

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK**

JOHN R. RICONDA

Plaintiff,

v.

LIBERTY INSURANCE UNDERWRITERS,  
INC.,

Defendant.

Index No. 3655/2012

(Hon. Jerry Garguilo)

**NOTICE OF APPEAL**

PLEASE TAKE NOTICE, that Plaintiff John R. Riconda appeals to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, from the Decision of the Honorable Judge Garguilo, dated September 7, 2018, and the Order of the Honorable Judge Garguilo, dated October 4, 2018, that was entered in the office of the Clerk of the Court, Suffolk County, on October 5, 2018.

Dated: November 1, 2018



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# Supreme Court of the State of New York

## Appellate Division: Second Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance
JOHN R. RICONDA  Plaintiff,  - against -  LIBERTY INSURANCE UNDERWRITERS, INC.,  Defendant.		Date Notice of Appeal Filed
		For Appellate Division
Case Type	Filing Type	
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278
<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review		
<b>Nature of Suit:</b> Check up to three of the following categories which best reflect the nature of the case.		
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input checked="" type="checkbox"/> Commercial
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input checked="" type="checkbox"/> Contracts
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Election Law
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Miscellaneous
		<input type="checkbox"/> Prisoner Discipline & Parole
		<input type="checkbox"/> Taxation
		<input type="checkbox"/> Torts

Informational Statement - Civil

## Appeal

Paper Appealed From (Check one only):		If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.	
<input type="checkbox"/> Amended Decree	<input type="checkbox"/> Determination	<input type="checkbox"/> Order	<input type="checkbox"/> Resettled Order
<input type="checkbox"/> Amended Judgement	<input type="checkbox"/> Finding	<input checked="" type="checkbox"/> Order & Judgment	<input type="checkbox"/> Ruling
<input type="checkbox"/> Amended Order	<input type="checkbox"/> Interlocutory Decree	<input type="checkbox"/> Partial Decree	<input type="checkbox"/> Other (specify):
<input type="checkbox"/> Decision	<input type="checkbox"/> Interlocutory Judgment	<input type="checkbox"/> Resettled Decree	
<input type="checkbox"/> Decree	<input type="checkbox"/> Judgment	<input type="checkbox"/> Resettled Judgment	
Court: Supreme Court	County: Suffolk		
Dated: 10/04/2018	Entered: 10/05/2018		
Judge (name in full): Jerry Garguilo	Index No.: 3655/2012		
Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final	Trial: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If Yes: <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Non-Jury
Prior Unperfected Appeal and Related Case Information			
Are any appeals arising in the same action or proceeding currently pending in the court?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.			
Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:			
Original Proceeding			
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus		Date Filed:	
Statute authorizing commencement of proceeding in the Appellate Division:			
Proceeding Transferred Pursuant to CPLR 7804(g)			
Court: Choose Court		County: Choose County	
Judge (name in full):		Order of Transfer Date:	
CPLR 5704 Review of Ex Parte Order:			
Court: Choose Court		County: Choose County	
Judge (name in full):		Dated:	
Description of Appeal, Proceeding or Application and Statement of Issues			
Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.			
On April 4, 2018 Plaintiff John Riconda recieved an animous jury verdict. Subsequently, Defendant Liberty Insurance Underwriters, Inc. filed a Motion to Set Aside the Verdict pursuant to CPLR 4404. On October 4, 2018, the trial court issued an order granting Defendant's motion and setting aside the jury verdict. This is an appeal from that Order. Appellant is seeking reinstatement of the jury's verdict.			

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Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether the trial court erred in overturning a unanimous jury verdict after a two-week trial in substituting its own view of the credibility of the plaintiff's statements for that of the jury's under the guise of the principle of judicial estoppel;

Whether the trial court erred in overturning a unanimous jury verdict after a two-week trial in applying judicial estoppel on a CPLR 4404 motion;

Whether the trial court erred in overturning a unanimous jury verdict after a two-week trial in finding that deposition testimony that was used for impeachment at trial gave rise to judicial estoppel;

Whether the trial court erred in overturning a unanimous jury verdict after a two-week trial in finding that an ambiguous statement made in a different lawsuit, that was settled before an answer was filed or a judge was assigned, and in which neither party prevailed, constituted judicial estoppel;

Whether the trial court erred in overturning a unanimous jury verdict after a two-week trial in applying the doctrine of judicial estoppel when Liberty failed to raise such argument at trial and therefore waived any objection to the verdict on that basis;

Whether the trial court erred in overturning a unanimous jury verdict after a two-week trial in entering an order in favor of Liberty without making any finding on the merits, including as to whether Liberty met its burden of proving that an exclusion to the insurance policy applied, and without ordering a new trial.

### Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	John R. Riconda	Plaintiff	Appellant
2	Liberty Insurance Underwriters, Inc.	Defendant	Respondent
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Informational Statement - Civil

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