

**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 hereby appeals to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, from a Judgment of the Supreme Court, Suffolk County, dated October 10, 2018.

Dated: November 21, 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
Nature of Suit: 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 checked="" type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<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 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 checked="" type="checkbox"/> Judgment	<input type="checkbox"/> Resettled Judgment	
Court: Supreme Court	County: Suffolk		
Dated: 10/10/2018	Entered: 10/10/2018		
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? Yes No
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.
No. 2018-13329

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:

On November 1, 2018, Plaintiff-Appellant John Riconda appealed the Order of the Honorable Judge Garguilo to the Appellate Division, Second Judicial Department, Case No. 2018-13329. Pursuant to that Order, a judgment was entered in favor of Defendant-Respondent, Liberty Insurance Underwriters, Inc., on October 10, 2018. Riconda is currently appealing from that judgment and will request that this appeal be consolidated with Case No. 2018-13329.

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. On October, 10, 2018, the trial court entered judgment in favor of Defendant. This is an appeal from that Judgment. Appellant is seeking reinstatement of the jury's verdict.

Informational Statement - Civil

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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