

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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FAUSTO REY ESPINAL AND SUGHEY ESPINAL,

Plaintiffs,

Index # 20189/05

1157 EAST 156TH STREET, LLC and STURDY
CONCRETE CO., INC.

**STIPULATION
AND HIGH LOW
AGREEMENT**

Defendants.
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IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the parties hereto as follows:

- 1) That the parties do hereby agree to try both the liability and damages in the above-captioned case.
- 2) That at the conclusion of the trial, if the plaintiffs are entitled to enter judgment in their favor, they can enter judgment for the amount permitted by law, without costs or disbursements or pre-judgment interest. However, if the amount of the judgment permitted by law, without costs, disbursements or interest, exceeds \$1,650,000.00, plaintiffs can enter judgment for \$1,650,000.00, without costs, disbursements or pre-judgment interest.
- 3) If the defendants succeed at trial, or the plaintiff succeeds but would otherwise be permitted to enter judgment for an amount less than \$500,000.00, the plaintiff can enter judgment for \$500,000.00, without costs, disbursement or pre-judgment interest.
- 4) That the parties hereby expressly waive the right to seek any interest, costs or disbursements, except as set forth in CPLR Section 5003-a as set forth in paragraph 8 .
- 5) The parties hereby agree to set forth in writing within 15 (fifteen) business days after the date of the jury verdict whether they intend to file an appeal on any issue reserved under paragraph 6, below. Should one of the parties set forth in writing their intent to appeal and a Notice of Appeal is timely filed then interest as prescribed by law will begin to run and will be calculated and added from the date of the entry of judgment though the date of payment.

6) The parties reserve their rights to seek relief to petition to the trial court or any higher court to redress any errors related to any issues of law and/or evidentiary issues that may arise during any phase of the trial. However, the parties hereby agree to waive the right to seek or to accept relief from the trial court or any higher court to reduce or increase the verdict by the jury or to set it aside in the circumstances of either an inadequate or excessive verdict, subject to the provisions of paragraph 8 (eight) of this agreement;

7) The parties hereby agree that the defendant maintains its right to seek any and all post-trial adjustments/reductions to the jury verdict for collateral source and CPLR section 50 B calculations available under New York law.

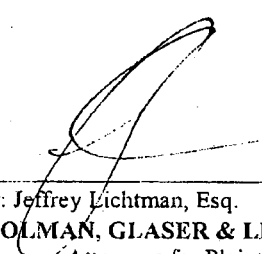
8) Upon the settlement of this matter, whether under the terms of this agreement or not, then plaintiffs and plaintiffs' counsel shall provide appropriate closing papers; i.e. a general release, a stipulation of discontinuance with prejudice, and a separate hold harmless agreement indemnifying and defending all defendants, their principals and The Hartford from any and all liens known or unknown. Defendants and their principals agree to be bound by the terms of CPLR 5003-a concerning the payment of any settlement draft.

9) That all disputes arising from this agreement shall be resolved by the statutory authority and decisional case law of the State of New York.

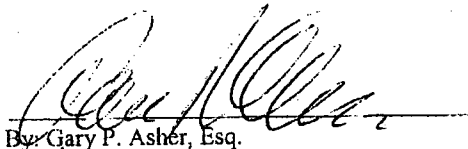
10) That either party may enter this stipulation in open court in the presence of the plaintiffs, who shall assent to all the terms contained herein.

11) That this agreement constitutes the entire understanding of the parties and that same may not be amended except by a formal written and executed document. That this agreement shall remain in effect and shall apply to any re-trial of this case.

Dated: New York, New York
May 7th, 2010



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