

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

JERRY CADIGAN and NANCY CATON  
CADIGAN, as the Proposed Administrators of the  
Estate of TREVOR NORRIS CADIGAN, Deceased,

Plaintiffs,

-against-

LIBERTY HELICOPTERS, INC., a New York  
Corporation; NYONAIR LLC, a New Jersey Limited  
Liability Company; FLYNYON LLC, a New Jersey  
Limited Liability Company; MERIDIAN  
CONSULTING CORPORATION, INC., a Delaware  
Corporation; RICHARD ZEMKE VANCE, a  
Connecticut resident; AIRBUS HELICOPTERS,  
S.A.S, a French Corporation; AIRBUS  
HELICOPTERS, INC., a Delaware Corporation; and  
APICAL INDUSTRIES, INC. d/b/a DART  
AEROSPACE, a California Corporation,

Defendants.

Index No.: 152286/2018

**STIPULATION AND ORDER**

**WHEREAS**, Plaintiffs Jerry Cadigan and Nancy Caton Cadigan, as Co-Administrators of the Estate of Trevor Norris Cadigan, Deceased (“Plaintiffs”), have filed a wrongful death lawsuit in the Supreme Court of the State of New York, County of New York, arising out of a helicopter accident that occurred on March 11, 2018 (“the Accident”); and

**WHEREAS**, in their First and Second Amended Complaints, Plaintiffs have made certain allegations as against Apical Industries, Inc. d/b/a DART Aerospace (“Apical”) and others arising out of and in connection with the aforementioned wrongful death lawsuit (hereinafter, the Plaintiffs and Apical jointly referred to as “the Parties”); and

**WHEREAS**, Apical has denied these allegations and, by Notice of Motion dated June 18, 2018, has moved to dismiss the First Amended Complaint for lack of personal jurisdiction;

and

WHEREAS, the Parties have reached a certain agreement with respect to Apical's Motion to Dismiss and other matters,

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED TO AS FOLLOWS:**

1. Plaintiffs have agreed to not seek punitive damages as against Apical and its past and present owners, parent and subsidiary entities and/or affiliates, in this and any other case or proceeding which is related to these plaintiffs and, in any manner, the Accident, and agree to amend their Second Amended Complaint to withdraw any such claims for punitive damages lodged by Plaintiffs against Apical;
2. In exchange, Apical agrees to withdraw its Notice of Motion seeking to dismiss the Complaint for lack of personal jurisdiction and agrees to submit to the jurisdiction of the Court, except with respect to any qualifications and conditions duly noted below;
3. This Stipulated Agreement is made for the sole consideration above indicated and for no other purpose or consideration;
4. Defendant Apical's submission to the jurisdiction of this Court applies and is effective only with respect to this case, namely, Index No. 152286/2018, and such submission and waiver of the defense of lack of personal jurisdiction shall not be construed as a waiver by Defendant Apical of personal jurisdiction in any other proceeding, lawsuit or third-party claim filed against Apical in New York by any other potential or actual plaintiff, defendant, or any other entity, with respect to the Accident which is the subject of this case, Index No.: 152286/2018, including but

not limited to the potential claims of any third-party for indemnification and/or contribution from Apical for damages sought by any person or entity other than Plaintiffs herein, nor shall the agreements of Apical and the Plaintiff herein be deemed as, or interpreted as, an estoppel of any kind from asserting any arguments or motions by Apical relative to the lack of jurisdiction of the courts of New York over Apical or its Affiliates in any other claim or proceeding.

5. Except, Defendant Apical expressly agrees that certain property damage claims for the value of the hull of the helicopter that was involved in the accident may be brought against Apical within this case (Index No. 152286/2018) by United States Aviation Underwriters Inc. (“USAU”) on its own behalf and/or on behalf of United States Aircraft Insurance Group and/or their insured Liberty Helicopter, Inc., as such claims are more particularly set forth in a suit entitled “United States Aviation Underwriters Inc., a New York corporation, individually and on behalf of United States Aviation Insurance Group, Plaintiff, vs. Apical Industries, Inc. d/b/a Dart Aerospace, et al.,” now pending in the Superior Court of the State of California, County of San Diego, Civil Unlimited, and bearing Case No. 37-2018-00057420-CU-NP-NC” (“the San Diego suit”), and Apical expressly submits to the jurisdiction of this Court for any and all such claims brought by USAU in the San Diego suit.
6. Defendant Apical’s submission to the Court’s jurisdiction in this action is not a general concession, agreement or acceptance by Apical that personal jurisdiction exists over Apical in any prior or subsequently filed claim or lawsuit against Apical in New York, whether related or not.

Dated: New York, New York  
May 13, 2019

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SO ORDERED:

Hon. James E. d'Auguste