SHORT FORM ORDER
SUPREME COURT OF THE STATE OF NEW YORK

Present: Hon. F. Dana Winslow,
Justice

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LISA and PAT DAVINO	NASSAU COUNTY
Plaintiffs,	Action #1
	Index No. 16044/93
–against–	
RONALD J. JACOBY,	
Defendant.	
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RONALD JACOBY	
Plaintiff,	Action # 2
	Index No. 20318/94
–against–	
COUNTY OF NASSAU, TOWN OF OYSTER BAY, LISA DAVINO AND LISA D. GIERSBACH,	
Defendants.	
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CHRISTOPHER LUHRS,	
Plaintiff,	Action # 2
	4213/95
–against–	
RONALD J. JACOBY, RONALD N. JACOBY, LISA D. DAVINO and LISA D. GIERSBACH,	Motion Seq # 005
	Motion Date: 10/11/02
Defendants.	
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The following papers having been read on the motion: [numbered 1-3]:

Notice of Motion in Limine.....1
Affirmation in Opposition.....2
Reply Affirmation.....3

These actions, joined for trial by order of Justice Molloy of 9/7/95, arise out of a head on collision between a vehicle driven by Plaintiff Ronald Jacoby and a vehicle driven by plaintiff in action # 1, Lisa Davino (a/k/a Lisa Giersbach). Christopher Luhrs, plaintiff in action #3, was a passenger in the Davino vehicle. In their respective actions, plaintiffs Davino and Luhrs claimed that defendant JACOBY was speeding, negligently lost control of his vehicle and crossed the median, striking the Davino vehicle head-on. Lisa Davino, as the plaintiff in Action #1 and a defendant in Action #2, moved for summary judgment against defendant Jacoby. Justice Lally granted that motion by order of April 10, 1996, finding as a matter of law that Davino was free from comparative negligence since she had been faced with an emergency not of her own making, and that defendant Jacoby, whose opposition consisted of a conclusory attorney's affirmation, failed to raise a triable question of fact regarding his lack of negligence in causing the accident. On the basis of this decision, the plaintiff in Action #3, Christopher Luhrs, and defendant Davino in Action #3, moved for summary judgment against defendant Jacoby in that action and by order of Justice Lally of August 20, 1996, these motions were also granted. Since JACOBY's claim in Action #2 against the TOWN OF OYSTER BAY was dismissed by order of Justice Lally of March14, 1996, the COUNTY OF NASSAU is the only remaining defendant in Action #2.

Now, the COUNTY OF NASSAU, a defendant in Action #2, moves this court, *in limine,* for an order precluding the plaintiff, RONALD JACOBY, from advancing any argument at trial that he was not negligent, on the basis that this issue has been resolved against him and is now the "law of the case." In effect, the COUNTY contends that plaintiff JACOBY's comparative negligence as a plaintiff has already been determined as a matter of law on the basis of determinations of negligence made against him, in his capacity as a defendant in actions # 1 and #2. This court agrees.

In his capacity as a defendant, JACOBY had a full and fair opportunity – twice – to litigate the question of his own culpability in causing this accident. His negligence was determined as a matter of law, no triable issues in his defense having been successfully raised in opposition to the summary judgment motions. Justice Lally has already determined that JACOBY is collaterally estopped from denying that his own negligence caused this accident. (Order of August 20, 1996). Accordingly, it is the law of the case that JACOBY was negligent in causing this accident and the motion *in limine* for an order

precluding JACOBY from re-litigating this issue is **granted.** See **Siewert v. Loudenville Elementary School**, 210 AD2d 568. JACOBY is not precluded, however, from litigating the question of whether or not the COUNTYof NASSAU was also negligent and, if so, to what proportionate degree.

This constitutes the order of the court.

Dated: October 22, 2002

ENTER,

J.S.C.