

20445

ORIGINAL

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-01901

Desiree D. Beatty, ... Respondent,

v.

Pyong Han Cho, ... Appellant.

RECORD ON APPEAL

RECEIVED
JUN 04 2013
SC Court of Appeals

John M. Grantland, Esquire
Ashley B. Stratton, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648

Columbia, SC 29260
(803) 782-4100

Attorneys for Appellant, Pyong Han Cho

Barry B. George

Paige George, Esquire
Law Office of Barry B. George
1419 Bull Street
Columbia, SC 29201

Attorney for Respondent, Desiree D. Beatty

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

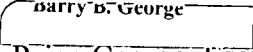
Case No. 2012-CP-40-01901

Desiree D. Beatty, ...Respondent,

v.

Pyong Han Cho, ...Appellant.

RECORD ON APPEAL

John M. Grantland, Esquire
Ashley B. Stratton, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorneys for Appellant, Pyong Han Cho

Paige George, Esquire
Law Office of Barry B. George
1419 Bull Street
Columbia, SC 29201
Attorney for Respondent, Desiree D. Beatty

INDEX

Order Denying Defendant's Motion for Relief from Judgment, filed November 19, 2012.....	1
Order for Default Judgment Damages, filed August 10, 2012	2
Motion and Order of Default, filed June 15, 2012.....	5
Affidavit of Default, filed June 15, 2012.....	7
Defendant's Notice of Motion and Motion for Relief from Judgment, filed September 6, 2012.....	9
Defendant's Memorandum in Support of its Motion for Relief from Judgment (including exhibits), filed October 29, 2012	12
Summons and Complaint (including attached affidavit of personal service), filed March 12, 2012.....	41
Transcript of Record, made on November 6, 2012.....	47
Letter to Appellant from Respondent's Counsel, dated July 16, 2012	59

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4001901

Desiree D. Beatty

Pyong Han Cho

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment to the Court:

Motion for Relief from Judgment denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

2061

Date

11-8-12

For Clerk of Court Office Use Only

This judgment was entered on Nov 20 and a copy mailed first class or placed in the appropriate attorney's box on this 20 day of Nov, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Barry B. George

John Martin Grantland

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court, Jeanette McBride

RECEIVED
NOV 2, 2012
BY: 4750-0170

SCANNED
1

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4001901

Desiree D. Beatty

Pyong Han Cho

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on 10th day of August, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

Barry B. George

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jeanette W. McBride
Clerk of Court, Jeanette McBride

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Desiree D. Beatty,) Civil Action #12-CP-40-01901
)

Plaintiff,)
)

vs.)
)

Pyong Han Cho,)
)

Defendant.)

ORDER

RICHLAND COUNTY
FILED
2012 AUG 10 PM 1:32
JEANE L. M. McBRIDE
C.C.P. & G.S.

A Damages Hearing was held before me at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on August 9, 2012 at 9:30 a.m. against the Defendant, Pyong Han Cho. Present at this hearing was the Plaintiff, Desiree D. Beatty, and her attorney, Barry B. George. The Defendant, Pyong Han Cho, was/was not present at the hearing.

Evidence was presented at the hearing on behalf of the Plaintiff. The Plaintiff testified that she was involved in an automobile accident on August 6, 2011 when the vehicle she was operating was struck from the rear by a vehicle driven by the Defendant, Pyong Han Cho.

The Plaintiff testified that she was injured in this accident. The Plaintiff testified that she injured her neck and back in the accident. The Plaintiff further testified that she was initially treated on August 7, 2011 at the Providence Hospital. The Plaintiff testified that she received further medical treatment on August 9, 2011 from Lexington Family Practice. The Plaintiff also testified that she was treated by Dr. Mark Escobedo of Advanced Healthcare Solutions from August 10, 2011 through September 29, 2011. The Plaintiff further testified that she continues to have trouble with her neck and lower back as a result of the accident. The Plaintiff testified that she takes over the counter medicine for the pain.

The Plaintiff testified that she was employed at Fort Jackson, SC as an assistant business manager. The Plaintiff testified that she was out of work from August 7, 2011 through August 31, 2011. The Plaintiff testified that she earns Thirteen and 90/100 (\$13.90) Dollars per hour and works forty (40) hours per week. The Plaintiff testified that as a result of losing time from work, she lost wages in the amount of Two thousand one and 60/100 (\$2,001.60) Dollars.

The Plaintiff presented to the Court the following medical information: Providence Hospital in the amount of \$265.05, Providence ER Services in the amount of \$356.00, Lexington Family Practice in the amount of \$102.00, and Dr. Mark Escobedo with Advanced Healthcare

Solutions in the amount of \$2,495.00, Walgreen's Pharmacy in the amount of \$33.22; said medical totaling the amount of \$3,251.27.

After considering the evidence presented, I FIND:

A) That an Order of Default was signed by the Honorable James R. Barber, III on June 14, 2012.

B) That the Plaintiff, Desiree D. Beatty, was injured in the automobile accident of August 6, 2011, when the vehicle she was operating was struck from the rear by a vehicle driven by the Defendant, Pyong Han Cho.

C) That the Plaintiff, Desiree D. Beatty, was injured in the accident on August 6, 2011 and had the following medical expenses: Providence Hospital in the amount of \$265.05, Providence ER Services in the amount of \$356.00, Lexington Family Practice in the amount of \$102.00, and Dr. Mark Escobedo with Advanced Healthcare Solutions in the amount of \$2,495.00, Walgreen's Pharmacy in the amount of \$33.22; said medical totaling \$3,251.27.

D) That the Plaintiff, Desiree D. Beatty, testified that she was employed at Fort Jackson, SC as an assistant business manager at the time of this accident and missed from August 7, 2011 through August 31, 2011. The Plaintiff testified that she earns Thirteen and 90/100 (\$13.90) Dollars per hour and works forty (40) hours per week. The Plaintiff testified that as a result of losing time from work, she lost wages in the amount of Two thousand one and 60/100 (\$2,001.60) Dollars.

E) That the Plaintiff, Desiree Beatty, testified that she still suffers pain in her neck and lower back and takes over the counter medication for the injuries sustained in the accident.

F) That Barry B. George, Attorney for the Plaintiff, presented to the Court a letter dated July 16, 2012 wherein the Defendant, Pyong Han Cho, was notified of the Damages Hearing scheduled for August 9, 2012 in Courtroom 3-A at 9:30 a.m..

THEREFORE, IT IS ORDERED that the Plaintiff, Desiree D. Beatty, have judgment against the Defendant, Pyong Han Cho, for actual damages for personal injury in the amount of

\$ 20,000.00 Dollars

AND IT IS SO ORDERED.

Columbia, South Carolina

Dated: 8-9-11


HONORABLE G. THOMAS COOPER, JR.
JUDGE, FIFTH JUDICIAL CIRCUIT



Aug. 28. 2012 3:38PM

No. 2418 P. 1

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

RECEIVED
AUG 28 2012

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4001901

Desiree D. Beatty

BY: 479-6170 Pyong Han Cho

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol Nonstat); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 15 June 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Barry B George

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Desiree D. Beatty,

Case #2012-CP-40-1901

Plaintiff,

vs.

MOTION AND ORDER OF DEFAULT

Pyong Han Cho,

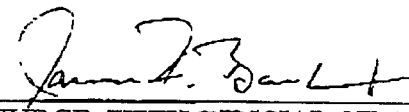
Defendant.

RICHLAND COUNTY
FILED
2012 JUN 15 AM 11:12
JEANETTE W. McBRIDE
CLERK, P. & C.S.

It appears from the Affidavit of Service signed by Kristi Ducote, that the Summons and Complaint in this action was served on Defendant, **Pyong Han Cho**, on the 14th day April 2012. It also appears from the Affidavit of Plaintiff's attorney that no Answer or motion to the Complaint has been served on the Plaintiff's attorney as required by law, and that Defendant, **Pyong Han Cho**, has not otherwise appeared. Furthermore, it appears that Defendant is not entitled to relief under the Soldiers' & Sailors' Relief Act and that Plaintiff's damages are unliquidated.

NOW, ON MOTION of Plaintiff's attorney, it is ordered and adjudged that Defendant, **Pyong Han Cho**, is in default and that Plaintiff is awarded judgment against Defendant for damages to be determined at a non-jury hearing held in accordance with applicable law. Finally, the Clerk of Court is directed to schedule a hearing during the next available non-jury term at which the extent of Plaintiff's damages shall be determined.

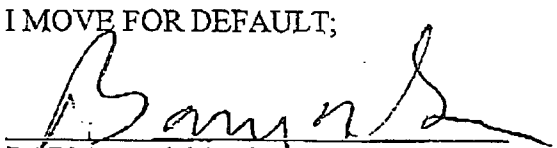
AND IT IS SO ORDERED.


JUDGE, FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina

Dated: 6/14/12

I MOVE FOR DEFAULT;


BARRY B. GEORGE

PAIGE B. GEORGE

Attorney for the Plaintiff

1419 Bull Street

Columbia, South Carolina 29201

SCANNED
6

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Desiree D. Beatty,

Plaintiff.

v.

Pyong Han Cho,

Defendant.

Civil Action #2012-CF-40-1901

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Barry B. George

SC Bar No.: 2417

Address: 1419 Bull Street

Columbia, SC 29201

Telephone: 254-7222 Fax: 779-9351

E-mail: Other:

Defendant's Attorney:

SC Bar No.:

Address:

Telephone:

Fax:

E-mail: Other:

☒ MOTION HEARING REQUESTED (attach written motion & complete Sections II and III)☐ FORM MOTION, NO HEARING REQUESTED (complete Sections II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete Sections II and III)

SECTION I: Hearing Information

Nature of Motion: Default

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☐ Yes ☒ No

SECTION II: Motion/Order Type

☐ Written Motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed Order.

Signature of Attorney for Plaintiff

Date submitted

SECTION III: Motion Fee

☒ Paid - Amount: \$25.00☐ Exempt: ☐ Rule to Show Cause in Child or Spousal Supportcheck reason ☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or, reduced to writing
from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the
order.☐ Other:

JUDGE

CODE:

DATE:

CLERK'S VERIFICATION

Date filed: 6/14/12

Collected by: mette☐ MOTION FEE COLLECTED ✓☐ CONTESTED - AMOUNT DUE: _____

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Desiree D. Beatty,

Case #2012-CP-40-1901

Plaintiff,

vs.

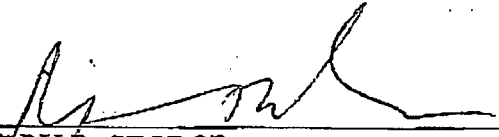
AFFIDAVIT OF DEFAULT

Pyong Han Cho,

Defendant.

RICHLAND COUNTY
FILED
2012 JUN 15 AM 11:12
JEANETTE W. McBRIDE
C.C.P. & G.S.

PERSONALLY, appeared before me, Barry B. George, who being duly sworn, says that he is the attorney for the Plaintiff in the above-entitled action; that the Summons and Complaint therein was duly served on the Defendant, **Pyong Han Cho**, on the 14th day of April 2011, as shown by the Affidavit of Service signed by Kristi Ducote; that more than thirty (30) days exclusive of the day of service has elapsed since the service of said Summons and Complaint; and no Answer, Demurrer, Notice of Appearance or other pleading has been served on the Plaintiff's attorney, as required by said Summons and Complaint, and that said Defendant is now in default. That said Defendant is not member of the Armed Services of the United States, as is contemplated under the Soldiers' & Sailors' Relief Act, as amended.


BARRY B. GEORGE
PAIGE B. GEORGE
ATTORNEY FOR THE PLAINTIFF
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222

SWORN to & subscribed before me this

12th day of June, 2012.

Charlene M. Dunlap-Sloan

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 03-06-17

SCANNED

3
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Desiree D. Beatty,
☐ Plaintiff

v.

Pyong Han Cho,
X Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-40-01901

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney as to the Counterclaim Only: Barry B. George, Esquire Bar No. Address: 1419 Bull Street Columbia, SC 29201 phone: 803-254-7222 fax: e-mail: other:		Defendant's Attorney: John M. Grantland, Esquire Bar No. Address: Murphy & Grantland, PA Post Office Box 6648 Columbia, SC 29260 phone: 803-782-4100 fax: e-mail: other:	
X MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: For Relief from Judgment Estimated Time Needed: 15 Minutes Court Reporter Needed: ☐ YES / X NO			
SECTION II: Motion/Order Type X Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for Defendant _____ Date submitted <u>8-30-12</u>			
SECTION III: Motion Fee X PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: <u>metts</u> Date Filed: <u>8/30/12</u> ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2012-CP-40-01901

Desiree D. Beatty,

Plaintiff,

v.

**DEFENDANT'S NOTICE OF MOTION AND
MOTION FOR RELIEF FROM JUDGMENT**

Pyong Han Cho,

Defendant,

**TO: BARRY B. GEORGE, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF AND
THE PLAINTIFF ABOVE NAMED:**

You will please take notice that the Defendant, by and through his undersigned counsel, will move before the Presiding Judge at the Richland County Court of Common Pleas at the Richland County Courthouse on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order seeking relief from judgment entered herein on August 10, 2012. This Motion is made pursuant to Rule 60(b)(1) and Rule 60(b)(4) of the *South Carolina Rules of Civil Procedure*. Upon information and belief, the judgment should be set aside due to mistake, inadvertence, and excusable neglect on the part of the Defendant.

This Motion will be supplemented and supported by Affidavits and other documents as appropriate.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

John M. Grantland, Esquire
4406-B Forest Drive (29206)
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorney for Defendant

Columbia, South Carolina
August 30, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2012-CP-40-01901

Desiree D. Beatty,

Plaintiff,

v.

CERTIFICATE OF SERVICE

Pyong Han Cho,

Defendant,

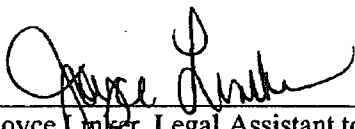
I, the undersigned employee of the law offices of Murphy & Grantland, P.A., attorneys
for Defendant, do hereby certify that on **August 30, 2012**, I have served a copy of the foregoing

DEFENDANT'S NOTICE OF MOTION AND MOTION FOR RELIEF FROM

JUDGMENT in connection with the above-referenced case placing same in the U.S. mail,

postage paid to:

Barry B. George, Esquire
1419 Bull Street
Columbia, SC 29201



Joyce Linker, Legal Assistant to
John M. Grantland, Esquire

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2012-CP-40-01901

Desiree D. Beatty,

Plaintiff,

v.

Pyong Han Cho,

Defendant,

**DEFENDANT'S MEMORANDUM IN
SUPPORT OF ITS MOTION FOR
RELIEF FROM JUDGMENT**

RICHLAND COUNTY
FILED
2012 OCT 12 PM 12:20
JEANETTE B. COOPER
C. CLERK OF COURT

Defendants submit the following Memorandum in support of their Motion for Relief from the Judgment pursuant to Rule 60(b), SCRPC.

FACTUAL BACKGROUND

This case arises from a motor vehicle accident that occurred on August 6, 2011. Plaintiff alleges that she was injured in her Complaint, which was filed on March 12, 2012. Defendant's wife, Diana Cho, was served by personal service on April 14th, 2012. However, the suit papers were never forwarded to Defendant's liability insurer, GEICO. While negotiations were ongoing between Plaintiff's counsel and GEICO, Plaintiff obtained an Entry of Default and a Default Judgment without GEICO's knowledge. Defendant filed this Motion for Relief from the Judgment.

Defendant's wife, Diana Cho, speaks and reads limited English and did not understand what the suit papers were about when she was served. (Affidavit of Diana Cho, ¶ 10, attached as Exhibit A.) She had notified GEICO of the accident and thought the matter had been resolved, since it was a very minor impact. (Id. at ¶¶ 6, 9.) The Chos did not receive any notice of the entry of default, the hearing on Plaintiff's motion for a default judgment, or the default judgment.

(Id. at ¶ 12.) The Chos moved from Richland to Lexington County after the accident. (Id. at ¶ 13.)

The motor vehicle accident at issue was a very minor bump that caused almost no damage to either vehicle. (Aff. of Diana Cho at ¶ 6.; Affidavit of Pyong Cho at ¶ 4, attached as Exhibit B.) Both of the Chos had the opportunity to observe and speak with Plaintiff for an extended period of time after the accident and they saw no sign of any injuries on Plaintiff's part. (Aff. of Diana Cho at ¶ 7; Aff. of Pyong Cho at ¶ 5.)

Jennifer Delong is the adjuster who handled the claim for GEICO. (Affidavit of Jennifer Delong, ¶ 4, attached as Exhibit 4.) She received notice of the accident, but no one at GEICO ever received notice of the lawsuit. (Id. at ¶ 6.) Delong investigated the claim and decided to attempt to settle the claim. (Id. at ¶ 8.) From January 24, 2012 until August 28, 2012, Delong made numerous attempts to contact Plaintiff's counsel. At no time was she ever told that the case was in suit.

On January 24, 2012, Delong called Plaintiff's counsel to make a settlement offer. (Aff. of Delong at ¶ 9.) Delong left a message with a paralegal at Plaintiff's counsel's office. (Id.) She also sent a settlement offer to Plaintiff's counsel in writing on the same date. (Id.)

On January 31, 2012, Delong spoke with Plaintiff's counsel by telephone. (Aff. of Delong at ¶ 10.) Plaintiff's counsel advised that his client had not yet responded to GEICO's settlement offer. (Id.)

On February 22, 2012, Delong attempted to contact Plaintiff's counsel but the telephone line was busy. (Id.) Delong was not notified that suit was filed on March 12, 2012. (Aff. of Delong at ¶ 12.)

On March 20, 2012, Delong called Plaintiff's counsel and left a voice mail requesting him to call her back regarding GEICO's settlement offer. (Id. at ¶ 13.)

Although Delong was not notified at the time, she subsequently learned that Diana Cho was served by personal service on April 14, 2012. (Aff. of Delong at ¶ 14.) GEICO did not receive a copy of the pleadings from either the insured or Plaintiff's counsel. (Id. at ¶ 15.)

On April 19, 2012, Delong spoke with Plaintiff's counsel. (Aff. of Delong at ¶ 16.) He advised he could not discuss the case at that time but that he would pull the file and call back. (Id.) Delong was not advised that suit had already been filed or that Diana Cho had been served. (Id.)

On May 18, 2012, Delong left a voice mail message with Plaintiff's counsel requesting him to call back regarding GEICO's settlement offer. (Aff. of Delong at ¶ 17.)

On June 14, 2012, Delong attempted to call Plaintiff's counsel but was unable to reach him. (Aff. of Delong at ¶ 18.) Delong wrote Plaintiff's counsel regarding GEICO's settlement offer on the same date. (Id.) Delong was not aware of the Order of Default dated June 14, 2012, nor was she provided notice that the lawsuit was in default. (Id.)

On June 28, 2012, Delong again attempted to reach Plaintiff's counsel by telephone but the line was busy. (Aff. of Delong at ¶ 20.)

On July 29, 2012, Delong phoned Plaintiff's counsel and left a message with his secretary requesting him to call her back. (Id. at ¶ 21.) Delong did not receive notice of the damages hearing scheduled for August 9, 2012. (Id. at ¶ 22.)

On August 20, 2012, Delong attempted to call Plaintiff's counsel but could not reach him because the line was busy. (Aff. of Delong at ¶ 23.)

On August 22, 2012, Delong wrote to Plaintiff's counsel reinstating GEICO's settlement offer, still unaware that the case was in suit. (Id. at ¶ 24.)

On August 28, 2012, Delong received notice of the default judgment against GEICO's insured. (Aff. of Delong at ¶ 25.) This was the first notice GEICO received of this lawsuit. (Id.) After learning of the default judgment, Delong called Diana Cho, the named insured under GEICO's policy. (Id.) Delong was told that Cho had mailed a copy of the pleadings to GEICO. (Id.) GEICO never received any communication of any kind regarding the lawsuit or the default proceedings. (Id. at ¶¶ 27-30.)

ARGUMENT

I. Standard for Motion for Relief from a Judgment

Rule 60(b), SCRCP, provides five enumerated grounds for relief from a final judgment. Momani v. Van Surdam, 296 S.C. 409, 410, 373 S.E.2d 691, 692 (Ct. App. 1988). Among these grounds are mistake, inadvertence, surprise, or excusable neglect; and fraud, misrepresentation, or other misconduct of an adverse party; and a showing that the judgment is void. Rule 60(b)(1), (3) and (4). To obtain relief from a default judgment, the movant must show a meritorious defense. Tri-County Ice & Fuel Co., Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990). A Rule 60(b) motion is addressed to the sound discretion of the trial judge. Id.

II. The default judgment against Cho should be set aside due to mistake, inadvertence, surprise, or excusable neglect.

Rule 60(b)(1) provides for default judgments to be set aside due to mistake, inadvertence, surprise, or excusable neglect. The Supreme Court of South Carolina has directly ruled that a trial court erred in refusing to set aside a default judgment under circumstances similar to those in this case. Edwards v. Ferguson, 254 S.C. 278, 175 S.E.2d 224 (1970). In Edwards, the insured driver was an alcoholic and he failed to notify his liability carrier, State Farm, about the

accident. Id. at 280, 175 S.E.2d at 225. The defendant was served through personal service on his father, who was illiterate. Id. at 281, 175 S.E.2d at 225. The defendant's father failed to forward the suit papers to State Farm. Id. They were later found in a drawer in the defendant's house. Id. As a result, a default judgment was entered against the defendant. Id. at 281-82, 254 S.E.2d at 225.

The trial court denied the defendant's motion to set aside the judgment based on mistake, inadvertence, surprise, or excusable neglect. Edwards, 254 S.C. at 282, 275 S.E.2d at 225. The Supreme Court reversed, finding that the trial court abused its discretion. Id. at 283, 175 S.E.2d at 226.

Defendants' motion for relief from the default judgment should be granted under Edwards. As in Edwards, the person upon whom service was obtained understood little English. (Aff. of Diana Cho at ¶ 10.) She did not understand what the suit papers were for and she thought she was simply being harassed by the Plaintiff personally. (Id.) Notice of the suit was never provided to GEICO. (Aff. of DeLong.) Therefore, this Court should grant Defendant's motion pursuant to Rule 60(b)(1), SCRCP and Edwards.

III. The default judgment against Cho should be set aside due to fraud, misrepresentation, or other misconduct of an adverse party.

Rule 60(b)(3) also provides for default judgments to be set aside due to fraud, misrepresentation, or other misconduct of an adverse party. Defendants' motion should be granted on this basis because Plaintiff's counsel continued to negotiate with GEICO without telling GEICO that the case was already in suit and that its insured was in default.

The South Carolina Supreme Court has condemned the practice of filing suit and serving the insured without informing the insurer and while continuing to negotiate as if the case was not yet in suit. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct. App. 2008), aff'd, 395 S.C. 85,

716 S.E.2d 887 (2011). The Court of Appeals held that failure to send a courtesy copy to a defendant's insurance carrier when settlement negotiations are ongoing is grounds to set aside a default judgment. Id. at 573, 671 S.E.2d at 92-93.¹

Chief Judge Hearn (now Justice Hearn) addressed this issue at length in her concurring opinion and concluded that "counsel's actions in continuing to uphold the appearance of settlement negotiations while simultaneously pursuing a default judgment without notice to Zurich . . . certainly warrants the grant of New Prime and Deaton's Rule 60(b) motion." Id. at 584, 671 S.E.2d at 98 (Hearn, C.J., concurring). Justice Hearn cited two Indiana cases holding that failure to notify an insurance carrier that suit has been filed when settlement negotiations are ongoing is grounds for relief from a default judgment. McClurg, 380 S.C. at 583, 671 S.E.2d at 98 (citing McGee v. Reynolds, 618 N.E.2d 40 (Ind. Ct. App. 1993) and Boles v. Weidner, 449 N.E.2d 288 (Ind. 1983)). As Justice Hearn noted, the McGee court "described the plaintiff attorney's behavior as bad faith and "smacking of chicanery and unfair advantage which could not be tolerated." McClurg, 380 S.C. at 583, 671 S.E.2d at 98 (citations omitted). Furthermore, Chief Justice Toal opined in her dissenting opinion that the default judgment was obtained by "trickery and deception." McClurg, 395 S.C. at 88, 716 S.E.2d at 889 (Toal, C.J., dissenting).

This authority establishes that Plaintiff's conduct merits setting aside a default judgment. McClurg was decided under Rule 60(b), which is applicable in this case. Defendant requests that this Court grant its motion for relief from the default judgment because Plaintiff's counsel failed to negotiate in good faith by sending a courtesy copy of the Complaint to GEICO and providing notice that Cho was in default under McClurg.

¹ The adverse outcome in McClurg was due to the court's finding that the defendants failed to raise a meritorious defense in their motion to set aside the default. McClurg, 395 S.C. at 86-87, 716 S.E.2d at 887-888. As set forth below, this aspect of the McClurg ruling does not apply here because Defendants raised a meritorious defense.

IV. Defendant has demonstrated a meritorious defense in this case.

In McClurg, the court held that a party seeking relief from a default judgment under Rule 60(b) must make a prima facie showing of a meritorious defense. McClurg, 395 S.C. at 86-87, 716 S.E.2d at 887-88. Defendant satisfied this requirement through the claim documents submitted by GEICO's adjuster, Jennifer Delong. (See Aff. of Delong, ¶ 30 and attachments.) These claim documents demonstrate that any damage to the vehicles was almost undetectable from the photos. (Id.) When Plaintiff's bumper cover was pulled off, the bumper itself showed no damage at all. (Id.) The cost of the repairs to the vehicle was less than \$500. (Id.)

Plaintiff's judgment was for \$20,000, which is grossly disproportionate to the evidence from the vehicles. Moreover, both Pyong and Diana Cho testified by affidavit that they saw Plaintiff and spoke to her for an extended period of time after the accident and they saw no evidence that she was injured. Therefore, Defendants have demonstrated a meritorious defense. Defendant requests that this Court provide relief from the judgment and allow him to present his case on the merits. See Edwards, 254 S.C. at 283, 175 S.E.2d at 226.

CONCLUSION

For the reasons set forth above, Defendant respectfully request that this Court order relief from the judgment pursuant to Rule 60(b).

[Signature page follows]

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



John M. Grantland, Esquire
4406-B Forest Drive (29206)
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorney for Defendant

Columbia, South Carolina
October 26, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2012-CP-40-01901

Desiree D. Beatty,

Plaintiff,

v.

Pyong Han Cho,

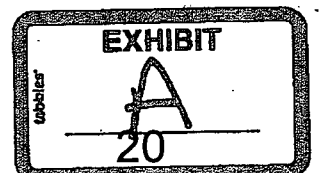
Defendant,

AFFIDAVIT OF DIANA CHO

**TO: BARRY B. GEORGE, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF AND
THE PLAINTIFF ABOVE NAMED:**

PERSONALLY APPEARED BEFORE ME, the undersigned Diana Cho, who after
being duly sworn, deposes and says:

1. My name is Diana Cho.
2. I am above 18 years of age.
3. I make this affidavit based on my knowledge and observations.
4. I am the wife of Defendant Pyong Han Cho and the named insured under the
GEICO auto policy which provides liability coverage for my husband.
5. I was not with my husband when this accident occurred, but I arrived about ten
minutes later.
6. The accident at issue was a very minor bump which caused almost no damage to
either vehicle.
7. I had the opportunity to observe the Plaintiff and speak with her for almost three
hours while we were waiting for the police officer to arrive after the accident and the Plaintiff
showed no sign of bodily injury.



8. After the accident I notified GEICO of the accident.

9. After I reported the accident to GEICO, I thought the matter had been resolved.

10. I was served with a copy of the Summons and Complaint in this matter.

However, I speak and read limited English and did not understand what the papers were about. I did not realize they were Court documents and thought we were being harassed by the Plaintiff.

11. Because I did not understand the papers, I did not send them to GEICO.

12. I did not receive any other notice regarding the above-referenced case. I did not receive notice of the entry of default. I did not receive notice of the hearing or the default judgment.

13. After the accident, we moved to our current address in Lexington, South Carolina.

FURTHER AFFIANT SAYETH NOT


Diana Cho

SWORN to and subscribed before me
this 19th day of October, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 10-22-2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2012-CP-40-01901

Desiree D. Beatty,

Plaintiff,

v.

Pyong Han Cho,

Defendant,

AFFIDAVIT OF PYONG CHO

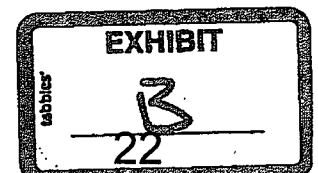
**TO: BARRY B. GEORGE, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF AND
THE PLAINTIFF ABOVE NAMED:**

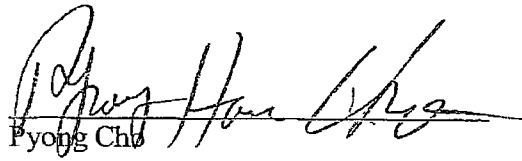
PERSONALLY APPEARED BEFORE ME, the undersigned Pyong Cho, who after
being duly sworn, deposes and says:

1. My name is Pyong Cho.
2. I am above 18 years of age.
3. I make this affidavit based on my knowledge and observations.
4. The accident at issue was a very minor bump which caused almost no damage to either vehicle.
5. I had the opportunity to observe the Plaintiff and speak with her for almost three hours while we were waiting for the police officer to arrive after the accident and the Plaintiff showed no sign of bodily injury.
6. After the accident, we moved to our current address in Lexington, South Carolina.

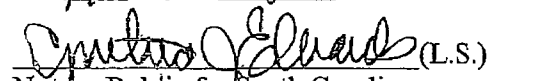
FURTHER AFFIANT SAYETH NOT

[Signature page follows]




Pyong Cho

SWORN to and subscribed before me
this 19th day of Oct., 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 10-22-2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2012-CP-40-01901

Desiree D. Beatty,

Plaintiff,

v.

AFFIDAVIT OF JENNIFER DELONG

Pyong Han Cho,

Defendant,

**TO: BARRY B. GEORGE, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF AND
THE PLAINTIFF ABOVE NAMED:**

PERSONALLY APPEARED BEFORE ME, the undersigned Jennifer Delong, who
after being duly sworn, deposes and says:

1. My name is Jennifer Delong.
2. I am above 18 years of age.
3. I make this affidavit based on my knowledge and observations.
4. I am a telephone claims representative for GEICO Direct Insurance Company,

which provides liability coverage for Defendant Pyong Han Cho.

5. In my capacity as telephone claims representative, I determine liability and handle
bodily injury claims. I was assigned the claim at issue in the above-referenced case.

6. GEICO received notice of the accident at issue, but GEICO was never notified
that the claim was in suit.

7. The following is a timeline of the events related to this claim.

8. The accident at issue occurred on August 6, 2011. I conducted an investigation
and decided to attempt to settle this claim.



9. On January 24, 2012, I called Plaintiff's counsel to make a settlement offer. I left a message with a paralegal at Plaintiff's counsel's office. I also sent a settlement offer to Plaintiff's counsel in writing on the same date.

10. On January 31, 2012, I spoke with Plaintiff's counsel by telephone. Plaintiff's counsel advised that his client had not yet responded to GEICO's settlement offer.

11. On February 22, 2012, I attempted to contact Plaintiff's counsel but the telephone line was busy.

12. I was not notified that suit was filed on March 12, 2012.

13. On March 20, 2012, I called Plaintiff's counsel and left a voice mail requesting him to call me back regarding GEICO's settlement offer.

14. Although I was not notified at the time, I have subsequently learned that Diana Cho was served by personal service on April 14, 2012.

15. GEICO did not receive a copy of the pleadings from either the insured or Plaintiff's counsel.

16. On April 19, 2012, I spoke with Plaintiff's counsel. He advised he could not discuss the case at that time but that he would pull the file and call back. I was not advised that suit had already been filed or that GEICO's insured had been served.

17. On May 18, 2012, I left a voice mail message with Plaintiff's counsel requesting him to call back regarding GEICO's settlement offer.

18. On June 14, 2012, I attempted to call Plaintiff's counsel but was unable to reach him. I wrote Plaintiff's counsel regarding GEICO's settlement offer on the same date.

19. I was not aware of the Order of Default dated June 14, 2012, nor was I provided notice that the lawsuit was in default.

20. On June 28, 2012, I again attempted to reach Plaintiff's counsel by telephone but the line was busy.

21. On July 29, 2012, I phone Plaintiff's counsel and left a message with his secretary requesting him to call me back.

22. I did not receive notice of the damages hearing scheduled for August 9, 2012.

23. On August 20, 2012, I attempted to call Plaintiff's counsel but could not reach him because the line was busy.

24. On August 22, 2012, I wrote to Plaintiff's counsel reinstating GEICO's settlement offer, still unaware that the case was in suit.

25. On August 28, 2012, I received notice of the default judgment against GEICO's insured. This was the first notice GEICO received of this lawsuit.

26. After learning of the default judgment, I called Diana Cho, the named insured under GEICO's policy. I was told that she had mailed a copy of the pleadings to GEICO.

27. GEICO never received a copy of the pleadings from Diana Cho or anyone else.

28. GEICO did not receive a courtesy copy of the Complaint from Plaintiff's counsel.

29. GEICO never received any communication from anyone to put it on notice that the case was in suit until after the default judgment had been filed.

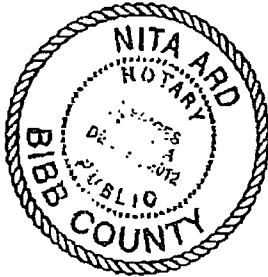
30. The attached photographs and invoices were received by GEICO in the course of its investigation and show that the physical damage to both vehicles involved in the accident at issues was minimal.

FURTHER AFFIANT SAYETH NOT

Jennifer DeLong
Jennifer DeLong

SWORN to and subscribed before me
this 26th day of Oct., 2012.

Nita Ard (L.S.)
Notary Public for Georgia
My Commission Expires: 12/30/12



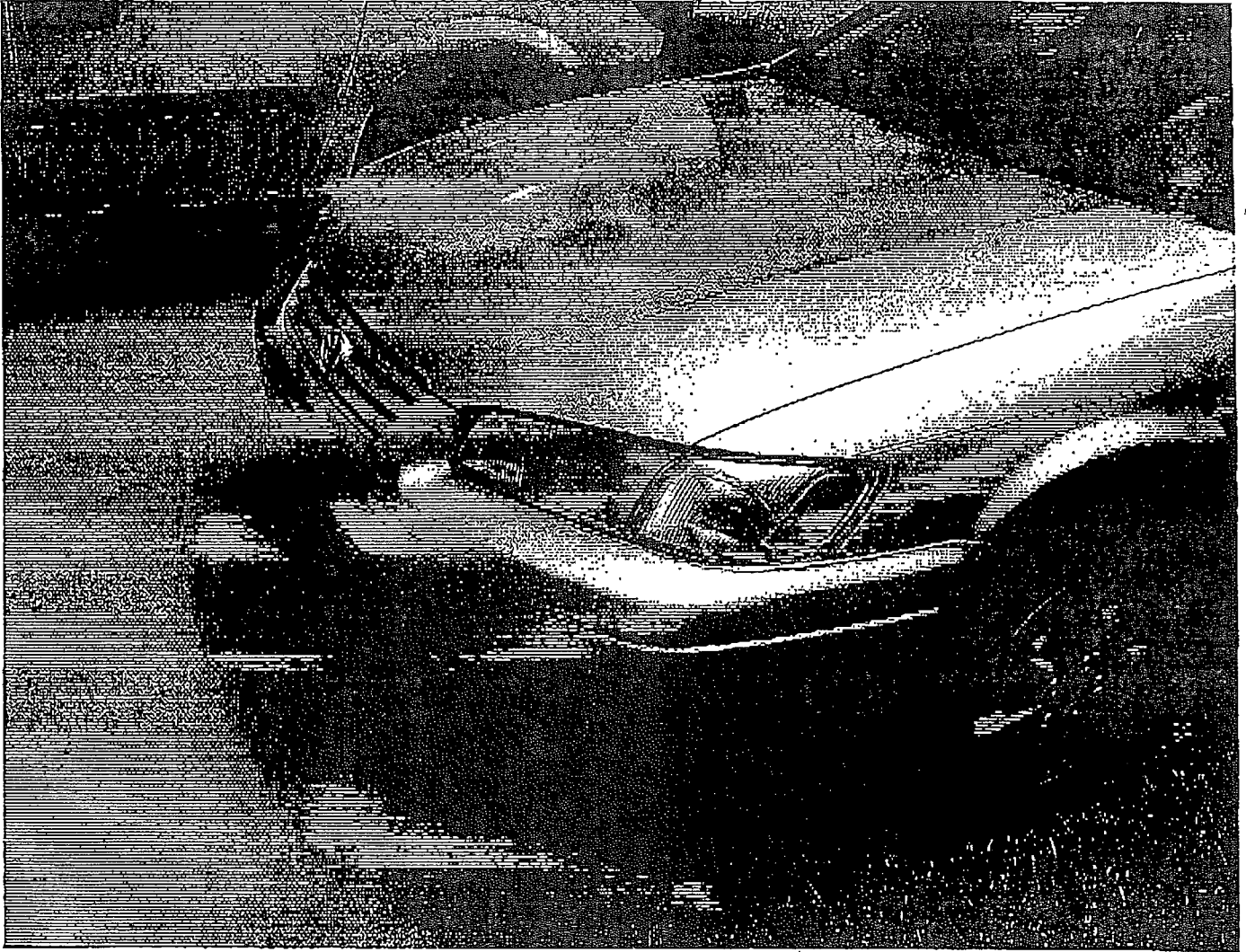
2 1 DIANA CHO/Auto Damage/Estimate / Total Loss Papers/Insd Photos/Page 1 (1 of 3),



3 2 DIANA CHO/Auto Damage/Estimate / Total Loss Papers/Insd Photos/Page 2 (2 of 3),



4 3 DIANA CHO/Auto Damage/Estimate / Total Loss Papers/Insd Photos/Page 3 (LAST),



5 1 4 IP3:MS DESIREE BEATTY/Auto Damage/Estimate / Total Loss Papers/Estimate of pieces 1 (LAST),

Details from Estimate for Claim no 0351257340101014-03 - E01

Claim summary**Number of photos** 3**Folder status****Company name**

COLUMBIA, SC

Address 1

FAX SUPPLEMENT 1-305-328-4122

Address 2

P.O.BOX 3992

City, State, ZIP

West Columbia, SC 29171-

Phone

(803)360-7019--

Estimate length

21384

License

GZW319 SC

Costs

PARTS			0.00
BODY LABOR	4.2 HRS	@ \$ 42.00/HR	176.40
PAINT LABOR	3.9 HRS	@ \$ 42.00/HR	163.80
PAINT SUPPLIES	3.9 HRS	@ \$ 26.00/HR	101.40
OTHER CHARGES			3.00

SUBTOTAL		\$	444.60
SALES TAX	\$ 3.00 @ 7.0000%		0.21

TOTAL COST OF REPAIRS		\$	444.81
-----------------------	--	----	--------

TOTAL ADJUSTMENTS		\$	0.00
NET COST OF REPAIRS		\$	444.81

Estimate header

0351257340101014-03 IGE007006

Style

5, CHRY, SEBRING

Insured

CHO, DIANA

Loss date

08/06/11

Claim number

0351257340101014-03

Policy number

4135423335

Claim rep

H012 EXT: FCC: 02

Shop name

JOHN HARRIS BODY SHOP

Claimant

BEATTY, DESIREE

VIN

1C3EL46X85N705877

Ins co.

GEICO

Ins is owner

N

Estimator

ROY LOONEY

6 2

Photo 1 from Estimate for Claim no 0351257340101014-03-E01

Photo date: 08/09/2011 09:10:31:00. Size: 29406

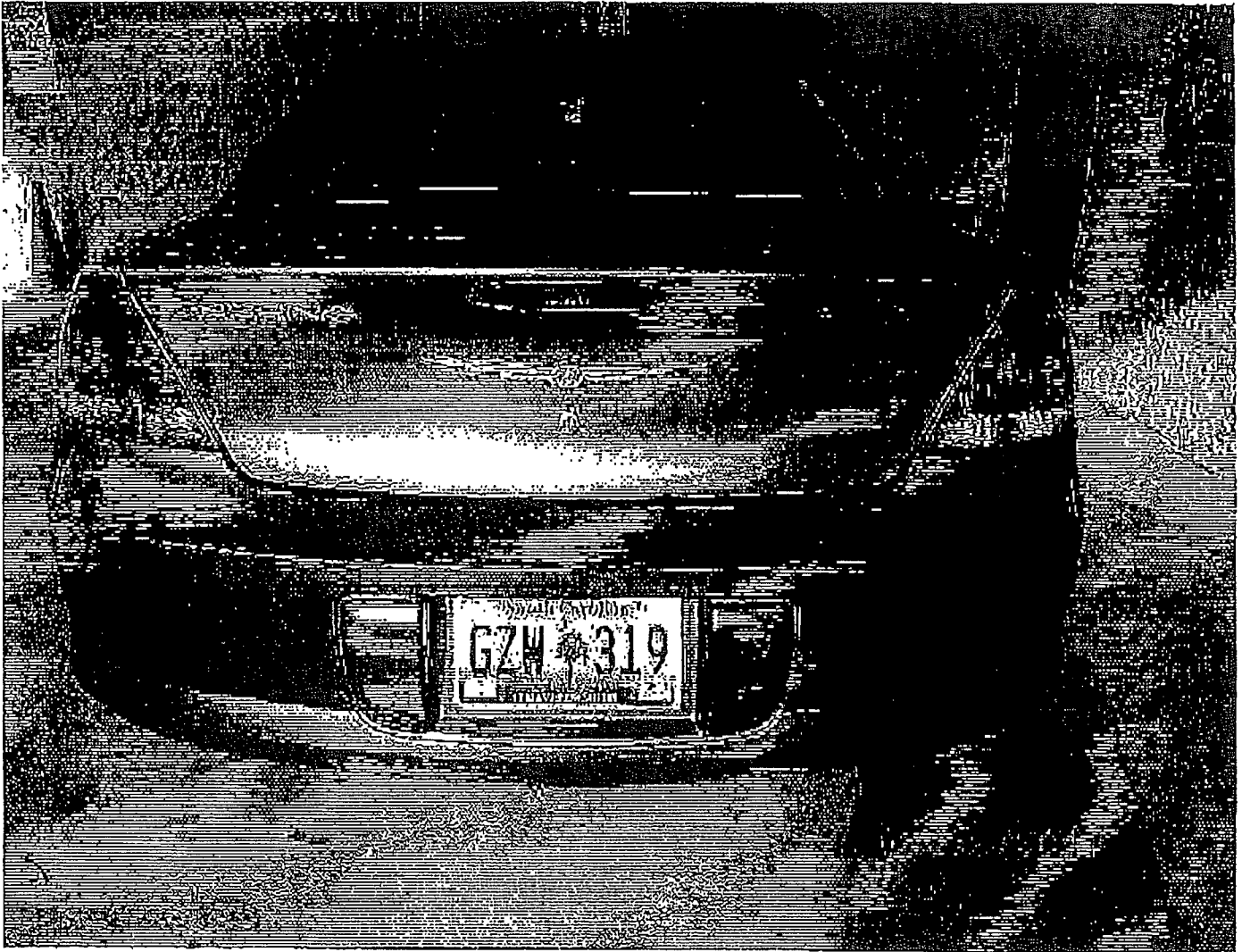
Description:

Insured: CHO, DIANA. Policy_no: 4135423335

Claimant: BEATTY, DESIREE

Vehicle: 5, CHRY, SEBRING. VIN: 1C3EL46X85N705877

Loss date: 08/06/11. Estimator: ROY LOONEY



7 3

Photo 2 from Estimate for Claim no 0351257340101014-03-E01

Photo date: 08/09/2011 09:10:31:00. Size: 28723

Description:

Insured: CHO, DIANA. Policy_no: 4135423335

Claimant: BEATTY, DESIREE

Vehicle: 5, CHRY, SEBRING. VIN: 1C3EL46X85N705877

Loss date: 08/06/11. Estimator: ROY LOONEY



8 4

Photo 3 from Estimate for Claim no 0351257340101014-03-E01

Photo date: 08/09/2011 10:52:35:00. Size: 30203

Description:

Insured: CHO, DIANA. Policy_no: 4135423335

Claimant: BEATTY, DESIREE

Vehicle: 5, CHRY, SEBRING. VIN: 1C3EL46X85N705877

Loss date: 08/06/11. Estimator: ROY LOONEY



9 508/09/2011 AT 11:17 AM
455730351257340101014-03
025X1R7Y

GEICO
COLUMBIA, SC
E-MAIL SUPPLEMENTS TO : R3SCSUPP@GEICO.COM
FAX SUPPLEMENT 1-305-328-4122
P.O. BOX 3992
WEST COLUMBIA, SC 29171
(803) 360-7019

ESTIMATE OF RECORD

WRITTEN BY: ROY LOONEY ## 175492 08/09/2011 11:17 AM
ADJUSTER: H012 EXT: FCC: (803) 360-7019

INSURED: DIANA CHO CLAIM #0351257340101014-03
OWNER: DESIREE BEATTY POLICY #
ADDRESS: 8100 BAYFIELD RD DATE OF LOSS: 08/06/2011 AT 12:00 AM
APT 14F
COLUMBIA, SC 29223
BUSINESS: (803) 237-9512 TYPE OF LOSS: LIABILITY
POINT OF IMPACT: 6. REAR

INSPECT JOHN HARRIS BODY SHOP-XD DAY: (803) 799-0273
LOCATION: 100 FONTAINE CENTER RD NON_DRIVE_IN
COLUMBIA, SC 29223-0000

REPAIR JOHN HARRIS BODY SHOP BUSINESS: (803) 799-0273
FACILITY: 100 FONTAINE CENTER DR. 3 DAYS TO REPAIR
COLUMBIA, SC 29223 LICENSE #

2005 CHRY SEBRING 4-2.4L-FI 4D SED GREEN INT:
VIN: 1C3EL46X85N705877 LIC: GZW319 SC PROD DATE: ODOMETER: 71706
AIR CONDITIONING REAR DEFOGGER TILT WHEEL
CRUISE CONTROL INTERMITTENT WIPERS KEYLESS ENTRY
TINTED GLASS BODY SIDE MOLDINGS DUAL MIRRORS
OVERHEAD CONSOLE CLEAR COAT PAINT POWER STEERING
POWER BRAKES POWER WINDOWS POWER LOCKS
POWER DRIVER SEAT POWER MIRRORS POWER TRUNK/GATE RELEASE
AM RADIO FM RADIO STEREO
SEARCH/SEEK CD PLAYER DRIVER AIR BAG
PASSENGER AIR BAG CLOTH SEATS BUCKET SEATS
AUTOMATIC TRANSMISSION OVERDRIVE ALUMINUM/ALLOY WHEELS

NO.	OP.	DESCRIPTION	QTY	EXT.	PRICE	LABOR	PAINT
1		REAR BUMPER					
2	R&I	R&I BUMPER COVER				1.0	
3*	RPR	BUMPER COVER				3.2*	2.8
4		ADD FOR CLEAR COAT					1.1
5		OTHER CHARGES					
6#	E.P.C.		1		3.00		
SUBTOTALS ==>					3.00	4.2	3.9

10 608/09/2011 AT 11:17 AM
455730351257340101014-03
0Z5X1R7YESTIMATE OF RECORD
2005 CHRY SEBRING 4-2.4L-FI 4D SED GREEN INT:-----
PRIOR DAMAGE NOTES:

MINOR DOOR DINGS, DENT ROOF. PAINT RUN REAR BUMPER COVER RT SIDE.

PARTS			0.00
BODY LABOR	4.2 HRS	@ \$ 42.00/HR	176.40
PAINT LABOR	3.9 HRS	@ \$ 42.00/HR	163.80
PAINT SUPPLIES	3.9 HRS	@ \$ 26.00/HR	101.40
OTHER CHARGES			3.00

SUBTOTAL			\$ 444.60
SALES TAX	\$ 3.00	@ 7.0000%	0.21

TOTAL COST OF REPAIRS			\$ 444.81

TOTAL ADJUSTMENTS			\$ 0.00
NET COST OF REPAIRS			\$ 444.81

11 7

08/09/2011 AT 11:17 AM
455730351257340101014-03
0Z5X1R7YESTIMATE OF RECORD
2005 CHRY SEBRING 4-2.4L-FI 4D SED GREEN INT:

ESTIMATE BASED ON MOTOR CRASH ESTIMATING GUIDE. UNLESS OTHERWISE NOTED ALL ITEMS ARE DERIVED FROM THE GUIDE DR3NM01, CCC DATA DATE 08/01/2011, AND THE PARTS SELECTED ARE OEM-PARTS MANUFACTURED BY THE VEHICLES ORIGINAL EQUIPMENT MANUFACTURER. OEM PARTS ARE AVAILABLE AT OE/VEHICLE DEALERSHIPS. OPT OEM (OPTIONAL OEM) OR ALT OEM (ALTERNATIVE OEM) PARTS ARE OEM PARTS THAT MAY BE PROVIDED BY OR THROUGH ALTERNATE SOURCES OTHER THAN THE OEM VEHICLE DEALERSHIPS. OPT OEM OR ALT OEM PARTS MAY REFLECT SOME SPECIFIC, SPECIAL, OR UNIQUE PRICING OR DISCOUNT. OPT OEM OR ALT OEM PARTS MAY INCLUDE "BLEMISHED" PARTS PROVIDED BY OEM'S THROUGH OEM VEHICLE DEALERSHIPS. ASTERISK (*) OR DOUBLE ASTERISK (**) INDICATES THAT THE PARTS AND/OR LABOR INFORMATION PROVIDED BY MOTOR MAY HAVE BEEN MODIFIED OR MAY HAVE COME FROM AN ALTERNATE DATA SOURCE. TILDE SIGN (~) ITEMS INDICATE MOTOR NOT-INCLUDED LABOR OPERATIONS. NON-ORIGINAL EQUIPMENT MANUFACTURER AFTERMARKET PARTS ARE DESCRIBED AS AM, QUAL REPL PARTS OR COMP REPL PARTS WHICH STANDS FOR COMPETITIVE REPLACEMENT PARTS. USED PARTS ARE DESCRIBED AS LKQ, QUAL RECY PARTS, RCY, OR USED. RECONDITIONED PARTS ARE DESCRIBED AS RECOND. RECORED PARTS ARE DESCRIBED AS RECORE. NAGS PART NUMBERS AND BENCHMARK PRICES ARE PROVIDED BY NATIONAL AUTO GLASS SPECIFICATIONS. LABOR OPERATION TIMES LISTED ON THE LINE WITH THE NAGS INFORMATION ARE MOTOR SUGGESTED LABOR OPERATION TIMES. NAGS LABOR OPERATION TIMES ARE NOT INCLUDED. POUND SIGN (#) ITEMS INDICATE MANUAL ENTRIES. SOME 2010 VEHICLES CONTAIN MINOR CHANGES FROM THE PREVIOUS YEAR. FOR THOSE VEHICLES, PRIOR TO RECEIVING UPDATED DATA FROM THE VEHICLE MANUFACTURER, LABOR AND PARTS DATA FROM THE PREVIOUS YEAR MAY BE USED. THE CCC ONE ESTIMATOR HAS A COMPLETE LIST OF APPLICABLE VEHICLES. PARTS NUMBERS AND PRICES SHOULD BE CONFIRMED WITH THE LOCAL DEALERSHIP. THE FOLLOWING IS A LIST OF ABBREVIATIONS OR SYMBOLS THAT MAY BE USED TO DESCRIBE WORK TO BE DONE OR PARTS TO BE REPAIRED OR REPLACED: MOTOR ABBREVIATIONS/SYMBOLS: D=DISCONTINUED PART A=APPROXIMATE PRICE LABOR TYPES: B=BODY LABOR D=DIAGNOSTIC E=ELECTRICAL F=FRAME G=GLASS M=MECHANICAL P=PAINT LABOR S=STRUCTURAL T=TAXED MISCELLANEOUS X=NON TAXED MISCELLANEOUS PATHWAYS: ADJ=ADJACENT ALGN=ALIGN A/M=AFTERMARKET BLND=BLEND CAPA=CERTIFIED AUTOMOTIVE PARTS ASSOCIATION NSF=NSF INTERNATIONAL CERTIFIED PART D&R=DISCONNECT AND RECONNECT EST=ESTIMATE EXT. PRICE=UNIT PRICE MULTIPLIED BY THE QUANTITY INCL=INCLUDED MISC=MISCELLANEOUS NAGS=NATIONAL AUTO GLASS SPECIFICATIONS NON-ADJ=NON ADJACENT O/H=OVERHAUL OP=OPERATION NO=LINE NUMBER QTY=QUANTITY QUAL RECY=QUALITY RECYCLED PART QUAL REPL=QUALITY REPLACEMENT PART COMP REPL PARTS=COMPETITIVE REPLACEMENT PARTS RECOND=RECONDITION REFN=REFINISH REPL=REPLACE R&I=REMOVE AND INSTALL R&R=REMOVE AND REPLACE RPR=REPAIR RT=RIGHT SECT=SECTION SUBL=SUBLET LT=LEFT W/O=WITHOUT W/=WITH/ SYMBOLS: #=MANUAL LINE ENTRY *=OTHER [IE..MOTORS DATABASE INFORMATION WAS CHANGED] **=DATABASE LINE WITH AFTERMARKET N=NOTES ATTACHED TO LINE. OPT OEM=ORIGINAL EQUIPMENT MANUFACTURER PARTS EITHER OPTIONALLY SOURCED OR OTHERWISE PROVIDED WITH SOME UNIQUE PRICING OR DISCOUNT. NWCPP=NATIONWIDE CRASH PARTS PROGRAM.

CCC PATHWAYS - A PRODUCT OF CCC INFORMATION SERVICES INC.

12 8

08/09/2011 AT 11:17 AM
455730351257340101014-03
0Z5X1R7YESTIMATE OF RECORD
2005 CHRY SEBRING 4-2.4L-FI 4D SED GREEN INT:

ALTERNATE PARTS USAGE

AFTERMARKET PARTS

AFTERMARKET SELECTION METHOD: AUTOMATICALLY LIST

NO. OF TIMES USER WAS NOTIFIED THAT AN AFTERMARKET PART WAS AVAILABLE: 0

NO. OF AFTERMARKET PARTS THAT APPEAR IN THE FINAL ESTIMATE: 0

OPTIONAL OEM PARTS

OPTIONAL OEM SELECTION METHOD: AUTOMATICALLY LIST

NO. OF TIMES USER WAS NOTIFIED THAT AN OPTIONAL OEM PART WAS AVAILABLE: 0

NO. OF OPTIONAL OEM PARTS THAT APPEAR IN THE FINAL ESTIMATE: 0

RECONDITIONED PARTS

RECONDITIONED SELECTION METHOD: AUTOMATICALLY LIST

NO. OF TIMES USER WAS NOTIFIED THAT A RECONDITIONED PART WAS AVAILABLE: 0

NO. OF RECONDITIONED PARTS THAT APPEAR IN THE FINAL ESTIMATE: 0

RECYCLED PARTS

NO. OF TIMES USER WAS NOTIFIED THAT A RECYCLED PART WAS AVAILABLE: 0

NO. OF RECYCLED PARTS THAT APPEAR IN THE FINAL ESTIMATE: 0

13 9

08/09/2011 AT 11:17 AM

CLAIM SUMMARY

0351257340101014-03

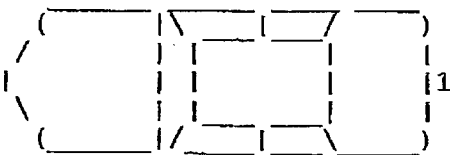
ADJUSTER: H012 EXT: FCC: 02,
 APPRAISER: LOONEY, ROY
 ## 175492

CLAIM #: 0351257340101014-03
 POLICY #: 4135423335

INSURED: CHO, DIANA
 OWNER: BEATTY, DESIREE
 ADDRESS: 8100 BAYFIELD RD
 APT 14F
 COLUMBIA, SC 29223

LOSS TYPE: LIABILITY
 BUSINESS: (803)237-9512
 EVENING:

VEHICLE: 2005 CHRY SEBRING 4-2.4L-FI 4D SED
 VIN: 1C3EL46X85N705877 ODOMETER: 71706 COLOR: GREEN LICENSE: GZW319 SC
 DRIVEABLE: YES PRIMARY IMPACT POINT: 6. REAR



PLACE OF INSPECTION:

JOHN HARRIS BODY SHOP-XD
 100 FONTAINE CENTER RD
 COLUMBIA, SC 29223-0000

ESTIMATE TO REPAIR			TOTAL LOSS VALUATION		
ESTIMATE	\$	444.60	VEHICLE VALUATION	\$	0.00
PRE-TAX SUBTOTAL	\$	444.60	PRE-TAX SUBTOTAL	\$	0.00
TAX		0.21	TAX		0.00
AFTER-TAX SUBTOTAL	\$	444.81	AFTER-TAX SUBTOTAL	\$	0.00
BETTERMENT		0.00			
DEDUCTIBLE		0.00	DEDUCTIBLE		0.00
APPEARANCE ALLOWANCE		0.00			
0% NEGLIGENCE		0.00	0% NEGLIGENCE		0.00
CALCULATED NET LOSS	\$	444.81	CALCULATED NET LOSS	\$	0.00
QUAL RECY PARTS NOT INCLUDED			VALUATION REQUEST #		
QUAL REPL PARTS NOT INCLUDED					
OPT OEM PARTS NOT INCLUDED					
RECOND PARTS NOT INCLUDED					

SETTLEMENT

SETTLEMENT TYPE: REPAIRABLE
 NEGOTIATED SETTLEMENT: \$444.81 ON WITH
 SETTLEMENT OUTSTANDING: \$444.81

COMMENTS

INSPECTED AT RX..... SHOP WILL REQUEST PAY.

EVENTS

08/06/2011 LOSS OCCURRED
 08/07/2011 LOSS REPORTED
 08/09/2011 12:00 AM DATE ASSIGNED = 08/09/2011.
 08/09/2011 07:47 AM ASSIGNMENT RETRIEVED.
 08/09/2011 07:47 AM WORKFILE WAS CREATED.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Desiree D. Beatty,

Plaintiff,

v.

Pyong Han Cho,

Defendant.

IN THE COURT OF COMMON PLEAS

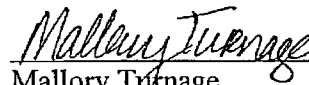
CIVIL ACTION NO: 2012-CP-40-01901

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., attorneys for Defendant, do hereby certify that on **October 26, 2012**, I have served a copy of the foregoing **Defendant's Memorandum in Support of its Motion for Relief from Judgment** in connection with the above-referenced case placing same in the U.S. mail, postage paid to:

Barry B. George, Esquire
1419 Bull Street
Columbia, SC 29201

Columbia, South Carolina


Mallory Turnage

RICHLAND COUNTY
FILED
2012 OCT 29 PM 12:20
JERAMETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Desiree D. Beatty,

Plaintiff(s)

vs.

Pyong Han Cho,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP-40 1901

(Please Print)

Submitted By: Barry B. George

Address: 1419 Bull Street
Columbia, SC 29201

SC Bar #: 2417

Telephone #: (803) 254-7222

Fax #: (803) 779-9355

Other: n/a

E-mail: n/a

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

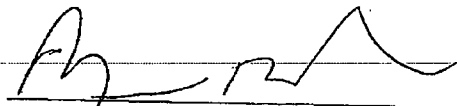
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Stander/Libel (300)
☐ Conversion (310)
☒ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650) | | |

Submitting Party Signature: 

Date: March 9, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY
Florence, Horry, Lexington, Richland, Greenville and Anderson

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS
)

Desiree D. Beatty,
Plaintiff,

) Civil Action #
)
)

vs.

Pyong Han Cho,

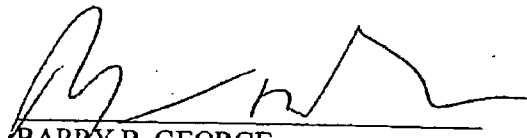
Defendant.

)
) SUMMONS
) (Jury Trial Requested)
)
)
)

2012 MAR 12 AM 10:10
FILED
CLERK OF COURT
C.C.P. & G.S.

TO THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you and to serve a copy of your Answer to the said Complaint on the subscriber at his office, 1419 Bull Street, Columbia, SC 29201, within thirty (30) days from the date of service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



BARRY B. GEORGE
PAIGE B. GEORGE
ATTORNEY FOR THE PLAINTIFF
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222

March 9, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS

Desiree D. Beatty,) Docket #

Plaintiff,)

vs.)

Pyong Han Cho,)

Defendant.)

COMPLAINT
(Jury Trial Requested)

JEANETTE L. THORP
C.C.P. & G.S.

2012 MAR 12 AM 10:10

RICHLAND COUNTY
FILED

The Plaintiff, complaining of the Defendant herein, alleges:

1. That the Plaintiff is a citizen and resident of the County of Richland, State of South Carolina; that, upon information and belief, the Defendant is a resident of the County of Richland, State of South Carolina.

2. That on or about August 6, 2011, the Plaintiff, Desiree D. Beatty, was operating a 2005 Chrysler automobile north on Two Notch Road, in the County of Richland, State of South Carolina; that the Defendant, Pyong Han Cho, was operating a 1999 Toyota automobile north on Two Notch Road, in the County of Richland, State of South Carolina, and crashed into the vehicle the Plaintiff was operating, throwing the Plaintiff in and about the interior of said vehicle, thus causing her severe and painful bodily injuries.

3. That as a result of the above, the Plaintiff suffered injuries in and about her body, all of which has and will cause her to undergo much physical pain and suffering, has and will cause her to have to spend money on medical services, and has and will cause her to lose money in the nature of wages and earnings.

4. That the Defendant, Pyong Han Cho, was willful, wanton, negligent, grossly negligent, careless and reckless in the following particulars, to-wit:

- a) in failing to maintain a proper lookout;
- b) in failing to keep his vehicle under proper control;
- c) in driving too fast for conditions;
- d) in following too closely;
- e) in failing to apply his brakes, if any he had;
- f) in failing to take evasive action of any kind to avoid the accident;
- g) in failing to use the degree of care and caution that a reasonable and prudent person would have used under the same or similar

- circumstances; and,
h) such other particulars as the evidence at trial may show.

All of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of the case and statute laws of the State of South Carolina.

5. That the Plaintiff is informed and believes she is entitled to judgment against the Defendant for actual damages in an amount to be determined by a jury, and an appropriate amount of punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendant for actual damages in an amount to be determined by a jury; an appropriate amount of punitive damages; for the costs of this action; and for such other and further relief as this court may deem just and proper.



BARRY B. GEORGE
PAIGE B. GEORGE
ATTORNEY FOR THE PLAINTIFF
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222

March 9, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

DESIREE D. BEATTY

PLAINTIFF

-v-

RYONG HAN CHO

DEFENDANT(S).

☒ IN THE COURT OF COMMON PLEAS
☐ IN THE FAMILY COURT
☐ GENERAL SESSIONS
☐ IN THE PROBATE COURT
☐ IN THE MAGISTRATE'S COURT

AFFIDAVIT OF PERSONAL SERVICE

Docket # 2012 CP 40-1901

RICHLAND COUNTY
FILED
2012 APR 18 AM 9:15
JEANE L. McBRIDE
C.C.P. & G.S.

THE UNDERSIGNED, KRISTI DUNWOTE, being duly sworn, deposes and says that he served the:

☒ SUMMONS and COMPLAINT	☐ NOTICE
☐ SUMMONS	☐ LIS PENDENS
☐ COMPLAINT	☒ COVER SHEET IN CIVIL ACTIONS
☐ MOTION	☐ RULE TO SHOW CAUSE
☐ PLAINTIFF'S INTERROGATORIES	☐ CERTIFICATE OF EXEMPTION/
☐ TO DEFENDANT	☐ WITHDRAWAL FROM ARBITRATION
☐ PLAINTIFF'S REQUEST FOR PRODUCTION	☐ and MEDIATION
☐ TO DEFENDANT	☐ OTHER: _____

in this action on the Defendant(s) RYONG HAN CHO by delivering same to:

☐ THE DEFENDANT, _____ personally;

☒ DIANA CHO (relation) (WIFE)
a person of discretion residing at the Defendant's residence;

☐ Military Status: _____ Military/Non-Military _____ Branch of service: _____

_____ the _____ at its
(Person served if Corporate Defendant) place of business;

and leaving with him/her 1 copy of the same at 5 POLD HILL CT. COLUMBIA, SC. 29223
on the 14TH day of APRIL, 2012 at 10:28 AM and that he knows the person so served to be the Defendant mentioned and described in the pleading(s) served, and that the Deponent is not a party to nor interested in the action.

SWORN to before me this 14TH day
of APRIL, 2012.

Wayne S. Duncanson

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10/16/2019

KRISTI DUNWOTE

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COMMON PLEAS COURT
3
4 Desiree D. Beatty,)
5 Plaintiff,) TRANSCRIPT OF RECORD
6 -vs-) 2012-CP-40-1901
7 Pyong Han Cho,)
8 Defendant.) November 6, 2012
9) Columbia, South Carolina
10
11

12 B E F O R E:

13 HONORABLE L. CASEY MANNING, JUDGE
14
15

16 A P P E A R A N C E S:

17 BARRY B. GEORGE, ESQUIRE
18 Attorney for the Plaintiff

19 JOHN MARTIN GRANTLAND, ESQUIRE
20 Attorney for the Defendant
21
22

23
24 Linda D. Moffitt
Circuit Court Reporter

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: Motion for relief from judgment. Let me
2 guess. That's Mr. Grantland's motion. I'm sure it's
3 fairly simple and straightforward.

4 Are you ready, Mr. George?

5 MR. GEORGE: Yes, sir.

6 THE COURT: Proceed, Mr. Grantland.

7 MR. GRANTLAND: Thank you, Your Honor. May it please
8 the Court.

9 Your Honor, I'm John Grantland, and I represent
10 defendant Pyong Han Cho. And this is a motion for relief
11 under rule 60.

12 This lawsuit arises from a car accident that Mr. Cho
13 was involved in with Mr. George's client, Ms. Beatty, back
14 in August of 2011.

15 And our position, Your Honor, with all due respect to
16 Mr. George and in the light favorable to the nonmoving
17 party, we believe that there was excusable neglect on the
18 part of our -- on the part of Mr. Cho and that there's a
19 meritorious defense that would warrant setting aside the
20 judgment.

21 If I can give the Court a little background --

22 THE COURT: Yes, sir.

23 MR. GRANTLAND: -- a little timeline, I can explain
24 ourselves.

25 Your Honor, the accident that gives rise to the

1 lawsuit occurred on August the 6th of 2011. Mr. Cho
2 rear-ended Ms. Beatty. There's really no dispute about
3 that.

4 The Court has the affidavits of a GEICO adjuster,
5 Jennifer DeLong, and the affidavit of Mr. and Mrs. Cho.
6 And the affidavit of Ms. DeLong -- she has photos of the
7 property damage, and the photos speak for themselves.
8 There was very little to no damage to Mr. Cho's car or
9 Ms. Beatty's car.

10 Mr. Cho and his wife are Korean and speak and read
11 very limited English. They notified GEICO of the accident
12 and they thought the matter was --

13 THE COURT: Within the time limit, I assume.

14 MR. GRANTLAND: Yes, sir, yes, sir.

15 THE COURT: All right.

16 MR. GRANTLAND: They notified GEICO soon after,
17 immediately after, the accident. And the case was assigned
18 to this adjuster that the Court has her affidavit, Jennifer
19 DeLong.

20 From January to August Ms. DeLong attempted to contact
21 Mr. George, wrote him, called him to negotiate the claim.

22 According to her affidavit, she was never notified of
23 the lawsuit, service of the -- on the defendants, Mr. Cho,
24 the damages hearing, nothing.

25 We know that on March 12th of 2012 the lawsuit was

1 filed.

2 We know that on April 14th of 2012 Mrs. Cho was served
3 with the summons and complaint. She is the defendant's
4 wife.

5 She says in her affidavit that she didn't know what
6 the papers were about. She thought they were being
7 harassed. She thought the matter was over. And she did
8 not send the summons and complaint to GEICO.

9 Five days later on April 19th according to Ms. DeLong
10 Mr. George -- Ms. DeLong and Barry George talked to each
11 other. This is a month after the lawsuit is filed. Five
12 days after service they talked to each other.

13 I think it was -- it appears it was a short
14 conversation. Barry said he immediately pulled the file
15 and called her back. But nothing is said about, hey, I
16 filed this lawsuit a month ago or I served your client five
17 days ago. None of that was said. It was just I'll call --
18 I'll pull the file and call you back. Barry did not call
19 her back.

20 We know that in June of 2012 there's an order of
21 default. Mrs. Cho says she didn't receive any notice.

22 We know in August of 2012 there is a damages hearing.
23 Mrs. Cho -- the Chos say they didn't receive notice of the
24 damages hearing.

25 Meanwhile, the adjuster is calling and writing

1 Mr. George asking, you know, completely in the dark, that
2 there's a lawsuit or there's default.

3 Finally, Mr. George does send GEICO the judgment, the
4 default judgment, \$20,000. On -- they get it on August the
5 28th. They get it to me on the 29th, and I file a motion.

6 There are three points I'd like to make, Your Honor.
7 First, was there mistake or excusable neglect by the Chos.
8 The Court has their affidavit.

9 Your Honor, they're natives of Korea. She said she --
10 the lady who received service, the defendant's wife, says
11 she didn't understand what the papers were about and she
12 didn't turn them over to her carrier.

13 There's plenty of case law dealing with people who
14 don't understand legal documents. I cited the Edwards case
15 in our memorandum, Your Honor.

16 In that case he didn't turn the documents over. He
17 didn't turn the summons and complaint over to State Farm.
18 He was illiterate and he didn't understand what they meant.
19 And the Court found that that was grounds to set aside the
20 judgment.

21 Second, are their grounds based on communication
22 between Mr. George and GEICO.

23 Your Honor, I'm sure the Court's very familiar with
24 the McClurg vs. Deaton case, both a Court of Appeals

25 decision and the Supreme Court decision. Our courts frown

1 on lawyers talking to insurance companies after lawsuits
2 have been filed and not -- and negotiating the case and not
3 letting them know.

4 And I'm sure -- I have the utmost respect for
5 Mr. George, and I'm sure there may be two sides to this
6 story, but there's no question they talked. He talked with
7 the adjuster after the suit was -- 30 days after the suit
8 was filed, five days after the insured was served. And
9 nothing was said to the adjuster about the lawsuit. And I
10 think under McClurg vs. Deaton that is grounds to set aside
11 a default.

12 And finally, Your Honor, we believe there is a
13 meritorious defense. Liability is not a question, but this
14 was a no-property-damage rear end collision.

15 The lady, the plaintiff, received a judgment of
16 \$20,000. And I think it would be very difficult for her to
17 get that type of judgment before a Richland County jury,
18 particularly when there's no damage to the cars. I think
19 that there'd be no prejudice to the plaintiff to have her
20 day in court.

21 It certainly would be -- I don't see any prejudice at
22 all to the plaintiff to have her day in court, and I'd ask
23 the Court to set aside the judgment and allow the Chos to
24 answer and defend themselves. Thank you.

25 THE COURT: I didn't realize that J.L. Murphy had a

1 son that was a scratch golfer here.

2 MR. GRANTLAND: Yes, sir. He has two sons.

3 THE COURT: The oldest is the scratch golfer.

4 MR. GRANTLAND: The youngest. Well, the one son
5 played at Furman and is a graduate and played golf at
6 Furman. And then his youngest will plays at Carolina.

7 THE COURT: Will.

8 MR. GRANTLAND: Yes, sir.

9 THE COURT: I'm sorry. Just an aside.

10 Mr. George, I'll be happy to hear from you, sir.

11 MR. GEORGE: Your Honor, I don't -- just forget about
12 me talking to this lady. As Mr. Grantland said, I don't
13 remember talking to them. I usually -- told him today. My
14 philosophy at my office is I don't take any calls from
15 GEICO, period.

16 THE COURT: How about State Farm or Allstate?

17 MR. GEORGE: No. Just GEICO and Allstate. I just sue
18 them readily, but I don't talk to them.

19 THE COURT: Okay.

20 MR. GEORGE: But I would just ask the Court to note in
21 the affidavit of the insurance adjuster, No. 26, she says
22 after learning of the default judgment I called Diana Cho,
23 the name insured under GEICO's policy. I was told that she
24 had mailed a copy of the pleadings to GEICO. That's what
25 their insured told the insurance adjuster, that she got

1 them and she mailed them to GEICO.

2 THE COURT: Mr. Grantland said that too early on in
3 his argument.

4 MR. GEORGE: No. He never -- he said that's not
5 correct.

6 THE COURT: Okay.

7 MR. GEORGE: Then in her affidavit she says that she
8 got the papers but she never mailed them to GEICO. So
9 somebody is not coming, being forthright about the papers.

10 She tells -- the insurance adjuster says that the
11 insured said she mailed them to her. The insured says she
12 never mailed them to her.

13 And so we served her properly. We had an order signed
14 by the judge holding her in default. Then we had a hearing
15 in front of not one of the most liberal judges in the
16 world.

17 THE COURT: You say that because the judge went to
18 Clemson or what?

19 MR. GEORGE: That's one of the reasons. But Judge
20 Thomas Cooper gave us \$20,000. And let's face it. He's
21 not always the easiest guy to give you anything. But/and
22 we --

23 THE COURT: I'll be sure and tell Judge Cooper that.

24 MR. GEORGE: I told him that one time. I told him one
25 time I wasn't happy with what he was giving me, and he said

1 don't come back, send your daughter.

2 Okay. So, but we served her. We notified her of the
3 hearing. We did everything we were supposed to. And if
4 she can -- if she could understand the affidavit that she
5 signed about she thought she was being harassed by the
6 plaintiff, then I think she probably understood what it
7 means that you have 30 days to answer these papers, because
8 this affidavit is pretty clear. And it's got some language
9 in it that makes me feel that she does understand the
10 English language quite well.

11 She has a driver's license. They have a driver's
12 license. They had to pass the driver's test. So she can
13 read and write the English language. And we'd ask you deny
14 the motion.

15 THE COURT: Anything further, Mr. Grantland?

16 MR. GRANTLAND: Your Honor, all I would say in
17 response to Mr. George is that there's no question GEICO
18 didn't get the papers. And there's no question --
19 Mrs. Cho's affidavit says she didn't send them.

20 And there's also no question, at least according to
21 the Chos, that they didn't receive notice of any other
22 subsequent hearings. They moved. They moved to Lexington.
23 They didn't get notice of the default hearing or damages
24 hearing or nothing, Your Honor.

25 I believe it'd be no prejudice to the plaintiff to

1 allow the Chos to defend themselves and answer.

2 THE COURT: Any further, Mr. George?

3 MR. GEORGE: No. That is all, Your Honor.

4 THE COURT: Well, thank you both for your lively
5 presentation. Considering the matters I heard here today
6 and the papers the motion is.

7 END OF REQUESTED TRANSCRIPT OF RECORD

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

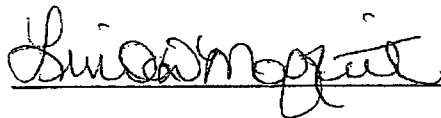
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Richland County, South Carolina, on the 6th day of November 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 21, 2012

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

**BARRY B. GEORGE
ATTORNEY AT LAW
1419 BULL STREET
COLUMBIA, S. C. 29201**

(803) 254-7222

(803) 779-9351 Fax

July 16, 2012

Pyong Han Cho
5 Polo Hill Court
Columbia, SC 29223

RE: DESIREE D. BEATTY v. PYONG HAN CHO
C/A: 2012-CP-40-01901

Dear Mr. Cho:

Enclosed please find Notice of Damages Hearing in the above matter.

This hearing is scheduled for **August 9, 2012** in the Richland County
Judicial Center, 1701 Main Street, Courtroom 3-A, Columbia, SC.

Yours very truly,

Barry B. George

BBG/cs

Enclosure

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-01901

Desiree D. Beatty, ...Respondent,

v.

Pyong Han Cho, ...Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



John M. Grantland, Esquire
Ashley B. Stratton, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-01901

Desiree D. Beatty, ... Respondent,

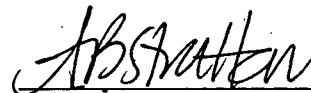
v.

Pyong Han Cho, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on June 4, 2013, addressed to attorney of record, Barry B. George, Esquire, 1419 Bull Street, Columbia, South Carolina 29201.

June 4, 2013



John M. Grantland, Esquire
Ashley B. Stratton, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorneys for Appellant

RECEIVED

JUN 12 2013

SC Court of Appeals