

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Appellate Case No. 2024-000020
Trial Court Case No. 2023-CP-32-01750

Glenna Gray; and Michael W. Gray, as
Personal Representative for the Estate
of Joseph S. Gray,

Appellants,

v.

Larousse Lamur, Phoenix Grand, LLC,
And Lamur Transportation Services, LLC

Respondents.

APPELLANTS' RECORD ON APPEAL

Lane D. Jefferies
Poulin | Willey | Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
(803) 222-2222
Attorneys for Appellants

Everett A. Kendall, II
Phillip Florence, Jr.
R. Cameron Stephenson
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorneys for Respondents

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Glenna Gray,	)	C/A No. 3:21-cv-00908-SAL
	)	
Plaintiff,	)	
	)	
v.	)	OPINION & ORDER
	)	
Larousse Lamur; Lamur Transportation	)	
Services, LLC; and Phoenix Grand, LLC,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the court on Plaintiff Glenna Gray’s (“Plaintiff”) Motion to Amend Complaint. [ECF No. 22.] For the reasons set forth below, the court grants Plaintiff’s motion.

BACKGROUND

Plaintiff filed this action on March 30, 2021. [ECF No. 1, Compl.] It stems from an accident between an 18-wheeler truck and a passenger car on Interstate 26. Plaintiff was in the passenger car at the time of the accident and claims she was “seriously injured in the wreck.” *Id.* at ¶ 4. Her husband, Joseph Gray, was also in the car and “later died.” *Id.* Plaintiff claims Defendants Larousse Lamur, Lamur Transportation Services, LLC, and Phoenix Grand, LLC were negligent and their negligence caused her injuries. *Id.* at ¶¶ 6–26. Defendants answered the complaint on June 2, 2021 and filed an amended answer on June 9, 2021. [ECF Nos. 10, 17.]

On June 22, 2021, Plaintiff filed the motion presently before the court. [ECF No. 22.] Therein, she seeks to amend her pleading to include an additional plaintiff, Michael W. Gray as the personal representative of the Estate of Joseph S. Gray (“Mr. Gray” or “Estate”), and two causes of action, wrongful death and survival. *Id.* Defendants filed a response in opposition to the motion on July

6, 2021, and a supplement on September 7, 2021. [ECF Nos. 23, 28.] Accordingly, the matter is ripe for resolution by the court.

LEGAL STANDARD

Pursuant to Rule 15(a)(1), FRCP, a plaintiff may amend a complaint “once as a matter of course” within either 21 days after serving it, or 21 days after service of a responsive pleading or a motion under Rule 12(b), (e), or (f), “whichever is earlier.” Fed. R. Civ. P. 15(a)(1). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). In the latter case, the “court should freely give leave when justice so requires.” *Id.*

Although granting or denying a motion to amend pursuant to Rule 15(a)(2) is within the discretion of the court, *Scott v. Family Dollar Stores, Inc.*, 733 F.3d 105, 121 (4th Cir. 2013), the Fourth Circuit has interpreted the rule to require that “leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile.” *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)); *see also Edwards v. City of Goldsboro*, 178 F.3d 231 (4th Cir. 1999); *see also Equal Rights Ctr. v. Niles Bolton Assocs.*, 602 F.3d 597, 603 (4th Cir. 2010) (“[A] district court has discretion to deny a motion to amend a complaint, so long as it does not outright refuse to grant the leave without any justifying reason.” (citation omitted)).

Leave to amend is futile when the amended complaint would not survive a motion to dismiss, *Perkins v. United States*, 55 F.3d 910, 917 (4th Cir. 1995), or “when the proposed amendment is clearly insufficient or frivolous on its face.” *Johnson*, 785 F.2d at 510. When assessing futility, “a district court may look to ‘substantive or procedural considerations.’” *Jones v. HSBC Bank*

USA, N.A., 444 F. App'x 640, 643 (4th Cir. 2011) (quoting *Davis v. Piper Aircraft*, 615 F.2d 606, 613 (4th Cir. 1980)).

Further, in deciding whether to grant or deny a motion to amend that seeks to join new parties, the court must also consider the specific joinder provisions of Rule 20, FRCP. *Hinson v. Norwest Fin. S.C., Inc.*, 239 F.3d 611, 618 (4th Cir. 2001). In deciding whether to join a new plaintiff or a new defendant, “courts [have] wide discretion concerning the permissive joinder of parties.” *Aleman v. Chugach Support Servs., Inc.*, 485 F.3d 206, 218 n.5 (4th Cir. 2007).

DISCUSSION

Plaintiff's proposed amendment falls outside of the time parameters of Rule 15(a)(1), and she was unable to obtain Defendants' consent to the amendment pursuant to Rule 15(a)(2). Thus, before Plaintiff may amend her pleading, she must obtain the court's leave. As noted above, Plaintiff seeks to join a plaintiff, the Estate,¹ and two causes of action for negligence—wrongful death and survival.

Defendants oppose the proposed amendment as futile. [ECF No. 23.] More specifically, they note that Plaintiff seeks to “add survival and wrongful death cause of action generally alleging that the accident occurred on February 13, 2019, caused the subsequent death of Joseph S. Gray over two years after the accident on February 28, 2021.” *Id.* at 2. Defendants argue that the proposed amended pleading lacks an “objective good faith basis” and “evidentiary support” to make the claim “plausible on its face.” *Id.* at 2–3; *see also id.* at 3 (“[T]he new allegations in the proposed Amended Complaint . . . are wholly unsupported by any facts[.]”). Stated differently, Defendants

¹ The parties do not raise Rule 20, FRCP joinder arguments, but it appears the requirements for permissive joinder would be met. Thus, the court focuses its analysis on Rule 15, FRCP.

argue Plaintiff's proposed amendment fails to make any plausible connection between the accident and Mr. Gray's death.

In addition to the substantive futility arguments, Defendants' September 7, 2021 supplement raises a procedural issue. [ECF No. 28.] On August 30, 2021, the Estate filed a lawsuit against Defendants in the Lexington County Court of Common Pleas. [ECF No. 28-1.] The state-court complaint is nearly identical to the proposed amended complaint submitted by Plaintiff in this matter. [*Compare* ECF No. 28-1, *with* ECF No. 22-1.] Defendants submit that Plaintiff's filing of the state-court complaint renders the proposed amended complaint here "superfluous, redundant, and result[s] in parallel litigation possibly leading to inconsistent verdicts." [ECF No. 28.]

Having reviewed and thoroughly considered the parties' positions, the court concludes that it must grant Plaintiff the requested leave to amend under Rule 15(a)(2)'s "liberal" standard. *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006). As to Defendants' substantive futility arguments, the court appreciates that a significant amount of time passed between the date of the accident and Mr. Gray's death. However, the proposed amended complaint specifically alleges that "Joseph and Glenna were seriously injured in the wreck, and Joseph later died as a result." [ECF No. 22-1 at ¶ 4.] The court is simply not in a position to say, at least at this very early juncture, that Plaintiff cannot prove some connection between the accident and the death. That is a question to be answered at a later time. Further, Defendants' substantive arguments are ones of futility, not bad faith. The court has no reason to believe then that Plaintiff's allegations that Mr. Gray was "seriously injured in the wreck" and "later died *as a result*" are not made in good faith. *Id.* (emphasis added).

Defendants’ procedural argument similarly fails. The court again appreciates the inefficiencies associated with having two cases proceed on parallel tracks. The inefficiency is not, however, procedurally futile. *See Jones*, 444 F. App’x at 643 (denying amendment where proposed claim “would be barred by claim preclusion arising from the state court’s decision in the original foreclosure action”). Again mindful of the “liberal” standard it must apply when considering requests to amend, the court cannot deny Plaintiff leave on the basis of procedural futility.²

CONCLUSION

For the reasons outlined herein, Plaintiff Glenna Gray’s Motion to Amend Complaint, ECF No. 22, is **GRANTED**. Plaintiff has until **January 10, 2022** to file the Amended Complaint.

IT IS SO ORDERED.

/s/ Sherri A. Lydon
United States District Judge

January 7, 2022
Florence, South Carolina

² The parties did not brief whether a stay of Mr. Gray’s federal case would be appropriate in light of the pending state-court action involving the same facts and same claims. Thus, the court will not reach the issue here.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Glenna Gray, and Michael W. Gray as
Personal Representative of the Estate of
Joseph S. Gray,

Plaintiffs,

v.

Larousse Lamur, Phoenix Grand, LLC, and
Lamur Transportation Services, LLC,

Defendants.

C/A No.: 3:21-cv-0908-SAL

**ORDER DENYING MOTIONS AND
DISMISSING CASE**

These matters are before the court on Defendants Larousse Lamur, Phoenix Grand, LLC, and Lamur Transportation Services, LLC's Motion in Limine, ECF No. 55, and Motion for Partial Summary Judgment, ECF No. 50. For the reasons below, the court finds it lacks subject matter jurisdiction over the case and is without jurisdiction to rule on either of Defendants' motions. The court raises subject matter jurisdiction sua sponte. *See Cook v. Georgetown Steel Corp.*, 770 F.2d 1272, 1275 (4th Cir. 1985) ("[L]ack of subject matter jurisdiction is an issue that requires sua sponte consideration when it is seriously in doubt."); *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir. 1998) (Federal courts have a "duty to inquire, sua sponte, whether a valid basis for jurisdiction exists, and to dismiss the action if no such ground appears."). Plaintiffs Glenna and Michael Gray not only fail to adequately allege a jurisdictional basis in their Amended Complaint, but the facts reveal that subject matter jurisdiction does not exist. The court addresses each problem in turn.

DISCUSSION

“Federal courts are courts of limited jurisdiction and, as such, may only hear and decide cases when given the authority to do so by the United States Constitution and by federal statute.” *Bilbro v. Haley*, 229 F. Supp. 3d 397, 404 (D.S.C. 2017) (citing *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir. 1998)). District courts most commonly have original jurisdiction pursuant to federal question jurisdiction and diversity jurisdiction. *See* 28 U.S.C. § 1331; 28 U.S.C. § 1332. Rule 8 requires that a pleading “must contain . . . a short and plain statement of the grounds for the court’s jurisdiction.” Fed. R. Civ. P. 8(a)(1). And “the facts providing the court jurisdiction must be affirmatively alleged in the complaint.” *Pinkley, Inc. v. City of Federick*, 191 F.3d 394, 399 (4th Cir. 1999) (citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936)).

But Plaintiffs do not affirmatively allege *facts* supporting jurisdiction. Instead, they simply conclude “[t]hat this Court has jurisdiction over the parties and the subject matter of this action.” [ECF No. 35, ¶ 6.] This allegation is insufficient, though, because it does not allege a federal basis for the court’s subject matter jurisdiction. *See Gaines Motor Lines, Inc. v. Klaussner Furniture Indus. Inc.*, 734 F.3d 296, 301 (4th Cir. 2013) (“The party ‘seeking to adjudicate a matter in federal court must allege . . . the federal court’s jurisdiction over the matter.”). The court is left to figure out that basis on its own. Plaintiffs bring their claims under South Carolina law, so federal question jurisdiction appears to be out of the question. The court must conclude, then, that Plaintiffs bring this action under the court’s diversity jurisdiction. Even then, the allegations in the Amended Complaint do not support diversity jurisdiction.

Federal courts have diversity jurisdiction where the amount in controversy exceeds \$75,000, and the claim is between citizens of different states. 28 U.S.C. § 1332(a). And diversity jurisdiction “requires complete diversity among the parties, meaning the citizenship of each

plaintiff must be different from the citizenship of each defendant.” *Hoschar v. Appalachian Power Co.*, 739 F.3d 163, 170 (4th Cir. 2014). While Plaintiffs sufficiently allege an amount in controversy, they fail to sufficiently allege complete diversity of citizenship. *See* [ECF No. 35, ¶ 4 (alleging medical bills totaling more than \$220,000).]

To start, Plaintiffs *never* allege their own citizenship. This is fatal to diversity jurisdiction. Without affirmatively alleging their own citizenship the court cannot find complete diversity exists. It is appropriate, then, for the court to dismiss the Amended Complaint. *See Sheridan v. Reidell*, 465 F. Supp. 2d 528, 535 (D.S.C. 2006) (finding dismissal appropriate where a “Complaint does not allege facts from which the court could determine the state of Plaintiff’s citizenship”). Even more, Plaintiffs fail to properly allege each Defendants’ citizenship.

Plaintiffs allege that Defendant Lamur is a citizen and resident of Florida, ECF No. 35 ¶ 2 at First Cause of Action, that Defendant Phoenix Grand, LLC is a limited liability company organized under the laws of Ohio, *id.* ¶ 3, and Defendant Lamur Transportation Services, LLC is a limited liability company organized under the laws of Florida, *id.* ¶ 4. For diversity purposes, “a limited liability company’s citizenship is that of its members.”” *Mystic Retreat Med Spa & Weight Loss Ctr. v. Ascentium Cap. LLC*, No. 1:21-CV-00515, 2022 WL 2820843, at *2 (M.D.N.C. July 19, 2022) (quoting *Gen. Tech. Applications, Inc. v. Exro Ltda*, 338 F.3d 114, 121 (4th Cir. 2004)). Plaintiffs’ failure to allege the citizenship of the limited liability companies prove fatal. *Bracy v. Hapag-Lloyd AG*, No. 2:14-CV-2728-DCN, 2016 WL 3997373, at *4 (D.S.C. July 26, 2016) (“In the case of business organizations, such as corporations or limited liability companies, which have multiple citizenships, a complaint must make out allegations as to each form of citizenship.”) (citations omitted).

Even if the court overlooks Plaintiffs’ insufficient allegations, record evidence reveals that the parties are not completely diverse. As noted above, Plaintiffs allege Defendant Lamur is a citizen of Florida. [ECF No. 35, ¶ 2 at First Cause of Action.] And Plaintiff Glenna Gray is also a citizen of Florida, or at least she was at the time she filed this action. *See* [ECF No. 2, Plaintiff’s Response to Local Rule 26.01 Interrogatories at 2 (“Plaintiff is a resident and citizen of the County of Volusia, State of Florida.”).] The court thus finds that it lacks subject matter jurisdiction because complete diversity does not exist, as Plaintiff Glenna Gray and Defendant Lamur are both citizens of Florida. *See Hoschar*, 739 F.3d at 170.

And the fact Glenna Gray moved from Florida to Ohio does not help her case. “[A] court determines the existence of diversity jurisdiction ‘at the time the action is filed,’ regardless of later changes in originally crucial facts such as the parties’ citizenship or the amount in controversy.” *Porsche Cars N. Am. v. Porsche.net*, 302 F.3d 248, 255–56 (4th Cir. 2002) (citing *Freeport-McMoRan, Inc. v. K N Energy, Inc.*, 498 U.S. 426, 428 (1991)). Glenna Gray, then, for diversity is a citizen of Florida and not Ohio. Even if the court could consider Glenna Gray a citizen of Ohio (it cannot), complete diversity likely does not exist as it is possible Defendant Phoenix Grand, LLC is also a citizen of Ohio. As the court stated above, Phoenix Grand’s citizenship is determined by the citizenship of its members. The court does not know the citizenship of Phoenix Grand’s members—neither Plaintiffs nor Phoenix Grand have provided that information. But its registered agent has an Ohio address. It seems possible, then, that at least one of Phoenix Grand’s members is an Ohio citizen, meaning that Phoenix Grand is an Ohio citizen. The court therefore finds that, despite Glenna Gray’s move, complete diversity does not exist.

The court therefore finds that Plaintiffs did not affirmatively allege facts establishing this court’s jurisdiction over this matter. And the evidence shows the parties are not completely diverse

in any event. The court thus dismisses this action without prejudice and is without jurisdiction to rule on Defendants' motions.

CONCLUSION

For the above reasons, the court **DISMISSES** this action without prejudice. The court is without jurisdiction to rule on Defendants' Motion in Limine, ECF No. 55, and Motion for Partial Summary Judgment, ECF No. 50. Both motions are consequently terminated, and the case is closed.

IT IS SO ORDERED.

February 16, 2023
Columbia, South Carolina

/s/Sherri A. Lydon
Sherri A. Lydon
United States District Judge

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Glenna Gray; and Michael W. Gray as	)	CIVIL ACTION NO.: 2023-CP-32-01750
Personal Representative of the Estate of	)	
Joseph S. Gray,	)	
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANT’S
	)	MOTION TO DISMISS AS TO
vs.	)	PLAINTIFFS’ CAUSES OF ACTION FOR
	)	NEGLIGENCE AND SURVIVAL
Larousse Lamur, Phoenix Grand, LLC, and	)	ACTION
Lamur Transportation Services, LLC,	)	
	)	
Defendant.		

This matter is before the Court upon Defendant’s Motion to Dismiss (the “Motion”), filed July 20, 2023. A hearing on the matter was held via WebEx in the virtual courtroom on October 10, 2023. Plaintiffs were represented by attorney Jonathan Riddle, Esq., and Defendants were represented by attorney Everett A. Kendall III, Esq. The parties have stipulated the procedural history of this case as set forth below. Having considered the parties’ memoranda, the arguments heard on October 10, 2023, and the applicable law, this Court hereby **GRANTS** Defendants’ Motion to Dismiss.

STIPULATION OF FACTS

This case originates from a November 13, 2019, motor vehicle accident on I-26 in Lexington County. Joseph S. Gray, the husband of Plaintiff Glenna Gray, was operating a 2010 Chevrolet Malibu and Defendant Larousse Lamar was operating a 2015 Freightliner 18-wheeler during the subject accident.

On March 30, 2021, Plaintiff Glenna Gray filed her Complaint in the Federal District Court for the District of South Carolina against Defendants (hereinafter the “Federal Court Action”). In the Federal Court Action, Plaintiff Glenna Gray asserted causes of action for

negligence, gross negligence, and negligence *per se*. Defendants filed their Answer on June 2, 2021, and then filed an Amended Answer on June 6, 2021. On June 22, 2021, Plaintiff Glenna Gray filed a Motion to Amend her Complaint to add Plaintiff Michael W. Gray, as Personal Representative of the Estate of Joseph S. Gray (hereinafter “Plaintiff Michael Gray”), to Federal Court Action and assert causes of action for wrongful death and a survival action.

On August 30, 2021, Plaintiff Michael Gray filed a Complaint in the Lexington County Court of Pleas against the Defendants (hereinafter the “Initial State Court Action”), asserting causes of action for wrongful death, pursuant to S.C. Code Ann. § 15-5-10 *et seq.*, and a survival action pursuant to S.C. Code Ann. § 15-5-90. Defendants filed their Answer to the Initial State Court Action on September 13, 2021.

On January 10, 2022, Plaintiff Glenna Gray filed her Amended Complaint in the Federal Court Action, adding Plaintiff Micheal W. Gray as a party and asserting causes of action for wrongful death and a survival action. Defendants filed their Answer to the Amended Complaint in the Federal Court Action on January 13, 2023.

Plaintiff Michael Gray voluntarily dismissed the State Court Action under Rule 41(a) of the South Carolina Rules of Civil Procedure on February 18, 2022. Thereafter, the claims of Plaintiff Michael Gray and Plaintiff Glenna were combined in the Federal Court Action.

On February 16, 2023, the Federal Court Action was dismissed by the Court *sua sponte* for lack of subject matter jurisdiction. Plaintiffs filed a Motion to Reconsider, which was denied by the Court on May 2, 2023.

On May 8, 2023, Plaintiffs filed a Complaint in the Lexington County Court of Common Pleas, with Plaintiff Glenna Gray asserting negligence and Plaintiff Micheal Gray asserting causes of action for wrongful death and a survival action (hereinafter the “Second State Court Action”).

Defendants filed a Motion to Dismiss Plaintiff Glenna Gray's cause of action for negligence and Plaintiff Michael Gray's survival action on July 20, 2023, citing the applicable statute of limitations. Defendant's acknowledged that the wrongful death action was permitted to go forward as the trigger date for the statute of limitations was different than that of the negligence and survival actions. Defendants then filed an Answer responding to Plaintiff Michael Gray's wrongful death cause of action on July 21, 2023. Plaintiffs filed a Memorandum in Opposition to Defendants' Motion to Dismiss on October 9, 2023.

Defendants' Motion to Dismiss was heard before the Court on October 10, 2023.

STANDARD OF REVIEW

"Under Rule 12(b)(6), SCRCP, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action." *Baird v. Charleston Cty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *see also Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987) (noting trial court must dispose of motion for failure to state cause of action based solely upon allegations set forth on face of complaint); *Williams*, 347 S.C. at 233, 553 S.E.2d at 499 (finding that trial court's ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff).

FINDINGS OF LAW

I. The Statute of Limitations Bars Plaintiffs' Claims for Negligence and Survival Action Pursuant to S.C. Code Ann. § 15-5-90.

The Court finds that the Plaintiffs' causes of action for negligence and survival action under S.C. Code § 15-5-90 are barred by the applicable statute of limitations. South Carolina law provides a three-year statute of limitations for cases arising out of negligence or for a survival action. S.C. Code Ann. § 15-3-530(5). The statute of limitations begins to accrue once the plaintiff "knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535. This is an objective determination that does not require the development of a fully actualized theory of recovery. *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994) (citing *Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981); *Wilson v. Shannon*, 299 S.C. 512, 513, 386 S.E.2d 257, 258 (Ct. App. 1989)). South Carolina law is clear that in personal injuries arising out of an automobile accident, the statute of limitations begins to accrue at the date of the accident. *See Wiggins v. Edwards*, 299 S.C. at 130, 386 S.E.2d at 171 (holding there is no question that the accident occurred on November 11, 1989 and that is the date that Plaintiff should have known that a cause of action accrued).

Here, the parties do not contest that the accident occurred on November 13, 2019, nor that the Complaint was then filed May 8, 2023. Plaintiffs' Complaint does not allege tolling of the statute of limitations. Thus, under South Carolina law, the statute of limitations on the negligence and survival action began to accrue on November 13, 2019, and the limitations period lapsed on November 13, 2022, barring the Complaint that was filled over a year later, on May 8, 2023. The Court therefore holds that, on the face of the Complaint, the applicable statute of limitations bars Plaintiffs recovery on their negligence and survival action.

II. Equitable Tolling of the Statute of Limitations is not Warranted Under the Undisputed Facts.

In response to the Motion, Plaintiffs have asserted that the effect of the Statute of Limitations should be equitably tolled. The Plaintiffs' argued that they have diligently pursued the litigation and simply put, made a bad strategic decision that resulted in an unduly harsh outcome. Although this defense was not raised in any pleading, the Parties have raised no objection to its consideration at this time. Based on the Stipulated Facts, this Court finds no allegation that the Defendants actions caused or contributed to the circumstances whereby the Plaintiffs filed this lawsuit after the running of the Statute of Limitations. Therefore, the Court finds that the Statute of Limitations should not be equitably tolled.

South Carolina law provides for tolling of the applicable limitations period by statute in certain circumstances. *See* S.C.Code Ann. § 15–3–30 (2005) (stating exceptions to the running of the statute of limitations when the defendant is out of the state); *id.* § 15–3–40 (providing exceptions for persons under a disability, including being underage or insane). In addition to these statutory tolling mechanisms, however, “[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations.” *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009) (*citing* 54 C.J.S. *Limitations of Actions* § 115 (2005)). “Equitable tolling is a nonstatutory tolling theory which suspends a limitations period.” *Ocana v. Am. Furniture Co.*, 135 N.M. 539, 91 P.3d 58, 66 (2004). However, “equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.” *Hooper*, at 117, 687 S.E.2d at 33. “The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use.” *Id.* at 115, 687 S.E.2d at 32.

Plaintiff's request for this Court to apply equitable tolling relies heavily of the South Carolina Supreme Court's decision in *Hooper v. Ebenezer Senior Services and Rehabilitation Center*, 386 S.C. 108, 687 S.E.2d 29 (2009). In that case, plaintiff filed a summons and complaint against the defendant for a survival action and wrongful death on February 6, 2006, based on an incident that occurred on May 15, 2003. *Hooper*, at 111, 687 S.E.2d at 30. The plaintiff repeatedly tried to effect service on the defendant's registered agent whose address was not listed in the South Carolina Secretary of State's records. *Id.*, at 112, 687 S.E.2d at 30. Plaintiff took several additional steps to effect service, including retaining a private investigator and contacting multiple sheriff's offices for assistance. *Id.* Plaintiff was assured that service would be timely made. *Id.* However, on June 12, 2006, almost a month after the applicable statute of limitations expired, the Lexington County Sheriff's Office told counsel that service could not be affected. *Id.* Plaintiff's counsel then affected service via process server on June 15, 2006. *Id.*, 386 S.C. at 113. Defendant moved to dismiss, which was subsequently turned into a motion for summary judgment, on the basis that the applicable statute of limitations and the time limits of Rule 3(a)(2) SCRCPLapsed. On appeal, the South Carolina Supreme Court ultimately decided to equitably toll the statute of limitations because the defendant's failure to list the address of its registered agent, as required by state law, hindered the pursuit of service. *Id.* at 118, 687 S.E.2d at 34. The Court pointed out that plaintiff's delays in properly serving the defendant were due entirely to the defendant's failure to list the address of its registered agent. *Id.*

In a recent published decision by the South Carolina Court of Appeals, equitable tolling was not applied because the defendant did not participate in any deceptive or bad faith attempts to conceal the existence of a cause of action. *Crocker v. S.C. Dep't of Health & Env't Control*, 428 S.C. 1, 10, 831 S.E.2d 924, 930 (Ct. App. 2019) (citing *Hooper*, 386 S.C. at 117, 687 S.E.2d at 33

(“[E]quitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.”); *English v. Pabst Brewing Co.*, 828 F.2d 1047, 1049 (4th Cir. 1987). (“To invoke equitable tolling, the plaintiff must therefore show that the defendant attempted to mislead him and that the plaintiff reasonably relied on the misrepresentation by neglecting to file a timely charge.”).

In the present matter, Defendants did not act with fraud or deceit to prevent Plaintiff from filing this matter in the correct venue. Plaintiffs were free to file this action in this Court before the statute of limitations expired. Plaintiffs filed the Initial State Court Action, encompassing the survival and wrongful death causes of action, on August 30, 2021. Plaintiffs voluntarily dismissed the Initial State Court Action via Rule 41(a) SCRCP on February 18, 2022, thus requiring no consent from the Defendants. It is notable that this dismissal from State Court was not based on removal by the Defendant’s or any defective pleading. Plaintiffs effort to amend the complaint in the Federal Court action was, in fact, objected to by the Defendants.

Ultimately, Plaintiffs’ Federal Court Action was dismissed, not upon the motion of the Defendants, but by the U.S. District Court *sua sponte* on February 16, 2023, for lack of subject matter jurisdiction. The Defendants did not use deceit or fraud to prevent them from bringing the Second State Court Action. Rather, the Court finds that the Plaintiffs made a strategic decision to consolidate their Action in Federal Court and was not the consequence of any third-party actions. Therefore, for the reasons stated above, this Court denies Plaintiffs’ requests to equitably toll the applicable statute of limitations.

CONCLUSION

For the reasons stated above, Defendant's Motion to Dismiss Plaintiff Glenna Gray and Plaintiff Michael W. Gray's cause of action for negligence and Plaintiff Michael W. Gray's survival cause of action, pursuant to S.C. Code Ann. § 15-5-90, is hereby **GRANTED**.

As the trigger date for Plaintiff Michael W. Gray's wrongful death cause of action is different, Defendants have not moved for a dismissal of that cause of action. Thus, this action is not fully concluded by this Order.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: Glenna Gray , plaintiff, et al VS Larousse Lamur , defendant, et al

Case Number: 2023CP3201750

Type: Order/Dismissal

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2023-12-07 15:44:26 page 9 of 9

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

GLENNA GRAY,

Plaintiff,

v.

LAROUSSE LAMUR; PHOENIX
GRAND, LLC; and LAMUR
TRANSPORTATION SERVICES, LLC,

Defendants.

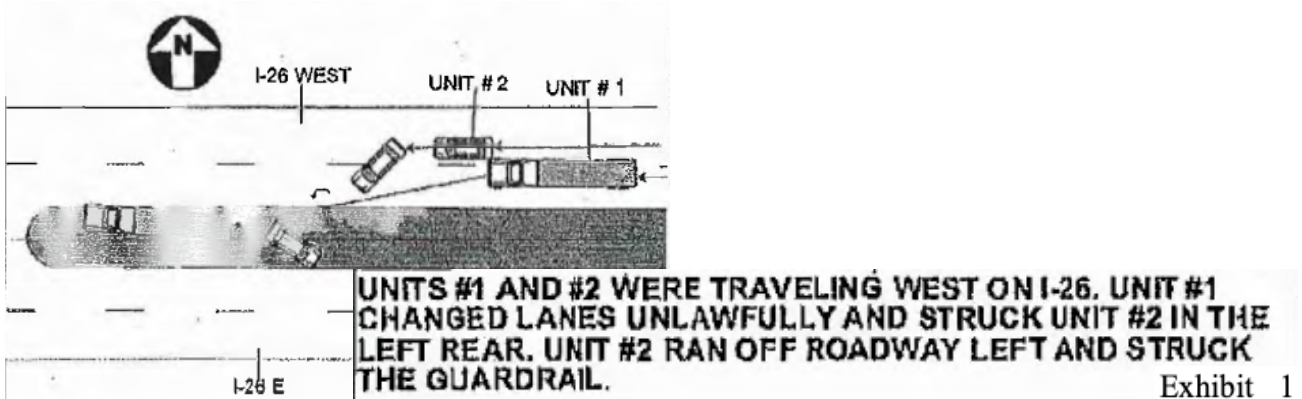
CIVIL ACTION NO 3:21-cv-00908-SAL

**COMPLAINT
(Jury Trial Demanded)**

The Plaintiff, complaining of the Defendants, alleges and says as follows:

CASE SYNOPSIS

1. Defendant drove west in the left lane of I-26 in a large “18-Wheeler” truck. He was driving too fast and not paying attention.
2. Had Defendant been paying attention, he would have seen the passenger car in the right lane in which Joseph and Glenna Gray were traveling. But he did not.
3. Instead, Defendant changed lanes directly into the rear of the passenger car, sending the passenger car spinning out of control across the highway. Fortunately, a guardrail stopped the spinning passenger car before it crossed into the oncoming lanes. Exhibit 1 below.



4. Nonetheless, both Joseph and Glenna were seriously injured in the wreck, and Joseph later died as a result. Glenna is now facing the remainder of her life without her husband of 45 years. She is also facing over \$150,000.00 in medical bills, with more to come.
5. Had Defendant simply been paying attention and driving at a safe speed, none of this would

have happened.

SPECIFIC AVERMENTS

For a First Cause of Action
(Negligence, Gross Negligence, Negligence *per se*)

6. Plaintiff incorporates verbatim and in their entirety the allegations set forth above.

7. That upon information and belief, Defendant Larousse Lamur, (herein referred to as “Defendant Driver”) is a citizen and resident of Miami-Dade County, State of Florida and can be served with process at 12300 NE 4th Avenue, Apartment 204, North Miami, Florida 33161.

8. That upon information and belief, Defendant Phoenix Grand, LLC (herein referred to as “Defendant Owner”) is a limited liability company organized and existing pursuant to the laws of the State of Ohio, and whose registered agent for service of process is Durdon Tulanova who can be served at 2101 South Hamilton Road Suite 206, Columbus, Ohio 43232.

9. That upon information and belief, Defendant Lamur Transportation Services, LLC (herein referred to as “Defendant Employer”) is a limited liability company organized and existing pursuant to the laws of the State of Florida, and whose registered agent for service of process is Larousse Lamur, who can be served at 12300 NE 4th Avenue, North Miami, Florida 33161.

10. That the automobile collision that is the subject of this action occurred in Lexington County, State of South Carolina.

11. That this Court has jurisdiction over the parties and the subject matter of this action.

12. That upon information and belief, at all times relevant, Defendant Lamur Transportation Services, LLC was a motor carrier engaged in the interstate transport of property under USDOT Number: 3099160.

13. That upon information and belief, at all times relevant, Phoenix Grand, LLC was the owner of a 2015 Freightliner truck with VIN# 3AKJGLD3DFSGB3B44 and Ohio License Plate

PWK1857 (“The 18-Wheeler”).

14. That upon information and belief, at all times relevant, Larousse Lamur was the driver of The 18-Wheeler.

15. That Defendant Larousse Lamur, Defendant Phoenix Grand, LLC and Defendant Lamur Transportation Services, LLC are referred to hereinafter collectively as “Defendants” and each individually by name.

16. That on or about February 13, 2019, at all times relevant, Plaintiff’s husband, Joseph Gray, was lawfully driving westbound in the right lane of Interstate 26, in the vicinity of Chapin, South Carolina.

17. That on or about February 13, 2019, at all times relevant, Plaintiff was a passenger in the vehicle driven by Joseph Gray.

18. That the collision and the resulting injuries and damages to Plaintiff were caused directly and proximately by one or more of the following negligent, negligent *per se*, grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendants in any one or more of the following respects:

As to Defendant Driver:

- a. In violating the Federal Motor Carrier Safety Act;
- b. In failing to keep a proper lookout while operating The 18-Wheeler;
- c. In failing to maintain control of The 18-Wheeler;
- d. In failing to stay in his lane of traffic;
- e. In failing to slow down to a controllable speed to stay in his lane of traffic;
- f. In failing to keep a safe distance from Plaintiff;
- g. In failing to properly observe the road and traffic conditions;

- h. In failing to obey traffic laws and/or signs;
- i. In failing to use his horn, if he had any;
- j. In traveling too fast for conditions;
- k. In failing to properly maintain the vehicle;
- l. In failing to yield the right of way;
- m. In failing to apply his brakes or using his steering mechanism to avoid the collision;
- n. In negligently and carelessly operating The 18-Wheeler in a high and excessive rate of speed under the circumstances then and there existing;
- o. In operating The 18-Wheeler at a high rate of speed and far in excess of the reasonable and prudent speed under the circumstances and conditions then and there existing;
- p. In operating The 18-Wheeler without using due care and without regard for safety and rights of Plaintiff;
- q. In operating The 18-Wheeler in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner so as to create a dangerous situation;
- r. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- s. In In failing to exercise the degree of care and caution that a reasonable and prudent professional driver would have exercised under the circumstances then and there prevailing;
- t. In negligently and carelessly operating The 18-Wheeler in such a manner to cause the vehicle to strike Plaintiff and cause personal injuries;
- u. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- v. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.

As to Defendant Owner and Defendant Employer:

- a. In negligently entrusting The 18-Wheeler to someone they knew or should have known would operate The 18-Wheeler without using due care and without regard for the safety and rights of the public using the highway and the Plaintiff in particular;
- b. In negligently entrusting The 18-Wheeler to someone they knew or should have known would operate The 18-Wheeler in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner as to create a dangerous situation and render an accident inevitable, in utter disregard of the laws of the State of South Carolina;
- c. In negligently entrusting The 18-Wheeler to someone they knew or should have known would fail to exercise that degree of care that a reasonable and prudent person would have exercised under the same or similar circumstances;
- d. In failing to appreciate the gravity and seriousness of having an unsafe, unqualified, incompetent driver use their 18-Wheeler;
- e. In failing to ensure that the driver of their 18-Wheeler would comply with all state and federal statutory codes and regulations;
- f. In failing to properly and/or timely inspect, maintain, service and/or repair The 18-Wheeler, and its component parts, to ensure that the same could be utilized and operated safely;
- g. In failing to use due care; and
- h. In any other such manner the Plaintiff may become aware of through discovery and/or trial.
- i. In failing to properly hire, train and/or supervise their employee driver Defendant Driver to ensure that The 18-Wheeler was driven/operated in a safe and proper manner;
- j. In failing to properly hire, train and/or supervise their employee driver Defendant Driver, and others involved with maintenance, regulatory compliance, and/or safety, to ensure that proper pre-trip, post-trip, periodic, quarterly and/or annual inspections were performed, including properly, on The 18-Wheeler, and its component parts;
- k. In failing to properly train and/or supervise their employee driver Defendant Driver as defined in the safe and appropriate operation and use of The 18-Wheeler;
- l. In failing, by and through their employee driver Defendant Driver to have the required driver knowledge necessary in order to safely operate The 18-Wheeler,

including but not limited to the procedures to obey traffic laws;

- m. In failing, by and through their employee driver Defendant Driver to safely and properly operate The 18-Wheeler, including on the trip and up to the time of the occurrence alleged in this Complaint;
- n. In permitting their employee driver Defendant Driver to drive The 18-Wheeler when he was not fully qualified to do so;
- o. In failing to create, maintain, and/or implement appropriate policies and procedures related to inspection and safety for its drivers, including their employee driver Defendant Driver, and for safety, regulatory compliance, and/or inspection, maintenance, and service of commercial motor vehicles;
- p. In failing to properly and/or timely inspect, maintain, service and/or repair The 18-Wheeler, and its component parts, to ensure that the same could be utilized and operated safely;
- q. In failing to use due care;
- r. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina or the United States; and
- s. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.

19. That at all times material to the collision that made the basis of this action, The 18-Wheeler that was being driven by Defendant Driver was owned, possessed and/or under the control of Defendant Owner and/or Defendant Employer.

20. That at all times material to the collision that made the basis of this action, Defendant Driver was acting by and through Defendant Owner and/or Defendant Employer as an employee/agent of Defendant Owner and/or Defendant Employer, and was at all times material acting within the course and scope of his employment or agency in performing duties for, and on behalf of Defendant Owner and/or Defendant Employer.

21. That Defendant Owner and/or Defendant Employer are vicariously liable, due to the negligence of their employees or agents, as is set forth more fully above, for proximately causing

injuries and/or damages to Plaintiff, under the doctrines of *respondeat superior*, *agency*, and/or *ostensible/apparent agency*.

22. That as a direct and proximate result of the employer/employee and/or agency relationship between Defendant Driver and Defendant Owner and/or Defendant Employer, as is set forth more fully above, Defendant Driver and Defendant Owner and Defendant Employer are jointly and severally liable to Plaintiff for her injuries and damages, including for punitive damages, directly and proximately resulting from the breaches of duty of said Defendants.

23. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendants, as is set forth more fully above, Plaintiff has been damaged and injured in the following respects:

- a) Plaintiff has been required to expend a significant amount of money for her medical care, treatment and attendant services;
- b) Upon information and belief, the nature of Plaintiff's injuries will require her to expend a significant amount of money for her medical care, treatment and attendant services in the future; and
- d) The pain of her injuries has resulted in their loss of enjoyment of life and change in her personality, all to permanent detriment to her health and physical well-being.

24. That Defendants' acts and omissions, as are set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of Defendants' conscious indifference to the consequences of such acts and omissions.

25. That because of Defendants' acts and omissions and the proximate harm resulting to Plaintiff, Plaintiff should be awarded punitive damages in an amount to be determined by the trier

of fact, in order to punish and penalize Defendants and to deter Defendants and others from similar behavior.

26. That upon information and belief, Plaintiff is entitled to judgment against Defendants for actual, compensatory and exemplary or punitive damages for her personal injuries set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that she may be entitled to be determined by a jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, jointly and severally, for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

s / Vanisa T. Siler

Vanisa T. Siler, Esquire

Federal Bar No.: 13425

Lane D. Jefferies, Esquire

Federal Bar No.: 11988

Eric M. Poulin, Esquire

Poulin Bar No.: 11251

Roy T. Willey, IV, Esquire

Federal Bar No.: 11664

Anastopoulos Law Firm, LLC

32 Ann Street

Charleston, SC 29403

(843) 614-8888

Dated at Charleston, South Carolina this 29th day of March, 2021.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Glenna Gray,

Plaintiff,

vs.

Larousse Lamur; Phoenix Grand, LLC; and
Lamur Transportation Services, LLC,

Defendants.

Civil Action No.: 3:21-cv-00908-SAL

**ANSWER TO COMPLAINT ON
BEHALF OF DEFENDANTS
LAROUSSE LAMUR; PHOENIX
GRAND, LLC; AND LAMUR
TRANSPORTATION SERVICES, LLC**

**TO: LANE D. JEFFRIES, ESQUIRE, ATTORNEY FOR PLAINTIFF, AND TO THE
PLAINTIFF ABOVE-NAMED:**

The Defendants, Larousse Lamur; Phoenix Grand, LLC; and Lamur Transportation Services, LLC, by and through their undersigned counsel and responding to the Complaint of the Plaintiff, answers as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically admitted or qualified is hereby denied.

2. In response to the allegations in Paragraphs 1, 2, 3, 4 and 5 of the Complaint, the Defendants admit only that on February 13, 2019, a collision occurred between a vehicle in which Plaintiff was a passenger and a vehicle being operated by the Defendant Larousse Lamur on I-26 in Lexington County, South Carolina. Defendants deny the remaining allegations of Paragraphs 1, 2, 3, 4 and 5 of the Complaint.

3. In response to the allegations in Paragraph 6 of the Complaint, the Defendants restate and reassert their previous responses as is set forth verbatim herein

4. Upon information and belief, the Defendants admit the allegations of Paragraphs 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Complaint.

5. The Defendants deny the allegations of Paragraph 16 of the Complaint.

6. Upon information and belief, the Defendants admit the allegations of Paragraph 17 of the Complaint.

7. The Defendants deny the allegations of Paragraphs 18, 19, 20, 21, 22, 23, 24, 25 and 26 of the Complaint.

FOR A SECOND DEFENSE

8. The Complaint fails to state facts sufficient to constitute a cause of action and, therefore, should be dismissed.

FOR A THIRD DEFENSE

9. The Defendants would show, upon information and belief, that the injuries sustained by the Plaintiff were the result of the sole negligence of the Plaintiff and therefore, the Plaintiffs cannot recover any sum whatsoever from the Defendants.

FOR A FOURTH DEFENSE

10. The Defendants would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to Plaintiff's own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendants, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred. The Defendants plead such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would

ask that this court compare the negligence of the Plaintiff and the Defendants and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendants, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendants, then the amount of recovery available to the Plaintiff's should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A FIFTH DEFENSE

11. The Defendants would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that the Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because the Defendants can be compelled to give testimony against Defendants' self in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates the Defendants' right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive

damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

FOR A SIXTH DEFENSE

12. Pursuant to S.C. Code Ann. §15-32-520, any proceeding to determine punitive damages should be bifurcated from any trial to determine liability and compensatory damages.

FOR A SEVENTH DEFENSE

13. Defendants hereby assert that any award of punitive damages should be capped pursuant to S.C. Code § 15-32-530.

FOR AN EIGHTH DEFENSE

14. Any award of punitive damages should not exceed the greater of three (3) times the amount of compensatory damages as provided for in S.C. Code Ann. §15-32-530.

FOR A NINTH DEFENSE

15. The Defendants would assert that the alleged injuries of the Plaintiff were not proximately caused by the accident alleged herein and, therefore, the Plaintiff cannot recover from the Defendants due to lack of proximate cause and damages.

WHEREFORE, having answered the Plaintiff's Complaint, Defendants respectfully requests that the Complaint be dismissed, with costs, and for such other and further relief as the Court deems just and proper.

The Defendants demand a jury trial.

This the 2nd day of June 2021, in Columbia, South Carolina.

{Signature page following}

MURPHY & GRANTLAND, P.A.

s/Phillip Florence, Jr.

Everett A. Kendall (Fed ID 8450)

Phillip Florence, Jr. (Fed ID 6367)

PO Box 6648

Columbia, SC 29260

Phone: 803-782-4100

Fax: 803-782-4140

rkendall@murphygrantland.com

pflorence@murphygrantland.com

***Attorneys for Larousse Lamur; Phoenix Grand,
LLC; and Lamur Transportation Services, LLC***

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Glenna Gray,

Plaintiff,

vs.

Larousse Lamur; Phoenix Grand, LLC; and
Lamur Transportation Services, LLC,

Defendants.

Civil Action No.: 3:21-cv-00908-SAL

**AMENDED ANSWER TO COMPLAINT
ON BEHALF OF DEFENDANTS
LAROUSSE LAMUR; PHOENIX
GRAND, LLC; AND LAMUR
TRANSPORTATION SERVICES, LLC**

**TO: LANE D. JEFFRIES, ESQUIRE, ATTORNEY FOR PLAINTIFF, AND TO THE
PLAINTIFF ABOVE-NAMED:**

The Defendants, Larousse Lamur; Phoenix Grand, LLC; and Lamur Transportation Services, LLC, by and through their undersigned counsel and responding to the Complaint of the Plaintiff, amends their Answer as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically admitted or qualified is hereby denied.

2. In response to the allegations in Paragraphs 1, 2, 3, 4 and 5 of the Complaint, the Defendants admit only that on February 13, 2019, a vehicle in which Plaintiff was a passenger and being operated by Joseph Gray was involved in an accident on I-26 in Lexington County, South Carolina. Defendants deny the remaining allegations of Paragraphs 1, 2, 3, 4 and 5 of the Complaint.

3. In response to the allegations in Paragraph 6 of the Complaint, the Defendants restate and reassert their previous responses as is set forth verbatim herein

4. Upon information and belief, the Defendants admit the allegations of Paragraphs 7, 8, 9, 10, 11 of the Complaint.

5. The Defendants deny the allegations of Paragraphs 12 and 13 of the Complaint.

6. Upon information and belief, the Defendants admit the allegations of Paragraphs 14 and 15 of the Complaint.

7. The Defendants deny the allegations of Paragraph 16 of the Complaint.

8. Upon information and belief, the Defendants admit the allegations of Paragraph 17 of the Complaint.

9. The Defendants deny the allegations of Paragraphs 18, 19, 20, 21, 22, 23, 24, 25 and 26 of the Complaint.

FOR A SECOND DEFENSE

10. The Complaint fails to state facts sufficient to constitute a cause of action and, therefore, should be dismissed.

FOR A THIRD DEFENSE

11. The Defendants would show, upon information and belief, that the injuries sustained by the Plaintiff were the result of the sole negligence of the Plaintiff and therefore, the Plaintiffs cannot recover any sum whatsoever from the Defendants.

FOR A FOURTH DEFENSE

12. The Defendants would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to Plaintiff's own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the

part of the Defendants, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred. The Defendants plead such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would ask that this court compare the negligence of the Plaintiff and the Defendants and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendants, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendants, then the amount of recovery available to the Plaintiff's should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A FIFTH DEFENSE

13. The Defendants would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that the Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because the Defendants can be compelled to give testimony against Defendants' self in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates the Defendants' right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiff's claim

for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

FOR A SIXTH DEFENSE

14. Pursuant to S.C. Code Ann. §15-32-520, any proceeding to determine punitive damages should be bifurcated from any trial to determine liability and compensatory damages.

FOR A SEVENTH DEFENSE

15. Defendants hereby assert that any award of punitive damages should be capped pursuant to S.C. Code § 15-32-530.

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16. Any award of punitive damages should not exceed the greater of three (3) times the amount of compensatory damages as provided for in S.C. Code Ann. §15-32-530.

FOR A NINTH DEFENSE

17. The Defendants would assert that the alleged injuries of the Plaintiff were not proximately caused by the accident alleged herein and, therefore, the Plaintiff cannot recover from the Defendants due to lack of proximate cause and damages.

WHEREFORE, having answered the Plaintiff's Complaint, Defendants respectfully requests that the Complaint be dismissed, with costs, and for such other and further relief as the Court deems just and proper.

The Defendants demand a jury trial.

This the 9th day of June 2021, in Columbia, South Carolina.

MURPHY & GRANTLAND, P.A.

s/Phillip Florence, Jr.

Everett A. Kendall (Fed ID 8450)

Phillip Florence, Jr. (Fed ID 6367)

PO Box 6648

Columbia, SC 29260

Phone: 803-782-4100

Fax: 803-782-4140

rkendall@murphygrantland.com

pflorence@murphygrantland.com

***Attorneys for Larousse Lamur; Phoenix Grand,
LLC; and Lamur Transportation Services, LLC***

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION JUDICIAL CIRCUIT

GLENNA GRAY,

Plaintiff,

v.

LAROUSSE LAMUR; LAMUR
TRANSPORTATION SERVICES, LLC;
AND PHOENIX GRAND, LLC,

Defendants.

CASE NO: 3:21-cv-00908-SAL

**PLAINTIFF'S MOTION AND
MEMORANDUM IN SUPPORT OF
MOTION TO AMEND THE
COMPLAINT**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

Plaintiff, by her attorney, asks leave of court pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure to file the following amendments to her Complaint, previously filed in this Court. This action arises from a collision between a passenger car and commercial truck. Counsel originally filed suit on behalf of one occupant of the car; and now seeks to amend the complaint to add the estate of the other occupant of the car as a Plaintiff and its respective causes of action. The proposed amendments are made in good faith, will promote judicial economy, are not futile, and will not prejudice the defense, as it will avoid the need for filing a second lawsuit against the same defendants based on essentially the same set of operative facts. Such proposed amendments are as follows:

1. The addition of plaintiff Michael W. Gray as Personal Representative of the Estate of Joseph S. Gray;
2. Two additional causes of action, of which are wrongful death and a survival action for negligence, gross negligence, and negligence per se;
3. Amendments to the pleadings to accurately reflect the Plaintiff and Joseph S. Gray's

marital status at the time of the wreck; and

4. Amendment to line 4 of the Complaint to include an approximate amount of Joseph S. Gray's medical bills. The amended Complaint is attached hereto as **Exhibit A**.

Rule 15(a) of the Federal Rules of Civil Procedure allows "[a] party [to] amend its pleading once as a matter of course within 21 days after serving it, or if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b)(e) or (f), whichever is earlier. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." F.R.C.P. Rule 15.

"This liberal rule [to freely give leave when justice so requires] gives effect to the federal policy in favor of resolving cases on their merits instead of disposing of them on technicalities." *Laber v. Harvey*, 438 F.3d 404,426 (4th Cir. 2006). Only under the following circumstances should leave be denied: 1) bad faith on the part of the moving party; 2) prejudice to the opposing party; or 3) futility. *Johnson v. Oroweat Foods Co.*, 785 F.2d 503,509 (4th Cir. 1986).

In the case at hand, there is no bad faith on part of the Plaintiff, the proposed amendments will not prejudice Defendants, and the proposed amendments are not futile. First, the addition of Joseph's estate as a plaintiff in this action does not warrant denial. Joseph was driving the couple's vehicle the day in question and suffered severe injuries that ultimately led to his untimely death. Additionally, Joseph had already entered into an agreement with Plaintiff's counsel to represent him in the very matter that is the subject of this litigation. But for his untimely death, Joseph would have already been included as a litigant in this action.

Second, the addition of both a wrongful death cause of action and survival action also does not warrant denial. Joseph's estate is entitled to pursue such actions because Defendants' acts and omissions, as detailed further in the Amended Summons and Complaint, served as the direct and proximate cause of Joseph's death. Third, the proposed amendments to the pleadings for the sake of accurately reflecting Plaintiff and Joseph's marital status do not warrant denial. Plaintiff and Joseph were not legally married at the time of the wreck. Once married, the couple obtained a divorce at one point in their relationship. However, the couple were about eight (8) years into their rekindled romantic relationship at the time of the wreck; they simply never remarried although they resumed presenting themselves as husband and wife.

Finally, the amendment of line 4 to reflect an approximate of the medical bills Joseph faced prior to his death does not warrant denial. To avoid surprises in litigation, it is best to at the very least provide Defendants with the total amount of medical bills Plaintiffs faced as a result of the injuries they suffered from the wreck. If anything, Defendants would be prejudiced if they were not given an idea of what they will be liable for in damages at the very least. Providing an approximate of the medical bills prevents such prejudice.

CONCLUSION

For all the aforementioned reasons, this Court should grant Plaintiff's Motion to leave and amend the Complaint to add the aforementioned party as a Plaintiff and allow the proposed amendments.

[SIGNATURE LINE ON THE FOLLOWING PAGE]

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s\Vanisa T. Siler

Vanisa T. Siler, Esquire (Federal ID No.: 13425)

Lane D. Jefferies, Esquire (Federal ID No.: 11988)

Eric M. Poulin, Esquire (Federal ID No.: 11251)

Roy T. Willey, IV, Esquire (Federal ID No.: 11664)

Anastopoulos Law Firm, LLC

32 Ann Street

Charleston, SC 29403

(843) 614-8888

cld@akimlawfirm.com

Attorneys for Plaintiff

Dated at Charleston, South Carolina
June 22, 2021

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

GLENNA GRAY, and MICHAEL W.
GRAY as Personal Representative of THE
ESTATE OF JOSEPH S. GRAY;

Plaintiffs,

v.

LAROUSSE LAMUR; PHOENIX
GRAND, LLC; LAMUR
TRANSPORTATION SERVICES, LLC,

Defendants.

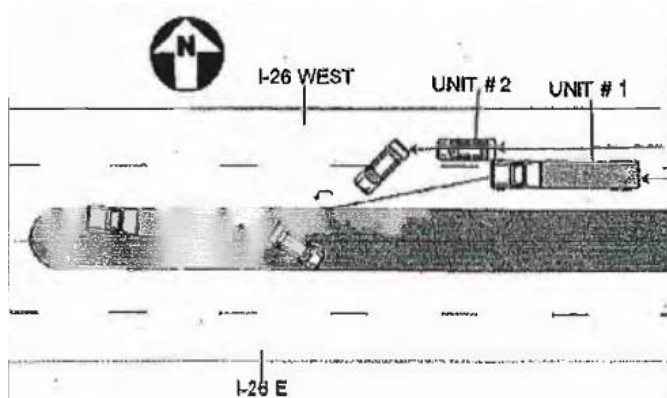
CIVIL ACTION NO: 3:21-cv-00908-SAL

**AMENDED COMPLAINT
(Jury Trial Demanded)**

The Plaintiffs, complaining of the Defendants, allege and says as follows:

CASE SYNOPSIS

1. Defendant drove west in the left lane of I-26 in a large “18-Wheeler” truck. He was driving too fast and not paying attention.
2. Had Defendant been paying attention, he would have seen the passenger car in the right lane in which Joseph and Glenna Gray were traveling. But he did not.
3. Instead, Defendant changed lanes directly into the rear of the passenger car, sending the passenger car spinning out of control across the highway. Fortunately, a guardrail stopped the spinning passenger car before it crossed into the oncoming lanes. Exhibit 1 below.



UNITS #1 AND #2 WERE TRAVELING WEST ON I-26. UNIT #1 CHANGED LANES UNLAWFULLY AND STRUCK UNIT #2 IN THE LEFT REAR. UNIT #2 RAN OFF ROADWAY LEFT AND STRUCK THE GUARDRAIL.

Exhibit 1

4. Nonetheless, both Joseph and Glenna were seriously injured in the wreck, and Joseph later died as a result. Glenna is now facing the remainder of her life without her significant other of nearly

45 years. She is also facing over \$150,000.00 in medical bills, with more to come. Prior to Joseph's death, he was facing over \$70,000 in medical bills.

5. Had Defendant simply been paying attention and driving at a safe speed, none of this would have happened.

SPECIFIC AVERMENTS

For a First Cause of Action
(Negligence, Gross Negligence, Negligence *per se*)

6. Plaintiff Glenna Gray incorporates verbatim and in their entirety the allegations set forth above.

7. That upon information and belief, Defendant Larousse Lamur, (herein referred to as "Defendant Driver") is a citizen and resident of Miami-Dade County, State of Florida and can be served with process at 12300 NE 4th Avenue, Apartment 204, North Miami, Florida 33161.

8. That upon information and belief, Defendant Phoenix Grand, LLC (herein referred to as "Defendant Owner") is a limited liability company organized and existing pursuant to the laws of the State of Ohio, and whose registered agent for service of process is Durdona Tulanova who can be served at 2101 South Hamilton Road Suite 206, Columbus, Ohio 43232.

9. That upon information and belief, Defendant Lamur Transportation Services, LLC (herein referred to as "Defendant Employer") is a limited liability company organized and existing pursuant to the laws of the State of Florida, and whose registered agent for service of process is Larousse Lamur, who can be served at 12300 NE 4th Avenue, North Miami, Florida 33161.

10. That Michael W. Gray was duly appointed Personal Representative of the Estate of Joseph S. Gray on May 10, 2021.

11. That the automobile collision that is the subject of this action occurred in Lexington County, State of South Carolina.

12. That this Court has jurisdiction over the parties and the subject matter of this action.

13. That upon information and belief, at all times relevant, Defendant Lamur Transportation Services, LLC was a motor carrier engaged in the interstate transport of property under USDOT Number: 3099160.

14. That upon information and belief, at all times relevant, Phoenix Grand, LLC was the owner of a 2015 Freightliner truck with VIN# 3AKJGLD3DFSGB3B44 and Ohio License Plate PWK1857 (“The 18-Wheeler”).

15. That upon information and belief, at all times relevant, Larousse Lamur was the driver of The 18-Wheeler.

16. That Defendant Larousse Lamur, Defendant Phoenix Grand, LLC and Defendant Lamur Transportation Services, LLC are referred to hereinafter collectively as “Defendants” and each individually by name.

17. That on or about February 13, 2019, at all times relevant, Plaintiff Glenna Gray’s significant other, Joseph S. Gray (“Joseph Gray”), was lawfully driving westbound in the right lane of Interstate 26, in the vicinity of Chapin, South Carolina.

18. That Plaintiff Glenna Gray and Plaintiff Michael W. Gray as the Personal Representative of the Estate of Joseph S. Gray are hereinafter referred to collectively as “Plaintiffs” and each individually by name.

19. That on or about February 13, 2019, at all times relevant, Glenna Gray was a passenger in the vehicle driven by Decedent.

20. That the collision and the resulting injuries and damages to Glenna Gray and Joseph Gray were caused directly and proximately by one or more of the following negligent, negligent *per se*, grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendants in any one or more of the following respects:

As to Defendant Driver:

- a. In violating the Federal Motor Carrier Safety Act;
- b. In failing to keep a proper lookout while operating The 18-Wheeler;
- c. In failing to maintain control of The 18-Wheeler;
- d. In failing to stay in his lane of traffic;
- e. In failing to slow down to a controllable speed to stay in his lane of traffic;
- f. In failing to keep a safe distance from Glenna Gray and Joseph Gray;
- g. In failing to properly observe the road and traffic conditions;
- h. In failing to obey traffic laws and/or signs;
- i. In failing to use his horn, if he had any;
- j. In traveling too fast for conditions;
- k. In failing to properly maintain the vehicle;
- l. In failing to yield the right of way;
- m. In failing to apply his brakes or using his steering mechanism to avoid the collision;
- n. In negligently and carelessly operating The 18-Wheeler in a high and excessive rate of speed under the circumstances then and there existing;
- o. In operating The 18-Wheeler at a high rate of speed and far in excess of the reasonable and prudent speed under the circumstances and conditions then and there existing;
- p. In operating The 18-Wheeler without using due care and without regard for safety and rights of Glenna Gray and Joseph Gray;
- q. In operating The 18-Wheeler in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner so as to create a dangerous situation;
- r. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;

- s. In failing to exercise the degree of care and caution that a reasonable and prudent professional driver would have exercised under the circumstances then and there prevailing;
- t. In negligently and carelessly operating The 18-Wheeler in such a manner to cause the vehicle to strike Glenna Gray and Joseph Gray and cause personal injuries;
- u. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- v. In any other such manner that Plaintiffs may become aware of through discovery and/or at trial.

As to Defendant Owner and Defendant Employer:

- a. In negligently entrusting The 18-Wheeler to someone they knew or should have known would operate The 18-Wheeler without using due care and without regard for the safety and rights of the public using the highway and Glenna Gray and Joseph Gray in particular;
- b. In negligently entrusting The 18-Wheeler to someone they knew or should have known would operate The 18-Wheeler in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner as to create a dangerous situation and render an accident inevitable, in utter disregard of the laws of the State of South Carolina;
- c. In negligently entrusting The 18-Wheeler to someone they knew or should have known would fail to exercise that degree of care that a reasonable and prudent person would have exercised under the same or similar circumstances;
- d. In failing to appreciate the gravity and seriousness of having an unsafe, unqualified, incompetent driver use their 18-Wheeler;
- e. In failing to ensure that the driver of their 18-Wheeler would comply with all state and federal statutory codes and regulations;
- f. In failing to properly and/or timely inspect, maintain, service and/or repair The 18-Wheeler, and its component parts, to ensure that the same could be utilized and operated safely;
- g. In failing to use due care; and
- h. In any other such manner the Plaintiffs may become aware of through discovery and/or trial.

- i. In failing to properly hire, train and/or supervise their employee driver Defendant Driver to ensure that The 18-Wheeler was driven/operated in a safe and proper manner;
- j. In failing to properly hire, train and/or supervise their employee driver Defendant Driver, and others involved with maintenance, regulatory compliance, and/or safety, to ensure that proper pre-trip, post-trip, periodic, quarterly and/or annual inspections were performed, including properly, on The 18-Wheeler, and its component parts;
- k. In failing to properly train and/or supervise their employee driver Defendant Driver as defined in the safe and appropriate operation and use of The 18-Wheeler;
- l. In failing, by and through their employee driver Defendant Driver to have the required driver knowledge necessary in order to safely operate The 18-Wheeler, including but not limited to the procedures to obey traffic laws;
- m. In failing, by and through their employee driver Defendant Driver to safely and properly operate The 18-Wheeler, including on the trip and up to the time of the occurrence alleged in this Complaint;
- n. In permitting their employee driver Defendant Driver to drive The 18-Wheeler when he was not fully qualified to do so;
- o. In failing to create, maintain, and/or implement appropriate policies and procedures related to inspection and safety for its drivers, including their employee driver Defendant Driver, and for safety, regulatory compliance, and/or inspection, maintenance, and service of commercial motor vehicles;
- p. In failing to properly and/or timely inspect, maintain, service and/or repair The 18-Wheeler, and its component parts, to ensure that the same could be utilized and operated safely;
- q. In failing to use due care;
- r. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina or the United States; and
- s. In any other such manner that Plaintiffs may become aware of through discovery and/or at trial.

21. That at all times material to the collision that made the basis of this action, The 18-Wheeler

that was being driven by Defendant Driver was owned, possessed and/or under the control of Defendant Owner and/or Defendant Employer.

22. That at all times material to the collision that made the basis of this action, Defendant Driver was acting by and through Defendant Owner and/or Defendant Employer as an employee/agent of Defendant Owner and/or Defendant Employer, and was at all times material acting within the course and scope of his employment or agency in performing duties for, and on behalf of Defendant Owner and/or Defendant Employer.

23. That Defendant Owner and/or Defendant Employer are vicariously liable, due to the negligence of their employees or agents, as is set forth more fully above, for proximately causing injuries and/or damages to Glenna Gray, under the doctrines of *respondeat superior*, *agency*, and/or *ostensible/apparent agency*.

24. That as a direct and proximate result of the employer/employee and/or agency relationship between Defendant Driver and Defendant Owner and/or Defendant Employer, as is set forth more fully above, Defendant Driver and Defendant Owner and Defendant Employer are jointly and severally liable to Glenna Gray for her injuries and damages, including for punitive damages, directly and proximately resulting from the breaches of duty of said Defendants.

25. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendants, as is set forth more fully above, Glenna Gray has been damaged and injured in the following respects:

- a) Plaintiff has been required to expend a significant amount of money for her medical care, treatment and attendant services;
- b) Upon information and belief, the nature of Plaintiff's injuries will require her to expend a significant amount of money for her medical care,

treatment and attendant services in the future; and

- d) The pain of her injuries has resulted in her loss of enjoyment of life and change in her personality, all to permanent detriment to her health and physical well-being.

26. That Defendants' acts and omissions, as are set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of Defendants' conscious indifference to the consequences of such acts and omissions.

27. That because of Defendants' acts and omissions, and the proximate harm resulting to Glenna Gray, she should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize Defendants and to deter Defendants and others from similar behavior.

28. That upon information and belief, Plaintiff Glenna Gray is entitled to judgment against Defendants for actual, compensatory and exemplary or punitive damages for her personal injuries set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and fees that Plaintiffs may be entitled to be determined by a jury.

For a Second Cause of Action
(Survival Action, S.C. Code § 15-5-90 – Negligence, Gross Negligence, Negligence per se)

29. Michael Gray as the Personal Representative of the Estate of Joseph S. Gray ("The Estate") incorporates verbatim the entirety of the above-stated allegations

30. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendants, as is set forth more fully above, Joseph Gray was damaged and injured in the following respects:

- a. Joseph Gray had to expend a significant amount of money for his medical care

and treatment;

- b. Endured conscious pain and suffering;
- c. Feared for the loss of his life;
- d. Endured mental anguish;
- e. Fear of death;
- f. Anxiety over his future condition;
- g. Embarrassment and humiliation;
- h. Fright and shock; and
- i. The pain of his injuries resulted in the loss of enjoyment of life and change in his personality, all to the permanent detriment of his health and well-being.

31. That Defendants' acts and omissions, as are set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of Defendants' conscious indifference to the consequences of such acts and omissions.

32. That because of Defendants' acts and omissions and the proximate harm resulting to The Estate and Joseph Gray, The Estate should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendant and to deter the Defendant and others from similar behavior.

33. That, pursuant to S.C. Code § 15-5-90, The Estate is entitled to judgment against the Defendants for actual, compensatory and exemplary or punitive damages for Joseph Gray and The Estate's personal injuries and property damages set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and fees that The Estate may be entitled, to be determined by a jury.

For a Third Cause of Action
(Wrongful Death, S.C. Code Ann. § 15-51-10 et seq.)

34. Michael Gray as the Personal Representative of the Estate of Joseph S. Gray (“The Estate”) incorporates verbatim the entirety of the above-stated allegations.
35. That as a direct and proximate result of Defendants’ acts and omissions and the injuries thereby inflicted upon Joseph Gray on February 13, 2019 Joseph Gray died on February 28, 2021.
36. That as a direct and proximate result of Defendants’ acts and omissions causing the Joseph Gray’s death, Plaintiffs have suffered pecuniary loss; mental shock and suffering; wounded feelings; grief and sorrow; loss of companionship; and deprivation of the use and comfort of Joseph Gray’s society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries.
37. That Defendants’ acts and omissions were intentional and/or the result of negligence, gross negligence, carelessness, recklessness, willfulness and wantonness and entire want of care, raising a presumption of the Defendant’s conscious and callous indifference to the consequences of such conduct.
38. That because of the Defendants’ acts and omissions and the proximate harm resulting to Plaintiffs, Plaintiffs should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendants and to deter the Defendants and others from similar behavior.
39. That, pursuant to S.C. Code Ann. § 15-51-10 et seq., Plaintiffs are entitled to judgment against the Defendants for actual, compensatory and exemplary punitive damages for Plaintiffs’ injuries and damages set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and fees that Plaintiffs

may be entitled, to be determined by a jury.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants, jointly and severally, for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s\Vanisa T. Siler

Vanisa T. Siler, Esquire (Federal ID No.:13425)

Lane D. Jefferies, Esquire (Federal ID No.:11988)

Eric M. Poulin, Esquire, (Federal ID No.: 11251

Roy T. Willey, IV, Esquire (Federal ID No.:11664)

Anastopoulos Law Firm, LLC

32 Ann Street

Charleston, SC 29403

(843) 614-8888

cld@akimlawfirm.com

Attorneys for Plaintiff

Charleston, South Carolina
June 16, 2021

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Glenna Gray,

Plaintiff,

vs.

Larousse Lamur; Phoenix Grand, LLC; and
Lamur Transportation Services, LLC,

Defendants.

Civil Action No.: 3:21-cv-00908-SAL

**DEFENDANTS LAROUSSE LAMUR;
PHOENIX GRAND, LLC; AND
LAMUR TRANSPORTATION
SERVICES, LLC'S REPLY IN
OPPOSITION TO PLAINTIFF'S
MOTION TO AMEND THE
COMPLAINT**

The Defendants, Larousse Lamur, Phoenix Grand, LLC, and Lamur Transportation Services, LLC (collectively referred to as "Defendants"), submit this Reply in Opposition to Plaintiff's Motion to Amend filed on June 22, 2021 [ECF No. 22].

BACKGROUND

This case arises out of a motor vehicle accident that occurred on or about February 13, 2019. This action was originally filed on March 30, 2021, on behalf of Plaintiff, Glenna Gray, and alleges Glenna Gray was a passenger in a vehicle driven by Joseph S. Gray when it lost control on Interstate 26 and struck a guard rail. Plaintiff, Glenna Gray, further alleges that a truck operated by Defendants caused the accident. Plaintiff, Glenna Gray, alleges that she was injured in the accident and has incurred damages. There are no allegations in the original Complaint that Joseph S. Gray suffered any personal injuries or incurred damages as a result of the accident. Prior to the

filing of this suit, the driver of Plaintiff's vehicle, Joseph S. Gray, died on February 28, 2021. Defendants filed an Answer to the Complaint June 2, 2021.

On June 22, 2021, Plaintiff's counsel filed a Motion to Amend the Complaint to add Michael W. Gray as Personal Representative of The Estate of Joseph S. Gray as a Plaintiff and to add survival and wrongful death causes of action generally alleging that the accident that occurred on February 13, 2019, caused the subsequent death of Joseph S. Gray over two years after the accident on February 28, 2021. The proposed Amended Complaint does not allege any specifics as to the cause of Joseph S. Gray's death.

DISCUSSION

Rule 15(a)(2) provides that courts should "freely give leave [to amend] when justice so requires," and commits the matter to the discretion of the district court. See *Simmons v. United Mortg. & Loan Inv., LLC*, 634 F.3d 754, 769 (4th Cir. 2011). Denial of leave to amend is appropriate "only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999) (emphasis in original) (quoting *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986)).

Leave to amend may be denied as futile "if the proposed amended complaint fails to satisfy the requirements of the federal rules," including federal pleading standards. *Katyle v. Perm Nat. Gaming, Inc.*, 637 F.3d 462, 471 (4th Cir. 2011) (quoting *United States ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370, 376 (4th Cir. 2008)). The Federal Rules of Civil Procedure require the assertions in a complaint be based on objective good faith basis and not for the purposes of causing unnecessary delay or needlessly increase the cost of litigation. See Rule 11 of Fed. R. Civ. P. Additionally, the factual contentions in a complaint require evidentiary support or, if

specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. Id. A pleading need not contain detailed factual allegations, but the plaintiff must allege enough facts to make the claim appear “plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); see *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” (citation omitted)).

At the time the original Complaint was filed, March 30, 2021, Plaintiff’s counsel knew or should have known that Joseph S. Gray was involved in the accident and died two days prior to filing the original Complaint. However, the original Complaint did not assert any claim for personal injury to Joseph S. Gray and did not even identify Joseph S. Gray as a Plaintiff. The proposed Amended Complaint makes general conclusory assertions that Joseph S. Gray died from personal injuries he received in the accident that occurred over two years prior to his death. These new allegations will most certainly cause delay and exponentially increase the cost of litigation in this case. Therefore, the new allegations in the proposed Amended Complaint alleging that the accident caused the death of Joseph S. Gray over two years after the accident are wholly unsupported by any facts and do not meet the standards or requirements of The Federal Rules of Civil Procedure.

CONCLUSION

Accordingly, Plaintiff’s Motion to Amend the Complaint should be denied to the extent that Plaintiff proposes to add Joseph S. Gray as a Plaintiff and add survival and wrongful death causes of action to this case.

(Signature page following)

MURPHY & GRANTLAND, P.A.

s/Phillip Florence, Jr.

Everett A. Kendall (Fed ID 8450)

Phillip Florence, Jr. (Fed ID 6367)

PO Box 6648

Columbia, SC 29260

Phone: 803-782-4100

Fax: 803-782-4140

rkendall@murphygrantland.com

pflorence@murphygrantland.com

***Attorneys for Larousse Lamur; Phoenix Grand,
LLC; and Lamur Transportation Services, LLC***

Columbia, South Carolina
July 6, 2021

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT
CASE NO: 2021-CP-32-_____

MICHAEL W. GRAY as Personal
Representative of the ESTATE OF
JOSEPH S. GRAY,

Plaintiff,

v.

LAROUSSE LAMUR; PHOENIX
GRAND, LLC; and LAMUR
TRANSPORTATION SERVICES, LLC,

Defendants.

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or Plaintiff's attorneys, Lane D. Jefferies, Vanisa T. Siler, Eric M. Poulin, and Roy T. Willey, IV, at their offices at 32 Ann Street, Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

ANASTOPOULO LAW FIRM, LLC

BY s/Vanisa T. Siler

Vanisa T. Siler, Esquire
S.C. Bar No.: 104799
Lane D. Jefferies, Esquire
S.C. Bar No.: 101764
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Anastopoulos Law Firm, LLC
32 Ann Street
Charleston, SC 29403
(843) 614-8888
cld@akimlawfirm.com
Attorneys for Plaintiff

Dated at Charleston, SC
August 30, 2021

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT
CASE NO: 2021-CP-32-_____

MICHAEL W. GRAY as Personal
Representative of the ESTATE OF
JOSEPH S. GRAY ,

Plaintiff,

v.

LAROUSSE LAMUR; PHOENIX
GRAND, LLC; and LMAUR
TRANSPORTATION SERVICES, LLC,

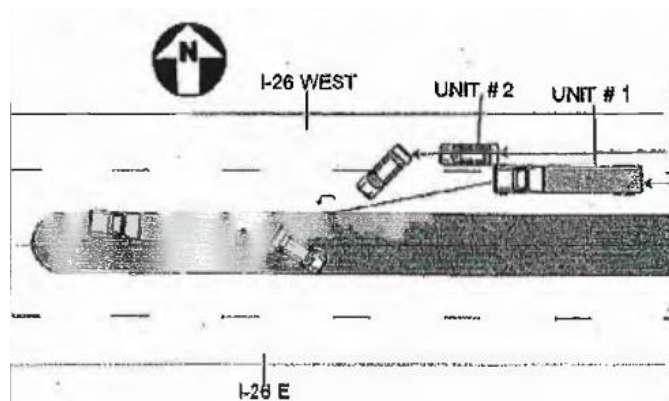
Defendants.

**COMPLAINT
(Jury Trial Demanded)**

The Plaintiff, complaining of the Defendants, alleges and says as follows:

CASE SYNOPSIS

1. Defendant drove west in the left lane of I-26 in a large “18-Wheeler” truck. He was driving too fast and not paying attention.
2. Had Defendant been paying attention, he would have seen the passenger car in the right lane in which Joseph and Glenna Gray were traveling. But he did not.
3. Instead, Defendant changed lanes directly into the rear of the passenger car, sending the passenger car spinning out of control across the highway. Fortunately, a guardrail stopped the spinning passenger car before it crossed into the oncoming lanes. Exhibit 1 below



UNITS #1 AND #2 WERE TRAVELING WEST ON I-26. UNIT #1 CHANGED LANES UNLAWFULLY AND STRUCK UNIT #2 IN THE LEFT REAR. UNIT #2 RAN OFF ROADWAY LEFT AND STRUCK THE GUARDRAIL.

Exhibit 1

4. Nonetheless, both Joseph and Glenna were seriously injured in the wreck, and Joseph later died as a result. Prior to Joseph's death, he was facing over \$70,000 in medical bills.

5. Had Defendant simply been paying attention and driving at a safe speed, none of this would have happened.

SPECIFIC AVERMENTS
FOR A FIRST CAUSE OF ACTION
(Survival Action, S.C. Code § 15-5-90 – Negligence, Gross Negligence, Negligence Per Se)

6. Michael W. Gray, as Personal Representative for the Estate of Joseph S. Gray, incorporates verbatim and in their entirety the allegations set forth above.

7. That upon information and belief, Defendant Larousse Lamur, (herein referred to as “Defendant Driver”) is a citizen and resident of Miami-Dade County, State of Florida and can be served with process at 12300 NE 4th Avenue, Apartment 204, North Miami, Florida 33161.

8. That upon information and belief, Defendant Phoenix Grand, LLC (herein referred to as “Defendant Owner”) is a limited liability company organized and existing pursuant to the laws of the State of Ohio, and whose registered agent for service of process is Durdona Tulanova who can be served at 2101 South Hamilton Road Suite 206, Columbus, Ohio 43232.

9. That upon information and belief, Defendant Lamur Transportation Services, LLC (herein referred to as “Defendant Employer”) is a limited liability company organized and existing pursuant to the laws of the State of Florida, and whose registered agent for service of process is Larousse Lamur, who can be served at 12300 NE 4th Avenue, North Miami, Florida 33161.

10. That the automobile collision that is the subject of this action occurred in Lexington County, State of South Carolina.

11. That this Court has jurisdiction over the parties and the subject matter of this action.

12. That upon information and belief, at all times relevant, Defendant Lamur Transportation Services, LLC was a motor carrier engaged in the interstate transport of property under USDOT Number: 3099160.

13. That upon information and belief, at all times relevant, Phoenix Grand, LLC was the owner of a 2015 Freightliner truck with VIN# 3AKJGLD3DFSGB3B44 and Ohio License Plate PWK1857 (“The 18-Wheeler”).

14. That upon information and belief, at all times relevant, Larousse Lamur was the driver of The 18-Wheeler.

15. That Defendant Larousse Lamur, Defendant Phoenix Grand, LLC and Defendant Lamur Transportation Services, LLC are referred to hereinafter collectively as “Defendants” and each individually by name.

16. That Michael W. Gray was appointed as Personal Representative of the Estate of Joseph S. Gray on May 10, 2021 in the Circuit Court of the Seventh Judicial Circuit in Volusia County, Florida.

17. That Michael W. Gray as the Personal Representative of the Estate of Joseph S. Gray, is hereinafter referred to as “Plaintiff”.

18. That on or about February 13, 2019, at all times relevant, Joseph S. Gray (“Mr. Gray”) was lawfully driving westbound in the right lane of Interstate 26, in the vicinity of Chapin, South Carolina.

19. That on or about February 13, 2019, at all times relevant, Mr. Gray’s significant other, Glenna Gray, was lawfully riding as a passenger with Mr. Gray.

20. That the collision and the resulting injuries and damages to Mr. Gray were caused directly and proximately by one or more of the following negligent, negligent *per se*, grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendants in any one or more of the following respects:

As to Defendant Driver:

- a. In violating the Federal Motor Carrier Safety Act;
- b. In failing to keep a proper lookout while operating The 18-Wheeler;
- c. In failing to maintain control of The 18-Wheeler;
- d. In failing to stay in his lane of traffic;
- e. In failing to slow down to a controllable speed to stay in his lane of traffic;
- f. In failing to keep a safe distance from Mr. Gray and Glenna Gray;
- g. In failing to properly observe the road and traffic conditions;
- h. In failing to obey traffic laws and/or signs;
- i. In failing to use his horn, if he had any;
- j. In traveling too fast for conditions;
- k. In failing to properly maintain the vehicle;
- l. In failing to yield the right of way;
- m. In failing to apply his brakes or using his steering mechanism to avoid the collision;
- n. In negligently and carelessly operating The 18-Wheeler in a high and excessive rate of speed under the circumstances then and there existing;
- o. In operating The 18-Wheeler at a high rate of speed and far in excess of the reasonable and prudent speed under the circumstances and conditions then and there existing;
- p. In operating The 18-Wheeler without using due care and without regard for safety and rights of Mr. Gray and Glenna Gray;
- q. In operating The 18-Wheeler in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner so as to create a dangerous situation;
- r. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- s. In In failing to exercise the degree of care and caution that a reasonable and

prudent professional driver would have exercised under the circumstances then and there prevailing;

- t. In negligently and carelessly operating The 18-Wheeler in such a manner to cause the vehicle to strike Mr. Gray and Glenna Gray and cause personal injuries;
- u. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- v. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.

As to Defendant Owner and Defendant Employer:

- a. In negligently entrusting The 18-Wheeler to someone they knew or should have known would operate The 18-Wheeler without using due care and without regard for the safety and rights of the public using the highway and Mr. Gray and Glenna Gray in particular;
- b. In negligently entrusting The 18-Wheeler to someone they knew or should have known would operate The 18-Wheeler in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner as to create a dangerous situation and render an accident inevitable, in utter disregard of the laws of the State of South Carolina;
- c. In negligently entrusting The 18-Wheeler to someone they knew or should have known would fail to exercise that degree of care that a reasonable and prudent person would have exercised under the same or similar circumstances;
- d. In failing to appreciate the gravity and seriousness of having an unsafe, unqualified, incompetent driver use their 18-Wheeler;
- e. In failing to ensure that the driver of their 18-Wheeler would comply with all state and federal statutory codes and regulations;
- f. In failing to properly and/or timely inspect, maintain, service and/or repair The 18-Wheeler, and its component parts, to ensure that the same could be utilized and operated safely;
- g. In failing to use due care; and
- h. In any other such manner the Plaintiff may become aware of through discovery and/or trial.
- i. In failing to properly hire, train and/or supervise their employee driver

Defendant Driver to ensure that The 18-Wheeler was driven/operated in a safe and proper manner;

- j. In failing to properly hire, train and/or supervise their employee driver Defendant Driver, and others involved with maintenance, regulatory compliance, and/or safety, to ensure that proper pre-trip, post-trip, periodic, quarterly and/or annual inspections were performed, including properly, on The 18-Wheeler, and its component parts;
- k. In failing to properly train and/or supervise their employee driver Defendant Driver as defined in the safe and appropriate operation and use of The 18-Wheeler;
- l. In failing, by and through their employee driver Defendant Driver to have the required driver knowledge necessary in order to safely operate The 18-Wheeler, including but not limited to the procedures to obey traffic laws;
- m. In failing, by and through their employee driver Defendant Driver to safely and properly operate The 18-Wheeler, including on the trip and up to the time of the occurrence alleged in this Complaint;
- n. In permitting their employee driver Defendant Driver to drive The 18-Wheeler when he was not fully qualified to do so;
- o. In failing to create, maintain, and/or implement appropriate policies and procedures related to inspection and safety for its drivers, including their employee driver Defendant Driver, and for safety, regulatory compliance, and/or inspection, maintenance, and service of commercial motor vehicles;
- p. In failing to properly and/or timely inspect, maintain, service and/or repair The 18-Wheeler, and its component parts, to ensure that the same could be utilized and operated safely;
- q. In failing to use due care;
- r. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina or the United States; and
- s. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.

21. That at all times material to the collision that made the basis of this action, The 18-Wheeler that was being driven by Defendant Driver was owned, possessed and/or under the control of Defendant Owner and/or Defendant Employer.

22. That at all times material to the collision that made the basis of this action, Defendant Driver was acting by and through Defendant Owner and/or Defendant Employer as an employee/agent of Defendant Owner and/or Defendant Employer, and was at all times material acting within the course and scope of his employment or agency in performing duties for, and on behalf of Defendant Owner and/or Defendant Employer.

23. That Defendant Owner and/or Defendant Employer are vicariously liable, due to the negligence of their employees or agents, as is set forth more fully above, for proximately causing injuries and/or damages to Mr. Gray, under the doctrines of *respondeat superior*, *agency*, and/or *ostensible/apparent agency*.

24. That as a direct and proximate result of the employer/employee and/or agency relationship between Defendant Driver and Defendant Owner and/or Defendant Employer, as is set forth more fully above, Defendant Driver and Defendant Owner and Defendant Employer are jointly and severally liable to Mr. Gray for his injuries and damages, including for punitive damages, directly and proximately resulting from the breaches of duty of said Defendants.

25. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendants, as is set forth more fully above, Mr. Gray was damaged and injured in the following respects:

- a. Mr. Gray had to expend a significant amount of money for his medical care and treatment;
- b. Mr. Gray suffered from mental distress;
- c. Fright;
- d. Shock;
- e. Fear of loss of life;

- f. The pain of his injuries resulted in the loss of enjoyment of life and change in his personality, all to the permanent detriment of his health and well-being;
 - g. Mr. Gray's injuries caused his untimely death.
26. That Defendants' acts and omissions, as are set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of Defendants' conscious indifference to the consequences of such acts and omissions.
27. That because of Defendants' acts and omissions and the proximate harm resulting to The Estate of Joseph S. Gray ("The Estate") and Mr. Gray, The Estate should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendant and to deter the Defendant and others from similar behavior.
28. That The Estate is entitled to judgment against the Defendants for actual, compensatory and exemplary or punitive damages for Mr. Gray and The Estate's personal injuries and property damages set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and fees that The Estate may be entitled, to be determined by a jury.

FOR A SECOND CAUSE OF ACTION
(Wrongful Death, S.C. Code Ann. § 15-51-10 et seq.)

29. Plaintiff incorporates the above allegations herein.
30. That as a direct and proximate result of Defendants' acts and omissions, Mr. Gray suffered death.
31. That as a direct and proximate result of Defendants' acts and omissions causing the Mr. Gray's death, Plaintiff has suffered pecuniary loss; mental shock and suffering; wounded feelings; grief and sorrow; loss of companionship; and deprivation of the use and comfort

of Mr. Gray's society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries.

32. That Defendants' acts and omissions were intentional and/or the result of negligence, gross negligence, carelessness, recklessness, willfulness and wantonness and entire want of care, raising a presumption of the Defendant's conscious and callous indifference to the consequences of such conduct.
33. That because of the Defendants' acts and omissions and the proximate harm resulting to Mr. Gray, Plaintiff should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendants and to deter the Defendants and others from similar behavior.
34. That Plaintiff is entitled to judgment against the Defendants for actual, compensatory and exemplary punitive damages for Mr. Gray's injuries and damages set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and fees that Plaintiff may be entitled, to be determined by a jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, jointly and severally, for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

BY s/Vanisa T. Siler

Vanisa T. Siler, Esquire
S.C. Bar No.: 104799
Lane D. Jefferies, Esquire
S.C. Bar No.: 101764
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Anastopoulos Law Firm, LLC
32 Ann Street
Charleston, SC 29403
(843) 614-8888
cld@akimlawfirm.com
Attorneys for Plaintiff

Dated at Charleston, South Carolina this 30th day of August, 2021.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

GLENNA GRAY, and MICHAEL W.
GRAY as Personal Representative of THE
ESTATE OF JOSEPH S. GRAY;

Plaintiff,

v.

LAROUSSE LAMUR; PHOENIX
GRAND, LLC; LAMUR
TRANSPORTATION SERVICES, LLC,

Defendants.

CIVIL ACTION NO: 3:21-cv-00908-SAL

**AMENDED COMPLAINT
(Jury Trial Demanded)**

The Plaintiffs, complaining of the Defendants, allege and say as follows:

CASE SYNOPSIS

1. Defendant drove west in the left lane of I-26 in a large “18-Wheeler” truck. He was driving too fast and not paying attention.
2. Had Defendant been paying attention, he would have seen the passenger car in the right lane in which Joseph and Glenna Gray were traveling. But he did not.
3. Instead, Defendant changed lanes directly into the rear of the passenger car, sending the passenger car spinning out of control across the highway. Fortunately, a guardrail stopped the spinning passenger car before it crossed into the oncoming lanes. Exhibit 1.
4. Nonetheless, both Joseph and Glenna were seriously injured in the wreck, and Joseph later died as a result. Glenna is now facing the remainder of her life without her significant other of nearly 45 years. She is also facing over \$150,000.00 in medical bills, with more to come. Prior to Joseph’s death, he was facing over \$70,000 in medical bills.
5. Had Defendant simply been paying attention and driving at a safe speed, none of this would have happened.

SPECIFIC AVERMENTS
FOR FIRST CAUSE OF ACTION
(Negligence, Gross Negligence, Negligence *per se*)

1. Plaintiff Glenna Gray incorporates verbatim and in their entirety the allegations set forth above.

2. That upon information and belief, Defendant Larousse Lamur, (herein referred to as “Defendant Driver”) is a citizen and resident of Miami-Dade County, State of Florida and can be served with process at 12300 NE 4th Avenue, Apartment 204, North Miami, Florida 33161.

3. That upon information and belief, Defendant Phoenix Grand, LLC (herein referred to as “Defendant Owner”) is a limited liability company organized and existing pursuant to the laws of the State of Ohio, and whose registered agent for service of process is Durdona Tulanova who can be served at 2101 South Hamilton Road Suite 206, Columbus, Ohio 43232.

4. That upon information and belief, Defendant Lamur Transportation Services, LLC (herein referred to as “Defendant Employer”) is a limited liability company organized and existing pursuant to the laws of the State of Florida, and whose registered agent for service of process is Larousse Lamur, who can be served at 12300 NE 4th Avenue, North Miami, Florida 33161.

5. That the automobile collision that is the subject of this action occurred in Lexington County, State of South Carolina.

6. That this Court has jurisdiction over the parties and the subject matter of this action.

7. That upon information and belief, at all times relevant, Defendant Lamur Transportation Services, LLC was a motor carrier engaged in the interstate transport of property under USDOT Number: 3099160.

8. That upon information and belief, at all times relevant, Phoenix Grand, LLC was the owner of a 2015 Freightliner truck with VIN# 3AKJGLD3DFSGB3B44 and Ohio License Plate

PWK1857 (“The 18-Wheeler”).

9. That upon information and belief, at all times relevant, Larousse Lamur was the driver of The 18-Wheeler.

10. That Defendant Larousse Lamur, Defendant Phoenix Grand, LLC and Defendant Lamur Transportation Services, LLC are referred to hereinafter collectively as “Defendants” and each individually by name.

11. That on or about February 13, 2019, at all times relevant, Plaintiff Glenna Gray’s significant other, Joseph S. Gray (“Decedent”), was lawfully driving westbound in the right lane of Interstate 26, in the vicinity of Chapin, South Carolina.

12. That Plaintiff Glenna Gray and Plaintiff Michael W. Gray as the Personal Representative of the Estate of Joseph S. Gray are hereinafter referred to collectively as “Plaintiffs” and each individually by name.

13. That on or about February 13, 2019, at all times relevant, Glenna Gray was a passenger in the vehicle driven by Decedent.

14. That the collision and the resulting injuries and damages to Glenna Gray and Decedent were caused directly and proximately by one or more of the following negligent, negligent *per se*, grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendants in any one or more of the following respects:

As to Defendant Driver:

- a. In violating the Federal Motor Carrier Safety Act;
- b. In failing to keep a proper lookout while operating The 18-Wheeler;
- c. In failing to maintain control of The 18-Wheeler;
- d. In failing to stay in his lane of traffic;

- e. In failing to slow down to a controllable speed to stay in his lane of traffic;
- f. In failing to keep a safe distance from Glenna Gray and Decedent;
- g. In failing to properly observe the road and traffic conditions;
- h. In failing to obey traffic laws and/or signs;
- i. In failing to use his horn, if he had any;
- j. In traveling too fast for conditions;
- k. In failing to properly maintain the vehicle;
- l. In failing to yield the right of way;
- m. In failing to apply his brakes or using his steering mechanism to avoid the collision;
- n. In negligently and carelessly operating The 18-Wheeler in a high and excessive rate of speed under the circumstances then and there existing;
- o. In operating The 18-Wheeler at a high rate of speed and far in excess of the reasonable and prudent speed under the circumstances and conditions then and there existing;
- p. In operating The 18-Wheeler without using due care and without regard for safety and rights of Glenna Gray and Decedent;
- q. In operating The 18-Wheeler in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner so as to create a dangerous situation;
- r. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;

- s. In failing to exercise the degree of care and caution that a reasonable and prudent professional driver would have exercised under the circumstances then and there prevailing;
- t. In negligently and carelessly operating The 18-Wheeler in such a manner to cause the vehicle to strike Glenna Gray and Decedent and cause personal injuries;
- u. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- v. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.

As to Defendant Owner and Defendant Employer:

- a. In negligently entrusting The 18-Wheeler to someone they knew or should have known would operate The 18-Wheeler without using due care and without regard for the safety and rights of the public using the highway and Glenna Gray and Decedent in particular;
- b. In negligently entrusting The 18-Wheeler to someone they knew or should have known would operate The 18-Wheeler in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner as to create a dangerous situation and render an accident inevitable, in utter disregard of the laws of the State of South Carolina;
- c. In negligently entrusting The 18-Wheeler to someone they knew or should have known would fail to exercise that degree of care that a reasonable and prudent

person would have exercised under the same or similar circumstances;

- d. In failing to appreciate the gravity and seriousness of having an unsafe, unqualified, incompetent driver use their 18-Wheeler;
- e. In failing to ensure that the driver of their 18-Wheeler would comply with all state and federal statutory codes and regulations;
- f. In failing to properly and/or timely inspect, maintain, service and/or repair The 18-Wheeler, and its component parts, to ensure that the same could be utilized and operated safely;
- g. In failing to use due care; and
- h. In any other such manner the Plaintiffs may become aware of through discovery and/or trial.
- i. In failing to properly hire, train and/or supervise their employee driver Defendant Driver to ensure that The 18-Wheeler was driven/operated in a safe and proper manner;
- j. In failing to properly hire, train and/or supervise their employee driver Defendant Driver, and others involved with maintenance, regulatory compliance, and/or safety, to ensure that proper pre-trip, post-trip, periodic, quarterly and/or annual inspections were performed, including properly, on The 18-Wheeler, and its component parts;
- k. In failing to properly train and/or supervise their employee driver Defendant Driver as defined in the safe and appropriate operation and use of The 18-Wheeler;
- l. In failing, by and through their employee driver Defendant Driver to have the

required driver knowledge necessary in order to safely operate The 18-Wheeler, including but not limited to the procedures to obey traffic laws;

- m. In failing, by and through their employee driver Defendant Driver to safely and properly operate The 18-Wheeler, including on the trip and up to the time of the occurrence alleged in this Complaint;
- n. In permitting their employee driver Defendant Driver to drive The 18-Wheeler when he was not fully qualified to do so;
- o. In failing to create, maintain, and/or implement appropriate policies and procedures related to inspection and safety for its drivers, including their employee driver Defendant Driver, and for safety, regulatory compliance, and/or inspection, maintenance, and service of commercial motor vehicles;
- p. In failing to properly and/or timely inspect, maintain, service and/or repair The 18-Wheeler, and its component parts, to ensure that the same could be utilized and operated safely;
- q. In failing to use due care;
- r. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina or the United States; and
- s. In any other such manner that Plaintiffs may become aware of through discovery and/or at trial.

15. That at all times material to the collision that made the basis of this action, The 18-Wheeler that was being driven by Defendant Driver was owned, possessed and/or under the control of Defendant Owner and/or Defendant Employer.

16. That at all times material to the collision that made the basis of this action, Defendant

Driver was acting by and through Defendant Owner and/or Defendant Employer as an employee/agent of Defendant Owner and/or Defendant Employer, and was at all times material acting within the course and scope of his employment or agency in performing duties for, and on behalf of Defendant Owner and/or Defendant Employer.

17. That Defendant Owner and/or Defendant Employer are vicariously liable, due to the negligence of their employees or agents, as is set forth more fully above, for proximately causing injuries and/or damages to Glenna Gray, under the doctrines of *respondeat superior*, *agency*, and/or *ostensible/apparent agency*.

18. That as a direct and proximate result of the employer/employee and/or agency relationship between Defendant Driver and Defendant Owner and/or Defendant Employer, as is set forth more fully above, Defendant Driver and Defendant Owner and Defendant Employer are jointly and severally liable to Glenna Gray for her injuries and damages, including for punitive damages, directly and proximately resulting from the breaches of duty of said Defendants.

19. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendants, as is set forth more fully above, Glenna Gray has been damaged and injured in the following respects:

- a) Plaintiff has been required to expend a significant amount of money for her medical care, treatment and attendant services;
- b) Upon information and belief, the nature of Plaintiff's injuries will require her to expend a significant amount of money for her medical care, treatment and attendant services in the future; and
- d) The pain of her injuries has resulted in her loss of enjoyment of life and change in her personality, all to permanent detriment to her health

and physical well-being.

20. That Defendants' acts and omissions, as are set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of Defendants' conscious indifference to the consequences of such acts and omissions.

21. That because of Defendants' acts and omissions, and the proximate harm resulting to Glenna Gray, she should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize Defendants and to deter Defendants and others from similar behavior.

22. That upon information and belief, Plaintiff Glenna Gray is entitled to judgment against Defendants for actual, compensatory and exemplary or punitive damages for her personal injuries set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and fees that Plaintiffs may be entitled to be determined by a jury.

FOR A SECOND CAUSE OF ACTION

(Survival Action, S.C. Code § 15-5-90 – Negligence, Gross Negligence, Negligence Per Se)

23. Michael Gray as the Personal Representative of the Estate of Joseph S. Gray "The Estate" incorporates verbatim the above allegations in paragraphs 1 – 22 herein

24. The Personal Representative of Joseph S. Gray brings this action for the conscious pain and suffering of the Decedent pursuant to the Survival Right of Action Statute S.C. Code § 15-5-90 (1976)

25. That Defendant Owner and/or Defendant Employer are vicariously liable, due to the negligence of their employees or agents, as is set forth more fully above, for proximately causing injuries and/or damages to Decedent, under the doctrines of *respondeat superior*, *agency*, and/or *ostensible/apparent agency*.

26. That as a direct and proximate result of the employer/employee and/or agency relationship between Defendant Driver and Defendant Owner and/or Defendant Employer, as is set forth more fully above, Defendant Driver and Defendant Owner and Defendant Employer are jointly and severally liable to Decedent for his injuries and damages, including for punitive damages, directly and proximately resulting from the breaches of duty of said Defendants.

27. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendants, as is set forth more fully above, Decedent was damaged and injured in the following respects:

- a. Decedent had to expend a significant amount of money for his medical care and treatment;
- b. The pain of his injuries resulted in the loss of enjoyment of life and change in his personality, all to the permanent detriment of his health and well-being;
- c. Decedent's injuries caused his untimely death.

28. That Defendants' acts and omissions, as are set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of Defendants' conscious indifference to the consequences of such acts and omissions.

29. That because of Defendants' acts and omissions and the proximate harm resulting to The Estate and Decedent, The Estate should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendant and to deter the Defendant and others from similar behavior.

30. That The Estate is entitled to judgment against the Defendants for actual, compensatory and exemplary or punitive damages for Decedent and The Estate's personal injuries and property damages set forth herein in an amount that is fair, just and reasonable under the

circumstances, plus whatever costs, interest and fees that The Estate may be entitled, to be determined by a jury.

FOR A THIRD CAUSE OF ACTION
(Wrongful Death, S.C. Code Ann. § 15-51-10 et seq.)

31. Michael Gray as Personal Representative of the Estate of Joseph S. Gray incorporates the above allegations in paragraphs 1 -22, and 23 - 31 herein.
32. The Personal Representative of Joseph S. Gray brings this claim or the death of the Decedent pursuant to the South Carolina Death by Wrongful Act Statute, S.C. Code § 15-51-10 (1976)
33. That as a direct and proximate result of Defendants' acts and omissions, Decedent suffered death.
34. That as a direct and proximate result of Defendants' acts and omissions causing the Decedent's death, Plaintiff has suffered pecuniary loss; mental shock and suffering; wounded feelings; grief and sorrow; loss of companionship; and deprivation of the use and comfort of Decedent's society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries.
35. That Defendants' acts and omissions were intentional and/or the result of negligence, gross negligence, carelessness, recklessness, willfulness and wantonness and entire want of care, raising a presumption of the Defendant's conscious and callous indifference to the consequences of such conduct.
36. That because of the Defendants' acts and omissions and the proximate harm resulting to Plaintiff, Plaintiff should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendants and to deter the Defendants and others from similar behavior.

37. That Plaintiff is entitled to judgment against the Defendants for actual, compensatory and exemplary punitive damages for Plaintiff's injuries and damages set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and fees that Plaintiff may be entitled, to be determined by a jury.

WHEREFORE, the Plaintiffs prays for judgment against the Defendants, jointly and severally, for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

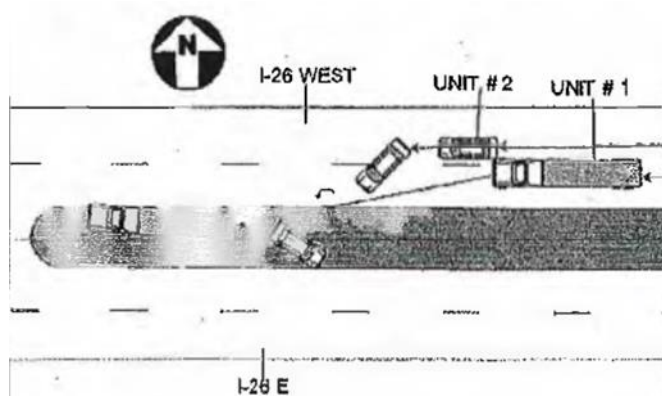
Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Roy T. Wiley, IV
Eric M. Poulin, Esquire
Federal Bar No.: 11251
Roy T. Willey, IV, Esquire
Federal Bar No.: 11664
Anastopoulos Law Firm, LLC
32 Ann Street
Charleston, SC 29403
(843) 614-8888
cld@akimlawfirm.com

Dated at Charleston, South Carolina this 10th day of January, 2022.

Exhibit 1



UNITS #1 AND #2 WERE TRAVELING WEST ON I-26. UNIT #1 CHANGED LANES UNLAWFULLY AND STRUCK UNIT #2 IN THE LEFT REAR. UNIT #2 RAN OFF ROADWAY LEFT AND STRUCK THE GUARDRAIL.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Glenna Gray, and Michael W. Gray as Personal
Representative of The Estate of Joseph S. Gray;

Plaintiffs,

vs.

Larousse Lamur; Phoenix Grand, LLC; and
Lamur Transportation Services, LLC,

Defendants.

Civil Action No.: 3:21-cv-00908-SAL

**ANSWER TO AMENDED COMPLAINT
ON BEHALF OF DEFENDANTS
LAROUSSE LAMUR, PHOENIX
GRAND, LLC, AND LAMUR
TRANSPORTATION SERVICES, LLC**

**TO: ROY T. WILLEY, IV, ESQUIRE, ATTORNEY FOR PLAINTIFF, AND TO THE
PLAINTIFF ABOVE-NAMED:**

The Defendants, Larousse Lamur; Phoenix Grand, LLC; and Lamur Transportation Services, LLC, by and through their undersigned counsel and respond to the Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Amended Complaint not hereinafter specifically admitted or qualified is hereby denied.

2. In response to the allegations in Paragraphs 1, 2, 3, 4 and 5 of the Amended Complaint, the Defendants admit only that on February 13, 2019, a vehicle in which Glenna Gray was a passenger and being operated by Joseph S. Gray was involved in an accident on I-26 in Lexington County, South Carolina. Defendants deny the remaining allegations of Paragraphs 1, 2, 3, 4 and 5 of the Amended Complaint.

3. In response to the allegations in Paragraph 1 of the section of Amended Complaint entitled “SPECIFIC AVERMENTS”, the Defendants restate and reassert their previous responses as is set forth verbatim herein.

4. Upon information and belief, the Defendants admit the allegations of Paragraphs 2, 3, 4, 5 and 6 of the section of Amended Complaint entitled “SPECIFIC AVERMENTS”.

5. The Defendants deny the allegations of Paragraphs 7 and 8 of the Amended Complaint.

6. Upon information and belief, the Defendants admit the allegations of Paragraphs 9 and 10 Amended Complaint.

7. In response to the allegations in Paragraphs 11, 12 and 13 of the Amended Complaint, the Defendants admit only that on February 13, 2019, a vehicle in which Glenna Gray was a passenger and being operated by Joseph S. Gray was involved in an accident on I-26 in Lexington County, South Carolina. Defendants deny the remaining allegations of Paragraphs 11, 12 and 13 of the Amended Complaint.

8. The Defendants deny the allegations of Paragraphs 14, 15, 16, 17, 18, 19, 20, 21 and 22 of the Amended Complaint.

9. In response to the allegations in Paragraph 23 of the Amended Complaint, the Defendants restate and reassert their previous responses as is set forth verbatim herein.

10. The Defendants deny the allegations of Paragraphs 24, 25, 26, 27, 28, 29 and 30 of the Amended Complaint.

11. In response to the allegations in Paragraph 31 of the Amended Complaint, the Defendants restate and reassert their previous responses as is set forth verbatim herein.

12. The Defendants deny the allegations of Paragraphs 32, 33, 34, 35, 36, and 37 of the Amended Complaint.

FOR A SECOND DEFENSE

13. The Amended Complaint fails to state facts sufficient to constitute a cause of action and, therefore, should be dismissed.

FOR A THIRD DEFENSE

14. The Defendants would show, upon information and belief, that the injuries sustained by the Plaintiffs were the result of the sole negligence of the Plaintiffs and therefore, the Plaintiffs cannot recover any sum whatsoever from the Defendants.

FOR A FOURTH DEFENSE

15. The Defendants would show, upon information and belief, that any injuries or damages sustained by the Plaintiffs were due to Plaintiffs' own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendants, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred. The Defendants plead such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiffs and would ask that this court compare the negligence of the Plaintiffs and the Defendants and if it is determined that the Plaintiffs' negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendants, which is specifically denied, then the Plaintiffs should be totally barred from recovery and if it is determined that the Plaintiffs' negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendants, then the amount of recovery available to the

Plaintiffs' should be reduced by the percentage of the Plaintiffs' own negligence, carelessness, recklessness and gross negligence.

FOR A FIFTH DEFENSE

16. The Defendants would show, upon information and belief, that the Plaintiffs' claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that the Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because the Defendants can be compelled to give testimony against Defendants' self in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiffs' claim for punitive damages violates the Defendants' right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiffs' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiffs' claim for punitive damages should be dismissed.

FOR A SIXTH DEFENSE

17. Pursuant to S.C. Code Ann. §15-32-520, any proceeding to determine punitive damages should be bifurcated from any trial to determine liability and compensatory damages.

FOR A SEVENTH DEFENSE

18. Defendants hereby assert that any award of punitive damages should be capped pursuant to S.C. Code § 15-32-530.

FOR AN EIGHTH DEFENSE

19. Any award of punitive damages should not exceed the greater of three (3) times the amount of compensatory damages as provided for in S.C. Code Ann. §15-32-530.

FOR A NINTH DEFENSE

20. The Defendants would assert that the alleged injuries of the Plaintiffs were not proximately caused by the accident alleged herein and, therefore, the Plaintiffs cannot recover from the Defendants due to lack of proximate cause and damages.

WHEREFORE, having answered the Plaintiffs' Amended Complaint, Defendants respectfully requests that the Amended Complaint be dismissed, with costs, and for such other and further relief as the Court deems just and proper.

The Defendants demand a jury trial.

This the 13th day of January 2022, in Columbia, South Carolina.

MURPHY & GRANTLAND, P.A.

s/Phillip Florence, Jr.

Everett A. Kendall (Fed ID 8450)

Phillip Florence, Jr. (Fed ID 6367)

PO Box 6648

Columbia, SC 29260

Phone: 803-782-4100

Fax: 803-782-4140

rkendall@murphygrantland.com

pflorence@murphygrantland.com

*Attorneys for Larousse Lamur; Phoenix Grand,
LLC; and Lamur Transportation Services, LLC*

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT
CASE NO: 2021-CP-32-02885

MICHAEL W. GRAY as Personal
Representative of the Estate of Joseph S.
Gray,

Plaintiff,

v.

LAROUSSE LAMUR; PHOENIX
GRAND, LLC; and LAMUR
TRANSPORTATION SERVICES, LLC,

Defendants.

**STIPULATION OF DISMISSAL
WITHOUT PREJUDICE**

COMES NOW the Plaintiff, by and through undersigned counsel, and does hereby request the Clerk of Court dismiss this action without prejudice pursuant to Rule 41(a)(1)(B) of the South Carolina Rules of Civil Procedure. The parties, by and through their undersigned counsel, hereby stipulate and agree that their claims asserted in the above-captioned action be dismissed without prejudice. Each Party shall bear its own costs and fees.

This 18th day of February, 2022.

WE SO STIPULATE AND CONSENT:

ANASTOPOULO LAW FIRM, LLC

By: s/Lane D. Jefferies
Lane D. Jefferies, Esq.
S.C. Bar No. 101764
Eric M. Poulin, Esq.
S.C. Bar No. 100209
Roy T. Willey, IV, Esq.
S.C. Bar No. 101010
32 Ann Street
Charleston, SC 29403
CLD@akimlawfirm.com
Attorneys for Plaintiff

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT
CASE NO: 2023-CP-32-

GLENNA GRAY; and MICHAEL W.
GRAY as Personal Representative of THE
ESTATE OF JOSEPH S. GRAY,

Plaintiffs,

v.

LAROUSSE LAMUR; PHOENIX
GRAND, LLC; and LAMUR
TRANSPORTATION SERVICES, LLC,

Defendants.

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiffs or Plaintiffs' attorney, Jonathan M. Riddle and Lane D. Jefferies at their offices at 32 Ann Street, Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiffs will apply to the court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 8th of May 2023.

POULIN | WILLEY | ANASTOPOULO, LLC

s/ Lane D. Jefferies
Lane D. Jefferies, Esquire
S.C. Bar No.:101764
Jonathan M. Riddle, Esquire
S.C. Bar No.:101475
Poulin | Willey | Anastopoulos, LLC
32 Ann Street
Charleston, SC 29403
(803) 222-2222
TeamRiddle @PoulinWilley.com

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT
CASE NO: 2023-CP-32-

GLENNA GRAY; and MICHAEL W.
GRAY as Personal Representative of THE
ESTATE OF JOSEPH S. GRAY,

Plaintiffs,

v.

LAROUSSE LAMUR; PHOENIX
GRAND, LLC; and LAMUR
TRANSPORTATION SERVICES, LLC,

Defendants.

COMPLAINT
(Jury Trial Demanded)

The Plaintiffs, complaining of the Defendants, alleges and says as follows:

CASE SYNOPSIS

1. Defendant Lamur drove west in the left lane of I-26 in a large “18-Wheeler” truck. He was driving too fast and not paying attention.
2. Had Defendant Lamur been paying attention, he would have seen the passenger car in the right lane in which Joseph and Glenna Gray were traveling. But he did not.
3. Instead, Defendant Lamur changed lanes directly into the rear of the passenger car, sending the passenger car spinning out of control across the highway. Fortunately, a guardrail stopped the spinning passenger car before it crossed into the oncoming lanes.
4. Nonetheless, both Joseph and Glenna were seriously injured in the wreck, and Joseph later died as a result. Glenna is now facing the remainder of her life without her significant other of nearly 45 years. She is also facing over \$150,000.00 in medical bills, with more to come. Prior to Joseph’s death, he was facing over \$70,000 in medical bills.
5. Had Defendant Lamur simply been paying attention and driving at a safe speed, none of this would have happened.

SPECIFIC AVERMENTS
FOR FIRST CAUSE OF ACTION
(Negligence, Gross Negligence, Negligence per se)

1. Plaintiff Glenna Gray and Michael W. Gray as Personal Representative of The Estate of Joseph S. Gray incorporate verbatim and in their entirety the allegations set forth above.
2. That upon information and belief, Defendant Larousse Lamur, (herein referred to as “Defendant Driver”) is a citizen and resident of Miami-Dade County, State of Florida and can be served with process at 12300 NE 4th Avenue, Apartment 204, North Miami, Florida 33161.
3. That upon information and belief, Defendant Phoenix Grand, LLC (herein referred to as “Defendant Owner”) is a limited liability company organized and existing pursuant to the laws of the State of Ohio, and whose registered agent for service of process is Durdona Tulanova who can be served at 2101 South Hamilton Road, Suite 206, Columbus, Ohio 43232.
4. That upon information and belief, Defendant Lamur Transportation Services, LLC (herein referred to as “Defendant Employer”) is a limited liability company organized and existing pursuant to the laws of the State of Florida, and whose registered agent for service of process is Larousse Lamur, who can be served at 12300 NE 4th Avenue, North Miami, Florida 33161.
5. That the automobile collision that is the subject of this action occurred in Lexington County, State of South Carolina.
6. That this Court has jurisdiction over the parties and the subject matter of this action.
7. That upon information and belief, at all times relevant, Defendant Lamur Transportation Services, LLC was a motor carrier engaged in the interstate transport of property under

USDOT Number: 3099160.

8. That upon information and belief, at all times relevant, Phoenix Grand, LLC was the owner of a 2015 Freightliner truck with VIN# 3AKJGLD3DFSGB344 and Ohio License Plate PWK1857 (“The 18-Wheeler”).
9. That upon information and belief, at all times relevant, Larousse Lamur was the driver of The 18-Wheeler.
10. That Defendant Larousse Lamur, Defendant Phoenix Grand, LLC and Defendant Lamur Transportation Services, LLC are referred to hereinafter collectively as “Defendants” and each individually by name.
11. That on or about February 13, 2019, at all times relevant, Plaintiff Glenna Gray’s significant other, Joseph S. Gray (“Decedent”), was lawfully driving westbound in the right lane on Interstate 26, in the vicinity of Chapin, South Carolina.
12. That Plaintiff Glenna Gray and Plaintiff Michael W. Gray as the Personal Representative of the Estate of Joseph S. Gray are hereinafter referred to collectively as “Plaintiffs” and each individually by name.
13. That on or about February 13, 2019, at all times relevant, Glenna Gray was a passenger in the vehicle driven by Decedent.
14. That the collision and the resulting injuries and damages to Glenna Gray and Decedent were caused directly and proximately by one or more of the following negligent, negligent per se, grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendants in any one or more of the following respects:

As to Defendant Driver:

- a. In violating the Federal Motor Carrier Safety Act;

- b. In failing to keep a proper lookout while operating the 18-Wheeler;
- c. In failing to maintain control of the 18-Wheeler;
- d. In failing to stay in his lane of traffic;
- e. In failing to slow down to a controllable speed to stay in his lane of traffic;
- f. In failing to keep a safe distance from Glenna Gray and Decedent;
- g. In failing to properly observe the road and traffic conditions;
- h. In failing obey traffic laws and/or signs;
- i. In failing to use his horn, if he had any;
- j. In traveling too fast for conditions;
- k. In failing to properly maintain the vehicle;
- l. In failing to yield the right of way;
- m. In failing to apply his brakes or using his steering mechanism to avoid the collision;
- n. In negligently and carelessly operating The 18-Wheeler in a high and excessive rate of speed under the circumstances then and there existing;
- o. In operating The 18-Wheeler at a high rate of speed and far in excess of the reasonable and prudent speed under the circumstances and conditions then and there existing;
- p. In operating The 18-Wheeler without using due care and without regard for safety and rights of Glenna Gray and Decedent;
- q. In operating The 18-Wheeler in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner so as to create a dangerous situation;
- r. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;

- s. In failing to exercise the degree of care and caution that a reasonable and prudent professional driver would have exercised under the circumstances then and there prevailing;
- t. In negligently and carelessly operating The 18-Wheeler in such a manner to cause the vehicle to strike Glenna Gray and Decedent and cause personal injuries;
- u. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- v. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.

As to Defendant Owner and Defendant Employer:

- a. In negligently entrusting the 18-Wheeler to someone they knew or should have known would operate The 18-Wheeler without using due care and without regard for the safety and rights of the public using the highway and Glenna Gray and Decedent in particular;
- b. In negligently entrusting the 18-Wheeler to someone they knew or should have known would operate The 18-Wheeler in a negligent, grossly negligent, careless, reckless, willful, wanton and unlawful manner as to create a dangerous situation and render an accident inevitable, in utter disregard of the laws of the State of South Carolina;
- c. In negligently entrusting the 18-Wheeler to someone they knew or should have known would fail to exercise that degree of care that a reasonable and prudent person would have exercised under the same or similar circumstances;
- d. In failing to appreciate the gravity and seriousness of having an unsafe,

unqualified, incompetent driver use their 18-Wheeler;

- e. In failing to ensure that the driver of their 18-Wheeler would comply with all state and federal statutory codes and regulations;
- f. In failing to properly and/or timely inspect, maintain, service and/or repair the 18-Wheeler, and its component parts, to ensure that the same could be utilized and operated safely;
- g. In failing to use due care; and
- h. In any other such manner the Plaintiffs may become aware of through discovery and/or trial;
- i. In failing to properly hire, train and/or supervise their employee driver Defendant Driver to ensure that the 18-Wheeler was driven/operated in a safe and proper manner;
- j. In failing to properly hire, train and/or supervise their employee driver Defendant Driver, and others involved with maintenance, regulatory compliance, and/or safety, to ensure that proper pre-trip, post-trip, periodic, quarterly and/or annual inspections were performed, including properly, on the 18-Wheeler, and its component parts;
- k. In failing to properly train and/or supervise their employee driver Defendant Driver as defined in the safe and appropriate operation and use of the 18-Wheeler;
- l. In failing, by and through their employee driver Defendant Driver to have the required driver knowledge necessary in order to safely operate The 18-Wheeler, including but not limited to the procedures to obey traffic laws;

- m. In failing, by and through their employee driver Defendant Driver to safely and properly operate the 18-Wheeler, including on the trip and up to the time of the occurrence alleged in this Complaint;
 - n. In permitting their employee driver Defendant Driver to drive the 18-Wheeler when he was not fully qualified to do so;
 - o. In failing to create, maintain, and/or implement appropriate policies and procedures related to inspection and safety for its drivers, including their employee driver Defendant Driver, and for safety, regulatory compliance, and/or inspection, maintenance, and service of commercial motor vehicles;
 - p. In failing to properly and/or timely inspect, maintain, service and/or repair The 18-Wheeler, and its component parts, to ensure that the same could be utilized and operated safely;
 - q. In failing to use due care;
 - r. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina or the United States; and
 - s. In any other such manner that Plaintiffs may become aware of through discovery and/or at trial.
15. That at all times material to the collision that made the basis of this action, The 18-Wheeler that was being driven by Defendant Driver was owned, possessed and/or under the control of Defendant Owner and/or Defendant Employer.
16. That at all times material to the collision that made the basis of this action, Defendant Driver was acting by and through Defendant Owner and/or Defendant Employer as an employee/agent of Defendant Owner and/or Defendant Employer and was at all times

material acting within the course and scope of his employment or agency in performing duties for, and on behalf of Defendant Owner and/or Defendant Employer.

17. That Defendant Owner and/or Defendant Employer are vicariously liable, due to the negligence of their employees or agents, as is set forth more fully above, for proximately causing injuries and/or damages to Glenna Gray, under the doctrines of *respondent superior, agency, and/or ostensible/apparent agency*.
18. That as a direct and proximate result of the employer/employee and/or agency relationship between Defendant Driver and Defendant Owner and/or Defendant Employer, as is set forth more fully above, Defendant Driver and Defendant Owner and Defendant Employer are jointly and severally liable to Glenna Gray for her injuries and damages, including for punitive damages, directly and proximately resulting from the breaches of duty of said Defendants.
19. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of Defendants, as is set forth more fully above, Glenna Gray has been damaged and injured in the following respects:
 - a. Plaintiff has been required to expend a significant amount of money for her medical care, treatment and attendant services;
 - b. Upon information and belief, the nature of Plaintiff's injuries will require her to expend a significant amount of money for her medical care, treatment, and attendant services in the future; and
 - c. The pain of her injuries has resulted in her loss of enjoyment of life and change in her personality, all to permanent detriment to her health and physical well-being.

20. That Defendants' acts and omissions, as are set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of Defendants' conscious indifference to the consequences of such acts and omissions.
21. That because of Defendants' acts and omissions, and the proximate harm resulting to Glenna Gray, she should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize Defendants and to deter Defendants and others from similar behavior.
22. That upon information and belief, Plaintiff Glenna Gray is entitled to judgment against Defendants for actual, compensatory and exemplary or punitive damages for her personal injuries set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and fees that Plaintiffs may be entitled to be determined by a jury.

FOR A SECOND CAUSE OF ACTION

(Survival Action, S.C. Code § 15-5-90 – Negligence, Gross Negligence, Negligence Per Se)

23. Michael Gray, as the Personal Representative of the Estate of Joseph S. Gray, "The Estate" incorporates verbatim the above allegations in paragraphs 1 – 22 herein.
24. The Personal Representative of Joseph S. Gray brings this action for the conscious pain and suffering of the Decedent pursuant to the Survival Right of Action Statute S.C. Code § 15-5- 90 (1976)
25. That Defendant Owner and/or Defendant Employer are vicariously liable, due to the negligence of their employees or agents, as is set forth more fully above, for proximately causing injuries and/or damages to Decedent, under the doctrines of *respondent superior*, *agency*, and/or *ostensible/apparent agency*.

26. That as a direct and proximate result of the employer/employee and/or agency relationship between Defendant Driver and Defendant Owner and/or Defendant Employer, as is set forth more fully above, Defendant Driver and Defendant Owner and Defendant Employer are jointly and severally liable to Decedent for his injuries and damages, including for punitive damages, directly and proximately resulting from the breaches of duty of said Defendants.
27. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendants, as is set forth more fully above, Decedent was damaged and injured in the following respects:
- a. Decedent had to expend a significant amount of money for his medical care and treatment;
 - b. The pain of his injuries resulted in the loss of enjoyment of life and change in his personality, all to the permanent detriment of his health and well-being;
 - c. Decedent's injuries caused his untimely death.
28. That Defendants' acts and omissions, as are set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of Defendants' conscious indifference to the consequences of such acts and omissions.
29. That because of Defendants' acts and omissions and the proximate harm resulting to The Estate and Decedent, The Estate should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendant and to deter the Defendant and others from similar behavior.
30. That The Estate is entitled to judgment against the Defendants for actual, compensatory and exemplary or punitive damages for Decedent and The Estate's personal injuries and

property damages set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and fees that The Estate may be entitled, to be determined by a jury.

FOR A THIRD CAUSE OF ACTION
(Wrongful Death, S.C. Code Ann. § 15-51-10 et seq.)

31. Michael Gray as Personal Representative of the Estate of Joseph S. Gray incorporates the above allegations in paragraphs 1 -22, and 23 - 31 herein.
32. The Personal Representative of Joseph S. Gray brings this claim on the death of the Decedent pursuant to the South Carolina Death by Wrongful Act Statute, S.C. Code § 15-51-10 (1976)
33. That as a direct and proximate result of Defendants' acts and omissions, Decedent suffered death.
34. That as a direct and proximate result of Defendants' acts and omissions causing the Decedent's death, Plaintiff has suffered pecuniary loss; mental shock and suffering; wounded feelings; grief and sorrow; loss of companionship; and deprivation of the use and comfort of Decedent's society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries.
35. That Defendants' acts and omissions were intentional and/or the result of negligence, gross negligence, carelessness, recklessness, willfulness and wantonness and entire want of care, raising a presumption of the Defendant's conscious and callous indifference to the consequences of such conduct.
36. That because of the Defendants' acts and omissions and the proximate harm resulting to Plaintiff, Plaintiff should be awarded punitive damages in an amount to be determined by

the trier of fact, in order to punish and penalize the Defendants and to deter the Defendants and others from similar behavior.

37. That Plaintiff is entitled to judgment against the Defendants for actual, compensatory and exemplary punitive damages for Plaintiff's injuries and damages set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and fees that Plaintiff may be entitled, to be determined by a jury.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants, jointly and severally, for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

Respectfully submitted,

POULIN | WILLEY | ANASTOPOULO, LLC

s/ Lane D. Jefferies
Lane D. Jefferies, Esquire
S.C. Bar No.:101764
Jonathan M. Riddle, Esquire
S.C. Bar No.: 101475
Poulin | Willey | Anastopoulos, LLC
32 Ann Street
Charleston, SC 29403
(803) 222-2222
TeamRiddle@PoulinWilley.com
Attorneys for Plaintiffs

Charleston, South Carolina
May 8, 2023

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT

CIVIL ACTION NO: 2023-CP-32-01750

Glenna Gray; and Michael W. Gray as
Personal Representative of the Estate of
Joseph S. Gray,

Plaintiffs,

v.

Larousse Lamur, Phoenix Grand, LLC, and
Lamur Transportation Services, LLC,

Defendants.

**DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

**TO: LANE D. JEFFERIES, ESQUIRE, AND JONATHAN M. RIDDLE, ESQUIRE,
ATTORNEYS FOR THE PLAINTIFFS, AND TO THE PLAINTIFFS ABOVE-
NAMED:**

YOU WILL PLEASE TAKE NOTICE THAT the Defendant Larousse Lamur, Defendant Phoenix Grand, LLC, and Defendant Lamur Transportation (hereinafter collectively the "Defendants"), by and through their undersigned counsel, will move before the Presiding Judge of the Lexington County Court of Common Pleas at the Lexington County Courthouse at 10:00 am on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order dismissing the Plaintiff's Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted. Specifically, Plaintiff's causes of action for survival action and negligence are barred by the applicable statute of limitations, S.C. Code Ann. § 15-3-530.

ALLEGATIONS IN THE COMPLAINT

Plaintiffs filed this action on May 8, 2023, for an alleged automobile accident that occurred over four years prior on February 13, 2019. (Ex. A: Pls.' Compl. ¶¶ 10 – 13). Plaintiffs' Complaint

asserts causes of action for negligence/gross negligence, survival action under S.C. Code § 15-5-90, and wrongful death under S.C. Code § 15-5-90. (Ex. A: Pls.' Compl. at ¶¶ 1 – 37). Notably, Plaintiffs did not allege tolling of the applicable statute of limitations.

STANDARD OF REVIEW

“Under Rule 12(b)(6), SCRCP, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action.” *Baird v. Charleston Cty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *see also Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987) (noting trial court must dispose of motion for failure to state cause of action based solely upon allegations set forth on face of complaint); *Williams*, 347 S.C. at 233, 553 S.E.2d at 499 (finding that trial court’s ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff).

GROUND FOR MOTION

South Carolina law provides a three-year statute of limitations for cases arising out of negligence or for a survival action. S.C. Code Ann. § 15-3-530(5). The statute of limitations begins to accrue once the plaintiff “knew or by the exercise of reasonable diligence should have known that he had a cause of action.” S.C. Code Ann. § 15-3-535. This is an objective determination that does not require the development of a fully actualized theory of recovery. *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994) (citing *Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981); *Wilson v. Shannon*, 299 S.C. 512, 513, 386 S.E.2d

257, 258 (Ct. App. 1989)). South Carolina law is clear that in personal injuries arising out of an automobile accident, the statute of limitations begins to accrue at the date of the accident. *See Wiggins v. Edwards*, 299 S.C. at 130, 386 S.E.2d at 171 “Here, there is no question that the accident occurred on November 11, 1989. It is on that date that Wiggins should have known that a cause of action accrued.”).

In this case, Plaintiffs’ Complaint clearly states that the accident occurred on February 13, 2019, and the Complaint filed May 8, 2023. Plaintiffs’ Complaint does not allege tolling of the statute of limitations. Under South Carolina law, the statute of limitations on the negligence and survival action began to accrue in February 2019 and the limitations period lapsed in February 2022. On the face of the Complaint, the applicable statute of limitations bars Plaintiffs recovery on their negligence and survival action.

CONCLUSION

Because the applicable statute of limitations has lapsed, Plaintiffs’ Complaint fails to state a claim for negligence and a survival action upon which relief can be granted. Therefore, this Court should dismiss Plaintiffs’ causes of action for negligence and survival action with prejudice.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/Phillip Florence, Jr.

Everett A. Kendall II, Esquire

S.C. Bar No.: 8450

Phillip Florence, Jr., Esquire

S.C. Bar No.: 6721

P.O. Box 6648

Columbia, SC 29260

Phone: 803-782-4100; Fax: 803-782-4140

Attorneys for Defendants

Columbia, South Carolina
July 20, 2023

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT

CIVIL ACTION NO: 2023-CP-32-01750

Glenna Gray; and Michael W. Gray as
Personal Representative of the Estate of
Joseph S. Gray,

Plaintiffs,

v.

Larousse Lamur, Phoenix Grand, LLC, and
Lamur Transportation Services, LLC,

Defendants.

**DEFENDANTS' ANSWER TO PLAINTIFFS'
COMPLAINT
(Jury Trial Demanded)**

**TO: LANE D. JEFFERIES, ESQUIRE, AND JONATHAN M. RIDDLE, ESQUIRE,
ATTORNEYS FOR THE PLAINTIFFS, AND TO THE PLAINTIFFS ABOVE-
NAMED:**

The Defendants (hereinafter the "Defendants"), by and through their undersigned counsel
and respond to the Plaintiffs' Complaint (hereinafter the "Complaint") as follows:

FOR A FIRST DEFENSE

1. Defendants deny each and every allegation of the Complaint that is not hereinafter
expressly admitted, modified, or explained.

2. In response to the allegations in Paragraphs 1, 2, 3, 4 and 5 of the Amended
Complaint, the Defendants admit only that on February 13, 2019, a vehicle containing Joseph and
Glenna Gray was involved in an accident on I-26 in Lexington County, South Carolina.
Defendants deny the remaining allegations of Paragraphs 1, 2, 3, 4 and 5 of the Complaint.

3. In response to the allegations in Paragraph 1 of the section of Complaint entitled
"SPECIFIC AVERMENTS", Defendants restate and reassert their previous responses as if set
forth verbatim herein.

4. In response to the allegations in Paragraph 2 of the Complaint, Defendants admits that Defendant Larousse Lamur is a natural person and is not a citizen of South Carolina. Defendants do not possess information or knowledge information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 2 of the Complaint, and therefore denies the same.

5. Defendants admit the allegations contained in Paragraph 3 of the Complaint.

6. In response to the allegations in Paragraph 4 of the Complaint, Defendants admits that Defendant Lamur Transportation, LLC is a limited liability company organized under the laws of the State of Florida. Defendants do not possess information or knowledge information sufficient as to the truth of the remaining allegations contained in Paragraph 4 of the Complaint, and therefore denies the same.

7. Defendants admit the allegations contained in Paragraph 5 of the Complaint.

8. Paragraph 6 is a conclusion of law which requires no response from these Defendants.

9. Defendants do not possess information or knowledge sufficient to form a belief as to the truth of the allegations contained Paragraph 7 of the Complaint, and therefore deny the same.

10. Defendants deny the allegations contained in Paragraph 8 of the Complaint.

11. Upon information and belief, Defendants admit the allegations of Paragraphs 9.

12. Because Paragraph 10 of the Complaint contains no factual allegations and serves to collectively reference the Defendants in this case, no response to Paragraph 10 of the Complaint is required from the Defendants.

13. In responding to Paragraph 11 of the Complaint, Defendants admit, upon information and belief, that Plaintiff Glenna Gray and Decedent were travelling westbound on

Interstate 26 in Lexington County on February 13, 2019. Defendant does not possess information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 11 of the Complaint, and therefore deny the same.

14. Because Paragraph 12 of the Complaint contains no factual allegations against Defendants and serves to collectively reference the Plaintiffs in this case, no response to Paragraph 12 of the Complaint is required from Defendants.

15. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint, and therefore deny the same.

16. Defendants deny the allegations contained in Paragraph 14, and subparts therein, of the Complaint.

17. Defendants deny the allegations contained in Paragraphs 15, 16, 17, and 18 of the Complaint.

18. Defendants deny the allegations contained in Paragraph 19, and subparts therein, of the Complaint.

19. Defendants deny the allegations contained in Paragraphs 20, 21, and 22 of the Complaint.

20. In response to the allegations in Paragraph 23 of the Complaint, Defendants restate and reassert their previous responses as is set forth verbatim herein.

21. Paragraph 24 of the Complaint contains a conclusion at law which requires no response from Defendants. Defendants deny the factual allegations contained in Paragraph 24 of the Complaint.

22. Defendants deny the allegations contained in Paragraphs 25 and 26 of the Complaint.

23. Defendants deny the allegations contained in Paragraph 27, and all subparts therein, of the Complaint.

24. Defendants deny the allegations contained in Paragraphs 28, 29, and 30 of the Complaint.

25. In response to the allegations in Paragraph 31 of the Complaint, Defendants restate and reassert their previous responses as is set forth verbatim herein.

26. Paragraph 32 of the Complaint contains a conclusion at law which requires no response from Defendants. Defendants deny the factual allegations contained in Paragraph 32 of the Complaint.

27. Defendants deny the allegations of Paragraphs 33, 34, 35, 36, and 37 of the Complaint.

28. Defendants deny the Plaintiffs' Prayer for Relief contained in the Paragraph beginning with "WHEREFORE".

FOR A SECOND DEFENSE

29. The Complaint fails to state facts sufficient to constitute a cause of action and, therefore, should be dismissed.

FOR A THIRD DEFENSE

30. Defendants reserve the right to file a Motion to Dismiss on any additional grounds in Rule 12 of the South Carolina Rules of Civil Procedure, including lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, insufficiency of process, insufficiency of the service of process, failure to join a party under SCRCP Rule 19, and pending action between the parties. Defendants also reserve the right to file a Motion to Dismiss pursuant to SCRCP Rule 12(b)(6) on grounds other than those asserted in this Answer.

FOR A FOURTH DEFENSE

31. Defendants would show, upon information and belief, that the injuries sustained by the Plaintiffs were the result of the sole negligence of the Plaintiffs and therefore, the Plaintiffs cannot recover any sum whatsoever from Defendants.

FOR A FIFTH DEFENSE

32. Defendants would show, upon information and belief, that any injuries or damages sustained by the Plaintiffs were due to Plaintiffs' own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendants, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred. These Defendants plead such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiffs and would ask that this court compare the negligence of the Plaintiffs and the Defendants and if it is determined that the Plaintiffs' negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendants, which is specifically denied, then the Plaintiffs should be totally barred from recovery and if it is determined that the Plaintiffs' negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendants, then the amount of recovery available to the Plaintiffs' should be reduced by the percentage of the Plaintiffs' own negligence, carelessness, recklessness and gross negligence.

FOR A SIXTH DEFENSE

33. Defendants would show, upon information and belief, that the Plaintiffs' claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that

this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Defendants can be compelled to give testimony against Defendants' self in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiffs' claim for punitive damages violates this Defendants' right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendants' exercise of that right; the Plaintiffs' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiffs' claim for punitive damages should be dismissed.

FOR A SEVENTH DEFENSE

34. Pursuant to S.C. Code Ann. §15-32-520, any proceeding to determine punitive damages should be bifurcated from any trial to determine liability and compensatory damages.

FOR AN EIGHTH DEFENSE

35. Defendants hereby assert that any award of punitive damages should be capped pursuant to S.C. Code § 15-32-530.

FOR A NINTH DEFENSE

36. Any award of punitive damages should not exceed the greater of three (3) times the amount of compensatory damages as provided for in S.C. Code Ann. §15-32-530.

FOR A TENTH DEFENSE

37. Defendants assert that the alleged injuries of the Plaintiffs were not proximately caused by the accident alleged herein and, therefore, the Plaintiffs cannot recover from these Defendants due to lack of proximate cause and damages.

WHEREFORE, having answered the Plaintiffs' Complaint, these Defendants respectfully request that the Complaint be dismissed with prejudice, with costs, and for such other and further relief as the Court deems just and proper.

These Defendants demand a jury trial.

This the 21st day of July 2023, in Columbia, South Carolina.

MURPHY & GRANTLAND, P.A.

s/Phillip Florence, Jr.

Everett A. Kendall, SC Bar No.:

Phillip Florence, Jr., SC Bar No.:

PO Box 6648

Columbia, SC 29260

Phone: 803-782-4100

Fax: 803-782-4140

rkendall@murphygrantland.com

pflorence@murphygrantland.com

Attorneys for Larousse Lamur; Phoenix Grand, LLC; and Lamur Transportation Services, LLC

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT
CASE NO: 2023-CP-32-01750

GLENNA GRAY; and MICHAEL W.
GRAY as Personal Representative of THE
ESTATE OF JOSEPH S. GRAY,

Plaintiffs,

v.

LAROUSSE LAMUR; PHOENIX
GRAND, LLC; and LAMUR
TRANSPORTATION SERVICES, LLC,

Defendants.

**MEMORANDUM IN OPPOSITION TO
DEFENDANTS MOTION TO DISMISS**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

COMES NOW the Plaintiffs, Glenna Gray and Michael W. Gray, as Personal Representative of The Estate of Joseph S. Gray (herein Individually “Plaintiff Glenna Gray” and “Plaintiff Joseph Gray”, collectively “Plaintiffs”), by and through undersigned counsel, and does submit this memorandum of law in opposition to Defendants’ Larousse Lamur, Phoenix Grand, LLC, and Lamur Transportation Services, LLC (herein “Defendants”) Motion to Dismiss.

INTRODUCTION

This case is an interesting one because for over two years it was litigated in federal Court, before the Court raised an issue of subject matter jurisdiction and dismissed the case on May 2, 2023. For over two years, everyone involved agreed that the Federal Court had subject matter jurisdiction. By “everyone,” we mean not only the Plaintiffs and all three Defendants, but *also the Court itself*. Only when the case was in the short rows before trial did the Court, in an unexpected about face, raised the issue of subject matter jurisdiction *sua sponte* and determined that Plaintiff’s Amended Complaint was jurisdictionally deficient.

This case arises out of a motor vehicle collision that occurred on or about February 13, 2019, on I-26. As a result of the Defendants' negligently driving an 18-wheeler too fast for conditions, Plaintiff Glenna Gray was seriously injured, and Joseph Gray suffered an untimely death due to this incident. Plaintiff Glenna Gray originally filed a Complaint in the District of South Carolina on March 3, 2021 (Civil Action Number 3:21-cv-00908). Defendant answered on June 2, 2021, and amended their answer on June 9, 2021. Plaintiff made a Motion to Amend on June 22, 2021, to add Michael Gray, as Personal Representative of Joseph Gray. The Court considered Defendants opposition and granted the motion, after which, Plaintiff filed an Amended Complaint on January 10, 2022. After substantial litigation, the Court considered a Partial Motion for Summary Judgment by Defendant. On February 16, 2023, in ruling on this motion, the Court for the first time raised the issue of subject matter jurisdiction and dismissed the case. After a timely Motion to Alter Judgment filed by Plaintiffs on February 16, 2023, the Court ultimately dismissed the case by Order dated May 2, 2023.

After the final Order from the Court dismissing the Amended Complaint on May 2, 2023, Plaintiffs filed their Complaint in the Court of Common Pleas for Lexington County on May 8, 2023. Defendants have now moved to dismiss on the basis that the Complaint was filed passed the three-year statute of limitations. Plaintiffs disagree for the reasons set forth below.

ARGUMENT

A. Plaintiffs assert that dismissal should be denied based on the doctrine of equitable tolling of the statute of limitations.

In the present action, the Complaint filed in the state court was filed a little over four years after the incident occurred, which is past the applicable three-year statute of limitations. However, the Defendants Motion to Dismiss should be denied because the doctrine of equitable tolling should be applied.

South Carolina law has long provided for the tolling of the applicable statute of limitations in certain circumstances, enumerated by statute. But these limited situations are not the only avenue by which the statute of limitations may be tolled. “In addition to these statutory tolling mechanisms ‘[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations.’” *Hooper v. Ebenezer Senior Services & Rehabilitation Center*, 386 SC 108, 115 (2009) (quoting 54 C.J.S. *Limitations of Actions* § 115 (2005)). “Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it.” *Id.* (See *Rodriguez v. Superior Court*, 176 Cal.App.4th 1461, 98 Cal.Rptr.3d 728 (2009)). “Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period ‘to ensure fundamental practicality and fairness.’” *Id.*

The Court has recognized that equitable tolling applies where a party was prevented from filing suit because of an extraordinary event beyond the party's control. *Id.* At 116 (See *Ocana v. Am. Furniture Co.*, 91 P.3d 58, 66 (2004)). The Court considered a variety of contexts from other jurisdictions to consider parameters for the application of equitable tolling. *Id.* (See *Irbyv. Fairbanks Gold Mining, Inc.*, 203 P.3d 1138, 1143 (Alaska 2009) (“Under the doctrine of equitable tolling, when a party has more than one legal remedy available, the statute of limitations is tolled while the party pursues one of the possible remedies.”); *Abbott v. State*, 979 P.2d 994, 998 (Alaska 1999) (“Federal precedent equitably tolls the limitations period in three circumstances: (1) where the plaintiff has actively pursued his or her judicial remedies by filing a timely but defective pleading; (2) where extraordinary circumstances outside the plaintiff's control make it impossible for the plaintiff to timely assert his or her claim; or (3) where the plaintiff, by exercising reasonable

diligence, could not have discovered essential information bearing on his or her claim.” (footnotes omitted)); *Kaplan v. Morgan Stanley & Co.*, 987 A.2d 258, 264 (Vermont 2009) (“Equitable tolling applies either where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit, or where the plaintiff *has timely raised the same claim in the wrong forum.*”) (*emphasis mine, citation omitted*)). After considering the examples from other jurisdictions, our Court held “the situations above do not constitute an exclusive list of circumstances that justify the application of equitable tolling.” *Id.*

In *Ebenezer*, the Defendants moved to dismiss Plaintiff’s Complaint on the basis that it was served after the running of the statute of limitations. *Id.* at 113-114. There, the Plaintiff was not able to effectuate proper service until after the running of the statute and 120 days since the Complaint was filed due to the failure of Defendant to properly list an address for the registered agent. *Id.* The Court considered other instances where it had equitably tolled the statute of limitations, including a Plaintiff’s belief that a workers compensation case was being handled by the employer. *Id.* at 117 (*See Hopkins v. Floyd’s Wholesale*, 299 SC 127, 129 (1989)). The Court found that Plaintiff was entitled to the equitable tolling of the statute and due to the Defendant’s actions, should not be the beneficiary of the drastic consequence of dismissal.” *Id.* at 118. It is important to note that the Court did not give set parameters for situations where equitable tolling may apply, holding that “the equitable power of a court is not bound by cast-iron rules but exist to do fairness and is flexible . . . so that relief may be granted when . . . to deny it would permit one party to suffer a gross wrong at the hands of the other.” *Id.* at 116-117 (*quoting Hausman v. Hausman*, 199 S.W.3d 38, 42 (Tex.App.2006). “Equitable tolling may be applied where it is justified under all the circumstances.” *Id.*

In this case, the circumstances justify the Court to toll the equitable statute of limitations. As stated before, the Plaintiff originally filed a timely Complaint in the federal court. Additionally, the Plaintiff eventually filed a Motion to Amend, which allowed Plaintiff to file an Amended Complaint on January 10, 2022, also within the applicable limitations period. The Plaintiff litigated this case in federal court believing it was the correct forum, with no issues as to subject-matter jurisdiction. Furthermore, while this case was being litigated in the federal court, Defendants and the Court never raised the issue of jurisdiction. In all their filings, including their Answer, Amended Answer, Answer to Amended Complaint, and Response to Local Rule 26.01 Interrogatories, Defendants never once challenged the federal court's jurisdiction, whether by denial or affirmative defense.

The Plaintiff also relied on the Court's actions, as the issue of subject matter jurisdiction was not considered until two years after filing. If there had been an issue, the Court could have and should have considered it when ruling on the Motion to Amend. Had the issue been raised then, Plaintiff would have been able to still file a timely Complaint in state court without missing the statute of limitations.

In this case, the Court should follow the guidance our Supreme Court used in *Ebenezer*, tolling the statute of limitations under equitable considerations. Here, the Plaintiff actively pursued its remedies, albeit in a wrong forum. Furthermore, the running of the statute of limitations arises from circumstances beyond the Plaintiff's control. Only until the final stages of the case, when all parties were ready to go to trial, was an issue raised as to proper jurisdiction. All of these circumstances were considered by the Court as examples of when the doctrine of equitable tolling may apply. *Id.* At 116 (*See Abbott v. State*, 979 P.2d 994, 998 (Alaska 1999); *Kaplan v. Morgan Stanley & Co.*, 987 A.2d 258, 264 (2009)). Plaintiffs, at all times, even after dismissal, has timely

and diligently pursued its remedies. When the Court finally dismissed the case on May 2, 2023, after a Motion for Reconsideration filed by Plaintiff, Plaintiffs filed in the correct forum within a week. Like in *Ebenezer*, where a Plaintiff could not effectuate service because of an issue beyond its control, Plaintiffs here are faced with the possibility of a gross wrong because of an extraordinary circumstance beyond their control. As a final note, tolling the statute of limitations will not prejudice Defendants in any way. They can still bring every argument and defense as was raised in the federal case, as they have already done in their Answer. For all these reasons, the Court, in the interest of fairness to all parties, should equitably toll the statute of limitations.

CONCLUSION

For all the foregoing reasons, Plaintiffs would show that when considering all the circumstances of the case, the equitable outcome is that the statute of limitations should be tolled. Plaintiffs respectfully request that this court deny the Defendants' Motion to Dismiss.

Respectfully submitted,

POULIN | WILLEY | ANASTOPOULO, LLC

s/ Jonathan M. Riddle

Jonathan M. Riddle, Esquire

S.C. Bar No.: 101475

Lane D. Jefferies, Esquire

S.C. Bar No.:101764

Poulin | Willey | Anastopoulos, LLC

32 Ann Street

Charleston, SC 29403

(803) 222-2222

TeamRiddle@PoulinWilley.com

Attorneys for Plaintiffs

Charleston, South Carolina
October 9, 2023

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
COUNTY OF LEXINGTON * TRANSCRIPT OF RECORD

-----X
GLENN A GRAY, *
Plaintiff, *
vs. * Case No. 2023-CP-32-01750
LAROUSSE LAMUR, et al., *
Defendants. *
-----X

October 10, 2023

B E F O R E:

The Honorable Walton J. McLeod, Presiding Judge

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

Rett Kendall, Esq.
Attorney for the Plaintiff

Jonathan Riddle, Esq.
Attorney for the Defendant

Recorded by: Webex Recording

Transcribed by: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

DESCRIPTION	PAGE
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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

1
2 THE COURT: Okay. The next one I show is Glenna
3 Gray versus Larousse Lamur; is that correct?

4 MR. KENDALL: Yes. Good morning, Your Honor.

5 THE COURT: Okay. Mr. Kendall, hello.

6 MR. KENDALL: How are you this morning?

7 THE COURT: All right.

8 MR. KENDALL: Great.

9 THE COURT: We have got a motion to dismiss. Let me
10 pull this up.

11 All right. It's Defendant's motion to dismiss the
12 complaint.

13 MR. KENDALL: Yes, Your Honor.

14 THE COURT: Memo in opposition. Okay.

15 All right, Mr. Kendall. This is your motion?

16 MR. KENDALL: Yes, Your Honor, thank you. Your
17 Honor, the short answer to the question is we're moving to
18 dismiss on the grounds that the statute of limitations
19 expired about -- a little more than a year prior to the
20 filing of this action. But as you might imagine, it's not
21 quite as simple as that. So there's some intervening
22 events that I want to bring to your attention, but,
23 ultimately, they're of no legal significance in this case.

24 This arises out of a tractor-trailer motor vehicle
25 accident that occurred on February 13th, 2019. And on

1 February 28th, just over two years later, 2021, so almost
2 two years later, Mr. Joseph Gray passed away.

3 On March 30th, 2021, Glenna Gray -- Mrs. Gray --
4 filed a lawsuit in the United States District Court
5 alleging her own personal injuries arising out of this
6 accident.

7 In August of 2021 -- so some six months after
8 Mr. Joseph Gray passed away -- his estate brought an
9 action in state court. So for a time, we had Glenna Gray
10 in federal court and Joseph Gray in state court.

11 In June of 2021, there was a motion made to amend to
12 add the -- add -- to move Mr. Gray's case -- Joseph Gray's
13 case and combine it into the federal court case. The
14 motion to amend was made in the federal court, and the
15 state court action was dismissed.

16 So as of -- let me get you the exact date -- as of
17 February 18th, 2022, Joseph Gray's state court case was
18 dismissed pursuant to Rule 41(a)(1)(b), not Rule 40(j).
19 So February 18th, 2022, that was dismissed.

20 In February of 2023 -- and I'm sorry to throw so
21 many -- there's also going to be February dates. In
22 February -- back in the spring of this year, the federal
23 court dismissed the federal court case for lack of subject
24 matter jurisdiction. Lack of subject matter jurisdiction
25 on the grounds that there was never personal -- there was

1 never diversity of citizenship, that the Court never had
2 jurisdiction to hear the case.

3 So, at that point, as of February 2023, both the
4 state court actions and the federal court action were
5 dismissed. When that federal court action was dismissed,
6 it was dismissed ab initio. It was because it's a subject
7 matter issue, the Court's jurisdiction never attached and
8 the complaint was invalid.

9 THE COURT: How long did the federal court have it
10 before they made that determination?

11 MR. KENDALL: A long time. And that was a subject
12 of contention, but the Court -- the Court stated that
13 it -- that sort of -- you can't waive subject matter
14 jurisdiction at the federal level. And the Court actually
15 looked back at the pleadings -- we were actually on --
16 this was in response to pretrial briefs. I mean, it was
17 that late in the case. And I get that.

18 But that does not solve the problem because there is
19 no tolling that has occurred between when -- during the
20 time the case was pending in federal court.

21 So the Court -- the plaintiffs took a chance of
22 removing or dismissing and re-filing their case out of the
23 State court; it wasn't removed, it was dismissed and
24 reasserted in federal court. And then the federal court
25 decided it had no jurisdiction.

1 In the meantime, the statute of limitations ran on
2 all these lawsuits. So by the time they got back to the
3 state court, they were more than a year late in filing a
4 state court action.

5 So, Your Honor, as caustic as that may seem or as
6 difficult in a result that may appear to be, it is the
7 result. Now, that is the result as to Ms. Glenna Gray's
8 claims and to the survival action. We recognize that the
9 wrongful death action has an extension because of the --
10 related to the personal representative. They actually
11 have -- have extra time after they are appointed, and so
12 we recognize that that statute permits that action -- just
13 the wrongful death action -- to go forward.

14 So, Your Honor, for these reasons -- and I can show
15 you a little chart with the timelines on it or can run --

16 THE COURT: I was going to say, is the chart an
17 exhibit to your memorandum?

18 MR. KENDALL: No, it's -- the dates are set forth in
19 the motion, the critical dates, but I'll be glad to
20 supplement the others. But, basically, the only dates
21 that really matter are the date of the accident, the date
22 of death, the date of the appointment of the personal
23 representative, and the date the action was ultimately
24 filed again in state court. And based on those, Your
25 Honor, the statute of limitations expired.

1 THE COURT: All right. Mr. Riddle, how can you get
2 around this? I guess that's a poor choice of words.
3 You're muted, by the way.

4 MR. RIDDLE: Can you hear me now?

5 THE COURT: Yeah. And I don't mean "get around,"
6 but what is the --

7 MR. RIDDLE: Well, and not to just reread my memo to
8 you, you know, our biggest argument -- and we don't
9 disagree with any of the dates that Mr. Kendall said.

10 THE COURT: Yeah.

11 MR. RIDDLE: You know, Ms. Gray -- at least
12 Ms. Gray's claim was pursued in federal court from the
13 beginning. The federal court had it pretty much until the
14 eve of trial before they sua sponte brought up the subject
15 matter jurisdiction. And we don't disagree that, you
16 know, subject matter jurisdiction in the federal court is
17 allowed to bring that up at any point.

18 Our issue is, in the case that I brought up -- you
19 know, our argument is basically this should be equitably
20 tolled and that our courts have allowed through the Hooper
21 v. Ebenezer case for equitable tolling to apply in a lot
22 of different places, one of the ones that the Court
23 mentioned was where a plaintiff pursues in what's
24 ultimately a defective pleading but they diligently pursue
25 what is ultimately a defective pleading, which we think,

1 you know, that matters here because we did diligently
2 pursue this case.

3 Ultimately, the form was wrong, and we did not have
4 subject matter jurisdiction, so we would assert that this
5 kind of -- is the exact sort of situation the Court -- the
6 Court considered when they considered the doctrine of
7 equitable tolling. You know, and this is something else
8 too that we brought up that, you know, everything
9 Mr. Kendall said is true about pursuing it in federal
10 court, but nobody at any time brought up the fact that
11 there was no subject matter jurisdiction. We filed both a
12 motion to amend --

13 THE COURT: So the Court -- did the Court just sua
14 sponte decide, hey, we don't have subject matter
15 jurisdiction?

16 MR. RIDDLE: While deciding on a motion for summary
17 judgment regarding the wrongful death and survival claim,
18 the Court, at that time, decided then that there was not
19 total diversity.

20 We also filed a motion to reconsider, and the second
21 that motion was ultimately denied for Ms. Gray, we
22 immediately filed in state court, within a week. So, you
23 know, the most important thing is we haven't just let this
24 claim sit, and, you know, we just made a bad decision, but
25 we think there's -- there's decisions from our Court that

1 allow for this sort of --

2 THE COURT: Like a -- well...

3 MR. RIDDLE: And kind of our final argument is
4 there's really no prejudice to the defendant, because they
5 can bring all the claims, all the defenses they want if
6 this claim is allowed to go forward. And, you know -- and
7 that's what we're saying. This is kind of a harsh result,
8 and I think that our courts have luckily have this sort of
9 doctrine of equitable tolling to prevent these harsh
10 results against Plaintiffs that, through no fault of their
11 own, you know --

12 THE COURT: Let me ask you the question -- and this
13 goes back to how it got to federal court -- but this
14 case -- Mr. and Mrs. Gray were in state court and then
15 y'all -- it was removed to federal court or y'all just --

16 MR. RIDDLE: No, Ms. Gray ultimately -- Ms. Gray
17 originally filed her claim in federal court. There was a
18 claim filed by Mr. Gray or his estate in state court, and
19 then, with the motion to amend, both claims were brought
20 into federal court, and the state court case was
21 dismissed. I mean, this kind of was completely right on
22 the procedural posture of the case, so...

23 THE COURT: Okay. How much more can you really tell
24 me?

25 MR. RIDDLE: Without rereading my memo, yeah.

1 THE COURT: Yeah, they're both good memos, and I'll
2 ask you to both do a proposed order here. Honestly, I
3 think y'all could essentially stipulate to the procedural
4 history and the dates.

5 MR. KENDALL: I believe where we're going to divide
6 is going to be on whether or not there is a doctrine of
7 equitable tolling that applies here. And, Your Honor, I
8 will tell you -- I'm going to confess to being a little
9 flat-footed. I was out yesterday, and I did not see a
10 memo, and I'm trying to pull it up now, and I'm not able
11 to access their memo in opposition. I'm not sure when it
12 was filed, but I don't have it.

13 I would love to have the opportunity, in the form of
14 a proposed order, just to address the concern.

15 THE COURT: That's fine.

16 MR. KENDALL: And I would just say, just as a
17 loose -- just for the clarification of the Court, I think
18 it is significant that this was not based on a removal.
19 We did not remove the case. It's also not based on a
20 defective pleading in the sense. It was based on a lack
21 of jurisdiction, which always existed and yet this was
22 moved.

23 So a little distinction between what was referenced,
24 but we'll -- if I can, I'll just make a very short
25 paragraph in the proposed order that addresses that point

1 specifically.

2 THE COURT: That would be fine. That would be fine.
3 And if y'all can just get them to me in ten days, I'd
4 appreciate it.

5 Mr. Kendall, I see you moved your flag.

6 MR. KENDALL: Yes, I have. I am at Murphy and
7 Grantland these days.

8 THE COURT: Okay. When did that happen?

9 MR. KENDALL: Actually in January of '19. So I'm
10 going on five years. It's hard to believe time has
11 happened that fast. But it has.

12 THE COURT: Okay. I guess I haven't scrolled down
13 to your file.

14 All right. Well, it's nice to see y'all both. This
15 is an interesting legal question.

16 MR. KENDALL: It is. So thank you for hearing us
17 today, Your Honor, and we'll get -- we'll submit -- I'll
18 work with Mr. Riddle to develop an agreed-to set of facts
19 so that we don't have to worry the Court with that, but
20 then, obviously, we'll diverge at that point.

21 THE COURT: That would be fine. That would be fine.
22 All right. Thank y'all. Nice to see you.

23 MR. KENDALL: Jonathan, I'll call you.

24 MR. RIDDLE: That sounds good, Rett.

25 (The above matter concluded.)

1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Gray v. Lamur

3 2023-CP-32-01750

4 DATE OF HEARING: 10/10/23

5 COURT REPORTER/MONITOR: Webex Recording

6 *****

7 I, Bobbi Fisher, do hereby certify that the
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12 neither counsel for, related to, nor employed by any of
13 the parties to this case, and I have no interest,
14 financial or otherwise, in its outcome.

15
16 17 /s/ Bobbi Fisher

18 Bobbi Fisher, RPR and Certified Transcriber

19 Date Submitted: 3/15/24

20
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**U.S. District Court
District of South Carolina (Columbia)
CIVIL DOCKET FOR CASE #: 3:21-cv-00908-SAL**

Gray v. Lamur et al
Assigned to: Honorable Sherri A Lydon
Cause: 28:1332 Diversity-Auto Negligence

Date Filed: 03/30/2021
Date Terminated: 02/16/2023
Jury Demand: Both
Nature of Suit: 350 Motor Vehicle
Jurisdiction: Diversity

Plaintiff

Glenna Gray

represented by **Eric Poulin**
Poulin Willey Anastopoulo LLC
32 Ann Street
Charleston, SC 29403
843-614-8888
Fax: 843-494-5536
Email: eric@akimlawfirm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lane Douglas Jefferies
Anastopoulo Law Firm (Cha)
32 Ann Street
Charleston, SC 29403
843.614-8888
Fax: 843-494-5536
Email: teamjefferies@poulinwilley.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rebecca Andrick Rayner
Wilson Elser Moskowitz Edelman and
Dicker (Cha)
525 N Tryon Street
Suite 1600
Charlotte, NC 28202
614-586-2802
Email: rebecca.rayner@wilsonelser.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Roy T Willey , IV
Anastopoulo Law Firm (Cha)
32 Ann Street
Unit B
Charleston, SC 29403
843-614-8888
Email: roy@akimlawfirm.com **ROA_130**
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Thomas B Cabler

Anastopoulos Law Firm (Gre)

418 River Street

Greenville, SC 29601

864-550-4693

Email: dale.cabler@akimlawfirm.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Vanisa Siler Brown

Siler Law Firm LLC

700 Nexton Square Drive

Suite 214

Summerville, SC 29486

843-467-9869

Fax: 843-564-0556

Email: vanisa@thesilerfirm.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Plaintiff

Michael W. Gray

Personal Representative of the Estate of

Joseph S. Gray

Estate of

Joseph S. Gray

represented by **Eric Poulin**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Lane Douglas Jefferies

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Rebecca Andrick Rayner

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Roy T Willey , IV

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

V.

Defendant

Larousse Lamur

represented by **Everett Augustus Kendall , II**

Murphy and Grantland (Col)

PO Box 6648

4406B Forest Drive

Columbia, SC 29206

803-782-4100

Fax: 803-782-4140

ROA_131

Email: rkendall@murphygrantland.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Phillip Florence , Jr
 Murphy and Grantland (Col)
 PO Box 6648
 4406B Forest Drive
 Columbia, SC 29206
 803-782-4100
 Fax: 803-782-4140
 Email: pflorence@murphygrantland.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Phoenix Grand, LLC

represented by **Everett Augustus Kendall , II**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Phillip Florence , Jr
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Lamur Transportation Services, LLC

represented by **Everett Augustus Kendall , II**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Phillip Florence , Jr
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/30/2021	<u>1</u>	COMPLAINT against Larousse Lamur, Lamur Transportation Services, LLC, Phoenix Grand, LLC (Filing fee \$ 402 receipt number 0420-9740058.), filed by Glenna Gray. Service due by 6/28/2021.(ahil) (Entered: 03/30/2021)
03/30/2021	<u>2</u>	Local Rule 26.01 Answers to Interrogatories by Glenna Gray.(ahil) (Entered: 03/30/2021)
03/30/2021	<u>4</u>	Summons Issued as to Larousse Lamur. (ahil) (Entered: 03/30/2021)
03/30/2021	<u>5</u>	Summons Issued as to Lamur Transportation Services, LLC. (ahil) (Entered: 03/30/2021)
03/30/2021	<u>6</u>	Summons Issued as to Phoenix Grand, LLC. (ahil) (Entered: 03/30/2021)
04/29/2021	8	DELETION OF DOCKET ENTRY NUMBER 7 Reason: Wrong event used. Filer to refile. (ahil) (Entered: 04/29/2021)

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05/10/2021	<u>9</u>	SUMMONS Returned Executed by Glenna Gray. Phoenix Grand, LLC served on 4/22/2021, answer due 5/13/2021. (Attachments: # <u>1</u> Affidavit)(Siler, Vanisa) (Entered: 05/10/2021)
06/02/2021	<u>10</u>	ANSWER to <u>1</u> Complaint by Larousse Lamur, Lamur Transportation Services, LLC, Phoenix Grand, LLC.(Florence, Phillip) (Entered: 06/02/2021)
06/02/2021	<u>11</u>	<i>Defendants'</i> Local Rule 26.01 Answers to Interrogatories by Larousse Lamur, Lamur Transportation Services, LLC, Phoenix Grand, LLC.(Florence, Phillip) (Entered: 06/02/2021)
06/03/2021	14	DELETION OF DOCKET ENTRY NUMBER 12 Reason: accidental entry by Clerk. (ahil) (Entered: 06/03/2021)
06/03/2021	<u>15</u>	CONFERENCE AND SCHEDULING ORDER Rule 26(f) Conference Deadline 6/23/2021, Rule 26 Report due by 7/7/2021, Motions to Amend Pleadings due by 8/17/2021, Plaintiffs ID of Expert Witness due by 9/13/2021, Defendants ID of Expert Witnesses Due by 10/12/2021, Records Custodian Affidavit due by 11/1/2021, Discovery due by 11/30/2021, Motion in Limine due by 1/31/2022, Motions due by 12/14/2021, Rule 26(a)(3) Disclosures due by 2/7/2022, Jury Selection Deadline 2/28/2022, and Mediation Due by 12/29/2021. Signed by the Honorable Sherri A. Lydon on June 3, 2021. (ahil) (Entered: 06/03/2021)
06/04/2021	<u>16</u>	NOTICE of Appearance by Everett Augustus Kendall, II on behalf of Larousse Lamur, Lamur Transportation Services, LLC, Phoenix Grand, LLC (Kendall, Everett) (Main Document 16 replaced on 6/4/2021 with flattened PDF.) (ahil) (Entered: 06/04/2021)
06/09/2021	<u>17</u>	AMENDED ANSWER to <u>1</u> Complaint by Larousse Lamur, Lamur Transportation Services, LLC, Phoenix Grand, LLC. Deleted and refiled by Clerk to use the correct filing event. Filing date has been preserved. (ahil) (Entered: 06/09/2021)
06/17/2021	<u>19</u>	First Rule 26(f) Report by Glenna Gray. (Attachments: # <u>1</u> Proposed Order)(Siler, Vanisa) (Main Document 19 replaced on 6/17/2021 with document provided by filer) (ahil). (Entered: 06/17/2021)
06/17/2021	20	DELETION OF DOCKET ENTRY NUMBER 18 Reason: Wrong filing event used. Corrected Filing Document Number <u>19</u> (ahil) (Entered: 06/17/2021)
06/21/2021	<u>21</u>	AMENDED SCHEDULING ORDER Motions to Amend Pleadings due by 10/1/2021, Plaintiffs ID of Expert Witness due by 10/28/2021, Defendants ID of Expert Witnesses Due by 11/26/2021, Records Custodian Affidavit due by 12/16/2021, Discovery due by 1/14/2022, Motion in Limine due by 3/17/2022, Motions due by 1/28/2022, Rule 26(a) (3) Disclosures due by 3/24/2022, Jury Selection Deadline 4/14/2022, and Mediation Due by 2/14/2022. Signed by the Honorable Sherri A. Lydon on June 21, 2021. (ahil) (Entered: 06/21/2021)
06/22/2021	<u>22</u>	First MOTION to Amend/Correct <u>1</u> Complaint by Glenna Gray. Response to Motion due by 7/6/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Exhibit Amended Complaint)No proposed order.(Siler, Vanisa) (Entered: 06/22/2021)
07/06/2021	<u>23</u>	RESPONSE in Opposition re <u>22</u> First MOTION to Amend/Correct <u>1</u> Complaint Response filed by Larousse Lamur, Lamur Transportation Services, LLC, Phoenix Grand, LLC.Reply to Response to Motion due by 7/13/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. Clerk deleted and refiled the document using the correct filing event. The date of filing was preserved. (ahil) ** Please see supplement located at <u>28</u> . Modified on 9/8/2021 to edit text. (ahil). (Entered: 07/07/2021) ROA_133

07/13/2021	24	Local Rule 26.03 Answers to Interrogatories by Larousse Lamur.(Florence, Phillip) (Entered: 07/13/2021)
07/14/2021	25	Local Rule 26.03 Answers to Interrogatories by Glenna Gray.(Siler, Vanisa) (Entered: 07/14/2021)
07/14/2021	26	<i>Joint Rule 26(f)(3) Discovery Plan</i> Rule 26 Outline of Discovery Plan by Larousse Lamur and Glenna Gray.(Florence, Phillip) (Entered: 07/14/2021)
09/07/2021	28	SUPPLEMENT by Larousse Lamur, Lamur Transportation Services, LLC, Phoenix Grand, LLC to 23 Response in Opposition to Motion. (Attachments: # 1 Exhibit 1 Lexington County Court of Common Pleas case 2021-CP-32-2885) Original filing was deleted and refiled by clerk to use the correct filing event. The date of filing was preserved. (ahil) (Entered: 09/08/2021)
10/20/2021	29	Consent MOTION for Extension of Time of <i>Expert Disclosure Deadline</i> by Glenna Gray. Response to Motion due by 11/3/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.(Siler, Vanisa) (Entered: 10/20/2021)
10/21/2021	30	TEXT ORDER granting 29 Consent Motion for Extension of Time for Expert Disclosures. Plaintiff's deadline for expert disclosures is hereby extended to November 11, 2021, and Defendants' deadline for expert disclosures is hereby extended to December 10, 2021. Signed by the Honorable Sherri A. Lydon on October 21, 2021. (ahil) (Entered: 10/21/2021)
11/05/2021	31	Consent MOTION for Extension of Time by Glenna Gray. Response to Motion due by 11/19/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. Proposed order is being emailed to chambers with copy to opposing counsel.Associated Cases: 3:21-cv-00908-SAL, 3:21-cv-02691-SAL(Siler, Vanisa) (Entered: 11/05/2021)
11/05/2021	32	TEXT ORDER granting 31 Motion for Extension of Time. Signed by the Honorable Sherri A. Lydon on November 5, 2021.(ahil) (Entered: 11/05/2021)
11/05/2021	33	SECOND AMENDED SCHEDULING ORDER Plaintiff's ID of Expert Witness due by 12/27/2021, Defendants' ID of Expert Witnesses Due by 1/24/2022, Records Custodian Affidavit due by 1/31/2022, Discovery due by 2/28/2022, Motions in Limine due by 5/2/2022, Motions due by 3/14/2022, Rule 26(a)(3) Disclosures due by 5/9/2022, Jury Selection Deadline 6/2/2022, and Mediation Due by 3/31/2022. Signed by the Honorable Sherri A. Lydon on November 5, 2021. (ahil) (Entered: 11/05/2021)
01/07/2022	34	ORDER re 22 First MOTION to Amend/Correct 1 Complaint filed by Glenna Gray. For the reasons outlined herein, Plaintiff Glenna Gray's Motion to Amend Complaint, ECF No. 22 , is GRANTED. Plaintiff has until January 10, 2022 to file the Amended Complaint. Signed by the Honorable Sherri A. Lydon on January 7, 2022. (ahil) (Entered: 01/07/2022)
01/10/2022	35	AMENDED COMPLAINT filed pursuant to ECF 34 against All Defendants, filed by Glenna Gray. Service due by 4/11/2022 (Attachments: # 1 Exhibit Diagram) (Willey, Roy) (Entered: 01/10/2022)
01/13/2022	37	ANSWER to 35 Amended Complaint by Larousse Lamur.(Florence, Phillip) (Entered: 01/13/2022)
01/29/2022	38	MOTION for Extension of Time of standing scheduling order at ECF 33 by Glenna Gray, Michael W. Gray. Response to Motion due by 2/14/2022. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No

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		proposed order.(Jefferies, Lane) Modified on 1/31/2022 to add link to scheduling order. (ahil) (Entered: 01/29/2022)
02/18/2022	40	TEXT ORDER granting 38 Motion for Extension of Time. Signed by the Honorable Sherri A. Lydon on February 18, 2022.(ahil) (Entered: 02/18/2022)
02/18/2022	41	THIRD AMENDED SCHEDULING ORDER Plaintiffs' ID of Expert Witness due by 2/9/2022, Defendants' ID of Expert Witnesses Due by 3/10/2022, Records Custodian Affidavit due by 3/16/2022, Discovery due by 4/14/2022, Motion in Limine due by 6/15/2022, Motions due by 4/28/2022, Rule 26(a)(3) Disclosures due by 6/22/2022, Jury Selection Deadline 8/4/2022, and Mediation Due by 5/16/2022. Signed by the Honorable Sherri A. Lydon on February 18, 2022. (ahil) (Entered: 02/18/2022)
03/21/2022	42	PLAINTIFF'S ID OF EXPERT WITNESSES by Glenna Gray, Michael W. Gray.(Jefferies, Lane) (Entered: 03/21/2022)
03/31/2022	43	Consent MOTION to Amend/Correct 41 Scheduling Order, by Larousse Lamur. Response to Motion due by 4/14/2022. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Memo in Support Memorandum in Support of Consent Motion to Amend Scheduling Order)Proposed order is being emailed to chambers with copy to opposing counsel.(Florence, Phillip) (Entered: 03/31/2022)
03/31/2022	44	TEXT ORDER granting 43 Motion to Amend/Correct Scheduling Order. Signed by the Honorable Sherri A. Lydon on March 31, 2022.(ahil) (Entered: 03/31/2022)
03/31/2022	45	FOURTH AMENDED SCHEDULING ORDER Plaintiffs' ID of Expert Witness due by 5/10/2022, Defendants' ID of Expert Witnesses Due by 6/8/2022, Records Custodian Affidavit due by 6/15/2022, Discovery due by 7/13/2022, Motion in Limine due by 9/13/2022, Motions due by 7/27/2022, Rule 26(a)(3) Disclosures due by 9/20/2022, Jury Selection Deadline 12/8/2022, and Mediation Due by 8/15/202. Signed by the Honorable Sherri A. Lydon on March 31, 2022. (ahil) (Entered: 03/31/2022)
04/04/2022	46	NOTICE of Appearance by Thomas B Cabler on behalf of Glenna Gray (Cabler, Thomas) (Entered: 04/04/2022)
05/27/2022	47	Consent MOTION for Extension of Time <i>for Defendants to Identify Expert Witnesses</i> by Larousse Lamur, Lamur Transportation Services, LLC, Phoenix Grand, LLC. Response to Motion due by 6/10/2022. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Memo in Support)No proposed order.(Florence, Phillip) (Entered: 05/27/2022)
06/01/2022	48	TEXT ORDER granting 47 Consent Motion for Extension of Time for Defendants to identify expert witnesses. Defendants' time to identify expert witnesses is due June 23, 2022. Entered at the direction of the Honorable Sherri A. Lydon on June 1, 2022. (ahil) (Entered: 06/01/2022)
06/15/2022	49	<i>Plaintiff's</i> AFFIDAVIT of Records Custodian <i>Plaintiff's</i> by Glenna Gray, Michael W. Gray, Michael W. Gray. (Attachments: # 1 Affidavit Affidavit of Advanced Imaging of Florida, # 2 Affidavit Affidavit of All Injury and Diagnostic Clinic, # 3 Affidavit Affidavit of Mission Hospital, # 4 Affidavit of Park Place Surgery Center, # 5 Affidavit Affidavit of Sterling Medical Group)Associated Cases: 3:21-cv-00908-SAL, 3:21-cv-02691-SAL(Jefferies, Lane) (Entered: 06/15/2022)
07/26/2022	50	MOTION for Partial Summary Judgment by Larousse Lamur, Lamur Transportation Services, LLC, Phoenix Grand, LLC. Response to Motion due by 8/9/2022. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Memo in Support Motion for Partial Summary

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		Judgment, # 2 Exhibit A - Transcript (full) Glenna Gray, # 3 Exhibit B - 35 Amended Complaint)No proposed order.(Florence, Phillip) (Entered: 07/26/2022)
08/09/2022	51	RESPONSE in Opposition re 50 MOTION for Partial Summary Judgment Response filed by Glenna Gray.Reply to Response to Motion due by 8/16/2022 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # 1 Exhibit Exhibit A - Trooper A Fiocco's Deposition, # 2 Exhibit Exhibit B - Plaintiff's Deposition)(Jefferies, Lane) (Entered: 08/09/2022)
09/13/2022	55	MOTION in Limine to <i>Exclude any Testimony Lay Witnesses or Parties</i> by Larousse Lamur, Lamur Transportation Services, LLC, Phoenix Grand, LLC. Response to Motion due by 9/27/2022. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.(Florence, Phillip) (Entered: 09/13/2022)
09/19/2022	56	<i>Defendants'</i> RULE 26(a)(3)PRETRIAL DISCLOSURES by Larousse Lamur, Lamur Transportation Services, LLC, Phoenix Grand, LLC. Objections to PreTrial Disclosures due by 10/3/2022.(Florence, Phillip) (Entered: 09/19/2022)
09/20/2022	57	RULE 26(a)(3)PRETRIAL DISCLOSURES by Glenna Gray. Objections to PreTrial Disclosures due by 10/4/2022.Associated Cases: 3:21-cv-00908-SAL, 3:21-cv-02691-SAL(Jefferies, Lane) (Entered: 09/20/2022)
02/16/2023	59	ORDER. The court DISMISSES this action without prejudice. The court is without jurisdiction to rule on Defendants' Motion in Limine, ECF No. 55 , and Motion for Partial Summary Judgment, ECF No. 50 . Both motions are consequently terminated, and the case is closed. Signed by the Honorable Sherri A Lydon on February 16, 2023.(ahil) (Entered: 02/16/2023)
02/16/2023	60	JUDGMENT. This case is dismissed without prejudice. (ahil) (Entered: 02/16/2023)
03/16/2023	61	First MOTION to Alter Judgment in re 60 Judgment by Glenna Gray, Michael W. Gray. Response to Motion due by 3/30/2023. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order. (Rayner, Rebecca) (Entered: 03/16/2023)
03/30/2023	62	RESPONSE in Opposition re 61 First MOTION to Alter Judgment in re 60 Judgment Response filed by Larousse Lamur.Reply to Response to Motion due by 4/6/2023 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Kendall, Everett) (Entered: 03/30/2023)
05/02/2023	64	ORDER denying 61 Motion to Alter Judgment. The court DENIES the Gray's Motion to Alter Judgment. [ECF No. 61.] The court is still without subject matter jurisdiction to hear the case. Signed by the Honorable Sherri A. Lydon on May 5, 2023.(ahil) Modified on 5/3/2023 to edit text (ahil). (Entered: 05/02/2023)

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