

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

**Index No.: 156167/16E**

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AMERICAN TRANSIT INSURANCE COMPANY, as  
Subrogee of SHERMAN AVENUE EIGHT, INC. &  
KARINA NICOLAKIS,

Plaintiff(s),

**AFFIRMATION IN  
SUPPORT**

- against -

FLOUR CITY BAGELS, LLC., LARRY L. INGRAM  
& RYDER TRUCK RENTAL, INC.,

Defendant(s).

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**SONAL PARMAR**, an attorney, duly admitted to practice law before the Courts of the State of New York, does hereby affirm the following under the penalties of perjury:

1. I am an associate with the law firm of NICOLINI, PARADISE, FERRETTI & SABELLA, PLLC, attorneys for the Plaintiff, AMERICAN TRANSIT INSURANCE COMPANY, as Subrogee of SHERMAN AVENUE EIGHT, INC. & KARINA NICOLAKIS (hereinafter referred to as “the Plaintiff” or “AMERICAN TRANSIT”) and I am fully familiar with the facts and circumstances heretofore had herein from a file maintained by this law office.

2. This affirmation is submitted in support of Plaintiff's Motion to Restore this matter to the Court’s active trial calendar and for such other and further relief as this Court may deem just and proper.

**FACTUAL AND PROCEDURAL BACKGROUND**

3. This is a subrogation action which stems from a motor vehicle accident that occurred on May 13, 2015. It is alleged in the Summons and Complaint that the Plaintiff, AMERICAN TRANSIT, issued payments to or on behalf of its subrogors, SHERMAN AVENUE EIGHT, INC. and KARINA NICOLAKIS, for additional No-Fault (APIP) claims in the total

amount of \$150,000.00 due to the negligence and carelessness of the Defendants, FLOUR CITY BAGELS, LLC. LARRY L. INGRAM and RYDER TRUCK RENTAL, INC. (collectively referred to as “the Defendants”). A copy of the Summons, Complaint and affidavits of service are annexed hereto as **EXHIBIT A** and Defendants’ Answers are annexed collectively as **EXHIBIT B**.

4. The following exhibits are annexed hereto in support of Plaintiff’s Motion to Restore:

- **EXHIBIT A:** copy of the Plaintiff’s Summons and Complaint and Affidavits of Service;
- **EXHIBIT B:** copy of the Defendants’ Answer;
- **EXHIBIT C:** copy of Preliminary Conference Order dated December 12, 2017;
- **EXHIBIT D:** copy of Defendants’ Motion to Change Venue (without exhibits), filed February 9, 2018;
- **EXHIBIT E:** Order dated March 8, 2018 granting Defendants’ Motion to Change Venue;
- **EXHIBIT F:** UCS E-Courts Appearance Detail; and
- **EXHIBIT G:** Defense counsel’s letter dated October 29, 2018.

5. On December 12, 2017, a preliminary conference was held before the Honorable Robert D. Kalish which resulted in a Preliminary Conference Order. (See **EXHIBIT C**).

6. On February 9, 2018, Defendants, FLOUR CITY BAGELS, LLC. and LARRY L. INGRAM, filed a Motion seeking to change venue of this action from Supreme Court, New York County to Supreme Court, Bronx County. (See **EXHIBIT D**). The basis of Defendants’ Motion

was such that the Plaintiff's subrogor, KARINA NICOLAKIS resided in Bronx County and had filed a related personal injury action stemming from the same subject motor vehicle accident in Supreme Court, Bronx County under Index Number 24208/2015E. Plaintiff and Co-Defendant, RYDER TRUCK RENTAL, INC did not oppose the moving Defendants' Motion to Change Venue and the Motion was granted by the Honorable Robert D. Kalish on March 8, 2018. (See **EXHIBIT E**).

7. However, prior to Judge Kalish's Order rendered on March 8, 2018 changing the venue of this lawsuit to Supreme Court, Bronx County, the Compliance Conference scheduled in this matter in this Court on March 6, 2018 was adjourned without a specific date in light of the fact that Defendants' Motion to Change Venue was still pending and had yet to be determined on the date of the Compliance Conference. There has been no further action or appearance in connection with this instant matter in this Court following the Compliance Conference on March 6, 2018 which was adjourned without a specific date. (See **EXHIBIT F**).

8. As mentioned in the prior paragraphs, Judge Kalish granted the Motion to Change Venue on March 8, 2018, changing the venue and transferring this action to Supreme Court, Bronx County. However, in spite of the Order, the court's file and records relating to this case were never transferred to Supreme Court, Bronx County from this Court. When your affiant's office inquired in person with the Clerk of Supreme Court, Bronx County, the Clerk notified our office that there was no record of this case in Bronx County and the case was never transferred from New York County. To date, the Supreme Court of Bronx County has no record of this instant lawsuit. As such, Plaintiff's instant subrogation action has been stalled because the Court's file was never transferred to Supreme Court, Bronx County. Therefore, this case is still considered pending in this Court.

9. Furthermore, on October 29, 2018, defense counsel informed this Court that although their office was required to transfer the file to Supreme Court, Bronx County, pursuant to Judge Kalish's Order dated March 8, 2018, the companion cases that had been venued in Bronx County which were the underlying basis of Defendants' Motion to Change Venue, were all settled. As such, counsel advised this Court that there was no further basis to transfer this instant matter to Supreme Court, Bronx County. (See **EXHIBIT G**).

10. It has never been the intention of the Plaintiff to abandon the prosecution of this matter. This is evident from the numerous Court appearances made by your affirmant's office in this action. The only rationale for the case not being litigated in this Court is Judge Kalish's Order changing the venue to Supreme Court, Bronx County. However, the moving Defendants and/or the Clerk of this Court failed to properly transfer the Court's file to Bronx County pursuant to the Order. This mishap in the transfer of the Court's file did not occur due to any action or inaction by the Plaintiff. Furthermore, the companion cases venued in Bronx County which were the basis for granting Defendants' Motion to Change Venue from New York County to Bronx County have now all been settled. As such, Plaintiff should not be penalized or thwarted in its efforts to proceed with litigation of its subrogation case in this Court. Plaintiff is unable to properly proceed with prosecution either in Supreme Court, Bronx County since that venue has no record of this lawsuit or this instant Court due to the existence of the Order changing the venue to Bronx County. Based upon the facts and circumstances of the matter, your affirmant respectfully requests this instant matter be restored to this Court's active trial calendar.

10. No previous application has been made for the relief requested.

**WHEREFORE**, it is respectfully requested that Plaintiff's Motion to Restore this case to the Court's active trial calendar be granted in its entirety, together with such other and further relief as this Court may deem just and proper.

Dated: Mineola, New York  
January 18, 2019

Yours, etc.,

NICOLINI, PARADISE, FERRETTI & SABELLA  
*Attorneys for Plaintiff(s): State Farm*

By:  \_\_\_\_\_

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