

No.

21-7043
In

ORIGINAL

The Supreme Court of the United States

**On Petition For A Writ Of Certiorari
To The
Supreme Court Of the United States
January 01, 2022**

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

Case Brought from Court Of Appeals For The Ninth Circuit
Case No: 21-55833 District Court Case No::21-cv-01046

Ada Maria Benson (Petitioner)

v.

Defendants:

Allstate Insurance Company
Homan, Stone & Rossi
Attorneys' at Law Counsel For defendant
Mr. Gene S. Stone, ESQ

Benson, Ada Maria
(Persona Propia)
324 South State St #3054
Hemet, California 92546
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QUESTIONS PRESENTED

The Supreme Court has recognized in a variety of contexts that the judiciary's legitimacy and efficacy derives largely from the public's confidence in its fairness and fidelity to the law. **Alden v. Maine, 527 U.S. 706, 752 (1999)** Public confidence [is] essential" to the judicial branch. **United States v. Richardson, 418 U.S. 166, 188 (1974)** (Powell, J., concurring)). That public confidence is being eroded by activities such as those at issue in this case and in other cases like it.

United States v. Armstrong, 517 U. S. 456, 468. Due process requires a fair trial before a judge without actual bias against the defendant or an interest in the outcome of his particular case. This case was filed in the Appeals Court Ninth Circuit under 28 US Code § 1292 - **Interlocutory Decisions** after the District Court Riverside County concealed the case for five months without assigning a number after petitioner filed on December 15, 2020. The confidence of the petitioner doubts the fidelity of the local judiciary to the United States Constitutional Amendments.

In the **Constitution Annotated > Article I > Section 10 > Clause 1 > ArtI.S10.C1.5 Contract Clause** "Obligation Defined reads: "A contract is analyzable into two elements: the agreement, which comes from the parties, and the obligation, which comes from the law and makes the agreement binding on the parties. The **concept of obligation is an importation from the civil law and its appearance in the Contract Clause.** Actually, the term as used in the **Contract Clause** has been rendered more or less superfluous by the doctrine that [t]he laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it. Hence, the Court sometimes recognizes the term in its decisions applying the clause, and sometimes ignores it. In **Sturges v. Crowninshield**, Chief Justice Marshall defined

obligation of contract as the law that binds a party to perform his undertaking, but a little later the same year, in *Dartmouth College v.*

Woodward, Chief Justice Marshall set forth the points presented for consideration to be: **1. Is this contract protected by the constitution of the United States? 2. Is it impaired by the acts under which the defendant holds?** The word obligation undoubtedly implies that the Constitution was intended to protect only executory contracts—i.e., **contracts still awaiting performance. (A contract unpaid).**

A breach of a Contract goes beyond a Constitutional violation trespassing the 42 U.S.C §1983. **“Deprivation Of Rights.**

Under the **US Constitution Annotated Fourteenth Amendment -- Rights Guaranteed: Privileges and Immunities of Citizenship, Due Process, and Equal Protection) Procedural Due Process Civil, Section 1:** First, procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." Due process may also require an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel. **1)** Notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. **2)** Hearing. "[Some form of hearing is required before an individual is finally deprived of a property (or liberty] interest." This right is a "basic aspect of the duty of the government to follow a fair process of decision-making when it acts to deprive a person of his possessions.

1. Does justification exist by the United States District Court and the Court of Appeals Ninth Circuit to deny the petitioner the right of being heard and apply the correct laws under the 42 U.S.C §1983. **“Deprivation Of Rights when Allstate Insurance Company has violated a Good Faith and Fair Dealing Covenant leaving a victim of a hit and run without the just covenant ? Sutherland V. Barclays American Mortgage Corp. .53 cal. APP 4th 299, 314,**

61 cal RPTR 2D 614 (1997) This case was filed in the Appeals Court Ninth Circuit under Interlocutory Decisions **28 U.S. Code § 1292 assigned case number: 21-55833 and “Mooted” by the Appeals Court.**

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LIST OF PARTIES

Benson, Ada Maria

Petitioner

(Persona Propria)

Defendants

Allstate Insurance Company

Counsel For Defendants:Mr. Gene S. Stone, ESQ.

Homan, Stone & Rossi

Attorneys' at Law Counsel For defendant

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Appendix XVII Letter of October 05, 2021 from petitioner to Allstate Counsel Mr. Gene Stone.

Appendix XVIII Letter of December 04, 2021 from petitioner to Allstate

Counsel announcing the Petition to the United States Supreme Court.

*Appendix XIX District Court Opinion of Dec. 01, 2021
discovered 01/24/22. Never mailed by Court.*

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Appendix XX

** see 2 pages 28 U.S.C. §1746 Unsworn Declaration Under Penalty of Perjury.*

*Appendix XXI Civil Intake For Appeals.
August 01, 2021. Online. 1 page.*

TABLE OF AUTHORITIES

AMENDMENTS

First Amendment

Fifth Amendment

Eight Amendment “ Nor cruel and unusual punishments inflicted.:

Fourteenth Amendment Section 1

STATUTES

10 U.S. Code § 911 - Art. 111.

§ 1013 Under the Sherman Act, Treble Damages honored petitioners.

28 U.S.C. § 1254 (1)

28 U.S.C § 1291.

42 U.S. Code § 1983

Section 504 of the American With Disability Act

CALIFORNIA LAWS IN STRICT LIABILITY AND BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

- California Code, Insurance Code - INS § 1758.992 (h)(1) (California CACI No 325).
- California Code INS 1758.992 (h) (1) Strict Liability Law in California
- California The Covenant of Good Faith and Fair Dealing CACI No.325
- CACI No. 325. California Code INS 1758.992 (h) (1) “Guaranteed asset protection” (GAP) insurance.

●

OTHER UNITED STATES LAWS AND STATUTES

- 1) Chief Justice Taney 1847 US Constitution Annotated › Article I.
Legislative Department › Interstate Versus Foreign Commerce

- 2) McCarran-Ferguson Act of 1945 (15 U.S.C. §§ 1011-1015) Under the Antitrust Sherman Act of 1890
- 3) Restatement (Second) of Torts § 282 (1965).
42 U.S.C. § 1983.
- 4) Restatement (Second) of Contracts § 347(b) (1981) .
- 5) Restatement Second of Contracts § 349 Damages Based on Reliance [R2C § 347]
- 6) US Constitution Annotated › Article III. Judicial Department ›
Substantial Interest: Standing

LEGAL CASES CITED

- Alden v. Maine, 527 U.S. 706, 752 (1999)
- United States v. Richardson, 418 U.S. 166, 188 (1974)
- American Bank of Waco v. Thompson, 660 S.W.2d 831, 834 (Tex. App.—Waco 1983, writ ref'd n.r.e)
- Amerigraphics, Inc. v. Mercury Cas. Co. (2010) 182 Cal. App.4th 1538, 1558 (Civ. C. § 3294)
- Cassim v. Allstate Ins. Co. (2004) 33 Cal.4th 780, 810
- I Conway v. Country Casualty Ins. Co., 92 Ill.2d 388, 397-98, 442 N.E.2d 245, 249 (1982), The United States Supreme Court stated
- Delatorre v. Safeway Ins. Co., 2013 IL App (1st) 120852, 989 N.E.2d 268 (2013).
- Dennis v. Higgins 493 U.S. 103 (1989)-Dennis, 111 S. Ct. At 873.
- English, 240 S.W.2d at 507
- Elliott v. Board of School Trustees, 2017 WL 5988226 (7th Cir. 2017)
- First Nat'l Bank of Hico v. English, 240 S.W.2d 503, 507 (Tex. Civ. App.—Waco 1951).
- First Nat'l Bank v. Twombly, 689 P.2d 1226 (Mont. 1984).
- Griffith v. Porter, 817 S.W.2d 131, 135

- Hardin Assocs., Inc. v. Brummett, 613 S.W.2d 4, 6 (Tex. Civ. App.—Texarkana 1980). Turner, 620 S.W.2d at 673-74
- Hodel V. Virginia 101 S. Ct 2352, 69 L. Ed. 2d 1 (1981)
- Jacob & Youngs, Inc. v. Kent, 230 N.Y. 239, 244, 129 N.E. 889, 891 (1921)
- Lopez , 514 U.S. at 558-59, 115 S.Ct. 1624.
- McCarran-Ferguson Act of 1945 (15 U.S.C. §§ 1011-1015)
- Murray v. Crest Constr., Inc., 900 S.W.2d 342, 344 (Tex. 1995) (per curiam);
- Nicholson v. United Pac. Ins., 710 P.2d 1342, 1348 (Mont. 1985)
- -Nobility Homes of Texas, Inc. v. Shivers, 557 S.W.2d 77, 78 n.1 (Tex. 1977).
- PPG Indus., Inc. v. Transamerica Ins. Co. (1999) 20 Cal.4th 310, 315.
- Roadway Express, Inc. v. Piper, 447 U.S. 752, 765-767 (1980), Supreme Court .
- Sherrod v. Bailey, 580 S.W.2d 24, 28 (Tex. Civ. App.—Houston [1st Dist.] 1979, writ ref'd n.r.e.)
- Southern California Gas Co. v. City of Santa Ana, 336 F.3d 885, 887 (9th Cir. 2003).
- Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co. (2014)231, and Cal.App.4th 1131, 1150 [180 Cal.Rptr.3d 683
- Stuart v. Bayless, 964 S.W.2d 920, 921 (Tex. 1998).
- Sutherland v. Barclays American/Mortgage Corp., 53 Cal. App. 4th 299, 314, 61 Cal. Rptr. 2D 614 (1997)
- Swift Co. V. United States, 196 U.S 375 (1905).
- United States v. Armstrong, 517 U. S. 456, 468.
- United States v. Ríos-Hernández, 645 F.3d 456, 462 (1st Cir.2011).
- United States V. South-Eastern Underwriters Association
- Wickard v. Filburn, 317 U.S. 111 (1942)

RELATED CASES

21-55147 Ada Benson v. Progressive Insurance and Benjamin Rodriguez.
(Case Sitted in Appeals Ninth Circuit). Petitioner's vehicle was hit and damaged inside an ARCO gas station in Riverside California. The State Court refused the Complaint in State court stating petitioner should not demand the insurance, but the individual. Petitioner was threatened and assaulted verbally by Progressive Insurance.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, in persona propria, respectfully petitions the United States Supreme Court, for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case #**21-cv-01046**

OPINIONS BELOW

District Court Opinions:

*Dec. 01, 2021 District Court Opinion was just discovered
Placed at appendix XIX (Discovered 01/24/22).*

- 1) Petitioner filed the case Benson, Ada Maria V. Allstate Insurance Co. on December 15, 2020 in federal forms JS-44 and Pro-Se 4 . However, the District Court sat on the complaint without assigning a case number. See App. I and App. II.
- 2) Petitioner mailed correspondence to the Riverside County, Ca District Court requesting information in the case filed without response.
- 3) On February 11, 2021, Petitioner mails directly a request for appeals to the Office of the Clerk at the Appeals Court Ninth Circuit and the forms are refused with a note stating that "to file appeals, petitioner must file through the District Court Directly". (See Appn.III. 4 pgs) The Appeals Court clerk mailed back the copy of the USPS envelope used by the petitioner to mail the appeals with the returned request.
- 4) Petitioner mailed back to the District Court Riverside County, California, the complaint with the appeals court message at the end of February 2021. The District Court enters the documents of appeal but returns the entire package to the petitioner on May 14, 2021 with a copy of the various USPS labels the petitioner had used to request the District Court to file the complaint: Ada Maria Benson V Allstate Insurance Co. (See App IV -1pg)
- 5) On June 24, 2020 the Complaint mailed on December 15, 2020 was entered by the District Court in the PACER and District Court of Riverside assigned a District Case number 5:21-cv-01046-DMG-SHK and appointed

Magistrate Judge Shashi Hon Kewalramani, that has biased the petitioner's other cases. **See Appen. V. 1 page**

6) District Court Case # 5:21-cv-01046-DMG-SHK remains dormant in the District Court Riverside County, Ca until the petitioner files for appeals through the US District Court Civil Intake Online on August 01, 2021 See Appen. VI 1page.

DECISIONS-OPINIONS OF APPEALS COURT NINTH CIRCUIT :

1) On August 11, 2021, The United States District Court Riverside County case # 5:21-cv-01046-DMG-SHK is assigned an Appeal Case Ninth Circuit Number: **21-55833 See Appn. VII 1page.**

2) The Appeals Court Ninth Circuit Order of September 17, 2021 reads; "Before Hawkins, Watford, and Lee, Circuit Judges. A Review of the record demonstrates that this court lacks jurisdiction over this appeal because the district court has not issued any orders See **28 U.S.C § 1291**. Consequently, this appeal is dismissed for lack of jurisdiction.

To the extent that the appellant requests relief by way of a petition for writ of mandamus, the request is denied because appellant has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. See Bauman V. U.S. Dist. Court, 557F.2d 650 (9th Circ. 1977) . All pending motions are denied as **moot** **Dismissed in part, DENIED in part."** See Appn. VIII. **1 page**

Petitioner Objection:

a) The Petitioner never requested Mandamus in the Appeals Court. Petitioner complied with submitting the Formal Briefs and informal Briefs on the same date that the Petition was filed in the Appeals Court.

b) The appeals Court word MOOT violates the sacred principle of the United States Constitution: *The First Amendment guarantees*

*freedoms concerning religion, expression, assembly, and the **right to petition**. ... It guarantees freedom of expression by **prohibiting** Congress from restricting the press or the rights of individuals to speak freely .*

3) The Appeals Court Ninth Circuit Order of November 30, 2021 reads: “Before Hawkins, Watford, and Lee, Circuit Judges.

“Appellant’ motion for reconsideration (docket Entry No. 4) is denied. See 9th Cir R-27-10. No further filings will be entertained in this closed case. See **Appn. IX**

Petitioner’s Objections:

a) Rule 27-10 is not above the Interlocutory Decisions 28 U.S. Code § 1292.

b) Rule 27-10 deals with filings in a timely manner and with a party seeking relief that, shall state with particularity the points of law or fact which, in the opinion of the moving party. The petitioner’ Formal Brief was filed at the same time the appeal was entered. The Formal Briefs explain correctly the statutory laws violated by the defendant and what the case is all about. Breach of a Fair Dealing Covenant in a Hit and Run accident. **42 USC 1983**.
Petitioner's litigation had always been timely.

4) The Appeals Court Ninth Circuit Mandate of December 08, 2021 states: “The judgment of this court, entered September 17, 2021, takes effect on this date.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. For the Court Molly C. Dwyer Clerk of the Court By David J. Vignol Deputy Clerk Ninth Circuit Rule 27-7” **See App. X**

JURISDICTION

1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1)

2. The Supreme Court has set Constitutional Standards for Jurisdiction based on Injury, Fact, Causation, and Redressability. US Codes and Statutes › **US Constitution Annotated › Article III. Judicial Department › Substantial Interest: Standing**

3. Chief Justice Taney wrote in 1847; “*The power to regulate commerce among the several states is granted to Congress in the same clause, and by the same words, as the power to regulate commerce with foreign nations, and is coextensive with it. And nearly thirty years later, Justice Fields, speaking for the United States Supreme Court, stated: “the power to regulate commerce among several states was granted to congress in terms as absolute as it is the power to regulate commerce with foreign nations. Today it is firmly established that the power to regulate commerce, whether with foreign nations or among the several states, comprises the power to restrain or prohibit it all times for the welfare of the public, provided only that the specific limitations imposed upon congress’ powers, as by the Due Process Clause of the Fifth amendment, are not transgressed.”* **US Constitution Annotated › Article I. Legislative Department › Interstate Versus Foreign Commerce**

Allstate Insurance Company affects substantial relations in intrastate commerce. Jurisdiction of the United States Supreme Court exists as well under the **42 U.S. Code § 1983** Commerce Clause. **United States V. South-Eastern Underwriters Association** “Insurance transactions across state lines constitute intrastate Commerce, therefore Congress may regulate activities having substantial relations to a substantial effect on interstate commerce”. **Lopez , 514 U.S. at 558-59, 115 S.Ct. 1624.** An activity

substantially affects interstate Commerce either directly or when considered with other similar activities in the aggregate. See e.g. **Hodel V. Virginia 101 S. Ct 2352, 69 L. Ed. 2d 1 (1981)** , **Swift Co. V. United States, 196 U.S 375 (1905)** . The United States Supreme Court held that the activity could become part of a continuous current of commerce that involved the interstate movement of goods and services. Therefore 1983 is applicable. Allstate provides services through intrastate commerce.

The **Supreme Court Ninth Circuit** has ruled that **Contract Clause violations are indeed actionable under §1983**. It stated: "The right of a party not to have a State, or a political subdivision thereof, impair its obligations of contract is a right secured by the first article of the **United States Constitution**." **Southern California Gas Co. v. City of Santa Ana, 336 F.3d 885, 887 (9th Cir. 2003)**.

Seventh Circuit Supreme Court, in Elliott v. Board of School Trustees, 2017 WL 5988226 (7th Cir. 2017), " **Contract Clause violations are actionable for damages under §1983**.

Dennis v. Higgins 493 U.S. 103 (1989)-Dennis, 111 S. Ct. At 873, the **Supreme Court of Nebraska** held that a plaintiff may bring an action for **Commerce Clause violations under section 1983**.

"In 1922, Congress, through an amendment to the Judicial Code, endeavored to extend the **reviewing power of the Supreme Court to "any suit involving the validity of a contract** wherein it is claimed that a change in the rule of law or construction of statutes by the highest court of a State applicable to such contract would be repugnant to the Constitution of the
United
States .

STATUTORY PROVISIONS INVOLVED

42 U.S. Code § 1983: “ *Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.*”

Wickard v. Filburn, 317 U.S. 111 (1942) demonstrated the United States Supreme Court's willingness to give an unequivocally broad interpretation of the Commerce Clause. Recognizing the development of a dynamic and integrated national economy, the Court employed a broad interpretation of the Commerce Clause, reasoning that even local activity will likely affect the larger interstate commercial economic scheme. **Wickard v. Filburn, 317 U.S. 111 (1942)**, dramatically increased the regulatory power of the federal government. It remains as one of the most important and far-reaching cases concerning the New Deal, and it set a precedent for an expansive reading of the U.S. Constitution's Commerce Clause for decades to come.

McCarran-Ferguson Act of 1945 (15 U.S.C. §§ 1011-1015) allows the Sherman Antitrust Act of 1890 to extend to the “business of insurance” only to the extent where: (1) such business is not regulated by state law (§ 1012), or there are insurer or **acts of, “boycott, coercion, or intimidation” (§ 1013).** **Under the Sherman Act, Treble Damages are honored to petitioners.** Treble damages refers to the awarding of actual damages equivalent to three times the amount of injury that the injured party has suffered.

Fourteenth Amendment Section 1: “ No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fifth Amendment: “nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Section 504 of the American With Disability Act?

“ Forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services.”

STATUTE OF LIMITATIONS:

The statute of limitations has not run out in this case, as Allstate Insurance Company has kept this case active as soon as the estimates were provided to Allstate. Allstate employees stated the **theory that Allstate needed further investigation before recognizing the damages to the petitioner ignoring the law enforcement accident report of June 21, 2009** See Appen. XI. (5 pages Sheriff Accident Report) and the DMV report filed. It was until **December 05, 2018**, that Allstate agent Jorge Casillas, wrote a three page letter, in which casillas clearly states “ **If you believe this claim has been wrongfully denied or rejected, you may have the matter reviewed by the Department of Insurance Customer Services at 300 S. Spring Street, Los Angeles., CA 90013.**” (Because of the spinal injuries suffered by petitioner in April 2020, petitioner cannot access boxes of evidence as sealed at the back of storage where Jorge

Casillas letters are). **See Appen. XII 5 pgs. Allstate correspondence of June 15, 2018, May 14, 2018, December 05, 2018.** Letter of Homan, Stone and Rossi Attorneys At Law date October 05, 2021 at **Appn.XVI pg 1.** This letter evidences that Allstate recognizes a pending problem to solve.

The follow up after Casillas letter of December 05, 2018, was contacting the Department of Insurance and the California State Insurance Department and it took as well some time until the petitioner filed in Federal District Court on December 15, 2020 after the State of California Insurance responded to the petitioner's complaint stating; that "this case should be handled in a courtroom".

The **United States Supreme Court allows four years after the discovery** in these types of cases after the discovery date. In December 05, 2018 a letter from Allstate Jorge Casillas stated: "If you believe this claim has been wrongfully denied or rejected you may have the matter reviewed by the department of Insurance South Tower, 300 S Spring St, Los Angeles, CA 90013." These words from Allstate **mark the date of the Repudiation of the Contract also known as "Anticipatory Breach"** that occurs when a party announces an intention not to perform" **Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co. (2014)231, and Cal.App.4th 1131, 1150 [180 Cal.Rptr.3d 683**

The repudiating party will lose the right to retract a repudiation if the other party brings an action on the contract or materially changes position in reliance on the

initial repudiation. **Griffith v. Porter, 817 S.W.2d 131, 135** Allstate at repudiating the contract became on the side of the hit and run driver. As the hit and run driver Allstate is in violation of the **10 U.S. Code § 911 - Art. 111. Leaving the scene of a vehicle accident is the same as abandoning the responsibility for a contract well established.**

Negligence and liability for negligence exist in this case. **Restatement (Second) of Torts § 282 (1965)**. The plaintiff was an Allstate customer. The customers rely on the insurance providers to believe that one is safe on the road and covered if something goes wrong. In this case through negligence, Allstate iced the plaintiff. A period of freeze was executed on their own customer indirectly participating in the crime of hit and run and depriving the plaintiff of the rights entitled by the Constitutional Rights **42 US. C § 1983**. The evidence supporting the finding reckless disregard of the plaintiff's rights as a customer allows the United States Supreme Court to consider **tort damages for breach of the implied covenant. First Nat'l Bank v. Twombly, 689 P.2d 1226 (Mont. 1984)**.

STATEMENT OF THE CASE

On June 21, 2019 at around 03:00 P.M petitioner was driving East on Highway 74 towards Hemet, California at normal speed. Petitioner had seen throughout driving between Fwy 215 South and Hwy 74, a red old model pick up swerving between the traffic through the driver's exterior mirrors. The weather was dry and pleasant, the road was clear. At least 2 miles before approaching the light of the intersection of Menifee Road and Hwy 74-Homeland, Ca, the petitioner felt the hit of the old red pickup truck seen prior on the road on the back of her 2008 Honda Element silver color, **plates 6HMR565 VIN: 5J6YH17928L016551**. The driver of the red pick up had a big size hat covering his face. The impact was with velocity and forced the petitioner towards the wheel drive. Petitioner felt the legs numbed, but focused on the heavy traffic that usually runs along Hwy 74. Eighteen wheeler rigs, RTA Public Buses, school buses and heavy equipment are the usual traffic along Hwy 74. Petitioner saw the red pick up fleeing the scene of the accident and to avoid getting further injured by the speeding traffic decided to pursue the fleeing vehicle with the phone camera ready with the emergency lights on and left hand requesting the adjacent traffic to cede passage. The old red pick up sped and entered the AM/PM Arco gas station located 26050

Menifee Road, Menifee Ca 92585. Petitioner attempted to get closer and snapshot various pictures of the hit and run vehicle capturing the plates in photos. The Hit and Run vehicle exited the Arco gas station towards the Menifee Road South and sped towards McCall's Boulevard West, Sun City , California. Petitioner proceeded to call 911 and explained the reasons why had moved from the Highway. A California, Riverside County Sheriff and a Highway patrol officer arrived at the shoulder of the AM-PM gas station where the petitioner had parked safely to wait for the officers to arrive. Petitioner provided the officers with the Allstate insurance number 924786287, California Driver License , Registration of the petitioner's vehicle and the picture of the plate of the hit and run vehicle, and stated that AM/PM must had recorded the hit and run red pick up truck speeding among the gasoline pumps. Riverside County, California Sheriff Perris Station provided a Report Number ME091720049. **See App. XI 5 pgs.** in which the Riverside Sheriff shows a DMV check on the fleeing vehicle Which provided John A. Almaraz of 1681 Emerald Way, Perris California as the registered owner of the hit and run vehicle. Allstate record of the petitioner reads "Distinguished Driver.

As a normal followup after an accident occurred, the same day of the accident, petitioner completed a DMV accident report and notified Allstate of the accident providing the Sheriff accident report number and the photos of the fleeing vehicle. The petitioner was scheduled to appear at the Hemet, California Allstate office 2129 E Florida Ave. Hemet, CA 92544 to see Jose Quiroz Leon on June 22, 2009, the following day after the accident, to perform the insurance appraisal and estimate. Quiroz, handed a \$15.30 (Fifteen dollars thirty cents) check Allstate warrant number 544412690 Claim 0141392068 reading in payment for collision for date of loss 06/21/2009, dated 06/22/2009, that petitioner kept uncashed as it wouldn't even cover the vehicle car wash. See Appn. XII 1pg.

Jose Quiroz appraisal amounted to \$2,359.61 for estimated repairs, explaining to the petitioner to take the damaged Honda to the repair dealer for

estimates. Three different estimates were provided to Allstate by the petitioner exceeding the amount calculated by the Allstate agent Jose Quiroz. The highest for \$4,250.00 and the lowest estimate at \$3,501.98 damages estimated at the Honda Dealer in Hemet, California and two other qualified repair shops. Allstate refused to recognize any of the estimates provided by petitioner leaving petitioner to incur in expenses out of pockets to pay for bodily damages in a policy. The petitioner paid the highest monthly insurance payments for collision and liability, uninsured motorist, property damage , medical payment. (A Deluxe Gap Coverage) See App.XIV 2 PAGES. Allstate insurance coverage. See App. XII PG 1. Jorge Casillas acknowledged that GAP coverage existed.

As presented in Appendix XII 5 pages, years of communication exist between Allstate Insurance Company and the petitioner regarding the accident of June 21, 2009. See attached Allstate Correspondence from Lisa Duran, of May 14, 2018 and April 21, 2018, and Jorge Casillas Claim Service leader on various dates by email and by USPS on June 15, 2018 and December 05, 2018. (Other emails and correspondence exist of various dates among the years that are not at appendices) Meanwhile the petitioner contacted the Best Business Bureau and placed a complaint number 12900026 filed June 06, 2018, noticing the complaint was a follow up of prior complaints regarding the same Allstate negligence. See Appn XV. 1 page . At the time the petitioner placed the complaint to the BBB, BBB notified the petitioner stating that the first Allstate response was "that the investigation about the case had not concluded."

On a Letter dated October 05, 2021 Attorney in Law Mr. Gene Stone sent a letter to petitioner stating that Homan, Stone and Rossi Professional Corporation, Attorneys At Law, was *"retained to represent the interest of Allstate Insurance Company in the above referenced matter. A review of the district court records fails to disclose any appealable orders. As such, the court of Appeals has dismissed your appeal. Please see the attached order.*

Should you have any comments or questions with respect to the order, please let me know” . See Appn. XVI 1pg.

It seems Mr. Stone considered the case over. Petitioner responded to Mr. Gene Stone Tue, Oct 5, 2021 at 3:39 PM. See Appen. XVII, _pg, stating that petitioner had responded to the Appeals Court Order as the Allstate case was filed in appeals Court Ninth Circuit under Interlocutory Decisions. There was no response thereafter. **On December 04, 2021, petitioner notified the Allstate legal counsel, Mr. Gene Stone that petitioner was filing the Allstate case in the United States Supreme Court** See Appn. XVIII _pg. stating; *“I deemed necessary to communicate to your bureau to notify your office that I am working on the case to submit it to the US Supreme Court. Meanwhile, If your client (Allstate) has any intention to settle this claim before it is docketed in the US Supreme Court, I will be more than happy to hear from you at any time. As you know, this case is a case of breach of contract by Allstate. I suffered an accident while full coverage was paid and Allstate failed to fulfill its obligations to this date.” There was no response from counsel.*

The accident was verified and recorded by the Riverside County Sheriff, California and California Highway patrol officers. DMV also filed a report. Why does Allstate maintain active correspondence with the petitioner from 2009 through October 05, 2021 stating that further investigation is ongoing or that Appeals has dismissed the case, knowing that they have all intentions to break the covenant made at the time that Allstate offered complete coverage to the petitioner?

The accident took place in the State of California. In the State of **California The Covenant of Good Faith and Fair Dealing** is an implied obligation that assumes that the parties to a contract will act in good faith and deal fairly with one another without breaking their word. **CACI No. 325** states *“In every contract or agreement there is an implied promise of good faith and fair dealing. This implied promise means that each party will not*

do anything to unfairly interfere with the right of any other party to receive the benefits of the contract. Good faith means honesty of purpose without any intention to mislead or to take unfair advantage of another. Generally speaking, it means being faithful to one's duty or obligation. However, the implied promise of good faith and fair dealing cannot create obligations that are inconsistent with the terms of the contract." Allstate subtracted every month from the petitioner, authorized automatic payments for their dues. However, they lacked to their obliged responsibility. See App. XIX 1pg. (Authorized deductions)

Allstate failed to comply with the Good Faith and Fair Dealing contract §4:10 Sutherland v. Barclays American/Mortgage Corp., 53 Cal. App. 4th 299, 314, 61 Cal. Rptr. 2D 614 (1997, And to the California Code, Insurance Code - INS § 1758.992 (h)(1) overriding the 42 U.S.C 1983. (California CACI No 325).

In Jacob & Youngs, Inc. v. Kent, 230 N.Y. 239, 244, 129 N.E. 889, 891 (1921)
"The willful transgressor must accept the penalty of his transgression."

California Code INS 1758.992 (h) (1) "Guaranteed asset protection" (GAP) insurance means insurance in which a person agrees to indemnify a vehicle purchaser or lessee for some or all of the amount owed on the vehicle at the time of an unrecovered theft or total loss, after credit for money received from the purchaser's or lessee's physical damage insurer, pursuant to the terms of a loan, lease agreement, or conditional sales contract used to purchase or lease the vehicle. GAP insurance, whether sold by a credit insurance agent or another type of licensee authorized to sell GAP insurance, may also include a promise to pay up to five thousand dollars (\$5,000) to an insured, **in addition to the sum needed to indemnify the insured for the amount owed, to purchase or lease another vehicle.** The petitioner paid for a Deluxe Gap protection.

*Allstate negligence constitutes the creation of laws that are not Constitutional as the **14th Amendment** demands. "The existence of strict liability (CACI No. 1200) of this sort in negligence could, in a sense, be an embarrassment. It seems so easy to tell the injured party to consider the claim dismissed while not acting upon the law.*

In the State of California first party bad faith is recognized , which involves an insured's claims against their own insurance company. In this case. The petitioner, filing a lawsuit against Allstate is a correct act as the plaintiff is entitled by California Law to establish a bad faith claim . (**Waters v. United Servs. Auto Ass'n (1996) 41 Cal.App.4th 1063, 1069.**) Damages for insurance bad faith comprise contract damages, extra-contractual compensation, and sometimes punitive damages . "The damages awarded under a contract claim should place the injured party in the same position it would have held had the contract properly been performed, **Brandon & Tibbs (1990) 226 Cal. App.3d 442, 468.** In addition to contractual damages, extra contractual damages, including physical, mental, and emotional distress, attorney fees, and possibly punitive damages may be awarded. (**Silberg v. Calif. Life Ins. Co. (1974) 11 Cal.3d 452, 462.**

Strict Liability Law in California is a legal doctrine under which a defendant may be held liable for an injury even if the defendant was not negligent or at fault for causing the injury.

California law permits all consequential damages flowing from denial of policy benefits. "Because breach of the implied covenant is actionable as a tort, the measure of damages for tort actions applies, and the insurance company generally is liable for 'any damages which are the proximate result of that breach.'" (**PPG Indus., Inc. v. Transamerica Ins. Co. (1999) 20 Cal.4th 310, 315.**) This may include personal injury or wrongful death damages under the right circumstances.

With respect to punitive damages, it requires a showing through clear and convincing evidence of oppression, fraud, or malice. (**Civ. C. § 3294; Amerigraphics, Inc. v. Mercury Cas. Co. (2010) 182 Cal. App.4th 1538, 1558.**) The award may be partially dependent on the net worth of the defendant. All admitted insurance companies' financial statements are with the Department of Insurance and The net worth is listed. The award must compensate for the attorney's efforts to obtain those benefits. (**Cassim v. Allstate Ins. Co. (2004) 33 Cal.4th 780, 810.**)

Allstate has purposely affected the plaintiff through and above the breach of covenant. Discrimination seems a real fact. Allstate is responsible for

1. Wanton Willful Negligence
2. Recklessness or wanton conduct
3. Intentional misconduct
4. Strict liability (regardless of fault)
5. Deprivation of Civil Rights 42 U.S.C §1983
6. A.D.A 42 U.S.C. §§ 12101(Ms. Benson is a disable senior)
7. Discrimination based in gender, sex, color, perception of a person, etc.

Restatement Second of Contracts § 349 Damages Based on Reliance Interest "As an alternative to the measure of damages stated in [R2C § 347], the injured party has a right to damages based on his reliance interest, including expenditures made in preparation for performance or in performance, less any loss that the party in breach can prove with reasonable certainty the injured party would have suffered had the contract been performed.

Breach Of Contract - A. General Damages v. Special Damages Monetary damages for breach of contract are characterized either as general or special damages. See **Nobility Homes of Texas, Inc. v. Shivers, 557 S.W.2d 77, 78 n.1 (Tex. 1977)**. "General" or "direct" damages naturally and necessarily flow from a wrongful act and are

conclusively presumed to be a foreseeable consequence of a breach of contract or wrongful act. See **First Nat'l Bank of Hico v. English**, 240 S.W.2d 503, 507 (Tex. Civ. App.—Waco 1951). Direct damages are imposed by law whether within the contemplation of the parties or not. See **American Bank of Waco v. Thompson**, 660 S.W.2d 831, 834 (Tex. App.—Waco 1983, writ ref'd n.r.e.). "Special damages," on the other hand, are those "injurious consequences which are not deemed as a matter of law to have been foreseen, but which are shown as a matter of fact to have been contemplated or anticipated by the defendant." **English**, 240 S.W.2d at 507 (citation omitted). These damages are also referred to as "incidental" or "consequential" damages. **Restatement (Second) of Contracts § 347(b) (1981)**. Special damages cover losses other than the value of the breaching party's performance, which arise naturally, although not necessarily, from the other party's breach. **Stuart v. Bayless**, 964 S.W.2d 920, 921 (Tex. 1998).

B. Pleading Damages. The mere allegation of a breach or other wrongdoing in a plaintiff's petition is generally sufficient notice of general damages. **Sherrod v. Bailey**, 580 S.W.2d 24, 28 (Tex. Civ. App.—Houston [1st Dist.] 1979, writ ref'd n.r.e.) Defense counsels should be mindful of a petitioner's pleadings and should specially accept all prayers for damages.

After a complete repudiation of a contract, the non-breaching party may immediately maintain a suit for damages caused by the entire breach, including the present value that would have been received had the contract been fully performed. **Murray v. Crest Constr., Inc.**, 900 S.W.2d 342, 344 (Tex. 1995) (per curiam); **Hardin Assocs., Inc. v. Brummett**, 613 S.W.2d 4, 6 (Tex. Civ. App.—Texarkana 1980). **Turner**, 620 S.W.2d at 673-74

The United States Supreme Court has stated "A party, who acts in bad faith may be ordered to pay the attorneys' fees of the opposing party in **Roadway Express, Inc. v. Piper**, 447 U.S. 752, 765-767 (1980), Supreme Court .

REASONS FOR GRANTING THE PETITION

This Court should grant review of the Court of Appeals' decisions because the Appeals Court has clearly disregarded the usual course of judicial proceedings by establishing further bias after the district court negligence. The appeals court has ignored clear violations of the constitutional rights especially in those dealing with intrastate commerce, that could have set precedents in the judiciary system especially in a breach of contract where there is a hit and run accident evidenced by law enforcement.

The case is of public interest.

In **Wickard v. Filburn, 317 U.S. 111 (1942)** demonstrated the United States Supreme Court's willingness to give an unequivocally broad interpretation of the Commerce Clause.

In **Conway v. Country Casualty Ins. Co., 92 Ill.2d 388, 397-98, 442 N.E.2d 245, 249 (1982)**, The United States Supreme Court stated " This would include damages in excess of the policy limits as well if those damages were also approximately related to the breach. **Delatorre v. Safeway Ins. Co., 2013 IL App (1st) 120852, 989 N.E.2d 268 (2013).**

In **Nicholson v. United Pac. Ins., 710 P.2d 1342, 1348 (Mont. 1985)** the court distinguished intentional contract breaches motivated by self-interest which justify contract damages from other egregious acts that give rise to tort damages.

In the State of California punitive damages are awarded when there is proof of intentional bad acts. In the State of California The Covenant of Good Faith and Fair Dealing is an implied obligation that assumes that the parties to a

contract will act in good faith and deal fairly with one another without breaking their word. CACI No. 325. **California Code INS 1758.992 (h) (1)** *"Guaranteed asset protection" (GAP) insurance.*

The United States Supreme Court defined the Standard for Review "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. The finding in this case meets the standards. 1) There are district and appeals courts errors 2) the errors are clear and obvious 3) the errors affect substantial rights, and 4) the court's decisions seriously impair the fairness, integrity, or public reputation of the judicial proceeding. **United States v. Ríos-Hernández, 645 F.3d 456, 462 (1st Cir.2011).**

There is a negligent act by Allstate that is premeditated, willful and wanton conduct that has intended to further injure the petitioner, an actual or deliberate intention to increase the harm already caused by the hit and run driver, a harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of the petitioner and her property, contrary to the services offered and contracted by Allstate Insurance Company. **"Are You In Good Hands?"** is the slogan that Allstate announces to the public on TV everyday.

CONCLUSION

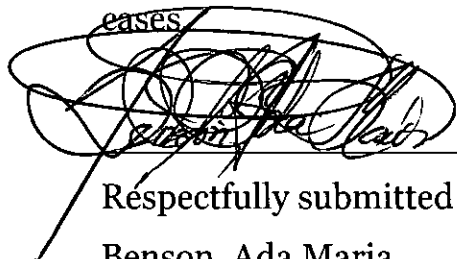
The trust and confidentiality placed by the petitioner in Allstate Insurance Company were broken. The statements represented by Jorge Casillas, Allstate worker are words acted as if under the color of law at the very moment that Allstate, Casillas wrote to plaintiff: **"If you believe this claim has been wrongfully denied or rejected, you may have the matter reviewed by the Department of Insurance, Consumer Services, 300 S. Spring Street, Los Angeles, CA 90013, or call them at 800-927-4357. Sincerely, CAS (Zok Jorge Casillas Claim Service Leader Allstate**

Northbrook Indemnity Company Phone: (951)278-5321 Fax: (951) 278-9110. It seems Allstate representatives believe that The California Department of Insurance should side with the Breach of Contract and consider a breach a legal act, **disregarding completely the evidence validated by the law enforcement Hit and Run report** and estimates for repairs provided all to the Allstate Hemet California branch repeatedly. **The undisputed evidence of the law enforcement report of the Hit and Run accident of June 21, 2009 cannot be disregarded.**

Just as in criminal and quasi-criminal cases, an impartial decision-maker is an essential right in civil proceedings as well. "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. . . . At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him."

This petition for a writ of certiorari should be held pending this Court's based in the U.S. Supreme Court decisions made under the protection of the 28 U.S.C. § 1292, under the protection of Rule 52(a) of the Rules of Civil and Criminal Procedure, under the **McCarran-Ferguson Act of 1945 (15 U.S.C. §§ 1011-1015), Conway v. Country Casualty Ins. Co., 92 Ill.2d 388, 397-98, 442 N.E.2d 245, 249 (1982)**, The United States Supreme Court stated and disposed of in accordance with the Court's decision in those

cases



Respectfully submitted

Benson, Ada Maria

Persona Propia

January 01, , 2021

Date