

THE STATE of SOUTH CAROLINA
In the Court of Appeals

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Aug 12 2024

SC Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court
Brian M. Gibbons, Circuit Court Judge
J. Mark Hayes, II, Circuit Court Judge

Appellate Case Nos. 2022-001312 and 2022-001390

Trial Court Case Nos. 2018CP1200117 and 2018CP1200074

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten is the Appellant,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Insurance Company, Interinsurance Exchange of the Automobile Co, John Ammendola, Trustgard Insurance Company, Blackwell, SC Department of Public Safety, Chevrolet, GMC, Unknown John Does, Respondents.

Of whom Kevin Carter is the Respondent.

APPELLANT'S TITLE II of the AMERICANS with DISABILITIES ACT ("ADA")
REASONABLE ACCOMMODATION REQUEST to ACCEPT as TIMELY FILED
APPELLANT'S SECOND AMENDED RETURN, RESPONSE. OBJECTION, and
OPPOSITION to RESPONDENT KEVIN CARTER'S MOTION TO DISMISS APPEAL OR,
IN THE ALTERNATIVE, MOTION TO REQUIRE APPELLANT TO PROMPTLY
CORRECT THE RECORD ON APPEAL and Exhibit A (RECORD on APPEAL)
[Sent in four (4) parts due to size of page volume]

Heidi Gersten, Appellant
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The Appellant Heidi Gersten (“GERSTEN”) in the above-captioned case, hereby moves this South Carolina Court of Appeals (“COURT”), pursuant of/to Title II of the Americans with Disabilities Act (“ADA”) Reasonable Accommodation Request, the Golden Rule, and Rules 240 and 263, SCACR, to accept as timely filed her second amended return, response, objection, and opposition and is seeking a DENIAL of the MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, MOTION TO REQUIRE APPELLANT TO PROMPTLY CORRECT THE RECORD ON APPEAL filed by the Respondent Kevin Carter, (“CARTER”).

The reasons for this motion are set forth in the attached memorandum in support.

Respectfully submitted this 12TH of August 2024,

/S/Heidi Gersten
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MEMORANDUM OF POINTS And AUTHORITIES in SUPPORT of APPELLANT’S TITLE
II of the AMERICANS with DISABILITIES ACT (“ADA”) REASONABLE
ACCOMMODATION REQUEST to ACCEPT as TIMELY FILED
APPELLANT’S SECOND AMENDED RETURN, RESPONSE. OBJECTION, and
OPPOSITION to RESPONDENT KEVIN CARTER’S MOTION TO DISMISS APPEAL
OR, IN THE ALTERNATIVE, MOTION TO REQUIRE APPELLANT TO PROMPTLY
CORRECT THE RECORD ON APPEAL

1. On June 12, 2024, “CARTER”, filed a MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, MOTION TO REQUIRE APPELLANT TO PROMPTLY CORRECT THE RECORD ON APPEAL, placing these previously “COURT” ordered consolidated case numbers 2022-001312 and 2022-001390 in abatement pending this “COURT’s” decision.

2. On July 17, 2024, this “COURT” granted “GERSTEN” an extension until July 25, 2024, to file a return to the said motion in item #1.

3. On July 25, 2024, “GERSTEN” did her best to comply with the said order of item #2.

4. On August 1, 2024, “GERSTEN” filed an amendment to said return along with an Americans with Disabilities Act Reasonable Accommodation Request to accept said filing as timely and it was made before the expiration of time for “CARTER” to file a reply and before “CARTER” filed a reply to said motion in item #1.

5. This second amended filing is made before the expiration of time for “CARTER” to file a reply to said amended filing.

6. This is “GERSTEN’s” good faith effort to comply.

7. “GERSTEN” is paralyzed disabled as a result of the collision in controversy in this matter which causes her to be substantially limited on one or more of her major life activities and she is now a qualified individual of and protected under the Americans with Disabilities Act (“ADA”). She has no caregiver, personal aid, or assistance to help her with daily functions. She lives under extreme hardship and extraordinary circumstances.

8. A “qualified individual with a disability” is defined as “an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” *United States v. Georgia*, 546 U.S. at 153– 54, 126 S.Ct. 877 (quoting 42 U.S.C. § 12131(2)).

9. Despite the previous, “GERSTEN” has been diligently working on perfecting her appeal as best as she can, while coping with secondary complications of paralysis, such as, an illness of multiple pressure wounds: one of which is located on her left buttocks that prevents her from sitting down for extended periods of time without further injury, in addition to others; as well as toes that have lost their nailbeds; coupled with managing bowels and incontinence issues that she has no control over. She experiences frequent diarrhea attacks, explosions, and accidents that include multiple unexpected bouts of urination throughout the day, as it takes “GERSTEN” between two to five hours or longer to perform the task of extracting at least one bowel movement daily and cleanup. Using the digital stimulation technique often leaves her fingers pruned and numb and causes her to feel exhausted following, as she often loses sensation in her hands afterwards. She changes her own diapers multiple times a day. It takes her approximately fifty-two (52) times longer to perform simple basic daily functions an abled body can do.

10. “GERSTEN’s” disability of being paralyzed renders her incapable of asserting her claims or defenses in a timely manner. Under South Carolina law, “GERSTEN” is a “vulnerable adult” defined, in part, as a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection.

11. . “GERSTEN” has spent much time on this instant appeal producing information which was voluminous, and required her to scan thousands of documents, research, redact personal data according to law, and type information into comprehensible and acceptable formats, which is challenging between lacking technological resources and a proper wheelchair to sit in and use, in addition to the litany of other previously stated misfortunes “GERSTEN” lives with, as she navigates through on her journey towards a single step, vindicating her rights in response to her victimization of paralysis and its secondary complications, including, but not limited to, her claims against Respondent Kevin Carter. “GERSTEN” is nearly finished with her return and response. During the completion of this filing, “GERSTEN” often became nauseated, vomited, and experienced stomach cramps and pains, indicating an urgency to empty her bowels immediately, though time restraints often left her with the choice to remain sitting in her own urine and feces in a good faith effort to comply, yet further caused her the requirement of more time to finish. Attached is “GERSTEN’s” Record on Appeal, as “Exhibit A” in four (4) parts pursuant to/of Order (b)(2) of the Supreme Court of South Carolina **2021-08-25-02**

RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules Appellate Case No. 2020-000447, as the pages were voluminous and the files too large to send in one (1) pdf. (Exhibit A)

12. In addition to “GERSTEN’s” health crisis, she has other court matters in other states with deadlines within proximity of this case here.

13. Public policy advocates for appeals to be tried on their merits and the appellate courts often grant extensions of time at various stages.

14. The Respondent Kevin Carter and other Respondents are not prejudiced.

15. This request to accept her second amended return, response, objection, and opposition

as timely filed are not made for the purposes of delay, rather in the interest and furtherance of justice and to prevent and avoid its miscarriage.

THEREFORE, having shown more than good cause; extraordinary circumstances, and for the previous reasons, the Appellant Heidi Gersten (“GERSTEN”) respectfully requests this “Court” to accept her amended return, response, objection, and opposition as timely filed and DENY the Respondent Carter’s Motion to Dismiss Appeal or, in the alternative, Motion to Require Appellant to Promptly Correct the Record on Appeal.

Respectfully submitted this 12th day of August 2024,

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PROOF OR CERTIFICATE OF SERVICE

I hereby certify that service of a true and accurate copy of the APPELLANT’S TITLE II of the AMERICANS with DISABILITIES ACT (“ADA”) REASONABLE ACCOMMODATION REQUEST to ACCEPT as TIMELY FILED APPELLANT’S SECOND AMENDED RETURN, RESPONSE. OBJECTION, and OPPOSITION to RESPONDENT KEVIN CARTER’S MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, MOTION TO REQUIRE APPELLANT TO PROMPTLY CORRECT THE RECORD ON APPEAL and Exhibit A (RECORD on APPEAL), PROOF or CERTIFICATE of SERVICE, and Cover Sheet in the above-captioned Appellate Case Nos. 2022-001312 and 2022-001390 was made upon all parties and counsel of record by email per court order on August 12, 2024:

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Respectfully submitted this 12th day of August 2024

/S/Heidi Gersten

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Exhibit A

Record on Appeal

Sent in four (4) parts due to volume of pages and size of files pursuant to/of Order (b)(2) of the Supreme Court of South Carolina **2021-08-25-02** RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules Appellate Case No. 2020-000447

THE STATE of SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas
John C. Hayes, III, Circuit Court
Judge Brian M. Gibbons, Circuit Court
Judge J. Mark Hayes, II, Circuit Court Judge

Case No. 2018-CP-12-00117
2028-AP-12-00074

Appellate Case Nos. 2022-001312 and 2022-001390

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten is Appellant,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Insurance Company, Interinsurance
Exchange of the Automobile Co, John Ammendola, Trustgard Insurance Company, Blackwell,
SC Department of Public Safety, Chevrolet, GMC, Unknown John Does, Defendants,

Of whom Kevin Carter is the Respondent.

RECORD ON APPEAL

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RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules Appellate Case No. 2020-000447)

COMPLETE RECORD ON APPEAL, PART 2 of 4

(Pursuant to/of Order (b)(2) of the Supreme Court of South Carolina **2021-08-25-02**

RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules Appellate Case No. 2020-000447)

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Certificate by Appellant

I certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material, pursuant to Rule 210(g) of the Appellate Court Rules.

Respectfully submitted,

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PROOF OR CERTIFICATE OF SERVICE

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Respectfully submitted this 12TH day of August 2024

_____/S/Heidi Gersten

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April 26, 2018

Order consolidating cases filed April 26, 2018

COUNTY OF Chester
IN THE COURT OF COMMON PLEAS

CASE NO. 2018CP1200117

Heidi Gersten et al
PLAINTIFF(S)

Kevin Carter et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This case shall be consolidated with case number 2018-CP-12-00074. These cases fall outside the scope of an arbitration and shall be placed on the Common Pleas docket for process.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/26/2018 .

Unknown John Does

GMC

Chevrolet

Blackwell

S C Department of Public Safety

John Ammendola

Interinsurance Exchange of the Automobile Club

Nationwide Insurance Company

Joseph Tirbovich

Daniel Hubbard

Ivanka Ayoub

Heidi Gersten for Heidi Gersten

Heidi Gersten for Heidi Gersten

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2018 Apr 26 4:14 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117



Chester Common Pleas

Case Caption: Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al

Case Number: 2018CP1200117

Type: Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

September 19, 2018

Order granting Defendants Kevin Carter's and Richard Davis' Motion to
Dismiss filed September 19, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel
Hubbard,

Plaintiff,

**ORDER GRANTING DEFENDANTS KEVIN
CARTER'S AND RICHARD DAVIS'
MOTION TO DISMISS**

vs.

Kevin Carter, Richard Davis, Joseph
Tribovich, Nationwide Insurance Company,
Interinsurance Exchange of the Automobile
Club, John Ammendola, Trustguard Insurance
Company, SC Department of Public Safety,
Chevrolet, GMC, Unknown John Does,

Defendants.

This matter comes before the Court upon Defendants Kevin Carter's and Richard Davis' Motion to Dismiss and Motion to Strike or, in the Alternative, Motion to Sever. The Court held a hearing on this Motion and a number of other motions on September 5, 2018. For the reasons set forth below, Defendants Carter's and Davis' Motion is granted in part and denied in part.

PROCEDURAL BACKGROUND

This action arises out of an automobile collision that took place on March 19, 2015 between a vehicle operated by Heidi Gersten and allegedly owned by Ivanka Ayoub and a vehicle operated and owned by Kevin Carter. Plaintiff Gersten originally filed a property damage arbitration claim on February 21, 2018 (hereinafter "Arbitration Action"). The claim named Kevin Carter, Richard Davis, Nationwide Mutual Insurance Company, Interinsurance of the Automobile Club, and Trustguard Insurance as defendants.

Gersten then created a “First Amended Claim for Property Damage Verified” (hereinafter “Amended Arbitration Complaint”) on or about March 2, 2018, however, she did not file the Amended Arbitration Complaint at that time. The Amended Arbitration Complaint added Gersten’s mother, Ivanka Ayoub, as a claimant and added Joseph Tirbovich and John Ammendola as additional defendants. Gersten and Ayoub never obtained an Amended Summons listing Ayoub as a claimant, and the Amended Arbitration Complaint was not filed until March 27, 2018.

On March 16, 2018, Gersten, Ayoub, and Daniel Hubbard filed the above-captioned case in Circuit Court purporting to seek recovery for injuries arising out of the same collision. In addition to the defendants named in the Amended Arbitration Complaint, the Plaintiffs named the South Carolina Department of Public Safety, Blackwell (*sic*), Chevrolet, GMC, and unknown John Doe defendants.

Kevin Carter, Richard Davis, and the other Defendants who have allegedly been served in the case filed motions to dismiss both cases.¹ Interinsurance Exchange sought to dismiss the Arbitration Action, in part, on the grounds that the arbitration panel lacked jurisdiction over some of the claims asserted in the Arbitration Action. On April 26, 2018, Judge Gibbons, acting as the Chief Administrative Judge for Chester County Circuit Court, entered an Order finding the claims asserted in the Arbitration Action were outside the scope of arbitration. Therefore, he transferred the Arbitration Action to the Common Pleas docket and consolidated the case with the Circuit Court action. (April 26, 2018 Form 4 Order). Because the cases have been consolidated, this Order will address the allegations set forth in the Circuit Court Complaint. However, the Court

¹ The Court has no record of Blackwell, GMC, Chevrolet or any John Doe defendants being served. Furthermore, John Ammendola and Joseph Tirbovich deny that they have been served.

has reviewed all three Complaints, and the Court's ruling would be the same regardless of which pleading(s) were in effect.

This case was set for a hearing on the various pending motions for September 5, 2018. The case was also placed on the non-jury roster for a merits hearing for the same week. Plaintiff Heidi Gersten filed a motion for continuance. At the hearing, the defendants all consented to continuing the merits hearing of the case, but they requested that the motions be heard. Gersten consented to the Court proceeding with hearing the various motions.

LAW

Carter and Davis' Motion to Dismiss seeks the following relief:

- a) Dismissal of all claims asserted against Richard Davis;
- b) Dismissal of Daniel Hubbard's claims;
- c) Dismissal of Ivanka Ayoub's claims; and
- d) Dismissal of all causes of action asserted by Heidi Gersten with the exception of the negligence cause of action.²

The Court will address each item in turn.

A. All Causes of Action as to Defendant Richard Davis.

The Complaint only references Richard Davis in one paragraph, stating "The Defendants Kevin Carter and Richard Davis reside in Iredell County, North Carolina." (Compl. ¶ 2). The Complaint does not allege Richard Davis was involved in the automobile collision. Pursuant to Rule 12(b)(6), SCRCPP, a Complaint should be dismissed if it fails "to state facts sufficient to

² Carter and Davis also sought dismissal of the co-defendants. However, the co-defendants each moved on their own behalf for dismissal. Those motions were also heard at the September 5, 2018 hearing, and the Court will grant each of those motions in separate orders.

constitute a cause of action.” Rule 12(b)(6), SCRCP. The Complaint alleges no factual allegations against Defendant Richard Davis.³

Moreover, Richard Davis is a citizen and resident of the State of North Carolina. The Complaint does not allege any actions that Richard Davis took in this State. Therefore, this Court lacks personal jurisdiction over Richard Davis pursuant to Rule 12(b)(2), SCRCP. For both of these reasons, the claims against Richard Davis are dismissed.

B. Daniel Hubbard’s claims.

Kevin Carter and Richard Davis moved to dismiss Daniel Hubbard’s claims on the ground that South Carolina does not recognize a cause of action for loss of a sibling’s consortium. However, Daniel Hubbard did not appear for the hearing on the Motion to Dismiss. Therefore, his claims are dismissed for failure to prosecute pursuant to Rule 41(b), SCRCP.⁴

C. Ivanka Ayoub’s claims.

Plaintiff Ayoub appears to have asserted a property damage claim in the Amended Arbitration Complaint and a cause of action for loss of consortium in the Circuit Court Complaint. Ayoub is Gersten’s mother. The Circuit Court Complaint does not allege Ayoub was personally

³ The Arbitration Action Complaint alleges Davis co-owned the vehicle operated by Carter. Even if that were true, co-ownership of a vehicle does not support a cause of action. *See Fletcher v. Anderson*, 27 Kan. App. 2d 276, 3 P. 3d 558, 567-68 (2000) (because “no action for negligent entrustment can occur where the person entrusting the vehicle lacked a superior or exclusive right of control over the vehicle,” a nonowner is not liable for returning car to owner); *McGlothlin v. Municipality of Anchorage*, 991 P.2d 1273, 1280 (Alaska 1999) (“doctrine of negligent entrustment requires that the defendant have a greater right of possession or control of the chattel than the person to whom he entrusts it”); *De Blanc ex rel. De Blanc v. Jensen*, 59 S.W.3d 373 (Tex. Ct. App. 2001) (“In order for the [Defendant] to be liable under a theory of negligent entrustment, we would have to conclude that it is negligent for a nonowner to return control of a vehicle to its owner. We decline to so hold.”).

⁴ Even if Hubbard had appeared at the hearing, his claim would nonetheless fail for the reasons set out in Part C. below.

involved in the accident, but it does allege she “suffered, among other things, loss of consortium.” (Compl. ¶ 103).

Our Supreme Court has refused to recognize a cause of action in tort for filial loss of consortium. *See Doe v. Greenville County School Dist.*, 375 S.C. 63, 70, 651 S.E.2d 305, 308 (2007) (“Accordingly, in the absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.”).⁵ While South Carolina does recognize loss of spousal consortium, that cause of action was expressly recognized by the South Carolina General Assembly. *See* S.C. Code Ann. § 15-75-20. Our Supreme Court has held the absence of a similar statutory cause of action for filial loss of consortium indicates the General Assembly did not intend to recognize such causes of action. *See Greenville County School Dist.*, 375 S.C. at 69, 651 S.E.2d at 308.

Because South Carolina does not recognize claims for loss of filial consortium, the causes of action asserted by Ayoub in the Circuit Court Complaint must be dismissed.

Carter and Davis also seek to dismiss the property damage claim asserted by Ayoub in the Arbitration Action on Rule 12(b)(8) grounds. Because the Arbitration Action has been consolidated with the Circuit Court action, the Court finds that motion is now moot. At the hearing, Carter and Davis also raised the statute of limitations as an additional ground for dismissal of the property damage claim. The Court finds that a ruling on the statute of limitations issue is premature at this time, but Defendant Carter may file a separate motion on that issue in the future.

⁵ *See also Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996) (declining to recognize loss of filial consortium claim of child relating to injury to parent); *Kirkland v. Sam’s East, Inc.*, 411 F. Supp. 2d 639, 641 (D.S.C. 2005) (“South Carolina does not recognize a cause of action for filial loss of consortium”).

D. All Other Causes of Action asserted by Gersten with the Exception of Negligence.

The Complaint lists eighteen separate causes of action. With the exception of the negligence claim, these causes of action merely allege the legal elements of various other causes of action, and several of these causes of action fail to even allege the basic legal elements. Rule 8(a) of the South Carolina Rules of Civil Procedure states that a pleading setting forth a cause of action “shall contain . . . a short and plain statement of the facts showing the pleader is entitled to relief.” Rule 8(a), SCRPC. In reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court’s analysis is limited solely to the Complaint itself, and no other documents may be considered. *See Woodell by Allen v. Marion School Dist. One*, 307 S.C. 297, 298, 414 S.E.2d 794, 794 (Ct. App. 1992). Moreover, a “trial court must dismiss a claim pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, if the pleadings, when taken in the light most favorable to the plaintiff, fail to allege sufficient facts to constitute a cause of action.” *Trancik v. USAA Ins. Co.*, 354 S.C. 549, 552, 581 S.E.2d 858, 860 (Ct. App. 2003).

Plaintiff must allege facts supporting each element of the causes of action asserted in the Complaint. She has failed to do so. Defendant Carter concedes the Complaint alleges sufficient facts to create a cause of action for negligence between Plaintiff Heidi Gersten and Defendant Kevin Carter. However, the Complaint alleges no facts that would support the other causes of action enumerated in the Complaint. Therefore, all causes of action with the exception of Gersten’s negligence claim will be dismissed pursuant to Rule 12(b)(6).

E. Carter and Davis’ other motions.

Carter and Davis also moved to dismiss the claims asserted against the various co-defendants or, in the alternative, to sever the causes asserted against those defendants. As noted above, the Court is granting the motions to dismiss the co-defendants via separate orders.

Therefore, Carter and Davis' motion to dismiss the co-defendants or, in the alternative, to sever is denied as moot.

In addition to moving to dismiss various claims asserted in the Complaint, Carter and Davis also moved to strike a number of paragraphs in the Complaints. Shortly before the hearing on the Defendants' various motions, Gersten apparently served an Amended Complaint on some of the defendants in the Circuit Court action. Counsel for Carter agreed at the hearing on this Motion that the Motion to Strike would need to be addressed after the Amended Complaint has been filed. Therefore, Carter's Motion to Strike is denied without prejudice and with leave to refile.

CONCLUSION

For the above-stated reasons, the Court finds Defendants Kevin Carter's and Richard Davis' Motions should be granted in part and denied in part. It is ORDERED, ADJUDGED, and DECREED that:

- 1) All causes of action asserted against Richard Davis are dismissed pursuant to Rule 12(b)(6), SCRCP.
- 2) The causes of action asserted by Daniel Hubbard are dismissed pursuant to Rule 41(b), SCRCP for failure to prosecute.
- 3) Ivanka Ayoub's loss of consortium claim is dismissed pursuant to Rule 12(b)(6), SCRCP because South Carolina does not recognize a claim for filial loss of consortium.
- 4) All of the remaining causes of action against Kevin Carter with the exception of Heidi Gersten's negligence cause of action for personal injuries and property damage and Ivanka Ayoub's negligence cause of action for property damage are dismissed pursuant to Rule 12(b)(6), SCRCP.
- 5) Carter's Motion to Dismiss the property damage claim by Ivanka Ayoub is denied, but Carter may file a separate motion based on his statute of limitations argument at a later time.
- 6) Carter's Motion to Sever is denied as moot.
- 7) Carter's Motion to Strike is denied without prejudice and with leave to refile in light of the recently-served Amended Complaint.

8) Carter's and Davis' Motion to Dismiss pursuant to 12(b)(8) is denied as moot.

It is so **ORDERED**.

John C. Hayes, III
Circuit Court Judge



Chester Common Pleas

Case Caption: Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al

Case Number: 2018CP1200117

Type: Order/Other

So Ordered

s/John C. Hayes III 2049

September 19, 2018

Order granting Defendant Interinsurance Exchange of the Automobile Club's Motion to Dismiss
filed September 19, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel
Hubbard,

CIVIL ACTION NO: 2018-CP-12-00074

Plaintiffs,

**ORDER GRANTING DEFENDANT
INTERINSURANCE EXCHANGE OF
THE AUTOMOBILE CLUB'S
MOTION TO DISMISS**

vs.

Kevin Carter, Richard Davis, Joseph
Tirbovich, Nationwide Insurance Company,
Interinsurance Exchange of the Automobile
Club, John Ammendola, Trustguard Ins. Co.,
Blackwell, SC Department of Public Safety,
Chevrolet, GMC, Unknown John Does,

Defendants.

This matter comes before the Court upon Defendant Interinsurance Exchange of the Automobile Club's ("AAA") Motions to Dismiss, to Strike, and to change venue. The Court held a hearing on its and the other Defendants' motions on September 5, 2018. All served Defendant's appeared by and through their attorneys and Plaintiffs Gersten and Ayoub appeared *pro se*; Plaintiff Hubbard did not appear. For the reasons set forth below, Defendant AAA's principal motions are granted.

PROCEDURAL BACKGROUND

This action arises out of an automobile collision that took place on March 19, 2015 between Ivanka Ayoub's vehicle operated by Heidi Gersten, and a vehicle both operated and owned by Kevin Carter. Plaintiff Gersten originally filed a property damage arbitration claim on February 21, 2018 (hereinafter "Arbitration Action"). The claim named Kevin Carter, Richard

Davis, Nationwide Mutual Insurance Company, Interinsurance of the Automobile Club, and Trustguard Insurance as defendants.

Gersten then created a “First Amended Claim for Property Damage Verified” (hereinafter “Amended Arbitration Complaint”) on or about March 2, 2018, however, she did not then file the Amended Arbitration Complaint. The Trided Arbitration Complaint added Gersten’s mother, Ivanka Ayoub, as a claimant and added Joseph Tirbovich and John Ammendola as additional defendants. Gersten and Ayoub never obtained an Amended Summons listing Ayoub as a claimant, and the Amended Arbitration Complaint was not filed until March 27, 2018.

On March 16, 2018, Gersten, Ayoub, and Daniel Hubbard filed the above-captioned case in this court seeking recovery for injuries arising out of the collision. In addition to the defendants named in the Amended Arbitration Complaint, the Plaintiffs named the South Carolina Department of Public Safety, Blackwell (*sic*), Chevrolet, GMC, and unknown John Doe defendants.

Kevin Carter, Richard Davis, and the other Defendants who have allegedly been served in the case filed motions to dismiss both cases.¹ AAA sought to dismiss the Arbitration Action, in part, claiming the arbitration panel lacked jurisdiction over some of the claims asserted in the Arbitration Action. On April 26, 2018, Judge Gibbons, acting as the Chief Administrative Judge for Chester County Circuit Court, entered an Order finding the claims asserted in the Arbitration Action were outside the scope of arbitration. He transferred the Arbitration Action to the Common Pleas docket and consolidated the case with the Circuit Court action. (April 26, 2018 Form 4 Order). Because the cases have been consolidated, this Order will address the allegations

¹ The Court has no record of Blackwell, GMC, Chevrolet or any John Doe defendants being served. Furthermore, John Ammendola and Joseph Tirbovich deny that they have been served.

set forth in the Circuit Court Complaint. However, the Court has reviewed all three Complaints, and the Court's ruling would be the same regardless which pleading(s) were in effect.

This case was set for hearing on the various pending motions for September 5, 2018. The case was also placed on the non-jury roster for a merits hearing for the same week. Plaintiff Heidi Gersten filed a motion for continuance. At the hearing, all defendants consented to continuing the merits hearing of the case but requested that the motions be heard. Gersten and Ayoub consented to proceeding with hearing the various motions.

LAW

AAA's Motion to Dismiss seeks the following relief:

- a) Dismissal of all claims asserted against it for failing to state facts constituting a cause of action,
- b) Dismissal for a lack of standing to pursue the claim asserted claims,
- c) Dismissal of Daniel Hubbard's claims,
- d) Dismissal of Ivanka Ayoub's claims,
- e) That certain specified allegations be stricken,
- f) Dismissal for lack of *in personam* jurisdiction, and a
- g) Change of Venue

The Court will address each item in turn.

A. All Causes of Action

The Complaint numbers eighteen separate causes of action. Except for the negligence claim, these causes of action merely allege the legal elements of various other causes of action, and some fail to even allege the basic legal elements.

Exactly four *facts* in its almost five score paragraphs are germane to AAA:

- At Paragraph 6, that AAA is a North Carolina Company,

- At 10, the collision occurred in Chester County,
- At 14, the date and time of the accident, and
- At 18, Gersten was insured for liability by AAA.

Rule 8(a) SCRCF states that a pleading setting forth a cause of action “shall contain . . . a short and plain statement of the facts showing the pleader is entitled to relief.” Rule 8(a), SCRCF. In reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court’s analysis is limited solely to the Complaint itself, and no other documents may be considered. *See Woodell by Allen v. Marion School Dist. One*, 307 S.C. 297, 298, 414 S.E.2d 794, 794 (Ct. App. 1992). Moreover, a “trial court must dismiss a claim pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, if the pleadings, when taken in the light most favorable to the plaintiff, fail to allege sufficient facts to constitute a cause of action.” *Trancik v. USAA Ins. Co.*, 354 S.C. 549, 552, 581 S.E.2d 858, 860 (Ct. App. 2003).

These facts do not constitute any cause of action against AAA. They do not specify any acts of negligence, nor describe the essential allegations of fraud, nor any false statement, nor any deceitful act, nor any conduct at all entitling the Plaintiffs to relief of any kind. The facts simply do not constitute a cause of action against AAA, so the Complaint against it must be **dismissed**.

B. Standing

The Plaintiffs argue they have asserted a cause of action against AAA. To the extent they seek to assert third-party claims against such a liability insurer, they lack standing to do so. *Kleckley v. Northwestern Nat. Cas. Co.*, 526 S.E.2d 218, 219 (S.C. 2000). In *Kleckley*, the Supreme Court held that third-party claimants have no standing to pursue a cause of action

against a liability insurer. Alternatively, even if the court were to have held that facts constituting a cause of action had been stated and that one or more of the Plaintiffs could continue its suit against the AAA, that suit would have been severed from the negligence claim. Allowing the two causes of action to go forward together would present a honey pot of potential prejudice and inefficiency which this court would avoid. **SCRCP, Rules 20 and 21.**

C. Daniel Hubbard's claims.

AAA moved to dismiss Daniel Hubbard's claims because South Carolina does not recognize a cause of action for loss of a sibling's *consortium*. The attorney for AAA exhibited to the court a letter mailing notice of this hearing to Hubbard with notice to him that it intended to move for a dismissal if he did not appear.

Daniel Hubbard did not appear for the hearing on the Motion to Dismiss. Therefore, his claims are **dismissed** for failure to prosecute pursuant to Rule 41(b), SCRCP.²

D. *Consortium* claims.

Only Plaintiff Gersten claims to be an insured of the AAA. Ayoub and Hubbard are total strangers to the AAA, the AAA was not involved in the accident, and the only complaint they make are for maternal or filial loss of *consortium*, respectively. Plaintiff Ayoub, the mother of Plaintiff Gersten, was not involved in the accident but the Complaint alleges that she "suffers, among other things, loss of consortium." Plaintiff Hubbard, Gersten's brother, alleges he "was unable to work for a period and, accordingly, loss (*sic*) wages... ." He was not involved in the accident.

² Even had Hubbard appeared at the hearing, his claim would fail for the reasons set out below.

Our Supreme Court has refused to recognize a cause of action for maternal or filial loss of *consortium*. South Carolina does recognize loss of spousal *consortium*, but that cause of action was expressly created: **SC Code Ann. 15-75-20**. The Supreme Court has held that the absence of a similar statutory cause of action for other loss of *consortia* is persuasive evidence that the General Assembly did not intend to recognize any such causes of action.

In *Taylor v. Medenica*, this Court held that the determination of which relationships may give rise to a loss of consortium claim in South Carolina is one best left to the discretion of the legislature. 479 S.E.2d 35, 47 (S.C. 1996) (declining to recognize a cause of action for loss of parental consortium). The United States District Court for the District of South Carolina adopted the *Taylor* analysis in finding that South Carolina law did not provide a cause of action for loss of consortium of a child or for filial consortium. *Kirkland v. Sam's East, Inc.*, 411 F.Supp. 2d 639, 641 (D.S.C. 2005). Today, we extend our *Taylor* analysis in holding that South Carolina law does not recognize claims for loss of filial consortium. Such rights did not exist under the common law, and the legislature has not provided such a right by statute.

Doe v. Greenville Cty. School District 651 S.E.2d 305, 308 (S.C. 2007)

The claims by Ayoub and Hubbard are hereby **dismissed**.

E. In Personam Jurisdiction

The Affidavit of Gail C. Louis, the Secretary of AAA, makes it clear that AAA does not have minimum contacts with South Carolina. Indeed, it has no contacts with South Carolina: no office, no business conducted, no insureds, no property, and no activity. Neither does the Complaint allege that AAA committed a tort within this state. Thus, the Complaint against AAA is **dismissed** because this court lacks personal jurisdiction.

F. Striking Allegations

In view of the other rulings made herein, this court need not reach, so it does not address the AAA motions made to strike various allegations. Such motions are thereby **moot**.

G. Change of Venue

Similarly this court need not reach, so it does not address, the AAA motion made to change the venue of the trial as it is also **moot**.

H. All Other Causes of Action asserted by Gersten

The existence of insurance is inadmissible in a tort suit. **Rule 411 SCRE**. Such mentions are highly prejudicial and there can be no doubt that reason and authority expressly forbid bringing into evidence or argument the fact that any defendant is protected by liability insurance. *Hartford v. Carolina Glass Co.*, 75 S.E.2d 533, 541 (S.C. 1912); *Landry v. Hilton Head Plantation Prop. Owners Ass'n, Inc.*, 452 S.E.2d 619, 622 (S.C. App. 1994); *Norris v. Ferre*, 432 S.E.2d 491, 493 (S.C. App. 1993) ("Furthermore, the Supreme Court has been meticulous in keeping the issue of insurance coverage away from the jury"). Since the existence of insurance is inadmissible, AAA must be stricken as a defendant and all allegations against it, to the extent there were any surviving, would have been stricken.

CONCLUSION

For the above-stated reasons, the Court finds AAA's Motions are granted in part and mooted in part. It is ORDERED, ADJUDGED, and DECREED that:

- 1) All causes of action asserted against AAA are dismissed pursuant to Rule 12(b)(6), SCRCP.
- 2) All causes of action asserted against AAA are dismissed for lack of personal jurisdiction by this court,
- 3) The causes of action asserted by Daniel Hubbard are dismissed pursuant to Rule 41(b), SCRCP for failure to prosecute.
- 4) Ivanka Ayoub's & Danial Hubbard's loss of consortium claims are dismissed pursuant to Rule 12(b)(6), SCRCP because South Carolina does not recognize a claim for filial or maternal loss of *consortium*.
- 5) All causes of action against AAA are dismissed because it would not be permissible to try them with the claims against the negligence Defendants.
- 6) AAA's Motions to Strike are denied as moot.
- 7) AAA's Motion to Change Venue is denied as moot.

It is so **ORDERED**.

John C. Hayes, III
Circuit Court Judge

_____, SC

_____, 2018



Chester Common Pleas

Case Caption: Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al

Case Number: 2018CP1200117

Type: Order/Dismissal

So Ordered

s/John C. Hayes III 2049

Order granting Defendants South Carolina Department of Public Safety's and Trooper Herbert Blackwell's Motion to Dismiss filed September 21, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	)	
	)	
	)	
Heidi Gersten, Ivanka Ayoub, Daniel	)	
Hubbard,	)	Civil Action No. 18-CP-12-117
	)	
Plaintiffs,	)	ORDER
	)	
v.	)	
	)	
Kevin Carter, Richard Davis, Joseph	)	
Tirbovich, Nationwide Insurance	)	
Company, Interinsurance Exchange of the	)	
Automobile Club, John Ammendola,	)	
Trustguard Insurance Company, South	)	
Carolina Department of Public Safety,	)	
Blackwell, Chevrolet, GMC, Unknown	)	
John Does,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court on a Motion to Dismiss filed by the South Carolina Department of Public Safety and Trooper Herbert Blackwell. Present at the hearing was Heidi Gersten and Ivanka Ayoub (mother of Ms. Gersten). Daniel Hubbard was not present at the hearing.

After hearing argument from the attorney for the Defendants South Carolina Department of Public Safety and Trooper Herbert Blackwell, and hearing the Plaintiffs' positions, the Court hereby grants South Carolina Department of Public Safety and Trooper Herbert Blackwell's Motion to Dismiss.

The Defendants South Carolina Department of Public Safety and Trooper Herbert Blackwell have moved to dismiss the Complaint on various grounds and between the time the Defendants South Carolina Department of Public Safety and Trooper Herbert Blackwell moved

to dismiss the Complaint, Plaintiffs' filed an Amended Complaint. In regard to these Defendants, South Carolina Department of Public Safety and Trooper Herbert Blackwell, the Amended Complaint was filed timely; however, as was explained by the attorney for Defendants South Carolina Department of Public Safety and Trooper Herbert Blackwell, the motion to dismiss is applicable not only to the original Complaint, but also the Amended Complaint. From a review of both the Complaint and Amended Complaint, it appears that the Plaintiffs are alleging that there were some irregularities in the investigation and preparation of the accident report surrounding the accident involving the Plaintiffs and Kevin Carter on March 19, 2015.

The Defendants South Carolina Department of Public Safety and Trooper Herbert Blackwell have moved to dismiss Trooper Blackwell from the Complaint pursuant to the South Carolina Tort Claims Act, §15-78-30.

The Court finds that Trooper Blackwell was acting as a South Carolina Department of Public Safety Officer in regard to his investigation of the accident involving the Plaintiffs and Kevin Carter. For this reason, Trooper Blackwell is dismissed from this case. See §15-78-30, of the Code of Laws of the State of South Carolina, 1976 as amended.

As to the remaining grounds raised by Defendants South Carolina Department of Public Safety and Trooper Herbert Blackwell, it is clear from allegations in the Complaints, that the Plaintiffs have alleged that the South Carolina Department of Public Safety through Trooper Blackwell issued a Traffic Accident Report which was later amended by the South Carolina Multi-Disciplinary Accident Reconstruction Team (MAIT).

From a review of the Complaint and Amended Complaint, Plaintiffs have failed to establish any private right of action against the Defendant South Carolina Department of Public Safety for "an improper investigation". Generally, there is no common law duty to act; however,

an affirmative legal duty may arise by statute, contractual relationship, status, property interest, or some other special circumstance. *See, Rayfield v. South Carolina Dep't of Corrections*, 297 S.C. 95, 105-06, 374 S.E.2d 910, 916 (Ct. App. 1998); *see also, Jensen v. Anderson Cnty. Dep't of Soc. Servs.*, 304 S.C. 195, 199 403 S.E.2d 615, 617 (1991). While a duty may arise by virtue of statutory law, courts in South Carolina recognize what is known as the “public duty” rule. *Rayfield*, 297 S.C. 95, 104, 374 S.E.2d 910, 915; *see also, Parker v. Brown*, 195 S.C. 35, 10 S.E.2d 625 (1940) (Supreme Court adopting the public duty rule as the law in South Carolina). A statute establishing the specific “duties of a public office does not, without more, impose on the person holding that office a duty of care towards individual members of the public in the performance of those duties.” *Rayfield*, 297 S.C. 95, 105, 374 S.E.2d at 915-16; *see also, Jensen v. Anderson Cnty. Dep't of Soc. Servs.*, 304 S.C. 195, 403 S.E.2d 615 (1991) (Under the rule, public officials are not liable to individuals in negligence as a result of discharging duties as owed to the public at large rather than to anyone individually). In this case the Department, through its officers, are required to investigate and report on motor vehicle accidents involving serious injuries. See, South Carolina Code Ann. §56-5-1270, 1976 as amended. For this reason any duty imposed on these Defendants would be a public duty and not give rise to a private right of action.

Further any injuries received by the Plaintiffs arose out of the automobile accident and are not the proximate cause of any action undertaken by the South Carolina Department of Public Safety in the investigation of the accident and the issuance of the Uniform Traffic Report in this matter.

Finally, any claims that the Uniform Traffic Report could or would be evidence in this case fails to recognize that under §56-5-1290, accident reports are not evidence to establish due or lack of due care.

For these reasons, the Complaints (original and amended) failed to set forth a viable private right of action against Defendant South Carolina Department of Public Safety and therefore the Complaints are dismissed with prejudice.

IT IS THEREFORE ORDERED, that the action brought by the Plaintiffs is dismissed with prejudice.

IT IS FURTHER ORDERED, that the action brought by Michael Hubbard is dismissed as a result of the Plaintiff failing to appear at the hearing and therefore failed to prosecute the claim.

AND IT IS SO ORDERED.

The Honorable J.C. Hayes

SEPTEMBER __, 2018

CHESTER, SOUTH CAROLINA



Chester Common Pleas

Case Caption: Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al

Case Number: 2018CP1200117

Type: Order/Dismissal

So Ordered

s/John C. Hayes III 2049

Order granting Defendants Nationwide Insurance Company's and Joseph Turbovich's Motion to Dismiss filed September 21, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel
Hubbard,

Plaintiff,

**ORDER GRANTING DEFENDANTS
NATIONWIDE INSURANCE COMPANY'S
AND JOSEPH TURBOVICH'S MOTION TO
DISMISS**

vs.

Kevin Carter, Richard Davis, Joseph
Tirbovich, Nationwide Insurance Company,
Interinsurance Exchange of the Automobile
Club, John Ammendola, Trustguard Insurance
Company, SC Department of Public Safety,
Chevrolet, GMC, Unknown John Does,

Defendants.

This matter comes before the Court upon Defendants Nationwide Mutual Insurance Company's ("Nationwide") and Joseph Tirbovich's ("Tirbovich") Motions to Dismiss. The Court held a hearing on these Motions and a number of other motions on September 5, 2018. For the reasons set forth below, Defendants Nationwide Mutual Insurance Company and Joseph Tirbovich's Motions are granted.

PROCEDURAL BACKGROUND

This action arises out of an automobile collision that took place on March 19, 2015 between a vehicle operated by Heidi Gersten and allegedly owned by Ivanka Ayoub and a vehicle operated and owned by Kevin Carter. Plaintiff Gersten originally filed a property damage arbitration claim on February 21, 2018 (hereinafter "Arbitration Action"). The claim

named Kevin Carter, Richard Davis, Nationwide Mutual Insurance Company, Interinsurance of the Automobile Club, and Trustguard Insurance as defendants.

Gersten then created a “First Amended Claim for Property Damage Verified” (hereinafter “Amended Arbitration Complaint”) on or about March 2, 2018, however, she did not file the Amended Arbitration Complaint at that time. The Amended Arbitration Complaint added Gersten’s mother, Ivanka Ayoub, as a claimant and added Joseph Tirbovich and John Ammendola as additional defendants. Gersten and Ayoub never obtained an Amended Summons listing Ayoub as a claimant, and the Amended Arbitration Complaint was not filed until March 27, 2018.

On March 16, 2018, Gersten, Ayoub, and Daniel Hubbard filed the above-captioned case in Circuit Court purporting to seek recovery for injuries arising out of the same collision. In addition to the defendants named in the Amended Arbitration Complaint, the Plaintiffs named the South Carolina Department of Public Safety, Blackwell (*sic*), Chevrolet, GMC, and unknown John Doe defendants.

Kevin Carter, Richard Davis, and the other Defendants who have allegedly been served in the case filed motions to dismiss both cases.¹ Interinsurance Exchange sought to dismiss the Arbitration Action, in part, on the grounds that the arbitration panel lacked jurisdiction over some of the claims asserted in the Arbitration Action. On April 26, 2018, Judge Gibbons, acting as the Chief Administrative Judge for Chester County Circuit Court, entered an Order finding the claims asserted in the Arbitration Action were outside the scope of arbitration. Therefore, he transferred the Arbitration Action to the Common Pleas docket and consolidated the case with the Circuit Court action. (April 26, 2018 Form 4 Order). Because the cases have been

¹ The Court has no record of Blackwell, GMC, Chevrolet or any John Doe defendants being served. Furthermore, John Ammendola and Joseph Tirbovich deny that they have been served.

consolidated, this Order will address the allegations set forth in the Circuit Court Complaint. However, the Court has reviewed all three Complaints, and the Court's ruling would be the same regardless of which pleading(s) were in effect.

This case was set for a hearing on the various pending motions for September 5, 2018. The case was also placed on the non-jury roster for a merits hearing for the same week. Plaintiff Heidi Gersten filed a motion for continuance. At the hearing, the defendants all consented to continuing the merits hearing of the case, but they requested that the motions be heard. Gersten consented to the Court proceeding with hearing the various motions.

LAW

Nationwide's and Tirbovich's Motion to Dismiss seeks dismissal of all claims asserted against Nationwide and Tirbovich on the following grounds:

- a) Dismissal of all causes of action for failure to state facts sufficient to constitute a cause of action;
- b) Dismissal of all causes of action due to lack of standing;
- c) Dismissal of Daniel Hubbard's claims;
- d) Dismissal of Ivanka Ayoub's claims;
- e) Dismissal of all claims against Joseph Tirbovich for failure to properly serve the Summons and Complaint;

The Court will address each of these grounds in turn.

A. All Causes of Action as to Defendants Nationwide and Tirbovich.

The Complaint only references Joseph Tirbovich in the caption and is not mentioned anywhere else in the Complaint. Nationwide is only mentioned in one paragraph, stating "The Defendant Nationwide Mutual Insurance Company is a company maintaining and operating and

doing business in the State of North Carolina.” (Compl. ¶ 5). Pursuant to Rule 12(b)(6), SCRCPP, a Complaint should be dismissed if it fails “to state facts sufficient to constitute a cause of action.” Rule 12(b)(6), SCRCPP. The Complaint alleges no factual allegations against Defendants Nationwide and Tirbovich.

B. Dismissal Due to Lack of Standing

The Plaintiffs argue they have asserted a cause of action against Nationwide and Tirbovich. To the extent they seek to assert third-party claims against such a liability insurer, they lack standing to do so. *Kleckley v. Northwestern Nat. Cas. Co.*, 526 S.E.2d 218, 219 (S.C. 2000). In *Kleckley*, the Supreme Court held that third-party claimants have no standing to pursue a cause of action against a liability insurer. Thus, Plaintiffs do not have standing to assert any claims against Nationwide or its adjuster, Tirbovich in either the Civil Action Complaint or the Arbitration Action.

C. Daniel Hubbard’s claims.

Nationwide and Tirbovich moved to dismiss Daniel Hubbard’s claims on the ground that South Carolina does not recognize a cause of action for loss of a sibling’s consortium. However, Daniel Hubbard did not appear for the hearing on the Motions to Dismiss. Therefore, his claims are dismissed for failure to prosecute pursuant to Rule 41(b), SCRCPP.²

D. Ivanka Ayoub’s claims.

Plaintiff Ayoub appears to have asserted a property damage claim in the Amended Arbitration Complaint and a cause of action for loss of consortium in the Circuit Court Complaint. Ayoub is Gersten’s mother. The Circuit Court Complaint does not allege Ayoub

² Even if Hubbard had appeared at the hearing, his claim would nonetheless fail for the reasons set out in Part D.

was personally involved in the accident, but it does allege she “suffered, among other things, loss of consortium.” (Compl. ¶ 103).

Our Supreme Court has refused to recognize a cause of action in tort for filial loss of consortium. *See Doe v. Greenville County School Dist.*, 375 S.C. 63, 70, 651 S.E.2d 305, 308 (2007) (“Accordingly, in the absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.”).³ While South Carolina does recognize loss of spousal consortium, that cause of action was expressly recognized by the South Carolina General Assembly. *See* S.C. Code Ann. § 15-75-20. Our Supreme Court has held the absence of a similar statutory cause of action for filial loss of consortium indicates the General Assembly did not intend to recognize such causes of action. *See Greenville County School Dist.*, 375 S.C. at 69, 651 S.E.2d at 308.

Because South Carolina does not recognize claims for loss of filial consortium, the causes of action asserted by Ayoub in the Circuit Court Complaint must be dismissed.

E. All Other Causes of Action asserted by Plaintiffs

The Complaint lists eighteen separate causes of action. As it relates to Nationwide and Tirbovich, these causes of action merely allege the legal elements of various other causes of action, and several of these causes of action fail to even allege the basic legal elements. Rule 8(a) of the South Carolina Rules of Civil Procedure states that a pleading setting forth a cause of action “shall contain . . . a short and plain statement of the facts showing the pleader is entitled to relief.” Rule 8(a), SCRPC. In reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court’s analysis is limited solely to the Complaint itself, and no other documents may be

³ *See also Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996) (declining to recognize loss of filial consortium claim of child relating to injury to parent); *Kirkland v. Sam’s East, Inc.*, 411 F. Supp. 2d 639, 641 (D.S.C. 2005) (“South Carolina does not recognize a cause of action for filial loss of consortium”).

considered. *See Woodell by Allen v. Marion School Dist. One*, 307 S.C. 297, 298, 414 S.E.2d 794, 794 (Ct. App. 1992). Moreover, a “trial court must dismiss a claim pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, if the pleadings, when taken in the light most favorable to the plaintiff, fail to allege sufficient facts to constitute a cause of action.” *Trancik v. USAA Ins. Co.*, 354 S.C. 549, 552, 581 S.E.2d 858, 860 (Ct. App. 2003).

Plaintiff must allege facts supporting each element of the causes of action asserted in the Complaint. She has failed to do so. Therefore, all causes of action against Nationwide and Tirbovich will be dismissed pursuant to Rule 12(b)(6).

CONCLUSION

For the above-stated reasons, the Court finds Defendants Nationwide Mutual Insurance Company’s and Joseph Tirbovich’s Motions should be granted. It is ORDERED, ADJUDGED, and DECREED that:

- 1) All causes of action asserted against Nationwide and Tirbovich are dismissed pursuant to Rule 12(b)(6), SCRCF.
- 2) All causes of action asserted against Nationwide and Tirbovich are dismissed for lack of standing;
- 3) The causes of action asserted by Daniel Hubbard are dismissed pursuant to Rule 41(b), SCRCF for failure to prosecute.
- 4) Ivanka Ayoub’s loss of consortium claim is dismissed pursuant to Rule 12(b)(6), SCRCF because South Carolina does not recognize a claim for filial loss of consortium.
- 5) All causes of action against Tirbovich are dismissed pursuant to Rule 12(b)(5) for Plaintiffs’ failure to serve him with the Summons and Complaint in either the Arbitration Action of the Civil Action.

It is so **ORDERED**.

John C. Hayes, III
Circuit Court Judge



Chester Common Pleas

Case Caption: Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al

Case Number: 2018CP1200117

Type: Order/Dismissal

So Ordered

s/John C. Hayes III 2049

Order granting Defendants Trustgard Insurance Company's and John Ammendola's Motion to Dismiss filed September 24, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTER	)	Case No. 2018-CP-12-000074
	)	
Heidi Gersten and Ivanka Ayoub,	)	and
	)	
Plaintiffs,	)	Case No. 2018-CP-12-000117
	)	
vs.	)	
	)	
Kevin Carter; Richard Davis; Joseph	)	ORDER ON
Tirbovich, Nationwide Mutual Insurance	)	MOTION TO DISMISS
Company; Interinsurance Exchange of the	)	
Automobile Club; John Ammendola;	)	
Trustgard Insurance Company, <i>et al.</i>	)	
	)	
Defendants.	)	
	)	

These matters come before the Court pursuant to Defendants' Trustgard Insurance Company ("Trustgard") and John Ammendola's Motions to Dismiss, and Trustgard's Motion to Quash Discovery. The Court held a hearing on these and other Defendants' motions on September 5, 2018. Trustgard and John Ammendola appeared by and through their attorneys. Plaintiffs Gersten and Ayoub appeared *pro se*. Plaintiff Hubbard did not appear. For the reasons set forth below, the Motions to dismiss of Trustgard and John Ammendola are granted. Trustgard's Motion to Quash is dismissed, without prejudice, as moot.

I. STATEMENT OF THE CASE

These two actions arise out of an automobile collision that took place on March 19, 2015. Plaintiff Heidi Gersten, was driving on I-77 in Chester County when she was involved in a motor vehicle accident with Kevin Carter. Carter was operating a vehicle insured by Nationwide Insurance. Gersten was driving a van owned by her mother, Plaintiff Ivanka Ayoub, which was insured by Trustgard.

Gersten filed a property damage arbitration claim on February 21, 2018, Case No. 2018-CP-12-000074, (hereinafter “Arbitration Action”). The claim also named as defendants Kevin Carter, Richard Davis, Nationwide Mutual Insurance Company, Interinsurance of the Automobile Club, and Trustgard.

Gersten later prepared a “First Amended Claim for Property Damage Verified” (hereinafter “Amended Arbitration Complaint”) dated March 2, 2018. The Amended Arbitration Complaint added Gersten’s mother, Ayoub, as a claimant, and added Joseph Tirbovich and John Ammendola as additional defendants. Gersten and Ayoub never obtained an Amended Summons listing Ayoub as a claimant. The Amended Arbitration Complaint was filed March 27, 2018.

On March 16, 2018, Gersten, Ayoub, and Daniel Hubbard filed a civil lawsuit, 2018-CP-12-000117, (“Circuit Court Action”) in this court, seeking, *inter alia*, recovery for injuries arising out of the collision. In addition to the Defendants named in the Amended Arbitration Complaint, the Plaintiffs named the South Carolina Department of Public Safety, Blackwell (sic), Chevrolet, GMC, and unknown John Doe defendants.

On April 26, 2018, Judge Gibbons, acting as the Chief Administrative Judge, for Chester County Circuit Court, entered an Order finding the claims asserted in the Arbitration Action were outside the scope of arbitration. He transferred the Arbitration Action to the Common Pleas docket and consolidated the case with the Circuit Court action. (April 26, 2018, Form 4 Order). Gersten and Ayoub filed a Motion to Alter or Amend that order.

Just before the hearing on the motions under consideration, Plaintiff served, via mail, an Amended Complaint dated August 29, 2018

The Court has reviewed the original Arbitration Action, the Amended Arbitration Action, the Complaint in the Circuit Court Action, and the Amended Complaint the Circuit Court Action;

the ruling is the same regardless of whether the cases have been consolidated or not, and regardless of which Complaint in the Circuit Court Action is operable.

This case was set for a hearing on the various pending motions for September 5, 2018. The case was placed on the non-jury roster for a merits hearing for the same week. Plaintiff Gersten filed a motion for continuance. At the hearing, the defendants all consented to continuing the merits hearing of the case, but they requested that the motions be heard. Gersten consented to the Court proceeding with hearing the various motions.

II. STANDARD OF REVIEW AND DISCUSSION

A. SCRCP 12(b)(6) Failure to State Facts Sufficient to Constitute a cause of Action as to both Trustgard and John Ammendola

SCRCP 12(b)(6) allows a party to move to dismiss an action for “failure to state a claim upon which relief can be granted.” A decision on a 12(b)(6) motion “must be bottomed and premised solely upon the allegations set forth by the plaintiff.” Williams v. Condon, 347 S.C. 227, 233 (Ct. App. 2001). “The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief.” Id. “If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper.” Doe v. Marion, 373 S.C. 390 (2007). See Skywaves I Corp. v. Branch Banking & Tr. Co., 814 S.E.2d 643, 656 (S.C. Ct. App. 2018), reh'g denied (June 21, 2018). “[A] mere conclusory allegation, unsupported by any particularized allegations of fact, is insufficient” to withstand a 12(b)(6) motion to dismiss. Jones v. Gilstrap, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986)).

1. The Circuit Court Action

The only reference to Trustgard in the original Complaint in the Circuit Court Action is that it is “a company maintaining and operating and doing business in the State of North Carolina”

and that it insured Gersten and Ayoub. See Complaint at ¶ 7, 17, 19. The Complaint includes causes of action for Negligence against Kevin Carter, and against all Defendants for Fraud, Fraudulent Inducement, Intentional Inflection of Emotional Distress, Loss of Consortium, Product Liability, Breach of Contract, Invasion of Privacy, Strict Liability, Conspiracy, Misrepresentation, Deceit, Duress and Undue Influence, Slander, Libel, Defamation, Malicious Prosecution, and prayers for damages, all asserted against all defendants. However, there are no facts alleged which support any of the causes of action. The Complaint merely pleads some of the legal elements of the causes of action. The Court notes that Trustgard states that it is based on Ohio and that Gersten was not personally insured with Trustgard (only the vehicle she was driving), but regardless of the validity of these statements, absent any further allegations Plaintiffs have not alleged facts under which they would be entitled to relief under any legal theory.

John Ammendola's name does not appear anywhere in the body of the original Complaint in the Circuit Court Action, although he is listed in the caption. With no allegations made against Mr. Ammendola whatsoever, this action is factually insufficient on its face without the necessity of any further analysis. Potter v. Clark, 497 F.2d 1206, 1207 (7th Cir.1974) (per curiam)(dismissing complaint that was silent as to defendant except for his name appearing in caption).

This Court notes that a short time prior to the hearing in which the Motions to Dismiss were heard, Plaintiffs served an Amended Complaint in the Common Pleas Action. The Amended Complaint also includes causes of action for Negligence against Kevin Carter, and against all Defendants for Fraud, Fraudulent Inducement, Intentional Inflection of Emotional Distress, Negligent Inflection of Emotional Distress, Loss of Consortium, Product Liability, Breach of Contract, Invasion of Privacy, Strict Liability, Conspiracy, Misrepresentation, Deceit, Duress and

Undue Influence, Slander, Libel, Defamation, Malicious Prosecution, and prayers for damages, all asserted against all defendants. This Amended Complaint does not allege any material additional facts as to Trustgard or John Ammendola. The Amended Complaint alleges that both Ayoub and Gersten were insured with Trustgard. (¶¶ 46, 48.) Paragraph 65 alleges that Trustgard and John Ammendola (and other defendants) are all, "...in breach of contract, among other things." There is no allegation as to the terms of the contract, or how it was breached. Paragraph 71 alleges Trustgard, among other defendants, "...made a representation of false statements of material fact." There is no allegation of any representation made by Trustgard or John Ammendola. Paragraph 98 alleges Ayoub and Gersten had a contract with Trustgard, without any other detail. Paragraph 99 alleges the "Defendants breached their duty." Otherwise, the Amended Complaint merely attempts to set forth legal requirements of causes of action. It does not include any facts supporting any cause of action as to Trustgard or John Ammendola. Accordingly, the Circuit Court Action is dismissed as to Trustgard and John Ammendola pursuant to Rule 12(b)(6), SCRCP.

2. The Arbitration Action

In the Arbitration Action, the only references to John Ammendola are conclusory allegations that he violated the law without any specific facts to support such a violation. See First Amended Claim ¶¶ 168, 173, 174, 183, 188, 193, 198 (alleging Ammendola is in violation of S.C. Code Section 38-59-20); ¶¶ 203 and 208 (seeking damages for Ammendola's violation of S.C. Code Section 38-59-20). Without any specific facts that would support the violations, these legal conclusions are simply insufficient to withstand a Motion to Dismiss. Moreover, there is no private cause of action under S.C. Code Section 38-59-20.

Beyond these conclusory allegations and the undisputed fact that Trustgard issued an insurance policy involved in the accident, the only specific allegations in the Arbitration Claim

against Trustgard relate to certain communications between representatives of Trustgard and Gersten about a claims or claims regarding the accident. First Amended Claim at ¶ 229, 230, 232, 233. These allegations reference a payment from Trustgard to Gersten for Medpay and an offer of payment for a property damage claim. Setting aside that Trustgard has objected to Plaintiffs' characterization of these exchanges, and assuming they are true for the purpose of this Motion, Plaintiffs make no specific allegations made as to how Trustgard's handling of any claim regarding this accident violates either a statute or the term of any insurance policy. Neither these allegations nor any other allegations in the Arbitration Claim against Trustgard support Plaintiffs' claim for legal relief under any theory.

The same or similar unsupported conclusory allegations are made against Trustgard in the Amended Arbitration Claim. See First Amended Claim ¶ 215 (alleging Trustgard breached a contractual duty, was negligent, and acted in bad faith); ¶ 167, 172, 177, 182, 187, 192, 197 (alleging Trustgard is in violation of S.C. Code Section 38-59-20); ¶ 202 and 207 (seeking damages for Trustgard's violation of S.C. Code Section 38-59-20).¹

Further, the legal basis for the arbitration claim, S. C. Code § 38-77-710, provides solely for the arbitration of "property damage liability claims arising out of motor vehicle collisions...." It is not a mechanism for bringing any other type of claim.

Finally, S. C. Code § 38-59-20 does not create a private cause of action. Gaskins v. Southern Farm Bureau Cas. Ins. Co., 343 S.C. 666, 541 S.E.2d 269 (Ct.App.2000). Therefore,

¹ A number of allegations in both the Common Pleas Action and the Arbitration Claim broadly assert legal violations against all "Defendants," sometimes with formulaic recitations of the elements of causes of action. These allegations which do not distinguish in any way between the various Defendants in these actions are not creditable because they are both "conclusory" and "unsupported by any particularized allegations of fact." Skywaves I Corp. 814 S.E.2d at 656.

even if the conclusory allegation that Trustgard or John Ammendola were “...in violation of the South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.” stated facts which were otherwise sufficient constitute a cause of action (it does not), there is no private cause of action for violation of that code section. It provides only for an administrative remedy before the Department of Insurance.

B. SCRCP 12(b)(2) Lack of Jurisdiction over John Ammendola

SCRCP 12(b)(6) allows a party to move to dismiss an action for “lack of jurisdiction over the person.” The burden of showing personal jurisdiction is on Plaintiffs. “At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction.” Coggeshall v. Reprod. Endocrine Assocs. of Charlotte, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)(internal citation omitted)). To determine the propriety of personal jurisdiction over a nonresident defendant, the relevant analysis is whether “there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Plaintiffs have not pled any facts as to Mr. Ammendola. They have not referred to his state of residency, the identity of his employer, or any other fact, and they have failed to make this prima facie showing by demonstrating the “minimum contacts” necessary for this court to have jurisdiction over him. To the extent it is argued that any minimum contacts that exist as to Trustgard be imputed to Mr. Ammendola, this argument fails because “the focus must center on the contacts generated by [Mr. Ammendola], and not on the unilateral actions of some other entity.” *Id.* at 492. As there are no allegations as to “minimum contacts” or that Mr. Ammendola took any action with respect to the accident or resulting claims, there is not even a starting point for a court to analyze the fundamental fairness of making him defend this lawsuit in

South Carolina. Plaintiffs have failed to meet their burden as to personal jurisdiction of Mr. Ammendola and the case against him must be dismissed pursuant to SCRPC 12(b)(2).

C. 12(b)(5) Insufficiency of Service of Process as to John Ammendola

Because John Ammendola was never served in either the Arbitration Action or the Circuit Court Action, dismissal is appropriate under SCRPC 12(b)(5). See Brown v. Evatt, 322 S.C. 189, 194, 470 S.E.2d 848, 850 (1996)(“A summons is not a mere notice, but a means for giving jurisdiction to the court, and unless it is waived, the court cannot otherwise obtain personal jurisdiction.”)(internal citation omitted). Service of the summons within the parameters of the rules of procedure is more than a mere formality, as without it a court has no power to render a personal judgment against a defendant. Louden v. Moragne, 327 S.C. 465, 468, 486 S.E.2d 525, 526 (Ct. App. 1997).

D. Dismissal of Loss Of Consortium Claims

Plaintiff Ayoub, the mother of Plaintiff Gersten, was not involved in the accident but the Complaint alleges that she “suffers, among other things, loss of consortium.” Plaintiff Hubbard, Gersten’s brother, alleges he “was unable to work for a period and, accordingly, loss (sic) wages... .” He was not involved in the accident. Our Supreme Court has refused to recognize a cause of action for maternal or filial loss of consortium. South Carolina does recognize loss of spousal consortium, but that cause of action was expressly created: SC Code Ann. 15-75-20. The Supreme Court has held that the absence of a similar statutory cause of action for other loss of consortia is persuasive evidence that the General Assembly did not intend to recognize any such causes of action:

In *Taylor v. Medenica*, this Court held that the determination of which relationships may give rise to a loss of consortium claim in South Carolina is one best left to the discretion of the legislature. 479 S.E.2d 35, 47 (S.C. 1996) (declining to recognize a cause of action for loss of parental consortium). The United States District Court

for the District of South Carolina adopted the *Taylor* analysis in finding that South Carolina law did not provide a cause of action for loss of consortium of a child or for filial consortium. *Kirkland v. Sam's East, Inc.*, 411 F.Supp. 2d 639, 641 (D.S.C. 2005). Today, we extend our *Taylor* analysis in holding that South Carolina law does not recognize claims for loss of filial consortium. Such rights did not exist under the common law, and the legislature has not provided such a right by statute.

Doe v. Greenville Cty. School District 651 S.E.2d 305, 308 (S.C. 2007).

Moreover, Daniel Hubbard did not appear at the hearing. Ivanka Ayoub appeared at the hearing, but did not offer any argument. The claims by Ayoub and Hubbard are therefore dismissed.

ORDER

For all of the above-stated reasons, this Court hereby GRANTS Trustgard Insurance Company and John Ammendola's Motion to Dismiss the Complaints and Amended Complaints in both 2018-CP-12-000074 and 2018-CP-12-000117, with prejudice. Because the Motion to Dismiss is granted as to Trustgard, its pending Motion to Quash is hereby dismissed without prejudice as moot.

AND IT IS SO ORDERED!

John C. Hayes, III
Circuit Court Judge



Chester Common Pleas

Case Caption: Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al
Case Number: 2018CP1200117
Type: Order/Dismissal

So Ordered

s/John C. Hayes III 2049

April 9, 2019

Court of Appeals Order filed April 9, 2019, in Appellate Case No. 2018-002115

The South Carolina Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are
Appellants,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich,
Nationwide Insurance Company, Interinsurance
Exchange of the Automobile Club, John Ammendola,
Trustguard Ins. Co., Blackwell, SC Department of Public
Safety, Chevrolet, GMC, Unknown John Does,
Respondents.

Appellate Case No. 2018-002115

The Honorable John C. Hayes, III,
The Honorable Brian M. Gibbons
Chester County

Trial Court Case No. 2018CP1200117, 2018CP1200074

ORDER

The time for serving and filing the amended return to the motion to dismiss filed by Kevin Carter and Richard Davis is hereby extended until April 15, 2019. If the amended return is not actually received in this office on or before April 15, 2019, the Court will consider only the motions and the filings previously received in this matter. No further extensions will be granted absent extraordinary circumstances.



FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

FILED

Columbia, South Carolina

cc:

Heidi Gersten

Ivanka Ayoub

Peter H. Dworjanyn, Esquire

Michael Reid Burchstead, Esquire

Wesley Brian Sawyer, Esquire

William Reynolds Williams, Esquire

David Richard Sligh, Esquire

William H. Davidson, II, Esquire

May 14, 2019

Court of Appeals Order filed May 14, 2019, in Appellate Case No. 2018-002115

The South Carolina Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are
Appellants,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich,
Nationwide Insurance Company, Interinsurance
Exchange of the Automobile Club, John Ammendola,
Trustguard Ins. Co., Blackwell, SC Department of Public
Safety, Chevrolet, GMC, Unknown John Does,
Respondents.

Appellate Case No. 2018-002115

The Honorable John C. Hayes, III,
The Honorable Brian M. Gibbons
Chester County

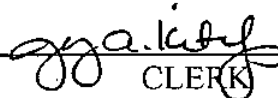
Trial Court Case No. 2018CP1200117, 2018CP1200074

ORDER

Appellant has failed to comply with the Court's order dated May 2, 2019.
Accordingly, this matter is dismissed. The remittitur will be sent as provided by
Rule 221(b), SCACR.

FOR THE COURT

BY


CLERK

FILED

May 14, 2019

Columbia, South Carolina

cc:

Heidi Gersten

Ivanka Ayoub

Peter H. Dworjanyn, Esquire

Michael Reid Burchstead, Esquire

Wesley Brian Sawyer, Esquire

William Reynolds Williams, Esquire

David Richard Sligh, Esquire

William H. Davidson, II, Esquire

July 30, 2019

Court of Appeals Order denying petition for rehearing filed July 30, 2019 in Appellate Case No. 2018-002115;

The South Carolina Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are
Appellants,

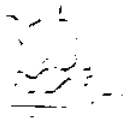
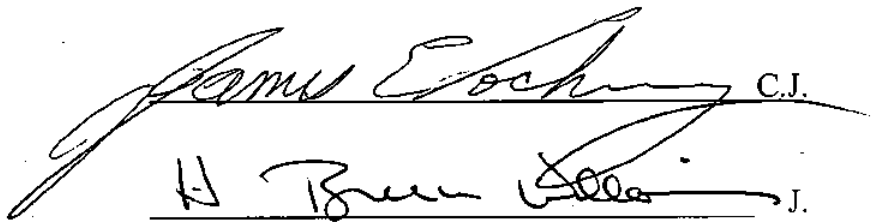
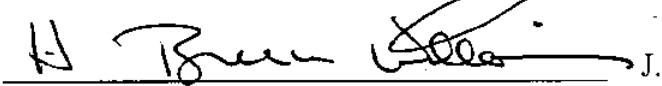
v.

Kevin Carter, Richard Davis, Joseph Tirbovich,
Nationwide Insurance Company, Interinsurance
Exchange of the Automobile Club, John Ammendola,
Trustguard Ins. Co., Blackwell, SC Department of Public
Safety, Chevrolet, GMC, Unknown John Does,
Respondents.

Appellate Case No. 2018-002115

ORDER

After careful consideration of Appellant's motion to reinstate or to rehear the dismissal of this appeal, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing or reinstating this appeal. Accordingly, the motion is denied.

  C.J.
 J.
 J.

FILED

July 30, 2019

Columbia, South Carolina

cc:

Heidi Gersten

Ivanka Ayoub

Peter H. Dworjanyn, Esquire

Michael Reid Burchstead, Esquire

Wesley Brian Sawyer, Esquire

William Reynolds Williams, Esquire

David Richard Sligh, Esquire

William H. Davidson, II, Esquire

April 24, 2020

Supreme Court Order denying petition for writ of certiorari filed April 24, 2020 in Appellate
Case No. 2019-001484

The Supreme Court of South Carolina

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are
Petitioners,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich,
Nationwide Insurance Company, Interinsurance
Exchange of the Automobile Club, John Ammendola,
Trustguard Ins. Co., Blackwell, SC Department of Public
Safety, Chevrolet, GMC, Unknown John Does,
Respondents.

Appellate Case No. 2019-001484
Trial Court Case Nos. 2018-CP-12-00117, 2018-CP-12-
00074

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

Columbia, South Carolina
April 24, 2020

cc: Peter H. Dworjanyn, Esquire
Michael Reid Burchstead, Esquire

William H. Davidson, II, Esquire
Wesley Brian Sawyer, Esquire
William Reynolds Williams, Esquire
David Richard Sligh, Esquire
Ivanka Ayoub
Heidi Gersten

June 23, 2020

Remittitur from the Court of Appeals filed June 26, 2020 in Case No. 2018-CP-12-00117;



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
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June 23, 2020

The Honorable Sue K. Carpenter
PO Drawer 580
Chester SC 29706-0580

REMITTITUR

Re: Heidi Gersten v. Kevin Carter
Lower Court Case No. 2018CP1200117, 2018CP1200074
Appellate Case No. 2018-002115

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,
V. Claire Allen
CLERK

Enclosure

cc: Heidi Gersten
Ivanka Ayoub
Peter H. Dworjanyn, Esquire
Michael Reid Burchstead, Esquire
Wesley Brian Sawyer, Esquire
William Reynolds Williams, Esquire
David Richard Sligh, Esquire
William H. Davidson, II, Esquire

August 22, 2022

Order dismissing case filed August 22, 2022 in Case No. 2018-CP-12-00117;

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard,

Plaintiffs,

v.

Kevin Carter, Richard Davis, Joseph
Tribovich, Nationwide Insurance Company,
Interinsurance Exchange of the Automobile
Club, John Ammendola, Trustguard Insurance
Company, SC Department of Public Safety,
Chevrolet, GMC, Unknown John Does,

Defendants.

ORDER

This matter comes before the Court on Defendant Kevin Carter's Motion to Compel or, in the Alternative, Motion to Dismiss for Failure to Prosecute and his Motion to Dismiss the claims of Ivanka Ayoub pursuant to Rule 25. On August 18, 2022, the Court held a hearing via WebEx on these Motions. Plaintiff Heidi Gersten appeared pro se. Ivanka Ayoub did not appear, and no one appeared on her behalf. Attorney Wesley Sawyer appeared on behalf of Defendant Kevin Carter. After reviewing the record, the Motions, and arguments of the parties, the Court will grant both of Defendant's Motions to Dismiss.

PROCEDURAL HISTORY

This consolidated action began as two separate proceedings arising out of an automobile collision that took place on or about March 19, 2015. On or about February 21, 2018, Plaintiff Heidi Gersten filed a Summons and Claim for Property Damage under the property damage arbitration statute. Ivanka Ayoub was not listed on the Summons or the Claim.

Plaintiff Heidi Gersten filed the pending personal injury action on March 16, 2018. Ivanka Ayoub is listed as a plaintiff on the caption. Although Ayoub did not sign the Summons, the

Complaint purports to bear her signature. Daniel Hubbard was also named as a plaintiff. As to Ayoub and Hubbard, the March 16, 2018 Complaint attempted to assert a cause of action for loss of filial consortium, among numerous other claims. The March 16, 2018 Complaint named numerous additional defendants. Defendant Kevin Carter and other defendants moved to dismiss the property damage arbitration in light of the Circuit Court Complaint.

On March 27, 2018 – after the statute of limitations expired – Plaintiffs filed a First Amended Claim for Property Damage Verified, which purported to add Ivanka Ayoub as a plaintiff to the property damage arbitration claim.

On April 26, 2018, the Honorable Brian M. Gibbons entered a Form 4 Order consolidating the two cases and placing them on the Common Pleas docket. On May 8, 2018, Plaintiffs Gersten and Ayoub moved to alter or amend the April 26, 2018 Order.

Kevin Carter and various other defendants filed motions to dismiss, among other motions. After a hearing on the various motions, the Honorable John C. Hayes, III, entered a series of orders dismissing all the defendants except Kevin Carter. The orders also dismissed the claims of Daniel Hubbard in their entirety and dismissed Ayoub’s loss of consortium claim against Defendant Carter. Although Kevin Carter asserted statute of limitations defenses, the Circuit Court withheld ruling on the statute of limitations issue and noted that Carter could file a separate motion on that issue in the future.

Plaintiffs Gersten and Ayoub moved to alter or amend the Circuit Court’s various dismissal orders.¹ On October 16, 2018, Judge John Hayes entered a Form 4 Order, denying the motions to

¹ The Motion to Reconsider identified a September 5, 2018 order. The hearing on the various motions took place on September 5, 2018. At the end of the hearing, Judge John Hayes indicated how he intended to rule and requested proposed orders. No written order was entered on September 5, 2018.

reconsider the “September 5, 2018” order. Plaintiffs Gersten and Ayoub then appealed. Their appeal was ultimately dismissed for failure to comply with orders from the Court of Appeals. The Court of Appeals denied a motion to reinstate or to rehear, and the Supreme Court ultimately denied Plaintiffs’ Petition for Writ of Certiorari. The Supreme Court issued its Remittitur on June 23, 2020.

On June 29, 2020, Defendant Carter served written discovery on Ayoub and Gersten. When no responses were provided, Defendant Carter sent a follow-up letter dated August 13, 2020 asking for the discovery responses and also asking for deposition dates. On August 26, 2020, when Plaintiffs failed to respond to the discovery requests and failed to respond to follow up letters, Defendant Carter filed a Motion to Compel or, in the Alternative, Motion to Dismiss for Failure to Prosecute.

The hearing on Carter’s Motion was first scheduled for January 13, 2021. Gersten moved to continue the hearing because she was litigating another matter in Florida, and she asked for a continuance of at least six months. The Circuit Court did not grant the Motion, but it did continue the hearing. The hearing was eventually rescheduled to take place on July 28, 2022. Shortly before the hearing, Gersten submitted an emergency motion to continue the hearing. On July 28, 2022, the Court held a hearing via WebEx. After hearing arguments on the emergency motion first, the Court agreed to reschedule the hearing to take place on August 18, 2022. During the July 28, 2022 hearing, Plaintiff Gersten stated that Ivanka Ayoub passed away on or about January 11, 2022. Ms. Gersten is Ivanka Ayoub’s daughter.

Shortly after it was disclosed that Plaintiff Ayoub had passed away, Defendant Carter filed a Motion to Dismiss Ayoub’s claims pursuant to Rule 25, SCRCP. At the August 18, 2022 hearing, the

Court heard arguments on the Rule 25 Motion and the previously filed Motion to Compel or, in the Alternative, Motion to Dismiss for Failure to Prosecute.²

LAW

The record in this case supports dismissal on multiple grounds. As to Gersten and Ayoub's claims, the Court finds that dismissal is proper under both Rule 41 for failure to prosecute and under Rule 37 as an appropriate discovery sanction. Furthermore, as to Ayoub, dismissal would alternatively be appropriate under Rule 25.³

A. Rule 41 Dismissal for Failure to Prosecute

"For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him." Rule 41(b), SCRCP. The decision of whether to dismiss a case for failure to prosecute is left to the discretion of the Circuit Court. *Small v. Mungo*, 254 S.C. 438, 442, 175 S.E.2d 802, 804 (1970). "The plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with his cause." *Don Shevey & Spires, Inc. v. American Motors Realty Corp.*, 279 S.C. 58, 60, 301 S.E.2d 757, 758 (1983).

The Fourth Circuit has established four factors when determining whether to dismiss for

² The Court also heard arguments on other motions filed by Plaintiff Gersten. However, most of those motions involve reconsideration of rulings from other Circuit Court judges. Some of those rulings were the subject of the prior appeal. Moreover, Judge John Hayes previously denied a motion to reconsider as to some of those issues. Ultimately, the Court does not need to rule on those issues because it is granting Defendant's Motions to Dismiss.

³ Gersten reported to the Court that she does not dispute that Ayoub has passed away, but she has been unable to obtain a death certificate. Counsel for Carter reported that he was unable to locate an obituary for Ayoub to confirm her death. Ultimately, this issue is immaterial. If Ayoub is still alive, dismissal is proper because she has not prosecuted her claim, she has not responded to discovery, and she has not appeared for the last two scheduled hearings. If she passed away in January as reported by Gersten, then no one has moved to substitute on her estate's behalf within a reasonable time. Either way, dismissal is proper.

failure to prosecute, which have been adopted by South Carolina State Courts: (1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal." *McComas v. Ross*, 368 S.C. 59, 63, 626 S.E.2d 902, 904 (Ct. App. 2006) (citing *Hillig v. Comm'r of Internal Revenue*, 916 F.2d 171, 174 (4th Cir. 1990)).

In this case, each of the four factors weighs heavily in favor of dismissal:

- (1) Plaintiffs are solely responsible for their failure to respond to discovery and to provide deposition dates. Therefore, the degree of responsibility rests wholly with the Plaintiffs.
- (2) Defendant presented argument on several forms of prejudice. First, it appears Ayoub has passed away, which has deprived Defendant of the opportunity to depose her. This alone is substantially prejudicial. Plaintiff sent discovery requests and requested deposition dates in 2020 – long before Ayoub's death in 2022. Moreover, the passage of time prejudices Defendant because it will be harder to find witnesses and develop facts relating to the case and because he has been stuck in litigation for over four years without having basic discovery responses. Therefore, prejudice is plainly present.
- (3) The history of this litigation – especially in light of the appellate record – shows a drawn-out history of dilatory proceeding. Plaintiffs have requested numerous continuances at the trial level. At the appellate level, Plaintiffs requested numerous extensions. The Court of Appeals made multiple requests for Plaintiffs to provide information to the Court. Ultimately, the Court of Appeals dismissed the appeal when Plaintiffs failed to provide the information requested by the Court. Most importantly, Plaintiffs have been on notice of Defendant's Motion to Compel for almost two years. During that time, they have continued to fail to provide any discovery responses.
- (4) At this point, there is not a less drastic sanction that would afford Defendant Carter procedural due process. The Rules of Civil Procedure are designed to give both parties an opportunity to fully develop their case. By failing to participate in discovery for so long – to the point at which one claimant and witness has passed away – Plaintiffs have prevented Defendant Carter from having a full and fair opportunity to defend his case. Any less severe sanction will not give Defendant Carter the ability to depose Ayoub or to depose any other witnesses with the same recollection that they would have had two years ago.

Ultimately, Rule 41 serves as a necessary part of the power of trial courts "to manage their own affairs so as to achieve orderly and expeditious disposition of cases." *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 212, 493 S.E.2d 826, 832 (1997) (emphasis added). Dismissal at this point is the only orderly and expeditious disposition of this case. Therefore, the Court finds that dismissal

pursuant to Rule 41 is proper and well within this Court's discretion.

B. Rule 37 Dismissal as a Discovery Sanction

Alternatively, dismissal is also proper under Rule 37. "If a party . . . fails . . . to serve answers or objections to interrogatories, or to serve a written response to request . . . under Rule 34 . . . the court . . . on motion may make such orders in regard to the failure as are just" Rule 37(d), SCRCP. The Rule gives the Circuit Court discretion to, among other things, strike pleadings or dismiss an action. Rule 27(b)(C), SCRCP. While the decision of appropriate sanctions is left to the sound discretion of the Court, severe sanctions such as dismissal will only be imposed in cases involving bad faith, willful disobedience, or gross indifference to the opposing party's rights. *McNair v. Fairfield County*, 379 S.C. 462, 466, 665 S.E.2d 830, 832 (Ct. App. 2008).

In *McNair*, the trial court struck Fairfield County's answer and counterclaim for failure to adequately respond to requests for production. Notably, the county in that case made an attempt to respond to discovery, producing over 800 documents. *Id.* at 464, 665 S.E.2d at 831. However, the plaintiff believed the responses were inadequate and moved to compel. The trial court agreed and entered an order compelling supplemental responses. Notably, that entire process took about five months. *Id.* When the county failed to supplement its responses within six months, the plaintiff moved for sanctions. After a hearing, the trial court struck the county's answer and its counterclaim. *Id.* The Court of Appeals affirmed, finding that the trial court properly exercised its discretion and considered the appropriate factors before imposing the sanction of dismissal. *Id.* at 467, 665 S.E.2d at 832-33.

The timeline at issue in *McNair* is telling here. When the trial court struck the county's answer and counterclaim, the case was less than a year-and-a-half old. Moreover, the county had made some effort to respond to discovery, including producing over 800 documents. Here, the case is over four years old. Defendant Carter served discovery on June 29, 2020 – well over two years ago. Defendant's

motion has been pending for nearly two years, and it has been set for a hearing three times. Thus, Plaintiffs have had notice of the issue far longer than the time that passed in *McNair*. Nonetheless, Plaintiffs have never attempted to respond to discovery. In the meantime, it appears Plaintiff Ayoub has passed away, depriving Defendant Carter of his ability to depose her or to obtain discovery from her. At a minimum, the failure to respond to discovery requests for over two years shows the very type of gross indifference to Defendant's rights that justifies dismissal. Moreover, given the fact that the hearing on this Motion has been scheduled three times with no effort by Plaintiffs to respond to the discovery requests, there is an adequate basis in the record to find willful disobedience. This willful failure to respond to discovery for such a long period of time is a complete disregard of Plaintiffs' obligations under the Rules of Civil Procedure.

Dismissal is a severe sanction. However, Defendant Carter has suffered significant prejudice both in the form of lost opportunity to obtain discoverable information and in the form of being tethered to this litigation for four years. For the reasons discussed above, the Court finds that dismissal is the only appropriate sanction for Plaintiffs' failure to participate in discovery.

C. Rule 25 Dismissal as to Ivanka Ayoub

Under Rule 25, SCRCP, when a party dies and the party's claim is not extinguished by her death, then "[i]f substitution is not made within a reasonable time, the action may be dismissed as to the deceased person." Rule 25(a)(1), SCRCP. "[R]ule [25] specifically provides for the dismissal of a deceased party where substitution of the proper parties *does not occur* within a reasonable amount of time." *Hillman v. Pinion*, 347 S.C. 253, 258, 554 S.E.2d 427, 430 (Ct. App. 2001) (emphasis in original).

The standard under the Federal Rule for a timely motion to substitute is 90 days. *See* Fed. R. Civ. P. 25. The South Carolina rules use a "reasonable time" standard. Even if a "reasonable time" is

something longer than 90 days, more than twice that amount of time has passed since Ayoub's purported death, and no one has moved to be substituted. Therefore, substitution has not occurred "within a reasonable time," and dismissal is proper.

CONCLUSION

For the above-stated reasons, Defendant Carter's Motions to Dismiss are GRANTED.

IT IS SO ORDERED.



Chester Common Pleas

Case Caption: Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al
Case Number: 2018CP1200117
Type: Order/Other

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

February 21, 2018

Summons and Claim for Property Damage filed February 21, 2018, in Case No. 2018-CP-12-0074

STATE OF SOUTH CAROLINA
In the matter of Arbitration between

HEIDI GERSTEN

Claimant(s)

vs.

KEVIN CARTER, RICHARD DAVIS,
NATIONWIDE MUTUAL INS. CO,
INTERINSURANCE OF THE
AUTOMOBILE CLUB, TRUSTGUARD INS.

Defendant(s)

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

Case number 2018-CP-12-00074

SUMMONS FOR ARBITRATION
(Claim Served Herewith)

FILED
2018 FEB 21 A 10:05
CLERK OF COURT
CHESTER CO. S.C.

TO THE DEFENDANT(S): Kevin Carter, Richard Davis, Nationwide Mutual Insurance
Company, Interinsurance of the Automobile Club, Trustguard Insurance;

YOU ARE HEREBY SUMMONED and required to answer the Claim for Property
Damage in this proceeding, a copy of which is herewith served upon you, and to file a response with
the Clerk of Court for Chester County within thirty (30) days from the date of service hereof,
exclusive of the day of such service. If you fail to file such response within the aforesaid thirty (30)
days, the claimant shall be entitled to a default judgment for the relief demanded in the Claim for
Property Damage.

Attorney for Claimant(s):

Claimant(s):

Heidi GERSTEN

1438 W. LANTANA RD. #330

LANTANA, FL 33462

Date: February 7, 2018

SCCA/202(3/2005)

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

HEIDI GERSTEN

Plaintiff(s)

vs.

KEVIN CARTER, RICHARD DAVIS, NATIONWIDE
MUTUAL INS., INTERINSURANCE OF THE
AUTOMOBILE CLUB INS., TRUSTGUARD INS.

Defendant(s)

Submitted By: Heidi Gersten
Address: 1438 West Lantana Rd. #330
Lantana, Florida 33462

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018 FEB 12 00074
-CP-

FILED
2018 FEB 21 AM 11:00
CLERK OF COURT
CHESTER CO. S.C.

SC Bar #: _____
Telephone #: 32324561487
Fax #: _____
Other: _____
E-mail: hanginhangout@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

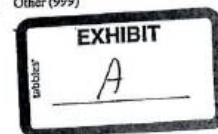
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Previous Notice of Intent Case # 20 -NI- _____ ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Label (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Administrative Law/Relief ☐ Reinstatement License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Incapacitated Adult Settlement (790) ☐ Other (799) _____	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____
Special/Complex /Other ☐ Environmental (600) ☒ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) _____ ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680) ☐ Interpleader (690)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		



Date: February 7 2018

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

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

Pursuant to the ADR Rules, you are required to take the following action(s):

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

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

STATE OF SOUTH CAROLINA
In the matter of Arbitration between

HEIDI GERSTEN

Claimant(s)

vs.

KEVIN CARTER, RICHARD DAVIS,
NATIONWIDE MUTUAL INSURANCE
COMPANY, INTERINSURANCE OF THE
AUTOMOBILE CLUB, TRUSTGUARD
INSURANCE

Defendant(s)

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

Case number 2018-CP-12-00014

CLAIM FOR PROPERTY DAMAGE

FILED
2018 FEB 21 A 10
CLERK OF COURT
CHESTER CO S.C.

The Claimant(s), complaining of the Defendant(s) hereby files a claim for property damage arising out of a motor vehicle collision and requests that the matter be submitted to arbitration, and allege:

1. The Claimant(s) resides in Palm Beach County, Florida County.
2. The Defendant(s) resides in Iredell County, North Carolina County.
3. The collision occurred in Chester County, South Carolina County.
4. The collision occurred on March 19, 2015 at approximately 3:45 a.m.
5. The Claimant was involved in said motor vehicle collision with the Defendant Kevin Carter.
6. The Defendant Kevin Carter had a duty to properly obey the traffic laws of the State of South Carolina and Chester County where the collision occurred, and by failing to do so acted in a negligent manner.
7. As a result of the Defendant Kevin Carter's negligent conduct, stated above, the Claimant has suffered specific damages, including but not limited to property damage.
8. Without yielding right of way, the Defendant Kevin Carter entered the highway from the shoulder of where he was parked, without turning his headlights on or using turn signals, at approximately 4 a.m., causing this collision, violating South Carolina laws.
9. The Defendant Kevin Carter was parked on the eastside shoulder of I-77 northbound, in Chester County, South Carolina: latitude: 34 41 41.32, longitude: 81 01 48.06, moments prior to said collision.
10. The Defendant Kevin Carter violated SC Code § 56-5-2350 (2012) - Vehicle entering roadway.

SCCA/201(3/2005)

Appx. 161

11. The Defendant Kevin Carter violated SC Code § 56-5-2150 (2012) - Turning movements and required signals.
12. The Defendant Kevin Carter violated SC Code § 56-5-4450 (2012) - Times when vehicles must be equipped with lights.
13. The Defendant Kevin Carter violated SC Code § 56-5-2930 - Operating motor vehicle while under influence of alcohol or drugs.
14. The Defendant Kevin Carter violated SC Code § 56-5-2945 - Offense of felony driving under the influence.
15. South Carolina Solicitor's Office is pursuing this matter to move into General Sessions under felony charges for causing great bodily injury to Claimant.
16. The Defendant Kevin Carter's full name is Kevin Mark Carter.
17. The Defendant Kevin Carter's date of birth is _____
18. The Defendant Kevin Carter's driver's license number is ____ issued in North Carolina.
19. The Defendant Kevin Carter's cell number is _____
20. The Defendant Kevin Carter resides at _____
21. The Defendant Kevin Carter is and/or was certified as a State of North Carolina Medical Responder, North Carolina EMS License _____
22. The Defendant Kevin Carter attended the University of North Carolina at Chapel Hill for a Master of Business Administration (MBA).
23. The Defendant Kevin Carter attended Virginia Tech for a Bachelor of Business Administration (BBA).
24. The Defendant Kevin Carter attended Carolina College of Health Sciences for an Associate's Degree.
25. The Defendant Kevin Carter attended Mitchell Community College for a Rescue & Fire Emergency Technician.
26. The Defendant Kevin Carter is listed as the registered owner of the 2006 Honda Ridgeline involved in said motor vehicle collision.
27. The license plate number of the said Honda Ridgeline involved in said collision is _____
28. The vin number of the said Honda Ridgeline involved in said collision is _____

29. The Defendant Richard Davis is listed as the registered owner of the 2006 Honda Ridgeline involved in said motor vehicle collision in addition to the Defendant Kevin Carter.
30. The Defendant Richard Davis resides at
31. The Defendant Richard Davis was communicating with the Defendant Kevin Carter while the Defendant Kevin Carter was operating said vehicle via cell phone.
32. Through negligent entrustment, the Defendant Richard Davis has violated South Carolina statute for consenting to the Defendant Kevin Carter's use of said vehicle while Valium was in the Defendant Kevin Carter's system.
33. The Defendant Nationwide Mutual Insurance Company insured the Defendants Kevin Carter and Richard Davis for the 2005 Honda Ridgeline in said collision, policy number:
34. The Defendant Nationwide Mutual Insurance Company is also known as Nationwide Property and Casualty.
35. The Defendant Nationwide Mutual Insurance Company also does business as Nationwide Property and Casualty.
36. The policy limit for property damage liability with Defendant Nationwide Mutual Insurance Company on said 2006 Honda Ridgeline is _____ per accident.
37. The Defendant Kevin Carter was charged with DUI in said collision.
38. March 19, 2017, at approximately 4:12 a.m., Trooper Blackwell of the South Carolina Highway Patrol was dispatched to said collision on I-77 North at the 61 mile marker.
39. Upon making contact with the Defendant Kevin Carter, Trooper Blackwell, "...noticed that Mr. Carter was very lethargic in his speech...", according to the incident report of said March 19, 2015 collision written by Trooper Blackwell.
40. Trooper Blackwell stated in his incident report of said collision that the Defendant Kevin Carter was "...having trouble remembering his current location...".
41. Trooper Blackwell stated in his incident report of said collision that the Defendant Kevin Carter was "...having trouble remembering where he was coming from..".
42. Trooper Blackwell stated in his incident report of said collision that the Defendant Kevin Carter stated to Trooper Blackwell and Richburg Fire Officials that, "... (he) and his wife had been in an argument earlier in the evening and she had asked him to leave their residence..".
43. The Defendant Kevin Carter stated that, "... (he) had been taking an unknown amount of his prescribed Valium throughout the night and into the morning hours for his "nerves"..", according to Trooper Blackwell's incident report of said collision.

44. Trooper Blackwell saw "...various bottles of prescription medications that were on the passenger seat of Mr. Carter's vehicle.", as stated by Trooper Blackwell in his incident report of said collision.
 45. The Defendant Kevin Carter stated that, "... (he) had only been taking his Valium but could not remember how much he had taken over the night."
 46. The Defendant Kevin Carter was transported by EMS to Piedmont Medical Center where Trooper Blackwell informed Defendant Kevin Carter that he was being charged with DUI according to Trooper Blackwell's incident report of said collision.
 47. The Defendant Kevin Carter was under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
 48. The Defendant Kevin Carter agreed to his implied consent rights.
 49. The Defendant Kevin Carter agreed to having a blood sample taken.
 50. A blood sample was taken of the Defendant Kevin Carter for analysis.
 51. The blood sample taken of the Defendant Kevin Carter was tested according to Section 56-5-2950 and SLED policies.
 52. The Defendant Kevin Carter admitted to being impaired while operating his motor vehicle.
 53. The Defendant Kevin Carter admitted to consuming Valium in greater amounts than prescribed while operating his 2005 Honda Ridgeline in said collision.
 54. Valium is synonymous with Diazepam.
 55. Diazepam is a Schedule IV controlled substance and is available by prescription.
 56. Diazepam Drug Class: Tranquilizer, sedative, CNS depressant.
 57. At low doses, diazepam is a moderate tranquilizer, causing sleepiness, drowsiness, confusion, and some loss of anterograde memory.
 58. Diazepam can produce a state of intoxication similar to that of alcohol, including slurred speech, disorientation, and drunken behavior.
 59. Side effects of Diazepam may include dry mouth, blurred or double vision, headache, vertigo, urinary retention, excessive perspiration, nausea and vomiting, ataxia, tremor, depression, hypotension and diminished reflexes.
 60. According to a report entitled "Drugs and Human Performance Fact Sheets" written by COUPER, Fiona J. and LOGAN, Barry K for Washington State Patrol Forensic Laboratory Services Bureau and sponsored by National Highway Traffic Safety Administration, "Laboratory studies have shown that single doses of diazepam (5-20 mg) are capable of causing significant performance decrements, with maximal effect occurring at approximately 2 hour post dose, and
- SCCA/201(3/2005)
-

lasting up to at least 3-4 hours. Decreases in divided attention, increases in lane travel, slowed reaction time (auditory and visual), increased braking time, decreased eye-hand coordination, and impairment of tracking, vigilance, information retrieval, psychomotor and cognitive skills have been recorded. Lengthened reaction times have been observed up to 9.5 hours post dose of diazepam, lethargy and fatigue are common, and diazepam increases subjective perceptions of sedation. Reduced concentration, impaired speech patterns and content, and amnesia can also be produced, and diazepam may produce some effects that may last for days..."

61. The drug manufacturer suggests patients treated with diazepam be cautioned against engaging in hazardous occupations requiring complete mental alertness such as driving a motor vehicle.
62. Simulator and driving studies have shown that diazepam produces significant driving impairment over multiple doses, according to said report entitled, "Drugs and Human Performance Fact Sheets".
63. Single doses of diazepam can increase lateral deviation of lane control, reduce reaction times, reduce ability to perform multiple tasks, decrease attention, adversely effect memory and cognition, and increase the effects of fatigue, according to said report entitled, "Drugs and Human Performance Fact Sheets".
64. Prescription Diazepam warning labels state, "Diazepam can make you sleepy, forgetful, have poor co-ordination along with other side effects that can affect everyday activities."
65. Prescription Diazepam warning labels state, "You should not drive, operate machinery or take part in such activities where, if affected, you could put yourself or others at risk."
66. Prescription Diazepam warning labels state, "The medicine can affect your ability to drive as it may make you sleepy or dizzy."
67. After diazepam (10 mg) patients should refrain from driving or participating in skilled performances for only 5 to 7 hours.
68. According to The Physicians' Desk Reference (a commercially published compilation of manufacturers' prescribing information on prescription drugs, updated annually) one should avoid driving a car or operating heavy machinery and drinking alcohol while taking Valium.
69. It is an offence to drive if diazepam affects your ability to drive.
70. A normal dose of Valium impairs functional ability similar to a 0.10 blood alcohol level.
71. Code of South Carolina Section 56-5-2930 states that, "It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired."

72. The Defendant Kevin Carter admitted to fighting with his "wife" on his cell phone while operating said 2005 Honda Ridgeline in said collision.

73. The Defendant Kevin Carter is on jury trial for DUI in said collision.

74. The Defendant Kevin Carter's DUI case number is _____

75. Toxicology reports conclude that the Defendant Kevin Carter consumed Valium in excess of the prescribed amount.

76. The SLED No: _____ and Case No: _____ is for The South Carolina Law Enforcement Division's Forensic Services Laboratory Report of the Toxicology Department dated May 15, 2015 for Defendant Kevin Carter regarding the incident dated March 19, 2015.

77. _____

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SCCA/201(3/2005)

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138. The Claimant granted Joseph Tirbovich's request for an extension of time to respond to said demand package.

139. September 1, 2017 was the new deadline set by Claimant for said demand to settle property damage claim.
140. August 24, 2017, Joseph Tirbovich offered to settle said property damage claim with the Claimant.
141. August 24, 2017, the Claimant requested that Joseph Tirbovich communicate said offer in writing.
142. August 25, 2017, Joseph Tirbovich offered to settle property damage punitive claim with the Claimant for
143. August 2 property damage claim for
144. August 2 the Defendant Kevin
145. Joseph T Claimant.
146. The letter ained the word "punitive"
147. August 2 said offer to settle pro
148. Joseph T image settlement offer
149. The Claim vin Carter.
150. The Defe \$100,000.00 for
151. Punitive damage liability against the Defendant Kevin Carter.
152. South Carolina Code of Laws Title 38, CHAPTER 77, ARTICLE, SECTION 38-77-710 states, "The court of common pleas, or any inferior courts having concurrent jurisdiction, in and for each county, shall by order of reference appoint an attorney or attorneys to hear and determine, by arbitration, property damage liability claims arising out of motor vehicle collisions or accidents and to award actual and punitive damages. This order must be consistent with the provisions of this chapter and may not be inconsistent with the Rules of the Supreme Court of South Carolina. Process and procedure must be as summary and simple as may be reasonable and may provide for the taking of evidence in the form of reports, statements, or itemized bills or in any other manner without the procedural and evidentiary limitations which pertain in jury

trials. The court may provide for the taking of depositions of a witness within or without the State."

153. Punitive damages can be obtained for property damages under South Carolina law.
154. According to THE STATE OF SOUTH CAROLINA, In The Supreme Court Opinion No. 26826 Heard March 2, 2010 - Filed June 14, 2010, "The legislature has defined "damages" as used in Chapter 77 governing automobile insurance to "include[] both actual and punitive damages." Id. § 38-77-30(4). The clear legislative indication is that all "damages," including actual and punitive damages, are recoverable under the pertinent insurance provisions. As a matter of law, these provisions become part and parcel of the insurance contract.[2] Further, in examining the public policy surrounding punitive damage awards, it is readily apparent that South Carolina courts have recognized that these awards serve a multitude of purposes and are not limited solely to punishment of the individual wrongdoer."
155. According to THE STATE OF SOUTH CAROLINA, In The Supreme Court Opinion No. 26826 Heard March 2, 2010 - Filed June 14, 2010, "punitive damages serve at least three important purposes: punishment of the defendant's reckless, willful, wanton, or malicious conduct; deterrence of similar future conduct by the defendant or others; and compensation for the reckless or willful invasion of the plaintiff's private rights." *Clark v. Cantrell*, 339 S.C. 369, 379, 529 S.E.2d 528, 533 (2000).
156. According to THE STATE OF SOUTH CAROLINA, In The Supreme Court Opinion No. 26826 Heard March 2, 2010 - Filed June 14, 2010, "In *Clark*, we noted "the important role that punitive damages play in the American system of justice generally, and in South Carolina in particular since at least 1784." Id. We observed that punitive damages, in addition to punishing the defendant and deterring similar conduct by the defendant and others, serve to vindicate the private rights of the plaintiff and they provide some measure of compensation to plaintiffs for the intentional violation of those rights that is separate and distinct from the usual measure of compensatory damages: Exemplary or punitive damages go to the plaintiff, not as a fine or penalty for a public wrong, but in vindication of a private right which has been willfully invaded; and indeed, it may be said that such damages in a measure compensate or satisfy for the willfulness with which the private right was invaded, but, in addition thereto, operating as a deterring punishment to the wrongdoer, and as a warning to others. . . . Punitive damages have now come, however, to be generally, though not universally, regarded, not only as punishment for wrong, but as vindication of private right. This is the basis upon which they are now placed in this state."
157. South Carolina Code of Laws Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-530 (C) (3) states, "(C) However, when the trial court determines one of the following apply, there shall be no cap on punitive damages: (3) the defendant acted or failed to act while under the influence of alcohol, drugs, other than lawfully prescribed drugs administered in accordance with a prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to the degree that the defendant's judgment is substantially impaired."
158. South Carolina has adopted an Excess Doctrine, whereby it's Supreme Court held that an insurance company can and will be held liable for any excess above its coverage for not settling within the limits of coverage, either through negligence or bad faith, or any combination of the two. *Tyger River Pine Co. v. Maryland Casualty Co.*

159. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (1) Knowingly misrepresenting to insureds or third-party claimants pertinent facts or policy provisions relating to coverages at issue or providing deceptive or misleading information with respect to coverages.
160. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims, including third-party liability claims, arising under its policies.
161. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (4) Not attempting in good faith to effect prompt, fair, and equitable settlement of claims, including third-party liability claims, submitted to it in which liability has become reasonably clear.
162. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (5) Compelling policyholders or claimants, including third-party claimants under liability policies, to institute suits to recover amounts reasonably due or payable with respect to claims arising under its policies by offering substantially less than the amounts ultimately recovered through suits brought by the claimants or through settlements with their attorneys employed as the result of the inability of the claimants to effect reasonable settlements with the insurers.
163. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (6) Offering to settle claims, including third-party liability claims, for an amount less than the amount otherwise reasonably due or payable based upon the possibility or probability that the policyholder or claimant would be required to incur attorneys' fees to recover the amount reasonably due or payable.

164. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (7) Invoking or threatening to invoke policy defenses or to rescind the policy as of its inception, not in good faith and with a reasonable expectation of prevailing with respect to the policy defense or attempted rescission, but for the primary purpose of discouraging or reducing a claim, including a third-party liability claim.
165. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (8) Any other practice which constitutes an unreasonable delay in paying or an unreasonable failure to pay or settle in full claims, including third-party liability claims, arising under coverages provided by its policies.
166. Due to the Defendant Nationwide Mutual Insurance Company's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimant suffers from economic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (3) "Economic damages" means pecuniary damages arising from medical expenses and medical care, rehabilitation services, costs associated with education, custodial care, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, a claim for loss of spousal services, loss of employment, loss of business or employment opportunities, loss of retirement income, and other monetary losses.
167. Due to the Defendant Nationwide Mutual Insurance Company's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimant suffers from noneconomic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (9) "Noneconomic damages" means nonpecuniary damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, other nonpecuniary damages, and any other theory of damages including, but not limited to, fear of loss, illness, or injury.
168. In the Claimant's said demand letter to Defendant Nationwide Mutual Insurance Company c/o Joseph Turbovich, is listed as actual property damage.
169. In the Claimant's said demand letter to Defendant Nationwide Mutual Insurance Company c/o Joseph Turbovich, is the total property damage listed including punitive.

170. The Defendant Interinsurance of the Automobile Clu
for property damage per accident and /or occurrence.
171. The Defendant Trustguard Insurance insured Claimat
damage per accident and/or occurrence.
172. South Carolina Code of Laws CHAPTER 32, ARTICLE 5, SECTION 15-32-510 (B)
states, "The plaintiff shall not specifically plead an amount of punitive damages, only that
punitive damages are sought in the action.",
173. The Claimant prays for punitive damages and they are sought in this complaint.
5. As a result of said collision, due to the negligent and reckless acts of the Defendant(s), the
Claimant(s) have suffered property damage in the amount of in excess of \$131,239.77(actual)
and punitive to be determined by the panel of arbitrators, actual and punitive.

WHEREFORE, Claimant(s) requests that this claim be arbitrated and that property damages be
awarded in the amount of in excess of \$131,239.77(actual) and punitive to be determined by the
panel of arbitrators, actual and punitive.

Attorney for Claimant(s):

Claimant(s):

DATE: February 7, 2018

THIS FORM SHALL BE ARBITRATED BY A PANEL OF THREE (3) ARBITRATORS TO BE APPOINTED BY THE CLERK
OF COURT UNLESS WITHIN TEN(10) DAYS FROM THE FILING OF A RESPONSE BY THE DEFENDANT(S), THE
CLAIMANT(S) AND DEFENDANT(S) SHALL AGREE, IN WRITING, TO HAVE SUCH CLAIM HEARD BY A SINGLE
ARBITRATOR. A FORM OF AGREEMENT IS AVAILABLE IN THE CLERK'S OFFICE.

Affidavit of Heidi Gersten in Support of Property Damage Claim

STATE OF SOUTH CAROLINA	)	BEFORE THE ARBITRATION PANEL OF
	)	CHESTER COUNTY
in the matter of Arbitration between	)	
HEIDI GERSTEN, IVANKA AYOUB	)	Case number 2018-AP-12-00074
Claimants	)	Affidavit of Heidi Gersten in Support of
	)	Property Damage Claim
vs.	)	VERIFICATION
	)	
KEVIN CARTER, RICHARD DAVIS, JOSEPH	)	
TIRBOVICH, NATIONWIDE MUTUAL INS.	)	
CO., INTERINSURANCE EXCHANGE of the	)	
AUTOMOBILE CLUB, TRUSTGUARD INS.	)	
CO., JOHN AMMENDOLA	)	
_____	)	
Defendants	)	

FILED
2018 MAR 27 P 3:52
CLERK OF COURT
CHESTER CO S.C.

VERIFICATION
AFFIDAVIT

(In Support of Property Damage Claim in Motor Vehicle Collision)

STATE OF FLORIDA,
SS:
COUNTY OF PALM BEACH,

Heidi Gersten, being first duly cautioned and sworn deposes and states as follows:

1. I am one of the Claimants herein, and have read the foregoing Claim for Property Damage and know the contents thereof, that the same is true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters I believe them to be true.

2. The facts stated herein are personally known to me and I have first hand knowledge thereof. And to those facts that are in addition stated are based on information and belief. If called upon to do so, I would and could competently testify to hereto under oath in a court of law operating under the laws of the state of South Carolina and/or any other state of the Republic of the United States of

America whether considered a foreign state or not under South Carolina laws and the United States Constitution.

3. On or about March 19, 2015 at approximately 3:45 a.m., I was traveling on I-77 northbound in the right hand lane at approximately 70 miles per hour. I saw a vehicle ahead of me in the right shoulder with no lights on that appeared to be parked. As I got closer, the vehicle suddenly entered into the lane I was in without yielding right of way or using turn signals. Our vehicles collided.

4. I was subsequently taken to a hospital in North Carolina.

5. I was paralyzed as a result of this collision.

6. The Chevrolet Mark III LX Conversion Van I was traveling in was owned and registered to my mother, Ivanka Ayoub.

7. The Van was totaled in said collision.

8. The Van was packed with an enormous amount of my personal and professional property that I was relocating from a storage unit in Florida to Ohio.

9. The majority of the items in the Van were destroyed, damaged, or lost as a direct and proximate cause of the Defendant Kevin Carter.

10. I sent a 332-page book with pictures and receipts with indexes and information relating to the property damage claim requested by Joseph Tirbovich confirming that he needed pictures of the items that I claimed were damaged, destroyed or lost in the collision. He understood that I was in the hospital for 3 weeks and unable to personally take pictures of the items immediately after the collision. I will have the book and copies to present at the arbitration hearing in this matter along with other pictures, receipts, audio, video, and other information and

evidence relevant to the subject matter. The total amount of my claimed loss is in excess of \$131,239.77 (actual) and punitive damages to be determined at arbitration on this matter.

11. I have attached, as Exhibit A, a true and genuine copy of the 31-page accident reconstruction report of the collision made by Donald J. Roberts, P.E. of Delta V Forensic Engineering.

12. I have attached, as Exhibit B, a true and genuine copy of the arbitration hearing to establish liability that resulted with me having NO LIABILITY.

13. I have attached, as Exhibit C, a true and genuine copy of the Police Report made by SC Trooper Blackwell which includes the signed Advisement of Implied Consent Rights, the DUI incident report, the SLED Laboratory Forensic Services Request, and the South Carolina Law Enforcement Division – Urine/Blood Collection Report.

14. I have attached as, Exhibit D, a true and genuine copy of the official report of the SC Law Enforcement Division Forensic Services Laboratory toxicology results of Defendant Kevin Carter.

15. I have attached as, Exhibit E, a true and genuine copy of the offer letter made by Joseph Tirbovich on behalf of Nationwide Mutual Ins. Co. for the property damage that I claimed.

16. I have attached, as Exhibit F, a true and genuine copy of the offer letter made by Joseph Tirbovich on behalf of Nationwide Mutual Ins. Co. for the punitive portion of the property damage I claimed.

17. I have attached, as Exhibit G, a true and genuine copy of the 1st phone

communication made between Joseph Tirbovich and I on or about April 27, 2016.

18. I have attached as Exhibit H, a true and genuine copy of the transcript of the 1st phone communication between Joseph Tirbovich and I on or about April 27, 2016.

19. I have attached, as Exhibit I, a true and genuine copy of the offer letter made by Amy Carmack on behalf of Trustguard Ins. Co. dated February 21, 2018.

20. I have attached, as Exhibit J, a true and genuine copy of the last phone communication made between Joseph Tirbovich and I on or about February 22, 2018.

21. I have attached, as Exhibit K, a true and genuine copy of the transcript of the last phone communication between Joseph Tirbovich and I on or about February 22, 2018.

22. I have attached, as Exhibit L, the declaration page of Kevin Carter and Richard Davis' coverage of insurance from Nationwide Mutual Insurance Company.

23. Defendant Kevin Carter was charged with DUI by SC Trooper Blackwell.

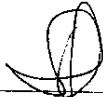
24. I'm cooperating with the SC Department of Public Safety to convict Defendant Kevin Carter for felony DUI with great bodily injury.

25. The named insurance companies and their insurance companies actions or inactions of their employees toward my mother and I thwarts public policy.

26. I believe there is collusion amongst the named insurance companies and their employees against my mother and I as a regular course of conduct in everyday business dealings with their insured.

27. I certify that the documents, video, audio, and other such evidence that has been submitted by my mother, Ivanka Ayoub, and I to be accurate and genuine

copies and/or originals of information relevant to redressing our grievances in this
action for property damage.



Heidi Gersten
1438 W. Lantana Rd., #330, Lantana, FL 33462

Subscribed and sworn to before me, this 6th day of March 2018.

[Notary Seal:]



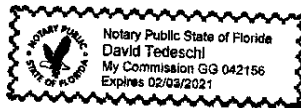
[signature of Notary]

DAVID TEDESCHI

[typed name of Notary]

NOTARY PUBLIC

My commission expires: 02/03, 20 21.



FILED

2018 MAR 21 P 3:52

CLERK OF COURT
JANET D. S.C.

March 16, 2018

Summons and Complaint filed March 16, 2018, in Case No. 2018-CP-12-00117

STATE OF SOUTH CAROLINA,)
COUNTY OF CHESTER)
HEIDI GERSTEN, IVANKA AYOUB,)
DANIEL HUBBARD)

Plaintiff,)

vs.)

KEVIN CARTER, RICHARD DAVIS,)
JOSEPH TIRBOVICH, NATIONWIDE)
MUTUAL INSURANCE CO.,)
INTERINSURANCE EXCHANGE OF)
THE AUTOMOBILE CLUB, JOHN)
AMMENDOLA, TRUSTGUARD INS. CO,)
S.C. DEPT. OF PUBLIC SAFETY,)
BLACKWELL, CHEVROLET, GMC,)
UNKNOWN JOHN DOES)
Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

2018 CP1200117

FILE NO.

FILED

CLERK OF COURT
CHESTER CO S.C.
2018 MAR 16 A 10:30

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Chester, South Carolina


Plaintiff/Attorney for Plaintiff

Dated: March 15, 2018

Address: 1438 W. Lantana Rd. #330
Lantana, FL 33462

SCCA 401 (5/02)

Annex 165

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

HEIDI GERSTEN, IVANKA AYOUB, DANIEL
HUBBARD

Plaintiff(s)

VS.

KEVIN CARTER, RICHARD DAVIS, JOSEPH
TIRBOVICH, NATIONWIDE INS. CO.,
INTERINSURANCE EXCHANGE OF THE
AUTOMOBILE CLUB, JOHN AMMENDOLA,
TRUSTGUARD INS. CO., S.C. DEPT OF PUBLIC
SAFETY, BLACKWELL, CHEVROLET, GMC,
UNKNOWN JOHN DOES

Defendant(s)

Submitted By: Heidi Gersten
Address: 1438 W. Lantana Rd. #330
Lantana, FL 33462

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018 -CP- 12 0017

SC Bar #:
Telephone #: (323) 245-6142
Fax #: (561) 756-9820
Other:
E-mail: hanginhangout@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- X JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

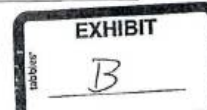
NATURE OF ACTION (Check One Box Below)

Contracts ☐ Construction (100) ☐ Debt Collection (110) ☐ General (150) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Conversion (310) X ☒ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture - Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Incapacitated Adult Settlement	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile A/R (610) ☐ Medical (620)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out of State Depositions (650)		

SCCA / 234 (02/2018)

Page 1 of 3

Ann 11.2



- ☐ Other (699) _____
 ☐ Motion to Quash Subpoena in an Out-of-County Action (660) (790)
- ☐ Sexual Predator (510)
 ☐ Pre-Suit Discovery (570)
 ☐ Other (799) _____
- ☐ Permanent Restraining Order (680)
 ☐ Interpleader (690)

Submitting Party Signature: 

Date: March 15, 2018

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

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

Pursuant to the ADR Rules, you are required to take the following action(s):

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

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

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

FILE NO: 2018 CP 1206117

4 HEIDI GERSTEN, IVANKA AYOUB,
5 DANIEL HUBBARD

Plaintiffs

COMPLAINT
and
DEMAND FOR JURY TRIAL

6 vs.

7 KEVIN CARTER, RICHARD DAVIS,
8 JOSEPH TIRBOVICH, NATIONWIDE
9 MUTUAL INSURANCE COMPANY,
10 INTERINSURANCE EXCHANGE OF
11 THE AUTOMOBILE CLUB, JOHN
12 AMMENDOLA, TRUSTGUARD
INSURANCE COMPANY SC DEPT
PUBLIC SAFETY BLACKWELL,
GMC, CHEVROLET, UNKNOWN
JOHN DOES

FILED

CLERK OF COURT
CHRISTOPHER SLO
2018 MAR 16 A 10:34

13 The Plaintiffs, complaining of the Defendants hereby file a claim for bodily
14 injury arising out of a motor vehicle collision, complain and for causes of
15 action allege as follows:
16

17
18 GENERAL ALLEGATIONS

19 (Against All Defendants)

20 I.

21 PARTIES

22 1. The Plaintiff Heidi Gersten is an individual and is now and at all times mentioned in this complaint
23 relevant to this matter, was and is a resident of Palm Beach County, Florida.

24 2. The Plaintiff Ivanka Ayoub is an individual and is now and at all times mentioned in this complaint
25 relevant to this matter, was a resident of Cuyahoga County, Ohio and is a resident of Palm Beach County,
26 Florida.

27 3. The Plaintiff Daniel Hubbard is an individual and is now and at all times mentioned in this complaint
28 relevant to this matter, was and is a resident of Cuyahoga County, Ohio.

- 1 4. The Defendants Kevin Carter and Richard Davis reside in Iredell County, North Carolina.
- 2 5. The Defendant Nationwide Mutual Insurance Company is a company maintaining and operating and
- 3 doing business in the State of North Carolina.
- 4 6. The Defendant Interinsurance Exchange of the Automobile Club is a company maintaining and
- 5 operating and doing business in the State of North Carolina.
- 6 7. The Defendant Trustguard Insurance Company is a company maintaining and operating and doing
- 7 business in the State of North Carolina.
- 8 8. Where the other Defendants reside is unknown to the Claimants at this time.
- 9 9. Some of the Defendants are unknown at this time and listed as John Does.

11 II.

12 JURISDICTION AND VENUE

- 13 10. The collision occurred in Chester County, South Carolina.
- 14 11. This court is vested with jurisdiction over the Defendants.
- 15 12. This court is vested with original jurisdiction because the damages sought by the Plaintiffs are in
- 16 excess of Ten Thousand Dollars (\$10,000.00 USD).
- 17 13. The venue of this action is proper in Chester County, pursuant to , because the cause of action arose
- 18 in this county.

21 III.

22 FACTUAL ALLEGATIONS

- 23 14. The collision occurred on March 19, 2015 at approximately 3:45 a.m.
- 24 15. The Plaintiff Heidi Gersten was involved in said motor vehicle collision with the Defendant Kevin
- 25 Carter.
- 26 16. The Plaintiff Ivanka Ayoub was the registered owner of the 1998 Chevrolet Mark III LX 1500
- 27 Conversion Van Involved in said motor vehicle collision.
- 28 17. The Plaintiff Ivanka Ayoub was insured with the Defendant Trustguard Insurance Company, also

1 doing business as Grange Insurance, for said van and other coverage on the date of said collision.

2 18. The Plaintiff Heidi Gersten was insured with the Defendant Interinsurance Exchange of the
3 Automobile Club on the date of said collision.

4 19. The Plaintiff Heidi Gersten was insured with the Defendant Trustguard Insurance Company, also
5 doing business as Grange Insurance, on the date of said collision.

6 20. Without yielding right of way, the Defendant Kevin Carter entered the highway from the
7 shoulder of where he was parked, without turning his headlights on or using turn signals, at approximately
8 4 a.m., causing this collision, violating South Carolina laws.

9 21. The Defendant Kevin Carter was parked on the eastside shoulder of I-77 northbound, in Chester
10 County, South Carolina: latitude: 34 41 41.32, longitude: 81 01 48.06, moments prior to said collision.

11 22. The Defendant Kevin Carter violated SC Code § 56-5-2350 (2012) - Vehicle entering roadway.

12 23. The Defendant Kevin Carter violated SC Code § 56-5-2150 (2012) - Turning movements and
13 required signals.

14 24. The Defendant Kevin Carter violated SC Code § 56-5-4450 (2012) - Times when vehicles must
15 be equipped with lights.

16 25. The Defendant Kevin Carter violated SC Code § 56-5-2930 - Operating motor vehicle while
17 under influence of alcohol or drugs.

18 26. The Defendant Kevin Carter violated SC Code § 56-5-2945 - Offense of felony driving under
19 the influence.

20 27. South Carolina Solicitor's Office is pursuing this matter to move into General Sessions under felony
21 charges for causing great bodily injury to the Plaintiff Heidi Gersten.

22 28. As a result, the Plaintiffs suffer severe damages and added expenses.

23
24
25
26 IV.

27 FIRST CAUSE OF ACTION (CLAIM FOR RELIEF)

28 (Negligence)

1 29. The Plaintiffs hereby incorporate and reallege Paragraphs 1 through 28 as though fully set forth at
2 length herein.

3 30. The Defendant Kevin Carter had a duty to properly obey the traffic laws of the State of South
4 Carolina, County of Chester, and by failing to do so acted in a negligent manner.

5 31. As a result of Defendant Kevin Carter's negligent conduct stated above, the Plaintiffs have suffered
6 specific damages, including but not limited to medical expenses and lost wages.

7
8 V.

9 SECOND CAUSE OF ACTION (CLAIM FOR RELIEF)

10 (Fraud)

11 32. The Plaintiffs incorporate by reference paragraphs 1-31 inclusive of the First Cause of
12 Action as if fully set forth.

13 33. The Defendants' made a representation false statements of material fact.

14 34. The Defendants' statements were false.

15 35. The Defendants' knew these statements were untrue or were ignorant of its truth.

16 36. The Defendants' statements were material.

17 37. The Defendants intended on deceiving the Plaintiffs.

18 38. There was reasonable reliance by the Plaintiffs of these statements.

19 39. The Plaintiffs suffer proximate injury.

20 VI.

21 THIRD CAUSE OF ACTION (CLAIM FOR RELIEF)

22 (Fraudulent Inducement)

23 40. The Plaintiffs incorporate by reference paragraphs 1-39 inclusive of the First and Second Causes of
24 Action as if fully set forth.

25 41. The Defendants intentionally pressured the Plaintiffs.

26 42. The Defendants' misrepresentation of the situation was relied on.

27 43. The Defendants' representation of the situation was false.
28

1 44. The Plaintiffs suffer damages as a direct and proximate result.

2 VII.

3 FOURTH CAUSE OF ACTION (CLAIM FOR RELIEF)

4 (Intentional Infliction of Emotional Distress)

5 45. The Plaintiffs incorporate by reference paragraphs 1-44 inclusive of the First, Second and
6 Third Causes of Action as if fully set forth.

7 46. The Defendants acted intentionally or recklessly.

8 47. The Defendants' conduct was outrageous.

9 48. The Defendants' conduct is the proximate cause of Plaintiffs' harm.

10 49. The Plaintiffs suffer from severe emotional distress.

11
12 VIII.

13 FIFTH CAUSE OF ACTION (CLAIM FOR RELIEF)

14 (Negligent Infliction of Emotional Distress)

15 50. The Plaintiffs incorporate by reference paragraphs 1-49 inclusive of the First, Second, Third and
16 Fourth Causes of Action as if fully set forth.

17 51. The Defendants' conduct caused physical contact with the Plaintiff Heidi Gersten.

18 52. The Plaintiffs were in the "zone of danger" of the Defendants' negligent acts.

19 53. It was foreseeable that the Defendants' negligent conduct would cause the Plaintiffs
20 emotional harm.

21 IX.

22 SIXTH CAUSE OF ACTION (CLAIM FOR RELIEF)

23 (Loss of Consortium)

24
25
26 54. The Plaintiffs incorporate by reference paragraphs 1-53 inclusive of the First, Second, Third, Fourth
27 and Fifth Causes of Action as if fully set forth.

28 55. The Plaintiffs suffer damages from the conduct of the Defendants.

1 X

2 SEVENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

3 (Product Liability)

4 56. The Plaintiffs incorporate by reference paragraphs 1-55 inclusive of the First, Second, Third,
5 Fourth, Fifth and Sixth Causes of Action as if fully set forth.

6 57. The Plaintiffs learned that there were product recalls with the said vehicle in collision.

7 58. The Plaintiffs suffer damages as a result.
8

9 XI

10 EIGHTH CAUSE OF ACTION (CLAIM FOR RELIEF)

11 (Breach of Contract)

12 59. The Plaintiffs incorporate by reference paragraphs 1-58 inclusive of the First, Second, Third,
13 Fourth, Fifth, Sixth and Seventh Causes of Action as if fully set forth.

14 60. The Defendants had a duty.

15 61. The Defendant breached the duty.

16 62. The Plaintiffs suffer damages as a result.
17

18 XII

19 NINTH CAUSE OF ACTION (CLAIM FOR RELIEF)

20 (Invasion of Privacy)

21 63. The Plaintiffs incorporate by reference paragraphs 1-62 inclusive of the First, Second, Third,
22 Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action as if fully set forth.

23 64. The Defendants had a duty.

24 65. The Defendants breached the duty.

25 66. The Plaintiffs suffer damages as a result.
26
27
28

XII

1 Tenth Cause of Action (Claim for Relief)

2 (Strict Liability)

3 67. The Plaintiffs incorporate by reference paragraphs 1-66 inclusive of the First, Second, Third,
4 Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action as if fully set forth.

5 68. There were product recalls on the said vehicle.

6 69. The Defendant is responsible.

7
8 XIII

9 Eleventh Cause of Action (Claim for Relief)

10 (Conspiracy)

11 70. The Plaintiffs incorporate by reference paragraphs 1-69 inclusive of the First, Second, Third,
12 Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Causes of Action as if fully set forth.

13 71. Two or more Defendants were in collusion.

14 72. The Defendants intentionally acted.

15 73. The Defendants made an agreement.

16 74. The Defendants violated laws.

17 75. The Defendants committed overt acts in furtherance of the agreement.

18
19 XIV

20 Twelfth Cause of Action (Claim for Relief)

21 (Misrepresentation)

22 76. The Plaintiffs incorporate by reference paragraphs 1-75 inclusive of the First, Second, Third,
23 Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Causes of Action as if fully set
24 forth.

25 77. The Defendants made a misrepresentation of material fact.

26 78. The Defendants' representation was false.

27 79. The Plaintiffs' loss benefited the Defendants.

28 XV

1 THIRTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

2 0

3 80. The Plaintiffs incorporate by reference paragraphs 1-79 inclusive of the First, Second, Third,
4 Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and Twelfth Causes of Action as if
5 fully set forth.

6 81. The Plaintiffs suffer damages from the conduct of the Defendants.

7 XVI

8 FOURTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

9 (Deceit)

10 82. The Plaintiffs incorporate by reference paragraphs 1-81 inclusive of the First, Second, Third,
11 Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth Causes of
12 Action as if fully set forth.

13 83. The Defendants made false representations to the Plaintiffs.

14 84. The Defendants knew these representations were false or acted reckless.

15 85. The Defendants intended that the Plaintiffs should act in reliance of it.

16 XVII

17 FIFTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

18 (Duress and Undue Influence)

19 86. The Plaintiffs incorporate by reference paragraphs 1-85 inclusive of the First, Second, Third,
20 Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth and Fourteenth
21 Causes of Action as if fully set forth.

22 87. The Plaintiffs suffer damages as a result of the Defendants' conduct.

24 XVIII

25 SIXTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

26 (Slander)

27 88. The Plaintiffs incorporate by reference paragraphs 1-87 inclusive of the First through Fifteenth
28 Causes of Action as if fully set forth.

1 89. The Plaintiffs suffer damages as a result of the Defendants' conduct.

2 XIX

3 SIXTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

4 (Libel)

5 90. The Plaintiffs incorporate by reference paragraphs 1-89 inclusive of the First and Second Causes of Action as if fully set forth.

6 91. The Plaintiffs suffer damages as a result of the Defendants' conduct.

7 XX

8 SEVENTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

9 (Defamation)

10 92. The Plaintiffs incorporate by reference paragraphs 1-91 inclusive of the First through Sixteen Causes of Action as if fully set forth.

11 93. The Plaintiffs suffer damages as a result of the Defendants' conduct.

12 XXI

13 EIGHTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

14 (Malicious Prosecution)

15 94. The Plaintiffs incorporate by reference paragraphs 1-93 inclusive of the First through Seventeenth Causes of Action as if fully set forth.

16 95. The Plaintiffs suffer damages as a result of the Defendants' conduct.

17 DAMAGES

18 96. As a result of said incident, due to the wanton, willful and reckless acts of the Defendants, the Plaintiffs have suffered bodily injury damage and personal injury damage in the amount in excess of \$1,000,000.00 (actual) and future amounts to be determined as well as punitive damages.

19 97. The Plaintiff has suffered general and special, incidental and consequential damages as the direct and proximate result of the acts and omissions of the Defendant, which

1 damages are in excess of Ten Thousand Dollars (\$10,000.00) and shall be fully proven at
2 the time of trial. These damages include, but are not limited to: damages for wage loss;
3 medical and medical-related expenses; travel and travel-related expenses; emotional
4 distress; fear of harm and humiliation; physical pain; physical injury; and all other
5 ordinary, incidental and consequential damages as would be anticipated to arise under the
6 circumstances.

7 98. This medical battery, assault, fraud and HIPAA violations are the proximate cause
8 of the Plaintiffs' damages.

9 99. As a direct and proximate result of the Defendants' conduct, the Plaintiff Heidi
10 Gersten suffered paralysis and a pressure wound, among other things. The Plaintiffs have
11 also suffered extreme mental anguish and physical pain. These injuries have caused the
12 Plaintiffs to suffer general damages in excess of \$1,000,000.00 USD, which the actual
13 amount is to be determined by proof at trial.

14 100. As a direct and proximate result of the Defendants' conduct, the Plaintiff was and is
15 required to obtain medical service and treatment in an amount in excess of \$1,000,000.00,
16 and will, in the future, be compelled to incur additional obligations for medical treatment
17 in an amount to be determined by proof at trial.

18 101. As a further direct and proximate result of the Defendant's conduct, the Plaintiff
19 Daniel Hubbard was unable to work for a period and, accordingly, lost wages in amount
20 to be determined by proof at trial.

21 102. As a further direct and proximate result of the Defendant's conduct, the Plaintiff
22 Heidi Gersten has been, and continues to be, unable to work since the events described in
23 this complaint and has suffered a loss of earnings in an amount which has not yet been
24 determined, but which will be added by amendment when it is ascertained.

25 103. The Plaintiff Ivanka Ayoub suffers, among other things, loss of consortium.

26 104. The Defendants' acts were done knowingly, willfully and with malicious intent, and
27
28

1 the Plaintiffs are entitled to punitive damages in an amount to be determined by proof at
2 trial.

3
4 PRAYER FOR RELIEF

5 WHEREFORE, the Plaintiffs demand judgment against the Defendants and pray for the
6 following relief as follows:

7 (1) For a trial by jury;

8 (2) That the Plaintiffs Heidi Gersten, Ivanka Ayoub and Daniel Hubbard recover
9 judgment for damages for such sums in excess of \$1,000,000.00, as shall be determined to
10 fully and fairly compensate them for all general, special, incidental and consequential
11 damages respectively incurred by them as the direct and proximate result of the acts and
12 omissions of the Defendants, together with interest until satisfied, to be determined by
13 proof at trial;

14 (3) Medical and related expenses in excess of \$100,000,000.00 to be determined by proof
15 at trial;

16 (4) Past and future lost earnings in an amount to be determined by proof at trial;

17 (5) Impairment of earning capacity in an amount to be determined by proof at trial;

18 (6) Punitive damages;

19 (7) Costs of this action;

20 (8) Any other and further relief that the court considers proper and as it deems necessary
21 and equitable in the circumstances.
22
23

24 Respectively submitted this 13th day of March 2018

25
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27
28

Plaintiff Heidi Gersten
1438 West Lantana Rd. #330
Lantana, FL 33462

FILED
MAR 16 10:36
CLERK OF COURT
JUDICIAL CIRCUIT
IN AND FOR
THE 17TH JUDICIAL CIRCUIT
PALM BEACH COUNTY, FLORIDA

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(323) 245-6142
hanginhangout@gmail.com
(561) 756-9820

Ivanka Ayoub
Plaintiff Ivanka Ayoub
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Daniel Hubbard
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Lantana, FL 33462
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hanginhangout@gmail.com
(561) 756-9820

FILED
2010 MAR 16 A 10:36
CLERK OF COURT
CLERK OF COURT

March 17, 2018

First amended claim for Property Damage (Filed March 17, 2018)

STATE OF SOUTH CAROLINA)

In the matter of Arbitration between)

HEIDI GERSTEN, IVANKA AYOUB)

Claimant(s))

vs.)

KEVIN CARTER, RICHARD DAVIS,
JOSEPH TIRBOVICH, NATIONWIDE
MUTUAL INSURANCE COMPANY,
INTERINSURANCE EXCHANGE OF THE
AUTOMOBILE CLUB, JOHN
AMMENDOLA, TRUSTGUARD
INSURANCE COMPANY)

Defendant(s))

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

Case number 2018-BP-12-00074

FIRST AMENDED
CLAIM FOR PROPERTY DAMAGE
VERIFIED

FILED
2018 MAR 27 3:52
CLERK OF COURT
JUDICIAL DISTRICT
S.C.

The Claimant(s), complaining of the Defendant(s) hereby files a claim for property damages arising out of a motor vehicle collision and requests that the matter be submitted to arbitration, and allege:

1. The Claimant(s) resides in Palm Beach County, Florida. County.
2. The Defendant(s) resides in Kevin Carter, Richard Davis in Iredell County, North Carolina, where the other Defendants reside are unknown to the Claimants at this time County.
3. The collision occurred in Chester County.
4. The collision occurred on March 19, 2015 at approximately 3:45 a.m.
5. The Claimant Heidi Gersten was involved in said motor vehicle collision with the Defendant Kevin Carter.
6. The Claimant Ivanka Ayoub was the registered owner of the 1998 Chevrolet Mark III LX 1500 Conversion Van involved in said motor vehicle collision.
7. The Claimant Ivanka Ayoub was insured with the Defendant Trustguard Insurance Company, also doing business as Grange Insurance, for said van and other coverage on the date of said collision.
8. The Claimant Heidi Gersten was insured with the Defendant Interinsurance Exchange of the Automobile Club on the date of said collision.
9. The Claimant Heidi Gersten was insured with the Defendant Trustguard Insurance Company, also doing business as Grange Insurance, on the date of said collision.

10. The Defendant Kevin Carter had a duty to properly obey the traffic laws of the State of South Carolina and Chester County where the collision occurred, and by failing to do so acted in a negligent manner.
11. As a direct and proximate result of the Defendant Kevin Carter's negligent conduct, stated above, the Claimants have suffered specific damages, including but not limited to property damage.
12. Without yielding right of way, the Defendant Kevin Carter entered the highway from the shoulder of where he was parked, without turning his headlights on or using turn signals, at approximately 4 a.m., causing this collision, violating South Carolina laws.
13. The Defendant Kevin Carter was parked on the eastside shoulder of I-77 northbound, in Chester County, South Carolina: latitude: 34 41 41.32, longitude: 81 01 48.06, moments prior to said collision.
14. The Defendant Kevin Carter violated SC Code § 56-5-2350 (2012) - Vehicle entering roadway.
15. The Defendant Kevin Carter violated SC Code § 56-5-2150 (2012) - Turning movements and required signals.
16. The Defendant Kevin Carter violated SC Code § 56-5-4450 (2012) - Times when vehicles must be equipped with lights.
17. The Defendant Kevin Carter violated SC Code § 56-5-2930 - Operating motor vehicle while under influence of alcohol or drugs.
18. The Defendant Kevin Carter violated SC Code § 56-5-2945 - Offense of felony driving under the influence.
19. South Carolina Solicitor's Office is pursuing this matter to move into General Sessions under felony charges for causing great bodily injury to the Claimant Heidi Gersten.
20. The Defendant Kevin Carter's conduct in said collision was willful, wanton or reckless.
21. The Defendant Kevin Carter displayed gross negligence in said collision.
22. The Defendant Kevin Carter's full name is Kevin Mark Carter.
23. The Defendant Kevin Carter's date of birth is .
24. The Defendant Kevin Carter's driver's license number is issued in
25. The Defendant Kevin Carter's cell number is
26. The Defendant Kevin Carter resides at .
27. The Defendant Kevin Carter is and/or was certified as a State of North Carolina Medical Responder, North Carolina EMS License

28. The Defendant Kevin Carter attended the University of North Carolina at Chapel Hill for a Master of Business Administration (MBA).
29. The Defendant Kevin Carter attended Virginia Tech for a Bachelor of Business Administration (BBA).
30. The Defendant Kevin Carter attended Carolina College of Health Sciences for an Associate's Degree.
31. The Defendant Kevin Carter attended Mitchell Community College for a Rescue & Fire Emergency Technician.
32. The Defendant Kevin Carter is listed as the registered owner of the 2006 Honda Ridgeline involved in said motor vehicle collision.
33. The license plate number of the said Honda Ridgeline involved in said collision is
34. The vin number of the said Honda Ridgeline involved in said collision is
35. The Defendant Richard Davis is listed as the registered owner of the 2006 Honda Ridgeline involved in said motor vehicle collision in addition to the Defendant Kevin Carter.
36. The Defendant Richard Davis resides at
37. The Defendant Richard Davis was communicating with the Defendant Kevin Carter while the Defendant Kevin Carter was operating said vehicle via cell phone.
38. Through negligent entrustment, the Defendant Richard Davis has violated South Carolina statutes for consenting to the Defendant Kevin Carter's use of said vehicle while Valium was in the Defendant Kevin Carter's system.
39. The Defendant Nationwide Mutual Insurance Company insured the Defendants Kevin Carter and Richard Davis for the 2005 Honda Ridgeline in said collision, policy number:
40. The Defendant Nationwide Mutual Insurance Company is also known as Nationwide Property and Casualty.
41. The Defendant Nationwide Mutual Insurance Company also does business as Nationwide Property and Casualty.
42. The policy limit for property damage liability with Defendant Nationwide Mutual Insurance Company on said 2006 Honda Ridgeline is per accident.
43. The Defendant Kevin Carter was charged with DUI in said collision.
44. March 19, 2017, at approximately 4:12 a.m., Trooper Blackwell of the South Carolina Highway Patrol was dispatched to said collision on I-77 North at the 61 mile marker.

45. Upon making contact with the Defendant Kevin Carter, Trooper Blackwell, "...noticed that Mr. Carter was very lethargic in his speech...", according to the incident report of said March 19, 2015 collision written by Trooper Blackwell.
 46. Trooper Blackwell stated in his incident report of said collision that the Defendant Kevin Carter was "...having trouble remembering his current location...".
 47. Trooper Blackwell stated in his incident report of said collision that the Defendant Kevin Carter was "...having trouble remembering where he was coming from...".
 48. Trooper Blackwell stated in his incident report of said collision that the Defendant Kevin Carter stated to Trooper Blackwell and Richburg Fire Officials that, "... (he) and his wife had been in an argument earlier in the evening and she had asked him to leave their residence...".
 49. The Defendant Kevin Carter stated that, "... (he) had been taking an unknown amount of his prescribed Valium throughout the night and into the morning hours for his "nerves"...", according to Trooper Blackwell's incident report of said collision.
 50. Trooper Blackwell saw "...various bottles of prescription medications that were on the passenger seat of Mr. Carter's vehicle.", as stated by Trooper Blackwell in his incident report of said collision.
 51. The Defendant Kevin Carter stated that, "... (he) had only been taking his Valium but could not remember how much he had taken over the night...".
 52. The Defendant Kevin Carter was transported by EMS to Piedmont Medical Center where Trooper Blackwell informed Defendant Kevin Carter that he was being charged with DUI according to Trooper Blackwell's incident report of said collision.
 53. The Defendant Kevin Carter was under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
 54. The Defendant Kevin Carter agreed to his implied consent rights.
 55. The Defendant Kevin Carter agreed to having a blood sample taken.
 56. A blood sample was taken of the Defendant Kevin Carter for analysis.
 57. The blood sample taken of the Defendant Kevin Carter was tested according to Section 56-5-2950 and SLED policies.
 58. The Defendant Kevin Carter admitted to being impaired while operating his motor vehicle.
 59. The Defendant Kevin Carter admitted to consuming Valium in greater amounts than prescribed while operating his 2005 Honda Ridgeline in said collision.
 60. Valium is synonymous with diazepam.
 61. Diazepam is a Schedule IV controlled substance and is available by prescription.
- SCCA/201(3/2005)

62. Diazepam Drug Class: Tranquilizer, sedative, CNS depressant.
63. At low doses, diazepam is a moderate tranquilizer, causing sleepiness, drowsiness, confusion, and some loss of anterograde memory.
64. Diazepam can produce a state of intoxication similar to that of alcohol, including slurred speech, disorientation, and drunken behavior.
65. Side effects of diazepam may include dry mouth, blurred or double vision, headache, vertigo, urinary retention, excessive perspiration, nausea and vomiting, ataxia, tremor, depression, hypotension and diminished reflexes.
66. According to a report entitled "Drugs and Human Performance Fact Sheets" written by COUPER, Fiona J. and LOGAN, Barry K for Washington State Patrol Forensic Laboratory Services Bureau and sponsored by National Highway Traffic Safety Administration, "Laboratory studies have shown that single doses of diazepam (5-20 mg) are capable of causing significant performance decrements, with maximal effect occurring at approximately 2 hour post dose, and lasting up to at least 3-4 hours. Decreases in divided attention, increases in lane travel, slowed reaction time (auditory and visual), increased braking time, decreased eye-hand coordination, and impairment of tracking, vigilance, information retrieval, psychomotor and cognitive skills have been recorded. Lengthened reaction times have been observed up to 9.5 hours post dose of diazepam, lethargy and fatigue are common, and diazepam increases subjective perceptions of sedation. Reduced concentration, impaired speech patterns and content, and amnesia can also be produced, and diazepam may produce some effects that may last for days..."
67. The drug manufacturer suggests patients treated with diazepam be cautioned against engaging in hazardous occupations requiring complete mental alertness such as driving a motor vehicle.
68. Simulator and driving studies have shown that diazepam produces significant driving impairment over multiple doses, according to said report entitled, "Drugs and Human Performance Fact Sheets".
69. Single doses of diazepam can increase lateral deviation of lane control, reduce reaction times, reduce ability to perform multiple tasks, decrease attention, adversely effect memory and cognition, and increase the effects of fatigue, according to said report entitled, "Drugs and Human Performance Fact Sheets".
70. Prescription diazepam warning labels state, "Diazepam can make you sleepy, forgetful, have poor co-ordination along with other side effects that can affect everyday activities."
71. Prescription diazepam warning labels state, "You should not drive, operate machinery or take part in such activities where, if affected, you could put yourself or others at risk."
72. Prescription diazepam warning labels state, "The medicine can affect your ability to drive as it may make you sleepy or dizzy."
73. After diazepam (10 mg) patients should refrain from driving or participating in skilled performances for only 5 to 7 hours.

74. According to The Physicians' Desk Reference (a commercially published compilation of manufacturers' prescribing information on prescription drugs, updated annually) one should avoid driving a car or operating heavy machinery and drinking alcohol while taking Valium.
75. It is an offence to drive if diazepam affects your ability to drive.
76. A normal dose of Valium impairs functional ability similar to a 0.10 blood alcohol level.
77. Code of South Carolina Section 56-5-2930 states that, "It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired."
78. The Defendant Kevin Carter admitted to fighting with his "wife" on his cell phone while operating said 2005 Honda Ridgeline in said collision.
79. The Defendant Kevin Carter is on jury trial for DUI in said collision.
80. The Defendant Kevin Carter's DUI case number is
81. Toxicology reports conclude that the Defendant Kevin Carter consumed Valium in excess of the prescribed amount.
82. The SLED No: _____ and Case No: _____ is for The South Carolina Law Enforcement Division's Forensic Services Laboratory Report of the Toxicology Department dated May 15, 2015 for Defendant Kevin Carter regarding the incident dated March 19, 2015.
83. The Defendant Kevin Carter's said toxicology report concluded that diazepam, synonyms: Valium, Zetran, Valrelease, resulted in 0.46 mg/L.
84. The Defendant Kevin Carter has not proven that he has a prescription for Valium.
85. The Defendant Kevin Carter's said toxicology report concluded that nordiazepam, synonyms: Diazepam/Chlordiazepoxide/Chlorazepate, resulted in 0.05 mg/L.
86. The Defendant Kevin Carter has not proven that he has a prescription for nordiazepam.
87. The Defendant Kevin Carter's said toxicology report concluded that temazepam, synonyms: Restoril, diazepam metabolite, resulted in 0.02 mg/L.
88. The Defendant Kevin Carter has not proven that he has a prescription for temazepam.
89. April 24, 2017 was the publication date for the arbitration that decided liability for said collision.

90. Nadia Reynolds was the arbitrator who decided liability for said collision.
91. A comprehensive accident reconstruction report which gives a detailed analysis was provided to said arbitrator, Nadia Reynolds, on behalf of the Claimant Heidi Gersten.
92. Based on the report findings, the Claimant Heidi Gersten was traveling in the right lane of the highway when the Defendant Kevin Carter attempted to enter onto the lane from the right shoulder.
93. Based on the report findings, the Defendant Kevin Carter failed to yield the right of way and operate his vehicle in a safe manner which is the proximate cause for the loss.
94. The said evidence caused the arbitrator, Nadia Reynolds, to render her decision in favor of the Claimant Heidi Gersten and against the Defendants Kevin Carter, Richard Davis, and Nationwide Property and Casualty.
95. The Arbitration Forums, Inc.'s Automobile Decision for said collision Docket Number is
96. The Defendant Nationwide Property and Casualty, acting on behalf of the Defendants Kevin Carter and Richard Davis, proved NO LIABILITY against the Claimant Heidi Gersten at said arbitration to establish liability.
97. The Defendant Nationwide Mutual Insurance Company has accepted full liability for this property damage claim.
98. The Defendant Nationwide Mutual Insurance Company did not appeal said arbitration ruling.
99. It is well settled, without dispute, that the Defendant Kevin Carter is liable for said collision.
100. It is well settled, without dispute, that the Defendant Richard Davis is liable for said collision.
101. It is well settled, without dispute, that the Defendant Nationwide Mutual Insurance Company is liable for said collision.
102. The Defendant Joseph Turbovich is the insurance adjuster for Nationwide Mutual Insurance Company assigned to this property damage claim number:
103. The Claimant Heidi Gersten and the Defendant Joseph Turbovich spoke for the first time on the phone on Wednesday, April 27, 2016.
104. April 27, 2016, the Defendant Joseph Turbovich told the Claimant Heidi Gersten that he was aware that the Defendant Kevin Carter was charged with DUI.
105. April 27, 2016, the Defendant Joseph Turbovich told the Claimant Heidi Gersten that he can haphazardly handle said claim.
106. April 27, 2016, the Defendant Joseph Turbovich told the Claimant Heidi Gersten that he can haphazard South Carolina law with regards to said claim.

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107. April 27, 2016, the Defendant Joseph Turbovich told the Claimant Heidi Gersten that he can "willy nilly" said claim.
108. April 27, 2016, the Defendant Joseph Turbovich told the Claimant Heidi Gersten that he can "willy nilly" the law.
109. April 27, 2016, the Defendant Joseph Turbovich told the Claimant Heidi Gersten that she needed to write the Defendant Nationwide Mutual Insurance Company a letter "with proper statute language and laws" in order to release whether or not Defendant Kevin Carter had an umbrella policy and/or a rider.
110. The Defendant Kevin Carter does not have an insurance umbrella policy.
111. The Defendant Richard Davis does not have an insurance umbrella policy.
112. The Defendant Kevin Carter does not have an insurance rider.
113. The Defendant Richard Davis does not have an insurance rider.
114. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that, "Once we have documentation and we accept the liability, well, yes, of course, we'll go ahead and compensate you up to our policy holder's limits".
115. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that the Defendant Nationwide Insurance Company did an accident reconstruction of said collision.
116. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that he had not spoken with the Claimant Heidi Gersten's insurance company as of April 27, 2016.
117. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that his decision was based on "... (his) own personal investigation".
118. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that, "We don't understand why the officer thought that our insured wasn't traveling. He was just stopped in the middle of the road. Why is the officer?--Why is there not an amendment to the police report as far as the details?"
119. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that she should be "irritated and upset".
120. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that the Defendant Kevin Carter did not tell the Defendant Nationwide Mutual Insurance Company that he was charged with a DUI.
121. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that, "We're finding out that he (the Defendant Kevin Carter) was under the influence."

136. The Claimant Heidi Gersten stated in her demand letter that she had superseded the policy limits with the pictures and receipts of said van and personal property contents damaged, destroyed, and/or lost in said collision that were provided to the Defendant Nationwide Mutual Insurance Company c/o the Defendant Joseph Tirbovich.
137. The Claimant Heidi Gersten stated in her demand letter to the Defendant Nationwide Mutual Insurance Company c/o the Defendant Joseph Tirbovich that the contents listed were a partial listing of personal property contents damaged, destroyed, and/or lost in said collision.
138. The said demand letter accompanied other documents that totaled 332 pages in all.
139. The said demand included reasonable market value of the totaled demolished van, all personal property contents, loss of use, and punitive damages.
140. August 9, 2017 the said demand letter package was sent via U.S. Postal Overnight Service to the Defendant Nationwide Mutual Insurance Company c/o the Defendant Joseph Tirbovich.
141. August 24, 2017 was the original deadline date of the Claimant Heidi Gersten's demand letter to the Defendant Nationwide Mutual Insurance Company c/o the Defendant Joseph Tirbovich.
142. August 16, 2017, the Defendant Joseph Tirbovich requested additional time to respond to the demand letter by leaving a message on the Claimant Heidi Gersten's voice mail.
143. August 11, 2017 is the date that the Defendant Joseph Tirbovich said he received said demand package.
144. The Claimant Heidi Gersten granted the Defendant Joseph Tirbovich's request for an extension of time to respond to said demand package.
145. September 1, 2017 was the new deadline set by the Claimant Heidi Gersten and the Defendant Joseph Tirbovich for said demand to settle property damage claim.
146. August 24, 2017, the Defendant Joseph Tirbovich offered to settle said property damage claim with the Claimant Heidi Gersten.
147. August 24, 2017, the Claimant Heidi Gersten requested that the Defendant Joseph Tirbovich communicate said offer in writing.
148. August 25, 2017, the Defendant Joseph Tirbovich offered to settle property damage punitive claim with the Claimant Heidi Gersten for
149. August 28, 2017, the Claimant Heidi Gersten requested a written basis for said offer to settle property damage claim from the Defendant Joseph Tirbovich.
150. August 28, 2017, the Defendant Joseph Tirbovich offered to settle property damage claim with the Claimant Heidi Gersten against the Defendant Kevin Carter for
151. The Defendant Joseph Tirbovich did not provide a written basis for said offer to the Claimant Heidi Gersten.

152. The letter written by the Defendant Joseph Tirbovich dated August 25, 2017 to the Claimant Heidi Gersten contained the word "punitive" and the letter dated August 28, 2017 did not.
153. August 28, 2017, the Claimant Heidi Gersten requested from the Defendant Joseph Tirbovich a written basis for said offer to settle property damage claim for the second time.
154. The Defendant Joseph Tirbovich did not provide the Claimant Heidi Gersten with a written basis for said property damage settlement offer from or on behalf of the Defendant Nationwide Mutual Insurance Company.
155. The Claimant Heidi Gersten has been paralyzed as a result of the collision with the Defendant Kevin Carter.
156. The Defendant Nationwide Mutual Insurance Company paid the policy limit of towards bodily injury to the Claimant Heidi Gersten.
157. Punitive damages alone warrant the tendering of the entire policy limit for property damage liability against the Defendant Kevin Carter.
158. South Carolina Code of Laws Title 38, CHAPTER 77, ARTICLE, SECTION 38-77-710 states, "The court of common pleas, or any inferior courts having concurrent jurisdiction, in and for each county, shall by order of reference appoint an attorney or attorneys to hear and determine, by arbitration, property damage liability claims arising out of motor vehicle collisions or accidents and to award actual and punitive damages. This order must be consistent with the provisions of this chapter and may not be inconsistent with the Rules of the Supreme Court of South Carolina. Process and procedure must be as summary and simple as may be reasonable and may provide for the taking of evidence in the form of reports, statements, or itemized bills or in any other manner without the procedural and evidentiary limitations which pertain in jury trials. The court may provide for the taking of depositions of a witness within or without the State."
159. Punitive damages can be obtained for property damages under South Carolina law.
160. According to THE STATE OF SOUTH CAROLINA, In The Supreme Court Opinion No. 26826 Heard March 2, 2010 - Filed June 14, 2010, "The legislature has defined "damages" as used in Chapter 77 governing automobile insurance to "include[] both actual and punitive damages." Id. § 38-77-30(4). The clear legislative indication is that all "damages," including actual and punitive damages, are recoverable under the pertinent insurance provisions. As a matter of law, these provisions become part and parcel of the insurance contract.[2] Further, in examining the public policy surrounding punitive damage awards, it is readily apparent that South Carolina courts have recognized that these awards serve a multitude of purposes and are not limited solely to punishment of the individual wrongdoer."
161. According to THE STATE OF SOUTH CAROLINA, In The Supreme Court Opinion No. 26826 Heard March 2, 2010 - Filed June 14, 2010, "punitive damages serve at least three important purposes: punishment of the defendant's reckless, willful, wanton, or malicious conduct; deterrence of similar future conduct by the defendant or others; and compensation for the

reckless or willful invasion of the plaintiff's private rights." *Clark v. Cantrell*, 339 S.C. 369, 379, 529 S.E.2d 528, 533 (2000).

162. According to THE STATE OF SOUTH CAROLINA, In The Supreme Court Opinion No. 26826 Heard March 2, 2010 - Filed June 14, 2010, "In *Clark*, we noted "the important role that punitive damages play in the American system of justice generally, and in South Carolina in particular since at least 1784." *Id.* We observed that punitive damages, in addition to punishing the defendant and deterring similar conduct by the defendant and others, serve to vindicate the private rights of the plaintiff and they provide some measure of compensation to plaintiffs for the intentional violation of those rights that is separate and distinct from the usual measure of compensatory damages: Exemplary or punitive damages go to the plaintiff, not as a fine or penalty for a public wrong, but in vindication of a private right which has been willfully invaded; and indeed, it may be said that such damages in a measure compensate or satisfy for the willfulness with which the private right was invaded, but, in addition thereto, operating as a deterring punishment to the wrongdoer, and as a warning to others. . . . Punitive damages have now come, however, to be generally, though not universally, regarded, not only as punishment for wrong, but as vindication of private right. This is the basis upon which they are now placed in this state."
163. South Carolina Code of Laws Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-530 (C) (3) states, "(C) However, when the trial court determines one of the following apply, there shall be no cap on punitive damages: (3) the defendant acted or failed to act while under the influence of alcohol, drugs, other than lawfully prescribed drugs administered in accordance with a prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to the degree that the defendant's judgment is substantially impaired."
164. South Carolina has adopted an Excess Doctrine, whereby it's Supreme Court held that an insurance company can and will be held liable for any excess above its coverage for not settling within the limits of coverage, either through negligence or bad faith, or any combination of the two. *Tyger River Pine Co. v. Maryland Casualty Co.*
165. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (1) Knowingly misrepresenting to insureds or third-party claimants pertinent facts or policy provisions relating to coverages at issue or providing deceptive or misleading information with respect to coverages.
166. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
167. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
168. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

169. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
170. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims, including third-party liability claims, arising under its policies.
171. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
172. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
173. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
174. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
175. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (4) Not attempting in good faith to effect prompt, fair, and equitable settlement of claims, including third-party liability claims, submitted to it in which liability has become reasonably clear.
176. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
177. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
178. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
179. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

180. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (5) Compelling policyholders or claimants, including third-party claimants under liability policies, to institute suits to recover amounts reasonably due or payable with respect to claims arising under its policies by offering substantially less than the amounts ultimately recovered through suits brought by the claimants or through settlements with their attorneys employed as the result of the inability of the claimants to effect reasonable settlements with the insurers.
181. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
182. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
183. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
184. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
185. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (6) Offering to settle claims, including third-party liability claims, for an amount less than the amount otherwise reasonably due or payable based upon the possibility or probability that the policyholder or claimant would be required to incur attorneys' fees to recover the amount reasonably due or payable.
186. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
187. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
188. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
189. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

190. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (7) Invoking or threatening to invoke policy defenses or to rescind the policy as of its inception, not in good faith and with a reasonable expectation of prevailing with respect to the policy defense or attempted rescission, but for the primary purpose of discouraging or reducing a claim, including a third-party liability claim.
191. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
192. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
193. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
194. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
195. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (8) Any other practice which constitutes an unreasonable delay in paying or an unreasonable failure to pay or settle in full claims, including third-party liability claims, arising under coverages provided by its policies.
196. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
197. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
198. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
199. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.
200. Due to the Defendant Nationwide Mutual Insurance Company's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimants suffer from economic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (3) "Economic damages" means

pecuniary damages arising from medical expenses and medical care, rehabilitation services, costs associated with education, custodial care, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, a claim for loss of spousal services, loss of employment, loss of business or employment opportunities, loss of retirement income, and other monetary losses.

201. Due to the Defendant Joseph Tirbovich's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimant suffers from economic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (3).
202. Due to the Defendant Trustguard Insurance Company's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimant suffers from economic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (3).
203. Due to the Defendant John Ammendola's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimant suffers from economic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (3).
204. Due to the Defendant Interinsurance Exchange of the Automobile Club's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimant suffers from economic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (3).
205. Due to the Defendant Nationwide Mutual Insurance Company's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimants suffers from noneconomic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (9) "Noneconomic damages" means nonpecuniary damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, other nonpecuniary damages, and any other theory of damages including, but not limited to, fear of loss, illness, or injury.
206. Due to the Defendant Joseph Tirbovich's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimants suffers from noneconomic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (9).
207. Due to the Defendant Trustguard Insurance Company's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimants suffers from noneconomic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (9).
208. Due to the Defendant John Ammendola's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimants suffers from noneconomic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (9).

209. Due to the Defendant Interinsurance Exchange of the Automobile Club's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimants suffers from noneconomic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (9).
210. In the Claimant Heidi Gersten's said demand letter to Defendant Nationwide Mutual Insurance Company c/o Joseph Tirbovich, in excess of \$131,239.77 was listed as actual property damage.
211. In the Claimant Heidi Gersten's said demand letter to Defendant Nationwide Mutual Insurance Company c/o Joseph Tirbovich, \$918,678.39 was the total property damage listed including punitive damages.
212. The Defendant Interinsurance Exchange of the Automobile Club insured Claimant Heidi Gersten for _____ for property damage per accident and /or occurrence.
213. The Defendant Interinsurance Exchange of the Automobile Club had a contractual duty to indemnify the insured against loss and by failing acted in negligence or bad faith causing the Claimant Heidi Gersten to suffer financial damages.
214. The Defendant Trustguard Insurance Company insured Claimants for _____ for property damage per accident and/or occurrence on said van involved in said collision.
215. The Defendant Trustguard Insurance Company had a contractual duty to indemnify the insured against loss and by failing acted in negligence or bad faith causing the Claimants Heidi Gersten and Ivanka Ayoub to suffer financial damages.
216. South Carolina Code of Laws CHAPTER 32, ARTICLE 5, SECTION 15-32-510 (B) states, "The plaintiff shall not specifically plead an amount of punitive damages, only that punitive damages are sought in the action."
217. The Claimants pray for punitive damages and they are sought in this complaint.
218. February 22, 2018, after this action was filed, the Defendant Joseph Tirbovich called the Claimant Heidi Gersten to "the reiterate settlement offer of _____ for property damage claim".
219. February 22 2018, the Defendant Joseph Tirbovich alleged that the Claimant Heidi Gersen sent a 2nd demand package to the Defendant Nationwide Mutual Insurance Company.
220. February 22, 2018, the Defendant Joseph Tirbovich did not ask to speak with the Claimant Ivanka Ayoub about her claim with the Defendant Nationwide Mutual Insurance Co.
221. February 22, 2018, the Defendant Joseph Tirbovich stated that the Claimant Heidi Gersten's mother made a demand to "Grange" and they would compensate her for her vehicle.
222. February 22 2018, during a phone conversation, the Claimant Heidi Gersten asked the Defendant Joseph Tirbovich if she may speak 3 times to which he replied, "No..."

223. February 22, 2018, the Defendant Joseph Tirbovich admitted to receiving the 332-page book containing pictures and receipts of damaged, destroyed, or lost items the Claimant Heidi Gersten sent to the Defendant Nationwide Mutual Insurance Company for said claim.
224. February 22, 2018, the Defendant Joseph Tirbovich referred to the said 332-page book containing pictures and receipts with indexes and detailed explanation of items that were damaged, destroyed, and/or lost in said collision that the Claimant Heidi Gersten sent to Nationwide Mutual Insurance Company as "vague".
225. February 22, 2018, the Defendant Joseph Tirbovich said he doesn't put anything that he says in writing "...because these attorneys. I've learned. That was something when I was a rookie adjuster. When I put things in writing, certain things in writing, attorneys can tear things apart. So, everything is verbal."
226. February 22, 2018, the Defendant Joseph Tirbovich said he was "waiting" for lawsuit papers from the Claimant Heidi Gersten.
227. February 22, 2018, the Defendant Joseph Tirbovich indicated to the Claimant Heidi Gersten that he didn't understand what was taking her so long to file a lawsuit against the Defendants.
228. The Defendant Joseph Tirbovich acting on behalf of the Defendant Nationwide Mutual Insurance Company has a duty to settle this claim and by failing to do so acted in a negligent or bad faith manner.
229. Cynthia Cromartie, Senior Claims Representative of the Defendant Trustguard Insurance Company, put in writing an offer of _____ to the Claimant Heidi Gersten in a letter dated October 6, 2018 towards bodily injury.
230. The Claimant Heidi Gersten first requested Medpay from the Defendant Trustguard Insurance Company while in the hospital sometime in March 2015 days after the said collision.
231. The Claimant Heidi Gersten first requested Medpay from the Defendant Interinsurance Exchange of the Automobile Club while in the hospital sometime in March 2015 days after the said collision.
232. The Defendants Interinsurance Exchange of the Automobile Club and Trustguard Insurance Company argued over who was primary and secondary insurance of the Medpay while the Claimant Heidi Gersten lay in a hospital bed waiting for _____ to obtain acute rehap which she never did receive and the bills alone totaled over _____ at that point in time.
233. June 6, 2016, the Defendant Trustguard Insurance Company issued a check to the Claimant Heidi Gersten in the amount of _____ for Medpay.
234. Sometime in May 2016, the Defendant Interinsurance Exchange of the Automobile Club issued a check to the Claimant Heidi Gersten in the amount of _____ for Medpay.
235. In a letter dated February 7, 2018, the Defendant Amy Carmack, Senior Claims Representative of Grange, acting on behalf of the Defendant Trustguard Insurance Company alleged that Claimant Heidi Gersten is not an insured.

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236. February 21, 2018, Amy Carmack, Senior Claims Representative of Grange, acting on behalf of The Defendant Trustguard Insurance Company made an ambiguous offer in writing to the Claimant Ivanka Ayoub to settle her property damage claim of the totaled van.
 237. February 21, 2018 Amy Carmack Trustguard Insurance Company alleged that punitive damages are excluded.
 238. The Defendant Interinsurance Exchange of the Automobile Club allege that they must be served with papers from any lawsuit that stems from the said March 19, 2015 accident/or occurrence.
 239. The Defendant Interinsurance Exchange of the Automobile Club had a duty to settle this claim and by failing to do so acted in a negligent or bad faith manner.
 240. The Defendants are also responsible for the additional infliction of bodily and/or mental injury on the Claimants as well as other costs associated with pursuing litigation on this filing with the court.
 241. There is collusion amongst the Defendants with a total disregard for the Claimants well being.
 242. The Defendants main purpose is to delay paying the Claimants' benefits.
 243. The Defendants hold interest in this said claim.
 244. The Defendants have not made reasonable attempts at helping to restore the Claimants to a state of being made whole again after their lives have been torn all apart as a result of the at fault driver, Defendant Kevin Carter's actions.
 245. Claimants did not ever waive any rights to full recovery.
 246. Claimants did not ever agree to accept cash value and not replacement value on any items in controversy in said Complaint.
 247. It is a violation of the Claimants' fundamental 1st Amendment right of the United States Constitution to petition the Government for a redress of grievances by bestowing rules not consented to upon parties in deciding if claims have merit.
 248. The enormous amounts of monies to provide care for the rest of the Claimant Heidi Gersten's life is astronomical.
 249. Being confined to a wheel chair without the ability to stand on her own creates unimaginable difficulties in the Claimant Heidi Gersten's daily life without a caregiver.
 250. It is nothing short of cruel and unusual punishment.
 251. Common people would expect the laws of this land to afford and protect them from the horrendous aftermath of what this catastrophic life-changing event has inflicted on the Claimants.

5. As a result of said collision, due to the negligent and reckless acts of the Defendant(s), the Claimant(s) have suffered property damage in the amount of in excess of \$131,239.77(actual) and punitive to be determined by the panel of arbitrators, actual and punitive.

WHEREFORE, Claimant(s) requests that this claim be arbitrated and that property damages be awarded in the amount of in excess of \$131,239.77(actual) and punitive to be determined by the panel of arbitrators, actual and punitive.

Attorney for Claimant(s):

Claimant(s):

Shirley Ann Ayala
1438 W. LANTANA Rd. #330
LANTANA, FL 33462
323 - 245 - 6142

DATE: March 2, 2018

THIS FORM SHALL BE ARBITRATED BY A PANEL OF THREE (3) ARBITRATORS TO BE APPOINTED BY THE CLERK OF COURT UNLESS WITHIN TEN(10) DAYS FROM THE FILING OF A RESPONSE BY THE DEFENDANT(S), THE CLAIMANT(S) AND DEFENDANT(S) SHALL AGREE, IN WRITING, TO HAVE SUCH CLAIM HEARD BY A SINGLE ARBITRATOR. A FORM OF AGREEMENT IS AVAILABLE IN THE CLERK'S OFFICE.

FILED
2018 MAR 27 P 3:52
CLERK OF COURT
JUDICIAL CIRCUIT IN AND FOR
THE SEVENTH JUDICIAL CIRCUIT

March 27, 2018

Affidavit of Service (Filed March 27, 2018)

STATE OF SOUTH CAROLINA)

In the matter of Arbitration between)

HEIDI GERSTEN, IVANKA AYOUB)

Claimant(s))

vs.)

KEVIN CARTER, RICHARD DAVIS,
JOSEPH TIRBOVICH, NATIONWIDE
MUTUAL INS. CO., INTERINSURANCE
EXCHANGE OF THE AUTOMOBILE
CLUB, JOHN AMMENDOLA,
TRUSTGUARD INS. CO.

Defendant(s))

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

Case number 2018-CP-12-00074

AFFIDAVIT OF SERVICE
(Claim Served Herewith)

FILED
2018 MAR 27 3:52
CLERK OF COURT
CHESTER COUNTY S.C.

The undersigned, Diana Maybrook, being duly sworn, states that he served the Summons for Arbitration and the Claim for Property Damage in this action on the Defendant(s), Kevin Carter, Richard Davis, Joseph Tirbovich, John Ammendola, pursuant to Rule 4 d(8) along with First Amended Complaint Verified, with attached Verification and Exhibits A, B, C, D, E, F, G, H, I, J, K, L and First Set of Admissions, Interrogatories, and Requests for Production with Exhibits A, B, C, D, E, F, G, copies were mailed US Postal Service restricted delivery certified mail, return receipt requested, from Boca Raton, Florida, addressed to Kevin Carter and Richard Davis at 130 Weeping Spring Dr., Mooresville, NC 28115-6990, Joseph Tirbovich at One Nationwide Gateway Dept. 5582, Des Moines, IA 50391-5582, John Ammendola at 671 S. High St., Columbus, Ohio 43206, by delivering a copy (or copies) of the same to n/a, the Defendant(s) personally, or to n/a, the 15th day of March, 2018, that affiant knows the person(s) so served to be the Defendant(s) or persons mentioned and described above, and that affiant is not a party to, nor interested in, the action.

SCCA/203(3/2005)

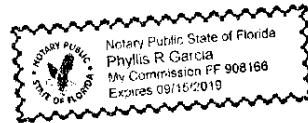
Sworn to before me this 15th
day of March, 2018.

Diana Maybrook

Affiant

Phyllis R. Garcia
NOTARY PUBLIC FOR SOUTH CAROLINA *Florida*

My Commission expires: 09/15/2019



FILED
2018 MAR 27 P 3:52
CLERK OF COURT
JUDICIAL CO. S.C.

STATE OF SOUTH CAROLINA)

In the matter of Arbitration between)

HEIDI GERSTEN, IVANKA AYOUB)

Claimant(s))

vs.)

KEVIN CARTER, RICHARD DAVIS,
JOSEPH TIRBOVICH, NATIONWIDE
MUTUAL INS. CO., INTERINSURANCE
EXCHANGE OF THE AUTOMOBILE
CLUB, JOHN AMMENDOLA,
TRUSTGUARD INS. CO.

Defendant(s))

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

Case number 2018-CP-12-00074

AFFIDAVIT OF SERVICE
(Claim Served Herewith)

FILED
2018 MAR 21 3:52
CLERK OF COURT
CHESTER CO S.C.

The undersigned, Diana Maybrook, being duly sworn, states that he served the Summons for Arbitration and the Claim for Property Damage in this action on the Defendant(s), Nationwide Mutual Ins. Co, Interinsurance Exchange of the Automobile Club, Trustguard Ins. Co., pursuant to SC Rules of Civil Procedure 4 d(8), along with First Amended Complaint Verified, with attached Verification and Exhibits A, B, C, D, E, F, G, H, I, J, K, L and First Set of Admissions, Interrogatories and Requests for Production with Exhibits A, B, C, D, E, F, G, copies were mailed US Postal Service certified mail, return receipt requested, from Boca Raton, Florida, addressed to Steven R. Du Bois, Administrative Coordinator of SC Dept. of Ins. Agent for Service of Process P.O. Box 100105, Columbia, SC 29201, by delivering a copy (or copies) of the same to n/a, the Defendant(s) personally, or to n/a , the 22nd day of March, 2018, that affiant knows the person(s) so served to be the Defendant(s) or persons mentioned and described above, and that affiant is not a party to, nor interested in, the action.

SCCA/203(3/2005)

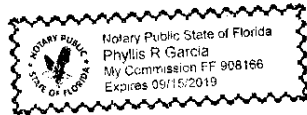
Sworn to before me this 22nd
day of March, 2018.

Diana Maybrook

Affiant

Phyllis R. Garcia
NOTARY PUBLIC FOR ~~SOUTH CAROLINA~~ Florida

My Commission expires: 09/15/2019



FILED
2018 MAR 27 P 3 52
CLERK OF COURT
JESSIE Q. S.C.

April 16 2018

Answer of Defendant Kevin Carter filed April 16, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel
Hubbard,

Plaintiff,

**ANSWER OF KEVIN CARTER AND
RICHARD DAVIS**

vs.

(Jury Trial Demanded)

Kevin Carter, Richard Davis, Joseph
Tribovich, Nationwide Insurance Company,
Interinsurance Exchange of the Automobile
Club, John Ammendola, Trustguard Insurance
Company, SC Department of Public Safety,
Chevrolet, GMC, Unknown John Does,

Defendants.

FILED
2018 APR 15 2 14 PM
CLERK OF COURT
COUNTY OF CHESTER, S.C.

TO: HEIDI GERSTEN, IVANKA AYOUB AND DANIEL HUBBARD:

The Defendants Kevin Carter and Richard Davis, Answering Plaintiffs' Complaint would show:

1. All allegations of the Complaint not expressly admitted in this Answer are denied.
2. In response to Paragraphs 1, 2, 3, 5, 6, 7, 8, 16, 17, 18, 19, 28, and 31 these Defendants lack sufficient knowledge and information to form a response and therefore deny the same.
3. Paragraphs 4, 10, 13, 14, and 15 are admitted.
4. Paragraphs 9, 11, 12, 13, 20, 21, 22, 23, 24, 25, 26, 33, 34, 35, 36, 37, 38, 39, 41-44, 46-49, 51-53, 55, 57-58, 60-62, 64-66, 68-69, 71-75, 77-79, 81, 83-85, 87, 89, 91, 93, 95, 96-104 and Plaintiffs Pray for Relief are denied.

5. In response to the allegations contained in Paragraphs 30 and 31, Defendant Carter admits simple fault in contributing to the accident, but would also show that Plaintiff contributed to the accident. Defendant Davis denies fault in causing the accident. Defendants Carter and Davis lack sufficient knowledge and information to form a response regarding the remaining allegations contained in Paragraphs 30 and 31 of the Complaint and therefore deny the same.

6. In response to the allegations contained in Paragraphs 17-19, 27, 33-39, 41-44, 46-49, 60-62, 64-66, 71-75, 77-79, 83-85, 87, 89, 91, 93, 94-95, these Defendants would show that these causes of action appear to be asserted against Defendants other than these Defendants for matters that are not related to the automobile accident alleged in the Complaint. Therefore, these causes of action should all be severed from any causes of action against these Defendants. Moreover, these allegations assert the existence of insurance coverage and assert purported causes of action against insurance adjusters and/or insurance companies. The existence of liability insurance or other insurance in a civil personal injury action is highly prejudicial and improper under the South Carolina Rules of Evidence and Juris Prudence. Allowing these actions to proceed together would greatly prejudice these Defendants and is improper. Therefore, these Defendants move to strike all of these allegations and move to sever all causes of action against any insurance company or insurance company adjuster from the causes of action against these Defendants.

FOR A FIRST DEFENSE

7. These Defendants would show, upon information and belief, that the Complaint fails to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and, therefore, the Plaintiffs' Complaint should be dismissed with costs.

FOR A SECOND DEFENSE

8. The Defendants would herein show that this action has not timely been commenced under South Carolina Code of Law 15-3-20 as there has been no actual service upon one or both of the Defendants within the statutorily required time period and accordingly the Defendants would show that the Plaintiffs' Complaint must be dismissed in its entirety.

FOR A THIRD DEFENSE

9. These Defendants would show, upon information and belief, that the Plaintiff Heidi Gersten signed a Covenant Not to Execute that protects Defendants Carter and Richard Davis from execution of any judgment against these Defendants. Therefore, to the extent the Complaint may be construed as asserted claims seeking personal recovery against these defendants, the Defendants would plead Accord, Satisfaction, and Release as defenses.

FOR A FOURTH DEFENSE

10. This Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiffs, which are specifically denied, were the result of the acts or omissions of others not in the employ or control of this Defendant and, therefore, the Plaintiff cannot recover from this Defendant in any sum whatsoever.

FOR A FIFTH DEFENSE

11. The Defendant would herein show that any liability against these answering Defendants, which is again denied, must be determined and, if appropriate, apportioned consistent with the provisions of the SC Contribution Among Joint Tortfeasors Act codified at SC Code of Laws Ann. 15-38-10, et seq.

FOR A SIXTH DEFENSE

12. The Defendants would show, upon information and belief, that any statements or actions were reasonable with respect to the time, place and manner, and in furtherance of the Defendant's legitimate interest, and, therefore, such actions or statements are privileged, and the Plaintiff cannot recover from the Defendant in any sum whatsoever.

FOR A SEVENTH DEFENSE

13. The Defendant 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 Defendant, (such negligence on the part of the Defendant being specifically denied), to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred. The Defendants pleads 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, (such negligence, carelessness, recklessness and/or gross negligence on the part of the Defendants being 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 AN EIGHTH DEFENSE

14. Even if Kevin Carter and Richard Davis were negligent in any respect, which is expressly denied, and such conduct operated as a proximate cause of Plaintiffs' injuries, if any, which is expressly denied, Kevin Carter and Richard Davis allege the Plaintiffs' negligent, grossly negligent, reckless, willful and wanton conduct contributed more than fifty percent (50%) to the cause of the accident, and therefore, Plaintiffs' claims are barred.

FOR A NINTH DEFENSE

15. These Defendants would show that the Plaintiffs have failed to state a claim for which punitive damages are recoverable under any applicable law as there is no reckless, willful, wanton, or grossly negligent conduct on the part of these Defendants; therefore, Plaintiffs' claims for punitive damages should be dismissed.

FOR A TENTH DEFENSE

16. The Plaintiffs' damages, if any, are barred to the extent they failed to mitigate their damages.

FOR AN ELEVENTH DEFENSE

17. The Defendants allege that the Plaintiffs' Complaint fails to plead a cause of action for breach of contract accompanied by fraud with sufficient particularity.

FOR A TWELFTH DEFENSE

18. The Complaint improperly combines an action for the determination of tort liability with an action against one or more insurance carriers involving separate transactions or occurrences subject to wholly unrelated facts and entirely different substantive law. It would be improper to mix before the same factfinder the entirely separate questions of the availability of

insurance coverage and duties of a liability insurance carrier for the subject automobile accident and of tort liability for the subject automobile accident. These actions should be severed.

FOR A THIRTEENTH DEFENSE

19. The Defendants would assert that the Plaintiff has failed to properly serve the Defendants and that this matter should be dismissed for insufficiency of process and insufficiency of service of process in accordance with Rule 12(b)(4) and Rule 12(b)(5) of the *South Carolina Rules of Civil Procedure*.

FOR A FOURTEENTH DEFENSE

20. Defendants would state that the Complaint fails to state facts sufficient to constitute a cause of action for negligent entrustment in that there is no evidence that Defendant Richard Davis negligently entrusted the vehicle to Kevin Carter and the Plaintiff alleges that Kevin Carter owned the accident vehicle; therefore, the Complaint against Defendant Richard Davis should be dismissed.

FOR A FIFTEENTH DEFENSE

21. Defendants Carter and Davis would show that they are not and were not at the time of the incidents herein an employee, agent or servant of Joseph Tribovich, Nationwide Insurance Company, Interinsurance Exchange of the Automobile Club, John Ammendola, Trustguard Insurance Company, SC Department of Public Safety, Chevrolet, GMC, or unknown John Does and, therefore, Defendants Carter and Davis cannot be liable for the actions of Defendants Joseph Tribovich, Nationwide Insurance Company, Interinsurance Exchange of the Automobile Club, John Ammendola, Trustguard Insurance Company, SC Department of Public Safety, Chevrolet, GMC, and unknown John Does.

FOR A SIXTEENTH DEFENSE

22. Defendant Richard Davis would show that he does not have sufficient contacts with the state of South Carolina to support personal jurisdiction and therefore this case should be dismissed as to him pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure

FOR A SEVENTEENTH DEFENSE

23. 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 Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because the Defendant can be compelled to give testimony against Defendant's 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 Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills the 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 AN EIGHTEENTH DEFENSE

24. 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 NINETEENTH DEFENSE

25. 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 TWENTIETH DEFENSE

26. These Defendants would show that if the Plaintiffs are entitled to any recovery against them, which is specifically denied, then Defendants are entitled to a set off of all sums of monies recovered from other potentially liable parties herein or monies obtained from any other source obtained by or on behalf of the Plaintiffs by way of the settlement, judgment, or otherwise, which Plaintiffs recovered from any other potentially responsible party.

FOR A TWENTY-FIRST DEFENSE

27. 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 TWENTY-SECOND DEFENSE

28. These answering Defendants are informed and believe that plaintiffs and/or their agents failed to preserve and permitted the spoliation of material evidence. Such conduct bars recovery from Defendants and/or gives rise to liability for damages payable to these answering defendants.

FOR A TWENTY-THIRD DEFENSE

29. The Plaintiffs are without proper standing to assert any cause of action against these Defendants.

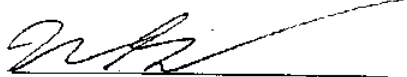
FOR A TWENTY-FOURTH DEFENSE

30. Defendants Kevin Carter and Richard Davis specifically reserve the right to assert any further defenses as may be revealed by additional information acquired during discovery or otherwise from any other party herein. Defendants Kevin Carter and Richard Davis further reserve the right to amend this Answer to assert any other applicable defenses, to assert any applicable cross and/or counterclaims, and to implead any other applicable parties.

WHEREFORE, having fully answered the Plaintiffs' Complaint, the Defendants Kevin Carter and Richard Davis would pray that the same be dismissed with cost being granted to them. The Defendants Kevin Carter and Richard Davis also pray for such other and further relief as the court deems just and proper, and also demands a trial by jury.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.


Wesley B. Sawyer, Esquire (SC Bar # 100229)
4406-B Forest Drive (29206)
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorney for Kevin Carter and Richard Davis

FILED

CLERK OF COURT
CHESLER CO. S.C.
APR 13 2 15 PM

Columbia, South Carolina
April 13, 2018

January 31, 2019

Affidavit of Facts filed January 31, 2019, in Appellate Case No. 2018-002115

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Case No. 2018-CP-12-00117
2018-AP-12-00074

RECEIVED
JAN 31 2019
SC Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard.....Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are, ...Appellants.

v.

Kevin Carter, Richard Davis, Joseph Tribovich, Nationwide Mutual Insurance Company,
Interinsurance Exchange of The Automobile Club, John Ammendola, Trustguard Insurance
Co., Blackwell, SC Department of Public Safety, Chevrolet, GMS, Unknown Joe Does,
.....Respondents.

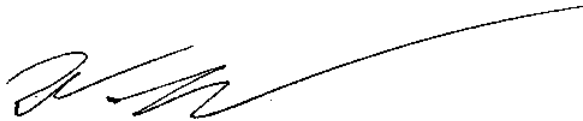
AFFIDAVIT OF FACTS

I, Wesley B. Sawyer, being first duly cautioned and sworn, state as follows:

1. I am the attorney for Respondents Kevin Carter and Richard Davis.
2. I mailed copies of the September 18, 2018 Order to Appellants on September 19, 2018.
3. I received a Notice of Appeal by certified mail on October 22, 2018 (attached to Respondents Carter's and Davis's Memorandum of Authorities in Support of Motion to Dismiss as Exhibit D, including a double-sided copy of the mailing envelope with a stamped date of receipt). As noted in the Certificate of Service and the date stamp on the envelope, it appears the First Notice of Appeal was mailed on October 19, 2018.
4. I received a second Notice of Appeal by certified mail on November 21, 2018 (attached to Respondents Carter's and Davis's Memorandum of Authorities in Support of Motion to Dismiss as Exhibit E). As noted in the Certificate of Service and the postage stamp

on the envelope, it appears the Second Notice of Appeal was mailed on November 15,
2018.

Further Affiant sayeth naught.



Wesley B. Sawyer

SWORN TO and subscribed before me this

30th day of January, 2019

Diane L. Black (I.S.)

Notary Public for SC

My Commission Expires: 7-29-19

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Case No. 2018-CP-12-00117
2018-AP-12-00074

RECEIVED
JAN 31 2019
SC Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard.....Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are, ...Appellants.

v.

Kevin Carter, Richard Davis, Joseph Tribovich, Nationwide Mutual Insurance
Company, Interinsurance Exchange of The Automobile Club, John Ammendola,
Trustguard Insurance Co., Blackwell, SC Department of Public Safety, Chevrolet,
GMS, Unknown Joe Does,

.....Respondents.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal as to Kevin Carter and Richard Davis, Affidavit of Facts, and Memorandum of Authorities in Support of Respondents Kevin Carter's and Richard Davis' Motion to Dismiss by depositing a copy of it in the United States Mail, postage prepaid, on January 31, 2019, addressed to all attorneys of record listed below.

January 31, 2019



Wesley B. Sawyer, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Respondents Kevin
Carter and Richard Davis

Heidi Gersten
Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142
Appellants

Other Counsel of Record:
David R. Sligh, Esquire
P. O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co.)
(Attorney for Joseph Tirbovich)
(843) 213-5519

Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
Collins & Lacy, PC
1330 Lady Street, 6th Floor (29201)
P. O. Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company
And John Ammendola)
(803) 255-0404

Reynolds Williams, Esquire
P. O. Box 1909
Florence, SC 29503-1909
(Attorney for Defendant Interinsurance
Exchange of the Automobile Club)
(843) 662-3258

William H. Davidson, II, Esquire
Davidson & Lindemann, PA
P. O. Box 8568
Columbia, SC 29202
(Attorneys for SC Dept. of Public Safety
And Herbert Blackwell)
(803) 806-8222

May 29, 2019

Petition for Rehearing filed May 29, 2019, in Appellate Case No. 2018-002115

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable John C. Hayes III, Circuit Court Judge
Honorable Brian Gibbons, Circuit Court Judge

Appellate Case No: 2018-002115

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard.....Plaintiffs,

Heidi Gersten, Ivanka Ayoub.....Appellants.

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance
Company, Interinsurance Exchange of the Automobile Club, John Ammendola,
Trustgard Insurance Co., Blackwell, SC Department of Public Safety, Chevrolet,
GMC, Unknown John Does, ...Respondents

APPELLANTS' AMENDED RETURN TO RESPONDENTS
CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND
AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH
MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR
REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS
INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB,
KEVIN CARTER AND RICHARD DAVIS WITH LEAVE TO AMEND OR
MOTION FOR EXTENSION OF TIME TO SERVE AND FILE MOTION TO REINSTATE
APPEAL

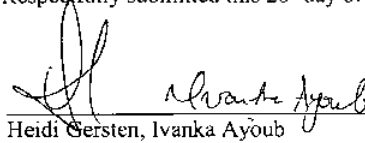
Heidi Gersten, Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142
(561) 756-9820 FAX
hanginhangout@gmail.com
Appellants

RECEIVED
MAY 29 2019
SC Court of Appeals

The Appellants, Heidi Gersten, Ivanka Ayoub ('Appellants') move this Court for an order to accept this amended return of the Respondents Kevin Carter and Richard Davis' (Respondents') motion to dismiss appeal as timely and combine it with a motion for reinstatement and/or a petition for rehearing of the motions to dismiss, along with leave of court, if necessary, as the crux of the matter is about proving timeliness in regards to the Notice of Appeal and the Court's jurisdiction, taking into strong consideration Appellant Gersten's extraordinary circumstances and extreme hardships suffered as a result of the Respondents' gross negligence, pursuant to SCACR 263(b), 260(a) and 221, on the grounds of good cause shown as evidenced by the attached Affidavit of Heidi Gersten and Timeline of Events with Law and Arguments That Include a Memorandum of Points and Authorities That Prove Timeliness of Appellants' Notice of Appeal.

The Appellants' argument will be more fully addressed in the attached Memorandum of Points and Authorities in Support and Timeline.

Respectfully submitted this 28th day of May 2019,



Heidi Gersten, Ivanka Ayoub
Appellants
1438 W. Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142
(561) 756-9820 FAX
hanginhangout@gmail.com

Boca Raton, Florida
May 28, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable John C. Hayes III, Circuit Court Judge
Honorable Brian Gibbons, Circuit Court Judge

Appellate Case No: 2018-002115

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, ...Plaintiffs,

Heidi Gersten, Ivanka Ayoub, ...Appellants.

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance
Company, Interinsurance Exchange of the Automobile Club, John Ammendola,
Trustgard Insurance Co., Blackwell, SC Department of Public Safety, Chevrolet,
GMC, Unknown John Does, ...Respondents

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER
AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF
HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO
REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF
MOTION TO DISMISS MADE BY RESPONDENTS
INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB,
KEVIN CARTER AND RICHARD DAVIS

WITH LEAVE TO AMEND OR MOTION FOR EXTENSION OF TIME
TO SERVE AND FILE MOTION TO REINSTATE APPEAL


Heidi Gersten, Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana, FL 33462

RECEIVED
MAY 29 2019
SC Court of Appeals

(323) 245-6142 (561) 756-9820 FAX
hanginhangout@gmail.com
Appellants

STATEMENT OF FACTS

The Appellants requested additional time to serve and file an amended return to the Respondents Carter and Davis' motion to dismiss appeal numerous times for good cause shown to sufficiently and adequately address the multiple errors made by the Respondents Carter and Davis. The return made in a good faith effort to comply with the previously underestimated calculations for extensions of time due to the Appellants, especially Appellant Gersten's, extraordinary circumstances and is permitted by **RULE 263(B), SCACR, EQUITABLE TOLLING** and **TITLE II OF THE AMERICAN DISABILITIES ACT**.

On May 16, 2019, the Appellants learned of the orders dated May 2, 2019 and May 14, 2019 on-line on the Court's Website. They did not 'receive' them from the mail or from an email or from personal service. In a good faith effort to comply, this motion is being made which is combined as a Return and/or Motion for Reinstatement and/or Petition for Rehearing. It is being made under duress in an attempt to follow the rules laid out in SCACR. To prevent the miscarriage of justice, these documents are being overnighted as well as faxed to the Court, as they are to be received by the Court within fifteen (15) days of the date of the filing of the orders. The May 14, 2019 order stems from the alleged non-compliance of the order of May 2, 2019 which is the subject of this motion(s). It is suggested to permit the Appellants to amend this motion in light of the good cause shown for not receiving the order in time to fully comply.

For these reasons, the reasons in the attached Affidavit of Heidi Gersten and all documents in the Court file and the Appellants' forthcoming Brief, the Court has jurisdiction as the Notice of Appeal was timely served and filed per SCACR rules.

Respectfully submitted this 28th day of May 2019,



Heidi Gersten

Heidi Gersten, Ivanka Ayoub
Appellants
1438 W. Lantana Rd., #330
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Boca Raton, Florida
May 28, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable John C. Hayes III, Circuit Court Judge
Honorable Brian Gibbons, Circuit Court Judge

Appellate Case No: 2018-002115

RECEIVED
MAY 29 2019
SC Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, ...Plaintiffs,

Heidi Gersten, Ivanka Ayoub.....Appellants.

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance
Company, Interinsurance Exchange of the Automobile Club, John Ammendola,
Trustgard Insurance Co., Blackwell, SC Department of Public Safety, Chevrolet,
GMC, Unknown John Does, ...Respondents

AFFIDAVIT OF APPELLANT HEIDI GERSTEN

Heidi Gersten, Ivanka Ayoub
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Appellants

STATE OF FLORIDA,
SS:
COUNTY OF PALM BEACH,

HEIDI GERSTEN, BEING FIRST DULY CAUTIONED AND SWORN
DEPOSES AND STATES AS FOLLOWS:

1. I am the Appellant herein, and have read the foregoing Appellants' Motion to Reinstate Appeal as well as the attached Return to the Respondents Kevin Carter and Richard Davis' Motion to Dismiss Appeal With Leave and Petition for a Rehearing on said motion, which includes all pages attached, and know the contents thereof, that the same is true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters, I believe them to be true.
2. The facts stated herein are personally known to me and I have first-hand direct knowledge thereof and to those facts that are in addition stated are based on information and belief.
3. If called upon to do so, I would and could competently testify to hereto under oath in a court of law operating under the laws of the State of South Carolina and the United States Constitution.
4. The Appellants served and filed motions to extend time to amend their return to Kevin Carter and Richard Davis' motion to dismiss appeal on March 7, 18, 25, and April 5, 15, 25, 2019 and would have requested an additional extension on May 6, 2019, except due to mitigating circumstances, there were heavy thunderstorms that day that prevented the deadline from being met. (Exhibit 1)
5. I sat in my wheelchair with the paperwork that I was ready to turn in to comply with the 'motion for extension to file' rules when I heard the strike of thunder and looked outside and saw that it was raining heavily, with the sky very dark. With a heavy heart, I knew I would not be able to wheel to the post office and UPS store that day. I took a screenshot of the weather report that day at the time I was leaving. (Exhibit 1)
6. I became aware of the order dated May 2, 2019 on May 16, 2019, after I learned that the iPad I recently got was able to access the Court's website. I read said order online and in a good faith effort to comply under the South Carolina Appellate Civil Rules, **SCACR**, these motions and documents are being submitted. Prior to getting the iPad, I was unable to access the Court's website from my over 10 year old incompatible computer.

7. Had there not been thunderstorms on May 6, 2019, I would have been able to ride in my wheelchair to the post office and UPS store and the May 2, 2019 order would have been partially complied with as some of the information requested was in the documents that were anticipated to be served and filed that day. A new motion was being composed when the May 2nd and 14th orders were learned of.
8. In a frenzy to comply with the rules, a draft was written for a petition for rehearing and Henrietta from You've Been Served, LLC, processing service was contacted. I explained to her that the only way to have the documents received by May 17th, less than 24hrs of learning of the order, was to get the documents to her via computer and have her go in person to file them. I would not have been able to sign them since I don't have the technology to sign and then scan into my computer and office stores were closed at that hour. She brought up the fact that even if I could, she would only be bringing in a copy and not an original. Therefore, there was no real chance to comply with the order in such a short amount of time learning of it a day before its deadline nor correct the numerous errors that may be contained in it due to the very limited time to complete what is necessary to have it received by the Court within fifteen (15) days from the date of the order to prevent a remittitur being sent to the lower court or administrative tribunal in accordance with Rule 221. Hiring a process server to file in person appeared to be the only option at that point.
9. The petition for rehearing of the motion may be combined with the motion for reinstatement as they stem from the same issues.
10. I would also suggest that the Appellants' Return for the Respondents Kevin Carter and Richard Davis' motion for dismissal be combined when taking things under consideration since its sole argument within the numerous unpaginated pages that are well over fifty (50) in count revolves around the sole issue of timeliness.
11. I called the Appellate Court on May 17, 2019 and spoke to Shelby who informed me that it wasn't necessary to do a petition for rehearing on the May 2, 2019 order however the May 14, 2019 triggered the time to do a motion to reinstate within 15 days being Wednesday, May 29, 2019.
12. In addition to being paralyzed, having an open phase 4 pressure wound on my left buttocks, phase 1 pressure wound on my right buttocks, living without a caregiver, litigating multiple lawsuits in multiple states without an attorney, having been the victim of numerous crimes, participating in a criminal pretrial conference as a subpoenaed victim, and the learning of the passing of my father under the cause of action of tortious interference with a dead body, I was summoned as a juror for May 13, 2019, all this year. (Exhibit 2) (Proof of any of the foregoing is available upon request.)

13. Leave of court should be administered in favor of justice. There is plenty of good cause shown.
14. Patience is a judicial canon. I require much patience. What seems like plenty of time to an able body is a fraction of the time it takes me to do simple things. It took 7 months before I was finally able to get my bathroom accommodated to where I am now able to shower independently, to give an example of the amount of time it took to be at a standard of living that most people take for granted.
15. This is an effort to show the Court that the Appellants take this matter seriously and are diligently attempting to comply with the rules. The American Disabilities Act permit modifying court rules to accommodate me due to my disabilities and remains undefeated when an action has been brought forward under Title II. Appellants prefer not to file a federal complaint. Time is of the essence however health is an issue to take into consideration.
16. Words do not describe the horror of being unable to care for myself at my standards since this collision. I was the one who took care of others and demonstrated an unprecedented amount of courage, strength, wisdom, knowledge, love, compassion, forthrighteousness, tenacity, candor, intuition, empathy, endurance and love in my family however perhaps I lacked gratitude for myself. I took for granted the amazing person that I am.
17. Judge Zamore was the first public authority I faced through this process who infused me with inner solidity, repeating to me as I looked into his eyes, "You are worthy!" My whole life, no one has ever said those words to me. I'm happy that he stood behind a red, white and blue flag. He understood my pain. Yet he is bound by these words on paper, called law. I will find the right combination and when I do, I will unlock the key to my therapy and simple pleasure of pursuing every remedy available to me in order to obtain control of my body. I will walk again!
18. Judge Underwood was the first judge to issue an order in favor of granting me a continuance to a court date I received a day before a holiday weekend last year, giving me 3 days to find a ride as a paralyzed person who hadn't left her bed in months and travel over 800 miles in one direction to attend and declared me a victim in addition to Judge Zamore. I called the clerk and wrote an objection to Respondent/Defendant Kevin Carter's acceptance of a plea offer to reduce his DUI charge, which in truth and fact, qualifies to be a felony charge as a DUI with great bodily injury. It's no surprise he took the offer of a \$440 fine and reckless driving in front of my eyes. This game of lucky breaks because someone knows how to manipulate the law better is unbelievable. My entire experience of how challenging it is to get help to be made whole again is history in the making.

19. This process has taught me to be indifferent.
20. It may be hard to imagine for some, the enormous amount of effort it takes to do simple things that able-bodied people can do, such as use a toilet.
21. I live under extraordinary circumstances and with extreme hardships.
22. Attached to this affidavit is a 5 page document labeled **TIMELINE OF EVENTS WITH LAW AND ARGUMENTS THAT INCLUDE A MEMORANDUM OF POINTS AND AUTHORITIES THAT PROVE TIMELINESS OF APPELLANTS' NOTICE OF APPEAL** that prove:
 - A. April 26, 2018 – Alleged Unsigned Order -Judge Gibbons (pgs. -).
(Note: These are pages one (1) and two (2) of two (2) pages)
 - B. May 6, 2018 – Served and May 8, 2018 – Filed - Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCF, and Request For Oral Hearing (pg.)
(Note: Only the top page is included as the proof of its timely filing is in question only at this stage and its contents will be discussed in the Appellants' upcoming brief. This motion was not ruled on nor was an order issued in response to it and will be further discussed in the Appellants' upcoming brief.)
 - C. May 8, 2018 – Served – Honorable Judge Gibbons
(Note: Appellant Gersten gave the document to Ruben Kirnos who gave the document to Mr. Atkinson, Chester County Clerk, who was instructed by Appellant Gersten to personally serve Judge Gibbons, from a rental car she was in, in front of the Chester County Courthouse, minutes prior to attending the sentencing of Respondent Carter at the Chester County Magistrate Court, after he was charged with DUI and she witnessed him plead guilty to reckless driving in front of Honorable Judge Yale Zamore.)
 - D. August 7, 2018 – Notice of Case Scheduling - Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCF, and Request For Oral Hearing (pg.)
(Note: This motion was not ruled on nor was an order issued in response to it and will be further discussed in the Appellants' upcoming brief.)
 - E. August 25, 2018 – Served - Amended With Or Without Leave Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCF, and Request For Oral Hearing (pgs. -)
 - F. August 29, 2018 – Filed - Amended With Or Without Leave Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCF, and Request For Oral Hearing (pg.)

(Note: Only the top page is included as the proof of its timely filing is in question only at this stage and its contents will be discussed in the Appellants' upcoming brief. This motion was not ruled on nor was an order issued in response to it and will be further discussed in the Appellants' upcoming brief.)

G. September 5, 2018 - Hearing Judge Hayes (pg.)

H. September 17, 2018 - Served and September 25, 2018 - Filed - Second Amended Complaint and Demand For Jury Trial With Leave (pg.)

(Note: This was scheduled on the roster for hearing on January 31, 2019 prior to the stay order issued by Honorable Judge Gibbons on January 15, 2019)

I. September 18, 2018 - Alleged Orders - Judge Hayes (pg.)

(Note: Only the top page is included as the proof of its filing and its contents will be discussed in the Appellants' upcoming brief. This order was not signed and will be further discussed in the Appellants' upcoming brief.)

J. September 21, 2018 - Alleged Orders - Judge Hayes (pg.)

(Note: Only the top page is included as the proof of its filing and its contents will be discussed in the Appellants' upcoming brief. This order was not signed and will be further discussed in the Appellants' upcoming brief.)

K. October 1, 2018 - Served - 2018-CP-12-00117 Notice of Motion/ Plaintiffs' Motion to Alter or Amend a Judgment or Relief From Judgment or Order Pursuant to Rules 52, 59 (e), 60 (4), SCRCP, and Request For Oral Hearing along with Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 (pg.)

L. October 8, 2018 - Filed - 2018-CP-12-00117 Notice of Motion/ Plaintiffs' Motion to Alter or Amend a judgment or Relief From Judgment or Order Pursuant to Rules 52, 59 (e), 60 (4), SCRCP, and Request For Oral Hearing along with Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 (pg.)

M. October 16, 2018 - Alleged Unsigned Order - Honorable Judge Hayes (pg.)

N. November 15, 2018 - Served - Notice of Appeal (pg.)

O. November 19, 2018 - Received - Respondent Interinsurance Exchange of the Automobile Club Return Receipt, Green Card (pg.)

(Note: Respondents Interinsurance Exchange of the Automobile Club and Carter and Davis are the only ones out of all of the Respondents that motioned for orders to dismiss the appeal and therefore the Appellants are responding with returns to these separate motions and not fully addressing the remaining respondents.)

P. November 21, 2018 – Court Received By Fax- Notice of Appeal (pg.)

Q. November 21, 2018 – Received – Respondents Carter and Davis Return Receipt, Green Card (pg)

R. November 27, 2018 – Filed - Notice of Appeal (pg.)

S. January 15, 2019 – Order – Honorable Judge Gibbons (pg.)
(Note: Only order signed in ink in this matter.)

23. Appellants' motions were not ruled on and orders were not made. This will be fully explained in the Appellants' upcoming brief.

24. The Appellants and Respondents are required to comply with the rules of **SCRCP**.

25. Note that under South Carolina's rules (**SCRCP**), service of motions is required on defendants however certified mail return with return receipt is not.

SCRCP 5 (1) Same: How Made.... *Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.*

26. Note that under South Carolina's rules (**SCRCP**), proof of service, for the summons and complaint, is required to be filed and it further indicates that other paperwork that must be served, must also be filed with the court however there is no requirement of a certificate of service for such subsequent paperwork. Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.

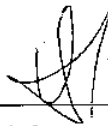
SCRCP 5(d) Filing. *All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof. The summons and complaint shall be filed before service. Proof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party. Upon failure of a party to file other pleadings, motions, or papers, the court may permit filing or proceed as though the same had not been served.*

27. Given the complexity of this matter, with numerous respondents and excessive documents to deal with, in addition to the extreme hardship and extraordinary circumstances Appellant Gersten lives with, there is good cause shown for additional time to provide the information that will prove the Appellants' timeliness in serving and filing the notice of appeal.
28. According to the **SCACR**, the Appellants should not be subjected to serving and filing a return when the Respondents Carter and Davis' Motion to Dismiss does not have the correct case number, along with the burden of sorting through 64 un-paginated pages. In addition, there is a litany of information nonrelated to the issue at hand therefore will be saved for the Appellants' brief. The only pertinent issue currently is proving timeliness of the Appellants' Notice of Appeal.
29. The date the Notice of Appeal was timely served and filed on Respondents Kevin Carter and Richard Davis was November 15, 2018. Proof of service was attached to said Notice of Appeal for the court's filing.
30. The motions for reconsideration were timely filed according to court rules.
31. The Appellants are hereby reserving the right to amend this return should additional information be necessary.
32. I was paralyzed as a result of the collision in controversy with the Respondent Kevin Carter and the Respondent Richard Davis co-owned the vehicle involved.
33. It is unfair to hold me to the same standards as able-bodied people.
34. The **American Disabilities Act**, An agency of the US Department of Justice Civil Rights Division, applies to and protects me.
35. **Title II** of the **American Disabilities Act** permits modifications to court rules to accommodate my situation due to my disability.
36. The **Doctrine of Equitable Tolling** may also be applied to my circumstances.
37. I urge the Court to permit this APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS to be considered in light of the good cause shown.

38. These extensions were not for the purpose of delaying. For the furtherance of justice and to prevent its miscarriage, this appeal must be reinstated and the Appellants be permitted to move forward on its merits..

39. To be so strict on a date on the calendar causes the merits of the actions to be replaced as the primary purpose of litigation. The brief cover must be "red or read?".

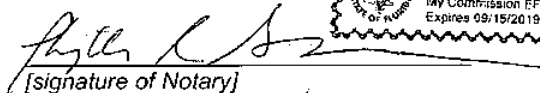
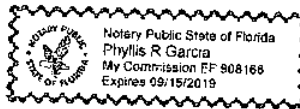
40. I can only do so much in a given day. I'm paralyzed without a caregiver.



Heidi Gersten
1438 W. Lantana Rd. #330,
Lantana, FL 33462

Subscribed and sworn to before me, this 28th day of May 2019.

[Notary Seal:]



[signature of Notary]

Phyllis R Garcia

[typed name of Notary]

NOTARY PUBLIC

My commission expires: 09/15/2019



Scan for updated forecast

Boca Raton, FL 10 Day Weather

3:24 pm EDT

DAY		DESCRIPTION	HIGH / LOW	PRECIP	WIND	HUMIDITY
TODAY MAY 6		Heavy Thunderstorms/Wind	77°/73°	100%	SSW 23 mph	80%
TUE MAY 7		PM Thunderstorms	87°/75°	80%	NE 11 mph	76%
WED MAY 8		Mostly Sunny	85°/74°	20%	E 13 mph	70%
THU MAY 9		Mostly Sunny	85°/74°	20%	ESE 13 mph	70%
FRI MAY 10		Mostly Sunny	86°/75°	20%	ESE 12 mph	68%
SAT MAY 11		Partly Cloudy	87°/75°	20%	SSE 12 mph	65%
SUN MAY 12		PM Thunderstorms	89°/75°	40%	S 14 mph	66%
MON MAY 13		PM Thunderstorms	90°/75°	40%	SSW 12 mph	68%
TUE MAY 14		Scattered Thunderstorms	89°/76°	50%	SSW 10 mph	70%
WED MAY 15		Scattered Thunderstorms	88°/75°	50%	S 12 mph	71%
THU MAY 16		Scattered Thunderstorms	88°/75°	50%	S 11 mph	68%
FRI MAY 17		Scattered Thunderstorms	87°/75°	60%	S 11 mph	68%
SAT MAY 18		Scattered Thunderstorms	87°/75°	50%	SSE 12 mph	67%
SUN MAY 19		Scattered Thunderstorms	87°/75°	50%	SE 12 mph	67%
MON MAY 20		Scattered Thunderstorms	87°/75°	40%	SE 10 mph	66%

EXHIBIT

ALMANAC



SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

JUROR SUMMONS

15th Judicial Circuit
You are summoned for jury duty to the
Palm Beach County Courthouse, 205 N. Dixie Highway, West Palm Beach, FL 33401-4622

NAME HEIDI VERONIKA GERSTEN JUROR ID JUROR NUMBER

Your name was selected at random from the list of people qualified to serve.

Your jury duty will begin **May 13, 2019 at 8:00 AM** and continue until you are released from service. You will not be released from jury duty until (1) you have served as a juror on a trial; (2) you have appeared for service and were not selected as a juror; or (3) you have been notified by the automated phone system that your service is not needed. You may be on telephone standby for up to one week from your original summons date.

Please visit www.mypalmbeachclerk.com/jury or call (561) 355-2930 or (888) 780-5032 after 5:00 p.m. the day before your summoned date. A recorded message will tell you whether to report. If there is no message or the telephone line is not in operation, and you have confirmed that the courthouse is open, please report as directed on this summons.

If selected to serve on a jury, electronic devices such as cell phones, cameras, laptop computers or any other similar technological device capable of making or transmitting images, text or data as well as audio and video recordings must, prior to the start of jury deliberations, be turned over to the courtroom deputy who will keep them while you deliberate.

Free parking is located at 505 Banyan Blvd. Bring parking ticket to the jury office to be validated. For directions and other helpful information about jury duty, visit www.mypalmbeachclerk.com/jury.

REQUEST FOR POSTPONEMENT OR EXCUSAL FROM JURY SERVICE

NAME HEIDI VERONIKA GERSTEN JUROR ID JUROR NUMBER

You may not serve if (please check and submit required documentation by visiting www.mypalmbeachclerk.com/jury or by mail):

- ☐ Not a legal resident of Palm Beach County
 - ☐ Not a citizen of the United States
 - ☐ Convicted of a felony and civil rights have not been restored
 - ☐ Currently under criminal prosecution
- Jurors are entitled to two postponements that together do not exceed six months from the original summons date. If you want to postpone your service, please visit www.mypalmbeachclerk.com/jury or call (561) 355-2930 or (888) 780-5032 or fax (561) 355-2930 or (888) 780-5032. You must provide a valid reason for postponement, you must provide a new date that falls on a Monday through Thursday (excluding court holidays). New date chosen:

You may choose not to serve if (please check):

- ☐ 70 or older -- Do you want to be permanently excused?
 - ☐ Responsible for care of medically/mentally incapacitated person unable to care for self.
 - ☐ Expectant Mother
 - ☐ Parent not working full time with custody of a child under 6
 - ☐ Full time law enforcement officer or law enforcement investigative personnel
 - ☐ Summoned and reported for jury service in Palm Beach County within (1) your first (the date for which summons are true).
- Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

Signature

Continued

EXHIBIT

2

TIMELINE OF EVENTS WITH LAW AND ARGUMENTS THAT INCLUDE A
MEMORANDUM OF POINTS AND AUTHORITIES THAT PROVE TIMELINESS OF
APPELLANTS' NOTICE OF APPEAL

Appellants received and/or obtained written notice of entry of each of the following
separate orders on appeal.

ORDER DATE	FILE DATE	JUDGE	DATE OBTAINED	DATE RECEIVED
04/26/18	04/26/18	Judge Gibbons (Consolidation Order)(Subject of this Appeal)	05/05/18 - On-line Court Website	N/A

(NOTE: Pursuant to **SCRCP**, a timely Motion to Alter or Amend a Judgment or Order
was served on the Respondents (Defendants) on May 6, 2018 and filed on May 8,
2018, pursuant to **Rule 59(e), SCRCP**, which requires that a motion to alter or
amend be "*served not later than 10 days after receipt of written notice of the entry of
the order.*"

This rule does not preclude the motion from being served prior to or earlier than
'receipt'.

According to the interpretation of these rules, the said May 8th motion is timely as it
has been served prior to 'receipt', and would apply if the Appellants were to serve
and file it as of today's date since they have not 'received' a written notice of the
entry of the order being challenged. It was 'obtained' online via the Court's Website.

(Perhaps the time may be ripe in presenting the Highest Court with a certified
question in regards to whether or not initiating a case search on the Court's website
and reading pleadings, orders, judgments or other documents constitutes
"receiving" written notice or written notice of entry of judgments or orders or any
other service of process. Does 'obtaining' documents online complete service in the
process of active or inactive litigation? Is an uncertified or certified document
online form found online create service on the litigant seeking the information?)

Similar to defendant litigants learning of an action being filed in the courthouse and
within hours of the filing by plaintiff litigants, the defendant litigants obtain copies
of the documents either from making copies that are online or going to the
courthouse and requesting them in person. Does either of those two scenarios
constitute service according to **SCRCP** rules?

(Perhaps, when these laws were written, modern technology wasn't in mind and
with the advent of the computer, times have changed and this is something that
ought to be addressed. Otherwise you end up with laws, like in Ohio, where the

Supreme Court has ruled that both parties may actively participate in litigation, have a trial, and then one party proves that according to the rules, service was not perfected and everything is void. This logic defies common sense. There comes a point where the rules cannot dictate logic. In order to comply with rules, they must be self evident and in plain English and not ambiguous. The Appellants did follow the letter of the law as well as the spirit.)

The filing was made in person on May 8, 2018 by the Appellant/Claimant/Plaintiff Gersten, at the Chester Courthouse, minutes prior to the Respondent/Defendant Carter's sentencing in front of Judge Zamore, in Magistrate's Court. Deputy Clerk Atkinson was instructed and agreed to provide a copy to Judge Gibbons, pursuant to **Rule 59(g), SCRCF**, which requires that a party filing a **Rule 59** motion "*shall provide*" a copy of the motion to the judge within 10 days of filing. The Appellant Gersten traveled from Florida with her pressure wound, by vehicle with friends to attend the hearing she was subpoenaed to by Judge Underwood, invoking her Victim's rights under the **SC Victim's Constitution** as a witness.)

(ALSO, NOTE: There is no requirement of a certificate of service or proof of service to be filed with the court under **SCRCF** for anything other than the summons and complaint. Service is complete upon mailing, as in "regular mail". There is no requirement to certify or do registered mail in **SCRCF**.) (Perhaps this is ripe for a certified question as to whether or not certificates of service are required.)

05/21/18 05/22/18 Judge Gibbons 05/16/18 - On-line N/A
Court Website

(NOTE: Appellants have not received this order in the mail nor email nor any other method of service as provided by **SCRCF** nor was permitted to review it in the proposed form for accuracy or objections. The issue at hand is moot since it did not affect any part of this matter, so no need to address it in depth other than to make note that it was not served on Appellants/Plaintiffs and used as an example of the course of conduct.)

(ALSO, NOTE: Appellants served "Second Amended Complaint and Demand For Jury Trial With Leave on Respondent/Defendants on September 17, 2018 and overnighted for filing on and received on September 24, 2018, under the mailbox rule, and file stamped on September 25, 2018.) (The pleadings were not closed on the premature hearing of September 5, 2018 in front of Judge Hayes for a variety of reasons including, but not limited to, a timely amended complaint that was served on the Respondent/Defendants and not answered at the time of the said hearing. All of this will be further explained in the forthcoming brief which will focus on the merits and not timeliness. This is an attempt to satisfy the timeliness requirements although the American Disabilities Act Title II and Equitable Tolling excuse these restrictions and permit law to accommodate the Appellants and modify rules due to their disabilities.)

09/18/18	09/19/18	Judge Hayes III ("AAA" Order) (Subject of this Appeal)	09/19/18 - E-mail From <i>RESPONDENT</i> AAA	N/A

(NOTE: Appellants' Notice of Appeal has a typo error and should reflect the correct receipt of this order as September 19, 2018 if e-mails apply to non-attorneys as valid service, possibly another certified question to conclude, either way, the Notice of Motion and Plaintiffs' Motion to Alter or Amend a judgment or Relief from Judgment or Order was timely served on October 1, 2018 and filed on October 8, 2018 according to **SCACR**, thus, tolling the time to serve and file the Notice of Appeal.)

09/18/18	09/19/18	Judge Hayes III ("Carter & Davis' Order") (Subject of this Appeal)	09/19/18 - On-line Court Website	N/A

09/21/18	09/21/18	Judge Hayes III ("Nationwide & Tirbovich" Order) (Subject of this Appeal)	09/23/18 - On-line Court Website	N/A

09/21/18	09/24/18	Judge Hayes III ("Trustgard & Ammendola" Order) (Subject of this Appeal)		N/A

09/21/18	09/21/18	Judge Hayes III ("SC Dept. of Public Safety & Blackwell" Order) (Subject of this Appeal)	09/23/18 - On-line Court Website	N/A

10/16/19	10/16/18	Judge Hayes III (Order) (Subject of this Appeal)(Order from Appellants' Motion for Reconsideration) (Tolled the time to serve Notice of Appeal)	10/21/18 - On-line Court Website	10/21/18 - USPS Regular Mail

01/15/19	01/15/19	Judge Gibbons (Stay Order) (Pending Outcome of Appeal)	01/15/19 - Received Phone Call From The Chester County Clerk	01/25/19 - USPS Regular Mail

02/15/19	02/15/19	Clerk (Letter) (Included As It Pertains to The Matter at Hand)		02/27/19 - USPS Regular Mail

NOTE that the Appellants did not actually receive the letter until two (2) days after its instructions to comply with its requests, causing it to be impossible, save for a nunc-pro-tunc, to follow with respect.

04/09/19	04/09/19	Clerk (Order) (Extension Granted)		04/17/19 - USPS Regular Mail

(NOTE that the Appellants did not actually receive the clerk's order until 2 (two) days after its instructions to comply with its requests, causing it to be impossible, save for a nunc-pro-tunc, to follow with respect. Regardless, it says "...absent extraordinary circumstances." There are plenty of extraordinary, mitigating and extenuating circumstances. The Appellants are unaware of the authority of clerks of court to issue orders. Is this their duty? It appears to be void on its face. Judges issue orders. With all due respect, this will be addressed in the future.)

05/02/19	05/02/19	Judge Lockemy (?) (Order) (Subject Matter For This Motion To Reinstate)	05/16/19 On-line	05/17/19 - USPS Regular Mail

(NOTE that the Appellants did not actually receive the judge's order, presuming that it was indeed a judge who signed this order as the last name is not legible and there is no printed legible version for the Appellants to ascertain its signor, until the day its instructions to comply were given, which was the same day. The first name "James" is legible and when the Court's website is accessed, one can see that there is a judge James Lockemy however is is uncertain if this is who signed this order or someone else. Again, with all due respect, the Appellants are doing what they can to follow orders and obey the law.)

Note that the Appellant Gersten called the Court and spoke with Shelby who informed her that this order did not trigger a motion to reinstate or petition for rehearing, which subsequently caused an order filed on May 14, 2019 issued by a clerk with illegible handwriting and no printed name. As said before, the Appellants

question or challenge the authority for clerks to issue orders. One of a judge's duty is to issue orders. The Appellants are unaware of any rule except for **Rule 260 (a) Involuntary Dismissal and Reinstatement, SCACR**, which states, "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing excluded). The Appellant Gersten spoke with case manager Elizabeth about a fax being permitted as being "received" by the court. The Appellants will also overnight this for an expected delivery date of May 29, 2019, which would be timely. Becky also affirmed that faxes and overnight deliveries are file-stamped the same day received.

05/14/19	05/14/19	Clerk	05/16/19	On-line	~4
		(Dismissal Order)			
		(Note: Stay of			
		Remittitur is in Order			
		Pending Motion for			
		Reinstatement)			

(NOTE: The Appellants have not received written notice of entry of this order and learned about it on 05/16/19 after searching case records and in a good faith effort are attempting to comply.)

Given the extraordinary, mitigating and extenuating circumstances, the Appellants move this Court for an Order granting their motion for reinstatement and/or petition for rehearing of motion to dismiss and acceptance of their Return of Respondent Kevin Carter and Richard Davis' Motion to Dismiss as timely.

CERTIFICATE OF SERVICE
(Appellate Case No: 2018-002115)

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: Appellate Case No: 2018-002115 APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS, ALONG WITH EXHIBITS AND A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 15, 2019, ORDERS OF APRIL 9, 2019 MAY 2, 14, 2019 along with letter to the Court dated May 28, 2019, and AFFIDAVIT OF APPELLANT HEIDI GERSTEN and, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT, by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

Wesley Brian Sawyer, Esquire
Murphy & Grantland, P.A.
4406 Forest Drive #B
Columbia, SC 29206
(Attorney for Kevin Carter and Richard Davis)

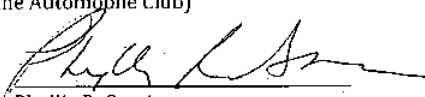
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
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1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
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Davidson & Lindemann, PA
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and Trooper Herbert Blackwell)

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Alexander S. Gogsette
P.O. Box 5478
Florence, SC 29502
(Attorney for Joseph Tirbovich)

By: 
Phyllis R. Garcia

Boca Raton, Florida

RECEIVED
MAY 29 2019
SC Court of Appeals

May 28, 2019
1438 W. Lantana Rd., #330
Lantana, FL 33462

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate St.
Columbia, SC 29201
(843)662-3258 Fax (843)662-1342

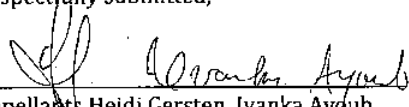
RE: Appellate Case No.: 2018-002115

Dear Ms. Kitchings or To Whom It May Concern:

Good day to you.

Please find 2 (two) enclosed U.S. postal money orders in the amount of \$50.00 each (\$100.00 total), as I was unaware of the correct amount due, for the enclosed original APPELLANTS' MOTION FOR REINSTATEMENT AND/OR PETITION FOR REHEARING OF MOTION AND AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS along with a more detailed response to this Court's letter dated February 15, April 9, May 2, and 14 all in the year of 2019, along with 7 copies. Please file the original and return a file-stamped copy in the pre-paid postage envelope provided. Thank you for your time regarding this matter.

Respectfully submitted,


Appellants Heidi Gersten, Ivanka Ayoub
hanginhangout@gmail.com
(323)245-6142 Fax (561) 756-9820

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September 26, 2019

Petition for Writ of Certiorari filed September 26, 2019, in Appellate Case No. 2019- 001484

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHESTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Honorable Brian Gibbons, Circuit Court Judge
Honorable John C. Hayes, Circuit Court Judge

C.A. No: 2018-002115 (Appellate Court of Appeals)
2019-001484 (Supreme Court)

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance Co.,
Interinsurance Exchange of the Automobile Club, Trustgard, John Ammendola,
Blackwell, SC Department of Public Safety, Unknown John Does,.....Respondents,

v.

Heidi Gersten, Ivanka Ayoub,.....Petitioners.

PETITION FOR A WRIT OF CERTIORARI

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September 24, 2019

Other Counsel of Record:

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CERTIFICATE OF PETITIONERS COUNSEL

The Petitioners, Heidi Gersten and Ivanka Ayoub, certify that a petition for rehearing was made on May 29, 2019 and finally denied by the Court of Appeals on July 30, 2019.

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S.C. SUPREME COURT

QUESTIONS PRESENTED

1. Did the Court of Appeals err in dismissing this appeal is stating that the Court was unable to discover that any material fact or principle of law had been either overlooked or disregarded, and hence, found no basis for granting a rehearing or reinstating the appeal?
2. Did the Court of Appeals err in dismissing this appeal is stating that the Court was unable to discover that any material fact or principle of law had been either overlooked or disregarded, and hence, found no basis for granting a rehearing or reinstating the appeal when in truth and fact there were?
3. Did the Court of Appeals err in finding that the Appellants failed to comply with the Court's order dated May 2, 2019?
4. Did the Court of Appeals err in finding that the Appellants failed to comply with the Court's order dated May 2, 2019 when the order was received by the Appellants after the deadline to comply with the order?
5. Did the Court of Appeals err in finding that the Appellants failed to comply with the Court's order dated May 2, 2019 when there was a timely return made to Interinsurance Exchange of the Automobile Club's motion to dismiss left to decide?
6. Did the Court of Appeals err in finding that the Appellants failed to comply with the Court's order dated May 2, 2019 when in truth and fact the information requested had been previously presented by the Appellants and therefore the order was complied with?
7. Did the Court of Appeals err in finding that the word 'shall' is permissive?
8. Did the Court of Appeals err in not complying with Title II of the American Disabilities Act?
9. Did the Court of Appeals err in not applying the doctrine of Equitable Tolling to the Appellate Gersten's extreme hardship due to her illness of pressure wounds, a secondary complication from the paralysis she sustains as a result of the collision in controversy?
10. Did the Court of Appeals err in not permitting the Appellants to formulate their brief?

INTRODUCTION

This Petition arises from a dismissal of the Court of Appeals. (Appx. at 3-4). It presents a novel question as to the ability of a judge to consolidate two matters (cases)(a state legislative non-binding arbitration regarding property damage due to an automobile collision and a civil action) comprised of different plaintiffs and different defendants and only the arbitration case having perfected service at the time of the consolidation ruling being challenged, among other things, before the Court of Appeals. In addition, the Court of Appeals mistakenly dismissed the appeal for a variety of reasons, misanalysing the standard of review in conflict with the previous opinions of this Court, conflating an action at law with a question of law. This error will give rise to confusion in any case seeking a declaratory judgment and raising questions of statutory construction. These issues implicate the express terms of Rule 242, SCACR, and warrant a grant of discretionary review by this Court.

This argument is further supported by In that filing, "this appeal presents both an issue of significant public interest and a legal principle of major importance. Those concerns remain following the dismissal of the Court of Appeals. ...this appeal warrants prompt consideration and final determination by this Court.

STATEMENT OF THE CASE AND FACTS

Petitioner Gersten and Respondent Carter were involved in an automobile collision on March 19, 2015 in Chester County, South Carolina which resulted in paralyzing Petitioner Gersten. Petitioners Gersten and Ayoub timely filed and served an arbitration hearing under statute against . A subsequent case was filed adding Daniel Hubbard as a plaintiff and additional defendants were named. Judge Gibbons made a consolidation ruling without hearing or notice to consolidate these two actions. At the time of said ruling, the second action was not served upon defendants causing the ruling to be void or voidable. On a timely motion to amend....was made by the plaintiffs. On September 18, 2018 a hearing was made before Judge Hayes however this motion was not ruled on as well as other motions before the court and the hearing was premature because the pleadings were not closed and the plaintiffs had submitted a timely amended complaint to which the defendants had not answered at the time of the hearing. Judge Hayes verbally dismissed all litigants except for Plaintiffs Heidi Gersten and Ivanka Ayoub and Defendant Kevin Carter against the plaintiffs' objections. Written orders were issued on without the plaintiffs opportunity to review them for accuracy. On Plaintiffs Gersten and Ayoub timely filed and served a motion to amend. On Judge Hayes arbitrarily and generically denied the motion without oral hearing or legal determination. A timely motion for appeal was made by Appellants on. A motion to extend time to serve brief was timely filed and served on however via a letter from the Court of Appeals stated that Respondent AAA had filed a motion to dismiss the same day as the Appellants therefore the Court of Appeals returned their check for

\$50 instructing or advising the Appellants that the matter was stayed until a decision was made by the Court of Appeals on the motion to dismiss per statute Rule, SCACR. The date of the receiving of the motion was on however at that time, the Respondent AAA had not paid the proper filing fee and was given time to cure the deficiency by the Court of Appeals although rule of SCACR says that a clerk shall dismiss the motion for failure to comply with the rules Rule SCACR see letter. A timely return was made by the Appellants based on the date that the. On Respondents Carter and Davis filed a motion to dismiss. During the time permitted to file and serve a return, Appellant Gersten suffered a series of health complications related to a pressure wound she has been dealing with for over 4 years as a result of being paralyzed as a result of the collision in controversy that caused the Appellants to file a series of motions to extend time to file and serve the return. In addition the motion was not paginated as the rules instruct and had the wrong case number. The sole argument through the litney of information was that the Appellants had not filed their appeal timely. The remaining respondents had not filed motions to dismiss. One only has to study the record to find the Appellants complaining about not receiving the documents related to this action until days after the requested information. This course of conduct is significant because the official reason for dismissing the appeal alleged that the appellants did not follow the rules. The questions that Judge asked were already answered when the notice of appeal was served and filed regardless of which date pertained to which respondent. There is no question or debate of whether or not the return to AAA was made on time. Carter and Davis' return was made

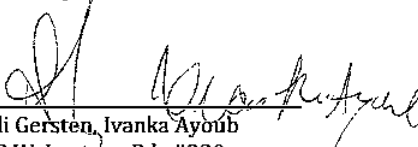
CONCLUSION

As argued above, the Court of Appeals applied the wrong standard of review in this case and failed to comply with Title II of the American Disabilities Act resulting in harmful error to the Appellants.

The Petition for Writ of Certiorari and Appendix is due on September 24, 2019 per Order of this Court dated September 24, 2019 in said case number and therefore is timely. Due to Petitioner Gersten's extreme hardships suffered from being paralyzed as a result of the controversy in action and the pressure wounds that resulted as secondary complications from being paralyzed, the Petitioners hereby thank this Court for the compassion extended in granting an additional six (6) days of the requested twenty (20) that was requested due to the Petitioner Gersten's life threatening illness. She is unable to sit for more than a few hours at a time and lives without a caregiver, performing her own wound care as well as litigating numerous lawsuits without an attorney. The Petitioner's also appreciate the rapid response to the request however did not receive notice of the Order until September 17, 2019 as the course of conduct from the inception of filing as shown that the Petitioners often receive information after the due dates issued in letters which is the crux of the dismissal of the Petitioner's Appeal and in the following they will attempt to explain how the Court of Appeals misinterpreted and or misapplied laws, making harmful errors to the Petitioner's. With all due respect, it has been said that "Ignorance is no excuse for the law and that non-attorneys are held to the same standards as attorney. With that logic, then non-attorneys should be treated equally under the law and the phrase, "What's good for the goose is good for the gander should apply."

The official Order of the Appellate Court mistakenly states that the Appeal is dismissed because the Petitioners failed to follow the laws laid out in SCACR. Not only did the Petitioners follow the law, they provided the Court of Appeal with a total of in for motions for extensions of time to make a Return to Carter and Davis' Motion to Dismiss. There are no grants for each individual motion made. There is one Order made on extending to and a request for three questions. The Petitioners were ordered to produce information and received the order after the deadline of the time to comply making it impossible to comply.

Respectfully submitted,



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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable Brian Gibbons, Circuit Court Judge
Honorable John C. Hayes, Circuit Court Judge

C.A. No: 2018-002115
2019-001484

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance Co.,
Interinsurance Exchange of the Automobile Club, Trustgard, John Ammendola,
Blackwell, SC Department of Public Safety, Unknown John Does,.....Respondents,

v.

Heidi Gersten, Ivanka Ayoub,.....Petitioners.

PROOF OF SERVICE

This is to certify that this day, the undersigned, over 18 years of age and not a party to the said action has served the following named individuals, counsel for the Respondents, in the foregoing matter, the foregoing Petitioner's Petition for Writ of Certiorari and accompanying Appendix by depositing (mailing) a copy of same to them in the United States Post Office mail, with sufficient postage affixed thereto(thereon) to ensure delivery and return address clearly marked on the date indicated below, addressed as follows:

Wesley Brian Sawyer, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive
Columbia SC 29206
Attorney for Respondents Kevin Carter & Richard Davis

David R. Sligh
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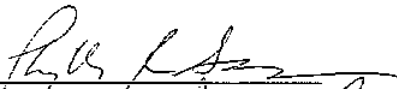
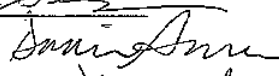
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Attorneys for Respondents Department of Public Safety & Trooper Herbert
Blackwell


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(561) 393-3231

DANIECIA AMOROSO

September 24, 2019

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S.C. SUPREME COURT

Transcript

September 5, 2019, Hearing

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHESTER
4 2018-CP-12-00117
5 Heidi Gersten
6 Vs.
7 Kevin Carter, et al.
8
9 Chester, South Carolina
10 September 5, 2018
11 Before the Honorable John C. Hayes, III
12 APPEARANCES
13 For the Plaintiff: Heidi Gersten, Pro Se
14 For the Defendants: Sawyer, Slye, Williams, Dworjanyn,
15 Davidson
16 Reported by: Michael C. Watkins
17 Official Court Reporter
18
19
20
21
22
23
24
25

1 THE COURT: Moving back over to the motions roster, I
2 am at number 21, which is a motion for continuance by Heidi
3 Gersten, and it will take me a minute to get everybody's
4 appearance. All right. And you're Ms. Gersten?

5 MS. GERSTEN: Yes.

6 THE COURT: Counsel, tell me who you are and you
7 represent.

8 MR. SAWYER: Yes, sir, Judge. Wesley Sawyer, I
9 represent Kevin Carter and Richard Davis.

10 THE COURT: All right, Carter and Davis.

11 MR. SLYE: Your Honor, I am David Slye, and I represent
12 Nationwide Mutual Insurance Company and Joseph Tirbovich.

13 THE COURT: Spell that for me.

14 MR. SLYE: T-i-r-b-o-v-i-c-h.

15 MR. WILLIAMS: Your Honor, I'm Reynolds Williams, I
16 practice in Florence. I represent the Interinsurance
17 Exchange of the Automobile Club.

18 THE COURT: Tell me that again.

19 MR. WILLIAMS: Interinsurance Exchange of the
20 Automobile Club.

21 THE COURT: I still couldn't hear you, that's my fault
22 not yours. Tell me again.

23 MR. WILLIAMS: It's Interinsurance, that's all one
24 word. It's like Interstate Commerce except it's
25 Interinsurance Exchange of the Automobile Club.

1 MR. DWORJANYN: Peter Dworjanyn with Collins and Lacey.

2 THE COURT: I'll have to get you to spell that for me.

3 MR. DWORJANYN: D-w-o-r-j-a-n-y-n.

4 THE COURT: And you represent?

5 MR. DWORJANYN: Trust Guard Insurance Company and John

6 Ammendola, A-m-m-e-n-d-o-l-a.

7 THE COURT: All right.

8 MR. DWORJANYN: Thank you.

9 THE COURT: Ms. Gersten, this is your motion, it's a

10 motion to continue.

11 MR. DAVIDSON: Your Honor, I'm trying to -- I decided

12 to take the jury box for my desk. Will Davidson, and I

13 represent the South Carolina Department of Public Safety and

14 Trooper Herbert Blackwell.

15 THE COURT: Herbert Blackwell?

16 MS. GERSTEN: Yes, sir.

17 THE COURT: All right. Good to see you.

18 MR. DAVIDSON: Thank you, sir.

19 MR. SAWYER: Your Honor, if I may real briefly, I

20 believe one thing that may help in terms of housekeeping and

21 moving things along, I don't know that any of the defendants

22 oppose the motion for continuance as it would apply to the

23 roster for the jury or an arbitration proceeding if one were

24 to take. I think we would just oppose the continuance of

25 motions that are before the Court.

1 THE COURT: All right. So collectively the defendants
2 do not oppose a motion to continue the actual hearing of
3 arbitration or a trial on the merits.

4 MR. SAWYER: Is that right?

5 (All defense attorneys said yes.)

6 THE COURT: Is that what you're asking to continue and
7 let us go for the requested motions today, Ms. Gersten?

8 MS. GERSTEN: Well, sir, before we get started I
9 thought we were having a court reporter here.

10 THE COURT: We do.

11 MS. GERSTEN: Oh, Michael, I didn't know you were the
12 court reporter, I just wanted to make sure. And my mother,
13 Ivanka Ayoub, is also a claimant in the arbitration and a
14 plaintiff in the civil action.

15 THE COURT: All right. I'm here, I'm a Judge, I've
16 been assigned to hear these cases. They're consenting to
17 you continuing the trial on the merits of the arbitration
18 and the civil litigation but we've got some motions to hear
19 today, do you understand that?

20 MS. GERSTEN: Yes.

21 THE COURT: Are you ready to go forward on those?

22 MS. GERSTEN: Yes, sir.

23 THE COURT: All right. Mr. Clerk, again, that puts us
24 with the Mr. Sawyer's motion to strike?

25 MR. SAWYER: Yes, sir, Your Honor.

1 THE CLERK: Correct.

2 MS. GERSTEN: Objection.

3 THE COURT: All right. Wait just one second, you're
4 getting ahead of me. All right. What is your objection?

5 MS. GERSTEN: My objection is he can't do a motion to
6 strike because he already did an answer. The rules say
7 you've got to do a strike before the answer and he answered
8 before the strike.

9 THE COURT: What rule says that?

10 MS. GERSTEN: Sir, I put it in my paperwork, it's in my
11 record here that says -- I would need a minute here.

12 MR. SAWYER: Judge, I can save us some time. Rule 12F
13 says that in part, but then it also says at anytime the
14 Court may order stricken from any pleading any insufficient
15 defense or any/or redundant immaterial pertinent or
16 scandalous matter. So the rule says the Court can do that
17 at anytime. And in my experience the common practice is to
18 file an answer and a motion to strike simultaneously,
19 because we're not moving to strike the entire complaint,
20 we're moving to strike portions of the complaint.

21 THE COURT: And you served them simultaneously?

22 MR. SAWYER: I did, yes, Judge.

23 MS. GERSTEN: But I still object for the record
24 because, sir, the rules say it's got to be before.

25 THE COURT: All right. I overrule your objection.

1 MS. GERSTEN: Excuse me?

2 THE COURT: I overrule the objection and we'll go
3 forward on the motion.

4 MS. GERSTEN: What is it, you said you overruled?

5 THE COURT: Yes, ma'am. We will go forward with the
6 motions. I'm looking at Rule 12F and --

7 MS. GERSTEN: I want to reserve my right to a motion
8 or --

9 THE COURT: You do. Once you say you object and I
10 sustain it you don't have to say you reserve your right,
11 it's automatically preserved.

12 MS. GERSTEN: Okay. I apologize.

13 THE COURT: That's okay. I understand you don't have
14 an attorney, but -- all right. Let's go forward on the
15 motion to strike.

16 MR. SAWYER: Thank you, Your Honor. This is actually a
17 motion to dismiss or in the alternative a motion to strike.

18 THE COURT: Oh, okay.

19 MR. SAWYER: We have two actions as you recognize, I
20 believe, Judge, that have been consolidated into one action
21 by Judge Gibbons.

22 MS. GERSTEN: Objection.

23 THE COURT: Yes, ma'am.

24 MS. GERSTEN: The consolidation is a void judgment and
25 that's what caused a lot of confusion, I apologize. But

1 Judge Gibbons didn't allow me to have an arbitration when
2 the rules say that I'm allowed to have an arbitration. It
3 doesn't prejudice anybody, it's an alternative dispute
4 resolution and Rule 12 of ADR is where I derive that from.

5 THE COURT: Well, but I was told by the clerk earlier
6 today that Judge Gibbons regardless of what -- has
7 consolidated the two cases.

8 MS. GERSTEN: But I never had a hearing so he violated
9 my fair due process law.

10 THE COURT: Well, that would be something for you to
11 appeal, I can't change what Judge Gibbons has done.

12 MS. GERSTEN: Well, then it wouldn't be an appeal, sir,
13 because it's an alternative dispute resolution.

14 THE COURT: Well, I'm not going to sit here and argue
15 with you, and I'm not saying that I'm the pinnacle of legal
16 knowledge, I have to --

17 MS. GERSTEN: I apologize, sir, I can't hear you.

18 THE COURT: Is that on now? Let me speak into it.
19 Mr. Sawyer, what do you have to say about that? I'm trying
20 to dig my way through it.

21 MR. SAWYER: Yes, sir, Your Honor. Very briefly, these
22 cases started out as two different cases.

23 MS. GERSTEN: Objection, it did not start out as two
24 separate cases, sir, that's not true.

25 THE COURT: Well, let's hear from him and then I'll

1 give you an opportunity to tell me --

2 MS. GERSTEN: As long as I can reserve my objections.

3 THE COURT: Well, you don't have to object to every
4 word. What you have to do is hear what he says and then
5 respond, do you understand? It's like a tennis match, he
6 gets to play his ball and then you get to return serve
7 however you wish. I'm not trying to squelch you or prevent
8 you from asserting any rights you may have, but I think you
9 are very well protected if he presents something and then
10 you present the other side.

11 MS. GERSTEN: Well, do you object to me yelling
12 objection when I hear something --

13 THE COURT: No. I don't object to your objection, you
14 object -- go ahead. At this time I'm finding that the cases
15 are consolidated at least for me hearing these motions, not
16 for trial, I don't know about that.

17 MS. GERSTEN: That's much better, thank you.

18 MR. SAWYER: Judge, by way of background, Ms. Gersten
19 originally filed a property damage arbitration case, and
20 then subsequently filed an action in circuit court for
21 bodily injuries. Both cases arise out of the same
22 automobile accident that occurred on March 19th of 2015. It
23 was an accident between a vehicle operated by Ms. Gersten
24 and a vehicle operated by one of my two clients, Kevin
25 Carter, and owned by Mr. Carter. There's no dispute that an

1 accident occurred. There's no dispute that both claims seek
2 damages out of that accident. Ms. Gersten, I understand,
3 represents that the property damage arbitration seeks the
4 property damages from that accident --

5 THE COURT: Well, let me -- this comes across my mind.
6 Did she file for a third person arbitration? Did she file
7 under the arbitration statute? Because she mentioned
8 alternative -- the ADR code, Alternative Dispute Resolution,
9 those rules wouldn't apply to a statutory arbitration. Did
10 you ask for a three judge or a three lawyer panel to
11 arbitrate the property damage under that statute?

12 MS. GERSTEN: I did. But the Rule 12 that I'm
13 referring to is a nonbinding arbitration hearing and an
14 award, which the rules would apply.

15 THE COURT: Well, I disagree with you on that but you
16 can appeal me. We're talking about two different things.
17 Arbitration a is a statutory procedure.

18 MS. GERSTEN: Yes.

19 THE COURT: The rules for that would be applied -- I've
20 never heard of any rule issue involving that, but the
21 alternative -- that's not -- in reality it's sort of an
22 alternative dispute resolution but I don't believe it falls
23 under the alternative dispute resolution like mediation and
24 arbitration for a matter that's brought in civil court.

25 MS. GERSTEN: I disagree, sir.

1 THE COURT: I just wanted to clear up what I see as the
2 posture. All right, go ahead.

3 MR. SAWYER: Thank you, Judge. And it was the under
4 statute arbitration statute for property damage claims,
5 that's what it was filed under seeking a three panel
6 arbitration through the process through the circuit clerk of
7 court. The second action being the circuit court action,
8 but there's no dispute they both arise out of the same
9 automobile accident. The arbitration case in addition to
10 naming Kevin Carter named a slough of other defendants and
11 had allegations about insurance and about all sorts of other
12 things, I think it was about a 200 paragraph complaint.
13 When Judge Gibbons saw that, I think rightfully so, and
14 several things moved me to argue this is not within the
15 confines of the statutory property damage arbitration, and
16 seeing that Judge Gibbons said, "That's right. I'm removing
17 it from arbitration now that we've got two circuit court
18 actions that both deal with the same auto accident with the
19 same plaintiff they're supposed to be formed into one case."
20 And the Supreme Court set that precedent back in the 1920's
21 and 30's, I think the common law goes back well before that,
22 that you can't bring two actions to recover from one
23 accident. It's all supposed to be done in one action.

24 MS. GERSTEN: Objection.

25 THE COURT: Overruled. Go ahead.

1 MR. SAWYER: Okay. So Judge, that's where we are
2 today. Today we have a consolidated case of the circuit
3 court case, and we have three plaintiffs. The arbitration
4 case originally had Ms. Gersten. She did attempt to add her
5 mother, Ms. Ayoub, who is here. The circuit court actions
6 has Ms. Gersten, her mother Ms. Ayoub, and her brother,
7 Daniel Hubbard, who I don't believe is here today and is not
8 represented by an attorney. That at least gets us to where
9 we are now, which is a lot of background. The motions are
10 simply this, first of all we move to dismiss when there was
11 a separate arbitration case, move to dismiss that case under
12 Rule 8 because there was the pending circuit court action.
13 Under the Flickner (phonetically) case, which is the South
14 Carolina Supreme Court case, it's 182 southeast 104, it's a
15 1935 case. The South Carolina Supreme Court held that a
16 plaintiff can't bring separate actions, can't split their
17 causes between bodily injury and property damage. Once you
18 choose to bring the bodily injury case you have to bring
19 everything in under it. So that's from the Supreme Court,
20 it's well established precedence, and therefore the property
21 damage case, once the circuit court action was filed was
22 duplicative under Rule 12 and it should have been dismissed.
23 So that gets rid of that case. And Judge, to give you an
24 idea of where we're heading, my goal by the end of this
25 argument is to show what we should have, despite all of this

1 pleading and everything else, what we should have at the end
2 of this day is an action between Heidi Gersten and Kevin
3 Carter for negligence. We've got a few steps to take to get
4 there but that's where we're headed. Hopefully I'll walk us
5 through that logically, I'll do my best. So that gets rid
6 of the property damage arbitration case and gets us down to
7 one action, I think that's the easiest and first step. The
8 second step, of course, is dealing with all the various
9 claims in the circuit court complaint. This names the
10 insurance companies, it names Joe Tirbovich, an insurance
11 adjustor; it names John Ammendola, who is CEO and President
12 I think of Grey's Insurance; it names the Department of
13 Highway; it names the investigating trooper; it names GM,
14 who manufactured the van that Ms. Gersten was operating,
15 although I don't believe they've been served. It names a
16 lot of different entities for a lot of different claims. If
17 you look at the complaint, though, Judge, the only factual
18 allegations that would support any cause of action are the
19 facts alleged against Mr. Carter. And, Judge, I represent
20 Mr. Carter, at the end of the day I expect him to still be
21 in this case. He's got a covenant not to execute dealing
22 with the bodily injury claim, but I do expect him to still
23 be in the case at the end of the day. As to Richard Davis,
24 who is my other client, the allegation against him is that
25 he co-owned the Honda Ridgeline that Kevin Carter was

1 driving at the time of the time of the accident, and as a
2 co-owner negligently entrusted, I guess, the vehicle to the
3 other owner of the vehicle, Kevin Carter. As a factual
4 matter that's not true, but for purposes of the motion to
5 dismiss I know that the facts don't necessarily matter. But
6 more importantly, Judge, you can't negligently entrust a
7 vehicle to the vehicle's owner. All of the courts that have
8 looked at that as far as I can tell across the country say
9 that's not a valid claim, because the owner who is driving
10 the vehicle at the time of the accident has a right of
11 possession. So you can't be liable for letting somebody who
12 has a right to possess the vehicle possess a vehicle, Judge.
13 And I think for that reason, Judge, the claim against
14 Richard Davis, the co-owner, should go out the window. At
15 that point it leaves all the other co-defendants. And
16 simply put, Judge, those can be put up into two balls:
17 Claims against the insurance companies, and claims against
18 the Department of Public Safety, and the trooper. The
19 claims against the insurance companies appear to try to
20 assert a breach of contract action and what might be some
21 form of third party bad faith action. And I say might
22 appear because there aren't facts that really explain all of
23 this, but that's my best gleaning from the complaint. Well,
24 there's no allegation of any contractual provisions that
25 were breached so there's no statement of any claim for

1 breach of contract in any of the complaints. And South
2 Carolina doesn't recognize third party bad faith, that's the
3 Cleckley case that's cited in our motion and the
4 co-defendant's motions, it's well established law, which
5 means there's no Standing for Ms. Gersten, or Mr. Hubbard,
6 or Ms. Ayoub to file any third party claim against
7 Nationwide or Joe Tirbovich either. So all of those claims
8 are not -- there's no facts to support them, and they are
9 not legally supported. For those grounds all of those
10 co-defendants and on the insurance side of things, which
11 would be Interinsurance Exchange, Trust Guard, John
12 Ammendola, and Joe Tirbovich should be dismissed. That
13 leaves us with Heidi Gersten and Kevin Carter, the
14 Department of Public Safety and Trooper Blackwell, and GM.
15 GM is real easy. There's no allegations of any product
16 defect that caused any injury to Ms. Gersten in the van.
17 There's no allegations of a component of the van that
18 malfunctioned, they're gone.

19 THE COURT: What are the allegations by Ivanka Ayoub.
20 Was she a passenger?

21 MR. SAWYER: She's not, Judge. Ms. Gersten was alone
22 in the vehicle. Ms. Ayoub claims a claim for loss of
23 consortium for her daughter's injuries, and apparently that's
24 what Mr. Hubbard claims. Now, with Mr. Hubbard not being
25 here I would move to --

1 MS. GERSTEN: Objection. He's not saying truthfulness
2 on some of that -- my mother, Ms. Ayoub, owned the vehicle.

3 THE COURT: Okay.

4 MR. SAWYER: Mr. Hubbard is not here. With him not
5 being here and not being represented I would move to dismiss
6 him for failure to prosecute since we're here for a motion
7 to dismiss anyhow. As to the loss of consortium claim for
8 Ms. Ayoub, Judge, the South Carolina Supreme Court in Doe
9 versus the County of Greenville School District case said
10 that the only consortium cause of action we recognize in
11 South Carolina is a spousal loss of consortium, and the only
12 reason that we recognize that is because there's a statute
13 that creates that right. And the what Supreme Court said in
14 the Doe case was, "All right. If the General Assembly
15 recognizes it here and doesn't recognize it for filial
16 consortium, then there is no filial consortium in South
17 Carolina. So that's the law in South Carolina. There is no
18 claim for filial consortium under our law, which means that
19 cause of action should also be gone. And I think that gets
20 us down to the Department of Public Safety and Trooper
21 Blackwell. The allegations against them are essentially
22 that they didn't do enough of an investigation after the
23 accident. Well, Judge, I don't think that there's any legal
24 duty that creates a tort claim against the Department of
25 Public Safety to conduct a certain level of investigation

1 after an accident, and even to the extent there is a duty it
2 didn't create any injuries here. The injuries here resulted
3 from the accident, not from the investigation.

4 MS. GERSTEN: Objection. It's not accurate, that's not
5 the claim.

6 THE COURT: Well, what he's saying is that something
7 that happened after the accident couldn't be what the law
8 calls a proximate cause of the accident, and, of course,
9 there's got to be proximate cause of the accident for there
10 to be the proximate cause of any injuries or damages.

11 MS. GERSTEN: I understand that, sir. It's a little
12 more entailed, though. Because the trooper originally was
13 not -- and I already spoke with Trooper Blackwell, he's a
14 fine man, but he said he's not qualified or trained to do
15 accident reconstruction and it prevented me from getting
16 counsel, because the early --

17 THE COURT: All right. Let Mr. Sawyer finish and then
18 I'll hear all of your --

19 MR. SAWYER: Thank you, Judge. There's no duty to
20 investigate on the part of the DPS, the Department of Public
21 Safety. And, of course, their counsel is here, I'm sure he
22 can elucidate that a lot better than I can. But with no
23 duty, there's no breach, there's nothing that can create a
24 causative action, plus there's an issue of proximate cause
25 for damages. So now we've got two cases boiled down to one

1 case, all of the other defendants are gone, and we've got
2 Heidi Gersten versus Kevin Carter. The last part of my
3 argument -- I'm almost done.

4 THE COURT: Okay. I'm having to think as we go along.
5 Wouldn't Ms. Ayoub have -- she should be the proper party in
6 the arbitration action to begin with, right? Not Ms.
7 Gersten.

8 MR. SAWYER: The problem -- that's right. The problem
9 with that part of the claim, Judge, was that Ms. Ayoub was
10 added to the arbitration case, the filing for adding her was
11 filed after the statute of limitations.

12 MS. GERSTEN: Objection. The rules don't say that.
13 The rules say that an amendment can be made before service,
14 so I filed the arbitration and mistakenly left my mother's
15 name off, and when I saw that I remedied it. They have no
16 prejudice because when they were actually served they were
17 served with her name attached.

18 MR. SAWYER: Judge, briefly to respond to that so we
19 don't have to do too much back and forth. Rule 5D says two
20 things: One, the summons and complaint shall be filed
21 before service, and two, that anything that doesn't have to
22 be filed before service has to be filed within five days of
23 service. Well, Mr. Carter and Mr. Davis were served on
24 March, I believe -- I've got a timeline here -- they were
25 served on March 17th, and the amended complaint wasn't file

1 until March 27th, 10 days later. The Court of Appeals in
2 what is albeit an unpublished decision, Venture Engineering
3 Inc. versus Algerie (phonetically) it's a 2008 Westlaw
4 9832815 held that when an amended complaint is served and
5 not filed within the five day time period, it's treated as a
6 nullity at least until it's filed. Well, Judge, it wasn't
7 filed until after the statute of limitations, and it's an
8 amendment adding a party, which means it can't relate back,
9 there's case law on that, too. So if it's filed after the
10 statute of limitations outside of the time required by Rule
11 5D and it can't relate back because it adds a party, then
12 it's void, the statute limitations applies. And on top of
13 all of that, Judge, there was no amended summons but they
14 added a party. If you add a party you can't just do an
15 amended complaint, you have to do an amended summons, and
16 there was never an amended summons that was issued and
17 served. So again, with all due respect, Ms. Ayoub's
18 property damage claim, it's gone by way of statute of
19 limitations.

20 MS. GERSTEN: And I object to that.

21 MR. SAWYER: So Judge, finally, the last part is,
22 there's about 18 different causes of action in the circuit
23 court bodily injury common pleas complaint. Most of them
24 attempt to just broadly state the elements of causes of
25 action, they go from fraud to duress to also sorts of other

1 claims. We really don't need to go through them item by
2 item, because Judge, if you just take a mere glance at it
3 you'll see that they don't allege any facts. And most of
4 the allegations, mostly the captioned causes of action,
5 don't even allege the elements, but in South Carolina you
6 can't just allege elements, you have to allege facts.

7 MS. GERSTEN: Objection, because it's been amended.
8 He's talking about the original but it has been timely
9 amended since then.

10 MR. SAWYER: I'm talking about the complaint that I
11 think -- is there a new one that was filed with the Court?

12 MS. GERSTEN: Yes.

13 THE COURT: You served it on the other party?

14 MS. GERSTEN: Yes.

15 THE COURT: When did you do that?

16 MR. SAWYER: Judge, I think that there is an amended
17 one that the parties are receiving right now in the mail.
18 Was it just mailed this week?

19 MS. GERSTEN: It was mailed timely before -- about 15
20 days before the court, ten days plus five days for mailing.
21 It was mailed on time.

22 THE COURT: Well, you attempted -- you filed an amended
23 complaint after the parties had answered.

24 MS. GERSTEN: Actually not all of their answers. The
25 last party that was actually served was July 15th,

1 July 15th, and you have 180 days before this can even go on
2 to a jury roster. And the last party hasn't even finished
3 their time that they're allowed to have to answer, they're
4 still in the answer. That's why this whole thing -- all of
5 these motions are premature, sir, the pleadings are not
6 closed.

7 MR. SAWYER: Judge, can I approach?

8 THE COURT: Yes.

9 MR. SAWYER: This, I believe, is the amended complaint
10 that she's referring to dated August 29th of 2018. Judge,
11 you'll notice from looking at that complaint again, the
12 exact same argument I was just going to give you still
13 applies, which is there's no factual allegations that
14 support the very many causes of action that are asserted in
15 the complaint, and cursory glance will reveal that, and
16 therefore all of those causes of action with the exception
17 of the negligence claim should be dismissed. And that gets
18 us down to where we should be, which is Heidi Gersten --

19 THE COURT: But any amendment under the Rule 15A, once
20 responsive pleadings are filed then you would have to have
21 leave of the Court to amend.

22 MR. SAWYER: Well, Judge, the problem with the amended
23 complaint, we're going to argue the exact same issues
24 because it alleges the same substance with the same defects.

25 THE COURT: I understand. I'm just trying to get the

1 procedure of where we are. Okay. Go ahead. I've got now a
2 copy in my hand, a copy of the amended complaint.

3 MR. SAWYER: And if she doesn't have leave that makes
4 it easier, of course, Judge.

5 THE COURT: Thank you.

6 MR. SAWYER: So Judge, that gets rid of everything. It
7 boils it down to what it should be, which is a complaint
8 against Kevin Carter by Heidi Gersten for negligence, it
9 simplifies this case into what it should be. If there are
10 any UIM carriers they can be properly served pursuant to the
11 UIM statute. And if there are any valid claims against any
12 insurance companies, none have been alleged, but if there
13 are they need to be dealt with in a separate legal action
14 and the law on that is clearly cited in everybody's motions,
15 I believe, and certainly in my motion. So Judge, that's
16 really the substance of it. We also have a motion to strike
17 a lot of the various allegations in the complaint as being
18 improper under Rule 12F, some of them dealing with the
19 investigation, which you just ruled on two motions ago, some
20 of them dealing with personal identifying information, some
21 dealing with various other aspects of the case. Those are
22 set out in the motion. I don't want to belabor the point
23 especially with the amended complaint, because I think we
24 would have to go line by line through the amended complaint
25 on the motion to strike, so I don't think we need to waste a

1 lot of the Court's time on that issue now. We can deal with
2 it at a subsequent point if we need to. Thank you, Your
3 Honor.

4 THE COURT: And anybody else on behalf of any of the
5 defendants?

6 MR. WILLIAMS: I would like to speak if I may, Your
7 Honor, very briefly. I'm Reynolds Williams again for
8 Interinsurance Exchange of California. The only allegation
9 in the complaint against my client is that they are -- that
10 they insured Mrs. Gersten at the time of the this wreck, and
11 I think they're entitled to be dismissed for failure to
12 state a claim of facts constituting a cause of action. In
13 addition my client -- I have filed an affidavit that has not
14 been contested from an appropriate executive officer of my
15 client, a vice president --

16 MS. GERSTEN: Objection, hearsay.

17 MR. WILLIAMS: And I filed an affidavit in support --

18 THE COURT: I overrule your objection. It's motions,
19 you can rely on affidavits.

20 MR. WILLIAMS: I filed that affidavit in support of my
21 motion for summary judgment in the -- and it was filed on
22 April 24th of this year.

23 MS. GERSTEN: Objection. I never received a summary
24 judgment. I've never received a summary judgment.

25 MR. WILLIAMS: It was placed in the United States Mail

1 for delivery to the plaintiff, Your Honor, and filed with
2 the Court. It's the affidavit of Gayle Lewis, who says that
3 my insurance company has no -- is not licensed in South
4 Carolina, has no offices, no agents, no property, no
5 policies issued, no employees, no address, no vehicles, and
6 does not even advertise in South Carolina. In other words,
7 it has zero contacts. It does not conduct business in the
8 state period. So it has -- it does not have minimum
9 contacts with the State of South Carolina, so this Court
10 would not have jurisdiction over it.

11 MS. GERSTEN: Objection. You would have jurisdiction
12 under the long armed statute.

13 THE COURT: Under the what?

14 MS. GERSTEN: The long armed statute.

15 THE COURT: I'm familiar with the long term statute,
16 but how would the Court have jurisdiction with somebody who
17 has no minimum contacts with the state?

18 MS. GERSTEN: Because they're providing services in the
19 state.

20 MR. WILLIAMS: I have an unchallenged affidavit that we
21 don't do that.

22 THE COURT: The affidavit states that they don't
23 provide services.

24 MS. GERSTEN: But it's hearsay, objection.

25 THE COURT: Well, I can accept what's stated in the

1 affidavit for the purposes of the motions. Go ahead.

2 MR. WILLIAMS: In addition, Your Honor, I think the law
3 in South Carolina is clear that insurance companies do not
4 get to be named as parties in causes of actions seeking to
5 determine liability for an accident. And I also -- in my
6 brief I cited a case of the South Carolina Supreme Court, it
7 is Doe versus South Carolina -- I think the citation is --

8 MS. GERSTEN: Objection. Because allowing it -- he
9 hasn't answered the amended complaint that I gave to you.

10 THE COURT: I've got the amended complaint in my hand.

11 MR. WILLIAMS: Your Honor, that amended complaint we
12 would argue is A, I haven't been served with, I've never
13 seen it, never laid eyes on it; B, it was improper for her
14 to file it. Because I filed my motion to dismiss this --
15 the complaint that I know about I filed on the day after
16 service, which was, in fact, July -- I filed it on July 25th
17 of this year, which is more than 30 days prior to, of
18 course, August 29th and she doesn't have leave with the
19 Court. But in any event, the case to which I was going to
20 call Your Honor's attention is Doe v. Greenville County
21 School District, 651 Southeast Second 305 at page 308, in
22 which the Supreme Court makes it crystal clear that there's
23 no cause of action for a maternal loss of consortium or
24 filial loss of consortium in South Carolina, and no parents
25 and no siblings have such a cause of action.

1 MS. GERSTEN: Objection.

2 THE COURT: What's your objection?

3 MS. GERSTEN: I am here to write history. That might
4 be some case law but this is new case law right here.

5 THE COURT: All right. Thank you. Objection
6 overruled. I have to go on precedent so I have to follow
7 the law.

8 MR. WILLIAMS: And finally, Your Honor, I think it's
9 finally, Mr. Hubbard is not here. I wrote Mr. Hubbard a
10 letter and informed him that if he were not here at this
11 hearing that we were moving to strike his complaint for
12 failure to prosecute. And I sent him a notice, a copy of
13 the Court's notices of the hearing and a copy of what
14 motions would be pending at this time.

15 MS. GERSTEN: Objection. I'm not familiar with that.

16 THE COURT: Well, that's dealing with Mr. Hubbard.
17 Mr. Hubbard's claim is separate from yours.

18 MR. WILLIAMS: I sent similar notice to Ms. Gersten and
19 similar notice to Ms. Ayoub since each of them is
20 representing themselves. Ms. Ayoub is here and Ms. Gersten
21 is here so I don't make that motion with respect to them.
22 And at the risk of repeating myself, with the interruption I
23 lost my train of thought a little bit, but I don't believe
24 that the complaint fails to -- I don't believe that the
25 complaint states facts constituting a cause of action

1 against the Interinsurance Exchange, because the only fact
2 about it stated in the complaint is that it insured
3 Ms. Gersten at the time of the accident. I don't know think
4 that's a cause of action to be an insurer of a person.
5 Thank you, Your Honor.

6 MR. DWORJANYN: May it please the Court? I'll try not
7 to cover too much of the same ground and I would adopt their
8 arguments. I represent -- sorry, Your Honor, Pete
9 Dworjanyn, and Trust Guard Insurance Company, and John
10 Ammendola. But I do have to say some things specific as to
11 Mr. Ammendola. He's the President and CEO of Trust Guard
12 Insurance Company. The Court lacks personal jurisdiction
13 over him -- first going to both -- of all of the pleadings,
14 the plaintiffs don't make any allegations as to Mr.
15 Ammendola whatsoever. And in the common pleas lawsuit he's
16 in the caption and that's it, there's no factual
17 allegations. And in the arbitration action it says he
18 violated Improper Claims Practices Act but there are no
19 facts as to it. There's no allegation that would bring
20 him -- there's no allegation as to his state of residency,
21 where he works, what he does, anything, just his name is in
22 the pleadings. He hasn't been served with the complaint, so
23 it's --

24 MS. GERSTEN: Objection. He has been served and I have
25 proof of service here.

1 MR. DWORJANYN: They mailed the complaint to Trust
2 Guard Insurance Company, but Mr. Ammendola did not sign for
3 it, and as a person being sued individually they would have
4 to serve him personally so they haven't served him
5 personally.

6 MS. GERSTEN: Objection.

7 THE COURT: Overruled.

8 MR. DWORJANYN: And finally and most importantly, there
9 are no allegations against Mr. Ammendola period, and there
10 are no allegations against Trust Guard Insurance Company.
11 Now, the reality is is that Trust Guard Insurance Company
12 had a property damage policy on Ms. Ayoub's vehicle that's
13 owned by Ms. Ayoub, the co-plaintiff, that's true, but they
14 didn't insure Ms. Gersten or Mr. Hubbard.

15 MS. GERSTEN: Objection.

16 MR. DWORJANYN: And there are no allegations in any of
17 the pleadings as to anything that Trust Guard did or did not
18 do. I know that that point has been stressed before, but
19 there's causes of action listed but there are no facts to
20 support a cause of action. It's kind of impossible to
21 defend a complaint where they don't say you did anything. A
22 legal conclusion isn't a cause of action. And I don't want
23 to waive this and I've got to argue it at this time, Your
24 Honor, I do have one other motion. So I've got motions to
25 dismiss Mr. Ammendola and Trust Guard, and I also have a

1 motion to quash discovery, which this might be moot
2 depending on what the Court does. But in the arbitration
3 action, which was joined with the common pleas lawsuit
4 consolidated, the plaintiffs served 62 requests to admit, 32
5 interrogatories, and 22 requests for production, which
6 don't -- aren't directed to any of the defendants. If you
7 don't mind I'll hand it up because I didn't put it in the
8 record. It's just these broad based allegations, almost all
9 of which don't have anything do with insurance, but they
10 really address the property damage claims. And, you know,
11 with respect to the request to admit they exceed the
12 possible numbers of requests to admit --

13 MS. GERSTEN: Objection. No, I didn't.

14 THE COURT: Overruled.

15 MR. DWORJANYN: If the case is going to go forward
16 against any party I would ask that the Court require the
17 plaintiffs to tailor their discovery requests to the
18 appropriate parties, and to limit her requests to admit to
19 the correct number of requests to admit. But that being
20 said, the cases against Trust Guard and Mr. Ammendola, Your
21 Honor, should be dismissed. Thank you.

22 MR. SLYE: Your Honor, David Slye on behalf of
23 Nationwide and Joe Tirbovich. I also adopt the arguments of
24 counsel, and I would appreciate Mr. Sawyer's recitation of
25 where we were going and I wholeheartedly agree with that.

1 THE COURT: Who is Tirbovich?

2 MR. SLYE: Tirbovich is an adjuster for Nationwide, and
3 then Nationwide is the liability insurance carrier on the
4 vehicle that was being driven by Kevin Carter. So that's
5 Nationwide's role in this. At this stage of the proceedings
6 it's not appropriate for the liability insurance carrier or
7 their adjusters to be involved any way in a property damage
8 arbitration or a lawsuit where they're litigating liability
9 and an automobile accident case. And so at this stage
10 certainly Nationwide and Mr. Tirbovich should be dismissed.
11 That's clearly established in Cleckley versus Northwestern
12 National, 338SC131, that's already been mentioned here
13 today. As it relates to the common pleas action, or the
14 arbitration action, Mr. Tirbovich, to my knowledge, has not
15 been served with any of these documents. He's been named as
16 an individual --

17 MS. GERSTEN: Objection, he's been served.

18 MR. SLYE: To the extent he's been served, Your Honor,
19 I haven't seen anything supporting that at this time. The
20 only allegation in the common pleas case is that Nationwide
21 does business in North Carolina, that's it. The rest of it
22 is just a recitation of the elements of the case and
23 generically labeling things as defendants. As has already
24 been mentioned, that's insufficient under South Carolina law
25 to form the basis for any of these causes of action as it

1 relates to Nationwide or Mr. Tirbovich, and therefore the
2 causes of action -- or both complaints in both cases should
3 be dismissed. But again, I just adopt the arguments that
4 have already been set forth, I think they apply equally to
5 all of the insurance companies.

6 THE COURT: All right. Thank you.

7 MR. DAVIDSON: Will Davidson on behalf of the Highway
8 Department and Trooper Blackwell. Your Honor, counsel was
9 correct in regard to where we probably ought to end up at
10 the end of the day. My motion was filed on -- in such a
11 time frame that probably her amended complaint would be
12 applicable to my case. My motion, however, not only applies
13 to the original complaint but the amended complaint, and the
14 reason being, Your Honor, in the original complaint she
15 really never set forth any factual basis for her claims
16 against the highway department, public safety, and Trooper
17 Blackwell. In the amended complaint she now does set forth
18 some facts that deal with Trooper Blackwell, and therefore
19 the department, but it all centers around the accident
20 report that was prepared by Trooper Blackwell, and according
21 to her taking the pleadings as she has drafted them, later
22 amended by the MAIT Team, and that's paragraph 61, 62 and
23 63, she then claims that as a result of being given the
24 report on the day of her appearance in court, upon reading
25 the report she suffered damages. Well, the fact that the --

1 or troopers are required to prepare accident reports, and
2 number two, those accident reports are not evidence of lack
3 of due care and can only be used in a very limited time
4 frame of when the trooper is on the stand to help refresh
5 his memory. They are not the basis for any liability or any
6 claim of negligence in this case. So it's our position, you
7 know, under our motion that she did not set forth a valid
8 claim against the department, because the department's
9 duties and Trooper Blackwell's duties are, in fact, public
10 duties that apply to the public at large. Under the case of
11 Rayfield versus Pardon and Parole Board, and Arthur versus
12 Akin County, and other cases that deal with public duty, and
13 it goes back to originally Parker versus Brown, which is the
14 original case that decided that there was a public duty
15 issue in South Carolina, a citizen, and in this is
16 Ms. Gersten from Florida, would not have the ability to
17 bring a claim against the department, or for that matter the
18 trooper, because the only duty exists is that of a public
19 duty, and that public duty does not give rise to a private
20 right of action, number one. Number two, the damages she
21 sustained in this event occurred as a result of the
22 automobile accident which occurred in March of '15.
23 Therefore the post-accident report would not be the
24 proximate cause to give rise to any type of claim or cause
25 of action against either the department or Trooper

1 Blackwell. Next, Your Honor, under the Tort Claims Act
2 Trooper Blackwell is immune from suit and you have to sue
3 the department. Yet the department in this instance is
4 complying with the law, which says they are to have their
5 troopers prepare accident reports, and under the Tort Claims
6 Act that is a new function. Next, Your Honor, because the
7 cause of action originated as a result of her automobile
8 accident in 2015, this action on the face of the complaint
9 was brought in 2018. Under the South Carolina Tort Claims
10 Act, be it the amended complaint or the original complaint,
11 there is a two year statute of limitations to bring a cause
12 of action against the department. Last but not least, Your
13 Honor, she asked for punitives against everybody, including
14 me. And as the Court is aware under both the common law and
15 under the Tort Claims Act punitives aren't recoverable in
16 this matter against the department. So from the department
17 and Trooper Blackwell's point, whether I'm under the amended
18 complaint or under the original complaint, and I appreciate
19 Ms. Gersten submitting an amended complaint to clarify what
20 her claims were against the department, but even with that
21 clarification under the grounds that I have set forth, the
22 department and Trooper Blackwell insofar as he might have
23 any exposure in this matter, although I think under the Tort
24 Claims Act he's immune, we believe that the amended
25 complaint should be dismissed along with the original

1 complaint against the department. If the Court feels that I
2 need to file another motion I'll be glad to file another
3 motion, I'll be glad to come to another hearing, but for
4 economy's sake since everybody is here today I would just as
5 soon the Court go ahead and rule. Thank you, Your Honor.

6 THE COURT: All right. Ms. Gersten, now I will be glad
7 to hear from you.

8 MS. GERSTEN: Thank you, sir. First of all I just want
9 to thank everybody for being here. I'm here to remedy my
10 grievances along with my mother. And it started out, sir,
11 where I read the law about this arbitration hearing for
12 property damage, and that was filed first, and everything
13 else came after when I realized it wasn't happening. Now
14 I've been told that here in this courthouse they haven't
15 done many arbitration hearings, if at all, and I feel the
16 confusion comes from the consolidating of the two because
17 they're separate plaintiffs and separate defendants, similar
18 but separate. And I would like to move the Court for an
19 opportunity to amend, because I understand it's the first
20 time I'm meeting Wesley, Mr. Sawyer, I've met him before at
21 the criminal when his client, Mr. Carter, was charged with
22 DUI. I went to the sentencing and I met Mr. Sawyer but
23 everyone else I've never met before. I would like to have
24 an opportunity to amend the complaint with leave of Court so
25 that I can address everything they're saying. I understand

1 maybe the communication was off, and it's not an
2 unreasonable request. I have come a long way, sir, and it's
3 not to delay anything, it's to present these facts, because
4 I'm an injured party and I just want to find my remedy. And
5 I still feel that the arbitration hearing should go on
6 because it's state legislative and it would give the parties
7 an opportunity to bring everything together, and a lot of
8 their complaints have to do with -- the arbitration said you
9 don't need all of these formalities. It didn't say you
10 couldn't use the discovery tools, but it said it wasn't
11 required, so I think there's a very misunderstanding with
12 what this is meant to be, that I wasn't supposed to be --
13 well, we -- my mother and I, we weren't supposed to be
14 restricted by all of these rules and regulations. My
15 understanding was it was a summary procedure, we could just
16 bring everything in and if either side didn't like it then
17 we go to jury trial. I decided to file, along with my
18 mother and my brother, other issues. But I feel that I'm
19 totally prejudiced because they got merged together, which
20 through the balance of the time limits and through the
21 balance of what everything was supposed to be way off, and
22 if you're ruling still that you're not going to overturn
23 what I consider the void judgment of Honorable Mr. Gibbons,
24 I would like an opportunity to amend the complaint based on
25 their arguments. So I move the Court for an opportunity to

1 amend this complaint. I may not know the exact case law,
2 sir, but courts advocate for people to have an opportunity,
3 First Amendment, Second Amendment, it's not unheard of. And
4 also some of the things that they were saying centered
5 around the word shall. Mr. Sawyer was speaking about
6 timeliness and things were done on a certain five days they
7 had to be filed, and I saw this, but I also know that
8 federal rules say that the only mandatory word is must. So
9 I understand -- and a lot of this rides on this discretion
10 of you, sir. And just so everybody knows, I'm sitting on a
11 pressure wound right now and so if I have a little issue
12 speaking I'm in a lot of pain. I came from Florida, my
13 friend drove me, it was very hard to endure but I'm here
14 because it's important. And I would like my opportunity to
15 remedy their arguments, because I put a lot of time and
16 effort into this. My life was changed. And I'm very, very
17 grateful to be here, and I'm so thankful that you are
18 listening, and I think that I have valid arguments, and
19 perhaps all the facts as they're saying did not line up with
20 the elements. But just understand in the beginning it was a
21 summary, and then some of the arguments they said it was too
22 much, everybody says it was out of the scope of arbitration,
23 it was too much, too much information. So when the civil
24 action was filed, it's true, I went along with my mother and
25 my brother, and we toned it down, we thought we were making

1 it easier. Now I understand what their arguments are, and a
2 lot of what they're saying I would like to examine the court
3 file, because I don't believe that some of these things have
4 been sent -- I do not remember any summary judgment being
5 filed. I would like a motion to continuance for another
6 opportunity to remedy what they're saying.

7 THE COURT: Well, I'm not going to second guess Judge
8 Gibbons, he's the administrative judge for this circuit and
9 this county and I'm bound by his ruling as far as the
10 consolidation, I'm not changing that, so the cases are still
11 consolidated. If he's wrong in that somewhere down the line
12 a higher court than myself, either a Court of Appeals or the
13 Supreme Court can tell Judge Gibbons he did the wrong thing,
14 I can't.

15 MS. GERSTEN: Okay, sir. But just know that the time
16 that things were due was thrown off. Common sense will tell
17 you that I didn't -- we didn't file until March 16th of 2018
18 for the second action. At that point the arbitration had
19 all been served, everybody was served, and I have proof of
20 service for everybody right here right now. And as a matter
21 the fact I would like to give this to you, sir --

22 THE COURT: I don't need it. I'm not concerned about
23 the times, the times are not going to be the basis for
24 whatever I do. I'm not concerned about whether or not
25 something was served on time or not.

1 MS. GERSTEN: I don't understand that you mean that
2 you're not concerned with what time was.

3 THE COURT: Well, let me let you finish your
4 presentation and then I will tell you what I think. I'm
5 thinking now how I need to dispose of this and let me listen
6 to the rest of what you have to say before I do it.

7 MS. GERSTEN: I didn't hear you.

8 THE COURT: Just go ahead with your argument.

9 MS. GERSTEN: Well, it's undisputed that Mr. Carter and
10 I had a collision.

11 THE COURT: Everybody agrees with that.

12 MS. GERSTEN: And I feel they want to sever away from
13 that, they feel it's a separate action because there's
14 breach of contract, and I feel that -- if it pleases the
15 Court, if you want to sever it I would still like to move
16 forward with my breach of contract issues.

17 THE COURT: What kind of contract did you have with
18 Mr. Carter?

19 MS. GERSTEN: No, not with Mr. Carter.

20 THE COURT: What kind of contract did you have with any
21 of these people?

22 MS. GERSTEN: With the Exchange --

23 THE COURT: You had a contract with the Exchange.

24 MS. GERSTEN: Yes, I did. I had a half million dollar
25 policy, and my underinsured motorist was not paid, along

1 with Trust Guard under insurance was not paid. Nationwide,
2 I feel that they were very dishonest with me. And I have a
3 recording of every single conversation I've had with every
4 single insurance company, and I can prove that what they
5 said to me was violations of many things, giving legal
6 advice. Nationwide wanted me to settle with what we didn't
7 agree upon, and the gentleman was very rude on the phone.
8 And these are separate actions that I would like to present,
9 perhaps not the proximate cause of the collision but
10 definitely -- and even if you were to dismiss I'm still well
11 within the statute of limitations for breach of contract
12 actions. So I would -- if you choose to sever I would like
13 an opportunity to amend my arguments and my facts, our facts
14 together about what had happened and why I am here today,
15 along with my mother.

16 THE COURT: Anything else?

17 MS. GERSTEN: Well, I mean, just going through the -- I
18 feel that the judgment of Judge Gibbons, Honorable Judge
19 Gibbons, is void for the record. And I still feel I would
20 like to have an arbitration hearing and to discuss
21 liability, which I could not find anything that says
22 liability is at fault. I believe that those are two
23 separate at fault and liability, especially when Nationwide
24 said that they accept liability, they accepted liability and
25 in my admissions they admitted that.

1 THE COURT: All right. Anything else?

2 MS. GERSTEN: I don't think that the pleadings are
3 closed.

4 THE COURT: Beg your pardon?

5 MS. GERSTEN: The pleadings are not closed.

6 THE COURT: Why not?

7 MS. GERSTEN: Because the time that the last person was
8 served, which was the South Carolina Department, was
9 July 15th, and this is a premature court hearing because we
10 haven't finished the pleadings and the discovery wasn't
11 closed.

12 THE COURT: Well, I disagree. I'm going to grant the
13 motions by the parties and ask each attorney to prepare an
14 order based on their presentation to the Court today,
15 including Mr. Hubbard's failure to prosecute, which will
16 leave the case with Ms. Gersten, and to the extent she has
17 an interest in the property I guess Ivanka Ayoub, against
18 Kevin Carter. Of course, you would have a right to appeal.
19 Just like you have a right to appeal Judge Gibbons you have
20 the right to appeal my orders once you get them.

21 MS. GERSTEN: I didn't understand what you just said.

22 THE COURT: I am granting their various motions to
23 dismiss the claims against everybody but Mr. Carter.

24 MS. GERSTEN: Everybody but Mr. Carter.

25 THE COURT: Yes.

1 MS. GERSTEN: Thank you, sir. Is that the end of this
2 proceeding?

3 THE COURT: Beg your pardon? Yes, it is.

4 MS. GERSTEN: And I really truly appreciate you, thank
5 you so much.

6 THE COURT: All right. Thank you.

7 (End of the hearing.)

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Transcript

July 28, 2022, Hearing

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHESTER
4 2018-CP-12-00117
5 Heidi Gersten
6 Vs.
7 Kevin Carter
8
9 (Webex Hearing)
10 July 28, 2022
11 Before the Honorable J. Mark Hayes
12 APPEARANCES
13 For the Plaintiff: Heidi Gersten, Pro Se
14 For the Defendant: Wesley B. Sawyer
15
16 Reported by: Michael C. Watkins
17 Official Court Reporter
18
19
20
21
22
23
24
25

1 THE COURT: Thank y'all for getting together. Is it --
2 do I say that correctly, Gersten? Do I say that correctly?

3 MS. GERSTEN: Oh, hi, yes. This is Heidi Gersten. Did
4 you receive my emergency --

5 THE COURT: Ma'am, ma'am, ma'am, let me -- we're making
6 a recording of everything that's here, so let me start and
7 I'll get right back to you on that. Okay?

8 MS. GERSTEN: Oh, I didn't know, are you the Judge or
9 the clerk?

10 THE COURT: I am the Judge, ma'am.

11 MS. GERSTEN: I apologize, I didn't know. I just
12 wanted to make sure that I put motion for a continuance
13 on --

14 THE COURT: Yes, ma'am, we got your motion. Let me
15 start this hearing and we'll get right back to you. Okay?

16 MS. GERSTEN: Okay. I apologize, I didn't know that I
17 was connected.

18 THE COURT: Thank you very much. We've got -- this is
19 the matter that has been scheduled as Gersten versus Carter.
20 I've got this as being case number 2018-CP-12-00117, and
21 2018-AP-12-00074. Prior to beginning this hearing I
22 received an email request from the plaintiff for a
23 continuance, as well as an attached 27 page memorandum. I
24 was provided copies of an exchange of emails from plaintiff
25 and defense counsel indicating that there was not an

1 agreement on the request for a continuance, so we will start
2 with the request for a continuance. Ms. Gersten, I've
3 reviewed your memo and then I reviewed the -- Mr. Sawyer's
4 response where he did not agree to it. Is there anything
5 else that you would like to add to your memo on the request
6 for a continuance?

7 MS. GERSTEN: Well, other than I'm sitting in diarrhea
8 and urine at the moment being paralyzed with a pressure
9 wound, and I'm just not able to proceed properly like this.
10 This is very hard for me. I didn't expect this, I got sick,
11 I didn't want this, but there were extenuating
12 circumstances. And I'm a member -- a qualified individual
13 of the Americans with Disabilities, and it's also an
14 accommodation request under Title Two. And everything that
15 I put in you called it a memorandum, the 27 pages, I
16 attached pictures in case anyone didn't believe me, and
17 they're graphic and gross, but this is part of being
18 paralyzed, this is part of it. I ask for if anything a
19 small continuance so I can least clean up and not be like
20 this.

21 THE COURT: Okay. Thank you very much for that. Mr.
22 Sawyer, is there anything that -- I just received your
23 emails indicating that you did not agree with it. Is there
24 anything else that you would like to add?

25 MR. SAWYER: Judge, very, very briefly, and thank you

1 for your time, Your Honor. May it please the Court? I
2 represent Kevin Carter who's the remaining defendant in this
3 case. But just to give the Court context for the reason
4 that we don't consent to this continuance. This case has
5 been riddled with motions for continuances and motions for
6 extensions. On August 22nd of 2018, there was a motion for
7 a continuance filed by Ms. Gersten in connection with a
8 worsening pressure wound. When this hearing was scheduled
9 last year on January 13th, on January 4th she also moved for
10 a continuance citing numerous other cases she was involved
11 in, and stating that she was a victim of a crime and had
12 litigation going on in Florida. In the Court of Appeals she
13 filed, I believe, eight motions for extensions, four of
14 those referenced pressure wounds, one of them referenced
15 diarrhea explosions, and then other ones referenced other
16 reasons for request for continuances. And then ultimately
17 the Court of Appeals dismissed the case when she failed to
18 comply with an order to provide information and to file a
19 return, and then it went to the Supreme Court and was also
20 denied there as well. So, Judge, if we didn't have such a
21 long and repeated history of this it would be one thing.
22 The other thing that I would note, of course, is her motion
23 itself states she spends I can't remember if it was four or
24 five hours drafting the motion for a continuance. She's
25 here by phone, the Court has accommodated by allowing her to

1 attend by phone, so I don't think that the burden to
2 attending today's hearing is overwhelming given the
3 circumstances.

4 THE COURT: Okay. Ma'am, is there anything that --
5 since you're the moving party you get to close and offer me
6 anything in response what he just stated.

7 MS. GERSTEN: Thank you. He -- everything he's saying
8 is very misleading, because I've never once had this like
9 this, not like this. And the pressure wound, yes, it's
10 ongoing, just like being paralyzed. It's not something that
11 I can just say: Well, you know, I mentioned I was paralyzed
12 everyday of my life and she keeps talking about being
13 paralyzed -- are you there?

14 THE COURT: Ma'am, I'm listening to you.

15 MS. GERSTEN: My phone -- I apologize, the phone, it
16 looked like it cut out, my apologies. And this is the trial
17 court, he's bringing into the appellate court and those were
18 separate issues but still ongoing. And this is unique
19 because those were -- you make an order to the appellate but
20 there's no oral hearing, so I was never actually sitting in
21 urine and feces like I am. And when he says that I put it
22 took me five hours, yes, in between trying to swim through
23 my own diarrhea. I mean, I hate talking like this, this
24 bothers me but this is my life. I didn't want this. And I
25 took the pictures and submitted them so that nobody thinks

1 I'm making this up, because if I didn't the way he sounds,
2 the way Mr. Sawyer sounds, I'm just using this as an excuse.
3 But this is legitimate. What am I supposed to do? Okay?
4 And because this means so much to me I chose to go ahead and
5 just bypass what should be the first thing to do, which is
6 clean yourself up, because I knew that getting a continuance
7 would be challenging. You don't think that I'm crying
8 inside thinking why? Why now? Well, I don't know. This is
9 where I'm at and this is -- he doesn't agree. I apologize,
10 but I have no control over my bowels and no caregiver, no
11 aid, nada. I'm by myself right now. And if you need more
12 proof I'll take more pictures.

13 THE COURT: All right. Thank you for sharing that with
14 me, and I'm very sorry to hear that you're going through
15 this situation that you've related to us. All right. These
16 are my options. You know, we've prepared for this hearing,
17 these are old cases, they are dated 2018, actually one is
18 dated 2019 -- I'm sorry, they're both dated 2018, so these
19 cases need to bring -- need to move forward. Due process
20 not only applies to the plaintiff but it also applies to the
21 defendants, and so both sides are entitled to fair process
22 that brings a reasonable resolution of the claims, or
23 counterclaim, or the positions of the parties. So this is
24 what I'm willing to do, and I would like to get input from
25 the parties, the motions that apply that I have been told

1 that I need to address, some of them actually don't apply,
2 and so I can summarily deal with those issues because I
3 don't think a resolution of those issues prejudice either
4 the plaintiff or the defendant in this case, they just need
5 some type of final resolution, so I will go ahead and take
6 care of the matters that have been assigned to me that just
7 need to -- they're like housekeeping matters as opposed to
8 substantive matters. On the substantive matters, what I
9 would propose is I am actually assigned back into the
10 circuit the week of August 15th, I could schedule these
11 hearings since we will be doing these hearings remotely, I
12 can work back -- I can work the hearings back in the week of
13 the 15th, and then if that's not appropriate I could also
14 work in the hearings at some other time. Again, given the
15 fact that Court Administration is allowing us to do remote
16 proceedings, the burden on the parties, as well as the Court
17 itself, will not be that significant to actually reschedule
18 this. So, in short, I'm going to grant the continuance, but
19 before I grant the continuance we need to go ahead and get
20 this thing rescheduled. So how does the week of August the
21 15th work for the parties? And I'll let the plaintiff go
22 first.

23 MS. GERSTEN: I'm just surprised that it's my brother's
24 birthday, and I mean, I want to say yes because I don't want
25 to delay, but I'm like of all days.

1 THE COURT: Okay. Well, I'm not saying the 15th, I'm
2 saying the week of the 15th.

3 MS. GERSTEN: Oh, okay. Well, what day?

4 THE COURT: What day would suit you?

5 MS. GERSTEN: Well, if we could not have it on the
6 15th, just -- it's my brother's birthday, that's --

7 THE COURT: Okay. So any day, Tuesday, Wednesday,
8 Thursday, or Friday, that would suit you?

9 MS. GERSTEN: That's fine. And I will prepare
10 accordingly and make sure that I very much watch what I eat
11 more than ever, not that I have control, but yes.

12 THE COURT: All right. Then let's -- how about, Mr.
13 Sawyer, do you have any conflicts that week that I need to
14 know about?

15 MR. SAWYER: Judge, we'll make any day that week work,
16 thank you so much.

17 THE COURT: Why don't we pick Thursday the 18th at
18 10:00.

19 MS. GERSTEN: That's August 18th at 10:00.

20 THE COURT: Right. The reason that I picked that date
21 is that I am assigned other court matters that week and it
22 would be easier for the Court if we did it later in the week
23 on a Thursday then at the beginning of the week, because I
24 would have other matters that possibly that it would
25 conflict with that I would have to take care of. So that

1 will give me enough time to get through some matters, so I
2 will hear y'all -- we'll get back together Thursday on the
3 18th, August 18th, at 10:00. Okay?

4 MS. GERSTEN: Can I interject one thing, though, as I'm
5 thinking about it?

6 THE COURT: All right.

7 MS. GERSTEN: Okay. So my mother passed unfortunately
8 this year, I have not received the death certificate yet.
9 So I'm not even sure how I'm able to proceed, if I need an
10 attorney or if the power of attorney that she granted me,
11 the durable power of attorney is -- I'm not asking for legal
12 advice, but this becomes more complex because she is a
13 listed plaintiff and the owner of the van in controversy,
14 and I never expected or -- it saddens me that she passed,
15 but I don't know what to do at this stage concerning her
16 because I would like to move forward with her claim as well.

17 THE COURT: Well, thank you for highlighting that to
18 us. I -- you are right, I am not in a position as a Judge
19 that I can give legal advice. But I will tell you that, as
20 I tell all pro se litigants, I'm of the very strong opinion
21 it's not a wise thing to do for a pro se person to ever
22 represent themselves in a court of law. And so -- and this
23 is -- because very frequently pro se litigants, they are
24 held to the same substantive standard that lawyers are, and
25 lawyers have been -- not only received a formal education

1 but probably have a lot of experience working through the
2 court system. And I find in my experience as a Judge that
3 sometimes all too often the Rules of Evidence and the Rules
4 of Civil Procedure, which apply equally both to a pro se
5 litigant as well as litigant represented by an attorney,
6 will frequently in layman's term trip up a pro se litigant,
7 and that sometimes the merits of a proceeding are never
8 addressed because pro se litigants failed to comply with the
9 Rules of Evidence or the Rules of Procedure. So I always
10 encourage pro se litigants to seek the advice of counsel,
11 and this is one of those times where I can express to you my
12 very strong belief that you do need to talk to a lawyer. So
13 you asked my opinion on that so I expressed it to you. I
14 would encourage you to do that, and if you do let the lawyer
15 know that we have this hearing scheduled for August 18th at
16 10:00.

17 MS. GERSTEN: Well, here is the thing, because now that
18 we're talking about my mom, I mean, I would like to have a
19 little extra time so I can do that because I wasn't
20 factoring that in, and I don't want to --

21 THE COURT: Ma'am, let me suggest something to you.
22 You are a pro se litigant, you do not have the authority in
23 South Carolina to represent your mother, nor do you have the
24 authority to represent her estate, so any questions that you
25 would raise about that matter are premature and I would not

1 want to put you in the bad situation of one day being
2 accused of practicing law without a license.

3 MS. GERSTEN: No, I'm not doing that, that's why I'm
4 being forthright with the courts right now. And I'm saying
5 to you that I would like to explore chatting with an
6 attorney to represent her I suppose as a deceased person,
7 but that would require more time.

8 THE COURT: No, ma'am, it will not require more time
9 for the matters that have been assigned to me. And so you
10 definitely -- I encourage you to go talk to a lawyer on
11 behalf of your mother's estate, you can do that between now
12 and the 18th. And if you do talk to a lawyer and they
13 decide to represent the interests of your mother, they can
14 advise the Court and we can address those issues at that
15 time. I think it puts the cart before the horse for me to
16 make any comments or to express anything about that without
17 having a proper person that can represent the legal
18 interests of that of your mother's estate. Okay?

19 MS. GERSTEN: I didn't understand what you just said, I
20 apologize, it's a lot to process.

21 THE COURT: In a nutshell, you need to go talk with a
22 lawyer because you can't represent your mother's estate.
23 Okay?

24 MS. GERSTEN: Not even with a durable power of
25 attorney?

1 THE COURT: Ma'am, I can't tell you whether that would
2 suffice or not, but I can tell you that in my history it
3 would not. But a lawyer may very well tell you differently
4 and I would look forward to receiving that argument from a
5 lawyer.

6 MR. SAWYER: Your Honor, thank you so much for your
7 time today. This morning with this motion for a continuance
8 is the first time I have heard of Ms. Ayoub's death. Can I
9 ask on the record of Ms. Gersten the date of Ms. Ayoub's
10 death?

11 MS. GERSTEN: I didn't hear you, could you please
12 repeat what you just said?

13 MR. SAWYER: Yes, ma'am. I was wondering what the date
14 of your mother's death was.

15 MS. GERSTEN: I was told January 11th of 2020. I only
16 got information, being paralyzed I couldn't even be there.

17 THE COURT: All right. Now, I noticed in one of the
18 pleadings that beside your mother's name there was a
19 parenthesis that she had been deceased. So you're informing
20 us all that your mother passed away in January of 2020?

21 MS. GERSTEN: Yes. No, no, no, '22, January. Without
22 a death certificate I don't actually know, and I'm not
23 sure -- I mean, hopefully I get it before next -- you know?
24 It's in the process, I just don't have it handy and I wasn't
25 there, I only received the phone call from a relative --

1 it's a long story, I'm not going to get into it. So I don't
2 have all of the information other than that's approximately
3 to the best of my knowledge that's the date.

4 THE COURT: All right. Just be aware that we're not
5 dealing with the mother's issues, we're dealing with the
6 claim that you have brought. We look forward to
7 receiving -- yeah. I think you talk with a lawyer, a lawyer
8 will get involved and make the appropriate contact with the
9 court officials and with the lawyers on the other side.
10 Okay? Well, listen, thank y'all very much for your time.
11 We will -- I'll see y'all, again, on August 18th at 10:00.
12 Now, part of the -- since we already know this far in
13 advance that I will be doing it, I'm sure the clerk of court
14 will do what they do, but my office will try to informally
15 not by any rule, but just as a matter of courtesy to the
16 parties in this case, we might be sending out some emails
17 just letting y'all know about anything that we think y'all
18 need to know about, you know, changes or stuff, but we'll be
19 in touch with y'all, but do look for notification.

20 MS. GERSTEN: That's something I put into my order that
21 according to the rules the new -- the one issued by the
22 South Carolina Supreme Court, it says that a non-lawyer is
23 supposed to make written consent, which they never have.
24 And I put a stipulation that I will consent to receiving
25 court documents if the defendants also agree. Otherwise I

1 have not -- I have not consented to any receiving of
2 including the notice of hearing. That was a surprise to me
3 because I have never received any documents via email
4 through the courts and --

5 THE COURT: Okay. I did notice in your motion for
6 continuance you did make other types of requests for relief.
7 Do you wish to argue those other types of requests for
8 relief?

9 MS. GERSTEN: Well, yes, because -- this as a
10 self-represented litigant who is not an attorney admitted to
11 practice in this state may consent, it doesn't say must. It
12 is not required in writing to be served by email and
13 designate an email address for service, and then a lawyer
14 may consent in writing to accept service by email from a
15 self-represented litigant. So I'm not even aware if Mr.
16 Sawyer will accept service by email or not.

17 THE COURT: Okay. I tell you what, Ms. Gersten, if
18 we're going to argue these other requests that you have made
19 in your explanation in your 27 page memo wanting the
20 continuance, we'll just go ahead and do the motions today,
21 too, then we don't have to get back together in August. I'm
22 coming to the conclusion that you have the ability and the
23 willingness to argue your motions of the other requests,
24 that I hear your motions, or your motion for a continuance,
25 so it's sort of coming -- it's sort of telling me that you

1 have the ability and wherewithal to argue the other
2 outstanding motions. Do you wish to proceed?

3 MS. GERSTEN: We can just go to the 18th when I can at
4 least clean myself up. I mean, it's interesting how the
5 will -- the human spirit that I have is greater than my
6 condition sometimes and how it can be flipped on me is
7 amazing to me. No disrespect to you, sir. I hope none of
8 you -- I hope none of you experiences being paralyzed
9 because it's not fun.

10 THE COURT: And Ms. Gersten, I say this with all
11 sincerity, if there becomes a time in the course of this
12 litigation where you feel like that -- and you still want to
13 pursue in representing yourself, if there comes a time where
14 you feel like that you cannot physically or mentally or ever
15 however represent yourself, ask the Court for assistance in
16 having someone appointed to stand in your shoes. Okay?

17 MS. GERSTEN: I didn't know that was an option.

18 THE COURT: Well, we can -- if you lack the mental
19 capacity or the physical capacity in order to represent
20 yourself there can be guardians appointed for you and we can
21 explore that as an option. Of course, we would have to hear
22 from the other side whether they agree or disagree, but we
23 can try to find someone to actually be able to come to court
24 in an appropriate manner so that due process for both sides
25 is not violated. Okay?

1 MS. GERSTEN: Well, I'm not claiming that I'm
2 incompetent, I want to be clear about that, and the law for
3 a vulnerable adult is not an issue of competency.

4 THE COURT: Okay. Well, if that ever gets to be a
5 problem you let us know.

6 MS. GERSTEN: Is that an issue of competency that
7 you're referring to?

8 THE COURT: If you feel like ever you get to the point
9 where you can't represent yourself either due to physical
10 problems or a mental problem you let us know. Okay?

11 MS. GERSTEN: Well, you say physical or mental, so if I
12 said physical, which is what I'm in, that does not include
13 mental; is that correct?

14 THE COURT: Those are two different words to this
15 Court.

16 MS. GERSTEN: That didn't make sense to me, there are
17 two different words, mental and physical.

18 THE COURT: Ma'am, I think you get my point, is that we
19 need to move forward with these cases.

20 MS. GERSTEN: I'm here in the sitting in my own feces
21 and urine because I get the importance. I know that the
22 courts don't have the -- I mean, thank you for the
23 continuance but this is a hard road and I get it. And I get
24 it.

25 THE COURT: Anything else, ma'am?

1 MS. GERSTEN: I suppose I should put it in writing that
2 you don't think that I wanted to pursue more issues.

3 THE COURT: Ma'am, I'm giving you the option, if you
4 want to pursue the rest of the issues we'll be more than
5 happy to go ahead and hear them absent some objection from
6 Mr. Sawyer.

7 MS. GERSTEN: I get it. I feel at this point -- my
8 brain is not 100 percent because of my situation right now,
9 I would like to clean up. Yes.

10 THE COURT: Okay. So which will see y'all on the 18th.
11 If you have issues with Mr. Sawyer, I've never met Mr.
12 Sawyer, don't know Mr. Sawyer, he's never appeared in front
13 of me, but you can reach out to him on any issues, and then
14 if you can't just reach out to the Court and we'll be glad
15 to be of assistance to you. Okay?

16 MS. GERSTEN: I agree. I'm willing to be amiable with
17 you, Mr. Sawyer, like we have in the past, today was a
18 surprise to me.

19 THE COURT: All right. Then we will see y'all on the
20 18th.

21 MS. GERSTEN: Oh, how do I get my transcript? How do I
22 get the transcript?

23 THE COURT: Transcript?

24 MS. GERSTEN: Isn't this a -- I was told that there was
25 going to be a court reporter.

1 THE COURT: There is a court reporter. You need to
2 reach out to court administration and they can advise you
3 how the order the transcript. Okay?

4 MS. GERSTEN: Well, how do I reach the court
5 administration?

6 THE COURT: If you had a lawyer that would be really
7 easy to answer, but court administration has a website that
8 you can go to. Okay?

9 MS. GERSTEN: What is the website called?

10 THE COURT: I do not know it, but I generally look up
11 South Carolina Court Administration and it usually comes up.

12 MS. GERSTEN: Do I get even a name of the court
13 reporter?

14 THE COURT: Mike Watkins is our court reporter assigned
15 to us.

16 MS. GERSTEN: Mike Watkins?

17 THE COURT: Yes, ma'am.

18 MS. GERSTEN: Okay. And so I will just contact the
19 court administration.

20 THE COURT: That would be my suggestion. There might
21 be easier ways but I do not know.

22 MS. GERSTEN: Okay.

23 THE COURT: All right. I will see y'all on the -- or
24 hear from you on the 18th at 10:00.

25 MS. GERSTEN: Okay.

1 THE COURT: Thank you very much.

2 MR. SAWYER: Thank you, Your Honor.

3 MS. GERSTEN: Thank you.

4 (End of the hearing.)

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Transcript

August 18, 2022, Hearing

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHESTER
4 2018-CP-12-00117
5 Heidi Gersten
6 Vs.
7 Kevin Carter, et al.
8
9 Webex Hearing
10 August 18, 2022
11 Before the Honorable Mark Hayes
12 APPEARANCES
13 For the Plaintiff: Heidi Gersten, Pro Se
14 For the Defendants: Wesley Sawyer
15 Reported by: Webex (transcribed by Michael C. Watkins
16 Official Court Reporter)
17
18
19
20
21
22
23
24
25

1 THE COURT: Ms. Gersten, can you hear me okay?

2 MS. GERSTEN: Yes, I can, sir.

3 THE COURT: Okay. And I can hear you fine. Mr.
4 Sawyer, can you hear me and Ms. Gersten all right?

5 MR. SAWYER: I can. It's coming in a little soft but I
6 think I will be able to make due, Your Honor.

7 THE COURT: Okay. If ever either of you cannot hear me
8 just let me know and I'll move closer to a microphone or
9 move around. Thank y'all for getting together for the
10 reconvening of this hearing. I have got -- according to
11 what was submitted to me by the Clerk of Court's office
12 we've got four -- well, five motions that were given to me
13 to be heard. I did review them prior to our last time we
14 got together, also I reviewed them prior to us getting
15 together this time. One of them I'm going just to throw out
16 there and suggest that I not address because it is the
17 plaintiff's motion to recuse or disqualify Judge Gibbons and
18 Judge Hayes. The Judge Hayes that she's referring to is the
19 Judge John Hayes. It is customary that, and I think that
20 the rules will provide that in the event -- well, first of
21 all Judge John Hayes is now retired so he would never hear
22 any of these cases -- that the motion to recuse or
23 disqualify would need to be addressed to the judge that
24 actually is being asked to be disqualified or to recuse
25 himself, so I would just put that one aside. And that in

1 the event that ever Judge Gibbons is asked to address
2 anything that the plaintiff believes needs to -- that issue
3 of recusal or the issue of disqualification needs to be
4 addressed it can be addressed by him at that time. Because
5 I don't -- it's not proper for another circuit court judge
6 to disqualify another circuit court judge, so I'm going to
7 move that one aside. The other remaining four motions I'm
8 going to take in order of filing. Some of them -- and by me
9 taking them in this order I don't want either side to
10 believe or to infer that there is some predetermined outcome
11 for the -- or how the motion should or should not be
12 addressed, I'm just going to take them just as they got
13 filed, because to me that chronologically makes the most
14 simple way to address them. So the first motion is going to
15 be the plaintiff's objections and opposition to designation
16 of non-jury docket and motion to transfer to the appropriate
17 docket that was filed August the 22nd, 2018. And it could
18 be that there's a history in this case that now some of
19 these motions are moot or no longer needs to be addressed by
20 the Court, but if that is the position, you know, let me
21 know, but I did not want to presuppose any type of argument
22 from anybody. So with that being the first motion, Ms.
23 Gersten do you wish to -- me to address that motion or hear
24 any further arguments other than what you've filed in the
25 written document?

1 MS. GERSTEN: Well, actually that was one that I think
2 that has already been fixed, hasn't it? Or --

3 THE COURT: Okay. I couldn't tell. I thought it might
4 have been but I'm not -- I didn't want to suppose anything.
5 I did view the file and it did look like that that one
6 probably has been resolved, so thank you for sharing that
7 with me.

8 MS. GERSTEN: I mean, if I'm incorrect I'll address it
9 later, but that wasn't one of the ones that I was focusing
10 on today, but thank you for bringing that up.

11 THE COURT: Certainly. Thank you for sharing that with
12 me. And then the next one, and it might be this is the same
13 type of resolution, plaintiff's motion to amend with or
14 without leave, plaintiff's motion to alter or amend judgment
15 or relief from judgment that's dated August the 29th, 2018.
16 Do you feel that that motion is still pending or needs to be
17 resolved in some way?

18 MS. GERSTEN: Yeah, I do. Let me get my documents for
19 that. I just require a minute of patience, there's a lot to
20 sort through. But honestly, I think before we get into
21 those, I think that my emergency motion that I filed on the
22 28th, there was some issues that were left unresolved, so
23 before I get to the amended one I think we need to talk
24 about my Title Two of the Americans With Disabilities
25 reasonable accommodation request. Did you remember that

1 one, sir?

2 THE COURT: Ma'am, I do not have that one. I have your
3 motion where you filed and asked for the continuance based
4 upon, you know, when we started the last hearing, and I
5 believe I granted your request for the continuance.

6 MS. GERSTEN: Right. But there was more on there. As
7 I was proceeding to talk about it you very kindly said to
8 bring it up at the next hearing, so that's why I bring it
9 up.

10 THE COURT: Well, thank you for bringing that up.
11 Let's bring that up in order, though, of filing and I will
12 be more than happy to address that at that time.

13 MS. GERSTEN: Oh, okay, okay, okay. That's fine if you
14 want to put that later then that's fine. Okay. So let me
15 get my ducks in a row here.

16 MR. SAWYER: While she's getting her papers organized,
17 I just -- as a matter of housekeeping, I think we've got an
18 updated motions roster where some of these motions have been
19 dropped or other motions are on, so just to bring that the
20 Court's attention. And there's a second motion to amend
21 complaint with leave that was filed October 22nd, 2018, by
22 Ms. Gersten, I believe, because that's the second motion
23 that's probably the operative motion for a motion to amend
24 that we should address. And I don't want to jump ahead of
25 things, I just want to avoid unnecessary confusion.

1 THE COURT: So the October 22nd, 2018, supplanted or
2 leapfrogged over the August 29, 2018 motion?

3 MR. SAWYER: I would expect so since the August motion
4 was before Judge Hayes, the other Judge Hayes heard the
5 motions to dismiss and the other matters.

6 THE COURT: Okay. Ms. Gersten, do you -- what I heard
7 from Mr. Sawyer is that the -- your October 22nd, 2018,
8 motion to amend is the one that we need to hear.

9 MS. GERSTEN: Well, no. Actually there are two
10 different ones. I can sort of do a combo on both of them if
11 you would like because they're similar.

12 THE COURT: Okay. If you want to do that, that would
13 be great.

14 MS. GERSTEN: Okay. Do you want me to just start
15 talking?

16 THE COURT: Sure. I will be more than happy to hear
17 from you. What we'll do is you give me -- I've got the
18 written motions and you just -- this is your chance to
19 present your oral arguments as to those motions. Once you
20 are finished then we'll turn to Mr. Sawyer to get his
21 response, so please listen to Mr. Sawyer, and then if you
22 have anything that you wish to present and reply to Mr.
23 Sawyer I'll let -- you have the opportunity to reply to
24 anything that he said, but your reply really should not
25 present any new arguments, you're just replying to his

1 arguments. Okay. I'll be more than happy to hear from you.

2 MS. GERSTEN: Okay. First of all I just want to say
3 thank you to you, Mr. Sawyer, all of the clerks, the court
4 reporter. South Carolina is a fine group of people, one day
5 I might move there. I just want to put that out there
6 because I'm litigating in other states that are not like
7 this, so I really appreciate you. And with that being said
8 let's talk about the motions. Okay. So back in 2017, let
9 me bring it back to how I even got in to this, of course.
10 Oh, and I just wanted --

11 THE COURT: Let me ask you to do this: We have other
12 matters to do. If you would, explain to me what it is that
13 you're wanting to amend and then you can give me a narrative
14 as to why you want to amend it, let's do it that way.
15 Because your task in presenting an oral argument is to
16 persuade me to decide in your way, so help me understand
17 what exactly you're asking me to amend. Start with that and
18 then tell me why.

19 MS. GERSTEN: Okay. Well this has to do with the very
20 first order that was made on April 26th, 2018, by Judge
21 Gibbons. Okay. It was a consolidation order. I never had
22 a ruling on this even though I filed -- I was the first
23 one -- you brought it up, you said it was the first one that
24 needs to be addressed and the first one I filed. Why it was
25 filed is because I already know, I saw that this was going

1 to confuse everything, because the consolidation was not
2 supposed to take away the arbitration, the property damage
3 arbitration for property damage that I found. It's Title
4 38, Chapter 77, Article 7 of the South Carolina --

5 THE COURT: Let me interrupt again because I want to be
6 sure I'm understanding you. What are you asking me to
7 amend? You can explain to me, but clue me in as to what
8 you're asking me to amend. Are you asking me to amend a
9 complaint? Are you asking me to amend a prior order? Are
10 you asking me to -- what is it you're asking me to consider
11 that needs to be amended?

12 MS. GERSTEN: Okay. Bottom line is I feel the
13 arbitration matter should not be dismissed. It was never
14 dismissed by any order. I would like to have the property
15 damage just as the law says, where it's supposed to be a
16 sit-down with three neutral attorneys that are brought in,
17 it was a \$5 thing, for property damage only for liable
18 parties. And liable parties, according to the law, includes
19 insurance companies. I've read books, I've read whatever
20 and it was supposed to be done within 60 days --

21 THE COURT: Let me ask you this then, Ms. Gersten, I'm
22 sorry to interrupt, because I need to understand this, are
23 you asking me to amend a prior order that Judge Gibbons
24 signed that consolidated the arbitration with the liability
25 claim? Is that what you're asking me to amend?

1 MS. GERSTEN: Yes.

2 THE COURT: Okay. All right. So it's the prior order
3 that was signed by Judge Gibbons. Okay. All right. So
4 your position is that Judge Gibbons was wrong?

5 MS. GERSTEN: You know, he may not have been wrong.
6 Okay. But the merging confused -- I think confused
7 everybody. And what I mean by confused is by merging it was
8 not supposed to prevent or preclude an arbitration hearing
9 from happening. It was -- it was meant for a trial purpose
10 is how I interpreted it. Okay. So I think that the order
11 had it not happened then we would have had an arbitration.
12 I was expecting to sit down with all parties and it says
13 that I can bring in -- it's supposed to be summary. I mean,
14 you know, I can read the law to you but I'm going by how I
15 took it. It's supposed to be the arbitrators were going to
16 hear the matter in the courthouse so it doesn't preclude
17 anyone if they weren't happy with the results of having a
18 jury trial after. It was basically -- I looked at it as
19 your -- like a mediation, like a chance for the meeting of
20 the minds, and I had everything prepared for that and it
21 never happened. And it's -- to my understanding property
22 damage claims in South Carolina, you can't get an attorney
23 for contingency on property damage. This was explained to
24 me that it was summary in nature and that it was supposed to
25 be simple and geared for non-attorneys, and that's me,

1 that's what I wanted to start with, and it never happened.
2 We never had -- we never had this arbitration. I mean, I
3 can read the law into the record but it's in my -- it's in
4 my motion, I clearly talk about --

5 THE COURT: It is. And I also read your motion and I
6 just wanted to be sure that I understood correctly what you
7 were asserting, and so I do understand -- that is -- the way
8 you presented it to me verbally is what I understood your
9 motion, or your -- I won't say your complaint with what
10 Judge Gibbons did, the way you've explained it is consistent
11 with the way that I read your files.

12 MS. GERSTEN: Can you say is it so that I can see if
13 you're understanding? Because you're very good at just
14 summarizing this in quick words. So what do you think --
15 how are you interpreting what I'm saying to you?

16 THE COURT: Well, that's -- part of what we do in these
17 hearings is you have to persuade me to your position, and so
18 what I'm hearing is that you took issue or you disagreed
19 with Judge Gibbons of consolidating the liability claim with
20 the arbitration claim that is allowed under the arbitration
21 process of doing property damage claims, and that you didn't
22 like that and you wanted to have them separated so you could
23 do your property damage separately from your liability
24 claims.

25 MS. GERSTEN: That's part of it, and the other part is

1 the fact that there was no hearing on his consolidation
2 order. I felt like, you know, government is supposed to
3 notice and an opportunity for a hearing, so there was never
4 a hearing on the consolidation anyway. It just came out as
5 all the sudden, you know, we have the motion hearings, and I
6 feel like this was -- this should have happened before any
7 motion hearing, this one, because that's the way the law was
8 written.

9 THE COURT: Okay. So you've got not only a substantive
10 issue, we also have a process issue with what Judge Gibbons
11 did.

12 MS. GERSTEN: You're amazing. I really appreciate
13 the fact that --

14 THE COURT: Can I get that in writing from you? I
15 would like to share that with other people that feel
16 otherwise, but thank you for saying that.

17 MS. GERSTEN: I didn't -- what did you just say?

18 THE COURT: I said thank you for saying that because a
19 lot of people don't say that about me.

20 MS. GERSTEN: Oh, I'm not trying to look for favoritism
21 at all. As long as you're fair and neutral in this process,
22 we're making a record today and I'm very happy to be here.
23 Just like I've always said, I really appreciate Mr. Sawyer
24 because he's been kind to me as well, and that's all I can
25 ask for.

1 THE COURT: Okay. Well, thank you. Let me do this,
2 let me get Mr. Sawyer's response on that, on the issue of
3 the order that -- where Judge Gibbons consolidated the
4 property damage claim with the liability claim. You're
5 muted, Mr. Sawyer. Mr. Sawyer, I've got you muted, I'm not
6 sure --

7 MR. SAWYER: Sorry. It's been awhile since I've had a
8 Webex hearing, Your Honor, but thank you for fixing that for
9 me. Your Honor, I appreciate your time today, thank you for
10 hearing these matters. As to the issues of the property
11 damage arbitration, when the subsequent broader lawsuit was
12 filed in the circuit court we filed a motion on the view
13 that you can't have two separate claims, you can't split
14 your claims against one defendant, you have to bring all of
15 your claims arising out of the same set of facts or
16 circumstances in one lawsuit, and that's well established
17 South Carolina law. And by bringing the circuit court
18 action, of course, that would be the proper action to
19 survive between that and the property damage arbitration
20 claim. And as a result Judge Gibbons signed the
21 administrative order acknowledging that essentially
22 consolidating the two cases into the circuit court action,
23 which will, of course, include the property damage claim,
24 and, you know, at the time included the other claims
25 asserted in the complaint, many of which, of course, have

1 now have been dismissed. But the rule in South Carolina is
2 you can't split claims into property damage, arbitration is
3 not an exception to that rule. In fact, it's been my
4 experience and common practice that when there is a property
5 damage arbitration pending and a plaintiff's attorney
6 subsequently files a bodily injury suit in circuit court the
7 parties have in every case I've ever had agreed that at that
8 point the property damage claim has to be consolidated or
9 dismissed and brought before the circuit court. Judge
10 Gibbons just followed that practice, which is in compliance
11 with South Carolina law, and I think that's a proper basis.
12 In terms of procedurally, Rule 59, Judge, I don't know that
13 there's any evidence that a copy of the Rule 59 motion was
14 sent to Judge Gibbons, which, of course, we know is required
15 by the rule, but that's a technical procedural matter. But
16 substantively the ruling was right and frankly typically, of
17 course, Judge Gibbons would have to hear a motion to
18 reconsider his own ruling.

19 THE COURT: Let me ask you a question. So my
20 understanding in my involvement with the litigation is that
21 the facts and the law arising from the liability claim and
22 the property damage claim is going to be identical; is that
23 correct?

24 MR. SAWYER: Yes, Your Honor.

25 THE COURT: All right. But the difference is --

1 between the liability claim and the property damage claim
2 would be the actual damages that are sought. Because in a
3 property damage claim a plaintiff seeks damages for an
4 automobile or property damage, but in the liability claim
5 the plaintiff seeks damages for things that are what I call
6 personal injuries or loss of income, bodily injury,
7 emotional damage, those types of things; is that correct?

8 MR. SAWYER: Well, Your Honor, I think generally they
9 can choose what they want to bring when they bring a
10 complaint, and they can choose to include property damage
11 with their bodily injury claims, or they can choose to only
12 pursue bodily injury claims, but what they can't do is split
13 their claims. South Carolina doesn't allow claim splitting
14 against one defendant. We do allow, of course, separate
15 lawsuits against different defendants, but we don't allow
16 separate lawsuits against the same defendant arising out of
17 the same facts and circumstances, all of those claims have
18 to be brought together in one action.

19 THE COURT: Okay. I think I understand that. Ms.
20 Gersten, this is your opportunity to present any argument
21 that you wish to present in reply to what Mr. Sawyer just
22 argued.

23 MS. GERSTEN: Okay. Well, the thing is that I did
24 serve Judge Gibbons, I want to be clear about that. I'm not
25 putting Mr. Atkinson on the spot here, but on that date, I

1 believe it was May 8th -- because right after I went to a
2 hearing in front of Judge Zamore where I personally
3 witnessed Mr. Sawyer's client, Mr. Carter, plead guilty to
4 reckless driving, and prior to that I went over to the
5 courthouse and I made sure that Mr. Gibbons was served. So
6 I want to make sure that I'm clear that I did follow that
7 part and made sure that he was personally served. Now,
8 getting back to originally filing this arbitration claim,
9 that was really all I was going to do. After speaking to
10 Mary Orr, who I heard that she passed, I think she has
11 passed, I apologize, I'm not sure, but I think she did, but
12 prior to her passing I spoke with her on August 30th, 2017,
13 with regards to filing the arbitration on a property damage
14 liable claim, that was the original plan. But when I
15 realized after speaking with her that she didn't even know
16 what I was talking about and she asked me if I could send
17 her a copy of the law that she could give to the Judge,
18 because she said she spoke to Judge Gibbons and he was
19 unfamiliar with this as well. Now, maybe there have been
20 times that it was filed, but at the time that I called she
21 specifically did not know what I was talking about, put me
22 on hold to talk to Judge Gibbons, came back and said: Send
23 the law. So on August 31st, 2017, I sent the law, one day
24 after I spoke with her. I put together a letter, it's in
25 the file, and I showed her the law, and she said -- called

1 me back and said: Okay. We're going to do it. When I
2 realized time was going by by the time I filed I got
3 nervous. Okay. You yourself said that often pro se
4 clients, which I want to interject that there's plenty of
5 case law that says there's supposed to be leniency towards
6 pro se's, plus I'm a vulnerable adult with a pressure wound.
7 I've got all these things against me, and lawyers --
8 attorneys in South Carolina have access to e-filing, which
9 even to this day, correct me if I'm wrong for this because I
10 do e-filing, so there's always been this not held to the
11 same standards but below standards as a pro se, as one in a
12 wheelchair and all of these negatives. So I filed with my
13 mother and at the time my brother just to CYA, cover our
14 butts, to make sure that we didn't miss the statute of
15 limitations. And so really it's separate plaintiffs -- I
16 mean, sorry -- well, no, because my brother was added to the
17 claim --

18 THE COURT: Well, Ms. Gersten, before you get too far
19 array, this is the part where you get to respond in a reply
20 to what Mr. Sawyer argued, and so don't bring up new matters
21 because that would be inappropriate at this time, respond to
22 what he was saying.

23 MS. GERSTEN: Oh, I was bringing up what he triggered.
24 He triggered these things to me that made me think of things
25 that -- and, of course, we didn't actually cover --

1 everything we're talking about has to do with the first one,
2 not the second filing that included Judge Hayes. This is
3 the amendment strictly for the order made by Judge Gibbons.

4 THE COURT: Correct, yeah. That's what we're dealing
5 with, just the one with Judge Gibbons right now.

6 MS. GERSTEN: Okay. I just wanted to be clear. So
7 when he's saying that they're supposed to be separate, or
8 that they're supposed to be together even under
9 consolidation, even the law says it doesn't mean that you --
10 they still have their own separate issues to deal with. I
11 wasn't supposed to have the arbitration hearing when it's
12 not supposed to be removed, that's not what consolidation
13 even says. Consolidation is supposed to keep everything
14 still as it is for purposes, I guess, to keep the trial
15 aspect of it. But nowhere in the order does it say no more
16 arbitration, it just is putting the matters together and
17 they are separate, they're distinctly separate. As a matter
18 of fact even insurance is separate that you've got --
19 they're separate, they're not the same or identical, they're
20 different and separate. And I still would like to have the
21 arbitration hearing even with the parties that were
22 dismissed because they should not have been dismissed.

23 THE COURT: Okay. I think I understand that. Okay.
24 All right. Thank y'all very much for your presentations.
25 Now, on my list the next matter I've got would be

1 plaintiff's notice of motion to amend the complaint that was
2 also filed October 22nd, 2018. Do you have that, Ms.
3 Gersten?

4 MS. GERSTEN: I'm looking for that one right now. It's
5 the one for October 8th?

6 THE COURT: I've got filed October 22nd, 2018.

7 MS. GERSTEN: You have October 22nd?

8 THE COURT: My summary reads that it was filed on
9 October 22nd.

10 MS. GERSTEN: My file stamp says the 8th, October 8th.

11 THE COURT: Of 2018?

12 MS. GERSTEN: Yeah, that's what my file stamp says,
13 October 8th.

14 THE COURT: Give me one second. Your stamp is better
15 than mine because my stamp is so light I can barely make it
16 out. I've got -- okay. The title of the one that I'm
17 looking at reads notice of motion and plaintiff's motion to
18 amend complaint with leave pursuant to Rule 15 request for
19 oral hearing.

20 MS. GERSTEN: I don't have the leave on here. You said
21 you have notice of motion with leave? It's possible I
22 grabbed the wrong one. It's a big file. See, one of the
23 things that I wanted to address in my emergency motion
24 was --

25 THE COURT: Okay. That's fine. Ms. Gersten, let's

1 deal with them as I've got them so that we can --

2 MS. GERSTEN: I apologize, it's just the Title Two of
3 the Americans Disabilities always says that those are
4 supposed to go first, but it's okay, if you want to do it
5 different it's okay. I'm not mad or anything, I'm just --
6 it's just important, because part of what I wanted was my
7 disability thing is because I can only sit in this chair for
8 so long. It's easier to do one motion at a time because I
9 have a -- I have a communication disability on top of
10 everything else, so we won't discuss that because you wanted
11 to discuss it later, I apologize.

12 THE COURT: No, ma'am. I tell you what we can do, I'll
13 take a break because I've got a criminal matter I need to go
14 take care of, and let me go take care of that criminal
15 matter and you can have a break and we'll come back in about
16 probably ten or 15 minutes. Is that sufficient?

17 MS. GERSTEN: That's not going to work for me because
18 it would take me a half hour to get out of the chair, it's a
19 different road. I'm not trying to be anything hard with
20 you, I'm trying to paint a visual that I'm sitting on a
21 wound. I lost a half hour of time because Attorney Sawyer
22 gave me the incorrect call in access code. I took for
23 granted that his letter dated July 28th, 2022, had the
24 correct information and it didn't and that cost me 30
25 minutes of time. I apologize. I apologize. So --

1 THE COURT: Well, I'll take a 30 minute break. No,
2 ma'am, I'll take a 30 minute break and we'll come back.

3 MS. GERSTEN: Well, 30 minutes is how long it takes me
4 to get out of the chair, if you can give me a two hour break
5 then that would be great.

6 THE COURT: Okay. Well, I tell you what we'll do,
7 we'll reconvene at 3:00, How about that?

8 MS. GERSTEN: Oh, that would be amazing. Are you okay
9 with that?

10 THE COURT: Mr. Sawyer, does your schedule permit that
11 we reconvene at 3:00?

12 MR. SAWYER: Yes, Your Honor, I'll make due. That will
13 and fine.

14 THE COURT: Okay. We'll reconvene at 3:00 then, I'll
15 see y'all then.

16 MR. SAWYER: Judge, I assume that you'll close down the
17 Webex for now?

18 THE COURT: Well, I have to. I don't know whether --
19 my administrative assistant, Sharon, is, I guess, the main
20 host so she'll do what she does.

21 MR. SAWYER: Okay. And, Judge, just one point, because
22 I know the roster you're running off of is the previous
23 roster. On the roster for today is one additional motion,
24 which is in light of learning about Ms. Ayoub's passing
25 away, we filed a motion to dismiss under Rule 25. So I know

1 that -- it sounds like you may be running on the previous
2 roster so I wanted to make sure I brought that to your
3 attention.

4 THE COURT: Okay. If you could -- well, what I'm
5 working under is we did a -- it's not really a
6 roster/roster, it's not prepared by the clerk's office, it's
7 just a summary that my office generated. If you want to be
8 sure that I've got that, if you want to go ahead and be sure
9 that you send it to me to get a hard copy since I am
10 physically not in Chester, I am physically in Fairfield now,
11 but at 3:00 I'll physically hopefully be in Spartanburg.

12 MR. SAWYER: So electronic copies, is that what you
13 would prefer right now so you'll have --

14 THE COURT: Yeah. That will be fine, yeah.

15 MR. SAWYER: Okay. Thank you, Your Honor.

16 THE COURT: Thank y'all. See y'all at 3:00.

17 (Break in proceedings.)

18 THE COURT: Okay. Thank y'all for getting back
19 together. Mr. Sawyer, can you hear me okay?

20 MR. SAWYER: Yes, Your Honor, I can.

21 THE COURT: And Ms. Gersten, can you hear me okay?

22 MS. GERSTEN: Yes, I can, thank you for asking.

23 THE COURT: Certainly. Okay. Thank y'all. We will go
24 back and pick up. The next thing on my list was going to be
25 the plaintiff's second motion as I refer to it, second

1 motion to alter or amend that was filed -- and Ms. Gersten,
2 I did find an October 8th motion that I think you were
3 referencing. And if I understand it -- I've taken a look at
4 it, if I understand correctly this is your motion where
5 you're asking that the prior ruling by Judge Gibbons to be
6 altered or amended pursuant to Rule 52, 59E, and Rule 60(4);
7 is that correct? Does that ring a bell to you?

8 MS. GERSTEN: Yes. And I think I would like to explain
9 because I also reviewed, because you had said October 22nd,
10 and I see there's a bit of confusion. Under the Federal
11 Rules of Civil Procedure failure to state a claim under 42
12 USC Section 1983, the Court noted that allegations such as
13 those asserted by the petitioner, however inartfully
14 pleaded, are sufficient to call for the opportunity to offer
15 evidence. And it says in part that we hold less stringent
16 standards in form of pleadings drafted by lawyers. And I
17 bring that up only because as I mentioned before, I'm very
18 disabled, a vulnerable adult with a pressure wound, and I'm
19 sitting here and you graciously gave me a timeout because I
20 took a bathroom break and I appreciate that. So getting
21 back to this motion, I think why I have put it in so many
22 times is because I needed a ruling. The first time that I
23 had put it in and it was up in front of the other Judge
24 Hayes, his remark was take it up with the appellate court,
25 but without a written order or anything there was nothing I

1 could do with it. And I was asked by the appellate judges
2 when he made the ruling, but he never actually made a
3 ruling, so that is why I'm seeking that. Because when I
4 looked in Westlaw I only saw two cases that even referenced
5 the particular arbitration hearing that I'm referencing.
6 One was -- oh, good Lord, this is where my nerves -- I
7 apologize, I really appreciate your patience, but there were
8 two of them. There was one -- no, Cooper. Cooper versus
9 Poston, and Blizzard versus Miller, and that was all I could
10 find regarding the arbitration. So I think this is a first
11 impression -- and I really believe that regardless of which
12 way you go with this it's going to benefit people in the
13 future that I have this confusion. I really think that
14 we're doing a good thing by talking about it, because I came
15 into it thinking it would be simple, to just have a simple,
16 you know, within 60 days sit down with everybody and just
17 talk about the concerns. It was supposed to be moved, no
18 strict procedural, easy breezy, and it was far from that,
19 even to this day it seems to be very complex, and so that is
20 why it is mentioned so many times. And sure -- please do, I
21 apologize, I'm long winded.

22 THE COURT: That's okay. And so -- and I'm taking a
23 look at the documents. So the relief that you're asking
24 with this particular motion is for me to avoid -- and I'm
25 just going to quote you, the Court to avoid reversible error

1 and correct the mistake that has been made perhaps due to
2 lack of communication. And so you want me to reverse the
3 prior ruling of Judge Gibbons, and then also of Judge -- and
4 then also of Judge Hayes, the other Judge Hayes; is that
5 correct?

6 MS. GERSTEN: Well, here is the thing, it may not need
7 to be reversed. But the big issue is I really think in all
8 fairness, including the parties that were -- the insurance
9 parties that were dismissed, there's a very grave
10 miscarriage of justice happening right now, because there
11 were insurance policies. And my understanding of this
12 arbitration has to do simply with the property damage due to
13 a vehicle collision, motor vehicle collision, and that's
14 what this was. Even when I looked up consolidation, which I
15 can read to you, it says that in consolidation matters that
16 the word may is in there, that trials may be still
17 separated. It doesn't mean -- gosh, I'm trying to find
18 that, I don't want to take up a lot of time, I apologize, I
19 had it all together but trying to retrieve what I need to so
20 much. So I guess in answer to your question is that I
21 really just think that these matters, the breach of contract
22 that were put into the actual civil action could be
23 addressed in the arbitration, like a lot of the issues are
24 really for arbitration. I mean, it is undisputed that Kevin
25 Carter and I had something, but these other insurance

1 companies I had beyond the minimal, and for them to get away
2 with not paying me anything, I got nada. I had over
3 insurance, I have letters, I have evidence, I have so much
4 to present, and I feel that the easiest way in my opinion is
5 to go ahead and let's do that arbitration sit-down. It
6 doesn't, you know -- anybody doesn't lose their right to a
7 jury trial, but it would be less complex, two hours of a
8 round table meaningful chat. I can bring in my big book of
9 300 pages of -- I'm a musician, all my equipment, everything
10 in that van was destroyed, intellectual property, so much.
11 And nothing was ever paid by any insurance, not the van, not
12 property damage, and that is completely separate from any
13 bodily injury or anything else.

14 THE COURT: Okay. I think I understand that. And,
15 Mr. Sawyer, do you want to respond to that particular
16 motion?

17 MR. SAWYER: Yes, Your Honor. And thank you, again,
18 for your time. I think this is fairly duplicative of the
19 motion that was argued earlier today on Judge Gibbons'
20 ruling. I would just bring to the Court's attention the
21 Powers versus Calvert Fire Insurance Company case, it's 216
22 South Carolina 309, it's a 1950 case. But it notes that
23 when a claim is brought for personal injury -- or arising
24 out of an accident, a claim for personal injury and claim
25 for property damage must be sued in one action or the

1 omitted claim is lost. So I think that fairly summarily
2 addresses the issue. Obviously if the concern is process,
3 the Rules of Civil Procedure would have required mediation
4 once the case was in circuit court, so there would have been
5 an opportunity for that. Of course, we haven't gotten
6 discovery responses, which is a different motion that you'll
7 hear later on today, Your Honor, that's postponed all of
8 that. But in terms of having an opportunity to sit down and
9 go through it, that could have taken place really a long
10 time ago had things gone differently, Your Honor. But at
11 the end of the day Judge Gibbons' order follows the law.
12 It's really his order that she's asking to have
13 reconsidered. There was reference to insurance, of course,
14 that's not relevant to the Court's consideration in either
15 the PDR or this, they're both civil litigation claims
16 arising out of automobile accidents. And the case law says,
17 as well as Rule 12B8, you can't split your claims for
18 damages for the same tort, same cause of action.

19 THE COURT: All right. Thank you very much for that.
20 And Ms. Gersten, since you're the moving party on this
21 motion you get to close with any type of reply response to
22 what Mr. Sawyer just argued.

23 MS. GERSTEN: Thank you. So I think the rule that
24 Judge Gibson (sic) was going under was Rule 42. And in A it
25 says consolidation. When actions involving a common

1 question of law or fact are pending before the Court it may
2 order a joint hearing or trial of any or all parties in
3 issue in the action. It may order all of the actions
4 consolidated, and it may make such orders concerning
5 proceedings therein and may tend to avoid unnecessary costs
6 or delay. Now in B it says separate trials. The Court in
7 furtherance of convenience, or to avoid prejudice, or when
8 separate trials would be conducive expedition and economy
9 may order a separate trial of any claims, cross claims,
10 counterclaims, or third party claim, or of any separate
11 issue, or of any number of claims, crossclaims,
12 counterclaims, third party claims, or issues always
13 preserving (inaudible) I'm not sure if I said that right,
14 the right of trial by jury is declared by the Constitution
15 or is given by a statute or the state. Now, I'm not sure if
16 this is a part of the same one, this might be the
17 October 22nd thing you're referring to, you'll let me know,
18 but I have a first amended claim for property damage, and in
19 there I think in my opinion if the arbitration is not
20 possible then they should have been ordered to just pay a
21 fee and put them in their separate category. I put them all
22 together not realizing that that was an issue. Okay. But
23 they were definitely pled separately. Breach of contract is
24 a completely different cause of action, and it should
25 definitely be in furtherance of justice and to avoid a

1 miscarriage be permitted to provide evidence of contracts
2 and documentation to show that there indeed was additional
3 insurance that not only did I bargain for, I paid, and
4 letters of promises. And even Trust Guard offered a check,
5 which they offered the check, sent the check after the
6 action was filed, after the action. And if you scope the
7 transcript you'll see that they did not argue about a
8 arbitration, they were not having a problem with one at all,
9 and they shouldn't, because there was underinsured, and
10 again, none of the property damage was paid. So I think
11 that covers everything with this issue.

12 THE COURT: Okay. Thank you for providing that. All
13 right. I've got the next motion is going to be the
14 defendant's motion to compel or in the alternate to dismiss.
15 Now, with this motion this is Mr. Sawyer's motion so he is
16 the moving party so he gets to go first, present to me his
17 arguments, and then, Ms. Gersten, you will respond in full
18 to anything you want me to know and then he gets to close by
19 making his reply to your argument. So at this time I will
20 turn this over to Mr. Sawyer to receive his argument.

21 MR. SAWYER: Your Honor, thank you. And may it please
22 the Court? This is my client, Kevin Carter's, motion to
23 compel, or in the alternative motion to dismiss. Judge, by
24 way of background, as you know from looking through this
25 fairly extensive file, this action was filed in the early

1 part of 2018. There were a number of motions to dismiss
2 and, you know, attempt to amend pleadings that ultimately
3 were narrowed down significantly by an order from Judge John
4 Hayes, which Ms. Gersten appealed to the Court of Appeals.
5 Those appeals were dismissed by the Court of Appeals after
6 failure to respond to a motion to dismiss and to respond to
7 a request by the Court of Appeals for certain information
8 from Ms. Gersten. That was petitioned to the Supreme Court,
9 which they rejected, and once the remand or remittitur was
10 issued, the remand, excuse me, we promptly served written
11 discovery, including requests for production and
12 interrogatories both to Ms. Gersten and to Ivanka Ayoub, who
13 were the two remaining plaintiffs after the motions practice
14 that took place before the case went to the appellate
15 courts. When we did not receive timely responses to those
16 discovery requests, which were sent in June of 2020, I sent
17 what would be typically a Rule 11 letter asking --
18 notifying, asking Ms. Gersten and Ms. Ayoub that they were
19 overdue, and also, Judge, asking for deposition dates due to
20 the age of the case and the concern for fading memories.
21 When there was no response to those and no discovery
22 responses provided we filed this motion to compel, which was
23 filed August 26th of 2020, almost two years ago now, Your
24 Honor. Two years have passed. Ms. Gersten asked that the
25 prior -- in a separate hearing last year Ms. Gersten asked

1 that that be continued due to pending litigation that she
2 had in Florida in another case, and the case was continued,
3 and then we fell before you, Your Honor, this year. Despite
4 the fact that the discovery is well over two years old, and
5 the fact that we've filed a motion to compel that's been
6 pending for very nearly two years, two years within two
7 weeks from now, Your Honor, that Ms. Gersten has moved for
8 two continuances on this motion, and has obviously been
9 aware of this motion and these discovery requests at this
10 point for well over two years. While we've seen other
11 filings we've not seen a single document produced, any
12 interrogatories provided, or deposition dates provided.
13 And, Your Honor, while, you know, in 2020 when this was
14 filed maybe the appropriate relief would have been an order
15 compelling. Given the fact that we're now in 2022, two
16 years later, I think that the more appropriate remedy based
17 upon the status of this case is, in fact, a dismissal. And
18 Your Honor has two avenues that you can choose within your
19 discretion, it's broad discretion, as to whether or not
20 dismissal is appropriate. Those avenues are, one, under a
21 failure prosecute the action, and two, as a sanction for
22 failure to comply with discovery, so either under Rule 41 or
23 rule 37B2C. The Small v. Mungo case addresses the standard
24 for dismissal for failure to prosecute under Rule 41. In
25 that case a party failed to show up for trial, it was their

1 only time failing to appear for something in the case. The
2 trial judge to manage the docket struck the case and the
3 appellate court affirmed finding that that was a proper
4 exercise in the Court's discretion. It talked about the
5 elements for whether to dismiss, which includes orderly
6 disposition of cases in the face of repeated opportunities
7 to proceed, unreasonable neglect, indifference pled to the
8 rights of the defendants. And, Your Honor, I don't think we
9 could have a better example here where we have two years
10 passing without an effort to respond to basic
11 interrogatories, basic requests for production, or provide
12 dates for depositions. There's been no excuse provided for
13 that. Obviously other things have been submitted to the
14 Court in that time, but there's been no documents produced,
15 no answers to interrogatories, leaving us at a loss as to
16 exactly what to do with the case, Your Honor. In terms of
17 orderly disposition, we've got a four year old case now, and
18 I think the background is relevant, too, in the fact that
19 the reason the Court of Appeals dismissed the appeal was
20 because of after repeated requests for extensions and
21 extensions of time for Ms. Gersten to respond to an inquiry
22 from the Court. Ultimately the Court of Appeals got fed up,
23 gave her a date to provide a response, to which she did not
24 provide a response, and as a result dismissed the case. So
25 there's a pattern of practice in this case of disregarding

1 rules, including orders from the Court. And Judge, in terms
2 of prejudice, where we are now is not only are we four years
3 into a case and my client is still in, but more importantly
4 now that we have learned that Ivanka Ayoub has actually
5 passed away, so we have, in fact, lost a witness, and lost
6 someone who could have been deposed and provided information
7 in the case. So the prejudice is baked into the situation
8 that we find ourselves in right now. And, Judge, all of
9 those, I think, are more than adequate as a basis under Rule
10 41 to dismiss for failure to prosecute. I believe you noted
11 at our prior hearing that was continued that the obligations
12 apply to both parties in the case, not just to the
13 defendant, and those obligations have not been fulfilled by
14 the plaintiff. And, Judge, certainly as to Ivanka Ayoub who
15 is not here, now granted we have a Rule 25 motion as to her
16 as well because we believe she's passed away, but certainly
17 that would be another grounds for failure to prosecute as to
18 her claim. Judge, moving on to the issue of it being done
19 as a proper discovery sanction, McNair versus Fairfield
20 County would be the case I would point you to, it's 379
21 South Carolina 462, that's a 2003 Court of Appeals case. In
22 that case, Judge, you had a much shorter timeline. You had
23 discovery served on the county, the county did actually make
24 an attempt to respond, they provided 800 pages in response
25 to the discovery requests. The plaintiff in that action

1 moved to compel arguing that the discovery responses were
2 inadequate, the court ordered production, the county failed
3 to comply. All of this took place within one year of the
4 original discovery requests. And ultimately the circuit
5 court, when the county failed to promptly provide
6 supplemental discovery responses, struck the county's answer
7 and its counterclaim. And Justice Hearn, sitting in the
8 Court of Appeals, affirmed that as a proper use and exercise
9 of the circuit court's broad discretion in these matters
10 because there was no excuse for the delay, and found that
11 striking the answer and counterclaim was the only sanction
12 that would create a just result for the plaintiff in that
13 case. And, Judge, again, we're in a case four years in.
14 We've had no discovery, we've lost a witness at this point,
15 and at this point the only just result for this kind of
16 delay and loss of information is to dismiss the case as a
17 proper discovery sanction. There's been no regard
18 whatsoever for the obligations under the rules to respond to
19 discovery. And I know that Ms. Gersten has noted that she's
20 pro se repeatedly, but she clearly has access to the Rules
21 of Civil Procedure. She's been involved in litigation as
22 she's filed with this Court and Florida, she's also been
23 involved in litigation in Ohio, so she's not a stranger to
24 the courtroom, and ignoring the rules of discovery is
25 something that just can't be permitted for four years out

1 into a case. So while we recognize that it's a fairly
2 drastic result, Your Honor, we think that the record here
3 more than adequately supports that on either a Rule 41 or a
4 Rule 37 basis.

5 THE COURT: All right. Thank you for those arguments.
6 Ms. Gersten, I would be more than happy to hear anything you
7 would like for me to know in response to this argument.

8 MS. GERSTEN: Yes. It is quite laughable in such a
9 horrible situation that's ideal with the pain of
10 misrepresentation. Where to begin. Let's start, not one
11 mention of a pandemic, a pandemic that changed of lives of
12 everybody I know, causes me to cry when I think about it.
13 How dare you, Mr. Sawyer, not mention that. That pandemic
14 began March 13, 2022 (sic) and everybody, including my life
15 especially, has changed because of it. There are plenty of
16 excuses. Number one, I never received any of that
17 documentation, and I will gladly look at evidence of
18 receipts of these discovery motions. I never received any
19 of them. During that time that's -- I saw in the docket but
20 the docket has a disclaimer that says that the information
21 on the docket it's sort of at risk. So I'm not held to
22 chase documents that I didn't receive.

23 THE COURT: Ms. Gersten, I must warn you, that argument
24 does not carry much weight with me. I understand the
25 disclaimer that all clerk's of court puts on their web page,

1 but if you looked at it you were aware that there were
2 documents out there, and I did not hear and I've not heard
3 any of this brought up that you didn't receive it.

4 MS. GERSTEN: I'm telling you now because it's never
5 been argued before, we've never discussed this. And for --

6 THE COURT: Okay. My point is making an argument that
7 you didn't receive it is one thing, but making the argument
8 that the clerk of court because they have a disclaimer on
9 their web page that's another type of argument. Okay. So
10 if your argument is you never received it, that's something
11 else. I'm not saying -- so just be mindful of I'm trying to
12 help you with your credibility with your arguments to me.
13 Okay?

14 MS. GERSTEN: I apologize. He touched a nerve because
15 he didn't mention the pandemic, and the pandemic was a big
16 cause of why things went awry, especially with the appellate
17 courts. Because the appellate courts -- he's saying that I
18 repeatedly didn't comply. Okay. What they were repeatedly
19 asking me for was written dates of receiving orders and I
20 couldn't give them because I didn't receive them. And I've
21 learned that actual notice is not the same as written
22 notice. And according to my --

23 THE COURT: Let me ask you to clarify that. You said
24 that they were asking you to receive copies of written
25 orders. You mean your medical records?

1 MS. GERSTEN: No, no, orders of the trial court. No
2 one ever served me orders. And I now have in my possession
3 certified copies of this. And as of -- I have to look at
4 the exact date, but a few days ago I've now received the
5 orders, so now I will be filing a notice of appeal because I
6 was not able to answer that question. That is really the
7 real reason that there was no merit to the claims because I
8 couldn't answer that. I never received written notice, it
9 was never served on me.

10 THE COURT: Oh, you're talking about the appeal that
11 went to the Court of Appeals.

12 MS. GERSTEN: Yes.

13 THE COURT: Okay. All right. I'm sorry. I'm clear
14 now. Go ahead, I'm sorry.

15 MS. GERSTEN: I didn't repeatedly not comply. The
16 dismissal is not appropriate because I have never failed to
17 appear. I've done everything that I'm asked to do within
18 reason. And my mother's passing, the only thing they lost
19 was her testimony that she owned the van, that's it. She
20 wasn't in the van, she didn't witness the collision, that's
21 it, so he lost nothing. Because she gave me a power of
22 attorney -- we're jumping ahead. The only service that I
23 received was his recent -- Mr. Sawyer's recent serving. And
24 I apologize because normally I'm really cool because this
25 pandemic thing, when I just think about not acknowledging

1 that it even happened is upsetting to me, because it changed
2 the course of everybody's lives, not just my life. And
3 during that time I even explained to the appellate courts
4 where I was living, which I'm not living there now, we were
5 not getting mail, and I -- the address that I have is not
6 where I lived. There was always other people. I went
7 through so many caregivers, and I don't even have a
8 caregiver now, back then there were so many different ones,
9 things were lost, things were gone. And if you're saying
10 that I'm held to even though I -- if I saw something on the
11 docket or if that's not a good argument, serve me again and
12 I will definitely -- it's fine, I have no problems. I
13 served my own discovery, I get it, but I wasn't trying to
14 avoid anything. But as far as saying that I filed
15 continuances and making insinuations that the Court granted
16 them and that's why we're two years into this is not true.
17 It's not true. I have no control over what happened. There
18 was actually a hearing set for the 13th that got canceled
19 not because of me. I put in continuances for my own reasons
20 but they were never ruled on, and my continuances had no
21 part of the Court canceling those hearings. And I don't
22 want to be rude to the Court because I appreciate everyone
23 in South Carolina, and even Mr. Wesley, he just touched a
24 nerve because he never mentioned the pandemic, and so the
25 four years that have gone by is all because of me. No, none

1 of it is because of me. I'm here, I've been ready. On the
2 13th I would have dealt with however the Court would have
3 dealt with it but they canceled it on their own, and that
4 can be easily verified, I'm not making that up. I just want
5 to make sure that I cover everything that he said. The
6 pandemic. Did not ignore and received -- okay. And yeah.
7 The only thing she would have testified to is insurance
8 stuff and -- but I'm not -- I'm not -- I'm not -- I'm not
9 practicing law without a license, that's why I've stayed
10 away from that. Because if you want to talk about it,
11 Judge, I do have law that I looked at about unauthorized
12 practice of law and what it actually means. Because when
13 you had mentioned that I wasn't even sure what that is,
14 because I'm not representing her. But her not being here,
15 she definitely has gifted me her claim, or the van, or how
16 ever you want to look at it, and so, you know, what is the
17 practice of law? It is neither practicable nor wise to
18 attempt the comprehensive definition by way of a set of
19 rules. The better course is to decide what is and what is
20 not the unauthorized practice of law in the context of an
21 actual controversy. And this is in regards to unauthorized
22 practice of law rules proposed by this South Carolina Bar,
23 309 SC 304 422 SC2D 123 1992. And it says in the South
24 Carolina Bar that state law does not set forth a list of
25 activities that constitute the unauthorized practice of law.

1 And I mentioned that she was deceased because she -- well,
2 here is the other interesting thing, I wasn't there. I only
3 received a message. I never spoke to anybody about it,
4 didn't go to a funeral, and just like Mr. Sawyer, can't find
5 an obituary, have been seeking a death certificate.
6 Unfortunately at this point it's hearsay. And I'm jumping
7 ahead because he's got a motion on the table that I did
8 receive and I know that's not this one, so I think that I
9 covered everything that I want to say. Oh, he's never once
10 called me, never called me, never sent an email. I mean,
11 those are probably the two best ways to reach me. I
12 apologize, but during that time -- and I can prove that
13 because I -- he's right, I have other claims, and that was
14 one of my big issues during that time because that was
15 shortly right after the pandemic. Where I lived it was
16 madness. They had people marching, no justice, no peace,
17 vandalizing. I mean, it was chaos. I mean, it was hard.
18 People were scared where I lived. The mail was missing,
19 things went awry. It was a hard time right during that
20 period. When he said two years, this was right after things
21 were really hot, and it was different in different places,
22 but where I was it was extremely -- people were touchy. I
23 was scared to go anywhere. I started wearing a Go Pro
24 camera around my chest because I got assaulted by a security
25 guard. And I'm not trying to drift off, I'm just painting

1 an image that during that time was a very unique time in the
2 history of the world, not just one place, it was Washington,
3 all kinds of madness. It was heavy times during then. And
4 I did not personally receive his discovery. Had he called
5 me, had he sent an email things would have been different.

6 THE COURT: All right. I think I understand, I've got
7 your argument. What I heard was pandemic related was a
8 causative factor in not responding, that there's no
9 prejudice due to the death -- or potential death of your
10 codefendant, and that you're now contesting whether or not
11 the codefendant has actually passed away or not. You also
12 claim that you never were served with the discovery
13 requests. And that -- also on the issue of prejudice, that
14 the only issue that your codefendant would be involved with
15 would be the issue of ownership, not the issue of liability,
16 just the issue of the ownership of the vehicle. I think I
17 got that.

18 MS. GERSTEN: Right. I want to interject that just a
19 correction, I'm not -- I'm not challenging that she's not
20 deceased, I have no reason to believe that she's not, but I
21 have no proof that she is.

22 THE COURT: Okay. Are you going to contest that she's
23 not deceased?

24 MS. GERSTEN: No, not at all. I'm seeking a death
25 certificate. Unfortunately the first place that I tried I

1 had bad information and it wasn't -- it was the state she
2 was actually in. It's a long story that led to that moment,
3 and that's not of the concern you said last time about what
4 happened or whatever.

5 THE COURT: Okay. I think I've got that. And whether
6 or not she is deceased or not deceased, your position is
7 still that there's no prejudice, that she's not involved in
8 the litigation, is that correct, due to the fact that her
9 only involvement is over the issue of the ownership of the
10 vehicle.

11 MS. GERSTEN: Well, yeah. And the other issues would
12 not be Kevin Carter related I don't believe, because it has
13 to do with insurances. That's what I have to take up with
14 the insurance company.

15 THE COURT: Right. Okay. Yes, good point, thank you
16 for pointing that out.

17 MS. GERSTEN: And I apologize if I got too passionate,
18 and I didn't mean to, I honestly -- it's a trigger for me
19 because a lot of bad things happened during those two years.

20 THE COURT: That's fine. You argued quite well and you
21 argued better than some lawyers that come in front of me, so
22 thank you for that. Don't say that to the other lawyers,
23 though. Do not say that to the other lawyers. Any reply to
24 that, Mr. Sawyer?

25 MR. SAWYER: Yes, Your Honor, very briefly. First of

1 all the pandemic, certainly we all dealt with it, we all
2 learned now to deal with it. I know Ms. Gersten litigated
3 other matters during the pandemic. And also the immediate
4 issues of the pandemic have certainly subsided
5 substantially, yet we haven't gotten discovery responses, so
6 I think that was a Red Herring. Certainly it's an emotional
7 appeal but it doesn't really explain the delay. In terms of
8 the prejudice, Judge, first of all I should clarify, this
9 motion is as to both Ms. Gersten and Ms. Ayoub. Ms. Ayoub
10 claimed ownership of the van. Because of learning of her
11 death I felt compelled to also file a Rule 25 motion, which
12 is really a motion in the alternative. Either she has
13 passed away, and I submit a sufficient amount of time has
14 passed such that because no one has moved to substitute
15 under Rule 25 her claim has to be dismissed. Or she's
16 alive, she's not here, and that's a failure to prosecute.
17 So really we have either way her claim should be dismissed,
18 but they're under two alternatives. But as to prejudice,
19 Judge, Ms. Gersten just represented that the claim for the
20 van has been somehow given over to her by her mother. I
21 cannot depose her mother to find out about that. I was
22 never aware of that claim being handed over. So again, the
23 prejudice there is abundant. Also, I would have to take
24 Ms. Gersten's word as to what her mother knew or did not
25 know about the contents of the van, the value of those

1 contents, the condition of those contents. And since the
2 claim here is primarily about the contents of the van now
3 I've lost a valuable source of information. To get to
4 probably the most important point that Ms. Gersten raised,
5 which is the claim that she did not receive these documents,
6 we have filed certificates of service of the discovery
7 requests with our motion to compel, or in the alternative
8 motion to dismiss. We also have certificates of service
9 mailing these documents, the motion to compel itself to Ms.
10 Gersten, just like we mailed notices of the hearings to
11 Ms. Gersten. She claims she didn't get the orders from the
12 underlying case, but, Judge, she filed a notice of appeal on
13 the underlying case earlier orders, so she filed a notice of
14 appeal attaching those other orders. So, Judge, she clearly
15 has been getting these things, otherwise she wouldn't have
16 been able to attach them to a notice of appeal. And, Judge,
17 when she got notice of the hearing a year ago, or notice of
18 this hearing, that would have certainly put her on notice
19 that the discovery had been sent, and I've never been told
20 until today or implied that she didn't receive the discovery
21 or didn't receive our motion. But frankly, Your Honor, if
22 she didn't we've mailed them, which is all the rules require
23 us to show, and we've provided the certificate of service to
24 that. But frankly, Your Honor, just the context and the
25 fact that this is only being raised now unfortunately

1 doesn't bear a lot of credibility given the background of
2 this and the fact that this motion has been pending without
3 any notice to the Court or to me stating that these have not
4 been received previously. So, Your Honor, I think that's
5 why we have certificates of service, we rely upon those, and
6 those were in the Court's record, and I would point to
7 those. And, Judge, here we are four years later, we've lost
8 a witness, we have no discovery, and the case just has been
9 dragged on for far too long at this point. I think that
10 those address the four things that Ms. Gersten raised.

11 THE COURT: Okay. Let me ask you a question, I know
12 that you filed a separate motion, the pleading with the
13 codefendant, do you feel like -- and I've got a copy of
14 that -- do you feel like you've now argued that motion
15 sufficiently? Because I think both of you -- both you and
16 Ms. Gersten have educated me as to what your positions are
17 on those, but do you have anything else just related to that
18 motion?

19 MR. SAWYER: Judge, very briefly, and it won't take me
20 long to address that one. It's Rule 25. And obviously
21 there's not a lot of case law on Rule 25, but there is a
22 little bit of it. It's based off the federal rule, but our
23 rule promulgators, I think, made a wise decision in two
24 regards. One, I dealt with this in the federal courts, the
25 federal courts require almost an impossible service rule,

1 which is you have to serve the beneficiaries of what would
2 be the estate, and as the opposing party typically it's
3 almost impossible to be in a position to identify those
4 individuals. Our state court rule promulgators thankfully
5 did not include that part in our version of Rule 25. So in
6 the service rule to my understanding it says as with any
7 other motion under the South Carolina rules which is you
8 mail to the last known address, and that's important just as
9 a point of distinction because I've dealt with that in the
10 federal court recently. But more importantly, our court --
11 our version uses the phrase a reasonable time, the federal
12 rule says 90 days. The commentary on it notes that that's
13 actually a substitute, it's not meant to modify the time
14 substantially, but it gives the Court a little bit more
15 room, I believe, in terms of what is a reasonable time. But
16 in light of the fact that it's based upon -- says it's a
17 substitute for the 90 days in the federal rule I would
18 certainly think that in excess of 180 days after her
19 purported date of death is beyond the reasonable time for
20 someone to move to substitute. The Court of Appeals has
21 also noted as to Rule 25 that there is no requirement for
22 anything to be done by the opposing party, nor the party
23 that would be moving to dismiss under Rule 25. The rule
24 requires that the case be dismissed if no one moves to
25 substitute within a reasonable time of the decedent's

1 passing. So it's an automatic thing, it doesn't require any
2 personal jurisdiction, it doesn't require any proof of
3 service, all the question that the Court has is all right,
4 has someone passed away and has a reasonable amount of time
5 passed without a substitution being filed. And, Your Honor,
6 the only date that I have to operate with is the date that
7 Ms. Gersten put on the record during our last hearing, which
8 was January of this year, which is well over six months and
9 gets us past that 180 day mark by quite a margin. So that
10 would be the alternative basis, Your Honor, if the Court has
11 concerns about whether Ms. Ayoub is still alive, either
12 she's failed to prosecute and failed to respond to
13 discovery, or she's passed away and no one has moved to
14 substitute on her behalf within a reasonable period of time.
15 So it's just -- it's two different ways to deal with this in
16 the alternative, Your Honor.

17 THE COURT: All right. Ms. Gersten, Mr. Sawyer was
18 giving me his supplemental arguments relating to Rule 25 and
19 the dismissal of Ms. Ayoub's case. Do you have anything
20 that you wanted to add to that? And I caution you, I know I
21 mentioned practicing without a license, and I still would
22 caution you on that, I think I would be remiss if I did not.
23 But given my statement about that, do you have anything to
24 argue based on what Mr. Sawyer just argued? And I won't
25 hold you to the standard that you're practicing law without

1 a license, how about that.

2 MS. GERSTEN: Well, thank you very much. And I
3 definitely can even do it in a way that I think will even
4 more so avoid that. I'll just read the law that he's
5 referring to, which is Rule 25, substitution of parties. A
6 death, number one. If a party dies and the claim is not
7 thereby extinguished, the Court may order substitution of
8 the proper party. Motion for substitution may be made by
9 any party or by the successors or representatives of the
10 deceased party, and together with the notice of hearing
11 shall be served on the parties as provided in Rule 5, and
12 upon persons not parties in the manner provided by Rule 4 of
13 the service of summons. If substitution is not made within
14 a reasonable time the action may be dismissed as to the
15 deceased party. Counsel of record for such deceased party
16 shall give notice to all other parties of the death of such
17 parties as soon as practicable after obtaining such
18 knowledge and of the name and address of the proper parties
19 who should be substituted. Now, there is a note that says
20 this Rule 25A1 is substantially the same as Federal Rule
21 25A. In the federal rule the motion for substitution is to
22 be made within 90 days after notice of death is suggested
23 upon the record. The rule substitutes a reasonable time
24 after such knowledge is obtained. So in just discussing
25 this law and staying away from even appearing as though I'm

1 practicing law, which I'm not, or representing someone, the
2 key thing here is made within 90 days after notice of death
3 is suggested, suggested upon the record. Well, I suggested
4 it July 28, 2022, and if you give 90 days that hasn't
5 happened yet. October 26, 2022, would be 90 days. Now,
6 although I mentioned the date of January 11th, 2022, this
7 year, which I have not confirmed for myself yet, I did not
8 say that that's the date that I learned of this, but that's
9 all irrelevant according to the rules. According to the
10 rules it's the suggestion on the record, that was suggested
11 July 28th, 2022, as I intend on filing a substitution of
12 parties, and I have even spoken to numerous attorneys, so
13 many. And there's probate, there's all kind of different
14 ways, there's so many different ways of that. But the thing
15 is I'm within that reasonable time and I would ask the Court
16 to put a pause on this and perhaps set another hearing to
17 permit at least the 90 days, which I'll have to work faster
18 than this, it's getting a death certificate, which I think
19 is the key to proving that she's deceased. Otherwise I
20 don't know how else I can prove other than the power of
21 attorney that I do have, which I have not submitted because
22 I felt that my time wasn't due yet, that I'm still within
23 the reasonable time. And, yes, I feel that that has not
24 expired yet. It did not begin on a date of her death, it's
25 a date that's suggested on the record.

1 THE COURT: Okay. Thank you very much. Any reply to
2 that, Mr. Sawyer?

3 MR. SAWYER: Yes, Your Honor. It can't be the date
4 that's suggested on the record because that's definitely
5 supposed to be filed or dealt with by her attorney, and she
6 doesn't have an attorney, so it in effect will never
7 actually get his anywhere with this. And frankly I'm not in
8 a position that I could ever get the proof of her death
9 without knowing about it. But at the end of the day the
10 rule itself actually -- and not the comments to the rule,
11 but the rule itself says it's not made within a reasonable
12 time. It says if a party dies. So the opening line of
13 paragraph A1 is if a party dies and the claim is not thereby
14 extinguished...and then if a substitution is not made within
15 a reasonable time the action may be dismissed as to the
16 deceased party. Rule A1, which sets that forth doesn't
17 state that it's based upon the suggestion of death, and
18 that's not how the Court of Appeals has looked at it either
19 when it has reviewed that rule. So at the end of the day
20 we're not 90 days, we're 180 days, and that's well beyond a
21 reasonable time for someone to have filed a substitution if
22 it was going to happen, and at the end of day it hasn't.

23 THE COURT: Okay. Okay. And thank y'all very much.
24 Can I ask a point of privilege? Can I take a break for
25 about 30 minutes and then let's reconvene and I will give

1 you an update? If I'm able to make a ruling, make a ruling
2 at that time, if not I'll just reconvene and let you know
3 I'm not going to make a ruling. Can we do that?

4 MR. SAWYER: That's fine with me, Your Honor.

5 THE COURT: Ms. Gersten, is that okay with you?

6 MS. GERSTEN: Well, I mean, do I need to -- because I
7 would like to take a break. Again, it takes me a half hour
8 to get out of the chair, and so if I would have to wait I
9 would be just sitting in the chair for a half hour. I'm not
10 trying to be difficult, it's just that it would be easier
11 for me -- I mean, I don't want to be difficult. I mean, do
12 I just sit in the chair? You said you may not even have a
13 ruling, maybe it would be easier for you to take a full day
14 to think about this, and I'm fine, I don't need an answer
15 today.

16 THE COURT: I would like to -- I just want to review my
17 notes to be sure that I've got all of the questions that I
18 have has been answered, and if I have anymore maybe ask more
19 of them. But I tell you what, can we get back in 40
20 minutes, how about that? That would put us at 4:30.

21 MS. GERSTEN: Okay. So then I could take a quick
22 catheter break, thank you very much.

23 THE COURT: Thank y'all very much, we'll see y'all
24 about 4:30.

25 (Break in proceedings.)

1 THE COURT: Okay. Thank y'all for getting back
2 together. Mr. Sawyer, can you hear me okay?

3 MR. SAWYER: Yes, Your Honor.

4 THE COURT: Ms. Gersten, can you hear me okay?

5 MS. GERSTEN: Yes, sir, thank you for asking.

6 THE COURT: Thank y'all very much. Okay. A couple of
7 general observations first. Okay. Ms. Gersten, I probably
8 covered this with you last time because I cover this with --
9 I try to do this with any pro se litigant. I'm of the very
10 strong opinion it's never a wise thing to do for a lay
11 person to represent themselves in a court of law. You
12 definitely have a right to do so, but I just don't think
13 it's a wise thing to do. Frequently pro se litigants are --
14 get tripped up or get -- or else -- pro se litigants are
15 bound by the same rules of evidence and the rules of
16 procedures that people who are represented by lawyers.
17 There's definitely, as you've mentioned on several
18 occasions, there's a preference for the Court, and this
19 Court tries to do the same, to not hold pro se litigants in
20 strict compliance with the rules and allows some leeway.
21 But the Court also has to apply the rules of evidence and
22 the rules of procedure in a way that is fair to everybody.
23 I say that because I'm going to grant the motion to dismiss
24 in regards to the cases. And let me offer you a reason why.
25 And I want to tell you and encourage you to not let this be

1 the end of it, of your pursuit of this litigation, because I
2 can tell by your, for lack of better words, passion, but
3 also your ability to prepare for these hearings that you are
4 very sincere and genuine in seeking those claims. But I
5 want to encourage you to talk to a lawyer. I did have a
6 chance to review the pleadings even though the issues
7 related to the pleadings were not the material issues in
8 front of this Court. This is an automobile accident that
9 happened a long time ago, March of 2015 as alleged in the
10 complaint. And based on the allegations in the complaint,
11 the complaint is crafted in a way that it seems to, this is
12 my description, and I'm sure that maybe lawyers will come up
13 with a better way to say it, that the single complaint has
14 tried to act as a catch all to bring everybody into the
15 action. And that is unusual for this Court to see a
16 complaint filed like that, where everybody, and I mean
17 everybody, including insurance companies, liability
18 insurance company, UIM insurance companies, just an array of
19 different defendants have been brought into the same action,
20 and so that is unusual. And if you do have -- and the
21 reason I want you to talk to a lawyer is because the
22 complaint itself -- if we had lawyers arguing today they
23 would argue probably they wanted separate different types of
24 lawsuits in regards to the -- in regards to the litigation
25 that was filed. Because insurance coverage, whether it be

1 first party coverage, or liability coverage, or UIM
2 coverage, or UM coverage, all of that is handled separately
3 from the actual litigation that establishes the claims of
4 liability and damages, and I really think you would be well
5 served if you have legal counsel to filter through that.
6 Because an individual who has been involved in an automobile
7 accident may have claims against the at-fault party's
8 insurance companies, as well as have claims as you have
9 argued today where your own insurance company where possibly
10 you paid for some type of insurance coverage, or they would
11 have obligations to respond. And those are different
12 obligations, and those different obligations arise different
13 duties under the law. I know you phrased your complaint as
14 both in negligence as well as breach of contract claims, and
15 those are -- and in automobile accidents that's just unusual
16 to have those pled together, so I encourage you to talk to a
17 lawyer about those. I'm going to grant the motions to
18 dismiss dealing with the motions to compel and in the
19 alternative the motions to dismiss as to both the
20 defendants. So I'll ask Mr. Sawyer to prepare a formal
21 order that will summarize his arguments to me. I think his
22 arguments succinctly gave the reasons that justified the
23 dismissal. In particular the one of the -- once you get
24 involved in litigation one of the aspects of being involved
25 in litigation is you've got to comply with discovery. I

1 think both sides are entitled to conduct discovery, and
2 given that this is a 2015 litigation this motion, the
3 discovery requests were filed in 2020, even with the
4 regrettable pandemic that we all lived through that did not
5 stop the litigation, and so I think a sufficient enough time
6 has passed to grant the motion. I think if I didn't I would
7 actually be denying reasonable due process to the
8 defendants. In regards to the other motions, I went back
9 and took a look at the procedural process of those motions.
10 I would -- if I were ruling on those motions since other
11 judges have decided them I would have to apply an abuse of
12 discretion standard, and I would have to set out -- I would
13 have to find that the other judges, Judge Hayes and Judge
14 Gibbons, had abused their discretion in issuing those
15 orders. There's a procedural barrier that prevents me from
16 making that determination whether they did or they did not,
17 and that is that those motions -- the present motions are
18 such that they needed to be filed and heard by the judge
19 that made those motions. The rules of procedure provides
20 that the -- that those motions needed to be filed with those
21 judges to allow those judges to revisit their rulings.
22 There's also a generalized rule that has been applied to me
23 in other cases to tell me I can't make rulings, and that is
24 that once a circuit court judge in a particular case has
25 made a ruling, another circuit court judge cannot reverse or

1 change that ruling that another circuit court judge has made
2 even if that second circuit court judge disagrees with them.
3 So based upon the fact that I view those motions having have
4 to be ruled on by those judges, I will -- I can't make that
5 ruling addressing the substance of it, but the procedural
6 aspects of those motions prevent me from making a ruling on
7 those motions. I will make a general observation that you
8 argued very articulately and very passionately about why you
9 feel that you need to have a separation of the property
10 damage claim and the liability claim. I struggle -- I want
11 to take a look at the law -- I struggle, that word may that
12 you referenced to me is very important. I struggled to find
13 that that word may would be defined as shall be separated,
14 and so with that word may being in there that would have
15 gone into my decision in trying to determine whether or not
16 those other judges had abused their discretion. And I just
17 point that out to you that that was some important language
18 that you pointed out, but I think that I am prohibited from
19 going in and reversing or making a decision that's contrary
20 to those other judges on those motions. I cannot stress to
21 you how impressed I am with -- while you're not represented
22 by a lawyer with your preparedness on the -- on arguing the
23 various points of rules that you wanted the Court to
24 consider. I think both Mr. Sawyer and you have provided me,
25 which is what oral argument is supposed to do, a good

1 educational foundation as to what your positions are, so I
2 wanted to be sure I understood your foundational arguments
3 from the standpoint of what law to apply or what rules to
4 apply. The -- I will note that Mr. Sawyer is being asked to
5 prepare a formal order, that's a customary practice in state
6 court litigation. It will -- I don't imagine Mr. Sawyer --
7 Mr. Sawyer has never appeared in front of me before that I
8 recall, but I don't think -- he's probably going to be fast
9 enough I'll get the order immediately. I mention that
10 because I want you to consider very seriously my
11 encouragement to go talk with a lawyer, because once Mr.
12 Sawyer delivers me the order I will make my own changes in
13 it, so what I say today is not a final ruling. Final
14 rulings made by state circuit court judges only appear in
15 the written document, so I may change something he makes, I
16 might change my mind completely, I don't do that frequently
17 but that is something that could happen. So I encourage you
18 to go talk with a lawyer and to let a lawyer know we've had
19 this proceeding, let the lawyer know what the status of it
20 is and take to that lawyer all of the documents that relate
21 to this case, because I do think that the passion that
22 you've shown and the preparation you've shown speaks well
23 for your position, and I would want you to receive the
24 appropriate legal advice. With that being said, there are
25 as you probably know -- once I do sign a final order, in the

1 event the final order is not in your favor, you do have two
2 options as I see it, you might have other options, that's
3 why I say talk to a lawyer because another lawyer might give
4 you other options, but two customary options is you can one,
5 file a motion for reconsideration. There is a time line for
6 filing that, I believe it is ten days after the order is
7 issued. That -- I will let you know that if I am asked to
8 reconsider the motion it might serve you well to have
9 complied with the discovery, the fact that we've taken so
10 long to have this motion addressed and the motion has been
11 pending. Going back and checking the clerk of court's file,
12 the clerk of court notified the parties as much as I think
13 it was October or January back when the motion was filed in
14 2020, that the motion to dismiss was pending, and then there
15 has not been any type of discovery responses filed. So I
16 would view, not to say it would be determinative, but I
17 would view favorably, I would look more favorably to a
18 motion for reconsideration if, in fact, discovery had been
19 complied with by the time the motion for reconsideration was
20 filed. Or your second alternative would be to file an
21 appeal of the written decision once I make it. Sometimes --
22 and I mention that, that sometimes I have seen parties take
23 a preliminary ruling made by a judge, they'll file --
24 they'll go through the process of filing a motion or filing
25 an appeal only to be told by the Court of Appeals or the

1 Supreme Court: You're too early, you can't file a motion,
2 then you've done a lot of work for no good. The time for
3 filing a motion to appeal also does not occur until a formal
4 order has been issued by a Court. But anyway, those are my
5 rulings on these matters. I do appreciate everyone's
6 patience with me, and I look forward to receiving a formal
7 order. Thank y'all very much.

8 MR. SAWYER: Thank you, Your Honor.

9 THE COURT: Thank y'all.

10 MS. GERSTEN: Thank you.

11 THE COURT: Thank you.

12 (End of the hearing.)

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Appellant Gersten's Exhibit List A-L (Filed March 27, 2018) from her Affidavit in Support of Property Damage Claim

Exhibit A: "Forensic Engineering Accident Reconstruction Report"

Exhibit B: "Arbitration Hearing"

Exhibit C: "Police Report"

Exhibit D: "SC Law Enforcement Division Forensic Services Laboratory Toxicology Results"

Exhibit E: "Offer Letter"

Exhibit F: "Punitive Offer Letter"

Exhibit G: "Communication with Claims Adjuster Joseph Tirbovich on or about April 27, 2016"

Exhibit H: "Transcript of Exhibit G Communication"

Exhibit I: ". Offer Letter from Representative Amy Carmack"

Exhibit J: "Communication with Claims Adjuster Joseph Tirbovich on or about February 22, 2018"

Exhibit K: "Transcript of Exhibit J Communication"

Exhibit L: "Declaration Page of Respondents Kevin Carter and Richard Davis"

FILED
2016 MAR 27 2 3:51
CLERK OF COURT
DESTER CO S.C.

Report by Donald J. Roberts, P.E.

February 18, 2016

Caption Two Passenger Vehicle Collision (Claim #:)
Involved Party Heidi Gersten
Client
Incident Date March 19, 2015
Incident Place Richburg, SC
File
Engineer Donald J. Roberts, P.E.



Resolution through engineering.

The following report concerns a collision involving a 1998 Chevrolet Mark III Conversion Van driven by Ms. Heidi Gersten and a 2008 Honda Ridgeline driven by Mr. Kevin Carter. The collision took place on March 19, 2015 on Interstate 77 near Richburg, South Carolina. Forensic Engineering conducted a detailed investigation and analysis to determine how the collision occurred. The speed and position of both vehicles were evaluated as part of the investigation.

The report is divided into the following sections:

- A. Background
- B. Work of Investigation
- C. Vehicles
- D. Collision Site
- E. Reconstruction Analysis
- F. Conclusions

Appendices

- I. South Carolina Traffic Collision Report
- II. Selected Photographs of the Involved Vehicles
- III. Selected Photographs of the Collision Scene
- IV. 1998 Chevrolet Van Crash Data Report
- V. Scale Drawings:
 - Collision Related Marks
 - Collision Sequence

A. BACKGROUND

On March 19, 2015 around 3:45 a.m., a collision occurred between a Chevrolet Mark III Conversion Van driven by Ms. Heidi Gersten and a Honda Ridgeline driven by Mr. Kevin Carter on Interstate 77 approximately 800 feet north of mile marker 61 in Chester County, South Carolina. Both vehicles were travelling north on an unlighted rural section of the interstate when the passenger's side front of the Chevrolet collided with the driver's side rear of the Honda. Additional details of the collision are reported in the South Carolina Traffic Collision Report contained in Appendix I.

B. WORK OF INVESTIGATION

_____ has conducted a reconstruction analysis to determine how the collision occurred. The following work has been conducted and documents have been reviewed as part of the analysis:

1. The South Carolina Traffic Collision Report prepared by Trooper H. A. Blackwell of the South Carolina Highway Patrol was reviewed and is included as Appendix I.
2. 40 color photographs taken at the collision scene by the South Carolina Highway Patrol were reviewed. Selected photographs are included in Appendix III.
3. The 1998 Chevrolet Mark III Conversion Van was inspected by _____ at the facilities of Copart Auto Auctions in Columbia Station, Ohio on December 20, 2015. Selected photographs of the vehicle are included in Appendix II. The Crash Data Report (CDR) imaged from the vehicle's airbag control module is included in Appendix IV.
4. The 2008 Honda Ridgeline was inspected by _____ at the facilities of Copart Auto Auctions in Gaston, South Carolina on November 10, 2015. Selected photographs of the vehicle are included in Appendix II.

5. The collision site was inspected and the collision related marks were photographed and measured by _____ on November 20, 2015.
6. Google Street View images taken shortly after the incident were reviewed.
7. Vehicle Specifications for both vehicles obtained from Expert AutoStats were reviewed.
8. Scale drawings of the collision related marks and collision sequence were created and are included as Appendix V.
9. A vehicle speed analysis was conducted using both energy dissipation and momentum methods.
10. A driver Perception Response Time (PRT) analysis was conducted.

C. VEHICLES

1. 1998 Chevrolet Mark III Conversion Van

The 1998 Chevrolet Van was inspected at the facilities of Copart Auto Auctions in Columbia Station, Ohio on December 10, 2015. The following manufacturer's information is provided:

Year/Make/Model: 1998 Chevrolet G1500 Van
Vehicle Identification Number: _____

The collision damage to the Chevrolet was to the front of the vehicle, primarily on the passenger's side. Direct contact damage to the vehicle front extends from the passenger front corner inboard approximately 2 feet. The passenger's side front wheel and suspension components had severe damage and were displaced rearward. Vehicle components were shifted primarily rearward, consistent with a partial overlap frontal collision. Both frontal airbags were deployed as a result of the collision. Additional damage to the vehicle sides, roof, and wheels are consistent with a rollover. Three-dimensional scans and photographs were used to quantify the location and extent of damage to the vehicle. This data was used for further reconstruction analysis. Selected photographs of the vehicle damage are provided in Appendix II.

The Chevrolet was equipped with an Airbag Control Module (ACM) that had a secondary function as an Event Data Recorder (EDR). [redacted] imaged the electronic data contained on the EDR by connecting directly to the ACM located under the driver's seat. An airbag deployment event was recorded as a result of the collision under investigation. However, due to a loss of power to the ACM during the collision, a full record of collision was not recorded and therefore the measured vehicle velocity change was incomplete. The Crash Data Retrieval (CDR) report from the EDR image is included as Appendix IV of this report.

2. 2008 Honda Ridgeline

The 2008 Honda Ridgeline was inspected by [redacted] at the facilities of Copart Auto Auctions in Gaston, South Carolina on November 20, 2015. Measurements and photographs were taken during the inspection. The following manufacturer's information is provided:

Year/Make/Model:	2008 Honda Ridgeline
Vehicle Identification Number:	[redacted]
Date of Manufacture:	September 2007

The Honda had collision damage to its rear. The damage was consistent with the driver's side rear of the vehicle coming into contact with the passenger's side front of the Chevrolet Van. The Honda's rear structure was displaced forward and to the left, with more extensive crush occurring on the driver's side rear of the vehicle due to the partial overlap of the collision. The rear axle of the Honda was displaced forward and damaged, especially on the driver's side. The contact area and extent of vehicle crush would have resulted in the Honda rotating severely in a clockwise direction following the impact. Three-dimensional scans and photographs were used to quantify the location and extent of damage to the vehicle. This data was used for further reconstruction analysis. Selected photographs of the vehicle damage are provided in Appendix II.

The Honda Ridgeline was not equipped by the manufacturer with an onboard Event Data Recorder prior to model year 2012. It was observed in the collision scene

photographs that the vehicle had a portable Garmin GPS device attached to the windshield. If operating during the incident, the Garmin GPS would have recorded incident related information such as vehicle speed, position, time and date. The Garmin GPS was not available during _____'s inspection of the vehicle, however, the incident data may still be present on the device if it was retained by its owner.

D. COLLISION SITE

The collision occurred on northbound Interstate 77 approximately 800 feet north of mile marker 61 near Richburg, South Carolina. The collision site was inspected by _____, on November 20, 2015. During the inspection, the general roadway configuration and the collision related marks were photographed and measured, including aerial photography and three-dimensional scans.

The collision occurred on a rural, unlighted section of northbound Interstate 77. In the area of the collision, northbound Interstate 77 has two lanes of travel, with a paved shoulder followed by a grassy shoulder area leading to a ditch. North and southbound travel are separated by a grassy median. The posted speed limit on Interstate 77 in the vicinity of the collision is 70 mph.

During _____'s inspection of the collision site, the area of the initial impact was identified by collision related scrapes and gouges in the roadway. These scrapes and gouges were verified to be the same as those from the incident by comparing them to the collision scene photographs taken by the South Carolina Highway Patrol (SCHP). Selected photographs of the collision scene taken by the SCHP are included in Appendix III. Additional roadway scrapes and tire marks related to the collision were identified in Google Street View imagery taken shortly after the incident. The final rest positions of the vehicles were identified by the investigating officer's photographs and aerial imagery of the soil furrows created as the vehicles travelled through the grassy shoulder to rest. The collision related marks in the roadway, vehicle rest positions and the general roadway configuration are identified in

Drawing _____ included in Appendix V.

E. RECONSTRUCTION ANALYSIS

A reconstruction analysis has been conducted to determine the positions and orientations of the vehicles at the point of impact. Additionally, a speed evaluation has been conducted to determine the impact speed of both of the vehicles. The following information was considered during the analysis: measurements and photographs taken by _____ at the collision site and during vehicle inspections; SCHP photographs taken of the collision scene on the day of the incident; and Google Street View imagery of the collision site taken shortly after the incident.

Gouges and scrapes documented at the collision site by _____ were used to evaluate the initial point of impact between the vehicles. Evidence from photographs taken at the collision scene on the day of the collision were also used to supplement this data. The collision related marks were consistent with being created when components of the Honda Ridgeline and Chevrolet Van were forced down into the pavement during their initial engagement. Post-impact tire marks and scrapes are consistent with the Honda Ridgeline initiating a clockwise spin after impact, traveling off of the roadway and through the grassy shoulder before coming to rest. Additional post-impact tire marks and an extended rim gouge are consistent with the Chevrolet Van proceeding into a severe yaw following impact. These tire marks are followed by a series roadway scrapes consistent with a rolling vehicle as it travelled off of the roadway and into the grassy shoulder before coming to rest.

Based on the analysis of the collision related marks and overlapping damage patterns between the vehicles, it was determined that the collision occurred with the Chevrolet Van travelling fully within the right lane of travel. The Honda Ridgeline was traveling with its driver's and passenger's side tires straddling the white edge line separating the right travel lane from the paved shoulder. The vehicles are depicted at their initial impact positions in _____ Drawing _____ of Appendix V.

A speed evaluation of the vehicles was conducted considering the energy dissipated as the vehicles travelled from the point of impact to their rest positions. A crush energy analysis was also utilized to determine the change in velocity (commonly referred to as a delta v) of the vehicles during the collision. Based upon the results of the analysis, it was evaluated that the speed of the Honda Ridgeline was less than 20 mph at impact. The speed of the Chevrolet Van was evaluated to be approximately 75 mph at impact.

The speed and location of the Honda in the impact area were consistent with the vehicle entering the travel lanes from the right shoulder of the interstate highway. The slow speed of the Honda created a hazardous high closure rate situation between the two vehicles. Additionally, attempting to enter the travel lane from the shoulder creates an unexpected cut-off hazard for approaching drivers. This type of maneuver is most dangerous at night due to the increased difficulty approaching drivers have of appreciating the high closing rate created by the situation. Based upon published research concerning typical driver perception response times for a similar situation, a reasonable driver that is cut-off by a slow moving vehicle at night would not have sufficient opportunity to avoid the hazard.

F. CONCLUSIONS

Based upon the work conducted to date, my education and professional experience, it is my opinion that:

1. The driver of the 2008 Honda Ridgeline, Mr. Kevin Carter, attempted to enter the travel lanes of Interstate 77 from its right shoulder at a slow speed when it collided with the 1998 Chevrolet Van driven by Ms. Heidi Gersten.
2. The evaluated impact speed of the Honda was less than 20 mph, significantly below the posted speed limit of 70 mph.
3. The evaluated impact speed of the Chevrolet was approximately 75 mph, consistent with travelling at an appropriate speed for the interstate.

4. The driver of the 2008 Honda Ridgeline created a hazardous situation by cutting off the driver of the 1998 Chevrolet Van while attempting to re-enter the travel lanes from the shoulder of the interstate highway.
5. The high closure rate situation created by the driver of the Honda posed a significant hazard for approaching drivers. This dangerous condition was further degraded due to it occurring during the hours of darkness on an unlighted section of the interstate. A reasonable driver that is cut-off by a slow moving vehicle at night would not have sufficient opportunity to avoid the hazard.
6. The collision was caused by the hazard created by the driver of the Honda when he attempted to re-enter the travel lanes from the shoulder at a slow speed. The driver of the Chevrolet did not have sufficient opportunity to avoid this hazard.

Each of these opinions is stated with a reasonable degree of engineering and accident reconstruction certainty. They are subject to additions or changes as additional material becomes available to me.

Appendix I
South Carolina Traffic Collision Report

CLERK OF COURT
CHARLESTON CO S.C.
2010 MAR 27 P 3:58
FILED

ORIGINAL-AMENDED

SOUTH CAROLINA DPS/DHS & DMV USE ONLY				Page # 1		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 11/2011)				# Of Units 02		Amended - Attach Copy of Original Report Corrected		Notified 0359		Arrived 0412																																																															
Date 03-10-2015		Time of Collision 0345		County 12		1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- PP		Collision Location (Rt. # / Name) 77 / INTERSTATE 77				Miles: 1.04		Dir. In (Near City or Town of) N E S W RICHBURG																																																															
Lane # / Dir. 2 / 4 N E S W		Distance Offset .50 Miles		Direction N E S W		1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- Other		Base Intersection (Rt. # / Name) 497 / MURDOCK RD				GPS COORDINATES 00 00' 00.00"		DEGREES MINUTES SECONDS																																																															
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E-894782										E-895228																																																																					
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#Occ 1		Birth Date		City, State, & Zip		State		Driver's License #		Class C		Insurance Company		State		Driver's License #		Class D		Insurance Company																																																											
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State NC		Year 2015		License Plate #		Owner's D.L. #		Home Telephone		Owner's Full Name CARTER KEVIN		State OH		Year 2015		License Plate #		Owner's D.L. #		Home Telephone		Owner's Full Name AYOUB IVANKA		State OH		Year 2015		License Plate #		Owner's D.L. #																																																	
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Appendix II
Selected Photographs
of the Involved Vehicles



Figure 1. Frontal damage to Chevrolet Van



Figure 2. Frontal damage to Chevrolet Van



Figure 3. Frontal damage to Chevrolet Van



Figure 4. Rollover damage to driver's side of Chevrolet Van



Figure 5. Rollover damage to passenger's side of Chevrolet Van



Figure 6. Rear damage to Honda Ridgeline



Figure 7. Driver's side rear damage to Honda Ridgeline



Figure 8. Rear damage to Honda Ridgeline



Figure 9. Passenger's side rear damage to Honda Ridgeline



Figure 10. Passenger's side of Honda Ridgeline

Appendix III
Selected Photographs of the Collision Scene
(Taken by SCHP)



Figure 1. Collision related marks in the impact area

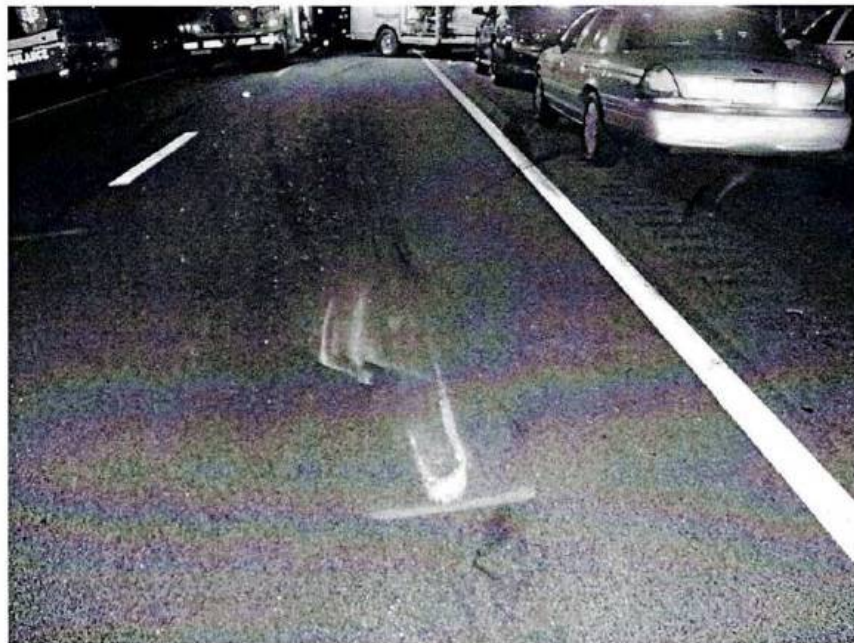


Figure 2. Collision related marks in the impact area



Figure 3. Collision related marks in the impact area



Figure 4. Collision related marks leading to rest position of Chevrolet Van

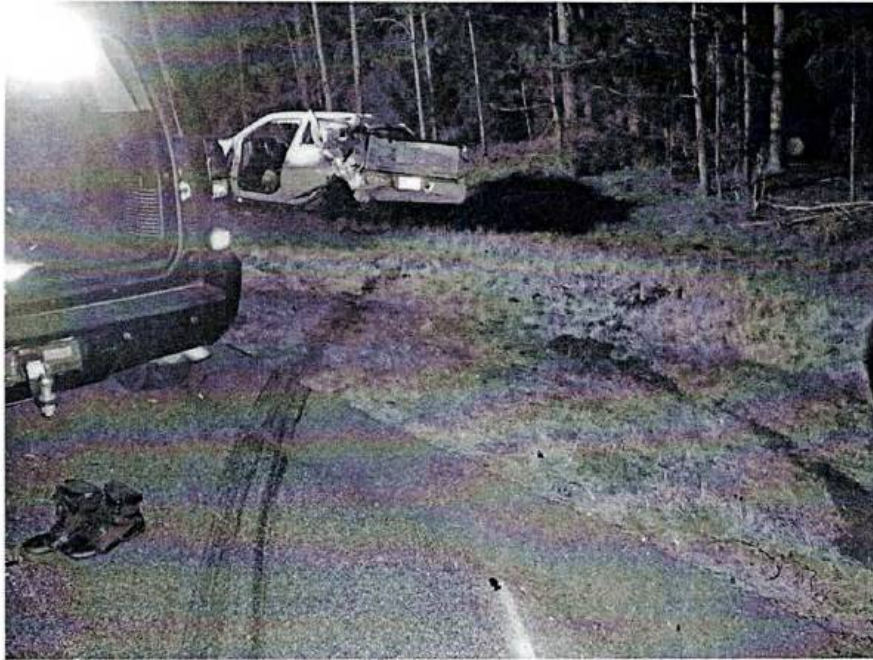


Figure 5. Collision related marks leading to rest position of Honda Ridgeline



Figure 6. Rest position of Honda Ridgeline



Figure 7. Rest position of Honda Ridgeline



Figure 8. Rest position of Chevrolet Van

Appendix IV
1998 Chevrolet Van Crash Data Report



IMPORTANT NOTICE: Robert Bosch LLC and the manufacturers whose vehicles are accessible using the CDR System urge end users to use the latest production release of the Crash Data Retrieval system software when viewing, printing or exporting any retrieved data from within the CDR program. Using the latest version of the CDR software is the best way to ensure that retrieved data has been translated using the most current information provided by the manufacturers of the vehicles supported by this product.

CDR File Information

User Entered VIN	
User	
Case Number	
EDR Data Imaging Date	12/10/2015
Crash Date	03/19/2015
Filename	
Saved on	Thursday, December 10 2015 at 16:30:09
Collected with CDR version	Crash Data Retrieval Tool 16.2.1
Reported with CDR version	Crash Data Retrieval Tool 16.2.1
EDR Device Type	Airbag Control Module
Event(s) recovered	Deployment

Comments

Imaged DTM. Copart Columbia Station, OH.

Data Limitations

Recorded Crash Events:

There are two types of Recorded Crash Events. The first is the Non-Deployment Event. A Non-Deployment Event records data but does not deploy the air bag(s). The SDM can store up to one Non-Deployment Event. This event can be overwritten by an event that has a greater SDM recorded longitudinal velocity change. This event will be cleared by the SDM, after approximately 250 ignition cycles. This event can be overwritten by a second Deployment Event, referred to as a Deployment Level Event, if the Non-Deployment Event is not locked. The data in the Non-Deployment Event file will be locked, if the Non-Deployment Event occurred within five seconds before a Deployment Event. A locked Non Deployment Event cannot be overwritten or cleared by the SDM. The second type of SDM recorded crash event is the Deployment Event. The SDM can store up to two different Deployment Events, if they occur within five seconds of one another. If a Deployment Level Event occurs within five seconds after the Deployment Event, the Deployment Level Event will overwrite any non-locked Non-Deployment Event. Deployment Events cannot be overwritten or cleared by the SDM. Once the SDM has deployed an air bag, the SDM must be replaced.

Data:

- SDM Recorded Vehicle Longitudinal Velocity Change reflects the change in longitudinal velocity that the sensing system experienced during the recorded portion of the event. SDM Recorded Vehicle Longitudinal Velocity Change is the change in velocity during the recording time and is not the speed the vehicle was traveling before the event, and is also not the Barrier Equivalent Velocity. The SDM records the first 300 milliseconds of Vehicle Longitudinal Velocity Change after Algorithm Enable. The maximum value that can be recorded for Vehicle Longitudinal Velocity Change is 56 MPH. Velocity Change data is displayed in SAE sign convention.
- Driver's Belt Switch Circuit Status indicates the status of the driver's seat belt switch circuit.
- The Time between Non-Deployment and Deployment Events is displayed in seconds. If the time between the two events is greater than five seconds, "N/A" is displayed in place of the time.
- If power to the SDM is lost during a crash event, all or part of the crash record may not be recorded. An indication of a loss of power would be if the ignition cycles at the event is recorded as zero. Data recorded after that may not be reliable, such as Time Between Non-Deployment and Deployment Events, Driver Belt Switch Circuit Status, and Passenger SIR Suppression Switch Circuit Status.
- All data should be examined in conjunction with other available physical evidence from the vehicle and scene.

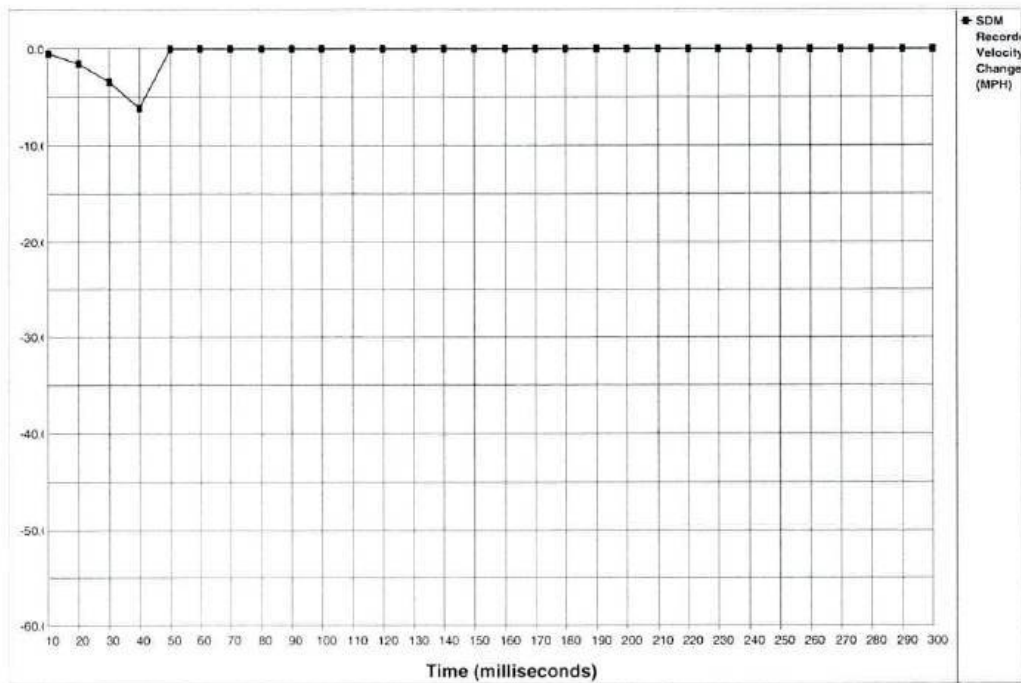
Data Source:

- All SDM recorded data is measured, calculated, and stored internally, except for the following:
- The Driver's Belt Switch Circuit is wired directly to the SDM.
 - The Passenger Front Air Bag Suppression Switch Circuit is wired directly to the SDM.

Hexadecimal Data:

Data that the vehicle manufacturer has specified for data retrieval is shown in the hexadecimal data section of the CDR report. The hexadecimal data section of the CDR report may contain data that is not translated by the CDR program. The control module contains additional data that is not retrievable by the CDR tool.

01033_SDMRSD_r002



Time (milliseconds)	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150
Recorded Velocity Change (MPH)	-0.44	-1.54	-3.51	-6.14	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Time (milliseconds)	160	170	180	190	200	210	220	230	240	250	260	270	280	290	300
Recorded Velocity Change (MPH)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Hexadecimal Data

```

B600: 20 50 48 00 00 00 00 00
B608: 00 00 00 AA AA 00 00 00
B610: 00 00 00 AA AA 69 F9 DD
B618: F9 F9 F9 F9 F9 F9 FF 00
B620: AA AA AA 00 00 00 00 7D
B628: 00 00 40 11 02 07 10 1C
B630: 00 00 00 00 00 00 00 00
B638: 00 00 00 00 00 00 00 00
B640: 00 00 00 00 00 00 00 00
B648: 00 00 00 00 00 00 00 00
B650: 00 00 00 00 00 00 00 00
B658: 00 00 00 00 00 00 00 00
B660: 00 00 00 00 00 00 00 00
B668: 00 00 00 00 00 00 00 00
B670: 00 00 00 00 00 00 00 00
B678: 00 00 00 00 00 00 00 00
B680: 00 00 00 00 00 00 00 00
B688: 00 00 00 00 7D FA 00 00
B690: 7D FA 00 00 7D FA 00 00
B698: 7D FA 00 00 7D FA 00 00
B6A0: 7D FA 00 00 00 00 00 00
B6A8: 00 00 69 DD 00 00 81 00
B6B0: 00 00 00 00 00 00 00 00
B6B8: 00 00 00 00 00 A2 5F C4
B6C0: 3B 3F 32 01 06 64 02 00
B6C8: 00 AA 00 00 00 00 FF FF
B6D0: BE BC CA B4 CB CE BE AC
B6D8: 69 BA B4 C7 ED 80 00 00
B6E0: 00 00 12 58 AA 00 01 5A
B6E8: 01 AA 00 00 00 00 00 00
B6F0: FF 06 F0 05 50 05 0B 1D
B6F8: 58 37 37 37 37 37 37 37
B700: 38 44 4C 53 56 5A 61 66
B708: 6A 70 79 80 92 9B AC BC
B710: C7 D3 DF E9 F5 40 43 46
B718: 49 4C 4F 51 55 57 5A 5C
B720: 5E 60 62 64 66 67 69 6A
B728: 6C 6D 6E 6F 70 71 72 73
B730: 75 75 76 77 78 79 79 7A
B738: 7A 7B 7B 7C 7C 7C 7C 7C
B740: 7C 7C 7C 7C 7C 7C 7C 7C
B748: 7C 7C 7C 7C 7C 7C 7C 7C
B750: 7C FF FF FF FF FF FF FF
B758: FF FF FF FF FF FF FF FF
B760: FF 00 01 02 28 14 10 06
B768: 0E AA 04 4E 4F 37 37 37
B770: 37 37 37 37 37 41 49 4F
B778: 52 56 5C 61 63 63 63 63
B780: 63 63 63 63 63 63 63 63
B788: 63 63 63 63 63 63 63 63
B790: 63 63 63 63 63 63 63 63
B798: 63 63 63 63 63 63 63 63
B7A0: 63 63 63 63 63 63 63 63
B7A8: 63 63 63 63 63 63 63 63
B7B0: 63 63 63 63 63 63 63 63
B7B8: 63 63 63 FF FF 00 00 00
B7C0: 00 00 B0 D2 00 00 00 00
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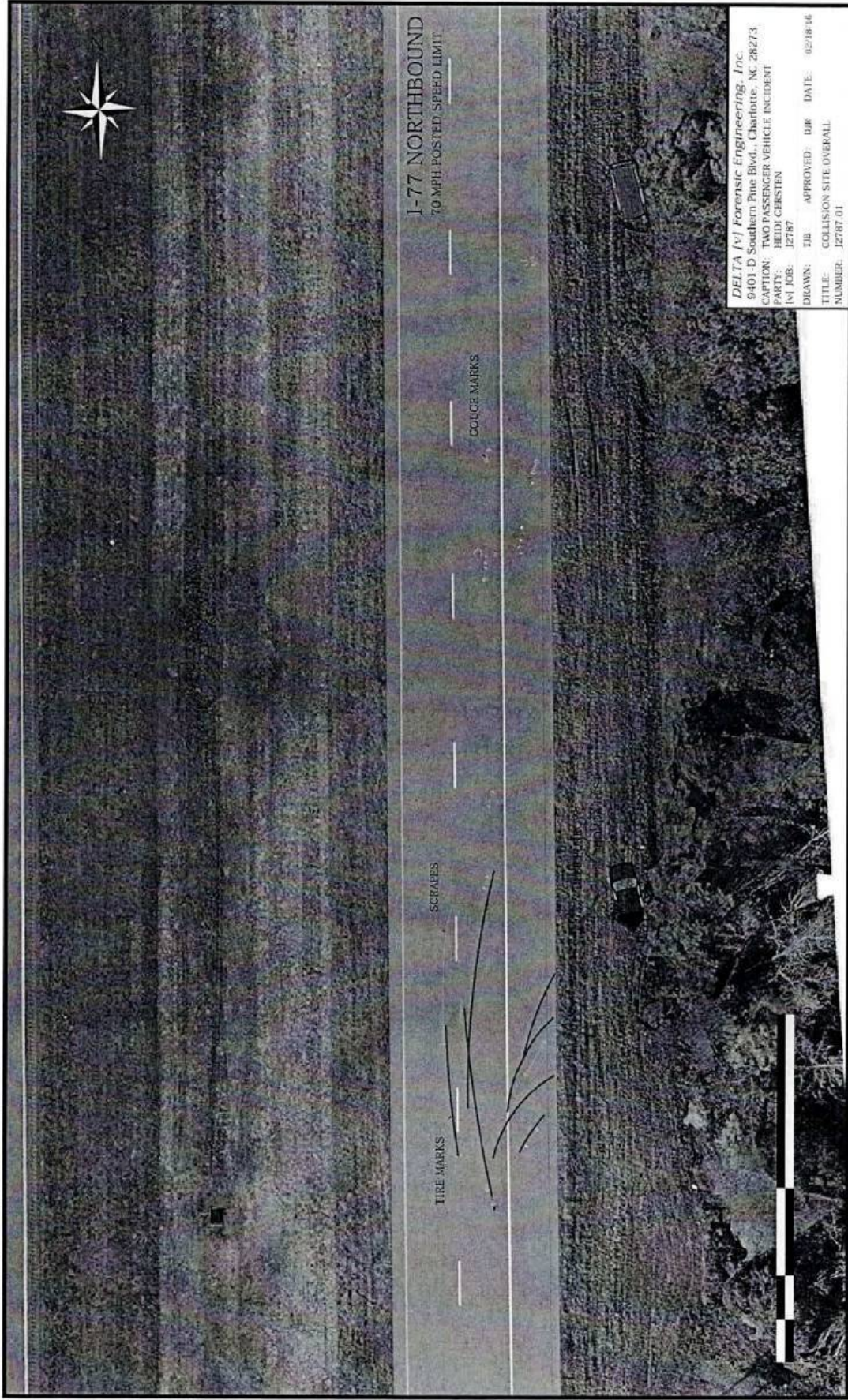


B7F8: 00 00 A5 A5 A5 A5 75 FD

Disclaimer of Liability

The users of the CDR product and reviewers of the CDR reports and exported data shall ensure that data and information supplied is applicable to the vehicle, vehicle's system(s) and the vehicle ECU. Robert Bosch LLC and all its directors, officers, employees and members shall not be liable for damages arising out of or related to incorrect, incomplete or misinterpreted software and/or data. Robert Bosch LLC expressly excludes all liability for incidental, consequential, special or punitive damages arising from or related to the CDR data, CDR software or use thereof.

Appendix V
Scale Drawings



I-77 NORTHBOUND
70 MPH POSTED SPEED LIMIT

POLICE MARKS

SCRAPES

TIRE MARKS

DELTA JV Forensic Engineering, Inc.
6401 D Southern Pine Blvd., Charlotte, NC 28273
CAPTION: TWO PASSENGER VEHICLE INCIDENT
PARTY: DELTA GERSTEN
DRAWN: TJB APPROVED: DJF DATE: 02/18/16
TITLE: COLLISION SITE OVERALL
NUMBER: J2787 01



ARBITRATION FORUMS, INC.
Industry created. Membership driven.

AUTOMOBILE DECISION

DOCKET NUMBER:

PUBLICATION DATE:

04/24/2017

CASE INFORMATION

Date Filed: 12/07/2016
Date of Loss/Accident: 03/19/2015
Place of Loss/Accident: CHESTER, SC

Total Company Claim Amount:
Deductible Paid By Insured:
Legal Fees Sought:

Party	Subsidiary	Representative	File Number/Remit Addr	Insured Name
App				RICHARD DAVIS

Rsp 01

Rsp 02

IVANKA AYOUB
FILED
2017 MAR 27 P 58
CLERK OF COURT
CHESTER CO S.C.
HEIDI GRESTEN

Arbitrator(s) considered the following in rendering the decision (Hearing Representation Information):

Applicant	APPLICATION, CONTENTIONS, ALL LISTED EVIDENCE RECEIVED
Respondent 1	RESPONSE, CONTENTIONS, ALL LISTED EVIDENCE RECEIVED
Respondent 2	RESPONSE, CONTENTIONS, ALL LISTED EVIDENCE RECEIVED

DECISION INFORMATION

Arbitrator #1:

Date Closed: 04/21/2017

Note: Above Arbitrator(s) have acknowledged the AF Neutrality Statement.

Summary of Dispute

This is a liability dispute involving a rear end accident. [redacted] contends they were traveling when [redacted] failed to a safe distance and speed striking [redacted]'s rear. [redacted] disagrees and contends they traveling when [redacted] attempted to enter onto the lane from the right shoulder causing this collision.

Liability Decision

Respondent #01 - [redacted] admits 0% liability. [redacted] based on [redacted] failed to prove that

Applicant proved 0% liability against Respondent #01 - [redacted] failed to maintain a safe distance or vehicle control

Respondent #02 - [redacted] admits 0% liability. [redacted] based on [redacted] failed to prove that [redacted] failed to maintain a safe

Applicant proved 0% liability against Respondent #02 - [redacted] distance or vehicle control

Damages Decision





ARBITRATION FORUMS, INC.
Industry created. Membership driven.

AUTOMOBILE DECISION

DOCKET NUMBER:

PUBLICATION DATE:

04/24/2017

Applicant

proved NO LIABILITY.

Damages Proven:

Respondent(s) indicate that they are not disputing damages.

What evidence caused you to render this decision and why?

There were no recorded statements provided. provided a police report which does list as at fault. however, provided a comprehensive accident reconstruction report which gives a detailed analysis. Based on the report findings, was traveling in the right lane of the highway when attempted to enter onto the lane from the right shoulder. failed to yield the right of way and operate their vehicle in a safe manner which is the proximate cause for the loss.

Award

State Negligence Law applied to award calculations: 50% Comparative

<u>Rsp #</u>	<u>Damages Award Against (not including Deductible)</u>	<u>Insured Paid Deductible Award Against</u>	<u>Legal Fees Award Against</u>	<u>Credit for Prior Payment</u>	<u>Total Award Against</u>

01

02

TOTAL

If you have any questions about this decision, please call our Member Service Center at (866) 977-3434.

FILED
2018 MAR 27 P 3:58
CLERK OF COURT
CHESTER CO S.C.

ORIGINAL

SOUTH CAROLINA DPE/DHS & DMV USE ONLY				Page # 1		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 11/2011)				# Of Units	Amended - Attach Copy of Original Report	Notified	Arrived		
Date	Time of Collision	County	1-Interstate 2-US Primary 3-SC Primary	4-Secondary 5-County 6-PP	Collision Location (Rt. # / Name)	7-Interstate 8-County 9-PP	10-Interstate 11-County 12-PP	13-Interstate 14-County 15-PP	16-Interstate 17-County 18-PP	19-Interstate 20-County 21-PP	22-Interstate 23-County 24-PP	25-Interstate 26-County 27-PP	28-Interstate 29-County 30-PP		
03-19-2015	03:46	12	2-US Primary	3-SC Primary	77 / INTERSTATE 77	8-County	9-PP	10-Interstate	11-County	12-PP	13-Interstate	14-County	15-PP		
Lane # / Dir.	Distance Offset	Direction	1-Interstate 2-US Primary 3-SC Primary	4-Secondary 5-County 6-Other	Base Intersection (Rt. # / Name)	7-Interstate 8-County 9-PP	10-Interstate 11-County 12-PP	13-Interstate 14-County 15-PP	16-Interstate 17-County 18-PP	19-Interstate 20-County 21-PP	22-Interstate 23-County 24-PP	25-Interstate 26-County 27-PP	28-Interstate 29-County 30-PP		
2 / 4	.50	N E	1-Interstate 2-US Primary 3-SC Primary	4-Secondary 5-County 6-Other	487 / MURDOCK RD	8-County	9-PP	10-Interstate	11-County	12-PP	13-Interstate	14-County	15-PP		
R.R. Id.	From	Ramp Only	To	1-Interstate 2-US Primary 3-SC Primary	4-Secondary 5-County 6-Other	Second Intersection (Rt. # / Name)	7-Interstate 8-County 9-PP	10-Interstate 11-County 12-PP	13-Interstate 14-County 15-PP	16-Interstate 17-County 18-PP	19-Interstate 20-County 21-PP	22-Interstate 23-County 24-PP	25-Interstate 26-County 27-PP		
	N E	1-Entrance 2-Exit	S W	1-Interstate 2-US Primary 3-SC Primary	4-Secondary 5-County 6-Other	52 / OLD MILL RD	8-County	9-PP	10-Interstate	11-County	12-PP	13-Interstate	14-County		
E-894782	Driver/Pedestrian's Full Name	CARTER	KEVIN	E-895228	Driver/Pedestrian's Full Name	GERSTEN	HEIDI	GPS COORDINATES 00 00 00.00 DEGREES MINUTES SECONDS							
Unit #	Side	Place	Street	Unit #	Side	Place	Street	Latitude 34 41 41.32 Longitude 81 01 46.06							
01	M	W		02	F	W									
1	Birth Date	City, State, & Zip		1	Birth Date	City, State, & Zip									
State	Driver's License #	Class	Insurance Company	State	Driver's License #	Class	Insurance Company								
NC		C		FL		D									
Year	Body	Vehicle Make	Unit #	Year	Body	Vehicle Make	Unit #								
2008	PK	HOND		1998	VN	GMC									
State	Year	License Plate #	Owner's D.L. #	State	Year	License Plate #	Owner's D.L. #								
NC	2015			OH	2015		NONE								
Home Telephone	Owner's Full Name	CARTER	KEVIN	Home Telephone	Owner's Full Name	AYOUB	IVANKA								
Bus. Telephone	Street			Bus. Telephone	Street										
Contributed To Collision	City, State, & Zip			Contributed To Collision	City, State, & Zip										
Yes	No			Yes	No										
Estimated Speed	Speed Limit	C.D.L. Req. Yes (No)	T/B S Req. Yes (No)	Alc/Drg Info (see back) Yes (No)	Estimated Speed	Speed Limit	C.D.L. Req. Yes (No)	T/B S Req. Yes (No)	Alc/Drg Info (see back) Yes (No)						
70	70	Summons #	Code	Summons #	Code	Summons #	Code	Summons #	Code	Summons #	Code	Summons #	Code		
			99												
Driver/Pedestrian's Full Name				State				Year				License Plate #			
Unit #				Sex				Race				Street			
01															
Birth Date				City, State, & Zip				Home Telephone				Owner's Full Name			
State				Driver's License #				Class				Insurance Company			
Year				Body				Vehicle Make				VIN #			
Dir. of Travel:				Unit 1: (N) S E W				Unit 2: S E W				Unit 3: N S E W			
Unit 1 Dam.				Unit 2 Dam.				Unit 3 Dam.				Prop. Dam. 1			
\$ 10000				\$ 10000				\$				\$			
Property Owner/Witness				Property Owner/Witness				Property Owner/Witness				Property Owner/Witness			
Address				Address				Address				Address			
State				Zip				Phone				State			
Photo				Describe What Happened (Refer to Units by Number)				Photo				Describe What Happened (Refer to Units by Number)			
(Y N)								(Y N)							
UNIT 1 AND UNIT 2 WERE TRAVELING NORTH ON I-77. THE DRIVER OF UNIT 2 DRIVING TOO FAST FOR CONDITIONS (INATTENTION) STRUCK UNIT 1 IN THE REAR.								UNIT 1 AND UNIT 2 WERE TRAVELING NORTH ON I-77. THE DRIVER OF UNIT 2 DRIVING TOO FAST FOR CONDITIONS (INATTENTION) STRUCK UNIT 1 IN THE REAR.							
EXHIBIT								EXHIBIT							
tabbies								tabbies							
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.								NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.							
Investigating Officer's Name				Rank				Badge #				Jurisdiction Code			
BLACKWELL - H A				TRP				T 8 0 7				H P O 4			
Review Date				Reviewer's Name				Rank				Internal Agency Code			
03-28-2015				K B Winburn				Cpl				15BW058607			

[illegible]

ADVISEMENT OF IMPLIED CONSENT RIGHTS

Kevin Marc Carter
Subject's Name (Print)



Date of Birth

Driver's License Number

State Licensed

DRIVING UNDER THE INFLUENCE ADVISEMENT

- (A) Will test be video recorded? If answer is Yes, start here-> - Inform subject of video recording.
If answer is No, start here-> - Inform subject of type samples requested(i.e. breath,blood,urine).
- (B) Provide subject with a written copy of the following advisement and read the advisement to the subject:
- You are under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
 - The arresting officer has directed that samples be taken for alcohol and/or drug testing.
 - The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
 - You do not have to take the tests or give the samples, but if you refuse to submit to the tests, your privilege to drive in South Carolina must be suspended or denied for at least six (6) months, with the option of ending the suspension if you enroll in the Ignition Interlock Device Program, and your refusal may be used against you in court.
 - If you take the tests or give the samples and have an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, you may instead be charged with Driving with an Unlawful Alcohol Concentration (DUAC), Section 56-5-2933.
 - If you have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least one (1) month, with the option of ending the suspension if you enroll in the Ignition Interlock Device Program.
 - You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, shall provide you affirmative assistance.
 - You have the right to request a contested case hearing within thirty (30) days of the issuance of the notice of suspension.
 - If you do not request a contested case hearing or if your suspension is upheld at the contested case hearing, you shall enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occurred.)
(D) Enter biographical data into DataMaster DMT. (Required for all tests, including refusals.)
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occurred.)

ADVERTENCIA Y LECTURA DE DERECHOS POR MANEJAR BAJOS LOS EFECTOS DE ALCOHOL O DROGAS (DUI)

- (A) ¿Se grabará el análisis en video? Si la respuesta es Si, empiece aquí-> - Informe a la persona que va a ser grabada en video.
Si la respuesta es No, empiece aquí-> - Informe a la persona de las muestras que se requieren (ejemplos: soplar, sangre, orina).
- (B) Dele a la persona una copia escrita de la advertencia siguiente y lea la advertencia al sujeto:
(C) Dele a la persona una copia escrita de la advertencia siguiente y léasela a la persona:
- Usted está arrestado por Manejar Bajo los Efectos de Alcohol o Drogas (DUI), Sección 56-5-2930, del Código Legal de Carolina del Sur de 1976, según su enmienda.
 - El policía que efectuó el arresto dispuso que le sacaran muestras de alcohol y/o drogas para ser analizadas(s).
 - Se obtendrán y analizarán las muestras según la Sección 56-5-2950 y las normas del SLED.
 - Usted no está obligado a hacerse los análisis ni a proporcionar muestras, pero si se niega a someterse a estos análisis, se le tendrá que suspender o negar su privilegio de manejar en Carolina del Sur por lo menos durante seis (6) meses con la opción de terminar la suspensión si se inscribe en el Programa del Dispositivo de Bloqueo del Arranque. Negarse a ello podrá usarse en su contra en un tribunal.
 - Si usted se somete a los análisis o proporciona las muestras y tiene una concentración de alcohol de ocho centésimos del uno por ciento (0.08%) o más, podría ser acusado en vez de Manejar con una Concentración Ilegal de Alcohol (DUAC), según la Sección 56-5-2933.
 - Si usted tiene una concentración de alcohol de quince centésimos del uno por ciento (0.15%) o más, su privilegio de manejar en Carolina del Sur debe ser suspendido por lo menos durante un (1) mes con la opción de terminar la suspensión si se inscribe en el Programa del Dispositivo de Bloqueo del Arranque.
 - Usted tiene el derecho de que una persona que usted elija y que esté capacitada para hacerlo, realice por su cuenta los análisis adicionales que usted tendrá que pagar y en ese caso, el agente debe brindarle ayuda si usted la solicita.
 - Usted tiene el derecho de solicitar una audiencia para disputar el caso dentro de los treinta (30) días a partir de la fecha en que se emitió la notificación de la suspensión.
 - Si usted no solicita una audiencia para disputar el caso o si se le confirma la suspensión en la audiencia para disputar el caso, usted tiene que inscribirse en un Programa de Medidas de Seguridad para el Consumo Responsable del Alcohol y las Drogas.

Si es pertinente, haga lo siguiente:

- (C) Inspeccione la boca de la persona y quite todo material extraño de la boca. (No se requiere si se niega la persona.)
(D) Ingrese los datos biográficos en el DataMaster DMT. (Obligatorio para todos los análisis aunque se niegue la persona.)
(E) Observe a la persona un mínimo de (20) minutos antes de obtener una muestra de su aliento. (No se requiere si se niega la persona.)

Kevin Marc Carter
Subject's Signature
Firma de la Persona (recibió una copia)

[Signature] 0618
3/19/15
Officer's Signature
Firma del Agente
date/time
fecha/hora

AGENCY I.D.
SC012SP00

INCIDENT REPORT

CASE NUMBER	NOIC INV ENT

EVENT	INCIDENT TYPE	COMPLETED ☒ YES ☐ NO	FORCED ENTRY ☐ YES ☒ NO	PREMISE TYPE Highway/Road/Alley	UNITS ENTERED	TYPE VICTIM ☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Org. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.
	1. DUI 1ST OFFENSE	☒ YES ☐ NO	☐ YES ☒ NO			
	2.	☐ YES ☒ NO	☐ YES ☒ NO			
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) I-77 NORTH AT MM 61				ZIP CODE	WEAPON TYPE
	INCIDENT DATE 3/19/2015	24 HR. CLOCK 04:12	TO DATE 3/19/2015	24 HR. CLOCK 06:31	DISPATCH DATE/TIME 24 HR. CLOCK DISP. DATE DISP. TIME TIME ARRIVED DEPART. TIME	LOCATION NO.
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT #1 #2 #3 *JSOU		RACE SEX AGE ETH. DAYTIME PHONE EVENING PHONE	
VICTIM NO. 2	ADDRESS		CITY		STATE	ZIP CODE
	VICTIM'S NAME (LAST, FIRST, MIDDLE) Society/Public		RELATIONSHIP TO SUBJECT #1 #2 #3 *JSOU		RACE SEX AGE ETH. DAYTIME PHONE EVENING PHONE	
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
SUBJECT NO. 1	ADDRESS		CITY		STATE	ZIP CODE
	VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO		EXPLAIN -		COMPLAINT OF NON-VISIBLE INJURIES: ☐ YES ☒ NO	
	VICTIM (NO. 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK.		DRUGS: ☐ YES ☒ NO ☐ UNK. TYPE:		TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLASMT. ☐ OTHER ☐	
SUBJECT NO. 1	NAME (LAST, FIRST, MIDDLE) CARTER, KEVIN MARK		RACE W	SEX M	AGE 46	ETH. N
	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		DATE OF BIRTH		HEIGHT 507	WEIGHT 200
	ADDRESS		CITY		STATE	ZIP CODE
SUBJECT NO. 1	SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK.		ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO ☐ UNK.		DATE/TIME OF OFFENSE	
	DRUGS ☐ YES ☒ NO ☐ UNK. TYPE:		TOTAL # ARRESTED:		DATE/TIME OF ARREST	
	ON 3/19/15 AT APPROX 0412 TRP BLACKWELL WAS DISPATCHED TO A 2 VEHICLE COLLISION ON I-77 NORTH AT THE 61 MILE MARKER. UPON MAKING CONTACT WITH THE DRIVER OF UNIT 1 A MR. KEVIN MARK CARTER, TRP BLACKWELL NOTICED THAT MR. CARTER WAS VERY LATHARGIC IN HIS SPEECH AS WELL AS HAVING TROUBLE REMEMBERING HIS CURRENT LOCATION AS WELL AS WERE HE WAS COMING FROM. MR. CARTER STATED TO TRP BLACKWELL AND RICHBURG FIRE OFFICALS THAT HE AND HIS.WIFE HAD BEEN IN AN ARGUMENT EARLIER IN THE EVENING AND SHE HAD ASKED HIM TO LEAVE THERE RESIDENCE. MR. CARTER STATED THAT HE HAD BEEN TAKING AN UNKNOWN AMOUNT OF HIS PRESCRIBED VALIUM THOUGHOUT THE NIGHT AND INTO THE MORNING HOURS FOR HIS "NERVES". TRP BLACKWELL ASKED MR. CARTER IF HE HAD TAKEN ANY OTHER MEDICATION, DUE TO THE VARIUS BOTTLES OF PRESCRIPTION MEDICATIONS THAT WERE IN THE PASSENGER SEAT OF MR. CARTER'S VEHICLE. MR.					
PROPERTY EST.	TYPE(GROUP)		JURISDICTION OF THEFT		JURISDICTION OF RECOVERY	
	STOLEN					
	DAMAGED					
ADMINISTRATIVE	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE-NO CUSTODY		SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO	
	REPORTING OFFICER(S) BLACKWELL, HERBERT A III		DATE 3/19/2015		UNIT NUMBER 807	
	APPROVING OFFICER WADE, JEFFREY B		DATE		UNIT NUMB P14	

AGENCY I.D.
SC012SP00

SUPPLEMENTARY INCIDENT REPORT

CASE NUMBER	NCIC INQ. ENT

☒ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 of 2 PAGES

CARTER STATED THAT HE HAD ONLY BEEN TAKING HIS VALIUM BUT COULD NOT REMEMBER HOW MUCH HE HAD TAKEN THROUGHT THE NIGHT. MR. CATER WAS TRANSPORTED BY EMS TO PEIDMONT MEDICAL CENTER WERE TRP BLACKWELL INFORMED MR. CARTER THAT HE WAS BEING CHARGED WITH DUI. TRP BLACKWELL ADVISED MR CARTER OF HIS IMPLIED CONSENT RIGHTS AND REQUESTED A BLOOD SAMPLE BE TAKEN. MR. CARTED AGREED AND A BLOOD SAMPLE WAS TAKEN FOR ANALYSIS.

NARRATIVE

JURISDICTION OF THEFT

JURISDICTION OF RECOVERY

ADMINISTRATIVE

SUBJECT IDENTIFIED ☒ YES ☐ NO	SUBJECT LOCATED ☒ YES ☐ NO	☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE-NO CUSTODY				
REPORTING OFFICER(S) BLACKWELL, HERBERT A III	DATE 3/19/2015	UNIT NUMBER 807	APPROVING OFFICER WADE, JEFFREY B	DATE F14
FOLLOW-UP INVESTIGATION ☐ YES ☒ NO			OFFICER	

South Carolina Department of Public Safety Chain Of Custody & Evidence Destruction

Case Number	Evidence Type	Date Impounded		
☒ Highway Patrol ☐ Transport Police	☐ Bureau of Protective Service ☐ Other			
Status Check One Only ☐ General Session Evidence ☒ Magistrate Evidence ☐ Found ☐ Recovered ☐ Safe Keeping ☐ Other				
I hereby acknowledge that the listed items represent monies/ property taken from my possession and that I have received a copy of this report. Signature				
Court Date: 5/6/15	Summons /Warrant Number:			
Officer: H.H. Blackwell	Date of Incident: 3/19/15	Time of Incident: 0631		
Subject / Violator's Name: Kevin Mark Carter	Phone Number: ()			
Violator's Address:	License Number (Tag/State):			
Item #	Quantity	Description (include make, Model and serial Numbers if applicable)	Field weight	NCIC Yes No
1	1	Sled Bto Kit		
DISPOSITION OF ITEM (S) ABOVE: (The item(s) above have been received in substantially the same condition as when seized.)				
From	To	Location	Reason for Movement	Date
Trp. H.H. Blackwell	CB Ford	Piedmont	Transport	3/19/15
CB Ford	Evidence	Chester	Temp Storage	3/19/15
We have further inspected such Conveyance as to condition and contents, including glove compartment, trunk, or any other applicable storage areas and do certify that all contents and condition of such conveyance, except contraband items, if any have been satisfactorily accounted for to me/us with this conveyance, or that such items have been disposed of in accordance with my/our instructions, except:(If no exceptions, have recipient write "None" in ink, in his/her handwriting)				
It is my/our full understanding that this conveyance and it's contents, except contraband items, if any, are being returned to me/us by the South Carolina Department of Public Safety because such police agency has no interest in proceeding legally to have the conveyance declared forfeit, and that it's return is in no degree an implication or admission that its seizure was unlawful. With the foregoing clearly understood, I/we acknowledge receipt of such conveyance and its contents from: on the day of				
Signature (Individual Receiving Property)				
Signature (Individual Returning Property)				
Witness:				
Disposition of the above cases was disposed of in General Sessions/ Magistrate's court on:				
DESTRUCTION OF EVIDENCE				
This is to certify that I, destroyed / relinquished the above described evidence on				
(Person destroying/relinquish evidence)				(Date)
at				
(Where destroyed)				(Witness)
Person destroying evidence				



SLED LABORATORY
FORENSIC SERVICES REQUEST
Blood/Urine Collection Kit

SLED Lab No: _____

Name of Investigating Officer: <u>HA Blackwell</u>	Agency ORI No: <u>SHPL400</u>
Agency: <u>SCHP</u> Phone No: _____	Case No: _____
Fax No: _____ Email: _____	Case Type: <u>DUI</u>
Mailing Address: <u>1232 JA Cochran Bypass</u>	Offense Date: <u>3-19-15</u>
City: <u>Chester</u> State: <u>SC</u> Zip Code: <u>29706</u>	County: <u>Chester</u>
CC: _____	Officer Involved Shooting ☐ Yes

Has other evidence on this case been submitted to this lab? ☐ Yes ☐ No If yes, Lab Number: _____	Is this evidence related to another lab number? ☐ Yes ☐ No If yes, Lab Number: _____

For Toxicology Cases ONLY	
Death:	☐ Yes ☐ No If yes: ☐ Traffic Fatality ☐ Child Fatality ☐ Accidental ☐ Natural ☐ Unexplained
Traffic Fatality:	☐ Driver ☐ Passenger ☐ Pedestrian ☐ Motorcyclist ☐ Bicyclist ☐ Boating ☐ Other _____
Other Causes:	☐ Gunshot ☐ Stabbing ☐ Beating ☐ Strangulation/Suffocation ☐ Drug/Poison/Alcohol ☐ Fire ☐ Disease ☐ Carbon Monoxide ☐ Hanging ☐ Electrocution ☐ Heart Related ☐ Drowning ☐ Other _____
DUI:	Felony ☐ Yes ☒ No (If felony resulted in death, Victim's name is required) Breath test given: ☐ Yes ☒ No If yes, reading: _____
Drugs Suspected:	☒ Yes ☐ No If yes, list drugs: _____
Number of Specimens Enclosed: Blood _____ Urine _____ Ocular Fluid _____ Other _____	

Subject(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN
	<u>Carter Kevin Mark</u>	<u>M</u>	<u>W</u>		

Victim(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN

SOUTH CAROLINA LAW ENFORCEMENT DIVISION - URINE/BLOOD COLLECTION REPORT

Subject: Carter Kevin Wane Chesler
 Last Name First Name Middle Name County of Arrest

Subject's Address: _____

Driver's License Number: _____ State: _____ DOB: _____ Sex: M Race: C

Arresting Officer: H.A. Blackwell Agency: SCHP

Date of Arrest: 3/19/15 Time of Arrest: 0620 AM/PM Traffic Ticket Number: _____

Date of Test: 3/19/15 Time of Test: 0620 AM/PM Location of Collection: Perdant Med Center

CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

- ☒ Subject is under arrest for Section 56-5-2930, 56-5-2933, 56-5-2945, 56-1-2120, 50-21-112, 50-21-113 or 23-31-415, or is in violation of Section 56-5-2945, 50-21-113 or 56-1-286 of the 1976 South Carolina Code of Laws as amended.
- ☒ Subject has been advised in writing of his/her Implied Consent Rights.

CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

- ☐ Subject has completed a valid breath test (DataMaster reading: _____) and the officer has reasonable suspicion that the subject is under the influence of drug(s) other than alcohol therefore a urine sample is requested.
- ☐ Subject has not completed a valid breath test and a voluntary blood sample has been requested to test for the presence of volatiles and/or drugs.
- ☐ Subject is unconscious or otherwise incapable of refusal (has not taken a breath test) and is considered informed, therefore, a blood sample is requested.
- ☒ A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.

Name and Title of Licensed Medical Personnel: X Melinda Haverlock RN
 (Please Print)

Signature of Licensed Medical Personnel: X Melinda J Haverlock RN

- ☐ Subject is under arrest for, or in violation of, Section 56-5-2945 (Felony DUI) or 50-21-113 (Felony BUI) and, pursuant to Section 56-5-2946 or 50-21-116, a blood sample or a blood and urine sample is/are requested.
- ☐ A blood sample is requested by the subject for his/her own independent test.

THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR

- ☒ Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.
- ☐ A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

Name of Licensed or Trained Collector: Melinda Haverlock RN
 (Please Print)

Signature of Licensed or Trained Collector: Melinda J Haverlock RN

FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

- ☒ Sample collection was under my direct supervision.
- ☒ Sample container is properly labeled with the subject's name and time of collection.
- ☒ Sample is properly sealed and ready for transport.

Signature of Officer: [Signature] Date: 3/19/15

I, X _____ received a copy of this report on 3/19/15
 (Subject's Signature) Date

Copy to: Subject, Hospital, SLED

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

H.A. Blackwell
S.C. Highway Patrol Troop #4
P.O. Box 279
Chester, SC 29706

TOXICOLOGY DEPARTMENT
May 15, 2015
SLED No:
Your Case No:
Incident Date: 03/19/2015

[S] Kevin Mark Carter

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE

Item: 1 Sample Type: Blood (Toxicology) - labeled "CARTER, KEVIN"

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold



ALI-359-T

AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351



SLED No :1

5/15/15

Screen by Enzyme Linked Immunosorbant Assay (ELISA)

Analyte	Result	Units	Threshold

Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS)

Analyte	Result	Units	Threshold

Comprehensive Analysis



ALI-359-T

AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SLED No

Page 3 of 3

5/15/15

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.



Tracy McKinnon
Forensic Toxicologist

For any additional interpretation of results please contact the Toxicologist above at the SLED Toxicology Department , (803) 896-7365.

FILED
2018 MAR 27 2 3:58
CLERK OF COURT
SOUTH CAROLINA



ALI-359-T

AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014
P.O. Box 21388, Columbia, South Carolina 29221-1388 Phone (803) 896-7300 Fax (803) 896-7351

Heidi Gersten
Page 1 of 1

Date prepared August 28, 2017
Notice of loss date January 8, 2016
Claim number
Policy number
Questions? Contact Claims Associate
Joseph Tirbovich
TIRBOVJ@
Phone
Fax

Heidi Gersten

Claim details

Insurer:
Policyholder: RICHARD DAVIS AND KEVIN CARTER
Claimant: Heidi Gersten
Claim number:
Loss date: March 19, 2015

FILED
2018 MAR 27 P 3:58
CLERK OF COURT
HAMILTON CO S.C.

Dear Ms. Gersten,

I am in receipt of your letter dated August 25, 2017. I have reviewed your letter with my Manager. As mentioned in my letter dated on August 25, 2017. Based on the current information we have that was sent to us by you. 's offer to you for settlement of your property damage claim is .

Please contact me at as I would be more than happy to verbally discuss the reasoning of 's offer to settle your property damage claim.

For more information

If you have any questions or concerns, please contact me at or
TIRBOVJ@

Sincerely,

Joseph Tirbovich

NOTICE - Section 817.234, Florida Statutes, provides in part: "Any person who knowingly and with intent to injure, defraud or deceive any insurer files a statement of claim or an application containing any false, incomplete or misleading information is guilty of a felony of the third degree."



Heidi Gersten
Page 1 of 1

Date prepared August 25, 2017
Notice of loss date January 8, 2016
Claim number
Policy number

Questions? Contact Claims Associate
Joseph Tirbovich
TIRBOVJ@
Phone
Fax

Heidi Gersten

Claim details

Insurer:
Policyholder: RICHARD DAVIS AND KEVIN CARTER
Claimant: Heidi Gersten
Claim number:
Loss date: March 19, 2015

FILED

2018 MAR 27 3:58

CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

Dear Ms. Gersten,

I have received your letter faxed to me on August 25, 2017 at 9:41 AM. With the information that has been submitted to _____ by you. My offer to settle your property damage punitive claim against our member is _____

If you would like to know the reasoning of _____'s offer. Please contact me at _____ and I will be more than happy to discuss that topic with you verbally.

For more information

If you have any questions or concerns, please contact me at _____ or TIRBOVJ@

Sincerely,

Joseph Tirbovich

NOTICE - Section 817.234, Florida Statutes, provides in part: "Any person who knowingly and with intent to injure, defraud or deceive any insurer files a statement of claim or an application containing any false, incomplete or misleading information is guilty of a felony of the third degree."



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Transcript of
Claims Adjuster, Joseph Tirbovich and Heidi Gersten

Wednesday, April 27, 2016, approximately 3:30 p.m.

Transcribed and certified by Heidi Gersten to be a true and accurate depiction.

First telephone communication.

30 pages.

FILED
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JUDICIAL CO S.C.



1 Mr. Tirbovich: Joe, how can I help you?

2 Ms. Gersten: Oh, hi. I'm returning your call for claim number C.

3 Mr. Tirbovich: .. Okay. Let me pull that up here. : Mmm-mmm-mmm-
4 you said, " :"?

5 Ms. Gersten: Yes.

6 Mr. Tirbovich: Okay. I don't know. I thought file. What, what, what, is your name?

7 Ms. Gersten: Heidi Gersten

8 Mr. Tirbovich: Uh-hh-hh. Okay. Ah. Oh. Spell your name, 'cause I-I-I, you may have
9 been given wrong. What-what-what's your? Spell your last name please.

10 Ms. Gersten: G-E-R-S-T-E-N

11 Mr. Tirbovich: Oh. Heidi. Yes. I'm sorry. Yes. Okay, uh, let me, ah, get that right here,
12 um. I am the adjuster assigned to this particular claim, um. We are still investigating the
13 accident. Now, we were told that you had an attorney. I then got a-a drop letter from that
14 attorney and, um, basically wanted to talk to you to get a statement, eh-eh, as to, uh, your
15 version of what happened in the auto accident and also I don't know as far as a current, um,
16 contact information for you as-as-as far as address and, um, phone number, uh. Do you
17 have some time to give me a statement?

18 Ms. Gersten: Um. I was actually calling because I thought you were ready to send for
19 damages.

20 Mr. Tirbovich: No. We're still investigating the incident, um, at this point. Also as far
21 as injuries, we-we don't have any information in regards to your injuries, meaning, I-we
22 have to have detailed documentation. We have to have medical records. We have to have,
23 you know, from start to finish medical bills, ah-and-and-and so on. So normally when you
24 have an attorney, the attorney supplies us with all of that information, but, um, with--when

1 we received the letter from Motley Rice stating they're-they're no longer representing you--
2 So, um, even if we do accept liability, we still need to gather all medical records from
3 everybody you've gone to see from-from the accident, you know, to-to present. Um. And
4 then we evaluate the claim and make an offer at-at that point. Um. So we-we, as far as, you
5 know, I-I can't just, you know, release monies. Number one, we've got to finish the
6 investigation. Number two, um, well, we-we have to have all medical documentation. Um.
7 As I said, when you have an attorney, they supply all that information or documentation, if
8 not, um, what I do is I forward you a, what's called a, uh-uh, medical authorization form.
9 You then have to list everyone that you've gone to see for this accident, list their name,
10 addresses, phone numbers and then I-I can order the medical records and then we evaluate
11 the claim.
12

13
14 Ms. Gersten: Okay. So you're not, uh, aware that Kevin Carter is on trial for his DWI?

15 Mr. Tirbovich: We--Yes, we are. That is correct. We are.

16 Ms. Gersten: Okay. And they moved him up from--Um, into General Sessions Court for--
17 -They're increasing the charges.

18 Mr. Tirbovich: That we don't. We don't have any knowledge of that. What-what we
19 have is--We have a police report that, you know, cites you for a-a excessive speed. I'm not--
20

21 Ms. Gersten: No. I-I was--That--

22 Mr. Tirbovich: --saying that it's correct.

23 Ms. Gersten: --that is not correct. I was never--

24 Mr. Tirbovich: Okay.

25 Ms. Gersten: --cited for anything.

26 Mr. Tirbovich: Well, it-it's listed on the police report. But, I-I'm just going with--That's
27 the whole reason of-of getting a-a statement from you. Um. You know. So, we can
28

1 complete or do-do as best as we can, as far as completing the investigation. At this point,
2 we have his statement. Um. Yes, we are completely aware of-of what he's-he's being
3 charged, hence, that's why we didn't just stop and say, "Well, you know, he was rear ended,
4 you're at fault for the accident and be done with it." We are still investigating it. But, no, at
5 this point I'm-I'm not offering any kind of-of-of monies. Um. Even if we were to accept
6 liability, as I had mentioned, I've got to have all of the medical records. I need to have all of
7 the medical records and all medical bills to review. Um. You know, I can't just offer up
8 money by going by somebody's, um-um, word. Ah, I-I could get fired for something of that
9 nature. (10 sec. pause) (5:07 min.) Uh hello?
10

11 Ms. Gersten: Yeah. No, I was just waiting, uh, listening to what you were saying.

12 Mr. Tirbovich: Mm-hmm. Ah-ah—

13 Ms. Gersten: So—

14 Mr. Tirbovich: —that's what I have to say.

15 Ms. Gersten: So. So, does Kevin Carter have an umbrella policy or a rider?

16 Mr. Tirbovich: Hmm-I-I can't release any of that information at this point, other--once
17 again, there's-there's proper wording and a write up from, ah, normally it's an attorney to-
18 to, get that information, so at this point I-I can't release any of that information unless that
19 you file us the proper South Carolina statute, um, rules and regulations to-to give me to
20 send for us to release any of that information.

21 Ms. Gersten: Wait. Repeat that? What? What rule? What statute of South Carolina?

22 Mr. Tirbovich: That's all South Carolina. There's-there's-there's-there's-uh-uh-uh
23 proper wording, proper requests via writings, um, citing, uh, the statute, uh, and that's
24 something, once again, you know, your attorney would do that or you'll have to do your
25 research to-to get that information.
26
27
28

1 Ms. Gersten: So what statute—

2 Mr. Turbovich: We can't just give—

3 Ms. Gersten: —are you quoting?

4
5 Mr. Tirbovich: Uh. Uh, to be honest with you, I didn't even have the name of it. I-I just
6 know that when we get the proper, uh, information from the attorney, it's already in there.

7 Ms. Gersten: So, you don't know the law?

8 Mr. Tirbovich: Ah. I-I-I-I, you know, I don't know the exact statute. I don't know the
9 number. I don't have that on the top of my head. No.

10 Ms. Gersten: Okay. Well, what's your address so I can write you?

11 Mr. Tirbovich: Okay. Well, once again, like I said, it-it has to have-cite proper language
12 and stuff, which I would, you know, obviously suggest for you to research to get that
13 information.

14 Ms. Gersten: I suggest you—

15 Mr. Turbovich: —Um—

16 Ms. Gersten: —research it as well. You're saying to me that you don't know it.

17 Mr. Tirbovich: Um. No. No. No ma'am. I-I—Yeah. I, like I said, there-there is laws in
18 South Carolina, so—

19 Ms. Gersten: But, what are they?

20 Mr. Tirbovich: —you need to follow up.

21 Ms. Gersten: —What are they? You can't just be-be-be-be—

22 Mr. Tirbovich: —you go ahead and look into that yourself.

23 Ms. Gersten: You as well. You can't just willy-nilly this and-and the law.

24 Mr. Tirbovich: Oh, I sure can. Yes. Yes, ma'am. I can. That's-that's why—

1 Ms. Gersten: You can willy-nilly it?
2 Mr. Tirbovich: —you know, you have the--Yes, ma'am. As I said, there's--there's
3 proper statute language and laws and you can go right ahead and research that and get that
4 out to me and then I can, ah, at that point, I can get permission from my manager to release
5 any of-of the type of information, if everything is in order. Um. But regardless, we will
6 need to order--Well, like I said. Number one, we're still investigating the accident. We're
7 going to try to get a statement from you, if we can't, then, we can deny the claim. Then your
8 next step would be to file suit and then through, um, uh, discovery we would get that
9 information. Um. But on top of that we would have to have all of your medical records and
10 bills regardless, you know, even if we, whatever limits that we have, if you're looking for
11 those, I need to order up, get all the medical records and bills. Um. Once again, the
12 attorney, Motley and Rice was going to supply all of that, but then, they sent us a letter
13 saying, they're no longer representing you. So, if you have an attorney, I can't even be
14 talking to you. So, I don't even know if—

17 Ms. Gersten: What? What?

18 Mr. Tirbovich: —if you have an attorney at this point.

20 Ms. Gersten: What, is your address?

21 Mr. Tirbovich: Uh, it is r. Three words.

22 1.
23 ... and that is in

24 Ms. Gersten: ...And your name?

25 Mr. Tirbovich: My name is Joe Tirbovich. You spell that T, as in Tom, I-R, B as in boy,
26 O-V, as in Victor, I-C-H.

27 Ms. Gersten: ...All right, Mister—

28 Mr. Tirbovich: And let me give—

1 Ms. Gersten: —Tirbovich.

2 Mr. Tirbovich: —you the correct claim number, too. Uh, what you may--Maybe you
3 guys wrote it down wrong. The claim number is ; as in
4

5 Ms. Gersten: Okay.

6 Mr. Tirbovich: Now, I have you living in-in . I've been mailing you, uh, letters
7 and information, uh, pertaining to this accident to ., ah,

8 a. Is-is, that, uh-uh, a good address to continue to forward
9 you information or is there a different address?

10 Ms. Gersten: No, that's fine, I've not received anything.

11 Mr. Tirbovich: You haven't? Really? I've sent about three pieces of mail within the
12 past month to that address).

13 Ms. Gersten: Let me ask you something.

14 Mr. Tirbovich: Sure.

15 Ms. Gersten: Do you know what it's like to have your ability to walk removed from
16 you?

17 Mr. Tirbovich: I do not.

18 Ms. Gersten: Something to think about and also forward this to your legal department,
19 Title 42 U.S. Section Code 1983.

20 Mr. Tirbovich: Okay. That doesn't mean anything to me. As I said. I said right—

21 Ms. Gersten: Well—

22 Mr. Tirbovich: —now we're doing an investigation of the accident. You're-you're
23 telling me about an injury that I don't have your documentation of. And as I said, I have a
24 police report which puts you at excessive speed. Yes, we have our insured who was
25

1 charged with, ah-ah-ah, DWI. Um. He's claiming that he was traveling down the road and
2 was rear ended. I wasn't there. I didn't see it. So, I-I can't. You know. I'm not saying that
3 you're right, you're wrong. I'm telling you, ah, you know, I didn't see it and we're trying to
4 investigate it. So, I mean if-if you're not going to cooperate, and that's fine. You don't have
5 to give a statement. That-that's fine. There's not much on my end I can do until we've
6 properly investigated it. And then on top of that, as far as, if we accept liability, if we're
7 willing to pay for medicals, I would have to have the medical records and bills to show me
8 exactly what your injuries are. It's not that I don't believe you, but I, uh, have nothing to
9 document. I just can't go by somebody's word. So, I, uh, I guess my-my question is--You're
10 saying this address is correct. Because when I spoke to this Robert on the phone
11 trying to get a hold of you, he said that you're in . So, I-I don't know where
12 you're--you are actually at. And I don't even have a phone number to reach you at. I, uh,
13 had a area code number and I gave that to Robert and he said, "No, that's not a, uh,
14 correct number." Now, I can only, I can't talk to Robert about the claim because he's not
15 representing you. I can only talk to you, um, but the reason why I called Robert was just to
16 pass on my information 'cause I have no contact with you since we got the drop letter from
17 the, uh, the attorneys of ... So I—

21 Ms. Gersten: I have your address.

22 Mr. Tirbovich: —once again—

23 Ms. Gersten: I will be in touch.

24 Mr. Tirbovich: —I'm sorry. You-you will be in touch?

25 Ms. Gersten: Yes.

26 Mr. Tirbovich: Oh, okay, is there? Will you give me your phone number?

27 Ms. Gersten: Right now, I'm not prepared to give a statement.

1 Mr. Tirbovich: Okay, and you won't give a contact number either for yah?

2 Ms. Gersten: Well, right now—

3 Mr. Tirbovich: I-I'm just, uh, I'm just asking. I mean you don't have to, I'm asking for-
4
5 for the ease of the claim.

6 Ms. Gersten: —I'm—

7 Mr. Tirbovich: —because I see you called me on a number—

8 Ms. Gersten: —This is my first time. This is my first time calling you and I'm quite
9
10 surprised that you guys aren't up to speed. I need to, uh, process this, like I said.

11 Mr. Tirbovich: Okay.

12 Ms. Gersten: You know having your ability to walk taken from you-um. I've already
13
14 beat the odds of, uh, the third leading cause of death of spinal cord injury, which is suicide
15 the first year. So, kudos to me for beating that one. Um. I will be in touch.

16 Mr. Tirbovich: And once again, let me, uh-uh, I don't have documentation, everything
17
18 you're telling me, I don't, I mean, I'm not saying, oh-I, that's related to the accident, 'cause I
19
20 don't. I-I have nothing. We have little information on you, eh-eh, if we're, all we have is
21
22 what's on the police report, pretty much all we have.

23 Ms. Gersten: Well, I'm-I'm just surprised because my insurance company says they've
24
25 spoken to your--you, guys, and-and, I'm just--I'm just floored because what you're saying to
26
27 me does not line up with what they've already told me so I have to process this and I—

28 Mr. Tirbovich: Well, they can't—

Ms. Gersten: —hope you understand this.

Mr. Tirbovich: —give us any personal information on you. They can't give us your
address. They-they have told us that they are disputing liability. Um, is what they had told

1 us. Yes, they have told us that you have had, um, a , but once again,
2 I'm going with, by word. I don't have documentation, ah. I don't have anything to
3 document it. I'm not, once again, I'm not saying it's not true, all I'm telling you that I'm only
4 been hearing hearsay is what I have. I don't have medical documentation, so take away,
5 let's say that we accept liability. Okay. Let's just go ahead and say that. I can't pay
6 anything out unless I have all of the medical records and all of the medical bills. Once we
7 have documentation and if we've accept the liability, well, yes, of course, we'll go ahead and
8 compensate you up to our policy holder's limits. But, ah, all I've got is just word. That's all
9 we've got. I don't have any hardcore documentation. That's just what I'm trying to say. So,
10 I mean, I can forward you a medical authorization form so you can forward the--Sign and
11 fill out. That gives us permission to order the medical records, yeah, you know, you could
12 get--Your welcome to do that as well, very time consuming, but you can get, ah-ah, I don't
13 know where you've gone to treat. I have absolutely no idea. I don't know where you've
14 gone for rehab. I have no-nothing of that nature. Your insurance company with privacy
15 issues can't share that type of information with us. So once again, I'll be more than happy
16 to mail you that, the medical authorization form to the address in i. Um. If you
17 choose not to-to sign that-that's up to you. I can't, you know, once again, I can't force you to
18 sign anything. But I can tell you that we can't pay anything if we accept liability unless I
19 have all the medical documentation. I can't go by just word from you or from your
20 insurance company. I have to have the actual medical specials.

21 Ms. Gersten: This covers pain and suffering, too, correct?

22 Mr. Turbovich: Oh, of course, if we accept liability, yes, ma'am. We definitely, um, we
23 com--um--compensate for injury and inconvenience, but once again, that's if we've
24 accepted liability. And as I said, we are still--everybody--I mean everybody is still

1 investigating. I know your insurance companies are still--I know they're doing accident
2 reconstructions—

3 Ms. Gersten: Yeah. But. Yeah. But—

4 Mr. Tirbovich: —and so on. So—

5 Ms. Gersten: Well, you just brought up a good point because to my knowledge both
6 sides have concluded the accident recons and they've both come favorable to me.

7
8 Mr. Tirbovich: Well, all I-I-uh-uh-I have--that has not been conveyed to us. Uh, so that's
9 one thing I could definitely say is we have not had any com--any communications since,
10 probably since they told us originally that hey they said, "Hey, whoa-whoa-whoa-hey,
11 we're not-we're not accepting liability we're doing, uh-uh, we think that there could be
12 liability on your person." And, there's--they're going to do an investigation. So, that's, you
13 know, what-what, we have, what I've got is I have a statement from my insured. Our
14 insured is trying to pursue after us, his own carrier, he's looking for underinsured motorist
15 coverage from us 'cause he doesn't feel he's at fault. See, from what I gather, he's assuming
16 that your insurance companies don't have enough coverage. So, he is coming after us for
17 underinsured motorist coverage, so, we, that's-that's, another reason we've got, you know,
18 two types of coverage's open. We've got one that's for liability. Then we've got one that's a
19 no fault. So, that's where we are at right now, uh, as far as, he's adamant screaming up and
20 down that he's not at fault for this accident, but regardless if he was on, um, you know,
21 taking medications or not and he is trying to pursue us and threatening to sue us for bad-
22 bad faith if we don't pay for his underinsured motorist. So-so, we are still investigating. So,
23 we, that's, why we have not said, "Yes, he's at fault or he's not at fault for this accident."
24 We've got two claims open up here. We've got one investigating for underinsured motorist
25 coverage 'cause he's saying your at fault and you don't have enough coverage under your
26
27
28

1 own policies to compensate him and then on the other hand I have you who, who's brought
2 up some good points, um, in saying that he's at fault for the accident. But I don't have your
3 statement as to your version of what happened in the accident. His version is he's traveling
4 down the road and you rear end him. See now, so, eh-eh, as I said that's-that's, the only
5 thing that I have and then I have the police report.

7 Ms. Gersten: Well, didn't you get the police dash cam, too?

8 Mr. Tirbovich: We don't have the dash cam. No. It, cuh, well, the dash cam didn't--that
9 dash cam didn't show what happened in-in--did-did not show us what happened in the
10 accident.

12 Ms. Gersten: No, but, it--

13 Mr. Tirbovich: There's a dash, we-we have the dash cam showing that---stating that--
14 where you-you said that you were, ah-ah-eh, were injured. You couldn't feel your legs. Um.
15 And then there's a dash cam, uh, talking about that they had talked to our policy holder. Uh,
16 but, as far as the details of the accident, I'm just going with what-what is written down.
17 The dash cam wouldn't have picked up the actual accident itself happening 'cause they
18 weren't there.

20 Ms. Gersten: I'm just surprised that you-you don't at least have from-from my
21 insurance company, the results of the accident recon because...

23 Mr. Tirbovich: Now that-- and I-I-I'm being honest with you. I don't have anything of
24 that nature from them at this time. No. We have not received-received that from them.

25 Ms. Gersten: Interesting 'cause they've concluded, ah, that I was without liability and
26 told me they spoke to, uh, Kevin Carter's--I don't know, maybe his lawyer if-if not you. I
27 was assuming the insurance, but they said that--
28

1 Mr. Tirbovich: He-he has a couple claims open. He has another adjuster, um, but, ah,
2 that has not been conveyed. I have not heard anything that the--your insurance company
3 has concluded, um, their investigation or that they-they've gotten back their accident
4 reconstruction. That I don't have.

5 Ms. Gersten: And you guys haven't—

6 Mr. Tirbovich: But—

7 Ms. Gersten: —gotten your—

8 Mr. Tirbovich: —but-but, we still don't make an offer—

9 Ms. Gersten: —reconstruction?

10 Mr. Tirbovich: I mean we still don't make a, uh, a decision, ah, I mean two insurance
11 companies can disagree, you know. I-I--going by what they say, you know, we've, um, had
12 an accident reconstruction as well. At this point I'm not at liberty to say what we've gotten
13 back, um, once again, I want to get, I want to try to get a statement from you, to get your
14 version of what happened in the accident. So, once again, they can have--you can have four
15 people do four different types of investigations and you can come up with all different
16 types of results. So, um, even if your insurance company calls me today and says, "Hey,
17 we're denying the claim. This is what we feel." We can come back and say, "Well, you
18 know what? We don't agree with yours--with your decision." So, there's that, eh, it's just as
19 well, it doesn't means—

20 Ms. Gersten: But the-but the—

21 Mr. Tirbovich: —their decision is not going to make our decision—

22 Ms. Gersten: —but—

23 Mr. Tirbovich: —I can tell you that.

24 Ms. Gersten: —But, that's why I'm-I'm a little bit--I don't understand because I was

1 told that you guys already concluded your recon. That's what I was told.
2 Mr. Tirbovich: I don't know who told--Who-whoever told you that. I did not know.
3 Because I know that we have not said, we have not made any, um, final decisions. I mean, I
4 know that we met earlier today and talked about it. So, we have not told anybody that we
5 have made a final conclusion. If, I--that I don't know where you're getting that information
6 from. I-I honestly have no idea. When we were talking to , we thought you're,
7 um, being represented by them. We had indicated to them that the investigation was still
8 being, um, reviewed. And then next thing you know, 'cause we were trying to get a, you
9 know, requesting a statement, uh, from you. We were also requesting to get them your
10 medicals. And then when I called them one day, he says, "We're no longer representing
11 you." And-and, he said, "I'm send you a drop letter." So, and that's where I've been. I've
12 been trying to call you at area code and I've been mailing letters to try to
13 contact you at 2. I'm, well,
14 since I had no, um, nothing back from you. I then contacted the Robert and gave him my
15 information to give you to contact me so I can try to get, you know, correct information.
16 Mailing address, correct phone number and also try to get a statement from you as well.
17 Ms. Gersten: ...All right. Well, you've just given me a lot of new information. But, like I
18 said, I have to process 'cause I was on the understanding that you guys had concluded
19 everything.
20 Mr. Tirbovich: Yeah, and-and-and-I-I-I apologize. I'm not sure. Could you tell me who-
21 who told you that-that we had concluded our investigation?
22 Ms. Gersten: The people.
23 Mr. Tirbovich: Oh-oh. Okay. I-I-I have not spoken with . I was actually going to

1 give them a call tomorrow to see if they could give me any information as far as a way to
2 contact you. Um. That was the reason that I was going to give them a call because, once
3 again, I don't know if the address and phone numbers I have are cur—current. And when I
4 had spoke to that Robert gentleman two days ago, he made it sound like that you were
5 living in California. So, ha, I-I-I have, you know, ah-ah, I-I--the only addresses--I know that
6 you lived in . I know that you lived in . I-I have nothing as far as

8
9 Ms. Gersten: ...Do you want—

10 Mr. Tirbovich: But, as far as—

11 Ms. Gersten: —the —

12 Mr. Tirbovich: —as far as, I'm sorry—

13 Ms. Gersten: Do you want the lady's number?

14 Mr. Tirbovich: Oh, no! We've got all that information, yeah. I don't need any of that
15 information. But once again, them telling me what their liability decision isn't-isn't going to
16 make my decision. My decision is based on my own personal investigation. As I had
17 mentioned, right now, we've got our insured who's giving us a story that he was rear
18 ended. Um. He's actually even looking for underinsured motorist with under his own
19 policy for us to pay, um, him for his extra injuries that he's claiming that your insurance, uh,
20 eh, you don't have enough coverage for him. Now, once again, I don't know if there's been
21 any communication between your insurance company and him, um, but I can tell you that's
22 what he's looking for with . He's trying to say that you're at fault and he's trying
23 to get us to pay, um, the extras under his uninsured, underinsured motorist coverage. So,
24 that's, you know, as I said, so, you've got me sitting here and I'm hearing story from him
25 and then we see that there are some issues with DUI. We hear your insurance company's

1 investigating they feel that he's at fault, um, you know. I-I--We're getting all kinds of
2 stories, you know, we're, eh-eh-eh, police reports, documentation, all kinds of stories and
3 really we don't have the exact details of what really happened at that point.
4

5 Ms. Gersten: Yeah.

6 Mr. Tirbovich: We do know that, eh-eh, and as I said—

7 Ms. Gersten: —I feel the same way, Joe—

8 Mr. Tirbovich: —I wasn't there. I didn't see it—

9 Ms. Gersten: —and I'm not just trying to give you a hard time. It's just like I said. What
10 you just said, um, a lot of what you said, I-I feel the same way that you--You know, it's been
11 this one story after another. And it's just a shame 'cause I feel like every company is just
12 out to not pay and I don't understand. You-you know. I feel for-for the whole situation
13 'cause it's really—It-it-it shouldn't be this way.
14

15 Mr. Tirbovich: Oh no, it shouldn't. I mean it should be, eh-eh-ah, most cases, you know,
16 there's--there's pretty much clear liability from the get go. And, you know, wuh-uh, I've the-
17 - we--the history of this claim is from, you know, this is, oh, over a year old claim and it's
18 still. And there's been lots of money spent just for the investigation part of this, I mean, it-
19 it's-it's-eh-eh, crazy in my opinion as far as, uh, the cost for us to investigate the-the-the
20 different stories that we're getting. You know, looking at, you know, looking at the police
21 report, then, you know, we hire people to go and, you know, like I said, get information
22 from the dash cam, um, you know, we don't understand why the officer, you know, if-if
23 there is a, eh-eh-eh, thought that our insured wasn't traveling--He was just stopped in the
24 middle of the road. Um. You know. Why is the officer?--Why is there not ah-ah-an-
25 amendment to the police report as far as the details? There's an amendment as far as him
26
27
28

1 being charged for the DWI. And that's why we--That is why we didn't just say, "Ah, this is
2 an open and shut case. We're going to deny liability. Done." Because of that DWI that's
3 why this claim is still investigated. Normally when somebody is rear ended, you know, it's
4 clear. Either the--Our person's rear ended or if we rear end somebody, you know, if our
5 person's rear ended, we could say, "Hey, we're not at fault for this accident." or, if we rear
6 end somebody, we're like, "Yup, we'll go ahead and pay it. Done deal." You know, ah-um,
7 we even had a situation when it's first with claim first started, your insurance company.
8 I'm not sure which one it was, because I know there's two, one that insures the van and
9 then your personal insurance. They were originally going to pay our insured for the
10 damages and then they retracted everything and that and then our insured got all upset
11 about that saying, you know, he was like, "Originally, it was supposed to be paid for." and
12 then your insurance companies came back and said, "Nope, we're still investigating this."
13 So, we're getting different stories. I-I mean we're learning stuff every day. I mean every
14 time we look at this file we're finding out more and more information.
15

16
17 Ms. Gersten: Ha-ha. Yeah.

18
19 Mr. Tirbovich: So—

20
21 Ms. Gersten: No, Joe, I mean—

22
23 Mr. Tirbovich: —and you know, and-and—

24
25 Ms. Gersten: —you've touched on some stuff that I-I feel the same way. This was not a-
26 a mere rear ender. And-and the evidence proves itself. Um. That's why I'm just floored
27 that I thought everybody was up to speed already. It's been over a year and-and what you
28 just said that I'm-I'm very much in agreement with a lot that-that this is ridiculous. Um.

Mr. Tirbovich: Mm-hmm.

Ms. Gersten: But a lot of it has to do with, um, right where we started. South

1 Carolina trumps every insurance. And yes it becomes complicated when you have one
2 insurance for, um, for the, uh, vehicle and then, you know, one for the driver. And nobody
3 wants to pay.
4

5 Mr. Tirbovich: And then on top of that, with-with-with-eh-eh, Mr. Carter, he has two
6 claims open up for this particular accident. He has one claim that was open up for--
7 Originally it was opened up for underinsured motorist coverage. Because originally when,
8 you know, back when this first happened, it was, oh, he was rear ended and he-he
9 sustained injuries. And he's looking for-- And the insurance companies for-for, you, um,
10 possibly don't have enough, um, money under the limits to pay for all, for everything with
11 claims worth for pain and suffering, medicals bills, so we're going to have to dip into--
12 'Cause that was South Carolina. Dip into the uninsured motorist portion of his claim. Then
13 we're learning, well, wait a second, you're insurance company said that-that something
14 seems fishy. We didn't find out that he was under the influence, um, and then we go ahead
15 and find out the accident may not have happened the way that he had explained it. But
16 we're like wait a second we have the police report, you know, then we're finding out well
17 the police report might not be so accurate, um-eh, as I said, and then, so then we go ahead
18 and open up a second claim looking into liability in a sense of paying for you. Well in the
19 mean time, he's screaming at us saying, "Why are you doing that? You know I'm not at fault
20 for this accident." You know. So, I mean, it's like we have people coming from both ends.
21 You know. And I understand, rightfully so, you should be irritated and upset. It's not that
22 we're doing this on purpose as, eh-eh, if it were a clear cut case then we could see for
23 sure--yeah, we're definitely at fault, our-our, excuse me, our insured is definitely at fault
24 for this accident, go ahead, get it, let's get this taken care of, but it's not that simple. We-we,

1 have a police report that's saying one thing. We have our insured who's saying something.
2 But then we're finding out that he was under the influence. You know, then we've got
3 other insurance companies saying, "Oh, wait a second we're finding out this information
4 and it looks like that he could have been, you know, stopped on the road or going a very,
5 very, very, slow rate of speed. You know, but we, but-but-but, when it comes down to, we
6 don't have proof. He's not admitting to us saying, "Yeah, yeah, I was stopped on the road."
7 You know, I mean he didn't even admit to us about the uh, the eh-eh-eh, being under the
8 influence until we found out later, you know, so--

9
10 Ms. Gersten: Mm-hmm.

11 Mr. Tirbovich: —We're getting all kinds of-of-of-of different information. That's
12 coming in. That's coming into us. And the same thing with your insurance companies
13 'cause, you know, you and him were the only ones that were there at the time of the
14 incident. We weren't. And, you know, outside of talking with you, 'cause we don't have
15 your-your statement, but all the other information. We have a lot of conflicting information
16 out there, you know, that's saying one thing. Then we're finding out something--finding out
17 something else. We're like, well, this might not be true, I mean, you know what I mean
18 that—

19
20
21 Ms. Gersten: Right.

22 Mr. Tirbovich: —those are the issues that we have with this. It's not--It's not just a-a
23 shut and closed case. And as I said, if we felt that you, you know, were at fault 100%, ah, we
24 wouldn't still be investigating this. We wouldn't be spending the money that we have been
25 to investigating. We would have been just like, "Hey, he was rear ended case closed." But
26 we're-we're not, you know, and-and, then, you know, on top of that we're, you know,
27 we're under the impression, we've been communicating with the attorney's office of
28

1 and then they come and tell us, "You know what? She--We no longer
2 represent her." So, that just kind of throws a wrench into everything. You know. I'm like,
3 okay, so now we need to communicate directly with you, uh, but we didn't know if you, do
4 you have another attorney? You know, are you going to be retaining an attorney? Because
5 if you do, legally I can't be talking to you. So, there's a lot of information out here and, once
6 again, as far as addresses, you know, your friend Robert told me, well, so, I was under the
7 impression, you're living in [REDACTED] i. So, you know. But I have a [REDACTED] address. So, I
8 have a lot of information, a lot of conflicting information that I'm looking at that when we
9 met today there's a lot of unanswered questions, you know, a lot of them are, you know,
10 where's Heidi? Where is she at? You know, to try and figure out how to communicate with
11 her, you know, I'm like, well now all I've got is a phone number for Robert and that's it, um,
12 and as I've said, I was going to contact your insurance companies, once again, they wouldn't
13 give me any of your personal information but I can always say, " Hey, here's my information
14 pass it on to Heidi." That was going to be my next step. So, but I definitely understand your
15 frustration. Don't get me wrong. And I'm frustrated just as much as you because I'm
16 getting conflicting statements all across the board with-with everything.

17
18
19
20 Ms. Gersten: Well, you communicating with me opens up a lot of, um, understanding
21 on my end 'cause really I, too, would like to just resolve this. I mean, if anything, I'm very
22 sad, um, at the loss of being able to walk.

23
24 Mr. Tirbovich: Ah, I understand, eh-eh, trust me, no, I-I-I-I-I-I get what you're saying
25 I-I-I am not denying that whatsoever. Um, you know, what it-it-it's-it's really, you know.
26 The-the biggest question that-that we have as far as investigation purposes is, you know,
27 what-what-what is the true story here? What-what is really what happened here? You
28

1 know. Why are there so many conflicts? Why is there a police report that says this? And
2 then our insured who is saying this? Then, we're finding out he was under the influence
3 and then we have insurance companies saying, "Well, you know, we believe this is
4 something else that happened." So, we have a lot of situ-stories and situations going.
5 Obviously. I'll be honest with you. I've been doing this for fifteen years and this is, just for-
6 just for investigation, I mean, to try to determine liability, this is one of--This is a very
7 unique situation that I've never--I've never run into something like this. You know. I've
8 had your green light, red light. You know. Both people are claiming they had a green light
9 at an intersection. I've had a side swipe. You know. Two--one person's like, oh this person
10 came into my lane, and the other person's going, oh-no-no-no, this person came into my
11 lane. You know. But as far as a claim like this where it's a, you know, it's a rear end
12 accident. If you just look at it just right at that point, you would be like, well the person
13 driving who rear ended is at fault, but, no, it's--That's not the case. There's many other
14 factors with this. So, you know. In my fifteen years, I'd say probably this is the most unique
15 situation that--claim I've dealt with as far as just-just investigation as far as liability. Then
16 the next-the next layer after that is after we've accepted, you know, after we've completed
17 our investigation, and if we accept liability, then the next thing is-is, ok, in order for us to
18 pay the medical bills and compensate you for your injury and inconvenience. We need to
19 get medical records and medical bills. All, you know, documentation and, you know, to add
20 to that we have, we believe there was an attorney. Attorneys are always, you know, really
21 good at getting-getting us that information. They-they are even able to get it quicker than
22 insurance companies are. Um. And then we find out, ok, you don't have an attorney any
23 more, so we're like, well, now even after we complete our investigation, if we accept
24 liability, then it's going to be on us to now have to--for us to gather all of that information.
25
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27
28

1 Um. And that can be tedious, you know, calling all the providers you've gone to see and
2 mailing the request to get your medical documentation and you-you'd have to sign a
3 permission form for us to get it. As I said, you can get that information yourself, but I can
4 tell you, it's a--it's a very timely process, so, um-eh-eh, that was another wrench that was
5 thrown in as once we got the letter from, eh-eh, the attorney. And I'm not saying having an
6 attorney is gonna make us pay more or less, in fact an attorney keeps a third of whatever
7 your settlement is. Um. But we were at least under the impression, well, has
8 been, you know, communicating with you. They know where you're at. They're be
9 gathering all of that information for us. Um. So, if we do accept liability we'll just be
10 waiting for what's called their 'demand package', and review everything. They'll have all of
11 the documents already done for us. But obviously then we won't be getting any other
12 communications or correspondence from them. So, there's the first layer of just trying to
13 determine if-if our--if we are going to accept liability. Um. And yeah, we're definitely are
14 taking into consideration the, uh, alcohol, drugs and, uh, what was--he had said on the dash
15 cam, as far as, he really didn't remember what-what-what happened, so-so, all of that, yeah,
16 plays a huge factor in it, um, getting your statement would be, uh-uh, helpful. Then I could
17 take that up to the powers to be and say, "Hey, well, you know, I've done all--everything I
18 possibly can, as far as investigation." And then get their final, you know, say on liability.
19 Um. In which, I-I-I feel it would, eh, more in your favor is my opinion. But I don't--I'm
20 saying off the record, um, but then after that if I, once again, if we do accept liability, well, I
21 need to get all of the medical documentation. I-I just can't go by word, be-be, word from
22 your insurance company. Well, these are the injuries she's sustained. And-and you say
23 these are the injuries I've sustained. This is where I treated. It's not that we don't believe
24

1 you. It's we've got to have the documentation to support it. So, when we do pay out our
2 insured's, um-eh-eh-eh, coverages we have to be able to justify it. We're a business. For
3 every dollar amount we spend we have to be able to justify it. If we have the medical
4 documentation--if it's a limits case, we have the medical documentation to support it, then
5 we can pay it and there's not going to be any repercussions. Nobody's going to come down
6 to me and be like, " Joe, what in the world did you pay this for? You didn't have our
7 authorization. You didn't have the proper documentation to support. All you're going by is
8 somebody's word." So, that's-that's where I'm at this point. So, it definitely, you know, do
9 what you need to do. I've-I've given you a lot of information. Um, this claim is not going
10 anywhere Um. Now, the statue of limitations in South Carolina is three years. Um. So, you
11 have until sixteen-sixteen, seventeen, so, let's see, 'til March of 2018. Um. March 19 until,
12 you know, the claims could legally be closed, without stealing or less suits filed at that
13 point. Um. But this claim isn't going anywhere anytime soon. So, I mean, definitely talk it
14 over. Think. You know. As I said, I-I-I getting a statement from you, I mean, I-I--The
15 questions that I'm going to be asking--I'm not going to be asking personal questions as far
16 as, you know, eh-ah. I can't even think. You know. I'm going to be asking, you know, what
17 happened, you know, during the accident. Again, I'm detailed. Type of questions relating to
18 the-the accident. And then yes, I do ask questions about your injury to kind of give me a
19 better idea of the injuries that you did sustain and medical places you went to. And then
20 the next step after that is I present it to my-my superiors. We go ahead and make our final
21 liability decision. And then, if we accept liability, at that point, I need to get the medical
22 records. Either it could be 'A', you can gather everything, or-or we can gather everything.
23 That's, you know, wa-wa-whatever is, you know, trust me, us doing it's gonna be--it's going
24 to be time consuming. It'll be time consuming for you, but we would be doing it. But, you

1 know, it-it is a time consuming thing depending on how many facilities you've gone to see
2 in relation to your injuries. So, those are the two-two main things. First, we want to clear
3 liability and I'm requesting a statement from you. If I get a statement from you I can
4 present that to my superiors, say, "This is what I've got. Can we make a final liability
5 decision?" If they accept, if they say, "Yeah, we'll accept liability." then, next step is I need to
6 go ahead and get all the medical records. Um. And then we can evaluate the claim. And
7 then, you know, make an offer. Once again, if it's a limits case, we can offer our limits, but
8 I-I need to have medical documentations to support that first. So, I hope that shed some
9 light, you know, and-and understand that I'm not, you know, just making this up or
10 anything of that nature trying to give you a hard time. That is where I'm at in-in-in this
11 situation. I have--I have conflicting statements. I have conflicting reports. I've got all kinds
12 of things that are saying one-one thing and then I'm getting something, you know, that says
13 something completely different. And then as far as injuries I just have word. Your
14 insurance company said this is the type of injuries you sustained. I have you saying this is
15 what I've sustained but I don't have any medical documentation. And your insurance
16 company can't give any-anything to us. I mean, because you could sue them for, uh, saying,
17 "What are your giving the insurance company all my personal information without my-
18 without my permission?" Uh, you know, then you could sue them. So, same thing with us.
19 We don't give out people's injuries or anything of that nature, um, unless we have some
20 kind of written consent because we could get sued for sharing information.

21 Ms. Gersten: Well, it's strange, though, because I was--I-I was under the impression
22 that, um, Mr. Carter sustained some sort of

23 Mr. Tirbovich: ...Uh, well, and-and-and, as I said, I, you know, I can't comment on his
24 injuries. That's like, as I said, because I don't have his permission. So, I-I, trust me, I, that's-

1 that's a personal thing. You know. That's the same thing, as you know, I can't give the--say
2 the type of injuries that-that-that he-he sustained because he could come back and be like,
3 "What? I didn't tell you-you to--could tell any body this." So, that's, you know, once again,
4 that's all privacy—
5
6 Ms. Gersten: But, you just—
7
8 Mr. Tirbovich: —privacy privileges.
9
10 Ms. Gersten: —you said earlier that you had--You-you were told that I sustained some-
11 some fracture injury. So, this is where—
12
13 Mr. Tirbovich: Yeah, yeah, —
14
15 Ms. Gersten: —I get confused.
16
17 Mr. Tirbovich: —that was from, yeah, your insurance company just had given us that.
18 But is it true? This thing, if your insurance company called me and said, "Hey, can you tell
19 me what type of injuries your-your-your person sustained?" I would tell them I'm not
20 allowed. _____ company policy, I can't say anything. Um.
21
22 Ms. Gersten: So, you're saying they violated that to you?
23
24 Mr. Tirbovich: ...I'm sorry?
25
26 Ms. Gersten: They-they told you my injury. So, isn't that a violation? I'm trying to
27 understand.
28
29 Mr. Tirbovich: Well, hey, I-I-I,eh-eh, that's something you could take up with them. I
30 mean, not to us, because, well, they--We didn't give out any information. It's what we got
31 from them, so.
32
33 Ms. Gersten: It's just crazy to me 'cause this should all be transparent. I don't
34 understand why it's-it's so under the cover, you know, everyone hides behind these

1 supposed laws. And really I think both parties, not that I can totally speak for Mr. Carter,
2 but I'm sure he would like to be resolved as I would like to be resolved. And I hope you
3 understand that this is my first communication with you, so, I'm absorbing all of this
4 because of-of how everyone has been treating me. I, too, feel like you. You're almost not
5 able to-to just speak. And that's not the way it should be because really, you know, it's
6 complicated.

7
8 Mr. Tirbovich: Yeah. We're in a sue happy, yeah, we're in a sue happy world at this
9 time that people will find any excuse to get money. You know. And-and-and releasing
10 personal information that's the hot topic now. You know when you go to the doctor and
11 there's, all those HIPAA forms and privacy and everything else of that nature. So, yeah, eh-
12 eh-eh-eh, it can impede an investigations. It can hurt other people's—Um. But on the other
13 hand, it is what it is and it's so easy to get sued now. That's the scary part.

14
15 Ms. Gersten: ...Yeah.

16 Mr. Tirbovich: You know, I, uh, I-I-I, definitely don't want to, you know, lose my job,
17 you know, uh, and-and, those type of, uh, you know, eh, because I gave out some
18 information. You know. As I said, if your insurance company called me today to tell me the
19 type of injuries you had your person's sustained, I would say, "I can't tell you because of
20 privacy issues, you know." Um. You know. So anyway and this information was in there
21 before I-I inherited this file. Uh, so, you know, as far as what-what I see is from a previous
22 adjuster who's not with us.

23
24 Ms. Gersten: So, is that Kristy?

25
26 Mr. Tirbovich: ...No. She's handling, yeah, she's handling the underinsured motorist
27 claim.

28 Ms. Gersten: Oh.

1 Mr. Tirbovich: Um. I told you there's two claims open. Um. So that's the, yeah, this-
2 this claim was opened up, uh, later on, because there was that--We had found out that there
3 was, uh, some issues as far as, um, the alcohol and-and-and, so on, so.

4
5 Ms. Gersten: Yeah, you had said that that report was amended. I don't understand
6 'cause I wasn't under the impression it was ever amended, that it was just one version. I
7 was told that he couldn't amend it.

8 Mr. Tirbovich: Well, I-I--it's-it's more of the--it's more of--I guess what was saying--the
9 way I was interpreting the report is for or maybe it's a continuation as far as they just
10 wrote more. Ah-ah, explicitly about the, uh-uh-eh-eh, charges, DUI charges and him being
11 under the influence and there's the, eh-ah, we only got a reports as far as the--Um, after
12 the hospital, and his toxicology report. So, once again, I-I-I can't share that information but
13 I'm saying, you know, those are things that, you know, came about later on.

14
15 Ms. Gersten: Yeah.

16
17 Mr. Tirbovich: So, what, why, you know, what, eh, once again, go ahead and, you
18 know, take in everything you want. I will go ahead and, you know, note the file that I spoke
19 with you. You have a pretty good idea as far as, um, you know, what we--what-what, I'm
20 going to be, you know, what-what I'm looking for, um, you know, ah. Um. You know. Once
21 again, I can't force you to-to-to give me a statement. Um. But as I said, it's not a statement
22 in the sense of, you know, getting into your personal life. This is what happened in the
23 accident is-is all that is. Um. And like I said, that's all up to you, so you know, and-and I--
24 that's only if you feel free to get back to with me but obviously take everything in and then-
25 - and I am, you know, and-and, you know, definitely get back with me.

26
27
28 Ms. Gersten: I will. Thank you very much and um--

1 Mr. Tirbovich: Oh—
2 Ms. Gersten: —I'm just processing all of this 'cause it's—
3 Mr. Tirbovich: —I-I, ah, don't—
4 Ms. Gersten: —the first time communicating.
5 Mr. Tirbovich: —expect you to make a decision at this point. I bet I've given you a lot
6 of information, so, and I, once again, I wanted to explain to you why it's not a cut and dry
7 situation. You know. I mean, let's-- Once again. We've got two clams open for this one, uh-
8 uh, a-a no-fault kind of based exactly open. And then one is this one. You know. We've got
9 him, who's saying he's not at fault. You know. It-it-its, so, it's not as cut and dry as you
10 would hope it to be.
11
12 Ms. Gersten: Right.
13 Mr. Tirbovich: You know I don't like it any kind.
14 Ms. Gersten: Do you-you have pictures of both of the vehicles? Correct?
15 Mr. Tirbovich: Oh, yeah-yeah, yup, oh, yeah, we've got all of that.
16 Ms. Gersten: 'Cause the evidence speaks for itself if you, um, look at the vehicles.
17 Mr. Tirbovich: Mm-hmm, yeah, like I said, those are huge things that the reason why
18 we didn't ignore opening up, ah-ah, a liability claim. Those are--Those are all factors as to
19 why we didn't just say, "Eh, our person's not at fault and leave it at that." You know.
20 Ms. Gersten: I-I would like to interject this, too. That police report is very misleading
21 because it's one rectangle with an arrow above it and another rectangle and that just leaves
22 one image in one's mind where it would seem to be something that it isn't. You know. I, uh,
23 the report is-is-is really, I can't even find the word for it-it-it's—
24 Mr. Tirbovich: Inaccurate.
25 Ms. Gersten: —ha-ha-ha-ha-ha-ha-ha. That would be a good word. Yes, inaccurate.
26
27
28

1 You know.

2 Mr. Tirbovich: Yeah, and-and, I do--We--I know how you feel. I get that a lot. Um, as
3 far as, eh, something, you know, as inaccurate and-and-and so on. So, you know, I-I-I-I-I-I
4 see exactly what your saying. Um. You know. But-but, what, ooh, that's, so, you know, so
5 by me, just, you know, by saying that, realizing that, I think that you would understand that,
6 you know, it's hard to, but understand that's why this--Everybody is spending all kinds of
7 money in-in investigating this 'cause it's not a-a-a-- it's not a clear cut. It's not what it is
8 appears to be. What the report is, you know, normally, they're not that inaccurate. They're
9 pretty right on. But, you know, as you're saying in we-we, those are the report's inaccurate,
10 so that's why it hasn't been just so cut and dry and we've had to do branch out and really do
11 a thorough investigation as opposed to just, oh, this person is rear ended we're going to
12 deny it and be done.

13 Ms. Gersten: Right. Have you spoken to the Trooper?

14 Mr. Tirbovich: Uh, the—yeah-yeah-yeah. We have spoken with the trooper. Um. As
15 far as, you know, it--he has given us his opinions. Um, but, you know, obviously defending
16 his-his write up, you know. I mean, all troopers don't want to be wrong. You know. That's
17 a whole other thing. That's-that's the problem, you know, a lot of them don't want to admit
18 that what they wrote is wrong or whatever, so.

19 Ms. Gersten: Yeah, being held accountable for one's—

20 Mr. Tirbovich: Mm-hmm.

21 Ms. Gersten: —own mistake, yeah.

22 Mr. Tirbovich: Mm-hmm, exactly.

23 Ms. Gersten: Yeah.

1 Mr. Tirbovich: That's why we had to branch out and do other means of investigation as
2 opposed to, yeah, sometimes me talking to a trooper can make me make my decision, uh,
3 but in this case it's not that simple. It's very complicated.

4 Ms. Gersten: Yeah.

5 Mr. Tirbovich: So, you know, obviously, think about it. I'm in Monday through Friday,
6 eight--Normally I'm here to four thirty, which I'm getting ready to leave right now, but, um,
7 you know, I-I-I will, you know, put everything, what, you know, our communication and,
8 ah, you know, I definitely will give your insurance a call tomorrow. Um. You know. As you
9 said, you told me that they--you said that they definitely are putting our insured's at fault.
10 That-that doesn't tell us for sure, you know, but we don't make a decision on that for sure,
11 but it's something that I-I-I'll definitely look into and-and-and, see what they have to say,
12 okay.

13 Ms. Gersten: All right. Thank you.

14 Mr. Tirbovich: All right. Thank you. Ba-bye.

15 Ms. Gersten: Bye.

16 Conversation ends. (53 min. 9 sec.)
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FILED
2018 MAR 27 3:59
CLERK OF COURT
CHRISTEN CO S.C.

February 21, 2018

TEMP RETURN SERVICE REQUESTED

SENT VIA REGULAR AND CERTIFIED MAIL

Ivanka Ayoub

RE: Claim Number:
Date of Loss: 3/19/2015
Policy Number:
Insured: Ivanka Ayoub

FILED
2018 MAR 27 2 35 PM
CLERK OF COURT
WINSTON-SALEM, N.C.

Dear Ivanka Ayoub:

acknowledges the Tyger River demand received on February 20, 2018. 's investigation and review of your claim for Collision Coverage is based, in part, on the policy contract issued to our Named Insured, Ivanka Ayoub by . The policy provided by Trustgard to Ivanka Ayoub is an policy contract. Collision coverage is contractual and governed by the state where the policy was issued. In this particular policy, there is a "choice of law" clause or "interpretation" clause requiring the policy to be interpreted under the law of the state where the policy was issued as noted on the Declarations Page. The Declarations Page provides that your address is . Enclosed is a copy of the Declarations page for your review.

The policy has the following language explaining that the policy will be interpreted by the law of the state indicated on the Declarations Page:

PART F - GENERAL PROVISIONS

Policy Period, Territory, and Interpretation

C. This agreement shall be governed by, and interpreted in accordance with the laws of the state in which the insured resides as reflected on the policy Declarations Page.

Regarding the Collision damage to the 1998 Chevy Van from the auto accident of March 19, 2015, we previously extend an offer related to the total loss value of the 1998 Chevrolet Sport Van on May 21, 2015. We have enclosed a copy of this offer for your review. To confirm, our offer is less the Collision deductible of . The total settlement amount we will issue to you is , which represents the actual cash value of the vehicle at the time of loss. You may be eligible for sales tax reimbursement if you purchase a replacement vehicle within 30 days of



receiving our settlement check. You must send proof of purchase showing the amount of sales tax incurred by you to _____ within 33 days of the receipt of our check. The Amount of reimbursement for sales tax is limited to the lesser of the following:

1. The amount that would have been payable for sales tax on the purchase of a vehicle with a market value equal to the amount of the settlement
2. The actual amount of sales tax paid for the replacement vehicle.

If you do not send proof of payment of sales tax on a replacement vehicle with 33 days after you receive our settlement check, we are no longer required to reimburse you for the tax paid.

Below is the applicable policy language related to the Collision coverage under this policy:

PART D - COVERAGE FOR DAMAGE TO

* * *

Insuring Agreement

A. We will pay for sudden, direct and accidental loss to your covered auto or any non-owned auto, including its permanently installed equipment, minus any applicable deductible shown on the Declarations Page. We will pay for loss to your covered auto caused by:

2. Collision only if the Declarations Page indicates that Collision Coverage is provided for that auto.

B. "Collision" means the upset of your covered auto or a non-owned auto or their impact with another vehicle or object.

* * *

Limit of Liability

A. Our limit of liability will be the lesser of the:

1. Actual cash value of the stolen or damaged property; or
2. Amount necessary to repair or replace the property using parts furnished by the vehicle's manufacturers or parts from other manufacturers.

This policy does not cover a claim for diminished market value of your covered auto or nonowned auto.

B. An adjustment for depreciation and physical condition will be made in determining the actual cash value of your covered auto or non-owned auto at the time of loss.

* * *

Punitive or Exemplary Damages Exclusion

Regardless of any other provision of this policy, we do not provide coverage for punitive or exemplary damages, or any legal fees or costs associated with them.

If we are unable to come to an agreement regarding the actual cash value of your 1998 Chevy at the time of loss to resolve the collision claim, please refer to the below policy language:

Appraisal

A. If we and you do not agree on the actual value of the vehicle, either party may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of the loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the expenses of the appraisal and umpire equally.

B. We do not waive any of our rights under this policy by agreeing to an appraisal.

* * *

Our Right To Recover Payment

A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person shall do:

1. Whatever is necessary to enable us to exercise our rights; and
2. Nothing after loss to prejudice them.

B. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and
2. Reimburse us to the extent of our payment regardless of the total amount of damages sustained by the insured irrespective of whether any such settlement or judgment may or may not provide reimbursement for all injuries, illnesses, or other damages (including, without limitation, pain and suffering, consequential, punitive, exemplary or other damages, whether alleged, proven in a court of law otherwise substantiated).

C. We are not responsible for any fees, including, but not limited to, attorney fees or court costs incurred to recover our subrogated interest unless we have agreed in writing, in advance, to be responsible for those fees.

Below are the terms specifically defined under the Definitions section of the policy.

DEFINITIONS

A. The terms defined below appear in bold type throughout this policy. You and Your refer to the named insured, which includes the individual named on the Declarations Page or that person's spouse if a resident of the same household.

J. "Your covered auto" means:

1. Any vehicle shown on the Declarations Page.
2. Any of the following types of vehicles, acquired during the policy period, on the date you become the owner:
 - a. a private passenger auto; or
 - b. a pickup or van for which no other insurance policy provides coverage and that has a Gross Vehicle Weight of less than 12,000 lbs. according to the manufacturer's specifications.

Based on the above policy language and Ohio law, Trustgard is unable to consider a claim or extend any offers of settlement for the personal property damage under this policy. If you have any additional information you would like us to consider please provide it, in writing, to my attention for additional review.

Please feel free to contact me with any questions at the number listed below.

Sincerely,

Amy Carmack
Senior Claims Representative

Phone:

Fax:

Email: Thirdparty@

Enclosures: Dec Page
Total Loss Settlement Offer
CCC Market Evaluation

Policy Number:	
Policy Type:	
Reason Issued: Reinstatement	
Effective Date: 01/28/2015	
Print Date: 01/29/2015	

Named Insured and Address

Ivanka Ayoub

Auto Policy Declarations Page

This is not a bill.

Issued by:

Policy Effective Dates: 01/28/2015 to 07/23/2015 11:01 a.m. ET at the address of the named insured as shown, and for additional six month periods if renewed, as provided in the policy. These declarations with policy provisions, applications, forms and endorsements, if any, complete the above numbered policy.

Total Policy Premium Summary

Your Auto policy includes coverage for the following:

Year	Make	Model	VIN	Premium
1999	Dodg	Ram		
1998	Chev	Sport Van G1		

The total premium shown does not include any applicable billing fees

Total Policy Premium

Did You Know...

- You have qualified for Disclosed Operator, Insurance Score, and Multi-Car Discount(s). Find out how you can save even more by contacting _____

Got questions? We've got answers.

Policy Information: If you have any questions about your coverages or other ways to save with Grange, be sure to contact your agent.

Claims Assistance: To report or check on a claim, call _____

Billing Questions: To inquire about your bill or pay it, _____

Discounts

For a description of these discounts, please reference the Discounts applied to your policy section.

Policy Discounts

Disclosed Operator, Insurance Score, and Multi-Car

Policy Number:
Policy Type:

Vehicle Coverages

Coverage is provided where a premium is shown for the vehicle and coverage. The coverages listed below apply separately for each vehicle and are provided only where a premium or included is shown. The limit of liability applies separately for each vehicle. Where there are multiple vehicles on the policy, stacking of any limits of liability among the vehicles is not allowed.

1999 Dodg Ram

Coverages	Limits of Liability		Premium
	Each Person	Each Accident	
Part A - Liability			
Bodily Injury		)	
Property Damage		)	
Part B - Medical Payments			
Part C - Uninsured/Underinsured Motorists			
Bodily Injury		)	
Part D - Damage to Your Auto	Deductible		
Other Than Collision			
Collision			
Optional Coverages			
Rental Reimbursement	/ Day	/ Occurrence	
Towing and Labor			
Policy Fee			
Vehicle Premium			

Vehicle Coverages

1998 Chev Sport Van G1

Coverages	Limits of Liability		Premium
	Each Person	Each Accident	
Part A - Liability			
Bodily Injury		)	
Property Damage		)	
Part B - Medical Payments			
Part C - Uninsured/Underinsured Motorists			
Bodily Injury		)	
Part D - Damage to Your Auto	Deductible		
Other Than Collision			
Collision			
Optional Coverages			
Rental Reimbursement	/ Day	/ Occurrence	
Towing and Labor			
Vehicle Premium			

Policy Number
Policy Type

Policy Forms

Form #	Edition Date	Description
BCC136M	(03-2010)	Policy Contract
PPT02	(09-2013)	Passport Endorsement

End of Declarations Page

TEMP-RETURN SERVICE REQUESTED

May 21, 2015

Ivanka Ayoub

Re: Claim Number:
Date of Loss: 03/19/2015
Vehicle Year: 1998
Vehicle Model: SPORT VAN G1

Insured: Ivanka Ayoub
Policy Number:
Vehicle Make: CHEV
VIN: 1

Dear Ivanka,

Thank you for discussing the claim with me. Based on our review of the damages to the vehicle, we have determined that the vehicle is a total loss. The actual cash value of the vehicle is based on the mileage, options and condition of the vehicle.

In order to settle this portion of the claim, we require the following:

- Certificate of Title
- Signed and notarized Power of Attorney (POA).

Please send all requested documents in the enclosed business reply envelope. Once all documents have been received we will use the POA to transfer the title into Trustgard Insurance Company's name and issue payment.

Explanation of Settlement:

Market Valuation

- Deductible

Settlement Amount

Please leave the keys with the total loss vehicle. If you did not leave the keys with the total loss vehicle and it has already been picked up for salvage, please return the keys in the enclosed business reply envelope.



LTR CLM-0341

Sincerely,

Erin M. Caldwell

Claims Representative

Phone:

Fax:

Email: caldwelle@

Enclosure: Power of Attorney



CCC VALUESCOPE
Claim Services

Market Report

Report Reference Number:
Claim Reference:
Loss Incident Date: 03/19/2015
Insured: Ivanka Ayoub

Adjuster: Brin Caldwell
Adjuster ID: 240
Claim Reported Date: 03/25/2015
Owner: Ayoub, Ivanka
Appraiser: CHRIS MOENHRING

Introduction

Orange Insurance Companies has conducted an appraisal of your 1998 Chevrolet G10/EXP 4X2 Incomplete Deluxe located in . The appraisal information was then used to conduct research in your market to determine the local market value of your unit. This CCC Valuescope Market Report details the results of that search. It contains the following sections:

Section Title:	Section Contents:
Equipment Summary	Market Value and Equipment Detail
VINguard Identification	Loss Unit configuration and VIN history
Valuation Methodology	Method used to evaluate the vehicle
Comparable Units	Supporting market data for loss unit
Appraisal and Valuation Notes	Log notes for this file

===== Equipment Summary =====
Loss Unit Specifications

Deluxe
1998 Chevrolet G10/EXP 4X2 Incomplete
Deluxe
5-5.7L-FI
Condition is 2: Average
Odometer: Unknown

Actual Cash Value	\$
Pre Tax Adjustments	
Mileage To 250,000	-
Pre-tax amount:	\$
Adjusted Loss Unit Value	\$

Loss Unit Equipment:

Option	Description
AT	- Automatic Transmission
OD	- Overdrive
PS	- Power Steering

Valuation Request: (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

===== Equipment Summary (continued) =====

PB	- Power Brakes
PW	- Power Windows
PL	- Power Locks
AW	- Aluminum/Alloy Wheels
AC	- Air Conditioning
DM	- Dual Mirrors
IN	- Intermittent Wipers
TW	- Tilt Wheel
CC	- Cruise Control
AM	- AM Radio
FM	- FM Radio
ST	- Stereo
SE	- Search/Seek
CN	- Console/Storage
CS	- Cloth Seats
RL	- Reclining/Lounge Seats
CO	- Overhead Console

3S - 3rd Row Seat
 WT - Wood Interior Trim
 FU - Full Carpeting
 IL - Interior Lighting
 PO - Rear Fold-Out Sofa Bed
 UD - Upholstered Door Panels - Re
 WL - Insult. Walls W/Paneling/Wall
 AG - Drivers Side Air Bag
 RG - Passenger Air Bag
 AR - Anti-Lock Brakes (4)
 DT - Privacy Glass
 SB - Rear Step Bumper
 TR - Tire Rack/Carrier
 WF - Draperies or Mini Blinds
 WN - Custom Windows
 IP - Clearcoat Paint
 2T - Two Tone Paint

Additional Equipment
 Deluxe Conversion

Actual Cash Value does not include tax, title, license, prior damage or deductible. For additional information or special consideration, call the CCC Commercial/Recreational Vehicle Division at 1-800-621-8070 or, in Illinois, 312-CCC-INFO. Please use your Valuation Request Number for reference.

===== VINguard Identification =====

VIN:

Insurer Description	Analysis
Valuation Request: (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE	

===== VINguard Identification (continued) =====

Class	Deluxe	1998
Year	1998	Chevrolet
Make	Chevrolet	G10/EXP 4X2 Incomplete
Model	G10/EXP 4X2 Incomplete	BG15
Model Num	NG15	
Body style	Deluxe	
Engine	8-5.7l-Fi	8-5.7l-Fi

Previous Total Loss History:

on 03/24/2015 Claim #:

Collision History Information:

Collision incident reported

on 03/26/2015 Claim #

Miles: 0,000 Damage

===== AutoCheck Vehicle History Report =====

AutoCheck Vehicle History Report

Experian Automotive

Report Run Date: 05/20/2015

Key: | N = No Problem Found | Y = Problem Found | I = Information Found

TITLE CHECK

THIS VEHICLE CHECKS OUT. AutoCheck database for this 1998 CHEVROLET G10/EXP 4X2 INCOMPLETE shows no historical events that indicate a significant automotive problem. These problems can indicate past automotive damage or warnings associated with the vehicle title.

Problems Checked	Results Found
Abandoned	N No Abandoned Record(s) Found
Valuation Request:	(Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE
===== AutoCheck Vehicle History Report (continued) =====	
Damaged	N No Damaged Record(s) Found
Fire Damage	N No Fire Damage Record Found
Grey Market	N No Grey Market Record Found
Hail Damage	N No Hail Damage Record Found
Insurance Loss	N No Insurance Loss Record Found
Junk	N No Junk Record(s) Found
Rebuilt	N No Rebuilt Record(s) Found
Salvage	N No Salvage Record(s) Found

PROBLEM CHECK

THIS VEHICLE CHECKS OUT. AutoCheck database for this 1998 CHEVROLET G10/EXP 4X2 INCOMPLETE shows no historical events that indicate a significant automotive problem. These problems can indicate past automotive damage or warnings associated with the vehicle title.

Problems Checked	Results Found
NHTSA Crash Test Vehicle	N No NHTSA Crash Test Vehicle Record(s) Found
Frame Damage	N No Frame Damage Record(s) Found
Major Damage Incident	N No Major Damage Record(s) Found
Manufacturer buyback/lemon	N No Manufacturer buyback/lemon Record(s) Found
Odometer Problem	N No Odometer Problem Record(s) Found
Recycled	N No Recycled Record(s) Found
Salvage Auction	N No Salvage Auction Record(s) Found
Water Damage	N No Water Damage Record(s) Found
ODOMETER CHECK	THIS VEHICLE CHECKS OUT. For this 1998 CHEVROLET G10/EXP 4X2 INCOMPLETE, no indication of odometer rollback or tampering was found. AutoCheck determines odometer rollbacks by searching for records that indicate odometer readings less than a previously reported value. Other odometer events can report events of tampering, or possible odometer breakage.

Date Reported	Odometer Reading
1998-08-10	
1998-09-11	
1999-02-03	
1999-02-03	
1999-06-15	
1999-11-29	24,681
1999-12-17	
2000-12-18	
2001-12-13	
2002-10-18	53,852
2002-10-18	
2003-07-30	
2004-07-30	
2005-07-27	
2007-06-22	
Valuation Request:	(Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE
===== AutoCheck Vehicle History Report (continued) =====	
2009-10-01	
2011-07-27	
2013-06-10	245,700
2013-06-11	245,000
2013-06-12	
2014-03-24	
2015-03-19	

2015-03-19
2015-03-19
2015-03-19
2015-03-19
2015-03-19

VEHICLE INFORMATION

INFORMATION FOUND. AutoCheck found additional information on this vehicle.
These records will provide more history for this 1998 CHEVROLET G10/EXP 4X2
INCOMPLETE {

Problems Checked Results Found

Accident
Corrected Title
Driver Education
Duplicate Title
Emissions Safety Inspection
Fire Damage
Lease
Lien
Livery Use
Government Use
Police Use
Fleet
Rental
Fleet and/or Lease
Fleet and/or Rental
Repossessed
Taxi Use
Theft

FULL HISTORY

Below are the historical events for this vehicle listed in chronological order.

Report Run Date: 05/20/2015

Event	Event	Odometer	Date	Event
Valuation Request:		(Continued)	1998 CHEV G10/EXP 4X2	INCOMPLETE
***** AutoCheck Vehicle History Report (continued) *****				
Date	Location	Reading	Source	Detail

AutoCheck Vehicle History Report Terms and Conditions:
Valuation Request: (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE
***** Autocheck Vehicle History Report (continued) *****
Experian's Reports are compiled from multiple sources. It is not always possible for Experian to obtain complete discrepancy information on all vehicles; therefore, there may be other title brands, odometer readings or discrepancies that apply to a vehicle that are not reflected on that vehicle's Report. Experian searches data from additional sources where possible, but all discrepancies may not be reflected on the Report.

These Reports are based on information supplied to Experian by external sources believed to be reliable, BUT NO RESPONSIBILITY IS ASSUMED BY EXPERIAN OR ITS AGENTS FOR ERRORS, INACCURACIES OR OMISSIONS. THE REPORTS ARE PROVIDED STRICTLY ON AN 'AS IS WHERE IS' BASIS, AND EXPERIAN FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THIS REPORT.

YOU AGREE TO INDEMNIFY EXPERIAN FOR ANY CLAIMS OR LOSSES, INCLUDING COSTS, EXPENSES AND ATTORNEYS FEES, INCURRED BY EXPERIAN ARISING DIRECTLY OR INDIRECTLY FROM YOUR IMPROPER OR UNAUTHORIZED USE OF AUTOCHECK VEHICLE HISTORY REPORTS.

Experian shall not be liable for any delay or failure to provide an accurate report if and to the extent which such delay or failure is caused by events beyond the reasonable control of Experian, including, without limitation, 'acts of God', terrorism, or public enemies, labor disputes, equipment malfunctions, material or component shortages, supplier failures, embargoes, rationing, acts of local, state or national governments, or public agencies, utility or communication failures or delays, fire, earthquakes, flood, epidemics, riots and strikes.

These terms and the relationship between you and Experian shall be governed by the laws of the State of Illinois (USA) without regard to its conflict of laws provisions. You and Experian agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Cook, Illinois.

***** Valuation Methodology *****

The Commercial + Recreational Vehicle Division of CCC Information Services, Inc., prepared this CCC Valuescope Market Report for Grange Insurance Companies. CCC has been preparing market value reports for the insurance industry since 1981.

Valuations performed by CCC's Commercial + Recreational Vehicle Division require individual market searches to identify and locate supporting market information. Due to the unique nature of the loss units valued in the Commercial + Recreational Vehicle Division, a valuation expert handles each request individually.

When ; requests a valuation report, they provide CCC with the configuration of the loss unit, including model, hours or mileage, optional features, any accessories, the condition of the loss unit as well as Valuation Request: (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

the VIN/HIN/PIN (vehicle/hull/product identification number) of the loss unit. That identification number is analyzed to verify basic information provided on the loss unit.

also provides CCC with the loss unit owner's ZIP code, which identifies the local market used to determine the market value.

The local market area, however, may vary by vehicle or unit type. Where the vehicle or loss unit is readily available in a given location, the search area can be within the same city or state as the loss unit. If the loss unit or vehicle is very specialized, the search may expand to locate comparable support to document the loss unit's value.

Significant differences between the loss unit and any comparable units are documented and are used to define a verifiable market value for the loss unit. If no comparable units are located, the valuation expert will conduct a local market survey to gather the expert opinion of knowledgeable retailers in order to determine the local market value.

===== Comparable Units =====
The Comparable Units are compared to the Loss Unit to determine the Adjusted Value. The Adjusted Value represents the price of the Comparable Unit configured to exactly match the Loss Unit.

Comparable # 1 :

Publication: Internet Advertisement	Publication Date: 09/30/2014
Location: Grand Rapids, MI	Phone: (866)438-7403
Dealer/Private: Dealer	Dealer Name: Paris Motors Inc

Loss Unit	Comparable # 1	Adjustment
Loss Unit Type: Conversion Vans	Conversion Vans	
Class: Deluxe	Deluxe	
1998 Chevrolet	Take Price:	
G10/Exp 4x2 Incomplete	1998 Chevrolet	
Deluxe	G10 4x2 Chevyvan Incomplete	
8-5.7l-Fi	Conversion	
Miles: Unlisted	8-5.7l-Fi	
	169,604	
Condition: 2 Average	2 Average	
Packages		
Radio		
AM/FM Stereo Seek	AM/FM Stereo	
	With Tape Cassette	
Valuation Request:	(Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE	

===== Comparable Units (continued) =====

LOSS UNIT	Comparable # 1	ADJUSTMENT
Options		
Automatic Transmission	Automatic Transmission	
Overdrive	Overdrive	
Power Steering	Power Steering	
Power Brakes	Power Brakes	
Power Windows	Power Windows	
Power Locks	Power Locks	
Aluminum/Alloy Wheels	Aluminum/Alloy Wheels	
Air Conditioning	Air Conditioning	
Dual Mirrors	Dual Mirrors	
Intermittent Wipers	Intermittent Wipers	
Tilt Wheel	Tilt Wheel	
Cruise Control	Cruise Control	
Console/Storage	Console/Storage	
Cloth Seats	Cloth Seats	
Reclining/Lounge Seats		

Overhead Console
 3rd Row Seat
 Wood Interior Trim
 Full Carpeting
 Interior Lighting
 Rear Fold-Out Sofa Bed
 Upholstered Door Panel
 Inslt. Walls W/Panelin
 Drivers Side Air Bag
 Passenger Air Bag
 Anti-Lock Brakes (4)
 Privacy Glass
 Rear Step Bumper
 Tire Rack/Carrier
 Draperies Or Mini Blin
 Custom Windows
 Clearcoat Paint
 Two Tone Paint

3rd Row Seat
 Wood Interior Trim
 Full Carpeting
 Interior Lighting
 Rear Fold-Out Sofa Bed
 Upholstered Door Panels - Headlin
 Inslt. Walls W/Paneling/Wall Cove
 Drivers Side Air Bag
 Passenger Air Bag
 Anti-Lock Brakes (4)
 Privacy Glass
 Rear Step Bumper
 Tire Rack/Carrier
 Draperies Or Mini Blinds
 Custom Windows

Power Mirrors
 Heated Mirrors
 Television
 Vcr
 Dual Radio
 Captain Chairs (4)
 Running Boards/Side Steps

Additional Equipment
 Deluxe Conversion

Midwest Vans Conversion

Valuation Request: 54403684 (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

===== Comparable Units (continued) =====

LOSS UNIT	Comparable #	1	ADJUSTMENT
Adjusted Value			

Comparable # 2 :

Publication: Internet Advertisement
 Location:
 Dealer/Private: Dealer

Publication Date: 09/25/2014
 Dealer Name:

Loss Unit	Comparable #	2	Adjustment
Loss Unit Type: Conversion Vans Class: Deluxe 1998 Chevrolet G10/Exp 4x2 Incomplete Deluxe 8-5.71-Pi Miles: Unlisted Condition: 2 Average Packages Radio AM/FM Stereo Seek Options Automatic Transmission Overdrive Power Steering Power Brakes Power Windows Power Locks	Conversion Vans Deluxe Take Price: 1998 Chevrolet G10 4x2 Chevyvan Incomplete Conversion 8-5.71-Pi 89,093 2 Average AM/FM Stereo With Tape And Cd Automatic Transmission Overdrive Power Steering Power Brakes Power Windows Power Locks		

Aluminum/Alloy Wheels
Air Conditioning
Dual Mirrors
Intermittent Wipers
Tilt Wheel
Cruise Control
Console/Storage
Cloth Seats
Reclining/Lounge Seats
Valuation Request:

Aluminum/Alloy Wheels
Air Conditioning
Dual Mirrors
Intermittent Wipers
Tilt Wheel
Cruise Control
Console/Storage
Cloth Seats

(Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

***** Comparable Units (continued) *****

LOSS UNIT	Comparable #	2	ADJUSTMENT
Overhead Console		3rd Row Seat	
3rd Row Seat		Wood Interior Trim	
Wood Interior Trim		Full Carpeting	
Full Carpeting		Interior Lighting	
Interior Lighting		Rear Fold-Out Sofa Bed	
Rear Fold-Out Sofa Bed		Upholstered Door Panels + Headlin	
Upholstered Door Panel		Inst. Walls W/Paneling/Wall Cove	
Inst. Walls W/Panelin		Drivers Side Air Bag	
Drivers Side Air Bag		Passenger Air Bag	
Passenger Air Bag		Anti-Lock Brakes (4)	
Anti-Lock Brakes (4)		Privacy Glass	
Privacy Glass			
Rear Step Bumper		Tire Rack/Carrier	
Tire Rack/Carrier		Draperies Or Mini Blinds	
Draperies Or Mini Blin		Custom Windows	
Custom Windows			
Clearcoat Paint		Power Mirrors	
Two Tone Paint		Television	
		Vcr	
		Dual Radio	
		Captain Chairs (4)	
		Trailer Hitch	
		Trailer Package	
		Running Boards/Side Steps	
Additional Equipment			
Deluxe Conversion		Gladiator Conversion	
Adjusted Value			

Comparable # 3 :

Publication: Internet Advertisement
Location:
Dealer/Private: Private

Publication Date: 09/30/2014
Phone:

Loss Unit	Comparable #	3	Adjustment
Loss Unit Type: Conversion Vans		Conversion Vans	
Class: Deluxe		Deluxe	
		Take Price:	
Valuation Request: 54403684		(Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE	

***** Comparable Units (continued) *****

LOSS UNIT	Comparable #	3	ADJUSTMENT
1998 Chevrolet		1999 Chevrolet	
G10/Exp 4x2 Incomplete		G10 4x2 Chevyvan Incomplete	
Deluxe		Conversion	
8-5.71-F1		8-5.71-F1	
Miles: Unlisted		120,000	

Condition: 2 Average

2 Average

Packages

Radio
AM/FM Stereo Seek

AM/FM Stereo
With Tape Cassette

Options

Automatic Transmission
Overdrive
Power Steering
Power Brakes
Power Windows
Power Locks
Aluminum/Alloy Wheels
Air Conditioning
Dual Mirrors
Intermittent Wipers
Tilt Wheel
Cruise Control
Console/Storage
Cloth Seats
Reclining/Lounge Seats
Overhead Console
3rd Row Seat
Wood Interior Trim
Full Carpeting
Interior Lighting
Rear Fold-Out Sofa Bed
Upholstered Door Panel
Insult. Walls W/Paneling
Drivers Side Air Bag
Passenger Air Bag
Anti-Lock Brakes (4)
Privacy Glass
Rear Step Bumper
Tire Rack/Carrier
Draperies Or Mini Blin
Valuation Request:

Automatic Transmission
Overdrive
Power Steering
Power Brakes
Power Windows
Power Locks

Air Conditioning
Dual Mirrors
Intermittent Wipers
Tilt Wheel
Cruise Control
Console/Storage
Cloth Seats

3rd Row Seat
Wood Interior Trim
Full Carpeting
Interior Lighting
Rear Fold-Out Sofa Bed
Upholstered Door Panels + Headlin
Insult. Walls W/Paneling/Wall Cove
Drivers Side Air Bag
Passenger Air Bag
Anti-Lock Brakes (4)
Privacy Glass
Rear Step Bumper
Tire Rack/Carrier
Draperies Or Mini Blinds

(Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

***** Comparable Units (continued) *****

LOSS UNIT	Comparable #	3	ADJUSTMENT
Custom Windows	Custom Windows		
Clearcoat Paint			
Two Tone Paint			
	20" Or Larger Wheels		
	Dual Air Conditioning		
	Television		
	Captain Chairs (4)		
	Running Boards/Side Steps		
Additional Equipment			
Deluxe Conversion	Deluxe Conversion		
	42" Television (2nd TV)		
	Dvd Player		
Adjusted Value			

***** Valuation Processing Notes *****

01/25 14:28 Standard Equipment:
Ps Pb Ab Ag Rg Pw Pl Tw Cc Am Fm St Ca Av

The following information was provided after the valuation was completed:
05/20 12:51 Pre tax/Post tax data modified after valuation.

If you have any questions, please contact Customer service at
or in . Thank you for the assignment.

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DISTRICT CO S.C.

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5 Phone communication between Heidi Gersten
6 and Joseph Tirbovich of
7

8 February 22, 2018 2:29 p.m. EST.

9 Transcribed and certified by Heidi Gersten to be a true and accurate depiction.

10 4 pages.
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HEIDI GERSTEN CO.S.C.



FEBRUARY 22, 2018 PHONE COMMUNICATION BETWEEN HEIDI GERSTEN AND JOSEPH TIRBOVICH OF

1 Heidi Gersten: Good afternoon. Heidi Gersten speaking on a recorded line. How may I help you?

2 Joseph Tirbovich: Hello, Heidi. This is Joe Tirbovich with Nationwide Insurance. I need to also let you know that this
call may be monitored and recorded for quality purposes. How are you today?

3 Heidi Gersten: Oh, I'm hanging in there. How are you doing?

4 Joseph Tirbovich: Doing very good. Just giving you a call. Uh, I received, uh, another demand letter from you on
5 regards to the property damage claim and wanted to let you know that our offer stands at _____ and will not move at
that.

6 Heidi Gersten: I apologize, but, uh, are you offering _____ on my mother's claim?

7 Joseph Tirbovich: Your mother has made a claim with, um, _____ for her vehicle. Um, the _____ is for your
8 property damage. We are not honoring anything for your mother. Zero for your mother. This is strictly for your injury,
excuse me, your property damage punitive claim that you had made with us. So, I'm just reiterating the _____ for
9 you as far as with your mother, zero.

10 Heidi Gersten: Okay. So, are you putting in writing a letter to her?

11 Joseph Tirbovich: Definitely, and a letter to you as well. But, I just still wanted to call.

12 Heidi Gersten: Okay. What is your basis for denying my mother's claim, Ivanka Ayoub?

13 Joseph Tirbovich: Um, yeah, your mom doesn't have a claim with us.

14 Heidi Gersten: So. You prefer to go to litigation?

15 Joseph Tirbovich: Oh, we've been waiting for you. (laughter) Actually, I thought you were going to—We've even—
16 We've been waiting. Um. 'Cause you've been saying for months you were. So, now we've already let our insured
know. We have our litigation department on-on stand by. I'm waiting for that to be honest with you 'cause I know the
statute's running.

17 Heidi Gersten: All right. Anything else you'd like to say?

18 Joseph Tirbovich: Oh. No ma'am. Nope. Just letting you know that for your property damage punitive claim we are
19 offering _____, which was the same offer I made back, I think, in August or September. As far as with your mom
trying to make any loss of consortium claim, we're not honoring that.

20 Heidi Gersten: Okay. And what is—

21 Joseph Tirbovich: And so you know—

22 Heidi Gersten: —your basis—

23 Joseph Tirbovich: —just for the—

24 Heidi Gersten: —basis of, uh, your-your, uh, with the—with my claim which is separate? What-what is the basis—

25 Joseph Tirbovich: —Yah—

26 Heidi Gersten: —of the _____ when punitive damages are—

27 Joseph Tirbovich: Yeah. Well, unfortunately, with what, what you've provided us, was very vague in-information is
28 what you provided, basically provided us with multiple photos of things that were taken prior to the accident. I was able

FEBRUARY 22, 2018 PHONE COMMUNICATION BETWEEN HEIDI GERSTEN AND JOSEPH TIRBOVICH OF

1 to identify around Um, and then we added, um, additional money for punitive damages. So, as I said we
2 needed to actually see, physically see all the property damages, yeah, everything that you said that was in this van. All
3 you gave me were pictures, you gave me a video, but I was not able to identify probably 90% of the things that, that you
4 were, um, asking for, so that is our basis.

5 Heidi Gersten: Really so you didn't receive—

6 Joseph Tirbovich: I mean—

7 Heidi Gersten: Did you? Did you receive a 332-page book with pictures and receipts with indexes?

8 Joseph Tirbovich: Mm. But there's nothing to show that those items were in the-your vehicle at the time of loss. And we
9 had this conversation multiple times before that I needed to see those items that were damaged in the vehicle right after
10 the accident.

11 Heidi Gersten: First of all, I—

12 Joseph Tirbovich: I told you that.

13 Heidi Gersten: —I disagree with what you're saying because, um, in our previously recorded conversation you did not
14 agree to that. You understood that I was in the hospital for—

15 Joseph Tirbovich: No ma'am. I didn't. We never had that--Please let me hear this conversation. I-I would like to listen
16 to this conversation because I know I have it documented in my file I told you exactly what we needed. So if you could,
17 could I hear this conversation?

18 Heidi Gersten: Absolutely. Absolutely.

19 Joseph Tirbovich: Could I hear it now? Do you have that on you?

20 Heidi Gersten: I apologize, you asked for litigation and you've not--This is the first time you're telling me what you're
21 saying to me. This is brand new.

22 Joseph Tirbovich: Yeah. And-and-and I had sent many letters when we made the offer for you to call me and you
23 refused to call me—

24 Heidi Gersten: I apologize. I'm paralyzed.

25 Joseph Tirbovich: —back.

26 Heidi Gersten: I apologize. May I speak?

27 Joseph Tirbovich: So, we've talked.

28 Heidi Gersten: I'm paralyzed. Sir, may I speak?

Joseph Tirbovich: We talked on the phone—

Heidi Gersten: May I speak?

Joseph Tirbovich: —many times before. No ma'am. We talked on the phone for many times prior to that—us making
the offer and then you stopped talking to me. You would not. You wanted everything in writing.

Heidi Gersten: And why would you not put this in writing?

FEBRUARY 22, 2018 PHONE COMMUNICATION BETWEEN HEIDI GERSTEN AND JOSEPH TIRBOVICH OF

1 Joseph Tirbovich: We don't put things in writing because attorneys. I've learned. That was something when I was a
rooky adjuster. When I put certain things in writing, attorneys can tear things apart. So, everything is verbal.

2 Heidi Gersten: Okay. Well, you verbally agreed to compensate me and you failed.

3 Joseph Tirbovich: Yes ma'am. I verbally agreed to compensate you with _____ and I am not
4 compensating your mother for anything.

5 Heidi Gersten: All right.

6 Joseph Tirbovich: You have a very nice day ma'am and I'll just wait for the suit papers.

7 Heidi Gersten: Absolutely.

8 Joseph Tirbovich: Thank you very much. Mm. Ba-bye.

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FEBRUARY 22, 2018 PHONE COMMUNICATION BETWEEN HEIDI GERSTEN AND JOSEPH TIRBOVICH OF

Your Policy Declarations

Policy Period: Feb 8, 2015 - Aug 8, 2015

Policy Number:

Insured Vehicle(s) and Schedule of Coverages (continued)

2008 Honda Ridgeline

Coverages	Limits of Liability	Premium
A Comprehensive With OEM Other Than Collision (Comprehensive)	Actual Cash Value	\$ 64.80
Collision With OEM	Actual Cash Value Less	\$ 134.80
B Liability	Each Accident	\$ 55.23
Property Damage Liability	Each Person	\$ 75.93
Bodily Injury Liability	Each Accident	\$ 23.90
	Each Person	\$ 16.00
C Medical Payments	Endorsement 3083A	
Increased Limits	Per Day	
Transportation	Per Accident	
Expenses Coverage		
Vehicle Endorsements 3305		
Loss Payee-Capital One Auto	Lien Expires On Apr 05, 2019	
	Total for this Vehicle	\$

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Policy Level Schedule of Coverages

Coverages	Limits of Liability	Premium
Part D2-Combined Uninsured and Underinsured Motorist - Bodily Injury	Each Person	\$
	Each Accident	\$
Uninsured - Property Damage	Each Accident	\$
	Total for Policy Coverages	\$

Policy Form and Endorsements

V-032E	Auto Policy
V-3456B	Amendatory Endorsement
V-3540	Amendatory Endorsement
V-3572	Other Products Endorsement
V-3083A	Extended Transportation Expenses Coverage
V-3305	Loss Settlement - Original Equipment Manufacturer Parts



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