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SC Court of Appeals

COMPLETE RECORD ON APPEAL, PART 3 of 3

(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)

Notice of Appeal filed November 27, 2018, in Appellate Case No. 2018-002115

NOTICE OF APPEAL IN A CIVIL CASE

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 M. Gibbons, Circuit Court Judge

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

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SC Court of Appeals

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

v.

Heid Gersten, Ivanka Ayoub, Daniel Hubbard — Appellants.

NOTICE OF APPEAL

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard ('Appellants') appeal the orders [judgments] of the Honorable Judges Brian M. Gibbons and John C. Hayes III dated April 26, 2018, September 5, 2018 and October 16, 2018. Appellants received written notice of entry of some of these orders [judgments] on September 18-October 21, 2018.

This appeal is subject to being premature and a stay may be in order as there are orders left to be reconsidered and/or determined by the lower (circuit) court. The Appellants retain their filing as paid in full at the time of filing for all purposes of the orders made and/or pertaining to

and/or regarding, whether ruled on or not, said court date.

November 15, 2018

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

Other Counsel of Record:

Wesley Brian Sawyer, Esquire
Murpy & Grantland, P.A.
4406 Forest Drive #B
Columbia, SC 29206
(Attorney for Kevin Carter and Richard Davis)
(803) 782-4100

David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)
(843) 213-5519

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

William H. Davidson II, Esquire
Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202
(Attorney for SC Dept. of Public Safety and Herbert Blackwell)

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

Alexander S. Gogsette
P.O. Box 5478
Florence, SC 29502
(Attorney for Joseph Tirbovich)
(843) 656-4454

CERTIFICATE OF SERVICE
(2018-AP-12-00074)
(2018-CP-12-00117)

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: FILE NO: 2018-CP-12-00117/2018-AP-12-00074 **NOTICE OF APPEAL IN A CIVIL CASE** 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
Murpy & Grantland, P.A.
4406 Forest Drive #B
Columbia, SC 29206
(Attorney for Kevin Carter and Richard Davis)

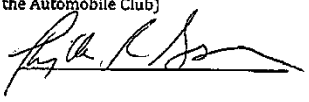
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
Collins & Lacy, PC
1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company)

William H. Davidson II, Esquire
Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202
(Attorney for SC Dept. of Public Safety and Trooper Herbert Blackwell)

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

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

By: 

Boca Raton, Florida
November 15, 2018

FAX Cover Sheet

November 27, 2018

TO: Jenny Abbott Kitchings
Clerk of Court
FAX (803) 734 1839

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SC Court of Appeals

From: Heidi Gersten
(323) 245-6142

Pages including this cover sheet 44

November 27, 2018
1438 West Lantana Rd. #330
Lantana, FL 33462
(323) 245 6142

South Carolina Court of Appeals
Clerk of Court
Attn: Jenny Abbott Kitchings
1220 Senate Street
Columbia, South Carolina 29201
Phone (803) 734-1890
Fax (855) 734-1839

RECEIVED
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SC Court of Appeals

Re: New Appeal
File No: 2018-AP-12-00074 and 2018-CP-12-00117
Priority Matter

Dear Ms. Kitchings or To Whom it may concern:

Good day to you. Please file this appeal. The Original Notice of Appeal along with the Orders, Proof of Service paperwork, and a money order USPS serial number 25302654821 has been sent yesterday November 26, 2018 via U.S. Postal Service tracking number 70181830000149570837 and is expected to be delivered on Thursday November 29, 2018.

Thank you so much for your help. I am available if you have any questions.

Respectfully submitted

Heidi Gersten

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Certified Mail Restricted Delivery	$0.00
Adult Signature Required	$0.00
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Total Postage and Fees	$6.70

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Adult Signature Restricted Delivery	
Postage	$0.50
Total Postage and Fees	$6.70

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BOCA RATON FL 33432
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11/15/2018

Sent To: Holly Briscoe Sawyer, Esquire (Combined PA
Street and Apt. No., or PO Box No.: 4406 Forest Dr. #B
City, State, ZIP+4®: Columbia, SC 29206

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Extra Services & Fees (check box, add fee as appropriate)	$2.75
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Certified Mail Restricted Delivery	$0.00
Adult Signature Required	$0.00
Adult Signature Restricted Delivery	
Postage	$0.50
Total Postage and Fees	$6.70

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BOCA RATON FL 33432
NOV 15 2018
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Sent To: David R. Sigh
Street and Apt. No., or PO Box No.: PO Box 2116
City, State, ZIP+4®: Myrtle Beach, SC 29578

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Return Receipt (hardcopy)	$0.00
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Adult Signature Restricted Delivery	
Postage	$0.50
Total Postage and Fees	$6.70

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Sent To: William H. Davidson II Esquire
Street and Apt. No., or PO Box No.: PO Box 8568
City, State, ZIP+4®: Columbia SC 29202

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Letter
(Domestic)
(FLORENCE, SC 29502)
(Weight:0 Lb 0.80 Oz)
(Estimated Delivery Date)
(Monday 11/19/2018)
Certified 1 $3.45
(@@USPS Certified Mail #)
(70181830000149570684)
Return 1 $2.75
Receipt
(@@USPS Return Receipt #)
(9590940243858190011282)
First-Class 1 $0.50
Mail
Letter
(Domestic)
(COLUMBIA, SC 29206)
(Weight:0 Lb 0.80 Oz)
(Estimated Delivery Date)
(Monday 11/19/2018)
Certified 1 $3.45
(@@USPS Certified Mail #)
(70181830000149570707)
Return 1 $2.75
Receipt
(@@USPS Return Receipt #)
(9590940243858190011299)
First-Class 1 $0.50
Mail
Letter
(Domestic)
(MYRTLE BEACH, SC 29578)
(Weight:0 Lb 0.80 Oz)
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(Monday 11/19/2018)
Certified 1 $3.45
(@@USPS Certified Mail #)
(70181830000149570714)
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(@@USPS Return Receipt #)
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Change ($52.89)

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First-Class Mail Letter (Domestic) (YORK, SC 29745) (Weight:0 Lb 1.60 Oz) (Estimated Delivery Date) (Monday 11/19/2018)	1	$0.71
Certified (@@USPS Certified Mail #) (70181830000149570691)	1	$3.45
Return Receipt (@@USPS Return Receipt #) (9590940243858190011350)	1	$2.75
First-Class Mail Letter (Domestic) (COLUMBIA, SC 29202) (Weight:0 Lb 0.80 Oz) (Estimated Delivery Date) (Monday 11/19/2018)	1	$0.50
Certified (@@USPS Certified Mail #) (70181830000149570738)	1	$3.45
Return Receipt (@@USPS Return Receipt #) (9590940243858190011329)	1	$2.75
First-Class Mail Letter (Domestic) (COLUMBIA, SC 29201) (Weight:0 Lb 0.70 Oz) (Estimated Delivery Date) (Monday 11/19/2018)	1	$0.50
Certified (@@USPS Certified Mail #) (70181830000149570721)	1	$3.45
Return Receipt (@@USPS Return Receipt #) (9590940243858190011312)	1	$2.75
First-Class Mail Letter (Domestic) (FLORENCE, SC 29503) (Weight:0 Lb 0.80 Oz) (Estimated Delivery Date) (Monday 11/19/2018)	1	$0.50
Certified (@@USPS Certified Mail #) (70181830000149570677)	1	$3.45
Return Receipt (@@USPS Return Receipt #) (9590940243858190011275)	1	$2.75
First-Class Mail Letter (Domestic) (FLORENCE, SC 29502)	1	$0.50

February 15, 2019

Letter from the Court of Appeals to Gersten and Ayoub dated February 15, 2019, in Appellate Case No. 2018-002115

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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COLUMBIA, SOUTH CAROLINA 29201
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February 15, 2019

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

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

Re: Heidi Gersten v. Kevin Carter
Appellate Case No. 2018-002115

Dear Ms. Gersten and Ms. Ayoub:

Within ten days of the date of this letter you must serve and file a return to the motion to dismiss, specifically addressing whether your motion for reconsideration was made timely in the circuit court pursuant to Rule 59, SCRCP. You must also provide the individual dates for when appellants received written notice of entry of each of the separate orders on appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: 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 26, 2020

Carter's First Set of Interrogatories and Requests for Production with certificate of service filed August 26, 2020, in Case No. 2018-CP-12-00117

M&G
MURPHY & GRANTLAND, P.A.

Wesley B. Sawyer
Direct dial 803-454-1233
wsawyer@murphygrantland.com

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

June 29, 2020

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

Re: Heidi Gersten, Ivanka Ayoub, Daniel Hubbard vs. Kevin Mark Carter, Richard Davis, Joseph Tirbovich, Nationwide Ins. Co., Interinsurance Exchange of the Automobile Club, John Ammendola, Trustgaurd Ins. Co., S.C. Dept. of Public Safety, Blackwell, Chevrolet, GMC, Unknown John Does

Civil Case No.:	2018-CP-12-00074
Claim No.:	553954-gc
Insured:	Kevin Mark Carter
Date of Loss:	03-19-15
Our File No.:	1150-0747

Dear Ms. Gersten:

Enclosed please find the Defendant Kevin's First Set of Interrogatories and Requests for Production to you, along with a Certificate of Service, which I hereby serve upon you. Please provide your responses to this discovery within thirty (30) days of service.

With warm personal regards, I am

Sincerely yours,

S/ Wesley B. Sawyer

Wesley B. Sawyer

WBS/dlb
Enclosures

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard,

Plaintiffs,

v.

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

Defendants.

CERTIFICATE OF SERVICE

I, Diane L. Black, an employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendant Kevin Carter, do hereby certify that I have served a copy of the foregoing, First Set of Interrogatories and Requests for Production to the Plaintiff Heidi Gersten, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

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

Diane L. Black
Legal Assistant to Wesley B. Sawyer

Columbia, South Carolina
June 29, 2020

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

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, 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.	**DEFENDANT KEVIN CARTER'S FIRST SET OF INTERROGATORIES TO THE PLAINTIFF HEIDI GERSTEN**

TO: HEIDI GERSTEN, PRO SE:

YOU ARE HEREBY SERVED the following written Interrogatories on behalf of these Defendant Kevin Carter, to be answered separately and in writing by the Plaintiff Heidi Gersten, within thirty (30) days after the service hereof under the provisions of Rule 33 of the South Carolina Rules of Civil Procedure.

1. Give the names and addresses of persons known to the party or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relates to the claim or defense in the case.

3. Set forth a statement of all damages claimed to have been sustained by the party and for which the Plaintiff seeks recovery in this action.

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4. Provide all the numbers and providers for all cellular phones in the vehicle with you, on your person, or regularly used by you at the time of the subject accident.

5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

6. For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

7. State where you had been just prior to the collision, where you were going at the time of the collision, and the purpose of the trip.

8. Describe in your own words how the collision occurred and state specifically and in detail what the claim or contention of the Plaintiffs will be regarding any cause or contributing cause of the collision, including a statement in detail of the facts or information upon which this contention is based.

9. State your date of birth, driver's license number, Social Security number and any other names you have gone by during your lifetime.

10. State whether or not you have a copy of any statement which these Defendants have previously made concerning the action or its subject matter and which is in your possession, custody or control. (for the purpose of this question, a statement previously made is (1) a written statement, or (2) a stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.)

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11. State the speed of your vehicle at all times material to the collision in question, including specifically your speed at the time of impact, and if your brakes were on at the time of the impact, please state your speed before applying your brakes.

12. State in detail what intoxicating beverages you had consumed and what drugs or medications you had taken during the 24-hour period immediately preceding the collision.

13. Describe in detail what damage, if any, was done to your vehicle in the collision, and give the cost for repair of your vehicle.

14. Describe in detail what damage, if any, was done to any personal property in the collision, and give the cost for repair of the item, the value of the item on the date of the accident, when you first acquired the item, the condition of the item at the time of purchase (new or used), and the amount you paid for the item.

15. Describe in detail any conversations you have had with these Defendants or Defendants' representative following the collision in question.

16. Describe any information you have indicating, or any reason you have to believe, that there was defect or failure on the part of any vehicle or equipment involved in the collision.

17. Describe any traffic citation you received as a result of this collision by stating the name and location of the Court involved, the violations of the law charged in that citation, and the date, place and manner (i.e., type of plea, bail, forfeit, trial, etc.) of disposition of the citation.

18. Were there any obstructions to visibility for any of the operators of the vehicles involved in this collision at the time of or immediately before the collision in question which you contend were a factor or contributed to cause the collision in question?

19. If you had a valid driver's license at the time of the accident, please describe it as to type, license number, and any restrictions thereof, and if the license has ever been suspended, give the details of such suspension.

20. Do you contend that these Defendants violated any traffic law at the time of or immediately prior to the collision in question? If so, please describe either by statute number or generally what you contend to be such traffic violations.

21. Has the Plaintiff been involved in any motor vehicle collision before the date of the occurrence made the basis of this lawsuit? If so, give details as to where, when, how, with whom, whether a lawsuit resulted therefrom, the style and number of the case and the court in which it was filed.

22. Describe any criminal record that you may have, including the nature of the charge, date and place of arrest, and conviction, if any.

23. List the case number, year filed, and county of filing for any prior lawsuit to which you have been a party.

24. Please state whether you are currently employed and the name and address of your employer. If not currently employed, please so state and list the last date you were and that employer's name and address.

25. Please state whether you have ever filed any worker's compensation claims as well as the date, injuries, and settlement amount for each claim.

26. Please identify all social networking websites, internet groups, forums, organizations, or other entities of which Plaintiffs are members, have an account or identifying information concerning internet websites such as, but not limited to, Facebook, MySpace, Twitter, LinkedIn, Instagram, etc.

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These Interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorney obtain further information between the time answers are served and the time of trial.

MURPHY & GRANTLAND, P.A.

Wesley B. Sawyer, Esquire
4406-B Forest Drive (29206)
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorney for Defendant Kevin Carter

Columbia, South Carolina
June 29, 2020

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ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

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, 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.	**DEFENDANT KEVIN CARTER'S REQUESTS FOR PRODUCTION TO THE PLAINTIFF HEIDI GERSTEN**

TO: HEIDI GERSTEN, PRO SE:

Defendant Kevin Carter requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that the Plaintiff Heidi Gersten produce and permit the inspection, copying and/or photographing of:

1. All repair bills, estimates, reports, or other written or printed documents relating to any claimed damage to personal or real property.

2. All statements or any other written or printed documents concerning any claims for any other damages sought by the Plaintiff in this action.

3. All photographs, diagrams, drawings, or other similar material relating to the claims set forth in the Complaint.

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4. All statements of possible witnesses, whether written, oral, summarized, or otherwise reproduced in any manner, relating to the incident as set forth in the Complaint.

5. All tax returns, both Federal and State returns, for the five (5) years preceding the incident set forth in the Complaint as well as any returns made subsequent to the incident set forth in the Complaint.

6. Any documents, of any kind, referenced in Plaintiffs' Answers to Defendant's Interrogatories.

7. Any documents, of any kind, used or consulted when answering Defendant's Interrogatories to Plaintiffs.

8. Please permit counsel for Defendants to access, inspect, and copy all of Plaintiffs' accounts to any social networking websites, internet groups, forums, organizations, or other entities identified by Plaintiff in response to Defendants' Interrogatories. This request is intended to include access to all written materials, information, correspondence, writings, internet posts, updates, email, photographs, email, etc. contained in the accounts or profiles so identified. **PLEASE NOTE: No written material, information, correspondence, writings, internet posts, updates, email, photographs, email, etc. should be deleted from any account or profile identified by Plaintiffs in response to Defendants' Interrogatories without prior written consent from counsel for Defendants. All accounts, websites, and profiles should be preserved in their present condition.**

9. Copies of all receipts, proofs of purchase, bills of sale, checks, bank statements, or other similar items relating to the purchase of any property that the Plaintiff claims was damaged in the collision.

10. Copies of all receipts, proofs of purchase, checks, bill of sale, bank statements, or other similar items, relating to the sale or salvage of any allegedly-damaged items.

11. The title of any vehicle owned by Plaintiff, in whole or in part, and damaged in the collision.

12. Property tax records for the vehicle involved in the collision for the three years prior to the accident.

If you contend any item need not be produced, identify such item and set forth the basis for your failure to produce same.

It is requested that this production be made within thirty (30) days after the date of service of this request at the office of Murphy & Grantland, P.A., 4406-B Forest Drive, Columbia, South Carolina. Visual inspection and copies may be made of any and all documents.

MURPHY & GRANTLAND, P.A.

Wesley B. Sawyer, Esquire
4406-B Forest Drive (29206)
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorney for Defendant Kevin Carter

Columbia, South Carolina
June 29, 2020

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

M&G
MURPHY & GRANTLAND, P.A.

Wesley B. Sawyer
Direct dial 803-454-1233
wsawyer@murphygrantland.com

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

June 29, 2020

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

Re: Heidi Gersten, Ivanka Ayoub, Daniel Hubbard vs. Kevin Mark Carter, Richard Davis, Joseph Tirbovich, Nationwide Ins. Co., Interinsurance Exchange of the Automobile Club, John Ammendola, Trustgaurd Ins. Co., S.C. Dept. of Public Safety, Blackwell, Chevrolet, GMC, Unknown John Does

Civil Case No.:	2018-CP-12-00074
Claim No.:	553954-gc
Insured:	Kevin Mark Carter
Date of Loss:	03-19-15
Our File No.:	1150-0747

Dear Ms. Ayoub:

Enclosed please find the Defendant Kevin's First Set of Interrogatories and Requests for Production to you, along with a Certificate of Service, which I hereby serve upon you. Please provide your responses to this discovery within thirty (30) days of service.

With warm personal regards, I am

Sincerely yours,

S/ Wesley B. Sawyer

Wesley B. Sawyer

WBS/dlb
Enclosures

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard,

Plaintiffs,

v.

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

Defendants.

CERTIFICATE OF SERVICE

I, Diane L. Black, an employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendant Kevin Carter, do hereby certify that I have served a copy of the foregoing, First Set of Interrogatories and Requests for Production to the Plaintiff Ivanka Ayoub, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

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

Diane L. Black
Legal Assistant to Wesley B. Sawyer

Columbia, South Carolina
June 29, 2020

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

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, 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.	**DEFENDANT KEVIN CARTER'S FIRST SET OF INTERROGATORIES TO THE PLAINTIFF IVANKA AYOUB**

TO: IVANKA AYOUB, PRO SE:

YOU ARE HEREBY SERVED the following written Interrogatories on behalf of these Defendant Kevin Carter, to be answered separately and in writing by the Plaintiff Ivanka Ayoub, within thirty (30) days after the service hereof under the provisions of Rule 33 of the South Carolina Rules of Civil Procedure.

1. Give the names and addresses of persons known to the party or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relates to the claim or defense in the case.

3. Set forth a statement of all damages claimed to have been sustained by the party.

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4. Provide all the numbers and providers for all cellular phones in the vehicle with you, on your person, or regularly used by you at the time of the subject accident.

5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

6. For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

7. Describe in your own words how the collision occurred and state specifically and in detail what the claim or contention of the Plaintiff will be regarding any cause or contributing cause of the collision, including a statement in detail of the facts or information upon which this contention is based.

8. State your date of birth, driver's license number, Social Security number and any other names you have gone by during your lifetime.

9. State whether or not you have a copy of any statement which these Defendants have previously made concerning the action or its subject matter and which is in your possession, custody or control. (for the purpose of this question, a statement previously made is (1) a written statement, or (2) a stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.)

10. State the speed of your vehicle at all times material to the collision in question, including specifically your speed at the time of impact, and if your brakes were on at the time of the impact, please state your speed before applying your brakes.

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11. State in detail what intoxicating beverages you had consumed and what drugs or medications you had taken during the 24-hour period immediately preceding the collision.

12. Describe in detail what damage, if any, was done to your vehicle in the collision, and give the cost for repair of your vehicle.

13. Describe in detail any conversations you have had with these Defendants or Defendants' representative following the collision in question.

14. Describe any information you have indicating, or any reason you have to believe, that there was defect or failure on the part of any vehicle or equipment involved in the collision.

15. Describe any traffic citation you received as a result of this collision by stating the name and location of the Court involved, the violations of the law charged in that citation, and the date, place and manner (i.e., type of plea, bail, forfeit, trial, etc.) of disposition of the citation.

16. Were there any obstructions to visibility for any of the operators of the vehicles involved in this collision at the time of or immediately before the collision in question which you contend were a factor or contributed to cause the collision in question?

17. Do you contend that these Defendants violated any traffic law at the time of or immediately prior to the collision in question? If so, please describe either by statute number or generally what you contend to be such traffic violations.

18. Describe any criminal record that you may have, including the nature of the charge, date and place of arrest, and conviction, if any.

19. List the case number, year filed, and county of filing for any prior lawsuit to which you have been a party.

20. Please state whether you are currently employed and the name and address of your employer. If not currently employed, please so state and list the last date you were and that employer's name and address.

21. Please identify all social networking websites, internet groups, forums, organizations, or other entities of which Plaintiffs are members, have an account or identifying information concerning internet websites such as, but not limited to, Facebook, My Space, Twitter, LinkedIn, Instagram, etc.

These Interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorney obtain further information between the time answers are served and the time of trial.

MURPHY & GRANTLAND, P.A.

Wesley B. Sawyer, Esquire
4406-B Forest Drive (29206)
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorney for Defendant Kevin Carter

Columbia, South Carolina
June 29, 2020

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

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, 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.	**DEFENDANT KEVIN CARTER'S REQUESTS FOR PRODUCTION TO THE PLAINTIFF IVANKA AYOUB**

TO: IVANKA AYOUB, PRO SE:

Defendant Kevin Carter requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that the Plaintiff Heidi Gersten produce and permit the inspection, copying and/or photographing of:

1. All repair bills, estimates, reports, or other written or printed documents relating to any claimed damage to personal or real property.

2. All statements or any other written or printed documents concerning any claims for any other damages sought by the Plaintiff in this action.

3. All photographs, diagrams, drawings, or other similar material relating to the claims set forth in the Complaint.

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4. All statements of possible witnesses, whether written, oral, summarized, or otherwise reproduced in any manner, relating to the incident as set forth in the Complaint.

5. All tax returns, both Federal and State returns, for the five (5) years preceding the incident set forth in the Complaint as well as any returns made subsequent to the incident set forth in the Complaint.

6. Any documents, of any kind, referenced in Plaintiffs' Answers to Defendant's Interrogatories.

7. Any documents, of any kind, used or consulted when answering Defendant's Interrogatories to Plaintiffs.

8. Please permit counsel for Defendants to access, inspect, and copy all of Plaintiffs' accounts to any social networking websites, internet groups, forums, organizations, or other entities identified by Plaintiff in response to Defendants' Interrogatories. This request is intended to include access to all written materials, information, correspondence, writings, internet posts, updates, email, photographs, email, etc. contained in the accounts or profiles so identified. **PLEASE NOTE: No written material, information, correspondence, writings, internet posts, updates, email, photographs, email, etc. should be deleted from any account or profile identified by Plaintiffs in response to Defendants' Interrogatories without prior written consent from counsel for Defendants. All accounts, websites, and profiles should be preserved in their present condition.**

9. Copies of all receipts, proofs of purchase, bills of sale, checks, bank statements, or other similar items relating to the purchase of any property that the Plaintiff claims was damaged in the collision.

10. Copies of all receipts, proofs of purchase, bills of sale, checks, bank statements, or other similar items, relating to the sale or salvage of any allegedly-damaged items.

11. The title of any vehicle owned by Plaintiff, in whole or in part, and damaged in the collision.

12. Property tax records for the vehicle involved in the collision for the three years prior to the accident.

If you contend any item need not be produced, identify such item and set forth the basis for your failure to produce same.

It is requested that this production be made within thirty (30) days after the date of service of this request at the office of Murphy & Grantland, P.A., 4406-B Forest Drive, Columbia, South Carolina. Visual inspection and copies may be made of any and all documents.

MURPHY & GRANTLAND, P.A.

Wesley B. Sawyer, Esquire
4406-B Forest Drive (29206)
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorney for Defendant Kevin Carter

Columbia, South Carolina
June 29, 2020

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

August 13, 2020,

Letter to Gersten filed August 26, 2020, in Case No. 2018-CP-12- 00117..

MURPHY & GRANTLAND, P.A.

Wesley B. Sawyer
Direct dial 803-454-1233
wsawyer@murphygrantland.com

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

August 13, 2020

Sent Via U.S. Mail
Heidi Gersten
1438 W. Lantana Rd. #330
Lantana, FL 33462

Re: Heidi Gersten, Ivanka Ayoub, Daniel Hubbard vs. Kevin Mark Carter, Richard Davis, Joseph Tirbovich, Nationwide Ins. Co., Interinsurance Exchange of the Automobile Club, John Ammendola, Trustgaurd Ins. Co., S.C. Dept. of Public Safety, Blackwell, Chevrolet, GMC, Unknown John Does

Civil Case No.:	2018-CP-12-00074
Claim No.:	553954-gc
Insured:	Kevin Mark Carter
Date of Loss:	03-19-15
Our File No.:	1150-0747

Dear Ms. Gersten:

On June 29, 2020, we served Interrogatories and Requests for Production on you via United States mail. Pursuant to the South Carolina Rules of Civil Procedure, you were required to provide discovery responses within thirty (30) days. As of the writing of this letter, we have not received any responses to those discovery requests. Therefore, we write to ask that you please provide those responses in the next ten (10) days.

We would also like to begin scheduling depositions in this case. Therefore, please provide three dates in the month of September for your deposition. We ask that you provide these available dates with your written discovery responses within the next ten (10) days. We look forward to receiving your response.

With warm personal regards, I am

Sincerely yours,

S/Wesley B. Sawyer

Wesley B. Sawyer

WBS/dlb

MURPHY & GRANTLAND, P.A.

Wesley B. Sawyer
Direct dial 803-454-1233
wsawyer@murphygrantland.com

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

August 13, 2020

Sent Via U.S. Mail
Ivanka Ayoub
1438 W. Lantana Rd. #330
Lantana, FL 33462

Re: Heidi Gersten, Ivanka Ayoub, Daniel Hubbard vs. Kevin Mark Carter, Richard Davis, Joseph Tirbovich, Nationwide Ins. Co., Interinsurance Exchange of the Automobile Club, John Ammendola, Trustgaurd Ins. Co., S.C. Dept. of Public Safety, Blackwell, Chevrolet, GMC, Unknown John Does

Civil Case No.:	2018-CP-12-00074
Claim No.:	553954-gc
Insured:	Kevin Mark Carter
Date of Loss:	03-19-15
Our File No.:	1150-0747

Dear Ms. Ayoub:

On June 29, 2020, we served Interrogatories and Requests for Production on you via United States mail. Pursuant to the South Carolina Rules of Civil Procedure, you were required to provide discovery responses within thirty (30) days. As of the writing of this letter, we have not received any responses to those discovery requests. Therefore, we write to ask that you please provide those responses in the next ten (10) days.

We would also like to begin scheduling depositions in this case. Therefore, please provide three dates in the month of September for your deposition. We ask that you provide these available dates with your written discovery responses within the next ten (10) days. We look forward to receiving your response.

With warm personal regards, I am

Sincerely yours,

S/Wesley B. Sawyer

Wesley B. Sawyer

WBS/dlb

December 18, 2020,

Motions Roster Letter to Gersten filed on December 18, 2020, in Case No. 2018-CP-12-00117

Chester County, South Carolina
Office of the Clerk of Court
Post Office Drawer 580
Chester, SC 29706

December 18, 2020

Dear Ms. Heidi Gersten:

You have several motions scheduled in the Court of Common Pleas of Chester County. The following motions are set for January 13, 2021 @ 9:30AM before Judge Brian M. Gibbons:

2018-CP-12-00074 Heidi Gersten, et.al v Kevin Carter

Motion/ Claimants' Motion to Alter or Amend a Judgment
Motion/Dismiss on Behalf of Nationwide Mutual Insurance Company
Motion/Dismiss or in the Alternative Motions to Strike

2018-CP-12-00117 Heidi Gersten, et.al v Kevin Carter

Motion/Amend Complaint With Leave
Motion/Recuse and Disqualify Judges Gibbons and Hayes
Motion/Alter and/or Amend a Judgment or Relief from Judgment
Motion/Strike Amended Complaint
Motion/Compel
Motion/Dismiss and Motion to Strike

FILED
2020 DEC 18 A 11:46
CLERK OF COURT
CHESTER CO S.C.

The hearing of these motions is set for 1/13/2021 at 9:30 AM.

If a motion needs to be removed, please email Rachel Johnson at rjohnson@chestercounty.org OR Betty Jo Lawson at blawson@chestercounty.org . If you have any questions regarding the scheduling of this motion, please contact the courts at: (803) 385-2605.

Court Info:

Court of Common Pleas
PO Drawer 580
140 Main St.
Chester, SC 29706-9706

Respectfully,

Sue K. Carpenter
Clerk of Court

Sent via USPS
12/18/20

Chester County, South Carolina
OFFICE OF CLERK OF COURT
POST OFFICE DRAWER 580
CHESTER, SOUTH CAROLINA 29706

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

FILED
2020 DEC 18 A 11:46
CLERK OF COURT
CHESTER CO. S.C.

April 16, 2018

Kevin Carter's and Richard Davis' Motion to Dismiss or, in the alternative, Motion to Strike and Sever filed April 16, 2018, in Case No. 2018-CP-12-00074

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

Heidi Gersten,
☐ Plaintiff,

v.

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,
☒ Defendants.

BEFORE THE ARBITRATION PANEL

CASE NO.
2018-CP-12-00074

MOTION INFORMATION
FORM AND COVER SHEET

FILED
2018 APR 13 P 1:57
CLERK OF COURT
CHESTER CO S.C.

Plaintiff's Attorney:	Defendant's Attorney: Wesley B. Sawyer, Esquire Murphy & Grantland, P.A. Post Office Box 6648 Columbia, SC 29260 803-782-4100

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

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss and Motion to Strike or, in the Alternative, Sever
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — April 13, 2018 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE
☐ Other:	CODE: Date:

CLERK'S VERIFICATION

Date Filed: Collected by:
☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Heidi Gersten,

Plaintiff,

vs.

Kevin Carter, Richard Davis, Nationwide Mutual Insurance Company, Interinsurance of the Automobile Club, Trustguard Insurance,

Defendants.

BEFORE THE ARBITRATION PANEL

CIVIL ACTION NO: 2018-CP-12-00074

MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTIONS TO STRIKE AND SEVER

FILED
2019 APR 16 P 1:57
CLERK OF COURT
CHESTER CO. S.C.

You will please take notice that the Defendants Kevin Carter and Richard Davis, by and through their undersigned counsel, will move before the Presiding Judge of the Chester County Court of Common Pleas at the Chester County Courthouse at 10:00 a.m. on the tenth (10^{th}) day after service hereof, or as soon thereafter as counsel may be heard for an Order on the following grounds:

I. Rule 12(b)(8) Motion to Dismiss.

Defendants Carter and Davis move to dismiss the Plaintiff's claim in its entirety pursuant to Rule 12(b)(8), SCRCP, on the ground that Plaintiff has now filed a separate civil action in the Chester County Court of Common Pleas, Case No. 2018-CP-12-00117, captioned, Heidi Gersten, Ivanka Ayoub, Daniel Hubbard 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 (hereinafter the "Circuit Court Action"). The Circuit Court action seeks a "judgment for damage . . . to fully and

fairly compensate [Plaintiff] for all general, special, incidental and consequential damages . . . ." (Ex. A, Circuit Court Action Complaint, p. 11). It is unclear whether Plaintiff is seeking recovery for property damages in that action. However, if she is, then this action is duplicative and should be dismissed. *See Corbett v. City of Myrtle Beach*, 336 S.C. 601, 610-11, 521 S.E.2d 276, 281 (Ct. App. 1999) (affirming dismissal of individual emotional distress claim where another action was pending that included consolidated wrongful death and survival claims in addition to the same emotional distress claim). Like the cases at issue in *Corbett*, both this action and the pending Circuit Court action involve the same parties and are based on the same facts and circumstances. Therefore, the action is duplicative and should be dismissed.

II. Defendant Richard Davis' Rule 12(b)(6) Motion to Dismiss.

Defendant Richard Davis also moves to dismiss the claims against himself pursuant to Rule 12(b)(6), SCRCP. The Complaint alleges, and these Defendants admit, that the vehicle operated by Kevin Carter at the time of the accident was owned by Kevin Carter. Therefore, Richard Davis cannot be liable for negligently entrusting the accident vehicle to Kevin Carter because Carter had ownership and control over the vehicle. *See e.g., 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.").[1]

[1] *See also 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 r control of the chattel than the person to whom he entrusts it.").

III. Motion to Strike.

In the alternative, the Defendants move to strike various paragraphs of the Plaintiff's claim. Pursuant to Rule 43(g), a party may read his or her pleadings to the jury. Rule 43(g), SCRCP. Therefore, matters that are otherwise inadmissible should be stricken from a complaint. Furthermore, Rule 12(f) authorizes the Court to strike "from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Rule 12(f), SCRCP. Defendants' move to strike the following Paragraphs of the Complaint:

A. Paragraphs 17-19 – Allegations Containing Personal Identifying Information.

Paragraphs 17 through 19 of the Complaint contain Defendant Kevin Carter's personal identifying information. Pursuant to Rule 41.2, SCRCP, these paragraphs should be stricken from any and all pleadings filed with this Court and any official records placed on the case management system public index. Moreover, Kevin Carter's personal identifying information is immaterial to this action. Therefore, these allegations should be stricken pursuant to Rule 12(f).

B. Paragraphs 21-25 – Allegations Containing Immaterial Information.

Paragraphs 21 through 25 of the Complaint assert information regarding Kevin Carter's educational background and allege that he is an EMT. This information is wholly irrelevant to the issues in this case. Therefore, the allegations should be stricken pursuant to Rule 12(f) because they are immaterial.

C. Paragraphs 15, 37, 47, 73-74, 76 – Allegations Regarding Criminal Charges.

Paragraphs 15, 37, 47, 37 through 74 and 76 of the Complaint each reference or allege that Kevin Carter has been charged with certain criminal offenses. "The results of a criminal suit may not normally be used as evidence in a purely, civil suit involving the same facts" and "whether a police officer decided to ticket someone is not admissible." *McKissick v. J.F. Cleckley & Co.*, 325

S.C. 327, 350 n.5, 479 S.E.2d 67, 79 n.5 (Ct. App. 1996). Kevin Carter has not been convicted of any of the charges alleged in the Complaint. Therefore, the fact of the charges is inadmissible and should be stricken from the pleadings.

D. Paragraphs 33-36, 91-92, 95-148, 151, 158-171 – Allegations Containing Reference to the Existence of Liability Insurance.

Paragraphs 33 through 36, 91 through 92, 95 through 148, 151, and 158 through 171 all reference the existence of liability insurance and/or Plaintiff's interactions with insurance companies. The law is well established that the existence of insurance is inadmissible in a tort suit. *See* Rule 411, SCRE. Justice Woods explained the highly prejudicial nature of such reference to liability insurance in a personal injury action:

> There can be no doubt on the bench or at the bar that, in an action . . . to recover damages for personal injury, both reason and authority forbid bringing into evidence or argument the fact that defendant is protected by . . . liability insurance. Such evidence or argument has a manifest and strong tendency to carry the jury away from the real issue and to lead them to regard carelessly the legal rights of the defendant on the ground that some one else will have to pay the verdict.

Horsford v. Carolina Glass Co., 92 S.C. 236, 75 S.E. 533, 541 (1912). "[O]ur courts have consistently held the existence and contents of a defendant's liability insurance policy may not be disclosed to the jury." *Landry v. Hilton Head Plantation Property Owners Ass'n, Inc.*, 317 S.C. 200, 206, 452 S.E.2d 619, 622 (Ct. App. 1994). *See also Dunn v. Charleston Coca-Cola Bottling Co.*, 311 S.C. 43, 45, 426 S.E.2d 756, 757 (1993) ("The long-established rule of our decisions is that the fact that a Defendant is protected from liability in an action for damages by insurance shall not be made known to the jury.") (quotation omitted); *Norris v. Ferre*, 315 S.C. 179, 182, 432 S.E.2d 491, 493 (Ct. App. 1993) ("Furthermore, the Supreme Court has been meticulous in keeping the issue of insurance coverage away from the jury.").

The existence of liability insurance is inadmissible in an action against Carter or Davis for personal injuries. Therefore, the allegations contained in the above-referenced paragraphs should be stricken as being immaterial, inadmissible, and prejudicial.

E. Paragraphs 38-46 – Hearsay and Police Reports

Plaintiff also cites the police report in Paragraphs 38 through 46 of the Complaint. Rule 803(8) of the South Carolina Rules of Evidence expressly prohibits "investigative notes involving opinions, judgments, or conclusions" and "Accident reports required by S.C. Code Ann. § 56-5-1260 to -1280 (1991). Rule 803(8), SCRE. Moreover, the General Assembly has expressly prohibited admission of such reports in civil cases: "None of the reports required by Section 56-5-1260 to 56-5-1280 may be evidence of the negligence or due care of either party at the trial of any action at law to recover damages." S.C. Code Ann. § 56-5-1290. The Supreme Court in *Branham v. Leaphart*, 311 S.C. 231, 428 S.E.2d 707 (1993) held that such reports cannot be used even for impeachment purposes.

The allegations in the above-referenced Paragraphs also restate comments written by the investigating officer. Therefore, the allegations contain hearsay which is prohibited by Rule 802, SCRE. For both of these reasons, Paragraphs 38 through 46 of the Complaint should be stricken.

F. Paragraphs 60-63, 68 – Hearsay and Expert Opinions.

Paragraphs 60 through 63 purport to cite to a report from the Washington State Patrol Forensic Laboratory Services Bureau. The report and the other allegations contained in these paragraphs and in Paragraph 68 (which cites The Physician's Desk Reference) contain opinions that require expert testimony. *See* Rule 701 & 702. Moreover, the statements are hearsay. *See* Rule 802, SCRE.[2] Therefore, they are inadmissible and should be stricken from the Complaint.

[2] Plaintiff's Complaint alleges The Physician's Desk Reference is a "commercial publication," presumably contending that it falls within the Rule 803(17) exception to hearsay. Multiple courts

G. Paragraphs 83-90 – References to Non-Binding Arbitration to Which Neither Plaintiff nor Defendants Carter and Davis were Parties

Paragraphs 83 through 90 reference an inter-company arbitration between three different insurance companies. Plaintiff and Defendants Carter and Davis were not parties to that arbitration. They were not given an opportunity to appear in the arbitration, and the arbitration is not binding on them. Put simply, the arbitration is a wholly separate legal dispute subject to different evidentiary rules, submitted by different parties, and not subject to the benefits of a jury trial. Therefore, the arbitration is not admissible in this case. This would be no different from a party citing a jury finding in a separate case between different parties. What one finder of fact did in another venue with different evidentiary rules and when Defendants Carter and Davis had no opportunity to appear and defend is simply not relevant and cannot serve as evidence in this case. Moreover, the allegations reference insurance, which is impermissible in this personal injury action. Therefore, these Paragraphs should be stricken.

IV. Motion to Dismiss or, in the Alternative, Motion to Sever.

Plaintiff asserts causes of action against three insurance companies.[3] The only insurance defendant to which any factual allegations are alleged is Nationwide. Although Plaintiff fails to

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have held that The Physician's Desk Reference is not a "commercial publication" within the scope of the Rule 803(17) hearsay exception. *See People v. Hard*, 342 P.3d 572, 578 (Colo. Ct. App. 2014) (listing courts that have questioned the reliability of The Physicians' Desk Reference); *Garvey v. O'Donoghue*, 530 A.2d 1141, 1145 (D.C. 1987) (holding the Physicians' Desk Reference inadmissible under Fed. R. Evid. 803(17) because the publication contains not only factual statements, but also "directions, opinions, suggestions, and recommendations"); *Kahanek v. Rogers*, 12 S.W.3d 501, 504 (Tex. App. 1999) (holding the Physicians' Desk Reference inadmissible under Texas' market reports exception because the publication goes beyond objective information and extends to items on which learned professionals may disagree in good faith); *In re Richardson-Merrell, Inc. Bendectin Products Liab. Litig.*, 624 F. Supp. 1212, 1232 (S.D. Ohio 1985 (holding excerpts from the Physicians' Desk Reference did not fall within the commercial publications exception of Fed. R. Evid. 803(17)), *aff'd*, 857 F.2d 290 (6th Cir. 1988).

[3] Although Plaintiff names Interinsurance of the Automobile Club and Trustguard Insurance, the Complaint does not allege any facts against those two defendants. Therefore, they should be

clearly articulate her claim against Nationwide, she appears to be alleging that Nationwide failed to properly handle her third-party claim. However, South Carolina law is well established that a third-party claimant has no standing to assert a bad faith claim against a liability insurer. *See Kleckley v. Northwestern Nat'l Cas. Co.*, 338 S.C. 131, 135, 526 S.E.2d 218, 219 (2000) ("This Court and the Court of Appeals have repeatedly denied actions for bad faith refusal to pay claims to third parties who are not named insured."). In *Kleckley*, the Supreme Court held a third-party claimant – such as Plaintiff here – does not have standing to pursue a cause of action against the liability insurer.[4] *Id.* at 137, 526 S.E.2d at 221.

Plaintiff lacks standing to assert a claim against Carter and Dennis' insurance carrier, Nationwide. Therefore, the Complaint fails to state a cause of action against Nationwide and should be dismissed pursuant to Rule 12(b)(6).

In the event the Court does not dismiss the claims against the insurance carriers, then Defendants Carter and Davis move to sever the claims asserted against the insurance defendants from the claims asserted against Carter and Davis. Rule 21 of the South Carolina Rules of Civil Procedure gives the Court discretion to drop parties or sever claims to proceed separately "at any stage of the action and on such terms as are just." Rule 21, SCRCP. As discussed above in Part

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dismissed pursuant to Rule 12(b)(6), SCRCP for failure to state facts sufficient to constitute a cause of action.

[4] Plaintiff's Complaint cites several provisions from the South Carolina Claims Practices Act. However, the Court of Appeals has held that the Claims Practices Act does not create a private right of action, and only creates an administrative remedy. *See Swinton v. Chub & Son, Inc.*, 283 S.C. 11, 14-15 320 S.E.2d 495, 496-97 (Ct. App. 1984).

III.D., "the Supreme Court has been meticulous in keeping the issue of insurance coverage away from the jury." *Norris*, 315 S.C. at 182, 432 S.E.2d at 493.

Trying the claims against the liability insurers before the same fact finder as the personal injury claims against Defendants Carter and Davis would be highly prejudicial. It will be impossible for the finder of fact to ignore the existence of insurance when considering the claims against Carter and Davis. Severing the two causes of action pursuant to Rule 21 remedies this problem. *See Palmetto Health Alliance v. South Carolina Elec. & Gas Co.*, 2012 WL 12089247 (S.C. Com. Pl. June 28, 2012) (Kinard, J) (severing claims under Rule 21, SCRCP to avoid potential prejudice of injecting existence of liability insurance into dispute). As Judge Kinard noted in *Palmetto Health Alliance*, allowing the two causes of action to go forward together "presents a thorny thicket of potential prejudice and inefficience" and "Rules 20 and 21 . . . vest this Court with broad discretion to prevent just this sort of situation from going forward." *Id.* at *3.

For the above-stated reasons, Plaintiff's claims against the insurance defendants should be dismissed for failure to state a claim. However, if the actions are allowed to proceed, then they should be severed from the actions against Carter and Davis and given separate case numbers. Severance is the only way to avoid undue prejudice against Carter and Davis.

CONCLUSION

For the above-stated reasons, the above-captioned case should be dismissed. The damages alleged in this case appear to overlap damages asserted in the pending Circuit Court action and involve the same set of facts. Therefore, the case should be dismissed pursuant to Rule 12(b)(8), SCRCP. If the case is not dismissed in its entirety, then the case against Richard Davis should be dismissed because it is undisputed that Kevin Carter – the driver of the accident vehicle – was the

owner of the vehicle. Because Carter owned the vehicle, Davis could not owe a duty to prevent Carter from driving Carter's own vehicle.

If the case is not dismissed, then numerous paragraphs should be stricken from the Complaint. The paragraphs contain private, personal identifying information, immaterial allegations, inadmissible hearsay, reference to liability insurance, inadmissible expert opinions, and reference police reports that are inadmissible as a matter of South Carolina statutory law. The prejudicial nature of the allegations greatly outweighs any probative benefits of the allegations. Therefore, the Paragraphs should be stricken from the Complaint.

Lastly, the claims against the insurance defendants should be dismissed. Plaintiff alleges no facts against two of the three insurers. As to Nationwide, Plaintiff appears to be asserting a third-party claim, which has been rejected by the South Carolina Supreme Court and Court of Appeals. Therefore, Plaintiff fails to state a claim against any of the insurance defendants. If the claims against the insurance defendants are allowed to proceed, then those claims should be severed from the claims against Defendants Carter and Davis to avoid undue prejudice.

This motion will be supported by such affidavits, memorandum of law, and other exhibits that may be provided to the Court ahead of or at the hearing on the Motion.

FILED
2018 APR 16 P 1:57
CLERK OF COURT
RICHLAND CO. S.C.

Respectfully submitted,

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Attorney for Kevin Carter and Richard Davis

Columbia, South Carolina
April 13, 2018

April 16, 2018

Kevin Carter's and Richard Davis' Motion to Dismiss and Motion to Strike or, in the alternative, Sever filed April 16, 2018, in Case No. 2018-CP-12-00117

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard,)
☐ Plaintiffs,)

v.)

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,)
☒ Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2018-CP-12-00117

MOTION INFORMATION
FORM AND COVER SHEET

FILED
2018 APR 16 P 4:54
CLERK OF COURT
CHESTER CO. S.C.

Plaintiff's Attorney:	Defendant's Attorney: Wesley B. Sawyer, Esquire Murphy & Grantland, P.A. Post Office Box 6648 Columbia, SC 29260 803-782-4100

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

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss and Motion to Strike or, in the Alternative, Sever
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — April 13, 2018 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE
☐ Other:	CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed: Collected by: _____
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard,

Plaintiff,

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.

MOTION TO DISMISS AND MOTION TO STRIKE OR, IN THE ALTERNATIVE, SEVER

FILED
2018 APR 11 P 4:54
CLERK OF COURT
CHESTER CO. S.C.

You will please take notice that the Defendants Kevin Carter and Richard Davis, by and through their undersigned counsel, will move before the Presiding Judge of the Chester County Court of Common Pleas at the Chester County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard for an Order on the following grounds:

I. Rule 12(b)(6) Motion to Dismiss.

Defendants Carter and Davis move to dismiss Plaintiffs' following claims:

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), SCRCP, a Complaint should be dismissed if it fails "to state facts sufficient to

constitute a cause of action." Rule 12(b)(6), SCRCP. Because the Complaint alleges no factual allegations against Defendant Richard Davis, he should be dismissed.

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 him and he should be dismissed pursuant to Rule 12(b)(2), SCRCP.

B. Fraud, Fraudulent Inducement, and Deceit.

The Second, Third, and Fourteenth causes of action purport to assert claims for fraud, fraudulent inducement, and deceit, respectively. (Comp. pp. 4-5 & 8). The Complaint does not assert any factual allegations to support any of these causes of action. Rather, it merely attempts to assert the basic elements of each cause of action. Rule 9(b) of the South Carolina Rules of Civil Procedure applies a heightened pleading requirement for allegations of fraud or mistake, stating "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Rule 9(b), SCRCP. Plaintiffs faile to allege any necessary facts to support their claims.

To establish fraud, Plaintiff must allege specific facts showing: "(1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." *Schnellman v. Roettger*, 373 S.C. 379, 382, 645 S.E.2d 239, 240 (2007). The Complaint bears no facts of a false statement made by Richard Davis or Kevin Carter, no reliance on any such statement, and no consequent damage – not to mention all of the other necessary elements. Put simply, the Complaint is devoid of any factual allegations to

support the fraud and deceit claims, much less the specific factual allegations required by Rule 9(b). Therefore, these causes of action should be dismissed.

C. All Other Causes of Action with the Exception of Negligence.

Like the fraud and deceit causes of action, Plaintiffs merely allege the legal elements of various other causes of action (Causes Four through Thirteen and Fifteen through Eighteen).[1] 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), SCRCP. 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).

Plaintiffs must allege facts supporting each element of the causes of action asserted in the Complaint. They have failed to do so. Admittedly, 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 should be dismissed pursuant to Rule 12(b)(6).

[1] Several of these causes of action fail to even allege the basic legal elements of the causes.

D. Plaintiffs Ivanka Ayoub and Daniel Hubbard's Causes of Action for Loss of Consortium.

Although not clearly alleged, Plaintiffs Hubbard and Ayoub appear to assert causes of action for loss of consortium. Plaintiff Hubbard, Heidi Gersten's brother, alleges he "was unable to work for a period and, accordingly, lost wages in an amount to be determined by proof at trial." (Compl. ¶ 101). The Complaint does not allege Hubbard was personally involved in the accident, and it appears Hubbard claims he was unable to work because he was caring for Plaintiff Gersten after the accident.

Likewise, Plaintiff Ayoub, Gersten's mother, is not alleged to have been involved in the accident. Paragraph 103 of the Complaint alleged, "The Plaintiff Ivanka Ayoub suffers, among other things, loss of consortium." (Compl. ¶ 103). Therefore, it appears Plaintiffs Hubbard and Ayoub attempt to assert claims for loss of filial consortium. However, South Carolina does not recognize claims for loss of filial consortium.

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.").[2] South Carolina does recognize loss of spousal consortium, but 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

[2] *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).

loss of consortium indicates the General Assembly did not intend to recognize such causes of action. *See Doe v. Greenville County School Dist.*, 375 S.C. at 69, 651 S.E.2d at 308.

South Carolina does not recognize claims for loss of filial consortium. Therefore, the causes of action asserted by Hubbard and Ayoub should be dismissed in their entirety.

II. Motion to Strike.

In the alternative, the Defendants move to strike various paragraphs of the Plaintiffs' claim. Pursuant to Rule 43(g), a party may read his or her pleadings to the jury. Rule 43(g), SCRCP. Therefore, matters that are otherwise inadmissible should be stricken from a complaint. Furthermore, Rule 12(f) authorizes the Court to strike "from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Rule 12(f), SCRCP. Defendants' move to strike the following Paragraphs of the Complaint:

A. Paragraph 27 – Allegation Regarding Criminal Charges.

Paragraphs 27 of the Complaint references or alleges that Kevin Carter has been charged with certain criminal offenses. "The results of a criminal suit may not normally be used as evidence in a purely, civil suit involving the same facts" and "whether a police officer decided to ticket someone is not admissible." *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 350 n.5, 479 S.E.2d 67, 79 n.5 (Ct. App. 1996). Kevin Carter has not been convicted of any of the charges alleged in the Complaint. Therefore, the fact of the charges is inadmissible and should be stricken from the pleadings.

B. Paragraphs 5-7 and 17-19 – Allegations Containing Reference to the Existence of Insurance.

Paragraphs 5 through 7 and 17 through 19 all reference the existence of insurance. The law is well established that the existence of insurance is inadmissible in a tort suit. *See* Rule 411,

SCRE. Justice Woods explained the highly prejudicial nature of such reference to liability insurance in a personal injury action:

> There can be no doubt on the bench or at the bar that, in an action . . . to recover damages for personal injury, both reason and authority forbid bringing into evidence or argument the fact that defendant is protected by . . . liability insurance. Such evidence or argument has a manifest and strong tendency to carry the jury away from the real issue and to lead them to regard carelessly the legal rights of the defendant on the ground that some one else will have to pay the verdict.

Horsford v. Carolina Glass Co., 92 S.C. 236, 75 S.E. 533, 541 (1912). "[O]ur courts have consistently held the existence and contents of a defendant's liability insurance policy may not be disclosed to the jury." *Landry v. Hilton Head Plantation Property Owners Ass'n, Inc.*, 317 S.C. 200, 206, 452 S.E.2d 619, 622 (Ct. App. 1994). *See also Dunn v. Charleston Coca-Cola Bottling Co.*, 311 S.C. 43, 45, 426 S.E.2d 756, 757 (1993) ("The long-established rule of our decisions is that the fact that a Defendant is protected from liability in an action for damages by insurance shall not be made known to the jury.") (quotation omitted); *Norris v. Ferre*, 315 S.C. 179, 182, 432 S.E.2d 491, 493 (Ct. App. 1993) ("Furthermore, the Supreme Court has been meticulous in keeping the issue of insurance coverage away from the jury.").

The existence of insurance is inadmissible in an action against Carter or Davis for personal injuries. Therefore, the allegations contained in the above-referenced paragraphs should be stricken as being immaterial, inadmissible, and prejudicial.

III. Motion to Dismiss or, in the Alternative, Motion to Sever.

Plaintiffs appear to assert causes of action against three insurance companies and against one or more insurance adjusters.[3] Plaintiffs fail to articulate their claims against the insurance carriers or to assert any facts to support a cause of action. To the extent they seek to assert third-party claims against liability insurers, they lack standing to do so. *See Kleckley v. Northwestern Nat'l Cas. Co.*, 338 S.C. 131, 135, 526 S.E.2d 218, 219 (2000) ("This Court and the Court of Appeals have repeatedly denied actions for bad faith refusal to pay claims to third parties who are not named insured."). In *Kleckley*, the Supreme Court held a third-party claimant – such as Plaintiff here – does not have standing to pursue a cause of action against the liability insurer.[4] *Id.* at 137, 526 S.E.2d at 221.

Even if Plaintiffs had standing to assert claims against one or more of the Insurance Defendants, the Complaint does not allege any factual allegations against the Insurance Defendants. Therefore, the Complaint fails to satisfy Rule 8(a) and should be dismissed for failure to state a claim. *See* Rule 12(b)(6), SCRCP.

In the event the Court does not dismiss the claims against the Insurance Defendants, then Defendants Carter and Davis move to sever the claims asserted against the insurance defendants from the claims asserted against Carter and Davis. Rule 21 of the South Carolina Rules of Civil

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[3] Plaintiffs name Nationwide Mutual Insurance Company, Interinsurance Exchange of the Automobile Club and Trustguard Insurance Company as defendants. They also name Joseph Tirbovich – an adjuster with Nationwide – and John Ammendola – the president and CEO of Grange Insurance. In this motion, these defendants are referred to collectively as the "Insurance Defendants."

[4] Plaintiff's Complaint cites several provisions from the South Carolina Claims Practices Act. However, the Court of Appeals has held that the Claims Practices Act does not create a private right of action, and only creates an administrative remedy. *See Swinton v. Chub & Son, Inc.*, 283 S.C. 11, 14-15 320 S.E.2d 495, 496-97 (Ct. App. 1984).

Procedure gives the Court discretion to drop parties or sever claims to proceed separately "at any stage of the action and on such terms as are just." Rule 21, SCRCP. As discussed above in Part III.D., "the Supreme Court has been meticulous in keeping the issue of insurance coverage away from the jury." *Norris*, 315 S.C. at 182, 432 S.E.2d at 493.

Trying the claims against the Insurance Defendants before the same fact finder as the personal injury claims against Defendants Carter and Davis would be highly prejudicial. It will be impossible for the finder of fact to ignore the existence of insurance when considering the claims against Carter and Davis. Severing the two causes of action pursuant to Rule 21 remedies this problem. *See Palmetto Health Alliance v. South Carolina Elec. & Gas Co.*, 2012 WL 12089247 (S.C. Com. Pl. June 28, 2012) (Kinard, J) (severing claims under Rule 21, SCRCP to avoid potential prejudice of injecting existence of liability insurance into dispute). As Judge Kinard noted in *Palmetto Health Alliance*, allowing the two causes of action to go forward together "presents a thorny thicket of potential prejudice and inefficience" and "Rules 20 and 21 . . . vest this Court with broad discretion to prevent just this sort of situation from going forward." *Id.* at *3.

For the above-stated reasons, Plaintiffs' claims against the Insurance Defendants should be dismissed for failure to state a claim. However, if the actions are allowed to proceed, then they should be severed from the actions against Carter and Davis and given separate case numbers. Severance is the only way to avoid undue prejudice against Carter and Davis.

CONCLUSION

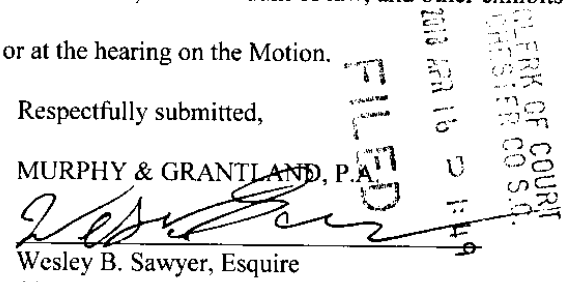
For the above-stated reasons, the above-captioned case should be dismissed in its entirety with the exception of Heidi Gersten's claim against Kevin Carter for negligence. Plaintiffs allege no facts to support a cause of action against Defendant Davis. In fact, the only factual allegations

in the Complaint assert a claim against Defendant Carter only. Therefore, all of the other name defendants should be dismissed. Moreover, the Complaint does not allege any facts against Defendant Carter that would support a cause of action for the various enumerate causes of action set forth in the Complaint with the exception of the negligence action.

If the case is not dismissed, then certain paragraphs should be stricken from the Complaint. The paragraphs contain reference to liability insurance and reference criminal charges that are inadmissible. The prejudicial nature of the allegations greatly outweighs any probative benefits of the allegations. Therefore, the Paragraphs should be stricken from the Complaint.

Lastly, the claims against the Insurance Defendants should be dismissed. Plaintiffs allege no facts against the Insurance Defendants. Therefore, Plaintiffs fail to state a claim against any of the Insurance Defendants. If the claims against the Insurance Defendants are allowed to proceed, then those claims should be severed from the claims against Defendants Carter and Davis to avoid undue prejudice.

This motion will be supported by such affidavits, memorandum of law, and other exhibits that may be provided to the Court ahead of or at the hearing on the Motion.



Respectfully submitted,

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Attorney for Kevin Carter and Richard Davis

Columbia, South Carolina
April 13, 2018

January 31, 2019

Kevin Carter's and Richard Davis' Motion to Dismiss Appeal and Memorandum in Support 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

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.

MOTION TO DISMISS APPEAL AS TO KEVIN CARTER AND RICHARD DAVIS

Respondents Kevin Carter and Richard Davis, by and through their undersigned attorney, move this Court to dismiss the appeal against them because Appellants did not timely serve the Notice of Appeal on this Court. Respondents Carter and Davis also file a Memorandum of Authorities in support and an Affidavit of Facts.

This Motion is made pursuant to Rule 240 of the South Carolina Appellate Court Rules and is supported by the affidavits, memoranda of law, and such other documents filed with this Motion.

Respectfully submitted,

RECEIVED
JAN 31 2019
SC Court of Appeals

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Attorneys for Respondents Kevin Carter and
Richard Davis

January 30, 2019

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED
JAN 31 2019
SC Court of Appeals

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

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

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IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED
JAN 31 2019
SC Court of Appeals

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

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.

MEMORANDUM OF AUTHORITIES IN SUPPORT OF RESPONDENTS KEVIN CARTER'S AND RICHARD DAVIS' MOTION TO DISMISS

Appellants attempted to appeal three orders from the Chester County Court of Common Pleas. However, the operative Notice of Appeal in this case was untimely filed with the Court of Appeals and clerk of the lower court. Therefore, Respondents Carter and Davis respectfully request that this Court grant their Motion to Dismiss the Appeal with prejudice as it pertains to them.

BACKGROUND

In early 2018, Appellant Heidi Gersten filed two actions in the Chester County Court of Common Pleas. On February 21, 2018, Gersten filed a Summons and Claim for Property Damage seeking arbitration in case number 2018-CP-12-00074 alleging damages resulting from an automobile accident. (Ex. A, Summons and Claim, *Heidi Gersten v. Kevin Carter, Richard*

Davis, Naitonwide Mutual Ins. Co., Interinsurance of the Automobile Club, Trustguard Ins., 2018-CP-12-00074). On March 16, 2018, Appellants Heidi Gersten and Ivanka Ayoub and Daniel Hubbard[1] filed a Summons and Complaint alleging damages arising out of the same automobile accident. (Ex. B, Summons and Complaint, *Heidi Gersten, Ivanka Ayoub, Daniel Hubbard v. Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual insurance Company, Interinsurance Exchange of the Automobile Club, John Ammendola, Trustguard Insurance Company, SC Dep't of Public Safety, Blackwell, GMC, Chevrolet, Unknown John Does*, 2018-CP-12-00117).

Respondents Kevin Carter and Richard Davis filed Motions to Dismiss or, in the Alternative, Motions to Strike and Sever in both cases on April 16, 2018. On April 26, 2018, the Chief Administrative Judge of Chester County entered a Form 4 Order consolidating the two cases. The various other defendants also filed Motions to Dismiss the case, and a hearing was held on September 5, 2018. On September 18, 2018, the Honorable John C. Hayes, III, entered an order granting Richard Davis's Motion to Dismiss in full and granting Kevin Carter's Motion to Dismiss in part. (Ex. C, Order Granting Defendants Kevin Carter's and Richard Davis' Motion to Dismiss). On September 19, 2018, counsel for Respondents Carter and Davis placed copies of the Order in the mail to Gersten, Ayoub, and Hubbard. (Affidavit of Facts).

Nineteen days later,[2] on October 8, 2018, Appellants Gersten and Ayoub filed a Motion to Alter or Amend the judgment regarding the April 26, 2018 consolidation Order and the

[1] Daniel Hubbard did not sign the Notices of Appeal. Therefore, he is not an appellant in this action, and the dismissal as to him is now final.

[2] Respondents reserve the right to argue that the motion to reconsider was untimely.

September 5, 2018 Order.[3] The Court denied this Motion by a Form 4 Order on October 16, 2018.

On October 22, 2018, Respondents received a Notice of Appeal, purporting to appeal the September 18, 2018 Order (hereinafter the "First Notice of Appeal").[4] However, Appellants never filed the First Notice of Appeal with the Court of Appeals or the Circuit Court.

On November 21, 2018, Respondents received another Notice of Appeal, appealing the orders from April 26, 2018, September 18, 2018, and October 16, 2018 (hereinafter the "Second Notice of Appeal").[5] Appellants filed the Second Notice of Appeal with the Court of Appeals by fax on November 27, 2018 – more than 30 days after entry of the Order denying the Motion to Alter or Amend and more than 10 days after serving the Second Notice of Appeal.[6] Appellant filed the Second Notice of Appeal with the clerk of the lower court on November 29, 2018.

ARGUMENT

The South Carolina Appellate Court Rules require appellants to serve a Notice of Appeal on Respondents within 30 days of receipt of written notice of entry of the order they seek to appeal. Rule 203(b)(1), SCACR. Then, from the date of service, appellants have an additional 10 days to file their Notice of Appeal with the Court of Appeals and the clerk of the lower court.

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[3] There is no "September 5, 2018 Order." Rather, the Motions hearing occurred on September 5, 2018, and the Court issued its Orders regarding the various Motions on September 18, 2018. Thus, although both of Appellants' Notices of Appeal and all their filings with the Court refer to the "September 5, 2018 Order," Respondents interpret this to mean the September 18, 2018 Order.

[4] The First Notice of Appeal is attached hereto as Exhibit D.

[5] The Second Notice of Appeal received by Respondents is attached hereto as Exhibit E.

[6] Attached as Exhibit F is the Second Notice of Appeal with the date received by the Court of Appeals noted as November 27, 2018.

Rule 203(d)(1)(B), SCACR. If the appeal is not timely filed, the appeal "shall be dismissed." Rule 203(d)(3), SCACR.

I. The Second Notice of Appeal was untimely filed with the Court.

Appellants did not timely file their Second Notice of Appeal with this Court or the clerk of the lower court.[7] South Carolina Appellate Court Rules require appellants to file their Notice of Appeal with the Court of Appeals and the clerk of the Circuit Court within ten days of serving the Notice upon Respondents. Rule 203(d)(1)(B), SCACR. The clock for filing the Second Notice of Appeal began to run on November 15, 2018, when Appellants served the notice on Respondents.[8] Therefore, Appellants had ten days from November 15, 2018 to file the Second Notice of Appeal with the Court of Appeals and the Circuit Court. Because the tenth day after November 15, 2018 fell on Sunday, November 25, 2018, Appellants were required to file their Second Notice of Appeal with this Court and the Circuit Court by November 26, 2018. Rules 203(d)(1)(B) and 263(a), SCACR.

Appellants missed the deadline and did not file their Second Notice of Appeal with this Court until November 27, 2018 and the Circuit Court until November 29, 2018.[9] Although

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[7] As noted above, Appellants never filed the First Notice of Appeal. Therefore, the first Notice of Appeal is moot, and the only question before the Court on this Motion is whether the Second Notice of Appeal was timely served and filed.

[8] Respondents reserve the right to argue, upon later motion, the timeliness of the service of the Second Notice of Appeal as it pertains to the April 26, 2018 and September 18, 2018 Orders.

[9] The Court of Appeals has two copies of the Second Notice of Appeal with two different stamped dates of receipt. The first, attached hereto as Exhibit F, includes a fax cover sheet and a note handwritten by Appellant Gersten indicating Appellants' desire that the faxed Second Notice of Appeal be filed. The note also indicates that Appellants had placed in the mail on November 26, 2018 a hard copy of the Second Notice of Appeal, expected to arrive at the Court of Appeals on November 29, 2018. Accordingly, the second copy of the Second Notice of Appeal on file with the Court, and attached hereto as Exhibit G, is dated as received by the Court of Appeals on November 29, 2018.

Appellants attempted to file the notice via facsimile and via mail, neither copy was timely filed. Appellants had until November 26, 2018 to file the Notice, but the faxed copy was not transmitted to or received by this Court until November 27, 2018. Although Appellant Gersten sent a handwritten note with the facsimile indicating that the hard copy was placed in the mail on the deadline of November 26, 2018, the South Carolina Supreme Court has repeatedly held that mailing does not constitute filing. *See, e.g.*, *In re Estate of Cretzmeyer*, 365 S.C. 12, 14, 615 S.E.2d 116, 116 (2005) (holding that probate ruling was not timely appealed even though appellant placed her notice of appeal in the mail the day after entry of the order); *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001) ("It is clear under South Carolina law that mailing does not constitute filing."). A Notice of Appeal "is filed when delivered to and received by the proper officer." *Gary, supra.* Appellants did not timely file their Second Notice of Appeal because the Court of Appeals did not receive the Second Notice of Appeal until – at the earliest – November 27, 2018, and the Circuit Court did not receive the Second Notice of Appeal until November 29, 2018.

Rule 203 states, "If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260." Rule 203(d)(3), SCACR. Therefore, the Court should dismiss the appeal in its entirety as it pertains to Respondents.

CONCLUSION

Appellants' Second Notice of Appeal was not timely filed with this Court. Accordingly, this Court should grant Respondents' Motion to Dismiss Appellants' appeal, with prejudice, for failure to comply with the South Carolina Appellate Court Rules.

Wesley B. Sawyer, Esquire, SC Bar # 100229
Murphy & Grantland, PA
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
wsawyer@murphygrantland.com
Attorneys for Respondents Kevin Carter and Richard Davis

January 30, 2019

August 26, 2020

Carter's Motion to Compel or, in the alternative, Motion to Dismiss for Failure to Prosecute filed August 26, 2020, in Case No. 2018-CP-12-00117

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP120117

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.	**MOTION TO COMPEL OR, IN THE ALTERNATIVE, MOTION TO DISMISS FOR FAILURE TO PROSECUTE**

TO: HEIDI GERSTEN, PRO SE, AND TO IVANKA AYOUB, PRO SE:

YOU WILL PLEASE TAKE NOTICE, that the Defendant Kevin Carter, by his undersigned attorney, will move before the Presiding Judge of the Chester County Court of Common Pleas on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, compelling the Plaintiffs to answer Defendant's First Set of Interrogatories and First Set of Requests for Production served upon the Plaintiffs Heidi Gersten and Ivanka Ayoub and to provide dates for depositions or, in the alternative, an Order pursuant to Rules 37 and 41(b) dismissing this action pursuant due to the Plaintiffs' failure to prosecute this action.

SUMMARY

Plaintiffs filed this action in the early part of 2018. Plaintiffs initially named a number of other Defendants, all of whom were subsequently dismissed in a series of Orders entered by this Court entered in September of 2018.

Plaintiffs Ivanka Ayoub and Heidi Gersten filed a Notice of Appeal to the South Carolina

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Court of Appeals and the Court of Appeals ultimately dismissed the Appeal on May 14, 2019 as a result of Plaintiffs' repeated failure to comply with Court Orders.

Plaintiffs then filed a Petition for Writ of Certiorari to the South Carolina Supreme Court which was also denied. The Remittitur to this Court followed.

On June 29, 2020, Defendant Kevin Carter served his first set of Interrogatories and Requests for Production on Plaintiffs. (Attached as Exhibit 1). Pursuant to Rules 33 and 34, SCRCP, Plaintiffs were required to respond to those discovery requests by July 29, 2020. As of the date of this filing, no responses have been provided to date, and no extensions have been requested.

On August 13, 2020, counsel for Kevin Carter sent letters to Plaintiffs asking that they provide responses to the discovery within ten (10) days and also asking for a list of available days in September to take Plaintiffs' depositions. (Attached as Exhibit 2). Ten days have passed, and Plaintiffs have neither provided the requested discovery responses nor provided dates of availability for their depositions.

ARGUMENT

A. Motion to Compel

Rule 37, SCRCP, provides:

> If a deponent fails to answer a question propounded or submitted under Rule 30 . . . or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to requests for inspection submitted under Rule 34, fails to respond … the discovering party may move for an order compelling an answer, . . . or an order compelling inspection in accordance with the request."

Rule 37(a)(2), SCRCP. When a party fails to respond to discovery served in accordance with the Rules of Civil Procedure, Rule 37(d) permits the Court to enter an order compelling product, "striking out pleadings . . . or dismissing the action or proceeding or any part thereof." See Rule 37(b)(2)(C), SCRCP.

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Defendant has properly served Plaintiffs by mail as evidenced by the attached Interrogatories and Requests for Production and accompanying Certificate of Service. More than thirty days have passed, and Plaintiffs have not responded to the discovery. Therefore, Defendant Kevin Carter respectfully asks for entry of an Order compelling responses to the discovery or, in the alternative, an Order striking the Plaintiffs' Complaint pursuant to the remedies permitted by Rule 37(d).

Defendant Carter has also asked for dates for Plaintiffs' depositions. Therefore, Defendant also requests an Order compelling Plaintiffs to provide dates of availability to sit for the depositions.

B. Motion to Dismiss for Failure to Prosecute

"The Plaintiff has the burden of prosecuting her action, and the Trial Court may properly dismiss an action for Plaintiff's unreasonable neglect in proceeding with her cause." McComas v. Ross, 368 SC 59, 62, 626 S.E.2nd 902, 904 (Ct. App. 2006) (citations omitted)". Dismissal of cases for failure to prosecute are "imposed to maintain the orderly disposition of cases in the face of repeated warnings to the offending party or multiple opportunities to proceed with trial, and only then upon a finding of unreasonable neglect." *Id*. "In granting dismissal for failure to prosecute, there must be some showing of indifference to the rights of the Defendant." *Id*. (citation omitted).

Plaintiffs' appeal before the Court of Appeals was dismissed due to Plaintiffs' repeated failure to comply with orders of the Court of Appeals. Once again, Plaintiffs are now before this Court failing to comply with the Rules of Civil Procedure by not responding to discovery requests and failing to provide dates for their depositions. Defendant has been required to participate in a lawsuit since the beginning of 2018, including litigating the matter on appeal before the Court of Appeals and Supreme Court. Plaintiffs' failure to respond to written discovery, to provide deposition dates, or to otherwise pursue the prosecution of this action justifies entry of an Order dismissing this case as authorized by both Rule 41 and Rule 37.

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Rule 41(b) authorizes the Court to dismiss a case involuntarily "for failure of the plaintiff to prosecute or to comply with these rules or any order of the Court…" Rule 41(b), SCRCP. Plaintiffs cannot file a lawsuit and thereby chain a Defendant to a civil action without any apparent intent or effort to prosecute the case. Rule 41(b) is designed to give this Court discretion to dismiss a case and relieve a defendant when it becomes apparent that a plaintiff has failed to comply with this Court's orders and is taking no steps to prosecute an action. This is that time.

Moreover, Rule 37 authorizes the Court to strike Plaintiffs' Complaint for their failure to comply with discovery requests. Rule 37(e) and Rule 37(b)(2)(C), SCRCP. Plaintiffs have been served with discovery requests, have received reminders from counsel for Defendant, and continue to fail to respond. Thus, Rule 37 authorizes this Court to dismiss the case for Plaintiffs' failure to comply with the Rules of Civil Procedure.

Plaintiffs have disregarded the orders of the Court of Appeals and this Court's Rules of Civil Procedure by failing to respond to discovery requests served by Defendant and failing to provide deposition dates. Plaintiffs' willful disregard of the Rules of Civil Procedure make it apparent that Plaintiffs have no intention of prosecuting this matter. Therefore, this action should be dismissed for failure to prosecute.

CONCLUSION

For the reasons stated above, Defendant respectfully requests that the Court grant its Motion and either enter an Order compelling Plaintiffs to respond to the written discovery requests and to provide dates for depositions or, in the alternative, enter an Order striking Plaintiffs' Complaint and dismissing this action pursuant to Rule 37(d), SCRCP, and Rule 41(b), SCRCP. This Motion is supported by the arguments contained herein and the supporting documentation attached as Exhibits hereto.

MURPHY & GRANTLAND, P.A.

Wesley B. Sawyer
Wesley B. Sawyer. Esquire (S.C. Bar # 100229)
14406-B Forest Drive
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
wsawyer@murphygrantland.com
Attorneys for the Defendant Kevin Carter

Columbia, South Carolina
August 26, 2020

ELECTRONICALLY FILED - 2020 Aug 26 4:29 PM - CHESTER - COMMON PLEAS - CASE#2018CP120117

July 28, 2022

Gersten's "Emergency Notice of Objection to and Request/or Motion for Order and Objection to and Request/or Motion for Order for Continuance of Scheduled Telephonic Hearing Thursday July 28, 2022, at 10:00 AM Due to Illness Pursuant to Rule SCRCP and Exhibits and Americans with Disabilities Reasonable Accommodation Request (Title II) and Request for Clarification" emailed to the Court on July 28, 2022

Gmail **Heidi Veronika Gersten <hanginhangout@gmail.com>**

Cases # 2018CP1200074 & 2018CP1200117

11 messages

Hayes, J. Mark Law Clerk (Zachary Turner) <mhayeslc@sccourts.org> Tue, Jul 26, 2022 at 11:28 AM
To: "wsawyer@murphygrantland.com" <wsawyer@murphygrantland.com>, "hanginhangout@gmail.com" <hanginhangout@gmail.com>

Good Morning,

The Chester county clerk's office has provided us information from the file in the above referenced cases. We anticipate the following motions to be heard Thursday Morning, July 28:

Plaintiffs

- Objection to Designation of Nonjury Trial and Motion to Transfer to appropriate Docket
- Motion to Amend Complain with Leave
- Motion to Alter or Amend a Judgment or Relief from Judgment or Order
- Motions to Recuse and Disqualify Judge Gibbons and Hayes

Defense

- Motion to Compel

We look forward to the hearing and if you have any questions please do not hesitate to ask

Zachary Turner

Judicial Law Clerk to the Honorable J. Mark Hayes II

180 Magnolia St.

Spartanburg, SC 29306

E-Mail: mhayeslc@sccourts.org

Phone: (864) 562-4146

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Hayes, J. Mark Law Clerk (Zachary Turner) <mhayeslc@sccourts.org> Tue, Jul 26, 2022 at 3:04 PM
To: "wsawyer@murphygrantland.com" <wsawyer@murphygrantland.com>, "hanginhangout@gmail.com" <hanginhangout@gmail.com>

For clarification purposes, the hearing will begin at 10:00 am in Judge Hayes' virtual courtroom and the motion to recuse and disqualify is in regards to Judge John Hayes and not Judge J. Mark Hayes.

[Quoted text hidden]
[Quoted text hidden]

Heidi Veronika Gersten <hanginhangout@gmail.com> Thu, Jul 28, 2022 at 8:19 AM
To: "Hayes, J. Mark Law Clerk (Zachary Turner)" <mhayeslc@sccourts.org>

Good day to you, Honorable Judge Hayes. I hope this email finds you well.

Unfortunately, I am not.

The attached document further explains my position.

Respectfully,

Heidi Gersten
[Quoted text hidden]

EMERGENCY CONTINUANCE.pdf
6657K

Heidi Veronika Gersten <hanginhangout@gmail.com> Thu, Jul 28, 2022 at 8:27 AM
To: wsawyer@murphygrantland.com

Good day to you, Mr. Sawyer. I hope this email finds you well.

Unfortunately, I am not.

I left you a voicemail on Tuesday, July 26, 2022 regarding a continuance for today.

The attached document has been sent to Honorable Judge Hayes. It further explains my position.

I would like you and I to agree to emails as a form of service as recently approved by the South Carolina Supreme Court.

I would like your approval of a continuance of today's hearing for the reasons set in the attached paperwork.

We can amiably get this case prepared for trial. We have always had friendly interactions.

I need a few weeks to recover.

Thank you for your kind consideration.

Respectfully,

Heidi Gersten
[Quoted text hidden]

EMERGENCY CONTINUANCE.pdf
6657K

Heidi Veronika Gersten <hanginhangout@gmail.com> Thu, Jul 28, 2022 at 8:30 AM
To: "Hayes, J. Mark Law Clerk (Zachary Turner)" <mhayeslc@sccourts.org>

Just so you know, the email sent to you earlier, was also forwarded to Mr. Sawyer, attorney for the Defendant Kevin Carter.
[Quoted text hidden]

Wesley B. Sawyer <wsawyer@murphygrantland.com> Thu, Jul 28, 2022 at 9:20 AM
To: "Hayes, J. Mark Law Clerk (Zachary Turner)" <mhayeslc@sccourts.org>, "hanginhangout@gmail.com" <hanginhangout@gmail.com>

Mr. Turner,

Thank you. Given the amount of time that has passed in this case and the numerous prior motions for continuances filed by Ms. Gersten in this court and in the appellate courts, we respectfully do not consent to the continuance. I will plan to be in attendance on WebEx at 10:00 AM.

I am copying Ms. Gersten on this email to notify her of my communication with the Court.

Wes Sawyer

M & G

Murphy & Grantland, P.A.

Wesley B. Sawyer, Esquire

wsawyer@murphygrantland.com

Post Office Box 6648

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803-782-4140 /803-454-1258 fax

www.murphygrantland.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

From: Hayes, J. Mark Law Clerk (Zachary Turner) <mhayeslc@sccourts.org>
Sent: Thursday, July 28, 2022 9:15 AM
To: Wesley B. Sawyer <wsawyer@murphygrantland.com>
Subject: FW: Cases # 2018CP1200074 & 2018CP1200117

From: Heidi Veronika Gersten <hanginhangout@gmail.com>
Sent: Thursday, July 28, 2022 8:30 AM
To: Hayes, J. Mark Law Clerk (Zachary Turner) <mhayeslc@sccourts.org>
Subject: Re: Cases # 2018CP1200074 & 2018CP1200117

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

[Quoted text hidden]

Heidi Veronika Gersten <hanginhangout@gmail.com> Thu, Jul 28, 2022 at 9:38 AM
To: "Wesley B. Sawyer" <wsawyer@murphygrantland.com>

Mr. Sawyer, I'm surprised that you feel this way and disappointed in your response that is misleading. There were continuances filed by the Plaintiffs, however, not ever ruled on or granted in the trial court. Any cancellation of hearings in the trial Court was always made by the trial Court; something the Plaintiffs have no control over. The Appellate Court is complex. Any continuance granted in that Court was found to be worthy. The years that have passed in between was due to Covid-19; something the Plaintiffs also had no control over, just as I have no control over my bowels. It saddens me to know that you would prefer that I proceed soaked in urine and feces.
[Quoted text hidden]

Heidi Veronika Gersten <hanginhangout@gmail.com> Thu, Jul 28, 2022 at 9:39 AM
To: mhayeslc@sccourts.org

I replied to Mr. Sawyer
[Quoted text hidden]

Heidi Veronika Gersten <hanginhangout@gmail.com> Thu, Jul 28, 2022 at 9:40 AM
To: mhayeslc@sccourts.org

I sent this one to Mr. Sawyer earlier.
[Quoted text hidden]

EMERGENCY CONTINUANCE.pdf
6657K

Heidi Veronika Gersten <hanginhangout@gmail.com> Thu, Aug 18, 2022 at 10:04 AM
To: "mhayeslc@sccourts.org" <mhayeslc@sccourts.org>

I'm attempting to sign in to hearing scheduled for today and for some reason it is not letting me. Help.
[Quoted text hidden]

Hayes, J. Mark Law Clerk (Joseph Hanna, III) <mhayeslc@sccourts.org> Thu, Aug 18, 2022 at 10:06 AM
To: Heidi Veronika Gersten <hanginhangout@gmail.com>

Is there a specific error message?

From: Heidi Veronika Gersten <hanginhangout@gmail.com>
Sent: Thursday, August 18, 2022 10:05 AM
To: Hayes, J. Mark Law Clerk (Joseph Hanna, III) <mhayeslc@sccourts.org>
Subject: Re: Cases # 2018CP1200074 & 2018CP1200117

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *******

I'm attempting to sign in to hearing scheduled for today and for some reason it is not letting me. Help.

[Quoted text hidden]

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	)	
	)	
	)	FILE NO: 2018-CP-12-00117 and
HEIDI GERSTEN, IVANKA AYOUB	)	2018-AP-12-00074
	)	Honorable Judge Mark Hayes
Plaintiffs.	)	
	)	EMERGENCY
vs.	)	NOTICE OF OBJECTION TO and REQUEST/or
	)	MOTION for ORDER
	)	and
	)	OBJECTION TO and REQUEST/or MOTION for
	)	ORDER for
KEVIN CARTER, RICHARD DAVIS	)	CONTINUANCE of SCHEDULED TELEPHONIC
JOSEPH TIRBOVICH, NATIONWIDE	)	HEARING Thursday, July 28, 2022, at 10:00 AM
MUTUAL INSURANCE COMPANY,	)	DUE TO ILLNESS Pursuant to Rule SCRCP
INTERINSURANCE EXCHANGE OF	)	AND
THE AUTOMOBILE CLUB, JOHN	)	Exhibits
AMMENDOLA, TRUSTGUARD	)	AND
INSURANCE COMPANY, SC DEPT. OF	)	AMERICANS WITH DISABILITIES REASONABLE
PUBLIC SAFETY, BLACKWELL,	)	ACCOMMODATION REQUEST (TITLE II)
UNKNOWN JOHN DOES	)	AND
	)	REQUEST FOR CLARIFICATION
Defendants.	)	
_____	)	

PLEASE TAKE NOTICE, now come the Plaintiffs Heidi Gersten and Ivanka Ayoub (now deceased) with this EMERGENCY and respectfully object to the scheduled telephonic hearing of July 28, 2022, and move this Court for an Order of continuance of the above said scheduled hearing beyond the scheduled date of July 28, 2022, no sooner than sixty (60) days after and in support of same, state the following grounds:

1. July 19, 2022, the Plaintiff Heidi Gersten received an email from Rachel Johnson, Common Pleas Clerk, Chester County Clerk of Court regarding a virtual hearing scheduled for July 28, 2022, even though the Plaintiffs have not ever consented to receiving service of court documents by email. (Exhibit A)

2. The case was listed as 2018-CP-12-00117 Gersten v Carter, which is not the correct names of plaintiffs and defendants in this matter, in addition to not including case #2018-AP-12-00074. (Exhibit A)
3. It had no list of what motions would be heard on the said date. (Exhibit A)
4. An example of a previous written notice of hearing from the Chester County Clerk of Court in this matter listed the motions that would be heard, in addition to naming the correct plaintiffs and defendants and was mailed to the Plaintiff's address listed on court documents in the case file with attached proof of service. (Exhibit B)
5. May 6, 2022, the South Carolina Supreme Court issued an order, *2022-05-06-04* RE: Service by E-Mail in the Trial Courts, Appellate Case No. 2022-000029. (Exhibit C)
6. It states in part **(d) E-Mail Service By and On Self-Represented Litigants.** A self-represented litigant who is not a lawyer admitted to practice in this state may consent in writing to be served by e-mail and designate a correct e-mail address for service. A lawyer may consent in writing to accept service by e-mail from a self-represented litigant.
7. The Plaintiffs may consent to being served under the condition that all Defendants in this case agree in writing to accept service by e-mail from the Plaintiffs.
8. The Plaintiff Gersten is paralyzed as a result of a collision with one of the named Defendants, Kevin Carter.

9. Secondary complications to being paralyzed are pressure wounds.
10. The Plaintiff Gersten suffers from an extraordinary pressure wound located on her left buttocks, that prevents her from sitting down very long without further injury to it, since near the beginning of being paralyzed in 2015. (Exhibit D)
11. Through the years, the Plaintiff Gersten has participated in numerous medical and homeopathic treatments on her journey to get this deadly life-threatening illness of a pressure wound to close. It heals better when she stays off of it, which requires her laying on the opposite side. She's mostly bedridden because of it. It is hard to imagine staying in one position for as many years as she has.
12. March 13, 2020, President Trump announced a state of emergency in regard to the novel coronavirus, a.k.a. Covid-19. Everyone was affected differently because of it.
13. Near the end of 2020, The Plaintiff Gersten managed to finally get the wound to close and weeks later, she was assaulted in the lobby of an apartment building she lived in, in Florida, thus, the start of a separate ongoing legal action in addition to the instant matter in Chester County, South Carolina, and the reopening of her wound that to this day has not closed.
14. In December of 2020, the Plaintiffs received notice of another court date in Chester County. (Exhibit B) It was canceled by the Court.
15. The Plaintiff Gersten became aware that another court date and judge was being sought sometime in June of 2022.
16. Sometime before July 18, 2022, the Plaintiff Gersten ripped her wound open

more than it was through transferring into her wheelchair. In order for the wound to heal properly, she should not sit on it for more than an hour at a time. (Exhibits 1, 2)

17. July 18, 2022, the Defendant Gersten participated in a telephonic Florida hearing.
18. July 21, 2022, the Plaintiff Gersten attended an in-person scheduled mediation on another matter in another state that lasted 4 ½ hours, which was not anticipated by her, causing her wound further injury.
19. July 26, 2022, the Defendant Gersten began to feel lightheaded and sick, experiencing 'hot flashes' and severe back and leg pain because of her wound. She is always seeking different help with it because nothing seems to heal it completely, other than laying on one side, endlessly, until it closes.
20. The Defendant Gersten has no caregiver, assistant, or aid.
21. Under South Carolina law, the Defendant Gersten is a 'vulnerable adult'. "[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…
22. The Defendant Gersten is competent.
23. The Defendant Gersten is a qualified individual of and protected under the Americans with Disabilities Act ('ADA'). The Americans with Disabilities Act of 1990 (ADA) requires that reasonable accommodations be provided on request to qualified persons with disabilities in order that they might fully participate in

court programs, services, activities, and benefits: and it is presumed that the intent of the judiciary is to comply fully with the ADA, to assure equity, fairness, and full participation in the judicial system for persons with disabilities, and to facilitate provision of reasonable accommodations when requested by qualified persons with disabilities

24. Pursuant to Title II of the Americans with Disabilities Act, Courts will make reasonable modifications in policies, practices, and procedures. Title II of the ADA permits reasonable modification requests. Put simply, all law, rules, orders, statutes, procedures, practices, policies, contracts, as an example, can be modified to accommodate the Defendant Gersten, due to her disability of being paralyzed.
25. July 26, 2022, after realizing that her usual symptoms, occurring since the beginning of being paralyzed and developing an illness of a pressure wound, the Plaintiff Gersten called the Defendant Carter's attorney Wesley Sawyers to find out how he would feel about a continuance. She got a voice mail and left a message.
26. July 27, 2022, the Plaintiff Gersten began to feel nauseous, and her stomach felt like she was getting sick, something she experiences periodically ever since being paralyzed. Later after laying down in an attempt to feel better, she began to have a diarrhea explosion that lasted for hours. As she was relieving her bowels, she realized that there was no way she could participate in a court hearing under these conditions. She began to take pictures to document what she was going

through because she knew that getting a continuance is at a judge's discretion. After years of time had gone by between the last hearing in this case, she thought that she may not be believed. As graphic as it is to show, the Defendant Gersten found it important to prove that she was not making this up. Without an aid, caregiver, or assistant, it is beyond words to describe what she goes through at times. Bathing in her own urine and feces, as she attempts to clean herself, all the while the explosions of diarrhea continuously flow. She must then make sure that her wound remains clean, as she cares for it simultaneously. It is exhausting, to say the least. Writing this document has taken over five (5) hours to produce. The mess from this last episode is everywhere and will take her days to clean. The smell is enough to knock her out. She will need to wash linens, scrub the floor, wipe down her wheelchair, clean her body, and take out the trash. Sounds simple to an able-bodied person. If she lived in South Carolina, she would ask the Court for some help. (Exhibits 3, 4, 5)

27. As a good faith offering, she will attend the scheduled hearing to orally follow up on this continuance, however, she will not be able to have a meaningful discussion under the conditions previously mentioned. It is now 4:20 a.m. and the Defendant Gersten feels dirty, gross, and is in so much pain, as she found it more important to get this paperwork finished and then served than to finish cleaning or tending to her wound since her last diarrhea episode.
28. For the previous reasons, a continuance should be granted.
29. The Defendant Carter will not be prejudiced.

30. The Plaintiff Gersten suggests that the Defendant Carter's attorney communicate with her and agree to being served through email for ease of the claim.
31. The Plaintiff Gersten would like to set another hearing on the Plaintiffs' motions, which there are more than listed in the Court's email sent to her on July 26, 2022, again without her written consent of service
32. All named defendants are required to attend any hearing on her motions because they are listed parties to the action. To do otherwise, would be considered an exparte hearing.
33. This request and/or motion for continuance is not made for purposes of delay.
34. A trial date has not been set yet.
35. If granted, this would be the first continuance granted to the Plaintiffs.
36. With the recent 'virtual' or 'telephonic' hearings being used by the courts, as an ADA reasonable accommodation request, which has been granted numerous times in Florida courts, the Defendant Gersten would like an agreement that motion hearings will be set up one at a time. This would make the hearings shorter and less complex, as well as keep the case moving, in addition to the Defendant Gersten staying off of her pressure wound.
37. The clarification that the Defendant Gersten would like to be made is procedural.
    A. Is she permitted to efile as a non-attorney?
    B. If yes, what is the process?
    C. When serving documents to Judge Hayes' email, is that that the same as filing?
    D. Is emailing to the Chester County Clerk of Courts the same as filing?

38. Permitting the Defendant Gersten to file online is another Americans with Disabilities reasonable modification request.

39. If an affidavit is required to be made in support by the Defendant Gersten, kindly let her know and give her a reasonable opportunity to produce one.

FORE THE FOREGOING REASONS, AN ORDER OF A CONTINUANCE OF THE HEARING OF JULY 28, 2022, SHOULD BE GRANTED AND A NEW HEARING SCHEDULED NOT LESS THAN SIXTY (60) DAYS BE SET IN THE INTEREST OF JUSTICE AND TO PREVENT ITS MISCARRIAGE.

Respectfully submitted,

DATED: July 28, 2022

IVANKA AYOUB

Heidi Gersten & Ivanka Ayoub (Deceased)
Plaintiffs/Claimants
1438 W. Lantana Rd. #330
Lantana, FL 33462
(323) 245-6142
hanginhangout@gmail.com

EXHIBIT A

EMAIL from Chester County Clerk of Court
Virtual Hearing on 7/28/22 - hanginhangout@gmail.com - Gmail

Rachel Johnson <rjohnson@chestercountysc.gov> Jul 19, 2022, 1:06 PM (9 days ago)

to me, wsawyer@murphygrantland.com, Douglas, mhayeslc@sccourts.org

July 19, 2022

Heidi Gersten, ProSe
RE: 2018-CP-12-00117 Gersten v Carter

Dear Ms. Gersten:

Please be advised that your case (2018-CP-12-00117) will be heard by the Honorable Judge Mark Hayes on Thursday, July 28, 2022 at 10:00 AM. This hearing will be held ONLINE via Judge Hayes's VIRTUAL COURTROOM beginning at 10:00 AM.

To access the virtual courtroom:
Go to this link: https://sccourts.org/calendar/

1. From there, you will click on "circuit" in the box for the date of the hearing.
2. Next you will scroll down to **Judge Hayes's** virtual courtroom, enter and join.

If you are unable to join via computer, there is an option to call into the meeting by phone:

1. **Call in for audio only (US Toll) 1-408-418-9388.**
2. **Call in Access Code: 129 187 3519 #**
3. **Call in Attendee ID is issued when you JOIN.**

* Be sure to mute yourself and your computer volume to prevent an audio feedback loop.

Once you've entered the "courtroom," you will be able to watch the hearing. The law clerk will promote you to panelist when your case comes up so that you can speak to the court. If you have any questions or concerns, you may call the Clerk of Court's office at (803) 385-2605 or email the Common Pleas department: rjohnson@chestercounty.org . Also, there is a WebEx guide for the general public that can be accessed HERE, and an attorney guide HERE.

Warmest Regards,
Doug Atkinson
Common Pleas Clerk
Chester County Clerk of Court

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

EXHIBIT B

December 18, 2020 Written Notice of Hearing from Chester County Clerk of Court

Chester County, South Carolina
Office of the Clerk of Court
Post Office Drawer 580
Chester, SC 29706

December 18, 2020

Dear Ms. Heidi Gersten:

You have several motions scheduled in the Court of Common Pleas of Chester County. The following motions are set for January 13, 2021 @ 9:30AM before Judge Brian M. Gibbons:

2018-CP-12-00074 Heidi Gersten, et.al v Kevin Carter

Motion/ Claimants' Motion to Alter or Amend a Judgment
Motion/Dismiss on Behalf of Nationwide Mutual Insurance Company
Motion/Dismiss or in the Alternative Motions to Strike

2018-CP-12-00117 Heidi Gersten, et.al v Kevin Carter

Motion/Amend Complaint With Leave
Motion/Recuse and Disqualify Judges Gibbons and Hayes
Motion/Alter and/or Amend a Judgment or Relief from Judgment
Motion/Strike Amended Complaint
Motion/Compel
Motion/Dismiss and Motion to Strike

FILED
2020 DEC 18 A 11:46
CLERK OF COURT
CHESTER CO S.C.

The hearing of these motions is set for 1/13/2021 at 9:30 AM.

If a motion needs to be removed, please email Rachel Johnson at rjohnson@chestercounty.org OR Betty Jo Lawson at blawson@chestercounty.org . If you have any questions regarding the scheduling of this motion, please contact the courts at: (803) 385-2605.

Court Info:

Court of Common Pleas
PO Drawer 580
140 Main St.
Chester, SC 29706-9706

Respectfully,

Sue K. Carpenter
Clerk of Court

Sent via USPS
12/18/20

Chester County, South Carolina
OFFICE OF CLERK OF COURT
POST OFFICE DRAWER 580
CHESTER, SOUTH CAROLINA 29706

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

FILED
2020 DEC 18 A 11:46
CLERK OF COURT
CHESTER CO S.C.

EXHIBIT C

2022-05-06-04
Service by EMail in the Trial Courts
Appellate Case No. 2022-000029

2022-05-06-04

The Supreme Court of South Carolina

RE: Service by E-Mail in the Trial Courts

Appellate Case No. 2022-000029

ORDER

a) Purpose. Pursuant to Rule 613 of the South Carolina Appellate Courts Rules (SCACR), the Supreme Court may promulgate an order setting forth permissible methods of electronic service in the trial courts, including by e-mail.[1] The purpose of this order is to provide a uniform rule for service by e-mail in the various trial courts of this state.

(b) E-Mail as Additional Method of Service. In addition to the methods of service that may be provided for in the rules governing service of pleadings and other papers in the circuit, family, probate, and summary courts of this state, pleadings and other papers may be served by e-mail pursuant to the provisions of this order.

(c) E-Mail Service on Lawyers. A lawyer admitted to practice law in this state may serve a pleading or other paper on another lawyer admitted to practice law in this state by e-mail using that lawyer's primary e-mail address listed in the Attorney Information System (AIS). The primary e-mail address for a lawyer admitted in South Carolina can be accessed utilizing the Attorney Information Search at: https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm. Lawyers are reminded of their obligation under Rule 410(g) of the South Carolina Appellate Court Rules (SCACR) to ensure their AIS information is current and accurate at all times.

(d) E-Mail Service By and On Self-Represented Litigants. A self-represented litigant who is not a lawyer admitted to practice in this state may consent in writing to be served by e-mail and designate a correct e-mail address for service. A lawyer may consent in writing to accept service by e-mail from a self-represented litigant.

(e) Requirements for Service. In all cases:

(1) E-mail service under this order is intended for the service of pleadings and other papers subsequent to the initiation of a case, and may not be used for the service of a summons and complaint, subpoena, or other pleading or document required to be personally served under any rule of court. However, this provision does not prohibit a party from consenting to accept such service by e-mail or other electronic means.

(2) Pleadings and papers served by e-mail must be sent as an attachment in Adobe Acrobat portable document format (.pdf) unless otherwise agreed by the parties. In the absence of consent, a party serving a document may not utilize another file format or a file-sharing service for e-mail service.

(3) Service by e-mail under this order is complete upon transmission of the e-mail. If the serving party learns the e-mail did not reach the intended recipient(s), the party shall immediately provide a copy of the pleading or paper by other means set forth in the applicable court rule, together with evidence of the prior attempt at service by e-mail.

(4) E-Mail service under this order may not be utilized for documents that are required to be E-Filed in accordance with Section 2 of the South Carolina Electronic Filing Policies and Guidelines, except as to parties that are not authorized E-Filers. Lawyers are reminded that the E-Filing System automatically serves parties that have appeared in a case, and the Notice of Electronic Filing (NEF) indicates which parties have been served.

(5) In any action governed by the South Carolina Rules of Civil Procedure (SCRCP), computation of the time for a response after service by e-mail is governed by Rule 6, SCRCP. In accordance with Rule 6(e), SCRCP, service by e-mail will be treated the same as service by U.S. Mail for purposes of determining the time to respond; therefore, five days shall be added to the prescribed period to respond from the date of transmission of the e-mail serving the document.

(6) For attorneys admitted pro hac vice, service on the associated South Carolina lawyer under this method of service shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney.

(f) Proof of Service. Any proof of service of a document that is served by e-mail shall include a copy of the sent e-mail with the proof of service, affidavit of service, or certificate of service for that document.

s/Donald W. Beatty C.J.
s/John W. Kittredge J.
s/Kaye G. Hearn J.
s/John Cannon Few J.
s/George C. James, Jr. J.

Columbia, South Carolina
May 6, 2022

[1] The Supreme Court similarly permits service by electronic means in matters governed by the SCACR in accordance with 262(c)(3), SCACR, which states that, in addition to service by delivery or via U.S. mail, a party may also serve a copy by electronic means in a manner specified by order of the Supreme Court.

EXHIBIT D

Wound Pic from 2015

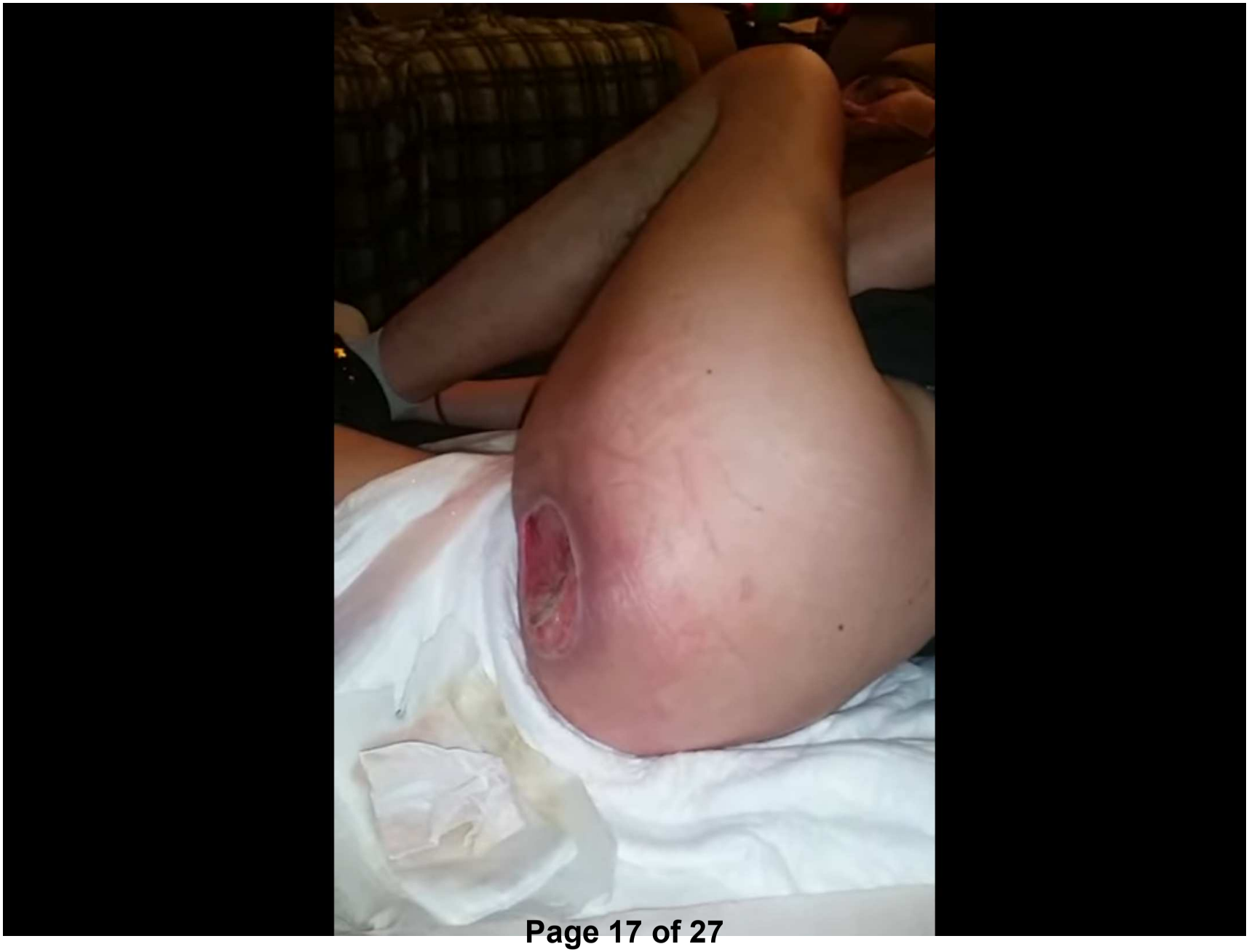

EXHIBIT 1

Recent Wound Photo

EXHIBT 2

Recent Wound Photo

EXHIBIT 3

Recent Diarrhea Explosion

EXHIBIT 4

Recent Diarrhea Explosion Cleanup

EXHIBIT 5

Recent Diarrhea Explosion Cleanup

HOPE DREAM BELIEVE
ENJOY LIFE
LOVE

July 28, 2022,

Carter's Motion to Dismiss Claims of Ivanka Ayoub filed July 28, 2022, in Case No. 2018CP1200117

ELECTRONICALLY FILED - 2022 Jul 28 2:55 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

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.	**MOTION TO DISMISS CLAIMS OF IVANKA AYOUB**

TO: HEIDI GERSTEN, PRO SE, AND TO IVANKA AYOUB, PRO SE:

YOU WILL PLEASE TAKE NOTICE THAT, the Defendant Kevin Carter, by his undersigned attorney, will move before the Presiding Judge of the Chester County Court of Common Pleas on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an order pursuant to Rule 25 of the South Carolina Rules of Civil Procedure dismissing the claims of Ivanka Ayoub due to the failure of any party to move for substitution on behalf of her estate within a reasonable time after her death. The basis for this Motion is set forth below.

PROCEDURAL BACKGROUND

As the Court is aware, 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

ELECTRONICALLY FILED - 2022 Jul 28 2:55 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

Complaint purports to bear her signature. As to Ayoub, 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.

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. (April 26, 2018, Order). 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. On September 19, 2018, the Honorable John C. Hayes, III, entered an Order dismissing all claims against Defendant Richard Davis and dismissing Ayoub's loss of consortium claim against Defendant Carter. (September 19, 2018 Order, p. 5). As a result of the September 19, 2018 Order, Ayoub's only remaining claim was one for property damage against Defendant Carter. (September 19, 2018 Order, p. 7, ¶ 4). 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.[1] Through a series of other orders, the Circuit Court dismissed all the other named defendants and dismissed all claims of Plaintiff Daniel Hubbard.

Plaintiffs Gersten and Ayoub moved to alter or amend the Circuit Court's various dismissal orders.[2] On October 16, 2018, the Court entered a Form 4 Order, denying the motions to reconsider

[1] Defendant Carter continues to assert the statute of limitations as an affirmative defense to Plaintiff Ayoub's property damage claim.

[2] 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.

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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.

After the case was remanded to this Court, Defendant Carter served written discovery on Ayoub and Gersten. On August 26, 2020, when Plaintiffs failed to respond to the discovery requests and failed to respond to follow up letters, Defendant filed a Motion to Compel or, in the Alternative, Motion to Dismiss for Failure to Prosecute. That Motion was scheduled to be heard on July 28, 2022.

On July 28, 2022, the Court held a hearing via WebEx.[3] During the hearing, Plaintiff Gersten stated that Ivanka Ayoub passed away on or about January 11, 2022. Ms. Gersten is Ivanka Ayoub's daughter. Counsel for the undersigned has been unable to locate an obituary to confirm this date, but he has no reason to dispute the information provided by Ms. Ayoub's daughter.

ARGUMENT

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; *see Hillman v. Pinion*, 347 S.C. 253, 258, 554 S.E.2d 427, 430 (Ct. App. 2001) ("[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.") (emphasis in original). "Rule 25(a)(1) is substantially the same as Federal Rule 25(a). In the Federal Rule the motion for substitution is to be made within 90 days after notice of death is suggested upon

[3] Shortly before the hearing, Plaintiff Heidi Gersten submitted an "Emergency Notice of Objection to and Request/or Motion for Order for Continuance of Scheduled Telephonic Hearing." The Court granted Plaintiff Gersten's Motion for Continuance, and the pending motions have been rescheduled to be heard on August 18, 2022.

the record. This Rule substitutes 'a reasonable time' after such knowledge is obtained." Notes, Rule 25, SCRCP.

The standard under the Federal Rule for a timely motion to substitute is 90 days. *See* Fed. R. Civ. P. 25. As of the filing of this Motion, more than 180 days have passed since Ms. Ayoub's death – twice the time set forth in the Federal Rule – and no one has moved to be substituted. Therefore, substitution has not occurred "within a reasonable time," and dismissal is proper.

WHEREFORE, for the reasons set forth above, in addition to the reasons raised in Defendant Kevin Carter's prior Motion to Compel or, in the Alternative, Motion to Dismiss, Defendant Kevin Carter respectfully requests that this Court grant his Motion to Dismiss Plaintiff Ivanka Ayoub's claim pursuant to Rule 25(a)(1), SCRCP.

MURPHY & GRANTLAND, P.A.

s/Wesley B. Sawyer
Wesley B. Sawyer. Esquire (S.C. Bar # 100229)
14406-B Forest Drive
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
wsawyer@murphygrantland.com
Attorneys for the Defendant Kevin Carter

Columbia, South Carolina
July 28, 2022

ELECTRONICALLY FILED - 2022 Jul 28 2:55 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

August 22, 2018

Gersten’s Motion for Continuance filed August 22, 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 Tirpowich
Nationwide Mutual Ins Co, Interstate Insurance Exchange of the Automobile Club, John Doe Insurance Company, SC Dept of Public Safety, Blackwell Chevrolet, Inc, Unknown, Jane Does, Defendant.

IN THE COURT OF COMMON PLEAS
____ JUDICIAL CIRCUIT

CASE NO.: 2018-CP-12-00117

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
_____, Bar No. _____	_____, Bar No _____
Address: 1438 W. Lantana Rd # 330 Lantana	Address:
Phone: 323 275 6142 Fax 561-756-9875	Phone: _____ Fax _____
E-mail: Imgershunsort@gmail.com Other: SCL	E-mail: _____ Other:

2018 AUG 22 P 1:10 CHESTER CO. S.C.

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

SECTION I: Hearing Information

Nature of Motion: Plaintiff's objection to Motion to Designation of Non-party Defendant and motion to Amend the Complaint to add Non-party Defendant
Estimated Time Needed: 1/2 hour Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

_____, 20____
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 100.00 Between this and filing 2018-CP-12-00074
☐ EXEMPT: (check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____, 20____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____, 20____

☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER)	
)	
)	FILE NO: 2018-CP-12-00117
)	
HEIDI GERSTEN, IVANKA AYOUB,)	
DANIEL HUBBARD)	PRIORITY MATTER
Plaintiffs)	
)	PLAINTIFF'S OBJECTION AND
vs,)	OPPOSITION TO DESIGNATION OF
)	OF NONJURY DOCKET AND
)	MOTION TO TRANSFER TO THE
KEVIN CARTER, RICHARD DAVIS,)	APPROPRIATE DOCKET AND
JOSEPH TIRBOVICH, NATIONWIDE)	MOTION TO STRIKE SCHEDULED
MUTUAL INSURANCE COMPANY,)	COURT DATE OF SEPTEMBER 5,
INTERINSURANCE EXCHANGE OF)	2018 or IN THE ALTERNATIVE
THE AUTOMOBILE CLUB, JOHN)	MOTION FOR CONTINUANCE
AMMENDOLA, TRUSTGUARD)	Pursuant to SCRCP Rules 15, 40
INSURANCE COMPANY SC DEPT)	
OF PUBLIC SAFETY, BLACKWELL)	
CHEVROLET, GMC, UNKNOWN)	
JOHN DOES)	
)	
Defendants)	

CLERK OF COURT
CHESTER CO. S.C.

Now come Plaintiffs Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, pursuant to **SCRCP Rule 40** that permits this response, with this timely objection and opposition, pursuant to **SCRCP Rule 15**, to the designation of File No: *2018-CP-12-00117* to the Nonjury Docket and its scheduled court date of September 5, 2018 as well as being subjected to trial on September 5, 2018 and move this Court for an Order transferring File No: *2018-CP-12-00117* to the appropriate Docket and out of the Nonjury Docket and striking the fore-mentioned court date or in the alternative a motion for continuance of the said court date for the Nonjury related issues only and not for trial or arbitration and a scheduling order for an arbitration for File No: *2018-AP-12-00074* pursuant to **Title 38, Chapter 77, Article 7 of the South**

Carolina Code of Laws.

The reasons for these objections, oppositions and motions are stated in the attached Memorandum In Support.

Respectfully submitted,

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

FILED
2018 AUG 22 P 1:11
CLERK OF COURT
CHESTER CO S.C.

MEMORANDUM IN SUPPORT OF MOTIONS TO TRANSFER TO THE APPROPRIATE DOCKET, TO STRIKE COURT DATE OF SEPTEMBER 5, 2018 AND PLAINTIFFS' OBJECTION AND OPPOSITION TO SAID COURT DATE AND NONJURY TRIAL ROSTER DESIGNATION

Statement of Facts

The arbitration for property damage, File No: *2018-AP-12-00074,* due to a motor vehicle incident was filed pursuant to **Title 38, Chapter 77, Article 7 of the South Carolina Code of Laws** on February 21, 2018 and *2018-CP-12-00117* was filed with a Demand for Jury Trial on March 19, 2018.

2018 AUG 22 P 1:11
FILED
CLERK OF COURT
CHESTER CO S.C.

August 13, 2018, the Plaintiffs' learned about the 'Notice of Case Scheduling' dated August 7, 2018 via U.S.P.S. mail stamped August 8, 2018.

This notice designates that the Roster ID: 94 – CP is listed as Non-Jury. Plaintiffs are unaware of what GS Non-Jury means and do not understand its notation.

In this said notice, it states that, "ALL cases on this Roster are subject to trial."

The Plaintiffs hereby object to the designation of Nonjury of File No: *2018-CP-12-00117* as this action was filed with a Demand for Jury Trial. This matter is not ripe for trial. There are plenty of issues of material fact left to settle.

The Plaintiffs seek a continuance should the court not grant their other motions or sustain their objections for the following reasons.

Law and Argument

SCRCP Rule 40(d)(1) states in part, "**Agreement or Objection.** No earlier than 180 days after the date the case was filed, any party may file and serve upon all other parties a Request to Transfer that case from the General Docket to the Jury Trial Roster..."

This action was filed on March 19, 2018 and 180 days after this date is September

12, 2018. The fore-mentioned court date of September 5 is 7 days premature of this rule's requirement of days before a case may be transferred to the Jury Trial Roster.

No request to transfer has been made by any party in this action.

Due to the numerous defendants, Defendants have been timely served at different dates, the last being July 15, 2018.

Discovery has not been completed.

FILED
2018 AUG 22 P 1:
CLERK OF COURT
CHESTER CO. S.C.

Plaintiffs still have time to serve and file an amended complaint pursuant to **SCRCP Rule 15(a)**, which states in part, "A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served..."

SCRCP Rule 40(b) states in part, "...A case may not be called for trial until it has been transferred to the Jury Trial Roster. Trial shall be had no earlier than 30 days from the date the case first appears on the Jury Trial Roster..."

SCRCP Rule 40(c) states in part, "**Transfer to Jury Trial Roster by Agreement.** A case may be moved from the General Docket to the Jury Trial Roster at any time by agreement of all counsel of record..."

SCRCP Rule 40(d)(1) states in part, "**Agreement or Objection.** No earlier than 180 days after the date the case was filed, any party may file and serve upon all other parties a Request to Transfer that case from the General Docket to the Jury Trial Roster...

This action was filed on March 19, 2018 and 180 days after this date is September 12, 2018. The fore-mentioned court date of September 5 is 7 days premature of this rule's requirement of days before a case may be transferred to the Jury Trial Roster.

No request to transfer has been made by any party in this action.

This is a timely filing of the Plaintiffs' position to object to this above-mentioned hearing date.

SCRCP Rule 40(d)(1)(b) states in part, "If any party files an Objection to Transfer, the case may not be transferred to the Jury Trial Roster within 9 months of filing of the complaint..."

FILED
2018 AUG 22 P 1:11
CLERK OF COURT
BEAUFORT CO. S.C.

Since the Plaintiffs are hereby objecting to this scheduled court date of September 5, 2018 pursuant to **SCRCP Rule 40(d)(1)(b)**, this matter may not be transferred to the Jury Trial Roster before December 14, 2018.

Due to the Plaintiff Heidi Gersten's pressure wound worsening and the anticipated 9 hour travel time in either direction from Florida to South Carolina, along with the challenge of securing someone to transport her under such short notice to make plans as she is parlayzed as the result of the said incident and Plaintiff Ivanka Ayoub is also disabled and they are relevant with first-hand knowledge of the March 19, 2015, a continuance is proper for them to have adequate time to prepare and subpoena witnesses and documents, etc. for the arbitration of File No: *2018-AP-12-00074* should the court issue a scheduling order.

In the absence of a designation as jury or nonjury, the matter is placed on the Nonjury Docket, subject to a motion to transfer.

The Plaintiffs do not consent to this file No: 2018-CP-000117 being placed on the Court's Nonjury Roster.

The Plaintiffs do not consent to trial on September 5, 2018.

The Plaintiffs do not consent to arbitration on September 5, 2018.

The Plaintiffs agree to motions only hearing as it appears that the granting of arbitration is subject the outcome of the motions.

This is not created to cause delay but in the interest and furtherance of justice.

CONCLUSION

For the above-stated reasons File No: *2018-CP-12-00117* should be transferred out of the Nonjury Docket and into the Appropriate Docket, the court date of September 5, 2018 should be stricken or a continuance granted.

Respectfully submitted,

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

FILED
2018 AUG 22 9:11
CLERK OF COURT
CHARLESTON CO. S.C.

December 27, 2018

Gersten's Motion for Extension of Time to File Initial Brief filed December 27, 2018, in Appellate Case No. 2018-002115.

886640

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 M. Gibbons, Circuit Court Judge

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

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

Respondents,

v.

Heid Gersten, Ivanka Ayoub, Daniel Hubbard

Appellants.

RECEIVED
DEC 27 2018
SC Court of Appeals

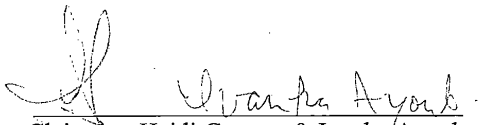
MOTION FOR EXTENSION OF TIME TO FILE PLAINTIFF/APPELLANTS' INITIAL BRIEF

TO THE HONORABLE SOUTH CAROLINA COURT OF APPEALS:

NOW COMES, Heidi Gersten, Ivanka Ayoub, Daniel Hubbard ('Appellants') and respectfully move this Court, pursuant to **Rules 240 and 263, SCACR**, for an extension of time to file their initial brief in this court. The reasons for this motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

DATED: December 17, 2018



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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXTEND TIME TO FILE PLAINTIFF/APPELLANT'S INITIAL BRIEF

As grounds therefore, the Appellants show the following good cause:

1. The Appellants brief is currently due to be filed on December 17, 2018.
2. The Appellant Gersten was paralyzed as a result of the collision in controversy in this matter. She has no caregiver or physical help with daily functions like bowel movements, bathing, eating and other regular activities able-bodied people perform. She lives under extraordinary circumstances.
3. The Appellant Ayoub is also disabled and unable to give proper care for her daughter,
4. the Appellant Gersten.
5. The Appellant Hubbard is located over 1000 miles away from his sister, the Appellant Gersten, and is unable to give proper care for her.
6. Despite the extraoridinary circumstances the Appellant Gersten lives with, she has been diligently working on this appeal and has already prepared a significant part of the Appellant's brief however this appeal has been disrupted by the fact that on Thanksgiving, November 22, 2018, the wheel to her manual wheelchair fell off while she was sitting in it. It took hours of her crawling to her bed dragging the broken wheelchair with her to "jimmy" it well enough for her to slowly get to her computer, located across the room, to order a replacement, which took several days to receive and was not to her liking once it arrived, as it is challenging to order the proper wheelchair on-line without "test driving" it first. She is currently in the process of repairing the one that broke, using the new uncomfortable one in the meantime, waiting for the parts to come in for the broken one.

7. The Appellant Gersten also has a pressure wound on her left butt cheek the size of a quarter which prevents her from sitting up for more than a few hours at a time.
8. The Appellants are not South Carolina residents.
9. This may be considered excusable neglect.
10. The Doctrine of Equitable Tolling as well as Title II of the American Disabilities Act permit this Court to grant an extension of time for such axiomatic situations.
11. The due date of this brief comes at a time around major holidays.
12. This request is not unheard of.
13. This request is made before the expiration of the time the brief is due.
14. The Appellants prefer not to have to file a Motion for Reinstatement, which would more than likely be granted given the extraordinary circumstances and good cause shown.
15. **RULE 263, SCACR, TIME(b) Extending and Diminishing Time Prescribed by These Rules.** The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.
16. Unlike the case of **WADE V. GORE, 151 S.E. 470 (S.C. 1930),** the Appellants are requesting this extension before the expiration of the date the brief is due.
17. The South Carolina Supreme Court recently adopted this doctrine. **HOOPER V. EBENEZER SR. SERVS. & REHAB. CTR., 386 S.C. 108, 687 S.E.2D 29 (2009).** The court explained the doctrine of equitable tolling may be applied to toll the running of the statute of limitations "to serve the ends of justice where technical forfeitures would

unjustifiably prevent a trial on the merits." Id. at **115, 687 S.E.2D AT 32.** The court explained:

THE EQUITABLE POWER OF A COURT IS NOT BOUND BY CAST-IRON RULES BUT EXISTS TO DO FAIRNESS AND IS FLEXIBLE AND ADAPTABLE TO PARTICULAR EXIGENCIES SO THAT RELIEF WILL BE GRANTED WHEN, IN VIEW OF ALL THE CIRCUMSTANCES, TO DENY IT WOULD PERMIT ONE PARTY TO SUFFER A GROSS WRONG AT THE HANDS OF THE OTHER. EQUITABLE TOLLING MAY BE APPLIED WHERE IT IS JUSTIFIED UNDER ALL THE CIRCUMSTANCES.

If the Doctrine of Equitable Tolling may be applied to the Statute of Limitations, surely it can be applied to an extension of time to file a brief, such as in this matter.

THEREFORE, having shown good cause, the Appellants respectfully request and move the Court for an extension of time to, and including, February 15, 2018; an extension of sixty (60) days from the date of December 17, 2018, to allow enough time to correctly and competently complete the Appellant's Brief.

This motion is not made to cause undue delay. It is made in the furtherance of justice and to prevent its miscarriage.

Respectfully submitted this 17th day of December 2018.

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

Other Counsel of Record:

Wesley Brian Sawyer, Esquire
Murpy & Grantland, P.A.
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(803) 782-4100

David R. Sligh
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Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
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Columbia, SC 29211
(Attorneys for Trustguard Insurance Company and John Ammendola)
(803) 255-0404

William H. Davidson II, Esquire
Davidson & Lindemann, PA
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Columbia, SC 29202
(Attorney for SC Dept. of Public Safety and Herbert Blackwell)

Reynolds Williams
P.O. Box 1909
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(843) 662-3258

Alexander S. Gogsette
P.O. Box 5478
Florence, SC 29502
(Attorney for Joseph Tirbovich)
(843) 656-4454

CERTIFICATE OF SERVICE
(2018-AP-12-00074)
(2018-CP-12-00117)

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: FILE NO: 2018-CP-12-00117/2018-AP-12-00074 **NOTICE OF AND MOTION FOR EXTENSION OF TIME TO FILE PLAINTIFF/APPELLANT'S INITIAL BRIEF** 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
Murpy & 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
Collins & Lacy, PC
1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company)

William H. Davidson II, Esquire
Davidson & Lindemann, PA
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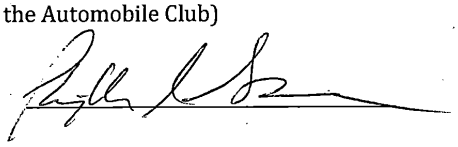
Columbia, SC 29202
(Attorney for SC Dept. of Public Safety
and Trooper Herbert Blackwell)

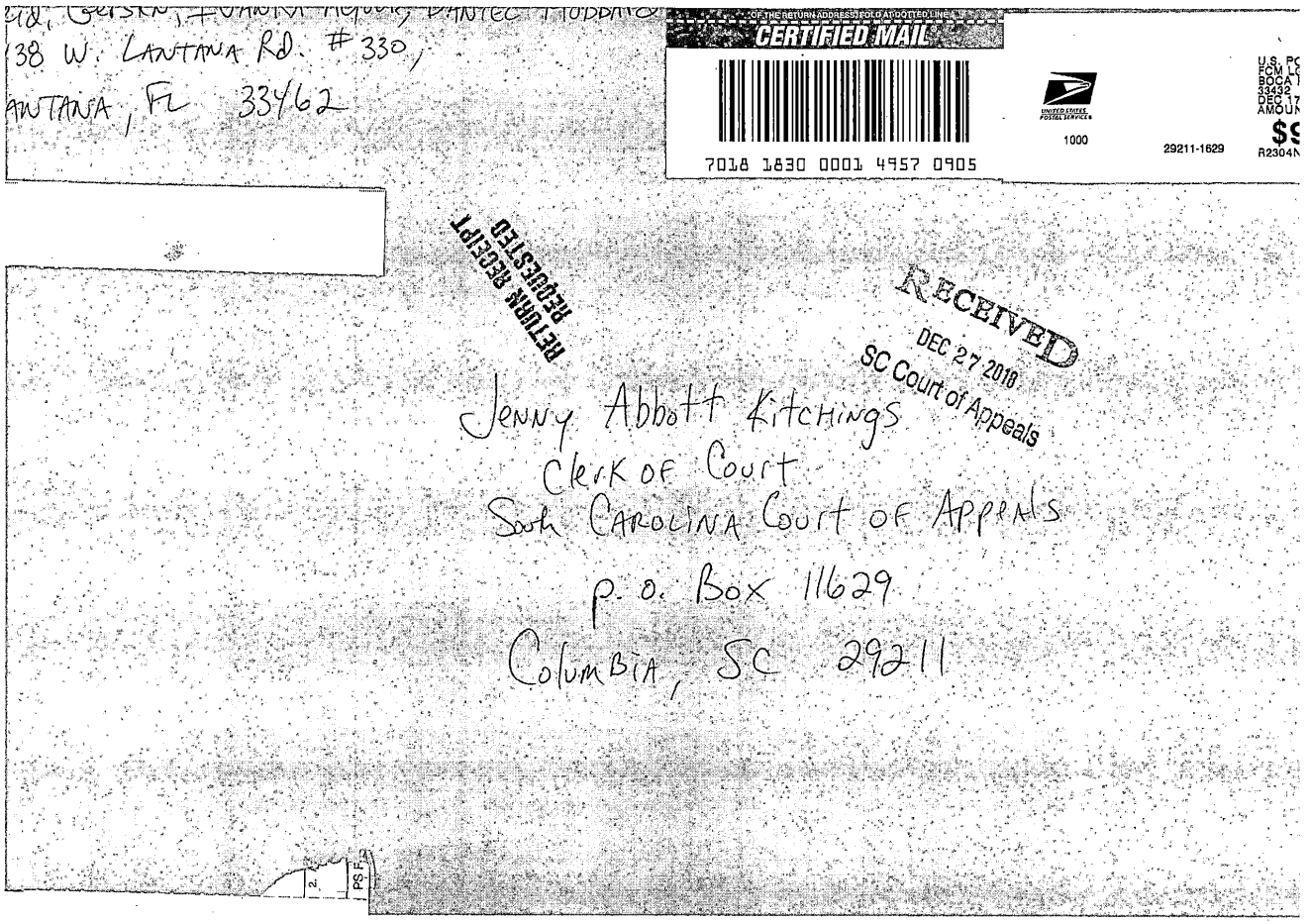
Alexander S. Gogsette
P.O. Box 5478
Florence, SC 29502
(Attorney for Joseph Tirbovich)

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

By: 

Boca Raton, Florida
December 17, 2018

RECEIVED
DEC 27 2018
SC Court of Appeals


38 W. LANTANA RD. #330,
LANTANA, FL 33462
CERTIFIED MAIL
7018 1830 0001 4957 0905
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29211-1629
RETURN RECEIPT REQUESTED
RECEIVED
DEC 27 2018
SC Court of Appeals
Jenny Abbott Kitchings
Clerk of Court
Soth CAROLINA Court of APPEALS
P.O. Box 11629
Columbia, SC 29211

February 8, 2019

Gersten's Motion for Extension of Time filed February 8, 2019, in Appellate Case No. 2018-002115

89008

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 M. Gibbons, Circuit Court Judge

Appellate Case No. 2018-002115

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

v.

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

RECEIVED
FEB 08 2019
SC Court of Appeals

MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' CORRECTION TO COURT NOTED DEFIENCIES IN RETURN ALONG WITH AMMENDED RETURN

TO THE HONORABLE SOUTH CAROLINA COURT OF APPEALS:

NOW COMES, Heidi Gersten, Ivanka Ayoub, ('Appellants') and respectfully move this Court, pursuant to **Rules 240 and 263, SCACR**, for an extension of time to file their correction to the Court's noted deficiencies in their timely filed Return to the Respondent Interinsurance Exchange of the Automobile Club ('AAA')'s Motion to Dismiss along with their Ammended

Return in this court. The reasons for this motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

DATED: February 4, 2019

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXTEND TIME TO FILE APPELLANTS' CORRECTION TO COURT NOTED DEFIENCIES IN RETURN ALONG WITH AMMENDED RETURN

As grounds therefore, the Appellants show the following good cause:

1. The Appellants received a letter from the Court dated January 25, 2019 on February 4, 2019 instructing a mandatory list of corrections to be made to their Return of the Respondent AAA's Motion to Dismiss.
2. The Appellants did not receive an appellate case number until after the Return was filed.
3. The appellate case number that Respondent AAA listed in their Motion to Dismiss is incorrect however the Appellants are unaware of a similar notice to cure served on them by the Court as sent to the Appellants for this same reason.
4. The original Return filed by the Appellants was timely due to the fact that the Respondent AAA had not provided the proper court filing fees at the initial time of serving and filing their Motion to Dismiss. The Court sent them a ten (10) day letter to cure this defect which was corrected by the Respondent AAA on January 2019. The Appellants based their due date of their Return from the date of perfection and not from the improperly filed date.
5. The Appellant Gersten was paralyzed as a result of the collision in controversy in this matter. She has no caregiver or physical help with daily functions like bowel movements, bathing, eating and other regular activities able-bodied people perform. She lives under extraordinary circumstances.
6. The Appellant Ayoub is also disabled and unable to give proper care for her daughter, the Appellant Gersten.
7. Despite the extraordinary circumstances the Appellant Gersten lives with, she has been

diligently working on this appeal with Appellant Ayoub. Given that the notice for correction was received on the tenth day of the 10 days allowed to cure, the Appellants request an additional ten (10) days to comply, which would be February 14, 2019.

8. The Appellant Gersten also has a pressure wound on her left buttocks the size of a quarter which prevents her from sitting up for more than a few hours at a time.
9. The Appellants are not South Carolina residents.
10. This may be considered excusable neglect.
11. The Doctrine of Equitable Tolling as well as Title II of the American Disabilities Act permit this Court to grant an extension of time for such axiomatic situations.
12. This request is not unheard of.
13. This request is made before the expiration of the time due.
14. The Appellants prefer not to file a Motion for Reinstatement, which would more than likely be granted given the extraordinary circumstances and good cause shown.
15. **RULE 263, SCACR, TIME(b) Extending and Diminishing Time Prescribed by These Rules.** The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.
16. Unlike the case of **WADE V. GORE, 151 S.E. 470 (S.C. 1930)**, the Appellants are requesting this extension before the expiration of the date due.
17. The South Carolina Supreme Court recently adopted this doctrine. **HOOPER V. EBENEZER SR. SERVS. & REHAB. CTR., 386 S.C. 108, 687 S.E.2D 29 (2009)**. The court

explained the doctrine of equitable tolling may be applied to toll the running of the statute of limitations "to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits." Id. at **115, 687 S.E.2D AT 32.** The court explained:

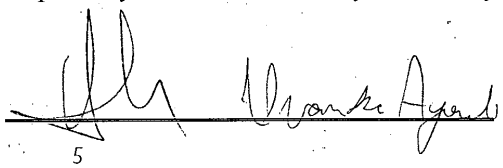
THE EQUITABLE POWER OF A COURT IS NOT BOUND BY CAST-IRON RULES BUT EXISTS TO DO FAIRNESS AND IS FLEXIBLE AND ADAPTABLE TO PARTICULAR EXIGENCIES SO THAT RELIEF WILL BE GRANTED WHEN, IN VIEW OF ALL THE CIRCUMSTANCES, TO DENY IT WOULD PERMIT ONE PARTY TO SUFFER A GROSS WRONG AT THE HANDS OF THE OTHER. EQUITABLE TOLLING MAY BE APPLIED WHERE IT IS JUSTIFIED UNDER ALL THE CIRCUMSTANCES.

If the Doctrine of Equitable Tolling may be applied to the Statute of Limitations, surely it can be applied to an extension of time to file corections to deficiencies, such as in this matter.

THEREFORE, having shown good cause, the Appellants respectfully request and move the Court for an extension of time to, and including, February 14, 2019; an extension of ten (10) days from the date of December 25, 2019, to allow enough time to correctly and competently complete the Court's instructions.

This motion is not made to cause undue delay. It is made in the furtherance of justice and to prevent its miscarriage.

Respectfully submitted this 4th day of February 2019.



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

Other Counsel of Record:

Wesley Brian Sawyer, Esquire
Murpy & Grantland, P.A.
4406 Forest Drive #B
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David R. Sligh
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P.O. Box 1909
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(Attorney for Defendant Interinsurance Exchange of the Automobile Club)
(843) 662-3258

Alexander S. Gogsette
P.O. Box 5478
Florence, SC 29502
(Attorney for Joseph Tirbovich)
(843) 656-4454

CERTIFICATE OF SERVICE
(Appellate Case N0: 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: 2019-002115 MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' CORRECTION TO COURT NOTED DEFIENCIES IN RETURN ALONG WITH AMMENDED RETURN along with Letter to Court 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
Murpy & Grantland, P.A.
4406 Forest Drive #B
Columbia, SC 29206
(Attorney for Kevin Carter and Richard Davis)

David R. Sligh
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Myrtle Beach, SC 29578
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(Attorneys for Trustguard Insurance Company)

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P.O. Box 8568
Columbia, SC 29202
(Attorney for SC Dept. of Public Safety and Trooper Herbert Blackwell)

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

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

By: Phyllis K Garcia

Boca Raton, Florida
February 4, 2019

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FEB 08 2019
SC Court of Appeals

February 4, 2019
1438 W. Lantana Rd., #330
Lantana, FL 33462

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211
(843)662-3258 Fax (843)662-1342

RE: Appellate Case No.: 2018-002115

RECEIVED
FEB 08 2019
SC Court of Appeals

Dear Ms. Kitchings:

Good day to you.

As per today's conversation with Elizabeth, please find an enclosed U.S. postal money order in the amount of $50.00 for the enclosed original Motion For Extension Of Time To File Appellants' Correction to Court Noted Deficiencies In Return Along With Amended Return, 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

HG/Enclosures

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

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL®

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UNITED STATES POSTAL SERVICE®

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Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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FEB 08 2019
SC Court of Appeals

February 19, 2019

Gersten's Motion to Allow Late Filing filed February 19, 2019, in Appellate Case No. 2018-002115

890760

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
FEB 19 2019
SC 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: 2019-002115

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

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APPELLANTS' AMENDED RETURN AND/OR OBJECTION AND/OR OPPOSITION AND/OR RESPONSE TO RESPONDENT INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB'S MOTION TO DISMISS APPEAL AND MOTION FOR THE COURT TO ACCEPT THIS DOCUMENT AS TIMELY WITH OR WITHOUT LEAVE OF COURT

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

The Appellants, Heidi Gersten, Ivanka Ayoub ('Appellants') move this Court for an acceptance of this document as timely and for a denial of the Motion to Dismiss served and filed by the Respondent Interinsurance of the Exchange of the Automobile Club ('Respondent AAA') and perfected on January 7, 2019. Due to insufficient funds submitted by Respondent AAA at its filing and its later correction as per request of this Court's Deputy Clerk, V. Claire Allen ('D.C.'), in a letter dated January 4, 2019, tolling the deadline for the Appellants' response to January 17, 2019.

For these reasons, this Amended Return and/or Objection and/or Opposition and/or Response is therefore timely served and filed according to SCARP, as well as its original for the previously stated reasons. The Appellants hereby move this Court to accept this document as timely.

NOTE: Added to this amended motion since the date of its original creation, D.C., sent a letter dated January 25, 2019, to the Appellants to cure 3 (three) defiencies, made in opinion against the Appellants' objections, regarding the original version of this timely filed motion. The said letter is interpreted by the Appellants to be defined as;

1. Remove the Appellant Daniel Hubbard's written name from the caption of the motion and further reference to him as an Appellant;

2. The above case number is incorrect however even the said letter states the case number written on the original and this amended version of this document to be the same as written by the Appellants.

NOTE: To the date of this document, the Respondent AAA, in truth and fact, has the incorrect case number on their motion to dismiss however were not intstructed by D.C. to correct this error creating prejudice against the Appellants for being instructed to correct an accurate written case number, while the Respondent AAA has not been instructed to correct its incorrect listing of the case number.

3. The Appellants documents are inaccurately determined to be untimely. The Appellants original filing was timely for the reasons previously stated. The Appellants have enclosed $50.00 in court fees

against their objection.

The Appellants urge the Court to allow proper communication between the deciding judges of this appeal and the Appellants, as their arguments are not without merit.

The Respondent AAA has grossly misrepresented the record of the Court in its effort to pursuade the Court to grant its Motion for Dismissal of Appeal. Respondent AAA asserts 3 (three) grounds for dismissal on page 2 (two) of its Motion for Dismissal of Appeal.

1. The Appellant Daniel Hubbard has not filed or served a Notice of Appeal.

   A. The Appellants deny the truth of this allegation. Appellant Hubbard's signature is missing. The Court ought to permit an opportunity to correct this as the Court permitted the Respondent AAA to correct its error in submitting the improper court filing fee for said motion. To do otherwise demonstrates prejudice against the Appellants by the Court.

2. The Appellants Gersten and Ayoub have failed to prosecute their appeal by failing to comply with the Appellate Court rules.

   A. The Appellants deny the truth of this allegation. The Appellants have complied with the Appellate Court rules.

3. The Appellants have not served or filed a notice of Appeal from the Order below dismissing all causes of action against Respondent AAA.

   A. The Appellants deny the truth of this allegation. The Appellants timely served and filed a notice of Appeal as stated by the Appellate Court rules.

The Appellants' argument will be more fully addressed in the attached Memorandum of Points and Authorities in Support of their objections/or opposition and response.

Respectfully submitted this 14th day of February 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
February 14, 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: 2019-002115

RECEIVED
FEB 19 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
1438 W. Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142
(561) 756-9820 FAX
hanginhangout@gmail.com
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 Amended Return and/or Objection/or Opposition and/or Response to the Respondent Interinsurance Exchange of the Automobile Club's Motion to Dismiss Appeal, 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 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 operation under the laws of the State of South Carolina and the United States Constitution.

4. The date the Notice of Appeal was timely served and filed on Respondent Interinsurance Exchange of the Automobile Club was November 15, 2018.

5. The proposed orders were allegedly signed before the Appellants had an opportunity to review them for accuracy.

6. The allegedly signed orders contain numerous errors that will be discussed in the Brief of the Appellants.

7. The Appellates' Motion to Alter or Amend a Judgment or Relief from Judgment or Order filed May 8, 2018 may have been ruled on October 16, 2018 by Honorable Judge Hayes III.

8. I was paralyzed as a result of the collision in controversy.

9. It is unfair to hold me to the same standards as able-bodied people.

10. The American Disabilities Act applies to me.

11. The Doctrine of Equitable Tolling may also be applied to my circumstances.

12. A Motion to Amend the Complaint With Leave was filed before the alleged orders in controversy were allegedly signed by the presiding judge and were on the calendar for a ruling until this Appeal stayed the trial court.

13. Interinsurance Exchange of the Automobile Club is not a third-party to me.

14. I was insured for over 50 times the minimum coverage mandated by law with Interinsurance Exchange of the Automobile Club.

15. There is a breach of contract between the Respondent Interinsurance Exchange of the Automobile Club and I, among other things.

16. I am without a caregiver.

17. I urge the Court to deny this Motion to Dismiss Appeal made by the Respondent Interinsurance Exchange of the Automobile Club. Let the merits of the upcoming brief shine a light on the facts of this matter.

18. I authenticate the documents submitted in this Amended Return and/or Objection and/or Opposition and and/or Response to the said Motion to Dismiss Appeal as true and accurate copies.

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

Subscribed and sworn to before me, this 14th day of February 2019.

[Notary Seal:]

[signature of Notary]

Phyllis R Garcia

[typed name of Notary]

Notary Public State of Florida
Phyllis R Garcia
My Commission FF 908166
Expires 09/15/2019

NOTARY PUBLIC

My commission expires: 09/15/20, 2019.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
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SC 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: 2019-002115

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

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, ...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, Daniel Hubbard
1438 W. Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142
(561) 756-9820 FAX
hanginhangout@gmail.com
Plaintiffs/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 Objection/or Opposition and Response to the Respondent Interinsurance Exchange of the Automobile Club's Motion to Dismiss Appeal, 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 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 operation under the laws of the State of South Carolina and the United States Constitution.

4. The date the Notice of Appeal was timely served and filed on Respondent Interinsurance Exchange of the Automobile Club was November 15, 2018.

5. The proposed orders were allegedly signed before the Appellants had an opportunity to review them for accuracy.

6. The allegedly signed orders contain numerous errors that will be discussed in the Brief of the Appellants.

7. The Appellates' Motion to Alter or Amend a Judgment or Relief from Judgment or Order has yet to be ruled on.

8. I was paralyzed as a result of the collision in controversy.

9. It is unfair to hold me to the same standards as able-bodied people.

10. The American Disabilities Act applies to me.

11. The Doctrine of Equitable Tolling may also be applied to my circumstances.

12. A Motion to Amend the Complaint With Leave was filed before the alleged orders in controversy were allegedly signed by the presiding judge and were on the calendar for a ruling until this Appeal stayed the trial court.

13. Interinsurance Exchange of the Automobile Club is not a third-party to me.

14. I was insured for over 50 times the minimum coverage mandated by law with Interinsurance Exchange of the Automobile Club.

15. There is a breach of contract between the Respondent Interinsurance Exchange of the Automobile Club and I, among other things.

16. I am without a caregiver.

17. I urge the Court to deny this Motion to Dismiss Appeal made by the Respondent Interinsurance Exchange of the Automobile Club. Let the merits of the upcoming brief shine a light on the facts of this matter.

18. I authenticate the documents submitted in this Objection and/or Opposition and Response to the said Motion to Dismiss Appeal as true and accurate copies.

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

Subscribed and sworn to before me, this 17th day of January 2019.

[Notary Seal:]

[signature of Notary]

[typed name of Notary]

Notary Public State of Florida
Phyllis R Garcia
My Commission FF 908165
Expires 09/15/2019

NOTARY PUBLIC

My commission expires: 09/15, 2019.

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STATE OF SOUTH CAROLINA

BEFORE THE ARBITRATION PANEL OF CHESTER COUNTY

In the matter of Arbitration between

Case number 2018-AP-12-00074

HEIDI GERSTEN, IVANKA AYOUB	)	
	)	
Claimants	)	CLAIMANTS' OBJECTION AND
	)	OPPOSITION TO DEFENDANT
vs.	)	INTERINSURANCE EXCHANGE OF THE
	)	AUTOMOBILE CLUB'S MOTION TO
KEVIN CARTER, RICHARD DAVIS,	)	DISMISS AND
JOSEPH TIRBOVICH, NATIONWIDE	)	REQUEST FOR ORAL HEARING
MUTUAL INSURANCE COMPANY,	)	
INTERINSURANCE EXCHANGE OF	)	
THE AUTOMOBILE CLUB, JOHN	)	
AMMENDOLA, TRUSTGUARD	)	
INSURANCE COMPANY	)	
	)	
Defendants	)	

FILED
2018 MAY -8 P 2:52
CLERK OF COURT
CHESTER CO S.C.

Now come the Claimants Heidi Gersten and Ivanka Ayoub and move this court for an order denying the Defendant Interinsurance Exchange of the Automobile Club's (the "Exchange") Motion to Dismiss The Claimants also request an oral hearing on said motions. The reasons for this Objection and Opposition are set forth in the attached Memorandum in Support.

Respectfully submitted,

DATED: May 6, 2018

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DENIAL OF DEFENDANT'S MOTION TO DISMISS

I. INTRODUCTION

The Claimant Heidi Gersten filed a complaint for Arbitration # 2018-AP-12-00074 with this Court on February 21, 2018 pursuant to **Title 38, Chapter 77, Article 7 of the South Carolina Code of Laws.** This is a cause of action to resolve property damage arising out of a motor vehicle collision that occurred in Chester County, South Carolina on March 19, 2015 between the Claimant Heidi Gersten and the Defendant Kevin Carter. The Claimant Ivanka Ayoub is the owner of the Chevrolet Mark III 1500 LX Conversion Van totaled in said collision.

On March 26, 2018, the Defendant Exchange was served the Summons and Claim for Property Damage, the First Amended Claim for Property Damage Verified along with Verification of Heidi Gersten attached with Exhibits A-L and Claimants First Set of Admissions, Interrogatories and Request for Production with attached Exhibits A-G via certified mail pursuant to **Rule 4(d)(8), SCRCP** through the SC Dept. of Insurance as the agent for service of process.

On April 24, 2018 Attorney Reynolds Williams (S.C. Bar #006153) filed with this Court on behalf of the Defendant Exchange : Notice of Motion and Motion to Dismiss, and served the Claimants.

The Defendant is mistaken in its presentation to the Court for the following reasons:

II. LAW AND ARGUMENT

The Defendant Exchange lists five (5) grounds for their motion.

1. THE ARBITRATION PANEL FOR CHESTER COUNTY LACKS JURISDICTION OVER THE SUBJECT MATTER.

The Claimants deny that the Arbitration Panel of Chester County, South Carolina lacks jurisdiction over the subject matter in controversy.

This is an Alternative Dispute Resolution matter.

> **Title 38, Chapter 77, Article 7 of the South Carolina Code of Laws SECTION 38-77-730.** Request for arbitration; no formal pleading and process; arbitration docket; filing of claim; service of summons to defendant.
>
> (a) *Any person who is a party to the disputed property damage liability claim may submit his claim for determination through arbitration. No formal pleading or process is required. The clerk of court of each county shall prepare and keep an arbitration docket and set the cases thereon for arbitration as provided by law for the settling of cases in the court of common pleas.*

The above stated law permits the Claimants to redress their grievances in this manner. Arbitration is available without either party waiving their right to a jury trial under standard civil procedure. This arbitration setting is geared for non-attorneys and numerous attorneys place advocacy on their websites for the fairness and understanding of individuals presenting their own matters directly to the arbitrators in this setting.

This procedure is involatile in bridging the gap between the public and governmental entities. Since it is illegal for attorneys to take property damage claims on contingency under South Carolina law, the five-dollar fee affords the ability to redress grievances and be heard in a court of law and record for this type of subject matter.

> It states in **Title 38, Chapter 77, Article 7 of the South Carolina Code of Laws SECTION 38-77-710** *...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.

Subject matter is defined as:

> Term refers to court's power to hear and determine cases of the general class or category to which proceedings inquestion belong; the power to deal with the general subject involved in the action. *Standard Oil Co. v. MontecatiniEdis on S. p. A., D.C.Del., 342 F.Supp. 125, 129.*
>
> Power of a particular court to hear the type of case that is then before it. Alfaro v. Meagher, 27 Ill.App.3d 292, 326N.E.2d 545, 548. Term refers to jurisdiction of court over class of cases to which particular case belongs, Ferree v.Ferree, 285 Ky. 825, 149 S.W.2d 719, 721; jurisdiction over the nature of the cause of action and relief sought, MidCity Bank & Trust Co. v. M yers, 343 Pa. 465, 23 A.2d 420, 423;
>
> *Black's Law Dictionary. HENRY CAMPBELL BLACK, M. A.. 1990.*

The Arbitration Panel of Chester County has the authority to hear this type of case or controversy the Claimants initiated in its court.

The Claimants are requesting arbitration for property damages arising out of a motor vehicle collision pursuant to Title 38, Chapter 77, Article 7 of the South Carolina code of Laws.

> **SECTION 38-77-710** states in part, *"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..."*

Let's examine the meaning of "property damage liability claims". According to Black's Law Dictionary the word "liability" is, "The state of being bound or obliged in law or justice to do, pay, or make good something; legal responsibility." Wood v. Currey, 57 Cal. 209; McElfresh v. Kirkendall, 36 Iowa, 225; Benge v. Bowling, 100 Ky. 575, 51 S. W. 151; Joslin v. New Jersey Car-Spring Co., 36 N. J. Law, 145.

Liability is the state of being responsible for something, especially by law.

2. THE ARBITRATION PANEL AND COURTS OF SOUTH CAROLINA LACK JURISDICTION OVER THE PERSON OF THE MOVING DEFENDANT

The Claimants deny that the Arbitration Panel and Courts of South Carolina lack jurisdiction over the person of the moving Defendant.

South Carolina Long-Arm Statute S.C. Code Ann. § 36-2-803 § 36-2-803. Personal jurisdiction based upon conduct. (1) A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's (a) transacting any business in this State; (b) contracting to supply services or things in the State; (c) commission of a tortious act in whole or in part in this State; (d) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this State; or (e) having an interest in, using, or possessing real property in this State; or (f) contracting to insure any person, property or risk located within this State at the time of contracting; or (g) entry into a contract to be performed in whole or in part by either party in this State; or (h) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed. (2) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him, and such action, if brought in this State, shall not be subject to the provisions of § 15-7-100 (3).

3. VENUE IN THE ARBITRATION PANEL OF CHESTER COUNTY IS IMPROPER AND INCONVENIENT

The Claimants deny that the venue in the Arbitration Panel of Chester County is improper and inconvenient.

Chester County, South Carolina is where the most substantial part of the cause of action arose therefore the venue is proper.

The venue statute, S.C. Code Ann. § 15-7-30, states in part that, *"...a civil action tried pursuant to this section must be brought and tried in the county in which the: most substantial part of the alleged act or omission giving rise to the cause of action occurred."*

Venue is the place or geographical location of trial. *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994); *see also In re Asbestosis Cases*, 276 S.C. 579, 581, 281 S.E.2d 112, 115 (1981) (noting that "venue" refers to the county where the action should be brought).

4. THE CLAIM FAILS TO STATE FACTS CONSTITUTING A CAUSE OF ACTION.

The Claimants deny that the claim fails to state facts constituting a cause of action.

The liability of the Defendant is at issue. The arbitration statute that this claim is brought under allows any party to the disputed property damage liability claim, which the Claimants are, to submit their claim for determination through arbitration. The statute makes no distinction as to specifics in defining property damage liability. It is commonly accepted that the word liability is synonymous with responsibility. The Claimant Gersten obtained property damage insurance through the Defendant and was insured at the time of said collision. Therefore the Defendant is liable or responsible to pay their portion of the damages. In the event that this Court still maintains that this is outside of the scope of arbitration, the matter must be preserved and placed into a separate filing with a new case number preserving the timely commencement in the action and the Claimants given the opportunity to amend its pleadings accordingly in all fairness of judicial due process of law.

5. THE LIABILITY OF KEVIN CARTER IS RES JUDICATA BY VIRTUE OF CHESTER COUNTY DOCKET NO. A099-05470-16-00.

The Claimants deny that the liability of the Defendant Kevin Carter is res judicata by virtue of Chester County Docket No. A099-05470-16-00. There is no record in Chester County with said numbers. This is the number to an arbitration ruling

initiated by the Defendant Nationwide Mutual Insurance Company on behalf of the Defendants Kevin Carter and Richard Davis against the Defendants Trustgard Insurance Co. and Exchange on behalf of the Claimants. It was decided that NO LIABILITY was determined against the Claimants therefore the liability of the Claimants not the Defendant Kevin Carter is res judicata.

This statement made by the Defendant Exchange is factually untrue.

III. CONCLUSION

Rule 3(a)(2), SCRCP, and **S.C. Code § 15-3-20(B)** permit 120 days from the date of filing for the service of process to be perfected therefore the Defendants motions are premature and must be denied if the Court determines service has not been perfected.

The Arbitration for Property Damages Case No. 2018-AP-12-00074 is a separate claim from the Bodily Injury and Personal Injuries Case No. 2018-CP-12-00117 and must remain as filed. There is just cause for the Court to deny the Defendants' **Rule 12(b)(8), SCRCP, Motion to Dismiss.**

There are First Amendment rights violations of the U.S. Constitution in striking words of the Claimants against their objection.

Should the Court grant the Defendants' Motion to Strike, the Claimants hereby request a continuance or extension of time to reply to subparts A-G of Part III of the Defendants Motion to Strike pursuant to:

> **Rule 6 (b), SCRCP, Enlargement.** *When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the time may be extended by written agreement of counsel for an additional period not exceeding the original time provided in these rules, or the court for cause shown may at any time in its discretion (1) with or without written motion or notice order the period enlarged if request*

therefor is made before the expiration of the period as originally prescribed or extended...

The Claimants have no objection to the Defendants being severed from the remaining Defendants if it pleases the court, although a legal determination explaining the specific reasons for doing so is requested should this happen.

For the fore-mentioned reasons, the Claimants move this Court for an order denying the Defendants Motion to Dismiss. Should the said motions or part of them be granted, the Claimants move this Court for a continuance or extension of time to reply.

The Claimants' Objection and Opposition is supported by this Memorandum, everything in the case file in this matter, minutes of the court and other evidence that may be submitted prior to or at the oral hearing on said Motions, including but not limited to oral argument.

FILED
2018 MAY -8 P 2:52
CLERK OF COURT
PALM BEACH CO S.C.

Respectfully submitted,

Dated this 6th day of May, 2018

Claimants Heidi Gersten and Ivanka Ayoub
1438 West Lantana Rd. #330
Lantana, FL 33462
(323) 245-6142
hanginhangout@gmail.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)
)
Heidi Gersten, Ivanka Ayoub)
Plaintiff,)
vs.)
)
Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Ins. Co., Interinsurance Exchange of the Automobile Club, John Ammendola, Trustgard Ins. Co.,)
Defendant.)

IN THE COURT OF COMMON PLEAS
BEFORE THE ARBITRATION PANEL
JUDICIAL CIRCUIT

CASE NO.: 2018 -CP-12-00074

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

FILED
2018 MAY -8 P 2:52
CLERK OF COURT
CHESTER CO. S.C.

Plaintiff's Attorney:	Defendant's Attorney:
_____, Bar No. _____ Address: _____ Phone: _____Fax _____ E-mail: _____Other: _____	Wesley Brian Sawyer, Esquire, Bar No. 100229 Address: 4406 Forest Drive #B Columbia, SC 29206 Phone: (803) 782-4100 Fax_____ E-mail: _____Other: (Attorney for Defendants Carter and Davis) Peter H. Dworjanyn, Esquire, Bar No. 12950 and Michael R. Burchstead, Esquire , Bar No. 73770 1330 Lady Street, 6th Floor Columbia, SC 29201 Phone: E-mail: pdworjanyn@collinsandlacy.com mburchstead@collinsandlacy.com (Attorneys for Trustgard Insurance Company) John Ammendola 671 S. High St. Columbus, Ohio 43206 Reynolds Williams, Bar No: 006153 P.O. Box 1909 Florence, SC 29503-1909 Phone: (843) 662-3258 Fax: (843) 662-1342 E-mail: Reynolds@WillcoxLaw.com (Attorney for Defendant Interinsurance Exchange of the Automobile Club) David R. Sligh, Bar No. 77493 P.O. Box 2116 Myrtle Beach, South Carolina 29578 Phone: (843) 213-5519 Fax: (843) 213-5619 E-mail: dsligh@turnerpadget.com Alexander S. Gogsette, SC Bar No. 101244 P.O.Box 5478 Florence, South Carolina 29502 Phone: (843) 656-4454 Fax: (843) 413-5852

	E-mail: AHogsette@turnerpadget.com (Attorneys for Defendants Nationwide Mutual Insurance Company and Joseph Tirbovich

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

SECTION I: Hearing Information

Nature of Motion: Motion to Alter or Amend a Judgment or Relef from Judgment or Order
Estimated Time Needed: 1/2 hour Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

_____ May 8, 2018
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted

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2018 MAY -8 P 2:52
CLERK OF COURT
RICHLAND CO. S.C.

SECTION III: Motion Fee

☒ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other:	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

BEFORE THE ARBITRATION PANEL OF CHESTER COUNTY

In the matter of Arbitration between

Case number 2018-AP-12-00074

HEIDI GERSTEN, IVANKA AYOUB Claimants vs. KEVIN CARTER, RICHARD DAVIS, JOSEPH TIRBOVICH, NATIONWIDE MUTUAL INSURANCE COMPANY, INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, JOHN AMMENDOLA, TRUSTGUARD INSURANCE COMPANY Defendants	CLAIMANTS' MOTION TO ALTER OR AMEND A JUDGMENT OR RELIEF FROM JUDGMENT OR ORDER Pursuant to Rules 59(e), 60(4), SCRCP AND REQUEST FOR ORAL HEARING

FILED
2018 MAY -8 P 2:52
CLERK OF COURT
CHESTER CO S.C.

Now come the Claimants Heidi Gersten and Ivanka Ayoub and move this court for an order to alter or amend a judgment or relief from judgment or order made by Honorable Circuit Judge Brian M. Gibbons on April 26, 2018 pursuant to Rules 59(e) and 60(4), SCRCP, on the grounds that the order is void and violates the Claimants' U.S. Constitutional rights to fair due process of law and request an oral hearing on said motion. The reasons for this motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

DATED: May 8, 2018

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLAIMANT'S MOTION TO ALTER OR AMEND A JUDGMENT OR RELIEF FROM JUDGMENT OR ORDER

I. INTRODUCTION

The Claimant Heidi Gersten filed a claim for Arbitration # 2018-AP-12-00074 with this Court on February 21, 2018 pursuant to **Title 38, Chapter 77, Article 7 of the South Carolina Code of Laws.** This is a cause of action to resolve property damages arising out of a motor vehicle collision that occurred in Chester County, South Carolina on March 19, 2015 between the Claimant Heidi Gersten and the Defendant Kevin Carter. The Claimant Ivanka Ayoub is the owner of the Chevrolet Mark III 1500 LX Conversion Van totaled in said collision.

Between March 17, 2018 and March 26, 2018, the Defendants were served the Summons and Claim for Property Damage, the First Amended Claim for Property Damage Verified along with Verification of Heidi Gersten attached with Exhibits A-L and Claimants First Set of Admissions, Interrogatories and Request for Production with attached Exhibits A-G via certified mail pursuant to **Rule 4(d)(8), SCRCP.**

On March 16, 2018, the Plaintiffs Heidi Gersten, Ivanka Ayoub, Daniel Hubbard filed a civil action # 2018-CP-12-00117 for bodily injury and personal injury arising out of the same incident. Process of service has not been perfected on the defendants in this said case as it has been in the arbitration matter. The Plaintiffs have until July 13, 2018 to perfect timely service of the Summons and Complaint.

On April 26, 2018, Honorable Circuit Judge Gibbons made an order that, "This matter is outside the scope of an arbitration. This matter shall be placed on the regular Common Pleas docket for process. This case shall be consolidated with case

number 2018-CP-12-00117." And vice versa.

The Order and Judgment is void for the following reasons:

II. LAW AND ARGUMENT

This is an Alternative Dispute Resolution matter.

> **Title 38, Chapter 77, Article 7 of the South Carolina Code of Laws SECTION 38-77-730.** Request for arbitration; no formal pleading and process; arbitration docket; filing of claim; service of summons to defendant.
>
> (a) *Any person who is a party to the disputed property damage liability claim may submit his claim for determination through arbitration. No formal pleading or process is required. The clerk of court of each county shall prepare and keep an arbitration docket and set the cases thereon for arbitration as provided by law for the settling of cases in the court of common pleas.*

The above stated law permits the Claimants to redress their grievances in this manner. Arbitration is available without either party waiving their right to a jury trial under standard civil procedure. This arbitration setting is geared for non-attorneys and numerous attorneys place advocacy on their websites for the fairness and understanding of individuals presenting their own matters directly to the arbitrators in this setting.

This procedure is involatile in bridging the gap between the public and governmental entities. Since it is illegal for attorneys to take property damage claims on contingency under South Carolina law, the five-dollar fee affords the ability to redress grievances and be heard in a court of law and record for this type of subject matter.

> It states in **Title 38, Chapter 77, Article 7 of the South Carolina Code of Laws SECTION 38-77-710** ...*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.

Rule 60(b)(4), SCRCP, allows relief from an order to be granted on the grounds that the order is void. A void order is one rendered in the absence of proper due process or jurisdiction. Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002). *"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S. Ct. 652 (1950). Such notice must give the parties a reasonable time to make their appearance and *"[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it."* Id.

The Claimants were not given an opportunity to present their objections nor were they notified of a hearing regarding the Court's decision therefore violating their due process of law rights under the U.S. Constitution. In essence, the arbitration was dismissed. The Claimants object. *The phrase due process embodies society's basic notions of legal fairness. The Fourteenth Amendment limits the power of state (and local) governments. Fair procedures do help prevent arbitrary, unreasonable decisions. At a minimum, due process means that a person who will be affected by a government decision must be given notice of what government plans to do and have a chance to comment on the action.* (quoted from lincoln.edu)

Perhaps there was confusion as to the Claimants' intention. It would prejudice the Claimants and give them an unfair advantage if these two court filings were merged. The two court filings are distinct and separate. One pertains to property damages and liability only. There are different parties, although some are the same. The Claimants have perfected Process of Service in the arbitration matter and have

not perfected it in the civil matter. To combine the two would cause an unusual circumstance of uncertainty and chaos to all parties involved for a variety of reasons. The Claimants have followed the rules laid out in South Carolina laws for this process and their filings and service are timely. They were not expected to have procedural and evidentiary limitations. The Claimants urge this Court to reconsider its order and grant this motion to alter or amend this judgment or relief from the judgment or order. If it pleases this Court, the Claimants suggest placing the defendants in the arbitration action into a civil action separate from the existing one and give it a new case file number. This would eliminate any due process violations and allow the Claimants in the arbitration to retain their process of service efforts in tact while proceeding in a regular Common Pleas process as the Plaintiffs and avoiding unnecessary confusion for all litigants involved.

III. CONCLUSION

The Arbitration for Property Damages Case No. 2018-AP-12-00074 is a separate claim from the Bodily Injury and Personal Injuries Case No. 2018-CP-12-00117 and must remain as filed or at least remain separated or severed.

There are due process of law rights violations of the Fourteenth Amendment of the U.S. Constitution in ending the arbitration without fair notice to the Claimants and without allowing them an opportunity to be heard with their objections. **Rule 3(a)(2), SCRCP,** and **S.C. Code § 15-3-20(B)** permit 120 days from the date of filing for the service of process to be perfected and combining the two would upset the balance since the arbitration matter has perfected service and the civil action has not. Should the Court be firm with its decision, then the two matters must remain

separate or severed and proceed as two different filings bifurcated.

This request by no means prejudices the Defendants. It is made in the interest of justice and to prevent its miscarriage. For the ease of everyone involved in this matter, the Claimants request the Court to set the oral hearing on this motion to be set at least 30 days in advance and suggest scheduling the defendant's motions together and arbitration thereafter on the same day assigned should it be determined proper. The Claimants live in Florida and are disabled. The Claimant Gersten is paralyzed.

FILED
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CLERK OF COURT
CHESTER CO. S.C.

For the fore-mentioned reasons, the Claimants move this Court for an order to alter or amend a judgment or relief from judgment or order made by Honorable Circuit Judge Brian M. Gibbons on April 26, 2018 to resume arbitration or transfer the file to a new case file separate from civil action # 2018-CP-12-00117.

The Claimants' Motion is supported by this Memorandum, everything in the case file in this matter, minutes of the court, applicable laws and other evidence that may be submitted prior to or at the oral hearing on said motion, including but not limited to oral argument.

Respectfully submitted,

Dated this 8th day of May, 2018

Claimants Heidi Gersten and Ivanka Ayoub
1438 West Lantana Rd. #330
Lantana, FL 33462
(323) 245-6142
hanginhangout@gmail.com

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

FILE NO: 2018-CP-12-00117

HEIDI GERSTEN, IVANKA AYOUB, DANIEL HUBBARD
PLAINTIFFS

vs.

KEVIN CARTER, RICHARD DAVIS, JOSEPH TIRBOVICH, NATIONWIDE MUTUAL INSURANCE COMPANY, INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, JOHN AMMENDOLA, TRUSTGUARD INSURANCE COMPANY, SC DEPT. OF PUBLIC SAFETY, BLACKWELL, UNKNOWN JOHN DOES
Defendants

NOTICE OF MOTION AND 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

Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9

FILED
2018 OCT -8 A 9:32
CLERK OF COURT
CHESTER CO. S.C.

PLEASE TAKE NOTICE , now come the Plaintiffs Heidi Gersten, Ivanka Ayoub, Daniel Hubbard and move this court of the Sixth Judicial Circuit before the Presiding Judge , preferably 7 months from now after service hereof on said defendants, or as soon thereafter as may be heard, to allow the Plaintiff Gersten ample time to heal her pressure wound that was worsened by enduring the premature motion hearing on September 5, 2018, for an order to alter or amend a judgment or relief from judgment or order made by Honorable Circuit Judge Brian M. Gibbons on April 26, 2018 pursuant to Rules 52, 59(e) and 60(4), SCRCP, on the grounds that the order is void and violates the Claimants' U.S. Constitutional rights to fair due process of law, and the First Amendment right of free speech and the right to redress grievances unabridged by Congress and request an oral hearing on said motion and the Plaintiffs Heidi Gersten, Ivanka Ayoub, and Daniel Hubbard move this court for an

order to alter or amend judgments or relief from judgments or orders made by Honorable Judge John Hayes on September 5, 2018 pursuant to Rules 52, 59 (e) and/or 60(4), SCRCP, on the grounds that the order is void and violates the Plaintiffs' U.S. Constitutional rights to fair due process of law and request an oral hearing on said motion. The reasons for this motion are set forth in the attached Memorandum in Support.

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CLERK OF COURT
CHESTER CO S.C.

Respectfully submitted,

DATED: September 28, 2018

Ivanka Ayoub

PLAINTIFFS Heidi Gersten & Ivanka Ayoub, DANIEL HUBBARD
1438 W. Lantana Rd. #330
Lantana, FL 33462
(323) 245-6142/ Fax (561) 756-9820
hanginhangout@gmail.com

CLERK OF COURT
CHESTER CO S.C.
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FILED

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLAIMANT'S MOTION TO ALTER OR AMEND A JUDGMENT OR RELIEF FROM JUDGMENT OR ORDER

I. INTRODUCTION

The Claimant Heidi Gersten filed a claim for Arbitration # 2018-AP-12-00074 with this Court on February 21, 2018 pursuant to **Title 38, Chapter 77, Article 7 of the South Carolina Code of Laws.** This is a cause of action to resolve property damages arising out of a motor vehicle collision that occurred in Chester County, South Carolina on March 19, 2015 between the Claimant Heidi Gersten and the Defendant Kevin Carter. The Claimant Ivanka Ayoub is the owner of the Chevrolet Mark III 1500 LX Conversion Van totaled in said collision.

Between March 17, 2018 and March 26, 2018, the Defendants were served the Summons and Claim for Property Damage, the First Amended Claim for Property Damage Verified along with Verification of Heidi Gersten attached with Exhibits A-L and Claimants First Set of Admissions, Interrogatories and Request for Production with attached Exhibits A-G via certified mail pursuant to **Rule 4(d)(8), SCRCP.**

On March 16, 2018, the Plaintiffs Heidi Gersten, Ivanka Ayoub, Daniel Hubbard filed a civil action # 2018-CP-12-00117 for bodily injury, personal injury and other torts arising out of the same incident. The Plaintiffs had until July 13, 2018 to perfect timely service of the Summons and Complaint.

On April 26, 2018, Honorable Circuit Judge Gibbons made an order that, "This matter is outside the scope of an arbitration. This matter shall be placed on the regular Common Pleas docket for process. This case shall be consolidated with case number 2018-CP-12-00117." And vice versa.

The Order and Judgment is void for the following reasons:

II. LAW AND ARGUMENT

This is an Alternative Dispute Resolution matter.

> **Title 38, Chapter 77, Article 7 of the South Carolina Code of Laws SECTION 38-77-730.** Request for arbitration; no formal pleading and process; arbitration docket; filing of claim; service of summons to defendant.
>
> (a) *Any person who is a party to the disputed property damage liability claim may submit his claim for determination through arbitration. No formal pleading or process is required. The clerk of court of each county shall prepare and keep an arbitration docket and set the cases thereon for arbitration as provided by law for the settling of cases in the court of common pleas.*

The above stated law permits the Claimants to redress their grievances in this manner. Arbitration is available without either party waiving their right to a jury trial under standard civil procedure. This arbitration setting is geared for non-attorneys and numerous attorneys place advocacy on their websites for the fairness and understanding of individuals presenting their own matters directly to the arbitrators in this setting.

This procedure is involatile in bridging the gap between the public and governmental entities. Since it is illegal for attorneys to take property damage claims on contingency under South Carolina law, the five-dollar fee affords the ability to redress grievances and be heard in a court of law and record for this type

of subject matter.

> It states in **Title 38, Chapter 77, Article 7 of the South Carolina Code of Laws SECTION 38-77-710** ...*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.*

> Rule 60(b)(4), SCRCP, allows relief from an order to be granted on the grounds that the order is void. A void order is one rendered in the absence of proper due process or jurisdiction. Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002). *"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S. Ct. 652 (1950). Such notice must give the parties a reasonable time to make their appearance and *"[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it."* Id.

The Claimants were not given an opportunity to present their objections nor were they notified of a hearing regarding the Court's decision therefore violating their due process of law rights under the U.S. Constitution. In essence, the arbitration was dismissed. The Claimants object. *The phrase due process embodies society's basic notions of legal fairness. The Fourteenth Amendment limits the power of state (and local) governments. Fair procedures do help prevent arbitrary, unreasonable decisions. At a minimum, due process means that a person who will be affected by a government decision must be given notice of what government plans to do and have a chance to comment on the action.* (quoted from lincoln.edu)

Perhaps there was confusion as to the Claimants' intention. It would prejudice the Claimants and give them an unfair advantage if these two court filings were

merged. The two court filings are distinct and separate. One pertains to property damages and liability only. There are different parties, although some are the same. The Claimants have perfected Process of Service in the arbitration matter and have not perfected it in the civil matter. To combine the two would cause an unusual circumstance of uncertainty and chaos to all parties involved for a variety of reasons. The Claimants have followed the rules laid out in South Carolina laws for this process and their filings and service are timely. They were not expected to have procedural and evidentiary limitations. The Claimants urge this Court to reconsider its order and grant this motion to alter or amend this judgment or relief from the judgment or order. If it pleases this Court, the Claimants suggest placing the defendants in the arbitration action into a civil action separate from the existing one and give it a new case file number. This would eliminate any due process violations and allow the Claimants in the arbitration to retain their process of service efforts in tact while proceeding in a regular Common Pleas process as the Plaintiffs and avoiding unnecessary confusion for all litigants involved.

The combining of the 2 matters violates Rule 12 of the SC ADR Rules.

Honorable Judge Gibbons erred by requiring the Claimants to elect between remedies.

Election of remedies involves a choice between different forms of redress afforded by law for the same injury or different forms of proceeding on the same cause of action. It is the act of choosing between inconsistent remedies allowed by l law on the same set of facts. Its purpose is to prevent double recovery for a single wrong. *Thompson v Watts,* 281 S.C. 504, 316 S.E. 2d 393 (1984). Election of

remedies is not applicable where there are two separate causes of action, each based on different facts. *Jones v. Winn-Dixie Greenville*, 318 S.C. 171, 456 S.E. 2d 429 (Ct. App. 1995).

On September 5, 2018 a hearing in front of Honorable John Hayes was had. Attorneys for the Defendants were there and the Plaintiffs Heidi Gersten and Ivanka Ayoub. The only one in the entire courtroom with first-hand knowledge of all of the events the occurred on the said date in controversy and the events that transpired after due to this occurrence is Plaintiff Heidi Gersten. The Plaintiff Ivanka Ayoub has some first-hand knowledge. All of the attorneys for the defendants offered hearsay evidence. The Plaintiff Daniel Hubbard was not in attendance for good cause that was not permitted to be introduced at said hearing.

The Claimants of the File No: 2018-AP-12-00074 served, filed and paid for a motion to alter or amend a judgment or relief from a judgment or order back in May of 2018 which to this date has not been ruled on. When the Plaintiff Heidi Gersten brought it to the Court's attention, Judge Hayes said, "...take it up with the Appellate Court..."

The Plaintiffs also served, filed and paid for a motion to strike the said hearing date that was also not ruled on. I urge the Court to reconsider this as the Plaintiff Heidi Gersten was and is still dealing with a deadly pressure wound, a secondary condition of being paralyzed as the result of the Defendant Carter's gross negligence. The Plaintiff Gersten made mention of the extreme hardship she endured to arrive at said court hearing of September 5, 2018. Exhibits 1 and 2 illustrate the said pressure wound. The morning of the said court date, the Plaintiff Heidi Gersten had

an extreme outburst of diarrhea that caused her to be very ill. She endured 5 sets of fireman and paramedics to lift her in and out of the SUV she was transported in over 10 hours in one direction from Florida. Exhibit 3 and 4 illustrates the paramedics lifting her out of the SUV in front of the Chester Courthouse the morning of the September 5, 2018 hearing. Exhibits 5 and 6 illustrate public lifts made by fireman. Perhaps Honorable Judge Hayes is unaware of the severity of the situation.

Although, the Plaintiffs timely served, filed and paid for a motion to strike the court date as according to SCRCP rules state that this hearing was premature as well as all of the defendants' motions to dismiss, the hearing proceeded over the Plaintiffs' objections without any inquiry of the Court as to the health status of the Plaintiff Gersten who endured extreme agony of pain sitting on her life threatening pressure wound. Public policy would view this as cruel and unusual punishment.

The Plaintiffs also timely served, filed and paid for a motion to transfer the file to the proper roster which was also not addressed nor ruled on.

The Plaintiff Gersten suggested an opportunity to remedy all arguments the Defendants attorneys raised some of which were not facts in evidence, misleading, misrepresented, false, and simply untrue hearsay. The Plaintiffs had timely submitted an amended complaint under the SCRCP which allowed one as a matter of course, and at the time of the said hearing none of the defendants had answered it. "One and done" has never been the courts policy. For this reason alone, all of the orders made by Honorable Judge Hayes are void. There are other reasons that the orders are invalid, which include the prejudice aimed at the Plaintiffs for not having an opportunity to review the proposed orders for accuracy which common sense

will tell one that is standard in fairness. Many of the documents, such as claimed by Attorney Reynolds for summary judgment were not received by the Plaintiffs, and were merely stated without allowing the Plaintiffs to examine and/or authenticate, let alone shown directly to the judge. The Plaintiff Gersten objected to numerous statements that the Defendants attorneys made. Not one of the Defendant's attorneys objected to anything she had to say.

Much of what Honorable Judge Hayes said was inaudible and the Plaintiff Gersten asked numerous times to repeat what was said and an attempt for the microphone to be adjusted to allow her to hear what the judge was saying was made. Honorable Judge Hayes said that the hearing, "...was like a tennis match..."

Upon reading and reviewing the proposed orders that were signed the same day received by Honorable Judge Hayes , some of which were obtained on line and not through proper service, there are multiple errors of inaccuracies and facts that are inaccurate. The simple point of perfecting service has been made on all defendants and an offer of proof was made at the said hearing however Honorable Judge Hayes refused to let the Plaintiff Gersten submit that evidence to the court.

The misrepresentation of the Defendants' Attorneys combined leaves room for a whole new set of causes of actions, including fraud on the court.

Since the commencement of this action, the Defendant Trustgard has sent the Defendant Ivanka Ayoub a check issued in her name for the amount of $3196.00. This was written 5 days after the Plaintiff Heidi Gersten communicated to the Defendants Trustgard and Ammendola's Attorney Mr. Dworjanyn. A copy of the letter sent to Mr. Dworjanyn is attached as Exhibit 7 along with a copy of the said

check as Exhibit 8. This alone proves that the Defendant Trustgard owes money to her. This is one reason that Defendants Trustgard and Ammendola must not be dismissed as defendants in this action. Mr Dworjanyn has not been earnest and has mislead the Court with facts of this dispute. The check issued but not cashed to the Plaintiff Ivanka Ayoub on April 18, 2018 is not the correct value of settlement. The Defendant Trustgard has not paid the UIM contracted and paid for by the Plaintiffs Ayoub and Gersten. The Defendant Interinsurance of the Automobile Club has not paid the UIM contracted and paid for by the Plaintiff Gersten. The Defendants Nationwide Mutual Insurance Company and Tirbovich made oral contracts with the Plaintiff Gersten that have been breached.

A writ of mandamus was also served, filed and paid for back in May of 2018 however was not ruled on.

Honorable Judge Hayes ordered all defendants to have their proposed orders to him by the end of the day. None of the defendants followed this order.

The rule that loss of an injured child's companionship is not recoverable is based on the outdated perception that children, like servants, are nothing more than economic assets to their parents. This master-servant analogy no longer holds true. Rather than being valued merely for their services or earning capacity, children are valued for the love, affection, companionship and society they offer their parents. The Government offers no compelling reason to retain a rule that, under today's standards, simply appears unjust. The loss of a child's companionship and society is one of the primary losses that the parent of a severely injured child must endure.

A parent has the right to sue for loss of her child's consortium at common

law, a right preserved under the South Carolina Tort Claims Act, Webb v. Southern Ry. Co., supra.

The court is not precluded from recognizing such a right of action simply because the legislature has not acted to create such a right.

The South Carolina Tort Claims Act ("TCA") addresses the circumstances under which a governmental entity is liable for tortious conduct of its employees. The TCA states that "a governmental entity (is) liable for (its) torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein." S.C. Code Ann. 15-78-40 (2005). "...except where the responsibility or duty is exercised in a grossly negligent manner."

Gross negligence is defined as "the failure to exercise slight care." Steinke v. South Carolina Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999). It has also been defined as "the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Id. Gross negligence "is a relative term, and means the absence of cart that is necessary under the circumstances." Id.

Defendant Blackwell failed to report the collision to the South Carolina Accident Reconstruction Team (M.A.I.T.) knowing that he was untrained and not qualified to write an accurate report that all insurance companies including the listed defendants rely on when assessing damages and liability. It took Plaintiff Gersten over 3 years to have the inaccurate report amended. Plaintiff Gersten did not learn of the Defendant Blackwell's failure of duty until Prosecutor Marc Gore of the

Magistrate's Court informed her on or about September of 2016, which is well within the statute of limitations for bringing this action forward.

The Plaintiffs are vindicating their rights and would like the wrongs made right, especially the Plaintiff Heidi Gersten would like to be made whole again.

III. CONCLUSION

The Arbitration for Property Damages Case No. 2018-AP-12-00074 is a separate claim from the Bodily Injury and Personal Injuries Case No. 2018-CP-12-00117 and must remain as filed or at least remain separated or severed.

There are due process of law rights violations of the Fourteenth Amendment of the U.S. Constitution in ending the arbitration without fair notice to the Claimants and without allowing them an opportunity to be heard with their objections. **Rule 3(a)(2), SCRCP**, and **S.C. Code § 15-3-20(B)** permit 120 days from the date of filing for the service of process to be perfected and combining the two upsets the balance of perfecting service. Should the Court be firm with its decision, then the two matters must remain separate or severed and proceed as two different filings bifurcated.

This request by no means prejudices the Defendants. It is made in the interest of justice and to prevent its miscarriage. For the ease of everyone involved in this matter and due to the Plaintiff Gersten's health issues, specifically her pressure wound, the Claimants and Plaintiffs request the Court to set the oral hearing on this motion to be set at least 7 months in advance and suggest scheduling the defendant's motions together and arbitration thereafter on the same day assigned should it be determined proper. The Claimants live in Florida and are disabled. The

Claimant Gersten is paralyzed.

For the fore-mentioned reasons, the Claimants and Plaintiffs move this Court for an order to alter or amend a judgment or relief from judgment or order made by Honorable Circuit Judge Brian M. Gibbons on April 26, 2018 to resume arbitration or transfer the file to a new case file separate from civil action # 2018-CP-12-00117 and for all orders made prematurely by Honorable Judge Hayes, especially the motions to dismiss be declared void or vacated and the defendants ordered to answer the amended complaint.

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CLERK OF COURT
CHESTER CO. S.C.

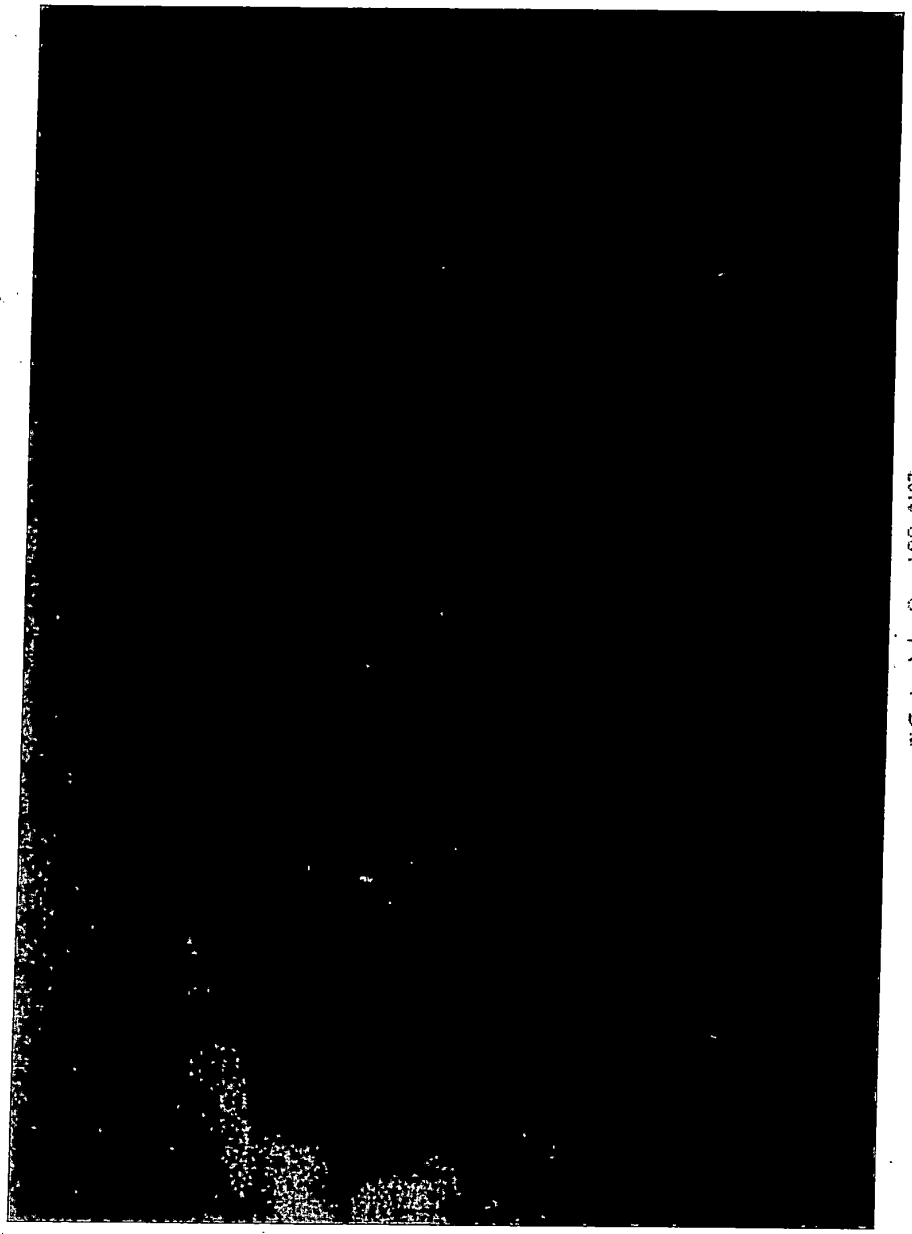
This is an opportunity for the Court to avoid reversible error and correct the mistakes that have been made perhaps due to lack of communication.

The Claimants' Motion and the Plaintiffs' Motion is supported by this Memorandum, everything in the case file in this matter, minutes of the court, applicable laws and other evidence that may be submitted prior to or at the oral hearing on said motion, including but not limited to oral argument.

Respectfully submitted,

Dated this 28th day of September, 2018

PLAINTIFFS Heidi Gersten and Ivanka Ayoub, DANIEL HUBBARD
1438 West Lantana Rd. #330
Lantana, FL 33462
(323) 245-6142
hanginhangout@gmail.com



CLERK OF COURT
CHESTER CO S.C.
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EXHIBIT
1

tabbies

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EXHIBIT
2

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EXHIBIT
3
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FILED

EXHIBIT
5

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CHESTER CO S.C.
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FILED

EXHIBIT
6
tabbies

April 13, 2018
1438 West Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142
hanginghangout@gmail.com

Trustguard Insurance Company
Attn: Peter Dworjanyn
Columbia Attorney
1330 Lady St., Sixth Floor
Columbia, SC 29201
Phone: (803) 255-0404
Fax: (803) 771-4484
pdworjanyn@collinsandlacy.com

FILED
2018 OCT -8 A 9:33
CLERK OF COURT
CHESTER CO S.C.

Re: Arbitration Number: 2018-AP-12-00074
Policy Number: PPT 9970193
Claim Number: APV001860444
Arbitration Number: 2018-AP-12-00074
Insurer: Trustguard Insurance Company
Policyholder: Ivanka Ayoub
Loss date: March 19, 2015

Dear Peter Dworjanyn or To Whom It May Concern:

Good day to you.

In order for me to give you an accurate settlement amount specifically for the Chevrolet Mark III LX 1500 Conversion Van, please answer the following questions.

1. What is Trustguard's offer to Ivanka Ayoub for the total loss of her vehicle?

2. What is Trustguard's position on paying punitive damages for said loss to Ivanka Ayoub?

3. Does Trustguard receive monies it pays to its insured from the at-fault driver's insurance company through subrogation?

(For example, in this matter, whatever monies Trustguard pays Ivanka Ayoub for her total loss vehicle, will it be reimbursed by Nationwide to Trustguard since their insured Kevin Carter is at-fault?

4. Will Trustguard reimburse Ivanka Ayoub for the monies spent to have the said vehicle towed from South Carolina to Ohio?

Grange Insurance

P.O. Box 1218
Columbus, Ohio 43216-1218

TEMP RETURN SERVICE REQUESTED

706238460
IVANKA AYOUB
1438 W LANTANA RD APT 330
LANTANA FL 33462

Policy #: PPT 9970193
Claim #: APV001860444
Branch #: 444
Adjustor ID: 355
Phone #: (800) 422-0550

RUSTGARD INSURANCE COMPANY

Date	Check #	Amount	Source
4/18/2018	706238460	3,196.00	CLMHO

Disbursement Reason
FULL AND FINAL SETTLEMENT OF THE TOTA

IVANKA AYOUB 34-931 LANSING INSURANCE AGENCY INC

Claimant Name
IVANKA AYOUB

CLERK OF COURT
CHESTER CO S.C.
2018 OCT -8 A 9:33

004 (10-2012)

DETACH THIS PORTION BEFORE CASHING

Insurance Companies
x 1218
is, Ohio 43216-1218

TRUSTGARD INSURANCE COMPANY No. 706238460

FULL AND FINAL SETTLEMENT OF THE TOTA

Branch #	Policy#	Agent #	Date
444	PPT 9970193	34-931	04/18/2018

e: CLMHO **Claim #:** APV001860444 **Date of Loss:** 03-19-2015

AMOUNT
*****3,196.00

THREE THOUSAND, ONE HUNDRED NINETY-SIX AND 00/100 ——DOLLARS

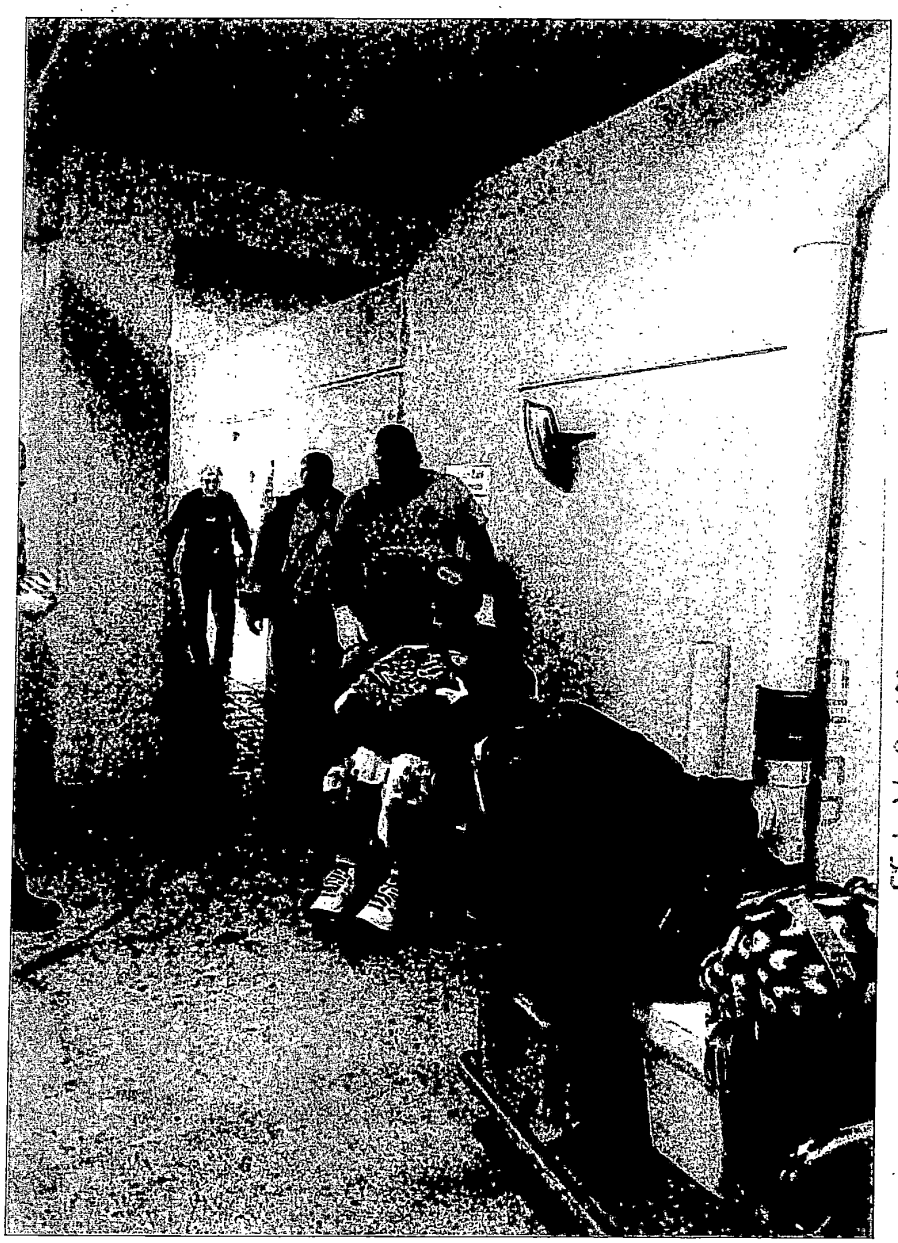
THE
ER • IVANKA AYOUB
1438 W LANTANA RD APT 330
LANTANA FL 33462

Bank, Ashland, OH 70 PLEASE CASH PROMPTLY

EXHIBIT
8

4/8

27



CLERK OF COURT
CHESTER CO S.C.
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EXHIBIT
9

49

CERTIFICATE OF SERVICE
(2018-AP-12-00074)
(2018-CP-12-00117)

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: FILE NO: 2018-CP-12-00117 NOTICE OF MOTION AND 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 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:

FILED
2018 OCT -8 A 8:32
CLERK OF COURT
CHESTER CO. S.C.

Wesley Brian Sawyer, Esquire
Murpy & 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
Collins & Lacy, PC
1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company)

William H. Davidson II, Esquire
Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202
(Attorney for SC Dept. of Public Safety and Trooper Herbert Blackwell)

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

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

By: DAVID TEDESCHI

Boca Raton, Florida
October 1, 2018

50

16

FORM 4

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

JUDGMENT IN A CIVIL CASE

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:

As to the order of September 5, 2018, Plaintiff's motion of October 8, 2018 is denied without a hearing. Said order does not violate plaintiffs' due process rights under the Constitution of the United States or South Carolina.

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 10/16/2018 .

Unknown John Does
GMC
Chevrolet
Ivanka Ayoub
Heidi Gersten for Heidi Gersten
Heidi Gersten for Heidi Gersten

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

51

ELECTRONICALLY FILED - 2018 Oct 16 10:44 AM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

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 Oct 16 10:44 AM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

ELECTRONICALLY FILED - 2018 Oct 16 10:44 AM - 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/John C. Hayes III 2049

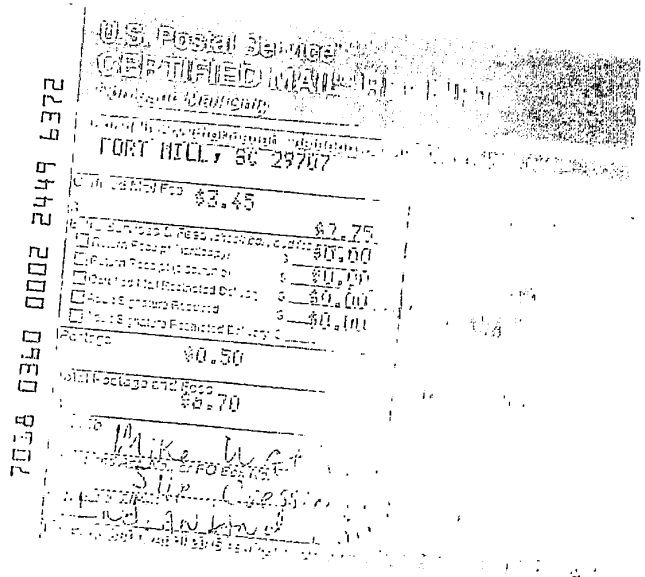
53

UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION	Pay to	KEEP THIS RECEIPT FOR YOUR RECORDS
NOT NEGOTIABLE	Address 516 Cressington Dr. Ind. Trail, SC 29707	

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
24987297690	2019-09-22	334320	$120.45	



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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mike Watkins
5116 Cressingham Dr.
Indianland, SC 29707

9590 9402 2856 7069 5487 12

2. Article Number *(Transfer from service label)*

7018 0360 0002 2449 6372

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Mike Watkins ☐ Agent ☑ Addressee

B. Received by *(Printed Name)* Mike Watkins C. Date of Delivery 9-25-18

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

94

95

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Clerk of County Clerk of Courts
Attn: Civil Appeals
P.O. Drawer 830
Chester, SC 29706

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) J.J. Martin C. Date of Delivery 2-14-19

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

9590 9402 2956 7069 6841 68

2. Article Number (Transfer from service label)

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

STATE OF
SOUTH CAROLINA

NOTICE OF MOTION SCHEDULING

August 07, 2018

Motion "MAPPCN - Motion/Claimants' Motion to Alter or Amend a Judgment or Rel" for Case: 2018CP1200074 - Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al has been added to the following Motions Roster:

25 - Common Pleas Motions 9:30 AM140 Main Street Chester SC 29706

This hearing of this motion has been scheduled for 9/5/2018 at 9:30 AM.

IMPORTANT: Please see roster news for changes
Motions- Chester County Courthouse 140 Main Street Chester SC 29706

Mail Notice To:	Court Info:
Heidi Gersten	Common Pleas PO Drawer 580 140 Main Street Chester, SC 29706-9706

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(803)385-2605

Respectfully,

Sue K. Carpenter
Clerk of Court

57

STATE OF
SOUTH CAROLINA

NOTICE OF MOTION SCHEDULING

December 27, 2018

Motion "MOTAPP - Motion/Amend Complaint With Leave" for Case: 2018CP1200117 - Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al has been added to the following Motions Roster:

27 - Motions Jan 30th 2019 140 Main Street Chester SC 29706

This hearing of this motion has been scheduled for 1/30/2019 at 9:30 AM.

IMPORTANT: Please see roster news for changes
Motions- Chester County Courthouse 140 Main Street Chester SC 29706

If motion needs to be removed, please email blawson@chestercounty.org

Mail Notice To:	Court Info:
Heidi Gersten	Common Pleas PO Drawer 580 140 Main Street Chester, SC 29706-9706

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(803)385-2605

Respectfully.

Sue K. Carpenter
Clerk of Court

S8

STATE OF
SOUTH CAROLINA

NOTICE OF MOTION SCHEDULING

December 27, 2018

Motion "MAMNMO - Motion/Alter and/or Amend A Judgment or Relief from Judgment" for Case: 2018CP1200117 - Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al has been added to the following Motions Roster:

27 - Motions Jan 30th 2019 140 Main Street Chester SC 29706

This hearing of this motion has been scheduled for 1/30/2019 at 9:30 AM.

IMPORTANT: Please see roster news for changes
Motions- Chester County Courthouse 140 Main Street Chester SC 29706

If motion needs to be removed, please email blawson@chestercounty.org

Mail Notice To:	Court Info:
Heidi Gersten	Common Pleas PO Drawer 580 140 Main Street Chester, SC 29706-9706

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(803)385-2605

Respectfully,

Sue K. Carpenter
Clerk of Court

59

43

STATE OF
SOUTH CAROLINA

NOTICE OF MOTION SCHEDULING

December 27, 2018

Motion "MAPPCN - Motion/Claimants' Motion to Alter or Amend a Judgment or Rel" for Case: 2018CP1200074 - Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al has been added to the following Motions Roster:

27 - Motions Jan 30th 2019 140 Main Street Chester SC 29706

This hearing of this motion has been scheduled for 1/30/2019 at 9:30 AM.

IMPORTANT: Please see roster news for changes
Motions- Chester County Courthouse 140 Main Street Chester SC 29706

If motion needs to be removed, please email blawson@chestercounty.org

Mail Notice To:	Court Info:
Heidi Gersten	Common Pleas PO Drawer 580 140 Main Street Chester, SC 29706-9706

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(803)385-2605

Respectfully,

Sue K. Carpenter
Clerk of Court

60

44

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: 2019-002115

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' OBJECTION AND/OR OPPOSITION AND RESPONSE TO RESPONDENT INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB'S MOTION TO DISMISS APPEAL AND MOTION FOR THE COURT TO ACCEPT THIS DOCUMENT AS TIMELY WITH OR WITHOUT LEAVE OF COURT

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

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STATEMENT OF FACTS

On February 14, 2018, the Appellant Gersten overnighted a timely filing for a state legislated arbitration hearing regarding property damage due to a vehicle collision occurring in Chester County on March 19, 2015. She was told months prior that the Court was unfamiliar with this law and she subsequently provided the Court with a copy of the law. This will be more fully explained in the forthcoming Appellants' Brief, as well as the relevence of the March 16, 2018 Civil Court action filed that included different Plaintiffs and Defendants. All defendants have been properly served according to law. Proof is available upon request and will be included in the said Appelllants' Brief.

A consolidation ruling was obtained by the Appellants on-line through the Court's website as well as a note from the judge to Appellate Gersten instructing her that she "needs an attorney". The Appellants are unaware of any law that requires a litigant to hire an attorney. For this reason which will also be fully explained in the Appellants' Brief, the Appellants have been prejudiced. A timely Notice of Motion and Plaintiffs' Motion to Alter or Amend a Judgment or Relief from Judgment or Order the alleged consolidation ruling was filed and served on May 8, 2018 and to this date has not been ruled on, as also evidenced by the transcript that the Appellants ordered, paid for and received from the court reporter prior to filing the Notice of Appeal. The Respondent AAA has not offered proof of any ruling made as to the Appellants' motion regarding the April 2018 consolidation ruling which was made without notice to either party to allow an opportunity for objections.

The October 18, 2019 Notice of Appeal was not filed, as the timely Notice of Motion and Plaintiffs' Motion to Alter or Amend a Judgment or Relief from Judgment or Order tolled the time to file it. The November 15, 2018 Notice of Appeal permits the Court jurisdiction to

examine this controversy.

The Appellants' ought not be subjected to serving or filing a return to the Respondent AAA's Motion to Dismiss Appeal on the grounds that it did not follow SCACR, which includes, but is not limited to, not having the correct case number listed in the caption on its motion document.

The Respondent AAA repeatedly alleges that the Appellants did not order the transcript, when in truth and fact they did. The Appellants deny the allegation that Respondent AAA makes in stating that the Appellants did not order the transcript.

The Appellants object to the inclusion of the Affidavit of Reynolds Williams (page 4 of the Respondent AAA's Motion to Dismiss Appeal) as evidence on the grounds that it is hearsay and not authenticated. This said Affidavit of Reynolds Williams contains no official state stamp or embossing to validate that it is genuine or a true certified document, it simply isn't properly notorized. The Affidavit of Reynolds Williams is not based on first-hand personal knowledge nor does it claim to be. The dates of the service it claims or alleges are inaccurate. One only has to examine pages 23-28 of the said motion to learn that Mr. Reynolds claims that AAA was served a Notice of Appeal on October 19, 2018, when indeed, it was served on October 18, 2018. Mr. Reynolds claims that he was served another Notice of Appeal on November 19, 2018, when indeed he was served on November 15, 2018.

The Supreme Court of South Carolina has ruled that an email will start the clock for a Notice of Appeal. Respondent AAA emailed the Appellants on September 18, 2018 the alleged Court's Order in controversy. Please note that pleadings are not notices.

Page 5 of the Respondent AAA's Motion to Dismiss Appeal Table of Contents is inaccurate as it lists the Notice of Appeal Served on Respondent's attorney as October 19, 2019 (page 23) when in truth and fact it was October 18, 2018. It also incorrectly lists the Notice of Appeal

Served on Respondent's attorney (page 26) as November 19, 2018 when in truth and fact it was November 15, 2018.

The Appellants object to the attached alleged order from page 6-14 of the Respondent AAA's Motion to Dismiss Appeal as evidence as there is no judge's signature. To say that the signature is unimportant demonstrates an extreme biased against the Appellants. The attached order has numerous inaccuracies that will be addressed in the Appellants' brief, explaining fully the reasons and/or grounds for their objections.

Pages 16-19 of the Respondent AAA's Motion to Dismiss Appeal are a part of the Appellants' timely filed Notice of Motion and Plaintiffs' Motion to Alter or Amend a Judgment or Relief from Judgment or Order. Appellants have included the complete motion for the Court's review.

NOTE: This was arbitrarily ruled on and denied without oral hearing or legal determination as to where the Court based its decision from. The filing of this motion tolled the time to file a Notice of Appeal according to SCACR rules. Another Motion to Alter or Amend A Judgment or Relief from Judgment or Order was timely served and filed and a ruling has not been made on it.

Included with these documents is the unsigned copy of the order of Honorable John C. Hayes III which states, "As to the order of September 5, 2018, Plaintiff's motion of October 8, 2018 is denied without a hearing. Said order does not violate plaintiffs' due process rights under the Constitution of the United States or South Carolina." The Plaintiffs are unclear as to which order the judge is referencing on September 5, 2018 as many were alleged to have been made and referenced in the Plaintiffs' timely motion. There is no legal determination made. Also the clock for serving a timely motion for appeal is uncertain as there are rulings that have not been made at the lower court. If anything, this appeal may be premature.

NOTE: An amended complaint was served before the Honorable Judge Hayes allegedly signed any orders.

Page 20 of the Respondent AAA's Motion to Dismiss Appeal is a document not signed by a judge and the Appellants object to its inclusion as evidence as on its face it is hearsay evidence. This said document that purports to be an order fails to give the basis or grounds for the decision claimed to be made.

Electonic Filing also known as E-filing is unconstituional when it can only be accessed by attorneys and not accessed by non-attorneys, prejudicing and preventing the Plaintiffs/Appellants from benefiting from the convenience and cost-efficiencey it provides, which includes but is not limited to costs incurred for making copies and mailing documents to parties and the Court. This self-evident bias in favor of attorneys creates an unnecessary burden on the Plaintiffs/Appellants. Appellants object to E-filing.

Page 22 of the Respondent AAA's Motion to Dismiss Appeal has no signature of the judge. Without a signature, this is hearsay evidence and must be stricken from the record.

On page 31 of the Respondent AAA's Motion to Dismiss Appeal, the Respondent AAA accurately states that the date of the Notice of Appeal is October 18, 2018. Any further discussion of this Notice of Appeal is moot as it is not the subject of the Appeal before the Court today.

On page 32 of the Respondent AAA's Motion to Dismiss Appeal, it admits that this Appeal is timely and properly before the Court however the April 26, 2018 is not 'long passed' the time to file as it was not received by the Appellants, it was obtained on the Court's internet website and the timely Notice of Motion and Plaintiffs' Motion to Alter or Amend a Judgment or Relief from Judgment or Order has not been ruled on as of the date of this objection. The Appellants are

unaware of any orders made on September 18, 2018 as the The Respondent AAA also states that there were orders made on September 18, 2018 by the Court on page 32 of its Motion to Dismiss Appeal .

For these reasons, and the reasons to be submitted in the forthcoming Appellants' Brief, the Court has jurisdiction as the Notice of Appeal was timely served and filed per SCACR rules.

Respectfully submitted this 14th day of February 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
February 14, 2019

RECEIVED
FEB 19 2019
SC Court of Appeals

CERTIFICATE OF SERVICE
(Appellate Case N0: 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: 2019-002115 APPELLANTS' AMENDED RETURN AND/OR OBJECTION AND/OR OPPOSITION AND/OR RESPONSE TO RESPONDENT INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB'S MOTION TO DISMISS APPEAL AND MOTION FOR THE COURT TO ACCEPT THIS DOCUMENT AS TIMELY WITH OR WITHOUT LEAVE OF COURT along with Letter to Court 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
Murpy & 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
Collins & Lacy, PC
1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company)

William H. Davidson II, Esquire
Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202
(Attorney for SC Dept. of Public Safety and Trooper Herbert Blackwell)

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

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

By: Phyllis R Garcia

Boca Raton, Florida
February 14, 2019

February 14, 2019
1438 W. Lantana Rd., #330
Lantana, FL 33462

RECEIVED
FEB 19 2019
SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211
(843)662-3258 Fax (843)662-1342

RE: Appellate Case No.: 2018-002115

Dear Ms. Kitchings:

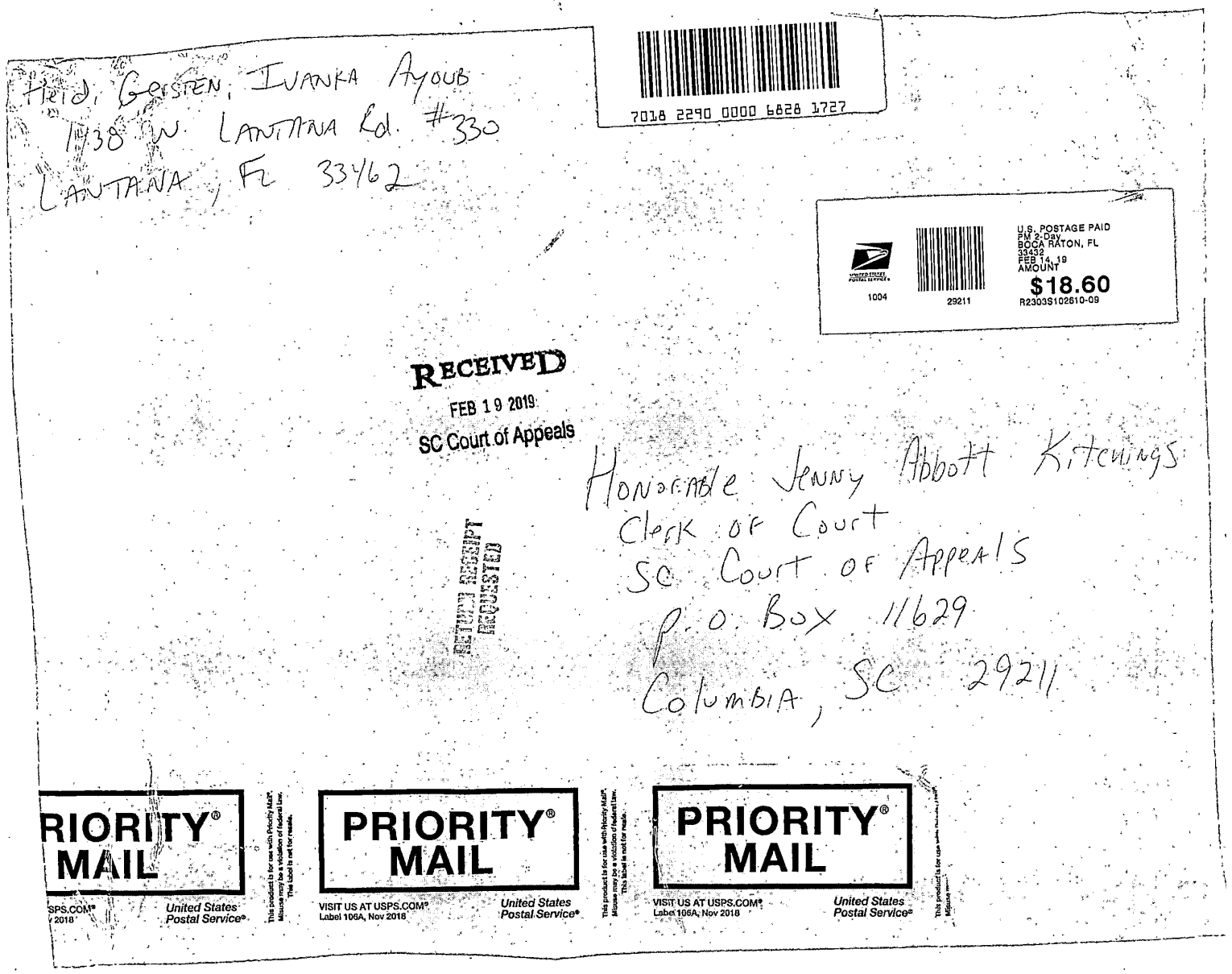
Good day to you.

Please find an enclosed U.S. postal money order in the amount of $50.00 for the enclosed original Motion For the Court To Accept This Document As Timely With or Without Leave of Court, along With Amended Return, 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

HG/Enclosures


Reid, Gersten, Ivanka Ayoub
1138 N. Lantana Rd. #330
Lantana, FL 33462
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FEB 19 2019
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RETURN RECEIPT REQUESTED
Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211
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March 1, 2019

Gersten's Motion for Extension of Time filed March 1, 2019, in Appellate Case No. 2018-002115

89177

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 M. 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 Co., Interinsurance Exchange of the Automobile Club, John Ammendola, Trustgard Insurance Co., SC Dept. of Public Safety, Blackwell, Unknown John Does.....

Respondents.

RECEIVED
MAR 01 2019
SC Court of Appeals

MOTION FOR EXTENSION OF TIME TO FILE AND SERVE APPELLANTS' RETURN OF RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS AND TO COMPLY WITH COURT'S NOTED REQUESTS

TO THE HONORABLE SOUTH CAROLINA COURT OF APPEALS:

NOW COMES, Heidi Gersten, Ivanka Ayoub, ('Appellants') and respectfully move this Court, pursuant to **Rules 240 and 263, SCACR**, for an extension of time to serve and file their return of the Respondents Carter and Davis' Motion to Dismiss Appeal and to comply with the

Court's noted requests in their timely response to the Court's letter dated February 15, 2019.

The reasons for this motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

DATED: February 25, 2019

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION TO EXTEND TIME TO SERVE AND FILE APPELLANTS' RETURN OF THE RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND TO COMPLY WITH THE COURT'S NOTED REQUESTS IN THEIR TIMELY RESPONSE TO THE COURT'S LETTER DATED FEBRUARY 15, 2019.

As grounds therefore, the Appellants show the following good cause:

1. The Appellants received a letter from the Court dated February 15, 2019 on February 23, 2019 instructing a mandatory list of requests to be made including a request to serve and file a return to the motion to dismiss however did not specify which motion to dismiss it was referring to. There are two (2) motions to dismiss pending in this matter. The request has been satisfied as far as a return to the Respondent AAA's Motion to Dismiss served and filed on February 14, 2019, one (1) day before the Court's letter was sent. As far as, the motion to dismiss filed by the Respondents Carter and Davis on January 31, 2019, and received by the Appellants on February 13, 2019, additional time is needed to perfect the Appellants' Return.
2. The appellate case number that Respondents Carter and Davis listed in their Motion to Dismiss is incorrect however the Appellants are unaware of a similar notice to cure served on them by the Court as sent to the Appellants for this same reason.
3. The Court's letter dated February 15, 2019 also requests specific individual dates for when the Appellants received written ntice of entry of each of the separate orders on appeal.
4. The Appellants motion for reconsideration was timely made in the circuit court pursuant to Rules 59 and 60, SCRCP, and the Appellants require additional time to properly and accurately prove this.

5. The Appellant Gersten was paralyzed as a result of the collision in controversy in this matter. She has no caregiver or physical help with daily functions like bowel movements, bathing, eating and other regular activities able-bodied people perform. She lives under extraordinary circumstances.

6. The Appellant Ayoub is also disabled and unable to give proper care for her daughter, the Appellant Gersten.

7. Despite the extraordinary circumstances the Appellant Gersten lives with, she has been diligently working on this appeal with Appellant Ayoub. Given that the Court's notice for was received on the eighth day of the ten (10) days allowed to satisfy the requests, the Appellants request an additional ten (10) days to comply, which would be March 7, 2019.

8. The Appellant Gersten also has a pressure wound on her left buttocks the size of a quarter which prevents her from sitting up for more than a few hours at a time.

9. The Appellants are not South Carolina residents.

10. This may be considered excusable neglect.

11. The Doctrine of Equitable Tolling as well as Title II of the American Disabilities Act permit this Court to grant an extension of time for such axiomatic situations.

12. This request is not unheard of.

13. This request is made before the expiration of the time due.

14. The Appellants prefer not to file a Motion for Reinstatement, which would more than likely be granted given the extraordinary circumstances and good cause shown.

15. **RULE 263, SCACR, TIME(b) Extending and Diminishing Time Prescribed by These Rules.** The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened

by the appellate court, or by any judge or justice thereof. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.

16. Unlike the case of **WADE V. GORE, 151 S.E. 470 (S.C. 1930),** the Appellants are requesting this extension before the expiration of the date due.

17. The South Carolina Supreme Court recently adopted this doctrine. **HOOPER V. EBENEZER SR. SERVS. & REHAB. CTR., 386 S.C. 108, 687 S.E.2D 29 (2009).** The court explained the doctrine of equitable tolling may be applied to toll the running of the statute of limitations "to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits." Id. at **115, 687 S.E.2D AT 32.** The court explained:

THE EQUITABLE POWER OF A COURT IS NOT BOUND BY CAST-IRON RULES BUT EXISTS TO DO FAIRNESS AND IS FLEXIBLE AND ADAPTABLE TO PARTICULAR EXIGENCIES SO THAT RELIEF WILL BE GRANTED WHEN, IN VIEW OF ALL THE CIRCUMSTANCES, TO DENY IT WOULD PERMIT ONE PARTY TO SUFFER A GROSS WRONG AT THE HANDS OF THE OTHER. EQUITABLE TOLLING MAY BE APPLIED WHERE IT IS JUSTIFIED UNDER ALL THE CIRCUMSTANCES.

If the Doctrine of Equitable Tolling may be applied to the Statute of Limitations, surely it can be applied to an extension of time to file corections to deficiencies, such as in this matter.

THEREFORE, having shown good cause, the Appellants respectfully request and move the Court for an extension of time to, and including, February 14, 2019; an extension of ten (10) days from the date of December 25, 2019, to allow enough time to correctly

and competently complete the Court's instructions.

This motion is not made to cause undue delay. It is made in the furtherance of justice and to prevent its miscarriage.

Respectfully submitted this 25th day of February 2019.

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

Other Counsel of Record:

Wesley Brian Sawyer, Esquire
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David R. Sligh
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P.O. Box 5478
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(Attorney for Joseph Tirbovich)
(843) 656-4454

CERTIFICATE OF SERVICE
(Appellate Case N0: 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: 2019-002115 MOTION FOR EXTENSION OF TIME TO FILE AND SERVE APPELLANTS' RETURN OF RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS AND TO COMPLY WITH COURT'S NOTED REQUESTS
along with Letter to Court 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
Murpy & 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
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1330 Lady Street, 6th Floor (29201)
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Alexander S. Gogsette
P.O. Box 5478
Florence, SC 29502
(Attorney for Joseph Tirbovich)

By: _____

Boca Raton, Florida
February 25, 2019

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SC Court of Appeals

February 25, 2019
1438 W. Lantana Rd., #330
Lantana, FL 33462

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211
(843)662-3258 Fax (843)662-1342

RE: Appellate Case No.: 2018-002115

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SC Court of Appeals

Dear Ms. Kitchings:

Good day to you.

Please find an enclosed U.S. postal money order in the amount of $50.00 for the enclosed original MOTION FOR EXTENSION OF TIME TO FILE AND SERVE APPELLANTS' RETURN OF RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS AND TO COMPLY WITH COURT'S NOTED REQUESTS , 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

HG/Enclosures

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

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Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

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