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SC Court of Appeals

THE STATE of SOUTH CAROLINA
In the Court of Appeals

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

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

Appellate Case Nos. 2022-001312 and 2022-001390 (Consolidated)

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten is Appellant,

v.

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

Of whom Kevin Carter is the Respondent.

AMENDED EMERGENCY with LEAVE of COURT APPELLANT's TITLE II and TITLE III of the AMERICANS with DISABILITIES ACT ("ADA") REASONABLE ACCOMMODATION to ACCEPT as TIMELY FILED and GRANT MOTION to RECALL REMITTITUR, REINSTATE APPEAL, and ASSIGN ADA COORDINATOR to ASSIST with RECORD RECONSTRUCTION EXHIBIT "A" RECORD on APPEAL (898 Pages)

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TO THE HONARABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS AND TO ALL CONCERNED:

NOW COMES, Appellant, Heidi Gersten ("GERSTEN"), proceeding as a qualified paralyzed disabled individual under Title II and Title III of the Americans with Disabilities Act ("ADA"), kindly and respectfully moves this State of South Carolina Court of Appeals ("COURT") to recall the remittitur issued in this matter on August 15, 2025, and filed in the lower court on August 18, 2025, pursuant to its inherent authority and Title II and Title III ADA, 42 U.S.C. § 12131, *et seq.*, and moves and seeks for an order(s) vacating the order of dismissal, reinstating the appeal, and granting GERSTEN a reasonable accommodation to cure the defect in the Record on Appeal. (GERSTEN's best effort is attached as Exhibit "A")

This motion is based on this COURT's mistake and inadvertence in failing to properly consider a reasonable accommodation for GERSTEN's disability, which was the direct cause of the procedural default leading to dismissal.

This motion and ADA Title II and Title III reasonable accommodation request was timely filed on the same day the remittitur was filed in the lower court. This amended version is filed to correct grammatical and other errors GERSTEN found after the original was filed yesterday, August 18, 2025, which included Exhibit "A" ("Record on Appeal" 898 pages), which was sent as separate email files. This amended version is made as one file document for easier comprehension and references.

This COURT has the inherent jurisdiction to recall a remittitur to correct its own inadvertence and prevent a manifest injustice.

The remittitur was issued improperly and through clear court inadvertence because GERSTEN's timely filed Motion for Reinstatement of November 8, 2024, remains pending and has not ever been adjudicated by this COURT.

Furthermore, recalling the remittitur and reinstating this appeal is a necessary reasonable accommodation to remedy this COURT's prior failure to provide an effective accommodation for GERSTEN's disability, which resulted in the dismissal of her appeal and denied her fundamental right of access to the courts in violation of the ADA.

In support of this motion, GERSTEN states as follows for grounds, reasons, and basis in her attached memorandum:

MEMORANDUM IN SUPPORT OF AMENDED EMERGENCY
with LEAVE of COURT
APPELLANT's TITLE II and TITLE III of the AMERICANS with
DISABILITIES ACT ("ADA") REASONABLE ACCOMMODATION to
ACCEPT as TIMELY FILED and GRANT
MOTION to RECALL REMITTITUR, REINSTATE APPEAL, and ASSIGN
ADA COORDINATOR to ASSIST with RECORD RECONSTRUCTION

STATEMENT OF THE CASE

This appeal was dismissed by this COURT on September 24, 2024, due to GERSTEN's ongoing difficulties, stemming from her paralysis, in compiling and filing a Record on Appeal that complied with the South Carolina Appellate Court Rules (SCACR).

On November 8, 2024, GERSTEN timely filed a combined pleading entitled, **"TITLE II OF THE AMERICANS WITH DISABILITIES ACT REASONABLE ACCOMMODATION REQUEST to ACCEPT as TIMELY FILED And GRANT RULE 221 SCACR And RULE 260 SCACR PETITION FOR REHEARING And MOTION FOR REINSTATEMENT VACATING DISMISSAL And APPENDIX Attached Including RECORD ON APPEAL."**

This single pleading contained two distinct requests for relief: (1) a Petition for Rehearing under Rule 221, SCACR; and (2) a Motion for Reinstatement under Rule 260, SCACR.

On February 10, 2025, this COURT issued an order stating, in its entirety: "After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either

overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied."

This said order, by its plain language, addressed only the petition for rehearing. This COURT did not rule on, address, or otherwise dispose of GERSTEN's separate and distinct **Motion for Reinstatement**.

Subsequently, the South Carolina Supreme Court denied GERSTEN's petition for a writ of certiorari on August 13, 2025. This COURT then issued the remittitur on August 15, 2025, which was filed in the Chester County Court of Common Pleas on August 18, 2025. GERSTEN's said original motion was filed immediately upon learning of that filing.

ARGUMENT

I. The Court Retains Inherent Jurisdiction to Recall its Remittitur to Correct Its Own Mistake or Inadvertnce and Prevent a Manifest Injustice.

While the issuance of a remittitur generally divests an appellate court of jurisdiction, South Carolina law recognizes a critical exception to this rule. The court retains the inherent authority to recall a remittitur to correct a mistake, error, or inadvertence on the part of the court or its officer. This is an extraordinary remedy, but one that is essential to ensuring justice. The Supreme Court of South Carolina has held that such a recall requires a "very strong showing that the remittitur was recalled due to some mistake or inadvertence on the part of this court or its officer." *State v. Barnes*, 413 S.C. 1, 6, 774 S.E.2d 454, 457 (2015).

In *Wise v. South Carolina Department of Corrections*, 372 S.C. 173, 175, 642 S.E.2d 551, 552 (2007), the Supreme Court affirmed that while it "loses jurisdiction over a case once the remittitur has been sent to the lower court," it may nevertheless recall the remittitur "in cases of mistake, error or inadvertence." Here, a mistake occurred when this COURT failed to address and grant a necessary reasonable accommodation, leading to the unjust termination of GERSTEN's appeal. The prompt filing of this motion underscores the urgency and importance of correcting this error.

An appellate court generally loses jurisdiction over a case once the remittitur has been issued and the matter is returned to the lower court. *Stogsdill v. S.C. Dep't of Health & Human Servs.*, 415 S.C. 568, 784 S.E.2d 669 (2016). However, this rule is not absolute. South Carolina law has long recognized that an appellate court retains the inherent power to recall its remittitur in extraordinary circumstances, such as "to correct a mistake, relieve a party from the consequences of fraud, or to prevent a manifest injustice." *Carpenter v. Lewis*, 65 S.C. 400, 43 S.E. 881 (1903).

The key exception applies where the remittitur was "sent down through a mistake or inadvertence of the court." *Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007). Unlike the situation in *Wise*, where the motion to reinstate was untimely, here the motion for reinstatement was timely filed. The inadvertence is this COURT's own—its failure to rule on that pending motion before issuing the remittitur. Because the remittitur was issued

prematurely and by mistake, this COURT retains jurisdiction to correct its error and prevent the manifest injustice of terminating GERSTEN's appeal without ever having ruled on her request to reinstate it.

II. The Remittitur Was Issued Improperly and Through Court Inadvertence As Appellant's Motion for Reinstatement Remains Pending.

The dispositive issue before this COURT is the clear, objective fact that GERSTEN's Motion for Reinstatement, filed on November 8, 2024, has never been decided. A remittitur can only issue after an appeal has been finally determined. An appeal is not finally determined while a timely, non-frivolous motion affecting the judgment—such as a motion to reinstate an appeal under Rule 260, SCACR—remains pending.

GERSTEN's November 8, 2024 filing explicitly sought relief under both Rule 221 (Rehearing) and Rule 260 (Reinstatement). These are two different forms of relief with different standards. While this COURT fully considered and denied the petition for rehearing, its February 10, 2025 order is silent as to the motion for reinstatement. This omission is a clerical mistake and an instance of judicial inadvertence.

Because the motion for reinstatement remains pending, the September 24, 2024 dismissal never became the final, unalterable judgment of this COURT. The issuance of the remittitur was therefore premature and must be recalled. This COURT cannot properly return jurisdiction to the lower court while a motion seeking to restore jurisdiction in this COURT remains unresolved.

III. Recalling the Remittitur is Necessary to Remedy Violations of Appellant's Federally Protected Rights Under Title II of the Americans with Disabilities Act (ADA).

The procedural history of this case is replete with GERSTEN's requests for reasonable accommodation based on her paralysis. The dismissal on appeal was a direct consequence of her disability, which significantly impairs her ability to perform the complex physical and organizational tasks required to compile and format a multi-volume Record on Appeal in compliance with this COURT's exacting rules.

Title II of the ADA is a federal mandate that prohibits public entities, including state courts, from discriminating against qualified individuals with disabilities. This prohibition requires courts to provide reasonable accommodations to ensure individuals with disabilities have meaningful access to judicial proceedings. *See Tennessee v. Lane*, 541 U.S. 509, 533-34 (2004) (holding that Title II validly abrogates state sovereign immunity as it pertains to the fundamental right of access to the courts).

While this COURT granted GERSTEN numerous extensions of time, these accommodations proved ineffective. The ADA requires more than rote gestures; it requires an "interactive process" to determine an *effective* accommodation. *See Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1114 (9th Cir. 2000). This COURT never engaged GERSTEN in such a process to understand *why* the extensions were insufficient and what alternative accommodation might succeed.

Instead, this COURT issued orders stating "No further extensions will be granted absent extraordinary circumstances," which functions as a categorical denial prohibited by the ADA's mandate for individualized assessment. *See Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454 (5th Cir. 2005).

Dismissing GERSTEN's appeal under these circumstances amounts to a denial of her fundamental right to court access because of her disability. Recalling the remittitur is now itself a necessary component of a reasonable accommodation to remedy this violation.

IV. This Motion is Timely Filed.

GERSTEN filed this emergency motion on August 18, 2025, the very day the remittitur was docketed by the lower court. This shows the utmost diligence and highlights the urgent need for this COURT's intervention before the lower court takes any substantive action that might further complicate the proceedings. No party is prejudiced by a recall made this promptly to correct a manifest error.

STATEMENT OF FACTS

1. GERSTEN is a "qualified individual with a disability" as defined by the ADA due to paralysis, which substantially limits one or more major life activities, including the ability to perform manual tasks necessary to compile and perfect a complex legal record.
2. On September 24, 2024 this COURT dismissed the instant appeal for

GESTEN's failure to provide a complete Record on Appeal as required by the South Carolina Appellate Court Rules.

3. GERSTEN's failure to provide a complete Record on Appeal was not the result of negligence or willful disregard for this COURT's rules, but was a direct consequence of the physical limitations imposed by GERSTEN's paralysis.

4. Following the dismissal, GERSTEN filed a timely request for a reasonable accommodation under Title II of the ADA. The request sought an extension of time to file both a Petition for Rehearing and a Motion to Reinstate the appeal, explaining that the disability was the cause of the procedural defect.

II. The Court's Failure to Address the ADA Accommodation for Reinstatement Constitutes a Mistake or Inadvertence Warranting Recall.

The "mistake" or "inadvertence" warranting recall in this case is this COURT's failure to fulfill its obligations under federal disability law. GERSTEN's initial procedural default was caused by a disability. GERSTEN explicitly notified this COURT of this fact in the ADA request for an accommodation. This COURT, however, issued an order that implicitly denied the request for an accommodation as it related to reinstatement without any analysis or consideration of its duties under the ADA.

By granting an extension only for the Petition for Rehearing—a

petition with a very high bar for success—while denying the more practical path to curing the defect via a Motion to Reinstate, this COURT inadvertently failed to provide a meaningful accommodation. This failure to engage with the substance of the ADA request constitutes a mistake of law and an inadvertent oversight of this COURT's duties under a superseding federal statute. This is precisely the type of judicial error that the power to recall a remittitur is designed to correct.

III. The Dismissal and Refusal to Reinstate Violate Title II of the Americans with Disabilities Act.

Title II of the ADA mandates that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The South Carolina court system is a "public entity" subject to Title II's requirements.

A public entity must make reasonable modifications to its "rules, policies, or practices… when the modifications are necessary to avoid discrimination on the basis of disability." 28 C.F.R. § 35.130(b)(7). Here, the rigid application of this COURT's procedural rules regarding the timely filing of a complete Record on Appeal, without modification to account for GERSTEN's disability, has resulted in the denial of a fundamental service: the right to appellate review. Dismissing an

appeal and refusing to grant a path to reinstatement, when the underlying default was caused by a known disability, is a form of discrimination. The ADA required this COURT to modify its standard dismissal procedure to provide a reasonable accommodation, which it failed to do.

IV. Reinstatement and an Accommodation to Reconstruct the Record on Appeal is the Appropriate Remedy.

To remedy this error and comply with the ADA, GERSTEN requests that this COURT reinstate the appeal and grant a new reasonable accommodation. GERSTEN has shown good faith by working diligently, despite physical limitations, to cure the procedural defect.

Request for Reasonable Accommodation: Pursuant to Title II of the ADA, GERSTEN requests that this COURT grant an accommodation to perfect the Record on Appeal. Specifically, GERSTEN requests that this COURT either (1) provide assistance and guidance from the Clerk's office or appoint or assign an ADA coordinator or a neutral third-party, such as a paralegal or pro bono attorney, to help finalize the Record on Appeal based on the draft provided or appoint, or (2) grant GERSTEN an additional sixty (60) days to independently finalize and file the corrected Record on Appeal. Attached to this motion as **Exhibit A** is "GERSTEN's Best Effort Reconstructed Record," which GERSTEN believes substantially corrects the deficiencies that led to the dismissal.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the remittitur in this case was issued through clear court inadvertence while a substantive motion for reinstatement remained—and still remains—un-adjudicated. This mistake compounded violations of GERSTEN's rights under the ADA and has resulted in a manifest injustice.

WHEREFORE, GERSTEN kindly and respectfully prays for an order(s) from this COURT that:

1. **RECALLS** the Remittitur issued on August 15, 2025;
2. **VACATES** this COURT's order of Dismissal dated September 24, 2024;
3. **REINSTATES** GERSTEN's appeal;
4. **GRANTS** GERSTEN an effective reasonable accommodation under Title II of the ADA by appointing or assigning an ADA coordinator or a neutral third-party, such as a paralegal or pro bono attorney, or a clerk, for the sole and limited purpose of assisting GERSTEN in compiling, formatting, serving, and filing a compliant Record on Appeal, and setting a firm deadline for the completion of that task only after such assistance is in place; unless the attached Exhibit "A" is deemed perfected and complete.; and
5. For such other and further relief as this COURT deems just and proper .

Respectfully submitted this 19th day of August 2025,

_____/S/Heidi Gersten_____

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PROOF OR CERTIFICATE OF SERVICE

I hereby certify that service of a true and accurate copy of the "AMENDED EMERGENCY with LEAVE of COURT APPELLANT's TITLE II and TITLE III of the AMERICANS with DISABILITIES ACT ("ADA") REASONABLE ACCOMMODATION to ACCEPT as TIMELY FILED and GRANT MOTION to RECALL REMITTITUR, REINSTATE APPEAL, and ASSIGN ADA COORDINATOR to ASSIST with RECORD RECONSTRUCTION EXHIBIT "A" RECORD on APPEAL (898 Pages)", PROOF or CERTIFICATE of SERVICE, and Cover Letters in the above-captioned Appellate Case Nos. 2022-001312 and 2022- 001390 [was made upon all parties and counsel of record by email per Title II and Title III of the Americans with Disabilities Act Reasonable Accommodation Request, as well as court order on August 19, 2025, at:

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Respectfully submitted this 19th day of August 2025,

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Exhibit A

RECORD on APPEAL

GERSTEN's Best Effort Reconstructed Record

THE STATE of SOUTH CAROLINA
In the Court of Appeals

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

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

Appellate Case Nos. 2022-001312 and 2022-001390

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Of whom Heidi Gersten is Appellant,

v.

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

Of whom Kevin Carter is the Respondent.

RECORD ON APPEAL

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Certificate by Appellant

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

Respectfully submitted,
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PROOF OR CERTIFICATE OF SERVICE

I hereby certify that service of a true and accurate copy of the APPELLANT'S "RECORD on APPEAL" (Eight Hundred Ninety-eight (898) pages total.), PROOF or CERTIFICATE of SERVICE, and Cover Sheet in the above-captioned Appellate Case Nos. 2022-001312 and 2022-001390 was made upon all parties and counsel of record by email per court order on May 1, 2025:

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Respectfully submitted this 1st day of May 2025

_ _____/S/Heidi Gersten_____

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Orders, Judgments, Decrees, Decisions

April 26, 2018
Order Consolidating Cases
Filed April 26, 2018

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

COUNTY OF Chester
IN THE COURT OF COMMON PLEAS

CASE NO. 2018CP1200117

Heidi Gersten et al
PLAINTIFF(S)

Kevin Carter et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

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

ORDER INFORMATION

This order: ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

Unknown John Does
GMC
Chevrolet
Blackwell
S C Department of Public Safety
John Ammendola
Interinsurance Exchange of the Automobile Club
Nationwide Insurance Company
Joseph Tirbovich
Daniel Hubbard
Ivanka Ayoub
Heidi Gersten for Heidi Gersten
Heidi Gersten for Heidi Gersten

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

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

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

Chester Common Pleas

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

Case Number: 2018CP1200117

Type: Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

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

ECTRONICALLY FILED - 2018 Sep 19 8:56 AM - 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, 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.	**ORDER GRANTING DEFENDANTS KEVIN CARTER'S AND RICHARD DAVIS' MOTION TO DISMISS**

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

PROCEDURAL BACKGROUND

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

-ECTRONICALLY FILED - 2018 Sep 19 8:56 AM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

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

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

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

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

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

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

LAW

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

a) Dismissal of all claims asserted against Richard Davis;

b) Dismissal of Daniel Hubbard's claims;

c) Dismissal of Ivanka Ayoub's claims; and

d) Dismissal of all causes of action asserted by Heidi Gersten with the exception of the negligence cause of action.[2]

The Court will address each item in turn.

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

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

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

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

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

B. Daniel Hubbard's claims.

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

C. Ivanka Ayoub's claims.

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

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

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

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

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

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

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

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

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

The Complaint lists eighteen separate causes of action. With the exception of the negligence claim, these causes of action merely allege the legal elements of various other causes of action, and several of these causes of action fail to even allege the basic legal elements. Rule 8(a) of the South Carolina Rules of Civil Procedure states that a pleading setting forth a cause of action "shall contain . . . a short and plain statement of the facts showing the pleader is entitled to relief." Rule 8(a), 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).

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

E. Carter and Davis' other motions.

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

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

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

CONCLUSION

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

1) All causes of action asserted against Richard Davis are dismissed pursuant to Rule 12(b)(6), SCRCP.

2) The causes of action asserted by Daniel Hubbard are dismissed pursuant to Rule 41(b), SCRCP for failure to prosecute.

3) Ivanka Ayoub's loss of consortium claim is dismissed pursuant to Rule 12(b)(6), SCRCP because South Carolina does not recognize a claim for filial loss of consortium.

4) All of the remaining causes of action against Kevin Carter with the exception of Heidi Gersten's negligence cause of action for personal injuries and property damage and Ivanka Ayoub's negligence cause of action for property damage are dismissed pursuant to Rule 12(b)(6), SCRCP.

5) Carter's Motion to Dismiss the property damage claim by Ivanka Ayoub is denied, but Carter may file a separate motion based on his statute of limitations argument at a later time.

6) Carter's Motion to Sever is denied as moot.

7) Carter's Motion to Strike is denied without prejudice and with leave to refile in light of the recently-served Amended Complaint.

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

It is so **ORDERED**.

_____
John C. Hayes, III
Circuit Court Judge

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Chester Common Pleas

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

Case Number: 2018CP1200117

Type: Order/Other

So Ordered

s/John C. Hayes III 2049

Electronically signed on 2018-09-18 17:57:44 page 9 of 9

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

ECTRONICALLY FILED - 2018 Sep 19 8:54 AM - 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 Tirbovich, Nationwide Insurance Company, Interinsurance Exchange of the Automobile Club, John Ammendola, Trustguard Ins. Co., Blackwell, SC Department of Public Safety, Chevrolet, GMC, Unknown John Does, Defendants.	CIVIL ACTION NO: 2018-CP-12-00074 **ORDER GRANTING DEFENDANT INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB'S MOTION TO DISMISS**

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

PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

LAW

AAA's Motion to Dismiss seeks the following relief:

a) Dismissal of all claims asserted against it for failing to state facts constituting a cause of action,

b) Dismissal for a lack of standing to pursue the claim asserted claims,

c) Dismissal of Daniel Hubbard's claims,

d) Dismissal of Ivanka Ayoub's claims,

e) That certain specified allegations be stricken,

f) Dismissal for lack of *in personam* jurisdiction, and a

g) Change of Venue

The Court will address each item in turn.

A. All Causes of Action

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

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

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

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

Rule 8(a) SCRCP 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).

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

B. Standing

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

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

C. Daniel Hubbard's claims.

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

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

D. *Consortium* claims.

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

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

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

> In *Taylor v. Medenica*, this Court held that the determination of which relationships may give rise to a loss of consortium claim in South Carolina is one best left to the discretion of the legislature. 479 S.E.2d 35, 47 (S.C. 1996) (declining to recognize a cause of action for loss of parental consortium). The United States District Court for the District of South Carolina adopted the *Taylor* analysis in finding that South Carolina law did not provide a cause of action for loss of consortium of a child or for filial consortium. *Kirkland v. Sam's East, Inc*., 411 F.Supp. 2d 639, 641 (D.S.C. 2005). Today, we extend our *Taylor* analysis in holding that South Carolina law does not recognize claims for loss of filial consortium. Such rights did not exist under the common law, and the legislature has not provided such a right by statute.
>
> *Doe v. Greenville Cty. School District* 651 S.E.2d 305, 308 (S.C. 2007)

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

E. *In Personam* Jurisdiction

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

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F. Striking Allegations

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

G. Change of Venue

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

H. All Other Causes of Action asserted by Gersten

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

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CONCLUSION

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

1) All causes of action asserted against AAA are dismissed pursuant to Rule 12(b)(6), SCRCP.

2) All causes of action asserted against AAA are dismissed for lack of personal jurisdiction by this court,

3) The causes of action asserted by Daniel Hubbard are dismissed pursuant to Rule 41(b), SCRCP for failure to prosecute.

4) Ivanka Ayoub's & Danial Hubbard's loss of consortium claims are dismissed pursuant to Rule 12(b)(6), SCRCP because South Carolina does not recognize a claim for filial or maternal loss of *consortium*.

5) All causes of action against AAA are dismissed because it would not be permissible to try them with the claims against the negligence Defendants.

6) AAA's Motions to Strike are denied as moot.

7) AAA's Motion to Change Venue is denied as moot.

It is so **ORDERED**.

_____
John C. Hayes, III
Circuit Court Judge

_____, SC

_____, 2018

-ECTRONICALLY FILED - 2018 Sep 19 8:54 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/Dismissal

So Ordered

s/John C. Hayes III 2049

Electronically signed on 2018-09-18 17:57:14 page 9 of 9

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

ECTRONICALLY FILED - 2018 Sep 21 2:50 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AND IT IS SO ORDERED.

_____
The Honorable J.C. Hayes

SEPTEMBER __, 2018

CHESTER, SOUTH CAROLINA

-ECTRONICALLY FILED - 2018 Sep 21 2:50 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

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Chester Common Pleas

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

Case Number: 2018CP1200117

Type: Order/Dismissal

So Ordered

s/John C. Hayes III 2049

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

ECTRONICALLY FILED - 2018 Sep 21 2:52 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, 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.	**ORDER GRANTING DEFENDANTS NATIONWIDE INSURANCE COMPANY'S AND JOSEPH TURBOVICH'S MOTION TO DISMISS**

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

PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

LAW

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

a) Dismissal of all causes of action for failure to state facts sufficient to constitute a cause of action;

b) Dismissal of all causes of action due to lack of standing;

c) Dismissal of Daniel Hubbard's claims;

d) Dismissal of Ivanka Ayoub's claims;

e) Dismissal of all claims against Joseph Tirbovich for failure to properly serve the Summons and Complaint;

The Court will address each of these grounds in turn.

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

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

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doing business in the State of North Carolina." (Compl. ¶ 5). 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. The Complaint alleges no factual allegations against Defendants Nationwide and Tirbovich.

B. Dismissal Due to Lack of Standing

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

C. Daniel Hubbard's claims.

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

D. Ivanka Ayoub's claims.

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

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

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

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

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

E. All Other Causes of Action asserted by Plaintiffs

The Complaint lists eighteen separate causes of action. As it relates to Nationwide and Tirbovich, these causes of action merely allege the legal elements of various other causes of action, and several of these causes of action fail to even allege the basic legal elements. Rule 8(a) of the South Carolina Rules of Civil Procedure states that a pleading setting forth a cause of action "shall contain . . . a short and plain statement of the facts showing the pleader is entitled to relief." Rule 8(a), 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

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

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

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

CONCLUSION

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

1) All causes of action asserted against Nationwide and Tirbovich are dismissed pursuant to Rule 12(b)(6), SCRCP.

2) All causes of action asserted against Nationwide and Tirbovich are dismissed for lack of standing;

3) The causes of action asserted by Daniel Hubbard are dismissed pursuant to Rule 41(b), SCRCP for failure to prosecute.

4) Ivanka Ayoub's loss of consortium claim is dismissed pursuant to Rule 12(b)(6), SCRCP because South Carolina does not recognize a claim for filial loss of consortium.

5) All causes of action against Tirbovich are dismissed pursuant to Rule 12(b)(5) for Plaintiffs' failure to serve him with the Summons and Complaint in either the Arbitration Action of the Civil Action.

It is so **ORDERED**.

_____
John C. Hayes, III
Circuit Court Judge

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Chester Common Pleas

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

Case Number: 2018CP1200117

Type: Order/Dismissal

So Ordered

s/John C. Hayes III 2049

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

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

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

I. STATEMENT OF THE CASE

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

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

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

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

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

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

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

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

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

II. STANDARD OF REVIEW AND DISUCSSION

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

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

1. The Circuit Court Action

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

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

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

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

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

2. The Arbitration Action

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Dismissal of Loss Of Consortium Claims

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

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

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

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

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

ORDER

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

AND IT IS SO ORDERED!

_____
John C. Hayes, III
Circuit Court Judge

-ECTRONICALLY FILED - 2018 Sep 24 8:24 AM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

-ECTRONICALLY FILED - 2018 Sep 24 8:24 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/Dismissal

So Ordered

s/John C. Hayes III 2049

Electronically signed on 2018-09-21 16:29:13 page 10 of 10

April 9, 2019
Court of Appeals Order
In Appellate Case No. 2018-002115
Filed April 9, 2019

The South Carolina Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are Appellants,

v.

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

Appellate Case No. 2018-002115

The Honorable John C. Hayes, III,
The Honorable Brian M. Gibbons
Chester County
Trial Court Case No. 2018CP1200117, 2018CP1200074

ORDER

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

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

FILED

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

May 14, 2019
Court of Appeals Order
In Appellate Case No. 2018-002115
Filed May 14, 2019

The South Carolina Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are Appellants,

v.

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

Appellate Case No. 2018-002115

The Honorable John C. Hayes, III,
The Honorable Brian M. Gibbons
Chester County
Trial Court Case No. 2018CP1200117, 2018CP1200074

ORDER

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

FOR THE COURT

BY _____ CLERK

FILED

May 14, 2019

Columbia, South Carolina

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

July 30, 2019
Court of Appeals Order Denying
Petition for Rehearing
In Appellate Case No. 2018-002115
Filed July 30, 2019

The South Carolina Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are Appellants,

v.

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

Appellate Case No. 2018-002115

ORDER

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

C.J.

J.

J.

FILED

July 30, 2019

Columbia, South Carolina

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

April 24, 2020
Supreme Court Order Denying
Petition for Writ of Certiorari
In Appellate Case No. 2019-001484
Filed April 24, 2020

The Supreme Court of South Carolina

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are Petitioners,

v.

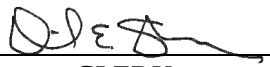
Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Insurance Company, Interinsurance Exchange of the Automobile Club, John Ammendola, Trustguard Ins. Co., Blackwell, SC Department of Public Safety, Chevrolet, GMC, Unknown John Does, Respondents.

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

ORDER

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

FOR THE COURT

BY 
CLERK

Columbia, South Carolina
April 24, 2020

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

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

June 23, 2020
Remittitur from the Court of Appeals
In Case No. 2018-CP-12-00117
Filed June 26, 2020

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 23, 2020

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

REMITTITUR

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

Dear Clerk of Court:

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

Very truly yours,
V Claire Allen
CLERK

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

August 22, 2022
Order Dismissing Case
In Case No. 2018-CP-12-00117
Filed August 22, 2022

-ECTRONICALLY FILED - 2022 Aug 22 1:21 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.	**ORDER**

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

PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

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

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

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

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

LAW

The record in this case supports dismissal on multiple grounds. As to Gersten and Ayoub's claims, the Court finds that dismissal is proper under both Rule 41 for failure to prosecute and under Rule 37 as an appropriate discovery sanction. Furthermore, as to Ayoub, dismissal would alternatively be appropriate under Rule 25.[3]

A. Rule 41 Dismissal for Failure to Prosecute

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

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

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

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

-ECTRONICALLY FILED - 2022 Aug 22 1:21 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

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

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

(1) Plaintiffs are solely responsible for their failure to respond to discovery and to provide deposition dates. Therefore, the degree of responsibility rests wholly with the Plaintiffs.

(2) Defendant presented argument on several forms of prejudice. First, it appears Ayoub has passed away, which has deprived Defendant of the opportunity to depose her. This alone is substantially prejudicial. Plaintiff sent discovery requests and requested deposition dates in 2020 – long before Ayoub's death in 2022. Moreover, the passage of time prejudices Defendant because it will be harder to find witnesses and develop facts relating to the case and because he has been stuck in litigation for over four years without having basic discovery responses. Therefore, prejudice is plainly present.

(3) The history of this litigation – especially in light of the appellate record – shows a drawn-out history of dilatory proceeding. Plaintiffs have requested numerous continuances at the trial level. At the appellate level, Plaintiffs requested numerous extensions. The Court of Appeals made multiple requests for Plaintiffs to provide information to the Court. Ultimately, the Court of Appeals dismissed the appeal when Plaintiffs failed to provide the information requested by the Court. Most importantly, Plaintiffs have been on notice of Defendant's Motion to Compel for almost two years. During that time, they have continued to fail to provide any discovery responses.

(4) At this point, there is not a less drastic sanction that would afford Defendant Carter procedural due process. The Rules of Civil Procedure are designed to give both parties an opportunity to fully develop their case. By failing to participate in discovery for so long – to the point at which one claimant and witness has passed away – Plaintiffs have prevented Defendant Carter from having a full and fair opportunity to defend his case. Any less severe sanction will not give Defendant Carter the ability to depose Ayoub or to depose any other witnesses with the same recollection that they would have had two years ago.

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

-ECTRONICALLY FILED - 2022 Aug 22 1:21 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

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

B. Rule 37 Dismissal as a Discovery Sanction

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

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

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

-ECTRONICALLY FILED - 2022 Aug 22 1:21 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

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

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

C. Rule 25 Dismissal as to Ivanka Ayoub

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

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

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

CONCLUSION

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

IT IS SO ORDERED.

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-ECTRONICALLY FILED - 2022 Aug 22 1:21 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200117

Chester Common Pleas

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

Case Number: 2018CP1200117

Type: Order/Other

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2022-08-22 13:18:27 page 9 of 9

Pleadings

February 21, 2018
Summons and Arbitration
Claim for Property Damage
In Case No. 2018-CP-12-0074
Filed February 21, 2018

STATE OF SOUTH CAROLINA)
In the matter of Arbitration between)
HEIDI GERSTEN)
Claimant(s))
vs.)
KEVIN CARTER, RICHARD DAVIS, NATIONWIDE MUTUAL INS. CO, INTERINSURANCE OF THE AUTOMOBILE CLUB, TRUSTGUARD INS.)
Defendant(s))

BEFORE THE ARBITRATION PANEL OF CHESTER COUNTY

Case number 20 SR-CP- 12 - 00094

SUMMONS FOR ARBITRATION
(Claim Served Herewith)

CLERK OF COURT CHESTER CO. S.C. 2018 FEB 21 A 8:55 FILED

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

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

Attorney for Claimant(s):

Claimant(s):

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

Date: February 7, 2018

SCCA/202(3/2005)

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

HEIDI GERSTEN Plaintiff(s)

vs.

KEVIN CARTER, RICHARD DAVIS, NATIONWIDE MUTUAL INS., INTERINSURANCE OF THE AUTOMOBILE CLUB INS., TRUSTGUARD INS. Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018 -CP- 12 - 00074

CLERK OF COURT
CHESTER CO SC
2018 FEB 21 A 10:
FILED

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

SC Bar #:
Telephone #: 3232456142
Fax #:
Other:
E-mail: hanginhangout@gmail.com

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

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts – Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20___-NI-___-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Incapacitated Adult Settlement (790)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☑ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Interpleader (690)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

EXHIBIT A

Date: February 7, 2018

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

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

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

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

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

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

STATE OF SOUTH CAROLINA)
) BEFORE THE ARBITRATION PANEL OF
In the matter of Arbitration between) CHESTER COUNTY
)
) Case number 2018 -CP- 12 - 00214
HEIDI GERSTEN)
Claimant(s)) CLAIM FOR PROPERTY DAMAGE
)
vs.)
)
KEVIN CARTER, RICHARD DAVIS,)
NATIONWIDE MUTUAL INSURANCE)
COMPANY, INTERINSURANCE OF THE)
AUTOMOBILE CLUB, TRUSTGUARD)
INSURANCE)
Defendant(s))

2018 FEB 21 A 8:34
FILED
CLERK OF COURT
CHESTER, S.C.

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

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

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

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

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

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

15. South Carolina Solicitor's Office is pursuing this matter to move into General Sessions under felony charges for causing great bodily injury to Claimant.

16. The Defendant Kevin Carter's full name is Kevin Mark Carter.

17. The Defendant Kevin Carter's date of birth is [redacted]

18. The Defendant Kevin Carter's driver's license number is [redacted] issued in North Carolina.

19. The Defendant Kevin Carter's cell number is [redacted]

20. The Defendant Kevin Carter resides at [redacted]

21. The Defendant Kevin Carter is and/or was certified as a State of North Carolina Medical Responder, North Carolina EMS License [redacted]

22. The Defendant Kevin Carter attended the University of North Carolina at Chapel Hill for a Master of Business Administration (MBA).

23. The Defendant Kevin Carter attended Virginia Tech for a Bachelor of Business Administration (BBA).

24. The Defendant Kevin Carter attended Carolina College of Health Sciences for an Associate's Degree.

25. The Defendant Kevin Carter attended Mitchell Community College for a Rescue & Fire Emergency Technician.

26. The Defendant Kevin Carter is listed as the registered owner of the 2006 Honda Ridgeline involved in said motor vehicle collision.

27. The license plate number of the said Honda Ridgeline involved in said collision is [redacted]

28. The vin number of the said Honda Ridgeline involved in said collision is [redacted]

29. The Defendant Richard Davis is listed as the registered owner of the 2006 Honda Ridgeline involved in said motor vehicle collision in addition to the Defendant Kevin Carter.

30. The Defendant Richard Davis resides at [redacted]

31. The Defendant Richard Davis was communicating with the Defendant Kevin Carter while the Defendant Kevin Carter was operating said vehicle via cell phone.

32. Through negligent entrustment, the Defendant Richard Davis has violated South Carolina statute for consenting to the Defendant Kevin Carter's use of said vehicle while [redacted] was in the Defendant Kevin Carter's system.

33. The Defendant Nationwide Mutual Insurance Company insured the Defendants Kevin Carter and Richard Davis for the 2005 Honda Ridgeline in said collision, policy number: [redacted]

34. The Defendant Nationwide Mutual Insurance Company is also known as Nationwide Property and Casualty.

35. The Defendant Nationwide Mutual Insurance Company also does business as Nationwide Property and Casualty.

36. The policy limit for property damage liability with Defendant Nationwide Mutual Insurance Company on said 2006 Honda Ridgeline is [redacted] per accident.

37. The Defendant Kevin Carter was charged with DUI in said collision.

38. March 19, 2017, at approximately 4:12 a.m., Trooper Blackwell of the South Carolina Highway Patrol was dispatched to said collision on I-77 North at the 61 mile marker.

39. Upon making contact with the Defendant Kevin Carter, Trooper Blackwell, "...noticed that Mr. Carter was very lethargic in his speech...", according to the incident report of said March 19, 2015 collision written by Trooper Blackwell.

40. Trooper Blackwell stated in his incident report of said collision that the Defendant Kevin Carter was "... having trouble remembering his current location...".

41. Trooper Blackwell stated in his incident report of said collision that the Defendant Kevin Carter was "... having trouble remembering where he was coming from.".

42. Trooper Blackwell stated in his incident report of said collison that the Defendant Kevin Carter stated to Trooper Blackwell and Richburg Fire Officials that, "... (he) and his wife had been in an argument earlier in the evening and she had asked him to leave their residence.".

43. The Defendant Kevin Carter stated that, "...(he) had been taking an unknown amount of his prescribed [redacted] throughout the night and into the morning hours for his "nerves".", according to Trooper Blackwell's incident report of said collision.

44. Trooper Blackwell saw "...various bottles of prescription medications that were on the passenger seat of Mr. Carter's vehicle.", as stated by Trooper Blackwell in his incident report of said collision.

45. The Defendant Kevin Carter stated that, "...(he) had only been taking his [redacted] but could not remember how much he had taken over the night.".

46. The Defendant Kevin Carter was transported by EMS to Piedmont Medical Center where Trooper Blackwell informed Defendant Kevin Carter that he was being charged with DUI according to Trooper Blackwell's incident report of said collision.

47. The Defendant Kevin Carter was under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.

48. The Defendant Kevin Carter agreed to his implied consent rights.

49. The Defendant Kevin Carter agreed to having a blood sample taken.

50. A blood sample was taken of the Defendant Kevin Carter for analysis.

51. The blood sample taken of the Defendant Kevin Carter was tested according to Section 56-5-2950 and SLED policies.

52. The Defendant Kevin Carter admitted to being impaired while operating his motor vehicle.

53. The Defendant Kevin Carter admitted to consuming [redacted] in greater amounts than prescribed while operating his 2005 Honda Ridgeline in said collision.

54. Valium is synonymous with Diazepam.

55. Diazepam is a Schedule IV controlled substance and is available by prescription.

56. Diazepam Drug Class: Tranquilizer, sedative, CNS depressant.

57. At low doses, diazepam is a moderate tranquilizer, causing sleepiness, drowsiness, confusion, and some loss of anterograde memory.

58. Diazepam can produce a state of intoxication similar to that of alcohol, including slurred speech, disorientation, and drunken behavior.

59. Side effects of Diazepam may include dry mouth, blurred or double vision, headache, vertigo, urinary retention, excessive perspiration, nausea and vomiting, ataxia, tremor, depression, hypotension and diminished reflexes.

60. According to a report entitled "Drugs and Human Performance Fact Sheets" written by COUPER, Fiona J. and LOGAN, Barry K for Washington State Patrol Forensic Laboratory Services Bureau and sponsored by National Highway Traffic Safety Administration, "Laboratory studies have shown that single doses of diazepam (5-20 mg) are capable of causing significant performance decrements, with maximal effect occurring at approximately 2 hour post dose, and

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

61. The drug manufacturer suggests patients treated with diazepam be cautioned against engaging in hazardous occupations requiring complete mental alertness such as driving a motor vehicle.

62. Simulator and driving studies have shown that diazepam produces significant driving impairment over multiple doses, according to said report entitled, "Drugs and Human Performance Fact Sheets".

63. Single doses of diazepam can increase lateral deviation of lane control, reduce reaction times, reduce ability to perform multiple tasks, decrease attention, adversely effect memory and cognition, and increase the effects of fatigue, according to said report entitled, "Drugs and Human Performance Fact Sheets".

64. Prescription Diazepam warning labels state, "Diazepam can make you sleepy, forgetful, have poor co-ordination along with other side effects that can affect everyday activities.".

65. Prescription Diazepam warning labels state, "You should not drive, operate machinery or take part in such activities where, if affected, you could put yourself or others at risk.".

66. Prescription Diazepam warning labels state, "The medicine can affect your ability to drive as it may make you sleepy or dizzy.".

67. After diazepam (10 mg) patients should refrain from driving or participating in skilled performances for only 5 to 7 hours.

68. According to The Physicians' Desk Reference (a commercially published compilation of manufacturers' prescribing information on prescription drugs, updated annually) one should avoid driving a car or operating heavy machinery and drinking alcohol while taking Valium.

69. It is an offence to drive if diazepam affects your ability to drive.

70. A normal dose of Valium impairs functional ability similar to a 0.10 blood alcohol level.

71. Code of South Carolina Section 56-5-2930 states that, "It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired.".

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

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

74. The Defendant Kevin Carter's DUI case number is [redacted]

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

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

77. The Defendant Kevin Carter's said toxicology report concluded that [redacted], synonyms: [redacted] resulted in [redacted]

78. The Defendant Kevin Carter has not proven that he has a prescription for [redacted]

79. The Defendant Kevin Carter's said toxicology report concluded that [redacted], synonyms: [redacted], resulted in [redacted]

80. The Defendant Kevin Carter has not proven that he has a prescription for [redacted]

81. The Defendant Kevin Carter's said toxicology report concluded that [redacted], synonyms: [redacted], resulted in [redacted]

82. The Defendant Kevin Carter has not proven that he has a prescription for [redacted]

83. April 24, 2017 was the publication date for the arbitration that decided liability for said collision.

84. Nadia Reynolds was the arbitrator who decided liability for said collision.

85. A comprehensive accident reconstruction report which gives a detailed analysis was provided to said arbitrator, Nadia Reynolds, on behalf of Claimant.

86. Based on the report findings, Claimant was traveling in the right lane of the highway when Defendant Kevin Carter attempted to enter onto the lane from the right shoulder.

87. Based on the report findings, Defendant Kevin Carter failed to yield the right of way and operate his vehicle in a safe manner which is the proximate cause for the loss.

88. The said evidence caused the arbitrator, Nadia Reynolds, to render her decision in favor of Claimant and against the Defendants Kevin Carter, Richard Davis, and Nationwide Property and Casualty.

89. The Arbitration Forums, Inc.'s Automobile Decision for said collision Docket Number is A099-05470-16-00.

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90. The Defendant Nationwide Property and Casualty, acting on behalf of Defendants Kevin Carter and Richard Davis, proved NO LIABILITY against the Claimant at said arbitration to establish liability.

91. The Defendant Nationwide Mutual Insurance Company has accepted full liability for this property damage claim.

92. The Defendant Nationwide Mutual Insurance Company did not appeal said arbitration ruling.

93. It is well settled, without dispute, that the Defendant Kevin Carter is liable for said collision.

94. It is well settled, without dispute, that the Defendant Richard Davis is liable for said collision.

95. It is well settled, without dispute, that the Defendant Nationwide Mutual Insurance Company is liable for said collision.

96. Joseph Turbovich is the insurance adjuster for Nationwide Mutual Insurance Company assigned to this property damage claim number [redacted].

97. Claimant and Joseph Turbovich spoke for the first time on the phone on Wednesday, April 27, 2016.

98. April 27, 2016, Joseph Turbovich told Claimant that he was aware that Defendant Kevin Carter was charged with DUI.

99. April 27, 2016, Joseph Turbovich told Claimant that he can haphazardly handle said claim.

100. April 27, 2016, Joseph Turbovich told Claimant that he can haphazard South Carolina law with regards to said claim.

101. April 27, 2016, Joseph Turbovich told Claimant that he can "willy nilly" said claim.

102. April 27, 2016, Joseph Turbovich told Claimant that he can "willy nilly" the law.

103. April 27, 2016, Joseph Turbovich told Claimant that she needed to write Defendant Nationwide Mutual Insurance Company a letter "with proper statute language and laws" in order to release whether or not Defendant Kevin Carter had an umbrella policy and/or a rider.

104. Defendant Kevin Carter does not have an insurance umbrella policy.

105. Defendant Richared Davis does not have an insurance umbrella policy.

106. Defendant Kevin Carter does not have an insurance rider.

107. Defendant Richard Davis does not have an insurance rider.

108. April 27, 2016, Joseph Turbovich told Claimant that, "Once we have documentation and we accept the liability, well, yes, of course, we'll go ahead and compensate you up to our policy holder's limits".

109. April 27, 2016, Joseph Tirbovich told Claimant that Defendant Nationwide Insurance Company did an accident reconstruction of said collision.

110. April 27, 2016, Joseph Tirbovich told Claimant that he had not spoken with Claimant's insurance company as of April 27, 2016.

111. April 27, 2016, Joseph Tirbovich told Claimant that his decision was based on "his own personal investigation".

112. April 27, 2016, Joseph Tirbovich told Claimant that, "We don't understand why the officer thought that our insured wasn't traveling. He was just stopped in the middle of the road. Why is the officer?--Why is there not an amendment to the police report as far as the details?"

113. April 27, 2016, Joseph Tirbovich told Claimant that she should be "irritated and upset".

114. April 27, 2016, Joseph Tirbovich told Claimant that Defendant Kevin Carter did not tell Defendant Nationwide Mutual Insurance Company that he was charged with a DUI.

115. April 27, 2016, Joseph Tirbovich told Claimant that, "We're finding out that he was under the influence."

116. April 27, 2016, Joseph Tirbovich told Claimant that, "...to accept liability, we're definitely taking into consideration the, alcohol, drugs and what was--he had said on the dash cam, as far as, he really didn't remember what happened ..."

117. April 27, 2016, Joseph Turbovich told Claimant that, "...we had found out that there was some issues as far as the alcohol..."

118. April 27, 2016, Joseph Tirbovich told Claimant that the police report is "inaccurate."

119. April 27, 2016, Joseph Tirbovich told Claimant that, "...normally they're not that inaccurate."

120. April 27, 2016, Joseph Tirbovich told Claimant that he had spoken to Trooper Blackwell.

121. April 27, 2016, Joseph Tirbovich told Claimant that, "All troopers don't want to be wrong. You know, that's a whole other thing. That's-that's the problem, you know, a lot of them don't want to admit that what they wrote is wrong..."

122. Joseph Tirbovich told Claimant that Defendant Kevin Carter did not mention his DUI charge when he initiated a claim with Defendant Nationwide Mutual Insurance Company.

123. Joseph Tirbovich told Claimant that he learned of Defendant Kevin Carter's DUI from Claimant's insurance company.

124. Joseph Tirbovich verbally agreed to compensate the Claimant for her personal property and contents damaged, destroyed, and/or lost in said collision with the Defendant Kevin Carter.

125. Joseph Tirbovich verbally agreed to compensate for the 1998 Chevrolet Mark III Conversion Van that was totaled in said collision.

126. Joseph Tirbovich and Claimant made a verbal agreement to settle this claim based on pictures and receipts of said van and personal property contents damaged, destroyed, and/or lost in said collision.

127. Joseph Tirbovich told Claimant that there is some type of negligence on the Defendant Kevin Carter.

128. Joseph Tirbovich told Claimant that auto insurance companies are required to pay punitive damages.

129. The Claimant presented Defendant Nationwide Mutual Insurance Company c/o Joseph Turbovich with a demand letter dated August 9, 2017 offering to settle for the policy limit of [redacted] for property damage.

130. The Claimant stated in her demand letter that she had superseded the policy limits with the pictures and receipts of said van and personal property contents damaged, destroyed, and/or lost in said collision that were provided to the Defendant Nationwide Mutual Insurance Company c/o Joseph Tirbovich.

131. The Claimant stated in her demand letter to the Defendant Nationwide Mutual Insurance Company c/o Joseph Tirbovich that the contents listed were a partial listing of personal property contents damaged, destroyed, and/or lost in said collision.

132. The said demand letter accompanied other documents that totaled 332 pages in all.

133. The said demand included reasonable market value of the totaled demolished van, all personal property contents, loss of use, and punitive damages.

134. August 9, 2017 the said demand letter package was sent via U.S. Postal Overnight Service to the Defendant Nationwide Mutual Insurance Company c/o Joseph Tirbovich.

135. August 24, 2017 was the original deadline date of the Claimant's demand letter to the Defendant Nationwide Mutual Insurance Company c/o Joseph Tirbovich.

136. August 16, 2017, Joseph Tirbovich requested additional time to respond to the demand letter by leaving a message on the Claimant's voice mail.

137. August 11, 2017 is the date that Joseph Tirbovich said he received said demand package.

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

139. September 1, 2017 was the new deadline set by Claimant for said demand to settle property damage claim.

140. August 24, 2017, Joseph Tirbovich offered to settle said property damage claim with the Claimant.

141. August 24, 2017, the Claimant requested that Joseph Tirbovich communicate said offer in writing.

142. August 25, 2017, Joseph Tirbovich offered to settle property damage punitive claim with the Claimant for [redacted]

143. August 28, 2017, the Claimant requested a written basis for said offer to settle property damage claim from Joseph Tirbovich.

144. August 28, 2017, Joseph Tirbovich offered to settle property damage claim against the Defendant Kevin Carter for [redacted]

145. Joseph Tirbovich did not provide a written basis for said [redacted] offer to the Claimant.

146. The letter written by Joseph Tirbovich dated August 25, 2017 to the Claimant contained the word "punitive" and the letter dated August 28, 2017 did not.

147. August 28, 2017, the Claimant requested from Joseph Tirbovich a written basis for said offer to settle property damage claim for the second time.

148. Joseph Tirbovich did not provide Claimant with a written basis for said property damage settlement offer from or on behalf of Defendant Nationwide Mutual Insurance Company.

149. The Claimant has been paralyzed as a result of the collision with the Defendant Kevin Carter.

150. The Defendant Nationwide Mutual Insurance Company paid the policy limit of [redacted] for bodily injury to the Claimant.

151. Punitive damages alone warrant the tendering of the entire policy limit for property damage liability against the Defendant Kevin Carter.

152. South Carolina Code of Laws Title 38, CHAPTER 77, ARTICLE, SECTION 38-77-710 states, "The court of common pleas, or any inferior courts having concurrent jurisdiction, in and for each county, shall by order of reference appoint an attorney or attorneys to hear and determine, by arbitration, property damage liability claims arising out of motor vehicle collisions or accidents and to award actual and punitive damages. This order must be consistent with the provisions of this chapter and may not be inconsistent with the Rules of the Supreme Court of South Carolina. Process and procedure must be as summary and simple as may be reasonable and may provide for the taking of evidence in the form of reports, statements, or itemized bills or in any other manner without the procedural and evidentiary limitations which pertain in jury

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

153. Punitive damages can be obtained for property damages under South Carolina law.

154. According to THE STATE OF SOUTH CAROLINA, In The Supreme Court Opinion No. 26826 Heard March 2, 2010 - Filed June 14, 2010, "The legislature has defined "damages" as used in Chapter 77 governing automobile insurance to "include[] both actual and punitive damages." Id. § 38-77-30(4). The clear legislative indication is that all "damages," including actual and punitive damages, are recoverable under the pertinent insurance provisions. As a matter of law, these provisions become part and parcel of the insurance contract.[2] Further, in examining the public policy surrounding punitive damage awards, it is readily apparent that South Carolina courts have recognized that these awards serve a multitude of purposes and are not limited solely to punishment of the individual wrongdoer.".

155. According to THE STATE OF SOUTH CAROLINA, In The Supreme Court Opinion No. 26826 Heard March 2, 2010 - Filed June 14, 2010, "punitive damages serve at least three important purposes: punishment of the defendant's reckless, willful, wanton, or malicious conduct; deterrence of similar future conduct by the defendant or others; and compensation for the reckless or willful invasion of the plaintiff's private rights." Clark v. Cantrell, 339 S.C. 369, 379, 529 S.E.2d 528, 533 (2000).

156. According to THE STATE OF SOUTH CAROLINA, In The Supreme Court Opinion No. 26826 Heard March 2, 2010 - Filed June 14, 2010, "In Clark, we noted "the important role that punitive damages play in the American system of justice generally, and in South Carolina in particular since at least 1784." Id. We observed that punitive damages, in addition to punishing the defendant and deterring similar conduct by the defendant and others, serve to vindicate the private rights of the plaintiff and they provide some measure of compensation to plaintiffs for the intentional violation of those rights that is separate and distinct from the usual measure of compensatory damages: Exemplary or punitive damages go to the plaintiff, not as a fine or penalty for a public wrong, but in vindication of a private right which has been willfully invaded; and indeed, it may be said that such damages in a measure compensate or satisfy for the willfulness with which the private right was invaded, but, in addition thereto, operating as a deterring punishment to the wrongdoer, and as a warning to others. . . . Punitive damages have now come, however, to be generally, though not universally, regarded, not only as punishment for wrong, but as vindication of private right. This is the basis upon which they are now placed in this state.".

157. South Carolina Code of Laws Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-530 (C) (3) states, "(C) However, when the trial court determines one of the following apply, there shall be no cap on punitive damages: (3) the defendant acted or failed to act while under the influence of alcohol, drugs, other than lawfully prescribed drugs administered in accordance with a prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to the degree that the defendant's judgment is substantially impaired.".

158. South Carolina has adopted an Excess Doctrine, whereby it's Supreme Court held that an insurance company can and will be held liable for any excess above its coverage for not settling within the limits of coverage, either through negligence or bad faith, or any combination of the two. Tyger River Pine Co. v. Maryland Casualty Co.

159. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (1) Knowingly misrepresenting to insureds or third-party claimants pertinent facts or policy provisions relating to coverages at issue or providing deceptive or misleading information with respect to coverages.

160. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims, including third-party liability claims, arising under its policies.

161. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (4) Not attempting in good faith to effect prompt, fair, and equitable settlement of claims, including third-party liability claims, submitted to it in which liability has become reasonably clear.

162. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (5) Compelling policyholders or claimants, including third-party claimants under liability policies, to institute suits to recover amounts reasonably due or payable with respect to claims arising under its policies by offering substantially less than the amounts ultimately recovered through suits brought by the claimants or through settlements with their attorneys employed as the result of the inability of the claimants to effect reasonable settlements with the insurers.

163. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (6) Offering to settle claims, including third-party liability claims, for an amount less than the amount otherwise reasonably due or payable based upon the possibility or probability that the policyholder or claimant would be required to incur attorneys' fees to recover the amount reasonably due or payable.

164. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (7) Invoking or threatening to invoke policy defenses or to rescind the policy as of its inception, not in good faith and with a reasonable expectation of prevailing with respect to the policy defense or attempted rescission, but for the primary purpose of discouraging or reducing a claim, including a third-party liability claim.

165. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (8) Any other practice which constitutes an unreasonable delay in paying or an unreasonable failure to pay or settle in full claims, including third-party liability claims, arising under coverages provided by its policies.

166. Due to the Defendant Nationwide Mutual Insurance Company's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimant suffers from economic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (3) "Economic damages" means pecuniary damages arising from medical expenses and medical care, rehabilitation services, costs associated with education, custodial care, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, a claim for loss of spousal services, loss of employment, loss of business or employment opportunities, loss of retirement income, and other monetary losses.

167. Due to the Defendant Nationwide Mutual Insurance Company's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimant suffers from noneconomic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (9) "Noneconomic damages" means nonpecuniary damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, other nonpecuniary damages, and any other theory of damages including, but not limited to, fear of loss, illness, or injury.

168. In the Claimant's said demand letter to Defendant Nationwide Mutual Insurance Company c/o Joseph Turbovich, $131,239.77 was listed as actual property damage.

169. In the Claimant's said demand letter to Defendant Nationwide Mutual Insurance Company c/o Joseph Turbovich, $918,678.39 was the total property damage listed including punitive.

170. The Defendant Interinsurance of the Automobile Club insured Claimant for [redacted] for property damage per accident and /or occurrance.

171. The Defendant Trustguard Insurance insured Claimant for [redacted] for property damage per accident and/or occurrence.

172. South Carolina Code of Laws CHAPTER 32, ARTICLE 5, SECTION 15-32-510 (B) states, "The plaintiff shall not specifically plead an amount of punitive damages, only that punitive damages are sought in the action.".

173. The Claimant prays for punitive damages and they are sought in this complaint.

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

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

Attorney for Claimant(s):	Claimant(s):

DATE: February 7, 2018

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

SCCA/201(3/2005)

March 6, 2018
Affidavit of Heidi Gersten
In Support of Property Damage Claim
Filed March 27, 2018

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)	Affidavit of Heidi Gersten in Support of Property Damage Claim
)	
vs.)	VERIFICATION
)	
KEVIN CARTER, RICHARD DAVIS, JOSEPH) TIRBOVICH, NATIONWIDE MUTUAL INS.) CO., INTERINSURANCE EXCHANGE of the) AUTOMOBILE CLUB, TRUSTGUARD INS.) CO., JOHN AMMENDOLA)	
Defendants	

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

VERIFICATION

AFFIDAVIT

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

STATE OF FLORIDA,
SS:
COUNTY OF PALM BEACH,

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

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

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

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

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

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

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

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

7. The Van was totaled in said collision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Notary Seal:]

[signature of Notary]

DAVID TEDESCHI
[typed name of Notary]

NOTARY PUBLIC

My commission expires: 02/03, 2021.

Notary Public State of Florida
David Tedeschi
My Commission GG 042156
Expires 02/03/2021

FILED
2018 MAR 27 P 3:52
CLERK OF COURT
PALM BEACH CO. FL

March 16, 2018
Summons and Complaint
In Case No. 2018-CP-12-00117
Filed March 16, 2018

STATE OF SOUTH CAROLINA,
COUNTY OF CHESTER

HEIDI GERSTEN, IVANKA AYOUB, DANIEL HUBBARD

Plaintiff,

vs.

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

Defendant.

IN THE COURT OF COMMON PLEAS

SUMMONS

2018 CP 1200117

FILE NO.

FILED

2018 MAR 16 A 8:36

CLERK OF COURT
CHESTER CO. SC

TO THE DEFENDANT ABOVE-NAMED:

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

Chester, South Carolina

Dated: March 15, 2018

Plaintiff/Attorney for Plaintiff

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

SCCA 401 (5/02)

App. 115

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

IN THE COURT OF COMMON PLEAS

HEIDI GERSTEN, IVANKA AYOUB, DANIEL HUBBARD
Plaintiff(s)

vs.

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

CIVIL ACTION COVERSHEET

2018 CP - 12 00117

FILED
2018 MAR 16 A 10:36
CLERK OF COURT
CHESTER CO. S.C.

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

SC Bar #:
Telephone #: (323) 245-5142
Fax #: (561) 756-9820
Other:
E-mail: hangingbangout@gmail.com

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

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

X **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.

☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.

☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (120)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___NI_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts - Personal Injury
- ☐ Conversion (310)
- X Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture Petition (840)
- ☐ Forfeiture - Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Incapacitated Adult Settlement

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of-State Depositions (650)

EXHIBIT
B

Amv 11.2

☐ Other (699) _____ ☐ Motion to Quash Subpoena in an Out of County Action (660) (799)

☐ Sexual Predator (510) ☐ Pre-Suit Discovery (800)

☐ Permanent Restraining Order (680) ☐ Other(799) _____

☐ Interpleader (690)

Submitting Party Signature: _____ Date: March 15, 2018

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

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

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA COUNTY OF CHESTER 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 PUBLIC SAFETY BLACKWELL, GMC, CHEVROLET, UNKNOWN JOHN DOES	IN THE COURT OF COMMON PLEAS FILE NO: 2018 CP 1200117 COMPLAINT and DEMAND FOR JURY TRIAL

FILED
2018 MAR 16 A 10:34
CLERK OF COURT
CHESTER CO. S.C.

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

GENERAL ALLEGATIONS

(Against All Defendants)

I.

PARTIES

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

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

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

4. The Defendants Kevin Carter and Richard Davis reside in Iredell County, North Carolina.

5. The Defendant Nationwide Mutual Insurance Company is a company maintaining and operating and doing business in the State of North Carolina.

6. The Defendant Interinsurance Exchange of the Automobile Club is a company maintaining and operating and doing business in the State of North Carolina.

7. The Defendant Trustguard Insurance Company is a company maintaining and operating and doing business in the State of North Carolina.

8. Where the other Defendants reside is unknown to the Claimants at this time.

9. Some of the Defendants are unknown at this time and listed as John Does.

II.

JURISDICTION AND VENUE

10. The collision occurred in Chester County, South Carolina.

11. This court is vested with jurisdiction over the Defendants.

12. This court is vested with original jurisdiction because the damages sought by the Plaintiffs are in excess of Ten Thousand Dollars ($10,000.00 USD).

13. The venue of this action is proper in Chester County, pursuant to , because the cause of action arose in this county.

III.

FACTUAL ALLEGATIONS

14. The collision occurred on March 19, 2015 at approximately 3:45 a.m.

15. The Plaintiff Heidi Gersten was involved in said motor vehicle collision with the Defendant Kevin Carter.

16. The Plaintiff Ivanka Ayoub was the registered owner of the 1998 Chevrolet Mark III LX 1500 Conversion Van involved in said motor vehicle collision.

17. The Plaintiff Ivanka Ayoub was insured with the Defendant Trustguard Insurance Company, also

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

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

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

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

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

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

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

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

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

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

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

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

IV.

FIRST CAUSE OF ACTION (CLAIM FOR RELIEF)

(Negligence)

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

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

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

V.

SECOND CAUSE OF ACTION (CLAIM FOR RELIEF)

(Fraud)

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

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

34. The Defendants' statements were false.

35. The Defendants' knew these statements were untrue or were ignorant of its truth.
36. The Defendants' statements were material.
37. The Defendants intended on deceiving the Plaintiffs.
38. There was reasonable reliance by the Plaintiffs of these statements.
39. The Plaintiffs suffer proximate injury.

VI.

THIRD CAUSE OF ACTION (CLAIM FOR RELIEF)

(Fraudulent Inducement)

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

41. The Defendants intentionally pressured the Plaintiffs.

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

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

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

VII.

FOURTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Intentional Infliction of Emotional Distress)

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

46. The Defendants acted intentionally or recklessly.

47. The Defendants' conduct was outrageous.

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

49. The Plaintiffs suffer from severe emotional distress.

VIII.

FIFTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Negligent Infliction of Emotional Distress)

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

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

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

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

IX

SIXTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Loss of Consortium)

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

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

App. 170

X

SEVENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Product Liability)

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

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

58. The Plaintiffs suffer damages as a result.

XI

EIGHTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Breach of Contract)

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

60. The Defendants had a duty.

61. The Defendant breached the duty.

62. The Plaintiffs suffer damages as a result.

XII

NINTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Invasion of Privacy)

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

64. The Defendants had a duty.

65. The Defendants breached the duty.

66. The Plaintiffs suffer damages as a result.

XII

TENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Strict Liability)

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

68. There were product recalls on the said vehicle.

69. The Defendant is responsible.

XIII

ELEVENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Conspiracy)

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

71. Two or more Defendants were in collusion.

72. The Defendants intentionally acted.

73. The Defendants made an agreement.

74. The Defendants violated laws.

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

XIV

TWELFTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Misrepresentation)

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

77. The Defendants made a misrepresentation of material fact.

78. The Defendants' representation was false.

79. The Plaintiffs' loss benefited the Defendants.

XV

THIRTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

0

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

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

XVI

FOURTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Deceit)

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

83. The Defendants made false representations to the Plaintiffs.

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

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

XVII

FIFTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Duress and Undue Influence)

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

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

XVIII

SIXTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Slander)

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

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

XIX

SIXTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Libel)

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

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

XX

SEVENTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Defamation)

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

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

XXI

EIGHTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Malicious Prosecution)

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

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

DAMAGES

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

(1) For a trial by jury;

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

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

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

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

(6) Punitive damages;

(7) Costs of this action;

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

Respectively submitted this 13th day of March 2018

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

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

Ivanka Ayoub

Plaintiff Ivanka Ayoub
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CLERK OF COURT
PALM BEACH CO. FL.
2020 MAR 16 A 10:39
FILED

March 17, 2018
First Amended
Claim for Property Damage
Filed March 17, 2018

STATE OF SOUTH CAROLINA)
)
In the matter of Arbitration between)
)
)
HEIDI GERSTEN, IVANKA AYOUB)
Claimant(s))
)
vs.)
)
KEVIN CARTER, RICHARD DAVIS,)
JOSEPH TIRBOVICH, NATIONWIDE
MUTUAL INSURANCE COMPANY,
INTERINSURANCE EXCHANGE OF THE
AUTOMOBILE CLUB, JOHN
AMMENDOLA, TRUSTGUARD
INSURANCE COMPANY
Defendant(s))

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

Case number 2018-BP-12-00074

FIRST AMENDED
CLAIM FOR PROPERTY DAMAGE
VERIFIED

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

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

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

SCCA/201(3/2005)

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

11. As a direct and proximate result of the Defendant Kevin Carter's negligent conduct, stated above, the Claimants have suffered specific damages, including but not limited to property damage.

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

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

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

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

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

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

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

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

20. The Defendant Kevin Carter's conduct in said collision was willful, wanton or reckless.

21. The Defendant Kevin Carter displayed gross negligence in said collision.

22. The Defendant Kevin Carter's full name is Kevin Mark Carter.

23. The Defendant Kevin Carter's date of birth is [redacted].

24. The Defendant Kevin Carter's driver's license number is [redacted] issued in North Carolina.

25. The Defendant Kevin Carter's cell number is [redacted]

26. The Defendant Kevin Carter resides at [redacted]

27. The Defendant Kevin Carter is and/or was certified as a State of North Carolina Medical Responder, North Carolina EMS License [redacted]

28. The Defendant Kevin Carter attended the University of North Carolina at Chapel Hill for a Master of Business Administration (MBA).

29. The Defendant Kevin Carter attended Virginia Tech for a Bachelor of Business Administration (BBA).

30. The Defendant Kevin Carter attended Carolina College of Health Sciences for an Associate's Degree.

31. The Defendant Kevin Carter attended Mitchell Community College for a Rescue & Fire Emergency Technician.

32. The Defendant Kevin Carter is listed as the registered owner of the 2006 Honda Ridgeline involved in said motor vehicle collision.

33. The license plate number of the said Honda Ridgeline involved in said collision is [redacted]

34. The vin number of the said Honda Ridgeline involved in said collision is [redacted]

35. The Defendant Richard Davis is listed as the registered owner of the 2006 Honda Ridgeline involved in said motor vehicle collision in addition to the Defendant Kevin Carter.

36. The Defendant Richard Davis resides at [redacted]

37. The Defendant Richard Davis was communicating with the Defendant Kevin Carter while the Defendant Kevin Carter was operating said vehicle via cell phone.

38. Through negligent entrustment, the Defendant Richard Davis has violated South Carolina statutes for consenting to the Defendant Kevin Carter's use of said vehicle while [redacted] was in the Defendant Kevin Carter's system.

39. The Defendant Nationwide Mutual Insurance Company insured the Defendants Kevin Carter and Richard Davis for the 2005 Honda Ridgeline in said collision, policy number: [redacted]

40. The Defendant Nationwide Mutual Insurance Company is also known as Nationwide Property and Casualty.

41. The Defendant Nationwide Mutual Insurance Company also does business as Nationwide Property and Casualty.

42. The policy limit for property damage liability with Defendant Nationwide Mutual Insurance Company on said 2006 Honda Ridgeline is [redacted] per accident.

43. The Defendant Kevin Carter was charged with DUI in said collision.

44. March 19, 2017, at approximately 4:12 a.m., Trooper Blackwell of the South Carolina Highway Patrol was dispatched to said collision on I-77 North at the 61 mile marker.

45. Upon making contact with the Defendant Kevin Carter, Trooper Blackwell, "...noticed that Mr. Carter was very lethargic in his speech...", according to the incident report of said March 19, 2015 collision written by Trooper Blackwell.

46. Trooper Blackwell stated in his incident report of said collision that the Defendant Kevin Carter was "...having trouble remembering his current location...".

47. Trooper Blackwell stated in his incident report of said collision that the Defendant Kevin Carter was "...having trouble remembering where he was coming from.".

48. Trooper Blackwell stated in his incident report of said collison that the Defendant Kevin Carter stated to Trooper Blackwell and Richburg Fire Officials that, "... (he) and his wife had been in an argument earlier in the evening and she had asked him to leave their residence.".

49. The Defendant Kevin Carter stated that, "...(he) had been taking an unknown amount of his prescribed [redacted] throughout the night and into the morning hours for his "nerves".", according to Trooper Blackwell's incident report of said collision.

50. Trooper Blackwell saw "...various bottles of prescription medications that were on the passenger seat of Mr. Carter's vehicle.", as stated by Trooper Blackwell in his incident report of said collision.

51. The Defendant Kevin Carter stated that, "...(he) had only been taking his [redacted] but could not remember how much he had taken over the night.".

52. The Defendant Kevin Carter was transported by EMS to Piedmont Medical Center where Trooper Blackwell informed Defendant Kevin Carter that he was being charged with DUI according to Trooper Blackwell's incident report of said collision.

53. The Defendant Kevin Carter was under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.

54. The Defendant Kevin Carter agreed to his implied consent rights.

55. The Defendant Kevin Carter agreed to having a blood sample taken.

56. A blood sample was taken of the Defendant Kevin Carter for analysis.

57. The blood sample taken of the Defendant Kevin Carter was tested according to Section 56-5-2950 and SLED policies.

58. The Defendant Kevin Carter admitted to being impaired while operating his motor vehicle.

59. The Defendant Kevin Carter admitted to consuming [redacted] in greater amounts than prescribed while operating his 2005 Honda Ridgeline in said collision.

60. Valium is synonymous with diazepam.

61. Diazepam is a Schedule IV controlled substance and is available by prescription.

62. Diazepam Drug Class: Tranquilizer, sedative, CNS depressant.

63. At low doses, diazepam is a moderate tranquilizer, causing sleepiness, drowsiness, confusion, and some loss of anterograde memory.

64. Diazepam can produce a state of intoxication similar to that of alcohol, including slurred speech, disorientation, and drunken behavior.

65. Side effects of diazepam may include dry mouth, blurred or double vision, headache, vertigo, urinary retention, excessive perspiration, nausea and vomiting, ataxia, tremor, depression, hypotension and diminished reflexes.

66. According to a report entitled "Drugs and Human Performance Fact Sheets" written by COUPER, Fiona J. and LOGAN, Barry K for Washington State Patrol Forensic Laboratory Services Bureau and sponsored by National Highway Traffic Safety Administration, "Laboratory studies have shown that single doses of diazepam (5-20 mg) are capable of causing significant performance decrements, with maximal effect occurring at approximately 2 hour post dose, and lasting up to at least 3-4 hours. Decreases in divided attention, increases in lane travel, slowed reaction time (auditory and visual), increased braking time, decreased eye-hand coordination, and impairment of tracking, vigilance, information retrieval, psychomotor and cognitive skills have been recorded. Lengthened reaction times have been observed up to 9.5 hours post dose of diazepam, lethargy and fatigue are common, and diazepam increases subjective perceptions of sedation. Reduced concentration, impaired speech patterns and content, and amnesia can also be produced, and diazepam may produce some effects that may last for days..."

67. The drug manufacturer suggests patients treated with diazepam be cautioned against engaging in hazardous occupations requiring complete mental alertness such as driving a motor vehicle.

68. Simulator and driving studies have shown that diazepam produces significant driving impairment over multiple doses, according to said report entitiled, "Drugs and Human Performance Fact Sheets".

69. Single doses of diazepam can increase lateral deviation of lane control, reduce reaction times, reduce ability to perform multiple tasks, decrease attention, adversely effect memory and cognition, and increase the effects of fatigue, according to said report entitled, "Drugs and Human Performance Fact Sheets".

70. Prescription diazepam warning labels state, "Diazepam can make you sleepy, forgetful, have poor co-ordination along with other side effects that can affect everyday activities.".

71. Prescription diazepam warning labels state, "You should not drive, operate machinery or take part in such activities where, if affected, you could put yourself or others at risk.".

72. Prescription diazepam warning labels state, "The medicine can affect your ability to drive as it may make you sleepy or dizzy.".

73. After diazepam (10 mg) patients should refrain from driving or participating in skilled performances for only 5 to 7 hours.

74. According to The Physicians' Desk Reference (a commercially published compilation of manufacturers' prescribing information on prescription drugs, updated annually) one should avoid driving a car or operating heavy machinery and drinking alcohol while taking Valium.

75. It is an offence to drive if diazepam affects your ability to drive.

76. A normal dose of Valium impairs functional ability similar to a 0.10 blood alcohol level.

77. Code of South Carolina Section 56-5-2930 states that, "It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired.".

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

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

80. The Defendant Kevin Carter's DUI case number is [redacted].

81. Toxicology reports conclude that the Defendant Kevin Carter consumed [redacted] in excess of the prescribed amount.

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

83. The Defendant Kevin Carter's said toxicology report concluded that [redacted] synonyms: [redacted], resulted in [redacted]

84. The Defendant Kevin Carter has not proven that he has a prescripton for [redacted]

85. The Defendant Kevin Carter's said toxicology report concluded that [redacted], synonyms: [redacted], resulted in [redacted]

86. The Defendant Kevin Carter has not proven that he has a prescription for [redacted]

87. The Defendant Kevin Carter's said toxicology report concluded that [redacted], synonyms: [redacted], resulted in [redacted].

88. The Defendant Kevin Carter has not proven that he has a prescription for [redacted]

89. April 24, 2017 was the publication date for the arbitration that decided liability for said collision.

90. Nadia Reynolds was the arbitrator who decided liability for said collision.

91. A comprehensive accident reconstruction report which gives a detailed analysis was provided to said arbitrator, Nadia Reynolds, on behalf of the Claimant Heidi Gersten.

92. Based on the report findings, the Claimant Heidi Gersten was traveling in the right lane of the highway when the Defendant Kevin Carter attempted to enter onto the lane from the right shoulder.

93. Based on the report findings, the Defendant Kevin Carter failed to yield the right of way and operate his vehicle in a safe manner which is the proximate cause for the loss.

94. The said evidence caused the arbitrator, Nadia Reynolds, to render her decision in favor of the Claimant Heidi Gersten and against the Defendants Kevin Carter, Richard Davis, and Nationwide Property and Casualty.

95. The Arbitration Forums, Inc.'s Automobile Decision for said collision Docket Number is A099-05470-16-00.

96. The Defendant Nationwide Property and Casualty, acting on behalf of the Defendants Kevin Carter and Richard Davis, proved NO LIABILITY against the Claimant Heidi Gersten at said arbitration to establish liability.

97. The Defendant Nationwide Mutual Insurance Company has accepted full liability for this property damage claim.

98. The Defendant Nationwide Mutual Insurance Company did not appeal said arbitration ruling.

99. It is well settled, without dispute, that the Defendant Kevin Carter is liable for said collision.

100. It is well settled, without dispute, that the Defendant Richard Davis is liable for said collision.

101. It is well settled, without dispute, that the Defendant Nationwide Mutual Insurance Company is liable for said collision.

102. The Defendant Joseph Turbovich is the insurance adjuster for Nationwide Mutual Insurance Company assigned to this property damage claim number: [redacted]

103. The Claimant Heidi Gersten and the Defendant Joseph Turbovich spoke for the first time on the phone on Wednesday, April 27, 2016.

104. April 27, 2016, the Defendant Joseph Turbovich told the Claimant Heidi Gersten that he was aware that the Defendant Kevin Carter was charged with DUI.

105. April 27, 2016, the Defendant Joseph Turbovich told the Claimant Heidi Gersten that he can haphazardly handle said claim.

106. April 27, 2016, the Defendant Joseph Turbovich told the Claimant Heidi Gersten that he can haphazard South Carolina law with regards to said claim.

107. April 27, 2016, the Defendant Joseph Turbovich told the Claimant Heidi Gersten that he can "willy nilly" said claim.

108. April 27, 2016, the Defendant Joseph Turbovich told the Claimant Heidi Gersten that he can "willy nilly" the law.

109. April 27, 2016, the Defendant Joseph Turbovich told the Claimant Heidi Gersten that she needed to write the Defendant Nationwide Mutual Insurance Company a letter "with proper statute language and laws" in order to release whether or not Defendant Kevin Carter had an umbrella policy and/or a rider.

110. The Defendant Kevin Carter does not have an insurance umbrella policy.

111. The Defendant Richared Davis does not have an insurance umbrella policy.

112. The Defendant Kevin Carter does not have an insurance rider.

113. The Defendant Richard Davis does not have an insurance rider.

114. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that, "Once we have documentation and we accept the liability, well, yes, of course, we'll go ahead and compensate you up to our policy holder's limits".

115. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that the Defendant Nationwide Insurance Company did an accident reconstruction of said collision.

116. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that he had not spoken with the Claimant Heidi Gersten's insurance company as of April 27, 2016.

117. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that his decision was based on "...(his) own personal investigation".

118. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that, "We don't understand why the officer thought that our insured wasn't traveling. He was just stopped in the middle of the road. Why is the officer?--Why is there not an amendment to the police report as far as the details?"

119. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that she should be "irritated and upset".

120. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that the Defendant Kevin Carter did not tell the Defendant Nationwide Mutual Insurance Company that he was charged with a DUI.

121. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that, "We're finding out that he (the Defendant Kevin Carter) was under the influence."

122. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that, "...to accept liability, we're definitely taking into consideration the, alcohol, drugs and what was--he (the Defendant Kevin Carter) had said on the Dash Cam, as far as, he really didn't remember what happened ..."

123. April 27, 2016, the Defendant Joseph Turbovich told the Claimant Heidi Gersten that, "...we had found out that there was some issues as far as the alcohol..."

124. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that the police report is "inaccurate."

125. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that, "...normally they're not that inaccurate."

126. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that he had spoken to Trooper Blackwell.

127. April 27, 2016, the Defendant Joseph Tirbovich told the Claimant Heidi Gersten that, "All troopers don't want to be wrong. You know, that's a whole other thing. That's-that's the problem, you know, a lot of them don't want to admit that what they wrote is wrong..."

128. The Defendant Joseph Tirbovich told the Claimant Heidi Gersten that the Defendant Kevin Carter did not mention his DUI charge when he initiated a claim with the Defendant Nationwide Mutual Insurance Company.

129. The Defendant Joseph Tirbovich told the Claimant Heidi Gersten that he learned of the Defendant Kevin Carter's DUI from her insurance company.

130. The Defendant Joseph Tirbovich verbally agreed to compensate the Claimant Heidi Gersten for her personal property and contents damaged, destroyed, and/or lost in said collision with the Defendant Kevin Carter.

131. The Defendant Joseph Tirbovich verbally agreed to compensate for the 1998 Chevrolet Mark III Conversion Van that was totaled in said collision.

132. The Defendant Joseph Tirbovich and the Claimant Heidi Gersten made a verbal agreement to settle this claim based on pictures and receipts of said van and personal property contents claimed to be damaged, destroyed, and/or lost in said collision.

133. The Defendant Joseph Tirbovich told the Claimant Heidi Gersten that there is some type of negligence on the Defendant Kevin Carter.

134. The Defendant Joseph Tirbovich told the Claimant Heidi Gersten that auto insurance companies are required to pay punitive damages.

135. The Claimant Heidi Gersten presented the Defendant Nationwide Mutual Insurance Company c/o the Defendant Joseph Turbovich with a demand letter dated August 9, 2017 offering to settle for the policy limit of [redacted] for property damage.

136. The Claimant Heidi Gersten stated in her demand letter that she had superseded the policy limits with the pictures and receipts of said van and personal property contents damaged, destroyed, and/or lost in said collision that were provided to the Defendant Nationwide Mutual Insurance Company c/o the Defen .dant Joseph Tirbovich.

137. The Claimant Heidi Gersten stated in her demand letter to the Defendant Nationwide Mutual Insurance Company c/o the Defendant Joseph Tirbovich that the contents listed were a partial listing of personal property contents damaged, destroyed, and/or lost in said collision.

138. The said demand letter accompanied other documents that totaled 332 pages in all.

139. The said demand included reasonable market value of the totaled demolished van, all personal property contents, loss of use, and punitive damages.

140. August 9, 2017 the said demand letter package was sent via U.S. Postal Overnight Service to the Defendant Nationwide Mutual Insurance Company c/o the Defendant Joseph Tirbovich.

141. August 24, 2017 was the original deadline date of the Claimant Heidi Gersten's demand letter to the Defendant Nationwide Mutual Insurance Company c/o the Defendant Joseph Tirbovich.

142. August 16, 2017, the Defendant Joseph Tirbovich requested additional time to respond to the demand letter by leaving a message on the Claimant Heidi Gersten's voice mail.

143. August 11, 2017 is the date that the Defendant Joseph Tirbovich said he received said demand package.

144. The Claimant Heidi Gersten granted the Defendant Joseph Tirbovich's request for an extention of time to respond to said demand package.

145. September 1, 2017 was the new deadline set by the Claimant Heidi Gersten and the Defendant Joseph Tirbovich for said demand to settle property damage claim.

146. August 24, 2017, the Defendant Joseph Tirbovich offered to settle said property damage claim with the Claimant Heidi Gersten.

147. August 24, 2017, the Claimant Heidi Gersten requested that the Defendant Joseph Tirbovich communicate said offer in writing.

148. August 25, 2017, the Defendant Joseph Tirbovich offered to settle property damage punitive claim with the Claimant Heidi Gersten for [redacted]

149. August 28, 2017, the Claimant Heidi Gersten requested a written basis for said offer to settle property damage claim from the Defendant Joseph Tirbovich.

150. August 28, 2017, the Defendant Joseph Tirbovich offered to settle property damage claim with the Claimant Heidi Gersten against the Defendant Kevin Carter for [redacted]

151. The Defendant Joseph Tirbovich did not provide a written basis for said [redacted] offer to the Claimant Heidi Gersten.

152. The letter written by the Defendant Joseph Tirbovich dated August 25, 2017 to the Claimant Heidi Gersten contained the word "punitive" and the letter dated August 28, 2017 did not.

153. August 28, 2017, the Claimant Heidi Gersten requested from the Defendant Joseph Tirbovich a written basis for said offer to settle property damage claim for the second time.

154. The Defendant Joseph Tirbovich did not provide the Claimant Heidi Gersten with a written basis for said property damage settlement offer from or on behalf of the Defendant Nationwide Mutual Insurance Company.

155. The Claimant Heidi Gersten has been paralyzed as a result of the collision with the Defendant Kevin Carter.

156. The Defendant Nationwide Mutual Insurance Company paid the policy limit of [redacted] towards bodily injury to the Claimant Heidi Gersten.

157. Punitive damages alone warrant the tendering of the entire policy limit for property damage liability against the Defendant Kevin Carter.

158. South Carolina Code of Laws Title 38, CHAPTER 77, ARTICLE, SECTION 38-77-710 states, "The court of common pleas, or any inferior courts having concurrent jurisdiction, in and for each county, shall by order of reference appoint an attorney or attorneys to hear and determine, by arbitration, property damage liability claims arising out of motor vehicle collisions or accidents and to award actual and punitive damages. This order must be consistent with the provisions of this chapter and may not be inconsistent with the Rules of the Supreme Court of South Carolina. Process and procedure must be as summary and simple as may be reasonable and may provide for the taking of evidence in the form of reports, statements, or itemized bills or in any other manner without the procedural and evidentiary limitations which pertain in jury trials. The court may provide for the taking of depositions of a witness within or without the State."

159. Punitive damages can be obtained for property damages under South Carolina law.

160. According to THE STATE OF SOUTH CAROLINA, In The Supreme Court Opinion No. 26826 Heard March 2, 2010 - Filed June 14, 2010, "The legislature has defined "damages" as used in Chapter 77 governing automobile insurance to "include[] both actual and punitive damages." Id. § 38-77-30(4). The clear legislative indication is that all "damages," including actual and punitive damages, are recoverable under the pertinent insurance provisions. As a matter of law, these provisions become part and parcel of the insurance contract.[2] Further, in examining the public policy surrounding punitive damage awards, it is readily apparent that South Carolina courts have recognized that these awards serve a multitude of purposes and are not limited solely to punishment of the individual wrongdoer.".

161. According to THE STATE OF SOUTH CAROLINA, In The Supreme Court Opinion No. 26826 Heard March 2, 2010 - Filed June 14, 2010, "punitive damages serve at least three important purposes: punishment of the defendant's reckless, willful, wanton, or malicious conduct; deterrence of similar future conduct by the defendant or others; and compensation for the

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

162. According to THE STATE OF SOUTH CAROLINA, In The Supreme Court Opinion No. 26826 Heard March 2, 2010 - Filed June 14, 2010, "In Clark, we noted "the important role that punitive damages play in the American system of justice generally, and in South Carolina in particular since at least 1784." Id. We observed that punitive damages, in addition to punishing the defendant and deterring similar conduct by the defendant and others, serve to vindicate the private rights of the plaintiff and they provide some measure of compensation to plaintiffs for the intentional violation of those rights that is separate and distinct from the usual measure of compensatory damages: Exemplary or punitive damages go to the plaintiff, not as a fine or penalty for a public wrong, but in vindication of a private right which has been willfully invaded; and indeed, it may be said that such damages in a measure compensate or satisfy for the willfulness with which the private right was invaded, but, in addition thereto, operating as a deterring punishment to the wrongdoer, and as a warning to others. . . . Punitive damages have now come, however, to be generally, though not universally, regarded, not only as punishment for wrong, but as vindication of private right. This is the basis upon which they are now placed in this state.".

163. South Carolina Code of Laws Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-530 (C) (3) states, "(C) However, when the trial court determines one of the following apply, there shall be no cap on punitive damages: (3) the defendant acted or failed to act while under the influence of alcohol, drugs, other than lawfully prescribed drugs administered in accordance with a prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to the degree that the defendant's judgment is substantially impaired.".

164. South Carolina has adopted an Excess Doctrine, whereby it's Supreme Court held that an insurance company can and will be held liable for any excess above its coverage for not settling within the limits of coverage, either through negligence or bad faith, or any combination of the two. Tyger River Pine Co. v. Maryland Casualty Co.

165. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (1) Knowingly misrepresenting to insureds or third-party claimants pertinent facts or policy provisions relating to coverages at issue or providing deceptive or misleading information with respect to coverages.

166. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

167. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

168. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

169. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

170. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims, including third-party liability claims, arising under its policies.

171. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

172. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

173. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

174. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

175. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (4) Not attempting in good faith to effect prompt, fair, and equitable settlement of claims, including third-party liability claims, submitted to it in which liability has become reasonably clear.

176. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

177. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

178. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

179. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

180. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (5) Compelling policyholders or claimants, including third-party claimants under liability policies, to institute suits to recover amounts reasonably due or payable with respect to claims arising under its policies by offering substantially less than the amounts ultimately recovered through suits brought by the claimants or through settlements with their attorneys employed as the result of the inability of the claimants to effect reasonable settlements with the insurers.

181. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

182. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

183. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

184. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

185. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (6) Offering to settle claims, including third-party liability claims, for an amount less than the amount otherwise reasonably due or payable based upon the possibility or probability that the policyholder or claimant would be required to incur attorneys' fees to recover the amount reasonably due or payable.

186. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

187. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

188. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

189. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

190. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (7) Invoking or threatening to invoke policy defenses or to rescind the policy as of its inception, not in good faith and with a reasonable expectation of prevailing with respect to the policy defense or attempted rescission, but for the primary purpose of discouraging or reducing a claim, including a third-party liability claim.

191. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

192. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

193. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

194. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

195. The Defendant Nationwide Mutual Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices. Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices: (8) Any other practice which constitutes an unreasonable delay in paying or an unreasonable failure to pay or settle in full claims, including third-party liability claims, arising under coverages provided by its policies.

196. The Defendant Joseph Tirbovich is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

197. The Defendant Trustguard Insurance Company is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

198. The Defendant John Ammendola is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

199. The Defendant Interinsurance Exchange of the Automobile Club is in violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices.

200. Due to the Defendant Nationwide Mutual Insurance Company's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimants suffer from economic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (3) "Economic damages" means

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

201. Due to the Defendant Joseph Tirbovich's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimant suffers from economic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (3).

202. Due to the Defendant Trustguard Insurance Company's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimant suffers from economic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (3).

203. Due to the Defendant John Ammendola's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimant suffers from economic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (3).

204. Due to the Defendant Interinsurance Exchange of the Automobile Club's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimant suffers from economic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (3).

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

206. Due to the Defendant Joseph Tirbovich's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimants suffers from noneconomic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (9).

207. Due to the Defendant Trustguard Insurance Company's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimants suffers from noneconomic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (9).

208. Due to the Defendant John Ammendola's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimants suffers from noneconomic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (9).

209. Due to the Defendant Interinsurance Exchange of the Automobile Club's violation of South Carolina Code of Laws, Title 38, CHAPTER 59, ARTICLE 1, SECTION 38-59-20 Improper claim practices, Claimants suffers from noneconomic damages as defined in South Carolina Code of Laws, Title 15, CHAPTER 32, ARTICLE 3, SECTION 15-32-210 (9).

210. In the Claimant Heidi Gersten's said demand letter to Defendant Nationwide Mutual Insurance Company c/o Joseph Turbovich, in excess of $131,239.77 was listed as actual property damage.

211. In the Claimant Heidi Gersten's said demand letter to Defendant Nationwide Mutual Insurance Company c/o Joseph Turbovich, $918,678.39 was the total property damage listed including punitive damages.

212. The Defendant Interinsurance Exchange of the Automobile Club insured Claimant Heidi Gersten for [redacted] for property damage per accident and /or occurrence.

213. The Defendant Interinsurance Exchange of the Automobile Club had a contractual duty to indemnify the insured against loss and by failing acted in negligence or bad faith causing the Claimant Heidi Gersten to suffer financial damages.

214. The Defendant Trustguard Insurance Company insured Claimants for [redacted] for property damage per accident and/or occurrence on said van involved in said collision.

215. The Defendant Trustguard Insurance Company had a contractual duty to indemnify the insured against loss and by failing acted in negligence or bad faith causing the Claimants Heidi Gersten and Ivanka Ayoub to suffer financial damages.

216. South Carolina Code of Laws CHAPTER 32, ARTICLE 5, SECTION 15-32-510 (B) states, "The plaintiff shall not specifically plead an amount of punitive damages, only that punitive damages are sought in the action.".

217. The Claimants pray for punitive damages and they are sought in this complaint.

218. February 22, 2018, after this action was filed, the Defendant Joseph Tirbovich called the Claimant Heidi Gersten to "the reiterate settlement offer of [redacted] for property damage claim".

219. February 22 2018, the Defendant Joseph Tirbovich alleged that the Claimant Heidi Gersen sent a 2nd demand package to the Defendant Nationwide Mutual Insurance Company.

220. February 22, 2018, the Defendant Joseph Tirbovich did not ask to speak with the Claimant Ivanka Ayoub about her claim with the Defendant Nationwide Mutual Insurance Co.

221. February 22, 2018, the Defendant Joseph Tirbovich stated that the Claimant Heidi Gersten's mother made a demand to "Grange" and they would compensate her for her vehicle.

222. February 22 2018, during a phone conversation, the Claimant Heidi Gersten asked the Defendant Joseph Tirbovich if she may speak 3 times to which he replied, "No..."

223. February 22, 2018, the Defendant Joseph Tirbovich admitted to receiving the 332-page book containing pictures and receipts of damaged, destroyed, or lost items the Claimant Heidi Gersten sent to the Defendant Nationwide Mutual Insurance Company for said claim.

224. February 22, 2018, the Defendant Joseph Tirbovich referred to the said 332-page book containing pictures and receipts with indexes and detailed explanation of items that were damaged, destroyed, and/or lost in said collision that the Claimant Heidi Gersten sent to Nationwide Mutual Insurance Company as "vague".

225. February 22, 2018, the Defendant Joseph Tirbovich said he doesn't put anything that he says in writing "...because these attorneys. I've learned. That was something when I was a rooky adjuster. When I put things in writing, certain things in writing, attorneys can tear things apart. So, everything is verbal."

226. February 22, 2018, the Defendant Joseph Tirbovich said he was "waiting" for lawsuit papers from the Claimant Heidi Gersten.

227. February 22, 2018, the Defendant Joseph Tirbovich indicated to the Claimant Heidi Gersten that he didn't understand what was taking her so long to file a lawsuit against the Defendants.

228. The Defendant Joseph Tirbovich acting on behalf of the Defendant Nationwide Mutual Insurance Company has a duty to settle this claim and by failing to do so acted in a negligent or bad faith manner.

229. Cynthia Cromartie, Senior Claims Representaive of the Defendant Trustguard Insurance Company, put in writing an offer of [redacted] to the Claimant Heidi Gersten in a letter dated October 6, 2018 towards bodily injury.

230. The Claimant Heidi Gersten first requested Medpay from the Defendant Trustguard Insurance Company while in the hospital sometime in March 2015 days after the said collision.

231. The Claimant Heidi Gersten first requested Medpay from the Defendant Interinsurance Exchange of the Automobile Club while in the hospital sometime in March 2015 days after the said collision.

232. The Defendants Interinsurance Exchange of the Automobile Club and Trustguard Insurance Company argued over who was primary and secondary insurance of the Medpay while the Claimant Heidi Gersten lay in a hospital bed waiting for $4900.00 to obtain acute rehap which she never did receive and the bills alone totaled over $300,000.00 at that point in time.

233. June 6, 2016, the Defendant Trustguard Insurance Company issued a check to the Claimant Heidi Gersten in the amount of $5000.00 for Medpay.

234. Sometime in May 2016, the Defendant Interinsurance Exchange of the Automobile Club issued a check to the Claimant Heidi Gersten in the amount of $10,000.00 for Medpay.

235. In a letter dated February 7, 2018, the Defendant Amy Carmack, Senior Claims Representative of Grange, acting on behalf of the Defendant Trustguard Insurance Company alleged that Claimant Heidi Gersten in not an insured.

236. February 21, 2018, Amy Carmack, Senior Claims Representative of Grange, acting on behalf of The Defendant Trustguard Insurance Company made an ambiguous offer in writing to the Claimant Ivanka Ayoub to settle her property damage claim of the totaled van.

237. February 21, 2018 Amy Carmack Trustguard Insurance Company alleged that punitive damages are excluded.

238. The Defendant Interinsurance Exchange of the Automobile Club allege that they must be served with papers from any lawsuit that stems from the said March 19, 2015 accident/or occurrence.

239. The Defendant Interinsurance Exchange of the Automobile Club had a duty to settle this claim and by failing to do so acted in a negligent or bad faith manner.

240. The Defendants are also responsible for the additional infliction of bodily and/or mental injury on the Claimants as well as other costs associated with pursuing litigation on this filing with the court.

241. There is collusion amongst the Defendants with a total disregard for the Claimants well being.

242. The Defendants main purpose is to delay paying the Claimants' benefits.

243. The Defendants hold interest in this said claim.

244. The Defendants have not made reasononable attempts at helping to restore the Claimants to a state of being made whole again after their lives have been torn all apart as a result of the at fault driver, Defendant Kevin Carter's actions.

245. Claimants did not ever waive any rights to full recovery.

246. Claimants did not ever agree to accept cash value and not replacement value on any items in controversy in said Complaint.

247. It is a violation of the Claimants' fundamental 1st Amendment right of the United States Constitution to petition the Government for a redress of grievances by bestowing rules not consented to upon parties in deciding if claims have merit.

248. The enormous amounts of monies to provide care for the rest of the Claimant Heidi Gersten's life is astronomical.

249. Being confined to a wheel chair without the ability to stand on her own creates unimaginable difficultics in the Claimant Heidi Gersten's daily life without a caregiver.

250. It is nothing short of cruel and unusual punishment.

251. Common people would expect the laws of this land to afford and protect them from the herrendous aftermath of what this catastrophic life-changing event has inflicted on the Claimants.

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

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

Attorney for Claimant(s):

Claimant(s):

1439 W. LANTANA Rd. #330

LANTANA FL 33462

323 - 245 - 6142

DATE: March 2, 2018

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

FILED
2018 MAR 27 P 3:52
CLERK OF COURT
PALM BEACH CO. FL

SCCA/201(3/2005)

March 27, 2018
Affidavit of Service
Filed March 27, 2018

STATE OF SOUTH CAROLINA)
)
In the matter of Arbitration between)
)
)
HEIDI GERSTEN, IVANKA AYOUB)
Claimant(s))
)
vs.)
)
)
KEVIN CARTER, RICHARD DAVIS,)
JOSEPH TIRBOVICH, NATIONWIDE
MUTUAL INS. CO., INTERINSURANCE
EXCHANGE OF THE AUTOMOBILE
CLUB, JOHN AMMENDOLA,
TRUSTGUARD INS. CO.
Defendant(s))

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

Case number 2018-CP-12-00074

AFFIDAVIT OF SERVICE
(Claim Served Herewith)

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

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

SCCA/203(3/2005)

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

Diana Maybrook
Affiant

NOTARY PUBLIC FOR ~~SOUTH CAROLINA~~ Florida

My Commission expires: 09/15/2019

Notary Public State of Florida
Phyllis R Garcia
My Commission FF 906166
Expires 09/15/2019

2018 MAR 27 P 3:52

SCCA/203(3/2005)

STATE OF SOUTH CAROLINA)
)
In the matter of Arbitration between)
)
)
HEIDI GERSTEN, IVANKA AYOUB)
Claimant(s))
)
vs.)
)
)
KEVIN CARTER, RICHARD DAVIS,)
JOSEPH TIRBOVICH, NATIONWIDE)
MUTUAL INS. CO., INTERINSURANCE)
EXCHANGE OF THE AUTOMOBILE)
CLUB, JOHN AMMENDOLA,)
TRUSTGUARD INS. CO.)
Defendant(s))

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

Case number 2018-CP-12-00074

AFFIDAVIT OF SERVICE
(Claim Served Herewith)

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

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

SCCA/203(3/2005)

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

Diana Mayerook
Affiant

NOTARY PUBLIC FOR ~~SOUTH CAROLINA~~ Florida

My Commission expires: 09/15/2019

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

FILED
2018 MAR 27 P 3:52
CLERK OF COURT

SCCA/203(3/2005)

April 16 2018
Answer of Defendant Kevin Carter
Filed April 16, 2018

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.

ANSWER OF KEVIN CARTER AND RICHARD DAVIS

(Jury Trial Demanded)

FILED
2018 APR 19 P 1:49
CLERK OF COURT
CHESTER CO. S.C.

TO: HEIDI GERSTEN, IVANKA AYOUB AND DANIEL HUBBARD:

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

1. All allegations of the Complaint not expressly admitted in this Answer are denied.

2. In response to Paragraphs 1, 2, 3, 5, 6, 7, 8, 16, 17, 18, 19, 28, and 31 these Defendants lack sufficient knowledge and information to form a response and therefore deny the same.

3. Paragraphs 4, 10, 13, 14, and 15 are admitted.

4. Paragraphs 9, 11, 12, 13, 20, 21, 22, 23, 24, 25, 26, 33, 34, 35, 36, 37, 38, 39, 41-44, 46-49, 51-53, 55, 57-58, 60-62, 64-66, 68-69, 71-75, 77-79, 81, 83-85, 87, 89, 91, 93, 95, 96-104 and Plaintiffs Pray for Relief are denied.

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

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

FOR A FIRST DEFENSE

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

FOR A SECOND DEFENSE

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

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

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

FOR A FIFTH DEFENSE

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

FOR A SIXTH DEFENSE

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

FOR A SEVENTH DEFENSE

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

FOR AN EIGHTH DEFENSE

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

FOR A NINTH DEFENSE

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

FOR A TENTH DEFENSE

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

FOR AN ELEVENTH DEFENSE

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

FOR A TWELFTH DEFENSE

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

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

FOR A THIRTEENTH DEFENSE

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

FOR A FOURTEENTH DEFENSE

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

FOR A FIFTEENTH DEFENSE

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

FOR A SIXTEENTH DEFENSE

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

FOR A SEVENTEENTH DEFENSE

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

FOR AN EIGTHTEENTH DEFENSE

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

FOR A NINETEENTH DEFENSE

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

FOR A TWENTIETH DEFENSE

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

FOR A TWENTY-FIRST DEFENSE

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

FOR A TWENTY-SECOND DEFENSE

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

FOR A TWENTY-THIRD DEFENSE

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

FOR A TWENTY-FOURTH DEFENSE

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

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

FILED
CLERK OF COURT
RICHLAND CO S.C.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

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

Columbia, South Carolina
April 13, 2018

January 31, 2019
Affidavit of Facts
In Appellate Case No. 2018-002115
Filed January 31, 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.

AFFIDAVIT OF FACTS

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

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

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

Further Affiant sayeth naught.

Wesley B. Sawyer

SWORN TO and subscribed before me this

30th day of January, 2019

Diane L. Black (L.S.)

Notary Public for SC

My Commission Expires: 7-29-19

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

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

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

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

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

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

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

May 29, 2019
Petition for Rehearing
In Appellate Case No. 2018-002115
Filed May 29, 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

RECEIVED
MAY 29 2019
SC Court of Appeals

Appellate Case No: 2018-002115

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

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

v.

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

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

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

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

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

Respectfully submitted this 28th day of May 2019,

Heidi Gersten, Ivanka Ayoub
Appellants
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Boca Raton, Florida
May 28, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 29 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: 2018-002115

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

Heidi Gersten, Ivanka Ayoub, ...Appellants.

v.

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

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

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

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

(323) 245-6142 (561) 756-9820 FAX
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Appellants

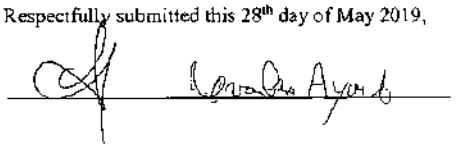
STATEMENT OF FACTS

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

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

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

Respectfully submitted this 28th day of May 2019,



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Boca Raton, Florida
May 28, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 29 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: 2018-002115

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

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

v.

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

AFFIDAVIT OF APPELLANT HEIDI GERSTEN

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Appellants

STATE OF FLORIDA,
SS:
COUNTY OF PALM BEACH.

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

1. I am the Appellant herein, and have read the foregoing Appellants' Motion to Reinstate Appeal as well as the attached Return to the Respondents Kevin Carter and Richard Davis' Motion to Dismiss Appeal With Leave and Petition for a Rehearing on said motion, which includes all pages attached, and know the contents thereof, that the same is true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters, I believe them to be true.

2. The facts stated herein are personally known to me and I have first-hand direct knowledge thereof and to those facts that are in addition stated are based on information and belief.

3. If called upon to do so, I would and could competently testify to hereto under oath in a court of law operating under the laws of the State of South Carolina and the United States Constitution.

4. The Appellants served and filed motions to extend time to amend their return to Kevin Carter and Richard Davis' motion to dismiss appeal on March 7, 18, 25, and April 5, 15, 25, 2019 and would have requested an additional extension on May 6, 2019, except due to mitigating circumstances, there were heavy thunderstorms that day that prevented the deadline from being met. (Exhibit 1)

5. I sat in my wheelchair with the paperwork that I was ready to turn in to comply with the 'motion for extension to file' rules when I heard the strike of thunder and looked outside and saw that it was raining heavily, with the sky very dark. With a heavy heart, I knew I would not be able to wheel to the post office and UPS store that day. I took a screenshot of the weather report that day at the time I was leaving. (Exhibit 1)

6. I became aware of the order dated May 2, 2019 on May 16, 2019, after I learned that the IPad I recently got was able to access the Court's website. I read said order online and in a good faith effort to comply under the South Carolina Appellate Civil Rules, **SCACR**, these motions and documents are being submitted. Prior to getting the IPad, I was unable to access the Court's website from my over 10 year old incompatible computer.

7. Had there not been thunderstorms on May 6, 2019, I would have been able to ride in my wheelchair to the post office and UPS store and the May 2, 2019 order would have been partially complied with as some of the information requested was in the documents that were anticipated to be served and filed that day. A new motion was being composed when the May 2nd and 14th orders were learned of.

8. In a frenzy to comply with the rules, a draft was written for a petition for rehearing and Henrietta from You've Been Served, LLC, processing service was contacted. I explained to her that the only way to have the documents received by May 17th, less than 24hrs of learning of the order, was to get the documents to her via computer and have her go in person to file them. I would not have been able to sign them since I don't have the technology to sign and then scan into my computer and office stores were closed at that hour. She brought up the fact that even if I could, she would only be bringing in a copy and not an original. Therefore, there was no real chance to comply with the order in such a short amount of time learning of it a day before its deadline nor correct the numerous errors that may be contained in it due to the very limited time to complete what is necessary to have it received by the Court within fifteen (15) days from the date of the order to prevent a remittitur being sent to the lower court or administrative tribunal in accordance with Rule 221. Hiring a process server to file in person appeared to be the only option at that point.

9. The petition for rehearing of the motion may be combined with the motion for reinstatement as they stem from the same issues.

10. I would also suggest that the Appellants' Return for the Respondents Kevin Carter and Richard Davis' motion for dismall be combined when taking things under consideration since its' sole argument within the numerous unpagenated pages that are well over fifty (50) in count revolves around the sole issue of timeliness.

11. I called the Appellate Court on May 17, 2019 and spoke to Shelby who informed me that it wasn't necessary to do a petition for rehearing on the May 2, 2019 order however the May 14, 2019 triggered the time to do a motion to reinstate within 15 days being Wednesday, May 29, 2019.

12. In addition to being paralyzed, having an open phase 4 pressure wound on my left buttocks, phase 1 pressure wound on my right buttocks, living without a caregiver, litigating multiple lawsuits in multiple states without an attorney, having been the victim of numerous crimes, participating in a criminal pretrial conference as a subpoenaed victim, and the learning of the passing of my father under the cause of action of tortious interference with a dead body, I was was summoned as a juror for May 13, 2019, all this year. [Exhibit ♂] (Proof of any of the foregoing is available upon request.)

13. Leave of court should be administered in favor of justice. There is plenty of good cause shown.

14. Patience is a judicial canon. I require much patience. What seems like plenty of time to an able body is a fraction of the time it takes me to do simple things. It took 7 months before I was finally able to get my bathroom accommodated to where I am now able to shower independently, to give an example of the amount of time it took to be at a standard of living that most people take for granted.

15. This is an effort to show the Court that the Appellants take this matter seriously and are diligently attempting to comply with the rules. The American Disabilities Act permit modifying court rules to accommodate me due to my disabilities and remains undefeated when an action has been brought forward under Title II. Appellants prefer not to file a federal complaint. Time is of the essence however health is an issue to take into consideration.

16. Words do not describe the horror of being unable to care for myself at my standards since this collision. I was the one who took care of others and demonstrated an unprecedented amount of courage, strength , wisdom, knowledge, love, compassion, forthrighteousness, tenacity, candor, intuition, empathy, endurance and love in my family however perhaps I lacked gratitude for myself. I took for granted the amazing person that I am.

17. Judge Zamore was the first public authority I faced through this process who infused me with inner solidity, repeating to me as I looked into his eyes, "You are worthy!" My whole life, no one has ever said those words to me. I'm happy that he stood behind a red, white and blue flag. He understood my pain. Yet he is bound by these words on paper, called law. I will find the right combination and when I do, I will unlock the key to my therapy and simple pleasure of pursuing every remedy available to me in order to obtain control of my body. I will walk again!

18. Judge Underwood was the first judge to issue an order in favor of granting me a continuance to a court date I received a day before a holiday weekend last year, giving me 3 days to find a ride as a paralyzed person who hadn't left her bed in months and travel over 800 miles in one direction to attend and declared me a victim in addition to Judge Zamore. I called the clerk and wrote an objection to Respondent/Defendant Kevin Carter's acceptance of a plea offer to reduce his DUI charge, which in truth and fact, qualifies to be a felony charge as a DUI with great bodily injury. It's no surprise he took the offer of a $440 fine and reckless driving in front of my eyes. This game of lucky breaks because someone knows how to manipulate the law better is unbelievable. My entire experience of how challenging it is to get help to be made whole again is history in the making.

19. This process has taught me to be indifferent.

20. It may be hard to imagine for some, the enormous amount of effort it takes to do simple things that able-bodied people can do, such as use a toilet.

21. I live under extraordinary circumstances and with extreme hardships.

22. Attached to this affidavit is a 5 page document labeled TIMELINE OF EVENTS WITH LAW AND ARGUMENTS THAT INCLUDE A MEMORANDUM OF POINTS AND AUTHORITIES THAT PROVE TIMELINESS OF APPELLANTS' NOTICE OF APPEAL that prove:

   A. April 26, 2018 – Alleged Unsigned Order -Judge Gibbons (pgs. -).
   (Note: These are pages one (1) and two (2) of two (2) pages)

   B. May 6, 2018 – Served and May 8, 2018 – Filed - Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCP, and Request For Oral Hearing (pg.)
   (Note: Only the top page is included as the proof of its timely filing is in question only at this stage and its contents will be discussed in the Appellants' upcoming brief. This motion was not ruled on nor was an order issued in response to it and will be further discussed in the Appellants' upcoming brief.)

   C. May 8, 2018 – Served – Honorable Judge Gibbons
   (Note: Appellant Gersten gave the document to Ruben Kirnos who gave the document to Mr. Atkinson, Chester County Clerk, who was instructed by Appellant Gersten to personally serve Judge Gibbons, from a rental car she was in, in front of the Chester County Courthouse, minutes prior to attending the sentencing of Respondent Carter at the Chester County Magistrate Court, after he was charged with DUI and she witnessed him plead guilty to reckless driving in front of Honorable Judge Yale Zamore.)

   D. August 7, 2018 – Notice of Case Scheduling - Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCP, and Request For Oral Hearing (pg.)
   (Note: This motion was not ruled on nor was an order issued in response to it and will be further discussed in the Appellants' upcoming brief.)

   E. August 25, 2018 – Served - Amended With Or Without Leave Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCP, and Request For Oral Hearing (pgs. -)

   F. August 29, 2018 – Filed - Amended With Or Without Leave Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCP, and Request For Oral Hearing (pg.)

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

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

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

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

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

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

J. September 21, 2018 - Alleged Orders - Judge Hayes (pg.)
(Note: Only the top page is included as the proof of its filing and its contents will be discussed in the Appellants' upcoming brief. This order was not signed and will be further discussed in the Appellants' upcoming brief.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. Given the complexity of this matter, with numerous respondents and excessive documents to deal with, in addition to the extreme hardship and extraordinary circumstances Appellant Gersten lives with, there is good cause shown for additional time to provide the information that will prove the Appellants' timeliness in serving and filing the notice of appeal.

28. According to the **SCACR**, the Appellants should not be subjected to serving and filing a return when the Respondents Carter and Davis' Motion to Dismiss does not have the correct case number, along with the burden of sorting through 64 un-paginated pages. In addition, there is a litany of information nonrelated to the issue at hand therefore will be saved for the Appellants' brief. The only pertinent issue currently is proving timeliness of the Appellants' Notice of Appeal.

29. The date the Notice of Appeal was timely served and filed on Respondents Kevin Carter and Richard Davis was November 15, 2018. Proof of service was attached to said Notice of Appeal for the court's filing.

30. The motions for reconsideration were timely filed according to court rules.

31. The Appellants are hereby reserving the right to amend this return should additional information be necessary.

32. I was paralyzed as a result of the collision in controversy with the Respondent Kevin Carter and the Respondent Richard Davis co-owned the vehicle involved.

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

34. The **American Disabilities Act**, An agency of the US Department of Justice Civil Rights Division, applies to and protects me.

35. **Title II** of the **American Disabilities Act** permits modifications to court rules to accommodate my situation due to my disability.

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

37. I urge the Court to permit this APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS to be considered in light of the good cause shown.

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

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

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

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

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

[Notary Seal:]

Notary Public State of Florida
Phyllis R Garcia
My Commission FF 908168
Expires 09/15/2019

[signature of Notary]

Phyllis R Garcia
[typed name of Notary]

NOTARY PUBLIC

My commission expires: 09/15/2019

The Weather Channel

Scan for updated forecast

Boca Raton, FL 10 Day Weather

3:24 pm EDT

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

EXHIBIT

EXHIBIT 2

SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

JUROR SUMMONS

15th Judicial Circuit

You are summoned for jury duty at the
Palm Beach County Courthouse, 205 N. Dixie Highway, West Palm Beach, FL 33401-4699

NAME HEIDI VERONIKA GERSTEN JUROR ID _____ JUROR NUMBER _____

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

Your jury duty will begin **May 13, 2019** at 8:00 AM and continue until you are released from service.

You will not be released from jury duty until (1) you have served as a juror on a trial; (2) you have appeared for service and were not selected as a juror; or (3) you have been notified by the automated phone system that your service is not needed. You may be on telephone standby for up to one week from your original summons date.

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

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

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

REQUEST FOR POSTPONEMENT OR EXCUSAL FROM JURY SERVICE

NAME HEIDI VERONIKA GERSTEN JUROR ID _____ JUROR NUMBER _____

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

- ☐ Not a legal resident of Palm Beach County
- ☐ Not a citizen of the United States
- ☐ Convicted of a felony and civil rights have not been restored
- ☐ Currently under criminal prosecution

Jurors are entitled to two postponements (per calendar year) per request for up to six months from the original summoning date. If you want to postpone your service please visit www.mypalmbeachclerk.com/jury or call (561) 355-2930 or (888) 780-5032 or (deaf and hard of hearing only) 711 (FRS) and follow the prompts. When speaking to representative, you must provide a new date that falls on a Monday through Friday (excluding court holidays).

New date chosen _____

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

- ☐ 70 or older -- Do you want to be permanently excused? ☐ Yes ☐ No
- ☐ Responsible for care of medically/mentally incapacitated person unable to care for self
- ☐ Expectant Mother
- ☐ Parent not working full time with custody of a child under 6
- ☐ Full time law enforcement officer or law enforcement investigative personnel
- ☐ Summoned and reported for jury service in Palm Beach County within (1) year from the date for which you originally were summoned

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

Signature _____ Contact number _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

09/18/18	09/19/18	Judge Hayes III ("Carter & Davis' Order) (Subject of this Appeal]	09/19/18 – On-line Court Website	N/A
09/21/18	09/21/18	Judge Hayes III ("Nationwide & Tirbovich" Order) (Subject of this Appeal]	09/23/18 – On-line Court Website	N/A
09/21/18	09/24/18	Judge Hayes III ("Trustgard & Ammendola" Order) (Subject of this Appeal)		N/A
09/21/18	09/21/18	Judge Hayes III ("SC Dept. of Public Safety & Blackwell" Order) (Subject of this Appeal)	09/23/18 – On-line Court Website	N/A
10/16/19	10/16/18	Judge Hayes III (Order) (Subject of this Appeal)(Order from Appellants' Motion for Reconsideration) (Tolled the time to serve Notice of Appeal]	10/21/18 – On-line Court Website	10/21/18 - USPS Regular Mail

01/15/19	01/15/19	Judge Gibbons (Stay Order) (Pending Outcome of Appeal)	01/15/19 - Received Phone Call From The Chester County Clerk	01/25/19 - USPS Regular Mail
02/15/19	02/15/19	Clerk (Letter) (Included As It Pertains to The Matter at Hand)		02/27/19 - USPS Regular Mail

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

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

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

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

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

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

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

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

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

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

CERTIFICATE OF SERVICE
[Appellate Case No: 2018-002115]

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

Wesley Brian Sawyer, Esquire
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

RECEIVED
MAY 29 2019
SC Court of Appeals

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

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

RE: Appellate Case No.: 2018-002115

RECEIVED
MAY 29 2019
SC Court of Appeals

Dear Ms. Kitchings or To Whom It May Concern:

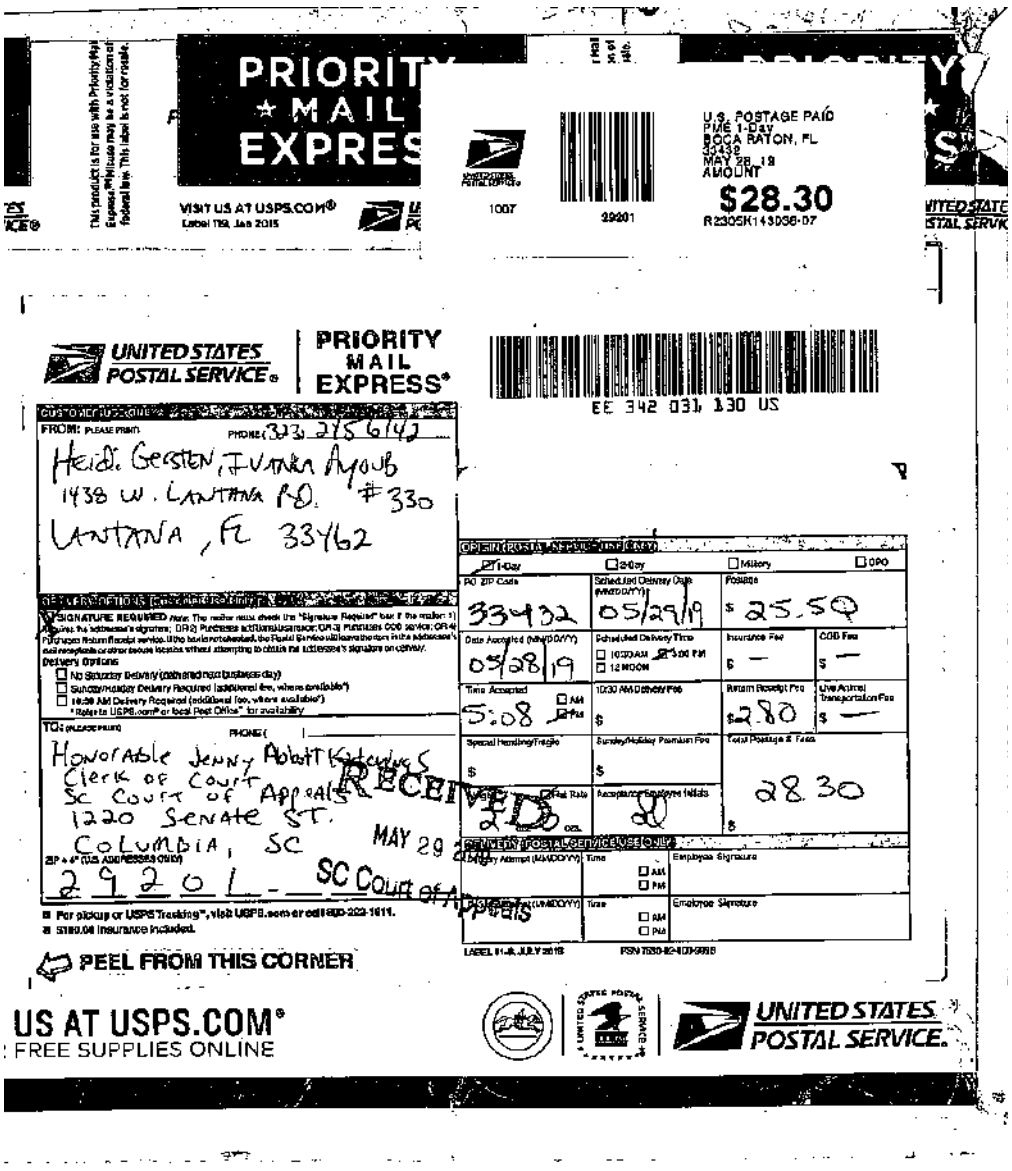
Good day to you.

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

Respectfully submitted,

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

HG/Enclosures



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

DELIVERY OPTIONS (Customer Recipient)

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Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate St.
Columbia, SC

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29201

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MAY 29 2019
SC Court of Appeals

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Date Accepted (MM/DD/YY)	Scheduled Delivery Time	Insurance Fee	COD Fee
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Time Accepted	10:30 AM Delivery Fee	Return Receipt Fee	Live Animal Transportation Fee
5:08 ☐ AM ☑ PM	$	$ 2.80	$ —

Special Handling/Fragile	Sunday/Holiday Premium Fee	Total Postage & Fees
$	$	$ 28.30

Weight	Acceptance Employee Initials
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Petition for Writ of Certiorari
In Appellate Case No. 2019-001484
Filed September 26, 2019

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
SEP 26 2019
S.C. SUPREME COURT

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

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

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

v.

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

PETITION FOR A WRIT OF CERTIORARI

Heidi Gersten, Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana, FL 33462
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September 24, 2019

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Attorneys for Respondents Department of Public Safety & Trooper Herbert Blackwell

INDEX

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ARGUMENT 6

1. THE COURT OF APPEALS INCORRECTLY DISMISSED THE APPEAL
2. THE COURTFAILED TO DISCOVER THAT MATERIAL FACT OR PRINCIPLE OF LAW HAD BEEN EITHER OVERLOOKEDED OR DISREGARDED
3. THE COURT ERRED IN FINDING APPELLANTS FAILED TO COMPLY WITH THE COURT'S ORDER OF MAY 2, 2019
4. THE COURT FAILED TO RECOGNIZE THE ORDER WAS UNLAWFUL, VOID AND/OR VOIDABLE
5. THE COURT FAILED TO ACKNOWLEDGE TIMELY RETURNS MADE BY THE APPELLANTS
6. THE COURT FAILED TO FIND THE INFORMATION IT REQUESTED IN DOCUMENTS SUBMITTED BY THE APPELLANTS
7. THE COURT AFFIRMED THAT 'SHALL' IS PERMISSIVE
8. THE COURT FAILED TO COMPLY WITH TITILE II OF THE AMERICAN DISABILITIES ACT
9. THE COURT FAILED TO APPLY THE DOCTRINE OF EQUITABLE TOLLING
10. THE COURT ERRED IN NOT RULING ON MOTIONS OR PERMITTING APPELLANTS TO FILE BRIEFS

CONCLUSION .....

CERTIFICATE OF PETITIONERS COUNSEL

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

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QUESTIONS PRESENTED

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

INTRODUCTION

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

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

STATEMENT OF THE CASE AND FACTS

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

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

CONCLUSION

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

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

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

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

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

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

v.

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

PROOF OF SERVICE

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

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DANIELA AMOROSO

September 24, 2019

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Transcripts

Transcript
September 5, 2019, Hearing

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHESTER

2018-CP-12-00117

Heidi Gersten

Vs.

Kevin Carter, et al.

Chester, South Carolina

September 5, 2018

Before the Honorable John C. Hayes, III

APPEARANCES

For the Plaintiff: Heidi Gersten, Pro Se

For the Defendants: Sawyer, Slye, Williams, Dworjanyn, Davidson

Reported by: Michael C. Watkins

Official Court Reporter

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

MS. GERSTEN: Yes.

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

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

THE COURT: All right, Carter and Davis.

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

THE COURT: Spell that for me.

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

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

THE COURT: Tell me that again.

MR. WILLIAMS: Interinsurance Exchange of the Automobile Club.

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

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

MR. DWORJANYN: Peter Dworjanyn with Collins and Lacey.

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

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

THE COURT: And you represent?

MR. DWORJANYN: Trust Guard Insurance Company and John Ammendola, A-m-m-e-n-d-o-l-a.

THE COURT: All right.

MR. DWORJANYN: Thank you.

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

MR. DAVIDSON: Your Honor, I'm trying to -- I decided to take the jury box for my desk. Will Davidson, and I represent the South Carolina Department of Public Safety and Trooper Herbert Blackwell.

THE COURT: Herbert Blackwell?

MS. GERSTEN: Yes, sir.

THE COURT: All right. Good to see you.

MR. DAVIDSON: Thank you, sir.

MR. SAWYER: Your Honor, if I may real briefly, I believe one thing that may help in terms of housekeeping and moving things along, I don't know that any of the defendants oppose the motion for continuance as it would apply to the roster for the jury or an arbitration proceeding if one were to take. I think we would just oppose the continuance of motions that are before the Court.

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

MR. SAWYER: Is that right?

(All defense attorneys said yes.)

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

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

THE COURT: We do.

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

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

MS. GERSTEN: Yes.

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

MS. GERSTEN: Yes, sir.

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

MR. SAWYER: Yes, sir, Your Honor.

THE CLERK: Correct.

MS. GERSTEN: Objection.

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

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

THE COURT: What rule says that?

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

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

THE COURT: And you served them simultaneously?

MR. SAWYER: I did, yes, Judge.

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

THE COURT: All right. I overrule your objection.

MS. GERSTEN: Excuse me?

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

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

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

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

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

MS. GERSTEN: Okay. I apologize.

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

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

THE COURT: Oh, okay.

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

MS. GERSTEN: Objection.

THE COURT: Yes, ma'am.

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

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

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

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

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

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

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

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

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

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

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

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

give you an opportunity to tell me --

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

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

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

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

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

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

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

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

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

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

MS. GERSTEN: Yes.

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

MS. GERSTEN: I disagree, sir.

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

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

MS. GERSTEN: Objection.

THE COURT: Overruled. Go ahead.

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

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

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

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

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

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

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. GERSTEN: And I object to that.

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

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

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

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

MS. GERSTEN: Yes.

THE COURT: You served it on the other party?

MS. GERSTEN: Yes.

THE COURT: When did you do that?

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

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

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

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

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

MR. SAWYER: Judge, can I approach?

THE COURT: Yes.

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

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

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

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

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

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

THE COURT: Thank you.

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

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

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

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

MS. GERSTEN: Objection, hearsay.

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

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

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

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

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

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

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

THE COURT: Under the what?

MS. GERSTEN: The long armed statute.

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

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

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

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

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

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

affidavit for the purposes of the motions. Go ahead.

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

MS. GERSTEN: Objection. Because allowing it -- he hasn't answered the amended complaint that I gave to you.

THE COURT: I've got the amended complaint in my hand.

MR. WILLIAMS: Your Honor, that amended complaint we would argue is A, I haven't been served with, I've never seen it, never laid eyes on it; B, it was improper for her to file it. Because I filed my motion to dismiss this -- the complaint that I know about I filed on the day after service, which was, in fact, July -- I filed it on July 25th of this year, which is more than 30 days prior to, of course, August 29th and she doesn't have leave with the Court. But in any event, the case to which I was going to call Your Honor's attention is Doe v. Greenville County School District, 651 Southeast Second 305 at page 308, in which the Supreme Court makes it crystal clear that there's no cause of action for a maternal loss of consortium or filial loss of consortium in South Carolina, and no parents and no siblings have such a cause of action.

MS. GERSTEN: Objection.

THE COURT: What's your objection?

MS. GERSTEN: I am here to write history. That might be some case law but this is new case law right here.

THE COURT: All right. Thank you. Objection overruled. I have to go on precedent so I have to follow the law.

MR. WILLIAMS: And finally, Your Honor, I think it's finally, Mr. Hubbard is not here. I wrote Mr. Hubbard a letter and informed him that if he were not here at this hearing that we were moving to strike his complaint for failure to prosecute. And I sent him a notice, a copy of the Court's notices of the hearing and a copy of what motions would be pending at this time.

MS. GERSTEN: Objection. I'm not familiar with that.

THE COURT: Well, that's dealing with Mr. Hubbard. Mr. Hubbard's claim is separate from yours.

MR. WILLIAMS: I sent similar notice to Ms. Gersten and similar notice to Ms. Ayoub since each of them is representing themselves. Ms. Ayoub is here and Ms. Gersten is here so I don't make that motion with respect to them. And at the risk of repeating myself, with the interruption I lost my train of thought a little bit, but I don't believe that the complaint fails to -- I don't believe that the complaint states facts constituting a cause of action

against the Interinsurance Exchange, because the only fact about it stated in the complaint is that it insured Ms. Gersten at the time of the accident. I don't know think that's a cause of action to be an insurer of a person. Thank you, Your Honor.

MR. DWORJANYN: May it please the Court? I'll try not to cover too much of the same ground and I would adopt their arguments. I represent -- sorry, Your Honor, Pete Dworjanyn, and Trust Guard Insurance Company, and John Ammendola. But I do have to say some things specific as to Mr. Ammendola. He's the President and CEO of Trust Guard Insurance Company. The Court lacks personal jurisdiction over him -- first going to both -- of all of the pleadings, the plaintiffs don't make any allegations as to Mr. Ammendola whatsoever. And in the common pleas lawsuit he's in the caption and that's it, there's no factual allegations. And in the arbitration action it says he violated Improper Claims Practices Act but there are no facts as to it. There's no allegation that would bring him -- there's no allegation as to his state of residency, where he works, what he does, anything, just his name is in the pleadings. He hasn't been served with the complaint, so it's --

MS. GERSTEN: Objection. He has been served and I have proof of service here.

MR. DWORJANYN: They mailed the complaint to Trust Guard Insurance Company, but Mr. Ammendola did not sign for it, and as a person being sued individually they would have to serve him personally so they haven't served him personally.

MS. GERSTEN: Objection.

THE COURT: Overruled.

MR. DWORJANYN: And finally and most importantly, there are no allegations against Mr. Ammendola period, and there are no allegations against Trust Guard Insurance Company. Now, the reality is is that Trust Guard Insurance Company had a property damage policy on Ms. Ayoub's vehicle that's owned by Ms. Ayoub, the co-plaintiff, that's true, but they didn't insure Ms. Gersten or Mr. Hubbard.

MS. GERSTEN: Objection.

MR. DWORJANYN: And there are no allegations in any of the pleadings as to anything that Trust Guard did or did not do. I know that that point has been stressed before, but there's causes of action listed but there are no facts to support a cause of action. It's kind of impossible to defend a complaint where they don't say you did anything. A legal conclusion isn't a cause of action. And I don't want to waive this and I've got to argue it at this time, Your Honor, I do have one other motion. So I've got motions to dismiss Mr. Ammendola and Trust Guard, and I also have a

motion to quash discovery, which this might be moot depending on what the Court does. But in the arbitration action, which was joined with the common pleas lawsuit consolidated, the plaintiffs served 62 requests to admit, 32 interrogatories, and 22 requests for production, which don't -- aren't directed to any of the defendants. If you don't mind I'll hand it up because I didn't put it in the record. It's just these broad based allegations, almost all of which don't have anything do with insurance, but they really address the property damage claims. And, you know, with respect to the request to admit they exceed the possible numbers of requests to admit --

MS. GERSTEN: Objection. No, I didn't.

THE COURT: Overruled.

MR. DWORJANYN: If the case is going to go forward against any party I would ask that the Court require the plaintiffs to tailor their discovery requests to the appropriate parties, and to limit her requests to admit to the correct number of requests to admit. But that being said, the cases against Trust Guard and Mr. Ammendola, Your Honor, should be dismissed. Thank you.

MR. SLYE: Your Honor, David Slye on behalf of Nationwide and Joe Tirbovich. I also adopt the arguments of counsel, and I would appreciate Mr. Sawyer's recitation of where we were going and I wholeheartedly agree with that.

THE COURT: Who is Tirbovich?

MR. SLYE: Tirbovich it an adjustor for Nationwide, and then Nationwide is the liability insurance carrier on the vehicle that was being driven by Kevin Carter. So that's Nationwide's role in this. At this stage of the proceedings it's not appropriate for the liability insurance carrier or their adjustors to be involved any way in a property damage arbitration or a lawsuit where they're litigating liability and an automobile accident case. And so at this stage certainly Nationwide and Mr. Tirbovich should be dismissed. That's clearly established in Cleckley versus Northwestern National, 338SC131, that's already been mentioned here today. As it relates to the common pleas action, or the arbitration action, Mr. Tirbovich, to my knowledge, has not been served with any of these documents. He's been named as an individual --

MS. GERSTEN: Objection, he's been served.

MR. SLYE: To the extent he's been served, Your Honor, I haven't seen anything supporting that at this time. The only allegation in the common pleas case is that Nationwide does business in North Carolina, that's it. The rest of it is just a recitation of the elements of the case and generically labeling things as defendants. As has already been mentioned, that's insufficient under South Carolina law to form the basis for any of these causes of action as it

relates to Nationwide or Mr. Tirbovich, and therefore the causes of action -- or both complaints in both cases should be dismissed. But again, I just adopt the arguments that have already been set forth, I think they apply equally to all of the insurance companies.

THE COURT: All right. Thank you.

MR. DAVIDSON: Will Davidson on behalf of the Highway Department and Trooper Blackwell. Your Honor, counsel was correct in regard to where we probably ought to end up at the end of the day. My motion was filed on -- in such a time frame that probably her amended complaint would be applicable to my case. My motion, however, not only applies to the original complaint but the amended complaint, and the reason being, Your Honor, in the original complaint she really never set forth any factual basis for her claims against the highway department, public safety, and Trooper Blackwell. In the amended complaint she now does set forth some facts that deal with Trooper Blackwell, and therefore the department, but it all centers around the accident report that was prepared by Trooper Blackwell, and according to her taking the pleadings as she has drafted them, later amended by the MAIT Team, and that's paragraph 61, 62 and 63, she then claims that as a result of being given the report on the day of her appearance in court, upon reading the report she suffered damages. Well, the fact that the --

or troopers are required to prepare accident reports, and number two, those accident reports are not evidence of lack of due care and can only be used in a very limited time frame of when the trooper is on the stand to help refresh his memory. They are not the basis for any liability or any claim of negligence in this case. So it's our position, you know, under our motion that she did not set forth a valid claim against the department, because the department's duties and Trooper Blackwell's duties are, in fact, public duties that apply to the public at large. Under the case of Rayfield versus Pardon and Parole Board, and Arthur versus Akin County, and other cases that deal with public duty, and it goes back to originally Parker versus Brown, which is the original case that decided that there was a public duty issue in South Carolina, a citizen, and in this is Ms. Gersten from Florida, would not have the ability to bring a claim against the department, or for that matter the trooper, because the only duty exists is that of a public duty, and that public duty does not give rise to a private right of action, number one. Number two, the damages she sustained in this event occurred as a result of the automobile accident which occurred in March of '15. Therefore the post-accident report would not be the proximate cause to give rise to any type of claim or cause of action against either the department or Trooper

Blackwell. Next, Your Honor, under the Tort Claims Act Trooper Blackwell is immune from suit and you have to sue the department. Yet the department in this instance is complying with the law, which says they are to have their troopers prepare accident reports, and under the Tort Claims Act that is a new function. Next, Your Honor, because the cause of action originated as a result of her automobile accident in 2015, this action on the face of the complaint was brought in 2018. Under the South Carolina Tort Claims Act, be it the amended complaint or the original complaint, there is a two year statute of limitations to bring a cause of action against the department. Last but not least, Your Honor, she asked for punitives against everybody, including me. And as the Court is aware under both the common law and under the Tort Claims Act punitives aren't recoverable in this matter against the department. So from the department and Trooper Blackwell's point, whether I'm under the amended complaint or under the original complaint, and I appreciate Ms. Gersten submitting an amended complaint to clarify what her claims were against the department, but even with that clarification under the grounds that I have set forth, the department and Trooper Blackwell insofar as he might have any exposure in this matter, although I think under the Tort Claims Act he's immune, we believe that the amended complaint should be dismissed along with the original

complaint against the department. If the Court feels that I need to file another motion I'll be glad to file another motion, I'll be glad to come to another hearing, but for economy's sake since everybody is here today I would just as soon the Court go ahead and rule. Thank you, Your Honor.

THE COURT: All right. Ms. Gersten, now I will be glad to hear from you.

MS. GERSTEN: Thank you, sir. First of all I just want to thank everybody for being here. I'm here to remedy my grievances along with my mother. And it started out, sir, where I read the law about this arbitration hearing for property damage, and that was filed first, and everything else came after when I realized it wasn't happening. Now I've been told that here in this courthouse they haven't done many arbitration hearings, if at all, and I feel the confusion comes from the consolidating of the two because they're separate plaintiffs and separate defendants, similar but separate. And I would like to move the Court for an opportunity to amend, because I understand it's the first time I'm meeting Wesley, Mr. Sawyer, I've met him before at the criminal when his client, Mr. Carter, was charged with DUI. I went to the sentencing and I met Mr. Sawyer but everyone else I've never met before. I would like to have an opportunity to amend the complaint with leave of Court so that I can address everything they're saying. I understand

maybe the communication was off, and it's not an unreasonable request. I have come a long way, sir, and it's not to delay anything, it's to present these facts, because I'm an injured party and I just want to find my remedy. And I still feel that the arbitration hearing should go on because it's state legislative and it would give the parties an opportunity to bring everything together, and a lot of their complaints have to do with -- the arbitration said you don't need all of these formalities. It didn't say you couldn't use the discovery tools, but it said it wasn't required, so I think there's a very misunderstanding with what this is meant to be, that I wasn't supposed to be -- well, we -- my mother and I, we weren't supposed to be restricted by all of these rules and regulations. My understanding was it was a summary procedure, we could just bring everything in and if either side didn't like it then we go to jury trial. I decided to file, along with my mother and my brother, other issues. But I feel that I'm totally prejudiced because they got merged together, which through the balance of the time limits and through the balance of what everything was supposed to be way off, and if you're ruling still that you're not going to overturn what I consider the void judgment of Honorable Mr. Gibbons, I would like an opportunity to amend the complaint based on their arguments. So I move the Court for an opportunity to

amend this complaint. I may not know the exact case law, sir, but courts advocate for people to have an opportunity, First Amendment, Second Amendment, it's not unheard of. And also some of the things that they were saying centered around the word shall. Mr. Sawyer was speaking about timeliness and things were done on a certain five days they had to be filed, and I saw this, but I also know that federal rules say that the only mandatory word is must. So I understand -- and a lot of this rides on this discretion of you, sir. And just so everybody knows, I'm sitting on a pressure wound right now and so if I have a little issue speaking I'm in a lot of pain. I came from Florida, my friend drove me, it was very hard to endure but I'm here because it's important. And I would like my opportunity to remedy their arguments, because I put a lot of time and effort into this. My life was changed. And I'm very, very grateful to be here, and I'm so thankful that you are listening, and I think that I have valid arguments, and perhaps all the facts as they're saying did not line up with the elements. But just understand in the beginning it was a summary, and then some of the arguments they said it was too much, everybody says it was out of the scope of arbitration, it was too much, too much information. So when the civil action was filed, it's true, I went along with my mother and my brother, and we toned it down, we thought we were making

it easier. Now I understand what their arguments are, and a lot of what they're saying I would like to examine the court file, because I don't believe that some of these things have been sent -- I do not remember any summary judgment being filed. I would like a motion to continuance for another opportunity to remedy what they're saying.

THE COURT: Well, I'm not going to second guess Judge Gibbons, he's the administrative judge for this circuit and this county and I'm bound by his ruling as far as the consolidation, I'm not changing that, so the cases are still consolidated. If he's wrong in that somewhere down the line a higher court than myself, either a Court of Appeals or the Supreme Court can tell Judge Gibbons he did the wrong thing, I can't.

MS. GERSTEN: Okay, sir. But just know that the time that things were due was thrown off. Common sense will tell you that I didn't -- we didn't file until March 16th of 2018 for the second action. At that point the arbitration had all been served, everybody was served, and I have proof of service for everybody right here right now. And as a matter the fact I would like to give this to you, sir --

THE COURT: I don't need it. I'm not concerned about the times, the times are not going to be the basis for whatever I do. I'm not concerned about whether or not something was served on time or not.

MS. GERSTEN: I don't understand that you mean that you're not concerned with what time was.

THE COURT: Well, let me let you finish your presentation and then I will tell you what I think. I'm thinking now how I need to dispose of this and let me listen to the rest of what you have to say before I do it.

MS. GERSTEN: I didn't hear you.

THE COURT: Just go ahead with your argument.

MS. GERSTEN: Well, it's undisputed that Mr. Carter and I had a collision.

THE COURT: Everybody agrees with that.

MS. GERSTEN: And I feel they want to sever away from that, they feel it's a separate action because there's breach of contract, and I feel that -- if it pleases the Court, if you want to sever it I would still like to move forward with my breach of contract issues.

THE COURT: What kind of contract did you have with Mr. Carter?

MS. GERSTEN: No, not with Mr. Carter.

THE COURT: What kind of contract did you have with any of these people?

MS. GERSTEN: With the Exchange --

THE COURT: You had a contract with the Exchange.

MS. GERSTEN: Yes, I did. I had a half million dollar policy, and my underinsured motorist was not paid, along

with Trust Guard under insurance was not paid. Nationwide, I feel that they were very dishonest with me. And I have a recording of every single conversation I've had with every single insurance company, and I can prove that what they said to me was violations of many things, giving legal advice. Nationwide wanted me to settle with what we didn't agree upon, and the gentleman was very rude on the phone. And these are separate actions that I would like to present, perhaps not the proximate cause of the collision but definitely -- and even if you were to dismiss I'm still well within the statute of limitations for breach of contract actions. So I would -- if you choose to sever I would like an opportunity to amend my arguments and my facts, our facts together about what had happened and why I am here today, along with my mother.

THE COURT: Anything else?

MS. GERSTEN: Well, I mean, just going through the -- I feel that the judgment of Judge Gibbons, Honorable Judge Gibbons, is void for the record. And I still feel I would like to have an arbitration hearing and to discuss liability, which I could not find anything that says liability is at fault. I believe that those are two separate at fault and liability, especially when Nationwide said that they accept liability, they accepted liability and in my admissions they admitted that.

THE COURT: All right. Anything else?

MS. GERSTEN: I don't think that the pleadings are closed.

THE COURT: Beg your pardon?

MS. GERSTEN: The pleadings are not closed.

THE COURT: Why not?

MS. GERSTEN: Because the time that the last person was served, which was the South Carolina Department, was July 15th, and this is a premature court hearing because we haven't finished the pleadings and the discovery wasn't closed.

THE COURT: Well, I disagree. I'm going to grant the motions by the parties and ask each attorney to prepare an order based on their presentation to the Court today, including Mr. Hubbard's failure to prosecute, which will leave the case with Ms. Gersten, and to the extent she has an interest in the property I guess Ivanka Ayoub, against Kevin Carter. Of course, you would have a right to appeal. Just like you have a right to appeal Judge Gibbons you have the right to appeal my orders once you get them.

MS. GERSTEN: I didn't understand what you just said.

THE COURT: I am granting their various motions to dismiss the claims again everybody but Mr. Carter.

MS. GERSTEN: Everybody but Mr. Carter.

THE COURT: Yes.

MS. GERSTEN: Thank you, sir. Is that the end of this proceeding?

THE COURT: Beg your pardon? Yes, it is.

MS. GERSTEN: And I really truly appreciate you, thank you so much.

THE COURT: All right. Thank you.

(End of the hearing.)

July 28, 2022
Hearing Transcript
In Case No. 2018-CP-12-00117

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHESTER

2018-CP-12-00117

Heidi Gersten

Vs.

Kevin Carter

(Webex Hearing)

July 28, 2022

Before the Honorable J. Mark Hayes

APPEARANCES

For the Plaintiff: Heidi Gersten, Pro Se

For the Defendant: Wesley B. Sawyer

Reported by: Michael C. Watkins

Official Court Reporter

THE COURT: Thank y'all for getting together. Is it -- do I say that correctly, Gersten? Do I say that correctly?

MS. GERSTEN: Oh, hi, yes. This is Heidi Gersten. Did you receive my emergency --

THE COURT: Ma'am, ma'am, ma'am, let me -- we're making a recording of everything that's here, so let me start and I'll get right back to you on that. Okay?

MS. GERSTEN: Oh, I didn't know, are you the Judge or the clerk?

THE COURT: I am the Judge, ma'am.

MS. GERSTEN: I apologize, I didn't know. I just wanted to make sure that I put motion for a continuance on --

THE COURT: Yes, ma'am, we got your motion. Let me start this hearing and we'll get right back to you. Okay?

MS. GERSTEN: Okay. I apologize, I didn't know that I was connected.

THE COURT: Thank you very much. We've got -- this is the matter that has been scheduled as Gersten versus Carter. I've got this as being case number 2018-CP-12-00117, and 2018-AP-12-00074. Prior to beginning this hearing I received an email request from the plaintiff for a continuance, as well as an attached 27 page memorandum. I was provided copies of an exchange of emails from plaintiff and defense counsel indicating that there was not an

agreement on the request for a continuance, so we will start with the request for a continuance. Ms. Gersten, I've reviewed your memo and then I reviewed the -- Mr. Sawyer's response where he did not agree to it. Is there anything else that you would like to add to your memo on the request for a continuance?

MS. GERSTEN: Well, other than I'm sitting in diarrhea and urine at the moment being paralyzed with a pressure wound, and I'm just not able to proceed properly like this. This is very hard for me. I didn't expect this, I got sick, I didn't want this, but there were extenuating circumstances. And I'm a member -- a qualified individual of the Americans with Disabilities, and it's also an accommodation request under Title Two. And everything that I put in you called it a memorandum, the 27 pages, I attached pictures in case anyone didn't believe me, and they're graphic and gross, but this is part of being paralyzed, this is part of it. I ask for if anything a small continuance so I can least clean up and not be like this.

THE COURT: Okay. Thank you very much for that. Mr. Sawyer, is there anything that -- I just received your emails indicating that you did not agree with it. Is there anything else that you would like to add?

MR. SAWYER: Judge, very, very briefly, and thank you

for your time, Your Honor. May it please the Court? I represent Kevin Carter who's the remaining defendant in this case. But just to give the Court context for the reason that we don't consent to this continuance. This case has been riddled with motions for continuances and motions for extensions. On August 22nd of 2018, there was a motion for a continuance filed by Ms. Gersten in connection with a worsening pressure wound. When this hearing was scheduled last year on January 13th, on January 4th she also moved for a continuance citing numerous other cases she was involved in, and stating that she was a victim of a crime and had litigation going on in Florida. In the Court of Appeals she filed, I believe, eight motions for extensions, four of those referenced pressure wounds, one of them referenced diarrhea explosions, and then other ones referenced other reasons for request for continuances. And then ultimately the Court of Appeals dismissed the case when she failed to comply with an order to provide information and to file a return, and then it went to the Supreme Court and was also denied there as well. So, Judge, if we didn't have such a long and repeated history of this it would be one thing. The other thing that I would note, of course, is her motion itself states she spends I can't remember if it was four or five hours drafting the motion for a continuance. She's here by phone, the Court has accommodated by allowing her to

attend by phone, so I don't think that the burden to attending today's hearing is overwhelming given the circumstances.

THE COURT: Okay. Ma'am, is there anything that -- since you're the moving party you get to close and offer me anything in response what he just stated.

MS. GERSTEN: Thank you. He -- everything he's saying is very misleading, because I've never once had this like this, not like this. And the pressure wound, yes, it's ongoing, just like being paralyzed. It's not something that I can just say: Well, you know, I mentioned I was paralyzed everyday of my life and she keeps talking about being paralyzed -- are you there?

THE COURT: Ma'am, I'm listening to you.

MS. GERSTEN: My phone -- I apologize, the phone, it looked like it cut out, my apologies. And this is the trial court, he's bringing into the appellate court and those were separate issues but still ongoing. And this is unique because those were -- you make an order to the appellate but there's no oral hearing, so I was never actually sitting in urine and feces like I am. And when he says that I put it took me five hours, yes, in between trying to swim through my own diarrhea. I mean, I hate talking like this, this bothers me but this is my life. I didn't want this. And I took the pictures and submitted them so that nobody thinks

I'm making this up, because if I didn't the way he sounds, the way Mr. Sawyer sounds, I'm just using this as an excuse. But this is legitimate. What am I supposed to do? Okay? And because this means so much to me I chose to go ahead and just bypass what should be the first thing to do, which is clean yourself up, because I knew that getting a continuance would be challenging. You don't think that I'm crying inside thinking why? Why now? Well, I don't know. This is where I'm at and this is -- he doesn't agree. I apologize, but I have no control over my bowels and no caregiver, no aid, nada. I'm by myself right now. And if you need more proof I'll take more pictures.

THE COURT: All right. Thank you for sharing that with me, and I'm very sorry to hear that you're going through this situation that you've related to us. All right. These are my options. You know, we've prepared for this hearing, these are old cases, they are dated 2018, actually one is dated 2019 -- I'm sorry, they're both dated 2018, so these cases need to bring -- need to move forward. Due process not only applies to the plaintiff but it also applies to the defendants, and so both sides are entitled to fair process that brings a reasonable resolution of the claims, or counterclaim, or the positions of the parties. So this is what I'm willing to do, and I would like to get input from the parties, the motions that apply that I have been told

that I need to address, some of them actually don't apply, and so I can summarily deal with those issues because I don't think a resolution of those issues prejudice either the plaintiff or the defendant in this case, they just need some type of final resolution, so I will go ahead and take care of the matters that have been assigned to me that just need to -- they're like housekeeping matters as opposed to substantive matters. On the substantive matters, what I would propose is I am actually assigned back into the circuit the week of August 15th, I could schedule these hearings since we will be doing these hearings remotely, I can work back -- I can work the hearings back in the week of the 15th, and then if that's not appropriate I could also work in the hearings at some other time. Again, given the fact that Court Administration is allowing us to do remote proceedings, the burden on the parties, as well as the Court itself, will not be that significant to actually reschedule this. So, in short, I'm going to grant the continuance, but before I grant the continuance we need to go ahead and get this thing rescheduled. So how does the week of August the 15th work for the parties? And I'll let the plaintiff go first.

MS. GERSTEN: I'm just surprised that it's my brother's birthday, and I mean, I want to say yes because I don't want to delay, but I'm like of all days.

THE COURT: Okay. Well, I'm not saying the 15th, I'm saying the week of the 15th.

MS. GERSTEN: Oh, okay. Well, what day?

THE COURT: What day would suit you?

MS. GERSTEN: Well, if we could not have it on the 15th, just -- it's my brother's birthday, that's --

THE COURT: Okay. So any day, Tuesday, Wednesday, Thursday, or Friday, that would suit you?

MS. GERSTEN: That's fine. And I will prepare accordingly and make sure that I very much watch what I eat more than ever, not that I have control, but yes.

THE COURT: All right. Then let's -- how about, Mr. Sawyer, do you have any conflicts that week that I need to know about?

MR. SAWYER: Judge, we'll make any day that week work, thank you so much.

THE COURT: Why don't we pick Thursday the 18th at 10:00.

MS. GERSTEN: That's August 18th at 10:00.

THE COURT: Right. The reason that I picked that date is that I am assigned other court matters that week and it would be easier for the Court if we did it later in the week on a Thursday then at the beginning of the week, because I would have other matters that possibly that it would conflict with that I would have to take care of. So that

will give me enough time to get through some matters, so I will hear y'all -- we'll get back together Thursday on the 18th, August 18th, at 10:00. Okay?

MS. GERSTEN: Can I interject one thing, though, as I'm thinking about it?

THE COURT: All right.

MS. GERSTEN: Okay. So my mother passed unfortunately this year, I have not received the death certificate yet. So I'm not even sure how I'm able to proceed, if I need an attorney or if the power of attorney that she granted me, the durable power of attorney is -- I'm not asking for legal advice, but this becomes more complex because she is a listed plaintiff and the owner of the van in controversy, and I never expected or -- it saddens me that she passed, but I don't know what to do at this stage concerning her because I would like to move forward with her claim as well.

THE COURT: Well, thank you for highlighting that to us. I -- you are right, I am not in a position as a Judge that I can give legal advice. But I will tell you that, as I tell all pro se litigants, I'm of the very strong opinion it's not a wise thing to do for a pro se person to ever represent themselves in a court of law. And so -- and this is -- because very frequently pro se litigants, they are held to the same substantive standard that lawyers are, and lawyers have been -- not only received a formal education

but probably have a lot of experience working through the court system. And I find in my experience as a Judge that sometimes all too often the Rules of Evidence and the Rules of Civil Procedure, which apply equally both to a pro se litigant as well as litigant represented by an attorney, will frequently in layman's term trip up a pro se litigant, and that sometimes the merits of a proceeding are never addressed because pro se litigants failed to comply with the Rules of Evidence or the Rules of Procedure. So I always encourage pro se litigants to seek the advice of counsel, and this is one of those times where I can express to you my very strong belief that you do need to talk to a lawyer. So you asked my opinion on that so I expressed it to you. I would encourage you to do that, and if you do let the lawyer know that we have this hearing scheduled for August 18th at 10:00.

MS. GERSTEN: Well, here is the thing, because now that we're talking about my mom, I mean, I would like to have a little extra time so I can do that because I wasn't factoring that in, and I don't want to --

THE COURT: Ma'am, let me suggest something to you. You are a pro se litigant, you do not have the authority in South Carolina to represent your mother, nor do you have the authority to represent her estate, so any questions that you would raise about that matter are premature and I would not

want to put you in the bad situation of one day being accused of practicing law without a license.

MS. GERSTEN: No, I'm not doing that, that's why I'm being forthright with the courts right now. And I'm saying to you that I would like to explore chatting with an attorney to represent her I suppose as a deceased person, but that would require more time.

THE COURT: No, ma'am, it will not require more time for the matters that have been assigned to me. And so you definitely -- I encourage you to go talk to a lawyer on behalf of your mother's estate, you can do that between now and the 18th. And if you do talk to a lawyer and they decide to represent the interests of your mother, they can advise the Court and we can address those issues at that time. I think it puts the cart before the horse for me to make any comments or to express anything about that without having a proper person that can represent the legal interests of that of your mother's estate. Okay?

MS. GERSTEN: I didn't understand what you just said, I apologize, it's a lot to process.

THE COURT: In a nutshell, you need to go talk with a lawyer because you can't represent your mother's estate. Okay?

MS. GERSTEN: Not even with a durable power of attorney?

THE COURT: Ma'am, I can't tell you whether that would suffice or not, but I can tell you that in my history it would not. But a lawyer may very well tell you differently and I would look forward to receiving that argument from a lawyer.

MR. SAWYER: Your Honor, thank you so much for your time today. This morning with this motion for a continuance is the first time I have heard of Ms. Ayoub's death. Can I ask on the record of Ms. Gersten the date of Ms. Ayoub's death?

MS. GERSTEN: I didn't hear you, could you please repeat what you just said?

MR. SAWYER: Yes, ma'am. I was wondering what the date of your mother's death was.

MS. GERSTEN: I was told January 11th of 2020. I only got information, being paralyzed I couldn't even be there.

THE COURT: All right. Now, I noticed in one of the pleadings that beside your mother's name there was a parenthesis that she had been deceased. So you're informing us all that your mother passed away in January of 2020?

MS. GERSTEN: Yes. No, no, no, '22, January. Without a death certificate I don't actually know, and I'm not sure -- I mean, hopefully I get it before next -- you know? It's in the process, I just don't have it handy and I wasn't there, I only received the phone call from a relative --

it's a long story, I'm not going to get into it. So I don't have all of the information other than that's approximately to the best of my knowledge that's the date.

THE COURT: All right. Just be aware that we're not dealing with the mother's issues, we're dealing with the claim that you have brought. We look forward to receiving -- yeah. I think you talk with a lawyer, a lawyer will get involved and make the appropriate contact with the court officials and with the lawyers on the other side. Okay? Well, listen, thank y'all very much for your time. We will -- I'll see y'all, again, on August 18th at 10:00. Now, part of the -- since we already know this far in advance that I will be doing it, I'm sure the clerk of court will do what they do, but my office will try to informally not by any rule, but just as a matter of courtesy to the parties in this case, we might be sending out some emails just letting y'all know about anything that we think y'all need to know about, you know, changes or stuff, but we'll be in touch with y'all, but do look for notification.

MS. GERSTEN: That's something I put into my order that according to the rules the new -- the one issued by the South Carolina Supreme Court, it says that a non-lawyer is supposed to make written consent, which they never have. And I put a stipulation that I will consent to receiving court documents if the defendants also agree. Otherwise I

have not -- I have not consented to any receiving of including the notice of hearing. That was a surprise to me because I have never received any documents via email through the courts and --

THE COURT: Okay. I did notice in your motion for continuance you did make other types of requests for relief. Do you wish to argue those other types of requests for relief?

MS. GERSTEN: Well, yes, because -- this as a self-represented litigant who is not an attorney admitted to practice in this state may consent, it doesn't say must. It is not required in writing to be served by email and designate an email address for service, and then a lawyer may consent in writing to accept service by email from a self-represented litigant. So I'm not even aware if Mr. Sawyer will accept service by email or not.

THE COURT: Okay. I tell you what, Ms. Gersten, if we're going to argue these other requests that you have made in your explanation in your 27 page memo wanting the continuance, we'll just go ahead and do the motions today, too, then we don't have to get back together in August. I'm coming to the conclusion that you have the ability and the willingness to argue your motions of the other requests, that I hear your motions, or your motion for a continuance, so it's sort of coming -- it's sort of telling me that you

have the ability and wherewithal to argue the other outstanding motions. Do you wish to proceed?

MS. GERSTEN: We can just go to the 18th when I can at least clean myself up. I mean, it's interesting how the will -- the human spirit that I have is greater than my condition sometimes and how it can be flipped on me is amazing to me. No disrespect to you, sir. I hope none of you -- I hope none of you experiences being paralyzed because it's not fun.

THE COURT: And Ms. Gersten, I say this with all sincerity, if there becomes a time in the course of this litigation where you feel like that -- and you still want to pursue in representing yourself, if there comes a time where you feel like that you cannot physically or mentally or ever however represent yourself, ask the Court for assistance in having someone appointed to stand in your shoes. Okay?

MS. GERSTEN: I didn't know that was an option.

THE COURT: Well, we can -- if you lack the mental capacity or the physical capacity in order to represent yourself there can be guardians appointed for you and we can explore that as an option. Of course, we would have to hear from the other side whether they agree or disagree, but we can try to find someone to actually be able to come to court in an appropriate manner so that due process for both sides is not violated. Okay?

MS. GERSTEN: Well, I'm not claiming that I'm incompetent, I want to be clear about that, and the law for a vulnerable adult is not an issue of competency.

THE COURT: Okay. Well, if that ever gets to be a problem you let us know.

MS. GERSTEN: Is that an issue of competency that you're referring to?

THE COURT: If you feel like ever you get to the point where you can't represent yourself either due to physical problems or a mental problem you let us know. Okay?

MS. GERSTEN: Well, you say physical or mental, so if I said physical, which is what I'm in, that does not include mental; is that correct?

THE COURT: Those are two different words to this Court.

MS. GERSTEN: That didn't make sense to me, there are two different words, mental and physical.

THE COURT: Ma'am, I think you get my point, is that we need to move forward with these cases.

MS. GERSTEN: I'm here in the sitting in my own feces and urine because I get the importance. I know that the courts don't have the -- I mean, thank you for the continuance but this is a hard road and I get it. And I get it.

THE COURT: Anything else, ma'am?

MS. GERSTEN: I suppose I should put it in writing that you don't think that I wanted to pursue more issues.

THE COURT: Ma'am, I'm giving you the option, if you want to pursue the rest of the issues we'll be more than happy to go ahead and hear them absent some objection from Mr. Sawyer.

MS. GERSTEN: I get it. I feel at this point -- my brain is not 100 percent because of my situation right now, I would like to clean up. Yes.

THE COURT: Okay. So which will see y'all on the 18th. If you have issues with Mr. Sawyer, I've never met Mr. Sawyer, don't know Mr. Sawyer, he's never appeared in front of me, but you can reach out to him on any issues, and then if you can't just reach out to the Court and we'll be glad to be of assistance to you. Okay?

MS. GERSTEN: I agree. I'm willing to be amiable with you, Mr. Sawyer, like we have in the past, today was a surprise to me.

THE COURT: All right. Then we will see y'all on the 18th.

MS. GERSTEN: Oh, how do I get my transcript? How do I get the transcript?

THE COURT: Transcript?

MS. GERSTEN: Isn't this a -- I was told that there was going to be a court reporter.

THE COURT: There is a court reporter. You need to reach out to court administration and they can advise you how the order the transcript. Okay?

MS. GERSTEN: Well, how do I reach the court administration?

THE COURT: If you had a lawyer that would be really easy to answer, but court administration has a website that you can go to. Okay?

MS. GERSTEN: What is the website called?

THE COURT: I do not know it, but I generally look up South Carolina Court Administration and it usually comes up.

MS. GERSTEN: Do I get even a name of the court reporter?

THE COURT: Mike Watkins is our court reporter assigned to us.

MS. GERSTEN: Mike Watkins?

THE COURT: Yes, ma'am.

MS. GERSTEN: Okay. And so I will just contact the court administration.

THE COURT: That would be my suggestion. There might be easier ways but I do not know.

MS. GERSTEN: Okay.

THE COURT: All right. I will see y'all on the -- or hear from you on the 18th at 10:00.

MS. GERSTEN: Okay.

THE COURT: Thank you very much.

MR. SAWYER: Thank you, Your Honor.

MS. GERSTEN: Thank you.

(End of the hearing.)

August 18, 2022
Hearing Transcript
In Case No. 2018-CP-12-00117

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHESTER

2018-CP-12-00117

Heidi Gersten

Vs.

Kevin Carter, et al.

Webex Hearing

August 18, 2022

Before the Honorable Mark Hayes

APPEARANCES

For the Plaintiff: Heidi Gersten, Pro Se

For the Defendants: Wesley Sawyer

Reported by: Webex (transcribed by Michael C. Watkins Official Court Reporter)

THE COURT: Ms. Gersten, can you hear me okay?

MS. GERSTEN: Yes, I can, sir.

THE COURT: Okay. And I can hear you fine. Mr. Sawyer, can you hear me and Ms. Gersten all right?

MR. SAWYER: I can. It's coming in a little soft but I think I will be able to make due, Your Honor.

THE COURT: Okay. If ever either of you cannot hear me just let me know and I'll move closer to a microphone or move around. Thank y'all for getting together for the reconvening of this hearing. I have got -- according to what was submitted to me by the Clerk of Court's office we've got four -- well, five motions that were given to me to be heard. I did review them prior to our last time we got together, also I reviewed them prior to us getting together this time. One of them I'm going just to throw out there and suggest that I not address because it is the plaintiff's motion to recuse or disqualify Judge Gibbons and Judge Hayes. The Judge Hayes that she's referring to is the Judge John Hayes. It is customary that, and I think that the rules will provide that in the event -- well, first of all Judge John Hayes is now retired so he would never hear any of these cases -- that the motion to recuse or disqualify would need to be addressed to the judge that actually is being asked to be disqualified or to recuse himself, so I would just put that one aside. And that in

the event that ever Judge Gibbons is asked to address anything that the plaintiff believes needs to -- that issue of recusal or the issue of disqualification needs to be addressed it can be addressed by him at that time. Because I don't -- it's not proper for another circuit court judge to disqualify another circuit court judge, so I'm going to move that one aside. The other remaining four motions I'm going to take in order of filing. Some of them -- and by me taking them in this order I don't want either side to believe or to infer that there is some predetermined outcome for the -- or how the motion should or should not be addressed, I'm just going to take them just as they got filed, because to me that chronologically makes the most simple way to address them. So the first motion is going to be the plaintiff's objections and opposition to designation of non-jury docket and motion to transfer to the appropriate docket that was filed August the 22nd, 2018. And it could be that there's a history in this case that now some of these motions are moot or no longer needs to be addressed by the Court, but if that is the position, you know, let me know, but I did not want to presuppose any type of argument from anybody. So with that being the first motion, Ms. Gersten do you wish to -- me to address that motion or hear any further arguments other than what you've filed in the written document?

MS. GERSTEN: Well, actually that was one that I think that has already been fixed, hasn't it? Or --

THE COURT: Okay. I couldn't tell. I thought it might have been but I'm not -- I didn't want to suppose anything. I did view the file and it did look like that that one probably has been resolved, so thank you for sharing that with me.

MS. GERSTEN: I mean, if I'm incorrect I'll address it later, but that wasn't one of the ones that I was focusing on today, but thank you for bringing that up.

THE COURT: Certainly. Thank you for sharing that with me. And then the next one, and it might be this is the same type of resolution, plaintiff's motion to amend with or without leave, plaintiff's motion to alter or amend judgment or relief from judgment that's dated August the 29th, 2018. Do you feel that that motion is still pending or needs to be resolved in some way?

MS. GERSTEN: Yeah, I do. Let me get my documents for that. I just require a minute of patience, there's a lot to sort through. But honestly, I think before we get into those, I think that my emergency motion that I filed on the 28th, there was some issues that were left unresolved, so before I get to the amended one I think we need to talk about my Title Two of the Americans With Disabilities reasonable accommodation request. Did you remember that

one, sir?

THE COURT: Ma'am, I do not have that one. I have your motion where you filed and asked for the continuance based upon, you know, when we started the last hearing, and I believe I granted your request for the continuance.

MS. GERSTEN: Right. But there was more on there. As I was proceeding to talk about it you very kindly said to bring it up at the next hearing, so that's why I bring it up.

THE COURT: Well, thank you for bringing that up. Let's bring that up in order, though, of filing and I will be more than happy to address that at that time.

MS. GERSTEN: Oh, okay, okay, okay. That's fine if you want to put that later then that's fine. Okay. So let me get my ducks in a row here.

MR. SAWYER: While she's getting her papers organized, I just -- as a matter of housekeeping, I think we've got an updated motions roster where some of these motions have been dropped or other motions are on, so just to bring that the Court's attention. And there's a second motion to amend complaint with leave that was filed October 22nd, 2018, by Ms. Gersten, I believe, because that's the second motion that's probably the operative motion for a motion to amend that we should address. And I don't want to jump ahead of things, I just want to avoid unnecessary confusion.

THE COURT: So the October 22nd, 2018, supplanted or leapfrogged over the August 29, 2018 motion?

MR. SAWYER: I would expect so since the August motion was before Judge Hayes, the other Judge Hayes heard the motions to dismiss and the other matters.

THE COURT: Okay. Ms. Gersten, do you -- what I heard from Mr. Sawyer is that the -- your October 22nd, 2018, motion to amend is the one that we need to hear.

MS. GERSTEN: Well, no. Actually there are two different ones. I can sort of do a combo on both of them if you would like because they're similar.

THE COURT: Okay. If you want to do that, that would be great.

MS. GERSTEN: Okay. Do you want me to just start talking?

THE COURT: Sure. I will be more than happy to hear from you. What we'll do is you give me -- I've got the written motions and you just -- this is your chance to present your oral arguments as to those motions. Once you are finished then we'll turn to Mr. Sawyer to get his response, so please listen to Mr. Sawyer, and then if you have anything that you wish to present and reply to Mr. Sawyer I'll let -- you have the opportunity to reply to anything that he said, but your reply really should not present any new arguments, you're just replying to his

arguments. Okay. I'll be more than happy to hear from you.

MS. GERSTEN: Okay. First of all I just want to say thank you to you, Mr. Sawyer, all of the clerks, the court reporter. South Carolina is a fine group of people, one day I might move there. I just want to put that out there because I'm litigating in other states that are not like this, so I really appreciate you. And with that being said let's talk about the motions. Okay. So back in 2017, let me bring it back to how I even got in to this, of course. Oh, and I just wanted --

THE COURT: Let me ask you to do this: We have other matters to do. If you would, explain to me what it is that you're wanting to amend and then you can give me a narrative as to why you want to amend it, let's do it that way. Because your task in presenting an oral argument is to persuade me to decide in your way, so help me understand what exactly you're asking me to amend. Start with that and then tell me why.

MS. GERSTEN: Okay. Well this has to do with the very first order that was made on April 26th, 2018, by Judge Gibbons. Okay. It was a consolidation order. I never had a ruling on this even though I filed -- I was the first one -- you brought it up, you said it was the first one that needs to be addressed and the first one I filed. Why it was filed is because I already know, I saw that this was going

to confuse everything, because the consolidation was not supposed to take away the arbitration, the property damage arbitration for property damage that I found. It's Title 38, Chapter 77, Article 7 of the South Carolina --

THE COURT: Let me interrupt again because I want to be sure I'm understanding you. What are you asking me to amend? You can explain to me, but clue me in as to what you're asking me to amend. Are you asking me to amend a complaint? Are you asking me to amend a prior order? Are you asking me to -- what is it you're asking me to consider that needs to be amended?

MS. GERSTEN: Okay. Bottom line is I feel the arbitration matter should not be dismissed. It was never dismissed by any order. I would like to have the property damage just as the law says, where it's supposed to be a sit-down with three neutral attorneys that are brought in, it was a $5 thing, for property damage only for liable parties. And liable parties, according to the law, includes insurance companies. I've read books, I've read whatever and it was supposed to be done within 60 days --

THE COURT: Let me ask you this then, Ms. Gersten, I'm sorry to interrupt, because I need to understand this, are you asking me to amend a prior order that Judge Gibbons signed that consolidated the arbitration with the liability claim? Is that what you're asking me to amend?

MS. GERSTEN: Yes.

THE COURT: Okay. All right. So it's the prior order that was signed by Judge Gibbons. Okay. All right. So your position is that Judge Gibbons was wrong?

MS. GERSTEN: You know, he may not have been wrong. Okay. But the merging confused -- I think confused everybody. And what I mean by confused is by merging it was not supposed to prevent or preclude an arbitration hearing from happening. It was -- it was meant for a trial purpose is how I interpreted it. Okay. So I think that the order had it not happened then we would have had an arbitration. I was expecting to sit down with all parties and it says that I can bring in -- it's supposed to be summary. I mean, you know, I can read the law to you but I'm going by how I took it. It's supposed to be the arbitrators were going to hear the matter in the courthouse so it doesn't preclude anyone if they weren't happy with the results of having a jury trial after. It was basically -- I looked at it as your -- like a mediation, like a chance for the meeting of the minds, and I had everything prepared for that and it never happened. And it's -- to my understanding property damage claims in South Carolina, you can't get an attorney for contingency on property damage. This was explained to me that it was summary in nature and that it was supposed to be simple and geared for non-attorneys, and that's me,

that's what I wanted to start with, and it never happened. We never had -- we never had this arbitration. I mean, I can read the law into the record but it's in my -- it's in my motion, I clearly talk about --

THE COURT: It is. And I also read your motion and I just wanted to be sure that I understood correctly what you were asserting, and so I do understand -- that is -- the way you presented it to me verbally is what I understood your motion, or your -- I won't say your complaint with what Judge Gibbons did, the way you've explained it is consistent with the way that I read your files.

MS. GERSTEN: Can you say is it so that I can see if you're understanding? Because you're very good at just summarizing this in quick words. So what do you think -- how are you interpreting what I'm saying to you?

THE COURT: Well, that's -- part of what we do in these hearings is you have to persuade me to your position, and so what I'm hearing is that you took issue or you disagreed with Judge Gibbons of consolidating the liability claim with the arbitration claim that is allowed under the arbitration process of doing property damage claims, and that you didn't like that and you wanted to have them separated so you could do your property damage separately from your liability claims.

MS. GERSTEN: That's part of it, and the other part is

the fact that there was no hearing on his consolidation order. I felt like, you know, government is supposed to notice and an opportunity for a hearing, so there was never a hearing on the consolidation anyway. It just came out as all the sudden, you know, we have the motion hearings, and I feel like this was -- this should have happened before any motion hearing, this one, because that's the way the law was written.

THE COURT: Okay. So you've got not only a substantive issue, we also have a process issue with what Judge Gibbons did.

MS. GERSTEN: You're amazing. I really appreciate the fact that --

THE COURT: Can I get that in writing from you? I would like to share that with other people that feel otherwise, but thank you for saying that.

MS. GERSTEN: I didn't -- what did you just say?

THE COURT: I said thank you for saying that because a lot of people don't say that about me.

MS. GERSTEN: Oh, I'm not trying to look for favoritism at all. As long as you're fair and neutral in this process, we're making a record today and I'm very happy to be here. Just like I've always said, I really appreciate Mr. Sawyer because he's been kind to me as well, and that's all I can ask for.

THE COURT: Okay. Well, thank you. Let me do this, let me get Mr. Sawyer's response on that, on the issue of the order that -- where Judge Gibbons consolidated the property damage claim with the liability claim. You're muted, Mr. Sawyer. Mr. Sawyer, I've got you muted, I'm not sure --

MR. SAWYER: Sorry. It's been awhile since I've had a Webex hearing, Your Honor, but thank you for fixing that for me. Your Honor, I appreciate your time today, thank you for hearing these matters. As to the issues of the property damage arbitration, when the subsequent broader lawsuit was filed in the circuit court we filed a motion on the view that you can't have two separate claims, you can't split your claims against one defendant, you have to bring all of your claims arising out of the same set of facts or circumstances in one lawsuit, and that's well established South Carolina law. And by bringing the circuit court action, of course, that would be the proper action to survive between that and the property damage arbitration claim. And as a result Judge Gibbons signed the administrative order acknowledging that essentially consolidating the two cases into the circuit court action, which will, of course, include the property damage claim, and, you know, at the time included the other claims asserted in the complaint, many of which, of course, have

now have been dismissed. But the rule in South Carolina is you can't split claims into property damage, arbitration is not an exception to that rule. In fact, it's been my experience and common practice that when there is a property damage arbitration pending and a plaintiff's attorney subsequently files a bodily injury suit in circuit court the parties have in every case I've ever had agreed that at that point the property damage claim has to be consolidated or dismissed and brought before the circuit court. Judge Gibbons just followed that practice, which is in compliance with South Carolina law, and I think that's a proper basis. In terms of procedurally, Rule 59, Judge, I don't know that there's any evidence that a copy of the Rule 59 motion was sent to Judge Gibbons, which, of course, we know is required by the rule, but that's a technical procedural matter. But substantively the ruling was right and frankly typically, of course, Judge Gibbons would have to hear a motion to reconsider his own ruling.

THE COURT: Let me ask you a question. So my understanding in my involvement with the litigation is that the facts and the law arising from the liability claim and the property damage claim is going to be identical; is that correct?

MR. SAWYER: Yes, Your Honor.

THE COURT: All right. But the difference is --

between the liability claim and the property damage claim would be the actual damages that are sought. Because in a property damage claim a plaintiff seeks damages for an automobile or property damage, but in the liability claim the plaintiff seeks damages for things that are what I call personal injuries or loss of income, bodily injury, emotional damage, those types of things; is that correct?

MR. SAWYER: Well, Your Honor, I think generally they can choose what they want to bring when they bring a complaint, and they can choose to include property damage with their bodily injury claims, or they can choose to only pursue bodily injury claims, but what they can't do is split their claims. South Carolina doesn't allow claim splitting against one defendant. We do allow, of course, separate lawsuits against different defendants, but we don't allow separate lawsuits against the same defendant arising out of the same facts and circumstances, all of those claims have to be brought together in one action.

THE COURT: Okay. I think I understand that. Ms. Gersten, this is your opportunity to present any argument that you wish to present in reply to what Mr. Sawyer just argued.

MS. GERSTEN: Okay. Well, the thing is that I did serve Judge Gibbons, I want to be clear about that. I'm not putting Mr. Atkinson on the spot here, but on that date, I

believe it was May 8th -- because right after I went to a hearing in front of Judge Zamore where I personally witnessed Mr. Sawyer's client, Mr. Carter, plead guilty to reckless driving, and prior to that I went over to the courthouse and I made sure that Mr. Gibbons was served. So I want to make sure that I'm clear that I did follow that part and made sure that he was personally served. Now, getting back to originally filing this arbitration claim, that was really all I was going to do. After speaking to Mary Orr, who I heard that she passed, I think she has passed, I apologize, I'm not sure, but I think she did, but prior to her passing I spoke with her on August 30th, 2017, with regards to filing the arbitration on a property damage liable claim, that was the original plan. But when I realized after speaking with her that she didn't even know what I was talking about and she asked me if I could send her a copy of the law that she could give to the Judge, because she said she spoke to Judge Gibbons and he was unfamiliar with this as well. Now, maybe there have been times that it was filed, but at the time that I called she specifically did not know what I was talking about, put me on hold to talk to Judge Gibbons, came back and said: Send the law. So on August 31st, 2017, I sent the law, one day after I spoke with her. I put together a letter, it's in the file, and I showed her the law, and she said -- called

me back and said: Okay. We're going to do it. When I realized time was going by by the time I filed I got nervous. Okay. You yourself said that often pro se clients, which I want to interject that there's plenty of case law that says there's supposed to be leniency towards pro se's, plus I'm a vulnerable adult with a pressure wound. I've got all these things against me, and lawyers -- attorneys in South Carolina have access to e-filing, which even to this day, correct me if I'm wrong for this because I do e-filing, so there's always been this not held to the same standards but below standards as a pro se, as one in a wheelchair and all of these negatives. So I filed with my mother and at the time my brother just to CYA, cover our butts, to make sure that we didn't miss the statute of limitations. And so really it's separate plaintiffs -- I mean, sorry -- well, no, because my brother was added to the claim --

THE COURT: Well, Ms. Gersten, before you get too far array, this is the part where you get to respond in a reply to what Mr. Sawyer argued, and so don't bring up new matters because that would be inappropriate at this time, respond to what he was saying.

MS. GERSTEN: Oh, I was bringing up what he triggered. He triggered these things to me that made me think of things that -- and, of course, we didn't actually cover --

everything we're talking about has to do with the first one, not the second filing that included Judge Hayes. This is the amendment strictly for the order made by Judge Gibbons.

THE COURT: Correct, yeah. That's what we're dealing with, just the one with Judge Gibbons right now.

MS. GERSTEN: Okay. I just wanted to be clear. So when he's saying that they're supposed to be separate, or that they're supposed to be together even under consolidation, even the law says it doesn't mean that you -- they still have their own separate issues to deal with. I wasn't supposed to have the arbitration hearing when it's not supposed to be removed, that's not what consolidation even says. Consolidation is supposed to keep everything still as it is for purposes, I guess, to keep the trial aspect of it. But nowhere in the order does it say no more arbitration, it just is putting the matters together and they are separate, they're distinctly separate. As a matter of fact even insurance is separate that you've got -- they're separate, they're not the same or identical, they're different and separate. And I still would like to have the arbitration hearing even with the parties that were dismissed because they should not have been dismissed.

THE COURT: Okay. I think I understand that. Okay. All right. Thank y'all very much for your presentations. Now, on my list the next matter I've got would be

plaintiff's notice of motion to amend the complaint that was also filed October 22nd, 2018. Do you have that, Ms. Gersten?

MS. GERSTEN: I'm looking for that one right now. It's the one for October 8th?

THE COURT: I've got filed October 22nd, 2018.

MS. GERSTEN: You have October 22nd?

THE COURT: My summary reads that it was filed on October 22nd.

MS. GERSTEN: My file stamp says the 8th, October 8th.

THE COURT: Of 2018?

MS. GERSTEN: Yeah, that's what my file stamp says, October 8th.

THE COURT: Give me one second. Your stamp is better than mine because my stamp is so light I can barely make it out. I've got -- okay. The title of the one that I'm looking at reads notice of motion and plaintiff's motion to amend complaint with leave pursuant to Rule 15 request for oral hearing.

MS. GERSTEN: I don't have the leave on here. You said you have notice of motion with leave? It's possible I grabbed the wrong one. It's a big file. See, one of the things that I wanted to address in my emergency motion was --

THE COURT: Okay. That's fine. Ms. Gersten, let's

deal with them as I've got them so that we can --

MS. GERSTEN: I apologize, it's just the Title Two of the Americans Disabilities always says that those are supposed to go first, but it's okay, if you want to do it different it's okay. I'm not mad or anything, I'm just -- it's just important, because part of what I wanted was my disability thing is because I can only sit in this chair for so long. It's easier to do one motion at a time because I have a -- I have a communication disability on top of everything else, so we won't discuss that because you wanted to discuss it later, I apologize.

THE COURT: No, ma'am. I tell you what we can do, I'll take a break because I've got a criminal matter I need to go take care of, and let me go take care of that criminal matter and you can have a break and we'll come back in about probably ten or 15 minutes. Is that sufficient?

MS. GERSTEN: That's not going to work for me because it would take me a half hour to get out of the chair, it's a different road. I'm not trying to be anything hard with you, I'm trying to paint a visual that I'm sitting on a wound. I lost a half hour of time because Attorney Sawyer gave me the incorrect call in access code. I took for granted that his letter dated July 28th, 2022, had the correct information and it didn't and that cost me 30 minutes of time. I apologize. I apologize. So --

THE COURT: Well, I'll take a 30 minute break. No, ma'am, I'll take a 30 minute break and we'll come back.

MS. GERSTEN: Well, 30 minutes is how long it takes me to get out of the chair, if you can give me a two hour break then that would be great.

THE COURT: Okay. Well, I tell you what we'll do, we'll reconvene at 3:00, How about that?

MS. GERSTEN: Oh, that would be amazing. Are you okay with that?

THE COURT: Mr. Sawyer, does your schedule permit that we reconvene at 3:00?

MR. SAWYER: Yes, Your Honor, I'll make due. That will and fine.

THE COURT: Okay. We'll reconvene at 3:00 then, I'll see y'all then.

MR. SAWYER: Judge, I assume that you'll close down the Webex for now?

THE COURT: Well, I have to. I don't know whether -- my administrative assistant, Sharon, is, I guess, the main host so she'll do what she does.

MR. SAWYER: Okay. And, Judge, just one point, because I know the roster you're running off of is the previous roster. On the roster for today is one additional motion, which is in light of learning about Ms. Ayoub's passing away, we filed a motion to dismiss under Rule 25. So I know

that -- it sounds like you may be running on the previous roster so I wanted to make sure I brought that to your attention.

THE COURT: Okay. If you could -- well, what I'm working under is we did a -- it's not really a roster/roster, it's not prepared by the clerk's office, it's just a summary that my office generated. If you want to be sure that I've got that, if you want to go ahead and be sure that you send it to me to get a hard copy since I am physically not in Chester, I am physically in Fairfield now, but at 3:00 I'll physically hopefully be in Spartanburg.

MR. SAWYER: So electronic copies, is that what you would prefer right now so you'll have --

THE COURT: Yeah. That will be fine, yeah.

MR. SAWYER: Okay. Thank you, Your Honor.

THE COURT: Thank y'all. See y'all at 3:00.

(Break in proceedings.)

THE COURT: Okay. Thank y'all for getting back together. Mr. Sawyer, can you hear me okay?

MR. SAWYER: Yes, Your Honor, I can.

THE COURT: And Ms. Gersten, can you hear me okay?

MS. GERSTEN: Yes, I can, thank you for asking.

THE COURT: Certainly. Okay. Thank y'all. We will go back and pick up. The next thing on my list was going to be the plaintiff's second motion as I refer to it, second

motion to alter or amend that was filed -- and Ms. Gersten, I did find an October 8th motion that I think you were referencing. And if I understand it -- I've taken a look at it, if I understand correctly this is your motion where you're asking that the prior ruling by Judge Gibbons to be altered or amended pursuant to Rule 52, 59E, and Rule 60(4); is that correct? Does that ring a bell to you?

MS. GERSTEN: Yes. And I think I would like to explain because I also reviewed, because you had said October 22nd, and I see there's a bit of confusion. Under the Federal Rules of Civil Procedure failure to state a claim under 42 USC Section 1983, the Court noted that allegations such as those asserted by the petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer evidence. And it says in part that we hold less stringent standards in form of pleadings drafted by lawyers. And I bring that up only because as I mentioned before, I'm very disabled, a vulnerable adult with a pressure wound, and I'm sitting here and you graciously gave me a timeout because I took a bathroom break and I appreciate that. So getting back to this motion, I think why I have put it in so many times is because I needed a ruling. The first time that I had put it in and it was up in front of the other Judge Hayes, his remark was take it up with the appellate court, but without a written order or anything there was nothing I

could do with it. And I was asked by the appellate judges when he made the ruling, but he never actually made a ruling, so that is why I'm seeking that. Because when I looked in Westlaw I only saw two cases that even referenced the particular arbitration hearing that I'm referencing. One was -- oh, good Lord, this is where my nerves -- I apologize, I really appreciate your patience, but there were two of them. There was one -- no, Cooper. Cooper versus Poston, and Blizzard versus Miller, and that was all I could find regarding the arbitration. So I think this is a first impression -- and I really believe that regardless of which way you go with this it's going to benefit people in the future that I have this confusion. I really think that we're doing a good thing by talking about it, because I came into it thinking it would be simple, to just have a simple, you know, within 60 days sit down with everybody and just talk about the concerns. It was supposed to be moved, no strict procedural, easy breezy, and it was far from that, even to this day it seems to be very complex, and so that is why it is mentioned so many times. And sure -- please do, I apologize, I'm long winded.

THE COURT: That's okay. And so -- and I'm taking a look at the documents. So the relief that you're asking with this particular motion is for me to avoid -- and I'm just going to quote you, the Court to avoid reversible error

and correct the mistake that has been made perhaps due to lack of communication. And so you want me to reverse the prior ruling of Judge Gibbons, and then also of Judge -- and then also of Judge Hayes, the other Judge Hayes; is that correct?

MS. GERSTEN: Well, here is the thing, it may not need to be reversed. But the big issue is I really think in all fairness, including the parties that were -- the insurance parties that were dismissed, there's a very grave miscarriage of justice happening right now, because there were insurance policies. And my understanding of this arbitration has to do simply with the property damage due to a vehicle collision, motor vehicle collision, and that's what this was. Even when I looked up consolidation, which I can read to you, it says that in consolidation matters that the word may is in there, that trials may be still separated. It doesn't mean -- gosh, I'm trying to find that, I don't want to take up a lot of time, I apologize, I had it all together but trying to retrieve what I need to so much. So I guess in answer to your question is that I really just think that these matters, the breach of contract that were put into the actual civil action could be addressed in the arbitration, like a lot of the issues are really for arbitration. I mean, it is undisputed that Kevin Carter and I had something, but these other insurance

companies I had beyond the minimal, and for them to get away with not paying me anything, I got nada. I had over insurance, I have letters, I have evidence, I have so much to present, and I feel that the easiest way in my opinion is to go ahead and let's do that arbitration sit-down. It doesn't, you know -- anybody doesn't lose their right to a jury trial, but it would be less complex, two hours of a round table meaningful chat. I can bring in my big book of 300 pages of -- I'm a musician, all my equipment, everything in that van was destroyed, intellectual property, so much. And nothing was ever paid by any insurance, not the van, not property damage, and that is completely separate from any bodily injury or anything else.

THE COURT: Okay. I think I understand that. And, Mr. Sawyer, do you want to respond to that particular motion?

MR. SAWYER: Yes, Your Honor. And thank you, again, for your time. I think this is fairly duplicative of the motion that was argued earlier today on Judge Gibbons' ruling. I would just bring to the Court's attention the Powers versus Calvert Fire Insurance Company case, it's 216 South Carolina 309, it's a 1950 case. But it notes that when a claim is brought for personal injury -- or arising out of an accident, a claim for personal injury and claim for property damage must be sued in one action or the

omitted claim is lost. So I think that fairly summarily addresses the issue. Obviously if the concern is process, the Rules of Civil Procedure would have required mediation once the case was in circuit court, so there would have been an opportunity for that. Of course, we haven't gotten discovery responses, which is a different motion that you'll hear later on today, Your Honor, that's postponed all of that. But in terms of having an opportunity to sit down and go through it, that could have taken place really a long time ago had things gone differently, Your Honor. But at the end of the day Judge Gibbons' order follows the law. It's really his order that she's asking to have reconsidered. There was reference to insurance, of course, that's not relevant to the Court's consideration in either the PDR or this, they're both civil litigation claims arising out of automobile accidents. And the case law says, as well as Rule 12B8, you can't split your claims for damages for the same tort, same cause of action.

THE COURT: All right. Thank you very much for that. And Ms. Gersten, since you're the moving party on this motion you get to close with any type of reply response to what Mr. Sawyer just argued.

MS. GERSTEN: Thank you. So I think the rule that Judge Gibson (sic) was going under was Rule 42. And in A it says consolidation. When actions involving a common

question of law or fact are pending before the Court it may order a joint hearing or trial of any or all parties in issue in the action. It may order all of the actions consolidated, and it may make such orders concerning proceedings therein and may tend to avoid unnecessary costs or delay. Now in B it says separate trials. The Court in furtherance of convenience, or to avoid prejudice, or when separate trials would be conducive expedition and economy may order a separate trial of any claims, cross claims, counterclaims, or third party claim, or of any separate issue, or of any number of claims, crossclaims, counterclaims, third party claims, or issues always preserving (inaudible) I'm not sure if I said that right, the right of trial by jury is declared by the Constitution or is given by a statute or the state. Now, I'm not sure if this is a part of the same one, this might be the October 22nd thing you're referring to, you'll let me know, but I have a first amended claim for property damage, and in there I think in my opinion if the arbitration is not possible then they should have been ordered to just pay a fee and put them in their separate category. I put them all together not realizing that that was an issue. Okay. But they were definitely pled separately. Breach of contract is a completely different cause of action, and it should definitely be in furtherance of justice and to avoid a

miscarriage be permitted to provide evidence of contracts and documentation to show that there indeed was additional insurance that not only did I bargain for, I paid, and letters of promises. And even Trust Guard offered a check, which they offered the check, sent the check after the action was filed, after the action. And if you scope the transcript you'll see that they did not argue about a arbitration, they were not having a problem with one at all, and they shouldn't, because there was underinsured, and again, none of the property damage was paid. So I think that covers everything with this issue.

THE COURT: Okay. Thank you for providing that. All right. I've got the next motion is going to be the defendant's motion to compel or in the alternate to dismiss. Now, with this motion this is Mr. Sawyer's motion so he is the moving party so he gets to go first, present to me his arguments, and then, Ms. Gersten, you will respond in full to anything you want me to know and then he gets to close by making his reply to your argument. So at this time I will turn this over to Mr. Sawyer to receive his argument.

MR. SAWYER: Your Honor, thank you. And may it please the Court? This is my client, Kevin Carter's, motion to compel, or in the alternative motion to dismiss. Judge, by way of background, as you know from looking through this fairly extensive file, this action was filed in the early

part of 2018. There were a number of motions to dismiss and, you know, attempt to amend pleadings that ultimately were narrowed down significantly by an order from Judge John Hayes, which Ms. Gersten appealed to the Court of Appeals. Those appeals were dismissed by the Court of Appeals after failure to respond to a motion to dismiss and to respond to a request by the Court of Appeals for certain information from Ms. Gersten. That was petitioned to the Supreme Court, which they rejected, and once the remand or remittitur was issued, the remand, excuse me, we promptly served written discovery, including requests for production and interrogatories both to Ms. Gersten and to Ivanka Ayoub, who were the two remaining plaintiffs after the motions practice that took place before the case went to the appellate courts. When we did not receive timely responses to those discovery requests, which were sent in June of 2020, I sent what would be typically a Rule 11 letter asking -- notifying, asking Ms. Gersten and Ms. Ayoub that they were overdue, and also, Judge, asking for deposition dates due to the age of the case and the concern for fading memories. When there was no response to those and no discovery responses provided we filed this motion to compel, which was filed August 26th of 2020, almost two years ago now, Your Honor. Two years have passed. Ms. Gersten asked that the prior -- in a separate hearing last year Ms. Gersten asked

that that be continued due to pending litigation that she had in Florida in another case, and the case was continued, and then we fell before you, Your Honor, this year. Despite the fact that the discovery is well over two years old, and the fact that we've filed a motion to compel that's been pending for very nearly two years, two years within two weeks from now, Your Honor, that Ms. Gersten has moved for two continuances on this motion, and has obviously been aware of this motion and these discovery requests at this point for well over two years. While we've seen other filings we've not seen a single document produced, any interrogatories provided, or deposition dates provided. And, Your Honor, while, you know, in 2020 when this was filed maybe the appropriate relief would have been an order compelling. Given the fact that we're now in 2022, two years later, I think that the more appropriate remedy based upon the status of this case is, in fact, a dismissal. And Your Honor has two avenues that you can choose within your discretion, it's broad discretion, as to whether or not dismissal is appropriate. Those avenues are, one, under a failure prosecute the action, and two, as a sanction for failure to comply with discovery, so either under Rule 41 or rule 37B2C. The Small v. Mungo case addresses the standard for dismissal for failure to prosecute under Rule 41. In that case a party failed to show up for trial, it was their

only time failing to appear for something in the case. The trial judge to manage the docket struck the case and the appellate court affirmed finding that that was a proper exercise in the Court's discretion. It talked about the elements for whether to dismiss, which includes orderly disposition of cases in the face of repeated opportunities to proceed, unreasonable neglect, indifference pled to the rights of the defendants. And, Your Honor, I don't think we could have a better example here where we have two years passing without an effort to respond to basic interrogatories, basic requests for production, or provide dates for depositions. There's been no excuse provided for that. Obviously other things have been submitted to the Court in that time, but there's been no documents produced, no answers to interrogatories, leaving us at a loss as to exactly what to do with the case, Your Honor. In terms of orderly disposition, we've got a four year old case now, and I think the background is relevant, too, in the fact that the reason the Court of Appeals dismissed the appeal was because of after repeated requests for extensions and extensions of time for Ms. Gersten to respond to an inquiry from the Court. Ultimately the Court of Appeals got fed up, gave her a date to provide a response, to which she did not provide a response, and as a result dismissed the case. So there's a pattern of practice in this case of disregarding

rules, including orders from the Court. And Judge, in terms of prejudice, where we are now is not only are we four years into a case and my client is still in, but more importantly now that we have learned that Ivanka Ayoub has actually passed away, so we have, in fact, lost a witness, and lost someone who could have been deposed and provided information in the case. So the prejudice is baked into the situation that we find ourselves in right now. And, Judge, all of those, I think, are more than adequate as a basis under Rule 41 to dismiss for failure to prosecute. I believe you noted at our prior hearing that was continued that the obligations apply to both parties in the case, not just to the defendant, and those obligations have not been fulfilled by the plaintiff. And, Judge, certainly as to Ivanka Ayoub who is not here, now granted we have a Rule 25 motion as to her as well because we believe she's passed away, but certainly that would be another grounds for failure to prosecute as to her claim. Judge, moving on to the issue of it being done as a proper discovery sanction, McNair versus Fairfield County would be the case I would point you to, it's 379 South Carolina 462, that's a 2003 Court of Appeals case. In that case, Judge, you had a much shorter timeline. You had discovery served on the county, the county did actually make an attempt to respond, they provided 800 pages in response to the discovery requests. The plaintiff in that action

moved to compel arguing that the discovery responses were inadequate, the court ordered production, the county failed to comply. All of this took place within one year of the original discovery requests. And ultimately the circuit court, when the county failed to promptly provide supplemental discovery responses, struck the county's answer and its counterclaim. And Justice Hearn, sitting in the Court of Appeals, affirmed that as a proper use and exercise of the circuit court's broad discretion in these matters because there was no excuse for the delay, and found that striking the answer and counterclaim was the only sanction that would create a just result for the plaintiff in that case. And, Judge, again, we're in a case four years in. We've had no discovery, we've lost a witness at this point, and at this point the only just result for this kind of delay and loss of information is to dismiss the case as a proper discovery sanction. There's been no regard whatsoever for the obligations under the rules to respond to discovery. And I know that Ms. Gersten has noted that she's pro se repeatedly, but she clearly has access to the Rules of Civil Procedure. She's been involved in litigation as she's filed with this Court and Florida, she's also been involved in litigation in Ohio, so she's not a stranger to the courtroom, and ignoring the rules of discovery is something that just can't be permitted for four years out

into a case. So while we recognize that it's a fairly drastic result, Your Honor, we think that the record here more than adequately supports that on either a Rule 41 or a Rule 37 basis.

THE COURT: All right. Thank you for those arguments. Ms. Gersten, I would be more than happy to hear anything you would like for me to know in response to this argument.

MS. GERSTEN: Yes. It is quite laughable in such a horrible situation that's ideal with the pain of misrepresentation. Where to begin. Let's start, not one mention of a pandemic, a pandemic that changed of lives of everybody I know, causes me to cry when I think about it. How dare you, Mr. Sawyer, not mention that. That pandemic began March 13, 2022 (sic) and everybody, including my life especially, has changed because of it. There are plenty of excuses. Number one, I never received any of that documentation, and I will gladly look at evidence of receipts of these discovery motions. I never received any of them. During that time that's -- I saw in the docket but the docket has a disclaimer that says that the information on the docket it's sort of at risk. So I'm not held to chase documents that I didn't receive.

THE COURT: Ms. Gersten, I must warn you, that argument does not carry much weight with me. I understand the disclaimer that all clerk's of court puts on their web page,

but if you looked at it you were aware that there were documents out there, and I did not hear and I've not heard any of this brought up that you didn't receive it.

MS. GERSTEN: I'm telling you now because it's never been argued before, we've never discussed this. And for --

THE COURT: Okay. My point is making an argument that you didn't receive it is one thing, but making the argument that the clerk of court because they have a disclaimer on their web page that's another type of argument. Okay. So if your argument is you never received it, that's something else. I'm not saying -- so just be mindful of I'm trying to help you with your credibility with your arguments to me. Okay?

MS. GERSTEN: I apologize. He touched a nerve because he didn't mention the pandemic, and the pandemic was a big cause of why things went awry, especially with the appellate courts. Because the appellate courts -- he's saying that I repeatedly didn't comply. Okay. What they were repeatedly asking me for was written dates of receiving orders and I couldn't give them because I didn't receive them. And I've learned that actual notice is not the same as written notice. And according to my --

THE COURT: Let me ask you to clarify that. You said that they were asking you to receive copies of written orders. You mean your medical records?

MS. GERSTEN: No, no, orders of the trial court. No one ever served me orders. And I now have in my possession certified copies of this. And as of -- I have to look at the exact date, but a few days ago I've now received the orders, so now I will be filing a notice of appeal because I was not able to answer that question. That is really the real reason that there was no merit to the claims because I couldn't answer that. I never received written notice, it was never served on me.

THE COURT: Oh, you're talking about the appeal that went to the Court of Appeals.

MS. GERSTEN: Yes.

THE COURT: Okay. All right. I'm sorry. I'm clear now. Go ahead, I'm sorry.

MS. GERSTEN: I didn't repeatedly not comply. The dismissal is not appropriate because I have never failed to appear. I've done everything that I'm asked to do within reason. And my mother's passing, the only thing they lost was her testimony that she owned the van, that's it. She wasn't in the van, she didn't witness the collision, that's it, so he lost nothing. Because she gave me a power of attorney -- we're jumping ahead. The only service that I received was his recent -- Mr. Sawyer's recent serving. And I apologize because normally I'm really cool because this pandemic thing, when I just think about not acknowledging

that it even happened is upsetting to me, because it changed the course of everybody's lives, not just my life. And during that time I even explained to the appellate courts where I was living, which I'm not living there now, we were not getting mail, and I -- the address that I have is not where I lived. There was always other people. I went through so many caregivers, and I don't even have a caregiver now, back then there were so many different ones, things were lost, things were gone. And if you're saying that I'm held to even though I -- if I saw something on the docket or if that's not a good argument, serve me again and I will definitely -- it's fine, I have no problems. I served my own discovery, I get it, but I wasn't trying to avoid anything. But as far as saying that I filed continuances and making insinuations that the Court granted them and that's why we're two years into this is not true. It's not true. I have no control over what happened. There was actually a hearing set for the 13th that got canceled not because of me. I put in continuances for my own reasons but they were never ruled on, and my continuances had no part of the Court canceling those hearings. And I don't want to be rude to the Court because I appreciate everyone in South Carolina, and even Mr. Wesley, he just touched a nerve because he never mentioned the pandemic, and so the four years that have gone by is all because of me. No, none

of it is because of me. I'm here, I've been ready. On the 13th I would have dealt with however the Court would have dealt with it but they canceled it on their own, and that can be easily verified, I'm not making that up. I just want to make sure that I cover everything that he said. The pandemic. Did not ignore and received -- okay. And yeah. The only thing she would have testified to is insurance stuff and -- but I'm not -- I'm not -- I'm not -- I'm not practicing law without a license, that's why I've stayed away from that. Because if you want to talk about it, Judge, I do have law that I looked at about unauthorized practice of law and what it actually means. Because when you had mentioned that I wasn't even sure what that is, because I'm not representing her. But her not being here, she definitely has gifted me her claim, or the van, or how ever you want to look at it, and so, you know, what is the practice of law? It is neither practicable nor wise to attempt the comprehensive definition by way of a set of rules. The better course is to decide what is and what is not the unauthorized practice of law in the context of an actual controversy. And this is in regards to unauthorized practice of law rules proposed by this South Carolina Bar, 309 SC 304 422 SC2D 123 1992. And it says in the South Carolina Bar that state law does not set forth a list of activities that constitute the unauthorized practice of law.

And I mentioned that she was deceased because she -- well, here is the other interesting thing, I wasn't there. I only received a message. I never spoke to anybody about it, didn't go to a funeral, and just like Mr. Sawyer, can't find an obituary, have been seeking a death certificate. Unfortunately at this point it's hearsay. And I'm jumping ahead because he's got a motion on the table that I did receive and I know that's not this one, so I think that I covered everything that I want to say. Oh, he's never once called me, never called me, never sent an email. I mean, those are probably the two best ways to reach me. I apologize, but during that time -- and I can prove that because I -- he's right, I have other claims, and that was one of my big issues during that time because that was shortly right after the pandemic. Where I lived it was madness. They had people marching, no justice, no peace, vandalizing. I mean, it was chaos. I mean, it was hard. People were scared where I lived. The mail was missing, things went awry. It was a hard time right during that period. When he said two years, this was right after things were really hot, and it was different in different places, but where I was it was extremely -- people were touchy. I was scared to go anywhere. I started wearing a Go Pro camera around my chest because I got assaulted by a security guard. And I'm not trying to drift off, I'm just painting

an image that during that time was a very unique time in the history of the world, not just one place, it was Washington, all kinds of madness. It was heavy times during then. And I did not personally receive his discovery. Had he called me, had he sent an email things would have been different.

THE COURT: All right. I think I understand, I've got your argument. What I heard was pandemic related was a causative factor in not responding, that there's no prejudice due to the death -- or potential death of your codefendant, and that you're now contesting whether or not the codefendant has actually passed away or not. You also claim that you never were served with the discovery requests. And that -- also on the issue of prejudice, that the only issue that your codefendant would be involved with would be the issue of ownership, not the issue of liability, just the issue of the ownership of the vehicle. I think I got that.

MS. GERSTEN: Right. I want to interject that just a correction, I'm not -- I'm not challenging that she's not deceased, I have no reason to believe that she's not, but I have no proof that she is.

THE COURT: Okay. Are you going to contest that she's not deceased?

MS. GERSTEN: No, not at all. I'm seeking a death certificate. Unfortunately the first place that I tried I

had bad information and it wasn't -- it was the state she was actually in. It's a long story that led to that moment, and that's not of the concern you said last time about what happened or whatever.

THE COURT: Okay. I think I've got that. And whether or not she is deceased or not deceased, your position is still that there's no prejudice, that she's not involved in the litigation, is that correct, due to the fact that her only involvement is over the issue of the ownership of the vehicle.

MS. GERSTEN: Well, yeah. And the other issues would not be Kevin Carter related I don't believe, because it has to do with insurances. That's what I have to take up with the insurance company.

THE COURT: Right. Okay. Yes, good point, thank you for pointing that out.

MS. GERSTEN: And I apologize if I got too passionate, and I didn't mean to, I honestly -- it's a trigger for me because a lot of bad things happened during those two years.

THE COURT: That's fine. You argued quite well and you argued better than some lawyers that come in front of me, so thank you for that. Don't say that to the other lawyers, though. Do not say that to the other lawyers. Any reply to that, Mr. Sawyer?

MR. SAWYER: Yes, Your Honor, very briefly. First of

all the pandemic, certainly we all dealt with it, we all learned now to deal with it. I know Ms. Gersten litigated other matters during the pandemic. And also the immediate issues of the pandemic have certainly subsided substantially, yet we haven't gotten discovery responses, so I think that was a Red Herring. Certainly it's an emotional appeal but it doesn't really explain the delay. In terms of the prejudice, Judge, first of all I should clarify, this motion is as to both Ms. Gersten and Ms. Ayoub. Ms. Ayoub claimed ownership of the van. Because of learning of her death I felt compelled to also file a Rule 25 motion, which is really a motion in the alternative. Either she has passed away, and I submit a sufficient amount of time has passed such that because no one has moved to substitute under Rule 25 her claim has to be dismissed. Or she's alive, she's not here, and that's a failure to prosecute. So really we have either way her claim should be dismissed, but they're under two alternatives. But as to prejudice, Judge, Ms. Gersten just represented that the claim for the van has been somehow given over to her by her mother. I cannot depose her mother to find out about that. I was never aware of that claim being handed over. So again, the prejudice there is abundant. Also, I would have to take Ms. Gersten's word as to what her mother knew or did not know about the contents of the van, the value of those

contents, the condition of those contents. And since the claim here is primarily about the contents of the van now I've lost a valuable source of information. To get to probably the most important point that Ms. Gersten raised, which is the claim that she did not receive these documents, we have filed certificates of service of the discovery requests with our motion to compel, or in the alternative motion to dismiss. We also have certificates of service mailing these documents, the motion to compel itself to Ms. Gersten, just like we mailed notices of the hearings to Ms. Gersten. She claims she didn't get the orders from the underlying case, but, Judge, she filed a notice of appeal on the underlying case earlier orders, so she filed a notice of appeal attaching those other orders. So, Judge, she clearly has been getting these things, otherwise she wouldn't have been able to attach them to a notice of appeal. And, Judge, when she got notice of the hearing a year ago, or notice of this hearing, that would have certainly put her on notice that the discovery had been sent, and I've never been told until today or implied that she didn't receive the discovery or didn't receive our motion. But frankly, Your Honor, if she didn't we've mailed them, which is all the rules require us to show, and we've provided the certificate of service to that. But frankly, Your Honor, just the context and the fact that this is only being raised now unfortunately

doesn't bear a lot of credibility given the background of this and the fact that this motion has been pending without any notice to the Court or to me stating that these have not been received previously. So, Your Honor, I think that's why we have certificates of service, we rely upon those, and those were in the Court's record, and I would point to those. And, Judge, here we are four years later, we've lost a witness, we have no discovery, and the case just has been dragged on for far too long at this point. I think that those address the four things that Ms. Gersten raised.

THE COURT: Okay. Let me ask you a question, I know that you filed a separate motion, the pleading with the codefendant, do you feel like -- and I've got a copy of that -- do you feel like you've now argued that motion sufficiently? Because I think both of you -- both you and Ms. Gersten have educated me as to what your positions are on those, but do you have anything else just related to that motion?

MR. SAWYER: Judge, very briefly, and it won't take me long to address that one. It's Rule 25. And obviously there's not a lot of case law on Rule 25, but there is a little bit of it. It's based off the federal rule, but our rule promulgators, I think, made a wise decision in two regards. One, I dealt with this in the federal courts, the federal courts require almost an impossible service rule,

which is you have to serve the beneficiaries of what would be the estate, and as the opposing party typically it's almost impossible to be in a position to identify those individuals. Our state court rule promulgators thankfully did not include that part in our version of Rule 25. So in the service rule to my understanding it says as with any other motion under the South Carolina rules which is you mail to the last known address, and that's important just as a point of distinction because I've dealt with that in the federal court recently. But more importantly, our court -- our version uses the phrase a reasonable time, the federal rule says 90 days. The commentary on it notes that that's actually a substitute, it's not meant to modify the time substantially, but it gives the Court a little bit more room, I believe, in terms of what is a reasonable time. But in light of the fact that it's based upon -- says it's a substitute for the 90 days in the federal rule I would certainly think that in excess of 180 days after her purported date of death is beyond the reasonable time for someone to move to substitute. The Court of Appeals has also noted as to Rule 25 that there is no requirement for anything to be done by the opposing party, nor the party that would be moving to dismiss under Rule 25. The rule requires that the case be dismissed if no one moves to substitute within a reasonable time of the decedent's

passing. So it's an automatic thing, it doesn't require any personal jurisdiction, it doesn't require any proof of service, all the question that the Court has is all right, has someone passed away and has a reasonable amount of time passed without a substitution being filed. And, Your Honor, the only date that I have to operate with is the date that Ms. Gersten put on the record during our last hearing, which was January of this year, which is well over six months and gets us past that 180 day mark by quite a margin. So that would be the alternative basis, Your Honor, if the Court has concerns about whether Ms. Ayoub is still alive, either she's failed to prosecute and failed to respond to discovery, or she's passed away and no one has moved to substitute on her behalf within a reasonable period of time. So it's just -- it's two different ways to deal with this in the alternative, Your Honor.

THE COURT: All right. Ms. Gersten, Mr. Sawyer was giving me his supplemental arguments relating to Rule 25 and the dismissal of Ms. Ayoub's case. Do you have anything that you wanted to add to that? And I caution you, I know I mentioned practicing without a license, and I still would caution you on that, I think I would be remiss if I did not. But given my statement about that, do you have anything to argue based on what Mr. Sawyer just argued? And I won't hold you to the standard that you're practicing law without

a license, how about that.

MS. GERSTEN: Well, thank you very much. And I definitely can even do it in a way that I think will even more so avoid that. I'll just read the law that he's referring to, which is Rule 25, substitution of parties. A death, number one. If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper party. Motion for substitution may be made by any party or by the successors or representatives of the deceased party, and together with the notice of hearing shall be served on the parties as provided in Rule 5, and upon persons not parties in the manner provided by Rule 4 of the service of summons. If substitution is not made within a reasonable time the action may be dismissed as to the deceased party. Counsel of record for such deceased party shall give notice to all other parties of the death of such parties as soon as practicable after obtaining such knowledge and of the name and address of the proper parties who should be substituted. Now, there is a note that says this Rule 25A1 is substantially the same as Federal Rule 25A. In the federal rule the motion for substitution is to be made within 90 days after notice of death is suggested upon the record. The rule substitutes a reasonable time after such knowledge is obtained. So in just discussing this law and staying away from even appearing as though I'm

practicing law, which I'm not, or representing someone, the key thing here is made within 90 days after notice of death is suggested, suggested upon the record. Well, I suggested it July 28, 2022, and if you give 90 days that hasn't happened yet. October 26, 2022, would be 90 days. Now, although I mentioned the date of January 11th, 2022, this year, which I have not confirmed for myself yet, I did not say that that's the date that I learned of this, but that's all irrelevant according to the rules. According to the rules it's the suggestion on the record, that was suggested July 28th, 2022, as I intend on filing a substitution of parties, and I have even spoken to numerous attorneys, so many. And there's probate, there's all kind of different ways, there's so many different ways of that. But the thing is I'm within that reasonable time and I would ask the Court to put a pause on this and perhaps set another hearing to permit at least the 90 days, which I'll have to work faster than this, it's getting a death certificate, which I think is the key to proving that she's deceased. Otherwise I don't know how else I can prove other than the power of attorney that I do have, which I have not submitted because I felt that my time wasn't due yet, that I'm still within the reasonable time. And, yes, I feel that that has not expired yet. It did not begin on a date of her death, it's a date that's suggested on the record.

THE COURT: Okay. Thank you very much. Any reply to that, Mr. Sawyer?

MR. SAWYER: Yes, Your Honor. It can't be the date that's suggested on the record because that's definitely supposed to be filed or dealt with by her attorney, and she doesn't have an attorney, so it in effect will never actually get his anywhere with this. And frankly I'm not in a position that I could ever get the proof of her death without knowing about it. But at the end of the day the rule itself actually -- and not the comments to the rule, but the rule itself says it's not made within a reasonable time. It says if a party dies. So the opening line of paragraph A1 is if a party dies and the claim is not thereby extinguished...and then if a substitution is not made within a reasonable time the action may be dismissed as to the deceased party. Rule A1, which sets that forth doesn't state that it's based upon the suggestion of death, and that's not how the Court of Appeals has looked at it either when it has reviewed that rule. So at the end of the day we're not 90 days, we're 180 days, and that's well beyond a reasonable time for someone to have filed a substitution if it was going to happen, and at the end of day it hasn't.

THE COURT: Okay. Okay. And thank y'all very much. Can I ask a point of privilege? Can I take a break for about 30 minutes and then let's reconvene and I will give

you an update? If I'm able to make a ruling, make a ruling at that time, if not I'll just reconvene and let you know I'm not going to make a ruling. Can we do that?

MR. SAWYER: That's fine with me, Your Honor.

THE COURT: Ms. Gersten, is that okay with you?

MS. GERSTEN: Well, I mean, do I need to -- because I would like to take a break. Again, it takes me a half hour to get out of the chair, and so if I would have to wait I would be just sitting in the chair for a half hour. I'm not trying to be difficult, it's just that it would be easier for me -- I mean, I don't want to be difficult. I mean, do I just sit in the chair? You said you may not even have a ruling, maybe it would be easier for you to take a full day to think about this, and I'm fine, I don't need an answer today.

THE COURT: I would like to -- I just want to review my notes to be sure that I've got all of the questions that I have has been answered, and if I have anymore maybe ask more of them. But I tell you what, can we get back in 40 minutes, how about that? That would put us at 4:30.

MS. GERSTEN: Okay. So then I could take a quick catheter break, thank you very much.

THE COURT: Thank y'all very much, we'll see y'all about 4:30.

(Break in proceedings.)

THE COURT: Okay. Thank y'all for getting back together. Mr. Sawyer, can you hear me okay?

MR. SAWYER: Yes, Your Honor.

THE COURT: Ms. Gersten, can you hear me okay?

MS. GERSTEN: Yes, sir, thank you for asking.

THE COURT: Thank y'all very much. Okay. A couple of general observations first. Okay. Ms. Gersten, I probably covered this with you last time because I cover this with -- I try to do this with any pro se litigant. I'm of the very strong opinion it's never a wise thing to do for a lay person to represent themselves in a court of law. You definitely have a right to do so, but I just don't think it's a wise thing to do. Frequently pro se litigants are -- get tripped up or get -- or else -- pro se litigants are bound by the same rules of evidence and the rules of procedures that people who are represented by lawyers. There's definitely, as you've mentioned on several occasions, there's a preference for the Court, and this Court tries to do the same, to not hold pro se litigants in strict compliance with the rules and allows some leeway. But the Court also has to apply the rules of evidence and the rules of procedure in a way that is fair to everybody. I say that because I'm going to grant the motion to dismiss in regards to the cases. And let me offer you a reason why. And I want to tell you and encourage you to not let this be

the end of it, of your pursuit of this litigation, because I can tell by your, for lack of better words, passion, but also your ability to prepare for these hearings that you are very sincere and genuine in seeking those claims. But I want to encourage you to talk to a lawyer. I did have a chance to review the pleadings even though the issues related to the pleadings were not the material issues in front of this Court. This is an automobile accident that happened a long time ago, March of 2015 as alleged in the complaint. And based on the allegations in the complaint, the complaint is crafted in a way that it seems to, this is my description, and I'm sure that maybe lawyers will come up with a better way to say it, that the single complaint has tried to act as a catch all to bring everybody into the action. And that is unusual for this Court to see a complaint filed like that, where everybody, and I mean everybody, including insurance companies, liability insurance company, UIM insurance companies, just an array of different defendants have been brought into the same action, and so that is unusual. And if you do have -- and the reason I want you to talk to a lawyer is because the complaint itself -- if we had lawyers arguing today they would argue probably they wanted separate different types of lawsuits in regards to the -- in regards to the litigation that was filed. Because insurance coverage, whether it be

first party coverage, or liability coverage, or UIM coverage, or UM coverage, all of that is handled separately from the actual litigation that establishes the claims of liability and damages, and I really think you would be well served if you have legal counsel to filter through that. Because an individual who has been involved in an automobile accident may have claims against the at-fault party's insurance companies, as well as have claims as you have argued today where your own insurance company where possibly you paid for some type of insurance coverage, or they would have obligations to respond. And those are different obligations, and those different obligations arise different duties under the law. I know you phrased your complaint as both in negligence as well as breach of contract claims, and those are -- and in automobile accidents that's just unusual to have those pled together, so I encourage you to talk to a lawyer about those. I'm going to grant the motions to dismiss dealing with the motions to compel and in the alternative the motions to dismiss as to both the defendants. So I'll ask Mr. Sawyer to prepare a formal order that will summarize his arguments to me. I think his arguments succinctly gave the reasons that justified the dismissal. In particular the one of the -- once you get involved in litigation one of the aspects of being involved in litigation is you've got to comply with discovery. I

think both sides are entitled to conduct discovery, and given that this is a 2015 litigation this motion, the discovery requests were filed in 2020, even with the regrettable pandemic that we all lived through that did not stop the litigation, and so I think a sufficient enough time has passed to grant the motion. I think if I didn't I would actually be denying reasonable due process to the defendants. In regards to the other motions, I went back and took a look at the procedural process of those motions. I would -- if I were ruling on those motions since other judges have decided them I would have to apply an abuse of discretion standard, and I would have to set out -- I would have to find that the other judges, Judge Hayes and Judge Gibbons, had abused their discretion in issuing those orders. There's a procedural barrier that prevents me from making that determination whether they did or they did not, and that is that those motions -- the present motions are such that they needed to be filed and heard by the judge that made those motions. The rules of procedure provides that the -- that those motions needed to be filed with those judges to allow those judges to revisit their rulings. There's also a generalized rule that has been applied to me in other cases to tell me I can't make rulings, and that is that once a circuit court judge in a particular case has made a ruling, another circuit court judge cannot reverse or

change that ruling that another circuit court judge has made even if that second circuit court judge disagrees with them. So based upon the fact that I view those motions having have to be ruled on by those judges, I will -- I can't make that ruling addressing the substance of it, but the procedural aspects of those motions prevent me from making a ruling on those motions. I will make a general observation that you argued very articulately and very passionately about why you feel that you need to have a separation of the property damage claim and the liability claim. I struggle -- I want to take a look at the law -- I struggle, that word may that you referenced to me is very important. I struggled to find that that word may would be defined as shall be separated, and so with that word may being in there that would have gone into my decision in trying to determine whether or not those other judges had abused their discretion. And I just point that out to you that that was some important language that you pointed out, but I think that I am prohibited from going in and reversing or making a decision that's contrary to those other judges on those motions. I cannot stress to you how impressed I am with -- while you're not represented by a lawyer with your preparedness on the -- on arguing the various points of rules that you wanted the Court to consider. I think both Mr. Sawyer and you have provided me, which is what oral argument is supposed to do, a good

educational foundation as to what your positions are, so I wanted to be sure I understood your foundational arguments from the standpoint of what law to apply or what rules to apply. The -- I will note that Mr. Sawyer is being asked to prepare a formal order, that's a customary practice in state court litigation. It will -- I don't imagine Mr. Sawyer -- Mr. Sawyer has never appeared in front of me before that I recall, but I don't think -- he's probably going to be fast enough I'll get the order immediately. I mention that because I want you to consider very seriously my encouragement to go talk with a lawyer, because once Mr. Sawyer delivers me the order I will make my own changes in it, so what I say today is not a final ruling. Final rulings made by state circuit court judges only appear in the written document, so I may change something he makes, I might change my mind completely, I don't do that frequently but that is something that could happen. So I encourage you to go talk with a lawyer and to let a lawyer know we've had this proceeding, let the lawyer know what the status of it is and take to that lawyer all of the documents that relate to this case, because I do think that the passion that you've shown and the preparation you've shown speaks well for your position, and I would want you to receive the appropriate legal advice. With that being said, there are as you probably know -- once I do sign a final order, in the

event the final order is not in your favor, you do have two options as I see it, you might have other options, that's why I say talk to a lawyer because another lawyer might give you other options, but two customary options is you can one, file a motion for reconsideration. There is a time line for filing that, I believe it is ten days after the order is issued. That -- I will let you know that if I am asked to reconsider the motion it might serve you well to have complied with the discovery, the fact that we've taken so long to have this motion addressed and the motion has been pending. Going back and checking the clerk of court's file, the clerk of court notified the parties as much as I think it was October or January back when the motion was filed in 2020, that the motion to dismiss was pending, and then there has not been any type of discovery responses filed. So I would view, not to say it would be determinative, but I would view favorably, I would look more favorably to a motion for reconsideration if, in fact, discovery had been complied with by the time the motion for reconsideration was filed. Or your second alternative would be to file an appeal of the written decision once I make it. Sometimes -- and I mention that, that sometimes I have seen parties take a preliminary ruling made by a judge, they'll file -- they'll go through the process of filing a motion or filing an appeal only to be told by the Court of Appeals or the

Supreme Court: You're too early, you can't file a motion, then you've done a lot of work for no good. The time for filing a motion to appeal also does not occur until a formal order has been issued by a Court. But anyway, those are my rulings on these matters. I do appreciate everyone's patience with me, and I look forward to receiving a formal order. Thank y'all very much.

MR. SAWYER: Thank you, Your Honor.

THE COURT: Thank y'all.

MS. GERSTEN: Thank you.

THE COURT: Thank you.

(End of the hearing.)

Exhibits and
Other Materials on Documents

Appellant Gersten's Exhibit List A-L (Filed March 27, 2018) from her Affidavit in Support of Property Damage Claim

Exhibit A: "Delta V Forensic Engineering Accident Reconstruction Report"

Exhibit B: "Arbitration Hearing"

Exhibit C: "Police Report"

Exhibit D: "SC Law Enforcement Division Forensic Services Laboratory Toxicology Results"

Exhibit E: "Nationwide Mutual Ins. Co. Offer Letter"

Exhibit F: "Nationwide Mutual Ins. Co. Punitive Offer Letter"

Exhibit G: "Nationwide Mutual Ins. Co. Communication with Claims Adjuster Joseph Tirbovich on or about April 27, 2016"

Exhibit H: "Transcript of Exhibit G Communication"

Exhibit I: "Trustgard Ins. Co. Offer Letter from Representative Amy Carmack"

Exhibit J: "Nationwide Mutual Ins. Co. Communication with Claims Adjuster Joseph Tirbovich on or about February 22, 2018"

Exhibit K: "Transcript of Exhibit J Communication"

Exhibit L: "Nationwide Mutual Ins. Co. Declaration Page of Respondents Kevin Carter and Richard Davis

DELTA |v|
Forensic Engineering

FILED
2016 MAR 21 P 3:57
CLERK OF COURT
RICHLAND CO SC

Report by Donald J. Roberts, P.E.

February 18, 2016

Caption	*Two Passenger Vehicle Collision (Claim #: [redacted])*
Involved Party	*Heidi Gersten*
DELTA [v] Client	*AAA – Automobile Club Southern California* *Ms. Judy Schaab*
Incident Date	*March 19, 2015*
Incident Place	*Richburg, SC*
DELTA [v] File	[redacted]
DELTA [v] Engineer	*Donald J. Roberts, P.E.*

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER No. 21380 DONALD J. ROBERTS

Donald J. Roberts 2/18/16

EXHIBIT A gabbler

Resolution through engineering.

The following report concerns a collision involving a 1998 Chevrolet Mark III Conversion Van driven by Ms. Heidi Gersten and a 2008 Honda Ridgeline driven by Mr. Kevin Carter. The collision took place on March 19, 2015 on Interstate 77 near Richburg, South Carolina. DELTA |v| Forensic Engineering conducted a detailed investigation and analysis to determine how the collision occurred. The speed and position of both vehicles were evaluated as part of the investigation.

The report is divided into the following sections:

A. Background
B. Work of Investigation
C. Vehicles
D. Collision Site
E. Reconstruction Analysis
F. Conclusions

Appendices

I. South Carolina Traffic Collision Report
II. Selected Photographs of the Involved Vehicles
III. Selected Photographs of the Collision Scene
IV. 1998 Chevrolet Van Crash Data Report
V. Scale Drawings:
[redacted] Collision Related Marks
Collision Sequence

A. BACKGROUND

On March 19, 2015 around 3:45 a.m., a collision occurred between a Chevrolet Mark III Conversion Van driven by Ms. Heidi Gersten and a Honda Ridgeline driven by Mr. Kevin Carter on Interstate 77 approximately 800 feet north of mile marker 61 in Chester County, South Carolina. Both vehicles were travelling north on an unlighted rural section of the interstate when the passenger's side front of the Chevrolet collided with the driver's side rear of the Honda. Additional details of the collision are reported in the South Carolina Traffic Collision Report contained in Appendix I.

B. WORK OF INVESTIGATION

DELTA |v| has conducted a reconstruction analysis to determine how the collision occurred. The following work has been conducted and documents have been reviewed as part of the analysis:

1. The South Carolina Traffic Collision Report prepared by Trooper H. A. Blackwell of the South Carolina Highway Patrol was reviewed and is included as Appendix I.
2. 40 color photographs taken at the collision scene by the South Carolina Highway Patrol were reviewed. Selected photographs are included in Appendix III.
3. The 1998 Chevrolet Mark III Conversion Van was inspected by DELTA |v| at the facilities of Copart Auto Auctions in Columbia Station, Ohio on December 20, 2015. Selected photographs of the vehicle are included in Appendix II. The Crash Data Report (CDR) imaged from the vehicle's airbag control module is included in Appendix IV.
4. The 2008 Honda Ridgeline was inspected by DELTA |v| at the facilities of Copart Auto Auctions in Gaston, South Carolina on November 10, 2015. Selected photographs of the vehicle are included in Appendix II.

5. The collision site was inspected and the collision related marks were photographed and measured by DELTA |v| on November 20, 2015.
6. Google Street View images taken shortly after the incident were reviewed.
7. Vehicle Specifications for both vehicles obtained from Expert AutoStats were reviewed.
8. Scale drawings of the collision related marks and collision sequence were created and are included as Appendix V.
9. A vehicle speed analysis was conducted using both energy dissipation and momentum methods.
10. A driver Perception Response Time (PRT) analysis was conducted.

C. VEHICLES

1. 1998 Chevrolet Mark III Conversion Van

The 1998 Chevrolet Van was inspected at the facilities of Copart Auto Auctions in Columbia Station, Ohio on December 10, 2015. The following manufacturer's information is provided:

Year/Make/Model: 1998 Chevrolet G1500 Van
Vehicle Identification Number: [redacted]

The collision damage to the Chevrolet was to the front of the vehicle, primarily on the passenger's side. Direct contact damage to the vehicle front extends from the passenger front corner inboard approximately 2 feet. The passenger's side front wheel and suspension components had severe damage and were displaced rearward. Vehicle components were shifted primarily rearward, consistent with a partial overlap frontal collision. Both frontal airbags were deployed as a result of the collision. Additional damage to the vehicle sides, roof, and wheels are consistent with a rollover. Three-dimensional scans and photographs were used to quantify the location and extent of damage to the vehicle. This data was used for further reconstruction analysis. Selected photographs of the vehicle damage are provided in Appendix II.

The Chevrolet was equipped with an Airbag Control Module (ACM) that had a secondary function as an Event Data Recorder (EDR). DELTA |v| imaged the electronic data contained on the EDR by connecting directly to the ACM located under the driver's seat. An airbag deployment event was recorded as a result of the collision under investigation. However, due to a loss of power to the ACM during the collision, a full record of collision was not recorded and therefore the measured vehicle velocity change was incomplete. The Crash Data Retrieval (CDR) report from the EDR image is included as Appendix IV of this report.

2. 2008 Honda Ridgeline

The 2008 Honda Ridgeline was inspected by DELTA |v| at the facilities of Copart Auto Auctions in Gaston, South Carolina on November 20, 2015. Measurements and photographs were taken during the inspection. The following manufacturer's information is provided:

Year/Make/Model:	2008 Honda Ridgeline
Vehicle Identification Number:	[redacted]
Date of Manufacture:	September 2007

The Honda had collision damage to its rear. The damage was consistent with the driver's side rear of the vehicle coming into contact with the passenger's side front of the Chevrolet Van. The Honda's rear structure was displaced forward and to the left, with more extensive crush occurring on the driver's side rear of the vehicle due to the partial overlap of the collision. The rear axle of the Honda was displaced forward and damaged, especially on the driver's side. The contact area and extent of vehicle crush would have resulted in the Honda rotating severely in a clockwise direction following the impact. Three-dimensional scans and photographs were used to quantify the location and extent of damage to the vehicle. This data was used for further reconstruction analysis. Selected photographs of the vehicle damage are provided in Appendix II.

The Honda Ridgeline was not equipped by the manufacturer with an onboard Event Data Recorder prior to model year 2012. It was observed in the collision scene

photographs that the vehicle had a portable Garmin GPS device attached to the windshield. If operating during the incident, the Garmin GPS would have recorded incident related information such as vehicle speed, position, time and date. The Garmin GPS was not available during DELTA |v|'s inspection of the vehicle, however, the incident data may still be present on the device if it was retained by its owner.

D. COLLISION SITE

The collision occurred on northbound Interstate 77 approximately 800 feet north of mile marker 61 near Richburg, South Carolina. The collision site was inspected by DELTA |v| on November 20, 2015. During the inspection, the general roadway configuration and the collision related marks were photographed and measured, including aerial photography and three-dimensional scans.

The collision occurred on a rural, unlighted section of northbound Interstate 77. In the area of the collision, northbound Interstate 77 has two lanes of travel, with a paved shoulder followed by a grassy shoulder area leading to a ditch. North and southbound travel are separated by a grassy median. The posted speed limit on Interstate 77 in the vicinity of the collision is 70 mph.

During DELTA [v]'s inspection of the collision site, the area of the initial impact was identified by collision related scrapes and gouges in the roadway. These scrapes and gouges were verified to be the same as those from the incident by comparing them to the collision scene photographs taken by the South Carolina Highway Patrol (SCHP). Selected photographs of the collision scene taken by the SCHP are included in Appendix III. Additional roadway scrapes and tire marks related to the collision were identified in Google Street View imagery taken shortly after the incident. The final rest positions of the vehicles were identified by the investigating officer's photographs and aerial imagery of the soil furrows created as the vehicles travelled through the grassy shoulder to rest. The collision related marks in the roadway, vehicle rest positions and the general roadway configuration are identified in DELTA |v| Drawing [redacted] included in Appendix V.

E. RECONSTRUCTION ANALYSIS

A reconstruction analysis has been conducted to determine the positions and orientations of the vehicles at the point of impact. Additionally, a speed evaluation has been conducted to determine the impact speed of both of the vehicles. The following information was considered during the analysis: measurements and photographs taken by DELTA |v| at the collision site and during vehicle inspections; SCHP photographs taken of the collision scene on the day of the incident; and Google Street View imagery of the collision site taken shortly after the incident.

Gouges and scrapes documented at the collision site by DELTA |v| were used to evaluate the initial point of impact between the vehicles. Evidence from photographs taken at the collision scene on the day of the collision were also used to supplement this data. The collision related marks were consistent with being created when components of the Honda Ridgeline and Chevrolet Van were forced down into the pavement during their initial engagement. Post-impact tire marks and scrapes are consistent with the Honda Ridgeline initiating a clockwise spin after impact, traveling off of the roadway and through the grassy shoulder before coming to rest. Additional post-impact tire marks and an extended rim gouge are consistent with the Chevrolet Van proceeding into a severe yaw following impact. These tire marks are followed by a series roadway scrapes consistent with a rolling vehicle as it travelled off of the roadway and into the grassy shoulder before coming to rest.

Based on the analysis of the collision related marks and overlapping damage patterns between the vehicles, it was determined that the collision occurred with the Chevrolet Van travelling fully within the right lane of travel. The Honda Ridgeline was traveling with its driver's and passenger's side tires straddling the white edge line separating the right travel lane from the paved shoulder. The vehicles are depicted at their initial impact positions in DELTA |v| Drawing [redacted] of Appendix V.

A speed evaluation of the vehicles was conducted considering the energy dissipated as the vehicles travelled from the point of impact to their rest positions. A crush energy analysis was also utilized to determine the change in velocity (commonly referred to as a delta v) of the vehicles during the collision. Based upon the results of the analysis, it was evaluated that the speed of the Honda Ridgeline was less than 20 mph at impact. The speed of the Chevrolet Van was evaluated to be approximately 75 mph at impact.

The speed and location of the Honda in the impact area were consistent with the vehicle entering the travel lanes from the right shoulder of the interstate highway. The slow speed of the Honda created a hazardous high closure rate situation between the two vehicles. Additionally, attempting to enter the travel lane from the shoulder creates an unexpected cut-off hazard for approaching drivers. This type of maneuver is most dangerous at night due to the increased difficulty approaching drivers have of appreciating the high closing rate created by the situation. Based upon published research concerning typical driver perception response times for a similar situation, a reasonable driver that is cut-off by a slow moving vehicle at night would not have sufficient opportunity to avoid the hazard.

F. CONCLUSIONS

Based upon the work conducted to date, my education and professional experience, it is my opinion that:

1. The driver of the 2008 Honda Ridgeline, Mr. Kevin Carter, attempted to enter the travel lanes of Interstate 77 from its right shoulder at a slow speed when it collided with the 1998 Chevrolet Van driven by Ms. Heidi Gersten.

2. The evaluated impact speed of the Honda was less than 20 mph, significantly below the posted speed limit of 70 mph.

3. The evaluated impact speed of the Chevrolet was approximately 75 mph, consistent with travelling at an appropriate speed for the interstate.

4. The driver of the 2008 Honda Ridgeline created a hazardous situation by cutting off the driver of the 1998 Chevrolet Van while attempting to re-enter the travel lanes from the shoulder of the interstate highway.

5. The high closure rate situation created by the driver of the Honda posed a significant hazard for approaching drivers. This dangerous condition was further degraded due to it occurring during the hours of darkness on an unlighted section of the interstate. A reasonable driver that is cut-off by a slow moving vehicle at night would not have sufficient opportunity to avoid the hazard.

6. The collision was caused by the hazard created by the driver of the Honda when he attempted to re-enter the travel lanes from the shoulder at a slow speed. The driver of the Chevrolet did not have sufficient opportunity to avoid this hazard.

Each of these opinions is stated with a reasonable degree of engineering and accident reconstruction certainty. They are subject to additions or changes as additional material becomes available to me.

Appendix I

South Carolina Traffic Collision Report

CLERK OF COURT
CHESTER CO S.C.
2019 MAR 27 P 3:58
FILED

ORIGINAL-AMENDED

SOUTH CAROLINA DPS/OHS & DMV USE ONLY | Page # 1 of 1

SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM

TR-310 (Rev. 11/2011)

Of Units: 02 | X Amended - Attach Copy of Original Report | Corrected | Notified: 0359 | Arrived: 0412

Date	Time of Collision	County	Collision Location (Rt. # / Name)	Miles	Dir.	In (Near) City or Town of:
03-19-2015	0345	12	1-Interstate 2-US Primary 3-SC Primary 4-Secondary 5-County 6-PP / 77 / INTERSTATE 77	1.04	N E S W	RICHBURG

Lane # / Dir.	Distance Offset	Direction	Base Intersection (Rt. # / Name)	GPS COORDINATES 00 00' 00.00" DEGREES MINUTES SECONDS
# 2 Of 4 N E S W	.50 Miles Feet	N E S W	From 497 / MURDOCK RD	Latitude 34 41 41.32
R/R Id.	From: Ramp Only: 1-Entrance 2-Exit N E S W To: N E S W	1-Interstate 2-US Primary 3-SC Primary 4-Secondary 5-County 6-Other	Toward 52 / OLD MILL RD	Longitude 81 01 48.06

Driver/Pedestrian's Full Name: CARTER KEVIN

Unit #	Sex	Race	Street
01	M	W	[redacted]

#Occ	Birth Date	City, State, & Zip
1	[redacted]	[redacted]

State	Driver's License #	Class	Insurance Company:
[redacted]	[redacted]	C	NATIONWIDE

Year	Body	Vehicle Make	VIN #
2008	PK	HOND	[redacted]

State	Year	License Plate #	Owner's D.L. #
NC	2015	[redacted]	[redacted]

Home Telephone	Owner's Full Name
[redacted]	CARTER KEVIN

Bus. Telephone	Street
( )	[redacted]

Contributed To Collision	City, State, & Zip
Yes (No)	[redacted]

Estimated Speed	Speed Limit	C.D.L. Req: Yes (No)	T/B S Req: Yes (No)	Alc/Drg info (see back): Yes (No)				
70	70	Summons # [redacted]	Code 99	Summons #	Code	Towed By TOMMYS	(Yes) No	

Driver/Pedestrian's Full Name: GERSTEN HEIDI

Unit #	Sex	Race	Street
02	F	W	[redacted]

#Occ	Birth Date	City, State, & Zip
1	[redacted]	[redacted]

State	Driver's License #	Class	Insurance Company:
[redacted]	[redacted]	D	GRANGE INSURANCE

Year	Body	Vehicle Make	VIN #
1998	VN	GMC	[redacted]

State	Year	License Plate #	Owner's D.L. #
OH	2015	[redacted]	[redacted]

Home Telephone	Owner's Full Name
[redacted]	AYOUB IVANKA

Bus. Telephone	Street
( )	[redacted]

Contributed To Collision	City, State, & Zip
(Yes) No	[redacted]

Estimated Speed	Speed Limit	C.D.L. Req: Yes (No)	T/B S Req: Yes (No)	Alc/Drg info (see back): Yes (No)				
80	70	Summons #	Code	Summons #	Code	Towed By BUCKS	(Yes) No	

Driver/Pedestrian's Full Name:

Unit #	Sex	Race	Street

#Occ	Birth Date	City, State, & Zip

State	Driver's License #	Class	Insurance Company:

Year	Body	Vehicle Make	VIN #

Estimated Speed	Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg info (see back): Yes No				
		Summons #	Code	Summons #	Code	Towed By	Yes No	

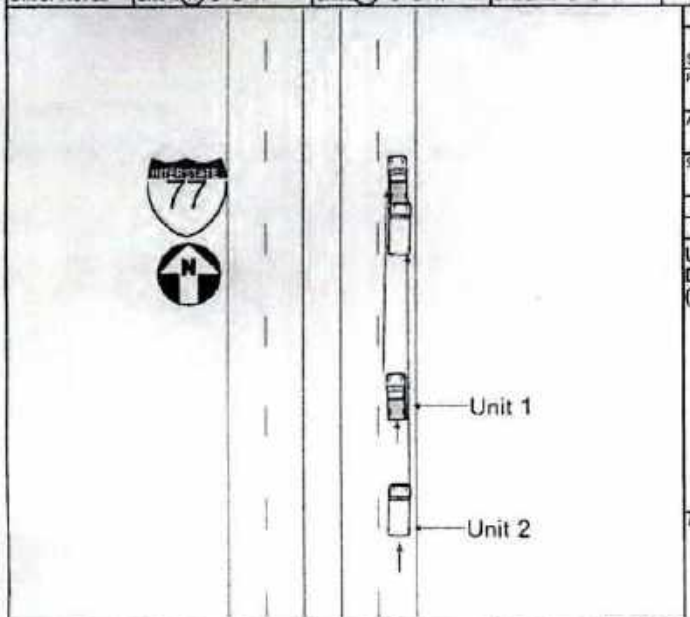
State	Year	License Plate #	Owner's D.L. #

Home Telephone	Owner's Full Name
( )	

Bus. Telephone	Street
( )	

Contributed To Collision	City, State, & Zip
Yes No	

Dir. of Travel: Unit 1: (N) S E W | Unit 2: (N) S E W | Unit 3: N S E W



Unit 1 Dam.	Unit 2 Dam.	Unit 3 Dam.	Prop. Dam. 1	Prop. Dam. 2
$ 10000	$ 10000	$	$	$

Property Owner/Witness:	Property Owner/Witness:
Address	Address
State Zip Phone	State Zip Phone

Photo: (Y) N

Describe What Happened (Refer to Units by Number)

UNIT 1 AND UNIT 2 WERE TRAVELING NORTH ON I-77. THE DRIVER OF UNIT 2 DRIVING TOO FAST FOR CONDITIONS (INATTENTION) STRUCK UNIT 1 IN THE REAR.

7-2-2015, BLOOD RESULTS ADDED TO REPORT.

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name	Rank	Badge #	Jurisdiction Code	Review Date	Reviewer's Name	Rank	Internal Agency Code
BLACKWELL - H A	TRP	T 8 0 7	H P 0 4	07-02-2015	O Milhouse Jr	Sgt.	15BW058607

Unit:	Date of Birth	Sex:	Race	(N.):	Seat:	R/SD	A B D	Eject	LAI:	Tran:	Name	Street Address	Zip Code
01	[redacted]	M	W	1	01	13	1 3	1	2	1 1	CARTER KEVIN	[redacted]	[redacted]
02	[redacted]	F	W	3	01	13	1 3	1	1	1 1	GERSTEN HEIDI	[redacted]	[redacted]

Race: A - Asian/Pacific Islander; B - African American; I - Alaskan Native or American Indian; W - Caucasian; H - Hispanic; O - Other; U - Unk.

a) Injury Status: 0-Not Injured; 1-Possible Injury; 2-Non-incapacitating; 3-Incapacitating; 4-Fatal

Seating Loc.: 01 02 03 / 04 05 06 / 07 08 09

10-Pedestrian; 30-Trailing Unit; 40-Bus or Van (4th row or Higher); 50-Other Enclosed Area (nontrailing); 51-Other Unenclosed Area (nontrailing); 60-Sleeper of Cab; 70-Riding on Unit Exterior; 80-Lap; 99-Unk./NA

Restraint/Safety Device: 00-None Used; 11-Shoulder belt; 12-Lap Belt Only; 13-Shoulder & Lap Belt; 21-Child Safety Seat; 88-Other; 99-Unk.

Pedestrian, Motor/Pedalcycle Only: 31-Helmet; 51-Reflective Clothing; 41-Protective Pads; 61-Lighting

Air Bag Deployment / Switch: a) 1-Deployed Front; 2-Deployed Side; 3-Deployed Both; 4-Not Deployed; 7-Not Applicable; 9-Deployment Unk. b) 1-Switch in On Position; 2-Switch in Off Position; 3-No Switch; 9-Unknown

Ejection: 1-Not Ejected; 2-Part. Ejected; 3-Tot. Ejected; 7-Not App.; 9-Unk.

b) 2 or 3 Wheel Motorized Vehicle: Head Injury 1-Yes 2-No

Location After Impact: 1-Not Trapped; 2-Extricated (Mechanical Means); 3-Freed (non-mech.); 4-Not Applicable; 9-Unknown

a) Transported to Medical Facility: 1-Yes 2-No 3-Unknown

b) By: 1-EMS 2-Police 8-Other 9-Unk.

Sequence of Events

Non-Collision: 01-Cargo/Equip Loss or Shift; 02-Cross Median/Center; 03-Downhill Runaway; 04-Equipment Failure; 05-Fire/Explosion; 06-Immersion; 07-Jackknife; 08-Overturn/Rollover; 09-Ran off Road Left; 10-Ran off Road Right

Collision: Not Fixed: 11-Separation of Units; 12-Split (Two-Vehicle Veh.); 18-Other Non-collision; 19-Unk. Non-collision; 20-Animal (Deer Only); 21-Animal (All Other); 22-Motor Veh. (In Transport); 23-Motor Veh. (Stopped); 24-Motor Veh. (Other Roadway); 25-Motor Veh. (Parked); 26-Pedalcycle; 27-Pedestrian; 28-Railway Veh.; 29-Work Zone Maint. Equip.; 30-Other Movable Object; 39-Unk. Movable Object

Collision: Fixed Object: 40-Bridge Overhead Structure; 41-Bridge Pier or Abutment; 42-Bridge Rail; 43-Culvert; 44-Curb; 45-Ditch; 46-Embankment; 47-Fence; 48-Guardrail Face; 49-Highway Traffic Sign Post; 53-Impact Attenuator/Crash Cushion; 54-Light/Luminaire Support; 55-Mail Box; 56-Median Barrier; 57-Overhead Sign Support; 58-Other (Post, Pole, Support, Etc.); 59-Other (Wall, Building, Tunnel, Etc.); 60-Tree; 61-Utility Pole; 62-Work Zone Maint. Equipment; 69-Unk.

Event 1	Event 2	Event 3	Event 4	Most Harmful	1st Harmful
22				22	22
22				22	

Manner of Collision (Struck Veh.): 00-Not Coll. w/ Motor Veh.; 10-Rear End; 20-Head On; 30-Rear-to-Rear; 41-Angle; 42-Angle; 43-Angle; 50-Sideswipe Same Dir.; 60-Sideswipe Opposite Dir.; 70-Backed Into; 99-Unknown

1st / Most Deformed Area: 1st Deformed: 17 21 J; Most Deformed: 17 21 J

21-Pedestrian; 81-None; 82-Rollover; 93-Total; 94-Under Carriage; 98-Other; 99-Unk.

Vehicle Type: 01-Automobile; 12-Pickup Truck; 13-Truck Tractor; 14-Other Truck; 15-Full Size Van; 16-Mini Van; 17-Sport Utility; 25-Motorcycle; 26-Other Motorbike; 27-Pedalcycle; 36-Animal Drawn Veh.; 39-Animal (Ridden); 41-Pedestrian; 51-Train; 61-School Bus; 62-Passenger Bus; 98-Other; 99-Unk. (Hit and Run Only)

Alcohol / Drug Test Given: 1-Given - Known Results; 2-Given - Unusable; 3-Given - Pending; 4-None; 5-Refused

Special Use Only

Vehicle Use Code: 01-Personal; 02-Driver Training; 03-Construction/Maint.; 04-Ambulance; 05-Military; 06-Transport Passengers; 07-Transport Property; 08-Farm Use; 09-Wrecker or Tow; 10-Police; 11-Government; 12-Fire Fighting; 13-Logging; 18-Other; 41-Pedestrian

Test Type: 1-Breath (Alc Only); 2-Blood; 3-Urine; 4-Serum; 8-Other

1-Under-Compartment Intrusion; 2-Under-No Intrusion; 3-Under-Unknown; 4-Over-MV in transport; 5-Over-Other Vehicle; 6-None; 9-Unk.

Underride/Override: 6

Vehicle Attachment: 1-None; 2-Mobile Home; 3-Semi-Trailer; 4-Utility Trailer; 5-Farm Trailer; 6-Trailer w/Boat; 7-Camper Trailer; 8-Towed Motor Vehicle; 9-Petroleum Tanker; A-Lowboy Trailer; B-Autocarrier Trailer; C-Other Tanker; D-Flat Bed; E-Twin Trailers; F-Other

Drug Results: 1-Amphetamines; 2-Cocaine; 3-Marijuana; 4-Opiates; 5-PCP; 8-Other

0-None/Minor; 1-Functional Damage; 2-Disabling Damage; 4-Severe/Totaled; 5-Not Applicable; 9-Unk.

Extent of Deformity: 4

Alc Test Results: A1-.000; A2-; A3-

Trafficway: 1-Two-way, Not Divided; 2-Two-way, Divided, Unprotected Median; 3-Two-way, Divided, Barrier; 4-One-Way; 8-Other

Trafficway: 2

Action Prior to Impact: 01-Backing; 02-Changing lanes; 03-Entering traffic lane; 04-Leaving traffic lane; 05-Making U-turn; 06-Movements Essentially Straight Ahead; 07-Overtaking/passing; 08-Parked; 09-Slowing or Stopped in traffic; 10-Turning left; 11-Turning right; 88-Other; 99-Unk.

(Non-motorist): 21-Approaching/Leaving Vehicle; 22-Entering/Crossing Location; 23-Playing/Working on Vehicle; 24-Pushing Vehicle; 25-Standing; 26-Walking, Playing, Cycling; 27-Working

A: 1-Gore; 2-Island; 3-Medies; 4-Roadway; 5-Shoulder; 7-Sidewalk; 8-Outside Trafficway; 9-Unk.

B: X-walk; 1-Y 2-N 9-U

1st Harmful Event Loc.: 52

1-Straight - Level; 2-Straight - On grade; 3-Straight - Hillcrest; 4-Curve - Level; 5-Curve - On grade; 6-Curve - Hillcrest

Road Character: 1

1-Dry; 2-Wet; 3-Snow; 4-Slush; 5-Ice; 6-Contaminate; 7-Water (Standing, etc.); 8-Other; 9-Unk.

Road Surface Condition: 1

01-Stop and Go Light; 02-Flashing Traffic Signal; 11-RR (X-bucks, Lights & Gates); 12-RR (X-bucks & Lights); 13-RR (X-bucks Only); 21-Officer or Flagman; 22-Oncoming Emergency Vehicle; 31-Pavement Markings (only); 41-Stop Sign; 42-School zone Sign; 43-Yield Sign; 44-Work Zone; 45-Other Warning Signs; 98-None; 99-Unk.

Traffic Control Type: 98

Weather Condition: 1-Clear (no adverse conditions); 2-Rain; 3-Cloudy; 4-Sleet, Hail; 5-Snow; 6-Fog, Smog, Smoke; 7-Blowing Sand, Oil, Dirt or Snow; 8-Severe Crosswinds; 9-Unk.

3

Light Condition: 1-Daylight; 2-Dawn; 3-Dusk; 4-Dark (Lighting Unspecified); 5-Dark (Street Lamp Lit); 6-Dark (Street Lamp Not Lit); 7-Dark (No lights)

7

1-Yes, Directly; 2-Yes, Indirectly; 3-No; 9-Unk.

School Bus Involved: 3

Junction Type: 01-Crossover; 02-Driveway; 03-Five/More Points; 04-Four-way Intersection; 05-Railway Grade Crossing; 07-Shared Use Paths or Trail; 08-T-Intersection; 09-Traffic Circle; 12-Y-Intersection; 13-Nonjunction; 99-Unk.

13

1-Before 1st Sign; 2-Advanced Warning Area; 3-Transition Area; 4-Activity Area; 5-Termination Area

1-Yes 2-No Work Zone: 2

1-Shoulder/Median Work; 2-Lane Shift/Crossover; 3-Intermittent/Moving Work; 4-Lane Closure; 8-Other; 9-Unk.

Work Zone Location; Work Zone Type

1-Yes 2-No Workers Present:

Primary: 03

Contributing Factors

Driver: 01-Disregarded Signs, Signals, Etc.; 02-Distracted/Inattention; 03-Driving Too Fast for Conditions; 04-Exceeded Authorized Speed Limit; 05-Failed to Yield Right of Way; 06-Ran off Road; 07-Fatigued/Asleep; 08-Followed Too Closely; 09-Made an Improper Turn; 10-Medical Related; 12-Aggressive Operation of Vehicle; 13-Over-correcting/Over-steering; 14-Swerving to Avoiding Object; 15-Wrong Side or Wrong Way; 16-Under the Influence; 17-Vision Obscured (Within Unit); 18-Improper lane Usage/Change; 19-Cell Phone; 20-Texting; 28-Other Improper Action; 29-Unk.

Others: 02

Roadway: 30-Debris; 31-Non-highway Work; 32-Obstruction in Roadway; 33-Road Surface Condition (i.e., Wet); 34-Rut, Holes, Bumps; 35-Shoulders (None, Low, Soft, High); 36-Traffic Control Device (i.e., Missing); 37-Work Zone (Const./Maint./Utility); 38-Worn, Travel-Polished Surface; 48-Other; 49-Unk.

Non-Motorist: 50-Inattentive; 51-Lying &/or Illegally in Roadway; 52-Failure to Yield R. of W.; 53-Not Visible (Dark Clothing); 54-Disregard Signs, Signals, Etc.; 55-Improper Crossing; 56-Darting; 57-Wrong Side of Road; 58-Other; 59-Unk.; 66-Under the Influence; 67-Other Person Under Influence

Environmental: 60-Animal in Road; 61-Glare; 62-Obstruction; 63-Weather Cond.; 68-Other; 69-Unk.

Vehicle Defect: 70-Brakes; 71-Steering; 72-Power Plant; 73-Tires/Wheel; 74-Lights; 75-Signals; 76-Windows/Shield; 77-Restraint System; 78-Truck Coupling; 79-Cargo; 80-Fuel System; 88-Other; 89-Unk.

Appendix II

Selected Photographs

of the Involved Vehicles

Figure 1. Frontal damage to Chevrolet Van

Figure 2. Frontal damage to Chevrolet Van

Figure 3. Frontal damage to Chevrolet Van

Figure 4. Rollover damage to driver's side of Chevrolet Van

Figure 5. Rollover damage to passenger's side of Chevrolet Van

Figure 6. Rear damage to Honda Ridgeline

Figure 7. Driver's side rear damage to Honda Ridgeline

Figure 8. Rear damage to Honda Ridgeline

Figure 9. Passenger's side rear damage to Honda Ridgeline

Figure 10. Passenger's side of Honda Ridgeline

Appendix III

Selected Photographs of the Collision Scene

(Taken by SCHP)

Figure 1. Collision related marks in the impact area

Figure 2. Collision related marks in the impact area

Figure 3. Collision related marks in the impact area

Figure 4. Collision related marks leading to rest position of Chevrolet Van

Figure 5. Collision related marks leading to rest position of Honda Ridgeline

Figure 6. Rest position of Honda Ridgeline

Figure 7. Rest position of Honda Ridgeline

Figure 8. Rest position of Chevrolet Van

Appendix IV

1998 Chevrolet Van Crash Data Report

IMPORTANT NOTICE: Robert Bosch LLC and the manufacturers whose vehicles are accessible using the CDR System urge end users to use the latest production release of the Crash Data Retrieval system software when viewing, printing or exporting any retrieved data from within the CDR program. Using the latest version of the CDR software is the best way to ensure that retrieved data has been translated using the most current information provided by the manufacturers of the vehicles supported by this product.

CDR File Information

User Entered VIN	[redacted]
User	GWW
Case Number	[redacted]
EDR Data Imaging Date	12/10/2015
Crash Date	03/19/2015
Filename	[redacted]
Saved on	Thursday, December 10 2015 at 16:30:09
Collected with CDR version	Crash Data Retrieval Tool 16.2.1
Reported with CDR version	Crash Data Retrieval Tool 16.2.1
EDR Device Type	Airbag Control Module
Event(s) recovered	Deployment

Comments

Imaged DTM. Copart Columbia Station, OH.

Data Limitations

Recorded Crash Events:

There are two types of Recorded Crash Events. The first is the Non-Deployment Event. A Non-Deployment Event records data but does not deploy the air bag(s). The SDM can store up to one Non-Deployment Event. This event can be overwritten by an event that has a greater SDM recorded longitudinal velocity change. This event will be cleared by the SDM, after approximately 250 ignition cycles. This event can be overwritten by a second Deployment Event, referred to as a Deployment Level Event, if the Non-Deployment Event is not locked. The data in the Non-Deployment Event file will be locked, if the Non-Deployment Event occurred within five seconds before a Deployment Event. A locked Non Deployment Event cannot be overwritten or cleared by the SDM. The second type of SDM recorded crash event is the Deployment Event. The SDM can store up to two different Deployment Events, if they occur within five seconds of one another. If a Deployment Level Event occurs within five seconds after the Deployment Event, the Deployment Level Event will overwrite any non-locked Non-Deployment Event. Deployment Events cannot be overwritten or cleared by the SDM. Once the SDM has deployed an air bag, the SDM must be replaced.

Data:

-SDM Recorded Vehicle Longitudinal Velocity Change reflects the change in longitudinal velocity that the sensing system experienced during the recorded portion of the event. SDM Recorded Vehicle Longitudinal Velocity Change is the change in velocity during the recording time and is not the speed the vehicle was traveling before the event, and is also not the Barrier Equivalent Velocity. The SDM records the first 300 milliseconds of Vehicle Longitudinal Velocity Change after Algorithm Enable. The maximum value that can be recorded for Vehicle Longitudinal Velocity Change is 56 MPH. Velocity Change data is displayed in SAE sign convention.
-Driver's Belt Switch Circuit Status indicates the status of the driver's seat belt switch circuit.
-The Time between Non-Deployment and Deployment Events is displayed in seconds. If the time between the two events is greater than five seconds, "N/A" is displayed in place of the time.
-If power to the SDM is lost during a crash event, all or part of the crash record may not be recorded. An indication of a loss of power would be if the ignition cycles at the event is recorded as zero. Data recorded after that may not be reliable, such as Time Between Non-Deployment and Deployment Events, Driver Belt Switch Circuit Status, and Passenger SIR Suppression Switch Circuit Status.
-All data should be examined in conjunction with other available physical evidence from the vehicle and scene.

Data Source:

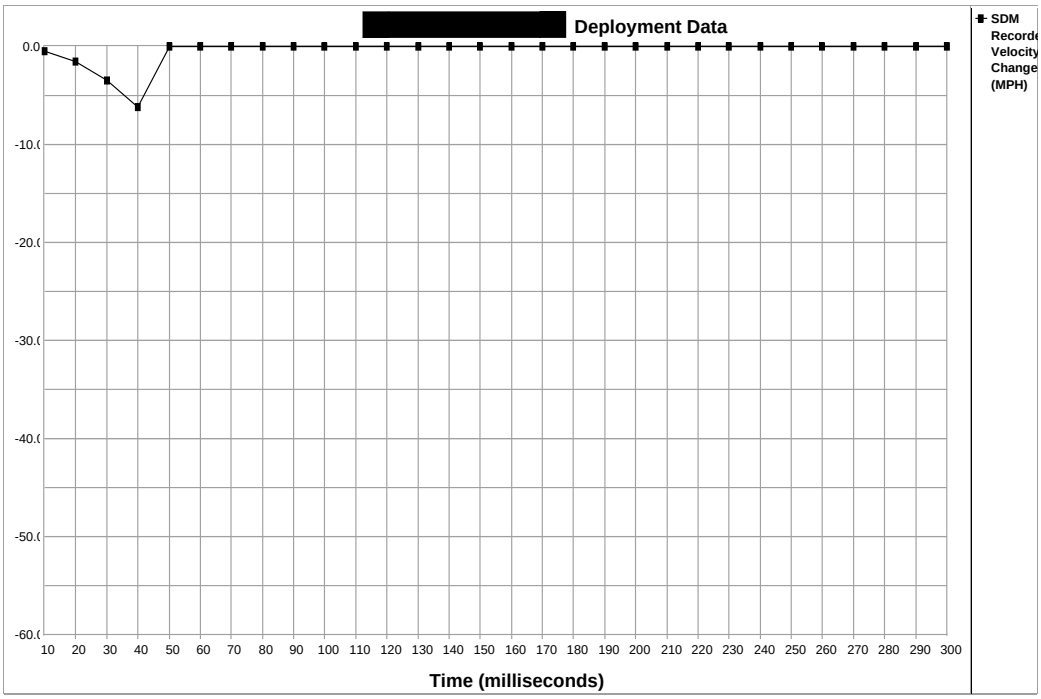
All SDM recorded data is measured, calculated, and stored internally, except for the following:
-The Driver's Belt Switch Circuit is wired directly to the SDM.
-The Passenger Front Air Bag Suppression Switch Circuit is wired directly to the SDM.

Hexadecimal Data:

Data that the vehicle manufacturer has specified for data retrieval is shown in the hexadecimal data section of the CDR report. The hexadecimal data section of the CDR report may contain data that is not translated by the CDR program. The control module contains additional data that is not retrievable by the CDR tool.

01033_SDMRSDD_r002

[redacted]



Time (milliseconds)	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150
Recorded Velocity Change (MPH)	-0.44	-1.54	-3.51	-6.14	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Time (milliseconds)	160	170	180	190	200	210	220	230	240	250	260	270	280	290	300
Recorded Velocity Change (MPH)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Hexadecimal Data

```
B600:  20 50 48 00 00 00 00 00
B608:  00 00 00 AA AA 00 00 00
B610:  00 00 00 AA AA 69 F9 DD
B618:  F9 F9 F9 F9 F9 F9 FF 00
B620:  AA AA AA 00 00 00 00 7D
B628:  00 00 40 11 02 07 10 1C
B630:  00 00 00 00 00 00 00 00
B638:  00 00 00 00 00 00 00 00
B640:  00 00 00 00 00 00 00 00
B648:  00 00 00 00 00 00 00 00
B650:  00 00 00 00 00 00 00 00
B658:  00 00 00 00 00 00 00 00
B660:  00 00 00 00 00 00 00 00
B668:  00 00 00 00 00 00 00 00
B670:  00 00 00 00 00 00 00 00
B678:  00 00 00 00 00 00 00 00
B680:  00 00 00 00 00 00 00 00
B688:  00 00 00 00 7D FA 00 00
B690:  7D FA 00 00 7D FA 00 00
B698:  7D FA 00 00 7D FA 00 00
B6A0:  7D FA 00 00 00 00 00 00
B6A8:  00 00 69 DD 00 00 81 00
B6B0:  00 00 00 00 00 00 00 00
B6B8:  00 00 00 00 00 A2 5F C4
B6C0:  3B 3F 32 01 06 64 02 00
B6C8:  00 AA 00 00 00 00 FF FF
B6D0:  BE BC CA B4 CB CE BE AC
B6D8:  69 BA B4 C7 ED 80 00 00
B6E0:  00 00 12 58 AA 00 01 5A
B6E8:  01 AA 00 00 00 00 00 00
B6F0:  FF 06 F0 05 50 05 0B 1D
B6F8:  58 37 37 37 37 37 37 37
B700:  38 44 4C 53 56 5A 61 66
B708:  6A 70 79 80 92 9B AC BC
B710:  C7 D3 DF E9 F5 40 43 46
B718:  49 4C 4F 51 55 57 5A 5C
B720:  5E 60 62 64 66 67 69 6A
B728:  6C 6D 6E 6F 70 71 72 73
B730:  75 75 76 77 78 79 79 7A
B738:  7A 7B 7B 7C 7C 7C 7C 7C
B740:  7C 7C 7C 7C 7C 7C 7C 7C
B748:  7C 7C 7C 7C 7C 7C 7C 7C
B750:  7C FF FF FF FF FF FF FF
B758:  FF FF FF FF FF FF FF FF
B760:  FF 00 01 02 28 14 10 06
B768:  0E AA 04 4E 4F 37 37 37
B770:  37 37 37 37 37 41 49 4F
B778:  52 56 5C 61 63 63 63 63
B780:  63 63 63 63 63 63 63 63
B788:  63 63 63 63 63 63 63 63
B790:  63 63 63 63 63 63 63 63
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B7A0:  63 63 63 63 63 63 63 63
B7A8:  63 63 63 63 63 63 63 63
B7B0:  63 63 63 63 63 63 63 63
B7B8:  63 63 63 FF FF 00 00 00
B7C0:  00 00 B0 D2 00 00 00 00
B7C8:  00 00 00 00 00 00 00 00
B7D0:  00 00 00 00 00 00 00 00
B7D8:  00 00 00 00 00 00 00 00
B7E0:  00 00 00 00 00 00 00 00
B7E8:  00 00 00 00 00 00 00 00
B7F0:  00 00 00 00 00 00 00 00
```

B7F8: 00 00 A5 A5 A5 A5 75 FD

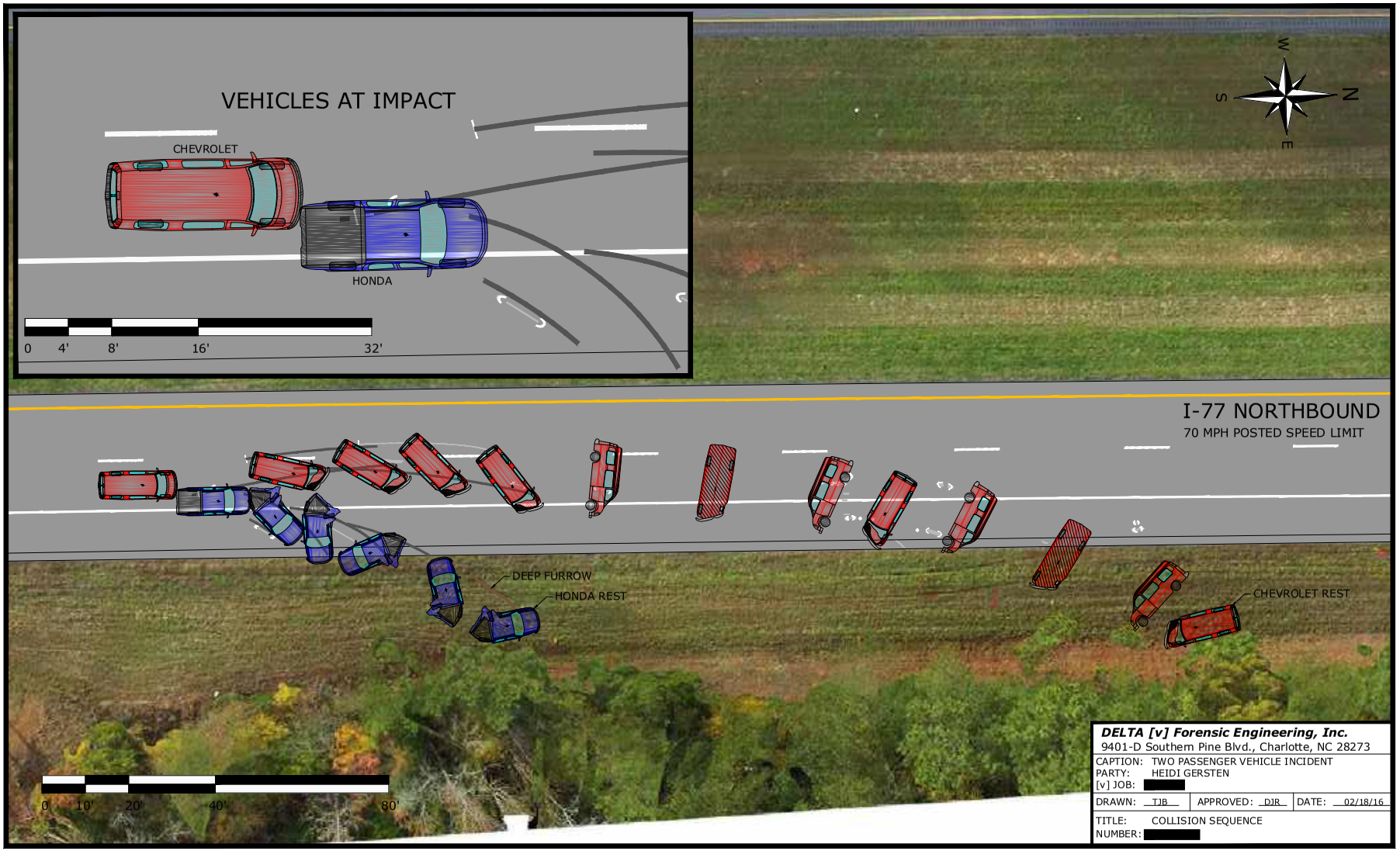
Disclaimer of Liability

The users of the CDR product and reviewers of the CDR reports and exported data shall ensure that data and information supplied is applicable to the vehicle, vehicle's system(s) and the vehicle ECU. Robert Bosch LLC and all its directors, officers, employees and members shall not be liable for damages arising out of or related to incorrect, incomplete or misinterpreted software and/or data. Robert Bosch LLC expressly excludes all liability for incidental, consequential, special or punitive damages arising from or related to the CDR data, CDR software or use thereof.

Appendix V

Scale Drawings

W
S
N
E
I-77 NORTHBOUND
70 MPH POSTED SPEED LIMIT
TIRE MARKS
SCRAPES
GOUGE MARKS
DEEP FURROW
HONDA REST
CHEVROLET REST
0'
10'
20'
40'
80'
DELTA [v] Forensic Engineering, Inc.
9401-D Southern Pine Blvd., Charlotte, NC 28273
CAPTION: TWO PASSENGER VEHICLE INCIDENT
PARTY: HEIDI GERSTEN
[v] JOB: [redacted]
DRAWN: TJB
APPROVED: DJR
DATE: 02/18/16
TITLE: COLLISION SITE OVERALL
NUMBER: [redacted]


VEHICLES AT IMPACT
CHEVROLET
HONDA
0 4' 8' 16' 32'
W
S
N
E
I-77 NORTHBOUND
70 MPH POSTED SPEED LIMIT
DEEP FURROW
HONDA REST
CHEVROLET REST
0 10' 20' 40' 80'
DELTA [v] Forensic Engineering, Inc.
9401-D Southern Pine Blvd., Charlotte, NC 28273
CAPTION: TWO PASSENGER VEHICLE INCIDENT
PARTY: HEIDI GERSTEN
[v] JOB: [redacted]
DRAWN: TJB
APPROVED: DJR
DATE: 02/18/16
TITLE: COLLISION SEQUENCE
NUMBER: [redacted]

ARBITRATION FORUMS, INC.
Industry created. Membership driven.

AUTOMOBILE DECISION

DOCKET NUMBER: A099-05470-16-00
PUBLICATION DATE: 04/24/2017

CASE INFORMATION

Date Filed: 12/07/2016
Date of Loss/Accident: 03/19/2015
Place of Loss/Accident: CHESTER, SC

Total Company Claim Amount: $ 19,636.73
Deductible Paid By Insured: $ 250.00
Legal Fees Sought: $ 0.00

Party	Subsidiary	Representative	File Number/Remit Addr	Insured Name
App	[redacted]	[redacted]	[redacted]	RICHARD DAVIS
Rsp 01	[redacted]	[redacted]	[redacted]	IVANKA AYOUB
Rsp 02	[redacted]	[redacted]	[redacted]	HEIDI GRESTEN

CLERK OF COURT
CHESTER CO S.C.
2017 MAR 27 P 3:58
FILED

Arbitrator(s) considered the following in rendering the decision (Hearing Representation Information):

Applicant	APPLICATION, CONTENTIONS, ALL LISTED EVIDENCE RECEIVED
Respondent 1	RESPONSE, CONTENTIONS, ALL LISTED EVIDENCE RECEIVED
Respondent 2	RESPONSE, CONTENTIONS, ALL LISTED EVIDENCE RECEIVED

DECISION INFORMATION

Arbitrator #1: NADIA REYNOLDS

Date Closed: 04/21/2017

Note: Above Arbitrator(s) have acknowledged the AF Neutrality Statement.

Summary of Dispute

This is a liability dispute involving a rear end accident. [redacted] contends they were traveling when [redacted] failed to a safe distance and speed striking [redacted] rear. [redacted] disagrees and contends they traveling when [redacted] attempted to enter onto the lane from the right shoulder causing this collision.

Liability Decision

Respondent #01 - [redacted] admits 0% liability
Applicant proved 0% liability against Respondent #01 - [redacted] based on: [redacted] failed to prove that [redacted] failed to maintain a safe distance or vehicle control

Respondent #02 - [redacted] admits 0% liability.
Applicant proved 0% liability against Respondent #02 - [redacted] based on: [redacted] failed to prove that [redacted] failed to maintain a safe distance or vehicle control

Damages Decision

EXHIBIT
B

ARBITRATION FORUMS, INC.
Industry-created. Member-driven.

AUTOMOBILE DECISION

DOCKET NUMBER: A099-05470-16-00
PUBLICATION DATE: 04/24/2017

Applicant [redacted] proved NO LIABILITY. Damages Proven: $ 0.00

Respondent(s) indicate that they are not disputing damages.

What evidence caused you to render this decision and why?

There were no recorded statements provided [redacted] provided a police report which does list [redacted] as at fault [redacted] however, provided a comprehensive accident reconstruction report which gives a detailed analysis. Based on the report findings, [redacted] was traveling in the right lane of the highway when [redacted] attempted to enter onto the lane from the right shoulder [redacted] failed to yield the right of way and operate their vehicle in a safe manner which is the proximate cause for the loss.

Award

State Negligence Law applied to award calculations: 50% Comparative

Resp #	Damages Award Against (not including Deductible)	Insured Paid Deductible Award Against	Legal Fees Award Against	Credit for Prior Payment	Total Award Against
01	$ 0.00	$ 0.00	$ 0.00	$0.00	**$ 0.00**
02	$ 0.00	$ 0.00	$ 0.00	$0.00	**$ 0.00**
TOTAL	**$ 0.00**	**$ 0.00**	**$ 0.00**	**$0.00**	**$ 0.00**

If you have any questions about this decision, please call our Member Service Center at (866) 977-3434.

CLERK OF COURT
2018 MAR 27 P 3:58
FILED

ORIGINAL

SOUTH CAROLINA DPS/DHS & DMV USE ONLY

Page # 1 / 1

SOUTH CAROLINA
TRAFFIC COLLISION REPORT FORM
TR-310 (Rev. 11/2011)

Of Units: 02

Amended - Attach Sets of Original Report: Corrected

Notified: 0359 | Arrived: 0412

Date	Time of Collision	Counts	Collision Location (Rt. # / Name)	Miles	Dir.	In (Neg.) City or Town of:
03-19-2015	0345	12	77 / INTERSTATE 77	1.04	N E S W	RICHBURG

Lane # / Dir.: 2 / 4 / N E S W — Distance Offset: .50 Miles Feet — Direction: N E S W — 1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- Other

Base Intersection (Rt. # / Name): From 497 / MURDOCK RD — 0-Main Line 2-Alternate 3-Spur 4-Connection 5-Business 6-Other

GPS COORDINATES 00 00' 00.00" DEGREES MINUTES SECONDS: Latitude 34 41 41.32; Longitude 81 01 46.06

R.R. Id. — From: N E S W — Ramp Only: 1- Entrance 2- Exit — To: N E S W — 1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- Other

Second Intersection (Rt. # / Name): Toward 52 / OLD MILL RD — 0-Main Line 2-Alternate 3-Spur 4-Connection 5-Business 6-Other

Unit #	Sex	Race	Street	Unit #	Sex	Race	Street
[redacted]				[redacted]			
01	M	W	[redacted]	02	F	W	[redacted]
Driver/Pedestrian's Full Name	CARTER KEVIN			Driver/Pedestrian's Full Name	GERSTEN HEIDI		
#Occ 1	Birth Date [redacted]	City, State, & Zip [redacted]	[redacted]	#Occ 1	Birth Date [redacted]	City, State, & Zip [redacted]	[redacted]
State [redacted]	Driver's License # [redacted]	Class C	Insurance Company: NATIONWIDE	State [redacted]	Driver's License # [redacted]	Class D	Insurance Company: GRANGE INSURANCE
Year 2008	Body PK	Vehicle Make HOND	VIN # [redacted]	Year 1998	Body VN	Vehicle Make GMC	VIN # [redacted]
State NC	Year 2015	License Plate # [redacted]	Owner's D.L. # [redacted]	State OH	Year 2015	License Plate # [redacted]	Owner's D.L. # NONE
Home Telephone [redacted]	Owner's Full Name CARTER KEVIN			Home Telephone [redacted]	Owner's Full Name AYOUB IVANKA		
Bus. Telephone ( )	Street [redacted]			Bus. Telephone ( )	Street [redacted]		
Contributed To Collision Yes No	City, State, & Zip [redacted]			Contributed To Collision Yes No	City, State, & Zip [redacted]		

Estimated Speed	Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg info (see back): Yes No	Summons #	Code	Summons #	Code	Towed By	Yes No
70	70	[redacted]	99						TOMMYS	
80	70								BUCKS	

Driver/Pedestrian's Full Name	State	Year	License Plate #	Owner's D.L. #

Unit #	Sex	Race	Street	Home Telephone	Owner's Full Name
				( )	
#Occ	Birth Date	City, State, & Zip		Bus. Telephone ( )	Street
State	Driver's License #	Class	Insurance Company:	Contributed To Collision Yes No	City, State, & Zip
Year	Body	Vehicle Make	VIN #		

Estimated Speed	Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg info (see back): Yes No	Summons #	Code	Summons #	Code	Towed By	Yes No

Dir. of Travel: Unit 1: N S E W — Unit 2: N S E W — Unit 3: N S E W

Unit 1 Dam.	Unit 2 Dam.	Unit 3 Dam.	Prop. Dam. 1	Prop. Dam. 2
$ 10000	$ 10000	$	$	$

Property Owner/Witness: | Property Owner/Witness:

Address | Address

State | Zip | Phone | State | Zip | Phone

Photo: Y N — Describe What Happened (Refer to Units by Number)

UNIT 1 AND UNIT 2 WERE TRAVELING NORTH ON I-77. THE DRIVER OF UNIT 2 DRIVING TOO FAST FOR CONDITIONS (INATTENTION) STRUCK UNIT 1 IN THE REAR.

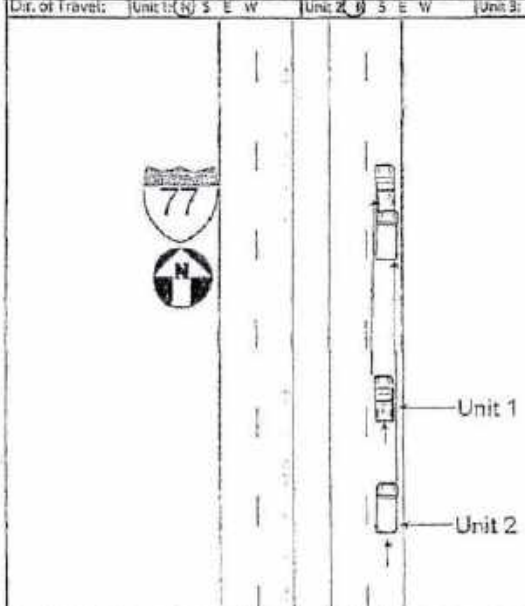


EXHIBIT
tabbies
C

CLERK OF COURT
ELIZABETH CO S.C.
2015 MAR 27 P 3:58
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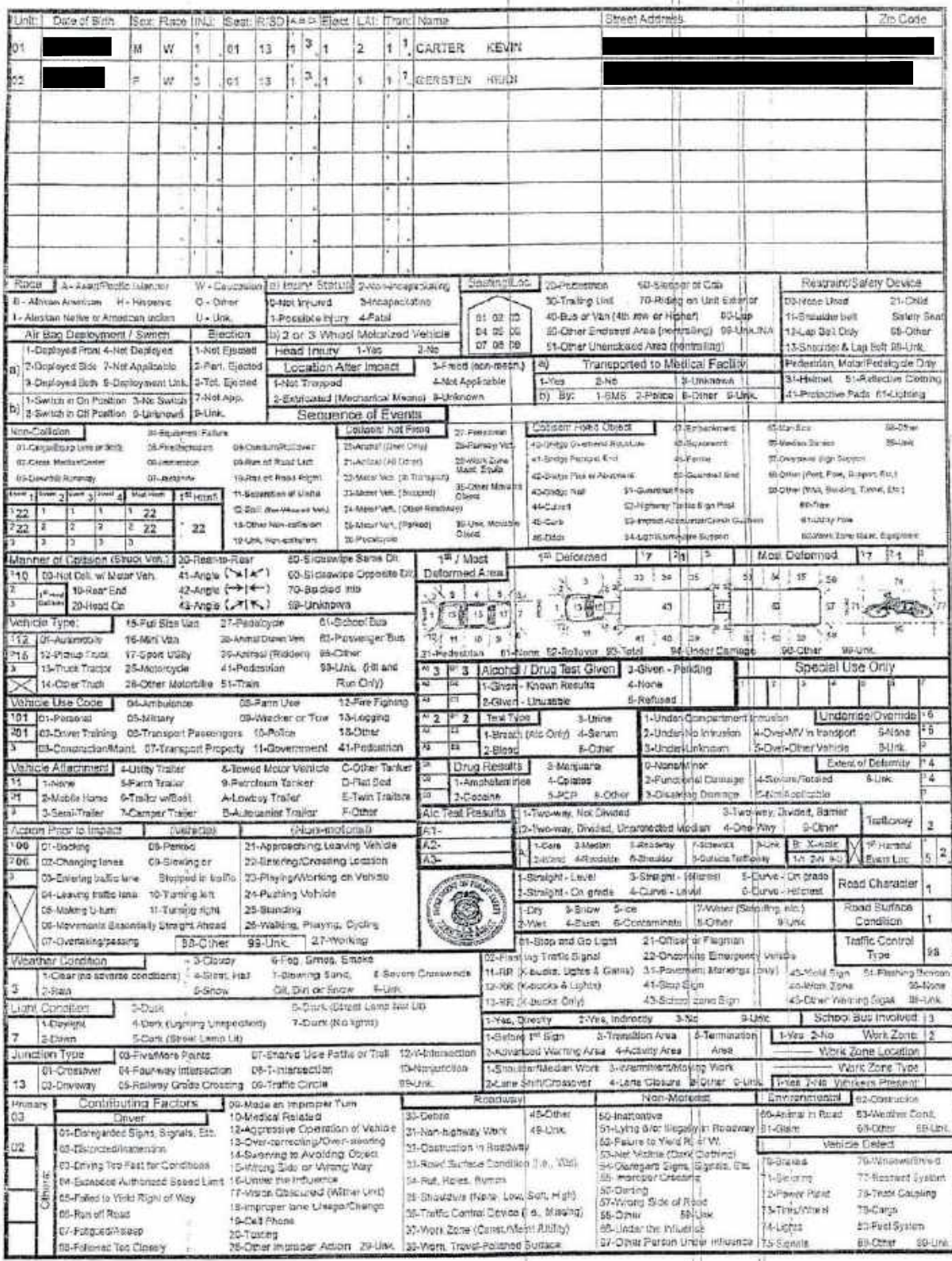
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name	Rank	Badge #	Jurisdiction Code	Review Date	Reviewer's Name	Rank	Internal Agency Code
BLACKWELL - H A	TRP	T 8 0 7	H P 0 4	03-28-2015	K B Winburn	Cpl	15BW058607



Unit	Date of Birth	Sex	Race	INJ	Seat	R/SD	Age	Eject	LAI	Trans	Name	Street Address	Zip Code
01	[redacted]	M	W	1	01	13	1	3	1	2	1	1	CARTER KEVIN	[redacted]	
02	[redacted]	F	W	5	01	13	1	3	1	1	1	7	GERSTEN HEIDI	[redacted]	

ADVISEMENT OF IMPLIED CONSENT RIGHTS

Keven Marie Carter
Subject's Name (Print)

[redacted]
Date of Birth

[redacted]
Driver's License Number

[redacted]
State Licensed

DRIVING UNDER THE INFLUENCE ADVISEMENT

(A) Will test be video recorded? If answer is Yes, start here-> - Inform subject of video recording.
If answer is No, start here -> - Inform subject of type samples requested(i.e. breath,blood,urine).

(B) Provide subject with a written copy of the following advisement and read the advisement to the subject:

- You are under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
- The arresting officer has directed that samples be taken for alcohol and/or drug testing.
- The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- You do not have to take the tests or give the samples, but if you refuse to submit to the tests, your privilege to drive in South Carolina must be suspended or denied for at least six (6) months, with the option of ending the suspension if you enroll in the Ignition Interlock Device Program, and your refusal may be used against you in court.
- If you take the tests or give the samples and have an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, you may instead be charged with Driving with an Unlawful Alcohol Concentration (DUAC), Section 56-5-2933.
- If you have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least one (1) month, with the option of ending the suspension if you enroll in the Ignition Interlock Device Program.
- You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, shall provide you affirmative assistance.
- You have the right to request a contested case hearing within thirty (30) days of the issuance of the notice of suspension.
- If you do not request a contested case hearing or if your suspension is upheld at the contested case hearing, you shall enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

(C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occured.)
(D) Enter biographical data into DataMaster DMT. (Required for all tests, including refusals.)
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occured.)

ADVERTENCIA Y LECTURA DE DERECHOS POR MANEJAR BAJOS LOS EFECTOS DE ALCOHOL O DROGAS (DUI)

(A) ¿Se grabará el análisis en video? Si la respuesta es Si, empiece aquí-> - Informe a la persona que va a ser grabada en video.
Si la respuesta es No, empiece aquí-> - Informe a la persona de las muestras que se requieren (ejemplos: soplar, sangre, orina).

(A) Dele a la persona una copia escrita de la advertencia siguiente y lea la advertencia al sujeto:
(B) Dele a la persona una copia escrita de la advertencia siguiente y léasela a la persona:

- Usted está arrestado por Manejar Bajo los Efectos de Alcohol o Drogas (DUI), Sección 56-5-2930, del Código Legal de Carolina del Sur de 1976, según su enmienda.
- El policía que efectuó el arresto dispuso que le sacaran muestras de alcohol y/o drogas para ser analizada(s).
- Se obtendrán y analizarán las muestras según la Sección 56-5-2950 y las normas del SLED.
- Usted no está obligado a hacerse los análisis ni a proporcionar muestras, pero si se niega a someterse a estos análisis, se le tendrá que suspender o negar su privilegio de manejar en Carolina del Sur por lo menos durante seis (6) meses con la opción de terminar la suspensión si se inscribe en el Programa del Dispositivo de Bloqueo del Arranque. Negarse a ello podrá usarse en su contra en un tribunal.
- Si usted se somete a los análisis o proporciona las muestras y tiene una concentración de alcohol de ocho centésimos del uno por ciento (0.08%) o más, podría ser acusado en vez de Manejar con una Concentración Ilegal de Alcohol (DUAC), según la Sección 56-5-2933.
- Si usted tiene una concentración de alcohol de quince centésimos del uno por ciento (0.15%) o más, su privilegio de manejar en Carolina del Sur debe ser suspendido por lo menos durante un (1) mes con la opción de terminar la suspensión si se inscribe en el Programa del Dispositivo de Bloqueo del Arranque.
- Usted tiene el derecho de que una persona que usted elija y que esté capacitada para hacerlo, realice por su cuenta los análisis adicionales que usted tendrá que pagar y en ese caso, el agente debe brindarle ayuda si usted la solicita.
- Usted tiene el derecho de solicitar una audiencia para disputar el caso dentro de los treinta (30) días a partir de la fecha en que se emitió la notificación de la suspensión.
- Si usted no solicita una audiencia para disputar el caso o si se le confirma la suspensión en la audiencia para disputar el caso, usted tiene que inscribirse en un Programa de Medidas de Seguridad para el Consumo Responsable del Alcohol y las Drogas.

Si es pertinente, haga lo siguiente:

(C) Inspeccione la boca de la persona y quite todo material extraño de la boca. (No se requiere si se niega la persona.)
(D) Ingrese los datos biográficos en el DataMaster DMT. (Obligatorio para todos los análisis aunque se niegue la persona.)
(E) Observe a la persona un mínimo de (20) minutos antes de obtener una muestra de su aliento. (No se requiere si se niega la persona.)

X [signature]
Subject's Signature
Firma de la Persona (recibió una copia)

[signature] 0618 3/19/15
Officer's Signature date/time
Firma del Agente fecha/hora

AGENCY I.D.
SC012SP00

INCIDENT REPORT

CASE NUMBER [redacted]

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. DUI 1ST OFFENSE	☒ YES ☐ NO	☐ YES ☒ NO	Highway/Road/Alley		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Org. ☒ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
2.	☐ YES ☐ NO	☐ YES ☐ NO			
3.	☐ YES ☐ NO	☐ YES ☐ NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): I-77 NORTH AT MM 61 — ZIP CODE — WEAPON TYPE

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK: DISP. DATE	DISP. TIME	TIME ARRIVED	CLEARED TIME	LOCATION NO.
3/19/2015	04:12		3/19/2015	05:31					

COMPLAINANT'S NAME (LAST,FIRST, MIDDLE) — RELATIONSHIP TO SUBJECT (#1, #2, #3) — RESIDENT: *JSOU — RACE — SEX — AGE — ETH. — DAYTIME PHONE — EVENING PHONE

ADDRESS — CITY — STATE — ZIP CODE — LOCATION NO.

VICTIM NO.1

VICTIM'S NAME (LAST, FIRST, MIDDLE): Society/Public — RELATIONSHIP TO SUBJECT (#1, #2, #3) — RESIDENT: *JSOU — RACE — SEX — AGE — ETH. — DAYTIME PHONE — EVENING PHONE

HEIGHT — WEIGHT — HAIR — EYES — FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS — CITY — STATE — ZIP CODE — LOCATION NO.

VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN - COMPLAINT OF NON-VISIBLE INJURIES: ☐ YES ☒ NO

VICTIM (NO.1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK. DRUGS: ☐ YES ☒ NO ☐ UNK. TYPE:

TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASHMT. ☐ OTHER ☐ ALONE ☒ ASSISTED ☐ J - This Jurisdiction, S - State, O - Out of State, U - Unknown

SUBJECT NO. 1

☐ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☒ ARREST ☐ JUVE ☒ SUMMONS

NAME (LAST,FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
CARTER, KEVIN MARK	W	M	46	N	[redacted]	507	200	BRO	BRO

FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS [redacted] — CITY [redacted] — STATE — ZIP CODE [redacted] — LOCATION NO.

SUBJECT (NO.1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK. DRUGS ☒ YES ☐ NO ☐ UNK. TYPE: — ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐ UNK. TOTAL # ARRESTED: — DATE/TIME OF OFFENSE — DATE/TIME OF ARREST

NARRATIVE

ON 3/19/15 AT APPROX 0412 TRP BLACKWELL WAS DISPATCHED TO A 2 VEHICLE COLLISION ON I-77 NORTH AT THE 61 MILE MARKER. UPON MAKING CONTACT WITH THE DRIVER OF UNIT 1 A MR. KEVIN MARK CARTER, TRP BLACKWELL NOTICED THAT MR. CARTER WAS VERY LATHARGIC IN HIS SPEECH AS WELL AS HAVING TROUBLE REMEMBERING HIS CURRENT LOCATION AS WELL AS WERE HE WAS COMING FROM. MR. CARTER STATED TO TRP BLACKWELL AND RICHBURG FIRE OFFICALS THAT HE AND HIS WIFE HAD BEEN IN AN ARGUMENT EARLIER IN THE EVENING AND SHE HAD ASKED HIM TO LEAVE THERE RESIDENCE. MR. CARTER STATED THAT HE HAD BEEN TAKING AN UNKNOWN AMOUNT OF HIS PRESCRIBED [redacted] THOUGHOUT THE NIGHT AND INTO THE MORNING HOURS FOR HIS "NERVES". TRP BLACKWELL ASKED MR. CARTER IF HE HAD TAKEN ANY OTHER MEDICATION, DUE TO THE VARIUS BOTTLES OF PRESCRIPTION MEDICATIONS THAT WERE IN THE PASSENGER SEAT OF MR. CARTER'S VEHICLE. MR.

JURISDICTION OF THEFT — JURISDICTION OF RECOVERY

PROPERTY EST.

TYPE(GROUP)							TOTAL VALUE
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							
FORGED							

ADMINISTRATIVE

SUBJECT IDENTIFIED ☒ YES ☐ NO — SUBJECT LOCATED ☒ YES ☐ NO — ☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED — ☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER — ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE-NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
BLACKWELL, HERBERT AIII	3/19/2015	907	WADE, JEFFREY B		714
			FOLLOW-UP INVESTIGATION ☐ YES ☒ NO — OFFICER		

AGENCY I.D.
SC012SP00

SUPPLEMENTARY INCIDENT REPORT

CASE NUMBER [redacted] | NO. | CNTI

☒ ORIGINAL REPORT ☐ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY
PAGE 3 OF 3 PAGES

NARRATIVE

CARTER STATED THAT HE HAD ONLY BEEN TAKING HIS [redacted] BUT COULD NOT REMEMBER HOW MUCH HE HAD TAKEN THROUGHT THE NIGHT. MR. CATER WAS TRANSPORTED BY EMS TO PEIDMONT MEDICAL CENTER WERE TRP BLACKWELL INFORMED MR. CARTER THAT HE WAS BEING CHARGED WITH DUI. TRP BLACKWELL ADVISED MR CARTER OF HIS IMPLIED CONSENT RIGHTS AND REQUESTED A BLOOD SAMPLE BE TAKEN. MR. CARTED AGREED AND A BLOOD SAMPLE WAS TAKEN FOR ANALYSIS.

JURISDICTION OF THEFT | JURISDICTION OF RECOVERY

ADMINISTRATIVE

SUBJECT IDENTIFIED	SUBJECT LOCATED	☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
☒ YES ☐ NO	☒ YES ☐ NO			

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE-NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMB
BLACKWELL, HERBERT A III	5/15/2015	807	WADE, JEFFREY B		F14
			FOLLOW-UP INVESTIGATION ☐ YES ☒ NO	OFFICER	

South Carolina Department of Public Safety Chain Of Custody & Evidence Destruction

Case Number	Evidence Type	Date Impounded

☒ Highway Patrol ☐ Transport Police ☐ Bureau of Protective Service ☐ Other

Status Check One Only
☐ General Session Evidence ☒ Magistrate Evidence ☐ Found ☐ Recovered ☐ Safe Keeping ☐ Other

I hereby acknowledge that the listed items represent monies/ property taken from my possession and that I have received a copy of this report. Signature

Court Date: 3/16/15	Summons /Warrant Number: [redacted]	
Officer: H.M. Blackwell	Date of Incident: 3/19/15	Time of Incident: 0631
Subject / Violator's Name: Kevin Mark Carter	Phone Number: ( ) [redacted]	
Violator's Address: [redacted]	License Number (Tag/State) [redacted]	

Item #	Quantity	Description (include make, Model and serial Numbers if applicable)	Field weight	NCIC Yes	NCIC No
1	Test Kit	Sled Bio Kit			—

DISPOSITION OF ITEM (S) ABOVE: (The item(s) above have been received in substantially the same condition as when seized.)

From	To	Location	Reason for Movement	Date
Trp. H.M. Blackwell	CB Ford	Piedmont	Transport	3/19/15
CB Ford	Evidence	Chester	Temp Storage	3/19/15

We have further inspected such Conveyance as to condition and contents, including glove compartment, trunk, or any other applicable storage areas and do certify that all contents and condition of such conveyance, except contraband items , if any have been satisfactorily accounted for to me/us with this conveyance, or that such items have been disposed of in accordance with my/our instructions, except:(If no exceptions, have recipient write "None" in ink, in his/her handwriting) _____

It is my/our full understanding that this conveyance and it's contents, except contraband items, if any , are being returned to me/us by the South Carolina Department of Public Safety because such police agency has no interest in proceeding legally to have the conveyance declared forfeit, and that it's return is in no degree an implication or admission that its seizure was unlawful. With the forgoing clearly understood, I/we acknowledge receipt of such conveyance and its contents from: _____ on the _____ day of _____.

Signature (Individual Receiving Property) _____

Signature (Individual Returning Property) _____

Witness: _____

Disposition of the above cases was disposed of in General Sessions/ Magistrate's court on: _____

DESTRUCTION OF EVIDENCE

This is to certify that I, _____ destroyed / relinquished the above described evidence on _____
(Person destroying/relinquish evidence) (Date)

at _____ _____
(Where destroyed) (Witness)

_____
Person destroying evidence

DPS.I.E.008 Rev 9/2009

SLED LABORATORY
FORENSIC SERVICES REQUEST
Blood/Urine Collection Kit

SLED Lab No: _____

Name of Investigating Officer: H A Blackwell

Agency: SCHP Phone No: _____

Fax No: _____ Email: _____

Mailing Address: 1231 JA Cochran ByPass

City: Chester State: SC Zip Code: 29706

CC: _____

Agency ORI No: SC1014400

Case No: [redacted]

Case Type: DUI

Offense Date: 3-19-15

County: Chester

Officer Involved Shooting ☐ Yes

Has other evidence on this case been submitted to this lab?
☐ Yes ☐ No
If yes, Lab Number: _____

Is this evidence related to another lab number?
☐ Yes ☐ No
If yes, Lab Number: _____

For Toxicology Cases ONLY

Death:	☐ Yes ☐ No If yes: ☐ Traffic Fatality ☐ Child Fatality ☐ Accidental ☐ Natural ☐ Unexplained
Traffic Fatality:	☐ Driver ☐ Passenger ☐ Pedestrian ☐ Motorcyclist ☐ Bicyclist ☐ Boating ☐ Other _____
Other Causes:	☐ Gunshot ☐ Stabbing ☐ Beating ☐ Strangulation/Suffocation ☐ Drug/Poison/Alcohol ☐ Fire ☐ Disease ☐ Carbon Monoxide ☐ Hanging ☐ Electrocution ☐ Heart Related ☐ Drowning ☐ Other _____
DUI:	Felony ☐ Yes ☒ No (If felony resulted in death, Victim's name is required) Breath test given: ☐ Yes ☒ No If yes, reading: _____
Drugs Suspected:	☒ Yes ☐ No If yes, list drugs _____
Number of Specimens Enclosed:	Blood _____ Urine _____ Ocular Fluid _____ Other _____

Subject(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN
	Carter Kevin Mark	M	W	[redacted]	

Victim(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN

SOUTH CAROLINA LAW ENFORCEMENT DIVISION - URINE/BLOOD COLLECTION REPORT

Subject: Carter (Last Name) Kevin (First Name) Mark (Middle Name) Chester (County of Arrest)

Subject's Address: [redacted]

Driver's License Number: [redacted] State: [redacted] DOB: [redacted] Sex: M Race: W

Arresting Officer: H.A. Blackwell Agency: SCHP

Date of Arrest: 3/14/15 Time of Arrest: 0620 (A)PM Traffic Ticket Number: [redacted]

Date of Test: 3/14/15 Time of Test: 0620 (A)PM Location of Collection: Piedmont Med Center

CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

☒ Subject is under arrest for Section 56-5-2930, 56-5-2933, 56-5-2945, 56-1-2120, 50-21-112, 50-21-113 or 23-31-415; or is in violation of Section 56-5-2945, 50-21-113 or 56-1-286 of the 1976 South Carolina Code of Laws as amended.

☒ Subject has been advised in writing of his/her Implied Consent Rights.

CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

☐ Subject has completed a valid breath test (DataMaster reading: _____) and the officer has reasonable suspicion that the subject is under the influence of drug(s) other than alcohol therefore a urine sample is requested.

☐ Subject has not completed a valid breath test and a voluntary blood sample has been requested to test for the presence of volatiles and/or drugs.

☐ Subject is unconscious or otherwise incapable of refusal (has not taken a breath test) and is considered informed, therefore, a blood sample is requested.

☒ A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.

Name and Title of Licensed Medical Personnel: X Melinda Haverlock RN (Please Print)

Signature of Licensed Medical Personnel: X Melinda J Haverlock RN

☐ Subject is under arrest for, or in violation of, Section 56-5-2945 (Felony DUI) or 50-21-113 (Felony BUI), and, pursuant to Section 56-5-2946 or 50-21-116, a blood sample or a blood and urine sample is/are requested.

☐ A blood sample is requested by the subject for his/her own independent test.

THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR

☑ Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.

☐ A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

Name of Licensed or Trained Collector: Melinda Haverlock RN (Please Print)

Signature of Licensed or Trained Collector: Melinda J Haverlock RN

FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

☒ Sample collection was under my direct supervision.

☒ Sample container is properly labeled with the subject's name and time of collection.

☒ Sample is properly sealed and ready for transport.

Signature of Officer: [signature] Date: 3/14/15

I, X [signature] received a copy of this report on 3/14/15

(Subject's Signature) Date

Copy to: Subject, Hospital, SLED

FILED MAR 27 2015 CLERK OF COURT CHESTER CO. SC

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor

MARK A. KEEL
Chief

H.A. Blackwell
S.C. Highway Patrol Troop #4
P.O. Box 279
Chester, SC 29706

TOXICOLOGY DEPARTMENT
May 15, 2015
SLED No: [redacted]
Your Case No: [redacted]
Incident Date: 03/19/2015

[S] Kevin Mark Carter

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

FILED
2018 MAR 27 P 3:58
CLERK OF COURT
CHESTER CO S.C.

ITEMS OF EVIDENCE

Item: 1 **Sample Type: Blood (Toxicology)** - labeled "CARTER, KEVIN"

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
[redacted]	[redacted]		

CALEA

ALI-359-T

AN ASCLD/LAB-*International* ACCREDITED TESTING LABORATORY SINCE 09/19/2014
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

EXHIBIT
D

SLED No: [redacted]

5/15/15

Screen by Enzyme Linked Immunosorbant Assay (ELISA)

Analyte	Result	Units	Threshold
[redacted]	[redacted]		

Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS)

Analyte	Result	Units	Threshold
[redacted]	[redacted]		

Comprehensive Analysis

A comprehensive drug screen utilizing gas chromatography/mass spectrometry and liquid chromatography/tandem mass spectrometry was performed on this sample. With the exception of the compound(s) listed, no other drugs or poisons of concern were found.

SLED No : [redacted]

5/15/15

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.

Tracy McKinnon
Forensic Toxicologist

For any additional interpretation of results please contact the Toxicologist above at the SLED Toxicology Department , (803) 896-7385.

CLERK OF COURT
CHEROKEE CO S.C.
2018 MAR 27 P 3:58
FILED

Nationwide

Date prepared August 28, 2017
Notice of loss date January 8, 2016
Claim number [redacted]
Policy number
Questions? Contact Claims Associate
Joseph Tirbovich
[redacted]

Heidi Gersten
[redacted]

Claim details

Insurer: Nationwide Mutual Insurance Company
Policyholder: RICHARD DAVIS AND KEVIN CARTER
Claimant: Heidi Gersten
Claim number: [redacted]
Loss date: March 19, 2015

FILED
2018 MAR 27 P 3:58
CLERK OF COURT
CUYAHOGA CO. O.

Dear Ms. Gersten,

I am in receipt of your letter dated August 25, 2017. I have reviewed your letter with my Manager. As mentioned in my letter dated on August 25, 2017. Based on the current information we have that was sent to us by you. Nationwide Mutual Insurance Company's offer to you for settlement of your property damage claim is $20,000.00.

Please contact me at [redacted] as I would be more than happy to verbally discuss the reasoning of Nationwide's offer to settle your property damage claim.

For more information

If you have any questions or concerns, please contact me at [redacted] or [redacted]

Sincerely,

Joseph Tirbovich
Nationwide Mutual Insurance Company
[redacted]

NOTICE - Section 817.234, Florida Statutes, provides in part: "Any person who knowingly and with intent to injure, defraud or deceive any insurer files a statement of claim or an application containing any false, incomplete or misleading information is guilty of a felony of the third degree."

Nationwide

Date prepared	August 25, 2017
Notice of loss date	January 8, 2015
Claim number	[redacted]
Policy number	
Questions?	Contact Claims Associate Joseph Tirbovich [redacted]

Heidi Gersten
[redacted]

CLERK OF COURT
DUPLEX CO S.C.
2018 MAR 27 P 3:58
FILED

1381600157 0014

Claim details

Insurer:	Nationwide Mutual Insurance Company
Policyholder:	RICHARD DAVIS AND KEVIN CARTER
Claimant:	Heidi Gersten
Claim number:	[redacted]
Loss date:	March 19, 2015

Dear Ms. Gersten,

I have received your letter faxed to me on August 25, 2017 at 9:41 AM. With the information that has been submitted to Nationwide Mutual Insurance Company by you. My offer to settle your property damage punitive claim against our member is $20,000.00.

If you would like to know the reasoning of Nationwide Mutual Insurance Company's offer. Please contact me at [redacted] and I will be more than happy to discuss that topic with you verbally.

For more information

If you have any questions or concerns, please contact me at [redacted] or [redacted]

Sincerely,

Joseph Tirbovich
Nationwide Mutual Insurance Company
[redacted]

NOTICE - Section 817.234, Florida Statutes, provides in part: "Any person who knowingly and with intent to injure, defraud or deceive any insurer files a statement of claim or an application containing any false, incomplete or misleading information is guilty of a felony of the third degree."

EXHIBIT
F

Transcript of Nationwide Mutual Insurance Company Claims Adjuster, Joseph Tirbovich and Heidi Gersten

Wednesday, April 27, 2016, approximately 3:30 p.m.

Transcribed and certified by Heidi Gersten to be a true and accurate depiction.

First telephone communication.

30 pages.

FILED
CLERK OF COURT
FRANKLIN COUNTY, OHIO
2016 APR 27 PM 3:58

Mr. Tirbovich: Joe, how can I help you?

Ms. Gersten: Oh, hi. I'm returning your call for claim number [redacted]

Mr. Tirbovich: [redacted]. Okay. Let me pull that up here. [redacted] Mmm-mmm-mmm-you said, "[redacted]"?

Ms. Gersten: Yes.

Mr. Tirbovich: Okay. I don't know. I thought file. What, what, what, is your name?

Ms. Gersten: Heidi Gersten

Mr. Tirbovich: Uh-hh-hh. Okay. Ah. Oh. Spell your name, 'cause I-I-I, you may have been given wrong. What-what-what's your? Spell your last name please.

Ms. Gersten: G-E-R-S-T-E-N

Mr. Tirbovich: Oh. Heidi. Yes. I'm sorry. Yes. Okay, uh, let me, ah, get that right here, um. I am the adjuster assigned to this particular claim, um. We are still investigating the accident. Now, we were told that you had an attorney. I then got a-a drop letter from that attorney and, um, basically wanted to talk to you to get a statement, eh-eh, as to, uh, your version of what happened in the auto accident and also I don't know as far as a current, um, contact information for you as-as-as far as address and, um, phone number, uh. Do you have some time to give me a statement?

Ms. Gersten: Um. I was actually calling because I thought you were ready to send for damages.

Mr. Tirbovich: No. We're still investigating the incident, um, at this point. Also as far as injuries, we-we don't have any information in regards to your injuries, meaning, I-we have to have detailed documentation. We have to have medical records. We have to have, you know, from start to finish medical bills, ah-and-and-and so on. So normally when you have an attorney, the attorney supplies us with all of that information, but, um, with--when

we received the letter from Motley Rice stating they're-they're no longer representing you--So, um, even if we do accept liability, we still need to gather all medical records from everybody you've gone to see from-from the accident, you know, to-to present. Um. And then we evaluate the claim and make an offer at-at that point. Um. So we-we, as far as, you know, I-I can't just, you know, release monies. Number one, we've got to finish the investigation. Number two, um, well, we-we have to have all medical documentation. Um. As I said, when you have an attorney, they supply all that information or documentation, if not, um, what I do is I forward you a, what's called a, uh-uh, medical authorization form. You then have to list everyone that you've gone to see for this accident, list their name, addresses, phone numbers and then I-I can order the medical records and then we evaluate the claim.

Ms. Gersten: Okay. So you're not, uh, aware that Kevin Carter is on trial for his DWI?

Mr. Tirbovich: We--Yes, we are. That is correct. We are.

Ms. Gersten: Okay. And they moved him up from--Um, into General Sessions Court for--They're increasing the charges.

Mr. Tirbovich: That we don't. We don't have any knowledge of that. What-what we have is--We have a police report that, you know, cites you for a-a excessive speed. I'm not--

Ms. Gersten: No. I-I was--That—

Mr. Tirbovich: —saying that it's correct.

Ms. Gersten: —that is not correct. I was never—

Mr. Tirbovich: Okay.

Ms. Gersten: —cited for anything.

Mr. Tirbovich: Well, it-it's listed on the police report. But, I-I'm just going with--That's the whole reason of-of getting a-a statement from you. Um. You know. So, we can

complete or do-do as best as we can, as far as completing the investigation. At this point, we have his statement. Um. Yes, we are completely aware of-of what he's-he's being charged, hence, that's why we didn't just stop and say, "Well, you know, he was rear ended, you're at fault for the accident and be done with it." We are still investigating it. But, no, at this point I'm-I'm not offering any kind of-of-of monies. Um. Even if we were to accept liability, as I had mentioned, I've got to have all of the medical records. I need to have all of the medical records and all medical bills to review. Um. You know, I can't just offer up money by going by somebody's, um-um, word. Ah, I-I could get fired for something of that nature. (10 sec. pause) (5:07 min.) Uh hello?

Ms. Gersten: Yeah. No, I was just waiting, uh, listening to what you were saying.

Mr. Tirbovich: Mm-hmm. Ah-ah—

Ms. Gersten: So—

Mr. Tirbovich: —that's what I have to say.

Ms. Gersten: So. So, does Kevin Carter have an umbrella policy or a rider?

Mr. Tirbovich: Hmm-I-I can't release any of that information at this point, other--once again, there's-there's proper wording and a write up from, ah, normally it's an attorney to-to, get that information, so at this point I-I can't release any of that information unless that you file us the proper South Carolina statute, um, rules and regulations to-to give me to send for us to release any of that information.

Ms. Gersten: Wait. Repeat that? What? What rule? What statute of South Carolina?

Mr. Tirbovich: That's all South Carolina. There's-there's-there's-there's-uh-uh-uh proper wording, proper requests via writings, um, citing, uh, the statute, uh, and that's something, once again, you know, your attorney would do that or you'll have to do your research to-to get that information.

Ms. Gersten: So what statute—

Mr. Turbovich: We can't just give—

Ms. Gersten: —are you quoting?

Mr. Tirbovich: Uh. Uh, to be honest with you, I didn't even have the name of it. I-I just know that when we get the proper, uh, information from the attorney, it's already in there.

Ms. Gersten: So, you don't know the law?

Mr. Tirbovich: Ah. I-I-I-I, you know, I don't know the exact statute. I don't know the number. I don't have that on the top of my head. No.

Ms. Gersten: Okay. Well, what's your address so I can write you?

Mr. Tirbovich: Okay. Well, once again, like I said, it-it has to have-cite proper language and stuff, which I would, you know, obviously suggest for you to research to get that information.

Ms. Gersten: I suggest you—

Mr. Turbovich: —Um—

Ms. Gersten: —research it as well. You're saying to me that you don't know it.

Mr. Tirbovich: Um. No. No. No ma'am. I-I—Yeah. I, like I said, there-there is laws in South Carolina, so—

Ms. Gersten: But, what are they?

Mr. Tirbovich: —you need to follow up.

Ms. Gersten: —What are they? You can't just be-be-be-be—

Mr. Tirbovich: —you go ahead and look into that yourself.

Ms. Gersten: You as well. You can't just willy-nilly this and-and the law.

Mr. Tirbovich: Oh, I sure can. Yes. Yes, ma'am. I can. That's-that's why—

Ms. Gersten: You can willy-nilly it?

Mr. Tirbovich: —you know, you have the--Yes, ma'am. As I said, there's-there's proper statute language and laws and you can go right ahead and research that and get that out to me and then I can, ah, at that point, I can get permission from my manager to release any of-of the type of information, if everything is in order. Um. But regardless, we will need to order--Well, like I said. Number one, we're still investigating the accident. We're going to try to get a statement from you, if we can't, then, we can deny the claim. Then your next step would be to file suit and then through, um, uh, discovery we would get that information. Um. But on top of that we would have to have all of your medical records and bills regardless, you know, even if we, whatever limits that we have, if you're looking for those, I need to order up, get all the medical records and bills. Um. Once again, the attorney, Motley and Rice was going to supply all of that, but then, they sent us a letter saying, they're no longer representing you. So, if you have an attorney, I can't even be talking to you. So, I don't even know if—

Ms. Gersten: What? What?

Mr. Tirbovich: —if you have an attorney at this point.

Ms. Gersten: What, is your address?

Mr. Tirbovich: Uh, it is 'One', spelled one. Nationwide. Gateway. Three words. Department 5582... and that is in Des Moines, Iowa... 50391.

Ms. Gersten: ...And your name?

Mr. Tirbovich: My name is Joe Tirbovich. You spell that T, as in Tom, I-R, B as in boy, O-V, as in Victor, I-C-H.

Ms. Gersten: ...All right, Mister—

Mr. Tirbovich: And let me give—

Ms. Gersten: —Tirbovich.

Mr. Tirbovich: —you the correct claim number, too. Uh, what you may--Maybe you guys wrote it down wrong. The claim number is [redacted] as in [redacted].

Ms. Gersten: Okay.

Mr. Tirbovich: Now, I have you living in-in [redacted]. I've been mailing you, uh, letters and information, uh, pertaining to this accident to [redacted], ah, [redacted] Is-is, that, uh-uh, a good address to continue to forward you information or is there a different address?

Ms. Gersten: No, that's fine, I've not received anything.

Mr. Tirbovich: You haven't? Really? I've sent about three pieces of mail within the past month to that address [redacted]

Ms. Gersten: Let me ask you something.

Mr. Tirbovich: Sure.

Ms. Gersten: Do you know what it's like to have your ability to walk removed from you?

Mr. Tirbovich: I do not.

Ms. Gersten: Something to think about and also forward this to your legal department, Title 42 U.S. Section Code 1983.

Mr. Tirbovich: Okay. That doesn't mean anything to me. As I said. I said right—

Ms. Gersten: Well—

Mr. Tirbovich: —now we're doing an investigation of the accident. You're-you're telling me about an injury that I don't have your documentation of. And as I said, I have a police report which puts you at excessive speed. Yes, we have our insured who was

charged with, ah-ah-ah, DWI. Um. He's claiming that he was traveling down the road and was rear ended. I wasn't there. I didn't see it. So, I-I can't. You know. I'm not saying that you're right, you're wrong. I'm telling you, ah, you know, I didn't see it and we're trying to investigate it. So, I mean if-if you're not going to cooperate, and that's fine. You don't have to give a statement. That-that's fine. There's not much on my end I can do until we've properly investigated it. And then on top of that, as far as, if we accept liability, if we're willing to pay for medicals, I would have to have the medical records and bills to show me exactly what your injuries are. It's not that I don't believe you, but I, uh, have nothing to document. I just can't go by somebody's word. So, I, uh, I guess my-my question is--You're saying this [redacted] address is correct. Because when I spoke to this Robert on the phone trying to get a hold of you, he said that you're in [redacted]. So, I-I don't know where you're--you are actually at. And I don't even have a phone number to reach you at. I, uh, had a [redacted] area code number and I gave that to Robert and he said, "No, that's not a, uh, correct number." Now, I can only, I can't talk to Robert about the claim because he's not representing you. I can only talk to you, um, but the reason why I called Robert was just to pass on my information 'cause I have no contact with you since we got the drop letter from the, uh, the attorneys of [redacted]... So I—

Ms. Gersten: I have your address.

Mr. Tirbovich: —once again—

Ms. Gersten: I will be in touch.

Mr. Tirbovich: —I'm sorry. You-you will be in touch?

Ms. Gersten: Yes.

Mr. Tirbovich: Oh, okay, is there? Will you give me your phone number?

Ms. Gersten: Right now, I'm not prepared to give a statement.

Mr. Tirbovich: Okay, and you won't give a contact number either for yah?

Ms. Gersten: Well, right now—

Mr. Tirbovich: I-I'm just, uh, I'm just asking. I mean you don't have to, I'm asking for-for the ease of the claim.

Ms. Gersten: —I'm—

Mr. Tirbovich: —because I see you called me on a number—

Ms. Gersten: —This is my first time. This is my first time calling you and I'm quite surprised that you guys aren't up to speed. I need to, uh, process this, like I said.

Mr. Tirbovich: Okay.

Ms. Gersten: You know having your ability to walk taken from you-um. I've already beat the odds of, uh, the third leading cause of death of spinal cord injury, which is suicide the first year. So, kudos to me for beating that one. Um. I will be in touch.

Mr. Tirbovich: And once again, let me, uh-uh, I don't have documentation, everything you're telling me, I don't, I mean, I'm not saying, oh-I, that's related to the accident, 'cause I don't. I-I have nothing. We have little information on you, eh-eh, if we're, all we have is what's on the police report, pretty much all we have.

Ms. Gersten: Well, I'm-I'm just surprised because my insurance company says they've spoken to your--you, guys, and-and, I'm just--I'm just floored because what you're saying to me does not line up with what they've already told me so I have to process this and I—

Mr. Tirbovich: Well, they can't—

Ms. Gersten: —hope you understand this.

Mr. Tirbovich: —give us any personal information on you. They can't give us your address. They-they have told us that they are disputing liability. Um, is what they had told

us. Yes, they have told us that you have had, um, a fracture to your spine, but once again, I'm going with, by word. I don't have documentation, ah. I don't have anything to document it. I'm not, once again, I'm not saying it's not true, all I'm telling you that I'm only been hearing hearsay is what I have. I don't have medical documentation, so take away, let's say that we accept liability. Okay. Let's just go ahead and say that. I can't pay anything out unless I have all of the medical records and all of the medical bills. Once we have documentation and if we've accept the liability, well, yes, of course, we'll go ahead and compensate you up to our policy holder's limits. But, ah, all I've got is just word. That's all we've got. I don't have any hardcore documentation. That's just what I'm trying to say. So, I mean, I can forward you a medical authorization form so you can forward the--Sign and fill out. That gives us permission to order the medical records, yeah, you know, you could get--Your welcome to do that as well, very time consuming, but you can get, ah-ah, I don't know where you've gone to treat. I have absolutely no idea. I don't know where you've gone for rehab. I have no-nothing of that nature. Your insurance company with privacy issues can't share that type of information with us. So once again, I'll be more than happy to mail you that, the medical authorization form to the address in [redacted]. Um. If you choose not to-to sign that-that's up to you. I can't, you know, once again, I can't force you to sign anything. But I can tell you that we can't pay anything if we accept liability unless I have all the medical documentation. I can't go by just word from you or from your insurance company. I have to have the actual medical specials.

Ms. Gersten: This covers pain and suffering, too, correct?

Mr. Turbovich: Oh, of course, if we accept liability, yes, ma'am. We definitely, um, we com—um--compensate for injury and inconvenience, but once again, that's if we've accepted liability. And as I said, we are still—everybody--I mean everybody is still

investigating. I know your insurance companies are still--I know they're doing accident reconstructions—

Ms. Gersten: Yeah. But. Yeah. But—

Mr. Tirbovich: —and so on. So—

Ms. Gersten: Well, you just brought up a good point because to my knowledge both sides have concluded the accident recons and they've both come favorable to me.

Mr. Tirbovich: Well, all I-I-uh-uh-I have--that has not been conveyed to us. Uh, so that's one thing I could definitely say is we have not had any com--any communications since, probably since they told us originally that hey they said, "Hey, whoa-whoa-whoa-hey, we're not-we're not accepting liability we're doing, uh-uh, we think that there could be liability on your person." And, there's--they're going to do an investigation. So, that's, you know, what-what, we have, what I've got is I have a statement from my insured. Our insured is trying to pursue after us, his own carrier, he's looking for underinsured motorist coverage from us 'cause he doesn't feel he's at fault. See, from what I gather, he's assuming that your insurance companies don't have enough coverage. So, he is coming after us for underinsured motorist coverage, so, we, that's-that's, another reason we've got, you know, two types of coverage's open. We've got one that's for liability. Then we've got one that's a no fault. So, that's where we are at right now, uh, as far as, he's adamant screaming up and down that he's not at fault for this accident, but regardless if he was on, um, you know, taking medications or not and he is trying to pursue us and threatening to sue us for bad-bad faith if we don't pay for his underinsured motorist. So-so, we are still investigating. So, we, that's, why we have not said, "Yes, he's at fault or he's not at fault for this accident." We've got two claims open up here. We've got one investigating for underinsured motorist coverage 'cause he's saying your at fault and you don't have enough coverage under your

own policies to compensate him and then on the other hand I have you who, who's brought up some good points, um, in saying that he's at fault for the accident. But I don't have your statement as to your version of what happened in the accident. His version is he's traveling down the road and you rear end him. See now, so, eh-eh, as I said that's-that's, the only thing that I have and then I have the police report.

Ms. Gersten: Well, didn't you get the police dash cam, too?

Mr. Tirbovich: We don't have the dash cam. No. It, cuh, well, the dash cam didn't--that dash cam didn't show what happened in-in--did-did not show us what happened in the accident.

Ms. Gersten: No, but, it—

Mr. Tirbovich: There's a dash, we-we have the dash cam showing that---stating that--where you-you said that you were, ah-ah-eh, were injured. You couldn't feel your legs. Um. And then there's a dash cam, uh, talking about that they had talked to our policy holder. Uh, but, as far as the details of the accident, I'm just going with what-what is written down. The dash cam wouldn't have picked up the actual accident itself happening 'cause they weren't there.

Ms. Gersten: I'm just surprised that you-you don't at least have from-from my insurance company, the results of the accident recon because...

Mr. Tirbovich: Now that-- and I-I-I'm being honest with you. I don't have anything of that nature from them at this time. No. We have not received-received that from them.

Ms. Gersten: Interesting 'cause they've concluded, ah, that I was without liability and told me they spoke to, uh, Kevin Carter's--I don't know, maybe his lawyer if-if not you. I was assuming the insurance, but they said that--

Mr. Tirbovich: He-he has a couple claims open. He has another adjuster, um, but, ah, that has not been conveyed. I have not heard anything that the--your insurance company has concluded, um, their investigation or that they-they've gotten back their accident reconstruction. That I don't have.

Ms. Gersten: And you guys haven't—

Mr. Tirbovich: But—

Ms. Gersten: —gotten your—

Mr. Tirbovich: —but-but, we still don't make an offer—

Ms. Gersten: —reconstruction?

Mr. Tirbovich: I mean we still don't make a, uh, a decision, ah, I mean two insurance companies can disagree, you know. I-I--going by what they say, you know, we've, um, had an accident reconstruction as well. At this point I'm not at liberty to say what we've gotten back, um, once again, I want to get, I want to try to get a statement from you, to get your version of what happened in the accident. So, once again, they can have--you can have four people do four different types of investigations and you can come up with all different types of results. So, um, even if your insurance company calls me today and says, "Hey, we're denying the claim. This is what we feel." We can come back and say, "Well, you know what? We don't agree with yours--with your decision." So, there's that, eh, it's just as well, it doesn't means—

Ms. Gersten: But the-but the—

Mr. Tirbovich: —their decision is not going to make our decision—

Ms. Gersten: —but—

Mr. Tirbovich: —I can tell you that.

Ms. Gersten: —But, that's why I'm-I'm a little bit--I don't understand because I was

told that you guys already concluded your recon. That's what I was told.

Mr. Tirbovich: I don't know who told--Who-whoever told you that. I did not know. Because I know that we have not said, we have not made any, um, final decisions. I mean, I know that we met earlier today and talked about it. So, we have not told anybody that we have made a final conclusion. If, I--that I don't know where you're getting that information from. I-I honestly have no idea. When we were talking to [redacted], we thought you're, um, being represented by them. We had indicated to them that the investigation was still being, um, reviewed. And then next thing you know, 'cause we were trying to get a, you know, requesting a statement, uh, from you. We were also requesting to get them your medicals. And then when I called them one day, he says, "We're no longer representing you." And-and, he said, "I'm send you a drop letter." So, and that's where I've been. I've been trying to call you at area code [redacted] and I've been mailing letters to try to contact you at [redacted] I'm, well, since I had no, um, nothing back from you. I then contacted the Robert and gave him my information to give you to contact me so I can try to get, you know, correct information. Mailing address, correct phone number and also try to get a statement from you as well.

Ms. Gersten: ...All right. Well, you've just given me a lot of new information. But, like I said, I have to process 'cause I was on the understanding that you guys had concluded everything.

Mr. Tirbovich: Yeah, and-and-and-I-I-I apologize. I'm not sure. Could you tell me who-who told you that-that we had concluded our investigation?

Ms. Gersten: The AAA people.

Mr. Tirbovich: Oh-oh. Okay. I-I-I have not spoken with AAA. I was actually going to

give them a call tomorrow to see if they could give me any information as far as a way to contact you. Um. That was the reason that I was going to give them a call because, once again, I don't know if the address and phone numbers I have are cur—current. And when I had spoke to that Robert gentleman two days ago, he made it sound like that you were living in [redacted] So, ha, I-I-I have, you know, ah-ah, I-I--the only addresses--I know that you lived in [redacted]. I know that you lived in [redacted] I-I have nothing as far as [redacted]

Ms. Gersten: ...Do you want—

Mr. Tirbovich: But, as far as—

Ms. Gersten: —the AAA—

Mr. Tirbovich: —as far as, I'm sorry—

Ms. Gersten: Do you want the AAA lady's number?

Mr. Tirbovich: Oh, no! We've got all that information, yeah. I don't need any of that information. But once again, them telling me what their liability decision isn't-isn't going to make my decision. My decision is based on my own personal investigation. As I had mentioned, right now, we've got our insured who's giving us a story that he was rear ended. Um. He's actually even looking for underinsured motorist with under his own policy for us to pay, um, him for his extra injuries that he's claiming that your insurance, uh, eh, you don't have enough coverage for him. Now, once again, I don't know if there's been any communication between your insurance company and him, um, but I can tell you that's what he's looking for with Nationwide. He's trying to say that you're at fault and he's trying to get us to pay, um, the extras under his uninsured, underinsured motorist coverage. So, that's, you know, as I said, so, you've got me sitting here and I'm hearing story from him and then we see that there are some issues with DUI. We hear your insurance company's

investigating they feel that he's at fault, um, you know. I-I--We're getting all kinds of stories, you know, we're, eh-eh-eh, police reports, documentation, all kinds of stories and really we don't have the exact details of what really happened at that point.

Ms. Gersten: Yeah.

Mr. Tirbovich: We do know that, eh-eh, and as I said—

Ms. Gersten: —I feel the same way, Joe—

Mr. Tirbovich: —I wasn't there. I didn't see it—

Ms. Gersten: —and I'm not just trying to give you a hard time. It's just like I said. What you just said, um, a lot of what you said, I-I feel the same way that you--You know, it's been this one story after another. And it's just a shame 'cause I feel like every company is just out to not pay and I don't understand. You-you know. I feel for-for the whole situation 'cause it's really—It-it-it shouldn't be this way.

Mr. Tirbovich: Oh no, it shouldn't. I mean it should be, eh-eh-ah, most cases, you know, there's-there's pretty much clear liability from the get go. And, you know, wuh-uh, I've the- - we--the history of this claim is from, you know, this is, oh, over a year old claim and it's still. And there's been lots of money spent just for the investigation part of this, I mean, it-it's-it's-eh-eh, crazy in my opinion as far as, uh, the cost for us to investigate the-the-the different stories that we're getting. You know, looking at, you know, looking at the police report, then, you know, we hire people to go and, you know, like I said, get information from the dash cam, um, you know, we don't understand why the officer, you know, if-if there is a, eh-eh-eh, thought that our insured wasn't traveling--He was just stopped in the middle of the road. Um. You know. Why is the officer?--Why is there not ah-ah-an- amendment to the police report as far as the details? There's an amendment as far as him

being charged for the DWI. And that's why we--That is why we didn't just say, "Ah, this is an open and shut case. We're going to deny liability. Done." Because of that DWI that's why this claim is still investigated. Normally when somebody is rear ended, you know, it's clear. Either the--Our person's rear ended or if we rear end somebody, you know, if our person's rear ended, we could say, "Hey, we're not at fault for this accident." or, if we rear end somebody, we're like, "Yup, we'll go ahead and pay it. Done deal." You know, ah-um, we even had a situation when it's first with claim first started, your insurance company. I'm not sure which one it was, because I know there's two, one that insures the van and then your personal insurance. They were originally going to pay our insured for the damages and then they retracted everything and that and then our insured got all upset about that saying, you know, he was like, "Originally, it was supposed to be paid for." and then your insurance companies came back and said, "Nope, we're still investigating this." So, we're getting different stories. I-I mean we're learning stuff every day. I mean every time we look at this file we're finding out more and more information.

Ms. Gersten: Ha-ha. Yeah.

Mr. Tirbovich: So—

Ms. Gersten: No, Joe, I mean—

Mr. Tirbovich: —and you know, and-and—

Ms. Gersten: —you've touched on some stuff that I-I feel the same way. This was not a-a mere rear ender. And-and the evidence proves itself. Um. That's why I'm just floored that I thought everybody was up to speed already. It's been over a year and-and what you just said that I'm-I'm very much in agreement with a lot that-that this is ridiculous. Um.

Mr. Tirbovich: Mm-hmm.

Ms. Gersten: But a lot of it has to do with, um, right where we started. South

Carolina trumps every insurance. And yes it becomes complicated when you have one insurance for, um, for the, uh, vehicle and then, you know, one for the driver. And nobody wants to pay.

Mr. Tirbovich: And then on top of that, with-with-with-eh-eh, Mr. Carter, he has two claims open up for this particular accident. He has one claim that was open up for-- Originally it was opened up for underinsured motorist coverage. Because originally when, you know, back when this first happened, it was, oh, he was rear ended and he-he sustained injuries. And he's looking for-- And the insurance companies for-for, you, um, possibly don't have enough, um, money under the limits to pay for all, for everything with claims worth for pain and suffering, medicals bills, so we're going to have to dip into— 'Cause that was South Carolina. Dip into the uninsured motorist portion of his claim. Then we're learning, well, wait a second, you're insurance company said that-that something seams fishy. We didn't find out that he was under the influence, um, and then we go ahead and find out the accident may not have happened the way that he had explained it. But we're like wait a second we have the police report, you know, then we're finding out well the police report might not be so accurate, um-eh, as I said, and then, so then we go ahead and open up a second claim looking into liability in a sense of paying for you. Well in the mean time, he's screaming at us saying, "Why are you doing that? You know I'm not at fault for this accident." You know. So, I mean, it's like we have people coming from both ends. You know. And I understand, rightfully so, you should be irritated and upset. It's not that we're doing this on purpose as, eh-eh, if it were a clear cut case then we could see for sure—yeah, we're definitely at fault, our-our, excuse me, our insured is definitely at fault for this accident, go ahead, get it, let's get this taken care of, but it's not that simple. We-we,

have a police report that's saying one thing. We have our insured who's saying something. But then we're finding out that he was under the influence. You know, then we've got other insurance companies saying, "Oh, wait a second we're finding out this information and it looks like that he could have been, you know, stopped on the road or going a very, very, very, slow rate of speed. You know, but we, but-but-but, when it comes down to, we don't have proof. He's not admitting to us saying, "Yeah, yeah, I was stopped on the road." You know, I mean he didn't even admit to us about the uh, the eh-eh-eh, being under the influence until we found out later, you know, so--

Ms. Gersten: Mm-hmm.

Mr. Tirbovich: —We're getting all kinds of-of-of-of different information. That's coming in. That's coming into us. And the same thing with your insurance companies 'cause, you know, you and him were the only ones that were there at the time of the incident. We weren't. And, you know, outside of talking with you, 'cause we don't have your-your statement, but all the other information. We have a lot of conflicting information out there, you know, that's saying one thing. Then we're finding out something--finding out something else. We're like, well, this might not be true, I mean, you know what I mean that—

Ms. Gersten: Right.

Mr. Tirbovich: —those are the issues that we have with this. It's not--It's not just a-a shut and closed case. And as I said, if we felt that you, you know, were at fault 100%, ah, we wouldn't still be investigating this. We wouldn't be spending the money that we have been to investigating. We would have been just like, "Hey, he was rear ended case closed." But we're-we're not, you know, and-and, then, you know, on top of that we're, you know, we're under the impression, we've been communicating with the attorney's office of

Motley and Rice and then they come and tell us, "You know what? She--We no longer represent her." So, that just kind of throws a wrench into everything. You know. I'm like, okay, so now we need to communicate directly with you, uh, but we didn't know if you, do you have another attorney? You know, are you going to be retaining an attorney? Because if you do, legally I can't be talking to you. So, there's a lot of information out here and, once again, as far as addresses, you know, your friend Robert told me, well, so, I was under the impression, you're living in California. So, you know. But I have a [redacted]address. So, I have a lot of information, a lot of conflicting information that I'm looking at that when we met today there's a lot of unanswered questions, you know, a lot of them are, you know, where's Heidi? Where is she at? You know, to try and figure out how to communicate with her, you know, I'm like, well now all I've got is a phone number for Robert and that's it, um, and as I've said, I was going to contact your insurance companies, once again, they wouldn't give me any of your personal information but I can always say, " Hey, here's my information pass it on to Heidi." That was going to be my next step. So, but I definitely understand your frustration. Don't get me wrong. And I'm frustrated just as much as you because I'm getting conflicting statements all across the board with-with everything.

Ms. Gersten: Well, you communicating with me opens up a lot of, um, understanding on my end 'cause really I, too, would like to just resolve this. I mean, if anything, I'm very sad, um, at the loss of being able to walk.

Mr. Tirbovich: Ah, I understand, eh-eh, trust me, no, I-I-I-I-I-I get what you're saying I-I-I am not denying that whatsoever. Um, you know, what it-it-it's-it's really, you know. The-the biggest question that-that we have as far as investigation purposes is, you know, what-what-what is the true story here? What-what is really what happened here? You

know. Why are there so many conflicts? Why is there a police report that says this? And then our insured who is saying this? Then, we're finding out he was under the influence and then we have insurance companies saying, "Well, you know, we believe this is something else that happened." So, we have a lot of situ-stories and situations going. Obviously. I'll be honest with you. I've been doing this for fifteen years and this is, just for- just for investigation, I mean, to try to determine liability, this is one of--This is a very unique situation that I've never--I've never run into something like this. You know. I've had your green light, red light. You know. Both people are claiming they had a green light at an intersection. I've had a side swipe. You know. Two--one person's like, oh this person came into my lane, and the other person's going, oh-no-no-no, this person came into my lane. You know. But as far as a claim like this where it's a, you know, it's a rear end accident. If you just look at it just right at that point, you would be like, well the person driving who rear ended is at fault, but, no, it's--That's not the case. There's many other factors with this. So, you know. In my fifteen years, I'd say probably this is the most unique situation that--claim I've dealt with as far as just-just investigation as far as liability. Then the next-the next layer after that is after we've accepted, you know, after we've completed our investigation, and if we accept liability, then the next thing is-is, ok, in order for us to pay the medical bills and compensate you for your injury and inconvenience. We need to get medical records and medical bills. All, you know, documentation and, you know, to add to that we have, we believe there was an attorney. Attorneys are always, you know, really good at getting-getting us that information. They-they are even able to get it quicker than insurance companies are. Um. And then we find out, ok, you don't have an attorney any more, so we're like, well, now even after we complete our investigation, if we accept liability, then it's going to be on us to now have to--for us to gather all of that information.

Um. And that can be tedious, you know, calling all the providers you've gone to see and mailing the request to get your medical documentation and you-you'd have to sign a permission form for us to get it. As I said, you can get that information yourself, but I can tell you, it's a--it's a very timely process, so, um-eh-eh, that was another wrench that was thrown in as once we got the letter from, eh-eh, the attorney. And I'm not saying having an attorney is gonna make us pay more or less, in fact an attorney keeps a third of whatever your settlement is. Um. But we were at least under the impression, well, Motley Rice has been, you know, communicating with you. They know where you're at. They're be gathering all of that information for us. Um. So, if we do accept liability we'll just be waiting for what's called their 'demand package', and review everything. They'll have all of the documents already done for us. But obviously then we won't be getting any other communications or correspondence from them. So, there's the first layer of just trying to determine if-if our--if we are going to accept liability. Um. And yeah, we're definitely are taking into consideration the, uh, alcohol, drugs and, uh, what was--he had said on the dash cam, as far as, he really didn't remember what-what-what happened, so-so, all of that, yeah, plays a huge factor in it, um, getting your statement would be, uh-uh, helpful. Then I could take that up to the powers to be and say, "Hey, well, you know, I've done all--everything I possibly can, as far as investigation." And then get their final, you know, say on liability. Um. In which, I-I-I feel it would, eh, more in your favor is my opinion. But I don't--I'm saying off the record, um, but then after that if I, once again, if we do accept liability, well, I need to get all of the medical documentation. I-I just can't go by word, be-be, word from your insurance company. Well, these are the injuries she's sustained. And-and you say these are the injuries I've sustained. This is where I treated. It's not that we don't believe

you. It's we've got to have the documentation to support it. So, when we do pay out our insured's, um-eh-eh-eh, coverages we have to be able to justify it. We're a business. For every dollar amount we spend we have to be able to justify it. If we have the medical documentation--if it's a limits case, we have the medical documentation to support it, then we can pay it and there's not going to be any repercussions. Nobody's going to come down to me and be like, " Joe, what in the world did you pay this for? You didn't have our authorization. You didn't have the proper documentation to support. All you're going by is somebody's word." So, that's-that's where I'm at this point. So, it definitely, you know, do what you need to do. I've-I've given you a lot of information. Um, this claim is not going anywhere Um. Now, the statue of limitations in South Carolina is three years. Um. So, you have until sixteen-sixteen, seventeen, so, let's see, 'til March of 2018. Um. March 19 until, you know, the claims could legally be closed, without stealing or less suits filed at that point. Um. But this claim isn't going anywhere anytime soon. So, I mean, definitely talk it over. Think. You know. As I said, I-I-I getting a statement from you, I mean, I-I--The questions that I'm going to be asking--I'm not going to be asking personal questions as far as, you know, eh-ah. I can't even think. You know. I'm going to be asking, you know, what happened, you know, during the accident. Again, I'm detailed. Type of questions relating to the-the accident. And then yes, I do ask questions about your injury to kind of give me a better idea of the injuries that you did sustain and medical places you went to. And then the next step after that is I present it to my-my superiors. We go ahead and make our final liability decision. And then, if we accept liability, at that point, I need to get the medical records. Either it could be 'A', you can gather everything, or-or we can gather everything. That's, you know, wa-wa-whatever is, you know, trust me, us doing it's gonna be--it's going to be time consuming. It'll be time consuming for you, but we would be doing it. But, you

know, it-it is a time consuming thing depending on how many facilities you've gone to see in relation to your injuries. So, those are the two-two main things. First, we want to clear liability and I'm requesting a statement from you. If I get a statement from you I can present that to my superiors, say, "This is what I've got. Can we make a final liability decision?" If they accept, if they say, "Yeah, we'll accept liability," then, next step is I need to go ahead and get all the medical records. Um. And then we can evaluate the claim. And then, you know, make an offer. Once again, if it's a limits case, we can offer our limits, but I-I need to have medical documentations to support that first. So, I hope that shed some light, you know, and-and understand that I'm not, you know, just making this up or anything of that nature trying to give you a hard time. That is where I'm at in-in-in this situation. I have--I have conflicting statements. I have conflicting reports. I've got all kinds of things that are saying one-one thing and then I'm getting something, you know, that says something completely different. And then as far as injuries I just have word. Your insurance company said this is the type of injuries you sustained. I have you saying this is what I've sustained but I don't have any medical documentation. And your insurance company can't give any-anything to us. I mean, because you could sue them for, uh, saying, "What are your giving the insurance company all my personal information without my-without my permission?" Uh, you know, then you could sue them. So, same thing with us. We don't give out people's injuries or anything of that nature, um, unless we have some kind of written consent because we could get sued for sharing information.

Ms. Gersten: Well, it's strange, though, because I was--I-I was under the impression that, um, Mr. Carter sustained some sort of head or-or brain injury.

Mr. Tirbovich: ...Uh, well, and-and-and, as I said, I, you know, I can't comment on his injuries. That's like, as I said, because I don't have his permission. So, I-I, trust me, I, that's-

that's a personal thing. You know. That's the same thing, as you know, I can't give the--say the type of injuries that-that-that he-he sustained because he could come back and be like, "What? I didn't tell you-you to--could tell any body this." So, that's, you know, once again, that's all privacy—

Ms. Gersten: But, you just—

Mr. Tirbovich: —privacy privileges.

Ms. Gersten: —you said earlier that you had--You-you were told that I sustained some-some fracture injury. So, this is where—

Mr. Tirbovich: Yeah, yeah, —

Ms. Gersten: —I get confused.

Mr. Tirbovich: —that was from, yeah, your insurance company just had given us that. But is it true? This thing, if your insurance company called me and said, "Hey, can you tell me what type of injuries your-your-your person sustained?" I would tell them I'm not allowed. Nationwide company policy, I can't say anything. Um.

Ms. Gersten: So, you're saying they violated that to you?

Mr. Tirbovich: ...I'm sorry?

Ms. Gersten: They-they told you my injury. So, isn't that a violation? I'm trying to understand.

Mr. Tirbovich: Well, hey, I-I-I,eh-eh, that's something you could take up with them. I mean, not to us, because, well, they--We didn't give out any information. It's what we got from them, so.

Ms. Gersten: It's just crazy to me 'cause this should all be transparent. I don't understand why it's-it's so under the cover, you know, everyone hides behind these

supposed laws. And really I think both parties, not that I can totally speak for Mr. Carter, but I'm sure he would like to be resolved as I would like to be resolved. And I hope you understand that this is my first communication with you, so, I'm absorbing all of this because of-of how everyone has been treating me. I, too, feel like you. You're almost not able to-to just speak. And that's not the way it should be because really, you know, it's complicated.

Mr. Tirbovich: Yeah. We're in a sue happy, yeah, we're in a sue happy world at this time that people will find any excuse to get money. You know. And-and-and releasing personal information that's the hot topic now. You know when you go to the doctor and there's, all those HIPAA forms and privacy and everything else of that nature. So, yeah, eh-eh-eh-eh, it can impede an investigations. It can hurt other people's—Um. But on the other hand, it is what it is and it's so easy to get sued now. That's the scary part.

Ms. Gersten: ...Yeah.

Mr. Tirbovich: You know, I, uh, I-I-I, definitely don't want to, you know, lose my job, you know, uh, and-and, those type of, uh, you know, eh, because I gave out some information. You know. As I said, if your insurance company called me today to tell me the type of injuries you had your person's sustained, I would say, "I can't tell you because of privacy issues, you know." Um. You know. So anyway and this information was in there before I-I inherited this file. Uh, so, you know, as far as what-what I see is from a previous adjuster who's not with us.

Ms. Gersten: So, is that Kristy?

Mr. Tirbovich: ...No. She's handling, yeah, she's handling the underinsured motorist claim.

Ms. Gersten: Oh.

Mr. Tirbovich: Um. I told you there's two claims open. Um. So that's the, yeah, this-this claim was opened up, uh, later on, because there was that--We had found out that there was, uh, some issues as far as, um, the alcohol and-and-and, so on, so.

Ms. Gersten: Yeah, you had said that that report was amended. I don't understand 'cause I wasn't under the impression it was ever amended, that it was just one version. I was told that he couldn't amend it.

Mr. Tirbovich: Well, I-I--it's-it's more of the--it's more of--I guess what was saying--the way I was interpreting the report is for or maybe it's a continuation as far as they just wrote more. Ah-ah, explicitly about the, uh-uh-eh-eh, charges, DUI charges and him being under the influence and there's the, eh-ah, we only got a reports as far as the—Um, after the hospital, and his toxicology report. So, once again, I-I-I can't share that information but I'm saying, you know, those are things that, you know, came about later on.

Ms. Gersten: Yeah.

Mr. Tirbovich: So, what, why, you know, what, eh, once again, go ahead and, you know, take in everything you want. I will go ahead and, you know, note the file that I spoke with you. You have a pretty good idea as far as, um, you know, what we—what-what, I'm going to be, you know, what-what I'm looking for, um, you know, ah. Um. You know. Once again, I can't force you to-to-to give me a statement. Um. But as I said, it's not a statement in the sense of, you know, getting into your personal life. This is what happened in the accident is-is all that is. Um. And like I said, that's all up to you, so you know, and-and I--that's only if you feel free to get back to with me but obviously take everything in and then--and I am, you know, and-and, you know, definitely get back with me.

Ms. Gersten: I will. Thank you very much and um—

Mr. Tirbovich: Oh—

Ms. Gersten: —I'm just processing all of this 'cause it's—

Mr. Tirbovich: —I-I, ah, don't—

Ms. Gersten: —the first time communicating.

Mr. Tirbovich: —expect you to make a decision at this point. I bet I've given you a lot of information, so, and I, once again, I wanted to explain to you why it's not a cut and dry situation. You know. I mean, let's-- Once again. We've got two claims open for this one, uh-uh, a-a no-fault kind of based exactly open. And then one is this one. You know. We've got him, who's saying he's not at fault. You know. It-it-its, so, it's not as cut and dry as you would hope it to be.

Ms. Gersten: Right.

Mr. Tirbovich: You know I don't like it any kind.

Ms. Gersten: Do you-you have pictures of both of the vehicles? Correct?

Mr. Tirbovich: Oh, yeah-yeah, yup, oh, yeah, we've got all of that.

Ms. Gersten: 'Cause the evidence speaks for itself if you, um, look at the vehicles.

Mr. Tirbovich: Mm-hmm, yeah, like I said, those are huge things that the reason why we didn't ignore opening up, ah-ah, a liability claim. Those are--Those are all factors as to why we didn't just say, "Eh, our person's not at fault and leave it at that." You know.

Ms. Gersten: I-I would like to interject this, too. That police report is very misleading because it's one rectangle with an arrow above it and another rectangle and that just leaves one image in one's mind where it would seem to be something that it isn't. You know. I, uh, the report is-is-is really, I can't even find the word for it-it-it's—

Mr. Tirbovich: Inaccurate.

Ms. Gersten: —ha-ha-ha-ha-ha-ha-ha. That would be a good word. Yes, inaccurate.

You know.

Mr. Tirbovich: Yeah, and-and, I do--We--I know how you feel. I get that a lot. Um, as far as, eh, something, you know, as inaccurate and-and-and so on. So, you know, I-I-I-I-I-I see exactly what your saying. Um. You know. But-but, what, ooh, that's, so, you know, so by me, just, you know, by saying that, realizing that, I think that you would understand that, you know, it's hard to, but understand that's why this--Everybody is spending all kinds of money in-in investigating this 'cause it's not a-a-a-- it's not a clear cut. It's not what it is appears to be. What the report is, you know, normally, they're not that inaccurate. They're pretty right on. But, you know, as you're saying in we-we, those are the report's inaccurate, so that's why it hasn't been just so cut and dry and we've had to do branch out and really do a thorough investigation as opposed to just, oh, this person is rear ended we're going to deny it and be done.

Ms. Gersten: Right. Have you spoken to the Trooper?

Mr. Tirbovich: Uh, the—yeah-yeah-yeah. We have spoken with the trooper. Um. As far as, you know, it--he has given us his opinions. Um, but, you know, obviously defending his-his write up, you know. I mean, all troopers don't want to be wrong. You know. That's a whole other thing. That's-that's the problem, you know, a lot of them don't want to admit that what they wrote is wrong or whatever, so.

Ms. Gersten: Yeah, being held accountable for one's—

Mr. Tirbovich: Mm-hmm.

Ms. Gersten: —own mistake, yeah.

Mr. Tirbovich: Mm-hmm, exactly.

Ms. Gersten: Yeah.

Mr. Tirbovich: That's why we had to branch out an do other means of investigation as opposed to, yeah, sometimes me talking to a trooper can make me make my decision, uh, but in this case it's not that simple. It's very complicated.

Ms. Gersten: Yeah.

Mr. Tirbovich: So, you know, obviously, think about it. I'm in Monday through Friday, eight--Normally I'm here to four thirty, which I'm getting ready to leave right now, but, um, you know, I-I-I-I will, you know, put everything, what, you know, our communication and, ah, you know, I definitely will give your insurance a call tomorrow. Um. You know. As you said, you told me that they--you said that they definitely are putting our insured's at fault. That-that doesn't tell us for sure, you know, but we don't make a decision on that for sure, but it's something that I-I-I'll definitely look into and-and-and, see what they have to say, okay.

Ms. Gersten: All right. Thank you.

Mr. Tirbovich: All right. Thank you. Ba-bye.

Ms. Gersten: Bye.

Conversation ends. (53 min. 9 sec.)

CLERK OF COURT
HUNTER CO S.C.
2018 MAR 27 P 3:59
FILED

[redacted]

Grange Insurance

TEMP-RETURN SERVICE REQUESTED

February 21, 2018

SENT VIA REGULAR AND CERTIFIED MAIL

Ivanka Ayoub
[redacted]

CLERK OF COURT
FRANKLIN CO. S.C.
2018 MAR 27 P 3:59
FILED

RE: Claim Number: [redacted]
Date of Loss: 3/19/2015
Policy Number: [redacted]
Insured: Ivanka Ayoub

Dear Ivanka Ayoub:

Trustgard Insurance Company ("Trustgard") acknowledges the Tyger River demand received on February 20, 2018. Trustgard's investigation and review of your claim for Collision Coverage is based, in part, on the Ohio policy contract issued to our Named Insured, Ivanka Ayoub by Trustgard. The policy provided by Trustgard to Ivanka Ayoub is an Ohio policy contract. Collison coverage is contractual and governed by the state where the policy was issued. In this particular policy, there is a "choice of law" clause or "interpretation" clause requiring the policy to be interpreted under the law of the state where the policy was issued as noted on the Declarations Page. The Declarations Page provides that your address is [redacted] Enclosed is a copy of the Declarations page for your review.

The policy has the following language explaining that the policy will be interpreted by the law of the state indicated on the Declarations Page:

> PART F - GENERAL PROVISIONS
>
> Policy Period, Territory, and Interpretation
>
> * * *
>
> C. This agreement shall be governed by, and interpreted in accordance with the laws of the state in which the insured resides as reflected on the policy Declarations Page.

Regarding the Collison damage to the 1998 Chevy Van from the auto accident of March 19,2015, we previously extend an offer related to the total loss value of the 1998 Chevrolet Sport Van on May 21, 2015. We have enclosed a copy of this offer for your review. To confirm, our offer is $3,969 less the Collision deductible of $500. The total settlement amount we will issue to you is $3,196, which represents the actual cash value of the vehicle at the time of loss. You may be eligible for sales tax reimbursement if you purchase a replacement vehicle within 30 days of

EXHIBIT
I

receiving our settlement check. You must send proof of purchase showing the amount of sales tax incurred by you to Trustgard Insurance Company within 33 days of the receipt of our check. The Amount of reimbursement for sales tax is limited to the lesser of the following:

1. The amount that would have been payable for sales tax on the purchase of a vehicle with a market value equal to the amount of the settlement
2. The actual amount of sales tax paid for the replacement vehicle.

If you do not send proof of payment of sales tax on a replacement vehicle with 33 days after you receive our settlement check, we are no longer required to reimburse you for the tax paid.

Below is the applicable policy language related to the Collision coverage under this policy:

PART D - COVERAGE FOR DAMAGE TO

* * *

Insuring Agreement

A. We will pay for sudden, direct and accidental loss to your covered auto or any non-owned auto, including its permanently installed equipment, minus any applicable deductible shown on the Declarations Page. We will pay for loss to your covered auto caused by:

2. Collision only if the Declarations Page indicates that Collision Coverage is provided for that auto.

B. "Collision" means the upset of your covered auto or a non-owned auto or their impact with another vehicle or object.

* * *

Limit of Liability

A. Our limit of liability will be the lesser of the:

1. Actual cash value of the stolen or damaged property; or

2. Amount necessary to repair or replace the property using parts furnished by the vehicle's manufacturers or parts from other manufacturers.

This policy does not cover a claim for diminished market value of your covered auto or nonowned auto.

B. An adjustment for depreciation and physical condition will be made in determining the actual cash value of your covered auto or non-owned auto at the time of loss.

* * *

Punitive or Exemplary Damages Exclusion
Regardless of any other provision of this policy, we do not provide coverage for punitive or exemplary damages, or any legal fees or costs associated with them.

If we are unable to come to an agreement regarding the actual cash value of your 1998 Chevy at the time of loss to resolve the collision claim, please refer to the below policy language:

Appraisal

A. If we and you do not agree on the actual value of the vehicle, either party may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of the loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and

2. Bear the expenses of the appraisal and umpire equally.

B. We do not waive any of our rights under this policy by agreeing to an appraisal.

* * *

Our Right To Recover Payment
A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person shall do:

1. Whatever is necessary to enable us to exercise our rights; and

2. Nothing after loss to prejudice them.

B. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and

2. Reimburse us to the extent of our payment regardless of the total amount of damages sustained by the insured irrespective of whether any such settlement or judgment may or may not provide reimbursement for all injuries, illnesses, or other damages (including, without limitation, pain and suffering, consequential, punitive, exemplary or other damages, whether alleged, proven in a court of law otherwise substantiated).

C. We are not responsible for any fees, including, but not limited to, attorney fees or court costs incurred to recover our subrogated interest unless we have agreed in writing, in advance, to be responsible for those fees.

Below are the terms specifically defined under the Definitions section of the policy.

DEFINITIONS

A. The terms defined below appear in bold type throughout this policy. You and Your refer to the named insured, which includes the individual named on the Declarations Page or that person's spouse if a resident of the same household.

J. "Your covered auto" means:

1. Any vehicle shown on the Declarations Page.
2. Any of the following types of vehicles, acquired during the policy period, on the date you become the owner:
a. a private passenger auto; or
b. a pickup or van for which no other insurance policy provides coverage and that has a Gross Vehicle Weight of less than 12,000 lbs. according to the manufacturer's specifications.

Based on the above policy language and Ohio law, Trustgard is unable to consider a claim or extend any offers of settlement for the personal property damage under this policy. If you have any additional information you would like us to consider please provide it, in writing, to my attention for additional review.

Please feel free to contact me with any questions at the number listed below.

Sincerely,

Amy Carmack
Senior Claims Representative
Grange Insurance
[redacted]

Enclosures: Dec Page
Total Loss Settlement Offer
CCC Market Evaluation

Grange Insurance

[redacted]

Policy Number: [redacted]
Policy Type: [redacted]
Reason Issued: Reinstatement
Effective Date: 01/28/2015
Print Date: 01/29/2015

Named Insured and Address

Ivanka Ayoub
[redacted]

Auto Policy Declarations Page

This is not a bill.

Issued by: Trustgard Insurance Company, A Wholly-Owned Stock Subsidiary of Grange Mutual Casualty Company, [redacted]

Policy Effective Dates: 01/28/2015 to 07/28/2015 12:01 a.m. ET at the address of the named insured as shown, and for additional six month periods if renewed, as provided in the policy. These declarations with policy provisions, applications, forms and endorsements, if any, complete the above numbered policy.

Total Policy Premium Summary

Your Auto policy includes coverage for the following:

Year	Make	Model	VIN	Premium
1995	Dodg	Ram	[redacted]	$427.00
1998	Chev	Sport Van G1	[redacted]	$375.00

The total premium shown does not include any applicable billing fees

Total Policy Premium **$802.00**

Did You Know...

- You have qualified for Disclosed Operator, Insurance Score, and Multi-Car Discount(s). Find out how you can save even more by contacting [redacted]

Got questions? We've got answers.

Policy Information: If you have any questions about your coverages or other ways to save with Grange, be sure to contact your agent, [redacted]
Claims Assistance: To report or check on a claim, call [redacted]
Billing Questions: To inquire about your bill or pay it, call [redacted]

Discounts

For a description of these discounts, please reference the Discounts applied to your policy section.

Policy Discounts

Disclosed Operator, Insurance Score, and Multi-Car

DECS001 (04 2012)

Page 1 of 3

Policy Number: [redacted]
Policy Type:

Vehicle Coverages

Coverage is provided where a premium is shown for the vehicle and coverage. The coverages listed below apply separately for each vehicle and are provided only where a premium or included is shown. The limit of liability applies separately for each vehicle. Where there are multiple vehicles on the policy, stacking of any limits of liability among the vehicles is not allowed.

1999 Dodg Ram

Coverages	Limits of Liability		Premium
	Each Person	Each Accident	
Part A - Liability	$50,000	$100,000	$102.00
Bodily Injury		$50,000	$98.00
Property Damage	$5,000		$13.00
Part B - Medical Payments			
Part C - Uninsured/Underinsured Motorists	$50,000	$100,000	$21.00
Bodily Injury	**Deductible**		
Part D - Damage to Your Auto	$500		$34.00
Other Than Collision	$500		$97.00
Collision			
Optional Coverages	$60 / Day	$1,800 / Occurrence	$35.00
Rental Reimbursement			$12.00
Towing and Labor			$15.00
Policy Fee			
		Vehicle Premium	**$427.00**

Vehicle Coverages

1998 Chev Sport Van G1

Coverages	Limits of Liability		Premium
	Each Person	Each Accident	
Part A - Liability	$50,000	$100,000	$100.00
Bodily Injury		$50,000	$94.00
Property Damage	$5,000		$14.00
Part B - Medical Payments			
Part C - Uninsured/Underinsured Motorists	$50,000	$100,000	$22.00
Bodily Injury	**Deductible**		
Part D - Damage to Your Auto	$500		$25.00
Other Than Collision	$500		$73.00
Collision			
Optional Coverages	$60 / Day	$1,800 / Occurrence	$35.00
Rental Reimbursement			$12.00
Towing and Labor			
		Vehicle Premium	**$375.00**

Policy Number: [redacted]
Policy Type: [redacted]

Policy Forms

Form #	Edition Date	Description
BCC136M	(09-2010)	Policy Contract
PPT02	(09-2013)	Passport Endorsement

End of Declarations Page

Grange Insurance
PO Box 182085
Columbus, OH 43218-2085

TEMP-RETURN SERVICE REQUESTED

May 21, 2015

Ivanka Ayoub
[redacted]

Re: Claim Number: [redacted]
Date of Loss: 03/19/2015
Vehicle Year: 1998
Vehicle Model: SPORT VAN G1

Insured: Ivanka Ayoub
Policy Number: [redacted]
Vehicle Make: CHEV
VIN: [redacted]

Dear Ivanka,

Thank you for discussing the claim with me. Based on our review of the damages to the vehicle, we have determined that the vehicle is a total loss. The actual cash value of the vehicle is based on the mileage, options and condition of the vehicle.

In order to settle this portion of the claim, we require the following:

- Certificate of Title
- Signed and notarized Power of Attorney (POA).

Please send all requested documents in the enclosed business reply envelope. Once all documents have been received we will use the POA to transfer the title into Trustgard Insurance Company's name and issue payment.

Explanation of Settlement:	
Market Valuation	$3,696.00
- Deductible	$500.00
Settlement Amount	$3,196.00

Please leave the keys with the total loss vehicle. If you did not leave the keys with the total loss vehicle and it has already been picked up for salvage, please return the keys in the enclosed business reply envelope.

Sincerely,

Erin M. Caldwell

Claims Representative
Grange Insurance
[redacted]

Enclosure: Power of Attorney

CCC VALUESCOPE
Claim Services

Market Report

Report Reference Number: [redacted]
Claim reference: [redacted]
Loss Incident Date: 03/19/2019
Insured: Ivanka Ayoub

Adjuster: Brin Caldwell
Adjuster ID: 349
Claim Reported Date: 03/26/2019
Owner: Ayoub, Ivanka
Appraiser: CHAIS MORNING

Introduction

Orange Insurance Companies has conducted an appraisal of your 1998 Chevrolet G10/EXP 4X2 Incomplete Deluxe located in [redacted]. The appraisal information was then used to conduct research in your market to determine the local market value of your unit. This CCC Valuescope Market Report details the results of that search. It contains the following sections:

Section Title:	Section Contents:
Equipment Summary	Market Value and Equipment Detail
VINGuard Identification	Loss Unit configuration and VIN history
Valuation Methodology	Method used to evaluate the vehicle
Comparable Units	Supporting market data for loss unit
Appraisal and Valuation Notes	Log notes for this file

---------- Equipment Summary ----------

Loss Unit Specifications

Deluxe
1998 Chevrolet G10/EXP 4X2 Incomplete
Deluxe
8-5.7L-FI
Condition is 3: Average
Odometer Unknown

Actual Cash Value	$	4,550.00
Pre Tax Adjustments		
Mileage To 250,000	-	954.00
Pre-tax amount:	$	3,696.00
Adjusted Loss Unit Value	$	3,696.00

Loss Unit Equipment:

Option	Description
AT	Automatic Transmission
OD	Overdrive
PS	Power Steering

Valuation Request: [redacted] (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

---------- Equipment Summary (continued) ----------

PB - Power Brakes
PW - Power Windows
PL - Power Locks
AW - Aluminum/Alloy Wheels
AC - Air Conditioning
DM - Dual Mirrors
IW - Intermittant Wipers
TW - Tilt Wheel
CC - Cruise Control
AM - AM Radio
FM - FM Radio
ST - Stereo
SE - Search/Seek
CN - Console/Storage
CS - Cloth Seats
RL - Reclining/Lounge Seats
OC - Overhead Console

3S - 3rd Row Seat
WT - Wood Interior Trim
FU - Full Carpeting
IL - Interior Lighting
FO - Rear Fold-Out Sofa Bed
UO - Upholstered Door Panels - Re
WL - Insit. Walls W/Paneling/Wall
AG - Drivers Side Air Bag
AG - Passenger Air Bag
AB - Anti-Lock Brakes (4
DT - Privacy Glass
SB - Rear Step Bumper
TR - Tire Rack/Carrier
WP - Draperies or Mini Blinds
WN - Custom Windows
1P - Clearcoat Paint
2T - Two Tone Paint

Additional Equipment
Deluxe Conversion

Actual Cash Value does not include tax, title, license, prior damage or deductible. For additional information or special consideration, call the CCC Commercial/Recreational Vehicle Division at [redacted] or, in Illinois, [redacted] Please use your Valuation Request Number for reference.

---------- VINguard Identification ----------

VIN: [redacted]

	Insurer Description	VINguard Analysis
Valuation Request: [redacted]	(Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE	

---------- VINguard Identification (continued) ----------

Class	Deluxe	
Year	1998	1998
Make	Chevrolet	Chevrolet
Model	G10/EXP 4X2 Incomplete	G10/EXP 4x2 Incomplete
Model Num	NG15	NG15
Body style	Deluxe	
Engine	8-5.7L-FI	8-5.7L-FI

VINguard messages:
VINguard detected discrepancies with this VIN
-- refer to VINguard Vehicle History Information.

Previous Total Loss History:
Duplicate VIN 54390986--14021 previously submitted by
Orange Insurance Companies (800) 686-0025
on 03/24/2015 Claim #: APV201860444-001-1

Collision History Information:
Collision incident reported
on 03/26/2015 Claim # APV201860444-001-1 in CLEVELAND, OH
Miles: 0,000 Damage Location: Rollover

---------- AutoCheck Vehicle History Report ----------

AutoCheck Vehicle History Report

Experian Automotive

Report Run Date: 05/26/2015

Key: | N = No Problem Found | Y = Problem Found | I = Information Found

TITLE CHECK

THIS VEHICLE CHECKS OUT. AutoCheck database for this 1998 CHEVROLET G10/EXP 4X2 INCOMPLETE [redacted] shows no historical events that indicate a significant automotive problem. These problems can indicate past automotive damage or warnings associated with the vehicle title.

Problems Checked	Results Found
Abandoned	N No Abandoned Record(s) Found
Valuation Request [redacted]	(Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

Damaged	N No Damaged Record(s) Found
Fire Damage	N No Fire Damage Record Found
Grey Market	N No Grey Market Record Found
Hail Damage	N No Hail Damage Record Found
Insurance Loss	N No Insurance Loss Record Found
Junk	N No Junk Record(s) Found
Rebuilt	N No Rebuilt Record(s) Found
Salvage	N No Salvage Record(s) Found

PROBLEM CHECK

THIS VEHICLE CHECKS OUT. AutoCheck database for this 1998 CHEVROLET G10/EXP 4X2 INCOMPLETE [redacted] shows no historical events that indicate a significant automotive problem. These problems can indicate past automotive damage or warnings associated with the vehicle title.

Problems Checked	Results Found
NHTSA Crash Test Vehicle	N No NHTSA Crash Test Vehicle Record(s) Found
Frame Damage	N No Frame Damage Record(s) Found
Major Damage Incident	N No Major Damage Record(s) Found
Manufacturer buyback/lemon	N No Manufacturer buyback/lemon Record(s) Found
Odometer Problem	N No Odometer Problem Record(s) Found
Recycled	N No Recycled Record(s) Found
Salvage Auction	N No Salvage Auction Record(s) Found
Water Damage	N No Water Damage Record(s) Found

ODOMETER CHECK [redacted] THIS VEHICLE CHECKS OUT. For this 1998 CHEVROLET G10/EXP 4X2 INCOMPLETE [redacted] no indication of odometer rollback or tampering was found. AutoCheck determines odometer rollbacks by searching for records that indicate odometer readings less than a previously reported value. Other odometer events can report events of tampering, or possible odometer breakage.

Date Reported	Odometer Reading
1998-08-18	
1998-08-11	
1999-02-03	
1999-02-03	
1999-06-15	
1999-12-29	24,681
1999-12-17	
2000-10-16	
2001-12-13	
2002-10-16	53,352
2002-10-15	
2003-07-30	
2004-07-30	
2005-07-27	
2007-06-22	

Valuation Request [redacted] (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

2009-10-01	
2011-07-27	
2013-06-10	246,709
2013-08-11	249,999
2013-08-12	
2014-03-24	
2014-03-17	

2015-03-19
2015-03-19
2015-03-19
2015-03-19
2015-03-19

VEHICLE INFORMATION

INFORMATION FOUND. AutoCheck found additional information on this vehicle.
These records will provide more history for this 1998 CHEVROLET G10/EXP 4X2
INCOMPLETE [redacted]

Problems Checked	Results Found
Accident	Y Accident Record(s) Found
Corrected Title	N No Corrected Title Record(s) Found
Driver Education	N No Driver Education Record(s) Found
Duplicate Title	N No Duplicate Title Record(s) Found
Emissions Safety Inspection	Y Emissions Safety Inspection Record(s) Found
Fire Damage	N No Fire Damage Record(s) Found
Lease	N No Lease Record(s) Found
Lien	Y Lien Record(s) Found
Livery Use	N No Livery Use Record(s) Found
Government Use	N No Government Use Record(s) Found
Police Use	N No Police Use Record(s) Found
Fleet	N No Fleet Record(s) Found
Rental	N No Rental Record(s) Found
Fleet and/or Lease	N No Fleet and/or Lease Record(s) Found
Fleet and/or Rental	N No Fleet and/or Rental Record(s) Found
Repossessed	N No Repossessed Record(s) Found
Taxi Use	N No Taxi Use Record(s) Found
Theft	N No Theft Record(s) Found

FULL HISTORY

Below are the historical events for this vehicle listed in chronological order.

Report Run Date: 05/20/2015

Event Event [redacted] Odometer Data Event
Valuation Request (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE
========== AutoCheck Vehicle History Report (continued) ==========

Date	Location	Reading	Source	Detail
1998-08-10	[redacted]	00000000	Motor Vehicle Dept	TITLE
1998-09-11		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
1999-03-03		00000000	State Agency	REAR IMPACT WITH ANOTHER VEHICLE
1999-03-03		00000000	State Agency	MODERATE DAMAGE REPORTED
1999-06-15		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
1999-11-23		24,681	Motor Vehicle Dept	TITLE
1999-12-17		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2000-12-18		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2001-12-13		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2002-10-18		53,863	Motor Vehicle Dept	TITLE
2002-10-18		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2003-07-30		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2004-07-30		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2005-07-27		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2007-08-22		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL

2009-10-01	[redacted]	00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2011-07-27		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2013-06-10		245,700	Motor Vehicle Dept	TITLE
2013-06-11		245,000	Independent Emissi	PASSED EMISSION INSPECTION
2013-06-12		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2014-05-24		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2015-02-19	CHESTER C, SC	00000000	State Agency	FRONT IMPACT WITH ANOTHER VEHICLE
2015-03-19	SC	00000000	Police Report	FRONT IMPACT COLLISION
2015-03-19	SC	00000000	Police Report	ACCIDENT REPORTED
2015-03-19	CHESTER C, SC	00000000	State Agency	AIR BAG DEPLOYED
2015-03-19	CHESTER C, SC	00000000	State Agency	SEVERE DAMAGE REPORTED
2015-03-19	SC	00000000	Police Report	VEHICLE WAS TOWED

AutoCheck Vehicle History Report Terms and Conditions:
Valuation Request: [redacted] (Continued) 1998 CHEV C10/EXP 4X2 INCOMPLETE ********** (Continued) ********** AutoCheck Vehicle History Report (continued) **********

Experian's Reports are compiled from multiple sources. It is not always possible for Experian to obtain complete discrepancy information on all vehicles; therefore, there may be other title brands, odometer readings or discrepancies that apply to a vehicle that are not reflected on that vehicle's Report. Experian searches data from additional sources where possible, but all discrepancies may not be reflected on the Report.

These Reports are based on information supplied to Experian by external sources believed to be reliable, BUT NO RESPONSIBILITY IS ASSUMED BY EXPERIAN OR ITS AGENTS FOR ERRORS, INACCURACIES OR OMISSIONS. THE REPORTS ARE PROVIDED STRICTLY ON AN 'AS IS WHERE IS' BASIS, AND EXPERIAN FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THIS REPORT.

YOU AGREE TO INDEMNIFY EXPERIAN FOR ANY CLAIMS OR LOSSES, INCLUDING COSTS, EXPENSES AND ATTORNEYS FEES, INCURRED BY EXPERIAN ARISING DIRECTLY OR INDIRECTLY FROM YOUR IMPROPER OR UNAUTHORIZED USE OF AUTOCHECK VEHICLE HISTORY REPORTS.

Experian shall not be liable for any delay or failure to provide an accurate report if and to the extent which such delay or failure is caused by events beyond the reasonable control of Experian, including, without limitation, 'acts of God', terrorism, or public enemies, labor disputes, equipment malfunctions, material or component shortages, supplier failures, embargoes, rationing, acts of local, state or national governments, or public agencies, utility or communication failures or delays, fire, earthquakes, flood, epidemics, riots and strikes.

These terms and the relationship between you and Experian shall be governed by the laws of the State of Illinois (USA) without regard to its conflict of laws provisions. You and Experian agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Cook, Illinois.

********** Valuation Methodology **********

The Commercial + Recreational Vehicle Division of CCC Information Services, Inc., prepared this CCC Valuescope Market Report for Grange Insurance Companies. CCC has been preparing market value reports for the insurance industry since 1981.

Valuations performed by CCC's Commercial + Recreational Vehicle Division require individual market searches to identify and locate supporting market information. Due to the unique nature of the loss units valued in the Commercial + Recreational Vehicle Division, a valuation expert handles each request individually.

When Grange Insurance Companies requests a valuation report, they provide CCC with the configuration of the loss unit, including model, hours or mileage, optional features, any accessories, the condition of the loss unit as well as
Valuation Request: [redacted] (Continued) 1998 CHEV C10/EXP 4X2 INCOMPLETE

the VIN/HIN/PIN (vehicle/hull/product identification number) of the loss unit. That identification number is analyzed to verify basic information provided on the loss unit.

Orange Insurance Companies also provides CCC with the loss unit owner's ZIP code, which identifies the local market used to determine the market value.

The local market area, however, may vary by vehicle or unit type. Where the vehicle or loss unit is readily available in a given location, the search area can be within the same city or state as the loss unit. If the loss unit or vehicle is very specialized, the search may expand to locate comparable support to document the loss unit's value.

Significant differences between the loss unit and any comparable units are documented and are used to define a verifiable market value for the loss unit. If no comparable units are located, the valuation expert will conduct a local market survey to gather the expert opinion of knowledgeable retailers in order to determine the local market value.

---------- Comparable Units ----------
The Comparable Units are compared to the Loss Unit to determine the Adjusted Value. The Adjusted Value represents the price of the Comparable Unit configured to exactly match the Loss Unit.

Comparable # 1 :

Publication: Internet Advertisement
Location: Grand Rapids, MI
Dealer/Private: Dealer

Publication Date: 09/30/2014
Phone: (888)438-7403
Dealer Name: Paris Motors Inc

Loss Unit	Comparable # 1	Adjustment
Loss Unit Type: Conversion Vans Class: Deluxe	Conversion Vans Deluxe Take Price:	4995
1998 Chevrolet C10/Exp 4x2 Incomplete Deluxe 8-5.7l-Fi Miles: Unlisted	1998 Chevrolet C10 4X2 Chevyvan Incomplete Conversion 8-5.7l-Fi 169,404	124
Condition: 2 Average	2 Average	
Packages		
Radio AM/FM Stereo Seek	AM/FM Stereo With Tape Cassette	-24

Valuation Request: [redacted] (Continued) 1998 CHEV C10/EXP 4X2 INCOMPLETE

---------- Comparable Units (continued) ----------

LOSS UNIT	Comparable # 1	ADJUSTMENT
Options		
Automatic Transmission	Automatic Transmission	
Overdrive	Overdrive	
Power Steering	Power Steering	
Power Brakes	Power Brakes	
Power Windows	Power Windows	
Power Locks	Power Locks	
Aluminum/Alloy Wheels	Aluminum/Alloy Wheels	
Air Conditioning	Air Conditioning	
Dual Mirrors	Dual Mirrors	
Intermittent Wipers	Intermittent Wipers	
Tilt Wheel	Tilt Wheel	
Cruise Control	Cruise Control	
Console/Storage	Console/Storage	
Cloth Seats	Cloth Seats	
Reclining/Lounge Seats		

Overhead Console	
3rd Row Seat	3rd Row Seat
Wood Interior Trim	Wood Interior Trim
Full Carpeting	Full Carpeting
Interior Lighting	Interior Lighting
Rear Fold-Out Sofa Bed	Rear Fold Out Sofa Bed
Upholstered Door Panel	Upholstered Door Panels - Muslin
Insit. Walls W/Paneling	Insit. Walls W/Paneling/Wall Cove
Drivers Side Air Bag	Drivers Side Air Bag
Passenger Air Bag	Passenger Air Bag
Anti-Lock Brakes (4)	Anti-Lock Brakes (4)
Privacy Glass	Privacy Glass
Rear Step Bumper	Rear Step Bumper
Tire Rack/Carrier	Tire Rack/Carrier
Draperies Or Mini Blin	Draperies Or Mini Blinds
Custom Windows	Custom Windows
Clearcoat Paint	
Two Tone Paint	
	Power Mirrors -8
	Heated Mirrors -35
	Television -95
	Vcr -8
	Dual Radio -63
	Captain Chairs (4)
	Running Boards/Side Steps -97
Additional Equipment	
Deluxe Conversion	Midwest Vans Conversion

Valuation Request: [redacted] (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

---------- Comparable Units (continued) ----------

LOSS UNIT	Comparable # 1	ADJUSTMENT
Adjusted Value		4941

Comparable # 2 :

Publication: Internet Advertisement
Location: Mason, Oh
Dealer/Private: Dealer
Publication Date: 09/25/2014
Phone: [redacted]
Dealer Name: Mason Car Company

Loss Unit	Comparable # 2	Adjustment
Loss Unit Type: Conversion Vans	Conversion Vans	
Class: Deluxe	Deluxe	
	Take Price:	5450
1998 Chevrolet	1998 Chevrolet	
G10/Exp 4x2 Incomplete	G10 4x2 Chevyvan Incomplete	
Deluxe	Conversion	
8-5.7l-Fi	8-5.7l-Fi	
Miles: Unlisted	89,083	-1500
Condition: 2 Average	2 Average	
Packages		
Radio		
AM/FM Stereo Seek	AM/FM Stereo	-71
	With Tape And Cd	
Options		
Automatic Transmission	Automatic Transmission	
Overdrive	Overdrive	
Power Steering	Power Steering	
Power Brakes	Power Brakes	
Power Windows	Power Windows	
Power Locks	Power Locks	

Aluminum/Alloy Wheels	Aluminum/Alloy Wheels
Air Conditioning	Air Conditioning
Dual Mirrors	Dual Mirrors
Intermittent Wipers	Intermittent Wipers
Tilt Wheel	Tilt Wheel
Cruise Control	Cruise Control
Console/Storage	Console/Storage
Cloth Seats	Cloth Seats
Reclining/Lounge Seats	

Valuation Request: [redacted] (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

---------- Comparable Units (continued) ----------

LOSS UNIT	Comparable # 2	ADJUSTMENT
Overhead Console		
3rd Row Seat	3rd Row Seat	
Wood Interior Trim	Wood Interior Trim	
Full Carpeting	Full Carpeting	
Interior Lighting	Interior Lighting	
Rear Fold-Out Sofa Bed	Rear Fold-Out Sofa Bed	
Upholstered Door Panel	Upholstered Door Panels + Headlin	
Insalt. Walls W/Panelin	Insalt. Walls W/Paneling/Wall Cove	
Drivers Side Air Bag	Drivers Side Air Bag	
Passenger Air Bag	Passenger Air Bag	
Anti-Lock Brakes (4)	Anti-Lock Brakes (4)	
Privacy Glass	Privacy Glass	
Rear Step Bumper		
Tire Rack/Carrier	Tire Rack/Carrier	
Draperies Or Mini Blin	Draperies Or Mini Blinds	
Custom Windows	Custom Windows	
Clearcoat Paint		
Two Tone Paint		
	Power Mirrors	-6
	Television	-25
	Vcr	-8
	Dual Radio	-61
	Captain Chairs (4)	
	Trailer Hitch	-24
	Trailering Package	-24
	Running Boards/Side Steps	-37
Additional Equipment		
Deluxe Conversion	Gladiator Conversion	
Adjusted Value		3870

Comparable # 3 :

Publication: Internet Advertisement
Location: Kelvindale, Mi
Dealer/Private: Private
Publication Date: 09/30/2014
Phone: [redacted]

Loss Unit	Comparable # 3	Adjustment
Loss Unit Type: Conversion Vans	Conversion Vans	
Class: Deluxe	Deluxe	
	Take Price:	7803

Valuation Request: [redacted] (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

---------- Comparable Units (continued) ----------

LOSS UNIT	Comparable # 3	ADJUSTMENT
1998 Chevrolet	1998 Chevrolet	-225
G10/Exp 4x2 Incomplete	G10 4x2 Chevyvan Incomplete	
Deluxe	Conversion	
8-5.7l-Fi	8-5.7l-Fi	
Miles: Unlisted	120,020	-1096

Condition: 2 Average	2 Average	
Packages		
Radio AM/FM Stereo Seek	AM/FM Stereo With Tape Cassette	-38
Options Automatic Transmission Overdrive Power Steering Power Brakes Power Windows Power Locks Aluminum/Alloy Wheels Air Conditioning Dual Mirrors Intermittent Wipers Tilt Wheel Cruise Control Console/Storage Cloth Seats Reclining/Lounge Seats Overhead Console 3rd Row Seat Wood Interior Trim Full Carpeting Interior Lighting Rear Fold-Out Sofa Bed Upholstered Door Panel Insit. Walls W/Panelin Drivers Side Air Bag Passenger Air Bag Anti-Lock Brakes (4) Privacy Glass Rear Step Bumper Tire Rack/Carrier Draperies Or Mini Blin	Automatic Transmission Overdrive Power Steering Power Brakes Power Windows Power Locks Air Conditioning Dual Mirrors Intermittent Wipers Tilt Wheel Cruise Control Console/Storage Cloth Seats 3rd Row Seat Wood Interior Trim Full Carpeting Interior Lighting Rear Fold-Out Sofa Bed Upholstered Door Panels + Headlin Insit. Walls W/Paneling/Wall Cove Drivers Side Air Bag Passenger Air Bag Anti-Lock Brakes (4) Privacy Glass Rear Step Bumper Tire Rack/Carrier Draperies Or Mini Blinds	49
Valuation Request: [redacted] (Continued) 1998 CHEV G1C/EXP 4X2 INCOMPLETE		

---------- Comparable Units (continued) ----------

LOSS UNIT	Comparable # 3	ADJUSTMENT
Custom Windows Clearcoat Paint Two Tone Paint	Custom Windows	
	20" Or Larger Wheels	-66
	Dual Air Conditioning	-98
	Television	-25
	Captain Chairs (4)	
	Running Boards/Side Steps	-37
Additional Equipment Deluxe Conversion	Deluxe Conversion	
	41" Television (2nd TV)	-95
	Dvd Player	-3
Adjusted Value		5175

---------- Valuation Processing Notes ----------

05/25 14:28 Standard Equipment:
Ra Pb Ab Ag Rg Pw Pl Tw Cc Am Fm St Ca Ac

The following information was provided after the valuation was completed:
05/29 12:51 Pre tax/Post tax data modified after valuation

If you have any questions, please contact Customer service at [redacted] or [redacted] Thank you for the assignment.

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PAX2

CLERK OF COURT
GREENVILLE CO S.C.
2016 MAR 21 P 3:59
FILED

Phone communication between Heidi Gersten

and Joseph Tirbovich of Nationwide Insurance Co.

February 22, 2018 2:29 p.m. EST.

Transcribed and certified by Heidi Gersten to be a true and accurate depiction.

4 pages.

CLERK OF COURT
CUYAHOGA CO. S.C.
2018 MAR 27 P 3:59
FILED

Heidi Gersten: Good afternoon. Heidi Gersten speaking on a recorded line. How may I help you?

Joseph Tirbovich: Hello, Heidi. This is Joe Tirbovich with Nationwide Insurance. I need to also let you know that this call may be monitored and recorded for quality purposes. How are you today?

Heidi Gersten: Oh, I'm hanging in there. How are you doing?

Joseph Tirbovich: Doing very good. Just giving you a call. Uh, I received, uh, another demand letter from you on regards to the property damage claim and wanted to let you know that our offer stands at $20,000.00 and will not move at that.

Heidi Gersten: I apologize, but, uh, are you offering $20,000.00 on my mother's claim?

Joseph Tirbovich: Your mother has made a claim with, um, Grange for her vehicle. Um, the $20,000.00 is for your property damage. We are not honoring anything for your mother. Zero for your mother. This is strictly for your injury, excuse me, your property damage punitive claim that you had made with us. So, I'm just reiterating the $20,000.00 for you as far as with your mother, zero.

Heidi Gersten: Okay. So, are you putting in writing a letter to her?

Joseph Tirbovich: Definitely, and a letter to you as well. But, I just still wanted to call.

Heidi Gersten: Okay. What is your basis for denying my mother's claim, Ivanka Ayoub?

Joseph Tirbovich: Um, yeah, your mom doesn't have a claim with us.

Heidi Gersten: So. You prefer to go to litigation?

Joseph Tirbovich: Oh, we've been waiting for you. (laughter) Actually, I thought you were going to—We've even—We've been waiting. Um. 'Cause you've been saying for months you were. So, now we've already let our insured know. We have our litigation department on-on stand by. I'm waiting for that to be honest with you 'cause I know the statute's running.

Heidi Gersten: All right. Anything else you'd like to say?

Joseph Tirbovich: Oh. No ma'am. Nope. Just letting you know that for your property damage punitive claim we are offering $20,000.00, which was the same offer I made back, I think, in August or September. As far as with your mom trying to make any loss of consortion claim, we're not honoring that.

Heidi Gersten: Okay. And what is—

Joseph Tirbovich: And so you know—

Heidi Gersten: —your basis—

Joseph Tirbovich: —just for the—

Heidi Gersten: —basis of, uh, your-your, uh, with the—with my claim which is separate? What-what is the basis—

Joseph Tirbovich: —Yah—

Heidi Gersten: —of the $20,000.00 when punitive damages are—

Joseph Tirbovich: Yeah. Well, unfortunately, with what, what you've provided us, was very vague in-information is what you provided, basically provided us with multiple photos of things that were taken prior to the accident. I was able

to identify around $5000.00. Um, and then we added, um, additional money for punitive damages. So, as I said we needed to actually see, physically see all the property damages, yeah, everything that you said that was in this van. All you gave me were pictures, you gave me a video, but I was not able to identify probably 90% of the things that, that you were, um, asking for, so that is our basis.

Heidi Gersten: Really so you didn't receive—

Joseph Tirbovich: I meaa—

Heidi Gersten: Did you? Did you receive a 332-page book with pictures and receipts with indexes?

Joseph Tirbovich: Mm. But there's nothing to show that those items were in the your vehicle at the time of loss. And we had this conversation multiple times before that I needed to see those items that were damaged in the vehicle right after the accident.

Heidi Gersten: First of all, I—

Joseph Tirbovich: I told you that.

Heidi Gersten: —I disagree with what you're saying because, um, in our previously recorded conversation you did not agree to that. You understood that I was in the hospital for—

Joseph Tirbovich: No ma'am, I didn't. We never had that--Please let me hear this conversation. I-I would like to listen to this conversation because I know I have it documented in my file I told you exactly what we needed. So if you could, could I hear this conversation?

Heidi Gersten: Absolutely. Absolutely.

Joseph Tirbovich: Could I hear it now? Do you have that on you?

Heidi Gersten: I apologize, you asked for litigation and you've not--This is the first time you're telling me what you're saying to me. This is brand new.

Joseph Tirbovich: Yeah. And-and-and I had sent many letters when we made the offer for you to call me and you refused to call me—

Heidi Gersten: I apologize. I'm paralyzed.

Joseph Tirbovich: —back.

Heidi Gersten: I apologize. May I speak?

Joseph Tirbovich: So, we've talked.

Heidi Gersten: I'm paralyzed. Sir, may I speak?

Joseph Tirbovich: We talked on the phone—

Heidi Gersten: May I speak?

Joseph Tirbovich: —many times before. No ma'am. We talked on the phone for many times prior to that—us making the offer and then you stopped talking to me. You would not. You wanted everything in writing.

Heidi Gersten: And why would you not put this in writing?

Joseph Tirbovich: We don't put things in writing because attorneys. I've learned. That was something when I was a rooky adjuster. When I put certain things in writing, attorneys can tear things apart. So, everything is verbal.

Heidi Gersten: Okay. Well, you verbally agreed to compensate me and you failed.

Joseph Tirbovich: $20,000.00. Yes ma'am. I verbally agreed to compensate you with $20,000.00 and I am not compensating your mother for anything.

Heidi Gersten: All right.

Joseph Tirbovich: You have a very nice day ma'am and I'll just wait for the suit papers.

Heidi Gersten: Absolutely.

Joseph Tirbovich: Thank you very much. Mm. Ba-bye.

CLERK OF COURT
RICHLAND CO. S.C.
2018 MAR 27 P 3:59
FILED

Nationwide®
On Your Side

Your Policy Declarations

Nationwide Auto Policy
Policy Period: Feb 8, 2015 - Aug 8, 2015
Policy Number: [redacted]

Insured Vehicle(s) and Schedule of Coverages (continued)

2008 Honda Ridgelin
[redacted]

Coverages	Limits of Liability	Premium
A Comprehensive With OEM Other Than Collision (Comprehensive)	Actual Cash Value	$ 84.80
Collision With OEM	Actual Cash Value Less $ 250	$ 134.80
B Liability		$ 55.23
Property Damage Liability	$ 100,000 Each Accident	
Bodily Injury Liability	$ 100,000 Each Person $ 300,000 Each Accident	$ 75.93
C Medical Payments	$ 100,000 Each Person	$ 23.90
Increased Limits	Endorsement 3083A	$ 18.00
Transportation Expenses Coverage	$ 50 Per Day $ 1,500 Per Accident	
Vehicle Endorsements 3305		
Loss Payee-Capital One Auto	Lien Expires On Apr 05, 2019	**Total for this Vehicle** $ 370.66

07697000095054

FILED

Policy Level Schedule of Coverages

Coverages	Limits of Liability	Premium
Part D2-Combined Uninsured and Underinsured Motorist - Bodily Injury	$ 100,000 Each Person $ 300,000 Each Accident	$ 57.30
Uninsured - Property Damage	$ 25,000 Each Accident	$ 2.50
	Total for Policy Coverages	$ 59.80

Policy Form and Endorsements

V-032E	Nationwide Auto Policy
V-3458B	Amendatory Endorsement
V-3540	NC Amendatory Endorsement
V-3572	Other Products Endorsement
V-3083A	Extended Transportation Expenses Coverage
V-3305	Loss Settlement - Original Equipment Manufacturer Parts

EXHIBIT
tabbies

Continued on the next page

1st Set of Admissions, Interrogatories, and Request for Productions

STATE OF SOUTH CAROLINA In the matter of Arbitration HEIDI GERSTEN, IVANKA AYOUB Claimants vs. KEVIN CARTER, RICHARD DAVIS, JOSEPH TIRBOVICH, NATIONWIDE MUTUAL INS. CO., INTERINSURANCE EXCHANGE of the AUTOMOBILE CLUB, TRUSTGUARD INS. CO., JOHN AMMENDOLA Defendants	BEFORE THE ARBITRATION PANEL CHESTER COUNTY Case number: 2018-CP-12-00074 1st SET of ADMISSIONS, INTERROGATORIES, and REQUEST for PRODUCTIONS Pursuant to SC Rules of Civil Procedure Sections: 33, 34 and 36

Now come the Claimants Heidi Gersten and Ivanka Ayoub and move the Court to admit into evidence the following Admissions, Interrogatories and Request for Productions as well as their present and future responses by Defendants Kevin Carter and/or Richard Davis and/or Joseph Tirbovich and/or Nationwide Mutual Insurance Company and/or Interinsurance Exchange of the Automobile Club and/or John Ammendola and/or Trustguard Insurance pursuant to SC Rules of Civil Procedure Sections 33, 34 and 36.

The Claimants hereby request the Defendants pursuant to Rule 36, within 30 days after service of this request, make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility, which may be interposed at a trial on this matter. If objection is made, please state the reason for the objection. Please specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. Space has been provided after each request to permit the Defendants to set forth an answer of objections thereto. Also, please note that the term "collision" refers to the motor

vehicle collision which is the subject of this lawsuit and which occurred on or about March 19, 2015.

DEFINITIONS AND INSTRUCTIONS

1. As used herein, a singular form of a noun or a pronoun shall be considered to include, within its meaning the plural form of the noun or pronoun as used and vice versa. In similar fashion, the use of the masculine form of a pronoun shall be considered also to include within its meaning the feminine form of the pronoun so used and vice versa. Also in similar fashion, the use of any tense of the verb shall be considered to include within its meaning all other tenses of the verb so used.

2. These requests for admission, requests for production of documents and interrogatories shall be deemed to be continuing in nature so as to require additional answers, responses and admissions or denials if further information is obtained between the time the answers, responses and admissions are served and the time of arbitration. Such answers, responses and admissions shall be served from time to time, but not later than 30 days after such additional information is received.

3. In answering these requests for admission, an answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter.

4. In answering these requests for admission, a denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer, or deny part of the matter of which an admission is

requested, he or she shall specify so much of it as is true and qualify or deny the remainder.

5. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he or she states that he or she has made a reasonable inquiry and that the information known or readily obtainable by him or her to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request. He or she may, subject to the provision of Rule 36, deny the matter or set forth reason why he or she cannot admit or deny it.

6. If you fail or refuse to admit the truth of any such statement of fact and the Claimant(s) thereafter prove(s) the truth thereof, you may be required to pay reasonable expenses incurred in making such proof, including attorney fees.

7. All information is to be divulged which is in your possession or control or within the possession or control of your attorneys, agents or the representatives of you or your attorneys.

8. When a request contains a separately numbered or lettered paragraph, each separately numbered or lettered paragraph should be treated separately and a separate response furnished.

9. You are reminded that all answers must be made separately and fully, and that an incomplete or evasive answer is a failure to answer.

10. If an objection is made, the reasons therefore shall be stated with particularity.

11. The words "document", "documents", and "thing" as used herein shall be

deemed to include any written, printed, typed, or other graphic matter of any kind or nature, drafts and copies bearing notations or marks not found on the original, including reports, notes, letters, envelopes, telegrams, messages (including references, studies, analyses, comparisons, books, articles, magazines, manuals, newspapers, booklets, circulars, bulletins, notice, instructions, minutes of all other communications of any kind, including inter-and intra-office communications, purchase orders, questionnaires and surveys, charts, graphs, photographs, microfilms, phonograph, tapes or recordings, punch cards, magnetic tapes, discs, data cell, drums, printouts, video, and other data compilations from which information can be obtained.

12. The word "person" or "persons" as used herein shall be deemed to include natural person, firms, partnerships, associations, joint ventures, trustees and corporations.

13. The word "identify", "identity", or "identification":

(a) When used herein in reference to a natural person, shall require you to state:

(1) his full name and the present or last known address of his residence, and

(2) his present or last known business affiliation or employer, and position therewith.

(b) When used in reference to an entity other than the individual, shall require you to state:

(1) its full name, and

(2) nature of the organization including the name of the state under which the same was or is organized.

(c) When used in reference to a document, shall require you to state:

(1) its date,

(2) its author,

(3) the type of document (e.g., letter, memorandum, receipt, invoice, schedule, report, telegraph, chart, photograph, sound reproduction, note, etc.)

(4) its source (i.e., from whom you obtained it), and

(5) its present location and the name of the present custodian or each custodian if there is more than one copy thereof. If any such document was, but is no longer in your possession or subject to your control, or it is no longer in existence, state whether it is:

(1) missing or lost,

(2) destroyed,

(3) transmitted or transferred, voluntarily or involuntarily to others, identifying such others or

(4) otherwise disposed of , and in each instance, explain the circumstances surrounding the authorization for such disposition and state the date or approximate date thereof.

14. "And", "as well as", "or" shall be construed either disjunctively or conjunctively as necessary to bring with the scope of this request any documents which might otherwise be construed as outside its scope.

15. "Related to", "regarding", "relative to", "relating to" or any similar term shall mean directly or indirectly mentioning or describing, pertaining to , connected with, or reflecting upon any item or issue designated.

16. "Communications" shall refer to all inquires, discussions, interviews, messages, meetings, telephone conversations, letters, notes, electronic mail, or any other form or interpersonal discussion, whether verbal or written.

17. The words "you", "your" and "yours" refer to the Defendants, the Defendant's attorney, representatives, or any other person acting for or on behalf of the same.

18. "Property" refers to the personal property and/or belongings including but not limited to tangible and/or intangible items/or goods and/or intellectual property.

19. "This action" refers to the above captioned action pending in the Chester County Court of Common Pleas as case number: 2018-AP-12-00074.

20. The word "liability" means accountability and/or responsibility.

ADMISSIONS

Instructions

Pursuant to Rule 36 REQUEST FOR ADMISSIONS

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as stipulated in

writing by the parties pursuant to Rules 29 and 6(b), the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

Note to 2001 Amendment:

The second sentence of the second paragraph of Rule 36(a) is amended to reflect the change in Rule 29 allowing the parties, under certain circumstances, to stipulate to extensions.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admissions fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose.

(c) Limitation. A party may serve on any other party more than one set of requests to admit, but the total number of all requests to one party shall not exceed twenty requests, including subparts, except by leave of court upon good cause shown. Requests to admit the genuineness of documents or tangible things are not limited to any number of documents or things.

Note:

This is the language of current Federal Rule 36, as well as substantially the language of Circuit Court Rule 89, with the addition of the limitation in 36(c), which is new matter.

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ADMISSIONS

1. Admit that you were personally served with the Writ of Summons and Complaint in the above-captioned case.

ANSWER:

2. Admit that you have no basis to assert as a defense or affirmative defense to the subject accident, lack of personal jurisdiction.

ANSWER:

3. Admit that immediately prior to impact, the Defendant Kevin Carter failed to yield right of way to the Claimant Heidi Gersten on the date of the collision.

ANSWER:

4. Admit that the Claimant Heidi Gersten was paralyzed as a result of said collision.

ANSWER:

5. Admit that the Claimant Heidi Gersten was paralyzed as a result of the collision caused by the Defendant Kevin Carter.

ANSWER:

6. You consumed drugs (prescription or otherwise), medicines, or alcoholic beverages within twenty-four (24) hours prior to said occurrence.

ANSWER:

7. You were under care of a physician at the time of the occurrence.

ANSWER:

8. You maintained insurance that covers your liability in this lawsuit.

ANSWER:

9. Nationwide Mutual Insurance Company offered the Claimant Heidi Gersten $20,000.00 solely for punitive damages to settle this claim in addition to the offer of $20,000.00 for property damage.

ANSWER:

10. Admit that the collision occurred on US 177 heading north in Chester County, South Carolina.

ANSWER:

11. Admit that the speed limit was 70mph in the area of this controversy.

ANSWER:

12. Admit that the Defendant Kevin Carter was partly in the right shoulder of northbound 177 upon impact of the collision.

ANSWER:

13. The Defendant Kevin Carter consumed [redacted] while operating his motor vehicle during said March 19, 2015 collision.

ANSWER:

14. The Defendant Kevin Carter was too impaired on March 19, 2015 at approximately 3:45 a.m. to safely drive a motor vehicle.

ANSWER:

15. The Defendant Kevin Carter did not report to his claims adjuster employed by Defendant Nationwide Mutual Insurance Company that he was charged with DUI for said March 19, 2015 collision when initially reporting the said collision.

ANSWER:

16. The Defendant Kevin Carter is and/or was certified as a State of North Carolina Medical Responder North Carolina EMS License [redacted]

ANSWER:

17. Punitive damages are recoverable in a property damage claim in South Carolina and there is no cap when the defendant's conduct is willful, wanton or reckless.

ANSWER:

18. Admit or deny that the Defendant Nationwide Mutual Insurance Company accepted liability through the Defendant Joseph Tirbovich for this stated March 19, 2015 occurrence.

ANSWER:

19. The Defendants Kevin Carter and/or Richard Davis do not have an insurance rider or umbrella policy.

ANSWER:

20. The Claimant Heidi Gersten provided the Defendant Nationwide Insurance Company with 322 pages of information that included receipts and pictures of lost, destroyed, or damaged property caused by said collision as requested by the Defendant Joseph Tirbovich.

ANSWER:

FOR RECORDS OF A REGULARLY CONDUCTED ACTIVITY

REQUEST FOR ADMISSION No. 21: Admit that documents labeled "Exhibit A" are true and authentic copies of the genuine original documents.

ANSWER:

REQUEST FOR ADMISSION No. 22: Admit that documents labeled "Exhibit A" were made at or near the time of the regularly conducted activity to which the documents pertain.

ANSWER:

REQUEST FOR ADMISSION No. 23: Admit that documents labeled "Exhibit A" were made by a person with knowledge of the activity to which the documents pertain or were made from information transmitted by a person with knowledge of the activity to which the documents pertain.

ANSWER:

REQUEST FOR ADMISSION No. 24: Admit that documents labeled "Exhibit A" were prepared and kept by SC Dept. of Public Safety in the course of regularly conducted activity of a business, organization, occupation or calling.

ANSWER:

REQUEST FOR ADMISSION No. 25: Admit that the documents labeled "Exhibit A" were made in the regular practice of activity to which the documents pertain.

ANSWER:

REQUEST FOR ADMISSION No. 26: Admit that the document attached as "Exhibit A" (Police Report) is an authentic copy of a document produced by Trooper Blackwell of the South Carolina Highway Patrol in the normal course of its business operation.

ANSWER:

REQUEST FOR ADMISSION No. 27: Admit that documents labeled "Exhibit B" are true and authentic copies of the genuine original documents.

ANSWER:

REQUEST FOR ADMISSION No. 28: Admit that documents labeled "Exhibit B" were made at or near the time of the regularly conducted activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 29: Admit that documents labeled "Exhibit B" were made by a person with knowledge of the activity to which the documents pertain or were made from information transmitted by a person with knowledge of the activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 30: Admit that documents labeled "Exhibit B" were prepared and kept by Arbitration Forums, Inc. in the course of regularly conducted activity of a business, organization, occupation or calling.
ANSWER:

REQUEST FOR ADMISSION No. 31: Admit that the documents labeled "Exhibit B" were made in the regular practice of activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 32: Admit that the documents attached as "Exhibit B" (Arbitration Decision) is an authentic copy of the document produced by Nadia Reynolds, Arbitrator for Arbitrations Forum Inc., in the normal course of its business operation.
ANSWER:

REQUEST FOR ADMISSION No. 33: Admit that documents labeled "Exhibit C" are true and authentic copies of the genuine original documents.
ANSWER:

REQUEST FOR ADMISSION No. 34: Admit that the documents labeled "Exhibit C" were made in the regular practice of activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 35: Admit that documents labeled "Exhibit C" were made by a person with knowledge of the activity to which the documents pertain or were made from information transmitted by a person with knowledge of the activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 36: Admit that documents labeled "Exhibit C" were prepared and kept by SC Law Enforcement Division Toxicology Dept. in the course of regularly conducted activity of a business, organization, occupation or calling.
ANSWER:

REQUEST FOR ADMISSION No. 37: Admit that the documents labeled "Exhibit C" were made in the regular practice of activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 38: Admit that the documents attached as "Exhibit C" (Forensic Services Laboratory Report) are authentic copies of documents produced by Tracy McKinnon, Forensic Toxicologist, in the normal course of its business operation.
ANSWER:

REQUEST FOR ADMISSION No. 39: Admit that documents labeled "Exhibit D" are true and authentic copies of the genuine original documents.
ANSWER:

REQUEST FOR ADMISSION No. 40: Admit that documents labeled "Exhibit D" were made at or near the time of the regularly conducted activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 41: Admit that documents labeled "Exhibit D" were made by a person with knowledge of the activity to which the documents pertain or were made from information transmitted by a person with knowledge of the activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 42: Admit that documents labeled "Exhibit D" were prepared and kept by Nationwide Mutual Insurance Company in the course of regularly conducted activity of a business, organization, occupation or calling.
ANSWER:

REQUEST FOR ADMISSION No. 43: Admit that the documents labeled "Exhibit D" were made in the regular practice of activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 44: Admit that the documents attached as "Exhibit D" (Declaration Page) are authentic copies of documents produced by Nationwide Mutual Insurance Company in the normal course of its business operation.
ANSWER:

REQUEST FOR ADMISSION No. 45: Admit that the document labeled "Exhibit E" is a true and authentic copy of the genuine original documents.
ANSWER:

REQUEST FOR ADMISSION No. 46: Admit that the document labeled "Exhibit E" was made at or near the time of the regularly conducted activity to which the document pertains.

ANSWER:

REQUEST FOR ADMISSION No. 47: Admit that the document labeled "Exhibit E" was made by a person with knowledge of the activity to which the document pertains or was made from information transmitted by a person with knowledge of the activity to which the document pertains.
ANSWER:

REQUEST FOR ADMISSION No. 48: Admit that the document labeled "Exhibit E" was prepared and kept by Nationwide Mutual Insurance Company in the course of regularly conducted activity of a business, organization, occupation or calling.
ANSWER:

REQUEST FOR ADMISSION No. 49: Admit that the document labeled "Exhibit E" was made in the regular practice of activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 50: Admit that the document attached as "Exhibit E" (Nationwide Offer) is an authentic copy of a document produced by Joseph Tirbovich, Casualty Claims Specialist for Nationwide Mutual Insurance Company, in the normal course of its business operation.
ANSWER:

REQUEST FOR ADMISSION No. 51: Admit that the document labeled "Exhibit F" is a true and authentic copy of the genuine original document.
ANSWER:

REQUEST FOR ADMISSION No. 52: Admit that the document labeled "Exhibit F" was made at or near the time of the regularly conducted activity to which the document pertains.
ANSWER:

REQUEST FOR ADMISSION No. 53: Admit that document labeled "Exhibit F" was made by a person with knowledge of the activity to which the document pertains or was made from information transmitted by a person with knowledge of the activity to which the document pertains.
ANSWER:

REQUEST FOR ADMISSION No. 54: Admit that the document labeled "Exhibit F" was prepared and kept by Nationwide Mutual Insurance Company in the course of regularly conducted activity of a business, organization, occupation or calling.
ANSWER:

REQUEST FOR ADMISSION No. 55: Admit that the document labeled "Exhibit F" was made in the regular practice of activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 56: Admit that the document attached as "Exhibit F" (Nationwide Punitive Offer) is an authentic copy of a document produced by Joseph Tirbovich, Claims Adjuster for Nationwide Mutual Insurance Company, in the normal course of its business operation.
ANSWER:

REQUEST FOR ADMISSION No. 57: Admit that documents labeled "Exhibit G" are true and authentic copies of the genuine original documents.
ANSWER:

REQUEST FOR ADMISSION No. 58: Admit that documents labeled "Exhibit G" were made at or near the time of the regularly conducted activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 59: Admit that documents labeled "Exhibit G" were made by a person with knowledge of the activity to which the documents pertain or were made from information transmitted by a person with knowledge of the activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 60: Admit that documents labeled "Exhibit G" were prepared and kept by Trustguard Insurance Company, also doing business as Grange Insurance, in the course of regularly conducted activity of a business, organization, occupation or calling.
ANSWER:

REQUEST FOR ADMISSION No. 61: Admit that the documents labeled "Exhibit G" were made in the regular practice of activity to which the documents pertain.
ANSWER:

REQUEST FOR ADMISSION No. 62: Admit that documents attached as "Exhibit G" (Trustguard Offer) are authentic copies of documents produced by Amy Carmack, Senior Claims Representative of Grange Insurance, also doing business as Trustguard Insurance Company, in the normal course of its business operation.
ANSWER:

INTERROGATORIES

Instructions

Pursuant to Rule 33 INTERROGATORIES TO PARTIES

(a) **Availability; Procedures for Use.** Except as limited by paragraph (b)(9), any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

Note:

This Rule 33(a) is the language of current Federal Rule except the first line. This language permits interrogatories to any party, not just an adverse party, and increases the time within which a party may object or respond to 30 days.

(b) **Standard Interrogatories.** In all cases the following standard interrogatories may be served by one party upon another unless otherwise ordered by the court for good cause shown. The interrogatories shall be deemed to continue from the time of service, until the time of trial of the action so that information sought, which comes to the knowledge of a party, or his representative or attorney, after original answers to interrogatories have been submitted, shall be promptly transmitted to the other party.

(1) Give the names and addresses of persons known to the parties 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 relate to the claim or defense in the case.

(3) In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

(4) Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

(5) Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

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

(7) For each person known to the parties 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.

(8) [Defendants only.] If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

(9) **Limitations.** In addition to the standard interrogatories authorized by this paragraph, the court may order additional interrogatories for good cause shown in any case. In all actions in which the amount in controversy is not less than $25,000, and in all actions for declaratory or injunctive relief, a party may serve additional interrogatories including more than one set of interrogatories upon any other party; but the total number of general interrogatories to any one party shall not exceed fifty questions including subparts, except by leave of court upon good cause shown.

Note:

Rule 33(b)(5) amends present Circuit Court Rule 90 to require an "itemized" statement of all special damages exclusive of pain and suffering. 33(b)(8) is amended to make clear that in certain cases additional interrogatories are permitted beyond the standard interrogatories. Paragraphs 33(b)(1) through (4) and (6) are verbatim the standard interrogatories permitted by present Circuit Court Rule 90(e)(A) through (D) and (F). Paragraph (b)(7) is new and provides for a summary of the facts known to the witnesses in the case. The rule requires a detailed summary so as to avoid the problem encountered with the interrogatories directed to experts in Federal Rule 26(b)(4)(A)(i) which often results in a short, vague summary of expected testimony. On the other hand, it is limited to important facts known or observed by the witness so that the summary is restricted to the actual knowledge of the witness. Paragraph (b)(8) is added to provide for additional special interrogatories to parties in complex cases. The $10,000 limitation follows the approach set by present Circuit Court Rule 87J. The limit of fifty such interrogatories follows present local rules of the Federal courts.

Note to 1985 Amendment:

The changes to Rule 33(b)(8) raise the amount in controversy necessary to authorize general interrogatories as a matter of course from $10,000 to $25,000. The rule is clarified to permit up to fifty general interrogatories in addition to the seven standard interrogatories.

Note to 1988 Amendment:

Rule 33(b)(8) is amended to make clear that the court has the discretion to permit additional interrogatories in any case for good cause shown.

Note to 2008 Amendment:

This amendment added section (b)(8) relating to defendants.

(c) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Note:

This Rule 33(c) is the Federal Rule and permits the party responding to discovery interrogatories to supply the documents from which the information can be obtained when the burden of extracting the information is the same for either party. It places on the requesting party the burden of obtaining the information if he specially needs it.

Note to 2011 Amendment:

The amendments to Rules 16, 25, 33, 34, 37 and 45 of the South Carolina Rules of Civil Procedure concerning electronic discovery are substantially similar to the corresponding provisions in the Federal Rules of Civil Procedure. The rules concerning electronic discovery are intended to provide a practical, efficient and cost-effective method to assure reasonable discovery. Pursuit of electronic discovery must relate to the claims and defenses asserted in the pleadings and should serve as a means for facilitating a just and cost-effective resolution of disputes.

(d) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial hearing or other later time.

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DEFINITIONS

a. These Interrogatories are continuing in character so as to require you to file supplementary answers if you obtain further or different information before trial.
b. Unless otherwise stated, these Interrogatories refer to the time, place, and circumstances of the collision and property damages mentioned or complained of in the Claim for property damages.
c. Where name and identity of a person is required, please state full name, home address and also business address, if known.
d. Where knowledge or information in possession of a party is requested, such request includes knowledge of the party's agents, representatives, and unless privileged, his attorney's. When answer is made by corporate defendant, state the name, address and title of persons supplying the information and making the affidavit, and announce the source of his or her information.
e. The pronoun "you" refers to the party to whom the Interrogatories are addressed and the parties mentioned in clause (d).
f. "Identify" when referring to an individual, corporation, or other entity shall mean to set forth the name and telephone number, and if a corporation or other entity, its principle place of business, or if an individual, the present or last known home address, his or her job title or titles, by whom employed and address of the place of employment.
g. "Collision" is defined as the car accident that occurred on March 19 2015 as referenced in Claimants' Complaint.

INTERROGATORIES

INTERROGATORY No. 1:
(1) Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the matter and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
ANSWER:

INTERROGATORY No. 2:

(2) Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the matter.
ANSWER:

INTERROGATORY No. 3:
(3) Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.
ANSWER:

INTERROGATORY No. 4:
(4) List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the arbitration of this matter.
ANSWER:

INTERROGATORY No. 5:
(5) For each person known to the parties or counsel to be a witness concerning the facts of the matter, 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.
ANSWER:

INTERROGATORY No. 6:
(6) State your full name, current address, date of birth, social security number and work address or if you are the representative of a company answering these interrogatories state your title, your affiliation with the Defendant Kevin Carter and the length of time you have been employed by the Defendant Nationwide Mutual Insurance Company or Trustguard Insurance Company or Interinsurance Exchange of the Automobile club, and list all the positions you held in the past and your current position.
ANSWER:

INTERROGATORY No. 7:
(8) If anyone investigated this matter for you, including medical experts, private investigators or insurance adjusters, state their name(s) and address(es) and state whether such investigation was reduced to writing. If said investigator obtained any signed statements or recorded statements, identify the person who gave the statement and attach to your Answers a copy of any said statement.
ANSWER:

INTERROGATORY No. 8:
(10) Please state the relationship of the driver, Defendant Kevin Carter, to the other owner of the vehicle, Defendant Richard Davis, which was involved in the collision with the Claimant Heidi Gersten
ANSWER:

l. Number of cases expert has consulted or otherwise has been retained on by your lawyer's firm, including identification of each such case;
m. Number of cases the expert has consulted or otherwise been retained on by your insurance company, including identification of each such case;
n. Identification of all cases in which the expert has testified in deposition;
o. Identification of all cases in which the expert has testified at trial.
p. Identification of all cases in which the expert has been excluded from testifying at trial.
ANSWER:

INTERROGATORY No. 14:
(19) Please state the name and address of your employer, your position and duties, and your wages at the time of the collision and at the present time.
ANSWER:

INTERROGATORY No. 15:
(20) Please state in detail your itinerary on the date of the collision, including each place at which you were present, your length of stay at each such place, and a detailed account of whom you saw and what you did at each such place.
ANSWER:

INTERROGATORY No. 16:
(21) Please identify all persons known to you to have personal knowledge of the facts pertaining to the occurrence, and indicate those who were eye witnesses, and state the substance of their knowledge and articulate their expected testimony.
ANSWER:

INTERROGATORY No. 17:
(22) Please identify all persons (excluding attorneys) who investigated the cause and circumstances of this incident for you.
Please identify all persons who arrived at the scene of the collision within one (1) hour after the incident.
ANSWER:

INTERROGATORY No. 18:
(23) Please identify the motor vehicle the Defendant Kevin Carter was operating at the time of your collision with the Claimant Heidi Gersten, including its make, year, registration number and registered owner.
ANSWER:

INTERROGATORY No. 19:
(24) Please identify all persons to whom you have given signed statements regarding the incident, the date thereof, and the name of the person in whose custody each is at this time.
ANSWER:

INTERROGATORY No. 20:
(25) Please identify all persons who have given you signed statements regarding the incident or the personal injuries suffered by the Claimant Heidi Gersten in the accident.
ANSWER:

INTERROGATORY No. 21:
(27) Please give a concise statement of facts as to how you contend the collision took place.
ANSWER:

INTERROGATORY No. 22:
(28) Please identify all expert witnesses who will be called at the arbitration of this matter, the area of expertise of each, and a summary of the expected testimony of each.
ANSWER:

INTERROGATORY No. 23:
(29) Please state whether you consumed any drugs, medicines, or alcoholic beverages within twenty-four (24) hours prior to said occurrence, the place where such drugs, medicines, or alcoholic beverages were obtained, the nature of the drugs, medicines or alcoholic beverages, and the amount thereof.
ANSWER:

INTERROGATORY No. 24:
(30) Please state whether you were under the care of a physician at the time of the collision. If so, please state the name and address of your physician, specify the illness or condition for which you were treated, and list any prescribed medication.
ANSWER:

INTERROGATORY No. 25:
(31) Please list all insurance agreements that were made regarding the vehicle the Defendant Kevin Carter was operating at the time of the collision, including the name of the owner(s), the name of the insurance carrier, the policy number, the type of coverage, the amount of coverage (specifying its upper and lower limits) and the effective dates of said policy for the past five (5) years.
ANSWER:

INTERROGATORY No. 26:
(32) Please state whether you had any other insurance policies in effect at the time of the collision covering bodily injuries caused to other person. If so, please provide all pertinent information, including the name of the insurer, the policy number, the type of coverage, the amount of coverage, specifying its upper and lower limits, and the effective dates of said policy.
ANSWER:

INTERROGATORY No. 27:
(33) Please list all prior motor vehicle accidents in which the Defendant Kevin Carter has been involved, either with other persons or with property. Please include the name of any other driver or property owner involved, the location of the collision, the date and time of the collision, and disposition of the matter.
ANSWER:

INTERROGATORY No. 28:
(34) Please list all violations of the motor vehicle laws of the State of South Carolina or any other jurisdiction with which the Defendant Kevin Carter has been charged since obtaining his driver's license.
ANSWER:

INTERROGATORY No. 29:
(37) Please state in detail all actions the Defendant Kevin Carter took or attempted to take to avoid the collision.
ANSWER:

INTERROGATORY No. 30:
(38) Please identify each and every person who assisted in, and/or provided information for the preparation of your responses to these discovery requests. With respect to each person listed, please state the name, address, phone number, position held and information he or she provided.
ANSWER:

INTERROGATORY No. 31:
(40) Please identify any and all person(s) who you intend and/or expect to call as a witness at the arbitration of this action. For each person listed, please state the substance and subject matter of the person's testimony.
ANSWER:

INTERROGATORY No. 32:
(41) Please identify each person who you expect and/or intend to call as an expert witness at the arbitration of this matter. For each person identified, please state his or her opinion and conclusions and the legal and/or factual basis for those opinions and conclusions.
ANSWER:

PRODUCTION OF DOCUMENTS

Plaintiff's Request for Production of Documents to Defendants

You are requested to file within 30 days a written response to request and to produce those documents for inspection and copying on the day set for arbitration of this claim for property damage, to be announced.

a. Your written response shall state with respect to each item or category, that inspection-related activities will be permitted as requested, unless request is refused, in which event the reasons for refusal shall be stated. If the refusal relates to part of an item or category, that part shall be specified.
b. In accordance, the documents shall be produced as they are covered in the usual course of business or you shall organize and label them to correspond with the categories in the request.
c. These requests shall encompass all items within your possession, custody or control.
d. These requests are continuing in character so as to require you to promptly amend or supplement your response if you obtain further material information.
e. If in responding to these requests you encounter any ambiguity in construing any request, instruction or definition, set forth the matter deemed ambiguous in the construction used, in responding.

DEFINITIONS

As used in these requests, the following terms are to be interpreted in accordance with these definitions:

a. The term "person" includes any individual, joint stock company, unincorporated association or society, municipal or other corporation.
b. The terms "you" or "your" include the persons to whom these requests are addressed, and all that person's agents, representatives or attorneys.
c. In accordance, the terms, "document" or "documents" includes all writings, drawings, graphs, charts, photographs, recordings and any other data computations from which information can be obtained, translated, if necessary by (you), through detection devices, into reasonably usable form.
d. The term "occurrence" means the incident complained out in the Claimants' claim for property damage.

DOCUMENTS TO BE PRODUCED

REQUEST FOR PRODUCTION NO. 1:
A copy of each and every document you plan to introduce as evidence at the trial of this matter.
RESPONSE:

REQUEST FOR PRODUCTION NO. 2:
All statements, receipts, correspondences, invoices and other documents related to your relationship with the Claimants.
RESPONSE:

REQUEST FOR PRODUCTION NO. 3:
Any and all documents that would support the allegations contained.
RESPONSE:

REQUEST FOR PRODUCTION NO. 4:
All documents identified, directly or indirectly, in your answers to Interrogatories.
RESPONSE:

REQUEST FOR PRODUCTION NO. 5:
All statements, receipts, correspondences, invoices and other documents related to your relationship with the Claimants.
RESPONSE:

REQUEST FOR PRODUCTION NO. 6:
All written reports of all expert witnesses with whom you or your attorneys have consulted, including, of course, those persons you expect to call as an expert witness at trial.
RESPONSE:

REQUEST FOR PRODUCTION NO. 7:
All documents upon which any expert witness you intend to call at trial relied to form an opinion.
RESPONSE:

REQUEST FOR PRODUCTION NO. 8:
The most recent resume or curriculum vitae of each expert whom you expect to call as an expert witness at trial.
RESPONSE:

REQUEST FOR PRODUCTION NO. 9:
All notes, correspondence, bills, invoices, diagrams, photographs or other documents prepared or reviewed by each person whom you expect to call as an expert witness at trial.
RESPONSE:

REQUEST FOR PRODUCTION NO. 10:
All invoices generated by expert witnesses generated for performing all expert witness services to the defendant, the records review, the pretrial preparation, any telephone conference, any trial testimony anticipated and any other fee paid by the defendants for expert fees.
RESPONSE:

REQUEST FOR PRODUCTION NO. 11:
All written, recorded or signed statements of any party, including the Claimant(s), Defendant(s), witness(es), investigator(s) or agent(s), representative(s) or employee(s) of the parties concerning the subject matter of this action.
RESPONSE:

REQUEST FOR PRODUCTION NO. 12:

All photographs, videotapes, audiotapes, diagrams, surveys or other graphic representations of information concerning the subject matter of this action, the Claimants or property damage.
RESPONSE:

REQUEST FOR PRODUCTION NO. 13:
Any documents which afforded liability insurance coverage for the incident, which is the subject matter of the Claimants' Claim for Property Damage.
RESPONSE:

REQUEST FOR PRODUCTION NO. 14:
Any documents identified in any other parties' Answers to Interrogatories.
RESPONSE:

REQUEST FOR PRODUCTION NO. 15:
Any and all documents that would support the allegations contained.
RESPONSE:

REQUEST FOR PRODUCTION NO. 16:
Any documents received pursuant to a subpoena request in this case.
RESPONSE:

REQUEST FOR PRODUCTION NO. 17:
Any document prepared during the regular course of business as a result of the Incident complained of in the Claimants' Claim for Property Damage.
RESPONSE:

REQUEST FOR PRODUCTION NO. 18:
Copies of any treaties, standards in the industry, legal authority, rule, case, statute, or code, that will be relied upon in the defense of this case.
RESPONSE:

REQUEST FOR PRODUCTION NO. 19:
All maintenance records concerning the vehicle being driven by the Defendant Kevin Carter on the date of the incident for the two (2) years prior to the auto collision.
RESPONSE:

REQUEST FOR PRODUCTUON NO. 20:
Any and all invoices, logs, sales receipts, itineraries, or schedules for the Defendants.
RESPONSE:

It is requested that the aforesaid Admissions, Interrogatories and Request for Productions be made within thirty (30) days of service of this request at 1438 West Lantana Rd., Lantana, FL 33462.

Respectfully submitted this 5th day of March 2018.

Claimant Heidi Gersten
1438 West Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142

Claimant Ivanka Ayoub
1438 West Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142

FILED
2018 MAR 27 P 3:59
CLERK OF COURT
PALM BEACH CO. S.C.

March 27, 2018
Appellant Gersten's
Exhibit List A-G
Filed March 27, 2018

Appellant Gersten's Exhibit List A-G (Filed March 27, 2018) for 1st Set of Admissions, Interrogatories, and Request for Productions

Exhibit A: "Police Report"

Exhibit B: "Arbitration Decision"

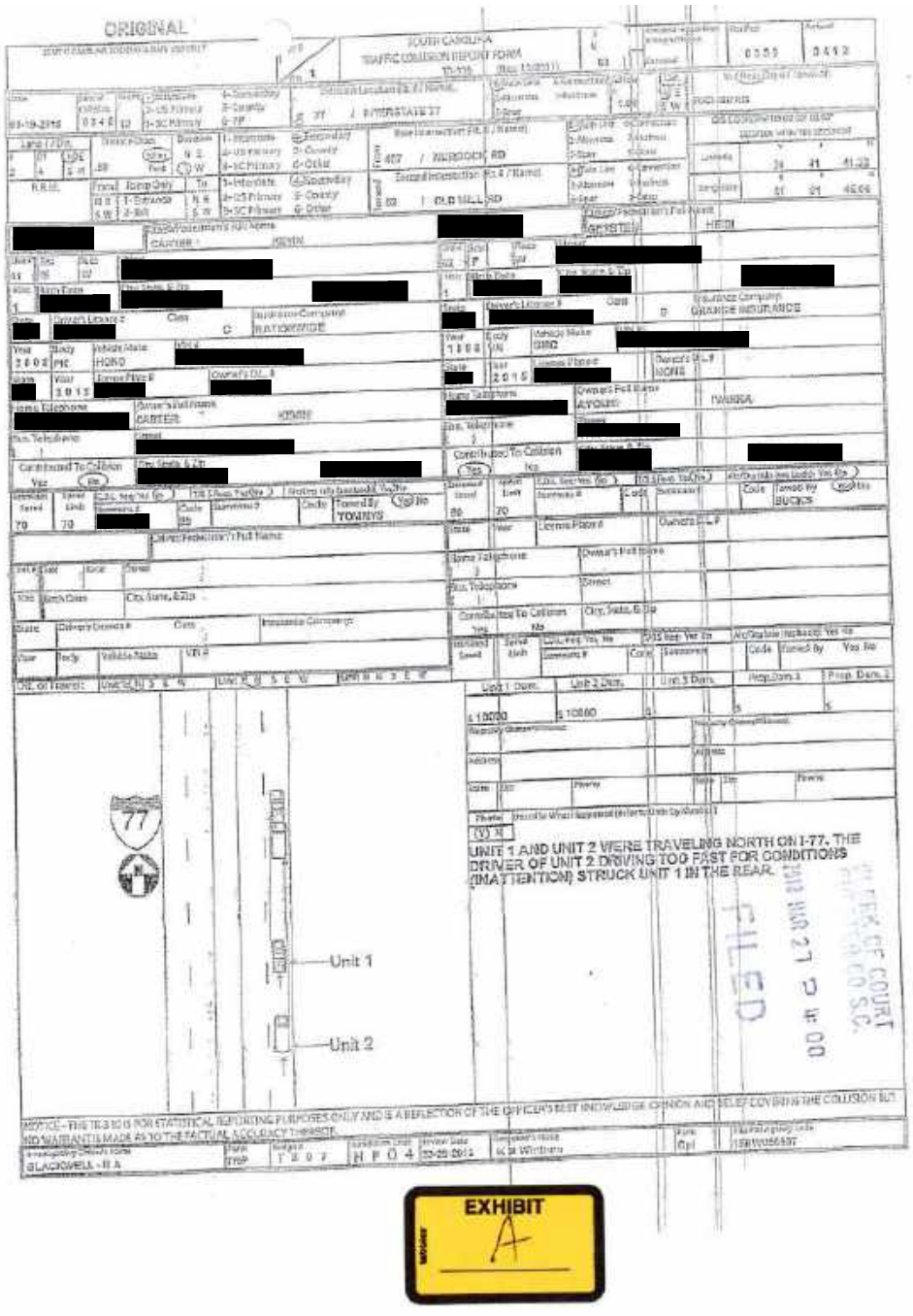
Exhibit C: "Forensic Services Laboratory Report"

Exhibit D: "Declaration Page"

Exhibit E: "Nationwide Offer"

Exhibit F: "Nationwide Punitive Offer"

Exhibit G: "Trustgard Offer"



ORIGINAL

SOUTH CAROLINA
TRAFFIC COLLISION REPORT FORM

[redacted] CARTER KEVIN [redacted] WESTON HEIDI

[redacted] [redacted] [redacted]

Driver's License # [redacted] Class C Insurance Company NATIONWIDE

Driver's License # [redacted] Class D Insurance Company GRANGE INSURANCE

Year 2008 Body PIC Vehicle Make HOND [redacted]

Year 1998 Body VN Vehicle Make GMC [redacted]

State [redacted] Year 2015 License Plate # [redacted] Owner's DL # NONE

Home Telephone [redacted] Owner's Full Name CARTER KEVIN

Home Telephone [redacted] Owner's Full Name AYOUB IMANA

Contributed To Collision Yes No [redacted]

Contributed To Collision Yes No [redacted]

Damaged Areas 70 70 Towed By TOWNYS

Damaged Areas 80 70 Towed By BUCKS

Other Pedestrian's Full Name

Unit 1 Dam. $10000 Unit 2 Dam. $10000

Unit 1 Dir. N S E W Unit 2 Dir. N S E W

77

Unit 1

Unit 2

UNIT 1 AND UNIT 2 WERE TRAVELING NORTH ON I-77. THE DRIVER OF UNIT 2 DRIVING TOO FAST FOR CONDITIONS (INATTENTION) STRUCK UNIT 1 IN THE REAR.

FILED

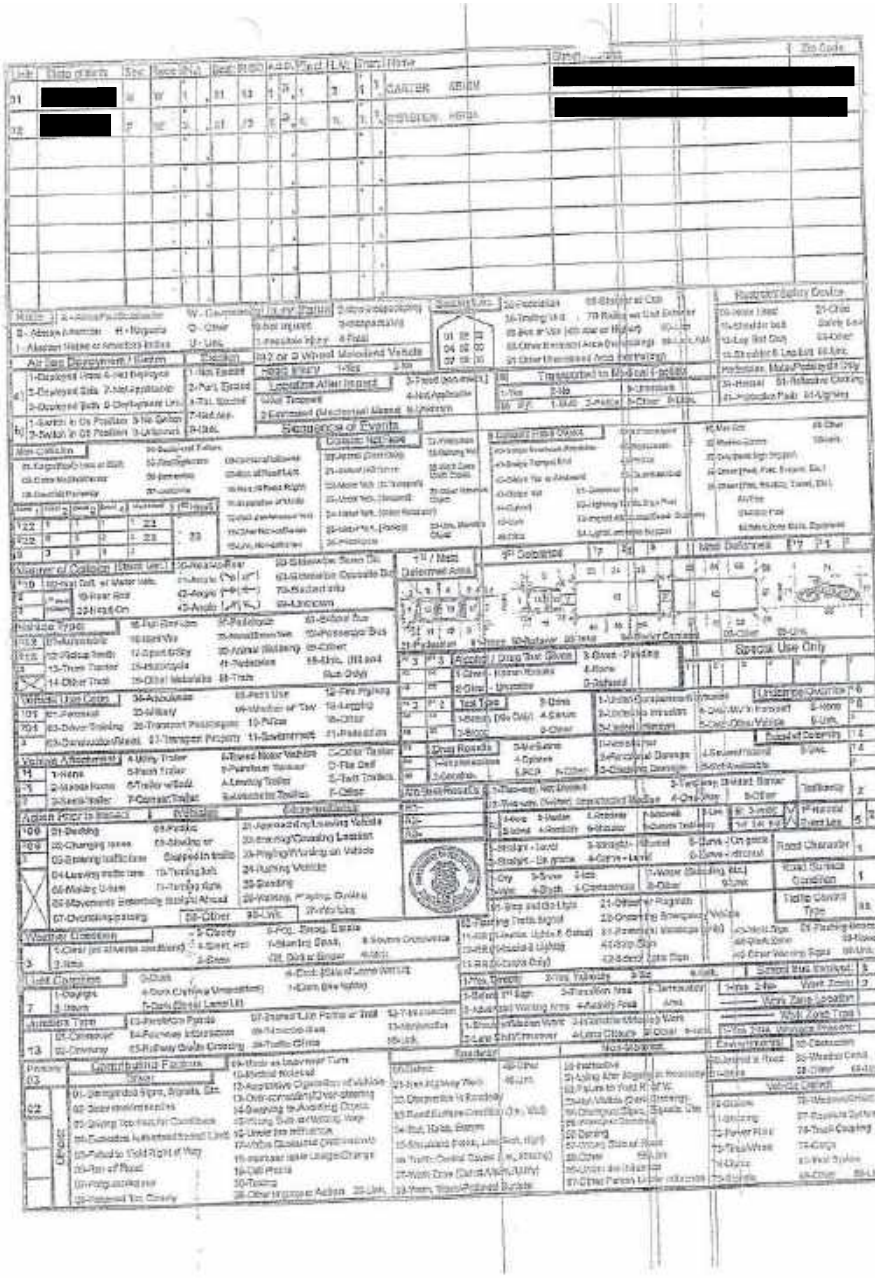
2012 MAR 27 2 44 00

CLERK OF COURT
YORK CO S.C.

NOTICE - THIS TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTIES MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name BLACKWELL - R A Unit TRP Badge T 2 0 7 Jurisdiction Code H P O 4 Review Date 03-28-2012 Supervisor's Name K M Williams Form Opl Department Code 1SBW0065G7

EXHIBIT
A



A ISEMENT OF IMPLIED CONSENT RIGHTS

Kerrin Marie Carter
Subject's Name (Print)

[redacted]
Driver's License Number

Date of Birth [redacted]

State Licensed

DRIVING UNDER THE INFLUENCE ADVISEMENT

(A) Will test be video recorded? If answer is Yes, start here-> - Inform subject of video recording.
If answer is No, start here -> - Inform subject of type samples requested (i.e. breath, blood, urine).

(B) Provide subject with a written copy of the following advisement and read the advisement to the subject:

- You are under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
- The arresting officer has directed that samples be taken for alcohol and/or drug testing.
- The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- You do not have to take the tests or give the samples, but if you refuse to submit to the tests, your privilege to drive in South Carolina could be suspended or denied for at least six (6) months, with the option of ending the suspension if you enroll in the Ignition Interlock Device Program, and your refusal may be used against you in court.
- If you take the tests or give the samples and have an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, you may instead be charged with Driving with an Unlawful Alcohol Concentration (DUAC), Section 56-5-2933.
- If you have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least one (1) month, with the option of ending the suspension if you enroll in the Ignition Interlock Device Program.
- You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, shall provide you affirmative assistance.
- You have the right to request a contested case hearing within thirty (30) days of the issuance of the notice of suspension.
- If you do not request a contested case hearing or if your suspension is upheld at the contested case hearing, you shall enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

(C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occured.)
(D) Enter biographical data into DataMaster DMT. (Required for all tests, including refusals.)
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occured.)

ADVERTENCIA Y LECTURA DE DERECHOS POR MANEJAR BAJOS LOS EFECTOS DE ALCOHOL O DROGAS (DUI)

(A) ¿Se grabará el análisis en video? Si la respuesta es Sí, empiece aquí-> - Informe a la persona que va a ser grabada en video.
Si la respuesta es No, empiece aquí-> - Informe a la persona de las muestras que se requieren (ejemplos soplar, sangre, orina).

(A) Dele a la persona una copia escrita de la advertencia siguiente y lea la advertencia al sujeto:
(B) Dele a la persona una copia escrita de la advertencia siguiente y léasela a la persona:

- Usted está arrestado por Manejar Bajo los Efectos de Alcohol o Drogas (DUI), Sección 56-5-2930, del Código Legal de Carolina del Sur de 1976, según es enmiende.
- El policía que efectuó el arresto dispuso que le saquen muestras de alcohol y/o drogas para ser analizadas(os).
- Se obtendrán y analizarán las muestras según la Sección 56-5-2950 y las normas del SLED.
- Usted no está obligado a hacerse los análisis ni a proporcionar muestras, pero si se niega a someterse a estos análisis, se le tendrá que suspender o negar su privilegio de manejar en Carolina del Sur por lo menos durante seis (6) meses con la opción de terminar la suspensión si se inscribe en el Programa del Dispositivo de Bloqueo del Arranque. Negarse a ello podrá usarse en su contra en un tribunal.
- Si usted se somete a los análisis o proporciona las muestras y tiene una concentración de alcohol de ocho centésimos del uno por ciento (0.08%) o más, podría ser acusado en vez de Manejar con una Concentración Ilegal de Alcohol (DUAC), según la Sección 56-5-2933.
- Si usted tiene una concentración de alcohol de quince centésimos del uno por ciento (0.15%) o más, su privilegio de manejar en Carolina del Sur debe ser suspendido por lo menos durante un (1) mes con la opción de terminar la suspensión si se inscribe en el Programa del Dispositivo de Bloqueo del Arranque.
- Usted tiene el derecho de que una persona que usted elija y que esté capacitada para hacerlo, realice por su cuenta los análisis adicionales que usted desee que pagar y en ese caso, el agente debe brindarle ayuda si usted la solicita.
- Usted tiene el derecho de solicitar una audiencia para disputar el caso dentro de los treinta (30) días a partir de la fecha en que se emitió la notificación de la suspensión.
- Si usted no solicita una audiencia para disputar el caso o si se le confirma la suspensión en la audiencia para disputar el caso, usted debe que inscribirse en un Programa de Medidas de Seguridad para el Consumo Responsable del Alcohol y las Drogas.

Si es pertinente, haga lo siguiente:

(C) Inspeccione la boca de la persona y quite todo material extraño de la boca. (No se requiere si se niega la persona.)
(D) Ingrese los datos biográficos en el DataMaster DMT. (Obligatorio para todos los análisis aunque se niegue la persona.)
(E) Observe a la persona un mínimo de (20) minutos antes de obtener una muestra de su aliento. (No se requiere si se niega la persona.)

0618

Subject's Signature
Firma de la Persona (recibió una copia)

Officer's Signature
Firma del Agente

3/19/15
date/fecha

SLED Form/Forma Form # 8244 (9) Revised 1.2

AGENCY I.D.
SC0125F00

INCIDENT REPORT

[redacted]

EVENT

INCIDENT TYPE	PREMISE TYPE
1. DUI 1ST OFFENSE	Highway/Road/Alley

INCIDENT LOCATION (BUILDING/APARTMENT NUMBER, STREET NAME AND NUMBER)
I-77 NORTH AT MM 51

INCIDENT DATE	INCIDENT TIME	REPORT DATE	REPORT TIME
3/19/2015	04:12	3/19/2015	0631

VICTIM NO.1

VICTIM'S NAME (LAST, FIRST, MIDDLE)
Society/Public

RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE
	*JSOU					

SUBJECT NO. 1

☐ SUSPECT ☐ RUNAWAY ☐ UNITED ☐ WARRANT ☒ ARREST ☐ JUV. ☐ ADULT

NAME (LAST, FIRST, MIDDLE)
CARTER, KEVIN MARK

RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
W	M	46	N	[redacted]	507	200	BRO	BRO

ADDRESS [redacted] CITY [redacted] STATE [redacted] ZIP CODE [redacted]

NARRATIVE

ON 3/19/15 AT APPROX 0412 TRP BLACKWELL WAS DISPATCHED TO A 2 VEHICLE COLLISION ON I-77 NORTH AT THE 51 MILE MARKER. UPON MAKING CONTACT WITH THE DRIVER OF UNIT 1 A MR. KEVIN MARK CARTER, TRP BLACKWELL NOTICED THAT MR. CARTER WAS VERY LETHARGIC IN HIS SPEECH AS WELL AS HAVING TROUBLE REMEMBERING HIS CURRENT LOCATION AS WELL AS WERE HE WAS COMING FROM. MR. CARTER STATED TO TRP BLACKWELL AND RICHBORO FIRE OFFICIALS THAT HE AND HIS WIFE HAD BEEN IN AN ARGUMENT EARLIER IN THE EVENING AND SHE HAD ASKED HIM TO LEAVE THERE RESIDENCE. MR. CARTER STATED THAT HE HAD BEEN TAKING AN UNKNOWN AMOUNT OF HIS PRESCRIBED [redacted] THOUGHOUT THE NIGHT AND INTO THE MORNING HOURS FOR HIS "NERVES". TRP BLACKWELL ASKED MR. CARTER IF HE HAD TAKEN ANY OTHER MEDICATION, DUE TO THE VARIOUS BOTTLES OF PRESCRIPTION MEDICATIONS THAT WERE IN THE PASSENGER SEAT OF MR. CARTER'S VEHICLE. MR.

PROPERTY/EST.

TYPE (GROUP)	DESCRIPTION	ASSOCIATION OF VICTIM	ASSOCIATION OF RECOVERY	TOTAL VALUE
STOLEN				
DAMAGED				
BURNED				
RECOVERED				
SEIZED				
FORGED				

ADMINISTRATIVE

SUBJECT CHARGED ☒ YES ☐ NO | SUBJECT LOCATED ☒ YES ☐ NO | ☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER | ☐ EXC. CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM/WITNESS UNCOOPERATIVE 5. ☐ JUVENILE/NO CUSTODY

REPORTING OFFICER(S) | DATE | UNIT NUMBER | APPROVED BY | DATE | UNIT #

BLACKWELL, MARGOT A III | 3/19/15 | 257 | ADDL APPROV 1 | FOLLOW-UP ☐ YES ☒ NO | OTHER

AGENCY I.D.
SC0123P00

PPLEMENTARY INCIDENT REPORT

[redacted]

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGES / ITEMS	
☐ MODIFIED ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY		

NARRATIVE

CARTER STATED THAT HE HAD ONLY BEEN TAKING HIS [redacted] BUT COULD NOT REMEMBER HOW MUCH HE HAD TAKEN THROUGHT THE NIGHT. MR. CATER WAS TRANSPORTED BY EMS TO PRIDMONT MEDICAL CENTER WERE TRP BLACKWELL INFORMED MR. CARTER THAT HE WAS BEING CHARGED WITH DUI. TRP BLACKWELL ADVISED MR CARTER OF HIS IMPLIED CONSENT RIGHTS AND REQUESTED A BLOOD SAMPLE BE TAKEN. MR. CARTED AGREED AND A BLOOD SAMPLE WAS TAKEN FOR ANALYSIS.

JURISDICTION OF THEFT	JURISDICTION OF RECOVERY

ADMINISTRATIVE

SUBJECT IDENTIFIED	SUBJECT LOCATED	CHARTIME CLAIM CLOSED	☐ ARRESTED UNDER 18	CLEARANCE UNDER 18
☒ YES ☐ NO	☒ YES ☐ NO	☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ LEAD/SUSPECT LOCATION

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
BLACKWELL, HERBERT A III	8/15/2016	807	WADE, JEFFREY B		P14
			FOLLOW-UP OFFICER		
			INVESTIGATION ☐ YES ☒ NO		

South Carolina Department of Public Safety Chain Of Custody & Evidence Destruction

Case Number	Evidence Type	Date Impounded
☒ Highway Patrol ☐ Transport Police		☐ Bureau of Protective Service ☐ Other

Status Check One Only
☐ General Session Evidence ☒ Magistrate Evidence ☐ Found ☐ Recovered ☐ Safe Keeping ☐ Other

I hereby acknowledge that the listed items represent monies/ property taken from my possession and that I have received a copy of this report. Signature

Court Date: 3/6/15	Summons /Warrant Number: [redacted]		
Officer: H.H. Blackwell		Date of Incident: 3/19/15	Time of Incident: 0631
Subject / Violator's Name: Kevin Marie Carter		Phone Number: ( ) [redacted]	
Violator's Address: [redacted]		License Number (Tag/State) [redacted]	[redacted]

Item #	Quantity	Description (include name, [illegible])	Field weight	NCIC Yes	NCIC No
1	~~Sled Bio Kit~~	Sled Bio Kit			—

DISPOSITION OF ITEM (S) ABOVE: (The item(s) above have been received in substantially the same condition as when seized.)

From	To	Location	Reason for Movement	Date
Trp. H.H. Blackwell	CB Ford	Piedmont	Transport	3/19/15
C B Ford	Evidence	Chester	Temp Storage	3/19/15

We have further inspected such Conveyance as to condition and contents, including glove compartment, trunk, or any other applicable storage areas and do certify that all contents and condition of such conveyance, except contraband items, if any have been satisfactorily accounted for to me/us with this conveyance, or that such items have been disposed of in accordance with my/our instructions, except:(If no exceptions, have recipient write "None" in ink, in his/her handwriting)

It is my/our full understanding that this conveyance and it's contents, except contraband items, if any, are being returned to me/us by the South Carolina Department of Public Safety because such police agency has no interest in proceeding legally to have the conveyance declared forfeit, and that it's return is in no degree an implication or admission that its seizure was unlawful. With the foregoing clearly understood, I/we acknowledge receipt of such conveyance and its contents from _____ on the _____ day of _____

Signature (Individual Receiving Property) _____

Signature (Individual Returning Property) _____

Witness _____

Disposition of the above cases was disposed of in General Sessions/ Magistrate's court on:

DESTRUCTION OF EVIDENCE

This is to certify that I, _____ destroyed / relinquished the above described evidence on _____
(Person destroying/relinquish evidence) (Date)

at _____ _____
(Where destroyed) (Witness)

_____
Person destroying evidence

DPS-LE-018 Rev 5/ 2009

SLED LABORATORY
FORENSIC SERVICES REQUEST
Blood/Urine Collection Kit

SLED Lab No: _____

Name of Investigating Officer: HA Blackwell
Agency: SCHP Phone No: _____
Fax No: _____ Email: _____
Mailing Address: 1732 JA Cochran Bypass
City: Chester State: SC Zip Code: 29706
CC: _____

Agency ORI No: SCHP0100
Case No: [redacted]
Case Type: DUI
Offense Date: 3-19-15
County: Chester
Officer Involved Shooting ☐ Yes

Has other evidence on this case been submitted to this lab?
☐ Yes ☐ No
If yes, Lab Number: _____

Is this evidence related to another lab number?
☐ Yes ☐ No
If yes, Lab Number: _____

For Toxicology Cases ONLY

Death:	☐ Yes ☐ No If yes: ☐ Traffic Fatality ☐ Child Fatality ☐ Accidental ☐ Natural ☐ Unexplained
Traffic Fatality:	☐ Driver ☐ Passenger ☐ Pedestrian ☐ Motorcyclist ☐ Bicyclist ☐ Boating ☐ Other _____
Other Causes:	☐ Gunshot ☐ Stabbing ☐ Beating ☐ Strangulation/Suffocation ☐ Drug/Poison/Alcohol ☐ Fire ☐ Disease ☐ Carbon Monoxide ☐ Hanging ☐ Electrocution ☐ Heart Related ☐ Drowning ☐ Other _____
DUI:	Felony ☐ Yes ☒ No (If felony resulted in death, Victim's name is required) Breath test given: ☐ Yes ☒ No If yes, reading: _____
Drugs Suspected:	☒ Yes ☐ No If yes, list drugs _____
Number of Specimens Enclosed:	Blood _____ Urine _____ Ocular Fluid _____ Other _____

Subject(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN
	Carter Kevin Mark	M	W	[redacted]	

Victim(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN

Issuing Authority: Quality Manager

SLED Forensics Form # FSA 054, April 2014
Page 1 of 1
SLED/FSR.3 4/14

SOUTH CAROLIN[illegible]W ENFORCEMENT DIVISION - URI[illegible] BLOOD COLLECTION REPORT

Subject: Carter (Last Name) Kevin (First Name) Moore (Middle Name) Chester (County of Arrest)

Subject's Address: [redacted]

Driver's License Number: [redacted] State: [redacted] DOB: [redacted] Sex: M Race: W

Arresting Officer: H.A. Blackwell Agency: SCHP

Date of Arrest: 3/19/15 Time of Arrest: 0620 (24hr) Traffic Ticket Number: [redacted]

Date of Test: 3/19/15 Time of Test: 0820 (24hr) Location of Collection: Piedmont Med Center

CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

☒ Subject is under arrest for Section 56-5-2930, 56-5-2933, 56-5-2943, 56-5-2730, 50-21-112, 50-21-113 or 23-31-415; or is in violation of Section 56-5-2945, 50-21-113 or 50-1-286 of the 1976 South Carolina Code of Laws as amended.

☒ Subject has been advised in writing of his/her Implied Consent Rights.

CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

☐ Subject has completed a valid breath test (DataMaster reading: _____) and the officer has reasonable suspicion that the subject is under the influence of drug(s) other than alcohol therefore a urine sample is requested.

☐ Subject has not completed a valid breath test and a voluntary blood sample has been requested to test for the presence of volatiles and/or drugs.

☐ Subject is unconscious or otherwise incapable of refusal (has not taken a breath test) and is considered informed, therefore, a blood sample is requested.

☒ A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.

Name and Title of Licensed Medical Personnel: X Melinda Haverlock RN (Please Print)

Signature of Licensed Medical Personnel: X Melinda J Haverlock RN

☐ Subject is under arrest for, or in violation of, Section 56-5-2945 (Felony DUI) or 50-21-113 (Felony BUI) and, pursuant to Section 56-5-2946 or 50-21-116, a blood sample or a blood and urine sample is/are requested.

☐ A blood sample is requested by the subject for his/her own independent test.

THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR

☑ Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.

☐ A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

Name of Licensed or Trained Collector: Melinda Haverlock RN (Please Print)

Signature of Licensed or Trained Collector: Melinda J Haverlock RN

FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

☒ Sample collection was under my direct supervision.

☒ Sample container is properly labeled with the subject's name and time of collection.

☒ Sample is properly sealed and ready for transport.

Signature of Officer: [signature] Date: 3/19/15

I, X [signature] (Subject's Signature) received a copy of this report on 3/19/15 (Date).

Copy to: Subject, Hospital, SLED

ARBITRATION FORUMS, INC.

AUTOMOBILE DECISION

DOCKET NUMBER: A099-08470-15-00
PUBLICATION DATE: 04/24/2017

CASE INFORMATION

Date Filed: 12/07/2016
Date of Loss/Accident: 03/19/2015
Place of Loss/Accident: CHESTER, SC

Total Company Claim Amount: $ 19,636.73
Deductible Paid By Insured: $ 250.00
Legal Fees Sought: $ 0.00

Party	Subsidiary	Representative	File Number/Remit Addr	Insured Name
App	[redacted]	[redacted]	[redacted]	RICHARD DAVIS
Rsp 01	[redacted]	[redacted]	[redacted]	IVANKA AYOUB
Rsp 02	[redacted]	[redacted]	[redacted]	HEIDI GRESTEN

FILED
2016 MAR 27 P 4:00
CLERK OF COURT
CHESTER, S.C.

Arbitrator(s) considered the following in rendering the decision (Hearing Representation Information):

Applicant	APPLICATION, CONTENTIONS, ALL LISTED EVIDENCE RECEIVED
Respondent 1	RESPONSE, CONTENTIONS, ALL LISTED EVIDENCE RECEIVED
Respondent 2	RESPONSE, CONTENTIONS, ALL LISTED EVIDENCE RECEIVED

DECISION INFORMATION

Arbitrator #1: NADIA REYNOLDS
Date Closed: 04/21/2017

Note: Above Arbitrator(s) have acknowledged the AF Neutrality Statement

Summary of Dispute

This is a liability dispute involving a rear end accident [redacted] contends they were traveling when [redacted] failed to a safe distance and speed striking [redacted] rear [redacted] disagrees and contends they traveling when Nationwide attempted to enter onto the lane from the right shoulder causing this collision.

Liability Decision

Respondent #01 - [redacted] admits 0% liability.
Applicant proved 0% liability against Respondent #01 - [redacted] based on [redacted] failed to prove that [redacted] failed to maintain a safe distance or vehicle control

Respondent #02 - [redacted] admits 0% liability.
Applicant proved 0% liability against Respondent #02 - [redacted] based on [redacted] failed to prove that [redacted] failed to maintain a safe distance or vehicle control

Damages Decision

EXHIBIT
B

ARBITRATION FORUMS, INC.
Industry created. Membership driven.

AUTOMOBILE DECISION

DOCKET NUMBER: A098-05470-16-00
PUBLICATION DATE: 04/24/2017

Applicant [redacted] CO proved NO LIABILITY. Damages Proven $ 0.00

Respondent(s) indicate that they are not disputing damages.

What evidence caused you to render this decision and why?

There were no recorded statements provided [redacted] provided a police report which does list [redacted] as at fault. [redacted] however, provided a comprehensive accident reconstruction report which gives a detailed analysis. Based on the report findings, [redacted] was traveling in the right lane of the highway when [redacted] attempted to enter onto the lane from the right shoulder [redacted] failed to yield the right of way and operate their vehicle in a safe manner which is the proximate cause for the loss.

Award

State Negligence Law applied to award calculations: 50% Comparative

Rep #	Damages Award Against (not including Deductible)	Insured Paid Deductible Award Against	Legal Fees Award Against	Credit for Prior Payment	Total Award Against
01	$ 0.00	$ 0.00	$ 0.00	$0.00	$ 0.00
02	$ 0.00	$ 0.00	$ 0.00	$0.00	$ 0.00
TOTAL	$ 0.00	$ 0.00	$ 0.00	$0.00	$ 0.00

If you have any questions about this decision, please call our Member Service Center at (866) 577-3434.

CLERK OF COURT
SUPERIOR CO S.C.
2018 MAR 27 P 4:00
FILED

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor

MARK A. KEEL
Chief

H.A. Blackwell
S.C. Highway Patrol Troop #4
P.O. Box 279
Chester, SC 29706

TOXICOLOGY DEPARTMENT
May 15, 2015
SLED No: [redacted]
Your Case No: [redacted]
Incident Date: 03/19/2015

[S] Kevin Mark Carter

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE

Item: 1 Sample Type: Blood (Toxicology) - labeled "CARTER, KEVIN"

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
[redacted]	[redacted]		

CALEA

ALI-391-T

AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7393 Fax (803) 896-7551

EXHIBIT
C

SLED No [redacted]

5/15/15

Screen by Enzyme Linked Immunosorbent Assay (ELISA)

Analyte	Result	Units	Threshold
[redacted]	[redacted]		

Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS)

Analyte	Result	Units	Threshold
[redacted]	[redacted]	mg/L	
		mg/L	
		mg/L	

FILED
2016 MAR 27 2 11:00
CLERK OF COURT
SUPERIOR CO S.C.

Comprehensive Analysis

A comprehensive drug screen utilizing gas chromatography/mass spectrometry and liquid chromatography/tandem mass spectrometry was performed on this sample. With the exception of the compound(s) listed, no other drugs or poisons of concern were found.

CALEA

ALI-109-T

AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 1978/2014
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7000 Fax (803) 896-7351

8/18/15

This report contains the conclusions, opinion and interpretations of the analyst whose signature appears below.

Tracy McKinnon
Forensic Toxicologist

For any additional interpretation of results please contact this Toxicologist above at the SLED Toxicology Department , (803) 896-7595

FILED
2013 MAR 27 P 1:00
CLERK OF COURT
RICHLAND CO.S.C.

Nationwide®
On Your Side

Your Policy Declarations

Nationwide Auto Policy
Policy Period: Feb 8, 2015 - Aug 8, 2015
Policy Number: [redacted]

Insured Vehicle(s) and Schedule of Coverages (continued)

2008 Honda Ridgelin
[redacted]

Coverages	Limits of Liability	Premium
A Comprehensive With OEM Other Than Collision (Comprehensive)	Actual Cash Value	$ 54.80
Collision With OEM	Actual Cash Value Less $ 250	$ 134.60
B Liability		$ 55.23
Property Damage Liability	$ 100,000 Each Accident	$ 75.93
Bodily Injury Liability	$ 100,000 Each Person	$ 23.90
	$ 300,000 Each Accident	$ 16.00
C Medical Payments	$ 100,000 Each Person	
Increased Limits	Endorsement 3063A	
Transportation Expenses Coverage	$ 50 Per Day	
	$ 1,500 Per Accident	
Vehicle Endorsements 3305		
Less Payee-Capital One Auto	Lien Expires On Apr 05, 2019	Total for this Vehicle $ 370.66

Policy Level Schedule of Coverages

Coverages	Limits of Liability		Premium
Part D2-Combined Uninsured and Underinsured Motorist - Bodily Injury	$ 100,000	Each Person	$ 57.90
	$ 300,000	Each Accident	
Uninsured - Property Damage	$ 25,000	Each Accident	$ 2.50
		Total for Policy Coverages	$ 59.80

Policy Form and Endorsements

V-002E	Nationwide Auto Policy
V-34588	Amendatory Endorsement
V-3540	NC Amendatory Endorsement
V-3572	Other Products Endorsement
V-3063A	Extended Transportation Expenses Coverage
V-3305	Loss Settlement - Original Equipment Manufacturer Parts

FILED
2015 MAR 27 P 4:00
CLERK OF COURT

Continued on the next page

EXHIBIT
sticker
D

Nationwide

Date prepared August 28, 2017
Notice of loss date January 9, 2018
Claim number [redacted]
Policy number
Questions? Contact Claims Associate
Joseph Tirbovich
[redacted]

Heidi Gersten
[redacted]

CLERK OF COURT
PALM BEACH COUNTY
2018 MAR 27 P 4:01
FILED

Claim details

Insurer: Nationwide Mutual Insurance Company
Policyholder: RICHARD DAVIS AND KEVIN CARTER
Claimant: Heidi Gersten
Claim number: [redacted]
Loss date: March 19, 2015

Dear Ms. Gersten,

I am in receipt of your letter dated August 25, 2017. I have reviewed your letter with my Manager. As mentioned in my letter dated on August 25, 2017. Based on the current information we have that was sent to us by you, Nationwide Mutual Insurance Company's offer to you for settlement of your property damage claim is $20,000.00.

Please contact me at [redacted] as I would be more than happy to verbally discuss the reasoning of Nationwide's offer to settle your property damage claim.

For more information

If you have any questions or concerns, please contact me at [redacted] or [redacted]

Sincerely,

Joseph Tirbovich
Nationwide Mutual Insurance Company
[redacted]

NOTICE - Section 817.234, Florida Statutes, provides in part: "Any person who knowingly and with intent to injure, defraud or deceive any insurer files a statement of claim or an application containing any false, incomplete or misleading information is guilty of a felony of the third degree."

EXHIBIT
E

Nationwide

Date prepared August 25, 2017
Notice of loss date January 6, 2015
Claim number [redacted]
Policy number
Questions? Contact Claims Associate Joseph Tirbovich [redacted]

Heidi Gersten
[redacted]

FILED
2017 AUG 21 P 4:01
CLERK OF COURT
DUVAL CO. FLA.

Claim details

Insurer:	Nationwide Mutual Insurance Company
Policyholder:	RICHARD DAVIS AND KEVIN CARTER
Claimant:	Heidi Gersten
Claim number:	[redacted]
Loss date:	March 19, 2015

Dear Ms. Gersten,

I have received your letter faxed to me on August 25, 2017 at 9:41 AM. With the information that has been submitted to Nationwide Mutual Insurance Company by you. My offer to settle your property damage punitive claim against our member is $20,000.00.

If you would like to know the reasoning of Nationwide Mutual Insurance Company's offer. Please contact me at 919-881-3394 and I will be more than happy to discuss that topic with you verbally.

For more information

If you have any questions or concerns, please contact me at [redacted] or [redacted]

Sincerely,

Joseph Tirbovich
Nationwide Mutual Insurance Company
[redacted]

NOTICE - Section 817.234, Florida Statutes, provides in part: "Any person who knowingly and with intent to injure, defraud or deceive any insurer files a statement of claim or an application containing any false, incomplete or misleading information is guilty of a felony of the third degree."

EXHIBIT
F

February 21, 2018

Grange Insurance
PO Box 182085
Columbus, OH 43218-2085

TEMP-RETURN SERVICE REQUESTED

SENT VIA REGULAR AND CERTIFIED MAIL

Ivanka Ayoub
[redacted]

FILED
2018 MAR 27 P 4:01
CLERK OF COURT
CUYAHOGA CO. S.C.

RE:	Claim Number:	[redacted]
	Date of Loss:	3/19/2015
	Policy Number:	[redacted]
	Insured:	Ivanka Ayoub

Dear Ivanka Ayoub:

Trustgard Insurance Company ("Trustgard") acknowledges the Tyger River demand received on February 20, 2018. Trustgard's investigation and review of your claim for Collision Coverage is based, in part, on the Ohio policy contract issued to our Named Insured, Ivanka Ayoub by Trustgard. The policy provided by Trustgard to Ivanka Ayoub is an Ohio policy contract. Collison coverage is contractual and governed by the state where the policy was issued. In this particular policy, there is a "choice of law" clause or "interpretation" clause requiring the policy to be interpreted under the law of the state where the policy was issued as noted on the Declarations Page. The Declarations Page provides that your address is [redacted]. Enclosed is a copy of the Declarations page for your review.

The policy has the following language explaining that the policy will be interpreted by the law of the state indicated on the Declarations Page:

> PART F - GENERAL PROVISIONS
>
> Policy Period, Territory, and Interpretation
>
> * * *
>
> C. This agreement shall be governed by, and interpreted in accordance with the laws of the state in which the insured resides as reflected on the policy Declarations Page.

Regarding the Collison damage to the 1998 Chevy Van from the auto accident of March 19,2015, we previously extend an offer related to the total loss value of the 1998 Chevrolet Sport Van on May 21, 2015. We have enclosed a copy of this offer for your review. To confirm, our offer is $3,969 less the Collision deductible of $500. The total settlement amount we will issue to you is $3,196, which represents the actual cash value of the vehicle at the time of loss. You may be eligible for sales tax reimbursement if you purchase a replacement vehicle within 30 days of

EXHIBIT
G

receiving our settlement check. You must send proof of purchase showing the amount of sales tax incurred by you to Trustgard Insurance Company within 33 days of the receipt of our check. The Amount of reimbursement for sales tax is limited to the lesser of the following:

1. The amount that would have been payable for sales tax on the purchase of a vehicle with a market value equal to the amount of the settlement
2. The actual amount of sales tax paid for the replacement vehicle.

If you do not send proof of payment of sales tax on a replacement vehicle with 33 days after you receive our settlement check, we are no longer required to reimburse you for the tax paid.

Below is the applicable policy language related to the Collision coverage under this policy:

PART D - COVERAGE FOR DAMAGE TO

* * *

Insuring Agreement

A. We will pay for sudden, direct and accidental loss to your covered auto or any non-owned auto, including its permanently installed equipment, minus any applicable deductible shown on the Declarations Page. We will pay for loss to your covered auto caused by:

2. Collision only if the Declarations Page indicates that Collision Coverage is provided for that auto.

B. "Collision" means the upset of your covered auto or a non-owned auto or their impact with another vehicle or object.

* * *

Limit of Liability

A. Our limit of liability will be the lesser of the:

1. Actual cash value of the stolen or damaged property; or

2. Amount necessary to repair or replace the property using parts furnished by the vehicle's manufacturers or parts from other manufacturers.

This policy does not cover a claim for diminished market value of your covered auto or nonowned auto.

B. An adjustment for depreciation and physical condition will be made in determining the actual cash value of your covered auto or non-owned auto at the time of loss.

* * *

Punitive or Exemplary Damages Exclusion
Regardless of any other provision of this policy, we do not provide coverage for punitive or exemplary damages, or any legal fees or costs associated with them.

If we are unable to come to an agreement regarding the actual cash value of your 1998 Chevy at the time of loss to resolve the collision claim, please refer to the below policy language:

Appraisal

A. If we and you do not agree on the actual value of the vehicle, either party may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of the loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and

2. Bear the expenses of the appraisal and umpire equally.

B. We do not waive any of our rights under this policy by agreeing to an appraisal.

* * *

Our Right To Recover Payment
A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person shall do:

1. Whatever is necessary to enable us to exercise our rights; and

2. Nothing after loss to prejudice them.

B. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and

2. Reimburse us to the extent of our payment regardless of the total amount of damages sustained by the insured irrespective of whether any such settlement or judgment may or may not provide reimbursement for all injuries, illnesses, or other damages (including, without limitation, pain and suffering, consequential, punitive, exemplary or other damages, whether alleged, proven in a court of law otherwise substantiated).

C. We are not responsible for any fees, including, but not limited to, attorney fees or court costs incurred to recover our subrogated interest unless we have agreed in writing, in advance, to be responsible for those fees.

Below are the terms specifically defined under the Definitions section of the policy.

DEFINITIONS

A. The terms defined below appear in bold type throughout this policy. You and Your refer to the named insured, which includes the individual named on the Declarations Page or that person's spouse if a resident of the same household.

J. "Your covered auto" means:

1. Any vehicle shown on the Declarations Page.
2. Any of the following types of vehicles, acquired during the policy period, on the date you become the owner:
a. a private passenger auto; or
b. a pickup or van for which no other insurance policy provides coverage and that has a Gross Vehicle Weight of less than 12,000 lbs. according to the manufacturer's specifications.

Based on the above policy language and Ohio law, Trustgard is unable to consider a claim or extend any offers of settlement for the personal property damage under this policy. If you have any additional information you would like us to consider please provide it, in writing, to my attention for additional review.

Please feel free to contact me with any questions at the number listed below.

Sincerely,

Amy Carnack
Senior Claims Representative
Grange Insurance
[redacted]

Enclosures: Dec Page
Total Loss Settlement Offer
CCC Market Evaluation

Grange Insurance

[redacted]

Policy Number: [redacted]
Reason Issued: Reinstatement
Effective Date: 01/28/2015
Print Date: 01/29/2015

Named Insured and Address

Ivanka Ayoub
[redacted]

Auto Policy Declarations Page

This is not a bill.

Issued by: Trustgard Insurance Company, A Wholly-Owned Stock Subsidiary of Grange Mutual Casualty Company, 671 South High Street, Columbus, OH 43206-1066

Policy Effective Dates: 01/28/2015 to 07/23/2015 12:01 a.m. ET at the address of the named insured as shown, and for additional six month periods if renewed, as provided in the policy. These declarations with policy provisions, applications, forms and endorsements, if any, complete the above numbered policy.

Total Policy Premium Summary

Your Auto policy includes coverage for the following:

Year	Make	Model	VIN	Premium
1998	Dodg	Ram	[redacted]	$427.00
1998	Chev	Spon Van G1		$375.00

The total premium shown does not include any applicable billing fees. **Total Policy Premium** **$802.00**

Did You Know...

- You have qualified for Disclosed Operator, Insurance Score, and Multi-Car Discount(s). Find out how you can save even more by contacting Lansing Insurance Agency Inc at (740) 775-2143.

Got questions? We've got answers.

Policy Information: If you have any questions about your coverages or other ways to save with Grange, be sure to contact your agent, Lansing Insurance Agency Inc at (740) 775-2143.
Claims Assistance: To report or check on a claim, call (800) 445-3030 or visit grangeinsurance.com.
Billing Questions: To inquire about your bill or pay it, call (800) 428-1280 or visit grangeinsurance.com.

Discounts

For a description of these discounts, please reference the Discounts applied to your policy section.

Policy Discounts
Disclosed Operator, Insurance Score, and Multi-Car

Policy Number [redacted]
Policy Type

Vehicle Coverages

Coverage is provided where a premium is shown for the vehicle and coverage. The coverages listed below apply separately for each vehicle and are provided only where a premium or included is shown. The limit of liability applies separately for each vehicle. Where there are multiple vehicles on the policy, stacking of any limits of liability among the vehicles is not allowed.

1999 Dodg Ram

Coverages	Limits of Liability		Premium
	Each Person	Each Accident	
Part A - Liability	$50,000	$100,000	$102.00
Bodily Injury		$50,000	$88.00
Property Damage	$5,000		$13.00
Part B - Medical Payments			
Part C - Uninsured/Underinsured Motorists	$50,000	$100,000	$21.00
Bodily Injury	Deductible		
Part D - Damage to Your Auto	$500		$34.00
Other Than Collision	$500		$97.00
Collision			
Optional Coverages	$60 / Day	$1,800 / Occurrence	$35.00
Rental Reimbursement			$12.00
Towing and Labor			$15.00
Policy Fee			
		Vehicle Premium	**$427.00**

Vehicle Coverages

1998 Chev Sport Van G1

Coverages	Limits of Liability		Premium
	Each Person	Each Accident	
Part A - Liability	$50,000	$100,000	$100.00
Bodily Injury		$50,000	$84.00
Property Damage	$5,000		$14.00
Part B - Medical Payments			
Part C - Uninsured/Underinsured Motorists	$50,000	$100,000	$22.00
Bodily Injury	Deductible		
Part D - Damage to Your Auto	$500		$25.00
Other Than Collision	$500		$73.00
Collision			
Optional Coverages	$60 / Day	$1,800 / Occurrence	$35.00
Rental Reimbursement			$12.00
Towing and Labor			
		Vehicle Premium	**$375.00**

Page 3 of 3

Policy Number: [redacted]
Policy Type:

Policy Forms

Form #	Edition Date	Description
90C156M	(09-2010)	Policy Contract
PPT02	(09-2013)	Passport Endorsement

End of Declarations Page

Page 3 of 3

Grange Insurance [redacted]

TEMP-RETURN SERVICE REQUESTED

May 21, 2015

Ivanka Ayoub
[redacted]

Re: Claim Number: [redacted]
Date of Loss: 03/19/2015
Vehicle Year: 1998
Vehicle Model: SPORT VAN G1

Insured: Ivanka Ayoub
Policy Number: [redacted]
Vehicle Make: CHEV
VIN: [redacted]

Dear Ivanka,

Thank you for discussing the claim with me. Based on our review of the damages to the vehicle, we have determined that the vehicle is a total loss. The actual cash value of the vehicle is based on the mileage, options and condition of the vehicle.

In order to settle this portion of the claim, we require the following:

- Certificate of Title
- Signed and notarized Power of Attorney (POA)

Please send all requested documents in the enclosed business reply envelope. Once all documents have been received we will use the POA to transfer the title into Trumbull Insurance Company's name and issue payment.

Explanation of Settlement:	
Market Valuation	$3,696.00
- Deductible	$500.00
Settlement Amount	$3,196.00

Please leave the keys with the total loss vehicle. If you did not leave the keys with the total loss vehicle and it has already been picked up for salvage, please return the keys in the enclosed business reply envelope.

Sincerely,

Erin M. Caldwell

Claim Representative
Grange Insurance
[redacted]

Enclosure: Power of Attorney

CCC VALUESCOPE
Claim Services

Market Report

Report Reference Number: [redacted]
Claim reference: [redacted]
Loss Incident Date: 01/13/2015
Insured: Ivanka Ayoub

Adjuster: Erin Caldwell
Adjuster ID: 340
Claim Reported Date: 01/20/2015
Owner: Ayoub, Ivanka
Appraiser: CHAIN #CHAIN3

Introduction

Grange Insurance Companies has conducted an appraisal of your 1998 Chevrolet G10/EXP 4X2 Incomplete Deluxe located in Cleveland, OH. The appraisal information was then used to conduct research in your market to determine the local market value of your unit. This CCC Valuescope Market Report details the results of that search. It contains the following sections:

Section Title:	Section Contents:
Equipment Summary	Market Value and Equipment Detail
VINguard Identification	Loss Unit configuration and VIN history
Valuation Methodology	Method used to evaluate the vehicle
Comparable Units	Supporting market data for loss unit
Appraisal and Valuation Notes	Log notes for this file

Equipment Summary

Loss Unit Specifications

Deluxe
1998 Chevrolet G10/EXP 4X2 Incomplete
Deluxe
8-5.7L-FI
Condition is 3: Average
Odometer: Unknown

Actual Cash Value	$	4,559.00
Pre Tax Adjustments		
Mileage To 250,000	-	954.00
Pre-tax amount:	$	3,596.00
Adjusted Loss Unit Value	$	3,596.00

Loss Unit Equipment:

Option	Description
AT	Automatic Transmission
OD	Overdrive
PS	Power Steering

Equipment Summary (continued)

PB	Power Brakes
PW	Power Windows
PL	Power Locks
AW	Aluminum/Alloy Wheels
AC	Air Conditioning
DM	Dual Mirrors
IW	Intermittent Wipers
TW	Tilt Wheel
CC	Cruise Control
AM	AM Radio
FM	FM Radio
ST	Stereo
SS	Search/Seek
CN	Console/Storage
CW	Cloth Seats
RL	Reclining/Lounge Seats
OD	Overhead Console

3S - 3rd Row Seat
HT - Hood Interior Trim
FU - Full Carpeting
IL - Interior Lighting
FO - Rear Fold-Out Sofa Bed
UD - Upholstered Door Panels + Re
WL - Insult. Walls W/Paneling/Wall
BG - Drivers Side Air Bag
BS - Passenger Air Bag
AB - Anti-Lock Brakes (4)
DT - Privacy Glass
SB - Rear Step Bumper
TR - Tire Rack/Carrier
NF - Draperies or Mini Blinds
WN - Custom Windows
IP - Clearcoat Paint
2T - Two Tone Paint

Additional Equipment
Deluxe Conversion

Actual Cash Value does not include tax, title, license, prior damage or deductible. For additional information or special consideration, call the CCC Commercial/Recreational Vehicle Division at [redacted] or, [redacted] Please use your Valuation Request Number for reference.

---------- VINguard Identification ----------

VIN: [redacted]

	Insurer Description	VINguard Analysis
Valuation Request:	[redacted] (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE	

---------- VINguard Identification (continued) ----------

Class	Deluxe	
Year	1998	1998
Make	Chevrolet	Chevrolet
Model	G10/EXP 4X2 Incomplete	G10/EXP 4X2 Incomplete
Model Num	MG15	BG15
Body style	Deluxe	
Engine	8-5.71-F5	8-5.71-F5

VINguard message(s):
VINguard detected discrepancies with this VIN
-- refer to VINguard Vehicle History Information.

Previous Total Loss History:
Duplicate VIN 54390986--14021 previously submitted by
Grange Insurance Companies (800) 486-0925
on 03/24/2015 Claim #: [redacted]

Collision History Information:
Collision Incident reported
on 03/26/2015 Claim # [redacted] in [redacted]
Miles: 0,000 Damage Location: Rollover

---------- AutoCheck Vehicle History Report ----------

AutoCheck Vehicle History Report

Experian Automotive

Report Run Date: 09/30/2015

Key: | N = No Problem Found | Y = Problem Found | I = Information Found

TITLE CHECK

THIS VEHICLE CHECKS OUT. AutoCheck database for this 1998 CHEVROLET G10/EXP 4X2 INCOMPLETE [redacted] shows no historical events that indicate a significant automotive problem. These problems can indicate past automotive damage or warnings associated with the vehicle title.

Problems Checked	Results Found
Abandoned	N No Abandoned Record(s) Found

Valuation Request: [redacted] (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

========== AutoCheck Vehicle History Report (continued) ==========

Damaged	N No Damaged Record(s) Found
Fire Damage	N No Fire Damage Record Found
Grey Market	N No Grey Market Record Found
Hail Damage	N No Hail Damage Record Found
Insurance Loss	N No Insurance Loss Record Found
Junk	N No Junk Record(s) Found
Rebuilt	N No Rebuilt Record(s) Found
Salvage	N No Salvage Record(s) Found

PROBLEM CHECK

THIS VEHICLE CHECKS OUT. AutoCheck database for this 1998 CHEVROLET G10/EXP 4X2 INCOMPLETE [redacted] shows no historical events that indicate a significant automotive problem. These problems can indicate past automotive damage or warnings associated with the vehicle title.

Problems Checked	Results Found
NHTSA Crash Test Vehicle	N No NHTSA Crash Test Vehicle Record(s) Found
Frame Damage	N No Frame Damage Record(s) Found
Major Damage Incident	N No Major Damage Record(s) Found
Manufacturer Buyback/Lemon	N No Manufacturer Buyback/Lemon Record(s) Found
Odometer Problem	N No Odometer Problem Record(s) Found
Recycled	N No Recycled Record(s) Found
Salvage Auction	N No Salvage Auction Record(s) Found
Water Damage	N No Water Damage Record(s) Found

ODOMETER CHECK THIS VEHICLE CHECKS OUT. For this 1998 CHEVROLET G10/EXP 4X2 INCOMPLETE [redacted] no indication of odometer rollback or tampering was found. AutoCheck determines odometer rollbacks by searching for records that indicate odometer readings less than a previously reported value. Other odometer events can report events of tampering, or possible odometer breakage.

Date Reported	Odometer Reading
1998-08-10	
1998-09-11	
1999-02-03	
1999-03-03	
1999-06-15	
1999-11-24	24,661
2000-12-17	
2001-12-13	
2002-10-18	53,842
2002-10-18	
2003-07-30	
2004-07-30	
2005-07-27	
2007-06-22	

Valuation Request: [redacted] (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

========== AutoCheck Vehicle History Report (continued) ==========

2009-10-01	
2011-07-27	
2013-06-10	245,700
2013-06-11	245,000
2013-06-12	
2014-03-24	
2015-03-19	

2015-03-19
2015-03-19
2015-03-19
2015-03-19
2015-03-19

VEHICLE INFORMATION

INFORMATION FOUND. AutoCheck found additional information on this vehicle. These records will provide more history for this 1998 CHEVROLET G10/EXP 4X2 INCOMPLETE [redacted]

Problems Checked	Results Found
Accident	Y Accident Record(s) Found
Corrected Title	N No Corrected Title Record(s) Found
Driver Education	N No Driver Education Record(s) Found
Duplicate Title	N No Duplicate Title Record(s) Found
Emissions Safety Inspection	Y Emissions Safety Inspection Record(s) Found
Fire Damage	N No Fire Damage Record(s) Found
Lease	N No Lease Record(s) Found
Lien	Y Lien Record(s) Found
Livery Use	N No Livery Use Record(s) Found
Government Use	N No Government Use Record(s) Found
Police Use	N No Police Use Record(s) Found
Fleet	N No Fleet Record(s) Found
Rental	N No Rental Record(s) Found
Fleet and/or Lease	N No Fleet and/or Lease Record(s) Found
Fleet and/or Rental	N No Fleet and/or Rental Record(s) Found
Repossessed	N No Repossessed Record(s) Found
Taxi Use	N No Taxi Use Record(s) Found
Theft	N No Theft Record(s) Found

FULL HISTORY

Below are the historical events for this vehicle listed in chronological order.

Report Run Date: 08/20/2015

Event Event Odometer Data Event
Valuation Request: [redacted] (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE
========== AutoCheck Vehicle History Report (continued) ==========

Date	Location	Reading	Source	Detail
1998-08-10	[redacted]	00000000	Motor Vehicle Dept	TITLE
1998-09-11		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
1999-02-03		00000000	State Agency	REAR IMPACT WITH ANOTHER VEHICLE
1999-02-03		00000000	State Agency	MODERATE DAMAGE REPORTED
1999-06-15		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
1999-11-29		24,681	Motor Vehicle Dept	TITLE
1999-12-17		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2000-12-18		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2001-12-13		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2002-10-18		53,863	Motor Vehicle Dept	TITLE
2002-10-18		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2003-07-30		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2004-07-30		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2005-07-27		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2007-06-22		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL

2009-10-01	[redacted]	00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2011-07-27		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2013-06-10		248,700	Motor Vehicle Dept	TITLE
2013-06-11		248,000	Independent Emissi	PASSED EMISSION INSPECTION
2013-06-13		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2014-01-24		00000000	Motor Vehicle Dept	REGISTRATION EVENT/RENEWAL
2014-03-19	CHESTER C, SC	00000000	State Agency	EVENT IMPACT WITH ANOTHER VEHICLE FRONT IMPACT COLLISION
2015-03-19	SC	00000000	Police Report	ACCIDENT REPORTED
2015-03-19	SC	00000000	Police Report	AIR BAG DEPLOYED
2015-03-19	CHESTER C, SC	00000000	State Agency	SEVERE DAMAGE REPORTED
2015-03-19	CHESTER C, SC	00000000	State Agency	VEHICLE WAS TOWED
2015-03-19	SC	00000000	Police Report	

AutoCheck Vehicle History Report Terms and Conditions:
Valuation Request: [redacted] (Continued) 1998 CHEV C10/EXP 4X2 INCOMPLETE
---------- AutoCheck Vehicle History Report (continued) ----------
Experian's Reports are compiled from multiple sources. It is not always possible for Experian to obtain complete discrepancy information on all vehicles; therefore, there may be other title brands, odometer readings or discrepancies that apply to a vehicle that are not reflected on that vehicle's Report. Experian searches data from additional sources where possible, but all discrepancies may not be reflected on the Report.

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---------- Valuation Methodology ----------

The Commercial + Recreational Vehicle Division of CCC Information Services, Inc., prepared this CCC Valuescope Market Report for Grange Insurance Companies. CCC has been preparing market value reports for the insurance industry since 1991.

Valuations performed by CCC's Commercial + Recreational Vehicle Division require individual market searches to identify and locate supporting market information. Due to the unique nature of the loss units valued in the Commercial + Recreational Vehicle Division, a valuation expert handles each request individually.

When Grange Insurance Companies requests a valuation report, they provide CCC with the configuration of the loss unit, including model, hours or mileage, optional features, any accessories, the condition of the loss unit as well as
Valuation Request: [redacted] (Continued) 1998 CHEV C10/EXP 4X2 INCOMPLETE

the VIN/GIN/PIN (vehicle/hull/product identification number) of the loss unit. That identification number is analyzed to verify basic information provided on the loss unit.

Orange Insurance Companies also provides CCC with the loss unit owner's ZIP code, which identifies the local market used to determine the market value.

The local market area, however, may vary by vehicle or unit type. Where the vehicle or loss unit is readily available in a given location, the search area can be within the same city or state as the loss unit. If the loss unit or vehicle is very specialized, the search may expand to locate comparable support to document the loss unit's value.

significant differences between the loss unit and any comparable units are documented and are used to define a verifiable market value for the loss unit. If no comparable units are located, the valuation expert will conduct a local market survey to gather the expert opinion of knowledgeable retailers in order to determine the local market value.

---------- Comparable Units ----------

The Comparable Units are compared to the Loss Unit to determine the Adjusted Value. The Adjusted Value represents the price of the Comparable Unit configured to exactly match the Loss Unit.

Comparable # 1)

Publication: Internet Advertisement
Location: Grand Rapids, MI
Dealer/Private: Dealer

Publication Date: 09/30/2014
Phone: [redacted]
Dealer Name: Perin Motors Inc

Loss Unit	Comparable # 1	Adjustment
Loss Unit Type: Conversion Vans Class: Deluxe	Conversion Vans Deluxe	
	Take Price:	4995
1998 Chevrolet S10/Blz 4x2 Incomplete Deluxe 8-5.7l-Fi	1998 Chevrolet G10 4x3 Chevyvan Incomplete Conversion 8-5.7l-Fi	
Miles: Unlisted	169,604	124
Condition: 3 Average	2 Average	
Packages		
Radio AM/FM Stereo Seek	AM/FM Stereo With Tape Cassette	-24

Valuation Request: [redacted] (Continued) 1998 CHEV G10/EXP 4X3 INCOMPLETE

---------- Comparable Units (continued) ----------

LOSS UNIT	Comparable # 1	ADJUSTMENT
Options		
Automatic Transmission	Automatic Transmission	
Overdrive	Overdrive	
Power Steering	Power Steering	
Power Brakes	Power Brakes	
Power Windows	Power Windows	
Power Locks	Power Locks	
Aluminum/Alloy Wheels	Aluminum/Alloy Wheels	
Air Conditioning	Air Conditioning	
Dual Mirrors	Dual Mirrors	
Intermittent Wipers	Intermittent Wipers	
Tilt Wheel	Tilt Wheel	
Cruise Control	Cruise Control	
Console/Storage	Console/Storage	
Cloth Seats	Cloth Seats	
Reclining/Lounge Seats		

Overhead Console		
3rd Row Seat	3rd Row Seat	
Wood Interior Trim	Wood Interior Trim	
Full Carpeting	Full Carpeting	
Interior Lighting	Interior Lighting	
Rear Fold-Out Sofa Bed	Rear Fold-Out Sofa Bed	
Upholstered Door Panel	Upholstered Door Panels + Headlin	
Instr. Walls W/Paneling	Instr. Walls W/Paneling/Wall Cove	
Drivers Side Air Bag	Drivers Side Air Bag	
Passenger Air Bag	Passenger Air Bag	
Anti-Lock Brakes (4)	Anti-Lock Brakes (4)	
Privacy Glass	Privacy Glass	
Rear Step Bumper	Rear Step Bumper	
Tire Rack/Carrier	Tire Rack/Carrier	
Draperies Or Mini Blin	Draperies Or Mini Blinds	
Custom Windows	Custom Windows	
Clearcoat Paint		
Two Tone Paint		
	Power Mirrors	-8
	Heated Mirrors	-15
	Television	-25
	Vcr	-8
	Dual Radio	-61
	Captain Chairs (4)	
	Running Boards/Side Steps	-37
Additional Equipment		
Deluxe Conversion	Midwest Vans Conversion	

Valuation Request: [redacted] (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

========== Comparable Units (continued) ==========

LOSS UNIT	Comparable # 1	ADJUSTMENT
Adjusted Value		1941

Comparable # 2 :

Publication: Internet Advertisement
Location: Mason, Oh
Dealer/Private: Dealer
Publication Date: 09/25/2014
Phone: [redacted]
Dealer Name: Mason Car Company

Loss Unit	Comparable # 2	Adjustment
Loss Unit Type: Conversion Vans	Conversion Vans	
Class: Deluxe	Deluxe	
	Value Price:	9450
1998 Chevrolet	1998 Chevrolet	
G10/Exp 4x2 Incomplete	G10 4x2 Chevyvan Incomplete	
Deluxe	Conversion	
8-5.7l-Fi	8-5.7l-Fi	
Miles: Unlisted	80,093	-1820
Condition: 3 Average	3 Average	
Packages		
Radio		
AM/FM Stereo Seek	AM/FM Stereo	-71
	With Tape And Cd	
Options		
Automatic Transmission	Automatic Transmission	
Overdrive	Overdrive	
Power Steering	Power Steering	
Power Brakes	Power Brakes	
Power Windows	Power Windows	
Power Locks	Power Locks	

Aluminum/Alloy Wheels	Aluminum/Alloy Wheels
Air Conditioning	Air Conditioning
Dual Mirrors	Dual Mirrors
Intermittent Wipers	Intermittent Wipers
Tilt Wheel	Tilt Wheel
Cruise Control	Cruise Control
Console/Storage	Console/Storage
Cloth Seats	Cloth Seats
Reclining/Lounge Seats	

Valuation Request: [redacted] (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

========== Comparable Units (continued) ==========

LOSS UNIT	Comparable # 3	ADJUSTMENT
Overhead Console		
3rd Row Seat	3rd Row Seat	
Wood Interior Trim	Wood Interior Trim	
Full Carpeting	Full Carpeting	
Interior Lighting	Interior Lighting	
Rear Fold-Out Sofa Bed	Rear Fold-Out Sofa Bed	
Upholstered Door Panel	Upholstered Door Panels + Headlin	
Insit. Walls W/Panelin	Insit. Walls W/Panelling/Wall Cove	
Drivers Side Air Bag	Drivers Side Air Bag	
Passenger Air Bag	Passenger Air Bag	
Anti-Lock Brakes (4)	Anti-Lock Brakes (4)	
Privacy Glass	Privacy Glass	
Rear Step Bumper		
Tire Rack/Carrier	Tire Rack/Carrier	
Draperies Or Mini Blin	Draperies Or Mini Blinds	
Custom Windows	Custom Windows	
Clearcoat Paint		
Two Tone Paint		
	Power Mirrors	-8
	Television	-25
	Ver	-8
	Dual Radio	-61
	Captain Chairs (4)	
	Trailer Hitch	-24
	Trailering Package	-24
	Running Boards/Side Steps	-37
Additional Equipment		
Deluxe Conversion	Gladiator Conversion	
Adjusted Value		3673

Comparable # 3 :

Publication: Internet Advertisement
Location: Halvindale, Mi
Dealer/Private: Private

Publication Date: 09/30/2014
Phone: [redacted]

Loss Unit	Comparable # 3	Adjustment
Loss Unit Type: Conversion Vans	Conversion Vans	
Class: Deluxe	Deluxe	
	Take Price:	7000

Valuation Request: [redacted] (Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE

========== Comparable Units (continued) ==========

LOSS UNIT	Comparable # 3	ADJUSTMENT
1998 Chevrolet	1998 Chevrolet	-225
G10/Exp 4x2 Incomplete	G10 4x2 Chevyvan Incomplete	
Deluxe	Conversion	
8-6.71-Fi	8-6.71-Fi	
Miles: Unlisted	120,000	-1000

Condition: 3 Average	3 Average	
Packages		
Radio		
AM/FM Stereo Seek	AM/FM Stereo With Tape Cassette	-31
Options		
Automatic Transmission	Automatic Transmission	
Overdrive	Overdrive	
Power Steering	Power Steering	
Power Brakes	Power Brakes	
Power Windows	Power Windows	
Power Locks	Power Locks	
Aluminum/Alloy Wheels		49
Air Conditioning	Air Conditioning	
Dual Mirrors	Dual Mirrors	
Intermittent Wipers	Intermittent Wipers	
Tilt Wheel	Tilt Wheel	
Cruise Control	Cruise Control	
Console/Storage	Console/Storage	
Cloth Seats	Cloth Seats	
Reclining/Lounge Seats		
Overhead Console		
3rd Row Seat	3rd Row Seat	
Wood Interior Trim	Wood Interior Trim	
Full Carpeting	Full Carpeting	
Interior Lighting	Interior Lighting	
Rear Fold-Out Sofa Bed	Rear Fold-Out Sofa Bed	
Upholstered Door Panel	Upholstered Door Panels + Headlin	
Insit. Walls W/Panelin	Insit. Walls W/Paneling/Wall Cove	
Drivers Side Air Bag	Drivers Side Air Bag	
Passenger Air Bag	Passenger Air Bag	
Anti-Lock Brakes (4)	Anti-Lock Brakes (4)	
Privacy Glass	Privacy Glass	
Rear Step Bumper	Rear Step Bumper	
Tire Rack/Carrier	Tire Rack/Carrier	
Draperies Or Mini Blin	Draperies Or Mini Blinds	
Valuation Request: [redacted]	(Continued) 1998 CHEV G10/EXP 4X2 INCOMPLETE	

---------- Comparable Units (continued) ----------

LOSS UNIT	Comparable # 3	ADJUSTMENT
Custom Windows	Custom Windows	
Clearcoat Paint		
Two Tone Paint		
	20" Or Larger Wheels	-65
	Dual Air Conditioning	-98
	Television	-25
	Captain Chairs (4)	
	Running Boards/Side Steps	-37
Additional Equipment		
Deluxe Conversion	Deluxe Conversion	
	42" Television (2nd TV)	-95
	DVD Player	-8
Adjusted Value		$375

---------- Valuation Processing Notes ----------

03/25 14:28 Standard Equipment:
Pa Pb Ab Ag Eg Pw Pl Tv Cc Sm Fn St Va Ac

The following information was provided after the valuation was completed:
03/30 23:51 Drs tax/Post tax data modified after valuation.

If you have any questions, please contact Customer Service at [redacted] or [redacted] Thank you for the assignment.

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FAXP

CLERK OF COURT
CHESTER CO S.C.
2010 MAR 27 P 4:01
FILED

November 27, 2018
Notice of Appeal
Filed 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

RECEIVED
NOV 27 2018
SC Court of Appeals

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance Co., Interinsurance Exchange of the Autombile 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

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(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)

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Michael R. Burchstead, Esquire
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Columbia, SC 29211
(Attorneys for Trustguard Insurance Company)

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

Reynolds Williams
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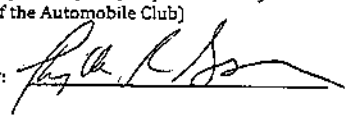
(Attorney for Defendant Interinsurance Exchange of the Automobile Club)

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

By: 

Boca Raton, Florida
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FAX Cover Sheet

November 27, 2018

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

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FROM: Heidi Gersten
(323) 245-6142

Pages including this cover sheet 44

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(323) 245 6142

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Clerk of Court
ATTN: Jenny Abbott Kitchings
1220 Senate Street
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Phone (803) 734-1890
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RE: New Appeal
File No: 2018-AP-12-00074 And 2018-CP-12-00117
Priority matter

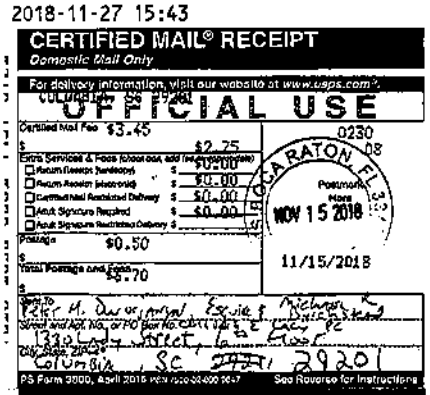
Dear Ms. Kitchings or To Whom it may concern:

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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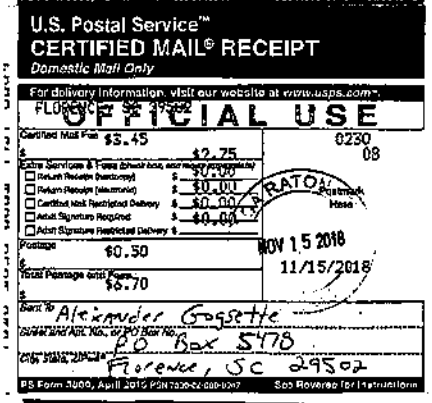

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City, State, ZIP+4®: Columbia, SC 29206

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City, State, ZIP+4®: PO Box 8568, Columbia, SC 29202

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(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)
(Estimated Delivery Date)
(Monday 11/19/2018)
Certified 1 $3.45
(@@USPS Certified Mail #)
(70181830000149570714)
Return 1 $2.75
Receipt
(@@USPS Return Receipt #)
(9590940243858190011305)

Total $47.11

Cash $100.00
Change ($52.89)

Text your tracking number to 28777
(2USPS) to get the latest status.
Standard Message and Data rates may
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170 NE 2ND ST
BOCA RATON
FL
33432-9998
1100640230
11/15/2018 (800)275-8777 5:07 PM

Product Description	Sale Qty	Final Price
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 #) (70181830000149570733)	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
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
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

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 in Case No. 2018-CP-12-00117

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

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-ge
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.

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

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.

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

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 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

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M&G
MURPHY & GRANTLAND, P.A.

Wesley B. Sawyer
Direct dial 803-454-123
wsawyer@murphygrantland.com

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.

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

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.

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

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.

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

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
In Case No. 2018-CP-12- 00117
Filed August 26, 2029

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

Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

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

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.

ed by: Agency, Roster ID
d By: Schedule Date, Priority
de Completed Motions

Common Pleas

MOTIONS ROSTER DETAIL LISTING

Motions Roster ID: 20 - Motions 140 Main Street Chester S C 29706

ule	Day Priority	StartTime	Duration Hrs	Duration Min	Action Code	Description	Complete Date	Case Number
022	1	10:00:00AM	0	15	MSTRIK	Motion/Strike Amended Complaint		2018CP1200117
022	2	10:00:00AM	0	0	MOTAPP	Motion/Amend Complaint With Leave		2018CP1200117
022	3	10:00:00AM	0	0	MAMNMO	Motion/Alter and/or Amend A Judgment or Relief from Judgment		2018CP1200117
022	4	10:00:00AM	1	0	MCOMPL	Motion/Compel		2018CP1200117
022	5	10:00:00AM	0	0	MDISMS	Motion/Dismiss		2018CP1200117

Print Date: 08/08/2022
Print Time: 8:46:55AM
Requested By: C12DATKINS

File: ROSTERLSTM.rpt V6.1 (SQL)

April 16, 2018
Kevin Carter and Richard Davis'
Motion to Dismiss or, in the alternative,
Motion to Strike and Sever
Filed 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	_____ JUDGE
☐ Motion Fee to be paid upon filing of the attached order. ☐ 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
2018 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 (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)(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
CHESTER CO. S.C.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

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

Columbia, South Carolina
April 13, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

BEFORE THE ARBITRATION PANEL

CIVIL ACTION NO: 2018-CP-12-00074

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.

CERTIFICATE OF SERVICE

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

I, Ricki L. Blakeney, an employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendants Kevin Carter, Richard Davis, do hereby certify that I have served a copy of the foregoing, Answer of Kevin Carter and Richard Davis as well as a Motion to Dismiss and Motion to Strike or, in The Alternative, Sever, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

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

Ricki L. Blakeney

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
In Case No. 2018-CP-12- 00117
Filed April 16, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

IN THE COURT OF COMMON PLEAS

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

CASE NO.
2018-CP-12-00117

v.)

MOTION INFORMATION
FORM AND COVER SHEET

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.

FILED
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	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	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
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:

1. 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

[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.

FILED
CLERK OF COURT
RICHLAND CO. S.C.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

Wesley B. Sawyer, Esquire
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Columbia, South Carolina
April 13, 2018

January 31, 2019
Kevin Carter's and Richard Davis' Motion
to Dismiss Appeal and
Memorandum in Support
In Appellate Case No. 2018- 002115
Filed January 31, 2019

88934

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

Wesley B. Sawyer, Esquire, SC Bar # [illegible]
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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

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

RECEIVED
JAN 31 2019
SC Court of Appeals

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

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

v.

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

PROOF OF SERVICE

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

January 31, 2019

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(Attorney for Joseph Tirbovich)
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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.

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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
In Case No. 2018-CP-12-00117
Filed August 26, 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, 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

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

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.

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

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#2018CP1200117

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

Columbia, South Carolina 29260

803-454-1233 dd

803-782-4100 ext.

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?

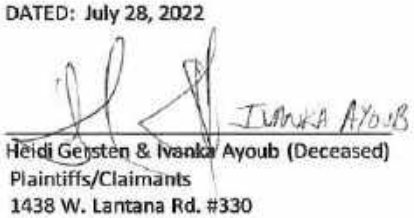
38. Permitting the Defendant Gersten to file online is another Americans with Disabilities reasonable modification request.

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



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, wesawyer@murphygrantland.com, Douglas, mhayeslc@accourts.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://accourts.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

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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

2018 DEC 18 A 11:44

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

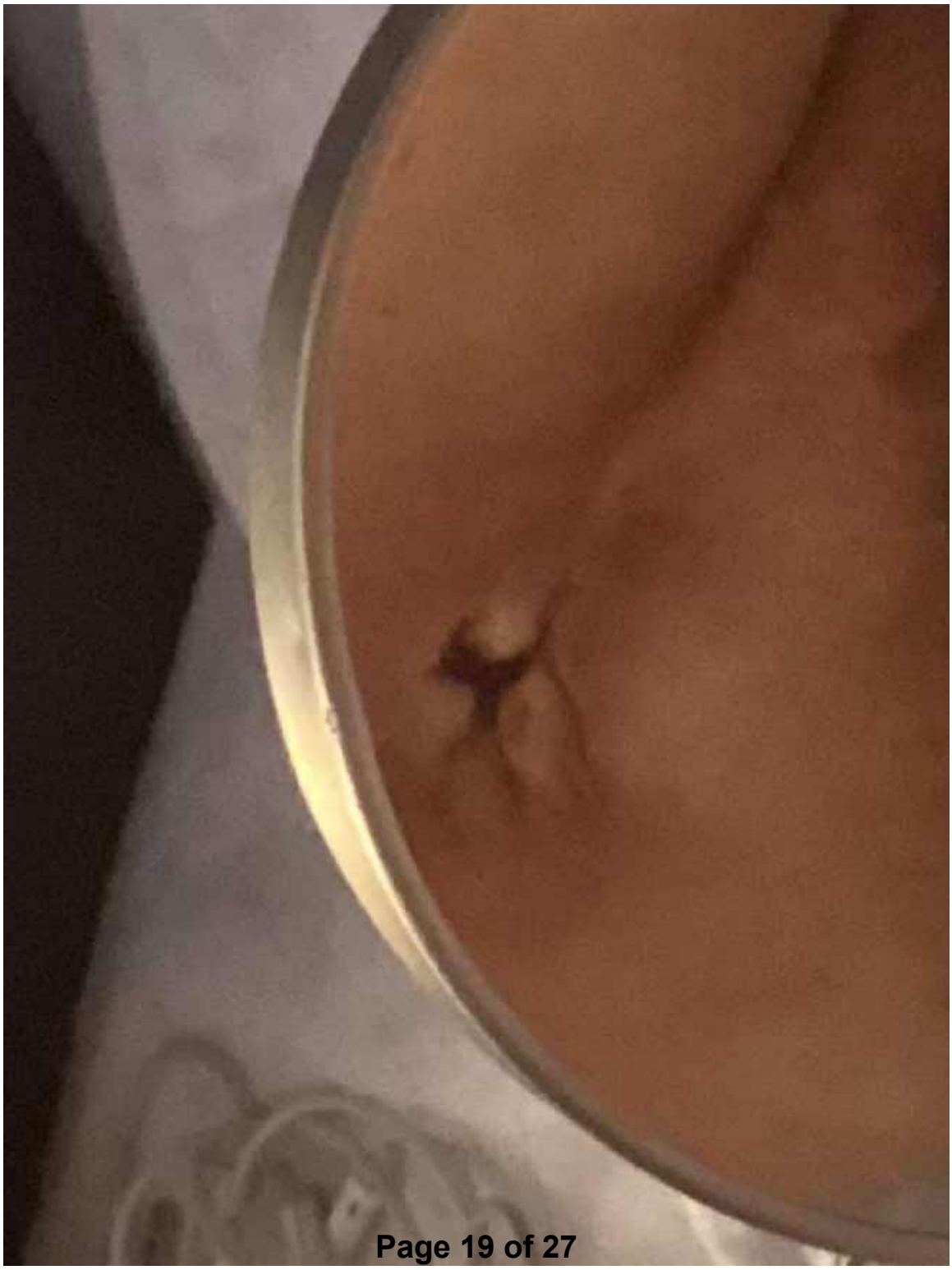
[1] The Supreme Court similarly permits service by electronic means in matters governed by the SCACR in accordance with 262(c)(3), SCACR, which states that, in addition to service by delivery or via U.S. mail, a party may also serve a copy by electronic means in a manner specified by order of the Supreme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

EXHIBIT D

Wound Pic from 2015

EXHIBIT 1

Recent Wound Photo



EXHIBT 2

Recent Wound Photo

EXHIBIT 3

Recent Diarrhea Explosion

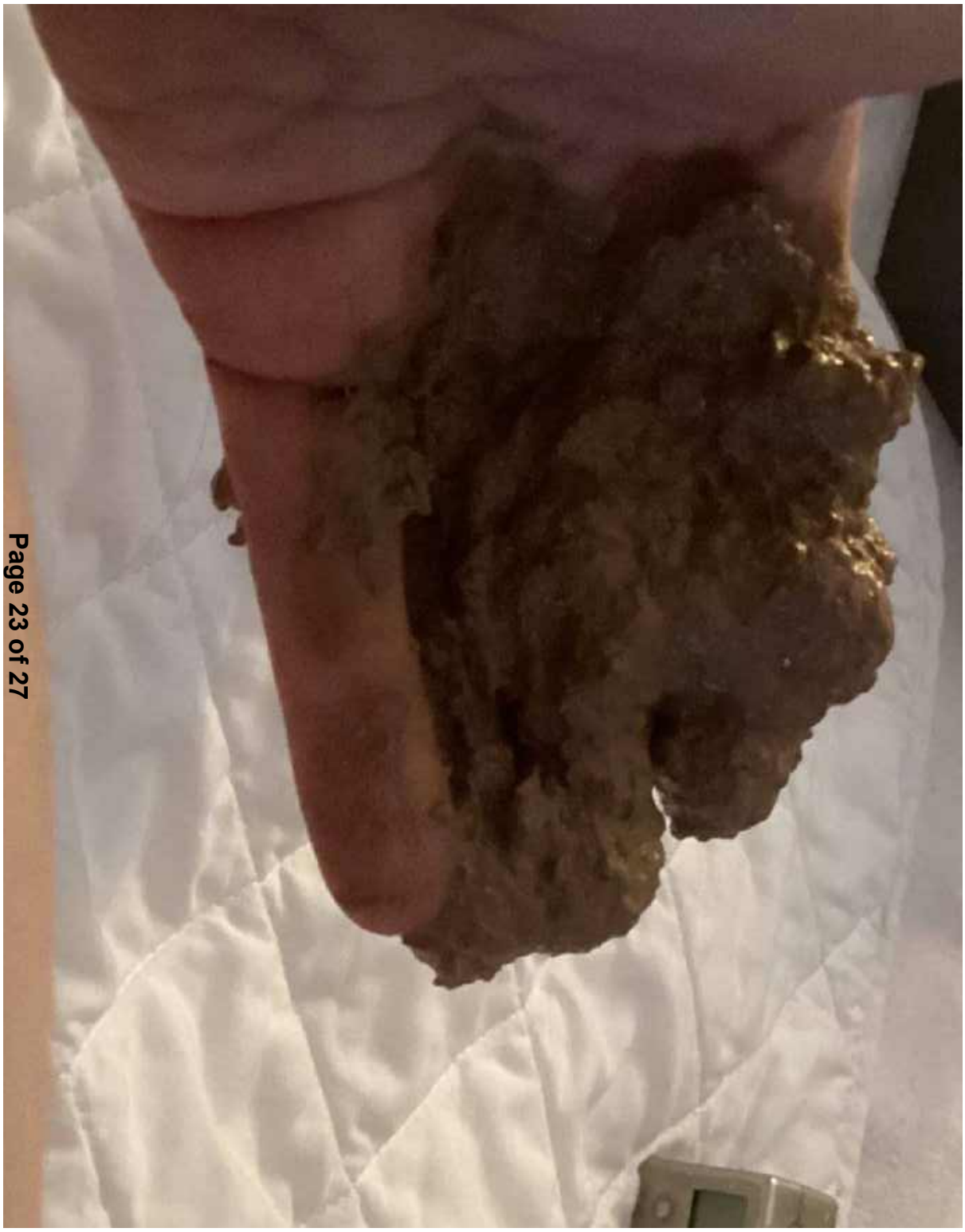
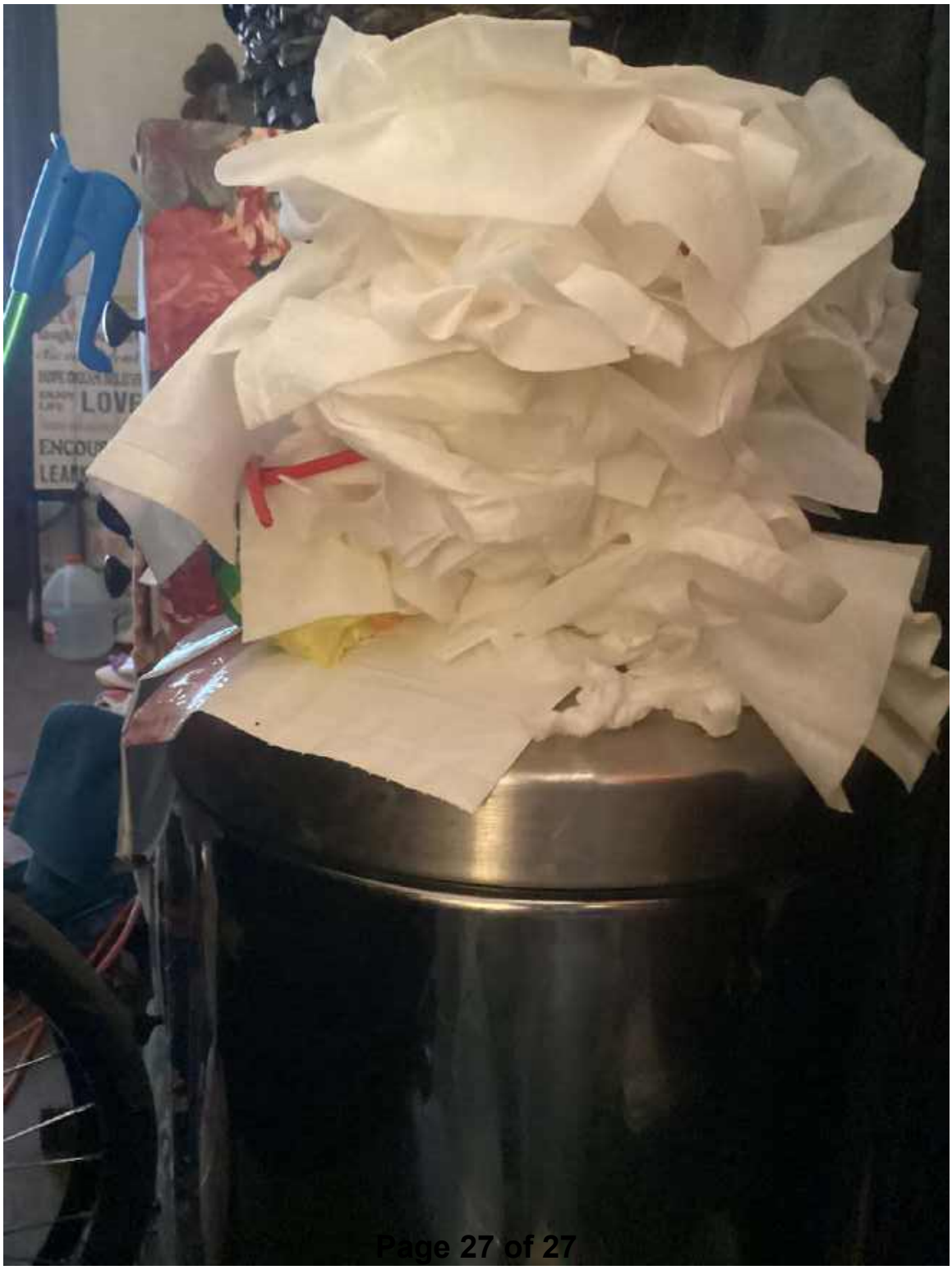


EXHIBIT 4

Recent Diarrhea Explosion Cleanup

EXHIBIT 5

Recent Diarrhea Explosion Cleanup



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

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

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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.

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

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
In Case No. 2018-CP-12- 00117
Filed August 22, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)
)
Heidi Gersten Ivanka Ayoub)
Daniel Hubbard, Plaintiff,)
vs.)
)
Kevin Carter, Richard Davis, Joseph Tinsley,)
Nationwide Mutual Ins Co, Integrity Insurance, Defendant.)
Each of the Automobile Club, Jim Hawley Ins Trustee, Ins Co
SC Dept of Public Safety, Buckwell Chevrolet Cobb, Unknown Does

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: 323 215 6142 Fax 561 753 3962	Phone: _____ Fax:
E-mail: Investment@gmail.com Other: SUI	E-mail: Other:

2018 AUG 23 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 Designation of Nationwide Defendant's Attorney
Estimated Time Needed: 1 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 No 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.
☐ Other: _____

JUDGE CODE _____
Date: _____, 20___

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____, 20___

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

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)) COUNTY OF CHESTER)))) 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) CHEVROLET, GMC, UNKNOWN) JOHN DOES)) Defendants)	IN THE COURT OF COMMON PLEAS FILE NO: 2018-CP-12-00117 PRIORITY MATTER PLAINTIFF'S OBJECTION AND OPPOSITION TO DESIGNATION OF NONJURY DOCKET AND MOTION TO TRANSFER TO THE APPROPRIATE DOCKET AND MOTION TO STRIKE SCHEDULED COURT DATE OF SEPTEMBER 5, 2018 or IN THE ALTERNATIVE MOTION FOR CONTINUANCE Pursuant to SCRCP Rules 15, 40

FILED
AUG 22 2018
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
2009 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.

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.

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

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..."

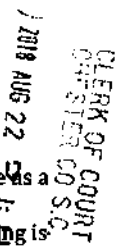
This action was filed on March 19, 2018 and 180 days after this date is September

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.



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..."

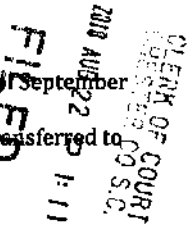
SCRCP Rule 40(d)(1) states in part, "**Agreement or Objection.** No earlier than 180 days after the date the case was filed, any party may file and serve upon all other parties a Request to Transfer that case from the General Docket to the Jury Trial Roster...

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..."



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
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Fax: (561) 756-9820
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FILED
2018 AUG 22 9:11
CLERK OF COURT
CHEROKEE COUNTY, S.C.

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

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 Autombile Club, John Amnendola, 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

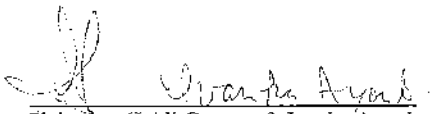
TO THE HONORABLE SOUTH CAROLINA COURT OF APPEALS:

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.

1

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 extraordinary 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:

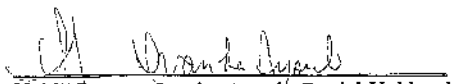
THE EQUITABLE POWER OF A COURT IS NOT BOUND BY CAST-IRON RULES BUT EXISTS TO DO FAIRNESS AND IS FLEXIBLE AND ADAPTABLE TO PARTICULAR EXIGENCIES SO THAT RELIEF WILL BE GRANTED WHEN, IN VIEW OF ALL THE CIRCUMSTANCES, TO DENY IT WOULD PERMIT ONE PARTY TO SUFFER A GROSS WRONG AT THE HANDS OF THE OTHER. EQUITABLE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

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Murpy & Grantland, P.A.
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Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
Collins & Lacy, PC
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Columbia, SC 29211
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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)

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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 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)

Reynolds Williams
P.O. Box 1909
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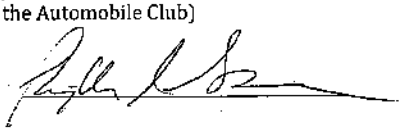
(Attorney for Defendant Interinsurance Exchange of the Automobile Club)

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

By: 

Boca Raton, Florida
December 17, 2018

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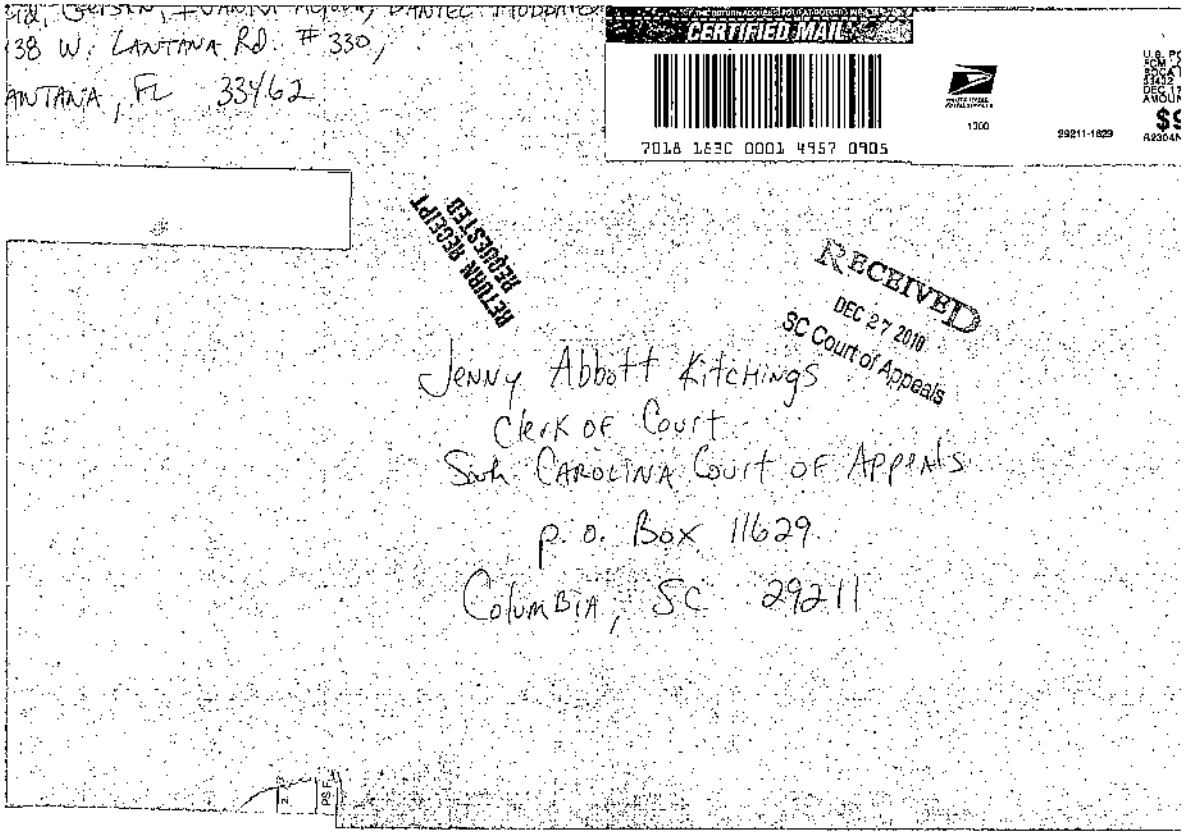
SC Court of Appeals


38 W. LANTANA RD. #330,
LANTANA, FL 33462
CERTIFIED MAIL
7018 163C 0001 4957 0905
29211-1829
RETURN RECEIPT REQUESTED
RECEIVED
DEC 27 2018
SC Court of Appeals
JENNY ABBOTT KITCHINGS
CLERK OF COURT
SOUTH CAROLINA COURT OF APPEALS
P. O. BOX 11629
COLUMBIA, SC 29211

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

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:

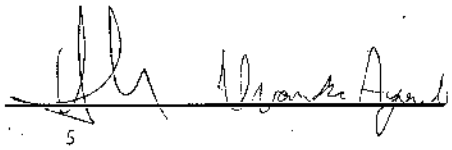
THE EQUITABLE POWER OF A COURT IS NOT BOUND BY CAST-IRON RULES BUT EXISTS TO DO FAIRNESS AND IS FLEXIBLE AND ADAPTABLE TO PARTICULAR EXIGENCIES SO THAT RELIEF WILL BE GRANTED WHEN, IN VIEW OF ALL THE CIRCUMSTANCES, TO DENY IT WOULD PERMIT ONE PARTY TO SUFFER A GROSS WRONG AT THE HANDS OF THE OTHER. EQUITABLE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



5

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.
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Columbia, SC 29206
(Attorney for Kevin Carter and Richard Davis)
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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
(Appellate Case NO: 2018-002115)

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: Appellate Case No: 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
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(Attorney for Kevin Carter and Richard Davis)

David R. Sligh
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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:

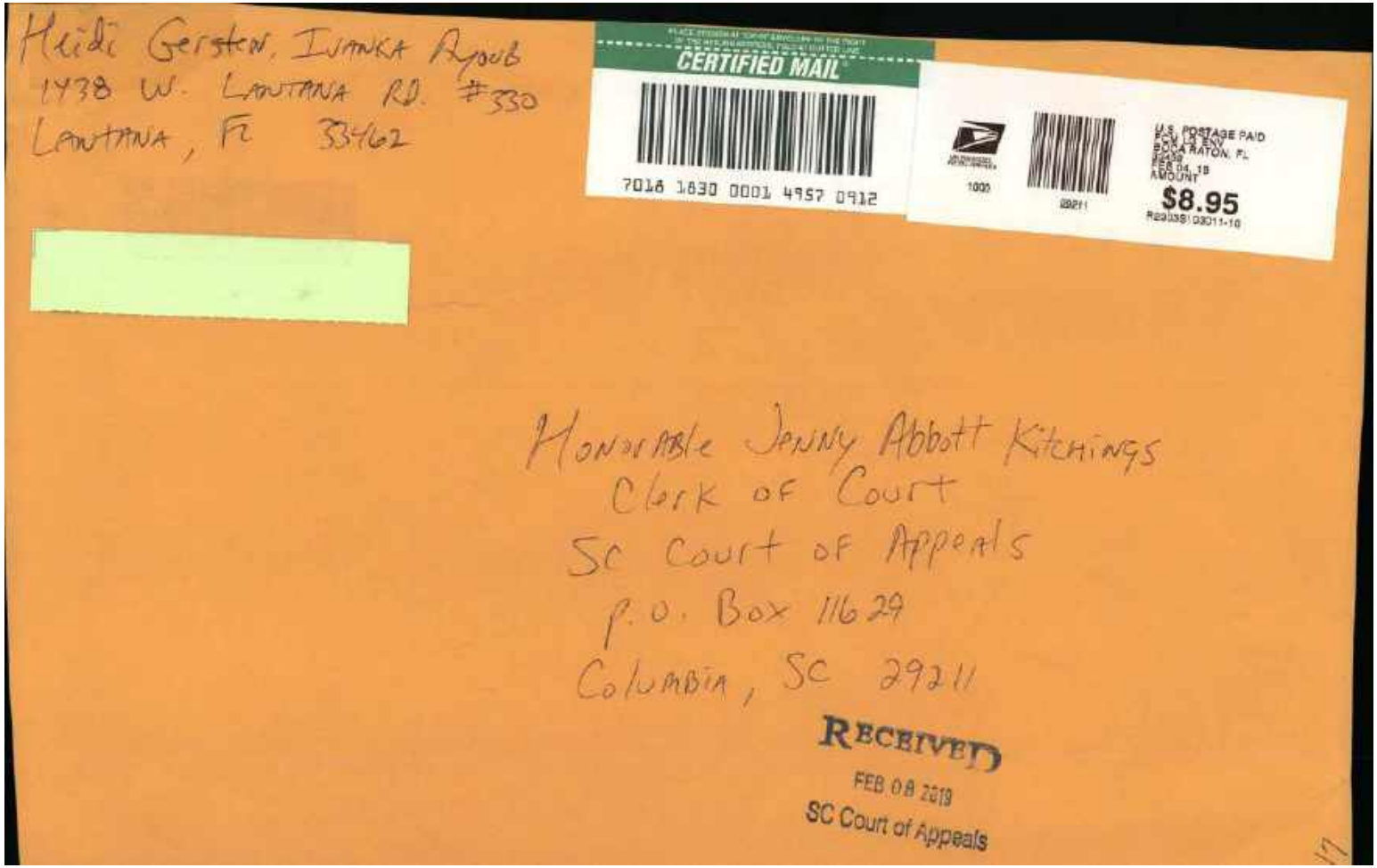
Good day to you.

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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1438 W. Lantana Rd. #330
Lantana, FL 33462
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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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SC Court of Appeals

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

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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.....Appellants.

v.

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

APPELLANTS' AMENDED RETURN 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) deficiencies, 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

4

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

RECEIVED
FEB 19 2019
SC Court of Appeals

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

---

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

5

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.

6

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 998166
Expires 09/15/2019

NOTARY PUBLIC

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

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, 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

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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.

5 9

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 968185
Expires 09/15/2019

NOTARY PUBLIC

My commission expires: 09/15, 2019.

10
6

TABLE OF CONTENTS

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Hearing

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Return and/or Objection and/or Opposition and/or Response to Respondent
Interinsurance Exchange of the Automobile Club's Motion To Dismiss Appeal

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' OBJECTION AND OPPOSITION TO DEFENDANT INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB'S MOTION TO DISMISS 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 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
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(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
MAY -8 P 2:52
CLERK OF COURT
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

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	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

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)

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STATE OF SOUTH CAROLINA

In the matter of Arbitration between

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)

BEFORE THE ARBITRATION PANEL OF CHESTER COUNTY

Case number 2018-AP-12-00074

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
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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.

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2018 MAY -8 P 2:52
CLERK OF COURT
BERKELEY 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
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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

CLERK OF COURT
CHESTER CO. S.C.
2018 OCT -5 A 9:32

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

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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.

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

Respectfully submitted,

DATED: September 28, 2018

PLAINTIFFS Heidi Gersten & Ivanka Ayoub, DANIEL HUBBARD
1438 W. Lantana Rd. #330
Lantana, FL 33462
(323) 245-6142/ Fax (561) 756-9820
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CLERK OF COURT
CHESTER CO. S.C.
2018 OCT -8 A 9:32
FILED

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

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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.

30

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

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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

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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.

FILED
2018 OCT -8 A 9:32
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

40

CLERK OF COURT
CHESTER CO S.C.

2010 OCT -8 A 9:32

EXHIBIT
1

41

CLERK OF COURT
CHESTER CO SC
2018 OCT -8 A 9:33
FILED

EXHIBIT
2
42

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

EXHIBIT
3

43

CLERK OF COURT
CHESTER CO. S.C.
2010 OCT -8 A 8:33
FILED

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

EXHIBIT
5

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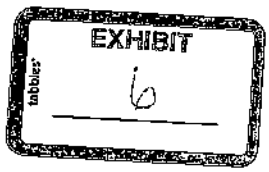
45

CLERK OF COURT
CHESTER CO. S.C.
2019 OCT -8 A 9:33
FILED



35

46

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?

EXHIBIT 47

Grange Insurance

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

TEMP RETURN SERVICE REQUESTED

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

IVANKA AYOUB
1438 W LANTANA RD APT 330
LANTANA FL 33462

RUSTGARD INSURANCE COMPANY

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

lisbursement Reason
ULL AND FINAL SETTLEMENT OF THE TOTA

/ANKA AYOUB 34-931 LANSING INSURANCE AGENCY INC

laimant Name
/ANKA AYOUB

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

004 (10-2012)

DETACH THIS PORTION BEFORE CASHING

e Insurance Companies
x 1218
s, Ohio 43216-1218

TRUSTGARD INSURANCE COMPANY

No. 706238460

	Branch #	Policy#	Agent #	Date
ULL AND FINAL SETTLEMENT OF THE TOTA	444	PPT 9970193	34-931	04/18/2018

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

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

AMOUNT
3,196.00

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

Bank, Ashland, OH 70

PLEASE CASH PROMPTLY

EXHIBIT
8

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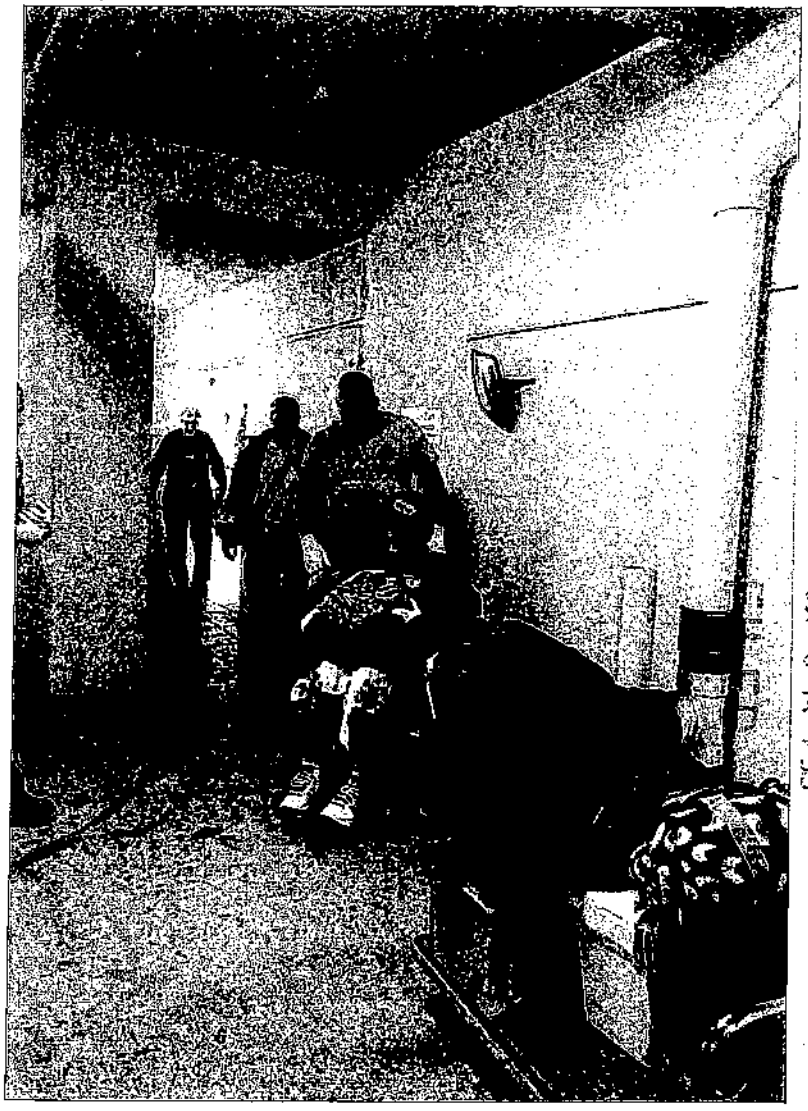
27



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

EXHIBIT
9

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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:

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

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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

Electronically signed on 2018-10-16 09:54:36 page 3 of 3

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UNITED STATES POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to [illegible]

Address 5116 Cressingham Dr.

[illegible] SC 29707

KEEP THIS RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
24987297690	2018-09-22	334320	$120.45	

U.S. Postal Service
CERTIFIED MAIL

FORT MILL, SC 29707

$3.45

$2.75

$0.00

$0.00

$0.00

$0.00

$0.50

$0.70

Mike [illegible]

Slip Cress[illegible]

[illegible]

7038 0360 0002 2449 6372

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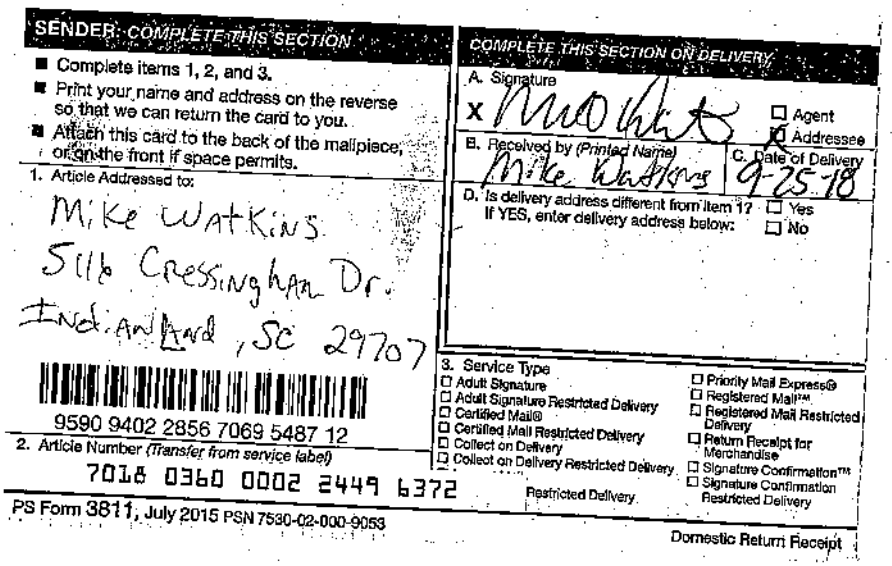

SENDER: COMPLETE THIS SECTION

- 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
516 Cressingham Dr.
Inchland, 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

55

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56

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:

Chester County Clerk of Courts
Attn: Common Pleas
P.O. Drawer 580
Chester, SC 29706

9590 9402 2856 7069 6841 68

2. Article Number (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature]
☑ Agent
☐ Addressee

B. Received by (Printed Name)
TJ Martin

C. Date of Delivery
2-14-18

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
☐ 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

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

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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

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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	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

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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

61

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

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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.

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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

66

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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

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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:

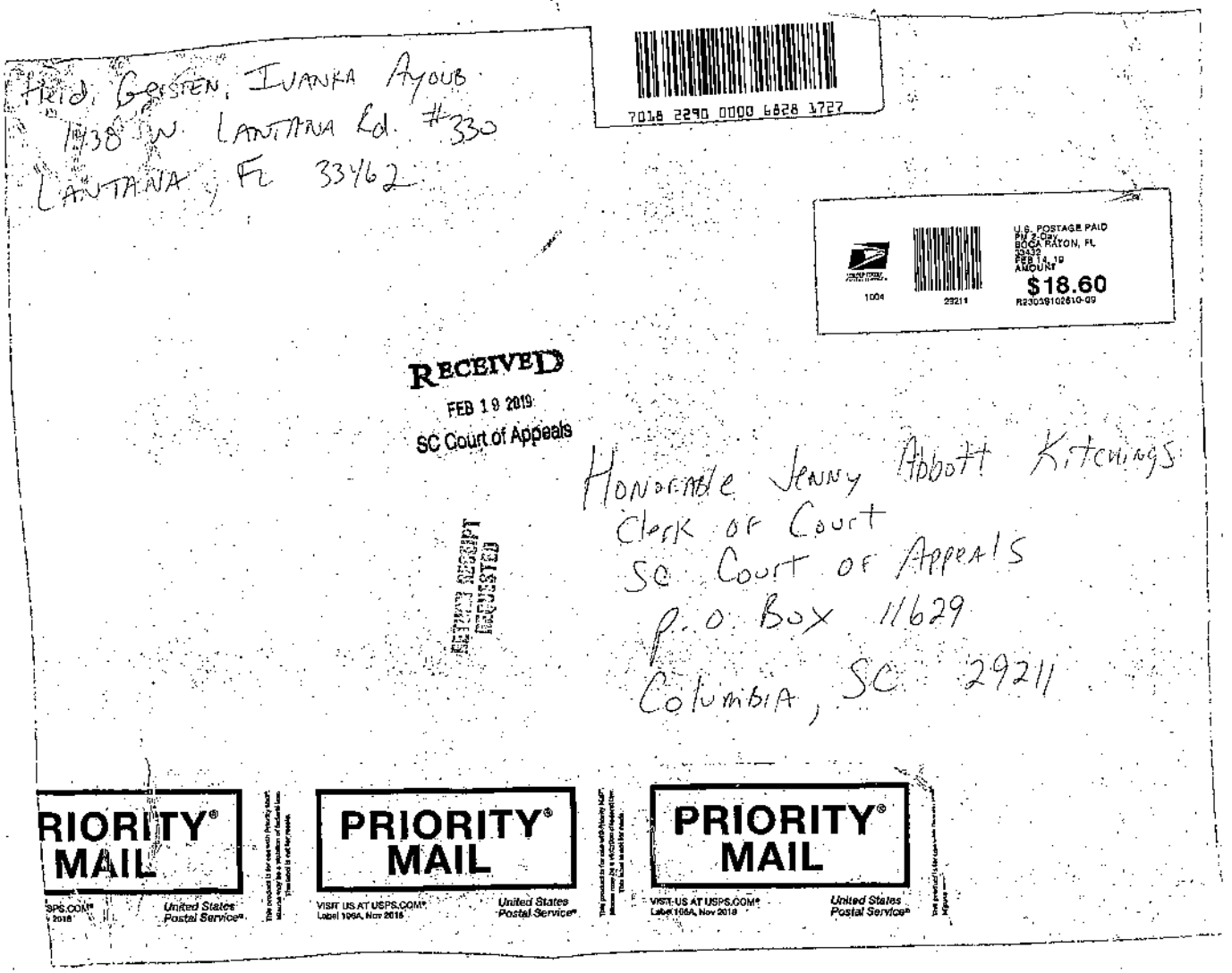
Good day to you.

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



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

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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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March 1, 2019
Gersten's Motion for Extension of Time In
Appellate Case No. 2018- 002115
Filed March 1, 2019

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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 Autombile Club, John Ammendola, Trustgard Insurance Co., SC Dept. of Public Safety, Blackwell, Unknown John Does.....

RECEIVED
MAR 01 2019
SC Court of Appeals

Respondents.

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
Murpy & Grantland, P.A.
4406 Forest Drive #B
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(Attorney for Kevin Carter and Richard Davis)
(803) 782-4100

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Myrtle Beach, SC 29578
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Michael R. Burchstead, Esquire
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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)

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 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
Michael R. Burchstead, Esquire
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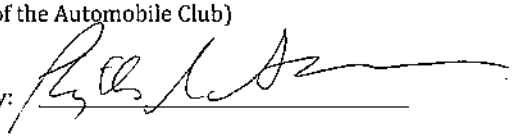
1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company)

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
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

RECEIVED
MAR 01 2019
SC Court of Appeals

Dear Ms. Kitchings:

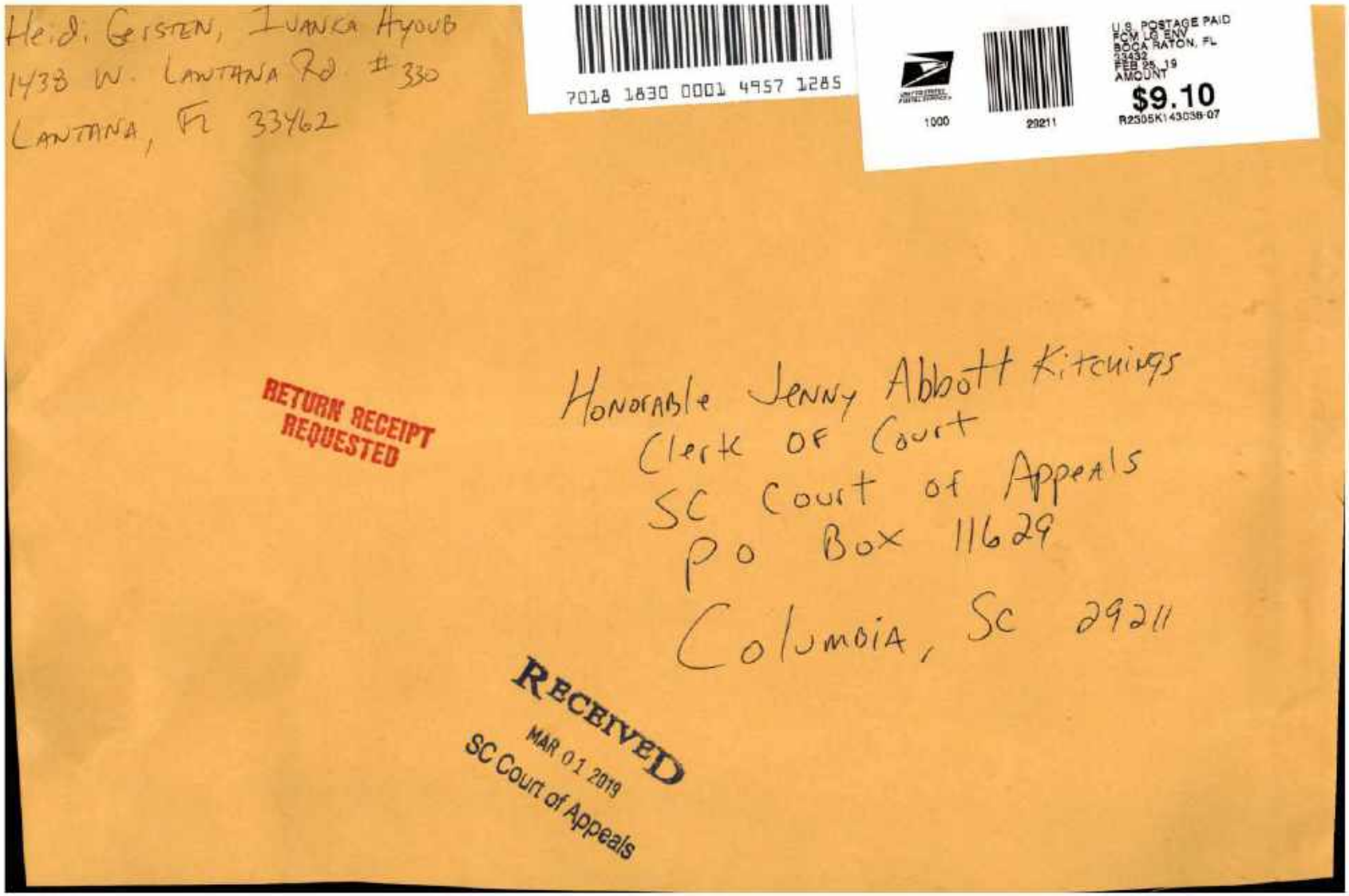
Good day to you.

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 Geisen, Juanca Ayoub
1433 W. Lantana Rd #330
Lantana, FL 33462
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Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211
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MAR 01 2019
SC Court of Appeals

March 12, 2019
Gersten's Motion for Extension of Time In
Appellate Case No. 2018-002115
Filed March 12, 2019

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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 Autombile Club, John Ammendola, Trustgard Insurance Co., SC Dept. of Public Safety, Blackwell, Unknown John Does.....

Respondents.

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MAR 12 2019
SC Court of Appeals

APPELLANTS' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS ALONG WITH A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 2019

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**, and **TITLE II OF THE AMERICAN DISABILITIES ACT** for an extension of time to file their amended return of Respondent Carter and Davis'

1

motion to dismiss, along with a more detailed response to this court's letter dated February 15, 2019.

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

Respectfully submitted,

DATED: March 7, 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 MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS ALONG WITH A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 2019

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

1. The Appellants received a letter from the Court dated February 5, on February 21, 2019 instructing a mandatory list of answers and a return to be made.
2. In immediate response, the Appellants noted that a motion for an extension of time was made and paid for in the amount of $50.00.
3. This said letter from the Court did not specify which motion to dismiss it was referring to, as there are two (2) pending in this Court, that the Appelants are aware of.
4. This said letter from the Court may be deemed satisfied in part, as a day before its inception, Appellants served and filed a return to the Respondent Interinsurance Exchange of the Automobile Club.
5. 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.
6. 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.
7. The Appellant Ayoub is also disabled and unable to give proper care for her daughter, the Appellant Gersten.
8. Despite the extraordinary circumstances the Appellant Gersten lives with, she has been

diligently working on this appeal with Appellant Ayoub. Given that the Respondents Carter and Davis' return is 64 unpagenated pages and there are numerous inaccuracies, the Appellants request an additional ten (10) days to comply, which would be March 17, 2019.

9. 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.

10. The Appellants are not South Carolina residents.

11. This may be considered excusable neglect.

12. 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.

13. This request is not unheard of.

14. This request is made before the expiration of the time due.

15. 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.

16. **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.

17. 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.

18. 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:

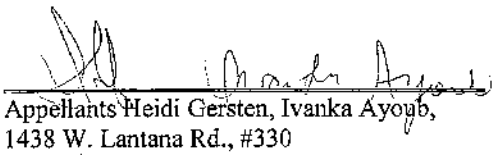
THE EQUITABLE POWER OF A COURT IS NOT BOUND BY CAST-IRON RULES BUT EXISTS TO DO FAIRNESS AND IS FLEXIBLE AND ADAPTABLE TO PARTICULAR EXIGENCIES SO THAT RELIEF WILL BE GRANTED WHEN, IN VIEW OF ALL THE CIRCUMSTANCES, TO DENY IT WOULD PERMIT ONE PARTY TO SUFFER A GROSS WRONG AT THE HANDS OF THE OTHER. EQUITABLE 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, MARCH 7, 2019; an extension of ten (10) days from the date of MARCH 7, 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 5th day of MARCH 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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(Attorney for SC Dept. of Public Safety and Herbert Blackwell)

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(843) 662-3258

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

RECEIVED
MAR 12 2019
SC Court of Appeals

CERTIFICATE OF SERVICE
(Appellate Case No: 2019-002115)

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' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS ALONG WITH A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 2019 along with letter to the Court dated March 7, 2019, and Exhibits A, B, AFFIDAVIT OF APPELLANT HEIDI GERSTEN and Exhibit 1, APPELLANTS' RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND MOTION FOR THE COURT TO ACCEPT THIS DOCUMENT AS TIMELY WITH OR WITHOUT LEAVE OF COURT, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANTS' RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND MOTION FOR THE COURT TO ACCEPT THIS DOCUMENT AS TIMELY WITH OR WITHOUT LEAVE OF 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
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P.O. Box 1909
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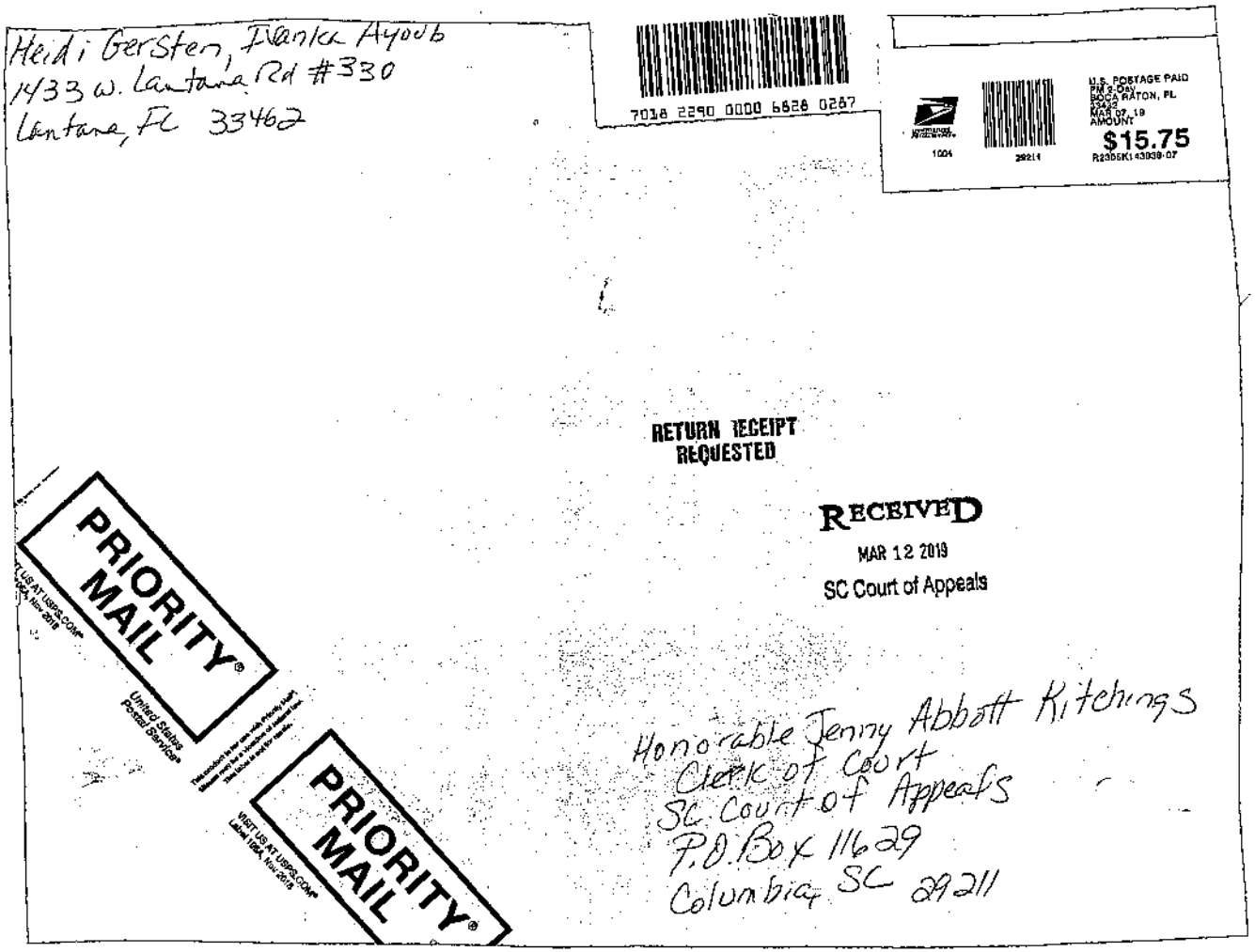
(Attorney for Defendant Interinsurance Exchange of the Automobile Club)

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

By: [signature]

Boca Raton, Florida
March 7, 2019


Heidi Gerstein, Ivanka Ayoob
1433 W. Lantana Rd #330
Lantana, FL 33462
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33432
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REQUESTED
RECEIVED
MAR 12 2019
SC Court of Appeals
PRIORITY MAIL
PRIORITY MAIL
Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia SC 29211

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAR 12 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

AFFIDAVIT OF APPELLANT HEIDI GERSTEN

Heidi Gersten, Ivanka Ayoub
1438 W. Lantana Rd., #330
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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 Return to the Respondents Kevin Carter and Richard Davis' Motion to Dismiss Appeal, which includes all pages attached, including, but not limited to, the letter to the Court dated March 7, 2019 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 operating 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 Respondents Kevin Carter and Richard Davis 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 with the Respondent Kevin Carter and the Respondent Richard Davis co-owned the vehicle involved.

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

10. The American Disabilities Act applies to and protects me.

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

2

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. I received the only signed order made by Honorable Judge Gibbons on January 2019. (Exhibit 1)

14. I am without a caregiver.

15. I urge the Court to deny this Motion to Dismiss Appeal made by the Respondents Kevin Carter and Richard Davis. Let the merits of the upcoming brief shine a light on the facts of this matter.

16. I authenticate the documents submitted in this Return 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 March day of ~~February~~ 2019.

[Notary Seal:]

[signature of Notary]

Phyllis R Garcia
[typed name of Notary]

NOTARY PUBLIC

My commission expires: September 15 20 19.

Notary Public State of Florida
Phyllis R Garcia
My Commission FF 904156
Expires 09/15/2019

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-12-00117
2018 ~~AP~~-12-00074
CP

Heidi Gersten et al — PLAINTIFF(S)

Kevin Carter et al. — DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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.~~ ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter is currently scheduled for numerous motion hearings on January 30, 2019. On November 29, 2018, the Plaintiffs filed a Notice of Appeal with the S.C. Court of Appeals. As such, this matter is stayed pursuant to Rules 205 and 241 of the SCACR. The hearings scheduled for January 30, 2019 are therefore continued until such time as this Court has jurisdiction again.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

SCRCP Form 4C (02/2017) Page 1 of 4

EXHIBIT 1
4

ELECTRONICALLY FILED - 2019 Jan 15 1:39 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200074

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge | 2168 Judge Code | 1/15/19 Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

S

ELECTRONICALLY FILED - 2019 Jan 15 1:50 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200074

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

---

APPELLANTS' RETURN TO RESPONDENTS CARTER AND DAVIS' 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
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(323) 245-6142
(561) 756-9820 FAX
hanginhangout@gmail.com
Appellants

6

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 Respondents Kevin Carter and Richard Davis ('Respondents Carter and Davis') on January 31, 2019 and received on February 13, 2019. A Moion for an extension to serve and file the Appellants return was made on February 14, 2019. Due to insufficient amount of time to accurately perfect the return to the Respondents Carter and Davis' 64 unpagenated pages of their motion to dismiss, coupled with their disabilities, the Appellants require more time to amend this return.

This Return had no chance to comply with rules regarding its timeliness since it was received 13 days after the date of the motion.

The Appellants hereby move this Court to accept this document as timely.

The Respondents Carter and Davis' sole argument is based on the allegation that the Appellants' Notice of Appeal is untimely. The letter to the Court dated March 7, 2019, included, should shed some light.

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

Respectfully submitted this 7th day of March 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
March 7, 2019

7

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' RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND MOTION FOR THE COURT TO ACCEPT THIS DOCUMENT AS TIMELY WITH OR WITHOUT LEAVE OF COURT

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(323) 245-6142
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Plaintiffs/Appellants

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 timely filed and served 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 Respondents Carter and Davis have 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 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 Respondents Carter

and Davis' 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 Respondents Carter and Davis' sole argument revolves around their accusation that the Appellants Notice of Appeal was untimely, when in truth and fact it is timely. The Appellants deny the allegation that Respondents Carter and Davis' AAA make in stating that the Appellants did not timely serve and file a Notice of Appeal.

The Appellants object to the inclusion of the Affidavit of Wesley Sawyer as evidence on the grounds that it is hearsay and not authenticated. This said Affidavit of Wesley Sawyer 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 Wesley Sawyer is not based on first-hand personal knowledge nor does it claim to be.

The Appellants request more time to Amend this motion. Ten (10) days from March 7, 2019 would be March 17, 2019, to sufficiently and adequately address the multiple errors made by the Respondents Carter and Davis. This return in made in a good faith effort to comply with the previously underestimated motion fot extension of time.

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 only signed order the Appellants have received. Please refer to the letter to the Court dated March 7, 2019.

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.

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 7th day of March 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
March 7, 2019

11

RECEIVED
MAR 12 2019
SC Court of Appeals

CERTIFICATE OF SERVICE
(Appellate Case No: 2019-002115)

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' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS ALONG WITH A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 2019 along with letter to the Court dated March 7, 2019, and Exhibits A, B, AFFIDAVIT OF APPELLANT HEIDI GERSTEN and Exhibit 1, APPELLANTS' RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND MOTION FOR THE COURT TO ACCEPT THIS DOCUMENT AS TIMELY WITH OR WITHOUT LEAVE OF COURT, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANTS' RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND MOTION FOR THE COURT TO ACCEPT THIS DOCUMENT AS TIMELY WITH OR WITHOUT LEAVE OF 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
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4406 Forest Drive #B
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(Attorney for Kevin Carter and Richard Davis)

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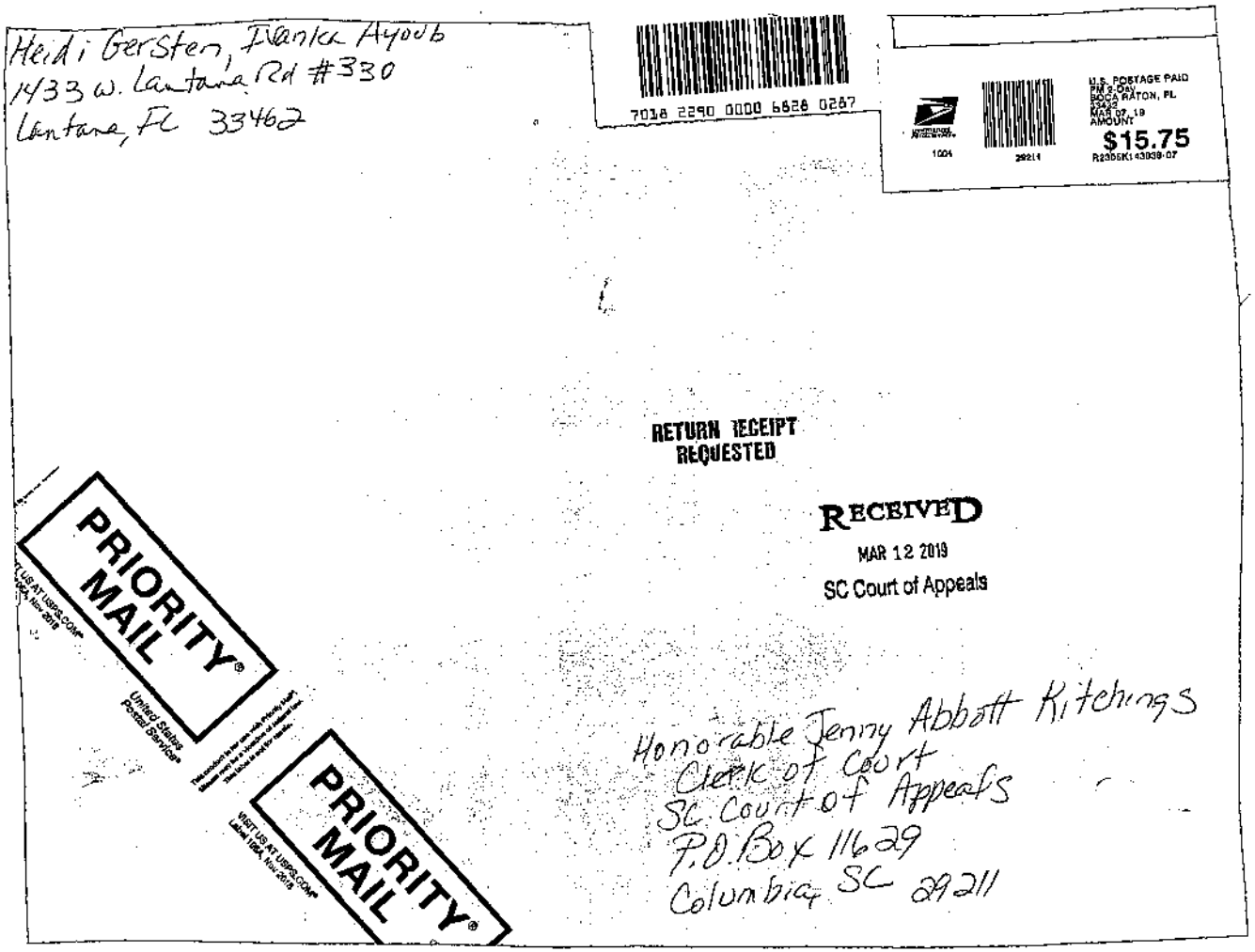
P.O. Box 8568
Columbia, SC 29202
(Attorney for SC Dept. of Public Safety and Trooper Herbert Blackwell)

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: [signature]

Boca Raton, Florida
March 7, 2019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Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia SC 29211

March 21, 2019
Gersten's Motion for Extension of Time In
Appellate Case No. 2018-002115
Filed March 21, 2019

89843

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

RECEIVED
MAR 21 2019
SC Court of Appeals

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

---

APPELLANTS' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO SERVE AND FILE AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN

Heidi Gersten, Ivanka Ayoub
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Lantana, FL 33462
(323) 245-6142
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hanginhangout@gmail.com
Appellants

The Appellants, Heidi Gersten, Ivanka Ayoub ('Appellants') move this Court for an extension of time to serve and file an amended return of the Respondents Carter and Davis' motion to dismiss appeal pursuant to SCACR 263(b) on the grounds of good cause shown as evidenced by the attached Affidavit of Heidi Gersten. A previous extension was requested on March 7, 2019 and in light of the circumstances an additional 5 days is required to accurately and sufficiently submit an amended return.

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

Respectfully submitted this 18th day of March 2019,

Heidi Gersten, Ivanka Ayoub
Appellants
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(323) 245-6142
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Boca Raton, Florida
March 18, 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

RECEIVED
MAR 21 2019
SC Court of Appeals

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

---

AFFIDAVIT OF APPELLANT HEIDI GERSTEN

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(323) 245-6142
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Appellants

STATE OF FLORIDA,

SS:

COUNTY OF PALM BEACH,

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

1. I am the Appellant herein, and have read the foregoing Motion for Extension of Time to Amend Appellants' Return to the Respondents Kevin Carter and Richard Davis' 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 operating under the laws of the State of South Carolina and the United States Constitution.

4. The Appellants served and filed on March 7, 2019, a Return to Respondents Carter and Davis' Motion to Dismiss Appeal and Motion for the Court to Dismiss Appeal and Motion for the Court to Accept This Document as Timely With or Without Leave of Court in anticipation that the requested extension of time to amend it would be on March 27, 2019.

5. Unfortunately during these 10 days I was extremely ill and had an unusually painful menstrual cycle followed by the learning of the passing of my father, which created an additional hardship to my already overwhelming daily life, due to being paralyzed.

6. It may be hard to imagine for some, the enormous amount of effort it takes to do simple things that able-bodied people can do, such as use a toilet.

7. I live under extraordinary circumstances.

8. According to the **SCACR**, the Appellants should not be subjected to serving and filing a return when the Respondents Carter and Davis' Motion to Dismiss does not have the correct case number, along with the burden of sorting through 64 unpaginated pages.

9. The date the Notice of Appeal was timely served and filed on Respondents Kevin Carter and Richard Davis was November 15, 2018.

10. I was paralyzed as a result of the collision in controversy with the Respondent Kevin Carter and the Respondent Richard Davis co-owned the vehicle involved.

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

12. The American Disabilities Act applies to and protects me.

13. **Title II** of the **American Disabilities Act** permits modifications to court rules to accommodate my situation due to my disability.

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

15. I am without a caregiver.

16. I urge the Court to allow an additional 5 days, which would be March 23, 2019, to complete an accurate amended Return of the Appellants to the Motion to Dismiss Appeal made by the Respondents Kevin Carter and Richard Davis. Let the merits of the upcoming brief shine a light on the facts of this matter.

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

Subscribed and sworn to before me, this 18th day of March 2019.

[Notary Seal:]

Notary Public State of Florida
Phyllis R Garcia
My Commission FF 903169
Expires 09/15/2019

[signature of Notary]

Phyllis R Garcia
[typed name of Notary]

NOTARY PUBLIC

My commission expires: 09/15, 2019.

6

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

RECEIVED
MAR 21 2019
SC Court of Appeals

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' MOTION FOR EXTENSION OF TIME TO SERVE AND FILE RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL

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

STATEMENT OF FACTS

On March 7, 2019, the Appellants requested an additional 10 days to serve and file an amended return to the Respondents Carter and Davis' Motion to Dismiss Appeal. March 18, 2019 would be the due date on this request however for the reasons fully explained in the Appellant Heidi Gersten's Affidavit, good cause is shown for an additional 5 days to complete the Appellants' Return.

Ten (10) days from March 18, 2019 would be March 23, 2019, to sufficiently and adequately address the multiple errors made by the Respondents Carter and Davis. This return in made in a good faith effort to comply with the previously underestimated motion for extension of time and is permited by Rule 263(b), SCACR.

For these reasons, the reasons in the attached Affidavit of Heidi Gersten and the reasons to be submitted in the forthcoming Appellants' Amended Return and the Appellants' Brief, the Court has jurisdiction as the Notice of Appeal was timely served and filed per SCACR rules.

Respectfully submitted this 18th day of March 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
March 18, 2019

CERTIFICATE OF SERVICE
(Appellate Case No: 2019-002115)

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' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS ALONG WITH A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 2019 along with letter to the Court dated March 18, 2019, and AFFIDAVIT OF APPELLANT HEIDI GERSTEN and, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANTS' MOTION FOR EXTENSION OF TIME,
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)

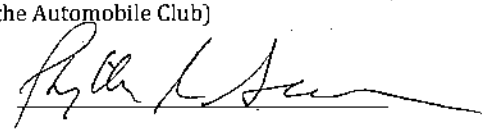
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

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
March 18, 2019

RECEIVED
MAR 21 2019
SC Court of Appeals

March 18, 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

RECEIVED
MAR 21 2019
SC Court of Appeals

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 NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS along with a more detailed response to this Court's letter dated February 15, 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
1439 W Lantana Rd. #330
Lantana, FL 33462

CERTIFIED MAIL

7018 2290 0000 6828 0317

U.S. POSTAGE PAID
PM 2-Day
BOCA RATON, FL
33432
MAR 18, 19
AMOUNT
$14.15
R2305K140006-07

1006

29211

RETURN RECEIPT
REQUESTED

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED
MAR 21 2019
SC Court of Appeals

Misuse may be a violation of federal law.
This label is not for resale.

March 28, 2019
Gersten's Motion for Extension of Time In
Appellate Case No. 2018-002115
Filed March 28, 2019

89398

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

RECEIVED
MAR 28 2019
SC Court of Appeals

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

---

APPELLANTS' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO SERVE AND FILE AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF 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

The Appellants, Heidi Gersten, Ivanka Ayoub ('Appellants') move this Court for an extension of time to serve and file an amended return of the Respondents Carter and Davis' motion to dismiss appeal pursuant to SCACR 263(b) on the grounds of good cause shown as evidenced by the attached Affidavit of Heidi Gersten. Previous extensions were requested on March 7, 2019 and March 18, 2019. In light of the good cause shown, an additional ten (10) days is required to accurately and sufficiently submit an amended return.

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

Respectfully submitted this 25th day of March 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
March 25, 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
MAR 28 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

3

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 Motion for Extension of Time to Amend Appellants' Return to the Respondents Kevin Carter and Richard Davis' 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 operating under the laws of the State of South Carolina and the United States Constitution.

4. The Appellants served and filed on March 7, 2019 and attached a U.S.P.S. money order in the amount of $50.00 payable to the SC Clerk of Court of Appeals, a Return to Respondents Carter and Davis' Motion to Dismiss Appeal and Motion for the Court to Dismiss Appeal and Motion for the Court to Accept This Document as Timely With or Without Leave of Court in anticipation that the requested extension of time to amend it would be on March 17, 2019.

5. Unfortunately during those ten (10) days I was extremely ill and had an unusually painful menstrual cycle followed by the learning of the passing of my father, which created an additional hardship to my already overwhelming daily life, due to being paralyzed.

6. The Appellants served and filed another extension on March 18, 2019 requesting five (5) additional days, as the tenth day was Sunday, March 17, 2019 from the previous request and attached a U.S.P.S. money order in the amount of $50.00 payable to the SC Clerk of Court of Appeals.

7. The Appellants are now requesting an additional ten (10) days from March 25, 2019, as five (5) days from March 18, 2019 is March 23, 2019, which was a Saturday, bringing us to today, March 25, 2019 and ten (10) days from today is April 4, 2019.

8. During this last five (5) days, my computer crashed, causing me to be unable to obtain stored information and print documents.

9. I will have a computer expert here this week to fix the problem.

10. It may be hard to imagine for some, the enormous amount of effort it takes to do simple things that able-bodied people can do, such as use a toilet.

11. I live under extraordinary circumstances.

12. After 7 months or more of living without a caregiver, I interviewed several caregivers this weekend and I will have some help this week.

13. I have been waking up to a head saturated in urine, as I have not been able to control my bladder.

14. I anticipate to get cleaned up with the help of my new caregiver.

15. According to the **SCACR**, the Appellants should not be subjected to serving and filing a return when the Respondents Carter and Davis' Motion to Dismiss does not have the correct case number, along with the burden of sorting through 64 un-paginated pages.

16. The date the Notice of Appeal was timely served and filed on Respondents Kevin Carter and Richard Davis was November 15, 2018.

17. The motions for reconsideration were timely filed according to court rules.

18. Without the use of my computer, I'm unable to provide accurate information.

19. I was paralyzed as a result of the collision in controversy with the Respondent Kevin Carter and the Respondent Richard Davis co-owned the vehicle involved.

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

21. The **American Disabilities Act** applies to and protects me.

22. **Title II** of the **American Disabilities Act** permits modifications to court rules to accommodate my situation due to my disability.

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

24. I urge the Court to allow an additional ten (10) days, which would be April 4, 2019, to complete an accurate amended Return of the Appellants to the Motion to Dismiss Appeal made by the Respondents Kevin Carter and Richard Davis in light of the good cause shown.

25. This extension is not for the purpose of delaying. It is for the furtherance of justice and to prevent its miscarriage.

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

Subscribed and sworn to before me, this 25th day of March 2019.

[Notary Seal:]

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

[signature of Notary]

Phyllis R Garcia

[typed name of Notary]

NOTARY PUBLIC

My commission expires: September 15th, 2019.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

RECEIVED
MAR 28 2019
SC Court of Appeals

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' MOTION FOR EXTENSION OF TIME TO SERVE AND FILE RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL

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

STATEMENT OF FACTS

On March 7, 2019, the Appellants requested an additional 10 days to serve and file an amended return to the Respondents Carter and Davis' Motion to Dismiss Appeal. On March 18, 2019 the Appellants, requested an additional 5 days. Now for good cause shown, an additional ten (10) days is required to complete the Appellants' Return.

Ten (10) days from March 25, 2019 would be April 4, 2019, to sufficiently and adequately address the multiple errors made by the Respondents Carter and Davis. This return in made in a good faith effort to comply with the previously underestimated motion for extension of time and is permited by Rule 263(b), SCACR.

For these reasons, the reasons in the attached Affidavit of Heidi Gersten and the reasons to be submitted in the forthcoming Appellants' Amended Return and the Appellants' Brief, the Court has jurisdiction as the Notice of Appeal was timely served and filed per SCACR rules.

Respectfully submitted this 25th day of March 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
March 25, 2019

CERTIFICATE OF SERVICE
(Appellate Case No: 2019-002115)

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' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS ALONG WITH A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 15, 2019 along with letter to the Court dated March 25, 2019, and AFFIDAVIT OF APPELLANT HEIDI GERSTEN and, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANTS' MOTION FOR EXTENSION OF TIME,
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)

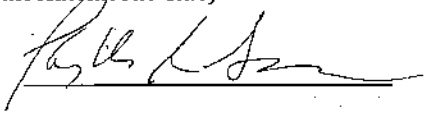
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

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
March 25, 2019

RECEIVED
MAR 28 2019
SC Court of Appeals

March 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

RECEIVED
MAR 28 2019
SC Court of Appeals

Dear Ms. Kitchings:

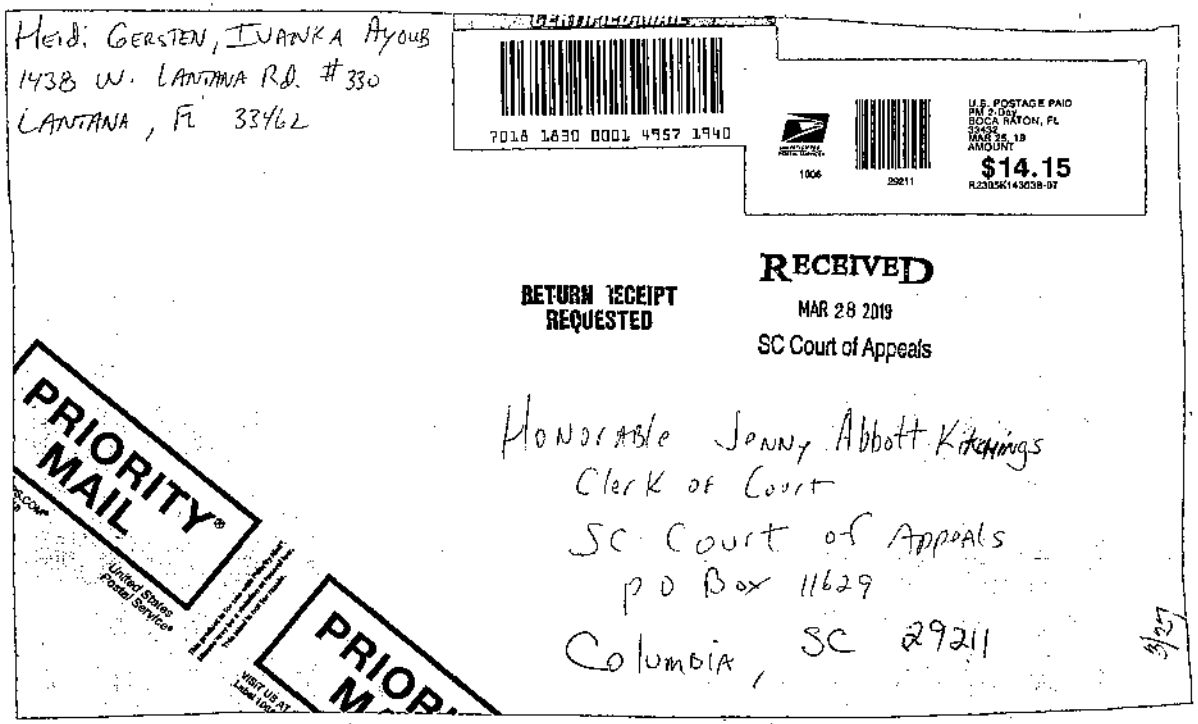
Good day to you.

Please find an enclosed U.S. postal money order in the amount of $50.00 for the enclosed original NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS along with a more detailed response to this Court's letter dated February 14, 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
7018 1830 0001 4957 1940
U.S. POSTAGE PAID
PM 2-Day
BOCA RATON, FL
33435
MAR 25 19
AMOUNT
$14.15
29211
RETURN RECEIPT REQUESTED
RECEIVED
MAR 28 2019
SC Court of Appeals
PRIORITY MAIL
United States Postal Service
Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

April 8, 2019
Gersten's Motion for Extension of Time In
Appellate Case No. 2018- 002115
Filed April 8, 2019

89479

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

RECEIVED
APR 08 2019
SC Court of Appeals

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

---

APPELLANTS' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO SERVE AND FILE AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF 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

The Appellants, Heidi Gersten, Ivanka Ayoub ('Appellants') move this Court for an extension of time to serve and file an amended return of the Respondents Carter and Davis' motion to dismiss appeal pursuant to SCACR 263(b) on the grounds of good cause shown as evidenced by the attached Affidavit of Heidi Gersten. Previous extensions were requested on March 7, 2019 March 18, 2019 and March 25, 2019. In light of the good cause shown, an additional ten (10) days is required to accurately and sufficiently submit an amended return.

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

Respectfully submitted this 4th day of April 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
April 4, 2019

2

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

---

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 Motion for Extension of Time to Amend Appellants' Return to the Respondents Kevin Carter and Richard Davis' 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 operating under the laws of the State of South Carolina and the United States Constitution.

4. The Appellants served and filed on March 7, 2019 and attached a U.S.P.S. money order in the amount of $50.00 payable to the SC Clerk of Court of Appeals, a Return to Respondents Carter and Davis' Motion to Dismiss Appeal and Motion for the Court to Dismiss Appeal and Motion for the Court to Accept This Document as Timely With or Without Leave of Court in anticipation that the requested extension of time to amend it would be on March 17, 2019.

5. Unfortunately during those ten (10) days I was extremely ill and had an unusually painful menstrual cycle followed by the learning of the passing of my father, which created an additional hardship to my already overwhelming daily life, due to being paralyzed.

6. The Appellants served and filed another extension on March 18, 2019 requesting five (5) additional days, as the tenth day was Sunday, March 17, 2019 from the previous request and attached a U.S.P.S. money order in the amount of $50.00 payable to the SC Clerk of Court of Appeals.

7. The Appellants are now requesting an additional ten (10) days from March 25, 2019, as five (5) days from March 18, 2019 is March 23, 2019, which was a Saturday, bringing us to today, March 25, 2019 and ten (10) days from today is April 4, 2019.

8. During this last five (5) days, my computer crashed, causing me to be unable to obtain stored information and print documents.

9. The Appellants are now requesting an additional ten (10) days from April 4, 2019, which is April 14, 2019.

10. During these last ten (10) days, my computer was fixed, permitting me to obtain stored information and print documents however other unexpected events occurred that prevented the anticipated return of the Defendants Kevin Carter and Richard Davis' Motion to Dismiss Appeal.

11. I had an unexpected visit from a good friend, who once was a marine, and when he learned I hadn't had a bath or a shower for 7 months, proceeded to place me into the tub, which I was in for nearly 3 hours, experiencing horrors and joys simultaneously as I was excited to wash myself clean however frightened by how crooked my body had become due to the lack of affordable care required for me to have the fundamental basics of living, such as eating and other things taken for granted as able-bodied beings.

12. My friend also observed the reasons why I could not get into the tub or even use a shower chair and transfer in on my own like I had in other situations.

13. I gave permission to my friend to remove the toilet so I may have room to wheel myself next to the tub, which took several days.

14. My manual wheelchair has been fixed from when the wheel fell off while I was sitting in it on Thanksgiving and I'm using it inside now after being without it for over 3 months.

15. I had food poisoning, which resulted in diarrhea explosions that took me days to clean up, coupled with a migraine from hell.

16. It may be hard to imagine for some, the enormous amount of effort it takes to do simple things that able-bodied people can do, such as use a toilet.

17. I live under extraordinary circumstances.

18. After 7 months or more of living without a caregiver, I interviewed several caregivers recently however the best qualified happened to be a convicted child molester.

19. I'm currently still without a caregiver.

20. A good day starts when I haven't urinated on myself and surprisingly those popular "Depends" don't always work as well as advertised, it all depends on the flow of the urine.

21. According to the **SCACR**, the Appellants should not be subjected to serving and filing a return when the Respondents Carter and Davis' Motion to Dismiss does not have the correct case number, along with the burden of sorting through 64 un-paginated pages.

22. The date the Notice of Appeal was timely served and filed on Respondents Kevin Carter and Richard Davis was November 15, 2018.

23. The motions for reconsideration were timely filed according to court rules.

24. Now that I have use of my computer, I'm unable to provide accurate information.

25. I was paralyzed as a result of the collision in controversy with the Respondent Kevin Carter and the Respondent Richard Davis co-owned the vehicle involved.

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

27. The **American Disabilities Act**, An agency of the US Department of Justice Civil Rights Division, applies to and protects me.

28. **Title II** of the **American Disabilities Act** permits modifications to court rules to accommodate my situation due to my disability.

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

30. I urge the Court to allow an additional ten (10) days, which would be April 14, 2019, to complete an accurate amended Return of the Appellants to the Motion to Dismiss Appeal made by the Respondents Kevin Carter and Richard Davis in light of the good cause shown.

31. This extension is not for the purpose of delaying. It is for the furtherance of justice and to prevent its miscarriage.

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

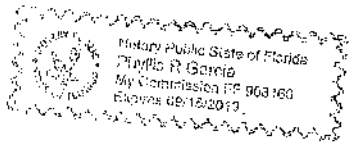
Subscribed and sworn to before me, this 4th day of April 2019.

[Notary Seal:]

[signature of Notary]

Phyllis R Garcia

[typed name of Notary]



NOTARY PUBLIC

My commission expires: 09/15/2019

7

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

RECEIVED
APR 08 2019
SC Court of Appeals

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' MOTION FOR EXTENSION OF TIME TO SERVE AND FILE RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL

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

STATEMENT OF FACTS

On March 7, 2019, the Appellants requested an additional ten (10) days to serve and file an amended return to the Respondents Carter and Davis' Motion to Dismiss Appeal. On March 18, 2019 the Appellants, requested an additional 5 days. On March 25, 2019, the Appellants requested an additional ten (10) days. Now for good cause shown, an additional ten (10) days is required to complete the Appellants' Return.

Ten (10) days from April 4, 2019 would be April 14, 2019, to sufficiently and adequately address the multiple errors made by the Respondents Carter and Davis. This return in made in a good faith effort to comply with the previously underestimated motion for extension of time and is permited by Rule 263(b), SCACR.

For these reasons, the reasons in the attached Affidavit of Heidi Gersten and the reasons to be submitted in the forthcoming Appellants' Amended Return and the Appellants' Brief, the Court has jurisdiction as the Notice of Appeal was timely served and filed per SCACR rules.

Respectfully submitted this 4th day of April 2019,

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

Boca Raton, Florida
April 4, 2019

CERTIFICATE OF SERVICE
(Appellate Case No: 2019-002115)

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' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS ALONG WITH A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 15, 2019. along with letter to the Court dated April 4, 2019, and AFFIDAVIT OF APPELLANT HEIDI GERSTEN and, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANTS' MOTION FOR EXTENSION OF TIME,
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)

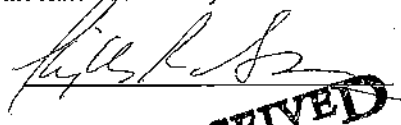
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

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: 

RECEIVED
APR 08 2019
SC Court of Appeals

Boca Raton, Florida
April 4, 2019

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

RECEIVED
APR 08 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 NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS along with a more detailed response to this Court's letter dated February 14, 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

U.S. POSTAGE PAID
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RECEIVED
APR 08 2019
SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

April 18, 2019
Gersten's Motion for Extension of Time In
Appellate Case No. 2018- 002115
Filed April 18, 2019

89582

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

RECEIVED
APR 18 2019
SC Court of Appeals

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

APPELLANTS' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO SERVE AND FILE AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF 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

The Appellants, Heidi Gersten, Ivanka Ayoub ('Appellants') move this Court for an extension of time to serve and file an amended return of the Respondents Carter and Davis' motion to dismiss appeal pursuant to SCACR 263(b) on the grounds of good cause shown as evidenced by the attached Affidavit of Heidi Gersten. Previous extensions were requested on March 7, 2019 March 18, 2019, March 25, 2019, and April 4, 2019. In light of the good cause shown, an additional ten (10) days is required to accurately and sufficiently submit an amended return.

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

Respectfully submitted this 15th day of April 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
April 15, 2019

CERTIFICATE OF SERVICE
(Appellate Case No: 2019-002115)

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' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS ALONG WITH A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 15, 2019 along with letter to the Court dated April 15, 2019, and AFFIDAVIT OF APPELLANT HEIDI GERSTEN and, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANTS' MOTION FOR EXTENSION OF TIME,
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
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(Attorney for Kevin Carter and Richard Davis)

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Alexander S. Gogsette
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Florence, SC 29502
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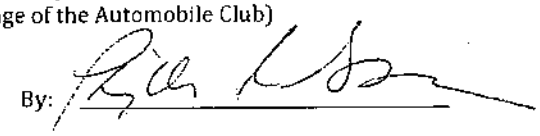
By: 

Boca Raton, Florida
April 15, 2019

RECEIVED
APR 18 2019
SC Court of Appeals

April 15, 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
APR 18 2019
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 NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS along with a more detailed response to this Court's letter dated February 14, 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

This product is for use with Priority Mail®. Misuse may be a violation of federal law. This label is not for resale.

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

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APR 18 2019
SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

RECEIVED
APR 18 2019
SC Court of Appeals

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' AMEMDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL

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

STATEMENT OF FACTS

On March 7, 2019, the Appellants requested an additional ten (10) days to serve and file an amended return to the Respondents Carter and Davis' Motion to Dismiss Appeal. On March 18, 2019 the Appellants, requested an additional 5 days. On March 25, 2019, the Appellants requested an additional ten (10) days. On April 4, 2018, the Appellants requested and additional ten (10) days. Now for good cause shown, an additional ten (10) days is required to complete the Appellants' Return.

Ten (10) days from April 15, 2019 would be April 25, 2019, to sufficiently and adequately address the multiple errors made by the Respondents Carter and Davis. This return in made in a good faith effort to comply with the previously underestimated motion for extension of time and is permited by Rule 263(b), SCACR.

For these reasons, the reasons in the attached Affidavit of Heidi Gersten and the reasons to be submitted in the forthcoming Appellants' Amended Return and the Appellants' Brief, the Court has jurisdiction as the Notice of Appeal was timely served and filed per SCACR rules.

Respectfully submitted this 15th day of April 2019,

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

Boca Raton, Florida
April 15, 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

RECEIVED
APR 18 2019
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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

---

AFFIDAVIT OF APPELLANT HEIDI GERSTEN

Heidi Gersten, Ivanka Ayoub
1438 W. Lantana Rd., #330
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(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 Motion for Extension of Time to Amend Appellants' Return to the Respondents Kevin Carter and Richard Davis' 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 direct knowledge thereof and to those facts that are in addition stated are based on information and belief.

3. If called upon to do so, I would and could competently testify to hereto under oath in a court of law operating under the laws of the State of South Carolina and the United States Constitution.

4. The Appellants served and filed on March 7, 2019 and attached a U.S.P.S. money order in the amount of $50.00 payable to the SC Clerk of Court of Appeals, a Return to Respondents Carter and Davis' Motion to Dismiss Appeal and Motion for the Court to Dismiss Appeal and Motion for the Court to Accept This Document as Timely With or Without Leave of Court in anticipation that the requested extension of time to amend it would be on March 17, 2019.

5. Unfortunately during those ten (10) days I was extremely ill and had an unusually painful menstrual cycle followed by the learning of the passing of my father, which created an additional hardship to my already overwhelming daily life, due to being paralyzed.

6. The Appellants served and filed another extension on March 18, 2019 requesting five (5) additional days, as the tenth day was Sunday, March 17, 2019 from the previous request and attached a U.S.P.S. money order in the amount of $50.00 payable to the SC Clerk of Court of Appeals.

7. The Appellants requested an additional ten (10) days from March 25, 2019, as five (5) days from March 18, 2019 is March 23, 2019, which was a Saturday, bringing it to, March 25, 2019 and ten (10) days from then is April 4, 2019.

8. During those last five (5) days, my computer crashed, causing me to be unable to obtain stored information and print documents.

9. The Appellants requested an additional ten (10) days from April 4, 2019, which is April 14, 2019, which is a Sunday, permitting Monday, April 15, 2019 to be the service and filing deadline of the request.

10. During these last ten (10) days, my computer was fixed, permitting me to obtain stored information and print documents however other unexpected events occurred that prevented the anticipated return of the Defendants Kevin Carter and Richard Davis' Motion to Dismiss Appeal.

11. I had an unexpected visit from a good friend, who once was a Marine, and when he learned I hadn't had a bath or a shower for 7 months, proceeded to place me into the tub, which I was in for nearly 3 hours, experiencing horrors and joys simultaneously as I was excited to wash myself clean however frightened by how crooked my body had become due to the lack of affordable care required for me to have the fundamental basics of living, such as eating and other things taken for granted as able-bodied beings.

12. My friend also observed the reasons why I could not get into the tub or even use a shower chair and transfer in on my own like I had in other situations.

13. I gave permission to my friend to remove the toilet so I may have room to wheel myself next to the tub, which took several days.

14. My manual wheelchair has been fixed from when the wheel fell off while I was sitting in it on Thanksgiving and I'm using it inside now after being without it for over 3 months.

15. I had food poisoning, which resulted in diarrhea explosions that took me days to clean up, coupled with a migraine from hell.

16. It may be hard to imagine for some, the enormous amount of effort it takes to do simple things that able-bodied people can do, such as use a toilet.

17. I live under extraordinary circumstances.

18. After 7 months or more of living without a caregiver, I interviewed several caregivers recently however the best qualified happened to be a convicted child molester.

19. I'm currently still without a caregiver.

20. A good day starts when I haven't urinated on myself and surprisingly those popular "Depends" don't always work as well as advertised, it all depends on the flow of the urine.

21. Another 10 days is required to finish the hundreds of copies of documents and information required to prove that this appeal indeed is timely.

22. Included in these documents will be proof that:

    A. April 26, 2018 - Unsigned order(s), Judge Gibbons
    B. May 8, 2018 - Claimants' served and filed notice of motion and motion to alter or amend a judgment or relief from judgment of order pursuant to Rules 59(e), 60(4), SCRCP, and request for oral hearing.
    C. August 25, 2018 – Claimants served and filed an amended with or without leave 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.
    D. September 5, 2018 – Oral hearing with Judge Hayes.
    E. September 17, 2018 – Claimants/Plaintiffs served and filed second amended complaint and demand for jury trial with leave.
    F. September 18, 2018 – Unsigned order(s), Judge Hayes
    G. October 1, 2018 – Plaintiffs served and filed notice of motion and 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 plus exhibits 1-9.
    H. October 16, 2018 – Unsigned order(s), Judge Gibbons
    I. November 15, 2018 - Appellants notice of appeal

23. Appellants' motions were not ruled on and orders were not made.

24. Given the complexity of this matter, with numerous respondents and excessive documents to deal with, there is good cause shown for additional time to provide the information that will prove the Appellants' timeliness in serving and filing the notice of appeal.

25. According to the **SCACR**, the Appellants should not be subjected to serving and filing a return when the Respondents Carter and Davis' Motion to Dismiss does not have the correct case number, along with the burden of sorting through 64 un-paginated pages.

26. The date the Notice of Appeal was timely served and filed on Respondents Kevin Carter and Richard Davis was November 15, 2018.

27. The motions for reconsideration were timely filed according to court rules.

28. The Appellants are hereby requesting an additional ten (10) days to accurately and understandably present proof to the timeliness of this appeal, which is now April 25, 2019.

6

29. I was paralyzed as a result of the collision in controversy with the Respondent Kevin Carter and the Respondent Richard Davis co-owned the vehicle involved.

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

31. The **American Disabilities Act**, An agency of the US Department of Justice Civil Rights Division, applies to and protects me.

32. **Title II** of the **American Disabilities Act** permits modifications to court rules to accommodate my situation due to my disability.

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

34. I urge the Court to allow an additional ten (10) days, which would be April 25, 2019, to complete an accurate amended Return of the Appellants to the Motion to Dismiss Appeal made by the Respondents Kevin Carter and Richard Davis in light of the good cause shown.

35. This extension is not for the purpose of delaying. It is for the furtherance of justice and to prevent its miscarriage.

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

Subscribed and sworn to before me, this 15th day of April 2019.

[Notary Seal:]

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

[signature of Notary]

Phyllis R Garcia
[typed name of Notary]

NOTARY PUBLIC

My commission expires: 09/15/2019

89582

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

RECEIVED
APR 18 2019
SC Court of Appeals

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' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO SERVE AND FILE AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN

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

The Appellants, Heidi Gersten, Ivanka Ayoub ('Appellants') move this Court for an extension of time to serve and file an amended return of the Respondents Carter and Davis' motion to dismiss appeal pursuant to SCACR 263(b) on the grounds of good cause shown as evidenced by the attached Affidavit of Heidi Gersten. Previous extensions were requested on March 7, 2019 March 18, 2019, March 25, 2019, and April 4, 2019. In light of the good cause shown, an additional ten (10) days is required to accurately and sufficiently submit an amended return.

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

Respectfully submitted this 15th day of April 2019,

Heidi Gersten, Ivanka Ayoub
Appellants
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Boca Raton, Florida
April 15, 2019

CERTIFICATE OF SERVICE
(Appellate Case No: 2019-002115)

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' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS ALONG WITH A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 15, 2019 along with letter to the Court dated April 15, 2019, and AFFIDAVIT OF APPELLANT HEIDI GERSTEN and, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANTS' MOTION FOR EXTENSION OF TIME,
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)

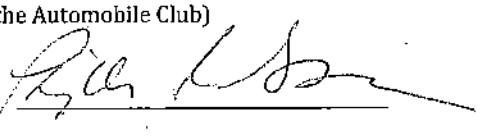
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

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
April 15, 2019

RECEIVED
APR 18 2019
SC Court of Appeals

April 15, 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
APR 18 2019
SC Court of Appeals

Dear Ms. Kitchings:

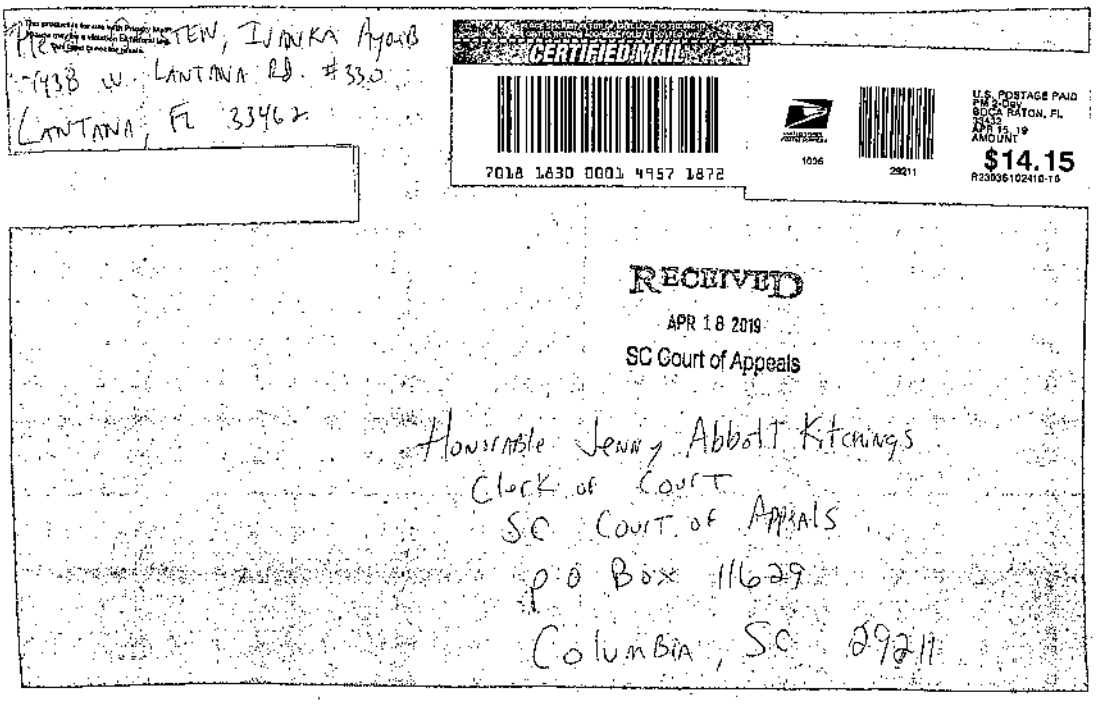
Good day to you.

Please find an enclosed U.S. postal money order in the amount of $50.00 for the enclosed original NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS along with a more detailed response to this Court's letter dated February 14, 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



This product is for use with Priority Mail. Please mark the valuation of the contents. Part of the product is not for resale.

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

CERTIFIED MAIL

7018 1830 0001 4957 1872

1036

29211

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APR 18 2019
SC Court of Appeals

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

April 29, 2019
Gersten's Motion for Extension of Time In
Appellate Case No. 2018- 002115
Filed April 29, 2019

89674

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

RECEIVED
APR 29 2019
SC Court of Appeals

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

---

APPELLANTS' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO SERVE AND FILE AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN

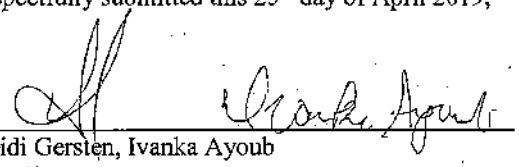
Heidi Gersten, Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142
(561) 756-9820 FAX
hanginhangout@gmail.com
Appellants

1

The Appellants, Heidi Gersten, Ivanka Ayoub ('Appellants') move this Court for an extension of time to serve and file an amended return of the Respondents Carter and Davis' motion to dismiss appeal pursuant to SCACR 263(b) on the grounds of good cause shown as evidenced by the attached Affidavit of Heidi Gersten. Previous extensions were requested on March 7, 2019 March 18, 2019, March 25, 2019, April 4, 2019 and April 25, 2019. In light of the good cause shown, an additional ten (10) days is required to accurately and sufficiently submit an amended return.

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

Respectfully submitted this 25th day of April 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
April 25, 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

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 Motion for Extension of Time to Amend Appellants' Return to the Respondents Kevin Carter and Richard Davis' 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 direct knowledge thereof and to those facts that are in addition stated are based on information and belief.

3. If called upon to do so, I would and could competently testify to hereto under oath in a court of law operating under the laws of the State of South Carolina and the United States Constitution.

4. The Appellants served and filed on March 7, 2019 and attached a U.S.P.S. money order in the amount of $50.00 payable to the SC Clerk of Court of Appeals, a Return to Respondents Carter and Davis' Motion to Dismiss Appeal and Motion for the Court to Dismiss Appeal and Motion for the Court to Accept This Document as Timely With or Without Leave of Court in anticipation that the requested extension of time to amend it would be on March 17, 2019.

5. Unfortunately during those ten (10) days I was extremely ill and had an unusually painful menstrual cycle followed by the learning of the passing of my father, which created an additional hardship to my already overwhelming daily life, due to being paralyzed.

6. The Appellants served and filed another extension on March 18, 2019 requesting five (5) additional days, as the tenth day was Sunday, March 17, 2019 from the previous request and attached a U.S.P.S. money order in the amount of $50.00 payable to the SC Clerk of Court of Appeals.

7. The Appellants requested an additional ten (10) days from March 25, 2019, as five (5) days from March 18, 2019 is March 23, 2019, which was a Saturday, bringing it to, March 25, 2019 and ten (10) days from then is April 4, 2019.

8. During those last five (5) days, my computer crashed, causing me to be unable to obtain stored information and print documents.

9. The Appellants requested an additional ten (10) days from April 4, 2019, which is April 14, 2019, which is a Sunday, permitting Monday, April 15, 2019 to be the service and filing deadline of the request.

10. During these last ten (10) days, my computer was fixed, permitting me to obtain stored information and print documents however other unexpected events occurred that prevented the anticipated return of the Defendants Kevin Carter and Richard Davis' Motion to Dismiss Appeal.

11. I had an unexpected visit from a good friend, who once was a Marine, and when he learned I hadn't had a bath or a shower for 7 months, proceeded to place me into the tub, which I was in for nearly 3 hours, experiencing horrors and joys simultaneously as I was excited to wash myself clean however frightened by how crooked my body had become due to the lack of affordable care required for me to have the fundamental basics of living, such as eating and other things taken for granted as able-bodied beings.

12. My friend also observed the reasons why I could not get into the tub or even use a shower chair and transfer in on my own like I had in other situations.

13. I gave permission to my friend to remove the toilet so I may have room to wheel myself next to the tub, which took several days.

14. My manual wheelchair has been fixed from when the wheel fell off while I was sitting in it on Thanksgiving and I'm using it inside now after being without it for over 3 months.

15. I had food poisoning, which resulted in diarrhea explosions that took me days to clean up, coupled with a migraine from hell.

16. The Appellants requested an additional ten (10) days from April 15, 2019, which is April 25, 2019,

17. During these last ten (10) days it has been determined an additional ten (10) days is required to produce additional documents to prove timeliness.

18. It may be hard to imagine for some, the enormous amount of effort it takes to do simple things that able-bodied people can do, such as use a toilet.

19. I live under extraordinary circumstances.

20. After 7 months or more of living without a caregiver, I interviewed several caregivers recently however the best qualified happened to be a convicted child molester.

21. I'm currently still without a caregiver.

22. A good day starts when I haven't urinated on myself and surprisingly those popular "Depends" don't always work as well as advertised, it all depends on the flow of the urine.

23. Another 10 days is required to finish the hundreds of copies of documents and information required to prove that this appeal indeed is timely.

24. Attached to this affidavit are some of these documents that will be prove:

A. April 26, 2018 – Alleged Order -Judge Gibbons (pg. 9)

B. May 6, 2018 – Served - Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCP, and Request For Oral Hearing (pg.)

C. May 8, 2018 – Filed - Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCP, and Request For Oral Hearing (pg. 10)

D. May 8, 2018 – Served – Judge Gibbons (pg.)

E. August 7, 2018 – Notice of Case Scheduling - Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCP, and Request For Oral Hearing (pg. 12)

F. August 25, 2018 – Served - Amended With Or Without Leave Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCP, and Request For Oral Hearing (pgs 13) & 14

G. August 29, 2018 – Filed - Amended With Or Without Leave Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCP, and Request For Oral Hearing (pg. 15)

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

I. September 18, 2018 - Alleged Orders - Judge Hayes (pgs 16) & 17

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

K. October 1, 2018 – Served – 2018-CP-12-00117 Notice of Motion/ Plaintiffs' Motion to Alter or Amend a judgment or Relief From Judgment or Order Pursuant to Rules 52, 59 (e), 60 (4), SCRCP, and Request For Oral Hearing along with Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 (pgs 18) & 19 & 20

L. October 8. 2018 – Filed - 2018-CP-12-00117 Notice of Motion/ Plaintiffs' Motion to Alter or Amend a judgment or Relief From Judgment or Order Pursuant to Rules 52, 59 (e), 60 (4), SCRCP, and Request For Oral Hearing along with Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 (pgs 21) + 22

M. October 16, 2018 - Alleged Order - Judge Hayes (pg. 23)

N. November 15, 2018 – Served - Notice of Appeal (pg. 24)

O. November 27, 2018 – Filed - Notice of Appeal (pgs25) & 26 & 27

P. January 15, 2019 – Order - Judge Gibbons (pgs 28) & 29
(Note: Only order signed in ink in this matter.)

25. Appellants' motions were not ruled on and orders were not made.

26. Given the complexity of this matter, with numerous respondents and excessive documents to deal with, there is good cause shown for additional time to provide the information that will prove the Appellants' timeliness in serving and filing the notice of appeal.

27. According to the **SCACR**, the Appellants should not be subjected to serving and filing a return when the Respondents Carter and Davis' Motion to Dismiss does not have the correct case number, along with the burden of sorting through 64 un-paginated pages.

28. The date the Notice of Appeal was timely served and filed on Respondents Kevin Carter and Richard Davis was November 15, 2018.

29. The motions for reconsideration were timely filed according to court rules.

30. The Appellants are hereby requesting an additional ten (10) days to accurately and understandably present proof to the timeliness of this appeal, which is now May 5, 2019.

31. I was paralyzed as a result of the collision in controversy with the Respondent Kevin Carter and the Respondent Richard Davis co-owned the vehicle involved.

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

33. The **American Disabilities Act**, An agency of the US Department of Justice Civil Rights Division, applies to and protects me.

34. **Title II** of the **American Disabilities Act** permits modifications to court rules to accommodate my situation due to my disability.

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

36. I urge the Court to allow an additional ten (10) days, which would be April May 5, 2019, to complete an accurate amended Return of the Appellants to the Motion to Dismiss Appeal made by the Respondents Kevin Carter and Richard Davis in light of the good cause shown.

37. This extension is not for the purpose of delaying. It is for the furtherance of justice and to prevent its miscarriage.

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

Subscribed and sworn to before me, this 25th day of April 2019.

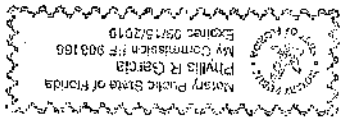
[Notary Seal:]

[signature of Notary]

[typed name of Notary]

NOTARY PUBLIC

My commission expires: 09/15/2019



8

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1200074

Heidi Gersten et al
PLAINTIFF(S)

Kevin Carter et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

This 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.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

Heidi Gersten for Heidi Gersten
Ivanka Ayoub
Heidi Gersten for Heidi Gersten

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2018 Apr 26 4:14 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200074

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
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

10

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Purpose

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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

12

The UPS Store - #2137
702 NE 2nd Street
Boca Rat , FL 33432
(561) 395-3231

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er: AAA Member

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(072)	$	1.36
Class Package		
ng# MMJ5A6P 9MGVV		
(022)	T0 $	1.36
Class Package		
ng# MMJ5A6VEMSG8H		
(022)	T0 $	1.36
Class Package		
ng# MMJ5A6W6BPB9R		
(022)	T0 $	1.36
Class Package		
ng# MMJ5A6WZPUCY8		
(022)	T0 $	1.36
Class Package		
ng# MMJ5A6WYG41M8		

SubTotal	$	10.47
TAX (T1)	$	0.31
Total	$	10.78
MASTERCARD	$	10.78

13

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

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: AMENDED WITH OR WITHOUT LEAVE CLAIMANTS' MOTION TO ALTER OR AMENDA JUDGMENT OR RELIEF FROM JUDGMENT OR ORDER PURSUANT TO RULES 59(e), 60(4), SCRCP, AND REQUEST FOR ORAL HEARING 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 AUG 29 P 3:01
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)

John Ammendola
671 S. High St.
Columbus, Ohio 43206

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: _____
DAVID TEDESCHI

Boca Raton, Florida
August 25, 2018

STATE OF SOUTH CAROLINA

In the matter of Arbitration between

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)

BEFORE THE ARBITRATION PANEL OF CHESTER COUNTY

Case number 2018-AP-12-00074

AMENDED WITH OR WITHOUT LEAVE 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 AUG 29 P 3:01
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: August 25, 2018

Ivanka Ayoub

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

1 15

ELECTRONICALLY FILED - 2018 Sep 19 8:54 AM - 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,	CIVIL ACTION NO: 2018-CP-12-00074
Plaintiffs,	**ORDER GRANTING DEFENDANT INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB'S MOTION TO DISMISS**
vs.	
Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Insurance Company, Interinsurance Exchange of the Automobile Club, John Ammendola, Trustguard Ins. Co., Blackwell, SC Department of Public Safety, Chevrolet, GMC, Unknown John Does,	
Defendants.	

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

PROCEDURAL BACKGROUND

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

ELECTRONICALLY FILED - 2018 Sep 19 8:56 AM - 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, 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.	**ORDER GRANTING DEFENDANTS KEVIN CARTER'S AND RICHARD DAVIS' MOTION TO DISMISS**

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

PROCEDURAL BACKGROUND

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

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:

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

11. 18

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

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:

William H. Davidson, II
1611 Devonshire Dr. 2nd Floor
P.O. Box 8568
Columbia, SC 29202

9590 9402 2856 7069 5487 74

2. Article Number (Transfer from service label)

7018 0360 0002 2449 6419

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

10-9-18

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

OCT 9 2018

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

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 — Domestic Return Receipt

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:

Reynolds Williams
P.O. Box 1909
Florence, SC 29503-1909

9590 9402 2856 7069 5487 29

2. Article Number (Transfer from service label)

7018 0360 0002 2449 6402

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Victoria Mete

☐ Agent
☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

Victoria Mete

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

OCT 05 2018

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

PS Form 3811, July 2015 PSN 7530-02-000-9053 — Domestic Return Receipt

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:

Alexander S. Gogsetas
P.O. Box 5778
Florence, SC 29502

9590 9402 2856 7069 5487 36

2. Article Number (Transfer from service label)

7018 0360 0002 2449 6396

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Ken Sturgeon

☐ Agent
☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

Ken Sturgeon | 10-4-18

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
☐ 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

PS Form 3811, July 2015 PSN 7530-02-000-9053 — Domestic Return Receipt

19

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:

David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578

9590 9402 2856 7069 5487 50

2. Article Number (Transfer from service label)

7015 0640 0003 1449 5526

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x Donna Brady ☐ Agent ☐ Addressee

B. Received by (Printed Name) Donna Brady C. Date of Delivery

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
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

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:

Wesley Brian Sawyer, Esq.
Murphy & Grantland, P.A.
4406 Forest Dr. #B
Columbia, SC 29206

9590 9402 2856 7069 5487 67

2. Article Number (Transfer from service label)

7017 0190 0000 6847 2390

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x ☐ Agent ☐ Addressee

B. Received by (Printed Name) Kelly Chamberlain C. Date of Delivery 10/4/18

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
- ☐ Insured Mail
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

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:

Peter K. Dwerryhouse, Esq.
and Michael R. Burchstead, Esq.
Collins & Lacy, P.C.
1330 Lady St., 6th Floor
Columbia, SC 29211

9590 9402 2856 7069 5487 43

2. Article Number (Transfer from service label)

7018 0360 0002 2449 6389

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x K Bessinger ☐ Agent ☐ Addressee

B. Received by (Printed Name) K Bessinger C. Date of Delivery 10/04/18

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
- ☐ Insured Mail
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

20

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

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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

1 17 21

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.

Respectfully submitted,

DATED: September 28, 2018

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

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CLERK OF COURT
CHESTER CO. S.C.

18 22

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

SCRCP Form 4CE (08/31/2017)

Page 1 of 2

23

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BY: DB
1150-0741

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

look at rules for service

EXHIBIT
E

24

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

RECEIVED
NOV 27 2018
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

Appell

look at rules for mailing

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

EXHIBIT
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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

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance Co., Interinsurance Exchange of the Autombile 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

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2018 NOV 29 P 12:22
CLERK OF COURT
CHESTER CO S.C.

26

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

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2018 NOV 29 P 2:22
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S.C.

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

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-12-00117
~~2018-AP-12-00074~~
CP

Heidi Gersten et al — PLAINTIFF(S)

Kevin Carter et al. — DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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.~~ ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter is currently scheduled for numerous motion hearings on January 30, 2019. On November 29, 2018, the Plaintiffs filed a Notice of Appeal with the S.C. Court of Appeals. As such, this matter is stayed pursuant to Rules 205 and 241 of the SCACR. The hearings scheduled for January 30, 2019 are therefore continued until such time as this Court has jurisdiction again.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

28

ELECTRONICALLY FILED - 2019 Jan 15 1:15 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200074

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge | 2168 Judge Code | 1/15/19 Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2019 Jan 15 1:50 PM - CHESTER - COMMON PLEAS - CASE#2018CP1200074

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

---

(WRONG VERSION)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANTS' AMEMDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL

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

1 30

STATEMENT OF FACTS

On March 7, 2019, the Appellants requested an additional ten (10) days to serve and file an amended return to the Respondents Carter and Davis' Motion to Dismiss Appeal. On March 18, 2019 the Appellants, requested an additional 5 days. On March 25, 2019, the Appellants requested an additional ten (10) days. On April 4, 2018, the Appellants requested and additional ten (10) days. Now for good cause shown, an additional ten (10) days is required to complete the Appellants' Return.

Ten (10) days from April 15, 2019 would be April 25, 2019, to sufficiently and adequately address the multiple errors made by the Respondents Carter and Davis. This return in made in a good faith effort to comply with the previously underestimated motion for extension of time and is permited by Rule 263(b), SCACR.

For these reasons, the reasons in the attached Affidavit of Heidi Gersten and the reasons to be submitted in the forthcoming Appellants' Amended Return and the Appellants' Brief, the Court has jurisdiction as the Notice of Appeal was timely served and filed per SCACR rules.

Respectfully submitted this 15th day of April 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
April 15, 2019

To whom it may concern:

I'm at the UPS Store and and mistakenly placed the wrong file to be copied on the flash drive I brought causing the Memorandum in Support to be excluded from these documents. There's no time to remedy this today. Instead I will include a previous Memorandum that will be hand amended for now as accurately as possible from memory. This is yet another reason that an extension of time is necessary

Respectfully submitted.

CERTIFICATE OF SERVICE
(Appellate Case No: 2019-002115)

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' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS ALONG WITH A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 15, 2019 along with letter to the Court dated April 25, 2019, and AFFIDAVIT OF APPELLANT HEIDI GERSTEN and, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANTS' MOTION FOR EXTENSION OF TIME,
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
April 25, 2019

RECEIVED
APR 29 2019
SC Court of Appeals

April 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

RECEIVED
APR 29 2019
SC Court of Appeals

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 NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS along with a more detailed response to this Court's letter dated February 14, 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

Heid. Gersten Ivanka Ayoub
1438 W Lantana Rd #30
Lantana, FL 33462

7018 1830 0001 4957 0790

U.S. POSTAGE PAID
PM 2-Day
BOCA RATON, FL
33432
APR 25 19
AMOUNT
$16.80
R2305K143038-07

1004

29211

RECEIVED
APR 29 2019
SC Court of Appeals

RETURN RECEIPT
REQUESTED

PRIORITY MAIL

United States Postal Service

PRIORITY MAIL

VISIT US AT USPS.COM

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

May 31, 2019
Gersten's Motion to Reinstate Appeal or
Motion for Extension of Time
In Appellate Case No. 2018-002115
Filed May 31, 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

RECEIVED
MAY 31 2019
SC Court of Appeals

Appellate Case No: 2018-002115

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

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

v.

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

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

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

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

Respectfully submitted this 29th day of May 2019,

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

Boca Raton, Florida
May 29, 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

RECEIVED
MAY 31 2019
SC Court of Appeals

Appellate Case No: 2018-002115

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

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

v.

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

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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 APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS WITH LEAVE TO AMEND OR MOTION FOR EXTENSION OF TIME TO SERVE AND FILE MOTION TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING, which includes all pages attached, and know the contents thereof, that the same is true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters, I believe them to be true.

2. The facts stated herein are personally known to me and I have first-hand direct knowledge thereof and to those facts that are in addition stated are based on information and belief.

3. If called upon to do so, I would and could competently testify to hereto under oath in a court of law operating under the laws of the State of South Carolina and the United States Constitution.

4. The Appellants served and filed motions to extend time to amend their return to Kevin Carter and Richard Davis' motion to dismiss appeal on March 7, 18, 25, and April 5, 15, 25, 2019 and would have requested an additional extension on May 6, 2019, except due to mitigating circumstances, there were heavy thunderstorms that day that prevented the deadline from being met. (Exhibit 1)

5. I sat in my wheelchair with the paperwork that I was ready to turn in to comply with the 'motion for extension to file' rules when I heard the strike of thunder and looked outside and saw that it was raining heavily, with the sky very dark. With a heavy heart, I knew I would not be able to wheel to the post office and UPS store that day. I took a screenshot of the weather report that day at the time I was leaving. (Exhibit 1)

6. I became aware of the order dated May 2, 2019 on May 16, 2019, after I learned that the iPad I recently got was able to access the Court's website. I

read said order online and in a good faith effort to comply under the South Carolina Appellate Court Rules, **SCACR**, these motions and documents are being submitted. Prior to getting the iPad, I was unable to access the Court's website from my over 10 year old incompatible computer.

7. Had there not been thunderstorms on May 6, 2019, I would have been able to ride in my wheelchair to the post office and UPS store and the May 2, 2019 order would have been partially complied with as some of the information requested was in the documents that were anticipated to be served and filed that day. A new motion was being composed when the May 2nd and 14th 2019 orders were learned of.

8. In a frenzy to comply with the rules, a draft was written for a petition for rehearing and Henrietta from You've Been Served, LLC, processing service was contacted. I explained to her that the only way to have the documents received by May 17th, less than 24hrs of learning of the order, was to get the documents to her via computer and have her go in person to file them. I would not have been able to sign them since I don't have the technology to sign and then scan into my computer and office stores were closed at that hour. She brought up the fact that even if I could, she would only be bringing in a copy and not an original. Therefore, there was no real chance to comply with the order in such a short amount of time learning of it a day before its deadline nor correct the numerous errors that may be contained in it due to the very limited time to complete what is necessary to have it received by the Court within fifteen (15) days from the date of the order to prevent a remittitur being sent to the lower court or administrative tribunal in accordance with **Rule 221, SCACR**. Hiring a process server to file in person appeared to be the only option at that point.

9. The petition for rehearing of the motion may be combined with the motion for reinstatement as they stem from the same issues.

10. I would also suggest that the Appellants' Return for the Respondents Kevin Carter and Richard Davis' motion to dismiss be combined when taking things under consideration since its' sole argument within the numerous unpaginated pages (against court rules) that are well over sixty (60) in count revolves around the sole issue of timeliness, as well as listing an incorrect case number. Without page numbers, it has been challenging to say the least to address the issues at hand by referencing the documents.

11. The Affidavit of Wesley B. Sawyer is hearsay and he does not state nor allege to have first-hand personal knowledge of the facts or events in controversy. The said affidavit has no stamp or embossment from a notary therefore is not an official document. It's not certified.

12. The Respondents Carter and Davis' Motion to Dismiss fails to list orders.

13. I called the Appellate Court on May 17, 2019 and spoke to Shelby who informed me that it wasn't necessary to do a petition for rehearing on the May 2, 2019 order however the May 14, 2019 triggered the time to do a motion to reinstate within 15 days being Wednesday, May 29, 2019.

14. In addition to being paralyzed, having an open phase 4 pressure wound on my left buttocks, phase 1 pressure wound on my right buttocks, living without a caregiver, litigating multiple lawsuits in multiple states without an attorney, having been the victim of numerous crimes, participating in a criminal pretrial conference as a subpoenaed victim, and the learning of the passing of my father under the cause of action of tortious interference with a dead body, I was summoned as a juror for May 13, 2019, all this year. (Exhibit 3) (Proof of any this is available upon request.) (The wound picture is in the Appellants' Objection and/or Opposition and Response to Respondent Interinsurance Exchange of the Automobile Club's Motion to Dismiss Appeal as Exhibit 3, page 31 and received by the Court on January 23, 2019)

15. Leave of court should be administered in favor of justice. There is plenty of good cause shown.

16. Patience is a judicial canon. I require much patience. What seems like plenty of time to an able body is a fraction of the time it takes me to do simple things. It took 7 months before I was finally able to get my bathroom accommodated to where I am now able to shower independently, to give an example of the amount of time it took to be at a standard of living that most people take for granted.

17. This is an effort to show the Court that the Appellants take this matter seriously and are diligently attempting to comply with the rules. The American Disabilities Act permit modifying court rules to accommodate me due to my disabilities and remains undefeated when an action has been brought forward under Title II. Appellants prefer not to file a federal complaint. Time is of the essence however health is an issue to take into consideration.

18. Words do not describe the horror of being unable to care for myself at my standards since this collision. I was the one who took care of others and demonstrated an unprecedented amount of courage, strength, wisdom, knowledge, compassion, forth righteousness, tenacity, candor, intuition, empathy, endurance and love in my family however perhaps I lacked gratitude for myself. I took for granted the amazing person that I am.

19. Judge Zamore was the first public authority I faced through this process who infused me with inner solidity, repeating to me as I looked into his eyes, "You are worthy!" My whole life, no one has ever said those words to me. I'm happy that he stood behind a red, white and blue flag. He understood my

pain. Yet he is bound by these words on paper, called law. I will find the right combination and when I do, I will unlock the key to my therapy and simple pleasure of pursuing every remedy available to me in order to obtain control of my body. I will walk again!

20. Judge Underwood was the first judge to issue an order in favor of granting me a continuance to a court date I received notice of a day before a holiday weekend last year, giving me three days to find a ride as a paralyzed person who hadn't left her bed in months and travel over 800 miles in one direction to attend. She declared me a victim and so did Judge Zamore. I called the clerk and wrote an objection to Respondent/Defendant Kevin Carter's acceptance of a plea offer to reduce his DUI charge, which in truth and fact, qualifies to be a felony charge as a DUI with great bodily injury. It's no surprise he took the offer of a $440 fine and reckless driving in front of my eyes. This game of lucky breaks because someone knows how to manipulate the law better is unbelievable. My entire experience of how challenging it is to get help to be made whole again is history in the making.

21. This process has taught me to be indifferent.

22. It may be hard to imagine for some, the enormous amount of effort it takes to do simple things that able-bodied people can do, such as use a toilet.

23. I live under extraordinary circumstances and with extreme hardships.

24. Attached to this affidavit is a 5 page document labeled TIMELINE OF EVENTS WITH LAW AND ARGUMENTS THAT INCLUDE A MEMORANDUM OF POINTS AND AUTHORITIES THAT PROVE TIMELINESS OF APPELLANTS' NOTICE OF APPEAL that prove: (EXHIBIT 3)

    A. April 26, 2018 – Alleged Unsigned Order -Judge Gibbons (Received by Court on November 29). (Note: On its face it says 1 and 2 of 2 pages and page 3 says 3 of 3.)

    B. May 6, 2018 – Served and May 8, 2018 – Filed - Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCP, and Request For Oral Hearing (This is in the Appellants' Objection and/or Opposition and Response to Respondent Interinsurance Exchange of the Automobile Club's Motion to Dismiss Appeal page 8 and received by the Court on January 23, 2019.)

    (Note: Only the top page is included as the proof of its timely filing is in question only at this stage and its contents will be discussed in the Appellants' upcoming brief. This motion was not ruled on nor was an order issued in response to it and will be further discussed in the Appellants' upcoming brief.) (Exhibit 4)

C. May 8, 2018 – Served – Honorable Judge Gibbons

(Note: Appellant Gersten gave the document to Ruben Kirnos who gave the document to Mr. Atkinson, Chester County Clerk, who was instructed by Appellant Gersten to personally serve Judge Gibbons, from a rental car she was in, in front of the Chester County Courthouse, minutes prior to attending the sentencing of Respondent Carter at the Chester County Magistrate Court, after he was charged with DUI and she witnessed him plead guilty to reckless driving in front of Honorable Judge Yale Zamore.)

D. August 7, 2018 – Notice of Case Scheduling - Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCP, and Request For Oral Hearing (pg.)

(Note: This motion was not ruled on nor was an order issued in response to it and will be further discussed in the Appellants' upcoming brief.)

E. August 25, 2018 – Served - Amended With Or Without Leave Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCP, and Request For Oral Hearing (pgs. -)

F. August 29, 2018 – Filed - Amended With Or Without Leave Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCP, and Request For Oral Hearing (pg.)

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

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

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

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

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

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

8

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

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

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

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

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

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

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

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

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

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

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

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

(Note: Due to time restraints and the enormous amount of effort to produce and attach the previously listed documents, an amended version with leave of court will be provided in the future. This is an attempt to provide as much of the information as can be done given the circumstances.)

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

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

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

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

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

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

29. Given the complexity of this matter, with numerous respondents and excessive documents to deal with, in addition to the extreme hardship and extraordinary circumstances Appellant Gersten lives with, there is good cause shown for additional time to provide the information that will prove the Appellants' timeliness in serving and filing the notice of appeal.

30. According to the **SCACR**, the Appellants should not be subjected to serving and filing a return when the Respondents Carter and Davis' Motion to Dismiss does not have the correct case number, along with the burden of sorting through 64 un-paginated pages. In addition, there is a litany of information nonrelated to the issue at hand therefore will be saved for the Appellants' brief. The only pertinent issue currently is proving timeliness of the Appellants' Notice of Appeal.

31. The date the Notice of Appeal was timely served and filed on Respondents Kevin Carter and Richard Davis was November 15, 2018. Proof of service was attached to said Notice of Appeal for the court's filing.

32. The motions for reconsideration were timely filed according to court rules.

33. The Appellants are hereby reserving the right to amend this return should additional information be necessary.

34. I was paralyzed as a result of the collision in controversy with the Respondent Kevin Carter and the Respondent Richard Davis co-owned the vehicle involved.

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

36. The **American Disabilities Act**, An agency of the US Department of Justice Civil Rights Division, applies to and protects me.

37. **Title II** of the **American Disabilities Act** permits modifications to court rules to accommodate my situation due to my disability.

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

39. I urge the Court to permit this APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS WITH LEAVE TO AMEND OR MOTION FOR EXTENSION OF TIME TO SERVE AND FILE MOTION TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING to be considered in light of the good cause shown.

40. **Rule 263(b), SCACR**, permits extensions of time in this type of situation. It states in part, "**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.*"

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

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

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

44. I authenticate the documents submitted in this paperwork as true and accurate copies.

45. The Return to the Respondent Interinsurance Exchange of the Automobile Club was served and filed on January 17, 2019 and file stamped January 23, 2019.

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

Subscribed and sworn to before me, this 29th day of May 2019.

[Notary Seal:]

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

[signature of Notary]

Phyllis R Garcia
[typed name of Notary]

NOTARY PUBLIC

My commission expires: 09/15/2019

The Weather Channel

Scan for updated forecast

Boca Raton, FL 10 Day Weather

3:24 pm EDT

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

ALMANAC

EXHIBIT

13

SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

JURY SUMMONS

15th Judicial Circuit
You are summoned for jury duty at the
Palm Beach County Courthouse, 205 N. Dixie Highway, West Palm Beach, FL [illegible]

NAME HEIDI VERONIKA GERSTEN JUROR ID _____ JUROR NUMBER

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

Your jury duty will begin **May 13, 2019** at 8:00 AM and continue until you are released from service.

You will not be released from jury duty until (1) you have served as a juror on a trial; (2) you have appeared for service and were not selected as a juror; or (3) you have been notified by the automated phone system that your service is not needed. You may be on telephone standby for up to one week from your original summons date.

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

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

Free parking is located at 505 Banyan Blvd. Bring parking ticket to the jury office to be validated. For directions and other helpful information about jury duty, visit www.mypalmbeachclerk.com/jury.

EXHIBIT 2

REQUEST FOR POSTPONEMENT OR EXCUSAL FROM JURY SERVICE

NAME HEIDI VERONIKA GERSTEN JUROR ID _____ JUROR NUMBER

You may not serve if (please check and submit required documentation by visiting www.mypalmbeachclerk.com/jury or by mail):

- ☐ Not a legal resident of Palm Beach County
- ☐ Not a citizen of the United States
- ☐ Convicted of a felony and civil rights have not been restored
- ☐ Currently under criminal prosecution

Jurors are entitled to [illegible] six months from the original summons date. If you want to [illegible] your serving period, [illegible] 355-2930 or (888) [illegible] summons. When [illegible] that falls on a Monday through [illegible]
New date chosen

You may choose not to serve if (please check):

- ☐ 70 or older -- Do you want to be permanently excused? Yes No
- ☐ Responsible for care of medically/mentally incapacitated person [illegible]
- ☐ Expectant Mother
- ☐ Parent not working full time with custody of a child under 6
- ☐ Full time law enforcement officer or law enforcement investigative personnel
- ☐ Summoned and reported for jury service in Palm Beach County within [illegible]

Under penalties of perjury, I declare that I have read the foregoing [illegible] are true.

Signature _____ Date (month)

TIMELINE OF EVENTS WITH LAW AND ARGUMENTS THAT INCLUDE A MEMORANDUM OF POINTS AND AUTHORITIES THAT PROVE TIMELINESS OF APPELLANTS' NOTICE OF APPEAL

Appellants received and/or obtained written notice of entry of each of the following separate orders on appeal.

ORDER DATE	FILE DATE	JUDGE	DATE OBTAINED	DATE RECEIVED
04/26/18	04/26/18	Judge Gibbons (Consolidation Order)(Subject of this Appeal)	05/05/18 - On-line Court Website	N/A

(NOTE: Pursuant to **SCRCP**, a timely Motion to Alter or Amend a Judgment or Order was served on the Respondents (Defendants) on May 6, 2018 and filed on May 8, 2018, pursuant to **Rule 59(e), SCRCP**, which requires that a motion to alter or amend be *"served not later than 10 days after receipt of written notice of the entry of the order."*

This rule does not preclude the motion from being served prior to or earlier than 'receipt'.

According to the interpretation of these rules, the said May 8th motion is timely as it has been served prior to 'receipt', and would apply if the Appellants were to serve and file it as of today's date since they have not 'received' a written notice of the entry of the order being challenged. It was 'obtained' online via the Court's Website.

(Perhaps the time may be ripe in presenting the Highest Court with a certified question in regards to whether or not initiating a case search on the Court's website and reading pleadings, orders, judgments or other documents constitutes "receiving" written notice or written notice of entry of judgments or orders or any other service of process. Does 'obtaining' documents online complete service in the process of active or inactive litigation? Is an uncertified or certified document online form found online create service on the litigant seeking the information?)

Similar to defendant litigants learning of an action being filed in the courthouse and within hours of the filing by plaintiff litigants, the defendant litigants obtain copies of the documents either from making copies that are online or going to the courthouse and requesting them in person. Does either of those two scenarios constitute service according to **SCRCP** rules?

(Perhaps, when these laws were written, modern technology wasn't in mind and with the advent of the computer, times have changed and this is something that ought to be addressed. Otherwise you end up with laws, like in Ohio, where the

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Supreme Court has ruled that both parties may actively participate in litigation, have a trial, and then one party proves that according to the rules, service was not perfected and everything is void. This logic defies common sense. There comes a point where the rules cannot dictate logic. In order to comply with rules, they must be self-evident and in plain English and not ambiguous. The Appellants did follow the letter of the law as well as the spirit.)

The filing was made in person on May 8, 2018 by the Appellant/Claimant/Plaintiff Gersten, at the Chester Courthouse, minutes prior to the Respondent/Defendant Carter's sentencing in front of Judge Zamore, in Magistrate's Court. Deputy Clerk Atkinson was instructed and agreed to provide a copy to Judge Gibbons, pursuant to **Rule 59(g), SCRCP**, which requires that a party filing a **Rule 59** motion "*shall provide*" a copy of the motion to the judge within 10 days of filing. The Appellant Gersten traveled from Florida with her pressure wound, by vehicle with friends to attend the hearing she was subpoenaed to by Judge Underwood, invoking her Victim's rights under the **SC Victim's Constitution** as a witness.)

(ALSO, NOTE: There is no requirement of a certificate of service or proof of service to be filed with the court under **SCRCP** for anything other than the summons and complaint. Service is complete upon mailing, as in "regular mail". There is no requirement to certify or do registered mail in **SCRCP**.)(Perhaps this is ripe for a certified question as to whether or not certificates of service are required.)

05/21/18	05/22/18	Judge Gibbons	05/16/18 – On-line Court Website	N/A

(NOTE: Appellants have not received this order in the mail nor email nor any other method of service as provided by **SCRCP** nor was permitted to review it in the proposed form for accuracy or objections. The issue at hand is moot since it did not affect any part of this matter, so no need to address it in depth other than to make note that it was not served on Appellants/Plaintiffs and used as an example of the course of conduct.)

(ALSO, NOTE: Appellants served "Second Amended Complaint and Demand For Jury Trial With Leave on Respondent/Defendants on September 17, 2018 and overnighted for filing on and received on September 24, 2018, under the mailbox rule, and file stamped on September 25, 2018.) (The pleadings were not closed on the premature hearing of September 5, 2018 in front of Judge Hayes for a variety of reasons including, but not limited to, a timely amended complaint that was served on the Respondent/Defendants and not answered at the time of the said hearing. All of this will be further explained in the forthcoming brief, which will focus on the merits and not timeliness. This is an attempt to satisfy the timeliness requirements although the American Disabilities Act Title II and Equitable Tolling excuse these restrictions and permit law to accommodate the Appellants and modify rules due to their disabilities.)

09/18/18	09/19/18	Judge Hayes III ("AAA" Order) (Subject of this Appeal)	09/19/18 - E-mail From	N/A

(NOTE: Appellants' Notice of Appeal has a typo error and should reflect the correct receipt of this order as September 19, 2018 if e-mails apply to non-attorneys as valid service, possibly another certified question to conclude, either way, the Notice of Motion and Plaintiffs' Motion to Alter or Amend a judgment or Relief from Judgment or Order was timely served on October 1, 2018 and filed on October 8, 2018 according to **SCACR,** thus, tolling the time to serve and file the Notice of Appeal.)

09/18/18	09/19/18	Judge Hayes III ("Carter & Davis' Order) (Subject of this Appeal)	09/19/18 – On-line Court Website	N/A
09/21/18	09/21/18	Judge Hayes III ("Nationwide & Tirbovich" Order) (Subject of this Appeal)	09/23/18 – On-line Court Website	N/A
09/21/18	09/24/18	Judge Hayes III ("Trustgard & Ammendola" Order) (Subject of this Appeal)		N/A
09/21/18	09/21/18	Judge Hayes III ("SC Dept. of Public Safety & Blackwell" Order) (Subject of this Appeal)	09/23/18 – On-line Court Website	N/A
10/16/19	10/16/18	Judge Hayes III (Order) (Subject of this Appeal)(Order from Appellants' Motion for Reconsideration) (Tolled the time to serve Notice of Appeal)	10/21/18 – On-line Court Website	10/21/18 - USPS Regular Mail

01/15/19	01/15/19	Judge Gibbons (Stay Order) (Pending Outcome of Appeal)	01/15/19 - Received Phone Call From The Chester County Clerk	01/25/19 - USPS Regular Mail
02/15/19	02/15/19	Clerk (Letter) (Included As It Pertains to The Matter at Hand)		02/27/19 - USPS Regular Mail

NOTE that the Appellants did not actually receive the letter until two (2) days after its instructions to comply with its requests, causing it to be impossible, save for a nunc-pro-tunc, to follow with respect.

04/09/19	04/09/19	Clerk (Order) (Extension Granted)		04/17/19 - USPS Regular Mail

(NOTE that the Appellants did not actually receive the clerk's order until 2 (two) days after its instructions to comply with its requests, causing it to be impossible, save for a nunc-pro-tunc, to follow with respect. Regardless, it says "...absent extraordinary circumstances." There are plenty of extraordinary, mitigating and extenuating circumstances. The Appellants are unaware of the authority of clerks of court to issue orders. Is this their duty?. It appears to be void on its face. Judges issue orders. With all due respect, this will be addressed in the future.)

05/02/19	05/02/19	Judge Lockmy (Order) (Subject Matter For This Motion To Reinstate)	05/16/19	On-line	05/17/19 - USPS Regular Mail

(NOTE that the Appellants did not actually receive the judge's order, presuming that it was indeed a judge who signed this order as the last name is not legible and there is no printed legible version for the Appellants to ascertain its signor, until the day its instructions to comply were given, which was the same day. The first name "James" is legible and when the Court's website is accessed, one can see that there is a judge James Lockemy however is uncertain if this is who signed this order or someone else. Again, with all due respect, the Appellants are doing what they can to follow orders and obey the law.)

Note that the Appellant Gersten called the Court and spoke with Shelby who informed her that this order did not trigger a motion to reinstate or petition for rehearing, which subsequently caused an order filed on May 14, 2019 issued by a

clerk with illegible handwriting and no printed name. As said before, the Appellants question or challenge the authority for clerks to issue orders. One of a judge's duty is to issue orders. The Appellants are unaware of an any rule except for **Rule 260 (a) Involuntary Dismissal and Reinstatement., SCACR**, which states, " 'Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing excluded). The Appellant Gersten spoke with case manager Elizabeth about a fax being permitted as being "received" by the court. The Appellants will also overnight this for an expected delivery date of May 29, 2019, which would be timely. Becky also affirmed that faxes and overnight deliveries are file-stamped the same day received.

05/14/19	05/14/19	Clerk (Dismissal Order) (Note: Stay of Remittitur is in Order Pending Motion for Reinstatement)	05/16/19	On-line	N/A

(NOTE: The Appellants have not received written notice of entry of this order and learned about it on 05/16/19 after searching case records and in a good faith effort are attempting to comply.)

Given the extraordinary, mitigating and extenuating circumstances, the Appellants move this Court for an Order granting their motion for reinstatement and/or petition for rehearing of motion to dismiss and acceptance of their Return of Respondent Kevin Carter and Richard Davis' Motion to Dismiss as timely.

(Note that now that the Appellant Gersten is finally able to shower independently and has an iPad that is capable of accessing the Court website, it will be easier for the Appellants to stay more up-to-date with court matters.)

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.)

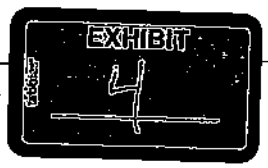
IN THE COURT OF COMMON PLEAS
BEFORE THE ARBITRATION PANEL
JUDICIAL CIRCUIT

CASE NO.: 2018-CP-12-00074

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

FILED
MAY -8 P 2:52
CLERK OF COURT
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



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	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)

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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 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

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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

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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

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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.

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CLERK OF COURT
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
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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

RECEIVED
MAY 31 2019
SC Court of Appeals

Appellate Case No: 2018-002115

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, ...Plaintiffs,

Heidi Gersten, Ivanka Ayoub, ...Appellants.

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance Company , Interinsurance Exchange of the Automobile Club, John Ammendola, Trustgard Insurance Co., Blackwell, SC Department of Public Safety, Chevrolet, GMC, Unknown John Does, ...Respondents

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS

WITH LEAVE TO AMEND OR MOTION FOR EXTENSION OF TIME TO SERVE AND FILE MOTION TO REINSTATE APPEAL

Heidi Gersten, Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana, FL 33462

28

(323) 245-6142 (561) 756-9820 FAX
hanginhangout@gmail.com
Appellants

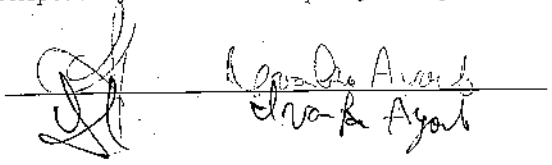
STATEMENT OF FACTS

The Appellants requested additional time to serve and file an amended return to the Respondents Carter and Davis' motion to dismiss appeal numerous times for good cause shown to sufficiently and adequately address the multiple errors made by the Respondents Carter and Davis. The return made in a good faith effort to comply with the previously underestimated calculations for extensions of time due to the Appellants, especially Appellant Gersten's, extraordinary circumstances and is permited by **RULE 263(B), SCACR, EQUITABLE TOLLING** and **TITLE II OF THE AMERICAN DISABILITIES ACT.**

On May 16, 2019, the Appellants learned of the orders dated May 2, 2019 and May 14, 2019 on-line on the Court's Website. They did not 'receive' them from the mail or from an email or from personal service. In a good faith effort to comply, this motion is being made which is combined as a Return and/or Motion for Reinstatement and/or Petition for Rehearing. It is being made under duress in an attempt to follow the rules laid out in SCACR. To prevent the miscarriage of justice, these documents are being overnighted as well as faxed to the Court, as they are to be received by the Court within fifteen (15) days of the date of the filing of the orders. The May 14, 2019 order stems from the alleged non-compliance of the order of May 2, 2019 which is the subject of this motion(s). It is suggested to permit the Appellants to amend this motion in light of the good cause shown for not receiving the order in time to fully comply.

For these reasons, the reasons in the attached Affidavit of Heidi Gersten and all documents in the Court file and the Appellants' forthcoming Brief, the Court has jurisdiction as the Notice of Appeal was timely served and filed per **SCACR** rules.

Respectfully submitted this 29th day of May 2019,



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Heidi Gersten, Ivanka Ayoub
Appellants
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Boca Raton, Florida
May 29, 2019

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RECEIVED
MAY 31 2019
SC Court of Appeals

CERTIFICATE OF SERVICE
(Appellate Case No: 2018-002115)

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: Appellate Case No: 2018-002115 APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS WITH LEAVE TO AMEND OR MOTION FOR EXTENSION OF TIME TO SERVE AND FILE MOTION TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING, ALONG WITH EXHIBITS AND A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 15, 2019, ORDERS OF APRIL 9, 2019 MAY 2, 14, 2019 along with letter to the Court dated May 29, 2019, and AFFIDAVIT OF APPELLANT HEIDI GERSTEN and, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT,
by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

Wesley Brian Sawyer, Esquire
Murpy & Grantland, P.A.
4406 Forest Drive #B
Columbia, SC 29206
(Attorney for Kevin Carter and Richard Davis)

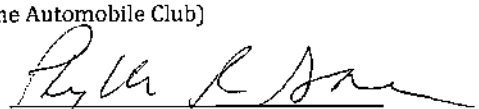
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

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
May 29, 2019

May 29, 2019
1438 W. Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142 Fax (561) 756-9820
hanginhangout@gmail.com

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate St.
Columbia, SC 29201
(803)734- 1890 Fax (803)734-1839

RECEIVED
MAY 31 2019
SC Court of Appeals

RE: Appellate Case No.: 2018-002115

Dear Ms. Kitchings or To Whom It May Concern:

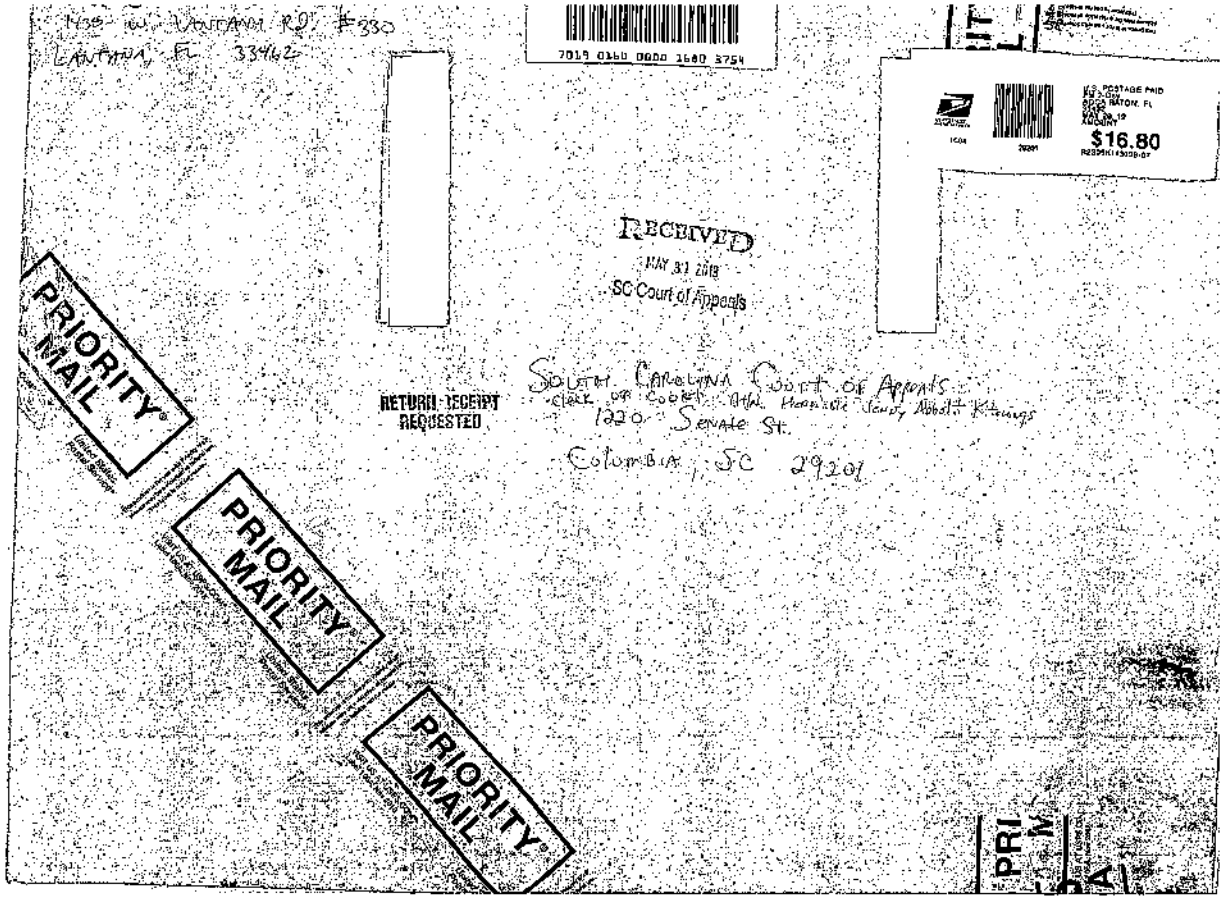
Good day to you.

After reviewing the earlier submission, this amended APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS WITH LEAVE TO AMEND OR MOTION FOR EXTENSION OF TIME TO SERVE AND FILE MOTION TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING along with a more detailed response to this Court's letter dated February 15, April 9, May 2, and 14 all in the year of 2019, is being submitted, first as a fax to you and then by mail, 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,

Heidi Gersten, Ivanka Ayoub
Appellants

HG/Enclosures



1430 W. LANTANA RD. #330
LANTANA, FL 33462

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U.S. POSTAGE PAID
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BOCA RATON, FL
MAY 29 19
AMOUNT
$16.80

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MAY 31 2019
SC Court of Appeals

RETURN RECEIPT
REQUESTED

South Carolina Court of Appeals
Clerk of Court Attn. Hennette Jenny Abbott Kittings
1220 Senate St.
Columbia, SC 29201

PRIORITY MAIL

PRIORITY MAIL

PRIORITY MAIL

September 4, 2019
Gersten's Motion for Extension of Time In
Appellate Case No. 2019-001484
Filed September 4, 2019

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SEP 04 2019
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable Brian Gibbons, Circuit Court Judge
Honorable John C. Hayes, Circuit Court Judge

C.A. No: 2018-002115

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance Co., Interinsurance Exchange of the Automobile Club, Trustgard, John Ammendola, Blackwell, SC Department of Public Safety, Unknown John Does,.....Respondents,

v.

Heidi Gersten, Ivanka Ayoub,.....Petitioners.

MOTION FOR EXTENSION OF TIME TO FILE AND SERVE PETITIONERS' PETITION FOR A WRIT OF CERTIORARI AND APPENDIX

Heidi Gersten, Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142
(561) 756-9820 FAX
hanginhangout@gmail.com

August 29, 2019

The Petitioners, Heidi Gersten, Ivanka Ayoub move this court for an extension of time to serve and file a Petition for Writ of Certiorari and accompanying Appendix.

The Petition for Writ of Certiorari and Appendix is due on August 29, 2019 in said case number to be served and filed however due to Petitioner Gersten's extreme hardships suffered from being paralyzed as a result of the controversy in action, an extension of no more than twenty (20) days is requested and is necessary to file and serve the petition and appendix. By the undersigned's calculations, this would extend the deadline for filing and serving the petition and accompanying appendix to September 18, 2019, with a grant.

This is not made to cause unnecessary delay. This is made in an attempt to follow the rules. This Court's Order No: 2014-07-16-01 permits this extension, as well as SCACR 263(b), Title II of the American Disabilities Act and Equitable Tolling.

Respectfully submitted,

Heidi Gersten, Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142
FAX (561) 756-9820
hanginhangout@gmail.com

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SEP 04 2019
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
SEP 04 2019
S.C. SUPREME COURT

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable Brian Gibbons, Circuit Court Judge
Honorable John C. Hayes, Circuit Court Judge

C.A. No: 2018-002115

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance Co., Interinsurance Exchange of the Automobile Club, Trustgard, John Ammendola, Blackwell, SC Department of Public Safety, Unknown John Does,.....Respondents,

v.

Heidi Gersten, Ivanka Ayoub,.....Petitioners.

PROOF OF SERVICE

This is to certify that this day, the undersigned, over 18 years of age and not a party to the said action has served the following named individuals, counsel for the Respondents, in the foregoing matter, the foregoing Petitioner's Motion for Extension of Time to File and Serve the Petitioner's Petition for Writ of Certiorari and accompanying Appendix by depositing (mailing) a copy of same to them in the United States Post Office mail, with sufficient postage affixed thereto(thereon) to ensure delivery and return address clearly marked on the date indicated below, addressed as follows:

Wesley Brian Sawyer, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive
Columbia SC 29206
Attorney for Respondents Kevin Carter & Richard Davis

David R. Sligh
P.O. Box 2116

Myrtle Beach, SC 29578
Attorney for Respondent Nationwide Mutual Insurance Company

Reynolds Williams
P.O. Box 1909
Florence, SC 29503-1909
Attorney for Respondent Interinsurance Exchange of the Automobile Club

Alexander S. Gogsette
P.O. Box 5478
Florence, SC 29502
Attorney for Respondent Joseph Tirbovich

Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
Collins & Lacy, PC
P.O. Box 12487
Columbia, SC 29211
Attorney for Respondents Trustgard & Ammendola

William H. Davidson II, Esquire
Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202
Attorneys for Respondents Department of Public Safety & Trooper Herbert Blackwell

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate St.
Columbia, SC 29201

Phyllis Garcia
102 N.E. 2nd Ave.
Boca Raton, FL 33432
(561) 393-3231

August 29, 2019

RECEIVED
SEP 04 2019
S.C. SUPREME COURT

November 7, 2019
Gersten's Motion for Extension of Time In
Appellate Case No. 2019-001484
Filed November 7, 2019

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable Brian Gibbons, Circuit Court Judge
Honorable John C. Hayes, Circuit Court Judge

C.A. No: 2018-002115 (Appellate Court of Appeals)
2019-001484 (Supreme Court)

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heid Gersten and Ivanka Ayoub are Petitioners,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance Co., Interinsurance Exchange of the Automobile Club, Trustgard, John Ammendola, Blackwell, SC Department of Public Safety, Unknown John Does.....Respondents.

MOTION FOR EXTENSION OF TIME TO FILE AND SERVE PETITIONERS' REPLY

Heidi Gersten, Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142
(561) 756-9820 FAX
hanginhangout@gmail.com

November 4, 2019

RECEIVED
NOV 07 2019
S.C. SUPREME COURT

The Petitioners, Heidi Gersten, Ivanka Ayoub move this court for an extension of time to serve and file a Reply.

The Reply is due on November 4, 2019 (10 days from the Defendants' joined return claimed to have been served on October 23, 2019, making November 2, 2019 the actual due date however that was a Saturday which carries over to the next business day of Monday, November 4, 2019) in said case, to be served and filed however due to Petitioner Gersten's illness of her left buttock's wound reopening due to extensive aggravated sitting in pursuit of complying with the law and other pending litigation case loads outside of this suit before you, in addition to her already extreme hardships suffered from being paralyzed as a result of the controversy in action, an extension of no more than seven (7) days is requested and is necessary to file and serve the reply. By the undersigned's calculations, this would extend the deadline for filing and serving the reply to November 11, 2019, with a grant.

This is not made to cause unnecessary delay. This is made in an attempt to follow the rules. This Court's Order No: 2014-07-16-01 permits this extension, as well as SCACR 263(b), Title II of the American Disabilities Act and Equitable Tolling.

This Court permitted an amended petition for writ of certiorari to be served and filed in Case No: 2017-002402, *The State v. Damyon Cotton* and no one who participated was paralyzed with the appearance of insurmountable handicaps as in this case. On behalf of Honorable Chief Justice Donald W. Beatty, Honorable Associate Justice Kaye Gorenflo Hearn, Honorable Associate Justice John Cannon

Few and Honorable Associate Justice George C. James, Honorable Associate Justice John W. Kittredge stated that, "...We always enjoy someone coming for the first time." He commended the attorneys for their preparation and presentations. This is the Petitioners first time before this Court.

This Court graciously granted an extension of time to serve and file the petition for writ of certiorari in this case with an additional six (6) days above the requested twenty (20) days.

The extra days are to submit a prepared and well thought-out reply to the overwhelming number of misrepresented facts and allegations that primarily revolve around timeliness and first-impression public policy issues that will be addressed with precision and clarity in the forthcoming reply with a grant.

In the spirit of fairness and positive public perception of this Court's authority to make independent decisions, a grant of the seven (7) days is reasonable under the circumstances presented.

Respectfully submitted,

Heidi Gersten, Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142
FAX (561) 756-9820
hanginhangout@gmail.com

RECEIVED
NOV 07 2019
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable Brian Gibbons, Circuit Court Judge
Honorable John C. Hayes, Circuit Court Judge

C.A. No: 2018-002115

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are Petitioners

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance Co., Interinsurance Exchange of the Automobile Club, Trustgard, John Ammendola, Blackwell, SC Department of Public Safety, Unknown John Does,.....Respondents,

PROOF OF SERVICE

This is to certify that this day, the undersigned, over 18 years of age and not a party to the said action has served the following named individuals, counsel for the Respondents, in the foregoing matter, the foregoing Petitioner's Motion for Extension of Time to File and Serve the Petitioner's Reply by depositing (mailing) a copy of same to them in the United States Post Office mail, with sufficient postage affixed thereto(thereon) to ensure delivery and return address clearly marked on the date indicated below, addressed as follows:

Wesley Brian Sawyer, Esquire

Murphy & Grantland, P.A.
4406-B Forest Drive
Columbia SC 29206
Attorney for Respondents Kevin Carter & Richard Davis

David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
Attorney for Respondent Nationwide Mutual Insurance Company

Reynolds Williams
P.O. Box 1909
Florence, SC 29503-1909
Attorney for Respondent Interinsurance Exchange of the Automobile Club

Alexander S. Gogsette
P.O. Box 5478
Florence, SC 29502
Attorney for Respondent Joseph Tirbovich

Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
Collins & Lacy, PC
P.O. Box 12487
Columbia, SC 29211
Attorney for Respondents Trustgard & Ammendola

William H. Davidson II, Esquire
Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202
Attorneys for Respondents Department of Public Safety & Trooper Herbert Blackwell

Phyllis Garcia
102 N.E. 2nd Ave.
Boca Raton, FL 33432
(561) 393-3231

November 4, 2019

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NOV 07 2019
S.C. SUPREME COURT

November 4, 2019
1438 W. Lantana Rd. #330
Lantana, FL 33462
(323) 245-6142
hanginhangout@gmail.com

RECEIVED
NOV 07 2019
S.C. SUPREME COURT

The Honorable Daniel Shearouse
Clerk of Court, South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

Re: Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are Petitioners,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance Co., Interinsurance Exchange of the Automobile Club, Trustgard, John Ammendola, Blackwell, SC Department of Public Safety, Unknown John Does.....Respondents.

Supreme Court Case No: 2019-001484 / Court of Appeals Case No: 2018-002115

Dear Mr. Shearouse or To Whom It May Concern:

Good day to you!

Enclosed for filing, please find an original and seven (7) copies of Petitioners' Motion to Extend time to file and serve Reply, together with Proof of Service of same and United States Postal Service money order in the amount of $50.00 made payable to the SC Supreme Court for said motion. Please return clocked or file-stamped copies in the enclosed self-addressed prepaid stamped envelope.

By copy of this letter, a copy of the fore-mentioned is served on all counsel of record. Please call the above number if you have any questions. Thank you for your time and assistance regarding this matter.

Respectfully submitted,

Heidi Gersten, Ivanka Ayoub
Appellants/Petitioners

Enclosures

RECEIVED
NOV 07 2019
S.C. SUPREME COURT

RETURN RECEIPT
REQUESTED
CERTIFIED MAIL
PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
7019 0700 0001 5453 9900
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33432
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1000
29201
The Honorable Daniel Shearouse
Clerk of Court, South Carolina Supreme Court
Supreme Court Building
1231 Gervais St.
Columbia, SC 29201

January 4, 2021
Gersten's Motion for a Continuance
In Case No. 2018-CP-12- 00117
Filed January 4, 2021

December 31, 2020
~~February 7, 2018~~ →
1438 West Lantana Rd. #330
Lantana, FL 33462
(323) 245-6142
Heidi @ 2020vision Presidential@yahoo.com

Chester County Court of Common Pleas
Clerk of Court
Attn: Douglas Atkinson and/or Rachel Johnson
Civil Clerk
P.O. Drawer 580
Chester, SC 29706
Phone: (803) 385-2605
Fax - Civil: (855) 946-0423
Re: 2018-AP-12-00074/ 2018-CP-12-00017
Notice of/Motion for Continuance

FILED
2021 JAN -4 P 3:33
CLERK OF COURT
CHESTER CO S.C.

To All Concerned:

Good day to you!

This is a cover sheet to give instructions on the filing of my motion. I learned of a court hearing scheduled on January 13, 2013, at 9:30 a.m. on December 28. 2020. (Exhibit A)

Unfortunately, I became a victim of numerous crimes, including assault, abuse and exploitation of a disabled person, that began sometime during the summer of 2020.

After being assaulted on December 3, 2020, I found myself in the Palm Beach County, Florida courthouse and in the middle of an investigation.

I am writing this brief letter to inform you of this and to let you know that I intend on picking up where we left off, as soon as this issue is resolved. I anticipate a trial by jury to be had before springtime, as courts here move much faster. The next Florida scheduled hearing is January 5, 2021. (Exhibit B)

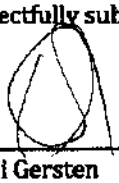
This is not an attempt to delay unnecessarily. History has shown that due diligence has been applied all of these years. I'm in a time restraint to get this out to the Court timely, as I comprehend that motions are timely at least 10 days prior to hearing, which lands on Sunday, January 3, 2020 and counting backwards, the next non holiday, nonweekend day is today. This is an effort to follow the rules and there is good cause for this continuance.

In an effort to prevent a miscarriage of justice, especially to preserve the public's view of the integrity of the judiciary, a continuance until the legal issues in Florida are resolved is worthy of a grant. The video of the assault is available upon request as it was captured in its entirety.

Please file stamp my copies of this motion and return them in the enclosed postage paid envelope provided. Thank you. Let 2021 be a much better year for all of us.

Thank you so much for your help. I am available if my understanding of any of this is incorrect or if you have any questions.

Respectfully submitted,



Heidi Gersten

HG/ Enclosures: 1 Copy and 1 Original of cover letter, motion cover sheet, notice of motion and motion, exhibits A and B, certificate of service, $25.00 check for motion.

FILED
2021 JAN -4 P 3:33
CLERK OF COURT
CHESTER CO S.C.

STATE OF SOUTH CAROLINA COUNTY OF CHESTER HEIDI GERSTEN, IVANKA AYOUB Plaintiff, vs. KEVIN CARTER, RICHARD DAVIS, NATIONWIDE MUTUAL INS. CO, TRUSTGUARD INSURANCE COMPANY , SC DEPT. OF PUBLIC SAFETY, TROOPER BLACKWELL, INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB Defendant.	IN THE COURT OF COMMON PLEAS _____ JUDICIAL CIRCUIT CASE NO.: 2018-CP-12-00117 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

FILED
2021 JAN -4 P 3:33
CLERK OF COURT
CHESTER CO S.C.

Plaintiff's Attorney: _____, Bar No. _____ Address: Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: Phone: _____ Fax _____ E-mail: _____ Other: _____

☐ **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: CONTINUANCE
Estimated Time Needed: 6 MONTHS 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.

_____ DECEMBER 31 2020
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted

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. ☐ Other: _____	JUDGE CODE _____ 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
2018-CP-12-00117

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'/PLAINTIFFS' MOTION FOR CONTINUANCE

Pursuant to Rule 40(i)1, SCRCP,

FILED
2021 JAN -4 P 3:34
CLERK OF COURT
CHESTER CO S.C.

Now come the Claimants Heidi Gersten and Ivanka Ayoub and move this court for a continuance of the scheduled hearing on January 13, 2020 pursuant to Rule 40)1)1, SCRCP for at least 6 months until the matters in Palm Beach County, Florida are resolved. The reasons for this motion are set forth in the attached letter to the Clerk and without a Memorandum in Support, at this time. An amendment to this motion will be made as soon as possible.

Respectfully submitted,

DATED: December 31, 2020

Claimants Heidi Gersten & Ivanka Ayoub
1438 W. Lantana Rd. #330
Lantana, FL 33462
(323) 245-6142/ Fax (561) 756-9820
Heidi@2020VisionPresidential Campaign.com

Chester County, South Carolina
Office of the Clerk of Court
Post Office Drawer 580
Chester, SC 29706

FILED
2021 JAN -4 P 3:34
CLERK OF COURT
CHESTER CO S.C.

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

FILED
2020 DEC 18 A 11:46
CLERK OF COURT
CHESTER CO S.C.

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

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

Exhibit A

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
2021 JAN -4 P 3:34
CLERK OF COURT
CHESTER CO S.C.

FILED
2020 DEC 18 A 11:44
CLERK OF COURT
CHESTER CO S.C.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

HEIDI GERSTEN,
Petitioner,

and

JAMES WEAVER,
Respondent.

Case No.: 50-2020-DR-009808-XXXX-MB
Division: FC

FILED
2021 JAN -4 P 3:34
CLERK OF COURT
CHESTER CO. S.C.

ORDER RESETTING HEARING ON PETITION FOR INJUNCTION FOR PROTECTION AGAINST REPEAT VIOLENCE

[redacted]

FINDINGS

[redacted]

Exhibit B

NOTICE OF HEARING

Petitioner and Respondent are ordered to appear and testify at a hearing on the Petition for Injunction for Protection Against Domestic Violence on: Dec. 5, 2018 at 10:00 AM, at room 6B (Main Branch) MB, 205 N. Dixie Highway West Palm Beach FL 33401, at which time the Court will consider whether a Final Judgment of Injunction for Protection Against Domestic Violence, Repeat, Dating, or Sexual Violence, or Stalking should be entered. If entered, the injunction will remain in effect until a fixed date set by the Court or until modified or dissolved by the Court. At the hearing, the Court will determine whether other things should be ordered, including, for example, such matters as time-sharing and support.

If Petitioner and/or Respondent do not appear, orders may be entered, including the entry of a permanent injunction and the imposition of court costs. Petitioner and Respondent will be bound by the terms of any injunction or order issued at the final hearing.

IF EITHER PETITIONER OR RESPONDENT DOES NOT APPEAR AT THE FINAL HEARING, HE OR SHE WILL BE BOUND BY THE TERMS OF ANY INJUNCTION OR ORDER ISSUED IN THIS MATTER.

All witnesses and evidence, if any, must be presented at this time. In cases where temporary support issues have been alleged in the pleadings, each party is ordered to bring his or her financial affidavit (Florida Family Law Rules of Procedure Form 12.902(b) or (c)), tax return, pay stubs, and other evidence of financial income to the hearing.

NOTICE: Because this is a civil case, there is no requirement that these proceedings be transcribed at public expense.

YOU ARE ADVISED THAT IN THIS COURT:

_____ a. a court reporter is provided by the court.

__X__ b. electronic recording only is provided by the court. A party may arrange in advance for the services of and provide for a court reporter to prepare a written transcript of the proceedings at that party's expense.

_____ c. in repeat, dating, and sexual violence cases, no electronic recording or court reporting services are provided by the court. A party may arrange in advance for the services of and provide for a court reporter to prepare a written transcript of the proceedings at that party's expense.

A RECORD, WHICH INCLUDES A TRANSCRIPT, MAY BE REQUIRED TO SUPPORT AN APPEAL. THE PARTY SEEKING THE APPEAL IS RESPONSIBLE FOR HAVING THE TRANSCRIPT PREPARED BY A COURT REPORTER. THE TRANSCRIPT MUST BE FILED WITH THE REVIEWING COURT OR THE APPEAL MAY BE DENIED.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Tammy Anton, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Nothing in this order limits Petitioner's rights to dismiss the petition.

DONE AND ORDERED in PALM BEACH COUNTY, Florida on this: 12/22/2020

CIRCUIT JUDGE

COPIES TO:
Petitioner:
✓ by hand delivery in open Court
___ by U.S. mail
___ by e-mail to designated e-mail address(es)

Respondent:
___ forwarded to sheriff for service
___ State Attorney's Office
___ Other: PBSO

I CERTIFY the foregoing is a true copy of the original **Order Setting Hearing on Petition for Injunction** as it appears on file in the office of **Sharon R. Bock, Clerk & Comptroller, Palm Beach County**, and that I have furnished copies of this order as indicated above.

Sharon R. Bock
Clerk & Comptroller

By: _____
Deputy Clerk

STATE OF FLORIDA - PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the record in my office.
THIS 22 DAY OF December 20
SHARON R. BOCK
CLERK & COMPTROLLER
By _____
DEPUTY CLERK

X _____

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: CLAIMANTS'/ PETITIONERS' NOTICE OF MOTION/MOTION FOR CONTINUANCE OF JANUARY 13, 2021 HEARING IN CHESTER COUNTY, SC AT 9:30 A.M. 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
2021 JAN -4 P 3:36
CLERK OF COURT
CHESTER CO S.C.

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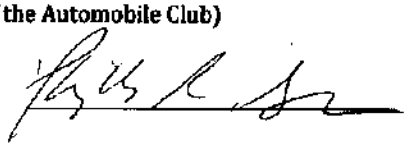
By: 

Boca Raton, Florida
December 31, 2020

Designation of Matter GERSTEN

THE STATE of SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge
Brian M. Gibbons, Circuit Court Judge
J. Mark Hayes, II, Circuit Court Judge

Case No. 2018-CP-12-00117
2028-AP-12-00074

Appellate Case Nos. 2022-001312 and 2022-001390

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten is Appellant,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Insurance Company, Interinsurance Exchange of the Automobile Co, John Ammendola, Trustgard Insurance Company, Blackwell, SC Department of Public Safety, Chevrolet, GMC, Unknown John Does, Respondents.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL PERTAINING TO RESPONDENT KEVIN CARTER

The Appellant Heidi Gersten proposes the following be included in the Record on Appeal:

1. Order of August 22, 2022
2. Arbitration Claim for Property Damage Filed February 21, 2018
3. Complaint Filed March 17, 2018
4. First Amended Claim for Property Damage Filed March 27, 2018
5. Appellant Gersten's Exhibit List A-L Filed March 27, 2018
6. Appellant Gersten's Exhibit List A-G Filed March 27, 2018

7. First Set of Admissions, Interrogatories, and Admissions Filed March 27, 2018
8. Affidavit of Service March 27, 2018
9. Affidavit of Heidi Gersten in Support of Property Damage Claim
10. Answer of Kevin Carter Filed April 16, 2018
11. Motion to Dismiss or Motion to Strike of Kevin Carter Filed April 16, 2018
12. Transcript of Proceedings
13. Appellant Gersten's Exhibits

I certify that this designation contains no matter which is irrelevant to this appeal.

July 31, 2023

__/S/Heidi Gersten_

Heidi Gersten, Appellant
All Rights Reserved
1438 W. Lantana Rd. #330
Lantana, FL 33462
(323) 245-6142
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Designation of Matter CARTER

RECEIVED
Aug 29 2023
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2022-001312

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten is the ……..……..……Appellant,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Insurance Company, Interinsurance Exchange of the Automobile Club, John Ammendola, Trustgard Insurance Company, SC Department of Public Safety, Chevrolet, GMC, Unknown John Does, Defendants,

Of whom Kevin Carter is the ……..……...….....Respondent.

RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent Kevin Carter proposes the following documents to be included in the Record on Appeal:

1. Summons and Claim for Property Damage filed February 21, 2018 in Case No. 2018-CP-12-00074;

2. Summons and Complaint filed March 16, 2018 in Case No. 2018-CP-12-00117;

3. 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;

4. 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;

5. Order consolidating cases filed April 26, 2018;

6. Order granting Defendants Kevin Carter's and Richard Davis' Motion to Dismiss filed September 19, 2018;

7. Order granting Defendant Interinsurance Exchange of the Automobile Club's Motion to Dismiss filed September 19, 2018;

8. Order granting Defendants South Carolina Department of Public Safety's and Trooper Herbert Blackwell's Motion to Dismiss filed September 21, 2018;

9. Order granting Defendants Nationwide Insurance Company's and Joseph Turbovich's Motion to Dismiss filed September 21, 2018;

10. Order granting Defendants Trustgard Insurance Company's and John Ammendola's Motion to Dismiss filed September 24, 2018;

11. Affidavit of Facts filed January 31, 2019 in Appellate Case No. 2018-002115;

12. Notice of Appeal filed November 27, 2018 in Appellate Case No. 2018-002115;

13. Kevin Carter's and Richard Davis' Motion to Dismiss Appeal and Memorandum in Support filed January 31, 2019 in Appellate Case No. 2018-002115;

14. Letter from the Court of Appeals to Gersten and Ayoub dated February 15, 2019 in Appellate Case No. 2018-002115;

15. Court of Appeals Order filed April 9, 2019 in Appellate Case No. 2018-002115;

16. Court of Appeals Order filed May 14, 2019 in Appellate Case No. 2018-002115;

17. Court of Appeals Order dismissing appeal filed May 14, 2019 in Appellate Case No. 2018-002115;

18. Petition for Rehearing filed May 29, 2019 in Appellate Case No. 2018-002115;

19. Court of Appeals Order denying petition for rehearing filed July 30, 2019 in Appellate Case No. 2018-002115;

20. Petition for Writ of Certiorari filed September 26, 2019 in Appellate Case No. 2019-001484;

21. Supreme Court Order denying petition for writ of certiorari filed April 24, 2020 in Appellate Case No. 2019-001484;

22. June 23, 2020 Remittitur from the Court of Appeals filed June 26, 2020 in Case No. 2018-CP-12-00117;

23. 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;

24. August 13, 2020 Letter to Gersten filed August 26, 2020 in Case No. 2018-CP-12-00117;

25. 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;

26. December 18, 2020 Motions Roster Letter to Gersten filed on December 18, 2020 in Case No. 2018-CP-12-00117;

27. 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;

28. July 28, 2022 Hearing Transcript in Case No. 2018-CP-12-00117;

29. Carter's Motion to Dismiss Claims of Ivanka Ayoub filed July 28, 2022 in Case No. 2018-CP-12-00117;

30. August 18, 2022 Hearing Transcript in Case No. 2018-CP-12-00117;

31. Order dismissing case filed August 22, 2022 in Case No. 2018-CP-12-00117;

32. Gersten's Motion for Continuance filed August 22, 2018 in Case No. 2018-CP-12-00117;

33. Gersten's Motion for Extension of Time to File Initial Brief filed December 27, 2018 in Appellate Case No. 2018-002115;

34. Gersten's Motion for Extension of Time filed February 8, 2019 in Appellate Case No. 2018-002115;

35. Gersten's Motion to Allow Late Filing filed February 19, 2019 in Appellate Case No. 2018-002115;

36. Gersten's Motion for Extension of Time filed March 1, 2019 in Appellate Case No. 2018-002115;

37. Gersten's Motion for Extension of Time filed March 12, 2019 in Appellate Case No. 2018-002115;

38. Gersten's Motion for Extension of Time filed March 21, 2019 in Appellate Case No. 2018-002115;

39. Gersten's Motion for Extension of Time filed March 28, 2019 in Appellate Case No. 2018-002115;

40. Gersten's Motion for Extension of Time filed April 8, 2019 in Appellate Case No. 2018-002115;

41. Gersten's Motion for Extension of Time filed April 18, 2019 in Appellate Case No. 2018-002115;

42. Gersten's Motion for Extension of Time filed April 29, 2019 in Appellate Case No. 2018-002115;

43. Gersten's Motion to Reinstate Appeal or Motion for Extension of Time filed May 31, 2019 in Appellate Case No. 2018-002115;

44. Gersten's Motion for Extension of Time filed September 4, 2019 in Appellate Case No. 2019-001484;

45. Gersten's Motion for Extension of Time filed November 7, 2019 in Appellate Case No. 2019-001484; and

46. Gersten's Motion for a Continuance filed January 4, 2021 in Case No. 2018-CP-12-00117.

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

s/Wesley B. Sawyer

Wesley B. Sawyer, Esquire
S.C. Bar No. 100229
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Attorney for Respondent

RECEIVED
Aug 19 2025
SC Court of Appeals

August 19, 2025
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Lantana, Florida 33462
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The Honorable Jenny Abbott Kitchings
Clerk of Court,
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201
(803) 734-1890
ctappfilings@sccourts.org

Re: Appellate Case Nos. 2022-001312 and 2022-001390

TO ALL CONCERNED: Good day to you!

Please accept the attached AMENDED EMERGENCY with LEAVE of COURT APPELLANT's TITLE II and TITLE III of the AMERICANS with DISABILITIES ACT ("ADA") REASONABLE ACCOMMODATION to ACCEPT as TIMELY FILED and GRANT MOTION to RECALL REMITTITUR, REINSTATE APPEAL, and ASSIGN ADA COORDINATOR to ASSIST with RECORD RECONSTRUCTION, EXHIBIT "A" RECORD on APPEAL (898 Pages)

and Proof or Certificate of Service for filing and email me back a time-stamped copy at the above email address.

There is no fee for ADA Title II or Title III reasonable accommodation requests.

Let me know if you have any questions. Emailing preferred.

Kind regards,

____/S/Heidi Gersten_____

hg/enc./ AMENDED EMERGENCY with LEAVE of COURT APPELLANT's TITLE II and TITLE III of the AMERICANS with DISABILITIES ACT ("ADA") REASONABLE ACCOMMODATION to ACCEPT as TIMELY FILED and GRANT MOTION to RECALL REMITTITUR, REINSTATE APPEAL, and ASSIGN ADA COORDIANTOR to ASSIST with RECORD RECONSTRUCTION EXHIBIT "A" RECORD on APPEAL (898 Pages), Proof or Certificate of Service, Cover Letter

Total Amount of Pages including this cover letter: 918 Pages