

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.

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

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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, Nationwide 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<sup>1</sup> 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,<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> Respondents reserve the right to argue that the motion to reconsider was untimely.

September 5, 2018 Order.<sup>3</sup> 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”).<sup>4</sup> 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”).<sup>5</sup> 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.<sup>6</sup> 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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<sup>3</sup> 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.

<sup>4</sup> The First Notice of Appeal is attached hereto as Exhibit D.

<sup>5</sup> The Second Notice of Appeal received by Respondents is attached hereto as Exhibit E.

<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> Although

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<sup>7</sup> 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.

<sup>8</sup> 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.


<sup>9</sup> 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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Murphy & Grantland, PA  
P.O. Box 6648  
Columbia, South Carolina 29260  
(803) 782-4100  
wsawyer@murphygrantland.com  
Attorneys for Respondents Kevin Carter and  
Richard Davis

January 30, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

HEIDI GERSTEN

Plaintiff(s)

vs.

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

Defendant(s)

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

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

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018 JAN 12 00074 -CP-

FILED
2018 FEB 21 AM 10:04
CLERK OF COURT
CHESTER COUNTY

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), Other (799)

EXHIBIT
A

Submitting Party Signature: [Signature]

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 210<sup>th</sup> 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  
CHESTER COUNTY

In the matter of Arbitration between )

Case number 2018-CP-12-00074

HEIDI GERSTEN )

Claimant(s) )

vs. )

SUMMONS FOR ARBITRATION  
(Claim Served Herewith)

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

Defendant(s) )

FILED  
2018 FEB 21 A 10:55  
CLERK OF COURT  
CHESTER CO S.C.


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

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

Attorney for Claimant(s):

Claimant(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
Heidi GERSTEN  
\_\_\_\_\_  
1438 W. LANTANA Rd. # 330  
\_\_\_\_\_  
LANTANA, FL 33462  
\_\_\_\_\_

Date: February 7, 2018

STATE OF SOUTH CAROLINA )

BEFORE THE ARBITRATION PANEL OF  
CHESTER COUNTY

In the matter of Arbitration between )

Case number 2018-CP-12-00074

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) )

FILED  
2018 FEB 21 A 10:52  
CLERK OF COURT  
CHESTER CO S.C.

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

1. The Claimant(s) resides in Palm Beach County, Florida. County.
2. The Defendant(s) resides in 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.

STATE OF SOUTH CAROLINA )

COUNTY OF CHESTER )

HEIDI GERSTEN, IVANKA AYOUB, DANIEL HUBBARD )

Plaintiff(s) )

vs. )

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

Defendant(s) )

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

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

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018 -CP- 12 0017

CLERK OF COURT
CHESTER CO. S.C.
1000 MAR 16 10:34

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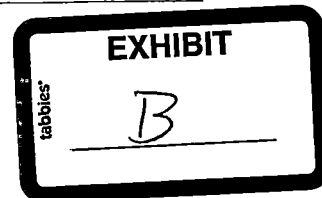
DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

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NON-JURY TRIAL demanded in complaint.
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Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650)



- Other (699) \_\_\_\_\_      Motion to Quash Subpoena in an Out-of-County Action (660) (790)  
 Sexual Predator (510)      Pre-Suit Discovery (670)  
 Permanent Restraining Order (680)      Other (799) \_\_\_\_\_  
 Interpleader (690)

**Submitting Party Signature:** \_\_\_\_\_

**Date:** March 15, 2018

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

Plaintiff, )

vs. )

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

Defendant. )

IN THE COURT OF COMMON PLEAS

SUMMONS

2018 CP1200117

FILE NO.

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

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

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF CHESTER )  
3 )  
4 HEIDI GERSTEN, IVANKA AYOUB, )  
DANIEL HUBBARD )  
5 Plaintiffs )  
6 vs. )  
7 KEVIN CARTER, RICHARD DAVIS, )  
JOSEPH TIRBOVICH, NATIONWIDE )  
8 MUTUAL INSURANCE COMPANY, )  
INTERINSURANCE EXCHANGE OF )  
9 THE AUTOMOBILE CLUB, JOHN )  
AMMENDOLA, TRUSTGUARD )  
10 INSURANCE COMPANY SC DEPT )  
PUBLIC SAFETY BLACKWELL, )  
11 GMC, CHEVROLET, UNKNOWN )  
JOHN DOES )  
12 ----- )

IN THE COURT OF COMMON PLEAS  
FILE NO: 2018 CP 1206117  
COMPLAINT  
and  
DEMAND FOR JURY TRIAL

FILED  
2018 MAR 16 A 10:30  
CLERK OF COURT  
OFFICE 200 S. 100

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

17  
18 GENERAL ALLEGATIONS  
19 (Against All Defendants)

20 I.

21 PARTIES

- 22 1. The Plaintiff Heidi Gersten is an individual and is now and at all times mentioned in this complaint  
23 relevant to this matter, was and is a resident of Palm Beach County, Florida.  
24 2. The Plaintiff Ivanka Ayoub is an individual and is now and at all times mentioned in this complaint  
25 relevant to this matter, was a resident of Cuyahoga County, Ohio and is a resident of Palm Beach County,  
26 Florida.  
27 3. The Plaintiff Daniel Hubbard is an individual and is now and at all times mentioned in this complaint  
28 relevant to this matter, was and is a resident of Cuyahoga County, Ohio.

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

11 II.

12 JURISDICTION AND VENUE

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

21 III.

22 FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

23  
24  
25  
26 IV.

27 FIRST CAUSE OF ACTION (CLAIM FOR RELIEF)

28 (Negligence)

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

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

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

7  
8 V.

9 SECOND CAUSE OF ACTION (CLAIM FOR RELIEF)

10 (Fraud)

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

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

14 34. The Defendants' statements were false.

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

16 36. The Defendants' statements were material.

17 37. The Defendants intended on deceiving the Plaintiffs.

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

19 39. The Plaintiffs suffer proximate injury.

20 VI.

21 THIRD CAUSE OF ACTION (CLAIM FOR RELIEF)

22 (Fraudulent Inducement)

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

25 41. The Defendants intentionally pressured the Plaintiffs.

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

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

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

2 VII.

3 FOURTH CAUSE OF ACTION (CLAIM FOR RELIEF)

4 (Intentional Infliction of Emotional Distress)

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

7 46. The Defendants acted intentionally or recklessly.

8 47. The Defendants' conduct was outrageous.

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

10 49. The Plaintiffs suffer from severe emotional distress.

11  
12 VIII.

13 FIFTH CAUSE OF ACTION (CLAIM FOR RELIEF)

14 (Negligent Infliction of Emotional Distress)

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

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

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

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

21 IX

22 SIXTH CAUSE OF ACTION (CLAIM FOR RELIEF)

23 (Loss of Consortium)

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

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

2 SEVENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

3 (Product Liability)

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

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

7 58. The Plaintiffs suffer damages as a result.

10 EIGHTH CAUSE OF ACTION (CLAIM FOR RELIEF)

11 (Breach of Contract)

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

15 60. The Defendants had a duty.

16 61. The Defendant breached the duty.

17 62. The Plaintiffs suffer damages as a result.

20 NINTH CAUSE OF ACTION (CLAIM FOR RELIEF)

21 (Invasion of Privacy)

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

24 64. The Defendants had a duty.

25 65. The Defendants breached the duty.

26 66. The Plaintiffs suffer damages as a result.

1 TENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

2 (Strict Liability)

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

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

6 69. The Defendant is responsible.

7  
8 XIII

9 ELEVENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

10 (Conspiracy)

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

13 71. Two or more Defendants were in collusion.

14 72. The Defendants intentionally acted.

15 73. The Defendants made an agreement.

16 74. The Defendants violated laws.

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

18  
19 XIV

20 TWELFTH CAUSE OF ACTION (CLAIM FOR RELIEF)

21 (Misrepresentation)

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

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

26 78. The Defendants' representation was false.

27 79. The Plaintiffs' loss benefited the Defendants.

28 XV

1 THIRTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

2 0

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

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

7 XVI

8 FOURTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

9 (Deceit)

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

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

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

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

16 XVII

17 FIFTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

18 (Duress and Undue Influence)

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

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

23 XVIII

24 SIXTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

25 (Slander)

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

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

2  
3 XIX

4 SIXTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

5 (Libel)

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

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

9 XX

10 SEVENTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

11 (Defamation)

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

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

15 XXI

16 EIGHTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

17 (Malicious Prosecution)

18  
19 94. The Plaintiffs incorporate by reference paragraphs 1-93 inclusive of the First through  
20 Seventeenth Causes of Action as if fully set forth.

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

22 DAMAGES

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

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

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

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

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

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

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

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

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

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

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

3  
4 PRAYER FOR RELIEF

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

- 7 (1) For a trial by jury;
- 8 (2) That the Plaintiffs Heidi Gersten, Ivanka Ayoub and Daniel Hubbard recover  
9 judgment for damages for such sums in excess of \$1,000,000.00, as shall be determined to  
10 fully and fairly compensate them for all general, special, incidental and consequential  
11 damages respectively incurred by them as the direct and proximate result of the acts and  
12 omissions of the Defendants, together with interest until satisfied, to be determined by  
13 proof at trial;
- 14 (3) Medical and related expenses in excess of \$100,000,000.00 to be determined by proof  
15 at trial;
- 16 (4) Past and future lost earnings in an amount to be determined by proof at trial;
- 17 (5) Impairment of earning capacity in an amount to be determined by proof at trial;
- 18 (6) Punitive damages;
- 19 (7) Costs of this action;
- 20 (8) Any other and further relief that the court considers proper and as it deems necessary  
21 and equitable in the circumstances.  
22  
23  
24

FILED  
MAR 16 10:36  
CLERK OF COURT  
OSWALD CO. SEC.

25 Respectively submitted this 13<sup>th</sup> day of March 2018

26  
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\_\_\_\_\_  
Plaintiff Heidi Gersten  
1438 West Lantana Rd. #330  
Lantana, FL 33462

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

*Ivanka Ayoub*

---

Plaintiff Ivanka Ayoub  
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*Daniel Hubbard*

---

Plaintiff Daniel Hubbard  
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Lantana, FL 33462  
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(561) 756-9820

DEPT OF COURT  
DAVID STEIN-00-512  
MAR 16 A 10:36  
FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard,

Plaintiff,

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

vs.

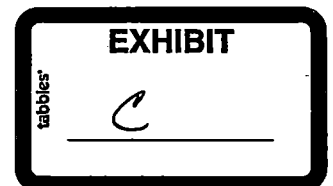
Kevin Carter, Richard Davis, Joseph Tribovich, Nationwide Insurance Company, Interinsurance Exchange of the Automobile Club, John Ammendola, Trustguard Insurance Company, SC Department of Public Safety, Chevrolet, GMC, Unknown John Does,

Defendants.

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

**PROCEDURAL BACKGROUND**

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



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

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

Kevin Carter, Richard Davis, and the other Defendants who have allegedly been served in the case filed motions to dismiss both cases.<sup>1</sup> 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

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

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

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

### LAW

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

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

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

---

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

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

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), SCRPC. 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), SCRPC.<sup>4</sup>

**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

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<sup>3</sup> 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.”).

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

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

Our Supreme Court has refused to recognize a cause of action in tort for filial loss of consortium. *See Doe v. Greenville County School Dist.*, 375 S.C. 63, 70, 651 S.E.2d 305, 308 (2007) (“Accordingly, in the absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.”).<sup>5</sup> 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.

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

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

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

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

**E. Carter and Davis’ other motions.**

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

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

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

### CONCLUSION

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

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

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

It is so **ORDERED**.

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John C. Hayes, III  
Circuit Court Judge

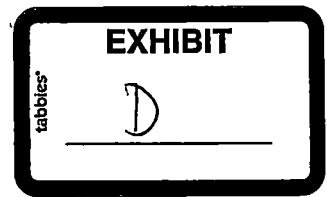


Chester Common Pleas

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

So Ordered

s/John C. Hayes III 2049



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 Gibbons, Circuit Court Judge

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

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

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 John Hayes dated September 5, 2018. Appellants received written notice of entry of some of these orders [judgments] on September 18-October 3, 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.

October 18, 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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Michael R. Burchstead, Esquire  
Collins & Lacy, PC  
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Columbia, SC 29202  
(Attorney for SC Dept. of Public Safety  
and Herbert Blackwell)

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

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

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

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: FILE NO: 2018-CP-12-00117 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:

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

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

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

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)

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

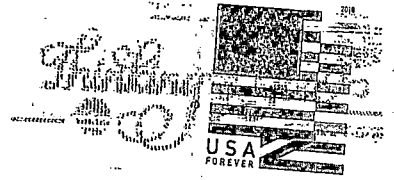
By: 

Boca Raton, Florida  
October 18, 2018

MEIDI GERSTEN, LUANFA AYOUB, DANIEL HUBBARD  
1438 W. LANTANA Rd. #330  
LANTANA, FL 33462

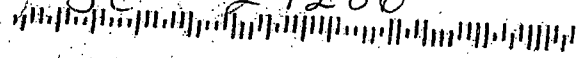
WEST PALM BCH FL 334

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Wesley Brian Sawyer, Esquire  
Murphy & Grantland, P.A.  
4406 Forest Dr. #B  
Columbia SC 29206

29206-310406



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

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150-0749

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:

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

David R. Sligh  
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Myrtle Beach, SC 29578  
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Peter H. Dworjany, Esquire and  
Michael R. Burchstead, Esquire  
Collins & Lacy, PC  
1330 Lady Street, 6<sup>th</sup> Floor (29201)  
Post Office Box 12487  
Columbia, SC 29211  
(Attorneys for Trustguard Insurance Company)

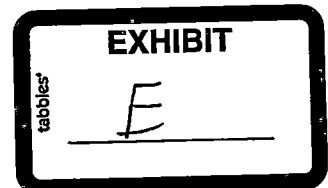
William H. Davidson II, Esquire  
Davidson & Lindemann, PA  
P.O. Box 8568  
Columbia, SC 29202  
(Attorney for SC Dept. of Public Safety  
and Trooper Herbert Blackwell)

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



**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., Respondents,  
Interinsurance Exchange of  
the Automobile Club, John  
Ammendola, Trustgard  
Insurance Co., SC Dept. of  
Public Safety, Blackwell,  
Unknown John Does

v.

Heid Gersten, Ivanka Ayoub,  
Daniel Hubbard Appellants.

---

**NOTICE OF APPEAL**

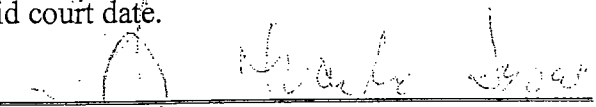
---

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

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

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

November 15, 2018

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

Other Counsel of Record:

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

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

Peter H. Dworjany, Esquire and  
Michael R. Burchstead, Esquire  
Collins & Lacy, PC  
1330 Lady Street, 6<sup>th</sup> 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  
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and Herbert Blackwell)

Reynolds Williams  
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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

Held: ~~Ersten, Winkell, Ayoub~~  
1438 W. Lantana Rd. #330  
Lantana, FL 33462

**VERIFIED MAIL**



7018 1830 0001 4957 0707

RETURN RECEIPT  
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Wesley Brian Sawyer, Esquire  
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33432  
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AMOUNT  
**\$6.70**  
R230-AN118089-08



29206



1000

**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.

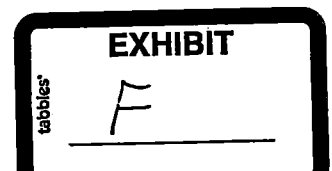
Heid Gersten, Ivanka Ayoub,  
Daniel Hubbard

Appellants.

**NOTICE OF APPEAL**


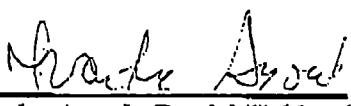
Heidi Gersten, Ivanka Ayoub, Daniel Hubbard ('Appellants') appeal the orders [judgments] of the Honorable Judges Brian M. Gibbons and John C. Hayes III dated April 26, 2018, September 5, 2018 and October 16, 2018. Appellants received written notice of entry of some of these orders [judgments] on September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

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



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

November 15, 2018

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

**Other Counsel of Record:**

Wesley Brian Sawyer, Esquire  
 Murpy & Grantland, P.A.  
 4406 Forest Drive #B  
 Columbia, SC 29206  
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 (Attorney for Defendant Interinsurance Exchange  
 of the Automobile Club)  
 (843) 662-3258

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

**CERTIFICATE OF SERVICE**  
**(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:

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(Attorney for Kevin Carter and Richard Davis)

David R. Sligh  
P.O. Box 2116  
Myrtle Beach, SC 29578  
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Collins & Lacy, PC  
1330 Lady Street, 6<sup>th</sup> Floor (29201)  
Post Office Box 12487  
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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: 

Boca Raton, Florida  
November 15, 2018

FAX  
Cover Sheet

November 27, 2018

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

**RECEIVED**

NOV 27 2018  
SC Court of Appeals

From: Heidi Gersten  
(323) 245-6142

Pages including this cover sheet 44

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

SOUTH CAROLINA Court of Appeals  
Clerk of Court  
ATTN: Jenny Abbott KITCHINGS  
1220 Senate Street  
COLUMBIA, South CAROLINA 29201  
PHONE (803) 734-1890  
FAX (855) 734-1839  
RE: New Appeal  
File No: 2018-AP-12-00074 AND 2018-CP-12-00117  
Priority Matter

RECEIVED  
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SC Court of Appeals

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 2530265482 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

7016 1A30 0001 4957 0670

7016 1A30 0001 4957 0702

7016 1A30 0001 4957 0730

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Street and Apt. No., or PO Box No.: Davidson & Catherine PA  
City, State, ZIP+4: P.O. Box 8568  
Columbia, SC 29202

PS Form 3800, April 2015 PSN 7530-02-000-0047 See Reverse for Instructions

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Letter  
 (Domestic)  
 (FLORENCE, SC 29502)  
 (Weight: 0 Lb 0.80 Oz)  
 (Estimated Delivery Date)  
 (Monday 11/19/2018)  
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 Return 1 \$2.75  
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 First-Class 1 \$0.50  
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 (Domestic)  
 (COLUMBIA, SC 29206)  
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 (Monday 11/19/2018)  
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 First-Class 1 \$0.50  
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 (Domestic)  
 (MYRTLE BEACH, SC 29578)  
 (Weight: 0 Lb 0.80 Oz)  
 (Estimated Delivery Date)  
 (Monday 11/19/2018)  
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 Return 1 \$2.75  
 Receipt  
 (@@USPS Return Receipt #)  
 (9590940243858190011305)

Total	\$47.11
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Cash	\$100.00
Change	(\$52.89)

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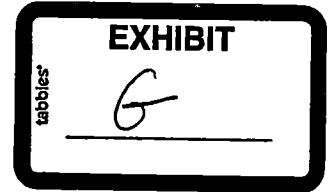


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DOWNTOWN BOCA RATON
170 NE 2ND ST
BOCA RATON
FL
33432-9998
1108640230
11/15/2018 (800)275-8777 5:07 PM
=====
Product      Sale      Final
Description  Qty       Price
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Mail
Letter
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(YORK, SC 29745)
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(Estimated Delivery Date)
(Monday 11/19/2018)
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(Weight:0 Lb 0.80 Oz)
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(Domestic)
(COLUMBIA, SC 29201)
(Weight:0 Lb 0.70 Oz)
(Estimated Delivery Date)
(Monday 11/19/2018)
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(9590940243858190011312)
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Mail
Letter
(Domestic)
(FLORENCE, SC 29503)
(Weight:0 Lb 0.80 Oz)
(Estimated Delivery Date)
(Monday 11/19/2018)
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(@@USPS Return Receipt #)
(9590940243858190011275)
First-Class  1         $0.50
Mail
Letter
(Domestic)
(FLORENCE, SC 29502)
=====

```

88403



NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

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

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

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NOV 29 2018

SC Court of Appeals

Kevin Carter, Richard Davis,  
Joseph Tirbovich, Nationwide  
Mutual Insurance Co., Respondents,  
Interinsurance Exchange of  
the Automobile Club, John  
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Daniel Hubbard Appellants.

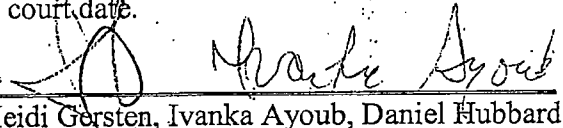
NOTICE OF APPEAL

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

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

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

November 15, 2018

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

Other Counsel of Record:

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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-12-00117/2018-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:

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By: 

Boca Raton, Florida  
November 15, 2018

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Heidi Gersten, IVANKA Ayoub,  
1438 W. LANTANA Rd.  
LANTANA, FL 33462



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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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