

89076

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

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 instructed 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.

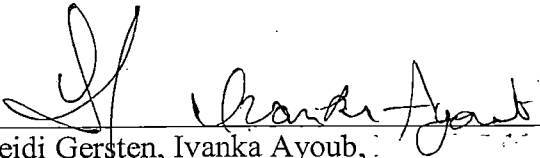
The Appellants urge the Court to allow proper communication between the deciding judges of this appeal and the Appellants, as their arguments are not without merit.

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

1. The Appellant Daniel Hubbard has not filed or served a Notice of Appeal.
 - A. The Appellants deny the truth of this allegation. Appellant Hubbard's signature is missing. The Court ought to permit an opportunity to correct this as the Court permitted the Respondent AAA to correct its error in submitting the improper court filing fee for said motion. To do otherwise demonstrates prejudice against the Appellants by the Court.
2. The Appellants Gersten and Ayoub have failed to prosecute their appeal by failing to comply with the Appellate Court rules.
 - A. The Appellants deny the truth of this allegation. The Appellants have complied with the Appellate Court rules.
3. The Appellants have not served or filed a notice of Appeal from the Order below dismissing all causes of action against Respondent AAA.
 - A. The Appellants deny the truth of this allegation. The Appellants timely served and filed a notice of Appeal as stated by the Appellate Court rules.

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

Respectfully submitted this 14th day of February 2019,


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

Lantana, FL 33462
(323) 245-6142
(561) 756-9820 FAX
hanginhangout@gmail.com

Boca Raton, Florida
February 14, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

Appellate Case No: 2019-002115

RECEIVED
FEB 19 2019
SC Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard,Plaintiffs,

Heidi Gersten, Ivanka Ayoub,Appellants.

v.

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

AFFIDAVIT OF APPELLANT HEIDI GERSTEN

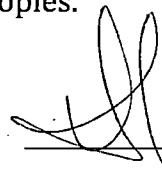
Heidi Gersten, Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142
(561) 756-9820 FAX
hanginhangout@gmail.com
Appellants

STATE OF FLORIDA,
SS:
COUNTY OF PALM BEACH,

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

1. I am the Appellant herein, and have read the foregoing Amended Return and/or Objection/or Opposition and/or Response to the Respondent Interinsurance Exchange of the Automobile Club's Motion to Dismiss Appeal, which includes all pages attached and know the contents thereof, that the same is true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters, I believe them to be true.
2. The facts stated herein are personally known to me and I have first-hand knowledge thereof and to those facts that are in addition stated are based on information and belief.
3. If called upon to do so, I would and could competently testify to hereto under oath in a court of law operation under the laws of the State of South Carolina and the United States Constitution.
4. The date the Notice of Appeal was timely served and filed on Respondent Interinsurance Exchange of the Automobile Club was November 15, 2018.
5. The proposed orders were allegedly signed before the Appellants had an opportunity to review them for accuracy.
6. The allegedly signed orders contain numerous errors that will be discussed in the Brief of the Appellants.
7. The Appellates' Motion to Alter or Amend a Judgment or Relief from Judgment or Order filed May 8, 2018 may have been ruled on October 16, 2018 by Honorable Judge Hayes III.
8. I was paralyzed as a result of the collision in controversy.
9. It is unfair to hold me to the same standards as able-bodied people.
10. The American Disabilities Act applies to me.
11. The Doctrine of Equitable Tolling may also be applied to my circumstances.

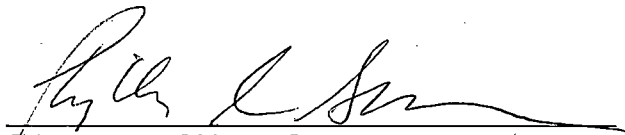
12. A Motion to Amend the Complaint With Leave was filed before the alleged orders in controversy were allegedly signed by the presiding judge and were on the calendar for a ruling until this Appeal stayed the trial court.
13. Interinsurance Exchange of the Automobile Club is not a third-party to me.
14. I was insured for over 50 times the minimum coverage mandated by law with Interinsurance Exchange of the Automobile Club.
15. There is a breach of contract between the Respondent Interinsurance Exchange of the Automobile Club and I, among other things.
16. I am without a caregiver.
17. I urge the Court to deny this Motion to Dismiss Appeal made by the Respondent Interinsurance Exchange of the Automobile Club. Let the merits of the upcoming brief shine a light on the facts of this matter.
18. I authenticate the documents submitted in this Amended Return and/or Objection and/or Opposition and and/or Response to the said Motion to Dismiss Appeal as true and accurate copies.



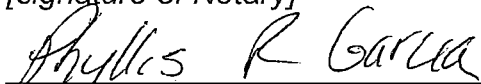
Heidi Gersten
1438 W. Lantana Rd. #330,
Lantana, FL 33462

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

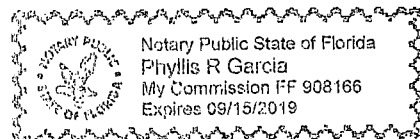
[Notary Seal:]



[signature of Notary]



[typed name of Notary]



NOTARY PUBLIC

My commission expires: 09/15/20, 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
FEB 19 2019
SC Court of Appeals

Appellate Case No: 2019-002115

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard,Plaintiffs,

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard,Appellants.

v.

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

AFFIDAVIT OF APPELLANT HEIDI GERSTEN

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

STATE OF FLORIDA,

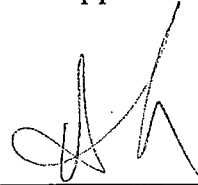
SS:

COUNTY OF PALM BEACH,

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

1. I am the Appellant herein, and have read the foregoing Objection/or Opposition and Response to the Respondent Interinsurance Exchange of the Automobile Club's Motion to Dismiss Appeal, which includes all pages attached and know the contents thereof, that the same is true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters, I believe them to be true.
2. The facts stated herein are personally known to me and I have first-hand knowledge thereof and to those facts that are in addition stated are based on information and belief.
3. If called upon to do so, I would and could competently testify to hereto under oath in a court of law operation under the laws of the State of South Carolina and the United States Constitution.
4. The date the Notice of Appeal was timely served and filed on Respondent Interinsurance Exchange of the Automobile Club was November 15, 2018.
5. The proposed orders were allegedly signed before the Appellants had an opportunity to review them for accuracy.
6. The allegedly signed orders contain numerous errors that will be discussed in the Brief of the Appellants.
7. The Appellates' Motion to Alter or Amend a Judgment or Relief from Judgment or Order has yet to be ruled on.
8. I was paralyzed as a result of the collision in controversy.
9. It is unfair to hold me to the same standards as able-bodied people.
10. The American Disabilities Act applies to me.
11. The Doctrine of Equitable Tolling may also be applied to my circumstances.
12. A Motion to Amend the Complaint With Leave was filed before the alleged orders in controversy were allegedly signed by the presiding judge and were on the calendar for a ruling until this Appeal stayed the trial court.

13. Interinsurance Exchange of the Automobile Club is not a third-party to me.
14. I was insured for over 50 times the minimum coverage mandated by law with Interinsurance Exchange of the Automobile Club.
15. There is a breach of contract between the Respondent Interinsurance Exchange of the Automobile Club and I, among other things.
16. I am without a caregiver.
17. I urge the Court to deny this Motion to Dismiss Appeal made by the Respondent Interinsurance Exchange of the Automobile Club. Let the merits of the upcoming brief shine a light on the facts of this matter.
18. I authenticate the documents submitted in this Objection and/or Opposition and Response to the said Motion to Dismiss Appeal as true and accurate copies.



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

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

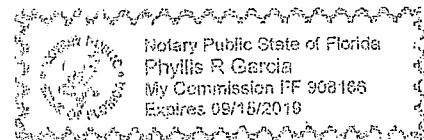
[Notary Seal:]



[signature of Notary]



[typed name of Notary]



NOTARY PUBLIC

My commission expires: 09/15, 2019.

TABLE OF CONTENTS

Claimants' Objection and Opposition to Defendant Interinsurance Exchange of The Automobile Club's Motion to Dismiss and Request for Oral Hearing	12
Notice of Motion and Plaintiffs' Motion to Alter or amend a Judgment or Relief From Judgment or Order filed May 8, 2018	20
Notice of Motion and Plaintiffs' Motion to Alter or amend a Judgment or Relief From Judgment or Order filed October 8, 2018	28
Honorable Judge Hayes unsigned order	51
Receipt and Proof of Payment of Transcript Ordered	54
Proof of Mailing of Arbitration Filing to Clerk of Court February 14, 2018	56
Notice of Motion Scheduling-Motion to Alter or Amend a Judgment or Relief From Judgment or Order- August 07, 2018 for September 5, 2018 Hearing	57
Notice of Motion Scheduling- Motion/Amend Complaint With Leave- December 27, 2018 for January 30, 2019 Hearing	58
Notice of Motion Scheduling- Motion/Alter and/or Amend a Judgment or Relief From Judgment or Order- December 27, 2018 For January 30, 2019 Hearing	59
Notice of Motion Scheduling- Motion/Claimants' Motion To Alter or Amend a Judgment or Relief from Judgment or Order- December 27, 2018 For January 30, 2019 Hearing	60
Memorandum of Points and Authorities in Support of 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	61

STATE OF SOUTH CAROLINA

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

In the matter of Arbitration between

Case number 2018-~~A~~P-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

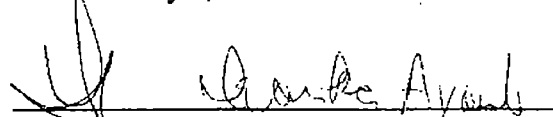
20 MAY - 8 P 2:52

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), SCRPC** 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 inviolate 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 in question 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. Myers, 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; Bengel 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), SCRCF, 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), SCRCF, 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), SCRCF, 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...

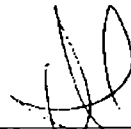
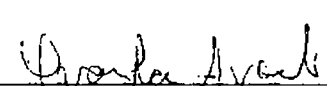
The Claimants have no objection to the Defendants being severed from the remaining Defendants if it pleases the court, although a legal determination explaining the specific reasons for doing so is requested should this happen.

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.

Respectfully submitted,

Dated this 6th day of May, 2018



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

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Heidi Gersten, Ivanka Ayoub

Plaintiff,

vs.

Kevin Carter, Richard Davis, Joseph Tirbovich,
Nationwide Mutual Ins. Co., Interinsurance
Exchange of the Automobile Club, John
Ammendola, Trustgard Ins. Co.,

Defendant.

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

CASE NO.: 2018 -CP-12-00074

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

FILED

MAY - 8 P 2:52

CLERK OF COURT
CHESTER CO S.C.

Plaintiff's Attorney:

_____, Bar No. _____

Address:

Phone: _____ Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

Wesley Brian Sawyer, Esquire, Bar No. 100229

Address:

4406 Forest Drive #B

Columbia, SC 29206

Phone: (803) 782-4100 Fax _____

E-mail: _____ Other: _____

(Attorney for Defendants Carter and Davis)

Peter H. Dworjanyn, Esquire, Bar No. 12950 and

Michael R. Burchstead, Esquire, Bar No. 73770

1330 Lady Street, 6th Floor

Columbia, SC 29201

Phone:

E-mail: pdworjanyn@collinsandlacy.com

mburchstead@collinsandlacy.com

(Attorneys for Trustgard Insurance Company)

John Ammendola

671 S. High St.

Columbus, Ohio 43206

Reynolds Williams, Bar No: 006153

P.O. Box 1909

Florence, SC 29503-1909

Phone: (843) 662-3258 Fax: (843) 662-1342

E-mail: Reynolds@WillcoxLaw.com

(Attorney for Defendant Interinsurance Exchange of
the Automobile Club)

David R. Sligh, Bar No. 77493

P.O. Box 2116

Myrtle Beach, South Carolina 29578

Phone: (843) 213-5519 Fax: (843) 213-5619

E-mail: dsligh@turnerpadget.com

Alexander S. Gogsette, SC Bar No. 101244

P.O.Box 5478

Florence, South Carolina 29502

Phone: (843) 656-4454 Fax: (843) 413-5852

	E-mail: AHogsette@turnerpadget.com (Attorneys for Defendants Nationwide Mutual Insurance Company and Joseph Tirbovich)
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: <u>Motion to Alter or Amend a Judgment or Relief from Judgment or Order</u> Estimated Time Needed: <u>1/2 hour</u> 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	Date submitted <u>May 8, 2018</u>
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: \$ _____	

 CLERK OF COURT
 DISTRICT CO. S.D.
 2018 MAY -8 P 2:52

STATE OF SOUTH CAROLINA

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

In the matter of Arbitration between

Case number 2018-~~A~~P-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.

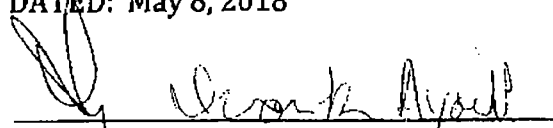
FILED
MAY - 8 P 2:52

CLERK OF COURT
CHESTER CO S.C.

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

Respectfully submitted,

DATED: May 8, 2018


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

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

I. INTRODUCTION

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

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

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

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

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

The Order and Judgment is void for the following reasons:

II. LAW AND ARGUMENT

This is an Alternative Dispute Resolution matter.

Title 38, Chapter 77, Article 7 of the South Carolina Code of Laws SECTION 38-77-730. Request for arbitration; no formal pleading and process; arbitration docket; filing of claim; service of summons to defendant.

(a) Any person who is a party to the disputed property damage liability claim may submit his claim for determination through arbitration. No formal pleading or process is required. The clerk of court of each county shall prepare and keep an arbitration docket and set the cases thereon for arbitration as provided by law for the settling of cases in the court of common pleas.

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

This procedure is inviolate 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), SCRCF, 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.

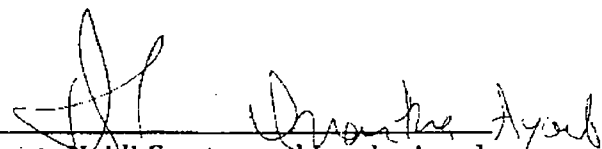
This request by no means prejudices the Defendants. It is made in the interest of justice and to prevent its miscarriage. For the ease of everyone involved in this matter, the Claimants request the Court to set the oral hearing on this motion to be set at least 30 days in advance and suggest scheduling 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.

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

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

Respectfully submitted,

Dated this 8th day of May, 2018


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

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

FILE NO: 2018-CP-12-00117

HEIDI GERSTEN, IVANKA AYOUB
DANIEL HUBBARD

PLAINTIFFS

vs.

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

Defendants

NOTICE OF MOTION AND
PLAINTIFFS' MOTION TO ALTER OR
AMEND A JUDGMENT OR RELIEF FROM
JUDGMENT OR ORDER
Pursuant to Rules 52, 59(e), 60(4), SCRCP,
AND
REQUEST FOR ORAL HEARING

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

CLERK OF COURT
CHESTER CO S.C.

2018 OCT -8 A 9:32

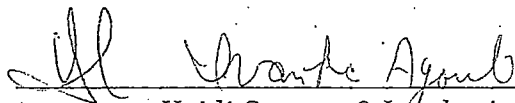
FILED

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

order to alter or amend judgments or relief from judgments or orders made by Honorable Judge John Hayes on September 5, 2018 pursuant to Rules 52, 59 (e) and/or 60(4), SCRCF, 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

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

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

2018 OCT - 8 A 9:32

CLERK OF COURT
CHESTER CO S.C.

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), SCRPC**.

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

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

The Order and Judgment is void for the following reasons:

II. LAW AND ARGUMENT

This is an Alternative Dispute Resolution matter.

Title 38, Chapter 77, Article 7 of the South Carolina Code of Laws SECTION 38-77-730. Request for arbitration; no formal pleading and process; arbitration docket; filing of claim; service of summons to defendant.

(a) Any person who is a party to the disputed property damage liability claim may submit his claim for determination through arbitration. No formal pleading or process is required. The clerk of court of each county shall prepare and keep an arbitration docket and set the cases thereon for arbitration as provided by law for the settling of cases in the court of common pleas.

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

This procedure is inviolate 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), SCRCF, 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 intact 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 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 that 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 SCRCF 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 SCRCF 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 care 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.

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

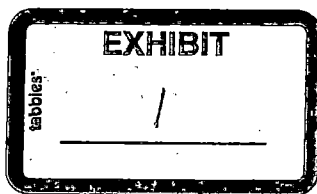
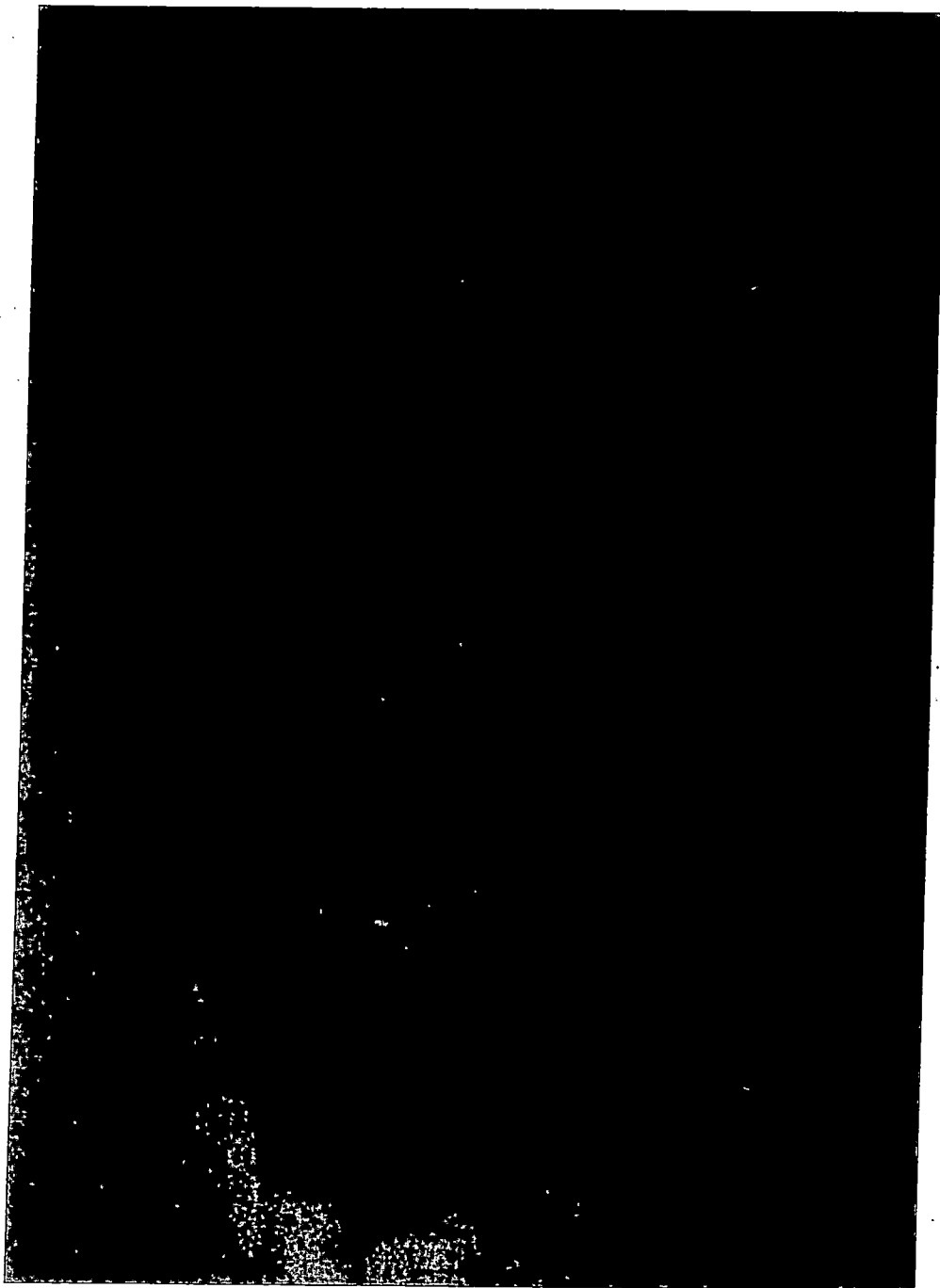
 Heidi Gersten

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

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

CLERK OF COURT
CHESTER CO S.C.

2018 OCT -8 A 9:32

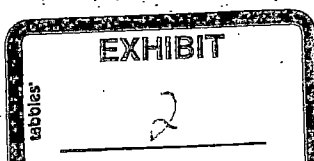




CLERK OF COURT
CHESTER CO S.D.

2010 OCT -8 A 9:33

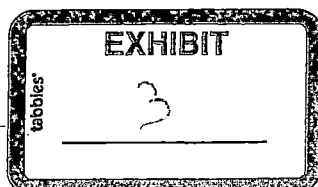
FILED



42



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



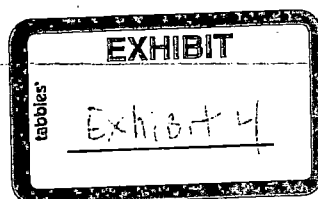
37. 43



FILED

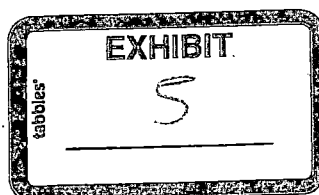
2010 OCT -9 A 9:33

CLERK OF COURT
CHESTER CO S.C.



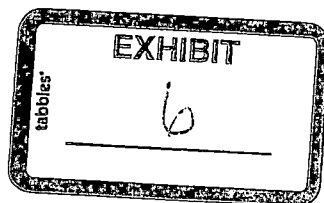


FILED
CLERK OF COURT
CHESTER CO. S.C.
2018 OCT -8 A 9:33





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



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

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

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

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?





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

TEMP RETURN SERVICE REQUESTED

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

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



RUSTGARD INSURANCE COMPANY

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

Disbursement Reason
FULL AND FINAL SETTLEMENT OF THE TOTAL

IVANKA AYOUB 34-931 LANSING INSURANCE AGENCY INC

Claimant Name
IVANKA AYOUB

FILED
10010000010000101

2010 OCT -8 A 9:33

CLERK OF COURT
CHESTER CO S.C.

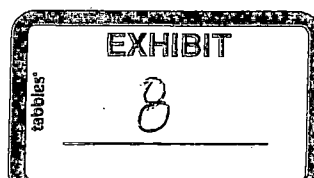
004 (10-2012)

DETACH THIS PORTION BEFORE CASHING

Insurance Companies		TRUSTGARD INSURANCE COMPANY		No. 706238460	
x 1218 us, Ohio 43216-1218				412	
FULL AND FINAL SETTLEMENT OF THE TOTAL		Branch #	Policy#	Agent #	Date
		444	PPT 9970193	34-931	04/18/2018
Source: CLMHO	Claim #: APV001860444	Date of Loss: 03-19-2015			
THREE THOUSAND, ONE HUNDRED NINETY-SIX AND 00/100 — DOLLARS					
THE ER • IVANKA AYOUB 1438 W LANTANA RD APT 330 LANTANA FL 33462					
Bank, Ashland, OH 70		PLEASE CASH PROMPTLY			

Amount: 3,196.00

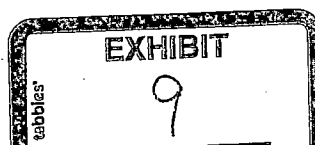
[Signature]
[Signature]





2018 OCT - 8 A 9 33

CLERK OF COURT
CHESTER CO S.C.



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

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

Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
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 TEODESCHI

Boca Raton, Florida
October 1, 2018

CLERK OF COURT
CHRISTOPHER S.C.

FILED
OCT-8 A 932

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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

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.



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



CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT
FOR IMPORTANT CLAIM
INFORMATION

NOT
NEGOTIABLE

Pay to

Al & J. H. Kins

Address

5116 Cassingham Dr.

Ind. M. 2nd, SC 29707

KEEP THIS
RECEIPT FOR
YOUR RECORDS

Serial Number

24987297690

Year, Month, Day

2018-09-29

Post Office

334320

Amount

\$120.45

Clerk

U.S. Postal Service
CERTIFIED MAIL

Postage and Fees

FORT HILL, SC 29707

Postage and Fees \$3.45

Postage and Fees \$2.75

Postage and Fees \$0.00

Postage and Fees \$0.00

Postage and Fees \$0.00

Postage and Fees \$0.00

Postage and Fees \$0.00

Postage and Fees \$0.00

Postage and Fees \$0.00

Postage and Fees \$0.00

Postage and Fees \$0.00

Postage and Fees \$0.00

Postage and Fees \$0.00

Postage and Fees \$0.00

2498 0360 0002 2449 6372

Mike West

Slip Cassingham

Ind. M. 2nd

69

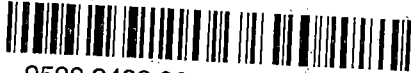
54

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mike Watkins
5116 Cressingham Dr.
Indian Land, SC 29707



9590 9402 2856 7069 5487 12

2. Article Number (Transfer from service label)

7018 0360 0002 2449 6372

PS Form 3811, July 2015 PSN 7530-02-000-9053

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? If YES, enter delivery address below:

☐ Yes

☒ 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

Domestic Return Receipt

40

96

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:

CLUSTER COUNTY CLERK OF COURTS
ATTN: COMMON PLEAS
P.O. DRAWER 580
CLUSTER, SC 29706



9590 9402 2056 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

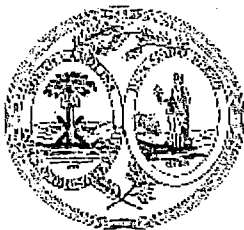
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

NOTICE OF MOTION SCHEDULING

STATE OF
SOUTH CAROLINA

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 AM 140 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:

Heidi Gersten

Court Info:

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

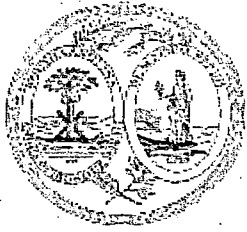
Respectfully,

Sue K. Carpenter
Clerk of Court

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:
Heidi Gersten

Court Info:
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,

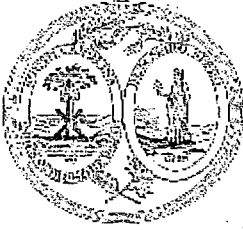
Sue K. Carpenter
Clerk of Court

58

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:

Heidi Gersten

Court Info:

Clerk of Court
PO Drawer 500
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

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:

Heidi Gersten

Court Info:

Clerk of Court
PO Drawer 533
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

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

STATEMENT OF FACTS

On February 14, 2018, the Appellant Gersten overnigheted 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 relevance 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 Appellants' Brief.

A consolidation ruling was obtained by the Appellants on-line through the Court's website as well as a note from the judge to Appellate Gersten instructing her that she "needs an attorney". The Appellants are unaware of any law that requires a litigant to hire an attorney. For this reason which will also be fully explained in the Appellants' Brief, the Appellants have been prejudiced. A timely Notice of Motion and Plaintiffs' Motion to Alter or Amend a Judgment or Relief from Judgment or Order the alleged consolidation ruling was filed and served on May 8, 2018 and to this date has not been ruled on, as also evidenced by the transcript that the Appellants ordered, paid for and received from the court reporter prior to filing the Notice of Appeal. The Respondent AAA has not offered proof of any ruling made as to the Appellants' motion regarding the April 2018 consolidation ruling which was made without notice to either party to allow an opportunity for objections.

The October 18, 2019 Notice of Appeal was not filed, as the timely Notice of Motion and Plaintiffs' Motion to Alter or Amend a Judgment or Relief from Judgment or Order tolled the time to file it. The November 15, 2018 Notice of Appeal permits the Court jurisdiction to

examine this controversy.

The Appellants' ought not be subjected to serving or filing a return to the Respondent AAA's Motion to Dismiss Appeal on the grounds that it did not follow SCACR, which includes, but is not limited to, not having the correct case number listed in the caption on its motion document.

The Respondent AAA repeatedly alleges that the Appellants did not order the transcript, when in truth and fact they did. The Appellants deny the allegation that Respondent AAA makes in stating that the Appellants did not order the transcript.

The Appellants object to the inclusion of the Affidavit of Reynolds Williams (page 4 of the Respondent AAA's Motion to Dismiss Appeal) as evidence on the grounds that it is hearsay and not authenticated. This said Affidavit of Reynolds Williams contains no official state stamp or embossing to validate that it is genuine or a true certified document, it simply isn't properly notarized. 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 bias against the Appellants. The attached order has numerous inaccuracies that will be addressed in the Appellants' brief, explaining fully the reasons and/or grounds for their objections.

Pages 16-19 of the Respondent AAA's Motion to Dismiss Appeal are a part of the Appellants' timely filed Notice of Motion and Plaintiffs' Motion to Alter or Amend a Judgment or Relief from Judgment or Order. Appellants have included the complete motion for the Court's review.

NOTE: This was arbitrarily ruled on and denied without oral hearing or legal determination as to where the Court based its decision from. The filing of this motion tolled the time to file a Notice of Appeal according to SCACR rules. Another Motion to Alter or Amend A Judgment or Relief from Judgment or Order was timely served and filed and a ruling has not been made on it.

Included with these documents is the unsigned copy of the order of Honorable John C. Hayes III which states, "As to the order of September 5, 2018, Plaintiff's motion of October 8, 2018 is denied without a hearing. Said order does not violate plaintiffs' due process rights under the Constitution of the United States or South Carolina." The Plaintiffs are unclear as to which order the judge is referencing on September 5, 2018 as many were alleged to have been made and referenced in the Plaintiffs' timely motion. There is no legal determination made. Also the clock for serving a timely motion for appeal is uncertain as there are rulings that have not been made at the lower court. If anything, this appeal may be premature.

NOTE: An amended complaint was served before the Honorable Judge Hayes allegedly signed any orders.

Page 20 of the Respondent AAA's Motion to Dismiss Appeal is a document not signed by a judge and the Appellants object to its inclusion as evidence as on its face it is hearsay evidence. This said document that purports to be an order fails to give the basis or grounds for the decision claimed to be made.

Electronic Filing also known as E-filing is unconstitutional 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-efficiency 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.

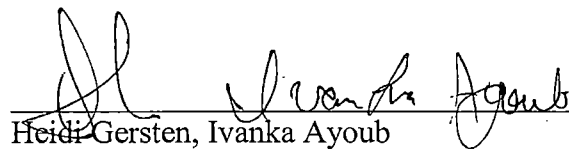
On page 31 of the Respondent AAA's Motion to Dismiss Appeal, the Respondent AAA accurately states that the date of the Notice of Appeal is October 18, 2018. Any further discussion of this Notice of Appeal is moot as it is not the subject of the Appeal before the Court today.

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

bb

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

RECEIVED
FEB 19 2019
SC Court of Appeals

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

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

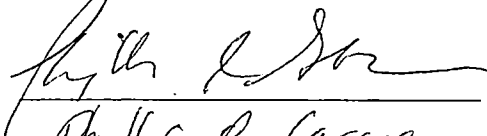
Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
Collins & Lacy, PC
1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company)

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

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

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

By:


Phyllis R Garcia

Boca Raton, Florida
February 14, 2019

February 14, 2019
1438 W. Lantana Rd., #330
Lantana, FL 33462

RECEIVED
FEB 19 2019
SC Court of Appeals

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

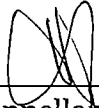
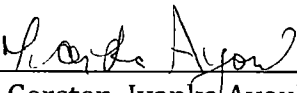
RE: Appellate Case No.: 2018-002115

Dear Ms. Kitchings:

Good day to you.

Please find an enclosed U.S. postal money order in the amount of \$50.00 for the enclosed original Motion For the Court To Accept This Document As Timely With or Without Leave of Court, along With Amended Return, along with 7 copies. Please file the original and return a file-stamped copy in the pre-paid postage envelope provided. Thank you for your time regarding this matter.

Respectfully submitted,



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

HG/Enclosures

HILD, GERSTEN, IVANKA AYOUB
1438 W. LANTANA Rd. #330
LANTANA, FL 33462



7018 2290 0000 6628 1727



1004



29211

U.S. POSTAGE PAID
PM 2-Day
BOCA RATON, FL
33432
FEB 14, 19
AMOUNT

\$18.60

R23039102610-09

RECEIVED

FEB 19 2019

SC Court of Appeals

RETURN RECEIPT
REQUESTED

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

**PRIORITY[®]
MAIL**

USPS.COM[®]
2018

United States
Postal Service[®]

This product is for use with Priority Mail.
Misuse may be a violation of Federal law.
This label is not for reuse.

**PRIORITY[®]
MAIL**

VISIT US AT USPS.COM[®]
Label 106A, Nov 2018

United States
Postal Service[®]

This product is for use with Priority Mail.
Misuse may be a violation of Federal law.
This label is not for reuse.

**PRIORITY[®]
MAIL**

VISIT US AT USPS.COM[®]
Label 106A, Nov 2018

United States
Postal Service[®]

This product is for use with Priority Mail.
Misuse may be a violation of Federal law.
This label is not for reuse.