

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

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

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Appellate Case No: 2019-002115

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**RECEIVED**  
MAR 12 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

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AFFIDAVIT OF APPELLANT HEIDI GERSTEN

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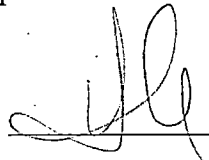
Heidi Gersten, Ivanka Ayoub  
1438 W. Lantana Rd., #330  
Lantana, FL 33462  
(323) 245-6142  
(561) 756-9820 FAX  
[hanginhangout@gmail.com](mailto:hanginhangout@gmail.com)  
Appellants

**STATE OF FLORIDA,**  
**SS:**  
**COUNTY OF PALM BEACH,**

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

1. I am the Appellant herein, and have read the foregoing Return to the Respondents Kevin Carter and Richard Davis' Motion to Dismiss Appeal, which includes all pages attached, including, but not limited to, the letter to the Court dated March 7, 2019 and know the contents thereof, that the same is true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters, I believe them to be true.
2. The facts stated herein are personally known to me and I have first-hand knowledge thereof and to those facts that are in addition stated are based on information and belief.
3. If called upon to do so, I would and could competently testify to hereto under oath in a court of law operating under the laws of the State of South Carolina and the United States Constitution.
4. The date the Notice of Appeal was timely served and filed on Respondents Kevin Carter and Richard Davis was November 15, 2018.
5. The proposed orders were allegedly signed before the Appellants had an opportunity to review them for accuracy.
6. The allegedly signed orders contain numerous errors that will be discussed in the Brief of the Appellants.
7. The Appellates' Motion to Alter or Amend a Judgment or Relief from Judgment or Order filed May 8, 2018 may have been ruled on October 16, 2018 by Honorable Judge Hayes III.
8. I was paralyzed as a result of the collision in controversy with the Respondent Kevin Carter and the Respondent Richard Davis co-owned the vehicle involved.
9. It is unfair to hold me to the same standards as able-bodied people.
10. The American Disabilities Act applies to and protects me.
11. The Doctrine of Equitable Tolling may also be applied to my circumstances.

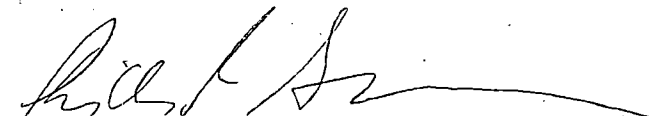
12. A Motion to Amend the Complaint With Leave was filed before the alleged orders in controversy were allegedly signed by the presiding judge and were on the calendar for a ruling until this Appeal stayed the trial court.
13. I received the only signed order made by Honorable Judge Gibbons on January 2019. (Exhibit 1)
14. I am without a caregiver.
15. I urge the Court to deny this Motion to Dismiss Appeal made by the Respondents Kevin Carter and Richard Davis. Let the merits of the upcoming brief shine a light on the facts of this matter.
16. I authenticate the documents submitted in this Return to the said Motion to Dismiss Appeal as true and accurate copies.



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

Subscribed and sworn to before me, this <sup>14<sup>th</sup></sup> ~~14<sup>th</sup>~~ <sup>March</sup> day of February 2019.

[Notary Seal:]

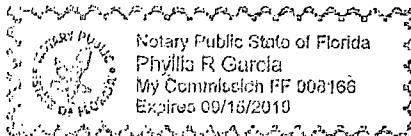


[signature of Notary]

Phyllis R Garcia  
[typed name of Notary]

NOTARY PUBLIC

My commission expires: September 15 2019



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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-12-00117  
2018-AP-12-00074  
CP

Heidi Gersten et al

Kevin Carter et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. ~~The issues have been tried or heard and a decision rendered.~~  See Page 2 for additional information. *(Administrative Matter) So*
- 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: This matter is currently scheduled for numerous motion hearings on January 30, 2019. On November 29, 2018, the Plaintiffs filed a Notice of Appeal with the S.C. Court of Appeals. As such, this matter is stayed pursuant to Rules 205 and 241 of the SCACR. The hearings scheduled for January 30, 2019 are therefore continued until such time as this Court has jurisdiction again.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

EXHIBIT 1

4



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

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

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Appellate Case No: 2019-002115

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

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

v.

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

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APPELLANTS' RETURN TO RESPONDENTS CARTER AND  
DAVIS' MOTION TO DISMISS APPEAL AND MOTION FOR THE  
COURT TO ACCEPT THIS DOCUMENT AS TIMELY WITH OR  
WITHOUT LEAVE OF COURT

---

Heidi Gersten, Ivanka Ayoub  
1438 W. Lantana Rd., #330  
Lantana, FL 33462  
(323) 245-6142  
(561) 756-9820 FAX  
[hanginhangout@gmail.com](mailto: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 Respondents Kevin Carter and Richard Davis ('Respondents Carter and Davis') on January 31, 2019 and received on February 13, 2019. A Motion for an extension to serve and file the Appellants return was made on February 14, 2019. Due to insufficient amount of time to accurately perfect the return to the Respondents Carter and Davis' 64 unpaginated pages of their motion to dismiss, coupled with their disabilities, the Appellants require more time to amend this return.

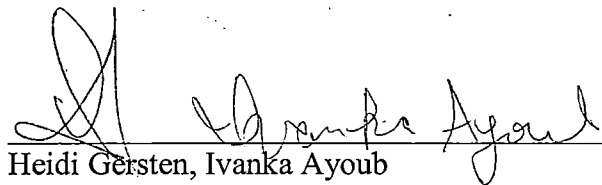
This Return had no chance to comply with rules regarding its timeliness since it was received 13 days after the date of the motion.

The Appellants hereby move this Court to accept this document as timely.

The Respondents Carter and Davis' sole argument is based on the allegation that the Appellants' Notice of Appeal is untimely. The letter to the Court dated March 7, 2019, included, should shed some light.

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

Respectfully submitted this 7<sup>th</sup> day of March 2019,



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

Boca Raton, Florida  
March 7, 2019

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHESTER COUNTY  
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Honorable John C. Hayes III, Circuit Court Judge  
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GMC, Unknown John Does, .....Respondents

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
APPELLANTS' RETURN TO RESPONDENTS CARTER AND  
DAVIS' MOTION TO DISMISS APPEAL AND MOTION FOR THE  
COURT TO ACCEPT THIS DOCUMENT AS TIMELY WITH OR  
WITHOUT LEAVE OF COURT

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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 timely filed and served and to this date has not been ruled on, as also evidenced by the transcript that the Appellants ordered, paid for and received from the court reporter prior to filing the Notice of Appeal. The Respondents Carter and Davis have not offered proof of any ruling made as to the Appellants' motion regarding the April 2018 consolidation ruling which was made without notice to either party to allow an opportunity for objections.

The November 15, 2018 Notice of Appeal permits the Court jurisdiction to examine this controversy.

The Appellants' ought not be subjected to serving or filing a return to the Respondents Carter

and Davis' Motion to Dismiss Appeal on the grounds that it did not follow SCACR, which includes, but is not limited to, not having the correct case number listed in the caption on its motion document.

The Respondents Carter and Davis' sole argument revolves around their accusation that the Appellants Notice of Appeal was untimely, when in truth and fact it is timely. The Appellants deny the allegation that Respondents Carter and Davis' AAA make in stating that the Appellants did not timely serve and file a Notice of Appeal.

The Appellants object to the inclusion of the Affidavit of Wesley Sawyer as evidence on the grounds that it is hearsay and not authenticated. This said Affidavit of Wesley Sawyer contains no official state stamp or embossing to validate that it is genuine or a true certified document, it simply isn't properly notarized. The Affidavit of Wesley Sawyer is not based on first-hand personal knowledge nor does it claim to be.

The Appellants request more time to Amend this motion. Ten (10) days from March 7, 2019 would be March 17, 2019, to sufficiently and adequately address the multiple errors made by the Respondents Carter and Davis. This return in made in a good faith effort to comply with the previously underestimated motion for extension of time.

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

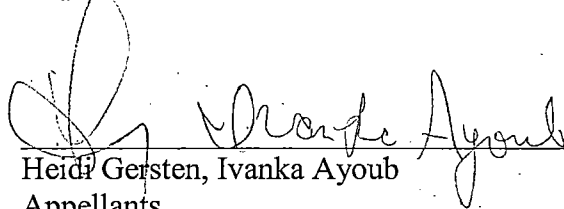
Included with these documents is the only signed order the Appellants have received. Please refer to the letter to the Court dated March 7, 2019.

Also the clock for serving a timely motion for appeal is uncertain as there are rulings that have not been made at the lower court. If anything, this appeal may be premature.

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

For these reasons, and the reasons to be submitted in the forthcoming Appellants' Brief, the Court has jurisdiction as the Notice of Appeal was timely served and filed per SCACR rules.

Respectfully submitted this 7<sup>th</sup> day of March 2019,



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

Boca Raton, Florida  
MARCH 7, 2019

RECEIVED

MAR 12 2019

SC Court of Appeals

CERTIFICATE OF SERVICE  
(Appellate Case No: 2019-002115)

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: Appellate Case No: 2019-002115 APPELLANTS' NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS ALONG WITH A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 2019 along with letter to the Court dated March 7, 2019, and Exhibits A, B, AFFIDAVIT OF APPELLANT HEIDI GERSTEN and Exhibit 1, APPELLANTS' RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND MOTION FOR THE COURT TO ACCEPT THIS DOCUMENT AS TIMELY WITH OR WITHOUT LEAVE OF COURT, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANTS' RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND MOTION FOR THE COURT TO ACCEPT THIS DOCUMENT AS TIMELY WITH OR WITHOUT LEAVE OF COURT, by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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

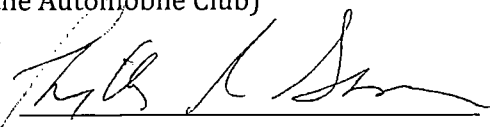
David R. Sligh  
P.O. Box 2116  
Myrtle Beach, SC 29578  
(Attorney for Nationwide Mutual Ins. Co)

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

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

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

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

By: 

Boca Raton, Florida  
March 7, 2019

✓

Heidi Gersten, Ivanka Ayoub  
1433 W. Lantana Rd #330  
Lantana, FL 33462



7018 2290 0000 6828 0287



1004



29211

U.S. POSTAGE PAID  
PM 2-Day  
BOCA RATON, FL  
33432  
MAR 07, 19  
AMOUNT  
**\$15.75**  
R2305K143038-07

RETURN RECEIPT  
REQUESTED

RECEIVED

MAR 12 2019

SC Court of Appeals

**PRIORITY MAIL**  
VISIT US AT USPS.COM  
Label 1004, Nov 2018

United States  
Postal Service

This product is for use with Priority Mail.  
It does not include a label or return receipt.  
The label is not for sale.

**PRIORITY MAIL**  
VISIT US AT USPS.COM  
Label 1004, Nov 2018

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