

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

RECEIVED
MAY 29 2019
SC Court of Appeals

Appellate Case No: 2018-002115

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

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

v.

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

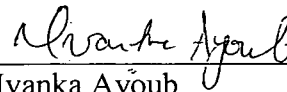
APPELLANTS' AMENDED RETURN TO RESPONDENTS
CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND
AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH
MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR
REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS
INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB,
KEVIN CARTER AND RICHARD DAVIS WITH LEAVE TO AMEND OR
MOTION FOR EXTENSION OF TIME TO SERVE AND FILE MOTION TO REINSTATE
APPEAL

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

The Appellants, Heidi Gersten, Ivanka Ayoub ('Appellants') move this Court for an order to accept this amended return of the Respondents Kevin Carter and Richard Davis' (Respondents') motion to dismiss appeal as timely and combine it with a motion for reinstatement and/or a petition for rehearing of the motions to dismiss, along with leave of court, if necessary, as the crux of the matter is about proving timeliness in regards to the Notice of Appeal and the Court's jurisdiction, taking into strong consideration Appellant Gersten's extraordinary circumstances and extreme hardships suffered as a result of the Respondents' gross negligence, pursuant to SCACR 263(b), 260(a) and 221, on the grounds of good cause shown as evidenced by the attached Affidavit of Heidi Gersten and Timeline of Events with Law and Arguments That Include a Memorandum of Points and Authorities That Prove Timeliness of Appellants' Notice of Appeal.

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

Respectfully submitted this 28th day of May 2019,



Heidi Gersten, Ivanka Ayoub
Appellants
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Boca Raton, Florida
May 28, 2019

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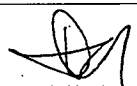
Heidi Gersten, Ivanka Ayoub, Daniel Hubbard,Plaintiffs,

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS WITH LEAVE TO AMEND OR MOTION FOR EXTENSION OF TIME TO SERVE AND FILE MOTION TO REINSTATE APPEAL


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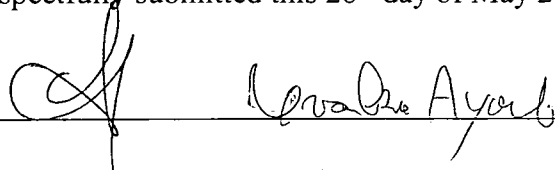
STATEMENT OF FACTS

The Appellants requested additional time to serve and file an amended return to the Respondents Carter and Davis' motion to dismiss appeal numerous times for good cause shown to sufficiently and adequately address the multiple errors made by the Respondents Carter and Davis. The return made in a good faith effort to comply with the previously underestimated calculations for extensions of time due to the Appellants, especially Appellant Gersten's, extraordinary circumstances and is permitted by **RULE 263(B), SCACR, EQUITABLE TOLLING** and **TITLE II OF THE AMERICAN DISABILITIES ACT**.

On May 16, 2019, the Appellants learned of the orders dated May 2, 2019 and May 14, 2019 on-line on the Court's Website. They did not 'receive' them from the mail or from an email or from personal service. In a good faith effort to comply, this motion is being made which is combined as a Return and/or Motion for Reinstatement and/or Petition for Rehearing. It is being made under duress in an attempt to follow the rules laid out in SCACR. To prevent the miscarriage of justice, these documents are being overnighted as well as faxed to the Court, as they are to be received by the Court within fifteen (15) days of the date of the filing of the orders. The May 14, 2019 order stems from the alleged non-compliance of the order of May 2, 2019 which is the subject of this motion(s). It is suggested to permit the Appellants to amend this motion in light of the good cause shown for not receiving the order in time to fully comply.

For these reasons, the reasons in the attached Affidavit of Heidi Gersten and all documents in the Court file and the Appellants' forthcoming Brief, . . . the Court has jurisdiction as the Notice of Appeal was timely served and filed per SCACR rules.

Respectfully submitted this 28th day of May 2019,



Heidi Gersten, Ivanka Ayoub
Appellants
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GMC, Unknown John Does,Respondents

AFFIDAVIT OF APPELLANT HEIDI GERSTEN

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Appellants

STATE OF FLORIDA,
SS:
COUNTY OF PALM BEACH,

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

1. I am the Appellant herein, and have read the foregoing Appellants' Motion to Reinstate Appeal as well as the attached Return to the Respondents Kevin Carter and Richard Davis' Motion to Dismiss Appeal With Leave and Petition for a Rehearing on said motion, which includes all pages attached, and know the contents thereof, that the same is true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters, I believe them to be true.
2. The facts stated herein are personally known to me and I have first-hand direct knowledge thereof and to those facts that are in addition stated are based on information and belief.
3. If called upon to do so, I would and could competently testify to hereto under oath in a court of law operating under the laws of the State of South Carolina and the United States Constitution.
4. The Appellants served and filed motions to extend time to amend their return to Kevin Carter and Richard Davis' motion to dismiss appeal on March 7, 18, 25, and April 5, 15, 25, 2019 and would have requested an additional extension on May 6, 2019, except due to mitigating circumstances, there were heavy thunderstorms that day that prevented the deadline from being met. (Exhibit 1)
5. I sat in my wheelchair with the paperwork that I was ready to turn in to comply with the 'motion for extension to file' rules when I heard the strike of thunder and looked outside and saw that it was raining heavily, with the sky very dark. With a heavy heart, I knew I would not be able to wheel to the post office and UPS store that day. I took a screenshot of the weather report that day at the time I was leaving. (Exhibit 1)
6. I became aware of the order dated May 2, 2019 on May 16, 2019, after I learned that the iPad I recently got was able to access the Court's website. I read said order online and in a good faith effort to comply under the South Carolina Appellate Civil Rules, **SCACR**, these motions and documents are being submitted. Prior to getting the iPad, I was unable to access the Court's website from my over 10 year old incompatible computer.

7. Had there not been thunderstorms on May 6, 2019, I would have been able to ride in my wheelchair to the post office and UPS store and the May 2, 2019 order would have been partially complied with as some of the information requested was in the documents that were anticipated to be served and filed that day. A new motion was being composed when the May 2nd and 14th orders were learned of.
8. In a frenzy to comply with the rules, a draft was written for a petition for rehearing and Henrietta from You've Been Served, LLC, processing service was contacted. I explained to her that the only way to have the documents received by May 17th, less than 24hrs of learning of the order, was to get the documents to her via computer and have her go in person to file them. I would not have been able to sign them since I don't have the technology to sign and then scan into my computer and office stores were closed at that hour. She brought up the fact that even if I could, she would only be bringing in a copy and not an original. Therefore, there was no real chance to comply with the order in such a short amount of time learning of it a day before its deadline nor correct the numerous errors that may be contained in it due to the very limited time to complete what is necessary to have it received by the Court within fifteen (15) days from the date of the order to prevent a remittitur being sent to the lower court or administrative tribunal in accordance with Rule 221. Hiring a process server to file in person appeared to be the only option at that point.
9. The petition for rehearing of the motion may be combined with the motion for reinstatement as they stem from the same issues.
10. I would also suggest that the Appellants' Return for the Respondents Kevin Carter and Richard Davis' motion for dismissal be combined when taking things under consideration since its' sole argument within the numerous unpaginated pages that are well over fifty (50) in count revolves around the sole issue of timeliness.
11. I called the Appellate Court on May 17, 2019 and spoke to Shelby who informed me that it wasn't necessary to do a petition for rehearing on the May 2, 2019 order however the May 14, 2019 triggered the time to do a motion to reinstate within 15 days being Wednesday, May 29, 2019.
12. In addition to being paralyzed, having an open phase 4 pressure wound on my left buttocks, phase 1 pressure wound on my right buttocks, living without a caregiver, litigating multiple lawsuits in multiple states without an attorney, having been the victim of numerous crimes, participating in a criminal pretrial conference as a subpoenaed victim, and the learning of the passing of my father under the cause of action of tortious interference with a dead body, I was was summoned as a juror for May 13, 2019, all this year. (Exhibit 3) (Proof of any of the foregoing is available upon request.)

13. Leave of court should be administered in favor of justice. There is plenty of good cause shown.
14. Patience is a judicial canon. I require much patience. What seems like plenty of time to an able body is a fraction of the time it takes me to do simple things. It took 7 months before I was finally able to get my bathroom accommodated to where I am now able to shower independently, to give an example of the amount of time it took to be at a standard of living that most people take for granted.
15. This is an effort to show the Court that the Appellants take this matter seriously and are diligently attempting to comply with the rules. The American Disabilities Act permit modifying court rules to accommodate me due to my disabilities and remains undefeated when an action has been brought forward under Title II. Appellants prefer not to file a federal complaint. Time is of the essence however health is an issue to take into consideration.
16. Words do not describe the horror of being unable to care for myself at my standards since this collision. I was the one who took care of others and demonstrated an unprecedented amount of courage, strength, wisdom, knowledge, love, compassion, forthrighteousness, tenacity, candor, intuition, empathy, endurance and love in my family however perhaps I lacked gratitude for myself. I took for granted the amazing person that I am.
17. Judge Zamore was the first public authority I faced through this process who infused me with inner solidity, repeating to me as I looked into his eyes, "You are worthy!" My whole life, no one has ever said those words to me. I'm happy that he stood behind a red, white and blue flag. He understood my pain. Yet he is bound by these words on paper, called law. I will find the right combination and when I do, I will unlock the key to my therapy and simple pleasure of pursuing every remedy available to me in order to obtain control of my body. I will walk again!
18. Judge Underwood was the first judge to issue an order in favor of granting me a continuance to a court date I received a day before a holiday weekend last year, giving me 3 days to find a ride as a paralyzed person who hadn't left her bed in months and travel over 800 miles in one direction to attend and declared me a victim in addition to Judge Zamore. I called the clerk and wrote an objection to Respondent/Defendant Kevin Carter's acceptance of a plea offer to reduce his DUI charge, which in truth and fact, qualifies to be a felony charge as a DUI with great bodily injury. It's no surprise he took the offer of a \$440 fine and reckless driving in front of my eyes. This game of lucky breaks because someone knows how to manipulate the law better is unbelievable. My entire experience of how challenging it is to get help to be made whole again is history in the making.

19. This process has taught me to be indifferent.
20. It may be hard to imagine for some, the enormous amount of effort it takes to do simple things that able-bodied people can do, such as use a toilet.
21. I live under extraordinary circumstances and with extreme hardships.
22. Attached to this affidavit is a 5 page document labeled **TIMELINE OF EVENTS WITH LAW AND ARGUMENTS THAT INCLUDE A MEMORANDUM OF POINTS AND AUTHORITIES THAT PROVE TIMELINESS OF APPELLANTS' NOTICE OF APPEAL** that prove:
 - A. April 26, 2018 – Alleged Unsigned Order -Judge Gibbons (pgs. -).
(Note: These are pages one (1) and two (2) of two (2) pages)
 - B. May 6, 2018 – Served and May 8, 2018 – Filed - Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRPC, and Request For Oral Hearing (pg.)
(Note: Only the top page is included as the proof of its timely filing is in question only at this stage and its contents will be discussed in the Appellants' upcoming brief. This motion was not ruled on nor was an order issued in response to it and will be further discussed in the Appellants' upcoming brief.)
 - C. May 8, 2018 – Served – Honorable Judge Gibbons
(Note: Appellant Gersten gave the document to Ruben Kirnos who gave the document to Mr. Atkinson, Chester County Clerk, who was instructed by Appellant Gersten to personally serve Judge Gibbons, from a rental car she was in, in front of the Chester County Courthouse, minutes prior to attending the sentencing of Respondent Carter at the Chester County Magistrate Court, after he was charged with DUI and she witnessed him plead guilty to reckless driving in front of Honorable Judge Yale Zamore.)
 - D. August 7, 2018 – Notice of Case Scheduling - Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRPC, and Request For Oral Hearing (pg.)
(Note: This motion was not ruled on nor was an order issued in response to it and will be further discussed in the Appellants' upcoming brief.)
 - E. August 25, 2018 – Served - Amended With Or Without Leave Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRPC, and Request For Oral Hearing (pgs. -)
 - F. August 29, 2018 – Filed - Amended With Or Without Leave Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRPC, and Request For Oral Hearing (pg.)

(Note: Only the top page is included as the proof of its timely filing is in question only at this stage and its contents will be discussed in the Appellants' upcoming brief. This motion was not ruled on nor was an order issued in response to it and will be further discussed in the Appellants' upcoming brief.)

G. September 5, 2018 - Hearing Judge Hayes (pg.)

H. September 17, 2018 - Served and September 25, 2018 - Filed - Second Amended Complaint and Demand For Jury Trial With Leave (pg.)

(Note: This was scheduled on the roster for hearing on January 31, 2019 prior to the stay order issued by Honorable Judge Gibbons on January 15, 2019)

I. September 18, 2018 - Alleged Orders - Judge Hayes (pg.)

(Note: Only the top page is included as the proof of its filing and its contents will be discussed in the Appellants' upcoming brief. This order was not signed and will be further discussed in the Appellants' upcoming brief.)

J. September 21, 2018 - Alleged Orders - Judge Hayes (pg.)

(Note: Only the top page is included as the proof of its filing and its contents will be discussed in the Appellants' upcoming brief. This order was not signed and will be further discussed in the Appellants' upcoming brief.)

K. October 1, 2018 - Served - 2018-CP-12-00117 Notice of Motion/ Plaintiffs' Motion to Alter or Amend a Judgment or Relief From Judgment or Order Pursuant to Rules 52, 59 (e), 60 (4), SCRPC, and Request For Oral Hearing along with Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 (pg.)

L. October 8, 2018 - Filed - 2018-CP-12-00117 Notice of Motion/ Plaintiffs' Motion to Alter or Amend a judgment or Relief From Judgment or Order Pursuant to Rules 52, 59 (e), 60 (4), SCRPC, and Request For Oral Hearing along with Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 (pg.)

M. October 16, 2018 - Alleged Unsigned Order - Honorable Judge Hayes (pg.)

N. November 15, 2018 - Served - Notice of Appeal (pg.)

O. November 19, 2018 - Received - Respondent Interinsurance Exchange of the Automobile Club Return Receipt, Green Card (pg.)

(Note: Respondents Interinsurance Exchange of the Automobile Club and Carter and Davis are the only ones out of all of the Respondents that motioned for orders to dismiss the appeal and therefore the Appellants are responding with returns to these separate motions and not fully addressing the remaining respondents.)

- P. November 21, 2018 – Court Received By Fax– Notice of Appeal (pg.)
 - Q. November 21, 2018 – Received – Respondents Carter and Davis Return Receipt, Green Card (pg)
 - R. November 27, 2018 – Filed - Notice of Appeal (pg.)
 - S. January 15, 2019 – Order – Honorable Judge Gibbons (pg.)
(Note: Only order signed in ink in this matter.)
23. Appellants' motions were not ruled on and orders were not made. This will be fully explained in the Appellants' upcoming brief.
24. The Appellants and Respondents are required to comply with the rules of **SCRCP**.
25. Note that under South Carolina's rules (**SCRCP**), service of motions is required on defendants however certified mail return with return receipt is not.

SCRCP 5 (1) Same: How Made.... *Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.*

26. Note that under South Carolina's rules (**SCRCP**), proof of service, for the summons and complaint, is required to be filed and it further indicates that other paperwork that must be served, must also be filed with the court however there is no requirement of a certificate of service for such subsequent paperwork. Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.

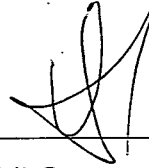
SCRCP 5(d) Filing. *All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof. The summons and complaint shall be filed before service. Proof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party. Upon failure of a party to file other pleadings, motions, or papers, the court may permit filing or proceed as though the same had not been served.*

27. Given the complexity of this matter, with numerous respondents and excessive documents to deal with, in addition to the extreme hardship and extraordinary circumstances Appellant Gersten lives with, there is good cause shown for additional time to provide the information that will prove the Appellants' timeliness in serving and filing the notice of appeal.
28. According to the **SCACR**, the Appellants should not be subjected to serving and filing a return when the Respondents Carter and Davis' Motion to Dismiss does not have the correct case number, along with the burden of sorting through 64 unpaginated pages. In addition, there is a litany of information nonrelated to the issue at hand therefore will be saved for the Appellants' brief. The only pertinent issue currently is proving timeliness of the Appellants' Notice of Appeal.
29. The date the Notice of Appeal was timely served and filed on Respondents Kevin Carter and Richard Davis was November 15, 2018. Proof of service was attached to said Notice of Appeal for the court's filing.
30. The motions for reconsideration were timely filed according to court rules.
31. The Appellants are hereby reserving the right to amend this return should additional information be necessary.
32. I was paralyzed as a result of the collision in controversy with the Respondent Kevin Carter and the Respondent Richard Davis co-owned the vehicle involved.
33. It is unfair to hold me to the same standards as able-bodied people.
34. The **American Disabilities Act**, An agency of the US Department of Justice Civil Rights Division, applies to and protects me.
35. **Title II** of the **American Disabilities Act** permits modifications to court rules to accommodate my situation due to my disability.
36. The **Doctrine of Equitable Tolling** may also be applied to my circumstances.
37. I urge the Court to permit this APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS to be considered in light of the good cause shown.

38. These extensions were not for the purpose of delaying. For the furtherance of justice and to prevent its miscarriage, this appeal must be reinstated and the Appellants be permitted to move forward on its merits..

39. To be so strict on a date on the calendar causes the merits of the actions to be replaced as the primary purpose of litigation. The brief cover must be "red or read?"


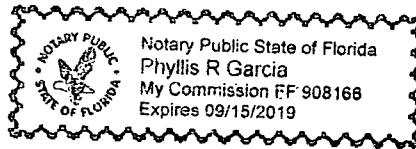
40. I can only do so much in a given day. I'm paralyzed without a caregiver.



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

Subscribed and sworn to before me, this 28th day of May 2019.

[Notary Seal:]


[signature of Notary]

Phyllis R Garcia
[typed name of Notary]

NOTARY PUBLIC

My commission expires: 09/15/2019



Scan for updated forecast

Boca Raton, FL 10 Day Weather

3:24 pm EDT

DAY		DESCRIPTION	HIGH / LOW	PRECIP	WIND	HUMIDITY
TODAY MAY 6		Heavy Thunderstorms/Wind	77°/73°	100%	SSW 23 mph	80%
TUE MAY 7		PM Thunderstorms	87°/75°	80%	NE 11 mph	76%
WED MAY 8		Mostly Sunny	85°/74°	20%	E 13 mph	70%
THU MAY 9		Mostly Sunny	85°/74°	20%	ESE 13 mph	70%
FRI MAY 10		Mostly Sunny	86°/75°	20%	ESE 12 mph	68%
SAT MAY 11		Partly Cloudy	87°/75°	20%	SSE 12 mph	65%
SUN MAY 12		PM Thunderstorms	89°/75°	40%	S 14 mph	66%
MON MAY 13		PM Thunderstorms	90°/75°	40%	SSW 12 mph	68%
TUE MAY 14		Scattered Thunderstorms	89°/76°	50%	SSW 10 mph	70%
WED MAY 15		Scattered Thunderstorms	88°/75°	50%	S 12 mph	71%
THU MAY 16		Scattered Thunderstorms	88°/75°	50%	S 11 mph	68%
FRI MAY 17		Scattered Thunderstorms	87°/75°	60%	S 11 mph	68%
SAT MAY 18		Scattered Thunderstorms	87°/75°	50%	SSE 12 mph	67%
SUN MAY 19		Scattered Thunderstorms	87°/75°	50%	SE 12 mph	67%
MON MAY 20		Scattered Thunderstorms	87°/75°	40%	SE 10 mph	66%

EXHIBIT

tabbles

_____ 1 _____



SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

JUROR SUMMONS

15th Judicial Circuit

You are summoned for jury duty at this

Palm Beach County Courthouse, 205 N. Dixie Highway, West Palm Beach, FL 33401-1000

NAME HEIDI VERONIKA GERSTEN

JUROR ID _____

JUROR NUMBER _____

Your name was selected at random from the list of people qualified to serve.

Your jury duty will begin **May 13, 2019** at **8:00 AM** and continue until you are released from service.

You will not be released from jury duty until (1) you have served as a juror on a trial; (2) you have appeared for service and were not selected as a juror; or (3) you have been notified by the automated phone system that your service is not needed. You may be on telephone standby for up to one week from your original summons date.

Please visit www.mypalmbeachclerk.com/jury or call (561) 355-2930 or (888) 780-5032 after 5:00 p.m. the day before your summoned date. A recorded message will tell you whether to report. If there is no message or the telephone line is not in operation, and you have confirmed that the courthouse is open, please report as directed on this summons.

If selected to serve on a jury, electronic devices such as cell phones, cameras, laptop computers or any other similar technological device capable of making or transmitting images, text or data as well as audio and video recordings must, prior to the start of jury deliberations, be turned over to the courtroom deputy who will keep them while you deliberate.

Free parking is located at 505 Banyan Blvd. Bring parking ticket to the jury office to be validated. For directions and other helpful information about jury duty, visit www.mypalmbeachclerk.com/jury.

REQUEST FOR POSTPONEMENT OR EXCUSAL FROM JURY SERVICE
NAME HEIDI VERONIKA GERSTEN JUROR ID _____ JUROR NUMBER _____
You may not serve if (please check and submit required documentation by visiting www.mypalmbeachclerk.com/jury or by mail):

- Not a legal resident of Palm Beach County
- Not a citizen of the United States
- Convicted of a felony and civil rights have not been restored
- Currently under criminal prosecution

Jurors are entitled to two postponements that together do not exceed six months from the original summons date. If you want to postpone your service please visit www.mypalmbeachclerk.com/jury or call (561) 355-2930 or (888) 780-5032 or contact and mail the attached form (the summons. When seeking a postponement, you must check a box that falls on a Monday through Thursday (excluding court holidays) New date chosen _____

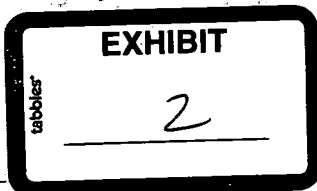
You may choose not to serve if (please check):

- 70 or older -- Do you want to be permanently excused? YES NO
- Responsible for care of medically/mentally incapacitated person unable to care for self.
- Expectant Mother
- Parent not working full time with custody of a child under 6
- Full time law enforcement officer or law enforcement investigative personnel
- Summoned and reported for jury service in Palm Beach County within (1) year from the date for which being summoned.

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

Signature _____

Control number _____



TIMELINE OF EVENTS WITH LAW AND ARGUMENTS THAT INCLUDE A MEMORANDUM OF POINTS AND AUTHORITIES THAT PROVE TIMELINESS OF APPELLANTS' NOTICE OF APPEAL

Appellants received and/or obtained written notice of entry of each of the following separate orders on appeal.

ORDER DATE	FILE DATE	JUDGE	DATE OBTAINED	DATE RECEIVED
04/26/18	04/26/18	Judge Gibbons (Consolidation Order)(Subject of this Appeal)	05/05/18 - On-line Court Website	N/A

(NOTE: Pursuant to **SCRCP**, a timely Motion to Alter or Amend a Judgment or Order was served on the Respondents (Defendants) on May 6, 2018 and filed on May 8, 2018, pursuant to **Rule 59(e), SCRCP**, which requires that a motion to alter or amend be *“served not later than 10 days after receipt of written notice of the entry of the order.”*

This rule does not preclude the motion from being served prior to or earlier than ‘receipt’.

According to the interpretation of these rules, the said May 8th motion is timely as it has been served prior to ‘receipt’, and would apply if the Appellants were to serve and file it as of today’s date since they have not ‘received’ a written notice of the entry of the order being challenged. It was ‘obtained’ online via the Court’s Website.

(Perhaps the time may be ripe in presenting the Highest Court with a certified question in regards to whether or not initiating a case search on the Court’s website and reading pleadings, orders, judgments or other documents constitutes “receiving” written notice or written notice of entry of judgments or orders or any other service of process. Does ‘obtaining’ documents online complete service in the process of active or inactive litigation? Is an uncertified or certified document online form found online create service on the litigant seeking the information?)

Similar to defendant litigants learning of an action being filed in the courthouse and within hours of the filing by plaintiff litigants, the defendant litigants obtain copies of the documents either from making copies that are online or going to the courthouse and requesting them in person. Does either of those two scenarios constitute service according to **SCRCP** rules?

(Perhaps, when these laws were written, modern technology wasn’t in mind and with the advent of the computer, times have changed and this is something that ought to be addressed. Otherwise you end up with laws, like in Ohio, where the

09/18/18	09/19/18	Judge Hayes III ("AAA" Order) (Subject of this Appeal)	09/19/18 - E-mail From <i>RESPONDENT</i> AAA	N/A
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(NOTE: Appellants' Notice of Appeal has a typo error and should reflect the correct receipt of this order as September 19, 2018 if e-mails apply to non-attorneys as valid service, possibly another certified question to conclude, either way, the Notice of Motion and Plaintiffs' Motion to Alter or Amend a judgment or Relief from Judgment or Order was timely served on October 1, 2018 and filed on October 8, 2018 according to **SCACR**, thus, tolling the time to serve and file the Notice of Appeal.)

09/18/18	09/19/18	Judge Hayes III ("Carter & Davis' Order") (Subject of this Appeal)	09/19/18 - On-line Court Website	<i>N/A</i>
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09/21/18	09/21/18	Judge Hayes III ("Nationwide & Tirbovich" Order) (Subject of this Appeal)	09/23/18 - On-line Court Website	N/A
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09/21/18	09/24/18	Judge Hayes III ("Trustgard & Ammendola" Order) (Subject of this Appeal)		N/A
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09/21/18	09/21/18	Judge Hayes III ("SC Dept. of Public Safety & Blackwell" Order) (Subject of this Appeal)	09/23/18 - On-line Court Website	N/A
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10/16/19	10/16/18	Judge Hayes III (Order) (Subject of this Appeal)(Order from Appellants' Motion for Reconsideration) (Tolled the time to serve Notice of Appeal)	10/21/18 - On-line Court Website	10/21/18 - USPS Regular Mail
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01/15/19 01/15/19 Judge Gibbons 01/15/19 - Received 01/25/19 -
(Stay Order) Phone Call From The USPS Regular
(Pending Chester County Clerk Mail
Outcome of Appeal)

02/15/19 02/15/19 Clerk 02/27/19 -
(Letter) USPS Regular
(Included As It Mail
Pertains to The
Matter at Hand)

NOTE that the Appellants did not actually receive the letter until two (2) days after its instructions to comply with its requests, causing it to be impossible, save for a nunc-pro-tunc, to follow with respect.

04/09/19 04/09/19 Clerk 04/17/19 -
(Order) (Extension USPS Regular
Granted) Mail

(NOTE that the Appellants did not actually receive the clerk's order until 2 (two) days after its instructions to comply with its requests, causing it to be impossible, save for a nunc-pro-tunc, to follow with respect. Regardless, it says "...absent extraordinary circumstances." There are plenty of extraordinary, mitigating and extenuating circumstances. The Appellants are unaware of the authority of clerks of court to issue orders. Is this their duty?. It appears to be void on its face. Judges issue orders. With all due respect, this will be addressed in the future.)

05/02/19. 05/02/19 Judge Lockemy (?) 05/16/19 On-line 05/17/19 -
(Order) USPS Regular
(Subject Matter Mail
For This Motion To
Reinstate)

(NOTE that the Appellants did not actually receive the judge's order, presuming that it was indeed a judge who signed this order as the last name is not legible and there is no printed legible version for the Appellants to ascertain its signor, until the day its instructions to comply were given, which was the same day. The first name "James" is legible and when the Court's website is accessed, one can see that there is a judge James Lockemy however is uncertain if this is who signed this order or someone else. Again, with all due respect, the Appellants are doing what they can to follow orders and obey the law.)

Note that the Appellant Gersten called the Court and spoke with Shelby who informed her that this order did not trigger a motion to reinstate or petition for rehearing, which subsequently caused an order filed on May 14, 2019 issued by a clerk with illegible handwriting and no printed name. As said before, the Appellants

question or challenge the authority for clerks to issue orders. One of a judge's duty is to issue orders. The Appellants are unaware of an any rule except for **Rule 260 (a) Involuntary Dismissal and Reinstatement, SCACR**, which states, "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or amistrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing excluded). The Appellant Gersten spoke with case manager Elizabeth about a fax being permitted as being "received" by the court. The Appellants will also overnight this for an expected delivery date of May 29, 2019, which would be timely. Becky also affirmed that faxes and overnight deliveries are file-stamped the same day received.

05/14/19	05/14/19	Clerk	05/16/19	On-line	~4
		(Dismissal Order)			
		(Note: Stay of			
		Remittitur is in Order			
		Pending Motion for			
		Reinstatement)			

(NOTE: The Appellants have not received written notice of entry of this order and learned about it on 05/16/19 after searching case records and in a good faith effort are attempting to comply.)

Given the extraordinary, mitigating and extenuating circumstances, the Appellants move this Court for an Order granting their motion for reinstatement and/or petition for rehearing of motion to dismiss and acceptance of their Return of Respondent Kevin Carter and Richard Davis' Motion to Dismiss as timely.

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

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: Appellate Case No: 2018-002115 APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS, ALONG WITH EXHIBITS AND A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 15, 2019, ORDERS OF APRIL 9, 2019 MAY 2, 14, 2019 along with letter to the Court dated May 28, 2019, and AFFIDAVIT OF APPELLANT HEIDI GERSTEN and, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT, by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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

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

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

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

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

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

By: 

Phyllis R. Garcia

Boca Raton, Florida

RECEIVED
MAY 29 2019
SC Court of Appeals

May 28, 2019
1438 W. Lantana Rd., #330
Lantana, FL 33462

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate St.
Columbia, SC 29201
(843)662-3258 Fax (843)662-1342

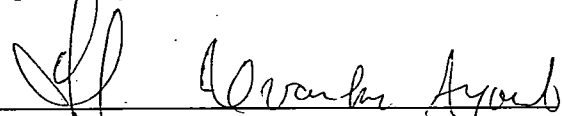
RE: Appellate Case No.: 2018-002115

Dear Ms. Kitchings or To Whom It May Concern:

Good day to you.

Please find 2 (two) enclosed U.S. postal money orders in the amount of \$50.00 each (\$100.00 total), as I was unaware of the correct amount due, for the enclosed original APPELLANTS' MOTION FOR REINSTATEMENT AND/OR PETITION FOR REHEARING OF MOTION AND AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS along with a more detailed response to this Court's letter dated February 15, April 9, May 2, and 14 all in the year of 2019, along with 7 copies. Please file the original and return a file-stamped copy in the pre-paid postage envelope provided. Thank you for your time regarding this matter.

Respectfully submitted,



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

HG/Enclosures

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SC Court of Appeals

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Clerk of Court
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Time Accepted 5:08 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	10:30 AM Delivery Fee \$	Return Receipt Fee \$2.80	Live Animal Transportation Fee \$ -
Special Handling/Fragile \$	Sunday/Holiday Premium Fee \$	Total Postage & Fees 28.30	
Weight 2.00 lbs.	Acceptance Employee Initials [Signature]		

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