

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

SEP 26 2019

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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

C.A. No: 2018-002115 (Appellate Court of Appeals)
2019-001484 (Supreme Court)

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

v.

Heidi Gersten, Ivanka Ayoub,.....Petitioners.

APPENDIX

Heidi Gersten, Ivanka Ayoub
Petitioners
1438 W. Lantana Rd., #330
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September 24, 2019

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Murphy & Grantland, P.A.
4406-B Forest Drive
Columbia SC 29206
Attorney for Respondents Kevin Carter & Richard Davis

David R. Sligh
P.O. Box 2116

Myrtle Beach, SC 29578
Attorney for Respondent Nationwide Mutual Insurance Company

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

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P.O. Box 5478
Florence, SC 29502
Attorney for Respondent Joseph Tirbovich

Peter H. Dworjany, Esquire and
Michael R. Burchstead, Esquire
Collins & Lacy, PC
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Attorney for Respondents Trustgard & Ammendola

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Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202
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Blackwell

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South Carolina Appellate Case Management System

C-Track, the browser based CMS for Appellate Courts

Appellate Case No. ...

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Disclaimer: The information and documents available here should not be relied upon as an official record of action.
Only filed documents can be viewed. Some documents received in a case may not be available for viewing.
Some documents originating from a lower court, including records and appendices, may not be available for viewing.

Case Information: 2018-002115

Court:	Court of Appeals	Classification:	Appeal - Common Pleas - Other
Short Title:	Heidi Gersten v. Kevin Carter	Case Status:	Rehearing Denied
	View Full Title		
Consolidated:			
Filed Date:	11/27/2018	Oral Argument Date:	
Disposition Date:	05/14/2019	Disposition Type:	Order
Remittitur Date:			
Lower Court or Tribunal:	Chester (2018CP1200117, 2018CP1200074)		

Party Information

Appellate Role	Party Name	Former	Attorney(s)
Appellant	Ivanka Ayoub	N	Self Represented
Appellant	Heidi Gersten	N	Self Represented
Respondent	John Ammendola	N	Peter H. Dworjanyn Michael Reid Burchstead
Respondent	Herbert Blackwell	N	William H. Davidson, II
Respondent	Kevin Carter	N	Wesley Brian Sawyer
Respondent	Richard Davis	N	Wesley Brian Sawyer
Respondent	Interinsurance Exchange of the Automobile Club	N	William Reynolds Williams
Respondent	Nationwide Mutual Insurance Co.	N	David Richard Sligh
Respondent	SC Dept of Public Safety	N	William H. Davidson, II
Respondent	Joseph Tirbovich	N	David Richard Sligh
Respondent	Trustguard Insurance Co.	N	Peter H. Dworjanyn Michael Reid Burchstead

Views

Display:

Event Information

Filed Date	Event Information	Doc
09/03/2019	Correspondence - Incoming (Other) copy of motion as filed in SC Supreme Court	
07/30/2019	Rehearing - Denied	
06/18/2019	Correspondence - Outgoing (Returned Filing Fee)	
05/31/2019	Motion - Return (AMENDED) return to motion to dismiss OR petition to rehear OR extension request to reinstate	
05/29/2019	Rehearing - Petition for Rehearing from Judge's Order	
05/14/2019	Dispositional Decision - Order	
05/02/2019	Non-Dispositional Decision - Order - Appellants to provide date of when written notice of entry was received	
04/29/2019	Motion - Extension of Time (5th or Subsequent) to file amended return	
04/18/2019	Motion - Extension of Time (5th or Subsequent) for amended return to motion to dismiss	
04/09/2019	Non-Dispositional Decision - Extension Granted as to amended return to motion to dismiss filed by Carter and Davis	
04/08/2019	Motion - Extension of Time (5th or Subsequent) to file an amended return	
03/28/2019	Motion - Extension of Time (5th or Subsequent) to file an amended return	
03/21/2019	Motion - Extension of Time (4th) to file amended return	
03/12/2019	Motion - Extension of Time (3rd) to file amended return	
03/01/2019	Motion - Extension of Time (2nd) for serving and filing the return to the motion to dismiss	
02/19/2019	Motion - Allow Late Filing of the return to the motion to dismiss	
02/19/2019	Motion - Return to motion to dismiss as to Kevin Carter and Richard Davis	

02/15/2019	Correspondence - Outgoing requesting return to include specific information	
02/08/2019	Motion - Extension of Time (1st) for return to the motion to dismiss	
01/31/2019	Motion - Dismiss as to Kevin Carter and Richard Davis	
01/23/2019	Motion - Return to motion to dismiss as to motion to dismiss filed by Interinsurance Exchange of Automobile Club	
01/10/2019	Correspondence - Outgoing requesting refund of Appellant's motion fee	
01/10/2019	Non-Dispositional Decision - Withdrawn or Ended	
01/09/2019	Deficiency - Correction regarding the motion to dismiss	
01/04/2019	Deficiency - Deficiency Letter Sent regarding the motion to dismiss	
12/31/2018	Correspondence - Incoming (Other) filed by Mr. Dworjanyan	
12/27/2018	Motion - Dismiss as to Interinsurance Exchange of the Automobile Club	
12/27/2018	Motion - Extension of Time (1st) (Appellant's Initial Brief)	
12/19/2018	Correspondence - Outgoing informing parties that Hubbard is not a party to this appeal	
12/19/2018	Correspondence - Outgoing notice of appeal initial letter	
11/27/2018	Notice of Appeal (Civil) - Initial	

The South Carolina Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are
Appellants,

v.

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

Appellate Case No. 2018-002115

The Honorable John C. Hayes, III,
The Honorable Brian M. Gibbons
Chester County

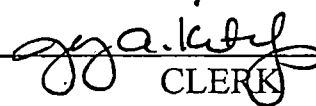
Trial Court Case No. 2018CP1200117, 2018CP1200074

ORDER

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

FOR THE COURT

BY


CLERK

FILED

May 14, 2019

Appx. 3

Columbia, South Carolina

cc:

Heidi Gersten

Ivanka Ayoub

Peter H. Dworjanyn, Esquire

Michael Reid Burchstead, Esquire

Wesley Brian Sawyer, Esquire

William Reynolds Williams, Esquire

David Richard Sligh, Esquire

William H. Davidson, II, Esquire

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHESTER COUNTY
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MAY 29 2019
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v.

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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

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Appellants

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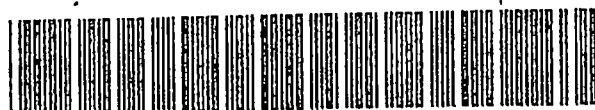
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Heidi Gesten, Fawka Ayoub
1438 W. LANTANA RD. #330
LANTANA, FL 33462

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Date Accepted (MM/DD/YY) 05/28/19	Scheduled Delivery Time ☐ 10:30 AM ☒ 3:00 PM ☐ 12 NOON	Insurance Fee \$ -	COD Fee \$ -
Time Accepted 5:08 ☐ AM ☒ 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	
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APPEAL FROM CHESTER COUNTY
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Honorable John C. Hayes III, Circuit Court Judge
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MAY 31 2019

SC Court of Appeals

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

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

v.

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APPELLANTS' AMENDED RETURN TO RESPONDENTS
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INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB,
KEVIN CARTER AND RICHARD DAVIS WITH LEAVE TO AMEND
OR MOTION FOR EXTENSION OF TIME TO SERVE AND FILE
MOTION TO REINSTATE APPEAL AND/OR PETITION FOR
REHEARING

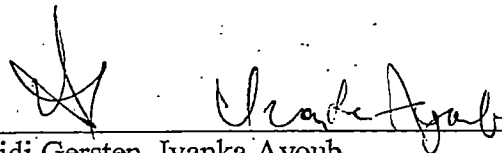
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Appellants

1 Appx. 7

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 Rules 263(b), 260(a) and 221, SCACR, Equitable Tolling and Title II of the American Disabilities Act on the grounds of good cause shown as evidenced by the attached Affidavit of Heidi Gersten and Timeline of Events with Law and Arguments That Include a Memorandum of Points and Authorities That Prove Timeliness of Appellants' Notice of Appeal.

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

Respectfully submitted this 29th day of May 2019,



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Boca Raton, Florida
May 29, 2019

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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' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS WITH LEAVE TO AMEND OR MOTION FOR EXTENSION OF TIME TO SERVE AND FILE MOTION TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING, which includes all pages attached, and know the contents thereof, that the same is true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters, I believe them to be true.
2. The facts stated herein are personally known to me and I have first-hand direct knowledge thereof and to those facts that are in addition stated are based on information and belief.
3. If called upon to do so, I would and could competently testify to hereto under oath in a court of law operating under the laws of the State of South Carolina and the United States Constitution.
4. The Appellants served and filed motions to extend time to amend their return to Kevin Carter and Richard Davis' motion to dismiss appeal on March 7, 18, 25, and April 5, 15, 25, 2019 and would have requested an additional extension on May 6, 2019, except due to mitigating circumstances, there were heavy thunderstorms that day that prevented the deadline from being met. (Exhibit 1)
5. I sat in my wheelchair with the paperwork that I was ready to turn in to comply with the 'motion for extension to file' rules when I heard the strike of thunder and looked outside and saw that it was raining heavily, with the sky very dark. With a heavy heart, I knew I would not be able to wheel to the post office and UPS store that day. I took a screenshot of the weather report that day at the time I was leaving. (Exhibit 1)
6. I became aware of the order dated May 2, 2019 on May 16, 2019, after I learned that the iPad I recently got was able to access the Court's website. I

read said order online and in a good faith effort to comply under the South Carolina Appellate Court Rules, **SCACR**, these motions and documents are being submitted. Prior to getting the iPad, I was unable to access the Court's website from my over 10 year old incompatible computer.

7. Had there not been thunderstorms on May 6, 2019, I would have been able to ride in my wheelchair to the post office and UPS store and the May 2, 2019 order would have been partially complied with as some of the information requested was in the documents that were anticipated to be served and filed that day. A new motion was being composed when the May 2nd and 14th 2019 orders were learned of.
8. In a frenzy to comply with the rules, a draft was written for a petition for rehearing and Henrietta from You've Been Served, LLC, processing service was contacted. I explained to her that the only way to have the documents received by May 17th, less than 24hrs of learning of the order, was to get the documents to her via computer and have her go in person to file them. I would not have been able to sign them since I don't have the technology to sign and then scan into my computer and office stores were closed at that hour. She brought up the fact that even if I could, she would only be bringing in a copy and not an original. Therefore, there was no real chance to comply with the order in such a short amount of time learning of it a day before its deadline nor correct the numerous errors that may be contained in it due to the very limited time to complete what is necessary to have it received by the Court within fifteen (15) days from the date of the order to prevent a remittitur being sent to the lower court or administrative tribunal in accordance with **Rule 221, SCACR**. Hiring a process server to file in person appeared to be the only option at that point.
9. The petition for rehearing of the motion may be combined with the motion for reinstatement as they stem from the same issues.
10. I would also suggest that the Appellants' Return for the Respondents Kevin Carter and Richard Davis' motion to dismiss be combined when taking things under consideration since its' sole argument within the numerous unpaginated pages (against court rules) that are well over sixty (60) in count revolves around the sole issue of timeliness, as well as listing an incorrect case number. Without page numbers, it has been challenging to say the least to address the issues at hand by referencing the documents.
11. The Affidavit of Wesley B. Sawyer is hearsay and he does not state nor allege to have first-hand personal knowledge of the facts or events in controversy. The said affidavit has no stamp or embossment from a notary therefore is not an official document. It's not certified.
12. The Respondents Carter and Davis' Motion to Dismiss fails to list orders.

13. I called the Appellate Court on May 17, 2019 and spoke to Shelby who informed me that it wasn't necessary to do a petition for rehearing on the May 2, 2019 order however the May 14, 2019 triggered the time to do a motion to reinstate within 15 days being Wednesday, May 29, 2019.
14. In addition to being paralyzed, having an open phase 4 pressure wound on my left buttocks, phase 1 pressure wound on my right buttocks, living without a caregiver, litigating multiple lawsuits in multiple states without an attorney, having been the victim of numerous crimes, participating in a criminal pretrial conference as a subpoenaed victim, and the learning of the passing of my father under the cause of action of tortious interference with a dead body, I was summoned as a juror for May 13, 2019, all this year. (Exhibit 3) (Proof of any this is available upon request.) (The wound picture is in the Appellants' Objection and/or Opposition and Response to Respondent Interinsurance Exchange of the Automobile Club's Motion to Dismiss Appeal as Exhibit 3, page 31 and received by the Court on January 23, 2019)
15. Leave of court should be administered in favor of justice. There is plenty of good cause shown.
16. Patience is a judicial canon. I require much patience. What seems like plenty of time to an able body is a fraction of the time it takes me to do simple things. It took 7 months before I was finally able to get my bathroom accommodated to where I am now able to shower independently, to give an example of the amount of time it took to be at a standard of living that most people take for granted.
17. This is an effort to show the Court that the Appellants take this matter seriously and are diligently attempting to comply with the rules. The American Disabilities Act permit modifying court rules to accommodate me due to my disabilities and remains undefeated when an action has been brought forward under Title II. Appellants prefer not to file a federal complaint. Time is of the essence however health is an issue to take into consideration.
18. Words do not describe the horror of being unable to care for myself at my standards since this collision. I was the one who took care of others and demonstrated an unprecedented amount of courage, strength, wisdom, knowledge, compassion, forth righteousness, tenacity, candor, intuition, empathy, endurance and love in my family however perhaps I lacked gratitude for myself. I took for granted the amazing person that I am.
19. Judge Zamore was the first public authority I faced through this process who infused me with inner solidity, repeating to me as I looked into his eyes, "You are worthy!" My whole life, no one has ever said those words to me. I'm happy that he stood behind a red, white and blue flag. He understood my

pain. Yet he is bound by these words on paper, called law. I will find the right combination and when I do, I will unlock the key to my therapy and simple pleasure of pursuing every remedy available to me in order to obtain control of my body. I will walk again!

20. Judge Underwood was the first judge to issue an order in favor of granting me a continuance to a court date I received notice of a day before a holiday weekend last year, giving me three days to find a ride as a paralyzed person who hadn't left her bed in months and travel over 800 miles in one direction to attend. She declared me a victim and so did Judge Zamore. I called the clerk and wrote an objection to Respondent/Defendant Kevin Carter's acceptance of a plea offer to reduce his DUI charge, which in truth and fact, qualifies to be a felony charge as a DUI with great bodily injury. It's no surprise he took the offer of a \$440 fine and reckless driving in front of my eyes. This game of lucky breaks because someone knows how to manipulate the law better is unbelievable. My entire experience of how challenging it is to get help to be made whole again is history in the making.
21. This process has taught me to be indifferent.
22. It may be hard to imagine for some, the enormous amount of effort it takes to do simple things that able-bodied people can do, such as use a toilet.
23. I live under extraordinary circumstances and with extreme hardships.
24. Attached to this affidavit is a 5 page document labeled **TIMELINE OF EVENTS WITH LAW AND ARGUMENTS THAT INCLUDE A MEMORANDUM OF POINTS AND AUTHORITIES THAT PROVE TIMELINESS OF APPELLANTS' NOTICE OF APPEAL** that prove: (EXHIBIT 3)
 - A. April 26, 2018 – Alleged Unsigned Order -Judge Gibbons (Received by Court on November 29). (Note: On its face it says 1 and 2 of 2 pages and page 3 says 3 of 3.)
 - B. May 6, 2018 – Served and May 8, 2018 – Filed - Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRPC, and Request For Oral Hearing (This is in the Appellants' Objection and/or Opposition and Response to Respondent Interinsurance Exchange of the Automobile Club's Motion to Dismiss Appeal page 8 and received by the Court on January 23, 2019.)

(Note: Only the top page is included as the proof of its timely filing is in question only at this stage and its contents will be discussed in the Appellants' upcoming brief. This motion was not ruled on nor was an order issued in response to it and will be further discussed in the Appellants' upcoming brief.) (Exhibit 4)

C. May 8, 2018 – Served – Honorable Judge Gibbons

(Note: Appellant Gersten gave the document to Ruben Kirnos who gave the document to Mr. Atkinson, Chester County Clerk, who was instructed by Appellant Gersten to personally serve Judge Gibbons, from a rental car she was in, in front of the Chester County Courthouse, minutes prior to attending the sentencing of Respondent Carter at the Chester County Magistrate Court, after he was charged with DUI and she witnessed him plead guilty to reckless driving in front of Honorable Judge Yale Zamore.)

D. August 7, 2018 – Notice of Case Scheduling - Claimants' Motion To Alter Or Amend A Judgment Or Order Pursuant To Rules 59(e), 60(4) SCRCF, 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) SCRCF, 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) SCRCF, and Request For Oral Hearing (pg.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- P. November 21, 2018 - Court Received By Fax- Notice of Appeal (pg.)

- Q. November 21, 2018 - Received - Respondents Carter and Davis Return Receipt, Green Card (pg.)

- R. November 27, 2018 - Filed - Notice of Appeal (pg.)

- S. January 15, 2019 - Order - Honorable Judge Gibbons (pg.)
(Note: Only order signed in ink in this matter.)

(Note: Due to time restraints and the enormous amount of effort to produce and attach the previously listed documents, an amended version with leave of court will be provided in the future. This is an attempt to provide as much of the information as can be done given the circumstances.)

25. Appellants' motions were not ruled on and orders were not made. This will be fully explained in the Appellants' upcoming brief.

26. The Appellants and Respondents are required to comply with the rules of **SCRCP**.

27. Note that under South Carolina's rules (**SCRCP**), service of motions is required on defendants however certified mail return with return receipt is not.

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

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

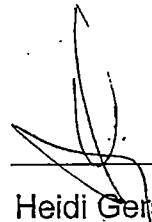
SCRCP 5(d) Filing. *All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof. The summons and complaint shall be filed before service. Proof of service shall be filed within ten (10) days after service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

29. Given the complexity of this matter, with numerous respondents and excessive documents to deal with, in addition to the extreme hardship and extraordinary circumstances Appellant Gersten lives with, there is good cause shown for additional time to provide the information that will prove the Appellants' timeliness in serving and filing the notice of appeal.

30. According to the **SCACR**, the Appellants should not be subjected to serving and filing a return when the Respondents Carter and Davis' Motion to Dismiss does not have the correct case number, along with the burden of sorting through 64 un-paginated pages. In addition, there is a litany of information nonrelated to the issue at hand therefore will be saved for the Appellants' brief. The only pertinent issue currently is proving timeliness of the Appellants' Notice of Appeal.

31. The date the Notice of Appeal was timely served and filed on Respondents Kevin Carter and Richard Davis was November 15, 2018. Proof of service was attached to said Notice of Appeal for the court's filing.
32. The motions for reconsideration were timely filed according to court rules.
33. The Appellants are hereby reserving the right to amend this return should additional information be necessary.
34. I was paralyzed as a result of the collision in controversy with the Respondent Kevin Carter and the Respondent Richard Davis co-owned the vehicle involved.
35. It is unfair to hold me to the same standards as able-bodied people.
36. The **American Disabilities Act**, An agency of the US Department of Justice Civil Rights Division, applies to and protects me.
37. **Title II of the American Disabilities Act** permits modifications to court rules to accommodate my situation due to my disability.
38. The **Doctrine of Equitable Tolling** may also be applied to my circumstances.
39. I urge the Court to permit this APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS WITH LEAVE TO AMEND OR MOTION FOR EXTENSION OF TIME TO SERVE AND FILE MOTION TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING to be considered in light of the good cause shown.
40. **Rule 263(b), SCACR**, permits extensions of time in this type of situation. It states in part, "**Extending and Diminishing Time Prescribed by These rules.** *THE TIME PRESCRIBED BY THESE RULES FOR PERFORMING ANY ACT EXCEPT THE TIME FOR SERVING THE NOTICE OF APPEAL UNDER RULES 203 AND 243 MAY BE EXTENDED OR SHORTENED BY THE APPELLATE COURT, OR BY ANY JUDGE OR JUSTICE THEREOF.*"
41. These extensions were not for the purpose of delaying. For the furtherance of justice and to prevent its miscarriage, this appeal must be reinstated and the Appellants be permitted to move forward on its merits.
42. To be so strict on a date on the calendar causes the merits of the actions to be replaced as the primary purpose of litigation. The brief cover must be "red or read?"

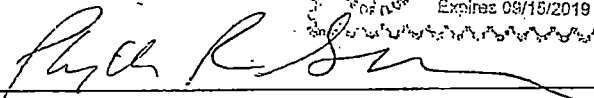
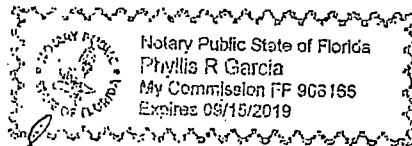
43. I can only do so much in a given day. I'm paralyzed without a caregiver.
44. I authenticate the documents submitted in this paperwork as true and accurate copies.
45. The Return to the Respondent Interinsurance Exchange of the Automobile Club was served and filed on January 17, 2019 and file stamped January 23, 2019.



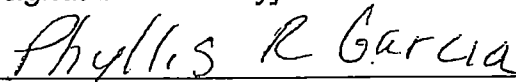
Heidi Gersten
1438 W. Lantana Rd. #330,
Lantana, FL 33462

Subscribed and sworn to before me, this 29th day of May 2019.

[Notary Seal:]



[signature of Notary]



[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 5		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

tabbies

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SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

JUROR SUMMONS

15th Judicial Circuit

You are summoned for jury duty at the

Palm Beach County Courthouse, 205 N. Dixie Highway, West Palm Beach, FL 33401-1500

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 in detail and mail the postponed jury summons. When seeking a postponement, you must check a reason 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?
- ☐ 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 11 years from the date for which summoned

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

Signature _____

Contact number _____



#14 Appx. 20

**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



15 Appx. 21

Supreme Court has ruled that both parties may actively participate in litigation, have a trial, and then one party proves that according to the rules, service was not perfected and everything is void. This logic defies common sense. There comes a point where the rules cannot dictate logic. In order to comply with rules, they must be self-evident and in plain English and not ambiguous. The Appellants did follow the letter of the law as well as the spirit.)

The filing was made in person on May 8, 2018 by the Appellant/Claimant/Plaintiff Gersten, at the Chester Courthouse, minutes prior to the Respondent/Defendant Carter's sentencing in front of Judge Zamore, in Magistrate's Court. Deputy Clerk Atkinson was instructed and agreed to provide a copy to Judge Gibbons, pursuant to **Rule 59(g), SCRCF**, which requires that a party filing a **Rule 59** motion "*shall provide*" a copy of the motion to the judge within 10 days of filing. The Appellant Gersten traveled from Florida with her pressure wound, by vehicle with friends to attend the hearing she was subpoenaed to by Judge Underwood, invoking her Victim's rights under the **SC Victim's Constitution** as a witness.)

(ALSO, NOTE: There is no requirement of a certificate of service or proof of service to be filed with the court under **SCRCF** for anything other than the summons and complaint. Service is complete upon mailing, as in "regular mail". There is no requirement to certify or do registered mail in **SCRCF**.) (Perhaps this is ripe for a certified question as to whether or not certificates of service are required.)

05/21/18 05/22/18 Judge Gibbons 05/16/18 – On-line N/A
Court Website

(NOTE: Appellants have not received this order in the mail nor email nor any other method of service as provided by **SCRCF** nor was permitted to review it in the proposed form for accuracy or objections. The issue at hand is moot since it did not affect any part of this matter, so no need to address it in depth other than to make note that it was not served on Appellants/Plaintiffs and used as an example of the course of conduct.)

(ALSO, NOTE: Appellants served "Second Amended Complaint and Demand For Jury Trial With Leave on Respondent/Defendants on September 17, 2018 and overnighted for filing on and received on September 24, 2018, under the mailbox rule, and file stamped on September 25, 2018.) (The pleadings were not closed on the premature hearing of September 5, 2018 in front of Judge Hayes for a variety of reasons including, but not limited to, a timely amended complaint that was served on the Respondent/Defendants and not answered at the time of the said hearing. All of this will be further explained in the forthcoming brief, which will focus on the merits and not timeliness. This is an attempt to satisfy the timeliness requirements although the American Disabilities Act Title II and Equitable Tolling excuse these restrictions and permit law to accommodate the Appellants and modify rules due to their disabilities.)

09/18/18	09/19/18	Judge Hayes III ("AAA" Order) (Subject of this Appeal)	09/19/18 - E-mail From	N/A

(NOTE: Appellants' Notice of Appeal has a typo error and should reflect the correct receipt of this order as September 19, 2018 if e-mails apply to non-attorneys as valid service, possibly another certified question to conclude, either way, the Notice of Motion and Plaintiffs' Motion to Alter or Amend a judgment or Relief from Judgment or Order was timely served on October 1, 2018 and filed on October 8, 2018 according to **SCACR**, thus, tolling the time to serve and file the Notice of Appeal.)

09/18/18	09/19/18	Judge Hayes III ("Carter & Davis' Order) (Subject of this Appeal)	09/19/18 - On-line Court Website	N/A

09/21/18	09/21/18	Judge Hayes III ("Nationwide & Tirbovich" Order) (Subject of this Appeal)	09/23/18 - On-line Court Website	N/A

09/21/18	09/24/18	Judge Hayes III ("Trustgard & Ammendola" Order) (Subject of this Appeal)		N/A

09/21/18	09/21/18	Judge Hayes III ("SC Dept. of Public Safety & Blackwell" Order) (Subject of this Appeal)	09/23/18 - On-line Court Website	N/A

10/16/19	10/16/18	Judge Hayes III (Order) (Subject of this Appeal)(Order from Appellants' Motion for Reconsideration) (Tolled the time to serve Notice of Appeal)	10/21/18 - On-line Court Website	10/21/18 - USPS Regular Mail

01/15/19	01/15/19	Judge Gibbons (Stay Order) (Pending Outcome of Appeal)	01/15/19 - Received Phone Call From The Chester County Clerk	01/25/19 - USPS Regular Mail

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

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

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

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

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

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

Note that the Appellant Gersten called the Court and spoke with Shelby who informed her that this order did not trigger a motion to reinstate or petition for rehearing, which subsequently caused an order filed on May 14, 2019 issued by a

clerk with illegible handwriting and no printed name. As said before, the Appellants question or challenge the authority for clerks to issue orders. One of a judge's duty is to issue orders. The Appellants are unaware of any rule except for **Rule 260 (a) Involuntary Dismissal and Reinstatement, SCACR**, which states, "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing excluded). The Appellant Gersten spoke with case manager Elizabeth about a fax being permitted as being "received" by the court. The Appellants will also overnight this for an expected delivery date of May 29, 2019, which would be timely. Becky also affirmed that faxes and overnight deliveries are file-stamped the same day received.

05/14/19	05/14/19	Clerk	05/16/19	On-line	N/A
		(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.

(Note that now that the Appellant Gersten is finally able to shower independently and has an iPad that is capable of accessing the Court website, it will be easier for the Appellants to stay more up-to-date with court matters.)

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Heidi Gersten, Ivanka Ayoub

Plaintiff,

vs.

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

Defendant.

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

CASE NO.: 2018-CP-12-00074

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

FILED
MAY -8 P 2:52
CLERK OF COURT
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

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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

EXHIBIT

4

20 Appx. 26

	E-mail: <u>AHogsette@turnerpadget.com</u> (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	<u>May 8, 2018</u> Date submitted														
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) <table style="width: 100%; border: none;"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Motion for Stay in Bankruptcy</td> <td>☐ Motion for Execution (Rule 69, SCRCP)</td> </tr> <tr> <td colspan="2">☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>		☐ 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 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: _____	
☐ 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 Execution (Rule 69, SCRCP)														
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions															
Name of Court Reporter: _____															
☐ Other: _____															
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____														
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____															

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

In the matter of Arbitration between

Case number 2018-~~CP~~-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), SCRC

AND

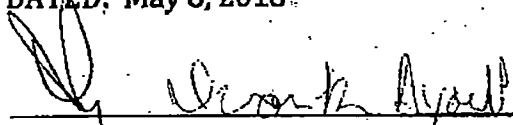
REQUEST FOR ORAL HEARING.

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), SCRC, 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), SCRPC**.

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.

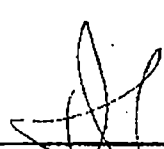
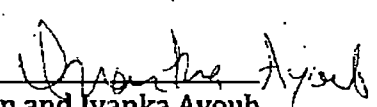
This request by no means prejudices the Defendants. It is made in the interest of justice and to prevent its miscarriage. For the ease of everyone involved in this matter, the Claimants request the Court to set the oral hearing on this motion to be set at least 30 days in advance and suggest scheduling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

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: 2018-002115

RECEIVED

MAY 31 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

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

WITH LEAVE TO AMEND OR MOTION FOR EXTENSION OF TIME
TO SERVE AND FILE MOTION TO REINSTATE APPEAL


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

3 28 Appx. 34

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

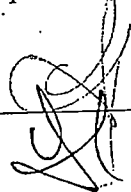
STATEMENT OF FACTS

The Appellants requested additional time to serve and file an amended return to the Respondents Carter and Davis' motion to dismiss appeal numerous times for good cause shown to sufficiently and adequately address the multiple errors made by the Respondents Carter and Davis. The return made in a good faith effort to comply with the previously underestimated calculations for extensions of time due to the Appellants, especially Appellant Gersten's, extraordinary circumstances and is 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 29th day of May 2019,


Heidi Gersten
Appellant

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

Boca Raton, Florida
May 29, 2019

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

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MAY 31 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: 2018-002115 APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS WITH LEAVE TO AMEND OR MOTION FOR EXTENSION OF TIME TO SERVE AND FILE MOTION TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING, ALONG WITH EXHIBITS AND A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY 15, 2019, ORDERS OF APRIL 9, 2019 MAY 2, 14, 2019 along with letter to the Court dated May 29, 2019, and AFFIDAVIT OF APPELLANT HEIDI GERSTEN and, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT, by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

Wesley Brian Sawyer, Esquire
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)

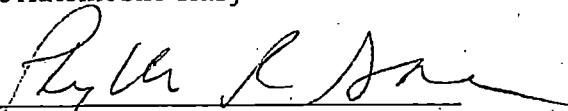
Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
Collins & Lacy, PC
1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company)

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
May 29, 2019

Appx. 38

May 29, 2019
1438 W. Lantana Rd., #330
Lantana, FL 33462
(323) 245-6142 Fax (561) 756-9820
hanginhangout@gmail.com

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate St.
Columbia, SC 29201
(803)734- 1890 Fax (803)734-1839

RE: Appellate Case No.: 2018-002115

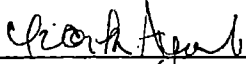
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MAY 31 2019
SC Court of Appeals

Dear Ms. Kitchings or To Whom It May Concern:

Good day to you.

After reviewing the earlier submission, this amended APPELLANTS' AMENDED RETURN TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS APPEAL AND AFFIDAVIT OF HEIDI GERSTEN TO BE COMBINED WITH MOTIONS TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING OF MOTION TO DISMISS MADE BY RESPONDENTS INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, KEVIN CARTER AND RICHARD DAVIS WITH LEAVE TO AMEND OR MOTION FOR EXTENSION OF TIME TO SERVE AND FILE MOTION TO REINSTATE APPEAL AND/OR PETITION FOR REHEARING along with a more detailed response to this Court's letter dated February 15, April 9, May 2, and 14 all in the year of 2019, is being submitted, first as a fax to you and then by mail, along with 7 copies. Please file the original and return a file-stamped copy in the pre-paid postage envelope provided. Thank you for your time regarding this matter.

Respectfully submitted,

Heidi Gersten, Ivanka Ayoub
Appellants

HG/Enclosures

Appx. 39

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South Carolina Court of Appeals
Chief of Court: Hon. Joseph Abbott Kitchens
1220 Senate St.
Columbia, SC 29201

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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FAX: (803) 734-1839
www.sccourts.org

June 18, 2019

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

Re: Heidi Gersten v. Kevin Carter
Appellate Case No. 2018-002115

Dear Ms. Gersten:

The Court received your document titled "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 motion for extension of time to serve and file motion to reinstate appeal."

Two money orders were received with this motion, each in the amount of \$50.00. The correct motion fee amount is \$50.00. Accordingly, we are returning one of the money orders to you.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Appx. 41

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

The South Carolina Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are
Appellants,

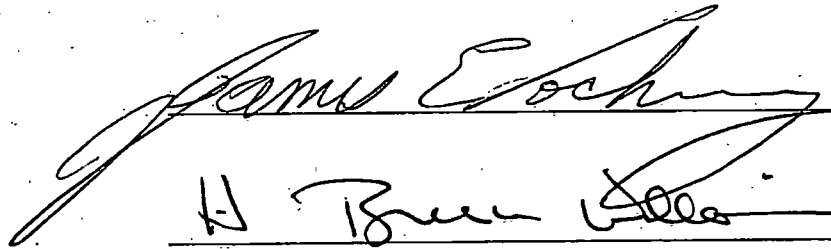
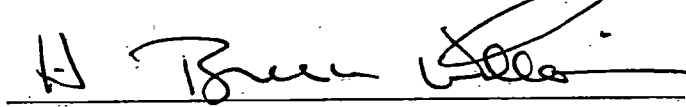
v.

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

Appellate Case No. 2018-002115

ORDER

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

 C.J.
 J.
 J.

FILED

July 30, 2019

Appx. 43

Columbia, South Carolina

cc:

Heidi Gersten

Ivanka Ayoub

Peter H. Dworjanyn, Esquire

Michael Reid Burchstead, Esquire

Wesley Brian Sawyer, Esquire

William Reynolds Williams, Esquire

David Richard Sligh, Esquire

William H. Davidson, II, Esquire

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

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

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

Respondents,

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NOV 27 2018

SC Court of Appeals

v.

Heidi Gersten, Ivanka Ayoub,
Daniel Hubbard

Appellants.

NOTICE OF APPEAL

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

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

Appx. 45

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

November 15, 2018


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

Other Counsel of Record:

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(Attorney for Kevin Carter and Richard Davis)
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Michael R. Burchstead, Esquire
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John Ammendola)
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(Attorney for Defendant Interinsurance Exchange
of the Automobile Club)
(843) 662-3258

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

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

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: **FILE NO: 2018-CP-12-00117/2018-AP-12-00074 NOTICE OF APPEAL IN A CIVIL CASE** by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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

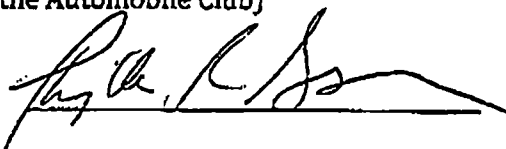
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

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

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

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

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

By: 

Boca Raton, Florida
November 15, 2018

FAX
Cover Sheet

November 27, 2018

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

From: Heidi Gersten
(323) 245-6142

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NOV 27 2018

SC Court of Appeals

Pages including this cover sheet 44

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

SOUTH CAROLINA Court of Appeals
Clerk of Court
ATTN: Jenny Abbott Kitchings
1220 Senate Street
Columbia, South Carolina 29201

PHONE (803) 734-1890

FAX (855) 734-1839

RE: New Appeal

File No: 2018-AP-12-00074 AND 2018-CP-12-00117

Priority Matter

RECEIVED

NOV 27 2018

SC Court of Appeals

Dear Ms. Kitchings or To Whom It May Concern:

Good Day to you. Please file this appeal. The Original Notice of Appeal along with the Orders, Proof of Service paperwork, and a money order USPS serial number 25302654821 has been sent yesterday November 26, 2018 via U.S. Postal Service tracking number 70181830000149570837 and is expected to be delivered on Thursday November 29, 2018.

Thank you so much for your help. I am available if you have any questions.

Respectfully Submitted



Heidi Gersten

2010-11-21 12:40

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Total Postage and Fees	\$6.70	11/15/2018

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☐ Adult Signature Required	\$0.00	
☐ Adult Signature Restricted Delivery	\$0.00	

Postage	\$0.50	NOV 15 2018
Total Postage and Fees	\$6.70	11/15/2018

Sent To: *David R. Singh*
 Street and Apt. No., or PO Box No.: *PO Box 2116*
 City, State, ZIP+4®: *Myrtle Beach, SC 29578*

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☐ Adult Signature Restricted Delivery	\$0.00	

Postage	\$0.50	NOV 15 2018
Total Postage and Fees	\$6.70	11/15/2018

Sent To: *Reynolds Williams*
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Appx. 50

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 (Estimated Delivery Date)
 (Monday 11/19/2018)
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 (70181830000149570684)
 Return 1 \$2.75
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 (@USPS Return Receipt #)
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 First-Class 1 \$0.50
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 (Domestic)
 (COLUMBIA, SC 29205)
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 (Estimated Delivery Date)
 (Monday 11/19/2018)
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 First-Class 1 \$0.50
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 (Estimated Delivery Date)
 (Monday 11/19/2018)
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Total	\$47.11
Cash	\$100.00
Change	(\$52.89)

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Appx. 51

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Product Description	Sale Qty	Final Price

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 (9590940243858190011350)

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 (COLUMBIA, SC 29202)
 (Weight: 0 Lb 0.80 Oz)
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Certified	1	\$3.45

(@USPS Certified Mail #)
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Return Receipt	1	\$2.75

(@USPS Return Receipt #)
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First-Class Mail Letter	1	\$0.50

(Domestic)
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 (Weight: 0 Lb 0.70 Oz)
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 (Monday 11/19/2018)

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Return Receipt	1	\$2.75

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 (Monday 11/19/2018)

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Return Receipt	1	\$2.75

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First-Class Mail Letter	1	\$0.50

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Appx. 52

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

RECEIVED
NOV 27 2018
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

Appx. 54



Chester Common Pleas

Case Caption: Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al
Case Number: 2018CP1200117
Type: Order/Electronic Form 4

So Ordered

s/John C. Hayes III 2049

Electronically signed on 2018-10-16 09:54:36 page 3 of 3

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Appx. 55

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Heidi Gersten, Ivanka Ayoub, Daniel
Hubbard,

Plaintiffs,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2018-CP-12-00117

CIVIL ACTION NO: 2018-CP-12-00074

**ORDER GRANTING DEFENDANT
INTERINSURANCE EXCHANGE OF
THE AUTOMOBILE CLUB'S
MOTION TO DISMISS**

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

PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

LAW

AAA's Motion to Dismiss seeks the following relief:

- a) Dismissal of all claims asserted against it for failing to state facts constituting a cause of action,
- b) Dismissal for a lack of standing to pursue the claim asserted claims,
- c) Dismissal of Daniel Hubbard's claims,
- d) Dismissal of Ivanka Ayoub's claims,
- e) That certain specified allegations be stricken,
- f) Dismissal for lack of *in personam* jurisdiction, and a
- g) Change of Venue

The Court will address each item in turn.

A. All Causes of Action

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

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

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

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

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

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

B. Standing

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

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

C. Daniel Hubbard's claims.

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

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

D. *Consortium* claims.

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

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

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

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

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

The claims by Ayoub and Hubbard are hereby dismissed.

E. In Personam Jurisdiction

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

F. Striking Allegations

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

G. Change of Venue

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

H. All Other Causes of Action asserted by Gersten

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

CONCLUSION

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

- 1) All causes of action asserted against AAA are dismissed pursuant to Rule 12(b)(6), SCRCP.
- 2) All causes of action asserted against AAA are dismissed for lack of personal jurisdiction by this court,
- 3) The causes of action asserted by Daniel Hubbard are dismissed pursuant to Rule 41(b), SCRCP for failure to prosecute.
- 4) Ivanka Ayoub's & Danial Hubbard's loss of consortium claims are dismissed pursuant to Rule 12(b)(6), SCRCP because South Carolina does not recognize a claim for filial or maternal loss of *consortium*.
- 5) All causes of action against AAA are dismissed because it would not be permissible to try them with the claims against the negligence Defendants.
- 6) AAA's Motions to Strike are denied as moot.
- 7) AAA's Motion to Change Venue is denied as moot.

It is so ORDERED.

John C. Hayes, III
Circuit Court Judge

_____, SC
_____, 2018



Chester Common Pleas

Case Caption: Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al
Case Number: 2018CPI200117
Type: Order/Dismissal

So Ordered

s/John C. Hayes III 2049

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Appx. 64

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel
Hubbard,

Plaintiff,

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

vs.

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

Defendants.

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NOV 27 2018

SC Court of Appeals

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

PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

LAW

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

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

The Court will address each item in turn.

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

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

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

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

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

B. Daniel Hubbard's claims.

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

C. Ivanka Ayoub's claims.

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

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

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

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

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

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

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

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

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

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

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

E. Carter and Davis' other motions.

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

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

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

CONCLUSION

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

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

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

John C. Hayes, III
Circuit Court Judge



Chester Common Pleas

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

Case Number: 2018CP1200117

Type: Order/Other

So Ordered

s/John C. Hayes III 2049

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

Appx. 73

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Heidi Gersten, Ivanka Ayoub, Daniel
Hubbard,

Plaintiffs,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 18-CP-12-117

ORDER

RECEIVED
NOV 27 2018
SC Court of Appeals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AND IT IS SO ORDERED.

The Honorable J.C. Hayes

SEPTEMBER __, 2018

CHESTER, SOUTH CAROLINA



Chester Common Pleas

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

So Ordered

s/John C. Hayes III 2049

Electronically signed on 2018-09-21 14:22:40 page 5 of 5

Appx. 78

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel
Hubbard,

Plaintiff,

**ORDER GRANTING DEFENDANTS
NATIONWIDE INSURANCE COMPANY'S
AND JOSEPH TURBOVICH'S MOTION TO
DISMISS**

vs.

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

Defendants.

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NOV 27 2018
SC Court of Appeals

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

PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

LAW

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

- a) Dismissal of all causes of action for failure to state facts sufficient to constitute a cause of action;
- b) Dismissal of all causes of action due to lack of standing;
- c) Dismissal of Daniel Hubbard's claims;
- d) Dismissal of Ivanka Ayoub's claims;
- e) Dismissal of all claims against Joseph Tirbovich for failure to properly serve the Summons and Complaint;

The Court will address each of these grounds in turn.

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

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

doing business in the State of North Carolina.” (Compl. ¶ 5). Pursuant to Rule 12(b)(6), SCRCPP, a Complaint should be dismissed if it fails “to state facts sufficient to constitute a cause of action.” Rule 12(b)(6), SCRCPP. The Complaint alleges no factual allegations against Defendants Nationwide and Tirbovich.

B. Dismissal Due to Lack of Standing

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

C. Daniel Hubbard’s claims.

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

D. Ivanka Ayoub’s claims.

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

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

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

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

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

E. All Other Causes of Action asserted by Plaintiffs

The Complaint lists eighteen separate causes of action. As it relates to Nationwide and Tirbovich, these causes of action merely allege the legal elements of various other causes of action, and several of these causes of action fail to even allege the basic legal elements. Rule 8(a) of the South Carolina Rules of Civil Procedure states that a pleading setting forth a cause of action "shall contain . . . a short and plain statement of the facts showing the pleader is entitled to relief." Rule 8(a), SCRCF. In reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court's analysis is limited solely to the Complaint itself, and no other documents may be

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

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

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

CONCLUSION

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

- 1) All causes of action asserted against Nationwide and Tirbovich are dismissed pursuant to Rule 12(b)(6), SCRCP.
- 2) All causes of action asserted against Nationwide and Tirbovich are dismissed for lack of standing;
- 3) The causes of action asserted by Daniel Hubbard are dismissed pursuant to Rule 41(b), SCRCP for failure to prosecute.
- 4) Ivanka Ayoub's loss of consortium claim is dismissed pursuant to Rule 12(b)(6), SCRCP because South Carolina does not recognize a claim for filial loss of consortium.
- 5) All causes of action against Tirbovich are dismissed pursuant to Rule 12(b)(5) for Plaintiffs' failure to serve him with the Summons and Complaint in either the Arbitration Action of the Civil Action.

It is so ORDERED.

John C. Hayes, III
Circuit Court Judge



Chester Common Pleas

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

Case Number: 2018CP1200117

Type: Order/Dismissal

So Ordered

s/John C. Hayes III 2049

Electronically signed on 2018-09-21 14:23:20 page 7 of 7

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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

RECEIVED

NOV 29 2018

SC Court of Appeals

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

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

Respondents,

v.

Heid Gersten, Ivanka Ayoub,
Daniel Hubbard

Appellants.

NOTICE OF APPEAL

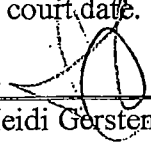
Heidi Gersten, Ivanka Ayoub, Daniel Hubbard ('Appellants') appeal the orders [judgments] of the Honorable Judges Brian M. Gibbons and John C. Hayes III dated April 26, 2018, September 5, 2018 and October 16, 2018. Appellants received written notice of entry of some of these orders [judgments] on September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

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

Appx. 86

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

November 15, 2018


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

Other Counsel of Record:

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

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: FILE NO: 2018-CP-12-00117/2018-AP-12-00074 **NOTICE OF APPEAL IN A CIVIL CASE** by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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

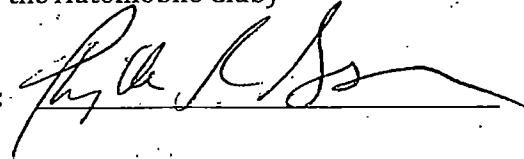
David R. Sligh
P.O. Box 2116
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Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
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Alexander S. Gogsette
P.O. Box 5478
Florence, SC 29502
(Attorney for Joseph Tirbovich)

By: 

Boca Raton, Florida
November 15, 2018

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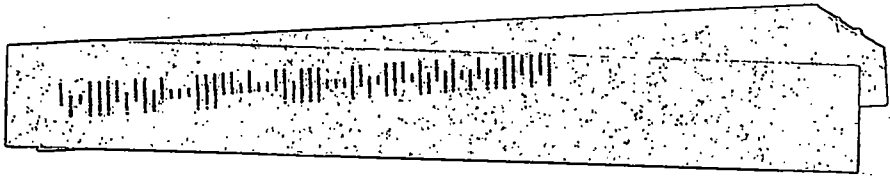
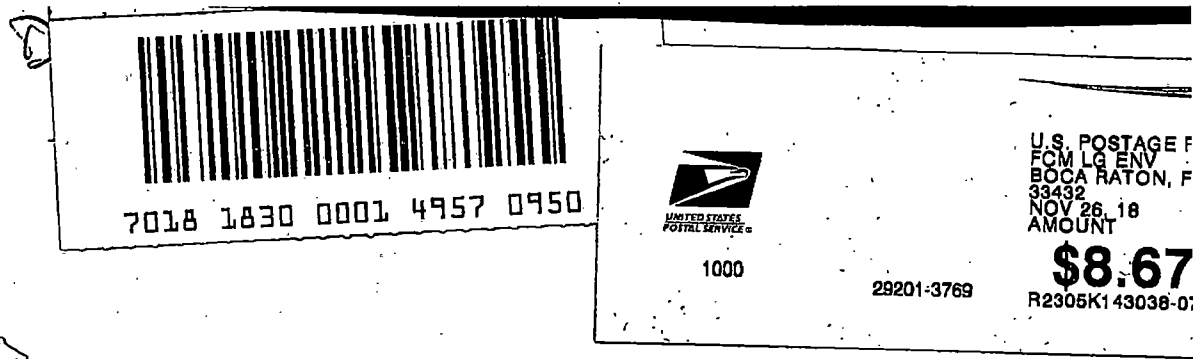
SC Court of Appeals

Appx. 88

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 Receipt

Appx. 89

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



RETURN RECEIPT
REQUESTED

APR 91

RECEIVED
NOV 29 2018
SC Court of Appeals

SOUTH CAROLINA Court of Appeals
1220 Senate St.
Columbia, SC 29201

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1200074

Heidi Gersten et al
PLAINTIFF(S)

Kevin Carter et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

This matter is outside the scope of an arbitration. This matter shall be placed on the regular Common Pleas docket for process. This case shall be consolidated with case number 2018-CP-12-00117.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

Heidi Gersten for Heidi Gersten
Ivanka Ayoub
Heidi Gersten for Heidi Gersten

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SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Appx. 92

Court Reporter:

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

ELECTRONICALLY FILED - 2018 Apr 26 4:14 PM - CHESTER - COMMON PLEAS - CASE#2018CP120074

Appx. 93



Chester Common Pleas

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

Case Number: 2018CP1200074

Type: Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2018-04-26 13:01:30 page 3 of 3

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Appx. 97



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
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www.sccourts.org

December 19, 2018

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

Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana FL 33462

Re: Heidi Gersten v. Kevin Carter
Appellate Case No. 2018-002115

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please

Appx. 95

note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are Appellants,

v.

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

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy

CLERK

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



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 19, 2018

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

Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana FL 33462

Re: Heidi Gersten v. Kevin Carter
Appellate Case No. 2018-002115

Dear Ms. Gersten and Ms. Ayoub:

Upon reviewing your notice of appeal, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR).

- Although you have included Daniel Hubbard, pro se appellant, in the signature block of your notice of appeal, Mr. Hubbard has not signed the notice of appeal himself. Therefore, Mr. Hubbard is not considered an appellant to this appeal.

Very truly yours,

V. Claire Allen, Deputy
CLERK

Appx. 97

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

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

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

Respondents,

v.

Heid Gersten, Ivanka Ayoub,
Daniel Hubbard

Appellants.

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DEC 27 2018

SC Court of Appeals

MOTION FOR EXTENSION OF TIME TO FILE PLAINTIFF/APPELLANTS'
INITIAL BRIEF

TO THE HONORABLE SOUTH CAROLINA COURT OF APPEALS:

NOW COMES, Heidi Gersten, Ivanka Ayoub, Daniel Hubbard ('Appellants') and respectfully move this Court, pursuant to **Rules 240 and 263, SCACR**, for an extension of time to file their initial brief in this court. The reasons for this motion are set forth in the attached Memorandum in Support.

38 W LANTANA RD #330,
LANTANA, FL 33462

CERTIFIED MAIL



7018 1830 0001 4957 0905



1000

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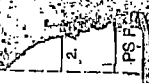
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DEC 27 2018
SC Court of Appeals

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

Appx 100



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case Nos.: 2018-CP-12-00117
2018-AP-12-00074

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DEC 27 2018

SC Court of Appeals

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

Of whom Heidi Gersten and Ivanka Ayoub are, ... Appellants.

v.

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

**MOTION TO DISMISS APPEAL AS TO
INTERINSURANCE EXCHANGE OF
THE AUTOMOBILE CLUB**

Reynolds Williams, Esquire
Post Office Box 1909
Florence, South Carolina 29503
843-662-3258
Attorney for Respondent Interinsurance
Exchange of The Automobile Club

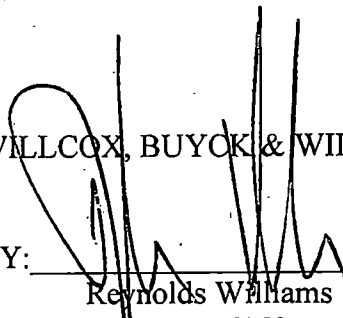
Appx. 101

The Respondent, Interinsurance Exchange of the Automobile Club ("Respondent AAA") moves the Court that the appeal against it be dismissed on the following grounds:

- The Appellant Daniel Hubbard has not filed or served a Notice of Appeal.
- The Appellants Gersten and Ayoub have failed to prosecute their appeal by failing to comply with the Appellate Court Rules.
- The Appellants have not served or filed a Notice of Appeal from the Order below dismissing all causes of action against Respondent AAA.

Respectfully submitted,

WILLCOX, BUYCK & WILLIAMS, P.A.

BY: 

Reynolds Williams

I.D. No.: 6153

Post Office Box 1909

Florence, South Carolina 29503

843-662-3258

**Attorney for Respondent Interinsurance
Exchange of The Automobile Club**

Florence, South Carolina
December 21, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case Nos.: 2018-CP-12-00117
2018-AP-12-00074

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, ... Plaintiffs,
Of whom Heidi Gersten and Ivanka Ayoub are, ... Appellants.

v.

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

AFIDAVIT OF REYNOLDS WILLIAMS

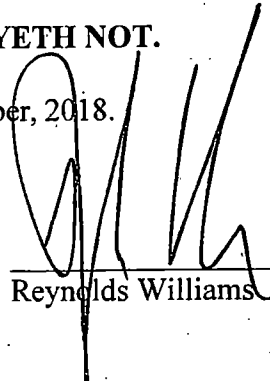
Reynolds Williams, Esquire
Post Office Box 1909
Florence, South Carolina 29503
843-662-3258
Attorney for Respondent Interinsurance
Exchange of The Automobile Club

PERSONALLY APPEARED BEFORE ME, the undersigned, Reynolds Williams,
who, after being duly sworn, deposes and says as follows:

1. I am the attorney for the Respondent AAA.
2. The items described in numbers 1 through 6 of the Table of Contents attached hereto are true and accurate copies of the documents they purport to be.
3. The dates of service specified in the Table of Contents are the actual dates upon which I was served with the indicated pleading. One Notice of Appeal on October 19, 2018 and a separate Notice of Appeal was served upon me November 19, 2019.
4. The three (3) transmittal letters, attachment 2, were placed in the mail on September 19, 2018. Appellants Ayoub and Gersten have acknowledged in the Notice of Appeal they were first served otherwise on September 18, 2018.

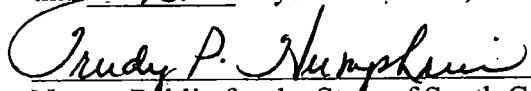
FURTHER YOUR AFFIANT SAYETH NOT.

This the 01 day of December, 2018.



Reynolds Williams

SWORN to and subscribed before me,
this 2/3 day of December, 2018.



Notary Public for the State of South Carolina
My Commissions Expires: 9/22/2027

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel
Hubbard,

CIVIL ACTION NO: 2018-CP-12-00074

Plaintiffs,

**ORDER GRANTING DEFENDANT
INTERINSURANCE EXCHANGE OF
THE AUTOMOBILE CLUB'S
MOTION TO DISMISS**

vs.

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

Defendants.

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

PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

LAW

AAA's Motion to Dismiss seeks the following relief:

- a) Dismissal of all claims asserted against it for failing to state facts constituting a cause of action,
- b) Dismissal for a lack of standing to pursue the claim asserted claims,
- c) Dismissal of Daniel Hubbard's claims,
- d) Dismissal of Ivanka Ayoub's claims,
- e) That certain specified allegations be stricken,
- f) Dismissal for lack of *in personam* jurisdiction, and a
- g) Change of Venue

The Court will address each item in turn.

A. All Causes of Action

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

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

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

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

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

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

B. Standing

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

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

C. Daniel Hubbard's claims.

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

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

D. Consortium claims.

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

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

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

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

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

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

E. In Personam Jurisdiction

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

F. Striking Allegations

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

G. Change of Venue

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

H. All Other Causes of Action asserted by Gersten

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

CONCLUSION

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

- 1) All causes of action asserted against AAA are dismissed pursuant to Rule 12(b)(6), SCRPC.
- 2) All causes of action asserted against AAA are dismissed for lack of personal jurisdiction by this court,
- 3) The causes of action asserted by Daniel Hubbard are dismissed pursuant to Rule 41(b), SCRPC for failure to prosecute.
- 4) Ivanka Ayoub's & Danial Hubbard's loss of consortium claims are dismissed pursuant to Rule 12(b)(6), SCRPC because South Carolina does not recognize a claim for filial or maternal loss of *consortium*.
- 5) All causes of action against AAA are dismissed because it would not be permissible to try them with the claims against the negligence Defendants.
- 6) AAA's Motions to Strike are denied as moot.
- 7) AAA's Motion to Change Venue is denied as moot.

It is so **ORDERED**.

John C. Hayes, III
Circuit Court Judge

_____, SC
_____, 2018



Chester Common Pleas

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

Case Number: 2018CP1200117

Type: Order/Dismissal

So Ordered

s/John C. Hayes III 2049

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

Mark W. Buyck, Jr.
Hugh L. Willcox, Jr.
Wm. Reynolds Williams♦
Mark W. Buyck, III
E. Lloyd Willcox, II
John H. Muench † GA & KY
Tracy L. Wright
J. Scott Kozacki
Walker H. Willcox
Paula A. Sartor
Katherine M. Ryan † AL

LAW OFFICES
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† Additionally Licensed
♦ Certified Mediator

ESTABLISHED 1895

Telephone (843) 662-3258
Fax (843) 662-1342

Reply To: Florence

September 19, 2018

Sent via Email Transmission Only

Heidi Gersten - hanginhangout@gmail.com
1438 West Lantana Road, #330
Lantana, FL 33462

Daniel Hubbard - hanginhangout@gmail.com
1438 West Lantana Road, #330
Lantana, FL 33462

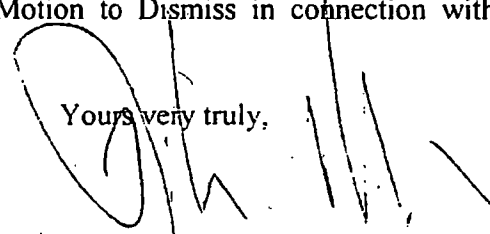
Ivanka Ayoub - hanginhangout@gmail.com
1438 West Lantana Road, #330
Lantana, FL 33462

Re: Heidi Gersten, et al v. Kevin Carter, et al
Case Nos.: 2018-CP-12-00074 and 2018-CP-12-00117
Our File No.: 13443.17168

Dear Ms. Gersten, Ms. Ayoub, and Mr. Hubbard:

Attached please find a copy of the signed and filed Order Granting Defendant Interinsurance Exchange of the Automobile Club's Motion to Dismiss in connection with the above-referenced matter.

Yours very truly,



Reynolds Williams
Email: reynolds@willcoxlaw.com

RW/tph
Enclosure

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard

Plaintiff,

vs.

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

Defendant.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-12-00117

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

CLERK OF COURT
CHESTER CO S.C.

2018 OCT -8 A 9:30

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 and John
Ammendola)

Reynolds Williams, Bar No: 006153

P.O. Box 1909

Florence, SC 29503-1909

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

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the Automobile Club)

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Myrtle Beach, South Carolina 29578

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Alexander S. Gogsette, SC Bar No. 101244

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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

	<u>Tirbovich</u> <u>William H. Davidson, II</u> <u>1611 Devonshire Dr., 2nd Floor</u> <u>Columbia, SC 29202</u> <u>(Attorney for SC Dept. of Public Safety and Blackwell)</u>																		
☒ 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 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: _____																			
SECTION III: Motion Fee																			
☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) <table style="width: 100%; border: none;"> <tr> <td style="width: 30%;">☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Domestic Abuse or Abuse and Neglect</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td></td> </tr> <tr> <td>☐ Motion for Stay in Bankruptcy</td> <td></td> </tr> <tr> <td>☐ Motion for Publication</td> <td></td> </tr> <tr> <td colspan="2">☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>		☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party	☐ Domestic Abuse or Abuse and Neglect	☐ Post-Conviction Relief	☐ Indigent Status	☐ Motion for Execution (Rule 69, SCRPC)	☐ Sexually Violent Predator Act		☐ Motion for Stay in Bankruptcy		☐ Motion for Publication		☐ 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: _____	
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☐ Motion for Publication																			
☐ 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
 2008 OCT -8 A 9 30
 FILED

SCCA 233 (11/2003)

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), SCRC

AND

REQUEST FOR ORAL HEARING

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

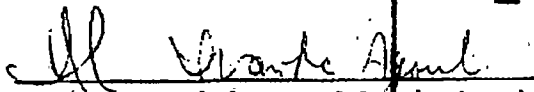
FILED
2018 OCT -8 A 9:31
CLERK OF COURT
JUDICIAL CIRCUIT 60 S.C.

PLEASE TAKE NOTICE, now come the Plaintiffs Heidi Gersten, Ivanka Ayoub, Daniel Hubbard and move this court of the Sixth Judicial Circuit before the Presiding Judge, preferably 7 months from now after service hereof on said defendants, or as soon thereafter as may be heard, to allow the Plaintiff Gersten ample time to heal her pressure wound that was worsened by enduring the premature motion hearing on September 5, 2018, for an order to alter or amend a judgment or relief from judgment or order made by Honorable Circuit Judge Brian M. Gibbons on April 26, 2018 pursuant to Rules 52, 59(e) and 60(4), SCRC, 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 31
CLERK OF COURT
JUDICIAL CIRCUIT
IN THE 13th S.C.

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

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

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

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

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

Respondents,

v.

Heidi Gersten, Ivanka Ayoub,
Daniel Hubbard

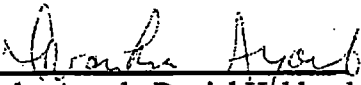
Appellants.

NOTICE OF APPEAL

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard ('Appellants') appeal the orders [judgments] of the Honorable John Hayes dated September 5, 2018. Appellants received written notice of entry of some of these orders [judgments] on September 18-October 3, 2018.

This appeal is subject to being premature and a stay may be in order as there are orders left to be reconsidered and/or determined by the lower (circuit) court. The Appellants retain their filing as paid in full at the time of filing for all purposes of the orders made and/or pertaining to and/or regarding, whether ruled on or not, said court date.

October 18, 2018



Heidi Gersten, Ivanka Ayoub, Daniel Hubbard
1438 W. Lantana Rd., #330
Lantana, FL 33462

(323) 245-6142

Appellants

Other Counsel of Record:

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

David R. Sligh
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Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)
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Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
Collins & Lacy, PC
1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company and
John Ammendola)
(803) 255-0404

William H. Davidson II, Esquire
Davidson & Lindemann, PA
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(Attorney for SC Dept. of Public Safety
and Herbert Blackwell)

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

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

CERTIFICATE OF SERVICE

(2018-AP-12-00074)

(2018-CP-12-00117)

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: **FILE NO: 2018-CP-12-00117 NOTICE OF APPEAL IN A CIVIL CASE**, by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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

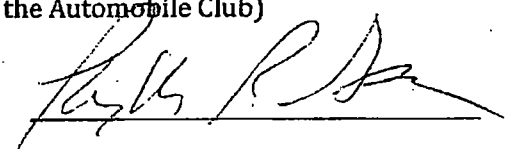
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
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Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202
(Attorney for SC Dept. of Public Safety and Herbert Blackwell)

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

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

By: 

Boca Raton, Florida
October 18, 2018

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

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

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

Respondents,

v.

Heid Gersten, Ivanka Ayoub,
Daniel Hubbard

Appellants.

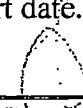
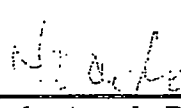
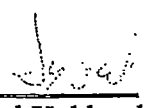
NOTICE OF APPEAL

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

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

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

November 15, 2018

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

Other Counsel of Record:

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

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(Attorneys for Trustguard Insurance Company and
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William H. Davidson II, Esquire
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Columbia, SC 29202
(Attorney for SC Dept. of Public Safety
and Herbert Blackwell)

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

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

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

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: FILE NO: 2018-CP-12-00117/2018-AP-12-00074 **NOTICE OF APPEAL IN A CIVIL CASE** by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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

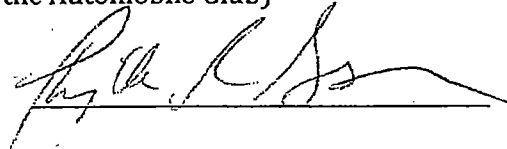
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

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

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

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

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

By: 

Boca Raton, Florida
November 15, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY

Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Brian M. Gibbons, Circuit Court Judge

RECEIVED

Case Nos.: 2018-CP-12-00117
2018-AP-12-00074

DEC 27 2018

SC Court of Appeals

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

Of whom Heidi Gersten and Ivanka Ayoub are, ... Appellants.

v.

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

**MEMORANDUM OF AUTHORITIES
IN SUPPORT OF RESPONDENT
INTERINSURANCE EXCHANGE
OF THE AUTOMOBILE CLUB'S
MOTION TO DISMISS**

Reynolds Williams, Esquire
Post Office Box 1909
Florence, South Carolina 29503
843-662-3258
Attorney for Respondent Interinsurance
Exchange of The Automobile Club

STATEMENT OF CASE AND PERTINENT FACTS

The Appellants filed an arbitration case for property damage and a lawsuit for personal injury in the Court of Chester County in the Spring of 2018. Respondent AAA was a Defendant or Respondent in both and the cases were consolidated by Order of the Administrative Judge of Chester County in April 2018. No appeal was taken from that Order. Respondent AAA filed a Motion to Dismiss both claims and a hearing was held on that Motion, and all the other pending motions, mostly similar filed by the Co-Defendants, on September 5, 2018.

On October 8 Plaintiffs Gersten and Ayoub (but not Hubbard) filed a motion to alter or amend or be relieved from an Order made by "Honorable Circuit Judge Brian M. Gibbons on April 26, 2018" and "orders made by Honorable Judge John Hayes on September 5, 2018." The body of the motion asserts that *pro se* Plaintiff Hubbard is a moving party but at no place does Hubbard sign that motion.

The Presiding Judge issued an Order resolving the issues argued at the September 5th hearing on September 18, 2018, served upon Respondent AAA and Appellants Ayoub and Gersten that same day.

On October 18, 2018 Appellants Gersten and Ayoub signed a Notice of Appeal from "the orders [judgements] of the Honorable John Hayes dated September 5, 2018. Appellants received written notice of entry of some of these orders [judgments] on September 18 – October 3, 2018." Although the *pro se* Plaintiff Daniel Hubbard's name is mentioned in the Notice of Appeal, he did not sign it. The attorney for Respondent

AAA was served October 19, 2018, but the Notice of Appeal has never been filed in the Court below or this Court. None of the Appellants have ordered a Transcript of the September 5, 2018 proceedings from the Court Reporter.

On November 15, 2018, Appellants Gersten and Ayoub signed a Notice of Appeal from "orders [judgments] ... dated April 26, 2018, September 5, 2018, and October 16, 2018. Appellants received written notice of entry of some of these order [judgments] on September 18-October 21, 2018." Although the *pro se* Plaintiff Daniel Hubbard is mentioned in the body of the Notice of Appeal, he did not sign it. The attorney for Respondent AAA was served November 19, 2018; the Notice of Appeal was filed in this Court and the Circuit Court November 29, 2018. None of the Appellants have ordered a transcript of any proceedings of any kind or nature in this matter.

POINTS AND AUTHORITIES

Rule 205 S.C.A.C.R. provides that this Court shall have "exclusive jurisdiction" over the appeal, thus divesting the Court below on October 19, 2018, of jurisdiction.

The October 18, 2018 appeal of the September 5, 2018 Order did not comply with the 203(a) S.C.A.C.R. stricture that it not only be served but also filed and otherwise comply with the Rules. The effect of failing to timely file a notice of appeal is that it "shall be dismissed." Rule 203(d)(3) S.C.A.C.R. The deadline for filing in this Court and the lower court passed on the 10th day after the October 19th service upon the undersigned. On or before that same day, the Appellants had an obligation to order the transcript. Rule 207(a)(1) S.C.A.C.R. A party intending to appeal must comply with

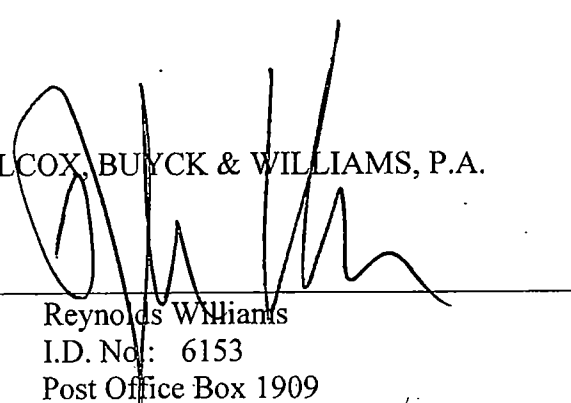
that Rule, so Appellants' failure to order the transcript further justifies the dismissal of the October 18 Notice of Appeal (the "first appeal"). Rule 203(a) S.C.A.C.R.

The second appeal was timely served on November 19 and appears to have been timely filed below and in this Court. By its own terms, however, that second appeal is only from Orders dated April 26, September 5, and October 16, 2018. The time to appeal from an April 26, 2018 Order had passed long ago by the time of this second Notice. In addition, the September 5th Order was the subject of the Notice of Appeal, aborted for the reasons already discussed. Thus, the only appeal both noticed and still alive is from the Order of October 16, 2018 holding that the "[September 5, 2018] order does not violate plaintiffs' due process rights under the Constitution of the United States or South Carolina." Judge Hayes's Order of September 18, 2018 is not a subject of the extant second Notice of Appeal. Since that Order is the one which granted Respondent AAA's Motion to Dismiss, its continued viability is crucial to this Court's consideration. That Order dismissed "all causes of action asserted against (Respondent AAA)" and for five (5) different reasons therein specified. No appeal having been taken from such Order, it is a final judgment as to Respondent AAA.

The Plaintiff and alleged Appellant Daniel Hubbard has never made an appeal by initiating or otherwise processing a Notice of Appeal, so his appeal should be dismissed for lack of jurisdiction.

Respectfully submitted,

WILLCOX, BUYCK & WILLIAMS, P.A.

BY: 

Reynolds Williams

I.D. No: 6153

Post Office Box 1909

Florence, South Carolina 29503

843-662-3258

**Attorney for Respondent Interinsurance
Exchange of The Automobile Club**

Florence, South Carolina

December 21, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case Nos.: 2018-CP-12-00117
2018-AP-12-00074

RECEIVED

DEC 27 2018

SC Court of Appeals

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

Of whom Heidi Gersten and Ivanka Ayoub are, ... Appellants.

v.

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

CERTIFICATE OF SERVICE

The undersigned employee of Willcox, Buyck & Williams, P.A., counsel for the Respondent Interinsurance Exchange of The Automobile Club, does hereby certify that service of the **Respondent's Motion To Dismiss, Memorandum of Authorities, and Supporting Documents** in the above-captioned case was made upon all parties and counsel of record by depositing a copy of same in the US Mail, postage prepaid, to:

HEIDI GERSTEN
1438 West Lantana Road, #330
Lantana, FL 33462

Wesley Brian Sawyer, Esquire
Murphy & Grantland, P.A.
PO Box 6648
Columbia, SC 29260

Appx. 134

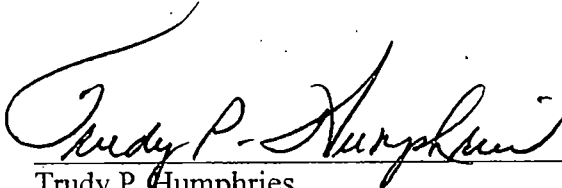
IVANKA AYOUB
1438 West Lantana Road, #330
Lantana, FL 33462

Peter H. Dworjanyn, Esquire
Michael R. Burchstead, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211

William H. Davidson, II, Esquire
Davidson, Wren & Plyler, P.A.
PO Box 8568
Columbia, SC 29202

David Richard Sligh, Esquire
Turner Padget Graham & Laney, P.A.
PO Box 2116
Myrtle Beach, SC 29578

December 21, 2018


Trudy P. Humphries
Paralegal to Reynolds Williams

Mark W. Buyck, Jr.
Hugh L. Willcox, Jr.
Wm. Reynolds Williams♦
Mark W. Buyck, III
E. Lloyd Willcox, II
John H. Muench † GA & KY
Tracy L. Wright
J. Scott Kozacki
Walker H. Willcox
Paula A. Sartor
Katherine M. Ryan † AL

LAW OFFICES
WILLCOX, BUYCK, & WILLIAMS
PROFESSIONAL ASSOCIATION
WWW.WILLCOXLAW.COM
248 WEST EVANS STREET (29501)
POST OFFICE BOX 1909
FLORENCE, SOUTH CAROLINA 29503-1909

2050 Corporate Center Dr
Suite 230
Myrtle Beach, SC 29577
Telephone (843) 650-6777
Fax (843) 650-6767

† Additionally Licensed
♦ Certified Mediator

ESTABLISHED 1895

Telephone (843) 662-3258
Fax (843) 662-1342

Reply To: Florence

December 21, 2018

HONORABLE JENNY ABBOTT KITCHINGS
CLERK OF COURT
SC COURT OF APPEALS
PO BOX 11629
COLUMBIA SC 29211

RECEIVED

DEC 27 2018

SC Court of Appeals

Re: Heidi Gersten, et al v. Kevin Carter, et al
Appellate Case No.: 2018-002115
Our File No.: 13443.17168

Dear Ms. Kitchings:

Please find enclosed for filing the originals and seven copies each of Respondent Interinsurance Exchange of The Automobile Club's **Motion to Dismiss, Memorandum of Authorities, and Supporting Documents** in connection with the above case. Also enclosed is our firm's check in the amount of \$25.00 for the filing of this Motion. Please file the original and return a clocked-in copy to us in the self-addressed, stamped envelope.

By copy of this correspondence, we are serving a copy on Appellants and counsel of record.

Yours very truly,

Reynolds Williams
Email: reynolds@willcoxlaw.com

RW/tpb
Enclosures

Appx. 136

December 21, 2018

Page 2

Cc: Heidi Gersten
Ivanka Ayoub
Wesley Brian Sawyer, Attorney for Defendants Carter and Davis
Peter H. Dworjanyn and Michael Burchstead, Attorneys for Defendants Trustguard Insurance
and Ammendola
David Richard Sligh, Attorney for Defendants Nationwide and Tirbovich
William H. Davidson, II, Attorney for Defendants SC Dept of Public Safety and Blackwell

Appx. 137

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CLERK OF COURT
SC COURT OF APPEALS
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The South Carolina Court of Appeals

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V. CLAIRE ALLEN
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COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 04, 2019

Mr. William Reynolds Williams, Esquire
PO Box 1909
Florence SC 29503-1909

Re: Heidi Gersten v. Kevin Carter
Appellate Case No. 2018-002115

Dear Counsel:

Upon reviewing your motion to dismiss, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this letter or your motion will not be considered:

- The filing fee amount submitted is incorrect. The correct filing fee is \$50.00. We are returning your check (no. 97632).

Very truly yours,

V. Claire Allen, Deputy

CLERK

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

Appx. 139

0012

Mark W. Buyck, Jr.
Hugh L. Willcox, Jr.
Wm. Reynolds Williams♦
Mark W. Buyck, III
E. Lloyd Willcox, II
John H. Muench † GA & KY
Tracy L. Wright
J. Scott Kozacki
Walker H. Willcox
Paula A. Sartor
Katherine M. Ryan † AL

LAW OFFICES
WILLCOX, BUYCK, & WILLIAMS
PROFESSIONAL ASSOCIATION
WWW.WILLCOXLAW.COM
248 WEST EVANS STREET (29501)
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FLORENCE, SOUTH CAROLINA 29503-1909

2050 Corporate Center Dr
Suite 230
Myrtle Beach, SC 29577
Telephone (843) 650-6777
Fax (843) 650-6767

ESTABLISHED 1895

Reply To: Florence

† Additionally Licensed
♦ Certified Mediator

Telephone (843) 662-3258
Fax (843) 662-1342

January 7, 2019

V. CLAIRE ALLEN
DEPUTY CLERK OF COURT
SC COURT OF APPEALS
PO BOX 11629
COLUMBIA SC 29211

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JAN 09 2019

SC Court of Appeals

Re: Heidi Gersten, et al v. Kevin Carter, et al
Appellate Case No. 2018-002115
Our File No. 13443-17168

Dear Ms. Allen:

We are in receipt of your correspondence dated January 4, 2019 in connection with the filing fees submitted with our Motion to Dismiss in the above-referenced matter. We apologize for the error and have enclosed the correct filing fee of \$50.00 (our firm's check number 97751).

Yours very truly,

Reynolds Williams
Email: reynolds@willcoxlaw.com

RW/tpb
Enclosure

Cc: Heidi Gersten
Ivanka Ayoub

Wesley Brian Sawyer, Attorney for Defendants Carter and Davis
Peter H. Dworjanyn and Michael Burchstead, Attorneys for Defendants Trustguard Insurance
and Ammendola
David Richard Sligh, Attorney for Defendants Nationwide and Tirbovich
William H. Davidson, II, Attorney for Defendants SC Dept of Public Safety and Blackwell

Appx. 170

TPH
Please handle



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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

January 04, 2019

Mr. William Reynolds Williams, Esquire
PO Box 1909
Florence SC 29503-1909

Re: Heidi Gersten v. Kevin Carter
Appellate Case No. 2018-002115

Dear Counsel:

Upon reviewing your motion to dismiss, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this letter or your motion will not be considered:

- The filing fee amount submitted is incorrect. The correct filing fee is \$50.00. We are returning your check (no. 97632).

Very truly yours,

V. Claire Allen, Deputy

CLERK

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

Appx-141

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Appx. 142



The South Carolina Court of Appeals

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V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 10, 2019

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

Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana FL 33462

Re: Heidi Gersten v. Kevin Carter
Appellate Case No. 2018-002115

Dear Ms. Gersten and Ms. Ayoub:

Your motion for extension of time to serve and file the appellants' initial brief and designation of matter was received on the same day as the respondents' motion to dismiss this appeal. The motion to dismiss holds all filing deadlines in abeyance, pursuant to Rule 240, SCACR. Therefore, your motion is not necessary and no action will be taken regarding your extension request. We are requesting a refund of your filing fee.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Peter H. Dworjanyn, Esquire
Michael Reid Burchstead, Esquire
Wesley Brian Sawyer, Esquire

Appx. 143

William Reynolds Williams, Esquire
David Richard Sligh, Esquire
William H. Davidson, II, Esquire

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

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JAN 23 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

APPELLANTS OBJECTION AND/OR OPPOSITION AND
RESPONSE TO RESPONDENT INTERINSURANCE EXCHANGE
OF THE AUTOMOBILE CLUB'S MOTION TO DISMISS APPEAL

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

Appx. 145

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

JAN 23 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 **APPEALLANTS OBJECTION/OR OPPOSITION and RESPONSE TO RESPONDENT INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB'S MOTION TO DISMISS APPEAL along with attached AFFIDAVITS OF APPELLANT HEIDI GERSTEN and PHYLLIS pages IN A CIVIL CASE** by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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

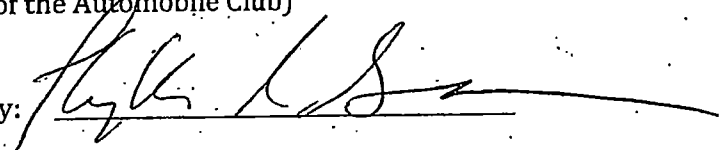
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

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: 

Boca Raton, Florida
January 17, 2019

Appx. 146

NTANA, FL 33462

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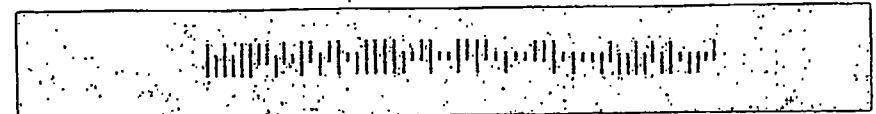
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JAN 23 2019

SC Court of Appeals

The South Carolina Court of Appeals
c/o Jenny Abbott Kitchings
Clerk of Court
P.O. Box 11629
Columbia, SC 29211

Appx. 147



IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

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

Of whom Heidi Gersten and Ivanka Ayoub are, ...Appellants.

v.

Kevin Carter, Richard Davis, Joseph Tribovich, Nationwide Mutual Insurance Company,
Interinsurance Exchange of The Automobile Club, John Ammendola, Trustguard Insurance
Co., Blackwell, SC Department of Public Safety, Chevrolet, GMS, Unknown Joe Does,
.....Respondents.

**MOTION TO DISMISS APPEAL AS TO
KEVIN CARTER AND RICHARD DAVIS**

Respondents Kevin Carter and Richard Davis, by and through their undersigned attorney,
move this Court to dismiss the appeal against them because Appellants did not timely serve the
Notice of Appeal on this Court. Respondents Carter and Davis also file a Memorandum of
Authorities in support and an Affidavit of Facts.

This Motion is made pursuant to Rule 240 of the South Carolina Appellate Court Rules
and is supported by the affidavits, memoranda of law, and such other documents filed with this
Motion.

Respectfully submitted,



Wesley B. Sawyer, Esquire, SC Bar # 00444
Murphy & Grantland, PA
P.O. Box 6648

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JAN 31 2019

SC Court of Appeals

Appx. 148

Columbia, South Carolina 29260
(803) 782-4100
wsawyer@murphygrantland.com
Attorneys for Respondents Kevin Carter and
Richard Davis

January 30, 2019

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

RECEIVED
JAN 31 2019
SC Court of Appeals

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

Of whom Heidi Gersten and Ivanka Ayoub are, ...Appellants.

v.

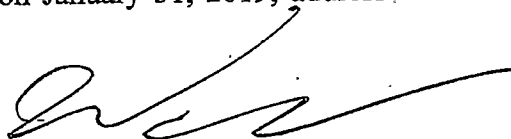
Kevin Carter, Richard Davis, Joseph Tribovich, Nationwide Mutual Insurance
Company, Interinsurance Exchange of The Automobile Club, John Ammendola,
Trustguard Insurance Co., Blackwell, SC Department of Public Safety, Chevrolet,
GMS, Unknown Joe Does,

.....Respondents.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal as to Kevin Carter and Richard Davis, Affidavit of Facts, and Memorandum of Authorities in Support of Respondents Kevin Carter's and Richard Davis' Motion to Dismiss by depositing a copy of it in the United States Mail, postage prepaid, on January 31, 2019, addressed to all attorneys of record listed below.

January 31, 2019



Wesley B. Sawyer, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Respondents Kevin
Carter and Richard Davis

Appx: 150

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

Other Counsel of Record:
David R. Sligh, Esquire
P. O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co.)
(Attorney for Joseph Tirbovich)
(843) 213-5519

Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
Collins & Lacy, PC
1330 Lady Street, 6th Floor (29201)
P. O. Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company
And John Ammendola)
(803) 255-0404

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

William H. Davidson, II, Esquire
Davidson & Lindemann, PA
P. O. Box 8568
Columbia, SC 29202
(Attorneys for SC Dept. of Public Safety
And Herbert Blackwell)
(803) 806-8222

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

RECEIVED
JAN 31 2019
SC Court of Appeals

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

Of whom Heidi Gersten and Ivanka Ayoub are, ...Appellants.

v.

Kevin Carter, Richard Davis, Joseph Tribovich, Nationwide Mutual Insurance Company,
Interinsurance Exchange of The Automobile Club, John Ammendola, Trustguard
Insurance Co., Blackwell, SC Department of Public Safety, Chevrolet, GMS, Unknown
Joe Does, ...Respondents.

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

Appellants attempted to appeal three orders from the Chester County Court of Common Pleas. However, the operative Notice of Appeal in this case was untimely filed with the Court of Appeals and clerk of the lower court. Therefore, Respondents Carter and Davis respectfully request that this Court grant their Motion to Dismiss the Appeal with prejudice as it pertains to them.

BACKGROUND

In early 2018, Appellant Heidi Gersten filed two actions in the Chester County Court of Common Pleas. On February 21, 2018, Gersten filed a Summons and Claim for Property Damage seeking arbitration in case number 2018-CP-12-00074 alleging damages resulting from an automobile accident. (Ex. A, Summons and Claim, *Heidi Gersten v. Kevin Carter, Richard*

Davis, Nationwide Mutual Ins. Co., Interinsurance of the Automobile Club, Trustguard Ins., 2018-CP-12-00074). On March 16, 2018, Appellants Heidi Gersten and Ivanka Ayoub and Daniel Hubbard¹ filed a Summons and Complaint alleging damages arising out of the same automobile accident. (Ex. B, Summons and Complaint, *Heidi Gersten, Ivanka Ayoub, Daniel Hubbard v. Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual insurance Company, Interinsurance Exchange of the Automobile Club, John Ammendola, Trustguard Insurance Company, SC Dep't of Public Safety, Blackwell, GMC, Chevrolet, Unknown John Does*, 2018-CP-12-00117).

Respondents Kevin Carter and Richard Davis filed Motions to Dismiss or, in the Alternative, Motions to Strike and Sever in both cases on April 16, 2018. On April 26, 2018, the Chief Administrative Judge of Chester County entered a Form 4 Order consolidating the two cases. The various other defendants also filed Motions to Dismiss the case, and a hearing was held on September 5, 2018. On September 18, 2018, the Honorable John C. Hayes, III, entered an order granting Richard Davis's Motion to Dismiss in full and granting Kevin Carter's Motion to Dismiss in part. (Ex. C, Order Granting Defendants Kevin Carter's and Richard Davis' Motion to Dismiss). On September 19, 2018, counsel for Respondents Carter and Davis placed copies of the Order in the mail to Gersten, Ayoub, and Hubbard. (Affidavit of Facts).

Nineteen days later,² on October 8, 2018, Appellants Gersten and Ayoub filed a Motion to Alter or Amend the judgment regarding the April 26, 2018 consolidation Order and the

¹ Daniel Hubbard did not sign the Notices of Appeal. Therefore, he is not an appellant in this action, and the dismissal as to him is now final.

² Respondents reserve the right to argue that the motion to reconsider was untimely.

September 5, 2018 Order.³ The Court denied this Motion by a Form 4 Order on October 16, 2018.

On October 22, 2018, Respondents received a Notice of Appeal, purporting to appeal the September 18, 2018 Order (hereinafter the “First Notice of Appeal”).⁴ However, Appellants never filed the First Notice of Appeal with the Court of Appeals or the Circuit Court.

On November 21, 2018, Respondents received another Notice of Appeal, appealing the orders from April 26, 2018, September 18, 2018, and October 16, 2018 (hereinafter the “Second Notice of Appeal”).⁵ Appellants filed the Second Notice of Appeal with the Court of Appeals by fax on November 27, 2018 – more than 30 days after entry of the Order denying the Motion to Alter or Amend and more than 10 days after serving the Second Notice of Appeal.⁶ Appellant filed the Second Notice of Appeal with the clerk of the lower court on November 29, 2018.

ARGUMENT

The South Carolina Appellate Court Rules require appellants to serve a Notice of Appeal on Respondents within 30 days of receipt of written notice of entry of the order they seek to appeal. Rule 203(b)(1), SCACR. Then, from the date of service, appellants have an additional 10 days to file their Notice of Appeal with the Court of Appeals and the clerk of the lower court.

³ There is no “September 5, 2018 Order.” Rather, the Motions hearing occurred on September 5, 2018, and the Court issued its Orders regarding the various Motions on September 18, 2018. Thus, although both of Appellants’ Notices of Appeal and all their filings with the Court refer to the “September 5, 2018 Order,” Respondents interpret this to mean the September 18, 2018 Order.

⁴ The First Notice of Appeal is attached hereto as Exhibit D.

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

⁶ Attached as Exhibit F is the Second Notice of Appeal with the date received by the Court of Appeals noted as November 27, 2018.

Rule 203(d)(1)(B), SCACR. If the appeal is not timely filed, the appeal "shall be dismissed."
Rule 203(d)(3), SCACR.

I. The Second Notice of Appeal was untimely filed with the Court.

Appellants did not timely file their Second Notice of Appeal with this Court or the clerk of the lower court.⁷ South Carolina Appellate Court Rules require appellants to file their Notice of Appeal with the Court of Appeals and the clerk of the Circuit Court within ten days of serving the Notice upon Respondents. Rule 203(d)(1)(B), SCACR. The clock for filing the Second Notice of Appeal began to run on November 15, 2018, when Appellants served the notice on Respondents.⁸ Therefore, Appellants had ten days from November 15, 2018 to file the Second Notice of Appeal with the Court of Appeals and the Circuit Court. Because the tenth day after November 15, 2018 fell on Sunday, November 25, 2018, Appellants were required to file their Second Notice of Appeal with this Court and the Circuit Court by November 26, 2018. Rules 203(d)(1)(B) and 263(a), SCACR.

Appellants missed the deadline and did not file their Second Notice of Appeal with this Court until November 27, 2018 and the Circuit Court until November 29, 2018.⁹ Although

⁷ As noted above, Appellants never filed the First Notice of Appeal. Therefore, the first Notice of Appeal is moot, and the only question before the Court on this Motion is whether the Second Notice of Appeal was timely served and filed.

⁸ Respondents reserve the right to argue, upon later motion, the timeliness of the service of the Second Notice of Appeal as it pertains to the April 26, 2018 and September 18, 2018 Orders.

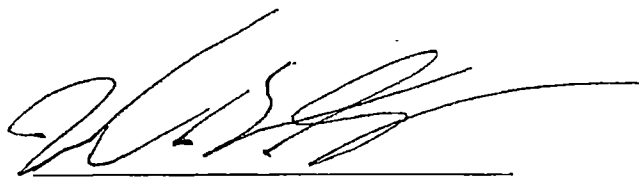
⁹ The Court of Appeals has two copies of the Second Notice of Appeal with two different stamped dates of receipt. The first, attached hereto as Exhibit F, includes a fax cover sheet and a note handwritten by Appellant Gersten indicating Appellants' desire that the faxed Second Notice of Appeal be filed. The note also indicates that Appellants had placed in the mail on November 26, 2018 a hard copy of the Second Notice of Appeal, expected to arrive at the Court of Appeals on November 29, 2018. Accordingly, the second copy of the Second Notice of Appeal on file with the Court, and attached hereto as Exhibit G, is dated as received by the Court of Appeals on November 29, 2018.

Appellants attempted to file the notice via facsimile and via mail, neither copy was timely filed. Appellants had until November 26, 2018 to file the Notice, but the faxed copy was not transmitted to or received by this Court until November 27, 2018. Although Appellant Gersten sent a handwritten note with the facsimile indicating that the hard copy was placed in the mail on the deadline of November 26, 2018, the South Carolina Supreme Court has repeatedly held that mailing does not constitute filing. *See, e.g., In re Estate of Cretzmeyer*, 365 S.C. 12, 14, 615 S.E.2d 116, 116 (2005) (holding that probate ruling was not timely appealed even though appellant placed her notice of appeal in the mail the day after entry of the order); *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001) (“It is clear under South Carolina law that mailing does not constitute filing.”). A Notice of Appeal “is filed when delivered to and received by the proper officer.” *Gary, supra*. Appellants did not timely file their Second Notice of Appeal because the Court of Appeals did not receive the Second Notice of Appeal until – at the earliest – November 27, 2018, and the Circuit Court did not receive the Second Notice of Appeal until November 29, 2018.

Rule 203 states, “If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260.” Rule 203(d)(3), SCACR. Therefore, the Court should dismiss the appeal in its entirety as it pertains to Respondents.

CONCLUSION

Appellants’ Second Notice of Appeal was not timely filed with this Court. Accordingly, this Court should grant Respondents’ Motion to Dismiss Appellants’ appeal, with prejudice, for failure to comply with the South Carolina Appellate Court Rules.



Wesley B. Sawyer, Esquire, SC Bar # 100229
Murphy & Grantland, PA
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
wsawyer@murphygrantland.com
Attorneys for Respondents Kevin Carter and
Richard Davis

January 30, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

HEIDI GERSTEN

Plaintiff(s)

vs.

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

Defendant(s)

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

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

3232456142

hanginhangout@gmail.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Previous Notice of Intent Case # 20 -NI- _____ ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Incapacitated Adult Settlement (790) ☐ Other (799) _____	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____
Special/Complex /Other ☐ Environmental (600) ☒ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) _____ ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680) ☐ Interpleader (690)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature: _____

Date: February 7, 2018

SCCA / 234 (02/2018)

Page 1 of 2

Appx. 158

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018 FEB 12 00074
CP-12-00074

FILED
2018 FEB 21 A.M.
CLERK OF COURT
CHESTER CO. S.C.

EXHIBIT
A

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

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

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

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

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

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

STATE OF SOUTH CAROLINA

In the matter of Arbitration between

HEIDI GERSTEN

Claimant(s)

vs.

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

Defendant(s)

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

Case number 2018-CP-12-00074

SUMMONS FOR ARBITRATION
(Claim Served Herewith)

FILED

2018 FEB 21 A 10:55

CLERK OF COURT
CHESTER CO S.C.

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

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

Attorney for Claimant(s):

Claimant(s):

Heidi GERSTEN

1438 W. LANTANA Rd. #330

LANTANA, FL 33462

Date: February 7, 2018

SCCA/202(3/2005)

Appx. 160

STATE OF SOUTH CAROLINA

In the matter of Arbitration between

HEIDI GERSTEN

Claimant(s)

vs.

KEVIN CARTER, RICHARD DAVIS,
NATIONWIDE MUTUAL INSURANCE
COMPANY, INTERINSURANCE OF THE
AUTOMOBILE CLUB, TRUSTGUARD
INSURANCE

Defendant(s)

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

Case number 2018-CP-12-00074

CLAIM FOR PROPERTY DAMAGE

FILED
2018 FEB 21 A 10:58
CLERK OF COURT
CHESTER CO S.C.

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

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

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

HEIDI GERSTEN, IVANKA AYOUB, DANIEL
HUBBARD

Plaintiff(s)

vs.

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

Defendant(s)

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

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

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

DOCKETING INFORMATION (Check all that apply)

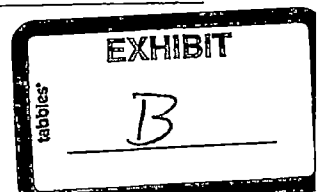
*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Conversion (310) X ☒ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Incapacitated Adult Settlement	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650)		

Appx. 162



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

Submitting Party Signature: _____

Date: March 15, 2018

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

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

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2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
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 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

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

Plaintiff,)
)
)

vs.)
)
)

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

IN THE COURT OF COMMON PLEAS

SUMMONS

2018 CP1200117

FILE NO.

FILED

2018 MAR 16 A 10:36

CLERK OF COURT
CHESTER CO S.C.

TO THE DEFENDANT ABOVE-NAMED:

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

Chester, South Carolina



Plaintiff/Attorney for Plaintiff

Dated: March 15, 2018

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

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

FILE NO:

2018 CP 1206117

4 HEIDI GERSTEN, IVANKA AYOUB,
5 DANIEL HUBBARD

Plaintiffs

COMPLAINT

and

DEMAND FOR JURY TRIAL

6 vs.

7 KEVIN CARTER, RICHARD DAVIS,
8 JOSEPH TIRBOVICH, NATIONWIDE
9 MUTUAL INSURANCE COMPANY,
10 INTERINSURANCE EXCHANGE OF
11 THE AUTOMOBILE CLUB, JOHN
12 AMMENDOLA, TRUSTGUARD
INSURANCE COMPANY SC DEPT
PUBLIC SAFETY BLACKWELL,
GMC, CHEVROLET, UNKNOWN
JOHN DOES

FILED

2018 MAR 16 A 10:36

CLERK OF COURT
CHES. JUDGE S.C.

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

17
18 GENERAL ALLEGATIONS

19 (Against All Defendants)

20 I.

21 PARTIES

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

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

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

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

11 II.

12 JURISDICTION AND VENUE

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

21 III.

22 FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

23
24
25
26 IV.

27 FIRST CAUSE OF ACTION (CLAIM FOR RELIEF)

28 (Negligence)

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

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

5 31. As a result of Defendant Kevin Carter's negligent conduct stated above, the Plaintiffs have suffered
6 specific damages, including but not limited to medical expenses and lost wages.
7

8 V.

9 SECOND CAUSE OF ACTION (CLAIM FOR RELIEF)

10 (Fraud)

11 32. The Plaintiffs incorporate by reference paragraphs 1-31 inclusive of the First Cause of
12 Action as if fully set forth.
13

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

15 34. The Defendants' statements were false.

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

17 36. The Defendants' statements were material.

18 37. The Defendants intended on deceiving the Plaintiffs.

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

20 39. The Plaintiffs suffer proximate injury.
21

22 VI.

23 THIRD CAUSE OF ACTION (CLAIM FOR RELIEF)

24 (Fraudulent Inducement)

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

27 41. The Defendants intentionally pressured the Plaintiffs.

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

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

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

2 VII.

3 FOURTH CAUSE OF ACTION (CLAIM FOR RELIEF)

4 (Intentional Infliction of Emotional Distress)

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

7 46. The Defendants acted intentionally or recklessly.

8 47. The Defendants' conduct was outrageous.

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

10 49. The Plaintiffs suffer from severe emotional distress.

11
12 VIII.

13 FIFTH CAUSE OF ACTION (CLAIM FOR RELIEF)

14 (Negligent Infliction of Emotional Distress)

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

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

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

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

21 IX

22 SIXTH CAUSE OF ACTION (CLAIM FOR RELIEF)

23 (Loss of Consortium)

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

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

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X

SEVENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Product Liability)

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

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

58. The Plaintiffs suffer damages as a result.

XI

EIGHTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Breach of Contract)

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

60. The Defendants had a duty.

61. The Defendant breached the duty.

62. The Plaintiffs suffer damages as a result.

XII

NINTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Invasion of Privacy)

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

64. The Defendants had a duty.

65. The Defendants breached the duty.

66. The Plaintiffs suffer damages as a result.

XII

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TENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Strict Liability)

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

68. There were product recalls on the said vehicle.

69. The Defendant is responsible.

XIII

ELEVENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Conspiracy)

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

71. Two or more Defendants were in collusion.

72. The Defendants intentionally acted.

73. The Defendants made an agreement.

74. The Defendants violated laws.

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

XIV

TWELFTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Misrepresentation)

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

77. The Defendants made a misrepresentation of material fact.

78. The Defendants' representation was false.

79. The Plaintiffs' loss benefited the Defendants.

XV

THIRTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

0

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

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

XVI

FOURTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Deceit)

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

83. The Defendants made false representations to the Plaintiffs.

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

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

XVII

FIFTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Duress and Undue Influence)

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

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

XVIII

SIXTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

(Slander)

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

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

2
3 XIX

4 SIXTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

5 (Libel)

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

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

9 XX

10 SEVENTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

11 (Defamation)

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

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

15 XXI

16 EIGHTEENTH CAUSE OF ACTION (CLAIM FOR RELIEF)

17 (Malicious Prosecution)

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

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

22 DAMAGES

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

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

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

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

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

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

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

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

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

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

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

3
4 PRAYER FOR RELIEF

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

7 (1) For a trial by jury;

8 (2) That the Plaintiffs Heidi Gersten, Ivanka Ayoub and Daniel Hubbard recover
9 judgment for damages for such sums in excess of \$1,000,000.00, as shall be determined to
10 fully and fairly compensate them for all general, special, incidental and consequential
11 damages respectively incurred by them as the direct and proximate result of the acts and
12 omissions of the Defendants, together with interest until satisfied, to be determined by
13 proof at trial;
14

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

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

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

19 (6) Punitive damages;

20 (7) Costs of this action;

21 (8) Any other and further relief that the court considers proper and as it deems necessary
22 and equitable in the circumstances.
23

24
25 Respectively submitted this 13th day of March 2018

26
27
28

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

Appx. 176

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2
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Ivanka Ayoub

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Daniel Hubbard

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FILED
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CLERK OF COURT
COUNTY OF S.D.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

CIVIL ACTION NO: 2018-CP-12-00117

Heidi Gersten, Ivanka Ayoub, Daniel
Hubbard,

Plaintiff,

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

vs.

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

Defendants.

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

PROCEDURAL BACKGROUND

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



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

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

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

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

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

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

LAW

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

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

The Court will address each item in turn.

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

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

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

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

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

B. Daniel Hubbard’s claims.

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

C. Ivanka Ayoub’s claims.

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

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

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

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

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

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

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

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

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

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

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

E. Carter and Davis' other motions.

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

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

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

CONCLUSION

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

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

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

It is so **ORDERED**.

John C. Hayes, III
Circuit Court Judge



Chester Common Pleas

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

So Ordered

s/John C. Hayes III 2049

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

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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

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

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

Respondents,

v.

Heidi Gersten, Ivanka Ayoub,
Daniel Hubbard

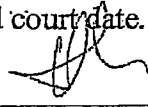
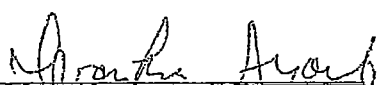
Appellants.

NOTICE OF APPEAL

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard ('Appellants') appeal the orders [judgments] of the Honorable John Hayes dated September 5, 2018. Appellants received written notice of entry of some of these orders [judgments] on September 18-October 3, 2018.

This appeal is subject to being premature and a stay may be in order as there are orders left to be reconsidered and/or determined by the lower (circuit) court. The Appellants retain their filing as paid in full at the time of filing for all purposes of the orders made and/or pertaining to and/or regarding, whether ruled on or not, said court date.

October 18, 2018



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Appx. 187

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

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: FILE NO: 2018-CP-12-00117 NOTICE OF APPEAL IN A CIVIL CASE, by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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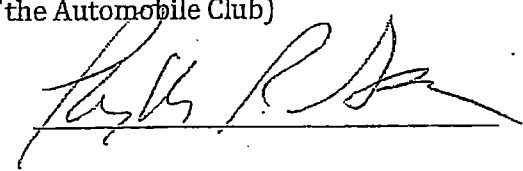
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By: 

Boca Raton, Florida
October 18, 2018

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WEST PALM BCH FL 334

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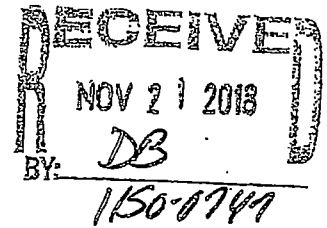
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29206-29206

Appx. 190

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



The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: FILE NO: 2018-CP-12-00117/2018-AP-12-00074 **NOTICE OF APPEAL IN A CIVIL CASE** by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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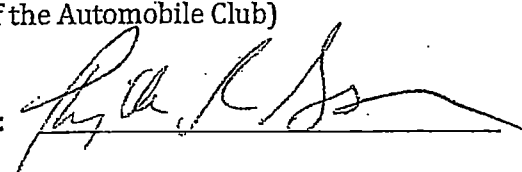
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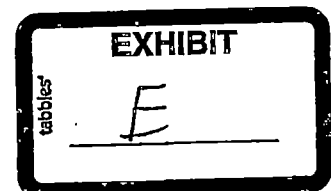
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By: 

Boca Raton, Florida
November 15, 2018



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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

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

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

Respondents,

v.

Heidi Gersten, Ivanka Ayoub,
Daniel Hubbard

Appellants.

NOTICE OF APPEAL

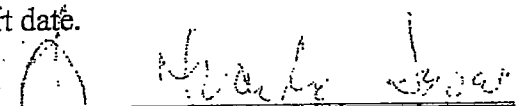
Heidi Gersten, Ivanka Ayoub, Daniel Hubbard ('Appellants') appeal the orders [judgments] of the Honorable Judges Brian M. Gibbons and John C. Hayes III dated April 26, 2018, September 5, 2018 and October 16, 2018. Appellants received written notice of entry of some of these orders [judgments] on September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

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

Appx - 193

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

November 15, 2018


Heidi Gersten, Ivanka Ayoub, Daniel Hubbard
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Appellants

Other Counsel of Record:
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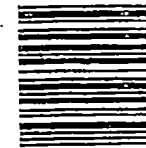
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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

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

Kevin Carter, Richard Davis,
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Insurance Co., SC Dept. of
Public Safety, Blackwell,
Unknown John Does

Respondents,

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SC Court of Appeals

v.

Heid Gersten, Ivanka Ayoub,
Daniel Hubbard

Appellants.

NOTICE OF APPEAL

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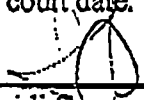
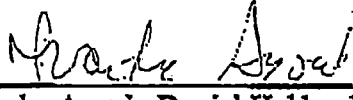
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EXHIBIT

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November 15, 2018



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Appx. 197

CERTIFICATE OF SERVICE

(2018-AP-12-00074)

(2018-CP-12-00117)

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: FILE NO: 2018-CP-12-00117/2018-AP-12-00074 NOTICE OF APPEAL IN A CIVIL CASE by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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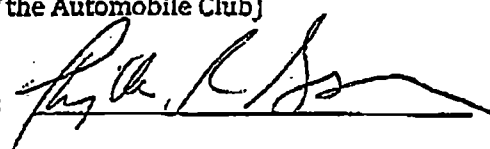
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(Attorney for Nationwide Mutual Ins. Co)

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

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

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

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

By: 

Boca Raton, Florida
November 15, 2018

FAX
Cover Sheet

November 27, 2018

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

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NOV 27 2018

SC Court of Appeals

From: Heidi Gersten
(323) 245-6142

Pages including this cover sheet 44

Appx. 199.

November 27, 2018
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(323) 245 6142

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

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Dear Ms. Kitchings or To Whom It May Concern:

Good Day to you. Please file this appeal. The Original Notice of Appeal along with the Orders, Proof of Service paperwork, and a money order USPS serial number 25302654821 has been sent yesterday November 26, 2018 via U.S. Postal Service tracking number 70181830000149570837 and is expected to be delivered on Thursday November 29, 2018.

Thank you so much for your help. I am available if you have any questions.

Respectfully submitted



Heidi Gersten

Appx. 200

2018-11-27 15:43

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2018-11-21 12:40

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(FLORENCE, SC 29502)

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(Estimated Delivery Date)

(Monday 11/19/2018)

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(70181830000149570584)

Return 1 \$2.75

Receipt

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(9590940243858190011282)

First-Class 1 \$0.50

Mail

Letter

(Domestic)

(COLUMBIA, SC 29205)

(Weight: 0 Lb 0.80 Oz)

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(Monday 11/19/2018)

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(70181830000149570707)

Return 1 \$2.75

Receipt

(@USPS Return Receipt #)

(9590940243858190011299)

First-Class 1 \$0.50

Mail

Letter

(Domestic)

(MYRTLE BEACH, SC 29578)

(Weight: 0 Lb 0.80 Oz)

(Estimated Delivery Date)

(Monday 11/19/2018)

Certified 1 \$3.45

(@USPS Certified Mail #)

(70181830000149570714)

Return 1 \$2.75

Receipt

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(9590940243858190011305)

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Cash \$100.00

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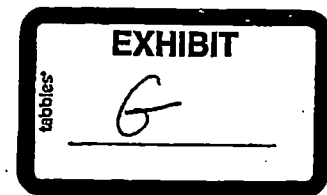
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170 NE 2ND ST
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33432-9998
1108640230
11/15/2018 (800)275-8777 5:07 PM
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Product      Sale      Final
Description   Qty      Price
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First-Class   1      $0.71
Mail
Letter
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  (VORAK, SC 29745)
  (Weight:0 Lb 1.60 Oz)
  (Estimated Delivery Date)
  (Monday 11/19/2018)
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  (70181830000149570691)
Return       1      $2.75
Receipt
  (USPS Return Receipt #)
  (9590940243858190011350)
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Mail
Letter
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  (COLUMBIA, SC 29202)
  (Weight:0 Lb 0.80 Oz)
  (Estimated Delivery Date)
  (Monday 11/19/2018)
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  (70181830000149570738)
Return       1      $2.75
Receipt
  (USPS Return Receipt #)
  (9590940243858190011329)
First-Class   1      $0.50
Mail
Letter
  (Domestic)
  (COLUMBIA, SC 29201)
  (Weight:0 Lb 0.70 Oz)
  (Estimated Delivery Date)
  (Monday 11/19/2018)
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  (70181830000149570721)
Return       1      $2.75
Receipt
  (USPS Return Receipt #)
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First-Class   1      $0.50
Mail
Letter
  (Domestic)
  (FLORENCE, SC 29503)
  (Weight:0 Lb 0.80 Oz)
  (Estimated Delivery Date)
  (Monday 11/19/2018)
Certified    1      $3.45
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  (70181830000149570677)
Return       1      $2.75
Receipt
  (USPS Return Receipt #)
  (9590940243858190011275)
First-Class   1      $0.50
Mail
Letter
  (Domestic)
  (FLORENCE, SC 29502)

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88403



NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

RECEIVED

NOV 29 2018

SC Court of Appeals

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

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

Respondents,

v.

Heidi Gersten, Ivanka Ayoub,
Daniel Hubbard

Appellants.

NOTICE OF APPEAL

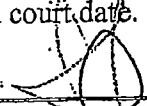
Heidi Gersten, Ivanka Ayoub, Daniel Hubbard ('Appellants') appeal the orders [judgments] of the Honorable Judges Brian M. Gibbons and John C. Hayes III dated April 26, 2018, September 5, 2018 and October 16, 2018. Appellants received written notice of entry of some of these orders [judgments] on September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

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

Appx. 204

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

November 15, 2018


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

Other Counsel of Record:

Wesley Brian Sawyer, Esquire
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(Attorney for Kevin Carter and Richard Davis)
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Alexander S. Gogsette
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Florence, SC 29502
(Attorney for Joseph Tirbovich)
(843) 656-4454

APPX - 205

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

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: FILE NO: 2018-CP-12-00117/2018-AP-12-00074 **NOTICE OF APPEAL IN A CIVIL CASE** by mailing a copy of same to them in the U. S. Post Office mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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

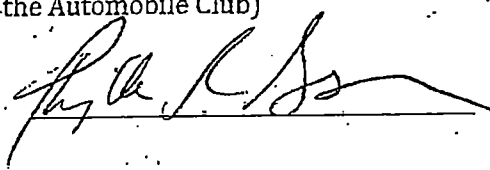
Peter H. Dworjanyn, Esquire and
Michael R. Burchstead, Esquire
Collins & Lacy, PC
1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company)

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

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

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Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202
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and Trooper Herbert Blackwell)

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☐ Certified Mail Restricted Delivery	\$0.00
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Street and Apt. No., or PO Box No. **P.O. Box 2116**

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Appx. 208

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IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

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JAN 31 2019
SC Court of Appeals

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

Of whom Heidi Gersten and Ivanka Ayoub are, ...Appellants.

v.

Kevin Carter, Richard Davis, Joseph Tribovich, Nationwide Mutual Insurance
Company, Interinsurance Exchange of The Automobile Club, John Ammendola,
Trustguard Insurance Co., Blackwell, SC Department of Public Safety, Chevrolet,
GMS, Unknown Joe Does,

.....Respondents.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal as to Kevin Carter and Richard Davis, Affidavit of Facts, and Memorandum of Authorities in Support of Respondents Kevin Carter's and Richard Davis' Motion to Dismiss by depositing a copy of it in the United States Mail, postage prepaid, on January 31, 2019, addressed to all attorneys of record listed below.

January 31, 2019



Wesley B. Sawyer, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Respondents Kevin
Carter and Richard Davis

Appx. 210

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

Other Counsel of Record:
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P. O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co.)
(Attorney for Joseph Tirbovich)
(843) 213-5519

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Michael R. Burchstead, Esquire
Collins & Lacy, PC
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P. O. Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company
And John Ammendola)
(803) 255-0404

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

William H. Davidson, II, Esquire
Davidson & Lindemann, PA
P. O. Box 8568
Columbia, SC 29202
(Attorneys for SC Dept. of Public Safety
And Herbert Blackwell)
(803) 806-8222

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

RECEIVED
JAN 31 2019
SC Court of Appeals

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

Of whom Heidi Gersten and Ivanka Ayoub are, ...Appellants.

v.

Kevin Carter, Richard Davis, Joseph Tribovich, Nationwide Mutual Insurance Company,
Interinsurance Exchange of The Automobile Club, John Ammendola, Trustguard Insurance
Co., Blackwell, SC Department of Public Safety, Chevrolet, GMS, Unknown Joe Does,
.....Respondents.

AFFIDAVIT OF FACTS

I, Wesley B. Sawyer, being first duly cautioned and sworn, state as follows:

1. I am the attorney for Respondents Kevin Carter and Richard Davis.
2. I mailed copies of the September 18, 2018 Order to Appellants on September 19, 2018.
3. I received a Notice of Appeal by certified mail on October 22, 2018 (attached to Respondents Carter's and Davis's Memorandum of Authorities in Support of Motion to Dismiss as Exhibit D, including a double-sided copy of the mailing envelope with a stamped date of receipt). As noted in the Certificate of Service and the date stamp on the envelope, it appears the First Notice of Appeal was mailed on October 19, 2018.
4. I received a second Notice of Appeal by certified mail on November 21, 2018 (attached to Respondents Carter's and Davis's Memorandum of Authorities in Support of Motion to Dismiss as Exhibit E). As noted in the Certificate of Service and the postage stamp

Appx. 207

on the envelope, it appears the Second Notice of Appeal was mailed on November 15,
2018.

Further Affiant sayeth naught.



Wesley B. Sawyer

SWORN TO and subscribed before me this

30th day of January, 2019

Orlene L. Black (L.S.)
Notary Public for SC

My Commission Expires: 7-27-19

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

RECEIVED
JAN 31 2019
SC Court of Appeals

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

Of whom Heidi Gersten and Ivanka Ayoub are, ...Appellants.

v.

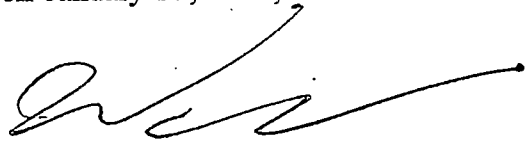
Kevin Carter, Richard Davis, Joseph Tribovich, Nationwide Mutual Insurance
Company, Interinsurance Exchange of The Automobile Club, John Ammendola,
Trustguard Insurance Co., Blackwell, SC Department of Public Safety, Chevrolet,
GMS, Unknown Joe Does,

.....Respondents.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal as to Kevin Carter and Richard Davis, Affidavit of Facts, and Memorandum of Authorities in Support of Respondents Kevin Carter's and Richard Davis' Motion to Dismiss by depositing a copy of it in the United States Mail, postage prepaid, on January 31, 2019, addressed to all attorneys of record listed below.

January 31, 2019



Wesley B. Sawyer, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Respondents Kevin
Carter and Richard Davis

Appx. 209

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

Other Counsel of Record:
David R. Sligh, Esquire
P. O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co.)
(Attorney for Joseph Tirbovich)
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Exchange of the Automobile Club)
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Davidson & Lindemann, PA
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Columbia, SC 29202
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And Herbert Blackwell)
(803) 806-8222

Appx. 210

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

Appellate Case No. 2018-002115

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

v.

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

Respondents.

RECEIVED
FEB 08 2019
SC Court of Appeals

MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS'
CORRECTION TO COURT NOTED DEFICIENCIES IN RETURN ALONG
WITH AMMENDED RETURN

TO THE HONORABLE SOUTH CAROLINA COURT OF APPEALS:

NOW COMES, Heidi Gersten, Ivanka Ayoub, ('Appellants') and respectfully move this Court, pursuant to **Rules 240 and 263, SCACR**, for an extension of time to file their correction to the Court's noted deficiencies in their timely filed Return to the Respondent Interinsurance Exchange of the Automobile Club ('AAA')'s Motion to Dismiss along with their Ammended

Gerstein, Ivanka Ayoub
W. LANTANA RD. #330
MIA, FL 33462



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

RECEIVED

FEB 08 2019

SC Court of Appeals



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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

February 15, 2019

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

Ivanka Ayoub
1438 W. Lantana Rd., #330
Lantana FL 33462

Re: Heidi Gersten v. Kevin Carter
Appellate Case No. 2018-002115

Dear Ms. Gersten and Ms. Ayoub:

Within ten days of the date of this letter you must serve and file a return to the motion to dismiss, specifically addressing whether your motion for reconsideration was made timely in the circuit court pursuant to Rule 59, SCRCP. You must also provide the individual dates for when appellants received written notice of entry of each of the separate orders on appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Appx. 213

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

890 10

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

1 Appx. 215

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.

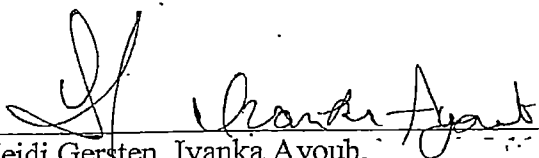
The Appellants urge the Court to allow proper communication between the deciding judges of this appeal and the Appellants, as their arguments are not without merit.

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

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v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance
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Trustgard Insurance Co., Blackwell, SC Department of Public Safety, Chevrolet,
GMC, Unknown John Does, ...Respondents

AFFIDAVIT OF APPELLANT HEIDI GERSTEN

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

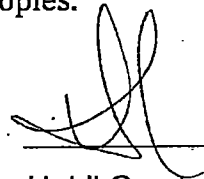
5 Appx. 219

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.

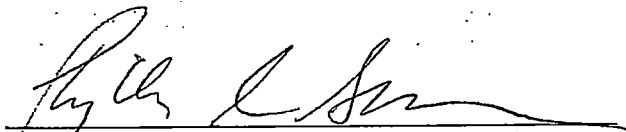
12. A Motion to Amend the Complaint With Leave was filed before the alleged orders in controversy were allegedly signed by the presiding judge and were on the calendar for a ruling until this Appeal stayed the trial court.
13. Interinsurance Exchange of the Automobile Club is not a third-party to me.
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.



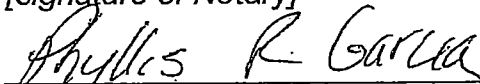
Heidi Gersten
1438 W. Lantana Rd. #330,
Lantana, FL 33462

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

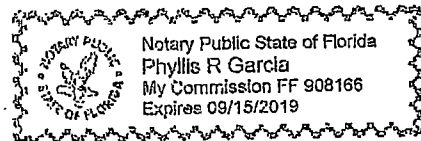
[Notary Seal:]



[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

Appellate Case No: 2019-002115

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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,

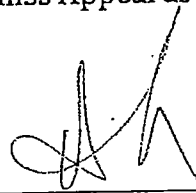
SS:

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.
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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.



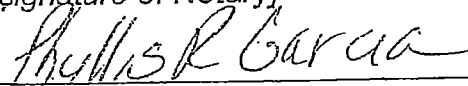
Heidi Gersten
1438 W. Lantana Rd. #330,
Lantana, FL 33462

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

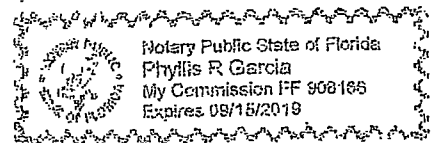
[Notary Seal:]



[signature of Notary]



[typed name of Notary]



NOTARY PUBLIC

My commission expires: 09/15, 2019.

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STATE OF SOUTH CAROLINA

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

In the matter of Arbitration between

Case number 2018-AP-12-00074

HEIDI GERSTEN, IVANKA AYOUB

Claimants

vs.

KEVIN CARTER, RICHARD DAVIS,
JOSEPH TIRBOVICH, NATIONWIDE
MUTUAL INSURANCE COMPANY,
INTERINSURANCE EXCHANGE OF
THE AUTOMOBILE CLUB, JOHN
AMMENDOLA, TRUSTGUARD
INSURANCE COMPANY

Defendants

CLAIMANTS' OBJECTION AND
OPPOSITION TO DEFENDANT
INTERINSURANCE EXCHANGE OF THE
AUTOMOBILE CLUB'S MOTION TO
DISMISS AND
REQUEST FOR ORAL HEARING

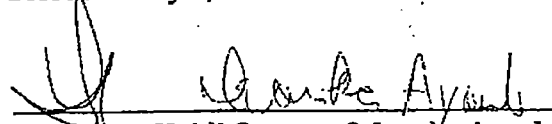
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CLERK OF COURT
CHESTER CO S.C.

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), SCRPC, 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), SCRPC, 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), SCRPC, Enlargement. *When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the time may be extended by written agreement of counsel for an additional period not exceeding the original time provided in these rules, or the court for cause shown may at any time in its discretion (1) with or without written motion or notice order the period enlarged if request*

therefor is made before the expiration of the period as originally prescribed or extended...

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

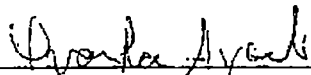
For the fore-mentioned reasons, the Claimants move this Court for an order denying the Defendants Motion to Dismiss. Should the said motions or part of them be granted, the Claimants move this Court for a continuance or extension of time to reply.

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

FILED
MAY - 8 P 2:52
CLERK OF COURT
HENDERSON CO S.C.

Respectfully submitted,

Dated this 6th day of May, 2018



Claimants Heidi Gersten and Ivanka Ayoub
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(323) 245-6142
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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: _____

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Columbia, SC 29206

Phone: (803) 782-4100 Fax _____

E-mail: _____ Other: _____

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E-mail: AHogsette@turnerpadget.com (Attorneys for Defendants Nationwide Mutual Insurance Company and Joseph Tirbovich)	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: <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: _____ FILED 2018 MAY -8 P 2:52 CLERK OF COURT DISTRICT CO S.D.	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

BEFORE THE ARBITRATION PANEL OF
CHESTER COUNTY

In the matter of Arbitration between

Case number 2018-~~AP~~-12-00074

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), SCRPC

AND

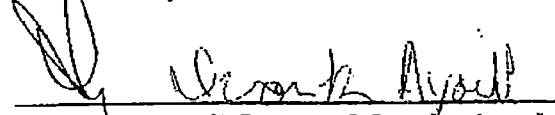
REQUEST FOR ORAL HEARING

FILED
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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), SCRPC, on the grounds that the order is void and violates the Claimants' U.S. Constitutional rights to fair due process of law and request an oral hearing on said motion. The reasons for this motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

DATED: May 8, 2018


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

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

I. INTRODUCTION

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

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

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), SCRPC, 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.

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), 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 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.

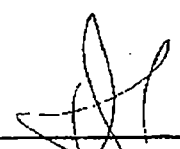
This request by no means prejudices the Defendants. It is made in the interest of justice and to prevent its miscarriage. For the ease of everyone involved in this matter, the Claimants request the Court to set the oral hearing on this motion to be set at least 30 days in advance and suggest scheduling 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
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Lantana, FL 33462
(323) 245-6142
hanginhangout@gmail.com

27 Appx. 241

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), SCRPC,
AND
REQUEST FOR ORAL HEARING

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

2019 OCT - 8 A 9:32

CLERK OF COURT
CHESTER CO S.C.

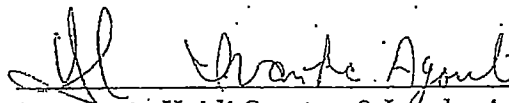
PLEASE TAKE NOTICE, now come the Plaintiffs Heidi Gersten, Ivanka Ayoub, Daniel Hubbard and move this court of the Sixth Judicial Circuit before the Presiding Judge, preferably 7 months from now after service hereof on said defendants, or as soon thereafter as may be heard, to allow the Plaintiff Gersten ample time to heal her pressure wound that was worsened by enduring the premature motion hearing on September 5, 2018, for an order to alter or amend a judgment or relief from judgment or order made by Honorable Circuit Judge Brian M. Gibbons on April 26, 2018 pursuant to Rules 52, 59(e) and 60(4), SCRPC, 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

28 Appx. 242.

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
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Lantana, FL 33462
(323) 245-6142 / Fax (561) 756-9820
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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

CLERK OF COURT
CHESTER CO S.C.

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FILED

I. INTRODUCTION

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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.

30 Appx 244

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

The Order and Judgment is void for the following reasons:

II. LAW AND ARGUMENT

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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 invaluable 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.

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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 SCRCP rules state that this hearing was premature as well as all of the defendants' motions to dismiss, the hearing proceeded over the Plaintiffs' objections without any inquiry of the Court as to the health status of the Plaintiff Gersten who endured extreme agony of pain sitting on her life threatening pressure wound. Public policy would view this as cruel and unusual punishment.

The Plaintiffs also timely served, filed and paid for a motion to transfer the file to the proper roster which was also not addressed nor ruled on.

The Plaintiff Gersten suggested an opportunity to remedy all arguments the Defendants attorneys raised some of which were not facts in evidence, misleading, misrepresented, false, and simply untrue hearsay. The Plaintiffs had timely submitted an amended complaint under the SCRCP which allowed one as a matter of course, and at the time of the said hearing none of the defendants had answered it. "One and done" has never been the courts policy. For this reason alone, all of the orders made by Honorable Judge Hayes are void. There are other reasons that the orders are invalid, which include the prejudice aimed at the Plaintiffs for not having an opportunity to review the proposed orders for accuracy which common sense

will tell one that is standard in fairness. Many of the documents, such as claimed by Attorney Reynolds for summary judgment were not received by the Plaintiffs, and were merely stated without allowing the Plaintiffs to examine and/or authenticate, let alone shown directly to the judge. The Plaintiff Gersten objected to numerous statements that the Defendants attorneys made. Not one of the Defendant's attorneys objected to anything she had to say.

Much of what Honorable Judge Hayes said was inaudible and the Plaintiff Gersten asked numerous times to repeat what was said and an attempt for the microphone to be adjusted to allow her to hear what the judge was saying was made. Honorable Judge Hayes said that the hearing, "...was like a tennis match..."

Upon reading and reviewing the proposed orders that were signed the same day received by Honorable Judge Hayes, some of which were obtained on line and not through proper service, there are multiple errors of inaccuracies and facts that are inaccurate. The simple point of perfecting service has been made on all defendants and an offer of proof was made at the said hearing however Honorable Judge Hayes refused to let the Plaintiff Gersten submit that evidence to the court.

The misrepresentation of the Defendants' Attorneys combined leaves room for a whole new set of causes of actions, including fraud on the court.

Since the commencement of this action, the Defendant Trustgard has sent the Defendant Ivanka Ayoub a check issued in her name for the amount of \$3196.00. This was written 5 days after the Plaintiff Heidi Gersten communicated to the Defendants Trustgard and Ammendola's Attorney Mr. Dworjanyn. A copy of the letter sent to Mr. Dworjanyn is attached as Exhibit 7 along with a copy of the said

36 Appx 250

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 Dworjanyin has not been earnest and has misled 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), SCRPC, 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,

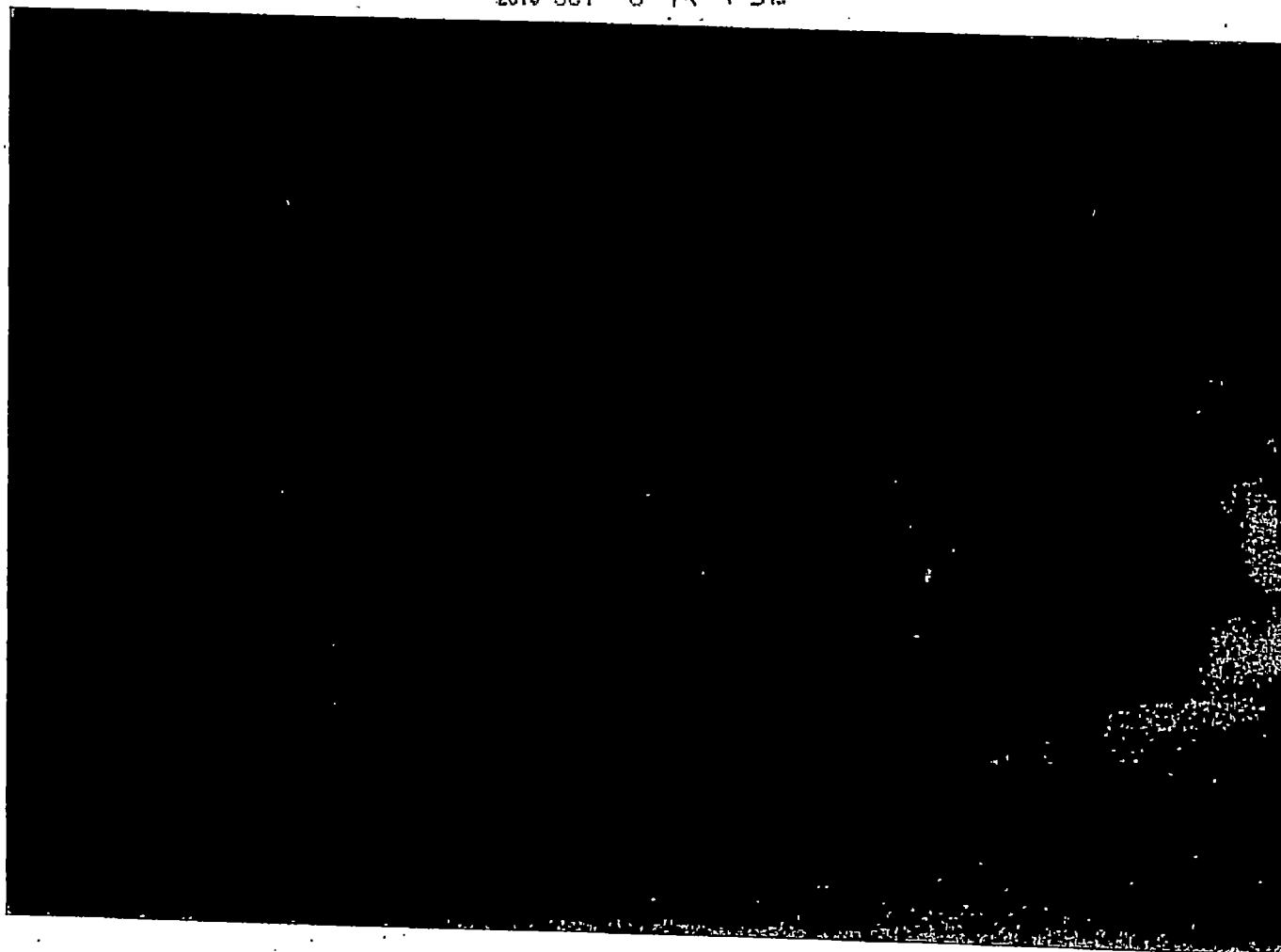
Dated this 28th day of September, 2018

 Heidi Gersten

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

CLERK OF COURT
CHESTER CO S.C.

2018 OCT -8 A 9:32



41 Appx. 255



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

FILED

EXHIBIT
2

42 Appx. 256



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

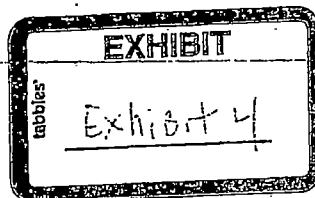
EXHIBIT
3

43 Appx 257



CLERK OF COURT
CHESTER CO S.C.
2010 OCT -9 A 9:33

FILED

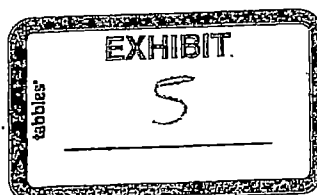




CLERK OF COURT
CHESTER CO S.C.

2018 OCT - 8 A 9:33

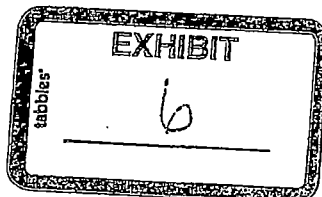
FILED





FILED

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



25

46

Appx. 260

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:

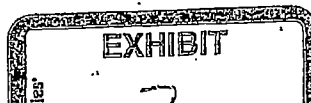
Good day to you.

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?



47

Appx. 261



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

TEMP RETURN SERVICE REQUESTED

762238460
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



TRUSTGARD 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

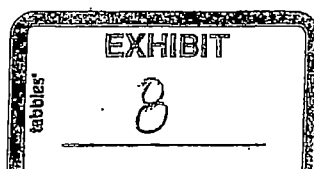
Claimant Name
IVANKA AYOUB

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	
P.O. Box 1218 Columbus, Ohio 43216-1218					
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					AMOUNT 3,196.00
THE CLAIMANT • IVANKA AYOUB 1438 W LANTANA RD APT 330 LANTANA FL 33462					
Bank, Ashland, OH 70					
PLEASE CASH PROMPTLY					



48

Appx. 262



CLERK OF COURT
CHESTER CO S.C.

2018 OCT -8 A 9:33



49 Appx. 263

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.)

Peter H. Dworjanyan, 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
CHESTER CO 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), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ 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 Appx. 265

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.

52 Appx. 266



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

53 Appx. 267



CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT
FOR IMPORTANT CLAIM
INFORMATION

NOT
NEGOTIABLE

Pay to Al + 21 HKAS

Address 5116 Cressingham Dr.

Ind. H. Ave. SC 29717

KEEP THIS
RECEIPT FOR
YOUR RECORDS

Serial Number

24987297690

Year, Month, Day

2018-09-22

Post Office

334320

Amount

\$120.45

Clerk

2498 0360 2498 6372

25E9 6442 2000 09E0 8707

U.S. Postal Service
CERTIFIED MAIL
Return Receipt by First-Class Mail®
Postage and Fees Paid
FORT HILL, SC 29707

Postage and Fees Paid \$3.45

U.S. Priority Mail® \$7.75

U.S. Registered Mail® \$13.00

U.S. Certified Mail® \$0.00

U.S. Return Receipt by First-Class Mail® \$0.00

U.S. Return Receipt by First-Class Mail® \$0.00

U.S. Return Receipt by First-Class Mail® \$0.00

Postage \$0.50

U.S. Priority Mail® \$8.70

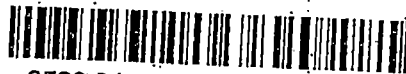
Mike West
Slip Case
Ind. H. Ave.

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.
Ind. and Land, SC 29707



9590 9402 2856 7069 5487 12

2. Article Number (Transfer from service label)

7018 0360 0002 2449 6372

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Mike Watkins*

☐ Agent
☒ Addressee

B. Received by (Printed Name)

Mike Watkins

C. Date of Delivery

9-25-18

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☒ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

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

Restricted Delivery

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

Domestic Return Receipt

55 Appx 269

40

St Appx. 270

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
 ALBANY COMMON PLEAS
 P.O. DRAWER 580
 CLUSTER, SC 29706



9590 9402 2856 7069 6841 68

2. Article Number (Transfer from service label)

COMPLETE THIS SECTION FOR DELIVERY

A. Signature

X J Martin

☒ 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	☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery	☐ Registered Mail™
☐ Certified Mail®	☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery	☐ Return Receipt for Merchandise
☐ Collect on Delivery	☐ Signature Confirmation™
☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Insured Mail	
☐ Insured Mail Restricted Delivery (over \$500)	

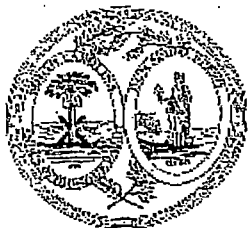
PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

NOTICE OF MOTION SCHEDULING

STATE OF
SOUTH CAROLINA

August 07, 2018



Motion "MAPPEN - 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

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

NOTICE OF MOTION SCHEDULING

STATE OF
SOUTH CAROLINA

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 Keyin Carter , defendant, et al has been added to the following Motions Roster:

27 - Motions Jan 30th 2019 140 Main Street Chester SC 29706

This hearing of this motion has been scheduled for 1/30/2019 at 9:30 AM.

IMPORTANT: Please see roster news for changes
Motions- Chester County Courthouse 140 Main Street Chester SC 29706

If motion needs to be removed, please email blawson@chestercounty.org

Mail Notice To:	Court Info:
Heidi Gersten	Courtroom 212A 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:

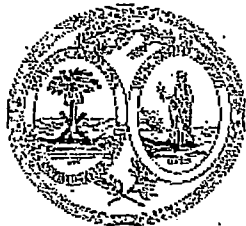
(803)385-2605

Respectfully,

Sue K. Carpenter
Clerk of Court

NOTICE OF MOTION SCHEDULING

December 27, 2018



Motion "MAPPCN - Motion/Claimants' Motion to Alter or Amend a Judgment or Rel" for Case: 2018CP1200074 - Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al has been added to the following Motions Roster:

27 - Motions Jan 30th 2019 140 Main Street Chester SC 29706

This hearing of this motion has been scheduled for 1/30/2019 at 9:30 AM.

IMPORTANT: Please see roster news for changes

Motions- Chester County Courthouse 140 Main Street Chester SC 29706

If motion needs to be removed, please email blawson@chestercounty.org

Mail Notice To:	Court Info:
Heidi Gersten	Common Pleas PO Drawer 530 140 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
hinginhangout@gmail.com
Plaintiffs/Appellants

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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

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examine this controversy.

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

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

The Appellants object to the inclusion of the Affidavit of Reynolds Williams (page 4 of the Respondent AAA's Motion to Dismiss Appeal) as evidence on the grounds that it is hearsay and not authenticated. This said Affidavit of Reynolds Williams contains no official state stamp or embossing to validate that it is genuine or a true certified document, it simply isn't properly 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

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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.

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

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

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.

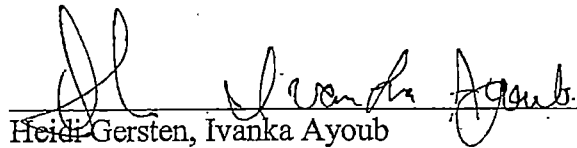
On page 32 of the Respondent AAA's Motion to Dismiss Appeal, it admits that this Appeal is timely and properly before the Court however the April 26, 2018 is not 'long passed' the time to file as it was not received by the Appellants, it was obtained on the Court's internet website and the timely Notice 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

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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
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hanginhangout@gmail.com

Boca Raton, Florida
February 14, 2019

bb
Appx. 280

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)

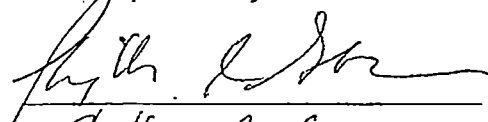
Peter H. Dworjany, Esquire and
Michael R. Burchstead, Esquire
Collins & Lacy, PC
1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
Columbia, SC 29211
(Attorneys for Trustguard Insurance Company)

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
February 14, 2019

Appx. 281

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

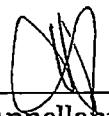
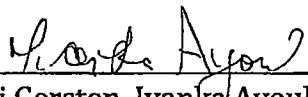
RE: Appellate Case No.: 2018-002115

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

Appx. 282

HEID, GERSTEN, IVANKA AYQUB
1438 W. LANTANA Rd. #330
LANTANA, FL 33462



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SC Court of Appeals

HONORABLE JENNY ABBOTT KITCHINGS
CLERK OF COURT
SC COURT OF APPEALS
P.O. Box 11629
Columbia, SC 29211

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This product is for use with Priority Mail.
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Appx. 283

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

Appellate Case No. 2018-002115

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

Heidi Gersten, Ivanka Ayoub, ...Appellants.

v.

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

Respondents.

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MAR 01 2019
SC Court of Appeals

MOTION FOR EXTENSION OF TIME TO FILE AND SERVE APPELLANTS'
RETURN OF RESPONDENTS CARTER AND DAVIS' MOTION TO
DISMISS AND TO COMPLY WITH COURT'S NOTED REQUESTS

TO THE HONORABLE SOUTH CAROLINA COURT OF APPEALS:

NOW COMES, Heidi Gersten, Ivanka Ayoub, ('Appellants') and respectfully move this
Court, pursuant to **Rules 240 and 263, SCACR**, for an extension of time to serve and file their
return of the Respondents Carter and Davis' Motion to Dismiss Appeal and to comply with the

Ji GERSTEN, IVANKA HYOUNG
W. LANTANA RD. #330
LANTANA, FL 33462



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HONORABLE JENNY ABBOTT KITCHINGS
CLERK OF COURT
SC COURT OF APPEALS
PO BOX 11629
COLUMBIA, SC 29211

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MAR 01 2019
SC COURT OF APPEALS

Appx. 285

March 7, 2019
1438 W. Lantana Rd., #330
Lantana, FL 33462

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

RE: Appellate Case No.: 2018-002115

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MAR 12 2019
SC Court of Appeals

Dear Ms. Kitchings:

Good day to you.

In an attempt to satisfy the Court's letter dated February 15, 2019, the Appellants received the alleged unsigned order dated September 18, 2018 and referred to on pages 6-14 of the Interinsurance Exchange of the Automobile Club's (Respondent AAA) Motion To Dismiss, through an email dated September 19, 2018 (attached Exhibit A). A motion to correct the Affidavit of Heidi Gersten and the Appellants' return will be made to accurately state this. The Appellants mistakenly stated September 18, 2019.

Ten (10) days are permitted to serve a motion for reconsideration pursuant to **SCRCP Rules 52, 59(e)**, which would be Saturday, September 29, 2018.

Rule 6, SCRCP, states a) Computation. *In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.*

This permits the Appellants to timely serve the Respondents on Monday, October 1, 2018, which they did. (Exhibit B)

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The Appellants also brought the motion for reconsideration pursuant to 60(4), SCRCp, which permits the motion to be made within one (1) year from after the judgment, order or proceeding was entered or taken.

Rule 5(d), SCRCp, 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.

This would make the filing due date Saturday, October 6, 2019. Pursuant to **Rule 6(a), SCRCp**, it was timely filed on Monday, October 8, 2018. This filing is referenced on page of the Respondent AAA's Motion To Dismiss.

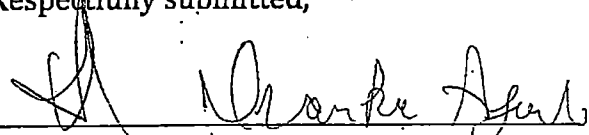
Regardless, the Supreme Court has ruled that "must" is mandatory and "shall" is permissive.

The Appellants received Honorable Judge Hayes alleged unsigned order of October 16, 2018 on October 21, 2018. The Notice of Appeal was timely served and filed on November 15, 2018.

More time is needed for the Appellants to accurately provide the remaining requested answers.

Please find an enclosed U.S. postal money order in the amount of \$50.00 for the enclosed original MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' AMENDED RETURN OF RESPONDENT CARTER AND DAVIS' MOTION TO DISMISS ALONG WITH A MORE DETAILED RESPONSE TO THIS COURT'S LETTER DATED FEBRUARY¹⁵ 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

Appx. 287



Heidi Veronika Gersten <hanginhangout@gmail.com>

Gersten v. Carter, et al 2018-CP-12-00074 and 00117

1 message

Trudy Humphries <thumphries@willcoxlaw.com>

Wed, Sep 19, 2018 at 12:51 PM

To: "hanginhangout@gmail.com" <hanginhangout@gmail.com>, "hanginhangout@gmail.com"

<hanginhangout@gmail.com>

Cc: Reynolds Williams <Reynolds@willcoxlaw.com>

Good afternoon:

Please find attached correspondence from Attorney Williams and the filed Order in connection with the above-referenced matters.

Trudy P. Humphries
Legal Assistant to
Reynolds Williams & Mark Buyck, III

Willcox Buyck & Williams, P.A.
248 W. Evans St | Florence, SC 29501
PO Box 1909 | Florence, SC 29503
843 662-3258|office 843 664-3362|direct 843 662-1362|fax
thumphries@willcoxlaw.com |willcoxlaw.com

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

2 attachments

 **Ltr to Plfs forwarding filed Order.pdf**
125K

 **Order Dismissing Exchange.pdf**
203K

EXHIBIT A
Appx. 288

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), SCRPC, 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.)

CLERK OF COURT
CHESTER CO S.C.
OCT - 8 A 932

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

EXHIBIT B

Appx. 289

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

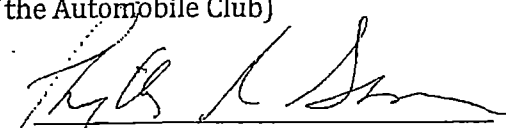
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

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
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P.O. Box 8568
Columbia, SC 29202
(Attorney for SC Dept. of Public Safety
and Trooper Herbert Blackwell)

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

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

By: 

Boca Raton, Florida
March 7, 2019

Appx. 290

✓

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



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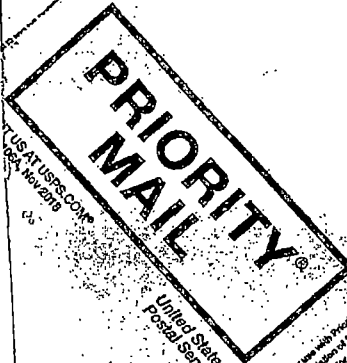
U.S. POSTAGE PAID
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33432
MAR 07, 19
AMOUNT
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RETURN RECEIPT
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MAR 12 2019

SC Court of Appeals



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

Appx. 291

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

Appellate Case No: 2019-002115

RECEIVED
MAR 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

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

1
Appx. 292

**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.

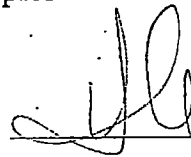
12. A Motion to Amend the Complaint With Leave was filed before the alleged orders in controversy were allegedly signed by the presiding judge and were on the calendar for a ruling until this Appeal stayed the trial court.

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.

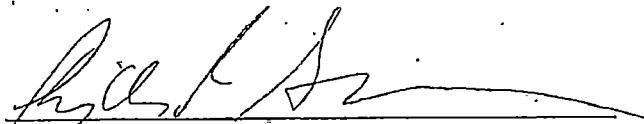
16. I authenticate the documents submitted in this Return to the said Motion to Dismiss Appeal as true and accurate copies.



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

Subscribed and sworn to before me, this ^{7th} 14th day of ^{March} February 2019.

[Notary Seal:]



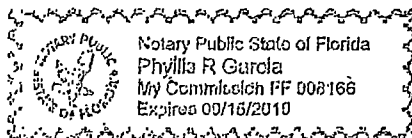
[signature of Notary]

Phyllis R Garcia

[typed name of Notary]

NOTARY PUBLIC

My commission expires: September 15th 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 : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information. *(Administrative Matter)*
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ 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 Appx. 295

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

S Appx. 296

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

Appellate Case No: 2019-002115

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

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

v.

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

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

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

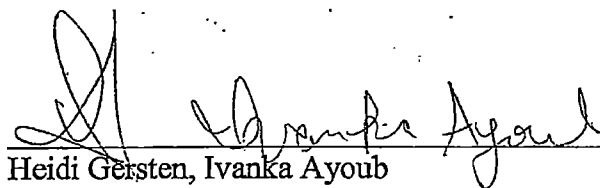
This Return had no chance to comply with rules regarding its timeliness since it was received 13 days after the date of the motion.

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 7th day of March 2019,



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

Boca Raton, Florida
March 7, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

Appellate Case No: 2019-002115

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

Heidi Gersten, Ivanka Ayoub, ...Appellants.

v.

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

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

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(323) 245-6142
(561) 756-9820 FAX
hanginhangout@gmail.com
Plaintiffs/Appellants

STATEMENT OF FACTS

On February 14, 2018, the Appellant Gersten overnighed 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 is 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.

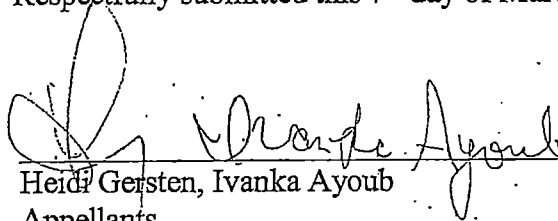
10 Appx - 301

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

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

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

Respectfully submitted this 7th day of March 2019,



Heidi Gersten, Ivanka Ayoub

Appellants

1438 W. Lantana Rd., #330

Lantana, FL 33462

(323) 245-6142

(561) 756-9820 FAX

hanginhangout@gmail.com

Boca Raton, Florida

MARCH 7, 2019

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

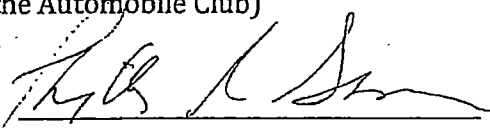
David R. Sligh
P.O. Box 2116
Myrtle Beach, SC 29578
(Attorney for Nationwide Mutual Ins. Co)

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: 

Boca Raton, Florida
March 7, 2019

Appx. 303

✓

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



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SC Court of Appeals

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SC Court of Appeals
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Columbia SC 29211

Appx. 304

84343

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

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MAR 21 2019

SC Court of Appeals

Appellate Case No: 2019-002115

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

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

v.

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

APPELLANTS' NOTICE OF MOTION AND MOTION FOR
EXTENSION OF TIME TO SERVE AND FILE AMENDED RETURN
TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS
APPEAL AND AFFIDAVIT OF HEIDI GERSTEN

Heidi Gersten, Ivanka Ayoub
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Appellants

1 Appx. 305

Heidi Gersten, IVANKA AYOUB
1439 W LANTANA RD #330
LANTANA, FL 33462

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

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MAR 28 2019
SC Court of Appeals

Appellate Case No: 2019-002115

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

v.

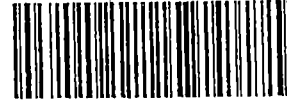
Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Mutual Insurance
Company , Interinsurance Exchange of the Automobile Club, John Ammendola,
Trustgard Insurance Co., Blackwell, SC Department of Public Safety, Chevrolet,
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TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS
APPEAL AND AFFIDAVIT OF HEIDI GERSTEN

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Appellants

1. Appx. 307

Heidi GERSTEN, IVANKA Ayoub
1438 W. LANTANA RD. #330
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SC Court of Appeals

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3/27

Appx. 308

89479

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

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APR 08 2019
SC Court of Appeals

Appellate Case No: 2019-002115

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

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

v.

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

APPELLANTS' NOTICE OF MOTION AND MOTION FOR
EXTENSION OF TIME TO SERVE AND FILE AMENDED RETURN
TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS
APPEAL AND AFFIDAVIT OF HEIDI GERSTEN

Heidi Gersten, Ivanka Ayoub
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(561) 756-9820 FAX
hanginhangout@gmail.com
Appellants

1 Appx- 309

Heidi GERSTEN, IVANKA Ayoub
1438 W. LANTANA RD. # 330
LANTANA FL 33462



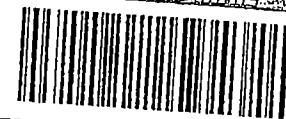
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SC Court of Appeals

Honorable Jenny Abbott Kitching
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

Appx. 3/10

The South Carolina Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are
Appellants,

v.

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

Appellate Case No. 2018-002115

The Honorable John C. Hayes, III,
The Honorable Brian M. Gibbons
Chester County

Trial Court Case No. 2018CP1200117, 2018CP1200074

ORDER

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

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

FILED

Appx 3/11

April 9, 2019

Columbia, South Carolina

cc:

Heidi Gersten

Ivanka Ayoub

Peter H. Dworjanyn, Esquire

Michael Reid Burchstead, Esquire

Wesley Brian Sawyer, Esquire

William Reynolds Williams, Esquire

David Richard Sligh, Esquire

William H. Davidson, II, Esquire

Appx 3/2

89582

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

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

RECEIVED
APR 18 2019
SC Court of Appeals

Appellate Case No: 2019-002115

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

v.

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

APPELLANTS' NOTICE OF MOTION AND MOTION FOR
EXTENSION OF TIME TO SERVE AND FILE AMENDED RETURN
TO RESPONDENTS CARTER AND DAVIS' MOTION TO DISMISS
APPEAL AND AFFIDAVIT OF HEIDI GERSTEN

Heidi Gersten, Ivanka Ayoub
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Appellants

8 Appx 313

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SC Court of Appeals

Honorable Jenny Abbott Kitchens
Clerk of Court
S.C. Court of Appeals
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Columbia, SC 29211

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
APR 29 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

APPELLANTS' NOTICE OF MOTION AND MOTION FOR
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Appellants

Appx 315

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1438 W. LANTANA RD #30
LANTANA, FL 33462



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APR 29 2019

SC Court of Appeals

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Bureau of Land Management
1666 North Washington Avenue
Flagstaff, AZ 86001-9750
Tel: (908) 755-2000
Fax: (908) 755-2001

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Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29200

Appx 3/16

The South Carolina Court of Appeals

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten and Ivanka Ayoub are
Appellants,

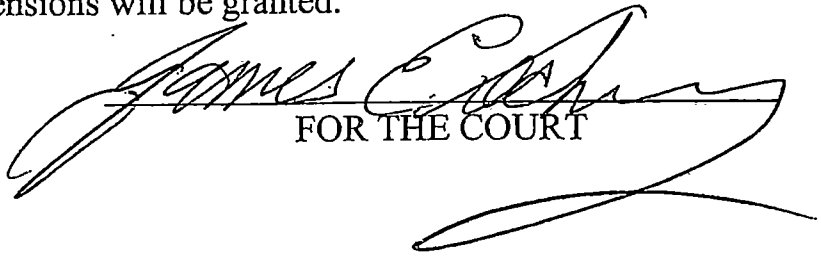
v.

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

Appellate Case No. 2018-002115

ORDER

By letter of February 15, 2019, this court required Appellants to file a response within ten days providing specific and individual dates indicating when Appellants received written notice of entry of each of the separate orders on appeal. This court also required Appellants to address the timeliness of their motion to alter or amend, which was filed on October 8, 2018. This court has granted Appellants multiple extensions to file their response, but Appellants have failed to comply with this court's request. Unless Appellants file a response as to the specific dates Appellants received written notice of entry of each of the orders on appeal, including the September 18, 2018 order, by May 10, 2019, this appeal will be dismissed. No further extensions will be granted.


FOR THE COURT

Columbia, South Carolina

FILED

May 2, 2019

Appx. 317

cc:

Heidi Gersten

Ivanka Ayoub

Peter H. Dworjanyn, Esquire

Michael Reid Burchstead, Esquire

Wesley Brian Sawyer, Esquire

William Reynolds Williams, Esquire

David Richard Sligh, Esquire

William H. Davidson, II, Esquire

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