

PETITION FOR A WRIT OF CERTIORI TO THE COURT OF APPEALS

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS  
Court of Common Pleas

**S.C. Supreme Court**

John C. Few, Chief Justice; James Lockemy, Justice; Jasper M. Cureton, Associate  
Justice

Appellate Case No. 2014-001676 (S.C. Ct. App. Filed January 8, 2015)

Russell Goodwin,.....Petitioner,

v.

Employbridge dba Prologistix, Employer, and  
American Casualty Company of Reading PA, .....Respondents.

**PETITION FOR A WRIT OF CERTIORARI**

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(803) 251-4517  
**Attorney for Petitioner**

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Columbia, SC 29209  
(803) 227-2889  
**Attorney for Respondent**

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**QUESTIONS PRESENTED**

1. Upon a finding that petitioner is *non compos mentis*, may the deadline to file a notice of appeal be tolled pursuant to the Americans with Disabilities Act?

## STATEMENT OF THE CASE

The Petitioner, Russell Goodwin, appeals the Order of the South Carolina Court of Appeals denying his motion to file out of time. Appellant requested the South Carolina Court of Appeal toll the deadline pursuant to the Americans with Disabilities Act (ADA), 42 U.S.C. 126 et. seq., and fined the Petitioner *non compos mentis*. In its dismissal of Petitioners' motion to file his notice of appeal out of time, the Court did not specifically address the applicability of the ADA or determine whether Petitioner was *non compos mentis*. Attorney for Petitioner has been unable to locate any case law in South Carolina addressing the applicability of the ADA and as such, this issue appears to be a novel question of law that the Supreme Court should address and resolve.

## PROCEDURAL BACKGROUND

In this workers' compensation matter, the parties were heard by Commissioner Aisha G. Taylor, on June 12, 2013, in Columbia South Carolina. On July 15, 2013, Commissioner Taylor issued an Order from which Claimant appealed. Claimant, proceeding Pro Se, filed a Form 30 Request for Commission Review on the case. Claimant did not present his grounds for appeal in the form of questions presented, but instead submitted a written statement on a Form 59. After review, the Appellate Panel of the South Carolina Workers' Compensation Commission determined that the order of the Hearing Commissioner be affirmed in full.

On August 1, 2014, Petitioner, Russell Goodwin, appealed the Order of the South Carolina Workers' Compensation Commission filed and served on May 20, 2014. Petitioner received written notice of entry of this Order on May 25, 2014. Counsel for Petitioner was retained the date of the filing of the notice of appeal and was aware that

the notice was filed more than 30 days after the receipt of the underlying order but requested accommodations for Petitioner under the Americans with Disabilities Act to allow for an extended filing period given the Pro Se Petitioner's long running mental illness.

An Order entered by the South Carolina Court of Appeals on November 11, 2014 denied Petitioner's request. Subsequently, the South Carolina Court of Appeals denied Petitioner's Motion to Reconsider and his appeal was dismissed by Order of that Court on January 8, 2015.

### ARGUMENT

#### **I. THE COURT ERRED IN FAILING TO ADDRESS THE APPLICABILITY OF THE AMERICANS WITH DISABILITIES ACT TO A TOLLING OF THE DEADLINE TO FILE A NOTICE OF APPEAL.**

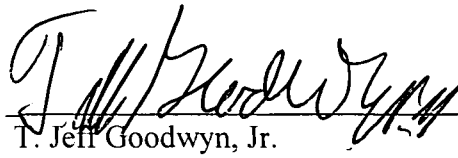
Equitable tolling of statutes of limitations may be warranted upon showing that the plaintiff was *non compos mentis*. *Speiser v. U.S. Dep't of Health and Human Servs.*, 370 F.Supp. 380, 384 (D.D.C. 1986). To be *non compos mentis*, one must be "incapable of handling her own affairs or unable to function in society." *Smith-Haynie*, 155 F.3d at 580; *Perry*, 669 F.Supp.2d at 66. An individual must show that she was "unable to engage in rational thought and deliberate decision making sufficient to pursue her claim alone or through counsel." *Smith-Haynie* 155 F.3d at 580 (quoting *Nunnally v. MacCausland*, 966 F.2d 1, 5 (1<sup>st</sup> Cir. 1993)). Here, Mr. Goodwin requested an equitable tolling of the filing deadline for a notice of appeal based on disabilities arising from mental illness. Mr. Goodwin has long suffered from severe depression among other mental illnesses and does not live alone.

**II. SUFFICIENT EVIDENCE WAS BEFORE THE COURT OF APPEALS THAT PETITIONER WAS *NON COMPOS MENTIS*.**

Mr. Goodwin's medical records indicate that he has been diagnosed with major depression and severe lapses in memory (See SC Department of Mental Health dated June 22, 2011 attached as Exhibit "A"). For these issues, Mr. Goodwin was prescribed several different anti-psychotic, anti-depressant, and Alzheimer's medications including Seroquel, Risperdal, Celexa, and Wellbutrin (Exhibit "A"). Unfortunately, these medications were ineffective to treat Mr. Goodwin's conditions and he subsequently stopped taking them in 2011 (Exhibit "A"). Further, Mr. Goodwin suffers from anhedonia, social withdrawal, panic attacks, and both visual and audio hallucinations including a history of talking to people who are not actually there (See SC Department of Mental Health dated June 14, 2011 attached as Exhibit "B"). The symptoms suffered by Mr. Goodwin have been ongoing and continuous. In 2013 his physician again recognizes the hallucinations that Mr. Goodwin suffers from and further diagnoses him with MDD (Major Depressive Disorder) with psychotic features (See SC Department of Mental Health dated April 4, 2013 as Exhibit "C").

**CONCLUSION**

Based upon the extensiveness and variety of the symptoms suffered by Mr. Goodwin in relation to his mental illnesses he is not able to engage in rational thought and deliberate decision making sufficient for him to pursue his claim alone. Thus, this court should equitably toll the filing deadline and allow his notice of appeal to be filed out of time.



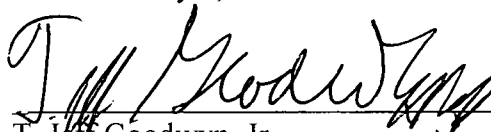
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February 5, 2015

**CERTIFICATE OF COUNSEL**

Counsel for Petitioner certifies that the Motion to Reconsider was made and finally ruled on by the Court of Appeals on January 8, 2015.



T. Jeff Goodwyn, Jr.  
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Employbridge dba Prologistix, Employer, and  
American Casualty Company of Reading PA, .....Respondents.

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**PROOF OF SERVICE**

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I certify that I have served the Petition for a Writ of Certiorari on Justin T. Williams, Esquire and John G. Coggiola, Esquire, Attorneys for the Respondents at Willson, Jones, Carter & Baxley, P.A., 4500 Fort Jackson Blvd., Columbia, SC 29209 by depositing a copy of same in the United States Mail, postage prepaid, on February 5, 2015.

GOODWYN LAW FIRM, LLC



---

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Attorney for Petitioner

February 5, 2015

# GOODWYN LAW FIRM, LLC

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\*Also Licensed in Georgia

February 5, 2015

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**S.C. Supreme Court**

**VIA HAND DELIVERY**

Daniel E. Sharehouse, Clerk of Court  
Supreme Court of South Carolina  
1231 Gervais Street  
Columbia, SC 29201

RE: ***Russell Goodwin v. Employbridge dba Prologistix and American Casualty  
Company of Reading PA***  
*Appellate Case No.: 2014-001676*  
*WCC File No.: 1108188*  
*Our File No.: 7000-0097*

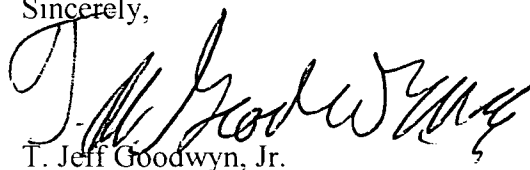
Dear Mr. Sharehouse:

Enclosed for filing please find an original and seven (7) copies of a Petition for a Writ of Certiorari, along with an Original unbound copy of the Appendix and two (2) copies of the bound Appendix, as well as an original and one copy of the Proof of Service and filing fee check in the amount of \$100.00 in regard to the above referenced matter. I would appreciate it if you would file same in your office and return a clocked copy to the courier.

By copy of this letter, I am serving a copy of the Petition for a Writ of Certiorari upon J. Gabriel Coggiola, Esquire and Justin T. Williams, Esquire, Attorneys for the Respondents and filing a copy of same with the South Carolina Court of Appeals.

Should you have any questions, please do not hesitate to contact me.

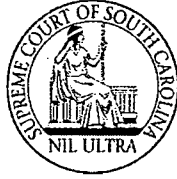
Sincerely,



T. Jeff Goodwyn, Jr.

TJG/msb  
Enclosures

cc: J. Gabriel Coggiola, Esquire  
Justin T. Williams, Esquire  
SC Court of Appeals  
Russell Goodwin



# The Supreme Court of South Carolina

Goodwyn Law

02/05/2015

## RECEIPT #74959

|                                |                                |
|--------------------------------|--------------------------------|
| <b>Fee Type:</b>               | Case Initiation Fee            |
| <b>Amount:</b>                 | \$100.00                       |
| <b>Payment Type:</b>           | Check                          |
| <b>Reference No:</b>           | 5065                           |
| <b>Check/Money Order Date:</b> | 02/05/2015                     |
| <b>Comments:</b>               | Goodwin v. Employbridge, et al |