

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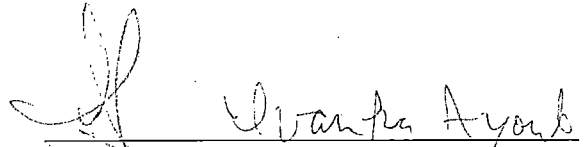
MOTION FOR EXTENSION OF TIME TO FILE PLAINTIFF/APPELLANTS'  
INITIAL BRIEF

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.

Respectfully submitted,

DATED: December 17, 2018

A handwritten signature in cursive script, appearing to read "Ivanka Ayoub", is written over a horizontal line.

Claimants Heidi Gersten & Ivanka Ayoub  
1438 W. Lantana Rd. #330  
Lantana, FL 33462  
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO  
EXTEND TIME TO FILE PLAINTIFF/APPELLANT'S INITIAL BRIEF

As grounds therefore, the Appellants show the following good cause:

1. The Appellants brief is currently due to be filed on December 17, 2018.
2. The Appellant Gersten was paralyzed as a result of the collision in controversy in this matter. She has no caregiver or physical help with daily functions like bowel movements, bathing, eating and other regular activities able-bodied people perform. She lives under extraordinary circumstances.
3. The Appellant Ayoub is also disabled and unable to give proper care for her daughter,
4. the Appellant Gersten.
5. The Appellant Hubbard is located over 1000 miles away from his sister, the Appellant Gersten, and is unable to give proper care for her.
6. Despite the extraordinary circumstances the Appellant Gersten lives with, she has been diligently working on this appeal and has already prepared a significant part of the Appellant's brief however this appeal has been disrupted by the fact that on Thanksgiving, November 22, 2018, the wheel to her manual wheelchair fell off while she was sitting in it. It took hours of her crawling to her bed dragging the broken wheelchair with her to "jimmy" it well enough for her to slowly get to her computer, located across the room, to order a replacement, which took several days to receive and was not to her liking once it arrived, as it is challenging to order the proper wheelchair on-line without "test driving" it first. She is currently in the process of repairing the one that broke, using the new uncomfortable one in the meantime, waiting for the parts to come in for the broken one.

7. The Appellant Gersten also has a pressure wound on her left butt cheek the size of a quarter which prevents her from sitting up for more than a few hours at a time.
8. The Appellants are not South Carolina residents.
9. This may be considered excusable neglect.
10. The Doctrine of Equitable Tolling as well as Title II of the American Disabilities Act permit this Court to grant an extension of time for such axiomatic situations.
11. The due date of this brief comes at a time around major holidays.
12. This request is not unheard of.
13. This request is made before the expiration of the time the brief is due.
14. The Appellants prefer not to have to file a Motion for Reinstatement, which would more than likely be granted given the extraordinary circumstances and good cause shown.
15. **RULE 263, SCACR, TIME(b) 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. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.
16. Unlike the case of **WADE V. GORE, 151 S.E. 470 (S.C. 1930)**, the Appellants are requesting this extension before the expiration of the date the brief is due.
17. The South Carolina Supreme Court recently adopted this doctrine. **HOOPER V. EBENEZER SR. SERVS. & REHAB. CTR., 386 S.C. 108, 687 S.E.2D 29 (2009)**. The court explained the doctrine of equitable tolling may be applied to toll the running of the statute of limitations “to serve the ends of justice where technical forfeitures would

unjustifiably prevent a trial on the merits.” Id. at 115, 687 S.E.2D AT 32. The court explained:

*THE EQUITABLE POWER OF A COURT IS NOT BOUND BY CAST-IRON RULES BUT EXISTS TO DO FAIRNESS AND IS FLEXIBLE AND ADAPTABLE TO PARTICULAR EXIGENCIES SO THAT RELIEF WILL BE GRANTED WHEN, IN VIEW OF ALL THE CIRCUMSTANCES, TO DENY IT WOULD PERMIT ONE PARTY TO SUFFER A GROSS WRONG AT THE HANDS OF THE OTHER. EQUITABLE TOLLING MAY BE APPLIED WHERE IT IS JUSTIFIED UNDER ALL THE CIRCUMSTANCES.*

If the Doctrine of Equitable Tolling may be applied to the Statute of Limitations, surely it can be applied to an extension of time to file a brief, such as in this matter.

**THEREFORE**, having shown good cause, the Appellants respectfully request and move the Court for an extension of time to, and including, February 15, 2018; an extension of sixty (60) days from the date of December 17, 2018, to allow enough time to correctly and competently complete the Appellant’s Brief.

This motion is not made to cause undue delay. It is made in the furtherance of justice and to prevent its miscarriage.

Respectfully submitted this 17<sup>th</sup> day of December 2018.



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Appellants

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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 AND MOTION FOR EXTENSION OF TIME TO FILE PLAINTIFF/APPELLANT'S INITIAL BRIEF** 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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By: 

Boca Raton, Florida  
December 17, 2018

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LANTANA, FL 33462

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Jenny Abbott Kitchings  
Clerk of Court  
South CAROLINA Court of Appeals  
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