

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.

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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

Return in this court. The reasons for this motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

DATED: February 4, 2019



Appellants 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 MOTION TO
EXTEND TIME TO FILE APPELLANTS' CORRECTION TO COURT NOTED
DEFICIENCIES IN RETURN ALONG WITH AMMENDED RETURN

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

1. The Appellants received a letter from the Court dated January 25, 2019 on February 4, 2019 instructing a mandatory list of corrections to be made to their Return of the Respondent AAA's Motion to Dismiss.
2. The Appellants did not receive an appellate case number until after the Return was filed.
3. The appellate case number that Respondent AAA listed in their Motion to Dismiss is incorrect however the Appellants are unaware of a similar notice to cure served on them by the Court as sent to the Appellants for this same reason.
4. The original Return filed by the Appellants was timely due to the fact that the Respondent AAA had not provided the proper court filing fees at the initial time of serving and filing their Motion to Dismiss. The Court sent them a ten (10) day letter to cure this defect which was corrected by the Respondent AAA on January 2019. The Appellants based their due date of their Return from the date of perfection and not from the improperly filed date.
5. 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.
6. The Appellant Ayoub is also disabled and unable to give proper care for her daughter, the Appellant Gersten.
7. Despite the extraordinary circumstances the Appellant Gersten lives with, she has been

diligently working on this appeal with Appellant Ayoub. Given that the notice for correction was received on the tenth day of the 10 days allowed to cure, the Appellants request an additional ten (10) days to comply, which would be February 14, 2019.

8. The Appellant Gersten also has a pressure wound on her left buttocks the size of a quarter which prevents her from sitting up for more than a few hours at a time.
9. The Appellants are not South Carolina residents.
10. This may be considered excusable neglect.
11. 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.
12. This request is not unheard of.
13. This request is made before the expiration of the time due.
14. The Appellants prefer not 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 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:

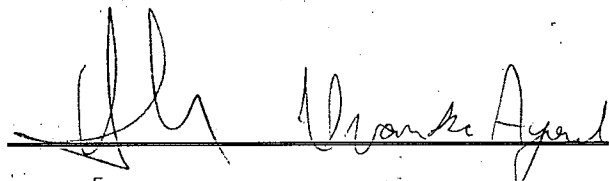
THE EQUITABLE POWER OF A COURT IS NOT BOUND BY CAST-IRON RULES BUT EXISTS TO DO FAIRNESS AND IS FLEXIBLE AND ADAPTABLE TO PARTICULAR EXIGENCIES SO THAT RELIEF WILL BE GRANTED WHEN, IN VIEW OF ALL THE CIRCUMSTANCES, TO DENY IT WOULD PERMIT ONE PARTY TO SUFFER A GROSS WRONG AT THE HANDS OF THE OTHER. EQUITABLE 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 corrections to deficiencies, 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 14, 2019; an extension of ten (10) days from the date of December 25, 2019, to allow enough time to correctly and competently complete the Court’s instructions.

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 4th day of February 2019.



A handwritten signature in black ink, appearing to read "Frank Ayers", is written over a horizontal line.

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

The undersigned, over 18 years of age and not a party to the said action, hereby certifies that (s)he has served the following named individuals with a copy of the foregoing: Appellate Case No: 2019-002115 MOTION FOR EXTENSION OF TIME TO FILE APPELLANTS' CORRECTION TO COURT NOTED DEFICIENCIES IN RETURN ALONG WITH AMMENDED RETURN 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:

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(Attorney for Kevin Carter and Richard Davis)

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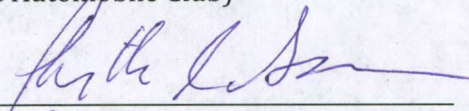
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By: _____


Phyllis K. Garcia

Boca Raton, Florida
February 4, 2019

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SC Court of Appeals

February 4, 2019
1438 W. Lantana Rd., #330
Lantana, FL 33462

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
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(843)662-3258 Fax (843)662-1342

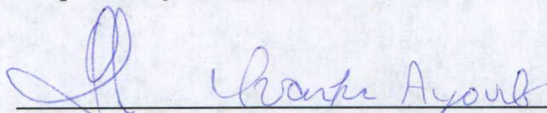
RE: Appellate Case No.: 2018-002115

Dear Ms. Kitchings:

Good day to you.

As per today's conversation with Elizabeth, 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' Correction to Court Noted Deficiencies In Return 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,


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HG/Enclosures

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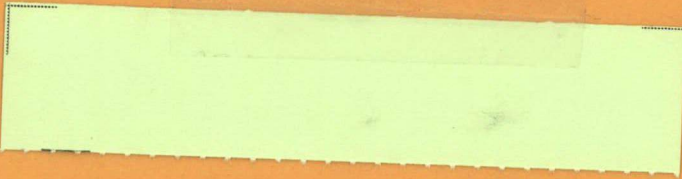
Heidi Gerstein, IVANKA Ayoub
1438 W. LANTANA RD. #330
LANTANA, FL 33462

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL

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29211
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Honorable Jenny Abbott Kitchings
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SC Court of Appeals
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