

89263

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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MAR 12 2019
SC Court of Appeals

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

TO THE HONORABLE SOUTH CAROLINA COURT OF APPEALS:

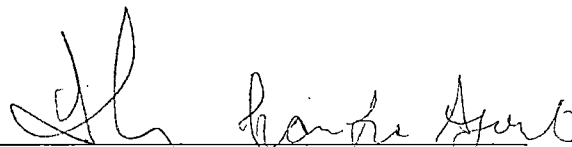
NOW COMES, Heidi Gersten, Ivanka Ayoub, ('Appellants') and respectfully move this
Court, pursuant to **Rules 240 and 263, SCACR**, and **TITLE II OF THE AMERICAN DISABILITIES
ACT** for an extension of time to file their amended return of Respondent Carter and Davis'

motion to dismiss, along with a more detailed response to this court's letter dated February¹⁵ 2019.

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

Respectfully submitted,

DATED: March 7, 2019



Appellants Heidi Gersten & Ivanka Ayoub
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT 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

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

1. The Appellants received a letter from the Court dated February 15, on February 21, 2019 instructing a mandatory list of answers and a return to be made.
2. In immediate response, the Appellants noted that a motion for an extension of time was made and paid for in the amount of \$50.00.
3. This said letter from the Court did not specify which motion to dismiss it was referring to, as there are two (2) pending in this Court, that the Appellants are aware of.
4. This said letter from the Court may be deemed satisfied in part, as a day before its inception, Appellants served and filed a return to the Respondent Interinsurance Exchange of the Automobile Club.
5. The appellate case number that Respondents Carter and Davis 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.
6. 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.
7. The Appellant Ayoub is also disabled and unable to give proper care for her daughter, the Appellant Gersten.
8. Despite the extraordinary circumstances the Appellant Gersten lives with, she has been

diligently working on this appeal with Appellant Ayoub. Given that the Respondents Carter and Davis' return is 64 unpaginated pages and there are numerous inaccuracies, the Appellants request an additional ten (10) days to comply, which would be March 17, 2019.

9. 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.

10. The Appellants are not South Carolina residents.

11. This may be considered excusable neglect.

12. 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.

13. This request is not unheard of.

14. This request is made before the expiration of the time due.

15. 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.

16. **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.

17. 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.

18. 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 corections 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, *MARCH 7*, 2019; an extension of ten (10) days from the date of *MARCH 7*, 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 *7th* day of *MARCH* 2019.


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

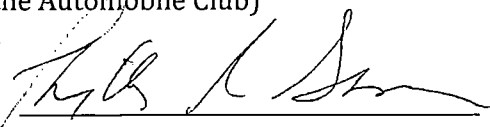
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By: 

Boca Raton, Florida
March 7, 2019

✓

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29211

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SC Court of Appeals

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Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
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Columbia SC 29211