

CASE No. FLSC No. SC23-147

IN THE US SUPREME COURT OF THE UNITED STATES

Dr. TAWAINGA KATSVAIRO

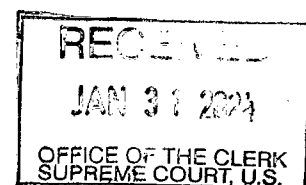
Pro Se Petitioner, Individually

Vs.

**Liberty Industries Inc
Liberty Holding Company
Liberty Chips Corporation
LHC Texas Properties
Samuel Hatcher
Jimmy Hatcher**

MOTION TO DIRECT THE CLERK TO FILE THE PETITION OUT OF TIME

**Dr. Tawainga Katsvairo
P. O. Box 3711
Tallahassee, FL 32315
Phone: 850 508 2127**



LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

FLORIDA SUPREME COURT

FLORIDA FIRST DISTRICT COURT OF APPEAL

LIBERTY COUNTY COURT

LIBERTY INDUSTRIES, INC

LIBERTY HOLDING COMPANY

LIBERTY CHIPS CORPORATION

LHC TEXAS PROPERTIES INC

SAMUEL HATCHER

JIMMY HATCHER

TABLE OF CONTENTS

INDEX TO APPENDICES	3
TABLE OF AUTHORITIES	4
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	5
MOTION TO FILE PETITION OUT OF TIME	6

INDEX TO APPENDICES

Appendix A: Decision of Florida Supreme Court

APPENDIX B: Award of legal fees to respondent by Florida Court

TABLE OF AUTHORITIES

Cases	Page
<i>Lujan v. Nat'l Wildlife Fed'n</i> , 498 U.S. 871, 896 (1990).	7
<i>Pioneer Investment Services Co. v. Brunswick Associates, Ltd, Partnership</i> , 507 U.S. 380, 395 (1992)	7
<i>Briones v. Riviera Hotel & Casino</i> , 116 F.3d 379, 381 (9th Cir. 1997),	8
<i>Lemoge v. United States</i> , 587 F.3d 1188, 1192 (9th Cir. 2009).	8
<i>Rodgers v. Watt</i> , 722 F.2d 456, 459 (9th Cir. 1983),	8
<i>Wong v. Regents of the Univ. of Calif.</i> , 410 F.3d 1052, 1060 (9th Cir. 2005)	9
<i>Newgen, LLC v. Safe Cig. LLC</i> , 840 F.3d 606, 616 (9th Cir. 2016)	9
<i>Rodriguez v. Village Green Realty, LLC</i> ,	

788 F.3d 31, 47 (2nd Cir. 2015) (citing *Cargill, Inc. v. Sears Petroleum*

& Transp. Corp., 334 F. Supp. 2d 197, 247 (NDNY 2014)

9

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rule of Civil Procedure 6(b)(1)(B)

7

This is a motion to direct the clerk to file the petition out of time: On October 31, 2023, the pro se petitioner filled a petition for Writ of Certiorari, Exhibit AA. The petition was filed past the due date for an appeal with the Supreme Court. The petition provided good cause and excusable neglect as justification for the Supreme Court to accept the petition.

The petitioner received a letter from the supreme court dated November 7th stating that the petition had been returned because it was filed out of time.

On December 4, 2023, the petitioner filed for good cause and excusable neglect as a basis for the Supreme Court to accept the original motion for a writ of certiorari out of time.

The petitioner received a second letter from the supreme court dated December 7, 2023 stating that “If you are seeking to file your petition for a writ of certiorari out of time, you must file the petition with a motion to direct the Clerk to file the petition out of time.”

This petition instructs the Clerk to file the petition for a writ of certiorari out of time dated October 31, 2023, Exhibit AA. The petitioner amends and rewrites the motion for Accepting Late Filing filed dated December 4, below.

Based on the letter from the US Supreme Court dated November 7th 2023, the petition should have been filed before May 1, 2023. The

petitioner acknowledges having filed late for which he apologizes and offers the explanation that the late filing resulted for a good cause.

On page 16 of the initial petition filed with the Supreme Court on October 31, 2023, the petitioner provides a reason for filing late. The ruling by the Florida Supreme Court was made on January 31, 2023, Exhibit A. The award for attorney fees was granted on October 09, 2023, Appendix B. The petitioner mistakenly believed that the last date when the Florida court system made its last decision and closed the case was the date that would be used to determine the due date to the US supreme court. The date on which the Florida Court system made its last ruling is October 09, 2023. If based on that date, which was a mistake on the petitioner's part, the petitioner could be considered as having been filed on time. This error on the petitioner's part is a good cause and excusable neglect. An affidavit is attached in support of the petition.

The petitioner references Rule 6(b)(1)(B) for a post-deadline filing extension "for good cause," and failure to file timely because of "excusable neglect." *Lujon v. Nat'l Wildlife Fed'n*, 498 U.S. 871, 896 (1990).

In *Pioneer Investment Services Co. v. Brunswick Associates, Ltd, Partnership*, 507 U.S. 380, 395 (1992) the U.S. Supreme Court elaborates four factors as guidance to what constitutes "excusable neglect" under Rule 6(b). *Id.*

(1) Whether the delay in filing was within the reasonable control of the movant;

(2) The length of the delay and the delay's potential impact on judicial proceedings;

(3) The danger of prejudice to the non-moving party; and

(4) Whether the movant acted in good faith.

1) Mis calendaring caused the delay

2) The delay, which is five months, does not have an impact on judicial proceedings.

3) Allowing the filing past the deadline does not prejudice the non-moving party

4) The error on filing by the petitioner was in good faith. See attached affidavit.

All four factors or the predominant of the factors favor the petitioner.

Under Rule 6(b) and Rule 60(b), failure to engage in an equitable analysis of all four factors constitutes an abuse of discretion. *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997), *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009). In the *Briones v. Riviera Hotel & Casino*, the pro se plaintiff

filed an opposition to the motion three and one-half months after the filing deadline. The court granted excusable neglect.

Rule 6(b), like all the Federal Rules of Civil Procedure, “[is] to be liberally construed to effectuate the general purpose of seeing that cases are tried on the merits.” *Rodgers v. Watt*, 722 F.2d 456, 459 (9th Cir. 1983); *Wong v. Regents of the Univ. of Calif.*, 410 F.3d 1052, 1060 (9th Cir. 2005) (“Of course, courts should not mindlessly enforce deadlines.”)

The excusable neglect doctrine exists to prevent victories by default. *Newgen, LLC v. Safe Cig. LLC*, 840 F.3d 606, 616 (9th Cir. 2016) (observing that it is “the general rule that default judgments are ordinarily disfavored.”) Litigation in the federal civil procedure system should be decided on the merits and not on technicalities. *Rodriguez v. Village Green Realty, LLC*, 788 F.3d 31, 47 (2nd Cir. 2015) (citing *Cargill, Inc. v. Sears Petroleum & Transp. Corp.*, 334 F. Supp. 2d 197, 247 (NDNY 2014) (there is a strong preference for resolving disputes on the merits).

Failure to allow this particular petition to be reviewed by the US Supreme Court provides victory by default and disregard the merits this case has and on issues pertaining to hundreds of billions of dollars provided in grants annually in the nation.

In applying the *Pioneer-Briones* analysis, courts have found that inadvertent calendaring mistakes, while they may be negligent, constitute “good cause” under Rules 6(b) and 60(b) to entitle relief for late filings. *Pincay*, 389 F.3d at 860. This particular motion is for a case where the pro se petitioner misunderstood the due dates process.

I humbly request that the Supreme Court accept the petition for review. The late filing resulted from a “good cause.”

WTKatsvairo

Respectfully submitted,

Tawainga Katsvairo, PhD

Date: January 27, 2024

CASE No. FLSC No. SC23-147

IN THE US SUPREME COURT OF THE UNITED STATES

Dr. TAWAINGA KATSVAIRO

Pro Se Petitioner, Individually

Vs.

Liberty Industries Inc

Liberty Holding Company

Liberty Chips Corporation

LHC Texas Properties

Samuel Hatcher

Jimmy Hatcher

**AFFIDAVIT OF DR. TAWAINGA KATSVAIRO IN SUPPORT OF REASON
WHY THE PETITION WAS FILED LATE**

DR. TAWAINGA KATSVAIRO AFFIDAVIT

BEFORE ME personally appeared DR. TAWAINGA KATSVAIRO, who, after taking an oath states the following on his own personal knowledge:

I am the petitioner in the above-captioned case, and I am submitting this affidavit without an attorney in support of my Petitioner Motion on Excusable Neglect for filing late.

The Florida Supreme Court made a ruling on my case on January 31, 2023. The Liberty County Court in Florida made a determination for attorney fees on October 9, 2023. I mistakenly believed that the date when the Florida court system made its final decision to close the case was the date that would be used to determine the due date to the US Supreme Court.

At that point I believed the US Supreme Court needed to know the full impact of this case against the petitioner including the 14 years of legal fees which was assessed on October 9, 2023.

With the understanding that the due date with the US Supreme Court was based on October 9, 2023, I filled with my petition with the US Supreme Court on October 31, 2023.

It turned out that I had misunderstood how the due dates is determined and my petition was late.

Dated this 29 day of January, 2024

W Katsvairo

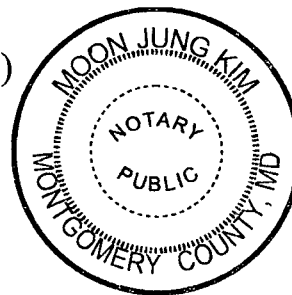
Dr. Tawainga W. Katsvairo

ATTESTATION

BEFORE ME personally appeared Dr. Tawainga W. Katsvairo, who, after being sworn, states that the facts set forth above are true and correct and are on his own personal knowledge. He presented his Florida driver's license as proof of his identity.

[Signature]

Notary Public (Signature)



Moon Jung Kim

Notary Public (Printed Name)

My Commission expires: 12/20/2026

*Moon Jung Kim
Notary Public
Montgomery County/Maryland
My commission Expires:
December 20, 2026*

Appendix A

Supreme Court of Florida

TUESDAY, JANUARY 31, 2023

CASE NO.: SC23-147

Lower Tribunal No(s).:

1D21-2582; 392009CA000055CAAXMX

TAWAINGA KATSVAIRO

vs. LIBERTY INDUSTRIES INC.,
ET AL.

Petitioner(s)


Respondent(s)

This case is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. See *Wheeler v. State*, 296 So. 3d 895 (Fla. 2020); *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

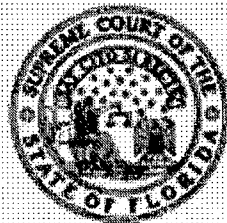
No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



CASE NO.: SC23-147

Page Two

td

Served:

JOHN F. LOAR

TAWAINGA KATSVAIRO

HON. KRISTINA SAMUELS, CLERK

HON. DANIEL STANLEY, CLERK

HON. DAVID M. FRANK, JUDGE

Appendix B

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LIBERTY COUNTY, FLORIDA

DR. TAWAINGA W. KATSVAIRO,
individually

Plaintiff,

CASE NO. 09-55-CA

vs.

LIBERTY INDUSTRIES, INC.,
LIBERTY HOLDING COMPANY,

Defendants.
_____ /

FINAL JUDGMENT AWARDING ATTORNEYS' FEES AND COSTS
IN FAVOR OF LIBERTY INDUSTRIES, INC.

THIS CAUSE, having come before this Court on Thursday, September 28, 2023, on Industries' Supplemental Motion to Determine Reasonableness of Attorneys' Fees Due to Industries (the "Motion"), and having reviewed the motion and taken evidence, heard argument, and being otherwise advised in the premises, the Court finds as follows:

1. By Order dated May 26, 2022, this Court determined that Liberty Industries, Inc. ("Industries") was entitled to its reasonable attorneys' fees pursuant to a proposal for settlement and reserved jurisdiction to determine the reasonableness of fees.

2. By Order dated November 21, 2022, the First District Court of Appeal awarded Industries its appellate attorneys' fees, remanding the matter to the trial court to determine the amount of appellate fees due to Industries.

3. Defendants offered opinion testimony of expert J. Breck Brannen, Esq., and Defendants Exhibits A, B, and C, were admitted, respectively comprising attorneys' fees incurred by Industries defending this matter to the law firm Nelson Mullins, costs incurred by

Industries, and attorneys' fees incurred by Industries to the law firm Akerman LLP. Industries incurred trial court attorneys' fees in the amount of \$170,549.50, appellate attorneys' fees in the amount of \$14,755.00, and costs in the amount of \$5,180.37, for a total of \$190,484.87. This included 83.7 hours of special counsel/of counsel time on appeal and 1,021.2 hours of trial court time, comprised of 12.9 hours for paralegal time, 2.1 hours of law clerk time, 230.2 hours of associate time, 665.6 hours in of counsel time, and 185.3 hours of partner time.

4. In determining the reasonableness of attorneys' fees, this Court is required to make specific findings with respect to the following criteria set forth in *Florida Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985), holding modified by *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828 (Fla. 1990):

(1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

5. With respect to the time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal services properly, the Court determines that the hours and labor reflected in Exhibits A and C were reasonable. *See Rowe*, 472 So. 2d at 1150 ("[t]he 'novelty and difficulty of the question involved' should normally be reflected by the number of hours reasonably expended on the litigation"). This is a case that was pending for 12 years, and involved several iterations of pleadings and heavy motion practice that paired down a twelve-count Second Amended Counterclaim to a single breach of contract action

that was tried before a jury over a three-day period. Additionally, counsel for Industries was required to prepare for trial twice, as the case was set to be tried on March 23, 2020, but was cancelled on March 13, 2020, due to COVID-19. Brannen credibly testified that the number of hours expended by Industries' counsel was reasonable in light of the above and the record. The Court adopts the hours reflected in Exhibits A and C as a reasonable number of hours expended.

6. When determining whether the hourly rate charged was reasonable, this Court must consider the fee customarily charged in the locality for similar legal services, the likelihood, if apparent to the client, that the acceptance of the particular work will preclude other employment by the lawyer, the time limitations imposed by the client or by the circumstances, the nature and length of the professional relationship with the client, and the experience, reputation, and ability of the lawyer or lawyers performing the services. *Id.*

7. Expert Brannen credibly testified that the hourly rates charged by Industries' counsel were consistent with, or less than, the fees customarily charged in the locality for similar legal services and that the lawyers who represented Industries were highly experienced and reputable, and each had legal abilities consistent with that of top-tier counsel. Expert Brannen based his opinion on his experience litigating with and against the attorneys representing Industries in other matters and their reputation in the community. Additionally, the original counsel for Industries withdrew from representing Industries when he was appointed as a Circuit Judge in the Second Judicial Circuit in and for Leon County, Florida, which reflects a stellar reputation. Trial counsel for Industries is special counsel for a highly reputable law firm and handled this matter with skill and at a discounted rate due to his longstanding relationship with Industries. The Court finds these factors weigh in favor of adopting the hourly fee charged by Industries' attorneys as reasonable. With respect to the likelihood that acceptance of the

employment would preclude other employment and the time limitations imposed by the circumstances, the Court finds these factors to be neutral. After considering the above factors in *toto*, the Court finds the rates charged by the lawyers to be reasonable and thus adopts those rates as reasonable.

8. The Court does not find any basis to adjust the fee based on a contingency fee risk, as Industries' counsel did not take the case on contingency, so there is no contingency fee risk. Nor does the Court find any basis to adjust the fee downward based upon the amount involved and the result obtained. The result obtained was a complete defense verdict, not a partial verdict that may provide a basis for reducing a fee. *See Rowe*, 472 So. 2d at 1151.

9. After considering the *Rowe* factors, the Court finds that the fees and costs incurred by Industries, including trial court attorneys' fees in the amount of \$170,549.50 and appellate attorneys' fees in the amount of \$14,755.00, are reasonable, and thus adopts the fees charged as a reasonable fee. Industries is also entitled to costs in the amount of \$5,180.37. The total award of fees and costs due to Industries is \$190,484.87.

10. Additionally, pursuant to *Quality Engineered Installation, Inc. v. Higley S., Inc.*, 670 So. 2d 929, 931 (Fla. 1996), Industries is entitled to pre-judgment interest, which begins to accrue on the date that entitlement is determined. For purposes of an offer of judgment, entitlement is determined on the day that a defendant obtains a judgment of no liability after previously serving an offer of judgment pursuant to F.S. § 768.79. *Lorillard Tobacco Co. v. French*, 12 So. 3d 786, 788 (Fla. 3d DCA 2009). In this case, the Final Judgment determining no liability was entered on August 4, 2021. "Courts apply the statutory judgment interest rate from the date of loss or entitlement under section 55.03 for purposes of calculation of pre-judgment interest." *Genser v. Reef Condo. Ass'n, Inc.*, 100 So. 3d 760, 762 (Fla. 4th DCA 2012). In other

words, the pre-judgment interest rate is determined by referencing the judgment interest rate in effect at the time entitlement is determined. The applicable judgment interest rate on August 4, 2021, was 4.25%.

11. Industries is entitled to pre-judgment interest from the date of entitlement, August 4, 2021, through October 4, 2023, on costs and attorneys' fees incurred in the amount of \$190,484.87, for a total pre-judgment interest award of \$17,536.47, based on a per diem rate of \$22.17.

Accordingly, it is hereby **ORDERED and ADJUDGED** that DEFENDANT, LIBERTY INDUSTRIES, INC., shall have and recover against PLAINTIFF, TAWAINGA KATSWAIRO, the amount of TWO-HUNDRED EIGHT THOUSAND TWENTY-ONE and 34/100 DOLLARS (208,021.34), including attorneys' fees and costs and pre-judgment interest, together with post-judgment interest allowed by law, for which let execution immediately issue.

DONE AND ORDERED in Bristol, Liberty County, Florida.


00055-CAAM 10/06/2023

David Frank, Circuit Judge
39-2009-CA-000055-CAAM 10/06/2023 03:47:04 PM

Exhibit AA