

LAW OFFICE OF  
HENRY M. GRUBEL, P.C.  
37 Prospect Street  
Freeport, New York 11520

Phone: 516-623-4130 Fax: 516-623-1989

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April 11, 2006

Via Federal Express

Roseann B. MacKechnie  
Clerk of the Court  
Court of Appeals, Second Circuit  
Thurgood Marshall U.S. Court House  
40 Foley Square Room 1803  
New York, NY 10007

Re: Civ. No 05-0609-cv, LoPresti c. Citigroup, Inc.; United States District Court for the Eastern District of New York

Dear Ms. MacKechnie:

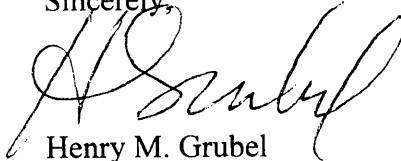
Enclosed for filing in the above – referenced matter, are five copies of appellant’s motion to file a petition for a rehearing one day late.

This petition was filed on April 7, 2006 when it was received by the court. I was told that it should have been received by the court on April 6, 2006. Accordingly the docket of the court states that the petition was defective and that a motion to file the petition had to be made prior April 14, 2006. My request to Mr. Eniola Ajaji to extend the time to file this motion was denied. I never received notice from the court that the petition was defective.

Please file-mark the extra copy hereof and return it to me in the enclosed self –addressed envelope.

Thank you for your assistance in this matter.

Sincerely,



Henry M. Grubel

cc: all counsel

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
Thurgood Marshall U.S. Courthouse at Foley Square . . Centre Street, New York, N Y 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Caption: [use short title]

Docket Number(s): 05-0609-cv

LoPresti v. Citigroup, Inc.

Motion for: Leave to serve late petition for rehearing

Set forth below precise, complete statement of relief sought:

Have the court accept petition for rehearing that was one day late

MOVING PARTY: \_\_\_\_\_

OPPOSING PARTY: \_\_\_\_\_

- Plaintiff
- Defendant
- Appellant/Petitioner
- Appellee/Respondent

MOVING ATTORNEY: Henry M. Grubel  
[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY [Name]: David J. Lender, Esq.  
[name of attorney, with firm, address, phone number and e-mail]

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New York, NY 10153 (212) 310-8000  
david.lender@weil.com

Court-Judge/Agency appealed from: United States District Court, Eastern District, New York – Judge Sterling Johnson, Jr.

**Please check appropriate boxes:**

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:**

Has consent of opposing counsel:

- A. been sought?  Yes  No
- B. been obtained?  Yes  No

Has request for relief been made below?  Yes  No

Has this relief been previously sought in this Court?  Yes  No

Is oral argument requested?  Yes  No  
(requests for oral argument will not necessarily be granted)

Requested return date and explanation of emergency:

Has argument date of appeal been set?  Yes  No If yes, enter date it was submitted on 3/20/06 & decided 3/26/06

Signature of Moving Attorney: \_\_\_\_\_

Date: 4/16/06

Has service been effected?  Yes  No  
[Attach proof of service]

**ORDER**

IT IS HEREBY ORDERED THAT the motion is **GRANTED DENIED**.

FOR THE COURT: \_\_\_\_\_  
ROSEANN B. MacKECHNIE, Clerk of Court

Date: \_\_\_\_\_

By: \_\_\_\_\_

**05-0609** cv

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**In the United States Court of Appeals  
for the Second Circuit**

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**LoPresti v. Citigroup, Inc.**

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On Appeal from the United States District Court

For the Eastern District of New York

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Appellant's Motion for an Extension of  
Time to Deem his Petition for a Rehearing  
to have been Timely Filed

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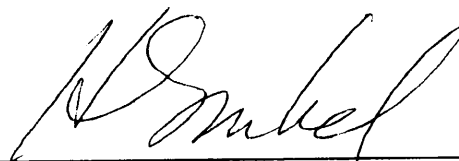
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Attorney for the Appellant

**MOTION**

Petitioner-Appellant Carmine A. LoPresti, respectfully moves this court to permit him to file his petition for a rehearing, of the decision rendered and filed by the court on March 23, 2006.

The petition for rehearing was filed by LoPresti on April 7, 2006. The petition was defective in that it should have been filed by April 6, 2006, accordingly petitioner respectfully moves this court to accept the petition for a rehearing that was filed on April 7, 2006 instead of on April 6, 2006 on a *nunc pro tunc* basis.

Dated: April 11, 2006  
Freeport, New York



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HENRY M. GRUBEL (HG)(3211)  
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Phone: 516-623-4130  
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## AFFIDAVIT

I, Henry M. Grubel attorney for the petitioner-appellant herein, respectfully submit this affidavit in support of petitioner's motion to have the court accept for filing the petition for a rehearing that was filed on April 7, 2006, when it should have been filed on April 6, 2006, *nunc pro tunc*.

As of April 7, 2006 at 5:16 pm there were no entries on the docket of this case, that were made after March 23, 2006.

When I went to check the docket of this case today I saw entries dated April 7, 2006, that must have been entered after I looked at the docket, regarding the fact that the petition for a rehearing was defective.

I called the court today and spoke to Mr. Eniola Ajaji. He told me that the petition was deemed defective by the court because it arrived at the court on April 7, 2006 instead of on April 6, 2006. This was my error, in that I counted the days incorrectly.

The court, according to the docket specifically gave the petitioner the opportunity to file this motion prior to April 14, 2006.

It would have been an easy matter to have delivered the petition to the court by hand on April 6, 2006, rather than having sent it by Federal Express overnight delivery to the court and to all counsel, but I erred in believing that the petition was being filed timely.

I respectfully request that the court accept the petition for a rehearing in this matter on a *nunc pro tunc* basis. FRAP 40 (a)(1) specifically contemplates the court's power to extend the fourteen (14) day period that a party has to file its Petition for a Rehearing.

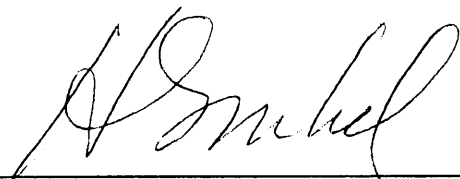
It is respectfully submitted that no party to this appeal will be prejudiced by having the court extend retroactively the date for filing the Petition for a Rehearing from April 6<sup>th</sup> to April 7, 2006, on a *nunc pro tunc* basis.

Petitioner's Petition for a Rehearing is meritorious in that it presents good cause for rehearing the instant appeal before a different panel of judges.

WHEREFORE, it is respectfully requested that in the interest of justice and for the reasons hereinabove stated, that the court grant petitioner's motion to extend the time and deem his Petition for a Rehearing to have been filed timely on April 7, 2006, *nunc pro tunc*.

I, Henry M. Grubel, certify under penalty of perjury that I am the attorney for the petitioner-appellant in this action, that I have read this affidavit in support of petitioner's motion for permission to have his petition for a Rehearing to be deemed timely filed as of April 7, 2006, and that, to the best of my knowledge, information, and belief the statements herein are true and correct, and that this affidavit is not interposed for delay or other improper purposes.

Dated: April 11, 2006  
Freeport, New York



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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
CARMINE A. LoPRESTI,

Appellant,

**05-0609-cv**

-against-

CERTIFICATE OF SERVICE

CITIGROUP, INC., et. al.

Appellees.

-----X

On April 11, 2006, counsel for the petitioner-appellant, served the transmittal letter to the Clerk of the Court, the motion to extend the time to file the Petition for a Rehearing until April 7, 2006 and to deem it filed timely non-pro-tunc., and the affidavit of Henry M. Grubel in support of said motion, upon counsel for the appellees who have appeared in this action as follows. All were served two copies by FedEx overnight next day regular service:

David J. Lender, ESQ  
Weil, Gotshal & Manges, LLP  
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Attorneys for the Citigroup, Inc. appellees

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Phone: 212-422-0202 Fax: 212-422-0925  
Attorneys for the Buck appellees

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Phone: 212-930-9700 Fax: 212-930-9725  
Attorneys for the Lutheran Medical Center  
appellees

Dated: April 11, 2006  
Freeport, New York



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