

**THE SUPREME COURT OF THE UNITED STATES OF AMERICA
WASHINGTON, D.C.**

BERNARD MORELLO,

Petitioner

v.

THE STATE OF TEXAS

Respondent

**MORELLO’S MOTION TO EXTEND TIME FOR FILING A PETITION FOR
A WRIT OF CERTEORARI TO THE SUPREME COURT OF TEXAS**

**TO THE SAMUEL ALITO, ASSOCIATE JUSTICE OF THE SUPREME
COURT OF THE UNITED STATES OF AMERICA:**

Bernard Morello, Defendant and Respondent below, and Petitioner in this cause and motion (“Morello) asks this court to permit an additional 21 days beyond the statutory time to file a Petition for a Writ of Certiorari to the Supreme Court of the United States and as cause therefore would show:

1. **Nature of the case below:** This case was brought by an agency of the State of Texas seeking punitive fines and assessments because of alleged environmental contractual violations against a limited liability company, White Lion Holdings, L.L.C., (“White Lion”) who is the transferee of a compliance plan and permit for

property purchased. Morello is the sole member and owner of White Lion. The allegations asserted against both White Lion and Morello were based on reporting violations and the posting of financial assurance, not for illegally discharging hazardous waste or other harm to the environment. In fact, the evidence in the case is uncontroverted that environmental conditions improved after White Lion purchased the property and all hazardous activities ceased.

Morello contends that he was never individually provided notice that he could be a party to the proceeding merely as the owner of the business. The trial court, granting a Motion for Summary Judgment, found him separately and personally liable after having found the business entity separately liable in a severed action, for the punitive fines relating to his failure to test and report the conditions of the property. The cumulative fines assessed approach \$1,000,000.00 for property acquired for \$150,000. With post judgment interest, the fines now exceed \$1,000,000.00.

Morello appealed the Trial Court's judgment to the Third Court of Appeals of the State of Texas, which reversed the judgment against him personally. On appeal by the State entity, the Texas Supreme Court, *inter alia*, reversed the Third Court of Appeals opinion and reinstated the personal judgment against Morello individually and separately, holding that the fines were not unconstitutionally excessive and that since Morello was a person, he could be held separately liable. This overly broad reading of the Texas Water Code is unconstitutionally vague and fails to notify any person of when he could be held liable.

2. **Issues Morello seeks to present:** Morello will contend, as the Third Court of Appeals found, and as he contended in the Texas Supreme Court, that he was not personally a party to the compliance plan or permit and was not given fair notice that the State of Texas was seeking to recover from him personally and separately for the contractual failures of White Lion. He will show that the way that the proceedings were conducted below deprived him of property without due process of law in violation of the 5th and 14th Amendments of the Constitution of the United States of America.

In addition, Morello contends that the amount of the fine in excess of \$1,00,000.00, in view of the small size of the property (5 acres of property out of a 200 acre tract), the amount of \$150,000 paid for all 200 acres when purchased out of a federal bankruptcy proceeding, and the lack of harm to the environment, the putative fine is excessive under the 8th Amendment to the United States Constitution and is applicable to the State of Texas under the 14th Amendment.

3. **Bases for Additional Time:** The undersigned counsel, Jacqueline Lucci Smith, represented Mr. Morello in the state court proceedings. Although not yet licensed before this Honorable Court, Mrs. Smith is an experienced attorney who has been licensed to practice law in Texas since 1993. She is admitted to practice before the United States District Court for the Southern District of Texas and the United States Court of Appeals for the Fifth Circuit. She also served as the judge of County Court of Law No. 2 in Harris County, Texas for 6 years.

The ruling by the Texas Supreme Court obligates Mr. Morello to pay nearly \$500,000 in fines with post-judgment interest accruing daily. After a due and diligent search, Mr. Morello could neither afford to engage new counsel nor obtain *pro bono* representation to draft and file a Petition for Writ of Certiorari before the United States Supreme Court. After Mr. Morello expressed the fruitlessness of his efforts, Mrs. Smith, over this past weekend, agreed that her firm would represent Mr. Morello in drafting and filing the Petition for Writ of Certiorari before this Honorable Court. In doing so, Mrs. Smith has had to make arrangements to practice before this Honorable Court and meld the current deadline in the matter *sub judice* with preexisting deadlines.

To that end, Mrs. Smith filed, today, an application for admission to practice before this Honorable Court. Since the Texas Supreme Court handed down its opinion and rendered its judgment and the various post-judgment motions for rehearing were overruled on June 20, 2018, Mrs. Smith has had numerous appellate deadlines and trials scheduled, the highlights of which are as follows:

- a. 6/22/18 Special Commissioners' Hearing, Cause No. CON-0197; *Breviloba, LLC v Julie L Graves*; Eminent Domain Proceeding in the County Court at Law in Liberty County, Texas.
- b. 7/3/18 Brief of Appellant, Cause No. 09-18-00173-CV; *Lone Star NGL Pipeline LP v Lois St. Pe and Julie L Graves*; in the Court of Appeals for the Ninth District of Texas.
- c. 7/12/18 Special Commissioners' Hearing, Cause No. CV-0080494; *The State of Texas v Irma Patelis, Individually, and as Trustee of all Trusts Created Under the Last Will and Testament of Chris Patelis*; Condemnation Proceeding Filed in the County Court at Law No. 3 of Galveston county, Texas.

- d. 7/12/18 File Motion for Rehearing, Cause No. 13-CCV-050231; *Bernard J. Morello and White Lion Holdings, LLC v Seaway Crude Pipeline Company, LLC*; in the First Court of Appeals Houston, Tex 7/16/18
- e. 8/13/18 Injunction Hearing, Cause No. 2011-75448; *Ella Park Terrace Civic Club, v Jose M. Gallegos*; in the District Court of Harris County, Texas 55th Judicial District.
- f. 8/14/18 Special Commissioners' Hearing, Cause No. CON-0205; *Breviloba, LLC v Rescue Concepts, Inc.*; Eminent Domain Proceeding in the County Court at Law Liberty County.
- g. 8/28/18 Pretrial and Scheduling Conference, Cause No. 3:18-CV-00165; *Weems & Kelsey Management Company No. 2, Ltd v Chevron USA, Inc.*; United States District Court Southern District of Texas Galveston Division.
- h. 9/5/18 Special Commissioners' Hearing, Cause No. CV-0081038; *The State of Texas v Visual Design Manufacturing Company, Ince., A Texas Corporation*; Condemnation Proceeding Filed in the County Court at Law No. 3 of Galveston County, Texas.
- i. 9/12/18 Special Commissioners' Hearing, Cause Number 1113923; *Magellan Pipeline Company, et al v. Beck & Masten Real Estate Properties, LTD.*, Harris County Civil Court at Law 2.

Ms. Smith has worked diligently on the issues she wishes to present in the proposed petition. The additional 20 days will ensure that Mrs. Smith properly presents Mr. Morello's issues for this Honorable Court's consideration in whether to grant a Writ of Certiorari in this matter. In short, this extension of time is sought not for delay but so that justice can be done.

WHEREFORE, Bernard Morello, Petitioner, prays that this Court grant an additional 20 days within which he may file his proposed petition, extending the deadline through and including Wednesday, October 10, 2018.

Respectfully submitted,

By: /s/ Jacqueline Lucci Smith

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CERTIFICATE OF CONFERENCE

On September 10, 2018, I sent Craig J. Pritzlaff, lead counsel for the State of Texas, an electronic mail request for whether the State of Texas opposed this extension, and the State of Texas has not responded.

/s/ Jacqueline Lucci Smith
Jacqueline Lucci Smith

CERTIFICATE OF SERVICE

I certify that, on September 10, 2018, I served a copy of this motion by e-service, e-mail and first class mail on the following counsel of record:

/s/ Jacqueline Lucci Smith
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