Elizabeth Haring Coomes
210 Cornwall Street NW
Leesburg, VA 20176

May 29, 2018

The Honorable John G. Roberts, Jr.
Circuit Justice for the United States 4th Circuit
The United States Supreme Court
1 First St NE
Washington, DC 20543

Dear Justice Roberts:

There were some errors in the conclusion paragraph of the original application filed May 26, 2018. Please find enclosed a corrected Application to Extend Time to File a Petition for a Writ of Certiorari along with a notarized affidavit of service.

Thank you for your consideration.

Sincerely,

Elizabeth Haring Coomes

cc: Ioannis Laskaris, Counsel for Respondent

App. No. _____

In the

Supreme Court of the United States

Elizabeth Haring Coomes,

Petitioner

v.

Maryland Insurance Administration

PETITIONER'S **CORRECTED** APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable John G. Roberts, Jr., as Circuit Justice for the United States 4th Circuit:

Petitioner Elizabeth Haring Coomes respectfully requests that the time for Petitioner to file a Petition for a Writ of Certiorari in this matter be extended for sixty days. The Maryland Court of Appeals entered an Order dismissing Petitioner's appeal on March 8, 2018. Petitioner moved the Court to reconsider. On March 27, 2018, the Court issued an Order denying the motion to reconsider. On March 27, 2018, the Court issued an Order granting Petitioner's counsel leave to withdraw. On March 29, 2018, the Court *sua sponte* entered an Order stating that, "the Order dated March 8, 2018 is hereby MODIFIED to clarify the Court's decision to

grant Respondent's Motion to Dismiss." The March 29, 2018 Order materially changed the basis of the Court's decision. The Court issued the mandate on April 9, 2018. Petitioner moved the Maryland Court of Appeals to reconsider the March 29, 2018 Order. Petitioner also moved the Court to recall the mandate. On May 15, 2018, the Court entered an Order denying Petitioner's Motion to Reconsider, Motion to Deem the Motion to Reconsider Timely Filed and Motion to Recall the Mandate.

Petitioner is filing this Application at least ten days before that date per S. Ct. R. 13.5. This Court has jurisdiction over the case because it involves federal questions: an interpretation of Federal bankruptcy law 11 USC 362(b)(4) as well as constitutional issues and legal issues raised before the Maryland Insurance Administration hearing officer, the Baltimore Circuit Court, the Maryland Court of Special Appeals and the Maryland Court of Appeals, the state's court of last resort.

BACKGROUND

This matter raises important legal questions with far-reaching implications for 29% of the US workforce who hold professional licenses (approx. 37,000,000 full-time workers), over 2,300,000 licensed US insurance producers, and also nearly 800,000 personal bankruptcy debtors annually. It also impacts almost 327,000,000 Americans insofar as we're all subject to various criminal and hybrid civil-criminal regulatory laws in some form or fashion in our everyday lives. These important issues are ripe for judicial review. United States Supreme Court review is desirable and in the public interest.

In a case of first impression, this matter raises the question of whether an individual bankruptcy debtor who is appealing a final regulatory action is protected by the automatic stay of bankruptcy. In *Board of Governors of Federal Reserve System v. MCORP.*, 502 U.S. 32 (1991),

the US Supreme Court suggests that the automatic stay may be applicable to appeals of final regulatory actions. Although Petitioner is the moving party in the appeal from the administrative agency, the appeal was noted as a result of the original proceeding brought against Petitioner. Therefore, the appeal is a continuation of the original action brought against Petitioner by Respondent and Petitioner ought to be protected by the automatic stay. Petitioner relies on *St. Croix Condominium Owners v. St. Croix Hotel Corporation*, 682 F.2d 446 (3rd Cir. 1982) in support of this proposition.

Petitioner filed a voluntary Chapter 13 bankruptcy case on October 16, 2017. In a case of first impression, the Maryland Court of Appeals held that the police and regulatory power exception to the automatic stay in 11 USC 362(b)(4) applied and dismissed Petitioner's pending appeal of a final regulatory action for failure to timely file the brief after denying Petitioner's request for an extension of time. Bankruptcy legislative history clearly shows that the police and regulatory power exception to the automatic stay; 11 USC 362(b)(4) excepts only ongoing, non-final regulatory actions from the automatic stay,

> "Under present law, there has been some overuse of the stay in the area of government regulation. For example, in one Texas bankruptcy Court, the stay was applied to prevent the state of Maine from closing down one of the Debtor's plants that was polluting a Maine river in violation of Maine's environmental protection laws. In a Montana case, the stay was applied to prevent Nevada from obtaining an injunction against a principal in a corporation who was acting in violation of Nevada's anti-fraud consumer protection laws. **The Bill excepts these kinds of actions from the automatic stay**." (Emphasis added) See House Report 95-595 dated September 8, 1977, page 149.

Since its enactment in 1978, bankruptcy courts have found that the 11 USC 362(b)(4) police and regulatory power automatic stay exception applies to ongoing, non-final regulatory actions for public policy reasons: to protect the public from imminent future harm. Since the Maryland

Insurance Administration's enforcement action summarily revoking Petitioner's professional license is final, there is no public policy justification for 362(b)(4) in the instant case.

This case arises from Maryland's highest court, the Maryland Court of Appeals, which granted certiorari after the Maryland Court of Special Appeals affirmed the decision of the Maryland Insurance Administration in its reported opinion *Elizabeth Haring Coomes v. Maryland Insurance Administration*, No. 2158, Court of Special Appeals of Maryland (2017). The Maryland Insurance Administration summarily revoked Petitioner's insurance producer license and fined her in an arbitrary, illegal case with no legal precedent. It is a case of first impression regarding issues of bankruptcy law, administrative law, criminal law, the rule of lenity, doctrine of merger, and double jeopardy jurisprudence. It implicates Petitioner's Constitutional rights, in particular substantive and procedural Due Process, Fair Notice, Confrontation, and Equal Protection. Summary decision was not appropriate because there were multiple material facts in dispute.

In a case of first impression, the Maryland Insurance Administration asserted original jurisdiction over Petitioner's actions in Virginia and summarily revoked Petitioner's insurance producer license for allegedly failing to pay a Virginia insurer on demand. Petitioner objected on the basis that the Maryland Insurance Administration lacked jurisdiction/express statutory authority to prosecute Petitioner under Maryland law for something that occurred in Virginia and was legal in Virginia. <u>If this decision stands, it up-ends the regulatory scheme and sets a dangerous precedent for a regulatory agency to cross state lines and prosecute any licensed professional for actions that were legal in the jurisdiction where they occurred. This impacts nearly 37,000,000 licensed professionals.</u>

In a case of first impression, the Maryland Insurance Administration summarily revoked Petitioner's insurance producer license after a motions hearing, finding that the voluntary surrender of her Virginia insurance producer license was an adverse administrative action within the ambit of Maryland's reporting of actions statute 10-126(f),

Within 30 days after the final disposition of the matter, an insurance producer shall report to the Commissioner any adverse administrative action taken against the insurance producer:

(i) in another jurisdiction; or

(ii) by another governmental unit in this State.

(2) The report shall include a copy of the order, consent order, and any other relevant legal documents.

The insurance industry has never construed the voluntary surrender of a producer license to be a final adverse action; the industry has always construed a final adverse action as a product of formal or informal adjudication with findings of fact and conclusions of law that results in a final Order. This case raises the question of whether a voluntary surrender in Virginia in the absence of administrative charges, the absence of findings of fact and conclusions of law, and the absence of an Order, is an adverse administrative action subject to the Maryland reporting of actions requirement.

Petitioner raised the defense below that even if the voluntary surrender were an adverse action, it was not final in the absence of findings of fact and conclusions of law, and the absence of an Order. It is not subject to the reporting of actions requirement if it is not final. The hearing officer, the Baltimore Circuit Court and the Maryland Court of Special Appeals have all found that it was an adverse administrative action, but ignored the question of whether it was final. The ruling must be reversed or remanded on the failure to rule on a material issue in the case. *Forman v. Motor Vehicle Administration*, 332 Md. 201, 630 A.2d 753 (1993)

In a case of first impression, the Maryland Court of Special Appeals found that the matter was not criminal and held that the Rule of Lenity did not apply. The circuits are still deeply divided on lenity's application to hybrid criminal-civil statutes, notwithstanding the Supreme Court opinions on lenity in *United States v. Thompson/Arms Co., Leocal v. Ashcroft* and *Abramski v. United States*. This case raises the question of whether the rule of lenity ought to apply in the context of an expressly criminal statute where prosecution is brought by an administrative agency. Maryland Insurance Article Section 1-301 expressly criminalizes willful violations of Maryland insurance law as a misdemeanor and includes a criminal penalty, "In addition to any administrative penalty otherwise applicable, a person that willfully violates any provision of this article, with respect to which a greater penalty is not provided by other applicable State law, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100,000." Moreover, the fraud and misappropriation allegations against Petitioner are essentially criminal in nature and she could face criminal prosecution too. The reporting of actions statute in question 10-126(f), was codified in all 50 states pursuant to the Gramm–Leach–Bliley Act, is grievously ambiguous and open to more than one interpretation. The Maryland Insurance Administration's novel interpretation that a voluntary surrender of a license in the absence of administrative charges, the absence of findings of faction and conclusions of law, and the absence of an Order, is highly nuanced. Petitioner did not have any notice, much less fair notice. Since the Maryland Insurance Administration's position was neither longstanding nor consistent and they ruled against Petitioner as a matter of law, their decision is not entitled to *Chevron* deference. The criminal statute should be construed narrowly in favor of Petitioner.

The sentence against Petitioner was illegal insofar as she was punished for allegedly failing to appear and produce a copy of the voluntary surrender agreement, but she was never

charged with violating 10-126(a)(11). The Maryland statutes in question are unconstitutional insofar as they are criminal, yet the evidentiary standard is a mere preponderance of the evidence and hearsay evidence is permitted.

Moreover, despite the fact that the statute is criminal, the Hearing Officer failed to consider Petitioner's intent. Respondent argued that scienter was not required for a violation of 10-126(a)(13). The hearing officer held Petitioner's intent was irrelevant. This Court has imputed scienter to criminal statutes that impose sanctions without expressly requiring scienter.

Courts have held that regulatory actions do not fall within the ambit of double jeopardy's prohibition against multiple punishments if they are remedial in nature. Petitioner's case is highly distinguishable because the Maryland statute is expressly criminal and provides a criminal punishment. Despite this, the Hearing Officer found the Maryland statute was not "criminal" and would not implicate double jeopardy. Petitioner meets criteria set forth in *Hudson* and its predecessor *Halper*. If the voluntary surrender in Virginia was an adverse action, Petitioner has been punished twice for the same alleged offense. The hearing officer permitted multiple punishments on the basis of the dual sovereignty doctrine. Based upon the opinion in *Puerto Rico v. Sanchez Valle*, 579 U.S. (2016), it seems the Supreme Court is receptive to revisit the dual sovereign doctrine since it is premised upon the outdated antebellum idea that states are sovereign. The dual sovereign doctrine does not seem to apply here since the ultimate source of authority for both state regulatory agencies is the same sovereign: the US Federal government. One could also argue that the British Crown is the ultimate source of authority for Maryland and Virginia since they were among the original thirteen colonies. If the Court were to hold that dual sovereignty comes into play in this case, Petitioner argues that dual sovereignty is unfair and violates the intent of the founding fathers *vis a vis* double jeopardy and the Court ought to reject

its dual sovereignty doctrine. Our founding fathers enshrined Double Jeopardy protection in our Constitution because they believed multiple punishments were "inhumane." This issue is very timely; just a few weeks ago the United States assistant attorney general Rod Rosenstein admitted multiple punishments are unfair when he announced a new Department of Justice policy against duplicative punishments. Unfortunately the new Department of Justice policy is not absolute; it permits the DOJ to impose multiple punishments under certain circumstances. It also does not have the force of law. It is high time for the Supreme Court to shore up double jeopardy protection and consign dual sovereignty to the ash heap of legal history.

In a case of first impression, petitioner argued that since the statute was criminal, the Hearing Officer should have applied the doctrine of merger. Although normally applied in traditional criminal matters, the concept is relevant here. Merger of offenses, for example, occurs when all of the elements of one offense are included in a separate offense; see, e.g., *State v. Jenkins, 307 Md. 501, 517 (Md. 1986).* Here, the alleged conduct which the Hearing Officer found constituted violations of Section 10-126(a)(1), (6), and (12) occurred in Virginia but also formed the basis of the original allegations investigated by the Maryland Insurance Administration against Petitioner pursuant to Section 10-126(a)(13) and (f), i.e., the alleged failure to report the Virginia voluntary license surrender that was based upon the series of transactions and events connected with the Anthem checks. These transactions and events merged into Section 10-126(a)(13) and (f) because these events formed the basis of the "adverse administrative action" which the Commissioner initially contended the Petitioner did not report. The Commissioner overreached when she then attempted to charge Petitioner with violations of Maryland law that had already been the subject of a previous alleged adverse administrative action. In effect, the Commissioner was punishing the petitioner for a second time on the same conduct which had resulted in the

voluntary surrender in Virginia and, in fairness, Petitioner ought not have to contend with a second punishment for the same alleged offense that she had settled in Virginia.

REASONS FOR GRANTING AN EXTENSION OF TIME

Good cause and extraordinary circumstances exist such that the time to file a Petition for a Writ of Certiorari should be extended for sixty days. In support thereof, Petitioner states:

1. The need to file a Petition will be obviated if the Bankruptcy Court for the Eastern District of Virginia rules that the automatic stay applied to the matter before the Maryland Court of Appeals. If the bankruptcy Court rules that the automatic stay applied, the dismissal of the Maryland appeal by the Maryland Court of Appeals was void *ab initio*. Petitioner's bankruptcy counsel is currently preparing to litigate the applicability of the automatic stay in the bankruptcy Court.

2. Petitioner has to substitute counsel in this matter. This is a case of first impression which involves complex and fundamentally important legal issues warranting a carefully prepared petition.

3. Petitioner is a debtor in a voluntary Chapter 13 bankruptcy reorganization in the United States Bankruptcy Court for the Eastern District of Virginia, In re: *Elizabeth H. Coomes*, case no. 17-13497. Petitioner's financial difficulty and hardship caused by the recent additional litigation necessitates the need for additional time to retain new counsel in this matter.

4. One of the principal reasons for Petitioner's financial difficulty is extraordinary out of pocket medical expenses for medical problems. For example, she was treated at Mayo Clinic between November 17, 2018 through December 10, 2017. She was treated again at Mayo Clinic between March 30, 2018 through April 20, 2018. She is supposed to return to Mayo Clinic from June 10, 2018 through June 22, 2018 for additional treatment.

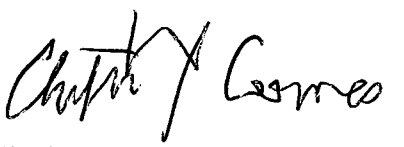
5. Respondent prevailed in the lower courts and no prejudice to Respondent would arise from the extension. The Respondent Maryland Insurance Administration has consented to the extension of time.

5. This Court could hear oral argument and issue its opinion in the October 2018 Term regardless of whether an extension is granted.

CONCLUSION

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended sixty days. If the Order entered March 29, 2018 is considered the final decision in the case, the time to file the Petition would be extended to August 27, 2018. If the Order entered May 15, 2018 is considered the final decision in the case, the time to file the Petition would be extended to October 12, 2018.

Respectfully submitted,



Elizabeth Haring Coomes
Petitioner

Elizabeth Haring Coomes
210 Cornwall Street NW
Leesburg, VA 20176
Tel: 540-878-8021

May 29, 2018

AFFIDAVIT OF SERVICE

I HEREBY CERTIFY under penalty of perjury under the laws of the United States of America that the following is true and correct: that on this 29th day of May 2018 pursuant to Rule 29, I caused a copy of the foregoing paper Petitioner's Corrected Application to Extend Time to File a Petition for a Writ of Certiorari to be served, by first class mail, postage prepaid upon:

Ioannis Laskaris, Assistant Attorney General
Counsel for Respondent
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, MD 21202

Elizabeth Haring Coomes

STATE of VA
County of Loudoun

The foregoing instrument was subscribed, swoln and acknowledged before me this 29 day of MAY 2018 by Elizabeth Haring Coomes who produced a drivers License as identification and acknowledged that she signed the aforesaid document to execute for the purposes stated therein.

JUDY M. CHEUNG
Notary Public - Reg. # 310776
Commonwealth of Virginia
My Commission Expires Mar. 31, 2021

Judy M Cheung