No. 18-5664

IN THE

Supreme Court of the United States

CHAN CHEESEBORO

Petitioner,

v.

LITTLE RICHIE BUS SERVICE, INC.,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Whether this Court should grant the instant petition where there is no important federal question or circuit split, Plaintiff raises an argument for the first time in her petition for writ of certiorari, and Plaintiff's argument is merely a factual inaccuracy?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, counsel for Defendant-Respondent LITTLE RICHIE BUS SERVICE, INC. certifies that Defendant-Respondent is a privately held corporation. The parent corporation is Logan Bus Co., Inc. and the following is a list of any publicly held company that owns 10% or more of the corporation's stock: Logan Bus Co., Inc.

STATEMENT

Plaintiff Chan Cheeseboro (hereinafter "Plaintiff") brought a negligence action in the United States District Court for the Eastern District of New York against Little Richie Bus Service, Inc. (hereinafter "Defendant"), for injuries she allegedly sustained in a motor vehicle accident while riding on a school bus operated by Defendant.

On or about November 15, 2000, Joseph Ristieneau operated a school bus owned by Defendant and Subrattran Corchado was the bus matron. At approximately 8:00 a.m., at the intersection of Woodhaven Boulevard and 101st Street, a vehicle attempted to enter the service lane of Woodhaven Boulevard and caused an accident with the school bus.

Although Corchado testified at her deposition that she routinely got out of the bus, took the child to their seat, and made sure they put their seatbelt on, the parties disputed whether or not Plaintiff was wearing seat belt at the time of the accident. Plaintiff asserted that she could not have been thrown out of her seat into the aisle if she was wearing a seat belt.

Plaintiff was evaluated at Jamaica Hospital and peninsula Hospital on the date of the accident, was released, and did not seek further medical treatment until over a year after the accident. She alleges that as a result of the accident she has scoliosis, a permanent condition.

Plaintiff's complaint alleged that Defendant was negligent for failing to equip the school bus with seat belts. After discovery Defendant moved for summary judgment on the ground that the bus was in fact equipped with seatbelts. In opposing the motion, Plaintiff asserted a new theory of negligence, that Defendant was negligent because Corchado should have ensured that Plaintiff had her seat belt on at the time of the accident.

The district court concluded that Defendant was immune from liability under state law, citing to New York Education Law Section 3813(4). The court noted that the plain language of the statute immunizes school bus operators from personal injury claims

brought by an injured student on the sole basis that the student was not wearing a seat belt.

Plaintiff further argued that Defendant could be held liable because the immunity under the statute has an exception for failure to comply with applicable statutes, rules, or regulations in section 3813(4). The court found that Defendant did not fail to comply with either 8 N.Y.C.R.R. 156.3(g) or section 1229-d.

Specifically, the court found that the applicable New York State and City statutes and regulations do not impose a duty of care on bus operators or matrons to ensure students wear their seat belts at every moment they are being transported.

Plaintiff subsequently appealed, *pro se*, to the Second Circuit Court of Appeals and primarily argued that she received ineffective assistance of counsel. The court affirmed on the basis that, inter alia, there is no constitutional right to ineffective counsel in civil cases.

Plaintiff raised new claims on appeal to the Second Circuit. She asserted that Defendant was not entitled to immunity because it sent a second school bus to transport the students to the hospital, rather than an ambulance.

The Second Circuit noted that this argument was raised for the first time on appeal and Plaintiff identified no statute, rule, or regulation that Defendant violated, nor any other basis to disturb the district court's ruling. Therefore, the Second Circuit unanimously affirmed the district court's ruling.

Plaintiff now petitions for a writ of certiorari to this Court on an entirely different ground than those raised below. Plaintiff erroneously alleges that the bus matron, Subrattan Corchado, was not the bus matron on the bus on the date of the accident, because her name was not in the "police index" and she allegedly answered "no" when she was asked if she had ever been involved in a bus accident.

REASONS FOR DENYING THE WRIT

The unanimous Second Circuit Decision does not conflict with any other Court of Appeals decision, does not pertain to an important federal question in a way that conflicts with any appellate court, and does not decide an important federal question that should be settled by this Court. Moreover, the case does not deal with any statutory provision that confers on this Court jurisdiction to review Plaintiff's writ of certiorari. This is an ordinary negligence action that falls far short of this Court's requirements for certiorari.

Plaintiff's Claim is Meritless

Plaintiff's argument is meritless. She again raises a claim for the first time to an appellate court, as Plaintiff did in the Second Circuit Court of Appeals.

Plaintiff asserts that this Court should hear her case because the bus matron, Subrattan Corchado, was not on the bus that morning and does not appear on the "police index."

Plaintiff's claim is patently false. Corchado testified under oath as to her experience that day on the bus in her capacity as the children's bus matron. She spoke about her personal observations on how the accident occurred and her duties as bus matron with regard to seat belts.

Corchado testified at her deposition that she could not remember exactly when the accident occurred, but recalled what hospital they went to, where she was sitting, and other important details. It should be noted that Corchado's deposition occurred about fourteen years after the accident. Contrary to Plaintiff's reading of the deposition, Corchado did not state, imply, or assert that she was not present on the day of Plaintiff's accident.

The Second Circuit's Decision was Proper

In any event, the Second Circuit properly decided the case and its decision does not warrant further review by this Court. Plaintiff's primary contention in the court of appeal was ineffective assistance of counsel, which the Second Circuit properly disregarded

as this is a civil case. United States v. Coven, 662 F.2d 162 (2d Cir. 1981).

In the Second Circuit, Plaintiff did not dispute whether Defendant breached a duty of care to Plaintiff or whether Defendant was entitled to immunity under New York State statute. The court of appeals concluded that Plaintiff's failure to meaningfully challenge whether Defendant was entitled to immunity was a sufficient ground on which to affirm.

Despite Plaintiff's failure to raise the argument that Defendant is not entitled to immunity because it sent a school bus rather than an ambulance to transport students to the hospital, the court correctly determined that absent a statute, rule, or regulation that Defendant violated, there was no ground to disturb the district court's ruling.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,
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