

18-7142  
No. \_\_\_\_\_

**In the  
Supreme Court of the United States**

**ORIGINAL**

Supreme Court, U.S.  
FILED

**DEC 19 2018**

OFFICE OF THE CLERK

Evelyn Talley, Petitioner,

v.

Pride Mobility Products Corporation,  
Quality Home Healthcare, Inc.,  
William S. Cameron, and  
Barbara B. Cameron, Respondents.

On Petition for Writ of Certiorari to the  
Supreme Court of North Carolina

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**PETITION FOR WRIT OF CERTIORARI**

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EVELYN TALLEY  
Petitioner

1801 Wicker Street, Apt. 10F  
Sanford, NC 27330  
Tel. (919) 777-9657

### **QUESTION PRESENTED**

Are state courts required to allow a plaintiff in product liability case alleging negligence a full and fair trial on the merits under the privileges and immunities and due process clauses of the 14<sup>th</sup> Amendment to the United States Constitution?

**In the  
Supreme Court of the United States**

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**PETITION FOR WRIT OF CERTIORARI**

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Petitioner Evelyn Talley respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINION BELOW**

The opinion of the North Carolina Court of Appeals appears at appendix A to this petition.

**JURISDICTION**

The North Carolina Supreme Court issued its order denying discretionary review of the decision of the North Carolina Court of Appeals on 25 September 2018. A copy of the order is attached at appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(a).

## **CONSTITUTIONAL PROVISIONS**

U.S. Const. Amend. XIV, sec.1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **STATEMENT OF THE CASE**

The federal question for which review is now sought was not raised before the filing of this petition. Page references herein are to the record on appeal filed with the North Carolina Court of Appeals which is attached hereto at Appendix C.

On 1 November 2006, petitioner Evelyn Talley purchased an electric lift chair manufactured by the defendant Pride Mobility Products Corporation (hereinafter "Pride") and sold by defendants Quality Home Healthcare, Inc. (hereinafter "Quality"), William S. Cameron, and Barbara B. Cameron (hereinafter "the Camerons") (R p 9). On 14 May 2013 Mrs. Talley brought Quality and the Camerons her hand control which had stopped working, and they replaced it with a used and allegedly defective hand control (R pp 11, 61). On 11 June 2013 Mrs. Talley was sitting in the lift chair in her home and after operating the hand control experienced an explosion which flung her across the room and rendered her unconscious (R pp 9, 62). As a result of the explosion she suffered: loss of sight in her right eye; loss of hearing in her right ear; near-paralysis of her right arm; hematomas on her back, abdomen, right thigh, and lower right leg; injury to her female organs; cracked teeth; and blisters (R p 62). After the explosion Mrs. Talley visited various physicians who noted her loss of vision and hearing and treated her for pain (R pp 63-4). The explosion left her in constant pain, unable to write well, and unable to drive (R p 63). Due to her age she cannot undergo surgery (R p 62).

After the explosion Mrs. Talley contacted employees of Quality to inform them of what had occurred, asking them not to repair the lift chair but to explain what was wrong with it (R p 63). In spite of her instruction, the Quality employees claimed to have “fixed” the chair by straightening “bent pieces of metal” (R p 63).

On 14 January 2017 a licensed electrical contractor, Michael Brian Johnson, examined the lift chair and could not find evidence of electrical damage (R pp 68, 70). He noted that since he was not examining the chair in its original state before defendant Quality’s employees repaired it, he could not speak to the condition of the original parts (R p 70), but if they were found he would return to inspect them (R p 68).

On 18 January 2017 defendant Pride’s expert Michael A. Sutton, an accident reconstructionist, examined Mrs. Talley’s lift chair (R p 46). He found no evidence of defects or malfunctions that could explain the 11 June 2013 incident and offered his opinion that the chair could not have exploded as alleged (R p 47).

Mrs. Talley commenced this product liability action by the filing of a complaint and issuance of summonses directed to the 4 defendants on 2 May 2016 (R p 2). Defendant Pride filed an answer on 13 June 2016 (R p 20) and the remaining defendants filed their answer on 12 July 2016 (R p 25). Discovery ensued (R p 31) and Mrs. Talley and William Stewart Cameron were deposed (R p 1). The defendants moved for summary judgment on 21 and 22 March 2017 (R pp 43, 51) with supporting affidavits (R pp 46, 56). Plaintiff responded by filing her own affidavit (R p 61) and that of Michael Brian Johnson (R p 69). The Honorable C. Winston Gilchrist, Lee County Superior Court Judge Presiding heard arguments on the defendants’ motion which he granted on 17 April 2017 (R p 72). The plaintiff filed and served notice of appeal on 16 May 2017 (R pp 73-4).

The North Carolina Court of Appeals affirmed the trial court's order in an unpublished opinion filed on 15 May 2018 and issued its mandate to the trial court on 4 June 2018. Mrs. Talley sought discretionary review from the North Carolina Supreme Court by petition filed on 19 June 2018 which was denied by order entered on 25 September 2018.

### **REASONS FOR ALLOWANCE OF THE WRIT**

THE COURT SHOULD GRANT THE WRIT TO DECIDE WHETHER  
A STATE COURT MUST ALLOW A PLAINTIFF IN A PRODUCT  
LIABILITY CASE ALLEGING NEGLIGENCE A FULL AND FAIR  
TRIAL ON THE MERITS.

#### **A. Summary Judgment**

Rule 56 of both the North Carolina and federal rules of civil procedure states the same standard for when summary judgment is appropriate in a contested case, to wit: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." See Celotex Corp. v. Catrett, 477 U.S. 377 (1986).

In the present case the facts are disputed, so that the entry of summary judgment was error.

#### **B. Privileges and immunities**

The privileges and immunities of US citizens as contained in the 14<sup>th</sup> Amendment was meant for broader interpretation than it was given in the Slaughter-House Cases, 16 Wall. 36 (1873). See Mr. Justice Thomas's concurring opinion in McDonald v. City of Chicago, 561 U.S. 742 (2010). A broader interpretation of a citizen's privileges and immunities by this Court would include the right to a full and fair trial on the merits of a claim sounding in negligence, which was not allowed this petitioner in error.

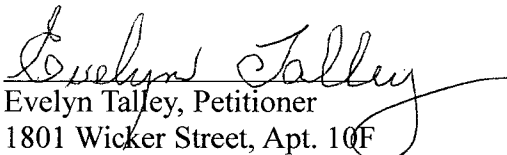
### **C. Due Process**

The 14<sup>th</sup> Amendment also requires that the states afford citizens due process. See McDonald v. City of Chicago, supra. Due process includes procedural due process, which at a minimum means that citizens are entitled to notice and a hearing. This petitioner, while noticed of a hearing on motions for summary judgment, was deprived in error of a full and fair hearing on the merits of her claims.

### **CONCLUSION**

This petition for writ of certiorari should be granted.

Respectfully submitted,

  
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