No. 18-8085

PETITION FOR WRIT OF CERTIORARI,

Petition to U.S. Supreme Court

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

STEVEN CLAYTON THOMASON, Appellant

Petition for Writ of Certiorari,

To the United States Court of Appeals for the Eleventh Circuit

PETTION FOR WRIT OF CERTIORARI

Steven Clayton Thomason Pro Se Counsel of Record

901 Seibles Road

Montgomery Alabama 36116

334-294-9910

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Right to a Jury Trial Wherein Anti- Trust Issues are before the court in a Restraint of Trade Conflict with U.S. Supreme Court Holding in Beacon Theatres Inc. v. Westover, 359 U.S. 500, 511 (1959)?

2. Whether the District Court lacked Jurisdiction under Rooker Feldman?

3. Whether Petitioner had fair opportunity to present its 60 b Motion / Fraud in Rebuttal to 41 (b) dismissal deserved a decision from the 11th Circuit U.S. Court of Appeals?

PARTIES TO THE PROCEEDINGS

The following were parties to the proceedings in the United Sates Court of Appeals for the Eleventh Circuit:

1. Steven Clayton Thomason filed an appeal from the district court's dismissal under 41 b of his petition for a 1983 Claim.

2. Alabama Homebuilder Licensure Board etc.

3. The following are parties to the proceeding in this Court: 1. Steven Clayton Thomason is the Petitioner. 2. The United States Court of Appeals for the Eleventh Circuit is the Respondent.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

Statutes

STATEMENT OF JURISDICTION

The United States Supreme Court Exercises Jurisdiction over Final Appeals from the 11th Circuit U.S. Court of Appeals under the All Writs Act 28 U.S.C § 1651.

The 11th Circuit decision was September 26, 2018 and this Petition is filed 12-19-2018 as such is within the 90 days to seek Review in the United States Supreme Court.

STATEMENT OF THE CASE

1. The issue of Market Participants using their position as Board Members to limit their competition in the Market place, by use of cease & desist letters and criminal prosecutions by way of manufactured evidence violating due process rights; and using the District Attorneys as Thugs and Shake down artist on hard working men and women just trying to feed and clothe their family.
2. Furthermore, the guarantees to make and enforce contracts that Congress gave the once enslaved African, to equally be whole in his right to work; is being limited by way of illegal enforcement wherein the Contract Clause of the United States on private citizen land is under attack by the enforcement of this unconstitutional State Statute 34-14A-1 Homebuilder Law. The very act of Soliciting work is deemed criminal and punishable by fines and prison time.
3. The State of Alabama has brought Jim Crow through Regulation that violates the Constitution. Appellant seeks injunction and prospective relief, injunctive relief, Compensatory, Punitive damages, of 15,000,000.00 and attach penalty to the sum of $5,000,000.00 against the Defendants in accord with 15 U.S. CODE 2 & 15 and additional relief of $500,000.00 for the intentional violations of Plaintiff's constitutional rights and harm to Appellant.

4. Steven Clayton Thomason has worked under his State of Alabama Occupational License since 2004, the law changed in 2007 wherein those who held the Occupational License before the change were Grandfather In.

5. On May 12, 2014 Circuit Court of Montgomery County, Alabama Awarded a Consent Judgment to Clayton Thomason. In Clayton Thomason vs Matilda, Long CV-2013-00247. The case started on April 5th, 2013 and ended on May 12, 2014, wherein a Bench Trial took place and all issues were fully litigated as to Plaintiff's role as a Sub-contractor working under the Authority of the Homeowner wherein his wages did exceed $10,000.00 dollars could enforce his contract. In lieu of Al Code 34-14A-14 which reads: A residential home builder, who does not have the license required, shall not bring or maintain any action to enforce the provisions of any contract for residential home building.

6. **The Alabama Homebuilder Licensure Board issued the first criminal warrant against Plaintiff on 4-8-2009 for making a contract for $43,400.00 The 2nd warrant on 6-15-2012 for making a contract for $86,979.37.**

7. The District Court of Montgomery County added the Alabama Homebuilders Licensure Board as a Party on these cases on September 19th, 2014.

8. Jeopardy attached with Appellant raising his hand being sworn in by District Judge Troy Massey, and afterwards jeopardy terminated with a dismissal as to guilt: on the 12TH day of January 2015.

9. The District Attorney filed a Motion to ***Reconsider and vacate the order of Dismissal. Judge Massey denied the request. Therefore, this was a Final Judgment rendered in the criminal trial wherein the question of working under the homeowner who was acting as her own Homebuilder and the earnings from the job exceeded $10,000.00 were covered by the Occupation License of Appellant. This Final decision was handed down on the 12th of January 2015, before the Board removed Petitioner's 1983 civil complaint against the Board on January 13, 2015.)***

10. The Board filed the same criminal charge again on Appellant and On January 20th, 2015 in Elmore County District Court Alabama. Plaintiff's attorney Julian Mcphillips did not show, Plaintiff immediately called him and put him on the phone with the District Attorney, Joshua Cochran. The undersigned requested a continuance of which was denied. Moments later Plaintiff observed, the Homebuilder's Boards Attorney General Jamie Durham and the District Judge Goggin's, Cochran and Board's compliance officer McCullough all huddle together.

11. Plaintiff's name was then called for trial. Plaintiff also moved for a continuance which was denied. Judge Goggin's said, "***That you will have***

to do because we are trying it today". Plaintiff responded I want a lawyer! Judge Goggin's said no. Plaintiff was forced to represent himself. Plaintiff raised the cases of Montgomery County State Court as Double Jeopardy and explain that the question of making over $10,000.00 under the Homeowner supervising their repairs has been settled after a 2-year trial, between the Board and Defendant. 1st charge was $43,400.00 2nd charge was $86,979.37.

12. Jeopardy Attached and terminated as to Defendant's guilt due to my Active Grandfather License that preceded the Law Change. The Elmore Court accepted a forged contract that was typed and signed by a complaining witness Joy Jackson for $12,000.00. The Court ignored Appellant's handwritten exculpatory contract wherein it stated that work would not exceed $10,000.00 (due to Litigation with Board) that was signed by Joy Jackson. Appellant filed Fraud charges and the investigator agreed it was not my signature and bound Joy Jackson over to the Grand Jury. Appellant was convicted on January 20, 2015 in Elmore County for signing a contract for $12,000.00. Appellant has never allowed a customer to make out his contracts!!! Fraud on the Court.
13. Plaintiff has been appealing this conviction but is unable to receive a fair appeal within the Courts of Alabama. The Courts are playing tennis with my Due Process Rights. Plaintiff Did Petition the Alabama Criminal Court of Appeals under Rule 32 again based on egregious unconstitutional

trial conduct, a Sham Proceeding and gave precedent that should have warranted a reversal of the illegal conviction and dismissal of the charge, instead the Appeals Court dismissed Plaintiff's Appeal citing jurisdiction. See Barnes v State, 621 So. 2d 329.

14. Dismissal under 41 B or Summary judgment is not appropriate in Thomason's case because he is entitled to a Jury Trial under the U.S. Constitution and his State of Alabama Constitution of 1901. Thomason case was started in his own State wherein the Defendants are also State Residents.

15. The pleadings, and disclosure materials on file, and affidavits show that there are several genuine issues as to material facts and that the Defendants are not entitled to a judgment as a matter of law." See Fed. R.Civ. 56(c)(2). Furthermore, the record is clear that the Defendants knew exactly what the Lawsuit was about based on their responses in State Court before removal; and the record on Appeal "Document 10" drives home any doubt that this matter should proceed to Discovery and a Jury Trial. These same responses were before the request for a More Definite Statement was made to the District Court under Fed Rule 12(e).

16. Notice now the plain language of the Alabama Homebuilder Licensure Board's Chief Legal Counsel Kathy Perry Brasfield on page 56 of Document 10 page 17 wherein she states Thomason's Petition and Amended complaint contains claims for Violations of Constitutional and

Civil rights, and a request for Money damages. Allegations that the Board's governing statute, Ala Code 1975 34-14-1 is Unconstitutional.

17. Counsel Brasfield on page 20 paragraph 2 states to issue a Homebuilder's License and Prohibit Criminal Charges and to Recall the Warrant that was Issued for the Arrest of Clayton Thomason and Further Enjoin the Board from any Future Actions not to Violate Petitioner's Due Process Right". In Document 18 page 4 states: To the degree these allegations can be understood, **"they are denied"** and the Chief Legal Counsel repeats the same for each allegation made in Thomason's 1983 Civil Complaint.

18. Thomason avers that these were in fact a Response given, before the multiple request were made under Fed Rule 12 (e) wherein the District Court prejudiced Thomason request for Discovery and Trial but instead allowed the Defendants to use Fed Rule 12 (e) as a" discovery tool" and yet deny Thomason the right to Discovery and his Jury Trial.

19. Document 19 is a copy of Thomason's 1st Amended Complaint in the District Court in response to the Defendants request for a more Definite Statement under Fed Rule 12 (e) filed on April 15, 2015. Notice the Plain words on Page 2: Come now, the Plaintiff , pursuant to Rule 15 of the Federal Rules of Civil Procedure, for leave to file an Amended Complaint and Add Defendants, for Declaratory, Injunctive Relief and Compensatory, Punitive Damages for Relief to Plaintiff of $15,000,000.00 and attach penalty to the sum of $5,000,000.00 Against the Defendants in

Accord with 15 U.S. Code 2 & 15 and Additional Relief of $500,000.00 for the intentional violations Plaintiff's Constitutional Rights. This was buttressed by the District Court's order in Document 23 page 11 of 13 / 3rd paragraph reads: This Court concludes that, to the extent Thomason seeks declaratory or prospective injunctive relief against the defendants and /or monetary relief in their individual capacities, the Motion to amend is granted ;therefore Thomason's Complaint is non other than an Anti-Trust Civil Law Suit the same as in Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S. Ct. 948, 3 L. Ed. 2d 988 (1959). Deserving of a Jury Trial under the same holding.

THOMASON HAS MET CRITERIA TO HAVE A JURY TRIAL

20. Thomason under the Application of the 7th Amendment has met all four criteria to be able to have a trial heard by a jury under the 7th Amendment.
21. Thomason's claim is a civil claim seeking money to compensate loss from Defendants he's suing.
22. Thomason's claim is based on federal law and is in a federal court.
23. The lawsuit is worth more than $20 and it is still the threshold used to decide if a trial by jury is allowed under the 7th Amendment.
24. The lawsuit is a claim for Restraint of Trade to Make Contracts in the Construction Trades by unlawful criminal Double Jeopardy & Fraud of

which was precluded by the Civil Rights Act of 1991 as work was done under a Grandfathering License.

25. The English common law of 1791 would have allowed it to go to trial by jury under the Constitution of the United States, Thus, any time money is involved, it is a common lawsuit and eligible to be tried by jury.

26. Respect for Juries An important part of the 7th Amendment is that it prohibits judges in any court from overruling a jury's findings unless there was some violation of common law.

WHY WRIT OF MANDAMUS SHOULD ISSUE UNDER 7TH AMENDMENT RIGHT TO A JURY TO DECIDE CLAIMS

27. Thomason avers that in general, a writ of mandamus is used only in very limited circumstances, typically to order a lower court to perform a nondiscretionary act or to reverse actions that "amount . . . to a judicial 'usurpation of power.' " *Hahnemann Univ. Hosp. v. Edgar*, 74 F.3d 456, 461 (3d Cir. 1996). The writ of mandamus, however, has found a special niche in protecting the right to a jury trial.

28. As long ago as 1918, the Supreme Court recognized mandamus as the appropriate vehicle to cure erroneous denials of a civil jury trial. *In re Simons*, 247 U.S. 231 (1918). The court based its conclusion on judicial economy-avoiding duplicative bench and jury trials-and the convenience of prejudgment appeal to litigants. This reasoning survived over the ensuing

decades, and in 1959, the Supreme Court affirmed that "[w]whatever differences of opinion there may be in other types of cases . . . the right to grant mandamus to require jury trial where it [has] been improperly denied is settled." *Beacon Theatres Inc. v. Westover*, 359 U.S. 500, 511 (1959). Several years later, the court reiterated that courts of appeals have the "responsibility . . . to grant mandamus where necessary to protect the constitutional right to trial by jury." *Dairy Queen Inc. v. Wood*, 369 U.S. 469, 472 (1962).

29. *Standard for Issuance of Mandamus.* A writ of mandamus is an extraordinary remedy, which requires a high threshold showing that the petitioner has no other adequate means to secure the requested relief and has a " 'clear and indisputable' " right to the relief. See *Mallard v. United States Dist. Ct.*, 490 U.S. 296, 309 (1989).

30. Thomason aver that several have taken the Supreme Court's decisions in *Dairy Queen* and *Beacon Theatres* to mean that the writ should issue if a de novo review shows that the district court erred in denying a jury trial, without the extraordinary showing usually required for mandamus. See, e.g., *Maldonado v. Flynn*, 671 F.2d 729, 732 (2d Cir. 1982).

31. The 9th U.S. Circuit Court of Appeals has stated the principle plainly: "The right to a jury trial . . . has occupied an exceptional place in the history of the law of federal mandamus permitting a writ to issue although the petitioner is unable to show a 'clear and indisputable' right."

Wilmington Trust v. United States Dist. Ct., 934 F.2d 1026, 1028 (9th Cir. 1991).

32. The Supreme Court has instructed that "the remedy of mandamus is a drastic one, to be invoked only in extraordinary situations" and "only exceptional circumstances, amounting to a judicial usurpation of power, will justify the invocation of this extraordinary remedy." Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 34-35 (1980). See also Lopez-Lukis, 113 F.3d 1187, 1187-88 (11th Cir. 1997) ("[M]mandamus is an extraordinary remedy, which is available only to correct a clear abuse of discretion or usurpation of judicial power. Notice the Supreme Court Holding in *Beacon Theatres* to mean that the writ should issue if a de novo review shows that the district court erred in denying a jury trial, without the extraordinary showing usually required for mandamus.

33. The High Court said " In anticipation of a suit by petitioner for treble damages under the Sherman and Clayton Acts, the prospective defendant brought suit against petitioner in a Federal District Court for a declaratory judgment which would have settled some of the key issues in such an antitrust suit and prayed that the bringing of such a suit be enjoined pending outcome of the declaratory judgment litigation. Petitioner filed a counterclaim raising the issues which would have been raised in the antitrust suit for treble damages and demanded a jury trial. Purporting to act in the exercise of its discretion under Rules 42(b) and 57

of the Federal Rules of Civil Procedure, the District Court ruled that it would try in equity, without a jury, the issues common to both proceedings before trying petitioner's counterclaim.

34. The Court of Appeals held that the District Court had acted within the proper scope of its discretion, and it denied petitioner's application for a writ of mandamus requiring the District Court to set aside its ruling. *Held:* the judgment of the Court of Appeals is reversed". Pp. 359 U. S. 501-511.

35. The Supreme Court then outline its decisions by points notice the plain words of the Supreme Court "1. The District Court's finding that the complaint for declaratory relief presented basically equitable issues draws no support from the Declaratory Judgment Act, which specifically preserves the right to a jury trial for both parties." P. 359 U. S. 504. **Thomason would claim this provision for his suit as it should proceed to a jury as requested and as is just in law.**

36. The Supreme Court then continues by point 2 of its decision it said; "If petitioner would have been entitled to a jury trial in a treble damage suit, he cannot be deprived of that right merely because the prospective defendant took advantage of the availability of declaratory relief to sue petitioner first". P. 359 U. S. 504. **Thomason would claim this provision for his suit as it should also proceed to a jury as**

requested and as is just in law as Thomason has plead Fraud within his Law suit.

37. The Supreme Court then expands the deep reasoning its decisions, notice the plain words of the Supreme Court in point it said "3. Since the right to trial by jury applies to treble damage suits under the antitrust laws and is an essential part of the congressional plan for making competition, rather than monopoly, the rule of trade, the antitrust issues raised in the declaratory judgment suit were essentially jury questions." P. 359 U. S. 504. **Thomason would clearly claim this provision for his suit as it should also proceed to a jury as requested and as is just in law as Thomason has plead Fraud within his Law suit.**

38. The Supreme Court stated in point "4. "Assuming that the pleadings can be construed to support a request for an injunction against threats of lawsuits, and as alleging the kind of harassment by a multiplicity of lawsuits which would traditionally have justified equity in taking jurisdiction and settling Page 359 U. S. 501 the case in one suit, nevertheless, under the Declaratory Judgment Act and the Federal Rules of Civil Procedure, neither claim can justify denying petitioner a trial by jury of all the issues in the antitrust controversy". Pp. 359 U. S. 506-511.

39. Appellant Thomason hereby quotes the words of the Supreme Court wherein it stated "Today, the existence of irreparable harm and inadequacy of legal remedies as a basis of injunctive relief must be

determined not by precedents under discarded procedures, but in the light of the remedies now made available by the Declaratory Judgment Act and the Federal Rules of Civil Procedure". Pp. 359 U. S. 506-510. This is the direction Thomason seeks for his Suit; may it please the Court, I seek the protection now available by the Declaratory Judgment Act for my injunctive relief within my civil complaint.

40. Therefore, as pointed out the Supreme Court would not allow the Erroneous use of discretion by the District Court under Rule 42(b) to deprive the petitioner in *Beacon Theatres Inc. v. Westover*, of a full jury trial of the issues in the antitrust controversy. **Thomason would pray that this 11th Circuit would follow the High Court and allow Thomason's antitrust controversy be decided by a Full Jury**. See P. 359 U. S. 508.

41. The Supreme Court in Point 5. Stated that "Mandamus is available under the All Writs Act, 28 U.S.C. § 1651, to require jury trial where it has been improperly denied. P. 359 U. S. 511.Nevertheless, we have no doubt that the courts below will heed the command of Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S. Ct. 948, 3 L. Ed. 2d 988 (1959), and make certain that appellants' Seventh Amendment right to jury trial of "legal" claims is not lost by a prior determination of "equitable" claims." Thomason would also hope that this Appeals court will send this case

back to the District court and ALLOW Discovery and a Trial by Jury to move forward.

42. Thomason's threat to his Seventh Amendment rights have becomes concrete and seeks appropriate remedies currently to preserve his suit and right to proceed to the Jury Phase there is no justification as to the complaint not being clear. The multiple complaints and answers all show that the Defendants know exactly what this law suit is all about. Furthermore, the Supreme Court has stated in Beacon that "We recognize that in appropriate cases common issues impacting upon general liability or causation may be tried standing alone. However, when such a common issue trial is presented through or along with selected individuals' cases, concerns arise that are founded upon considerations of due process". This understanding was Buttressed in Lytle v. Household Manufacturing, Inc., --- U.S. ----, 110 S. Ct. 1331, 108 L. Ed. 2d 504 (1990).

43. Due process Concerns, and Fundamental fairness contained in a system that permits the extinguishment of claims or the imposition of liability. Such a procedure is inherently unfair when the substantive rights of both plaintiff and the defendant are resolved in a manner that lacks the requisite level of confidence in the reliability of its result. The Supreme Court recognize that due process concerns seem to blur distinctions between procedural and substantive due process. Notice the Plain Language of the Court. "However, our difficulty in compartmentalization

does not detract from the validity of our concern that is ultimately based on fundamental fairness. The elements of basic fairness contained in our historical understanding of both procedural and substantive due process therefore dictate that when a unitary trial is conducted where common issues, issues of general liability, or issues of causation are coupled with a sample of individual claims or cases, the sample must be one that is a randomly selected, statistically significant sample. See Hilao, 103 F.3d at 782-84, 786.

STATE OF ALABAMA RIGHT TO A JURY

44. Thomason's claims also raise State Law and the Constitution of Alabama 1901 provides a right to jury trials in cases involving purely legal claims, and equitable claims. Law and equity were See Wooten v. Ivey, 877 So.2d 585, 588 (Ala. 2003). merged in 1973 with the adoption of the Alabama Rules of Civil Procedure, after which jury trials were a constitutional right if the issue was the sort that would have been tried to a jury before the adoption of those rules. Following Beacon Theatres and Dairy Queen, the Supreme Court of Alabama holds that when both legal and equitable claims are joined in one action, the trial judge must arrange the order of trial.

45. The Alabama Supreme Court has long recognized that Article I, § 11, Constitution of Alabama of 1901, provides the right to a jury trial in those

cases that involve purely legal claims.[1] See Ex parte Thorn, 788 So. 2d 140, 142 (Ala.2000)(quoting W & H Mach. & Tool Co. v. National Distillers & Chem. Corp., 291 Ala. 517, 520, 283 So. 2d 173, 175-76 (1973)(citing in turn Tillery v. Commercial Nat'l Bank, 241 Ala. 653, 4 So. 2d 125 (1941); Alford v. State, 170 Ala. 178, 188, 54 So. 213, 215 (1911); Montgomery & Florida Ry. v. McKenzie, 85 Ala. 546, 549, 5 So. 322 (1888); see also Rule 38, Ala. R. Civ. P. It is equally well settled that the constitution does not provide a right to a jury trial for the resolution of factual issues for parties alleging equitable claims. See Ex parte Thorn, 788 So. 2d at 143 (citing Finance, Inv. & Rediscount Co. v. Wells, 409 So. 2d 1341, 1343 (Ala.1981) (citing in turn Pugh v. Calloway, 295 Ala. 139, 325 So. 2d 135 (1976).

46. However, since the merger of law and equity in 1973 with the adoption of the Alabama Rules of Civil Procedure, see Rule 2, Ala. R. Civ. P., courts have been presented with cases that contain both issues to be tried by a jury and issues to be tried by the court. In those cases, the test for determining whether a party has a right to a trial by jury is: "`[I]f an issue is of a sort which [before the adoption of the Alabama Rules of Civil Procedure] would have been tried to a jury, then the party has a constitutional right ... to have it tried to a jury under the merged procedure." Ex parte Thorn, 788 So. 2d at 143 (quoting Committee Comments to Rule 38, Ala. R. Civ. P.).

47. When legal and equitable claims are presented in one action, the trial court must resolve the equitable claims in a way that does not impinge on a party's right to a jury trial as to the legal claims. See Ex parte Taylor, 828 So. 2d 883 (Ala.2001); Ex parte Thorn, 788 So. 2d at 140. Purely legal claims, as well as factual issues common to the legal and equitable claims, must be determined by a jury; the remaining issues are then to be decided by the trial court. See Ex parte Taylor, 828 So. 2d at 883; Ex parte Thorn, 788 So. 2d at 140.decision on the equitable issues does not operate to deny a jury trial of the legal issues. Factual issues common to the legal and equitable issues must first be decided by the jury. We express no opinion on whether the mix of claims that collectively make up the consolidated case lend themselves to the sampling techniques required to conduct a bellwether trial or whether this is an appropriate case for a stand-alone, common-issue trial. **"Accordingly, when both legal and equitable claims are joined in one action, then, the trial judge must arrange the order of trial so that the judge's decision on the equitable issues does not operate to deny a trial by the jury of the legal issues.** See Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 510-11, 79 S. Ct. 948, 3 L. Ed. 2d 988 (1959) (stating that `only under the most imperative circumstances, ... can the right to a jury trial of legal issues be lost through prior determination of equitable claims'); accord Crommelin

v. Fain, 403 So. 2d 177, 185 (Ala.1981). Thomason is entitled to this provision under Trial by Jury in Alabama.

48. A jury first must decide any factual issues that are purely legal in nature, along with any factual issues common to the legal and equitable claims. See Dairy Queen, Inc. v. Wood, 369 U.S. 469, 479, 82 S. Ct. 894, 8 L. Ed. 2d 44 (1962) (holding that because the factual issues relating to the petitioner's breach of contract claim `[were] common with those upon which [the] respondents' claim to equitable relief [was] based, the legal claims involved in the action [had to] be determined prior to any final court determination of respondents' equitable claims'); see also 9 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2302.1, at 29 (2d ed.1995); 1 Champ Lyons, Jr., Alabama Rules of Civil Procedure Annotated § 2.2 at 24 (3d ed. 1996) (`[Beacon Theatres] held that the questions of fact common to the legal and equitable [claims] must be decided first by the jury, for to permit the court to make findings on these common issues of fact would deprive the litigant of his right to [a] jury trial.') Therefore, Thomason's rights and claims must proceed to the Jury so that findings can be made.

49. Once those factual findings are made, the trial judge must determine the remaining equitable issues. See Dairy Queen, 369 U.S. at 470, 82 S. Ct. 894. "... In addition, those factual questions that are purely legal in

nature, as well as those common to the legal and equitable issues, must first be decided by the jury. Dairy Queen, Inc., supra."

50. Thomason avers as did the High Court wherein it stated in Beacon "We are sympathetic to the efforts of the district court to control its docket and to move this case along. We also are not without appreciation for the concerns a district court might have when it concludes that some of the issues raised may be motivated by delay tactics. However, our sympathies and our appreciation for the efforts of the district court in this case do not outweigh our due process concerns". Thomason filed this Law Suit in 2012 no one is more eager to get this matter resolved not dispose of as common trash but to be decided by a Jury of my peers.

/

The Civil Rights Act of 1991 42 U.S.C. § 1981

51. Thomason claim also fall under 42 U.S.C. 1981 of which was amended in 1991 therefore to buttress his right to a Jury trial Thomason shows the following: The Civil Rights Act of 1991 now permits Title VII cases to be tried by jury. 42 U.S.C. § 1981a(c). ("Put simply, the plaintiff in any Title VII case may establish a violation through a preponderance of evidence (whether direct or circumstantial) that a protected characteristic played 'a motivating factor.'"); *see also E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2032 (2015).Thomason's complaint claims Restraint of Trade by a Regulatory Board in the Construction Trades by

Unconstitutional application of AL-34-14A-1 Alabama Homebuilder Law. Now once again recall the plain words of the Supreme Court: "Since the right to trial by jury applies to treble damage suits under the antitrust laws and is an essential part of the congressional plan for making competition, rather than monopoly, the rule of trade, the antitrust issues raised in the declaratory judgment suit were essentially jury questions." P. 359 U. S. 504.

CONCLUSION

52. Wherefore Thomason would ask this U.S. Court Supreme Court to issue this Writ under its Holding in Beacon Theatres, Inc. v. Westover, wherein Stated that "Mandamus is available under the All Writs Act, 28 U.S.C. § 1651, to require jury trial where it has been improperly denied. P. 359 U. S. 511. Thomason would pray that this Mandamus would issue to protect the Court's Ruling in Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S. Ct. 948, 3 L. Ed. 2d 988 (1959), and make certain that Thomason's Seventh Amendment right to jury trial of "legal" claims is not lost. Therefore, as Thomason's suit has been dismissed and there is no other remedy as to enforce Thomason's right to a Jury Trial as Motions to Vacate and Set Aside and Motion for New Trial have all been denied by the District Court "Therefore denying Thomason's right to a Jury of his claims is judicial usurpation of power. See Coffman, 766 F.3d 1246, 1248

(11th Cir. 2014). Thomason has no other adequate means to attain the relief he desires and that his right to the issuance of the writ is clear and indisputable." Wherefore pray that this Judicial Body is satisfied, and that the writ is appropriate under the circumstances.

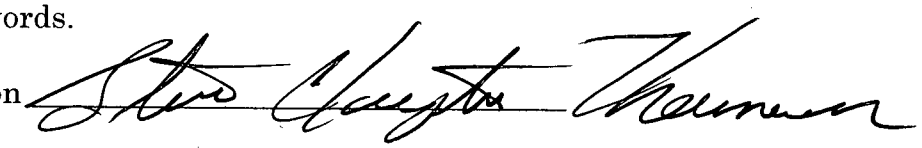
Respectfully Submitted

Steven Clayton Thomason 

CERTIFICATION OF FONT

AND TYPE STYLE & PAGE LIMITS Rule 33.2 (b)

I certify that the document is filed in Century Schoolbook size 12 font and that the word count is 5984 under 9000 words.

Steven Clayton Thomason 

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of December 2018 a copy of the foregoing pleading was mailed to the 11th Circuit U.S. Court of Appeals mailed by first class mail to the following Respondents' addresses:

U.S. Court of Appeals 11th Circuit

56 Forsyth St NW, Atlanta Georgia 30303

MARY GOLD WAITE / Office of the Attorney General

P. O. Box 300152

Montgomery, Alabama 36130-0152

Hon W. Cliff Watkins

Alabama Middle District Court, Montgomery.

Frank M. Johnson, Jr. United States Courthouse

One Church Street, Suite B-110

Montgomery, AL 36104