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No. 19-A

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES EX REL. LEONARD A. PELULLO, STATE OF NEW YORK
EX REL. LEONARD A. PELULLO,

Petitioners-Plaintiffs,

v.

AMERICAN INTERNATIONAL GROUP, INC., STARR INTERNATIONAL
COMPANY, INC., C.V. STARR & CO., INC., MAURICE R, HANK
GREENBERG, HOWARD I. SMITH, AND MEL HARRIS,

Defendants – Respondent.

**APPLICATION FOR EXTENSION OF TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI**

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*Counsel for Petitioners-Plaintiffs
Leonard Pelullo*

**TO THE HONORABLE RUTH BADER GINSBURG, ASSOCIATE
JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND
CIRCUIT JUSTICE FOR THE SECOND CIRCUIT:**

Pursuant to Supreme Court Rules 13.5, 22 and 30, Petitioner respectfully request a 30-day extension of time, up to and including March 25, 2019 to file a petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit to review that court's decision in *United States Ex Rel. Leonard A. Pelullo, State Of New York Ex Rel. Leonard A. Pelullo, v. American International Group, Inc., Starr International Company, Inc., C.V. Starr & Co., Inc., Maurice R, Hank Greenberg, Howard I. Smith, And Mel Harris - Case No. 17-2837*, — Fed. Appx. —, 2018 WL 6179013 (attached as Exhibit A). In the case below, the respondents filed three separate briefs in opposition to petitioner's appeal of the trial court's dismissal of his *qui tam* complaint. The Second Circuit issued its amended summary order and judgment in this matter on January 7, 2019 (attached as Exhibit B). The petitioner intends to file a petition seeking review of this judgment under Supreme Court Rule 12.4. The jurisdiction of this Court will be invoked under 28 U.S.C. §1254(1), and the time to file a petition for a writ of certiorari will expire without an extension on February 25, 2019.¹ This application, filed by the petitioner from the case decided by

¹ On January 7, 2019, the Second Circuit filed an amended summary order and again issued the judgment with the mandate. There are now two orders and judgements entered in this case. The first summary order was entered on November 27, 2018 and the second amended summary order was entered on January 7, 2019. Petitioner, in an abundance of caution, moves this Court for this extension of time in case the amended summary order and judgment dated January 7, 2019 does not start the 90 day time frame to file a petition for writ of certiorari. In the alternative, if the

the Second Circuit, is filed less than ten days prior to the date on which the time for filing the petition is to expire (S. Ct. Rule 13.5). As explained below, there are extraordinary circumstances why this application is filed in less than ten days before the deadline.

1. This case presents substantial and important questions of federal law:

Whether a relator in a False Claims Act *qui tam* action may rely on the statute of limitations in 31 U.S.C. § 3731(b)(2) in a suit in which the United States has declined to intervene and, if so, whether the three-year limitations period in 31 U.S.C. § 3731(b)(2) begins to run from the date of the relator's knowledge of the alleged false claim, or from the date of the responsible government official's knowledge of the alleged false claim.

This Court has granted certiorari on this identical question in *Cochise Consultancy, Inc. and The Parsons Corporation v. United States of America Ex. Rel. Billy Joe Hunt, Supreme Court No. 18-315*. In the present case, the Second Circuit did not address directly the statute of limitations issue but nonetheless affirmed the trial court's dismissal of the *qui tam* complaint, which held that the ten year statute of limitations is inapplicable to a relator in which the United States declines to intervene.

2. Whether an incarcerated relator (subsequently released) factual allegations of

January 7, 2019 amended summary order and judgement start the 90 day clock to file a petition for writ of certiorari, this motion will be moot because the petition for writ of certiorari would be due April 7, 2019.

misconduct in the *qui tam* complaint are subject to a higher standard of review beyond the standards set forth in prior Supreme Court decisions. *Aschroft v. Iqbal*, 556 U.S.662, 678(29009) and *Bell Atl., Corp. v. Twombly*, 550 U.S. 544, 570 (2007). 3. Whether federal rule of civil procedure 9(b) heighten pleading standard applies to claims brought under the federal false claims act. Below the Second Circuit held that a *qui tam* relator is subject to "...Fed. R. Civ. P. 9(b)'s heightened pleading standard to claims brought under the FCA". *United States ex rel. Ladas v. Exelis, Inc.*, 824 F.3d 16, 26 (2d Cir. 2016). The Second Circuit has split the circuits on the pleading standard under Rule 9. On the one hand, the Second Circuit has invoked a heightened pleading standard applying Rule 9(b) to an FCA claim versus the Third, Fifth, Seventh, Ninth, Tenth, and D.C. Circuits, which have overtly adopted a "more lenient" pleading standard. Those courts have allowed a complaint that does not allege the details of an actually submitted false claim to pass the Rule 9(b) standard by "alleging particular details of a scheme to submit false claims paired with reliable indicia that lead to a strong inference that claims were actually submitted." **Grubbs**, 565 F.3d 180, 190 (5th Cir. 2009); U.S. ex rel. **Lemmon v. Envirocare of Utah, Inc.**, 614 F.3d 1163, 1172 (10th Cir. 2010)_(adopting *Grubbs* standard); *Ebeid ex rel. U.S. v. Lungwitz*, 616 F.3d 993, 998-99 (9th Cir. 2010) (same); *Foglia v. Renal Ventures Mgmt., LLC*, 754 F.3d 153, 156-57 (3d Cir. 2014) (same); **Heath**, 791 F.3d 112, 126 (D.C. Cir. 2015) (same);

cf. Lusby, 570 F.3d at 854 (7th Cir. 2009) (“We don’t think it essential for a relator to produce the invoices (and accompanying representations) at the outset of the suit.”)

EXTRAORDINARY CIRCUMSTANCES

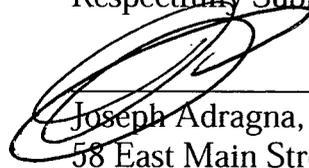
On January 23, 2019, undersigned counsel forwarded counsel’s application for admission to the Supreme Court of the United States. Counsel’s application to be admitted to practice before this Court is pending. Briefly stated, on February 4, 2019, my application was rejected by the clerk of the Supreme Court, because I did not include my email address in the application and, additionally, because I did not include a certificate of good standing from the highest court in the State of New York. The rejection of my application received on February 4, 2019 contained specific instructions from the clerk of the Supreme Court to leave the papers returned intact, to write my email address into the application and to obtain the required document from the Court of Appeals and thereafter to resend. On February 4, 2019, the same day the rejection of my application was received, I wrote to the clerk of the Court of Appeals of New York requesting a certificate of good standing. I received the certificate, dated February 13, on February 17, 2019. I immediately enclosed it in an envelope and returned it to the Supreme Court. I have not received a response from the Supreme Court thereafter. (See Exhibit C, documents in support of admission) I spoke

to the Clerk of this Court today and was told that my application for admission should be resolved no later than March 4, 2019.

Accordingly, the petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 30 days, up to and including March 25, 2019.

Dated: February 21, 2019

Respectfully Submitted:



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Exhibit A