

No. 19-163

In The
Supreme Court of the United States

MARGARET A. NORTON,

Petitioner.

v.

COLGATE PALMOLIVE COMPANY,

Respondent.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of New Jersey**

PETITION FOR REHEARING

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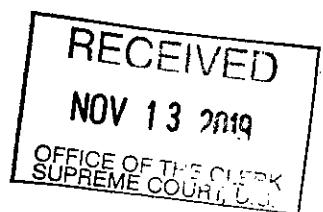


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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.1 petitioner Margaret A. Norton respectfully petitions this Court for rehearing of its October 15, 2019 Order denying the Writ of Certiorari in this case. Petitioner moves this Court to grant this petition for rehearing and consider this case with merits briefing and argument. Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed within 25 days of this Court's decision in the case.

FACTUAL BACKGROUND

This is a personal injury case in which the petitioner had been using the respondent's Colgate great regular flavor toothpaste that is sold over-the-counter, and contains the Sodium lauryl sulfate (SLS) ingredient. The petitioner was experiencing from the toothpaste severe dry mouth, no saliva, irritation, burning and tingling sensation in the mouth. Petitioner later discovered through the respondent's SLS-free Prescription Only toothpaste advertisement that the respondent had knowledge that the SLS ingredient used in toothpaste pose a danger of multiple adverse side effects.

The respondent announced on their new Colgate PreviDent 5000 Dry Mouth Prescription Only SLS-free toothpaste advertisement, that the ingredient SLS pose a danger of irritation and dryness, with a motive to compel dry mouth suffers to want the new SLS-free

toothpaste, but failed to announce such a warning on their Colgate great regular flavor toothpaste that contains the SLS ingredient, and is sold over-the-counter. The respondent also announced on their new Colgate PreviDent 5000 Dry Mouth Prescription Only SLS-free toothpaste 2nd advertisement, that Sodium Lauryl Sulfate increases sensitivity to the oral mucosa. But failed to announce such warning on their Colgate great regular flavor toothpaste in which contains the Sodium Lauryl Sulfate ingredient, and is sold over-the-counter.

In addition, petitioner also presented evidence of a copy of the respondent's footnoted Clinical Research Study, footnoted from the Colgate PreviDent 5000 Dry Mouth Prescription Only SLS-free toothpaste advertisement, in which the respondent used the clinical study to back their claims of multiple adverse effects of the SLS ingredient, but failed to warn of the SLS ingredients' adverse effects on their Colgate great regular flavor toothpaste that contains the Sodium Lauryl Sulfate (SLS) ingredient, and is sold over- the-counter.

In the June 28, 2017 Order with Statement of Reasons the trial court held that plaintiff cannot demonstrate a *Prima facie* case of negligence without expert testimony. That a witness qualified as an expert was needed to assist the trier of fact to understand the evidence, using N.J.R.E 702. The trial court also opined that expert testimony is necessary to prove there is a causal link between a claimed injury and the tortious act alleged under *Kelly v. Borwegan*, 95 N.J. Super. 240, 243-44 (App. Div. 1967) However, the Trial Court further found that "she does mention evidence that the

court did not consider". (App. 20) The Opinion of Honorable Judge Spencer is acknowledging that a mistake affected the outcome of the judgment. (App. 20)

REASONS FOR GRANTING THE PETITION

This case has national significance. Inalienable rights are involved in this case, therefore, process is due. Significant grounds not previously presented are that of the procedural due process clause of the Fifth and Fourteenth Amendment of the United States Constitution, and the New Jersey Constitution, Article 1, Section 1, Rights and Privileges. We all have unalienable rights. The Declaration of Independence in which provides; "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness."

THE QUESTION PRESENTED

Whether the New Jersey Supreme Court erroneously failed to apply Supreme Court Precedent, when an Acknowledged Error resulted in an Improper Judgment, in which violated the right of fairness.

This Court misapprehended the facts concerning petitioner's claim of violation of her right to fairness. This was the fault of the petitioner because she failed

to use the proper Constitutional clause to support her claim of right of fairness. Petitioner was using the Fourteenth Amendment's Equal Protection of the Law clause in which provides; "nor shall any state[. . .] deny any person within its jurisdiction the equal protection of the laws".

Petitioner argued that she had an unfair trial because she was not treated the same as the defendant because her evidence was not considered, in which was unfair and improper.

This Court misapprehended the facts concerning petitioner's claim of violation of her right to fairness in relation to the respondent made statements denouncing the SLS ingredient on their SLS-free toothpaste advertisement, and omitted the warnings about the SLS ingredient's adverse effects on their over-the-counter toothpaste product that contains the SLS ingredient. Petitioner was using the Fourteenth Amendment's Equal Protection clause in which provides; "nor shall any state [. . .] deny any person within its jurisdiction the equal protection of the laws". Petitioner was using the wrong Constitutional clause to support her claim that is why this court misapprehended the facts.

Rehearing is Appropriate because:

I Substantial grounds not previously presented exist under the Fifth and Fourteenth Amendment's due process clause, in which provides; "nor shall any state deprive any person of life, liberty, or property,

without due process of law". The Fifth and Fourteenth Amendment stand on equal footing.

Honorable Judge Spencer opined that "she does mention evidence that the court did not consider". Honorable Judge Spencer is acknowledging that a mistake in which the evidence that was not considered, affected the outcome of the judgment. (App. 20)¹

The action of the lower court in denying petitioner's case without considering the evidence interfered with petitioner's constitutional right to pursue and obtain safety.

The final decision in this case was not based on the evidence presented in the case. "Fourteenth Amendment applies only to deprivation of liberty or property interest; to have interest, person must have legitimate claim or entitlement to benefit". DeSalle v. Wright, C.A. 7 (Ill.) 1992, 969 F. 2d 273. Petitioner has a liberty interest of safety. The right to pursue safety is an inalienable right declared by the Constitution of the United States, it is one of the fundamental privileges and immunities of a citizen of the United States. See Slaughter-house cases 16. Wall. 57

The respondent made statements denouncing the SLS ingredient on their SLS-free toothpaste advertisement. The respondent omitted the warnings about the SLS ingredient's adverse effects on their over-the-counter toothpaste product that contains the SLS

¹ Motion for reconsideration dated June 28, 2016 Opinion of Honorable Judge Spencer J.S.C "she does mention evidence that the court did not consider". (App. 20)

ingredient. This action by the respondent violated petitioner's due process Rights. *Brown v. City of Galveston, Tex.*, S.D. Tex. 1994, 870 F. Supp. 155.

The lower court deprived petitioner of her Constitutional right to pursue and obtain safety under both the New Jersey Constitution, Article 1, Section 1, Rights and Privileges and the Fourteenth Amendment's due process clause. In *DeShaney, supra*, 489 U.S. at 199-200, 109 S.Ct. at 1005-1006, 103 L.Ed.2d at 262. The court states "It is the state's affirmative act of restraining an individual's ability to act on his own behalf which triggers the protection of the Due Process Clause, "not its failure to act to protect his liberty interests against harms inflicted by other means." *Id.* at 200, 109 S.Ct. at 1006, 103 L.Ed.2d at 262. The trial court's denial of petitioner's case without considering the evidence, restricted petitioner's ability to act on her own behalf, thereby depriving her of the protection of the Due Process Clause, and the fundamental right of fairness.

Rehearing is appropriate because:

II Substantial grounds not previously presented exist under the New Jersey Constitution Article 1, Section 1, Rights and Privileges.

New Jersey Constitution, Article 1, Section 1, Rights and Privileges

All persons are by nature free and independent, and have certain natural and unalienable rights,

among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protection property, **and of pursuing and obtaining safety and happiness.**

In *Daugherty v. Wallace*, 621 N.E.2d 1374 (Ohio Ct.App.1993) The appeals court states “the language of Section 1, Article I must be interpreted as a guarantee of rights”. See *Meyers v. Defiance* (1940), 67 Ohio App. 159, 21 Ohio Op. 165, 36 N.E.2d 162. The entire clause, when read as a whole, must be interpreted to place a restriction on the exercise of governmental powers and not to bestow affirmative obligations on the state. The state is restricted by the clause from wholly interfering with a citizen’s inalienable right to pursue and enjoy life and liberty, to acquire and possess and protect his property, and to seek and obtain happiness and safety, but has no affirmative duty to provide for the exercise of these inalienable rights.

In *Meyers v. Defiance, supra*, the court of appeals stated: “The right to seek and obtain happiness and safety is one of the inalienable rights of mankind, so declared by the Constitution, and guaranteed by that instrument”. Inalienable is defined as incapable of being surrendered or transferred; at least without one’s consent. *Morrison v. State*, 252 S.W.2d 97, 101 (Mo. Ct. App. 1952).

The trial court’s denial of petitioner’s case due to “evidence that the court did not consider” interfered with petitioner’s Constitutional right to pursue and obtain safety under both the New Jersey Constitution,

Article 1, Section 1, Rights and Privileges and the Fourteenth Amendment's due process clause prohibiting deprivation of life, liberty, or property without due process of law".

CONCLUSION

Based upon the forgoing, this Honorable Court should grant rehearing and schedule Merit briefing and argument.

Date: November 11, 2019

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CERTIFICATE OF PRO SE

I hereby certify that this petition for rehearing from the denial of certiorari is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 44.2 namely intervening circumstances of substantial or controlling effect, or substantial grounds not previously presented.

MARGARET A. NORTON