

No. \_\_\_\_\_

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

SUSAN LEVY,  
Applicant,

V.

BASF METALS LIMITED, BASF  
CORPORATION, GOLDMAN SACHS INTERNATIONAL,  
GOLDMAN SACHS GROUP, INC. GOLDMAN SACHS & CO.,  
GOLDMAN SACHS EXECUTION & CLEARING, L.P., ICBC  
STANDARD BANK, PLC, UBS AG, UBS SECURITIES LLC, HSBC  
BANK USA, N.A., LONDON PLATINUM AND PALLADIUM  
FIXING COMPANY LIMITED.

Respondents.

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

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To the Honorable Ruth Bader Ginsberg  
Associate Justice of the United States Supreme Court and Circuit  
Justice for the Second Circuit.

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Susan J. Levy*

**To the Honorable Ruth Bader Ginsberg, Associate Justice of the United States Supreme Court and the Circuit Justice for the Second Circuit.**

Applicant-Plaintiff, Susan J. Levy, Esq. admitted to practice in this Court, respectfully requests an extension of time to file a petition for writ of certiorari to this Honorable Court. Sup. Ct. R. 13.5. The earliest deadline for Applicant, Ms. Levy, to file her Petition is, Monday, July 22, 2019 which is ninety-days<sup>1</sup> from April 22, 2019, the date when the Second Circuit Court of Appeals issued an Order declining to reconsider Ms. Levy's petition for a panel rehearing or rehearing *en banc*. See Order, dated April 22, 2019 annexed hereto as Applicant's Exhibit A. The Order dated April 22, 2019 considered two separate Decisions and Orders, both filed separately on February 28, 2019, including a published decision entitled *Levy v. BASF Metals Limited, Et. Al.*, 917 F.3d 106 (2d Cir. 2019) annexed hereto as Exhibit B as well as a Summary Order not published by West's Federal Reporter. The Summary Order was entered on the Electronic Docket Sheet on February 28, 2019 as Document #148 and is annexed hereto as Exhibit C.<sup>2</sup> These Decisions and Orders are the two Second Circuit decisions and orders dated February 28, 2019 from which Ms. Levy is seeking a writ of certiorari.

For good cause set forth herein, Applicant, Ms. Levy, respectfully requests that this deadline be extended by sixty days so that the new deadline would be Friday, September 20, 2019.

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<sup>1</sup>Pursuant to Supreme Court Rule 30.1, one day was added to this calculation to move the due date from Sunday, July 21, 2019, to the "next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed." namely, Monday, July 22, 2019.

<sup>2</sup> The Summary Order was published as 755 Fed Appx. 29 (February 28, 2018) which is incorrect and hopefully will be changed at some point and corrected because this Summary Order was definately issued on February 28, 2019 not 2018.

## **BACKGROUND**

This matter entitled, *Levy v. BASF Metals Limited*, 917 F.3d 106 (2d Cir. 2019) should not be considered in a vacuum as just Ms. Levy's solitary case, because so many others similarly-situated to her are being effected by these misguided holdings dismissing her case at the pleading stage when nearly identical allegations by the Companion Class Action were apparently credited allowing 2008 members of the Class Action to proceed.

The facts of the underlying case are that Ms. Levy, a practicing attorney, at the time for eighteen years back in 2008, and a 1990 graduate of New York University School of Law and Duke University undergraduate, decided to take the advice of a trusted-advisor at the time who happened to be her boyfriend and a Harvard and Princeton graduate. She decided to invest her savings which she wanted for her law practice and retirement to make what she thought were valid investments in NYMEX Platinum Futures Contracts back in 2008.

Platinum and its sister metal Palladium are part of the Platinum Group Metals which have industrial and commercial uses such as Jewelry manufacturing or for Catalytic Converters which help to filter pollution emissions in automobiles upon information and belief and for Dental Implants as well. However, Platinum, unlike its sister metal Palladium, is also considered a precious metal like Gold; and Platinum, unlike Palladium, but like Gold, also acts like a currency, upon information and belief. So, there was a substantial market for both physical (spot) and NYMEX Platinum back in 2008 upon information and belief.

In this case, Platinum and Palladium traded over New York Mercantile Exchange as well as was sold in the Physical (Spot) Markets over in London and Zurich. These 2008 NYMEX Futures Contracts were liquidated at severe losses to Ms. Levy, and she fits within the

Class of Investors defined under the Class Action entitled *In re Platinum & Palladium Antitrust Litigation*, 14-cv-9391-GHW (S.D.N.Y. 3/28/2017)(“*Platinum & Palladium II*.)

Following her losses, two Class Actions were commenced on her behalf, and she was defined in both Class Actions as a member of the Class, since the 2008 NYMEX Platinum Futures Contract Holders were defined as Class Members. In the first Class Action entitled *In Re Platinum & Palladium Commodities Litigation*, 10-cv-03617 (S.D.N.Y 2010), (“*Platinum & Palladium I*), Ms. Levy ended-up opting-out and entered into a confidential settlement. But as everyone knows the definition of a good settlement is that nobody is happy. She realized that the Plan of Allocation in *Platinum & Palladium I* did not afford the recovery she wanted, so she felt fortunate to be able to opt-out. She learned quickly that Class Counsel have many subclasses to juggle such as in her case the short-sellers of NYMEX Platinum opposed to the long-buyers and others as well. She learned that just because one is a member of a certified class does not necessarily equate with a substantial recovery or decent recovery. She was surprised to learn about Class counsel’s fees, Defendants’ right of reversion for any unclaimed or undistributed proceeds; and realized if she wanted justice to be served for herself, and not get lost in the shuffle, she needed to exercise her rights as an opt-out and proceed solo. However, her decision not to follow the Pack is now coming full circle to haunt her, because now in the case of *Levy v. BASF METALS*, 917 F.3d 106 (2d Cir. 2019) at issue herein, she has been dismissed at the Pleading Stage based on the Statute of Limitations Defense; whereas the companion Class Action, entitled *In re Platinum & Palladium Antitrust Litigation* 14-cv-9391-GHW (S.D.N.Y. 3/28/2017)(“*Platinum & Palladium II*) is currently pending without any objections based on the Statute of Limitations Defense to the Class. Ms. Levy under this posture appears to still be a Class member, since the 2008 NYMEX holders are defined in the Class Complaint as Class

members upon information and belief. One wonders why did not defense counsel use the negative decision against Ms. Levy and argue the statute of limitations defense against the similarly-situated Class when they moved to dismiss Class Counsel's Third Amended Complaint?

In fact, Ms. Levy Pleadings were nearly identical to the Class's with respect to Equitable tolling based on fraudulent concealment, and the Class of which she is still a member is moving forward and she is being left behind and has been dismissed. The tolling provisions such as Equitable Tolling based on Fraudulent Concealment as well as the Discovery Accrual Rule have not been applied to her. But worse, these age-old doctrines are being severely misapplied to Opt-out Plaintiffs such as Ms. Levy and others that she knows about. This asymmetry needs to be addressed, and this opportunity for review by the highest Court in the Land is desperately needed not only for Ms. Levy to finally be able to sleep at night, but to hopefully reinstate these learned doctrines which appear to be close to evisceration as demonstrated in her case and others of which she is keenly aware. Because there were absolutely no statutes of repose in her case or in the case of the Class Action, she believes this case is ripe for Final Appellate Review.

The losses she sustained in her investments in NYMEX Future Platinum Contracts in the year 2008 were like so many other investors who also invested in instruments such as *LIBOR, FOREX, GOLD, SILVER, ALUMINUM, THE ISDA FIX*, and so many other instruments that were allegedly manipulated during this time-frame. Judge Woods' Class Action decision entered on March 28, 2017 describes the horrendous allegations that she believes were happening to her in 2008 and which she believes caused her to lose her savings. Unless one has walked in her shoes, it is very hard to imagine the gravity of the situation and the humiliation of being

subject to a world-wide financial manipulation which should have and could have resulted in jail time to some perpetrators since the claims are also defined as Felonies.

Although this Esteemed and Venerable Court admittedly must decide extremely urgent matters of life and death that go to the heart of our Democracy, and are admittedly much more important than Ms. Levy's solitary case; nevertheless, it should not be gainsaid that her allegations of price-fixing and market manipulation which she equates with theft of funds including her life-savings, is vitally important to a fair society; and she believes her case is still a matter of great importance where a hard-working, law-abiding, tax-paying citizen was treated in such a unseemly manner. Since we are still living in a society based on Economic Freedoms, it appears that this case would be ripe for further Appellate Review, and Ms. Levy would like to submit a petition for a writ of certiorari hopefully to correct what she believes has been so far a miscarriage of justice relevant to her and many others.

Now, the lower courts unapologetically have thrown-out Ms. Levy's case by telling her she is out-of-time. But, she respectfully begs to differ under the totality of the circumstances and would like to press her case under the posture of being an opt-out plaintiff. How can the important policy of repose be promoted by dismissing her solitary case, when the other 2008 Class members of which she is a part are allowed to proceed as part of a Companion Class Action? Especially here, where her pleadings were nearly identical to the Class regarding the Statute of Limitations, Equitable Tolling and the Discovery Rule? Did not the lower courts have to credit Ms. Levy's good faith allegations that she was within the Statute of Limitations, under the posture of a Motion to Dismiss where all facts are supposed to be construed in favor of the non-movant and absent any Merits Discovery? Have the Standards for a motion to dismiss been changed? If so, this Appeal will at least clarify a split in many circuits that treat the

timeliness of financial loss cases in such divergent manners and establish one national standard of conduct upon which litigants, especially Opt-out Plaintiffs, can rely upon in deciding whether or not to proceed to court which is quite costly. Therefore, settling this issue will allow potential opt-outs to avoid costly litigation from the very start and just stay with the Class, notwithstanding their right to opt-out under Federal Rule of Civil Procedure 23; and perhaps this case will cause Congress to take further action so that nobody else falls through the cracks as Ms. Levy feels has happened to her despite her diligent efforts.

Therefore, despite the mountain of alleged evidence that Ms. Levy believes exists that her accounts were effected by criminal market-manipulation, her case at issue here was summarily dismissed based on the Statute of Limitations defense. She believes she has a right to be here, and now she feels that she has to be here to reverse the strong impact that this decision will have under *Stare Decisis*.

### **OPINIONS BELOW**

On April 22, 2019, The Second Circuit Court of Appeals unanimously declined to reconsider Ms. Levy's appeal both by the Panel and *En Banc*. The Second Circuit Court of Appeals issued two separate Orders and Decisions in response to Ms. Levy's appeal, both on February 28, 2019. *See* Exhibits, B,C, annexed hereto. The Second Circuit issued a published opinion to address only the applicability of the Discovery Accrual Rule to Commodity Exchange Act Claims such as Ms. Levy's. This decision was published as *Levy v BASF Metal Limited*, 917 F.3d 106 (2d Cir. 2019), and is annexed hereto as part of Exhibit B. Also, on February 28, 2019, the Second Circuit issued what appears to be a Summary Order also annexed hereto as Exhibit C. The Order denying Reconsideration dated April 22, 2019 is annexed hereto as Exhibit A. The two Second Circuit Decisions each dated February 28, 2019 are annexed hereto as Exhibit B,

and C respectively.

### **JURISDICTION**

This Court has jurisdiction under 28 U.S.C. § 1254(1).

### **REASONS AN EXTENSION IF JUSTIFIED**

Supreme Court Rule 13.5 provides in relevant part that “An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified.” Sup. Ct. R. 13.5. The specific reasons why an extension of time is justified are as follows:

1. I work in a small office with one other attorney. We are extremely busy working together on many client matters, and during the past few months have been overwhelmed. For example, on June 7, 2019, I finally filed on behalf of my clients, defendants, a motion for summary judgment in New York State Court before Justice Lucy Billings with over 90 docket entries including Five affidavits/affirmations and Exhibits and Memorandum of law. I had to get two extensions of time to file this Summary Judgment Motion; and now a Reply is due on August 23, 2019 as well.

2. I also have another case pending in the Southern District of New York, and had papers due on June 21, 2019 relating to a pending Motion and Cross-Motion. Judge Broderick also ordered an extension of time in response to my letter-motion. I try to really help my clients in an ethical fashion, and I sometimes take on very hard cases and simply need more time to complete my tasks under my fiduciary obligations requiring a duty of care to my clients. I have done so in this case at my own expense because now I need more time to attend to my own case. Because of the gravity involved, I do need to take enough time to present the strongest argument



possible.

3. In another case pending in a New York State Court, I have three Court ordered Depositions that I must conduct that are scheduled for August, 2019.

4. One reason I got so delayed and set back was on or about April 29, 2019, I learned of the passing of a family member (my cousin, Mrs. Rosenberg) due to Multiple Myeloma. I felt blind-sided by the news because I thought the situation was that of remission, and I was not expecting such news. So I took a few days off. When I returned I seemed to have difficulty concentrating for at least two weeks to one month, and was therefore not working at the efficient rate at which I normally work that entails extremely long hours. For a few weeks I was spinning my wheels so to speak, but now I have been able to get back on track.

Unfortunately, I could not address this Petition for a Writ of Certiorari until this week and realized it is just not enough time to do the right job when the Petition is due on July 22, 2019.

5. I also had numerous doctors appointments and dental appointments that needed to be scheduled that were either cancelled or never scheduled in the first place due to these deadlines in June, 2019 and many other deadlines not mentioned herein. I am extremely overdue for seeing some doctors including most importantly my opthomalogist/Optometrlist for a serious eye condition that needs to be closely monitored called Macular Hole (not macular degeneration) which effects my sight, but fortunately right now all is stable, and I have learned to adapt except for racquet sports where my game is worse than what it used to be; Mammography; Dermatologist, general doctor, and dental work which I have been putting off for much too long a time period. I would like to see my doctors this summer because that is supposedly my slow season, but not this year. I am now extremely over due and would like to take some time to address these important concerns which I have neglected to do due to my work load,

6. In sum, the heavy demands of my occupation and work load and death of my dear Cousin caused great delay in my schedule. I need to take time to put together an excellent Petition, the best I have ever done in my entire career, that will hopefully convince this Honorable Court to take-up this Case. As such, Applicant seeks a sixty-day extension to cope with these demands.

7. The requested extension also is necessary to accommodate pressing deadlines in Applicant's other matters.

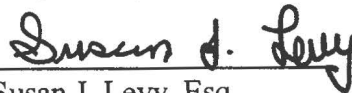
8. Because there appears to be no prejudice to any of the parties nor irreparable harm by the sixty-day delay; Applicant requests this time in the interests of justice so that she can be heard.

### CONCLUSION

For the foregoing reasons and good cause shown, Applicant respectfully requests that this Court grant this application for an extension of time to file a petition for writ of certiorari.

July 3, 2019

Respectfully Submitted,



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