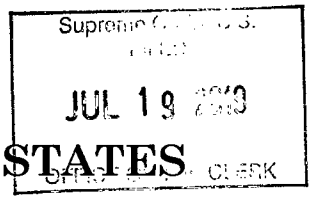
19-5285 ORIGINAL

No._____



IN THE

SUPREME COURT OF THE UNITED STATES

DANIEL LUKE MEIER— PETITIONER

VS.

ALLSTATE PROPERTY AND CASUALTY INSURANCE CORP.

AND AMANDA MEGAN BERGER — RESPONDENT(S)

ON

PETITION FOR A WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS EASTERN DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

Did the Circuit Court err in failing to complete the default process against Allstate Property and Casualty Insurance Company under color of state law and violate of the Plaintiff's federally protected due process rights by depriving the Plaintiff of "property" he is entitled to under 42 U.S.C. 1983 and due process under the 5th and 14th Amendments to the constitution?

Did the Circuit Court err in allowing Allstate to proceed after a default was entered on the docket and the Judge arbitrarily blocked the clerk from entering the default judgment in violation of federally recognized due process rights in violation of 42 U.S.C. 1983 and due process under the 5th and 14th Amendments to the constitution?

Did the Circuit Court err in abusing it's discretion in not requiring a principled decision and allowing a 2.116 (c)(7) to be filed even though there was no final order, motion was not in responsive pleading, federally recognized fraud upon the court was admitted and threshold of serious impairment of body function was always met and surpassed depriving the Plaintiff of "property" he is entitled to under 42 U.S.C. 1983 and due process under the 5th and 14th Amendments to the constitution?

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

DANIEL LUKE MEIER— PETITIONER

VS.

ALLSTATE PROPERTY AND CASUALTY INSURANCE CORP.

AND AMANDA MEGAN BERGER — RESPONDENT(S)

ON

PETITION FOR A WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS EASTERN DISTRICT

PETITION FOR WRIT OF CERTIORARI

The petitioner, Daniel Luke Meier, respectfully petitions this Court for a writ of certiorari to review the judgment and opinion of the Michigan Court of Appeals Eastern District. Michigan Supreme Court denial of leave was April 30, 2019.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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INTRODUCTION

1. Plaintiff worked in the Trump campaign and defendant's counsel clearly took issue with this; defendants targeted the plaintiff politically. Plaintiff is also a long time card carrying member of Judicial Watch. This entire proceeding was an outrageous politically motivated hit job intended to destroy the plaintiff's life. This is an appeal from two very clear and straight forward auto accident civil cases with several eye witnesses in which the plaintiff, a pedestrian, was riding a bicycle on a designated bike path when the defendant's car, through admitted negligent operation, collided with the Plaintiff nearly killing him.

2. Plaintiff was propelled in the air into a parking lot and was knocked unconscious in a puddle of blood, suffered a broken collarbone, severe closed head injuries, fractured scull, lacerations on face and arms (one requiring several stitches) **(See Appendix E),** permanent scarring, torn shoulder ligaments, post concussion syndrome, seizures, nerve damage, neck and back injury, memory loss, hearing loss, visual impairment and more. Plaintiff was taken by ambulance to a hospital. Defendant did not deny 100% negligence, paid for rehabilitation of impairment of bodily function, and even offered plastic surgery. The defendants do not deny any injuries but conspired with the judges to arbitrarily block a constitutional right to jury trial, depositions, and discovery for the plaintiff because they stated the plaintiff would "get too much money" if it proceeded to trial. Two evaluations were done on the

merits, both "unanimous" in favor of the Plaintiff. The proceedings have been a complete unprecedented obstruction of justice, fraud and violation of constitutional and civil and rights.

3. These kinds of criminal outrageous political acts and agenda of oppression under color of law should never happen to another U.S. citizen. This blatant obstruction and abuse of process is so extreme, ongoing, and malicious after a near death accident to a plaintiff in his fifties as to constitute a clear deliberate act of attempted murder through oppression and emotional distress. This is a politically motivated act of attempted murder by the management of Allstate Property and Casualty Insurance Company so they won't have to pay on what they lost as a matter of law. Plaintiff is outraged to the utmost extreme at the multitude of deliberate fraudulent continuing malicious acts intended to attack and do harm to the plaintiff physically, emotionally and financially after such traumatic injuries. This was done both by the defendants and by the courts conspiring with them illegally through a socialist type agenda. This is completely and utterly unconstitutional and intolerable in a civilized society.

IN THE □SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[X] For cases from state courts:□

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

JURISDICTION

[X] For cases from state courts:

The date on which the highest state court decided my case was April 30, 2019.

A copy of that decision appears at Appendix B.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 USC § 1983 - CIVIL ACTION FOR DEPRIVATION OF RIGHTS

28 USC § 455- DISQUALIFICATION OF JUSTICE, JUDGE, OR MAGISTRATE JUDGE

AMENDMENT V OF THE U.S. CONSTITUTION

AMENDMENT VII TO THE U.S. CONSTITUTION

AMENDMENT XIV OF THE U.S. CONSTITUTION SEC. 1

STATEMENT OF THE CASE

4. The near death and long-term injuries to the plaintiff have not been denied by either defendant in this instant case, however, defendants deny any law provides any financial compensation for he plaintiff's injuries in violation of the plaintiff's federally protected rights; additionally, the negligence in this case has not been denied as being 100% due to the defendant. The proceedings in this case are deliberately and violently unjust and admittedly targeting the plaintiff as political and intended to cause extreme distress and continued harm to the plaintiff who was already nearly killed by the accident itself and suffered seizures. The proceedings in this case have been abusive, outrageous, malicious, cruel and unusual and not in the normal mode especially considering a pro se is to be treated as a welcome guest in the court. These proceedings have been utilized as a weaponized judicial political attack against an innocent pedestrian and a serial malicious denial of rights. This is nothing less than an attempted murder using the judicial system to cause extreme duress and oppression. Plaintiff is not asking the court to revisit Michigan law but presents federal rights which were violated in the proceedings, especially as set forth in the sworn affidavit of fraud for consideration. These proceedings have wasted a lot of valuable time and are not based on law but arbitrary acts.

5. This case was originally filed as two separate proceedings 13-013426 - NI Meier v. Berger and 13-014522-NF Meier v. Allstate on October 7, 2013, on September 18, 2014; both cases were consolidated with a demand for jury trial under Judge Kathleen MacDonald. However, this was only "after" the□cases were submitted and briefed by both parties for evaluation by a tribunal, and the panel determines if the complaint was frivolous, without merit, and failed to state a claim, or; if it was legitimate as a matter of law and fact and would receive a value award on the merits or move to jury trial if the only dispute was as to the amount of damages. On August 6, 2014, after briefing by both parties, a tribunal evaluated case 13- 013426-NI as a matter of law and fact and found "unanimously" in favor of the Plaintiff. Then on August 26, 2014, after briefing by both parties, a tribunal evaluated the second case 13-014522-NF as a matter of law and fact and found "unanimously" again in favor of the Plaintiff on the merits nonetheless the judge dismissed both cases arbitrarily to block a jury trial.

6. The prevailing merits that must be recognized, is that the threshold of serious impairment of bodily was always met and surpassed and therefore this case could never be dismissed on the merits. On Defendant Amanda Megan Berger's Appellate brief they even cite as a standard of review. *The Reserve at Heritage Village Ass'n v Warren Financial Acquisition, LLC* 305 Mich App 92,111;850 NW2d 649 (2014) which states "Contents of the complaint are accepted as true unless contradicted by documentation

submitted by the movant". Instant case was filed May 26, 2016, the defendant accepted as true the complaint stated the prior order was based on fraud and void, the defendant did not submit any documentation to meet his burden of proof otherwise. This again negates their MCR 2.116 (c)(7) entirely by their own admission. Nothing in the order in the prior proceeding holds any legal weight at all, it is void. The defendant's submission of a MCR 2.116 (c)(7) motion was in bad faith and inadmissible as not being presented in a responsive pleading and not timely before the court waiving that right.

7. Defendant Berger stated, without any factual basis or proof whatsoever of the threshold comparison and without his requirement of burden of proof, that "he failed to create a genuine issue of material fact that the injuries he sustained surmount the tort threshold, as required under MCL 500.3135" but never supports his burden of proof the threshold was not met in any way by example because it was simply to harass. Defendant Berger's argument is baseless, idiotic and the court was responsible for holding the defendants accountable by applying prevailing law and preventing these kind of corrupt ridiculous ludicrous arguments. Defendants never even attempted to present this frivolous argument to the evaluators, because it was frivolous and would have been called out as such obviously because they lost unanimously anyways. Any opposition to a unanimous evaluation decision in favor of the plaintiff without proof would be fraudulent and frivolous by the very definition. The evaluation is by law res judicata as to the merits in evaluating

the evidence of meeting the threshold for injuries in a car accident.

8. Berger admitted by failure to deny in the complaint, and by his own citing on appeal, that the prior order was a fraud and is void as a matter of law. Berger uses an admittedly fraudulent baseless document in bad faith to mislead the court. The fact will always be the legal threshold was met and surpassed and denial of that fact is a continuation of the fraud and an obstruction of justice. Berger and Allstate are in fact conspiring to commit grand theft of the plaintiff's lawsuit winnings, deny the law, and obstruct justice.

9. Since the 1995 amendment, the Michigan Supreme Court has decided two cases interpreting the amended "serious impairment of body function" threshold. These cases were Kreiner v. Fischer 471 Mich. 109; 683 NW2d 611(2004) and McCormick v. Carrier ,487 Mich 180 (2010). Defendants never argue against this prevailing law, or the plaintiff's proper application of it as it applies to the instant case; not even a single time in oral argument in the lower court, oral argument on appeal, or in *any* of their pleadings.

10. Today, the best current interpretation of the "serious impairment of body function" threshold law is to be found in (p.52 plaintiff's App brief) McCormick v. Carrier threshold of a broken ankle and by all counts Plaintiff's injuries including a broken collar bone, seizures, post concussion syndrome, fractured skull, permanent scarring and more "far surpasses the threshold (a broken ankle) as supported by the tribunal". Plaintiff had far more injuries

with more severity than a broken ankle. So why is it that the plaintiff's injuries are being deliberately ignored after being admitted when (1) MCL 500.3135 (2) (a) (i) states, "There is no factual dispute concerning the nature and extent of the person's injuries." (Allstate's own doctor verified there was a broken collarbone and seizures), it is fraud to deny the threshold has been met and surpassed. So defendant Berger does not agree with Allstate's own doctor, all the other doctors, all six of the evaluators, the mediator, and the Plaintiff, and everyone else including law professors; except the corrupt judges they conspired with. But Judge MacDonald actually negated her own order by stating "if" the Plaintiff agreed to arbitration and gave up his constitutional right to a jury trial to arbitrate she would reverse the summary judgment; in so admitting a dismissal could not possibly be based on the merits at all but a threat. This is on record both in the lower court and oral argument in the Court of Appeals. The defendants Allstate and Berger couldn't convince even one of the evaluators the case was without merit and the evaluators in fact found their defense was without merit unanimously and the mediator told them they would "lose at trial".

11. The case evaluators job is to determine if the case has merit, or if it is devoid of legal merit and should be summarily disposed. MCR 2.403 (k) (4) (a,b,c) In the defendants evaluation summary, defendant did not argue that the plaintiff's legal position was devoid of arguable legal merit. They simply lost unanimously on all counts in both cases. If they disagreed with the

determination, this is was their time to address the issue. MCR 2.403 (N) (1) is to be followed if the disagreement is on the amount of the award: (1) If all or part of the evaluation of the case evaluation panel is rejected, the action proceeds to trial in the normal fashion. By law, this case was now supposed to go to jury trial, which was demanded, not a bench trial. This does not mean the merits are up again for arbitrary legal determination by the judge, just the amount. The merits were res judicata by the evaluation, and the threshold of serious impairment of bodily function was obviously evaluated by law and fact and met as required by law and fact. By law, a case without merits cannot be assigned a value by a tribunal. Seventh Amendment to the Constitution and MCR 2.508 (A) Right Preserved: The right of trial by jury as declared by the constitution must be preserved to the parties inviolate.

12. After defendant lost both evaluations, they then filed two fraudulent, baseless motions for summary disposition in bad faith, which should have been denied by law. Instead, Judge MacDonald arbitrarily and illegally granted the Defendant's motions for summary disposition September 8, 2015. Plaintiff filed a Motion for reconsideration, set aside, and reconsideration September 20, 2015. September 30, 2015 there was an order denying Plaintiff's motion for reconsideration without a reasoned opinion. The Plaintiff appealed, then withdrew the appeal first October 28, 2015 with an explanation because the law was not preserved below by prior counsel before the court dismissed it. Regardless of request for withdraw happening first,

the court of appeals considered it a dismissal anyway, November 18, 2015 but without prejudice so a new timely prima facie complaint was filed with new privies, exhibits, evidence, and additional statutory violations not on the first complaint.

13. The instant prima facie case of the incident on June 3, 2013 was filed on May 26, 2016 with thirty (30) pages of 100% admitted (by both Defendants) prior discovery exhibits, that the Defendant already had in possession, documentary evidence and proofs and eight (8) tabs legally establishing a prima facie case of serious impairment of bodily function and negligence and PIP claim as required by law and supported by detailed and applied case law and statutes in support of the complaint against the Defendant(s).

14. The plaintiff was supposed to be assigned a new judge, by procedure and alleged the prior fraud in the new complaint, but the court did not follow procedure and again assigned it to Judge MacDonald to simply harass the plaintiff as a pro se. The exhibits included a Documentation of evaluation of facts and law on the merits (exhibit "A"), detailed crash diagram with specific statements to cause and effect negligence (exhibit "C"), Picture of bicycle with bent rear wheel from Defendant "second" hit (exhibit "D") doctors evaluations and pictures validating post concussion syndrome, unconsciousness, hospital stay, pain and suffering, broken collar bone, fractured skull, two forehead lacerations, stitches, torn ligaments, seizures, physical therapy, permanent

scarring (to this day) on face and both wrists, hearing loss, vision problems (exhibits "E" and "G") witness statements of Defendant being obviously 100% at fault and more (exhibit "F" and "H"). All allegations of fraud in prior proceedings, as well as, injuries, negligence, statements of fact, and prior with additional new statutory violations set forth in on the complaint as well as all other paragraphs, were not denied by Defendant Amanda Megan Berger, without exception, in their responsive pleading.

15. Berger's responsive pleading did not have a MCR 2.116 (c)(7) motion as required by law if it was to be submitted proper before the court. They waived that right by law. It could no longer be considered and they waived their right to proceed with a MCR 2.116 (c)(7) because it was not on their responsive pleading. Nothing else in their motion matters, it is legally moot.

16. The many burdens of proof provided by the plaintiff were accepted and not denied by both defendants and the defendants were required to meet their burdens due to the complaint's prima facie extreme detail, evidence and undisputed facts, witness statements, new claims and specificity of prior proceeding fraud perpetuated by Allstate and Berger presented in the instant complaint. June 15, 2016 Defendant Amanda Megan Berger's responsive pleading did not contain the MCR 2.116 (c)(7) motion, was an utterly bizarre, non-conforming and included an outrageous and baseless Motion for Costs, which is a form of illegal extortion. June 28, 2016, the defendant filed their baseless, untimely, and utterly implausible Defendant Amanda Megan

Berger's Motion for Summary Disposition pursuant to MCR 2.116 (c)(7). Again, it was not in their responsive pleading as required by law.

17. The core argument of the defendant Amanda Megan Berger's MCR 2.116 (c)(7) motion is not about the law, but that there was "an order" but they did not deny the plaintiff's argument in the complaint that it was invalid. They act as if the order, which has already been negated by the complaint itself, is the law. No burden of proof was provided by the defendant to support that order, or the motion, because it was not based on the facts or the law and he did not deny that the insurmountable bar to admitting by failure to deny order was void first. The instant complaint established the facts and stated the prior order was not a valid order on the merits, was not with prejudice or a final order as a matter of law, was void, and the fact is the threshold was always evaluated and surpassed by law. It simply was not a final order and can never be considered a final order for purposes of a MCR 2.116 (c)(7) motion, which was also not proper before the court anyway. Defendant Allstate even agrees with the plaintiff at the Groner hearing stating Jan 27, 2017 "It's not a final order because Allstate is still pending in this case" P.4 lines 18-20

18. June 29, 2016 Plaintiff/Appellant filed a response Counter Motion for Bond Costs and Sanctions and Motion to strike.

19. June 29, 2016 Plaintiff / Appellant filed a Motion for Recusal, Affidavit, and Proof of Service due to Judge MacDonald's prior arbitrary

actions including denial of jury trial in violation of Seventh Amendment federal constitutional rights and under MCR 2.003.

20. July 09, 2016 Plaintiff/Appellant filed with the court Plaintiff Daniel Luke Meier's Motion for Default Judgment against defendant Allstate citing failure of defendant Allstate to respond within 21 days per rules MCR 2.108 (a) (5) and MCR 2.603 (A) (1) this is also in violation of federal Rule 55. There were no communications entered from the defendant on the record prior to the clerk entering the default. The default was "entered" on the docket. As stated at hearings, and on the record on appeal, the clerk was going to enter the default judgment, but was illegally restrained from doing so by Judge MacDonald as stated on the record and unopposed in the lower court and also at oral argument in the Court of Appeals. This is a matter of court record.

21. July 12. 2016 Defendant Allstate filed (but did not properly serve) their answer, affirmative defenses and jury demand to the complaint, late, 25 days after signing for service by process server and legally defaulted.

22. August 9, 2016 there was an order arbitrarily denying the dismissal of judge Kathleen MacDonald. Plaintiff/Appellant appealed August 15, 2016.

23. August 22, 2016 there was an invalid order granting defendant Berger's lawless motion for summary Disposition MCR 2.116 (c)(7), forcing plaintiff to pay an illegal $3,000.00 bond to proceed against Berger (who admitted all law and fact of negligence), denying motion for default judgment against Allstate stating: "plaintiff failed to properly enter default" not based

on or referencing the law at all. Order further states, "Pursuant to MCR 2.602 this Order does not dispose of the last pending Claim and does not close the case". Defendants therefore are still required by law to submit to discovery and respond to all motions requiring a response by the plaintiff or deemed admitted.

24. On August 23, 2016 Court of appeals denied appeal based on lack of jurisdiction on August 9, 2016 order as not a "final order" but failing to recognize the mandamus requirement to prevent the continuing corruption and injustice.

25. Ironically, since the court stated "Pursuant to MCR 2.602 this Order does not dispose of the last pending Claim and does not close the case", and the Court of Appeals stated order as not a "final order", this forever enforces that the MCR 2.116 (c)(7) motion was never based on a "final order" and is therefore of course again invalid and not proper before the court in another facet for specifically that reason also. There were subsequent orders after the prior order used by defendant so that eliminates any attempt at a MCR 2.116 (c)(7) because there was no "final order" submitted to support a MCR 2.116 (c)(7) motion which must be based on a final order by law. Additionally, the Claim against Allstate proceeded and was also previously dismissed when they were consolidated, but was not granted a MCR 2.116 (c)(7) because both orders were arbitrary and not based on law and they wanted to proceed with only one to politically harass the plaintiff and deny compensation.

26. August 26, 2016 plaintiff filed with the court a 20 page sworn and notarized "Plaintiff's affidavit of fraud upon the court" which was completely unopposed by both Defendants. This was in addition to the fraud upon the court set forth in the complaint itself, which should have easily warranted another judge to preside over the case and also mirrors federal law. Wayne County Circuit Court did not operate based on the law; they ignore the facts and the law, as did the Court of Appeals.

27. Plaintiff filed two separate appeals 334399 and 334699 in an effort to stop the continual illegal acts and injustice occurring in the lower court before the final appeal.

28. November 17, 2016 Defendant/Appellee re-notice motion to compel discovery and admissions for November 29, 2016. First to note is Allstate defaulted, had no legal right to proceed, and already had all discoveries, but were illegally denying plaintiff's discovery.

29. December 06, 2016 Order granting defendant Allstate motion to compel, 14 days (deliberately ignores plaintiff's counter compel motion or complete denial of discovery by defendants and the fact they defaulted by law).

30. January 24, 2017 plaintiff's files response to request for admissions, plaintiff further states Defendant is in default as a matter of law, has all the same items plaintiff has and is not entitled to proceed pursuant to MCR 2.108 (A) (5), MCR 2.603 (A) (1), MCR 2.111(e)(1), 2.111(F)(2), 2.102(B)(11),

2.104(A)(1), 2.105(H)(1) and others but response is being submitted for reference anyway. The response was submitted so their motion was moot.

31. January 27, 2017 hearing before judge Groner Judge MacDonald retired but corruption still persisted. They admit prima facie case at the hearing but ignore facts and law.

32. February 9, 2017 Order Granting Defendant's Motion to Dismiss for Failure to Comply with Court Order even though moot because already complied. Answers were submitted but ignored and before the Court of Appeals at oral argument on the record defendant admitted it was not a "principled decision" as required by law. Order was without referenced legal principles as required by law. It is a matter of Court record.

33. Court of Appeals Case No. 336946 brief filed May 9, 2017. May 2, 2018 oral argument on record court established there was no principled decision below admitted on record, Allstate was properly served as a public corporation and "Allstate Legal" signed for service and defaulted. September 27, 2018 Court of Appeals order handed down ignoring the facts and the law including oral argument on the record. Court of Appeals misrepresented who was served and that on the record during oral argument on appeal it was proven by undisputed fact that Allstate was served when Allstate Legal signed for and accepted service for Allstate and was served legally.

34. Motion for reconsideration October 17, 2018 denied November 13, 2018 without reasoned opinion.

REASONS FOR GRANTING THE WRIT

The questions presented are exceedingly important. The court(s) below so far departed from the accepted and usual course of judicial proceedings, or sanctioned (gave explicit approval of) such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

35. Many of the mass shootings that have been occurring in this country recently have been shown to be the result of bullying and illegal oppression by people working in the government or assigned by the government. The president himself and his associates have been the victim of fraudulent proceedings based on political motives just like this example. This illegal political violent unconstitutional behavior is of national importance and needs to stop or people will continue to die and there will no doubt be a civil war.

36. This is an obvious 1st year law school example of why students are taught that there are civil proceedings in order to prevent victims from administering their own form of justice when another has wronged them. The adverse treatment which occurred here is all the more outrageous when done to a pro se pedestrian who almost lost his life by the pure admitted 100% negligence of the defendant driving a car. Plaintiff, by law, should be treated even more liberally in an effort to honestly and fairly address the merits of the case especially a prima facie case like this.

Eastern District fails to recognize actual injuries presented to them at oral argument that Judge MacDonald and judge Groner also admit to on the record, establishing there is a policy of denying civil rights to selected individuals on a discriminatory and political basis.

37. The Plaintiff set forth in the instant prima facie case injuries sustained. No person with any common sense or true system of justice would ignore the admitted severe numerous near death obvious injuries and facts in this case except by fraud.

Aug 19, 2016 Judge Macdonald transcript copy she stated, " I'll try to speak up because I know you have trouble hearing" p. 3 lines 17-19 (Exhibit 1)

38. In doing so admits on the record just one of many serious impairment of bodily functions the plaintiff suffered that meets the threshold, but the plaintiff was still denied due process. Judge Groner was visually shown at the hearing present both facial and wrist scarring six (6) years after the accident, which was also ignored but he said he could "appreciate" what he was seeing directly before his eyes.

Jan 27, 2017 transcript (before Groner) (Plaintiff) "This is the situation we have your honor, I was run over, almost killed. I have permanent scarring. That meets the threshold right there. On two sides right here, and right here (showing scarring to Judge) I broke a collarbone; so I met the threshold you can see it. That's my case. (that is the merits undenied) P. 15 line 3-8

Judge Groner: **"I appreciate that" p. 15 line 9**

Judge Groner then goes on to say: **" You do believe you're in the right, but you're not. I've ruled that way. p. 16 lines 14-16.**

39. If the plaintiff was truly incorrect in whether the threshold was met then the judge normally would explain the reasoning to the plaintiff by stating what would be needed to achieve the threshold, but he could not, a bald denial is not the law. In the Court of appeals, the presiding judge said the plaintiff clearly understood the law and complemented the plaintiff in his appellants brief although the later decision was capricious. Outrageously, Judge Groner then goes on to say:

"I'm going to say if you file another motion regarding Ms. Berger, you have to post a $3000.00 bond before you can file it, if you do not post that bond you cannot file it. If you violate that order, you will be in contempt of court. That will be the court's decision. P.16 lines 18-23

40. Judge Groner never addresses how the law obviously proves plaintiff is 100% correct as a judge is obligated to do for a pro se with a legally required principled decision. He ignores the facts and arbitrarily asserts he "ruled that way" regardless of the law and the facts. The Plaintiff was illegally harassed threatened by both Judge Groner and Chief Judge Colombo to be held in contempt for simply seeking justice when no real violation occurred to justify a provocative threat to a traumatized victim who nearly died; there is no "real" actual contempt by law and the threats were outrageous. Plaintiff was illegally harassed and provoked by the circuit court and the defendants counsel time and again to deliberately cause outrage so

they could use a contempt charge in court and further harm the plaintiff and deny due process rights. This is civil judicial gas lighting and tyranny at its worst and most obvious.

41. However, Judge Groner admits that the Plaintiff has the right to be "upset" and "passionate" about what has been taking place due to the injustice. That statement, and his subtle headshake of admission belied his actions, especially during explanation of the obvious fact that Allstate signed for service and did default. He no doubt obviously agreed, but felt bound by politics of the case to deny a decision for the plaintiff, which is apparent by the inconsistencies in what transpired at the hearing. He then states:

Jan 27, 2017 transcript Groner "I'm not going to impose sanctions only because you seem so passionate about this and upset. You've been in court numerous times so I won't impose sanctions" P. 16 lines 11-14

42. So Judge Groner can see there are injuries and plaintiff is suffering emotional distress right in front of him due to the denial of rights but continues to harass the plaintiff anyway even though the plaintiff had suffered seizures. He sees the Plaintiff has been in court several times has been gas lighted and harassed as punishment enough and not yet lost composure or snapped. Defendants even maliciously, and in bad faith, filed malicious motions to deny a simple reschedule on appeal when the plaintiff was suffering with a severe bout of the flu.

43. In the sworn affidavit of fraud submitted to the court it was established by statements of the clerks themselves that it was an established

policy or custom for Judge MacDonald to obstruct them from entering a default judgment if she had bias. 42 U.S.C. § 1983. Such claims require that a defendant, "acting under the color of state law," has deprived the plaintiff of a right under the Constitution or the laws of the United States. West v. Atkins, 487 U.S. 42, 47 (1988).

42 USC 1983 4.6.3 Liability in Connection with the Actions of Another – Municipalities – General Instruction: If you find that plaintiff was deprived of [due process], [municipality] is liable for that deprivation if plaintiff proves by a preponderance of the evidence that the deprivation resulted from municipality's official policy or custom, in other words, that municipality's official policy or custom caused the deprivation.

44. Horton v. City of Harrisburg, 2009 WL 2225386, at *5 (M.D.Pa. July 23, 2009) ("Supervisory liability under § 1983 utilizes the same standard as municipal liability. See Iqbal .... Therefore, a supervisor will only be liable for the acts of a subordinate if he fosters a policy or custom that amounts to deliberate indifference towards an individual's constitutional rights.".
14 U.S.C 1983 Supervisor must have been involved personally, meaning through personal direction or actual knowledge and acquiescence, in the wrongs alleged"); Reedy v. Evanson, 615 F.3d 197, 231 (3d Cir. 2010) (applying the framework set by Baker v. Monroe Tp., 50 F.3d 1186 (3d Cir. 1995) Marrakush Soc. v. New Jersey State Police, 2009 WL 2366132, at *31 (D.N.J. July 30, 2009) ("Personal involvement can be asserted through allegations of facts showing that a defendant directed, had actual knowledge of, or acquiesced in, the deprivation of a plaintiff's constitutional rights.").

45. A supervisor incurs Section 1983 liability in connection with the

actions of another only if he or she had "personal involvement in the alleged wrongs." Rode v. Dellarciprete, 845 F.2d 1195, 14 1207 (3d Cir. 1988). In the Third Circuit,58 "[p]ersonal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence." Id.; see also C.N. v. Ridgewood Bd. of Educ., 430 F.3d 159, 173 (3d Cir. 2005) ("To impose liability on the individual defendants, Plaintiffs must show that each one individually participated in the alleged constitutional violation or approved of it."); Baker v. Monroe Tp., 50 F.3d 1186, 1194 (3d Cir.1995) (noting that "actual knowledge can be inferred from circumstances other than actual sight"); A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center, 372 F.3d 572, 586 (3d Cir. 2004) (noting that "a supervisor may be personally liable under § 1983 if he or she participated in violating the plaintiff's rights, directed others to violate them, or, as the person in charge, had knowledge of and acquiesced in his subordinates' violations"); Black v. Stephens, 662 F.2d 181.

46. On the affidavit of fraud, the clerk herself states the judge should have sua sponte recused herself. Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause."). Should a judge issue any order after he has been disqualified "by law", and if the party has been denied of any of his / her

property, then the judge may have been engaged in the Federal Crime of "interference with interstate commerce". The judge has acted in the judge's "personal capacity" and "not in the judge's judicial capacity". It has been said that this judge, acting in this manner, has no more lawful authority than someone's next-door neighbor (provided that he is not a judge)

47. That Court also stated that Section 455(a) "requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned." Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989). In Pfizer Inc. v. Lord, 456 F.2d 532 (8th Cir. 1972), the Court stated that "It is important that the litigant not only actually receive justice, but that he believes that he has received justice."

48. The plaintiff went beyond what was required and filed a sworn affidavit of fraud detailing the specific conversations, federal violations and obstructionist activities that continued too take place in the instant case. (See Appendix D)

49. Knowing there was an unrefuted affidavit of fraud and the complaint itself stating additional fraud that negates any ruling by Judge MacDonald the Court of Appeals never the less cites an arbitrary comment:

(COA order Sept 27, 2018) In this case, the trial court found, "I sat through the first case; that was absolutely res judicata on any case that you could ever file arising from the same accident." Thus, because plaintiff's previous lawsuit was decided on the merits, the matter in the instant case was also contested in the previous case, and plaintiff filed against Berger in both cases, the trial court did not err in granting Berger's motion for summary disposition

according to MCR 2.116(C)(7).

50. "Recusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances." Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989). None of the orders issued by any judge who has been disqualified by law would appear to be valid. It would appear that they are void as a matter of law, and are of *no legal force or effect.*

51. People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980). Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."

52. "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th

Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and *never becomes final.*" Under Illinois and Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.

53. This Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). Nothing in this hearing gives the "appearance of justice" to anyone who has seen the pleadings, orders, and transcripts.

54. Most courts will interpret a pro se litigant's pleading "liberally" and will not dismiss the complaint for mere technical violations of rules. Stanley v. Goodwin, 475 F. Supp. 2d 1026, 1032-33 (D. Haw. 2006) (citing Haines v. Kerner, 404 U.S. 519, 520-21 (1972)) In fact, some courts will go so far as to advise the pro se litigants of the defects in their pleadings and give them an opportunity to amend before dismissal. Fedrik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992)). If the plaintiff fails to include sufficient information, counsel should consider filing a motion for a more definite statement that clearly articulates the deficiencies of the pro se complaint.

Jan 27, 2017 transcript (Groner hearing) Burke " Although he indicated he had some legal education, he's not an attorney" p. 15 lines 24-25, p.16 line 1.

55. This comment demonstrates defendant is intending to persuade the court to discriminate against a pro se Certified Legal Assistant regardless of the law and facts. He then admits he conspired with the judge to dismiss not

based on the merits of this case but based on an order which has been admitted in front of this U.S. Supreme court to be a fraud where the Judge admitted everything the petition. He uses a fraud to support another fraud.

Jan 27, 2017 transcript Groner hearing (Burke for Berger) "In federal court there is a standing order in place that says he needs to get permission from the court before he is permitted to file subsequent lawsuits Judge MacDonald agreed" p. 9 lines 14-17) (extreme prejudice by Burke)

56. By defendant Berger's own admission on the record, the MCR 2.116 (c)(7) motion never really was a legitimate motion based on fact or law, it was simply an Insurance Company using a pretext to "agree" to obstruct the entire proceedings regardless of the merits by conspiring with the judge to obstruct a legitimate proceeding using an irrelevant, invalid, inadmissible order that was admitted to be a fraud before this U.S. Supreme Court as precedent years ago. Darwin Burke seems to think an old unrelated invalid order in a completely separate unrelated federal case; addressing one defendant only, is applicable to every single defendant in every subsequent legal proceeding, regardless of jurisdiction, even in a car accident, to deny all rights forever to the plaintiff. He offers absolutely no law to support his harassment and fraud in presenting this irrelevant item to the court. This behavior advocating and encouraging prejudice is normally staunchly rejected in a legal proceeding because to subverts the judicial machinery itself.

57. This is part of the "scheme or artifice" to defraud. The U.S. Supreme

Court held in Carpenter v. United States 585 U.S.--- 138 S. Ct. 2206; 201 L.Ed. 2d 507 that the terms apply to any plan intended to deprive another of property, regardless of whether it would cause immediate financial harm

58. Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957) "The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice."

59. Due Process: The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide "fair procedures". The requirement that government function in accordance with law is, in itself, ample basis for understanding the stress given these words.

60. A commitment to legality is at the heart of all advanced legal systems, and the Due Process Clause often thought to embody that commitment. The clause also promises that before depriving a citizen of life, liberty or property, government must follow "fair procedures". Thus, it is not always enough for

the government just to act in accordance with whatever law there may happen to be. Citizens may also be entitled to have the government observe or offer fair procedures, whether or not those procedures have been provided for in the law on the basis of which it is acting. Action denying the process that is "due" would be unconstitutional.

61. People v. Zajic, 88 Ill App.3d 477,410N.E. 2d 626 (1980) A judge is an officer of the court, as well as are all attorneys. A state judge is a state judicial officer, paid by the State to act impartially and lawfully. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. State and federal attorneys fall into the same general category and must meet the same requirements. A judge is not the court.

62. This is also why pro se dismissals are such an abomination. They open the door to a pretext for bullying pro se citizens who are legitimately seeking justice with valid prima facie cases.

The Eastern District construction of service conflicts with actual signed perfected service accepted by the clerk for the default entry which was entered on the register of actions

At the MacDonald hearing August 19, 2016 without any motion to set aside, Judge MacDonald states to defendant P. 8 lines 8-9 "Your request to set aside default is granted".

63. There was no motion to set aside. She was at odds with the clerks who wanted to file a default judgment as set forth in the affidavit of fraud. She

was blocking them from doing their job.

64. This is outrageous; Judge MacDonald states there was some sort of "request" and not "motion" to set aside. The plaintiff was not informed in any way of any such request or served as required by law. This is an illegal action, nowhere does it say you can simply "request" a default to be set aside. There is no such request even on the record. This is a blatant abuse of discretion this is her acting based on a personal bias and some sort of possible ex parte request without a proper motion being submitted to the court. This was so Allstate would not be required to submit an affidavit on the proper service they received because they had no standing. This is pure tyranny. The law states in regards to a default already entered.

65. MCR 2.603 (A) (3) once a default of a party has been entered that party may not proceed with the action until the default has been set aside by the court in accordance with subrule (D) or MCR 2.612. MCR 2.603 (D) (1) ...shall be granted *only if* good cause is shown and an affidavit of facts showing a meritorious defense is filed (neither were done). Allstate even admits they filed no motion and provided no defense for a motion to set aside.

Jan 27, 2017 transcript (before Groner) (Padgett for Allstate) "I think that if we were even needed to give a chance to file a motion to set aside the default we certainly had good cause and a meritorious defense" p.5, 24-25 p.6 1-3.

The register of actions shows the following: **07/11/2016 Default, Filed**

Court of appeals erroneously stated in their order September 27, 2018:

"Plaintiff attempted to serve Allstate by serving the summons and complaint on Berger's attorney. This was insufficient to effect service on Allstate under MCR 2.105. Because plaintiff did not properly serve Allstate, the time period for Allstate's answer had not extinguished when plaintiff sought a default against the insurer. The trial court did not abuse its discretion in denying plaintiff's motion for a default judgment against Allstate. Huntington Nat Bank, 292 Mich App at 383."

66. In oral argument before the court of appeals plaintiff stated on the record that the summons and complaint was served on "Allstate Legal", not Berger's attorney, Allstate Legal is a division of Allstate property and casualty insurance company a "public company" traded on the New York stock with symbol ALL who signed for legal service by process server. The defendants did not deny these facts at oral argument before the Court of Appeals and it is perfected service under the law. If it was not properly served, they would have had it dismissed for to failure to serve and not proceeded at all. The fact that they did not have it dismissed is an admission they were in fact properly served and could not have supported a dismissal. No defendant is going to voluntarily proceed with something, if they can have it dismissed for failure to serve.

67. The clerk in fact entered the default; it is a matter of court record and cannot be denied except to violate the plaintiff's civil rights. Additionally, the clerks also attempted to enter the default judgment and stated the Judge would not let them do what they were supposed to do. That fact was verified and was submitted to the court on a sworn affidavit of fraud submitted by the plaintiff and not denied by the defendants or the court and are judicial

admissions binding under the law.

68. The Court provided no recognition of how defendant Allstate evaded service, then the service was later signed for and perfected. The Appeals Court while ignoring many of the facts, then go on and make an erroneous conclusion of who was not served rather than how service was completed. They provide no law to back up that service on "Allstate Legal" who in fact signed for the complaint was improper service, rather they ignore the multiple methods of service satisfying the requirements. This is just more judicial gas lighting debunked time and again in court on the record.

Judge Groner hearing Jan 27, 2017 hearing on the record (Padgett for Allstate): defendant stated his firm "signed a proof acknowledging complaint to Allstate" p.5 line 7-9.

69. As set forth at the hearing and in brief, Allstate legal, a division of Allstate, admittedly was served and signed for service and that is not denied. The default was entered. Allstate lied about what constituted service and submitted fraudulent information to the court attempting to argue outrageously and falsely that they are a "private company" in desperation to support their frivolous argument and intentionally making false statements of material fact to the court.

Jan 27, 2017 transcript Judge Groner : (Padgett for Allstate)"Even if Judge MacDonald found Allstate was properly served, a default was not properly entered" p. 5 lines 22-24

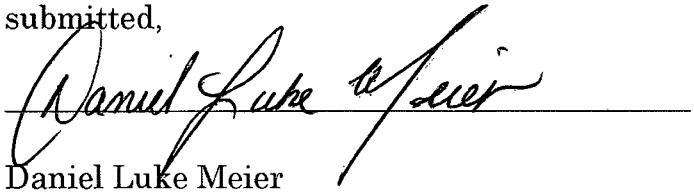
70. This is incorrect. The Plaintiff does not enter the default; the clerk does and did so as required by law. The clerk found otherwise under the law and agreed with the plaintiff just like the evaluation panel, and the mediator.

Allstate, Judge MacDonald, and the Court of Appeals are discriminating against the plaintiff. Allstate failed to get the clerk not to enter the default. The clerk entered the default and that is the default required by law, if Allstate wanted to legally move forward, they would have had to set aside the default legally and that was the "only" way to proceed. There is no other option; it must be in accordance with the law and rules.

71. Not allowing the Plaintiff to collect his lawsuit is "property" and should be considered benefits or property just as benefits withheld under 42 USC 1983 Richardson v. Belcher, 404 U.S. 78, 80-81 (1971); Richardson v. Perales, 402 U.S. 389, 4 01-402 (1971); Flemming v. Nestor, 363 U.S. 603, 611 (1960), that the interest of an individual in continued receipt of these benefits is a statutorily created "property" interest protected by the Fifth Amendment. Cf. Arnett v. Kennedy, 416 U.S. 134, 166 (POWELL, J., concurring in part) (1974); Board of Regents v. Roth, 408 U.S. 564, 576-578 (1972); Bell v Burson, 402 U.S. at 539; Goldberg v. Kelly, 397 U.S. at 261-262.

CONCLUSION

The petition for a writ of certiorari should be granted. Respectfully submitted,



Daniel Luke Meier

Date: July 19, 2019