

No 19-8724

Supreme Court, U.S.
FILED
JUN 11 2020
OFFICE OF THE CLERK

**IN THE
SUPREME COURT OF THE UNITED STATES**

Michael Garry

Petitioner

v

American Standard Trane U.S. Inc. "et al". Respondents

**On Petition for a Writ of Certiorari in Forma
Pauperis to the Supreme Court Of Wisconsin**

(Name of Court that last ruled on the case)

PETITION FOR A WRIT OF CERTIORARI IN FORMA PAUPERIS

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ORIGINAL

Questions Presented

(1) The Wisconsin Supreme Court was manifestly wrong in rejecting the Petitioner's Appeal for Review, when it failed to consider mitigating, newly discovered evidence.

Such error was structural, instead of issuing a mandate immediately as required under Federal Rules of Appellate Procedure, Rule 41(d) (1) (2), it clearly contravened applicable rules of Appellate Procedure, when it dismissed the appeal as moot.

Should this Court issue a Writ of Certiorari, when The Wisconsin Supreme Court clearly contravened applicable Rules of Appellate Procedure and unjustifiably departed from ordinary judicial procedures, when extraordinary circumstances existed.

Should this court order the Wisconsin Supreme Court to issue a mandate to the Wisconsin Labour, Wisconsin Circuit and Appeals Courts to comply with this Court's authority, rules and precedents.

List of Parties

[X} 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 judgement is the subject of this petition is as follows.

American Standard Trane US Inc.

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101, Piscataway Township.
NJ 08854-6820
New Jersey
Tel. 1732-652-7100

Ingersol Rand

800. E Beaty Street
Davidson
NC 28036
Tel. 704-655-4000

Travelers Insurance

485, Lexington Avenue
New York
NY 10017
Tel. 1-971-778-6000

Ernst & Young.

5, Times Square
NY 10036
New York
Tel. 212 - 773 -3000

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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

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] 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.

The opinion of the WISCONSIN LABOUR court appears at Appendix H to the petition and is

[] reported at _____; or,
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[**X**] is unpublished.

OPINIONS BELOW

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Michael Garry v American Standard Trane US Inc. Dated March 11, 2020
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Decision of the Supreme Court of Wisconsin case No. L.C.2001CV255
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**Decision for Reconsideration by the Wisconsin Circuit Court Branch 16
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JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was MAY 28, 2002. A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied on the following date: MARCH 11, 2020, and a copy of the order denying rehearing appears at Appendix A.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

Statement of Jurisdiction.

The Wisconsin Supreme Court issued its order on March 11, 2020 (App. A) This Court's jurisdiction is timely invoked under the All Writs Act, 28 U.S.C. § 1651 28 U.S.C. § 1254, 28 U.S.C. §1257 and Rule 10 (a) and 13, of the Rules of the Supreme Court of the United States.

Constitutional and Statutory Provisions and Rules

Federal Rule of Appellate Procedure 41 governs issuance of an appellate court mandate and provides, in pertinent part : —

- (2) Pending Petition for Certiorari.
- (A) A party may move to stay the mandate pending the filing of a petition for a Writ of Certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.
- (B) The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition.
- (C) The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.
- (D) The court of appeals must issue the mandate immediately

INTRODUCTION

This case presents the kind of extraordinary circumstances in which this Court exercises its discretionary authority to issue a Writ of Certiorari.

The Supreme Court of Wisconsin's refusal to issue a mandate clearly contravenes applicable rules of appellate procedure and effectively thwarts this Court's decision to decline review of the Petitioner's petition for Writ of Certiorari.

The appeal was in pursuance of 28 USCA § 60 Invalidating a Judgement for Fraud by failing to consider this mitigating newly discovered evidence and rejecting the Petitioner's appeal out of hand. It should instead have issued a mandate immediately as required under the Federal Rules of Appellate Procedure 41 (d) (1)(2)

The Wisconsin Supreme Court refusal to issue the mandate was manifestly wrong and defied this Court's precedent. *Ryan v. Schad*, U.S 133 S. Ct. 2548 (2013)

Cone v. West Virginia Pulp& Paper Co. 330 U.S. 212 (67 S.Ct. 752, 91 L.Ed. 849)

The petition was appropriately brought under Wisconsin Rules of Appellate Procedure 808.10, and 809.62 and all the appropriate sub section of that rule, (1g)(a) (1r)(a)(c)(d), the review being appealed in pursuance of 28 USCA § 60 (b2) (3)(d3) Invalidating a Judgement for Fraud.

U.S. Supreme Court :- Hazel-Atlas Glass Company v. Hartford -Empire Company 322 U.S. 238

The Petitioner's Appeal for Review to the Wisconsin Supreme Court was premised on newly discovered evidence disclosed to him in February 2020, by the International Consortium of Investigative Journalists, (ICIJ), which revealed that the Respondents had wilfully concealed evidence from the petitioner and the Wisconsin Courts, that **TRANE SA**, was a shell company. (Emphasis added)
See:-"TRANE S.A ICIJ Offshore Leaks Database. <https://offshoreleaks.icij.org>"

The Respondents conspired with Mossack Fonseca of the Panama Paper's fame exacerbating this concealment, by constituting a labyrinth of other shell companies around the world revealing an intentional act of jurisdictional manipulation to disenfranchise the Petitioner from any legal jurisdiction.

See Appendix (L) copies of documents disclosed by (ICIJ) linking American Standard Inc. to the TRANE SA entity. (Emphasis added)

Was the Wisconsin Circuit and Appeals Court's Abuse of Discretion "Arbitrary, and Capricious."

In the Petitioners appeals in 2001 and 2002 respectively, to Wisconsin Circuit and Appeals Courts, it shows from the record that they erroneously exercised their discretion by failing to comply with state and Federal Statutes, and Rules of Procedure. Wis. Stats §102.23(a), Restatement of Contracts Statute § 74 (1932)Wis. Stats.806.07 (1)(b)(c)(h) Rule 804.01(1)(2)(a)(c)(1)(4) and or Federal Rule 26 (1)(a)(C)(E)(F)(3)(A)(iii)(B) and Rule 7.1(1)(2) (b)(1)(2) Rule 56 (a)(c)(B)(4) (c) Summery Judgement, Rule 52 (5) (6), Questioning Evidentiary Support, Rule 401 Test for Relevant Evidence,Rule 402 (4) (b) the fact is of consequence in determining the action.

The Wisconsin Labour Court Erroneously Exercised its Discretion

Structural error is prevalent in this case, the trial judge in the Wisconsin Labour Court erroneously exercised his discretion by allowing, the Respondents, on two separate occasions to file new evidence in contravention of state and federal Rules of Procedure Wis. 804.01, Federal Rules 26 and 7.1(a) (1)(2) (b)(1)(2).

The Respondents' Case Was Procured By Fraud.

The broad scope of the Respondents' fraud and its pervasive effect on the proceedings in the Wisconsin Labour, Wisconsin Circuit and Appeals Courts, requires a full appellate review of the court records.

By failing to make any disclosure prior to the court hearing they wilfully violated rules of Procedure and Evidence. Indeed their entire scheme of the filed false material evidence, and their wilful manipulation of the Rule of Procedure pertaining to disclosure was fraudulent.

U.S. Securities and Exchange Commission of Regulation, Rule 10b-5, ideology or rules of shell companies was subverted by American Standard Inc / The Trane Company §10(b) of the Exchange Act, and §17(a)(1) of the Securities Act as under item 1101(b) AB (§ 229.1101(b)'

Petitioner asks this Court to grant certiorari to exercise its supervisory power, as set forth in Supreme Court Rule 10(a), because the Supreme Court of Wisconsin has grossly and unjustifiably departed from ordinary judicial procedures. This Court's intervention is critical to ensure the integrity of the appellate process and to curtail the wilful refusal to comply with this Court's rules and precedent.

STATEMENT OF THE CASE

The Petitioner had an accident at work while lifting a pump. He slipped and fell backwards falling out of the engine compartment of an A/C unit.

He sustained hernia and protrusion of the nucleus pulposus, compression of the discs at the bottom and neck area of his back and injury to his left knee, and other serious injuries that only manifested at a later date.

The injuries were serious enough that a medical tribunal deemed him disabled and unable to work again.

See Appendix (Z) Copy of medical tribunal decision

Because the Petitioner had signed employment contracts with The Trane Company La Crosse, Wisconsin, he obtained the service of a pro-bono lawyer who opened a case in the Wisconsin Labour Court for Workman's Compensation.

This was to claim for health and medical care, loss of salary, and now punitive damages for causing unnecessary pain and suffering.

Prior to the court hearing, on several occasions, the Petitioner's lawyer requested, all documents relating to his employment from his personal file, under Wisconsin 804.01 and Federal Rule 26 pertaining to discovery, the Respondents failed to comply to this request.

The failure to comply with this request resulted in the Petitioner going to court without being able to cross examine the Respondents, regarding the contents of any of these documents. This was in violation of Rule 804.01(1)(2)(a)(c)(4) and or Federal Rule 26 (1)(a)(C)(E)(F)(3)(A)(iii)(B) pertaining to discovery, as required under the Wisconsin and Federal Rules of Procedure.

See Appendix (N) (NN) Copies of letters from Petitioner requesting all documents from his file. Dated Dec. 1, 1993, and January 11, 1994

During the hearing of February 24 1994, the Respondents having contravened Rules Procedure, the trial judge made a ruling to allow the record to be left open for the Petitioner to be able to receive these documents from his file and submit any evidence from any these documents.

On May 3 1994, 10 weeks after the court hearing, the Respondents produced what was represented to be a complete list of the Petitioner's personal file.

See Appendix (O) Copy of letter from Respondents with list of document from the Petitioner's personnel file. Dated May 3, 1994

However there was concealment of critical documents by the Respondents, because neither a Letter of Appointment, nor copies of two American Employment Contracts, were disclosed in their response, which violated Rule 804.01(1)(2)(a)(c)(4) and or Rule 26 Federal (1)(a)(C)(E)(F)(3)(A)(iii)(B)(4)(b)(1).

The Letter of Appointment would have been critical in proving that the Petitioner's

contract was executed in La Crosse, Wisconsin which under the :-Restatement of Contracts § 74 (1932) Provides :- "A contract is made at the time when the last act necessary for its formations is made, and at the place where that final act is done."

Structural error is defined as "an error that permeate[s] the entire conduct of the trial from beginning to end or affect[s] the framework within which the trial proceeds."

See : Al Haramain Islamic Found., Inc. v. United States Dep't of the Treasury, 2009 U.S.Dist. LEXIS 103373 (D. Or. Nov. 5, 2011)

See : Mathews v. Eldridge, 424 U.S. 319 (1976),

Both American Employment Contracts stated under **Disputes**, as following :-

"If the employee and Trane disagree with the terms of his employment under this agreement, the dispute shall be referred to Trane's parent company, The Trane Company, a Wisconsin Corporation with its principle place of business in La Crosse, Wisconsin, U.S.A. The laws of the state of Wisconsin shall be the governing law of any disputes under this agreement." (emphasis added)

The Letter of Appointment stated in pertinent part :-

"Please review the contract carefully and advise if you have any questions. if you decide to accept our offer of employment (and we hope you do) please sign it and insert the date you will be free to join us. Send both copies to La Crosse, we will counter-sign it and return one for your records."

(Emphasis added)

See :- Appendix (W) American Employment contract page (3 & 4) section(14)

Dated. December 15, 1978

See :- Appendix (X) American Employment Contract page (4) section (15)

Dated. November 10, 1984

See :- Appendix (Y) Page 2, final paragraph, "Letter of Appointment"

Dated July 10 1979

Over seven months after the court hearing, the Petitioner's lawyer was informed by letter on December 7, 1994, that the Respondents had filed into the record, an alleged "Arabic Contract," to which the Petitioner objected.

See Appendix (P) Copy of letter from the Petitioner's objecting to the alleged "Arabic Contract" Dated Dec. 9, 1994

See Appendix (R) Copy of alleged one page "Arabic Employment contract".

However, without any legal opinion given, the trial judge over- ruled the Petitioner's objection, forgoing his ruling," that the record had only been left open to allow the Petitioner to receive and submit any evidence from any documents from his personnel file," and received the alleged Arabic Employment Contract into the record.

See Appendix (Q) Copy of letter from Adm. Law judge Phillips, overruling Petitioners objection. Dated January 26, 1995.

This was an Abuse of Discretion by the trial Judge by allowing the Respondents to file this evidence in contravention of Rule 804.01(1)(2)(a)(c) Trial Preparation : Material (4) Sequencing and timing of Discovery, and or Federal Rule 26 (1)(a)(C) (E)(F)(3)(A)(iii)(B) under sub sections (C) Time for Initial Disclosure, 3(A) (iii)(4)(b)(1) Form of Disclosure. See :- Jones v. State, 477 So. 2d 566, 569 (Fla. 1985) (Boyd, C.J, (concurring specially).

This alleged "Arabic contract" was a further misrepresentation and violation of Federal Procedure Rule 106 "Reminder of, or related writing or recorded statements."

The Petitioner swore an affidavit to the court, that this alleged "Arabic Contract" was one page of a five page application form, which the Trane Company made to the U.A.E Ministry of Labour for a work visa for him. See :- McCormick §56; California Evidence Code §356.

See:- Appendix (I) Copy of Affidavit

See Appendix (U) Copy to Petitioner'd brief page (4) last Paragraph

Dated February 27, 1995

Subsequently, three months later, on March 9, 1995, which was now 13 months after the Court hearing, there was further infringement of evidence by the Respondents by their introduction of alleged new evidence that was completely materially different from the infringing evidence of the alleged "Arabic Contract". The Respondents now stated, that the Petitioner was employed under contract to **TRANE SA**, an entity registered in Switzerland. (Emphasis added)

This was again Abuse of Discretion and impartiality by the trial judge in allowing this alleged new evidence, into the record, in contravention now of Rules of Procedure 7.1(1) (2) (b)(1)(2) pertaining to Corporate Discovery as well as State Rule 804.01 and Federal Rule 26. See:- Jones v. State, 477 So. 2d 566, 569 (Fla. 1985) (Boyd, C.J., concurring specially).See ; United States Court of Appeals :- Samuel Barely Steele Plaintiff V Vector Management; MLB Adva, Insurance, 785 N.W.2d 493 (2010)

See Appendix (T) Page (1) Copy of Respondents brief and attached list at end, of Chain of Command.

Dated March 9,1995

The following is the verbatim evidence from the Respondents Brief, which was allowed to be filed into the court record in violation and defiance of State and Federal Rules of Procedure. :-

"At the time of his injury, the applicant was based in Oman and was an employee of Trane S.A.

Trane SA. is a Swiss corporation, that does no business in Wisconsin.

Trane S.A. is wholly owned by The Trane Company, a Delaware corporation that also conducts no business in the United States.

The Trane Company (the Delaware corporation) is wholly owned by American Standard Inc. which is headquartered in New York State.

Trane the entity in La Crosse, Wisconsin is a division of American Standard." (emphasis added)

See :Cox v. Burke, 706 So. 2d 43, 47 (Fla. 5th DCA 1998): "The basic standards governing fraud on the court are reasonably straightforward."

The requisite fraud on the court occurs where : "it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defence."

Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989)

See Appendix (I) Copy of Order of Wisconsin Industry and Wisconsin Labour Court.
Dated March 29, 1996

See Appendix (T) Page (1) Copy of Respondents brief. Dated March 9, 1995
Attached with a copy of the Respondents Chain of Command.

The Respondents, surreptitiously constituted this shell company in the tax haven country, Switzerland, and by subterfuge, wilfully misrepresented this to the Wisconsin Courts, that this entity in Switzerland was the Petitioner's employer.
See Appendix (V) Copy of Swiss Commerce register. Dated. 1996 and 2014

The disclosure by the International Consortium of Investigative Journalists, (ICIJ), to the Petitioner in January 2020, reveals the concealment of evidence by the Respondents that **TRANE SA** was a shell company, and by constituting a labyrinth of shell companies around the world, reveals an intentional act of jurisdictional manipulation to disenfranchise the Petitioner from any legal Jurisdiction.

See:-"TRANE S.A ICIJ Offshore Leaks Database. <https://offshoreleaks.icij.org>".

The revelation by ICIJ that American Standard Trane SA, together with other Respondents, conspired with Mossack Fonseca of the Panama Papers fame, exacerbating this concealment. This impaired pending court proceedings through the intentional concealment of evidence.

See Appendix (L) copies of documents disclosed by (ICIJ) linking American Standard Inc. to the off shore entity **TRANE SA**

It shows in letters and documents that Ernst & Young were complicit in this and that they did represent American Standard / The Trane Company, in Switzerland.

The parent company Ingersol Rand were aware of this in 2009.

See Appendix (V) Copy of Swiss Commerce register. Dated. 1996 and 2014

See Appendix (B2) Copy of email letter from Ernst & Young. London office stating that fact. Dated January 4, 2014

See Appendix (C2) Copy of letter from parent company Ingersol rand declining to take any responsibility. Dated April 28, 2009

Hearing at Wisconsin Labour Court

In his Summation and Finding of Fact, the trial judge erroneously exercised his discretion when he dismissed the Petitioner's claim, for lack of jurisdiction, by using this alleged new evidence, which he had allowed to be filed in contravention of Rules of Procedure 7.1(a) (1) (2) (b)(1)(2) Corporate Discovery as well as State Rule 804.01 and Federal Rule 26.

See Appendix (H) Copy of Order of Wisconsin Industry and Wisconsin Labour Court
Dated March 29, 1996

The Restatement of Contracts § 74 (1932) provides " A contract is made at the time when the last act necessary for its formation is done , and at the place where that final act is done". See :- Handal v American Farmers Mut. Cas. Co., 79 Wis. 2d.67, 255 N.W. 2d.903. Miller v Hanover Insurance 785 N.W.2d 493 (2010)

The Letter of Appointment when seen in context of the two American Employment Contracts would have been crucial in proving that the final act of the Petitioner's

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contract was finalised in La Crosse, Wisconsin.

See :- Appendix (X) Page 2, final paragraph, "Letter of Appointment"

Dated July 10 197

See :- United States v. Beltran-Gutierrez, 19 F.3d 1287, 1289 (9th Cir. 1994)," The court abuses its discretion by erroneously interpreting a law, or by resting its decision on an inaccurate view of the law, Richard S. v. Dep't of Dev. Servs., 317 F.3d 1080 1085-86 (9th Cir. 2003). See also Fox v. Vice, 131 S. Ct. 2205, 2211 (2011) recognizing trial court has wide discretion "but only when it calls the game by the right rules".

After the decision of the Wisconsin Labour Court in 1996, the Petitioner's Pro Bono lawyer declined to act any further for him. Unable to obtain counsel he continued to proceeded as a Pro Se, indigent litigant.

However, the standard of his education and lack of legal knowledge severely impaired his ability to obtain a fair and just hearing of his case.

Appeal to Wisconsin Labour and Review Commission,

In April 1996 the Petitioner commissioned a Swiss lawyer for an opinion as to whether he had a right to bring an action to the Swiss Courts.

In a letter dated May 13,1996 the lawyer stated his opinion in pertinent part as follows :-

" With regard to Swiss contract law, you do not have a claim against **Trane SA** either. First of all, the agreement was **governed by Wisconsin law** and subsidiarily, by Oman law." (Emphasis added)

See Appendix (A2) page (1) paragraph (3) Copy of letter from Swiss Lawyer to Petitioner. Dated May 13, 1996,

On the premise of this letter, the Petitioner petitioned the Wisconsin Labour and Review Commission, for a review of his case.

LIRC dismissed his petition for review of the Order of the Wisconsin Labour Court stating it was untimely.

See Appendix (G) Copy of the Order of the Wisconsin Labour and Review Commission. Dated August 21,1996,

The Commission dismissed the review under section Wis code102.18 (3) "The commission shall dismiss a petition which is not timely filed unless the petition shows probable good cause that the reason for failure was beyond the petitioner's control."

However the code 102.18(3) further states that the Review Commission has discretion on this issue.

The Petitioner explained that his U.A.E visa had been revoked and he had to return to his place of residence in South Africa, and that it was taking weeks for the Petitioner to receive mail from the U.S.A.

He has been at pains over the years to point out that the South African postal service is extraordinarily slow and unreliable, with much anecdotal evidence of documents or parcels (especially those coming from U.S.A) never reaching their intended destinations.

See Appendix (G2) Copy of South African newspaper, apology by the head of Postal service regarding crisis of the South African postal services.

Petition for Review to the Wisconsin Circuit Court

Four years later, in July 20 2001, the Petitioner came into possession of the Letter of Appointment document, and in context of the two American Employment Contracts, he petitioned The Wisconsin Circuit Court for a Judicial Review.

This document together with the American Employment Contracts, would have been crucial in proving that the Petitioner's contract finalised in La Crosse, Wisconsin, as under the Restatement of Contracts § 74 (1932).

The petition for Judicial Review, was in pursuance of Wis. § stats. 806.07 (1) :-Relief From judgement or Order (b) newly discovered evidence, (c) Fraud, misrepresentation and (h)

However the Respondents moved a Motion to Dismiss the action on basis that the Petition was untimely under Wis. Stats §102.23.

An Order to Dismiss was granted in favour of the Respondents

The Wisconsin Circuit Court, and the affirming of its Decision, by Wisconsin Appeals Court, erroneously exercised their discretion when they dismissed the Petitioner's appeal by this summary judgement.

The court abused its discretion by erroneously interpreting the law, the evidence presented for review was one of evidentiary fact and law.

Their misconception of Wis. Stats §102.23(a) under which the Respondents "Motion to Dismiss" was granted states :- Wis. Stats §102.23(a) " sets forth the procedure for judicial review of LIRC orders pertaining to workers' compensation claims. Section (1)(a) provides in pertinent part :- (a) The finding of fact made by the commission acting within its powers **shall in the absence of Fraud**, be conclusive." (emphasis added) See :—United States v Beltran-Gutierrez, 19 F.3d 1287, 1289 (9th Cir. 1994), "or by resting its decision on an inaccurate view of the law," See Pullman-Standard v. Swint, 456 U.S. 273, 289 n.19 (1982); See :— Fox v. Vice, 131 S. Ct. 2205, 2211 (2011) (recognizing trial court has wide discretion "but only when, it calls the game by the right rules").

See Appendix (F) Copy of Decision and Order granting Defendants Motion to Dismiss Petition for Judicial Review Based Upon Lack of Subject-matter Jurisdiction. Page (3) paragraph (2).

Dated September 19, 2001.

Second :- They failed to consider a crucial newly discovered document, (Letter of Appointment), as under Wis. stats § 806.07, pertaining to discovery and disregarded other Rules of Procedure and Evidence, Rule 56 (a)(c)(B)(4)(c) Summery Judgement, Rule 52 (5) (6), Questioning Evidentiary Support, Rule 401 Test for Relevant Evidence, Rule 402 (4) (b) the fact is of consequence in determining the action.

See :- U.S. Supreme Court Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)

" Held: The Court of Appeals did not apply the correct standard in reviewing the District Court's grant of summary judgment " Pp. 477 U. S. 247-257.

" (a) Summary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the

nonmoving party. At the summary judgment stage, the trial judge's function is not himself to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. Pp. 477 U. S. 247-252.

See *Miller v Hanover Insurance* 785 N.W.2d 493 (2010) :- " (¶ 68) Unlike some of the other subsections in § 806.07(1), there is no time limit for bringing an action under subsection (h). "[T]he ground for granting relief is 'justice' and the time for bringing the motion is 'reasonable.'" Id. at 544-45, 363 N.W.2d 419. Therefore, if interpreted broadly, subsection (h) could significantly erode the finality of judgments.

Imposing the ultimate sanction of dismissal with prejudice was an act of discretion, by their denial of the Petitioner's entitlement to any Procedural Due Process, under the Due Process clauses of the 5th and 14th Amendments.

See :- *Al Haramain Islamic Found., Inc. v. United States Dep't of the Treasury*, 2009 U.S.Dist. LEXIS 103373 (D. Or. Nov. 5, 2011) *Mathews v. Eldridge*, 424 U.S. 319.

In *J. McIntyre Machinery, Ltd. v. Nicastro*.957 2011, In Suing Out-of-State (Foreign) Corporations, doctrinal differences on the due process touchstones in stream of commerce cases became more critical to the outcome.

Although his brief to the Wisconsin Circuit and Appeals Court was very naive and simplistic, it was accepted by the Appeal Court as a motion for Reconsideration, the brief emphatically asserted that the appeal was in pursuance of Wis. § stats.806.07 (1):-Relief From judgement or Order (b) newly discovered evidence, (c) Fraud, misrepresentation and (h)

See Appendix (J) Petitioners brief to the Wisconsin Appeals Court.

See Appendix (K) Petitioners brief to Wisconsin Circuit Court

In the intervening years, from the May 20, 2002 Petition and the April 5, 2018, the Petitioner attempted to seek relief in other U.S.A courts, Re., New York labour Court, New York Appeals and Supreme Courts, and the State of New Jersey Court, in pursuance of 28 U.S.C § 1332 The Federal Diversity Jurisdiction Statute. As well as the United Kingdom Courts, Sultanate of Oman courts, Switzerland, and South Africa. See Appendix (H2) (I2) (J2) (K2) (L2)(M2) (N2)

REASONS FOR GRANTING THE PETITION

The Petitioner recognizes that the Writ of Certiorari is an extraordinary remedy reserved for extraordinary circumstances. Those circumstances exist here. The Wisconsin Supreme Court was manifestly wrong in rejecting the Petitioner's Appeal, when newly discovered evidence revealed the Respondents case was procured by fraud.

The petition was appropriately brought under Wisconsin Rule of Appellate Procedure 808.10 and 809.62 and all the appropriate sub section of that rule, (1g)(a) (1r)(a)(c) (d), in pursuance of 28 USCA § 60 (b2)(3)(d3) Invalidating a Judgement for Fraud. Structural error is prevalent in this case as stated in *Al Haramain Islamic Found., Inc.*

Inc.

v. United States Dep't of the Treasury, 2009 U.S.Dist. LEXIS 103373 (D. Or. Nov.5, 2011) See : Mathews v. Eldridge, 424 U.S. 319 (1976),

The broad scope of the Respondents' fraud and its pervasive effect on the proceedings in the Wisconsin Labour, Wisconsin Circuit and Appeals Courts, requires a full appellate review of the court records.

This Court's review is De Novo as there is no Discretion to allow fraud.

The Petitioner's appeal for review was premised on newly discovered evidence disclosed to him in January 2020, by the International Consortium of Investigative Journalists, (ICIJ), which revealed that the Respondents had wilfully concealed evidence from the Petitioner and the Wisconsin Courts, that **TRANE SA**, was a shell company. (Emphasis added)

See:-"TRANE S.A ICIJ Offshore Leaks Database. <https://offshoreleaks.icij.org>"

See Appendix (L) Copies of documents linking American Standard Trane SA to the **TRANE SA entity**. (Emphasis added)

The magnitude of deception by the Respondents is beyond comprehension in that they submitted in December 1994 and then March1995, over a year after the February 1994 hearing, two conflicting alleged employment contracts, in violation of RulesWis. § 804.01, and federal Rule 26 and 7.1(a) (1)(2) (b)(1)(2).7.1(a)(1) (2) (b)(1) (2) Corporate Discovery, 7.1(a) reflects the "financial interest" standard of Canon 3C (1)(c) of the Code of Conduct for United States Judges.

The Wisconsin Labour Court Erroneously Exercised its Discretion

The trial judge in the Wisconsin Labour Court erroneously exercised his discretion by allowing the Respondents on those two separate occasions to file new evidence in contravention of Rules of Procedure Wis. Rule 804.01, Federal Rules 26 and 7.1(a) (1)(2) (b)(1)(2).

The Respondents had failed to make any disclosure prior to the hearing of February 24, 1994, where the trial judge made a ruling " to allow the record to be left open for the Petitioner to be able to receive these documents from his file and submit any evidence from any these documents," which made it more repugnant when the trial judge allowed these contraventions of Rules of Procedure.

See Appendix (Q) Copy of letter from trial Judge, Overruling Petitioners objection
Dated January 26, 1995

Was the trial Judge's "Summation and Finding of Fact" flawed on the basis of his discretion of the essential requirements of law

The trial judge dismissed the Petitioner's claim for lack of jurisdiction. His judgement only being premised on the alleged new evidence, which he had allowed to be filed in violation of State and Federal Rules of Procedure, which was an Abuse Of Discretion.

By using this alleged new evidence in total exclusion of evidence of the two

27, 1995, page (1) paragraph (2) and Page (2) paragraph (1) and (2) and also referred to by the Respondents brief of March 9, 1995, page (2) paragraph (2) and page (3) paragraph (2).

See Appendix (U) Copy to Petitioner's brief. Dated February 27, 1995

See Appendix (T) Page (1) Copy of Respondents' brief with copy of their Chain of Command, (last page) Dated March 9, 1995

See Appendix (M) Copy of letter from Petitioner to Travellers Insurance filing the two American Employment Contracts. Dated March 11, 1993.

In his Summation and Finding of Fact, he posed the threshold question. :- "is whether or not the parties are subject to the Wisconsin Workers Compensation Act pursuant to Sec. 102.03 (5). " Specifically, jurisdiction turns on whether the applicant was working under a contract for hire made in this state for employment outside the United States pursuant to Sec. 102.03(5) (d)"

"The controlling case in Wisconsin on this issue is Horton v Haddow, 186 Wis 2d 184, 519 N.V. 2d 736 (1994)."

See Appendix (H) Copy of Order of Wisconsin Industry and Wisconsin Labour Court Dated March 29, 1996

This was in conflict of Federal Statute Restatement of Contracts § 74 (1932) and numerous other case precedents, whereas Horton v Haddow, was not decided on the relevance of any documents or written contracts.

See :- "the court abuses its discretion by erroneously interpreting a law, "United States v. Beltran-Gutierrez, 19 F.3d 1287, 1289 (9th Cir. 1994), or by resting its decision on an inaccurate view of the law, Richard S. v. Dep't of Dev. Servs., 317 F.3d 1080, 1085-86 (9th Cir. 2003).

See also Fox v. Vice, 131 S. Ct. 2205, 2211 (2011) (recognizing trial court has wide discretion "but only when, it calls the game by the right rules"). See :- Handal v American Farmers Mut. Cas. Co., 79 Wis. 2d 67, 255 N.W. 2d 903.

The trial judge erred in law in his directions by his failure to accurately interpret the controlling Federal Statutes or Rules, considering the evidence of the two American Employment Contracts and taking into account any relevant considerations before coming to his findings to ensure that the Petitioner was not prejudiced, or that there was no danger of him being prejudiced, or the trial undermined. See : The People of the State of New York v. Phillip RIBACK "Summation Misstatements of Fact and Law." 2009. See:- Jones v. State, 477 So. 2d 566, 569 (Fla. 1985) (Boyd, C.J., concurring specially). Independent Oil and Chemical Workers of Quincy, Inc. v. Procter & Gamble Mfg. Co., 864 F.2d 927, 929

Was the Wisconsin Circuit and Appeals Court's Abuse of Discretion "Arbitrary, and Capricious."

The dismissal of the appeal with prejudice conclusively establishes that this is one of the ascendant issues in this present appeal.

This summary judgement decision by the court and the affirmation of that decision by the Wisconsin Appeals Court was an erroneous exercise of their discretion.

The appeal was in pursuit of previously undisclosed evidence under Wis. stats § 806.

07 pertaining to discovery.

This document when viewed in context with the American Employment Contracts, would have been crucial in proving that the Petitioner's contract was finalised in La Crosse, Wisconsin, as under the Restatement of Contracts § 74 (1932).

Their decision that the appeal was untimely, based on Wis. Stats §102.23 (a) was erroneous, although the Respondents "Motion to Dismiss" was granted.

This was in conflict with a fact of law in the interpretation of Wis. Stat §102.23(a) :- "sets forth the procedure for judicial review of LIRC orders pertaining workers' compensation claims. Section (1)(a) provides in pertinent part :- (a) The finding of fact made by the commission acting within its powers **shall in the absence of Fraud be conclusive.**" (Emphasis added)

See Miller v Hanover Insurance 785 N.W.2d 493 (2010) :- " (¶ 68) Unlike some of the other subsections in § 806.07(1), there is no time limit for bringing an action under subsection (h). "[T]he ground for granting relief is 'justice' and the time for bringing the motion is 'reasonable.'" Id. at 544-45, 363 N.W.2d 419. Therefore, if interpreted broadly, subsection (h) could significantly erode the finality of judgments.

See:- Miller v Hanover Insurance 785 N.W.2d 493 (2010), " it has been aptly characterized as a "game changer" because it so emphatically reiterates the importance of the interests of justice in default judgment proceedings, but the court's ultimate ruling providing relief in the interests of justice rests on long-standing precedent."

In U.S. Supreme Court Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) " Held: The Court of Appeals did not apply the correct standard in reviewing the District Court's grant of summary judgment " Pp. 477 U. S. 247-257.

" (a) Summary judgment will not lie if the dispute about a material fact is "genuine," " that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."

They failed to consider a crucial newly discovered document, that the Respondents had failed to disclose (Letter of Appointment), and disregarded other Rules of Procedure and Evidence, Rule 56 (a)(c)(B)(4)(c)Summary Judgement, Rule 52 (5) (6), Questioning Evidentiary Support, Rule 401 Test for Relevant Evidence, Rule 402 (4) (b) the fact is of consequence in determining the action.

This was despite the fact that the Circuit Court in an Order for Reconsideration, which was denied, stated :- " Garry's reconsideration motion **asserts a substantive issue that was raised in his petition** but does not address the jurisdictional issue." (Emphasis added)

See Appendix (E) Copy of Order denying the Reconsideration Motion.

Although the Petitioner's brief to the Appeals Court was very naive and simplistic, it was accepted by the Appeal Court as a motion for Reconsideration. The brief emphatically asserted that the appeal was in pursuance of Wis. § stats.806.07

Wisconsin Courts denied the Petitioner the ability to obtain any entitlement to any Procedural Due Process rights, as in Haines v. Kerner, 404 U.S. 519 (1972), for a

Due Process Standard for Leniency, due to his lack of legal knowledge shown by his very naive and simplistic briefs to the courts. "the fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner."

In Mathews v. Eldridge 424 U.S. 319 (1976), in its ruling in Mathews the Court commented that "the fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner."

See also Al Haramain Islamic Found., Inc. v. United States Dep't of the Treasury, 2009 U.S. Dist. LEXIS 103373 (D. Or. Nov. 5, 2011)

See Appendix (K) Copy of the Petitioner's briefs to Wisconsin Circuit Court.

Dated May 11, 2001

See Appendix(J) Copy of Petitioners brief to Wisconsin Appeal Court

Dated April 28, 2002

A writ of Certiorari is appropriate where a lower court's action constitutes a "judicial usurpation of power" or amounts to a "clear abuse of discretion. Schlaginhauf v. Holder, 379 U.S. 104, 109-10 (1964) (quoting Roche v Evaporated Milk Ass'n, 319 U.S. 21,24 26 (1943))."

"The writ for a review is likewise proper where, as here, a party seeks to forestall a lower court's persistent disregard of procedural rules promulgated by this Court, a review is appropriate where a party seeks to enforce an appellate court judgment in a lower court or to prevent a lower court from obstructing the appellate process."

The Respondents' Case Was Procured By Fraud.

By failing to make any disclosure prior to the court hearing they wilfully violated rules of Procedure and Evidence. Indeed their entire scheme of the filed false material evidence, and their wilful manipulation of the Rule of Procedure pertaining to disclosure was fraudulent.

See Appendix (N) (NN) Copies of letter from Petitioner to Respondents requesting all documents relating to his employment. Dated Dec. 1, 1993, and Jan. 11, 1994.

On May 3,1994, 10 weeks after the court hearing, the Respondents produced what was purported to be a complete list of the Petitioner's personal file, which proved an egregious misrepresentation of the facts.

See Appendix (O) Copy of letter from Respondents with list of documents from the Petitioner's personnel file. Dated May 3, 1994

There was further violation of Rules of Procedure by their filing of an alleged "Arabic Contract" in December 1994, over seven months after the court hearing, and then subsequently filing further new evidence three months later on March 9,1995, now 13 months after the court hearing.

This supposed new "contract" showed that it was completely materially different and culpable to the infringing evidence of the alleged "Arabic contract".

The Respondents now stated that the Petitioner was employed under contract to **TRANE SA**, an entity registered in Switzerland. (Emphasis added).

The purported alleged new evidence which should have been disclosed prior to the court hearing of February 26, 1994, and the filing of what the Respondents claim was a change in the structural "chain of command," shows there was absolutely no

reference to Switzerland, or any person remotely connected to Switzerland. The evidence was unambiguous it still reflected unequivocally, that American Standard Inc./ The Trane Company, La Crosse, were the owners and consequently the employers of the Petitioner.

See Appendix (T) Page (1) Copy of Respondents brief, with a copy of the "Chain of Command. (Last page of brief) Dated March 9,1995

The Respondents also claimed, in the new evidence, that the Petitioner was paid substantial "terminal pay" as per Omani Law, but again they failed to disclose to the court a unilateral decision by them of a quid pro quo, whereby they stopped a yearly bonus of \$2500, as per the American contract, in order to pay that "terminal pay".

See Appendix (F2) Copy of La Crosse internal memo of that unilateral decision

Dated March 31, 1987.

They also state they offered the Petitioner workers' compensation pursuant to Oman law but again, by subterfuge, they completely misrepresented that law and only offered the Petitioner \$ 1312 without any future health or medical aid payment which he declined to accept, and was the reason the Petitioner instigated a claim in La Crosse, Wisconsin.

See:- Appendix (S) page (2) Copy of final offer. Dated November 22,1992

For whatever ulterior motives the Respondents constituted the shell entity **TRANE SA**, which was administrated by Ernst & Young accountants, when viewed in context to the disclosure to the Petitioner, in January 2020 by the (ICIJ), it reveals the concealment of evidence and fraud.

See Appendix (V) Copy of Swiss Commerce register. Dated. 1996 and 2014

See Appendix (B2) Copy of email letter from Ernst & Young. London office stating that fact that they had acted for the Respondents at that time. Dated January 4, 2014

They conspired with Mossack Fonseca of the Panama Paper's fame exacerbating this concealment, by constituting a labyrinth of other shell companies around the world revealing an intentional act of jurisdictional manipulation to disenfranchise the Petitioner from any legal jurisdiction. See :- Hertz Corp. v. Friend - 559 U.S. 77, 130 S. Ct. 1181 (2010) under 28 U.S.C.S. § 1332(c)(1),

See Appendix (L) copies of documents disclosed by (ICIJ)

The USA Government Accountability Office Report in its December 2008 report on the use of tax havens by American corporations said:-

"they were unable to find a satisfactory definition of a tax haven but regarded the following characteristics as indicative of it" :-

" No requirement for a substantive presence"

" Nil or nominal taxes "lack of transparency in the operation of legislative, and Legal, administrative provisions." (Emphasis added)

This concealment of evidence by the Respondents impaired pending court proceedings sought in, and highly relevant to those proceedings, causing fraud on the court and violating 18 U.S.C1503, the Obstruction of Justice.

See :- U.S.A v Richard A. Lundwall and Robert W. Ulrich, 97 Cr. 0211 (BDP)

See:- United States v. Brenson, 104 F.3d 1267, 1275 (11th Cir.), "The statute [§

justice from being duly administered."

The U.S. Securities and Exchange Commission's ideology or rules of shell companies was subverted by American Standard Inc / The Trane Company See :- Lorenzo v. Securities and Exchange Commission 587 U.S.(2019), Rule 10(b)- 5, §10(b) of the Exchange Act, and §17(a)(1) of the Securities Act, and as defined under 1101(b) of Regulation AB (§ 229.1101(b) that has: (1) No or nominal operations; and (2) Either (i) No or nominal assets; (ii) Assets consisting solely of cash and cash equivalents; "**a shell company or corporation that exists only on paper and has no office and no employees.**" (Emphasis added)

Federal Corporate law of the U.S.A is regulated under the laws of a particular state, and under the regulation, a shell company is designated as follows. :-

"A shell corporation is a company with financial assets but no significant business activity. **Shell corporations don't create products. hire employees, or generate revenue.**" (Emphasis added)

The Petitioner, as an employee, also suffered as a result of that subversion, under **Collateral Consequences** of the Department of Justice Corporate Prosecution Guidance. The Petitioner has found it extremely difficult over these years to survive without health or medical aid care for himself and his family, but under these very trying times of pandemic he is particularly anxious. (Emphasis added)

See :- Department of Justice Corporate Prosecution Guidance,

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a).

See Klapprott v. United States, 335 U.S. 601, 615 (1948). "interpreting that provision indicate that it must be liberally construed to allow relief from judgments "whenever such action is appropriate to accomplish justice."

See Hazel-Atlas Glass 322 U.S. 238 (1944),

This Court considers three factors when determining whether to grant such a petition:

(1) the party seeking the writ must "have no other adequate means to attain the relief he desires a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process"; (2) the party seeking the writ must show a "clear and indisputable" right to the writ's issuance; and 3) this Court must decide, in its discretion, that the writ is appropriate under the case's circumstances.

This is a case where the Petitioner sought relief in pursuance of 28 USCA § 60 (b2)(3)(d3) Invalidating a Judgement for Fraud, for undisclosed, newly discovered evidence sought under 28 U.S.C §1651(a) All Writs Act.

In Herring v U.S.A. it was argued: July 15, 2005 : United States Court of Appeals for the Third Circuit No. 04-4270 1948, before Alito Van Antwerpen and Aldisert. The opinion of the court stated " Because an important question of the government's privilege to resist discovery is involved, we granted certiorari."

" The Government contends that because Appellants seek an equitable remedy ancillary to the prior suit of relief from a prior judgment of the District Court we should

treat this action as if it were a review of denial of a Rule 60(b) motion and therefore review for abuse of discretion. We will not treat as a Rule 60(b) motion something that is explicitly preserved without being included by the text of Rule 60(b)." Schlagenauf v. Holder, 379 U.S. 104, 109–10 (1964) (quoting Roche v Evaporated Milk Ass'n, 319 U.S. 21,24 26 (194

The Petitioner lacks an alternative means to challenge the Wisconsin Supreme Court as he cannot obtain the relief he seeks from another court. Sup. Ct. Rule 20.1; Cheney, 542 U.S. at 380–81. The Petitioner lacks a clear procedural vehicle to challenge the Wisconsin Supreme Court order in that court.

Compelling reasons exist for this Court to exercise its supervisory powers and grant certiorari under Rule 10(a). "This Court has a significant interest in supervising the administration of the judicial system," and its "interest in ensuring compliance with proper rules of judicial administration is particularly acute when those rules relate to the integrity of judicial processes." Hollingsworth, 558 U.S. at 196 (citing Rule 10(a)).

Conclusion

For the reasons set forth above, the Wisconsin Supreme Court's wilful noncompliance with this Court's rules threatens the integrity of the judicial process.

This Court's intervention is critical to ensure the integrity of the Appellate Process and to curtail the Wisconsin Supreme Court, Wisconsin's Lower Courts and the Respondents from their wilful refusal to comply with this Court's authority, rules and precedents.

The Petitioner respectfully asks this court to grant Certiorari.

Respectfully Submitted and Signed



Dated

May 11, 2020

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