

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

IN THE SUPREME COURT OF THE UNITED STATES

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ALAN SINGER, *Applicant/Petitioner*

*v.*

MONDEX CORPORATION, *Respondent*

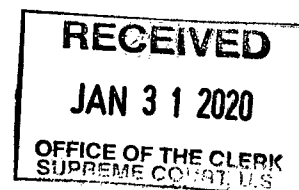
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*APPLICATION FOR EXTENSION OF TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI  
TO THE ARIZONA SUPREME COURT*

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TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE  
OF THE SUPREME COURT OF THE UNITED STATES

1. Pursuant to this Court's Rules 13.5 and 30.2, applicant-petitioner Alan Singer respectfully requests a sixty (60) day extension, to and including Monday, May 4, 2020, to file his petition for writ of certiorari in this Court. The judgment for which review is sought is *Alan Singer v. Mondex Corporation*, CV-19-0159-PR.
2. On December 5, 2019, the Arizona Supreme Court entered an order denying applicant-petitioner Alan Singer's Petition for Review, and further ordered the granting of respondent Mondex Corporation's request for attorney's fees, although that court had refused to assume jurisdiction. The above-referenced order is attached as Exhibit 1.



3. The date within which a petition for writ of certiorari would be due, if not extended, is Wednesday, March 4, 2020. This application is being filed more than ten (10) days before this date, pursuant to Rule 30.2. The jurisdiction of this Court is to be invoked under 28 USC § 1257(a).

### **GROUND FOR CERTIORARI EXIST**

4. This case presents substantial legal issues dealing with matters of international importance, which will likely become more common in investor-state-dispute-settlement litigation after the ratification by Canada of the United States-Mexico-Canada Treaty (“USMCA”). Specifically, the question arises whether a Canadian party’s choice of law may result in an implied partial waiver of personal jurisdiction, when sued in the United States.

The question arises (1) whether a choice of law, freely bargained for, is enforceable against the party, that drafted the contract; and (2) if it is, whether the provision can be construed to partially waive personal jurisdiction and the provisions of the minimum contacts test set forth in *International Shoe v. Washington* (1945) 326 U.S. 310.

Since 2012, Canadian law has employed the less stringent “real and substantial connection” in the assumption of civil jurisdiction by Canadian courts. See *Club Resorts v. Van Breda*, 2012 SCC 17.

5. Applicant-petitioner Alan Singer, an Arizona resident, appealed the dismissal of his action against Mondex Corporation, a company headquartered in Ontario, Canada for lack of personal jurisdiction. Mondex argued that it had

insufficient contacts with Arizona for that state to exercise personal jurisdiction over it.

6. Respondent Mondex did not ask for attorney's fees at the superior court, and it failed to file a cross-appeal. For the first time, on appeal to the Arizona Court of Appeals, Mondex demanded attorney's fees, claiming that the action was brought without substantial justification. However, the Court of Appeals refused to grant Mondex any attorney's fees, concluding there existed substantial justification for the action.

7. Applicant-petitioner filed a Motion for Reconsideration asking the Court of Appeals to rule on respondent Mondex's argument that the choice of law in a contract, which it created, can be followed and that the choice of law, included therein, made Arizona a proper situs for the lawsuit. A copy of the contract is attached as Exhibit 2.

Applicant-petitioner appealed to the Arizona Supreme Court which refused jurisdiction over the case, but nevertheless *sua sponte* granted attorney's fees "based upon contract" – even though the contract expressly denies attorney's fees for any party.

8. Since Arizona Supreme Court Rules do not provide for a rehearing or en banc review, applicant-petitioner had no opportunity to object to, or challenge that court's decision to grant attorney's fees. This is clearly a denial of his due process rights.

Applicant-petitioner argued that there existed sufficient contacts created by Mondex for the superior court to exercise jurisdiction over it, because the tortious actions of the company were expressly aimed at him – and respondent Mondex knew that.

### **THE NEED FOR AN EXTENSION OF TIME**

9. There is an anticipated ruling on a related case, *Alan Singer v. James Palmer a.k.a. Jonathan James Palmer and Mondex Corporation*, CV-19-0296-PR, which was partially reversed and remanded at the Court of Appeals, but remains pending at the Arizona Supreme Court. The aforementioned pending matter may significantly impact the present case.

The recently enacted USMCA is already influencing contract formation between American and Canadian entities.

10. The requested extension, if granted, will afford applicant-petitioner sufficient opportunity to submit a more detailed and cogent petition for writ of certiorari that is consistent with the standard and accuracy expected by the United States Supreme Court, while addressing substantial and important issues of law.

Applicant-petitioner did communicate with respondent's counsel concerning this extension request. Counsel for respondent advised he "does not have any objection" to a request for extension of time to file a writ of certiorari with the U.S. Supreme Court.

This requested extension of time to file will not prejudice either party to this action.

## CONCLUSION

For the foregoing reasons, applicant-petitioner hereby requests that an extension of time to, and including Monday, May 4, 2020, be granted within which he may file a petition for writ of certiorari.

Respectfully submitted on this 28<sup>th</sup> day of January, 2020.

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