No. 20-7819

In the Supreme Court of the United States

Theresa A. Logan,
Petitioner

v.

Town of Windsor, New York
Respondent

Respondent's Brief in Opposition
to Petitioner's Petition for a Writ of Certiorari

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Questions Presented

Respondents Town of Windsor, New York; Robert Briggs; Gregg Story; and New York Municipal Reciprocal Insurance Company (hereinafter collectively "Respondent") deny that Petitioner Theresa A. Logan (hereinafter "Petitioner" or "Plaintiff") presents any questions that should compel this Court to grant Petitioner's Petition for a Writ of Certiorari. Respondent further states that to the extent Petitioner's Questions Presented are understood, each presents unfounded conclusions of law to which no response is required.

As to Petitioner's Question 1, Respondent denies that Respondents Brinks or Story, or Attorneys O'Brien or Bouman, committed perjury, or that any person or entity has "allowed" them to do so. Respondent further states that Question 1 does not present a compelling reason why the Petition should be granted.

Respondent objects to Question 2 as vague and unintelligible. To the extent it is understood, Respondent denies any wrongdoing and states that Question 2 does not present a compelling reason why the Petition should be granted.

Respondent objects to Question 3 as vague and unintelligible. To the extent it is understood, Respondent denies any wrongdoing and states that Question 3 does not present a compelling reason why the Petition should be granted.

Respondent objects to Question 4 as vague and unintelligible. To the extent it is understood, Respondent denies any wrongdoing and states that Question 4 does not present a compelling reason why the Petition should be granted.

Respondent objects to Question 5 as vague and unintelligible. To the extent it is understood, Respondent denies any wrongdoing and states that Question 5 does not present a compelling reason why the Petition should be granted.

Respondent further contends that the Court of Appeals of the State of New York, and the United States Court of Appeals for the Second Circuit ruled correctly in affirming dismissal of Petitioner's personal injury Complaints.

Table of Contents and Authorities

Cases:

Statutes and Rules:

United States Code:

28 U.S.C. § 1915(a)(3)
28 U.S.C. § 1257(a)
28 U.S.C. § 1254(1)
42 U.S.C. § 1983

Fed. R. Evid. 408

Sup. Ct. R.:
Rule 10, Rule 14, Rule 15

New York State Vehicle and Traffic Law § 1103(b)

New York State Insurance Law § 5102, 5104

Opinions Below

This matter arises out of personal injuries Petitioner claims she sustained as the result of an alleged encounter with a municipal snowplow in 2011.

A. New York State Court

By Decision & Order dated June 11, 2015, the New York State Supreme Court denied without prejudice Defendant's Motions for Summary Judgment, and granted Petitioner leave to amend her Complaint and Bill of Particulars. *Theresa Odejimi v. Town of Windsor*, No. #2011-2394, (N.Y. Sup. Ct. June 11, 2016).

By Decision & Order dated May 25, 2016 and filed in the Broome County Clerk's Office on May 25, 2016, the New York State Supreme Court granted the Defendant's Motion for Summary Judgment dismissing the Petitioner's Complaint against it, on the basis that Petitioner failed to produce legally sufficient evidence of statutorily-defined serious injury that was causally related to the alleged incident. *Theresa Odejimi v. Town of Windsor*, No. #2011-2394, (N.Y. Sup. Ct. May 25, 2016).

Plaintiff/Appellant filed a Notice of Appeal to the New York State Supreme Court Appellate Division, Third Department. Respondent moved that court for an Order dismissing the Appellant's Appeal. In a Decision and Order on Motion of the Appellate Division, Third

Department, decided and entered on October 6, 2016, the Respondent's Motion to Dismiss the Appeal was granted. As part of the court's Decision and Order, the Appellant's motion for Permission to Proceed as a Poor Person was denied. *THERESA ODEJIMI, Appellant, v. TOWN OF WINDSOR, Respondent.*, No. # 523549, (N.Y. App. Div. Oct. 6, 2016).

Plaintiff's subsequent Motion for Oral Reconsideration and for Further Relief was denied by Decision and Order of the Appellate Division, Third Department. *THERESA ODEJIMI, Appellant, v. TOWN OF WINDSOR, Respondent.*, No. # 523549, (N.Y. App. Div. Jan. 19, 2017).

Plaintiff's subsequent Motion for Reversible Error was denied by Decision and Order of the Appellate Division, Third Department. *THERESA ODEJIMI, Appellant, v. TOWN OF WINDSOR, Respondent.*, No. # 523549, (N.Y. App. Div. Mar. 16, 2017).

Plaintiff filed a Motion for Leave to Appeal in the Court of Appeals of the State of New York. The court dismissed the motion upon the ground that the court did not have jurisdiction to entertain it, and Plaintiff's Motion for Poor Person Relief was dismissed as academic on June 8, 2017. *Odejimi v. Town of Windsor*, 29 N.Y.3d 1074, 79 N.E.3d 1124, 1124, *reargument denied*, 29 N.Y.3d 1117, 83 N.E.3d 849 (September 12, 2017).

B. Federal Court

Relevant federal procedural documents and decisions are available at the United States District Court for the Northern District of New York, Docket No. 3:18-cv-593, at the United States Court of Appeals for the Second Circuit at Docket No. 19-143 (collectively, "*Logan I*"), as well as at the United States District Court for the Northern District of New York, Docket No. 3 19-cv-1590, and at the United States Court of Appeals for the Second Circuit at Docket No. 20-2518 (collectively, "*Logan II*").

Petitioner commenced an action on May 18, 2018 in the United States District Court for the Northern District of New York, along with a motion for leave to proceed *in forma pauperis*, based on the same set of allegations that formed the basis of her New York State complaint. Complaint, *Logan v. Town of Windsor*, No. 3:18-cv-593, #1-2 (N.D.N.Y. 2018). On June 26, 2018, by Order, Report, and Recommendation by Magistrate Judge Peebles, the Court accepted her application to proceed *in forma pauperis* and dismissed her complaint for lack of subject matter jurisdiction with leave to amend her complaint. Order, Report, and Recommendations, *Logan v. Town of Windsor*, No. 3:18-cv-593, #4 (N.D.N.Y. 2018).

On July 11, 2018, Petitioner filed her first amended complaint. Docket No. 3:18-cv-593, #5. By Decision and Order dated August 14, 2018, District Judge Suddaby adopted Magistrate Peebles's Order,

Report, and Recommendation, but did not find that the Court lacked subject matter jurisdiction. Decision and Order, *Logan v. Town of Windsor*, No. 3:18-cv-593, #6 (N.D.N.Y. 2018). The Court stated, "the strongest claim that Petitioner attempts to be asserting is a constitutional claim pursuant to 42 U.S.C. § 1983." *Id.* at 3. The Court noted that a failure to cure this defect would not be a dismissal for lack of subject matter jurisdiction, but instead a dismissal for failure to state a claim. *Id.* The Court also noted Petitioner failed to cure the defects identified by Magistrate Peebles, such as there were no facts plausibly alleging federal discrimination, there were no facts alleging diversity of citizenship, no allegations that either events occurring within three years of the date of the filing of the complaint or facts plausibly suggesting an exception to the statute of limitations; and the lack of factual allegations plausibly suggesting that either the town or its two employees violated her rights under either the Fourteenth or First Amendment. *Id.* at 3-4.

The Court also noted, "the Amended Complaint does not solve the apparent problems posed by the filing of a prior state-court action arising from the same events (e.g., problems of ripeness and/or problems stemming from the doctrines of collateral estoppel and/or res judicata) given that the Amended Complaint continues to reference the state-court action." *Id.* Recognizing Petitioner did not have the benefit of this

decision, the District Court granted her one final chance to amend her complaint in accordance with the Decision and Order. *Id.* at 5.

On September 14, 2018, Petitioner filed a Second Amended Complaint with seven exhibits. Amended Complaint, *Logan v. Town of Windsor*, No. 3:18-cv-593, #7 (N.D.N.Y. 2018).

By Report and Recommendation dated September 28, 2018, Magistrate Peebles recommended the district court dismiss the Second Amended Complaint without leave to amend. Report and Recommendation, *Logan v. Town of Windsor*, No. 3:18-cv-593, #8 (N.D.N.Y. 2018).

In light of Judge Suddaby's Decision and Order, the Court analyzed whether Petitioner plausibly alleged claims under the 14th Amendment and the state-created danger doctrine and a First Amendment access to courts claim. *Id.* at 9.

The Court held that Petitioner failed to plausibly allege a violation state-created danger doctrine, and recommended dismissal of this claim. *Id.* The Court also recommended dismissing Petitioner's First Amendment access to courts claim. *Id.* at 14.

The Court also recommended against exercising supplemental jurisdiction over Petitioner's tort claims since she failed to plausibly allege any federal claims pursuant to 42 U.S.C. § 1983. *Id.* at 16. The

Court considered several factors in its analysis, including judicial economy, fairness, and comity, which militated against exercise of supplemental jurisdiction. *Id.* Accordingly, the Court recommended against exercising supplemental jurisdiction. *Id.*

Since Petitioner was provided an opportunity to cure "the precise deficiencies discerned in her original pleadings," the Court denied leave to amend. *Id.* at 17. As the Court recommended dismissal of both her federal claims, recommended against exercising supplemental jurisdiction over her state tort law claims, and denied leave to amend, the Court recommended dismissal of Petitioner's Second Amended Complaint with prejudice. *Id.* at 18.

Petitioner requested an extension to file an objection to the report recommendation, which was granted by the court by Text Order dated October 10, 2018. Letter Motion at 11, *Logan v. Town of Windsor*, No. 3:18-cv-593, #9 (N.D.N.Y. 2018). Petitioner also filed a motion to appoint counsel on October 10, 2018.

Petitioner filed her objection on October 19, 2018, failing to specify the grounds for her objection. Objections, *Logan v. Town of Windsor*, No. 3:18-cv-593, #12 (N.D.N.Y. 2018).

Petitioner filed a Third Amended Complaint on October 19, 2018. Amended Complaint, *Logan v. Town of Windsor*, No. 3:18-cv-593, #13

(N.D.N.Y. 2018). By Decision and Order dated December 17, 2018, the Court held Petitioner's Third Amended Complaint was a nullity since it was filed without leave by the Court. Decision and Order, *Logan v. Town of Windsor*, No. 3:18-cv-593, #14 (N.D.N.Y. 2018). The Court also noted that Plaintiff's objection to the Report-Recommendation failed to provide a specific challenge and was therefore subject to a clear error review. *Id.* Under clear error, the District Court found no clear error in the Report Recommendation. *Id.* at 3. As there was no clear error, the Court adopted the Report-Recommendation in its entirety and dismissed the Second Amended Complaint, also denying Petitioner's motion to appoint counsel as moot. *Id.* It also noted Petitioner's motion is unsupported by a showing of cause warranting appointment of counsel. *Id.* at 3-4. The Court also certified that an appeal from this Decision and Order would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3).

A judgment was filed on December 17, 2018 Judgment, *Logan v. Town of Windsor*, No. 3:18-cv-593, #15 (N.D.N.Y. 2018). Petitioner filed a notice of appeal on January 11, 2019. Notice of Appeal, *Logan v. Town of Windsor*, No. 3:18-cv-593, #16 (N.D.N.Y. 2018).

On January 24, 2019, Petitioner filed Motions with the United States Court of Appeals for the Second Circuit for appointment of counsel, which the Court also construed as a motion to seek leave to

proceed in forma pauperis, and appealed the District Court decision. No. Motion, *Logan v. Town of Windsor*, 19-143, #13. (2nd Cir. 2019).

By Decision and Order dated April 26, 2019 the United States Court of Appeals for the Second Circuit denied Petitioner's Motion for appointment of counsel and/or motion to seek leave to proceed in forma pauperis, and dismissed Petitioner's appeal as lacking an arguable basis in law or fact. Motion Order, *Logan v. Town of Windsor*, 19-143, #21. (2nd Cir. 2019).

On May 8, 2019, Plaintiff moved the Court for reconsideration of its April 26, 2019 Decision and Order. Motion, *Logan v. Town of Windsor*, 19-143, #21. (2nd Cir. 2019).

On May 29, 2019, the Court denied Petitioner's motion for reconsideration, and denied as moot Petitioner's motion to seek leave to proceed in forma pauperis. Motion Order, *Logan v. Town of Windsor*, 19-143, #29. (2nd Cir. 2019).

On June 5, 2019, the United States Court of Appeals for the Second Circuit issued a mandate pertaining to its April 26, 2019 Decision and Order. Certified Copy of Order, *Logan v. Town of Windsor*, 19-143, #34. (2nd Cir. 2019).

On July 2, 2019, Petitioner filed a Petitioner for Writ of Certiorari with this Court, which was denied on October 7, 2019.

On December 20, 2019, Petitioner commenced *Logan II* by filing a Complaint in the United States District Court for the Northern District of New York. Complaint, *Logan v. Town of Windsor*, 3:19-cv-01590, #1. (N.D.N.Y. 2020)

On April 23, 2020, Magistrate Lovric issued an Order and Report and Recommendation that the *Logan II* Complaint be dismissed without leave to replead for lack of subject matter jurisdiction, reasoning that the Complaint evinced no federal claim, and noting that the *Logan II* Complaint was virtually identical to the *Logan I* Complaint. Order and Report-Recommendation, *Logan v. Town of Windsor*, 3:19-cv-01590, #5. (N.D.N.Y. 2020).

On July 20, 2020, over Petitioner's objection, Chief Judge Glenn T. Suddaby adopted the Report and Recommendation in its entirety and dismissed the *Logan II* Complaint for lack of subject matter jurisdiction. Decision and Order, *Logan v. Town of Windsor*, 3:19-cv-01590, #5. (N.D.N.Y. 2020).

On July 29, 2020, Petitioner filed a Notice of Appeal to the United States Court of Appeals for the Second Circuit. Notice of Appeal, *Logan v. Town of Windsor*, 3:19-cv-01590, #14. (N.D.N.Y. 2020). Petitioner filed an Appeal in August, 2020. *Logan v. Town of Windsor*, 3:19-cv-01590, #1-#21. (2nd Cir. 2020). Respondent opposed this Appeal. Oral argument was held on January 12, 2021.

On January 25, 2021, the United States Court of Appeals for the Second Circuit affirmed the decision of the district court dismissing the Complaint. Summary Order and Judgment, *Logan v. Town of Windsor*, 3:19-cv-01590, #82. (2nd Cir. 2020).

Statement of Jurisdiction

It is unclear on what grounds Petitioner invokes this Court's jurisdiction. Petitioner incorrectly asserts that the date on which the highest state court decided her case was January 25, 2021. The Court of Appeals of the State of New York dismissed Petitioner's motion for leave to appeal on June 8, 2017. To the extent that Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a), this Court has previously denied a Petition for Writ of Certiorari based on the June 8, 2017 ruling on February 20, 2018, and with respect, should do so again. The final judgment of the Court of Appeals of the State of New York did not draw into question the validity of any treaty or statute of the United States, or the validity of any statute of any State on the ground that such treaty or statute is repugnant to the Constitution of the United States. Nor was any title, right, privilege, or immunity specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

While Petitioner now invokes New York State Vehicle and Traffic Law § 1103(b), neither her New York State action nor her two federal actions turned on this statute. Petitioner is clearly abusing the legal process with meritless filings intended to harass and incur expense.

In the event that Petitioner is invoking this Court's jurisdiction under 28 U.S.C. § 1254(1), Petitioner erroneously asserts that the date on which the US Court of Appeals decided her case was August 3, 2020. The U.S. Court of Appeals first decided her case on April 26, 2019, and issued a mandate on June 5, 2019. The U.S. Court of Appeals next decided her case on March 19, 2021, affirming the district court's dismissal of her complaint.

Statement of Facts

This case arose out of the removal of snow on a public highway by the Town of Windsor, by its snowplow while engaged in highway work and maintenance, namely, snow removal that occurred on March 7, 2011, at 50 Williams Road in the Town of Windsor, County of Broome, State of New York. The Plaintiff, Theresa Odejimi, now known as Theresa Logan, alleged that she was parked to the side of Williams Road, about 8-10 feet onto her property and had been brushing, clearing, and shoveling snow from her parked vehicle, when a snowplow driven by a Town of Windsor employee allegedly caused snow to come into contact with her, an allegation Respondent denies.

Defendant moved for summary judgment dismissing the complaint on the basis that Plaintiff has not sustained a causally related serious injury as defined by New York State Insurance Law § 5102(d), a prerequisite for bringing a claim in New York State arising out of a motor vehicle accident, including an accident involving a snowplow and pedestrian. The Supreme Court of New York State held that the Plaintiff failed to raise triable questions of fact as a matter of law as to whether she had sustained a causally related serious injury as defined by New York State Insurance law § 5102(d) and the Plaintiff's case was dismissed in its entirety. Petitioner then appealed to the New York State Supreme Court, Appellate Division, which denied Petitioner's appeal.

Petitioner appealed to the Court of Appeals of New York State, which denied her appeal. On December 11, 2017, Petitioner filed with this Court a Petition for a Writ of Certiorari to review the decision of the Court of Appeals of the State of New York. This Court declined to grant that Petition.

On May 18, 2018, over four years after the statute of limitations on Petitioner's original claim had run, Petitioner proceeded to attempt to pursue her personal injury action based on the same set of allegations in the United States District Court for the Northern District of New York. Her Complaint was ultimately dismissed by the District Court and, following an appeal, by the United States Court of Appeals for the Second Circuit. On December 20, 2019, over five years after the statute of limitations had run, Petitioner commenced *Logan II*, based on the same set of allegations as *Logan I* and the same underlying facts as the state action. The United States Court of Appeals for the Second Circuit affirmed the United States District Court for the Northern District of New York 's dismissal of the *Logan II* complaint.

Reasons for Denying the Petition

1. Petitioner has not asserted a compelling reason for the Court to grant the Petition

Rule 10 of the Rules of the Supreme Court of the United States lists three categories that are more likely to give rise to compelling reasons for the Court to grant a petition for a writ of certiorari.

The first category concerns United States Courts of Appeals, and lists three scenarios: the first is a decision of one US Court of Appeals has issued a decision in conflict with another, which is inapplicable here. The second scenario concerns federal questions; no federal question was raised in the New York State or federal matters. The third concerns a court that has departed from the accepted and usual course of judicial proceedings, which the facts in this case do not support. U.S. Sup. Ct. R. 10. Mrs. Logan's objections to various court decisions over the years appear to be that they have not gone her way.

The second category is when "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals." U.S. Sup. Ct. R. 10. This scenario is also inapplicable to the instant matter, in which the Court of Appeals of the State of New York affirmed the trial court and Appellate Division in a controversy where no important federal question was raised. And the third scenario also involves "important question[s] of federal law" or "important federal

questions," *Id.*, neither of which were present in Petitioner's attempts in New York State or federal court. Lastly, Rule 10 provides that "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." *Id.*

The instant petition concerns allegedly erroneous findings of fact, and makes no mention of any federal law or question, and is without "[a] direct and concise argument amplifying the reasons relied on for allowance of the writ" as required by Rule 14 of the Rules of the Supreme Court of the United States. U.S. Sup. Ct. R. 14. The petition is facially deficient with respect to the guidelines of Rule 10.

For this reason, Respondent respectfully requests that the Court deny Petitioner's Petition for Writ of Certiorari.

2. Petitioner has failed to present points requiring the Court's consideration with accuracy, brevity, and clarity.

The Petition is rife with violations of Rule 14 of the Supreme Court of the United States. The following is a representative, non-exclusive list of those violations:

Petitioner's questions presented, in addition lacking the requisite national importance described in Rule 10 (see above), are not expressed concisely, contain unnecessary detail, and are argumentative and

repetitive, in contravention U.S. Sup. Ct. R. 14 (1)(a). In addition, Petitioner's questions presented and other assertions frequently lack clear meaning.

Petitioner's table of contents is incomprehensible, in contravention of U.S. Sup. Ct. R. 14 (1)(c).

Petitioner does not include an intelligible statement of the basis for jurisdiction in this Court, as required by U.S. Sup. Ct. R. 14 (1)(e).

Petitioner does not comply with the requirements of U.S. Sup. Ct. R. 14 (1)(f). In addition, the "Constitutional and Statutory Provisions Involved" section references clearly inapplicable Constitutional Amendments, as well as New York State Vehicle and Traffic Law § 1103(b), exempting persons and vehicles engaged in highway work from liability unless the conduct causing injury rises to the level of reckless disregard. Petitioner's case was not dismissed on the basis of this statute. Petitioner's case was dismissed on summary judgment on May 25, 2016 because after having been given numerous chances to demonstrate a triable question of fact, she was unable to submit proof of serious injury in legally sufficient form, pursuant to New York State Insurance Law § 5102, 5104, and case law applying that statute.

Petitioner's statement of the case is not concise, and fails to identify any federal questions sought to be reviewed, let alone when in the state or federal court proceedings those questions were raised, the

method and manner of their raising, the way in which they were passed on by the state and federal courts, or any pertinent quotations of specific portions of the record where such questions might have appeared, as required by U.S. Sup. Ct. R. 14 (1)(g)(i). Petitioner fails to identify any instance where the US Court of Appeals for the Second Circuit, or any lower federal or state court, departed from the accepted and usual course of judicial proceedings.

Petitioner's "Reasons for Granting the Petition" are similarly unintelligible and unavailing. Petitioner alleges that legal errors were made by lower courts, however, she has now appealed three times. No court found any basis to overturn any result. To the extent that Petitioner contends she has not been given a "concrete explanation" as to why she has not prevailed, she need only read the various decisions of each court for such explanations. Petitioner's contention that the undersigned's associate, Thomas Bouman, Esq., perjured himself in some way is simply not understood. To the extent it is understood, it is denied in the sense that at no time did Mr. Bouman state, set forth, or suggest that "Mrs. Logan was living homeless on the streets, domicile…" (Petition, p. 44). He would have had no reason to. Petitioner's residence is only faintly at issue to the extent that she, as a resident of New York State, would not be able to proceed in federal court against a New York

State-domiciled defendant on the basis of diversity jurisdiction, which in any event was not a jurisdictional basis she asserted.

Rule 14 provides, "[t]he failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition." U.S. Sup. Ct. R. 14. This rule is consistent with Court rulings denying petitions for writs of certiorari: "Unless [petitions] are carefully prepared, contain *appropriate* references to the record, and present with *studied accuracy, brevity, and clearness* whatever is essential to ready and adequate understanding of points requiring our attention, the rights of interested parties may be prejudiced and the court will be impeded in its efforts properly to dispose of the causes which constantly crowd its docket." *Furness, Withy & Co. v. Yang-Tsze Ins. Ass'n*, 242 U.S. 430, 434, 37 S. Ct. 141, 142, 61 L. Ed. 409 (1917).

The Petition meets neither the formal requirements of the Rules of the Supreme Court of the United States nor the formal requirements of the Court's case law. These deficiencies of accuracy and clarity are pervasive, and will certainly prejudice the rights of the Respondent should this Petition be granted. For this reason, Respondent respectfully requests that the Court deny the Petition for a Writ of Certiorari.

3. Petitioner has made numerous misstatements of fact and law

Rule 15 of the Rules of the Supreme Court of the United States requires Respondent to identify in its opposing brief any misstatements of fact or law made by the Petitioner, or waive raising them subsequently.

A. First Section

Petitioner's brief opens with an unidentified section offering erroneous legal conclusions, allegations, and misstatements of fact. Respondent denies each and every allegation and suggestion that they or their attorneys were untruthful in any way.

Respondent denies the allegations that they committed any tortious conduct, including but not limited to improper or reckless operation of the snowplow and speeding.

As set forth in a previous section, Petitioner's allegations with respect to statements made regarding her domicile are not understood. Neither the undersigned nor Attorney Bouman stated, set forth, or suggested that Petitioner was "domiciled, or living on the streets" or did not own her home. That is simply not an issue in this case, but to the extent Petitioner alleges that either attorney made a false statement in any respect, that is specifically and vehemently denied.

Petitioner's contentions with regard to the timing of the suit are similarly unintelligible. Respondent does not dispute that Petitioner

first brought suit in New York State Supreme Court in 2014, based on an event that allegedly occurred in 2011. The state court action was dismissed on summary judgment, based on lack of competent proof of causally-related serious injury. Petitioner then proceeded to commence two (2) federal lawsuits based on the same allegations in 2018 and 2019, both of which were dismissed.

Respondent lacks knowledge and information sufficient to form a belief as to the nature of Petitioner's legal representation, except to state that Petitioner is not entitled to the services of an attorney as regards her personal injury case. Her inability to retain legal representation is not relevant to her Petition, and may simply reflect that Petitioner had no meritorious case.

Petitioner contends that Respondent has somehow "switched attorneys" in that the undersigned requested and received the assistance of Mr. Bouman, who is an associate of my law firm. Petitioner further suggests that this is somehow improper. Respondent denies that this is improper and further states that it is commonplace for associates of a law firm to assist partners of a law firm in legal matters.

Respondent mischaracterizes Mr. Bouman's statements at oral argument at the U.S. Court of Appeals. Respondent further states that Mr. Bouman's arguments were consistent with the district court's decision, which dismissed the complaint based on lack of subject matter

jurisdiction. Mr. Bouman also emphasized that Mrs. Logan unsuccessfully pursued her claims three times, once in state court and twice in federal court, and that the doctrine of *res judicata* could also have been a ground for dismissal.

Petitioner alleges that Respondent made factual errors in the New York State action. Respondent denies that such errors were made as to her residence at the time of the alleged incident, or as regards the weather conditions, and further states that such errors, even if they had been made, were not of any significance to the outcome of the state action.

Respondent denies any improper or reckless use of the snowplow, deny causing Petitioner injury, and deny taunting her after the fact.

Respondent lacks knowledge and information sufficient to form a belief as to Petitioner's claimed injuries, symptoms, treatment, or legal representation.

To the extent Petitioner references settlement discussions, it is for the apparent purpose of attempting to show that Respondent is liable for her alleged injuries, and Respondent objects to such material when used for that purpose. Fed. R. Evid. 408.

Respondent denies that Petitioner is entitled to the driving records of Mr. Briggs or Mr. Story, and specifically denies that Mr. Briggs or Mr. Story were in any way impaired at the time of the alleged

incident. Petitioner had an opportunity to explore these theories in the discovery phase of the New York State action. Contrary to Petitioner's assertion, it is not the role of the "lower courts" to ask such questions of Respondent on behalf of Petitioner; it was Petitioner's role to martial evidence. Once again, Petitioner's case was dismissed for failure to create a triable issue of fact as to New York State's statutory serious injury requirement, which had nothing to do with Mr. Briggs' or Mr. Story's alleged conduct.

Respondent denies targeting Petitioner or her husband with any conduct, harassing or otherwise, and denies the conduct described on pages 17-19 of the Petition.

B. Petitioner's Statement of the Case

1. Respondent denies that Petitioner was seriously injured as a result of any action or omission or Respondent, and denies each and every allegation that Respondent engaged in tortious conduct of any kind.

2. Respondent lacks knowledge and information sufficient to form a belief as to Paragraph 2, 3, or 4.

C. Petitioner's Reasons for Granting the Petition

1. Paragraph 1 presents legal conclusions to which no response is required. To the extent a response is required: denied.

2. Respondent objects to Paragraph 2 as unintelligible. To the extent Paragraph 2 is understood, Respondents deny that any lower court decision should be overturned.

3. Respondent objects to Paragraph 3 as unintelligible. As previously stated, Respondent denies that the undersigned's associate Thomas Bouman's assistance in this matter has been in any way improper, and deny that Mr. Bouman ever made the assertions described.

4. Respondent lacks knowledge and information sufficient to form a belief as to Paragraph 4.

5. Respondent objects to Paragraph 5 as unintelligible. To the extent Paragraph 5 is understood, Respondents deny that any lower court decision regarding Petitioner's should be overturned.

4. The State and Federal Actions Were Decided Correctly

The record in this case indicates that Petitioner had ample opportunity to pursue her personal injury action in New York State Courts, with the Appellate Division and the Court of Appeals for the State of New York reviewing the trial court's decision. Petitioner's New York State action was decided correctly with no federal question or controversy presented to require this Court's review.

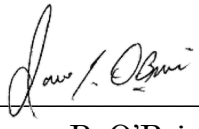
Petitioner's personal injury claim was properly dismissed at the United States District Court and appellate level, twice. The record demonstrates that Petitioner was given ample opportunity to state a federal claim and failed to do so. In addition, Petitioner's attempt to pursue her personal injury action in federal court is time-barred and barred by the doctrine of res judicata. There is no indication in the federal record of any departure from accepted and usual judicial proceedings.

Conclusion

For the reasons stated above, Respondent respectfully requests this Court deny Petitioner's Petition for Writ of Certiorari.

Respectfully Submitted,

April 26, 2021



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