

08/02/21
MO

NO: 21-208

IN THE
SUPREME COURT OF THE UNITED STATES

MERRILEE STEWART, PETITIONER

V.

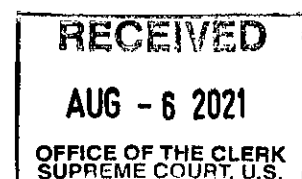
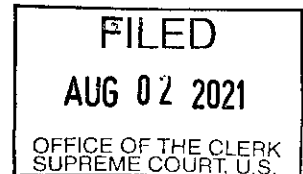
IHT INSURANCE AGENCY GROUP LLC WELFARE BENEFITS PLAN,
ET AL., RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
CINCINNATI, OHIO

PETITION FOR WRIT OF CERTIORARI

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I. The questions presented for review

A. In recognition of the escalation of the disease of addiction and deaths, "over 81,000 drug overdose deaths occurred in the United States in the 12 months ending in May 2020, the highest number of overdose deaths ever recorded in a 12-month period" ⁽¹⁾, this Supreme Court should grant review because, by doing so, this court can clarify the civil liberties, privacy, protections and private right of action afforded a Drug Addict in recovery addressed in the Americans with Disabilities Act, the Affordable Care Act, ERISA law and the Constitution of these United States.

Question presented for review: Before an employee may have been deemed to have waived the comprehensive rights, remedies and procedural protections prescribed in civil rights statutes, must there at least be a knowing agreement to Arbitrate those employment disputes?

B. If a decision to dismiss is predicated by the unclean hands of officers of the court presenting egregious errors of fact and in violation of law then shall not the highest court in this land review?

Question(s) presented for review: 1) Does the 6th Circuit court have the duty to uphold the constitutional protections that have been denied and withheld from a citizen because an officer of the court has committed fraud upon the court, and 2) Is the corporations fraudulent transfer of all assets, facilitated by counsel, to avoid known creditors, a criminal offense?

Note: If this petition is accepted, an Attorney who is licensed to the bar of this court will conduct oral argument.

⁽¹⁾ The Centers for Disease Control (CDC) stated in a December 2020 press release that "over 81,000 drug overdose deaths occurred in the United States in the 12 months ending in May 2020, the highest number of overdose deaths ever recorded in a 12-month period." Even though overdoses were increasing prior to the pandemic, the CDC states that "the latest numbers suggest an acceleration of overdose death during the pandemic."

II. Parties to the proceedings.

The caption contains the names of all the parties to the proceedings.

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**OPINIONS: List of all proceedings in state and appellate courts
that are directly related to the case in this Court
and challenges the same convictions as is challenged in this court.**

Appendix	Judgement Entry	Docket no.	Court	•Pages 1-7
A	Decided & filed: March 5, 2021	20-3754	United States Court of Appeals for the Sixth Circuit Cincinnati, Ohio	
Case Caption: Case No. 20-3754, Merrilee Stewart, et al v. IHT Insurance Agency Group, et al				
Description: Appeal from the United States District Court for the Southern District of Ohio at Columbus, No. 2:16-cv-00210, James L. Graham, District Judge.				
Status: Appeal was denied				

Appendix	Judgement Entry	Docket no.	Court	•Pages 8-20
B	Decided & filed: June 15, 2020	2:16-cv- 00210	United States Court of Appeals for the Sixth Circuit Cincinnati, Ohio	
Case Caption: Merrilee Stewart, et al v. IHT Insurance Agency Group, et al				
Description: Opinion & Order, Case: 2:16-cv-00210-JLG-KAJ Doc #: 72 Filed: 06/15/20 Page: 1 of 12 PAGEID #: 1128				
Status: Case was dismissed with prejudice				

Appendix	Judgement Entry	Docket no.	Court	•Pages 21-23
C	Filed: March 8, 2016	16-cv- 001761	In the Court of Common Pleas Franklin County, Ohio	
Case Caption: Merrilee Stewart v. IHT Insurance Agency Group, et al, Case No. 16-cv-001761				
Description: Defendants Notice of filing notice of removal (R. OC944, U89)				
Status: Case was removed to Federal Court by Defendants				

Appendix	Judgement Entry	Docket no.	Court	•Pages 24-25
D	Filed: March 14, 2018	2016-CV- 0127	In the Court of Common Pleas Wood County, Ohio	
Case Caption: Merrilee Stewart v. Fritz W. Griffioen, et al				
Description: Order Continuing Stay, the Court ordered this case to be stayed, pending arbitration, on September 8, 2017 and on March 12, 2018 Defendants filed a Status Report and requested the matter remain stayed.				
Status: Case remains stayed				

**OPINIONS: List of all proceedings in state and appellate courts
that are directly related to the case in this Court
and challenges the same convictions as is challenged in this court.**

Appendix	Judgement Entry	Docket no.	Court	♦Pages 26-34
E	Decided & filed: November 10, 2015	15-cv-1842	Franklin County Ohio Court of Common Pleas Civil Division	
Case Caption: RRL Holding Company of Ohio LLC, et al v. Merrilee Stewart, et al				
Description: Stay Order, pending arbitration, from Franklin County Ohio Court of Common Pleas Civil Division, Case No. 15CV1842, Judge Kim J. Brown				
Status: Case remains stayed				

Appendix	Judgement Entry	Docket no.	Court	♦Pages 35-53
F	Pending	2021-0385	The Supreme Court of Ohio	
Case Caption: RRL Holding Company of Ohio LLC, et al v. Merrilee Stewart, et al				
Description: Motion for Reconsideration, On Appeal from Tenth District Court of Appeals Case No. 20-AP-674, from lower court (C.P.C. 15-CV-1842)				
Status: Filed and accepted on June 21, 2021, Decision is pending				

Appendix	Judgement Entry	Docket no.	Court	♦Pages 54-83
G	Pending	20-AP-493	Tenth District Court of Appeals Franklin County, Ohio	
Case Caption: RRL Holding Company of Ohio LLC, et al v. Merrilee Stewart, et al				
Description: On appeal from Franklin County Ohio Court of Common Pleas Civil Division, Case No. 15CV1842, Judge Kim J. Brown				
Status: Fully briefed as of March 26, 2021 Decision is pending				

Appendix	Judgement Entry	Docket no.	Court	♦Pages 84-124
H	Decided & filed: 01/23/2020	19AP202	Tenth District Court of Appeals Franklin County, Ohio	
Case Caption: RRL Holding Company of Ohio LLC, et al v. Merrilee Stewart, et al				
Description: Decision "On remand, the trial court shall vacate that finding and any award of sanctions or attorney fees pertaining thereto."				
Status: Franklin County, Ohio Common Pleas Court Judge Kim J. Brown refuses to hold the hearing as was ordered by the higher court. Case No. 15CV1842				

TABLE OF AUTHORITIES

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5 U.S.C.S. § 552(b)(7)(C)	3
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15 W. FLETCHER, <i>supra</i> note 1, §§ 7157, 7158 & 7162.1 (damage remedy) (rev. vol. 1973). 106. <i>Id</i> § 7160.	4
3 W. FLETCHER, <i>supra</i> note I, § 921 (rev. vol. 1975). Such conflicts render the transaction voidable by the corporation. See <i>Id</i> § 913.	4
7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23	3
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III. Citations of the opinions and orders entered in the case by courts.

A. This Case.

- i. United States Court of Appeals for the Sixth Circuit Cincinnati, Ohio, Decided & filed: March 5, 2021, Case No. 20-3754, Merrilee Stewart, et al v. IHT Insurance Agency Group, et al Originating Case No. 2:16-cv-00210. "Appeal Denied" See Appendix A.
- ii. United States District Court for the Southern District of Ohio at Columbus, Decided & filed: June 15, 2020, Case No. 2:16-cv-00210 Merrilee Stewart, et al v. IHT Insurance Agency Group, et al. "Case Dismissed" See Appendix B.
- iii. In the Court of Common Pleas Franklin County, Ohio, Filed March 8, 2016, Case No. 16-cv-001761 Merrilee Stewart v. IHT Insurance Agency Group, et al. "Defendants Notice of filing notice of removal" See Appendix C.

B. Decided related cases.

Tenth District Court of Appeals Franklin County, Ohio, Decided & filed: 01/23/2020, Case 19AP202, Case Caption: RRL Holding Company of Ohio LLC, et al v. Merrilee Stewart, et al., See Appendix H and quoted in part below.

¶10 Appellees claimed appellant violated the Agreed Entry by claiming to be an owner and authorized agent of IHT and RRL to: (1) the Ohio Civil Rights Commission ("civil rights commission"); (2) the Columbus Police Department ("police"); (3) Hartford Insurance ("Hartford"); and (4) Liberty Mutual Insurance ("Liberty") (collectively "insurance companies").

¶46 We agree the trial court did not give appellant an opportunity to rebut its initial finding of violations of the Agreed Entry with regard to the civil rights commission's claim and the police report and abused its discretion in not reconsidering its interlocutory finding of November 7, 2016 and May 17, 2017, and in entering the final decision of March 15, 2019 with regard to the insurance claims. This is evidenced in the court's implicit rejection, without any reference thereto of the September 18, 2017 Notice and exhibits thereto and appellant's objections to the magistrates' decisions. It is also evidenced by the court's express words in its decisions.

¶71 Quoted, in Part: "On remand, the court shall hold a hearing" "On remand, the trial court shall vacate that finding and any award of sanctions or attorney fees pertaining thereto."

Status: The Opinion, to vacate and remand for hearing of the Tenth District Court of Appeals Franklin County, Ohio Case No. 19AP202 entered on January 23, 2020 from the Appeal from Franklin County Ohio Court of Common Pleas, Case No. 15CV1842 special proceedings is being ignored by Common Pleas court Judge Kim J Brown. The Judge refuses to comply with the order of the Tenth District Court of Appeals and afford the Petitioner a hearing, Franklin County, Ohio Common Pleas Court.

C. Related Cases Stayed Pending Arbitration (which concluded December 8, 2017).

i. In the Court of Common Pleas Wood County, Ohio, Filed March 14, 2018, Case 2016-CV-0127 Merrilee Stewart v. Fritz W. Griffioen, et al, "Order Continuing Stay", the Court ordered this case to be stayed, pending arbitration, on September 8, 2017 and on March 12, 2018 Defendants filed a Status Report and requested the matter remain stayed. Case remains stayed See Appendix D.

ii. In the Court of Common Pleas Franklin County, Ohio, Decided & filed: November 10, 2015, Case 15-cv-1842, Case Caption: RRL Holding Company of Ohio LLC, et al v. Merrilee Stewart, et al., Stay Order, pending arbitration. Judge Kim J. Brown refuses to lift the stay so the case remains stayed. See Appendix E.

D. Pending and related cases.

i. The Supreme Court of Ohio, Case No. 2021-0385, Case Caption: RRL Holding Company of Ohio LLC, et al v. Merrilee Stewart, et al., See Appendix F

Status: Filed and accepted as of June 21, 2021, Decision is pending

ii. Tenth District Court of Appeals Franklin County, Ohio, Case No. 20AP493, Case Caption: RRL Holding Company of Ohio LLC, et al v. Merrilee Stewart, et al, See Appendix G

Status: Fully briefed as of March 26, 2021, Decision is pending

IV. The basis for jurisdiction.

This Court's jurisdiction is drawn from 28 U.S.C. § 1257(a).

V. Constitution and Legal Principles.

A. Arbitration of Civil Rights and Employment Discrimination Claims.

In this case, the Arbitration Clause contained in the RRL Buy Sell Agreement did not put Petitioner Merrilee Stewart or her disabled son on notice that she/he was waiving her/his rights to pursue civil rights and employment discrimination claims against IHT Insurance Agency Group LLC or the health plan administrator Fritz W. Griffioen in the Federal Courts.

The 9th Circuit Court has held that "Congress intended there to be at least a knowing agreement to arbitrate employment disputes before an employee may be deemed to have waived the comprehensive rights, remedies and procedural protections prescribed" in the civil rights statutes. *Prudential Ins Co of Am v. Lai*, 42F. 3d 1299, 1305 (9th Cir. 1994), see also *Block v. Art Iron, Inc.* 866F. Supp. 380, 396 (N.D. Ind. 1994) ("ADA's legislative history very strongly suggest that ADA claims may not be arbitrated in the absence of an express, voluntary waiver of the right to assert the claims in the courts")

B. Constitutional and Common Law Right to Privacy.

A person has an actionable right to be free from the invasion of privacy. *Black v. Aegis Consumer Funding Group, Inc.*, 2001 U.S. Dist. LEXIS 2632 (S.D. Ala. Feb. 8, 2001).

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his/her private affairs or concerns, is subject to liability to the other for invasion of privacy. *Jackson v. Playboy Enterprises, Inc.*, 574 F. Supp. 10 (S.D. Ohio 1983).

Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990) ("ADA") affords protections against discrimination for alcoholics and drug addicts in recovery.

The statutory privacy right protected by 5 U.S.C.S. § 552(b)(7)(C) goes beyond the common law and the U.S. Constitution. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (U.S. 2004).

C. Fraud upon the Court.

Did the 6th Circuit commit a reversible error when they failed to consider the documented malfeasance and fraud upon the court committed by officers of the court Shumaker, Loop & Kendrick ("Shumaker") of sufficient gravity to warrant reversal? "[s]ince attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court." *H.K. Porter Co. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115, 1119 (6th Cir. 1976).

All attorneys and judges are officers of the court. Under 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.

See *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."

D. Disregard for law, contract or court order in making RRL Holding Company of Ohio, LLC a Dead Entity on December 31, 2018.

This undisclosed event, was hidden from the courts and Petitioner Merrilee Stewart under the guise of a name change only. In addition, the Ohio Secretary of State did not receive proper disclosure otherwise this merger of RRL out of existence would not have been authorized.

Shumaker, Loop & Kendrick in facilitating the seizure of all assets of Respondent RRL Holding Company of Ohio, LLC ("RRL") to avoid known creditors, including Petitioners' Certified Award, is a criminal act and this illegal merger must be undone.

In response to a question from James R. Carnes of Shumaker, Loop & Kendrick about Firefly, former/selling RRL member Respondent Fritz W. Griffioen testified on July 9, 2019 (C.P.C. 15CV182) that Firefly was a renaming and a name change for re-branding and marketing. It was after the hearing, in August 2019, when Ms. Stewart discovered the State Document that showed RRL was "Merged Out of Existence".

See State of Ohio Certificate, Ohio Secretary of State, Jon Husted, 1658734, Doc: 201836501222, effective 12/31/2018 RRL Dead.

As a non-consenting and unredeemed owner of 25% membership interest in RRL, Petitioner Merrilee Stewart, directly attacks this illegal merger that is based upon fraud, bad faith, and lack of authority.

Prior to completing the killing of RRL the controlling members were obligated to pay a lump sum of \$524,475.00 to Petitioner pursuant to the contract provisions certified by the Tenth District Court of Appeals.

See Tenth District Court of Appeals 18AP118 Appeals Court R.R0331, U5 confirmed the Final Arbitration Award, quoted in part here: "Therefore, it is ORDERED, ADJUDGED AND DECREED as follows: This Court hereby confirms the December 11, 2017 Final Award in American Arbitration Association Case No. 01-16-0003-9163 in all respects, pursuant to Ohio Rev. Code § 2711.09. The terms of the Final Award (filed with the Motion as Exhibit C) are specifically incorporated by reference into this Judgment Entry. The terms of the Final Award shall be binding on the parties." EMPHASIS.

Pursuant to the RRL Buy/Sell Agreement and Petitioners Confirmed Award, the uncured default on the lump sum requirement makes all unredeemed RRL shares owned by Petitioner Ms. Stewart as active with full rights, privileges including group life and health benefits. (emphasis).

However, in utter disregard and defiance to the order of the court and Petitioner rights, Shumaker, Loop & Kendrick facilitated the merger of RRL out of existence.

See Dissenters' rights statutes. 15 W. FLETCHER, supra note 1, §§ 7157 (suit allowed), 7158 (injunctive remedy), & 7162.1 (damage remedy) (rev. vol. 1973). 106. Id § 7160. *See also*, fiduciaries with adverse interests, such as personal contracts with the corporation, their business judgment on that

matter is presumed invalid. 3 W. FLETCHER, supra note I, § 921 (rev. vol. 1975). Such conflicts render the transaction voidable by the corporation. See id § 913.

Respondent and a new set of owners, six (6) total, had seized 100% of the assets of RRL, making Firefly a non-affiliate and third-party to the RRL Buy/Sell Agreement.

This undisclosed change of control was done in violation of the RRL Buy/Sell Agreement and the Laws of the State of Ohio that serve to protect the known and anticipated creditors and was hidden from dissenting member Petitioner Ms. Stewart. See Ohio Rev. C. § 1705.36, Ohio Rev. C. § 1705.41 (A). See also *West v. Household Life Ins. Co.*, 170 Ohio App.3d 463,469, 2007-Ohio-845 (10th Dist.). Unless a third-party's enforcement of an agreement was "contemplated by the parties and sufficiently identified" in the agreement, a third-party may not enforce an arbitration agreement between two other entities.

Immediately upon discovery of this cognizable event (emphasis), that the former controlling and selling members of RRL had made RRL a Dead Entity, Ms. Stewart issue a demand pursuant to Ohio Rev. C. § 1705.41 (B).

See Ohio Rev. C. § 1705.41 (B) the dissenting member shall deliver to the company a written demand for payment and Ohio Rev. C. § 1705.391 Legal effect of conversion - action to set aside.

The controlling members of Respondent RRL, Respondent Fritz W. Griffioen, Bill Griffioen and Rod Mayhill, redeemed their shares in RRL for 1/6th ownership each in a new entity with a new FEIN XX-XXX4159, non-affiliate Firefly, with three new owners (Hans Griffioen, Ben Griffioen and Andy Kirkham).

These former members misused their powers for personal/family interests at the expense of the company in violation of "the standard of a duty to be of the 'utmost good faith and loyalty.'" *Crosby v. Beam*, 47 Ohio St. 3d at 108.

VI. Statement of the Case.

A. Preliminary statement.

This case was dismissed prematurely without opportunity to Amend (emphasis) by Fraud upon the courts committed by Respondents, by way of counsel, which mislead the court in determining issues and induced the court to find for the party perpetrating the fraud (i.e., the Respondents).

Petitioner Merrilee Stewart is a Federal Whistleblower and Informant working with the Federal Bureau of Investigation, the Department of Treasury - Internal Revenue Service ("IRS"), the Federal Trade Commission and the Federal Insurance Office.

Plaintiff desires to "leave the investigations up to the Federal Authorities", however, also desires to be afforded protection from the on-going and continuous retaliation" perpetrated upon this Petitioner by the Respondents and their legal counsel.

Much attention has been paid to a release that does not exist and will never exist even though it was fraudulently presented to Judge Graham as if it did.

The fact is, Plaintiffs had an Employee/Employer relationship with Respondent IHT Insurance Agency Group, LLC ("IHT") unrelated to Ms. Stewart's ownership shares in Respondent RRL. These are two separate relationships. Petitioner Merrilee Stewart's Equal Employment Opportunity Commission ("EEOC") right to sue for discrimination and retaliation involves the Employee/Employer relationship and not ownership of shares in RRL.

Accordingly, Petitioner prays for the granted permission to Amend the pleadings and incorporate the Federal EEOC claims and the Federal Whistleblower protection to prevent further adverse action for engaging in protected conduct and the duty to report the White-Collar Criminal Activity ongoing at IHT.

B. Statement of the case.

This case involves claims premised under ERISA, ADA, privacy law and whistleblower protections for multiple violations of duties owed to Petitioner.

Following the district court's stay of the case pending arbitration in a state court case, and after Ms. Stewart sought leave to file a Second Amended Complaint, she was ordered to show cause as to why the case should not be dismissed.

C. Summary of the argument.

Petitioner Merrilee Stewart believes the district court's ruling [...] dismissing the case with prejudice, was a reversible error. The district court accepted without verification as true several salient points, including the scope of the unsigned release and the breadth of the claims decided in the state court case, which to this day has not been finalized.

Petitioner submits that these issues should have been the subject of discovery and that the case should have proceeded, even if Ms. Stewart was required to dismiss without prejudice and/or file their Second Amended Complaint. (R. 15, Page 20-21, Appellants Brief)

D. Standard of review.

The arguments presented implicate De Novo standard of review. See *Lawrence v. Dep't of Interior*, 525 F.3d 916, 920 (9th Cir. 2008); see also *Lewis v. United States*, 641 F.3d 1174, 1176 (9th Cir. 2011). The appellate court must consider the matter anew, as if no decision previously had been rendered. See *Freeman v. DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006). Review is "independent," see *Agyeman v. INS*, 296 F.3d 871, 876 (9th Cir. 2002), or "plenary," see *Stilwell v. Smith & Nephew, Inc.*, 482 F.3d 1187, 1193 (9th Cir. 2007); *United States v. Waites*, 198 F.3d 1123, 1126 (9th Cir. 2000). No deference is given to the district court.

In contract determination (i.e. The RRL Buy/Sell documents); See *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009); *Milenbach v. Commissioner*, 318 F.3d 924, 930 (9th Cir. 2003); but see *Tyler v. Cuomo*, 236 F.3d 1124, 1134 (9th Cir. 2000) (stating that the interpretation of a contract is a mixed question of law and fact reviewed de novo).

In Federal Whistleblower statutory interpretation; See *Schleining v. Thomas*, 642 F.3d 1242, 1246 (9th Cir. 2011); *Beeman v. TDI Managed Care Svcs.*, 449 F.3d 1035, 1038 (9th Cir. 2006); see also *Vega v. Holder*, 611 F.3d 1168, 1170 (9th Cir. 2010) (reviewing de novo BIA's interpretation of statute, but explaining that "[i]f, however, Congress has not directly addressed the exact issue in question, a reviewing court must defer to the agency's construction of the statute so long as it is reasonable." (quotation marks and citation omitted)).

In interpretation of Federal Rules involving an opportunity to Amend a complaint and the Fraud upon the court; See *United States v. Urena*, 659 F.3d 903, 908 (9th Cir. 2011) (evidence); *Riordan v. State Farm Mut. Auto. Ins.*, 589 F.3d 999, 1004 (9th Cir. 2009) (civil procedure).

E. Law and Argument

I. Fraud upon the courts. If a decision to dismiss is predicated by the unclean hands of officers of the court presenting egregious errors of fact and in violation of law then shall not the highest court in this land review.

Respondents and their counsel committed Fraud upon the Courts in their Brief and in this case on appeal from Judge James L. Graham with the utilization of False Documents and Perjury to obtain rulings from Judge Kim J Brown in the Franklin County Ohio Common Pleas Courts split cases 15-CV-1892 and 18-CV-7212.

Issues presented for review: 1) Is a decision based on Fraud upon the courts a reversible Error, 2) Is it just to use Perjured evidence and a pending, not final judgement in a separate case adversely and prematurely to dismiss an independent equitable proceeding, 3) Should the Federal Courts allow Appellees to Benefit from a fraudulently obtained judgment in a proceeding that has yet to be determined and is under Appeal and, 4) Should at least the courts await the final outcome before issuing a death sentence of Dismissal with prejudice?

This case was dismissed prematurely without opportunity to Amend (emphasis) by Fraud upon the courts committed by Respondents and their counsel which mislead the court in determining issues and induced the court to find for the party perpetrating the fraud (i.e., the Respondents).

This fraud deprives the Petitioner Merrilee Stewart the opportunity to be heard or be afforded the due process as is guaranteed by the Fifth, Fourteenth and Seventh Amendment to the constitution of the United States of America.

The Supreme Court and the lower federal courts have repeatedly and consistently held that the federal courts cannot sit in review of state court judgments, but may prevent a party from benefiting from his fraudulently obtained judgment only in an independent equitable proceeding. "E.g., *Simon v. Southern Ry.*, 236 U.S. 115 (1915); *Howard v. DeCordova*, 177 U.S. 609 (1900); *Gaines v. Fuentes*, 92 U.S. 10 (1875); *Dulien Steel Prods., Inc. v. Connell*, 252 F.2d 556 (5th Cir. 1958); and *United States v. Mashunkshey*, 72 F.2d 847 (10th Cir. 1934).

The more an appellee disputes the facts, the more likely the appellate court may conclude there is a dispute in material facts that precludes a summary judgment. See Chris W. Altenbernd, Gary L. Sasso & George A. Vaka, CLE Presentation, How to Prepare for an Oral Argument (Stetson U. College of L., July 26, 2000) (copy on file with the Stetson Law Review). Also See "Federal Rule 60(b)(3), by its express terms, permits judgments to be set aside for fraud, whether the fraud is intrinsic or extrinsic." *Mr. G. v. Mrs. G*, 320 S.C. 305, 465 S.E.2d 101 (Ct. App. 1995), fn. 2. (Emphasis added).

The trial court case (Franklin County Common Pleas) filed on March 2, 2015 has also been in a stayed status for over five [almost six] years, since November 10, 2015. The sole purported reason given by Defendants for Plaintiff Merrilee Stewart's removal

from RRL was Petitioner's alleged ownership of shares in TRG United Insurance, LLC. However, these claims and defenses were stayed on November 10, 2015, without one day of discovery and is are remain still today. (R. 53, Page ID # 464)

The Common Pleas case is about a documented and collaborated criminal enterprise Respondent IHT, who in this court filed a perjured affidavit, subordinated by attorney James R. Carnes, with intent to halt a police investigation and two insurance company investigations. The perjured affidavit, supported by a culpable attorney, was successful on both counts, stopping three investigations. (R. 53, Page ID # 466)

This perjury, the subordination of perjury, and the obstruction of justice at the hands of the criminal enterprise and their culpable attorney, is in violation of both State and Federal laws. (R. 53, Page ID # 466)

Two and 1/2 years later, on December 8, 2017, the criminal enterprise admitted to the unknowns (the commission fees with unidentified owner agents / agencies). These unknowns were documented in signed RRL/IHT meeting minutes. Fritz Griffioen, supported by James R. Carnes, Esq., claimed to have a plan to fix them. Again, they claimed to have a plan to fix a commission fees embezzlement problem that they earlier cited in their sworn affidavit "did not exist". This is perjury and subordination of perjury, clear and simple. (R. 53, Page ID # 466)

A. There is no release.

The idea that a new set of owners who are not a party to the RRL Buy/Sell Agreement believe, after fraudulently seizing 100 % of RRL, are ever entitled to a release is an error of law, fact and contract.

Plaintiff Merrilee Stewart is estranged and unredeemed minority membership owner of RRL. (R. 53, Page ID # 463) and is the sole remaining member of RRL. The three-controlling prior RRL members fraudulently sized 100% of RRL assets by and for the benefit of a new set of owners, Griffion family members.

The arbitration involved the RRL Buy/Sell Agreement which contained an agreement to arbitrate. The stated purpose of the Buy/Sell Agreement is to "dictate how Members shares are redeemed or purchased by the Company [RRL]." (R. 63, Page ID # 977).

The Buy/Sell Agreement contained an arbitration provision, which, by its plain language, only covered disputes that arise "with respect" to the Buy/Sell Agreement. This arbitration provision did not mandate the arbitration of all disputes related to

RRL; rather, it was limited to only those disputes that related to the Buy/Sell Agreement. (R. 63, Page ID # 978)

Ultimately the arbitration panel awarded Ms. Stewart \$520,000.00 for the sale of her membership interest in RRL and \$4,475.00 for Arbitration cost, with a closing to occur in January 2018. (R. 63, Page ID # 978)

However, Respondents never intended to actually purchase Ms. Stewarts membership interest or obey ~~by~~ the courts order. This is evident by the refusal to even pay the \$4,475.00 of Respondents share of the cost of Arbitration as ordered.

B. Res Judicata from the 2017 Arbitration is in apropos to current claims.

i. Arbitration dealt with the employers' financial contribution to the Plan Benefits

As an active member of RRL the employer contributed 65% of the cost and as a member on an executed Buy/Sell the employer contribution was 0%. Arbitration denied the employer contribution, not the continuation of eligibility to be a plan participant. See R. 59, Page ID # 858 showing partners paid 65%. See also R. 59, Page ID # 862-863.

ii. Arbitration did not address the continuation of benefits granted to all members similarly situated.

Prior departing members, on an executed RRL Buy/Sell, were allowed to remain on the IHT Welfare Benefits Plan indefinitely and keep their Life Insurance coverage. (R. 53, Page ID # 483)

Defendants do not interpret or apply the terms of the Plan with an even hand, and do not treat alike similarly-situated persons. (EFC No. 12 *Id.* at 53 ¶ 61). RRL (former) member Glenn Roulette executed his Buy/Sell Agreement in January 2011, yet Defendant Fritz Griffioen, individually and/or by and through Griffioen Agency, acting as the personal insurance agent for the Plan, made certain that Glenn Roulette and his family remained on the plan for as many years as desired. See R. 53, Page ID # 483 *See also* R. 59, Page ID #844.

RRL partially redeemed member Norm Fountain executed his Buy/Sell Agreement in September 2013, yet Defendant Fritz Griffioen, individually and/or by and through Griffioen Agency, acting as the personal insurance agent for the Plan, made sure the Norm Fountain and his family remained on the plan for as many years as desired. This unequal treatment of similarly situated member(s) is a violation of Title II and

IRS code. (R. 53, Page ID # 483) *See also* R. 59, Page ID #825-826, R. 59, Page ID # 830 and R. 59, Page ID # 832.

iii. Arbitration did not contemplate the 2018 uncured contract default requiring restoration of all benefits.

Whereas, the RRL Buy/Sell Agreement §7 and the arbitration award granted members the right to purchase membership interest over a 10-year period. Instead of purchasing the RRL Shares as required. ALL RRL shares were fraudulently sold to a new company and a new set of new owners in violation of law & contract.

Whereas, by contract, if RRL ceases to exist all unredeemed shares not yet purchased must be purchased in full. By contract, if the unredeemed shares are not purchased in full there exist a default.

Now Therefore, by contract, the uncured default results in ALL unredeemed shares becoming active shares with full rights are privileges, including plan benefits. Documentation is in the record in the Tenth District Court of Appeals.

III. The rights to due process and trial by jury as granted every citizen under the Constitution of the United States of America are infringed upon.

Issues presented for review: 1) Does the case dismissal deprive the Petitioner the opportunity to be heard or be afforded the due process as is guaranteed by the Fifth and Fourteenth to the Constitution of the United States of America and 2) Does the case dismissal strip Petitioner of the Seventh Amendment rights under the constitution of the United States of America.

At no time did the district court advise Appellants that it contemplated dismissing the case with prejudice; the court merely instructed Appellants to show cause "why this case should not be dismissed." In this circuit, and throughout the federal courts, dismissal with prejudice and denying a plaintiff the opportunity to amend is improper unless it is conclusively demonstrated that the claims could not have been saved by amendment. This Court has repeatedly held that dismissal with prejudice goes against the well-established preference for allowing claims to be decided on their merits, as dismissing with prejudice is the "death penalty" sanction and the remedy "of last resort." R. 15, Page: 8 Appellants Brief

IV. Cognizable Events and new evidence warrant new Federal Cause of action and there is good cause for an Amended Complaint.

Issues presented for review: 1) Should new evidence and cognizable events cited in the record grant Plaintiffs/Petitioner an opportunity to Amend.

Petitioner sought leave to Amend in October 2019 because of new evidence and cognizable events. (R. 51, Page ID #: 429-458)

Pursuant to Fed. R. Civ. P. 15(A)(2), Plaintiffs are permitted to amend his Complaint with leave of this Court. Considering new and forgoing described cognizable events this complaint requires an amendment to contain accurate and concise allegations. R. 51, Page ID #: 430.

The first new cognizable event is the December 31, 2018 winding down and dissolution of Respondent RRL. Subsequently, all the assets of RRL were seized by new owners that consist of Respondent Fritz W. Griffioen and his family members who are all part of Respondent Griffioen Agency, LLC. This change of control was in violation of the laws of the State of Ohio. In the Defendants' seizure of all of the assets of RRL they changed the ownership and beneficiary of over \$6. Million in Group Life contracts on (now former) RRL members, including Petitioner Merrilee Stewart []. Therefore, Plaintiffs add counts for unjust enrichment and conversion. (R. 51, Page ID #: 430)

The second new cognizable event is the September 16, 2019 letter of Respondent Fritz W. Griffioen sent to industry business colleges containing false, egregious and defamatory information about Petitioner Merrilee Stewart. Therefore, Petitioner seeks restitution for tortious interference, retaliation, defamation and industry blacklisting as is protected in the Dodd-Frank Wall Street Reform and Consumer Protection Act H.R. 4173 § 369 (1) (A), The United States Constitution and other State and Federal Laws. Petitioner also allege Defamation by the Respondent Fritz W, Griffioen as is defined in U.S. Code § 4101(1). (R. 51, Page ID #: 430)

A. Federal Whistleblower.

Petitioner Merrilee Stewart is a victim and a whistleblower with first-hand knowledge of crimes and illegal activities perpetrated by Respondent RRL members, Fritz W. Griffioen, Bill Griffioen and Rodney Mayhill, who collectively form a majority in the close corporation. This collective majority voted themselves to serve on the board and in a management positions of Respondent IHT. RRL wholly owned (100%) of IHT. (R. 53, Page ID # 463)

The controlling members of RRL, collectively forming a majority have used the past five years [...] to violated their duties owed to the minority owner, Petitioner Merrilee

Stewart, in a close corporation. See *Crosby v. Beam*, 47 Ohio St.3d 105, 548 N.E.2d 217 (1989).

Respondents violated State and Federal whistleblower laws designed to protect Petitioner Merrilee Stewart from harassment, intimidation and retaliation as an inside informant of multiple provable and documented felonies; citing Ohio Rev. Code § 4113.52 and Federal protection in the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) codified in the new section 21F of the Securities Exchange Act of 1934. (R. 53, Page ID # 465)

Petitioner Merrilee Stewart was granted a close up look at the Respondent IHT operations when she served in a management capacity of Vice President at IHT beginning on August 22, 2012 and then as President beginning on September 5, 2013. In early 2013, RRL outside Attorney Christopher B. Murphy was hired to examine, identify and recommend corrective action on all "At Risk" business practices at Defendant IHT. (R. 53, Page ID # 468)

One of the uncovered and documented "At Risk" business practices was the placement of supplier accounts ("policies") onto an unknown list, failing to pay the supplier, failing to sequester the accounts payable obligation, and then distributing the money to the owners as fictitious profits. (R. 53, Page ID #: 468)

On December 11, 2014 at an RRL meeting Petitioner Merrilee Stewart presented two possible plans to correct the Unknowns (i.e., unpaid & unrecorded accounts payable obligations) and other attorney identified "At Risk" items. On December 30, 2014 the collective majority of RRL members sent Ms. Stewart a notice of removal, with a closing date of March 30, 2015. (R. 53, Page ID # 469)

Yet, instead of closing on Ms. Stewart's membership shares on March 30, 2015, the Respondents filed the Franklin County Common Pleas trial court case on March 2, 2015, (wrongfully) accusing her of stealing funds from Respondent RRL. This allegation was subsequently proven false by the Arbitration Panel, as Ms. Stewart was entitled to the funds identified. (R. 53, Page ID #: 469)

On or about January 2016, additional documentation was uncovered with the assistance of former IHT President Norman L. Fountain that revealed the embezzlement of funds (the Unknowns) was systemic from the beginning of the entity in 2005. The record of unknowns now surpassed 8,900 unknown transactions with a total value of at least \$8,400,000.00. Additionally, many more records of redlining and antitrust violations were discovered. (R. 53, Page ID #: 469-470)

RRL partially redeemed member Norman L. Fountain joined with Ms. Stewart as an additional inside informant for the Federal Bureau of Investigation, the United States Department of Treasury – Internal Revenue Service investigation and the redlining and SEC Anti-trust claim. (R. 53, Page ID #: 470)

The United States Department of Treasury complaint centered on the topic of discriminatory practices of Respondent IHT in the distribution of Auto and Home insurance in 24 states through contracted insurance agents / suppliers. IHT's "Affluent Middle-Class" rules essentially boycott entire communities, predominately in our underserved and ethnic communities, from access to Auto or Home insurance from the Preferred Insurance Carriers. This significantly limits their access to preferred carriers and significantly increases their cost. (R. 53, Page ID #: 470)

The contracted suppliers for IHT are forced to abide by the discriminatory rules or be shut off from access to the insurance carrier products and the ability to service their customers. This Boycotting of citizens from access to Auto and Home insurance by forcing the suppliers to abide by "Affluent Middle-Class" rules is an anti-trust violation. In addition, these "Affluent Middle-Class" rules violate the Fair Housing Act and The Civil Rights Act. (R. 53, Page ID #: 470)

The Dodd-Frank Wall Street Reform and Consumer Protection Act Established Treasury's Federal Insurance Office ("FIO") and vested FIO with the authority to monitor all aspects of the insurance sector, including monitoring the extent to which traditionally underserved communities and consumers have access to affordable non-health insurance products. Title V of the Act establishes the FIO within the Department of the Treasury. The FIO has authority over all lines of insurance, except health insurance. See 31 U.S.C. § 313. Title V specifically empowers the Office to monitor the extent to which traditionally underserved communities and consumers have access to affordable insurance products. (R. 53, Page ID #: 470)

B. Federal Civil Rights Laws & American Disability Act and the EEOC right to sue were not part of Arbitration

Ms. Stewart's son, Charles B. Stewart's medical record indicates treatment for his disability. Respondent Fritz Griffioen denied Charles Stewart's re-employment at IHT when he sought permission to return to work. Fritz Griffioen used his private medical information as the reason for denial to return to work, in violation of Americans with Disabilities Act.

Fritz Griffioen, individually and/or by and through Griffioen Agency, used information concerning Plaintiff Charles Stewart's medical condition to ensure that Mr. Stewart would never be qualified to work in the insurance business again. (EFC No. 12 Id. at 56 ¶ 81)

Furthermore, Fritz Griffioen made publicly known Charles B. Stewart's medical history. The information obtained by Defendant(s) was highly sensitive and confidential, and was an intrusion into private affairs and solitude. (EFC No. 12 Id. at 56 ¶ 82)

Respondents' intrusion into Plaintiffs' private affairs, and the reasons for intrusion, is highly offensive to a reasonable person. (EFC No. 12 Id. at 56 ¶ 83)

Ms. Stewart and her son Charles Stewart suffered damages as a result of Respondents' invasion of privacy (intrusion). (EFC No. 12 Id. at 56 ¶ 84)

C. Identity Theft, Mail Fraud, Tax Evasion, Retaliation

The actions, including Identity Theft, Mail Fraud and Tax Evasion, taken by Fritz Griffioen, Chief Financial Officer at IHT and previously RRL against Ms. Stewart, a documented Whistleblower, are in retaliation for the reporting of criminal activity to the proper authorities including the IRS.

Ms. Stewart submitted an IRS Identity Theft Affidavit, Report No. 1545-2139, reporting as a victim of Identity Theft and the resulting tax evasion and mail fraud perpetrated by IHT and their Chief Financial Officer ("CFO"), Fritz W. Griffioen.

Ms. Stewart's management position in IHT from 2007 through 2014 was an employee relationship with IHT pursuant to IRS code and as such IHT owns Federal Employment Taxes for Social Security, Medicare and Federal Unemployment.

The structure of RRL Members working in management positions at IHT and improperly reporting wages as distributions in RRL is a direct violation of IRS Tax Code and an avoidance of the required Federal taxes including Social Security, Medicaid, Medicare and Unemployment. See Alison Day, Esq of Littler (R. 59, Page ID #800) narrative and Sarah Cole, Esq the scribe of the Arbitration Award (R. 59, Page ID #807-809) narrative confirming this structure of working in a management position at IHT (employee/employer) relationship. See Also Ohio Department of Insurance determination "termination of insurance was the result of termination of employment. (R. 59, Page ID #797).

The Taxpayer First Act ("TFA") protects tax whistleblowers against retaliation, including whistleblowers that have provided information to the IRS.

Section 1405(b) of the TFA prohibits any "employer, officer, employee, contractor, subcontractor, or agent" of an employer from retaliating against a whistleblower. Section 1405(b) of the TFA applies the causation standard and burden-shifting framework set forth in the AIR21 Whistleblower Protection Law. Under that framework, the whistleblower prevails by proving that their protected whistleblowing was a contributing factor in the unfavorable personnel action taken by their employer. The DOL ARB has emphasized that the standard is low and "broad and forgiving"; protected activity need only play some role, and even an "[in]significant" or "[in]substantial" role suffices. *Palmer v. Canadian Nat'l R.R.*, ARB No. 16-035, ALJ No. 2014-FRS-154, at 53 (ARB Sept. 30, 2016) (emphasis in original). Examples of circumstantial evidence that can establish "contributing factor" causation include:

Effective on the date of enactment, the TFA amends the Code to extend anti-retaliation provisions to IRS whistleblowers like those that are provided to whistleblowers under the False Claims Act and the Sarbanes-Oxley Act. (Code Sec. 7623(d) as amended by Act Sec. 1405(b))

Once the whistleblower proves that their protected conduct was a contributing factor in the adverse action, the employer can avoid liability only if it proves by clear and convincing evidence that it would have taken the same adverse action in the absence of the whistleblower engaging in protected conduct.

If retaliation is found to have occurred, the whistleblower may be eligible for reinstatement, double back-pay, interest on unpaid amounts, attorney fees and costs, and "special damages" which can include emotional distress and reputational harm.

Petitioner seeks reversal and remand to allow the filing of an Amended Complaint or, alternately, to seek a stay pending the final disposition of the state court case. (R. 15, Page 21 § III Appellants Brief)

VII. Reason for Granting the Writ

Petitioner Merrilee Stewart moves this Supreme Court of these United States of America to review these very important questions of constitutional and federal law protections that were not, but should be, settled by the State Courts.

First, With the death of my son, Charles Bedwell Stewart, October 18, 1991 ~ December 16, 2020 (age 29), I am seeking a discrimination attorney with admission to the bar of this court to represent his interest in this important case involving this national epidemic.

“Charlie saved the lives of many of our addicted and mentally ill. Charlie spent time working with the people living off the land, in the emergency room, leading/attending NA meetings daily and participating in public speeches about solutions.

See

To Fight Drug Addiction, Hospitals Hire Recovering Addicts | Side Effects
(sideeffectspublicmedia.org)

I will continue to fight for services and protections for all people, especially and including those struggling with drug addiction, alcoholism and mental illness.” Merrilee Stewart, mother

Although scientific advances over the past decades have shown that addiction is a chronic medical illness, the view that it is a “moral failing” remains prevalent and the associated stigma is persistent.

Thus, Employee’s continue to experience significant negative consequences as a result of prejudice and ignorance and in this case, having participated in recovery treatment was itself the basis for a discriminatory response waged against both Petitioner Merrilee Stewart and her disabled son.

Unfortunately, patients with substance use disorders still face enormous consequences associated with disclosure, including loss of employment.

As our country faces an unprecedented epidemic of opioid addiction and overdose, we must ensure that fear of discrimination does not deter people from seeking treatment.

“Federal civil rights laws prohibit discrimination in many areas of life against qualified “individuals with disabilities.” Many people with past and current alcohol problems and past drug use disorders, including those in treatment for these illnesses, are protected from discrimination...”

Second, our justice system relies upon officers of the court including judges and attorneys who have an obligation to promote justice and the effective operation of the judicial system.

When officers of the court engage in Fraud upon the court, ignore the authority and orders of the higher court, and fail to enforce Federal Law (as prevails in this case) this seriously affects the integrity of the normal process of adjudication.

Finally, Citizens must believe and trust the integrity of the Judiciary and be afforded the protections guaranteed by state and federal law when they fulfill their duty to report criminal activity. The Enforcement of Whistleblower protections is an essential component to the quality of justice which lies firmly in the hands of the Judiciary.

Ms. Stewart continues to endure multiple scorching tactics, including but not limited to: liable, slander, defamation, industry blacklisting, harassment, retaliation, threats, identity theft, mail fraud, tax evasion, refusal to supply tax forms and years of non-payment of payroll taxes.

When the Judiciary fails, as in this case, the likelihood of future Whistleblowers coming forward diminishes, as does justice.

VIII. Conclusion

For the preceding reasons, Petitioner Merrilee Stewart prays the petition for a writ of certiorari will be granted.

Respectfully Submitted,

Merrilee Stewart

Merrilee Stewart

/s/ Merrilee Stewart

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