No. ___

In the

Supreme Court of the United States

WILLIAM CARLSON and
WILLIS CAPITAL., LLC,

Petitioners,

v.

THOMAS CRONIN, AARON L. DAVIS,
LELAND W. HUTCHINSON, JR.,
DANIEL J. KELLEY,
and CRONIN & CO., LTD.,

Respondents.

On Petition for Writ of Certiorari to the
Illinois Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW.

Whether Carlson's constitutional right to due process and constitutional right to receive full faith and credit of a final judgment was violated when certain Illinois courts ignored, refused to acknowledge, consider, address or comment in any manner on the evidence presented, which included a prior final judgment ruling on a dispositive issue, and the law presented that established that Carlson's has a viable claim for legal malpractice claim against Cronin for his failure to timely file a legal malpractice claim against Drinker before the statute of limitations and statute of repose expired.

Whether the underlying proceedings were a "sham" because the conclusion was predetermined and not based upon the undisputed evidence and law presented by both parties at the hearings in this case.

Whether a trial court in Illinois violated the Full Faith and Credit Act and 28 U.S.C. 1738 by refusing to comply with a final judgment rendered previously by the same judge in the same matter but involving another party.

PARTIES TO THE PROCEEDINGS BELOW AND CORPORATE DISCLOSURE STATEMENT.

Petitioners here are William Carlson and Willis Capital, LLC. No petitioner has a parent corporation and no publicly held company owns 10% or more of any petitioners' stock. The respondents are Thomas Cronin, Aaron Davis, Leland Hutchinson, Daniel Kelley and Cronin & Co., Ltd. The petitioner does not believe the respondents have a parent corporation and no publicly held company owns 10% or more of any respondents' stock.

RELATED PROCEEDINGS

William Carlson and Willis Capital, LLC v. Thomas Cronin, Aaron L. Davis, Leland Hutchinson, Jr., Daniel Kelley and Cronin & Co., LTD., et al., 16 L 383.

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Petition of Writ of Certiorari.

Petitioners respectfully petition for a writ of certiorari to review the final judgment of the Illinois Supreme Court in this case.

Opinions Below.

On April 24, 2020 an Illinois trial court granted a motion for summary judgment dismissing Carlson's claims against Cronin with prejudice. (A79-92). Carlson appealed and the Illinois appellate court affirmed on June 30, 2022. (A3-30). On November 30, 2022, the Illinois Supreme Court entered an order denying Carlson's Petition for Leave to Appeal. (A153).

Jurisdiction.

The Illinois Supreme Court entered a final judgment on November 30, 2022. (A153). This petition is timely filed pursuant to Supreme Court Rule 13.1. Jurisdiction is proper based upon 28 U.S.C. 1257(a) because this appeal involves an appeal from the highest court in Illinois and involves federal questions such as due process. *Amalgamated Food Emp. Union Local 590 v. Logan Valley Plaza, Inc.,* 391 U.S. 308, 310-12, 88 S.Ct. 1601, 20 L.Ed.2d 603 (1968)

Constitutional and Statutory Provisions Involved.

U.S. Const. Amendment V states "no person…shall be deprived of life, liberty or property,

without due process of law."

U.S. Const. Amendment XIV, section 1 states "…nor shall any State deprive any person of life, liberty, or property, without due process of law."

Article IV Section 1 states "Full Faith and Credit shall be given to the public acts, records, and judicial proceedings of every other state."

28 U.S.C. section 1738 states "…judicial proceedings…shall have the same full faith and credit in every court within the United States…from which they are taken."

Statement of the Case.

This petition arises from the Illinois courts unlawfully shutting out Carlson which prevented him from receiving a fair hearing on the merits of his claims. The procedural history and genesis of the instant claim is long and somewhat complex. It is helpful to briefly review some of facts and procedural history which led instant Petition.

In 2002, William Carlson, individually and as the sole owner and member of Willis Capital LLC, (Carlson and Willis hereinafter collectively referred to as "Carlson"), founded Belvedere Trading, LLC ("Belvedere") by contributing his life savings. (A289 paragraph "p" 1). Belvedere was created to trade S & P 500 equity index options. (A289 p1). Carlson made Thomas Hutchinson ("Hutchinson") and Owen O'Neill ("O'Neill") his partners. (A289 p1). As a result of Carlson hard work, Belvedere has been

tremendously successful and its owners have earned millions of dollars in profits on a yearly basis. (A290 p1).

In 2005, Carlson took a leave of absence from Belvedere due to health concerns. (A289 p2). When Carlson returned in 2006, Hutchinson and O'Neill tried to force Carlson out of Belvedere. (A289 p2). They refused to allow Carlson to resume equal use of Belvedere assets and claimed that Carlson was no longer an equal owner of the company. (A289 p2). Hutchinson and O'Neill also locked Carlson out of virtually all important business decisions and would not provide him with information about the Belvedere's finances. (A289 p2).

In approximately March of 2007, Carlson retained The Collins Law Firm, P.C. ("Collins") to represent him in confronting Hutchinson and O'Neill. (A290 p1). Collins initially filed a claim in arbitration for breach of contract, breach of fiduciary duty and other relief on or about May 17, 2007. (A290 p1). On October 12, 2007, Collins filed a complaint seeking dissolution and other relief against Belvedere, Hutchinson and O'Neill in the Circuit Court of Cook County, Illinois. (A290 p1). In February 2008, a Cook County court granted Hutchinson's and O'Neill's motion to compel arbitration of the Cook County case. (A290 p1).

Collins then instructed Carlson that he had to attend a mediation a few days later on February 13, 2008. (A291 p2). Collins informed Carlson that he would not attend the mediation, he negligently advised Carlson that he had to settle the matter

because Carlson would not be able to get any financial documents from Belvedere in the pending litigation, that the documents governing Belvedere permitted Carlson's partners to essentially legally take control of Belvedere and legally eliminate his interest in Belvedere and that every day Carlson waited the more his ownership interest in Belvedere was reduced. (A291 p1). Carlson agreed to a settlement at the mediation by accepting $17.5 million because he followed the negligent advice of Collins and he felt he had no "other options at all" based upon the fact he was falsely told that he could not get financial documents from Belvedere including a copy of the capital account, that the documents governing Belvedere were "bad" meaning Carlson's equity was being legally diluted every day and that Carlson's attorney told them the night before he would be lucky to get $8 million. (A291 p1).

A few months agreeing to the settlement, Carlson wanted a new law firm to review everything that happened. (A295 p1). On November 17, 2008 Carlson entered into an engagement agreement with the international law firm Drinker, Biddle & Reath ("Drinker") which stated that Drinker would provide "an assessment of your rights and potential litigation relating to your separation from Belvedere." (A295 p1). On November 19, 2008, Carlson met with the attorneys at Drinker and during this meeting, they criticized the legal work performed by the Collins firm. (A295 p1). This was the first time anyone alerted Carlson to the fact that Collins had done something wrong while he represented Carlson. (A295 p1). On November 26,

2008, Drinker submitted a written legal opinion to Carlson and despite the fact that Drinker promised in writing to advise Carlson about all claims that arose out of the Belvedere settlement and despite the fact Drinker criticized Collin's work, Drinker's analysis did not discuss any issues related to the legal malpractice of Collins, did not advise Carlson that there was a 2 year statute of limitations governing claims for legal malpractice and did not advise Carlson that any claim for legal malpractice had to be filed before February of 2010 so that a statute of limitations argument could be avoided. (A295 p1).

In November and December of 2008, Carlson also met with and discussed what had happened in the Belvedere litigation with national law firm Michael Best ("Best"). (A296 p1). On November 7, 2008 Carlson sent an email to Best that asked Best to review the facts and circumstances which led to the settlement agreement in the Belvedere litigation and said he would "pay as necessary." (A296 p1). In November of 2008, Best told Carlson that he thought it was improper for Collins not to attend the mediation and Best admitted that Carlson asked "should he be concerned about his representation." (A296 p1). On December 2, 2008 Best wrote an email to Carlson that discussed the Drinker memorandum Carlson sent him and Best stated that "that memo sounds about right." (A296 p1). On December 2, 2008 Carlson wrote an email to Best stating "what recourse is there….malpractice?" (A296 p1). Best responded by stating "Malpractice is an option" and then Best explained in detail what was necessary to assert a legal malpractice case

against Collins but the email did not identify or explain the statute of limitations or the statute of repose related to any claim for legal malpractice and the email did not advise Carlson that any claim for legal malpractice had to be filed before February of 2010 to avoid any statute of limitations issues. (A296 p1).

In August of 2010, Carlson approached Best and asked Best to provide further legal advice about his situation and on August 18, 2010, Carlson entered into a written engagement letter with Best pertaining to a "legal malpractice matter." (A296 p1). During the engagement, Best reviewed all relevant and material documents and met with Carlson. (A297 p1). On September 16, 2010 Best sent Carlson an email ending their representation because as one Best attorney testified "in my mind there was a good chance that it [the statute of limitations on claims against Collins] had already expired." (A297 p1). Best negligently did not inform Carlson that any statute of limitations had expired on any claims against Collins, they never advised Carlson that Carlson may have claims against Best or Drinker if the statute of limitations had expired on claims against Collins and they never advised Carlson that they had a conflict of interest. (A297 p1).

On or around November 11, 2010, Carlson retained attorney Thomas Cronin ("Cronin") to bring a legal malpractice matter against any attorneys who violated the standard of care. (A299 p1). Cronin filed a complaint alleging legal malpractice against Collins on November 18, 2010. (A299 p1).

On January 15, 2014, the Cook County trial court granted a motion to dismiss the legal malpractice case because the trial court found that the 2 year statute of limitations governing legal malpractice claims had expired days before Carlson filed his complaint in November of 2010 when the trial court stated "that the plaintiff knew of his injury, which is certainly no later than September and by November 12th or 13th [2008] he had identified his former partners as the wrongful cause of the injury. At that point, he was on inquiry notice..." (A299 p1). Carlson appealed and the appellate court affirmed on April 22, 2015. (A299 p1).

On February 27, 2014 Carlson entered into another written engagement with Best to "review everything that had happened and to advise[them] if anything was done wrong and if there were other legal options that [they] had based upon what happened. [Plaintiffs] made it clear that [they] wanted everything reviewed including prior work done by Best." (A300 p1). Best provided legal advice to Carlson from February 2014 through approximately October 2015. (A300 p1).

Carlson then retained his current attorney and Carlson filed a two-count complaint and amended complaint in 16 L 383 alleging legal malpractice against attorneys Best and Cronin. (A302 p1). Count I alleged numerous claims for legal malpractice against Best for, among other things, failing to advise Carlson that he had claims against Drinker for legal malpractice and for failing to timely file a claim for Carlson against Drinker before the statute of limitations and/or statute of

repose expired. (A302 p1). Count II alleged numerous claims for legal malpractice against Cronin for, among other things, failing to advise Carlson that he had claims against Drinker for legal malpractice and for failing to timely file a claim for Carlson against Drinker before the statute of limitations and/or statute of repose expired. (A302 p1). Count II alleged that "Cronin breached the standard of care…[when he] [f]ailed to advise plaintiffs they had a claim against Almeida and Drinker, failing to inform plaintiffs about the statute of limitations for any claims and failing to file such a claim in a timely manner." (A302 p1). Under Illinois law, a claim for legal malpractice is considered filed in a "timely manner" if it was filed within the 2 year statute of limitations and within the 6 year statute of repose. 735 ILCS 5/13-214.3. Thus, when Carlson's claim against Cronin in Count II alleged that Cronin failed to "file such a claim in a timely manner," that meant Cronin failed to file claims against Drinker before the statute of limitations and statue of repose expired on those claims. In other words, in order for Carlson to sustain a claim against Cronin, he would have to establish that either the statute of limitations or statute of repose expired during the time that Cronin represented Carlson.

Carlson's claim in Count II was supported by numerous unrebutted opinions of a legal malpractice expert that explained, among other things, that Cronin violated the standard of care and that Drinker had violated the standard of care. (A367-391). Carlson's legal expert testified "the standard of care required Drinker Biddle to advise Carlson

during its November/December 2008 representation not only that Carlson had a claim for legal malpractice against Collins and Fish, but also that Carlson had two years to bring that suit against Collins and Fish and that to avoid any possibility of the claim being barred by the statute of limitations, Carlson should bring that suit within two years of the date of the underlying February 13, 2008 Belvedere settlement." (A367 p10). The expert further stated that Drinker violated the standard of care and that the breach "was a proximate cause of Carlson losing his claims for legal malpractice against Collins." (A367 p13). Carlson's expert concluded that "Cronin's failure to file suit against Drinker Biddle on behalf of Carlson, or to otherwise assist Carlson to preserve his claim for malpractice against Drinker Biddle, was a breach of the standard of care by Cronin, causing Carlson to lose his right to pursue a claim for malpractice against Drinker Biddle." (A367 p13).

Carlson sued Best and Cronin in 16 L 383 because they both provided legal advice to Carlson in 2008 and it was unclear how the trial court would rule pertaining to when the statute of limitations and statute of repose would expire on claims that Carlson had against Drinker. (A345-366). Carlson sued Best because Best had provided legal advice to Carlson in November and December 2008, had formally represented Carlson in August and September of 2010 and formally represented Carlson from February 27, 2014 through at least October of 2015. (A345-366). Carlson sued Cronin because it is undisputed that Cronin began representing Carlson in November of 2010 and continued to represent

plaintiffs through at least April of 2015. (A345-366). Carlson sued both attorneys in the same action so he could reduce the possibility that there would be inconsistent rulings by different judges about when the statute of limitations and statute of repose expired.

On July 20, 2018 Best filed a motion for summary judgment pertaining to Count I. (A302 p1). Best argued that the statute of limitations and statute of repose on Carlson's claims against Drinker had expired during times that they did not represent Carlson. Best argued that the statute of limitations on claims Carlson had against Drinker commenced in 2010 and expired in 2012 and that the statute of limitations on those claims did not commence in 2014, when the trial court dismissed Carlson's claims against Collins, and expire in 2016 because "Carlson was injured by any Drinker malpractice years before the trial court dismissed his compliant in the underlying lawsuit in January 2014." (A302 p1). Best argued that "the claims accrued in 2010 when Carlson paid legal fees to other law firms [Cronin] concerning the February 2008 settlement and the claims became barred by the statute of limitations two years later in 2012." (A302 p1). Best concluded that they were not the proximate cause of any loss of plaintiffs' claims against Drinker because those claims expired in 2012 when Cronin was representing Carlson and Best was not Carlson's attorney in 2012. (A302 p1). Best also argued that the statute of repose expired in 2015 after they were representing Carlson. (A302 p1).

On May 3, 2019 the trial court entered an

order granting summary judgment to Best on Count I. (A302 p1). The trial court found, in part, that Carlson's claims that Best committed malpractice when they failed to advise Carlson to file claims against Drinker had no merit because the statute of limitations and the statute of repose expired during a time when Best did not represent Carlson. (A302 p1). The trial court found that the statute of limitations on Carlson's claims against Drinker commenced upon the retention of Cronin in November of 2010 and "Carlson's claims became untimely in [November] 2012" when Best was not representing Carlson. (A302 p1). The trial court also found that the statute of repose on Carlson's claims against Drinker expired in November 2015 after the time the trial court found that Best represented Carlson. (A302 p1). Carlson appealed the decision and on July 15, 2021 the Illinois appellate court affirmed. (A302 p1).

On October 2, 2019 Cronin filed a motion for summary judgment related to Count II. (A303 p1). On December 6, 2019 the trial court granted the motion for summary judgment. (A303 p1). The trial court found that Carlson's claims for legal malpractice against Cronin for failing to advise Carlson that he had claims against Drinker for legal malpractice and for failing to timely file a claim for Carlson against Drinker before the statute of limitations and/or statute of repose expired had no merit because the statute of repose had expired on those claims during a time that Cronin was not representing Carlson. (A303 p1).

Carlson appealed and in his briefs Carlson

made numerous arguments including an argument that the trial court and appellate court in the Cronin appeal were bound by "the "law of the case" doctrine and collateral estoppel by the final judgment entered in the Best appeal that found the statute of limitations on Carlson's claims against Drinker expired in 2012. (A280-344). Carlson argued that under Illinois law, the "law of the case" doctrine requires that where an issue has been litigated and decided, a court's unreversed decision on a question of law or fact settles that question for all subsequent stages of the suit. *Stickler v. American Augers, Inc.,* 325 Ill.App.3d 506, 510 (2001). (A309-312). The rule of the "law of the case" doctrine is a rule of practice based upon sound policy that once a trial court decides an issue that the issue is settled for all aspects of that case. *Id.* (A280-344). Carlson also argued that, even if the Illinois courts did not believe that they were bound by the prior final judgment entered in the Best case finding that the statute of limitations on Carlson's claims against Drinker had expired in 2012, that Illinois law establishes that the statute of limitations expired in 2012 as a matter of law. (A312-315). It should be noted that Cronin's appellate brief did not argue that the "law of the case" doctrine did not apply or that collateral estoppel did not apply. (A280-344).

The appellate court affirmed on June 30, 2022. (A3-32). The appellate court decision did not address, comment, mention or make a decision based upon Carlson's arguments that that statute of limitations on Carlson's claims against Drinker had expired in November 2012 when Cronin represented Carlson and that the final judgment entered in Best

appeal that found that the statute of limitations expired in November of 2012 was dispositive of the issue. (A3-32). In fact, the appellate court did not make any finding whatsoever about when the statute of limitations expired on claims Carlson had against Drinker. (A3-32). The appellate court opinion only addressed when the statute of repose expired. (A3-32).

On July 20, 2022 Carlson filed a Petition for Rehearing before the Illinois appellate court which argued in part that the appellate court erred because it was "barred by the doctrine of 'law of the case' or collateral estoppel from contradicting a prior final judgment entered in this matter that found that the statute of limitations expired on Carlson's claims against Drinker in 2012." (A201-237). The Petition for Rehearing also reiterated the fact that if the statute of limitations expired on claims that Carlson had against Drinker in November of 2012 that Carlson had a viable claim against Cronin because Cronin represented Carlson at that time. (A201-237). The Petition for Rehearing also stated and that there was no need for the appellate court to even decide when the statute of repose on any claims expired because Carlson had a viable claim against Cronin if the statute of limitations or statute of repose expired during the time Cronin represented Carlson. (A201-237). On July 26, 2022 the appellate court ignored all of Carlson's arguments when it denied the Petition for Rehearing without comment. (A1-2).

On August 31, 2022 Carlson file a Motion for Supervisory Order before the Illinois Supreme Court

that asked the Illinois Supreme Court to vacate the appellate court opinion or to order the appellate court to address Carlson's arguments because, in part, the appellate court opinion violated Carlson constitutional right to due process. (A155-173). Carlson argued, in part, that the appellate court was bound by the previous final judgment by the "law of the case" doctrine or collateral estoppel, that found that the statute of limitations on Carlson's claims against Drinker has expired in 2012 when Cronin represented Carlson. (A155-173). On October 4, 2022 the Illinois Supreme Court ignored Carlson's arguments when it denied the Motion for Supervisory order without comment. (A154). On August 30. 2022 Carlson filed a Petition for Leave to Appeal to the Illinois Supreme Court. (A174-200). Carlson argued in part that his constitutional right to due process was violated because the trial court and appellate court failed to render ANY ruling related to when the statute of limitations expired and the trial court and appellate court failed to abide by a final judgment entered in the same case that stated Carlson's claims against Drinker has expired in 2012 when Cronin represented Carlson. (A174-200). On November 30, 2022 the Illinois Supreme Court again ignored all of Carlon's arguments and denied the PLA without comment. (A153).

Reasons for Granting the Writ.

The above undisputed facts establish that Carlson's Constitutional rights were violated in numerous respects when an Illinois trial court, an Illinois appellate court and Illinois Supreme Court all refused to address Carlson's arguments that were

dispositive of the matter. This Court should grant the writ for numerous reasons.

A. Carlson's right to procedural due process was violated because the hearing he was provided was a sham where there was a predetermined result that was not based upon material and dispositive arguments.

First, this Court should grant the relief sought otherwise Carlson will have suffered a grievous violation of his right to due process. The Due Process Clause of the Fourteenth Amendment provides that "[n]o State…shall…deprive any person of life, liberty, or property without due process of law." The Due Process Clause protects fundamental justice and fairness. *Galvin v. Press*, 347 U.S. 522, 530, 74 S.Ct. 737, 98 L.Ed.2d 911 (1954). Every litigant in every suit is entitled to due process. *Id.* To establish a due process violation, a party must demonstrate: (1) he had a constitutionally protected property interest; (2) he suffered a loss of that interest amounting to a deprivation, and (3) the deprivation occurred without due process of law. *Polenz v. Parrott*, 883 F.2d 551, 555 (7th Cir. 1989). The requirements of procedural due process apply only to deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. *Board of Regents v. Roth*, 408 U.S. 564, 569-70, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Federal courts have a duty to examine the course of litigation and to ascertain whether the adjudication of a litigants' rights comports with due process. *Hansberry v. Lee*, 311 U.S. 32, 40, 61 S.Ct. 115, 85 L,Ed. 22 (1940).

Carlson has met the criteria necessary to establish that his right to due process was violated. First, Carlson has a constitutionally protected property interest in the legal claims he pursued in 16 L 383 that were wrongfully dismissed. A legal claim can be "property" within the meaning of the due process clause. *Logan v. Zimmerman Brush Company*, 455 U.S. 422, 428-31, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982). In *Logan*, this Court stated "a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." *Id.* This Court further explained in *Logan* that "[t]he Court traditionally has held that the Due Process Clause protects civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiff's attempting to redress grievances." *Id.* at 429. The undisputed facts establish that Carlson suffered a loss of constitutionally protected property right when his lawsuit that was potentially worth in excess of $50 million was wrongfully dismissed with prejudice.

Second, Carlson suffered a loss of his property interest by state action. The Due Process Clause governs actions of the State and the State alone and it is not disputed that the State may act by executive officers as well as by its courts and its legislature. *Ex parte Virginia*, 100 U.S. 339, para. 16, 25 L.Ed. 676 (1879). In the instant case, Carlson suffered a loss of his property interest when the Illinois court system wrongfully dismissed his lawsuit with prejudice.

Third, Carlson raised the issues involved in this case with the Illinois courts. Carlson's appellate

brief contained a section that argued and provided authority related to the statute of limitations analysis and that argued that the appellate court was bound by the final judgment in the Best appeal that found that the statute of limitations had expired in November of 2012 when Cronin was representing Carlson pursuant to the "law of the case" doctrine and collateral estoppel. (A280-344). When the Illinois appellate court failed to address or determine when the statute of limitation on Carlson's claims against Drinker has expired, he immediately filed a Petition for Rehearing that pointed out that the appellate court had made a decision that had failed to address these material and dispositive issues. (A201-237). Carlson also filed two separate documents with the Illinois Supreme Court that stated that unless the Supreme Court immediately acted Carlson's Constitutional right to due process would be violated. (A155-173, A174-200). These facts establish that Carlson sufficiently raised the issues involved in this matter with the underlying courts but they ignored all the arguments.

Fourth, Carlson was not afforded due process because any proceedings provided were a sham, not based upon the evidence and law submitted and therefore the result was arbitrary. Once it is determined that due process applies, the question remains what process is due. *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). The due process clause has been held to protect rights covered by the First, Second, Third, Fourth, Fifth Sixth, Eighth and Ninth Amendments. CJS 2d, Constitutional Law, section 1833 page 591.

The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss." *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168, 71 S.Ct. 624, 95 L.Ed.2d 817 (1951). "Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as the private interest that has been affected by governmental action." *Cafeteria & Restaurant Workers Union, etc. v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748-49, 6 L.Ed.2d 1230 (1961). Due process does not require that a party in every civil case actually have a hearing on the merits. *Boddie v. Connecticut*, 401 U.S. 371, 378, 91 S. Ct. 780, 28 L.Ed.2d 113(1971). All the constitution requires is an opportunity for a hearing granted at a meaningful time and in a meaningful manner. *Id.* What the Constitution does require, is an opportunity granted at a meaningful time and in a meaningful manner for a hearing appropriate to the nature of the case. *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62(1965). The formality and procedural requisites for the hearing can vary, depending upon the importance of the interest involved and the nature of the subsequent proceedings. *Bowles v. Willingham*, 321 U.S. 503, 520-521, 64 S.Ct. 641(1944). Under normal circumstances a party must be afforded a fair chance to submit evidence and arguments in favor of his position before a final judgment is rendered. *EEOC v. S.S. Clerks, Local 1066*, 48 F.3d 594, 609 (1st Cir. 1995). Due process does not necessarily "require a full-scale trial, or even a hearing strictly

conforming to the rules of evidence" on every issue. *In re Nineteen Appeals*, 982 F.2d 603, 611(1st Cir. 1992).

In the instant case, Carlson was afforded a legal process to appeal but the appeal and legal process in general was a sham because the conclusion reached by the Illinois courts was not based upon the evidence presented and the applicable law and legal rules enacted by Illinois courts. Due process requires that a hearing "must be a real one, not a sham or a pretense." *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 164, 71 S. Ct. 624, 644, 95 L.Ed. 817 (1951). A decisionmaker's conclusion must rest solely on the legal rules and evidence adduced at the hearing. *United States v. Abilene & S.R. Co.*, 265 U.S. 274, 288-89, 44 S.Ct. 565, 569-70, 68 L.E. 1016 (1924). To demonstrate compliance with the elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on. *Wichita R. & Light Co. v. PUC*, 260 U.S. 48, 57-59, 43 S.Ct. 51, 54, 67 L.E. 124 (1922). An impartial decision maker is also essential. *Wong Yang Sung v. McGrath*, 339 U.S. 33, 45-46, 70 S.Ct. 445, 451, 94 L.Ed. 616 (1950).

The undisputed facts above establish that the hearing provided was a "sham" because the result was not based upon the evidence presented and the governing law that was dispositive of the issues presented. The undisputed evidence establishes that Carlson asserted claims against Best and Cronin for legal malpractice based in part upon their failure to file a suit for Carlson against Drinker before the

statute of limitations and statute of repose expired. (A345-366). The undisputed evidence also establishes that an Illinois trial court entered a final judgment in favor of Best on Carlson's claim against Best when it found that the statute of limitation had expired on Carlson's claims against Drinker in November of 2012 and that the statute of repose had expired in October of 2015. (A79-92, A93-103, A107-111). The undisputed evidence established that the appellate court affirmed the trial court's decision involving Best. (A33-78). The undisputed evidence established that Carlson and Cronin both argued in the appellate court that in order for the appellate court to affirm the trial court order dismissing Carlson's claims against Cronin with prejudice that the trial court had to determine when the statute of limitations and statute of repose expired on Carlson's claims against Drinker. (A3-32, A33-78). The undisputed evidence establishes that the only way that Carlson's claims against Cronin could be dismissed with prejudice would be if the Illinois courts found that the statute of limitations and statute of repose expired at some time when Cronin was not representing Carlson. It is undisputed that the trial court and appellate court in the Cronin case failed to make any determination of when the statute of limitations expired on Carlson's claim against Drinker. (A3-32). It is undisputed that Carlson filed a Petition for Rehearing before the Illinois appellate court and a Petition for Supervisory Order and Petition for Leave to Appeal before the Illinois Supreme Court that pointed out all of the above and asked the courts to comply with due process by making a determination based upon the evidence presented and the applicable law.

(A155-200). The Illinois courts all refused to address the material and dispositive issues in the case, thus they violated Carlson's right to due process.

In addition, the undisputed evidence establishes that Carlson argued to the Illinois courts that they were bound by a previous final judgment pertaining to Count I against Best, that found that the statute of limitations expired in November of 2012 when Cronin was representing Carlson, based upon the "law of the case" doctrine and collateral estoppel. (A280-344). The undisputed record also establishes that Cronin never argued in the appellate court that the "law of the case" doctrine and collateral estoppel did not apply. (A238-279). Thus, it is undisputed that Carlson's argument that the Illinois courts were bound by the prior final judgment in the Best case pursuant to the "law of the case" doctrine or collateral estoppel was not contradicted or opposed in any manner by Cronin.

In addition, even if the Illinois courts found that they were not bound by the previous final judgment related to Count I, Carlson presented evidence, which included judicial admissions of Cronin and Illinois law that established that the statute of limitations pertaining to Carlson's claims against Drinker expired in 2012 as a matter of law. (A280-344). Certainly, when Carlson retained Cronin, and paid him handsomely, to pursue legal malpractice claims against any attorneys who had previously provided legal advice to Carlson about the Belvedere situation that also triggered the statute of limitations that Carlson had against Drinker because that involved a claim for legal malpractice

arising out of the Belveder situation.

For some unknown reason, the Illinois appellate court spent multiple pages discussing when the statute of repose expired and zero pages and zero words discussing the issue of when the statute of limitations expired. (A3-32). Carlson is unclear why the appellate court spent so much time discussing the conclusion that the statute of repose expired in 2015 when the statute of limitations expired in 2012. As Carlson explained to both the Illinois appellate court and the Illinois Supreme Court, if the statute of limitations expired in 2012 then it is immaterial to the case that the statute of repose expired after that time. This is based upon the fact that Carlson's case against Drinker would be considered untimely if it was filed anytime after that statute of limitations expired in 2012.

The above establishes that the Illinois courts totally ignored at least three material and dispositive issues in the. Case. The Illinois courts wrongfully ignored and refused to consider any arguments related to the statute of limitations that were briefed by both parties. (A238-344). The Illinois courts wrongfully ignored and refused to consider any arguments that the court was bound by the final judgment in the Best case that found that the statute of limitations had expired in November of 2012 when Cronin was representing Carlson. (A280-344). The Illinois courts also wrongfully ignored and refused to consider the arguments made by Carlson that even if the Illinois court was not bound by the findings in the final judgment pertaining to Count I that the statute of limitations expired in November

of 2012 as a matter of law under Illinois law. (A280-344). In hindsight, it is clear as day why the Illinois courts intentionally chose to ignore all issue related to the statute of limitations; i.e. because the courts knew if they considered the arguments and the governing law that it would compel them to rule in Carlson's favor. Thus, undisputed facts establish that the Illinois courts did not reach a decision on the evidence and law presented by the parties but instead based a decision upon some unknown matter. A hearing that is not based upon the evidence and legal arguments made by the parties is nothing more than a complete sham that violates the parties constitutional right to due process. Since it is clear that the Illinois courts did not base their decision upon the facts and law presented they violated Carlson's right to due process.

In addition, the appellate procedures were not neutrally applied because the Illinois courts refused to apply or enforce the prior final judgment entered in this matter on Count I pursuant the "law of the case" doctrine and collateral estoppel. Fairness also dictates that the procedure itself not be abused or misused and that no matter how complete the panoply of procedural devices which protect a particular liberty or property interest, due process also requires that those procedures be neutrally applied. *Wong Yang Sung v. McGrath*, 339 U.S. 33, 50, 70 S. Ct. 445, 454, 94 L.Ed. 616; see *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 625, 99 L.Ed. 942; *Hurtado v. California*, 110 U.S. 516, 536-37, 4 S. Ct. 111, 121, 28 L.Ed.2d 232. Even if the procedures themselves are legitimate, it is impermissible to employ those procedures

vindictively or maliciously so as to deny a particular individual due process. *Blackledge v. Perry*, 417 U.S. 21, 25-28, 94 S. Ct. 2098, 2101-2102, 40 L.Ed.2d 628; *North Carolina v. Pearce*, 395 U.S. 711, 723-26, 89 S. Ct. 2072, 2079-81, 23 L.Ed.2d 656.

Centuries of precedent in Illinois pertaining to the "law of the case" doctrine and collateral estoppel establish that Illinois courts are bound by prior final judgments but in this case the Illinois courts vindictively and maliciously chose to wrongfully ignore such long standing principles.

The process provided Carlson also did not rely upon the evidence and law presented to the courts. The facts and evidence presented to the Illinois courts required that they rule in Carlson's favor and find that he had a viable claim against Cronin because the statute of limitations on Carlson's claims against Drinker expired in 2012 when Cronin represented Carlson. There are numerous cases that find that a party's right to due process is violated if the court relies upon matters outside the record. The "consideration of impermissible criteria" distorted the normal process of evaluating work-release applications, resulting in a deprivation of procedural due process. *Sheppard v. Maxwell*, 384 U.S. 333, 351, 354-55, 86 S. Ct. 1507, 1516, 1517-18, 16 L.Ed.2d 600 (due process violated by massive prejudicial publicity before and during trial); *Irvin v. Dowd*, 366 U.S. 717, 722-23, 81 S. Ct. 1639, 1642, 6 L.Ed.2d 751 (due process requires impartial jury unbiased by pretrial publicity). A ruling must be based on evidence received in open court, not from outside sources. *Marshall v. United States,* 360 U.S.

310, 313, 79 S.Ct. 1171, 3 L.ed.2d 1250 (1959). Thus, in *Marshall* this Court set aside a federal conviction where the jurors were exposed through news accounts, to information that was not admitted at trial. *Id.* Furthermore, in *Patterson v. Colorado*, 205 U.S. 454, 462, 27 S.Ct. 556, 51 L.Ed. 879 (1907) this Court stated "the theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by outside influence, whether of private talk or public print."

As established above in detail, the Illinoiis courts did not base any decision upon the evidence and law presented because if it did then Carlson would have prevailed.

Carlson understands and appreciates that it is not appropriate for a federal court to upbraid state officials for a supposed error of state law. *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 106, 104 S.Ct. 900, 911, 79 L.Ed.2d 67 (1984). Carlson also appreciates and understands that the Constitution does not require states to administer their laws correctly. *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 202, 109 S.Ct. 998, 1006, 103 L.Ed.2d 249 (1989). Due process of law does not guarantee against judicial error, or unjust or erroneous decisions. *Watson v. Kenlick Coal Co.*, 365 F.Supp. 456, 462 (E.D. Ky. 1973). The due process clause requires courts to use procedures adequate to reach informed and accurate decisions in the main; it does not guarantee that all decisions will be correct or persuasive to the accused. *United States ex rel. Villa v. Fairman,* 810

F.2d 715, 718-19 (7th Cir. 1987).

What happened in this case was not that the Illinois courts made some error in the application of the law but instead the Illinois courts refused to make a decision because they knew that making a decision would mean that Carlson wins as a matter of law. The Illinois courts did not state that the statute of limitations analysis was irrelevant or immaterial and did not state that the "law of the case" doctrine or collateral estoppel did not apply instead the Illinois courts totally ignored all these issues. Again, it should be noted that the issue of when the statute of limitations expired on Carlson's claims against Drinker was briefed by Cronin. (A238-279). Thus, all parties to the proceedings agreed that the Illinois courts had to determine when the statute of limitations expired. There is no way that the process provided to Carlson was fair or based upon the evidence or the law or the arguments presented by both parties because the Illinois Courts ignored the entire statute of limitations issue. If a parties present an issue to a court that is material and dispositive either as a matter of law or otherwise and if the court ignores that material and dispositive issue, that court by definition violated due process.

Carlson right to due process were also violated because the Illinois court did not apply the law equally. The separate clauses of the Fourteenth Amendment guarantying due process of law and equal protection of laws refer to separate rights; the purpose being to require equal protection as well as due process. *George Benz Sons Inc., v. Ericson*, 34

N.W.2d 725, 736-39 (1948). The concepts of equal protection and due process are not mutually exclusive. *Id.* The purpose of the guaranty of due process is to secure to all persons equal protection of the law so that the laws operate on all alike. *Greenburg v. Bolger*, 497 F.Supp. 756, 778-780 (E.D. N.Y. 1980). Due process is secured by law operating on all alike, and not subjecting the individual to arbitrary exercise of the power of the government unrestrained by the established principles of rights. *Greater New Haven Property Owners Ass'n v. City of New Haven*, 288 Conn. 181, 195-204, 951 A.2d 551 (2008).

Illinois law requires that prior final judgments are binding on all future matters involving the same matters. In Illinois, this concept is called the "law of the case" doctrine. This doctrine is long standing and widely recognized that the Illinois courts are well aware of and that are applied on a daily basis. For some unknown reason, the Illinois courts chose to not apply such principles in this matter to all citizens equally. Instead, the Illinois courts chose to arbitrarily not apply the centuries old doctrine to Carlson. The failure to apply this centuries old doctrine equally to Carlson violated his right to due process and right to equal protection of the law.

B. Carlson right to substantive due process was violated by the grievous actions of the Illinois courts.

Carlson's right to substantive due process was violated because the decisions by the Illinois courts were arbitrary. Due Process claims may take either of two forms: substantive due process or procedural due process. *Plyler v. Moore*, 100 F.3d 365, 374 (4th Cir. 1996). Although each plays a distinct role in protecting an individual's right to due process, they frequently overlap and many cases do not adequately distinguish between the two. *Westerheide v. State*, 767 So. 2d 637, 653-57(Fla. 2000). Substantive due process claims are two types: the first type includes claims asserting the denial of a right, privilege or immunity secured by the Constitution or by federal statute and the other type of claim is directed at official acts that may not occur regardless of procedural safeguards accompanying them. *Hampton v. Hobbs*, 106 F.3d, 1281, 1287 (6th Cir. 1996). Substantive due process imposes limits on what a state may do regardless of what procedural protection is provided. *Id.* It focuses on the result not its procedures. *Id.* Substantive due process prohibits the government from engaging in conduct that shocks the conscience or that interferes with rights implicit in the concept of ordered liberty or that is arbitrary. *U.S. v. Salerno*, 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). The substantive component of the due process clause has been referred to as an area of the law "famous for its controversy, and not known for its simplicity." *Schaper v. City of Huntsville,* 813 F.2d 709, 715 (5th Cir. 1987). Its precise parameters have been the

subject of much confusion and the Supreme Court has yet to define its limits. *Reich v. Beharry,* 883 F.2d 239, 243 (3d Cir.1989) (whether and when state created property interest invokes the substantive due process clause is subject to varying analyses). In order to state a claim for a violation of substantive due process, a plaintiff must allege first that the government official's decision was arbitrary and irrational, and second, either that state remedies are inadequate or that an additional constitutional provision has been violated. *New Burnham Prairie Homes v. Village of Burnham,* 910 F.2d 1474, 1481 (7th Cir. 1990); *Kauth v. Hartford Ins. Co. of Illinois,* 852 F.2d 951, 958 (7th Cir.1988). An abuse of power is arbitrary in the substantive due process sense if it shocks the conscience. *Remer v. Burlington Area School Dist.,* 286 F.3d 1007, 1011 (7th Cir. 2002).

The result reached by the Illinois courts was arbitrary and shocks the conscience of the reasonable legal world. The Illinois courts dismissed Carlson's claims against fellow members of the bar by rendering a decision that ignored material and dispositive issues raised by all parties including the defendants. There is absolutely no rational basis that can explain the actions of the Illinois courts. The actions of the Illinois court are even more egregious based upon the fact that Carlson filed three separate briefs before two difference courts that informed the Illinois courts that they were violating Carlson's right to due process by ignoring and refusing to address the arguments, yet the Illinois courts chose to continue ignore Carlson and the arguments. The behavior of the Illinois courts is

disgusting and brings the legal profession into serious disrepute. At a minimum, the Illinois should have and could have commented or addressed the issues and their failure to do so establishes a breach of Carlson's right to due process.

C. Carlson's right to full faith and credit of an Illinois judgment was violated when Illinois courts refused to abide by the findings of the final judgment.

Finally, Carlson constitutional right to have one court be bound by the final judgment of another court was violated. Article IV section 1 of the Constitution states "Full Faith and Credit shall be given in each State to the..judicial proceedings of every other state." As one of its first acts, Congress directed that all United States courts afford the same full faith and credit to state court judgments that would apply in the State's own courts by enacting 28 U.S.C 1738. *Kremer v. Chemical Construction Corp.,* 456 U.S. 461, 463, 102 S.Ct. 1883, 72 L.Ed.2d 262 (1982). 28 U.S.C section 1738 states "judicial proceedings.so authenticated, shall have the same full faith and credit in every court within the United States..as they have by law or usage in the courts of such State..from which they were taken."

A final judgment is entitled to full faith and credit in every American jurisdiction under this section. *Allegheny County v. Maryland Cas. Co.*, 132 F.2d 894, 899 (3d Cir. Pa 1943). Only final judgments are subject to enforcement pursuant to the full faith and credit principles. *MacArthur v.*

San Juan County, 497 F.3d 1057, 1065 (10th Cir. Utah 2007). The requirement of full faith and credit is to be interpreted in light of well-established principles of justice protected by other constitutional provisions such as due process…" *Botz v. Helvering*, 134 F.2d 538, 544 (8th Cir. 1943). Under constitutional requirement of full faith and credit, federal courts must accord to prior state adjudication the same degree of collateral estoppel effect or *res judicata* effect as would be accorded under law if the state where adjudication was rendered. *Khal Charidim Kiryas Joel v. Village of Kiryas Joel,* 935 F.Supp. 450, 459 (S.D. N.Y. 1996); *Granite Const. Co. v. AllisChalmers Corp.*, 648 F.Supp. 519, 526 (Nev. 1986). This statute gives the decree of a state court the same effect elsewhere which it has in that state. *Cheever v. Wilson*, 76 U.S. 108, 19 L.E. 604 (1869). Under this clause, local doctrines of *res judicata* become a part of national jurisprudence and are therefore federal questions cognizable before the Supreme Court. *Durfee v. Duke*, 375 U.S. 106, 107, 84 S.Ct. 242, 11 L.Ed.2d 186 (1963); *Riley v. New York Trust Co.,* 315 U.S. 343, 349, 62 S.Ct. 608, 86 L.Ed 885 (1941).

In addition, there are many cases that discuss the fact that one court should be bound by the final judgment of another court. In *Riley v. New York Trust Co.,* 315 U.S. 343, 349, 62 S.Ct. 608, 86 L.Ed 885 (1941). this Court wrote that "[b]y the Constitutional provision for the full faith and credit, the local doctrine of *res judicata*, speaking generally, [became] a part of national jurisprudence., and therefore federal questions cognizable here." The policy behind the Full Faith and Credit Act and *res*

judicata are the same. *Id.* at 348. This Court in *Riley* further stated "[t]his clause of the Constitution brings to our Union a useful means for ending litigation. Matters once decided between adverse parties in any state or territory are at rest…" *Id.* at 348.

Carlson's constitutional right to full faith and credit was violated by the Illinois courts. There was a final judgment reached by the Illinois courts on Count I of Carlson's complaint. (A3-32). The Illinois trial court found that the statute of limitations on Carlson's claim against Drinker had expired in November of 2012 and this decision was affirmed on appeal. (A33-78). The Illinois courts in this matter failed to comply with the with the prior final judgment thus violating Carlson's right to full faith and credit.

Section 1738 applies here even though the two courts are in the same state because the statutory language in section 1738 uses the terms "in every court" so that covers two courts in the same state. Moreover, section 1738 is to be broadly construed and applied. The full faith and credit provision of the constitution favors the expansive application in order to fulfill its purpose of ensuring that all states recognize official acts, judicial actions and judgments. *R.S. v. Pacificare Life and Health Ins. Co.,* 194 Cal. App. 4th 192, 199-203, 128 Cal.Rptr. 3d 1 (2d Dist. 2011).

D. The Petition should be granted because if it is not granted then this Court is countenancing the unprofessional and improper behavior of the Illinois courts.

This Court should grant the Petition for an additional reason. This Court is the highest court in the land and it sets the standards that govern the court systems in general and the behavior of attorneys throughout the land in particular. The instant case involves an abuse of the legal system where it certainly can be reasonably inferred that the Illinois Courts are wrongfully protecting fellow members of the bar and former judges from facing the effects of their negligence. The fact that the Illinois courts intentionally and wrongfully repeatedly ignored material and dispositive issues involved in this case and essentially shut Carlson out of the legal process by refusing to address material legal arguments that both Carlson and Cronin do not dispute are dispositive to this case is extremely troubling. This Court should not countenance the shocking behavior of the Illinois courts because it will encourage and send a message to Illinois courts and other corrupt court systems that it acceptable to ignore material and dispositive issues raised by the parties. The Illinois courts abdicated their responsibility and the oaths of office that all members of the judiciary are required to take because they refused to do the job they were elected to perform which was to resolve matters on the merits of the evidence presented and instead they based their decisions on matters outside the record. The Illinois courts failed to perform the job they were elected to perform and were allowed to

reach an arbitrary result to protect a fellow member of the bar and judiciary and that should not stand in a country that prides itself on the integrity of its legal systems. If this Court does not act, then it will allow the Illinois courts to get away with violating the Constitutional rights of Carlson and may lead the Illinois courts to repeat their actions whenever they so choose because they will know there are no repercussions for their wrongful actions.

Conclusion.

In summary, the only logical explanation for why the Illinois courts chose to ignore the entire statute of limitations issue is because the Illinois courts knew if the courts addressed the issue it would require ruling in Carlson's favor based upon the "law of the case doctrine," collateral estoppel, *res judicata*, full faith and credit clause and section 1738. The Illinois courts intentional refusal to address, consider or rule on material and dispositive issues establishes that Carlson's right to due process was violated.

William Carlson prays that this Court grant the writ for certiorari, that this Court reverse and vacate the judgment entered by the Illinois Supreme Court, Illinois Appellate court and Illinois trial court against William Carlson and Willis Capital LLC and remand this case for a trial on the merits and for any further relief that is just and equitable under the circumstances.

Respectfully Submitted,

WILLIAM CARLSON and
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