22-1184

No. 22-A429

IN THE
Supreme Court of the United States

ROBERT L WALKER. etal,
Petitioners,
v.

Barry S Mittelberg, Barry Steven Mittelberg,
BARRY S MITTELBERG P.A.,etal
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Robert L. Walker
4001 S.W. Melbourne Street
Port Saint Lucie, FL 34953
(772)400-7544
Petitioners'

Date: 12th May 2023

QUESTIONS PRESENTED

Whether the 11th Circuit Court of Appeals exercised its discretion in err by not "safeguarding not only ongoing proceedings, but potential future proceedings," Klay, 376 F.3d at 1099, as well as to "protect or effectuate" their prior orders and judgments as to a "Moot" Mandate made in conflict with judicial over reach in abuse and premature when it presided over the Barry S Mittelberg, Barry Steven Mittelberg and BARRY S MITTELBERG P.A., untimely Proof of claims that were forfeited through judicial estoppel "proverbial strangers" when he filed a Bankruptcy petition and did not disclose the Petitioner's real and personal Property on his asset and schedules and is he entitle to receive "any relief" without pleading and defending while under the 11th Circuit Court of Appellate Review in conflict with 11 U.S.C. §521 Section 1306, Section 541(a)(7), and Bankruptcy Rule 1007 citing *Martineau v. Wier,* 934 F.3d 385 (4th Cir. 2019), *Coastal Plains*, 179 F.3d 197 (5th Cir. 1999) and US Bankruptcy Court of Florida Southern Division Local Rule 2090-1(D)(E), in err citing *Erickson v. Pardus,* 551 U.S. 89, 94 (2007), *Neidich v. Salas* 783 F.3d 1215, 1216 (11th Cir. 2015) *and Chanbers v. NASCO, Inc,* 501 U.S. 32, 45 (1991),.

RULE 29.6 STATEMENT

Petitioners' Robert L Walker, has no parent companies or subsidiaries, and no public company owns 10% or more of its stock.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

United States Court of Appeals for the Eleventh Circuit Docket No. 21-10207 *Robert L Walker, etal, v. BARRY S MITTELBERG P.A., Barry S Mittelberg.,etal*

Date of Final Judgment: None and Mandated None

United States Court of Appeals for the Eleventh Circuit Docket No. 21-10205 *Robert L Walker, etal, v. BARRY S MITTELBERG P.A., Barry S Mittelberg.,etal*

Date of Final Judgment: October 25, 2022

United States Court of Appeals for the Eleventh Circuit Docket No. 21-12114 *Robert L Walker, etal, v. K. DRAKE OZMENT, OZMENT LAW P.A.,etal*

Date of Final Judgment: September 27, 2022

RELATED PROCEEDINGS CONTINUED

United States Court of Appeals for the Eleventh Circuit Docket No. 21-13937 *Robert L Walker, etal, v. K. DRAKE OZMENT, OZMENT LAW P.A.,etal*

Date of Final Judgment: October 6, 2022

United States Court of Appeals for the Eleventh Circuit Docket No. 22-10716-JJ *Robert L Walker, etal, v. BARRY S MITTELBERG P.A., Barry S Mittelberg.,etal*

Date of "Moot" Order: 2, 2022

United States District Court for the Southern District of Florida Docket No. 9:20-cv-81366-WPD *Robert L Walker, etal, v. BARRY S MITTELBERG P.A., Barry S Mittelberg.,etal*

Date of Final Judgment: January 15, 2021

RELATED PROCEEDINGS CONTINUED

United States District Court for the Southern District of Florida Docket No. 9:21-cv-80537-AMC

Robert L Walker, etal, v. K. DRAKE OZMENT, OZMENT LAW P.A.,etal

Date of on Stay pending Judgment: June 24, 2021

United States District Court for the Southern District of Florida Docket No. 9:21-cv-80568-AMC

Robert L Walker, etal, v. K. DRAKE OZMENT, OZMENT LAW P.A.,etal

Date of Judgment without prejudice: November11, 2021

United States District Court for the Southern District of Florida Docket No. 9:21-cv-80855-AMC

Robert L Walker, etal, v. K. DRAKE OZMENT, OZMENT LAW P.A.,etal

Date of Judgment without prejudice: February 4, 2021

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The opinion of the Eleventh Circuit Court of Appeals appears in the Appendix ("App.") at 1a-19a to this Petition, The order of the United States District Court for the Southern District of Florida, dated November 29, 2021, granting the Order Staying Case Pending Appeal and Administratively Closing Case, at [App.17a-19a].

STATEMENT OF JURISDICTION

The Eleventh Circuit Court of Appeals entered its opinion on December 2, 2022. [App.14a-15a], September 27, 2022. [App.1a-9a] and October 26, 2022. [App.9a-12]. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND JUDICIAL RULES INVOLVED

U.S. Const. amend. V The Due Process Clause of the Fifth Amendment to the United States Constitution provides in pertinent part as follows: No Person shall be . . deprived of life, liberty, or property, without due process of law . . .

U.S. Const. amend. XIV § 1 The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides in pertinent part as follows: nor shall any State deprive any person of life, liberty, or property, without due process of law . . .

Federal Rules of Civil Procedure 60(b)

Extraordinary Relief as to the exceptional circumstances, for extraordinary relief and remedy Pursuant to Rule 60(b)(6). Pursuant to Rule60(b)(6)., while and extraordinary remedy may be invoked only upon a showing of exceptional

circumstances, and that, absent such relief, an extreme and unexpected ***hardship*** *will result. SEC v. N. Am. Clearing, Inc., 656 F. App'x 947, 949 (11th Cir. 2016) (citation omitted). Toole v. Baxter Healthcare Corp., 235 F.3d 1307, 1316-17 (11th Cir. 2000)*

STATEMENT OF THE CASE

A. Proceedings in the District Court

On the 4th of October 2016 the Respondent, Barry S Mittelberg, Barry Steven Mittelberg and BARRY S MITTELBERG P.A., had a Meeting of the Creditors as to his filed a Petition for a Chapter 13 Bankruptcy Protection Re BARRY STEVEN MITTELBERG, P.A. as Debtor, Case NO. 16-22322-RBR with the assistant of Florida Bar Attorney Stan Riskin. In which the Petitioners without knowledge and consent lacked notice that has since lead to unjust benefit to the Respondent Barry S Mittelberg, Barry Steven Mittelberg and BARRY S MITTELBERG P.A as a debtor forfeited alleged creditor

through judicial estoppel that was "clearly inconsistent" with an earlier position upon which the court relied in which he becomes the "proverbial strangers" making the 11th Premature Judgment in conflict with Section 521, Section 541(a)(7), In re Coastal Plains, 179 F.3d 197 (5th Cir. 1999) and citing Martineau v. Wier, 934 F.3d 385 (4th Cir. 2019).

Soon thereafter, On the 31st of January 2020 the Petitioner, filed a Petition for a Chapter 13 Bankruptcy Protection with the assistant of retained Counsel K. DRAKE OZMENT, OZMENT LAW P.A., Kenneth Drake Ozment with full Retainer paid prior to The Chapter 13 Confirmation on the 14th of July 2020. That petition was filed as to the Injuries that was sustained of a Catastrophic Workman's Compensation 3rd Party Incident, through the Scope of Employment Injuries in

Relations to Former Employers United Parcel Service Inc., and their Insurance Risk Carriers Companies Liberty Mutual Group, Liberty Mutual Insurance Inc., and HELSMAN MGMT LLC LLC along with Fraud but not limited to. In which prior to filing a bankruptcy petition Respondent Barry S Mittelberg, Barry Steven Mittelberg and BARRY S MITTELBERG P.A was retained to handle the 1st, 2nd and 3rd party Insurer The Bad Faith State Matters that were tolling prior to the 11th Circuit Three(3) premature Judgments under state jurisdiction in cases **a.** Peele v. The United States Department of Justice (USDOJ),The Florida Bar, etal, 22-13173; 11th Circuit Court of Appeals, **b.** Peele v. The United States Department of Justice(USDOJ), The Florida Bar, etal, 22-14096; 11th Circuit Court of Appeals, and **c.** Peele v. The United States of America through SSA

(USA), The Florida Bar, etal State Notice of Removal, 19th JUDICIAL County Civil For St. Lucie County, Florida *Case No. 562023SC002970 AXXXHC in the process of being* adjudicated through the State arena, then Removed to Federal Jurisdiction making all previously matters ***Moot*** while allowing the avoidance of Damages that creates the continued violation of The Rooker Feldman Doctrine, in which the Judgments created infinite Litigation thresholds by not *"safeguarding ongoing proceedings, that have created potential future proceedings"*. The U.S. Supreme Court made it clear in The Rooker Feldman Doctrine as: Rooker-Feldman Doctrine *is based on the concept "that a litigant should not be able to challenge state court orders in federal courts as a means of relitigating matters that already have*

been considered and decided by a court of competent jurisdiction.

The LOGOA abused her discretion with conflict of interest by presiding over the matters while under the Florida Supreme Court Jurisdiction then becoming an 11th Circuit Court Appellate Judge and re opinioned matters that it relinquished prior allowed to seize the allocation of Wealth and Assets, while denying redress through due process and rewarding the protecting of the same parties that are the Authors of the Damages that are continuing in Nature. Former *Employer, The United Parcel Service Inc and their Insurance Carrier Liberty Mutual Insurance Company, Liberty Mutual Group and Liberty Mutual Holdings Along With Third(3rd) Party Corporation, Kone Elevator, Kone Inc., Kone Holdings Inc., and their Insurance Risk Carrier Liberty Mutual*

Insurance Company, Liberty Mutual Group and Liberty Mutual Holdings who are the common nucleus of the litigation matters were in litigation prior to the 11th circuit Opinions under case **a.** Peele v. The United States of America through SSA (USA), The Florida Bar, etal, 19th JUDICIAL County Civil For St. Lucie County, Florida *Case No. 562023SC 000270AXXXHC,* **b**. Peele v. The United States of America through SSA (USA), The Florida Bar, etal, 19th JUDICIAL County Civil For St. Lucie County, Florida *Case No.562023SC002970AXXXHC and* **c.** Peele v. OPENSKY, etal, 19th JUDICIAL County Civil For St. Lucie County, Florida *Case No. 562022SC0 04427AXXXHC violating the Rooker-Feldman Doctrine seeking the Petition for A WRIT OF CERTIORARI.*

B. The Court of Appeals' Affirmance

The Court of Appeals for the Eleventh Circuit in err affirmed, finding in pertinent part, as follows: At least some of these are collateral matters. Former clients are entitled to records from former counsel, for example, no matter how the suit for which they hired counsel plays out. The district court thus could, in theory, grant effectual relief on at least one of debtors' motions: it could order Ozment Law to turn over certain records. Debtors' appeal, therefore, isn't moot. [App.5a-6a]. However in it's abuse presided over those matters prior to tolling related matter never opinioned United States Court of Appeals for the Eleventh Circuit Docket No. 21-10207: *Robert L Walker, etal, v. BARRY S MITTELBERG P.A., Barry S Mittelberg.,etal.*

STATEMENT OF FACTS

In: Local Loan Co. v. Hunt, 292 U.S. 234,244(1934) makes it perfectly that states.. "bankruptcy, gives to the honest but unfortunate debtor...a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt", allowing the opportunity for a "Fresh Start". The district court with abuse of discretion and judicial over reach and prematurely Issued Three(3) Conflicting Opinions in err on the 25th of October 2022, in an opinion reported at 2022 WL 4477259, at *1, the 6th of October 2022 in an opinion reported at 2022 5237915, at *1, and the 29th of September 2022 in an opinion reported In re Walker, No. 20-10507,in which those opinions conflicting in nature have created premature judgments with judicial overreach as to not "safeguarding not only ongoing

proceedings, but potential future proceedings," Klay, 376 F.3d at 1099, as well as to "protect or effectuate" their prior orders and judgments, *Wesch v. Folsom, 6 F.3d 1465, 1470 (11th Cir. 1993); see United States v. N.Y. Tel. Co., 434 U.S. 159, 172, 98 S. Ct. 364, 372 (1977).*

REASON FOR GRANTING THE PETITION

The Eleventh USCA Judges, LOGOA, abused her discretion by not recusing herself as she presiding over directly related when she was a Florida Supreme Court Justice and greatly claims briefing before the Court, made in passing related to current, and raised briefly with supporting arguments or authorities that are currently "still" pending Appellate review under the same panel JORDAN, MEWSOM, LOGOA. The Hon. Rodney Smith of the USDC of Florida Southern Division under Appellate Jurisdiction in addition to and Lower State of Florida

Judge Daryl Eisenhower also have jurisdiction over the briefing of related matters that JORDAN, NEWSOM and LOGOA without jurisdiction, opinioned on, causing abuse of discretion and judicial over reach conflicting with *Barton v. Barbour, 104 U.S. 126, 127 (1881) Doctrine, Carter v. Rodgers,220 F.3d* 1249, 1252–53 (11th Cir. 2000) and Seminole Tribe of Florida v. Florida. 517 U.S. 44, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996). "The Eleventh Circuit Court of Appeals panel JORDAN, NEWSOM and LOGOA" abused its discretion with erred by taking jurisdiction over State matters and matters tolling under Appellate Review under the jurisdiction of Three Jurisdictions and relying on Neidich v. Salas, 783 F.3d 1215, 1216 (11th Cir. 2015), Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008) and Sapuppo v. Allstate Floridian Ins. Co., 739 F.3d 678, 681 (11th Cir. 2014),

Conflicting with **Local Loan Co. v. Hunt**,292 U.S. 234, 244 (1934), *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) Wesch v. Folsom, 6 F.3d 1465, 1470 (11th Cir. 1993); and United States v. N.Y. Tel. Co., 434 U.S. 159, 172, 98 S. Ct. 364, 372 (1977) The Applicants cannot abandon any claim not briefed before this Court, made in passing, or raised briefly without supporting arguments or authority as the matters are still under briefing with several arguments and authorities under State PRE-TRIAL and Florida USDC Appellate Review. The Courts Three Opinions cause conflict deeming issues not briefed on appeal as abandoned, violating the *Rooker-Feldman Doctrine* and 14th amendment of right to due process as matters are still before the Court, tolling with issues that are brief and still pending before the court in separate mattes in which the Applicants placed the court

on notice in which after their Opinions have since then ruled on the Notice of related case stating "To the extent any of the various grievances and requests for relief that Walker and Peele raise on appeal are collateral matters, those arguments and requests for relief are outside the scope of this appeal", relying on In re *Donovan, 532 F.3d 1134, 1136 (11th Cir. 2008)* and *Erickson v. Pardius, 551 U.S. 89, 94 (2007).* On the 10th of August 2022 prior to the Courts Opinion the issues before the court where denied a related cases consolidation as to jurisdiction of related issues.

The Eleventh USCA issued a unusual amount of jurisdictional questions and denied all jurisdiction, however soon thereafter the Applications matters were tolling under the jurisdiction of the State, set for Pre-Trial and after the United States of America removed the

matters, rendered Three Opinions and a Denial for a Stay on the 7th of November 2022, as there will need to render an additional Two (2) more Opinions as the matters that were not abounded have been briefed and is pending briefing on the 14th of December 2022. The Applicants State Matters which are still pending and is awaiting Remand once the JORDAN, NEWSOM, and LOGOA render their decision after briefing.

The Applicants PRE-TRIAL in related stated matters that has since been removed from State Court by party Respondents in a related matter that is currently tolling under appeal in the Eleventh Circuit with the same panel of JORDAN, NEWSOM, LOGOA that have rendered a Pre-Mature opinion and Judgment as these matters have been on appeal for over seventeen months with significance delay that has successfully prejudice the

Applicants as the tolling issues which have been briefed on appeal and not abandoned as the matters are currently being heard by several jurisdiction, making the Court's order not only an abuse of discretion with judicial overreach, but a violation of the Equal Protection Clause and the14th amendment of Due Process but not limited to.

I. THERE IS NO CONSTITUTIONAL BASIS TO EXERCISE OF PERSONAL DISCRECTION JURISDICTION OVER U.S. Code: Title 11, SUB CHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE (§§1301- 1308)and SUBCHAPTERII—THE PLAN (§§ 1321 -1330),THAT IS INCONSISTENT WITH 11 U.S.C. § 521 citing Martineau v. Wier, 934 F.3d 385

The Petitioners were not given "as far in advance of trial, and as far in advance of any pretrial 'critical stage,' as necessary to guarantee effective assistance at trial. Inasmuch as the role of counsel at the preliminary hearing stage does not necessarily have the same effect upon the integrity of the factfinding process as the role of

counsel at trial. When the Petitioner Plan was confirmed on the 14th of July 2020 invoke the 11 U.S. Code § 1327 - Effect of confirmation, which gave the provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan. Subsection (a) binds the debtor and each creditor to the provisions of a confirmed plan, whether or not the claim of the creditor is provided for by the plan and whether or not the creditor has accepted, rejected, or objected to the plan. Unless the plan itself or the order confirming the plan otherwise provides, confirmation is deemed to vest all property of the estate in the debtor, free and clear of any claim or interest of any creditor provided for by the plan as 11 U.S. Code § 1301 - Stay of action against codebtor **(a)**Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with

the debtor, or that secured such debt, unless—**(1)**such individual became liable on or secured such debt in the ordinary course of such individual's business; or **(2)** the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title. Under the terms of the agreement with the codebtor who is not in bankruptcy, the creditor has a right to collect all payments to the extent they are not made by the debtor at the time they are due. To the extent to which a chapter 13 plan does not propose to pay a creditor his claims, the creditor may obtain relief from the court from the automatic stay and collect such claims from the codebtor, that was not the case the Petitioners were both under those protections such as the ones that afforded the Barry Steven Mittelberg who was in bankruptcy at the time of Retainment under Case *Barry S Mittelberg P.A (16-22322, (S.D.Fla.2016).*US Bankruptcy Court of Florida Southern Division Local Rule 2090-1(D)

stated **Attendance at Hearings Required for Debtor's Counsel,** K. DRAKE OZMENT, OZMENT LAW P.A.,etal who made an appearance on behalf of a debtor must attend all hearings scheduled in the debtor's case that the debtor is required to attend under any provision of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or order of the court, unless the court has granted a motion to withdraw pursuant to Local Rule 2091-1.

In addition, K. DRAKE OZMENT, OZMENT LAW P.A.,etal must be familiar with the facts and schedules and have met and conferred with the client prior to appearing as to being familiar with the client and the file, and may not use appearance counsel for any hearing unless (a) the client consents in advance to the use of the appearance attorney, (b) the client does not incur any additional expense associated with the use of an

appearance attorney, (c) the appearance attorney complies with all applicable rules regarding disclosure of any fee sharing arrangements, and (d) appearance counsel is familiar with the debtor's schedules and statement of financial affairs and is otherwise familiar with the facts of the case. Even after, K. DRAKE OZMENT, OZMENT LAW P.A.,etal did adhered to US Bankruptcy Court of Florida Southern Division Local Rule 2090-1(E), by not advising the debtor of, and assist the debtor in complying with, all duties of a debtor under 11 U.S.C. §521 under the petitioner matters shows the constant ineffective of counsel as to statements of The Former ***USDC Chief Judge Paul G. Hyman, Jr.,*** **stated....*"You're committing malpractice with your clients. If one of them come in here, I'm going to tell them to sue you. And I will put on the record, you are***

committing malpractice with your clients", *in proceeding Brown v. Merrill., etal., (9:2016-cv-81916)(S.D. Fla 2016).*

CONCLUSION

When The Petitioners' Filed his Notices of Appeals created an event of jurisdictional significance that confers jurisdiction on the appellate court and divests the trial court of its control over the aspects of the case involved in the appeals. See *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (per curiam). An Appeal from an order does not deprive the bankruptcy and or Appellate court of jurisdiction over all aspects of the case. *In re Strawberry Square Assocs.*, 152 B.R. 699 (Bankr. E.D.N.Y. 1993). However, it The Eleventh USCA Judges JORDAN, NEWSOM LOGOA, with abuse of discretion heard Mittelberg's appeal last prior to later appeals grossly

overreached as he "only" retained jurisdiction when (1) the matters were **"not"** related to the issues involved in the appeal; (2) the order appealed was "***not appealable***" or frivolous; and (3) the court's action would "***aid"*** in the appeal. to ensure their orders would be moot creating overreached as to them "only" retaining jurisdiction when (**1**) the matters were **"not"** related to the issues involved in the appeal; (**2**) the order appealed was "***not appealable***" or frivolous; and (**3**) the court's action would "***aid"*** in the appeal not were the mandated not "safeguarded not only to ongoing proceedings, but potential future proceedings," Klay, 376 F.3d at 1099, as well as to "protect or effectuate" their prior orders and judgments, Wesch v. Folsom, 6 F.3d 1465, 1470 (11th Cir. 1993); and United States v. N.Y. Tel. Co., 434 U.S. 159, 172, 98 S. Ct. 364, 372 (1977). This Court should grant

the petition, vacate mandate as premature, and or at minimum narrow, the mandate entered by the court of appeals, reverse the affirmed.

Dated: 22nd of April, 2023

Respectfully submitted,

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Petitioners'