

No.

22-6244

RECEIVED

IN THE

SUPREME COURT OF THE UNITED STATES

LeeAnn Morgan - PETITIONER

vs.

Regents, University of California et al -

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI

TO

Los Angeles Superior Court – West District, Santa Monica California

(NAME OF COURT THAT LAST RULED ON MERITS OF

YOUR CASE) PETITION FOR WRIT OF CERTIORARI

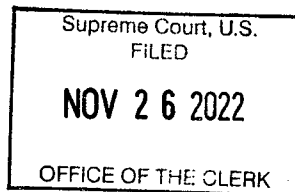
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QUESTION(S) PRESENTED

1. Does the 7th Amendment of the U.S. Constitution provide that a Jury Trial be held in civil private matters between a private party and a State-funded medical Institution?

2. Does a Petition for Writ of Error Coram Nobis - a long-held, common-law doctrine in California - lie as a remedy for a plaintiff's recovery, for a trial Court to:

a) Vacate a prior, erroneous judgment in a naively-filed medical "negligence" action, and

b) To order a fairly-conducted jury trial, based upon newly discovered facts obtained long after the original action ended: facts which indicate that the matter falls under the various laws of:

- 1) Concealed medical battery;
- 2) Fraud / fraudulent concealment;
- 3) Violations of the False Claims Act;
- 4) Violations of Unfair Competition Law;
- 5) Violations of Stark Anti-kickback Act;
- 6) Violations of several California Primary Rights during a surgery;
- 7) Violations of the Federal Food, Drug and Cosmetic Act;
- 8) Violations of the Declaration of Helsinki;
- 9) Violations of FDA and ICH regulations; and
- 10) Violations of the Nuremburg Code (concealed human experimentation)?

3. Does California Code of Civil Procedure Section 657 also lie as a statutory remedy in the trial court for a plaintiff's recovery under the same medical battery fact pattern as in #2 above?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Regents, University of California
2. Jeffrey C. Wang, M.D.
3. Rahul Basho, M.D.
4. Joshua Bales, M.D.
5. Does 7-100

RELATED CASES

1. BC452100: (2010) Los Angeles Superior Court (Medical negligence) Summary Judgment (**for** defendants) **Jury Trial Denied.**
2. BC624990: (2016) Los Angeles Superior Court (Medical Battery, Fraud, etc.) (demurrer sustained without leave to amend) **Jury Trial Denied.**
3. B284748: (2018) Los Angeles Second District Court of Appeal Div. 3 (affirmed); petition for rehearing (denied) **Jury Trial Denied.**
4. BC452100: (2020) Los Angeles Superior Court (Petition for Writ of Error Coram Nobis (denied) **Jury Trial Denied.**
5. B311441: (2022) Los Angeles Second District Court of Appeal Div. 5 (affirmed); petition for rehearing (denied Aug 25, 2022) **Jury Trial Denied.**
6. S276305 (2022) Petition for Review in California Supreme Court (declined)

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IN THE
SUPREME COURT OF THE UNITED
STATES PETITION FOR WRIT OF
CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix to the petition and is

☐ reported at _____; or, ☐ has been designated for publication but is not yet reported; or, ☐ is unpublished.

The opinion of the United States district court appears at Appendix to the petition and is

☐ reported at _____; or, ☐ has been designated for publication but is not yet reported; or, ☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to **review the merits** appears at **Appendix B** to the petition and is

☐ reported at _____; or, ☐ has been designated for publication but is not yet reported; or, ☒ is unpublished. **Please Note: Merits Not Reviewed. Appeal Dismissed.**

The opinion of the Los Angeles Superior court appears at **Appendix A** _____ to the petition and is

☐ reported at _____; or, ☐ has been designated for publication but is not yet reported; or, ☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____
(date) on _____ (date) in Application No. _____

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court **decided my case** was **August 9, 2022**. A copy of that decision appears at **Appendix B**.

☒ A timely petition for rehearing was thereafter denied on the following date:

August 25, 2022, and a copy of the order denying rehearing appears at **Appendix C**.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____
(date) on _____ (date) in Application No. _____ A ____

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional:

1. **Amendment 7, U.S. Constitution – Jury Trial in Civil Cases**

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”

2. **Amendment 14, U.S. Constitution:**

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Statutory:

3. **California Code of Civil Procedure Section 657(1)(3)(4)(6)(7) (Writ of Error Coram Nobis codified from common law doctrine)**

Universal Citation: CA Civ Pro Code § 657 (2016)

657. The verdict may be vacated and any other decision may be modified or vacated, in whole or in part, and a new or further trial granted on all or part of the issues, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial.

2. Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors.

3. Accident or surprise, which ordinary prudence could not have guarded against.

4. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

5. Excessive or inadequate damages.

6. Insufficiency of the evidence to justify the verdict or other decision, or the verdict or other decision is against law.

7. Error in law, occurring at the trial and excepted to by the party making the application

4. Other Statutory Codes, Regulations, Decisions

California Rule of Court (CRC) 8.108(c)

The Judicial Advisory Committee Comment under CRC 8.108(c)

California Code of Civil Procedure Sections 663 / 663(a)

California Business and Professions Code

California Welfare Code

California Health and Safety Code (Informed Consent)

21 CFR Part 50 (Informed Consent)

21 CFR 888.3080 (Illegal implantation of unapproved spinal device)

Ryan v. Rosenfeld (2017) 3 Cal.5th 124, 395 P.3d 689, 218 Cal.Rptr.3d 654

STATEMENT OF THE CASE

2009: Petitioner underwent a spinal fusion surgery for degenerative disc disease, after being told by the surgeon that “routine” fixation devices were going to be used.

2010: After many months of increased pain and disability, Petitioner filed a “naïve” yet timely medical malpractice action after suspecting an undisclosed error had occurred during the surgery. (BC452100)

2012: That action ended in Summary Judgment for defendants after the surgeon provided a perjured written Declaration that “no malpractice” occurred.

2016: After obtaining documentation and records certifying that several untested, unapproved devices had actually been implanted in her spine during the surgery without her knowledge or consent, and that two segments were operated rather than the single level she consented to, Petitioner filed a new action alleging battery, fraud, product liability, and other causes of action not related to the 2010 “negligence” action.

2017: The new action (BC624990) was dismissed by the new trial court based on sustaining defendants’ demurrer and denying leave to amend. Petitioner appealed.

2018: The L.A. Second District Court of Appeal Division 3 affirmed the dismissal, deeming that the battery and fraud causes of action were legally

equivalent to “negligence.”

2019: Petition for Writ of Error Coram “Vobis” in Court of Appeal was denied.

2019: Petition for Review in California Supreme Court was denied.

2020: Petitioner filed an original Petition for Writ of Error Coram “Nobis” back in the original 2010 Trial Court, requesting to 1) vacate the erroneous 2012 Summary Judgment and 2) to order a new jury trial based on the newly discovered evidence documenting the battery, fraud, insurance fraud, and other causes of action that were not known at the time of the 2010 medical “negligence” action. The trial court dismissed the action by sustaining defendant’s demurrer and denying leave to amend.

2021: Petitioner filed timely appeal based on the simultaneous operation of the following rules, statutes and U.S. Supreme Court decision:

- a) California Rules of Court (CRC) 8.500(b);
- b) CRC 8.108(c);
- c) The Judicial Advisory Committee Comment under CRC 8.108(c);
- d) California Code of Civil Procedure Sec. 663/663(a); and
- e) *Ryan v. Rosenfeld* (2017) 3 Cal.5th 124, 218 Cal.rptr.3d 654 395 p.3d

689

2022: The Appeal was dismissed on August 9, 2022. The Opinion stated that the Notice of Appeal was “untimely filed” thereby losing its jurisdiction over the matter. The Opinion discounted all the above authorities, *all operating in unison*, to extend the time for filing the Notice of Appeal by 30 days.

There was also a delay within the Appellate Division of the Superior Court due to covid-related staffing issues. The Court's Opinion also misstated the meaning of "validity" in reference to Petitioner's having filed a valid CCP 663/663(a) "motion to vacate" the January 5, 2021 trial court's judgment dismissing Petitioner's Coram Nobis Petition.

A timely Petition for Rehearing was filed in the Court of Appeal on August 16, 2022.

It was denied on August 25, 2022.

A timely Petition for Review was electronically submitted to the California Supreme Court on September 17, 2022. Petition was denied on November 9, 2022.

Each erroneous decision in favor of defendants in the procedural history of this matter has resulted in ongoing violation of the Seventh Amendment: the continued deprivation of Petitioner's right to a jury trial on all the "non-negligence" causes of action (for battery, fraud, insurance etc.) later brought to light, long after the original "naïve" medical negligence action ended in the 2012 summary judgment for defendants.

REASONS FOR GRANTING THE PETITION

Several compelling reasons exist for the exercise of the Court's discretionary jurisdiction to uphold the Seventh Amendment's right to trial by jury:

1. The underlying Coram Nobis matter affects the rights of all citizens (surgery patients) in all states. It is of national importance to preserve the statutory and doctrine-based rights to recovery from intentional injury by the 7th Amendment guarantee of a jury trial based upon all the operative facts.

The defendant device makers, medical institutions, and surgeons in various states have committed violations of State, Federal (FDA) and International (ICH) laws, Codes (Nuremburg) Declarations (Helsinki) and regulations (Belmont Report) protecting human patients.

Records are presently being gathered to determine the number and extent of the violations inflicted on the Los Angeles County patients, and possible other states' publicly-funded medical institutions. For example, at one university hospital in California, approximately 800 spine patients were operated on by the surgeon from 2005-2013. Across all States, this becomes a much larger number.

2. Refusal to distinguish Battery from Negligence: Each decision in each lower court erred in matters of both fact and law. Each court has refused to distinguish the law of Medical Battery as an intentional tort. Medical Battery legally operates under different laws, codes and statutes than those governing "medical malpractice". Medical Battery is an act of medical malfeasance, not merely surgeon error.

Specifically, in the underlying matter, the trial court erred as a matter of law by: 1) denying the Petition for Writ of Coram Nobis to a) vacate the prior 2012 Summary Judgment (for defendants) and b) to order a fairly-conducted jury trial based on all the newly discovered elemental facts pointing to the battery, fraud and other causes of action, despite having the documentation and proof and the proven perjury by the surgeon; and 2) by denying leave to amend. **(Ruling, Appendix A)**

Additionally, in the Court of Appeal, its failure to comply with each statute operating in unison compromised the Opinion. This is unconscionable and unclean. **(Opinion, Appendix B)**

Lastly, the California Supreme Court declined to review the matter. **(Decision, Appendix C)**

3. Direct Conflict with Existing Appellate Decisions: Trial Courts are bound by Appellate Decisions. The 2020 Decision of the Trial Court (Appendix A) that decided Petitioner's case is in direct conflict with Daley v. UC Regents (2019) 39 Cal.App.5th 595. In *Daley*, the court determined that an intentional and unconsented medical battery had occurred and was not merely an inadvertent medical "malpractice." This matter is similarly situated due to the delayed discovery of medical battery.

4. *Hundreds of others similarly situated*: This case is important to examine because this type of battery has occurred to *hundreds of others similarly situated*. Many of these patients still have no idea to this day that they have been abused and damaged without their knowledge or consent.

5. The decision in the trial court in this case was erroneous on

several levels. The trial court defied *Daley* and erred as a matter of law by: a) treating the Petition as a contested “evidentiary” hearing and not a Coram Nobis proceeding; b) improperly abridging the five required Coram Nobis elements; c) violating California Code of Civil Procedure Sec. 452 by drawing conclusions in favor of defendants; d) abused its discretion by denying leave to amend; e) wrongly misapplied “res judicata” to the matter, and committing other procedural irregularities. The August 9, 2022 Opinion (**Appendix C**) in the Court of Appeal affirmed all of the above in its erroneous dismissal.

When the legal precision required of the lower courts in a single state is compromised, the uniformity of all decision making across all states is also compromised. This has amounted to depriving the aggrieved plaintiff the legal right to recovery. Consequently, the proven wrongdoing of the defendants is protected, and other plaintiffs similarly are deprived of their constitutional rights. This is the opposite of justice.

A major public policy concern arises because the aggrieved party is deprived of the fundamental right to a jury trial.

Granting this Petition for Certiorari under these unprecedented circumstances will accomplish several goals:

- a) affirm the Legislative intent as expressed in the applicable statutes;
- b) assure nationwide consistency and harmony of decision-making; and
- c) preserve the interests of public policy, the interests of justice, and the constitutional right to jury trial. .

The Petitioner’s *underlying* trial court matter is supported by the long-standing Coram Nobis doctrine and other statutes. It speaks to a

fundamental human rights issue of widespread public interest: whether a Petition for Writ of Error Coram Nobis lies for the delayed discovery of numerous violations of human rights committed during a surgery performed in a publicly-funded medical institution.

CONCLUSION

For all the above reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

LeeAnn Morgan

LeeAnn Morgan, Petitioner

Date: November 26, 2022

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LeeAnn Morgan — PETITIONER

VS.

Regents, University of California, et al — RESPONDENT(S)


PROOF OF SERVICE

I, LeeAnn Morgan, do swear or declare that on this date, November 26, 2022, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Matthew Levinson, Esq., Counsel for Regents, University of California et al,
Cole Pedroza LLP / 2295 Huntington Drive, San Marino, Ca. 91108
em: mlevinson@colepedroza.com (Counsel has also consented to electronic
service.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on November 26, 2022



LeeAnn Morgan, Petitioner

APPENDIX A

DECISION of Los Angeles County Superior Court – Case No. BC452100,
Denying Petition for Writ of Error Coram Nobis, October 13, 2020.

ONLINE SERVICES

Tentative Rulings

DEPARTMENT OF LAW AND MOTION RULINGS

Case Number: BC452100 **Hearing Date:** October 13, 2020 **Dept:** O

Case Name: Morgan v. Wang, et al.

Case No.:	BC452100	Complaint Filed:	12-29-10
Hearing Date:	10-13-20	Discovery C/O:	N/A
Calendar No.:	9	Discover Motion C/O:	N/A
POS:	OK	Trial Date:	N/A

DEMURRER TO PETITION FOR WRIT OF CORAM NOBIS

MOVING PARTY: Defendants Jeffrey Wang, MD; Rahoul Basho, MD; Joshua Bales, MD; and The Regents of the University of California

RESP. PARTY: Plaintiff Leeann Morgan

TENTATIVE RULING

Defendants' Demurrer to Plaintiff's Petition for Writ of Coram Nobis is SUSTAINED WITHOUT LEAVE TO AMEND.

The writ of coram nobis is granted only when three requirements are met: (1) Petitioner must show that some fact existed which, without any fault or negligence on his part, was not presented to the court at the trial on the merits, and which if presented would have prevented the rendition of the judgment; (2) Petitioner must also show that the newly discovered evidence does not go to the merits of issues tried; issues of fact, once adjudicated, even though incorrectly, cannot be reopened except on motion for new trial. This second requirement applies even though the evidence in question is not discovered until after the time for moving for a new trial has elapsed or the motion has been denied; (3) Petitioner must show that the facts upon which he relies were not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier than the time of his motion. People v. Kim (2009) 45 Cal.4th 1078, 1093 (citing People v. Shipman (1965) 62 Cal.2d 226, 230).

Plaintiff's newly discovered evidence are (1) a 2015 letter from UCLA confirming that certain unauthorized devices were implanted in her during the surgery without her consent; (2) a 2016 letter from Blue Shield confirming that Defendants concealed implantation of these devices from her insurance company; and (3) 2019 discovery that Wang's declaration in support of the summary judgment contained

false statements and omissions after comparing it to the 2015 and 2016 letters. Plaintiff's allegations fail to plead grounds for issuance of a writ of coram nobis.

Plaintiff fails to plead diligence in bringing this petition. Plaintiff cannot establish diligence in bringing this petition. The "new facts" prompting this petition were first discovered in 2015 and merely confirmed by the 2016 letter. Plaintiff did not file her petition until June 2020. See Petition, pp. 25-26. In fact, Plaintiff made a tactical decision to file a new action based on her newly discovered evidence on 10-28-16, Case No. BC624990, rather than file a petition coram nobis in this action. See Defendants' RJN, Ex. E. Plaintiff admittedly failed to file this petition until four years after discovery the "new facts" she claims justifies a writ of coram nobis.

With regard to Plaintiff's 2019 "discovery" that Wang lied in his 2012 declaration, Plaintiff fails to explain why she could not have "discovered" the lies earlier. Plaintiff admits that she "discovered" Wang's alleged lies by comparing his 2012 declaration with the 2015 and 2016 letters from UCLA and Blue Shield. See Petition, p. 26. Plaintiff offers no explanation for why she could not have discovered the alleged lies earlier, given that she possessed all the documents necessary to discover the lies by 2016.

Evidence goes to facts already tried. Plaintiff fails to allege that the newly discovered evidence does not go to the merits of the issues tried and adjudicated in the summary judgment granted on 8-5-12. Plaintiff's FAC alleged a claim for "medical negligence & absence of informed consent." See Plaintiff's Complaint filed on 10-12-11, p. 9. The trial court found in connection with the 8-5-12 MSJ that the undisputed facts demonstrated that Defendants complied with the standard of care and were not a substantial factor in causing Plaintiff's injury, i.e. there was no negligence or lack of informed consent. See Defendants' RJN, Ex. 1, p. 5. Plaintiff seeks coram nobis based on "newly discovered" evidence establishing that unapproved devices were implanted in her without her consent during the same surgeries alleged in her FAC. However, this "newly discovered evidence" goes to facts already tried, i.e. whether Defendant performed the surgery on Plaintiff without proper consent.

This analysis is consistent with the outcome in BC624990. The trial court in BC624990 sustained demurrer without leave to amend based on claim preclusion arising from this litigation's MSJ. See Defendants' Request for Judicial Notice (RJN), Exs. F and G. The Court of Appeal affirmed that ruling in an unpublished opinion. Id. at Ex. H. "As we have said, plaintiff's prior action alleged that in September 2009, Dr. Wang performed a transforaminal lumbar interbody fusion, procedure to which plaintiff had not consented...[¶]Plaintiff's present action contains similar allegations." Id. at Ex. H, p. 10. "Plaintiff asserts that the present action includes some newly discovered information about Dr. Wang's surgical technique...the FDA's approvals...and the source of plaintiff's pain...But none of this newly

discovered information changes the nature of the primary right alleged to have been violated because plaintiff continued to allege the same injury to plaintiff's lumbar spine and surrounding nerves and tissues." Id. at Ex. H, p. 11.

Plaintiff fails to allege extrinsic fraud and only alleges intrinsic fraud. "In general, newly discovered evidence is not a basis for writ of error Coram vobis." Los Angeles Airways, Inc. v. Hughes Tool Co. ("LAA")(1979) 95 Cal.App.3d 1, 9. "[A]fter a judgment has become final, newly discovered evidence generally is not a ground for reopening that judgment unless the concealment of that evidence prevented a fair adversary hearing, kept the claimant out of court entirely or utterly deprived him of a claim or defense, or precipitated a grave miscarriage of justice such as the conviction of an innocent person." Id. at 6.

Following the reasoning of LAA, the Court of Appeal in Phillipine Exprt & Foreign Loan Guarantee Corp. v. Chuidian (1990) 218 Cal.App.3d 1058, 1091 denied coram nobis relief where the request was based on newly discovered evidence that the defendant had allegedly deliberately concealed or lied about its existence. "[I]t cannot be said that such fraud amounted to extrinsic fraud preventing [plaintiff] from having its day in court on the issue. To the contrary we deal with intrinsic fraud at most, that fraud which weakens the opponent's case, as for example by perjury on the witness stand. Such fraud is not ground to reopen a judgment." Id. at 1091. "The traditional and more manageable test articulated in LAA is the requirement of extrinsic fraud preventing a full and fair hearing on the issue." Id.

Plaintiff claims Defendants concealed the critical facts contained in the 2015 UCLA Letter and the 2016 Blue Shield Letter, blocking her attempts at deposition and discovery. See Petition, 8:7-13. However, newly discovered evidence material to a plaintiff's case that was allegedly fraudulently concealed by the defendant, is not grounds to reopen a trial based and issuance of a writ of coram nobis. Such conduct amounts to intrinsic fraud and issuance of a writ of coram nobis requires conduct that amounts to extrinsic fraud. Plaintiff makes the conclusory allegation in her "Preface to Petition" that she was deprived of due process, but the allegations do not support a finding that she was prevented from having her day in court due to Defendants' alleged "concealment" of the evidence.

Demurrer was not untimely. As noted by Defendants, the demurrer was filed within 35 days of being served with the Petition by mail on 6-20-20. The demurrer was filed and served on 7-27-20. CCP §430.40(a).

Petition is not a writ of mandate under CCP §§1085 or 1094.5. A petition for writ of coram nobis is not a statutory petition for writ of mandate under either CCP §§1085 or 1094.5. "The writ of error coram

nobis is a *nonstatutory, common law remedy* whose origins trace back to an era in England in which appeals and new trial motions were unknown.” People v. Kim, supra, 45 Cal.4th at 1091.

Opinion of Los Angeles County Second District Court of Appeal, Dismissed
August 9, 2022

APPENDIX B