

Supreme Court, U.S.
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No. 23-1049

In the
Supreme Court of the United States

JOHN-HENRY AYANBADEJO,

Petitioner,

v.

CHANEL GOOSBY AND
ALLSTATE FIRE & CASUALTY INSURANCE COMPANY,
Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Texas

PETITION FOR A WRIT OF CERTIORARI

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March 18, 2024

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QUESTIONS PRESENTED

1. Whether the Lower Appellate Court departed from the accepted and usual course of judicial proceedings, and/or sanctioned such a departure by the Texas District Court in instant case?
2. Whether the Texas Supreme Court was free to disregard United States and Texas Due Process and Equal Protection constitutional provisions under the First, Fifth, Seventh, and Fourteenth Amendment with binding precedent under their Oath of Office sworn?

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below

- John-Henry Ayanbadejo, an individual

Respondents and Defendants-Appellees below

- Chanel Goosby
- Allstate Fire & Casualty Insurance Company

LIST OF PROCEEDINGS

Supreme Court of Texas

23-0343

Ayanbadejo v. Goosby

Order Denying Review: August 4, 2023

Rehearing Denied: October 20, 2023

Fourteenth Court of Appeals of Texas

14-20-00264-CV

**John-Henry Ayanbadejo v. Chanel Goosby and
Allstate Fire & Casualty Insurance Co.**

Entry of Judgment: May 26, 2022

Order Denying Rehearing: March 28, 2023

**District Court of Harris County, Texas,
151st Judicial District**

2019-18186

**John-Henry Ayanbadejo, Individually and On Behalf
of Similarly Situated Persons v. Chanel Goosby and
Allstate Fire & Casualty Insurance Co.**

Summary Judgment Order: March 19, 2020

**Collateral Order on Attorney Motion to Withdraw:
August 16, 2021**

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, John-Henry Ayanbadejo, respectfully petitions for a writ of certiorari to review the judgment of the Texas Fourteenth Court of Appeals.



OPINIONS BELOW

The decision of the Supreme Court of Texas denying Petitioner, John-Henry Ayanbadejo's Petition for Rehearing by the lower Court, *Ayanbadejo v. Goosby*, No. 23-0343 (Tex. 2023), appears at App.1a to the Petition. The Opinion of the Texas Fourteenth Court of Appeals is included at App.2a.



JURISDICTION

The Order of the Supreme Court of Texas was entered on October 20, 2023 (App.1a). The Court granted an extension of time to file this Petition for a Writ of Certiorari to and including March 18, 2024 (23A677). Jurisdiction is conferred under 28 U.S.C. § 1254(1).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech.

U.S. Const. amend. V

...[n]o person shall be... deprived of life, liberty, or property, without due process of law[.]

See Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541, 105 S.Ct. 1487 (1985).

As a federal constitutional right, state courts must obey this mandate. *Richards v. Jefferson Cnty., Ala.*, 517 U.S. 793, 803-04, 116 S.Ct. 1761 (1996).

U.S. Const. amend. VII

The Seventh Amendment independently guarantees the right to have contested matters decided by a jury. *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 622, 93 S.Ct. 2469 (1973) (noting existence of "limitations" on granting summary judgment in cases subject to the Seventh Amendment).

U.S. Const. amend. XIV

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.

These statutes allow Texas residents to bring a lawsuit against Insurance providers individually and on behalf of similarly situated persons for deceptive and other illegal practices:

- i. Texas Insurance Code chapter 541, subchapter B
- ii. Texas Business & Commerce Code section 17.46(b)
- iii. Tex. Ins. Code § 541.251.



STATEMENT OF THE CASE

A. Introduction

Ayanbadejo, relying on representations made by Respondent Allstate switched all his insurance policies, auto and renters, from Farmers Insurance Bureau to Respondent's Allstate's renters and auto Gold Insurance policy on Respondent's assurance that Allstate would not increase its auto premium rates even if Ayanbadejo was involved in an accident, which Respondents termed accidental forgiveness in its contract with Ayanbadejo. As an incentive to switch, Allstate provided Ayanbadejo with discounts such as multiple policy discounts, good payer discounts, and other discounts included in its said contract.

Further, Allstate convinced Ayanbadejo to switch his roadside assistance providers from the American Automobile Association (AAA) to Allstate's Auto club

membership on the assurance that though Allstate's Auto Club was more expensive than AAA, its Auto club was better than AAA, and provided free towing services in the whole of the continental United States and in Canada. As a result, a significant amount of Ayanbadejo's paycheck was going into Respondents' coffers.

Allstate breached its foregoing promise not to raise Ayanbadejo's rates proximately causing Ayanbadejo to lose some stopgap coverage from his policy on Allstate's advice that to lower his premium rates to the original rates, Ayanbadejo could drop his stopgap coverage as it was duplicative of his separate Healthcare Insurance policy.

Further, Allstate, as a fiduciary corporation, illegally withdrew funds from Ayanbadejo's bank account and utilized the said funds to pay a female customer's policy of a different race in another State, New York, while Ayanbadejo's policy was not paid. Unknown to Ayanbadejo the foregoing acts of Allstate proximately caused damages to Ayanbadejo, which Allstate hid from Ayanbadejo by attributing the damages to a hurricane in Louisiana. Allstate also hid the foregoing damages from State and Federal Regulatory authorities.

B. Statement of Facts

Ayanbadejo is a pro se litigant as a proximate result of the criminal aggravated assault with a deadly weapon of his person and interference with his United States Constitutional Rights, State Constitutional Rights, United States Statutory Rights, and State Statutory Rights by his former attorney, Olu Otubusin and his employees, who on close review of the State

Bar of Texas disciplinary records, has multiple disciplinary complaints filed against him.

On March 13, 2017 at approximately 5:15 a.m., Ayanbadejo was traveling back to work in Dallas from a weekend in Houston on the Northbound lane of Interstate Highway 45 (I-45) from Houston to Dallas. At approximately 25 miles from Madisonville Town, a deer jumped from the forest and collided with Ayanbadejo's car causing extensive damage to his car and personal injuries to Ayanbadejo. Ayanbadejo drove the damaged car to Buckee's Gas Station at Madisonville Town where the car became inoperable.

Ayanbadejo immediately called Allstate to file a claim, to get a tow to the nearest Allstate approved collision and repair facility, which according to the Allstate representative, was in Houston, Texas. Also, Ayanbadejo wanted to get a rental car to return to Houston where Ayanbadejo resided, to get treatment for his injuries. When Ayanbadejo called Allstate's claim department, he received a recorded message on Allstate's claim department phone line stating the office was closed and to call back at 7:00 AM when the office opened.

At 7:00 AM, Ayanbadejo called and spoke to an Allstate's claims representative. Ayanbadejo informed the representative of the accident and the claims representative asked Ayanbadejo whether he received any injuries to which Ayanbadejo replied in the affirmative that he received personal injuries as he had a severe headache. The claims representative took Ayanbadejo's claim and informed Ayanbadejo that a tow truck was not available to Ayanbadejo unless Ayanbadejo paid an extra \$350 for towing.

Ayanbadejo responded that he had towing coverage not only in his insurance policy but also as a member of Allstate's Auto club. The representative responded that she would send the tow truck and abruptly hung up the phone. Ayanbadejo waited for approximately 5 hours for Allstate's tow truck, during which time Ayanbadejo called Allstate's claims department intermittently for a follow up call but each time, Ayanbadejo's call went straight to voicemail. It became obvious that no tow truck was coming from Allstate and that Allstate abandoned Ayanbadejo with his injuries. Ayanbadejo searched the internet, called the nearest collision and repair facility in Madisonville, and requested them to send a tow truck to tow Ayanbadejo's inoperable vehicle to their facility.

After reaching the collision and towing facility in Madisonville, the proprietors requested Ayanbadejo's insurance and filed a claim promising that they would take care of Ayanbadejo. Thereafter, the collision facility kindly offered to take Ayanbadejo to the nearest rental car facility, which was in Huntsville, so that he could rent a car pursuant to the claim and get treatment for his injuries. After Ayanbadejo rented the car he drove back to Houston where he went to the nearest injury clinic in downtown Houston complaining of intense headaches. At the clinic, the physician diagnosed Ayanbadejo with a whiplash injury, which she said would progressively get worse overnight with pain and that the pain will travel throughout his body. The physician prescribed some pain medication, which Ayanbadejo filled at the pharmacy and he went home.

Overnight, the pain, progressively intensified such that Ayanbadejo was forced to go to the

emergency hospital where he was given a shot and more powerful pain medication. As the shot wore out the pain magnified and Ayanbadejo was forced to return to the emergency room again to get another shot. A couple of days later due to the intense pain Ayanbadejo felt in his head, Ayanbadejo's back tooth cracked open and had to be extracted.

As the collision and repair facility was not an Allstate approved facility because of Allstate's failure or refusal to send a tow truck in accordance with the terms of Ayanbadejo's insurance contract and Allstate's Auto Club contract, Ayanbadejo's car spent approximately 31 days at the said facility.

After the repair facility notified Ayanbadejo of the repair of his vehicle, Ayanbadejo called Allstate to inform them of the development and instructed Allstate to pay for the rental car,

On return of the car, Ayanbadejo was duly informed by the rental car that Respondents refused to pay for approximately 15 days of his claim for the rental car out of 31 days and the rental car company showed Ayanbadejo the relevant screen for non-payment as evidence of Respondents' refusal to pay for the claim. The rental car company then informed Ayanbadejo that the cost of the rental car would be deducted from his credit card on file with the rental car company. Ayanbadejo had no option but to agree with the rental car company.

After Ayanbadejo returned to work with his car in Dallas he noticed that the car was not properly fixed and he called the repair and collision center and informed them. The repair and collision center informed Ayanbadejo that the warranty on the repairs

had expired. Ayanbadejo notified Allstate and also submitted his medical bills to Allstate for payment. Respondents declined to pay for any of the foregoing medical bills citing an alleged agreement that Ayanbadejo signed declining Personal Injury Protection and MedPay coverage for his personal injuries.

Ayanbadejo informed Allstate that the alleged document was signed on advice of Allstate, after Allstate inexplicably increased Ayanbadejo's premium without notice to Ayanbadejo in breach of the contract of insurance with Allstate due to what Allstate said was a Hurricane in Louisiana.

Further, Ayanbadejo informed Allstate that the document was only signed after Ayanbadejo went in to protest the increased premiums and Allstate's insurance agent explained to Ayanbadejo that the declined coverage was merely a stopgap coverage and a duplication of insurance under his separate Health Insurance policy pending the time Allstate paid Ayanbadejo for any injuries Ayanbadejo suffered in a car accident. Ayanbadejo will not have signed the documents had he known that the subsequently declined coverage were not a duplication of coverage under his separate Health Insurance Policy and that Allstate will decline to pay for his personal injuries utilizing the same excuse.

Allstate refused to timely pay on either the car rental according to the rental car company or for Ayanbadejo's medical bills under the uninsured or underinsured motorist provision of Ayanbadejo's insurance policy contrary to what their agent had advised Ayanbadejo.

When Ayanbadejo originally contacted Allstate, Ayanbadejo wanted to purchase Allstate's Platinum Insurance Policy coverage at a lower rate but was steered to Allstate's Gold coverage at a higher rate of \$427.41, which was the rate when Ayanbadejo signed his original contract. *See App.13 of the Petition filed before the Supreme Court of Texas.*

After some semi-annual months of paying his premium rates with no problems, Ayanbadejo's rate inexplicably increased and that was when Ayanbadejo went into Respondent Allstate's office to protest the increase because Allstate promised not to increase his premiums even if Ayanbadejo had an accident that was Ayanbadejo's fault. It was at this initial meeting that Allstate informed Ayanbadejo that the increase was due to a hurricane in Louisiana that Ayanbadejo was not a part of. Allstate at this initial meeting asked Ayanbadejo if he had separate Health Insurance. After Ayanbadejo responded in the affirmative, Allstate advised that to reduce his insurance premium to the original lower premium, Ayanbadejo could drop his PIP coverage and MedPay coverage because they were stopgap payments and duplicative coverage of his separate health insurance coverage pending the time Allstate paid for any injuries Ayanbadejo suffered during an accident.

Ayanbadejo researched the history of his agreement with Respondents and found it fraught with deception, fraud, and civil theft. Ayanbadejo found that even after he dropped said coverages after advice by Allstate's agent, his insurance premium rates did not decrease to the original rate but increased for the duration of the policy coverage.

Allstate illegally took money from Ayanbadejo's account in Houston, Texas, to pay the account of an Allstate's female customer in New York City, New York while Ayanbadejo's account remained unpaid in Houston, Texas. Ayanbadejo's bank notified Ayanbadejo of the foregoing development and advised that if Ayanbadejo wanted to recover his funds to depose to a fraud affidavit, and remove Allstate from Ayanbadejo's autopay while utilizing autopay through the Bank. Ayanbadejo, had no alternative but to agree to the foregoing terms of the bank to recover his money. Thinking that no damage had been done since the bank promised to refund his money, Ayanbadejo informed Allstate who neither apologized nor showed any remorse for the theft. Significantly, Allstate did not report the theft to Regulatory compliance authorities or any of the governing agencies regulating such matters.

Before the said accident, Ayanbadejo, displeased with the services of Allstate wanted to return to AAA and also switch insurances to AAA's but was informed by a AAA agent at their Galleria, Houston area location after running Ayanbadejo's credit that Ayanbadejo could no longer get a competitive rate with AAA, which Ayanbadejo reasonably attributed to Allstate's said actions.

In good faith, Ayanbadejo approached Olu Otubusin's law firm, a Texas Licensed Law Firm, to handle the case. Otubusin agreed to take Ayanbadejo's cases if Ayanbadejo conducted research on the case.

Ayanbadejo conducted research at the 14th Court of Appeals law library which shares a building with South Texas College of Law, the University of Houston, John O'Quinn Law Library, and Texas Southern University, law library. Ayanbadejo researched deceptive

insurance practices, the statute of limitations laws in Texas/Federally, and filing the lawsuit in a representative capacity to prevent respondents from raising arguments of statute of limitations laws. Ayanbadejo found the following under Texas law:

1. Texas law allowed Ayanbadejo to file his lawsuit in a representative proceeding without the need for certification. *See, Tex. Ins. Code § 541.251.*
2. Under Texas common law, an animal is in the same genus as an uninsured motorist when encountered on a highway as opposed to a farm to market road. *See, Nutchey v. Three R's Trucking Co.* 674 S.W.2d 928: 1984 Tex. App. LEXIS 5920, Court of Appeals of Texas, Seventh District Amarillo, citing *American Automobile Ins. Co. v. Baker*, 5 S.W.2d 252 (Tex. Civ. App.—Waco 1928)
3. Under Texas common law, the statute of limitations is tolled when bringing a lawsuit in a representative capacity. *See, Asplundh Tree Expert Co. v. Abshire, et al*, 517 S.W.3d 320 (Tex. App. 2017). The Court of Appeals affirmed the District Court's order denying Asplundh's motion for summary judgment, confirming that the Texas two-year statute of limitations set forth in Tex. Civ. Prac. & Rem. Code § 16.003 was tolled by the filing of a class action, as contemplated in the 1974 U.S. Supreme Court's decision in *American Pipe and Construction Co. v. State of Utah*.

4. Under Federal law decided by this Court, the statute of limitations is also tolled where the respondents hid the damages of their theft from Ayanbadejo and failed or refused to inform the relevant Federal or State regulatory agencies of the foregoing theft from Ayanbadejo's account.

Pursuant to Ayanbadejo's foregoing research, Ayanbadejo sued Defendants in a representative proceeding in the District Court for the 151st Judicial District, Harris County, entitled: *John-Henry Ayanbadejo, Individually, and on Behalf of Similarly Situated Persons, Plaintiff(s) v. Chanel Goosby, Allstate Fire & Casualty Insurance Co., Defendants and numbered 2019-18186*. CR[5-26], and CR[42-68]

Ayanbadejo sued Respondents for:

1. Reformation of Contract,
2. Promissory Estoppel,
3. Bad Faith,
4. Equitable Relief,
5. Deceptive Insurance Practices,
6. DTPA,
7. Theft Liability Act,
8. Late Payment of Claims,
9. Conversion,
10. Invasion of Privacy. According to Ayanbadejo's research, invasion of privacy under Texas law should be brought in a bifurcated trial. Ayanbadejo submitted an application to bifurcate the trial for the invasion of

privacy cause of action according to Texas law. CR[159-175].

C. Procedural History

1. Proceedings in the Trial Court

After Ayanbadejo filed suit, Ayanbadejo served Respondents with Discovery Requests. CR[32-37].

Respondents gave evasive and non-responsive answers to Ayanbadejo's discovery requests. *See e.g.*, CR[104-113].

In the interim, one of Allstate's documents produced in discovery showed that the said rental car payment was late due to an alleged glitch in Respondent's system, which corroborates the rental car company informing Ayanbadejo that Defendants refused to pay for the rental car and that the payments shall be coming out of Ayanbadejo's credit card on file with the rental car company. CR[127 entry dated 6/27/2017, 5:29 PM CST].

Though Ayanbadejo turned over the contents of his files to Respondents in discovery, including relevant portions of his bank statements that showed Respondents' initial civil theft of approximately \$500, nonetheless, Respondents served Ayanbadejo an overbroad subpoena seeking irrelevant information and Ayanbadejo responded by filing an application for a protective order to restrict Respondent's requests to only relevant information.

During the course of the trial, Ayanbadejo suspected Respondents of giving Ayanbadejo's private identifiable information without his consent to third parties who harassed, stalked, and invaded Ayan-

badejo's privacy. The foregoing incident grew more profound after Ayanbadejo made copies of his files and returned to Otubusin's office for the files to be turned over to Respondents. At the parking lot of Otubusin's office an unknown criminal stalker burglarized Ayanbadejo's car and zip-tied Ayanbadejo's laptop bag with Ayanbadejo's laptop still in it. Ayanbadejo showed the evidence to Otubusin but he failed or refused to take any action.

In the interim as Respondents and their attorney kept on insisting that the increase in Ayanbadejo's premium rate was due to a Louisiana hurricane, Ayanbadejo switched agents. Ayanbadejo informed the new agent of the situation and asked the new agent if he could investigate why his premium rates increased. The agent informed Ayanbadejo of the following:

1. The cause of Ayanbadejo's premium rate increase was not due to any hurricane in Louisiana but was entirely Allstate's fault.
2. The real cause of the increase was: after Allstate stole money from Ayanbadejo's account and Ayanbadejo removed Allstate from direct withdrawals from his account according to instructions of the bank to recover Ayanbadejo's funds, Ayanbadejo lost all of the discounts such as good payer and other discounts that he was receiving on his account.
3. Additionally, Allstate was penalizing Ayanbadejo an additional substantial amount for late payments every month thereby benefit-

ing tremendously from their theft of funds from Ayanbadejo's account.

On February 25, 2020, after giving evasive and non-responsive answers to Ayanbadejo's discovery requests, the Respondents filed their Motion for Summary Judgment. CR[176-591]

On March 4, 2020, Ayanbadejo responded to Respondents said Motion for Summary Judgment. CR[592-634]

On March 12, 2020, Defendants filed a Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment. CR[592-634].

On March 16, 2020, Ayanbadejo filed his Response to Defendants' Reply to Motion for Summary Judgment. CR[642-668].

Contrary to the false narrative of the Fourteenth Court of Appeals to justify their judgment, Ayanbadejo objected to Defendants' evidence. *E.g., see*, CR[69-81 at 70 ¶ 7, 77 ¶ 31, 78 ¶ 33], CR[592-616 at 592 ¶ 1, 594 ¶ 8, 601 ¶¶ 31, 33, 605 ¶ 42, 615 ¶ 68], CR[671-690 at 672 ¶ 7, 678 ¶ 20 (h), 679 ¶ 23, 682 ¶ 35, 688 ¶ 44], and CR[713-721 at 716 ¶ 7, 719 ¶ 11], CR[731-750 at 732 ¶ 7, 738 ¶ 20 (h), 739 ¶ 23, 742 ¶ 35, 748 ¶ 44]. Ayanbadejo objected to Respondents' evidence at every stage of the Trial, which was contrary to the Court's assertion that "Ayanbadejo did not object to any of this evidence or file a special exception to the summary-judgment motion." *See*, pg. 3 ¶ 1 of the said Memorandum Opinion affirming the Trial Court's decision, filed May 26, 2022. App.2a. Ayanbadejo even objected to Respondents overuse of its objections and refusal to answer or produce

documents in discovery. *E.g., see, CR 163 ¶ 20 amongst many such objections from Ayanbadejo.*

On March 19, 2020, the Trial Court signed its Final Summary Judgment Order. App.23a.

On April 2, 2020, Ayanbadejo filed his Motion for New Trial. CR[671-670].

On April 3, 2020, Ayanbadejo filed his Notice of Appeal. CR[703-704].

On April 15, 2020, the Defendants filed their response to Plaintiff's Motion for New Trial. CR[705-711]

On April 17, 2020, the Trial Court issued an Order denying Findings of Fact/Conclusion of Law. App.21a

On April 22, 2020, Ayanbadejo files his Reply to Defendants' Response to Motion for New Trial. CR[713-723]

On May 26, 2020, Ayanbadejo files his Request to Clerk to Include Material in Transcript. CR[724-726]

On June 1, 2020, Ayanbadejo files his Motion for New Trial together with, his Notice of Submission of Motion for New Trial, and Ayanbadejo's affidavit in support of his Motion for New Trial. CR[727-752]

On June 15, 2020, the Trial Court issued its Order denying Ayanbadejo's Motion for New Trial. App.20a

Ayanbadejo, convinced that he conducted the proper research into his case researched the judge and opposing lawyer. Ayanbadejo discovered that the chief campaign manager for the judge, campaigning

for his unopposed return to the judgeship position was a professor of law from South Texas College of Law. Opposing counsel was an alumnus of South Texas College of Law whose firm sponsored events at the college and often appeared on panels with the said professor, judge, and other judges of the 14th Court of Appeals in Texas. The said Judge was not an alumnus of South Texas College of Law. Ayanbadejo concluded from his investigation that there was enough for an appearance of bias and requested his attorney to file a Motion to Recuse the Judge. Otubusin after review of the application filed the said application. Shortly after the said filing of the Motion to Recuse the foregoing information used in the Motion mysteriously disappeared on Ayanbadejo's computer.

2. Appellate Proceedings

On April 7, 2020, the case began in the Court of Appeals. The Appellate fees were due in the Appellate Court and Ayanbadejo went into Otubusin's office to give him a check for the fees, but was informed by his employee that Otubusin was allegedly sick with Covid-19. Ayanbadejo, cognizant of his Federal license and no State Bar of Texas license informed the 14th Court of Appeals of this development, so the lower Court was put on notice that if Otubusin were to withdraw while preventing Ayanbadejo from collecting his client files, Ayanbadejo's due process Rights under the First, Fifth, Seventh, and Fourteenth Amendment Rights to the US Constitution would have been violated. *See App.14 of Appellant's brief Supreme Court of Texas, Ayanbadejo's letter to the Lower Court dated April 8, 2020.*

Ayanbadejo paid the Appeal fees. In the interim Respondents gave Ayanbadejo's personal identifiable information to a third party that included Ayanbadejo's Social Security Number, Ayanbadejo's Driver's License, Ayanbadejo's Bank account number, etc., which the third party utilized to serve an illegal subpoena on Ayanbadejo's Bank Account without Ayanbadejo's consent or authorization. The foregoing provided irrefutable proof of Respondent's invasion of privacy as asserted in his Motion for a Separate Trial. *See CR[159-175]; App.35a.*

On threat of being sued individually as well as collectively the third parties confessed that they obtained Ayanbadejo's Personal Identifiable Information from Respondents after Ayanbadejo's filing of his Motion for Protective Order and during the pendency of the Appeal, which contradicted what Respondents' attorney informed Otubusin. Ayanbadejo informed Otubusin of the foregoing contradiction and was infuriated at the blatant invasion of his privacy as Allstate was responsible for also stealing from his account, an act the lower Court and not a jury conveniently terms a "mistake" in its judgment. App.2a.

On August 13, 2020, Ayanbadejo filed a docketing statement requesting mediation. The Appellate Court stayed the Appeal and ordered mediation.

On August 13, 2020, Ayanbadejo, filed a Motion for Extension of Time to File his Brief due to lack of communication from Otubusin's office and Ayanbadejo finding out that the lack of communication by Otubusin's office was allegedly due to Otubusin contracting Covid-19, a very serious ailment with deadly consequences, and being hospitalized for it.

On the same August 13, 2020, the Motion for Extension of Time was granted.

On August 20, 2020, the Court issued its Order to abate the case for 60 days for mediation.

On August 21, 2020, the Respondents filed an objection to the Court's Order to mediate. Ayanbadejo was never served a copy of the objection either through his attorney or by Respondents.

On the same August 21, 2020, Ayanbadejo contacted Otubusin to start the mediation process but his call went directly to Otubusin's voicemail.

On the same August 21, 2020, Ayanbadejo due to Otubusin's lack of communication, unprofessionalism, and disappointing behavior in the case, contacted a vastly experienced Texas Licensed Attorney knowledgeable in the kind of issues raised in the case, briefed the said lawyer and told the lawyer to contact Otubusin with the aim of taking over the case. *See* App.38a

Otubusin refused to cooperate with said lawyer and illegally retained Ayanbadejo's files. Otubusin in his confession at the preliminary hearing of the disciplinary hearing told the panel of investigators that he intentionally violated Ayanbadejo's civil rights, so that "Ayanbadejo could conduct the cases himself". Otubusin knew that Ayanbadejo did not have a Texas License but a Federal license nor could he conduct the case himself because it was filed in a representative capacity.

On September 3, 2020, the Respondents' Objection was granted without opposition and the case was reinstated.

On September 8, 2020, Ayanbadejo wrote the Court.

On September 23, 2020, Ayanbadejo filed the brief on behalf of Otubusin after writing the Court and explaining the situation. Ayanbadejo also explained to the Court in the brief that he wanted to oppose the Respondents objection, but never had the opportunity to do so because he was never notified of the objection by Otubusin or anyone else.

On October 19, 2020, the 14th Court of Appeals stayed the Appeal for mediation.

On October 23, 2020, the Respondents filed their Response brief and the case was ready to be set by the lower Court.

On November 16, 2020, Ayanbadejo filed his Reply Brief to the Respondents' Response Brief.

On January 25, 2021, the Trial Court set up a status conference during the pendency of the Appeal. At this time, Otubusin switched sides and was busy defending Respondents actions. Ayanbadejo asked for permission to be heard by the Court and informed the Court exactly how Respondents invaded Ayanbadejo's privacy by giving a third party, Ayanbadejo's Personal Identifiable information without Ayanbadejo's consent even though a protective order was pending before the Trial Court, and the case was on Appeal. Ayanbadejo, orally urged the Court to Sanction Respondents and their attorneys. The Court agreed with Ayanbadejo that the foregoing was a serious invasion of privacy infraction by the Respondents, but expressly admitted that the Court's plenary power had expired after Ayanbadejo filed the Appeal, so the Court could not entertain any applications before it.

On the same day, January 25, 2021, contrary to the Court's opinion on its plenary power, the same Court denied Petitioner's Motion to Disqualify or Recuse that should have been heard and decided by a different Judge. App.18a

In the interim and before the case could be set for submission on briefs, Ayanbadejo asked Otubusin if he had a conflict of interest because at this time, he unethically switched sides again. Otubusin, defended Respondents when even the Trial Court admitted that Respondents invaded Ayanbadejo's privacy, consistently failed to file documents in response to Respondents arguments or bring them to the attention of Ayanbadejo. Rather than respond Otubusin informed Ayanbadejo that he wanted to withdraw at this crucial stage of the Appeal giving an irrational excuse. It is pertinent to note at this stage that before the foregoing, Ayanbadejo contacted more competent Texas Licensed Attorneys to continue with the case and Otubusin, unethically, purposely failed or refused to cooperate with them or turn over the client's files to the new attorneys.

Although Ayanbadejo was severely prejudiced by Otubusin's actions, Ayanbadejo said it was fine with him provided that he immediately returned all Ayanbadejo's client's files and documents. App.35a.

Ayanbadejo then immediately went on to the State Bar of Texas website and spoke to a couple of attorneys who wanted to see his client files before taking over the case. After Otubusin informed Ayanbadejo of his intention to withdraw, Otubusin failed to communicate with Ayanbadejo and did not take any of Ayanbadejo's calls as all Ayanbadejo's calls went straight to his voicemail even though Otubusin

knew that the cases were pending in court with Motions and an appeal pending. Otubusin refused to file his Motion to Withdraw for several weeks nor did he return any of the client files or documents that contained Ayanbadejo's personal identifiable information and personal health information.

On July 20, 2021, Otubusin, after inviting Ayanbadejo to his office to collect his files, and his employees aggravatedly assaulted and battered Ayanbadejo with a deadly weapon that caused severe injuries to Ayanbadejo, including a broken foot, lacerated injuries on his head and arms, injuries to hips and back that required tens of thousands of dollars in medical treatment and therapy. Ayanbadejo informed Houston Police Department that he wanted to file charges against the perpetrators but was informed by the police that the District Attorney's office refused to press charges. Ayanbadejo was out of commission for several months after the said assault and still feels the effects of the assault till today. *See, App.37a.*

In the interim, on July 29, 2021, Otubusin, after joining in aggravatedly assaulting and battering Ayanbadejo, filed his Motion to Withdraw. Apart from the fact that Otubusin conveniently omitted the aggravated assault with a deadly weapon and battery of Ayanbadejo, the filed amended application, was never served upon Ayanbadejo nor could Ayanbadejo have hired an attorney to continue with the case because Ayanbadejo had just been criminally severely injured and was in no condition to physically meet with any attorney at their office downtown or anywhere except at his home. *See App.37a.*

On August 16, 2021, the same Court that expressly admitted that its plenary power over the

case had expired due to Ayanbadejo perfecting his Appeal and so it could not entertain any application before it because it had no jurisdiction, granted Otubusin's egregiously filed Motion to Withdraw that left Ayanbadejo with no attorney and deprived Ayanbadejo of his due process and equal protection rights to a free and fair hearing under the First, Fifth, Seventh, and Fourteenth Amendment to the United States Constitution. *See App.16a.* It is noted that the Texas State Bar in a similar case involving a white client, disciplined the attorney more severely and compensated the client for the attorney's conduct. Thus, Ayanbadejo does not agree with the State Bar ruling and would contest the invalid ruling that does not address Ayanbadejo's Bar complaint. Otubusin, who withdrew as Ayanbadejo's attorney has no authority to sign an agreement on behalf of Ayanbadejo as State Bar of Texas rules provides for disbarment of an attorney who causes injury to his client.

Ayanbadejo spent the next several months recuperating at home fighting through the most severe pain he ever experienced in his life. App.27a, App.37a. Ayanbadejo also started to have post-traumatic nightmares as Ayanbadejo was very close to death as HPD confirmed that his life was in grave danger.

As Ayanbadejo notes, the Trial Court should have inquired on Otubusin filing the application, whether Otubusin had returned the client files to Ayanbadejo so that he could hire another attorney and adjourned the application because there was no indication that Ayanbadejo was served with the filed application. App.16a.

Further and most importantly, the Court at a status conference during the pendency of the Appeal

in the presence of Ayanbadejo and all other parties including Respondents and before the Motion to Withdraw was served expressly asserted that the Court's plenary power over the case had expired on perfecting the Appeal, therefore the Court could not entertain any applications before it when Ayanbadejo urged sanctions against Respondents for giving Ayanbadejo's Personal Identifiable Party to a third party that the Court agreed was a very serious infraction of Ayanbadejo's privacy rights.

Ayanbadejo's submits the foregoing establishes not only the judicial bias of the Trial Court and the Judge who should have recused himself on Ayanbadejo's filing of his recusal Motion, but also retaliation for Ayanbadejo filing the said recusal Motion. Ayanbadejo in his request for discovery specifically asked Respondents to disclose any relationship they had with Judges, but they failed or refused to answer the foregoing question.

On May 26, 2022, the Court of Appeal issued its Memorandum Opinion and Judgment affirming the Trial Court's Judgment. *See App.2a, App.14a.* In arriving at its decision, the Court of Appeal, erroneously or otherwise stated that Ayanbadejo did not object to any of Respondents evidence, which from relevant portions of the Clerk's record shows that Ayanbadejo did object to Respondents' evidence and that Ayanbadejo never waived his statute of limitations argument but cited a case decided by this Court in support of his statute of limitations argument.

According to Ayanbadejo's understanding of the Judgment of the Court of Appeal, Ayanbadejo and other similarly situated persons (who were unrepresented after the withdrawal of Otubusin from the

case) should pay for a multi-billion-dollar corporation's theft of stealing money from Ayanbadejo's and their accounts. Allstate's acts caused damages to Ayanbadejo, which Respondents hid from Ayanbadejo by informing him that the increase in premiums was due to a hurricane in Louisiana. Respondents proximately took advantage of their foregoing illegal activities, by instituting penalties as a proximate result of their said theft in the form of increased rates and penalties that Respondents promised not to increase even if Ayanbadejo was involved in an accident according to Respondent's Allstate's initial contract, thus breaching a key component of the contract.

Here, Respondents cannot establish that they paid Ayanbadejo's due premiums with money that they took from Ayanbadejo's account. A black man was sentenced to 16 years by the same courts in Texas for mistakenly taking a lawn mower worth \$350!

Ayanbadejo submits that the Lower Court's judgment is not valid in the first instance under the United States and Texas State Constitutions as the judgment was procured as a proximate result of the criminal interference of Ayanbadejo's civil and statutory rights by his former attorney and others.

Ayanbadejo informed police officers who witnessed first-hand the severity of Ayanbadejo's injuries that he wanted to press charges against those responsible for the aggravated assault with a deadly weapon. He was almost immediately informed by the same police department who advised Ayanbadejo not to pursue his attackers because his life was in grave danger that the District Attorney's Office (DA) declined to press charges. According to a friend who formerly

worked at the District Attorney's office after Ayanbadejo informed her of what happened to him, the friend informed Ayanbadejo that the foregoing is not the process and procedure of the District Attorney's office and that if the police officers called the DA's office it took weeks of investigation before the DA's office determines whether to prosecute the case.

On June 8, 2022, Ayanbadejo filed his extension of time to file his Motion for Rehearing and the said Motion was granted on June 14, 2022.

On July 7, 2022, Ayanbadejo filed another Motion for extension of time.

On July 11, 2022, Ayanbadejo filed his Motion for rehearing and Motion for En Banc Reconsideration and his previously filed latter Motion for Extension of time was dismissed as moot on July 28, 2022.

On October 12, 2022, the Court requested a response from Respondents.

On October 19, 2002, the Respondents filed their response.

On November 1, 2022, Ayanbadejo filed a letter with the Lower Court.

On November 3, 2022, Ayanbadejo filed a Reply to Respondent's Response.

On March 28, 2023, the lower Court denied Ayanbadejo's Motion for Rehearing and Motion for En Banc Reconsideration. App.26a.

On May 12, 2023, Ayanbadejo filed his Motion for Extension of Time to file his Petition for Review in Supreme Court of Texas and the Respondents filed a Response.

On May 15, 2023, Ayanbadejo's Motion for Extension of Time to File his Petition before the Supreme Court of Texas, which was granted in part and the time was extended to June 12, 2023.

On August 4, 2023, the Supreme Court of Texas denied Ayanbadejo's Petition for Review. App.1a

On October 20, 2023, the Supreme Court of Texas denied Ayanbadejo's Petition for Rehearing. App.25a



SUMMARY OF THE ARGUMENT

Petitioner, John-Henry Ayanbadejo has legal or equitable recourse against Respondents and has legal or equitable rights to bring his causes of actions individually and on behalf similarly situated persons against Respondents with Texas Licensed attorneys of his choice.

Petitioner John-Henry Ayanbadejo's due process, equal protection, and privacy rights under the First, Fourth, Fifth, Seventh, and Fourteenth Amendment to the United States Constitution and Texas State Constitutional equivalent were criminally violated in the course of the proceeding in the Trial Court and the Lower Court thereby rendering the proceedings void and a nullity.

The Lower Court panel is bound by US Supreme Court decisions on tolling of the statute of limitations and cannot refuse to follow it or ignore it.

The opinion issued by the panel in this case is incorrect because after citing binding precedent that Courts review the record "in the light most favorable

to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion.” *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005). The Panel ignored Ayanbadejo’s discussion of the tolling of the statute of limitations supported by judicially binding US Supreme Court case. *See*, pg. 20 of Ayanbadejo’s opening brief in the Texas Court of Appeals. This violates Texas Rule of Appellate Procedure 47.1, which requires a panel to address every argument raised in the briefs.



REASONS FOR GRANTING THE PETITION

Ayanbadejo objects to the decisions of the Lower Courts in its entirety. Any arguments by Ayanbadejo cannot be construed as a waiver of Ayanbadejo’s arguments in the Lower Court due to page limits. Ayanbadejo believes that the lower Court erred in its ruling on the following issues:

I. Violations of Ayanbadejo’s Due Process Rights Under the First, Fifth, Seventh, and Fourteenth Amendment Rights to Due Process of Law Under the United States Constitution and Texas State Equivalent Constitutional Provision.

A. Retaliation

The United States Supreme Court has repeatedly held that the United States Constitution protects all people within the territory of the United States. There were many constitutional violations in this case. Ayanbadejo shall touch on a few of the obvious

constitutional violations but this does not in any way shape or form waive any constitutional violations that he does not discuss herein.

Violation of Ayanbadejo's constitutional rights, which prevented his being heard, means the Court should grant this Petition.

A Party may seek relief from a judgment if the judgment is void. *United Student Aid Funds, Inc. v. Espinoza*, 559 U.S. 260, 269-70 (2010). The Lower Appellate court departed from the accepted and usual course of judicial proceedings, and/or sanctioned such a departure by the U.S. District Court in failing to vacate the District Court's Decision and in failing to grant Petitioner's remedies.

Respecting appeals, it should be mentioned that if a normal or restricted appeal has been perfected, the trial court generally has no jurisdiction over the case. If it does render an order or attempt to change or modify a judgment pending appeal, such orders or judgments are void.¹ *E.g., Robertson v. Ranger Ins. Co.*, 689 S.W.2d 209 (Tex. 1985) (consent judgment entered by trial court while motion for rehearing was still pending in supreme court was void).

What the foregoing means is that Otubusin has a continuing fiduciary duty to cooperate with Ayanbadejo in hiring new attorneys and cannot intentionally or criminally impede Ayanbadejo's rights to hire new attorneys of his choice as happened in instant case. Further, Otubusin as a fiduciary has to act in the best interest of Ayanbadejo. Otubusin cannot withdraw from representing Ayanbadejo and criminally impede

¹ Texas Civil Trial and Appellate Procedure § 9-13 (2022)

the rights of Ayanbadejo to hire new attorneys on one hand and then sign a document on behalf of Ayanbadejo impliedly agreeing that Ayanbadejo committed unauthorized practice of law, a criminal act under Texas law when he knew that he did not have the authority to make any further agreements on behalf of Ayanbadejo, and even if he did Otubusin had a fiduciary duty to act in Ayanbadejo's best interest.

Ayanbadejo submits that the foregoing actions of Otubusin is retaliation to deprive Ayanbadejo of his fundamental rights evidenced by the State Bar of Texas document. To reiterate, Ayanbadejo was not informed of the date of the hearing so could not have agreed to any transactions of the proceeding as Otubusin was clearly no longer representing Ayanbadejo and did not have the power of attorney to sign anything on Ayanbadejo's behalf. Otubusin is an attorney who has no reputation to protect as he has been disciplined several times by the State Bar clearly to no effect and will continue to do the same thing unhinged until a client ends up dead trying to protect himself. On interview of some people that know Otubusin by Ayanbadejo during an investigation of how he incurred the injuries on his leg he falsely accused Ayanbadejo of causing, none of the people interviewed had a good thing to say about his reputation. Ayanbadejo on the other hand in more than 30 years both after he was called to the bar in Nigeria, and more than 22 years as an attorney in the United States has never been disciplined by any State Bar or any Bar.

B. Due Process and Due Course Generally

Due process involves, at its heart, basic notions of justice and fair play. *Lawrence v. Texas*, 539 U.S. 558 (2003), *State v. Crank*, 666 S.W.2d 91, 94 (Tex. 1984). It means “certain substantive rights — life, liberty, and property — cannot be deprived except pursuant to constitutionally adequate procedures.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541, 105 S.Ct. 1487 (1985). As a federal constitutional right, state courts must obey this mandate. *Richards v. Jefferson Cnty., Ala.*, 517 U.S. 793, 803-04, 116 S.Ct. 1761 (1996).

Due process “requires every man have the protection of his day in court and the benefit of the general law, which hears before it condemns and proceeds not arbitrarily but upon inquiry, and renders judgment only after trial . . .” *Truax v. Corrigan*, 257 U.S. 312, 332, 42 S.Ct. 124 (1921). It requires the opportunity to be heard in a reasonable time and a reasonable manner, *Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893 (1976), and to present “every available defense” or claim. *Lindsey v. Normet*, 405 U.S. 56, 66, 92 S.Ct. 862 (1972); *accord*, *Howlett ex rel. Howlett v. Rose*, 496 U.S. 356, 369, 110 S.Ct. 2430 (1990) (state courts must hear and decide claims based on governing federal law).

The Texas Constitution provides similar protections, providing that “every person for an injury done him . . . shall have a remedy by due course of law.” Tex. Const., art. I, § 13. While state constitutions cannot subtract from the rights guaranteed by the United States Constitution, they can and often do provide additional rights. *LeCroy v. Hanlon*, 713 S.W.2d 335, 338 (Tex. 1986). Although the language

of the Due Course provision varies from the Due Process provision, *University of Tex. Med. Sch. at Houston v. Than*, 901 S.W.2d 926, 929 (Tex. 1995), they are understood to offer at least equivalent protections. *Texas Workers' Comp. Comm'n v. Patient Advocates of Tex.*, 136 S.W.3d 643, 658 (Tex. 2004).

C. Ayanbadejo's Constitutional Rights Were Violated

The Court should reconsider the denial of the Petition for Review filed in this case to correct violations of these important rights that occurred in this case. As herein detailed and in the Petition for Review, the trial court allowed Ayanbadejo's lawyer to withdraw from representing him, and in doing so interfered with his efforts to present his case with another lawyer by (among other things) retaining the contents of the file containing much of the information and evidence relating to Ayanbadejo's claims, at gunpoint. It has been recognized that allowing an attorney to withdraw in a way that prevents his client from presenting his case can violate due process. *Misium v. Misium*, 902 S.W.2d 195, 197 (Tex. App. — Eastland 1995, writ denied).

As further detailed in the Petition for Review, the trial court also refused to even consider Ayanbadejo's invasion of privacy claims, which is also contrary to the requirements of due process, including the hearing and consideration of claims presented, and a decision based on evidence. *Withrow v. Williams*, 507 U.S. 680, 695-96, 113 S.Ct. 1745 (1993); *accord, Truax*, 257 U.S. at 332. Finally, it is recognized that the Seventh Amendment independently guarantees the right to have contested matters decided by a jury.

Weinberger v. Hynson, Westcott & Dunning, Inc., 412 U.S. 609, 622, 93 S.Ct. 2469 (1973) (noting existence of “limitations” on granting summary judgment in cases subject to the Seventh Amendment).

This case was resolved against Ayanbadejo on summary judgment. CR 669-70. To grant summary judgment against Ayanbadejo on claims his lawyer’s withdrawal prevented him from contesting, and on other claims without hearing his arguments, is a violation of his constitutional rights. The Court should take the necessary steps to avoid this result. In context, these steps can only mean granting Ayanbadejo’s request for a Writ of Certiorari.

II. Allstate Failed to Conclusively Prove the Claims Against It Were Barred by Limitations, and So Was Not Entitled to the Judgment It Received.

Although summary judgment is proper in a case in which there is no genuine dispute of material fact, this is not a case in which the lower Court should have granted summary judgment. *Tolan v. Cotton*, ___ U.S. ___, 134 S. Ct. 1861, 1866 (2014); *see*, Fed. R. Civ. P. 56(a); *Celotex Corp. v. Cartrett*, 477 U.S. 317, 322 (1986).

The Court should grant Certiorari to determine whether, the foregoing constitutional issues and whether summary judgment on limitations grounds was proper. The court below held Ayanbadejo’s claims under the DTPA, the Theft Liability Act and conversion accrued in September, 2015, and were barred by limitations because suit was not filed until March, 2019. *Ayanbadejo v. Goosby*, 14-20-00264-CV, 2022 WL 1671150 * 2-3 (Tex. App. — Houston [14th Dist.]

May 26, 2022, pet. filed) (mem. op.). Allstate failed to prove this.

A. Proof that Limitations has Expired Generally

To be entitled to summary judgment on limitations, Allstate must “conclusively establish” that limitations on the claims brought against it expired before Ayanbadejo sued. *Regency Field Svcs., LLC v. Swift Energy Operating, LLC*, 622 S.W.3d 807, 818 (Tex. 2021). In order to do this, it must “conclusively establish when the claimant’s cause of action accrued.” *Regency Field Svcs.*, 622 S.W.3d at 818; *accord, ExxonMobil Corp. v. Lazy R. Ranch, LP*, 511 S.W.3d 538, 542 (Tex. 2017). A claim accrues when events giving rise to the right to seek a judicial remedy have occurred. *Barker v. Eckman*, 213 S.W.3d 306, 311 (Tex. 2006); *Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 221 (Tex. 2003). This “right to seek judicial remedy” requirement is known as the legal injury rule. *Regency Field Svcs.*, 622 S.W.3d at 814. The operation of the legal injury rule means a cause of action accrues on the date the defendant’s wrongful act caused a legal injury. *Regency Field Svcs.*, 622 S.W.3d at 814; *Eagle Oil & Gas Co. v. TRO-X, L.P.*, 619 S.W.3d 699, 707-08 (Tex. 2021). A “legal injury” has occurred when “all facts required for a cause of action exist[].” *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 514 (Tex. 1998). Here, Allstate lied to Ayanbadejo on the cause of the premium increase, a major legal injury proximately caused by their action, attributing it to a hurricane in Louisiana that they knew was not true. Allstate also hid Ayanbadejo’s legal injury proximately caused by their actions from the relevant regulatory

authorities, thus tolling the statute of limitations. *See, Sulyma v. Intel Corp. Inv. Policy Cmt'e*, 909 F.3d 1069 (9th Cir. 2018), *aff'd*, ____ U.S. ___, 140 S.Ct. 768 (2020).

B. Limitation Arguments are not Waived

The court below found Ayanbadejo waived his limitations arguments. *Ayanbadejo* at * 3. This is untrue and contrary to Cannon 3 of the Texas Code of Judicial Conduct: a review of Ayanbadejo's trial court filings, as well as his brief in the Court of Appeals, shows he did not waive his limitations argument, which were part of his tolling-based limitations arguments. CR 605-07, 652-55; Appellant's Brief at 11-12, 14, 20. Waiver cannot be found without considering "the arguments, evidence and citations relied on by those parties" to decide what was argued, *Lion Copolymer Hldgs., LLC v. Lion Polymers, LLC*, 614 S.W.3d 729, 733 (Tex. 2020), and the "arguments, evidence and citations" cited by Ayanbadejo show he did not waive arguments about limitations.

Specifically, Ayanbadejo argued that limitations is tolled when the suit is filed as a class action, in both state and federal class practice. *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 552-53, 94 S.Ct. 756 (1974); *Asplundh Tree Expert Co. v. Abshire*, 517 S.W.3d 320, 329-34 (Tex. App. — Austin 2017, no pet.). Based on this, he made a series of arguments about the effect Allstate's bad acts has on the accrual of claims and on Allstate's limitations arguments. CR 605-07, 652-55; *see also* CR 678-82, 684, 740-42 (same arguments made again, in motion seeking new trial). This is sufficient to preserve the question of whether his claims are barred by limitations for

review. *Lion Copolymer Hldgs.*, 614 S.W.3d at 733. *Also, see, Sulyma v. Intel Corp. Inv. Policy Ctt'e*, 909 F.3d 1069 (9th Cir. 2018), *aff'd*, ___ U.S. ___, 140 S.Ct. 768 (2020), which Ayanbadejo clearly cited in his Appellate Brief as pointed out by Ayanbadejo.

C. Allstate Fails to Prove its Limitations Defense

Without waiver, Allstate must prove its entitlement to summary judgment on limitations grounds. It failed to do so, because it failed to prove when the damages at issue in the underlying suit accrued, and therefore when the legal injury occurred: Under the legal injury rule, a tort cause of action accrues when the tort is completed — when the act is committed and *damages are suffered*. *Wright v. Sydow*, 173 S.W.3d 534, 547 (Tex. App. — Houston [14th Dist.] 2004, pet. denied) (emphasis added).

Although Allstate improperly took money from Ayanbadejo's account in September, 2015, *Ayanbadejo* at * 3, this did not cause him injury, because the funds were returned soon thereafter. *Id.* at * 1; CR 543-44. Instead, he did not suffer any injury until later, when the acts of Allstate led his account to be restricted and his credit to be harmed. CR 8, 17; *see also* CR 672-73 (specifically asserting “[Allstate’s] actions did somehow affect Ayanbadejo’s credit even though the money was later restituted”).

Bad acts that cause no damage does not lead to the accrual of a claim; instead, the claim does not accrue until the prior wrongful act causes damage at some later time. *Atkins v. Crosland*, 417 S.W.2d 150, 153 (Tex. 1967). Allstate offered no evidence to prove when Ayanbadejo was actually injured, something it

had to do to prove itself entitled to the summary judgment being sought. *Wheeler v. Green*, 157 S.W.3d 439, 442 (Tex. 2005) (there is no such thing as a “default summary judgment”; movant must present evidence proving it is entitled to the judgment it seeks). Without this evidence, Allstate failed to prove itself entitled to the summary judgment it received. Accordingly, the Court should grant his request for writ of certiorari.

The United States Supreme Court noted, speaking of the duty of state courts to hear § 1983 cases when they entertain analogous tort actions: “A state court may not deny a federal right, when the parties and controversy are properly before it, in the absence of ‘valid excuse.’” *Howlett v. Rose*, 496 U.S. 356, 110 S. Ct. 2430, 2439, 110 L. Ed. 2d 332 (1990). “Valid excuse” does not include “[a]n excuse that is inconsistent with or violates federal law . . . the Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source.” 496 U.S. at 371, 110 S. Ct. at 2440. *See Jennifer Friesen, STATE CONSTITUTIONAL LAW*, vol. 1. (2015). From the foregoing, the Trial Court and appellate court, cannot deny Ayanbadejo’s Invasion of Privacy Claim against Respondents even if Ayanbadejo’s claim is based strictly on Federal law.

The appellate rules of procedure must be construed reasonably, yet liberally, so that the right to appeal is not lost by imposing requirements not absolutely necessary to effect the purpose of a rule. In other words, the right to appeal should not be lost due to procedural technicalities [*Chen v. Razberi Technologies, Inc.*, 645 S.W.3d 773 (Tex. 2022)]. *See*

Ch. 14, § 14-2. Appeals—Necessity of Party Filing
Notice of Appeal.

Ayanbadejo's arguments are supported by the record and are not unconventional but supported by longstanding principles of law according to Texas and Federal Judicial precedent as Ayanbadejo did not manufacture the evidence or the law cited to support his arguments.

The Panel's opinion conflicts with the decisions of other State Courts and this Court that illegal diversion of client funds is a regulatory and legal violation, that is mandated to be reported to the regulatory or legal authorities in Texas and Federally, especially in this case where Allstate has a compliance department mandated by regulatory and legal rules to report such violations to the proper authorities. As Allstate failed or refused to report the violations to the proper authorities in this case or disclose to Ayanbadejo the damages caused by their acts, this tolls the statute of limitations. *See, e.g., Sulyma v. Intel Corp. Inv. Policy Ctt'e*, 909 F.3d 1069 (9th Cir. 2018), *aff'd*, ___ U.S. ___, 140 S.Ct. 768 (2020).



CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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March 18, 2024

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