

No. 23-1049

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IN THE  
**Supreme Court of the United States**

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JOHN-HENRY AYANBADEJO,  
Petitioner,

v.

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

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ON PETITION FOR WRIT OF CERTIORARI TO  
THE TEXAS SUPREME COURT

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**BRIEF IN OPPOSITION**

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*Company*

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## **QUESTIONS PRESENTED**

Does the withdrawal of Petitioner's attorney violate Petitioner's due process rights when the withdrawal occurred on appeal, after briefs were filed, and with the Petitioner's express written consent?

**PARTIES TO THE PROCEEDINGS AND RULE  
29.6 STATEMENT**

Petitioner is John-Henry Ayanbadejo.  
Respondents are Chanel Goosby and Allstate Fire & Casualty Insurance Company. Allstate Fire and Casualty Insurance Company, an Illinois insurance company, is a wholly-owned subsidiary of Allstate Insurance Holdings, LLC, which is a Delaware limited liability company. Allstate Insurance Holdings, LLC, is a wholly-owned subsidiary of The Allstate Corporation, which is a Delaware corporation. The stock of The Allstate Corporation is publicly traded.

**RULE 14.1 (b)(iii) STATEMENT**

This case is not directly related to any other proceedings in state or federal trial or appellate courts.

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## **JURISDICTION**

Petitioner has asserted that the Court has jurisdiction over this case pursuant to 28 U.S.C.S. § 1254. Because Petitioner seeks a writ of certiorari to a state court of last resort, the Court's jurisdiction comes from 28 U.S.C.S. § 1257(a), and not § 1254. Respondents respectfully assert that this case does not invoke the Court's jurisdiction.

It is true that Petitioner has claimed that his constitutional right to due process was violated when the trial court allowed his attorney to withdraw, preventing petitioner from effectively presenting his arguments. First, Petitioner waived any such complaint when he expressly authorized, in writing, his attorney's withdrawal. Resp. App. 1a. Second, the withdraw occurred while the case was on appeal and after the briefs had been filed. As a result, the motion to withdraw and the corresponding order are not a part of the record. Regardless, it is undisputed that the state trial court granted summary judgment after a contested hearing wherein Petitioner's counsel appeared and argued. The state appellate court affirmed the trial court after Petitioner's counsel filed Petitioner's brief. Moreover, Petitioner himself is a licensed attorney. The undisputed facts show that there is no due process violation; this allegation is a sham argument made solely to seek the Court's review.

## **STATEMENT**

Respondent objects generally that Petitioner's statement contains a voluminous number of factual

misstatements, legal misstatements, and irrelevant material that is not supported in the record and fails to contextualize the issues before the Court. Respondent submits the following in lieu of Petitioner's statement.

Petitioner sued his automobile insurance carrier on March 12, 2019 following a motor vehicle collision with a deer on March 13, 2017. R. 5-26. He alleged various causes of action, all related to two distinct events. First, Petitioner complained that Allstate failed to extend uninsured motorist benefits after his collision with the deer, arguing that this was a wrongful denial because the deer was on the roadway and clearly did not have insurance. Second, and unrelated to the "deer" claims, Petitioner alleged that Allstate made an unauthorized debit of approximately \$500.00 from his bank account in September of 2015. R. 45-49.

Respondents moved for summary judgment, arguing that Petitioner's "unauthorized debit" claims were time barred by the statute of limitations. Moreover, while the deer may have been uninsured, it was not an "uninsured motorist" that would trigger his uninsured motorist coverage in his insurance policy. Because this was the only coverage in Petitioner's policy that would provide money for injuries petitioner suffered, there was no coverage and therefore no breach of contract. R. 176-185. Respondents' motion for summary judgment included evidence establishing the date of the allegedly unauthorized debit, September 29, 2015. Pet. App. 8a. The motion also introduced the Petitioner's insurance policy into the summary judgment record. R. 480. The

Petitioner did not object to Respondents' evidence, nor did he introduce his own competent summary judgment evidence. R. 617-634. After hearing, the trial court found that Respondents had conclusively established the limitations defense barring the "unauthorized debit" claims and had proven the lack of coverage for the "deer" claims. The court granted the Motion for Summary Judgment. R. 669-670.

Petitioner's appeal argued this determination was wrong and advanced a host of claims not previously raised. He argued that limitations is tolled when the suit is filed as a class action, despite the cause's lack of class certification and his failure to bring this to the attention of the trial court. Having filed the brief, Petitioner's counsel then moved the trial court to withdraw. Resp. App. 1a. Petitioner signed the motion, expressly consenting to the withdrawal. *Id.* The state appellate court went on to affirm the trial court's ruling.

Petitioner then sought review from the Supreme Court of Texas, and, for the first time, asserted that his constitutional rights were violated by his attorney's withdrawal. He again reiterated that "class status" had tolled the statute of limitations and that the lower courts had therefore wrongly decided the case. His petition for review was denied. Petitioner now seeks the Court's review, arguing that the lower courts misapplied settled law.



## **REASONS FOR DENYING THE PETITION**

### **1. The Petition Fails to Identify a Conflict or a Profoundly Important Issue.**

Even if the Court accepted Petitioner's question as framed, Petitioner objects only to an alleged misapplication of settled state law. Petitioner fails to articulate why the Court should take up the issues he presents beyond his assertion that the state courts were wrong. He fails to show how "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort, or of a United States court of appeals." S. Ct. R. 10. This failure is because there simply is no such issue here.

There is no federal right truly in play in this litigation, nor is there unsettled law. Even if Petitioner's position was correct, which it is not, his "asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law" and is not enough to merit the Court's attention. S. Ct. R. 10.

### **2. The Lower Courts Did Not Rule on the Question Presented by Petitioner.**

Petitioner has framed the question presented to this court as, essentially, whether the Supreme Court of Texas endorsed the alleged violations of the Petitioner's due process rights. Petitioner first raised this claim in his petition to the Supreme Court of Texas. The issues the state appellate court considered were whether the Respondents had conclusively

established their affirmative defense of limitations and if Petitioner's automobile insurance policy provided "uninsured motorist" benefits for Petitioner's collision with a deer. Petitioner has invited the Court to review issues that were not before the lower courts. The Court should decline.

### **3. The State Courts Correctly applied State Law to State Claims.**

The state courts correctly applied state law in this case. Petitioner's due process rights were not violated. First, Petitioner's counsel of choice represented him at the trial court level and the appellate court level. He did not withdraw until after briefs had been filed. Resp. App. 1. There were no filings due at the time Petitioner's counsel moved to withdraw. Pet. 24. Furthermore, Petitioner expressly consented to his counsel's motion to withdraw. Resp. App. 3a. The motion was heard August 16, 2021, without objection. Pet. App. 16-17. Petitioner therefore waived any argument that his due process rights were violated by the withdrawal of his counsel with his consent. Even without waiver, the withdrawal had no effect on Petitioner's ability to present his arguments to the courts because the withdrawal did not occur until months after his brief was filed, let alone his response to the summary judgment.

Next, Petitioner argues that Respondents did not conclusively establish their limitations defense because his alleged class action status tolled limitations. Petitioner never moved the trial court to certify a class, and, in Texas, "there is no right to

litigate a claim as a class action. A Texas court may certify a class action only if the plaintiff satisfies the requirements of Rule 42.” *Citizens Ins. Co. of Am. v. Daccach*, 217 S.W.3d 430, 450 (Tex. 2007). Petitioner made no such showing in this litigation, and never asked the trial court for certification. Moreover, he again waived any class action concerns by failing to raise them at the trial court.

Finally, Petitioner has argued that his “unauthorized debit” claims did not accrue until he learned of his alleged damages in 2018. Petitioner does not contest that his various claims were subject to a two-year statute of limitations. Neither does he dispute that he failed to plead the “discovery rule,” as required by state law.

Even if he had pled the rule, the uncontested evidence showed that Petitioner was actually aware of the allegedly “unauthorized debit” in 2015. R. 410. “A claim accrues when the defendant's wrongful conduct causes the claimant to suffer a legal injury, which gives the claimant the right to seek a judicial remedy.” *Regency Field Servs., LLC v. Swift Energy Operating, LLC*, 622 S.W.3d 807, 814 (Tex. 2021). The absence of the money was itself a legal injury, and therefore the claim accrued in 2015.

Under the “single action” rule, a defendant's wrongful conduct gives rise to a single, indivisible action in which the claimant must pursue all claims for all damages resulting from all injuries that arise from the wrongful conduct, and those claims all accrue when the first such injury occurs. *Id.* at 815. Petitioner’s “unauthorized debit” claims therefore

accrued in 2015, and the summary judgment evidence conclusively established that these claims were time barred.

### CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully Submitted,

ALEXANDER S. TAYLOR  
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*Company*

April 2024

## **APPENDIX**

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**Motion to Withdraw**

IN THE DISTRICT COURT  
OF HARRIS COUNTY, TEXAS  
151<sup>ST</sup> JUDICIAL DISTRICT

JOHN-HENRY AYANBADEJO	)
INDIVIDUALLY, AND ON BEHALF OF	)
SIMILARLY SITUATED PERSONS,	)
PETITIONER	)
Vs	)
CHANEL GOOSBY & ALLSTATE	)
FIRE & CASUALTY INSURANCE	)
COMPANY,	)
DEFENDANTS.	)

MOTION TO WITHDRAW AS ATTORNEY OF  
RECORD

TO THE HONORABLE JUDGE OF SAID COURT:  
COMES NOW OLU MCGUINNIS OTUBUSIN,  
attorney of record in the above entitled and numbered  
cause, moves that he be permitted to withdraw as  
attorney of record for JOHN-HENRY AYANBADEJO  
in the above entitled case.

Good cause exists for withdrawal of OLU MCGUINNIS  
OTUBUSIN, as counsel, in that he unable to  
effectively communicate with JOHN-HENRY  
AYANBADEJO in a manner consistent with good  
attorney-client relationship.

A copy of this Motion has been delivered to Petitioner,  
and Petitioner has been notified in writing by both

certified mail return receipt requested and regular mail of her rights to object to this Motion.

JOHN-HENRY AYANBADEJO, Petitioner  
does consent to this Motion.

JOHN-HENRY AYANBADEJO, Petitioner has  
been notified of the filing of this Motion by  
serving him at his last known address at 2819  
W. Grand Pkwy N. # 150-218, Katy, Texas  
77449, and/or hand delivery.

JOHN-HENRY AYANBADEJO, Petitioner has  
been notified of all pending settings and deadlines of  
which I have knowledge at this time of the  
withdrawal.

Wherefore, Premises Considered, for these  
reasons, OLU MCGUINNIS OTUBUSIN asks this  
Honorable Court to GRANT this Motion to Withdraw.

Respectfully Submitted,

LAWCHAMBERS OF MCGUINNIS AND  
ASSOCIATES  
S/ Olu McGuinnis Otubusin  
Olu McGuinnis Otubusin  
TBA NO.: 15346150  
6430 RICHMOND AVE., SUITE 350.  
HOUSTON, TEXAS 77057  
TEL NO.: (713) 782-6982  
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E-MAIL: MCGUINNIS@SBSGLOBAL.NET



AGREED:  
S/ JOHN-HENRY AYANBADEJO  
JOHN-HENRY AYANBADEJO

CERTIFICATE OF CONFERENCE

I hereby certify that I have discussed the foregoing Motion to Withdraw with John M. Causey, of Hope & Causey, P.C. the attorney for Defendants and he is unopposed to the filing of this Motion.

s/ Olu McGuinnis Otubusin  
Olu McGuinnis Otubusin

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forward to the following counsel of record and the parties by certified mail, return receipt requested, by facsimile and/ or hand delivered on 28<sup>th</sup> day of July 2021 in compliance with Tex. R. Civ. P. 21.

John M. Causey of  
HOPE & CAUSEY, P.C.  
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P.O. Box 3188  
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JOHN-HENRY AYANBADEJO  
s/ Olu McGuinnis Otubusin  
Olu McGuinnis Otubusin