23-1165

No. _____

In The
Supreme Court of the United States

RAYMOND H. PIERSON, III, M.D.,PRO SE
Petitioner

v.

CSAA INSURANCE SERVICES,
CSAA INSURANCE EXCHANGE and
DOES 1 through 10
Respondents

On Petition For Writ of Certiorari
To the Supreme Court of the State of California

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

The California Legislature as evidenced in the Insurance Code 11580(b)(2) and the binding caselaw precedent (Moradi-Shalal v. Fireman's Fund Ins. Co., 46 Cal. 3d 287) of the Supreme Court of California have instituted a broad and impenetrable barrier for injured third parties which has blocked their proceeding directly in litigation against a tortfeasor's insurer prior to achieving a judgment against the tortfeasor. That barrier is maintained even in those circumstances where there is the presence of indisputable evidence of definitive and foreseeable injury caused to that third party by the direct actions of the insurer which has flagrantly breached its duty to the insured under the implied covenant of good faith and fair dealing due to that insurer's failure to settle the litigation under a policy limit offer extended by the injured third party. Under California law the only exception to this imposing moat of protection provided to insurers is the assignment by the insured to the injured third party of their *"cause of action for breach of the duty to settle"*

(*Coleman v. Gulf Ins. Group*, 41 Cal. _d 782,795 (Cal. Sup. Ct. 1986).

1. In the unique circumstances of this case at issue and in similar cases the long existing case law precedents of the Supreme Court of California (*Comunale v. Traders and General Ins. Co.*, 50 Cal. 2d 654, *Crisci v. Security Ins. Co.*, 66 Cal.2d 425, *Johanson v. California State Auto. Assn. Inter-ins. Bureau*, 15 Cal. 3d 9) the Insurer CSAA et al. due to the breach of their duty to settle must assume full liability and risk in the litigation due to the breach of the implied covenant of good faith and fair dealing owed to the insured. Under such specific conditions where the insured has no further financial risk whatsoever in the litigation, isn't it true that any subsequent and foreseeable injury or harm which occurs to the injured third party as a result of the insurer's actions should represent an actionable injury against that insurer under the "cases" and "controversies" provisions at Article III, section 2 of the U. S. Constitution and fully supportive of the right to sue under the First, Fifth and Fourteenth

Amendments as well as under the long standing precedents of the common law to seek redress for the injuries sustained?

2. The well-established early precedents of this U. S. Supreme Court [*Santa Clara County v. Southern Pacific Railroad*, 118 U.S. 394, Hn. 4 (1886) and *Gulf, C. & S.F. R. Co. v. Ellis*, 165 U.S. 150 (1897)] fully recognized that *"corporations are persons within the provisions of the Fourteenth Amendment"* (Id., p.154) with the same rights and privileges guaranteed to all persons under the U. S. Constitution. Doesn't the evidence contained within the California Insurance Code and case law precedents of the California courts reviewed above which effectively demonstrates complete protection to insurers under all conditions against third party litigants even despite the evidence of direct and indisputable harm to the third party by the insurer's acts be determined to represent flagrant, impermissible evidence of unconstitutional, unequal and elevated protections provided to those insurers and denied to the third party litigants?

3. The ancient precedent of this U. S. Supreme Court [*Second National Bank v. Grand Lodge*, 98 U. S. 123, 124 (1878)] fully recognized that multiple exceptions to the presence of privity of contract existed which created the third party right to proceed with suit for non-performance which occurs most commonly where *"under a contract between two persons, assets have come to the promisor's hands or under his control, which in equity belong to a third party"* (Id., p. 196-197). Isn't it true that under those similar circumstances where the insurer which represents the promisor or assumpsit refuses payment to the injured third party that a suit for non-performance against the insurer under the "cases and "controversies" provisions of Article III of the U.S. Constitution exists?
4. In this case at issue, the negligent acts of the Tortfeasor, Rushing caused exceptional destruction of Dr. Pierson's medical office space and resulted in a prolonged complete closure of that practice fully disrupting the ongoing care and treatment of many

patients in that underserved rural region of the Sierra Foothills. Under those conditions of extreme healthcare delivery disruption for literally hundreds of patients, can it reasonably be established that a societal *duty of care* in the public interests existed not only for the insured tortfeasor, but also for the insurer to expeditiously settle the claim with the purpose of getting the practice back up and running in a most time efficient manner?

5. The California Legislature by requiring within the Insurance Code 11580(b)(2) that a judgment must be obtained against the insured before suit may be advanced against the insurer to recover from an insurer for violation of Cal/ Ins. Code 790.03 which is consistent with the opinion of the California Supreme Court (*Moradi-Shalal v. Fireman's Fund Ins. Co.*, 46 Cal. 3d 287, 308) have denied Dr. Pierson's right of petition even in this specific case where the evidence is indisputable that CSAA et al. has directly and severely injured Dr. Pierson through its intentional act to fail to resolve the case over these seven plus years with resulting

foreseeable and ongoing professional and financial harm. Isn't it true that these deprivations of Dr. Pierson's fundamental right to seek redress for the injuries caused to him by CSAA et al. represent state action which has violated Dr. Pierson's First, Fifth, and Fourteenth Amendment right of petition and due process to seek redress for injury against that party responsible for those ongoing injuries?

6. The California Legislature and Court's fully denied Dr. Pierson's right to sue CSAA et al. directly under the unique circumstances fully reviewed here where CSAA et al. has breached the implied covenant of good faith and fair dealing as a result of the failure to settle the litigation when the offer within policy limits was presented despite the fact that from the time of Dr. Pierson's filing of the lawsuit two years following the motor vehicle accident the entirety of risk and liability resided with CSAA et al.. Doesn't this deprivation of such fundamental rights and liberties represent a violation of Dr. Pierson's constitutional rights under 42 USC 1983?

7. The precedents of this U.S. Supreme Court [*Direct TV v. Imburgia*, 577 U. S. 47, 58 (2015)] fully recognized that the *"specific words* (of a contract) *govern only when a general and a particular provision are inconsistent"*...while emphasizing that "*the reach of the canon construing contract language against the drafter must have limits, no matter who the drafter was.*" Despite Dr. Pierson's repeated notices to the Superior Court, the Third District Appellate Court and the California Supreme Court that the entirety of the insurance contract was never produced by CSAA et al. The entirety of that contract was necessary to fully evaluate Dr. Pierson's third-party interests. Shouldn't the fact that all involved California courts proceeded to rule on the case despite the failure of CSAA et al. to produce that critical information despite notice by Dr. Pierson be considered to represent a fundamental deprivation of constitutional due process which requires invalidation of the outcome?

PARTIES TO THE PROCEEDINGS

Petitioner/Appellant is Raymond H. Pierson, III, M.D., a physician and orthopedic surgeon, plaintiff below.

Respondents/Appellee, defendants below, are: CSAA Insurance Services., CSAA Insurance Exchange and DOES 1 through 10.

STATEMENT OF RELATED CASES

1. Northern California Collection Services, Inc. v. Dr. Pierson. Case #17-CVC-10112. Judgments of Dismissal of Dr. Pierson's Cross-Complaint May 7, 2019. Due to the Court's granting original plaintiff cross complaint motion to declare Dr. Pierson a vexatious litigant with imposition of a prohibitive bond of $140,743.42 which Dr. Pierson was unable to pay.
2. Northern California Collection Service, Inc. et al. v. Dr. Pierson. No. C089972 Appeal filed July 5, 2019.
3. Northern California Collection Service, Inc. v. Dr.

Pierson. No. C089972 Appeal decision to reverse the judgements of dismissal and to find that Dr. Pierson was not a vexatious litigant under the California statues CCP 391(b)(1).

4. Northern California Collection Service, Inc. et al. v. Dr. Pierson. No. C089972. Petition for Review to the Supreme Court of California under the Collateral Order Doctrine with the included purpose of having the California Vexatious Litigant Statute CCP 391 – 391.8 found unconstitutional. Denied December 13, 2023.
5. Northern California Collection Service, Inc. et al. v. Dr. Pierson. No. C089972. March 7, 2024 submitted request for a 60 Day Time Extension for the filing of a Petition for Writ of Certiorari under the Collateral Order Doctrine with the purpose of having the Court find the Vexatious Litigant statute unconstitutional.
6. Northern California Collection Service Inc., et al. v. Dr. Pierson Application #23A834. March 11, 2024 60 Day Time Extension granted by Justice Kagan with current extended time for filing the Petition until. May, 11, 2024

7. Raymond H. Pierson, III v. Phyliss M. Rushing No. 18-CVC-10813. Case Dismissed on August 9, 2022 due to Dr. Pierson's absence at Trial due to an acute cardiac event requiring emergency admission for cardiac/angioplasty and stent placement.
8. Raymond H. Pierson III v. Phyliss M. Rushing No. 18-CVC-10813 Judgement after Trial August 24, 2022.
9. Raymond H. Pierson III v. Phyliss M. Rushing No. 18-CVC-10813 appeal filed October 28, 2022 to Court of Appeals for the Third Appellate District No. C0972290. The appeal remains under way thus far with filing of the Appellant Opening Brief and Eleven Volume Appendix and Respondent Brief with the Appellant Reply Brief currently due on April 29, 2024.

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PETITION FOR A WRIT OF CERTIORARI

Under the specific circumstances and facts of this case Dr. Pierson has a U. S. constitutional right under the First, Fifth and Fourteenth Amendments to directly seek redress for the injuries caused to him by the Tortfeasor Rushing's insurer, CSAA et al. That right to petition in the courts offered to all citizens under the U. S. Constitution has been unlawfully denied to Dr. Pierson by the Superior Court of California in Amador County and subsequently affirmed by the California Third District Court of Appeal, and the Supreme Court of California. As a result of this denial to Dr. Pierson of a fundamental U.S. Constitutional right by the California Courts which is prohibited under the Fourteenth Amendment represents an issue of federal law which is now properly advanced to this Highest Court which has the authority of the Superior Sovereign. Multiple additional arguments as well as presumed errors of law will also be reviewed below.

OPINIONS BELOW

September 20, 2023 Decision of the Supreme Court of California to deny Petitioner's *Petition for Review* accepted for filing by the Court on August 15, 2023.

July 31, 2023 Decision of California Court of Appeal for the Third Appellate District Petition for Rehearing is denied.

June 30, 2023 Decision by the California Third District Court of Appeal to Deny the Appeal in Case# C091099 concerning the Superior Court of California in Amador County Decision in Case# 18-CVC-10813.

August 16, 2018 Dismissal of Defendant's CSAA Insurance et al. after Demurrer without Leave to Amend

May 10, 2019 Tentative Ruling as to CSAA Insurance et al.'s Demurrer

JURISDICTION

Final judgment of the Court of Appeal for the State of California, Third Appellate District was entered on June 30, 2023. The Third Appellate District denied Dr. Pierson's Petition for Rehearing on July 31, 2023. A

Petition for Review was accepted for filing in the Supreme Court of California on August 15, 2023. That Petition was denied on September 20, 2023.

On December 9, 2023, a timely Appellant Motion for a 60-Day Time Extension to file a Petition for Writ of Certiorari was submitted to the Court. On December 12, 2023, the Clerk of the Supreme Court mailed notice that Justice Kagan had granted the time extension with a due date of February 17, 2024.

On February 16, 2024, a non-conforming Petition was express mailed to the Court with acknowledged post-mark on February 17, 2023, and receipt on February 21, 2024. On review by the clerk that copy of the Petition was found deficient and the Court granted a 60-day time period for resubmission.

On this date, April 23, 2024, the completed Petition will be timely submitted via overnight express carrier.

CONSTITUTIONAL AND STUTUTORY PROVISIONS INVOLVED

First Amendment to the U.S. Constitution which authorizes a citizen's right of petition which permits access to the Courts.

Fifth Amendment to the U. S. Constitution which provides in relevant part that *"no person shall...be deprived of life, liberty or property without due process of law".*

Fourteenth Amendment to the U. S. Constitution which provides in relevant part that *"No state shall make or enforce any law which shall abridge the privileges and 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".*

42 USC 1843 which in relevant part states *"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."*

California Insurance Code 11580(b)(2) which in the relevant part states *"A provision that whenever judgement is secured against the insured or the executer or administrator of a deceased insured in an action based upon bodily injury, death, or property damage, then an action may be brought against the insurer on the policy and subject to its terms and limitations".*

California Insurance Code 790.03(h)(5) which states in relevant part *"not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear".*

California Civil Code 1714 which states in relevant part *"everyone is responsible for injuries caused by his or her willful acts or negligence, including in designing, distributing, or marketing firearms and ammunition.*

STATEMENT OF THE CASE

A. Introduction – Review of the Facts

This request for review by this esteemed highest Court arises from an underlying case previously before the California Superior Court of Amador County and later appealed first to the California Third District Court of

Appeals and subsequently to the Supreme Court of California. The case had arisen from the damages and ongoing injuries initiated nearly seven years earlier on October 10, 2016, as the direct result of the negligent operation of a motor vehicle by an elderly driver, Ms. Phyliss Rushing, who collided into and through the side structural wall of Dr. Pierson's medical office in Jackson, California. The damage that resulted caused quite extensive damage to the interior of the premises and compromised the structural integrity of that building, necessitating the immediate and prolonged closure of Dr. Pierson's medical practice. Liability in this case as applicable under the *Negligence Pro Se Doctrine* was fully attributable to the negligent vehicle accident damage which resulted in the foreseeable and ongoing severe professional, financial, and personal injuries caused to Dr. Pierson and his staff by the resulting immediate disruption of his medical practice. Those injuries were directly caused by the severe physical destruction of the office as well as by the resulting toxic contamination of the entire interior space caused by Tortfeasor Rushing's negligence.

Despite this indisputable negligence, the Tortfeasor's insurance carrier CSAA et al. even to the day of this writing has refused to provide Dr. Pierson the just compensation required to permit him the opportunity financially for him to be able to re-open his orthopedic practice. Until that just compensation is received Dr. Pierson will be unable to resume his restoration of orthopedic care to his many hundreds of patients whose care and physician-patient relationships have remained disrupted by this calamity. The flagrant and unlawful actions of the Tortfeasor's insurer, CSAA et al., failed abjectly to adhere to the clear and well stated requirements of the California Insurance Code § 790.03(h)(5) which requires the provision of *"prompt, fair and equitable settlements"* in such cases where liability is unquestioned as it is here. This exceptional bad faith failure over these intervening seven years to provide fair compensation has continued despite Dr. Pierson's repeated offers of settlement which have quite clearly and specifically agreed to eliminate all personal financial liability on the part of the insured Tortfeasor Rushing.

Tortfeasor Rushing and her insurance carrier, CSAA et al., have provided no reasonable settlement offer despite Dr. Pierson's repeated offers to settle within the full equivalency of policy limits and agreeing to no personal financial liability for Rushing. Furthermore, CSAA has even failed to recognize the fact that this company posture which was in full violation of the requirements of the California Insurance Code at 790.03(h)(5) was also causing the exceptional and unconscionable healthcare disruptions that have resulted from the closure of Dr. Pierson's practice. It must be emphasized that Dr. Pierson maintained his office in that location in order to provide orthopedic care to a critically underserved region of the Sierra Foothills in Amador County. From a public policy perspective, the tragic and exceptional human costs of this abject failure by Tortfeasor Rushing and her insurer CSAA et al. to fail to promptly accept responsibility and appropriately correct these injuries caused to Dr. Pierson and his staff by promptly providing fair compensation to permit the practice reopening is truly unconscionable and impermissible. Rather than proceed as instructed by

the California Insurance Code 790.03(h), CSAA et al. alternatively and quite adversely through the utilization of its limitless financial resources has manipulated time and the legal process to effectively and indefinitely deny fair compensation to further extremely financially marginalize Dr. Pierson while foreseeably and quite tragically disrupting health service delivery with the interruption of many hundreds of physician-patient relationships established over many years. Dr. Pierson's early efforts to achieve a prompt and fair resolution of the matter which would have provided the financial resources necessary to re-open his practice while not exposing Tortfeasor Rushing to any personal financial loss included his repeated inquiries directed to the CSAA et al. claims service personnel as well as to Ms. Rushing herself to be provided the full policy information inclusive of the insurance policy limits in order to have the information necessary to structure a proper and acceptable settlement offer. As fully reviewed in the *Appellant Opening Brief* at Argument #4, pgs. 69-70, the entire policy contract inclusive of the declaration and

endorsement pages has never been provided and the policy limits were repeatedly withheld for the initial 5½ years after the accident up until the time of the requisite settlement conference in the underlying related case held before the Amador Superior Court on May 5, 2022. It must be emphasized that even though the policy limits were finally provided at that May 2022 settlement conference the complete policy was still not provided. Not long after the accident and despite being denied access to that critical policy limit information on June 7, 2017, Dr. Pierson forwarded via certified mail to CSAA et al. claims service representatives a settlement offer reasonably interpreted to represent a settlement offer within policy limits which specifically agreed to the condition that there would be no personal financial loss to Tortfeasor Rushing. It must be stated with emphasis that this initial offer was extended without revision for a period of over eighteen months. Remarkably, despite the pendency of that offer within policy limits no direct response to that specific offer was ever provided by Tortfeasor Rushing or by her insurer, CSAA et al. Even after the formal retraction of that initial settlement

offer on February 1, 2019, Dr. Pierson subsequently followed that initial offer with multiple settlement offers which are reviewed in the multiple email correspondences cited between himself and Rushing's CSAA et al. employed attorney. Those offers which were then extended through the time of the Court mandated settlement conference of May 5, 2022 in the related underlying case that contained settlement terms which in all proposals eliminated any personal financial liability for Tortfeasor Rushing.

As a result of the failure of CSAA to settle the case in the face of the offer in policy limits, Dr. Pierson was left with no alternative but to proceed with litigation. On October 9, 2018, one day prior to the two-year anniversary of the motor vehicle accident and in the absence of any action by either the Tortfeasor Rushing or her insurer CSAA Dr. Pierson had no alternative but to proceed with the filing of the complaint in this matter. At the time of that filing in this case which had quite high potential for a judgment in excess of policy limits, the failure of CSAA et al. to achieve settlement of the case within policy limits fully breached the

insurer's *implied covenant of good faith and fair dealings*. The Supreme Court of California has repeatedly opined in its multiple case law precedents that under such conditions where there is risk of a judgment in excess of the policy limits and where a settlement offer within policy limits has been extended requires the under the Implied Covenant of Good Faith and Fair Dealing the insurer is contractually obligated to settle the case [See *Comunale v. Traders & General Ins. Co. (1958); Johansen v. USAA (1975) pg. 17 and Crisci v. Security Ins. Co. (1967) pg. 429].* The California Second Appellate District even more recently again emphasized that a failure to settle under such conditions represents a breach of the *implied covenant of good faith and fair dealing* [*Merritt v. Reserve Ins. Co. (2013) pg. 272].*

Furthermore, this Supreme Court of California has also emphasized that under such circumstances where there is a failure to settle within policy limits that the insurer becomes fully liable and at risk for the entirety of the judgment inclusive of any component of a judgment in excess of the policy limits [*Comunale, p. 660; Crisci p.*

428; and Johnsen p. 17]. It is critical for this Supreme Court of Cal to understand that in this case at issue, which was filed one day before the expiration of the two-year statute of limitations for personal injury, that CSAA et al. even at that time of filing had already exceptionally breached its duty under the *implied covenant* as interpreted by the many case law precedents to settle within policy limits making it fully liable for the entirety of any judgment even in excess of policy limits. Thus, from the perspective of these critical case law precedents it can be quite accurately stated that even at that time of initial filing of the litigation by Dr. Pierson 2 years following the accident that CSAA et al. from that time of filing due to its breach of its contractual duties had assumed the position which required that it must assume the entirety of financial risk for any and all judgments in the case inclusive of any judgments in excess of policy limits. The corollary to this point is that from the very first date of filing of the litigation by Dr. Pierson, Tortfeasor Rushing had absolutely **no** personal financial risk whatsoever to her personal assets inclusive of any

judgment in excess of policy limits. A further relevant point which must be emphasized is that the case law from the multiple state and federal courts across this country inclusive of the California Courts of Appeal and the California Supreme Court have long emphasized that insurance contracts extended by automobile insurance companies such as CSAA et al. require as a condition of enrollment that the insured must designate to the insurer complete and absolute control over any litigation arising from insured's negligent acts covered under the contract. (See *Hiller v. Western Auto Ins. Co. (1932) p. 258; Comunale v. Traders & Gen'l Ins. Co. (1973) p. 972; Jamestown Builders v. Gen'l State Indemnity Co., 1999) p. 346; and Rova Farms Resort v. Investors Ins Co. (1974) p. 497).*

In conclusion to this section, it is important to strongly emphasize the point that even from the first day of the filing of the complaint by Dr. Pierson all risk resided absolutely and completely with the insurer, CSAA et al., due to their multiple flagrant breaches of the *implied covenant of good faith and fair deal*ing which resulted from its abject failure to settle the case despite fully

qualifying offers within policy limits. Thus, from the time of the onset of the litigation CSAA was involved in managing its own financial risk and business interests exclusively which was in complete conflict with the interests owed to the insured, Rushing. From this perspective, there can be no question but that the litigation in the Amador Superior Court should have been permitted to proceed against CSAA et al. from the outset given the clear facts that the insurer was representing only its own interests with the full intent of further greatly marginalizing Dr. Pierson financially in the attempt to leverage him into the financially unfavorable position where he was forced to accept an unacceptable settlement in direct violation of California Ins. Code 970.04(h)(7). And circumstances and facts of this case Dr. Pierson had a U. S. constitutional right and standing under the First, Fifth and Fourteenth Amendments to directly seek redress for the injuries caused to him by the Tortfeasor Rushing's insurer, CSAA et al. That right to petition in the courts offered to all citizens under the U. S. Constitution has been unlawfully denied to Dr. Pierson by the Superior Court

of California in Amador County and subsequently affirmed by the Supreme Court of California. As a result of this denial of a fundamental U.S. Constitutional right by the California Courts which is prohibited under the Fourteenth Amendment represents an issue of federal law which is now properly advanced to this Highest Court which has the authority of the Superior Sovereign.

B. Proceedings Below

A list of the significant dates relevant to the *Appeal* in this case initially advanced in the California Third District Court of Appeals (Case# C091099) and subsequently submitted to the Supreme Court of California in the form of a *Petition for Review* (Case #S281367)) are provided below:

August 16, 2019	Date of the Judgment of Dismissal following the Superior Court of California in Amador County granting of the CSAA et al. Demurrers for their removal from the case (Case# - 18-CVC-10813).

October 17, 2019	Date of timely filing of the appeal to the California Third District Court of Appeals by Pro Per Appellant Dr. Raymond Pierson.
August 2, 2022	Date of filing of the (corrected) *Appellant Opening Brief* and six (6) volume *Appendix* (Note: Significant delays accrued due to the ongoing effects of the COVID-19 pandemic)
October 4, 2022	Date of submission of CSAA, et al. Respondent's Brief.
March 14, 2023	Date of filing of the Appellant's Reply Brief.
June 23, 2023	Oral Argument held before a three (3) judge panel of the California Third District Court of Appeal.
June 30, 2023	Decision by the Third District Appellate panel to affirm the decision of the court below to remove the Insurer, CSAA, et al. from the trial court proceedings.

August 15, 2023	Date of acceptance for filing of the *Petition for Review* by the Supreme Court of California.
September 20, 2023	Decision by the Supreme Court of California to deny the *Petition for Review.*
December 19, 2023	Current last permissible date for filing the Petition for Writ of Certiorari to the Supreme Court of the United States which was extended by Justice Kagans granting of a 60 day time extension.
February 17, 2024	The Court's receipt of the initial Petition for Writ.
February 23, 2024	Petition non-compliance. Providing a 60 day period for revision.

REASONS FOR GRANTING THE PETITION

A. INTRODUCTION

The right to a remedy in the courts for wrongful injury holds a revered place in our civil justice system. Lord Coke traced this tight to Chapter 29 of the Magna Carta, which guaranteed: *"Every subject may take his*

remedy by course of the Law, and have justice, and right for injury done to him..." 1 Edward Coke, the Second Part of the Institutes of the laws of England 55 (London, E. & R. Brooke 797). Chief Justice Marshall restated that principle for Americans:

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. Marbury v. Madison, 5 U. s. (1 Cranch) 137, 163 (1803).
>
> Our Fifth Amendment guarantee of due process is an "affirmation of Magna Carta according to Coke." *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U. S. 1, 29 (1991) (Scalia, J., concurring).

This Court has left no doubt that "[t]he Right to sue and defend in the courts is the alternative to force. In an organized society it is the Right conservative of all rights and lies at the foundation of orderly government." *Chambers v. Baltimore & Ohio, R.R.,* 207 U. S. 142, 148 (1907). This fundamental right is grounded in multiple

constitutional guarantees. *Christopher v. Harbury*, 536 U. S. 403, 415 n. 12 (2002).

B. Standing indisputably existed for Dr. Pierson two years following the motor vehicle destruction of his medical practice at which point CSAA et al. had refused settlement within Dr. Pierson's policy limit offer providing Dr. Pierson no alternative but to proceed with the filing **of the complaint.**

It has been fully recognized that the U.S. Constitution Article III § 1 does not clearly articulate what is meant by the reference to the phrase "*the judicial power of the United States;*" however at Article III § 2 it is specified that the judicial power extends only to "*cases*" and "*controversies*". This Court has strongly emphasized "*[N]o principle is more fundamental:*

> And "'[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.'" *Raines* v. *Byrd*, 521 U. S. 811, 818, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997).

This Court in *Spokeo, Inc. v. Robins, 578 U.S. 330, 338* has reviewed the traditional understanding of the

Doctrine of Standing to sue which is based upon the required existence of a "*case*" or *"controversy"*:

> The doctrine developed in our case law to ensure that federal courts do not exceed their authority as it has been traditionally understood. See *id.*, at 820, 117 S. Ct. 2312, 138 L. Ed. 2d 849. The doctrine limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong. (citations omitted)

The case law precedents of this Court have defined that the *"irreducible constitutional minimum"* of standing, which consists of three elements [*Lujan v. Defenders of Wildlife, 504 U.S. 555, 500 (1992)]:*

> The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Id.*, at 560-561, 112 S. Ct. 2130, 119 L. Ed. 2d 351; *Friends of the Earth, Inc.*, 528 U. S., at 180-181, 120 S. Ct. 693, 145 L. Ed. 2d 610.

With regard to "*injury*" the plaintiff must not only allege, but also show that there was a personal injury to them and not another:

> To establish injury in fact, a plaintiff must show that he or she suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." Lujan, 504 U. S., at 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (internal quotation marks omitted). (*Spokeo at p. 339).*

For the injury to be "particularized" it "*must affect the plaintiff in a personal and individual way*" (Lujan at 2130). Though particularization represents a necessary condition it is not sufficient. The injury must also be *"concrete"* (Spokeo at p. 340):

> A "concrete" injury must be "*de facto*"; that is, it must actually exist. See Black's Law Dictionary 506 (10th ed. 2014). When we have used the adjective "concrete," we have meant to convey the usual meaning of the term — "real," and not "abstract."

Finally, the *Spokeo* court emphasized that though concrete is most easily interpreted as *"tangible"* it can also be intangible (*Id. at p. 310)*:

> Although tangible injuries are perhaps easier to recognize, we have confirmed in many of our previous cases that intangible injuries can nevertheless be concrete. (citations omitted).

The facts of this case presented in the original pleading and reviewed in detail above indisputably establishes the fact that Dr. Pierson met all the conditions necessary to advance in litigation against CSAA et. al. That lawful and constitutional right was frustrated and denied by the California Courts.

In order to validly establish that an injury has occurred (*Spokeo at p. 339*):

> A plaintiff must show that he or she suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." Lujan, 504 U. S., at 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 We discuss the

particularization and concreteness requirements below.

This Court has emphasized the critical fact that *"Injury in fact is a constitutional requirement"* and *"[I]t is settled that Congress cannot erase Article III standing requirements"* (Id. p. 339). The corollary to this point is that neither Congress nor any legislature of the several states can legislate away the fact that such qualifying injury has occurred.

QUESTIONS

Issue #1

CSAA et al. has intentionally failed throughout the entirety of this case in the lower court as well as in this related appeal to present the complete insurance contract *(" the instrument as a whole")* that was in effect between the Insured Rushing and Insurer CSAA at the time of the motor vehicle accident on 10-10-2016.

The full facts and evidence provide irrefutable confirmation that CSAA failed through the entire duration of this case below as well as through this Appeal to provide the entirety of the insurance contract *("that instrument as a whole")* inclusive of all declaration and endorsement pages [*Harper v. Wausau Ins. Corp.,* 56 Cal. App. 4th 1079, 1085-1086]. That

abject failure to present the *"whole"* policy fully eliminated, as a matter of law, the jurisdiction of the Superior Court to proceed with that Court's order *"sustaining the Demurrer without leave to amend"* (2-APP-508).

The well-established caselaw precedents of the California Appellate Courts require that when a case in controversy involving the interpretation of a contract is brought before the court that the review must consider the *"instrument as a whole"* [*Harper v. Wausau Ins. Corp.,* 56 Cal. App. 4th 1079, 1085-1086]:

> The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. (Civ. Code, § 1636.) ...In so doing, the court must interpret the language in context, with regard to its intended function in the policy. **This is because 'language in a contract must be construed in the context of that instrument as a whole, and in the circumstances of that case, and cannot be found to be ambiguous in the abstract.'** (*Producers Dairy Delivery Co. v. Sentry Ins. Co.* (1986) 41 Cal. 3d 903, 916-917 & fn. 7 . . .)

Those true facts provide full evidence that CSAA has never produced the *"whole"* contract between Rushing

and CSAA for review by the Courts despite Pierson's repeated requests.

Strong case law support was provided in the 8-22-22 Appellant Opening Brief as well as at the 6-23-23 Oral Argument that a Court must review the entire insurance contract or *"instrument as a whole"* before making a valid determination on whether a third-party beneficiary is incidental or intentional with enforcement rights under CCP 1559:

1. In the AOB (p. 45) the case law decisions of the Second District in *Bancomer v. Superior Court,* 44 Cal. App 4th 1450 (1996) and Fourth District in *Cione v. Foresters Equity Services*, 58 Cal. App. 4th 625, 636 (1997) were reviewed. Those Courts emphasized that a contract determination had to be based upon "*the parties' intent, gleaned from reading the contract as a whole in light of the circumstances under which it was entered. [Citations omitted.]"*

   Conclusion

   The CSAA failure to provide the *"whole"* policy eliminated the authority of the Court to proceed to a proper determination on third-party enforcement rights under CCP 1559. The fact that both Courts proceeded to

decisions adverse to Pierson despite the absence of the *"whole"* represents *error* which has caused an exceptional injustice to deny Dr. Pierson his due process rights.

Issue #2

The Third District Court's decision which stated that CSAA's role here was simply an agreement to "indemnify Rushing" (p. 10) fails completely to recognize the quite extensive and exclusive role that CSAA has demanded that it must serve under the insurance contract in the management and handling of all litigations that arise due to the negligence of their insured such as exists here. Furthermore, it is indisputable here that CSAA has actively controlled the litigation in a manner that extends far beyond the boundaries defined by indemnification by extending that control into areas which target the corporation's best interests with a primary focus directed at maximizing shareholder value and profits while fully disregarding the interests of their insured as well as those interests of injured third-party beneficiaries.

1. **Auto insurance contracts have been well recognized by the multiple Federal and State courts nationally to demand complete and absolute control over all litigation matters by Insurers.**

There is a plethora of evidence provided in the caselaw decisions of the Supreme Court of California

as well as those of the many state and federal reviewing courts that the Courts have fully recognized that automobile insurance contracts require that complete and absolute control over all aspects of covered litigation must reside with the Insurer. The corollary is that Insureds have absolutely no control over the handling and resolution of those cases. This contractual control relegated to the insurer results in a complete subservience of the insured's interests to those of the insurer. The recognition of the existence of these contractual conditions by the Courts is well demonstrated on review of many caselaw precedents. One of the earliest cases which recognized the existence of this absolute level of control by the auto insurers was considered by the Supreme Court of Wisconsin which has been cited by the California courts. That case titled *Hilker v. Western Auto Insurance Co.,* 204 Wis. 1; 231 N.W. 257 importantly references an earlier Wisconsin case from 1916 at the beginning of the automobile era:

The case presents a question of vital

> *importance to both insurer and insured, which has been considered by this court in but a single case, decided in 1916. Wisconsin Zinc Co. v. Fidelity & D. Co. 162 Wis. 39, 155 N.W. 1081. Since that case was decided, a great body of automobile law has been developed. The court at that time did not see, and could not then foresee, the problems that would arise under the provisions of these policies which* ***give the insurer complete and absolute control*** *of all claims arising out of automobile accidents.*

A later precedent by the Supreme Court in *Comunale v. Traders & General Ins. Co.,* 50 Cal.2d 654 referenced this Wisconsin case and fully acknowledged *"the insurer has reserved control over the litigation and settlement . . .".* The First District in *Ivy v. Pacific Auto Ins. Co.,* 156 Cal. App. 2d 652, 659 (1958)] also recognized that *"under the terms of the policy the insurance company retains control of the litigation".* More recently in *Merritt v. Reserve Ins. Co.,* 34 Cal. App.3d 858, 872 (1973) the Second District again recognized that the insurance contract is designed to provide the insurer with the *"right to control litigation".*

Finally, in a recent decision by the Supreme Court [*Pitzer College v. Indian Harbor Ins. Co.,* 8 Cal. 5th 93 (2019)] the Court observed that *"The insurer [is invested] with complete control and direction of the defense".*

The point to be emphasized here is that an auto Insurer's exclusive control and active participation in auto negligence cases defines a level of involvement which extends well beyond the characterization of a simple *indemnification* process which the Third District Appellate Court suggests in the opinion. Rather, that active involvement extends prominently into areas where the insurer becomes actively involved in protecting its own financial interests which represents a much higher-level priority than those interests of the Insured thus resulting in a high-level of conflict of interests between the insurer and insured. Insurers have utilized their unique and dominant control over these auto negligence claims to transform them into investment opportunities. They manage the claims with a unifying intent to minimize payments to

injured parties and maximize return for shareholders. Such an approach necessarily causes further injury to the injured third party as well as to be truly unlawful as it is completely contrary to the Insurance Code at 790.03(h)(5) which requires that once negligence is established the insurer must *"effectuate prompt, fair and equitable settlements..."*

2. The facts of this case provide an overwhelming amount of evidence which demonstrates a plethora of blatant bad faith violations by CSAA of the Insurance Code Article 6.5, 790.03(h) with particular attention directed to subsections (5), (12) and (15).

Before proceeding, it is important to emphasize that Tortfeasor Rushing was a sole operator who crashed into and through the side structural wall of Dr. Pierson's medical practice, a negligent act fully documented in the Jackson *Police Report* (1-APP-22-25). That Rushing negligence is fully qualifying under the *Negligence Per Se Doctrine* (Evid. Code 669). Thus, at trial there would be no requirement to prove negligence, which has already been established as a matter of law. With negligence established, 790.03(h)(5) then required the insurer to

pursue "*prompt, fair and equitable settlement*". From that perspective, the status of this case demonstrates just how significantly and unlawfully the requirements of the Insurance Code have been flagrantly and repeatedly disregarded by CSAA. Such infractions are rarely addressed by the Department of Insurance nor have there been adverse consequences in the California courts due to the California Supreme Court's refusal to recognize a *cause of action* for infractions under 790.03(h). Despite that Court position it has emphasized that (*Moradi-Shalal v. Fireman's Fund Ins. Co., 46 Cal. 3d 287, 305):*

> *We caution, however, that our decision is not an invitation to the insurance industry to commit the unfair practices proscribed by the Insurance Code. We urge the Insurance Commissioner and the courts to continue to enforce the laws forbidding such practices to the full extent consistent with our opinion.*

In fact, CSAA et al.'s conduct here provides confirmation of the intent to do just that.

At this juncture, it will be useful to review the

caselaw precedents in the California which have long recognized that an insurer's failure to settle claims within policy limits when risk of an excess judgment exists represents a *bad faith* breach of the *implied covenant of good faith and fair dealing*. The Supreme Court has fully recognized that such a breach results in the insurer having full liability for any excess judgment that occurs [*Comunale v. Traders & General Ins. Co.,* (1958) 50 Cal. 2d 654, 660,659]. In another case the Supreme Court proposed a *test* which the insurer must apply when the risk of an excess judgment is high. That test requires the insurer to consider the liability exposure as if there was no policy limit and full risk rests with the insurer [*Crisci v. Security Ins. Co.,* 66 Cal. 2d 425, 429 (1967)]. The Second Circuit also found that an insurer was in breach of the *implied covenant* when there is an unreasonable failure to settle when the risk of an award in excess of policy limits exists [*Merritt v. Reserve Ins. Co.,* 34 Cal. App 3d 858, 872 (1973)]. In *Johansen v. Cal. State Auto Assn. Inter-Ins. Bureau,* 15 Cal. 3d 9, 17 (1975) the

> Supreme Court again emphasized that the insurer must achieve settlement of a claim within policy limits when the conditions exist for a judgment beyond policy limits. More recently the Second District [*Reid v. Mercury Ins. Co.,* 220 Cal. App. 4th 262, 272 (2013)] has again emphasized this point.
>
> In this case at issue the insurer here has flagrantly and in bad faith repeatedly breached these duties and must accept all financial risk.

Issue #3

The Appeal Panel's position with respect to Civil Code 1559 relies upon the California Supreme Court holding in *Harper v. Wausau* (1997) 56 Cal. App. 4th 1079, 1087 which states *"a third party should not be permitted to enforce covenants made not for his benefit but rather for others. He is not a contracting party; his right to performance is precedented on the contracting party's intent to benefit him".* This understanding greatly misinterprets the ancient precedents which motivated and guided the early California Legislature when establishing Civil Code 1559 as well as the Supreme Court of California's early interpretation of the statute.

The key to understanding the true intent of the California Legislature in the 1882 creation of Civil Code 1559 was fully reviewed in the AOB (p. 34-35). That

analysis included a review of the early contract law of Maine and Massachusetts as well as that of the U.S. Supreme Court in *Second National Bank v. Grand Lodge,* 98 U.S. 123, 124 (1878) which contributed to the legislative foundation of CCP 1559.

A short seven years following an initial Appeal in *Chung Kee v. Davidson*, 73 Cal. 522 (Cal. 1887) in which the Court interpreted CCP 1559 the case was returned to the Supreme Court on a second Appeal (*Chung Kee v. Davidson*, 102 Cal. 188 (1894). In that second appeal the Court reviewed the critical principles of contract law that had been established in those above-mentioned early precedents of the Supreme Courts of Maine and Massachusetts as well as that of the U.S. Supreme Court. It was those principles of contract law which had influenced and guided the Legislature in establishing CCP § 1559 which have critical relevance. Those early Courts established the principle that under circumstances where one party finds itself in the possession of the money or property of another party that in principle a *"privity"* of one to the

other was established. In other words, a substantive legal relationship would exist:

> *In Lewis v. Sawyer, 44 Me. 337, the court, quoting from Hall v. Marston, 17 Mass. 575, said: "Whenever one man has in his hands the money of another which he ought to pay over, he is liable to the action of money had and received, although he has never seen or heard of the party who has the right. When the fact is proved that he has the money, if he cannot show that he has legal or equitable ground for retaining it, the law creates the privity and the promise."(Id., p.195-196)*

In the second *Chung Kee* opinion, the California Supreme Court proceeded to review the U.S. Supreme Court's opinion in *Second National Bank v. Grand Lodge,* 98 U.S. 123, 124 (1878) which emphasized that there were multiple exceptions to the requirement of the existence of the privity of contract which also had the effect absent a contract to create the right to proceed with suit for non-performance. The Court observed that the most common such exception was that situation in which in a contract between two parties assets come into the possession or control of the promiser which lawfully belong to a non-contracted

third party under which circumstances the third party *"may sue in his own name".*

> *The Supreme Court of the United States, after conceding the general rule to be that privity of contract is necessary to the maintenance of the action of assumpsit said: "But there are confessedly many exceptions to it. One of them, and by far the most frequent one, is the case where, under a contract between two persons, assets have come to the promisor's hands or under his control, which in equity belong to a third party (Id., p. 196-197)*

There can be no doubt that this interpretation by the U.S. Supreme Court is fully consistent with the power of enforcement authorized by the Legislature in CCP § 1559 which the California courts in the decisions in this case have refused to acknowledge. These case-law precedents certainly support the recognition of the broader right of a non-contracted third party to sue to obtain possession of such property to which they are lawfully entitled. The further implications of this early precedent in *Second National Bank v. Grand Lodge* as to third-party enforcement with insurance contracts requires a review of the understanding of the role of an *assumpsit* in a contracted relationship. The legal

definition for assumpsit in Black's law dictionary (Third Pocket Edition) is:

> *An express or implied promise, not under seal, by which one person undertakes to do some act or pay something to another.*

The point to be emphasized is that the role of an insurance company such as CSAA offering an indemnification contract as was the original intent later abandoned in this case is that it represents a contracted entity that has made a promise (assumpsit) to pay the obligations of a client (Tortfeasor Rushing here) which may arise from that client's negligent acts. The point that must be emphasized is that the promise (or assumpsit) is owed to the third party that the insured may at some point in time become indebted to due to their negligence. Another example would be the contractual relationship developed between a home builder and his independent accountant; the homebuilder would deposit funds with the accountant (assumpsit) who would then utilize those deposited funds for payment of the legitimate debts of the builder that come due within the contractual time. To apply

this practical understanding to this case, CSAA et al. has made the promise to pay Rushing's indebtedness with the funds deposited by Rushing pooled with those funds of other insureds. In that circumstance, the debt is owed to the injured third party (Pierson) who was unnamed at the time of establishment of the contract. The intent or *"end and aim"* in this contractual relationship from the outset is always for the insurer to pay the debt owed to the injured party and to never make a directed payment to the insured, Rushing. In simple terms, the insurance policy could be considered to include *a blank space as to the intended recipient for future entry of the name of the injured third-party beneficiary* which is entered with the occurrence of a negligent injury caused by the insured immediately gets filled in with the name of the entitled third party. With this understanding and insights provided from the ancient precedents reviewed above it becomes patently clear that the injured third party in the insurance case represents an *intended and not incidental* 3rd party who thus has *enforcement rights*.

This analysis of the early case precedents fully supports

Dr. Pierson's stated position in the AOB that he has Third Party enforcement rights as an intended third-party under CCP 1559.

Issue #4

The Appellate Court decision states that "a third party such as plaintiff may not bring a direct action against an insurance company except where there has been an assignment of rights by, or final judgment against, the insured" (p. 5). In this case at issue Pierson has repeatedly made such requests of assignment that accompanied settlement offers which pledged no personal financial risk to Rushing. Those requests were repeatedly denied (5-APP-1113, 6-APP-1487-1488) with no evidence presented to confirm that the proposal was ever even presented to Rushing.

Despite the fact that Pierson had directly stated to Attorney Leonard that he had a Professional and Fiduciary Duty to inform his client of Pierson's settlement offers which entailed no personal financial risk to Rushing coupled in the later stages (4.5 years post-accident) with the request for assignment of her *bad faith* claims under the *Implied Covenant* (5-APP-1117), no direct evidence was ever presented from Rushing herself indicating refusal. In fact, a Rushing refusal would have been would have been truly

unexplainable. There is absolutely no reason that an elderly nonagenarian would refuse such offers which agree to completely vindicate her from the litigation with no financial risk. These circumstances strongly suggest that Rushing or alternatively her legal guardian(s) have never been informed of those reasonable offers extended over an almost 5-year period. If true, it should be fully evident that under such conditions where the insured is isolated and fraudulently not informed, then the plaintiff would never be able to acquire such an assignment of rights as he has no access to the defendant. Therefore, it is unreasonable for the courts to require such an assignment of rights when such a request can be so easily defeated by defense counsel's unethical and unlawful behavior. Thus, the requirement to require the assignment of rights or in the alternative to obtain a judgment at trial before a plaintiff can move against the Insurer creates quite impermissible and exceptionally unequal protections for Insurers such as CSAA et al. from being sued for their misdeeds. Those restrictions on Dr. Pierson's *right of petition* and the elevated and

unequal protections provided to Insurer CSAA et al. are inherently unjust and impermissible under the First, Fifth and Fourteenth Amendments of the U. S. Constitution.

Issue #5

The Appellate decision rejects Pierson's advancement of a *"CSAA duty of care under Biakanja"* apparently in part because *"he does not expressly state the nature of the duty he seeks to impose" (p. 13).* The Court has greatly misapprehended Dr. Pierson's argument. In fact, in the AOB (pgs. 62-66) and the RB (pgs. 42-51) the existence of special relationships and duty of care between CSAA et al., Rushing and Dr. Pierson due to the fact that Rushing's negligent act indefinitely interrupted the healthcare delivery and physician-patient relationships of many hundreds of patients in an underserved region of the Sierra Foothills. As a matter of public policy this provided full justification for the proceeding with a cause of action even in the absence of privity as advanced in *Biakanja.*

In the ARB (p.42), it was emphasized first that CSAA had a *special relationship* with Rushing because it was the CSAA provision of insurance coverage which assisted that eighty-nine-year-old negligent driver to keep her car registered and her driver's license current by facilitating her ability to meet the *financial*

responsibility requirements of the Vehicle Code 16020 and 4000.37. As a result of that act and the opportunity it represented for the elderly Rushing, CSAA was best positioned to ensure that she was a competent driver. Thus, CSAA created a special relationship with Rushing which served to establish a duty of care for CSAA to prevent or minimize the harm that Rushing might cause others. Furthermore, Rushing's negligent act resulted in the persistent closure of Dr. Pierson's medical practice and immediate disruption of care to many hundreds of patients. CSAA was immediately informed of these disruptions and injuries (2-APP-259,289). As a result, CSAA had early knowledge of the extent of the ongoing injuries that Dr. Pierson had sustained and knowledge that the only monies that would become available to repair and reopen the practice location would be those forthcomings from the insurance settlement; therefore, CSAA had full *foreseeability* that their failure to act to assist Pierson would result in significant ongoing injuries accruing (2-APP-259, 289). The fact that a CSAA insured's negligent vehicle operation resulted in the disruption of

care for many hundreds of patients at a critical health resource in an underserved region had the effect to also create a special relationship between CSAA and Dr. Pierson (ARB, p.46) with a resultant *duty of care* to assist to get the practice back in operation as soon as possible.

In addition, due to the unquestioned liability as documented by the police report (1-APP-21-25) which confirms the applicability of the *Negligence Per Se Doctrine* which established negligence, CSAA from the outset had certain knowledge that liability existed even prior to trial proceedings and would need to be compensated. This analysis fully confirms that all six factors qualifying factors specified under *Biakanja* were met or exceeded. Furthermore, the closure of a critically needed health clinic confirmed that public policy interests demanded that CSAA accept its duty of care and immediately assist with the practice restoration (*Biakanja v. Irving*, 49 Cal. 2d 647, 650 (1958).

The above review of facts along with the closure of the clinic which was a critically needed health resource confirms that a duty of care existed under CCP 1714.

Issue #6

Pierson has been denied his fundamental U.S. Constitutional Rights under the First, Fifth and Fourteenth Amendments to seek redress in the Courts for the substantial and ongoing injuries over the past almost 7 years that have resulted from the exceptional misconduct and repeated unlawful activities and fraud of Defendant/Respondent CSAA.

The right to a remedy in the Courts for wrongful injury holds a revered place in our civil justice system. Lord Coke, Chief Justice of the Common Pleas, traced this right to Chapter 29 of the Magna Carta, which guaranteed: *"Every Subject may take his remedy by the course of the Law, and have justice, and right for the injury done to him..."* 1 Edward Coke, *The Second Part of the Institutes of the Laws of England* *55 (London, E. & R. Brooke 1797). Chief Justice John Marshall, the longest serving Chief Justice on the Supreme Court of the United States, provided the following understanding

of this fundamental and essential principle in American Jurisprudence:

> *The very essence of civil liberty certainly consists in the right of every individual to claim protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. (citing* Marbury v. Madison, 4 U.S. (1 Cranch) 137, 163 (1803)

The Superior Court's 5-10-2019 order granting the CSAA Demurrer and subsequent Dismissal of Dr. Pierson's case against CSAA which was affirmed by this Third District Court's 6-30-23 decision have denied to Dr. Pierson his fundamental U.S. Constitutional Rights under the First, Fifth and Fourteenth Amendments to seek redress for the substantial and ongoing injuries sustained over an almost 7 year period which have resulted from the exceptional bad faith, misconduct and repeated unlawful activities inclusive of fraud by Respondent CSAA.

In regard to the applicability of the Fourteenth Amendment as it relates to this issue of due process and equal representation in a person's right of petition in seeking redress for injury against the person(s) causing

that injury; it is important to recognize that under both Federal and California law that a corporate entity such as CSAA et al. is a *"person"* under the Fourteenth Amendment. In the early precedent of the U.S. Supreme Court [*Gulf, C & S.F.R. Co. v. Ellis, 165 U.S. 150, 154 (1896)]* the Court emphasized:

> *It is well settled that corporations are persons within the provisions of the Fourteenth Amendment of the Constitution of the United States. . . . The rights and securities guaranteed to persons by that instrument cannot be disregarded in respect to these artificial entities called corporations any more than they can be in respect to the individuals who are the equitable owners of the property belonging to such corporations. A State has no more power to deny to corporations the equal protection of the law than it has to individual citizens.*

It is important to point out the Court's emphasis that the rights and securities guaranteed to corporations are those same guarantees afforded to *"individual citizens"*. That is the protections must be equal and not disproportionate more protective for insurers as exists currently in California law where insurers are protected from being held accountable for their mistakes. A last

point in this regard which is emphasized in the U.S. Supreme Court decision in *Shelley v. Kraemer, 334 U.S. 1, 14 (1948)* which emphasizes that no branch of state government may impugn these fundamental rights:

> *That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court. That principle was given expression in the earliest cases involving the construction of the terms of the Fourteenth Amendment. Thus, in Virginia v. Rives, 100 U.S. 313, 318 (1880), this Court stated: "It is doubtless true that a State may act through different agencies, -- either by its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all action of the State denying equal protection of the laws, whether it be action by one of these agencies or by another.*

Thus, the efforts by the California legislature and the California courts to provide such disproportionately greater protections to insurance corporations over the rights of the individual to seek redress for injury have no rational basis and thus represent unconstitutional deprivations of the rights of individual citizens.

Despite Pierson's exhaustive efforts within the restrictions imposed by the California Legislature in the Insurance Code [Code 790.03 and 11580(b)(2)] and the interpretations of those statutes by the Supreme Court as expressed in the case precedents *Moradi-Shalal v. Fireman's Fund Ins. Co. 46 Cal. 3d 287, 306 (1998)* and *Royal Indemnity co. v. United Enterprises Inc. (2008) 162 Cal. App. 4th 194, 205*, Dr. Pierson has been abjectly denied his fundamental Federal right to seek redress for injury from CSAA which has indisputably caused him substantial ongoing injury. This proves beyond any doubt that Dr. Pierson has been effectively denied his fundamental U.S. Constitutional Rights under the First, Fifth and Fourteenth Amendments to seek redress for the substantial and ongoing injuries caused by exceptional misconduct, fraud and repeated unlawful activities of CSAA which has been unlawfully and unconstitutionally permitted as a result of the elevated and unequal protections provided under the California statutes and Judicial interpretations of those statutes. At this point in the litigation and appeal, after exhausting all potential avenues to seek redress for his

injuries under California law, Dr. Pierson has proper standing to proceed with constitutional challenges to those defective California statutes and judicial precedents which have deprived him of his fundamental civil liberties inclusive of his unrestricted right of petition, due process and equal protection under the First, Fifth and Fourteenth Amendments of the U.S. Constitution. Furthermore, these deprivations of Dr. Pierson's fundamental rights and privileges by the California legislature and the California courts in this regard are actionable under the federal statute 42 USC 1983.

CONCLUSION

For all of the reasons expressed above Dr. Pierson, a self-represented party in this litigation prays for the mercy of this esteemed Court to grant this Petition.

Respectfully submitted,

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