

23-5600

Application No.: 23A11

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Richard D. Bostwick,
Pro Se Petitioner;

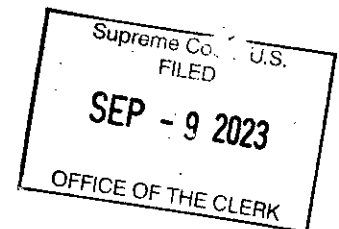
vs.

Massachusetts Executive Office of Health and Human Services, et al
Respondent(s).

On Petition for a Writ of Certiorari to
Appeals Court
For the Commonwealth of Massachusetts

PETITION FOR A WRIT OF CERTIORARI

Richard D. Bostwick
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QUESTIONS PRESENTED

Please note that Four Conflicts of Judicial Decisions are presented in this Petition.

Question #1:

1. Whether Bostwick's Appeal was NOT Reviewed by the Lower Courts (Appeals Case No. 21-P-721) given Bostwick's Notice of Appeal. The following was Appealed in Bostwick's Notice of Appeal for Bostwick v. Department of Health (DPH), Sims, Classic (Case No.: 1081CV01775):

"1.2 All Matters, in Civil Action No. 1081CV01775, falling within the Judgment, numerous Orders, Final Judgment, etc. and the 10 Day Post-Final Judgment Motion concerning the Classic Automatic Stay are Appealed from in all respects...3.2 The..."All Matters..."...are...,

(Docket Date: 03/02/2011): Motion to Dismiss Allowed: (Sims File Ref Nbr.: 11);

(Docket Date: 03/02/2011): Motion to Dismiss Allowed: (DPH File Ref Nbr.: 12);

(Docket Date: 03/02/2011): Motion to Dismiss Allowed: (Classic File Ref Nbr.: 13);

(Docket Date: 03/02/2011): Denied: Bostwick's Supplemental Documents (File Ref Nbr.: 15);

(Docket Date: 03/02/2011, File Ref Nbr.: 16): Memorandum of Decision and Order on the Defendant's Motions to Dismiss;

(Docket Date: 03/02/2011, File Ref Nbr.: 17): Declaratory Judgment, That the Complaint of the plaintiff be and hereby is dismissed;

(Docket Date: 03/14/2021): Denied: Bostwick's Motion about Classic's Bankruptcy and the Automatic Stay (File Ref Nbr. 18) is Denied;

(Docket Date: 05/06/2021): Denied: Bostwick's Motion to Vacate the 02 March 2011 Judgment under Mass.R.Civ.P. Rule 59(e) given Title 11 section 108(c)(2)...(File Ref. Nbr. 21) is Denied."

The 12 January 2023 Appeals Court Decision (Case No. 21-P-721) stated that Bostwick only appealed the 05 May 2021 (see above (Docket Date: 05/06/2021)), Judge Haggan Order. The Appeals Court Statement is False. Consequently, Bostwick's Appeal was NOT Reviewed by the Lower Courts. (Case No. 21-P-721)

The Appeals Court Decision (Case No. 21-P-721), which only concerns Docket Date: 05/06/2021, ONLY stated that Bostwick's 30 April 2021 Motion (see above (Docket

Date: 05/06/2021)) under Title 11 § 108(c)(2), Extension of Time and also under Mass.R.Civ.P. Rule 59(e), Rule 15, Rule 52(b), Rule 60(b)(4), Rule 60(b)(5) and Rule 60(b)(6) was UNTIMELY. Bostwick's 30 April 2021 Motion was NOT Untimely. As explained in this Petition, Bostwick's Motion was Timely given Title 11 § 108(c)(2); Extension of Time, and the Stays against Bostwick; namely, (a) Classic Chapter 7 Bankruptcy (Case No.: 11-10574-JNF) Automatic Stay, (b) Judge Feeney Title 11 § 105, STAY ORDER; namely, Title 11 § 362(a)(1) Stay with additional Terms and Conditions against Bostwick (Case No.: 11-10574-JNF) and (c) Superior Court Classic Stay by Judge Henry (Bostwick v. Clasic, Case No.: 0881CV01465) and the Notice of Bankruptcy Case Closure to Bostwick.

"Title 11 § 108(c)...continuing a civil action in a court other than a Bankruptcy Court on a claim against the Debtor (Classic)... and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of...

(2) 30 days after NOTICE of the termination or expiration of the stay under section 362...of this title."

Bostwick's 30 April 2021 Motion was Timely under Mass.R.Civ.P. Rule 60(b)(4) as explained in this Petition and Bostwick's 30 April 2021 Motion was Timely under Mass.R.Civ.P. Rule 60(b)(4) given that the 02 March 2011, Judge Wilkins, DPH Judgment, is Void (Mass.R.Civ.P. Rule 60(b)(4)) given all of the Due Process Violations (U.S. Constitution, Amendment XIV) leading to the Judge Wilkins, DPH Judgment.

Bostwick's 30 April 2021, Mass.R.Civ.P. Rule 60(b)(4), Motion was timely because there is no Time Limit to Void the Judgment because "a Void judgment can never acquire validity through laches." See Crosby v. Bradstreet Co. (1963) CA2 NY) 312 F2d cert den 373 US 911, 10 L. Ed 2d 412, 83 S Ct 1300 where a Court vacated a judgment as void 30 years after entry. See also Marquette Corp. v. Priester, 234 F. Supp 799 (Ed SC 1964) where the Court expressly held that the clause Rule 60(b)(4) carries no real time limit.

Bostwick's 30 April 2021 Motion was Timely under Mass.R.Civ.P. Rule 59(e), Rule 15, Rule 52(b), Rule 60(b)(4), Rule 60(b)(5) and Rule 60(b)(6) given Title 11 § 108(c) and this Petitions Arguments. The Appeals Court Decision based on Mass.R.Civ.P 60(b) and DISCRETION , said: "(three year delay unreasonable where party was aware of facts giving rise to motion to vacate at time of judgment)" (See Owens v. Mukendi, 448 Mass. at 74-77). The Appeal Court Judicial Discretion that Bostwick's 30 April 2021 Motion was not filed within a reasonable time is false and an Abuse of Discretion. Given the hard and fast rule of Title 11 § 108(c), the Appeals Court does NOT have the right to Discretion and Bostwick's Motion was Timely.

"Our Court has stated "The term discretion implies the absence of a hard and fast rule. The establishment of a clearly defined rule of action would be the end of discretion and yet discretion should not be a word for arbitrary will or inconsiderate action. Discretion means the equitable decision of just and proper under the circumstances." "Long v. George, 296 Mass. 574 7 N.E. 2d 149 (1937)."

"On re Spirtos, 221 F.3d 1079, 1081, 36 Bankr. Ct. Dec. (CRR) 136, Bankr. L. Rep. (CCH) P 78238 (9th Cir. 2000) (The creditors inability to enforce the judgment for a portion of the ten year period...keeps the period of duration [under California law] open under 108(c).)"

"In re Morton, 866 F.2d 561, 19 Bankr. Ct. Dec. (CCR) 85, 20 Collier Bankr. Cas. 2d (MB) 465, Bankr. L. Rep. (CCH) P 72648 (2d Cor. 1989) (New York law provide a judgment lien would expire after 10 years, unless extended by motion in the state court, the 10 year period expired while the debtor was in bankruptcy, and the debtor sought to avoid the allegedly expired lien: the Second Circuit upheld the validity of the lien via § 108(c)."

On this Petition there are FOUR Conflict of Decisions between three State Courts of Last Resort (Massachusetts Appeals/SJC) and Federal Bankruptcy Court of Last Resort under Supreme Court Rule 10; namely, (a) accepted and usual course of Judicial Proceedings and (b) important this Petition U.S. Constitutional and Federal Law Questions all of

which are described in this Petition and (c) that these Conflicts should be settled by this Supreme Court.

The first of four Conflicts between Court Judgments arises given the hard and fast rule of Title 11 § 108(c), which causes the Lower Appeals Court To NOT have the Right To Discretion. This first Conflict is between the Appeals Court Decision (Case No. 21-P-721) and “Owens v. Mukendi, 448 Mass. at 74-77” and “Long v. George, 296 Mass. 574 7 N.E. 2d 149 (1937), and “On re Spirtos, 221 F.3d 1079, 1081, 36 Bankr. Ct. Dec. (CRR) 136, Bankr. L. Rep. (CCH) P 78238 (9th Cir. 2000) and “In re Morton, 866 F.2d 561, 19 Bankr. Ct. Dec. (CCR) 85, 20 Collier Bankr. Cas. 2d (MB) 465, Bankr. L. Rep. (CCH) P 72648 (2d Cir. 1989).

Question #2:

2. Whether In the Bostwick v. Department of Health (DPH), Sims, Classic Case (Case No.: 1081CV01775) and AFTER RELIEF FROM ALL BOSTWICK’S STAYS CONCERNING CLASSIC ((a) Classic Chapter 7 Bankruptcy (Case No.: 11-10574-JNF) Automatic Stay , (b) Judge Feeney Title 11 § 105, STAY ORDER; namely, Title 11 § 362(a)(1) Stay with additional Terms and Conditions against Bostwick (Case No.: 11-10574-JNF) and (c) Superior Court Classic Stay by Judge Henry (Bostwick v. Classic, Case No.: 0881CV01465) and EVEN Given the 12 January 2023, Appeals Court CLAIMS (Case No. 21-P-721) that Judge Wilkins in 2011 (Bostwick v. DPH Case No.: 1081CV01775) had the Right to Dismiss the Case; Bostwick in the Lower Case (Bostwick v. DPH Case No.: 1081CV01775) still has the Mass.R.Civ.P Rules 59(e), 15 and 60(b) 4, 5, 6 Rights to (1) Vacate the Bostwick v. DPH Case No.: 1081CV01775 Case (Mass.R.Civ.P. Rule 59(e)), (2) Seek Relief from the Bostwick v. DPH Case

Judgment (Mass.R.Civ.P Rule 60(b) and (3) Appeal the Bostwick v. DPH Case No.: 1081CV01775 Case Judgment (Mass.R.App.P. Rules 3 & 4) given Bostwick's U.S. Constitutional Rights under (1) Article VI, [2], "Supremacy Clause," (2) Amendment I, "Right to Petition," (3) Amendment XIV, "Due Process," (4) Amendment XIV, "Equal Protection," and (5) Article VI, [3], "Judges Bound by Constitution" and (6) Bostwick's Rights to Bankruptcy Court's Title 11 § 108(c), Extension of Time for Bostwick v. Department of Health (DPH), Sims, Classic Case (Case No.: 1081CV01775) after COURT NOTICE to Bostwick of Case Closure (Case No.: 11-10574-JNF) and (7) Under Mass.R.Civ.P. Rule 60(b)(5) and on 29 March 2021 and in the Judge Haggan Case (1081CV01775), Bostwick correctly Argues that the 02 March 2011, Judge Wilkins, DPH Judgment, is Voidable given Bostwick's Rights under Mass.R.Civ.P Rule 15 and "Regulatory Taking" (U.S. Constitution, Amendment V) of Bostwick's Property; and (8) Bostwick's United States District Court District Of Massachusetts, C.A. No. 11-10662-GAO, Richard D. Bostwick, Plaintiff v. Justice Douglas H. Wilkins, et al Case (NOTE: Wilkins was Judge for the Bostwick v. DPH-Sims-Classic: Case No.: 1081CV01775); caused the District Court to state the following on 02 May 2011 on Page 5, Note 7:

"Interestingly enough; however, on March 11, 2011 (March 14, 2011), Bostwick filed a Motion to Vacate Declaratory Judgment and Strike the Memorandum of Decision and Order on the Defendants' Motion to Dismiss, noting the Automatic Stay. In other words, notwithstanding the Automatic Stay, Bostwick still sought relief from the judgment. On March 21, 2011, Bostwick's motion was denied by Justice Wilkins. Bostwick's incorporated Affidavit appears to include a motion for appellate review as well; however, whether this is sufficient to preserve his state appellate rights is a matter for state interpretation, and this Court need not address this matter."

all of which concerns the Bostwick v. Department of Health (DPH), Sims, Classic Case (Case No.: 1081CV01775) and Bostwick's Opposition to the Lower Court (Superior: No.: 1081CV01775, Appeals: No. 21-P-721 Decisions.

Question #3:

3. Whether there is a Conflict of Decisions between three State Courts of Last Resort (Massachusetts Appeals/SJC) and Federal Bankruptcy Court of Last Resort under Supreme Court Rule 10; namely, (a) accepted and usual course of Judicial Proceedings and (b) important this Petition U.S. Constitutional and Federal Law Questions to include U.S. Constitution, Amendment V, "Regulatory Taking" of Bostwick's Property (Mass.R.Civ.P. Rule 60(b)(5)) all of which are described in this Petition and (c) that these Conflicts should be settled by this Supreme Court. The Conflict of Decisions concern and are based upon the 12 January 2023, Appeals Court (SJC) Decision (Case No. 21-P-721) that the 02 March 2011, Judge Wilkins and the 29 March Judge Haggan Decisions to DISMISS the Bostwick v. DPH Case No.: 1081CV01775) Case were Proper (correct, valid) even given the (a) Classic Chapter 7 Bankruptcy (Case No.: 11-10574-JNF) Automatic Stay, (b) Judge Feeney Title 11 § 105, STAY ORDER; namely, Title 11 § 362(a)(1) Stay with additional Terms and Conditions against Bostwick (Case No.: 11-10574-JNF) and (c) the Superior Court Classic Stay by Judge Henry (Bostwick v. Classic, Case No.: 0881CV01465 and (d) the Bankruptcy Court's Title 11 § 108(c), Extension of Time given Notification of Case Closure to Bostwick. However given the three above Stays and Time Extension and the "Classic Fraud on the Court" of Classic's Fraudulent, Lower Court Concealment of the Stays as described in this Petition; Bostwick Claims

that the above Lower Court Decisions to Dismiss are Void under Mass.R.Civ.P. Rules 60(b)(4)(5)(6)

(a) "In re Soares, 107 F.3d 969, 37 Collier Bankr. Cas. 2d (MB) 1281, Bankr. L. Rep. (CCH) P 77333 (1st Cir. 1997)(since decision to enter judgment was made after filing, judgment was void.)"

(b) "In re Meyers, 491 F.3d 120, 48 Banke. Ct. Dec. (CRR) 133 Bankr. L. Rep. (CCH) P. 80962 (3rd Cir. 2007)(state court judgments entered in violation of the stay are void.)"

(c) "In re Wardrobe, 559 F.3d 932, 61 Collier Bankr. Cas. 2d (MB) 1132 Bankr. L. Rep. (CCH) P 81446 (9th Cir. 2009) (reaffirming its long held position, actions taken by a state court in violation of the stay are void ab initio, as a result of which bankruptcy court is not bound to give full faith and credit to the state court judgment.)"

The second of four Conflicts is between the Appeals Court Decision (Case No. 21-P-721) and the "Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755..." Case. The 02 March 2011, Judge Wilkins Decision to Dismiss the Bostwick v. Department of Health (DPH), Sims, Classic Case (Case No.: 1081CV01775) required Judge Wilkins to first consider other Issues presented by or related to the underlying case. Examples include the Classic Bankruptcy Case, The Bostwick v. Classic Case and the Bostwick, DPH, Sims and Classic Administrative Proceedings Case and this Case No.: 1081CV01775 where Classic is Stayed. Evidence that Judge Wilkins considered these matters is in the 02 March 2011, Judge Wilkins Memorandum of Decision. In opposition to the Appeals Court Decision, the "Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755..." Case states that the Judge Wilkins' Dismissal Violated the Automatic Stay and is Void.

(a) "Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755, 28 Bankr. Ct. Dec. (CRR) 394, 34 Collier Banke. Cas. 2d (MB) 843, 151 L.R.R.M. (BNA) 2134, Bankr. L. Rep. (CCH) P 76733 (9th Cir. 1995) (post-petition dismissal of an action pending against the debtor violates the stay "where a decision to dismiss

requires the court to first consider other issues presented by or related to the underlying case.”)”

The third of four Conflicts is between the Appeals Court Decision (Case No. 21-P-721) and the Wang v. Niakaros, 67 Mass.App.Ct. 166, 852 N.E.2d 699 (2006) Case. The Appeals Court Decision (Case No. 21-P-721) is based on Judicial Discretion concerning the 02 March 2011, Judge Wilkins Decision to Dismiss the Bostwick v. Department of Health (DPH), Sims, Classic Case (Case No.: 1081CV01775). However, Judge Wilkins failed to conform to the due process requirements of law. In the Judicial Review of the DPH Administrative Proceeding, Judge Wilkins Violated the due process of G.L. c. 30A §§ 7, 9, 10, 11, 14, 15 and 801 CMR §§ 1.01-1.04 and the Superior Court Standing Order 1-96. A Judge may exercise judicial discretion to grant or deny a motion for relief from judgment; namely, Mass.R.Civ.P. Rule 60(b) except as follows:.

“An important exception exists to the principle that a motion for relief from judgment is addressed to the judge’s discretion. If a judgment is void for lack of subject matter jurisdiction (jurisdiction over the parties) or for personal jurisdiction or for failure to conform to the requirements of due process of law, the judge must vacate it. Wang v. Niakaros, 67 Mass.App.Ct. 166, 852 N.E.2d 699 (2006).”

The fourth of four Conflicts is between the Appeals Court Decision (Case No. 21-P-721) and the Amonte v. Amonte, 17 Mass. App. Ct. 621, 623-624 (1984) Case. The 12 January 2023, Appeals Court (SJC) Decision (this Case No. 21-P-721) improperly cited the Amonte v. Amonte, 17 Mass. App. Ct. 621, 623-624 (1984) Case, where the Case concerns Dismissal by the Creditor and not the Debtor as in this Bostwick v. DPH Case No.: 1081CV01775) Case Debtor Dismissal. Allegedly, the Appeals Court (SJC) could not find applicable Case Law.

LIST OF PARTIES

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

2. The Listing of the Appellant is as follows:

2.1 Appellant – Plaintiff

RICHARD D. BOSTWICK.

3. The Listing of the Appellees are as follows:

3.1 Appellee – Defendant

“THE COMMONWEALTH OF MASSACHUSETTS,
EXECUTIVE OFFICE OF HEALTH AND HUMAN
SERVICES, DEPARTMENT OF PUBLIC HEALTH;”

3.2 Appellee – Defendant

“LEONARD J. SIMS a/k/a LEONARD JOSEPH SIMS,
LEONARD J. SIMS CO., GENERAL CONTRACTORS,
and LEONARD J. SIMS CUSTOM CARPENTRY;”

3.3 Appellee – Defendant

“THE CLASSIC GROUP, INC. previously known as (p.k.a)
CLASSIC RESTORATIONS, INC.”

RELATED CASES

1. Statement of Related Cases

1.1 Bostwick suffered Deleading, Lead Law, Damages at his Multifamily Residence by the Unauthorized Deleading work by Construction Contractors Leonard J. Sims et al and The Classic Group, Inc. et al starting on 14 June 2001 and on 14 December 2001 respectively.

1.2 Against Leonard J. Sims et al, Bostwick Served a Written Demand and Filed a Complaint on 14 June 2004 in Middlesex Superior Court; namely, Case No.: 0481CV02417.

1.2.1 The Bostwick v. Leonard J. Sims Case resulted in the "Regulatory Taking" (U.S. Constitution, Amendment V) of Bostwick's Property. Consequently, "Regulatory Taking" is now part of the Bostwick v. Department of Health (DPH), Sims, Classic Case No.: 1081CV01775.

1.3 Against The Classic Group, Inc. et al, Bostwick Served a Written Demand and Filed a Complaint on 10 April 2008 in Middlesex Superior Court; namely, Case No.: 0881CV01465.

1.4 Without the Superior Court's, Bostwick's and Classic Counsel's Knowledge; The Classic Group, Inc. Filed for Chapter 7 Bankruptcy (Case No.: 11-10574-JNF) on 25 January 2011 with an Automatic Stay under Title 11 § 362.

1.4.1 Given the Classic, Chapter 7 Bankruptcy and its Stays; namely, (a) Classic Chapter 7 Bankruptcy (Case No.: 11-10574-JNF) Automatic Stay , (b) Judge Feeney Title 11 § 105, STAY ORDER; namely, Title 11 § 362(a)(1) Stay with additional Terms and Conditions against Bostwick (Case No.: 11-10574-JNF) and (c) Superior Court Classic Stay by Judge Henry (Bostwick v. Clasic, Case No.: 0881CV01465); these Stays are part of the Bostwick v. Department of Health (DPH), Sims, Classic Case No.: 1081CV01775.

1.5 Bostwick's United States District Court District Of Massachusetts, C.A. No. 11-10662-GAO, Richard D. Bostwick, Plaintiff v. Justice Douglas H. Wilkins, et al Case (NOTE: Wilkins was Judge for the Bostwick v. DPH-Sims-Classic: Case No.:

1081CV01775); caused the District Court to render an Opinion concerning Bostwick's
PRESERVATION of Bostwick's Appellate Rights for the Bostwick v. DPH-Sims-
Classic: Case No.: 1081CV01775) Case.

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**IN THE
SUPREME COURT OF THE UNITED STATES**

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

1. Decision of the State Court of Appeals: See Appendix A: Richard D. Bostwick vs Executive Office of Health and Human Services & Others (Case No. 21-P-721) is Reported.
2. Decision of the State Trial Court: See Appendix B: Bostwick, Richard D. vs Department of Public Health et al (Case No. 1081CV01775) is Unreported.
3. Decision of the State Supreme Judicial Court Denying Review: See Appendix C: Richard D. Bostwick vs Executive Office of Health and Human Services & Others (FAR-29206) is Unreported.
4. Supreme Court Application No. 23A11 allowing extension of time to and including September 9, 2013. See Appendix D is Unreported.
5. Opinion of United States District Court: See Appendix E: United States District Court District Of Massachusetts, C.A. No. 11-10662-GAO, Richard D. Bostwick, Plaintiff v. Justice Douglas H. Wilkins, et al is Reported.

JURISDICTION

1. Given that the Cases below are from the State Courts, the Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).
2. The Date of Decision of the Massachusetts Supreme Judicial Court (SJC) Denying Review is 12 April 2023. See Appendix C.

The Supreme Court Application No. 23A11 allowed an extension of time for Bostwick to and including September 9, 2013. See Appendix D.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Constitutional and Statutory Provisions and VIOLATIONS Involved are as follows: (1) Article VI, [2], "Supremacy Clause," (2) Amendment I, "Right to Petition," (3) Amendment V, "Regulatory Taking," (4) Amendment XIV, "Due Process," (5) Amendment XIV, "Equal Protection," (6) Article VI, [3], "Judges Bound by Constitution."
2. The primary Federal Bankruptcy Court Statute involved is Title 11 § 108(c)(2), Extension of Time, states;

"Title 11 § 108(c)...continuing a civil action in a court other than a Bankruptcy Court on a claim against the Debtor (Classic)... and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of...

(2) 30 days after **NOTICE** of the termination or expiration of the stay under section 362...of this title."

3. Please note that Four Conflicts of Judicial Decisions are presented in this Petition.

STATEMENT OF THE CASE

1. Bostwick's Appeal was NOT Reviewed by the Lower Courts (Appeals Case No. 21-P-721) given Bostwick's Notice of Appeal. The following was Appealed in Bostwick's Notice of Appeal for Bostwick v. Department of Health (DPH), Sims, Classic (Case No.: 1081CV01775):

"1.2 All Matters, in Civil Action No. 1081CV01775, falling within the Judgment, numerous Orders, Final Judgment, etc. and the 10 Day Post-Final Judgment Motion concerning the Classic Automatic Stay are Appealed from in all respects...3.2 The..."All Matters..."...are... (See Petition Below for "All Matters").

The 12 January 2023 Appeals Court Decision (Case No. 21-P-721) stated that Bostwick only appealed the 05 May 2021 (see above (Docket Date: 05/06/2021)), Judge Haggan Order. The Appeals Court Statement is False. Bostwick Appealed Everything. Consequently, Bostwick's Appeal was NOT Reviewed by the Lower Courts. (Case No. 21-P-721)

(Docket Date: 05/06/2021): Denied: Bostwick's Motion to Vacate the 02 March 2011 Judgment under Mass.R.Civ.P. Rule 59(e) given Title 11 section 108(c)(2)...(File Ref. Nbr. 21) is Denied."

The above (Docket Date: 05/06/2021): Denied: Statement is incomplete. The Appeals Court Decision (Case No. 21-P-721), which only concerns Docket Date: 05/06/2021, ONLY stated that Bostwick's 30 April 2021 Motion (see above (Docket Date: 05/06/2021)) under Title 11 § 108(c)(2), Extension of Time and also under Mass.R.Civ.P. Rule 59(e), Rule 15, Rule 52(b), Rule 60(b)(4), Rule 60(b)(5) and Rule 60(b)(6) was UNTIMELY.

The 12 January 2023 Appeals Court Decision (Case No. 21-P-721) stated that Bostwick only appealed the 05 May 2021 (see above (Docket Date: 05/06/2021)), Judge Haggan Order. The Appeals Court Statement is False. Bostwick Appealed Everything.

2. Statement of Related Cases

2.1 Bostwick suffered Deleading, Lead Law, Damages at his Multifamily Residence by the Unauthorized Deleading work by Construction Contractors Leonard J. Sims et al and The Classic Group, Inc. et al starting on 14 June 2001 and on 14 December 2001 respectively.

2.2 Against Leonard J. Sims et al, Bostwick Served a Written Demand and Filed a Complaint on 14 June 2004 in Middlesex Superior Court; namely, Case No.: 0481CV02417.

2.2.1 The Bostwick v. Leonard J. Sims Case resulted in the "Regulatory Taking" (U.S. Constitution, Amendment V) of Bostwick's Property. Consequently, "Regulatory Taking" is now part of the Bostwick v. Department of Health (DPH), Sims, Classic Case No.: 1081CV01775.

2.3 Against The Classic Group, Inc. et al, Bostwick Served a Written Demand and Filed a Complaint on 10 April 2008 in Middlesex Superior Court; namely, Case No.: 0881CV01465.

2.4 Without the Superior Court's, Bostwick's and Classic Counsel's Knowledge; The Classic Group, Inc. Filed for Chapter 7 Bankruptcy (Case No.: 11-10574-JNF) on 25 January 2011 with an Automatic Stay under Title 11 § 362.

2.4.1 Given the Classic, Chapter 7 Bankruptcy and its Stays; namely, (a) Classic Chapter 7 Bankruptcy (Case No.: 11-10574-JNF) Automatic Stay , (b) Judge Feeney Title 11 § 105, STAY ORDER; namely, Title 11 § 362(a)(1) Stay with additional Terms and Conditions against Bostwick (Case No.: 11-10574-JNF) and (c) Superior Court Classic Stay by Judge Henry (Bostwick v. Clasic, Case No.: 0881CV01465); these Stays are part of the Bostwick v. Department of Health (DPH), Sims, Classic Case No.: 1081CV01775.

2.5 Bostwick's United States District Court District Of Massachusetts, C.A. No. 11-10662-GAO, Richard D. Bostwick, Plaintiff v. Justice Douglas H. Wilkins, et al Case (NOTE: Wilkins was Judge for the Bostwick v. DPH-Sims-Classic: Case No.:

1081CV01775); caused the District Court to render an Opinion concerning Bostwick's PRESERVATION of Bostwick's Appellate Rights for the Bostwick v. DPH-Sims-Classic: Case No.: 1081CV01775) Case.

3. Statement of Facts Relevant to the Appeal.

3.1 No Children were ever living or visiting or harmed at Bostwick's Multifamily Residence of 44 Chestnut Street, Wakefield, MA from its purchase in 1997 to the Present.

3.2 Bostwick suffered Deleading, Lead Law, Damages at his Multifamily Residence by the Unauthorized Deleading work by Construction Contractors Leonard J. Sims et al and The Classic Group, Inc. et al starting on 14 June 2001 and on 14 December 2001 respectively.

3.3 Against Leonard J. Sims et al, Bostwick Served a Written Demand and Filed a Complaint on 14 June 2004 in Middlesex Superior Court; namely, Case No.: 0481CV02417.

3.4 On 08 November 2007 and 15 November 2007, Bostwick Filed his Complaint to the DPH CLPPP against Sims and Classic respectively by filing these Complaints with Paul N. Hunter, the Director of Childhood Lead Poisoning Prevention Program (CLPPP) of the Massachusetts Department of Public Health (DPH).

3.5 Against The Classic Group, Inc. et al, Bostwick Served a Written Demand and Filed a Complaint on 10 April 2008 in Middlesex Superior Court; namely, Case No.: 0881CV01465.

3.6 On 02 September 2008 and as part of Bostwick's DPH CLPPP Complaint, Paul Hunter through Warren Laskey Served Bostwick with an Unauthorized Deleading

Complaint. The DPH CLPPP Complaint stated that "No letter of Unauthorized Deleading may be issued until all remaining lead hazards have been addressed by authorized workers." For Bostwick and Future Owners of Bostwick's Multifamily Residence, an Unauthorized Deleading Letter (UDL) with its Strict Liability Forever is the only Option available from the DPH CLPPP. Given the Unauthorized Deleading by Sims and Classic, No Letter of Interim Control and No Letter of Full Deleading Compliance each of which contains NO Strict Liability may ever be Issued. Bostwick had 12 to 15 face to face meetings with Paul Hunter and 4 to 6 similar meetings with the next in command, Warren Laskey, concerning the UDL with its Strict Liability Forever.

3.7 Bostwick's Request for an Adjudicatory Hearing was Denied by Susan Stein, DPH Counsel, in a Letter dated 07 April 2010 and Post Marked 12 April 2010. Denial was pursuant to 105 CMR 460.900, where lead violations remain and unauthorized deleading occurred.

3.8 On 07 May 2010 and given the DPH CLPPP Denial of Bostwick's Request for an Adjudicatory Hearing, Bostwick Filed a Complaint for Judicial Review against the DPH, Sims and Classic; namely, Case No.: 1081CV01775.

3.9 Without the Superior Court's, Bostwick's and Classic Counsel's Knowledge; The Classic Group, Inc. Filed for Chapter 7 Bankruptcy on 25 January 2011 with an Automatic Stay under Title 11 § 362.

3.10 On 07 February 2011, a Rule 12 Civil Action Case No.: 10-1775 (Now Case No.: 1081CV01775) Hearing was conducted. On 02 March 2011, Judge Wilkins generated a Memorandum of Decision and Dismissed the Case No.: 1081CV01775 Case.

3.11 Bostwick was surprised to Discover after the 07 February 2011 Hearing and 02 March 2011 Dismissal that Classic Filed for Chapter 7 Bankruptcy.

3.12 On 21 March 2011, Justice Wilkins with Knowledge of the Classic Automatic Stay Dismissed Bostwick's Motion under Mass.R.Civ.P. Rule 52(A,B) and Rule 59(E) to Vacate the Case No.: 1081CV01775 Dismissal and the Justice Wilkins Memorandum of Decision and Order given The Classic Group, Inc.'s Filing of Chapter 7 Bankruptcy with an Automatic Stay on 25 January 2011.

3.13 In an attempt to resolve the (1) Judge Wilkins, 02 March 2001 Judgment, (2) Judge Wilkins 21 March 2011 Dismissal and (3) the Classic, 25 January 2011 Automatic Stay; Bostwick filed a "Preliminary Injunction to Enforce the Automatic Stay in the Bankruptcy Court" in the United States District Court. Bostwick filed his Case in the District Court on 18 April 2011, which was within 30 days of 21 March 2011. (See United States District Court, District of Massachusetts (Boston) Civil Docket For Case #: 1:11-cv-10662-GAO). Bostwick's Injunction was Denied due to lack of District Court Jurisdiction over the Massachusetts Superior Court.

3.14 The Bostwick versus Sims Case No.: 0481CV02417 was Closed on 17 March 2014. In addition, the Bostwick versus DPH Case No.: 1081CV01775 Lead Law Issues and Damages by Sims and Classic were never Litigated in the Bostwick versus Sims Case.

3.15 As a consequence of the actions by the DPH CLPP, Sims and Classic and others; a Foreclosure Auction and Entry was made on Bostwick's Residence on 29 April 2016 by Santander Bank, N.A. through Orlans Moran PLLC.

3.16 On 22 February 2021 and in the Bostwick versus Classic Case No.: 0881CV01465; the Superior Court Lifted the Stay against The Classic Group, Inc. On 25 February 2021, a United States Bankruptcy Court Order #375 Provided the Required Federal Notice to Creditor Bostwick that the Ch. 7, 11-10574-JEB Bankruptcy Case was Closed.

3.17 On 29 March 2021, Bostwick Filed a Notice of Motion under Superior Court Rule 9E concerning Bostwick versus DPH Case No.: 1081CV01775. On 29 March 2021, Bostwick Served the Motion to (a) Vacate the 02 March 2011 Wilkins, Judgment under Mass.R.Civ.P Rule 59(e) and Bankruptcy Court, Title 11 § 108(c)(2) Extension of Time; (2) Make additional findings of Fact under Mass.R.Civ.P. Rule 52(b) and Title 11 § 108(c)(2) Extension of Time; (3) Relief from the 02 March 2011 Wilkins, Judgment under Mass.R.Civ.P Rule 60(b) (to include Rule 60(b)(4); namely, Void Judgment); (4) Amend, Relate Back and Supplement the DPH Case No.: 1081CV01775 Complaint under Mass.R.Civ.P. Rule 15. RA.II/23

3.18 On 06 May 2021, Judge Haggan Denied Bostwick's 29 March 2021 Motion to Vacate the 02 March 2011 Wilkins, Judgment.

3.19 Given the DPH as a Commonwealth Agency Party and the sixty day Appeal Requirement, Bostwick filed a Notice of Appeal of this Case No.: 1081CV01775 on 02 July 2021.

3.20 On 12 January 2023, the Appeals Court (Case No. 21-P-721) Dismissed Bostwick's Appeal.

REASONS FOR GRANTING THE PETITION

1. Summary of Reasons why the Decision Below is Incorrect.

1.1 The significant reason for Supreme Court Review is for the Enforcement of Title 11, Bankruptcy Court Related Statutes, Rules, and Orders generally and the Enforcement of Title 11 § 108(c), Extension of Time Specifically. In addition, Bostwick's Case is an opportunity to clarify the regulatory powers of the Lead Law Administrative Agencies and its relationship with the Courts. In addition, Four Conflicts of Judicial Decisions are presented in this Petition.

1.2 Bostwick's Appeal was NOT Reviewed by the Lower Courts (Appeals Case No. 21-P-721) given Bostwick's Notice of Appeal. The following was Appealed in Bostwick's Notice of Appeal for Bostwick v. Department of Health (DPH), Sims, Classic (Case No.: 1081CV01775):

"1.2 All Matters, in Civil Action No. 1081CV01775, falling within the Judgment, numerous Orders, Final Judgment, etc. and the 10 Day Post-Final Judgment Motion concerning the Classic Automatic Stay are Appealed from in all respects...3.2 The..."All Matters..."...are...
 (Docket Date: 03/02/2011): Motion to Dismiss Allowed: (Sims File Ref Nbr.: 11);
 (Docket Date: 03/02/2011): Motion to Dismiss Allowed: (DPH File Ref Nbr.: 12);
 (Docket Date: 03/02/2011): Motion to Dismiss Allowed: (Classic File Ref Nbr.: 13);
 (Docket Date: 03/02/2011): Denied: Bostwick's Supplemental Documents (File Ref Nbr.: 15);
 (Docket Date: 03/02/2011, File Ref Nbr.: 16): Memorandum of Decision and Order on the Defendant's Motions to Dismiss;
 (Docket Date: 03/02/2011, File Ref Nbr.: 17): Declaratory Judgment, That the Complaint of the plaintiff be and hereby is dismissed;
 (Docket Date: 03/14/2021): Denied: Bostwick's Motion about Classic's Bankruptcy and the Automatic Stay (File Ref Nbr. 18) is Denied;
 (Docket Date: 05/06/2021): Denied: Bostwick's Motion to Vacate the 02 March 2011 Judgment under Mass.R.Civ.P. Rule 59(e) given Title 11 section 108(c)(2)...(File Ref. Nbr. 21) is Denied."

The 12 January 2023 Appeals Court Decision (Case No. 21-P-721) stated that Bostwick only appealed the 05 May 2021 (see above (Docket Date: 05/06/2021)), Judge Haggan

Order. The Appeals Court Statement is False. Consequently, Bostwick's Appeal was NOT Reviewed by the Lower Courts. (Case No. 21-P-721)

The Appeals Court Decision (Case No. 21-P-721), which only concerns Docket Date: 05/06/2021, ONLY stated that Bostwick's 30 April 2021 Motion (see above (Docket Date: 05/06/2021)) under Title 11 § 108(c)(2), Extension of Time and also under Mass.R.Civ.P. Rule 59(e), Rule 15, Rule 52(b), Rule 60(b)(4), Rule 60(b)(5) and Rule 60(b)(6) was UNTIMELY. Bostwick's 30 April 2021 Motion was NOT Untimely. As explained in this Petition, Bostwick's Motion was Timely given Title 11 § 108(c)(2); Extension of Time, and the Stays against Bostwick; namely, (a) Classic Chapter 7 Bankruptcy (Case No.: 11-10574-JNF) Automatic Stay, (b) Judge Feeney Title 11 § 105, STAY ORDER; namely, Title 11 § 362(a)(1) Stay with additional Terms and Conditions against Bostwick (Case No.: 11-10574-JNF) and (c) Superior Court Classic Stay by Judge Henry (Bostwick v. Clasic, Case No.: 0881CV01465) and the Notice of Bankruptcy Case Closure to Bostwick.

“Title 11 § 108(c)...continuing a civil action in a court other than a Bankruptcy Court on a claim against the Debtor (Classic)... and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of...

(2) 30 days after NOTICE of the termination or expiration of the stay under section 362...of this title.”

Bostwick's 30 April 2021 Motion was Timely under Mass.R.Civ.P. Rule 60(b)(4) as explained in this Petition and Bostwick's 30 April 2021 Motion was Timely under Mass.R.Civ.P. Rule 60(b)(4) given that the 02 March 2011, Judge Wilkins, DPH Judgment, is Void (Mass.R.Civ.P. Rule 60(b)(4)) given all of the Due Process Violations (U.S. Constitution, Amendment XIV) leading to the Judge Wilkins, DPH Judgment.

Bostwick's 30 April 2021, Mass.R.Civ.P. Rule 60(b)(4), Motion was timely because there is no Time Limit to Void the Judgment because "a Void judgment can never acquire validity through laches." See Crosby v. Bradstreet Co. (1963) CA2 NY) 312 F2d cert den 373 US 911, 10 L. Ed 2d 412, 83 S Ct 1300 where a Court vacated a judgment as void 30 years after entry. See also Marquette Corp. v. Priester, 234 F. Supp 799 (Ed SC 1964) where the Court expressly held that the clause Rule 60(b)(4) carries no real time limit.

Bostwick's 30 April 2021 Motion was Timely under Mass.R.Civ.P. Rule 59(e), Rule 15, Rule 52(b), Rule 60(b)(4), Rule 60(b)(5) and Rule 60(b)(6) given Title 11 § 108(c) and this Petitions Arguments. The Appeals Court Decision based on Mass.R.Civ.P 60(b) and DISCRETION , said: "(three year delay unreasonable where party was aware of facts giving rise to motion to vacate at time of judgment)" (See Owens v. Mukendi, 448 Mass. at 74-77). The Appeal Court Judicial Discretion that Bostwick's 30 April 2021 Motion was not filed within a reasonable time is false and an Abuse of Discretion. Given the hard and fast rule of Title 11 § 108(c), the Appeals Court does NOT have the right to Discretion and Bostwick's Motion was Timely.

"Our Court has stated "The term discretion implies the absence of a hard and fast rule. The establishment of a clearly defined rule of action would be the end of discretion and yet discretion should not be a word for arbitrary will or inconsiderate action. Discretion means the equitable decision of just and proper under the circumstances." "Long v. George, 296 Mass. 574 7 N.E. 2d 149 (1937)."

"On re Spirtos, 221 F.3d 1079, 1081, 36 Bankr. Ct. Dec. (CRR) 136, Bankr. L. Rep. (CCH) P 78238 (9th Cir. 2000) (The creditors inability to enforce the judgment for a portion of the ten year period...keeps the period of duration [under California law] open under 108(c).")

"In re Morton, 866 F.2d 561, 19 Bankr. Ct. Dec. (CCR) 85, 20 Collier Bankr. Cas. 2d (MB) 465, Bankr. L. Rep. (CCH) P 72648 (2d Cor. 1989) (New York law provide a judgment lien would expire after 10 years, unless extended by motion in the state court, the 10 year period expired while the debtor was in bankruptcy, and the debtor sought to avoid the allegedly expired lien: the Second Circuit upheld the validity of the lien via § 108(c).")

On this Petition there are FOUR Conflict of Decisions between three State Courts of Last Resort (Massachusetts Appeals/SJC) and Federal Bankruptcy Court of Last Resort under Supreme Court Rule 10; namely, (a) accepted and usual course of Judicial Proceedings and (b) important this Petition U.S. Constitutional and Federal Law Questions all of which are described in this Petition and (c) that these Conflicts should be settled by this Supreme Court.

The first of four Conflicts between Court Judgments arises given the hard and fast rule of Title 11 § 108(c), which causes the Lower Appeals Court To NOT have the Right To Discretion. This first Conflict is between the Appeals Court Decision (Case No. 21-P-721) and “Owens v. Mukendi, 448 Mass. at 74-77” and “Long v. George, 296 Mass. 574 7 N.E. 2d 149 (1937), and “On re Spirtos, 221 F.3d 1079, 1081, 36 Bankr. Ct. Dec. (CRR) 136, Bankr. L. Rep. (CCH) P 78238 (9th Cir. 2000) and “In re Morton, 866 F.2d 561, 19 Bankr. Ct. Dec. (CCR) 85, 20 Collier Bankr. Cas. 2d (MB) 465, Bankr. L. Rep. (CCH) P 72648 (2d Cir. 1989).

1.3 In the Bostwick v. Department of Health (DPH), Sims, Classic Case (Case No.: 1081CV01775) and AFTER RELIEF FROM ALL BOSTWICK’S STAYS CONCERNING CLASSIC ((a) Classic Chapter 7 Bankruptcy (Case No.: 11-10574-JNF) Automatic Stay , (b) Judge Feeney Title 11 § 105, STAY ORDER; namely, Title 11 § 362(a)(1) Stay with additional Terms and Conditions against Bostwick (Case No.: 11-10574-JNF) and (c) Superior Court Classic Stay by Judge Henry (Bostwick v. Classic, Case No.: 0881CV01465) and EVEN Given the 12 January 2023, Appeals Court CLAIMS (Case No. 21-P-721) that Judge Wilkins in 2011 (Bostwick v. DPH Case No.: 1081CV01775) had the Right to Dismiss the Case; Bostwick in the Lower Case

(Bostwick v. DPH Case No.: 1081CV01775) still has the Mass.R.Civ.P Rules 59(e), 15 and 60(b) 4, 5, 6 Rights to (1) Vacate the Bostwick v. DPH Case No.: 1081CV01775 Case (Mass.R.Civ.P. Rule 59(e)), (2) Seek Relief from the Bostwick v. DPH Case Judgment (Mass.R.Civ.P Rule 60(b) and (3) Appeal the Bostwick v. DPH Case No.: 1081CV01775 Case Judgment (Mass.R.App.P. Rules 3 & 4) given Bostwick's U.S. Constitutional Rights under (1) Article VI, [2], "Supremacy Clause," (2) Amendment I, "Right to Petition," (3) Amendment XIV, "Due Process," (4) Amendment XIV, "Equal Protection," and (5) Article VI, [3], "Judges Bound by Constitution" and (6) Bostwick's Rights to Bankruptcy Court's Title 11 § 108(c), Extension of Time for Bostwick v. Department of Health (DPH), Sims, Classic Case (Case No.: 1081CV01775) after COURT NOTICE to Bostwick of Case Closure (Case No.: 11-10574-JNF) and (7) Under Mass.R.Civ.P. Rule 60(b)(5) and on 29 March 2021 and in the Judge Haggan Case (1081CV01775), Bostwick correctly Argues that the 02 March 2011, Judge Wilkins, DPH Judgment, is Voidable given Bostwick's Rights under Mass.R.Civ.P Rule 15 and "Regulatory Taking" (U.S. Constitution, Amendment V) of Bostwick's Property; and (8) Bostwick's United States District Court District Of Massachusetts, C.A. No. 11-10662-GAO, Richard D. Bostwick, Plaintiff v. Justice Douglas H. Wilkins, et al Case (NOTE: Wilkins was Judge for the Bostwick v. DPH-Sims-Classic: Case No.: 1081CV01775); caused the District Court to state the following on 02 May 2011 on Page 5, Note 7:

"Interestingly enough; however, on March 11, 2011 (March 14, 2011), Bostwick filed a Motion to Vacate Declaratory Judgment and Strike the Memorandum of Decision and Order on the Defendants' Motion to Dismiss, noting the Automatic Stay. In other words, notwithstanding the Automatic Stay, Bostwick still sought relief from the judgment. On March 21, 2011, Bostwick's motion was denied by Justice Wilkins. Bostwick's incorporated Affidavit appears to include a motion for appellate review as well; however, whether this is sufficient to preserve his

state appellate rights is a matter for state interpretation, and this Court need not address this matter.”

all of which concerns the Bostwick v. Department of Health (DPH), Sims, Classic Case (Case No.: 1081CV01775) and Bostwick’s Opposition to the Lower Court (Superior: No.: 1081CV01775, Appeals: No. 21-P-721 Decisions.

1.4 There is a Conflict of Decisions between three State Courts of Last Resort (Massachusetts Appeals/SJC) and Federal Bankruptcy Court of Last Resort under Supreme Court Rule 10; namely, (a) accepted and usual course of Judicial Proceedings and (b) important this Petition U.S. Constitutional and Federal Law Questions to include U.S. Constitution, Amendment V, "Regulatory Taking" of Bostwick's Property (Mass.R.Civ.P. Rule 60(b)(5)) all of which are described in this Petition and (c) that these Conflicts should be settled by this Supreme Court. The Conflict of Decisions concern and are based upon the 12 January 2023, Appeals Court (SJC) Decision (Case No. 21-P-721) that the 02 March 2011, Judge Wilkins and the 29 March Judge Haggan Decisions to DISMISS the Bostwick v. DPH Case No.: 1081CV01775) Case were Proper (correct, valid) even given the (a) Classic Chapter 7 Bankruptcy (Case No.: 11-10574-JNF) Automatic Stay, (b) Judge Feeney Title 11 § 105, STAY ORDER; namely, Title 11 § 362(a)(1) Stay with additional Terms and Conditions against Bostwick (Case No.: 11-10574-JNF) and (c) the Superior Court Classic Stay by Judge Henry (Bostwick v. Clasic, Case No.: 0881CV01465 and (d) the Bankruptcy Court’s Title 11 § 108(c), Extension of Time given Notification of Case Closure to Bostwick. However given the three above Stays and Time Extension and the “Classic Fraud on the Court” of Classic’s Fraudulent, Lower Court Concealment of the Stays as described in this Petition; Bostwick Claims

that the above Lower Court Decisions to Dismiss are Void under Mass.R.Civ.P. Rules 60(b)(4)(5)(6)

- (a) "In re Soares, 107 F.3d 969, 37 Collier Bankr. Cas. 2d (MB) 1281, Bankr. L. Rep. (CCH) P 77333 (1st Cir. 1997)(since decision to enter judgment was made after filing, judgment was void.)"
- (b) "In re Meyers, 491 F.3d 120, 48 Banke. Ct. Dec. (CRR) 133 Bankr. L. Rep. (CCH) P. 80962 (3rd Cir. 2007)(state court judgments entered in violation of the stay are void.)"
- (c) "In re Wardrobe, 559 F.3d 932, 61 Collier Bankr. Cas. 2d (MB) 1132 Bankr. L. Rep. (CCH) P 81446 (9th Cir. 2009) (reaffirming its long held position, actions taken by a state court in violation of the stay are void ab initio, as a result of which bankruptcy court is not bound to give full faith and credit to the state court judgment.)"

The second of four Conflicts is between the Appeals Court Decision (Case No. 21-P-721) and the "Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755..." Case. The 02 March 2011, Judge Wilkins Decision to Dismiss the Bostwick v. Department of Health (DPH), Sims, Classic Case (Case No.: 1081CV01775) required Judge Wilkins to first consider other Issues presented by or related to the underlying case. Examples include the Classic Bankruptcy Case, The Bostwick v. Classic Case and the Bostwick, DPH, Sims and Classic Administrative Proceedings Case and this Case No.: 1081CV01775 where Classic is Stayed. Evidence that Judge Wilkins considered these matters is in the 02 March 2011, Judge Wilkins Memorandum of Decision. In opposition to the Appeals Court Decision, the "Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755..." Case states that the Judge Wilkins' Dismissal Violated the Automatic Stay and is Void.

- (a) "Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755, 28 Bankr. Ct. Dec. (CRR) 394, 34 Collier Banke. Cas. 2d (MB) 843, 151 L.R.R.M. (BNA) 2134, Bankr. L. Rep. (CCH) P 76733 (9th Cir. 1995) (post-petition dismissal of an action pending against the debtor violates the stay "where a decision to dismiss

requires the court to first consider other issues presented by or related to the underlying case.”)”

The third of four Conflicts is between the Appeals Court Decision (Case No. 21-P-721) and the Wang v. Niakaros, 67 Mass.App.Ct. 166, 852 N.E.2d 699 (2006) Case. The Appeals Court Decision (Case No. 21-P-721) is based on Judicial Discretion concerning the 02 March 2011, Judge Wilkins Decision to Dismiss the Bostwick v. Department of Health (DPH), Sims, Classic Case (Case No.: 1081CV01775). However, Judge Wilkins failed to conform to the due process requirements of law. In the Judicial Review of the DPH Administrative Proceeding, Judge Wilkins Violated the due process of G.L. c. 30A §§ 7, 9, 10, 11, 14, 15 and 801 CMR §§ 1.01-1.04 and the Superior Court Standing Order 1-96. A Judge may exercise judicial discretion to grant or deny a motion for relief from judgment; namely, Mass.R.Civ.P. Rule 60(b) except as follows:

“An important exception exists to the principle that a motion for relief from judgment is addressed to the judge’s discretion. If a judgment is void for lack of subject matter jurisdiction (jurisdiction over the parties) or for personal jurisdiction or for failure to conform to the requirements of due process of law, the judge must vacate it. Wang v. Niakaros, 67 Mass.App.Ct. 166, 852 N.E.2d 699 (2006).”

The fourth of four Conflicts is between the Appeals Court Decision (Case No. 21-P-721) and the Amonte v. Amonte, 17 Mass. App. Ct. 621, 623-624 (1984) Case. The 12 January 2023, Appeals Court (SJC) Decision (this Case No. 21-P-721) improperly cited the Amonte v. Amonte, 17 Mass. App. Ct. 621, 623-624 (1984) Case, where the Case concerns Dismissal by the Creditor and not the Debtor as in this Bostwick v. DPH Case No.: 1081CV01775) Case Debtor Dismissal. Allegedly, the Appeals Court (SJC) could not find applicable Case Law.

2. Detailed Reasons why the Decision Below is Incorrect.

2.1 Bostwick's Rights to Title 11 § 108(c), Extension of Time: The Classic Group, Inc. filed for Chapter 7 Bankruptcy on 25 January 2011 (Case No.: 11-10574-JNF). Consequently, the Necessary Parties, Bostwick and Classic and Sims and DPH, were Stayed in Bostwick v. Department of Health (DPH), Sims, Classic (Case No.: 1081CV01775). Under Bankruptcy Law, Title 11 § 108(c), Extension of Time, the period for Continuing Case No.: 1081CV01775 from the 25 January 2011, Classic Bankruptcy expired on 25 February 2021 plus 30 Days given Notice of Bankruptcy Case Closure to Bostwick. The Lower Appeals Court 12 January 2023 (Case No. 21-P-721), Decision Denied the Title 11 § 108(c), Extension of Time, (Case No.: 2021-P-0721). The Bostwick v. DPH Case No.: 1081CV01775" and the Judge Haggan 05/06/2021, Dismissal as Untimely and the Lower Appeals Court 12 January 2023 (Case No. 21-P-721), Decision Denied as Untimely are (1) an Error of Law, (2) Error of Fact and (3) Abuse of Discretion and are Voidable.

2.1.1 The Bankruptcy (In re The Classic Group, Inc., Chapter 7, Case No.: 11-10574-JNF), Classic Automatic Stay under Bankruptcy Title 11 § 362(a) was from the Classic Petition date of 25 January 2011 to 25 February 2021 plus 30 days (for Bostwick), given the Case Closure Bankruptcy Court Notice and Court Order #375 to Bostwick.

2.1.2 The Superior Court Classic Stay by Judge Henry (Bostwick v. Clasic, Case No.: 0881CV01465) from 26 April 2011 to 22 February 2021 by Judge Haggan stayed the continuation of the Classic Cases. (Bostwick v. Classic: Case No.: 0881CV01465 and Bostwick v. DPH-Classic-Sims: Case No.: 1081CV01775).

2.1.3 The Bankruptcy Court (Title 11 § 105, Power of Court: Case No.: 11-10574-JNF) Stay against Non-Debtor, Bostwick, from 12/03/2015 to 25 February 2021 plus 30 days

(for Bostwick), given the Case Closure Bankruptcy Court Notice and Title 11 § 105, Court Order #375 specifically to Bostwick.

“In re Otero Mills, Inc. 25 B.R. 1018, 9 BankrCt. Dec. (CRR) 1400: bankruptcy proceedings are “equitable in nature” and thus Bankruptcy Court’s finding that Injunction was “necessary and appropriate” under § 105 was upheld.”

2.1.4 Concerning the Classic Bankruptcy Case #: 11-10574 and on 12/03/2015 #356; Judge Feeney made the following specific, Title 11 § 105, STAY ORDER against Bostwick concerning Classic; namely,

“Order dated 12/3/2015 Re.: 352 Motion filed by Creditor Richard Bostwick for Relief from Stay, Requested for Expedited Determination, and Request for Limitation of Notice. The Motion is granted in part and denied in part modification of the Stay is unnecessary to the extent that Movant seeks to pursue claims against non-debtor parties modification of the Stay is Denied to the extent that Movant seeks to pursue claims against the Debtor. Moreover, Movant failed to establish that insurance coverage exists with regard to the claims he intends to pursue, to agree to limit any judgment or other recovery he obtains against the Debtor to the Debtor’s Insurers and / or any insurance proceeds available through the applicable insurance policies, and to waive any recovery from the Debtor or the Debtor’s Bankruptcy Estate.”

The Judge Feeney Title 11 § 105, STAY ORDER against Bostwick is actually a Title 11 § 362(a)(1) Stay with additional Terms and Conditions. Bostwick never agreed to limit his recovery against the Debtor and the Non-Debtor, Title 11 § 105, Bostwick, Stay was never Lifted until Notice of Case Closure to Bostwick specifically.

2.1.5 Given the Department of Public Health (DPH), Anthony Jakaitis Lead Inspection Report (“...inspection report... unauthorized workers... contractors...Classic...Sims), the 02 September 2008, DPH v. Bostwick et al Complaint from the DPH Administrative Agency (...receipt of a letter... from Jakaitis...Classic...Sims) identifies Classic, Sims et al and Bostwick as Parties to the DPH, 02 September 2008 SPH Administrative Agency

Complaint. Consequently, Classic, Sims and Bostwick and the DPH are Necessary Parties to the lower case DPH v. Bostwick et al Case (Case No.: 1081CV01775).

2.1.6 The Classic and Sims Agreements (Contracts) with Bostwick concern overlapping Construct and Deleading work and consequential Damages to Bostwick and are applicable to the lower case Bostwick v. DPH et al (Case No.: 1081CV01775). The Non-Debtor (Sims) and Debtor (Classic) and the Non-Debtor Department of Public Health (DPH) interests are so aligned as to be indistinguishable that a Court may apply a stay to an action against the Non-Debtor (Sims) and Non-Debtor (DPH) with the Debtor (Classic). A. H. Robins Co. v. Piccinin. 788 F.2d 994, 998 (4th Cir. 1986)(non-debtor entitled to absolute indemnity from debtor.)

2.1.7 Given Bostwick's Non-Debtor, Stay Status Standing and the U.S. Constitution, Amendment XIV, "Equal Protection" Clause to include the Substantive, U.S. Constitution, Amendment V, "Regulatory Taking" Clause Standing; Bostwick has Moved to Vacate the 02 March 2011 and 21 March 2011 Dismissal Court Order Judgment(s) (Bostwick v. DPH et al (Case No.: 1081CV01775).

2.1.8 The Classic Stay has been lifted. On 25 February 2021, a United States Bankruptcy Court Order #375 to Creditor Bostwick PROVIDED NOTICE TO BOSTWICK and stated that the Ch. 7, 11-10574-JEB Bankruptcy Case was Closed. On 22 February 2021 and in the Case 0881CV01465; the Superior Court PROVISED NOTICE TO BOSTWICK and Lifted the Stay against The Classic Group, Inc.

2.1.9 The United States Bankruptcy Court has Original and Exclusive Jurisdiction over Case No. 11-10574-JNF under 28 U.S.C. § 1334(a) to include the Case Automatic Stay, Debtor Petition (Schedule H) and the Injunction Prohibiting Bostwick from Debtor

Litigation. As a Creditor, Bostwick has a right to Notice the Closing of the Case under Title 11 §§ 108(c)(2), 342(a), 350(a), 704(9), Title 28 §§ 586, and Fed.R.Bankr.P. Rules §§ 2002, 2015, 5005, 5009, 9034 and MLBR 2002-1(a). However until 25 February 2021, Bostwick had no proper Notice of Case No. 11-10574-JNF Closure. In addition, Bostwick had no Access to the Bankruptcy Court.

2.1.10 Title 11 § 108(c)(2), Extension of Time, states;

“Title 11 § 108(c)...continuing a civil action in a court other than a Bankruptcy Court on a claim against the Debtor (Classic)... and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of...

(2) 30 days after **NOTICE** of the termination or expiration of the stay under section 362...of this title.”

In addition:

“11 U.S.C.A. § 108(c) (tolling the statute of limitations for commencing or continuing a civil action against debtors until the latter of the end of the limitations period or 30 days after the stay no longer applies.)”

2.1.11 Under Title 11 § 108(c), Extension of Time; the extension of the continuance of the Stay continues after the 30 days, when Bostwick has no notice by the Bankruptcy Court, the 30 days never begins to run. (Schumacher v. Worcester, 55 Cal. App. 4th 376, 64 Cal. Rptr. 2d 1 (1997)). Bostwick received the proper Notice on 25 February 2021.

2.1.12 Under Bankruptcy Law, Title 11 § 108(c), Extension of Time, the period for Continuing Case No.: 1081CV01775 from the 25 January 2011, Classic Bankruptcy expired on 25 February 2021 plus 30 Days. On 29 March 2021 (03/29/2021) and in Case “Bostwick v. DPH Case No.: 1081CV01775” and under Superior Court Rule 9E; Bostwick Served Bostwick’s Motion to Vacate the 02 March 2011 Judge Wilkins, DPH Judgment under Mass.R.Civ.P. Rules 59(e), 52(b), 60(b) and 15. Consequently, the Bostwick v. DPH Case No.: 1081CV01775” and the Judge Haggan 05/06/2021,

Dismissal as Untimely and the Lower Appeals Court 12 January 2023 (Case No. 21-P-721), Decision Denied as Untimely are (1) an Error of Law, (2) Error of Fact and (3) Abuse of Discretion and are Voidable as discussed further in the sections below.

2.1.13 Previously, Bostwick could NOT Appeal the Bostwick v. DPH Case No.: 1081CV01775 because it would be a Violation of the Various Stays against Bostwick and Title 11 § 362(a)(1).

2.1.14 **The Lower Court's Ignored** and Omitted and did not address the Issue of Bostwick's Claims of Bostwick's Rights to Title 11 § 108(c), Extension of Time.

2.2 Classic's Fraud on the Court: Under Mass.R.Civ.P. Rule 60(b)(6) and on 29 March 2021 and in Judge Haggan Case Bostwick v. Department of Health (DPH), Sims, Classic Case No.: 1081CV01775, Bostwick's correctly argued that the 02 March 2011 Judge Wilkins, DPH Judgment was Void given the Classic "Fraud on the Court" and the Violation of the Classic Bankruptcy Stay(s). Whether the Lower Appeals Court 12 January 2023 (Case No. 21-P-721), Decision Denied it as not a continuation of the case are (1) an Error of Law, (2) Error of Fact and (3) Abuse of Discretion and are Void.

2.2.1 Without the Superior Court's, Bostwick's, DPH's, Sim's and Classic Counsel's Knowledge; The Classic Group, Inc. Filed for Chapter 7 Bankruptcy on 25 January 2011 with an Automatic Stay under Title 11 § 362.

2.2.2 Under Judge Wilkins, the Bostwick v. Department of Health (DPH), Sims, Classic Case No.: 1081CV01775 was conducted without knowledge of the Automatic Stay under Title 11 § 362. This Act of "Fraud on the Court" about the Classic Bankruptcy by The Classic Group, Inc. was knowing and willful act by Classic.

2.2.3 On 07 February 2011, a Rule 12 Civil Action Case No.: 10-1775 (Now Case No.: 1081CV01775) Hearing was conducted. On 02 March 2011, Judge Wilkins generated a Memorandum of Decision and Dismissed the Case No.: 1081CV01775 Case.

2.2.4 The Classic act of "Fraud on the Court" and continuation of the Case No.: 1081CV01775 without any regard to the automatic Stay (Title 11 § 362(a)) constituted a Violation of the Automatic Stay by Classic and indirectly by Judge Wilkins.

2.2.4.1 A party (Classic) has an obligation to inform the nonbankruptcy court or tribunal that a bankruptcy case has been filed and that the failure to do so is a "continuation of the case" (Under Title 11 § 362(a)(1) and a Violation of the Automatic Stay.)

"In re Stinson, 221 B.R. 726, 40 Collier Bankr. Cas. 2d (MB) 242, Bankr. L. Rep. (CCH) P 77727 (Bankr. E.D. Mich. 1998) (stay applicable to all entities including the debtor.)"

"Sternberg v. Johnson, 595 F.3d 937, Bankr. L. Rep. (CCH) P 81682 (9th Cir. 2010) Cert denied. 131 S. Ct. 102, 178 L. Ed. 2d 29 (2010) and cert. denied. 131 S. Ct. 180, 178 L. Ed 2d 42 (2010)(there was an affirmative duty on the attorney, at a minimum, to inform the state domestic relations court that the opposing spouse filed a petition for relief, failure to do so violated the stay.)"

2.2.5 Given the Classic "Fraud on the Court" violation of the Automatic Stay, the 2011, Dismissal of the Bostwick v. Department of Health (DPH), Sims, Classic Case No.: 1081CV01775 by Judge Wilkins was Void.

"In re Soares, 107 F.3d 969, 37 Collier Bankr. Cas. 2d (MB) 1281, Bankr. L. Rep. (CCH) P 77333 (1st Cir. 1997)(since decision to enter judgment was made after filing, judgment was void.)"

2.2.6 Under Judge Haggan, Bostwick Served Bostwick's Motion to Vacate the 02 March 2011 Judge Wilkins, DPH Judgment under Mass.R.Civ.P. Rules 59(e), 52(b), 60(b) and 15 on 29 March 2021. In that Motion, Bostwick claimed "Fraud on the Court"

by The Classic Group, Inc. under Mass.R.Civ.P. Rule 60(b)(6). The Claim was brought within a reasonable time given the Title 11 § 108(c) arguments above and Bostwick's ADA Disabilities.

"Where the fraud alleged involves the corruption of the judicial process, the one year limitation does not apply. Smith and Zobel, 8 Massachusetts Practice Series: Rules Practice § 60.9"

2.2.7 The Bostwick v. DPH Case No.: 1081CV01775" and the Judge Haggan 05/06/2021, Dismissal without comment and the Lower Appeals Court 12 January 2023 (Case No. 21-P-721), Decision Denied as not a Classic, Judge Wilkins continuation of the case are (1) an Error of Law, (2) Error of Fact and (3) Abuse of Discretion and are Void.

2.2.8 **The Lower Court's Ignored** and Omitted and did not address the Issue of Bostwick's Claims of Classic's Fraud on the Court

2.3 From the above Section, the "1. Summary of Reasons why the Decision Below is Incorrect." Are included herein by Reference.

2.3.1 Under Mass.R.Civ.P. Rules 60(b)(4), 60(b)(5) and 60(b)(6) and on 29 March 2021 and in the Judge Haggan Case Bostwick v. Department of Health (DPH), Sims, Classic Case No.: 1081CV01775, Bostwick's correctly argued that the 02 March 2011 Judge Wilkins, DPH Judgment can be vacated (Mass.R.Civ.P Rule 59(e)), seek relief from Judgment (Mass.R.Civ.P Rule 60(b)) and Appeal of Judgment (Mass.R.App.P Rules 3 & 4); AFTER RELIEF FROM ALL BOSTWICK'S STAYS CONCERNING CLASSIC given Bostwick's Rights to Title 11 § 108(c), Extension of Time and the U.S. Constitution's "Supremacy Clause," "Right to Petition," "Due Process," "Equal Protection," and "Judges Bound by Constitution," and as stated in this Petition.

2.3.2 Without the Superior Court's, Bostwick's, DPH's, Sim's and Classic Counsel's Knowledge; The Classic Group, Inc. Filed for Chapter 7 Bankruptcy on 25 January 2011 with an Automatic Stay under Title 11 § 362.

2.3.3 Under Judge Wilkins, the Bostwick v. Department of Health (DPH), Sims, Classic Case No.: 1081CV01775 was conducted without knowledge of the Automatic Stay under Title 11 § 362.

"In re Spansion, Inc. 418, B.R. 84, 90, 91 52 Bankr. Ct. Dec. (CRR) 59 (Bankr. D. Del 2009) ([N]otice of the stay is not required for its effectiveness."

2.3.4 On 07 February 2011, a Rule 12 Civil Action Case No.: 10-1775 (Now Case No.: 1081CV01775) Hearing was conducted. On 02 March 2011, Judge Wilkins generated a Memorandum of Decision and Dismissed the Case No.: 1081CV01775 Case on 02 March 2011.

2.3.5 Violations of the Title 11 § 362 Automatic Stay and the Judge Feeney Title 11 § 105, STAY ORDER; namely, Title 11 § 362(a)(1) Stay with additional Terms and Conditions against Bostwick, Arise under Bankruptcy Title 11 and its Statutory Provisions. Also Note that Bostwick was Stayed under Superior Court Classic Stay by Judge Henry (Bostwick v. Clasic, Case No.: 0881CV01465).

2.3.5.1 Bostwick has a Private Right of Action in the State Courts under Title 28 § 1334(b) to Litigate with Title 11 and its Statutory Provisions.

(a) "In re Williams, 244 B.R. 858, 43 Collier Bankr. Cas. 2d (MB) 1450 (S.D. Ca. 2000), aff'd, 34 Fed. Appx. 967 (11th Cir. 2002)(violation of automatic stay or discharge injunction arises under Title 11.)"

(b) "Matter of Wood, 825 F.2d 90, 96, 17 Collier Bankr Cas. 2d (MB) 743, Bankr. L. Rep. (CCH) P 71955 (5th Cir. 1987) (finding that "Congress used the phrase 'arising under title 11' to describe those proceedings that invoke a cause of action created or determined by a statutory provision of title 11")"

(c) "Title 28 § 1334(b) states the following: "§ 1334 Bankruptcy cases and proceedings...(b)...the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under Title 11, or arising in or related to cases under Title 11."

2.3.6 Title 11 § 362(1) states the following:

"§ 362. Automatic Stay (a)...a petition filed under section 301, 302 or 303 of this title...operates as a stay applicable to all entities of (1) the commencement or continuation, including the issuance or employment of process, of a judicial administration, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title or to recover a claim against the debtor that arose before the commencement of the case under this title."

2.3.7 The Scope of the Automatic and Judge Feeney: Bankruptcy and Judge Henry: Superior Court Stays apply to the lower case Bostwick v. DPH et al (Case No.: 1081CV01775) and its 02 September 2008, DPH v. Bostwick et al Complaint and the Bostwick v. Classic: Case No.: 0881CV01465.

"In re Panavotoff, 140 B.R. 509, 512 n.4, 22 Bankr. Ct. Dec. (CCR) 1583 (Bankr. D. Minn. 1992)(scope of automatic stay is broad, encompassing "Arbitration, license revocation, administrative, and judicial proceedings.)."

2.3.8 The 02 March 2011, post-petition Dismissal by Judge Wilkins of the lower case Bostwick v. DPH et al (Case No.: 1081CV01775) and 02 September 2008, DPH v. Bostwick et al Complaint and the Lower Court's Decisions and Bostwick's Stayed Inability (Classic Automatic Stay, Judge Feeney Stay against Bostwick, Judge Henry, Superior Court Classic Stay) to (1) Vacate the Bostwick v. DPH Case No.: 1081CV01775 Case (Mass.R.Civ.P. Rule 59(e)), (2) Seek Relief from the Bostwick v. DPH Case Judgment (Mass.R.Civ.P Rule 60(b) and (3) Appeal the Bostwick v. DPH Case No.: 1081CV01775 Case Judgment (Mass.R.App.P. Rules 3 & 4) were a Mass.R.Civ.P. Rule 60(b)(6) Violation of Bostwick's Rights under Bostwick's U.S. Constitutional Rights in (1) Article VI, [2], "Supremacy Clause," (2) Amendment I,

"Right to Petition," (3) Amendment XIV, "Due Process," (4) Amendment XIV, "Equal Protection," and (5) Article VI, [3], "Judges Bound by Constitution" and (6) Bostwick's Rights to Title 11 § 108(c), Extension of Time given the Judge Wilkins, Judge Haggan and Appeals Court Dismissals of the Bostwick v. DPH et al (Case No.: 1081CV01775 Case.

(a) "Pope v. Manville Forest Products Corp. 778 F.2d 238, 239, 13 Bankr.Ct. Dec. (CRR) 1390, 39 Fair Empl. Prac. Cas. (BNA) 982, Bankr. L. Rep. (CCH) P 70888, 38 Empl. Prac. Dec. (CCH) P 35800 (5th Cir. 1985))("We recognize that the stay by its statutory words, operates against "the commencement or continuation" of judicial proceedings. No specific reference is made to "dismissal" of judicial proceedings. Nevertheless, it seems to us that ordinarily the stay must be construed to apply to dismissal as well.")"

2.3.8.1 The Lower Court's **Ignored** and Omitted and did not address the Issue of Bostwick's Claims of Bostwick's Rights to Mass.R.Civ.P. Rule 60(b)(6) Violations of Bostwick's Rights under Bostwick's U.S. Constitutional Rights in (1) Article VI, [2], "Supremacy Clause," (2) Amendment I, "Right to Petition," (3) Amendment XIV, "Due Process," (4) Amendment XIV, "Equal Protection," and (5) Article VI, [3], "Judges Bound by Constitution" and (6) Bostwick's Rights to Title 11 § 108(c), Extension of Time.

2.3.9 Under the following Case Law and Mass.R.Civ.P. Rule 60(b)(4), the Judge Wilkins 02 March 2011, Memorandum of Decision, Judge Wilkins considered other issues presented by or related to the underlying case and Violated Title 362(a)(1) by continuing the Case.

(a) "Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755, 28 Bankr. Ct. Dec. (CRR) 394, 34 Collier Banke. Cas. 2d (MB) 843, 151 L.R.R.M. (BNA) 2134, Bankr. L. Rep. (CCH) P 76733 (9th Cir. 1995) (post-petition dismissal of an action pending against the debtor violates the stay "where a decision to dismiss

requires the court to first consider other issues presented by or related to the underlying case.””

Consequently, Judge Wilkins could NOT Dismiss the Bostwick v. Department of Health (DPH), Sims, Classic (Case No.: 1081CV01775) Case.

2.3.9.1 The Judge Wilkins 02 March 2011 and 21 March 2011 Dismissal Court Order Judgment(s) (Case No.: 1081CV01775) Violated the Automatic and Feeney Stays and are consequently Void.

(a) “In re Soares, 107 F.3d 969, 37 Collier Bankr. Cas. 2d (MB) 1281, Bankr. L. Rep. (CCH) P 77333 (1st Cir. 1997)(since decision to enter judgment was made after filing, judgment was void.)”

(b) “In re Meyers, 491 F.3d 120, 48 Banke. Ct. Dec. (CRR) 133 Bankr. L. Rep. (CCH) P. 80962 (3rd Cir. 2007)(state court judgments entered in violation of the stay are void.)”

(c) “In re Wardrobe, 559 F.3d 932, 61 Collier Bankr. Cas. 2d (MB) 1132 Bankr. L. Rep. (CCH) P 81446 (9th Cir. 2009) (reaffirming its long held position, actions taken by a state court in violation of the stay are void ab initio, as a result of which bankruptcy court is not bound to give full faith and credit to the state court judgment.)”

2.3.9.2 Given the above arguments, the Appeals Court 12 January 2023 (Case No. 21-P-721) Decision that the Judge Wilkins 02 March 2011 dismissal was not a continuing of the Case was (1) an Error of Law, (2) Error of Fact and (3) Abuse of Discretion.

2.3.9.3 Bostwick’s Mass.R.Civ.P. Rule 60(b)(4) Motion was timely because there is no Time Limit to Void the Judgment because “a Void judgment can never acquire validity through laches.” See Crosby v. Bradstreet Co. (1963) CA2 NY) 312 F2d cert den 373 US 911, 10 L. Ed 2d 412, 83 S Ct 1300 where a Court vacated a judgment as void 30 years after entry. See also Marquette Corp. v. Priester, 234 F. Supp 799 (Ed SC

1964) where the Court expressly held that the clause Rule 60(b)(4) carries no real time limit.

2.3.9.4 Consequently, there is a Decision Conflict between the Appeals Court Decision (Case No. 21-P-721) and the “Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755...” Case.

2.3.10 By denying Bostwick’s 14 March 2011, Motion (Notice) without any comments about the Classic Automatic Stay, Judge Wilkins Waived his opportunity to correct his Violation of the Classic Automatic Stay with the Bankruptcy Court Retroactively. Consequently, the Judge Wilkins Dismissal of the DPH Case on 02 March 2011 continues to be Void. The Appeal’s Court 12 January 2023 (Case No. 21-P-721) Decision did not comment on the matter. Bostwick makes this timely Claim under Mass.R.Civ.P. Rule 60(b)(4) given Title 11 § 108(c) and Bostwick’s ADA Disabilities.

2.3.10.1 The relevant Facts concerning the lower case Bostwick v. DPH et al (Case No.: 1081CV01775) and 02 September 2008, DPH v. Bostwick et al Complaint are as follows: (a) Without Superior Court Notice, Classic Filed for Bankruptcy on 25 January 2011 with an Automatic Stay under Title 11 § 362, (RA.I/115); (b) After the 07 February 2011, Rule 12 Hearing (RA.I/90-96) Judge Wilkins Dismissed the DPH Case on 02 March 2011 (RA.I/90-96), (c) After Discovery of the Bankruptcy Stay, Bostwick filed a Motion to Vacate the Judgment on 14 March 2011 (10 days later given the weekend), which Judge Wilkins Denied on 21 March 2011.

Note: Bostwick’s 14 March 2011, Motion to Vacate the Judgment stated that it was actually a NOTICE of the Automatic Stay and NOT intended to Violate the Automatic



Stay. Judge Wilkins Denied the Motion even though it was only a Notice by the Pro Se Plaintiff.

Note: Judge Wilkins Denied Bostwick's Motion (Notice) without comment.

2.3.10.2 By denying Bostwick's 14 March 2011, Motion (Notice) without any comments about the Classic Automatic Stay, Judge Wilkins Waived his opportunity to correct his Violation of the Classic Automatic Stay with the Bankruptcy Court Retroactively. Consequently, the Judge Wilkins Dismissal of the DPH Case on 02 March 2011 (RA.I/90-96) continues to be Void. The Appeal's Court 12 January 2023 (Case No. 21-P-721) Decision did not comment on the matter. Bostwick makes this timely Claim under Mass.R.Civ.P. Rule 60(b)(4) given Title 11 § 108(c) and Bostwick's ADA Disabilities.

"In re Hoffinger Industries, Inc. 329 F.3d 948, 951-952, 41 Bankr. Ct. Dec. (CRR) 112, 50 Collier Bankr. Cas. 2d (MB) 389, Bankr. L. Rep. (CCH), P 78860 (8th Cir. 2003)(bankruptcy court order annulling automatic stay retroactively in order to validate debtor's notice of appeal filed in violation of the stay was not an abuse of discretion. [bankruptcy courts have the power to annul an automatic stay retroactively for cause pursuant to 11 U.S.C. § 362(d)(1).)"

2.3.11 Under Mass.R.Civ.P. Rule 60(b)(6) and on 29 March 2021 and in the Judge Haggan Case Bostwick v. Department of Health (DPH), Sims, Classic Case No.: 1081CV01775, Bostwick was INCORRECTLY Denied his Right to Appeal the 02 March 2011, Judge Wilkins, DPH Judgment, which was previously Stayed, resulting in a Violation of his "Right to Petition" (U.S. Constitution, Amendment I. and "Due Process (U.S. Constitution, Amendment XIV and "Supremacy Clause" (U.S. Constitution, Article VI) Rights. The Appeal's Court 12 January 2023 (Case No. 21-P-721) Decision did not comment on the matter.



2.3.11.1 Given the Classic, Bankruptcy Automatic Stay; Bostwick could not Appeal the Justice Wilkins Dismissals.

“Sprint Airlines, Inc. v. Northwest Airlines, Inc. 431 F.3d 917 (6th Cir. 2005)(automatic stay under § 362(a)(1) applies to appellate proceedings).”

2.3.11.2 In an attempt to resolve the (1) Judge Wilkins, 02 March 2001 Judgment, (2) Judge Wilkins 21 March 2011 Dismissal and (3) the Classic, 25 January 2011 Automatic Stay; Bostwick filed a "Preliminary Injunction to Enforce the Automatic Stay in the Bankruptcy Court" in the United States District Court. Bostwick filed his Case in the District Court on 18 April 2011, which was within 30 days of 21 March 2011. (See United States District Court, District of Massachusetts (Boston) Civil Docket For Case #: 1:11-cv-10662-GAO). Bostwick's Injunction was Denied due to lack of District Court Jurisdiction over the Massachusetts Superior Court. Page 69 Bostwick's Brief. However, in the United States District Court District Of Massachusetts, C.A. No. 11-10662-GAO, Richard D. Bostwick, Plaintiff v. Justice Douglas H. Wilkins, et al; the following was stated 02 May 2011 on Page 5, Note 7:

“Interestingly enough; however, on March 11, 2011 (March 14, 2011), Bostwick filed a Motion to Vacate Declaratory Judgment and Strike the Memorandum of Decision and Order on the Defendants' Motion to Dismiss, noting the Automatic Stay. In other words, notwithstanding the Automatic Stay, Bostwick still sought relief from the judgment. On March 21, 2011, Bostwick's motion was denied by Justice Wilkins. Bostwick's incorporated Affidavit appears to include a motion for appellate review as well; however, whether this is sufficient to preserve his state appellate rights is a matter for state interpretation, and this Court need not address this matter.”

Bostwick's Motion and Affidavit appeared to Preserve his Rights for Appellate Review given the Automatic Stay.

2.3.11.3 However, both Judge Haggan and this Appeals Court Denied Bostwick's Right to Appeal after the termination of all of the Classic Bankruptcy Stay(s) in Violation of Bostwick's Constitutional Rights.

2.3.12 Under Mass.R.Civ.P. Rule 60(b)(6) and on 29 March 2021 and in the Judge Haggan Case (1081CV01775), Bostwick correctly Argues that the 02 March 2011, Judge Wilkins, DPH Judgment, is Void (Mass.R.Civ.P. Rule 60(b)(4)) given all of the Due Process Violations (U.S. Constitution, Amendment XIV) leading to the Judge Wilkins, DPH Judgment. Judge Haggan and the Appeal's Court 12 January 2023 (Case No. 21-P-721) Decision did not comment on the matter.

2.3.12.1 The (a) DPH CLPPP Proceedings and (b) UDL with Strict Liability Order used against Bostwick were (c) G.L. c. 30A and 801 CMR §§ 1.01-1.04 Nonconforming and Unlawful. However, Judicial Review of the Same is Lawful under G.L. c. 30A §§ 7, 9, 10, 11, 14, 15 and 801 CMR §§ 1.01-1.04 and the Superior Court Standing Order 1-96. Judge Wilkins Prejudiced Bostwick by Ignoring the Unlawful Proceedings in Violation of G.L. c. 30A § 7(d) "Made upon unlawful procedure" and G.L. c. 30A § 14(4).

2.3.12.2 Judge Wilkins Prejudiced Bostwick's Substantial Rights Under De Novo, Clear Error, G.L. c. 30A § 14(7) and "Supremacy Clause," by Ignoring the Judicial Review of the "Hunter Rule" and the DPH CLPPP Order of "Only a Letter of Unauthorized Deleading (UDL) with Strict Liability Forever may be Issued to Bostwick and Future Owners."

2.3.12.3 Bostwick was Prejudiced by the "DISCUSSION: III. Constitutionality of 105 Code Mass. Regs. § 460.900 and Right to a Hearing" in the 02 March 2011, Judge Wilkins, Memorandum of Decision under De Novo, Clear Error and G.L. c. 30A § 14(7).

2.3.12.4 A Decision Conflict exists between the Appeals Court Decision (Case No. 21-P-721) and the Wang v. Niakaros, 67 Mass.App.Ct. 166, 852 N.E.2d 699 (2006) Case.

2.3.12.5 The Appeals Court Decision (Case No. 21-P-721) is based on Judicial Discretion concerning the 02 March 2011, Judge Wilkins Decision to Dismiss the Bostwick v. Department of Health (DPH), Sims, Classic Case (Case No.: 1081CV01775). However, Judge Wilkins failed to conform to the due process requirements of law. In the Judicial Review of the DPH Administrative Proceeding, Judge Wilkins Violated the due process of G.L. c. 30A §§ 7, 9, 10, 11, 14, 15 and 801 CMR §§ 1.01-1.04 and the Superior Court Standing Order 1-96. A Judge may exercise judicial discretion to grant or deny a motion for relief from judgment; namely, Mass.R.Civ.P. Rule 60(b) except as follows:.

“An important exception exists to the principle that a motion for relief from judgment is addressed to the judge’s discretion. If a judgment is void for lack of subject matter jurisdiction (jurisdiction over the parties) or for personal jurisdiction or for failure to conform to the requirements of due process of law, the judge must vacate it. Wang v. Niakaros, 67 Mass.App.Ct. 166, 852 N.E.2d 699 (2006).”

2.3.13 A Decision Conflict exists between the Appeals Court Decision (Case No. 21-P-721) and the Amonte v. Amonte, 17 Mass. App. Ct. 621, 623-624 (1984) Case. The 12 January 2023, Appeals Court (SJC) Decision (this Case No. 21-P-721) improperly cited the Amonte v. Amonte, 17 Mass. App. Ct. 621, 623-624 (1984) Case, where the Case concerns Dismissal by the Creditor and not the Debtor as in this Bostwick v. DPH Case No.: 1081CV01775) Case Debtor Dismissal. Allegedly, the Appeals Court (SJC) could not find applicable Case Law.

2.3.14 Under Mass.R.Civ.P. Rule 60(b)(5) and on 29 March 2021 and in the Judge Haggan Case (1081CV01775), Bostwick correctly Argues that the 02 March 2011, Judge Wilkins, DPH Judgment, is Voidable given Bostwick's Rights under Mass.R.Civ.P Rule 15 and "Regulatory Taking" (U.S. Constitution, Amendment V) of Bostwick's Property. Judge Haggan and the Appeal's Court 12 January 2023 (Case No. 21-P-721) Decision did not comment on the matter.

2.3.14.1 Mass.R.Civ.P. Rule 60(b)(5) states:

"or a prior judgment upon which it is based has been reversed or otherwise vacated or it is no longer equitable that the judgment have prospective application."

Bostwick's Mass.R.Civ.P. Rule 60(b)(5) Claim is under a "Reasonable Time" requirement because of the Stays against Classic and Bostwick and Title 11 § 108(c) Extension of Time and Bostwick's ADA Disabilities.

2.3.14.2 The Bostwick v. Sims Trial Court refused to admit at Trial the Evidence of the 9/02/2008 Department of Public Health Letter and the Internet publication of Unauthorized Deleading at Bostwick's Residence by Sims and Classic. Consequently, the DPH, Paul N. Hunter (Official Capacity & 1983 Person), Donna Levin (1983 Person) and Warren Laskey (1983 Person) have caused "Regulatory Taking" (U.S. Constitution, Amendment V) of Bostwick's Property. After the Sims Trial, Bostwick's property was Regulatory Taken without just compensation.

2.3.14.3 There are four phases of "Regulatory Taking" of Bostwick's Property by the DPH, Hunter, Laskey and Levin as follows: (Phase 1) the 02 September 2008 DPH Complaint/ Contract and the 07 April 2010 DPH Adjudicatory Proceeding Denied; (Phase 2) the 02 March 2001 Bostwick v. DPH, Sims, Classic Complaint No. 2010-

01775 Dismissed and the 21 March 2011 Classic Automatic Stay and Right to Appeal Denied; (Phase 3) Bostwick's Discovery of the ongoing Mass.gov Internet Publication Property Stigma and on 03-07 March 2014 the 02 September 2008 Letter and Internet Publication Evidence were NOT Admitted in the Bostwick v. Sims Trail No. 2004-02417 and all Lead Law Constitutional and Taking Claims were Ignored and not litigated; (Phase 4) and finally on 04 September 2015 and in the Court Case, Bostwick v. 44 Chestnut Street No. 1581CV05636.

2.3.14.4 The Lower Court's **Ignored** and Omitted and did not address the Issue of Bostwick's Claims of Bostwick's Rights under "Regulatory Taking" (U.S. Constitution, Amendment V) of Bostwick's Property.

to Mass.R.Civ.P. Rule 60(b)(6)

2.3.15 Bostwick's 30 April 2021 Motion was Timely under Mass.R.Civ.P. Rule 60(b)(4) as explained in this Petition and Bostwick's 30 April 2021 Motion was Timely under Mass.R.Civ.P. Rule 60(b)(4) given that the 02 March 2011, Judge Wilkins, DPH Judgment, is Void (Mass.R.Civ.P. Rule 60(b)(4)) given all of the Due Process Violations (U.S. Constitution, Amendment XIV) leading to the Judge Wilkins, DPH Judgment.

Bostwick's 30 April 2021, Mass.R.Civ.P. Rule 60(b)(4), Motion was timely because there is no Time Limit to Void the Judgment because "a Void judgment can never acquire validity through laches." See Crosby v. Bradstreet Co. (1963) CA2 NY) 312 F2d cert den 373 US 911, 10 L. Ed 2d 412, 83 S Ct 1300 where a Court vacated a judgment as void 30 years after entry. See also Marquette Corp. v. Priester, 234 F. Supp 799 (Ed SC 1964) where the Court expressly held that the clause Rule 60(b)(4) carries no real time limit.

2.15.1 Under Mass.R.Civ.P. Rule 60(b)(6) and on 29 March 2021 and in Judge Haggan Case No.: 1081CV01775, Bostwick's correctly argued that the Mass.R.Civ.P. Rule 59(e) Claim was Timely because under Bankruptcy Law, Title 11 § 108(c), Extension of Time,

the period for Continuing Case No.: 1081CV01775 from the 25 January 2011, Classic Bankruptcy expired on 25 February 2021 plus 30 Days. The Decision by Judge Haggan and the Appeals Court 12 January 2023 (Case No. 21-P-721) Decision that Bostwick's Mass.R.Civ.P. Rule 59(e) was untimely is (1) an Error of Law, (2) Error of Fact and (3) Abuse of Discretion.

2.3.15.2 On 29 March 2021, Bostwick Filed a Notice of Motion under Superior Court Rule 9E concerning Bostwick versus DPH Case No.: 1081CV01775. On 29 March 2021, Bostwick Served the Motion to (a) Vacate the 02 March 2011 Wilkins, Judgment under Mass.R.Civ.P Rule 59(e) and Bankruptcy Court, Title 11 § 108(c)(2) Extension of Time; (2) Make additional findings of Fact under Mass.R.Civ.P. Rule 52(b) and Title 11 § 108(c)(2) Extension of Time; (3) Relief from the 02 March 2011 Wilkins, Judgment under Mass.R.Civ.P Rule 60(b) (to include Rule 60(b)(4); namely, Void Judgment); (4) Amend, Relate Back and Supplement the DPH Case No.: 1081CV01775 Complaint under Mass.R.Civ.P. Rule 15.

2.3.15.3 Bostwick received the Bankruptcy Court, 25 February Notice after 25 February 2021 by Post Office Mail. Given the day of the Notice Event, 25 February 2021, and Saturday, Sunday, the 10 day Rule 59(e), Rule 52 Requirement, the earliest date that the above Bostwick's 29 March 2021 Motion was due was on 29 March 2021. Consequently, under the Superior Court Rule 9A Service before filing the Rule 9A Package Requirement and aided by the Superior Court Rule 9E Notice (in a timely manner (not the same day) Court Filing); Bostwick has complied with the Rule 59(e), Rule 52; 10 day Requirement concerning the 02 March 2011 Judgment under "NUNC PRO TUNC," Title 11 § 108(c)(2), Extension of Time.

2.3.15.4 “Nunc Pro Tunc” is a phrase used in an order or judgment when the court wants the order or judgment to be effective as of a date in the past rather than on the date the judgment or order is entered into the court record.

2.3.15.5 Given Mass.R.App.P. Rule 4(c) and Title 11 § 108(c)(2), Extension of Time, and (Docket Date(s): 03/29/2021, File Ref. Nbr. 19 and 04/30/2021, File Ref Nbr.: 21); namely, Bostwick’s Motion to “Vacate...Mass.R.Civ.P. Rule 59(e) given Title 11 Section 108(c)(2), Extension of Time ...;” Bostwick’s Motion is Procedurally Correct under “NUNC PRO TUNC” because of Bostwick’s, 10 Days from Judgment, 14 March 2011 Motion. (Docket Date: 03/14/2011, File Ref Nbr.: 18).

2.3.15.6 The Lower Court’s **Ignored** and Omitted and did not address the Issue of Bostwick’s Claim. The Court just Denied Bostwick’s Mass.R.Civ.P Rule 59(e) without explanation.

2.3.16 Bostwick’s 29 March 2021 Motion in Case No.: 1081CV01775 to Vacate the 02 March 2011, Judge Wilkins, DPH Judgment, which was about ten years ago, was within a Mass.R.Civ.P Rule 60(b)(4)(5)(6) reasonable time requirement because it Avoided Judicial Abuse of Discretion through the Law and Case Law of Title 11 § 108(c). The 12 January 2023 (Case No. 21-P-721), Appeals Court Decision of a three-year delay is unreasonable is an Error of Law because Title 11 § 108(c) and its case law are hard and fast rules.

2.3.16.1 A Judges determination will be reviewed by the Appeals Court and SJC only because of an Abuse of Discretion or error as a matter of law. See Commonwealth v. United Brooks, Inc., 389 Mass 888, 453 N.E. 2d 406 (1983).

“Our Court has stated “The term discretion implies the absence of a hard and fast rule. The establishment of a clearly defined rule of action would be the end of

discretion and yet discretion should not be a word for arbitrary will or inconsiderate action. Discretion means the equitable decision of just and proper under the circumstances." "Long v. George, 296 Mass. 574 7 N.E. 2d 149 (1937)."

2.3.16.2 The Appeal Court Judicial Discretion that Bostwick's Motion was not filed within a reasonable time is an Abuse of Discretion given the hard and fast rule of Title 11 § 108(c) and its case law.

"Title 11 § 108(c)...continuing a civil action in a court other than a Bankruptcy Court on a claim against the Debtor (Classic)... and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of...

(2) 30 days after **NOTICE** of the termination or expiration of the stay under section 362...of this title."

"On re Spirtos, 221 F.3d 1079, 1081, 36 Bankr. Ct. Dec. (CRR) 136, Bankr. L. Rep. (CCH) P 78238 (9th Cir. 2000) (The creditors inability to enforce the judgment for a portion of the **ten year** period...keeps the period of duration [under California law] open under **108(c).**)"

"In re Morton, 866 F.2d 561, 19 Bankr. Ct. Dec. (CCR) 85, 20 Collier Bankr. Cas. 2d (MB) 465, Bankr. L. Rep. (CCH) P 72648 (2d Cor. 1989) (New York law provide a judgment lien would expire after **10 years**, unless extended by motion in the state court, the **10 year** period expired while the debtor was in bankruptcy, and the debtor sought to avoid the allegedly expired lien: the Second Circuit upheld the **validity of the lien via § 108(c).**"

2.3.16.3 The first of four Conflicts between Court Judgments arises given the hard and fast rule of Title 11 § 108(c), which causes the Lower Appeals Court To NOT have the Right To Discretion. This first Conflict is between the Appeals Court Decision (Case No. 21-P-721) and "Owens v. Mukendi, 448 Mass. at 74-77" and "Long v. George, 296 Mass. 574 7 N.E. 2d 149 (1937), and "On re Spirtos, 221 F.3d 1079, 1081, 36 Bankr. Ct. Dec. (CRR) 136, Bankr. L. Rep. (CCH) P 78238 (9th Cir. 2000) and "In re Morton, 866 F.2d 561, 19 Bankr. Ct. Dec. (CCR) 85, 20 Collier Bankr. Cas. 2d (MB) 465, Bankr. L. Rep. (CCH) P 72648 (2d Cor. 1989).

2.3.17 Reasons Affecting the Interest of Justice and Public Interest


2.3.17.1 The significant reason for Supreme Court Review is for the Enforcement of Title 11, Bankruptcy Court Related Statutes, Rules, Orders and Abuse of Process generally and the Enforcement of Title 11 § 108(c), Extension of Time Specifically.

2.3.17.2 In addition, Bostwick's Case is an opportunity to clarify the regulatory powers of the Lead Law Administrative Agencies and its relationship with the Courts.

CONCLUSION

1. The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date September 9, 2023

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