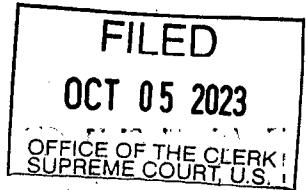


23-5822
No:



Linked to USSC No. [23A158], Ext.
and Simultaneous Link to Application to
Individual Justices []

IN THE
Supreme Court of the United States

Gina Russomanno,

Petitioner

~against~

*Sunovion Pharmaceuticals, Inc. (now named
Sumitomo Pharma America, Inc.), and IQVIA, Inc.*

Respondent(s)

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Third
Circuit

PETITION FOR WRIT OF CERTIORARI

Gina Russomanno

Pro Se Petitioner

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QUESTIONS FOR REVIEW

Whether, the Supreme Court will consider the merits of the decision by the U.S. Court of Appeals for the Third Circuit, pursuant to *Pro Se plaintiffs* Direct Motion upon the Court of Appeals for the Third Circuit, for Permission to Appeal Case [3:19-cv-05945], by FRAP Rule 5(a); FRCP Rules 60(b)(6); Rule 60(d)(1); and Rule 54(b); requesting permission from the Court of Appeals, via ‘*plaintiff-stated*,’ Jurisdiction Statement, (Document 1-1, pg. 6-8, in case action [23-8013]). *See: Appendix A, (directly following the Case Opinions for [23-8013]);* Plaintiffs Petition: statements filed, 3/6/2023, [Dkt. 1-1], Court of Appeals, Third Circuit. Permission was denied.

Whether, the Pro Se Plaintiff was righteously provided ‘provisional remedy mandate law,’ to Case [3:19-cv-05945], which provides the Standards, that upon any

i.

Rule 12(b)(6) Dismissal, failure to state a claim, a provision for amendment, “must be provided” before dismissal action can be upheld: [Phillips v. County of Allegheny], (3rd Cir. 2008).

Whether, the initial case (which wrongly affected its subsequent case [3:20-cv-12336], by res judicata), was *wrongly dismissed*; *wherein*, the dismissal opinion was “absent adequate remedy of law” and never provided *Pro Se* Plaintiff any curative amendment, or any of the Standards in mandate law for *curative amendment remedy*, per [Phillips], et.al. - Plaintiff did not amend, did not stand, was not given Opinion Statements why amendment would be futile per the Rule 12(b)(6) dismissal.

Whether, subsequent claims also wrongly dismissed in a subsequent, timely brought, separate cause of action case, are also in following, thereby, *incorrect and unjust*.

LIST OF PARTIES AND RELATED CASES

- *Gina Russomanno vs. Sunovion Pharmaceuticals, (now named Sumitomo Pharma America, Inc.) et al.* Case No. [23-8013]; and *Gina Russomanno vs. Sunovion Pharmaceuticals, et al*, United States Court of Appeals for the Third Circuit. *Judgement entered*, June 8, 2023; and *Stay Judgement entered* July 25, 2023.
- *Gina Russomanno vs. Sunovion Pharmaceuticals Inc. (now named Sumitomo Pharma America, Inc.) and IQVIA Inc.* Case No. [3:19-cv-05945], United States District Court of New Jersey. *Judgement entered*, May 18, 2020.
- *Gina Russomanno vs. Dan Dugan, Jenna Yackish, Trevor Volz, Erik Weedon, and Sunovion Pharmaceuticals Inc. (now named Sumitomo Pharma America, Inc.)* Case No. [3:20-cv-12336],

United States District Court of New Jersey.

Judgement entered, May 4, 2021.

- *Other Related Cases:*

United States Court of Appeals for the Third Circuit:

Case No's. [\[21-2004\]](#); [\[22-2225\]](#); [\[22-2822\]](#); [\[22-](#)

[\[2823\]](#); [\[23-1186\]](#); [\[23-8013\]](#); and U.S. Court of

Appeals for the Federal Circuit, Case No. [\[23-1020\]](#),

[\[23-1022\]](#).

CORPORATE DISCLOSURE STATEMENT, RULE 29.6

Petitioner, Gina Russomanno is strictly a personal entity
with no such corporation or LLC established under this
name or control.

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari is issued to review the judgements below and so requiring the entire record to be sent up for decision of the entire matter in controversy.

OPINIONS BELOW

1. The Opinion and Order for the United States Court of Appeals for the THIRD Circuit for Plaintiffs Formal Petition for Permission to Appeal, Rule 5(a), Rule 60(6)(b), Rule 60(d)(1), Rule 54(b), appears at Appendix A to the petition and is reported at Case No. [23-8013], [Dkt. 10, 11], Judgements entered, June 8, 2023; Stay denial issued July 25, 2023.
2. The Opinion and Order for the United States District Court for the Third Circuit for Plaintiffs Case No. [3:19-cv-05945], [Dkt. 61, 62], appears at Appendix B to the petition and is reported at Case No. [3:19-cv-05945],

Judgement entered, May 18, 2020.

JURISDICITON

The date on which U.S. Court of Appeals, THIRD Circuit denied my Appeal was June 8, 2023; and July 25, 2023, (*USSC extension granted to November 6, 2023*). A copy of the Order denying Rehearing appears at Appendix A. This Court's Jurisdiction is invoked under 28 U.S.C §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Wrongful Termination Provisions: N.J. Model Civil Jury Charges § 4.10(J) (2011), *Covenant of Good Faith and Fair Dealing; Title VII*: 42 U.S.C. § 2000e, 2000e-2; **ADEA**: 29 U.S.C § 621; **Equal Pay Act**: 29 U.S.C § 621; **NJLAD** and **NJ Diane B. Allen Equal Pay**: *N.J.S.A. §10:5-12(a)*, *N.J.S.A. §10:5-12(e)*, *N.J.S.A. § 10:5-12(t)*, *N.J. Rev. Stat. § 10:5-13*.

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STATEMENT OF THE CASE

The Supreme Court is being called upon for Writ of Certiorari to review the character reasons for decision by the U.S. Court of Appeals for the Third Circuit, Case No. [23-8013].

The courts have departed from the usual course of judicial proceedings, deciding important federal question in conflict with relevant precedent, whereby, these *substantial, extraordinary circumstances*, call for the Supreme Court's supervisory power.

Wherein, as matter of general public importance, and of substantial question of law that directly or indirectly affects the rights of parties.

The Court of Appeals for the Third Circuit refused plaintiff, Permission to Appeal, per F.R.A.P rule 5(a), denying rehearing and en banc on June 8, 2023, Plaintiff's request (filed June 1, 2023), to suspend judgement and Stay the proceeding, was further denied on July 25, 2023.

Plaintiff's USSC Application for Extension of Time

[23A158], was granted for this case on August 23, 2023, extending time to November 6, 2023.

NJ District Court for the Third Circuit, Case [3:19-cv-05945] was never appealed. A subsequent case [3:20-cv-12336], and completely separate cause of action, was timely filed. The subsequent case was then appealed for its “*incorrect*” res judicata decision, in its consecutive fashion, to its ‘*relation back*’ to the original case [3:19-cv-05945], (wherein, that judgement opinion is “*absent of adequate remedy of law*,” for *curative amendment* upon a Rule 12(b)(6) dismissal, action, and wherein, is an ‘*indisputable element*’ in “**abuse of discretion**.”

The initial DCNJ Case No. [3:19-cv-05945] was “*incorrectly*” dismissed thus, is *extraordinary, exceptional circumstance*, requiring due relief to plaintiff.

Wherein, “*absence of adequate remedy*,” for *curative amendment*, upon a Rule 12(b)(6) dismissal action,

an ‘*indisputable element*’ in “*abuse of discretion*.” *See:* [Phillips v. County of Allegheny]; and et al: [Shane v. Fauver]; [Grayson v. Mayview]; [Borelli v. City of Reading]; [Alston v. Parker]; [Batoff v. State Farm Ins.]; *Also See:* [Barrett, 840 F.2d at 1263 (*citing* 11 C. Wright & A. Miller, Fed. Practice and Procedure § 2868 at 238 (1973)].

The Federal Standard Rules pertaining to this action is FRAP Rule 5(a), (whereby, a direct motion application to the Third Circuit Court of Appeals, Circuit Clerk).

REASONS FOR GRANTING WRIT ARGUMENT

I. Opinion is “Absent Adequate Remedy of Law” in curative amendment:

Plaintiff should be granted permission to appeal NJ District Case [3:19-cv-05945] because the decision-opinion at [Dkt 61] is “*absent adequate remedy of law*,” for *curative amendment* upon a Rule 12(b)(6) dismissal, (which is an indisputable element in “*abuse of discretion*”).

Per, [Phillips v. County of Alleghany: 515 F3d 224 (3rd Cir. 2008)], “a District Court *must permit curative*

amendment and must give statement reasons, upon Rule 12(b)(6) Dismissal." The NJ District Judge "refused to provide this ministerial action" upon Rule 12(b)(6) Dismissal, failure to state claim. There are no statement reasons found within the Opinion decision, Re: Rule 12(b)(6).

This "absence of adequate remedy of law" is an 'indisputable element' in "abuse of discretion" which is exceptional extraordinary circumstance that requires due relief. *See: [Barrett, 840 F.2d at 1263 (citing 11 C. Wright & A. Miller, Fed. Practice and Procedure § 2868 at 238 (1973)].*

The Dismissal-Opinion for to NJ District Case [3:19-cv-05945] offers "no indication" in the 'record' for *curative amendment*, leave to reinstate, reason amendment would be futile, or that Plaintiff failed to file an amendment or stand. *See: [Phillips v. Allegheny]; and et al: [Shane v. Fauver]; [Grayson v. Mayview]; [Borelli v. City of Reading]; [Alston v. Parker]; [Batoff v. State Farm Ins.].*

The actual and Official, Case Text to Mandate, provision law, [*Phillips v. County of Allegheny*] follows below, **ARGUMENT II.**

II. Phillips v. County of Allegheny: 515 F3d 224 (3rd Cir. 2008):

1. The District Court, in *deciding a motion under Fed. R Civ. P. 12(b)(6)*, is required “to accept as true all factual allegations in the complaint” and “draw all inferences from the facts in the light most favorable to the plaintiff.”

Worldcom, Inc. v. Graphnet, Inc., 343 F.3d 651, 653 (3d Cir. 2003).

2. Moreover, *in the event a complaint fails to state a claim, unless amendment would be futile*, the District Court **must give a plaintiff the opportunity to amend her complaint.** *Shane v. Fauver*, 213 F.3d 113, 116 (3d Cir. 2000).

3. Under Rule 12(b)(6), Courts are required to accept “all well-pleaded allegations in the complaint as true and to draw all reasonable inferences in favor of the non-

moving party." The inquiry is not whether plaintiffs will ultimately prevail in a trial on the merits, but whether they should be afforded an opportunity to offer evidence in support of their claims. *[Twombly]*.

4. *In re Rockefeller Ctr. Props., Inc. Sec. Litig.*, 311 F.3d 198, 215-16 (3d Cir. 2002) (internal citations omitted). "In evaluating the propriety of the dismissal, we accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief."

5. *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n. 7 (3d Cir. 2002) rule "**requires only a short and plain statement of the claim** showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests,'" and that this standard does not require "detailed factual allegations." *Twombly*, 127 S.Ct. at 1964 (quoting *Conley*, 355 U.S. at 47, 78 S.Ct. 99). "On

a Rule 12(b)(6) motion, the facts alleged must be taken as true and a complaint may not be dismissed merely because it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits. *See id.* at 1964-65, 1969 n. 8. "Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Twombly*, 127 S.Ct. at 1969. We find that these two aspects of the decision are intended to apply to the Rule 12(b)(6) standard in general. *See Iqbal v. Hasty*, 490 F.3d 143, 157 n. 7 (2d Cir. 2007).

6. "We have already recognized principles that preclude the hyper-literal reading of *Conley*'s language "no set of facts" rejected in *Twombly*. Other Cases in that following: *Leuthner v. Blue Cross and Blue Shield of Ne. Pa.*, 454 F.3d 120, 129-131 (3d Cir. 2006), *Pryor v. National Collegiate Athletic Ass'n*, 288 F.3d 548, 564-65 (3d Cir. 2002), and *Levy v. Sterling Holding Co.*, 314 F.3d 106, 119 (3d Cir. 2002).

Furthering, *Pinker*, 292 F.3d at 374 n. 7. *See also* *Twombly*, 127 S.Ct. at 1969 n. 8 (citing as consistent with its rejection of the ("no set of facts") language the statement that "if, in view of what is alleged, it can reasonably be conceived that the plaintiffs . . . could, upon a trial, establish a case which would entitle them to . . . relief, the motion to dismiss should not have been granted") (citation omitted).

7. "The District Judge erred when he dismissed the complaint without offering [Phillips] the opportunity to amend her complaint. It does not matter whether or not a plaintiff seeks leave to amend. We have instructed that if a complaint is vulnerable to 12(b)(6) dismissal, a district court must permit a curative amendment, unless an amendment would be inequitable or futile. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002) (citing *Shane v. Fauver*, 213 F.3d 113, 116 (3d Cir. 2000)).

8. In *Shane*, we held that when dismissing for a failure to state a claim:

[W]e suggest that district judges expressly state, where appropriate, that the plaintiff has leave to amend within a specified period of time, and that application for dismissal of the action may be made if a timely amendment is not forthcoming within that time. If the plaintiff does not desire to amend, he may file an appropriate notice with the district court asserting his intent to stand on the complaint, at which time an order to dismiss the action would be appropriate."

Id. at 116 (quoting *Borelli v. City of Reading*, 532 F.2d 950, 951 n. 1 (3d Cir. 1976)). Because [Phillips] was not given such an opportunity, we will remand to allow her to decide whether to stand on her complaint or attempt an amendment so as to properly allege an affirmative act by defendant.

9. "If a complaint is subject to a Rule 12(b)(6) dismissal, a district court must permit a curative

amendment unless such an amendment would be inequitable or futile. *Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004). Moreover, we have instructed that a district court must provide the plaintiff with this opportunity even if the plaintiff does not seek leave to amend. *Id.* Accordingly, even when plaintiff does not seek leave to amend his complaint after a defendant moves to dismiss it, unless the district court finds that amendment would be inequitable or futile, the court must inform the plaintiff that he or she has leave to amend the complaint within a set period of time. *See Grayson*, 293 F.3d at 108. A district court may dismiss the action if the plaintiff does not submit an amended pleading within that time, or if the plaintiff files notice with the district court of his intent to stand on the complaint. *See Shane*, 213 F.3d at 116 (citation omitted)."

10. "The District Court's memorandum opinion indicates that it dismissed Phillips' Section 1983 claims with prejudice after receiving the parties' briefs on the motion to dismiss. There is no indication that the District Court informed

[Phillips] that she would have leave to amend her complaint.
Moreover, the memorandum opinion contained neither a
finding that a curative amendment would be inequitable or
futile, nor a finding that [Phillips] had failed to file a timely
amended pleading or had filed notice of her intention to
stand on the complaint. There is **no indication** that
[Phillips] wishes to stand on the complaint for purposes of
this appeal. Indeed, [Phillips] argues that, in the event we
determine she has failed to state a claim, we remand the
matter to the District Court with instructions to permit
amendment. See Batoff v. State Farm Ins. Co., 977 F.2d 848,
851 n. 5 (3d Cir. 1992)."

III. NJ District Court Refused Plaintiff Mandate Law Provision:

1. The NJ District Court did not provide any 'statement reasons' to mandate remedy of law, [Phillips v. County of Allegheny], et. al. However, in the Opinion statements in 'Standard of Review,' (pgs. 10 & 11), the NJ District Judge references this common law, by [Phillips], as standard mandate, yet, still refused plaintiff any of the remedy. The

Rule 12(b)(6) dismissal portion begins on page 10 at III.

Motion to Dismiss, and does not include *any indication or statement reasons for provision of this remedy* as provided to the plaintiff.

2. **Wherein**, the *precise standards* of that law listed herein, above, # 1-10, are taken from the *actual "case text"* from the Mandate decision, Case: *[Phillips v. County of Allegheny]*, but, **were excluded** in any provision to the plaintiff. *See: (a- h), below.*

a). District Court must provide remedy upon Rule 12(b)(6) Dismissal, **b)**. District Court must otherwise provide "reason" why amendment would be futile, **c)**. When dismissing for 'failure to state a claim,' District Judges are held to 'expressly state' that plaintiff has leave to amend within a specified period of time **d)**. Plaintiff must file an 'intent to stand' on the complaint if plaintiff does not desire to amend **e)**. Only upon an 'intent to stand' notice from the plaintiff, would an Order to Dismiss the Complaint be appropriate, **f)**. The District Court MUST provide leave to amend, even if the plaintiff does not request it, **g)**. Court ruled the District Judge erred by not providing plaintiff **[Phillips]** leave to amend, **h)**. Court also ruled to Remand to allow **[Phillips]** the opportunity to stand on her Complaint or attempt an **amendment**.

IV. Indisputable element in Abuse of discretion, thereby, Judgement is void.

1. The case dismissal Opinion [Dkt. 61], is a “judgement which ought not, in equity and good conscious, to be enforced,” as it demonstrates distinct “absence of an adequate remedy of law” which is an “indisputable element” in “abuse of discretion.” [Barrett, 840 F.2d at 1263 (citing 11 C. Wright & A. Miller, Fed. Practice and Procedure § 2868 at 238 (1973)].

The Opinion at [3:19-cv-05945], [Dkt. 61], demonstrates a grave miscarriage of justice, manifestly unconscionable, and an unusual, exceptional circumstance requiring equity and adequate remedy.

2. ‘Indisputable elements’ to a void judgement are: “(1) a judgement which ought not, in equity and good conscious, to be enforced; (2) a good defense to the alleged cause of action on which the judgement is founded; (3) fraud, accident or mistake which prevented the defendant in the judgement from

obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and *the absence of any adequate remedy at law.*" [Barrett, 840 F.2d at 1263], citing 11 C. Wright & A. Miller, Federal Practice of Civil Procedure § 2868 at 238 (1973)].

Also See: [Holstein v. City of Chicago, 803 F.Supp. 205, reconsideration denied 149 F.R.D. 147, affirmed 29 F.3d 1145 (N.D. III 1992)]; [Hobbs v. U.S. Office of Personnel Management, 485 F.Supp. 456 (M.D. Fla, 1980)]; [U.S.C.A Const. Amend. 5- Triad Energy Corp. v. McNell 110 F.R.D. 382 (S.D.N.Y. 1986)]; [Eckel v. MacNeal, 628 N.E. 2d 741 (III App. Dist. 1993)]; [Loyd v. Director, Dept. of Public Safety, 480 So. 2d 577 (Ala Civ. App. 1985)]; [In re Estate of Wells, 983, P. 2d 279, (Kan. App. 1999)]; [U.S.C.A Const. Amends. 5, 14 Matter of Marriage of Hampshire, 869 P.2d 58 (Kan. 1997)]; [U.S.C.A Const. Amend 5, Hays v. Louisiana Dock Co., 452 n.e.2D 1383 (III. App. 5 Dist. 1983)]; [Henderson v. Henderson, 59 S.E. 2d 227, (N.C. 1950)]; [Jaffe and Asher v.

Van Brunt, S.D.N.Y. 1994. 158 F.R.D. 278]; [*Allcock v. Allcock*, 437 N.E. 2d 392 (III App. 3 Dist. 1982)]; [*Orner v. Shalala* 30 F.3d 1307, (Colo. 1994)].

The Court should grant plaintiff *permission to appeal* because the Judgement for DCNJ case no. [3:19-cv-05945] is void, in the “*absence of adequate remedy of law*,” for *curative remedy* upon Rule 12(b)(6) dismissal action. Thereto, DCNJ case no. [3:20-cv-12336], is also void, as the result of an *incorrect res judicata decision* which relies upon the initial case no. [3:19-cv-05945], that is void per *absent adequate remedy of law*.

The Supreme Court has the great power to exercise its jurisdiction to consider the *merits* of this Writ (in *simultaneous entry* with *Application to Individual Justice*) as reviewed upon these plaintiff reasons for granting the Writ.

PRIOR COURT JURISDICTION STATEMENT

The Court of Appeals for the Third Circuit has jurisdiction per 48 U.S. Code § 1613a, appellate jurisdiction of a district court, appeals from all final decisions of the district court on appeal.

CONCLUSION:

The courts have departed from the usual course of judicial proceedings, and relevant precedent calling for the Supreme Court's supervisory power. Plaintiff's request per F.R.A.P. Rule 5(a), Permission to Appeal, DCNJ Case No. [3:19-cv-05945]: Gina Russomanno v. Sunovion Pharmaceuticals, *(now name Sumitomo Pharma America, Inc.), and IQVIA, Inc., per FRCP Rules 60(b)(6), 60(d)(1), and 54(b)), to relieve this party from (void) judgement, in the judgement's "*absence of adequate remedy of law*" and lack of curative amendment on a Rule 12(b)(6) dismissal action.

It is respectfully requested this petition for writ of certiorari be **GRANTED**, and further Brief on Merits be presented this Court.

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct.

Respectfully Submitted,
/s/ Gina Russomanno



Date: October 5, 2023