Case No. 23A528

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
DEC 09 2023
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RAYMOND H. PIERSON, III, as an INDIVIDUAL,
AND dba RAYMOND H. PIERSON, III, M.D.
Petitioner/Appellant,

v.

CSAA INSURANCE SERVICES,
CSAA INSURANCE EXCHANGE and
DOES 1 through 10
Respondent/Appellee

APPELLANT MOTION FOR A 60-DAY EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI CONCERNING THE SUPREME COURT OF THE STATE OF CALIFORNIA DECISION OF SEPTEMBER 20, 2023 IN CASE #S281367

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Pro Se Petitioner/Appellant

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States:

This Motion is advanced by this Pro Se Appellant, Raymond H. Pierson, III, M.D to this Highest Court in this Republic for the purpose of requesting a sixty (60) day extension of time to file a *Petition for Writ of Certiorari* concerning the California Supreme Court Opinion in Case# S281367 on September 20, 2023 to deny (Appendix 001) the Petition for Review submitted by Dr. Pierson and filed in that Court on August 15, 2023 (Appendix 003, 002).

This request has been made necessary by the fact that Dr. Pierson, a self-represented injured party in this and two related but fully independent appeals currently ongoing in the California Courts, has had the competing demands of having to file a *Petition for Review* in one of those competing cases (Case # S282177) which required refiling of an extensively corrected version of that *Petition* on November 20, 2023 as well as the current need to research and compose in the second of those matters (Appeal# C097290) an Appellant Opening Brief and ten (10) volume Appendix now due in the California Third District Court of Appeal on December 14, 2023. All these fully separate but related litigations have arisen from the exceptional damages caused to Dr. Pierson's medical practice as well as the injuries sustained by Dr. Pierson and his office staff as a result of the motor vehicle accident related destruction of that medical office suite which occurred due to the negligent operation of a motor vehicle by an elderly driver. Furthermore, the remarkable and unexpected convergence of these multiple related appellate matters has created circumstances which have made it utterly impossible for Dr. Pierson, a self-represented pro se petitioner, and his sole part-time assistant to be able to complete these critical filings within the limited time perspectives provided. In this regard, it is important to emphasize the fact that Dr. Pierson's only assistant is currently available to work in only quite a diminished capacity due

to her ongoing affliction with *long-Covid* which has followed her recent bout of Covid which represents her third occurrence of that infection. For these reasons, as well as for those other demands and time constraints not mentioned here, Dr. Pierson is unable to proceed with completion of the *Petition for Writ of Certiorari* due in this matter which has a current last permissible date for submission of December 19, 2023.

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<u>Section I</u>

Pursuant to Supreme Court Rule 13, 21, 22, 29, 30, 33 and 34 Pro Se Petitioner Raymond H. Pierson, III, M.D. respectfully requests that the Honorable Associate Justice Elena Kagan grant this time extension request for the full permissible sixty (60) days for submission of a *Petition for Writ of Certiorari* to this the Nation's Highest Court for review of the Supreme Court of California September 20, 2023 denial of Petitioner's August 15, 2023 Petition for Review (Case# S281367) with regard to the California Third District Court of Appeal Denial (Case# C091099) of the appeal advanced by Pro Se Petitioner, Dr. Pierson, with respect to the Decision by the Superior Court of Amador County in Case# 18-CVC-10813.

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

August 16, 2019	Date of the Judgment of Dismissal following the Superior Court of California in Amador County granting of the CSAA et al. Demurrers for their removal from the case (Case# - 18-CVC-10813).
October 17, 2019	Date of timely filing of the appeal to the California Third District Court of Appeals by Pro Per Appellant Dr. Raymond Pierson.
August 2, 2022	Date of filing of the (corrected) *Appellant Opening Brief* and six (6) volume *Appendix* (Note: Significant delays accrued due to the ongoing effects of the COVID-19 pandemic)
October 4, 2022	Date of submission of CSAA, et al. Respondent's Brief.
March 14, 2023	Date of filing of the Appellant's Reply Brief.
June 23, 2023	Oral Argument held before a three (3) judge panel of the California Third District Court of Appeal.

June 30, 2023	Decision by the Third District Appellate panel to affirm the decision of the court below to remove the Insurer, CSAA, et al. from the trial court proceedings.
August 15, 2023	Date of acceptance for filing of the *Petition for Review* by the Supreme Court of California.
September 20, 2023	Decision by the Supreme Court of California to deny the *Petition for Review.*
December 19, 2023	Current last permissible date for filing the Petition for Writ of Certiorari to the Supreme Court of the United States.

Section II

A Brief Review of the background in this case originally filed in the Superior Court of California, County of Amador on October 9, 2018 (Case#- 18-CVC-10813) and subsequently appealed to the California Third District Court of Appeal (Case# - CO91099).

This appeal and the related underlying case previously initiated before the Amador Superior Court below arose because of the failure of Tortfeasor Rushing's Insurer, CSAA et al., to sufficiently compensate Dr. Pierson during the initial two (2) year period following the extensive damages to Dr. Pierson's medical practice office suite and ongoing injuries to Dr. Pierson as well as his office staff which began on October 10, 2016 as the direct result of the negligent operation of a motor vehicle by an elderly driver, Ms. Phyliss Rushing, who collided into and through the side structural wall of Dr. Pierson's medical office in Jackson, California. The damage that resulted was quite extensive to the interior of the office premises as well as to the structural integrity of that building which necessitated the immediate and prolonged closure of the medical practice. Liability for the damages and injuries which resulted under the California *Negligence Pro Se Doctrine* was fully attributable to the negligent vehicle operation which was the direct cause of the

foreseeable and ongoing severe professional, financial, and personal injuries caused to Dr. Pierson and his staff which resulted from the immediate and extensive disruption of the office space requiring suspension of the practice. The injuries which resulted were directly related to the severe physical destruction of office space as well as to the toxic contamination of the entirety of the interior space caused by the negligently performed demolition and reconstruction. Despite the indisputable negligence, Tortfeasor's insurance carrier CSAA et al. even to the day of this writing has refused to provide Dr. Pierson the just compensation required to permit his being financially able to re-open his orthopedic practice. Until such just compensation is received Dr. Pierson will be unable to resume the restoration of his independent orthopedic practice with the resumption of the provision of orthopedic care to his many hundreds of patients whose care and physician-patient relationships have remained disrupted by this calamity over these multiple intervening years. The Insurer, CSAA et al. has flagrantly failed to adhere to the clear and well stated requirements of the California Insurance Code § 790.03(h)(5) which requires the provision of *"prompt, fair and equitable settlements"* in such cases where liability is unquestioned as it is here. This exceptional bad faith failure to provide fair settlement to Dr. Pierson has continued despite Dr. Pierson's repeated offers of settlement within policy limits which have quite clearly and specifically agreed to eliminate any personal financial liability on the part of the insured, Tortfeasor Rushing. Rather than proceed as instructed by the California Insurance Code 790.03(h), those parties alternatively and quite adversely through the utilization of their almost limitless financial resources have manipulated time and the legal process to effectively and indefinitely deny fair compensation to further extremely financially marginalize Dr. Pierson while also foreseeably and quite tragically disrupting health service delivery with the interruption of care to many patients with the interruption of multi-year established

physician-patient relationships. Dr. Pierson's early efforts to achieve a prompt and fair resolution of the matter which would have provided the financial resources necessary to re-open his practice while not exposing Tortfeasor Rushing to any personal financial loss included his repeated inquiries directed to the CSAA et al. claims service personnel as well as to Ms. Rushing herself to be provided the full policy information inclusive of the insurance policy limits in order to have the necessary information to structure a proper and acceptable settlement offer. As fully reviewed in the Appellant Opening Brief at Argument #4, pgs. 69-70, the full policy inclusive of the declaration and endorsement pages has never been provided and even the policy limits were repeatedly withheld to Dr. Pierson for the initial 5½ years after the accident up until the time of the requisite settlement conference in the underlying related case held before the Amador Superior Court on May 5, 2022. It must be emphasized that even though the policy limits were finally provided in May 2022, the complete policy has never been provided. Not long after the accident and despite being denied access to that critical policy limit information on June 7, 2017 Dr. Pierson forwarded via certified mail to CSAA et al. claims service representatives a settlement offer reasonably interpreted to represent a settlement offer within policy limits which specifically agreed to the condition that there would be no personal financial loss to Tortfeasor Rushing. It must be stated with emphasis that this offer was extended without revision for a period of over eighteen months. Remarkably, despite the pendency of that offer within policy limits no direct response to that offer was ever provided by Tortfeasor Rushing or by her insurer, CSAA et al. Even subsequent to the formal retraction of that initial settlement offer on February 1, 2019, Dr. Pierson followed that initial offer with multiple settlement offers which are reviewed in the multiple email correspondences cited between himself and Tortfeasor Rushing's CSAA et al. employed attorney. Those offers which were then extended through the time of

the Court mandated settlement conference of May 5, 2022 (6-APP-1466-1486) in the related underlying case all contained settlement terms which in all proposals eliminated any personal financial liability for Tortfeasor Rushing (6-APP-1471-1488). Again, quite remarkably, none of those offers were accepted or received meaningful counter proposals.

As a result of the failure of CSAA to settle the case in the face of the offer in policy limits, Dr. Pierson was left with no alternative but to proceed with litigation. On October 9, 2018, one day prior to the two-year anniversary of the motor vehicle accident and in the absence of any action by either the Tortfeasor Rushing or her insurer CSAA Dr. Pierson had no alternative but to proceed with the filing of the complaint in this matter which named as Defendants Tortfeasor Rushing and her Insurer, CSAA et al. At the time of filing of the original complaint in this case which had quite high potential for a judgment in excess of policy limits, the failure of CSAA et al. to achieve settlement of the case within policy limits fully breached the insurer's *implied covenant of good faith and fair dealings*. This Supreme Court of California in multiple case law precedents has held that under such conditions where there is risk of a judgment more than policy limits and where a settlement offer within policy limits has been extended requires that the insurer has a duty to settle the case [*Comunale v. Traders & General Ins. Co. (1958); Johansen v. USAA (1975) pg. 17 and Crisci v. Security Ins. Co. (1967) pg. 429]*. The California Supreme Court in those earlier precedents and the California Second District Court of Appeals even more recently has further emphasized that a failure to settle under such conditions represents a frank breach of the *implied covenant of good faith and fair dealing* [*Merritt v. Reserve Ins. Co. (2013) pg. 272)*.

Furthermore, the Supreme Court of California has also emphasized that under such circumstances where there is a failure to settle within policy limits that the insurer

becomes fully liable and at risk for the entirety of the judgment inclusive of any component in excess of the policy limits [*Comunale, p. 660; Crisci p. 428; and Johnsen p. 17]*. Thus, it is critical to understand that in this case which was filed one day prior to the expiration of the two-year statute of limitations for personal injury, that CSAA et al. even at that time of original filing had already exceptionally breached its duty under the *implied covenant* as interpreted by the many case law precedents making it fully liable for the entirety of any judgment even in excess of policy limits. Furthermore, it can be quite accurately stated that even at that time of initial filing of the litigation by Dr. Pierson that CSAA et al. from the time of filing the complaint had established a position which required that it must assume the entirety of financial risk for any judgment in the case inclusive of any judgment in excess of policy limits. The corollary to this point is that from the date of filing of the litigation by Dr. Pierson, Tortfeasor Rushing had absolutely **<u>no</u>** personal financial risk whatsoever to her assets inclusive of any judgment in excess of policy limits. A further relevant point which must be emphasized is that the case law from the multiple state courts across this Country inclusive of the California Courts of Appeal and this Supreme Court have long emphasized that insurance contracts extended by automobile insurance companies such as CSAA et al. require as a condition of enrollment that the insured must designate to the insurer complete and absolute control over any litigation arising from an insured's negligent acts covered under the contract. (See *Hiller v. Western Auto Ins. Co. (1932) p. 258; Comunale v. Traders & Gen'l Ins. Co. (1973) p. 972; Jamestown Builders v. Gen'l State Indemnity Co., 1999) p. 346; and Rova Farms Resort v. Investors Ins Co. (1974) p. 497)*. Based upon these long-established California case law precedents it has been Dr. Pierson's position form the outset of the litigation that the Insurer, CSAA et al., was an appropriately included Defendant given that all financial risk resided solely with the insurer. Furthermore, based

upon that financial risk residing solely with the insurer provides confirmation that all actions by CSAA, et al. in the case before the trial court represented actions advanced solely in its own interests and in direct conflict with those interests of their insured, Rushing. Under these circumstances the Insurer, CSAA et al. was appropriately and lawfully included as a defendant from the outset.

In conclusion to this section, it is important to strongly emphasize the point that even from the first day of the filing of the complaint by Dr. Pierson all risk resided solely and completely with the insurer, CSAA et al., due to their multitude of flagrant breaches of the *implied covenant of good faith and fair dealin*g which resulted from its abject failure to settle the case despite multiple fully qualifying offers within policy limits. The corollary to this point is the fact that Tortfeasor Rushing from the time of initial filing of the litigation on October 9, 2018 had absolutely no risk whatsoever to her personal finances and assets. From the perspective that Dr. Pierson repeatedly offered to permit Tortfeasor Rushing to resolve the case with no personal financial risk beyond insurance policy limits there is just no explanation for Rushing to not have demanded settlement of the case by CSAA. These facts fully elucidate the fact that CSAA et al. which retained the exclusive right of control in the handling of the litigation had created the circumstances in the case from the outset of the formal litigation where it's failure to act to settle within policy limits had the effect to result in the unequivocal requirement under the California case law precedents that it assume all risk. Those circumstances demonstrate beyond any doubt that right from the time of the filing of the litigation CSAA et al. the insurer was exclusively managing of its own financial risk in the manner best suited to the interests of the company and its shareholders. Put simply, from the time of the initial filing of the litigation on October 9, 2018 (2 years after the accident) only CSAA, et al. assets were at risk

and as a result CSAA et al. was exclusively involved in the management of its own risk which was unquestionably in complete conflict with the interests of its insured, Tortfeasor Rushing. In addition, it is important to emphasize the fact that it has been the decision by CSAA et al. made in its own interests to fail to settle the case and to provide financial restitution to Dr. Pierson which has resulted in the ongoing injuries that Dr. Pierson continues to suffer at this point over seven (7) years later. From these true perspectives, there can be no question but that Dr. Pierson should have been permitted the opportunity from the onset of the litigation to proceed against CSAA et al. given the solid and irrefutable evidence that it was representing its own interests as it proceeded with the full intent of further greatly marginalizing Dr. Pierson financially over these many years in the attempt to leverage him into a progressively adverse financial position and thus forcing him to accept an unacceptable settlement thus violating the express requirements of the California Insurance Code at 970.04(h)(7). The Superior Court of California, County of Amador denied this lawful and constitutional right of Dr. Pierson under the First, Fifth and Fourteenth Amendments of the U. S. Constitution to proceed in the courts directly against CSAA et al. to seek redress for the injuries caused to him and his staff which resulted from CSAA et al.'s proceeding throughout the litigation in the advancement of its own corporate interests to deprive Dr. Pierson of a fair restitution for the injuries he has continued to suffer. The facts of this case as reviewed above demonstrate beyond any doubt that Dr. Pierson's ongoing injuries have resulted from the CSAA et al.'s refusal to settle despite the multiple policy limit offers extended by Dr. Pierson. Unfortunately, the California Third District Court of Appeal and now the Supreme Court of California have affirmed that unlawful decision which has deprived Dr. Pierson of his U. S. Constitutional Right of Petition under the First Amendment as well as his Rights of Due Process and Equal Protection extended under the Fifth and Fourteenth Amendments. In

proceeding in that unlawful manner these reviewing Courts have extended an elevated and unequal level of protection to the corporate insurer CSAA et al.. This resulting constitutional inequity has occurred even though the U. S. Supreme Court in *Gulf, C & S.F.R. Co. v. Ellis*, 165 U.S. 150, 154 (1896) found *"that corporations are persons within the provisions of the Fourteenth Amendment of the Constitution of the Unted States"*. Under the Constitution of this great republic all *persons* must be considered equal with equal protection under the law. Under the above referenced interpretation of the Fourteenth Amendment such *"artificial entities called corporations"* cannot be denied *"the rights and securities guaranteed to persons"*. The corollary to this is that corporations cannot be provided an unequal and elevated level of protection over other *"persons"*. Furthermore, the State of California, the inferior sovereign, under the Fourteenth Amendment is obligated to extend these rights to all state residents who are U. S. citizens.

Section III

A Brief Review of the Issues which Dr. Pierson plans to advance to this Highest Court includes but is not limited to the following issues of law and fact.

Introduction:

The right to a remedy in the courts for wrongful injury holds a revered place in our civil justice system. Lord Coke traced this tight to Chapter 29 of the Magna Carta, which guaranteed: *"Every subject may take his remedy by course of the Law, and have justice, and right for injury done to him..."* 1 Edward Coke, the Second Part of the Institutes of the laws of England 55 (London, E. & R. Brooke 797). Chief Justice Marshall restated that principle for Americans:

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

Marbury v. Madison, 5 U. s. (1 Cranch) 137, 163 (1803). Thus, our Fifth Amendment guarantee of due process is an "affirmation of Magna Carta according to Coke." *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U. S. 1, 29 (1991) (Scalia, J., concurring).

This Court has left no doubt that "[t]he Right to sue and defend in the courts is the alternative to force. In an organized society it is the Right conservative of all rights and lies at the foundation of orderly government." *Chambers v. Baltimore & Ohio, R.R.*, 207 U. S. 142, 148 (1907). This fundamental right is grounded in multiple constitutional guarantees. *Christopher v. Harbury*, 536 U. S. 403, 415 n. 12 (2002).

ISSUE #1

Under the Fifth and Fourteenth Amendments to the U. S. Constitution, Petitioner Dr. Pierson is entitled to due process and equal protection under the laws of this State of California and this Nation in both the California State and Federal Courts. Despite this requirement Dr. Pierson has been denied the right to proceed directly in litigation against CSAA, et al. to seek remedy for the injuries that CSAA et al. has caused and will continue to cause until the case is resolved. It is unlawful and unconstitutional that the California courts have provided this elevated and unequal level of protection to this corporate insurer, CSAA et al., a mere "person" as defined under the provisions of the Fourteenth Amendment. The facts of this case as reviewed above clearly and unequivocally establish the fact that Dr. Pierson's ongoing financial injuries are the result of the actions by CSAA et al. to deny

settlement. The Insurer has proceeded in this manner in their own corporate and financial interests which are in direct conflict with their contractual duties to their Insured, Rushing, as established under the *implied covenant of good faith and fair dealing* so well-defined in the Supreme Court of California case law precedents.

ISSUE #2

The California Constitution and First Amendment of the U. S. Constitution have provided Dr. Pierson the right to petition in the Courts to seek redress for the injuries he has sustained. As reviewed above, Dr. Pierson's ongoing injuries continue to be the result of the CSAA, et al.'s decision made in the corporation's own financial interest. Due to the settlement offers within policy limits extended by Dr. Pierson shortly following the accident and well before the litigation, Ms. Rushing is fully protected from any judgment in excess of policy limits due to the fact that CSAA et al.'s decision not to settle has resulted in the circumstances where any and all financial risk in excess of policy limits must become the responsibility of the Insurer. Under this specific set of case circumstances, the California Courts denial of Dr. Pierson's right to proceed directly against CSAA et al. represents an unconstitutional deprivation of his *Right to Petition* in the courts both under the California Constitution and First Amendment of the U. S. Constitution.

ISSUE #3

When an Insurer's conduct and involvement in a litigation which concerns a insured's liability for negligence extends well beyond the provision of simple indemnification and extends into the area of primarily managing that Insurer's own financial risks and liabilities, the Insurer passes through a threshold which then establishes that they are permissibly considered defendants in the case. The facts

of this case unequivocally establish that CSAA et al. has passed through that threshold. The decisions of the California Courts' to deny Dr. Pierson's right to proceed directly against CSAA et al. under these specific circumstances represents an unconstitutional deprivation of the right to petition as well as the rights of due process and equal protection.

ISSUE #4

The recent California Supreme Court Decisions with respect to the California Code of Civil Procedure CCP 1559 which provides that *"A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it."* greatly misinterpret the intent of the California Legislature at the time of enactment of the statute in 1872 which was based upon the early precedents of the Supreme Courts' of Maine and Massachusetts which established that where one party finds itself in possession of the money or property of another party that in principle a *"privity"* of one to the other was established even though no formal contract existed between those parties. This understanding was further reviewed shortly thereafter in the precedent of the *U. S. Supreme Court in Second National Bank v. Grand Lodge*, 98 U. S. 123, 124 (1878) which established that there were multiple exceptions to the existence of the formal privity of contract which nevertheless created the right to proceed with suit for non-performance. Under a correct application of those ancient precedents to the proper interpretation of CCP 1559, Dr. Pierson, the injured third party, had in principle a right to proceed in suit against CSAA et al. to seek financial redress for the injuries sustained as CSAA et al. exclusively retained the financial resources fully intended for that purpose.

PRAYER FOR RELIEF

For all of these reasons Dr. Pierson reviewed above, this Pro Se Petitioner, Dr. Pierson, must plead for the mercy of this Court to grant this request for a full sixty (60) day time extension for submission of a *Petition for Writ of Certiorari* to this Highest Court in the referenced Supreme Court of California case. This time extension request has been noticed in an email transmission to Counsel for Respondent CSAA et al., Attorney Maria S. Quintero, on this date of mailing.

Respectfully submitted,

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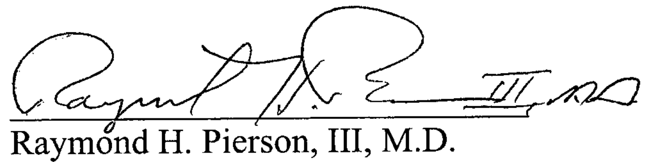
Date

CERTIFICATE OF COMPLIANCE

This Motion for a Sixty (60) Day Time Extension complies with the type-volume and limitations and typeface requirements of Fed. R. App. P. 32(a)(7) because this brief is typed in Times New Roman 14-point proportionally spaced typeface and contains 3,933 words, as determined by Microsoft Word 365.

Respectfully submitted,



Raymond H. Pierson, III, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2023 the foregoing document was forwarded to Defense Counsel via electronic mail.

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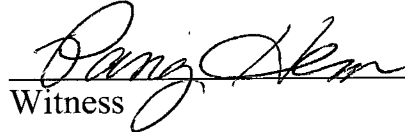

Witness

12-9-23
Date Signed

CERTIFICATE OF INTERESTED PARTIES

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Robert Bessler, MD, CEO

John Birkmaner, M.D.

John Conforti, COO

Viva Ettin, J.D., M.D.

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Peter Hull, M.D.

Sarah Krevens, CEO, Sutter Health

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Helen Thomson, R.N.

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CORPORATE DISCLOSURE

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Respectfully submitted,

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