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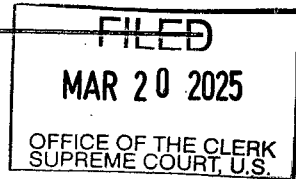
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SUPREME COURT OF THE UNITED STATES

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JOHN DOUGLAS

Petitioner



Vs

WEXFORD HEALTH SERVICES, ET AL

Respondents

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ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES

COURT OF APPEALS FOR THE SEVENTH CIRCUIT

APPEAL NO: 24- 2545

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PETITION FOR A WRIT OF CERTIORARI

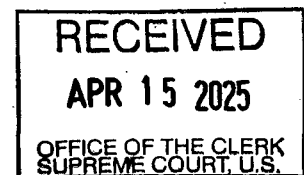
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JOHN DOUGLAS// PRO SE PETITIONER ( PRISONER ID # R- 01021)

WESTERN ILLINOIS CORRECTIONAL CENTER

2500 ROUTE #99 SOUTH

MT. STERLING, ILL 62353



I QUESTION PRESENTED.

Whether a dismissal of a meritorious and complex de-consolidated Federal Section 1983 lawsuit is appropriate as a discovery sanction pursuant to FRCP Rule 37 (b)(2)(a) and/or FRCP Rule 41 (b); when delayed compliance with discovery was NOT due to wilfulness, bad faith, or any fault of the Petitioner, as a pro se prisoner litigant, but instead due to the well-recognized difficulties in facilitating the discovery process in complex de-consolidated and pro se cases, as expressly admitted by the subject U.S. District Court in its own attached 11/22/1023 SCHEDULING ORDER/ EXHIBIT "B" under the landmark legal principles set forth by this Honorable Supreme Court in Societe Internationale v Rogers, 357 U.S. 197 (1958).

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<p>To avoid the wilful and unjust deprivation of one's property without due process of the law under the 5<sup>th</sup> Amendment to our U.S. Constitution, this Honorable U.S. Supreme Court must clarify its prior legal standard for a discovery sanction dismissal under FRCP Rule 37, as previously underscored in its landmark holding in <i>Societe Internationale v Rogers</i>, 357 U.S. 197 (1958), due to the significant number of conflicting U.S. Appellate Court decisions among the appellate court circuits on this important matter pursuant to Supreme Court Rule 10(a).</p>		
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#### IV PETITION FOR WRIT OF CERTIORARI

John Douglas, an inmate currently incarcerated at Western Illinois Correctional Center in Mt. Sterling, Illinois, respectfully petitions, pro se, this Honorable U.S. Supreme Court for a Writ of Certiorari to review the Orders of the U.S. Court of Appeals/Seventh Circuit// APPENDIX EXHIBITS "H" AND "I"; which summarily affirm the dismissal order of the U.S. District Court // APPENDIX EXHIBIT "F".

#### V OPINIONS BELOW

The attached (2) orders of the U.S. Court of Appeals/Seventh Circuit ( See APPENDIX EXHIBITS " H" AND "I", dated 11/26/2024 and 12/27/2024, respectively) summarily affirm the attached U.S. District Court's Dismissal Order. ( See APPENDIX EXHIBIT "F", dated 8/15/2024).

#### VI JURISDICTION

Petitioner's Appeal with the U.S. Court of Appeals/Seventh Circuit was dismissed on 12/27/2024 ( See APPENDIX EXHIBIT "I"); which invokes the jurisdiction of this Honorable Court Under 28 USC 2254, having timely filed this Petition for Writ of Certiorari within the 90 days of the said 12/27/2024 Order/ APPENDIX EXHIBIT "I".

#### VII CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the Same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to Be a witness against himself, NOR BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW.

VIII. STATEMENT OF THE CASE

Over 60 years ago, this Honorable United States Supreme Court held in Societe Internationale v Rogers, 357 U.S. 197 ( 1958) that Federal Rules of Civil Procedure Rule 37 should NOT be construed to authorize the dismissal of a federal civil complaint based on a plaintiff's non-compliance with a pretrial production order; when it has been established that the plaintiff's failure to comply had been due to inability, and not due to wilfulness, bad faith, or any fault of the plaintiff.

However, since this aforementioned landmark holding in Societe Internationale V Rogers, supra., there has been a significant number of U.S. Appellate Court decisions that have misconstrued this said holding; and furthermore, there are a significant number of U.S. Appellate Court decisions in DIRECT CONFLICT WITH OTHER U.S. APPELLATE COURT DECISIONS, resulting in conflicting circuit court rulings under Supreme Court Rule 10 (a).

As clearly demonstrated and documented in the following Statement of the Case, this instant case presents the question of whether a dismissal of a meritorious and complex de-consolidated Federal Section 1983 lawsuit is appropriate as a discovery sanction pursuant to Federal Rules of Civil Procedure Rule 37 (b)(2)(a) and/or FRCP Rule 41 (b); when the delayed discovery compliance was NOT due to wilfulness, bad faith, or any fault of the Petitioner, as a pro se prisoner litigant, but instead due to the well-recognized difficulties in facilitating the discovery process in complex de-consolidated and pros se cases.

THE WELL-DOCUMENTED FACTUAL STATEMENT OF THE CASE

- (1) On 4/12/2019, Petitioner court-filed his pro se Federal Section 1983 lawsuit against Defendants Wexford Health Services, Christy Smith, K. Ashcraft, Cameron Watson, and Tara Goins with the U.S. District Court for the Central District of Illinois based on well-supported violations of his 8<sup>th</sup> Amendment right to proper medical care for his extensive hernia, as a prisoner at the Western Illinois Correctional Center in Mt. Sterling, Illinois.

- (2) On 5/28/2019, Federal District Court Judge Colin Stirling Bruce granted Petitioner's Petition to Proceed in Forma Pauperis pursuant to 28 U.S.C 1915(b)(1) based on Petitioner's Prisoner Trust Fund Ledger.
- (3) On 6/21/2019, Federal District Court Judge Bruce also entered a merit review order finding complete merit with Petitioner's said pro se Federal 1983 lawsuit; however denied Petitioner's motion for the Court to appoint him counsel.
- (4) On 9/11/2019, Petitioner's said pro se Section 1983 cause of action was consolidated with (14) other hernia-related Federal Section 1983 cases. ( Doc. Filing 7.25)
- (5) On 9/30/2022, the said U.S. District Court denied class certification for the said consolidation of hernia cases, and DE-CONSOLIDATED all of the said cases. ( See Bryan v Jeffrey, et al. ( C.D. Ill. 18-2192). The District Court in its said ruling stated in pertinent part that " as soon as its schedule permits, the Court will enter appropriate orders in each of the de-consolidated cases to ensure that the cases proceed at a resolution. "
- (6) On 4/5/2023, the subject U.S. District Court in Petitioner's de-consolidated case entered a text order stating in pertinent part; " The discovery deadline is reset to 8/4/2023 and the dispositive motion deadline is reset to 9/5/2023. Given the age of this case, the Court does not anticipate extending these deadlines unless the moving party can establish extraordinary circumstances and good cause for the requested extension."
- (7) On 7/28/2023, it is extremely important to note that Defendants Wexford Health Services and Christy Smith, through their counsels at Cassidy Schade, LLP court-filed the attached Motion for Extension of Time to complete discovery and to file dispositive motions ( EXHIBIT " A") based on the following stated extraordinary circumstances and existence of good faith:
  - (a) " No entry was made on or about 9/30/2022 in the docket of the instant case reflecting that it had been de-consolidated from Bryant v Jeffreys ( C. D. Ill 18-2192)"
  - (b) " The case docket shows no activity following the 9/20/2022 de-consolidation order until entry of the Court's 4/5/2023 discovery and dispositive motion scheduling order. "



- (c) " Brent J. Colbert and Rachael N. Hayes, the two attorneys who had represented the Wexford Defendants ( Wexford and Smith) in this case; both left the employ of Cassiday Schade, LLP prior to 3/1/2023, when the undersigned, Atty Scott B. Sievers, joined the said law firm."
  - (d) " While Defendants Kathy Ashcraft, Tara Goins, and Cameron Watson ( State Defendants) have served written discovery on Plaintiff, neither Plaintiff nor the Wexford Defendants have served written discovery requests and no depositions have been taken by any party in this matter. "
  - (e) " Wexford Defendants wish to conduct discovery in this action to prepare for trial and a possible summary judgement motion. HOWEVER THE UNDERSIGNED'S CASE LOAD HAS NOT PREVIOUSLY PERMITTED HIM TO RESEARCH THIS CASE AND DRAFT APPROPRIATE DISCOVERY REQUESTS OR TAKE PERTINENT DEPOSITIONS. THE UNDERSIGNED NOW HAS DRAFTED INTERROGATORIES AND REQUESTS TO PLAINTIFF, BUT CANNOT SERVE THEM, AS LESS THAN 30 DAYS EXISTS FOR PLAINTIFF TO ANSWER AND RESPOND TO THEM BEFORE CLOSE OF DISCOVERY. CONSEQUENTLY, WEXFORD DEFENDANTS, AND THEIR COUNSELS NEED ADDITIONAL TIME TO SERVE WRITTEN DISCOVERY , TO TAKE DEPOSITIONS, AND TO DRAFT ANY DISPOSITIVE MOTIONS. "
  - (f) " To provide sufficient additional time for the parties to serve discovery requests, to answer or otherwise respond to them, to sort out any disputes over these discovery requests, and to ultimately take depositions, and file dispositive motions, Wexford Defendants seek approximately a 120 day extension of the discovery and dispositive motions deadline in this case to 12/4/2023 for the close of discovery and 1/3/2024 for the dispositive motions deadline. "
  - (g) " The undersigned has conferred with Plaintiff's counsel, Atty Thomas J. Pliura, and Plaintiff's counsel has no objections to this motion."
- ( See attached WEXFORD DEFENDANTS' MOTION FOR EXTENSION OF TIME/ EXHIBIT "A")

- (8) In August of 2023, it is also extremely important to note that Plaintiff's counsel, Atty Thomas J. Pliura, fully responds to the written discovery of Defendants Kathy Ashcraft, Tara Goins, and Cameron Watson, as evidenced in the attached GROUP EXHIBIT "C"
- (9) On 10/20/2023, it is also extremely important to note that the same Plaintiff's counsel, Atty Thomas J. Pliura, is allowed by the Court to withdraw without an order for him to return all case documents/work product to Petitioner; and Petitioner's said case is DISMISSED WITHOUT PREJUDICE.
- (10) On 11/11/2023, Petitioner court-filed his pro se Motion to Vacate the said 10/20/2023 dismissal order; which is granted and allows Petitioner to proceed pro se.
- (11) On 11/23/2023, U.S. District Court Chief Judge Sara Darrow enters her attached SCHEDULING ORDER( EXHIBIT "B"); which states, in pertinent parts, the following matters:
- (a) " Facilitating the discovery process in pro se cases like this case can be difficult."
  - (b) " Within 30 days of the entry of this order, Plaintiff shall provide the following to Defendants' counsel, not to the Court"
    - (i) " The names of the persons with knowledge of the relevant incidents, whom Plaintiff may use to support his claims, along with a short description of what each person knows."
    - (ii) "Copies of documents Plaintiff possesses which Plaintiff may use to support his claims."
    - (iii) "Any information Plaintiff has to help identify the Doe Defendants, if Doe Defendants are named"
    - (iv) " A statement of the Plaintiff's injuries suffered and the relief Plaintiff seeks. "
  - (c) " Within 45 days of the entry of this order, Defendants shall provide to Plaintiff, to the extent not already possessed by Plaintiff or provided to Plaintiff the following:
    - (i) " Plaintiff's relevant medical records"
    - (ii) "Plaintiff's relevant grievances and all responses to those grievances.
    - (iii) " Relevant incident reports and disciplinary committee Decisions"

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(d) "Discovery closes 5/20/2024"

(e) "Written discovery requests must be mailed at a party at least 30 days before the said 5/20/2024 discovery deadline"

(12) On 12/14/2023, IN FULL COMPLIANCE WITH THE AFOREMENTIONED ATTACHED 11/23/2023 SCHEDULING ORDER/ EXHIBIT "B", Petitioner served on Defendants Wexford's counsel, Cassidy Schade, LLP, his attached pro se letter/ EXHIBIT "D"

(13) On or about 4/1/2024, Defendants Wexford and Smith served on Petitioner pro se the following discovery requests to the Western Illinois Correctional Center via US mail:

- (a) Request to Produce Directed to Plaintiff
- (b) Interrogatories Directed to Plaintiff by Wexford
- (c) Interrogatories Directed to Plaintiff by Smith

( See attached Certificate of Service of Discovery Documents/ EXHIBIT "E" )

(14) On June 11, 2024, the said U.S. District Court granted the Defendant's Motion to Compel the above mentioned written discovery, and in a texted order of 7/8/2024, allowed Plaintiff to comply with said Defendants' discovery request by 7/26/2024.

(15) On 7/10/2024, IN COMPLIANCE WITH THE COURT'S TEXTED 7/8/2024 DISCOVERY ORDER, Petitioner served on Defendants Wexford's counsels at Cassidy Schade, LLP the following completed discovery documents:

- (a) Plaintiff's Answers to Defendant Wexford's Interrogatories with Exhibit A.
- (b) Plaintiff's Response to Defendants' Request for Documents with attachment for Response #10.

( See attached PETITIONER'S LETTER/DISCOVERY GROUP EXHIBIT "WWW" )

- (16) Moreover, on 7/10/2024, it is also extremely important to note that Petitioner served on counsels for Defendants Wexford and Smith Petitioner's Request for Production of Documents that has never been Answered.
- (17) On 7/29/2024, Defendants Wexford and Smith court-filed their Motion to Dismiss for failure to comply with discovery pursuant to FRCP Rule 41 (b) and FRCP Rule 37 (B)(2)(a).
- (18) On 8/5/2024, Petitioner court-filed his Response to Defendants' said Motion to Dismiss with supporting attachments/Exhibit WWW and medical records.
- (19) On 8/15/2024, U.S. District Court Chief Judge Sara Darrow court-filed her attached dismissal order/ EXHIBIT " F"; granting the Defendants' said Motion to Dismiss due to Petitioner's alleged failure to fully comply with his obligations to litigate his case.
- (20) On 9/3/2024, Petitioner timely court-filed his Notice of Appeal pursuant to Fed. R. App. P. Rule 4(a)(4)/ ATTACHED EXHIBIT "G" with the said U.S. District Court.
- (21) On 10/21/2024, Petitioner court-filed his Motion for Permission to Appeal in Forma Pauperis and with his supporting affidavit with the U.S. Court of Appeals for the Seventh Circuit.
- (22) Also on 10/21/2024, Petitioner court-filed with the U.S. Court of Appeals for the Seventh Circuit his Memorandum in support of his Motion for leave to Proceed on Appeal in Forma Pauperis.
- (23) On 11/26/2024, the U.S. Court of Appeals/ Seventh Circuit issued its attached ORDER denying Petitioner's Motion for Leave to Proceed in Forma Pauperis on Appeal, since " the Appellant has not identified a good faith issue that the District Court erred in dismissing his claims" ( See attached 11/26/2024 ORDER// EXHIBIT " H"

- (24) Thus, in accordance with 28 U.S.C. 1254, Petitioner respectfully submits this Petition for a Writ of Certiorari within 90 days of the attached Judgment Order/EXHIBIT "H" from the U.S. Court of Appeals for the Seventh Circuit dated 11/26/2024.
- (25) Moreover, on 12/27/2024, the U.S. Court of Appeals for the Seventh Circuit dismissed Petitioner's Appeal and issued its attached PLRA CR 3(b) FINALORDER// EXHIBIT "I".

IX: REASONS FOR GRANTING PETITIONER'S REQUESTED WRIT OF CERTIORARI

TO AVOID THE WILFUL AND UNJUST DEPRIVATION OF ONE'S PROPERTY WITHOUT DUE PROCESS OF THE LAW UNDER THE 5<sup>TH</sup> AMENDMENT TO OUR U.S. CONSTITUTION, THIS HONORABLE U.S. SUPREME COURT MUST CLARIFY ITS PRIOR LEGAL STANDARD FOR A DISCOVERY SANCTION DISMISSAL UNDER FRCP RULE 37, AS PREVIOUSLY UNDERScoreD IN ITS LANDMARK HOLDING IN SOCIETE INTERNATIONALE V ROGERS, 357 U.S. 197 ( 1958), DUE TO THE SIGNIFICANT NUMBER OF CONFLICTING U.S. APPELLATE COURT DECISIONS AMONG THE APPELLATE COURT CIRCUITS ON THIS MATTER PURSUANT TO SUPREME COURT RULE 10(A).

- (1) In Societe Internationale v Rogers, supra., this Honorable U.S. Supreme Court succinctly underscored that the provisions of the subject Rule 37 of the Federal Rules of Civil Procedure must be applied in light of the constitutional provisions of the 5<sup>th</sup> Amendment to our U.S. Constitution, that no person shall be deprived of property without due process of law and more particularly not against the prior decisions of this Court in Hovey v Elliot, 167 U.S. 409 ( 1897) and Hammond Packing Co. v Arkansas, 212 U.S. 322 (1909).

(2) These two above mentioned landmark decisions in Hovey, and Hammond Packing Co, supra, that were cited by this Honorable Supreme Court in Societe v Rogers, supra, firmly established that there are constitutional limitations upon the power of the courts, even in the aid of their own valid processes, to dismiss an action without affording a party the opportunity for a trial on the merits of his/her cause of action, as clearly documented in Petitioner's instant case.

(3) Moreover, as fully documented below, following this Court's landmark and controlling decision in Societe v Rogers, supra, the U.S. Appellate courts have issued a significant number of decisions in direct conflict with other U.S. Appellate Court decisions on this important matter of discovery sanction dismissals under FRCP Rule 37, resulting in conflicting U.S. circuit court rulings under Supreme Court Rule 10 (a), as most recently recognized and addressed in Ogunsula v. Warrenfeltz, 2024 WL 298984 ( D. Md. 1/25/2024).

#### SPLIT CIRCUIT COURT AUTHORITIES

#### SEVENTH CIRCUIT

(A) McMahan v Deutsche Bank AG, 892 F.3d 926 ( 7<sup>th</sup> Cir. 2018)

The Appellate Court held that there is no requirement to enter lesser sanctions before dismissing a case for lack of prosecution under FRCP Rule 37. Cited in the subject U.S. District Court's attached Dismissal Order/ EXHIBIT "F".

(B) McInnis v Duncan, 697 F.3d 661 ( 7<sup>th</sup> Cir. 2012)

The Appellate Court held there is no abuse of discretion for dismissal under FRCP Rule 37 without employing progressive discipline. Cited in the subject U.S. District Court's attached Dismissal Order/EXHIBIT "F"

- (c) Collins v Illinois, 554 F.3d 693 ( 7<sup>th</sup> Cir. 2009)

The Appellate Court held that the sanction of dismissal must be proportionate to the circumstances. Cited in the subject U.S. District Court's attached Dismissal Order/EXHIBIT "F".

- (D) 3 Penny Theatre Corp. v Plitt Theaters, Inc., 812 F 2d 340 ( 7<sup>th</sup> Cir 1987)

The Appellate Court held that a court is vested with inherent powers to manage their own affairs to achieve the orderly and expeditious dispositions of cases. Cited in the subject U.S. District Court's attached Dismissal Order/ EXHIBIT "F".

- (E) Ford v Larson, 2021 WL 3513592 ( S.D. Ill. 2023)

The U.S. District Court held that a dismissal under FRCP Rule 37 is a high bar. Cited in the subject U.S. District Court's attached Dismissal Order/EXHIBIT "F"

EIGHTH CIRCUIT

- (A) Fox v Studerbaker-Worthington, Inc., 516 F.2d 989 ( 8<sup>th</sup> Cir. 1975)

The Appellate Court held that a FRCP Rule 37 dismissal for failure to answer interrogatories doesn't apply when the failure to comply is anything less than a total failure to respond. Moreover, the Court underscored that the losing party's non-compliance must be due to wilfulness, fault, or bad faith, citing Societe v Internationale v Rogers, supra. More specifically, if a response is made to a request for documents, but is not satisfactory, FRCP Rule 37 dismissal sanction is NOT proper.

- (B) General Dynamics Corp. v Selb Manufacturing Co. 481 F2d 1204 ( 8<sup>th</sup> Cir. 1973)

The U.S. Appellate Court underscored that since the discretionary discovery sanctions imposed herein are among the more drastic under FRCP Rule 37(b); the alleged non-compliance must be due to the losing party's own fault, wilfulness, or bad faith in order to legally justify their imposition, citing Societe Internationale v Rogers, 357 U.S. 197 ( 1958)

FIFTH CIRCUIT.

- (A) Bon Air Hotel, Inc. v Time, Inc., 376 F2d. 118 ( 5<sup>th</sup> Cir. 1967)

The U.S. Appellate Court expressly underscored that the dismissal of an cause of action with prejudice under FRCP Rule 37 (b) is a drastic remedy and therefore should be applied only in extreme circumstances. The court went on to further underscore that a court has a responsibility to do justice between man and man; and thus general principles CANNOT justify denial of a party's fair day in court, except upon a serious showing of wilful default or behavior, citing Gill v Stelow, 240 F. 2d 669 ( 2<sup>nd</sup> Cir 1957). Moreover, the court underscored that FRCP Rule 37 must be read and applied in the light of the provisions of the 5<sup>th</sup> Amendment that no person shall be deprived of property without due process of the law through the wrongful dismissal of a case due to inability to comply with pretrial production orders, as addressed by our U.S. Supreme Court in Hovey v Elliot, 167 U.S. 409 ( 1897) and Hammond Packing Co. v State of Arkansas, 212 U.S. 322 ( 1909).

- (B) Dorsey v Academy Moving Storage, Inc., 423 F. 2d 858 ( 1970).

The U.S. Appellate Court expressly held dismissal sanctions under FRCP Rule 37 (b) must be predicated on wilful disobedience, gross indifference to the rights of the adverse party, deliberate callousness, or gross negligence; and NOT predicated upon a party's failure to fully satisfy the requirements of discovery when the failure was not due to inability fostered by its own conduct or by circumstances within its control, citing Societe Internationale v Rogers, 357 U.S. 197 ( 1958).



SIXTH CIRCUIT

- (A) Brookdale Mill v Rowley, 218 F.2d 728 ( 6<sup>th</sup> Cir. 1954)

The U.S. Appellate Court held that the dismissal under FRCP Rule 37(d) was affirmed on appeal based on the findings that the plaintiff's omission to file answers to defendant's interrogatories was done knowingly and intentionally.

NINTH CIRCUIT

- (A) Jones v Riot Hospitality Group, LLC, \_\_\_\_\_ F.4<sup>th</sup> \_\_\_\_\_ ( 9<sup>th</sup> Cir. 3/5/24)

The U.S. Appellate Court held that a dismissal of an employment discrimination action pursuant to FRCP Rule 37 ( E) (2) was due to intentional spoliation of electronically stored information by the plaintiff.

- (B) Halaco Engineering Co. v Costle, 843 F3d. 376 ( 9<sup>th</sup> Cir. 1989)

The U.S. Appellate Court expressly underscored that the inherent powers of the court for dismissal of a case for non-compliance with discovery under FRCP Rule 37 is justified only in extreme cases of wilfulness or bad faith.

- (C) Munoz-Santana v Ins., 742 F.2d 561 ( 9<sup>th</sup> Cir. 1984) and Wyle v R.J. Reynolds Inclusive, Inc., 709 F.2d 561 ( 9<sup>th</sup> Cir. 1983)

Both U.S. Appellate Courts likewise expressly held that the inherent powers of the court for dismissal of a case for non-compliance with discovery under FRCP Rule 37 is justified only in extreme cases of wilfulness or bad faith.

FOURTH CIRCUIT

- (A) United States v Shaffer Equipment Co., 11 F3d. 450 ( 4<sup>th</sup> Cir. 1993)

The U.S. Appellate Court held that a court's inherent authority to dismiss a cause of action exists only where a party abuses the judicial system.

- (B) Project Mgmnt Co. v Dyn Corp Inter'LLP, 734 F3d 366 ( 4<sup>th</sup> Cir 2013)

The U.S. Appellate Court held that the dismissal of the plaintiff's lawsuit was proper due to the plaintiff's repeated discovery fraud, citing Hazel-Atlas Glass Co v Hartford Empire, 322 U.S. 238 ( 1944).

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THIRD CIRCUIT

- (A) Poulis v State Farm Fire & Cas. Co., 747 F2d. 863 ( 3<sup>rd</sup> Cir. 1984)

The U.S. Appellate Court held that dismissals with prejudice as a discovery sanction must be based on wilful or bad faith of a party and prejudice to the other party caused by the non-compliance to scheduling orders.

- (B) Donnelly v. Johns-Mansville Sales Corp., 677 F.2d 339 (3<sup>rd</sup> Cir. 1982)

The U.S. Appellate Court expressly underscored that a sanction dismissal under FRCP Rule 37 is a drastic sanction and therefore must be reserved for only cases where there is a clear record of delay or contumacious conduct by the plaintiff, citing National Hockey League v. Metropolitan Hockey Club, 427 U.S. 639 (1976).

TENTH CIRCUIT

- (A) Robison v. Transamerica Ins. Co., 368 F.2d 37 (10<sup>th</sup> Cir. 1966)

The U.S. Appellate Court firmly held that the legal purpose of FRCP Rule 37 is to secure compliance with the discovery rules and for the speedy determination of trial; and NOT to punish erring parties that are maybe derelict, but still contrite.

ELEVENTH CIRCUIT

- (A) Flury v. Daimler Chrysler Corp., 427 F.3d 939 (11<sup>th</sup> Cir. 2005) and Tesoriero v. Carnival Corp., 965 F.3d 1170 (11<sup>th</sup> Cir. 2020)

Both U.S. Appellate Courts firmly held that a FRCP Rule 37 sanction dismissal must be based clearly on bad faith conduct for the purpose of hiding adverse evidence.

SECOND CIRCUIT

- (A) Gill v Stolow, 240 F2d. 669 ( 2<sup>nd</sup> Cir. 1957)

The U.S. Appellate Court expressly underscored that a FRCP Rule dismissal as a discovery sanction is extremely harsh; since there is a strong constitutional policy favoring a trial on the merits and against depriving a party of his/her day in court.

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- (4) Here, consistent with this Honorable Court's aforementioned landmark holding in Societe v Rogers, supra., the above mentioned attached record clearly reflects that Petitioner has always exercised due diligence and good faith conduct in compliance with all Scheduling Orders and discovery requests issued by the Respondents in the following well-documented ways:

- (A) On 9/11/2019, Petitioner's meritorious pro se Federal Section 1983 lawsuit court-filed on 4/12/2019 was consolidated by the subject U.S. District Court with (14) other hernia-related Federal Section 1983 cases. ( Doc. Filing # 7.25)

- (B) On 9/20/2022, the said U.S. District Court denied class certification for the consolidation of the said hernia Federal Section 1983 hernia cases, and de-consolidated all of the said cases. ( See Bryan v Jeffrey, C.D. Ill. 18-2192) and in its said ruling stated in pertinent part that " as soon as its schedule permits, the Court will enter appropriate orders in each of the de-consolidated cases to ensure that the cases proceed at a resolution. "

- (C) On 4/5/2023, the subject U.S. District Court entered a texted order in Petitioner's said Federal Section 1983 case, stating in pertinent part " The discovery deadline is RESET to 8/4/2023 and the dispositive motion deadline is also RESET to 9/5/2023. "
- (D) On 7/28/2023, the Respondent Wexford and Smith, through their counsels at Cassiday Schade LLC court-filed the attached Motion for Extension of Time to Complete Discovery and to file dispositive motions//EXHIBIT "A", and requested a 120 day extension of the discovery and dispositive motion deadline to 12/4/2023 for close of discovery and 1/3/2024 for dispositive motions. ( See Par #7 above in " Statement of Case")
- (E) In August of 2023, in full compliance with the said 12/4/2023 reset discovery deadline, Petitioner's counsel, Atty Thomas L Pliura, fully responded to the written discovery of the State Defendants ( Def. Kathy Ashcraft, Def. Tara Goins, and Def. Cameron Watson, as evidenced in the attached GROUP EXHIBIT "C".
- (F) On 10/20/2023, Petitioner's said counsel, Atty Thomas L Pliura, was allowed by the subject U.S. District Court to withdraw without an order for him to return all case documents/work product to Petitioner and furthermore dismissed Petitioner's case without prejudice.
- (G) On 11/11/2023, Petitioner court-filed his pro se Motion to Vacate the said 10/20/2023 dismissal order; which was granted and expressly allowed Petitioner to proceed pro se.
- (H) On 11/23/2023, the U.S. District Court's Chief Judge Sara Darrow entered her attached SCHEDULING ORDER/EXHIBIT "B"; which was fully addressed above in Par #11 of " Statement of Case"

(I) On 12/14/2023, in full compliance with the said attached 11/23/2023 SCHEDULING ORDER/ EXHIBIT "B" ; Petitioner served on Respondents Wexford's counsel, Cassidy Schade LLC his attached pro se letter with full discovery disclosures/EXHIBIT "D"

(J) On or about 4/1/2024, Respondents Wexford and Smith, through their said counsels served on Petitioner pro se their discovery requests, as stated in the attached Certificate of Service of Discovery Documents/EXHIBIT "E".

(k) On 6/11/2024, the subject U.S. District Court granted the Respondents' Wexford and Smith's Motion to Compel Answers/Responses to their said written discovery; and in a texted order of 7/8/2024, allowed Petitioner to comply by 7/26/2024.

(L) On 7/10/2024, in compliance with the U.S. District Court's said texted order of 7/8/2024, Petitioner served on Respondents' said counsels the following completed discovery documents:

- (1) Plaintiff's Answers to Def. Wexford's Interrogatories with Exhibit A.
- (2) Plaintiff's Responses to Def. Wexford's Request for Documents with attached for Response #10.  
( See attached Petitioner's Letter/Discovery GROUP EXHIBIT "WWW")

(5) However, despite the above mentioned and well-documented due diligence and good faith efforts to timely and fully comply with all discovery scheduling orders and discovery requests, the subject U.S. District Court unfoundedly issued its dismissal order of Petitioner's meritorious Federal Section 1983 cause of action/EXHIBIT "F", based solely on 7<sup>th</sup> Circuit case decisions and on the following erroneous assertions of non-compliance:

- (1) " Plaintiff John Douglas has failed to make his initial disclosures as ordered by this court in its Scheduling orders of 2/6/2024, 6/11/2024, and 7/8/2024. "
- (2) " Douglas has failed to respond to Defendant's Smith interrogatories, even though the court granted Def. Smith's Motion to Compel and ordered him to do so."
- (3) " Douglas has not produced the medical records to Defendants that he claims to have sent to Defendants."  
( See attached 8/15/2024 Dismissal Order/EXHIBIT"F")

(6) In direct contradiction to these above mentioned (3) erroneous assertions of Petitioner's non-compliance, the aforementioned attached record clearly reflects due diligence and good faith actions of Petitioner in full compliance with all said discovery Scheduling Orders and discovery requests; which includes all required discovery disclosures, requested discovery documents, and even medical records that were produced not only to the counsels for Respondents Wexford and Smith, but also to the subject U.S. District Court with Petitioner's attached Response to Def's Motion to Dismiss/ EXHIBIT "J", page #10. Lastly, Def. Smith's Interrogatories were answered through the same questions presented in Def. Wexford's Interrogatories.

(7) Thus, this case presents this Honorable U.S. Supreme Court with an excellent opportunity to clarify its prior legal standard for a discovery sanction under Federal Rules of Civil Procedure Rule 37, as previously underscored in its landmark and controlling decision in *Societe Internationale v Rogers*, supra., particularly in light of the aforementioned and well-documented significant number of conflicting U.S. Appellate Court decisions among the U.S. Appellate Court Circuits on this important matter; and more importantly to avoid the wilful and unjust derivation of one's property without due process of the law under the 5<sup>th</sup> Amendment to our United States Constitution, as clearly documented and fully addressed above in Petitioner's case.

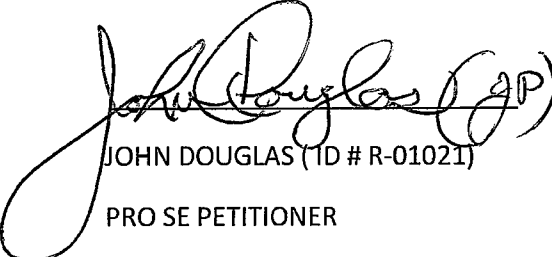
X CONCLUSION

WHEREFORE, FOR THE FOREGOING REASONS, PETITIONER JOHN DOUGLAS, PRO SE, RESPECTFULLY REQUESTS THIS HONORABLE U.S. SUPREME COURT TO ISSUE A WRIT OF CERTIORARI TO REVIEW THE AFOREMENTIONED AND ATTACHED ORDERS OF THE U.S. COURT OF APPEALS/SEVENTH CIRCUIT// APPENDIX EXHIBITS "H" AND "I" AS WELL AS THE ATTACHED DISMISSAL ORDER OF THE U.S. DISTRICT COURT// APPENDIX EXHIBIT "F"



-20-

Respectfully submitted

  
JOHN DOUGLAS (ID # R-01021)

PRO SE PETITIONER

WESTERN ILL. CORRECTIONAL CTR.

2500 RT# 99 SOUTH

MT. STERLING, ILL 62353

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NOTICE OF FILING // CERTIFICATE OF SERVICE

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TO; ATTY BRADLEY J. TAY;OR ( COUNSEL FOR RESPONDENTS)

CASSIDY SCHADE LLP

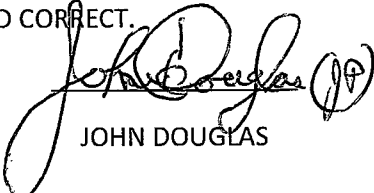
20240 WEST ILES AVENUE- SUITE B

SPRINGFIELD, ILL 62704

PLEASE BE ADVISED THAT ON OR ABOUT MARCH 25, 2025, MY ATTACHED PRO SE PETITION FOR WRIT OF CERTIORARI AND SUPPORTING ATTACHMENTS WERE COURT-FILED WITH THE U.S. SUPREME COURT THROUGH MY RETIRED LAWYER FRIEND, JAMES PANCRAZ; WHO I FULLY AUTHORIZED TO FILE AND SERVE DUE TO MY CURRENT STATUS AS A TOTALLY DISABLED IN-PATIENT IN THE MEDICAL INFIRMARY AT THE WESTERN ILLINOIS CORRECTIONAL CENTER, AND A COPY OF SAME WAS ALSO SERVED ON OPPOSING COUNSEL AT THE ADDRESS LISTED ABOVE VIA US MAIL. I CERTIFY THAT THE ABOVE STATEMENT IS TRUE AND CORRECT.

3/20/2025

DATE

  
JOHN DOUGLAS