

No. 24-838

In The

Supreme Court of the United States

SOL M. LEINER

Petitioner

v.

ORIGINAL
FILED
NOV 06 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

DOW INC., DOW CHEMICAL COMPANY
DOW SILICONES CORPORATION

Respondents

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

SOL M. LEINER, Pro Se – Petitioner
237 Beach 118 St.
Far Rockaway, N.Y. 11694
917 543 0497

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QUESTIONS PRESENTED

REGARDING BANKRUPTCY

1. Whether a Bankruptcy Discharge, can Protect a Party, from Liability for Fraudulent Acts that were Committed. Specifically, Concealment or Misrepresentation along with a Violation of Federal Law, Such as the FDA'S Prohibition on the Distribution of Liquid Injectable Silicone in the USA?

REGARDING JURISDICTION

2. Whether the Appeals Court Erred in finding that this Case was Properly in Federal Court, given the U.S. Supreme Court's Precedent Establishing that Claims of Product Liability are Subject to State Law Jurisdiction?

Court Proceedings

Sol M. Leiner V. Dow Defendants & Orentreich Defendants New York Supreme Court, Queens County, Index No. 714443 / 2022 on July 12, 2022.

Dow Defendants, Removed the Matter to the Federal Court, in the Eastern District of New York. Following a Conference, the Court Transferred The Dow Defendants to the United States District Court Eastern District of Michigan, Southern Division, and the Orentreich Defendants back to the original New York Supreme Court in Queens County on Dec. 06, 2022.

**Sol M. Leiner V. Dow Defendants
Case No. 22 -13 058 U.S. District Court
Eastern District od Michigan Southern
Division, Dismissed Case on Sept. 29, 2023**

United States Court of Appeals for the Sixth Circuit, Case No. 23 - 1913 Leiner V. Dow Defendants. The Court Affirmed the District Court Judgment on July 08, 2024

Leiner V. Dow Defendants, United States Court of Appeals Sixth Circuit, Leiner filed Petition for a Rehearing on July 17, 2024, upon Consideration, the Panel Denied the Petition for a Rehearing on Aug. 13, 2024

PETITION FOR WRIT OF CERTIORARI

Petitioner, Sol M. Leiner, Respectfully Petitions this Court for a Writ of Certiorari to Review the Judgment of the U.S. Sixth Circuit Court of Appeals.

OPINIONS BELOW

The Sixth Circuit, August 13, 2024, Leiner v. Dow Inc. et al., Case No. 23 - 1913, Decision is Reproduced Regarding a denial for a Rehearing as App. 1. The Sixth Circuit, July 08, 2024, *Leiner v. Dow Inc. et al.* Case No. 23 - 1913, Decision is Reproduced Regarding Affirming the District Court's Denial as App. 2. The District Court's Denial in *Leiner v. Dow Inc. et al.* Case No. 22 - 13058, Sept. 29, 2023 is Reproduced as App. 3.

REGARDING RULE 14.5

Petitioner received letter from the U.S. Supreme Court Clerk dated Nov. 25, 2024, stating that the Petition was Timely Received. However, the Petition was returned as per Rule 14.5, in order to Correct parts of the Petition. Petitioner was given 60 days from the date of the Clerks letter for the Sixth Circuit to Resubmit as per Rule 14.5

JURISDICTION

The Sixth Circuit's order Denying the Petition for a Rehearing was entered August 13, 2024.

The Sixth Circuit order Affirmed the dismissal of the Case in its entirety, was entered July 08, 2024.

This Court has Jurisdiction to review this case pursuant to 28 U.S. C. Section 1254 (1), which grants the Supreme Court the power to review judgments and decrees of the United States Court of Appeals. The United States Court of Appeals for the Sixth Circuit has jurisdiction, over Appeals from the United States District Court within its Circuit Pursuant to 28 U.S.C. Section 1291

REGARDING RULE 14.1 (e) (v)

The Constitutionality of an act of Congress is drawn into question, therefore 28 U.S.C. Section 2403 (a) may apply. Petitioner has Served a Copy of his Petition on the Solicitor General of the United States, Room 5616, Dept. of Justice, 950 Pennsylvania Ave., N.W. Washington D.C. 20530-0001. Petitioner has no knowledge that any Court Certified to the Attorney General that the Constitutionality of an Act of Congress was drawn into question.

The Constitutionality of a Statute of any State that May apply to 28 U.S.C. Section 2403 (b). Therefore, Petitioner has served the Attorney General of New York State with a copy of his Petition. Petitioner has no knowledge that any Court Certified to the State Attorney General that the Constitutionality of a Statute of the State was draw into Question.

CONSTITUTIONAL PROVISIONS, CASE LAW, STATUTES AND REGULATIONS

1. Congress Creates Bankruptcy Laws /
Article 1, Section 8, Clause 4 of the U.S.
Constitution.
2. Bankruptcy Code does not Protect debts
of Fraud. 11 U.S.C. Section 523 (a) (2) (A)
3. Bankruptcy Code does not Protect Willful
and Malicious Injury. 11 U.S.C. Section 523
(a) (8)
4. Grogan V. Garner - U.S. Supreme Court Case
498 U.S. 279 (1991)
5. Bartenwerfer V. Buckley - U.S. Supreme
Court Case 598 U.S. 69 (2023)
6. Merrell Dow Phar, Inc. V. Thompson - U.S.
Supreme Court Case 478 U.S. 804 - 15 n 12
(1986)
7. Code of Federal Regulations (CFR) Title 21
Drug & Medical Devices, FDA. GQV

Search for Illegal Silicone Injections

STATEMENT OF THE CASE FACTS

This petition for Writ of Certiorari Seeks Review of the Judgment of the United States Court of Appeals for the Sixth Circuit, which affirmed the district court's dismissal of the petitioner's lawsuit against the Dow Defendants. This Case involves serious personal injuries suffered by the petitioner Sol M. Leiner, due to the Illegal injection of medical grade silicone.

KEY OMISSIONS BY LOWER COURTS:

- 1. FDA Prohibition:** The lower Courts failed to acknowledge the Critical Fact that the FDA:
 - A. Prohibited the use of medical grade liquid silicone for Cosmedic Treatments.
 - B. Specifically named the Dow Defendants as the manufacturer of this product.
 - C. Prohibited the Dow Defendants from distributing this product within the United States. (see Appendix, pages 41 - 43 for the FDA letter)

- 2. Misinterpretation of Bankruptcy:** The Court of Appeals Erroneously concluded that the Dow Defendant's past bankruptcy shielded them from all future claims, including alleged Fraud.
(see Appendix page 10)
This directly Contradicts:
 - A. 11 U.S.C. Section 523 (a) (2) (A): Bankruptcy does not discharge debts obtained through Fraud.

B. 11 U.S.C. Section 523 (a) (6) : Bankruptcy does Not Discharge debts Arising from Willful and Malicious Injury.

C. Grogan V. Garner, 498 U.S. 279 (1991) : The Supreme Court Unequivocally Ruled that bankruptcy Does Not Protect debts Obtained through Fraud, when Proven.

D. Bartenwerfer V. Buckley, 598 U.S. 69 (2023) : The Court Unanimously Held that Fraud is not Dischargeable in bankruptcy, Regardless of whether the debtor, Personally Committed the Fraudulent Act.

3. IRRELEVANT PAST BANKRUPTCY:

The Dow Defendant's past bankruptcy stemmed from lawsuits related to silicone breast implants. CRUCIALLY :

A. The FDA NEVER PROHIBITED, the Dow Defendants from Distributing or Doctors from Performing Breast Implant Surgeries. Therefore there was no Fraud Involved in the Prior Bankruptcy Lawsuits, regarding Breast Implants.

B. In Contrast the FDA Explicitly Prohibited the Dow defendants from distribution in the U.S.A. of their Manufactured medical grade silicone Injections. Therefore, no bankruptcy can protect Fraud or Willful and Malicious Injury, regarding the illegal Distribution by the Dow Defendants.

4. FAULTY PRODUCT and DELAYED HARM

A. FDA Scientists Tested the Medical Grade Liquid Silicone used by the Orentreich Medical Group and found the Product to be no Better than INDUSTRIAL GRADE SILICONE.

B. FDA website, (FDA.GOV) Search for Illegal Silicone Injections: Explicitly States the Severe Harm Caused by Illegal Silicone Injections, that Can Manifest Many Years Later.

C. Furthermore, there are two Defendants in the Original Lawsuit in the State Court, the Dow Defendants and the Orentreich Defendants. The Lawsuit is regarding both Defendants, being either Individually or Jointly Liable. Therefore it was improper for the Dow Attorney to Transfer the case to the Federal Court. Also, the Appeals Court Should have Ruled that the lawsuit needs to be Remanded to the Original New York State Court, as was requested by the Petitioner.

REGARDING JURISDICTION

• The Appeals Court Erred in regard to the Proper Jurisdiction of the Leiner V. Dow Defendants. The Appeals Court Contradicts the U.S. Supreme Court's Ruling in

Merrell Dow Phar, Inc. V. Thompson 478 U.S.

804 - 15 n. 12 (1986) The U.S. Supreme Court Ruled that the Product Liabiility Claim needs to be TRANSFERRED to the State Court Due to the fact that the State Court has JURISDICTION regarding a Product Liability Claim, and that the Federal Courts do not have the proper Jurisdiction.

Petitioner, Sol M. Leiner, made this Claim to the Appeals Court, and Received no Response at all from the Appeals Court, regarding the Proper Jurisdiction being in the Original State Court. Also requested to remand the Case back to the State Court. (See APP. 44 - 47)

• The lawsuit against the Dow Defendants is a Strict Product Liability Claim and belongs in the State Court. This CLAIM is NOT a Bankruptcy Claim. The Past Bankruptcy of the Dow is a Side Issue and does not Control the MAIN Issue of Strict Product Liability.

CONCLUSION

The U.S. Supreme Court Should Accept this request for a Writ of Certiorari, Since the Federal Appeals Court has ruled regarding, Bankruptcy Fraud, in a way that Conflicts with Relevant Decisions of the U.S. Supreme Court, and also Conflicts with the Rules by Congress regarding Fraud not Dischargeable in Bankruptcy.

Also, Regarding the question of Federal or State Jurisdiction in a Product Liability Lawsuit. The Appeals Court refusal to Comply with the Past Ruling of the U.S. Supreme Court that it needs to be remanded to the State Court, is a direct Contradiction of a past Ruling by the U.S. Supreme Court.

Also, the Critical Omissions and Misinterpretations by the Lower Courts Necessitate Review by this Court. It is in the Public Interest and the Interest of Justice, to Rectify these Errors and Ensure that the Law regarding Bankruptcy, Product Liability, and Court Jurisdiction Correctly be Applied.