No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RACHEL BREAUX,
Petitioner,

v.

LOUISIANA STADIUM & EXPOSITION DISTRICT, SMG, LANDMARK EVENT STAFFING SERVICES, INC., AND JANE DOE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

PETITION FOR A WRIT OF CERTIORARI

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February 12, 2025

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QUESTIONS PRESENTED

1. Where Petitioner's duty to report her claim to the bankruptcy court was unclear and unsettled, would application of judicial estoppel to her claims violate the fundamental principles of fair notice set forth in our jurisprudence?

The standard of appellate review for judicial estoppel is "abuse of discretion." Kane v. Nat'l Union 'fire Ins. Co., 535 F.3d 380, 384 (5th Cir. 2008). "**[D]eference** ... is the hallmark of abuse-of-discretion review." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 143, 118 S.Ct. 512, (1997).

2. May an appellate court reverse a trial court's decision to not apply judicial estoppel without reviewing the trial court's decision under the abuse of discretion standard?

This Court in *New Hampshire v. Maine* instructed lower courts to consider the facts and *equitable considerations* of *each individual case* before considering the application of judicial estoppel. *New Hampshire v. Maine*, 532 U.S. 742, 751 (2001).

3. May an appellate court reverse a trial court's decision to not apply judicial estoppel without considering any of the equitable factors relied upon by the trial court in rendering its decision?

PARTIES TO THE PROCEEDING

The petitioner, Rachel Breaux, was the Applicant to the Louisiana Supreme Court, and SMG, Inc. and Jameika Gleason were Respondents. In the Louisiana Fourth Circuit of Appeal, the Petitioner was the Respondent, and SMG, Inc. and Jameika Gleason were Relators. The Petitioner was the Plaintiff in the trial court and SMG, Inc. and Jameika Gleason were defendants in the trial court.

LIST OF ALL PROCEEDINGS

Trial on Defendants' Exception of No Right of Action, January 24, 2024, Civil District Court, Parish of Orleans, State of Louisiana, No. 2016-00689.

Judgment Denying Defendants' Exception of No Right of Action, January 31, 2024, Civil District Court, Parish of Orleans, State of Louisiana, No. 2016-00689.

Louisiana Court of Appeal, Fourth Circuit, Writ Granted; Judgment reversed and Rendered, April 4, 2024, No. 2024-C-0126.

Louisiana Court of Appeal, Fourth Circuit, Order Denying Petitioner's Application for Rehearing, May 21, 2024, No. 2024-C-0126.

Supreme Court of the State of Louisiana, denial of Certiorari, November 14, 2024, No. 2024-CC-00788.

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OPINIONS BELOW

The denial of Petitioner's Writ Application by the Louisiana Supreme Court is reported in 395 So.3d 1183. The opinion of the Louisiana Fourth Circuit Court of appeal is reported in 390 So.3d 293. The Judgment of the trial court denying the Defendants' Exception of No right of action is unpublished.

JURISDICTION

The Louisiana Supreme Court entered an Order on November 14, 2024, denying Petitioner's Application for Writ of Certiorari. (Appendix F, p. 21a). The Louisiana Supreme Court's Order qualifies as a "[f]inal judgment or decree," within the meaning of 28 U.S.C. § 1257. The Petitioner invokes this Court's jurisdiction under that statute.

STATUTORY PROVISIONS

11 U.S.C. § 1306:

> (a) Property of the estate includes, in addition to the property specified in section 541 of this title-
>
> (1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under Chapter 7, 11, or 12 of this title, whichever occurs first; and
>
> (2) earnings from services performed by the debtor after commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.
>
> (b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

11 U.S.C. § 1327:

> (a) The provisions of confirmed plan bind the debtor and each creditor, which or not the claim of such creditor is provided for by the plan, and

whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

STATEMENTS OF THE CASE

A. FACTUAL BACKGROUND

On August 21, 2015, Petitioner was seriously injured while attending a New Orleans Saints football game at the Louisiana SuperDome. The Petitioner was literally run over by a security guard. Petitioner has endured seven surgeries and has incurred $400,000 in past medical bills. In 2024, seven years after this litigation was initiated, Defendants brought to trial an Exception of No Right of Action seeking to dismiss Petitioner's claim for not reporting the suit in a 2012 Chapter 13 Bankruptcy. The Chapter 13 bankruptcy plan had been completed, and the proceeding was closed by operation of law seven years prior to the trial of the exception. This litigation would never have had any effect on the 2012 Chapter 13 bankruptcy.

B. PROCEEDINGS IN THE LOWER COURT

The Defendants raised the defense of judicial estoppel in the trial court by filing an Exception of No Right of Action that was tried to the District Court Judge on January 24, 2024. The trial court denied the Exception in open court and assigned oral reasons for judgment, noting that the court's decision was based on equitable grounds:

> In addition, the failure to disclose a claim as part of the bankruptcy case doesn't necessarily create a *per se* inference of her intent to deceive.

> My review of the jurisprudence makes this a discretionary call. And I think under the circumstances, on this issue, I'm inclined to consider the totality of the circumstances. I think to deprive her of her right of action on the basis of judicial estoppel is a harsh remedy. In fact, it's the ultimate remedy.
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> ***
>
> I think *Woodard* provided the general parameters of what governs my decision. And in that case, the court found it wouldn't be equitable in such a circumstance to apply the judicial-estoppel doctrine to bar an individual from pursuing an undisclosed tort claim that did not arise until after confirmation of the debtor's Chapter 13 plan.
>
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> But I'm concerned that the defendants haven't shown that the creditors necessarily would have been entitled to the proceeds had Plaintiff disclosed this lawsuit . . . until well after the confirmation of the Chapter 13 Plan.

(Appendix G, p. 22a-25a).

A judgment dismissing the Exception was entered on January 30, 2024. (Appendix D, p. 13a). Defendants timely filed an Application for Supervisory Writs to the Louisiana Fourth Circuit Court of Appeal. **A mere two days** after Petitioner filed her Opposition to the Defendants' Writ Application, on April 4, 2024, the Court of Appeal reversed the Judgment of the trial court, and dismissed Petitioner's suit. (Appendix C, p. 5a-12a). The Court of Appeal held that because "the three elements of judicial estoppel are met ... the trial court erred in failing to grant Relator's Exception of No Right of Action." (Appendix C, p. 12a). The Court of Appeal did not even consider the *Woodard* decision relied upon by the trial court nor did the Court of Appeal state, in any respect, how the trial court abused its discretion in declining to apply judicial estoppel.

Petitioner timely filed an Application for Rehearing that was denied without reasons on May 24, 2024. (Appendix B, p. 31a). Petitioner timely filed an Application for Supervisory Review with the Louisiana Supreme Court on June 20, 2024. (Appendix A, p. 1a). On November 14, 2024, Petitioner's Application to the Louisiana Supreme Court was denied. (Appendix F, p. 18a). **However, Justice Hughes would have granted the Writ. (*Id.*)**

REASONS FOR GRANTING THE PETITION

1. In Reversing the Decision of the Trial Court to Deny Judicial Estoppel, the Court of Appeal Did Not Apply The "Abuse of Discretion" Standard of Review.

The standard of appellate review for judicial estoppel is "abuse of discretion." *Kane v. Nat'l Union Fire Ins. Co.*, 535 F.3d 380, 384 (5th Cir. 2008). "**[D]eference** ... is the hallmark of abuse-of-discretion review." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 143, 118 S.Ct. 512, 139 L.Ed.2d 508 (1997) (emphasis added). *See also Latvian Shipping Co. v. Baltic Shipping Co.*, 99 F.3d 690, 692 (5th Cir. 1996) ("we will not find an abuse of discretion unless the district court's factual findings are clearly erroneous . . . ."). A lower court abuses its discretion if it: (1) relies on clearly erroneous factual findings; (2) relies on erroneous conclusions of law; or (3) misapplies the law to the facts." *McClure v. Ashcroft*, 335 F.3d 404, 408 (5th Cir. 2003).

The trial court declined to apply judicial estoppel to Petitioner's injury claim based on the "totality of the [equitable] circumstances" in accordance with the deference afforded a trial court **sitting in equity**. (Appendix G, p. 26a). The trial court cited the *Woodard* District Court case as forming the "general parameters" of its decision.[1]

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[1] *Woodard v. Taco Bueno Restaurants, Inc.*, 2006 WL 3542693 (N.D. Tex. Dec. 8, 2006).

(Appendix G, p. 28a). The *Woodard* Court confronted a debtor's failure to report a claim to the bankruptcy court that arose two years after confirmation of the debtor's Chapter 13 Plan, where the debtor's estate was revested in the debtor on confirmation. Like the *Woodard* debtor, Petitioner's claim arose three years after confirmation of her Chapter 13 Plan and her estate was revested in Petitioner on confirmation. In declining to apply judicial estoppel, the *Woodard* Court held that it would not be equitable to dismiss the debtor's claim because there was substantial uncertainty under bankruptcy law on whether the debtor had a duty to report a claim arising post-confirmation where the debtor was revested with the estate.[2] These are the same facts as Petitioner's claims in the courts below.[3]

The Fourth Circuit's Opinion did not explain or even discuss how the trial court abused its discretion or how there was no rational basis for the trial court's decision. (Appendix C). The Court of Appeal did not even cite the *Woodard* decision that was the principal basis for the trial court's refusal to apply judicial estoppel. *Id.* The Court of Appeal Opinion did not describe or identify how the trial court relied on a clearly erroneous factual finding. *Id.* The Fourth

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[2] *Woodard*, 2006 WL 3542693, at *11-12.

[3] In declining to apply judicial estoppel, the trial court also held that the Defendants had not shown at trial that Petitioner's creditors would have been entitled to any proceeds from this suit because Petitioner's Chapter 13 bankruptcy had closed by operation of law seven years earlier. (Appendix F, p. 21a).

Circuit's Opinion did not describe or identify how the trial court relied on an erroneous conclusion of law. *Id.* The Court of Appeal did not describe or identify how the trial court may have misapplied the law to the facts. *Id.*

The complete failure to state how the trial court abused its discretion casts the Fourth Circuit's Opinion as arbitrary and constitutes a fundamental error of judicial review. This complete failure of proper appellate review has deprived Petitioner of her vested right to bring a claim for serious injuries she had no fault in causing. The Fourth Circuit's failures on appellate review did not "achieve substantial justice."[4]

2. Contrary to This Court's Instruction, the Court of Appeal Did Not Consider any Equitable Factors Relied Upon by the Trial Court in Denying Judicial Estoppel.

The trial court stated that its decision to deny judicial estoppel was based on the *Woodard*[5] District Court decision and other equitable factors:

> In addition, the failure to disclose a claim as part of the bankruptcy case doesn't necessarily create a *per se* inference of her intent to deceive.

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[4] *See Matter of Parker*, supra 789 F.App'x at 464 (judicial estoppel "should be applied flexibly, with an intent to achieve substantial justice").

[5] *Woodard v. Taco Bueno Restaurants, Inc.*, 2006 WL 3542693, at *11-12 (N.D. Tex. Dec. 8, 2006).

> My review of the jurisprudence makes this a discretionary call. And I think under the circumstances, on this issue I'm inclined to consider the totality of the circumstances. I think to deprive her of her right of action on the basis of judicial estoppel is a harsh remedy. In fact, it's the ultimate remedy.
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> I think *Woodard* provided the general parameters of what governs my decision. And in that case, the court found it wouldn't be equitable in such a circumstance to apply the judicial-estoppel doctrine to bar an individual from pursuing an undisclosed tort claim that did not arise until after confirmation of the debtor's Chapter 13 plan.
>
> ***
>
> But I'm concerned that the defendants haven't shown that the creditors necessarily would have been entitled to the proceeds had Plaintiff disclosed this lawsuit . . . until well after the confirmation of the Chapter 13 plan.

(Appendix G, 23a-28a).

This Court in *New Hampshire v. Maine* instructed lower courts to consider the facts and *equitable considerations* of *each individual case* before considering the application of judicial estoppel.[6] This Court cautioned against using a formulaic approach to applying judicial estoppel.[7] The Fifth Circuit has held that the intent of judicial estoppel is to "achieve substantial justice" and courts are not required to apply it even when the three elements necessary for judicial estoppel are present:

> [T]here is no per se rule estopping any party who fails to disclose potential claims to a bankruptcy court. The doctrine of judicial estoppel is equitable in nature, and **should be applied flexibly, with an intent to achieve substantial justice.** Because of the equitable nature of the doctrine, trial courts are *not required* to apply it in every instance that they determine its elements have been met.[8]

Even where the three elements of judicial estoppel are **present**, equitable considerations alone can justify not applying estoppel. Failure to disclose a claim as part of a bankruptcy does not create a *per*

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[6] *New Hampshire v. Maine,* 532 U.S. 742, 751 (2001).

[7] *Id.*

[8] *Matter of Parker*, 789 F. App'x 462, 464 (5th Cir. 2020)(bold; added italics in original)(internal quotations and citations omitted).

se inference of a debtor's intent to deceive or make a mockery of the legal system sufficient to warrant the application of judicial estoppel.[9] Instead, courts should consider the totality of the circumstances as part of their analysis in keeping with the principle that "equity eschews mechanical rules."[10] "When a plaintiff intended no deception, judicial estoppel may not be applied. If a court applies judicial estoppel to bar the plaintiff's claim absent such intent, it awards the civil defendant an unjustified windfall."[11]

There was no evidence introduced by Defendants at trial that Petitioner *intended* to deceive the bankruptcy court by not reporting claims that arose three years after her Chapter 13 Plan was confirmed. The trial court found no intent to deceive and considered "the totality of the circumstances" in declining to apply estoppel (Appendix G, 26a).

The Court of Appeal disregarded these principles and dismissed Petitioner's claim based solely on a formulaic premise: "[t]hus, the three elements of judicial estoppel are met and the trial court erred in failing to grant Relator's Exception of No Right of Action." (Appendix C, 12a).

The Court of Appeal reversed the trial court but did not discuss, explain or even mention a single equitable consideration relied upon by the trial court

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[9] *Slater v. United States Steel Corp.*, 871 F.3d 1174, 1176 (11th Cir. 2017).

[10] *Id.* at 1187.

[11] *Id.*

in denying judicial estoppel (Appendix C). In fact, the word "equity", "equitable", or any derivative of equity is absent from the Opinion. *Id.* Even though the trial court cited and relied upon the *Woodard* District Court decision, the Court of Appeal did not cite it, discuss it or distinguish it in its opinion. *Id.* The Court simply ignored *Woodard*. *The complete failure of the Court of Appeal to review any of the equitable considerations relied upon by the trial court is error and a gross departure from the principles this Court established in New Hampshire v. Maine.*

3. Petitioner's Claim was Dismissed Even Though There was "Uncertainty" on the Duty to Report the Claim.

A significant equitable consideration ignored by the Court of Appeal was that at the time of Petitioner's bankruptcy in 2012, there was uncertainty on the duty to disclose claims that arose post-confirmation in a Chapter 13 case, where the debtor's assets were revested in the debtor.[12]

Under a Chapter 13 bankruptcy, unless the confirmation order or the plan provides otherwise, upon confirmation, *all* property of the bankruptcy *estate vests in the debtor "free and clear of any claim or interest of any creditor provided for by the plan*."[13] 11 U.S.C. §1327(b) (emphasis added). However,

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[12] It is undisputed that Petitioner's Chapter 13 confirmation order revested the estate in Petitioner.

[13] 11 U.S.C. § 1327(b).

Section 1306(a) of the Bankruptcy Code conversely provides that estate property includes all property acquired post-petition through the time the case is dismissed, closed, or converted.[14] Section 1306(a), therefore, is at odds with Section 1327(b), that vests all property in the debtor free and clear after confirmation of the Chapter 13 Plan. This contradiction was summarized by the *Woodard* Court, a decision cited to and relied upon by the trial court in declining to apply judicial estoppel.[15]

One year after Petitioner's Chapter 13 Plan was approved, the Fifth Circuit acknowledged that it was "uncertain" whether a Chapter 13 debtor (like Petitioner) revested with her estate had a duty to report post-confirmation claims:

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[14] 11 U.S.C. § 1306(a).

[15] The *Woodard* Court observed:

> These two sections create a contradiction as to the proper treatment of a debtor's assets acquired after confirmation. Section 1306 seems to indicate that the bankruptcy estate continues in existence until the case is closed, dismissed, or converted, and all assets acquired by a debtor during this time are the property of the estate if those assets are of the kind specified in section 541 ("§ 541 assets"). On the other hand, section 1327 clearly indicates that all property in the bankruptcy estate at confirmation is vested in the debtor free and clear of any claims.

Woodard, *supra* 2006 WL 3542693, at 5.

> It may be ***uncertain*** whether a [Chapter 13] debtor must disclose assets post-confirmation. That uncertainty arises from two provisions in the Bankruptcy Code, one suggesting that post-confirmation causes of action are "property of the estate" and the other hinting that such property is "vested" "in the debtor." That possible conflict, however, is irrelevant here. The latter provision vests property in the debtor unless otherwise specified by the confirmation plan—and here, the plan explicitly stated that the estate's assets would not revest in the debtor until discharge.[16]

The First Circuit has described the uncertainty as "a controversial issue in itself."[17] The uncertainty

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[16] *In re Flugence*, 738 F.3d 126, 129 (5th Cir. 2013) (emphasis added). The Fifth Circuit did not decide the issue in *Flugence* because the debtor had not been revested with the estate. District Court cases aside from *Woodard* have declined to apply judicial *estoppel* in part due to the uncertainty on the duty to report post confirmation claims. *See e.g., Gilbreath v. Averitt Exp., Inc.,* 2010 WL 4554090, at *9 (W.D. La. 2010)("while the duty to disclose was clear in the Chapter 7 cases…there is considerable debate over whether Chapter 13 debtors must disclose assets acquired post-confirmation").

[17] *See Barbosa v. Doreen*, 235 f.3d 31, 36 (1st Cir. 2000) ("the status of the property of the [bankruptcy] estate after the confirmation of a chapter 13 plan is a controversial issue in itself").

regarding the duty to report revested post-confirmation claims continued until well after Petitioner's bankruptcy had closed by operation of law in 2017.

The uncertainty on the duty to report claims that arose post-confirmation was reflected in the Order entered in Petitioner's bankruptcy when Petitioner's Chapter 13 Plan was confirmed. The 2012 Order stated a duty to continue to report on existing or known claims. The Order also stated a duty to report on "proceeds" received from lawsuits, but did not impose a duty to report revested claims that arose post confirmation, but that had **not** generated proceeds.[18]

Petitioner's bankruptcy lawyer testified by Affidavit on the trial of the Exception. Petitioner's counsel testified that the 2012 bankruptcy Order did not address the situation faced by the Petitioner: claims arising 3 years after confirmation of her Plan, but where the claims had not generated "proceeds."

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[18] The 2012 Order provided:

> 7. That all ***proceeds*** from the sale of property, ***proceeds*** from lawsuits or settlements, or tax refunds payable to the debtors shall be turned over to the Trustee for administration.
>
> 8. That the debtor shall provide to the Trustee at least every six months until the case is closed, a report on the status of any **pending** or **potential** lawsuit in which the debtor is or may be a plaintiff.

(Appendix E emphasis added.)

In fact this suit has never generated proceeds because it has yet to be tried. The failure of the 2012 Order to address the reporting of claims that arose post-confirmation but that had not generated "proceeds," directly aligns with the uncertainty noted by the Fifth Circuit in *Flugence* a year **after** the Order was entered.

The Court of Appeal's Opinion does not even address this uncertainty in the law and/or the trial court's reliance on the *Woodard* decision. Considering the uncertainty extant in the law, application of judicial estoppel to Petitioner's claim is an obvious injustice to Petitioner and a windfall for Defendants. Moreover, as noted by the *Woodard* Court, "[t]o impose judicial estoppel against one whose duty is unclear would violate a fundamental principle in our jurisprudence: people are entitled to fair notice of what the law is before being held accountable under it [*citing* U.S. Const. amend. V]."[19]

The *Woodard* decision, and the *Gilbreath,*[20] and *Byrd*[21] cases that followed it, had facts similar to if not identical to Petitioner's claim. In those decisions, the claims arose two or three years after plan confirmation and the debtor was revested with the estate. Given the uncertainty on the duty to report the claims, all three courts declined to invoke estoppel. Further, the debtor's failures to disclose

[19] *Woodard, supra* 2006 WL 3542693, at *11-12.

[20] *Gilbreath v. Averitt Exp, Inc.*, 210WL 4554090 (W.D. La. 2010).

[21] *Byrd v. Wyeth, Inc.*, 907 F.Supp. 2nd 803 (N.D. Miss. 2012).

their claims **were different** from most Fifth Circuit cases estopping a plaintiff's claim, because the Fifth Circuit cases involved plaintiffs whose causes of action were ***known prior*** to bankruptcy.[22] Because the causes of actions were known, the Plaintiff-debtors in those cases **knowingly** made false statements denying the claims when they filed their bankruptcy schedules. *All of the cases relied upon by the Fourth Circuit Court of Appeal, involved known claims existing at the time the bankruptcy was filed*[23]

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[22] *See Gilbreath, supra* 2010 WL 4554090, at *9.

[23] The Fourth Circuit Court of Appeal cited:

Coastal Plains, Inc. v. MIMS, 179 F.3d 197, 210 (5th Cir. 1999): Chapter 11 case where debtor made false declarations in Schedules.

Love v. Tyson Foods, Inc., 677 F.3d 258, 261 (5th Cir. 2012): Cause of action arose before bankruptcy and was not disclosed in Schedules.

LeJeune v. Turner Indus. Grp., LLC, Civil Action No: 11-1238, (E.D. La. Apr. 3, 2012): Debtor aware of cause of action before bankruptcy.

In re: Superior Crewboats, Inc., 372 F.3d 330, 335 (5th Cir. 2004): Debtor aware of cause of action before Chapter 7 bankruptcy.

Loyd v. Harrah's Shreveport/Bossier City Holding Company, LLC 2005 WL 3113028 (W.D. La. 2005): Debtor's cause of action pursued by debtor before the filing of a Chapter 7 bankruptcy.

Jethroe v. Omnova Solutions, Inc., 412 F.3d 598, 599 (5th Cir. 2005): Chapter 13 debtor did not disclose a cause of action that arose several months prior to bankruptcy.

or involved different facts because the plaintiff *was* ***not*** *revested with her estate.*[24] All of those cases present different facts than Petitioner's case. Once again, the Court of Appeal ignored this Court's instruction in *New Hampshire v. Maine* to consider the "specific factual contexts" of each case when applying judicial estoppel.

The *Gilbreath* District Court held that the failure to disclose a claim that arose three years after confirmation (like Petitioner) was "less egregious" than where the debtor made affirmatively false statements in their original bankruptcy schedules.[25] Under facts identical to Petitioner's claims, the District Court in *Byrd* declined to apply judicial estoppel:

> In addition to the fact of the unresolved debate – at least unresolved by the Fifth Circuit – over whether Chapter 13 debtors must disclose assets acquired post-confirmation, also ***weighing against estoppel was the***

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[24] The Fourth Circuit Court of Appeal cited:

> *Flugence v. Axis Surplus Ins. Co. (In re Flugence)*, 738 F.3d 126, 129 n.1 (5th Cir. 2013): False statements made when the Chapter 13 Plan was amended; debtor was not revested with the estate.
>
> *United States ex rel. Long v. Gsdmidea City, L.L.C.,* 798 F.3d 265 (5th Cir. 2015): Chapter 13 debtor was not revested with estate on confirmation.

[25] *Gilbreath, supra* at p. *9.

> ***fact that the plaintiff had made no affirmative false statements but had instead failed to amend her initial schedule of assets to disclose a claim that arose three years after confirmation.***
>
> ***
>
> The facts in this case at bar are indistinguishable from those in *Woodard* and *Gilbreath*, and this Court, as were those courts, is ***firmly of the view*** that it would be inequitable to bar plaintiff from pursuing her claim.[26]

The *Woodward, Gilbreath* and *Byrd* decisions were not even cited by the Louisiana Fourth Circuit Court of Appeal. For the Court of Appeal to find that the trial court abused its discretion, it would have had to, at a minimum, cite the *Woodard* decision. *Woodard,* however, is absent from the opinion causing the Opinion to be fatally flawed.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

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[26] *Byrd*, *supra* 907 F. Supp. at 807 (emphasis added).

Respectfully submitted:

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