25-5182

No. 25-

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RONDA MELNYCHUK-BESELT - PETITIONER

vs.

WALDORF=ASTORIA MGT LLC - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

INTERMEDIATE COURT OF APPEALS HAWAI`I

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. Novel Questions

1. Whether the Court violated foreign Petitioner's Fourteenth Amendment rights of the United States Constitution during an attorney only telephone status conference call, instructed in its minute order that Petitioner sign Respondent's blank medical and employment authorizations which violated her foreign country's health information laws requiring providers to redact third party information instead of requesting she obtain the discovery and provide it to Respondent as per established law?

2. Whether under the 14th Amendment the Court violated due process when it unfairly and severely sanctioned foreign Petitioner and arbitrarily "cut off" her ability to produce her medical and employment records six months before the discovery deadline making it effectively impossible to prove her damages, without prior notice or an opportunity to be heard, or any warning of sanctions, based only upon a minute order directing Petitioner to violate her country's laws, but not obtain her own records, and the subsequent medical records produced directly to Respondent by the foreign providers had redacted third party information in compliance with said country's health information laws?

3. Whether under the 14th Amendment the Court erred when it granted her counsel's withdrawal on the eve of trial then failed to allow disabled pro se Petitioner, a Canadian resident, ADA accommodations and guardian ad litem, further denying her verbal and written requests for time to obtain counsel, when the Court had been provided several of Petitioner's medical expert reports and a medical letter that opined Petitioner suffered from significant psychological and physical injuries, and could not represent herself thus resulting in Respondent fraudulently and unduly influencing and coercing an extremely unfair alleged

"settlement agreement" on Petitioner, who lacked capacity to contract, thus depriving her of her liberty and property rights?

PARTIES TO THE PROCEEDING

Petitioner-Appellant Ronda Melnychuk-Beselt is the only remaining Plaintiff.

Respondent Waldorf=Astoria Management, LLC. is the only remaining Defendant.

- *Beselt et al., v. Waldorf=Astoria Management, LLC. et al.*, SCWC-21-0000463, Petition denied. Entered on March 19, 2025.

- *Beselt et al., v. Waldorf=Astoria Management, LLC. et al.*, CAAP-23-0000695, Intermediate Court of Appeals, pending judgment.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Ronda Melnychuk-Beselt ("Beselt") respectfully petitions for a writ of certiorari to review the judgment of the Intermediate Court of Appeals of Hawaii.

OPINIONS BELOW

The Intermediate Court of Appeals ("ICA") opinion under review (App. 1a- 9a) is unpublished but available at 155 Hawaii 178 (2024). All lower reports of the courts are attached hereto in Appendix.

JURISDICTION

The ICA entered judgment on October 21, 2024 and denied Plaintiff-Appellant's Motion for Reconsideration on November 11, 2024. Plaintiff-Appellant filed an Application for Writ Certiorari on January 22, 2025 and the Hawaii Supreme Court rejected the application on March 19, 2025 (App. 25a). This petition is being filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C § 1254(1).

The Intermediate Court of Appeal's failure to find the lower Court's erroneous rulings to be in facial violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution also serves as the basis of this appeal and thus confers jurisdiction on this Honorable Court.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case presents novel questions for this Court to review regarding foreign law and the Courts deprivation of Petitioner's 14th Amendment equal protection and due process rights. Petitioner asks this Court to exercise its supervisory authority to correct decisions that clearly conflict between a foreign jurisdiction's health information laws and the lower court's incongruent decisions of this Court regarding federal Due Process and Equal Protection of law.

Even a foreign party to a lawsuit in the United States should be provided equal protection and due process of the law. Without this Courts' intervention all foreigners in lawsuits in the United States risk having their fundamental 14th Amendment rights violated as Petitioner has had in the Hawai`i courts. Just because the Courts are out in the middle of the Pacific does not exclude them from following the rule of law and

The Beselts and their young children, 2 and 4 years of age, simply went to Hawaii on a family vacation in December 2014 which changed their lives. What should have been a lovely memory making vacation turned into a nightmare for the family for now more than 10 years. On January 7, 2015, while standing on a public beach fronting the Waldorf=Astoria hotel and resort ("Waldorf"), playing with her children in the sand, Ms. Beselt was harpooned in the head by one of the resorts unsecured ~ 20 lbs cabana umbrella, owned and operated by Waldorf, at an approximate speed of 40-60 mph. This is the start of the horror that Ms. Beselt and her family have faced through the judicial system in Hawaii.

Ms. Beselt and Mr. Beselt, then spouse to Petitioner, realizing the seriousness of her injuries from the umbrella, returned to Canada the next day after a stay in the Maui Memorial Hospital. She required extensive treatment in an attempt to improve her brain injury, spinal injuries, neurological deficits, visual injuries, etc. and psychological harm that had resulted from the harpooning weapon negligently and carelessly placed in the sand. Waldorf had a long history of injuring people with those umbrellas, and not only did their head of Security, on

behalf of the hotel, admit liability, punitive damages were likely in a Court who followed basic due process of the law in its proceedings. This is where the Second Circuit Court in Maui lacked fairness and discriminated against Petitioner based upon her national origin and foreign health laws.

Ms. Beselt, a clinical social worker, was off work from her long time employer, Alberta Health Services, more than three years due to her injuries, and in 2016 realized she needed to file suit as her medical and psychological expenses were extensive. Given the years long wait time in Canada, she required medical intervention by way of triple spine surgery in Germany in 2017 to replace 3 of the 6 herniated discs in her neck and lumbar with further surgeries required in the future. She was sent home to Canada in late July with sepsis and nearly died. After several months of hospitalization and daily antibiotic treatments, Ms. Beselt survived but with significant permanent injuries which treatments remain extensive, in excess of a half a million dollars.

The legal matters which began in late 2016 have not abated due to the Court's hot tempered and short fused abuse of discretion, willful disregard for Petitioner's due process and equal protection rights, denial of her ADA accommodations and request for assistance under HRCP Rule 17(c) and extreme bias against a foreigner based on her national origin and reluctance of comity for foreign law.

This application for petition of writ of certiorari follows.

STATEMENT OF THE FACTS

On December 2, 2016, Canadian Petitioner filed her complaint against Respondent Waldorf and the Department of Land and Natural Resources that on January 7, 2015, while Petitioner and her family were vacationing in Maui, one of Waldorf's unsecured beach umbrellas at its resort came loose with a gust of wind and harpooned Petitioner in the head, causing significant brain and other permanent damage, including necessitating spinal surgeries, brain injury rehabilitation, visual training, hospitalizations, etc. Petitioner's wage loss and future earning capacity remain significant. Petitioner filed her First Amended

Complaint on January 6, 2017. Due to Petitioner's poor health and requiring urgent spinal surgery, with Respondent's consent and agreement, discovery was put on hold until Petitioner could actively participate.

While Petitioner was in Germany in the summer of 2017 having triple spine surgery, due to the blow to the head and body, it was later discovered that her former counsel, Bickerton Dang LLP forged medical and employment authorizations and provided them to Respondent. Many months of improper, without consent, medical information retrieval by Respondents of not only Petitioner but her family members medical information as well, created significant apprehension for the Canadian medical providers and Petitioner's employer, Alberta Health Services.

In an effort to correct the errors, Petitioner, once out of hospital, as requested by her attorneys, signed authorizations in January – February 2018 which requested the providers and/or custodians of records to follow foreign law and redact third party information.

The Health Information Act of Alberta states, "**Right to Refuse Access to Health Information**

> 11(2) A custodian *must* refuse to disclose health information to an applicant
>
> (a) If the health information is about an individual other than the applicant..."

The Health Information Act ("HIA") of Alberta further states, "**Duty to protect health information**

> 60(1) A custodian must take reasonable steps in accordance with the regulations to maintain administrative, technical and physical safeguards that will
>
> (a) protect the confidentiality of health information that is in its custody or under its control and the privacy of the individuals who are the subjects of that information,

> (b) protect the confidentiality of health information that is to be stored or used in a jurisdiction outside Alberta or that is to be disclosed by the custodian to a person in a jurisdiction outside Alberta and the privacy of the individuals who are the subjects of that information,
>
> (c) protect against any reasonably anticipated (i) threat or hazard to the security or integrity of the health information or of loss of the health information, or (ii) unauthorized use, disclosure or modification of the health information."

Appx. F at 30a- 31a.

Because of the damage the Bickerton Dang firm created Petitioner and Mr. Beselt retained Michael Jay Green, Glenn Uesugi, and Peter Hsieh in early 2018 to expeditiously obtain discovery. That did not happen, of no fault of Petitioner but the lawyer's schedules. At this point, Petitioner had supplied nearly 1000 pages of her medical records to Respondent but was told to stop as Respondent wanted to get the records themselves and the parties would split the cost.

At the July 2018 Status Conference 13 minute telephone call where only attorneys attended, the Court, when hearing Respondents complaints regarding the challenges with obtaining foreign medical and employment records and the laws noted above, *sua sponte*, demanded Petitioner sign Respondents blank authorizations leaving the "To:" line blank, hence without knowing whom Respondents would be sending the authorization to, leaving her unable to revoke the authorization if she so choose, and thus violating foreign laws when it stated in its online electronic minutes, "PLAINTIFF HAS 10 DAYS TO EXECUTE RELEASES AND THERE WILL BE NO REDACTIONS." Because the line was left blank for Respondents to fill in any location or provider they decided, Petitioner could not provide informed consent, pursuant to Sec. 34 HIA, another requirement of her foreign country when releasing her confidential medical information.

These actions by the Court clearly violated not only HIPAA laws but HIA as well. Instead of the Court requesting Petitioner to

obtain her records and provide them to her attorneys to give to Respondents, as is well established law, the Court ordered Petitioner to violate her own laws. The Court later severely sanctioned her for following his court minutes as doing such the providers that did release the medical information followed the laws and redacted third party information even with Respondents blank authorization instructing them not too. Because they are legally required to protect the health information pursuant to Sec. 60(1) HIA.

Finally, after months of further stalls since Respondent had difficulties obtaining the records, as per the foreign law, and Petitioner was directed not to obtain her own records for fear of being accused of interference, Waldorf filed a motion to compel on January 14, 2019. Trial was set for September 30, 2019 and discovery cut off was August 1, 2019, later moved to September 1, 2019. There was plenty of time for discovery.

In response to the Motion, Petitioner, for the first time was able to provide to the Court extensive information on the foreign laws, the HIA statute, the requirement to redact the medical information of nonparties to the lawsuit, her children, and by that time, Mr. Beselt. In her memorandum in opposition, Petitioner provided more than sufficient material regarding the forging of the authorizations, a General Counsel for Alberta Health Services letter stating that they had no choice but to redact information as is the custodians and medical and employment providers responsibility to comply with the foreign law.

Three days prior to the hearing, Respondents filed a Reply and attached to it was an unsigned alleged letter from her employer, Alberta Health Services ("AHS") with no declaration as to its authenticity, produced by Respondents which indicated that Petitioner had requested third party redactions to her medical records and they could not send out the remaining file. The letter was incorrect and there was no proof when this supposed act took place.

Petitioner had no opportunity to respond to the letter, no opportunity to be heard in a meaningful manner and in a meaningful way, and no warning of sanctions since it was a

motion to compel and Respondents had only requested that Petitioner now provide her records within 30 days. The Court ignored all reference to the foreign laws and abruptly ended Petitioner's discovery. The Court at the July 2018 Status Conference had not requested that Petitioner obtain her records and provide them to Respondents, just the opposite. Petitioner complied with the Courts direction and signed the blank authorizations which violated her rights in her own country. There was no warning that Petitioner would be sanctioned for the foreign providers following their foreign law. It was ordered that Petitioner could provide no further discovery. This left Petitioner with the inability to prove her damages only case since the Waldorf had admitted liability. It was a sanction by ambush.

The lower Court, in its customary quick tempered fashion, sought further sanctions and harm to Petitioner, and although Respondent had most of Petitioner's employment records already but did not offer this information to the Court, *sua sponte* held that Petitioner's wage loss and future earning capacity, in excess of 2 million dollars, was barred from recovery. The Court was determined when it stated at the February 13, 2019 motion to compel hearing, "[C]lients who attempt to manipulate the Court, the other counsel, and their own attorneys to make their own decisions, their cases go away." The prejudice, discrimination, and clear bias was evident right from the start. Petitioner had only signed the blank authorizations that Respondent requested and the Court directed.

At the May 8, 2019 hearing on Petitioner's motion for reconsideration, although Petitioner flew from Canada to Maui to hand deliver a suitcase of the remaining records, which the Court violated his previous order and directed her to give the records to Respondents, still denied Petitioner the ability to rely or use those records at trial. At the second hearing two weeks later, the Court again, was not finished erroring in his rulings, and decided to limit all of Petitioner's experts from reviewing her records and testifying to them at trial effectively barring all expert testimony. Hence, Petitioner's attorneys at the Green firm decided it was time to withdraw and did so a week later.

At the July 19, 2019 hearing on the motion to withdraw, Plaintiff stressed to the Court, "Sir, I have had a brain injury. I'm doing the best that I can given my symptoms and my ongoing therapy. I have daily therapy still now because of this. I'm doing the best I can. I can't possibly represent myself." Petitioner's long time physician's February 25, 2019 medical opinion letter filed with the Court only 4 days earlier, supported the need for ADA accommodations and assistance from the Court along with Respondents filing nearly all of Petitioner's medical expert reports, the month prior, which used all the records to opine that Petitioner was seriously and catastrophically injured by the flying umbrella. The Court denied Petitioner's request to reschedule the pending September 2019 trial or allow Petitioner time to find counsel, or to be provided a guardian ad litem under the HRCP Rule 17(c). Petitioner also filed a motion requesting a continuance and an *ex parte* request to advance the hearing, but to no avail. The Court allowed Petitioner's counsel to withdraw because the case's value had substantially decreased, leaving seriously injured Petitioner to fend for herself.

Respondents in a flurry to pressure and unduly influence Petitioner, as she looked for counsel to no avail given the status of her case, giving her about 3 hours late at night on August 5, 2019, coerced her into emailing that she would accept their settlement offer which was less than half of her medical expenses. The next day, Respondents would not allow Petitioner, who lacked capacity at that time to contract given the sexual assaults by her attorney, Mr. Hsieh while he represented her, and her injuries, to back out of the late night email nor make all of the changes to the settlement agreement so that she could sue her previous attorneys for legal malpractice. Respondents told her sign their settlement or they were taking it to Court the next morning and the Court would force her to sign it.

The early morning settlement conference the next day, on August 7, 2019, Petitioner, unrepresented, bridged in from Canada by Respondents, informed the Court, "I wasn't able to follow what Ms. Napier said. I'm assuming that she just read the document that I signed last night?" The Court, again, showed no interest or concern for Petitioner or whether she even heard what was being said, understood what was being said, and

agreed to be bound by what was being said and read into the record as the terms and conditions of an agreement Plaintiff allegedly was ageing to.

In December 2020, the Court dismissed the case for no activity. Petitioner, finding this out, in January 2021, hired counsel who brought to the Court's attention the predator relationship that Petitioner's lawyer, Hsieh, had forced on her during his representation, that Petitioner lacked capacity to contract and attempted to overturn the alleged settlement. In 2023, numerous medical reports were placed on the record of medical experts that opined Petitioner lacked capacity to contract in 2019 but to no avail. As was evident from the beginning, the Court was determined to deny Petitioner her 14th Amendment due process and equal protection Constitutional rights.

REASONS FOR GRANTING THE PETITION

I.

This Court is the final arbiter of federal constitutional law, unless one of the states determines to extend greater protections to the individual. In contrast, especially when it concerns federal Due Process rights in civil cases, the Hawaii courts either ignore the precedents of this Court or it grossly abuses it's discretion believing its King of the Court inherent authority can violate a foreign litigants rights to Due Process and Equal Protection.

This Court in the early Twentieth Century in numerous cases began analyzing Due Process substantively (laws that are an affront to liberty) and procedurally (fair notice, fair hearing), depending on the facts of the case.

This Court has previously held that civil litigants regardless of national origin are protected by federal constitutional laws such as due process as filing a lawsuit confers upon the Court personal jurisdiction of the parties. *See Hellenic Lines Ltd. v. Rhoditis*, 398 U.S. 306 (1970); *also see Boumediene v. Bush*, 553 U.S. 723 (2008) (even alien enemies held at Guantanamo Bay have protection under the 5th and 14th Amendments.) However, Petitioner was not provided this same fundamental right when

she brought suit in the Maui court as is evidenced above.

Furthermore, the Court incorrectly abused its discretion and Petitioner's due process rights of fairness and equal protection when, at a 13 minute telephone Status Conference call, instructed in its Court Minutes, ""PLAINTIFF HAS 10 DAYS TO EXECUTE RELEASES AND THERE WILL BE NO REDACTIONS." These blank authorizations Respondents requested of the Court to instruct Petitioner to sign violated her Foreign Health Laws. As directed by the court minutes, Petitioner signed Respondent's blank authorizations for her medical and employment information and records retrieval which failed to provide informed consent and without knowing which providers Respondent was obtaining her and her families confidential information. Without a Hearing, any Notice or Any Interest in Complying with Foreign Law the Court instructed Petitioner to violate her foreign country's Health Information Act and Privacy Laws (similar to HIPAA) which later caused significant discovery problems but which the Court then severely sanctioned Petitioner for her compliance.

To note, Sec. 34(1) .HIA states, "[A] custodian *may* disclose individually identifying health information to a person other than the individual who is the subject of the information *if* the individual has consented to the disclosure." Here, Petitioner could not have consented as she was directed by the Court to sign a blank authorization for Respondents without entering a name of a provider and a three year window to gather her records from 2005 to present. One cannot consent if they do not know who is obtaining her medical information which is standard on every HIPAA authorization form as well in the U.S.

It is "well settled that a foreign blocking statute does not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate the statute." *Societe Nationale Industrielle Aerospatiale v. U.S. District Court*, 482 U.S. 522, 544 n. 29 (1987). Had the Court held that Petitioner was to produce the discovery requested in line with case law, then no violations would have existed. By the rules of comity between nations, the courts of one state will voluntarily enforce the laws of a friendly state or nation when, by such enforcement, they will not violate

their own public policy or laws or injuriously affect the interests of their own state or of their own citizens. *Disconto Gesellschaft v. Umbreit*, 127 Wis. 651*; 106 N.W. 821 (1906). However, that is not what the Court determined nor did it consider Petitioner's foreign laws.

As a matter of comity, the relevant factors for the Court to consider in balancing principles includes: (1) the importance to the litigation of the discovery requested; (2) the degree of specificity of the request; (3) whether the information originated in the United States; (4) the availability of alternative means of securing the information; and (5) the extent to which non-compliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located. *Consejo De Defensa Del Estado De La Republica de Chile* 2010 WL 2162868 (unpublished)(citing *Societe* at 544 n. 29.) Here, the Court never considered that his oral direction violated foreign law and what the repercussions for Petitioner would be. The Equal Protection Clause mandates that states cannot deny any person within their jurisdiction equal protection under the law. However, in this personal injury litigation, Petitioner's equal protections under the law and liberty and property rights were inconsequential to the Court.

This Court has never addressed the precise question whether a state court can direct a foreign litigant to violate its own foreign countries laws, not by obtaining their own records and evidence, which Petitioner offered to do, but by signing away their foreign rights to their confidential medical and employment information without giving informed consent to release the information and without knowing what information was being released. In complying with the direction of the Court, it later caused further material problems with discovery in the Hawai`i litigation which the Court then sanctioned Petitioner for without due process.

II.

Second, the State Court's decision is in direct conflict of Petitioner's 14th Amendment Due Process Rights when as a

sanction "By Ambush" Without Notice, Without Warning, and Without Providing a Meaningful Time to Be Heard, completely cut off Petitioner's right to obtain discovery 6 months prior to the discovery deadline due to her Canadian providers following their Foreign Laws when they sent redacted Third Party Information in Petitioner's records directly to Respondent in compliance with Foreign Law.

The Motion to compel hearing was just that, to compel, not to sanction. No previous order had been issued to Petitioner that her record retrieval, necessary to prove her damages only case, would be immediately cut off. The Court took away Petitioner's wage loss claim when Waldorf had almost all the employment records, some of which they hid from Petitioner and her counsel. None of Petitioner's employment records were redacted. The court had evidence before it that it was Waldorf who had been playing discovery games, not Petitioner. At his first hearing, the Court was made aware of the foreign laws and the custodians obligations. The Court violated Petitioner's 5th and 14th Amendment rights when it ruled that Petitioner had "initially" obstructed discovery based on Exh KK, supposedly issued by Petitioner's employer, only produced after Petitioner's opposition, and a few days prior to the hearing leaving no time for her to respond. The Court continued to error in its Motion For Reconsideration hearings on 05.08.19 and 05.24.19 when it ordered Petitioner to give nearly 6000 pages of her medical records to Respondent, which it ruled she could not use, then limited her experts testimony further as more punishment for bringing the records that she had offered to get in 2018.

"No person can be deprived of life, liberty, or property without due process of the law." U Const. amend. XIV, § 1. Due process requires that Petitioner be allowed to defend herself, be provided an opportunity to be heard in a meaningful time and meaningful manner. This right was not afforded to Petitioner at the 2.13.19 Motion to Compel hearing. The facts were in dispute, Petitioner was the non-moving party but she received no deference. The court abused its discretion. Without any previous order, her record retrieval to prove her damages was cut off when there were 6 months left before the discovery deadline, Respondent suffered no prejudice as it received all the records, and the Court found no bad faith on the part of Petitioner. The Court, without

an evidentiary hearing, based on one alleged incorrect letter, which was only following the foreign law, rushed to judgment falsely accusing her of interference and ended her wage loss claim when she had produced nearly all of her employment records, but the court stated, "none were produced!" Further due process violations occurred when the Court at the Motion for Reconsideration hearings on 5.8.19 and 5.24.19 added more sanctions limiting Petitioner's experts reports, in some cases, to no review of her records at all. Without the records or experts reports and testimony, the discovery sanctions were dispositive, an extreme sanction, with no lesser sanctions considered.

Procedural due process requires that a person have an opportunity to be heard at a meaningful time and in a meaningful manner. *See Wolcott v. Admin. Dir. Of Courts,* 148 Haw. 407 (2020) The court relied on Exh KK, a no context, unsigned letter, produced for the first time in Respondent's Reply Brief. Petitioner did not have an opportunity to properly address this mistake only knowing about it 2 days before the hearing. The 9th Circuit has ruled, "[C]ourts typically do not consider new evidence first submitted in a reply brief because the opposing party has no opportunity to respond to it." *JG v. Douglas Cty. Sch. Dist.*, 552 F.3d 786, 803 n.14 (9th Cir. 2008). It was a sanction by ambush, with no prior warning, taking away Petitioner's property rights. The 7.20.18 court minutes directed Petitioner sign Respondent's blank releases, which she complied immediately.

On the Motion to Compel, the first discovery motion filed, the actions by the lower Court amounted to default judgment for Respondent. Appellant in *Shipman v. Hawaiian Macadamia Nut Co*, 8 Haw. App. 354 (1990) was severely sanctioned for discovery responses but which the ICA vacated and determined drastic measures of default judgment are authorized under FRCP 37(b)(2)(C) *only in extreme circumstances*. There were no extreme circumstances nor was there any authority given or request for sanctions by Respondent. This Court in *Whittle v. Weber*, 243 P.3d 208 (2010), overturned an erroneous judgment, also ruling litigation ending sanctions were to be used only in extreme circumstances. Taking away Petitioner's ability to produce her remaining records, severely limiting her experts reports and testimony, and dismissing wage loss over 2 million,

were litigation ending sanctions which violated due process. Petitioner should have been ordered to produce the records, as Respondent motion requested, and she fully complied with all of her unredacted records by May 2019, well before the August 1, 2019 discovery deadline.

In *Weinberg v. Dickson-Weinberg,* 123 Haw. 68 (2010) the court reversed the ICA's decision as the lower courts pretrial deadline sanction was dispositive. The wife in this case, similarly to Petitioner, had not acted willfully or in bad faith. In *Lang v. Rogue Valley Med. Ctr/ Asante*, 361 Or. 487 (2017), the lower court *orally ordered* counsel to file an amended complaint within ten days but when it was not done, the court dismissed the case. This Court reversed because the lower court did not consider lesser sanctions and there was no willfulness in the noncompliance, similar to Petitioner's case when it orally ordered her to violate her foreign health laws by signing blank authorizations for Respondent.

Additionally, in *Teter v. Deck,* 174 Wash.2d 207 (2012), this Court held that striking the expert witness as a discovery sanction after the claimants missed several discovery deadlines, resulted in an abuse of discretion as no willfulness was found nor lesser sanctions considered. A new trial was ordered. Lastly, this Court ruled that the unlawful seizure of property without a meaningful opportunity of being heard in *Davis v. Bissen*, 154 Haw. 68 (2024), violated due process. Although the court did not seize Petitioner's property, it similarly took her property rights away by turning a Motion to Compel into a dispositive ruling, effectively ending her case. Thus leaving Petitioner's a bench trial that could *not* be heard on the merits.

Due process finds its inception in the Magna Carta, as it is the bringing of the charge by a sole Court, without sufficient notice or evidentiary standards, that offends traditional notions of liberty in an organized civil society. If the State Court can flippantly deny due process and equal protection to Petitioner so casually, it can be done to any foreign litigant attempting to obtain justice in the United States.

III.

The State Court knowingly denied Petitioner her ADA accommodations and 14th Amendment Due Process when she notified the Court she needed counsel, was in daily therapy for her Brain Injury, and could not represent herself due to her catastrophic injuries when it denied pro se Petitioner a stay to find counsel. Less than three weeks later the Court approved an alleged "settlement agreement" for less than 1% of the value of the case, coerced by Respondents late at night, when Petitioner notified the Court she could not understand the proceedings, the Court completely disregarded its minimum mandatory Federal Due Process as set forth by this Court.

The Court knew of Petitioner's serious injuries. It had five of Petitioner's recent expert reports filed by Respondent within the 3 weeks prior to the 7.19.19 motion to withdraw hearing. At the hearing, Petitioner reminded the Court she had a brain injury, was not an attorney, and could not represent herself. Instead, the court allowed Petitioner's attorneys to abandon her when they destroyed her case, knowing Hsieh lied at the hearing that Petitioner had new counsel. This is especially egregious given Hsieh's sexual assaults on Petitioner during his representation of her. Furthermore, Petitioner had filed her GP's medical letter on 07.15.19 which also supported her inability to self represent. Lastly, Petitioner filed her 7.26.19 motion for a continuance, seeking counsel, wherein she declared, "I do not have many of the pleadings, filings or documents to represent myself pro se, nor do I have the education, ability or benefit of good health to represent myself." The Court failed to protect her, or provide her with a guardian ad litem pursuant to Rule 17(c) HRCP/FRCP or provide her any ADA accommodations. Petitioner, unrepresented, even told the Court, "I am not following what Ms. Napier said" at the 8.7.19 settlement conference call, indicating she lacked capacity to even understand the proceedings. But the Court was not concerned with Petitioner's liberty or property rights- a case that was valued in the millions ended with an alleged settlement of half of Petitioner's medical expenses over a late night demand to settle with an incapacitated unrepresented seriously injured individual. The alleged settlement must be voided.

It is a fundamental public importance to protect a permanently injured litigant and follow the laws provided for them, the

intended purpose of the ADA. As stated above, the Court was provided a great deal of evidence that supports Petitioner's lack of capacity claim. Given Petitioner's various injuries, including PTSD and anxiety, it is reasonable to believe that she was unable to represent herself at the 7.19.19 hearing due to lack of mental capacity and thereafter, including the alleged settlement on 8.5.19. Further proof was Petitioner's inability to "follow" the brief 8.7.19 settlement conference call. Instead of inquiring with Petitioner to see if she did understand the proceedings, the court replied, "I can't say anything further." Petitioner was vulnerable, she lacked capacity, and she needed the protection of the Court to prevent her from being unduly influenced by Respondent. The later filed report of PhD. Psychologist, Wagner emphasized that Petitioner did not possess the mental capacity and ability to knowingly, voluntarily, and intelligently enter into a contract with the defendants." Dr. Raffle's, forensic psychiatrist report also filed with the Court in 2023 emphasized that during the alleged settlement timeframe, "her competency to prudently judge her decision and execute it was markedly impaired."

Under Rule 17(c) HRCP/FRCP, "the court *shall* appoint a guardian ad litem for...an incompetent person not otherwise represented in an action or shall make such other order as it deems proper for their protection." This the Court did not do for Petitioner. In *Allen v. Calderon*, 408 F. 3d 1150 (2005) the Appellate court determined that the inmates sworn declaration, and a letter from a prison psychiatrist that he was under his care for mental illness and on medications was sufficient evidence to set aside the dismissal order. Here, the Court errored as it had substantial evidence, more than *Allen*, in 2019, 2021 and in the 2023 60(b) filing to have had a competency hearing, then, and reverse judgment, now. The Court *shall* protect Petitioner. At the 7.19.19 hearing, the Court should have ordered a hearing to determine if Petitioner was competent. *See Cyntje v. Gov't of the Virgin Islands*, 95 F.R.D. 430 (1982). It failed to do so again violating due process. "A Court abuses its discretion whenever it exceeds the bounds of reason or disregards rules or principles of law or practice to the substantial detriment of a party." *Kawamata Farms, Inc v. United Agri Prods.*, 86 Haw 214 (1997).

Furthermore, in the District Courts including the District of Hawai`i, measures are put into place with a Civil Pro Bono Panel for pro se litigants who are not able to represent themselves, regardless of lack of capacity. In *Abordo v. State of Hawai`i*, (2019), the District Court appointed *Abordo* with counsel because he had no legal education and his attempts were unsuccessful in filing a fulsome complaint in his civil rights matter. Here, Petitioner not only had no legal education, which she informed the Court, but she also suffers from permanent mental and physical injuries, which the court ignored, to her detriment. This cavalier disregard substantially violated Petitioner's liberty and property due process rights. The Courts error in law in failing to applying HRCP, Rule 17(c) has caused Petitioner substantial harm as her attorneys valued her case at $8.25 million (although the value is much higher than that). Without this Court's intervention, others may face the same fate as Petitioner.

It is imperative that this Court correct the incorrect and non-existent application of federal Due Process, Equal Protection, and ADA rights missing from the State Court's rulings and orders by vacating and remanding; otherwise, the ongoing Constitutional violations occurring in Hawai`i will not be abated and immaterial to justice in the island state.

CONCLUSION

The Petition for Writ of Certiorari should be granted. Petitioner respectfully submits that the Hawai`i State Courts errors are sufficiently egregious to merit summary reversal.

Respectfully submitted, this the 17th day of June, 2025.

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