No.

In The

SUPREME COURT OF THE UNITED STATES

SHIRLEY A. BOLTON ET AL.
Petitioner (s),

v.

CROWLEY, HOGE AND FEIN, *PC*
Respondent (s).

ON PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT OF COLUMBIA
COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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March 5, 2018

QUESTION(S) PRESENTED

1. Whether the District of Columbia Court of Appeals violate the Appellants' Pro Se Seventh Amendment Rights under the Constitution of the United States when it ruled that dismissal of their Breach of Fiduciary Counter Claim by the Superior Court of the District of Columbia abused its discretion (for the second time on appeal) could not be sustained (due to evidence material issues of fact and misapplication of governing laws governing breach of fiduciary duty of loyalty), and when they failed to remand the case for a jury trial?

2. Whether the DC Court of Appeals erred by ruling on an award without benefit of a jury finding on liability and its unprecedented holding to reverse its own ruling by a prior panel in this case, and that in conflict with decisions of the United States District Court of the District of Columbia, U.S. Courts of Appeals for other Federal Circuits, and the decisions of the Supreme Court, that the undisputed and legitimate public interest and policy issues the decision by the Appeal Court?

3. Whether the Court of Appeals for the District of Columbia's 2nd Panel's decision in this appeal creates a new legal precedence that not only creates a Panel to Panel conflict, an Intra-Circuit Conflict and an Inter-Circuit Conflict, authorizes attorneys who breach clients trust, confidentiality of client information, and resultant conflict of

interest by representing multiple parties at the same time that are adverse to each other, and sue them while still representing them, without notice or prior termination of their legal services, but allow them to profit from this disloyalty, and turn the legal rules of professional and ethical standards its head, opening the flood gates for future litigation, and whether this unlawful appeal decision merits summary reversal?

LIST OF PARTIES

Linda C. Bolton, Petitioner, Pro Se

Shirley A. Bolton, Petitioner, Pro Se

Dr. Vickie E. Neal, Petitioner, Pro Se

Petitioners were defendants/Counter claimants - appellants below.

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Respondents were Plaintiffs/Counter Defendants-appellees below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Pro Se Linda Bolton, Shirley Bolton and Vickie E. Neal (collectively, "petitioners") respectfully petition for a writ of certiorari to review the judgment to the District of Columbia Court of Appeals.

OPINIONS BELOW

The DC Court of Appeal's opinion subject to this petition is provided at (Appendix ("App.") 1a). A related opinion, *Bolton v. Crowley, Hoge & Fein, P.C.*, 110 A.3d (D.C. 2015) is reported (See App. 37a). The Order granting summary judgment is at App. 16a.

JURISDICTION

The District of Columbia Court of Appeals entered its judgment on June 2, 2017. This Court has jurisdiction under 28 U.S.C. § 1257 (b).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves civil litigants constitutional rights under the Fifth and Seventh and Amendments.

The Fifth Amendment states, in relevant part: "No person shall be...deprived of life, liberty, or property, without due process of law".

The Seventh Amendment states, in part:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."

STATEMENT OF THE CASE

Comes Now Petitioners Pro Se Linda C. Bolton, Shirley A. Bolton, and Vickie E. Neal to respectfully file application for a petition for a writ of certiorari with the United States Supreme Court.

The Petitioners Counterclaim for Breach of Fiduciary Duty of Loyalty derives from representation by the Crowley, Hoge and Fein, PC Law Firm (Respondents) to represent them in an American Arbitration Association Legal Malpractice case against their former attorneys who settled their toxic tort claims without their knowledge or consent. The representation by the Crowley, Hoge, and Fein, PC (CHF) law firm negligently failed to prosecute four of five of the Petitioners' arbitration claims, and yielded no recovery on the one claim they presented.

The Respondents brought legal action against Petitioners for alleged unpaid legal fees in two different jurisdictions while the firm was still representing Petitioners, and failed to withdraw the firm's representation prior to commencing legal action against them. Petitioners filed a counterclaim against CHF that, in part, included a Breach of Fiduciary Duty of Loyalty Counter Claim, which was dismissed on Summary Judgment by the trial court based on a misapplication of the law in an order issued by the trial court dated March 6, 2010.

REASONS FOR GRANTING THE PETITION

The questions presented are:

I. WHETHER THE DISTRICT OF COLUMBIA COURT OF APPEALS DECISION VIOLATED THE PETITIONERS' GUARANTEED PROTECTIONS UNDER THE SEVENTH AMENDMENT OF THE CONSTITUTION

The DC Appeals Court's decision to thwart the remedy authorized under the law concerning the breach of fiduciary duty claims of the Petitioners violates their constitutional right guaranteed under the Seventh Amendment of the U.S. Constitution to have their claims presented in Court and related remedy decided by a trier of fact.

The Trial Court's October 2, 2015 Order dismissing Petitioners' claims violated the Petitioners' Seventh Amendment-protected rights. The Seventh Amendment to the Constitution provides protections for individuals in the judicial system. The Seventh Amendment guarantees a jury trial in common law—consisting of centuries of judicial precedents—civil cases such as personal injury cases arising from car accidents, disputes between corporations for breach of contract, or discrimination and employment cases.

The parties in a civil trial have the right to have their case decided by a jury. In a civil case a plaintiff (who brings the suit) may obtain money damages or a court order preventing the defendant from engaging in certain conduct.

In addition to defining what kinds of cases require a jury, the Seventh Amendment highlights the jury's role as "fact finder," and it imposes limits on the judge's ability to override the jury's conclusions. Under the common law, the jury hears the facts and decides the verdict, and the judge sets the penalty based on the jury's findings.

Because the trial court dismissed the Petitioners claims where there were genuine issues of material fact raised to be decided by a jury, the affirmation by DC Appeal Court said order is not only at variance with the U.S. Supreme Court, and other Federal Appeals Courts, but is in violation of the D.C. Appeals Court's own precedents, and presents a genuine issue of denial of due process, *i.e.*, a right to be heard and to present evidence prior to adjudication of material issues of fact.

The Decision Below Violates Petitioners' Seventh Amendment Right To A Jury Finding Of Each Plaintiff's Damages.

The D.C. Court of Appeals' holding is also deeply misguided on the merits and irreconcilable with *this* Court's case law.

In suits subject to the Seventh Amendment— which include actions under Section 216(b), *Lorillard v. Pons*, 434 U.S. 575, 580 & n.7 (1978)—the parties are "entitled ... to have a jury properly determine the question of liability and the extent of the injury by an *assessment of damages*." *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935) (emphasis added). The jury- trial right thus "includes the right to have a jury determine the *amount* of statutory damages," *28* and all genuinely disputed questions of fact underlying its verdict, *e.g.*, *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 384 (1996). It follows that a court cannot, consistent with the Seventh Amendment, substitute "its own estimate of the amount of damages which the plaintiff ought to have recovered to enter an absolute judgment for any other sum than that assessed by the jury." *Kennon v. Gilmer*, 131 U.S. 22, 29 (1889).

II. WHETHER THE DC COURT OF APPEALS FIRST PANEL FEBRUARY 19, 2015 OPINION IS INCONSISTENT WITH ITS SECOND PANEL JUNE 2, 2017 OPINION IN ITS APPLICATION OF THE LAW AND WARRANTS REVERSAL

This case is ripe for review by the Supreme Court due to the inconsistent rulings and application of prevailing case law. The D.C. Court of Appeal's findings and rulings in its February 19, 2015 Order are inconsistent with its June 2, 2017 Order (**App. A**). The June 2, 2017 Order affirmed the trial court's October 2, 2015 Order granting Summary Judgment to Respondent Chris Hoge and Crowley, Hoge & Fein (CHF). The trial court's order was based on its opinion that Respondent Chris Hoge did not represent the Bolton sisters after March 2, 2010. An Appeal Court Panel Ruling cannot overturn another Appeal Panels' Decision.

The trial court erred when it stated in its October 2, 2015 Order that Respondents were entitled to judgment as a matter of law because the firm's action that allegedly constituted the breach, namely seeking an attorney's lien in the Jasper County court, occurred after the representation of the Bolton sisters had ended. The D.C. Court of Appeals' second panel's found that evidence was presented by the Petitioners and their expert, George Clark that prove that Respondent represented them after March 2, 2010, and sued the Bolton sisters while representing them, which breached his fiduciary duty of loyalty to the Petitioners. This finding conflicts with the trial court's opinion and October 2, 2015 Order warranting reversal of the trial court's error and Order. Although the second panel ruled that the trial court's award of summary judgment cannot be sustained on the ground that CHF's representation had ended before March 2, 2010, it erred by not reversing the trial court's October 2, 2015 Order in its entirety and awarding disgorgement of fees to Petitioners. Likewise, the second panel's ruling that the trial court's decision rested on an alternative ground, that the Bolton sisters' lack of entitlement to the remedy they sought for CHF's breach of fiduciary duty of loyalty, disgorgement of funds, also cannot be sustained.

The D.C. Court of Appeals erred when it affirmed. the trial court's invalid findings in grant of summary judgment to CHF. The trial court abused its discretion when it issued the October 2, 2015 Order granting Summary Judgment in favor of CHF and the order can't be sustained because there were genuine issues of material fact in dispute that warranted a trial by a jury. See *Willens v. 2720 Wisconsin Ave. Coop. Ass 'n, Inc.,* 844 A.2d 1126, 1136 (D.C. 2004) (board of directors of a cooperative owes a duty of loyalty to the cooperative); *Griva v. Davison,* 637 A.2d 830, 846-48 (D.C. 1994) (a violation of the Code of Professional Responsibility ... can constitute a breach of the attorney's common law fiduciary duty to the client"; summary judgment inappropriate because genuine issues of material fact had to be resolved before determining whether a law firm breached their fiduciary duty).

The Judge in the trial court can't decide on summary judgment genuine issues of material fact in dispute, as a matter of law, as it is for a jury to decide and he can't circumvent a liability finding by a potential jury trier of fact regarding disgorgement of legal fees. Disgorgement flowed from the liability of the breach of fiduciary duty of loyalty claim. Disgorgement is not a stand-alone liability without the breach of fiduciary duty claim. The trial court judge committed error in determining when CHF's representation ended and stating that CHF's filing of its lien in Mississippi was not made public. CHF shared the lien information with outside counsels in Mississippi in addition to a third party he represented against the Bolton sisters at the same time he represented the Bolton sisters in the same subject matter.

The trial court's October 2, 2015 Order, relied on the wrong legal standards and principles in its opinion and failed to consider and adjudicate all of the Bolton sisters' claims in their Breach of Fiduciary Duty of Loyalty Counterclaim, including conflicts of interests claim by Respondent Chris Hoge's representation of multiple clients with competing interests. The first panel stated "On this record, we have doubts as to whether, before ruling on CHF's summary judgment motion and the Bolton sisters' opposition, the trial court considered the distinction between a breach of fiduciary duty based on a standard of care and breach of fiduciary duty based on alleged attorney conduct, and also whether the court correctly applied governing legal principles concerning breach based on conduct." The first panel vacated the trial court's prior grant of Summary Judgment to CHF on the Breach of Fiduciary Duty of Loyalty Counterclaim and remanded to the trial court for further proceedings and instructed the trial court to apply the correct legal standard.

The trial court applied the wrong legal standard again and failed to correctly apply governing legal principles concerning breach based on conduct standard by stating, "[t] here is no indication that the modification had any bearing on the outcome for the Bolton sisters." The Bolton sisters did not have to prove any bearing on the outcome of Hoge's actions (harm) only that he breached his fiduciary duty of loyalty through his actions, which the second panel found in its June 2, 2017 Order. *See Hendry Pelland* DC Circuit 1996 73 F.3d at 401. The trial court's statement validates again that it incorrectly applied the legal standard and governing legal principles for disgorgement. It therefore committed error by concluding that disgorgement would not be an appropriate remedy.

In the Bolton sisters' case, they do not have to prove injury and proximate causation in order to recover disgorgement of legal fees. Because the Bolton sisters sought disgorgement of legal fees for Respondent Chris Hoge's breach of fiduciary duty, the Bolton sisters are entitled to an award based on breach of fiduciary duty alone. *See Hendry,* 73 F.3d at 401.

Although the decision to grant or deny equitable relief (in some cases) is committed to the sound discretion of the trial court, see D.C. Code § 42–3110(b), a case such as a breach of fiduciary duty of loyalty by an attorney is not one of those cases in which that law applies. Additionally, "[j]udicial discretion must be founded upon correct legal principles and a trial court abuses its discretion when it rests its conclusions on incorrect legal standards." In re J.D.C., 594 A.2d 70, 75 (D.C.1991) (internal citation omitted). *Thanos v. District of Columbia*, 109 A.3d 1084, 1093 (D.C. 2014). The **trial Court did not apply the correct legal principles** in granting summary judgment and there were genuine issues of material of fact in dispute. Therefore, the trial court abused its discretion when it rested its conclusions on incorrect legal principles and legal standards, again as it did in its first award of summary judgment to CHF which was reversed.

DC Court of Appeal's second panel has already ruled in its June 2, 2017 Order that the trial court's October 2, 2015 Order awarding **summary judgment to CHF cannot be sustained** on the ground that the representation had ended before March 2, 2010. Based on DC Court of Appeal's conclusions, the trial court's October 2, 2015 Order granting judgment to CHF should have been reversed by DC Court of Appeals. Likewise, the panel's ruling that the trial court's decision in its October 2, 2015 Order rested on an alternative ground, that the Petitioners' lack of entitlement to the remedy they sought for CHF's breach of fiduciary duty of loyalty, disgorgement of funds, **also cannot be sustained** and should have been reversed. The DC Court of Appeal's June 2, 2017 Order affirming the trial court's October 2, 2015 Order granting summary judgment to CHF is in error and conflicts with the opinions and rulings and existing legal principles and legal standards already endorsed and in use by this Court, the D.C. Court of Appeals, and the District of Columbia.

DC Court of Appeals did not note in its opinions or any of its rulings that it disagreed with established legal principles and law governing breach of fiduciary duty under Hendry. On the contrary, the Appeals Court has agreed with Hendry in its rulings. The Hendry court ruled, **"We also agree with the Hendrys that, to the extent they sought disgorgement of legal fees, they needed to prove only that Pelland breached his duty of loyalty, not that**

his breach proximately caused them injury." ***See Hendry,*** **73 F.3d at 401.**

A. PANEL TO PANEL CONFLICT

The D.C. Appeal Court issued an opinion on February 19, 2015 (App. E) for the appeal taken in Appeal Case No. 12 CV-1749. The final mandate was issued on May 5, 2015. As a result of that appeal, the District of Columbia Court of Appeals reversed the trial court's Summary Judgment Order and dismissal of Count VI–of the Counter Plaintiffs' Amended Counter Claim for Breach of Fiduciary Duty of Loyalty and ruled in the Boltons' favor that the trial court erred when it issued a Summary Judgment Order dismissing this counterclaim. *Bolton v. Crowley, Hoge & Fein, P.C.*, 110 A.3d (D.C. 2015). The Appeal Court set forth the factual context for that counterclaim, in the light most favorable to the non-movants (Petitioners) and opined that:

> With respect to subparagraph (d), Paragraph 32 and 33 of the amended counterclaim allege facts implicitly showing a conflict of interest on the part of CHF-"the existence of the [l]ien has prevented the [Bolton sisters from obtaining their damage settlement in the mass tort litigation" and "[CHF was] still representing the [Bolton sisters] at the time the [l]ien was filed." The amended counterclaim contained a demand for compensatory and punitive

> damages. *Bolton v. Crowley, Hoge & Fein, P.C.,* 110 A.3d (D.C. 2015), 580-58.

This first panel further stated in their opinion that:

> ...We are guided by the following principles. "An agent owes [his] principal a fiduciary duty and a duty of loyalty," and' "[l]ike other agents, lawyers owe their clients a duty of loyalty and a duty of care." *Government of Rwanda v. Rwanda Working Grp.,* 227 F. Supp. 2d 45, 63, 64 (D.D.C. 2002), affd in part by *Government of Rwanda v. Johnson,* 366 U.S. App. D.C. 98, 102, 106, 409 F.3d 368, 372, 376 (D.C. Cir. 2005) (affirming judgment against appellee for breach of fiduciary duty). "A fiduciary relationship is founded upon trust or confidence reposed by one person in the integrity and fidelity of another." *Rwanda Working Grp., supra,* 227 F. Supp. 2d at 64 (internal quotation marks and citation omitted). "The relation between attorney and client is a fiduciary relation of the very highest character, and binds the attorney to the most conscientious fidelity ...." *David Welch Co.* v. *Erskine* & *Tulley,* 203 Cal App. 3d 884, 890 (1988) (internal quotation marks and citations omitted). *Crowley,*

Hoge & Fein, P.C., 110 A.3d (D.C. 2015), 583-584.

However, the D.C. Court of Appeal's second panel reversed course and overturned that Panel's decision by issuing a new decision on June 2, 2017, that not only contradicts D.C. Court of Appeal's previous decision of February 19, 2015, but has created a new law that has resulted in numerous binding precedents recognizing clients who prove a breach of fiduciary duty based on conduct, especially when a conflict of interest is the subject of the breach, and who need only prove the breach occurred in order to be entitled to disgorgement of fees.

Indeed, the second panel admitted that Christopher Hoge and Crowley Hoge and Fein, P.C. breached their fiduciary of loyalty to the Petitioners and therefore, the **trial court's grant of summary judgment cannot be sustained on the grounds that the representation ended before March 2, 2010**, the date that Crowley, Hoge and Fein, P.C. filed an unlawful lien and false affidavit in the Jasper County Court in Mississippi against Petitioners' settlement proceeds awarded in an underlying toxic tort case that CHF did not provide representation, and before the representation in the Arbitration Case ended. **Crucially, this finding by the Panel contradicts the findings documented by the trial court in its order that stated summary judgment was appropriate because the representation had ended before Crowley Hoge and Fein, P.C. filed the lien.** The trial court misapplied the law again as it did in Appeal Case 12-CV-1749, and that resulted in the remand of this case for further proceedings. The Panel stated that the trial court's decision also rested on an alleged "alternative ground," however; and that the Bolton sisters' lacked entitlement to the remedy they sought for CHF's breach of fiduciary duty (disgorgement of funds).

Regrettably, the Panel went on to state that clients asserting breach of fiduciary duty claims against lawyers must prove injury and proximate causation in order to recover **compensatory damages**, which is the legal principle that the trial court had used and applied incorrectly in the prior grant of summary judgment of the Petitioners breach of fiduciary duty claim in case 12-CV-1749. The second panel ruled contrary to law because it is not in the trial court's discretion to determine disgorgement of fees (as a matter of law) because it was based on his legal conclusions that CHF did not represent the Bolton Sisters when he filed the lien against them, and therefore not founded on the correct legal principles. The correct legal standard in a breach of fiduciary duty of loyalty claim, especially one that documents a conflict of interest, as is the case here, clients need only prove that the breach occurred in order to be entitled to disgorgement of legal fees.

Further, the Bolton Sisters detailed in their counterclaim that CHF breached their fiduciary duty of loyalty by: a. [T]aking legal action against them to unlawfully deprive them of their ability to collect the Mississippi settlement monies, to which [CHF was] not entitled, and by misrepresenting facts to the Jasper County, Mississippi Circuit Court in support of said action; b. Concealing the fact that they had filed the [l]ien against [c]lients during their representation of the [c]lients; c. Encouraging expert witnesses to increase their bills and charge the [c]lients more money than the experts initially intended to charge; and d. All other alleged adverse actions against the [c]lients incorporated in this [c]omplaint. *Bolton v. Crowley, Hoge & Fein, P.C.,* 110 A.3d at 580-81(D.C. 2015); Am. Counterclaim ¶¶29, 33-35, 63.Ex 13). The Mississippi Court found the lien invalid (**App. I**).

The first panel in its May 5, 2015 mandate found:

> Long before the Code of Professional Responsibility was adopted, and before the Rules of Professional Conduct were adopted, the common law recognized that a lawyer could not undertake representation adverse to a former client in a matter 'substantially related' to that in which the lawyer previously had served the client." *Maritrans GP Inc.* v. *Pepper, Hamilton &Scheetz,* 602 A.2d 1277, 1284 (Pa. 1992). "The legal obligation of a lawyer to refrain from misuse of a client's confidences goes even further back, predating the ABA [American Bar Association] Canons of Professional Ethics promulgated in 1908." *Id.* at 1285 (citation omitted). *See also* District of Columbia Bar Rule 1.9 ("A lawyer who has formerly represented a client in a matter shall

> not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent."); *Berkeley Ltd P'ship* v. *Arnold,* 118 F. Supp. 2d 668, 673 (D.D.C. 2000) (D.C. Bar R. 1.7 (b)(2) defines conflict of interest to include "'such representation that will be or is likely to be adversely affected by representation of another client'"). The universally recognized statement of this rule of law is *Consolidated Theatres, Inc. v. Warner Bros. Circuit Management Corp.,* 216 F.2d 920 (2d Cir.1954). The Consolidated Theatres decision relied importantly on *T.C. Theatre Corp. v. Warner Bros. Pictures, Inc.*, supra. Both of these cases relied on decisions of now more than 50 years standing such as *United States v. Bishop,* 90 F.2d 65 (6th Cir.1937); and *Gesellschaft Fur Drahtlose Telegraphie v. Brown,* 78 F.2d 410(D.C.App.1935).

The first panel also stated, "Understandably, some of these matters were rather complex, and in the press of advancing the case, the court may not have addressed the summary judgment motion with a full appreciation of applicable legal principles."

At a hearing on October 4, 2011, Shirley Bolton asserted that Mr. Hoge "breached his [fiduciary] duty of loyalty to the [Bolton sisters]."

B. THERE IS AN INTRA-CIRCUIT CONFLICT IN THIS CASE WITH PANEL DECISION

The District of Columbia Court of Appeals in *Griva v. Davison,* 637 A.2d 830 (D.C.1994), clearly ruled that "a violation of the Code of Professional Responsibility or of the Rules of Professional Conduct can constitute a breach of the attorney's common law fiduciary duty to the client." *Id.* At 846-47 (emphasis added). In particular, and significantly for this case, the court treated an alleged violation of Disciplinary Rule 5-105-prohibiting a lawyer from **representing multiple clients** "if the exercise of his independent professional judgment would be likely to involve him in representing differing interests" unless "it is obvious that he can adequately represent the interest of each [client] and **each consents to the representation after full disclosure**," D.C. Code of Professional Responsibility DR 5-105(B) to (C) as equivalent to a breach of an attorney's fiduciary duty. See *Griva,* 637 A.2d at 837-41, 846-48.

The *Griva* court's ruling that **a conflict of interest may violate not only ethical rules, but also an attorney's common law fiduciary duties**, is far from novel. See *American-Canadian Oil & Drilling Corp. v. Aldridge & Stroud, Inc.,* 237 Ark. 407, 373 S.W.2d 148, 150-51 (1963); *Kidney Ass'n of Oregon, Inc. v. Ferguson,* 315 Or. 135, 843 P.2d 442, 446-47 (1992).

As Pelland recognizes, a basic fiduciary obligation of an attorney is the duty of "undivided loyalty," which is breached when an attorney represents clients with conflicting interests. Brief for Respondents at 9-10 (citing *1 Ronald E. Mallen & Jeffrey M. Smith, Legal Malpractice,* § 11.1, at 633 (3d ed. 1989)).

C. THERE IS AN INTER-CIRCUIT CONFLICT IN THIS CASE

The Panel's conclusions here stand in acknowledged conflict with this jurisdiction, the United States District Court of Appeals for the District of Columbia and the legal precedence governing breach of fiduciary of duty violations by attorneys in the District of Columbia set forth in *Hendry v. Pelland.* 73 F.3d 397 (D.C. Cir. 1996). The panel's decision contradicts numerous binding precedents recognizing clients who prove a breach of fiduciary duty based on conduct, especially when a conflict of interest is the subject of the breach, and who now need **only prove the breach occurred** in order to be entitled to disgorgement of fees.

The District Court of the District of Columbia has ruled in *Hendry Pelland* that:

> [U]nder District of Columbia law, clients suing their attorney for breach of the fiduciary duty ... and seeking disgorgement of legal fees as their sole remedy need prove only that their attorney breached that duty, not that the breach caused them injury." *Hendry*

> *v. Pelland*, 73 F.3d 397, 401–02 (D.C.Cir.1996). Forfeiture of legal fees serves several different purposes. It deters attorney misconduct, a goal worth furthering regardless of whether a particular client has been harmed. *See Gilchrist v. Perl,* 387 N.W.2d 412, 415 416, (Minn.1986); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 49 cmt. b (Tentative Draft No. 4, 1991) (noting that forfeiture deters misconduct). It also fulfills a longstanding and fundamental principle of equity-that fiduciaries should not profit from their disloyalty. *See, e.g., Woods v. City Nat'l Bank & Trust Co.,* 312 U.S. 262, 268-69, 61 S.Ct. 493, 497-98, 85 L.Ed. 820 (1941); RESTATEMENT (SECOND) OF AGENCY § 469 cmt. A (1958). And, like compensatory damages, it compensates clients for a harm they have suffered. *See Gilchrist,* 387 N.W.2d at 416; *Kidney Ass'n of Oregon, Inc.,* 843 P.2d at 447.

This decision was documented in the trial court's hearing transcript as follows:

> **THE COURT:** So how can the Court dismiss a claim as a matter of law when material facts are disputed between the parties? That' s what we usually use a jury to do , to listen to this side's s

evidence, and listen to that side's s evidence, and let them decide who's being truthful and who is not. That's what a jury does in a jury trial.

The Petitioners never had their claim for Breach of Fiduciary Duty of Loyalty heard at trial before a trier of fact and the trial court ruled that it could not be used as an affirmative defense to CHF's breach of contract claim as is permissible by law. Petitioners never waived their rights to having their Breach of Fiduciary Duty of Loyalty Counterclaim for disgorgement of fees heard at trial. The final issue decided in *Hendry Pelland* case was that the trial court's ruling on the law firm's counterclaim-turned on the proposition that clients may defend a claim by their lawyer for unpaid legal fees by proving that their attorney breached a fiduciary duty. See *Griva,* 637 A.2d at 847 (citing Jeffry, 136 Cal.Rptr. at 377, in which the court ruled that the client could defend his lawyer's suit for unpaid fees by arguing that the lawyer breached his fiduciary duty); 10, at 698-99. Because the Hendrys presented sufficient evidence for a jury to find that Pelland violated his fiduciary duty, the appeal court ruled the district court erred in prohibiting them from using their breach of fiduciary duty of loyalty

> argument as a defense to the breach of contract claim. The District Court then remanded the case back to the district court for a new trial on the Hendrys' fiduciary duty claim.

The D.C. Appeals Court abused its discretion by not to permitting the Bolton Sisters to use CHF's breach of fiduciary duty to defend against CHF's breach of contract claim for fees as they were authorized under the law to do so and as cited by the Court in *Hendry Pelland* which ruled that the client could defend his lawyer's suit for unpaid fees by arguing that the lawyer breached his fiduciary duty); 1 Mallen & Smith, supra, § 11.24, at 698-99. See also *Griva,* 637 A.2d at 847 (citing Jeffry, 136 Cal.Rptr. at 377). While this was an issue presented on appeal, D.C. Court of Appeals did not adjudicate or provide a ruling disadvantaging the Bolton Sisters and causing irreparable harm.

The trial court's order granting summary judgment to Respondent Chris Hoge must be vacated due to its erroneous opinion containing several false statements as the basis for its order granting Respondent Chris Hoge's renewed motion for summary judgment including, (1) that no evidence was presented by the Bolton sisters that supports any theory of conflict of interest or breach of the duty of loyalty, and (2) the Boltons have not placed in evidence any factual support for the bare conclusionary statements in their affidavits that the law firm was still representing them when the lien was filed on March 2, 2010. The second panel reversed the trial court by ruling Respondent Chris Hoge did breach his fiduciary duty of loyalty to the Bolton sisters. The trial court also based its opinion and order on its statement that there is no authority that forbids a lawyer from taking legal action to collect an earned fee after the representation has concluded, which is moot based on this panel's ruling that Respondent Chris Hoge sued the Bolton sisters while still representing them.

The trial court erred in concluding that the Bolton sisters presented no disputed facts supported by evidence that would allow their breach of fiduciary duty of loyalty claims to survive the motion for summary judgment. DC Court of Appeals ruled in its February 19, 2015, Judgment that it is guided by the following principles:

> An agent owes [his] principal a fiduciary duty and a duty of loyalty," and' "[l]ike other agents, lawyers owe their clients a duty of loyalty and a duty of care." *Government of Rwanda v. Rwanda Working Grp.*, 227 F.Supp. 2d 45, 63, 64 (D.D.C. 2002), affd in part by *Government of Rwanda v. Johnson*, 366 U.S. App. D.C. 98, 102, 106, 409 F.3d 368, 372, 376 (D.C. Cir. 2005) (affirming judgment against appellee for breach of fiduciary duty).

The trial court also failed to adhere to the D.C. Appeals Court February 19, 2015, Judgment and order to conduct proceedings and address all of the

Bolton sisters' remaining claims outlined in their Breach of Fiduciary Duty of Loyalty Counterclaim reinstated by DC Court of Appeals. Therefore, the trial court's order granting Summary Judgment must be vacated and the panel's subsequent June 2, 2017, Judgment affirming the trial court's error must also be vacated.

The Bolton sisters requested and were entitled to **punitive damages** in addition to disgorgement of fees because Mr. Hoge acted with willful disregard of their rights.

The trial court failed to follow District of Columbia law that **clients seeking disgorgement of legal fees only have to prove the attorney breached his duty of loyalty, not that such breach proximately caused them injury**; evidence that attorney violated a disciplinary rule dealing with representation of multiple clients with conflicting interests was sufficient to support a claim that the attorney violated common-law fiduciary duty of loyalty; clients could rely on attorney's breach of fiduciary duty as a defense to law firm's counterclaim for unpaid fees, and District of Columbia law allows punitive damages if the attorney acted with willful disregard of client's rights. *Hendry v. Pelland,* 315 U.S. App. D.C. 297, 301, 73 F.3d 397, 401 (1996) **DC Court of Appeals' February, 2015 opinion contradicts this panel's ruling**.

Mr. Hoge's own e-mail evidence he produced prove that he revealed secrets of the Bolton sisters' confidential settlements violating District of

Columbia Rules of Professional Conduct 1.6 (a)(2) and (3) and violated a sealed court order by giving this information to an outside third party without the Bolton sisters' knowledge and consent and he coerced this party to inflate their bill and for them to collect against the Bolton sisters' settlement, while simultaneously representing the Bolton sisters which is a conflict of interest and breach of fiduciary duty of loyalty. The panel noted that the trial court stated that Respondent Chris Hoge could reveal client confidences to the minimum extent necessary under Rule 1.6 (e) (5). This rule does not extend to an attorney revealing client confidences and secrets while he is still representing a client while suing them at the same time, and does not extend to him revealing confidences and secrets of one client to a third party client for the third party to recover fees from his other client. See *Hendry Pelland.*

Respondent Chris Hoge represented multiple clients with competing interests at the same time and revealed the Bolton sisters' sealed confidential settlement information to advantage his other client (third party), while disadvantaging the Bolton sisters and he acted with willful disregard of the Bolton sisters' rights which entitles them to punitive damages. *Hendry v. Pelland,* 315 U.S. App. D.C. 297, 301, 73 F.3d 397, 401 (1996). The trial court did not address this issue and the Bolton sisters are entitled to punitive damages, thus the trial court's award of summary judgment fails and cannot be sustained on the alternative ground that the Bolton sisters lack entitlement to remedy for CHF's breach of fiduciary duty. The trial court failed to address the Bolton sisters' claim that they are entitled to rely on Mr. Hoge's breach of fiduciary duty as a defense to his claim for unpaid fees in the breach of contract trial. DC Court of Appeals ruled in its February 19, 2015 Judgment that further proceedings relating to the breach of the fiduciary duty of loyalty counterclaim may involve some evidence excluded from the breach of contract trial that would be admissible as to that counterclaim. Since the trial court prematurely dismissed the Bolton sisters' breach of fiduciary duty counterclaim prior to the contract trial, the trial court committed error by preventing the Bolton sisters from using Respondent Chris Hoge's breach of fiduciary duty as permissible evidence in their defense in the contract trial, violating District of Columbia Law and DC Court of Appeal's ruling. *Hendry v. Pelland,* 315 U.S. App. D.C. 297, 301, 73 F.3d 397, 401 (1996) In addition, DC Court of Appeals stated in its ruling that the breach of fiduciary duty counterclaim proceedings may ultimately impact the jury's monetary award of legal fees, given the Bolton sisters' assertion, through Mr. Clark, that they are entitled to some disgorgement of legal fees. Therefore, the trial court's award of summary judgment should be vacated and the jury award for Respondent Chris Hoge's unpaid fees should be vacated since the **Bolton sisters were prohibited from using Mr. Hoge's breach of fiduciary duty of loyalty as a defense in the breach of contract case**. *Hendry v. Pelland,* 315 U.S. App. D.C. 297, 301, 73 F.3d 397, 401 (1996).

The panel's own ruling does not support affirming the trial court's award of summary judgment. The panel ruled that the trial court's conclusion that additional work by Respondent Chris Hoge would have required a new agreement is called into question by the fact that Mr. Hoge did perform additional work on March 12, 2010, without a new agreement. The panel further ruled that the Bolton sisters' termination letter of March 31, 2010, also indicated they believed CHF continued to represent them up to that point and that Mr. Hoge breached his fiduciary duty to the Bolton sisters.

The second panel's ruling that there were evidence that Mr. Hoge's representation had not ended before March 2, 2010, proving that he did breach his fiduciary duty of loyalty to the Bolton sisters reverses the trial court's judgment and order granting Respondent Chris Hoge summary judgment of the Bolton sisters' breach of fiduciary duty claims. The foundation of the trial court's opinion in its order granting summary judgment in favor of Respondent Chris Hoge was the trial court's statements that Respondent Chris Hoge did not represent the Bolton sisters after March 2, 2010. The second panel reversed this ruling by the trial court in its June 2, 2017 Judgment, by ruling that evidence were presented by the Bolton sisters and their expert, George Clark that prove Respondent Chris Hoge represented them after March 2, 2010, and sued them while still representing them which breached his fiduciary duty.

Therefore, the second panel's ruling to affirm the trial court's order granting summary judgment to CHF although it found that he breached his duty of loyalty, is in conflict and affirming the order to not award disgorgement of attorney fees contravenes the well-established, uniform precedent by Hendry Pelland. In reaching this conclusion, the second panel ignored evidence properly before it that not only found that summary judgment was not lawfully granted, but applied the incorrect legal standard by affirming the order regarding disgorgement as related to CHF's breach of fiduciary duty of loyalty to the Petitioners and failed to address their conflict of interest claims altogether. **See Petitioners' expert, George R. Clark; Esq., timely submitted Rule 26 (b)(4) filed with DC Court of Appeals and that documents in detail that the "breach of fiduciary duty for conflict of interest means that [CHF] should disgorge all fees paid to it by the [Bolton sisters],"** and that "[t]he filing in Mississippi also was a breach of fiduciary duty because it disclosed confidences and secrets of the [Bolton sisters] **App. H**). The Bolton sisters also provided case law to the D.C. Appeals Court that provides/documents "so long as the only remedy sought is disgorgement of fees (or in this case both disgorgement and a bar of collection of uncollected fees) no showing of causation is required." Also provided to DC Court of Appeals was the Petitioners' pretrial statement, which the Bolton sisters filed on May 29, 2012, and properly asserted that the filing of CHF's action "in Mississippi ... was a breach [of fiduciary duty under DC Rules of Professional Conduct because it disclosed confidences and secrets ...to the public [and to the defendants]....in the [a]rbitration [proceeding]." The pretrial statement also declared that because CHF's "billing statements provide documentary evidence that CHF was still purporting to represent [the Bolton sisters] at the same time CHF [was] suing them in two separate legal actions and jurisdictions, [the Bolton sisters] are entitled to disgorgement of fees paid to CHF for their breach of loyalty and breach of fiduciary duty..."

III. THE BREACH OF FIDUCIARY CLAIM DISMISSED BASED ON INCORRECT LEGAL PRINICIPLES AND EXISTENCE OF GENUNIE ISSUES OF MATERIAL FACTS THAT THE DC COURT OF APPEALS RULED SUMMARY JUDGMENT

The D.C. Court of Appeals First Panel's opinion stated that "With respect to subparagraph (d) paragraphs 32 and 33 of the amended counterclaim allege facts implicitly showing a conflict of interest on the part of CHF –"the existence of the [l]ien has prevented the [Bolton sisters] from obtaining their damage settlement in the mass tort litigation" and "[CHF was] still representing the [Bolton sisters] at the time the [l]ien was filed." The amended counterclaim contained a demand for compensatory and punitive damages. *Bolton v. Crowley, Hoge & Fein, P.C.,* 110 A.3d 575 (D.C. 2015).

During the course of CHF's representation of the Bolton Sisters, CHF became increasingly inquisitive about the settlement and proceeds and came to know the complete details of the settlement funds in escrow.

Armed with the confidential settlement information, Attorney Christopher Hoge subsequently undertook efforts to utilize this information to enrich himself and CHF. He filed a complaint on behalf of the third party against the Bolton Sisters while still representing the Bolton Sisters in the same case action. **CHF's conduct and actions were willful** and with malice. *Hendry v. Pelland,* 315 U.S. App. D.C. 297, 301, 73 F. 3d 397, 401 (1996).

The Bolton Sisters provided evidence in this case which proved CHF encouraged the third party to inflate their expert bills in efforts to erode the Bolton Sisters' settlement funds (e-mail from Attorney Hoge to third party) **by informing the third party of confidential settlement information he learned through his representation to the Bolton Sisters** and bragging to the third party that there was more than enough money in the Bolton Sisters' settlement funds to share with them. He used the inflated expert fees for the third party in his illegal lien and lawsuit against the petitioners.

At common law, an attorney owes a fiduciary duty to his client; such duty demands undivided loyalty and prohibits the attorney from engaging in conflicts of interest, and breach of such duty is actionable. See, e.g., *Stockton v. Ford,* 52 U.S. (11 How.) 232, 13 L. Ed. 676 (1850); *Woods v. City Nat'l. Bank & Trust Co.,* 312 U.S. 262, 61 S. Ct. 493, 85 L. Ed. 820 (1941); *T.C. Theatre Corp. v. Warner Bros. Pictures, Inc.,* 113 F. Supp. 265 (S.D.N.Y. 1953). The DC COURT OF APPEALS here emasculated these common law principles, in effect turning the ethical or disciplinary rules governing lawyers into a grant of civil immunity for conduct which has been condemned from time immemorial. As stated by the United States Supreme Court in 1850:

> There are few of the business relations of life involving a higher trust and confidence than those of attorney and client or, generally speaking, one more honorably and faithfully discharged; few more anxiously guarded by the law, or governed by sterner principles of morality and justice; and it is the duty of the D.C. Court of Appeals to administer them in a corresponding spirit, and to be watchful and industrious, to see that confidence thus reposed shall not be used to the detriment or prejudice of the rights of the party bestowing it. *Stockton v. Ford,* 52 U.S. (11 How.) at 247.

By ignoring the common law principles of fiduciary duty, the District of Columbia Court of Appeals (DC COURT OF APPEALS) elevated attorneys, CHF above the law and granted to them greater rights and protection than are enjoyed by any other fiduciaries in this circuit and other circuits across the United States. No rule so preferring attorneys can be permitted to stand. See also, *American Dredging Co. v. City of Philadelphia,* 480 Pa. 177 at 185, 389 A.2d 568 at 572 (1978); *Tri-Growth Centre City, Ltd. v. Silldorf, Burdman, Duignan & Eisenberg,* 216 Cal. App. 3d 1139 at 1150, 265 Cal. Rptr. 330 at 335 (1989).

Adherence to those fiduciary duties ensures that clients will feel secure that everything they discuss with counsel will be kept in confidence. *Reardon v. Marlayne, Inc., 83 N.J. 460, 416 A.2d 852 (1980). Pepper and Messina, as attorneys, had a duty to administer properly their responsibilities to respect the confidences of Maritrans. See, e.g., American Dredging, supra,* 480 Pa. at 185, 389 A.2d at 572; *Slater v. Rimar, Inc.,* 462 Pa. 138 at 145, 338 A.2d 584 at 587 (1975); *Realco Servs., Inc. v. Holt,* 479 F. Supp. 867, 875 (E.D.Pa.1979); *David Welch Co. v. Erskine & Tulley,* 203 Cal. App. 3d 884, 890, 250 Cal. Rptr. 339, 342 (1988).

While the breach by a lawyer of his duty to keep the confidences of his client and to avoid representing conflicting interests may be the subject of appropriate disciplinary action, a court is not bound to await such development before acting to restrain improper conduct where it is disclosed in a case pending in that court. *Slater v. Rimar, Inc., supra,* 462 Pa. at 148-49, 338 A.2d at 589 (footnote omitted).

The power to discipline an attorney for violation of his fiduciary duty for engaging in conflicting representations dates at least to the early 1900's:

> Restraining Attorney from Acting Adversely to Client Where an attorney so far forgets, or ignores, his professional duty as to engage his service to one whose interests are necessarily in conflict with those of his

> client, or in whose employment he will be in a position to take undue advantage of the confidential communications of such client, there is no doubt of the power of the court to enter and enforce an order restraining the attorney from so acting. . . . *1 Thornton on Attorneys at Law,* § 180 (1914).

Moreover, "[a] court may restrain conduct which it feels may develop into a breach of ethics; it 'is not bound to sit back and wait for a probability to ripen into a certainty.'" *United States v. RMI Co.,* 467 F. Supp. 915, 923 (W.D.Pa.1979) (citation omitted). The courts do not have to wait until the derelict attorney appears before it.

Attorneys have always been held civilly liable for engaging in conduct violative of their fiduciary duties to clients, despite the existence of professional rules under which the attorneys could also have been disciplined.

Courts throughout the country have ordered the disgorgement of fees paid or the forfeiture of fees owed to attorneys who have breached their fiduciary duties to their clients by engaging in impermissible conflicts of interests. See, e.g., *White v. Roundtree Trans., Inc.,* 386 So. 2d 1287 (Fla.App.1980); *Perl v. St. Paul Fire & Marine Ins. Co.,* 345 N.W.2d 209 (Minn.1984); *Rice v. Perl,* 320 N.W.2d 407 (Minn.1982); *Financial Gen. Bankshares, Inc. v. Metzger,* 523 F. Supp. 744 (D.D.C.1981), vacated on jurisdictional grounds, 680 F.2d 768 (D.C.Cir.1982); *Goldstein v. Lees,* 46 Cal. App. 3d 614, 120 Cal. Rptr. 253 (1975); *Zeiden v. Oliphant,* 54 N.Y.S.2d 27 (Sup.Ct.1945). *Also see Hendry v. Pelland,* 315 U.S. App. D.C. 297, 301, 73 F. 3d 397, 401 (1996).

Notwithstanding that the attorneys in those cases could have been disciplined under applicable rules of professional conduct, disgorgement or forfeiture of fees for services rendered were ordered. Likewise, the United States Supreme Court has said:

> A fiduciary . . . may not perfect his claim to compensation by insisting that although he had conflicting interests, he served his several masters equally well or that his primary loyalty was not weakened by the pull of his secondary one. Only strict adherence to these equitable principles can keep the standard of conduct for fiduciaries "at a level higher than that trodden by the crowd." *Woods v. City Nat'l. Bank & Trust Co., supra, at* 312 U.S. at 269, 61 S. Ct. at 497 *(quoting Justice Cardozo).*

The Bolton petitioners were denied their Seventh Amendment rights to have their Breach of Fiduciary Duty of Loyalty Counterclaim heard by a jury. Courts have also allowed civil actions for damages for an attorney's breach of his fiduciary duties by engaging in conflicts of interest. See, e.g., *Tri-Growth Centre City, Ltd. v. Silldorf, Burdman, Duignan & Eisenberg,* supra, (permitting suit for a constructive trust and damages by a real estate partnership against a law firm that breached its fiduciary duty to the partnership by usurping a partnership opportunity); *David Welch Co. v. Erskine & Tulley*, supra, (where the court affirmed a judgment of $350,000 against a law firm that breached its fiduciary duties toward a former client after being privy to the former client's confidential information.

THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA' S DECISION RAISES AN IMPORTANT ISSUE REGARDING PUBLIC POLICY

The importance of this issue is especially troublesome because of its impact on the public because of the "exceptional importance" this legal precedence will have on public policy in terms of the attorney-client relationship, especially contract and agency considerations consistency in application of governing legal principles and legal standards. A review by this Court is needed to "maintain uniformity in application of laws governing breach of fiduciary duty of the Supreme Court, D.C. Court of Appeals and other district courts' decisions. Accordingly, the public's interest in fostering attorney-client relationships must be observed by courts when imposing fee forfeitures.

Inconsistencies in application of governing legal principles and legal standards that allow a lawyer to sue his client while still representing them and benefit from this breach of the fiduciary duty of loyalty through the collection of alleged earned and unearned fees, opens a dangerous new frontier in the strategic use of lawsuits by lawyers to enrich themselves at the expense of their clients and opens the floodgates for similar lawsuits at the expense of the court system and clients. Further, it leaves clients with no remedy resulting from willful and egregious breaches of fiduciary duty of loyalty to them through disgorgement of legal fees. The dangerous precedent and inconsistency in application of governing legal principles and standards set by the second panel's June 2, 2017 Opinion is also undermines the current existing laws and standards in the District of Columbia's Rules of Professional Conduct rendering them ineffective or moot.

The attorney-client relationship is a particularly important one in terms of the general public's confidence and trust in attorneys and the legal system. The appeals court panel thus opens a dangerous new frontier in the strategic use of lawsuits by attorneys to sue for fees without any accountability or recourse for clients to recover for the attorney's disloyalty and breach of fiduciary duty for conduct. Indeed, the "likelihood of recurrence" of this issue is extremely high because the panel's decision declares open season on a whole genre of new legal precedence.

Attorneys are bound to observe fiduciary obligations in favor of their clients as a matter of law. It is the agent's disloyalty, not any resulting harm that violates the fiduciary relationship and thus impairs the basis for compensation. Other jurisdictions have adopted and use to govern attorney conduct and resultant breaches as prescribed by *Hendry Pelland.* The main purpose of forfeiture is not to compensate an injured principal...Rather, the central purpose of...forfeiture is to protect relationships of trust by discouraging agents' disloyalty.[1]

The public's trust in the legal profession undoubtedly would be undermined if this Court does not correct the D.C. Court of Appeals' failure to recognize the common law foundation for the principle that an attorney's representation of a client whose interests are materially adverse to another client in a matter substantially related to matters in which he represented his other client constitutes an impermissible conflict of interest actionable at law. The D.C. Court of Appeals Second Panel's decision is diametrically opposed to law established by the courts in this circuit and other circuits throughout the United States which have imposed civil liability on attorneys for breaches of their fiduciary duties by engaging in conflicts of interest, notwithstanding the existence of the D.C. rules of professional conduct under which the attorneys also could be disciplined.

It also creates the chilling prospect that the prevailing law governing an attorney's breach of fiduciary duty of loyalty will be replaced with a new legal precedence that not only authorizes attorneys to sue their clients while still representing them, but incentivize attorneys to do so by rewarding them

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[1] *David Burrow v. Arce, Carol* 997 S.W.2d at 228 (Tex. 1999).

financially and removing the strong deterrence of forfeiture of fees, of which the impact that such a legal precedence will have exceptional importance on public policy.

The June 2, 2017, panel's decision will result in the attorneys' ability to still profit from disloyalty as the panel here authorized in their Memorandum and Opinion of June 2, 2017.

The D.C. Court of Appeals failed to impose sanctions and discipline Attorney Hoge professionally based on their June 2, 2017 Memorandum Opinion and Judgment opining that the Bolton Sisters and their expert, George Clark produced evidence to prove that Attorney Hoge breached his fiduciary duty of loyalty by suing them while still representing them. In reversing the D.C. Court of Appeal's first panel's February 19, 2015 Opinion and May 5, 2015 mandate, the D.C. Court of Appeal's second panel ignored the fact that there already exists in this Circuit and other Circuits, a well-entrenched body of substantive law prohibiting fiduciaries from engaging in conflicts of interest, and that there is no law excepting attorneys from that prohibition. The D.C. Court of Appeals therefore erroneously concluded that the trial court had augmented the substantive law of this Circuit by ruling only on an alternative ground of disgorgement isolative of the breach of fiduciary duty of loyalty claim, when case law standards for this Circuit is that to the extent that the Bolton Sisters sought disgorgement of legal fees, they needed to prove only that Attorney Hoge breached his duty of loyalty, not that this breach proximately caused them injury. *Hendry v. Pelland,* 315 U.S. App. D.C. 297, 301, 73 F. 3d 397, 401 (1996).

The D.C. Court of Appeals abused its discretion when it permitted the trial court to apply the wrong legal standards and principles in its Order granting summary judgment to CHF, ignoring longstanding law for this circuit in Hendry, and that is recognized and applied in other circuits through the United States.

Additionally, "[j]udicial discretion must be founded upon correct legal principles and standards and a trial court abuses its discretion when it rests its conclusions on incorrect legal standards." In re J.D.C., 594 A.2d 70, 75 (D.C. 1991) (internal citation omitted). *Thanos v. District of Columbia,* 109 A.3d 1084, 1093 (D.C. 2014). The D.C. Court of Appeals permitted the trial court to apply the incorrect legal principles in granting summary judgment and there were genuine issues of material fact in dispute. Therefore, the D.C. Court of Appeals and the trial court abused its discretion when it rested its conclusions and opinions on incorrect legal principles and legal standards again, as the trial court did in its first award of summary judgment to CHF which the D.C. Court of Appeals reversed due to the application of the wrong legal principles. The D.C. Court of Appeals award of summary judgment to CHF in its June 2, 2017 Memorandum Opinion and Judgment is in direct conflict with its own prior ruling in *Hendry* and based on incorrect legal principles and standards and should be reversed.

CONCLUSION

For the foregoing reasons, petitioners prayfully request a writ of certiorari should be granted for review by this Court. Further, Petitioners respectfully submit that the District of Columbia Court of Appeal errors with respect to the questions presented are sufficiently egregious to merit summary reversal for the Petitioner's Breach of Fiduciary Duty Claims (including conflict of interest) to be heard by a jury, and vacation of the judgment so they may use the now acknowledged Breach of Fiduciary Duty Claim as an affirmative defense to Respondents of Contract Claim and disgorgement as consistent with the current law of the land in *Hendry Pelland.*