

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-6375

Donchev et. al. v. DeSimone et.al.

CERTIFICATION OF GOOD FAITH FILING

by FATH DONCHEVA AS REQUIRED BY RULE 44 of:

PETITIONERS request for REHEARING

of the Jan. 8, 2018 GENERAL DENIAL

of the Petition for an Extraordinary WRIT OF CERTIORARI

and Request for GVR grant , vacate and remand,

in accordance with intervening 2017 US Supreme Court Law
established in Docket 15-1500 that substantially affects this case

This certification and Petition for Rehearing briefly and distinctly states the grounds for Rehearing for a Writ and grounds supporting that the Writ requested and (GVR) Grant, Vacate and Remand must be granted in accordance with law established by the US Supreme Court in 2017 and that effects this case and requires GVR. The substantial ground include to be consistent with Public Policy, the law, the constitution, plaintiffs rights and the to be consistent with the law established in the 2017 intervening in the US Supreme Court case Lewis v. Clark Docket 15-1500, established controlling law and substantially affects this case. In Lewis the US Supreme Court established law that immunity to suit of one entity cannot be shared by a separate entity, sued in his individual capacity, who is not entitled to immunity, to allow immunity to be extended where it is not allowed violates Public Policy, the law and established law.

The grounds for this Petition for Rehearing the Writ and GVR as allowed in rule 44 are limited to the intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented; as written in our Petition for Rehearing and supported by the appendixes A-B-C and D submitted with it. The appendixes include the 2017 Established US Supreme Court law, and the facts of this case, showing that the law established in 2017 must be applied to this case.

This petition is submitted in accordance with rule 44 and direction from the US Supreme Court Clerk, M. Blalock. As instructed the Petition is corrected. The supporting attachments are each identified as Appendixes as instructed. The Petition for rehearing is submitted in accordance with Rule 33.2(b) which allows 15 pages. Our Petition is 13 pages total, the first two of those 13 pages are a concise brief statement distinctly stating ground of why Rehearing and GVR must be granted in light of the 2017 Established case law in US Supreme Court Docket 15-1500 that effects this case and requires that it must be applied to this case, and require GVR in this case also.

I certify, that all statements made by me here-in are true and that I may be subject to punishment, if they are intentionally are untrue.

 2-7-18
Faith Doncheva

(Pro-se as Executrix for all four plaintiffs and as Individual) In Forma Pauperis
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QUESTION 1

Whether or not a court can allow an immunity to suit of one entity (a corporate employer who was not the defendant) to be shared by a separate entity not entitled to immunity who was the defendant sued in his individual capacity as homeowner (who as homeowner individually had statutory duties in a Construction Permit Homeowner Certification for safety on his property that he breached) after a jury trial and after the jury found the homeowner individually had duties and was negligent ?

(See WC 34:15-40 pg 11, Lyons v Barrett (1982) Pg 12, Lewis v. Clarke (2017) Pg. 14)

In a 2017 intervening US Supreme Court established law Docket 15-1500 the US Supreme Court established law that is controlling and substantially affects this case, establishing law that immunity of one entity cannot be shared by a separate entity, who is sued for damages caused by negligence in his individual capacity.

QUESTION 2

Whether or not on Oct. 14, 2015 trial court assignment judge can find plaintiffs motions or reconsideration request seeking justice are frivolous without complying with NJSA 15-59 (Pg11) and court rules and after the 2011 jury unanimously determined all genuine issues of fact in plaintiffs favor and after the trial court judge on May 15, 2015 granted leave to appeal in the interest of justice, after he again determined plaintiffs have not done anything in had faith, that plaintiffs have a good cause, a right to seek justice and to a jury trial on all claims and to the unanimous 2011 jury verdict and judgment against the homeowner that the trial judge again found is supported by evidence, the Construction Permit Homeowner Certification, admissions of the homeowner and legitimate inferences therefrom?

QUESTION 3

Whether or not the court applied the laws and court rules that the laws state must be applied to defendant and his counsels frivolous, criminal, unbecoming actions, and contempt of court, when the evidence and records show they pursued frivolous defenses for years that they admitted in 2006 were unsupported, that violate court rules NJCR 1:4-8 , WC Law 34:15-57.2, NJSA 15-59 and standards of the court by the unhecoming criminal behavior of misrepresenting the status of an employee and material facts and continuing for years frivolous defenses that they knew and admitted in 2006 were not supported, for no other reason but to obstruct justice and cause delay, harm and contempt of court?

QUESTION 4

Whether or not any of plaintiffs claims against the homeowner can be involuntarily dismiss or summary judgment granted to the homeowner after the jury determined in 2011 that he was negligent and the trial judge found there is evidence and legitimate inferences therefrom that could and did lead to a judgment in plaintiffs favor and found the 2011 jury verdict is supported?

CONCISE LETTER SUMMARY WHY REHEARING a Writ and GVR must be granted

(attached pages 2-13 with more detail and laws)

On Jan. 8, 2018 our Petition for a Writ to the Lower Courts was denied in a General Denial, (App. A-36) when it should not have been because the question of law that we requested to be determined by the US Supreme Court affects Public Policy, all Workers and Citizens and all Corporations in the United States and all Employers or employees, including the United States and each State itself. The Lower courts opinions or orders cannot be allowed to stand, they violate law and would allow construction to be done unlawfully without proper permits and not in accordance with law, then not allow damages for injury and death to be recovered caused by the unlawful negligent acts. The Question we asked the court to decide pertains to whether or not immunity to suit of a corporation can be shared by entities sued in their individual capacity as homeowners. The trial Court in this case found the homeowner is not immune to suit, and defendants counsel admitted in 2006 and at the 2011 jury trial that the homeowner is not the employer and does not share immunity to suit of the corporate employer and withdrew that defense at the jury trial. None the less, in a 2011 appeal defendants counsel falsely represented to the Appellate Court, that the Defendant was plaintiffs employer and therefore immune to suit under Worker Comp Law. The 2012 Appellate wrote an opinion writing that the defendant was plaintiffs employer, thus reversed a purported 2006 Sum. Jud. stating the employer was immune to suit. That was after a 2011 jury trial that found the homeowner negligent. The 2012 Appellate court wrote the opinion as though plaintiffs corporate employer and the homeowner are one and they are not. They are separate entities. The homeowner individually had duties as homeowner that he breached. He unlawfully commenced re-shingling his detached garage roof at his home without a permit update for that work, without complying with applicable laws that he certified to the Authorities he as homeowner would comply with, in a Construction Permit Homeowner Certification in Lieu of Oath. He negligently hired and failed to sufficiently warn the plaintiff of the hazard he as homeowner knew existed when he instructed the employee of DND Inc. who he knew was not a roofer to go on his roof to strip shingles. The homeowner admitted he himself knew his roof had been leaking for months and would not be safe to walk on, yet instructed plaintiff to strip shingles. Within hours it collapsed and he fell through sustaining injuries that led to infection, sepsis and his death. The homeowner commenced re-shingling unlawfully, if he had complied with the applicable laws, that require a permit for the work in writing prior to commencing, require determination of integrity prior to commencing and require no employee be allowed to walk on a roof that will not support his weight, it would have prevented the roof collapse, Metodi's injuries and death, and damages to him and his family. After the 2012 opinion was written for plaintiffs EMPLOYER, writing that "that defendant" was improperly denied summary judgment, plaintiffs returned to the trial court to have the court re-enter a clarified judgment against the homeowner to show it is specifically against the homeowner and to order a date for a jury trial on damages after death, BUT the trial judge thought that the 2012 opinion meant he had to grant Sum. Jud. to the defendant in this case, who is a separate entity. He granted leave to appeal, stating it is not what he did, but what the 2012 Appellate Court did, but he did not comply with the law, or standards that even that 2012 opinion had written **MUST BE COMPLIED WITH** by the trial and appellate courts. Plaintiffs then filed an appeal in 2015 **REGARDING THE CORRECT DEFENDANT THE HOMEOWNER**; but in 2017 the Appellate Court **AGAIN** wrote an opinion writing that *the defendant was plaintiffs employer*, and that they had already determined in 2012 *that the employer was immune to suit*, therefore, affirmed the improper 2015 orders of the trial court. Plaintiffs then appealed to the NJ Supreme Court, and they denied to review the case. That led to this Petition to the US Supreme Court for a Writ that must be granted. see NJ Supreme Court Lyons Case law (App.A-13) Page 1

While plaintiffs Petitioners appeal in the State Court, and Petition for a Writ from the United States were pending being heard, the US Supreme Court established Law in Docket 15-1500 (App. A-4) on this same question of immunity, and that 2017 established law affects this case. Based on the law established in Docket 15-1500 "Lewis" case law, GVR MUST be granted in this case also as it was in "Lewis". The Corporate Employer and the Homeowner are separate entities that did not have the same duties, and it was the homeowner who was sued for his own individual negligence. As in "Lewis", the employee of the tribe was sued individually for his own negligence and could not obtain immunity to suit of the tribe, the tribe was not the entity sued. That defendant in Lewis, as this defendant in this case was sued in as an individual. In this case further the jury ALREADY determined that the HOMEOWNER WAS INDIVIDUALLY negligent. Thus the court CANNOT grant Sum. Jud. or immunity to suit to the homeowner in this case, and must enter the verdict and judgment made by the 2011 jury for damages up to death, that they already determined, and must order a date for the jury to determine damages after death, that all four plaintiffs are entitled to under 41 UCS 1983.

In 2017 Docket 15-1500 the Supreme Court of the United States established law that Immunity to Suit of one entity, cannot be shared by an entity not entitled to immunity, who is sued as an individual for damages caused by the entities own individual negligence. That Law established in that case Docket 15-1500 is controlling in this case, it substantially affects this case and Granted the Writ and GVR, vacated the lower courts and remanded, for the same reasons we requested a Writ from the Supreme Court of the United States in our case. Thus to be consistent with the law and with the 2017 intervening case law established in the US Supreme Court Docket 15-1500 and to protect rights plaintiffs rights in this case, as well as the rights of every person and corporation or entity in the United States, this request for Rehearing must be granted and the Writ and GVR that we the Plaintiffs/Petitioners request must be granted. The court cannot allow case law to be established that allows homeowners to commence construction unlawfully, then try to gain immunity to suit that they are not entitled to.

I have attached with this page 1 & 2 concise letter additional pages 3 thru 13 and Appendix A with laws and case laws included, explaining in more detail this case and why Rehearing, the Writ and GVR should and must be granted. In addition with permission, there are appendix B, C & D with Amicus Curiae Briefs for the United States, from William & Mary College of Law and from 44 Corporate and Criminal Law Professors supporting that Rehearing, the Writ and GVR must be granted in this case as it was granted in 2017 in Docket 15-1500. The homeowner and the Corporate employer ARE SEPARATE ENTITIES. All four Plaintiff have rights to recover damages under 42USC 1983 from the homeowner Dennis who the jury already determined was negligent. If the homeowner Dennis had complied with the applicable laws enacted through the Constitution, Congress and the US Supreme Court itself, that were enacted to prevent hazards in construction and to protect the Safety, Health and Welfare of all people and employees, the roof would not have collapsed, plaintiff would not have fallen through or been injured or died. The Construction Permit and Homeowner Certification (App. A- 11, 12, 13, 14) showed it was Dennis the homeowner duty to comply with the laws and control the work at his home. The trial judge found the permit is what created a Genuine Issue of Fact and what led the jury to find the homeowner negligent. As Lewis said immunity cannot be shared and the NJ Lyons v. Barrett Supreme Court SAID Courts must protect workers and all peoples rights because it is consistent with the law.

Respectfully Submitted,

Faith On 2-7-18

Faith Doncheva

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Petitioner request Rehearing, for a Writ to be Granted & (GVR) pursuant to R 44 & 10 the facts, law & the 2017 intervening controlling law established in Docket 15-1500.

In 2017 while plaintiffs petition was pending, the US Supreme Court established law in docket 15-1500 "LEWIS" (App-A2) that is controlling law substantially affecting this case, it is intervening law & requires Rehearing, a Writ & GVR be granted in this case also. In "LEWIS" a Writ and GVR were granted regarding the same question in our petition. "LEWIS" established law "that immunity to suit of one entity cannot be shared by a separate entity not entitled to immunity".

The appeal plaintiff/petitioners filed in 2015, was decided by lower courts contrary to law. In 2017 plaintiffs appealed post jury trial orders in our claims against homeowners individually. The 2012 appeal Def. Counsel frivolously filed was regarding a subject matter for Plaintiffs corporate employer DND Inc or DND's President in that capacity, but they were not defendants; there were no trial court orders regarding those entities, to be reversed in the 2012 appellate opinion regarding those entities. The homeowner had duties that he breached that were not duties of the corporation or of the corporations president. The trial judge wrote in his June 1, 2011 decision, (App-A21-22) there were Genuine Issues; that there was no contract or any Construction Permit assigning responsibility to DND Inc. or DND's President, that the permit assigned all duties to the homeowner, that he signed he voluntarily acknowledged he assumed in the "Construction Permit Homeowner Certification in Lieu of Oath". (App-A11-14) The appellate court cannot state a homeowner can share immunity to suit of the plaintiffs corporate employer, as the US Supreme Court said in "LEWIS" & the NJ Supreme Lyons Court also said "*immunity of one entity can't be shared by a different entity*", "*the homeowner and the corporate employer are separate entities*", thus rehearing GVR and a Writ must be granted in this case directed to the lower courts to comply with established law, as was granted in LEWIS in 2017.

(See WC Law 34:15-40, 34:15-69, 34:15-57 App.-A1, & "Lyons v Barrett" App-A2, Lewis App-A4)

JURISTITION

Rehearing of petitioners Jan. 8, 2018 denial (App.A 36) is provided in R10 & 44(2), 42USC1983 WCLaw34:15-40, the Constitution, & in the US Supreme Court intervening Law established in 2017 in "LEWIS, Docket 15-1500 that is controlling in this case. In LEWIS a Writ and GVR were granted. The "LEWIS" case established law "immunity is an important substantial question & cannot be shared by a separate entity not entitled to immunity". "LEWIS" substantially affects this case and is grounds in R44 supporting rehearing & that GVR must be granted in this case also, because the homeowner defendant in this case cannot share immunity of the separate entity, plaintiffs corporate employer. (App.-A1, WCL34:15-40). Amicus Briefs of United States, of William & Mary College of Law and of Corporate and Criminal Page 3

Law Professors are filed with this rehearing request in Appendixes, B, C & D and evidence, the permit, laws and case laws in Appendix A also support granting rehearing, a Writ & GVR.

Rule 44

2. Any petition for the rehearing of an order denying a petition for a writ... shall be filed within 25 days after the date of the order of denial ..its grounds shall be.. **intervening circumstances of substantial or controlling effect** or to other substantial grounds...

**Rehearing, a WRIT and GVR must be granted in accordance with
intervening 2017 controlling established US Supreme Court Law**

The US Supreme Court in "LEWIS" in 2017, said "*the court reviewed immunity to suit on multiple occasions, in different context*", that allowing immunity to be shared by an entity where it would not reach, is against Public Policy & the law, & denies substantial rights to a jury trial. Due to law established in "Lewis" while this Petition was pending, that substantially affects this case, that law must be applied in this case, is substantial grounds supporting Rehearing, a Writ and GVR must be granted in this case, as in "LEWIS" to be consistent with law & rights. (App-A4)

SUMMARY OF THE CASE

The defendant homeowner of 149 Breakneck Rd. Sewell, NJ WAS NOT plaintiffs corporate employer DND Inc. DND was located in Woodbury, NJ.. Plaintiff was strictly a framer, with DND, he was not a roofer. The Homeowner Dennis himself had a NJ Contractors license and certified to authorities in a 2002 "*Construction Permit Homeowner Certification*" his statutory duties as homeowner, including for the condition of his property, supervising as homeowner and performing all construction in accordance with all applicable laws. The 2002 permit only allowed an addition to his main home. (App-A11-14) On June 16, 2003, the homeowner Dennis, negligently hired knowing DND Inc. was not a roof contractor and knowing Plaintiff was not a roofer. On June 16 Dennis unlawfully commenced re-roofing his detached garage roof w/o a permit update for re-roofing, w/o complying with applicable laws and w/o sufficiently warning plaintiff of the hazard the homeowner admitted he knew existed. Although Dennis was the sole stockholder or president of DND Inc. he did not usually supervise DND's employee in that capacity, DND had foremen. On June 16th Metodi's foreman with DND Inc. was not at Dennis's home when Dennis admitted he was the only one, who as homeowner, instructed Metodi to go on his roof to strip shingles, even though Dennis admitted he knew Metodi was not a roofer, knew it was unlawful to commence w/o a permit for re-roofing, and admitted he Dennis himself knew his roof was leaking for months and was not safe to walk on and knew he as homeowner had duties as homeowner to comply with the law. Within hours the roof collapsed, Metodi fell through sustaining injuries that led to infection, sepsis & death, as written in the July 29, 2010 trial judges order, (App.A15) the death cert. & plaintiffs doctors affidavit. Page 4

NJAC5:23-2.14-it is unlawful to commence construction without first obtaining in writing a permit for the work. IB Code for re-roofing & OSHA 1926.501 require (1) strength & structural integrity of the roof & roof structure shall be determined prior to commencing (2) the roof & roof structure shall be capable of supporting weight that will be encountered during re-roofing & (3) no employee shall be allowed to walk on a roof that will not support his weight. NJAC 5:23 state its intent is to prevent hazards in construction and protect the safety health and welfare OF THE PEOPLE. (these laws were on poster boards at trial).

Pictures taken after the fall of the underside that was concealed by insulation showed the hazardous underside concealed by insulation that would have been discovered & prevented the roof collapse, injuries and death, if the Homeowner complied with laws that he certified he would comply with. Dennis admitted "*he could have hired an architect to determine integrity*" or "*Instructed to remove insulation and work on it from below*" but admitted he did not. Dennis admitted "*he knew his roof was leaking for months and wouldn't be safe to walk on*", but did nothing to prevent plaintiff from going on it, and instructed him to go on it, to strip shingles then it collapsed and plaintiff fell through sustaining multiple injuries that led to infection and death. On June 27, 2003, eleven days afterward, Dennis in writing obtained an update. He again wrote, "Principle Contractor-Homeowner-Person in Charge" & acknowledged his duties as homeowner. There was no contract or any permit assigning responsibility to DND Inc or DND's president in that capacity, ALL DUTIES including to comply with laws were DUTIES of Homeowner Dennis.(App.A12) The permit & laws show the homeowner unlawfully commence re-roofing not in accordance with law.

PLAINTIFFS CLAIMS AGAINST HOMEOWNERS (App.-A17-19)

June 5, 2005 counsel for plaintiffs Metodi & Faith filed this claim against the homeowners under 42USC1983 & WCLaw 34:15-40 for damages caused by the homeowners individual negligence. Nov. 2006 Metodi died as a result of his fall through the roof. On Jan. 5, 2007 leave was granted to amend. Sept. 12, 2008 Wrongful Death & Survivorship counts were added, with Faith & children Anton & Rocitsa plaintiffs in those counts.

WC LAW 34:15-40. **Where a third person (the homeowner) is liable** to the employee or his dependents for an injury or death, ' the existence of a right of compensation from the employer (DND Inc) or insurance carrier under this statute **SHALL NOT** operate as a **BAR** to the action of the employee or his dependents, ' nor be regarded as establishing a measure of damage therein.

42USC 1983 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory... subjects, ...any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law....

Construction law & OSHA are laws created through the Constitution and the Courts to protect the safety and welfare OF THE PEOPLE, they are RIGHTS of everyone. Page 5

PROCEEDINGS IN THE COURT

On Sept. 8, 2006, Jan. 5, 2007, May 2009, June 1, 2011 & May 15, 2015 after the 2011 jury trial, (App. A-20,21,22,33) the trial judge found the Construction Permit created a Genuine Issue & is what COULD and DID lead the jury to find homeowner Dennis individually negligent. The permit & Dennis's admission showed his duties that he breached. Dennis admitted he supervised the work as homeowner as he certified in his *Homeowner Certification* he would. (App. A 11, 12, 13,14)

Def. Counsel continued frivolous defenses that "*the homeowner was immune to suit*" or "*did not have duties*" even though he admitted in 2006 to the trial judge that immunity of the corporation does not extend to the homeowner, and the permit clearly showed the duties Dennis as homeowner had. The trial judge found Genuine Issues requiring trial, stating a jury could decide in plaintiffs favor, that Dennis had duties as homeowner and was negligent.

On July 29, 2010 Judge Morgan acknowledged he overlooked evidence & ordered by R. 4:37-2(b) "*plaintiffs Wrongful Death claims are re-instated & all claims shall proceed to a jury trial.*" (App.-A15; 16) On July 7, 2011 the jury determined the homeowner Dennis was individually negligent & entered judgment against him for damages up to death.

Damages after death remain to be determined; they only were not determined in 2011, because def. counsel demanded plaintiffs doctor come in person to testify, the trial judge ordered he had to come in person because of Counsels demand, but when he came on July 5 & 6th, Def. Counsel then stated he was not prepared to question him about plaintiffs death. The Judge stated to be fair, he allowed Negligence, Proximate Cause, Contributory Negligence & Damages Up To Death to be decided and stated IF the jury determined the was homeowner negligent, plaintiffs could apply for a date to determine Damages After Death.

At trial Def. counsel "withdrew" the immunity defense (App.-A23). He did not motion to dismiss plaintiffs claims against the Homeowner before or after the Jury verdict. Def. Counsel explicitly explained to the jury that Plaintiffs corporate employer, DND Inc. or Dennis in his capacity as president of DND were not defendants, that these claims are against the homeowners Dennis individually, that plaintiffs had to show to their satisfaction that as homeowner Dennis individually had duties that he breached. (App. A-34)

July 7, 2011 the jury determined, Dennis the homeowner was individually negligent, that his negligence was 100% the proximate cause of damages and determined damages up to Metodi's death. Judgment was entered June 8th & re-entered on Sept. 6, 2011 with interest to date *added totaling over \$724,000. Plaintiffs economist testified to damages exceeding \$1,700,000.*

After trial, Plaintiffs motioned for a date to determine Damages After Death. Def. counsel cross-motioned for *"Remittitur of the Amount of the Jury Verdict or in the Alternative a New Trial on All The Issues"*.

Sept. 2011 The trial judge stated there is a basis for Damages after Death, but did not order a date yet to determine them. He denied Def. motion stating *"plaintiffs economist showed higher damages, there was no contrary evidence" & "the verdict & amount was supported therefore there's no reason for a new trial on issues the jury determined"*.

The trial judges post jury trial order denying a new trial to the defendant homeowner and the judgment entered against the homeowner were not reviewed or reversed by the 2012 Appellate Court, the opinion stated in the footnotes, they did not review the post jury trial orders or judgment (THAT WERE AGAINST THE HOMEOWNER). That 2012 opinion found that THAT defendant plaintiffs employer was improperly denied Sum. Jud. in 2006 or 2007. The post jury trial orders or the jury verdict or judgment that was not reviewed or reversed in the 2012 appeal ARE against the HOMEOWNER Individually. (App. A-35)

DEFENDANTS 2012 APPEAL FRIVOLOUSLY WRITING IN

his NOTICE OF APPEAL that "DEFENDANT WAS PLAINTIFFS EMPLOYER"

In Sept. 2011 Def. counsel frivolously wrote in his 2011/2012 Notice of Appeal *"defendant was plaintiffs employer"*. The 2012 Per Curium opinion wrote: *"defendant was plaintiffs employer" & "that 2006 and 2007 Sum. Jud.s & the Post jury trial orders were appealed."*

The footnotes on the last two pages have written: **"they did not review post trial orders or the judgment"**. (App.A35) It wrote **"they reviewed the 2006 and 2007 Sum. Jud. DE NOVO, deriving facts from the 2006 Sum. Jud. Record"**; (NOT from the trial court record, App.A35) *that : "DND's President did not unusually supervise DND's Projects" thus "They agreed 2006 or 2007 Sum. Jud.s were improperly denied to that defendant"* because Employers are immune to suit under WC Law". (but there was no Sum. Jud.s denied to DND Inc or DND's president in that capacity, to be reversed, and the jury verdict is against the separate entity the homeowner.)

The 2012 opinion ALSO had written "the Sum. Jud. standard must be complied with by trial and appellate courts, when there are Genuine Issues Sum. Jud. MUST be DENIED", and IF plaintiffs showed the INDEPENDANT Contractor Doctrine did not apply plaintiffs claims against the homeowner could proceed. BUT the court lower courts did not comply with the standards or law. The 2012 opinion cited ACCARDI caselaw:

" Homeowners have a non delegable duty for safety on their property, that sometimes courts recognize an exception when a homeowner hires an INDEPENDANT Contractor, BUT plaintiffs WOULD overcome that exception IF Plaintiffs showed the homeowner (1) exercised control of the work or (2) negligently hired or (3) the work constituted a hazardous nuisance ".

TRIAL COURT IMPROPER UNLAWFUL ORDERS AFTER THE 2012 APPEAL

Plaintiffs throughout & after the 2012 opinion in 2015 showed the trial court that the homeowner Dennis cannot share immunity of the corporate employer and showed that the 2012 opinion stated claims against the homeowner Could proceed if plaintiffs showed, as we did, that the independent contractor doctrine does not apply.

The Permit Homeowner Certification and Dennis's admissions showed the homeowner exercised control, did negligently hire and the work constituted a nuisance , Dennis unlawfully commenced re-roofing, in addition to failing to sufficiently warn plaintiff.

In 2015 Plaintiffs requested Judge Morgan to re-instate all plaintiffs claims against the homeowner and re-enter the judgment for damages up to death and to order a date to determine damages after death. In 2015 Judge Morgan did not comply with the law and standards that the even 2012 opinion had written he must comply with. On May 15, 2015 **Judge Morgan again agreed with plaintiffs arguments but denied the orders**, stating the only reason he did not grant the orders plaintiffs requested was because the 2012 Opinion had written the defendant was improperly denied Sum. Jud., **BUT on May 15 he granted leave to appeal stating plaintiffs have a good cause, a right to see justice & to appeal and stated the permit is what created a Genuine Issue & what lead the jury to find the homeowner negligent & stated also stated "it was not what he did, but what the 2012 opinion did."** (App. A33) He stated he thought the 2012 opinion, meant he had to grant summary judgment. But he did not have to, R1:7 states a trial judge can correct ANY ERROR CLEARLY capable of producing an unjust result and R 4:46 and the 2012 opinion both state "when there are Genuine Issues SUM. JUD. MUST BE DENIED".

In 2015 even though Judge Morgan again acknowledged there were Genuine Issues, he did not comply with the standards or law, or the standard written in the 2012 opinion, that state Sum. Jud. MUST BE DENIED, when there are genuine issues, as the Court said in LOMBARDI v. MASSO case law also: "what is critical is that the judge give the parties opportunity to be heard and APPLY THE CORRECT STANDARD."

In 2015 the trial court Judge Morgan or assignment judge Judge Curio or the 2017 Appellate Court **DID NOT COMPLY with the standard, rules or law that the 2012 opinion had written MUST COMPLIED WITH**, and they OVERLOOKED that the 2012 opinion **REVIEWED THE MATTER AS THOUGH DEFENDANT WAS EMPLOYER** .

Plaintiffs requested reconsideration of May 15, 2015 orders, that were given to the Assignment Judge. On Oct. 14, 2015 based only on the 2012 opinion, the assignment Judge without complying with laws or court rules, denied reconsideration & granted Def. Counsel

an order enforcing litigant rights of DND Inc or DND' President WHO Aren't LITIGANTS.
(that is clearly not supported by any fact, our claims, the law and is absurd)

**PLAINTIFFS 2015-2017 APPEAL REGARDING CLAIMS AGAINST THE
HOMEOWNERS INDIVIDUALLY, WHO WAS NOT PLAINTIFFS EMPLOYER**

THEN Oct. 2015. plaintiffs filed THIS APPEAL regarding the HOMEOWNER .

(App.A-20, 24,25,26.) Plaintiffs Appealed the May 15 denials and Oct. 14, 2015 denial of reconsideration, that denied re-instating plaintiffs claims against the homeowner & denied re-entering the judgment made by the jury, clarified to show it's against the homeowner of 149 Breakneck & denied assigning a date to determine damages after death. The July 29, 2010 order already ordered that our claims against the homeowner cannot be involuntarily dismissed by R4:37-2(b) because Judge Morgan found there is evidence that COULD lead to a judgment in plaintiffs favor therefore he ordered all claims shall proceed to a jury trial. In 2015 the trial court did not comply with rules or laws or standards written in the 2012 opinion, R4:46 or 4:37-2(b).

In Oct. 2015 Plaintiffs also appealed the trial court assignment judge's order enforcing litigant rights of DND Inc. or DND 's president WHO ARE NOT LITIGANTS, or litigant rights of Dennis that don't exist after a jury found him negligent. Plaintiffs also appeal the assignment judges October 2015, decision, stating plaintiffs actions were frivolous because the trial judge Judge Morgan stated on May 15, 2015 that plaintiffs have a good cause, a right ti seek justice, and to appeal, and again stated the Permit is what created a genuine issue and what led the jury to determine the homeowner Dennis was negligent, and stated we could motion for reconsideration and granted leave to appeal. (App. A33)

Thus the assignment judge cannot find in Oct. 2015 that plaintiffs actions or motion for reconsideration seeking justice and our rights are frivolous, and failed to find that defendants homeowners defenses that he was immune to suit or did not have duties as a homeowner, are frivolous and continued in bad faith after he admitted in 2006 that the homeowner does not share immunity of the corporation (App.A24,25,26) and the Construction Permit (App.A12) Homeowners Certification that the homeowner signed in 2002, shows his statutory duties as homeowner. The trial court did not comply with NJSA 2A:15-59.

2A:15-59 b. In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that either:

- (1) The complaint, counterclaim, cross-claim or defense was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- (2) The nonprevailing party knew, or should have known, that the complaint, counterclaim, cross-claim or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

In plaintiff 2015 Appeal regarding improper trial court orders for the Homeowner subject matter, the Appellate Opinion in 2017 again improperly wrote "the defendant was plaintiffs employer", (App.A31,33) & that the 2012 opinion already found that that defendant was improperly denied Sum. Jud. in 2006 because he was immune to suit, even-though PLAINTIFFS appeal is clearly regarding claims, orders & judgment against the HOMEOWNER who is separate entity.

The 2017 lower courts opinions and orders conflict and do not comply with the facts or law, standards, or all caselaw, that even the 2012 opinion wrote must comply with.

In Sept. 2017 the NJ Supreme Court denied plaintiffs appeal without review.

Thus plaintiffs petitioned to the US Supreme Court for GVR to order the lower courts to comply with the law. The 2017 law that "LEWIS" established **MUST BE COMPLIED WITH.**

Plaintiffs 2017 US Supreme Court Petition for a Writ, and GVR to vacate lower opinions and remand to the trial court for the courts to comply with Statutes, Law, rules & standards was denied Jan. 8, 2018 in a general denial. (App.A36)

While plaintiffs appeal and petition were pending, the US Supreme Court in "LEWIS (App.A4) established law, that is consistent with what the trial judge Judge Morgan in this case originally found and what def. counsel admitted in this case; that immunity to suit of one entity cannot be shared by a different entity. In 2006 the trial judge Judge Morgan found and def. Counsel admitted that WCLaw immunity only applies to plaintiffs corporate employer, that the homeowner who had statutory duties is sued individually and does not share immunity of the separate entity plaintiffs corporate employer. As the LEWIS opinion states no appellate opinion can change the established immunity law.

(See WCL34:15-40 on App. A1 and "Lyons" App. A2, "Lewis" App. A4).

The MAIN question IS whether or not one entity can share immunity to suit of a separate entity that they are not entitled to share.

January 8, 2018 our Petition for a Writ was denied. While plaintiffs petition was pending, the US Supreme Court in LEWIS Docket 15-1500 published established law, that answered the same question in this case, therefore "LEWIS" affects this case and must be applied to this case. The law in LEWIS established that immunity to suit cannot be shared, by an entity who is not entitled to immunity. Applying the intervening law established in LEWIS, the US Supreme Court must grant the Writ in this case and GVR.

Judge Morgan stated on May 15, 2015, he would enter the orders and judgments plaintiffs requested, that he agrees must be entered, but he thought the 2012 opinion meant he had to grant Sum. Jud. but he did not have to. R 1:7 states a trial judge can correct any error capable of producing an unjust result & the 2012 opinion has written: trial & appellate courts must comply with the standard, when there are Genuine Issues Sum. Jud. MUST BE DENIED.

On July 29, 2010 Judge Morgan 's order & decision write: *"plaintiffs ARE CORRECT by R 4:37-2(b) the court cannot involuntarily dismiss plaintiffs claims because there is evidence and legitimate inferences therefrom that COULD lead to a judgment on all plaintiffs claims for damages up to and after death, and ordered all claims shall proceed to a jury trial. (App. A15,16)* That July, 19, 2010 order was not appealed. (App. A15,16)

R 4:37-2(b) After having completed the presentation of the evidence on all matters other than the matter of damages (if that is an issue), the plaintiff shall so announce to the court, and thereupon the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal of the action or of any claim on the ground that upon the facts and upon the law the plaintiff has shown no right to relief. Whether the action is tried with or without a jury, such motion "SHALL BE" denied if the evidence, together with the legitimate inferences therefrom, COULD sustain a judgment in plaintiff's favor

CONCLUSION – in accordance with law, a Writ and GVR must be granted in this case

The questions, can the court allow the separate entity, the homeowner, to claim immunity to suit under WC Law of a separate entity, plaintiffs corporate employer who was not sued and who did not have the same duties as the individual homeowner?

In Lewis (2017) the US Supreme Court said, immunity cannot be shared. (App. A4) In Ortiz v. Jordan the US Supreme Court said Sum. Jud. cannot be granted after a jury verdict in plaintiffs favor, even on immunity, or when there are Genuine Issues.

RES JUDICATA only applies to the 2011 jury verdict/judgment in plaintiffs favor, against the homeowner Dennis individually.

Applying the law and standards:

- (1) Sum. Jud. cannot be granted to DND Inc. or DND's president they are not defendants.
- (2) The HOMEOWNER of 149 Breakneck Rd., Sewell NJ cannot share immunity to suit of the corporate employer, DND Inc. located in Woodbury NJ,
- (3) Sum. Jud. cannot be granted to the homeowner Dennis after the trial judge & the permit shows there were Genuine Issues & that the jury could enter judgment in plaintiffs favor or after the JURY found Dennis negligent & entered judgment against the HOMEOWNER Dennis.
- (4) the court cannot find plaintiffs motions and actions seeking justice are frivolous, the court did not comply with law, NJSA 2a:15-59.1; and
- (5) the court failed to apply NJSA 2A:15-59.1 and WCLaw 34:15-57-4 to defendants counsel who unquestionably misrepresented the status of the employee Metodi and material facts to appellate courts, which under WCLaw 34:15-57.1 IS CRIME IN THE 4TH DEGREE, and clearly did so knowingly to obstruct justice and cause delay, which no court can allow. Page 11

If the US Supreme Court or lower courts do not take corrective actions against defendants counsel, as the laws state the court must do, other counsel will continue the same unlawful behavior thereby FRUSTRATING THE COURTS, wasting PRECIOUS TIME, in efforts TO INTENTIONALLY DELAY AND OBSTRUCT JUSTICE, as def. counsels have CLEARLY done in this case, thereby criminally violating WCLaw 34:15-57.4, NJSA 2A:15-59.1 CR and US Supreme Court rule 8:

1. Whenever a member of the Bar of this Court ...**has engaged in conduct unbecoming a member of the Bar of this Court, the Court will enter an order suspending that member from practice before this Court** and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered. Upon response, or if no response is timely filed, the Court will enter an appropriate order.

2. After reasonable notice and an opportunity to show cause why disciplinary action should not be taken, and after a hearing if material facts are in dispute, **the Court may take any appropriate disciplinary action against any attorney who is admitted to practice before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule or order of the Court.**

2a:15-59.1 b. In order to find that a defense of the nonprevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that either:

(1) The....defense was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or

(2) The nonprevailing party knew, or should have known, that the ...defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

The US Supreme Court in Ortiz also determined a defendant can not claim immunity he is not entitled, similar to "LEWIS", and that Sum. Jud. cannot be granted after a jury verdict against the defendant. The NJ Supreme Lyons case has been cited hundreds of times, it too established as in "LEWIS" that a corporate employer and homeowner are separate entities and a homeowner doesn't share immunity of corporate employers. The NJ Appellate 2011 opinion in Camerrotta provides: "the homeowner had statutory duties that he asserted to authorities were his in the construction permit, that he cannot avoid or shift. He knew his roof was not safe to walk on but did nothing to prevent plaintiff from going on it, thus a jury must be allowed to decide if the homeowner breached duties", the same as MUST BE HELD IN THIS CASE.

The court in 2015 cannot find plaintiffs actions seeking justice & rights under the laws are frivolous after the trial judge found they are not, and the 2011 jury decided all claims against the homeowner in plaintiffs favor. The court must take action against defendant & his counsel in accordance with the law, for criminal misrepresentations of the status of an employee in violation of Rules & WCLaw34:15-57.4. (App.A1) There is no reason the Sum. Jud. standard, R 4:37-2(b) & established case laws Lewis, Ortiz, Lyons & Cammerota should not apply in this case.(App.A-13)

In accordance with the controlling law established in 2017 in "LEWIS" Rehearing & a Writ and GVR must be Granted in this case, to Vacate the lower court opinions and orders that do not comply with law or standards & Remanded this case to the trial court, Judge Morgan, to re-enter the judgment made by the jury against the homeowner & order a date for a jury to determine damages after death, to vacate any orders finding plaintiffs actions seeking justice are frivolous, and to take action against defendants counsel for frivolous defenses & criminal violations of WC Law 34:15-57.4.

34:15-57.4 crime of fourth degree; civil liability.

1. a. A person shall be guilty of a crime of the fourth degree

if the person purposely or knowingly:

(2) Makes a false or misleading statement, representation or submission, including a misclassification of employees, or engages in a deceptive leasing practice, for the purpose of evading the full payment of benefits.....

(3) Coerces, solicits or encourages, or employs or contracts with a person to coerce, solicit or encourage, any individual to make a false or misleading statement, representation or submission concerning any fact that is material to a claim for benefits,... for the purpose of wrongfully ... evading the full payment of the benefits ..

c. (3) Notwithstanding any other provision of law, and in addition to any other remedy available under law, a person who ... improperly denies or delays benefits is liable to pay the sum due and owing plus simple interest.

d. Nothing in this section shall preclude, if the evidence so warrants, indictment and conviction for a violation of any provision of chapter 20, 21 or 28 of Title 2C of the New Jersey Statutes or any other law. For the purpose of this section, "purposely," "knowingly" and "purposely or knowingly" have the same meaning as is provided in chapter 2 of Title 2C of the New Jersey Statutes.

In 2002 the Defendant Homeowner certified to the authorities under penalty of perjury the duties he as homeowner assumed YET defendants counsel FOR YEARS, FRIVIOUSLY and knowingly MISREPRESENTED material facts that the Homeowner did not have duties when Def. Counsel clearly knew the homeowner had duties IN THE 2002 PERMIT, (App. A12) and he did so in a clear effort to evade paying benefits due by the entity liable to plaintiffs. Def. Counsel also, clearly misrepresented THE STATUS of an employee of DND Inc. to the courts in an attempt to evade paying benefits due to plaintiffs by the homeowner, misrepresenting that immunity to suit of the corporation should be extended to the homeowner EVEN AFTER Def. Counsel ADMITTED IN 2006 at the summary judgment hearing that immunity to suit of the corporation IS NOT SHARED by the homeowner, (App. A23,24,25, 26) & WTHDREW that defense at trial YET frivolously continued that defense for years also knowing there is no support.

Defendants Counsels are guilty of CRIME in the fourth degree. WCLaw 34:15-57.4

The NJ Supreme Court said in LYONS, Courts must protect rights of Citizens, Workers and Plaintiffs because it is consistent with law, & must protect rights of the US Supreme Court to establish & consistently apply law, to not violate Public Policy or plaintiffs rights. (App. A1-10)

**Additional material
from this filing is
available in the
Clerk's Office.**