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APPENDIX A

**United States Court of Appeals
For the First Circuit**

No. 15-1537

HENRY J. DULAURENCE, III,

Plaintiff, Appellant,

v.

ARTHUR G. TELEGEN; LIBERTY MUTUAL INSURANCE COMPANY,

Defendants, Appellees.

Before

Howard, Chief Judge,
Thompson and Kayatta, Circuit Judges.

ORDER OF COURT

Entered: November 29, 2017

Appellant's petition for rehearing and rehearing en banc, which we construe as a motion for reconsideration of this court's October 12, 2017 order denying appellant's motion to recall the mandate, is denied.

By the Court:

/s/ Margaret Carter, Clerk

cc:

Henry DuLaurence, III

Erik Weibust

APPENDIX B

**United States Court of Appeals
For the First Circuit**

No. 15-1537

HENRY J. DULAURENCE, III,

Plaintiff - Appellant,

v.

ARTHUR G. TELEGEN; LIBERTY MUTUAL INSURANCE COMPANY,

Defendants - Appellees.

Before

Howard, Chief Judge,
Thompson and Kayatta, Circuit Judges.

ORDER OF COURT

Entered: October 12, 2017

Because mandate had already issued by the time appellant filed the Motion to Vacate Judgments Pursuant to Rule 60(b), and Title 28 U.S.C. § 455, we treat the motion as one seeking to recall the mandate. So construed, we deny it because no "extraordinary circumstances" have been shown justifying recall of the mandate. See Kashner Davidson Sec. Corp. v. Mscisz, 601 F.3d 19, 22 & n.4 (1st Cir. 2010) (noting that court exercises power to recall mandate "sparingly").

By the Court:

/s/ Margaret Carter, Clerk

cc:

Henry J. DuLaurence III
Erik Warren Weibust

APPENDIX C

United States Court of Appeals For the First Circuit

No. 15-1537

HENRY J. DULAURENCE, III,

Plaintiff, Appellant,

v.

ARTHUR G. TELEGEN; LIBERTY MUTUAL INSURANCE COMPANY,

Defendants, Appellees.

Before

Howard, Chief Judge,
Thompson and Kayatta, Circuit Judges.

JUDGMENT

Entered: November 30, 2016

The district court dismissed plaintiff-appellant Henry J. DuLaurence, III's amended complaint on the basis of lack of subject matter jurisdiction and res judicata. In addition, the district court denied DuLaurence's motion for leave to proceed in forma pauperis (IFP) because it concluded that DuLaurence's appeal was not taken in good faith. See 28 U.S.C. § 1915(a)(3).

DuLaurence now seeks IFP status in this court. Good faith for purposes of § 1915(a)(3) is judged by an objective standard; i.e., whether the litigant "seeks appellate review of any issue not frivolous." Coppedge v. United States, 369 U.S. 438, 445 (1962). We assume without deciding, for purposes of granting IFP status, that DuLaurence's claims are non-frivolous. Nevertheless, we have carefully reviewed the record and the issues on appeal set forth in DuLaurence's affidavit in support of his IFP motion, and it clearly appears to this court that the appeal presents no substantial question.

To the extent DuLaurence's federal court amended complaint sought to vacate the state court judgments in DuLaurence v. Liberty Mut. Ins. Co., 74 Mass.App.Ct. 1125, 909 N.E.2d 558 (2009), or DuLaurence v. Telegen, 83 Mass.App.Ct. 1101, 978 N.E.2d 237 (2012), the district court properly found such an attempt barred under the Rooker-Feldman doctrine. See Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005); Miller v. Nichols, 586 F.3d 53, 59 (1st Cir. 2009).

Furthermore, the factual issues underpinning DuLaurence's federal court lawsuit concern discovery disputes in the state court employment action that were addressed in a final decision on the merits in DuLaurence v. Liberty Mut. Ins. Co., *supra*, 74 Mass.App.Ct. 1125 at *1, 909 N.E.2d 558 at *1. The district court's dismissal on res judicata grounds was, thus, also appropriate, even though they involved different ultimate claims. *See Miller*, 586 F.3d at 60-61; Bellermann v. Fitchburg Gas and Elec. Light Co., 470 Mass. 43, 61, 18 N.E.2d 1050, 1066 (2014) (citation omitted).

Accordingly, the motion for leave to proceed IFP is granted. The motion to expedite, petition for hearing en banc, and motion to recuse, strike, and remand are denied as moot. The district court judgment is affirmed. *See* 1st Cir. R. 27.0(c).

By the Court:

/s/ Margaret Carter, Clerk

cc:

Henry DuLaurence, III
Erik Weibust

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HENRY J. DULAURENCE, III,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	14-12349-DPW
v.	)	
	)	
ARTHUR TELEGEN, and LIBERTY	)	
MUTUAL INSURANCE COMPANY,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

March 31, 2015

Plaintiff Henry DuLaurence filed this action against Liberty Mutual, his one-time employer, and Arthur Telegen, the lawyer who represented Liberty Mutual during an employment termination action that DuLaurence pursued against Liberty Mutual in Massachusetts Superior Court. He seeks relief from two final judgments in Massachusetts: that entered in the underlying employment action and that entered in a collateral action that was dismissed pursuant to the anti-SLAPP (strategic lawsuits against public participation) statute, Mass. Gen. Laws ch. 231 § 59H, as well as damages arising from the conduct of Liberty Mutual and Telegen during the Massachusetts litigation. Defendants move to dismiss on various grounds. Concluding that I am without jurisdiction to review the state court judgments and that indeed I would have an obligation did I have

jurisdiction to give full faith and credit to them, I dismiss this action.

I. BACKGROUND

The factual background provided here is derived from DuLaurence's Amended Complaint and incorporated documents. The procedural background is derived from the Amended Complaint and public records. *Wilson v. HSBC Mortg. Servs., Inc.*, 744 F.3d 1, 7 (1st Cir. 2014) (in addition to the complaint, courts may consider documents incorporated by reference in the complaint, matters of public record, and other matters susceptible to judicial notice).

Liberty Mutual is a Massachusetts corporation with a principal place of business in Boston, Massachusetts. Am. Compl. ¶ 16. DuLaurence worked for Liberty Mutual as an attorney and was terminated in April 1995. *Id.* ¶ 17. Telegen is a partner at the law firm Seyfarth Shaw. *Id.* ¶ 15.

A. First Superior Court Action: The Underlying Employment Action

DuLaurence brought an employment action in Suffolk Superior Court in July 1995 against Liberty Mutual and several of its employees alleging misconduct with respect to his termination. *Id.* ¶ 17. Telegen represented Liberty Mutual and the individually named defendants throughout that action. DuLaurence brought claims in fourteen counts, thirteen of which

were dismissed on summary judgment. *Id.* ¶ 20. DuLaurence contends that summary judgment was improperly granted as a result of unethical and criminal conduct by Telegen and Liberty Mutual. *Id.* ¶ 21. These allegations involve discovery-related conduct, including failing to respond to interrogatories, instructing witnesses not to answer questions in depositions, and refusing to produce deponents. See, e.g., *id.* ¶¶ 21, 51, 52, 54, 55, 58. During the course of discovery, DuLaurence filed multiple interlocutory appeals disputing the Superior Court's discovery orders, all of which were denied by the Appeals Court. *Id.* ¶¶ 20, 49. Sanctions were assessed against DuLaurence in one of these appeals. *Id.* ¶ 70.

A jury trial took place in August 2004 against three Liberty Mutual employees on the sole remaining count of tortious interference with an employment relationship. *Id.* ¶ 23. The trial court directed a verdict in favor of one of the defendants, and the jury returned verdicts in favor of the remaining two defendants. *Id.* ¶ 24-25.¹ The court denied DuLaurence's post-trial motions. *Id.* ¶ 26.

¹ DuLaurence occasionally characterizes the jury verdict as having been in his favor, adding to his list of grievances his wrongful deprivation of damages pursuant to the jury's verdict. The characterization is incorrect. The jury verdict was a special verdict. While the jury found that one of the defendants acted with malice, it also found that he acted in Liberty Mutual's corporate interest. *Id.* ¶ 125. In DuLaurence's appeal of the employment action, he argued that

DuLaurence appealed the grant of summary judgment and the jury's verdict to the Massachusetts Appeals Court, which affirmed and then denied DuLaurence's petition for rehearing. *Id.* ¶ 26-27, 29; see also *DuLaurence v. Liberty Mut. Ins. Co.*, (Employment Action Appeal), 909 N.E.2d 558 (Mass. App. Ct. 2009). In that appeal, DuLaurence raised the argument that he was entitled to relief due to discovery violations by defendants. This argument was rejected because the court found that he had "not identified any specific judicial rulings or advanced any proper appellate argument to show any abuse of judicial discretion." *Id.* DuLaurence filed an Application for Further Appellate Review with the Massachusetts Supreme Judicial Court, which was denied. *Id.* ¶ 30. *DuLaurence v. Liberty Mut. Ins. Co.*, 914 N.E.2d 330 (Mass. 2009). DuLaurence then filed a petition for a Writ of Certiorari with the United States Supreme Court, which was also denied. *Id.* ¶ 31. *DuLaurence v. Liberty Mut. Ins. Co.*, 559 U.S. 1078 (2010).

this finding would have resulted in liability against Liberty Mutual if Liberty Mutual had remained in the case, and asked the Superior Court to amend the judgment and reconsider its ruling dismissing the wrongful termination count against Liberty Mutual on summary judgment. The judge declined to do so, and that decision was upheld on appeal. *DuLaurence v. Liberty Mut. Ins. Co.* (Employment Action Appeal), 909 N.E.2d 558 (Mass. App. Ct. 2009).

B. Second Superior Court Action: The State Collateral Action

DuLaurence filed a new complaint in the Superior Court in July 2010 against Liberty Mutual and Telegen. *Id.* ¶ 32. DuLaurence alleged "tortious interference with the practice of law," abuse of process, intentional infliction of emotional distress, negligent infliction of emotional distress, fraud and deceit against Telegen and Liberty Mutual based on their conduct of the first Superior Court employment action. DuLaurence also sought to set aside the judgment in the employment action pursuant to Mass. R. Civ. P. 60(b). Telegen and Liberty Mutual filed a motion to dismiss pursuant to 12(b)(6) and the Massachusetts anti-SLAPP statute, Mass. Gen. Laws c. 231 § 59H. *Id.* ¶ 37. The Superior Court granted the Special Motion to Dismiss pursuant to anti-SLAPP and also granted the Rule 12(b)(6) motion, adopting the reasoning of the defendants without issuing a written opinion. *Id.* ¶ 30. The court denied DuLaurence's motion for reconsideration. Telegen and Liberty Mutual filed a Request for Fees pursuant to the anti-SLAPP statute, and the Superior Court granted the request, awarding defendants \$29,858.82. *Id.* ¶ 42. The court denied DuLaurence's motion for reconsideration of this award.

The Appeals Court affirmed the Superior Court's order as to the anti-SLAPP judgment, *DuLaurence v. Telegen* (Collateral Action Appeal), 979 N.E.2d 237 (Mass. App. Ct. 2012), and denied

a motion for rehearing. Application for further review was denied by the Supreme Judicial Court, *DuLaurence v. Telegen*, 982 N.E.2d 1189 (Mass. 2013), and DuLaurence's petition for Certiorari to the United States Supreme Court was also denied, *DuLaurence v. Telegen*, 134 S.Ct. 897 (U.S. 2014).

C. Instant Federal Collateral Action

DuLaurence commenced this action by filing a complaint against Liberty Mutual and Telegen on June 3, 2014. He filed an amended complaint on June 5, 2014. In essence, DuLaurence contends that Liberty Mutual and Telegen engaged in unethical practices during the first Superior Court action by withholding discovery and making incorrect and misleading statements to the court about what had been provided in discovery. DuLaurence seeks damages based on this conduct; he also seeks to have the judgments in the Employment and Collateral actions from Massachusetts state court be declared void.

The complaint alleges eleven counts as to both of the defendants, Liberty Mutual and Telegen. Count one is for an alleged violation of civil rights, pursuant to 42 U.S.C. § 1983. Counts two to four are counts alleging violations of federal criminal statutes. Count two alleges obstruction of justice, under 18 U.S.C. § 1512(c)(1) and (2), count three alleges conspiracy to obstruct justice, 18 U.S.C. § 1512(c) and § 371,

and count four alleges obstruction of judicial proceedings, 18 U.S.C. § 1503.

Counts five to eight each seek to set aside the prior proceedings. Count five cites Rule 60(b)(3) of the Federal and Massachusetts Rules of Civil Procedure, count six cites Rule 60(b)(4) for the employment action, count seven cites Rule 60(b)(4) for the collateral action, and count eight cites the residual clause, Rule 60(b)(6). Count nine requests costs for unreasonable and vexatious multiplication of proceedings under 28 U.S.C. § 1927. Count ten alleges intentional interference with the practice of law. Count eleven alleges intentional infliction of emotional distress. Each of these counts concerns the conduct of Telegen and Liberty Mutual during litigation of the earlier state court proceedings.

Telegen and Liberty Mutual filed a motion to dismiss DuLaurence's amended complaint generally; the defendants also filed a special motion to dismiss pursuant to Massachusetts General Laws ch. 231, § 59H, the anti-SLAPP statute. In addition, the defendants filed a motion to enjoin vexatious litigation. For his part, DuLaurence has opposed each of these motions and also moved to strike the motion to enjoin vexatious litigation and for sanctions against Telegen and Liberty Mutual.

II. THE DUTY OF THE FEDERAL COURT
NOT TO INTERFERE WITH
FINAL STATE COURT JUDGMENTS

The plaintiff in this case essentially seeks review and displacement of final state court judgments. Finding that I have an obligation not to do so: (A) because lower federal courts lack jurisdiction for such an undertaking, and (B) because even if jurisdiction were granted to entertain this litigation, I am affirmatively obligated to give full faith and credit to the relevant state judgments, I will dismiss this case without reaching the merits of plaintiff's substantive claims.

A. Subject Matter Jurisdiction and the Rooker-Feldman Doctrine

Although neither party raised concerns about this court's jurisdiction in this matter, I have an obligation to inquire *sua sponte* into my ability to exercise subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3); *McCulloch v. Velez*, 364 F.3d 1, 5 (1st Cir. 2004). As a general proposition, federal district courts may exercise subject matter jurisdiction in accordance with congressional grants of authority such as for jurisdiction over suits against foreign states, 28 U.S.C. § 1330, those raising federal questions, *id.* § 1331, and those involving diversity of citizenship and at least the minimum requisite amount in controversy, *id.* § 1332. See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291 (2005).

While DuLaurence has framed his claims in this action as arising under federal statutes, which typically leads to federal question jurisdiction, closer examination of the claims themselves makes clear that I do not have jurisdiction over this action. Congress granted authority for a federal court to review a state court judgment solely to the Supreme Court. 28 U.S.C. § 1257(a). In two cases, *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), the Supreme Court held that the lower federal courts do not have subject matter jurisdiction when a plaintiff seeks to have a federal court other than the Supreme Court act as an appellate court reviewing final state proceedings. *Exxon*, 544 U.S. at 284-85. Under the so-called *Rooker-Feldman* doctrine, "lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 465 (2006).

The *Rooker-Feldman* doctrine "is not simply preclusion by another name," because it applies only in the limited circumstance "where a party in effect seeks to take an appeal of an unfavorable state-court decision to a lower federal court." *Lance*, 546 U.S. at 465. The doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings

commenced and inviting district court review and rejection of those judgments." *Exxon*, 544 U.S. at 284.

In *Exxon*, the Supreme Court noted that it has only found the *Rooker-Feldman* doctrine applicable in the two cases that form its name. *Id.* at 287. The Court expressed concern that lower courts have occasionally attempted to extend *Rooker-Feldman* far beyond the contours of the cases in abrogation of federal-court jurisdiction granted by Congress to be concurrent with the jurisdiction of state courts. *Id.* at 283. In *Lance*, the Court noted the "narrowness" of the *Rooker-Feldman* rule, in that it does not apply to parallel state and federal litigation, to review of executive or state administrative agency action, or to an action brought by a non-party to the prior state suit. *Lance*, 546 U.S. at 464.

This action, which is a repackaging of the state court appeal, however, is precisely the type of case designed to fit within the narrow confines of the *Rooker-Feldman* doctrine. The doctrine applies only to (1) a party who lost in a state-court judgment that (2) was rendered before the federal action commenced, where (3) the party complains of injuries caused by the state-court judgment and (4) invites district court review and rejection of those judgments. See *Silva v. Massachusetts*, 351 Fed.Appx. 450, 454 (1st Cir. 2009) (presenting the elements in a different order). It is beyond dispute that (1) DuLaurence

lost in state court and (2) that the state court proceeding was final. The First Circuit has held that "when the highest state court in which review is available has affirmed the judgment below and nothing is left to be resolved, then without a doubt the state court proceedings have 'ended.'" *Id.* at 455. The two state court proceedings that form the foundation of this action proceeded to a final judgment in Superior Court, were appealed through the Massachusetts courts, and DuLaurence sought writs of certiorari on both to the Supreme Court, which were denied.

The questions whether (3) DuLaurence complains of injuries caused by the state court proceedings and (4) invites me to review and reject the state court judgments is only slightly more complex. Some of DuLaurence's claims, specifically his claims under Rule 60, explicitly ask me to review and reverse the state court decisions. He also purports to bring additional federal claims, such as those stemming from federal criminal law and federal civil rights law. The fact that the federal questions DuLaurence seeks to raise were not addressed by the state court in the specific terms of the federal statutes does not make a difference here. To be sure, the Supreme Court in *Exxon* did note that a plaintiff could bring an "independent claim" over which the federal courts would still have jurisdiction even if the claim denied a state court's legal conclusion. *Exxon*, 433 U.S. at 293. A claim is "independent"

when a party alleges that the injury was caused by the defendant, separate from the state court decision. See *Galibois v. Fisher*, 174 Fed. Appx. 579, 580 (1st Cir. 2006) (unpublished, per curiam). However, DuLaurence's claims in this case are not the type of independent claims that I may review. Rather, they are directly and inextricably tied to the state court judgments themselves.

First Circuit precedent is clear that a claim need not directly assert that it is attempting to appeal or attack a state court decision in order to fall within the scope of the *Rooker-Feldman* doctrine. Rather, a plaintiff's claims may be "an effort to do an end run around the state court's judgment." *Miller v. Nichols*, 586 F.3d 53, 59 (1st Cir. 2009). The *Rooker-Feldman* doctrine is properly applied "where, regardless of how the claim is phrased, 'the only real injury to Plaintiffs is ultimately still caused by a state-court judgment.'" *Silva v. Massachusetts*, 351 F. App'x 450, 455 (1st Cir. 2009) (quoting *Davison v. Gov't of Puerto Rico-Puerto Rico Firefighters Corps.*, 471 F.3d 220, 223 (1st Cir. 2006)). "*Rooker-Feldman* squarely applies" when the substance of a plaintiff's request would require me to "review and reject a final state court judgment." *Davison*, 471 F.3d at 223.

In this case, DuLaurence does not allege any violation or misconduct by the defendants that occurred outside of or

separate from their conduct during the state court litigation. The only possible harm that DuLaurence suffered due to any discovery misconduct was as a result of the state court rulings based on that discovery. The relief requested by DuLaurence includes vacatur of the judgments in favor of defendants and entry of judgment for DuLaurence in the underlying actions. Throughout the complaint, in addition to attacking the conduct of the defendants and despite framing the counts as being directed to the two plaintiffs, DuLaurence also makes repeated allegations about unethical, criminal, and illegal conduct by the judges that presided over the case in state court. See, e.g., Amend. Compl. ¶¶ 115-32.

If "a plaintiff implicitly or explicitly seeks review and rejection of the state judgment, then a federal suit seeking an opposite result is an impermissible attempt to appeal the state judgment to the lower federal courts," which the *Rooker-Feldman* doctrine teaches means that the federal courts lack jurisdiction. *Federacion de Maestros de Puerto Rico v. Junta de Relaciones del Trabajo de Puerto Rico*, 410 F.3d 17, 24 (1st Cir. 2005) (internal citations, quotation and correction marks omitted). Each of the claims that DuLaurence makes in this action is, explicitly or implicitly, asking me to review the conduct of the parties and the courts in the Massachusetts state action, to review the ultimate state court judgment, and to find

error that entitles him to relief from the state court judgments. DuLaurence's efforts to challenge the conduct of discovery and the rulings of judges in the state court action present themes and minor variations on the original state court actions themselves. While DuLaurence attempts to repackage these claims as federal questions, it is plain that the conduct and outcomes of which he complains are those from the earlier state lawsuits, and that he seeks recourse in federal court to re-litigate the same issues that came to final resolution in the state courts.

Although the *Rooker-Feldman* doctrine is a narrow one, the core of the doctrine is designed to address precisely these situations. DuLaurence asks me to act as a federal appellate court in these completed state proceedings. I do not have subject matter jurisdiction to do so.

B. *Res Judicata*

Even if I did have jurisdiction, I would be obligated to conclude that the final judgments in state court preclude further review of the claims DuLaurence now makes. I give judgments the same *res judicata* effect they would receive in Massachusetts state court. See generally 28 U.S.C. § 1738; see also *Isaac v. Schwartz*, 706 F.2d 15, 16-17 (1st Cir. 1983). The term *res judicata* refers to two types of preclusion: claim preclusion and issue preclusion. *Kobrin v. Bd. of Registration*

in *Med.*, 832 N.E.2d 628, 634 (Mass. 2005). Claim preclusion makes a prior final judgment conclusive on parties, preventing them from re-litigating matters that were or could have been adjudicated in that action. *Id.* Claim preclusion requires "(1) the identity or privity of the parties to the present and prior actions, (2) identity of the cause of action, and (3) prior final judgment on the merits." *Id.*

Issue preclusion prevents re-litigation of the same issue in a later action based on a different claim. *Id.* To find issue preclusion, a court must find that "(1) there was a final judgment on the merits in the prior adjudication; (2) the party against whom preclusion is asserted was a party (or in privity with a party) to the prior adjudication; and (3) the issue in the prior adjudication was identical to the issue in the current adjudication." *Id.* Some of the allegations in this action are barred by both types of preclusion, but issue preclusion has the broader scope in this case.

Both doctrines require that there be a final judgment on the merits in the prior case, and DuLaurence contends that there has not been one here. While not every issue in this case has been determined by terms on the merits, the issues surrounding the conduct of discovery have been. During the first Superior Court action, three Superior Court judges issued discovery orders. DuLaurence took four interlocutory appeals to the

Appeals Court, and his appeals were denied each time. After summary judgment and trial, DuLaurence again appealed the discovery rulings and violations he alleged below.

The Appeals Court in the employment action noted that it was "unnecessary to enter th[e] thicket" of the parties' motions and allegations of misconduct because DuLaurence had not identified any judicial ruling that showed an abuse of judicial discretion. *DuLaurence*, 909 N.E.2d 558. While DuLaurence argues that the Appeals Court failed to consider his allegations of discovery abuse seriously because they refused to engage at great length with the record, his argument misses the point: discovery is left to the discretion of the trial judge, and an appellate court has need only to satisfy itself that the appealing party has not shown that the judge abused her discretion in particular rulings. See *Solimene v. B. Grauel & Co.*, 507 N.E.2d 662, 668 (Mass. 1987) ("The conduct and scope of discovery is within the sound discretion of the judge . . . we do not interfere with the judge's exercise of discretion in the absence of a showing of prejudicial error resulting from an abuse of discretion.") (citations omitted). The Appeals Court held, on the merits, that DuLaurence had not shown he was entitled to any relief due to the conduct of discovery.

The finality of that ruling was acknowledged by the Appeals Court again, in the appeal of the collateral action. 979 N.E.2d 237, n. 2. In that decision, the Appeals Court wrote:

DuLaurence's factual allegations in this action closely tracked those raised in his appeal from the adverse judgment. In that appeal, DuLaurence maintained that he was entitled to relief from the judgment based on the 'egregious discovery violations that clearly prejudiced his case.' According to DuLaurence, the defendants' misconduct included violations of numerous court orders, withholding evidence, misleading judges, misrepresentation, the violation of 'almost every disciplinary rule,' and fraud on the court. DuLaurence's argument regarding the discovery abuses did not meet proper appellate standards. He therefore failed to show prejudicial error or an abuse of discretion. See *DuLaurence v. Liberty Mut. Ins. Co.*, 74 Mass. App. Ct. 1125 (2009). The adverse judgment and the unfavorable discovery rulings are now final and not subject to collateral attack in this proceeding.

Similarly, in this action, DuLaurence seeks to re-litigate the underlying alleged discovery violations and related misconduct by both defendants and the trial court judge. His failure to challenge those rulings successfully on appeal in the employment action, however, precludes him from challenging them in any subsequent action.

The fact that DuLaurence has brought some claims in this case that differ by terms from those in the state actions does not affect this analysis. Identity of critical issues, for purposes of issue preclusion, need not have been asserted in identical claims, so long as there is sufficient overlap between

the claims. *Alba v. Raytheon*, 809 N.E.2d 516, 522 (Mass. 2004). Similarly, for claim preclusion, the claims need not be completely identical – a cause of action is a set of facts characterized as a single transaction or series of related transactions, and the “cause of action” for purposes of claim preclusion is identified by a common nucleus of operative facts even if those facts give rise to multiple counts under different legal theories. *Apparel Art Int'l, Inc. v. Amertex Ent. Ltd.*, 48 F.3d 576, 583 (1st Cir. 1995).

The state court held that DuLaurence had not shown that the Superior Court judges abused their discretion in resolving discovery-related conflicts. Even though DuLaurence claims that the courts got it wrong in the prior action, he may not relitigate that proposition here. See *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316, 325 (1927) (“the effect of the judgment . . . is the same whether resting upon an erroneous view of the law or not. A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause.”)

While this will likely be little comfort to DuLaurence, as a technical matter, there was not a judgment on the merits as to the 12(b)(6) motion in the second Superior Court action. The Superior Court in the collateral action dismissed on two grounds

stated in the alternative: anti-SLAPP and 12(b)(6). While 12(b)(6) is usually a dismissal on the merits with *res judicata* effect, *Isaac*, 706 F.2d at 17, when "a judgment of a court of first instance . . . is based on determinations of two issues, either of which standing independently would be sufficient to support the result, the judgment . . . is not conclusive with respect to either issue standing alone" unless both are affirmed on appeal. *York Ford, Inc. v. Bldg Inspector & Zoning Adm'r of Saugus*, 647 N.E.2d 85, 87-88 and n. 6,7 (Mass. App. Ct. 1995) (quoting Restatement (Second) of Judgments § 27 comment i (1982)). Here, the Appeals Court affirmed the dismissal on the grounds of the anti-SLAPP statute, a statute that does not turn on the merits of the underlying claims, and did not reach the alternative grounds of 12(b)(6); consequently, the 12(b)(6) ruling of the Superior Court in the collateral action is not a final judgment on the merits.

The Superior Court decision in the collateral action and the decision on appeal did, however, determine the merits of the anti-SLAPP motion, finding that the activity was protected petitioning activity that warrants protection under the statute. That determination from the collateral action is therefore given preclusive effect as, of course, are the final determinations of the original state action. Accordingly, I conclude that even if I did have jurisdiction, the state actions resolved with

finality against DuLaurence the very issues and claims that DuLaurence attempts to raise again here. He is precluded from relitigating them.

III. DEFENDANTS' MOTION TO ENJOIN VEXATIOUS LITIGATION AND PLAINTIFF'S MOTION TO STRIKE AND REQUEST FOR SANCTIONS

Because I lack jurisdiction to reach the merits of – or perhaps more accurately, the manifest lack of merit to – DeLaurence's Complaint, I have considered it inappropriate to address those merits in connection with the defendants' motions to dismiss. But the defendants, understandably apprehensive of DeLaurence's prolonged pursuit of meritless claims, seek an injunction from this Court to protect them against future litigation by the plaintiff. Demonstrating the lack of self awareness and professional competence which has characterized his pursuit of this related litigation, DeLaurence for his part requests sanctions of his own against the defendants.

Telegen and Liberty Mutual move, pursuant to Rule 11 of the Federal Rules of Civil Procedure and the inherent powers of the court, for an order enjoining DuLaurence from filing any further actions against defendants without my leave and until he has paid the attorneys' fees and costs that they were awarded in the anti-SLAPP ruling of the collateral action by the state court.

Federal courts have discretionary powers to regulate the conduct of litigants, including "the ability to enjoin a party –

even a pro se party – from filing frivolous and vexatious motions.” *United States v. Gomez-Rosario*, 418 F.3d 90, 101(1st Cir. 2005). While even a pro se litigant is not immunized from sanctions, *Jones v. Social Security Administration*, 2004 WL 2915290, *4 (D. Mass. Dec. 14, 2004). I note that DuLaurence has been a Massachusetts licensed attorney since 1968, according to the Board of Bar Overseers.²

This action is nearly identical to the collateral action brought and dismissed in state court prior to this suit. Both this action and the state court collateral action are primarily based on discovery violations and rulings that took place in the employment action, a case that previously resolved on the merits the same discovery and related issues that are at the heart of DuLaurence's claims here. As in *Castro v. United States*, DuLaurence has “made allegations in previous suits that are virtually identical to certain allegations made in the instant case,” and has demonstrated a “propensity to repeatedly file suit against the same defendants . . . even in the face of adverse judgments.” 775 F.2d 399, 409 (1st Cir. 1985), abrogated on other grounds by *Stevens v. Dep't of the Treasury*, 500 U.S. 1 (1991).

² DeLaurence is currently in inactive status as a member of the Massachusetts bar. His right of audience here is based on his pro se status to pursue personal claims and not as a member of the bar.

Yet DuLaurence asks that the motion to enjoin vexatious litigation be stricken and that sanctions be ordered instead against Telegen and Liberty Mutual. The request to strike is without foundation, and the motion for sanctions against the defendants is denied as both procedurally and substantively insufficient. Fed. R. Civ. P. 11(c)(2).

The employment action was filed, litigated, tried to a jury, and appealed. DuLaurence lost. His filing of the state court collateral action demonstrates his obdurate and heedless inclination to continue challenging, without good reason and without a procedurally valid mechanism for doing so, the judgment in the employment action, despite a final and valid judgment. For that exercise, he faces state court sanctions. He has now continued his meritless challenge to the underlying state court judgment in this court.

DuLaurence's vitriolic language in this action, including personal attacks on the judges who have decided his cases in the past, suggest that he is unlikely to accept the decision in this case either. Nonetheless, the principal ground for dismissal was not one identified by the defendants in the motion to dismiss submissions and DeLaurence himself appears without competence in federal litigation. Because DeLaurence might be considered unfamiliar with the legal principles which bar this case in this court, I will not now enter the injunction

defendants seek. Further litigation on these matters in this court, however, will likely result in severe consequences about which DeLaurence, irrespective of his prior unfamiliarity with federal practice, is now on clear notice

IV. CONCLUSION

For the reasons set forth more fully above, it is hereby ORDERED that:

1. Defendants' Motion to Dismiss Plaintiff's Amended Complaint and Independent Action to Set Aside Superior Court Judgment (Doc. No. 14) is GRANTED;
2. Defendants' Special Motion to Dismiss Plaintiff's Complaint Pursuant to Mass. Gen. Laws Ch. 231, § 59H (Doc. No. 18) is treated as MOOT;
3. Defendants' Motion to Enjoin Vexatious Litigation (Doc. No. 23) is DENIED;
4. Plaintiff's Motion to Strike and Request for Sanctions (Doc. No. 24) is DENIED.

/s/ Douglas P. Woodlock
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HENRY J. DULAURENCE, III,

Plaintiff,

v.

ARTHUR TELEGEN, and LIBERTY
MUTUAL INSURANCE COMPANY,

Defendants.

CIVIL ACTION NO.
14-12349-DPW

FIRST CIRCUIT NO. 15-1537

MEMORANDUM AND ORDER

August 10, 2015

The plaintiff, an inactive member of the bar who initiated this action by submitting the requisite filing fee, now seeks *in forma pauperis* status to appeal my dismissal of the case. In seeking indigent status, plaintiff relies on debts he has accrued as sanctions for his abuse of the litigation process. I decline to rule on whether the plaintiff may rely on self-inflicted financial obligations arising from his misuse of litigation to establish indigency and pursue frivolous litigation further without cost to him. Rather, I will certify in this Memorandum that the appeal is not taken in good faith and, consequently, the plaintiff is foreclosed from pursuing his appeal *in forma pauperis*, unless he is given permission to do so by the United States Court of Appeals for the First Circuit.

I. BACKGROUND

On March 31, 2015, I issued a Memorandum and Order (Dkt. No. 35) granting the defendants' Motion to Dismiss Plaintiff's Amended Complaint (Dkt. No. 14) and on

5. Plaintiff's Motion for Recusal (Dkt. No. 43) is DENIED; and
6. The Clerk shall TRANSMIT this Memorandum and Order as a supplemental record to the First Circuit Court of Appeals, in connection with USCA No. 15-1537.

/s/ Douglas P. Woodlock
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

APPENDIX F

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 15-1537

HENRY J. DULAURENCE, III

Plaintiff/Appellant

v.

ARTHUR G. TELEGEN

AND

LIBERTY MUTUAL INSURANCE
COMPANY

Defendants/Appellees

PLAINTIFF/APPELLANT'S MOTION TO VACATE JUDGMENTS
PURSUANT TO RULE 60(b), AND TITLE 28 U.S.C. § 455

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Associate
at usds.com/...

APPENDIX G

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CLERK OF COURT
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 15-1537

HENRY J. DULAURENCE, III

Plaintiff/Appellant

v.

ARTHUR G. TELEGEN

AND

LIBERTY MUTUAL INSURANCE
COMPANY

Defendants/Appellees

PLAINTIFF/APPELLANT'S PETITION FOR REHEARING EN BANC
AND
PLAINTIFF/APPELLANT'S PETITION FOR PANEL REHEARING
[LOCAL RULE 35.0 (b)]

The panel decision conflicts with the decisions of the courts in this jurisdiction: *Kashner v. Davidson Sec. Corp. v. Mscisz*, 601 F.3d 19, 23, 24 (1st Cir. 2010); *U.S. v. Chantel*, 902 F.2d 1018, 1021-1024 (1st Cir. 1990); *U.S. v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 660, 661 (1st Cir. 1990); *In re Boston's Children First*, 244 F.3d 164, 170 (1st Cir. 2001). Other jurisdictions: *Wendt v. Leonard*, 431 F.3d 410, 413 (4th Cir. 2005); *Marquette Corp. v. Preister*, 234 F. Supp. 799 (E.D.S.C. 1964); *In re Asbestos Sch. Litig.*, No. 83-0268, 1988 U.S. Dist. LEXIS 11480, at 32-33 (E.D. Pa. Oct. 7, 1988); *Lassiter v. Alabama A & M University Board of Trustees*, 28 F.3d 1146, 1149 (11th Cir. 1994) (en banc); *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 202 (4th Cir. 1997); *Washington v. Wilmore*, 407 F.3d 274, 280 (4th Cir. 2005); *Hart v. Massanari*, 266 F.3d 1155, 1171 (9th Cir. 2001); *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1976); *United States v. Balistrieri*, 779 F.2d 1191 (7th Cir. 1985); *Kenner v. C.I.R.*, 387 F.3d 689 (7th Cir. 1968); *Alexander v. Fulton County*, 207 F.3d 1303, 1326 (11th Cir. 2000); *Villager Pond, Inc. v. Town of Darlien*, 56 F.3d 375, 378 (2d Cir. 1995); and *Sweet v. Sheahan*, 235 F.3d 80, 83 (2d Cir. 2000). It conflicts with United States Supreme Court decisions *Holland v. Florida*, 560 U.S. 631, 634, 644, 649, 651-653 (2010);

Chambers v. Nasco, 501 U.S. 32, 44 (1991); *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990); *United States v. Olano*, 507 U.S. 725, 732 (1993); *West v. Atkins*, 487 U.S. 42, 48, 50 (1988); *Liljberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 858-862 (1988); *Lance v. Dennis*, 546 U.S. 459, 466 (2006); *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005); *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740, 748-749 (2012); *Grable and Sons Metal Products v. Darue Engineering*, 545 U.S. 308, 312 (2005); *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 555-556, 557-558 (2014); *Johnson v. City of Shelby*, 135 S. Ct. 346, 346-347 (2014) (per curiam); *James v. City of Boise, Idaho*, 136 S. Ct. 685, 686 (2016) (per curiam); *Glebe v. Frost*, 135 S. Ct. 429, 430-431 (2014) (per curiam); and *Menominee Indian Tribe of Wisconsin v. U.S.*, 136 S. Ct. 750, 755-756 (2016).

The proceeding involves questions of exceptional importance. The above cases support plaintiff/appellant's allegations of judicial actions which violated the Due Process Clause, causing injury to him. This Order also goes against law involving the disqualification of judges which the Appeals Court would not address on the merits, although before it; and Canon 3 of the Code

of Conduct for United States Judges. Reconsideration by the full court is necessary to secure and maintain uniformity of the courts' decisions.

QUESTIONS PRESENTED

- I. — Whether the Court was correct in treating the Title 28 U.S.C. § 455 claim in the plaintiff/appellant's motion as "seeking to recall the mandate", as it never ruled on the merits, denying it as "moot", after the plaintiff/appellant had appealed the District judge's denial of the motion.
- II. Whether, after the district court judge denied the plaintiff's motion to recuse himself, the Appeals Court erred and abused its discretion by failing to address his Federal Title 28 U.S.C. § 455 Constitutional rights recusal appeal before it on the merits, dismissing it as "moot". The district judge in his Order of Dismissal (1) reprimanded the Plaintiff/appellant at 2 separate locations for his alleging "judicial misconduct" and "judicial vindictiveness" for his "well pled" facts necessary to support his Title 42 U.S.C. § 1983 complaint; (2) admonished him for continuing his claim that he was entitled to judgment on liability as a matter of law pursuant to a jury verdict in his favor, (3) threatened him if he brought an appeal from his Order of Dismissal, and (4) stated that he "faces state court sanctions" for bringing his action, which included his verified Federal 42 U.S.C. § 1983

civil rights claim, although he never addressed it in his Order. The Appeals Court agreed with the District Court's legal conclusion, even though it was not based on the correct application of law.

III. Whether the federal courts' failure to follow Canon 3 of the Code of Conduct for United States Judges, failure to apply clearly established Federal law as determined by the U. S. Supreme Court to 28 U.S.C. § 455 (bias) and 42 U.S.C. § 1983, and an egregious district court Order of Dismissal supported by the Appeals Court, based on an erroneous view of the law, constitute "extraordinary circumstances" to justify a recall of the mandate.

IV. Whether a *sua sponte* dismissal can be rendered by a district court in any action in which a plaintiff alleges a violation of protected Constitutional rights; this involves "waiver" which only the claimant can do, not the court.

V. Whether a *sua sponte* dismissal can be rendered by a district court in any federal action which alleges injury to the integrity of the judicial system.

ARGUMENT

I. There Is No Mandate to be Recalled in the Title 28 U.S.C. § 455 Claim.

Following the district court judge's Order of Dismissal, the

APPENDIX H

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

HENRY J. DULAURENCE, III
190 Bridge Street, #5308
Salem, Massachusetts 01970

Plaintiff

v.

CIVIL RIGHTS COMPLAINT

(42 U.S.C. Sec. 1983; 28 U.S.C. Sec. 455;
18 U.S.C. Sec. 1503; 18 U.S.C. Sec. 1512(c);
18 U.S.C. Sec. 1512(k); 28 U.S.C. Sec. 1927)

ARTHUR G. TELEGEN
Seyfarth, Shaw LLP
Two Seaport Lane, Suite 300
Boston, Massachusetts 02110

Civil Docket No. 1:14-cv-12349-DPW

AND

LIBERTY MUTUAL INSURANCE CO.
175 Berkeley Street
Boston, Massachusetts 02116

Defendants.

The plaintiff is *pro se*
(978) 740-0098

The defendant Arthur Telegen was last *pro se*
(U.S. Supreme Court)
(617) 946-4800

The defendant Liberty Mutual Insurance Co. was last
represented by Arthur Telegen (U.S. Supreme Court)
(617) 946-4800

VERIFIED COMPLAINT

AMENDED COMPLAINT AND JURY DEMAND

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such federal action been previously filed and dismissed or transferred after having been assigned to a judge. Appeals Court anti-Slapp decision (panel two), is at 83 Mass. App. Ct. 1101, 979 N.E.2d 237 (2012); employment decision (panel one), is at 74 Mass. App. Ct. 1125, 909 N.E.2d 558 (2009); Petition for a Writ of Certiorari, #12-10358, denied March 3, 2014.

NOW COMES Plaintiff, *pro se*, and for his Complaint against Arthur G. Telegen, and Liberty Mutual Insurance Co., hereby states as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this action under Title 42 U.S.C. Sec. 1983—Civil Action for Deprivation of Rights, for certain protections guaranteed to him “secured by the Constitution and laws”, the Bill of Rights, and Due Process—both defendants.
 2. Plaintiff brings this action under Title 18 U.S.C. Sec. 1503 (The Omnibus Provision)—obstruction of the “proper administration of law”—both defendants.
 3. Plaintiff brings this action under Title 18 U.S.C. Sec. 1512(c)(1) and (c)(2)—obstruction of the “proper administration of law”—both defendants.
 4. Plaintiff brings this action under Title 18 U.S.C. Sec. 1512 (k), and Sec. 371—conspiracy in “corruptly obstructing any official proceeding, or attempting to do so” as set out in Title 18 U.S.C. Sec. 1512(c), and Sec. 1503—both defendants.
 5. Plaintiff brings this action under Title 28 U.S.C. Sec. 455—both defendants.
 6. Plaintiff brings this as an independent action pursuant to Massachusetts and Federal Rules of Civil Procedure 60(b)(3)—both defendants.
 7. Plaintiff brings this independent action pursuant to Fed. R. Civ. P. 60(b)(4).
-

3.

8. Plaintiff brings this as an independent action pursuant to the Massachusetts and Federal Rules of Civil Procedure 60(b)(6)—both defendants.

9. Plaintiff brings this action under Title 28 U.S.C. Sec. 1927—costs for ‘unreasonable and vexatious multiplication of proceedings’—both defendants.

10. Plaintiff brings this action for the “Intentional Interference with the Practice of Law”—both defendants.

11. Plaintiff brings this action for the “Intentional Infliction of Emotional Distress”—both defendants.

12. This Court has jurisdiction pursuant to the following:

- a. Federal jurisdiction pursuant to Article III sec. 2, which extends jurisdiction to cases arising under the U.S. Constitution and the Bill of Rights;
- b. 28 U.S.C. Sec. 1331, which gives district courts original jurisdiction over civil actions arising under the Constitution, laws or treaties of the United States;
- c. 28 U.S.C. Sec. 1343 (3) and (4), which gives the district courts jurisdiction over actions to secure civil rights extended by the United States government;
- d. 28 U.S.C. Sec. 1367, which gives the district court supplemental jurisdiction over state law claims.

13. Venue is appropriate in this judicial district under 28 U.S.C. Sec. 1391(b), because the events that gave rise to this Complaint occurred in this district.

PARTIES

14. Plaintiff is a citizen of the United States and resides in the County of Essex,

COUNT ONE**Title 42 U.S.C. Sec. 1983—Violation of the Bill of Rights and the Fourteenth Amendment-Deprivation of Rights—both defendants**

87. The plaintiff hereby re-alleges and incorporates by reference, as if fully set forth and restated herein, paragraphs 1 through 45, and in particular 46 through 86, setting out factual allegations as opposed to “mere conclusions”. *Bell Atlantic Corp., et al. v. Twombly, et al.*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-1965 (2007); and *Ashcroft, et al. v. Iqbal, et al.*, 129 S.Ct. 1937 (2009)-“plausibility” for Sec. 1983.

88. “It is axiomatic that ‘a fair trial in a fair tribunal is a basis requirement of due process’”. *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S. Ct 2252, 2259, 173 L. Ed. 1208 (2009).

89. The defendants separately, together, and with others did knowingly, intentionally, and corruptly obstruct the plaintiff’s right to redress guaranteed by the Bill of Rights and Fourteenth Amendment of the United States Constitution. They violated the mandates of the Rules of Professional Conduct, their license to practice law given them by the state of Massachusetts, and criminal law set out below, and incorporated herein. These acts were prejudicial to the effective and expeditious administration of the business of the courts and the administration of justice, depriving the plaintiff of his Constitutional rights. (42 U.S.C. Sec. 1983.)

90. The defendants acted intentionally and with callous disregard to the plaintiff’s Constitutional rights.

91. As a direct and proximate result of the defendants’ violations of the plaintiff’s Constitutional rights, the plaintiff has suffered severe and substantial damages. The

damages include lost salary, lost employee benefits, lost raises, lost earning capacity, lost career and business opportunities, litigation expenses including costs and attorneys' fees, loss of reputation, humiliation, embarrassment, extreme mental and emotional anguish and distress, high blood pressure, open heart surgery, and other compensatory damages, in an amount to be determined by the jury and the Court.

COUNT TWO

Obstruction of Justice--both defendants Title 18 U.S.C. Sec. 1512(c)(1) and Sec. 1512(c)(2)

92. The plaintiff hereby re-alleges and incorporates by reference, as if fully set forth and restated herein, paragraphs 1-91, in particular paragraphs 46 through 86, setting out factual allegations as opposed to "mere conclusions". *Bell Atlantic Corp., et al. v. Twombly, et al.*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-1965 (2007).

93. The defendants, separately, together, and with others, did knowingly, intentionally, perpetrate criminal acts, which are subject to prosecution by the U. S. Department of Justice (Public Integrity Section). "Whoever corruptly or otherwise obstructs, or influences any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both". Title 18, United States Code, Section 1512 (c). (Title 18, United States Code, Sections 3238 and 3551 et seq.)

94. The defendants argued the following to the courts as to anti-Slapp "petitioning activity": "DuLaurence's entire complaint relates to Liberty Mutual's and Telegen's conduct and statements in connection with the underlying litigation [an "official proceeding"] against Liberty Mutual. Accordingly, the first prong of the anti-Slapp

statute is easily satisfied". Although the Trial Court agreed with this argument, as did the Appeals Court (panel two), this ruling goes completely against that set out in the above paragraph, and the Massachusetts Rules of Professional Conduct. This certainly was an interesting argument when one considers that this could lead to criminal prosecution, with the possibility of a 20 year prison sentence.

95. "[T]ampering with the administration of justice...involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public". *Chambers v. Nasco*, 501 U.S. 32, 44 (1991).

96. The defendants made representations to the courts, knowingly arguing incorrect law and facts for the purpose of misleading the court, which were intended, and which they had reason to expect would be acted upon as truthful, as Telegen and Liberty Mutual's attorneys were officers of the court. These misrepresentations of fact and law caused rulings that prevented the plaintiff from obtaining relevant information, "[impinging] on Constitutional protections". *Hickman v. Taylor*, 329 U.S. 495, 501 (1947). Mass. R. Prof. C. 8.4.

97. "Corruptly" for the purposes of Section of 18 U.S.C. sec. 1512(c) connotes "wrongfulness or impropriety". *United States v. Johnson*, 553 F. Supp. 2d 582, 626 (E.D. Va. 2008), citing *Arthur Anderson LLP v. United States*, 544 U.S. 696, 705 (2005). And in *United States v. Townsend*, 630 F.3d 1003 (11th Cir. 2011), that the natural and probable effect of the defendants' conduct would be the interference with the due administration of justice (Mass. R. Prof. C. 8.4). *Id.* at 1115.

98. *Restatement (Second) of Torts* sec. 682 (1977), provides:

One who causes a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed is subject to liability to the other for harm caused by that abuse of process. *Id.*

99. One is liable if aware “of the use to which the information is to be put, and intends to supply it for that purpose”. 37 C.J.S. *Fraud*, sec. 106, at 302 (2008).

100. Obstruction of justice is not a sole intent crime; convictions are sufficient when there is a dual intent, and the obstruction was only a part of the motive for taking the obstruction act. *See e.g., United States v. Bailey*, 405 F.3d 102 (1st Cir. 2005).

101. These provisions condemn the obstruction of judicial proceedings. There must be proven: (1), there was a pending judicial proceeding; (2), that a defendant knew the proceeding was pending; and (3), that the defendant corruptly endeavored to influence, obstruct, or impede the due administration of justice. *United States v. Price*, 951 F.2d 1028, 1030-1031 (9th Cir. 1991); *United States v. Specher*, 783 F. Supp. 133, 163 (S.D.N.Y. 1992). Plaintiff incorporates the paragraphs in Count One.

102. ‘It is the mere knowledge of the possibility that ones false or misleading statements would interfere with the proper administration of justice’. “The defendant’s actual design is irrelevant”. *United States v. Neiswender*, 590 F.2d 1269, 1272-1274 (4th Cir. 1979).

COUNT THREE

**Title 18 U.S.C. sec. 1512(c), sec. 1512(k); Title 18 U.S.C. sec. 371
Conspiracy to Obstruct Justice- both defendants**

103. The plaintiff hereby re-alleges and incorporates by reference, as if fully set forth

24.

and restated herein, paragraphs 1 through 102; and specifically 46 through 86, 91.

104. The defendants, together with others, did knowingly, intentionally, and corruptly obstruct, influence and impede an official proceeding contrary to Title 18, United States Code, sec. 1512(c). (Title 18, United States Code, Sections 1512(k), 3238 and 3551 et seq.; Title 18, United States Code, Section 371.)

COUNT FOUR

Obstruction of Judicial Proceedings

Title 18 U.S.C. 1503, The Omnibus Provision—both defendants

105. The plaintiff hereby re-alleges and incorporates by reference, as if fully set forth and restated herein, paragraphs 1 through 104; and specifically 46-86, and 91.

106. The defendants separately, together, and with others, did knowingly, intentionally, and corruptly obstruct, influence and impede an official proceeding...(Title 18, United States Code, Sections 1503, 1512(k), 3238 and 3551 et seq.) (Mass. R. Prof. C. 8.4.)

107. This provision condemns the obstruction of judicial proceedings. There must be proven: (1) there was a pending judicial proceeding; (2) that a defendant knew the proceeding was pending; and (3) that the defendant corruptly endeavored to influence, obstruct, or impede the due administration of justice. *United States v. Price*, 951 F.2d 1028, 1030-1031 (9th Cir. 1991); *United States v. Specher*, 783 F. Supp. 133, 163 (S.D.N.Y. 1992).

COUNT FIVE

Rules of Civil Procedure 60(b)(3)

Fraud, Misrepresentation or Misconduct by an Opposing Party

PRAYER FOR RELIEF

WHEREFORE, the plaintiff requests judgment against the defendants as follows:

- A. For appropriate declaratory relief regarding the unlawful and unconstitutional acts and practices of the defendants;
- B. For appropriate compensatory damages in an amount to be determined at trial;
- C. For appropriate punitive and exemplary damages in an amount to be determined;
- D. For appropriate equitable relief against all defendants as allowed;
- E. For an award of reasonable attorneys' fees and costs;
- F. Vacate the judgments entered in the underlying actions;
- G. Enter judgment for the plaintiff in the underlying actions, including Rule 59(e);
- H. Award the plaintiff damages for emotional distress caused by the defendants' illegal actions over 19 years;
- I. Award the plaintiff the financial sanctions illegally exacted from him for illegal discovery tactics and larceny, plus interest from the date of the order;
- J. For such other and further relief to which the plaintiff may show himself to be justly entitled.

VERIFICATION—DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the plaintiff in the above action, that he has read the above complaint, and that the information contained therein is true and correct. 28 U.S.C. sec. 1746.

Executed at 190 Bridge Street, Salem, MA 01970, on June 2, 2014.



Henry J. DuLaurence, III;
BBO# 137660

47.

THE PLAINTIFF REQUESTS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted,

A handwritten signature in cursive script, reading "Henry J. DuLaurence, III".

Henry J. DuLaurence, III

Plaintiff

190 Bridge Street, #5308

Salem, MA 01970

(978) 740-0098

Massachusetts BBO# 137660

Caskart5@icloud.com

Dated: June 4, 2014

APPENDIX I

Page 9 of the plaintiff's Petition For Rehearing before the Appeals Court (panel one), reminding it that the jury's special verdict did not implicate any "employee" as set out in its ruling, but the plaintiff's direct supervisor, Latronico, resulting in strict liability against Liberty Mutual

9.

The doctrine of apparent authority results in strict liability against Liberty.

Faragher v. City of Boca Raton, 524 U.S. 775, 118 S.Ct. 2275 (1998), delves into the relationship between supervisor and employer:

'The supervisor is deemed to act on behalf of the employer when making decisions that effect the economic status of the employee. From the perspective of the employee, the supervisor and the employer merge into a single entity... A supervisory employee who fires a subordinate is doing the kind of thing that he is authorized to do, and the wrongful intent with which he does it does not carry his behavior so far beyond the orbit of his responsibilities as to excuse the employer.' [*Id.* at 791-2; 2285.]

And in *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 118 S.Ct.

2257 (1998), the Court stated:

The Restatement defines conduct, including an intentional tort, to be within the scope of employment when 'actuated, at least in part, by a purpose to serve the employer,' even if it is forbidden by the employer. [*Id.* at 757; 2266.]

As stated in *Mutley v. Minkoff*, 68 Mass. App. Ct. 48, 859 N.E.2d 887 (2007), an appellate court may decide cases on issues or theories not raised. [R. Br. 12.] Both **wrongful termination** and **hostile environment** were perpetrated by Liberty Mutual. See Dr. Philip Doherty's affidavit as to defendants' harassment. [A. 1699-1704.] Even an at-will employee should not be subjected to termination with malice. [Pl. Br. 45.] Helen Sayles testified at trial that all Liberty employees should be treated fairly. [Pl. Br. 14.]

RETALIATION

The "internal actions" led to external situations which involved over-billing, and subjecting auto insureds to State Surcharges and increased premiums for failure to investigate claims. Judge Ball incorrectly analyzed the c. 176D and c. 93A violations,