No. 18-____

In the Supreme Court of the United States

CHRISTOPHER HOWARD PAIGE
AND MICHELE ANNA PAIGE,

Petitioners,

v.

LERNER MASTER FUND, LLC, ET. AL.

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. When the lower courts deny important substantive and procedural rights to protected minorities, may they simply refuse to explain their rationale(s) for those denials, thereby forcing both those litigants and the general public to question whether or not there's actually a legitimate, non-discriminatory explanation for the lower courts' decisions? In other words, does the need to avoid even the "appearance of impropriety" require the lower courts to do more than to simply assert their good-faith in response to specific, credible allegations of judicial discrimination?

2. In an adversary proceeding pursuant to a Chapter 7 bankruptcy, does an innocent defendant have any substantive legal rights other than the right to prevail at some indefinite point in the future? In lay terms, is justice delayed justice denied?

3. May the lower courts deny innocent bankrupts their right to a speedy resolution of all adversary proceedings against them, or are the lower courts free to ignore the Congressional mandate requiring a speedy resolution of such disputes?

4. Even if the lower courts may ignore allegations of judicial discrimination, when—consistent with the First Amendment to the U.S. Constitution—may the lower courts sanction litigants for challenging judicial discrimination?

5. Even if the lower courts may sanction litigants for challenging judicial discrimination, may the lower courts sanction litigants for challenging judicial discrimination without providing any notice or opportunity to be heard? What message are the lower courts

sending when they "castigate" litigants for challenging judicial discrimination?

PARTIES TO THE PROCEEDINGS

PETITIONERS ET. UX.

Christopher Paige and Michele Paige

RESPONDENTS

Lerner Master Fund

Morgan Lewis

John Goodchild, Esq.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioners Christopher and Michele Paige hereby respectfully petition this Court for a writ of certiorari to review the judgment of the Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

None of the final opinions below were reported, but we have attached copies of those opinions at App.32a (Bankruptcy Court), App.6a (District Court), and App.1a (Appellate Court).

The Bankruptcy Court did, however, publish its interlocutory opinion granting the Respondents' Motion to Extend (Bk. #35) at *Lerner Master Fund, LLC v. Paige (In re Paige)*, 476 B.R. 867 (Bankr. M.D.Pa. 2012). *See also* App.43a.

JURISDICTION

The judgment of court of appeals was entered on September 27, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Our appeal to the Third Circuit was an appeal of right pursuant to 28 U.S.C. § 158(a) from a final judgment of the District Court in our bankruptcy appeal.

The District Court exercised appellate jurisdiction over our initial appeal pursuant to 28 U.S.C. § 158.

The Bankruptcy Court exercised core subject matter jurisdiction over the underlying adversary proceeding pursuant to 28 U.S.C. § 157(b) and/or 28 U.S.C. § 1334; our Motions for Sanctions were collateral thereto.

STATUTORY PROVISIONS INVOLVED

We sought sanctions under 28 U.S.C. § 1927, Fed. R. Bankr. P. 9011, the courts' inherent powers, and we sought to enforce the Congressionally-mandated filing deadlines under Fed. R. Bankr. P. 4007(c).

STATEMENT

Many years ago now, on December 6, **2011** to be precise,[1] the sixty (60) day, Congressionally-mandated filing deadline for our creditors to file both discharge complaints (aka "727 Claims") and dischargeability complaints (aka "523 Claims") expired.

Several months later, on February 23, **2012**, the Appellees' filed an adversary complaint (Adv.#1) against my wife (Michele) and I (Christopher) that included both 727 and 523 Claims.

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[1] *See, e.g.*, Opinion (Adv.#40), App.51a (The deadline was set for December 6, 2011, . . . ").

When asked to account for their extraordinary delay, the Appellees attributed at least six (6) days of their lengthy delay to the fact that they didn't think filing deadlines are very important. *See* Tr. 3/1/12 (Bk.#86), p. 81, L: 7-10 (Goodchild: "And so the timing of the filing of the complaint in my view is not so urgent.").

Although the Bankruptcy Court had previously explained that these Appellees had to account for each and every day of their delay, that Court never explained how or why these Appellees were magically entitled to six extra days merely because their attorney didn't believe in the importance of filing deadlines. *See* Tr. 1/5/12 (Bk.#63), p. 14, L: 22 *et seq.* ("COURT: What I try to do is put myself in the shoes of the parties as this thing progresses asking myself: what is the reason why I couldn't have filed the complaint? What is the reason I couldn't file the complaint on this day? On the second day? On the third day? On the fourth day, et cetera?"); *but cf.* Opinion (Adv.#40), App.43a (completely failing to reference this standard or to account for those six days).

Thus, none of the lower courts ever attempted to explain the Bankruptcy Court's failure to follow the law as it had described it; rather, all three courts asserted that there must be a good, but completely unidentified non-discriminatory reason for the Bankruptcy Court to ignore the law as it has described it. *See, e.g.*, Opinion (Adv.#40), App. 43a (failing to explain its failure to enforce the law).

A few months after these Appellees had filed their belated Complaint (Adv.#1), the Appellees claimed on June 13, **2012**, that they were ready for trial, that

they had completed discovery,[2] and, thus, that they agreed to try their Complaint (Adv.#1) on August 15, 2012.[3]

A month later on July 11, 2012,[4] however, the Appellees suddenly "realized" that they needed discovery, so they requested—and received—their first indefinite continuance of the previously-scheduled trial. *See, e.g.,* LMF's Motion to Continue (Adv.#17); *and see* Order (Adv.#45) ("The Plaintiff's request to continue August 15, 2012 trial date is granted.").

Again, none of the lower courts attempted to explain why an indefinite delay was appropriate, and none of these courts even considered—or attempted to mitigate—the resulting prejudice to my wife and I. *See, e.g.,* Order (Adv.#45). Ultimately, these delays effectively denied us the medical care that we needed —a serious problem for a cancer survivor like my wife, who would subsequently discovery that she had a

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[2] *See, e.g.,* Tr. 6/13/12 (Bk.#130), p. 6, L: 16-17 (GOODCHILD: "I don't believe at this stage that there is additional discovery that we need . . . ").

[3] *See, e.g.,* Tr. 6/13/12 (Bk.#130), p. 17, L: 10-13 ("THE COURT: I'll do [the trial] any day you want me to-I mean, if you can agree-do you care? Do you care, Mr. Goodchild? MR. GOODCHILD: Your Honor, I don't—no."); *and see* Proceeding Memo (Adv.#14) ("Order scheduling trial for August 15, 2012 at 10:00 a.m.").

[4] *See, e.g.,* LMF Response (Adv.#52), p. 2, Para. 3 ("LMF never requested any discovery whatsoever from us [the Appellants] in this case until a few days ago on July 11, 2012. *See* Exhibit A, p.5. Consequently, our response won't even be due until the day before the trial, August 14, 2012. *See* Fed. R. Civ. P. 5(b)(2)(C) *and* Fed. R. Civ. P. 6(d) (setting deadline to respond to discovery requests served by mail). Response: Undisputed." [emphasis in original].

previously-undiagnosed Stage Three Cancer. Nevertheless, all three courts still didn't care enough to explain these delays because, you know, "reasons."

Likewise, no one attempted to explain why a party who had just attained a lengthy extension for "discovery" was granted a second indefinite extension for the same purpose. *See, e.g.,* Order (Adv.#40), App. 43a, *but cf.* Order (Adv.#45) (granting a second extension for the same purpose, aka discovery).

Having attained the first indefinite continuance that they had requested, the Appellees then voluntarily abandoned their discovery efforts a few months later in October 2012.[5] In the meantime, the Appellees had deposed absolutely no one,[6] and they hadn't even bothered to appear for the document production that they had requested![7] Apparently, not doing anything is now considered "due diligence."

Several years after they had voluntarily abandoned their discovery "efforts," these Appellees still weren't ready to proceed, so they requested-and received-their second indefinite continuance on August 14, **2015.**

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[5] *See, e.g.*, LMF's Answer (Adv.#183), p. 2, Para 2 ("By way of further response, LMF has not conducted discovery of the Debtors since October 2012 . . . ") [emphasis in original]

[6] *See, e.g.,* LMF's Brief (App.#67), p. 18 (conceding they conducted only "written" discovery.

[7] *See, e.g.,* Christopher Paige's testimony [Tr. 12/1/15 (Adv.#271), p. 6, L: 17-19 ("All these transactions that they're asking for are easily accounted for in the records they didn't bother to pick up. So I made a spreadsheet showing the answer."); *and see Id.* p. 18, L: 19-21 ("Yes. I produced everything I had. Yes. I'm sorry. I produced everything I had, but you didn't pick it all up."); p. 68, L: 4-p. 99, L: 25].

See LMF's Memo (Adv.#225); *and see* Order (Adv.# 231). Who doesn't get two indefinite stays, right?

Why did these Appellees need almost six (6) years to get ready for trial? According to the lower courts, the correct answer is "Who knows and who cares?" *See, e.g.,* Order (Adv.#231). And they proceeded to "castigate" us for asking. *See* App.1a.

In the long years between the Appellees' two (2) successful attempts to delay the trial, one of their lead attorneys (Zachary Johns) managed to find time to graduate law school, pass the Bar, marry, father a child, and practice law for a few years; meanwhile, the Appellees managed to find time to file an Amended Complaint (Adv.#81) on April 22, **2013**, or slightly less than six (6) months after their discovery efforts had ended in October **2012**.

Why were these Appellees entitled to an extension in order to allow their trial counsel to grow up, finish law school, and practice law for a few years? Again, the lower courts' answer is clear. "Shut up," they explained. *See generally* App.1a.

Despite demanding—and receiving—more than five (5) years to prepare for trial, the Appellees weren't quite sure whether they believed we had stolen more than $39 million of their money, or only some $6.6 million of their money.[8] And, for some reason, they

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[8] *See, e.g.,* Christopher Paige's testimony [Tr. 1/20/16 (Adv. #297), p. 63, L: 23-p. 64, L: 6 ("Q: Okay, how much money does LMF claim is missing from the original 40 million? A: At Response 108, Page 10, Footnote 10, they claim that we took $39.7 million. Q: And how much are they suing? A: It changes, but approximately 6.7 million. Q: And have they explained to you why that $33 million, the other $33 million is? A: No. I guess it's a tip for good service.")];

didn't bother investigating that multi-million dollar discrepancy or, really, anything at all. For example, these Appellees didn't even attempt to speak with any of administrators (accountants), custodians, or auditors who actually held and accounted for the money at issue.[9] Why was it appropriate for them to allege that we had either stolen or failed to account for money that they subsequently "found" in their own bank account?[10] Why was it appropriate for them to accuse my wife and I of multiple felonies despite the fact that they had admitted to the Trustee that they had no evidence whatsoever for any of their 727 Claims?[11]

And see LMF's Response (Adv.#108), p. 10, fnt. 10 ("After the Chancery Court ruled that Lerner had a right to withdraw its money from the Paiges' hedge fund, the remaining balance of $5.72 in the PCM account was returned to Lerner, along with approximately $363,000 from the POP and POMF accounts, which is all that remained of Lerner's investment after the Paiges used it to pay Chancery Court costs and collect management and incentive fees.").

[9] *See, e.g.*, Tr. 5/19/16 (Adv.#328), p. 70, L: 17-p. 74, L: 1; *and see* LMF's Brief (Adv. #67), p. 18 (conceding they conducted only "written" discovery).

[10] *See, e.g.*, Tr. 11/20/15 (Adv.#261), p. 199, L: 24-p. 203, L: 5 (proving that LMF's own Trial Exhibits placed the "missing" money in their own bank account).

[11] *See* Attorney Christman's testimony [Tr. 5/18/16 (Adv.#326), p.79, L: 11-21 (Q: Did he [Mr. Goodchild] tell you about any undisclosed bank accounts? A: I'm not sure that I can answer that question. I can explain that he told me that there could be accounts that we were dealing with people of great sophistication who, you know, had managed significant enterprises and significant amounts of money who are also, you know, very bright. And that there could very well-and that you know, he believed that

Once again, the lower courts' response was to "castigate" us for asking such questions. "There must be a reason, just not one that anyone has to identify," they held. *See generally* App.1a.

After a ten (10) day trial that began on November 4, **2015** and ended the following year on January 20, **2016**, the Appellees rested without calling a single witness who supported any of their allegations. *See generally* Opinion (Adv.#303). Literally, they called only my wife, my sister-in-law, and myself to the stand. *Id.* at 2 ("In advancing its case, LMF has called both Debtors and the female Debtor's sister as their only witnesses.").

With respect to my wife and I, the Appellees' "trial strategy" assumed that we would recant eleven (11) volumes of prior testimony in order to confess to all of their allegations. *See generally* Appellees' Opening Arguments starting at Tr. 11/4/15 (Adv. #249), p. 16, L: 23.

With regards to my sister-in-law, they hoped that she would recant her recent affidavits, which she had filed to spare herself the burdens of testifying about issues on which she knew nothing. *See, e.g., Id., but cf.* Jessica Paige's Affidavits at Exhibits A to our Motions (Adv. #241 & #251).

When their "Perry Mason" moment failed to materialize because all three (3) of their witnesses

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there may very well have been significant amounts of hidden assets.")];

And see Trustee Oleyar's testimony [Tr. 5/18/16 (A.#326), p.96, L: 1-12 (discussing documents LMF provided and concluding that none of those documents justified an objection to discharge)].

inexplicably refused to spontaneously confess to multiple felonies and torts, the Appellees demanded judgment in their favor. Repeatedly. *See, e.g.,* LMF's Motions (Adv.#275 & #293).

Instead, the Bankruptcy Court ruled in our favor without ever hearing our defense! *See generally* Opinion (Adv.#303). Literally, we cross-examined only one (1) of the Appellees' three (3) witnesses, and we introduced only one (1) exhibit, which the Court admitted solely to allow the Court to understand my testimony. [In my testimony, I had referenced various documents by document number; consequently, the Court needed a list of those documents to interpret those references.]

In short, we prevailed using only the Appellees' evidence and the Appellees' evidence alone! So why had we lost so many summary judgment motions? Who knows-the Bankruptcy Court never explained its rationales for denying our motions beyond proffering some vague conclusory platitudes that contradicted its own Opinion. *See, e.g.,* Opinion (Adv.#152); *but cf.* Opinion (Adv.#303).

Indeed, nothing better illustrates these Appellees' fundamental dishonesty than this: they testified under oath that they weren't even sure I existed prior to the previous litigation in Delaware! Remember they claim that they had been suing me for more than five (5) years[12] because they supposedly believed that I was a "fiduciary" who had "managed" their money.[13] So what

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[12] *See, e.g.,* LMF's Motion (Adv.Dkt. #309), p. 5 (stating this bankruptcy and adversary began "five" years ago).

[13] *See, e.g.,* LMF's Response (Adv.Dkt. #275), Para. 40-54; *and see* LMF's Response (Adv.Dkt. #293), Para. 308 ("Count II [sic] in LMF's Amended Complaint pleads that Mr. Paige is liable

did their client Randy Lerner testify under oath regarding his understanding of my role in "managing" his money?: "Can I ask a quick question of you? Is she [Michele] married?"[14] Literally, they claim to sincerely, reasonably, and in good-faith believe that I was a "fiduciary" who "managed" their money despite the fact that they only "learned" of my existence during discovery in the previous litigation in Delaware! Can you imagine more damning evidence of bad-faith than suing a potentially imaginary person for mis-managing your money? Are we really supposed to believe that they gave me $40 million[15] to "manage" without ascertaining whether or not I existed?

Sadly, you won't have to imagine more damning evidence of bad-faith: my undisputed testimony proved that LMF's executives had signed affidavits attesting under penalty of perjury that I did not own or manage the Paige entities?[16] Indeed, my undisputed testimony that those affidavits, which I identified by Bates number, proves that LMF's testimony-the testimony that rebutted its allegations!—was sitting on LMF's

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under section 523(a)(6) based on his role in managing LMF's investment, . . . ") [emphasis added].

[14] *See* Our Hearing Exhibit OOOO, p. 28, L: 19-20, 25 ("Can I ask a quick question of you? Is she [Michele] married?"; "I realize I never even knew that.").

[15] *See, e.g.,* LMF's Amended Complaint (Adv.Dkt. #81), Para. 10 ("In October 2007, Lerner entrusted the Paiges with $40 million to be invested in the Onshore Fund and Offshore Fund (collectively, 'the Funds')" [emphasis added].

[16] *See* Christopher Paige's testimony [Tr. 12/7/15 (Adv.Dkt. #274), p. 128, L: 17-p. 129, L: 4].

hard-drive![17] Since they could have produced those documents, but didn't, these Appellees necessarily admitted that their own production rebutted their own allegations.

If suing somebody for "managing" your money as a "fiduciary" despite the fact that you weren't sure they existed and despite the fact that you've already sworn they didn't "manage" your money is not frivolous, bad-faith litigation, then what is? In lay terms, they did not have a sincere, reasonable, and good-faith basis to believe both that I was a fiduciary (the factual predicate of their 523(a)(4) claim) and that I was not a fiduciary (the factual predicate of their aiding and abetting claim).[18]

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[17] *See, e.g.,* Our Motion to Introduce Exhibit B (Adv.Dkt. #286), *citing* LMF's own production by Bates number (Paige 11804; Paige 17369; Paige 37645; Paige 38920; Paige 38277; Paige 37526) as corroboration of my testimony cited above.

[18] *See* LMF's Response (Adv.Dkt. #275), Para. 40-54; *and see* LMF's Response (Adv.Dkt. #293), Para. 308 ("Count II [sic] in LMF's Amended Complaint pleads that Mr. Paige is liable under section 523(a)(6) based on his role in managing LMF's investment, . . . ") [emphasis added];

And see LMF's Amended Complaint (Adv.Dkt. #81), Para. 46 ("As a result, Christopher Paige committed defalcation while acting in a fiduciary capacity with respect to Lerner's investment because he, along with his wife, was entrusted with managing Lerner's investment for Lerner's benefit, . . . ") [emphasis added];

See, e.g., Tr. 11/4/15 (Adv.Dkt. #249), p. 19, L: 10-12 ("MR. JOHNS: Thank you. Our position is that the judgment debt applies to Christopher Paige because of his aiding and abetting Michele Paige's breach of her fiduciary duty.") [emphasis added];

But cf. Weinberger v. Rio Grande Indus., Inc., 519 A.2d 116, 131 (Del. Ch. 1986) (" . . . (1) the existence of a fiduciary relationship,

Even if they really "didn't know" whether or not I "managed" their money, Fed. R. Bankr. P. 9011 required these Respondents to notify this Court that they were pleading in the alternative; furthermore, the Rule also required them to conduct discovery regarding my role in managing their money.[19]

In any case, they were not entitled to lie about the law, falsely claiming that one alleged fiduciary can aid and abet another alleged fiduciary's breach of fiduciary duty when-in fact-my status as a non-fiduciary was the *sin qua non* of their aiding and abetting claim! To deceive the lower courts regarding the law of aiding and abetting in Delaware, they repeatedly misquoted their own authority[20] by omitting that

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(2) a breach of the fiduciary's duty and (3) a knowing participation in that breach by the defendants who are not fiduciaries.") [emphasis added].

[19] *See, e.g., Galardo v. Ethyl Corp.*, 835 F.2d 479, 482 (3rd Cir. 1987) ("As a commentator has observed, the Rule does not permit use of the 'pure heart and empty head' defense.") [internal citations omitted];

And see Tr. 3/29/16 (Adv.Dkt. #319), p. 37, L: 11-20 (MR. GOODCHILD: "The text of Rule 11 is that every time I submit a paper, every time I submit a paper to Your Honor, I am making a certification to you. I'm making a representation. I am certifying that to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, that the paper is not being presented for any improper purpose . . . ") [emphasis added].

[20] Curiously, LMF repeatedly cited an older, lower court case in "rebuttal" of our citation to the Delaware Supreme Court's decision cited below [*Gotham Partners, LP v. Harwood Realty Partners, LP,* 817 A. 2d 160, 172 (Del. 2002)], and they misquoted their older, lower-court authority.

lower court's re-affirmation of the Delaware Supreme Court's prohibition against lawsuits claiming that one fiduciary may have aided and abetted another fiduciary's breach of fiduciary duty.[21] *In other words, even if we were to assume they had a legitimate reason to sue my wife, why did they sue me on two*

Here's what they wrote regarding the elements of their aiding and abetting claim: "The elements of aiding and abetting a breach of fiduciary duty are: (1) the existence of a fiduciary duty, (2) breach of that fiduciary duty, and (3) knowing participation in the breach. *Weinberger v. Rio Grande Indus., Inc.*, 519 A.2d 116, 131 (Del. Ch. 1986)." LMF's Response (Adv.Dkt. #275), Exhibit A, Para. 220. Here's what that citation actually says, "... (1) the existence of a fiduciary relationship, (2) a breach of the fiduciary's duty and (3) a knowing participation in that breach by the defendants who are not fiduciaries." *Weinberger v. Rio Grande Indus., Inc.*, 519 A.2d 116, 131 (Del. Ch. 1986).

Notice, their so-called "mistake" made it possible for them to hide the fact that they were simultaneously asserting that I was and was not a fiduciary.

Please note that they persisted in making this "mistake" even after I expressly pointed it out to them. *See* Our Reply (Adv.Dkt. #282), Para. 220; *but cf.* LMF's Response (Adv.Dkt. #293), Exhibit A, Para. 239 (still asserting that, "The elements of aiding and abetting a breach of fiduciary duty are: (1) the existence of a fiduciary duty, (2) breach of that fiduciary duty, and (3) knowing participation in the breach.").

[21] *See, e.g., Gotham Partners, LP v. Harwood Realty Partners, LP*, 817 A. 2d 160, 172 (Del. 2002) ("The elements of a claim for aiding and abetting a breach of fiduciary duty are: (1) the existence of a fiduciary relationship, (2) the fiduciary breached its duty, (3) a defendant, who is not a fiduciary, knowingly participated in a breach, and (4) damages to the plaintiff resulted from the concerted action of the fiduciary and non-fiduciary.") [internal citation omitted] [emphasis added].

(2) mutually-exclusive theories by misleading this Court about the contradiction within their allegations?

And why did they offer to drop all charges against me as long as I betrayed my wife?[22] Does the "right" to sue one person include the right to sue their spouse? Does the right to sue one person include the right to sue their spouse to gain leverage in settlement talks?

Worse yet, everyone agrees that LMF had actually tried and lost on its theory that I was a fiduciary! *See* Delaware Opinion at LMF's Amended Complaint (Adv.Dkt. #81), Exhibit A, p. 68 ("With no helpful briefing on this subject from the Lerner Fund, I refuse to go further and hold that someone like Christopher Paige, who is not even an officer, director, or member of the governing fiduciary is a direct fiduciary of the limited partnership and its investors."). *See also* Opinion (Adv.Dkt. #72), p. 10 ("In fact, the Court of Chancery specifically found that Christopher Paige was not a 'direct fiduciary.'"). *So why did they get to re-litigate the issue?*

Again, the lower courts's answer was clear and unambiguous: we should just shut up, rather than dare ask such questions. *See* App.1a.

Likewise, according to their own testimony,[23] our undisputed testimony,[24] the Respondents' own Trial

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[22] *See, e.g.*, LMF's Hearing Exhibit #36 (*also at* Our Hearing Exhibit NN) offering to drop all charges against me in exchange for absolutely nothing (unless one assumes that I had to pressure my wife to accept their so-called "settlement offer" to her).

[23] *See, e.g.,* Our Hearing Exhibit OOOO [Randy Lerner deposition], p. 140, L: 20-p. 141, L: 15 & p. 206, L: 9-p. 211, L: 4 (Randy Lerner's

Exhibits,[25] their own production,[26] and their own Proposed Findings of Fact & Conclusions of Law,[27] their 523 Claims were based upon a lie—a lie expressly

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discussion and acknowledgment of pre-March 14th settlement talks, including his receipt of his lawyer's written summary thereof).

[24] *See, e.g.*, Christopher Paige's testimony [Tr. 5/19/16 (Adv.Dkt. #328), p. 50, L: 19-p. 55, L: 5 (documenting how LMF's own Trial Exhibits, production, and testimony prove the dispute and settlement talks therein pre-date our March 14, 2010 letter)].

[25] *See, e.g.,* Rob Bolandian email of **February 6, 2010**, at LMF's Trial Exhibit # 43 ("Let's discuss [Michele Paige's attached settlement offer] when you have time.");

And see Rob Bolandian email dated **March 11, 2010**, at LMF's Trial Exhibit #44. ("We were surprised by the [settlement] documents you sent for our review and confused with the email below.").

[26] *See* Our Hearing Exhibit KK (detailing LMF's threats to rape and sodomize my wife over a business dispute and discussing the ensuing settlement talks; please note that these emails began in late January **2009**, despite the Respondents' assertion that neither the dispute nor the settlement talks therein began until we initiated both more than a year later on March 14, **2010**.);

And see Tr. 5/19/16 (Adv.Dkt. #328), p. 27, L: 11-16 ("THE COURT: You know what I think we already got into this record the e-mails and the language utilizing those e-mails. I don't think we have to rehash them. I think Mr. Paige is characterizing the impact that this language may have had, I understand that. But I don't think we have to rehash the e-mails again.").

[27] *See, e.g.,* LMF's Response (Adv. Dkt. #275), Exhibit A, Para. 119-130; *and see* LMF's Response (Adv.Dkt. #293), Exhibit A, Para. 135-143 (falsely claiming we initiated this dispute over the Gates and settlement talks on March 14, 2010).

denied under oath by their own client![28]-and upon a legal theory rejected by both this Court and the U.S. Supreme Court on at least four (4) separate occasions.[29] *See, e.g., Theokary v. Shay (In re Theokary),* 592 Fed. Appx. 102, 108 (3rd Cir. 2015) ("The submission of fabricated evidence, regardless of the merits or validity of the underlying claim, always constitutes egregious misconduct."); *see also* LMF's Response (Adv. Dkt. #89), p. 7 ("Litigants, [including the Respondents], are not free to reargue the same points ad nauseam."). In short, the evidence proves that they lied to this Court to bolster their oft-discredited 523 Claims, falsely claiming that we initiated this dispute on or

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[28] *See, e.g.,* Our Hearing Exhibit OOOO [Randy Lerner deposition], p. 140, L: 20-p. 141, L: 15 & p. 206, L: 9-p. 211, L: 4 (Randy Lerner's discussion and acknowledgment of pre-March 14th settlement talks, including his receipt of his lawyer's written summary thereof).

[29] *See, e.g.,* Proceeding Memo (Adv.Dkt. #59) (rejecting LMF's theory that the previous judgment established the elements of a non-dischargeable debt);

And see Opinion (Adv.Dkt.#151) (rejecting LMF's Supplemental Motion (Adv.Dkt. #91) (which advanced the same theory);

See, e.g., Opinion (Adv.Dkt. #152), pp. 1-2, dated March 31, 2015 ("It is fairly clear to me that the Delaware Court's finding of a breach of fiduciary duty did not require it conclude an actual knowledge of wrongdoing or even a gross deviation from the reasonable standards of a fiduciary as required by 11 U.S.C. § 523(a)(4). *Bullock v. BankChampaign, N.A.*, 133 S.Ct. 1754 (2013)."); Opinion (Adv.Dkt. #303), p. 13 (same);

Opinion (Adv.Dkt. #303), p. 14 ("At best, the Delaware ruling could be interpreted such that Michele Paige conducted the hedge fund in a way to maximize her own self-interest. *Bullock*, however, stands for the proposition that simple self-dealing is not sufficient to support a loss of dischargeability under § 523(a)(4).").

about March 14, 2010, when their own evidence proves that they always knew their 523 Claims were predicated upon a lie.

Even if we were to assume that these Appellees needed five (5) years to prepare for a trial based upon the chance that their adversaries might spontaneously confess to serious felonies and torts, how did this case manage to make it to trial in the first place?

On August 9, 2012, we filed our Motion to Reconsider (Adv.#50) the Bankruptcy Court's decision of August 1, 2012 (Adv.#40), App.43a, which granted the Appellee's Motion to Extend (Bk.#35). Our Motion rested upon newly discovered evidence, which proved that the Appellee Goodchild had perjured himself when he falsely claimed to have "personally examined" us on documents that he had supposedly attained from the Trustee, but which-in fact-he subsequently admitted that he did not have.[30]

Indeed, as LMF later admitted in open court, they didn't even request a copy of the documents on which they were supposedly "personally examining" us until

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[30] *See, e.g.*, Tr. 3/1/12 (Bk.#86), p. 79, L: 13-20 ("Now after the meeting with Your Honor on the 5th, the next day was the 341 meeting; the continued part of the 341 meeting, at which I personally examined these debtors with respect to the new information that they had brought and the transfers that are-were in the papers that were revealed to the trustee. That testimony had nothing to do with anything that happened in the Chancery Court.") [emphasis added];

But cf. Our Hearing Ex. N (A.#54), (Appellee Goodchild's August 17, 2012 letter admitting that he did not, in fact, have the documents he claimed to use to "personally examine" us: "Please note that any documents previously produced to the Trustee in this matter were not also produced to Lerner, . . . ").

nearly a year after the December 2011 filing deadline, finally seeking discovery of these documents in September **2012**—not 2011 as Mr. Goodchild had testified![31]

Further corroborating these damning admissions, they subsequently claimed to believe these documents don't exist-thereby proving they had not acquired them as Mr. Goodchild had testified. *See, e.g.,* LMF's Response (Adv.Dkt. #275), Exhibit A, Para. 180 ("Despite this repeated statement to the contrary during discovery, Debtors claim to have retained copies of the check stubs for their personal and corporate bank accounts, and provided them to the Trustee.") [emphasis added]. In other words, either Mr. Goodchild "personally examined" us on imaginary documents, or he lied.

Likewise, we revealed to the Bankruptcy Court that the Appellees had failed to disclose controlling contrary authority [*Orange Theatre Corp. v. Rayhertz Amusement Corp.*, 130 F.2d 185 (3rd Cir. 1942) and its progeny] that expressly forbade the Bankruptcy Court from enforcing the Stipulation (Bk. #40) that the Bankruptcy Court had enforced in violation of that undisclosed authority. *See generally* Opinion (Adv. #40), App.43a, *and* Order (Adv.#41).

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[31] Tr. 1/4/16 (Adv.Dkt. #287), p. 191, L: 2-11 ("[JOHNS]: And just to-to be clear just in terms of dates, that was a September 11th, 2011 letter where we told you we had requested copies. [ME]: No. It was 2012 letter. September 2012 you told me that you had requested. It was definitely 2012, and I thought it was September 12th, maybe it September 11th, you could be right on that. And—[JOHNS]: I think you're right. You corrected me on the year. So, about September 11th, 2012—[ME]: Yes.") [emphasis added].

This issue arose solely because our former attorney inadvertently signed an erroneous Stipulation (Bk.#40), which purported to authorize Mr. Goodchild to unilaterally reverse any decision from the Bankruptcy Court contrary to his client's wishes. *See Id.*, p. ("NOW, THEREFORE, the parties stipulate and agree that if the Court denies Lerner's Motion, Lerner shall have five (5) days from the date of the Court's order to file a complaint to determine dischargeability.") [emphasis added].

No one has ever explained how or why the Appellees reasonably believed that parties can prospectively agree to nullify a court decision, thereby rendering that court's opinion an unlawful advisory opinion and exercising a power that court doesn't have (namely, the power to grant extensions without cause).

Far from denying their non-disclosure, the Appellees sought to justify it: "Debtors' argument that a stipulation between counsel cannot form the basis for 'cause' to extend the filing deadline misunderstands that the cause analysis is separate and apart from the question of whether to enforce the joint stipulation." *See* LMF's Response (Adv.#58), p. 3, n. 2 (internal citations omitted).

Of course, we did not address their contractual arguments because they had expressly waived their contractual argument: "Lerner's showing of cause permits this Court to deem Lerner's Complaint timely filed without the need to assess whether to enforce the December 6, 2011 stipulation." LMF's Response (Adv.#9), p. 4.

Regardless, their proposed distinction between "cause" and "contract" wasn't true either—*Orange*

Theatre negates their contract theory as well because contracts cannot trump public policy. *See, e.g., In re Hurns*, 1993 U.S. App. LEXIS 21875, *4 (9th Cir. 1993) ("Moreover, whether Hurns breached some private agreement not to raise timeliness of the complaint as a defense is irrelevant. C&B and Hurns could not stipulate to an extension of time without court approval."), *and see Maldonado-Denis v. Castillo-Rodriguez*, 23 F.3d 576, 584 (1st Cir. 1994) (courts-not contracts-control dockets); *and see* 17A Am. Jur.2d Contracts § 237 (invalidating contracts against public policy.).

In lay terms, the Appellees' "distinction" was patently absurd: if *Orange Theatre* does not preclude parties' attempts to contract around the "cause" requirement, then *Orange Theatre* never applies to any case ever since-by definition-that line of authority only applies to cases in which counsel have attempted to contract around the "cause" requirement.

Throughout this ordeal, we have tried as best we could to force an early resolution or trial of the issues discussed herein.[32] In stark contrast, the Appellees described themselves as "content" to wait,[33] despite

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[32] *See* LMF's Response (Adv.#142), p. 1 ("Apparently frustrated by the fact that the nine motions they previously filed against Lerner Master Fund, LLC ('LMF') in this adversary proceeding (including motions for summary judgment and for sanctions) remain pending, Debtors Michele Paige and Christopher Paige ('Debtors') have now filed what they acknowledge are three 'highly repetitive motions.' Adv.No. 138 at p. 11. Perhaps to attempt to force a ruling, the following three recent filings by Debtors primarily repeat the same arguments that they have previously presented to this Court . . . ") [emphasis added].

[33] *See* LMF's Response (Adv.#142), p. 14 (" . . . (2) the fact that LMF is content to wait for a ruling from this Court on the numerous

the fact that they supposedly believed that we were squandering their money on our defense. *See, e.g.,* Tr. 7/16/13 (A.#50), p. 6, L: 21 *et seq.*

Despite both our frustration and their curious lack of interest in the welfare of their "own" assets, the Bankruptcy Court repeatedly deferred its adjudication of these issues until it ruled upon the merits of the Appellees' Complaints (A.#18 & #20). *See, e.g.*, Appellees' Memo (A.#81); *and see* Orders (A.#61 & #17).

Then, it simply ignored these issues, and the appellate courts somehow "affirmed" this non-decision. How did the appellate courts have jurisdiction to affirm the Bankruptcy Court's non-existent ruling? Who knows?

And notice how I scarcely mentioned any exhibits or any dispute regarding the admissibility of exhibits? *But cf.* App.1a. That's because the Appellate Court either didn't read our Briefs or simply ignored them.

REASON FOR GRANTING THE PETITION

We petition for certiorari under Rule 10(c) of this Court because this Court has not, but must decide the standards to be used for resolving allegations of judicial discrimination or, at the very least, the lower courts' ability to sanction litigants for making such allegations.

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pending motions, rather than continually flood the Court with repetitive motion after repetitive motion.") [emphasis added].

According to PACER, my wife and I have suffered through the longest personal Chapter 7 bankruptcy in this history of the world; why?

Quite simply, no court has explained how or why this case, which began many years ago on August 29, 2011, could not be resolved without years and years of fruitless litigation; instead, all three courts told us to go to hell—no explanation required. Is that the law?

If so, it's not surprising that no one has any faith in our courts. More importantly, why should we be required—upon pain of judicial scorn and ridicule—to affirm our belief in the integrity of courts that we believe have discriminated against us? Our litigants truly required to deny that courts may have discriminated against them? Such a law would be more appropriate in a brutal dictatorship than in a Constitutional Republic.

We are, therefore, fighting for the right to be treated like human beings, rather than animals—for the right to require someone in authority to explain why we were denied our substantive and procedural rights.

Or, at the very least, we are fighting for the right to refuse to be forced to publicly affirm our faith in and our loyalty to the federal judiciary. We can criticize our president, our Congress, but we can't criticize our courts? When did we create that exception to the First Amendment?

Risibly, read the appellate court's decision. It doesn't actually deny that we were discriminated against; instead, it "castigates" us for complaining about

judicial discrimination. Presumably, the reader is supposed to assume such allegations are ludicrous.

Or is it a Freudian slip?

That is, do we really live in a society in which everyone "knows" that federal courts do not discriminate and, thus, in which everyone "knows" these allegations are false? If so, why do so few poll respondents express any confidence in those courts?

Regardless, the appellate court's decision is pure *ipse dixit*, that is, asserting you are not a bigot and/or that you are not indifferent to bigotry does not prove either point. Such assertions (whether implicit or explicit) literally add nothing—such assertions, therefore, have the same persuasive power as a blank page.

Are blank pages good enough? When protected minorities allege that they have been the victims of judicial discrimination, is a blank page a sufficient response?

Or does the public confidence in the integrity of the judiciary require a more detailed response?

Should we know why we were denied summary judgment despite the fact that we eventually prevailed on the same legal theories and the same facts that we had raised in those motions, which were denied without explanation only to be granted without explanation for the inconsistency?

Should we know why the lower courts required us to go to trial on a claim for which the plaintiff had no witnesses?

Should we know why the plaintiff had been deemed to have exercised "due diligence" by conducting no discovery and by lying about the discovery it had conducted?

Should we know why the plaintiff denied its own allegations under oath, but got to proceed to trial on the allegations it had denied anyways?

And why were we "castigated" for alleging judicial discrimination? Were we "castigated" for making those allegations or for making them in some particular way? That is, our litigants forbidden to challenge the courts' integrity, or must they simply challenge the courts' integrity in some "nice" way?

What is the message that this Court is sending to litigants when it permits lower courts to "castigate" litigants for alleging judicial discrimination?

In lay terms, was the Third Circuit trying to discourage such allegations? Is that an appropriate use of judicial authority—to deter litigants from alleging judicial discrimination? In other words, are you trying to prevent judicial discrimination, or are you merely trying to cover it up?

In short, why were we "castigated"? For doubting the courts' integrity? For expressing those doubts? For expressing those doubts in a particular way? Were we wrong? If so, did we know it? Were we "castigated" for insincerity or error? If the latter, unreasonable error or merely error? Literally, the Third Circuit "castigated" for questioning their integrity—when did citizens of this country lose the right to criticize government officials? Correct me if I'm wrong, but didn't we fight a Revolution in part because we quest-

ioned the integrity of the British courts established to enforce British taxes? When our heroes were dying on the battlefields to win our freedom, did they intend to forfeit the right to question courts—the very right for which they fought and died?

We are under no illusions that you will do anything to help us, but it is our duty, as Americans, to warn you: this Court's authority is not eternal-it can and will be lost when this Court turns a blind eye to the lower courts' efforts to suppress minorities.

At best, the lower courts were exceedingly careless, as even they admit they cannot explain why they needed so many years to resolve this case. You may be content to assume that their carelessness is just that, carelessness, but you should require them to explain and justify their incompetence because the general public is not as generous as you: we believe that the federal courts are corrupt and bigoted, more likely to author the next *Dredd Scott* or *Plessy* than the next *Brown*.

You cannot wish such sentiments away; rather, you must require the lower courts to articulate a rational, non-discriminatory reason for their decision to waste nearly six years litigating a case without any witnesses.

CONCLUSION

If you believe that requiring the lower courts to answer allegations of judicial discrimination would burden those courts, then what does that say about the federal courts? If there are lots of such allegations against the lower courts, then are you asserting that all of those accusers are wrong? And even if the accusers are wrong, even if the perception of judicial bigotry is merely that-a perception-then wouldn't the fact that such perceptions are widespread prove the need for a judicial response? How do you propose to dispel such "misperceptions," if you won't even respond to the allegations that give rise to them?

In the end, there are two ways to maintain confidence in the courts' integrity: the first requires the courts to answer allegations of impropriety; the second permits courts to silence their accusers. Which do you think will work? Which do you think is consistent with our Constitution?

For nearly six years, the lower courts permitted these Respondents to litigate claims that they had denied under oath, that they had lost in Delaware, and for which they had no witnesses; likewise, they granted extension after extension based upon these Respondents' assertions of "due diligence" despite the fact that these Respondents had not conducted any meaningful discovery after January 5, 2012 (merely requesting, but not picking up documents that they had supposedly attained previously), and despite the fact that they had lied about the little discovery they had conducted before January 5, 2012.

Why?

The lower courts won't say, but they'll sanction us for daring to ask that question.

That's not justice; that's a mockery of justice-a mockery that calls the federal courts into disrepute.

Asserting good-faith while "castigating" those who question those assertions is the epitome of tyranny, not justice.

The powerless cannot make the powerful acknowledge their rights, but we can tell you when we know that you are acting like corrupt and bigoted tyrants, rather than jurists; at the very least, this Court cannot deprive us of that right—the most basic of all rights.

If I'm wrong, if you can explain these bizarre decisions, then it won't take the lower courts more than a few moments to do so. The burden is light; the necessity for justice—and the appearance thereof—is essential.

Respectfully submitted,

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