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26-5587

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

ANDREW DELANEY,

Petitioner,

v.

HC2, INC.; STEPHANOS ZANNIKOS;
MICHAEL JOHN ESKER NACCHIO; and
TOYOTA MOTOR NORTH AMERICA, INC.,
Respondents,

ON PETITION FOR A WRIT OF CERTIORARI TO
THE
UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT
PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

New York Judiciary Law § 487 provides a civil treble-damages remedy for an attorney who is guilty of deceit or collusion with intent to deceive a court or party. Petitioner brought a § 487 claim based on alleged litigation misconduct occurring in proceedings connected with New York. The district court held that § 487 does not reach attorney conduct occurring in federal proceedings and, alternatively, held that the amended complaint did not plead actionable deceit with sufficient factual particularity. The Second Circuit affirmed, expressly declining to decide the threshold question whether § 487 reaches federal-court conduct and instead affirming on the pleading ground.

The questions presented are:

1. Whether New York Judiciary Law § 487 applies to alleged attorney deceit or collusion occurring in a federal court proceeding located within New York, where the New York Court of Appeals has not resolved that question and the federal courts applying New York law have reached materially different conclusions or assumptions.
2. Whether, under *Erie Railroad Co. v. Tompkins* and the Rules Enabling Act, a federal court sitting in diversity may deny a state-law cause of action on a categorical federal-forum rule that is not contained in the text of the state statute and has not been adopted by New York's highest court.
3. Whether a federal court may affirm dismissal of a state-law claim as insufficiently pleaded where the appellate court itself recognizes that the underlying state-law question is unsettled and the alleged misconduct concerns concrete statements and

filings made in judicial proceedings, rather than merely conclusory assertions of misconduct.

LIST OF PARTIES

The parties to the proceeding below are Andrew Delaney, Plaintiff-Appellant, and HC2, Inc., Stephanos Zannikos, Michael John Esker Nacchio, and Toyota Motor North America, Inc., Defendants-Appellees. The Second Circuit identified the same parties in its February 10, 2026 summary order. See Appendix A. No party is a corporation required to provide a stock ticker symbol for purposes of this petition other than Toyota Motor North America, Inc. which is a subsidiary of Toyota Motor Corporation (NYSE: TM); the petition proceeds on the basis of the party designations appearing in the judgment below.

DIRECTLY RELATED PROCEEDINGS

United States District Court for the Southern District of New York, No. 1:24-cv-6287 (LJL), *Delaney v. HC2, Inc.*, 761 F. Supp. 3d 641 (S.D.N.Y. 2025), Opinion and Order entered January 3, 2025.

United States Court of Appeals for the Second Circuit, No. 25-73-cv, *Delaney v. HC2, Inc.*, summary order entered February 10, 2026, affirming the district court. The order is reproduced in Appendix A.

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OPINIONS BELOW

The opinion and order of the United States District Court for the Southern District of New York is reported at 761 F. Supp. 3d 641 (S.D.N.Y. 2025) and was entered January 3, 2025. The United States Court of Appeals for the Second Circuit affirmed by summary order entered February 10, 2026, in No. 25-73-cv. The Second Circuit order is reproduced in Appendix A.

JURISDICTION

The Second Circuit entered judgment on February 10, 2026. Petitioner obtained an extension of time to file a petition for a writ of certiorari through September 3, 2026. This petition is filed within the extended period. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article VI, cl. 2 (Supremacy Clause), and the principles governing the application of state substantive law in federal diversity jurisdiction under *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938).

New York Judiciary Law § 487 provides, in relevant part, that an attorney or counselor who is guilty of deceit or collusion, or consents to deceit or collusion, with intent to deceive the court or any party, forfeits to the injured party treble damages recoverable in a civil action.

28 U.S.C. § 1441(a) authorizes removal of qualifying civil actions from state court to federal district court. Removal changes the forum; it does not by its text extinguish state causes of action.

STATEMENT OF THE CASE

A. Factual and Procedural Background

This action arises from litigation connected with Petitioner's participation in a document-review project for HC2 on behalf of its customer, WilmerHale, and WilmerHale's client, Toyota Motor North America. The Second Circuit summarized the underlying history as follows: HC2 filed litigation

against Petitioner in April 2020 concerning confidential and privileged information; Petitioner later filed for Chapter 7 bankruptcy; HC2 filed a proof of claim and later withdrew it with prejudice to its right to file another proof of claim; and Petitioner commenced the present New York state-court action on August 5, 2024.

On August 18, 2024, Petitioner filed a corrected amended complaint asserting federal claims. Toyota removed the action to the Southern District of New York two days later. The defendants moved to dismiss. The district court dismissed the action with prejudice.

Petitioner's § 487 claim alleged, among other matters, that HC2 filed a false proof of claim and that Zannikos and Nacchio made allegedly false affidavits and statements in judicial proceedings. The Second Circuit described the allegations as concerning a false proof of claim and allegedly false affidavits, and further noted Petitioner's contention that the defendants had lied to and deceived multiple New York state and federal courts concerning the contents of a Toyota demand letter.

B. Decision Below

The district court held that § 487 did not apply to attorney conduct occurring in federal proceedings. It also held, in the alternative, that the amended complaint failed to plead an actionable § 487 claim with sufficient factual support.

The Second Circuit did not adopt the first proposition. It expressly stated that the New York Court of Appeals has never addressed whether § 487 applies to attorney conduct in federal courts sitting in New York, and that lower state-court decisions

had not conclusively resolved the question. It also noted that its own precedent, *Schertenleib v. Traum*, 589 F.2d 1156, 1166 (2d Cir. 1978), involved proceedings outside New York's territorial borders and did not decide whether § 487 applies to federal courts within New York.

The Second Circuit nevertheless concluded that it did not need to decide that threshold legal issue because, assuming § 487 could reach conduct connected to a federal proceeding, the allegations did not meet the required pleading standard. The court therefore affirmed on that alternative ground.

C. Why Review Is Warranted

The decision presents an important unresolved question of state law with federal consequences. A state-created civil remedy for attorney deceit can have radically different practical scope depending upon whether the same litigation occurs in a New York state court or a federal court sitting in New York. The New York Court of Appeals has not resolved the question, and the federal courts must predict New York law without the benefit of a definitive ruling from the State's highest court.

The question is particularly suitable for this Court because the case also implicates the boundary between state substantive law and federal procedural law. Federal pleading rules govern the manner in which claims are pleaded in federal court, but those rules do not themselves answer whether a state legislature has created a cause of action that reaches a particular category of attorney conduct.

The Second Circuit's decision leaves the threshold legal question unresolved while allowing a

potentially categorical federal-forum limitation to remain in force through the district court's reasoning. Review would provide guidance on the proper *Erie* analysis when a federal court sitting in diversity confronts an unsettled state-law remedy directed at attorney misconduct occurring in federal proceedings.

REASONS FOR GRANTING THE WRIT

I. The case presents an important unresolved question concerning the scope of a state civil remedy for attorney deceit in federal proceedings.

New York Judiciary Law § 487 speaks in terms of deceit or collusion undertaken with intent to deceive a court or party. The statute does not, on its face, distinguish between a New York state court and a federal court located within New York. The New York Court of Appeals has not decided the precise issue presented here. The Second Circuit expressly recognized that uncertainty.

That uncertainty matters. Attorneys routinely practice in both state and federal courts in New York. If § 487 reaches federal proceedings, a party injured by intentional attorney deceit may have a state civil remedy. If it does not, the same conduct may be outside the statute solely because the proceeding occurred in federal court. The answer affects the substantive rights of litigants and the regulation of attorney conduct within New York.

II. *Erie* requires the federal court to determine and apply New York substantive law rather than create a forum-based limitation that the state legislature did not enact.

Under *Erie*, a federal court exercising diversity jurisdiction applies state substantive law and federal procedural law. The fact that a state-law claim is litigated in federal court does not, merely by virtue of removal, transform the underlying state right into a federal right or authorize the federal court to rewrite the state statute.

This petition does not contend that Federal Rules 12(b)(6) or 9(b) are invalid or that federal courts cannot dismiss insufficiently pleaded claims. The narrower question is whether federal courts may first exclude an entire category of conduct from a state statutory remedy because the conduct occurred in a federal proceeding, where the state statute contains no such express limitation and the State's highest court has not adopted it.

Hanna and *Shady Grove* instruct that the federal procedural rules/state substantive law inquiry turns on whether a valid federal rule actually conflicts with state law. Here, the threshold question is not answered by Rule 12(b)(6): the Federal Rules establish pleading standards; they do not define the substantive reach of New York Judiciary Law § 487.

III. The Second Circuit's own reasoning demonstrates why the threshold issue warrants authoritative resolution.

The Second Circuit expressly acknowledged that New York's highest court has never resolved the federal-court question. It further recognized competing lines of lower-court reasoning concerning the meaning of *Schertenleib* and the significance of later New York authority. Yet the court did not decide the issue because it found the pleading allegations deficient.

That leaves the federal courts in an unstable position. District courts may continue to treat the federal-forum limitation as controlling, while other courts may assume or conclude that § 487 reaches federal proceedings but apply the statute's particularity requirements. The result is uncertainty over the substantive scope of a New York statute in an area involving the integrity of judicial proceedings.

IV. The pleading issue should not prevent review of the underlying legal question.

The Second Circuit's alternative holding focused on whether the amended complaint adequately alleged that particular statements were false and intentionally made. Petitioner respectfully submits that the allegations were more concrete than the court characterized them, including allegations concerning filings and statements in identified proceedings. But the petition does not ask this Court to retry the factual sufficiency of the pleading.

Instead, the pleading ruling illustrates the need to separate two questions: what conduct § 487 substantively reaches, and whether the particular allegations satisfy federal pleading requirements. The first question is unsettled state law with significant federal consequences; the second is ordinarily fact-bound. Resolving the first would provide a clear legal framework for future federal courts regardless of the ultimate disposition of Petitioner's individual pleading.

V. The decision implicates important federalism and administration-of-justice concerns.

New York has a strong interest in defining the civil consequences of intentional attorney deceit and in safeguarding the integrity of litigation. Federal courts likewise have inherent and rule-based authority to regulate conduct before them. The existence of federal sanctions does not itself answer whether New York may also provide a state-law civil remedy. The interaction of these sources of authority is an important recurring issue in a State with extensive federal litigation.

CONCLUSION

The petition for a writ of certiorari should be granted. The Court should resolve whether New York Judiciary Law § 487 reaches attorney deceit or collusion occurring in federal proceedings within New York and clarify the proper *Erie* framework for determining the substantive scope of that state-law remedy in federal court.

Respectfully submitted,



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