

Case No.

Supreme Court, U.S.  
FILED

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*In the  
Supreme Court of the United States*

JEREMY G. MILLER,

*Petitioner,*

v.

MONSANTO COMPANY,

*Respondents.*

On Petition for Writ of Certiorari from the Court of Appeals for the Third Circuit  
and United States District Court for the District of Delaware in Case No. 24-11  
(Hon. Jennifer L. Hall, District Judge)

**PETITION FOR WRIT OF CERTIORARI**

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## **I. Questions Presented**

1. Whether the District Court for the District of Delaware wrongfully dismissed Petitioner's claim because they failed to apply the full substantive state law as dictated by the Erie Doctrine as required by 28 U.S.C. § 1332?
2. Whether the District Court failed to apply Indiana substantive state law, Indiana Code § 34-20-3-1, in its entirety, including exceptions, as it is to be used in all product liability cases?
3. Whether Petitioner's complaint and replies to Respondent Monsanto Company's motion to dismiss on face give the court the ability to draw inferences that the discovery rule was implied against any statute of limitations defense?

## **II. List of Party**

1. Monsanto Company

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#### **IV. Petition for Writ of Certiorari**

Jeremy G. Miller, Petitioner, Pro se, respectfully petitions this court for a writ of certiorari to review the judgement from the District Court for the District of Delaware and the affirming of the judgement by the Court of Appeals for the Third Circuit.

#### **V. Opinions Below**

The decision by the Court of Appeals for the Third Circuit denying Petitioner's petition for Rehearing was denied on May 13, 2026. The Court of Appeals for the Third District denied the direct appeal on April 14, 2026, and published a Not Precedential Per Curiam Opinion. On September 10, 2025, a memorandum Order granting Respondent, Monsanto Company's motion to Dismiss.

#### **VI. Jurisdiction**

Petitioner Miller petition for rehearing to the Court of Appeals for the Third Circuit was denied on May 13, 2026. Petitioner Miller invokes this Court's jurisdiction under 28 U.S.C. § 1254, having timely filed this petition for writ of certiorari within ninety days (90) of the denial of rehearing by the Court of Appeals for the Third Circuit.

#### **VII. Constitutional and Statutory Provision Involved**

United States Constitution, Amendment XIV:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws." *Fourteenth Amendment, Section 1.*

Indiana Code § 34-20-3-1:

Sec. 1. (a) This section applies to all person regardless of minority or legal disability. Notwithstanding IC § 34-11-6-1, this section applies in any product liability action in which the theory of liability is negligence or strict liability tort. (b) Except as provided in section 2 of this chapter, a product liability action must be commenced: (1) within two (2) years after the cause of

action accrues; or (2) within ten (10) years after the delivery of the product to the initial user or consumer. **However, if the cause of action accrues at least eight (8) years but less than ten (10) years after that initial delivery, the action may be commenced at any time within two (2) years after the cause of action accrues.**

Erie Doctrine:

The Erie Doctrine is based on a U.S. Supreme Court case, *Erie Railroad Co. V. Tompkins*, 304 U.S. 64 (1938). The doctrine states that the federal courts, when confronted with the issue of whether to apply federal or state law in a lawsuit, must apply state law on issues of substantive law. When the legal question is based on a procedural issue, the federal courts should apply federal law.

Choice of law rule:

Choice of law is a set of rules used to select which jurisdiction's laws to apply in a lawsuit. Choice of law questions most frequently arise in lawsuits in the federal courts that are based on diversity jurisdiction 28 U.S.C. § 1332. In these lawsuits, the courts are often confronted with the question of which jurisdiction's laws should apply. The choice of law rules establish a method by which the courts can select the appropriate law.

#### **VIII. Statement of the Case**

A federal court sitting in diversity is required to use substantive state law according to the Erie Doctrine, pursuant to 28 U.S.C § 1332. Under the Erie Doctrine, a federal court sitting in diversity must apply the correct substantive state laws. In *Erie Railroad Co. V. Tompkins* (1938), the Court held that federal courts hearing diversity cases must apply state substantive law instead of a general federal common law.

This petition for writ of certiorari involves a products liability action by Petitioner, Jeremy G. Miller, against Respondent Monsanto Company, alleging injuries from exposure to Roundup® branded herbicides. Miller worked at Pioneer Hi-Bred International Inc. in Plymouth, Indiana "for at least six months" beginning on Jun 27, 2011. Miller was exposed to glyphosate-containing Roundup® products during employment and was diagnosed with testicular cancer in November 2012, in Chicago, Illinois. Petitioner initiated the action initially on February 2, 2022, in the United States District Court for the Northern District of Mississippi against Pioneer for the

exposures to Roundup and added Monsanto Company in June 2022. The action raised claims of negligence, strict products liability – design defect, strict products liability failure to warn, and breach of implied warranties. Petitioner Miller complaint survived a 12(b)(6) motion to dismiss. This action was only dismissed against Monsanto Company for lack of personal jurisdiction on October 25, 2022. Petitioner Miller refiled the same complaint in the District of Delaware, excluding Pioneer as a defendant, on January 5, 2024. Monsanto Company filed a 12(b)(6) motion to dismiss. On September 10, 2025, the District Court granted the motion, holding that Miller’s claims are barred by the statute of repose in the Indiana Products Liability Act (“IPLA”). Miller timely appealed. The Court of Appeals for the Third Circuit affirmed the decision on April 14, 2026. Petitioner Miller filed a petition for rehearing, and it was denied on May 13, 2026. This Court recently ruled on Roundup in a 7-2 decision on the failure to warn in Monsanto Company’s favor. With this decision, Petitioner Miller still has three (3) other causes of actions against Respondent Monsanto Company. Petitioner respectfully requests the granting of this Petition for writ of certiorari.

#### **VIII. Argument**

Pursuant to 28 U.S.C § 1332, a federal court sitting in diversity where Indiana substantive law applies, IC § 34-20-3-1, must be considered in its entirety, as it is a substantive statute that cannot be waived by a failure to argue it in the trial court. Under the Erie doctrine, federal courts sitting in diversity must apply state substantive law, which includes statutory limitations periods and repose. IC § 34-20-3-1 must be read as a whole to determine if a claim is barred when applying Indiana’s Products Liability Act (“IPLA”). While arguments not raised in the trial court are typically waived on appeal, federal courts can consider substantive state law issues for the first time on appeal if they are matters of law, crucial to the outcome, and do not require further

factual development. The Indiana Product Liability Act's (IPLA) statute of limitation and statute of repose must be considered in its entirety in federal diversity cases applying Indiana law. Because the federal court sitting in diversity must apply state substantive law under the Erie doctrine (*Erie R.R. Co. v. Tompkins*, 304 U.S. 64), they must apply the statute as it is interpreted by the Indiana Supreme Court, regardless of whether the specific provisions were raised by the party. The District Court erred by simply applying the strict 10-year statute of repose as an absolute bar without applying statutory safeguards written inside the specific statute. The district court's dismissal based on a technicality of failing to cite the exact law was abuse of discretion.

Forfeiture has been defined by the United States Supreme Court as the failure to make the timely assertion of a right. Forfeiture occurs when the argument in question was not identified in any form or fashion before the lower court. Forfeited arguments are subjected to the plain error review which requires that an error occurred which was clear or obvious and affected appellant's substantial rights, but also impaired the fairness, integrity, and reputation of the judicial proceedings. Whether an argument is forfeited depends on whether the issue was sufficiently raised for the trial court to consider it, even if a specific statute was omitted. Under the "pressed-or-passed-on" rule, if the substance was argued and the court addressed the issue, it is generally not forfeited. The underlining argument of the discovery rule and the statute of limitations was clearly made in the complaint and replies to motion to dismiss, so citing the specific statute on appeal does not cause forfeiture.

In *Barna v. Board of School Directors of Panther Valley School District*, 877 F.3d 136 (3d Cir. 2017) where an appellant failed before the district court and in his opening brief to directly address controlling precedent under which the appellee was conclusively not entitled to qualified immunity. Despite this precedent, the appellee argued it was entitled to the district's

court grant of qualified immunity due to the appellant's failure to preserve the issue. The Third Circuit disagreed. It noted that the effect of failing to preserve an argument depends on whether the argument was waived or forfeited, and that —though often used interchangeably by jurists and litigants—the distinction can carry great significance. The court explained that waiver is the intentional relinquishment or abandonment of a known right, while forfeiture is the failure, often inadvertent, to make a timely assertion of a right. Although waived claims may not be resurrected on appeal, forfeited claims might be reviewed under “exceptional circumstances,” such as when the public interest requires that the issue be heard or when a manifest injustice would otherwise result. Moreover, courts are “slightly less reluctant” to bar a forfeited issue that is a pure question of law. See *id.* At 146-47. The court concluded that the appellant's failure to preserve the issue was inadvertent and constituted a forfeiture, not a waiver. It then held that exceptional circumstances compelled its review despite the forfeiture. Notably, the availability of qualified immunity was a pure question of law; the public interest would be better served by addressing the issue than ignoring it; and none of the prudential concerns—including unduly causing surprise—would be implicated because the appellee itself raised the issue and the parties provided supplemental briefing on the issue. See *id.* At 148-49.

As this relates to Petitioner Miller's case, he actually did argue the discovery rule and the statute of limitation in the complaint and replies to the motion to dismiss. If that didn't happen, Petitioner's failure to preserve the issue was inadvertent and constituted forfeiture. There is an exceptional circumstance in the availability of the discovery rule in matters of statute of limitation is a pure question of law; the public interest would be better served by addressing the issue than ignoring it because of the climate and concerns of this product. There are no prudential concerns, including unduly causing surprise, and it would be ok because the

Respondent Monsanto Company raised the issue, and both parties have provided briefing on the issue of discovery rule and statute of limitation.

Even if deemed forfeited, the Supreme Court has discretion to review for "plain error" if the error is obvious and severely prejudiced Petitioner or is a question of law. The omission is so foundational that it causes a manifest injustice. Failing to analyze required statutory elements, whether it is misinterpreting or skipping necessary elements of a statute, if it leads to dismissal, it meets the standards for plain error. The omitted element of the statute was so crucial in this case that if it had been applied, it would have changed the outcome of the dismissal. This is a manifest injustice. The fundamental error in the case is when the court applied the wrong statute of limitations in the statute of repose as an absolute bar and misapplied the discovery rule argued in the complaint and in the opposition to motion to dismiss, causing a denial of due process. The fundamental error arises when the court overlooked the specific Indiana statute or legal precedent regarding the discovery rule. "Thus, statutes of limitations, and any rules that are an "integral part of the statute of limitations," are part of the forum state's substantive law."

*Hollander v. Brown*, 457 F.3d 688, 694 (7<sup>th</sup> Cir. 2006); see also *Walker v. Armco Steel Corp.*, 446 U.S. 740, 752-53, 100 S.Ct. 1978, 64 L.Ed.2d 659 (1980).

When the court ruled on the motion to dismiss without considering the Petitioner's discovery rule arguments, which toll the deadline until injury is reasonably discovered, it constitutes a miscarriage of justice. This constitutes a blatant error affecting the validity of the case, violating due process if a claim exists that the court disregarded. A plaintiff is not strictly required to cite specific state statutes in their complaint to raise the discovery rule. They must only plead facts that, if true, indicate the injury was "inherently unknowable" or discoverable only at a later date, as Indiana law allows the statute of limitations to be tolled until the plaintiff

discovers, or reasonably should have discovered the injury and its cause. By stating the facts in the complaint and during the opposition to the motion to dismiss that plaintiff illness causes were hidden, plaintiff has raised the discovery rule without explicitly citing statute IC § 34-20-3-1. Once a plaintiff invokes this rule to argue that a claim was filed on time despite the statute of limitations appearing to have run out, the burden shifts to justifying why the illness wasn't discovered as an injury caused by another's tortious act sooner. In a motion to dismiss, the court must accept the plaintiff's allegations as true. If the plaintiff has alleged facts indicating the injury was inherently unknowable and the claimant is blamelessly ignorant of the wrongful act, the court may deny the motion to dismiss, as the question of when the plaintiff discovered or should have discovered an injury is a fact-intensive inquiry often unsuitable for a motion to dismiss. If the error goes to the core merits of the case, it is considered fundamental and can be addressed on appeal without an objection at the trial level. When discovery rule is raised, the court must consider whether a genuine issue of material fact exist regarding when the plaintiff discovered their injury which should have prevented this erroneous dismissal. A statute of limitations is considered substantive in diversity cases, meaning that the state's limitation law, including its tolling provisions must be applied. Therefore, this error is not merely technical; it is substantive because it prevented plaintiff's case from being decided on the merits by applying the temporal constraints.

To survive a motion to dismiss, Plaintiff is required to plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Put differently, "[f]actual allegations must be

sufficient to raise a non-speculative right to relief.” *Colony Ins. Co. v. Peachtree Constr. Ltd.*, 647 F. 3d 248 (5<sup>th</sup> Cir. 2011). “[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.” *Taylor v. Books A Million, Inc.*, 296 F. 3d 376, 378 (5<sup>th</sup> Cir. 2002). The facts stated in the complaint are well pled and does state a claim to relief that is plausible on its face. This District of Delaware court decision conflicts with the district court’s decision in Mississippi on this same motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.

When a judge neglects to apply the full law or statute, including the exceptions and it changes the outcome, it should be considered a reversible error rather than a harmless error. A court failing to consider the entire statute that causes prejudice to the plaintiff constitutes a significant legal error. This violates the “Whole Statute rule” which requires reading statutes entire text contextually, not just literal phrases, to avoid absurd results. This caused substantial prejudice to Petitioner because if the exception was applied, the outcome of the case would be different. When the court misapplied the statute, it caused significant prejudice because the error had practical, identifiable, and harmful consequences in the outcome of the case. Such errors violate a litigant’s legal rights. This error has a substantial impact on the final judgement in this case. The misapplication and failure to apply the entire statute of IC § 34-20-3-1, caused a misinterpretation of the scope of the statute. This misapplication led to the improper dismissal of the Petitioner’s case. When a court fails to apply statutory exceptions to a statute of limitations, it erroneously cuts off a Petitioner’s right to bring a claim, causing severe prejudice. The court misinterpreted the “plain language” of the statute. The result is absurd and violates the outlooked intent of the legislation. The decision is a legal error that should be reversed, rather than to be seen as a mere clerical mistake. Applying the wrong legal theory such as ignoring statutory

exceptions constitutes a legal error that is grounds for appeal. When exceptions meant for specific circumstances are omitted, the law may be applied too broadly, causing significant difficulty and unfairness to the aggrieved party, causing prejudice and injustice. Statutory exceptions are safeguards of the statute designed by the legislature to protect individuals from excessive hardship. Ignoring them is equivalent to ignoring the legislative intent behind the statute. These exceptions are often crucial to ensuring that the law is not applied in an unjust or overly rigid manner. The court must look to the plain English of the statute as well as the outlined exceptions.

These are not just bad decisions, but errors where the judge fails to apply full law to the case. A judge misuses their discretion by omitting relevant factors in a statute. Judges cannot create rulings that contradict a statute's clear prohibition or fail to follow the law's intent. While appellate courts uphold lower court rulings using the right for any reason doctrine, failure to apply mandatory statutory exceptions often constitutes reversible error. If the statute exception is mandatory, the court is required to apply the exception if the facts match. If the judge made a ruling based on the 10-year statute of repose without considering whether the exception applied is a significant legal error. Failing to apply the exception violates the plain language of the Indiana statute. Failure to apply the correct statutory period of limitations or repose is a reversible error. The trial court erred by misinterpreting Indiana's substantive law on product liability limitations provided by the exception written in the statute. This severely prejudiced plaintiff because the exception is provided as a safeguard from the statute being applied wrong.

Appellate court pointed out that Miller did not rely on the exception in District Court. Petitioner Miller didn't rely on the specific exception provided by IC § 34-20-3-1, but he did argue and rely on the discovery rule and the statute of limitations in the responses to

Respondent's motion to dismiss and in the complaint. Being that the discovery rule and statute of limitations were raised in the responses to Respondent's Motion to Dismiss by Petitioner Miller, Petitioner did preserve the issues even if he failed to cite the specific subsection regarding IC § 34-20-3-1 exception regarding the 8-to-10-year accrual exception. The facts pled in the complaint and in the oppositions to the motion to dismiss outline the statutory basis required to meet the requirements pursuant to IC § 34-20-3-1 exception regarding the 8-to-10-year accrual exception. In federal court, the argument or substance must be raised, not necessarily the specific statute or case citation. Petitioner Miller did raise legal arguments about the discovery rule and the statute of limitations during district court. Federal Rule of Civil Procedure 8(a)(2) requires a "short and plain statement of the claim," not a detailed recitation of specific statutes. If the complaint states facts that plausibly suggest the action is within the 8-10-year exception window, the court has the discretion to allow it to proceed. The goal for preservation is to ensure the trial court had the opportunity to rule on the issue. Petitioner Miller did argue that the statute of limitations should not apply because Petitioner Miller did not discover the cause of the illness/injuries until the link was found to be Roundup raising the discovery rule. In Indiana, the statute of limitations begins to run when the plaintiff knew or could have found that a tortious act caused the injury. The court made a manifest error of law even if plaintiff did not cite the exact statute initially. The discovery rule and the specific timing of discovery of injuries to Petitioner Miller under IC § 34-20-3-1 mandate that the claim is not time-barred. Because Petitioner Miller had raised the argument in substance during trial, the argument raised on appeal should have allowed the refining of the argument using the specific statutory language provided in IC § 34-20-3-1 exception. Appellate court erred by not finding legal errors such as misapplying the discovery rule, which improperly calculated the statute of limitations provided in IC § 34-20-3-1.

The district court did not apply the full statute, which caused the district court to apply the wrong interpretation of when the Petitioner's claim accrued and when the link between the cause and illness became known.

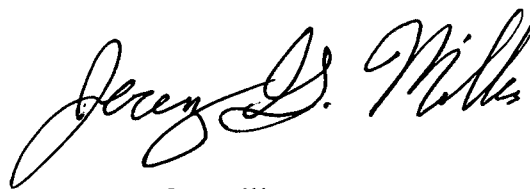
The district court erred in the ruling when it failed to apply the correct legal standard regarding the discovery rule. This issue was raised in every communication to the court, via complaint and in the oppositions to Respondent Monsanto Company's motion to dismiss, supporting a later discovery date of the link that caused the illness that were then confirmed to be injuries. The appellate court failed to look at whether the district court's decision on the statute of limitations was correct as a matter of law when the discovery rule is argued. Courts must assume the truth of the complaint's factual assertions. When the complaint and filings outline facts showing that Petitioner was not aware that the diagnosed illness was an injury until much later when the link became known, the appellate court should have reviewed whether the district court erred in rejecting the argument. When Petitioner argued discovery rule and the statute of limitations in the complaint and in the reply to the motion to dismiss, the district court had the opportunity to rule on it. Because this case was dismissed solely because of the 10-year statute of repose without considering the exception within IC § 34-20-3-1, the court caused a manifest injustice that severely prejudiced plaintiff and reversal should be proper.

#### **X. Conclusion**

For the foregoing reasons, Petitioner Miller respectfully request that this Court grant this writ of certiorari to review the judgement of the Court of Appeals for the Third Circuit and the District Court for the District of Delaware.

DATED this the 10<sup>th</sup> day of August, 2026.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jeremy G. Miller". The signature is written in black ink and is positioned above the printed contact information.

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