

(ORDER LIST: 601 U.S.)

MONDAY, NOVEMBER 20, 2023

ORDERS IN PENDING CASES

23M33 NORMAN, STEPHANIE V. H. LEE MOFFITT CANCER CENTER

The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is denied.

23M34 IN RE WILLIAM B. JOLLEY

The motion for leave to proceed as a veteran is granted.

23M35 SORBEL, TALTHIA V. SD, EX REL. SD SOCIAL SERV.

The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is granted.

22-1219 RELENTLESS, INC., ET AL. V. DEPT. OF COMMERCE, ET AL.

The motion of petitioners to dispense with printing the joint appendix is granted.

22-7573 KISSNER, DONALD L. V. MACAULEY, WARDEN

23-5092 BROWN, NOEL V. PENNSYLVANIA, ET AL.

23-5311 HOLMES, C. V. GRANUAILE, LLC, ET AL.

23-5337 BROWN, NOEL V. SOMERSET SCI, ADMIN., ET AL.

The motions of petitioners for reconsideration of orders denying leave to proceed *in forma pauperis* are denied.

CERTIORARI GRANTED

23-250) BECERRA, SEC. OF H&HS, ET AL. V. SAN CARLOS APACHE TRIBE

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23-253) BECERRA, SEC. OF H&HS, ET AL. V. NORTHERN ARAPAHO TRIBE

The petitions for writs of certiorari are granted. The cases are consolidated, and a total of one hour is allotted for oral argument.

23-370 ERLINGER, PAUL V. UNITED STATES

The petition for a writ of certiorari is granted.

CERTIORARI DENIED

22-1200 JONES, LEE V. UNITED STATES

22-1215 DELAFIELD, DARREN T. V. VETTER, GERARD R.

22-1239 FILES, MICHAEL J. V. UNITED STATES

22-7448 SWINDELL, CHRISTOPHER V. CACI NSS, INC., ET AL.

22-7757 MORRISON, SAMUEL L. V. UNITED STATES

22-7761 KEITH, AARON V. UNITED STATES

22-7847 MORAN, COLUM P. V. UNITED STATES

23-48 IN MUN. POWER AGENCY, ET AL. V. UNITED STATES

23-71 COSTA MESA, CA V. SoCAL RECOVERY, LLC, ET AL.

23-224 ALESSIO, CHRISTINA V. UNITED AIRLINES, INC., ET AL.

23-239 BARNES, STUART V. ALLEN, SHAWN A.

23-241 SALAZAR, JOE V. AT&T MOBILITY LLC, ET AL.

23-254 GUILDAY, SEAN V. CRISIS CENTER AT CROZER-CHESTER

23-258 DE DEPT. OF INS. V. UNITED STATES

23-261 KLEIN, HENRY L. V. OFFICE OF DISCIPLINARY COUNSEL

23-262 RAGHUBIR, VINODH V. PARRISH, BONNIE J., ET AL.

23-269 JUNTIKKA, CHARLES V. CADELL & CHAPMAN, ET AL.

23-273 SOUTHERN-OWNERS INSURANCE CO. V. AMERICAN BUILDERS INSURANCE CO.

23-282 STEPIEN, CYNTHIA, ET AL. V. MURPHY, GOV. OF NJ, ET AL.

23-298 RIVERDALE MILLS CORP. V. SU, ACTING SEC. OF LABOR

23-300 KHALID, ATM SHAFIQU L V. MICROSOFT CORPORATION

23-309 NELSON, MICHAEL P. V. NORTH CAROLINA

23-314 BROWN, DEBRA V. FED. NATIONAL MORTGAGE ASSN.

23-318 SALOMON, NICOLAS A. V. KROENKE SPORTS, ET AL.

23-320 WASHINGTON, DIR., MI DOC V. FOX, JAMES H., ET AL.

23-326 PHILLIPS, VANESSA A. V. MACON BIBB COUNTY GOVT.
23-339 J. M. F. V. NJ DEPT. OF TREASURY
23-357 HILBERT, JACOB V. MISSOURI
23-369 JAVITCH BLOCK LLC, ET AL. V. SMITH, KHADIJA
23-375 D'OLIVIO, BRIGETTA V. HUTSON, HILARY T.
23-386 TATA CONSULTANCY SERV. LTD. V. EPIC SYSTEMS CORP.
23-388 COMO, RICHARD W. V. PA PSERB
23-393 SHICHININ, LLC V. SPRINT CORP.
23-404 GRONDA, MATTHEW E., ET AL. V. TITLE CHECK, LLC
23-406 MATSON, TAYLOR J. V. UNITED STATES
23-416 CHAUVIN, DEREK M. V. MINNESOTA
23-443 MMN INFRASTRUCTURE SERVICES, LLC V. MI DEPT. OF TREASURY
23-5053 STEVENS, JOANN A. V. SNOW HILL, NC, ET AL.
23-5056 RAYMOND, CARLOS A. V. JPMORGAN CHASE BANK
23-5089 HARPER, GARLAND B. V. LUMPKIN, DIR., TX DCJ
23-5119 TIGER, NAWLLAH S. V. OKLAHOMA
23-5169 MOGAN, MICHAEL V. SACKS, RICKETTS & CASE, ET AL.
23-5358 LONG, DEVIN J. V. UNITED STATES
23-5364 NERIUS, CHRISTOPHER A. V. UNITED STATES
23-5375 DELACRUZ, ISIDRO M. V. TEXAS
23-5558 MCGILL, TRACY J. V. RANKIN, WILLIAM
23-5576 PANN, ROBERT W. V. BURT, WARDEN, ET AL.
23-5577 MORRIS, BRENT A. V. OKLAHOMA
23-5580 BARROSO, RICHARD V. TEXAS
23-5588 LIBBY, ROGER A. V. LEGRAN, WARDEN, ET AL.
23-5589 ELYAS, SARA V. JOHNSTON, EDWARD, ET AL.
23-5593 CASTIGLIONE, SHAWN V. V. FLORIDA
23-5596 STEINER, EDWARD J. V. WASHINGTON

23-5603 EDWIN, GILBERT V. CLEAN HARBORS ENVTL. SERV. INC.
23-5608 BUTLER, GEORGE V. MISSISSIPPI
23-5610 SHACKELFORD, JUSTIN D. V. UNIVERSITY OF MINNESOTA, ET AL.
23-5611 MIDDLETON, DAVID S. V. GITTERE, WARDEN
23-5612 OHAN, FESTUS O. V. NATO, ET AL.
23-5613 ALLUM, ROBERT L. V. MONTANA STATE FUND
23-5614 JORDAN, ELLISON O. V. PA STATE UNIVERSITY, ET AL.
23-5615 LINICOMN, ROOSEVELT V. DISTRICT ATTORNEY, ET AL.
23-5620 ALLEN, MARGARET A. V. DIXON, SEC., FL DOC, ET AL.
23-5622 SAVAGE, ERVIE V. WALMART STORES, INC.
23-5625 DAVIS, GALE L. V. WALKER, CHESTER J.
23-5635 CARTER, WILLIAM R. V. ILLINOIS
23-5637 REED, DANIEL L. V. LUMPKIN, DIR., TX DCJ
23-5638 JACKSON, ADRIAN M. V. CANADY, JUDGE, ET AL.
23-5694 PEAY, ORLANDO V. BURGESS, WARDEN
23-5701 WALLS, DENNIS L. V. WAKEFIELD, SUPT., SMITHFIELD
23-5799 MISSIMER, DONALD L. V. FORSHEY, WARDEN
23-5815 HARI, EMILY C. V. UNITED STATES
23-5819 GREEN, JASON V. MONTGOMERY, WARDEN
23-5829 RIOS, LUIS V. COVELLO, WARDEN
23-5837 WALLACE, SPENCER V. SALAMON, SUPT., ROCKVIEW, ET AL.
23-5839 VALENCIA-TERRAZAS, CESAR H. V. UNITED STATES
23-5846 KIM, JONG W. V. UNITED STATES
23-5852 DAVIS, KAREEM V. UNITED STATES
23-5858 SCHNEIDER, ANTHONY V. UNITED STATES
23-5859 HACKNEY, MATTHEW S. V. UNITED STATES
23-5860 FERRELL, JOHN C. V. UNITED STATES
23-5862 CASTANEDA, BENANCIO V. UNITED STATES

23-5863 WOITASZEWSKI, KATHERINE L. V. UNITED STATES

23-5865 DIX, JASON V. UNITED STATES

23-5869 SHULTS, CRAIG M. V. UNITED STATES

The petitions for writs of certiorari are denied.

23-5663 ADEGBUJI, TOSIN V. GARLAND, ATT'Y GEN.

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

23-5727 ZHANG, JEFF B. V. KNAPKE, KORY

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8.

MANDAMUS DENIED

23-5643 IN RE GREGORY MERCER

The petition for a writ of mandamus is denied.

PROHIBITION DENIED

23-5601 IN RE MICHAEL K. CARTER

23-5848 IN RE NASER A. ABDALLAH

The petitions for writs of prohibition are denied.

REHEARINGS DENIED

22-1087 BRUCE, DOUGLAS V. DENVER, CO, ET AL.

22-1111 MARINOS-ARSENIS, CHRYSOULA V. BLUE CROSS BLUE SHIELD OF NJ

22-1152 AZMAT, NAJAM V. UNITED STATES

22-1204 MUHR, WILLIAM V. BRASWELL, DAWNA

22-1220 KILLIAN, JEFFREY A. V. VIDAL, KATHERINE K.

22-1250 CHIEN, PETER, ET AL. V. JARRETT, SCOTT E., ET AL.

22-7483 ALKHAYER, FARRES V. NASHUA-OXFORD-BAY ASSOC., L.P.

22-7696 PARKER, MICHAEL E. V. KIJAKAZI, COMM'R, SOCIAL SEC.

22-7835 CORDOVA, FRANCISCO A. V. CAMACHO, MARIA L.
23-10 BRYSK, MIRIAM, ET AL. V. HERSKOVITZ, HENRY, ET AL.
23-34 UWASOMBA, DELILA V. BANK OF AMERICA, ET AL.
23-40 BELLAY, BRENDA V. SHUE, TYLER, ET AL.
23-43 HUNT, CHRISTOPHER M. V. DEUTSCHE BANK TRUST CO.
23-192 TRIMBLE, AISHA V. DEPT. OF VETERANS AFFAIRS
23-5031 HILL, MARC A. V. UNITED STATES
23-5268 BAKAMBIA, MARC A. V. SCHNELL, PAUL, ET AL.

 The petitions for rehearing are denied.

THOMAS, J., dissenting

SUPREME COURT OF THE UNITED STATES

**E. I. DU PONT DE NEMOURS & CO. v. TRAVIS ABBOTT,
ET UX.**

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

No. 23–13. Decided November 20, 2023

The petition for a writ of certiorari is denied. JUSTICE KAVANAUGH would grant the petition for a writ of certiorari. JUSTICE ALITO took no part in the consideration or decision of this petition.

JUSTICE THOMAS, dissenting from the denial of certiorari.

Plaintiffs brought negligence claims against petitioner E. I. du Pont de Nemours & Co. (DuPont) on behalf of a class of approximately 80,000 residents for DuPont’s discharge of perfluorooctanoic acid into the Ohio River and the air. They alleged that their exposure to the chemical caused a range of diseases. The Judicial Panel on Multidistrict Litigation assigned the cases to multidistrict litigation (MDL). The MDL court directed the parties to identify cases for bellwether trials, which it explained would be informational for the other pending MDL cases. The three resulting trials ended in verdicts for the plaintiffs. DuPont then settled the remaining cases in the MDL.

After the settlement, however, more plaintiffs brought claims, including respondents Travis and Julie Abbott. Relying on the three bellwether trials, the District Court held that DuPont was collaterally estopped from disputing several elements of the Abbotts’ (and the other new plaintiffs’) claims. Specifically, the District Court prevented DuPont from challenging duty, breach, and foreseeability. The only elements seemingly left unresolved were specific causation and damages. See App. to Pet. for Cert. 131. The jury found for the Abbotts, awarding them roughly \$40 million. The

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Sixth Circuit affirmed over Judge Batchelder’s partial dissent. *In re E. I. du Pont de Nemours & Co. C-8 Personal Injury Litigation*, 54 F. 4th 912 (2022).

DuPont now asks us to review the District Court’s application of collateral estoppel. I would grant the petition. I have serious doubts about the application of nonmutual offensive collateral estoppel in the MDL context.

Nonmutual offensive collateral estoppel prevents a defendant from relitigating issues that it lost in an earlier case against a different plaintiff. At common law, however, collateral estoppel—also called issue preclusion—required mutuality of parties: A prior judgment prevented only the same parties from relitigating settled issues in a new case between them. See, e.g., *Hopkins v. Lee*, 6 Wheat. 109, 113 (1821); *Deery v. Cray*, 5 Wall. 795, 803 (1867). In *Parklane Hosiery Co. v. Shore*, 439 U. S. 322 (1979), the Court relaxed the mutuality requirement for a plaintiff’s offensive use of collateral estoppel. But the Court cautioned that this preclusion should not be used when “the application of offensive estoppel would be unfair to a defendant.” *Id.*, at 331.

Extending *Parklane* to the MDL context seems illogical and unfair. First, an MDL is a mechanism for streamlining pretrial proceedings; it is not designed to fully resolve the merits of large batches of cases in one fell swoop. When several courts face cases involving common questions of fact, an MDL pools resources by having one court handle the pretrial proceedings for all related cases simultaneously. An MDL’s scope, however, is limited to pretrial proceedings. See 28 U. S. C. §1407(a). Once pretrial proceedings are complete, the MDL court *must* remand the cases back to their originating courts to be resolved on the merits. *Ibid.* (“Each action so transferred *shall be remanded* by the panel at or before the conclusion of such pretrial proceedings . . . ” (emphasis added)); see also *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U. S. 26, 40

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(1998). Although the MDL court may hold bellwether trials, I have not yet seen evidence that they are anything more than “*nonbinding* trial[s] . . . held to determine the merits of the claims and the strength of the parties’ positions on the issues.” Black’s Law Dictionary 190 (11th ed. 2019) (defining “*bellwether*” (emphasis added)); see also 4 W. Rubenstein, Newberg and Rubenstein on Class Actions §11:20, and n. 13 (6th ed. 2022). Indeed, the MDL court here shared that understanding and described the bellwether trials as helpful “information gathering.” *In re E. I. du Pont de Nemours & Co. C-8 Personal Injury Litigation*, No. 2:13-md-2433 (SD Ohio 2016), ECF Doc. 4624, p. 100947. It is quite a stretch to use a mechanism designed to handle only pretrial proceedings to instead resolve multiple elements of a claim based on a few nonbinding bellwether trials. This use of nonmutual offensive collateral estoppel is far afield from any this Court has endorsed.

Second, expansive use of nonmutual offensive collateral estoppel in the MDL context raises serious due process concerns. See *Taylor v. Sturgell*, 553 U. S. 880, 891 (2008) (“[P]reclusion is . . . subject to due process limitations”). Although not without limits, it is “part of our deep-rooted historic tradition that everyone should have his own day in court.” *Richards v. Jefferson County*, 517 U. S. 793, 798 (1996) (internal quotation marks omitted). Application of this type of collateral estoppel in an MDL, however, could prevent a defendant from raising a defense in potentially thousands of cases. It would make no difference if other MDL plaintiffs have material differences that would prevent them from making their required showing on that element—once nonmutual offensive collateral estoppel has been applied, a defendant’s hands are tied. In fact, a defendant cannot raise a defense even if there was *no notice* that bellwether trials would dictate the results of every MDL case. Collateral estoppel also must contend with a defendant’s right to a jury trial. See *Parklane*, 439 U. S., at

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346–347 (Rehnquist, J., dissenting). In short, applying non-mutual offensive collateral estoppel in the MDL context runs afoul of this Court’s warning that preclusion should not be used when “the application of offensive estoppel would be unfair to a defendant.” *Id.*, at 331.

The MDL here is a case in point. The MDL court originally told the parties that the bellwether trials would be informational and “would facilitate valuation of cases to assist in global settlement.” ECF Doc. 4624, at 100947. Yet, the MDL court later treated them as binding. Far from mere gauges of the parties’ claims, the three trials turned out to be DuPont’s only chance to litigate several elements of claims brought by numerous different plaintiffs. The MDL court thus used a tiny fraction of the cases against DuPont to impose sweeping liability—all without any warning to DuPont of the bellwether trials’ import.

The MDL court’s ruling was not only breathtaking in its scope, but it also disregarded the fact that the three bellwether trials were not representative of the cases against DuPont. For example, two bellwether plaintiffs drank water from wells that were less than one-third of a mile from DuPont’s plant; the Abbotts’ water, by contrast, came from wells 14 to 56 miles away. Two bellwether plaintiffs asserted exposure through air emissions, in addition to exposure through drinking water; the Abbotts’ alleged exposure was only through their water. These differences in location and source of exposure are material to each plaintiff’s claim that DuPont injured him through its negligent discharge of the chemical: “Any combination of these factual differences could lead a jury to find that a particular plaintiff’s injuries were not reasonably foreseeable and, therefore, that DuPont did not owe or breach a duty of care.” 54 F. 4th, at 943 (Batchelder, J., concurring in part and dissenting in part). And, of course, the third bellwether plaintiff was chosen not as a representative case, but as one of “the most severely impacted plaintiffs.” ECF Doc. 4624, at 100962.

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Given the differences among plaintiffs, DuPont may have lost the first three trials, but perhaps it would have won the rest. Under the MDL court’s ruling, however, DuPont had no chance to find out.

The preclusion was also entirely one sided: While plaintiffs were able to use their bellwether trial wins against DuPont, if the roles were reversed, DuPont could not have asserted collateral estoppel against new MDL plaintiffs without violating those plaintiffs’ due process rights. See *Blonder-Tongue Laboratories, Inc. v. University of Ill. Foundation*, 402 U. S. 313, 329 (1971) (explaining that “[d]ue process prohibits estopping” those litigants “who never appeared in a prior action”). DuPont had all of the downside without any potential for upside. The lopsidedness of the preclusion adds to the potential for unfairness.

I have doubts about whether the application of nonmutual offensive collateral estoppel based on bellwether trials comports with due process. Given that MDLs constitute a large part of the federal docket, this issue should be resolved sooner rather than later. We should not sacrifice constitutional protections for the sake of convenience, and certainly at least not without inquiry.