No. 13-675

In the Supreme Court of the United States

EROL OZINAL,

Petitioner,

v.

THE JOHNS HOPKINS HEALTH SYSTEM CORPORATION and THE JOHNS HOPKINS HOSPITAL

Respondents.

On Petition for Writ of Certiorari to the Court of Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Did the failure of judges from both the Court of Special Appeals of Maryland and the Court of Appeals of Maryland to recuse themselves from participation in the Petitioner's case violate the Petitioner's Fourteenth Amendment Due Process Rights?

TABLE OF CONTENTS

Page(s)

APPENDIX

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL PROVISIONS AND STATUTES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Erol Ozinal, respectfully petitions this Honorable Court for a Writ of Certiorari to review an Order of the Court of Appeals of Maryland. That Order reiterated the denial of Petitioner's Petition for Writ of Certiorari, which asked the Court of Appeals of Maryland to review the affirmance of the dismissal of Petitioner's Second Amended Complaint against The Johns Hopkins Health Systems Corporation and The Johns Hopkins Hospital. The Order also denied Petitioner's motion for reconsideration, which asked the court to reconsider the denial of the Petition for Writ of Certiorari because Chief Judge Robert M. Bell, who entered the Order denying the petition, was a member of the Board of Trustees for Johns Hopkins Medicine for a period of time, including 2004 to 2005. Therefore, Chief Judge Bell was on the Board of Trustees at least for the years 2004-2005.

STATEMENT OF JURISDICTION

The Court of Special Appeals of Maryland issued an Opinion on March 28, 2013, affirming the Order of the Circuit Court for Baltimore City which dismissed Petitioner's Second Amended Complaint against The Johns Hopkins Health Systems Corporation and The Johns Hopkins Hospital. That Opinion is unreported, but is reproduced at App. B. On July 12, 2013, the Court of Special Appeals of Maryland denied Petitioner's Motion for New Hearing. App. F. Petitioner also moved for a Petition for a Writ of Certiorari in the Court of Appeals of Maryland, and that petition was denied on July 5, 2013. App. A. Petitioner then moved for reconsideration of the denial of the request for a writ of certiorari in the Court of

Appeals of Maryland, and that motion for reconsideration was denied on October 21, 2013. App. E. Finally, Petitioner filed a Petition for Reversal of the Denial by the Court of Special Appeals of Appellant's Motion for New Hearing in the Court of Appeals of Maryland. App. H. This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> 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, with-out due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1, cl. 2.

STATEMENT OF THE CASE

In April of 2011, Petitioner, Erol Ozinal (hereinafter "Mr. Ozinal" or "Petitioner"), filed a Complaint against The Johns Hopkins Health Systems Corporation and The Johns Hopkins Hospital (collectively referred to as "Johns Hopkins"). Mr. Ozinal filed an Amended Complaint on September 1, 2011. Johns Hopkins moved to dismiss Mr. Ozinal's Amended Complaint for failure to state a claim. Mr. Ozinal filed a Response to the motion to dismiss. In turn, Johns Hopkins filed a Reply to Plaintiff's Opposition to their Motion to Dismiss Plaintiff's Amended Complaint. Mr. Ozinal then filed a supplemental response, along with a

Second Amended Complaint. His Second Amended Complaint asserted claims of Intentional or Reckless Infliction of Emotional Distress (Count 1); Negligence (Count 2); and Wrongful Discharge (Count 3). The Second Amended Complaint was based on the following facts.

Mr. Ozinal is a Certified Public Accountant. He worked for Johns Hopkins Health Systems Corporation starting in November of 2007, as a Staff Accountant-III, with the company's tax section of its Department of Finance. Prior to his employment, Mr. Ozinal disclosed to Johns Hopkins that he had been taking 50 mg of Zoloft since September of 2007, as prescribed by his primary care physician. Mr. Ozinal was then evaluated, at the direction of Johns Hopkins, by Frederick Gayger, PsyD, Employee assistance Clinician, Faculty and Staff Assistance Program for Johns Hopkins University and Johns Hopkins Hospital. Dr. Gayger's report reflected that Mr. Ozinal was taking 50 mg of Zoloft apparently because he did not believe he was coping well with daily stressors. The report further provided that Mr. Ozinal did not think of himself as someone who was "thick skinned."

Nonetheless, he was hired. Mr. Ozinal's responsibilities included the preparation of income tax and 990 tax exempt organization returns. Mr. Ozinal worked on the majority of the tax return preparation. Eventually, due to certain technological difficulties, his performance at work was negatively impacted. As a result, Mr. Ozinal sent three (3) emails to his supervisor. After he sent the emails, the relationship

turned sour, and Mr. Ozinal's supervisor sent him adversarial emails and engaged in adversarial verbal exchanges with him.

In April of 2008, Mr. Ozinal's supervisor and Jim Clauter, another director of the Finance Department at Johns Hopkins, gave Mr. Ozinal a Performance Plan and a Performance Review at the same time. This was the first performance evaluation ever given to Mr. Ozinal. He was placed on a thirty (30) day leave of absence. Mr. Ozinal's supervisor also notified him that she scheduled an appointment for him with Fran Humphrey Carothers of Johns Hopkins Occupational Health, to guide him through the leave of absence process. Mr. Ozinal was told that he could reschedule the appointment if need be.

Mr. Ozinal tried to reschedule the appointment by one week, but was told that it would be postponed by one day only, and if he did not attend the appointment, he would be considered to have resigned. Mr. Ozinal attended the appointment and expected that his performance evaluation would be discussed. Also in attendance were Rodney Orders from the Johns Hopkins Faculty and Staff Assistance Program, a senior executive from Johns Hopkins Security, and a Johns Hopkins Security Guard. While there, Mr. Ozinal signed a release for his health records.

During the meeting, Mr. Ozinal was calm but unresponsive to certain questions and requests. The personnel asked Mr. Ozinal's permission to take him to Johns Hopkins Hospital, but he declined consent. As a result, several Baltimore City Police Officers arrived at Occupational Health, handcuffed Mr. Ozinal, and took him to Johns Hopkins Hospital.

Apparently, this action was taken due to Mr. Ozinal's supervisor making a false allegation that he made a homicidal threat against her. Mr. Ozinal was unaware of this allegation until he obtained a copy of his medical report in July of 2008. No specific threat was ever listed, nor was it ever provided throughout the proceedings in this case.

While at the hospital, Mr. Ozinal agreed to voluntary admission at the request of Dr. Rupali Chadha, for the sole reason that Mr. Ozinal believed it would help him keep his job. Personnel at Johns Hopkins Hospital made only half-hearted attempts to contact Mr. Ozinal's family. Ulku Ozinal, MD, Petitioner's mother, eventually telephoned Dr. Chadha. Dr. Ozinal was informed that her son was brought to the emergency room because he had intimidated someone, and because he claimed he was the best accountant in America. Dr. Chadha also stated that Mr. Ozinal was not a danger to himself or to others, that he was diagnosed with hypomania, was sleeping, and that he had not been given any medication. When Dr. Ozinal explained she planned to come to the hospital, Dr. Chadha urged her not to, stating that her visit would be premature. Dr. Ozinal believed Dr. Chadha and delayed her visit to see her son.

The hospital never attempted to telephone Mr. Ozinal's wife. Mr. Ozinal's wife learned of his hospitalization from Dr. Ozinal. When his wife telephoned Dr. Chadha, she too was told that any visitation would be premature.

The following day, Dr. Ozinal telephoned the hospital to speak with Mr. Ozinal, but was again directed to Dr. Chadha. Dr. Ozinal was told her son

may be moved to another hospital due to his wife's insurance. Dr. Ozinal urged Dr. Chadha not to transfer her son, but Mr. Ozinal was nevertheless transferred to Carroll Hospital Center on April 30, 2008. Upon being admitted, Mr. Ozinal was asked a series of questions regarding any homicidal intentions. He believed these questions were routine and, again, was unaware of the allegation made by his supervisor.

Mr. Ozinal was discharged on May 5, 2008, on the condition that he continue outpatient treatment with Dr. James Choi. Mr. Ozinal complied, but suffered side effects from the medication Dr. Choi prescribed, including anxiety, agitation, sleeplessness, inability to concentrate, trouble reading, trouble writing, tremors, muscle spasm, tongue fasciculations, nausea vomiting, unsteadiness, depression, restlessness, dizziness, lightheadedness, severe headaches, trouble sitting still and weight gain. Mr. Ozinal was treated by Dr. Choi once a week and believed that, if he continued his treatment, he would be able to return to work.

Prior to the expiration of his thirty (30) day leave of absence from work, Mr. Ozinal emailed his supervisor and Ms. Carothers notifying them that he was ready to try to return to work. Mr. Ozinal was told that he needed to first obtain clearance from Ms. Carothers. Ms. Carothers then refused to meet with Mr. Ozinal until he had medical clearance. However, due to the state of his health, Mr. Ozinal was unable to get medical clearance from Dr. Choi. Thereafter, Mr. Ozinal received a letter from Johns Hopkins, terminating his employment as a result of his not being certified to return to work, and for not applying for an extension of the leave of absence.

Mr. Ozinal eventually terminated his relationship with Dr. Choi and began working with a psychiatrist and a psychologist recommended to him by his primary care physician. The new psychiatrist put Mr. Ozinal on a reduced dosage of his medication, and his symptoms began to improve. Mr. Ozinal, however, continued to suffer stress, anxiety and worry as a result of over-medication, the traumatic experience of being involuntarily transported from Occupational Health to Johns Hopkins Hospital, being confined at Johns Hopkins Hospital and being transferred to Carroll Hospital Center.

Ultimately, Mr. Ozinal sued Johns Hopkins Hospital and Johns Hopkins Health Systems, and both entities moved to dismiss. The Circuit Court for Baltimore City held a hearing on the motion to dismiss the Second Amended Complaint on January 13, 2012. Appx. C. At the conclusion of the hearing, the Circuit Court dismissed the Second Amended Complaint for failure to state a cause of action. Appx. 25.

Mr. Ozinal filed an appeal in the Court of Special Appeals of Maryland. Oral Argument was heard before Judges Albert J. Matriccianni, Jr., Christopher B. Kehoe and Emory A. Plitt, "Specially Assigned". On or about March 28, 2013, Judge Albert J. Matricciani authored the Opinion of the Court of Special Appeals of Maryland, affirming the Circuit Court's dismissal of the Second Amended Complaint. Appx. B. Mr. Ozinal then filed a Petition for Writ of Certiorari in the Court of Appeals of Maryland, seeking review of the affirmance of the Circuit Court Order. Prior to receiving an Order on the Petition for Writ of Certiorari, Mr. Ozinal discovered that Court of Special

Appeals Judge Albert J. Matricianni, Jr. was the President of the Friends of Johns Hopkins Libraries and that he hosted and attended a benefit for the organization on March 28, 2013 – the same day he authored the Opinion in this case. As a result, Mr. Ozinal promptly filed a Motion for New Hearing in the Court of Special Appeals, arguing the case should be reconsidered by a new panel of judges due to the bias of Judge Matricianni. App. G. The Court of Special Appeals denied the motion as untimely. App. F.

Thereafter, on July 5, 2013, the Court of Appeals of Maryland entered its Order denying the Petition for Writ of Certiorari. That Order was signed by Chief Judge Robert M. Bell. App. A. Subsequently, Mr. Ozinal learned that Chief Judge Bell served on the Board of Trustees for Johns Hopkins Medicine for a period of time, including 2004 to 2005. Therefore, Chief Judge Bell was on the Board of Trustees at least for the years 2004-2005. Based on this fact, Mr. Ozinal alleged the decision on his Petition for Writ of Certiorari was biased and that he was entitled to reconsideration. App. E. Mr. Ozinal filed his motion for reconsideration in the Court of Appeals of Maryland on August 16, 2013. App. E. That same day, Mr. Ozinal also filed a Petition for Reversal of the Denial by the Court of Special Appeals of Appellant's Motion for New Hearing, asking the Court of Appeals of Maryland to reverse the denial of the motion for new hearing based on Judge Matricianni's bias. The Court of Special Appeals of Maryland has yet to rule on the motion for reversal of the denial of the motion for new hearing, but denied Mr. Ozinal's motion for reconsideration of the Order denying the Petition for Writ of Certiorari on October 21, 2013.

On or about September 6, 2013, Mr. Ozinal filed an Application to Extend the Time to File a Petition for a Writ of Certiorari in this Court, asking the Court to provide him an additional sixty (60) days to file the petition. The Court graciously granted that request on September 17, 2013, providing Mr. Ozinal until December 2, 2013 to file the petition. Mr. Ozinal's original Petition for a Writ of Certiorari was filed on December 2, 2013 and placed on the docket on December 5, 2013. This pleading contains corrections to that original petition and timely follows.

REASONS FOR GRANTING THE WRIT

This petition presents an opportunity for the Court to provide lower courts with much-needed guidance concerning the circumstances under which a judge should disqualify him or herself from a case. In the past, the Court has held that due process warrants judicial disqualification only in certain limited circumstances, but the Court has also extended those circumstances in the recent past, in light of certain relationships between a judge and a party to the proceedings.

This case presents an opportunity for the Court to clarify that, when an adjudicator has a particularly close and personal relationship with one party, judicial disqualification is necessary not only to avoid the appearance of impropriety, but to reassure the public that judicial impartiality remains the linchpin of our judicial system.

I. LOWER COURTS NEED GUIDANCE ON HOW TO PROPERLY ANALYZE WHETHER DUE PROCESS WARRANTS JUDICIAL DISQUALIFICATION.

A. This Court Should Find That The Likelihood Of Loyalty To Petitioner's Opponent In This Case, And The Pervasiveness Of This Loyalty Throughout The Proceedings Below, Warrants Intervention By This Court.

When the resolution of what is typically a state law issue has the effect of impinging on litigants' constitutional due process rights, this Court has good reason to intercede. The Due Process Clause ensures not only fairness, but also the "orderly administration of the laws." *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945). In addition, the Due Process Clause may sometimes act to divest the State of its power to render a valid judgment. *See, e.g., World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294 (1980) (citing *Hanson v. Denckla*, 357 U.S. 235, 251-254 (1958)).

"It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'" *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 876, 129 S. Ct. 2252, 2259, 173 L. Ed. 2d 1208 (2009). Broadly speaking, "it is normally within the power of the State to regulate procedures under which its laws are carried out…and its decision in this regard is not subject to proscription under the Due Process Clause unless it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Aetna Life Ins. Co. v. Lavoie*, 475

U.S. 813, 821 (1986) (emphasis added) (citing *Patterson v. New York*, 432 U.S. 197, 201-202 (1977)). Therefore, while matters of "kinship, personal bias, state policy, [and] remoteness of interest, would seem generally to be matters merely of legislative discretion," the Due Process Clause of the United States Constitution mandates judicial disqualification in some extreme cases. *Id*. at 820-821. In this regard, the Due Process Clause marks the outer boundaries of judicial disqualification, and the states are free to impose more rigorous standards for judicial disqualification.

Those instances in which the Due Process Clause mandates disqualification have not been defined in an exhaustive manner. However, this Court has provided guidance. Long ago, the Court explained it is certainly a violation of the Fourteenth Amendment "to subject [a person's] liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case. *Id*. at 822 (citing, *Tumey v. Ohio*, 47 S.Ct. 437, 523 (1927)). And while the term "interest" cannot be defined with precision, the Court explained that a "reasonable formulation of the issue is whether the 'situation is one 'which would offer a possible temptation to the average … judge to … lead him not to hold the balance nice, clear and true.'" *Id*. (citation omitted).

In more recent cases, the Court clarified that, while a judge's own, direct pecuniary interest in the outcome of a case certainly provides grounds for disqualification under the Due Process Clause, the Court's concern is also with "a more general concept of interests that tempt adjudicators to disregard neutrality." *Caperton*,

556 U.S. at 878. The principle involved, therefore, hinges on whether there is a "possible temptation" that may make a judge partisan, or, stated another way, whether a reasonable judge would be tempted under the circumstances not to hold the balance "nice, clear and true". *Id*. This test is an objective one, which does not require proof of actual bias. *Id*. at 879, 883.

Prior to 2009, there were two situations, in which the Due Process Clause required a judge to recuse himself – first, "where a judge had a financial interest in the outcome of a case, although the interest was less than what would have been considered personal or direct at common law," and, second, in the criminal context, where a judge had no pecuniary interest in the case, but was challenged because of a conflict arising from his participation in an earlier proceeding. *Id*. at 877, 880. *Caperton,* however, extended those instances warranting judicial disqualification, demonstrating that the facts of each individual case are relevant to the determination of whether due process requires judicial disqualification. *Id*. at 887. *Caperton* thus instructs that whether a case fits nicely into the two instances originally warranting disqualification under common law does not end the inquiry: "[T]he disqualifying criteria 'cannot be defined with precision. Circumstances and relationships must be considered.'" *Id.* at 880 (emphasis added).

In *Caperton*, the Supreme Court of Appeals of West Virginia reviewed a trial court judgment, which entered a jury verdict of $50 million in compensatory and punitive damages against A.T. Massey Coal Company. *Id*. at 887. In a 3-2 decision, the Supreme Court of Appeals of West Virginia reversed. *Id*. at 872.

The case then came before this Court to decide the issue of whether the Due Process Clause demanded the recusal of a justice who took part in the majority opinion. *Id*. On review, this Court found the Constitution demanded the justice's recusal where he received campaign contributions in an extraordinary amount, "from, and through the efforts of, the board chairman and principal officer" of A.T. Massey Coal Company – Mr. Don Blankenship. *Id*. at 872-873.

After the jury verdict, but before the appeal, West Virginia held its judicial elections, in which an attorney named Brent Benjamin participated. *Id*. at 873. Blankenship knew the Supreme Court of Appeals for West Virginia would review the case, and he decided to support Mr. Benjamin's campaign for the bench. *Id*. Blankenship contributed the statutory maximum of $1,000 to Benjamin's campaign committee, plus an additional amount of almost $2.5 million to a political organization which backed Benjamin. *Id*. These sums accounted for more than two-thirds of the total funds raised for Benjamin, and Blankenship spent an additional $500,000 on independent expenditures in support. *Id*. Blankenship's efforts paid off - Benjamin won the election. *Id*.

Prior to Massey filing its petition for appeal in the state supreme court, Caperton moved to disqualify Justice Benjamin, pursuant to both the Due Process Clause and the West Virginia Code of Judicial Conduct, due to Blankenship's campaign contributions. *Id*. at 873-874. Justice Benjamin denied the motion for recusal. *Id*. at 874.

The Supreme Court of Appeals for West Virginia reversed on two grounds, independent of the question

of whether Massey's conduct warranted the type of judgment ultimately rendered. *Id*. Caperton moved both for rehearing and, again, for the recusal of Justice Benjamin. *Id*. The court granted rehearing, but Justice Benjamin refused to recuse himself. *Id*. The next opinion of the court again reversed the jury verdict in a 3-2 decision. *Id*.

Caperton filed a petition for a writ of certiorari before this Court, which granted review and found due process mandated Justice Benjamin's recusal. *Id.* at 872. The Court also acknowledged that it had never before considered judicial disqualification in the context of judicial elections, but nonetheless, applied its precedent cases to the facts of *Caperton*. *Id*. at 882. The Court also relied on the temporal proximity of the campaign contributions, the justice's election and the court's review of the case. *Id*. at 886. Critically, however, it was not dispositive that Benjamin did not stand to gain any pecuniary interest from reversing the case; that there was no financial incentive for Benjamin to reverse was of no moment – it was the past circumstance and relationship that mattered.

Against these principals, we turn to the facts of the case at bar. Mr. Ozinal implores this Court to intervene not only because of the absence of neutrality of the judges who decided this case at the lower, appellate court levels, but also because of the frequency with which the judicial bias appeared. Standing in Mr. Ozinal's position, no citizen would believe, under the facts here, that his case was reviewed by a series of impartial adjudicators who were not swayed, or rather, could not be swayed, by the possible temptations arising from their affiliation with his opponent – Johns

Hopkins. Two different judges, at two different stages of the appellate process, were affiliated with Johns Hopkins. This makes this case exceptional.

The Court should intervene because Mr. Ozinal was denied due process as a result of judicial bias at *each* stage of the appellate proceedings. First, Mr. Ozinal filed his appeal of the dismissal of his Second Amended Complaint against Johns Hopkins Health System Corporation and Johns Hopkins Hospital, in the Court of Special Appeals of Maryland. The Court of Special Appeals affirmed the lower court's order on March 28, 2013, in an unreported opinion authored by Judge Albert J. Matricianni, Jr. App. B. *The same day* that the Opinion was issued, Judge Matricianni actively participated in an event at Johns Hopkins University, as the President of the Friends of the Johns Hopkins Libraries. Appx. 37. Mr. Ozinal did not become aware of this event, or of Judge Matricianni's affiliation with Johns Hopkins, until well after the Court of Special Appeals entered its Opinion. However, prior to learning of Judge Matricianni's affiliation, Mr. Ozinal filed a Petition for Writ of Certiorari in the Court of Appeals of Maryland, seeking review of the case. Throughout that petition, Mr. Ozinal expressly noted, on multiple occasions, that "The Court of Special Appeals is protecting Johns Hopkins."

Thereafter, Mr. Ozinal learned of Judge Matricianni's involvement with Johns Hopkins and his role as President of the Friends of Johns Hopkins Libraries. Mr. Ozinal promptly filed a Motion for New Hearing in the Court of Special Appeals. He argued Judge Matricianni's position and affiliation with Johns Hopkins prevented him from receiving an unbiased

opinion from the Court of Special Appeals: "[Petitioner] asserts that a new oral argument before a different panel of judges is necessary to assure that his appeal receives a fair and objective view." App. 36. That motion, however, was denied as untimely. App. F.

There are two principal concerns with Judge Matricianni's involvement in this case. First, he authored the opinion of the Court of Special Appeals, affirming the lower court's dismissal of the Second Amended Complaint. His role as the presiding judge was crucial, as was Justice Benjamin's vote in *Capteron*.

The second problem relates to the temporal nature of Judge Matricianni's affiliation with Petitioner's opponent – Johns Hopkins – and the date the opinion was issued. In fact, on the very day the Opinion was entered, Judge Matricianni led the event for the Friends of Johns Hopkins Libraries. Worse still, this was not simply an event which Judge Matricianni attended or was merely invited to. Judge Matricianni co-hosted this event and invited others to attend. It would be hard to imagine Judge Matricianni or any other judge not being "tempted" to rule in favor of Johns Hopkins particularly where he would host an event for the institution, facing his colleagues, the very same day. The temporal nature of the campaign contribution was relevant in *Caperton*, so too should it be deemed relevant here.

While awaiting the Order on his Motion for New Hearing in the Court of Special Appeals of Maryland, Mr. Ozinal received the Order of the Court of Appeals of Maryland on his Petition for Writ of Certiorari. This marks the second occasion on which Petitioner's due

process rights were violated. The Court of Appeals of Maryland denied the petition, without an opinion, on July 5, 2013. Problematically, the Order was entered by Chief Judge Robert M. Bell. Chief Judge Bell is a former member of the Board of Trustees for Johns Hopkins Medicine.

Immediately upon learning of Chief Judge Bell's past membership on the Board, Mr. Ozinal filed a Motion for Reconsideration of Denial of Request for Writ of Certiorari in the Court of Appeals of Maryland. Therein, Mr. Ozinal explained, that he learned Chief Judge Robert M. Bell was a trustee for Johns Hopkins Medicine and that he served on the Board of Trustees for a period of time, including 2004 to 2005. App. E. Therefore, Chief Judge Bell was on the Board of Trustees at least for years 2004-2005. Mr. Ozinal also asserted that "[b]y virtue of his post and membership on the Board of Trustees, Judge Robert M. Bell has protected and promoted Johns Hopkins, and the service he has provided to Johns Hopkins could not help but influence and be vested in his current opinions." App. 29. Finally, in urging for the reconsideration of the denial of the Petition for Writ of Certiorari, Mr. Ozinal explained: "That Chief Judge Robert M. Bell and thus the Maryland Court of Appeals appear to have issued an order on July 5, 2013, that appears to be tarnished by conflict of interest." App. 29.

Johns Hopkins Medicine, of which Chief Judge Bell was a Trustee, was formed by the coming together of Johns Hopkins University School of Medicine and Johns Hopkins Health System – the very entity Mr. Ozinal sued. Moreover, as a former member of the Board of Trustees for Johns Hopkins Medicine, Chief

Judge Robert M. Bell was involved in the governance and leadership of both the school of medicine and Johns Hopkins Health System. Undoubtedly, Chief Judge Bell's past affiliation with the Board of Trustees and his role in the governance of the institution would make him forever loyal to Johns Hopkins. At the very least, one would have to assume Chief Judge Bell would be tempted to rule in favor of Johns Hopkins, knowing what he would about its internal operating procedures, officers and directors. In sum, in light of his affiliation and relationship with the institution and its members, Chief Judge Bell would be indubitably tempted not to hold the balance "nice, clear and true."

Finally, it is of no moment that Chief Judge Bell may or may not have been a member of the Board at the time he wrote the Order dated July 5, 2013, denying the Petition for Writ of Certiorari, just as it was not relevant whether Justice Benjamin would receive anything from Blankenship if he reversed the jury verdict in *Caperton*. The fact of the matter is that the past relationships of these individuals matters. It would be difficult for Chief Judge Bell to set aside his role and affiliation as a leader of an institution, just as it was impossible for Justice Benjamin to set aside all that Blankenship had done for his campaign in the past. No reasonable adjudicator could put these loyalties aside. Therefore, under these circumstances, and in light of these relationships, Mr. Ozinal's due process rights were violated once again in the Court of Appeals of Maryland.

Moreover, it is imperative that this Court consider the pervasiveness of impartial adjudicators throughout the proceedings below. At each stage of the appellate

court proceedings, a partial adjudicator presided over and entered the order or opinion, of which Mr. Ozinal sought reconsideration. Judge Matricianni authored the Opinion of the Court of Special Appeals, and Chief Judge Bell entered the Order denying Mr. Ozinal's Petition for Writ of Certiorari. Surely, this is the not the neutral adjudicatory process to which the citizens of this country are entitled. The adjudicators at each level of the appellate court proceedings were tempted by their loyalty to Johns Hopkins. This Court should find that the likelihood of these loyalties, and the pervasiveness of this problem throughout the proceedings below, warrants intervention by this Court.

B. Judge Matricianni And Chief Judge Bell's Failure To Disqualify Themselves Led To The Incorrect Result In This Case.

In *Caperton*, this Court frequently remarked upon the intensity with which the dissent in the West Virginia Supreme Court of Appeals believed the majority's holding was incorrect: "Justice Starcher dissented, stating that the 'majority's opinion is morally and legally wrong.' … Justice Albright also dissented, accusing the majority of 'misapplying the law and introducing sweeping 'new law' into our jurisprudence that may well come back to haunt us.'" *Caperton*, 556 U.S. at 874 (citations omitted). The dissenters' remarks emphasized the already glaring need for the disqualification of certain justices, such as Justice Benjamin, in the appellate court proceedings.

As in *Caperton*, the majority opinion in this case was negatively influenced by the failure of the partisan

adjudicators to disqualify themselves from the proceedings. At both stages of appeal, the question of whether Mr. Ozinal's case was controlled by the opinion in *Kentucky Fried Chicken Nat'l Management Co. v. Weathersby*, 326 Md. 663, 607 A.2d (1992) was at issue, and at both levels, the courts got it wrong.

In particular, when analyzing whether Mr. Ozinal properly stated a claim for intentional infliction of emotional distress, by alleging sufficient extreme and outrageous conduct, the Court of Special Appeals found, "[t]he various administrative and professional slights that appellant complains of … fall far short of the retaliatory actions in *Weathersby* and do not 'exceed all bounds usually tolerated by decent society.'" App. 13. When Mr. Ozinal sought review of the affirmance in the Court of Appeals of Maryland, the court denied review. As explained below, Mr. Ozinal's case is far more outrageous than that of the petitioner in *Weathersby*, and the Court of Special Appeals, as well as the Court of Appeals of Maryland, should have reversed.

In *Weathersby*, the Court of Appeals of Maryland reversed an Opinion of the Court of Special Appeals of Maryland, finding the petitioner/employer was liable for the tort of intentional infliction of emotional distress, as a result of its treatment of Weathersby. *Weathersby*, 326 Md. at 681, 607 A.2d at 17. Weathersby was a training store manager at the KFC operation in Wheaton, Maryland. *Id*. at 666. Her direct supervisor was Lee Watts. *Id*. After Weathersby began her employment, Watts and an assistant manager at the Wheaton store allegedly began a romance, which was discouraged by company

policy. *Id*. at 667. Weathersby confronted Watts about the situation and filed a complaint with the company. *Id*. After doing so, Watts began harassing her. According to Weathersby, she was made to work fifteen (15) days straight in December, had to put a promotional banner on the roof, without the help of a maintenance man, was telephoned at home on her day off, and was assigned substandard assistant managers. *Id.*

On one occasion, an assistant manager who opened the store noticed that over $1,000 was missing from a safe. *Id*. There was no sign of a forced entry, and so those people with keys, the combination, and access to the safe were suspects in the theft. *Id*. The company scheduled Weathersby for, and she took, a polygraph test. *Id*. Weathersby eventually met with Watts and a regional security director for KFC. *Id.* During that meeting, she informed the regional security director that Davis had not changed the locks in nearly three months and that he was involved in a romantic relationship with another store manager. *Id*. A day or so later, Watts took Weathersby's store keys away from her at a restaurant, in front of customers and employees, and proceeded to suspend her without pay, pending investigation of the missing money. *Id*. Watts later demoted Weathersby to assistant manager for "serious misconduct," her salary was cut by $11,000, and she was assigned to a store managed by someone she once supervised. *Id*. at 668.

Two days after being demoted, Weathersby sought psychiatric help and was eventually hospitalized for six weeks. *Id*. Weathersby never returned to work. *Id*. She was depressed, homicidal and suicidal. *Id*. Her

psychiatrist opined that her dismissal from work significantly contributed to her major depressive illness and that many of her symptoms were precipitated by the events which transpired at her work. *Id.* Many of Weathersby's problems also related to a childhood experience where her mother murdered her stepfather. *Id*. at 668-669. Finally, her doctor noted that Weathersby's borderline personality traits "would not necessarily be noticed by an employer, provided everything went smoothly on the job." *Id*. at 669.

Weathersby sued her employer for intentional infliction of emotional distress. *Id*. at 665. The trial court, however, found she failed to allege sufficient atrocious conduct on the part of her employer and granted the defendants' motion for judgment notwithstanding the verdict. *Id.* The trial court also relied on the lack of evidence that KFC knew Weathersby suffered from any emotional condition that made her particularly vulnerable. *Id*. On review, however, the Court of Special Appeals reversed, finding Weathersby had proven intentional infliction of emotional distress. *Id*. After granting a writ of certiorari, the Court of Appeals of Maryland again reversed and found Weathersby failed to state a claim. *Id.*

In so holding, the Court of Appeals noted that the significance of an employee/employer relationship was one factor to be considered when analyzing the employer's behavior. *Id*. at 678. Another factor was whether the employer knew that Weathersby was a particularly vulnerable employee. *Id*. at 680. Like the trial court judge, the Court of Appeals emphasized and relied on the fact that there was no evidence that KFC

was aware of Weathersby's emotional state: "Had KFC known that Weathersby suffered from a personality disorder that could contribute to her stress, the result might have been different. But there was no evidence that KFC knew of Weathersby's particular vulnerability, and therefore its actions do not reach the level of outrageousness the tort requires." *Id*. Knowledge of Weathersby's vulnerable state was therefore critical to the determination of her claim.

The actions taken by Johns Hopkins Health System Corporation and Johns Hopkins Hospital here are far more egregious than the actions taken by KFC and its officers in *Weathersby*. To wit, Mr. Ozinal's employer was well aware that he was prescribed 50 mg of Zoloft a day because he "did not believe he was coping well with daily stressors." Mr. Ozinal's employer was also well aware that he believed life events seemed to bother him too much and that he is not "thick skinned." Indeed, this information was reflected in the report of Frederick Gayger, PsyD, Employee assistance Clinician, Faculty and Staff Assistance Program for Johns Hopkins University and Johns Hopkins Hospital, at the direction of the institution. Thus, the main problem with Weathersby's claim – that there was no evidence KFC knew of her vulnerable state – is not present here.

Furthermore, the instant case is distinguishable from *Weathersby* because it does not involve minimally invasive employer actions, such as reprimanding Mr. Ozinal in front of others. Here, after his performance evaluation, Mr. Ozinal's supervisor, who repeatedly took a hostile position toward him, alleged that he made homicidal threats against her, but no one ever

informed Mr. Ozinal of this allegation, even though it was the impetus for his commitment to the hospital. Mr. Ozinal was also placed on leave of absence and forced to participate in an Occupational Health meeting with a senior executive from Johns Hopkins Security, and a Johns Hopkins Security Guard. Mr. Ozinal was also threatened that he would be deemed to have resigned if he did not appear at this meeting.

Then, during the meeting, the personnel asked for Mr. Ozinal's permission to take him to Johns Hopkins Hospital, but he declined consent. As a result, several Baltimore City Police Officers arrived at Occupational Health, handcuffed Mr. Ozinal, and took him to Johns Hopkins Hospital. Mr. Ozinal was then admitted to the hospital, where his family was urged not to visit him, but where he was curiously not put on any medication. Mr. Ozinal was then transferred to Carroll Hospital Center, against the express wishes of his family, including his mother who is a medical doctor.

Further, Mr. Ozinal was only discharged on the condition that he continue outpatient treatment with Dr. James Choi, and he was led to believe that his continued employment with Johns Hopkins Health Systems Corporation was contingent on his continued treatment with Dr. Choi. Mr. Ozinal was then prescribed such high doses of medication that he experienced anxiety, agitation, sleeplessness, inability to concentrate, trouble reading, trouble writing, tremors, muscle spasm, tongue fasciculations, nausea vomiting, unsteadiness, depression, restlessness, dizziness, lightheadedness, severe headaches, trouble

sitting still and weight gain. Mr. Ozinal became so ill that he was unable to return to work and was ultimately terminated.

The behavior of Johns Hopkins Hospital and Johns Hopkins Health Systems Corporation was outrageous. It had lasting effects on Mr. Ozinal and tormented both his family and himself. Worse still, the parties knew of Mr. Ozinal's delicate state, and they continued with their treatment of him undeterred. This behavior is sufficient to support a claim of intentional infliction of emotional distress, even under the standard set forth in *Weathersby*. The facts of the instant case, when compared to the facts of *Weathersby*, demonstrate the impact of the failure of the adjudicators to disqualify themselves from the case at bar. This Court should find Mr. Ozinal is entitled to the reconsideration of his appeal, before a panel of neutral arbitrators.

CONCLUSION

For the reasons described herein, the Petitioner respectfully requests that this Court grant his petition for a writ of certiorari, and review the proceedings below.

Respectfully submitted on this 6th day of January, 2014.

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APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 131
September Term, 2013

(No. 2604, Sept. Term, 2011
Court of Special Appeals)

[Filed July 5, 2013]

EROL OZINAL	)
	)
v.	)
	)
THE JOHNS HOPKINS HEALTH SYSTEM CORPORATION, et al.	)
	)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

DATE: July 5, 2013

APPENDIX B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No.2604

September Term, 2011

[Filed March 28, 2013]

EROL OZINAL

v.

JOHNS HOPKINS HEALTH SYSTEM CORPORATION, ET AL.

Matricciani,
Kehoe,
Plitt, Emory A., Jr.
(Specially Assigned),

JJ.

Opinion by Matricciani, J.

Filed: March 28, 2013

On April 22, 2011, appellant, Erol Ozinal, brought suit against appellees, the Johns Hopkins Health System Corp. ("JHHS") and the Johns Hopkins Hospital ("the Hospital"), in the Circuit Court for Baltimore City, alleging intentional and reckless

infliction of emotional distress, negligence, and wrongful discharge. At the conclusion of a motions hearing on January 13, 2012, the court granted appellees' joint motion to dismiss. Appellant noted this timely appeal on February 10, 2012.

QUESTIONS PRESENTED

Appellant presents two questions for our review, which we quote:

1. Did the Appellant's Complaint fail to allege facts sufficient to be the basis for a claim of intentional infliction of emotional distress?

2. Did the Appellant's Complaint fail to allege a duty of reasonable care owed by Appellee[s] towards Appellant which would be the basis of a cause of negligence?

For the reasons that follow, we answer yes to question one, and we therefore affirm the judgment of the Circuit Court for Baltimore City.[1]

FACTUAL AND PROCEDURAL HISTORY

JHHS hired appellant as a temporary staff accountant on November 5, 2007, and he soon became a regular employee, on November 26. Prior to beginning employment, JHHS asked appellant whether he was taking any medications for mental health reasons. Because appellant disclosed that he was taking Zoloft—prescribed by his primary care physician—JHHS scheduled an interview with a staff

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[1] Because, as explained below, appellant failed to allege sufficient facts of harm, we need not address his second question presented.

psychologist. According to the psychologist's written report, appellant stated that he had "requested the medication because he did not believe that he was coping well with daily stressors," and because "life events seemed to bother him too much[.]"

Appellant claims that the present dispute began when he sent three emails to his supervisor, Janet Buehler, on April 20, 2008. According to appellant, "Ms. Buehler took an adverserial [sic] position toward [him] beginning Monday, April 21, 2008, which was evident by emails, verbal exchanges, and other things"

Ms. Buehler met with appellant on Friday, April 25, 2008, provided him with an "unscheduled performance evaluation" and a performance plan, and informed him that she did not believe he could perform at an acceptable level. During the meeting, Ms. Buehler heard appellant make a "homicidal threat" against her.[2] She placed appellant on a leave of absence and informed him that she had scheduled a meeting with Fran Humphrey-Carothers, a member of the JHHS Occupational Health Department, for the following Monday, April 28th. Ms. Buehler escorted appellant to his desk to collect his belongings, then escorted him out of the building. According to appellant, Ms. Buehler told him that "she was treating him well because she could have called a security officer to escort him out of the building."

Early on the morning of the 28th, appellant called Ms. Humphrey-Carothers to ask that the day's meeting be postponed by a week so that he could prepare a

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[2] No details of this statement appear in the record

written response to his performance evaluation. Ms. Humphrey-Carothers agreed to postpone the meeting by one day, and she informed appellant that failure to attend would be considered his resignation.

Appellant appeared for the meeting with Ms. Humphrey-Carothers on April 29th and he was "surprised" to see a staff social worker and an unnamed "senior executive" also in attendance. According to his complaint, "although [appellant] was not briefed in advance as to what to expect at the Occupational Health conference, he thought his performance evaluation would be discussed." Appellant further claims that "[b]ecause [his] performance plan and review did not mention any alleged homicidal statements or threats, [he] was not aware that his April 29, 2008 occupational health conference was related to such issues."

At the occupational health meeting, Mr. Ozinal agreed to sign an authorization for release of medical records, but he was otherwise unresponsive to the occupational health personnel's questions and requests. The JHHS personnel asked appellant if he would voluntarily agree to be transported to the Hospital for an emergency psychiatric evaluation. When appellant refused, they called the Baltimore City Police, who placed appellant in handcuffs and transported him to the Hospital's emergency room. There, Dr. Rupali Chadha interviewed him and suggested that he agree to a voluntary admission to the Hospital's psychiatric ward. Appellant claims that he agreed because he believed it would help him keep his job.

The Hospital left messages for appellant's wife and parents. When appellant's mother—a physician

herself—returned the message, she was "surprised" to be connected with Dr. Chadha. Appellant's complaint describes their conversation, thusly:

> Dr. Chadha told Dr. Ozinal that [appellant] was brought to the emergency room because someone was intimidated and because he claimed he was the best accountant in America. In answer to Dr. Ozinal's questions, Dr. Chadha told Dr. Ozinal that [appellant] was not a danger to himself or others. Dr. Chadha told Dr. Ozinal that [appellant] is diagnosed with hypomania and was sleeping. Dr. Chadha told Dr. Ozinal that [appellant] had not been given any medications. Dr. Ozinal advised Dr. Chadha that she was going to request time off from her work as a physician at Woodrow Wilson Rehabilitation Center to drive the approximately four hours from Waynesboro, Virginia to Johns Hopkins Hospital. Dr. Chadha advised Dr. Ozinal that it was premature to visit [appellant]. With consideration given to Dr. Chadha's above responses to her questions, Dr. Ozinal accepted Dr. Chadha's advice to postpone visiting [appellant]. Dr. Chadha told Dr. Ozinal she would telephone her back in a couple of hours with an update on [appellant]'s state. However, Dr. Chadha did not telephone Dr. Ozinal back.

Appellant's wife, Ivy, "received notification" of his hospitalization approximately eight hours after the fact. She, too, called the Hospital and, according to appellant:

> Dr. Chadha told Ivy Ozinal that [appellant] is calm. Dr. Chadha advised Ivy Ozinal not to visit

> [appellant] at Johns Hopkins Hospital until he has a room. Ivy Ozinal, who was employed full time and was approximately four months pregnant, accepted Dr. Chadha's advice and did not visit [appellant] at Johns Hopkins Hospital.

Appellant's mother called again the next day, April 30. Appellant's complaint narrates the following exchange:

> Dr. Ozinal telephoned Johns Hopkins Hospital and asked to speak to [appellant]. Dr. Ozinal was instead connected with Dr. Chadha, who told her that [appellant] might be transferred to another hospital because of Ivy Ozinal's health insurance. Dr. Ozinal requested Dr. Chadha not to transfer [appellant] to another hospital. Dr. Ozinal also asked Dr. Chadha for assistance in locating [appellant]'s automobile but Dr. Chadha immediately dismissed the request' Subsequently, Johns Hopkins Hospital transferred [appellant] to Carroll Hospital Center anyway without any further consultation with Dr. Ozinal.

On April 30, 2008, appellant was transferred to Carroll Hospital Center. He was treated there until May 5, 2008, when he was released and he began outpatient treatment with Dr. James Choi, M.D. as a condition of discharge. Appellant claims that, following his discharge, he suffered from a variety of psychiatric symptoms and was unable to conduct his normal daily activities or return to work. He further claims that the symptoms "resulted from the over medication and the traumatic experience of being involuntarily transported . . . to Johns Hopkins Hospital . . . , being

confined at Johns Hopkins Hospital, and then being transferred to Carroll Hospital Center[.]"

JHHS notified appellant of his termination from employment on June 17, 2008, Appellant brought suit against JHHS and the Hospital on April 22, 2011 Appellant's complaint recites a litany of allegedly "outrageous" conduct, which we have attempted to whittle down to a manageable list:

1. Ms. Buehler replied to appellant's emails in an "adverserial" manner.

2. Ms. Buehler provided appellant with an undeservedly poor performance evaluation.[3]

3. JHHS placed appellant on a leave of absence.

4. JHHS did not grant appellant's request to postpone his occupational Health meeting by one week.

5. JHHS scheduled a meeting "to arrange a plan for a leave of absence and then, at that meeting, direct[ed] the Baltimore City Police Department to arrest [appellant] and caus[ed] his confinement."

6. A Johns Hopkins Hospital employee entered in appellant's medical record a statement made by

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[3] Appellant alleges that he "came to work for Defendant recommended by two members of Ms. Buehler's tax section and with a track record of competence including Form 990 tax exempt organization returns," and that "[i]n comparison to the relevant licenses and experiences of the rest of the employees of the tax section of the department of Finance, including Ms. Buehler, [appellant] compares well'"

an agitated man who was in the same holding area as appellant, and the Hospital failed to remove it from his medical record despite several requests.[4]

7 . The Hospital's treating physician, Dr. Chadha, "proceeded in an outrageous manner in communicating with appellant's family" by: a) "accepting" a telephone call from appellant's mother without "connecting it to" appellant; b) not being "forthright" with appellant's mother; and c) "discouraging" appellant's wife from visiting him.

8. When communicating with the Carroll Hospital Center, appellees referred to the homicidal statement that Ms. Buehler heard "as if it were proven in a few reports," when in fact "[t]here are no examples of any homicidal statements in any of these reports" and appellant did not "make a homicidal statement."

9. The Hospital "proceeded in an outrageous manner by transferring [appellant] to Carroll Hospital Center" because: a) "it was an employment matter" and b) JHHS "should have treated [appellant] at its own facility, Johns Hopkins Hospital."

Appellees moved to dismiss the complaint, and after hearing arguments the court granted appellees' motion on January 13, 2012. Appellant timely appealed on February 10, 2012, bringing the case before our Court.

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[4] The record does not provide any further information about these allegedly misattributed statements.

DISCUSSION

We draw our standard from *RRC Northeast, LLC v. BAA Md., Inc*., 413 Md. 638, 643-44 (2010):

> Considering a motion to dismiss a complaint for failure to state a claim upon which relief may be granted, a court must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.*,the allegations do not state a cause of action for which relief may be granted. Consideration of the universe of "facts" pertinent to the court's analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any. The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice. Upon appellate review, the trial court's decision to grant such a motion is analyzed to determine whether the court was legally correct.

(Internal citations omitted.)

Appellant argues that the trial court erred when it held that his complaint failed to allege intentional infliction of emotional distress. A valid claim for intentional infliction of emotional distress must comprise four elements:

(1) The conduct must be intentional or reckless;

(2) The conduct must be extreme and outrageous;

(3) There must be a causal connection between the wrongful conduct and the emotional distress;

(4) The emotional distress must be severe.

Manikhi v. Mass Transit Admin., 360 Md. 333, 367 (2000) (citing *Harris v. Jones*, 281 Md 560, 566 (1977)). Each of these elements must be pled and proved with specificity. *Manikhi*, 360 Md. at 367 (citing *Foor v. Juvenile Servs. Admin*., 78 Md. App. 151, 175 (1989); *Silkworth v. Ryder Truck Rental, Inc*., 70 Md. App. 264, 271(1987)).

While appellant has alleged severe distress and a causal chain originating in the actions of appellees and their agents, the question is whether appellees' alleged conduct was sufficiently extreme and outrageous. The tort of intentional infliction of emotional distress "is to be used sparingly and only for opprobrious behavior that includes truly outrageous conduct." *Kentucky Fried Chicken Nat'l Management Co. v. Weathersby*, 326 Md. 663, 670 (1992) (citing *Batson v. Shiflett*, 325 Md. 684, 734-35 (1992); *Figueiredo-Torres v. Nickel*, 321 Md. 642,653 (1991); Restatement (Second) of Torts § 46 cmt. d (1965)). The general rule from courts applying the tort—including those in this state—is that "there is liability for conduct exceeding all bounds usually tolerated by decent society, of a nature which is especially calculated to cause, and does cause, mental distress of a very serious kind. The requirements of the rule are rigorous, and difficult to

satisfy." *Weathersby*, 326 Md. at 670 (citing W. Page Keeton, *Prosser and Keeton on the Law of Torts* § 12, p. 60-61 (5th ed. 1984)).

Appellant claims that the threshold for extreme and outrageous conduct is lower in his case because appellees knew of his preexisting emotional distress, and he is correct. In *Continental Casualty Co. v. Mirabile*, we explained that "conduct which is not otherwise extreme and outrageous may become so where the actor is aware that the individual to whom the conduct is directed is particularly sensitive to emotional distress, . . . and that a plaintiff's status as an employee may entitle him to a greater degree of protection from insult and outrage than if he were a mere stranger." 52 Md. App. 387, 404 (1982) (citing *Harris v. Jones*, 281 Md. at 568; *Alcorn v. Anbro Engineering, Inc.*, 468 P.2d 276 (Cal. 1970)).

Appellant rests his case on *Weathersby*, 326 Md. 663, 680, in which the Court of Appeals held that the employer's actions were not outrageous *because* there was no evidence that the employer knew of the plaintiff's particular vulnerability. But the facts of the present case do not rise to the level of those in *Weathersby*, where a supervisor launched an extended harassment campaign against an employee who threatened to report the supervisor's fraternizing with another employee and possible negligence or involvement in a store theft. *Id*. at 667-68. "The harassment included making [the plaintiff] work about 15 days straight in December, ordering her to get a promotional banner put on the roof without the help of a maintenance man, phoning her at home on her day off, and assigning her substandard assistant

managers." *Id*. at 667. The supervisor also attempted to skew the theft investigation against the plaintiff, announced in front of employees and customers that the plaintiff was suspended without pay pending the theft investigation's outcome, and demoted the plaintiff to a position as assistant to one of her former employees. *Id*. at 667-68.

The mere existence, however, of a lower threshold for outrageous conduct does not imply that appellant's complaint has *cleared* it. The alleged conduct in the present case is far removed from the (allegedly and potentially) outrageous conduct in *Weathersby*, and appellant's claims fail as a matter of law to show that appellees engaged in intentionally "extreme and outrageous" behavior.

The various administrative and professional slights that appellant complains of—"adverserial" emails, a poor performance evaluation, a leave of absence, and a denied request to postpone a meeting—fall far short of the retaliatory actions in *Weathersby* and do not "exceed all bounds usually tolerated by decent society." *See Weathersby*, 326 Md. at 670. Nor has appellant alleged, with the requisite specificity, that these acts were especially calculated to cause appellant's mental distress. *See id*.

Whether JHHS and its personnel acted appropriately in pursuing an emergency psychiatric evaluation ultimately depends on Ms. Buehler's perception that appellant threatened her. The complaint alleges—without elaboration—that appellees should be held liable in tort because Ms. Buehler "*incorrectly* perceived that a homicidal threat was made against her." Appellant denies making or

intending any such threat, but appellant does not even *allege* that Ms. Buehler's perceptions—or her representations thereof—were intentionally false, recklessly false, extreme, or outrageous. The complaint states only that she "incorrectly perceived" a threat and that JHHS "proceeded in an outrageous manner by being influenced by Janet Buehler[.]"

Turning, then, to the actions of JHHS' occupational health personnel, the complaint again fails to set forth the requisite allegations of extreme and outrageous conduct. Appellees rightly argue that, even according to appellant's complaint, they complied with the Health—General Article's provisions for emergency mental health evaluations. *See* HG § 70-620 *et seq*. Faced with knowledge of appellant's mental disorder[5] and a reported threat of workplace violence, JHHS and its agents were authorized by HG § 10-622(a) to petition for an emergency mental evaluation.[6] In an attempt to mitigate the potential harm to appellant, they asked

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[5] Appellant relies on appellees' knowledge that he was taking prescription medication for mental health in order to hold them to a higher standard of conduct, as the Court of Appeals intimated in *Weathersby*, 326 Md. at 681 ("Had Weathersby established that Watts or KFC knew of her particular emotional makeup and vulnerability and still behaved as she alleged, today's outcome might have been different.").

[6] HG § 10-622(a) provides:

(a) *Petition authorized* — A petition for emergency evaluation of an individual may be made under this section only if the petitioner has reason to believe that the individual:

(1) Has a mental disorder; and

(2) The individual presents a danger to the life or safety of the individual or of others.

him to submit to psychiatric evaluation. When appellant refused, a licensed JHHS social worker completed a petition for appellant's emergency evaluation as authorized by HG § 10-622(b)(1), which required the Baltimore City Police to take appellant to the nearest emergency facility, *per* HG § 10-62a(a)(1).

Appellant claims that when he was admitted for treatment, the Hospital and its employees acted outrageously when communicating with appellant's relatives by "accepting" a telephone call from appellant's mother without "connecting it to" appellant, by not being "forthright" with appellant's mother, and by "discouraging" appellant's wife from visiting him. As above, these actions do not constitute "extreme or outrageous" behavior, nor is appellees' alleged failure to be "forthright" pled with specificity. In the alternative, appellant argues that the Hospital "proceeded in an outrageous manner" by transferring him to Carroll Hospital Center because "it was an employment matter" and because JHHS "should have treated [appellant] at its own facility, Johns Hopkins Hospital."[7] But again, appellant fails to plead with specificity what "it" was, or to explain why JHHS should have treated him rather than "outrageously" transferring him to a facility where JHHS believed his treatment would be covered by insurance.

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[7] Appellant again attacks Ms. Buehler's reported threat, but as discussed above, this was not outrageous conduct in the first instance, nor was JHHS' reliance thereupon. By logical extension, the Hospital's reliance on Ms. Buehler's report was not extreme or outrageous.

Given that JHHS received a threat report which—even allegedly—exhibited neither reckless, extreme, nor outrageous disregard for the truth, the organization and its agents responded appropriately. Moreover, to the extent that appellees are shielded from liability by HG § 10-629 and Courts and Judicial Proceedings Article § 5-624,[8] these statutes abrogate the common law of intentional infliction of emotional distress. *See Halliday v. Sturm, Ruger & Co.*, 368 Md. 186, 208 (2002) ("[C]ommon law principles should not be changed contrary to the public policy of the State set forth by the General Assembly of Maryland." (quoting *Kelley v. R.G. Industries, Inc.*, 304 Md. 124, 141 (1985))). Even on the face of the complaint, Ms. Beuhler's good faith is not contradicted, and the JHHS employees had reasonable grounds to act within the statute's guidelines, which they did.

For these reasons, appellant has failed to state a

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[8] CJ § 5-624 provides, in relevant part:

(b) *Petitioner.* — Any petitioner who, in good faith and with reasonable grounds, submits or completes a petition under Title 10, subtitle 6, part IV of the Health—General Article is not civilly or criminally liable for submitting or completing the petition.

(c) *Peace officer.* — Any peace officer who, in good faith and with reasonable grounds, acts as a custodian of an emergency evaluee is not civilly or criminally liable for acting as a custodian.

(d) *Emergency facility*. — An emergency facility that, in good faith and with reasonable grounds, acts in compliance with the provisions of Title 10, Subtitle 6, Part IV of the Health - General Article is not civilly or criminally liable for that action.

(e) *Emergency facility — Agent or employee.* — An agent or employee of an emergency facility who, in good faith and with reasonable grounds, acts in compliance with the provisions of Title 10, Subtitle 6, Part IV of the Health - General Article is not civilly or criminally liable for that action.

claim upon which relief can be granted, and the trial court did not err in dismissing his action.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.

APPENDIX C

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

Case No. 24-C-11-002912

[January 13, 2012]

EROL OZINAL,	)
	)
Plaintiff,	)
	)
v.	)
	)
THE JOHNS HOPKINS HEALTH SYSTEM CORP. , et al.,	)
	)
Defendants.	)

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Motions Hearing)

Baltimore, Maryland

Friday, January 13, 2012

BEFORE :

HON. LAWRENCE P. FLETCHER-HILL, Associate Judge

APPEARANCES:

For the Plaintiff:

PATRICK MALLOY, ESQ.

For the Defendants:

JAY R. FRIES, ESQ.

KATHLEEN A. TALTY, ESQ.

recorded digitally

Transcribed by:
CHARLES F. MADDEN,
Official Court Reporter
515 Courthouse East.
111 North Calvert Street
Baltimore, Maryland 21202

[p. 27]

the opposite.

THE COURT: There are a number of cases that have said in the employment context it may be even more difficult to show extreme and outrageous conduct?

MR. MALLOY: It also states that a plaintiff's status as employee may entitle him to a greater degree of protection from insult or outrage than if he were a mere stranger.

I think, you know, with the -- the employment workplace has to be flexible, but at the same time, the courts have recognized that the employee's at the mercy of the employer often. And so they -- they -- if it's outrageous, they will seek to protect the employee.

MEMORANDUM, OPINION, AND RULING

THE COURT: All right. Thank You.

In this case, I'm considering the amended motion to dismiss the second amended complaint filed by Mr. Ozinal yesterday. And I've had an adequate opportunity to review the allegations in that complaint.

Thank you, counsel, for the comparison copy which makes it easier to, having previously reviewed the amended complaint, to understand the changes.

There are three counts at issue; Count 1, which is intentional or reckless infliction of

[p. 28]

emotional distress, now combine what was previously Counts 1 and 2 in the amended complaint.

Count 2 is for ordinary negligence and Count 3 is for wrongful discharge. I have tried to understand, with precision, what it was that the plaintiff was alleging in this case, and I note that while the complaints are long and full on factual allegations, there's a notable lack of zeroing in on exactly what it is that Mr. Ozinal is complaining of in respect to each of his counts.

On Count 1, the defendants argue primarily that he has not pled extreme and outrageous conduct which would satisfy the requirements for the tort of intention or reckless infliction of emotional distress.

And under, particularly, the Harris case, 281 Md. 560, and the Kentucky Fried Chicken case, 326 Md. 663, those cases place a high burden on a plaintiff to

allege with particularity that type of conduct because this tort is capable of abuse. And therefore, it is important that courts serve as monitoring use of the tort only for those situations where the defendant's alleged conduct is truly extreme and outrageous.

I do not see anything in these allegations, nor have I heard anything in argument that would satisfy that requirement under that tort. While there

[p. 29]

certainly are factual issues, and I'm not, on this motion, adjudicating any factual issues, concerning the course of the employment relationship between Mr. Ozinal and his superiors, I do not see anything other than a measured reaction by his superiors to what they perceived as either instability or threats that could affect their safety, Ms. Buehler's in particular, or the safety of the workplace, and taking measured steps through performance evaluations, grant of leave, and seeking and evaluation by professionals, none of which could be termed to be extreme and outrageous conduct.

I note in particular that some of the cases discuss very insensitive conduct in -- in workplaces that did not arise to the level of extreme and outrageous to satisfy the requirements of that tort.

I will not consider the alternative argument of the defendants that Mr. Ozinal did not suffer severe emotional harm, nor did satisfy the pleading requirements of that tort. Because I think it's sufficient to grant the motion to dismiss on the extreme and outrageous prong.

Let me note further on Count 1 that although the plaintiffs says he asserts that also against Johns Hopkins Hospital, the healthcare provider as opposed to the employer, I do not see anything that would support

[p. 30]

a claim of extreme and outrageous conduct on the hospital, which, presented with information and the need to evaluate an individual, proceeded under the processes of law to make that evaluation.

And in particular, I have pressed plaintiff's counsel to tell me how the social worker who filled out the emergency evaluation did not act in good faith. And I'm not satisfied with regard to the allegations or even the arguments beyond the complaint made by plaintiff's counsel here.

Under Count 2, which is now styled as a general claim for negligence, I do not find that the plaintiff has shown any particular duty, the breach of which would lead to tort liability in this case. There are amorphous allegations about the conduct of both the employer and the hospital, neither of which is posed as a duty to investigate which was not fulfilled adequately.

These are very generalized allegations that the either the employer or the hospital should have looked further into the allegation of some threat against Ms. Buehler. And the plaintiff has not advanced any law that would support that as a generalized tort duty, which there is an alleged breach of in this case. The motion to dismiss will therefore

[p. 31]

be granted as to Count 2 as well.

And under Count 3, a wrongful discharge, there's no dispute from the plaintiff that he was an employee at will. And under clear Maryland law, particularly Adler, 291 Md. 31 and the recent case of Perks v. Alfarma decided in 2011 by the Court of Appeals, an at will employee who is discharged bears a very high burden of pleading with particularity what clear public policy was violated in his discharge that would justify a claim for wrongful discharge.

And the only articulation I've heard here is that he wasn't given an adequate opportunity to recuperate or improve his health and be prepared to return to work after the leave of absence.

That's an ordinary employment dispute, not a matter of established Maryland public policy which is violated on these allegations. Therefore the motion to dismiss will be granted on Count 3 as well. Those are all of the counts in the case.

I notice also that Johns Hopkins Hospital could not be a defendant on Count 3 because it is not alleged to have been the employer.

That disposes of all the counts of the second amended complaint, which will be dismissed. It is dismissed without leave to amend there having already

[p. 32]

been two amendments in this case attempting to state a cause of action.

Counsel I will issue an order. Unfortunately you probably won't receive it for seven to ten days even though it will likely be issued today. If you need it sooner you can contact chambers and we'll either fax it to you or provide it. But otherwise you'll get it in the ordinary course in about that length of time.

All right. Thank you very much, counsel.

MR. FRIES: Thank you, Your Honor.

MR. MALLOY: Thank You, Your Honor.

(The foregoing matter concluded at 11:04 a.m.)

IN THE CIRCUIT COURT FOR BALTIMORE CITY

Case No. 24-C-11-002912

[Filed January 13, 2012]

EROL OZINAL,	)
	)
Plaintiff,	)
	)
v.	)
	)
THE JOHNS HOPKINS HEALTH SYSTEM CORP., *et al.,*	)
	)
Defendant	)
	)

ORDER

This matter came before the Court for a hearing on January 13, 2012 based on Defendants Johns Hopkins Health System Corporation and the Johns Hopkins Hospital Inc.'s Motion to Dismiss filed on October 7, 2011 (Paper No. 10000). At the hearing, Defendants amended their motion to address the Second Amended Complaint. The Court has considered the motions, opposition, and the arguments of counsel. The Court has not considered Plaintiff's late-filed Supplemental Response.

For the reasons stated on the record at the hearing, it is this 13th day of January, 2012, by the Court for Bal~ore City, Part 26, hereby **ORDERED** that Defendants' Motion to Dismiss (Paper No. 10000) the Plaintiff's Second Amended Complaint is **GRANTED**

without leave to amend.

It is further **ORDERED** that the Clerk of this Court send copies of this Order to the parties listed below.

/s/ Lawrence P. Fletcher-Hill
Judge Lawrence P. Fletcher-Hill

cc: Patrick D. Malloy, Esq.
Jay R. Fries, Esq.

APPENDIX D

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 131
September Term, 2013

(No. 2604, Sept. Term, 2011
Court of Special Appeals)

[Filed October 21, 2013]

EROL OZINAL	)
	)
v.	)
	)
THE JOHNS HOPKINS HEALTH SYSTEM CORPORATION, et al.	)
	)

ORDER

The Court having considered the motion for reconsideration filed in the above entitled case, it is

ORDERED, by the court of Appeals of Maryland, that the motion for reconsideration be, and it is hereby, denied.

/s/ Mary Ellen Barbera
Chief Judge

DATE: October 21, 2013

APPENDIX E

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 131
September Term, 2013

(No. 2604, September Term, 2011
Court of Special Appeals)

[Filed August 16, 2013]

EROL OZINAL	)
	)
Appellant	)
	)
vs.	)
	)
THE JOHNS HOPKINS HEALTH SYSTEM CORPORATION, et al.	)
	)
Appellees	)
	)

APPELLANT'S MOTION FOR RECONSIDERATION OF DENIAL OF REQUEST FOR WRIT OF CERTIORARI

Now comes Erol Ozinal, Appellant, by his attorney, Patrick D. Malloy, and moves for reconsideration of the denial of his request of writ of certiorari, and for reason, says:

1. That Appellant filed a Petition for Writ of Certiorari with this Court on May 10, 2013.

2. That the Petition for Writ of Certiorari was denied by this Court on July 5, 2013 in an order signed by Chief Judge Robert M. Bell. (copy attached).

3. That Appellant has learned that Chief Judge Robert M. Bell was a Trustee for Johns Hopkins Medicine, Appellant's opponent in this case, and served on the Board of Trustees for a period of time, including 2004-2005. (A copy of the List of Trustees for 2004-2005 is attached).

4. It is impossible for Petitioner to receive impartial justice from the Maryland Court of Appeals when Chief Judge Robert M. Bell had previously been such a key member of Appellant's opponent, Johns Hopkins. By virtue of his post and membership on the Board of Trustees, Judge Robert M. Bell has protected and promoted Johns Hopkins, and the service he has provided to Johns Hopkins could not help but influence and be vested in his current opinions.

5. That Chief Judge Robert M. Bell and thus the Maryland Court of Appeals appear to have issued an order on July 5, 2013, that appears to be tarnished by conflict of interest.

6. Appellant asserts that the application of fairness and justice requires that the denial of this Petition for a Writ of Certiorari be reconsidered.

WHEREFORE, Appellant requests this Honorable Court to reconsider the decision to deny the Writ of Certiorari and instead to grant the Writ of Certiorari.

Respectfully submitted,

/s/ Patrick D. Malloy
Patrick D. Malloy
3685 Park Avenue
Ellicott City, MD 21043
410-465-1560
malloylaw@verizon.net

LIST OF TRUSTEES 2004-2005

* * *

The Hon. Robert M. Bell

* * *

[Certificate of Service Omitted for Purposes of This Appendix]

APPENDIX F

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 2011
No. 2604

[Filed July 12, 2013]

EROL OZINAL,	)
	)
Appellant,	)
	)
THE JOHNS HOPKINS HEALTH SYSTEM CORPORATION ET AL.,	)
	)
Appellee.	)
	)

ORDER

On June 10, 2013 Appellant filed his Motion for New Hearing which we shall treat as a motion for reconsideration. The opinion in this appeal was filed on March 28, 2013 and the mandate issued on April 29, 2013. On May 10, 2013, Appellant filed his Petition for Writ of Certiorari in the Court of Appeals. Pursuant to Md. Rule 8-605 a motion for reconsideration must be filed before the earlier of the mandate or thirty days after the opinion is filed. Appellant's motion is therefore untimely.

Accordingly, it is this 12th day of July 2013, by the Court of Special Appeals,

ORDERED that Applicant's Motion for New Hearing be and hereby is denied.

FOR A PANEL OF THE COURT

[CHIEF JUDGE'S SIGNATURE APPEARS ON ORIGINAL ORDER]

APPENDIX G

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2011
No. 2604

[Filed June 10, 2013]

EROL OZINAL,	)
	)
Appellant	)
	)
vs	)
	)
THE JOHNS HOPKINS HEALTH SYSTEM CORPORATION, ET. AL.,	)
	)
Appellees	)

APPELLANT'S MOTION FOR NEW HEARING

Now comes Erol Ozinal, Appellant, by his attorney, Patrick D. Malloy, and moves for a new oral argument hearing before this court and for reason says:

1. That an oral argument on this appeal was held before this Court on February 8, 2013 before Judge Albert J. Matricianni, Jr., Judge Christopher B. Kehoe, and Judge Emory A. Plitt, Jr., retired from the Circuit Court for Harford County, who was specially assigned.

2. The Court issued an unreported opinion written by Judge Albert J. Matricianni Jr., on March 28, 2013, which affirmed the dismissal of Appellant's Complaint by the Circuit Court for Baltimore City.

3. The Court issued a mandate on April 29, 2013. Appellant filed a Petition for Writ of Certiorari on May 10, 2013 with the Court of Appeals of Maryland. In his Petition for Writ of Certiorari, Appellant asserts in at least five (5) different places that the Court of Special Appeals is protecting Johns Hopkins.

4. In the last several days, Appellant has learned that Judge Matricianni apparently is the President of the Friends of the Johns Hopkins Libraries.

5. Judge Matricianni apparently was actively participating in a promotional event for Johns Hopkins, which took place on March 28, 2013,which is the day on which he issued the unreported decision in this case. (Copy of announcement is attached as Attachment 1)

6. Appellant would not have appealed his case to the Court of Special Appeals if he did not strongly believe that the Circuit Court for Baltimore City had erred in dismissing his case before any evidence had been considered. Appellant expected that his case would receive an objective review on appeal.

7. Since the appeal was from the dismissal of the case by the Circuit Court for Baltimore City pursuant to Appellees' Motion to Dismiss, there was no evidence presented to the Circuit Court and objectivity is of paramount importance in this type of appeal.

8. It is difficult to be objective when a person's loyalties and sympathies are with the Appellees, but procedures can be followed which will assure Appellant that he has received a fair and objective review of his appeal.

9. Appellant asserts that a new oral argument before a different panel of judges is necessary to assure that his appeal receives a fair and objective review.

WHEREFORE, Appellant requests this Honorable Court to schedule a new oral argument before a different panel of judges on this appeal.

Respectfully submitted,

/s/ Patrick D. Malloy
Patrick D. Malloy
3685 Park Avenue
Ellicott City, MD 21043
410-465-1560
malloylaw@verizon.net

Winston Tabb
Sheridan Dean of University Libraries and Museums

and

Albert J. Matricciani, Jr.
President of the Friends of the
Johns Hopkins Libraries

cordially invite you to the 2013
Paula U. Hamburger Lecture,

THE TAXONOMIST'S DILEMMA:
Or, What's in a Name?

featuring acclaimed author

JAMES PROSEK

March 28, 2013
6:00 pm reception and book signing; 7:00 pm lecture
Mason Hall, Homewood campus
Johns Hopkins University

Parking at the South Garage below Mason Hall

* * *

[Certificate of Service Omitted for
Purposes of this Appendix]

APPENDIX H

IN THE COURT OF APPEALS OF MARYLAND

September Term, 2013

(No. 2604, September Term 2011 Court of Special Appeals)

[Filed August 16, 2013]

EROL OZINAL,	)
	)
Appellant	)
	)
vs	)
	)
THE JOHNS HOPKINS HEALTH SYSTEM CORPORATION, ET. AL.,	)
	)
Appellees	)
	)

PETITION FOR REVERSAL OF THE DENIAL BY THE COURT OF SPECIAL APPEALS OF APPELLANT'S MOTION FOR NEW HEARING

Now comes Erol Ozinal, Appellant, by his attorney, Patrick D. Malloy, and petitions for reversal of the denial of his motion for a new hearing by the Court of Special Appeals and for reason says:

1. That Appellant filed a Motion for a new hearing with the Court of Special Appeals on June 10, 2013 in

the above captioned case which was Case No. 2504 in the September, 2011 Term. (copy of Appellant's Motion for a New Hearing is attached).

2. That the Court of Special Appeals denied Appellant's Motion for a New Hearing on July 12, 2013. (copy attached).

3. That Appellant asserts that the Motion for a New Hearing was improperly denied and should be reversed by this Court.

4. That the reasons for reversing the decision of the Court of Special Appeals are stated in Appellant's Motion for a New Hearing.

5. It is impossible to conclude that the Appellant received fair and impartial justice from the Maryland Court of Special Appeals when Judge Albert J. Matricciani, Jr., who wrote the decision, was President of Friends of the Johns Hopkins Library.

6. On March 28, 2013, a lecture and reception were held to benefit the Johns Hopkins libraries. (Copy of invitation attached). March 28, 2013 is the date on which the opinion affirming the decision of the lower court was signed by Judge Albert J. Matricciani, Jr.. Thus, it would appear to any impartial and unbiased observer that Judge Albert J. Matricciani, Jr. wanted to issue his opinion before attending the March 28, 2013 Friends of Johns Hopkins Libraries event.

7. Even before Appellant became aware of Judge Albert J. Matricciani, Jr.'s position as President of the Friends of Johns Hopkins Libraries, Appellant repeatedly alleged in his Petition for Writ for Certiorari that the Maryland Court of Special Appeals

was protecting Appellant's opponent Johns Hopkins.

WHEREFORE, Appellant requests this Honorable Court to reverse the decision of the Court of Special Appeals and order that the Court of Special Appeals schedule a new oral argument before a different panel of judges on this appeal.

Respectfully submitted,

/s/ Patrick D. Malloy
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malloylaw@verizon.net

* * *

[Attachments and Certificate of Service Omitted for Purposes of this Appendix]