

STATE OF LOUISIANA  
SECOND CIRCUIT COURT OF APPEAL  
DOCKET NO. 51-371-CA (Civil Proceeding)

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JEFF MERCER, LLC

Plaintiff/Appellee

VERSUS

STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF  
TRANSPORTATION AND DEVELOPMENT, ET AL

Defendant/Appellant

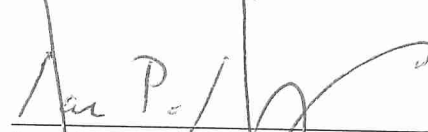
CIVIL APPEAL FROM THE  
FOURTH JUDICIAL DISTRICT COURT  
PARISH OF OUACHITA, STATE OF LOUISIANA  
DOCKET NO. 73,151  
THE HONORABLE J. WILSON RAMBO, PRESIDING

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APPLICATION FOR REHEARING, MOTION TO RECUSE,  
AND TO VACATE THE PANEL'S OPINION ON BEHALF OF  
PLAINTIFF-APPELLEE  
JEFF MERCER, LLC

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ATTORNEYS FOR PLAINTIFF-APPELLEE  
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Civil Case

FILED

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COURT OF APPEAL

**APPLICATION FOR REHEARING, MOTION TO RECUSE,  
AND TO VACATE THE PANEL'S OPINION**

The application of JEFF MERCER, LLC, plaintiff-appellee, respectfully represents that the opinion rendered by the Second Circuit Court of Appeals on June 7, 2017 reversing a unanimous jury verdict of the Fourth Judicial District for the Parish of Ouachita, is erroneous and should be reconsidered by this court for the following reasons. Also, Mercer moves that Judge Henry N. Brown, Jr. be recused from the case and the opinion vacated as set forth below:

1.

Chief Judge Henry N. Brown, Jr. failed to disclose that his father was a civil engineer for the State of Louisiana for forty-four (44) years. The Judge's failure to disclose and recuse himself taints the entire decision, requiring the decision to be vacated. Judge Brown's actions violated Code of Judicial Conduct Canon 3 and violated Mercer's constitutional right to a trial before an impartial court. As a result, the June 7, 2017 opinion should be vacated and heard by a new panel not tainted by the conflict, or in the alternative, moved to an independent Circuit Court of Appeal for a new appellate hearing.

2.

The Second Circuit Panel erred in finding a reversible error concerning the jury instructions and verdict form, ignoring the Louisiana Supreme Court decision of Wooley v. Lucksinger, 09-0571 (La. 04/01/11) 61 So.3d 507. Judge Rambo's instructions were almost verbatim from this case. Under the Wooley decision, Judge Rambo was not required to give specific instructions on all of the underlying intentional acts of the conspiracy. Also, defendants/appellants failed to object to what the Panel claimed was an error, namely the lack of specific instructions on the underlying intentional interference with business relations. Further, the Second Circuit Panel failed to establish reversible error of such a magnitude to show that a

unanimous twelve (12) person jury verdict did not return justice.

3.

The Second Circuit Panel also erred in completely ignoring the evidence of maliciousness by the DOTD and its employees against Jeff Mercer, LLC. Judge Brown wrote that “There is overwhelming evidence that most, if not all, of the allegedly wrongful and malicious actions taken by DOTD and its employees were not done with the intention of putting Mercer out of business, but indeed were done in furtherance of legitimate and protectable business interests”. However, the Second Circuit Panel failed to cite important facts proven at trial, believed by the twelve (12) person jury, and contained in the record.

For the reasons stated above, as amplified by the brief filed herewith, a rehearing should be granted, the motion to recuse Chief Judge Henry N. Brown, Jr. should be granted, the Second Circuit Panel decision vacated and set before an impartial Panel or another Circuit Court of Appeal for a decision.

4.

Finally, even assuming a reversible error did occur in the jury instructions, the Second Circuit Panel erred in conducting a de novo review of the case, instead of remanding for a new jury trial, where the preponderance of the evidence cannot be determined fairly from a cold record due to the substantial conflicts in testimony. The Second Circuit Panel simply did not follow Louisiana law in this regard, but took it upon themselves to conduct a de novo review of a cold record where there was a tremendous amount of conflicting testimony on virtually every issue.

WHEREFORE, applicant prays that a rehearing be granted and that:

- (1) that Chief Judge Henry N. Brown, Jr. be recused;
- (2) the Second Circuit Panel be vacated;
- (3) that the appeal decision be referred to another Panel or to an impartial

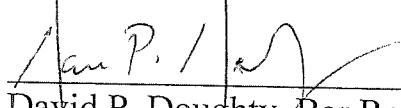
Circuit Court of Appeal for a fair hearing; and

- (4) the judgment previously rendered by the unanimous jury be affirmed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, **DAVID P. DOUGHTY**, hereby certify that the above and foregoing Application for Rehearing, Motion to Recuse and to Vacate the Panel's Opinion has this date been forwarded via United States mail, postage prepaid and properly addressed to counsel of record;

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RAYVILLE, LOUISIANA, this 16<sup>th</sup> day of June, 2017.

  
OF COUNSEL