No. ________

In The
Supreme Court of the United States

PATRICIA MORRISON,
Administrator for the Estate of Tommy Morrison,

Petitioner,

v.

QUEST DIAGNOSTICS INCORPORATED, JOHN HIATT, DR. MARGARET GOODMAN, NEVADA STATE ATHLETIC COMMISSION, and MARC RATNER,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Since 1990, Nevada State Athletic Commission rule: *NAC 467.027 Section 3*. requires ". . . . an original or certified copy of the results of medical tests which: *Section 3(b):* "show that the applicant or unarmed combatant is not infected with the *human immunodeficiency virus."* **In 2016**, QUEST Diagnostics Inc., confessed in court, for the first time, its 'laboratory reports' do not confirm the presence of the *human immunodeficiency virus ("HIV")*, and are **not** a diagnosis of any disease, and **cannot** be used for treatment. *The District Court* held: "We wouldn't be having this discussion if the test was specific for the existence of the virus or not that's obviously why there's even the possibility of a claim, the tests didn't test for the virus." Respondents QUEST then presented more of their 'clinical laboratory reports', now **as** a diagnosis **and** for treatment between 1996 and 2013, invoking the 'continuous course of treatment doctrine' as it relates to the QUEST '1996 laboratory report' used to end TOMMY's boxing career. **On September 17th, 2013**, TOMMY's postmortem investigation reported a **Final Diagnosis** that TOMMY did not have "HIV". **On July 24th, 2014**, this action was filed. This case presents 3 questions of great practical significance regarding the scope of the *Fraudulent Concealment Doctrine, Continuous Course of Treatment Doctrine, and the Discovery Rule.*

The 3 Questions Presented raise pressing issues of national importance:

1. Whether the *American Disabilities Act of 1990* preempts *NAC 467.027* that singles out athletes by requiring, and relying, on QUEST

QUESTIONS PRESENTED – Continued

'clinical laboratory reports' that do not report the presence of 'HIV infection' to expressly deny an athlete a license to continue his profession.

2. Whether the District Court erred in holding a case as time-barred and granting summary judgment in favor of Defendants/Respondents when the '*Fraudulent Concealment Doctrine*' provides that a party undertaking to give information, and has a duty to speak the whole truth, and that by concealments making his statements untruthful and misleading, tolls the statute of limitations.

3. Under the *Continuous Treatment*, *Continuous Course of Treatment*, and *Fraudulent Concealment* Doctrines, where wrongful acts and omissions have run continuously and are related to the same original condition or complaint, did the lower court err in not applying the accrual date *at the end of the treatment*, on *September 17th, 2013?*

PARTIES TO THE PROCEEDINGS

The caption contains the names of the following parties to the proceedings below.

1. Patricia Morrison, Administrator, Legal Representative for the Estate of Tommy Morrison, Plaintiff and Petitioner;

2. Quest Diagnostics Incorporated, Defendant and Respondent;

3. John Hiatt, Defendant and Respondent;

4. Nevada State Athletic Commission, Defendant and Respondent;

5. Dr. Margaret Goodman, Defendant and Respondent; and

6. Marc Ratner, Defendant and Respondent.

RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, the undersigned petitioner, Patricia Morrison, widow, legal representative, and Administrator for the Estate of Tommy Morrison, states no parent corporation and no publicly held corporation owns ten percent (10%) or more of the stock in The Estate of Tommy Morrison.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	iii
RULE 29.6 STATEMENT	iii
TABLE OF AUTHORITIES	vii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS, STATUTES, AND POLICIES INVOLVED	2
INTRODUCTION	3
STATEMENT	8
A. Nevada Athletic Commission Rule NAC 467.027	9
B. NSAC HIV Testing	10
C. QUEST Intentionally Concealed Test Packet Information	11
D. QUEST Intentionally Suppressed Science Literature	13
E. RESPONDENTS Were Under A Duty to Disclose	15
F. TOMMY February 08th-10th, 1996	16
G. TOMMY Sustained Damages as a Result of QUEST's Concealment	18
H. TOMMY 1996-2013 Continuous Course of Treatment and Continuous Treatment Doctrines	20

TABLE OF CONTENTS – Continued

Page

I. TOMMY End of General Treatment 21

J. TOMMY's Antemortem and Postmortem Pathology Reports 22

K. MORRISON's Due Diligence 23

L. MORRISON's Discovery Rule 24

M. RESPONDENTS' Last Negligent Act or Omission 25

N. FRAUD and the Statute of Limitations 27

O. RESPONDENTS Commit a Continuing Tort 29

REASONS WHY THIS PETITION SHOULD BE GRANTED 30

I. The Judges Were Deceived Evidence Was Concealed 30

II. Deficiencies Exist In Respondents' Docket Entry 6, Ninth Circuit Court 33

III. The Decision Below Conflicts With Other National/International Courts, And Similar Situations 40

IV. Tobacco, Opioids, and Quest Diagnostics Incorporated 43

CONCLUSION 44

TABLE OF CONTENTS – Continued

Page

TABLE OF APPENDICES

APPENDIX: Order of the United States Court of Appeals for the Ninth Circuit Court Denying Appeal (Oct. 03, 2017) .... App. 1-3

APPENDIX: Opinion and Order of the United States District Court for the District of Nevada Dismissing this case (Oct. 24, 2016) .... App. 4-25

APPENDIX: Memorandum of the United States Court of Appeals for the Ninth Circuit Denying Petition for Rehearing or Rehearing *En Banc* (Feb. 26, 2018) .... App. 26

TABLE OF AUTHORITIES

Page

CASES

Abbott v. Bragdon, 912 F.Supp. 581 (D.Me.1995) 29

Anderson v. Little League Baseball, Inc., 794 F.Supp. 342 (D.Ariz.1992) 29

Berry v. Nat'l Med. Servs., 41 Kan.App.2d 615 (2009) 31

Blanchard v. Blanchard, 108 Nev. 908, 839 P.2d 1320 (1992) 6

Borgia v. City of New York, 16 A.D.2d 927, 12 NY2d 151 (1962) 21, 27, 28

Bragdon v. Abbott, 1998 U.S. LEXIS 4212 (June 25, 1998) 40

Bullcoming v. New Mexico, 131 S.Ct. 2705 (2011)........ 23

Crawford v. Washington, 541 U.S. 36 (2004)............. 22

Devadas v. Niksarli, NY Slip Op 06032 (2014)............ 5

Diau v. Botswana Building Society (BBS), Case No IC 50/2003, Industrial Court of Botswana (2003) 41

Doe v. District of Columbia, 796 F.Supp. 559 (D.D.C.1992) 29

Doe v. Kohn, Nast & Graf, 862 F.Supp. 1310 (E.D. Pa. 1994).. 40

Epperson v. Roloff, 102 Nev. 206, 719 P.2d 799 (1986) 6

Fonda v. Paulsen, 46 A.D.2d 540 (1975)................. 5, 27

TABLE OF AUTHORITIES – Continued

Page

Fujisawa v. Compass Vision, Inc., 735 F.Supp.2d 1171 (N.D.Cal.2010) 17

Garlick v. Quest Diagnostics, Inc., 2009 WL 5033949 (D.N.J.2009) 30

Glover v. Eastern Nebraska Community Office of Retardation, 686 F.Supp. 243 (D.Neb. 1989) 15

Huerfano County v. Purdue Pharma. L.P. et al.; 1:18-cv-00219 44

Johnson v. Egtedar, 915 P.2d 271 (1996) 22

Mackintosh v. Jack Matthews & Co., 109 Nev. 634, 855 P.2d 553 (1993) 16

McDermott v. Torre, 56 NY2d 399 (1982) 21

Merrell Dow Pharms., Inc. v. Havner, 907 S.W.2d 535 (1997) 30

Morrison v. Quest, et al., 2:14-cv-01207-RFB-PAL (2014) 44

MX v. ZY, AIR 1997 Bom 406 (High Court of Judicature 1997) 41

Northern Nevada Mobile Home Brokers v. Penrod, 96 Nev. 394, 610 P.2d 724 (1980) 26, 35

Nykorchuck v. Henriques, 13 AD3d 1026 (1991) 20

Nykorchuck v. Henriques, 78 NY2d 255 (1991) 20

People v. Dungo, 286 P.3d 442 (Cal.2012) 28

People v. Edwards, 306 P.3d 1049 (Cal.2013) 28

PLD 1977 SC 14 Siraj-ud-Din v. Misbahul Islam. PLJ 1977 SC 28 40

TABLE OF AUTHORITIES – Continued

Page

Quisenberry v. Compass Vision, Inc., 618 F.Supp.2d 1223 (S.D.Cal.2007) 32

Raymond v. Eli Lilly & Co., 371 A.2d 170 (N.H.1977) 24

School Board of Nassau County, Florida v. Arline, 480 U.S. 273 (1987) 29

Semerenko v. Cendant Corp., 223 F.3d 165 (3d Cir.2000) 28

Siraj-ud-Din v. Misbahul Islam, PLD 1977 SC 14, PLJ 1977 SC 28 40

State v. Blevins, 744 S.E.2d 264 (W.Va.2013)....................................42

State v. Kennedy, 735 S.E.2d 905 (W.Va.2012)....................................42

State of Minnesota, et al. v. Philip Morris Incorporated, et al., 551 N.W.2d 490 (Minn. 1996) 43

Thomas v. Atascadero Unified School District, 662 F.Supp. 376 (C.D.Cal.1987) 29

Whalen v. Roe, 429 U.S. 589 (1977) 18

Wilson v. Compass Vision, Inc., 2007 WL 4570613 (N.D.Cal.2007) 15

XX v. Ministry of National Defence, Case No. T-707205, Third Appeal Bench of the Constitutional Court (2003) 42

ACTS, DOCTRINES, RULES, REGULATIONS, STATUTES

Americans With Disabilities Act of 1990 ....*passim*

Continuous Treatment Doctrine ....*passim*

TABLE OF AUTHORITIES – Continued

Page

Continuous Course of Treatment Doctrine .... *passim*

Continuing Negligent Treatment Doctrine .... *passim*

CPLR 214-a 21

Discovery Rule 5, 24

Fraudulent Concealment Doctrine .... *passim*

FRCP 26 .... 31, 39

H.R.1186 Professional Boxing Act 2

H.R.1832 Professional Boxing Act 26

H.R.4167 Professional Boxing Act Section 12(2) 15, 35

Restatement of Conflict of Law §149 33

4th Amendment to the U.S. Constitution 15

14th Amendment to the U.S. Constitution 2, 18

28 C.F.R. §36.104 40

28 C.F.R. §36.208(c) 29

42 C.F.R. §493.1283(a)(1)-(4) 33

42 C.F.R. §493.1291(g) 38

28 U.S.C. §1254(1) 1

42 U.S.C. §12101 Title I 2

42 U.S.C. §12101 (1990) 2

NAC 467.027 .... 2, 9, 11, 35

NRS 441.290(2) 18

NRS 441A.150 11

NRS 52.015 22

Page

OTHER AUTHORITIES

1994 The Clinton Administration 40

AIDS Advisory Task Force of the State Board of Health 10

AIDS & Boxing 7

CDC .... *passim*

CDC Laboratory Procedure Manual for the HIV Antibody/HIV Western Blot Test 36

CLIA .... *passim*

Disabilities and the Law, Sec. 4.09, p.314 Laura F. Rothstein 19

Disabilities and the Law, Sec. 10.04..............................19

Document 175-11, June 08th, 2016..............................29

Dr. Anthony Fauci, NIH..............................7

Dr. David Joyner, Chairman of the U.S.O.C...............41

FDA .... *passim*

Health Division International Covenant on Civil & Political Rights Article 26 ....10, 25

HIV/AIDS and Human Rights 10

International Covenant on Civil and Political Rights (Article 26)..............................10, 25

International Guidelines, Office of the UN High Commissioner for Human Rights & Joint United Nations Programme on HIV/AIDS, 1998 Guideline 5 10

TABLE OF AUTHORITIES – Continued

Page

Journal Arch.Intern.Med.1994: 154:1129-37, Celum CL, et al. 14

Journal Cancer Research (Suppl) 1990 Strandrom, et al. 13

Journal Clin.Diag.Lab. Immuno, 1999 Joseph Willmans, et al. 14

Journal Clin.Vaccine Immun;2007: 14:649-59, Guan M. 14

Journal C.R.Acad.Sci. Paris: 300:303-306 1996, Becker, et al. 13

Journal Infect. Dis.1990: 162:1379-82, Midthun, et al. 14

Journal JAIDS 1991: Sheppard HW, et al. 4:819-23 ....*passim*

Journal NATURE 1993, Papadopulus-Eleopulos, et al. 14

Journal SCIENCE 1991, Tracy A. Klon 14

Judge Richard F. Boulware II 26

Laboratory Procedure Manual, page 14, Analyte: HIV Antibody/HIV Western Blot Confirmatory test, Serum 12

Louisell & Williams, Id 13A.04(1) 24

Louisell & Williams, supra note 17, 13A.05[3] 25

MMWR/Vol.57 .... 11, 34, 37

National HIV Testing Policy 1995 40

National Institutes of Health Dr. Anthony Fauci 7

TABLE OF AUTHORITIES – Continued

Page

ROCHE Diagnostics Inc., Sarah Mosely....................12

UN Committee on Economic, Social and Cultural Rights General Comment 14, para 12(b)(iv)..........19

UN Commission on Human Rights Resolutions 1995/44 (3 March 1995) and 1996/43 (19 April 1996)..26

UN Doc A/810: Article 8..42

UN General Assembly Resolution 217 A (III) 1948 42

United Nations International Guidelines on HIV/AIDS 42

Universal Declaration of Human Rights...................42

PETITION FOR A WRIT OF CERTIORARI

Petitioner Patricia Morrison ("MORRISON"), Administrator for the Estate of Tommy Morrison ("TOMMY"), respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit issued a Memorandum on February 26th, 2018 denying a Rehearing and Rehearing *En Banc* (App.26); and Order denying Appeal on October 03rd, 2017. (App.1). The District Court of Nevada issued its Opinion & Order dismissing this case on October 24th, 2016. (App.4).

JURISDICTION

The Ninth Circuit issued its Opinion denying a timely Petition for Rehearing and Rehearing *En Banc* on February 26th, 2018. (App.26). This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES INVOLVED

14th Amendment to the United States Constitution

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The Americans With Disabilities Act, 42 U.S.C. §12101 (1990)

Title I

> "**Section 1.** Disability **(c)** being *regarded as* having such an impairment."

NAC 467.027 Nevada Athletic Boxing Commission

> "*Sec.3:* An applicant or unarmed combatant must provide with the application for a license or for renewal of the license an original or certified copy of the results of medical tests which:
>
> *Sec.3(b): show that the applicant or unarmed combatant is not infected with the human immunodeficiency virus;*"

H.R.1186, H.R.4167, H.R.1832 – Professional Boxing Safety Act

> "**Prescribes criminal penalties for violations of this Act.**
>
> **(Sec.12)** Requires a study by: **(2)** the Secretary of Health and Human Services to develop

> recommendations for health, safety, and equipment standards for boxers and matches. **(9)** On August 01, 1995 CBO provided a cost estimate for S.187, the **Professional Boxing Safety Act** as ordered, reported by the Senate Committee on Commerce, Science and Transportation on July 20,1995. **(5)** "Based on information from the Department of Labor and the Department of Health and Human Services, we estimate that the studies required by H.R.1186 would cost about $500,000."

INTRODUCTION

The facts in this action are particularly egregious and call into question the relationship between fraud and the statute of limitations.

Respondents take advantage of a defense based on the statute of limitations where Respondents' own intentional, knowing, and fraudulent concealment of facts from TOMMY, physicians, and the court, have resulted in dismissal of MORRISON's lawsuit as barred by the statute of limitations prior to a trial on the merits. Fraudulent actions by Respondents taken in order to deceive TOMMY commencing on February 10th, 1996 through to September 01st, 2013, from discovering their fraud, should be treated as such – **fraud**.

Incredibly, and shamefully, Respondents successfully, intentionally, fraudulently, misrepresented and concealed from TOMMY that QUEST's tests and 'lab reports' could ***not*** show that TOMMY's blood was

"**infected with the human immunodeficiency virus**" ("**HIV**"). At no time did Respondents reveal to TOMMY the fact that QUEST's 'lab reports' are not a diagnosis of HIV, and that QUEST's tests also react 'positive' in cows, dogs, healthy humans, and humans with naturally occurring antibodies to other conditions, totally unrelated to HIV.

Instead of being truthful, Respondents continued their fraudulent conduct with the courts below by deliberately committing another positive act of concealment by withholding the findings of the antemortem pathology report dated July 31st, 2012 at 12.02pm, and the postmortem report dated September 17th, 2013 at 11.13am, scientifically revealing TOMMY did not have HIV. An act so secretly planned and well executed as to keep the claims hidden from the lower court.

Respondents are home free unless an exception exists to preserve the causes of actions against them. If no such exception exists, Respondents will be rewarded for their fraud in concealing from TOMMY, physicians in this case, nonparties, and the courts that QUEST's 'lab reports' are not diagnoses of HIV and cannot be used to commence treatment.

Respondents used the statute of limitations as a shield from the consequences of their negligence and their fraud. This is an intolerable situation which the U.S. Supreme Court ought not to ignore. MORRISON does not believe that the law is powerless to correct such an injustice. The U.S. Supreme Court must decide

whether Respondents should keep their reward for their fraudulent conduct.

Since there is at the very least a question of fact on the issue of when TOMMY's *treatment* lost its continuity, it was error for the lower court to conclude as a matter of law that the Statutes of Limitation was a bar to the causes of action. The '**Continuous Treatment Doctrine**' tolls the statutes of limitation until *treatment* for a particular condition is concluded. The value of this doctrine was made evident by decision in *Devadas v. Niksarli*, NY Slip Op 06032 (2014) (where on appeal, the New York Appellate Division determined plaintiff met the standard for the **continuous treatment doctrine** because his 2007 visit was motivated by continued blurriness to his eye, and this "related" to the original treatment. The court upheld the jury verdict, despite the fact more than 33 months had passed between the plaintiff's last 2004 visit and his visit in 2007).

There is a question of fact as to whether the Discovery Rule; Continuing Negligent Treatment Doctrine, and **Fraudulent Concealment Doctrine** are imputable to Respondents with the Nevada court's acceptance of *out-of-state* QUEST 'lab reports' and the withholding of scientific evidence. It cannot be said, on the facts presented below, that as a matter of law, such principles are not applicable. The issue must be determined at trial *Fonda v. Paulsen*, 46 A.D.2d 540 (1975).

Defendants have committed fraud on the grounds of negative misrepresentations, omissions, and fraudulent concealment.

> "a defendant may also be found liable for misrepresentation even when the defendant does not make an express misrepresentation, but instead makes a representation which is misleading because it partially suppresses or conceals information."

Blanchard v. Blanchard, 108 Nev. 908, 839 P.2d 1320, 1332 (1992) (quoting *Epperson v. Roloff*, 102 Nev. 206, 719 P.2d 799, 803 (1986)).

The *continuous* nature of Quest Diagnostics Inc. ("QUEST") technicians' work is not a direct physician-patient relationship with an individual, but in this action, QUEST is 'playing doctor' and the Nevada State Athletic Commission ("NSAC"), is denying a boxing license, based on a 'lab report' which if 'positive' can mean 'positive for anemia, or rheumatoid arthritis, *inter alia*". QUEST concealed this medical fact. Such is what occurred in this case. QUEST should have reasonably expected that their work would be relied upon by NSAC, in determining combat licensing. It is appropriate to impute to QUEST, John Hiatt ("HIATT") (collectively "QUEST"); and NSAC, Marc Ratner ("RATNER"); Dr. Margaret Goodman ("GOODMAN") (collectively "NSAC") constructive participation in that treatment so long as it continued. TOMMY's *end of treatment* was **September 17th, 2013, and this action was timely filed on July 24th, 2014**.

In this way, QUEST is guilty of the initial, and continuing, malpractice and subject to the same period of limitations as those who continued the negligent conduct as a reasonably foreseeable result of the initial

wrong. The determination of Respondents' continuing wrongdoing is one of fact based upon medical and scientific evidence which can only be decided ***by the jury***.

The decision below reflects the latest effort by a lower court to avoid the facts of the case and 'real' science. It creates conflict amongst the medical establishment, 'standard of care', 'patient-physician relationship', scientists, and has accomplished a nonsensical interpretation of 'standard of laboratory practices and procedures' by disregarding the Food and Drug Administration ("FDA"), Center for Disease Control and Prevention ("CDC") Guidelines, Clinical Laboratory Improvement Amendments ("CLIA"), test kit manufacturers' packet inserts, and published peer-reviewed science journals. It allows QUEST to dominate the medical establishment, practice of medicine, and interpret other non-party, non-affiliated laboratory reports. And, absent of required studies or evidence that HIV can be transmitted in the Ring, and counter to *Dr. Anthony Fauci of the National Institutes of Health ("NIH") citing* "the risk of transmission is so small as to be unmeasurable" *Nightline: AIDS and Boxing (ABC television broadcast, February 13, 1996)*, allows NSAC to discriminate.

As in tobacco and opioid cases, QUEST has hidden crucial facts in its possession, resulting in millions of people's lives being destroyed, and in premature deaths because they did not receive supplemental testing and treatment for differential-diagnoses, because **QUEST** 'lab reports' are fraudulently masked as ready-made diagnoses of HIV/AIDS *for* physicians, patients, and Boxing Commissions.

Respondents have known for decades from their own internal studies that they are fraudulently misleading the products and services they purchase, perform, interpret and report on. Instead of disclosing this knowledge, QUEST intentionally chose to engage in a unified campaign, with Co-Respondents, of deceit and misrepresentation. This course of conduct was intended by QUEST to control and maintain its market, to maximize its profits, and to minimize its legal exposure.

Because of TOMMY, this case reveals a 'positive result' by QUEST, and its affiliated companies, does not medically, or scientifically, conclude 'infection with the human immunodeficiency virus' ("HIV"). This Court is respectfully requested to grant this Petition and consider this case as a matter of **high importance**.

STATEMENT

TOMMY was a professional boxer and was on course to fight Mike Tyson. As part of TOMMY's professional boxing career, he entered into a multimillion dollar, multi-fight, contract with Promoter Don King. The first fight was scheduled for February 10th, 1996. In order to uphold the fight contract TOMMY required a Nevada boxing license. The Nevada physician certified TOMMY as mentally and physically fit to fight and receive a license, and the certification was provided to the boxing commission. But, an 'oral diagnosis' of 'positive for HIV' by QUEST, instantly terminated

TOMMY's profession. In 2013, MORRISON discovered TOMMY did not have 'HIV'.

A. Nevada Athletic Commission Rule NAC 467.027

In 1990, NSAC introduced 'HIV' testing and QUEST purchased and performed tests with markers that only '**presume**' or '**may**' detect antibodies as confessed by QUEST ***in 2016***, and not HIV infection or the virus. QUEST fraudulently concealed that its 'HIV' tests have never been approved by the FDA or Federal Trade Commission ("FTC"), to deviate from a 'screening' status to a 'diagnostic' status, and nor can QUEST promise results directly to physicians, boxing commissions, patients, and TOMMY, confirming 'positive for HIV infection'.

Nevertheless NSAC, absent of any *required studies* by the U.S. Department of Health and Human Services ("HHS"), utilizes 'test reports' authored by QUEST to establish an applicant is 'infected with HIV' to deny a professional boxing license.

"**NAC 467.027**" provides:

> "Determination of physical and mental fitness to engage in unarmed combat; examination and testing; results of medical tests required". *Section 3*: "An applicant or unarmed combatant must provide with the application for a license or for renewal of the license an original or certified copy of the results of medical tests which: *Section 3(b):* "*show that the applicant*

or unarmed combatant is not infected with the human immunodeficiency virus";

The International Covenant on Civil and Political Rights (Article 26), UN Commission on Human Rights, International Guidelines on HIV/AIDS and Human Rights specifically recommend laws should guarantee "freedom from HIV screening for employment, promotion, training or benefits." *HIV/AIDS and Human Rights: International Guidelines, Office of the UN High Commissioner for Human Rights & Joint United Nations Programme on HIV/AIDS, 1998: Guideline 5.*

B. NSAC HIV Testing

QUEST convinced NSAC, TOMMY, and physicians, that its 'positive reports' are definitive of 'infected with HIV' in human blood. NSAC agreed to include QUEST's authored laboratory reports as a requirement for a license. NSAC, heavily relying on QUEST's 'positive for HIV', would then interpret the applicant as contagious in the ring, regardless of no such studies from the Health Division and AIDS Advisory Task Force of the State Board of Health. (No other league tests its players for 'HIV', and yet it is not uncommon for players in basketball, football, and hockey, to be cut or bleeding). The NBA, NFL, NHL, NCAA, and Amateur Boxing guidelines recommend not testing athletes for HIV).

QUEST also agreed to provide NSAC with 'oral reports' allowing NSAC to administratively and medically determine which action must be taken based

upon QUEST's reporting. However, CDC guidelines: *MMWR/Vol.57* provides "Oral reports of prior laboratory test results are *not* acceptable".

QUEST performs tests based on instructions, standards, limitations, and warnings from test kit manufacturers with pre-approved FDA packet inserts reviewed by FDA of the *pros and cons* of the method of testing offered by that manufacturer. Currently, and in 1996, Respondents' 'commercial lab reports' lack sufficient proven specificity for use as *primary or solo* evidence of HIV infection. Legal or disciplinary action based *solely* on a 'positive HIV clinical laboratory report' is inappropriate and scientifically unsupportable even at this time. FDA and CDC report that these tests should be considered as potential valuable clinical *tools* but their use in forensic settings is premature. **NRS 441A.150** Reporting Occurrences of Communicable Diseases to Health Authority provides: "**(3)** The health authority shall not presume a diagnosis of a communicable disease on the basis of the notification received from the *laboratory director*." trumping NSAC's *NAC467.027.*

C. QUEST Intentionally Concealed Test Packet Information

QUEST concealed and suppressed a material fact from TOMMY, the public, physicians, **and the courts**, that are in QUEST's possession, custody and control for decades, which provide:

- ELISA: "At present there is no recognized standard for establishing the presence or the absence of HIV-1 antibodies in human blood."

- WESTERN BLOT and CDC: "A *negative* test result at any point in the investigation of individual subjects does not preclude the possibility of exposure to or infection with HIV-1 and/or HIV-2" *(page 14 of 29 Laboratory Procedure Manual. Analyte: HIV Antibody/HIV Western Blot Confirmatory Test. Serum. Performed by: HIV Immunology and Diagnostic Branch Division of AIDS, STD and TB Laboratory Research. National Center for Infectious Diseases. CDC. Contact Dr. Michelle Owen) (a co-worker with Bernard Branson the Expert Witness for QUEST).*

- PCR/VIRAL LOAD: "Please note that neither this test nor any other Roche Diagnostics Assay is intended for use as a diagnostic test to confirm the presence of HIV infection." *Sarah Mosely Roche Diagnostics Inc./Amplicor*

No commercial tests for 'AIDS' or 'HIV infection' exist and QUEST have known for decades that *positive* reactions occur in dogs, cows, and healthy **human** blood, *inter alia*, as documented in peer-reviewed science journals.

D. QUEST Intentionally Suppressed Science Literature

Under *Daubert* non-exclusive criteria, when scientists publish a body of work in peer reviewed journals, courts recognize the criteria as one of the important signs of scientific legitimacy. Judges, too, as well as fellow scientists, judge the quality of scientific scholarship by the journals in which the author has published. FDA, CDC, test kit companies, and other non-QUEST laboratories have a general acceptance of these studies. QUEST negligently ignores studies harming the public with its deceit and fraudulent conduct by authoring 'positive for HIV' reports as unequivocal evidence of HIV infection. TOMMY was just another one of its victims.

- **1986: Journal C.R.Acad.Sci.Paris:** HIV DNA sequences are found in TSETSE FLIES, BLACK BEETLES, AND ANT LIONS in Zaire and the Central African Republic. *See Becker, et al. 1986.*

- **1990: Journal Cancer Research (Suppl):** 50% of DOGS from both normal and deceased, including dogs with neoplasia, contain antibodies which react positive on the Western Blot HIV Test. *See Strandrom, et al*.

- **1991: Journal JAIDS:** "there is no 'gold standard' laboratory test that defines the true infection status." *See Sheppard HW, et al., 4:819-23.*

- **1991: Journal Science:** ALLOIMMUNE MICE AND AUTOIMMUNE MICE" contain gp120 and p24, and also react positive on ELISA HIV TEST. *See Tracy A. Klon, et al.*

- **1993: Journal Nature:** PLATELETS from healthy people contain p.41/45 protein, and also react positive on HIV tests. *See Papadopulos-Eleopulos, et al.*

- **1999: Journal Clin.Diag.Lab.Immuno:** COWS, GOATS, and BABY PROTEINS also react 'positive' to the ELISA TEST. *See Joseph Willmans, et al., July 1999.*

- **1999: Journal Ann.Int.Med:** "viral load tests for HIV-1 were neither developed or evaluated for the diagnosis of HIV infection." *See Rich J, et al., 130: 37-39.*

- **Journals: 1990: J. Infect. Dis.; 162:1379-82**; *see Midthun K., et al.*; **1994-Arch.Intern. Med.: 154:1129-37**. *See Celum CL, et al.*; *and* **2007-Clin.Vaccine Immun;14:649-59.** *See Guan M.*; revealing 'positive' on QUEST's tests as the result of other conditions completely unrelated to HIV, such as autoimmune conditions, vaccination, arthritis and dermatologic conditions.

Despite QUEST's knowledge of science literature, still agree to provide NSAC with *stand-alone* reports of 'infection with the human immunodeficiency virus'.

E. RESPONDENTS Were Under A Duty To Disclose

NSAC owes a duty to request studies before enforcing a 'mandatory medical regulation', in accordance with *H.R.4167 Professional Boxing Act*. NSAC is not licensed to practice medicine or a healthcare provider. In *Glover v. Eastern Nebraska Community Office of Retardation*, 686 F.Supp. 243 (D.Neb. 1989) the Court held mandatory testing policy was not justified at its inception and constituted an unreasonable intrusion on Fourth Amendment rights because the risk of anyone being infected with HIV was 'extremely low and approached zero." *Id.* at 250 concluding that "[s]uch a theoretical risk does not justify a policy which interferes with the constitutional rights of the [employees]."

> Courts have found Respondents would owe TOMMY a duty of care. Courts recognize a duty of reasonable care owed from third-party administrators ("TPAs"), and testing laboratories, to test subjects when promulgating and administering tests to assess compliance with licensing regulations. TOMMY satisfied the elements of Respondents' negligence: he was a forseeable plaintiff (as one of the test subjects), and the harm was foreseeable (a professional boxer being denied the opportunity to continue his profession).

Wilson v. Compass Vision, Inc., 2007 WL 4570613 (N.D.Cal.2007) (unpublished) the Court rejected argument that Defendants owed no duty and noted that:

> "defendants' argument that promoting and conducting a flawed test is distinguishable from cases where laboratories mishandled test specimens or the reporting of test results, thereby negating their duty to plaintiff, **is unpersuasive**."

F. TOMMY February 08th-10th, 1996

Between February 08th and February 10th, 1996, NSAC contracted with QUEST, by means of a medical release form authored by NSAC, and signed by the applicant, TOMMY, to provide NSAC with a phone call and clinical laboratory report after administering QUEST's chosen 'HIV' tests. This agreement continues today. QUEST was/is now responsible, with a duty, to show whether the applicants' blood was 'infected with the human immunodeficiency virus' (HIV), or not. (1991: Journal JAIDS: "there is no 'gold standard' laboratory test that defines the true infection status." *See Sheppard HW, et al. 4:819-23*.) (*See Mackintosh v. Jack Matthews & Co.*, 109 Nev. 634, 635, 855 P.2d 553 (1993); *disclosure mandated in context of dealings between parties*).

Medical releases authored by NSAC required QUEST to provide NSAC *directly* with 'medical information' on TOMMY's blood. The other licensing requirement was a mental and physical, clinical, evaluation by a licensed physician, again on a form authored by NSAC. Lastly, an examination by NSAC's ringside physicians on the night of weigh-in. This NSAC Rule continues today and due within 30 days of the fight,

not outside of 30 days, **and not 'post' the scheduled fight**.

The licensed physician found TOMMY mentally and physically fit to receive a license for the February 10th, 1996, fight, as did NSAC's ringside physicians. The physician's evaluation, on a form provided by NSAC, was signed by the physician under penalty of perjury, and sent directly to NSAC, and received by NSAC.

Analogous to this case at bar is *Fujisawa v. Compass Vision, Inc.*, 735 F.Supp.2d 1171 (ND.Cal.2010) (where Fujisawa was disciplined on exclusive reliance of Compass's lab report and not on a 'complete clinical picture'. Judge Zimmerman denied defendants' summary judgment and found the clinical laboratories owed the plaintiff a duty of care).

On February 10th, 1996, QUEST made a 'phone call' to NSAC, and 'orally' reported TOMMY 'tested positive for HIV'. QUEST failed to call the 'ordering physician' and produced a written report ***20 years later*** for NSAC, deviating from, and breaching, the CLIA standard of laboratory practice and standard of care between QUEST and a physician, and disrupting a patient-physician relationship.

QUEST's 'positive for HIV' was only relayed to NSAC, then to Executive Commissioner Marc Ratner ("RATNER"). RATNER, not a licensed physician, further relayed the diagnosis of 'positive for HIV' in an unauthorized ringside meeting with a Tony Holden ("HOLDEN"). HOLDEN was not licensed in any capacity for the fight. and was not TOMMY's manager

or legal representative. TOMMY was self-managed as documented on the license application signed by TOMMY. HOLDEN was not named on the medical release. *NRS 441.290(2*) provides for criminal penalties for the unauthorized disclosure of the name of a person regarded as infected, with a venereal disease. NSAC are not above the law. *In Whalen v. Roe* the Supreme Court recognized a constitutional right to privacy of individuals to avoid "disclosure of personal matters." 429 U.S. 589, 599 (1977). The *Fourteenth Amendment to the U.S. Constitution* states: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Despite NSAC's conduct of violations of privileges of: privacy, patient-physician relationship; breach of its own NSAC licensing regulations, standard of care, standard of laboratory practice and procedures; Nevada law, and the constitution, HOLDEN was *then* told to contact TOMMY and meet him in a *hotel room* and inform him he 'tested positive for HIV' and the fight was cancelled. RATNER told HOLDEN to 'get him out of town quick, the media is swarming'. TOMMY was immediately flown out of Las Vegas at the request of NSAC.

G. TOMMY Sustained Damages As A Result of QUEST's Concealment

Co-Respondents relied on QUEST to determine TOMMY's suitability to obtain a license. No opportunity was given to review QUEST's medical decision made in Las Vegas, Nevada. Respondents instantly placed TOMMY on an indefinite, worldwide, medical suspension as reported to Fight Fax, Inc., and the

worldwide media on February 10th, 1996. As a result of QUEST's concealment TOMMY suffered the stigma of a loathsome disease for the rest of his life. A disease that he never had.

Failure to provide adequate pre and post-test counselling constitutes a limitation on the human right to receive essential information on health. The right to enjoyment of the highest attainable standard of health includes the "right to seek, receive and impart information concerning health issues." *UN Committee on Economic, Social and Cultural Rights, General Comment 14, para. 12(b)(iv).* In the area of employment, the courts have generally prohibited discrimination on the basis of HIV (*Laura F. Rothstein, Disabilities and the Law*, Sec. 4.09, p.314) (Disabilities and the Law, Sec.10.04). Had the Supreme Court ruled individuals *regarded as* HIV positive, and asymptomatic, were not covered by ADA, Congressional efforts to amend the ADA definition would have occurred. NSAC suppressed the fact that Congress has not ruled against *regarded as HIV positive* receiving a license to fight because it has never been established that there has ever been adequate "scientific assessment" of such a risk and a substantial limitation in such an activity.

Between October 2014 and October 2015, the Complaint was Amended with Court approval and gave the Estate of Tommy Morrison legal standing. MORRISON's Amended Complaint asserts claims for (1) Negligence; (2) Defamation; (3) Libel; (4) Slander;

(5) Fraud; (6) Negligent Misrepresentation; (7) Intentional Infliction of Emotional Distress;(8) Intentional Interference with a Contract.

Nevada Defendants concerned that they could be held liable for their own actions of February 10th, 1996, in Nevada, and in an effort to spread the damage, subpoenaed medical records, including blood testing, drug and patient-physicians' psychological notes, from other states without a Court Order from a Judge in Nevada, violating out-of-state laws and the 14th Amendment. Respondents' actions have created an exception to the statute of limitations by establishing the validity of the 'continuous course of treatment doctrine' whereby 'accrual' commences *at the end of treatment* on September 17th, 2013, saving MORRISON's claims in this case.

H. TOMMY 1996-2013 Continuous Course of Treatment, Continuous Treatment Doctrines

Between 1996 and 2013 QUEST establishes for the court a 'continuous course of treatment'. In *Nykorchuck*: "essential to the application of the doctrine is that there has been a course of treatment established [13 A.D.3d 1026 (1991)] with respect to the condition that gives rise to the lawsuit." (*Nykorchuck v. Henriques*, 78 NY2d 255, 258-259 (1991)). The continuous treatment doctrine provides:

> "the time in which to bring a malpractice action is stayed 'when the course of treatment which includes the wrongful acts or omissions

> has run continuously and is related to the same original condition or complaint.' "

(*McDermott v. Torre*, 56 NY2d 399, 405 (1982), quoting *Borgia v. City of New York*, 12 NY2d 151, 155 (1962); *see* CPLR 214-a).

I. TOMMY's End of General Treatment

September 01st, 2013, TOMMY died in Omaha, Nebraska, of cardiac arrest, septic shock, septicemia, and multi-organ failure as noted on the Death Certificate issued September 04th, 2013. But, on *September 01st, 2013*, blood was drawn for a postmortem report. The test requisition was issued by the 'ordering infectious disease physician', the distinguished scientist Philip Smith M.D., Professor of the Division of Infectious Diseases, Medical Director of Nebraska Biocontainment Unit, and UNMC's 2014 Scientist Laureate, Research Leadership, Distinguished Scientist and New Investigator Award recipient, to ***specifically*** investigate whether TOMMY had "HIV" and to provide MORRISON with a postmortem report constituting the *end of treatment* with respect to the retrovirus, the scientific term for HIV. TOMMY's blood was analyzed by Steven H. Hinrichs, M.D., the Professor and Chair in the Department of Pathology and Microbiology at the University of Nebraska Medical Center for Biosecurity, who is also the Director of the Nebraska Public Health Laboratory, and principal investigator of multiple national awards from the CDC and Department of Defense. MORRISON was informed on ***September***

17th, 2013, that TOMMY's ***Final Diagnosis*** concluded TOMMY did not have HIV. No AIDS diseases were found. The postmortem report was signed and faxed to MORRISON on September 25th, 2013, and submitted in evidence since the inception of the case at bar. In *Crawford v. Washington*, 541 U.S. 36, 51 (2004) the report is a "solemn declaration or affirmation made for the purpose of establishing some fact."

The *Final Diagnosis* of September 17th, 2013 (superseding a discharge paper issued September 01st, 2013) *ended the treatment* for TOMMY scientifically declaring no viral particles, affirming no budding retroviruses (no HIV), and no abnormalities.

Note Bene: QUEST subpoenaed records from Nebraska, and intentionally, fraudulently, deceptively, failed to produce all the medical records to the court and negligently withheld the postmortem report of 2013 (and antemortem report of 2012) even from their own 'expert witness'.

J. TOMMY's Antemortem and Postmortem Pathology Reports

NRS 52.015 provides, in part:

> "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence or other showing sufficient to support a finding that the matter in question is what its proponent claims." *Johnson v. Egtedar*, 915 P.2d 271 (1996) (The

district court admitting a pathology report as being properly authenticated.)

Despite Respondents' intentional concealment of subpoenaed records, MORRISON herself had introduced the **two** pathology reports into evidence. The reports' presence in the record ensures that this Court will be able to assess them directly, as opposed to deducing their contents through Respondents' records (where they simply do not exist). As in *Bullcoming,* "this is not a case" in which this Court must consider whether "an expert witness [may be] asked for his independent opinion about underlying testimonial reports that were not themselves admitted into evidence." *Bullcoming*, 131 S.Ct. at 2722 (Sotomayor, J., concurring) (emphasis added). **Two** independent pathology reports on the record: 1) Boston Massachusetts General Hospital, Boston, Massachusetts, July 2012, and 2) University of Nebraska Medical Center, Omaha, Nebraska, September 2013.

K. MORRISON's Due Diligence

In 2013, upon TOMMY's death, due to unrelated conditions to HIV, MORRISON's doubts about the utility of QUEST's HIV reporting began to appear when the postmortem pathology report of September 17th, 2013, confirmed another independent pathology report of 2012. Both pathology reports scientifically confirmed no viral particles, no budding retroviruses (no HIV), and no abnormalities in TOMMY's blood. No AIDS defining diseases were noted. On September

18th, 2013, MORRISON began her due diligence contacting test kit manufacturers, physicians, other national clinical laboratories, Respondents, CDC, FDA, scientists, reputable science journals, boxing sites, and media. The purpose: to discover the essential elements to the cause of action: who, and with what, diagnosed TOMMY with HIV in 1996, when he scientifically did not have HIV. This suit was filed on July 24th, 2014, well *within the Statutes of Limitation commencing on September 17th, 2013.*

L. MORRISON's Discovery

Applying the Discovery Rule "the patient's action accrues when he or she discovers, or reasonably should have discovered, the existence of the essential elements to the cause of action." *See Louisell & Williams, Id.* 13A.04(1). Some courts require the plaintiff to discover the source of injury was caused by the defendants' conduct before the limitations period begins to run. *See Raymond v. Eli Lilly & Co.*, 371 A.2d 170, 172 (N.H.1977). In 2014, MORRISON discovered all five Respondents were responsible for the injury TOMMY suffered – suspension, loss of a boxing license, fraud, libel, slander, defamation, negligent misrepresentation, intentional infliction of emotional distress, and intentional interference with a Contract. There is a clear connection between Defendants' conduct and TOMMY's injury; in fact, Respondents fully intended that the 'lab report' would have an effect on TOMMY and similarly situated individuals. Respondents' **continued negligent course of treatment**, breach of

standard laboratory practices, breach of standard of care, and fraudulent concealment continues to this day.

M. RESPONDENTS' Last Negligent Act or Omission

QUEST, aided and abetted by co-respondents, continue their decades of abuse of concealment of evidence and evading liability not just in this landmark case, their impact and identical conduct can be seen on nonparties. This Court's decision is important to the **world** of sport, the daily lives of men, women, unborn and conceived children, from all walks of life, color, race, and religion; future civil and criminal judicial cases. The decision below continues a wrongdoing by granting a corporation named ***QUEST***, and its affiliates, to present 'lab reports' as *solo* evidence of diagnosis/condition of a disease (HIV) on applicants that truly do not have HIV.

"In order for an injury to accrue on a date later than the initial negligent act, the entire treatment must constitute one continuing wrong". *See Louisell & Williams*, supra note 17, 13A.05[3]. Respondents continue their negligent acts and omissions in violation of the *International Covenant on Civil & Political Rights*. Discrimination is prohibited. Article 26 provides:

> "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantees to all persons equal and effective

> protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or status."

The UN Commission on Human Rights has confirmed "status" in non-discrimination provisions in international human rights treaties is to be interpreted to include health status, including HIV/AIDS. *UN Commission on Human Rights. Resolutions 1995/44 (03 March 1995) and 1996/43 (19 April 1996), among others.* In sum, this case, and its extraordinary facts, demonstrate that flexibility in the due process analysis is essential to achieve the purposes of damages – to punish and deter **QUEST**.

QUEST produced an incomplete report of its 1996 'oral report' *for the first time in 2014*. Then, on September 08th, 2016 (20 years later) QUEST confessed in court that a 'positive for HIV' actually meant positive for 'antibodies', and not the human immunodeficiency virus or 'infection'. Judge Richard F. Boulware II. September 08th, 2016, correctly ruled: "*We wouldn't even be having this discussion if the test was specific for the existence of the virus or not that's obviously why there's even the possibility of a claim. The tests didn't test for the virus". See Northern Nevada Mobile Home Brokers v. Penrod*, 96 Nev. 394, 610 P.2d 724, 727 (1980) (once a party undertakes to give information, he has a duty to speak the whole truth and not, by concealments make his statements untruthful and misleading).

N. FRAUD And The Statutes of Limitations

In *Borgia v. City of New York*, 12 NY2d 151, *supra*, the Court of Appeals held notice was filed within the time required. (12 NY2d at 155) because:

> "when the course of treatment which includes the wrongful acts or omissions has run continuously and is related to the same original condition or complaint, the 'accrual' comes only at the *end of the treatment*."

This principle was not disputed by the dissent, which commented (12 NY2d at 160):

> "Our courts have long recognized, however, that a strict application of this rule [viz., that the cause of action accrues from the date of the original malpractice] may lead to an unjust result and, in an attempt to ameliorate its rigors, have engrafted the 'continuous treatment' doctrine on to the rule. *This doctrine*, now a well-recognized rule of law, *has been confined in its applicability to cases which factually presented some plausible theory for concluding that the injury complained of was the result of a continued course of treatment, and not merely the result of one or more separate and distinct acts.*" (Emphasis supplied.)

Subsequently, in ***Fonda v. Paulsen***, 46 A.D.2d 540, ***supra***, a case markedly close on point for the principles relied upon by MORRISON was decided. In reversing, the Third Department (46 AD2d at 543) held that a continuing misdiagnosis is as much "treatment" as an affirmative act of malpractice, and albeit there

were gaps of 20 and 32 months, it could not be said as a *matter of law* that the treatment was not **continuous**. The Supreme Court instructed that: "[f]actual allegations must be enough to raise a right to relief above the speculative level." Ultimately, the question is whether the 'Petitioner' can prove a set of facts consistent with her allegations that will entitle her to **relief,** not whether that person will ultimately prevail. *Semerenko v. Cendant Corp.*, 223 F.3d 165, 173 (3d Cir. 2000).

Fact 1: No 'blood evidence', or notification from any Health Authorities, exist on the record that TOMMY carried HIV, at any time in his blood, urine, sperm, cerebral spine fluid, macrophages, tissue culture or saliva between Birth (1969), Death (2013) and postmortem (2013).

Fact 2: The presence of the entire postmortem blood report in evidence allows this Court to address the validity of the difference between a QUEST standalone 'Business Record' and its 'conclusions' manually entered on to a 'laboratory report' versus two pathology reports (antemortem and postmortem) containing detailed and graphic scientific findings of what they had seen in TOMMY's blood under microscope which is the basis of this lawsuit. *People v. Dungo*, 286 P.3d 442, 449 (Cal.2012); *accord People v. Edwards*, 306 P.3d 1049, 1089 (Cal.2013).

Fact 3: By QUEST's own chilling admissions, **20 years later**, fraudulently misrepresenting for decades: that a 'positive lab report' is now not a diagnosis

of a disease; that QUEST's tests were never FDA approved to diagnose HIV infection; nor AIDS. Document 175-11, June 08th, 2016, filed by QUEST provides*:* T. CELL/CD4+REPORTS: "CD4 T-lymphocyte test results alone should not be used as a surrogate marker for HIV or AIDS". "Information from a laboratory-initiated report of a CD4+T-lymphocyte count is insufficient for reporting a case of AIDS."

O. RESPONDENTS Commit A Continuing Tort:

By promoting, advertising, selling, and authoring 'lab reports' as reliable means of certainty that a 'positive' finding indicated, with virtual certainty, evidence of 'infection with the human immunodeficiency'. In determining whether a 'positive result' poses a direct threat to the health and safety of others in the Ring, the court is required to conduct an individualized assessment. 28 C.F.R. §36.208(c). *See School Board of Nassau County, Florida v. Arline*, 480 U.S. 273, 288 (1987); *Thomas v. Atascadero Unified School District*, 662 F.Supp. 376 (C.D.Cal.1987); *Anderson v. Little League Baseball, Inc.*, 794 F.Supp. 342 (D.Ariz.1992); *Doe v. District of Columbia*, 796 F.Supp. 559, 570 (D.D.C.1992); and *Abbott v. Bragdon*, 912 F.Supp. 581, 587 (D.Me.1995).

REASONS WHY THIS PETITION SHOULD BE GRANTED

I. THE JUDGES WERE DECEIVED EVIDENCE WAS CONCEALED

Judge Cavanaugh noted in *Garlick v. Quest Diagnostics, Inc.*, 2009 WL 5033949, *10 (D.N.J.2009), *in part*:

> " . . . plaintiff's claims are based on 'defendants' actions and statements associated with the establishment and promotion of EtG testing that has lead to false positives." *Id.*

QUEST's Expert Witness Is An 'Interested Party': Court records have Bernard Branson as an *Interested Party.* His testimony is biased. His report was not reached through a process of exclusion because he did not review TOMMY's complete patient history, did not rule out other conditions known to trigger a reaction on QUEST tests, and did not review any other supplemental testing performed on TOMMY including the antemortem and postmortem pathology reports. In *Merrell Dow Pharms., Inc. v. Havner*, 907 S.W.2d 535 (1997), held: "possibility, speculation, and surmise" are insufficient to support expert testimony regarding causation. Branson's 'report' fraudulently omitted informing the court: "there is no 'gold standard' laboratory test that defines the true infection status." *See Sheppard HW, et al. JAIDS 1991; 4:819-23*.

QUEST's Continuing Wrongdoing: Over the course of 20 years or more, Respondents lied, misrepresented, and deceived TOMMY, the public, and fans

worldwide that TOMMY had 'HIV'. They suppressed research, destroyed documents, manipulated licensing laws so as to increase and perpetuate their fraud, they distorted the truth and negligently enforced its lab reports as ready-made diagnoses for physicians and Boxing commissions. QUEST abused the legal system in order to achieve its goal – to make money with little, if any, regard for individual illness and suffering, soaring health costs, or the integrity of the legal system.

QUEST's Continuing Concealment of Evidence: The lower court abused its discretion granting Respondents' summary judgment with the sheer volumes of withheld documents and disclosure of QUEST's industry secrets, that are not privileged in the first instance and were requested by MORRISON, and discoverable under FRCP 26. QUEST continue to conceal that human blood has trace elements consistent with other medical conditions such as: Rheumatoid arthritis; Epstein Barr virus; Flu vaccination; Arthritis; Hypergammaglobulinemia; Lupus; Lipemic serum; Rubella vaccination; Diabetes; Warts; Sinusitis; Upper Respiratory Infections; Allergies; Rabies vaccination; Anemia; ***and more***, all scientifically known to trigger a 'positive' reaction.

The Berry Court involved facts nearly identical to those here. *Berry v. Nat'l Med. Servs.*, 41 Kan.App.2d 615, 616 (2009) (where the issue was whether laboratories and TPAs owed a duty to a plaintiff who falsely tested positive for EtG.) In *Berry*, the plaintiff:

> "assert[ed] that Compass and NMS were negligent in [e]stablishing cutoffs over which test results would be reported as positive that were arbitrary and scientifically unreliable and invalid."

Similarly, in Quisenberry v. Compass Vision, Inc., 618 F.Supp.2d 1223 (S.D.Cal.2007) (where "individuals who consume ordinary products such as mouthwash [could potentially have] fail[ed] the test." **The Court determined that laboratories and TPA's owe a duty to the individuals to inform them of what other factors may cause a 'positive' result**, whose specimens they test at the request of others (i.e., employers). *Id*. 1230-31. The Court stated there was a viable claim for negligence.)

QUEST's Continuing Negligence: QUEST's HIV tests, even when properly performed, generate 'positive' results for other conditions. QUEST continues its deceptive conduct in promoting, advertising, marketing, selling, and/or contracting with NSAC licensing board, and/or designing, implementing, and managing HIV testing programs, and/or collecting blood samples and/or performing 'screening tests' and/or interpreting HIV testing and/or utilizing its HIV clinical laboratory report/phone call to establish that the applicant was/is unequivocally 'positive for the human immunodeficiency virus', *when it lacked sufficient proven specificity for use as primary or solo evidence* of 'HIV', **and not something else**. Respondents' statements are counter to **scientific** evidence and manufacturers' packet inserts. QUEST labs were, therefore,

responsible for the continuing negligence in this case. The decision below endorses five Respondents to continue to fraudulently mislead, adulterate testing procedures, negligently design and implement a 'positive' QUEST test report as a denial of a boxing license, instant indefinite, and worldwide suspension.

II. DEFICIENCIES EXIST IN RESPONDENTS' DOCKET ENTRY 6. NINTH CIRCUIT

- ***1989. Page 8 of 58; 10-11:*** "In 1989, he tested positive for HIV, but that HIV positive test result never became known to the public".
- ***Tulsa, Oklahoma Press Conference*****:** ***Page 9 of 58; 3-5:*** "Tommy Morrison submitted to additional HIV testing by other laboratories, all of which confirmed Tommy was infected with HIV."
- ***Tulsa, Oklahoma: Page 20 of 58; 3-6:*** "Holden took him to a doctor in Tulsa and had him re-tested. The results were positive for HIV."

These Claims have not been met: No blood evidence exists or patient-physician diagnoses from any physician in 1989. Under the Restatement of Conflict of Law §149, which Nevada follows, Oklahoma governs QUEST's and Oklahoma 'lab reports' because the testing and test results are published to a third party, the Oklahoma Medical Board, in Oklahoma. **42 C.F.R. §493.1283(a)(1)-(4)** provides that the laboratory must maintain an information or record system that includes

the following: (1) the positive identification of the specimen belonging to TOMMY; (2) the date and time of the specimen receipt into the laboratory; (3) the condition and disposition of specimens that do not meet the lab criteria for specimen acceptability; and (4) the records and dates of all specimen testing, including the identity of the personnel who performed the test(s). **MMWR/Vol.57 CDC** provides: "Oral reports of prior laboratory test results are not acceptable". Based on review of court records, Respondents failed to provide Oklahoma laboratory documentation **between February 11th, and 15th, 1996**. *See Sheppard HW, et al. JAIDS 1991; 4:819-23* "there is no 'gold standard' laboratory test that defines the true infection status."

- ***CDC. Page 20 of 58, 6-9*** "Dr.Koprivica personally drew Tommy Morrison's blood sample, and sent two different samples to the CDC for HIV testing. Both tested positive for HIV."

This Claim has not been verified by the CDC: The CDC have no record of any testing on TOMMY or by KOPRIVICA. No records and dates of specimen testing, including the identity of the personnel who performed the test(s) in Atlanta, GA, exist in the record. In accordance with CDC Guidelines, *MMWR/Vol.57*, the court cannot accept an 'oral report' made by KOPRIVICA of prior laboratory test results. KOPRIVICA deposition testimony reads: "I can't tell you anything about the test, what they did or anything, I don't know the chain of custody." *(Page 23: lines 17-19).* And

"At the time in '96 I was no longer doing ER medicine 'cause I stopped in '92." *(Page 24: lines 15-16).*

NSAC Rule: Page 8 of 58; 12-15: "In 1996, he was required by the Nevada State Athletic Commission ("NSAC") to submit a negative HIV laboratory test report as part of its licensing requirements to obtain a license to box in a fight scheduled February 1996."

This Claim is false: NAC 467.027 provides "*show that the applicant or unarmed combatant is not infected with the human immunodeficiency virus*"; and not 'negative HIV laboratory test report'. Based on review of court records, NSAC, did not complete any studies with the CDC, FDA, American Medical Association ("AMA"), Clinical Laboratories Improvement Amendment ("CLIA"), Occupational Safety & Health Administration ("OSHA"); American Disabilities Act ("ADA"); and HHS before relying on a QUEST 'test report', whether positive or negative.

H.R.4167 – Professional Boxing Safety Act of 1996, "Prescribes criminal penalties for violations of this Act. (Sec.12) Requires a study by: (2) the Secretary of Health and Human Services to develop recommendations for health, safety, and equipment standards for boxers and matches."

QUEST is the ***only*** corporation that claims 'HIV infection' is based on its test reports without even examining the patient. *See Northern Nevada Mobile Home Brokers v. Penrod*, 96 Nev. 394, 610 P.2d 724, 727 (1980) (once a party undertakes to give information, he has a duty to speak the whole truth and not, by

concealments make his statements untruthful and misleading). *See Sheppard HW, et al. JAIDS 1991; 4:819-23* "there is no 'gold standard' laboratory test that defines the true infection status."

- ***Positive For HIV-1 Antibodies. Page 8 of 58; 18-19:*** "Tommy Morrison's blood sample was positive for HIV-1 antibodies."

This Claim is incomplete: Based on the standard of laboratory practice, standard of care, and in conformance with FDA approved packet inserts and *CDC Laboratory Procedure Manual for the HIV Antibody/HIV Western Blot Test*, which provides:

> "Clinical studies continue to clarify and refine the interpretation and medical significance of the presence of antibodies to HIV-1 and/or HIV-2. **repeatedly reactive specimens** must be investigated by *additional* tests, *more specific* or *supplemental tests.*"

Undisclosed CDC Laboratory Procedures confirm supplemental validation is required to verify if positive reactions are due to HIV, or to other known factors causing repeated reactions.

- ***Nevada Physician. Page 18 of 58; 3-4:*** "The Next day, Thursday, February 8, 1996, Dr. Robert Voy ordered HIV-1 antibody testing on a blood specimen for Tommy Morrison";

- ***1996 QUEST 'lab report'. Page 18 of 58; footnote 5:*** "The report was sent to the ordering physician on February 12th, 1996."

These Claims are false: The 'ordering physician' on QUEST's 1996 report (Dr. VOY), never ordered the tests. QUEST did not send the report to the 'ordering physician', nor TOMMY or NSAC, or any physician on February 12th, 1996. A 'partial' report was revealed to NSAC in 2014 for the first time.

- ***Standard of Laboratory Practice. Page 18 of 58;15-17 and Page 19 of 58, 1-2:*** "After Review, Dr. Iole reported Tommy Morrison's test results – positive Western Blot – by telephone – to Dr. Edwin Homansky, a fight doctor for the NSAC, pursuant to a release form signed by Tommy Morrison for that purpose, without which he could not obtain a Nevada Boxing License."

This Claim has not been met: Homansky has not testified he received a call from Iole and Respondents have not claimed he was unavailable for a deposition. CDC: MMWR/Vol.57 provides: "Oral reports of prior laboratory test results are not acceptable". Respondents claim *solo reliance* on QUEST to obtain a Boxing License. Dr. Iole breached standard of laboratory practices. Based on a review of policies and procedures, and absent of an interview with testing personnel and laboratory director, Dr. Iole and QUEST "failed to follow its policy for reporting 'life

threatening' results as staff failed to notify the requesting physician." **42 CF.R. §493.1291(g)**.

- ***Over A Hundred Tests. Page 9 of 58; 5-6:*** "Over the course of the rest of his life, Tommy Morrison tested positive for HIV on more than a hundred occasions."
- ***Page 36 of 58:*** "Morrison ignores over sixteen (16) years of HIV testing, diagnoses, and treatment – all of which confirmed his HIV diagnosis."
- ***Page 20 of 58, 15-20; Page 21 of 58, 1-4:*** "From 1996 until his death in 2013, Tommy Morrison was repeatedly tested, diagnosed, and treated for HIV and/or AIDS by various physicians, including HIV specialists, using different HIV testing methods. All of the laboratory test results on specimens provided by Tommy Morrison confirmed his HIV infection and all were consistent with Quest Diagnostics February 10, 1996 positive HIV-1 antibody test results."

These Claims, under penalty of perjury, meet the standard of: "continuous course of treatment doctrine": In *Borgia*, 16 A.D.2d 927, the Court of Appeals held that (12 NY2d at 155): "when the course of treatment which includes the wrongful acts or omissions has run continuously and is related to the same original condition or complaint, the "accrual' comes only *at the end of treatment."* Physicians' notes are non-testimonial (in contrast to *end of treatment* postmortem report of September 17th, 2013), and not created

with the primary purpose of creating evidence in civil, or criminal investigation.

- ***New York. Page 20 of 58, 10-14:*** "*Within two weeks of Quest Diagnostic's test Tommy Morrison also saw Dr. David Ho, an HIV specialist in New York, who also had HIV tests conducted on Tommy Morrison's blood. The results were positive for HIV.*"

This claim has not been met by HO: In 2014, the NY Health Department informed MORRISON that HO did ***not*** have any medical records on TOMMY. HO has not testified to blood samples belonging to TOMMY. HO's 'research laboratory' does not diagnose patients. QUEST **sealed** HO's records. No other records have been sealed in this case. Under FRCP 26, MORRISON is entitled to relevant information such as TOMMY's signed consent, State Report, physician's request, chain of custody and methods of testing. This was denied as 'moot'.

- ***Deemed Disabled 2002. Page 20 of 58, 15-20; Page 21 of 58, 16-17; Page 22 of 58; 1-2.*** "By 2002, Tommy Morrison was deemed totally disabled by the Social Security Administration due to symptomatic HIV/AIDS."

This Claim was met on February 10, 1996: when Respondents officially ***regarded*** TOMMY as 'positive for HIV' with a QUEST 'lab report'. In *Bragdon*, the Supreme Court determined the individual who was ***regarded as*** HIV positive, but asymptomatic, is

protected as an individual with a disability under the *Americans With Disabilities Act of 1990, whether he actually had HIV, or not*. *Bragdon v. Abbott*, 1988 U.S. LEXIS 4212 (June 25, 1998). In *Doe v. Kohn, Nast & Graf*, 862 F.Supp. 1310 (E.D. Pa. 1994) the court concluded after reading the Justice Department's interpretations of ADA in part " . . . or because the reactions of other people to individuals with HIV disease cause such individuals to be treated as disabled." *Id.* at 1321, n.8 (citing 28 C.F.R. §36-104).

III. THE DECISION BELOW CONFLICTS WITH OTHER NATIONAL/INTERNATIONAL COURTS AND SIMILAR SITUATIONS

NSAC cannot apply its laws worldwide in a 'worldwide suspension' even if TOMMY had 'HIV', which he did not:

1977: ***PLD 1977 SC 14 Siraj-ud-Din v. Misbahul Islam. PLJ 1977 SC 28***. Postmortem report admissible in evidence, under section 32(2) of Evidence Act, being a memorandum made in discharge of professional duty;

1994: The Clinton Administration waived a visa rule allowing foreigners to compete in the Gay Games in New York without HIV testing;

1995: National HIV Testing Policy published by the National AIDS Control Organization provides clear guidance that mandatory HIV testing in the

employment context is irrational, unjustified, and amounts to an infringement of human rights;

1996: International Olympic Committee's athletes competed at the Summer Games in Atlanta without HIV testing. **Dr. David Joyner, chairman of the U.S.O.C.** sports medicine committee, reiterated "there has never been a confirmed case in the world of athlete-to-athlete transmission of HIV caused by an athletic event";

1997: ***MX v. ZY, AIR Bom 406 (High Court of Judicature)***, the High Court granted the petition. MX tested HIV-positive, but in all other respects was deemed healthy. The examining physician certified MX was fit for duty. The director of health services in the state government wrote to ZY pointing out there was no medical justification for refusing to employ MX and by National AIDS Control Programme which stated that "HIV-positive status was not an acceptable basis on which to dismiss an employee";

2003: ***Diau v. Botswana Building Society (BBS), Case No IC 50/2003, Industrial Court of Botswana.*** BBS infringed Diau's right of liberty insofar as the requirement of an HIV test with a penalty of termination for refusal and dismissal was "most unfair, involving an unjustified assault on her dignity and her right to liberty". Specifically, the court examined World Health Organization best practices, International Labour Organisation convenants, International Guidelines on HIV/AIDS and Human Rights produced by UNAIDS and the Office of the UN High Commissioner on Human Rights;

2003: ***XX v. Ministry of National Defence, Case No. T-707205, Third Appeal Bench of the Constitutional Court.*** The Court upheld a finding, namely "the situation of being healthy and HIV-positive cannot be qualified as an illness." (SU-256 of 1996). It also found Defendants and lower courts' decision "violated the right to education and the right to choose a profession or occupation of the plaintiff because it prevented him from continuing with the course of studies he was pursuing, without valid justification";

2012: ***State v. Kennedy*,** 735 S.E.2d 905, 916-917 (W.Va.2012) autopsy reports conducted during 'death investigations' are "under all circumstances testimonial";

2013: *State v. Blevins*, 744 S.E.2d 264, 266 (W.Va.2013) (same).

The United Nations International Guidelines on HIV/AIDS and Human Rights encourages all countries to ensure their laws are supportive to the protection, promotion and fulfillment of the human rights of people labelled 'positive for HIV';

Universal Declaration of Human Rights recognizes: "Everyone has the right to an effective remedy by the competent national tribunals for acts of violating the fundamental rights granted him by the constitution or by law". Universal Declaration of Human Rights, UN General Assembly Resolution 217 A (III) (1948), UN Doc A/810: Article 8.

IV. TOBACCO, OPIOIDS, AND QUEST DIAGNOSTICS INCORPORATED

i. The Situation Rings Eerily Familiar

The idea of corporate greed is a touchstone marker in the unfurling of litigation in tobacco, opioids, and QUEST cases. The language in the analogous complaints strikes a very familiar chord. *In State of Minnesota, et al. v. Philip Morris Incorporated, et al.*, 551 N.W.2d 490 Supreme Court of Minnesota (Minn.1996), became a landmark suit in tobacco litigation because it uncovered millions of pages of internal documents from the tobacco industry, and it was also the first state lawsuit to go to trial.

ii. Three Industries Hiding Crucial Facts In Their Possession, Resulting In Many (Millions) of Premature Deaths

> ***Minnesota tobacco complaint:*** "Despite the duration and the severity of the misconduct, the industry has enjoyed virtual immunity because of its economic and political power." (*State of Minnesota. v. Philip Morris Inc., et al.*)
>
> ***Colorado suit:*** "Defendants' false and misleading statements deceived doctors and patients about the risks and benefits of *opioids* and convinced them that opioids were not only appropriate but necessary for treatment of chronic pain," and "each Defendant began a sophisticated marketing and distribution scheme premised on deception to persuade

doctors and patients that opioids can and should be used to treat chronic pain." *Huerfano County v. Purdue Pharma. L.P. et al.*; 1:18-cv-00219

***Morrison suit*: **"Defendants' false and misleading statements deceived doctors, patients, and boxing commissions, about QUEST 'lab reports' and convince[d] them that they are *solo* diagnoses of HIV infection and the virus in human blood. Defendants began a sophisticated marketing and distribution scheme premised on deception to persuade doctors, Boxing Commissions, and patients that a *solo* QUEST 'positive for HIV' report can and should be used to treat 'HIV', deny boxing licenses, and that clinical examinations and supplemental testing by physicians to exclude other factors causing 'positive' results are not required." *Morrison v. Quest, et al.*, 2:14-cv-01207-RFB-PAL (2014)

CONCLUSION

This Court is respectfully requested to end Respondents' long standing, continuing, fraudulent conduct and grant this Petition for Writ of Certiorari.

Dated: May 07th, 2018 Respectfully submitted,

PATRICIA MORRISON
Petitioner, Pro Se
Administrator for the
Estate of Tommy Morrison