No. _____

In the Supreme Court of the United States

MARCO DESTIN, INC., ET AL.,

Petitioners,

v.

SHAUL LEVY, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), did the Court impose a *non-discretionary, mandatory duty* on all federal courts, including those residing south of Canal Street, to vacate any judgment tainted by fraudulent scheme, driven by avarice, that directly targeted a federal court, other government institution, or both, with the intent to introduce compromised evidence into the trial process to influence the judge?

2. Whether the district court applied the incorrect standard for fraud between 'private' litigants, reiterated in *Marco Destin, Inc. v. Levy*, 111 F.4th 214 (2d Cir. 2024), which, in the context of fraud between private litigants, is appropriate in that it places the burden on the private litigant to protect his interests, but whenever the fraud is directed at a federal court or institution, impacting public interests and faith in government institutions, any resulting judgment is unjust, and an unjust judgment should not be allowed to sit around speaking of government impotence?

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants below

- Marco Destin, Inc.
- Panama Surf & Sport, Inc.
- E&T, Inc.

Respondents and Defendants-Appellees below

- Shaul Levy, Meir Levy, Ariel Levy, individually and as agents of L&L Wings, Inc.
- Bennett Krasner, individually and as attorney and agent of L&L Wings, Inc.
- L&L Wings, Inc.

CORPORATE DISCLOSURE STATEMENT

None of the Petitioners or any parent company is a public company, and no public company owns 10% or more of the stock of any Petitioner or parent company.

LIST OF PROCEEDINGS

Immediate Proceedings below

U.S. District Court, SDNY

No. 22-cv-8459

Marco Destin, Inc., Et Al., Plaintiffs v. Shaul Levy et al, Defendants

Order of dismissal: August 28, 2023 (dismissing Marco Destin's complaint for fraud on the NY district court in the 2007 New York federal court action and knowing deception of the USPTO)

U.S. Court of Appeals, Second Circuit

No. 23-1330

Marco Destin, Inc., Et Al., Plaintiffs-Appellants v. Shaul Levy et al, Defendants-Appellees

Opinion: August 8, 2024 (affirming)

Other Proceedings Involving same Parties

U.S. District Court, SDNY

No. 2007-CV-4137 (BSJ)

L&L Wings, Inc., Plaintiffs *v. Marco Destin et al.*, Defendants

Judgment: February 15, 2011

Order on summary judgment: December 16, 2009. (determining Marco Destin liable for damages for infringement on the WINGS mark, which L&L Wings claimed to own, which later was revealed a falsehood)

U.S. Bankruptcy Court, SDNY-B

No. 21-BK-10795-DSJ

In re L&L Wings, Inc.

Final Order: April 7, 2022 (sustaining L&L's objection to Marco-Destin's claim against L&L Wings, Levys and Attorney Krasner for fraud on the New York district court)

Other Proceedings Involving Respondents in a Related Subject Matter

U.S. District Court, EDNC

No. 2:11-cv-44-FL

Beach Mart v. L&L Wings

Judgment: March 29, 2021 (judgment against L&L Wings upon evidence "that L&L Wings knowingly made false representations of material fact with an intent to deceive the USPTO resulting in the issuance of federal trademark Registration No. 2,458,144")

U.S. Court of Appeals, Fourth Circuit

No. 18-1477, 784 F. App'x 118

Beach Mart, Inc. v. L&L Wings, Inc.

Opinion: 4th Cir. August 1, 2019 (affirming)

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OPINIONS BELOW

The dispute between the parties was initially settled in the U.S. District Court, Southern District of New York, in No. 07 Civ. 4137, with a stipulated settlement entered on February 15, 2011 which resulted in Marco Destin paying out over $5 million to Respondents for alleged trademark infringement. (App.48a). Petitioner later discovered a massive fraud, learning that Respondents never owned the trademarks in question, and filed for relief from prior judgments and damages based on the perpetration of fraud on the court. Such relief was denied by the Southern District on August 28, 2023. (App.15a). The U.S. Court of Appeals for the Second Circuit affirmed on August 8, 2024. (App.1a).

JURISDICTION

The opinion of the Second Circuit was entered on August 8, 2024. (App.1a). The petitioner received a letter from the clerk of court permitting a filing of the petition in booklet form by January 7, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

INTRODUCTION

In May 1944, across the Atlantic Ocean, thousands of America's best and brightest prepared to fight for our civilization and justice. Back home, the Court had to decide whether to vacate a judgment obtained through fraud on the district court and the USPTO prevent it from spreading and corrupting the justice system and to protect the public interests in the judiciary and other government institutions. In the matter of *Hazel-Atlas Glass v. Hartford-Empire*, this Court decided the insidious fraudulent judgment had to go for the sake of the *good order of society*. 322 U.S. at 246. The Court well understood allowing these vital public interests USPTO to suffer injury caused by the private litigant failed to uncover the fraudulent scheme on the court and USPTO during the discovery process. Despite the passage of eight decades, this Court has not indicated any desire to revisit the *Hazel-Atlas Glass* decision that when a judgment is obtained through assistance of counsel and extended to both the court and the USPTO, it imposed a non-discretionary duty on the court to vacate the judgment. Despite this, eighty years later, the Second Circuit substantially modified this Court's decision, replaced the non-discretionary duty to vacate and left the decision to the discretion of the district court. The Second Circuit's decision substantially dilutes the protection of the public interest that this Court articulated in the *Hazel-Atlas* decision

STATEMENT OF THE CASE

The factual background spanned several states and meandered through the doors of a half dozen federal courts. Indeed, the district court commented on the extensive record yet failed to related this extensive history to the vast breath of the Levys and Attorney Krasner's fraudulent multi-year conspiracy that targeted the New York district court and the Patent and Trademark Office against. *See Marco Destin*, 690 F. Supp. 3d 182, 186 (S.D.N.Y. 2023), aff'd, 111 F.4th 214 (2d Cir. 2024) ("*Because the factual record is extensive and encompasses two prior lawsuits as well as a bankruptcy case*, the Court provides an abbreviated recitation of the background and *discusses primarily those facts that are relevant to the disposition of the instant motions*.") (emphasis added). Instead of artificially segmenting the record, this Court considered the scope and breadth of Hartford's fraudulent scheme to conclude that the judgment obtained from such an extensive and complex fraudulent scheme had to be vacated. A single factual record shows that *Hazel-Atlas*, 322 U.S. at 245-46 finds a deliberately planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals. Despite the two fraudulent schemes' conclusive similarities in breadth and reach, the district court refused to apply Hazel-Atlas's duty to vacate. Instead, the district court found L&L Wings' fraudulent scheme directed at the court and the PTO no different than cases where the target of the fraud is the other private litigant. See, the Second Circuit

myopically followed the path walked by the district court.

A. Trademark Background and Licensing

L&L Wings operated beachwear and souvenir shops. (App.336a) Shaul Levy and Meir Levy owned L&L Wings, and Ariel Levy managed the operations (collectively, the "*Levys*"). (*Id.*) Bennett D. Krasner, Esq. ("*Attorney Krasner*"), a licensed attorney in New York, was their family and business. (App.337a)

1. Who Owned the WINGS Mark?

Mr. Shepard R. Morrow ("*Morrow*") owned the WINGS mark under several registrations on file with the registry of the Patent and Trademark Office (the "*PTO*"). (App.153a, 337a). Between 1987 and 1992, Attorney Krasner filed two applications to register the WINGS mark, but the PTO denied each due to Morrow's record ownership. (App.337a)

2. L&L Wings Made One Royalty Payment; Defaulted on the Remaining Nine, License Agreement & L&L Wings Usage of WINGS Mark Terminated

After the PTO rejected Attorney Krasner's second application to register the WINGS mark, Attorney Krasner negotiated a license agreement between L&L Wings and Morrow so L&L Wings use of the WINGS mark (the "ML Agreement"). (App.153a-164a, App. 337a). L&L Wings paid the $10,000 annual royalty payment upon execution of the contract (*Id.*). Attorney Krasner asked counsel for Morrow to provide the five Morrow's registrations so he could "proceed with trademark oppositions as a license." (App.165a) L&L

Wings did not make the next royalty payment due on the first anniversary of the agreement. (*Id.*) L&L Wings rights to use the WINGS mark, including right to sublease the mark to a sub-leasee terminated shortly after the royalty default. (App.337a-338a) (Attorney Krasner admits that the second royalty payment was not made yet does not explain why L&L Wings did not make it given the ML License Agreement had a ten year term, allowing it to terminate after the first year makes little sense. Attorney Krasner and the Levys intended to breach the ML Agreement before signing it so they could argue, as they did, that Morrow abandoned the mark. This is explained in L&L Wings disclosure statement filed in the bankruptcy, see *infra* p. 10-11)

3. L&L Wings' Sublicensing of the WINGS Mark to Marco Destin

In 1998, Eli Tabib purchased the Levys' partial ownership in Marco Destin, Inc. ("Marco Destin"), a company operating stores under the WINGS mark. (App.338a-339a). L&L Wings and Marco Destin entered into a license agreement that allowed Marco Destin to use the WINGS mark. (*Id.* at 339a). They knew at the time that L&L Wings rights in the WINGS mark had terminated.

B. Initial Litigation History and Settlement Under False Pretenses

1. L&L Wings' Infringement Suit Against Marco Destin

Marco Destin continued using the WINGS mark after the licensing agreement expired. Attorney Krasner

on behalf of L&L Wings, sued Marco Destin for infringement damages. (App.340a) Attorney Krasner knew Morrow was the rightful owner of the WINGS mark when he filed this complaint in the New York district court. He had received the notice from Morrow's counsel of the default in the second annual royalty payment, and he had negotiated the ML Agreement that provided for automatic termination. (App.161a) Attorney Krasner omitted the disclosure of L&L Wings status as *former* licensee of Morrow in the complaint. He would later make this same omission in his communications with the PTO. The district court in the North Carolina action found this to a knowing false representation or omission, made with the intent to deceive the PTO. (App.97a) By signing and filing the complaint in the New York district court, knowing it was chock full of material fraudulent representations and omissions, Attorney Krasner's actions were fraudulent—he knew L&L Wings did not have the right to sue Marco Destin for infringing on the WINGS mark owned by Morrow.

2. Attorney Krasner's Fraud on the Patent Office

After filing the infringement lawsuit, the Levys and Attorney Krasner turned their fraudulent scheme on the PTO. Attorney Krasner knowingly misrepresented and withheld material facts, mirroring the omissions made to the New York district court. (App.97a-98a, 141a, 147a). He falsely claimed L&L Wings had been in "continuous high-profile use" of the WINGS mark for nearly 30 years and asserted that Morrow was no longer using the mark. (*Id.*).

On July 1, 2008, Attorney Krasner's misrepresentations and omissions caused the PTO to issue federal trademark registration no. 3,458,144 for the WINGS mark to L&L Wings. (App.97a). After discovery had closed, Attorney Krasner introduced the new registration as evidence, claiming it was prima facie proof that the mark was registered, valid, and exclusively owned by L&L Wings. (App.85a).

3. The $3.5 Million Judgment Against Marco Destin

Well after discovery had closed, Attorney Krasner, as lead counsel, filed the newly minted WINGS trademark registration no. 3,458,144 into evidence in the New York district court action. The district court found that the July 1, 2008, Certificate of Registration from the Patent and Trademark Office was prima facie evidence "that [the] mark is registered and valid (*i.e.*, entitled to protection), that the registrant owns the mark, and that the registrant has the exclusive right to use the mark in commerce." (*Id.*)

Relying on this registration, the district court ruled that the liquidated damages provision in the L&L Wings agreement was enforceable. (App.65a) "Thus, for the reasons stated above, it is determined that the liquidated damages provision provided for in the Agreement is reasonable") [DE 115 p. 10]. After the two adverse rulings, Marco Destin consented to the entry of a $3.5 million judgment in favor of L&L Wings. (App.47a-56a) Marco Destin paid L&L Wings $3.5 million soon afterwards for infringing on Morrow's mark.

C. Fraud Discovery and Subsequent Litigation History

1. Attorney Krasner's Fraud On The PTO Comes To Light

In 2011, Beach Mart, Inc. ("Beach Mart") filed a trademark action against L&L Wings in the Eastern District of North Carolina. L&L Wings refused to comply with Beach Mart's discovery requests. The district court eventually concluded that "L&L Wings had acted in bad faith by failing to disclose the Morrow license during discovery" and imposed sanctions of $107,500 (App.97a) that included dismissal of L&L's counterclaims and affirmative defenses. *Beach Mart*, 784 Fed.Appx at 120. The Fourth Circuit affirmed the district court's discovery abuse sanctions against L&L Wings stating it had "intentionally withheld from its licensee, plaintiff-appellant Beach Mart, Inc., the fact that L&L itself had obtained a license for the mark from a third-party owner, Shepard Morrow." *Id.*

The district court entered a final judgment against L&L Wings, confirming the jury verdict that:

- L&L Wings knowingly made false representations of material fact or omissions with intent to deceive the PTO in 2006, 2007, and 2008, which led to the issuance of federal trademark Registration No. 3,458,144. (App. 97a)
- L&L Wings knowingly made false representations of material fact with the intent to deceive the PTO, which led to the issuance of federal trademark Registration No. 4,193,881,

and directed the PTO to cancel the fraudulently obtained registrations. (*Id.*).

- Entering punitive damages against L&L Wings totaling $12.5 million (*Id.*)

2. The Bankruptcy Court's Curious Lack of Curiosity Towards *Hazel-Atlas*

The $12.5 million judgment drove L&L Wings into bankruptcy. Marco Destin, receiving late notice of the claims' deadline, filed placeholder proof of claim. Marco Destin's successor counsel sought to withdraw the claim, waive distribution from the bankruptcy case or reorganization plan, and relief from the automatic stay to pursue fraud-on-the-court claims in the district court where the alleged fraud occurred.

L&L Wing's third amended disclosure statement contained the Levys and Attorney Krasner's tortured and fundamentally misleading explanation underlying their fraudulent scheme to steal the WINGS mark from Morrow:

> Subsequently, in 1993, the Debtor entered into a trademark license agreement with Shepard Morrow for the use of the mark WINGS in conjunction with signs, advertising, promotional materials, etc., in connection with the Debtor's retail store services (the "Morrow License"). *Following the first $10,000 royalty payment, the Debtor made no additional payments to Morrow*, and Morrow did not undertake his responsibility under the license agreement and trademark law *to monitor the use of the WINGS* mark and the quality of services provided thereunder from at least as

> early as September 1994. Therefore, *the Debtor maintains this license agreement was abandoned, expired*, and/or was terminated by its terms, and additionally**,** *such termination /expiration of the license agreement permitted the Debtor to acquire federally registered trademarks without engaging in fraudulent, deceptive, or unfair activities or representations*.

(App.274a). A disclosure statement in a reorganization case is generally subject to the SEC rules regarding disclosures in SEC registration statements and prospectus under section 11 of the Securities Act of 1933. They failed to explain why L&L Wings defaulted on its royalty payments when the most reasonable inference under the circumstances to be drawn is that this was the first act in their fraudulent scheme that would proceed through five federal courts. *Set Capital LLC v. Credit Suisse Grp. AG*, 996 F.3d 64, 84 (2d Cir. 2021) ("A material fact is one that a reasonable investor would have viewed as having significantly altered the 'total mix' of information made available). The other material omission is the disclosure statement omits to inform the creditors that the defense as set forth above was rejected by the jury in the Beach Mart case. Publishing unsuccessful defenses in a disclosure statement is materially misleading. The fraudulent scheme therefore continued from the adverse judgment in the North Carolina district court right into the New York bankruptcy court. (The Levys and Attorney Krasner urged the bankruptcy court to ignore *Hazel-Atlas*, at one point asserting it had been vacated. The bankruptcy court ignored it despite Marco Destin's extensive briefing of the decision. The bankruptcy

court refused to let Marco Destin withdraw the proof of claim and refused to allow him to leave the stay to pursue the claim against the Levys and Attorney Krasner. (App.45a-46a) despite it having consented to estimate the claim at zero. (App.42a). Inexplicably, the bankruptcy court retained jurisdiction over the claim estimated at zero so the they could seek to expunge the claim and use the order as *res judicata* defense in the future when Marco Destin filed the claim in district court. (App.43a). The bankruptcy court later expunged the claim despite the bankruptcy case being concluded. (App.38a-40a) The bankruptcy court was not required to address the issue at all. Once Marco Destin waived its right to receive a distribution under the confirmed reorganization plan, the court's diminished jurisdiction following the confirmation of the plan meant it could not decide on substantive rights that would not influence the implementation of the reorganized plan.

3. The District Court's Strange Case of *Hazel-Atlas* Amnesia

On appeal, the district court determined that the bankruptcy court lacked jurisdiction to challenge a final district court judgment and treated the bankruptcy court's decision as a recommendation. Marco Destin filed fraud-on-the-court complaint against Levys and Attorney Krasner for participating in the scheme that targeted the district court and the PTO in the 2007 New York infringement action. The district court entered a $3.5 million judgment in favor of L&L Wings based on Marco Destin's infringement of the WINGS mark. They knew Morrow owned the WINGS mark and that L&L Wings was only the former licensee under a trademark license agreement that L&L

breached at the beginning of the second year, failing to make the $10,000 annual royalty payment. The filing of the complaint by Attorney Krasner was a fraud in court because Attorney Krasner knew L&L Wings did not have rights to the WINGS mark. Seeking after he signed and filed the complaint, Attorney Krasner obtained the WINGS mark registration number through fraudulent representations and omissions to the PTO. 2,458,144. He promptly presented this fraudulent registration to the New York district court, resulting in the entry of the $3.5 judgment against L&L Wings.

The Levys and Attorney Krasner moved to dismiss the complaint, arguing that Marco Destin's discovery practice was insufficient. Otherwise, it would have uncovered Attorney Krasner's fraud on the PTO and the fraudulent nature of the registration. Marco Destin relied on the *Hazel-Atlas* decision. Because the Court in *Hazel-Atlas* sought to protect public interests and not the interest of the private litigant, the private litigants lack of due diligence was of no consequence. *See Hazel-Atlas*, 322 U.S. at 246 (even if Hazel did not exercise the highest degree of diligence, Hartford's fraud does not concern only private parties. There are issues of great moment to the public in a patent suit).

Despite similar complex fraudulent schemes, the district court did not apply the duty laid out in *Hazel-Atlas* and refused to walk the path. Instead, the court followed the Second Circuit's decision in *Mazzei v. The Money Store*, 62 F.4th 88 (2d Cir. 2023). *Mazzei*, however, involved routine discovery misconduct that was affected private litigant. *Mazzei* did not have the attorney for the litigant actively participating in the fraud, nor did the scheme specifically target either the district court or the PTO. There was no allegation that the litigant's

counsel actively participated in the scheme. (*Id*. At 93). Under these facts, the district court incorrectly applied *Mazzei*, with its focus on the private litigant's diligence in protecting itself against misdeeds during the discovery process. The damages were only for the private interest of the litigant. The district court dismissed Marco Destin's complaint by applying the wrong legal standard and disregarding the proper standard.

Marco Destin appealed to the Second Circuit.

4. The Second Circuit's Subtle Sabotage of *Hazel-Atlas*

The Second Circuit acknowledged, that *Hazel-Atlas* had continued validity in matters involving similar schemes, But, the court did not compare the facts presented in the two cases. The Second Circuit affirmed the district court's application of the wrong standard. The Second Circuit interpreted *Hazel-Atlas* as follows:

> Marco Destin leans heavily on *Hazel-Atlas*, asserting that it authorizes courts to grant relief to plaintiffs on their fraud-on-the-court claims even if those plaintiffs were not diligent in the underlying action. We agree, but only to a point. *Hazel-Atlas* established that a court has "discretion" to vacate a judgment even where the plaintiff was not diligent in the underlying action, at least in cases of particularly brazen fraud on the court. But nothing in *Hazel-Atlas* precludes a court from considering a party's lack of diligence, nor does it compel vacatur of the prior judgment regardless of the plaintiff's negligence in uncovering the asserted fraud.

Marco Destin, 111 F.4th at 221.

> The Court in *Hazel-Atlas* stated that:
>
> > Hartford's fraud, hidden for years but now admitted, had its genesis in the plan to publish an article for the deliberate purpose of deceiving the Patent Office. The plan was executed, and the article was put to fraudulent use in the Patent Office, contrary to law. From there, the fraud trail continued without breaking through the District Court and up to the Circuit Court of Appeals.
> >
> > Therefore, we hold that the Circuit Court on the record here presented had both the duty and the power to vacate its own judgment and give the District Court appropriate directions.

Hazel-Atlas, 322 U.S. at 249-50.

In short, the Second Circuit affirmed the application of *Mazzei* instead of *Hazel-Atlas* harmonizing the latter with the former. Unfortunately, this decision of the Second Circuit lacks the authority to modify the engineering of *Hazel-Atlas*, which would not only upend the engineering of *Hazel-Atlas* but also principles of *stare decisis*. The discretionary standard also strips the vital protection afforded to the public interest trust that was this Court's primary. However, it strips the vital protection afforded to concern in *Hazel Atlas*. The Second Circuit's decision directly contradicts the Court's decision.

ARGUMENT
CERTIORARI IS NEEDED TO RESTORE ORDER AND UNIFORMITY

Under these circumstances, this Court articulated the standard to be applied "that the Circuit Court on the record here presented had both the duty and the power to vacate its judgment and to give the District Court appropriate directions." *Hazel-Atlas*, 322 U.S. at 245. This standard was to be applied only in those cases of complex fraudulent schemes targeting the judicial system itself. The Court distinguished that e-fraud cases where fraud or misconduct between the private litigants, "a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury." (*Id.*) The operative elements of a *Hazel-Atlas* species of fraud are facts:

(i) a deliberately planned and carefully executed fraudulent scheme that *directly* targeted the federal justice system. (*Id.* at 240.)

(ii) the same scheme that directly targeted the federal patent and trademark system, implicating the remaining two branches of the federal system, the executive branch responsible for its operations and the legislative branch responsible for the laws and rules under which it operates: (*Id.*)

(iii) the attorney's participation in the fraudulent scheme protecting. (*Id.*)[1]

When such misconduct is alleged, the job of the trial court is comparative analysis, comparing the nature and scope of the misconduct before the court against that before the Court in *Hazel-Atlas*. The more alike the facts the more likely the duty to vacate the judgment. The source or origin of the discretion of the district court found by the Second Circuit is no easier to locate than the fabled Fountain of Youth searched for by Ponce de Leon. It is nowhere to be seen. We can only advise this Court that despite intense analysis, this discretion is nowhere in the *Hazel-Atlas* decision.

The absence of any language in the *Hazel-Atlas* decision to suggest an intent t to leave the decision to the discretion of the district court leaves a stark binary choice. Either the Second Circuit's decision in Marco Destin or this Court's decision is vacatur of the decision of the Second Circuit either vacatur the decision of the Second Circuit Marco Destin in Marco Destin in *Hazel-Atlas* the implicit predictive outcome from the THUNDERDOME. In short, the "*Two men enter, one man leaves*." MAD MAX BEYOND THUNDERDOME (Warner Bros., 1985) (the beginning of the THUNDERDOME fight scene to signify the brutal, fight-to-the-death between Mad Max and the Master-Blaster fight contest).

For the sake of an ordered society, *Hazel-Atlas* decision triumphs. The public trust in government, more specifically the justice system, for which this

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[1] *Id.* at 246-47.

Court is responsible, must be protected against all of the insidious machinations and schemes of malcontents, which are either too lazy, too stupid or too indifferent to engage in a fair litigation fight. Sensing they lack the brains and brawn to win litigation fought on a level playing field by the rules, they default to fraud, deception, and malevolent schemes to defeat justice to gain an unjust outcome.

This Court understood that permitting such litigants to despoil the judicial process produces devastating consequences to the public's faith in the justice system to dispense justice and punish injustice and to the Court's image as a diligent caretaker of the justice system. The immeasurable intangible nature of the injury provides a destructive more, the not less, reason for this Court to mercilessly stamp out of existence all such selfish, destructive more, not less, reason for this Court to mercilessly stamp out of existence all such selfish, destructive, and corrosive behavior if and when uncovered. Lower courts should not be afforded discretion to avoid vacating judgments gained at the expense of the justice system based on farcical notions lacking contextual meaning or application, such as the passage of time. Time passage alone will not make wrong right. Another century may pass, but if this Court does not act, the Second Circuit's decision will eternally speak of impotence.

Three federal courts are in a state of intellectual rebellion against this Court. The bankruptcy court did not consider the *Hazel-Atlas* decision. The district court seems to have considered it briefly before rejecting it in favor of the Second Circuit's Mazzei decision. The Second Circuit considered it exercised semantic subterfuge to eviscerate its decisional rule of law. These deci-

sions afford paltry protection of the public trust, and each chips away at *stare decisis* foundation of the justice system. Individually, they are modest affronts to the dignity of the Court. Death by a thousand cuts is little preferable to death by a guillotine. A judgment derived through fraud on the very system that delivered is a miscarriage of justice. By granting this petition and reaffirming the principles established in *Hazel-Atlas*, this Court can renew public trust, ensure fidelity to the rule of law, and protect the judiciary from becoming a sanctuary for fraud.

I. *Hazel-Atlas*: Protecting Public Interests

This case involves essential public interests such as the judiciary's integrity, this Court that is responsible for preserving that integrity, the federal patent and trademark system, and the interest of the other two branches of the federal government accountable for that system. *Hazel-Atlas*, 322 U.S. at 246 (acknowledging that there are issues of "great moment to the public in a patent suit" that do "not concern only private parties"). Trademark cases "are affected with a public interest." *Idaho Potato Comm'n v. M & M Produce Farm & Sales*, 335 F.3d 130, 136 (2d Cir. 2003) (quoting *T & T Manufacturing Co. v. A.T. Cross Co.*, 587 F.2d 533, 538 (1st Cir. 1978).

For reasons obvious to even the untrained eye, protection of such vital public interests naturally is not left to the enthusiasm and competence or lack thereof of either of a self-centered private litigant. *Hazel-Atlas*, 322 U.S. at 246 ("Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be

not so impotent that they must always be mute and helpless victims of deception and fraud.").

Courts have consistently refused to hold the protection of vital public hostage to the diligence of private litigants under countless other similar circumstances. *See United States v. Angell*, 292 F.3d 333, 338 (2d Cir. 2002)) ("laches is not available against the federal government when it undertakes to enforce a public right or protect the public interest") (citing *United States v. Arrow Transp. Co.*, 658 F.2d 392, 394 (5th Cir. 1981) ("Although the fact situation describes a textbook case of laches, that defense cannot be asserted against the United States … to protect the public interest")); *see also Perma Life Mufflers, Inc. v. Int'l Parts Corp.*, 392 U.S. 134, 135 (1968), overruled on other grounds by *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752 (1984) (holding that a private litigate antitrust action to enforce a private right of action provided by the Sherman Anti-Trust Act, § 1, 15 U.S.C.A. § 1 was not barred from recovery by a doctrine known by the Latin phrase *in pari delicto*, which means 'of equal fault."); *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 315 (1985) (explaining in the context of private damages action under federal securities law "that denying the *in pari delicto* defense promotes the primary objective of the federal securities laws—protection of the investing public and the national economy through the promotion of "a high standard of business ethic ... in every facet of the securities industry.") (quoting *SEC v. Capital Gains Research Bureau*, Inc., 375 U.S. 180, 186-187 (1963); *McKennon v. Nashville Banner Pub. Co.*, 513 U.S. 352, 360 (1995) (rejecting the application

of the unclean hand's defense "where a private suit serves important public purposes.").

Writing for the majority, Justice Black underscored the paramount importance of public trust:

> "*Tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants*."

Id. (emphasis added). Shortly after Justice Black spoke, this Court reaffirmed this basic principle in its decision in the matter of *Shawkee Mfg. Co. v. Hartford-Empire Co.*, 322 U.S. 271, 272 (1944)(finding that fraud on the PTO injured private parties and harmed public institutions, demanding judicial intervention).

A. A Functioning Judicial System Requires Public Trust

Public trust is the mother's milk of a functioning judiciary. *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 445-46 (2015). "Unlike the executive or the legislature, the judiciary 'does not influence either the sword or the purse ... neither force nor will but merely judgment.'" *Id.* (quoting *The Federalist* No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton) (capitalization altered). The judiciary's authority, in considerable measure, hinges on the public's willingness to respect and follow its decisions. *Id.* at 446. This truth was captured best by

Justice Frankfurter, who famously said, "[j]ustice must satisfy the appearance of justice." *Id.* (quoting *Offutt v. United States*, 348 U.S. 11, 17 (1954) ("To sanction such a [] procedure would give it encouragement."). Moreover, the Court recognizes that the "concept of public confidence in judicial integrity does not easily reduce to precise definition." *Id.* at 448. Unfortunately, that vital public confidence is being eroded.

B. Crisis of Legitimacy: Public Trust in the Court and Judiciary Wanes

Public trust in the judiciary has fallen to historic lows. In 2024, only 35% of Americans trusted the courts, down from 59% in 2020—a shocking 24-point decline in just four years. See Gallup, *Americans Pass Judgment on Their Courts* (Dec. 2024), https://news.gallup.com/poll/653897/americans-pass-judgment-courts.aspx. This decline spans political divides and stems from dissatisfaction with controversial rulings, ethical scandals, and growing perceptions of partisanship. Axios reports that public confidence in U.S. courts is comparable to that of nations with systemic corruption, such as Venezuela and Myanmar. Avery Lotz, *Americans' Confidence in U.S. Courts Hits Record Low*, Axios (Dec. 17, 2024), https://www.axios.com/2024/12/17/courts-confidence-record-low-gallup.

This crisis is not unique to the U.S. Globally, nations like Australia report similar declines, with only 30% of citizens trusting their judiciary. International comparisons show a 20-point gap between trust in American courts and the average trust in judicial systems across OECD nations.

However, as the public trust bleeds out, this Court's authority, dignity, and ability to function also bleed away.

C. Obliviousness Of This Court's Primary Responsibility

The decisions of the three lower courts reflect a consistent, willful disregard for the policy objectives clearly articulated in *Hazel-Atlas*. The most glaring error is the profound lack of perspective each court exhibits. This Court spoke solely to public interests—in 1944, the collective interests of approximately 138.4 million Americans; today, the interests of 334.91 million. Indeed, the courts were not so naive as to believe this Court gave a tinker's damn about *Hazel-Atlas* or its narrow, parochial, selfish concerns. As Abraham Maslow aptly observed, "If all you have is a hammer, everything looks like a nail." THE PSYCHOLOGY OF SCIENCE (1966). Rather than broadening their analysis to account for the broader public interest, the lower courts confined themselves to nit-picking a single litigant's discovery methods.

The consequences of tolerating such narrow reasoning in today's environment of waning public trust will only exacerbate this precipitous decline. Arresting this erosion will grow ever harder the longer it is allowed to persist. If this is the pinnacle of legal reasoning, these courts could muster during a single litigation, and then, "Houston, we have a problem." APOLLO 13 (Universal Pictures 1995) (spoken by Tom Hanks as Jim Lovell, paraphrasing the Apollo 13 mission's communication, "Okay, Houston, we've had a problem here").

II. *Stare Decisis* Meets Judicial Recalcitrance

Stare decisis serves many valuable ends. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 263-64 (2022). It protects the interests of those who have taken action based on a past decision. *Id.* It "reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigating." *Id.* at 264 It fosters "evenhanded" decision-making by requiring that similar cases be decided. *Id.* It "contributes to the actual and perceived integrity of the judicial process." *Id.* "Precedent is a way of accumulating and passing down the learning of past generations, a font of established wisdom richer than what can be found in any single judge or panel of judges." *Id.* (citing N. Gorsuch, A REPUBLIC, IF YOU CAN KEEP IT 217 (2019)).

"*Stare decisis* applies to Supreme Court precedent in two ways. First, the result of each Supreme Court case binds all lower courts. Second, the reasoning of a Supreme Court case also binds lower courts." *United States v. Duvall*, 740 F.3d 604, 609 (D.C. Cir. 2013) (Kavanaugh, J., concurring). *Stare decisis* is absolute and requires us, as middle-management circuit judges, to follow applicable Supreme Court precedent in every case. So once the Supreme Court has adopted a rule, standard, or interpretation, we must use that same rule, standard, or interpretation in later cases." *United States v. Maloid*, 71 F.4th 795, 808 (10th Cir. 2023) (citing *United States v. Guillen*, 995 F.3d 1095, 1114 (10th Cir. 2021).

In *Hutto v. Davis*, 454 U.S. 370, 372-73 (1982), This Court reiterated the principles of the doctrine of *stare decisis* as follows:

> More importantly, however, the Court of Appeals could be viewed as *having consciously or unconsciously ignored the federal court system hierarchy* created by the Constitution and Congress. Admittedly, the Members of this Court decide cases by their commissions, not their competence. Arguments from Rummel may be made one way or the other about whether the present case is distinguishable except for its facts. But unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.

Hutto v. Davis, 454 U.S. 370, 374-75 (1982) (emphasis added) (citations and punctuation omitted). The Court cautioned that "[u]nless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be." *Id.*

Chief Justice Roberts urged, "The federal courts must do their part to preserve the public's confidence in our institutions [and] judges must stay in our assigned areas of responsibility and do our level best to handle those responsibilities fairly." *See* John G. Roberts, Jr., Chief Justice of the United States, *2024 Year End Report on the Federal Judiciary* (December 31, 2024). A good first step to restore the public trust should begin with the Court demanding that lower courts strictly follow the decisions of this Court as required by *stare decisis* principles.

A. Duty And Discretion Are Not Fungible Synonyms

The duty established in *Hazel-Atlas* is described as an imperative, transcending mere judicial discretion. It underscores an ethical and systemic responsibility to ensure judgments are not procured by fraud. The case speaks directly to the judiciary's role in maintaining public confidence by actively intervening when fraud undermines the judicial and administrative governance processes.

Each court below had the obligation imposed by *stare decisis* to follow *Hazel-Atlas* or distinguish it on its facts. Each court turned away from *Hazel-Atlas*. The Second Circuit violated the principle when it affirmed the district court's decision that ignored *Hazel-Atlas*. A discretionary approach risks inconsistent application across jurisdictions, undermining uniformity and predictability in the law.

B. Attorney Krasner Actively Participated In The Fraudulent Scheme

A critical aggravating factor was the involvement of Hartford attorneys in drafting the spurious article standing alone to remove this case from the generic private interest cases. The Court held:

> This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury. Here, even if we consider nothing but Hartford's sworn admissions, we find a deliberately planned and carefully executed scheme to

> defraud not only the Patent Office but the Circuit Court of Appeals.

Hazel–Atlas, 322 U.S. at 245. *Cleveland Demolition Co. v. Azcon Scrap Corp.*, 827 F.2d 984, 986 (4th Cir. 1987) (perjury by a witness will not suffice; the involvement of an attorney, as an officer of the court, in a scheme to suborn perjury, should undoubtedly be considered fraud on the court).

The attorney who attempts by personal influence to control a judge or jury in their decision in a pending case, or who merely holds himself out as able to do so, whether or not he makes an attempt, and whether or not he succeeds or fails in the effort, in short, an apostate lawyer, who is false to the lawyers' creed that justice shall be undefiled, is ejected from the courts, and as a lawyer ceases to exist. *Root Ref. Co. v. Universal Oil Prods. Co.,* 169 F.2d 514, 541 (3d Cir. 1948).

Attorney Krasner actively participated in every step.

C. *Hazel-Atlas* Had Inquiry Notice Of The Fraudulent Article During The Discovery Process

The Supreme Court noted that *Hazel-Atlas* had noticed the fraudulent nature of the article regarding Hartford's patent before the trial in the district court. The district court decision merely sinks into sheer speculation about what Marco Destin could have discovered if it had more rigorously engaged in the discovery process. This outsized faith in the discovery process indicates an almost child-like naivete that a litigant who pursues a complex scheme to defraud the court and the Patent Office will not engage in the discovery

process any more honestly. We don't wish to appear cynical, but having shown boundless enthusiasm for lying to the court and the Patent Office, it seems downright ridiculous to believe the Levys and Attorney Krasner would voluntarily confess their fraud simply when asked to do so during the discovery process. They hid the fraudulent origins of the registration throughout the discovery process in the *Beach Mart* case. Their lousy faith was so egregious the district struck L&L's defenses. The Fourth Circuit affirmed this harsh remedy, reserved for the most blatant lousy faith litigants. The record before the district court does not justify the district court's naïve belief that fraudsters will willingly admit their crimes in response to discovery requests made during a civil lawsuit. Had they suffered an inexplicable bout of honesty and admitted to their fraudulent deeds or produced documents allowing Marco Destin to uncover their fraud, they would have suffered an adverse judgment for fraud in the court much earlier.

This Court now faces a pivotal decision. Allowing the Levys and their counsel to evade accountability for proven fraud would validate the public's worst fears: that the judiciary cannot or will not stand as a bulwark against wrongdoing. Such inaction would confirm the perception that courts are passive in the face of misconduct, further eroding public confidence. Conversely, taking decisive action would signal that the judiciary remains committed to fairness and the principles of justice.

Modern challenges heighten the urgency of enforcing the principles established in *Hazel-Atlas*. Advances in technology have made fraud more sophisticated, while public skepticism toward insti-

tutions like the USPTO continues to grow. Courts must meet these challenges head-on. Failing to act risks deepening public cynicism about the rule of law and institutional accountability. The source of the angst against the application of *Hazel-Atlas* has proved extremely frustrating to Marco Destin, as well as the ability of counsel to competently provide legal advice regarding litigation in any federal court sitting in New York City. Manhattan. Indeed, the courts are not sympathetic to the Levys or Krasner, who defrauded the New York district court and the USPTO. Second, the damage done to the judicial system through not following *stare decisis* is substantially more significant than any harm that would have been caused by vacating the judgment so corrupted by the fraud on the USPTO. Baked into the *Hazel-Atlas* decision was the implicit belief that cases with this degree of fraud on another government institution would be limited.

The only reason for rejecting *Hazel-Atlas* would be the lower court's belief that it would open the floodgates. That decision was not the decision made by the lower courts, however. The Supreme Court indeed considered this when deciding *Hazel-Atlas*. In short, the Second Circuit did not have discretion under *stare decisis* to afford the district court the "discretion" it did solely to get around the duty imposed on the district court to vacate. However, this Court knows the vital importance of the doctrine in maintaining the federal judicial system. We ask the Court to grant this petition, reverse the Second Circuit affirmance of the district court decision that violated the doctrine, and restore order to a part of the federal judiciary that seems to have lost its way.

CONCLUSION

The Second Circuit's decision in *Marco Destin* conflicts directly with *Hazel-Atlas* by erroneously introducing a diligence requirement and treating the duty to vacate fraudulent judgments as discretionary. More critically, the Second Circuit failed to advance the Supreme Court's broad policy of safeguarding public trust in judicial and administrative institutions. Even if discretion were permissible, the Second Circuit erred by failing to reverse the district court's abuse of that discretion. To preserve the rule of law and uphold public confidence, this Court must reaffirm the principles of *Hazel-Atlas* and reverse the Second Circuit's erroneous holding.

For these reasons above, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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