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24-11336-J  
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**UNITED STATES COURT OF APPEALS**  
**ELEVENTH CIRCUIT**  
\*\*\*\*\*

\*\*\*\*\*  
**ELIAS MAKERE, FSA, MAAA**  
**(Appellant/Plaintiff)**

v.

**ALLSTATE INSURANCE COMPANY**  
**(Appellee/Defendant)**  
\*\*\*\*\*

On Appeal From The  
United States District Court, Florida, Middle District  
3:20-cv-00905-MMH-LLL

\*\*\*\*\*  
**APPELLANT'S REPLY BRIEF**

\*\*\*\*\*

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**ORAL ARGUMENT REQUESTED**

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Tuesday, December 24, 2024

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT

*Makere v Allstate*, 24-11336

---

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

---

Lower Tribunal:

Lambert, Laura

Magistrate

Howard, Marcia

District Judge

Parties:

Allstate Insurance Company  
(NYSE: ALL)

Appellee

Makere, Elias (FSA, MAAA)

Appellant

Appellant is not a subsidiary/affiliate of a publicly owned corporation. Pursuant to Rule 26.1-2 11<sup>th</sup> Cir. R., Appellant does not know of any other entities that have interest in this case. Appellant hereby certifies that this CIP is complete.

**XXX**

-----

*right-on-time, the defendant  
repeated its material lies about  
timeliness. thereby evidencing its  
commitment to lawlessness.*

*so - with Defendant's incriminating  
answer in-tow - may this Court  
detach all of the manifest  
injustices [from below]?*

-----

**XXX**

**STATEMENT REGARDING ORAL ARGUMENT**

Appellant hereby repeats his request for oral argument (please see Rule 28-1(c) 11<sup>th</sup> Cir. R.). He does so for the same reasons as before (ie, Issues II, III, VI-VIII), as well as to present the pertinent facts that the lower tribunal stumbled over. Moreover, oral argument will provide:

- (1) Appellant the constitutionally-guaranteed hearing (regarding his substantial rights) which the LT refused to afford him;
- (2) Appellant the opportunity to debunk the misinterpretations/omissions which the devil will encourage this Court to manufacture; and
- (3) Appellee the opportunity to address its perjured Answer Brief.

Lastly, Appellant asserts that none of the factors listed in Rule 34(a)(2) Fed. R. App. P. exist in this appeal.

**TABLE OF CONTENTS**

Certificate of Interested Persons	C1
Prologue	i
Statement Regarding Oral Argument	ii
Table of Contents	iii
Table of Citations	iv
Argument and Citations of Authority	iv
Introduction	vii
Points on Reply	1
Summary of Reply	1
<b>Issue I (Clear Error - Filing Date)</b>	<b>3</b>
<b>Issue II (Due Process Error - Charge Exclusion)</b>	<b>9</b>
<b>Issue III (Harmful Error - Relation-Back Provision)</b>	<b>14</b>
<b>Issue IV (Legal Error - Evidentiary Standard)</b>	<b>21</b>
<b>Issue V (Legal Error - Remand State Charges)</b>	<b>26</b>
<b>Issue VI (Miscarriage of Justice - State of Florida)</b>	<b>29</b>
<b>Issue VII (Unconstitutional State Statute - §760 FS)</b>	<b>32</b>
<b>Issue VIII (Manifest Injustice - Law of the Case')</b>	<b>36</b>
Conclusion	43
Certificate of Compliance	-
Certificate of Service	-

## TABLE OF CITATIONS

### CASES<sup>1/</sup>

<i>Beem v. Ferguson</i> , 713 F. App'x 974 (11th Cir. 2018)	17
<i>Carlisle v. Phenix</i> , 849 F.2d 1376 (11th Cir. 1988)	11,13,23
<i>Goldsmith v. Bagby</i> , 513 F.3d 1261 (11 <sup>th</sup> Cir. 2008)	23,24
<i>Kremer v. Chemical</i> , 456 US 461 (1982)	38
<i>Leib v. Hillsborough County</i> , 558 F.3d 1301 (11 <sup>th</sup> Cir. 2009)	23
<i>Mayle v. Felix</i> , 545 US 644 (2005)	20
<i>McDonnell-Douglas v. Green</i> , 411 US 792 (1973)	10
<i>McCrimmon v. Daimler</i> , 2005 WL 8159946 (USFLMD 11/9/05)	6
<i>McKenzie v. IDOT</i> , 92 F.3d 473 (7 <sup>th</sup> Cir. 1996)	18,19
<i>National v. Morgan</i> , 536 US 101 (2002)	19,20
<i>Sheridan v Florida</i> , 182 So. 3d 787	6,7,8,41
<i>Smith v. Lockheed-Martin</i> , 644 F.3d 1321 (11th Cir. 2011)	39
<i>Steffes v. Stepan</i> , 144 F. 3d 1070 (7th Cir. 1998)	24
<i>Tipler v. EI Dupont</i> , 443 F.2d 125 (6 <sup>th</sup> Cir. 1971)	39
<i>Wilkerson v. Grinnell</i> , 270 F.3d 1314 (11 <sup>th</sup> Cir. 2001)	39
<i>Wilson v. B/E Aerospace</i> , 376 F.3d 1079 (11 <sup>th</sup> Cir. 2004)	39
<i>Wright v. AmSouth</i> 320 F.3d 1198 (11th Cir. 2003)	7
<i>Wu v. Thomas</i> , 863 F.2d 1543 (11th Cir. 1989)	12,13

CONSTITUTIONS

REGULATIONS

60Y-5.003 FAC	18
29 CFR §1601.12	18

RULES

Local Rule 26.1-2 11th Cir. R.	C1
Local Rule 28-1 11th Cir. R.	ii
Local Rule 31-1 11th Cir. R.	vii
Local Rule 31-2 11th Cir. R.	vii
Rule 28 Fed. R. App. P.	vii
Rule 34 Fed. R. App. P.	ii

FEDERAL STATUTES

Title VII	8
-----------	---

STATE STATUTES (FL)

§760 FS	2, 34, 35
---------	-----------

## MISCELLANEOUS

### REFERENCES

[A_]	Appendix for Opening Brief <sup>2/</sup>
[AB_]	Answer Brief <sup>2/</sup>
[OB_]	Opening Brief <sup>2/</sup>
[R_]	Appendix for Reply Brief <sup>2/</sup>
{#_}	Docket Entry <sup>2/</sup>

### ABBREVIATIONS

1DCA	First District Court of Appeals (FL)
ALJ	Administrative Law Judge
DCA	District Court of Appeals (FL)
DOAH	Division of Administrative Hearings (FL)
EEOC	Equal Employment Opportunity Commission
FAC	Florida Administrative Code
FCHR	Florida Commission on Human Relations
FS	Florida Statute
LT	Lower Tribunal
USCA11	US Court of Appeals, 11 <sup>th</sup> Circuit
USALMD	US District Court, Alabama, Middle District
USFLMD	US District Court, Florida, Middle District
USFLND	US District Court, Florida, Northern District

## INTRODUCTION

Appellant (ie, Elias Makere) was the Plaintiff in the lower tribunal; and will be referred to in this brief as "Employee X" (Rule 28(d) Fed. R. App. P.). Appellee (ie, Allstate Insurance Company) was the defendant below; and will be referred to as "Company Y".

### Incorporating Opening Brief

Employee X files this Reply Brief in response to Company Y's Answer Brief (AB); hereby incorporating Employee X's Opening Brief in its entirety.

### Timeliness

This Reply Brief is timely.

On October 14, 2024, Employee X submitted his Opening Brief.

Two months later - on December 16, 2024 - Company Y submitted its Answer Brief (Rule 31 Fed. R. App. P. (via Local Rule 31-2(a) 11<sup>th</sup> Cir. R.)).

On January 6, 2025, Employee X's reply brief becomes due. A due date which falls *'21 days after service of the brief of the last appellee'* (Rule 31-1(a) 11<sup>th</sup> Cir. R.).<sup>3/</sup> Thus, by filing it today (ie, on 12/24/24), Employee X has met this Court's time constraint (with 13 days to spare).

## Quick Recap of LT Proceeding

As outlined in the Opening Brief, the case below deals with employment discrimination in the state of Florida. The discrimination included - but was not limited to:

- (1) a hostile work environment **[A0028]-[A0035]**;
- (2) repeated acts of discrete discrimination:
  - (i) pay disparity **[A0024]**;
  - (ii) registration fee disparity **[A0039]**;
  - (iii) denied work-from-home privileges **[A0035]**; and
  - (iv) more **[A0028]-[A0039]**
- (3) an illegitimate termination **[A0039][A0067]**;
- (4) post-termination retaliation **[A0044]-[A0062]**; and
- (e) unconstitutionality/obstructions from the State of Florida **[A0062]-[A0065]**.

These acts - coupled with the LT's errors/abuses - have worked a manifest injustice onto this [textbook] case of employment discrimination **[A0070][OB61]**. A premeditated, manifest injustice that the LT: (i) spread out over 4 years; and (ii) effectuated solely on the basis of timeliness.

A [longcoming, metastasizing] manifest injustice that Company Y's Answer Brief failed to vaccinate...[4/](#)

**POINTS ON REPLY**

- I. Company Y failed to dispute the fact that the LT used a materially incorrect filing date (in the LT's calculation of timeliness).
- II. Secondly, Company Y failed to overcome (or even mention) the Supreme Court precedent that deems that the LT committed a reversible error (regarding the [intentionally] excluded basis in Employee X's First Charge).
- III. The same can be said about the third issue-on-appeal (ie, *the fact that the orders-on-appeal committed reversible error by failing to apply the relation-back provision*). An issue that Company Y attacked with lies & falsehoods.
- IV. Company Y hardly fared any better on the fourth issue-on-appeal (ie, *plausibility standard vs evidentiary standard*).
- V. Although Company Y fared better on the fifth issue-on-appeal, it [still] based its argument on another falsehood (*regarding the onus to remand state charges*).
- VI. Company Y, however, outright failed to [even] address Issue VI (ie, *the [reversible] miscarriage of justice stemming from the State of Florida's unconstitutional/obstructive conduct*).
- VII. For Issue VII, Company Y opted to argue form instead of substance. Thereby failing to rebut the unconstitutionality of FCHR determinations (found under §760 FS).

VIII. Lastly, the same can be said about Company Y's failure to rebut the manifest injustice that has permeated this entire cause of action.

**SUMMARY OF REPLY**

Stated briefly, Company Y failed to address/rebut the eight issues-on-appeal. Instead, it rested its laurels on the same material lies that have obstructed/perpetuated this legal dispute. The same material lies, notably, that Employee X foresaw. [OB07] [OB09] [OB21] [OB51]

Due to these shortcomings, this Court has many reasons to reject the decisions below.

POINT I

Unrebutted Issue-on-Appeal

#1

*Company Y Failed to Rebut the Fact that  
the Trial Court Committed a Clear Error when  
the Trial Court Used a [Materially] Incorrect Filing Date  
in its Calculation of Timeliness*

## OVERVIEW I

1. Employee X's First Issue-on-Appeal [OB19] detailed how the District Court's Improvident Order [OB11] erred by [falsely] claiming that Employee X's Second Charge [OB09] was not timely. Therein, Employee X presented the public records (and independently verifiable records) that proved that Employee X's Second Charge was [indeed] timely.
2. Company Y, however, failed to rebut this fact-driven point.

## ARGUMENT I

3. In his Opening Brief, Employee X diagramed the timeline pertaining to his Second Charge [OB03]-[OB10]. He disclosed:
  - a. the dates of his employment;
  - b. the dates of Company Y's hostile work environment;
  - c. the date that the FCHR stamped on his First Charge;
  - d. the date that the FCHR stamped on his Second Charge; and
  - e. the date that the FCHR's determination was due.
4. In its Answer Brief, however, Company Y failed to dispute any of these facts.
  - a. For starters, Company Y's Answer Brief agreed with Employee X's dates of employment (as well as the events regarding the hostile work environment). [AB03], [AB07]
  - b. Company Y also agreed with the [6/30/17] filing date that the FCHR attributed to Employee X's First Charge. [AB04]

c. Moreover, Company Y failed to dispute the fact that April 10, 2019 marked the date that Employee X filed his Second Charge. Notably, Company Y never claimed inauthenticity of:

- i. Employee X's [4/10/19] email [to the FCHR]; nor
- ii. the FCHR's [4/10/19] timestamp [on the Second Charge].

d. Plus, Company Y never refuted the fact that October 7, 2019 marked the due date for the FCHR's investigative determination. Nor did Company Y ever claim that the FCHR met that deadline (which the FCHR did not).

5. Company Y did, however, repeat its lie about an April 26, 2019 filing date:

*"on April 26, 2019, [Employee X] filed a second Charge of Discrimination ("2019 Charge") with the FCHR. [Doc. 99-8]."*

- [AB07]

6. The LT, of course, had already debunked this lie.

a. Doing so via Judicial Notice. **[A0269], [AB13]**

7. Employee X, of course, foresaw Company Y's reiterated lie.

a. Foreseeing it, notably, in his Opening Brief. **[OB09], [OB21]**

8. In addition to authoring [its redundant] lies on this [timeliness] topic, Company Y also proffered legal precedent on

it. All of which supported Employee X's position. Three of which are hereby worth quoting.

9. In the McCrimmon decision [AB37], the LT held that the filing date is [indeed] equal to the date that the clerk receives the complaint (highlights added):

*"Plaintiff asserts that she submitted a complaint and application for indigent status to the state court on August 3, 2004, exactly ninety days after receipt of her Right to Sue letter... Therefore, Plaintiff's submission of her complaint and application for indigent status to the state clerk of court constitutes filing for purposes of the timeliness requirement of Title VII."*

- McCrimmon v. Daimler, 2005 WL 8159946 (USFLMD 11/9/05)

This cited decision [from Company Y's AB], went on to prescribe denial of summary judgment (highlights added):

*"For this reason, the Motion for Summary Judgment on Count I of the Amended Complaint is denied."*

- McCrimmon v. Daimler, 2005 WL 8159946 (USFLMD 11/9/05)

A prescription, notably, that this Court is [also] well-positioned to write (please see [OB27]).

10. In the Sheridan decision [AB23], 1DCA held that the EEOC filing date equals the FCHR filing date (highlights added):

*"each agency has authorized the other to accept discrimination charges or complaints on the other's behalf. In this context, the date the complaint is filed with the [FCHR] is the earliest date of filing with the EEOC or the [FCHR]."*

- Sheridan v Florida, 182 So.3d 787 (1DCA 2016)

This quote is valuable, because it defeats Company Y's implication that Employee X's EEOC filing date should vary [from Employee X's correct/actual [4/10/19] filing date]. **[AB07]**

11. Plus, in the Wright decision **[AB31]**, this Court overruled a lower court's time-bar ruling. In fact, this Court went-so-far-as-to attach a lenient strain of equitable tolling to the filing date. It did so by saying that the filing date depends on the complainant's [subsequent] knowledge of his/her transgressor's culpability (as opposed to the date of injury):

*"In Sturniolo, the plaintiff of an age discrimination case had no knowledge he was replaced in his job by a younger person until several months after his discharge... Due to this delay, more than 180 days elapsed from the day Sturniolo received notice of his termination until the filing of his EEOC complaint... Because Sturniolo had insufficient information to file his complaint, we said the filing requirement should be equitably tolled "until the facts which would support a charge of discrimination are apparent or should be apparent to a person with a reasonably prudent regard for his rights.""*

- Wright v AmSouth, 320 F.3d 1198 (11<sup>th</sup> Cir. 2003)

Of course, this Court's 'lenient strain of equitable tolling' showcases how far the LT departed from the virtues of Title VII/etc.. This is [partly] because the LT barred Employee X from discovering some of Company Y's guilt. **[OB13], [OB65]**

12. All-in-all, Company Y's Answer Brief failed to rebut Issue I. Thereby rendering the LT's time-based summary judgment decision(s) to be reversible (highlights added):

*"Consistent with our charge to liberally construe the FCRA so as not to unduly restrict a citizen's constitutionally guaranteed access to the courts, we reverse the order granting final summary judgment for the Department and remand for the trial court to reinstate Ms. Sheridan's complaint."*

- *Sheridan v Florida*, 182 So.3d 787 (1DCA 2016)

### **CONCLUSION I**

13. Therefore, this Court is in prime position to reject the orders-on-appeal. Especially since Company Y's Answer Brief only enhanced Employee X's first issue-on-appeal.

14. This Court is also primed to reject the LT's appealed order due to its remaining [unrebutted] issue-on-appeal (*infra*).

## POINT II

Precedential Issue-on-Appeal

#1

*Company Y Failed to Rebut Supreme Court Precedent which holds  
that the Trial Court Committed a Reversible Error  
(regarding the [Intentionally] Excluded Basis  
in Employee X's First Charge)*

## OVERVIEW II

15. Employee X's Second Issue-on-Appeal [OB28] outlined how Supreme Court Precedent precludes the LT from entertaining collateral estoppel (and/or res judicata).
16. Company Y's Answer Brief, however, failed to mention (let alone rebut) this authoritative pillar.

## ARGUMENT II

17. In his Opening Brief, Employee X pointed to the fact that a Florida ALJ (named Mr. Edward Gary Early) [perjurally] removed the sex discrimination basis from the First Charge. The Opening Brief further explained how the US Supreme Court dealt with this precise [removal] issue. It dealt with it, of course, by:
  - a. attaching a due process violation to the removal; and
  - b. vacating all decisions which were borne out of the removal.The Supreme Court case that Employee X highlighted, of course, was the case titled McDonnell-Douglas v Green, 411 US 792 (1973) (ie, "The Seminal Case").
18. Company Y, however, failed to [even] mention The Seminal Case.[5/](#)
19. Moreover, Company Y never [even] mentioned (let alone rebutted) the primary takeaway from The Seminal Case. That takeaway, of course, was that a due process violation occurs when a tribunal removes a charged-basis from an employment discrimination cause. This due process violation exists even if/when the

[aforementioned] tribunal elicits testimony on the removed basis. **[OB40]**

20. Company Y did, however, manage to fortify Employee X's point-on-appeal. Doing so by citing two similarly-operative decisions.
21. In the Carlisle decision **[AB37]**, this Court established that if a tribunal fails to decide an issue then the issue is not available for preclusion (nor res judicata):

*"Collateral estoppel in this case depends on whether the race discrimination issue was litigated and decided in the state judicial proceedings. If the race claims were not decided in the course of the state appeal, there can be no collateral estoppel... (no collateral estoppel because not litigated and decided)."*

- Carlisle v. Phenix City, 849 F.2d 1376 (11th Cir. 1988)

This Court further explained that a lower court's erroneous conclusions [on this topic] are unavailing:

*"The district court concluded that race was a litigated issue in the state proceedings. There is little in the record to support this statement."*

- Carlisle v. Phenix City, 849 F.2d 1376 (11th Cir. 1988)

Then, this Court attached error to the summary judgment, because the excluded basis was absent from the state proceeding:

*"The absence of racial bias on the part of the board was not a finding necessary to the judgment and was not made in the course of the state proceedings. The district court was wrong to base summary judgment on collateral estoppel."*

- Carlisle v. Phenix City, 849 F.2d 1376 (11th Cir. 1988)

22. In the Wu decision [AB25], this Court dissolved a lower court's preclusion holding. Doing so, of course, because the discrimination basis was absent [in the preceding case] (highlights added):

*"In this case, the district court seems to have believed that the retaliation claims at issue in the present litigation were resolved by Wu I. We can find no basis for this belief. Neither the pleadings nor the pretrial order in Wu I show any indication that Kathleen Wu raised a retaliation claim. Appellees' counsel admitted this in oral argument before us, but maintained that because some of the testimony in Wu I touched on retaliatory actions taken by the university, Kathleen Wu should be deemed to have implicitly amended her complaint to include a claim of retaliation. We find counsel's argument to be completely devoid of merit. Kathleen Wu's first action did not raise a claim of retaliation; the principles of res judicata and collateral estoppel therefore do not bar appellants' claims, and the district court erred in so holding."*

- Wu v Thomas, 863 F.2d 1543 (11<sup>th</sup> Cir. 1989)

23. As such, these two appellate decisions reinforce The Seminal Case's mandate. A mandate which declares that the LT was wrong for entertaining those two doctrines [on preclusion].

24. Although the LT was wrong for entertaining those two doctrines, the LT did not actually apply them to the case below. In fact, Company Y conceded this reality (highlights added):

*"the District Court did not summary judgment [Employee X]'s Title VII termination and pre-*

termination claims (Counts X-XIII) based on collateral estoppel.<sup>6</sup> While the District Court never reached [Company Y]'s argument collateral estoppel likewise barred [Employee X]'s Title VII claims..."

- [AB35]

As such, the preclusion issues do not apply to the instant case.

25. Nevertheless - despite what Company Y has prayed for - the US Supreme Court (via The Seminal Case) deems them inapplicable:

"Summary judgment was erroneously granted on the bases of collateral estoppel and res judicata. We therefore REVERSE and REMAND for further proceedings."

- Carlisle v. Phenix City, 849 F.2d 1376 (11th Cir. 1988)

## **CONCLUSION II**

26. Therefore, the doctrine of collateral estoppel has no business being entertained in this cause of action (nor does the doctrine of res rudicata)). The US Supreme Court said so [in The Seminal Case]. This Court said so (in Carlisle; in Wu). And Employee X hereby avers that this Court should say so [again] - in the instant case. A saying, importantly, that will propel the two parties to litigate the case below: (i) fully; (ii) fairly; (iii) freely; and (iv) efficiently.
27. So, as this Court sends this case back [to the LT on this issue], it can also instruct the LT to apply the relation-back principle (Issue III *infra*).

## POINT III

Unrebutted Issue-on-Appeal

#2

*Company Y Failed to Rebut the Fact that  
the Trial Court Committed a Reversible Error when  
the Trial Court Failed to Apply the Relation-Back Provision*

### OVERVIEW III

28. Employee X's Third Issue-on-Appeal [OB35] detailed how the District Court's orders-on-appeal erred by failing to apply the relation-back principle. Therein, Employee X presented the rules, regulations, and statutes which provide for the principle's usage.
29. Company Y, however, failed to rebut this point. Instead, the former employer opted to succeed with falsehoods.

### ARGUMENT III

30. In his Opening Brief, Employee X pointed out how his Second Charge related back to his First Charge. Thereby using the continuing nature element [in his cause of action]. [OB16] [OB36]
31. Company Y, however, failed to address this element.<sup>6/</sup>
32. Instead, Company Y opted to proffer a falsehood for an answer. On page 29 of its Answer Brief, Company Y [falsely] claimed that Employee X did not raise this [relation-back] issue in the Lower Tribunal (highlights added):

*"However, in Issue III, [Employee X] attempts to challenge this Court's ruling, arguing for the first time on appeal Rule 15(c)'s relation back doctrine would have prevented summary judgment in favor of Allstate on [Employee X]'s Title VII claims."*

- [AB29]

Of course, Company Y's statement is false. Employee X did [indeed] raise this issue in the LT. He did so, quite notably, in his *Motion for Relief* (highlights added).

"15. [Employee X]'s Second Charge **relates back** to his First Charge; thereby linking the continuing nature to [Company Y]'s unlawful conduct"

- [R0005]

"First, this [LT] can restore the continuing nature of [Employee X]'s cause of action. Doing so via the **relation back provision** (among other things)."

- [R0006]

"31. [Employee X] seeks reversal on the grounds of:

a) the **relation back provision** (found in Title VII; the FCRA; etc.)"

- [R0007]

33. Then - just pages later - Company Y paired this falsehood with another one (highlights added):

"Even if timely raised and preserved for appeal, [Employee X] cites no authority for the proposition the **relation back doctrine** encompasses administrative complaints, and the language of Rule 15(c) refutes [Employee]'s contention."

- [AB33]

Once again, Company Y's statement is false. Employee X did [indeed] cite authorities (eg, 60Y-5.001 FAC; 29 CFR §1601.12; etc.) which establish that the relation-back provision applied to his administrative complaint. [OB38]

34. Then - inundated with its own falsehoods - Company Y cited authorities of its own. Authorities, of course, which corroborated Employee X's position.

35. In the Beem decision, this Court held that notice [of the original complaint] satisfies the requirements for using the relation-back principle (highlights added):

*"The critical issue in Rule 15(c) determinations is whether the original complaint gave notice to the defendant of the claim now being asserted." ... Mr. Beem's later-filed complaint contains nearly-identical factual allegations [as those] in his timely motion. As noted, those allegations were sufficient notice to Mr. Ferguson... Thus, the same issue was clearly raised in the original pleading and the complaint may relate back to Mr. Beem's timely filing... ("[A]mendments to complaints relate back to the original filing date when the issue was raised in the original complaint.")"*

- Beem v Ferguson, 713 F.App'x 974 (11<sup>th</sup> Cir. 2018)

This is important to the instant case, because Employee X's First Charge gave Company Y "sufficient notice" of the allegations in Employee X's Second Charge. In fact, Company Y conceded that the Second Charge was a continuation of the First Charge (highlights added):

*"Except for the unidentified July 2018 post-termination act of retaliation, the 2019 Charge allegations were identical to [Employee X]'s 2017 Charge allegations and the First Petition."*

- [AB08]

36. In the McKenzie decision, the 7<sup>th</sup> Circuit specified that retaliation is borne out of originating charges:

*"It is the nature of retaliation claims that they arise after the filing of the EEOC charge. Requiring prior resort to the EEOC would mean that two charges would have to be filed in a retaliation case – a double filing that would serve no purpose except to create additional procedural technicalities when a single filing would comply with the intent of Title VII"*

- McKenzie v IDOT, 92 F.3d 473 (7<sup>th</sup> Cir. 1996)

This nature - as the 7<sup>th</sup> Circuit put it - means that [new] retaliation charges relate back to their originating complaints (highlights added):

*"Under the reasoning of Steffen, however, the remaining incidents (i.e., those occurring after the filing of the February 1991 amended charge) may be considered as evidence of Ms. McKenzie's retaliation claim, despite the fact that "retaliation" was not alleged in her administrative filings."*

- McKenzie v IDOT, 92 F.3d 473 (7<sup>th</sup> Cir. 1996)

Moreover, the 7<sup>th</sup> Circuit held that retaliation does not need to be job-related (highlights added):

*"More recent cases have cast a significant shadow on the earlier view that an employer's retaliation in the pretermination situation must be job-related."*

- McKenzie v IDOT, 92 F.3d 473 (7<sup>th</sup> Cir. 1996)

This McKenzie decision (which Company Y cited) fits the instant matter well. Because: (a) Employee X's Second Charge contains allegations of new retaliation; and (b) some of the allegations in the Second Charge are not job-related (eg, lethal attack).

37. In the National case, the US Supreme Court mandated the use of the continuing violation element [in discrimination cases]:

*"The Court of Appeals applied the continuing violations doctrine to what it termed "serial violations," holding that so long as one act falls within the charge filing period, discriminatory and retaliatory acts that are plausibly or sufficiently related to that act may also be considered for the purposes of liability... With respect to this holding, therefore, we reverse."*

- National v. Morgan, 536 US 101 (2002)

That supreme Mandate, notably, encapsulated claims of hostile work environments (highlights added):

*"With respect to Morgan's hostile environment claim, the Court of Appeals concluded that "the pre- and postlimitations period incidents involve[d] the same type of employment actions, occurred relatively frequently, and were perpetrated by the same managers."... Although many of the acts upon which his claim depends occurred outside the 300 day filing period, we cannot say that they are not part of the same actionable hostile environment claim. On this point, we affirm."*

- National v. Morgan, 536 US 101 (2002)

This National decision (which Company Y cited) [also] fits the instant matter well. Because: (a) Employee X's complaint contains allegations of a re-occurring/long-lasting hostile work environment; and (b) some of those hostilities occurred outside of the 365-day/300-day/180-day filing deadline.

38. Moreover, Company Y's reliance on the Mayle decision is misguided. The Mayle case, of course, was a criminal case. The instant matter is a civil case. The US Supreme Court made an important distinction between the two. As such, the Answer Brief's Mayle citation has no value to this issue-on-appeal.

39. Of course - and above all - Company Y's falsehoods (regarding the relation-back provision) also have no value to this issue-on-appeal.

### **CONCLUSION III**

40. Therefore, this Court is in prime position to reject the order(s) from below. Especially considering the LT's additional errors/abuses (ie, Point IV *infra*).

## POINT IV

Unrebutted Issue-on-Appeal

#3

*Company Y Failed to Rebut the Fact that  
the Trial Court Committed a Reversible Error when  
the Trial Court Used the Evidentiary Standard  
[instead of the Plausibility Standard]*

**OVERVIEW IV**

42. Employee X's Fourth Issue-on-Appeal [OB41] detailed how the District Court abused its discretion. Therein, Employee X presented how the LT usurped the jury's authority.
43. Company Y's AB, however, failed to rebut this abuse.

**ARGUMENT IV**

44. In his Opening Brief, Employee X pointed out how the LT abused its discretion (regarding Employee X's post-termination retaliation charges). Thereby citing this Court's authorities on such [reversible] abuses. The LT's abusive act, of course, was its use of the evidentiary standard (instead of the plausibility standard) in its Premeditated Order's dismissal.
45. Company Y, however, failed to defeat this point. Instead, the former employer opted to weigh evidence [on Employee X's post-termination retaliation claims] (highlights added):

*"Even setting aside [Company Y]'s purported involvement, [Employee X] never alleged any facts supporting his contention the collision was intentional."*

- [AB49]

*"The District Court did not absolutely bar [Company Y]'s post-retaliation claims, but rather found significant the context in which [Company Y's retaliatory employee]'s statements were made -*

*i.e., on the record during the administrative proceedings and, thus, within the ALJ's oversight."*

- [AB53]

46. Of course, dismissal is defeated when lower courts weigh evidence. Lower courts are commanded, instead, to apply truth to all allegations in the complaint (highlights added):

*"We review de novo the district court's grant of a Rule 12(b)(6) motion to dismiss for failure to state a claim, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff."*

- *Leib v. Hillsborough*, 558 F.3d 1301 (11th Cir. 2009)

47. Of course - and inundated with its own falsehoods - Company Y cited authorities of its own. Authorities, of course, which corroborated Employee X's position.

48. In the Carlisle decision [AB37], this Court held that lower tribunals are wrong for dismissing [post-litigation] retaliation charges:

*"As we have said before, "claims based on conduct subsequent to prior litigation are not precluded."*

- *Carlisle v. Phenix City*, 849 F.2d 1376 (11th Cir. 1988)

49. In the Goldsmith decision [AB46], this Court held that lower tribunals are wrong for abusing the "causal link" [between adverse acts & protected activities] (highlights added):

*"We do not construe the "causal link" in the [retaliatory discharge] formula to be the sort of*

logical connection that would justify a prescription that the protected participation in fact prompted the adverse action. Such a connection would rise to the level of direct evidence of discrimination, shifting the burden of persuasion to the defendant. Rather, we construe the "causal link" element to require merely that the plaintiff establish that the protected activity and the adverse action were not wholly unrelated."

- Goldsmith v. Bagby, 513 F.3d 1261 (11th Cir. 2008)

In the instant case, Employee X established that his protected activity was "not wholly unrelated" to the adverse actions that occurred. Most obviously, perhaps, because it was Company Y's employees (active/former) who committed the acts. Some of those employees, of course, executed their transgressions upon explicit direction of Company Y [itself]. [A0044] - [A0062]

50. In the Steffes decision [AB54], this Court held that retaliation occurs when defendant-employers have 'no legitimate reason' to contact former/subsequent employers:

"Although Vepriusky held that an employer might commit unlawful retaliation by revealing, without any apparent legitimate justification, that one of its former employees has filed discrimination charges against it... (reversing summary judgment and remanding for further proceedings on this issue) "

- Steffes v. Stepan, 144 F.3d 1070 (7<sup>th</sup> Cir. 1998)

In the instant case, Employee X established that Company Y had no legitimate reason to contact Employee X's former employer. Company Y never propounded any discovery on the topic; and Employee X never volunteered any testimony on it either. **[A0056]**

51. As such, the Answer Brief was wrong for weighing evidence; and so was the lower tribunal [for doing the same].

#### **CONCLUSION IV**

52. Therefore, this Court is well-positioned to reject the orders-from-below. Because the LT abused its discretion when it applied a weight-shifting evidentiary standard [in order] to dismiss Employee X's retaliation charges.

53. This Court is also well-positioned to reject the Answer Brief's argument regarding remand (Point V, *infra*).

POINT V

Unrebutted Issue on Appeal

#4

*Company Y Failed to Rebut the Fact that  
the Trial Court Committed an Amendable Error when  
the Trial Court Abandoned its Responsibility  
to Remand the State Charges*

**OVERVIEW V**

54. In addition to his four previous points on the LT's faulty orders-on-appeal (*supra*), Employee X put forth one point on the LT's responsibility to remand. **[OB45]**
55. Instead of rebutting this point, though, Company Y opted to address it with a prohibitive falsehood.

**ARGUMENT V**

56. In his Opening Brief, Employee X pointed out how the LT abandoned its responsibility to remand (or to [at least] address the remanding-of) Employee X's state charges [back to state court].
57. In its Answer Brief, Company Y attacked this point with a falsehood. Thereby stating that the issue-of-remand was not presented to the LT (highlights added):

*"In Issue V, [Employee X] argues for the first time on appeal the District Court should have remanded [Employee X]'s FCRA claims to state court"*

- **[AB27]**

58. This statement, of course, is false. Employee X did [indeed] raise the issue-of-remand [in the LT]. He did so, quite notably, in his *Motion for Relief* (highlights added):

*"28. Secondly, this [LT] can remand the state charges..."*

- **[R0006]**

"31. [Employee X] seeks reversal on the grounds of:

b) remanding state charges (pendent jurisdiction);"

- [R0007]

59. As such, Company Y's falsehood renders its response [to this issue] obsolete.

#### CONCLUSION V

60. Therefore, this Court is well-positioned to reject the Answer Brief's argument on Issue V. And Employee X hereby asks this Court to do just that. While also asking this Court to instruct the LT to remand all state charges (which the LT refuses to adjudicate).

61. Speaking of refusals, Company Y refused to address the next issue-on-appeal (*Issue VI - Miscarriage of Justice; infra*).

## POINT VI

Forfeited Issue on Appeal

#1

*Company Y Failed to Address the Fact that  
the Proceeding [Below] Suffered from a Miscarriage of Justice  
(Stemming from the State of Florida's Unconstitutional/Obstructive Conduct)*

## OVERVIEW VI

62. Employee X's sixth issue-on-appeal [OB49] detailed how the proceedings [below] executed a miscarriage of justice.
63. Company Y - in its Answer Brief - forfeited all resistance to this [sixth] issue-on-appeal, though.

## ARGUMENT VI

64. In his Opening Brief, Employee X pointed out how the proceedings below lay on a bedrock of legal miscarriages. Miscarriages of justice which included - but were not limited to:
- a. a state hearing officer destroying evidence;
  - b. a state hearing officer committing perjury;
  - c. an FCHR attorney ratifying perjury;
  - d. a state agency failing to secure a [mandatory] 3-person panel for its case deliberations (§760.03(5) FS);
  - e. an FCHR attorney drafting a null & void determination;
  - f. an FCHR attorney mailing a null & void determination to the wrong person;
  - g. a state agency (the FCHR) inducing a federal agency (the EEOC) to mis-mail a null & void determination to the wrong person;
  - h. a state agency refusing to relinquish jurisdiction; and
  - i. a state agency conspiring to mute discrimination charges.

[A0062]-[A0066], [R0019]

65. Company Y, however, failed to address Employee X's point [on the miscarriages of justice].

a. In fact, in its 69-page AB, Company Y never even used the term "Issue VI". This contrasts with the other issues that the Answer Brief addressed; doing so by either: (i) explicitly invoking Employee X's issues-on-appeal; and/or (ii) explicitly titling its "*statement of the issues*" according to Employee X's issues-on-appeal. [R0012]<sup>7/</sup>

Thus, Company Y forfeited this point.

66. As such, it is undisputed (and indisputable) that the proceedings below were engulfed by miscarriages of justice.

#### **CONCLUSION VI**

67. Therefore, this Court is well-positioned to reject the decisions from below, because they lay on a bedrock of legal miscarriages. And Employee X hereby asks this Court to do just that.

68. Especially considering how those miscarriages were spurred on by an unconstitutional state statute (Issue VII, *infra*).

## POINT VII

Unrebutted Issue on Appeal

#5

*Company Y Failed to Rebut the Reality that  
the FCHR's Determinations (found in §760 FS)  
are Unconstitutional*

## OVERVIEW VII

69. Employee X's seventh issue-on-appeal [OB55] detailed the unconstitutionality of a [pertinent] state statute (ie, §760 FS).
70. Company Y, however, failed to rebut this point. Instead, the former employer opted [once again] to succeed with falsehoods.

## ARGUMENT VII

71. In his Opening Brief, Employee X pointed out how §760 FS allows the State of Florida to infringe on an American's [constitutionally-guaranteed] right to access the courts (as well as their rights to trials-by-jury). Thereby showcasing the way §760.11(7) uses "no cause" determinations to accomplish its obstructions.
72. Company Y, however, opted to proffer a falsehood for an answer. On page 43 of its Answer Brief, Company Y [falsely] claimed that Employee X did not raise this [constitutional] issue in the Lower Tribunal (highlights added):

*"In Issue VII, [Employee X] argues section 760.11(7), Florida Statutes, is unconstitutional. His argument is untimely. [Employee X] never challenged the constitutionality of section 760.11(7) before the District Court."*

- [AB43]

Company Y's statement, of course, is false.

73. Employee X did [indeed] raise this issue in the LT. He did so, quite notably, in his *Motion for Relief* (highlights added):

"30. Moreover, this Court can remedy the unconstitutionality of the FCHR's trespasses-against-Plaintiff (*Bounds v. Smith*, 430 US 817 (1977)). As well as the unconstitutionality of the state agency's determinations. Determinations which - in the instant case - were null & void."

"31. [Employee X] seeks reversal on the grounds of:

f) the unconstitutionality of FCHR determinations...

- [R0007]

Employee X also did so (perhaps most notably) in his *Formal Notice of a Constitutional Challenge* (highlights added):

"PLEASE TAKE NOTICE that [Employee X], ELIAS MAKERE - on this 30<sup>th</sup> day of May 2024 - hereby formalizes his challenge of two state statutes' constitutionality. Pursuant to Rule 5.1 Fed. R. Civ. P. (among other authorities), the statutes which he challenges are §760.06 FS and §760.11 FS."

- [R0009]

Altogether, Company Y was just wrong [about this issue].

74. Plus - in addition to being false - Company Y's Answer Brief also contradicted itself [on this point]. On Page 28 of its brief, Company Y admitted that Employee X had already raised this [constitutional] issue [in the LT] (highlights added):

"Additionally, [Employee X] asserts his Notice of [Employee X]'s Constitutional Challenge,

*challenging two state statutes in his Third Amended Complaint and Motion for Relief from Judgment"*

- [AB28]

75. In short, Company Y's Answer Brief was false & contradictory [on this point - at least].

**CONCLUSION VII**

76. Therefore, this Court is in prime position to reject the Answer Brief's response to Issue VII.

77. Finally - as Employee X hereby asks this Court to execute that rejection - he also asks this Court to reject Company Y's subsequent response (Issue VIII, *infra*).

## POINT VIII

Unrebutted Issue on Appeal

#6

*Company Y Failed to Rebut the Reality that  
a Manifest Injustice has Possessed this Entire Cause of Action*

### OVERVIEW VIII

79. Employee X's eighth (and final) issue-on-appeal [OB71] detailed how the Lower Tribunal manifested an injustice onto the proceedings.
80. Company Y failed to rebut this point. Instead - and once again - the former employer opted to succeed with falsehoods.

### ARGUMENT VIII

81. In his Opening Brief, Employee X pointed out how the LT - infused with Company Y's lies - sought to short-circuit the case below. Doing so, unfortunately, at the expense/electrocution of the judiciary's integrity. Doing so, pertinently, by:
- a. committing clear errors (ie, Issue I, *supra*);
  - b. usurping the jury's authority (ie, Issue IV, *supra*); and
  - c. summarily judging a manufactured fiction (Issue III-IV).
82. Company Y answered this point with a [foundational] falsehood. On page 26 of its Answer Brief, Company Y [falsely] claimed that Employee X did not raise this [manifest injustice] issue in the Lower Tribunal (highlights added):

*"[Employee X] now, in Issue VIII, asserts for the first time on appeal, the District Court committed manifest injustice"*

- [AB26]

Of course, Company Y's statement is false [once again].

83. Employee X did [indeed] raise this issue in the LT. He did so, quite notably, in his *Motion for Relief* (highlights added):

"29. Plus, this [LT] can remove the manifest injustice that has blanketed this case"

- [R0006]

Thus, [Employee X] believes the foregoing presents a compelling (ie, manifest injustice; unconstitutional proceeding/provisions) and..."

- [R0008]

So, Company Y was just wrong [about this issue].

84. Plus - in addition to being false - Company Y's Answer Brief defeated itself [on this point]. It did so by citing authorities that debunked its position. One of which is instructive.

85. In the Kremer decision, the US Supreme Court instructed lower courts that manifest injustice dissolves judicially-created doctrines. One such doctrine is collateral estoppel (which Company Y was not afforded - ¶24 *supra*):

"We have previously recognized that the judicially created doctrine of collateral estoppel does not apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity" to litigate the claim or issue... "Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation.""

- Kremer v. Chemical, 456 U.S. 461 (1982)

86. Four other decisions (which Company Y cited) actually reversed a lower court's summary judgment. An outcome, of course, which Company Y is combatting.

a. In the Tipler decision, the 6<sup>th</sup> Circuit held that lower courts should let discrimination cases be litigated (thereby opining on *pro se* leniency/imprecision).

b. In the Wilkerson decision, this Court reversed summary judgment because self-attestation rendered a complaint as "verified" (a nugget which Company Y lobbed up **[AB14]**).

c. In the Wilson decision, this Court reversed a summary judgment which featured a lower court forwarding a [purported] prima facie shortcoming (another nugget which Company Y's Answer Brief [falsely] propped up **[AB39]**).

87. In the Smith decision - which is [perhaps] the most instructive for this case - this Court held that evidence of discrimination defeats summary judgment (highlights added):

*"Based on the totality of the foregoing circumstances, we find that the record contains sufficient circumstantial evidence from which a jury could infer that Lockheed displayed a racially discriminatory animus toward Mitten when it fired him in May 2005. Mitten, consequently, presented a case sufficient to withstand Lockheed's motion for summary judgment. Therefore, the judgment of the district court is VACATED, and the case is REMANDED for further proceedings."*

- Smith v. Lockheed-Martin, 644 F.3d 1321 (11th Cir. 2011)

88. Of course, the instant case features a bevy of evidence pointing to Company Y's unlawful discrimination [towards Employee X].

Evidence which featured the following ultimate facts:

- a. Company Y paid Employee X a lower salary than Company Y paid its other ASAs;
- b. Company Y forced Employee X to pay \$1,025 for an actuarial exam fee, yet Company Y never forced its other employees to do the same;
- c. Company Y denied Employee X the work-from-home privilege, yet Company Y granted it to everyone else in the actuarial department;
- d. Company Y fired Employee X "solely" because he failed an actuarial exam, yet Company Y never fired any of its other employees [who failed more/easier actuarial exams];
- e. Company Y replaced Employee X with two people who had never even passed one actuarial exam (let alone the 8-10 that Employee X passed).

**[A0043]-[A0070]**

89. It bears repeating: Company Y has never disputed these ultimate facts. Moreover, Company Y cannot dispute these ultimate facts, because they are independently verifiable (from sources whose accuracy cannot be questioned). Simply put, this is a textbook case of employment discrimination.

## CONCLUSION VIII

90. Therefore, this Court is well-positioned to reject the decisions from below.

- a. They were borne out of a manifest injustice;
- b. Company Y's Answer Brief failed to rebut these injustices; and - [perhaps] most importantly -
- c. the evidence of Company Y's guilt renders summary judgment inoperable (highlights added):

*"Consistent with our charge to liberally construe the FCRA so as not to unduly restrict a citizen's constitutionally guaranteed access to the courts, we reverse the order granting final summary judgment for the Department and remand for the trial court to reinstate Ms. Sheridan's complaint."*

- Sheridan v. Florida, 182 So. 3d 787 (1DCA 2016)

*Thus...*

~~XXX~~

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*With a Valid Date in place (among other things)/  
May this Court validate this case (among other things)?/  
With an order of reversal, remand, and/or vacate//*

-----

~~XXX~~

## CONCLUSION

WHEREFORE, Appellant (ie, Employee X) asks this Court to reject the lower tribunal's [appealed] orders; because - in addition to being false & erroneous - neither the record nor Company Y can support them.

Dated this 24<sup>th</sup> day of December 2024.

Respectfully submitted,

/s/ Elias Makere

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/s/ Elias Makere

Elias Makere, FSA, MAAA

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I HEREBY CERTIFY that on this 24<sup>th</sup> day of December 2024, I electronically filed the foregoing with the Clerk of Courts by using PACER; which will send a notice of electronic filing to the attached service list.

/s/ Elias Makere

Endnotes:

<sup>1/</sup> Please note that these are the same citations found in: (i) the Answer Brief; and (ii) the Opening Brief - (albeit, truncated for layout purposes). In other words, this Reply Brief will not require this tribunal to reach for any additional opinions/decisions.

<sup>2/</sup>

[A0210] means page 210 from the appendix [to Appellant's Opening Brief]  
[OBII] means page ii from the Opening Brief  
[AB012] means page 12 from the Answer Brief  
[R0210] means page 210 from the appendix [to Appellant's Reply Brief]  
[#44] means docket entry 44 from the lower tribunal

<sup>3/</sup> Please refer to Rule 6 Fed. R. Civ. P. in order to calculate the time window.

<sup>4/</sup> Company Y's Answer Brief devoted a tiny percent of its time (6%) advocating for Company Y's evidence-based acquittal. Evidenced by the fact that Company Y's AB spent 1-page (6%) on 'facts-of-the-case'; yet spent 17-pages (94%) on the 'procedural history' (ie, the Government's cover-up [for Company Y's discrimination]). Please contrast with Employee X's 57%-43% split [between facts & procedure].

<sup>5/</sup> None of the 69 pages om Company Y's Answer Brief ever cited 'The Seminal Case'.

<sup>6/</sup> In fact, in its 69-page AB, Company Y never even uses the word "continuing" (let alone "continuing nature" nor "continuing violation").

<sup>7/</sup> Pursuant to several authorities (eg, Rule 47(b) Fed. R. App. P.; Mark v Singletary, 62 F.3d 1295 (11<sup>th</sup> Cir. 1995)); and - quite frankly - common sense/prudence, Employee X asked Company Y to confirm the mapping of its issues. Company Y did/does not disagree with the mapping that Employee X deduced/provided (see [R0012]). Thus, Company Y's Answer Brief did [indeed] fail to address Issue VI; thereby forfeiting the point.

**SERVICE LIST**

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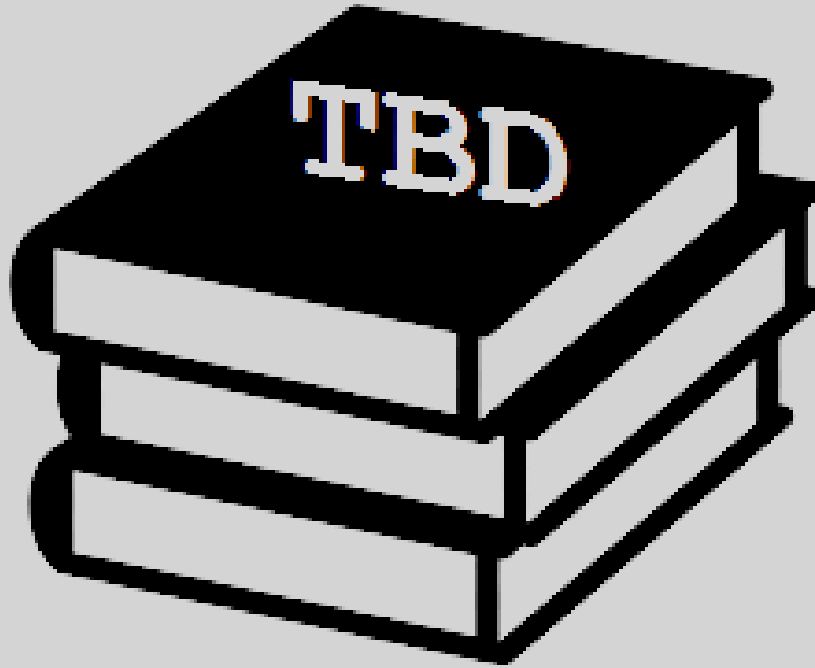
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