No. ____

IN THE

Supreme Court of the United States

THE GOODYEAR TIRE & RUBBER COMPANY,

Petitioner,

v.

LEROY HAEGER; DONNA HAEGER; BARRY HAEGER; SUZANNE HAEGER,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. In *Int'l Union v. Bagwell*, 512 U.S. 821 (1994), this Court ruled that sanctioned parties must be afforded the protections of criminal due process where sanctions are punitive, but not where they are compensatory. In this case, in a divided decision, the Ninth Circuit affirmed a $2.7 million sanction award imposed under inherent powers as a compensatory sanction. The majority held that sanctions can be compensatory even if the specific amount of sanctions is not directly caused by the alleged misconduct.

The first question presented is:

Is a federal court required to tailor compensatory civil sanctions imposed under inherent powers to harm directly caused by sanctionable misconduct when the court does not afford sanctioned parties the protections of criminal due process?

2. In *Roadway Express v. Piper*, 447 U.S. 752, 766 (1980) and *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991), this Court held that a finding of subjective bad faith is required to award attorneys' fees as sanctions under inherent powers. In this context, the court of appeals held that a client is deemed bound by the acts of its attorneys and can suffer attorneys' fees as sanctions for its attorneys' alleged misconduct.

The second question presented is:

May a court award attorneys' fees under its inherent powers as sanctions against a client for actions by its attorney that are not fairly attributable to the client's own subjective bad faith?

LIST OF PARTIES

Petitioner The Goodyear Tire & Rubber Company ("Goodyear"), Fennemore Craig, P.C. and Graeme Hancock, and Basil Musnuff were Appellants in the Ninth Circuit proceedings.

Goodyear, Spartan Motors, Inc., and Gulfstream Coach, Inc. were defendants in the District of Arizona and the Maricopa County Superior Court.

Leroy Haeger, Donna Haeger, Barry Haeger, and Suzanne Haeger, Respondents to this Petition, were Appellees in the Ninth Circuit proceedings, and plaintiffs in the proceedings in the District of Arizona and the Maricopa County Superior Court.

RULE 29.6 STATEMENT

Petitioner Goodyear has no parent company and no publicly-held corporation owns 10 percent or more of Petitioner's common stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

INTRODUCTION

Goodyear respectfully petitions for a writ of certiorari to review the judgment of the Ninth Circuit. This case, involving a $2.7 million sanction award, implicates two questions on which the Circuits are in conflict. Arising against the backdrop of inherent authority sanctions – which inflict tremendous consequences on attorneys and their clients alike – these questions are also exceptionally important.

First, the Ninth Circuit majority in this case expressly declined to require a causal connection between the sanctioned conduct and the civil monetary sanction imposed. As Judge Watford recognized in dissent, a finding of direct causation is essential to sustain an award of compensatory civil sanctions under the district court's inherent authority.

This Court in *Int'l Union v. Bagwell*, 512 U.S. 821 (1994), held that the imposition of punitive, non-compensatory sanctions must be accompanied by the procedural protections applicable in criminal cases. Following *Bagwell*, at least four circuits hold that the amount of fees awarded as compensatory sanctions must be tailored to the harm caused by the misconduct. The Ninth Circuit majority parted company with these courts by refusing to require a causal nexus between the conduct at hand and the sanctions imposed.

The majority's approach disregards the safeguards engrafted on inherent authority sanctions to restrain the unfettered exercise of a court's inherent

authority. This case presents an ideal vehicle for this Court to examine and clarify the standards that govern the imposition of civil sanctions under inherent powers, particularly in light of how the majority and dissent framed the issue at hand.

Second, inherent authority sanctions, unmoored by any statutory or rule constraints, must only be imposed upon a finding of subjective bad faith by the individual actor. Disregarding Supreme Court authority requiring bad faith by the sanctioned party, the Ninth Circuit deemed a client responsible for the alleged bad faith of its counsel. Not only does this rule conflict with this Court's requirements for inherent authority sanctions, but it also will erode the cornerstone of the attorney-client relationship by precluding clients from effectively relying on the advice of their attorneys. It also conflicts directly with the holding of the Eleventh Circuit that attorneys' fees cannot be imposed as sanctions on clients for the conduct of their counsel.

The decision below illustrates the devastating consequences for sanctioned parties who do not receive the procedural protections that are designed to constrain a court's inherent powers. This Court should accept *certiorari*, and reverse.

OPINIONS BELOW

The proposed order of the District of Arizona finding grounds for sanctions is unreported and reprinted in the appendix to this Petition ("Pet. App.") at 51a-82a. The decision of the District of Arizona imposing sanctions is reported at 906 F. Supp. 2d 938 (D. Ariz. 2012), and reprinted at Pet. App. 83a-172a. The decision of the District of Arizona allocating costs and fees is available at 2013

U.S. Dist. LEXIS 189796 (D. Ariz. Aug. 26, 2013), and reprinted at Pet. App. 173a-196a.

The original Ninth Circuit panel opinion is reported at 793 F.3d 1122 (9th Cir. 2015), and the panel opinion as amended is reported at 813 F.3d 1233 (9th Cir. 2016), and reprinted at Pet. App. 1a-50a. The order of the Ninth Circuit denying rehearing and rehearing en banc is unreported, available at 2016 U.S. App. Lexis 2722 (9th Cir. Feb. 16, 2016), and reprinted at Pet. App. 5a-6a. The Ninth Circuit issued a stay of its mandate, reprinted at Pet. App. 197a-200a, pending this Court's resolution of this Petition.

JURISDICTION

The divided Ninth Circuit issued its original opinion on July 20, 2015, and an amended opinion on February 16, 2016. Pet. App. 3a-5a. Petitioners filed a timely petition for rehearing and rehearing en banc, which the Ninth Circuit denied on February 16, 2016. *Id.* This timely Petition followed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This petition does not involve the interpretation of statutory provisions, but rather the federally-recognized "inherent authority" of a court to impose sanctions and the constitutional due process restraints upon such authority. *See* U.S. CONST. amend. V.

STATEMENT OF THE CASE

The action that led to this sanctions proceeding concerned a certain tire manufactured by Goodyear,

the "G159." Plaintiffs Leroy, Donna, Barry, and Suzanne Haeger commenced this action in 2005 against Goodyear and others, claiming, among other things, that a defect in a Goodyear G159 tire caused their accident. Pet. App. 8a. The district court exercised diversity jurisdiction over the underlying litigation pursuant to 28 U.S.C. § 1332. During this time period, Goodyear faced a number of lawsuits in different jurisdictions involving G159 tires. Goodyear accordingly retained Basil Munsuff and Roetzel & Andress to serve as its national coordinating counsel to, among other things, handle discovery across various G159 tire cases. *Id.* For this particular case, Goodyear also retained Graeme Hancock as local Arizona counsel to navigate the local rules and appear before the district court. *Id.*

The sanctions proceeding relates to discovery for particular categories of testing done on the G159 tire by Goodyear. As explained in Goodyear's Ninth Circuit briefing, during the underlying litigation, Goodyear conducted extensive document searches for testing results of the G159 tire. Goodyear located the particular tests now subject to dispute and turned them over to counsel by early 2007, shortly after Plaintiffs' first document requests were served and its expert report was received. *See* Pet. App. 11a. As Goodyear argued below, Goodyear's in-house counsel reviewed discovery responses drafted by counsel and relied on outside counsel to review and select the documents for production and provide advice on compliance with the discovery rules.

Goodyear objected to certain discovery requests that were (among other things) overly broad and unduly burdensome. Pet. App. 52a-53a. In their first request for documents, Plaintiffs sought

extremely broad discovery, demanding "[a]ll test records for the G159 tires." *Id.* at 9a, 52a. Goodyear later supplemented its initial response with test data on the G159 tire required by the Department of Transportation, but preserved its initial objections. *Id.* at 9a, 53a. Plaintiffs then served supplemental, more narrowly-tailored discovery relating to testing done to determine that the G159 tire was suitable to operate at highway speeds. *Id.* at 12a, 57a-58a. Counsel produced the test data for the one test Goodyear relied on to speed-rate this tire, but concluded that Plaintiffs' counsel had agreed to narrow the scope of their first request. *Id.* at 12a, 144a. Plaintiffs never filed a motion to compel "all tests" of the G159 tire, or any similar topic that would have encompassed the disputed tests at issue, notwithstanding the fact that they did seek court intervention regarding other discovery issues.

In April 2010, on the verge of trial, Plaintiffs reached a settlement with Goodyear, closing the case. *Id.* at 25a. Over a year after settlement, after reviewing an internet article about a jury verdict in a G159 case against Goodyear, Plaintiffs' counsel sought to reopen the matter in order to seek sanctions against Goodyear for alleged discovery misconduct. *Id.* at 13a. Plaintiffs accused Goodyear of committing discovery fraud primarily by not producing G159 testing documents relating to use of the G159 tire for highway speeds. *Id.* at 13a-14a. Plaintiffs adduced no evidence, however, that Goodyear actually used the non-produced tests at issue in approving the G159 tire for highway speeds.

Before holding a hearing, the court issued a "proposed order" finding misconduct by Goodyear and its counsel. *Id.* at 51a. The court concluded that

"[t]he misconduct at issue appears to have stemmed from a *deliberate corporate strategy* adopted by Goodyear to prevent the disclosure of the internal heat test results." *Id.* at 71a (emphasis added). Despite recognizing that sanctions on Goodyear required a finding of subjective bad faith, and despite acknowledging that "the present record does not indicate who is responsible for each instance of misconduct," the court nonetheless concluded that it "must impose sanctions." *Id.* at 81a-82a.

Discovery conducted during the sanctions proceedings, however, revealed that Goodyear conducted an extensive search for documents, had produced internal heat tests in other G159 cases. In this case, Goodyear located and promptly turned over to counsel the tire tests at issue. *See id.* at 11a. As Goodyear explained in its Ninth Circuit briefing, documents produced by Goodyear included candid communications between lawyer and client on a variety of subjects, but conspicuously absent was any directive from Goodyear to withhold any testing data from Plaintiffs. This wealth of post-hearing discovery revealed that Goodyear did what corporations are supposed to do—Goodyear opened its doors to outside counsel's document collection efforts and provided full access to its technical personnel.

Discounting or disregarding this evidence, the district court ultimately imposed sanctions relying largely on its conclusion that "Goodyear and its attorneys adopted a strategy" to obstruct discovery. Echoing its proposed order, the court found that outside counsel and Goodyear "adopted a plan" to obstruct discovery. Pet. App. 170a. The court sanctioned outside counsel and Goodyear pursuant to

its inherent authority. *See id.* at 7a. The court ordered that monetary sanctions be imposed on Goodyear, Mr. Musnuff, and Mr. Hancock. *Id.* at 17a-18a. In addition to a fee award, the court ordered Goodyear to file a copy of the sanctions order in any G159 tire case initiated after the date of that order. *Id.* at 18a.

Plaintiffs sought close to $2.9 million in fees and costs, representing nearly the entirety of the fees incurred over the history of the litigation. *See id.* at 44a, 185a. Despite objections by Goodyear and counsel, the district court awarded Plaintiffs $2,741,201.16 in fees and costs, all but a fraction of Plaintiffs' requested amount. *Id.* at 185a. Goodyear and Mr. Musnuff were held jointly responsible for 80% of the award, equaling $2,192,960.93. *Id.* In awarding that sizeable sum, the district court shifted "*all* the fees and costs incurred after" the purported discovery misconduct, early in the litigation. *Id.* at 180a (emphasis added); *see id.* at 44a.

In fashioning this massive award, the district court found it "inappropriate to limit the award to the fees and costs that could be directly linked to the misconduct." *Id.* at 180a. The court concluded that "it would be impossible to draw the precise causal connections between the misconduct and the fees Plaintiffs incurred." *Id.* at 151a-152a. Disregarding authority "that compensatory sanctions under a Court's inherent power must be limited to the amount necessary to compensate the opposing party for the harm caused by the misconduct," *id.* at 156a-157a, the court found that it "must be free to fashion an appropriate remedy," *id.* at 170a. Accordingly, the court concluded that "the most appropriate sanction is to award Plaintiffs *all* of the attorneys'

fees and costs they incurred after" early discovery. *Id.* at 152a (emphasis in original); *see id.* at 27a.

Despite acknowledging that the case may very well have proceeded to trial, the court presumed that the case "more likely than not would have settled much earlier" if Goodyear had produced the allegedly concealed tests. *Id.* at 152a. As the Ninth Circuit dissent noted, however, record evidence shows that production of these tests had no such effect. *Id.* at 44a-46a. In one case where Goodyear produced the disputed tests, the litigation proceeded all the way to a jury verdict. *See id.* at 46a.

Goodyear, Mr. Musnuff, and Mr. Hancock appealed, and a panel of the Ninth Circuit affirmed the imposition of sanctions. *Id.* at 42a. The court of appeals nominally recognized that, to award sanctions under inherent powers, "the sanctioned party's behavior" must amount to "bad faith." *Id.* at 21a. Nonetheless, the court held that Goodyear could be penalized for the conduct of its attorneys because "Goodyear 'is deemed bound by the acts of [its lawyers] and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'" *Id.* at 26a (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 634 (1962)).

In perfunctory fashion, the court also concluded that "the district court did not abuse its discretion in concluding that Goodyear participated directly in the discovery fraud." *Id.* at 26a. But the court of appeals identified no record evidence demonstrating that Goodyear employees, including in-house lawyers, deliberately attempted to delay or conceal the production of the tests in question. Nor did the court make any effort to engage with Goodyear's analysis of the facts, instead invoking *Link* for the

principle that Goodyear is responsible for the purported misconduct of counsel.

A divided panel affirmed the amount of sanctions, with Judge Watford in dissent concluding that Supreme Court authority requires a "causal link" between purported misconduct and compensatory sanctions. *Id.* at 44a-45a. Despite Plaintiffs' failure to establish a causal connection, the majority affirmed the entirety of the nearly $2.7 million in levied sanctions. The majority repudiated the rule "that the specific amount of attorneys' fees and costs awarded when a court invokes its inherent powers must be directly linked to the bad faith conduct." *Id.* at 28a. This Petition followed.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit Diverged From This Court And Other Circuits By Authorizing Compensatory Sanctions Without Causation.

A. The Ninth Circuit's Decision Conflicts With The Authority Of Other Circuits On Compensatory Civil Sanctions.

The authority of federal courts to impose sanctions pursuant to their inherent powers is circumscribed by procedural protections for parties threatened with sanctions. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991). Because the court's inherent power is so potent, it must be exercised "with restraint and discretion." *Id.* at 44. Likewise, a court must be cautious in exerting its inherent power to levy sanctions and "must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees." *Id.*

The Ninth Circuit departed from the prevailing authority in the other Circuits requiring a direct causal connection between sanctioned misconduct and the amount of compensatory civil sanctions. Under *Int'l Union v. Bagwell*, a sanctions award may be either "civil" or "criminal." *Int'l Union v. Bagwell*, 512 U.S. 821, 836-39 (1994). *Bagwell* instructed that "conclusions about the civil or criminal nature of a contempt sanction are properly drawn, not from the subjective intent of [the court imposing the sanction], but from an examination of the character of the relief itself." *Id.* at 828. A "civil" sanction must either offer the sanctioned party "an opportunity to purge" or be "compensatory." *Id.* at 829. A punitive award, which is intended to "vindicate the authority of the court," requires that the sanctioned party be afforded due process protections of the criminal process, *id.* at 828. These constraints on inherent powers dovetail with this Court's teaching that "[b]ecause inherent powers are shielded from direct democratic controls, they must be exercised with *restraint and discretion*." *Roadway Express Inc. v. Piper*, 447 U.S. 752, 764 (1980) (emphasis added).

The entire sanctions award in this case was affirmed as purely civil and compensatory. *See* Pet. App. 26a-39a. In *Bagwell*, the Court found that fines were not compensatory, but were of punitive character in part because they were not "*calibrate[d]* . . . to damages caused by the . . . contumacious activities." 512 U.S. at 834 (emphasis added). Because the substantial levied fines were "punitive," not "remedial," the Court ruled that the sanctioned parties were entitled to the protections of a criminal jury trial. Pet. App. at 829a, 831-39a. It is undisputed that the sanctioned parties in this case were not afforded criminal due process protections.

Subsequent to *Bagwell*, numerous circuits recognize that an award is compensatory only if the record reveals a causal connection between the misconduct the court found and the amount it awarded. The Eighth Circuit squarely holds that the amount of fees awarded as compensatory sanctions must be "directly" linked to the misconduct. In *Baycol Steering Comm. v. Bayer Corp.*, 419 F.3d 794, 808 (8th Cir. 2005), the Eighth Circuit overturned a $50,000 monetary sanction imposed under a court's inherent powers because it "does not compensate [the injured party] for fees incurred as a direct result of [the sanctioned attorney's] conduct." Not only was the sanction payable to the court instead of the injured party, but it did not "relate[] *concretely* to costs . . . *directly incurred* because of [the sanctioned attorney's] actions." *Id.* (emphasis added); *see also Schwartz v. Kujawa* (*In re Kujawa*), 270 F.3d 578, 584 (8th Cir. 2001) (overturning monetary sanction against party in part because "[t]he amount is not related concretely to redressing the harm of [the party's] misconduct").

The Fourth Circuit also requires civil compensatory sanctions to be "*tailored* to compensate the complaining party." *Bradley v. Am. Household, Inc.*, 378 F.3d 373, 378 (4th Cir. 2004) (quoting *Buffington v. Baltimore County*, 913 F.2d 113, 133 (4th Cir. 1990)) (emphasis added). In a case strikingly similar to this one, the Fourth Circuit vacated substantial monetary sanctions levied against a party and its attorney for discovery abuses after holding that the sanctions were "criminal in nature." 378 F.3d at 375. In the midst of discovery, the parties to a products liability action over allegedly defective electric blankets reached a settlement agreement. *Id.* at 374-76. Plaintiffs later

moved to reopen the case, and ultimately obtained sanctions against the defendant for its ongoing destruction of previously-requested discoverable materials. *Id.* The court of appeals overturned the civil fines because they failed "to compensate the complainant for losses sustained." *Id.* at 378. The sanctions could not be labeled "civil" because "the amounts of the fines were not determined by reference to any losses incurred by the [plaintiffs] as a result of [defendant's] alleged failure to complete discovery." *Id.*

Similarly, the D.C. and Seventh Circuits recognize that compensatory relief must be tailored to the actual harm caused by the misconduct. The D.C. Circuit, relying on *Bagwell*, vacated monetary sanctions "paid to the court and not at all calibrated to the damage caused by the [party's] conduct." *Evans v. Williams*, 206 F.3d 1292, 1295 (D.C. Cir. 2000); *see id.* at 1297 ("[I]t is not surprising that district courts around the country . . . have resisted the logic of *Bagwell*."). Applying the same principle in *United States v. Dowell*, 257 F.3d 694, 699 (7th Cir. 2001), the Seventh Circuit affirmed a civil contempt fines that "compensates the court and the government for actual losses sustained as a result of [the attorney's] refusal to appear at trial." The monetary sanction was deemed compensatory because "the district court *tailored* its sanction to compensate for these actual costs." *Id.* at 699-700 (emphasis added).

Finally, the Second, Fifth, Tenth, and Eleventh Circuits have each reversed monetary awards imposed without criminal procedures where the sanctions were non-compensatory. *Mackler Prods., Inc. v. Cohen*, 146 F.3d 126, 129 (2d Cir. 1998)

(reversing a $10,000 punitive fine that "was not intended to be compensatory" but imposed without criminal procedures sanction); *Crowe v. Smith*, 151 F.3d 217, 221 (5th Cir. 1998) (reversing order "imposing serious criminal sanctions … via a manifestly civil process"); *Law v. NCAA*, 134 F.3d 1025, 1029 (10th Cir. 1998) (reversing "daily fine [that] is not compensatory, even though ordered paid to plaintiffs"); *In re E.I. DuPont de Nemours & Co.-Benlate Litigation*, 99 F.3d 363, 369 (11th Cir. 1996) (reversing an over $13 million punitive fine imposed without criminal procedures that was "designed to punish [party] for flouting the authority of the district court").

The Ninth Circuit's decision stands in irreconcilable conflict with *Bagwell* and its progeny. The divided court of appeals rejected the rule "that the specific amount of attorneys' fees and costs awarded when a court invokes its inherent powers must be directly linked to the bad faith conduct." Pet. App. 28a. As explained by Judge Watford in dissent, the majority disregarded "the well-established principle that a sanction can be deemed compensatory only if it compensates the injured party for losses sustained *as a result of* the sanctionable misconduct." *Id.* at 47a (emphasis in original). Here, the entire $2.7 million sanctions award "cannot be deemed compensatory" because the record reveals no "causal connection between the misconduct the court found and the amount it awarded." *Id.* at 44a. The majority's decision declining to require a causal "linkage" between the sanctioned conduct and the awarded damages directly conflicts with this Court's precedent and the precedent of other Circuits.

B. The Ninth Circuit's Decision Cannot Be Reconciled With This Court's Precedent.

Dispensing with a "linkage" requirement, the majority held that a causation requirement "flouts controlling United States Supreme Court case law" embodied in *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50-51 (1991), a decision pre-dating *Bagwell*. Pet. App. 28a. The majority read *Chambers* as establishing that a fee award may be deemed compensatory even if the fees were not incurred as a result of the misconduct, so long as the misconduct involves "frequent and severe abuses of the judicial system." 501 U.S. at 56. As the dissent elucidates, the majority misreads *Chambers* and overlooks later Supreme Court authority that forecloses its interpretation. *See* Pet. App. 47a-49a (Watford, J., dissenting).

Chambers did not signal a retreat from the causation requirement for sanctions awards. In that case, the district court sanctioned Mr. Chambers for perpetrating fraud on the court and exhibiting bad faith in defending a suit in the first instance. 501 U.S. at 37-39, 49-51. As Judge Watford explained, "[b]ecause the district court found that *Chambers* never had a good-faith basis for resisting the relief NASCO sought . . . , it seems fair to say that all of NASCO's attorney's fees were incurred as a direct result of Chambers' misconduct." Pet. App. 48a. *Chambers* also expressly noted a causal connection between the sanctioned conduct and the levied fees. After Mr. Chambers attempted to sabotage the sale of a radio station through litigation tactics, the Court held that "Chambers' bad-faith conduct in the course of the litigation *caused* the delay for which damages

were sought and *greatly complicated* the closing of the sale[.]" 501 U.S. at 56 n.20 (emphasis added).

To be sure, the *Chambers* Court also discussed "the frequency and severity of [the] abuses of the judicial system and the resulting need to ensure that such abuses were not repeated." *Id.* at 56. But the Court did not suggest that it was abandoning a causation requirement. Rather, the Court rejected Mr. Chambers' assertion that the district court had "failed to tailor sanctions to the particular wrong," concluding instead that the full amount of attorneys' fees were an appropriate sanction in light of the particular facts. *Id.* at 56-57. Furthermore, as Judge Watford noted, "even if some portion" of the fees were not incurred "as a direct result" of misconduct, *Chambers* made clear that the sanctions award was "partly punitive," Pet. App. 48a-49a, while the award in the instant case was upheld as purely compensatory.

Chambers, moreover, is not this Court's last word on monetary sanctions. *See id.* at 49a (Watford, J., dissenting) ("Moreover, the law has changed since Chambers was decided."). Subsequent to *Chambers*, this Court in *Bagwell* reversed a civil contempt sanction where the trial court did not "calibrate the fines to damages caused by the" sanctioned behavior or "indicate that the fines were to compensate the complainant for losses sustained." *See Bagwell*, 512 U.S. at 834 (internal quotation marks omitted). The Court explained that an appropriate civil fine "is remedial," and thus limited to compensatory sanctions, *id.* at 827; but a fine that "is punitive, to vindicate the authority of the court" falls outside the scope of a civil sanction and requires the protections of the criminal process. *Id.* at 845. The courts of

appeals have extended the reasoning of *Bagwell* from the contempt context to sanctions imposed under inherent authority. *See, e.g., Mackler Prods.*, 146 F.3d at 128; *F.J. Hanshaw Enters. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1137 (9th Cir. 2001).

The sanctions imposed in this case fail the *Bagwell* test. The district court awarded "all of the attorney's fees incurred by the Haegers after Goodyear breached its discovery obligations," Pet. App. 44a (Watford, J., dissenting), on the assumption that the case would have immediately settled after disclosure of the disputed tests. *See id.* at 45a-46a, 152a. But the district court acknowledged that when Goodyear produced the test results in a similar suit, the case proceeded to trial. *Id.* at 123a; *see id.* at 152a. Therefore, it declined to impose any type of causation requirement for the $2.7 million award. Accordingly, there is no basis in the record for "causal link" to support the sanctions award.

C. The Issue Presented Is Important, and This Case Presents a Good Vehicle for Resolving It.

This case presents an ideal vehicle for addressing this important issue. The majority and dissent squarely considered whether compensatory civil sanctions must be directly caused by purported misconduct, arriving at opposite legal conclusions. The majority acknowledged that large non-compensatory sanctions require criminal contempt procedures. Pet. App. 34a. But the court invented its own exception to the rule that civil sanctions must be compensatory. Under this new formulation, the causation requirement is obviated where a district court finds "frequent and severe abuses." *Id.* at 32a. Cut from whole cloth, this exception

contradicts Supreme Court precedent and the law in other Circuits.

Judges and litigants are entitled to a clear answer on what restraint or standard (if any) controls a federal court's imposition of compensatory sanctions under its inherent powers. A causation requirement protects litigants from judicial overreach and ensures that litigants receive appropriate procedural due process when facing criminal penalties with far-reaching professional and financial consequences. The majority's opinion conflicts irreconcilably with *Bagwell* and the authority of other Circuits on this point. This Court should intervene to remedy this conflict and establish clear standards to guide courts' discretion in imposing compensatory sanctions.

II. The Ninth Circuit Diverged From This Court And the Eleventh Circuit By Permitting Attorneys' Fees Sanctions Under Inherent Powers Against A Client For The Conduct Of Its Attorneys.

A. The Ninth Circuit's Decision Violates This Court's Bad-Faith Requirement Constraining The Award of Attorney's Fees as Sanctions.

In affirming sanctions against Goodyear, the Ninth Circuit rejected the prevailing rule that inherent authority sanctions must be based on subjective bad faith of the individual party, rather than premised on the conduct of others. The Ninth Circuit's ruling that attorney's fees can be levied as sanctions against a client for the conduct of its attorney conflicts directly with authority from this Court and the Eleventh Circuit. It also stands inconsistent with the wealth of cases that insist upon

individualized findings of bad faith to support inherent authority sanctions.

Before awarding sanctions under its inherent powers, a court must find that the purported misconduct "constituted or was tantamount to bad faith." *Roadway Express v. Piper*, 447 U.S. 752, 767 (1980) (recognizing "[t]he bad-faith exception for the award of attorney's fees"). Reversing an award of sanctions levied against counsel for discovery violations, *Roadway Express* held that a bad-faith finding "would have to precede any sanction under the court's inherent powers." *Id.* Such a finding is especially critical when the court uses its inherent powers to assess attorneys' fees, as it did in this case. *See Chambers*, 501 U.S. at 47 ("The narrow exceptions to the American Rule effectively limit a court's inherent power to impose attorney's fees as a sanction to cases in which a litigant has engaged in bad-faith conduct or willful disobedience of a court's orders."). Moreover, this finding must be individualized. *See, e.g.*, *CTC Imports & Exports v. Nigerian Petroleum Corp.*, 951 F.2d 573, 578 (3d Cir. 1991) ("Where, however, the court sanctions more than one party, it must make particularized findings and conclusions as to each party's liability considering his or her unique circumstances.").

In this case, relying on *Link v. Wabash Railroad Co.*, 370 U.S. 626, 633 (1962), the Ninth Circuit affirmed an award of attorneys' fees against Goodyear for the actions of its lawyers. Pet. App. 26a ("Goodyear 'is deemed bound by the acts of [its lawyers] and is considered to have notice of all facts, notice of which can be charged upon the attorney.'"). The court of appeals obviated the need for an individualized finding that a party acted in

bad faith, instead concluding that the client is accountable for its attorney's bad-faith misconduct.[1]

Link, however, pre-dates Supreme Court authority mandating a bad-faith finding when *attorneys' fees* are imposed under a court's inherent powers in derogation of the American Rule. Emphasizing the court's authority to manage its docket, *Link* affirmed dismissal for failure to prosecute and did not involve the sanction of *attorneys' fees*. *See* 370 U.S. at 633. *Link*, moreover, did not involve any bad faith finding whatsoever and thus had no occasion to consider the subjective bad faith standard recognized by later precedent.

The Ninth Circuit's holding irreconcilably conflicts with this Court's bad-faith requirement in the attorneys' fees context. After *Link*, this Court in *Chambers* emphasized that attorneys' fees imposed as inherent authority sanctions must be supported by a bad-faith finding. *See Chambers*, 501 U.S. at 45-53 (collecting cases). *Chambers* reaffirmed the limited scope of the "bad faith exception" to the American Rule on fee-shifting: "[T]he narrow exceptions to the American Rule effectively limit a court's inherent power to impose attorney's fees as a sanction to cases in which a litigant has engaged in bad-faith conduct or willful disobedience of a court's orders. . . ." *Id.* at 47.

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[1] As both counsel will argue in their respective petitions, they did not act in bad faith, and if they were to prevail on their challenges to the sanctions award, Goodyear would necessarily win as well. This argument is unique to Goodyear's position.

Chambers also implicitly recognized that a bad-faith finding must be "personalized." In *Chambers*, the sanctioned party protested that the fees award was "not 'personalized' because the District Court failed to conduct any inquiry into whether he was personally responsible for the challenged conduct." 501 U.S. at 57. This Court deemed that assertion "flatly contradicted by the District Court's detailed factual findings concerning Chambers' involvement in the sequence of events at issue." *Id.* at 57-58. Rather than merely following the advice of counsel, the party himself engaged in "relentless, repeated fraudulent and brazenly unethical efforts." *Id.* at 58. *Chambers*, however, did not suggest that the sanctions could stand absent these individualized bad-faith findings.

Link not only predates these developments in *Chambers*, but it also precedes the Court's recognition of the distinctions between compensatory and punitive sanctions and its requirement of due process protections for any non-compensatory awards. *Bagwell*, 512 U.S. at 836-39. Thus, the Ninth Circuit's holding that a party's own bad faith need not be considered when assessing fees as sanctions runs afoul of this Court's recent authority.

B. The Ninth Circuit and the Eleventh Circuit Are In Conflict.

The Ninth Circuit's decision also directly conflicts with the position of the Eleventh Circuit. The Ninth Circuit held that Goodyear could not "pass[] the blame on to its attorneys" because Goodyear is "deemed bound by the acts of [its lawyers]." Pet. App. at 26a. In contrast, the Eleventh Circuit holds that attorneys' fees cannot be imposed as sanctions on clients for the conduct of their counsel. In *Byrne*

v. Nezhat, 261 F.3d 1075, 1123 (11th Cir. 2001), the court of appeals vacated a monetary sanction levied against a party because "the court impermissibly relied solely on the actions of counsel." The court held that a district court imposing such sanctions "should make *specific* findings as to *the party's conduct* that warrants sanctions." *Id.* at 1123 (emphasis added). The fact that the client relied on counsel did not justify sanctions. *Id.* at 1125-26. On the contrary, sanctions were vacated because the client herself did not "knowingly file[] and continue[] to prosecute the case in bad faith." *Id.* at 1127.

The Eleventh Circuit recently summarized its holding as follows:

> While a client may be made to suffer litigation losses because of her attorney's missteps, the *Byrne* decision rejects the notion that an innocent client must also suffer sanctions because of misconduct by her attorney that is not fairly attributable to her. Without more, the rule that the sins of the lawyer are visited on the client does not apply in this context, and a court must specify conduct of the plaintiff herself that is bad enough to subject her to sanctions.

DeLauro v. Porto (In re Porto), 645 F.3d 1294, 1304 (11th Cir. 2011). The position of the Eleventh Circuit follows inexorably from the requirement that fee-shifting sanctions require individualized findings of bad-faith. *See also Martin v. Brown*, 63 F.3d 1252, 1265 (3d Cir. 1995) ("Any sanctions imposed against Bender should also be imposed solely because of her own improper conduct without considering the conduct of the parties or any other attorney."). In other words, the Eleventh Circuit's holding was

unremarkable – it just concluded that there is no exception for clients from the individualized bad faith requirement.

Rejecting this precedent, the Ninth Circuit also concluded that "the district court did not abuse its discretion in concluding that Goodyear participated directly in the discovery fraud," but did not identify specific grounds supporting a bad-faith finding. Pet. App. at 25a. The Ninth Circuit relied on the district court's conclusion that "in-house counsel . . . maintained responsibility for reviewing and approving all the incomplete and misleading discovery responses." *Id.* But sanctions under inherent powers require "bad faith," not negligence; accordingly, the Eleventh Circuit in *Byrn*e vacated sanctions where the client "relied on" counsel in good faith. *Byrne*, 261 F.3d at 1125-26; *see id.* at 1120 (client demonstrates bad faith by "knowingly or recklessly raises a frivolous argument" or "delaying or disrupting the litigation or hampering enforcement of a court order"). Significantly, there is no finding that Goodyear did not rely in good faith on outside counsel.

The Ninth Circuit also relied on the district court's findings that Goodyear's corporate representative "falsely testified" about what tests were available. Pet. App. at 25a. As the Eleventh Circuit in *Byrne* explained, "[s]tanding alone, a false or inconsistent statement in a deposition does not compel the conclusion of bad faith." 261 F.3d at 1125. The district court in *Byrne* based its bad-faith finding on "several false assertions in affidavits, depositions, and sworn statements" made by the client. *Id.* at 1124. Even accepting the statements as false, the court of appeals found no basis for inferring that the

statements were made "for a harassing or frivolous purpose" sufficient to constitute bad faith. *Id.* In this case, the district court misconstrued testimony by Goodyear's representative and disregarded Goodyear's explanations of his statements. The Ninth Circuit, moreover, declined to address any of Goodyear's arguments regarding this testimony.

Fundamentally, the Ninth Circuit failed to explain how Goodyear's conduct supported the sanctions award in this case. Unlike other Circuits, the Ninth Circuit left open whether clear and convincing evidence is required to show bad faith. *Compare Lahiri v. Universal Music & Video Distrib. Corp.*, 606 F.3d 1216, 1219 (9th Cir. 2010) (declining to decide standard because clear and convincing evidence of misconduct supported bad faith finding), *with Ali v. Tolbert*, 636 F.3d 622, 627 (D.C. Cir. 2011); *Ty Inc. v. Softbelly's, Inc.*, 517 F.3d 494, 499 (7th Cir. 2008); *Autorama Corp. v. Stewart*, 802 F.2d 1284, 1287-88 (10th Cir. 1986); *Weinberger v. Kendrick*, 698 F.2d 61, 80 (2d Cir. 1982).

Whatever the clear and convincing standard means, at a minimum, it requires the court to address and respond to the sanctioned party's explanations of the facts. Here, offering only conclusory assertions in response to Goodyear's evidence that it reasonably relied on counsel in the course of discovery, the court of appeals failed to respond to Goodyear's factual defenses and failed to articulate how Goodyear's conduct demonstrates subjective bad faith. Unable to make this showing, the court of appeals instead relied primarily on its erroneous conclusion that Goodyear was liable for the actions of its attorneys. The decision below thus

illustrates the importance of a rigorous evidentiary standard for imposing sanctions.

C. This Case Affords The Court The Opportunity To Clarify The Law On An Important Issue.

This Court should accept *certiorari* and adopt the position of the Eleventh Circuit, and reaffirm the basic principle that inherent authority sanctions require individualized findings of bad faith. Among other things, the Ninth Circuit's ruling would eviscerate the advice of counsel defense, imperiling the ability of clients to rely on outside counsel's advice in discovery. In light of the practical difficulties of coordinating cases all over the country, subject to a panoply of different rules, Goodyear reasonably and necessarily relied on outside counsel's expertise in the discovery process. And like any other attorney-client relationship, for it to be successful, Goodyear had to be free to trust and rely upon the advice of its counsel.

This underscores a pragmatic problem raised by the district court's sanctions order. The court essentially faulted Goodyear for alleged discovery lapses by counsel, in the process assuming Goodyear's omniscience. That a client retains final say on certain matters does not mean that the client must scrutinize every document that is produced or not produced in discovery. Nor does that reflect the practical reality in any civil litigation, from antitrust to personal injury. Neither corporations nor individuals are generally equipped to micromanage every aspect of the litigation process; rather, they hire outside lawyers for just that purpose.

This is not to say that a party can simply wash its hands of anything done by counsel, but if a party is going to be sanctioned for the actions of its counsel based on inherent powers, the court needs to find that the party deliberately directed the improper activity and thus itself acted in bad faith. *See Byrne*, 261 F.3d at 1123 ("Sanctionable conduct by a party's counsel does not necessarily parlay into sanctionable conduct by a party."). Because a party is entitled to rely on an attorney's advice about legal matters, courts "have generally declined to impose sanctions on represented parties," particularly where the offending conduct relates to work within the competence of counsel. *Rentz v. Dynasty Apparel Indus., Inc.*, 556 F.3d 389, 398 (6th Cir. 2009); *see Barrett v. Tallon*, 30 F.3d 1296, 1302–03 (10th Cir. 1994) (client should not be sanctioned if offending conduct relates to work that lies within competence of counsel).

In the rare instances where courts have found it appropriate to sanction a client rather than an attorney, the client has been directly responsible for the actions in question. In the discovery context, for example, sanctions have been imposed on parties for failing to adequately search for and provide outside counsel with responsive documents. *See, e.g.*, *Wachtel v. Health Net, Inc.*, 239 F.R.D. 81, 94-96 & nn.32-33, 103 (D.N.J. 2006) (defendant "chose not to disclose" to outside counsel that its email system automatically removed email from active files); *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422, 436 (S.D.N.Y. 2004) (sanctioning party where in-house counsel failed to ensure adherence to litigation hold by employees); *Qualcomm Inc. v. Broadcom Corp.*, 2008 U.S. Dist. LEXIS 911, 66 (S.D. Cal. Jan. 7, 2008), *aff'd in part and vacated in part*, 548 F.3d

1004 (Fed. Cir. 2008) (sanctioning client who failed to conduct search for responsive documents and whose "employees were integral participants in hiding documents and making false statements to the court and jury"). Goodyear, in contrast, opened its doors to outside counsel's discovery efforts, locating and providing to outside counsel the very tests in question.

This Court should not let stand a rule under which a client cannot trust and rely upon advice of outside counsel on discovery matters. Such an approach defeats the very purpose of retaining outside counsel. Without action by this Court, the foundation of the attorney-client relationship, whereby clients are entitled to trust their lawyers and rely on their advice, is severely eroded.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant this petition for a writ of *certiorari*.

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