

# State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or [gspencer@nycourts.gov](mailto:gspencer@nycourts.gov).

To be argued Wednesday, September 9, 2020 (arguments begin at noon)

## No. 39 **Chavez v Occidental Chemical Corporation**

Tobias Bermudez Chavez and some 200 other plaintiffs are agricultural workers from Costa Rica, Ecuador and Panama who claim they suffered a range of physical harms – including sterility, liver damage, cancer, vision loss, and skin and respiratory disorders – due to their exposure to dibromochloropropane (DBCP), a pesticide used on Central and South American banana plantations where they were employed from the 1960s through the 1980s. In 2012, they brought this putative class action in federal court against manufacturers of DBCP, including Occidental Chemical Corp. Occidental moved to dismiss the plaintiffs’ claims as time-barred under New York’s three year statute of limitations for personal injury suits.

U.S. District Court for the Southern District of New York denied the motion to dismiss, finding the limitations period was tolled from 1993 to 2010 based on a putative class action filed in Texas state court in 1993 on behalf of Latin American plantation workers against manufacturers of DBCP. Under class action tolling, the filing of a class action suspends the statute of limitations for all members of the putative class until class certification is denied. Although New York courts have not addressed the doctrine of cross-jurisdictional class action tolling, the federal court in Chavez concluded that “New York most likely would recognize” the doctrine because its courts have adopted class action tolling triggered by cases filed in New York, and it said such tolling serves similar purposes regardless of whether the prior action was filed in New York or elsewhere. The Texas case was dismissed in 1995 on the ground of *forum non conveniens* – and the pending motion for class certification denied as moot – to permit the plaintiffs to pursue their claims in their home countries, but the federal court said this did not end the tolling for Chavez plaintiffs because the Texas order “effected only a conditional dismissal” and did not deny class certification on the merits. The Texas court included a “return jurisdiction” clause in its 1995 order which provided that, if the plaintiffs’ claims were dismissed for lack of jurisdiction in their home countries, the Texas court “will resume jurisdiction over the action as if the case had never been dismissed.” The Texas court reinstated the plaintiffs’ claims in its case in 2005, and the federal court ruled that tolling continued for the Chavez plaintiffs until the Texas court denied a motion for class certification on the merits in 2010, thus rendering the Chavez action timely. On appeal, Occidental argued that New York law does not permit cross-jurisdictional class action tolling and, even if it did, any tolling would have ended when the Texas case was first dismissed in 1995.

The U.S. Court of Appeals for the Second Circuit has asked this Court to resolve the key issues in a pair of certified questions: “(1) Does New York law recognize cross-jurisdictional class action tolling,” i.e., tolling of a New York statute of limitations by the pendency of a class action in another jurisdiction? “(2) Can a non-merits dismissal of class certification terminate class action tolling, and if so, did the Orders at issue do so?”

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To be argued Wednesday, September 9, 2020 (arguments begin at noon)

## No. 41 **People v Jonathan Batticks**

Jonathan Batticks and two fellow gang members, Princesam Bailey and Reginald Wiggins, were charged with assaulting another inmate at the Manhattan Detention Complex in October 2011. At their joint trial, Bailey's attorney repeatedly asked the victim during cross-examination whether Wiggins had referred to him with an inflammatory racial epithet by calling him an "old n....r" prior to the assault. A juror interrupted the proceedings with an outburst directed at Bailey's attorney, saying, "Please, I am not going to sit here ... and having you say that again. Don't say it again or I am leaving.... I find it very offensive." The judge told the juror, "Ma'am, that's not appropriate from you;" and then told the attorney, "I don't want to hear it again.... You don't ask the same question over and over and over again. Move on."

Supreme Court denied motions to discharge the juror or declare a mistrial, and rejected a request to ask the juror if she could be fair and impartial. It said, "[I]f you look at the Court of Appeals decision ... in [People v Mejias (21 NY3d 73)], you will see that, unless it's clear on its face that a juror is grossly disqualified, that there is no need to question the individual juror.... I don't think there would be any basis to remove the juror without first establishing that she can't be fair and impartial. I don't think her statement indicates that she could not be, only that she found the repeated use of the phrase distasteful." The court gave the jury a curative instruction. Batticks was convicted of second-degree assault and sentenced to 6½ years in prison.

The Appellate Division, First Department affirmed, rejecting Batticks' claim that People v Buford (69 NY2d 290) required the trial court to inquire into the juror's fitness to serve. It cited its prior decision affirming the conviction of a codefendant, People v Wiggins (132 AD3d 514), which said the trial court "properly determined, based on its own observations, that no inquiry was necessary.... The juror's brief outburst telling the codefendant's counsel not to use a racial epithet 'again' ... demonstrated that she was bothered by the repeated use, at least four times, of the phrase, rather than by counsel's initial line of questioning.... In any event, a juror's mere annoyance with a question or with counsel would not be a basis for discharge...."

Batticks argues the juror "became grossly unqualified to serve as a juror because her ability to remain fair and impartial was vitiated by her outburst, which, in and of itself, constituted substantial misconduct warranting her discharge. [The juror] disregarded the court's instructions, disrupted the course of the trial, and threatened to leave the proceedings if co-defendant's counsel did not cease using the phrase ... during cross-examination of the complainant, effectively abrogating her sworn duty as a juror by threatening to strike herself off the jury. She usurped the role of the court and unduly injected the issue of her highly emotional reaction to the line of cross-examination into the proceedings. This conduct required that the court strike her from the jury or, at the very least, required the court to conduct a probing and tactful *in camera* examination of the juror to determine if she could separate her emotional reaction from her duty to render an impartial verdict."

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