No. 19-319

In the
Supreme Court of the United States

BONNIE CRUICKSHANK-WALLACE
and WILLIAM WALLACE,
Petitioners,

v.

CNA FINANCIAL CORPORATION;
CONTINENTAL CORPORATION; CONTINENTAL
CASUALTY CO.; COLUMBIA CASUALTY CO.,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

William Wallace
10 Crestview Dr.
Parkesburg, PA 19365
610-314-3756
610-425-1403
will21921@yahoo.com

Petitioner pro se

Bonnie Cruickshank-Wallace
10 Crestview Dr.
Parkesburg, PA 19365
610-314-3756
610-425-1403
will21921@yahoo.com

Petitioner pro se

THREE QUESTIONS PRESENTED FOR REVIEW

1. This case provides an *issue of first impression* before this Court: should this Court affirm the standard that "'*claim preclusion*' requires...the [new] claim arise from the same set of facts as a claim adjudicated on the merits in the earlier litigation"?

U. S. District Court for the Eastern District of Pennsylvania ("EDPa.") grant of motion to dismiss Respondents Continental Casualty Company ("Continental") and Columbia Casualty Company ("Columbia"), affirmed by the Third Circuit ("3dCir."), used '*claim preclusion*' by arguing that plaintiff could have brought its new intentional tort claims in the previous litigation.

But the previous state summary judgment dismissed on a technicality that case of legal negligent malpractice against a lawyer, not a party to this case, and therefore stated "we need not address whether issues of material fact exist concerning the individual elements of the claims."

2. This case provides an *issue of first impression* before this Court: should this Court affirm precedent that finds a holding company of a wholly owned subsidiary, who controls and daily manages its holding company, liable for the conduct of its subsidiary?

EDPa. grant of motion to dismiss Respondent holding company The Continental Corporation ("TCC") regarding jurisdiction, affirmed by 3dCir., because TCC

has no "presence or operation in Pennsylvania" conflicts with abundant precedent that there is an alter-ego relationship when one entity "controls the day-to-day operations of another" and that holding companies (TCC) of Continental are liable for Continental's conduct in Pennsylvania.

3. Should this Court reverse EDPa. grant of motion to dismiss Respondent CNA Financial Corporation ("CNAF") regarding jurisdiction, affirmed by 3dCir., by using "*issue preclusion*" when the new Complaint alleges "changes in facts essential to a judgment"?

The use of "issue preclusion" in the instant case conflicts with *Montana v. United States*, 440 U.S. 147, 159 S.Ct. 970 L.Ed.2d 210 (1979) *159:

> "It is, of course, true that changes in facts essential to a judgment will render collateral estopple inapplicable in a subsequent action raising the same issues. *See, e.g. United States v Certain Land at Irving Place*, 415 F.2d 265, 269 (CA2 1969); 1B J. Moore, Federal Practice ¶ 0.448, pp. 4232-4233, ¶ 0.422 [4], pp. 3412-3413. [add'l citations omitted]."

PARTIES TO THE PROCEEDINGS

All the parties involved are identified in the style of the case.

RULE 29.6 CORPORATE STATEMENT

The Petitioners are individuals requiring no Rule 29.6 Statement.

RULE 14.1(B)(III) STATEMENT

April 22, 2019 judgment and opinion of the 3dCir. *Bonnie Cruickshank-Wallace; William Wallace, Appellants v. CNA Financial Corporation; Continental Corporation; Continental Casualty Co.; Columbia Casualty Co.* No. 18-3635, affirmed the EDPa. grant of defendants' motions to dismiss this case; Not Precedential, appear at Appendix A and B to this Petition. June 12, 2019 order denying petition for rehearing appears as Appendix E.

November 13, 2018 order and opinion of the EDPa. *Bonnie Cruickshank-Wallace; William Wallace v. CNA Financial Corporation; Continental Corporation; Continental Casualty Co.; Columbia Casualty Co.,* CA 18-2769, granted defendants' motions to dismiss the case, appear at Appendix C and D to this Petition. Jurisdiction in the EDPa is based upon diversity.

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Supreme Court of the United States:

3d Circuit:

EDPa.:

Other U.S. Districts:

Pa. Cases:

Regulations:

Other Authorities:

OPINIONS BELOW

April 22, 2019 judgment and opinion of the 3dCir. *Bonnie Cruickshank-Wallace; William Wallace, Appellants v. CNA Financial Corporation*; *Continental Corporation; Continental Casualty Co.; Columbia Casualty Co.* No. 18-3635, affirmed the EDPa. grant of defendants' motions to dismiss this case; Not Precedential, appear at Appendix A and B to this Petition. June 12, 2019 order denying petition for rehearing appears as Appendix E.

November 13, 2018 order and opinion of the EDPa. *Bonnie Cruickshank-Wallace; William Wallace v. CNA Financial Corporation*; *Continental Corporation; Continental Casualty Co.; Columbia Casualty Co.*, CA 18-2769, granted defendants' motions to dismiss the case, appear at Appendix C and D to this Petition.

JURISDICTION

Jurisdiction of this Court is pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

1. Complaint allegations

Pro se Plaintiff-Petitioners Bonnie Cruickshank-Wallace and husband William Wallace ("Wallace") August 2, 2018 amended their EDPa. Complaint ("Comp.") (A-30)[1] against Defendant-Respondents CNAF, TCC, Continental and Columbia (collectively

[1] References to the appendix to this Petition will be made by designation "A" followed by the page number.

"CNA"). EDPa. granted Defendants' motions to dismiss Continental and Columbia based upon "*claim preclusion*", and to dismiss TCC based upon lack of jurisdiction, and to dismiss CNAF based upon "*issue preclusion*", affirmed by the 3dCir.

"On motion to dismiss, the court must accept plaintiff's allegations as true and construe disputed facts in favor of the plaintiff." *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

Comp. (A-30) new factual allegations support new claims of intentional torts with malice against the CNA Defendants: ¶ 1 in March 2013 lawyer James Tupitza ("Tupitza") entered representation for Wallace in their existing case against defendant Klehr Harrison law firm ("Klehr") insured and defended by "CNA"; ¶ 10 "CNA" then insured Tupitza on May 19, 2013 with a policy contingency "requiring Tupitza to cooperate with CNA instructions"; ¶ 11 "Tupitza's August 1, 2013 email to 'CNA'" stated that he "had a conflict of interest"; ¶ 12 September 6, 2013 "CNA" wrote Tupitza stating that "CNA" had talked to Tupitza on September 3, 2013 "the same day of the docketed, emailed court order for a second [Wallace Pa.R.C.P.] 1925(b) Statement" of appeal issues required to advance the Wallace appeal; ¶ 5 Tuptiza then stopped his associate Julie Lathia, Esq. from filing the Wallace 1925(b) Statement and the court dismissed his client's appeal; and ¶¶ 21-23 CNA **intentionally created a conflict of interest by insuring opposing lawyer Tupitza while insuring and defending Klehr and** intentionally gave "*encouragement*" to a conflicted Tupitza to not file the Wallace 1925(b) Statement for

the malicious purpose to cause the Wallace appeal to be dismissed for the benefit of CNA.

Also, Comp. ¶ 9 (A-33) alleges new facts that all four CNA Defendants:

> "are composed of the same Continental employees, corporate officers and directors in the same Chicago office...all using the same name and business logo 'CNA'...and CNAF financial statement with the SEC, with net worth over $12 Billion, incorporates all operations of wholly owned subsidiaries Continental [TCC], Continental Casualty [Continental] and Columbia Casualty [Columbia]."

Comp. allegation that all four CNA Defendants are "controlled and daily managed" by Continental is also supported by Continental employee David Lehman's affidavit (A-43) (quoted p 11 and exhibit to Appellant 3dCir. Brief ("3dCir.Br."):

> ¶ 2. "TCC is a holding company...and it maintains its principal place of business in Chicago, Illinois. TCC was created for the purpose of holding the common stock of a number of operating subsidiaries for the benefit of TCC's sole shareholder CNAF. TCC owns 100% of the stock of Continental. Continental owns 100% of the stock of Columbia."
> ¶ 3. "TCC has no employees."

The Comp. causes of action are "intentional torts with malice" against all four CNA Defendants, which include (A-35):

COUNT I – Rest.2dTorts § 87 Concerted Intentional Tortious Conduct

19. Plaintiffs incorporate all foregoing paragraphs as if fully set forth in this claim.

20. This COMPLAINT alleges Tupitza intentional tortious conduct *with malice* and the claims against the CNA Defendants are for intentional torts *with malice.*

21. Because of the material differences in financial risk, it is a conflict of interest for CNA to insure the liability of a party and opposing lawyer in litigation (e.g. Wallace lawyer Tupitza versus Klehr), opposing parties in litigation, or insure the liability of opposing lawyers in litigation, which creates the potential for conflicted conduct.

22. The CNA Defendants intentionally, if by *willful blindness*, gave *assistance* or *encouragement* or by *mutual tacit understanding,* concerted with Tupitza, who they knew was conflicted, to maliciously breach his i) fiduciary duty, ii) manifest contractual duty as well as iii) Wallace instruction, and iv) promise to the Wallaces, detrimentally relied upon by the Wallaces, to file the court ordered second Wallace Rule 1925(b) Statement.

23. CNA Defendants concert with Tupitza was purposeful *with malice* to harm the Wallaces for the financial benefit of CNA by wrongfully causing dismissal of the Wallace appeal of their claims against Klehr insured by

> CNA for $20 million. *Qui sentit commodum sentire debet onus* – he who receives the benefit ought also to suffer the burden.

* * *

2. The previous Pennsylvania litigation.

Previously, *pro se* Wallaces sued Tupitza in Court of Common Pleas Chester County, Pennsylvania, *"Wallace v Tupitza"*, claiming *"legal negligent malpractice"* (Comp. ¶ 15) with "subsidiary" claims against defendants CNAF, Continental and Columbia (without the above allegations regarding CNA; TCC was not a party).

Wallace v Tupitza July 2016 summary judgment dismissed the case (A- 51) [2] (exhibit to and quoted in all Wallace briefs) by disagreeing with the 2013 Wallace *pro se* complaint's Pa.R.C.P. 1042.3 Certificate (3dCir. agrees) (A-3 *fn* 2, 8) that checked Certificate option # 3 that expert testimony was not necessary (A-83); therefore, the state summary judgment p 2 *fn* 2 stated, "we need not address whether issues of material fact exist concerning the individual elements of the claims" (Comp. ¶ 16) (A-52 *fn* 2):

> "Having concluded that Plaintiffs' claims collectively fail for failure to certify that expert testimony is required, see infra at 12-15, we need not address whether issues of material fact

---

[2] The state summary judgment confusingly combines a separate Wallace legal negligent malpractice case against other local lawyers Egan and Jokelson with *Wallace v Tupitza*. Nearly all the summary judgment opinion regards the Egan/ Jokelson case.

exist concerning the individual elements of the claims.

> "The parties were advised that the Court would entertain summary judgment motions only on the limited issues of Mr. Wallace's standing in this litigation [p 2 found Mr. Wallace had standing] and the need, if any, for a [PaRCP 1042] certificate of merit."

The state summary judgment (A-79) also dismissed claims against Continental and Columbia because they were "derivative" of the legal negligent malpractice claim against Tupitza.

Also, the state granted CNAF's 2014 preliminary objection (A-80) that Pennsylvania lacked jurisdiction over CNAF (quoted in part Comp. ¶ 8), p 2 *fn* 2 (A-82):

> "Plaintiffs base their jurisdictional argument on the theory that [CNAF, Continental and Columbia] are a 'corporate combine'...[but] the record demonstrates that [CNAF] does not control the other two insurance company defendants [Continental and Columbia]."

3. The 3dCir. affirmed EDPa. grant of CNA's motions to dismiss.

(a) <u>3dCir. affirmed EDPa. grant of motion to dismiss Continental and Columbia based upon "*claim preclusion*".</u>

3dCir. affirmed EDPa. grant of motion to dismiss Continental and Columbia by using "*claim preclusion*"

to argue that the new intentional tort claims could have been brought in the previous state case (A-7):

> "...the causes of action are not the same because their suit in state court alleged negligent malpractice on the part of Tupitza, whereas, here, they are alleging intentional torts on the part of Continental and Columbia...
> "Even if we did not view their claims as essentially the same...Appellants could have brought these intentional tort claims in the state court suit."

But, EDPa. and 3dCir. use of *'claim preclusion'* conflicts with *Allen v. Curry*, 449 U.S. 90, 101 S.Ct. 411 (1980) *94:

> "...any final, valid judgment on the merits by a court of competent jurisdiction precludes any future suit between the parties or their privies on the same cause of action."

And conflicts with *Blunt v. Lower Merion Sch. Dist.* 767 F.3d 247 (3d Cir. 2014) that claim preclusion bars a new claim only when "the claim arises from the same set of facts as a claim adjudicated on the merits in the earlier litigation". *Blunt* ¶ 4:

> "Claim preclusion requires: (1) a final judgment on the merits in a prior suit...
> "Thus, res judicata bars claims litigated between the same parties or their privies in earlier litigation where the claim arises from the same set of facts as a claim adjudicated on the merits in the earlier litigation."

Of moment, the state summary judgment dismissing *Wallace v Tupitza* stated that it made no finding of facts: "we need not address whether issues of material fact exist concerning the individual elements of the claims."

The *Blunt* court's standard "Claim preclusion requires...the [new] claim arise from the same set of facts as a claim adjudicated on the merits in the earlier litigation" is consistent with this Court in *Montana v. United States*, 440 U.S. 147, 159 S.Ct. 970 L.Ed.2d 210 (1979) regarding 'issue preclusion', *159:

> "It is, of course, true that changes in facts essential to a judgment will render collateral estopple inapplicable in a subsequent action raising the same issues. *See, e.g. United States v Certain Land at Irving Place*, 415 F.2d 265, 269 (CA2 1969); 1B J. Moore, Federal Practice ¶ 0.448, pp. 4232-4233, ¶ 0.422 [4], pp. 3412-3413. [add'l citations omitted]."

Tellingly, the EDPa. and 3dCir. do not address the *Wallace v. Tupitza* summary judgment, they do not address the new claim of conflict of interest, nor do they address *Blunt*, all of which are quoted *passim* Wallace briefs.

Rather than take the state summary judgment at its word that it did not address facts regarding the claims, the 3dCir. asserts (A-7), "Appellants' current claims are derived from the same set of underlying facts as their prior claims." But, without a previous judgment finding of facts, the 3dCir. unsupported statement is baseless.

Also, 3dCir. asserts (A-8), without support or reason, that the Wallaces' 1042 Certificate that no expert testimony was necessary was "dispositive of the merits" of the negligence claim against Tupitza and (A-8) misrepresents *McCool v Dep't of Corr.*, 984 A.2d 565 (Pa.Commw.Ct. 2009) without quoting *McCool*. Rather, *McCool* says nothing regarding either facts or merits, but simply dismissed a medical negligence claim for failure to produce any Certificate.

3dCr. (A-8, 9) further *begs the question* regarding the purpose of a 1042 Certificate by arguing a red herring fallacy (also not previously argued and not addressed by the EDPa.) by misrepresenting that the Pennsylvania Superior Court "looked at the underlying merits of the legal negligence claim" without quoting the Superior Court. Rather, to quote *Cruickshank-Wallace*, 2017 WL 4231601, at *4: "Simply put, Appellants needed the opinion of an expert witness in their case within a case."

Whether or not a 1042 Certificate is "dispositive" of a negligence claim does not constitute a judgment on the merits of the claim as required by this Court in *Allen* and by *Blunt*. Rather, to expediently dismiss a *pro se* legal malpractice case against local lawyers, the state simply disagreed with the Wallace 1042 Certificate when the court should have appropriately instructed that expert testimony be provided.[3]

---

[3] *Michael A. Harris v. Michael Moser*, GD 09-4769 C.C.P. Allegheny Co (Pa.Super.Ct. upheld without opinion Dec. 2011): plaintiff Harris' *negligent* malpractice action against former lawyer Moser claimed damages only for the claims in the *case-within-the-case*, and to support Harris' Certificate of Merit that no expert

Nonetheless, regardless the purpose of a 1042 Certificate, without a previous judgment finding of facts regarding a claim, *'claim preclusion'* cannot bar new claims.

(b) <u>3dCir. affirmed EDPa grant of motion to dismiss TCC for lack of jurisdiction</u>.

3dCir. affirmed EDPa. grant of motion to dismiss TCC (not a party to the state case) for lack of jurisdiction, because (A-5), "Appellants did not offer any facts to overcome TCC's defense...that it is a holding company with no presence or operation in Pennsylvania."

EDPa. and 3dCir. failed to address the Wallace repeated argument that TCC, like CNAF, has *single entity* "corporate combine" liability for the conduct of its wholly owned subsidiary Continental who controls and daily manages TCC. Yet, 3dCir. (A-10) acknowledged the Comp. factual allegation, "Citing paragraph 9 in their amended complaint, [Appellants] argue that Continental controls CNAF...."

That the holding companies of Continental are liable for Continental's conduct is supported by several Federal decisions quoted in all the Wallace briefs:

Savin Corp. v. Heritage Copy Prods., Inc., 661 F.Supp. 463, 469 (MDPa. 1987) that there is an alter-

---

testimony was necessary, Harris argued those underlying claims were "comprehensible by the average person", but the court disagreed and ordered Harris to comply with Rule 4003.5(a) and identify an expert and provide an expert report.

ego relationship when one entity "controls the day-to-day operations of another."

Continental Casualty Co., CNA Financial Corp. v. Diversified Industries, 884 F.Supp. 937, EDPa. (1995) granted counterclaim to include Continental's holding company CNAF. CNAF's motion to dismiss because of lack of personal jurisdiction was denied, *964:

> "...policyholders pay insurance premiums to "CNA." Moreover, the court is aware that many products are advertised under the name 'CNA Insurance.' Accordingly,..[this court] deny CNA Financial's motion to dismiss...CNA Financial next argues that it is not subject to this court's in personam jurisdiction...the court is not persuaded...the court cannot conclude as a matter of law that CNA Financial has not purposefully availed itself of the privilege of doing business in Pennsylvania...Finally, the court notes *965 that CNA Financial has been subject to suit in other Pennsylvania cases based upon its business operations within Pennsylvania. *See, e.g., Little v. MGIC Indemnity Corporation,* 836 F.2d 789 (3d Cir. 1987)."

And *Little* supra, plaintiff successfully included as defendants MGIC's holding companies CNAF and Continental, though CNAF had no contacts with Pennsylvania that might otherwise confer jurisdiction under Pennsylvania Judiciary Act, 42 Pa.C.S. § 5301, *et seq.*, and long arm statute, 42 Pa.C.S. § 5322.

Also, *In re Ins Brokerage Antitrust Litig.*, 282 F.R.D. 92, 126 (D.N.J. 2012) was initiated in Harrisburg by the Pennsylvania Attorney General claiming RICO racketeering against American Casualty Co. and its three holding companies TCC, CNAF and Continental, regardless that TCC and CNAF had no personal contacts with Pennsylvania. Several state actions were consolidated and transferred to the District of New Jersey for "aggregate lodestar settlement of $162,663,305.00".

Yet, EDPa and 3dCir. fail to address these cases[4] and the Wallace argument.

The only purpose for CNA's layers of holding companies, like a Russian matryoshka nesting doll, is to shield assets from liability and minimize state taxes.

---

[4] Additional cases applying Pa. law that find CNAF liable for the conduct of Continental: *Cashman v. Continental Casualty Co. and CNA Financial Corp.*, Dist. Court, EDPa., No. 08-5102 (2012) *citing Reif v. Continental Casualty Co. and CNA Financial Corp.*, 248 F.R.D. 448 Dist. Court, EDPa., No. 08-5102 (2008); *Grim v. American Casualty Co., Continental Casualty Co., CNA Financial Corporation, et al,* 8 Pa. D. & C. 3d 447 Common Pleas Court Berks County, PA (1978).

And Pa. cases applying ***single entity*** **"corporate combine":** *Castle Cheese, Inc. v. MS Produce, Inc.*, No. 04-878, 2008 WL 4372856 at *32 (W.D.Pa. Sept. 19. 2008); *Goldenberg v. Royal Petrolium Corp.*, Sept Term 2003, No. 004168, 2004 Phila.Com.Pl. LEXIS 45 (C.C.P. Phila. Dec. 2004)(Jones, J.) citing *First Union Bank v Quality Carriers, Inc.*, 48 Pa.D.&C. 4th 1, 50 (C.C. P.Phila. 2000); *Fineman & Bach, P.C. v. Wifran Agricultural Inductrie, Inc.*, March term 2001, No. 2121, 53 Pa.D.&C. 4th 62 (C.C.P.Phila. July 30, 2001) (Herron, J.); *Rinck v. Rinck,* 526 A.2d 12211, 1223 (Pa.Super.Ct. 1987); *Schwab v. McDonald (In re LmcD, LLC),* 405 B.R.555, 564-65 (Bankr. M.D.Pa. 2009)

The 3dCir. ruling that there is no jurisdiction over a "holding company with no presence or operation in Pennsylvania" directly conflicts with *Savin,* and *Continental Casualty Co.* as well as *Little* specific to Continental's holding companies' liability for Continental's conduct in Pennsylvania.

(c) 3dCir. affirmed EDPa grant of motion to dismiss CNAF based upon "*issue preclusion*"

3dCir. affirmed EDPa. grant of motion to dismiss CNAF by using "*issue preclusion*" to argue (A-10): "...Appellants did not allege new jurisdictional facts in the District Court sufficient to warrant re-litigation of the jurisdictional issue."

Yet, 3dCir. (A-10) also acknowledged, "Citing paragraph 9 in their amended complaint, [Appellants] argue that Continental controls CNAF, whereas in the state court suit, they alleged CNAF controlled Continental."

In *Wallace v Tupitza* the state granted CNAF's preliminary objection that Pennsylvania lacked jurisdiction over CNAF (A-82) (quoted EDPa Wallace brief p 3):

> "Plaintiffs base their jurisdictional argument on the theory that [CNAF, Continental and Columbia] are a 'corporate combine'...[but] the record demonstrates that [CNAF] does not control the other two insurance company defendants [Continental and Columbia]."

The 3dCir. decision conflicts with *Montana* *159: "It is, of course, true that changes in facts essential to a judgment will render collateral estopple inapplicable in a subsequent action raising the same issues ..." as well as conflicts with *Ashcroft* "On motion to dismiss, the court must accept plaintiff's allegations as true..."

3dCir. (A-10) acknowledgment that Comp. ¶ 9 alleges Continental controls and daily manages CNAF is certainly a "sufficient new jurisdictional fact" antithetical to the state preliminary objection judgment dismissing CNAF because it does not control Continental and Columbia. Therefore pursuant to *Montana, issue preclusion* does not bar the issue of jurisdiction over CNAF from being re-litigated.

THREE REASONS FOR GRANTING THE WRIT

1. This case provides an *issue of first impression* that this Court should affirm the *Blunt* court's standard that "claim preclusion requires...the [new] claim arise from the same set of facts as a claim adjudicated on the merits in the earlier litigation."

Because the previous state summary judgment stated that it made no finding of facts, there can be no determination of the facts regarding the legal negligence claim against Tupitza.

Furthermore, Comp. alleged facts regarding the new intentional tort claims, including CNA's concerted conflict of interest Comp. ¶ 21 (A-35) that caused Tupitza's conflict, certainly do not arise from the facts or claims regarding legal negligent malpractice by Tupitza.

Courts may be too eager to clear their dockets by using *'claim preclusion'* that any new claim related to a prior case could have been previously brought.

This Court should require that the use of *claim preclusion* because a new claim could have been previously brought shall require a finding that the new claim arise "from the same set of facts" as a previous judgment finding of facts regarding a claim adjudicated on its merits.

Therefore the new intentional tort claims against Continental and Columbia should be remanded for litigation.

2. This case provides an *issue of first impression* that this Court should affirm that a holding company of a wholly owned subsidiary, who controls and daily manage its holding company, is liable for the conduct of its subsidiary.

The 3dCir. ruling that there is no jurisdiction over a "holding company with no presence or operation in Pennsylvania" conflicts with *Savin*, and *Continental Casualty*, and *Little* that holding companies (TCC and CNAF) of Continental are liable for Continental's conduct.

Therefore, the claims against TCC should be remanded for litigation.

3. The EDPa. and 3dCir. use of *issue preclusion* to dismiss CNAF conflict with this Court in *Montana* "that changes in facts essential to a judgment will render collateral estopple inapplicable in a subsequent action raising the same issues."

3dCir. (A-10) acknowledged Comp. ¶ 9 allegation that Continental controls and daily manages CNAF, which is certainly a "sufficient new jurisdictional fact" antithetical to the state preliminary objection judgment dismissing CNAF by finding that it does not control Continental and Columbia.

Courts may be too eager to clear their docked by simply disregarding new alleged facts in a new complaint in order use *'issue preclusion'*.

Furthermore, this Court should clarify that it matters not which company controls and daily manages the other company or which company wholly owns the other for there to be mutual liability for the conduct of the other.

Therefore, pursuant to *Montana*, *'issue preclusion'* does not bar the issue of jurisdiction over CNAF from being remanded for litigation.

CONCLUSION

Based upon the foregoing, *pro se* Petitioners request that the Court grant their petition for a writ of certiorari.

Respectfully submitted.

Bonnie Cruickshank-Wallace
10 Crestview Dr.
Parkesburg, PA 19365
610-314-3756
610-425-1403
will21921@yahoo.com

Petitioner pro se

William Wallace
10 Crestview Dr.
Parkesburg, PA 19365
610-314-3756
610-425-1403
will21921@yahoo.com

Petitioner pro se

APPENDIX