

In the
Supreme Court of the United States

BONNIE CRUICKSHANK-WALLACE, ET VIR,
Petitioners,

v.

CNA FINANCIAL CORPORATION, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the courts below correctly ruled that the doctrine of *res judicata* prohibits Petitioners from relitigating a prior judgment by the Pennsylvania Court of Common Pleas.

2. Whether the Eastern District of Pennsylvania correctly ruled that it could not assert personal jurisdiction over The Continental Corporation.

3. Whether the courts below correctly ruled that the doctrine of collateral estoppel prohibits Petitioners from relitigating the Pennsylvania Court of Common Pleas' earlier determination that Pennsylvania law does not allow them to assert personal jurisdiction over CNA Financial Corporation in this cause of action.

RULE 29.6 STATEMENT

Respondent Columbia Casualty Company is a wholly owned subsidiary of Respondent Continental Casualty Company. Continental Casualty Company is a wholly owned subsidiary of Respondent The Continental Corporation. The Continental Corporation is a wholly owned subsidiary of Respondent CNA Financial Corporation.

Loews Corporation (NYSE: L). owns the majority of the stock of Respondent CNA Financial Corporation and is publicly traded (NYSE: CNA). No other publicly-held entity owns 10% or more of the stock in any Respondent.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
INTRODUCTION	1
STATEMENT OF THE CASE.....	2
REASONS TO DENY THE PETITION	4
A. <i>Res Judicata</i>	4
B. Personal Jurisdiction.	4
C. Collateral Estoppel.	4
CONCLUSION.....	6

TABLE OF AUTHORITIES

Page

RELATED CASES

<i>Cruickshank-Wallace v. CNA Fin. Corp.</i> , 187 A.3d 907 (Pa. 2018)	3
<i>Cruickshank-Wallace v. CNA Fin. Corp.</i> , 2017 WL 4231601 (Pa. Super. Ct., Sept. 25, 2017), <i>rearg. den.</i> , 178 A.3d 188 (Pa. Super. Ct., Nov. 22, 2017)	2, 3
<i>Cruickshank-Wallace v. CNA Fin. Corp.</i> , 2018 WL 5981838 (E.D. Pa. Nov. 13, 2018) (No. CV 18-2769)	1, 3, 5
<i>Cruickshank-Wallace v. CNA Fin. Corp.</i> , 769 F. App'x 77 (3d Cir. 2019)	1, 3, 4, 5
<i>Cruickshank-Wallace v. Egan, et al.</i> , No. 2013-11158, Pa. Ct. C.P. (Jan. 5, 2015)	3, 5
<i>Cruickshank-Wallace v. Egan, et al.</i> , No. 2013-11158, Pa. Ct. C.P. (July 11, 2016)	3

CASES

<i>Already, LLC v. Nike, Inc.</i> , 568 U.S. 85 (2013)	5
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JUDICIAL RULES

Sup. Ct. R. 10	2, 4, 5
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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is reported at *Cruickshank-Wallace v. CNA Fin. Corp.*, 769 F. App'x 77 (3d Cir. 2019) (PETITION A-1), and the underlying opinion of the Eastern District of Pennsylvania may be obtained at *Cruickshank-Wallace v. CNA Fin. Corp.*, 2018 WL 5981838 (E.D. Pa. Nov. 13, 2018) (No. CV 18-2769) (PETITION A-14).



INTRODUCTION

Petitioners spent five years litigating in Pennsylvania their claims that Respondents allegedly caused two of Petitioners' former lawyers to commit malpractice. After losing on the merits and on appeal in Pennsylvania, they filed this federal lawsuit which repeats essentially the same factual allegations and causes of action they unsuccessfully litigated in state court. The District Court dismissed the various Respondents on grounds of *res judicata*, collateral estoppel, and personal jurisdiction, and the Third Circuit affirmed.

The Petition is an unsound vehicle for the Court to revisit these legal doctrines. The Petition identifies no circuit split or important issues of federal concern, and there is no genuine debate that the courts below applied the correct rule of law. Fundamentally, the Petition merely contends that the courts below got

the facts wrong. This kind of quotidian dispute over facts and their application to undisputed law does not present a compelling reason for the Court to grant certiorari. Sup. Ct. R. 10.



STATEMENT OF THE CASE

Petitioners are not strangers to the courts. In 1998, the Mercantile County Bank sued them in a Maryland debt action over a \$750,000 loan guarantee. After the bank prevailed, Petitioners filed a 2006 abuse of process lawsuit in Maryland state court against the bank and its lawyers. Petitioners' lawsuit failed, so in 2009 they hired a second set of lawyers to sue their first set of lawyers for malpractice in the Pennsylvania Court of Common Pleas. Petitioners' malpractice lawsuit also failed, so in 2013 they hired a third set of lawyers to appeal the adverse judgment. The appeal also failed, so in 2013 the Petitioners filed *pro se* malpractice lawsuits in the Pennsylvania Court of Common Pleas against their second and third sets of lawyers. *See Cruickshank-Wallace v. CNA Fin. Corp.*, 2017 WL 4231601, at *1 (Pa. Super. Ct., Sept. 25, 2017), *rearg. den.*, 178 A.3d 188 (Pa. Super. Ct., Nov. 22, 2017).

Petitioners conjectured that their lawyers' insurers might have caused this alleged malpractice, so they filed derivative claims against Respondents Continental Casualty Company ("Continental"), Columbia Casualty Company ("Columbia"), and CNA Financial Corporation ("CNAF"). 2017 WL 4231601, at *2. The court dismissed CNAF, a nonresident holding company,

on personal jurisdiction grounds. PETITION A-81 (ORDER, *Cruickshank-Wallace v. Egan, et al.*, No. 2013-11158, Pa. Ct. C.P. (Jan. 5, 2015)). Later it granted summary judgment in favor of all remaining defendants, ruling that Petitioners had failed to satisfy their burden of proof that any of them caused or committed any malpractice. PETITION A-79 (ORDER, *Cruickshank-Wallace v. Egan, et al.*, No. 2013-11158, Pa. Ct. C.P. (July 11, 2016)). The Pennsylvania Superior Court affirmed, 2017 WL 4231601, at *3-4, and the Pennsylvania Supreme Court denied Petitioners' petition for leave to appeal, *Cruickshank-Wallace v. CNA Fin. Corp.*, 187 A.3d 907 (Pa. 2018).

Two weeks later, Petitioners filed this lawsuit against CNAF, Continental, Columbia, and The Continental Corporation ("TCC") in the Eastern District of Pennsylvania, making essentially the same factual and legal claims. 2018 WL 5981838, *4; 769 F. App'x at 80. The District Court dismissed because: (1) the doctrine of *res judicata* bars Petitioners from relitigating the substance of their failed claims against Continental and Columbia; (2) the doctrine of collateral estoppel bars them from relitigating personal jurisdiction over CNAF in Pennsylvania; and (3) TCC is a holding company with no connection to this dispute and insufficient contacts with Pennsylvania for the Eastern District to exercise specific or general personal jurisdiction under applicable Pennsylvania law. 2018 WL 5981838, *3-5; *aff'd*, 769 F. App'x at 79-82.



REASONS TO DENY THE PETITION

The Petition identifies no sound reasons to grant certiorari. Simply put, the Third Circuit’s opinion is not in conflict with the other circuits, there are no legal issues of first impression, and there are no important federal issues at stake. Sup. Ct. R. 10. The Petition merely invites another round of review of the prior courts’ factual findings:

A. *Res Judicata.*

Petitioners wrongly characterize the Pennsylvania court’s judgment as a mere “technicality” rather than a merits judgment that Petitioners failed to meet their burden of proof against Continental and Columbia. They seek this Court’s review of those facts and permission to relitigate them in the District Court. PETITION at 7-8, 14; *see also* 769 F. App’x at 80-81.

B. Personal Jurisdiction.

Petitioners claim that the Third Circuit erred in affirming the dismissal of TCC because it gave insufficient weight to their factual assertions that all Respondents are part of a “corporate combine,” each mutually amendable to personal jurisdiction in all the same places. PETITION at 10-13; *see also* 769 F. App’x at 79-80.

C. Collateral Estoppel.

Petitioners reassert that the Third Circuit erred in affirming the dismissal of CNAF because it gave too little credence to the supposedly “new jurisdictional

facts” that CNAF is part of this alleged “corporate combine.” PETITION at 13-14; *see also* 769 F. App’x at 81-82.

Not only are the inferences to be drawn from such idiosyncratic factual claims a poor vehicle for certiorari, Sup. Ct. R. 10, but nothing Petitioners asserted in federal court is genuinely “new.” Three times Petitioners argued the same “corporate combine” hypothesis, and three times courts have rejected it for a total lack of evidence in support. *See* PETITION A-82 fn.2 (Pa. Ct. C.P.), 2018 WL 5981838, at *3 (E.D. Pa.), *aff’d*, 769 F. App’x at 80 (3d Cir.).

The Petition also is moot. The Pennsylvania courts ruled that Petitioners failed to meet their burden of proof that their former lawyers committed malpractice; hence, regardless of what happens here, they never can prevail on derivative claims that Respondents “caused” that malpractice. Petitioners’ vehement disagreement over other facts does not merit certiorari when no viable legal path exists for them to recover against Respondents. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013).



CONCLUSION

The Petition should be denied.

Respectfully submitted,

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