20-67

SUPREME COURT CASE No.

SUPREME COURT OF THE UNITED STATES
FOR NINTH CIRCUIT COURT OF APPEALS
CASE NO. 19-55351

PEOPLE OF THE UNTED STATES
AND DELANEY SMITH PHARM.D.,M.D.
CIVIL SURGEON FOR THE UNITED STATES
DEPARTMENT OF DEFENSE

PETITIONER / PLAINTIFFS

V.

LOS ANGELES COUNTY MTA

DEFENDANT, AND

NINTH CIRCUIT COURT OF APPEALS

RESPONDANT,

PETITION FOR WRIT OF CERTIORARI
[FILED PURSUANT TO FRCP 60(b)(4)]

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QUESTIONS PRESENTED

1. Whether Ninth Circuit Court of Appeals forfeited subject matter jurisdiction to make rulings when Court failed and then refused to file Notice of Appeal served on district court on 1/4/19 in response to 12/11/18 district court's ruling because if filed the NOA had raised the issue of "contradictory rulings within the same Appellate Court thereby pursuant to Rutters Appellate Court Procedure automatically invoke the "en banc panel which then refused to rule in the absence of a NOA on Appellate court docket?

2. Plaintiff is a Federal Plaintiff who was denied a hearing for purpose of entering default against removing parties in both state and federal courts after case was remanded pursuant to 28 USC sec 1447(c), but federal order to remand never filed at state court because it was hidden from default window clerks by Los Angeles County defendants who also served as Court Counsel for Los Angeles Superior Court with free access to court records?

3. Whether federal court district court judge's ruling on 12/11/18 was rendered "null and void" because he lacked any arguable basis for subject matter jurisdiction to deny federal plaintiff's 5th Amendment Constitutional

4. right to "due process" to file a related federal court actions with federal claims in federal court [including but not limited to a [60(b)(4) motion for relief from "void rulings"?]

5. Whether pursuant to Federal Civil Rights sec 1983 petitioner's right to "due process" had been violated in underlying Los Angeles County MTA workers compensation fraud case when Los Angeles county counsel removed the case to federal court in violation 28 USC sec 1445(c), but federal judge ignored timely filed order to remand for lack of subject matter jurisdiction filed on 6/30/00 and thereafter substituted federal laws for state court administrative regulations [ie 8 CCR sec 9792.5, 10490 (which prohibits filing demurrers and requires a trial), but denied plaintiff a trial because according to the federal court mediator [a federal court judge] "she said she does not like niggers and has no intention of allowing this case to go to trial if not settled in mediation conference"?

6. Whether Federal Civil Rights Continuing Acts Doctrine was violated in 2016 when in response to 60(b)(4) Motion for Relief From Void rulings a federal court judge validated the removal of workers compensation fraud case to federal court; denial of right to trial by judge Manella because of petitioner's race;

and in the absence of subject matter jurisdiction over person [primary treating physician pursuant to labor code section 4061.5], and absence of trial with Q.M.E, A.M.E. rebuttal of treating physician's opinion offered to award sanctions by declaring primary treating physician in a workers compensation fraud case was a "vexatious litigant"; while ignoring WCAB judge's ruling that laches had no application to this plaintiff [Joyce Chapman v. Los Angeles County MTA; and administrative director's rulings against co-defendant Cambridge Integrated Services that defendant should have paid penalty [10%] and interest when uncontested medical bills are not paid within 60 days of receipt.

PARTIES TO THE PROCEEDINGS

PEOPLE OF THE UNITED STATES OF AMERICA
AND DELANEY SMITH PHARM.D.,M.D.
CIVIL SURGEON FOR UNITED STATES
AND PRIMARY TREATING PHYSICIAN

PETITIONERS,

v.

COUNTY OF LOS ANGELES,
ANGELA NOSSETT M.D.
COUNTY OF LOS ANGELES COUNSEL
MARY REYNA ESQ.
RAYMOND FORTNER ESQ.
AND DOES 1-100

DEFENDANTS,

NINTH CIRCUIT COURT CHIEF THOMAS

RESPONDENT,

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RELATED UNITED STATES SUPREME COURT CASES [NO. 17-407, 16-1028, 06-1425,] HEARINGS ON PETITIONS FOR WRIT OF CERTIORARI DENIED BY SCREENING ATTORNEYS WITH NO "JUDICIAL REVIEW" AS ORDERED ON 9/6/11

OPINIONS ENTERED IN THE CASE

Ninth Circuit Appellate Court MANDATE [App. No. 19- 55351] dated 5/25/20 2:11 cv 04996 PA FMO District Court. For the Court Molly Dwyer Clerk [App. p. 2a]

Ninth Circuit Appellate Court ORDER [App. No. 19-55351] dated 5/17/20 Silverman, W. Fletcher, and Rawlinson Circuit Judges [App. p. 3a]

District Court Judge Percy Anderson ORDER dated 12/11/18 cv 11-4996 PA (FMOx) [App. 4a – 5a]

3/18/20 Notice of Electronic Filing [App. 6a]

3/18/20 Notice of Clerical Error [App. 7a]

District Court Judge Percy Anderson ORDER for dated 9/6/11 cv 11-4996 (FMOx) Case Closed; Judicial Review Required [App 8a]

Ninth Circuit Appellate Court ORDER dated 1/3/18 Ninth Circuit Court Chief, Thomas, Silverman, and Rawlinson [No. 16-56176] [App. 10-11a]

FEDERAL COURT RECORDS AND DOCKET NOT FOUND BY CLERK 2:12 CV 1963 PA (FMOx)

Notice of Deficiency Default/ Default Judgment 3/14/12 [2:12 cv 01963 PA (FMOx) [App 12 a]

District Court Judge Percy Anderson Order dated March 13, 2012 cv 12- 1963 PA (FMOx) [App 13a]

JURISDICTIONAL STATEMENT

Dr. Delaney Smith, Civil Surgeon for the United States Government, is an involuntary "pro se" litigant because recommended LA County Bar Association attorneys refused to accept case on fee for service basis due to an unstated "conflict of interest". The United States Supreme Court Justices have exclusive jurisdiction to review, deny or revise WCAB decisions pursuant to Feldman. This petition for writ of certiorari [filed pursuant to FRCP 60(b)(4)] is timely filed within 90 days of the final ruling of Ninth Circuit Court of Appeals on March 17, 2020 and therefore within the 90 day statutory time period limitation of Rule 31.1.

Re: Conflict of Interest: *** State Law SBX 211 legalized payments by County of Los Angeles to state employees [Superior Court judges] as "tax free stipends" previously ruled to be illegal [Sturgeon v. County of Los Angeles (2008)]; legislation was opposed by the State of California Judicial Council. Law appears to be "unconstitutional" pursuant to the intent of the United States Congress as expressed in federal statute 28 USC sec 455(a)(b)(4) because it contains no clause that requires judges to make financial disclosure or self recuse...which has corrupted both state and federal court judges, to such an extent...Los Angeles County counsel [who are criminals pursuant State of California Department of Industrial Relations - WARNING TO ATTORNEYS] prevailed without ever filing an answer to FAC.

STATEMENT OF CASE

Pursuant to FRCP 60 (b)(4) several Petitions for Relief From Void Rulings were served Clerk at Los Angeles Federal District Court but court routinely denied each of them and ignored the fact that petitioner is a federal plaintiff with a right to federal court venue under federal laws cited herein. Ninth Circuit Court of Appeals in violation of petitioner's Federal Civil Rights and right to "due process" and hearing refused to file the timely served Notice of Appeal on 1/4/19 submitted in response to the district court's 12/11/18 ruling and did not post the paid filing fee thereby essentially stealing the $505.00 fee. Notice of Appeal is a requisite for subject matter jurisdiction of a Circuit Court and in the absence of a Notice of Appeal "there is no arguable basis for the

Appellate Court to make rulings" as all such rulings would be rendered "null and void"... which is ground for this petition for writ of certiorari [filed pursuant to FRCP 60(b)(4)]. With no NOA on file there is no opportunity for valid hearing at the Ninth Circuit Court of Appeals before an "en banc panel" which according to Rutter's Federal Appellate Procedure is "automatically invoked" when there are contradictory rulings within the same Circuit Court.

The face of the NOA states Civil Matter: 12/11/18 Denial of 60(b)(4) Motion to Reopen Closed Case - No Judicial Review; No Ruling on Jurisdiction *Contradictory District Court Rulings and Remand

to State Court that Denies Jurisdiction on 7/29/11 2:11 cv 11 -4996 PA (FMOx) Related to cv 05986 NM (CWx). NOA to date has not been filed by the Court of Appeal and filing fee is not recorded in the record.

With no NOA in the record instead of an "en banc panel ruling" as is required to address the issue of "contradictory rulings" the Ninth Circuit Panel of Barry Silverman, William Fletcher and Johnnie B. Rawlinson, who had been previously disqualified for reasons stated herein [in addition to no arguable subject matter jurisdiction to rule on their own contradictory rulings..... ruled on April 2, 2019 ...

"A review of the record suggests that this appeal of the district court's December 11, 2018 post – judgment order may be appropriate for summary disposition under Ninth Circuit Rule 3-6 (b). See United States v. Hooten 693 F 2d 857, 858, (9th Cir. 1982)(stating standard for summary affirmance).

In addition to being made in the absence of subject matter jurisdiction to "rule on their own contradictory rulings" "there is no arguable subject matter jurisdiction for a federal Appellate Court judge substitute a federal criminal case judicial standard [USA v. Hooten] to a 60(b)(4) Petition For Relief From Void Rulings. This deliberate misapplication of an incorrect "judicial standard" for a FRCP 60(b)(4) violated this petitioner's Constitutional 5th Amendment right to a hearing, that is consistent to Rule 60(b)(4) judicial standard...either ruling is void or it is valid, with no discretion to ignore or otherwise dismiss an

appropriately filed 60(b)(4) Petition. Additionally the ruling violated the FEDERAL ERIE Doctrine as the defendants in default pursuant to established case law cited herein WA Rose v. Municipal Court prohibits courts from considering the writings from defendants in default.

The defendants filed no Appearance in this case [and therefore effectively out of court] but according to the Appellate Court Docket #1 "Appearances were filed..." but a review of the record reveals no such filing and accordingly cannot be downloaded from Pacer [because no such appearance was ever filed].

This is a clear and glaring example of "institutional systematic racism".... and "judicial fraud"... that has caused our prisons to overflow with 25% of the world's incarcerated population while this nation represents 4% of the world's population, all of which begins "not with the criminal justice system" it is the entire legal justice system... that needs revision beginning with the UNITED STATE SUPREME COURT as is the duty of the United States Congress under the Bill of Rights.

Los Angeles County defendants never filed an answer in state or federal courts and filing demurrers are illegal and therefore prohibited in State of California workers compensation law cases, which no attorney, judge or court can deny or contravene for purpose of facilitating worker compensation fraud.

Title 8 California Code of Regulations section 10490 states:

"Demurrers, petitions for judgment on the pleadings, and petitions for summary judgment are not permitted" -see Workers Compensation Laws of California 2004 Edition

In violation of Federal Trespassing Laws instead of referring this case to the Ninth Circuit's "automatically invoked en banc" to rule on their contradictory rulings, the panel of Silverman, Fletcher and Rawlinson high jacked the case by not filing the NOA [filed for contradictory rulings] and then ruled "in the absence of any arguable basis for subject matter jurisdiction to make such ruling.... that there would be no "en banc hearing". In subsequent rulings the final of which was on March 17, 2020 [upon which this petition for writ of certiorari is filed in compliance with United States Supreme Court Rule 13.3.] The Ninth Circuit Appellate Court ruling with no NOA or appearances by defendants in the record by the disqualified Appellate Court Panel was criminal violation of Federal Civil Rights Act section 1983 committed while acting under "color of law"; violation of Federal Civil Rights Continuing Acts Doctrine, and in this primary treating physician's Opinion these acts constitute a "hate crime against this petitioner" [knowingly committed by judges "acting under color of law".... "in the absence of any arguable subject matter jurisdiction over person" [primary treating physician pursuant to labor section 4061.5]

In response to the district court's 12/11/18 ruling whereby in response to 60(b)(4) Petition For Relief From Void Rulings the federal court judge ruled the *"Plaintiff filed this action in the Los Angeles County Superior Court on April 11, 2011. After Defendants removed the action to this Court, the Court remanded the case upon Plaintiff's explicit disclaimer of any federal claims alluded to in the Complaint. (See Minute Order of July 25, 2011, cv 11-4996 PA (FMOx). After the Superior Court dismissed Plaintiff's action with prejudice, Plaintiff attempted to remove the case to federal court. (See Minute Order of July 25, 2011 CV11-4996 PA (FMOx)."*

The 12/11/18 ruling failed to mention that defendants had filed a tardy removal of First Amended Complaint and while in default had thereafter failed to file an answer in either state or federal courts. Following the 7/25/11 Federal Court Order to Remand .....on 7/29/11 "Los Angeles County Counsel" identified by the default window clerk supervisor as attorney Stephen Bennett [who also doubled as Counsel for Los Angeles Superior Court told the clerks they could not file plaintiff's Request for Entry of Default because the case is in federal court. In the state of California attorneys who make false statements for the purpose of facilitating workers compensation is a crime pursuant to Insurance Fraud Code section 1871.4, and penal code sections 549, 550 as set forth in the Warning to Attorneys from the State of California Department of

Industrial Relations –administrative director dated October 1, 2012. ***"Workers Compensation Fraud is a Crime:*** *Under Insurance Code section 1871.4, it is a felony to make or cause to be made knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying compensation, as defined in Labor Code section 3207, or present or cause to be presented any knowingly false or fraudulent material statement in support of, or in opposition to, any claim for compensation for the purpose of obtaining or denying compensation, as defined in labor code section 3207. It is a crime to knowingly assist, conspire with, or solicit any person in an unlawful act of workers compensation insurance fraud."*

Following the federal court's order to remand on 7/25/11 stamped by the administrators on 7/27/11 in room 102 as received [by signed letter of acknowledgment] but then have these documents concealed from Los Angeles Superior Court clerks and Court by Los Angeles County Counsel [while business as usual] is a crime pursuant to the State of California's administrative director's WARNING TO ATTORNEYS.

In what should have been a slam dunk case with defendants in default and refusing to answer FAC ....the 12/11/18 ruling of the district court judge seemed to reward the defendants for described criminal misconduct and clear "workers compensation fraud".... failed to mention that unable to file for "default and judgment" as late as 9/6/11 at

Los Angeles Superior Court with no order to remand in state court file [mailed by federal court clerk] and because under state law remand jurisdiction does not re-vest at state court until the clerk files the order to remand.... **FEDERAL PLAINTIFF filed a federal court action on 9/6/11 prior to any state court hearings....**that contained federal claims and was entitled.... "Plaintiff's Notice of State Court Clerk's Error In Failing To File Order For Remand; Contempt of Court; Obstruction of Justice By Defendants; And Request For U.S. Marshall to Hand Deliver Federal Court Order For Remand to State Court Judge" **[FRAUD UPON THE COURTS] [LABOR CODE SECTION 5955] [PURSUANT TO 28 U.S.C. 1445(c)]**

The document explained..... "The court room was dark for approximately a 2 week period that extended to 8/25/11. Yesterday it was reported that not only was the Court Order missing, but also the FAC Complaint was also missing from the judge's chamber, and had reportedly been removed by County Counsel, according to a reliable source at the court house. There was no reason for the defendants in this case to remove the file for the judge's court room, except for the purpose of tampering with the FAC, and or it's nearly one inch thick attachment of Exhibits".

Federal Action Continues.....

Los Angeles County Fraud Upon the Courts

" In serving the plaintiff with the Demurrer dated

8/9/11 [not filed with the clerk] the defendants, and their counsel engaged in mail fraud and legal malpractice, by knowingly filing another demurrer in this case as they had been admonished in federal court that such filings are moot as they violate 8 CCR section 10490 which prohibits filing Demurrers...."

Federal Action Filed 9/6/11 Continues:

RETALIATION

"The instant case was filed right after a "Right to Sue Letter" was issued from the EEOC, and a statute of limitation waiver extends in that this case is still under investigation by the EEOC."

Continuing,

Judicial Committee Review

"Plaintiff contend[s] ignoring a federal court judge's Orders is a serious matter. It should not be necessary for the U.S. Marshall to deliver the judge's Order in this case....."

".....The conduct at State Court in hiding the federal court Order on more than one occasion in this matter would appear to be worthy of Judicial Council Review."

Plaintiff's federal action entitled....."Notice of State Court Error" in Failing to File Order For Remand.... etc was stamped by the federal court clerk "Received

But Not Filed" Sept. 6, 2011.

The same day 9/6/11 the federal court judge served still another Federal Order to Remand this time with "Judicial Review Required" all of which was once again ignored by Los Angeles Superior Court who completely disrespected the African American judge attempting to administer justice. But while seeking to remand the case the federal court judge was informed but seemingly overlooked the fact that the Federal EEOC "right to sue letter" created "original federal court subject matter jurisdiction." Additionally, the federal action filed on 9/6/11 created "concurrent jurisdiction" in both courts that did not vanish when the state court made a judgment on 3/2/12.

Accordingly, under federal law Pursuant to the Federal Jurisdiction and Venue Clarification Act the federal action and claims should have been filed and ruled on by the district court judge.... but each ruling appeared the reward the defendants for their disrespect shown towards him which is somewhat puzzling. The state court, and Ninth Circuit Court of Appeals ignored the federal judge's 9/6/11 "administrative closure" and Order "Case Closed: Judicial Review is Required.

Under federal law only the Justices of the United States Supreme Court can review, modify, or in any way change or ignore WCAB decisions [ie pertinent to this case ***Joyce Chapman v. Los Angeles County MTA Case No. MON 206148 FINDING OF FACTS By WCAB judge Pamela W. Foust.*** Pertinent to the

workers compensation claims of injured worker Joyce Chapman and others under the care of this "primary treating physician"... **WCAB judge Foust ruled.... "Said claim is not barred by the doctrine of laches or equitable estoppel". 1/17/01**

This one ruling by a single WCAB judge rendered all federal district court rulings that attempted to assign time limits to this [now 20 years] collections effort [ie. R. Gary Klausner (2016)] and Ninth Circuit Appellate Court rulings [ie. Thomas, Silverman and Rawlinson 5/24/17] ... were rendered "null and void" because federal court judges cannot overrule WCAB judges.

Accordingly the 9/6/11 federal court's order ***"Judicial Review is Required"*** can only be ruled on by the ***Justices of the United States Supreme Court*** that no other judge or attorneys can overturn because the ruling of the WCAB judge Pamela Foust is final.

Labor Code section 5953: Appeals Board's findings of fact are final; right to appear at hearing

"The findings and conclusions of the appeals board on questions of fact are conclusive and final and not subject to review." See Workers Compensation Laws 2004 Edition

United States Supreme Court has ruled,

"The United States Supreme Court has exclusive jurisdiction to review state appellate decisions.

Feldman, 460 U.S. at 486. See also 28 USC sec 1257. This rule applies even when the state court judgment remains subject to appeal before the highest court, see Worldwide Church of God v. Mc Nair, 805 F. 2d 888, n.3 (9th Cir 1986), and when the challenge to the state actions involves federal constitutional issue. Feldman 460 U.S. Mc Nair 805, F. 2d at 892-93...

Because resolution of Sherman's current claims would require a review of the merits of the WCAB's and state court decisions, the district court did not err by concluding that it lacked subject matter jurisdiction over the claims. Feldman 460, U.S. at 484-86; Mc Nair 805 F 2d at 892-93.

Ninth Circuit Court of Appeals Panel of Browning, Farris and Leavy ruled *"Because resolution of Sherman's current claims would require review of the merits of the WCAB's and state court's decisions, the district court did not err by concluding that it lacked subject matter jurisdiction over the claims". Sherman v. Berlin.*

In the absence of a court's subject matter jurisdiction there is nothing that a plaintiff or defendant can file to create subject matter jurisdiction, where it cannot exist [pursuant to the intent of the United States Congress as expressed pursuant to ***federal statute 28 U.S.C. section 1445(c);*** unless the litigant is an African American, or in Southern California where unlike Northern California a "slide rule of justice" is applied based upon socio-economic class status and wealth in addition to the usual element of race.

Then, different rules apply and so instead of applying the usual judicial standard which requires "sua sponte" remand of these cases... in a hand is quicker than the eye move...the **panel of Farris, Boochever and Leavy** would switch gears to apply a "federal "diversity of citizenship case" "judicial standard" making it applicable to this California state law workers compensation fraud case ....[which resulted in one of many such "contradictory rulings within the same Circuit... and even by the same judges, who joined in with defendants engaged in criminal acts, for purpose of concealment and thereby facilitating the workers compensation fraud of employer Los Angeles County MTA and their attorney Los Angeles County counsel defendants in the instant case 60(b)(4)].

Pertinent to the underlying MTA case Farris, Boochever, and Leavy would rule... *"Removal [of state workers compensation law fraud case] was available because the district court had original jurisdiction arising under federal law. 28 U.S.C. sec. 1441(b). Assuming, only for the purpose of argument, that Smith's claim are one "arising under" California workers compensation law, Smith filed an amended complaint in federal court. In these circumstances, Smith's claim may be properly viewed as having been initiated in federal court,* Vasquez v. North County Transit Dist. 292 F 3d 1049, 1061 (9th Cir 2002) .... which facilitated the fraud of county counsel by affirming federal district court rulings for summary judgment that are illegal pursuant to the Federal ERIE DOCTRINE and California Code of Regulations 8 CCR sec 10490 cited above, and the

WARNING TO ATTORNEYS from State of California Department of Industrial Relations that prohibits attorneys from making false statement pertinent to workers compensation fraud of an employer [as criminal acts pursuant to Insurance code section 1871.4, penal code sections 549, 550], which is the reason that is predictable that the defendants in default for never filing an answer will not file an answer to this petition for writ of certiorari before the United States Supreme Court.

Re: State Court Ruling that Incorporated State Court Decisions of Disqualified Judges

"A final but void order can have no preclusive effect. A void judgment [or order] is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself all proceedings founded upon it are equally worthless. It neither binds nor bars anyone." [citation] Bennett v. Wilson (1898) 122 Cal. 509, 513 – 514 (55 P. 390)(bid)

Disqualification and Invoked Recusals Prior to Ruling that Primary Treating Physician [pursuant to labor code 4061.5] is a "vexatious litigant" in the Absence of a Trial, and rebuttals by A.M.E. or Q.M.E.

Pertinent to his 12/11/18 ruling in this case the federal court judge was informed and therefore should have known that state court judge Rex Heeseman's recusal had been invoked pursuant to 28 U.S.C. sec 455(a)(b)(4).... after not denying on the

record that he had taken over a million dollars from the LA County defendants. Months later he was removed from the case and courtroom by the State of California Judicial Council. His replacement Jo Anne O'Donnell's recusal was invoked during her first hearing on 7/27/12 after failing to make financial disclosures ruled to be illegal by the California Court of Appeal (Sturgeon v. County of Los Angeles), regarding how much money she had taken from the county defendants... and all state court rulings rendered "null and void for the same reasons". With no replacement for judge O'Donnell after her initial hearing the state court case never terminated after judge O'Donnell refused to vacate the "void ruling" of disqualified judge Heeseman required pursuant to 28 USC sec. 455(a)(b)(4)(c) after his removal from the case by the State of California Judicial Council.

Several months later following her invoked disqualification for refusing to self recuse or disclose amount of money she had taken from the Los Angeles County defendants attorney Clayton Averbuck requested that she deem the petitioner [primary treating physician pursuant to labor code section 4061.5] in the absence of trial as required by the labor code and with no rebuttal of primary treating physician's Opinion by a Qualified Medical Evaluator [Q.M.E.] or Agreed Medical Evaluator [A.M.E.], and the ruling rendered "null and void" by the disqualified judge for the same reasons.

Skipping over the relevant history of the case, with void state court rulings because no federal order to remand [mailed by the clerk] was ever filed and fact

that petitioner pursuant to FRCP 60(b)(4) is a federal plaintiff, who filed a copy of the federal judge's order on August 2011, but federal court judge Heeseman refused to acknowledge the petitioner filing of Order to Remand for purpose of plaintiff's attempt to file Request for Entry of Default on 7/29/11 and 8/25/11 both of which were not filed by state court clerk.

Federal Court original jurisdiction established by EEOC's right to sue letter and concurrent jurisdiction established by federal court action served on 9/6/11 required the federal court clerk to file the petitioner's Request For Entry of Default on 3/12/12 which unlike the 9/6/11 document appears nowhere on the federal docket. Even the 3/13/12 related ruling on the federal court docket has been expunged but see appendix ___- which raises serious concern when the federal record cannot be trusted for purpose of Appeal or Petition for Certiorari. Federal Court judge continues .....

"After the Superior Court dismissed Plaintiff's action with prejudice, Plaintiff attempted to remove the action to federal court. (See Minute Order of December 11, 2012, CV 11-4996 PA (FMOx)

This 12/11/18 ruling directly contradicts the ruling of United States Supreme Court judge Ginsburg... in FRCP 60(b)(4) Motion served on May 12, 2020 but still not filed by the district court [perhaps because the current case docket does not align with documents attached to Petition [ie federal court's ruling on the Request to Enter Default filed 3/12/12 and ruled on 3/13/12 attached to unfiled 60(b)(4)

Petition as Exhibit ___ pp. __ [but does not appear on the docket].

United States Supreme Court has ruled,

"But neither Rooker nor Feldman supports notion that properly invoked concurrent jurisdiction vanishes if a state court reaches judgment on the same or a related question while the case remains sub judice in a federal court....."

"The Rooker-Feldman doctrine does not preclude the federal court from proceeding in this case. Exxon Mobile has not repaired to federal court to undo the Delaware judgment in it's favor, but appears to have filed it's federal suit (only two weeks after SABIC filed in Delaware and well before any judgment in state court) to protect itself..... Rooker Feldman did not prevent the District Court from exercising jurisdiction when Exxon Mobile filed the federal action, and did not merge to vanquish jurisdiction after Exxon Mobile prevailed in the Delaware courts. The Third Circuit misperceived the narrow ground occupied by Rooker – Feldman, and consequently erred in ordering the federal action dismissed." 364 F 3d 102, reversed and remanded Ginburg, J. delivered the opinion for unanimous Court" Exxon Mobil Corp. v, Saudi Basic Industries Corp. 544 U.S. 280 (2005)

Under federal ERIE DOCTRINE and well established state law the Request For Entry of Default filed on 3/12/12 and now hidden from the federal court docket should have been filed because

state court and all subsequent courts lost subject matter jurisdiction to do anything in the case except enter "default and judgment", which rendered alls subsequent rulings and "denials" in federal court "null and void". The 3/12/12 **"Request For Entry of Default"** and 3/13/12 ruling by the district court judge are now both missing from the federal court's electronic data base and court dockets now being issued by the clerk of the district court. **[see Appendix – pp ___ district court's 3/13/12 ruling on Request to Enter Default]**. The removal of these rulings from the court's record appears to infer that the district court judge now recognizes and agrees that the ruling is "null and void" because "there is no arguable basis for subject matter jurisdiction for district court to deny federal plaintiff's **"Request to Enter Default"** in federal court venue ***[pursuant to the intent of the United States Congress as expressed in the Federal Venue and Clarification Act]***.

Additionally, pursuant to ***Federal Erie Doctrine*** and well established state case law cited herein ***[W.A. Rose v. Municipal Court]*** after state court failed to file and enter "Request for Default and Judgment" that should have been filed at state court on 7/29/11 thereafter court[s] lost subject matter jurisdiction to do anything but enter default. Pursuant to Federal Erie Doctrine and California law which is binding on state law claims.

"Failure of Clerk of Superior Court to enter Plaintiff's Notice of Default, prevented the court from considering the filings of the Defendants..."

"The Clerk merely has to look at the record and see if there is no demurrer, or answer of such notice on file. Seeing none, he must enter default."

"The municipal court thereafter lost jurisdiction to do anything but enter default and judgment" [W.A. Rose v. Municipal Court 176 CA 2d 67; Cal. Rptr; 1 Cal rptr 49]"

The failure of Los Angeles Superior Court to enter default on 3/12/12 did not rob the district court of original jurisdiction or supplemental jurisdiction to enter default and accordingly there was "no arguable basis for subject matter jurisdiction"... to deny federal plaintiff's request to enter default in federal court on 3/12/12 which is a problem that merely removing the documents will not mend, for the purpose of defeating *FRCP 60(b)(4)* or otherwise satisfy requisite *"immediate monetary relief from void rulings".*

After careful review of the recently received federal court docket and foot note on the 12/11/18 ruling it appears that while federal judge Anderson may have been mislead by the federal Court Judge Klausner's ruling, it appears that he definitely relied upon the Memorandum filed by the defendants in default [and thereby invalidated for purpose of review by any court [as per W.A. Rose v. Muncipal Court] which according to the 12/11/18 ruling states.... *Plaintiff was declared a vexatious litigant by the Superior Court on September 19, 2012 (See Docket No 37 at 15-15 CV 11 4996 PA (FMOx).*

Needless to say a ruling on 9/19/12 issued by state court judge JoAnne O'Donnel nearly 2 months after her disqualification and invoked recusal [pursuant to 28 USC sec 455(a)(b)(4)(c) on 7/27/12 at her initial court hearing for refusing to "self recuse" or make financial declaration of monies paid to her by defendants [ruled to be illegal by Court of Appeals Sturgeon v. County of Los Angeles]....is innately "null and void". Pursuant to federal ERIE DOCTRINE and well established California case law, any court that has relied upon "void rulings" renders that court's rulings "null and void" pursuant to state law:

"A final but void order can have no preclusive effect. A void judgment [or order] is in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself all proceedings founded upon it are equally worthless. It neither binds nor bars anyone." **Bennett v. Wilson (1898) 122 Cal. 509, 513 -514 (55. 390)(bid)**

As set forth in **60(b)(4) Petition's [Proposed Order]** ....served June 3, 2020 but not filed by the district court] on p. 23... reads: "Pursuant to the Federal Erie Doctrine and state law cited above the reliance of this court on judge Klausner's 2016 rulings rendered those of this court "null and void" as this court "lacks any arguable basis for subject matter jurisdiction" to validate "void rulings" or to include excerpts of "void rulings" [ie. petitioner primary treating physician pursuant to labor code section 4061.5 is a "vexatious litigant"]... a decision and ruling made in the absence of a trial, and no Q.M.E.

or A.M.E. rebuttal of primary treating physician's OPINION.

While "vexatious litigant language appears in and thereby invalidates the 2016 ruling of federal judge R. Gary Klausner ...newly obtained evidence the federal court docket reveals that district court judge Percy Anderson appears to have relied upon the filings of defendants, who were in "irreversible default" at the time of the removal of FAC on 6/13/11 and thereafter never filed an answer to FAC in state or federal courts *[also see Beller and Keller v. Tyler*

Under Federal ERIE DOCTRINE and well established California case law rulings that rely upon defendants in default are innately "null and void".

"A final but void order can have no preclusive effect. A void judgment [or order] is in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself all proceedings founded upon it are equally worthless. It neither binds nor bars anyone." [citation] Bennett v. Wilson (1898) 122 Cal. 509. 513-514 (55. 390)(bid)

Under cited federal and state law any judge who relies upon and incorporates innately void rulings into his own decisions and rulings.... said rulings and any judgments are "null and void". Other California laws make it impossible to consider a defendant's writings who has not answered the complaint, within 30 days after answer was due, to

which there is only one exception... that is if permission to extend time to answer is granted by the plaintiff" which did not happen in this case.

According to the 12/11/18 ruling.... the district court judge reviewed and relied upon the writings [Memorandum] of defendants in default at time of 7/25/11 remand and written nearly one and a half years after the answer to complaint was due rendering the ruling "null and void"... on this additional ground.

"But this order was an attempt to extend the time to plead beyond thirty days without the consent of the plaintiff, and was thereby beyond the jurisdiction of the court and void." **(Code Civ. Proc. sec. 1054; Baker v. Superior Court, 71 Cal. Cal 583; Gibson v. Superior Court, 83 Cal. 643) [cited by W.A. Rose v. Municipal Court, 176 Cal. App. 2d 67 (Cal. Ct. App. 1959)**

The 12/11/18 ruling stated: *"Plaintiff was declared a vexatious litigant by the Superior Court on September 19, 2012* (See Docket No. 37 at 15-16, CV 11 – 4996 PA (FMOx)..." suggests that district court judge's 12/11/18 may not have relied upon disqualified federal court judge Klausner's (2016) ruling... for this assertion as was previously believed by petitioner as stated in the related FRCP 60(b)(4) petition before the district court. Based upon **newly obtained information** [the court docket] docket item no. 37 referenced by the judge in the 12/11/18 ruling is actually the Memorandum filed [by defendants in

default] in "Opposition to Motion to Vacate". Defendants County of Los Angeles, Raymond Fortner, Angela Nossett, Mary Reyna (Gysler, Jennifer) (memorandum entered 11/16/2012)...was filed with no answer on record in state or federal courts. The 12/11/18 ruling based upon the filings of defendants in default was rendered "null and void" pursuant to *W.A Rose cited herein.*

The defendants Memorandum was filed in response to plaintiff's "Notice of Motion and Motion to Vacate Void Rulings and Judgments" [FRCP 60(b)(4)] filed 11/2/12]....nearly 1 ½ years after answer to FAC was due.

The 12/11/18 ruling was rendered "null and void" on the additional ground as previously stated of "no discretion" or arguable subject matter jurisdiction to deny a motion to vacate void rulings:

"The court has no discretion to deny a motion to vacate a void judgment: "If the motion is based on a void judgment under Rule 60(b)(4), the district court has no discretion – the judgment is either void or it is not." **[Jackson v. FIE Corp. (5th cir. 2002) 302 F 3d 515, 521, (internal quoted omitted) Oilfield v. Pueblo De Bahai Lora S.A (11th Cir. 2009) 558 F 3d 1210**

Additional ground that rendered the federal district court's ruling on 12/11/18 "null and void" can be found in the fact that under federal Erie Doctrine and state laws no court can even "consider the writings" of defendants in default.

W.A. Rose v. Municipal Court:

"Failure of the Clerk of Superior Court to enter Plaintiff's Notice of Default, prevented the court from considering the filings of the defendants" [see W.A. Rose Co. v. Municipal Court (Fitzsimmons)(1959) 176 Ca 2d 67, 71, CR 49, 52]..." Also see 60(b)(4) Petition now concealed by federal district court p. 33

Pursuant to Federal ERIE DOCTRINE and well established State of California Case Law, all rulings by state and federal courts after 7/29/11 failure of state court to enter default....were rulings made outside the scope of jurisdictional authority [pursuant to WA Rose] and thereby rendered "null and void..." with no arguable basis for subject matter jurisdiction to deny "entry of default judgment.. and or deny relief from innately "void rulings" pursuant to FRCP 60(b)(4) for which relief is mandatory under the United States Constitution to 5th Amendment an 14th Amendment rights of this petitioner who is a "black native American" presently called African Americans, and "niggers" in current American society, including "court rooms" as demonstrated by this case.

Re: ON INSTITUTIONAL RACISM

Hiding Key Documents in Court

Worse yet..in courts.... we have come to expect to receive what American Slang Dictionaries might describe as the "nigger treatment" as demonstrated in this case over the past 20 years [with all laws on

the plaintiff side... and no defense from defendants in years...only to be described as a "nigger and vexatious litigant" by Ninth Circuit and Los Angeles Superior court judges... none of whom had subject matter jurisdiction "over person" [primary treating physician pursuant to labor code section 4061.5] in the absence of a trial [and with no opportunity for trial or hearing expressly because of petitioner's race]. The federal court docket case number cv – 11-4996 PA (FMOx) related court document identifies the "Related Case"..... which is ***18 USC sec 1912 et. al...which raises petitioner's*** black native American heritage rights issues but the docket itself is not available according to the federal court clerk for reasons she was unable or unwilling to explain except to say she had no knowledge of why the dockets and documents are not available.

The 18 USC sec 1912, et. al. I.C.W.A. ENTIRE CASE FILE remains hidden at federal district court.... Related Case No : 2:12 cv -01963 PA FMO] but docket number appears as related case on this case file no. 2:11 cv 04996 PA FMO.... when petitioner appeared for the scheduled hearing on 11/22/18 the federal court room door was locked and according to the courtroom clerk when she appeared many hours later she explained she had never seen the nearly 500 pages of supporting documents filed in that case [all of which seemingly disappeared into thin air "business as usual"].

The district court's 12/11/18 ruling that the FRCP 60(b)(4) petition for relief from void ruling[s] was

denied *"because the court lacked subject matter jurisdiction over the action and lacks power to vacate state court ruling (See Minute Order December 11, 2012 CV 11-4996 PA (FMOX)".* This ruling was rendered void because "there is no arguable basis for subject matter jurisdiction for district court to deny a FRCP 60(b)(4) petition for relief from void rulings" [when the ruling made it impossible for the plaintiff to file entry for default and judgment in either state or federal court after the federal court's 7/25/11 order to remand was stolen by the defendants and concealed from the default window clerks....thereby denying this federal plaintiff an opportunity to be heard.

Directly as a result of the described attorney misconduct the 7/25/11 federal court order to remand [mailed by the clerk] needed for state court subject matter jurisdiction to re-vest at state court [pursuant to Bennett cited above] created the appearance of a "jurisdictional hiatus between state and federal court making it impossible for plaintiff to file for entry of default in federal or state court.

Illegal creation of a "jurisdictional hiatus" between the state and federal courts by defense attorney identified as county counsel attorney Stephen Bennett by clerks [also doubling as Court Counsel for Los Angeles Superior Court] occurred while hiding the 7/25/11 federal court order to remand from default window clerks and telling them on 7/29/11 not to file the plaintiff's request for "entry of default" because the case was in federal case [which as a

county prosecutor he knew the law; and accordingly knew that for any attorney to make false statements that conceals or facilitates an employer's workers compensation fraud is a crime [pursuant to Insurance Fraud Code section 1871.4 and penal codes sections 549,550 – Warning to Attorneys from the State of California Department of Industrial Relations –administrative director].

Criminal acts by government officials are always a violation of public policy to which immunity does not extend under cited state and federal laws including judges.

"*When a judge knows he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost.*" Zeller v. Rankin 101 S. Ct. 2020 451 U.S. 939, 68 L. Ed. 2d 326

Which as a gadget of "institutional ....systemic racism" the law is turned off and the opposite applies... and accordingly after their rulings in this case federal court judge Nora Manela received prestigious awards in Century City and was appointed to the California Supreme Court, state court judge Rex Heeseman is believed to have been paid 4.2 million dollars [10% of case value] an amount requested [without further explanation] by county counsel and granted by the Los Angeles County Board of Supervisor in December 2011 and day later he refused invoked recusal and continued making rulings, state court judge O'Donnell was appointed to a State Ethics Committee, and attorney

Eric Schnurpfeil [who hid the 8/2/02 administrative director's ruling against defendant Cambridge Integrated Services [aka Sedgwick CMS, Presidium, Hertz Claims Management [a subsidiary of American Airlines] thereby protracting this case... was appointed as Deputy of State of California Ethics Commission].

This case is a multifaceted, mixed motive Federal Civil Rights case that includes many "causes of action". The Federal EEOC "right to sue letter" created federal original subject matter jurisdiction. There is a WCAB, and workers compensation fraud related component. However related civil claims for damages are not within the exclusivity of the WCAB that include Federal FCC, mail fraud, RICO, and Federal Military related loss of services and related loss income due the conduct of the employer Los Angeles County MTA, county prosecutors [who are defendants in this case] sued for illegal interference in the collections process by filing false documents in courts and the arbitration hearing with First Health which disrupted that arbitration.. resulting in a arbitration settlement of $300,000.00 with project net loss of over $7,400,000.00... with judge Manella illegally threatening to dismiss the case against First Health if not settled in arbitration. The co-defendant said that they had wanted to settle during mediation but could not settle until petitioner first settled with Los Angeles County MTA [for reasons not explained]??? Various other co-defendants included several "unlicensed" co-defendants acting as third party administrators and Travelers Insurance Company [a Property and Casualty Company] that

engaged in illegal acts for purpose of facilitating worker compensation and other "insurance frauds" acts under various names [but is an unlicensed health insurance company and unauthorized illegal Health Care Company [HCO] when operating in the State of California without a license; which Travelers admits.

These defendants and others were named in the underlying MTA fraud case that ended with no final ruling after the mediator a federal court judge explained that we should settle the case because the district court judge Nora Manella said "she does not like niggers and has no intention of allowing this case to go to trial" [required to adjudicate California State worker compensation cases]. That case filed in 2000 at Los Angeles Superior Court had been removed to federal court by county counsel to avoid a trial in state court [required pursuant to 8 CCR sec 10490] and actually terminated under federal law terminated with 6/30/00 Motion to Remand which was ignored and judge Manella refused to address the issue of "lack of subject matter jurisdiction" [to adjudicate state law workers compensation claims in federal court without a trial and using federal laws].

Lack of subject matter jurisdiction for federal court to adjudicate state law workers compensation claims by substituting federal laws for state regulations [Title 8 California Code of Regulations section 9792.5, and 10490] rendered all of the MTA case rulings "null and void". Los Angeles County Counsel acting as defense attorneys for MTA were sued in 2011 for their role in fraud and illegal defense

[pursuant to 28 USC sec 1445(c)] that resulted in the MTA case having no dispositive ruling... because in 11/19/04 judge Manella had attempted to illegally extend the state law contract based arbitration agreement with First Health PPO network to MTA and the other co-defendants [none of whom had a contract with petitioner and therefore no right to arbitration].

About that same time she insinuated that this primary treating physician [pursuant to labor code section 4061.5] could be a "vexatious litigant" but she "lacked any arguable basis for subject matter jurisdiction over person" as a federal court judge in the absence of a trial and rebuttal from a Qualified Medical Evaluator [Q.M.E] or Agreed Medical Evaluator [A.M.E]. Additionally, her ruling were invalidated by the rulings of WCAB judge Pamela Foust and others cited herein. Perhaps most importantly the State of California Department's administrative director Gannon (8/21/02) ruled against co defendant third party administrator Cambridge Integrated Services for it's "business as usual practice" of not paying penalty and interest as an automatism when uncontested medico-legal bills are not paid within 60 days of receipt, which federal judge Manella's rulings did not at all reverse as they were rendered "null and void" by the administrative director.

The string of affirming Ninth Circuit Appellate Court decisions were all rendered "null and void" for the same reason... Ninth Circuit Court of Appeals lacks any arguable basis of subject matter

jurisdiction to make innately void rulings of judges Manella and her successor in MTA case R. Gary Klausner valid.

In the underlying MTA case lack of subject matter jurisdiction was a continuing violation of due process, which was indeed the net effect and intended result of defense attorneys who improvidently removed state law workers compensation cases to federal court, for purpose of facilitating the workers compensation fraud of employers as set forth in the State of California Department of industrial relations administrative director's Warning to Attorneys [pursuant to Insurance Fraud Code section 1871.4, penal code section 549, 550] which prohibits attorneys from making false statements for purpose of facilitating workers compensation fraud.

Lack of "original subject matter jurisdiction" is not an issue in the instant action filed pursuant to FRCP 60(b)(4) for several reasons that include the fact in the related case filed 2011 against the Los Angeles County defendants, the EEOC had issued a right to sue letter that created original subject matter jurisdiction for this court as explained herein. Concurrent jurisdiction was established by the separate federal action filed on 9/6/11 that contained federal claims that was never ruled on by the federal court judge Percy Anderson. The 7/25/11 federal court order to remand [pursuant to 28 USC sec 1447(c)] was a decision that is consistent with "supplemental created by "right to sue letter."

Concurrent jurisdiction was created when federal

plaintiff filed the 9/6/11 federal action while state court was denying subject matter jurisdiction to file the request for entry of default that should have been filed on 7/29/11 and 8/25/11 [therefore long before the initial state court hearing in October 2011]. During the November 2011 state court jurisdiction ruled that state court jurisdiction did not begin until November 2011 but judge Heeseman never filed the federal order for remand required for state law to revest pursuant to ***state law Bennett*** cited herein rendering all of his rulings "null and void".

The federal judge's conclusion that he lacked subject matter jurisdiction to make rulings after 7/25/11 order to remand was more than simple err, because it robbed petitioner of opportunity to adjudicate perfectly valid state and federal claims in either state or federal courts. Under federal ERIE DOCTRINE and State of California the state court forfeited subject matter jurisdiction to do anything but enter the default after 7/29/11 when the court clerk failed to file and enter Request to Enter Default on 7/29/11 that should have been filed. There is evidence that the acknowledgment of receipt of order to remand was stamped and signed on 7/27/11 in room 102 by Los Angeles Superior Court administrators. [also see- Petition 60(b)(4) Exhibit pp. served via United States Postal Service on May 12, 2020 but never filed by the district court clerk [without explanation] which had the net effect of facilitating the workers compensation fraud SCHEME OF COUNTY OF LOS ANGELES AND LOS ANGELES COUNTY COUNSEL AND THE

TAX PAYERS WHO FUND MTA'S WORKER COMPENSATION PROGRAM.

LOSS TO FEDERAL TAXPAYERS

$33,000,000.00 of taxpayers funds [alleged to be workers compensation premiums disappeared when Los Angeles County Counsel and Los Angeles County MTA made the false claim that effective September 1, 1998 the workers compensation program was fully insured by Travelers Insurance "a Property and Casualty Company". Also see 60(b)(4) Pet. 51 served on district court but still not filed.. as this is evidence of mail fraud and ongoing Federal RICO violations that continue to this day **[but as penalty and interest continues to accrue pursuant to the administrative director's WARNING TO ATTORNEYS regard false statements that no federal court judge, or attorney can ignore, modify, deny or reverse by any means other than the Justices of the United States Supreme Court pursuant to *Feldman.***

There is concern that someone with access to the district court Clerk's Office has concealed the most recent FRCP 60(b)(4) Petition from judge Percy Anderson as a business as usual practice for which there are other examples [ie the Request for Entry of Default filed at Federal Court on 3/12/12 appears nowhere on the docket and even the related ruling by judge Anderson is missing from the district court's docket [evidence of ruling 3/13/12 ruling attached as an Exhibit to unfiled Petition For Writ of Certiorari at district court.

There is growing concern that the reason the Petition FRCP 60(b)(4) has not been filed is because it cannot be filed with documents attached [presented as Exhibits] that do not appear on the federal court's docket..... as the district court clerk is now reporting that the docket for an entire Federal I.C.W.A 18 USC sec 1912 et. al. case filed in 2018 but is still missing missing from the district court record [2:12 cv 01963 PA FMO] even though it appears as a "Related Case" on the this docket [2:11 cv 04996 –PA-FMO]

These are continuing acts that violate this petitioner's "right to due process", which as primary treating physician... included the right to a trial, which instead was denied because of petitioner's race, and affirming Appellate Court decisions ruled that the issue raised [being denied a trial because of race] was so insubstantial as to not require a hearing and lower court rulings were repeatedly affirmed].

PRIMARY TREATING PHYSICIAN'S OPINION

It is this primary treating physician's opinion "there is no arguable basis for subject matter jurisdiction of district court judge Nora Manella" to adjudicate state worker compensation fraud claims by substituting federal laws for state administrative laws, and ignoring administrative directors WARNING TO ATTORNEYS [PURSUANT TO INSURANCE FRAUD CODE SECTION 1871.4, PENAL CODE SECTIONS 549,550]. Federal court judges Manella and Klausner and attempted to settle the claims of this primary treating physicians Opinion, in the absence of a trial.... by applying a

contract related arbitration settlement agreement with First Health PPO Network to co-defendant MTA and other defendants, which was in violation of federal and laws because none of the co-defendants had a contract with petitioner, and therefore no agreement to arbitrate.

The ruling of federal court judge Percy Anderson on 12/11/18 is "null and void"because there is "no arguable basis for subject matter jurisdiction" to ignore and not rule on a FRCP 60(b)(4) Motion for Immediate Relief From Void Rulings filed by a Federal Plaintiff or any other plaintiffs with right to due process under the 5th Amendment of the Constitution of the United States... and for anyone to deliberately, knowingly do so is an Obstruction of Justice pursuant to the intent of the United States Congress as expressed pursuant to 18 USC section 1001, 1503, 1505, and Federal Jurisdiction and Venue Clarification act; and violations of the 5th and 14th Amendments of the United States Constitution and net effect would be to facilitate the workers compensation fraud of the County of Los Angeles and it's attorneys Los Angeles County Counsel. It was a Continuing Act under the Federal Civil rights act sec 1983, when acting under "color of law" the defendants initiated various schemes to facilitate racial discrimination, including attempts to re-segregate the racial panel of the employer Los Angeles county MTA by making the false claim [in violation of Ins. code sec 1871.4, and penal code sections 5449,550] of having workers compensation insurance with Travelers Insurance company which was impossible pursuant to labor code licensing

requirements under section 4600.35, and without an approved application as required for HCOs under labor code section 4600.5. Furthermore Travelers filed Admissions in federal court Insurance Company that is had no license to operate as an insurance company [also see FRCP 60(b)(4) petition now hidden by federal district court for Evidence of Insurance Fraud Exhibit A pp. 43-75 [a petition that cannot be filed without further incriminating the defendants and involved judges pursuant to the State of California's Department of Industrial Relations – WARNING pursuant to Insurance Fraud Code section 1871.4, and Penal code section 549,550 and related RICO violations and mail fraud rulings of the State of California Supreme Court [Vacanti v. State Compensation Insurance Fund –see hidden petition

United State Supreme court has ruled:

"If federal plaintiff presents an independent claim, even one that denies a state's legal conclusion in a case in which the plaintiff was a party, there is jurisdiction and state court determines whether the defendant prevails under preclusion principles." Exxon Mobil Corp v. Saudi Basic Industries Corp. 544 U.S. 280 (2005) [see hidden district court Pet. pg. 24 –which the district court now refuses to file without explanation]

"[f]ederal courts have a "virtually unflagging obligation" to exercise the jurisdiction conferred upon the by the coordinate branches of government and duly invoked by litigants. (citing Colorado River

Water Conservation Dist. v United States 424 U.S. 800, 818, 96 S. Ct. 1236, 1246, 47 L Ed. 483 (1976) [Cited by 9th Cir. Court of Appeals – see Brockman v. Merabank 40 F 3d 103 [No.93-15505](1994) which proves the Ninth Circuit Panel is not ignorant of the law].

Petitioner was denied an Appeal by "En Banc Panel" as is required when invoked by "contradictory rulings within the same Circuit's Court Appeals, but "lacked any arguable basis for subject matter jurisdiction" to make required ruling with no NOA in the file or docket of Ninth Circuit Court of Appeals...as a clear demonstration "judicial fraud" for purpose of denying petitioner's Federal Civil Rights pursuant to Federal Civil Rights Act sec. 1983 "while acting under color of law and mechanism of "Institutional Racism" ... in place to prevent the ascent of African Americans in American society since the foundation of the legal system by the founders of the legal system, and **"framers of the United States Constitution"** many of whom were **slave owners** intent on preserving their right to own "human beings" minds,, bodies and souls as their property ... while admitting.. "all men are created equal" and claiming.... **"in GOD WE TRUST".**

Ninth Circuit Court of Appeals failed and then refused to file the Notice of Appeal required for "subject matter jurisdiction" to make ruling... but did assigned Appeal Case No. 19-55351 to "Appeal or 60(b)(4) Petition served on the Court in response to 12/11/18 district court ruling and upon which this petition for writ of certiorari is based [and therefore

filed pursuant to FRCP 60(b)(4)] after being denied the right to an appeal with no NOA in the Ninth Circuit Court's Appellate file and therefore "no opportunity to be heard" in state or federal courts.

The United States Supreme Court has written *"A void judgment is a legal nullity. See Black's Law Dictionary 1822 (3d ed. 1933).....*

A judgment is not void, for example, "simply because it is or may have been erroneous, Hoult v. Hoult, 57 F 3d. 1, 6 CA 1 1995); 112 J. Moore et. al. Federal Practice sec. 60.44 [1][a], pp. 60-150.... Instead, Rule 60(b)(4) applies only in the rare instance where a judgment is premise either on a certain type of judicial error or violation of due process that deprives a party of notice or opportunity to be heard." See United States v. Boch Oldsmobile, Inc. 909 F 2d. 657, 661, sec. 60.44 [1][a]; 11 C Wright A. Miller, & M. Kane, Federal Practice & Procedure sec 2862, p. 331 (2d ed. 1995 and Supp. 2009); of Chicot County Drainage Dist. v. Baxter State bank, 308 U.S. 371, 376, (1940); Stoll v. Gottlieb, 305 U.S. 165, 171 (1938)...Rule 60(b)(4) strikes a balance between the need for finality of judgments and insuring that litigants have a full and fair opportunity to litigate...[cited from United Student Aid Funds Inc. v. Espinosa [No. 08-1134] argued December 1, 2009, decided March 23, 2010]

FEDERAL RICO CLAIMS ARE EXEMPT FROM EXCLUSIVITY OF WCAB

"RICO CLAIMS..... We reach a similar conclusion

with respect to plaintiffs' RICO claim. The pattern of racketeering activity necessary to establish a RICO enterprise always falls outside the scope of the compensation bargain. Thus plaintiff's RICO claims are exempt from the exclusivity bar. A violation of 18 United States Code section 1962(c) requires "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." (Sedima, SPRL v. Imrex Co. Inc. Co.., Inc. (1985) 473 U,S, 479, 496 [105 S, Ct. 3275, 3285, 87 L. Ed. 2d 346"], fn. Omitted.) To establish a pattern of racketeering activity, plaintiffs must allege at least two predicate acts that " are interrelated by distinguishing characteristics" (H.J. Inc. v. Northwestern Bell Telephone Co (1989) 492 U.S. 229, 240 [109 S. Ct 2893, 2901, 106 L. Ed 2d 195](H.J. Inc. and "amount to or pose a threat of continued criminal activity". (id. At p. 239 [109 S. Ct. at 2900].) "[T]he threat of continuity is sufficiently established where the predicates can be attributed to a defendant operating as part of a long term association that exists for criminal purposes" or where it is shown that the predicates are a regular way of conducting defendant's ongoing legitimate business....or conducting or participating in an ongoing and legitimate RCIO enterprise.(Id. At pp. 242-243 [109 S. Ct. at p. 2902], fn omitted.

Here, plaintiff's RICO claims allege that defendants conducted or conspired to conduct various enterprises through numerous acts of **mail fraud** *and wire [24 Cal. 4th 827] fraud. Because these predicate acts of mail and wire fraud allegedly form a pattern of racketeering activity, they by definition, cannot be closely connected to normal insurer activity....*

indeed such organized and systematic criminal misconduct is always illegal, regardless of employer's state of mind. (see 18 U.S.C sec 1962). Accordingly RICO claims are never subject to the exclusivity provisions, and we refuse to bar them here. **(7 Cal 4th at .723,fn 7) Vancanti v. State Comp. Insurance Fund [24 Cal. 4th 827]**

State California criminal workers compensation law violations and related requests for civil damages for fraud are outside the scope and authority of the WCAB, and administrative law courts, once defendants violated federal laws using United States mail services to commit continuing FCC and Federal RICO violations.

REASON FOR GRANTING WRIT

Directly as a result of the Ninth Circuit Court of Appeals failing to filed the Notice of Appeal served on district court on 1/4/19 which automatically "invoked the Ninth Circuit's "en banc" panel required to rule on "contradictory rulings within the same Circuit Court [pursuant to Rutters Federal Appellate Proceedure... with no Notice of Appeal on record all rulings pertinent to Ninth Circuit Court of Appeal Case No. 1955351 were rendered "null and void". Pursuant to the United State's Constitution's 5th Amendment "right to due process", and 14th Amendment right "that requires equal application of the laws" that includes FRCP 60(b)(4) this petitioner is entitled to long overdue "immediate mandatory relief from void rulings"... under the "judicial standard articulated by United States Supreme

Court Justice Ginsburg, in the rare instance when there was no arguable basis for subject matter jurisdiction to make rulings [in the absence of NOA] and the rulings resulted in the petitioner not having an opportunity to be heard.

There was no arguable basis for the district court to block this federal plaintiff from filing Request to Enter Default in Federal Court on 3/12/12 and 11/21/12 after state clerk failed to enter default that should have been entered on 7/29/11 which resulted in "loss of subject matter jurisdiction for court[s] to do anything" but enter default [pursuant to Federal Erie Doctrine and well established case law cited above WA Rose v. Municipal Court.

It is notable that the Ninth Circuit Court of Appeal indeed confirmed that with no NOA on file.... "We lack jurisdiction to consider any of district court's prior rulings because Smith failed to file notice of appeal. See Fed.R. App P 4(a)(1) (notice of appeal must be filed within 30 days after entry of the judgment".....[Before Bea, Watford, and Friedland submitted 6/14/16] which would appear to applicable to this petition because the court of Appeals failed to file the NOA filed by this federal plaintiff on 1/4/19 in response to the 12/18/18 district court's ruling.] It appears that the Panel included newly appointed Appellate Court judge Watford [an African American] to this case to instill validity and so the contradictory ruling would not at all appear to be racially discriminatory.... But under California law it was illegal for Bea and Friedland to include justice Watford or anyone else on a panel created for the

purpose of facilitating a positive outcome for an employer and or attorneys who had engaged in making false statements that constitute workers compensation fraud [pursuant to WARNING FROM THE STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS].

The federal court judge erred in not recognizing that "original jurisdiction" remained in his court, and the remand pursuant to *1447(c)* was therefore a "supplemental" jurisdictional decision, that did not at all cause his original subject matter jurisdiction to vanish as explained ***by Justice Ginsburg- see Exxon v. Mobil cited herein.***

It is notable that the district court judge in this case appears to have also been a victim of workers compensation fraud and racism when his order to remand the case was hidden from the Superior Court clerk by Los Angeles County Counsel, who later stole the entire case file from the state court's judge's court room and kept it for the period 8/10/11- 8/25/11 for purpose of inserting a demurrer [illegal filing pursuant to 8 CCR sec 10490] dated 8/9/11 that was not filed with the state court clerk as late as 9/2/11 evidence for which is the state court docket attached as an exhibit to 60(b)(4) Petition served on district court via U.S. mail but disappeared from the court's records according to the district court clerk...making it impossible to have a hearing in federal or state court for purpose of 60(b)(4) immediate relief from void rulings or for entry of default that should have been entered at state court on 7/29/11 and no later

than 3/12/12 at federal court against defendants who to this day have filed no answer in state or federal courts and cannot respond to this petition without incriminating themselves.

As the co-founder and first president of the "Urban Claims Association" I have firsthand knowledge of the fact employer [defendant] MTA's administrators and their attorneys attended our workers compensation fraud seminars, as it was a spearhead organization that contributed to the passage of the *1993 State of California Workers Compensation Fraud Reform Act* ...but they seemingly did not absorb very much from those seminars.

In any case , it is anticipated that the ***Justices of the United States Supreme Court [pursuant to Feldman]*** will Order this case remanded to district court judge Percy Anderson with instructions to comply with state law that requires entry of default and judgment ***[pursuant to WA Rose v. Municipal Court]*** or grant 60(b)(4) Petition for federal plaintiff's mandatory relief from "void rulings" and monies owed as set forth in court documents filed most recently in Proposed Order served on 6/3/20 "via certified mail" but never filed by the district court clerk for reasons not explained as district court clerk Rose Henderson said she could offer no explanation and had no knowledge of what happened to the FRCP 60(4) Petition filed on 5/12/20 via U.S. mail and subsequent related filings sent "certified mail" [as including "Notice of Failure to Defend" and "Propose Order" that includes "monies owed" can be once again provided to the district court if needed for

purpose of granting "monies owed".

Petitioner is still waiting for response from this Court as to whether still another filing fee is required..... after not filing the last two petitions for "writ of certioraris" for reasons not explained [and without refunding the filing fee]. Please advise and if required still another fee will be paid , as similar inquiry was made on May 18, 2020, regarding payment to which there has been no response to inquiry sent via U.S. "REGISTERED MAIL" Number RE 199 196 705 US.

Delaney Smith Pharm.D.,M.D.
Primary Treating Physician [pursuant to labor code 4061.5] (OPINION UNOPPOSED)
UNITED STATES CIVIL SURGEON FOR DEPARTMENT OF DEFENSE AND IMMIGRATION AND NATURALIZATION SERVICE
FORMER STATE OF CALIFORNIA APPOINTED Q.M.E.
FELLOW AMERICAN COLLEGE OF FORENSIC MEDICINE