ORIGINAL

No. 22-7456

IN THE SUPREME COURT OF THE UNITED STATES

Zhaojin Ke

Petitioner,

v.

Liberty Mutual Insurance Company, *et al.*,

Respondents

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Third Circuit Court of Appeals erred in deliberately repeating the district court's errors in factfinding and the application of law and in discriminating against pro se litigants with the hand of a law clerk through a memdispo. This Court has supervisory power under Supreme Court Rule 10(a) to deter such conduct.

1. Whether the right to present evidence in an appeals court is Constitutionally protected.

2. Whether an appeals court should recognize a pro se litigant's right to present evidence and to review the presented evidence.

3. Whether pro se litigants should be willfully discriminated against and bullied to result in a second tier of the judicial system in violation of equal justice under the law.

LIST OF PARTIES IN PROCEEDINGS BELOW

1. Zhaojin David Ke, Appellant

2. Liberty Mutual Insurance Company, *et al.*, Appellees

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions this Court for a writ of certiorari to review the judgment of the Third Circuit Court of Appeals

OPINIONS BELOW

The Third Circuit Court's memdispo affirming the district court's summary judgment is unpublished and cited as *Zhaojin Ke v. Liberty Mutual Insurance Co.*, No. 21-3248 (3d Cir. 2023) and attached as Appendix 1. The district court's order denying Petitioner's summary judgment motion and granting it to Respondents is cited as *Zhaojin Ke v. Liberty Mut. Ins. Co.*, CIVIL ACTION No. 20-1591 (E.D. Pa. Feb. 11, 2021), attached as Appendix 2. The Third Circuit Court's denial of Petitioner's petition for rehearing was endorsed by only Judge Joseph Scirica and is attached as Appendix 3.

JURISDICTION

The Third Circuit Court of Appeals entered judgment on January 10, 2023, and its decision denying rehearing *en banc* was made on February 6, 2023. This petition is therefore timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall be...deprived of life, liberty, or property, without due process of law..." This due process clause makes courts recognize both procedural due process and substantive due process, with procedural due process aiming at guaranteeing a litigant's right to a fair, impartial hearing. The Fourteenth Amendment concours in the same fashion.

STATEMENT OF THE CASE

On January 15, 2020, Petitioner started the instant action with a writ of summons in state court. On March 23, 2020, Liberty removed the case to federal court in Eastern Pennsylvania. On March 1, 2021, Petitioner moved to compel communications related to Liberty's salesman Jeffery Howard, and Liberty responded that "[Howard's] mailbox was deleted on March 8, 2018" *after* Petitioner had twice warned Liberty of the forthcoming lawsuit. The parties filed cross summary judgment motions by September 3, 2021, and the district court granted summary judgment to Respondents on November 9, 2021 after a pretrial hearing. Petitioner appealed.

Petitioner disagreed with the district court's judgment—regarding factfinding in particular. The appeal in the appeals court below also dealt with the issue of a contract, a federal question under U.S. Constit., Art. I, § 10, and with the issue of bad faith under 42 PA.C.S. § 8371, with all issues surrounding the disputed cash value of Petitioner's Odyssey van. Petitioner bought collision coverage, and contractually, he was entitled to the repair of his van damaged in an accident under U.S. Constit., Art. I, § 10, but Respondents refused to have it repaired with various false pretexts, ending up paying nothing—not even a dime. The district court's summary judgment is based on an unwarranted cash settlement issue, falsely peddled by Respondents, and on its derived issues.

The district court called his appeal "frivolous" and "bad faith," denying the continuation of his IFP status given by state court. Thus impacted, the appeals court initiated summary action hinged on Petitioner's new IFP application.[1] Judge Peter Phipps agreed with Petitioner's

[1] On January 6, 2022, the Third Circuit Court's clerk's office ordered: "The foregoing motion to proceed in forma pauperis is referred to a motion panel. If the Court determines that the Appellant may proceed in forma pauperis, the Court will proceed to determine whether the appeal will be dismissed as legally frivolous under 28 U.S.C. § 1915(e)(2) or whether summary action under Third Circuit L.A.R. 27.4 and I.O.P. 10.6 is appropriate. In making this determination, the district court opinion and record will be examined. Appellant may submit argument, not to exceed 5 pages, in support of the appeal." On August 5, 2022, the Hon. Peter J. Phipps allowed the appeal to proceed, meaning the issues on appeal had merit. Petitioner briefed those issues with evidence, and a blunt denial of them in a memdispo is a brazen flip-flop on the prior ruling.

"Argument for Judicial Equity In Opposition to Summary Action" and allowed the appeal to proceed. His appeal was only an expansion of the same argument, but the appeal was denied by a law clerk in a memdispo, which would mean that the appeal, after all, was "frivolous" and "in bad faith," as the district court had ruled, contradicting Judge Phipps' ruling. Petitioner petitioned for rehearing, but only Judge Joseph Scirica voted for it.

With respect to the background of the case, on August 28, 2017, a Liberty's salesperson named Jeffery Howard called and asked Petitioner to switch to Liberty, promising a lower premium and a good repair if his van got into an accident and was damaged as long as Petitioner bought collision coverage. That solicitation lured Petitioner from Progressive to Liberty. On February 7, 2018, Petitioner was rearended by a Honda Accord, and the momentum caused his van to hit the car before him. On the same day, he was directed to drive his van to Liberty's designated body shop, Caliber, in Northeast Philadelphia, PA 19111 to have it repaired. Petitioner did. On the same day, his adjuster Michael Guess authorized the repair of the van and called it "Driveable [*sic*] Repairs." On Feb. 9, 2018, Caliber's assistant serviceman Carmine Crono wrote up the cost of repairs at $2,889.17 after a deductible of $500. Earlier on the same day, Guess had recorded in Liberty's internal memo "Repairs within Target," but now he wanted to settle with Petitioner on a lowball cash offer. Liberty subscribes to the CCC Information Services, a Chicago software company used by insurance companies to generate reports in their favor. On that company's website, Guess filled out a report and then claimed that the van was totaled and stopped Caliber from repairing it.

At 2:07 p.m. that day, he made an entry in the company's internal memo: "Vehicle Condition changed from Driveable to Total Loss." The vehicle condition did not change since it was parked in the parking lot of Caliber, Liberty-controlled repair shop, but Guess subjectively changed the "condition." The summary judgment states: "There is no dispute that a valid automobile insurance contract existed between Plaintiff and LM General." The relevant language of that contract as carried in *Liberty Mutual Auto Insurance Policy* regarding collision coverage is crystal clear: "Collision coverage: When your vehicle is damaged in an accident, Collision Insurance [] pays the cost of repairing or replacing it, minus the amount of your deductible." On Feb. 12, 2018, Guess told Petitioner that the van was totaled and Liberty would offer $2,500 to settle after a $500 deductible. He added that the settlement was on condition that Liberty take Petitioner 's van. Petitioner argued that the van was not totaled, and Guess said that"[t]he value report is completed by a third-party vendor named CCC One," hiding the fact that he himself had filled out the biased report on the CCC website. Guess persisted in his misrepresentation that the repair would cost more than the cash value of the van and that he would consider the van totaled under Pennsylvania law. Petitioner challenged him for the specific Pennsylvania law, and Guess never responded.

Petitioner challenged him to sell him a used Odyssey van with only 75,000 miles on the odometer at the price of $2,500. Guess never responded. On Feb. 15, 2018, Guess emailed Petitioner that now he would offer Petitioner $3,613.04 (after a $500 deductible) to settle with

Petitioner,[2] again on condition that Liberty possess Petitioner's van. Petitioner rejected the offer.[3] On March 23, 2020, the document Liberty pulled out from ISO ClaimSearch at https://claimsearch.iso.com/ showed that the accident was described as "Collison" with fault assigned to Petitioner. On March 1, 2018, Guess wrote "we would accept responsibility for this accident," siding with the rear-ending driver without an investigation and admitting that fault was assigned to Petitioner. In response, Petitioner pointed out: "Not investigating is your dereliction." He further pointed out: "Obviously, the total loss was determined by you who refused to investigate." Petitioner warned to sue and insisted that Liberty should have his van repaired as in accordance with the auto policy and with the initial promise of Liberty's solicitation by Salesman Jeffery Howard on August 28, 2017. Guess, after his March 1, 2018 email, stopped communicating with Petitioner. In an internal memo, he wrote: "Closing file without payment to insd."

In the meantime, Liberty continued to insure Petitioner's van and Petitioner continued to drive it daily. In June 2018, it even passed Pennsylvania's vehicle safety inspection.

REASONS FOR GRANTING THE WRIT

A. THE RIGHT TO PRESENT EVIDENCE IN AN APPEALS COURT IS CONSTITUTIONALLY PROTECTED

1. Procedural Due Process Requires An Appeals Court To Allow A Litigant The Right To Present Evidence When The Lower Court Has Disregarded It

When the district court denied Petitioner's right to present evidence, the appeals court has

[2] Guess made up the dollar number himself. In the report he prejudicially filled out at https://cccis.com/, his final total value for Petitioner's van before the deduction was $4,023, but the final total value after the deduction he emailed Petitioner on Feb. 15, 2018 was $3,613.04 without including the low milage credit of $1,368 and the salvage value. Anyway, this number was much higher than Caliber's repair cost of $2,889.17. Of course, even the higher value Guess offered was based on a false calculation.

[3] Guess' basis for the totaling of the van was only that the repair cost was higher than the cash value of the van, but the previous footnote contradicts that and proves it a false allegation.

the statutory duty to review the issue. In the instant case, the district court called the appeal frivolous and bad faith, but Petitioner survived the summary action initiated by the appeals court's clerk's office based on the prior warning from the district court. Judge Peter Phipps reviewed Petitioner's response to the summary action entitled "Argument for Judicial Equity In Opposition to Summary Action" and allowed the appeal to proceed. The signal was loud and clear that the appeal was not frivolous or in bad faith. The memdispo written by a law clerk ought to be consistent with an active judge's ruling with respect to the same appeal, but instead the clerk bypassed it to go back to the district court' summary judgment and disregarded the evidence Petitioner had presented.

That is a violation of his procedural due process right. The Due Process Clause of the Fourteenth Amendment guarantees every litigant the right "to present his case and have its merits fairly judged." *Logan v. Zimmerman Brush Co.* (1982). This right must include the right to present evidence necessary to establish a constitutional claim. Not allowing a presentation of evidence shows a biased tribunal because the "Due Process Clause entitles a person to an impartial and disinterested tribunal." *Marshall v. Jerrica*, Inc., 446 U.S. 238, 242 (1980); accord *In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process."). What happened in the district court was an exclusion and disregard of Petitioner's evidence. The memdispo repeats the same practice as though Petitioner's facts never existed. It unconditionally accepts Respondents' fallacious misrepresentations as facts but ignores Petitioner's facts surrounding the cash value of his van that is the pivot of the entire case. In that regard, the memdispo deliberately fails to take notice of Petitioner's facts such as the requirement of an investigation, the requirement of using a Pennsylvania licensed appraiser to determine the

cash value,[4] and the requirement to include the low mileage credit and the salvage value that are part and parcel of the fair cash value of his van.

In Petitioner's situation, what really happened could well be illustrated with this simple analogy. Once a company employee worked for four hours in the morning and four hours in the afternoon at the rate of $10 per hour. The employer only paid the employee $40 for that day's work. The employee sued, and the employer kept arguing that there was nothing wrong with the "actual wages" as the employer only owed the worker $40 for working four hours in the morning. The judge agreed. The worker appealed the ruling and the judge told the appellate court that the appeal was frivolous and in bad faith. An appellate judge adjudicating the summary action triggered by the prothonotary disagreed and ruled that the appeal was not frivolous or in bad faith. He allowed it to proceed. But a law clerk, opining on behalf of a panel of three active judges who were too busy to look at the appeal, erroneously decided that the appeal was after all frivolous and in bad faith, contradicting the prior judge's ruling. This is what has happened to the instant case, a serious violation of Petitioner's right to present evidence and have it property reviewed, a right that is Constitutionally protected.

2. **When A Litigant Appeals The Lower Court's Ruling On Factfinding Under Rule 52(A)(6), The Appeals Court Should Act As An Impartial Arbiter To Accept And Weigh The Facts**

Rule 52(a)(6) of the Federal Rules of Civil Procedure requires that a district court's finding of fact not be set aside unless "clearly erroneous" in an action tried on the facts without a jury.

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[4] With respect to the "Appraisal," the Auto Policy provides:

> A. If we and you do not agree on the amount of loss, either [*sic*] may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately **the actual cash value** and the amount of loss.

The adjuster, by definition, is not an appraiser. His filling out a CCC report is self-serving bias.

Petitioner's appeal hinges on the district court's error in factfinding, and he points out that the case would have come to an entirely different end if that error had not been made.

When faced with the challenge to the district court's factfinding error, the clerk ought to apply the "clearly erroneous" standard in the appellate review. In *United States v. United States Gypsum Co.,* this Court stated that the Federal Rule of Civil Procedure 52(a) provides that "a finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." 333 U.S. 364, 395 (1948).

Essentially, the appellate court must determine that a factfinding is unsupported by substantial, credible evidence on the record to act on the "clearly erroneous" standard. But the clerk in the instant appeal never waded into that standard. Instead, the clerk acted as defense counsel and mechanically reiterated Respondents' fallacious argument about evidence, completely cutting out Petitioner's argument about facts and affirming the district court's summary judgment that relied on the same fallacious argument from Respondents.[5] Blindly siding with Respondents constitutes a violation of 28 U.S. Code § 455, which is an abuse of discretion. Although the Due Process Clause has been implemented by objective standards that do not require proof of actual bias, the clerk's conduct has led to actual bias. "Actual bias, if disclosed, no doubt would be grounds for appropriate relief." *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 883 (2009). Questions of fact arise when parties disagree on facts, and after presenting evidence, the trier of fact must decide what the facts actually are.

When the appellate court determines that a lower court's finding of fact is clearly

[5] The district court all along determined that the case was triable and, accordingly, held a pretrial trial conference on September 16, 2021 and said the trial would need two days but the parties should go to a magistrate judge for mediation first (a second time). After that, however, it abruptly issued summary judgment.

erroneous, the appellate court must reverse that finding. This standard is considered to have minimal deference to the factfinder. The clerk in the instant case has never applied this theory and has thus violated Petitioner's Constitutionally-protected right to present evidence and have it reviewed.

B. AN APPEALS COURT SHOULD RECOGNIZE A PRO SE LITIGANT'S RIGHT TO PRESENT EVIDENCE AND TO REVIEW THE PRESENTED EVIDENCE

1. When The Key Issue On Appeal Is Factfinding, The Appeals Court Should Respect The Right To Present Evidence And To Review Presented Facts With Impartiality

A "fair and impartial tribunal," guaranteed by the Fifth and Fourteenth Amendments, requires "an absence of actual bias" *Murchison*, 349 U.S. at 1350 36 (quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954)). The clerk never applied the clear-error standard and never reviewed the evidential facts presented by Petitioner such as: (1) Liberty's cash value did not include the salvage value of the so-called "totaled" van; (2) it did not include the van's low mileage credit from the CCC report generated by Liberty; (3) Liberty continued to insure the van after the accident and Petitioner continued to drive it daily; (4) Petitioner passed the Pennsylvania Vehicle Safety Inspection in June 2018;[6] (5) the CCC report filled out by Liberty (the insureds have no access to the CCC online service) lacks credibility; (6) Liberty refused to investigate the accident and maliciously assigned the fault to Petitioner to harm his property interests and smear his driving record;[7] (7) the disputed cash value was never determined by a Pennsylvania licensed appraiser

[6] Liberty should not be allowed to have a double dip. After the accident and while the adjuster was handling the claim, Liberty continued to insure the van and told Petitioner that his van was safe to operate. But when sued, it schemed to lower the cash value of the van and falsely claimed that because the repair cost was higher than the actual cash value of the van, it was totaled. The memdispo wrongfully agrees with Liberty based on its false numbers. Common sense would dictate that an insurance company cannot insure a vehicle to reap a premium but in the same breath declares it totaled. One would expect an appeals court to have higher standards in ruling on such a simple issue, but that did not happen.

[7] Should Liberty have investigated the accident, the insurance company of the vehicle (Geico) that rear-ended Petitioner's van would have footed the repair bill and the instant case would not even have occurred in the first place, but the memdispo erroneously opines that an investigation was not necessary since the collision clause in the Policy would have covered the repair. It is obvious that an investigation was not about the repair alone.

under 63 P.S. § 851-863, as required by Liberty's Policy; (8) the cost of the repair never surpassed the cash value of the van; (9) there is no language in the Policy stating, as the memdispo alleges, that if the repair cost is more than the cash value of the van then the vehicle is deemed totaled; and (10) Liberty cites only two high-mileage vans without disclosing their background (whether they were once flooded vehicles or were grey-market vehicles) to determine the "comparative" low cash value of Petitioner's van.

The memdispo never addresses those facts from Petitioner's side to violate his due process right to present evidence and have it reviewed, causing a manifest miscarriage of justice. Throughout their filings in both the district court and the appeals court, Respondents repeatedly argued that they offered Petitioner a cash settlement but that Petitioner repeatedly disagreed with the Liberty-determined cash value. As a matter of law, if both parties disagreed on facts, summary judgment was never appropriate unless the district court addressed Petitioner's facts or let a jury determine the facts at a trial. The district court, instead, assumed that the van was totaled just because Respondents said so. It then followed the logic that the van was "totaled," that Liberty offered a cash settlement and Petitioner refused to accept it, and that, therefore, summary judgment was for Liberty. That even overwhelmed all the other issues separate from the cash settlement issue, ending up in Petitioner not receiving any relief even in the amount of $1.

2. Letting A Law Clerk Contradict A Prior Active Judge Is An Abuse Of Procedural Due Process

An individual, this Court writes, must be assured "that the arbiter is not predisposed to find against him." *Marshall v. Jerrica, Inc.*, 446 U.S. 238, 242 (1980). This due process right "has been jealously guarded by this Court" because it "preserves both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done." *Id.* (citation and internal quotation marks omitted), but in the instant case, the appeal was reviewed by

a law clerk who was prejudiced against this pro se litigant. The clerk's deliberate abuse of discretion was not to review Petitioner's evidence. That was a denial of his Constitutional right to present evidence.

Further, ruling consistency is vitally important to maintaining public confidence in the judicial system. Petitioner appealed because of the key error in factfinding by the district court that had erroneously determined the actual cash value of his Honda Odyssey. That determination impacted all the other ancillary claims and issues of his case. The district court called his appeal frivolous and bad faith, but Petitioner survived the summary action initiated by the clerk's office when Judge Phipps found otherwise and allowed the appeal to proceed. It is clear that the slapdash "Not Precedential" memdispo was drafted by a law clerk because none of the three panel judges acknowledges being the authoring judge. The flimsy "opinion" feels like the clerk doing a fill-in-the-blanks language exercise in an English class with the prompting words provided.

In this case, Petitioner's appeal hinges on the issue of the actual cash value of his van, disputed between the parties. The measly opinion ends up failing to resolve that issue when it excludes the numerous evidentiary objections Petitioner has raised to dispute Liberty's arbitrary determination, thus contradicting Judge Phipps's implied ruling since Petitioner's opening brief is only an expansion and explication of his prior "Argument for Judicial Equity in Opposition to Summary Action." The memdispo conflicts with Judge Phipps's order of August 5, 2022, and therefore a supervisory review under Supreme Court Rule 10(a) by this Court is necessary to secure and maintain the uniformity of appeals courts' judicial practice.

C. PRO SE LITIGANTS SHOULD NOT BE DISCRIMINATED AGAINST AND BULLIED TO RESULT IN A SECOND TIER OF THE LEGAL SYSTEM IN VIOLATION OF QUAL JUSTICE UNDER THE LAW

1. When A Pro Se Litigant's Evidence Is Excluded, That Is A Violation Of Their Constitutional Right To Present Evidence And Have It Reviewed

Through a biased memdispo, a clerk can quickly dispose of a pro se litigant's appeal and even bully that litigant without consequences, thus creating a second tier of the legal system just for pro se litigants in violation of their Constitutional due process rights. Petitioner was aware of the practice of a memdispo written by a clerk acting as a judge in the Third Circuit Court [8]and had pre-warned against that prejudice. Due process is reflected in both procedural and substantive processes. To use a memdispo to swiftly get rid of an appeal instead of letting a real judge review the appeal is a violation of a litigant's procedural due process right, and that is nothing short of judicial bullying. The clerk's factfinding by parroting Respondents' facts and by excluding Petitioner's facts is also a violation of his substantive due process right. All this was obviously motivated by the quick formula of the memdispo that was designed for the sole purpose of speedily processing the appeals court's caseload at the expense of justice.

By not touching on Petitioner's evidence, the memdispo denied his right to present evidence. Because he is a minority pro se litigant, a race factor becomes visible and disparate treatment has occurred that constitutes discrimination. The harsh reality is that Petitioner has been openly bullied by the clerk's willful abuse of discretion, but there is nothing he can do about that situation except to watch the weakening of the public trust in an appeals court. This Court should never tolerate such conduct and let it continue without deterrence. Treating a pro se litigant with discrimination and distain is unconscionable, unprofessional, and unethical and damages the public confidence in appeals courts.

To quickly dispose of the appeal, the clerk who drafted the memdispo could never be compared with a seasoned judge or an experienced magistrate judge and made palpable errors.

[8] It should be noted that a magistrate judge cannot act as a federal judge without the consent from the parties of a case. *See* 28 U.S.C. §636(c), but a clerk is now to act as a judge in an appeals court. This itself is an inconsistency in the legal system and a travesty harming the reputation of that court.

Clerks compound their errors in factfinding and the application of law and even create new errors. Carving out a new legal slice just to get rid of a pro se litigant through a memdispo is a poor way to treat that pro se litigant, and that, as a result, yields the stratification of a caste system inside the legal system, a taboo in contravention of the United States Constitution. Whether a pro se litigant should willfully be treated with open discrimination and distain or bullied without consequences is an issue that this Court should seriously deal with, given its supervisory power under its Rule 10(a).

2. A Memdispo Is Not Supposed To Create New Errors In Factfinding And Reasoning

a. The Memdispo Has Created New Errors Regarding Facts

The memdispo states: "Ke's policy gave Liberty the option to pay either the actual cash value of the van or the amount necessary to repair or replace it." Although that may make sense, the Policy does not have such language. Instead, the Policy says: "The appraisers will state separately the actual cash value and the amount of loss." Using creative writing to aid the ruling is terribly wrong.

"[*B]ased on visible damage*, the body shop estimated that repairs would cost $3,389.17, [], but there was a possibility—acknowledged both by the body shop [] and Ke, []that after beginning repairs, the mechanic might find additional damages requiring additional repairs (and cost)." Petitioner never acknowledged that. The body shop took parts apart to physically inspect the vehicle and put the parts back and charged Liberty $264.62 for that. The statement "the mechanic *might* find additional damages" is nothing short of speculation that may never happen. Speculation in ruling renders the ruling prejudicial and invalid, and here the clerk is clearly arguing like a sleazy defense attorney instead of playing the role of a Third Circuit Court judge.

The memdispo ruled that it "affirmed" the district court's "denial" of Petitioner's motion

to exclude the expert report, but in the district court the motion was only denied in part while it was granted in part. Such ruling even makes a pro se litigant ashamed of the tribunal he has had to go through and certainly renders the memdispo lacking in credibility.

b. The Memdispo Has Created New Errors In Reasoning

The memdispo states: "Ke argues that Liberty Mutual's bad faith was manifested through its failure to investigate the other driver who Ke alleges was at fault for the accident. However, because Ke's policy required Liberty Mutual to pay regardless of fault [] Liberty Mutual had a 'reasonable basis to forgo this investigation." First, the Policy never has such "forgo" language. Such repetition of Respondents' fallacious argument is horrific when it disregards (1) the requirement for the investigation according to the Policy, which is also the insurance industry's golden standard, (2) the fact that the investigation would have avoided the lawsuit since the rear-ending driver's insurance company (Geico) would have paid for the repair without even the $500 deductible, and (3) the fact that citing Petitioner as "at fault" (which entered into insurance data base) has smeared Petitioner's driving record to affect his future insurance rates—hence the injury.

The memdispo bluntly states that Petitioner cannot sue the adjuster because of the "gist of the action" while disregarding his argument of the theory of adjusters being colorable in Pennsylvania. *See Ellis v. Liberty Mut. Ins. Co.,* No. 2:18-cv-01032, 2018 WL 3594987, at *3 (E.D. Pa. July 26, 2018). Even under Pennsylvania's "participation theory" of personal liability, Michael Guess the adjuster can be held liable. *See Chester-Cambridge B. & T. Co. v. Rhodes*, 346 Pa. 427, 433 (1943) (holding that "a director or officer of a corporation may have personal liability for damages suffered by third persons when he knowingly participates in a wrongful act"). *See* also *Wicks v. Milzoco Builders, Inc.*, 470 A.2d 86 (Pa. 1983) and *Key Corporate Capital, Inc. v. Tilley,* 216 Fed. Appx. 193 (3d Cir. Pa. 2007). This error constitutes an abuse of discretion. *Koon*

v. United States, 518 U.S. 81, 100 (1996) ("A [] court by definition abuses its discretion when it makes an error of law.").

The memdispo denies Petitioner's claim under Pennsylvania's Unfair Trade Practices and Consumer Protection Law because, it states, that salesman Howard's promise on the phone with Petitioner is not verified as there is no recording, but it ignores the simultaneous draft insurance policy twice emailed to Petitioner that shows the same and even better promises. To deny one part of solicitation because of a lack of tangible evidence is understandable, but to also deny the same solicitation carried out in emails is nothing short of an abuse of discretion in both factfinding and reasoning. (*See* page 7 above for the applicable analogy.)

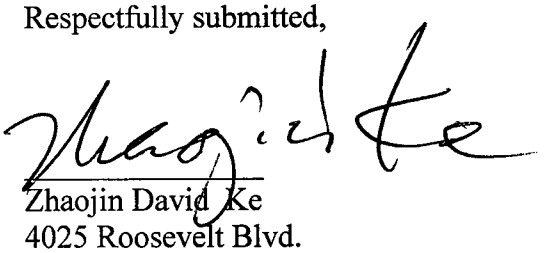
Overall, the memdispo could have been written by a green law clerk. When the panel and later the entire court (except Judge Joseph Scirica) denied rehearing, Petitioner was clearly deprived of his due process right to present evidence and to have it properly reviewed. When new errors were made in both factfinding and the application of law, the memdispo has *de facto* created a kangaroo court to cause a manifest miscarriage of justice as it fails to even point out that the district court was wrong not to provide any relief—not even a single dollar—for the accident. That constituted *bona fide* punitive damages against Petitioner to deter the insureds from filing similar lawsuits. Petitioner believes that this Court has its unshirkable supervisory duty—under its Rule 10(a)— to look into this matter.

CONCLUSION

Petitioner is aware that this Court does not grant a petition for certiorari with respect to disputes in factfinding, but this petition really is to invoke the Court's supervisory power to deter an appeals court from its unrestrained departure from its mandatory role in handling procedural and substantive due process (*See* Supreme Court Rule 10(a)) regarding pro se litigants. For this

and for the other foregoing reasons, Petitioner respectfully requests this Court to issue a writ of certiorari to the Third Circuit Court of Appeals.

Respectfully submitted,



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PROOF OF SERVICE

I, Zhaojin Ke, certify that on this 29 day of April, 2023, I caused a copy of the foregoing *Petition for Writ of Certiorari* and *Motion for Leave to Proceed In Forma Pauperis* to be served by email and FIRST CLASS MAIL, postage prepaid, upon all parties required to be served under SUP. CT. R. 29, as listed below:

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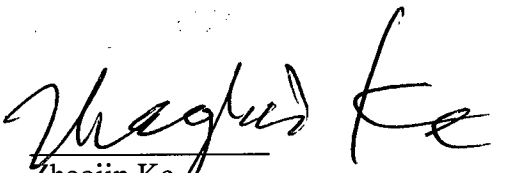

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