

NO.

**In the
Supreme Court of the United States**

JOHN W. FINK, Petitioner,

v.

JONATHAN L. BISHOP; KAYDON A. STANZIONE;
JOSEPH M. TROUPE; STEVEN W. DAVIS, SUEZ
WTS USA, INC.; JOHNSON CONTROLS SECURI-
TY SOLUTIONS LLC; EDGELINK, INC.; PRAXIS
TECHNOLOGIES CORPORATION; PRAXIS
TECHNOLOGIES, INC.; J. PHILIP KIRCHNER;
and FLASTER/GREENBERG, P.C., Respondents

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT*

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition is my third petition which involves one or more of six somewhat related cases. In the five prior cases, both the New Jersey District Court and the Third Circuit had deprived me of due process by committing a total of more than 50 judiciary violations¹ in deciding pre-jury-trial motions. Many of the violations consist of extrajudicially sourced facts with most false. These violations remain undisputed by any respondent or judge.

Currently, the underlying district court stated that it lacked jurisdiction over the prior Third Circuit opinions but nevertheless relied on those opinions, as is, to conclude my cases had been meritless. It did so without addressing the judiciary violations contained within them. Also, the court decided to grant an unwarranted sanction which bars me from further pursuing these grave miscarriages of justice.

In the last two cases, I explicitly invoked Federal Rule of Civil Procedure ("Rule") 60(d). Clearly, Rule 60(d) did not function as envisioned. Both times, the district court unjustly terminated my cases, with the Third Circuit wrongly affirmed them, thereby inflicting a grave miscarriage of justice upon me. As such, this Court needs to intervene to ensure the proper functioning of the lower courts. Therefore, the issues for consideration are as follows:

- Whether the Third Circuit deprive me of due process when, prior to any briefing in that current

¹ Not "errors," given the number and type committed.

appellate case before it, the Third Circuit summarily concluded that my appellate case lacked any substantial questions even though I had previously shown the court that many existed?

- Whether the underlying district court, which asserted it lacked jurisdiction over the Third Circuit opinions at issue in my complaint, failed to faithfully apply Rule 60(d) in a Rule 12(b)(6) proceeding and, thereby, deprived me of due process since a major portion of my complaint proffered deprivation-of-due-process allegations (along with supporting facts) as to those opinions and revealed them as void?
- Whether the district court again deprive me of due process – it had done so five previous times – and *the opportunity to be heard* when it used those very same Third Circuit opinions to support its dismissal of my case, especially since that court (i) independently introduce its jurisdictional argument without first informing the parties of its intention to do so, (ii) relied on the jurisdictional argument to render its biased decision, and (iii) improperly barred me from arguing against its jurisdictional argument?

PARTIES TO THE PROCEEDING

I, John W. Fink, petition this Court for a writ of certiorari.

All the named respondents, except for Mr. Troupe, moved to dismiss my case in the district court and appeared in the appellate case. Mr. Troupe died in November 2023.

RELATED CASES

1. *John W. Fink v. Advanced Logic Systems, Inc., Progressive Development Systems, Inc., Advanced Financial Solutions Group, Inc., AFFLINK, Inc., Kaydon Stanzione, John Does 1-3, and XYZ Corporations 1-3,*

Superior Court of New Jersey, Camden County, Docket No. GLO-L-494-03

Superior Court of New Jersey Appellate Division Docket NO. 1139-04

2. *John W. Fink v. Advanced Logic Systems, Inc.,* Superior Court of New Jersey, Camden County, Docket No. CAM-L-5574-06

3. *John W. Fink v. EdgeLink, Inc., and Kaydon A. Stanzione*

U.S. District of New Jersey; No. 1:09-cv-05078; Judgment: March 27, 2012.

U.S. Third Circuit; No. 12-2229; Judgment: January 21, 2014.

4. U.S. District of New Jersey; No. 1:13-cv-03370, *John W. Fink v. Jonathan L. Bishop, Kaydon A. Stanzione, Joseph M. Troupe, GE Betz, Inc.*,² *Steven W. Davis, Praxis Technologies Corporation, Praxis Technologies, Inc., ADT Security Services, Inc.*; Judgment

U.S. District of New Jersey; No. 1:13-cv-03370; Judgment: June 16, 2015.

U.S. Third Circuit; No. 15-2689; Judgment: February 2, 2018.

5. *John W. Fink v. J. Philip Kirchner, and Flaster/Greenberg P.C.*

U.S. District of New Jersey; No. 1:12-cv-04125; Judgment: April 5, 2016 and December 20, 2016.

U.S. Third Circuit; No. 17-1170; Judgment: July 3, 2018.

U.S. Supreme Court; No. 18-399; Judgment: December 3, 2018.

6. *John W. Fink v. United States of America, J. Philip Kirchner and Flaster Greenberg, P.C.*;

U.S. District of New Jersey; Case No. 2:19-cv-09374; Judgment: January 8, 2020, June 16, 2020, November 23, 2020.

U.S. Third Circuit; No. 20-3572; *Fink v. U.S.A., et al.*; Judgment: October 1, 2021.

² GE Betz, Inc. was renamed as SUEZ WTS USA Inc.

7. *John W. Fink v. Jonathan L. Bishop, Kaydon A. Stanzione, Joseph M. Troupe, Steven W. Davis, Suez WTS USA, Inc., Johnson Controls Security Solutions LLC, EdgeLink, Inc., Praxis Technologies Corporation, Praxis Technologies, Inc., J. Philip Kirchner, Flaster/Greenberg, P.C.*

U.S. District of New Jersey; Case No. 1:21-cv-00063; Judgment: August 16, 2021.

U.S. Third Circuit; No. 21-2651; *John Fink v. Jonathan Bishop, et al.*; Judgment: July 21, 2022.

U.S. Supreme Court; No. 22-858; *John W. Fink v. J. Philip Kirchner, et al.*; Judgment: May 15, 2023.

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PETITION FOR A WRIT OF CERTIORARI

I, a pro se litigant, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS AND JUDGMENT BELOW

The order of the court of appeals⁴ (App. at 1a-3a) and the order denying rehearing and rehearing en banc (App. at 45a-46a) are attached. The February 29, 2024 order and opinion of the New Jersey District Court (App. at 7a-9a and App. at 10a-44a, respectively) are attached, as are its March 6, 2024 and March 11, 2024 text orders (App. at 5a-6a and App. at 4a, respectively).

STATEMENT OF JURISDICTION

Federal Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332(a) by virtue of the complete diversity of citizenship between the parties and me, as well as by virtue that the amount in controversy exceeds \$75,000.

The Third Circuit entered its order on July 29, 2024. The court of appeals denied the appellant's timely petition for rehearing and rehearing en banc on September 18, 2024. Petitioner requests a writ of certiorari pursuant to 28 U.S.C. § 1254(1).

⁴ The Third Circuit did not issue a supporting opinion or separate judgment.

CONSTITUTIONAL PROVISION INVOLVED

Amendment VII of the US Constitution: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

STATEMENT OF THE CASE

A. Introduction.

I have posed three questions for resolution by this Court. The first question concerns the Third Circuit and involves a simple, straight-forward issue about the facts. The Third Circuit summarily dismissed my appellate case because supposedly I had not raised any new substantial questions in my appeal. It raised this possibility even though none of the respondents had raised this issue and, obviously, neither had I. The Third Circuit did so on its own.

I had opposed the possibility of a summary dismissal before the Third Circuit rendered its decision. I presented at least eight substantial questions which none of the respondents opposed.

Nevertheless, the Third Circuit ordered the dismissal of my case and did so without issuing an opinion. As such, that court did not explain why my list of questions did not preclude a summary dismis-

sal. The court also denied my motion requesting it to issue an opinion.

The second and third questions focus on certain decisions rendered by the underlying district court. These decisions impact my first question since they generated substantial questions which I presented to the Third Circuit before it summarily dismissed my case; questions that I had never raised previously, i.e., they were new.

In its February 29, 2024 decision, the district court concluded that it lacked jurisdiction as to Third Circuit opinions; that the district court could not “review” those opinions. Nevertheless, it then used those prior opinions which contained numerous judiciary violations as is (i.e., with the judiciary violations included) as meritorious opinions when they were not. As a result, the district court *incorrectly* (i) concluded that I did not establish a basis for relief per Rule 60(d), (ii) invoked the doctrine of *res judicata* (a.k.a. claim preclusion) to grant dismissal motions of my complaint, and (iii) granted a sanction designed to prevent me from filing another Rule 60(d) complaint without the district court’s prior written permission.

This Court must exercise its supervisory power because the Third Circuit has departed from accepted and usual standards and procedures, and/or permitted such a departure by the New Jersey District Court.

Also, the lower court judges have repeatedly deprived me of due process and thereby trial by jury.

Not only did those judges repeatedly commit judiciary violations, but they also disregarded the violations committed by other district judges in the prior cases. The Third Circuit even used some of the violations to incorrectly affirm the underlying court decisions.

This petition constitutes my second attempt to focus attention on this existing problem in the lower courts under Rule 60(d). In both instances, I specifically invoked Rule 60(d) to address severe judiciary violations – not inadvertent errors – that drastically distorted the facts in my prior cases. District and appellate judges are disregarding – unintentionally or otherwise – the law and/or, as a result, they are permitting other judges to do so.

Our judicial system requires an impartial presiding judge. True and fair decisions cannot be rendered by a judge who disfavours one or more of the parties (i.e., me in this instance) as occurred in the current and prior cases of mine. A decision rendered by a clearly less than impartial judge constitutes a grave miscarriage of justice and a reason for Rule 60(d). Such a situation, if unaddressed, also corrupts our judiciary system – the bedrock of our democracy.

B. Docket Abbreviations.

Abbreviations for court dockets referenced below:

DE = Docket Entry for case 23-cv-00566, the underlying district case; uses the formal pagination at bottom of the page, except where otherwise indicated.

CA-DE = Docket Entry for appeal case, No. 24-1581

(the appeal of case of 23-cv-00566); uses the formal pagination at bottom of the page, except where otherwise indicated.

C. My Current and Prior Cases.

In December 2020, I filed my first complaint in which I explicitly invoked Rule 60(d) – the Bishop-II Litigation.⁵ (App. at p. 16a-17a.) That case immediately preceded this one. (*Id.*) On December 29, 2022, I filed my current complaint, the second Rule 60(d) complaint which I filed. (*Id.* at 17a.) Both complaints sought new trials for prior cases of mine. (DE 1 at ¶¶2-4.)

My instant complaint alleges that the presiding judges in the five prior federal district court cases – the Honorable Noel L. Hillman (presided over the first three prior cases), Kevin McNulty, and Robert B. Kugler (“Three District Judges”) – had deprived me of due process, a grave miscarriage of justice. (DE 1 at ¶1-4.) To support my due process allegations against them, my complaint presented more than 50 judiciary violations – many of them extrajudicially sourced (supposed) facts with most false – committed by the Three District Judges over the span of my five prior cases. (*Id.* at ¶¶187-193, 271-282, 353-375, 402-405, 413-414, 422-423, 461-469.)

In each of the prior five federal cases, the Third Circuit affirmed the Three District Judges’ decisions (App. at 14a-17a), except for two of Judge

⁵ Judge O’Hearn referenced to this case as the “Bishop II Litigation,” i.e., no hyphen included. (App. at 16a.)

McNulty's decisions in the same case where the Third Circuit found it lacked jurisdiction over them (DE 62-3 at 3-4).⁶ In reviewing those five prior cases, the Third Circuit repeatedly used some of the 50+ judiciary violations, including extrajudicially sourced (supposed) facts. (DE 1 at ¶¶209-216, 290-297, 382-388, 429-442, 474-478.)

In the Bishop-II Litigation, my previous Rule 60(d) district case, I had raised the same due process allegations as in this case. (App. at 16a-17a.) While Judge Kugler, the presiding judge, acknowledged I had asserted "that Judge Hillman ... used 'extrajudicially sourced facts' in his opinion," (DE 110-8 at 6-7) he nevertheless mischaracterized my case in a Rule 12(b)(6) proceeding (*Id.* at 4) as no more than a "disagreement with the rulings rather than a true charge of partiality" (*Id.* at 7).

D. My Complaint Dismissal and Sanction.

In the current underlying case, all the named respondents, except for the deceased Mr. Troupe⁷, moved for Rule 12(b)(6) dismissals of my complaint; a few also moved for sanctions against me. (App. at 11a-12a.) The presiding judge, the Honorable Christine P. O'Hearn, considered these motions, except for EdgeLink's, in her February 29, 2024 decision. (*Id.*) Judge O'Hearn granted EdgeLink's separately on May 28, 2024 (DE 146).

⁶ Judge O'Hearn did not mention these excluded decisions. (App. at 15a-16a.)

⁷ Mr. Troupe died before I could serve him. (DE 148 at 1.)

In the dismissal motions, none of the respondents disputed with specificity any of the 50+ violations, not even the extrajudicially sourced (supposed) facts which would be easy to dispute if *not* truly extrajudicially sourced. (DE 57-1; DE 62-4; DE 68-1; DE 80; DE 81; DE 85; DE 98-1; DE 110-11.) The respondents failed to do so despite the fact that I had detailed those violations in my complaint as support for my allegations that the Three District Judges had deprived me of due process by committing them. (See citation above, p. 5.) Regardless, each respondent alleged the doctrine of *res judicate* barred my complaint and based their argument on the opinions issued by the district and appellate judges in my prior cases. (DE 57-1 at 6-8; DE 62-4 at 5-6; DE 68-1 at 6-7; DE 98-1 at 1-2; DE 110-11 at 2.) In my opposition briefs, I listed many of the 50+ judiciary violations and the Third Circuit's use of them. (Examples: DE 77 at 9-19, DE 78 at 9-19, DE 84 at 10-19.)

Separately, in seeking sanctions against me, Steve W. Davis and VEOLIA WTS USA, Inc.⁸ ("Veolia Respondents") jointly focused on only the latest six cases (DE 58-1 at 1) while respondents Mr. Kirchner and Flaster/Greenberg ("F/G Respondents") jointly focused on only the latest four cases (DE 62-4 at 3-4). Neither focused on my New Jersey State cases. (DE 58-1 at 1; DE 62-4 at 3-4; App. at 13a-14a.)

⁸ Formerly known as SUEZ WTS USA, INC.

E. The February 29, 2024 Dispositive Decision.

a. Dismissal Motions Granted.

On February 29, 2024, in a Rule 12(b)(6) proceeding, Judge O'Hearn acknowledged that my complaint alleged that "[t]his [District] Court has repeatedly rendered decisions that were not merited by the facts and in the process committed 50+ judiciary violations." (App. at 27a (quoting my complaint).) However, she did not analyze any of the 50+ judiciary violations dismissal discussion. (*Id.* at 30a-38a.)

She also stated she "ha[d] no jurisdiction to review any decisions of the Third Circuit" because the New Jersey District Court "does not sit in review of the Third Circuit; they sit in review of the District Court." (App. at 38a (citing a ruling by Judge McNulty – one of the Three District Judges – in one of my prior cases).)

Without analyzing any of the 50+ judiciary violations, especially the ones that appear in the Third Circuit opinions, Judge O'Hearn proceeded to use the Third Circuit opinions, as is, without explaining how this was possible given the presence of judiciary violations in them. (*Id.* at 30a-38a.) Regardless, she used them to affirm the Three District Judges' opinions. (Examples: *Id.* at 32a ("In the Bishop II Litigation, ... the Third Circuit affirmed ..."); 36a ("the District Court found that 'Mr. Fink has failed to clear the high bar imposed by Rule 60(d)(1) or (3)' which the 'Third Circuit affirmed'").)

In her February 29, 2024 decision, Judge

O'Hearn granted all of the motions to dismiss my complaint except for EdgeLink's. (*Id.* at 7a-9a (order), 11a-12a (opinion)). She based her decision on the doctrine of *res judicata* (*Id.* at 31a-36a)

b. Sanction Motions Granted.

In considering the sanctions filed by the Veolia and the F/G Respondents, Judge O'Hearn stated I "ha[d] filed some eight separate lawsuits – the present matter included – traceable to the same dispute over [my] 2001 credit agreement with ALSI," a New Jersey software developer (a.k.a. Advanced Logic Systems, Inc.). (App. at 41a; DE 1 at ¶9, 25.) She concluded that "this Court has no difficulty concluding that Plaintiff routinely 'abuses the judicial process by filing *meritless and repetitive actions*,' and such exigent circumstances warrant a pre-filing injunction at this point in time." [Emphasis Added; Citations Omitted.] (App. at 41a.)

Based on this finding and conclusion, Judge O'Hearn enjoined me "from filing further complaints or filings related to this matter and/or against any of these same defendants without the express written permission of the undersigned [Judge O'Hearn], as outlined in this Court's corresponding Opinion." (*Id.* at 9a.) She reached this conclusion without addressing with specificity any of the 50+ judiciary violations. (*Id.* at 39a-44a.)

Also, in her analysis, Judge O'Hearn included two New Jersey State cases of mine: the ALSI I Litigation (a.k.a. "Gloucester Litigation") and the ALSI II Litigation (a.k.a. "Camden Litigation"). (*Id.* at

13a-17a (the eight cases listed), 41a (“eight separate lawsuits”; DE 1 at ¶¶31, 55.) Neither the Veolia Respondents nor the F/G Respondents had mentioned either. (*See above*, p.7.)

In describing the ALSI I Litigation settlement, Judge O’Hearn omitted any mention that ALSI, et al. agreed to pay me “\$1,000,000 plus interest;” a fact mentioned in my complaint (App. at 13a; DE 1 at ¶48.) She did not explain why a case with a \$1,000,000 settlement in my favor should be considered “meritless.” (App. at 39a-44a.)

As for the ALSI II Litigation, she misdescribed it as having been “referred to binding arbitration” (*Id.* at 13a-14a) when that case had been specifically *excluded* from arbitration (DE 1 at ¶¶65; 99). ALSI filed a bankruptcy petition on October 28, 2008 which stayed the ALSI II Litigation. (DE 1 at ¶101; also *see* App. at 14a.) On August 13, 2009, the bankruptcy court concluded the bankruptcy case by discharging ALSI’s debts. (DE 1 at ¶121.)

Also, Judge O’Hearn, in analyzing the Veolia and F/G Respondents’ Sanctions, did not mention that those respondents had not been parties to the ALSI I or ALSI II Litigations. (App. at 39a-44a; DE 1 at ¶¶31, 55.) None of these parties discussed these two cases in their dismissal motion briefs. (DE 57-1; DE 62-4.)

F. My Reconsideration Motion.

On March 4, 2024, I requested permission to file a motion for reconsideration of the February 29,

2024 decision, along with other filing requests. (DE 126 at 1.) On March 6, 2024, Judge O’Hearn denied that reconsideration motion request but did not give any reason for her denial. (App. 5a-6a.)

On March 8, 2024, I requested permission for a reconsideration motion of Judge O’Hearn’s March 6, 2024 denial of my permission request. (DE 133 at 1.) On March 11 2024, Judge O’Hearn denied my request.⁹ (App. 4a.)

G. My Appellate Case.

On March 27, 2024, I filed a notice of appeal which included Judge O’Hearn’s February 29, 2024, March 6, 2024 and March 11, 2024 decisions. (DE 143; CA-DE 1.)

On May 9, 2024 (five weeks later), the Clerk of the Court for the Third Circuit informed the parties via a letter that “[t]his appeal has been listed for possible summary action by a panel of this Court, pursuant to Chapter 10.6 of the Internal Operating Procedures of the United States Court of Appeals for the Third Circuit” and stated the court could take such action “*if it appears that no substantial question is presented.*” [Emphasis Added.] (CA-DE 26-1 at 2.) The letter went on to state that the parties could “submit written argument in support of or in opposition to such action” but the letter did not include any specific details which supported such a summary ac-

⁹ Judge O’Hearn incorrectly referenced the “February 29, 2024 Order” when she should have stated her denial involved my request for permission to file a reconsideration motion of her “March 6, 2024 Order.” (App. 4a.)

tion or what the responses should be structured. (CA-DE 26-1 at 2.)

Prior to this letter, no respondent had argued for the court to take such action and neither had I. (See Docket, CA-DE 2 through CA-DE 25.)

On May 13, 2024, I filed a motion which requested clarification as to information absent from the Clerk's letter, including the reason why the Third Circuit believed "no substantial question is presented" by my appeal. (CA-DE 28 at 1-2.) No appellee opposed this clarification request. (See Docket, CA-DE 29 through CA-DE 34.)

On May 30, 2024, the Veolia Respondents filed a 7-page response supporting summary judgment; no other respondent filed a response. (CA-DE 30.) They only argued (i) that the doctrine of *res judicata* barred my underlying complaint claims (*Id.* at 4-5) and (ii) that Judge O'Hearn had not abused her discretion by imposing a pre-filing injunction (*Id.* at 5-7). Their legal arguments did not dispute with specificity any of the 50+ judiciary violations committed by the Three District Judges. (CA-DE 30 at 4-7.)

On June 10, 2024, the Third Circuit responded to my clarification motion: "no further clarification" was needed. (CA-DE 35 at 1.) In that same order, the Court also denied my motion to oppose the respondents' single supporting response. (*Id.*)

H. My Opposition Response.

On June 20, 2024, I filed a 35-page response (“Opposition Response”) (CA-DE 36) as best as I could since I did not know the genesis of the possible summarily dismissal (CA-DE 28 at 1-2 (my request for clarity); CA-DE 35 at 1 (Third Circuit’s denial).

In my Opposition Response, I summarized various facts from my complaint which included factual support for my allegations that the Three District Judges had deprived me of due process. (CA-DE 36 at 7-11.)

I also stated that in the various dismissal motions filed in the underlying district court and decided by Judge O’Hearn, none of the respondents had disputed with specificity any of the 50+ violations committed by the Three District Judges. (CA-DE 36 at 13.)

My Opposition Response presented over a span of *16 consecutive pages* at least eight substantial questions. (*Id.* at 19-34.) I addressed errors committed by Judge O’Hearn: some captioned as explicit questions, others as explicit errors committed by Judge O’Hearn, and others as specific legal issues. (*Id.*) They included the following:

1. Did the 50+ judiciary violations committed by the Three District Judges constitute a grave injustice, thereby invoking Rule 60(d), which Judge O’Hearn failed to address with specificity? (CA-DE 36 at 19-22.)

2. Did Judge O'Hearn fail to comply with the legal standards in a Rule 12(b)(6) proceeding, especially with regard to the 50+ judiciary violations? (CA-DE 36 at 22-23.)

3. Given the undisputed 50+ judiciary violations, had the prior district court cases been decided on the merits? (*Id.* at 24-26.)

4. Did Judge O'Hearn err as to (i) the findings of fact and conclusions of law in the Bishop-II Litigation, or (ii) in the current Rule 60(d) case, especially since no respondent had disputed with specificity any of the alleged 50+ judiciary violations and neither had Judge Kugler in the Bishop-II Litigation? (*Id.* at 27-29.)

5. Did Judge O'Hearn err when she failed to address my request for leave to amend my complaint, thus preventing me from adding a count that would have precluded Judge O'Hearn's conclusion that *res judicata* precludes my latest claims against the respondents? (*Id.* at 29-30.)

6. Did Judge O'Hearn err and when she (i) independently raised a legal argument in which she stated she lacked jurisdiction to review Third Circuit opinions, (ii) did so in a Rule 12(b)(6) proceeding without prior notification to the parties of her intention to use such an argument, and (iii) subsequently barred me from filing a motion for reconsideration? (*Id.* at 30-31.)

7. Did Judge O'Hearn err when she granted a sanction against me even though no respondent had

disputed with specificity the alleged 50+ judiciary violations committed by the Three District Judges and the New Jersey State cases had not been meritless? (CA-DE 36 at 32-33.)

8. Did Judge O'Hearn err when she denied my request for permission to file a motion for reconsideration regarding her February 29, 2024 decision? (*Id.* at 33-34.)

None of the respondents requested permission to oppose my response.

I. The Third Circuit's Dispositive Order.

On July 29, 2024, the Third Circuit issued a dispositive order that stated "[Fink's] appeal does not present a substantial question." (App. at 2a.)

The Third Circuit then specifically affirmed that the District Court (i) "properly determined that Fink failed to establish a basis for relief pursuant to Federal Rule of Civil Procedure 60(d)," (ii) "properly dismissed the complaint on the basis of res judicata" and (iii) "did not abuse its discretion in enjoining Fink from filing a complaint or other filings related to this matter without that Court's prior approval." (*Id.*)

The Third Circuit did not issue an opinion to support its July 29, 2024 order. (*See* Docket. CA-DE 35 through 38.) On August 9, 2024, I requested the Court to issue one. (CA-DE 38.)

On August 12, 2024, I requested a rehearing of the July 29, 2024 dispositive order. (CA-DE 39.)

J. Third Circuit's September 18, 2024 Orders.

On September 18, 2024, the Third Circuit issued two separate orders.

The first denied my request for the Court to issue an opinion of its July 29, 2024 dispositive order. (CA-DE 41.) The second order denied my petition for a rehearing of the July 29, 2024 dispositive order. (App. at 46a.) The Court did not include an opinion in either instance. (See Docket, CA-DE 40 through CA-DE 43 (no opinions included).)

REASONS FOR GRANTING THE PETITION**A. Overview.**

The Third Circuit deprived me of due processing when it summarily dismissed my appellate case. It did so by stating not even one substantial question exists for it to consider even though I presented at least eight such questions with many concerning the 50+ judiciary violations which neither Judge O'Hearn nor the respondents had analyzed/disputed with any specificity. The Third Circuit did not analyze them either.

The Third Circuit, just like the respondents and prior district judges, cannot dispute these 50+ judiciary violations. If these violations do not exist, then it should have been easy for someone, especially the economically motivated respondents, to have simply shown where in the relevant court records any of the many extrajudicially sourced (supposed) facts

exist. The Third Circuit did not do so in my prior Rule 60(d) case, the Bishop-II Litigation, and it cannot do so now as confirmed by the fact that none of the respondents has done so to date. That helps explain why the Third Court summarily dismissed my case in a complete disregard of the rule of law, especially Rule 60(d). The Third Circuit did not want to address the 50+ judiciary violations, or the numerous issues raised by Judge O'Hearn in her decisions.

Further, the Third Circuit could *not* argue that it lacks jurisdiction over its own opinions as Judge O'Hearn had done.

On this score, Judge O'Hearn had made her jurisdictional argument without prior notification to the parties and denied my request for permission to file a reconsideration motion. This blocked my ability to address her argument, to be heard on the issue, and address her conclusion to just treat these opinions as if they had merit.

Regardless of the supposed jurisdictional issue and its resulting elimination of a major portion of my case, Judge O'Hearn continued to decide the case when an equitable alternative was for her to transfer my case out of the Third Circuit. An outside district court could consider whether the Third Circuit's prior opinion contained extrajudicially sourced (supposed) facts, whether they were meritorious.

Alternatively, Judge O'Hearn could have denied the Rule 12(b)(6) dismissal motions and allow the jury – I filed my complaint as demanding a jury trial (DE 1 at 1) – to determine whether the Third

Circuit opinions contained judiciary violations that rendered them meritless.

This Court needs to ensure that the rule of law prevails; that Rule 60(d) is not just words on a page in the Federal Rules of Civil Procedure. This Court needs to ensure untrue extrajudicially sourced facts cannot pervert justice.

B. The 50+ Judiciary Violations.

The 50+ judiciary violations constitute the core of my allegations that the Three District Judges had repeatedly deprived me of due process, a grave injustice. These violations support my Rule 60(d) request for new trials. That is why the undisputed 50+ judiciary violations play such a key role in at least five of the questions I raised in my Opposition Response. (*See above Questions # 1, 2, 3, 4, and 7.*)

a. Impact in My Prior Cases.

As I alleged in my underlying complaint, the Three District Judges had committed over 50 judiciary violations in five prior cases; many consist of extrajudicially sourced (supposed) facts with most false. The Three Judges had used these (supposed) facts as the basis for granting either summary judgment or pre-discovery dismissal motions. Importantly, no one (including the presiding district and appellate judges) had ever disputed with specificity any of the 50+ judiciary violations. As such, none of the prior decisions had been rendered on the merits. Regardless, the lower courts granted and af-

firmed the dismissal of the Bishop-II Litigation, the first case in which I explicitly invoked Rule 60(d).

b. Impact in My Underlying Case and Appeal.

In rendering the February 29, 2024 decision, Judge O'Hearn used the very same opinions that contained some of the 50+ judiciary violations as the basis for her conclusion that *res judicata* barred my latest complaint. However, she did so without analyzing any of the 50+ judiciary violations. As such, she improperly sidestepped the 50+ judiciary violations in a Rule 12(6)(b) proceeding even though I had specifically listed them in my complaint and opposition briefs.

As Judge O'Hearn acknowledged, she was obligated in a Rule 12(b)(6) proceeding to accept as true my allegations that the Three District Judges had deprived me of due process unless *meritorious* prior opinions exist which dispute those allegations. (App. at 22a-23a.) With the prior Third Circuit opinions riddled with judiciary violations based on the facts supporting my deprivation-of-due-process-allegations and despite the fact that none of the respondents disputed with specificity any of the violations, Judge O'Hearn did not analyze any of the 50+ judiciary violations. Instead, she independently introduced a jurisdictional issue without allowing me to oppose it. (Discussed below.) As such, she obviously disfavored me in a Rule 12(b)(6) proceeding and did not rule impartially.

Similarly, the Third Circuit also sidestepped the 50+ judiciary violations by summarily dismissing my appellate case even though I had presented at least eight substantial questions over a span of 16 consecutive pages that had not been previously considered by that court. That constituted lots of questions over lots of pages. Too many for that court to have just missed them.

C. Judge O'Hearn's New Legal Argument.

Judge O'Hearn independently introduced the legal argument that supposedly she could not "re-view" Third Circuit opinions – supposedly, even not to confirm they contained some of the 50+ judiciary violations – and made this argument without giving prior notice to the parties. (See above Questions # 6.) As a result, she eliminated a major portion of my case.

Subsequently, she denied my request to file a motion for reconsideration. (*Id.*) By blocking my reconsideration request, she effectively prevented me from being heard on the jurisdiction issue. As such, she revealed her bias against me.

Judge O'Hearn could have transferred my case to a court outside of the Third Circuit's jurisdiction but never even mentioned that possibility. An outside court could then review the appellate opinions for the presence of substantial judiciary violations; the Third Circuit does not "sit in review" of an outside court. In that way, my case would receive a full hearing, not the truncated version Judge O'Hearn gave it. Rather than do that, Judge

O'Hearn just proceeded with my fatally crippled case to a predictable outcome: dismissal.

Unlike Judge O'Hearn, for obvious reasons, the Third Circuit could not argue it lacked jurisdiction over its own opinions. Also, the Third Circuit could not deny that its prior opinions contained some of those 50+ judiciary violations, including extrajudicially sourced (supposed) facts with most false.

Also, the Third Circuit faced two thorny questions on this issue: Did the jurisdictional argument really preclude Judge O'Hearn from reviewing the opinions to determine whether they contained substantial judiciary violations? Also, if so, could a district court outside the Third Circuit perform this fact-finding function? By summarily dismissing my appellate case, the Third Circuit sidestepped these two questions. It also revealed its bias against me.

D. Meritless Opinions v. Meritorious Ones.

Judge O'Hearn acknowledged that *res judicata* requires that the prior opinion(s) cited must be meritorious. (App. at 31a ("a final judgment on the merits in a prior suit").) As I showed in my complaint and opposition briefs, the prior cases and appeals contained many judiciary violations and thus none were meritorious.

Nevertheless, Judge O'Hearn concluded she lacked jurisdiction over the meritless prior Third Circuit opinions. She accepted them, as is, without explaining why she could do so in a Rule 12(b)(6) proceeding.

By doing so, Judge Ohearn effectively jettisoned a substantial portion of my case: that the Third Circuit's opinions constitute proof that it had deprived me of due process; that the Third Circuit opinions were meritless because they contained some of the 50+ judiciary violations.

Judge O'Hearn used these meritless Third Circuit opinions to rehabilitate the Three District Judges' opinions in the Rule 12(b)(6) proceeding. This allowed her to refute my allegations that the Three District Judges had deprived me of due process by committing over 50 judiciary violations. By using the Third Circuit's opinions to support her conclusion, Judge O'Hearn effectively avoided having to show with specificity that the 50+ judiciary violations had not been violations, a task that none of the respondents even attempted.

E. Sanction Granted Against Me.

Judge O'Hearn incorrectly granted a sanction against me – the first judge to do so.¹⁰ She based her decision on her incorrect list of eight supposedly “meritless” cases of mine. It was fatally flawed.

First, I obtained a \$1,000,000 settlement in the ALSI I Litigation which makes it impossible to characterize that as a “meritless” lawsuit as Judge O'Hearn did.

¹⁰ Judge Kugler, who presided in the prior Rule 60(d) case, had only warned me about the possibility of a sanction against me. (DE 110-8 at 11; also *see* App. at 42a (“Judge Kugler warned that if [Fink] should ‘file another action...’”).)

Second, the ALSI II Litigation was not decided in arbitration; it never went to arbitration. Instead, it was terminated because of the ALSI bankruptcy. Again, no support for a “meritless” characterization.

Third, the five prior federal district cases contained the undisputed 50+ judiciary violations which renders those opinions meritless (not my case) and effectively mute as to justifying a sanction since no one disputed any of those violations with specificity. For the same reason, the Third Circuit opinions are meritless. They also contained judiciary violations.

Fourth, Judge O’Hearn independently introduced some of these supposed facts and arguments without providing the parties with prior notification.

Therefore, there was no history for Judge O’Hearn to use as a basis for her draconian decision. Also, she did not afford me an opportunity to be heard on her supposed “meritless” findings. Again, revealing her bias against me.

Regardless, the Third Circuit did not consider my Opposition Response which raised the substantial question as to whether Judge O’Hearn had erred when she granted a sanction against me. (See above Question #7.) That question should have precluded the Third Circuit from summarily dismissing my appellate case and from denying my petition for a rehearing. As a result, the Third Circuit deprived me of due process, a grave injustice.

F. Third Circuit's Bias Against Petitioner.

The Third Circuit exhibited a bias against me – whether unintentionally or otherwise – in my two Rule 60(d) cases. In both cases, the Third Circuit disregarded the 50+ judiciary violations.

a. First Rule 60(d) Case.

In the first Rule 60(d) case, the Bishop-II Litigation, presiding District Judge Kugler had stated in his analysis of the Rule 12(b)(6) proceeding (DE 110-8 at 4) that I had alleged “Judge Hillman denied [me] due process by ... us[ing] ‘extrajudicially sourced facts’ in his opinion” (*Id.* at 7). Regardless, without addressing any of those extrajudicially sourced (supposed) facts with specificity (or any of the other judiciary violations), Judge Kugler also stated that “Fink’s assignment of legal errors allegedly committed by Judge Hillman smacks more of disagreement with the rulings rather than a true charge of partiality.” (*Id.*) Clearly, the two statements contradict each other with the latter revealing Judge Kugler’s bias against me.

In reviewing that case, the Third Circuit did not even mention any of the 50+ judiciary violations, much less the extrajudicially sourced (supposed) facts. That court simply concluded that “Fink’s fraud-on-the-court allegations, as well as his other allegations directed at the District Judges who presided over his previous cases, amount to nothing more than disagreements with the District Judges’ rulings in those cases.” (DE 110-9 at 5.) As such, the Third Circuit merely echoed Judge Kugler’s incorrect

conclusion. Just as Judge Kugler had done, the Third Circuit's review disregarded the 50+ judiciary violations I had presented in that case. Thereby, the Third Circuit revealed its bias against me.

b. Second Rule 60(d) Case.

In the underlying appellate case, the Third Circuit summarily dismissed my case based on its own findings that "it appears that no substantial question is presented." However, no respondent (nor I, obviously) had filed a single document which discussed this possibility. Therefore, the court, *based it on its own research*, and seems to have formed a preliminary conclusion by challenged me to dissuade it from summarily dismissing my case. It did so without sharing the supposed fruits of its research with the parties, even after I requested the information.

As a result of withholding the information, I had to essentially work in the dark when preparing my Opposition Response to the possible summary dismissal of my case, which seems manifestly unfair. The court, by withholding this crucial information, turned the legal proceeding into a gotcha game.

Further, only the Veolia Respondents supported summary action. However, they merely argued the bare minimum: that *res judicata* barred my underlying complaint claims and that Judge O'Hearn had not abused her discretion by imposing a pre-filing injunction. They did not dispute with specificity any of the 50+ judiciary violations committed by the Three District Judges, meaning the Third Circuit opinions should have been found to be

meritless in the Rule 12(b)(6) proceeding. As such, no basis existed for the summary action.

Also, in the appeal case, I presented at least eight substantial questions in my Opposition Response to a summary decision. Many of the substantial questions which I listed in the appellate case involved the 50+ judiciary violations. At a minimum, my Opposition Response proffered the +50 judiciary violations as a bar to any summary dismissal. Regardless, the Third Circuit never addressed, much less invalidated, any one of the eight.

In light of the foregoing, especially concerning the 50+ judiciary violations about which it learned from my Opposition Response and its supposed own research of the underling court docket, the Third Circuit's summary dismissal revealed its bias against me.

G. Grave Miscarriage of Justice.

I have repeatedly been deprived of due process by the Third Circuit, as amply demonstrated with its use of judiciary violations in its opinions. Importantly, no party (including judges) has ever disputed with specificity any of the 50+ judiciary violations.

Similarly, Judge O'Hearn had also deprived me of due process. She independently introduced a legal argument without giving me prior notice of her intent to do so and then she denied my request to be heard on it.

She also used her alleged jurisdictional conflict to benefit the respondents at my expense. Instead of transferring my case to another district court outside the Third Circuit's jurisdiction, Judge O'Hearn gutted a major chunk of my complaint which made dismissal inevitable.

H. Rule 60(d).

Rule 60(d) addresses the possible need for corrections when one or more parties have suffered a grave miscarriage of justice. In this instance, I have repeatedly been deprived of due process by the New Jersey District Court and the Third Circuit.

As I presented in my underlying complaint, the Three District Judges had repeatedly deprived me of due process in five prior cases by committing 50+ judiciary violations over only five cases.

Judge O'Hearn had done so in the underlying district court case by disregarding these many violations. The Third Circuit did so when it affirmed the prior cases despite its use of some of those 50+ judiciary violations and by summarily dismissing my current Rule 60(d) case without addressing with specificity any of the 50+ judiciary violations.

Also, since the respondents did not raise the substantial-question issue, the Third Circuit would have had to review the district court docket of the underlying case, including the complaint, as well as my opposition briefs to the various dismissal motions, to find that no substantial question exists. In complaint and opposition briefs, I repeatedly pre-

sented many, if not all, of the 50+ judiciary violations. As such, they precluded the possibility of the Third Circuit missing them inadvertently, especially since many were extrajudicially sourced (supposed) facts. The only logical conclusion is that the Third Circuit had deliberately disregarded them.

I. District Judges Failed to Act Impartially.

An unfair decision, one rendered by a judge who fails to act impartially, must not be allowed to stand; his decision must be voided/reversed if justice is to prevail. To protect justice in those circumstance, "[a] judgment is void if the court that rendered it [...] acted in a manner inconsistent with due process." *Klugh v. U.S.*, 620 F.Supp. 892, 901 (D.S.C. 1985) (citing *Margoles v. Johns*, 660 F.2d 291 (7th Cir. 1981) *cert. denied*).

An impartial judge constitutes a key element in assuring due process. Per 28 U.S.C. § 455, Section (a): "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

"Recusal under *Section 455* is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself *sua sponte* under the stated circumstances." *Taylor v. O'Grady*, 888 F.2d 1189, 1200 (7th Cir. 1989) (citing *United States v. Balistreri*, 779 F.2d 1191, 1202 (7th Cir. 1985).) "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or

state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky*, 114 US S. Ct., 1147, 1162 (1994).

While this Court has stated "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion" (*Liteky* at 1157), my case, with its unopposed allegations of 50+ judiciary violations spanning the five prior cases, plus the violations in the current case, must be considered as an exception. After all, an objective observer could only conclude that I had been repeatedly deprived of due process, especially since the Third Circuit has defined an extrajudicial bias as "a bias that is not derived from the evidence or conduct of the parties that the *judge* observes *in* the course of the proceedings." *United States v. Eisenberg*, 734 F. Supp. 1137, 1153 (NJDC 1990) (citing *Johnson v. Trueblood*, 629 F.2d 287, 291 (3d Cir. 1980) [Citations Omitted]). If for no other reason, the district judges' use of extrajudicially sourced (supposed) facts constitutes proof of the judges' bias against me.

As for using opinions as a means of arguing a judge failed to act impartially, this Court stated that they can be used "if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." [Emphasis Added.] *Liteky* at 1157. Here, all the many violations adversely impacted my cases – a high degree of antagonism.

Further, in the Bishop-II Litigation (a Rule 12(b)(6) proceeding) and affirmed by the Third Circuit (App. at 16a-17a; DE 110-8 at 1, 4), Judge Kugler stated that “[f]or the purposes of a motion to dismiss, the facts alleged in the complaint are accepted as true and all reasonable inferences are drawn in favor of the plaintiff” (DE 110-8 at 4 (citing *New Jersey Carpenters & the Trustees Thereof v. Tishman Const. Corp. of New Jersey*, 760 F.3d 297, 302 (3d Cir. 2014))). However, in the underlying matter, Judge O’Hearn did not do so with regard to the 50+ judiciary violations.

Significantly, neither the respondents, nor the judges (appellate and district) in the underlying matter, presented specific facts which disputed with specificity any of the facts supporting my deprivation-of-due-process allegations, nor did any of the respondents/judges dispute that the violations adversely impacted their dismissal arguments.

Undisputed, the 50+ judiciary violations bar any use of the prior opinions in my current case for purposes of invoking *res judicata*. After all, many of the violations are extrajudicially sourced (supposed) facts with most false.

J. Respondents Failed Their Burden of Proof.

On February 29, 2024, Judge O’Hearn stated that “[o]n a Rule 12(b)(6) motion, the ‘defendant bears the burden of showing that no claim has been presented.’” [Citations Omitted.] (App. at 22a.)

The respondents failed their burden-of-proof obligation when they solely relied upon the prior opinions issued by the Three District Judges and the Third Circuit's review of them. Those opinions contained the 50+ judiciary violations that support my deprivation-of-due process allegations. Without disputing with specificity the numerous violations, those opinions lack merit and fail as support for the respondents' dismissal arguments.

Since the respondents moved for dismissal, they bore the burden of proof; they had to *disprove* – dispute would be insufficient in a Rule 12(b)(6) proceeding – those supporting facts in my complaint if they wished to use the related opinions as if they were meritorious opinions for purposes of *res judicata*.

Since they did not do so, the alleged violations must be believed. That meant my allegations as to the Three District Judges having deprived me of due process must also be believed in a Rule 12(b)(6) proceeding. As such, the 50+ judiciary violations required Judge O'Hearn to have denied the dismissal motions and/or for the Third Circuit to have not summarily dismissed my appellate case.

K. Basis for Writ of Certiorari.

S. Ct. R. 10 states that “[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”

In this instance, the district judges in my prior cases committed more than 50 judiciary violations which constitutes more than just “erroneous factual findings” since so many of the violations are extrajudicially sourced (supposed) facts with most false, i.e., the supposed facts do not exist at all except to support a false narrative. As such, the prior judges’ decisions did not reflect “the misapplication of a properly stated rule of law” but rather reflected the deliberate distortion of the rule of law and thereby denied me due process.

Given the sheer number of these violations across multiple cases, this situation warrants this Court’s intervention so as to ensure future compliance by lower court judges with the federal rules and governing laws, as well as to restore my Constitutional right to due process.

Based on the foregoing, this Court needs to address this repeating problem. Therefore, this Court should grant a writ of certiorari.

K. Answers to the Petition Questions.

a. The Third Circuit Question.

As to whether the Third Circuit, prior to any briefing in the case before it, correctly concluded my appellate case lacks any substantial questions even though many substantial, previously unanswered questions exist, the answer must be no.

After all, in the underlying appeal case, the court did not even allow me to argue my case. It

simply summarily dismissed it by disregarding the substantial questions I had presented. It did so despite the fact that (i) I had presented at least eight substantial questions, (ii) many of my questions involved the undisputed 50+ judiciary violations in one way or another, and (iii) the respondents had not opposed my substantial questions or the 50+ judiciary violations.

b. The District Court Questions.

As to whether the underlying district court correctly handled the jurisdictional issue related to the prior Third circuit opinions and Rule 60(d), the answer must also be no. The same answer applies as to whether Judge O'Hearn deprived me of due process, especially as to being heard on this issue.

First, the respondents, who were the moving party and bore the burden of proof, did not raise the jurisdictional issue. Judge O'Hearn did so independently and introduced it without prior notification to the parties. She also *barred me from being heard* by denying me permission to file a reconsideration motion.

Second, Judge O'Hearn took the most-favorable-to-the-respondents approach as to the jurisdictional issue: she used the Third Circuit opinions, as is, despite the undisputed fact that they contained some of the 50+ judiciary violations. She did not consider the alternative of transferring my case to a district court that did not have such a jurisdictional restriction or allowing the jury to determine whether those opinions contained substantial judici-

ary violations.

Third, Judge O'Hearn did *not* dispute with specificity any of the 50+ judiciary violations that support my deprivation-of-due-process allegation, nor did she recognize the violations as sufficient justification for a new trial for the prior cases. Instead, she worked around them by invoking *res judicata*.

CONCLUSION

As for the Third Circuit's summary dismissal decision, many first-time, undisputed substantial questions exist that justify this Court's reversal of it. No legitimate way exists for any court to transform the meritless opinions in my prior cases into meritorious ones without first disputing with specificity the 50+ judiciary violations. No one, not even one of the judges, has even attempted to do so.

At a minimum, my case should be remanded back to the Third Circuit. Because of the undisputed 50+ judiciary violation (with some included in the Third Circuit's opinions) and Judge O'Hearn's jurisdictional conflict, this Court should also consider remanding my case back to a district court outside of the Third Circuit so that my entire complaint can be fairly considered, not just part of it.

For this reason and all the other foregoing reasons, this Court should grant a writ of certiorari and reverse the Third Circuit's decision.

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