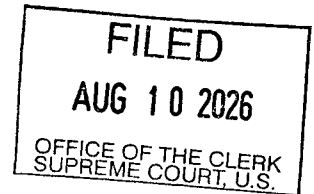


26-5741
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



JOHN F. KODENKANDETH, PETITIONER) SCOTUS DOCKET NO. 26-

vs

)

) Ca3 DOCKET # 25-2263

) PaWD Docket No. 2:23-cv-2051-CB

BLIND & VISION REHABILITATION)

SERVICES OF PITTSBURGH)

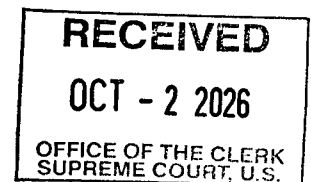
Ms Erika Petach, CEO)

EVERETT & HURITE)

HIGHMARK Health)

DEFENDANTS /APPELLEE)

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE THIRD
CIRCUIT DOCKET NO. 25-2263 ECF # 43
DENIAL OF EN BANC HEARING DATED JUNE 26, 2026
PETITION FOR WRIT OF CERTIORARI



Question PRESENTED

Question 1) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by THE MOTIONS PANEL of Ca3 No. 25-2263, SUMMARILY AFFIRMING THE LOWER COURT'S BIASED, ARBITRARY AND CAPRICIOUS MERITLESS RULING Pawd ECF 111, TO DISMISS THE PLAINTIFF'S CASE 2:23-CV-2051-CB WITH PREJUDICE. The motions panel did not perform an analysis or write an opinion See Ca3 docket ECF # 41 42, 43, inter alia. **ANSWER : YES** See Page #8 et seq for supporting arguments.

Question 2 : Whether the " MOTIONS PANEL " engaged in abuse of discretion, was arbitrary and capricious by NOT reviewing Appellant's opening brief ECF 20 that has more than 30 substantive issues and was on the docket Ca3 since August 26, 2025;

a) Instead the motions panel sat on 9 nine low value pending administrative motions, for ,more than 240 days ECF 27, 29, 30, 31 33, 34, 35 , 36 & 37 and then declaring in a few minutes (with wilful blindness) , that " there was no substantial issues " , and affirmed the lower court merittless contradictory ruling Pawd ECF 111.

ANSWER : YES See Page #8 et seq for supporting arguments.

Question 3) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by declaring " that the appellant's appeal has no substantial issues " without reviewing appellant' brief at ECF 20, on the Merits. **ANSWER YES**

Question 4)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by misuse of the FRAP 27.4 and IOP 10 et seq, to summarily dismiss the appellant's apples without a merit review of appellant's opening brief at ECF 20. by the Merit's panel.

ANSWER : YES See Page #8 et seq for supporting arguments.

Question 5) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by failure of the Ca3 to perform a De Novo appellate review of the district court dismissal of plaintiff's removed complaint without discovery, oral arguments and trial ? **ANSWER YES**

Question 6)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by Ca3 with wilfull blindness ignoring the procedural fact that the appellees including the joinder defendants defaulted and failed to file a appellee brief pursuant Ca3 circuit judge order from circuit judge Monrgomery Reeves ? **ANSWER YES**

Question 7)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the " liability shifting scheme for negligence and malpractice " to engage in Medicare fraud under the " nose and plain sight " of the Federal article III judges ? ANSWER YES

Question 8)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the " liability shifting scheme and Medicare Fraud " under the " nose and plain sight " of the Federal article III judges ? ANSWER YES

Question 9)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the jurisdictional fact that the defendants including defendant Highmark Health failed to file a valid notice of Removal pursuant to 28 USE 1441(a)(1) et seq ? ANSWER YES

Question 10)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness), the District Court lacked subject-matter jurisdiction because Appellant's claims are common-law negligence and breach of contract actions, rather than appealable "Medicare claims." ANSWER : YES See Page #8 et seq for supporting arguments.

Question 11) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by Whether the District Court erred by denying Appellant's Motion to Remand despite fatal, , and untimely procedural defects in the Defendants' Notice of Removal. ANSWER : YES See Page #8 et seq for supporting arguments.

Question 12)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the fact that Simple Contract Grievances Are Not Appealable Medicare Benefits ? ANSWER : YES See Page #8 et seq for supporting arguments.

Question 13) operational negligence.

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the fact that The Eradication of Chevron Deference Mandates Independent Judicial Review ? ANSWER : YES See Page #8 et seq for supporting arguments.

Question 14)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the fact that Denial of plaintiff's State Court Default Rights ? ANSWER YES

Question 15)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the fact that additional defendant secretary, Department of Health and Human services (hereafter DHHS) failed to appear to defendant the MAC claim M-24-3287 and therefore all additional; defendants, including DHHS, defaulted and admitted all plaintiff's counts in plaintiff's amended complaint ? ANSWER YES

Question 16)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the lower court Judge Cindy Bisoon's contradictory and vague orders Pawd ECF 59 & ECF 111 ? ANSWER : YES See Page #8 et seq for supporting arguments.

Question 17) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the jurisdictional fact that the lower USDC court lacked jurisdiction over the removed complaint ? ANSWER YES

Question 18)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the fact that USDC failed to Remand the improperly removed complaint even after the plaintiff filed a timely motion to Remand Paws ECF 22 ? ANSWER YES

Question 19)

Finally the Motions panel's act of summary affirmation is an act of arbitrary capricious abuse of discretion , in plain sight of the very substantial issues that the motions panel was wilfully blind to, in the appellant's opening brief at ECF 20. ? ANSWER YES

The answer is YES for all the reasons given in the 19 questions Supra. See Page #8 et seq for supporting arguments.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page

- JOHN F KODENKANDETH, PETITIONER PRIVATE NO STOCK SYMBOL
- BLIND & VISION REHABILITATION SERVICES OF PITTSBURGH ; STATE OF PA, NO STOCK SYMBOL
- Ms Erika Petach, CEO , PRIVATE NO STOCK SYMBOL

- EVERETT & HURITE , PRIVATE NO STOCK SYMBOL
- HIGHMARK Health PRIVATE NO STOCK SYMBOL

RELATED CASES

- 1) John F Kodenkandath v Highmark health, et al filed at Allegheny County Common Pleas Court, Pittsburgh State of Pa GD23-12812;
- 2) John F Kodenkandath v Higmark Health et al filed at , improperly removed to Federal District Court of Western Pa Pittsburgh, Pa docket No. 2:23-cv-2051-CB ;
- 3) John F Kodenkandath v Higmark Health et al filed at Ca3 25-2263
- 4) John F Kodenkandath v Secretary, DHHS, UPMC Health Plan Inc et al improperly removed to Federal District Court of Western Pa Docket # 2:23-cv-2049- CCW ;
- 5) John F Kodenkandath v UPMCet al filed at Ca3 25-1513;
- 6) John F Kodenkandath v UPMC et al filed aat Ca3 24- 1208 ;;
- 7) John F Kodenkandath v UPMC et al filed at Allegheny County Common Pleas Court Pittsburgh, Pa docket No. GD23-12632;
- 8) John F Kodenkandath v UPMC et al filed at SCOTUS No. 24-5579 Cert Denied.

TABLE OF AUTHORITIES CITED

▪ Coppedge v. United States, 369 U.S. 438 (1962).

▪ Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982).

- BP Plc v Mayor & City Council of Baltimore. 141 S.Ct 1532, 1537-38 (2021)
- Dooner v. DiDonatoSupreme Court of Pennsylvania. Ju

ne 04, 2009 601 Pa. 209 971 A.2d 1187

- Fischer v United States Scotus Docket No 23-5572 June 28, 2024
- See Farina v Nokia et al , 625 F.3d 97 (2010)
- Quackenbush v Allstate Insurance. 527 US 706. 723-713 (1996) of NYstate courts;
- Joyce v Safeguard Mutual Ins Co , 524 A. 2d 1362 - Pa: Supreme Court 1987.;
- Mallory v Norfolk Southern Railroad Co , 600 US 122
- Citations from Ca3 ECF 75;
- Midland Asphalt Corp. v. United States, 489 U.S. 794, 798 (1989) (citing Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546 (1949)).
- Cohen V Beneficial Industries. 337 U.S. 541. 69 S.Ct. 1221. 93 L.Ed. 1528 ":

- Graber v. Doe II, 59 F.4th 603, 607 (3d Cir
- Menoken v. McNamara United States District Court, D. New Jersey. February 27, 2003 213 F.R.D. 193 2003 WL 549404
- Thomas for Brown v Sullivan, 788 F.SUPP 788
- Trump v United States , Scotus Docket No. 23-939 immunity.
- Wyeth v. Levi Supreme Court of the United States March 04, 2009 555 U.S. 555 129 S.Ct. 1187

STATUTES AND RULES

- US Constitution 5th amendment due process
- US Constitution 14th Amendment Due Process
- US Constitution 14th Amendment Equal Justice & equal Protection
- 28 USC § 1291 et seq
- 28 USC § 1292 et seq Collateral order Doctrine
- 28 USC §1367 et seq
- 28 USC § 1441(a)(1) et seq
- 28 USC § 1442(a)(1) et seq
- 28 USC § 1446(b)(1) et seq
- 28 USC § 1447 et seq
- 28 USC § 1455(d) et seq
- 28 U. S. C. § 1254(1).
- LCvR 83.2(C) et seq Notice of Appearance
- CODES OF FEDERAL REGULATIONS (CFR)
- 42 CFR §422.566(b)(1) ET SEQ
- 42 CFR §422.566 ET SEQ

Federal Rules of Appellate Procedure

- FRCP 12, 15, 37, 50 & 55
- FRAP 27 motions
- FRAP 26, 30, & 35.

SCOTUS Rules

- Rules 13.3, 24, 33.1, 33.2, & 39

State Of Pa STATUTES & Rules of Civil Procedure

- 42 Pa CSA § 704 et seq, Waiver of Jurisdiction
- 42 Pa CSA § 1012 et seq Notice of Appearance
- Pa RCP 1026 et seq;
- Pa RCP 1028 et seq;
- Pa RCP 1028 (a) (1) et seq;
- Pa RCP 1029 et seq;

- Pa RCP 1030 et seq;
- Pa RCP 1031 et seq;
- Pa RCP 1032 et seq;
- Pa RCP 237.1 et seq;

OTHER

- Pa Constitution Article 1, § 11 Open court doctrine;
- Pa Constitution Art 5, § 10 et seq Powers of Pa Supreme court

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays for a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from federal courts: The opinion of the United States court of appeals appears at Appendix to the petition and is

[X] reported at ; *NO OPINION MADE BY APPELATE COURT; , but order of denial are attached as in appendix*

[] has been designated for publication but is not yet reported; or, *Not applicable*

[] is unpublished. The opinion of the United States district court appears at Appendix to the petition and is *Not applicable*

[] reported at ; ____ or, *Not applicable*

[] has been designated for publication but is not yet reported; or *NOT APPLICABLE*
, [] is unpublished. *NOT APPLICABLE*

[X] For cases from state courts: The opinion of the highest state court to review the merits appears at Appendix to the petition and is: *Petitioner's state complaint was improperly removed , depriving the State Court from reviewing the complaint*

[x] reported at _NA_ ; or, *The state courts were deprived from rendering an opinion by the unlawful " hijacking" of the case GD23-12812 by improper removal to Federal district court by defendant Highmark health et al*

See Honorable Judge Klein's order at ECF and Appendix

[] has been designated for publication but is not yet reported; or, [] is unpublished. The opinion of the court appears at Appendix to the petition and is *Not applicable*

[] reported at ; _ NA_ or, *Not Applicable. See Honorable Judge Klein's order at ECF 11. attached to Appendix*

[x] has been designated for publication but is not yet reported; or, [] is unpublished. *The State Court of Pennsylvania was deprived by Hijacking of the case by defendant Highmark Health et al. See Honorable Judge Klein's order at ECF 11 See appendix*

JURISDICTION

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was . June 3, 2026 Appendix B

[x] Petition for rehearing was timely filed in my case. Yes

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 26, 2026 , and a copy of the order denying rehearing appears at Appendix .A

[] *Not applicable* An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) _____ on (date) in Application No _____. A _____. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] *Not applicable* For cases from state courts:

The date on which the highest state court decided my case was . A copy of that decision appears at Appendix *Not applicable*.

[x] A timely petition for rehearing was thereafter denied on the following date:, and a copy of the order denying rehearing appears at Appendix A.

[] *Not applicable* An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a). Yes

ARGUMENTS IN SUPPORT OF THE 19 QUESTIONS ON PAGES 2 TO 4 SUPRA

Question 1) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by THE MOTIONS PANEL of Ca3 No. 25-2263, SUMMARILY AFFIRMING THE LOWER COURT'S BIASED, ARBITRARY AND CAPRICIOUS MERITLESS RULING Pawd ECF 111, TO DISMISS THE PLAINTIFF'S CASE 2:23-CV-2051-CB WITH PREJUDICE.

The motions panel did not perform an analysis or write an opinion See Ca3 docket ECF # 41 42, 43, inter alia.

ANSWER : YES

Question 2) Whether the " MOTIONS PANEL " engaged in abuse of discretion, was arbitrary and capricious by NOT reviewing Appellant's opening brief ECF 20 that has more than 30 substantive issues and was on the docket Ca3 since August 26, 2025; ?

a) Instead the motions panel sat on 9 nine low value peding administrative motioons, for ,more than 240 days ECF 27, 29, 30, 31 33, 34, 35 , 36 & 37 and then declaring in a few minutes (with wilful blindness) , that " there was no substantial issues " , and affirmed the lower court meritless contradictory ruling Pawd ECF 111. ?

Answer is YES

SUPPORTING PROCEDURAL FACTS AND ARGUMENTS

1) ON OR ABOUT JUNE 3, 2026 these nine low value administrative motions sat for more than 240 days in the motion panel's inbox;

a) The Motion panel's Judges failed to look at the appellant's 36 page primary brief with appendix, that was filed in the docket on August 26, 2025 at ECF 20;. See APPENDIX D

i) This appellant's primary opening brief contained more than 30 substantive appealable issues that covered the state courts of PA , the federal district court , and improper federal removal process pursuant to 28 USC §1441 et seq. by defendants;

b) The appellees were required to file appellee briefs on or before September 27, 2025, but failed to do so;

c) Even though appellant objected, Judge Montgomery Reeves allowed the appellees to file an appellees brief on or before October 27, 2025. See Ca3 ECF 26;

d) But the appellees failed to file their appellee briefs on or before October 27, 2025. And therefore ON OCTOBER 27, 2025, the appellees admitted all the substantial issue in appellant's primary brief ECF 20;

e) Instead, appellees Filed a late invalid motion for summary affirmation ECF 27 by appellee Highmark that does Not overrule Judge Montgomery Reeve's order to file appellee briefs due on or before October 27, 2025;

3) The appeal Ca3 No. 25-2263 included the permissive joinder defendants in Pawd ECF 84, 106, 40 ,41, 48 49 , inter alia;

THESE PERMISSIVE JOINDER DEFENDANTS WERE ALL SERVED PURSUANT T TO Pa RCP 424 et seq and FRCP 4, 5(D) & FRCP 5(E)(2) when a party fails to appear. ¹;

a) These same joinder defendants defaulted at the Pawd court. See Pawd ECF 94 to ECF 99;

b) And lower federal Pawd court and Judge Cindy Bissoon (CB) with wilful indifference ignored , and failed to enter the default by permissive joinder defendants,

c) And the district court committed reversible errors that benefited the defendants and permissive joinder defendants;

d) Appellant incorporates Pawd ECF 40. 41. 49. 84 106. inter alia herein:

e) For all these reasons the permissive joinder pursuant to FRCP 20 et Seq of the following permissive defendant were permissively joint to the docket at 2:23-cv-2051- CB at the Federal District Court;

¹ FRCP 5(E)(2) **If a Party Fails to Appear. No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.**

- f) All defendants and permissive joinder defendants failed to respond to appellant's appeal at CA3 No. 25-2263 and failed to file a brief at Ca3 . And hence admitted all plaintiff's counts and claims in the plaintiff's amended complaint ECF Pawd 68.

4) Appellant in his motion Ca3 ECF 35 opposing appellees' motion to affirm ECF 27, 29 & 30, and has provided more than 10 rebuttal arguments to show that appellees' motions to affirm has no merit, It is just an bad faith "hail Mary play", after having defaulted ;

- Appellees including Highmark failed to comply with local FRAP 27.4 and improper use of IOP by the motion Panel;
- THERE IS NO LEGAL GROUNDS OR PREDICATE FOR THESE IMPROPER MOTIONS TO AFFIRM BY DEFENDANTS AND unethical appellees;
- APPELLES DEFENDANTS CONCEDES , AGREE, ADMITTED and DECLARE THAT THEY WILL NOT FILE RESPONSIVE BRIEF HENCE ADMITS TO ALL ISSUES AND CLAIMS IN PLAINTIFF'S OPENING BRIEF ECF 20 and Amended complaint Pawd Ecf 68;
- Appellees forfeited yielded and waived the right to file an appellee brief. AND IT APPEARS THAT THE MOTIONS PANEL IS REWARDING THESE UNETHICAL DEFENDANTS;
 - THIS RAISES TROUBLING QUESTIONS ABOUT THE MOTION PANEL'S ETHICS AND COMPLIANCE WITH ARTICLE III § 1 OF THE US CONSTITUTIONS THAT REGULATES ARTICLE III JUDGES;
- DEFENDANTS/APPELLEES AND THEIR ATTORNEYS , are engaged in abuse of process, procedure and corruption of the Judiciary, that is in violation of article III §1. This renders the US Constitution , an empty and meaningless paper;
- For these reasons the appellees' motion to summarily affirm meritless and ECF 27, 29 & 30 must be vacated;
- Lower ct order ECF 111 & 112 must be vacated and remanded to State of Pa ACCPC .
- HENCE THE MOTIONS PANEL HAD NO LEGAL GROUNDS TO AFFIRM , AND MOTION PANE's RULING Ca3 ECF 41.1 & 41.2 MUST BE vacated.

4.5) It is an undeniable procedural fact the appellees failed to file appellee briefs on or before October 27, 2025 pursuant to honorable circuit Judge Monygomery Revere's order ECF 26;

5) The appellees waived their right to brief the merits by ignoring the court's briefing timeline of October 27, 2025 , and that did NOT allow defendants to resolve the case via a summary motion after defaulting is procedurally, which is inequitable AND PREJUDIAL to the APPELLANT.

Question 3) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by declaring " that the appellant's appeal has no substantial issues " without reviewing appellant' brief at ECF 20, on the Merits ? ANSWER : YES

6) The appellees waived their right to brief the merits by ignoring the court's briefing timeline of October 27, 2025 , and that did NOT allow defendants to resolve the case via a summary motion after defaulting which is procedurally flawed , inequitable AND PREJUDICIAL to the APPELLANT.

- a) However, an appeal where a circuit court summarily affirmed a dismissed complaint *after* a substantive opening brief was filed—and while the appellees were violating a court order ECF 26, —raises SERIOUS questions about federal appellate due process and the proper limits of summary disposition rules.
- b) A Note on the Appellee's Default: Under FRAP 31(c), if an appellee fails to file a brief, they are not permitted to be heard at oral argument OR FILE MOTIONS FOR SUMMARY AFFIRMATION, unless the court grants permission., The court is still required to review the appellant's brief on its merits. iThe " Motions Panel " failed to refer the appellant's brief to the Marits Panel for review on the merits.
- c) Plaintiff's primary goal will be convincing the SCOTUS court that the substantive brief raised genuine, triable legal issues that deserved a full look by a merits panel, rather than an arbitrary rapid dismissal by a motions panel. See appellant's opening brief ECF 20:
 - i) Appellant's opening brief shows that the defendants and additional defendants were engaged in Medicare fraud in " in plain sight" with the help of the courts and Medicare.

Question 4)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by misuse of the FRAP 27.4 and IOP 10 et seq, to summarily dismiss the appellant's apples without a merit review of appellant's opening brief at ECF 20. by the Merit's panel. ?

ANSWER : YES

- a) The reason is that federal circuit courts have independent, broad authority under the Federal Rules of Appellate Procedure (specifically FRAP 27 and local circuit rules) to manage their own dockets and handle motions for summary disposition. However these powers are NOT to be used by the court to discriminate against Pro Se litigants and for improper purposes of clearing the backed up workload backlog at favoring defendants;

7) Summary affirmation is reserved exclusively for cases where the merits are so clear that there is no "substantial question" left to debate. BUT IN THIS CASE THERE ARE MORE THAN 30 SUBSTANTIVE ISSUES IN ECF 20:

- The Citation: Coppedge v. United States, 369 U.S. 438 (1962).
- How it supports the Plaintiff: The Court noted that if an appellant raises any issue that is not completely frivolous from an objective standpoint, the appeal presents a "substantial question" and must be allowed to proceed.

- The plaintiff cites *Coppedge* to argue that plaintiff's detailed, substantive opening brief raised more than 28 non-frivolous, arguable legal points. Therefore, a substantial question *did* exist, making summary affirmation a violation of standard appellate screening principles.

7.5) On the Dangers of Shortcuts and "Summary" Justice

The Supreme Court has repeatedly warned lower courts that while summary mechanisms are great for efficiency, they cannot replace full, careful judicial review of legitimate disputes.

Question 5) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by failure of the Ca3 to perform a De Novo appellate review of the district court dismissal of plaintiff's removed complaint without discovery, oral arguments and trial ? ANSWER : YES

a) The plaintiff argues that because the district court dismissed the complaint at the pleading stage, without discovery, the circuit court owed the plaintiff *de novo* (completely fresh) review of the complaint's legal sufficiency. Bypassing that review via a summary motions panel—especially when the opening brief laid out detailed arguments—abused the narrow purpose of summary affirmation.

Question 6)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by Ca3 with wilfull blindness ignoring the procedural fact that the appellees including the joinder defendants defaulted and failed to file a appellee brief pursuant Ca3 circuit judge order from circuit judge Monrgomery Reeves ?

8) On Appellee Default and Procedural Fairness

The Supreme Court has strictly enforced rules regarding party defaults and the strictures of due process.

- The Citation: *Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982).*
- This citation supports the Plaintiff: *Logan* is a foundational procedural due process case. The Supreme Court held that a litigant's cause of action is a species of property protected by the Fourteenth Amendment (and the Fifth Amendment regarding federal actions). As such, a state or court cannot destroy a litigant's property interest by using procedural traps or cutting off their right to be heard in a fundamentally unfair manner.
- The appellant /plaintiff leverages *Logan* into a due process claim: the court established a briefing order; the plaintiff compiled at significant expense; the appellees openly defied a court order Ca3 ECF 26, and the court rewarded the defaulting party by granting an abbreviated, summary out-of-turn motion. This

sequence effectively deprived the plaintiff of their "property interest" (the appeal) without a fair, orderly hearing.

9) Why the Third Circuit's Own Case Law is Actually Stronger Here

While SCOTUS provides the grand constitutional canopy, the plaintiff's absolute best citations for a Petition for Rehearing actually come from the Third Circuit's own internal rules and internal case law.

The plaintiff explicitly cites Third Circuit Local Appellate Rule (LAR) 27.4, which governs summary actions. The Third Circuit has internal, binding precedent stating that summary affirmation is a "drastic remedy" only appropriate when the case is so entirely closed by existing precedent that any argument to the contrary is completely shut down. Pointing out to the Third Circuit that a motions panel misapplied its own local rules is universally more effective at the rehearing stage than trying to shoehorn a generic Supreme Court case. However the En Banc panel turned out to be just as ignorant and hubruss infected "blob" as the motions panel

- a) The law firm Reed Smith is engaged in bad faith and unethical conduct by suggesting motion for summary affirmation ECF 27 ,29 & 30 to the motions panel, while defaulting by not filing a court ordered ca3 ECF 26, appellees' brief.

Question 7)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the " liability shifting scheme for negligence and malpractice " to engage in Medicare fraud under the " nose and plain sight " of the Federal article III judges ? ANSWER : YES

10) Plaintiff's complaint is mainly about negligence, unfair business practices of the Appellees defendants ,Plaintiff's opening brief promises detailed substantive issues in more than 30 issues including medicare fraud;

- a) Defendant Highmark Health is an insurance company with revenue in excess of 100 billion dollars;
- b) One of the many Plaintiff's claims against defendant Highmark is about its failure to reimburse the plaintiff \$119 for purchasing a hearing aid that is allowed by the plaintiff's plan with the defendant Highmark;
- c) Reimbursement of the plaintiff \$119 is NOT a covered Medicare benefit. And it is NOT a Medicare appealable claim. See 42 CFR 42 CFR § 422.564(b) ;
- d) But defendant Highmark logged the plaintiff's reimbursement claim for \$119 as a medicare claim in Medicare's notorious four step appeal process that famously takes several years to process;

Question 8)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the " liability shifting scheme and Medicare Fraud " under the " nose and plain sight " of the Federal article III judges ? ANSWER : YES

Plaintiff will refer to this fake medicare claim as " fake medicare claim";

- a) Defendant Highmark got many of monetary and legal benefits by shifting defendant Highmark's liability to Medicare;
- b) And defendants, federal Judges got to use the thousands of medicare statutes and federal regulations as affirmative defenses and talking points, that easily fooled the district judges and circuit judges;

12) Plaintiff states substantive question # 22 FROM APPELLANT'S OPENING BRIEF ECF 20 as an example below:

QUESTION NO 22 WHETHER JUDGE CB WAS BIASED by willful indifference to : MISUSE OF MEDICARE FOUR STEP APPEAL PROCESS 42 CFR §422.566 . et Seq PROVIDED BY MEDICARE ACT FOR THE Secretary of DHHS for only official Acts AND DENIAL OF ACTUAL MEDICARE BENEFITS allowed by the Medicare advantage (MA) statute 42 USC §1395w-22 et seq,

29) Defendant Highmark (HMH) is the Medicare Advantage organization (MAO) , is required by Center for Medicare Services (CMS) to operate a meaningful grievance and appeal process of its own for enrollees in the MA plan Pursuant to 42 USCA §1395w-22(f), 42 USCA §1395mm)c)(5)(A);

i) Defendant HMH the MAO is required to provide a meaningful procedure for hearing and resolving a grievance between the MAO and its members Pursuant to 42 USCA §1395w-22(f), 42 SCA §1395mm)c)(5)A)

ii) Defendant HMH failed to provide a fair grievance procedure and instead converted a grievance against the defendant HMH the MAO into a Medicare four appeal (that can take years even for fake invalid appeals) procedure pursuant to 42 CFR §422.566 -660 et seq;

iii) Defendant HMH MAO failed to provide Notice to plaintiff regarding the grievance in Count for MAC Claim for M-24-3287 of the Amended complaint ECF 68, pursuant to 42 CFR §422.564(b);

iv) The specific regulation that clarifies why a grievance against a Medicare Advantage (MA) organization is not appealable to the Medicare Appeals Council is 42 CFR § 422.564(b).

v) 42 CFR § 422.564(b) - Distinguished from appeals: This section explicitly states, "Grievance procedures are separate and distinct from appeal procedures, which address organization determinations as defined in § 422.566(b)."

vi) Grievances are complaints about the MA organization's operations, quality of care, or other aspects of the plan that do not involve a denial of coverage or payment for a service. Examples include issues with customer service, appointment availability, or the cleanliness of a facility.

b) Additional Defendants including UPMC have fraudulently shifted a grievance that is not appealable into a four step appeal boondoggle for avoiding legal costs, liabilities and engaged unjust enrichment, inter alia, All lesser cumulative issues included ;

WHEREFORE JUDGE CB ORDER ECF 111 MUST BE VACATED AS INVALID due to false basis of ignoring material facts regarding , misuse of the Medicare appeal process by

defendants . And being arbitrary, capricious, biased, abuse of discretion and violation of article III §1 by Judge CB, overtly and covertly manipulating the FRCP rules to benefit defendants and the federal officer secretary of DHHS and UPMC who are joinder defendant parties.

13) On JULY 10, , 2025 plaintiff made this appeal to Ca3 No, 25-2263. And almost 400 days later Ca3 without any analysis, the motion panel in an act of abuse of process, abuse of discretion, arbitrary and capricious and biased conduct affirmed lower court with prejudice.

- a) It has been more than 2000 days and \$2000 dollars in court fees and costs , since plaintiff experienced this negligence and bad service from defendants and the grossly incompetent Medicare organization;
- b) Chevron deference has been overruled since June 28, 2024. Ca3 has to perform analysis and cannot deflect to Medicare hearsay, and evade responsibility;

Question 9)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the jurisdictional fact that the defendants including defendant Highmark Health failed to file a valid notice of Removal pursuant to 28 USE 1441(a)(1) et seq ? ANSWER : YES

14) On or about February 22, 2024 honorable Judge Aenold Klein of ACCPC that he was deprived from entering a default judgment against the defenders, due to the improper removal of the state case GD23-12812 to the Federal court by defendant Highmark pursuant to 28 USC §1441 et seq. . See Appendix F and state of Pa docket GD23-12812 ECF 11.

15) For all these reasibs the EN Banc panel failed to remand this appeal to the state court of Pa at ACCPC for entry of default Judgment;

Question 10)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness), the District Court lacked subject-matter jurisdiction because Appellant's claims are common-law negligence and breach of contract actions, rather than appealable "Medicare claims." ? ANSWER : YES

ISSUE #1: Whether the District Court lacked subject-matter jurisdiction because Appellant's claims are common-law negligence and breach of contract actions, rather than appealable administrative "Medicare claims."

1. **Nature of the Claims:** Appellant's complaint alleges tortious negligence and unfair business practices by Appellee Highmark(HMMH) (an enterprise with revenues exceeding \$100 billion). Specifically, the dispute arises from:
 - o Highmark's failure to reimburse Appellant \$119 for out network purchase of hearing aid device that is allowed under appellant's enrollee contract plan with Highmark.

- Highmark's breach of contract regarding a \$500 out-of-network purchasing allowance.
- 2. Misapplication of 42 C.F.R. § 422.564(b): Under federal law, regular consumer grievances against an MAO—such as poor customer service, negligence, or administrative malpractice—are separate and distinct from "organization determinations" regarding coverage denials.
- 3. The "Fake" Appeal Liability Shifting Scheme: Rather than resolving these internal consumer grievances through its mandated procedures (pursuant to 42 U.S.C. § 1395w-22(f)), Highmark unilaterally logged these minor billing disputes into Medicare's multi-year, four-step administrative appeal process (ALJ/MAC Appeals M-24-3287). Highmark et al insulated itself from immediate common-law liability and shifted its defense costs to the federal government by creating this pretextual "fake Medicare claim, M-24-3287 "

Question !1) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by Whether the District Court erred by denying Appellant's Motion to Remand despite fatal, , and untimely procedural defects in the Defendants' Notice of Removal.? ANSWER : YES

1. State Court Action and Waiver: On November 6, , 2023, Appellant filed a 39-count civil complaint in the Allegheny County Court of Common Pleas Court(ACCPC) (GD23-12812). Defendants were properly served pursuant to Pa.R.C.P. 424.
2. Untimely and Defective Removal: Under 28 U.S.C. §1441(a) et seq and §1446(b)(1), defendants have 20 days to file for removal.
 - At ACCPC Appellees and Highmark et al, defaulted on November 26 , 2023 by failing to file a notice of removal;
 - Defendants /appellees failed to file a Notice of Removal st ACCPC;
 - Defendants defaulted on November 26, 2023 at ACCPC by failing to file a preliminary objection pursuant to Pa RCP 1028 et seq. And waive all rights to Remove plaintiff's complaint , pursuant to 28 USC §1441 et aq;
 - Co-defendants, additional defendants UPMC and Maximus failed to properly file or join a valid Notice of Removal under 28 U.S.C. 1441(a)(1), thereby waiving their rights and failing the rule of unanimity.
3. Judicial Error Below: The District Court (Judge CB) exhibited willful blindness to these jurisdictional flaws, improperly denying Appellant's Motion to Remand (ECF No. 22) and dismissing the case with prejudice (ECF No. 111).

Question !2)

Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the fact that Simple Contract Grievances Are Not Appealable Medicare Benefits ? ANSWER : YES

I. Simple Contract Grievances Are Not Appealable Medicare Benefits

Under 42 C.F.R. § 422.564(b), grievance procedures are legally decoupled from formal benefit appeals:

" Grievance procedures are separate and distinct from appeal procedures, which address organization determinations as defined in § 422.566(b). "

The \$119 reimbursement and the \$500 out-of-network allowances are contract disputes, not Medicare national coverage determinations. The Administrative Law Judge's (ALJ) subsequent findings on these issues constitute administrative hearsay (Fed. R. Evid. 401–404) and cannot form an affirmative defense for Highmark's

Question 13) Operational negligence. Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the fact that The Eradication of Chevron Deference Mandates Independent Judicial Review ? ANSWER : YES

II. The Eradication of Chevron Deference Mandates Independent Judicial Review

The Motion Panel's improper false findings of no substantive issues and passive adoption of the agency's administrative framework constitutes legal error. Following the Supreme Court's overruling of *Chevron* deference, this Court cannot blindly defer to agency actions or interpretations regarding what constitutes an Medicare administrative claim. The Court must perform an independent, de novo analysis of the statutory boundary between state common-law claims and Medicare administrative remedies.

Question 14) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the fact that Denial of plaintiff's State Court Default Rights ? ANSWER : YES

III. Denial of State Court Default Rights

On or about February 22, 2024, Court of Common Pleas Judge Arnold Klein noted that the state court was unconstitutionally deprived of its power to enter a default judgment against the Appellees due to defendant Highmark's improper and defective removal actions. see appendix F.

- a) Finally the Motions panel's act of summary affirmation is an act of arbitrary capricious abuse of discretion , in plain sight of the very substantial issues that the motions panel was wilfully blind to, in the appellant's opening brief at ECF 20.

Question 15) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the fact that additional defendant secretary, Department of Health and Human services (hereafter DHHS) failed to appear to defendant the MAC claim M-24-3287 and therefore all additional; defendants, including DHHS, defaulted and admitted all plaintiff's counts in plaintiff's amended complaint ? ANSWER : YES

- a) On July 7, 2024 the Medicare Appeal Council (MAC) finally ruling M-24-3287 was properly joined to the removed complaint at 2:23--cv-2051-CB. See Pawd RCF 41 & 49, and additional defendants were served pursuant Pa RCP 424;
- b) Additional defendants DHHS, Maximus , UPMC inter alia failed to respond and motion for default judgment were entered against them in Pawd ECF 49;

- c) Therefore all additional defendants including DHHS, Maximus Federal Services , UPMC. inter alia admitted all plaintiff's claims and counts in plaintiff's removed complaint and amended complaint.

Question 16) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the lower court Judge Cindy Bisoon's contradictory and vague orders Pawd ECF 59 & ECF 111 ? ANSWER : YES

16) Further, Judge CB's order ECF 59 demied all of the defendants' FRCP 12(b)(5) claims made in the motion to dismiss ECCF 9, 12 & 15;

i) From ECF 59 " A. Dismissal of the Complaint is Not Warranted Pursuant to Rule 12(b)(5), as There is a Reasonable Prospect that Service May Yet be Obtained. "

- a) Again from order ECF 59 " The Court only will address Mr. Kodenkandeth's federal claims.

i) AND THERE WAS ONLY ONE FEDERAL CLAIM " MAC 24-3287 " TO BE REVIEWED BY USDC PAWD. ALL THE REMAING 85 COUNTS WERE STATE OF PA JURISDICTIONAL CLAIMS

ii) And Judge CB failed to review the only Federal claim MAC M-24-3287

iii) Hence the STATE claims, counts ISSUES OF ARE NOT PART OF USDC PAWD OR JUDGE CB jurisdiction;

iv) THEREFORE USDC PAWD DOES NOT HAVE 28 USC §1367 JURISDICTION OVER STATE OF PA CLAIMS AND COUNTS IN THE PLAINTIFF'S AMENDED COMPLAINT ECF 68;

IV) HENCE PLAINTIFF'S AMENDED COMPLAINT THAT CONSISTS OF 85 STATE OF PA COUNTS MUST BE REMANDED TO THE STATE OF PA COURT ACCPC EVEN IF THE CA3 IMPROPERLY AFFIRMS the lower court ruling ECF 111;

- b) Judge CB's final ruling ECF 111 Contradicts judge CB's earlier ruling at ECF 59;

i) Judge CB is wilfully blind to the fact that the plaintiff cured the minor service issue by re-serving it to the defendants . See ECF 71;

ii) Appellant's opening brief ECF 20 discusses all the structural and reversible errors in the final ruling ECF 111;

iii) Judge CB is gaming the the judicial process by using more than 759 days of time to hide her biased INADEQUATE and arbitrary ruling ECF 111, that is based on judicial hubris;

iv) Judge CB's final ruling ECF 111 must be vacated for lack of candor, partiality and legal grounds.

17) For all these reasons the motion Panel's improper decision dated June 3,2026 must be set aside . The EN Banc hearing should grant the relief sought by the appellant.

Question 17) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the jurisdictional fact that the lower USDC court lacked jurisdiction over the removed complaint ? ANSWER : YES

For reasons that include but not limited to the following:

- a) The defendants/appellees/respondents defaulted on November 27, 2023 by failing to respond to the mandatory Notice to defendant and Pa RCP 1026 notice to Plead. And failed to cure the default . .
 - i) This is a violation of 28 USC §1446(b)(1)., which required the defendants to file a response (notice of Removal) on or BEFORE the shorter time period of twenty (20) days rather than 30 days;
 - ii) Removal of complaint is not a discretionary issue/matter but a Jurisdictional issue pursuant to 28 USC §1441(a)(1) et seq
- b) The defendants/appellees/respondents failed to file at ACCPC, Preliminary objections pursuant to Pa RCP 1028 et seq, and hence, waived all rights to the following:
 - i) Waived objections as to Venue, forum, jurisdiction, and right to removal of plaintiff's Complaint, pursuant to Pa RCP 1028(a)(2) et seq and 28 USC § 1441(a)(1) et seq, and 28 USC §1446(b)(1) et seq;
 - ii) Waived all rights to new matter affirmative defenses and CounterClaims , pursuant to Pa RCP 1030 & 1031 et seq; and
 - iii) Waived all rights to subject matter jurisdiction pursuant to Pa RCP 1032 et seq; and
 - iv) Defendants admitted to all 39 counts in plaintiff's original complaint at GD23-12812;
 - v) Defendants/appellees/respondents, failed to file Notice of Removal at the state of Pa court ACCPC;
 - vi) In Short, respondents' defaulted on Nov 26, 2023 and on December 1 at Federal District Court PaWD;
 - vii) Inter alia

Question 18) Whether, the 3rd circuit court of Appeal and district court of Western Pennsylvania, erred by Arbitrary, Capricious abuse of discretion by deliberate indifference (Wilful Blindness) by ignoring the fact that USDC failed to Remand the improperly removed complaint even after the plaintiff filed a timely motion to Remand Paws ECF 22
? ANSWER : YES

18) The plaintiff's removed complaint were all state causes of action. And on November 6, 2023 , there were no medicare MAC and reviewable final ruling to be reviewed by the Pawd and Judge CB;

- a) Defendants had defaulted at the state court at ACCPC on November 26, 2023;
- b) Defendants violated 28 USC §1441(a)(2) and §1446(b)(1) et seq;
- c) Early USDC lacked subject matter jurisdiction;
- d) Despite these defects Judge CB denied plaintiff's motion to Remand ECF 22. and improperly retained jurisdiction as of December 1, 2023
- e) In Sept 19, 2024 Judge CB declared that she is relinquishing jurisdiction over plaintiff's state claims pursuant to 28 USC §1367;
- f) Then on June 30 , 2025 Judge CB in a confusing and vague final order ECF111 contradicts her prior orders

Question 19) Finally the Motions panel's act of summary affirmation is an act of arbitrary capricious abuse of discretion , in plain sight of the very substantial issues that the motions panel was wilfully blind to, in the appellant's opening brief at ECF 20. The answer is YES for all the reasons given the 19 questions Supra.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

20) This case shows that the US constitution can be easily circumvented by the defendants . The defendant Highmark Health , a 100 Billion dollar Health Insurance company was engaged in a " liability and cost shifting scheme" by mislabeling plaintiff's demand for reimbursement for \$119 , as a " medicare appealable claim".

- a) The plaintiff purchased a hearing aid for which the plaintiff's health insurance Medicare advantage plan provides an allowance of \$500 per plan year;**
- b) Purchase of a hearing aid is NOT a medicare benefit.**
- c) And refusal by defendant Highmark, to reimburse the plaintiff \$119, is not a medicare appealable claim, pursuant to 42 CFR §422.564(b)(1) et seq. See Question # 8 & 12 supra and question # 22 in Ca3 ECF 20, appellant's opening brief;**
 - i) In fact and in law \$119 was the liability of the defendant Highmark pursuant to 42 CFR §422.564(b)(1) et seq due to negligence and unfair trade practices. which are the state of Pa causes of Action.**
 - ii) In Short defendant Highmark was able to " shift legal liability, legal cost, penalties administrative cost inter alia " to Medicare department additional defendant DtHHS;**
 - iii) When this " liability shifting scheme " is repeated a million times by defendants, the Medicare fraud can exceed more than a billion dollars for defendant Highmark Heath alone;**
- d) The defendants usually partner with administrative clerks of the Court to prejudice the plaintiff/petitioner. This type of off the record partnering has already happened in this instant case, Many times, that conduct of the defendants prejudiced the petitioner.**

21) The US Constitutional Violations in this case include but NOT limited to:

- a) Violation of Due Process of the 5th and 14th amendment;**
 - i) Due Process violation is the most common violation in this case. This violation was committed by Judges, Law clerks, nameless staff of the courts, nameless staff of the USDC at Pa Western district and defendants. All these " due process" violations prejudiced the plaintiff petitioner.**
 - ii) Some of the due process violations are described in detail in appellant's opening brief at Ca3 ECF 20. Inter alia.**
- b) Violation of " Equal Protection": With the presence of the DOJ and DHHS, as defendants , in this case, it was common for the DOJ attorneys to contact court staff ex parte , and request favors that were very prejudicial to the plaintiff.**

- c) The Federal district court, appellate court and even the state of Pa court made no effort to prevent this violation of the " equal protection clause " of the 14th Amendment;
- i) For example, in the related case 2:23-cv-2049 on or about February 20, 2024 plainriff filed a motion for Non Pros to be heard on March 4, 2024 at Allegheny County Court of Common Pleas (ACCPC);
 - ii) On March 1, 2024, DOJ attorney Ryan Wilk made an ex parte contact with ACCPC staff and had the hearing removed from the court calendar. There was no hearing or motion for continuance by the DOJ;.
 - iii) This is an example of the coercive power of the DOJ.
 - iv) For more details see Ca3 No. 24-1513 ECF 42, 43, & 75 inter alia.
 - v) DOJ and DHHS who are additional defendants for the MAC M-24-3287 in this instant case, failed to respond and have defaulted. But USDC judge Cindy Bisoon and Ca3 circuit Judges ignored this fact with wilful indifference;
- d) Violation of Separation of powers that eschews colluding, partnering and favoring DOJ over the Pro se plaintiff.
- e) Plaintiff/petitioner's right to a fair and impartial trial has been ineluctably impaired, and relief is mandatory and essential for preservation of the rule of law and constitutional fairness of the justice system.
- f) See recent constitutional ruling in
Fischer v United States, Scotus Docket No 23-5572 June 28, 2024

IMPORTANT FEDERAL STATUTES INVOLVED

- 22) 28 USC § 1292 Collateral order Jurisdiction:
- a) 28 USC § 1291 Final order Rule
 - b) 28 USC § 1441
 - c) 28 USC § 1442 Federal Officer removal
 - d) 28 USC § 1446(a)(1) The thirty day rule
 - e) 28 USC § 1446 b)(1) Twenty day Rule
 - f) 28 USC § 1447(d) Remand;
 - g) 42 CFR §422.564(b)(1) negligence, malpractice are not Medicare appealable

STATEMENT OF THE CASE

- 23) Plaintiff incorporates ¶1 to ¶22 herein:

- 1) On November 6, 2023 plaintiff/petitioner filed a complaint GD23-12812 in the state Court of Pa, Allegheny County Common Pleas Court (ACCPC), This complaint contained 39 counts of state of Pa based causes of action claims and no medicare claims or issues that involved non Medicare appealable claims such as reimbursements for \$119, for the purchase of a hearing aid.claim.

- a) Defendant Highmark denied the plaintiff's reimbursement claim for \$119.
 - i) Even though the the defendant Highmark's Advantage plan allowed for a \$500 yearly allowance for out of network purchases under the Medicare advantage plan
 - b) This denial of plaintiff's reimbursement claim for \$119 is not appealable as a Medicare benefit claim, but is a strict liability of defendant Highmark pursuant to 42 CFR §422.564(b)(1) et seq;
 - c) Defendant Highmark then engaged in a fraudulent "liability shifting scheme" by labeling the denial of \$119 reimbursement as a Medicare appealable claims
 - i) Thereby shifting Highmark's legal liability . administrative costs, personal cost, inter alia to Medicare.. See plaintiff's questions 1 to 19 for more details
 - d) Even though 39 counts in the plaintiff's complaint were state claims, the plaintiff was forced to go through the four step Medicare appeal process that ended in final ruling Medicare appeal Council (MAC) M-24-3287 dated July 2, 2024;
 - e) Forcing the plaintiff to go through a time consuming MAC four level appeal process for the 39, state of Pa counts. Which is in violation of the current interpretation of the Chevron doctrine, by Scotus;
 - f) Even though Federal Preemption of state of Pa claims requires an explicit congressional intent in the language of the federal preemption statute- which did not exist for the common law state of Pa claims-- federal district court failed to bar the preemption of state of Pa claims.
- 2) Plaintiff's state complaint filed on Nov 6, 2023 GD23-12812 had a mandatory Notice to defend in twenty (20) days, and a Pa RCP 1026 Notice to plead in twenty (20) days on or before November 21, 2023;
- a) All defendants failed to respond to the mandatory state of Pa requirement to affirmatively respond on or before November 26, 2023;
 - b) The defendants/appellees/respondents failed to file Preliminary objections pursuant to Pa RCP 1028 et seq, and waived all rights to the following:
 - i) Waived objections as to Venue, form and jurisdiction, and removal pursuant to 28 USC § 1441(a)(1) et seq; and
 - ii) Waived all rights to new matter and affirmative defenses pursuant to Pa RCP 1030 & 1031 et seq; and
 - iii) Waived all rights to subject matter jurisdiction pursuant to Pa RCP 1032 et seq; and
 - iv) Defendants admitted to all counts in plaintiff's original complaint at GD23-12812;
 - v) Defendants/appellees/respondents' improper and unlawful removal dated December 1, 2023 ,since defendants failed to file a notice of removal pursuant to 28 USC § 1446(b)(1) et seq at ACCPC. See Allegheny County Common Pleas Court docket GD23-12812;

- vi) Defendants failed to seek leave of the State Court at ACCPC following their default on Nov 26, 2023, pursuant to Supreme Court of Pennsylvania, precedent at Joyce v Safeguard Mutual Insurance Co. 524 A. 2d 1362 - Pa Supreme Court 1984;
 - vii) Inter alia;
- 3) Despite the fact that the defendant Highmak (HMH) did NOT have a valid removed complaint and was in default at the state court of Pa at ACCPC. only HMH unlawfully filed a fake invalid removal complaint on December 1, 2023 in the Federal district court of Western Pa.
- a) Federal district Court and Judge CB wilfully failed to note that defendants had defaulted at failed to remove the plaintiff's complaint at State of Pa Court ACCPC on Nov 26 2023,
 - i) And defendants were in violation of t 28 USC 1441 (a) et seq and §1446 (b)(1) et seq and were late using the 20 day rule;
 - b) Federal District Judge CB, with deliberate indifference (wilful Blindness) ignored the fact that HMHs removed complaint at 2:23-cv-2051-CB was improper and had numerous irregularities and State of Pa violations, noted supra;
 - i) Federal Judge CB failed to note that the defendants removed complaint filed on December 1, 2023 was invalid and null and void, since the removal of the complaint at state of Pa did not happen. See State of Pa docket at GD23-12812;
 - ii) This improper conduct of Judge CB and clerks of federal district Court, of favoring and covering up for defendants prejudiced the plaintiff;
 - iii) This conduct of treating the defendants as a favored party continued to the third circuit appellate court;
 - iv) Constantly referring to the plaintiff as Pro Se, in a pejorative sense is a violation of the " equal protection" clause of the 14th Amendment and a violation of the Constitutional separation of Powers;
 - c) Honorable Judge Arnold Klein of ACCPC was deprived from entering Judgment of Non Pros against defendants; See judge Klein;s order ECF 11 at GD23-12812 decker. See appendix F;
 - i) Defendants " Hijacked " plaintiff's complaint from ACCPC in violation of State of Pa due Process requirements;
 - d) This conduct of the defendants is in violation of Scotus ruling in Fisher v United states ruled on June 28, 2024. Defendants are in violation of the 18 USC §1512(c)(1) et seq of obstructing an official proceeding for an improper purpose;
 - e) The District Court Judge CB lacked jurisdiction pursuant to 28 USC § 1441(a)(1) et seq.

REASONS FOR GRANTING THE PETITION

This petition is a good vehicle to reform and improve the judicial branch that has become arrogant, haughty, and uses judicial powers to dismiss plaintiff's complaints and appeal arbitrarily without analysis, opinion discovery or trial;

■ **Judge CB allowed the defendant Highmark's removed complaint when the USDC lacked Jurisdiction in violation of 28 USC §1441 et seq and §1446(b)(1) The other defendants did not remove the plaintiff's complaint to the USDC at Pawd;**

■ **Judge CB denied plaintiff's motion to Remand ECF Pawd 22, When USDC lacked jurisdiction and in violation of 28 USC §1447 et seq;**

■ **Then after more than 659 days on June 30, 2025 dismissed plaintiff's removed amended complaint with prejudice in a vague docket text order ECF Pawd 111;**

The appellant timely filed an opening brief with more than 25 substantial issues and violation by the lower USDC The appellees failed to file a court ordered (ECF Ca3 26) responsive brief. Despite the fact that the appellees failed to file a brief, the motions panel granted the appellee's motion for summary affirmation. This is an arbitrary abuse of discretion by the motions Panel and a violation of FRAP 27 and IOP 10 et seq

The back to back arbitrary and capricious Dismissal of the petitioner case at the lower USDC and Ca3 means that there was no adjudication on the merits of the plaintiff's complaint, that consisted mainly of state causes of action.

Further this case is about medicare fraud perpetrated by the defendants with the aid and assistance of the courts. The courts are engaged in wilful indifference to the liability shifting scheme used by the defendants to shift their liabilities fraudulently to Medicare and additional; defendant DHHS This medicare fraud in plain sight is aided and abetted by the federal courts.

- 1) This is a case of first impression, that will help millions of Medicare enrollees, for generations;**
- 2) Scotus has an affirmative , moral, Fiduciary and constitutional duty under Article III of the US Constitution to prevent and correct the violation of the separation of powers. And prevent the judiciary from become a tool and weapon in the hands of the DOJ, defendant DHHS, the healthcare insurance industry like the defendant Highmark;**
- 3) See petitioner's Questions 1 to 19 supra and filings appellant's opening brief at ECF Ca3 ECF 20 for more details.**

This petition involves questions of exceptional importance regarding the jurisdictional boundary between state-law rights and the Federal court removal power abuses.

CONCLUSION :

This petition involves questions of exceptional importance regarding the jurisdictional boundary between state-law negligence tort/breach of contract claims against a Medicare Advantage Organization (MAO) and administrative Medicare claims.

Petitioner's En Banc Rehearing WAS DENIED , despite the motion panel's arbitrary capricious biased and prejudicial decision to grant summary affirmation, based on false grounds that there are no no substantial issues. Despite the fact that the appellant filed an opening brief Ca3 ECF 20 , that had more than 30 substantial issues, while the appellees refused to comply with the Ca3 court order ECF 26, to file an appellee brief.

This prejudicial act of the motions panel allowed appellees and Highmark(MAO) to fraudulently bypass state court jurisdiction by mischaracterizing ordinary negligence and billing disputes as formal Medicare appeals.

- 1) The 3rd Circuit appellate court, with deliberate indifference and wilful blindness failed to consider the important issues, that the USDC at PaWd, lacked jurisdiction pursuant to 28 USC §1441(a) et seq and 28 USC §1446(b)(1) et Seq .**
- 2) The third Circuit appellate Court and the Federal District Court of Western Pa and Judges were engaged in favoring the defendants and additional DHHS, UPMC and Maximus . This is a flagrant violation of the separations of powers , that resulted in depriving the petitioner of his " Equal Protection Constitutional rights" and deprives State of Pa of its Powers and Privileges.**
- 3) The 3rd Circuit Motion Panel on June 3, 2026 denied by summary affirmation the appellant's appeal 25-2263 and did not file an opinion. This meant that the appellant does not have a clue of the reasons for denial of the appellant's appeal at 25-2263.**

a) This arbitrary and capricious conduct of the 3rd Circuit motions Panel is a violation of equal protection constitutional rights of the appellant/petitioner;

b) This makes the 3rd Circuit appellate Court

Motion Panel a " Polling/voting organization";

c) The back to back arbitrary and capricious conduct of the USDC Pawd and 3rd circuit , resulted in the petitioner's case not being adjudicated on the merits;

- 4) The 3rd Circuit Appellate Court and the Federal District Court of Western Pa did NOT review any of the 30 substantial questions in the appellant opening brief ECF 20.**

For all these reasons SCOTUS must grant petitioner's writ of Certiorari. And Remand this case to the state court of Pa at ACCPC for entry of default Judgment defendants and additional defendants .

- 5) The USDC lowe court judge CB, just quoted the generic**

FRCP 12(b)(6) without any particularity of which statute was involved for each of the 68 counts in the plaintiff's amended complaint. And dismissed the entire plaintiff's complaint, without review, analysis, discovery, trial, opinion, inter alia. This is a serious corruption of Judge's Duty, canons of Judicial conduct and a violation of article III §1 of good behavior and honest skill expected from a judge and court, inter alia of abuses without accountability. This is the same as the " Dred Scot " treatment, that is to label the plaintiff as " property " and dismiss the entire plaintiff's case. That causes follow on adverse effects in other appellate jurisdictions. .

Relief sought by petitioner

- 1) Scotus should grant the petitioner's writ of certiorari;**
- 2) Scotus must vacate the 3rd Circuit En Banc ruling dated June 26, 2026;**
- 3) Scotus must vacate the 3rd Circuit motion panel's summary affirmation dated June 3, 2026;**

4) **Scotus Must Remand** this case to the state of Pa court at Allegheny county court of common Pleas for entry of default judgment against all defendants and additional defendants

5) **And any other relief Scotus grants.**

WHEREFORE The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ JOHN F. KODENKANDETH

John F. Kodendandeth

Date: July 17, 2026

SEPTEMBER 29 2026

SEE CERTIFICATE OF SERVICE AT THE END OF THE BOOKLET.

Attachments Appendix

Appendix A: June 26, 2026 Order from 3rd Circuit Appellate Court denying Appellant's appeal. See ECF # 43 at Ca3 docket 25-2263.

Case: 25-2263 Document: 43 Page: 1 Date Filed: 06/26/2026

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2263

JOHN F. KODENKANDETH, Appellant v. BLIND & VISION REHABILITATION SERVICES OF PITTSBURGH; MS. ERIKA PETACH, CEO; EVERETT & HURITE; HIGHMARK HEALTH

On Appeal from the United States District Court for the Western District of Pennsylvania (No. 2:23-cv-02051) District Judge: Cathy Bissoon

PETITION FOR REHEARING EN BANC

BEFORE: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY REEVES, CHUNG, BOVE, MASCOTT, Circuit Judges

The petition for rehearing filed by appellant John F. Kodendandeth in the abovementioned matter has been submitted to all available circuit judges of the Court in regular active service. A majority of the circuit judges of the Court in regular active service who are not disqualified did not vote for rehearing by the Court en banc. It is now hereby ORDERED that the petition is DENIED.

BY THE COURT

s/ Paul B. Matey Circuit Judge

Dated: June 26, 2026

Sb/ cc: John F. Kodendandeth

All Counsel of Record

APPENDIX B June 3, 2026 Order from 3rd Circuit Appellate Court denying Appellant's appeal at ECF # 41 Ca3 docket 25-2263.

Case: 25-2263 Document: 41-1 Page: 1 Date Filed: 06/03/2026