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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re: Tehum Care Services, Inc Debtor.	Case No: 23-90086 (CML) CHAPTER 11
Anant Kumar Tripati Plaintiff, Vs. Sarah Tirschwell, et al., Defendants.	Adv. Pro. No. 23-03072 (CML)

OMNIBUS RESPONSE TO ECF 28, 30, 45, 69, 85, 86, 89

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A. Order refusing to consider spoliation claims due to this bankruptcy.

B. Docket sheet showing Ninth Circuit screened my claims.

C. New Mexico Cancels Contract of Corizon Centurion etc.

D. Petition for certiorari would could not be filed because of this bankruptcy.

E. Prison Mail Log showing Paul Carter was served.

RELIEF REQUESTED

¶ I ask that the motions to dismiss be denied and Defendants directed they may not raise these issues, in any form, during these proceedings.[1]

First Argument

THE FRUSTRATION OF PURPOSE DOCTRINE MANDATES THE MOTIONS BE DENIED

¶The "frustration of purpose" doctrine Geier v American Honda, 529 US 861 (2000) see also Gulf States Utility Co., v Alabama Power Co, 824 F2d 1465(5th Cir) amended reh., 831 F2d 557 (5th Cir. 1987) applies to all contracts. Wexford Corizon Centurion Naphcare entered into contracts to provide me and other prisoners' healthcare. Without the liability insurers, they would not have been allowed to enter into these contracts. These liability insurers guaranteed their performance and liability.

[1] As Defendants have incorporated each other's motions to dismiss as a part of their motions, Plaintiff incorporates this omnibus response, responses to ECF 27, 32, ECF 48, 66, as an integral part of all responses he has filed, to the extent they apply.

¶ By their misconduct set forth in ECF 1 and 4 they frustrated the intention of these contracts.

¶ By engaging in spoliation of evidence, they aided the Debtor in perpetrating this bankruptcy fraud.

¶ By and through their misconduct under the Meet and Confer section below, these Defendants have frustrated the purpose of bankruptcy

THIRD CIRCUIT DID NOT DECIDE THE SPOLIATION CLAIMS

¶ The draft Petition for Certiorari shows that the Third Circuit did not decide the spoliation claims against me, but had pending before it the petition to decide these. Though counsel have personal knowledge of this fact, and were again advised of this fact, counsel have come outright and stated otherwise. (See EX D)

¶ After Corizon notified the Third Circuit of this Bankruptcy, that court in Case 22-1861 on April 13, 2023 abstained as to all Defendants, because the claims in that case, were about spoliation by all Defendants, and the Third Circuit, District Court, Defendants, failed to address the spoliation. Defendants had joined in each other's defenses all through this litigation. (EX A)

¶ The Third Circuit was unable to rule on the spoliation claims (EX D) because of this bankruptcy. (EX A)

DISTRICT OF ARIZONA

¶In the District of Arizona, after Defendants filed a notice of this bankruptcy, the District Court, as mandated by law, abstained from ruling on the spoliation as to all Defendants for the reasons above. CIV 18-0066RM.

NINTH CIRCUIT

¶After Defendants notified the Ninth Circuit in 21-15902 of these Bankruptcy proceedings, the Ninth Circuit has not ruled on the matter, it appears, the court has abstained.

¶After I became apprised of this Bankruptcy, I notified the District Court in Arizona in CV 22-0243 JJT JFM of these proceedings.

¶ These Defendants have by operation of the federal bankruptcy laws, transferred the spoliation claims, to this court, against all Defendants.

DEFENDANTS ARGUED IN PRIOR LITIGATION THAT THE EVIDENCE THAT I NOW HAVE, DID NOT EXIST

¶ In prior litigation, Defendants argued that the evidence did not exist. Now I have the names of the parties who created documents, dates, who the recipients were, and what the documents state. With these documents I would have prevailed.

WHAT DEFENDANTS HAVE ARGUED BEFORE THIS COURT

¶In ECF 28 @ 4-5 JSK argues lack of personal jurisdiction, @ 4 lack of proper service, failure to plead facts as to JSH, @ 5-7 that this action cannot be used to attack collaterally an Arizona judgment, @ 7-8 violation of Rule 8, incorporating every argument made by the others.

¶ECF 30 @ 2-6 counsel agues the Pennsylvania litigation stating at pp 6-7 JSH has had no contact with Texas. PP 11-14 argues lack of personal jurisdiction, 14 lack of proper service, 15-16 failure to plead facts as to JSH, 16-18 a judgment from Arizona cannot be used to attack an order in this court, concluding @ 18-20 violation of Rule 8.

¶ ECF 45, 69, 85, 86, 89 adopt essentially the arguments advanced by Struck.

Second Argument

REFUSING TO MEET AND CONFER CONSTITUTES BAD FAITH
WHAT I DID TO MEET AND CONFER

¶ By email I contacted counsel and informed them that the spoliation claims were screened. I asked them to refer me to that portion of the decision by the court where the courts addressed these claims. I gave them my telephone contact and they did not respond.

¶ I also mailed them the draft copy of this omnibus giving them the opportunity again to correct the issue.

¶ In my communication I informed counsel that the spoliation could not be addressed by the Third Circuit and my petition for certiorari could not be filed, because of this bankruptcy. I referenced the date of the order, and the language so stating.

¶ I also informed counsel that *Foster v Lake Jackson, 28 F3d 425, 429 (5th Cir. 1994)* clearly states that an independent action that challenges the concealment or missing evidence is not a collateral attack on a prior judgment. Furthermore I informed counsel that the missing or concealed evidence that is a subject matter of this action, was discovered after the judgments.

¶ As to screening I informed counsel that these claims were screened, referenced them where the courts screened them, and that as a matter of law, Bankruptcy courts cannot screen these claims. I received no response.

¶ Finally I informed counsel their arguments as to jurisdiction, Rules 8 and 9 are invalid, for these reasons.

A. THE REFUSAL TO MEET AND CONFER AND NARROW THE ISSUES TO BE DECIDED BY THIS COURT, SHOWS BAD FAITH

¶The significant benefits that debtors derive from the bankruptcy process warrant intrusive disclosure requirements. Upon successfully petitioning a bankruptcy court, a debtor immediately receives the protection of a stay in all proceedings initiated against him.[2]

¶*Tenn. Student Assistance Corp. v. Hood, 541 U.S. 440, 447 (2004).* states "The discharge order releases a debtor from personal liability with respect to any discharged debt by voiding any past or future judgments on the debt and by operating as an injunction to prohibit creditors from attempting to collect or to recover the debt." (citing 11 U.S.C. § 524)); see also 11 U.S.C. §§ 727, 1141, 1328 (identifying the specific effects of discharge under each Chapter).

¶Perhaps most important, at the end of the bankruptcy process under each chapter, the debtor receives a "fresh start." Indeed, the Supreme Court noted in *Local Loan Co. v. Hunt, 292 U.S. 234 (1934)* that to "relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes" is central to U.S. bankruptcy law's aims Id. at 244–45 (citing *Williams v. U.S. Fid. & Guar. Co., 236 U.S. 549, 554–55 (1915)*); see also id. (Collecting cases affirming the new opportunity bankruptcy is intended to provide the honest debtor).

B. CORE OF THEIR DEFENSES

¶ The information I requested from these Defendants and the Debtor is at the core of this litigation and their defenses *Enron Corp Savings Plan v Hewitt Assn LLC 258 258 FRD*

[2] I asked the Debtor for specific records that show this bankruptcy is fraudulent. I also asked Defendants for specific records that show that their defenses are valid. i.e I asked them to show me where the Third Circuit decided the spoliation. They declined to do so.

149(SD Tex 2009) Had they provided the information, this response would not have been necessary. Instead in bad faith, they declined to address the issues.

¶ Even though a Defendant argues lack of personal jurisdiction, Plaintiff need not show a prima facie case to conduct discovery. *Orchid Biosciences Inc v St. Louis University 198 FRD 670 (SD V Ca 2001)*

Third Argument

THE SPOLIATION CLAIMS HAVE PREVIOUSLY BEEN SCREENED AND COUNSEL ARE DECEPTIVE WHEN THEY INFORMED THIS COURT THAT THEY WERE NOT SCREEENED

¶ 28 USC 1915 applies to Article III Courts and Article III Courts issued the following orders, after screening the spoliation claims:

- **"In light of the suggestion of bankruptcy filed by Appellee Corizon Inc....no action will be taken on Appellant's motion" (Order by Third Circuit in Tripati v Wexford No. 22-1861, Marc 13, 2003. Referring to pleading titled FRAP 41(d) (1) application.) (EX A)**

- **"This Court has reviewed the notice of appeal and accompanying documents....Appeal No. 21-15902 will be permitted to proceed." (Order by Judges Tashima, Frieland and Bade of the Ninth Circuit on March 17, 2022) (EX B)**

¶Bankruptcy courts are created by Article 1, Sec. 8 Clause 4 and the statute that governs it is 28 USC 1930. As stated in *Satterfield v Malloy, (In re Satterfield) 2009 US App. Lexis. 13601(10th Cir. 2009)* bankruptcy Courts are not courts of the United States. 28 USC 1930 does not have any screening provisions.

¶ Hence the argument that these claims must be screened are frivolous and designed to harass, intimidate Plaintiff and delay these proceedings.

i. THIS FRAUDULENT BANKRUPTCY PREVENTED THE THIRD CIRCUIT FROM CONSIDERING THE SPOLIATION CLAIMS

¶ After the Debtor filed this fraudulent bankruptcy, the appeal pending in the Third Circuit could not proceed, and the Third Circuit ordered

- **"In light of the suggestion of bankruptcy filed by Appellee Corizon Inc....no action will be taken on Appellant's motion" (Order by Third Circuit in Tripati v Wexford No. 22-1861, Marc 13, 2003. Referring to pleading titled FRAP 41(d) (1) application.) (App.A)**

- **"This Court has reviewed the notice of appeal and accompanying documents....Appeal No. 21-15902 will be permitted to proceed." (Order by Judges Tashima, Frieland and Bade of the Ninth Circuit on March 17, 2022) (App. B)**

¶ The United States Supreme Court could not consider the petition for certiorari (EX D) which was an appendix to the proceedings in the Third Circuit.

¶ It is well established by law *Foster v Lake Jackson, 28 F3d 425, 429 (5th Cir. 1994)* that when prior litigation ends poorly, because of missing or fabricated evidence, an independent action may be maintained to obtain relief from the court.

¶ An action for spoliation accrues **after the prior action is lost and the prior judgment acts as no bar.**

¶ The missing evidence was discovered after the prior action, and after the time for collaterally attacking the judgment expired.

ii. NO PORTION OF THE DECISION BY THE THIRD CIRCUIT HAS ADDRESSED THE SPOLIATION CLAIM AS ARGUED BY COUNSEL IN ECF 28 PP 16-17. THE COMPLAINT DOES NOT COLLATERALLY ATTACK ANY JUDGMENT

¶ Nowhere in the complaint does Plaintiff ask for invalidation of any judgment. No portion of the decision of the Third Circuit addressed spoliation and counsel declined to refer Plaintiff to that portion which did address spoliation. He seeks relief as authorized by *Foster v Lake Jackson, 28 F3d 425, 429 (5th Cir. 1994)*

iii. THESE LAWYERS HAVE NOT ACTED EQUITABLY DURING THESE ADVERSARY PROCEEDINGS BECAUSE THEY LIED OUTRIGHT, ABOUT THE CORE OF THEIR DEFENSE, THAT WHEN THEY STATED THAT THE THIRD CIRCUIT ADDDRESSED SPOLIATION. THE THIRD CIRCUIT DID NOT ADDRESS THE CLAIMS BECAUSE OF THIS BANKRUPTCY

COUNSEL LIED ABOUT THE CENTRAL ISSUE AS TO THEIR DEFENSES TO THIS LITIGATION

¶Reported cases provide a broad range of examples of how not to behave as a litigant. As the First Circuit stated in *Aoude v. Mobil Oil Corp. 892 F.2d 1115, 1118 (1st Cir. 1989)* "because corrupt intent knows no stylistic boundaries, fraud on the court can take many forms."

¶ These lawyers in their filings state that the Third Circuit decided against me on the spoliation claims **This is patently false.**

¶I asked them to provide me the page and paragraph where the court resolved this spoliation claims against me, and they refused to refer me to that portion of the decision.

¶They came outright and lied to this judge about a central issue in this litigation. If this court is to take this lie outright, the claims get dismissed. On the other hand if this court were to review the court order, the complaint proceeds. So this assertion is core to this litigation.

¶ When misconduct bears a substantial relationship to the matter(s) in issue the clean hand doctrine applies. *Precision Instrument Mfg. Co. v. Auto. Main. Mach. Co., 324 U.S. 806, 815 (1945)* (suggesting that the conduct of the opposing party is not relevant)

¶Traditionally, an equitable defense, the clean hands doctrine has been applied to cases at law since the merger of law and equity.

¶The standard exposition of the clean hands doctrine speaks of the requirement of coming into court with clean hands, but many courts also require that hands remain clean during the litigation. Thus, a plaintiff who arrives in court with clean hands may still find herself out of court if her hands become soiled during the litigation. *C.C.S. Communication Control, Inc. v. Sklar, No. 86-7191, 1987 U.S. Dist. LEXIS 4280 (S.D.N.Y. June 1, 1987), affd without op., 983 F.2d 1048 (2d Cir. 1992).*As one trial court explained: "It would be strange if a court of equity had power-because of public policy for its own protection-to throw out a case because it entered with unclean hands and yet would have no power to act if the unconscionable conduct occurred while the case was in court."

¶ As such for this fact and this fact alone the motions to dismiss should be denied with prejudice, with directions the matters in the motions to dismiss cannot be reargued in any other manner, during these proceedings.

iv. THE AUTHORITIES IN ECF 28, 30 ARE DISTINGUISHABLE IN THAT UNLIKE TRIPATI, THOSE PLAINTIFFS SOUGHT INVALIDATION OF THE JUDGMENTS

¶ *Miller v Meinhard-Commercial Corp, 462 F.2d 858 (5th Cir. 1972)* and *Mitchell v Village Creek Drainage Dist, 158 F3d 475 (8th Cir. 1946)* relied by Defendants for the proposition that I am collaterally attacking the judgment is distinguishable on the facts. In these cases the Plaintiffs sought invalidation of the judgments. I do not seek any such invalidation.

"**Some** duty must be imposed in circumstances such as these lest the fact-finding process be reduced to a mockery" *Bowmar Instruments Inc., v Texas Instruments Inc, 25 Fed. R. Serv. 2d (Callaghan) 423, 427 (N.D.Ind. 1977)*

¶ These attorneys misrepresented material facts to represent the interest of the Debtor as evidenced by their lack of disclosure. *In re Abbeux Amuru Inc 1998 Bankr. Lexis 1219 (Bankr. MD NC 1996)*

v. THE RIGHT TO RELIEF FOR SPOLIATION IS CLEARLY ESTABLISHED

¶ *Foster v Lake Jackson, 28 F3d 425, 429 (5th Cir. 1994)* clearly establishes the right to seek relief by way of an independent action, because prior action ended poorly, due to the missing or fabricated evidence, set forth in the complaint. *1B J Moore, J. Lucas, T. Currier, Moore's Federal Practice, para 0.407, at 286 (2nd ed. 1984)* provides in relevant part

- **"If it attempts to avoid, defeat, or evade a previously entered judicial decree.....or otherwise attempts to deny the prior decree's force and effect...in the context of an incidental proceeding NOT ESTABLISHED BY LAW for the purpose of attacking the decree's validity" (emphasis added)**

¶ The key is "established by law" and pursuant to *Foster v Lake Jackson, 28 F3d 425, 429 (5th Cir. 1994)* the right to independent action is established law, which does not set aside the judgment in the prior action.

Fourth Argument

A. THIS COURT HAS JURISDICTION AS THE CONDUCT OF DEFENDANTS ARE INEXTRICABLY ENTWINED

¶ The conduct of Defendants are inextricably entwined with the conduct of the Debtor *Fire Eagle LLC v Bischoff, 710 F.3d 299 (5th Cir. 2003).* They use the same modus operandi.

Howell Hydrocarbons v Adams, 897 F2d 183 (5th Cir. 1990) Because of their identity of interests, combined with the cooperation agreements that they have entered into, they are named as parties. These Defendants were parties, to the spoliation claims in the District and Circuit Courts. Without their joinder, I cannot get complete relief, because, as the Debtor has filed for this bankruptcy, the Circuit Court and District courts have, as required by law, declined to hear my spoliation claims. *In re Lile 1998 Bankr. Lexis 399 (SD Tex 1989)* when the complaint is based on the same operative facts, they are intertwined.

B. COOPERATION AGREEMENT BY WEXFORD CONFERS JURISDICTION

¶ January 30, 2013 Mark Hale, the CEO of Wexford signed a contract in Pittsburgh, agreeing to cooperate with Corizon Health. This contract was scanned and signed on the same date by Denel Pickering for the ADCRR in Phoenix. Weber Gallagher, Jones Skelton, Struck and Gottfried were involved.

C. COOPERATION AGREEMENT BY CORIZON CONFERS JURISDICTION

¶ Steve Rector CEO of Corizon on July 20, 2018 signed an agreement to cooperate with Centurion in Brentwood, Tennessee and it was scanned and signed on the same date by Ken Sanchez in Phoenix for ADCRR. Struck, Renaud Drury, Quintairios Prieto and Gottfried were involved.

D. COOPERATION AGREEMENT BY CENTURION CONFERS JURISDICTION

¶ Steven H Wheeler, CEO of Centurion from Vienna, Virginia on May 25, 2019 signed a cooperation agreement agreeing to cooperate with Corizon. The document was cosigned in Arizona by Kenneth P. Sanchez, for ADCRR. Broening Oberg, Struck and Gottfried were involved.

E. COOPERATION AGREEMENT BY NAPHCARE CONFERS JURISDICTION

¶ Bradford McLane CEO Naphcare on May 24, 2022 signed in Alabama a document agreeing to cooperate with Centurion and on the same date it was scanned and signed by Kenneth P. Sanchez, ADCRR in Phoenix.

F. DEEMED TO HAVE ESTABLISHED PERSONAL JURISDICTION IS ESTABLISHED BY SPOLIATION

¶ The Supreme Court has held when documents have been destroyed, the Plaintiff has been deemed to have established personal jurisdiction. *Ins. Corp. v. Compagnie des Bauxites, 456 U.S. 694 (1982)* (affirming order that imposed sanction of deeming personal jurisdiction established) As Defendants destroyed evidence, jurisdiction is deemed to have been established.

G. THIS COURT HAS RELATED TO JURISDICTION

¶"To (the)extent caveat expressed by US Supreme Court in Arbaugh to general rule that courts should avoid merits analysis in determining jurisdiction applied, (the) court concluded that debtor's officers contractual indemnity claim passed muster, and district court properly concluded that it had "related to" jurisdiction.....claim against debtor was not immaterial and made solely for obtaining jurisdiction or wholly insubstantial or frivolous" Collins v Sidharthan, (In re KSRP Ltd) 809 F3d 363 (5th Cir. 2015)(text omitted modified added for emphasis)

H. VENUE IS PROPER AS THE DEBTOR CHOSE THIS FORUM

¶ These Defendants have by operation of the federal bankruptcy laws, in effect, transferred the spoliation claims, to this court, against all Defendants.

¶ As in *Texas Official Employment Related Business Communic. Of Enron Corp v Arnold, (In re Enron Corp), 2004 Bankr. Lexis 1977 (Bankr. N.D.Tex 1977)* this case involves conduct

in Arizona, Pennsylvania and in this district, and as the Bankruptcy is in this District, venue is proper. Venue in related to cases is proper in this court. *In re Ven Huffel Tube Corp 1987 Bankr. Lexis 229 (Bankr. ND OH. 1987)*

Fifth Argument

RULES 8 AND 9 HAVE BEEN COMPLIED WITH IN THE COMPLAINT AS IT SHOWS WHO COMMITTED THE ACTS, HEN DID THEY COMMIT THE ACTS, WHAT EMAIL THEY USED TO COMMIT THE ACTS, AND WHAT THE ACTS WERE

¶ I have taken the conduct set forth in ECF 1 and 4 and clearly identified these in the Second Amended Complaint (ECF)

- **After Scott King Corizon General Counsel submitted requests for pandemic related federal funds for all venues that Corizon was operating under During the period January 2020 through January 2021 Corizon obtained funds authorized by 12 USC 4703a; 15 USC 636; 15 USC 9001; 15 USC 9009a; 15 USC 9011; 15 USC 9051; 21 USC 21516; 22 USC 4801; 42 USC 234; 42 USC 603; 50 USC 4532; amongst others, for the 25 contracts cancelled. (SAC@ 128)**

- **Corizon sent emails to all management staff upon approval of Sara Tirschwell directing them, to have employees work at least 16 hours daily, and if they did work, they should not be paid overtime, and the Managers shall get bonuses. (SAC @ 130)**

- **The emails also informed managers not to have inmates go to hospital, see specialists, and of hey die, so be it. (SAC @ 131)**

- **The Managers implemented the emails and received bonuses. (SAC@ 132)**

- **In furtherance of the scheme Sara Tirschwell; Valitas Intermediate Holdings Incorporated, a Delaware Corporation; M2 HoldCo LLC, a Florida Limited Liability Co; M2 LoanCo LLC, a Florida Limited Liability Co; M2 EquityCo LLC, a Florida Limited Liability Co; Becken Petty O'Keefe, a Delaware Corporation, (hereinafter Valitas Family Of Companies), all through mail and emails from and to ch.com determined that Corizon reorganize in Texas. (SAC@ 133)**

- **They agreed to form Tehum Care Services Inc aka Corizon a Texas Corporation; YesCare Corporation, a Texas Corporation and CHS Tex, a**

Texas Corporation. Never has Corizon maintained its place of business in Texas. It has always maintained its principal place of business in Tennessee. This was all accomplished by emails sent from corizonhealth.com (hereinafter "ch.com") (See Appendix A for The Valitas family Tree) (SAC@ 134)

- **They agreed to transfer bulk of the assets to CHS TEX, liabilities to Yescare and bonds and policies to Tehum. This reorganization was a sham designed to defraud. (SAC@ 135)**

- **They then as planned filed for bankruptcy. (SAC@ 136)**

- **Ankura consulting was hired to conduct due diligence. Russell Perry of Ankura did not examine the financials as he should have, especially the use of COVID funds, and any claims against Corizon for spoliation of evidence. (SAC@ 137)**

- **After discussions with Tirschwell, M2 HoldCo LLC,; M2 LoanCo LLC; M2 EquityCo LLC, Tehum Care Services Inc aka Corizon a Texas Corporation; YesCare Corporation, a Texas Corporation and CHS Tex, a Texas Corporation, Valitas Intermediate Holdings Incorporated, a Delaware Corporation; by emails and orally, Ankura consulting through Russell Perry submitted false declarations, and did not include in it, all the assets transferred to Valitas for concealment, as well as all the liability. (SAC@ 138)**

- **M2 HoldCo LLC, M2 LoanCo LLC; M2 EquityCo LLC, agreed to give Corizon loans from monies laundered from the assets of Corizon. These were sham loans. (SAC@ 139)**

- **During all times the enterprise Correctional Health, made of Valitas Intermediate Holdings Incorporated, a Delaware Corporation; M2 HoldCo LLC, a Florida Limited Liability Co; M2 LoanCo LLC, a Florida Limited Liability Co; M2 EquityCo LLC, a Florida Limited Liability Co; Becken Petty O'Keefe, a Delaware Corporation and Liability Insurers, was engaged in interstate commerce, in that the enterprise acquired, financed Corizon's services all around the nation. (SAC@ 140)**

1. **<u>ACTS COMMITTED BY QUINTAIROS PRIETO WOOD & BOYER; NICHOLE ROWEY; JOSEPH SCOTT CONLON; RENAUD COOK DRURY MESAROS PA SETTING FORTH DATES, EMAILS USED</u>**

- **March 6, 2020 Nichole Cullen sent emails from qpwblaw.com to Babich and Perkins at cch.com with copies to Gottfried and Carter directing them not to show me emails hat they send or receive. Copies were sent to bowwlaw.com Orm@teamcenturion and cch.com. (SAC@ 141)**

- **May 6, 2018 Dr. Ayodeji Ladele sent emails to all staff that they must change patient records in order to comply with Parsons. Conlon prepared declarations that contradicted these emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com . (SAC@ 142)**

- **May 6, 2018 Dr. Ayodeji Ladele sent emails to all staff that they must change patient records in order to comply with Parsons. Conlon prepared declarations that contradicted these emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 143)**

2. ACTS COMMITTED BY ULIBARRI, ERWIN, BOHUSZEWICZ SETTING FORTH DATES, EMAILS USED[3]

- **April 6, 2019 Julia Erwin ADCRR sent emails to Kelly Dudley, Bohuszewicz,; explaining that Ulibarri had seized evidence against Correctional Health, Attorney general's Office and ADCRR employees on CDS. She explained these were sent to Wexford Corizon Centurion corporate offices and their lawyers, Carter and Gottfried. She asked Dudley to draft a response for me. (SAC@ 144)**

3. ACTS COMMITTED BY CENTURION OF ARIZONA; SARAH L BARNES; BROENING OBERG WOODS & WILSON PC; MICHAEL E. GOTTFRIED SETTING FORTH DATES, EMAILS USED

- **March 6, 2020 Nichole Cullen sent emails from qpwblaw.com to Babich and Perkins at cch.com with copies to Gottfried and Carter directing them not to show me emails hat they send or receive. Copies were sent to bowwlaw.com Orm@teamcenturion and cch.com. (SAC@ 145)**

- **March 6, 2020 Nichole Cullen sent emails from qpwblaw.com to Babich and Perkins at cch.com with copies to Gottfried and Carter directing them not to show me emails hat they send or receive. Copies were sent to bowwlaw.com Orm@teamcenturion and cch.com. (SAC@ 146)**

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[3] A LAWYER, PROCEEDING PRO PER, DOES NOT HAVE A CLIENT. AS SUCH, THERE IS NO ATTORNEY CLIENT PRIVILEGE. QUINTAIROS PRIETO WOOD & BOYER; NICHOLE ROWEY ;JOSEPH SCOTT CONLON ;RENAUD COOK DRURY MESAROS PA ; STRUCK, LAW FIRM AND ARIZONA DEFENDANTS ARE PROCEEDING PRO PER. BY PROCEEDING PRO PER, THEY HAVE NO ATTORNEY CLIENT PRIVILEGE, AS TO ANY MATTER, PERTAINING TO THIS LITIGATION, CONVEYED TO THEM BY DEFENDANTS.

4. ACTS COMMITTED BY CARTER ULIBARRI, BOSCHUWICZ, WEXFORD, CENTURION, CORIZON SETTING FORTH DATES, EMAILS USED

- **May 28, 2019 Paul Carter sent a email to Shelby Negron azadc.gov and asked her to execute a declaration that contradicted emails she sent to and received from Jose Ramos, Julia Erwin, Betty Ulibarri and Bohuszewicz. Bohuszewicz. Had directed her to destroy my legal materials, and mail CDS to Wexford, Corizon, Centurion, and their lawyers. They contemplated the use of and did use the mail to accomplish this. (SAC@ 147)**

- **April 6, 2019 Julia Erwin ADCRR sent emails to Kelly Dudley, Bohuszewicz,; explaining that Ulibarri had seized evidence against Correctional Health, Attorney general's Office and ADCRR employees on CDS. She explained these were sent to Wexford Corizon Centurion corporate offices and their lawyers, Carter and Gottfried. She asked Dudley to draft a response for me. (SAC@ 148)**

5. ACTS COMMITTED BY STRUCK, GOTTFRIED, CORIZON, WEXFORD, CENTURION SETTING FORTH DATES, EMAILS USED

- **March 6, 2020 Nichole Cullen sent emails from qpwblaw.com to Babich and Perkins at cch.com with copies to Gottfried and Carter directing them not to show me emails hat they send or receive. Copies were sent to bowwlaw.com Orm@teamcenturion and cch.com. (SAC@ 149)**

- **May 6, 2018 Dr. Ayodeji Ladele sent emails to all staff that they must change patient records in order to comply with Parsons. Conlon prepared declarations that contradicted these emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 150)**

- **March 20, 2018 Marlene Bedoya from azadc.gov sent emails that records had been altered by Corizon. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 151)**

- **April 6, 2019 Julia Erwin ADCRR sent emails to Kelly Dudley, Bohuszewicz,; explaining that Ulibarri had seized evidence against Correctional Health, Attorney general's Office and ADCRR employees on CDS. She explained these were sent to Wexford Corizon Centurion corporate offices and their lawyers, Carter and Gottfried. She asked Dudley to draft a response for me. (SAC@ 152)**

- **March 4, 2014 Joseph Scott Conlon rcdmlaw. Com sent email to Dr. Dimitic Catsaros ch.com asking him to sign an affidavit that contradicted the emails**

sent by Catsaros when he was with Wexford health July 16,2012 where he was directed by Wexford change my treatment due to the cost. Catsaros executed the affidavit. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 153)

- **Pursuant to the litigation strategy adopted outside the adversarial process, to conceal and falsify evidence in prisoner litigation,, Struck and the Struck Law firm, Carter, Morrissey, Thornell, aware of these actions, continue to conceal these from the courts, thereby as a consequence of their spoliation activities, they denied me denying me the chance to have my claims heard by the courts. (SAC@ 154)**

6. ACTS COMMITTED BY WEXFORD HEALTH SOURCES, INC; WEBER GALLAGHER SIMPSON STAPLETON FIRES & NEWBY LLP; JONES SKELTON HOCHULI SETTING FORTH DATES, EMAILS USED

- **July 16, 2013 Weber Gallagher sent an email to Skelton Hochuli that training given to staff are not to be released to inmates in discovery. February 3 2013 Mullenaux of Wexford sent emails to all staff that staff should just change reports required by Parsons to make it look good. (SAC@ 155)**

- **January 14, 2013 Weber Gallagher sent a email to Skelton Hochuli that no policies by Wexford are to be released to inmates in discovery. (SAC@ 156)**

- **January 4, 2013 Mullenaux of Wexford sent emails to all staff that inmates Wexford staff should not send inmates to hospital and in the event they die, Wexford will take care of it. (SAC@ 157)**

- **October 6, 2012 Mullenaux of Wexford sent emails to all staff that inmates are not to be referred to specialists of provided essential treatment as the costs are exorbitant and Wexford s not getting paid much. (SAC@ 158)**

- **September 9, 2012 Weber Gallagher sent a email to Skelton Hochuli that no documents adverse to Wexford are to be released to inmates in discovery. (SAC@ 159)**

- **August 18, 2012, May 21, 2013; and March 6, 2013 ADCRR informed Wexford by emails that Wexford should reexamine the reports as they appear falsified. (SAC@ 160)**

7. ACTS COMMITTED BY KELLEY MORRRISSEY, DARYL JOHNSON WITH DATES AND FAXES USED

- **On July 19, 2001, September 4, 2001, August 8, 2001, August 14, 2001, September 21, 201 Morrissey and Johnson made telephone calls and obtained Affidavits from 20 ADOC employees. They directed these employees not to disclose material facts that are pertinent to loss and destruction of legal materials. Morrissey prepared and faxed these declarations. (SAC@ 161)**

- **During the period January 2020 through January 2021 Corizon obtained funds authorized by 12 USC 4703a; 15 USC 636; 15 USC 9001; 15 USC 9009a; 15 USC 9011; 15 USC 9051; 21 USC 21516; 22 USC 4801; 42 USC 234; 42 USC 603; 50 USC 4532; amongst others, for the 25 contracts cancelled. (SAC@ 162)**

- **In the applications to obtain these funds and subsequent reports on how these funds were used, they made materials misrepresentations, that the funds were not used, as represented, but were given as bonuses to executives, and misappropriated by senior staff. This bankruptcy does not account for these monies and Russell Perry does not explain what happened to these monies. (SAC@ 163)**

- **Centurion, Wexford and Naphcare continued this practice, as they are, in effect, alter egos, of each other. (SAC@ 164)**

8. **<u>THE BANKRUPTCY FRAUD SCHEME BY CORIZON SETTING FORTH DATES, WHO, WHAT EMAIL USED</u>**

- **Concealment of assets 18 USC § 152(1), false oaths 18 USC § 152(2), false declarations or false statements under penalty of perjury 18 USC § 152(3), embezzlement form the estate of the debtor 18SC § 15, money laundering 18 USC § 1956 are predicate acts cognizable as racketeering unlawful activity under RICO 18 USC § 1961(1)(A)(B)(D) and ARS § 2301.D.4(b)(iv)Iv)(xx)(xv) that make this scheme. (SAC@ 165)**

- **After Scott King Corizon General Counsel submitted requests for pandemic related federal funds for all venues that Corizon was operating under During the period January 2020 through January 2021 Corizon obtained funds authorized by 12 USC 4703a; 15 USC 636; 15 USC 9001; 15 USC 9009a; 15 USC 9011; 15 USC 9051; 21 USC 21516; 22 USC 4801; 42 USC 234; 42 USC 603; 50 USC 4532; amongst others, for the 25 contracts cancelled. (SAC@ 166)**

- **He submitted reports with false declarations that the funds were used to pay employees. (SAC@ 167)**

- **Corizon sent emails to all management staff upon approval of Sara Tirschwell directing them, to have employees work at least 16 hours daily, and if they did work, they should not be paid overtime, and the Managers shall get bonuses. (SAC@ 168)**

- **The emails also informed managers not to have inmates go to hospital, see specialists, and of hey die, so be it. (SAC@ 169)**

- **The Managers implemented the emails and received bonuses. (SAC@ 170)**

- **In furtherance of the scheme Sara Tirschwell; Valitas Intermediate Holdings Incorporated, a Delaware Corporation; M2 HoldCo LLC, a Florida Limited Liability Co; M2 LoanCo LLC, a Florida Limited Liability Co; M2 EquityCo LLC, a Florida Limited Liability Co; Becken Petty O'Keefe, a Delaware Corporation, (hereinafter Valitas Family Of Companies), all through mail and emails from and to ch.com determined that Corizon reorganize in Texas. (SAC@ 171)**
- **They agreed to form Tehum Care Services Inc aka Corizon a Texas Corporation; YesCare Corporation, a Texas Corporation and CHS Tex, a Texas Corporation. Never has Corizon maintained its place of business in Texas. It has always maintained its principal place of business in Tennessee. This was all accomplished by emails sent from corizonhealth.com (hereinafter "ch.com") (SAC@ 172)**

- **They agreed to transfer bulk of the assets to CHS TEX, liabilities to Yescare and bonds and policies to Tehum. This reorganization was a sham designed to defraud. (SAC@ 173)**

- **They then as planned filed for bankruptcy. (SAC@ 174)**

- **The Ankura consulting was hired to conduct due diligence. Russell Perry of Ankura did not examine the financials as he should have, especially the use of COVID funds, and any claims against Corizon for transfer of assets to Valitas, spoliation of evidence. (SAC@ 175)**

- **M2 HoldCo LLC; M2 LoanCo LLC; M2 Equity Co LLC, agreed to give Corizon loans from monies laundered from the assets of Corizon. These were sham loans. (SAC@ 176)**

9. <u>WHO, WHEN, WHAT EMAIL USED FOR THE SCHEME TO PERPETATE FRAUD BY DEFENDANTS</u>

- **Mail Fraud 18 USC § 1341, wire fraud 18 USC 1343, Concealment of assets 18 USC § 152(1), false oaths 18 USC § 152(2), false declarations or false statements under penalty of perjury 18 USC § 152(3), embezzlement form the estate of the debtor 18SC § 15, money laundering 18 USC § 1956, fraudulent schemes ARS §13-2310; forgery ARS § 13-2003 Concealment of assets 18 USC § 152(1), false oaths 18 USC § 152(2), false declarations or false statements under penalty of perjury 18 USC § 152(3), embezzlement form the estate of the debtor 18SC § 15, money laundering 18 USC § 1956 are predicate acts cognizable as racketeering unlawful activity under RICO 18 USC §**

1961(1)(A)(B)(D) and ARS § 2301.D.4(b)(iv)Iv)(xx)(xv) that make this scheme. (SAC@ 177)

- **After Scott King Corizon General Counsel submitted requests for pandemic related federal funds for all venues that Corizon was operating under During the period January 2020 through January 2021 Corizon obtained funds authorized by 12 USC 4703a; 15 USC 636; 15 USC 9001; 15 USC 9009a; 15 USC 9011; 15 USC 9051; 21 USC 21516; 22 USC 4801; 42 USC 234; 42 USC 603; 50 USC 4532; amongst others, for the 25 contracts cancelled. (SAC@ 178)**

- **March 6, 2020 Nichole Cullen sent emails from qpwblaw.com to Babich and Perkins at cch.com with copies to Gottfried and Carter directing them not to show me emails hat they send or receive. Copies were sent to bowwlaw.com Orm@teamcenturion and cch.com (SAC@ 179)**

- **November 25, 2018 Dr. Rodney Stewart cch.com sent emails to all staff that they must make sure that the records when submitted pursuant to Parsons, are reconciled with the medical records, and if necessary the medical records changed. (SAC@ 180)**

- **May 6, 2018 Dr. Ayodeji Ladele sent emails to all staff directed not to prescribe inmates medication that is cost prohibitive or not to refer inmates for consultation. (SAC@ 181)**

- **May 6, 2018 Dr. Ayodeji Ladele sent emails to all staff that they must change patient records in order to comply with Parsons. Conlon prepared declarations that contradicted these emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 182)**

- **March 20, 2018 Robert Maldonado from cch.com sent emails that Corizon had altered the records required to be filed by Parsons. (SAC@ 183)**

- **March 20, 2018 Marlene Bedoya from azadc.gov sent emails that records had been altered by Corizon. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 184)**

- **December 2017 Dr. Fallhouse sent a email to Corizon corporate that he had delivered the altered reports pursuant to Parsons the ADCRR as directed by Corizon corporate. (SAC@ 185)**

- **November 2017 Dr. David Robertson sent emails to Dr. Fallhouse that Corizon was altering reports and must stop. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 186)**

- **November 2017 Spencer Sego sent Corizon a email that he had changed the reports that Parson requires to comply with Parsons. (SAC@ 187)**

- **October 2017 Dr. Fallhouse sent a email to Corizon corporate that he had delivered the altered reports pursuant to Parsons the ADCRR as directed by Corizon corporate. (SAC@ 188)**

- **April 21, 2017 Dr. Michael Minev sent email to Dr. Rodney Stewart cch.com that he has changed the medical records to comply with the report submitted pursuant to Parsons, as requested (SAC@ 189)**

- **April 2017 FHA Porter sent altered reports required by Parsons to ADCRR and notified Corizon corporate. (SAC@ 190)**

- **March 21, 2016 Dr. Rodney Stewart cch.com sent emails to all staff that they must make sure that the records when submitted pursuant to Parsons, are reconciled with the medical records, and if necessary the medical records changed. (SAC@ 191)**

- **August 28, 2014 Dr. Winfred Williams from ch.com sent emails to staff to ensure that staff change the records to coincide with the reports submitted under Parsons. Conlon prepared a declaration contradicting the emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 192)**

- **March 4, 2014 Joseph Scott Conlon rcdmlaw. Com sent email to Dr. Dimitic Catsaros ch.co masking him to sign an affidavit that contradicted the emails sent by Catsaros when he was with Wexford health July 16,2012 where he was directed by Wexford change my treatment due to the cost. Catsaros executed the affidavit. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 193)**

- **September 2, 2013 Dr. Lucy Burciaga sent a email to staff to ensure that staff change the records to coincide with the reports submitted under Parsons. Conlon prepared a declaration contradicting the emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 194)**

- **August 3, 2013 Dr. Kevin Lewis sent email to Dr. Joseph Moyse which directed him not to prescribe inmates medication that is cost prohibitive and if inmates die, Corizon will take care of it. (SAC@ 195)**

- **July 23, 2013 Dr. Winfred Williams from ch.com sent directives to all staff that they are not to provide treatment, referral to specialists and send inmates to hospitals, due to the cost of treatment. Conlon prepared a declaration contradicting the emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 196)**

- **July 16, 2013 Weber Gallagher sent a email to Skelton Hochuli that training given to staff are to be released to inmates in discovery. (SAC@ 197)**

- **June 26, 2013 NP Unger received a email that directed him not to provide inmates with care that is expensive and not to refer inmates to specialists. (SAC@ 198)**

- **February 3 2013 Mullenaux of Wexford sent emails to all staff that staff should just change reports required by Parsons to make it look good. (SAC@ 199)**

- **January 14, 2013 Weber Gallagher sent a email to Skelton Hochuli that no policies by Wexford are to be released to inmates in discovery. (SAC@ 200)**

- **January 4, 2013 Mullenaux of Wexford sent emails to all staff that inmates Wexford staff should not send inmates to hospital and in the event they die, Wexford will take care of it. (SAC@ 201)**
- **October 6, 2012 Mullenaux of Wexford sent emails to all staff that inmates are not to be referred to specialists of provided essential treatment as the costs are exorbitant and Wexford s not getting paid much. (SAC@ 202)**

- **September 9, 2012 Weber Gallagher sent a email to Skelton Hochuli that no documents adverse to Wexford are to be released to inmates in discovery. (SAC@ 203)**

- **August 18, 2012 , May 21, 2013; and March 6, 2013 ADCRR informed Wexford by emails that Wexford should reexamine the reports as they appear falsified. (SAC@ 204)**

- **November 9, 2007 Aurora Aguilar sent emails to Johnson and Meyers confirming that Ruobyaines had destroyed my legal materials that I had asked to be copied. She confirmed that Ulibarri had reviewed these, but she nevertheless shall deny my grievance. These were subsequently forwarded to Carter and Brodsky (SAC@ 205)**

10. <u>WHO, WHEN, WHAT EMAIL USED FOR THE SCHEME TO PREVENT PRESENTATION OF EVIDENCE BY DEFENDANTS</u>

- **Retaliation against a witness 18 USC § 1513(e); false oaths 18 USC § 152; false claims 18 USC § 152; documents concealed/altered 18 USC § 1512(b)(1)(2) are predicate acts cognizable as racketeering unlawful activity under RICO 18 USC § 1961(1)(A)(B)(D) and ARS § 2301.D.4(b)(iv)Iv)(xx)(xv) that make this scheme. (SAC@ 206)**

- **Transcripts holding Ryan in contempt show that Magistrate Judge David Duncan found that Corizon supervisors instructed employees to alter the electronic records, to reflect inmates were receiving treatment, that they were not being given. ECF 2898 CIV 12-0601 (USDC ARIZ PARSONS v RYAN now SHINN v RYAN). This is the regular manner that Corizon operates in all venues. (SAC@ 207)**

- **February 9, 2023 Loresca Purden directed after being told of the electronic evidence sent emails that I not be allowed to review the evidence, unless and until the librarian is present. (SAC@ 208)**

- **October 6, 2022 Dalia Quintero after reviewing electronic evidence sent emails that I not be allowed to review the evidence, unless and until the librarian is present. (SAC@ 209)**

- **March 6, 2020 Nichole Culllen sent emails from qpwblaw.com to Babich and Perkins at cch.com with copies to Gottfried and Carter directing them not to show me emails hat they send or receive. Copies were sent to bowwlaw.com Orm@teamcenturion and cch.com (SAC@ 210)**
- **May 28, 2019 Paul Carter sent a email to Shelby Negron azadc.gov and asked her to execute a declaration that contradicted emails she sent to and received from Jose Ramos, Julia Erwin, Betty Ulibarri and Bohuszewicz. Bohuszewicz. Had directed her to destroy my legal materials, and mail CDS to Wexford, Corizon, Centurion, and their lawyers. They contemplated the use of and did use the mail to accomplish this. (SAC@ 211)**

- **April 6, 2019 Julia Erwin ADCRR sent emails to Kelly Dudley, Bohuszewicz,; explaining that Ulibarri had seized evidence against Correctional Health, Attorney general's Office and ADCRR employees on CDS. She explained these were sent to Wexford Corizon Centurion corporate offices and their lawyers, Carter and Gottfried. She asked Dudley to draft a response for me. (SAC@ 212)**

- **November 25, 2018 Dr. Rodney Stewart cch.com sent emails to all staff that they must make sure that the records when submitted pursuant to Parsons, are reconciled with the medical records, and if necessary the medical records changed. (SAC@ 213)**

- **May 6, 2018 Dr. Ayodeji Ladele sent emails to all staff directed not to prescribe inmates medication that is cost prohibitive or not to refer inmates for consultation. (SAC@ 214)**

- **May 6, 2018 Dr. Ayodeji Ladele sent emails to all staff that they must change patient records in order to comply with Parsons. Conlon prepared declarations that contradicted these emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 215)**

- **March 20, 2018 Robert Maldonado from cch.com sent emails that Corizon had altered the records required to be filed by Parsons. (SAC@ 216)**

- **March 20, 2018 Marlene Bedoya from azadc.gov sent emails that records had been altered by Corizon. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 217)**

- **December 2017 Dr. Fallhouse sent a email to Corizon corporate that he had delivered the altered reports pursuant to Parsons the ADCRR as directed by Corizon corporate. (SAC@ 218)**

- **November 2017 Dr. David Robertson sent emails to Dr. Fallhouse that Corizon was altering reports and must stop. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 219)**

- **November 2017 Spencer Sego sent Corizon a email that he had changed the reports that Parson requires to comply with Parsons. (SAC@ 220)**

- **October 2017 Dr. Fallhouse sent a email to Corizon corporate that he had delivered the altered reports pursuant to Parsons the ADCRR as directed by Corizon corporate. (SAC@ 221)**

- **September 28, 2017 Ryan sent emails to CEO Corizon that he was giving them $2,500,00 as bonus, so they would not cancel the contracts. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 222)**

- **June 6, 2017 CEO of Corizon sent emails to Ryan azadc.gov that in the event Ryan did not increase the fees by 4% Corizon shall move from Arizona. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 223)**

- **April 2017 FHA Porter sent altered reports required by Parsons to ADCRR and notified Corizon corporate. (SAC@ 224)**

- **April 21, 2017 Dr. Michael Minev sent email to Dr. Rodney Stewart cch.com that he has changed the medical records to comply with the report submitted pursuant to Parsons, as requested. (SAC@ 225)**

- **March 21, 2016 Dr. Rodney Stewart cch.com sent emails to all staff that they must make sure that the records when submitted pursuant to Parsons, are reconciled with the medical records, and if necessary the medical records changed. (SAC@ 226)**

- **May 12 2015 CEO Corizon sent emails to Ryan azadc.gov that in the event Ryan fails to reduce the penalties imposed on Corizon, it shall move out of Arizona. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 227)**

- **August 28, 2014 Dr. Winfred Williams from ch.com sent emails to staff to ensure that staff change the records to coincide with the reports submitted under Parsons.. Conlon prepared a declaration contradicting the emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 228)**

- **March 4, 2014 Joseph Scott Conlon rcdmlaw. Com sent email to Dr. Dimitic Catsaros ch.comasking him to sign an affidavit that contradicted the emails sent by Catsaros when he was with Wexford health July 16,2012 where he was directed by Wexford change my treatment due to the cost. Catsaros executed the affidavit. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 229)**

- **September 2, 2013 Dr. Lucy Burciaga sent a email to staff to ensure that staff change the records to coincide with the reports submitted under Parsons.. Conlon prepared a declaration contradicting the emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 230)**
- **August 3, 2013 Dr. Kevin Lewis sent email to Dr. Joseph Moyse which directed him not to prescribe inmates medication that is cost prohibitive and if inmates die, Corizon will take care of it. (SAC@ 231)**

- **July 23, 2013 Dr. Winfred Williams from ch.com sent directives to all staff that they are not to provide treatment, referral to specialists and send inmates to hospitals, due to the cost of treatment. Conlon prepared a declaration contradicting the emails. These emails were subsequently sent to Gottfried azag.gov and Struck swfirm.com (SAC@ 232)**

- **June 26, 2013 NP Unger received a email that directed him not to provide inmates with care that is expensive and not to refer inmates to specialists. (SAC@ 233)**

- **November 29, 2010 Gene Greeley sent emails to Carter that no matter what the reason, as I have been challenging the presentation of false evidence by Attorney general's Office my diet should be cancelled. (SAC@ 234)**

- **February 20, 2009 Shelly Sonberg sent a email to Greg Fizer that upon discussions with Michael Brodsky and Paul Carter the decisions made in my favor reconstructing the records, were set aside, and I should sue if I wish to. (SAC@ 235)**

- **December 14, 2007 Cheryl Dossett directed Tara Diaz to prepare documents that I was not sent o segregation, for complaining about the killing of an inmate, in case, take this to court. (SAC@ 236)**

- **November 9, 2007 Aurora Aguilar sent emails to Johnson and Meyers confirming that Ruobyaines had destroyed my legal materials that I had asked to be copied. She confirmed that Ulibarri had reviewed these, but she nevertheless shall deny my grievance. These were subsequently forwarded to Carter and Brodsky (SAC@ 237)**

- **December 18, 2006 Aurora Aguilar sent emails to Byron Tucker that the documents forged at the request of Paul Carter should be labelled amended. (SAC@ 238)**

- **December 12, 1999 Aurora Aguilar directed Byron Tucker to prepare documents that Sgt. Lance Uehlling did not ask sin heads to beat me up, just in case, I take it to court. (SAC@ 239)**

- **September 3, 1999 Sgt. Donaldson sent email to Daryl Graves stating she had found nine legal boxes of documents, but they have been removed from a secure area by staff. (SAC@ 240)**

- **August 31, 1999 Daryl Graves ADOC sent emails to Cindy Neese that the property and legal materials had been intentionally destroyed upon orders of central office. Copies were sent to Christopher Copple. (SAC@ 241)**
- **Defendants, implemented these directives, pursuant to cooperation agreements and continued with the scheme. They gave tacit authorization to the misconduct and failed to take remedial actions, when informed, thereby causing the misconduct. (SAC@ 242)**

- **Without knowing what the Jensen injunction would be, Naphcare, like Wexford, Corizon and Centurion signed the contract to comply with the prospective conjunction, further informing the court that Techcare, the software it uses shall maintain proper contemporaneous record of care given. (SAC@ 243)**

- **Continuing with the practices implemented by Wexford, Corizon and Centurion, Naphcare has Techcare where records made by nurses and providers vanish, and the reports submitted by the permanent injunction in Jensen are altered to appear they comply with ECF 4410 in Jensen, but they do not. (SAC@ 244)**

- **In violation of HIPPA, all inmates can from their tablets access medical records of any inmate, as long as they have their information. (SAC@ 245)**

- **EMAILS from ADCRR, Naphcare and Dr. Pacheco are and were sent to change treatment that the providers order and these documents appear nowhere in these records, because these emails appear nowhere in the inmate medical records, same as in the case of Wexford, Corizon, Centurion. (SAC@ 246)**

- **Pursuant to the litigation strategy adopted outside the adversarial process, to conceal and falsify evidence in prisoner litigation,, Struck and the Struck Law firm, Carter, Morrissey, Thornell, aware of these actions, continue to conceal these from the courts, thereby as a consequence of their spoliation activities, they denied me denying me the chance to have my claims heard by the courts. (SAC@ 247)**

Sixth Argument

AMENDED COMPLAINTS DO NOT HAVE TO BE SERVED ON THOSE WHO HAVE NOT ENTERED APPEARANCE

¶ Contrary to ECF 63, when an amended complaint is filed, it does not have to be served on those who have not entered appearance *Dominic v Hess Oil VI, 841 F 2d 513 (3rd Cir. 1988)*, or those in default. *Baldwin v Taishang Gypsum Co Ltd. (In re Chinese Manufactured Drywall Litig.) 748 F.3d 756 (5th Cir. 2014)*

Seventh Argument

A. AS THE PROTECTOR OF THE JUDICIAL PROCESS, THE EQUITABLE DOCTRINE OF JUDICIAL ESTOPPEL MANDATES DEFENDANTS BE BARRED FROM ACCESS TO THIS FORUM FOR PLAYING FAST AND LOOSE WITH THIS COURT AND ITS PROCESSES

¶The equitable doctrine of judicial estoppel[4] has long been applied by U.S. Courts seeking to prevent litigants from playing "fast and loose" in litigation. *New Hampshire v. Maine, 532 U.S. 742, 749–50 (2001)* (collecting circuit decisions). Somewhat unique among the equitable estoppel doctrines, the central purpose of judicial estoppel is to protect the integrity of the legal system itself. *In re Coastal Plains, Inc., 179 F.3d 197, 205 (5th Cir. 1999)* (characterizing judicial estoppel as protecting "the judicial system, rather than the litigants"). The basic

4 Charles Alan Wright Et Al., Federal Practice And Procedure § 4402 (2d Ed. 2011). Procedurally, judicial estoppel appears to be treated similarly to questions of res judicata since it may be raised by defendants in a motion to dismiss or for summary judgment. See Dunellen, LLC v. Getty Props. Corp., 567 F.3d 35, 37–38 (1st Cir. 2009) (upholding trial court's application of res judicata and judicial estoppel in granting summary judgment). Also similar to res judicata, the doctrine can be raised sua sponte by the court itself. In re M Cassidy, 892 F.2d 637, 641 (7th Cir. 1990) (citing Allen v. Zurich Ins. Co., 667 F.2d 1162, 1168 n.5 (4th Cir. 1982)) (doctrine may be raised by court on appeal sua sponte). Hence, this argument included the failure of Defendants to provide evidence, that these claims are barred by res judicata and collateral estoppel, because they have failed to show where, in what court, when these issues were addressed. They were not presented or addressed.

EXHIBIT C

inadequate medical care and due-process violations.

The parties then reached their settlement agreement on February 10, 2022. Under its terms, $32,885.27 was payable to Taylor and $17,114.73 allocated for fees and costs to his attorneys. See: *Taylor v. Riojas*, U.S.D.C. (N.D. Tex.), Case No. 5:14-cv-00149.

That it took the nation's highest court to find even a potential constitutional violation in what were such obviously egregious conditions demonstrates the high bar that prisoners must overcome to prevail in civil rights cases.

New Jail Healthcare Provider Coming to Albuquerque – Again

by Kevin W. Bliss

New Mexico's Bernalillo County is terminating the contract with its jail's private healthcare contractor effective July 25, 2023. County Manager Julie Morgas Baca sent word to YesCare – the corporate descendant of Corizon Health – on January 26, 2023, pulling the plug two years early on a $64.9 million four-year contract that began in September 2021.

It is the second contract canceled in two years with a healthcare contractor at the county's Metropolitan Detention Center (MDC) in Albuquerque. When county commissioners voted to hire YesCare, it was because previous provider Centurion Detention Health Services had quit in a firestorm that followed nine jail deaths in just one year.

Tennessee-based YesCare is the golem Corizon Health brought to life with much of the firm's viable business when it successfully petitioned a Texas court to let it slough off its liabilities into another new corporation called Tehum Care Services. That firm then promptly declared bankruptcy. Known as the "Texas Two-Step," the procedure is legal but ethically dubious; Tehum told the federal bankruptcy court for the Southern District of Texas in May 2023 that it had 30 unsecured creditors owed a total of $38,438,751. *See: In Re: Tehum Care Services, Inc.*, USBC (S.D. Tex.), Case No. 23-90086.

To fill its contractually required 105 positions at MDC, YesCare recruited much of the staff that Centurion abandoned. Those same employees now say healthcare has declined since the change, with several reportedly leaving over concerns about safety and well-being of both prisoners and staff. Nurse Taileigh Sanchez, an 11-year veteran at MDC, testified in court that this was the worst medical care ever provided at the jail. Staffing levels are still considered critical, and three more detainees have died.

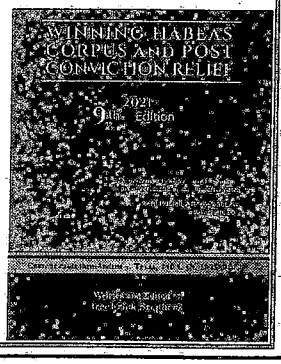
In September 2022, YesCare submitted a contract amendment providing for additional compensation to assist in staffing. The county commission refused to sign, saying YesCare was not even living up to current staffing requirements. MDC went for months without two medical doctors, a site physician or a medical director. Moreover, current records systems were so unmanageable as to actually hinder medical care, staffers said.

The county refused to hear any proposed amendments until current conditions met with contractual requirements. When that didn't happen, county commissioners exercised the contract's termination option, giving YesCare six months to exit the detention center.

On May 17, 2023, county commissioners made the rare move to end privatized healthcare at MDC. The University of New Mexico (UMN) Hospital will take over, under a partnership approved by the county and the UNM Board of Regents in April 2023. The county commission's latest vote endorsed a Joint Powers Agreement for the

9th Ed of Winning Habeas Corpus & Post Conviction Relief Case review to include Supreme Court thru Shoop v Hill S.Ct 504 (2019) Atty. Kent Russel writes: "Now that I've been turned on to Winning Habeas Corpus, I always make sure it's close at hand" **Power packed 635 pages**- NOT WHITE SPACE.
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two to work together.

Details of the arrangement – including a price tag – remain to be worked out. The final agreement will also need approval from the federal court for the District of New Mexico, which just approved a new settlement agreement in a decades-old class-action over jail conditions on January 17, 2023, requiring improved specialty care, sick calls and intake screening for mental illness. *See: McClendon v. City of Albuquerque*, USDC (D.N.M.), Case No. 6:95-cv-00024.

Local attorney Parrish Collins, whose clients have several jail lawsuits pending, said current YesCare staff should undergo a "vigorous rehiring process" with UNM, and that jail guards "and other county personnel must have a duty to report clear medical concerns."

"Otherwise," Collins added, "UNM will end up facing lawsuits regarding matters over which they had no knowledge."

Additional source: *Albuquerque Journal, Source NM*

Third Connecticut Prison Lockdown in Five Months

by Kevin W. Bliss

When an apparently intoxicated prisoner allegedly assaulted a guard at Connecticut's largest prison on June 13, 2023, the lockup was put on lockdown. It was at least the third time this year that a state Department of Correction (DOC) prison was shutdown.

The first incident also occurred at MacDougall-Walker Correctional Institution (CI). After prisoners registered over 50 new COVID-19 infections in just two weeks, Warden Daniel Dougherty placed the prison on lockdown on January 7, 2023. It wasn't lifted until over two weeks later. DOC said that more than 700 state prisoners and 659 staffers tested positive for the disease in December 2022 and January 2023.

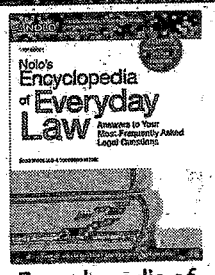
Then on May 19, 2023, New Haven CI went on a lockdown that lasted three days. DOC officials did not say what sparked the investigation that prompted it, however.

Connecticut's 13 active prisons – five more are shuttered – hold some 10,000 prisoners. Over 30 have died from COVID-19 since March 2020. Civil rights activists blame inattention to prevention. "They don't have proper cleaning items to clean their cells with, they don't have proper PPE [personal protective equipment], they don't have hand sanitizer, they don't have paper masks," said Katal Center for Equity, Health, and Justice activist Claudia Cupe. "They don't have any of the stuff that we have out here."

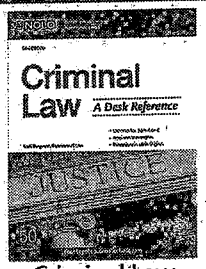
The COVID-19 surge early in the year also affected staffing levels. Though only 58% of employees got the initial vaccination for the disease, the local union complained that in addition to demanding schedules guards were forced to place their families at risk of infection. Collin Provost, president of the American Federation of State, County and Municipal Employees Local 391, said that has "a major effect on the psyche of individuals day in and day out."

But state auditors reported in December 2022 that at least 35 DOC employees

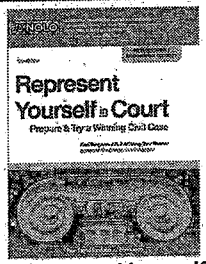
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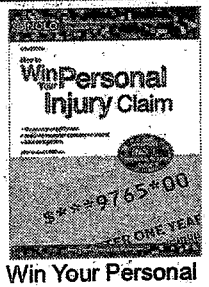
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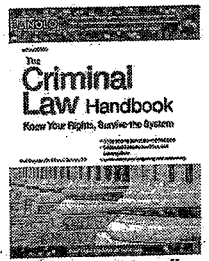
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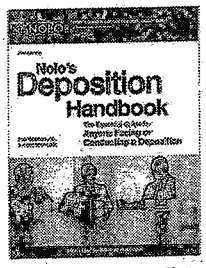
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EXHIBIT D

No._____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 2023

Anant Kumar Tripati,
Petitioner,

v.

Wexford Health Sources, Inc.; Matthew R. Zwick; Samuel H. Forman; Weber Gallagher Simpson Stapleton Fires & Newby, LLP; Jonah E. Rappazzo; Brandi C. Blair; Edward Hochuli; Jones Skelton Hochuli P.A.; Corizon, Inc.; Quintairos Prieto Wood & Boyer P.A.; Anthony J. Fernandez; Nichole Rowey, aka Nicole L. Cullen; Joseph Scott Conlon; Charles Stedman Hover, III; Timothy Regis Grimm, II; Kristin Whitney Basha; Renaud Cook Drury Mesaros P.A.; Kelly Joan Morrissey; Paul Edward Carter; Daryl Johnson; Karyn Klausner; Courtney Glynn; Cheryl Dossett; Diane Bousheszwicz; Betty Ullibarri; Centurion Of Arizona; Sarah L. Barnes; Broening Oberg Woods & Wilson P.C.; Michael E. Gottfried; Lucy M. Rand; Daniel P. Struck; Timothy J. Bojanowsky; Rachel Love; Nicholas D. Acedo; Struck Wienke & Love PLC; Charles L. Ryan; David Shinn; Julia Erwin; Lori Metcalf; Centurion LLC.

PETITION FOR WRIT OF CERTIORARI

Anant Kumar Tripati 102081
P.O. Box 8909, Yuma, Az 85349
ProPer

Questions Presented

After listening to privileged communications between Anant Kumar Tripati (Petitioner) and his counsel, Respondents, who are prison officials, prison healthcare providers and their attorneys, became aware that Petitioner had evidence against them, for concealing and falsifying evidence, in prisoner litigation. They sent Betty Ullibarri, a paralegal, to seize the evidence. The question presented is the same as that unresolved by this court in *The Pizarro*, 15 U.S. (2 Wheat.) 227 (1817).

1. Must the District Court sitting in diversity, address pre-filing spoliation of evidence, before addressing the defenses advanced by the guilty party? Can the guilty party engage in pre-filing spoliation to prevent Plaintiff from presenting his claims in compliance with Rules 8 and 9?

2. When substantial rights have been violated resulting in injustice, due to the appellate panel's failure to consider pre-trial spoliation of evidence, which, if considered, would have resulted in a different result, does *Calderon v Thompson*, 523 U.S. 538, 548 (1998) Accord at 567 (Souter, J. dissenting) authorize the appellate court to recall the mandate, so as to prevent injustice?

List of Parties

All parties appear in the caption

Related Cases

Petitioner is unaware of any related cases.

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G. Report by the Inter-American Commission on Huma Rights dated February 19, 2020.
H. Letter from Attorney Frederick A. Romero Dated October 3, 2019.
I. Letter from Attorney Dan Montgomery dated April 12, 2018.
J. Memo from prison officials dated September 2, 2008.

Rules Involved

Federal Rules of Civil Procedure

FED. R. Civ. P Rule 8(a) Claim for Relief: "A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the clam needs no jurisdictional support;
(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
(3) a demand for the relief sought which may include relief in the alternative or different types of relief.

FED. R. Civ. P. Rule 11 provides: Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.
(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after

service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

Opinions Below

The decision of the Third Circuit in *Tripati v Wexford Health Sources. , Inc., et al* No. 22-1861 (3rd Cir. December 15, 2022) and the order denying rehearing and suggestion for hearing en banc on February 1, 2023, is reproduced at App. B and C. The order denying the motion to recall the mandate is reproduced as App. A.

The District Court's decision, including the Magistrate Judge's Report and Recommendation in *Tripati v Wexford Health Sources, Inc., et al* (U.S.D.Ct. W.D. Pa. No. 2-20-cv-427, April 5, 2022) is reproduced at App. D, E and F.

Jurisdiction

The judgment below was entered on December 15, 2022 and a timely petition for rehearing with suggestion for hearing en banc, was denied on February 1, 2023. Petitioner filed a motion to recall the mandate and that was decided on March 13, 2023.

Petitioner invokes the jurisdiction of this court pursuant to 28 U.S.C. § 1254(1).

Introduction

Mr. Justice Story in *The Pizarro*, 15 U.S. (2 Wheat.) 227 (1817) stated "Spoliation of papers, is not itself a sufficient ground for condemnation in a prize court. It is, undoubtedly, a very awakening circumstance, calculated, and justify the suspicions of the court.... If, on the other hand, the spoliation be unexplained, or the explanation appear weak and futile, if the cause labor under heavy suspicions, or there be a vehement presumption of bad faith or gross prevarication, it is made the denial of further proof, and condemnation ensues, from defects in the evidence, which the party is not permitted to supply." *Id.* at 240.

When a party to litigation destroys relevant evidence, the judge may issue sanctions under the court's inherent power and statutory authority to punish spoliation of evidence. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46-47 (1991) (stating inherent power of courts to sanction not displaced by Federal Rules of Civil Procedure); *Anderson v. Dunn*, 19 U.S. 204, 226-27 (1821) (concluding courts vested, by creation, with power to impose "silence, respect, and decorum").

While the petition to recall the mandate was pending, Corizon filed for bankruptcy. The Clerk of court issued an order on March 13, 2013 stating "no action will be taken on Appellant's motion." That order is reproduced as App. A.

As all other Respondents had not filed for bankruptcy, Petitioner sought review by the panel. The panel declined to review that order and upheld the decision of the Clerk on April 13, 2013. That order is reproduced as App. A.

This case provides the Court with the opportunity to provide further, much needed guidance, as to the duty of the courts to consider the effects of pre-litigation spoliation, prior to considering the spoliator's defenses.

Certiorari is warranted for these reasons:

First,--in 1979 a federal court observed that there is an "alarming lack of authority" for the proposition that a party cannot destroy an item of relevant evidence. *Barker v. Bledsoe*, 85 F.R.D. 545, 547 (W.D. Okla. 1979).The court acknowledged that the parties to a proceeding are free to invoke the protection of the courts to safeguard their right to a fair trial. This privilege, however, must carry a concomitant duty of fairness, both to the court and the other adversaries. Yet, the topic has received little attention in ethical opinions, scholarly journals, or judicial decisions.

Pre-litigation destruction of evidence is a recurring issue which is subject to sanction under *Chambers v. NASCO, Inc.*, 501 U.S. 32, 35 (1991). Circuit Courts of Appeals are—and have long been---in direct conflict with *The Pizarro*, 15 U.S. (2 Wheat.) 227 (1817) and its protégé, on this important and recurring issue. Only this Court can resolve this stark divide.

Second, certiorari is warranted because the decision of the lower courts appears to collide with *The Pizarro*, 15 U.S. (2 Wheat.) 227 (1817) line of cases. By accepting review, this Court can prevent further erosion of that clear dividing line, in which the Court has invested significant effort to maintain.

Third, there is a Circuit split on the issue of pre-litigation spoliation of evidence. Other than the First,

Sixth and Ninth Circuits, the remaining Circuits find the courthouse doors altogether closed to such claims.

In this case the Third Circuit closed this door, notwithstanding *The Pizarro* and its protégé. This case presents an important and much-litigated legal issue worthy of this Court's determination. As noted, this case implicates the delicate relationship between the right to have one's claims heard, and spoliation of evidence.

Fourth, there is a Circuit split on the burden on the spoliator.

Fifth, this case presents the issue for resolution, clearly and discretely. The courts below refused to address the spoliation issue, but addressed the defenses. Had they addressed the spoliation issue, they would not have addressed the defenses, because the conduct was not harmless.

Finally, there is a split in the Circuits on the criteria to recall mandates. This court in *Calderon v Thompson*, 523 U.S. 538, 549 (1998) Accord at 567 (Souter, J. dissenting) has recognized that Circuit Courts may recall mandates, to prevent injustice, when as in the instant case, substantial rights are involved.

Statement of the Case

A. Petitioner's Litigation History

Petitioner since 1992 has been in litigation in federal and state courts in Arizona, challenging his criminal convictions and conditions of confinement. These Respondents are prison employees, healthcare providers and their lawyers. A copy of the decision of the Inter-American Commission on Human Rights is reproduced as App. G.

During litigation, Petitioner has asserted continually that the representations made by Respondents, to federal and state courts, in pleadings and declarations were materially false.

The contents of these documents were contradicted by documents created contemporaneously by Respondents agents when events happened. During discovery these documents were not released, because they were inculpatory to prison officials, thereby preventing Petitioner from bringing these to the court's attention.

By letter dated April 12, 2018, reproduced as App. I, Attorney Dan Montgomery advised Petitioner that "My analysis of all cases that Paul Carter has been involved in shows in detail what he concealed and falsified to win cases involving prisoners. There is a similar analysis for cases involving Corizon and Wexford in Arizona" Mr. Montgomery also sent Petitioner "nine cds ...with affidavits, law reviews and records."

Attorney Frederick A. Romero likewise in his letter dated October 3, 2019, reproduced as App. H,

also sent Petitioner CDS with other documents, confirming what Dan Montgomery stated.

Petitioner, after receiving these documents, began preparing complaints to be filed.

However, prison officials, through privileged communications, became privy to the evidence.

B. Petitioner's Claims in District Court

The verified second amended complaint reads in relevant part:

"In May 2018 I received CDS/DVDS from counsel and this is the first time that I saw documents that reflect the concealment of evidence, a subject matter of this case. In no uncertain terms the documents that I read in these CDS/DVDS from Weber Gallagher, (DEFENDANTS) direct lawyers, not to disclose evidence to prisoners, and to use every procedural device to frustrate prisoner litigation. The evidence that I read were not presented to the judges in the cases that I filed for had they been presented, I would have prevailed in the litigation. No judge has ever ruled that Defendants did not conceal evidence. (SAC Para 7 through 19)
I also read in these CDS/DVDS motions for sanctions, responses, letters, about 70 settlement agreements nationwide, involving Wexford, Corizon, Centurion, CENTURION LLC in Pennsylvania, New Jersey, Illinois, Florida, New Mexico, Georgia and other states, and ADOC in Arizona, where concealment of evidence was alleged, and sanctions imposed. (SAC Para 12-13)"

Ullibarri Seized And Delivered To Centurion, Wexford, Corizon, Shinn, Ryan, Gottfried And Others Evidence I Had On Cds/Dvds Necessary To Comply With Rules 8 And 9. She Did This Upon The Authorization Of Erwin, Johnson, Glynn, Carter And Others. I have firsthand knowledge as to what these documents state because I read them .(SAC@ 134-135; SAC@ 7, 8)
Seized Evidence, on the CDS/DVDS I Read, Show Weber Gallagher, Foreman, Zwick Created Policy In Pittsburgh To Frustrate Prisoner Litigation, Create Alternative Facts. Emails From Wexford Approved These.(SAC@ 23-24; SAC@ 1)
Counsel For Wexford, Ryan, Shinn, Corizon, Centurion In Cases Nationwide, Per The Seized Evidence I Read, Approved Above Policy By Emails And Sent Emails To Local Counsel Nationwide For Implementation. (SAC @ 6)
Hochuli; Blair; Rappazzo; Jones Skelton; Metcalf; Rowey; Quintairos Prieto; Fernandez; Conlon; Renaud Drury; Hover: Grimm; Klausner; Glynn; Barnes; Broening Oberg; Gottfried; Morrissey; Carter; Rand: Struck; Acedo; Struck Weinke; According To Seized Documents On CDS/DVDS, I Read, Are Indemnified And In Exchange Implement This Practice For Wexford, Corizon; Centurion; Ryan; Shinn (SAC @ 139 to 81)
Wexford, Corizon, Centurion, Ryan, Shinn And Others According To Seized Documents I Read, Enter Into Cooperation Agreements To Indemnify Attorney Defendants For Implementing Their Policy (SAC @ 139 to 81)

"These emails and documents would have entitled me to relief in cases that I was involved in and am involved in. They would have shown that higher-ups directed retaliatory actions against me and my medical treatment changed, as retaliation. These would have shown the Providers were just signing off and not making professional judgments as they have stated." (SAC Para 112)

The United States District Court for the District of Arizona Has Found *Jensen v Shinn* CV 12-0601 Doc 4335

Dr. Jordan testified medical schools do not teach the type of healthcare issues prisoners have, which are very bad. (p 111@ 24-26)(pp 16 @ 21-28)
"The current staffing levels illustrate ADCRR does not have the ability to address the varied and other complex needs of Arizona prisoners" (pp 22 @ 1-2)
"Defendants have failed to provide, and continue to refuse to provide, a constitutionally adequate medical care....Defendants have been aware of their failures for years and Defendants have refused to take necessary actions to remedy the failures. Defendants' years of inaction, despite Court intervention and imposition of monetary sanctions, establish Defendants are acting with deliberate indifference." (pp 2 @ 4-11)
Nursing Encounter Tools referrals by provider to Utilization Management and the responses, etc. (pp 13@ 12 -14 @ 18)
"The majority of medical staff do not have the necessary training or licensure to provide the type of care that is necessary to provide constitutionally

adequate care...The patterns of delay and indifference are pervasive." (pp 69@ line 22-26)
Dr. Wilcox was asked if he was "aware of any other health care settings where the nurse serves as the final decider when someone seeks to access their doctor." He responded "No." Considering that it's not really legal, you wouldn't expect to find any others. But, you know, can you imagine in the community if you schedule an appointment with your doctor and you're met in the lobby by the nurse who does a little assessment on you and then turns you around and sends you home and you're not allowed to see your doctor? That just doesn't exist in the scope of healthcare anywhere" (pp 28 @ 15-20)
"In Dr. Wilcox's expert opinion "the poor quality of clinical decision-making demonstrated by nurses and providers in the ADCRR harms patients and places them at an unreasonable and substantial risk of serious harm." (pp 28 @ 10-14)

C. The District Court's Decision

The District Court adopted the Magistrate Judge's Report and Recommendation, reproduced as App. D, E and F, and did not address the spoliation of evidence. Instead the court addressed the defense presented by Defendants.

D. The Decision by the Third Circuit

Like the District Court the Third Circuit failed to address the spoliation of evidence, addressing the defenses on the merits. That decision is reproduced as App. B.

E. Failure to Recall Mandate

Prior to filing this petition Petitioner moved the circuit court to recall the mandate due to substantial injustice, as a consequence of the failure to address spoliation. The court denied the application. This is reproduced as App. A.

Reasons Why the Petition Should Be Granted

As noted in the introduction, the same considerations that motivated this Court to grant certiorari in *The Pizarro* still exist today. Indeed, as will be shown below, the rift between the Circuits has only intensified, making the need for this Court's guidance more urgent.

I. Review Will Allow This Court to Finally Resolve the Longstanding Conflict Among the Circuits as to Pre-Litigation Spoliation of Evidence. Personal Jurisdiction Can be Established by Spoliation

This Court has held when documents have been destroyed, the Plaintiff has been deemed to have established personal jurisdiction. *Ins. Corp. v. Compagnie des Bauxites*, 456 U.S. 694 (1982) (affirming order that imposed sanction of deeming personal jurisdiction established) and the Circuit courts are split on this issue.

The circuits are split regarding what level of culpability is required on behalf of the spoliator; the minority allows the inference for negligent destruction of evidence, while the majority requires willful or bad-faith destruction. *Baliotis v Mc.Neil*, 870 F.Supp. 1285, 1289 (M.D. Pa., 1974), *Sacramona v Bridgestone/Firestone, Inc.*, 106 F.3d 444 (1st Cir.1997), *Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp.*, 982 F.2d 363, 368 (9th Cir. 1992); *Blain D. Johnson, Federal Courts' Authority to Impose Sanctions for Pre-litigation or Pre-order Spoliation of Evidence*, 156 F.R.D. 313, 318 (1994); *Bell v Lakewood Eng'g & Mfg. Corp.*, 15 F.3d (6th Cir. 1994).

Beaven v. U.S. Dep't of Justice, 622 F.3d 540, 553 (6th Cir. 2010) (recognizing negligent spoliation severely prejudiced plaintiff and justified adverse inference), and *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 780 (2d Cir. 1999) (claiming inference, rather than dismissal, properly remedies severe prejudice caused by negligent spoliation), with *Bashir v. Amtrak*, 119 F.3d 929, 931 (11th Cir. 1997) (issuing inference only when destruction predicated on bad faith (citing *Vick v. Texas Emp't Comm'n*, 514 F.2d 734, 737 (5th Cir. 1975))), and *Brewer v. Quaker State Oil Ref. Corp.*, 72 F.3d 326, 334 (3d Cir. 1995) (requiring intentional destruction before issuing adverse inference).

II. Federal Courts Have the Power to Deny the Court's Processes to One Who Defiles the Judicial System by Engaging in Pre-Filing Spoliation

In *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991) the Supreme Court considered a trial court's imposition of attorneys' fees as a sanction for a broad range of bad faith conduct in litigation over a contract for the sale of a Louisiana television station. The issue in the Supreme Court was whether it was permissible for the trial court to rely on inherent powers when at least some of the conduct was sanctionable under various federal rules or 28 U.S.C. § 1927, which allows a court to require counsel who unreasonably multiply proceedings to bear the marginal costs. The Court began with an explanation of the basis for inherent powers: It has long been understood that "certain implied powers must necessarily result to our Courts of justice from the nature of their institution," powers

"which cannot be dispensed with in a Court, because they are necessary to the exercise of all others." For this reason, "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates." These powers are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.

Prior cases have outlined the scope of the inherent power of the federal courts. For example, the Court has held that a federal court has the power to control admission to its bar and to discipline attorneys who appear before it. While this power "ought to be exercised with great caution," it is nevertheless "incidental to all Courts." *Chambers*, 501 U.S. at 43 (citations omitted).

The Court, in a five-to-four decision, upheld the sanctions under inherent powers: We discern no basis for holding that the sanctioning scheme of the statute and the rules displaces the inherent power to impose sanctions for the bad-faith conduct described above. These other mechanisms, taken alone or together, are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions. First, whereas each of the other mechanisms reaches only certain individuals or conduct, the inherent power extends to a full range of litigation abuses. At the very least, the inherent power must continue to exist to fill in the interstices.

The majority recognized that Congress could limit the exercise of inherent powers but expressed the opinion that neither Rule 11 nor Rule 26 had such effect. One area in which the dissenters and the

majority disagreed was with respect to the ability of a court to rely on inherent powers where the conduct was sanctionable under a rule or statute. Thus, even the dissenters agreed that a trial court's inherent powers could be relied upon to sanction bad-faith misconduct not governed by rules or statutes. But the majority went one step further: There is, therefore, nothing in the other sanctioning mechanisms or prior cases interpreting them that warrants a conclusion that a federal court may not, as a matter of law, resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct. This is plainly the case where the conduct at issue is not covered by one of the other sanctioning provisions. But neither is a federal court forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the Rules. A court must, of course, exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees. Furthermore, when there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the Rules, the court ordinarily should rely on the Rules rather than the inherent power. But if in the informed discretion of the court, neither the statute nor the Rules are up to the task, the court may safely rely on its inherent power.

Thus, despite what perhaps should be viewed as a preference to use applicable rules and statutes, under Chambers federal trial courts have discretion to invoke their inherent power to mete out sanctions in response to bad faith misconduct in matters pending before them.

Courts that dismiss or default for fraud practiced on the court often cite their inherent powers as a source of sanctioning authority. *Brady v. United States*, 877 F. Supp. 444 (C.D. 11. 1994); *Sun World, Inc. v. Lizarazu Olivarria,* 144 F.R.D. 384, 390 (E.D. Cal. 1992); *Eppes v. Snowden*, 656 F. Supp. 1267, 1279 (E.D. Ky. 1986). Perhaps this is because there is not a tight fit between the rules of civil procedure and situations in which litigants repeatedly lie under oath, fabricate evidence to support their claims, or destroy evidence. *TeleVideo Sys. Inc. v. Heidenthal*, 826 F.2d 915 (9th Cir. 1987); *McDowell v. Seaboard Farms of Athens, Inc.,* No. 95-609-CIV-ORL-19, 1996 U.S. Dist. Lexis 19558 (M.D. Fla. Nov. 4, 1996) (fabrication of evidence); *ABC Home Health Serv. Inc. v. Int'l Bus. Mach. Corp.*, 158 F.R.D. 180 (S.D. Ga. 1994) (evidence destroyed prior to initiation of lawsuit). The federal case law is well established that dismissal is the appropriate sanction where a party manufactures evidence which purports to corroborate its substantive claims. *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1116-1117, 1122 (1st Cir. 1989).

Federal courts have the power to deny the court's processes to one who defiles the judicial system by committing a fraud on the court. In its sole reference to the Federal Rules of Civil Procedure, the court said: "The Civil Rules neither completely describe nor purport to delimit, the district court's powers." *HMG Prop. Invs., Inc. v. Parque Indust. Rio Canas, Inc.*, 847 F.2d 908, 915 (1st Cir. 1988); *Brockton Sav. Bank v. Peat, Marwick, Mitchell& Co.*, 771 F.2d 5, 11 (1st Cir. 1985)). Yet, other authorities continue to suggest that the courts' inherent powers may only be utilized to respond to misconduct not addressed by statutory enactments or rules of court. For example, Professor

Moore writes, "when an appropriate sanction for a specific abuse exists under the Rules . . . , a court may not resort to its inherent sanctioning power but must use the sanctions available under the Rules.' 6 *James Wm. Moore Et Al., Moore's Federal Practice* 26.06[1] (Matthew Bender 3d ed. 2000) (citing *Societe Int'l Pour Participations Indus. et Comm'l, S.A. v. Rogers*, 357 U.S. 197, 207 (1958); *Black Panther Party v. Smith*, 661 F.2d 1243, 1259 n.103 (D.C. Cir. 1981), vacated on other grounds, 458 U.S. 1118 (1982)). In *Societe Internationale*, the Supreme Court held that the trial court erred by resorting to inherent powers and Rule 41(b), instead of Rule 37(b) (2) (iii), for authority to dismiss a case because of plaintiffs noncompliance with a discovery order. 357 U.S. at 207. The *Chambers* majority opinion distinguished *Societe Internationale* on the basis that there was "no need" in *Societe Internationale* to invoke inherent powers or Rule 41(b) and that where "individual rules address specific problems... it might be improper to invoke one when another directly applies." *Chambers*, 501 U.S. at 49 n.14.

Nonetheless, it is beyond question that many fraud on the court scenarios are not governed by the rules.

As "wrongful destruction of documents or other physical evidence prior to the commencement of an action is generally outside the scope of the sanctions available under specific Rules." *Moore,* At 26.06[1]. Accord 8a *Charles Alan Wright Et al., Wright, Miller & Marcus, Federal Practice And Procedure: Civil § 2282* (2d ed. 1994) ("[T]hough the Supreme Court said that Rule 37 is the sole source of sanctions for the discovery violations described in that rule, there are some violations of the discovery rules not within the

compass of Rule 37, and it should be held that the court has inherent power to deal with these violations."). Further, "the fabrication of evidence or testimony is subject to the court's inherent sanctioning power and dismissal is a potential sanction." In these situations, federal trial courts clearly are authorized to invoke their inherent power to sanction recalcitrant litigants.

The question, then, in deciding whether inherent powers properly should be invoked is whether the specific set of facts constituting fraud on the court is adequately addressed by a rule of civil procedure. In *Derzack v. County of Allegheny*, 173 F.R.D. 400, 412 (W.D. Pa. 1996) (footnote and citations omitted) the court relied on inherent powers to dismiss for misconduct that included fabrication of evidence. [B]ecause it occurred throughout several aspects of this litigation which are not squarely covered by any one rule, the Court holds, as have most federal courts faced with similar abuse, that plaintiffs' misconduct most directly implicates the inherent power of the court to curb such excesses and, just as clearly, warrants invocation of that power to sanction the responsible parties. It is unclear how tight the fit of the facts to the rule must be before inherent powers should not be relied upon. Compare *Societe Internationale*, 357 U.S. at 207 ([W]hether a court has power to dismiss a complaint because of noncompliance with a production order depends exclusively upon Rule 37, which addresses itself with particularity to the consequences of a failure to make discovery by listing a variety of remedies which a court may employ as well as by authorizing any order which is 'just.' There is no need to resort to Rule 41(b), which appears in the part of the Rules concerned with

trials and which lacks such specific references to discovery.) with *Chambers*, 501 U.S. at 50. Because inherent powers can be so potent, the Supreme Court has required that they be exercised with restraint and discretion. *Chambers*, 501 U.S. at 44; *Roadway Express*, 447 U.S. at 764.

III. The Third Circuit's Refusal to Apply The Pizarro to Pre-Litigation Spoliation is Contrary to the Dictates of This Court

Rule 8(a) FRCIVPR states "A pleading that states a claim for relief must contain: (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the clam needs no jurisdictional support; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; (3) and a demand for the relief sought which may include relief in the alternative or different types of relief."

In the context of spoliation, this is satisfied, when it has been pled that there has been (1) an act of destruction of evidence; (2) the evidence destroyed was relevant to the dispute; (3) the act of spoliation was intentional and/or negligent; (4) legal proceedings were pending or reasonably foreseeable at the time when destruction occurred; and (5) the act of destruction was taken by the parties or their agents, there is spoliation. *S.C. Johnson & Son, Inc. v. Louisville & Nashville R.R. Co.*, 695 F.2d 253, 258 (7th Cir. 1983) (holding that court must believe spoliation party acted in bad faith before unfavorable inference can arise), to ensure spoliators must not profit from their wrongs *Pomeroy v. Benton,* 77 Mo. 64, 86 (1882) spoliation instructions are given.

The increasing use of email and other forms of real-time electronic communication has enabled litigators to provide fact finders with highly persuasive contemporaneous records that were unavailable two decades ago. These records can be particularly revealing since people frequently use emails and other new forms of communication casually, without imagining that they might one day surface at a trial. Litigators, by contrast, have come to expect that electronically stored information will be available at trial, greatly expanding the scope of discovery. *James N. Dertousos et al., The Legal and Economic Implications of Electronic Discovery*, RAND CORP., 2 (2008), available at http://www.rand.org/pubs/occasional-papers/2008/RANDOP183.pdf ("Despite the potential of computer technology to make storage, search, and exchange of information less expensive and less time consuming, the most frequent issue raised by those we interviewed was the enormous costs-in time and money-to review information that is produced.").

Welsh v. United States, 844 F.2d 1239, 1248 (6th Cir. 1988) stated: when, as here, a plaintiff is unable to prove an essential element of her case due to the loss or destruction of evidence by an opposing party, and the proof would otherwise be sufficient to survive a directed verdict, it is proper for the trial court to create a rebuttable presumption that establishes the missing elements of the plaintiffs case that could only have been proved by the availability of the missing evidence. The burden thus shifts to the defendant-spoliator to rebut the presumption and disprove the inferred element of plaintiffs' prima facie case. ("[T]his approach merely selects which of two parties-the innocent or the negligent-will bear the onus of

proving a fact whose existence or nonexistence was placed in greater doubt by the negligent party.").

Nation-Wide Check Corp., Inc. v. Forest Hills Distrib., Inc., 692 F.2d 214, 217-19 (1st Cir. 1982) held that document destruction that amounted to "knowing disregard" of plaintiff's claim, though not necessarily constituting "bad faith", gave rise to adverse inference that sustained plaintiff's burden of proof.

Telectron, Inc. v. Overhead Door Corp., 116 F.R.D. 107, 129 (S.D. Fla. 1987) (holding judicial sanctions guaranteed more predictability than leaving it to jury). The court stated that allowing the jury to draw an inference "would leave too much to fortuity, since we can only speculate as to the significance which a jury might attach to evidence of willful document destruction in the context of a complex and protracted antitrust case." *Id.* at 136.

In *Bowman v. American Medical Systems*, No. CIV.A.96-7871, 1998 WL 721079 (E.D. Pa. Oct. 9, 1998) the United States District Court for the Eastern District of Pennsylvania granted a defendant manufacturer summary judgment when a plaintiff sued on an individual product malfunction theory and the defective product was discarded by the plaintiffs doctor.

IV. This Case Involves a Recurring and Highly Relevant Issue in the General Debate on Pre-Litigation Spoliation of Evidence

"When the contents of a document are relevant to an issue in a case, the trier of fact generally may receive the fact of the document's nonproduction or destruction as evidence that the party that has

prevented production did so out of the well-founded fear that the contents would harm him." (emphasis added) *Brewer v. Quaker State Oil Ref. Corp.*, 72 F.3d 326, 334 (3d Cir. 1995) ("*Dale A. Nance, Adverse Inferences About Adverse Inferences: Restructuring Juridical Roles for Responding to Evidence Tampering by Parties to Litigation*, 90 B.U. L. Rev. 1089, 1134-35 (2010) (discussing presumption of permissive, rather than mandatory, inferences) *Gumbs v. Int'l Harvester, Inc.*, 718 F.2d 88, 96 (3d Cir. 1983) (explaining nonproduction or destruction of relevant evidence justifies spoliation inference). *Brewer v. Quaker State Oil Ref. Corp.*, 72 F.3d 326, 334 (3d Cir. 1995) (explaining rationale behind allowing adverse inference against spoliating party). The inference allows the trier of fact to draw conclusions about what the missing evidence would prove had the offending party preserved it and made it discoverable.

For example, if the allegation is that the steering system of a car was defective product, reconstruction may be effectively impossible. There are too many elements of the steering system, potentially manufactured by different entities, to readily allow for sufficient reconstruction in the absence of the allegedly defective original.

In the case of documents, even if other copies of the spoliated document are available, a showing of prejudice can be made if the original is the one destroyed or if it can be shown that there was something unique about the destroyed document. For example, if it can be shown that a key individual made notes on his or her copy, and that copy was subsequently spoliated, then a prejudice argument can be made. The spoliator would respond that the

written notes can be reconstructed through questioning of the note's maker.

In the instant case Petitioner had asked the court for an order that allowed him to conduct limited discovery as to the spoliated evidence, and that was denied. With this limited discovery the spoliated evidence, could possibly have been reconstructed. The Magistrate Judge declined to allow discovery.

Obviously, if the spoliated evidence could have been reconstructed or recreated somehow, there is little or no prejudice suffered by the innocent party. The more complex the product or evidence in question is, the more difficult reconstruction may be.

V. The Court's Resolution of the Question Presented in This Case Gives This Court an Opportunity to Ensure Uniform Treatment of Pre-Litigation Spoliation Claims

Exploring the source of the court's authority to impose sanctions highlights an important distinction within the spoliation cases. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991) (qualifying courts' inherent ability to sanction fills "interstices" left by Federal Rules of Civil Procedure) as the harm addressed by sanctioning this conduct is the hardship incurred by the opposing party who can no longer use the evidence at trial, and not the destruction of evidence itself. ("In invoking the inherent power to punish conduct which abuses the judicial process, a court must exercise discretion in fashioning an appropriate sanction, which may range from dismissal of a lawsuit to an assessment of attorney's fees").

Regardless of what triggers this nonproduction, courts have inherent and statutory authority to sanction parties for spoliation. Judges enjoy broad discretion in fashioning appropriate sanctions for the damage incurred by spoliation. *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980) ("Because inherent powers are shielded from direct democratic controls, they must be exercised with restraint and discretion.").

In *Unigard Security Insurance Co. v. Lakewood Engineering& Manufacturing Corp* 982 F.2d 363 (9th Cir. 1992) the Ninth Circuit affirmed the trial court's decision to exclude evidence offered by the plaintiff, but it disagreed with the trial court's choice of authority in excluding the evidence. There was a fire on a yacht insured by the plaintiff. The plaintiff's expert blamed the fire on a space heater manufactured by the defendant. However, the plaintiff's subrogation department determined that the defendant would not be liable because the space heater was labeled with a warning which admonished the user not to leave the unit unattended." The plaintiff's subrogation department discarded the heater and the remaining evidence. However, after hiring a new attorney to handle subrogation cases, the plaintiff decided to file suit.

The trial court excluded the testimony of the plaintiff s expert because the defendant was unable to inspect the evidence. The trial court based its decision to exclude the evidence upon Federal Rule of Civil Procedure 37. However, Rule 37(b) allows the court to impose sanctions only where a party violates a discovery order. In many cases, the court has issued an order during discovery directing the parties to preserve any relevant evidence in their possession. In

Unigard, there was no such discovery order. Obviously, there could not have been such an order as the evidence was destroyed before the lawsuit was ever filed.

The source of authority may at first appear unimportant. When a situation not covered by Rule 37 arises, the court can simply turn to its inherent power to impose sanctions. However, the *Unigard* opinion demonstrates why the issue is relevant. The trial court in *Unigard* apparently felt constrained by the discovery rules, as demonstrated by the great lengths to which it went to stretch Rule 37 to justify sanctions.

West v. Goodyear Tire & Rubber Co., 167 F.3d 776, 779 (2d Cir. 1999) (discussing range of sanctions available). While lower court judges enjoy broad discretion in crafting appropriate sanctions for a party's misconduct, that discretion is tempered. ("Although a district court has broad discretion in crafting a proper sanction for spoliation, we have explained that the applicable sanction should be molded to serve the prophylactic, punitive, and remedial rationales underlying the spoliation doctrine.").

Turner v. Hudson Transit Lines, Inc., 142 F.R.D. 68, 75 (S.D.N.Y. 1991) ("It makes little difference to the party victimized by the destruction of evidence whether that act was done willfully or negligently.").

Victor Stanley, Inc. v. Creative Pipe, Inc., 269 F.R.D. 497, 532 (D. Md. 2010) ("Spoliation of evidence causes prejudice when, a result of the spoliation, the party claiming spoliation cannot present 'evidence essential to its underlying claim.'" (quoting *Krumwiede v. Brighton Assocs., L.L.C.*, No. 05 C 3003, 2006 WL 1308629, at *10 (N.D. Ill. May 8, 2006))).

Only when the nonspoliating party cannot prove its case without the spoliated evidence or expert testimony may dismissal be appropriate. See *Phoebe L. McGlynn, Note, Spoliation in the Product Liability Context,* 27 U. Mem. L. Rev. 663, 666 (1997) (discussing liability for spoliation). *Rachel K. Alexander, E-Discovery Practice, Theory, and Precedent: Finding the Right Pond, Lure, and Lines Without Going on a Fishing Expedition*, 56 S.D. L. REV. 25, 82-83 (2011) (discussing courts' willingness to issue inference despite prejudicial effect on spoliator).

Boyd v Ozark Air Lines Inc., 568 F.2d 50, 53 (8th Cir. 1977) requires the spoliator disprove the claims when spoliation has occurred. No other Circuit appears to require this. *Schwartz v. Subaru, Inc.*, 851 F. Supp. 191, 192-93 (E.D. Pa. 1994) (granting defendant manufacturer summary judgment when plaintiff destroyed allegedly defective automobile); *Smith v. American Honda Motor Co.,* 846 F. Supp. 1217, 1222 (M.D. Pa. 1994) (granting summary judgment after plaintiff permitted demolition of automobile with allegedly defective seatbelt). *Quaile v. Carol Cable Co.,* No. CIV.A. 90-7415, 1993 WL 53563, at *4 (E.D. Pa. Feb. 26, 1993) (denying defendant's motion for summary judgment when plaintiff discarded allegedly defective drop light). *Quaile,* 1993 WL 53563, at *3 (refusing summary judgment request when defendant was not prejudiced by loss of lamp that allegedly caused injury because defendant was able to examine other lamps of same design.).

VI. The Clean Hands Doctrine Mandates Spoliation be Addressed First. This Case Squarely Presents the Discrete but Important Issue of Whether Spoliation Must be Addressed Before Resolution of the Defenses Advanced by the Spoliator

The "clean hands" doctrine is a longstanding equitable doctrine whose scope is broader than, but may encompass, fraud on the court. It is "a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." *Precision Instrument Mfg. Co. v. Auto. Main. Mach. Co.*, 324 U.S. 806, 814- 15 (1945). The doctrine has been invoked to dismiss claims or defenses of litigants who have used underhanded means to advance their cause. So, for example, in *Mas v. Coca-Cola Co.*, 163 F.2d 505 (4th Cir. 1947) a plaintiff used forged documents and perjured testimony in a failed attempt to establish priority of invention before the Patent Office; the plaintiff suffered a dismissal for coming into court with unclean hands. The doctrine, flexible in application, permits a court to exercise broad discretion to deny relief to a litigant who has acted in an unconscionable way that "has immediate and necessary relation to the matter that he seeks in respect of the matter in litigation." *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245 (1933); *Precision Instrument*. 324 U.S. at 814-15.

Accordingly, the clean hands doctrine does not close the courthouse doors to a litigant simply because he is a bad person; rather, relief is denied where a

"violation [ ] of conscience as in some measure affect[s] the equitable relations between the parties in respect of something brought before the court for adjudication." *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 248 (1933).

The clean hands doctrine is one that the court applies, not for the protection of the parties, but for its own protection. Its basis was well stated by Professor Pomeroy as follows: It assumes that the suitor asking the aid of a court of equity has himself been guilty of conduct in violation of the fundamental conceptions of equity jurisprudence, and therefore refuses him all recognition and relief with reference to the subject-matter or transaction in question. It says that whenever a party, who, as actor seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy." *John Norton Pomeroy, Equity Jurisprudence* § 397 (5th ed. 1941).

Another passage by Pomeroy on equity jurisprudence, thus states the rule: "It is not alone fraud or illegality which will prevent a suitor from entering a court of equity; any really unconscientious conduct, connected with the controversy to which he is a party, will repel him from the forum whose very foundation is good conscience.

Armed with admissions by the plaintiff pilot that he had committed perjury in his first deposition and his interrogatory responses and that he had "committed fraud by submitting false tax returns in response to Cessna's request for production of

documents," Cessna moved, pursuant to the clean hands doctrine and Rule 41 (b) of the Federal Rules of Civil Procedure, to dismiss the pilot's complaint.

The clean hands doctrine in its traditional formulation applied against those parties asserting equitable claims or defenses where they arrived before the chancellor with unclean hands. *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 244-45 (1933).

In fact, the clean hands doctrine is unique among the tools for fighting fraud on the court in its applicability solely to misconduct of those (typically, but not always, plaintiffs) seeking the application of equity. *Aris-Isotoner Gloves, Inc. v. Berkshire Fashions, Inc.*, 792 F. Supp. 969 (S.D.N.Y. 1992) (applying clean hands doctrine to bar defendant's equitable defense of laches). This does not mean, however, that only plaintiffs or counterclaimants will be negatively impacted by the clean hands doctrine. Rather, the doctrine allows the court to deny equity to one who has not acted equitably in the matter and, therefore, can apply to a claimant bringing an equitable claim or a defendant asserting an equitable defense. See, e.g., *Fayemi v. Hambrecht & Quist, Inc*, 174 F.R.D. 319, 326 (S.D.N.Y. 1997) ("The final issue is whether the Court should withhold any sanction because of the defendants' own misconduct. Because the relief sought by the defendant is equitable, the unclean hands doctrine applies."); *Aris-Isotoner*, 792 F. Supp. at 972 n.7 ("We further disagree with *Berkshire's* argument that the doctrine of unclean hands especially applies to plaintiffs, as opposed to defendants. The cases that *Berkshire* cites do not state that a distinction exists as to the application of the unclean hands doctrine to equitable causes of

action on the one hand and to equitable defenses on the other, and such a distinction is needlessly artificial and unwarranted under these circumstances."). When applied in this way, the doctrine does not call for a balancing of the misconduct on both sides of the case.

Traditionally an equitable defense, the clean hands doctrine has been applied to cases at law since the merger of law and equity. As a practical matter, the fraud on the court doctrine is sufficiently developed and, in this context, sufficiently similar to the clean hands doctrine that the clean hands doctrine can be left to its traditional application to equity.

The standard exposition of the clean hands doctrine speaks of the requirement of coming into court with clean hands, but many courts also require that hands remain clean during the litigation. Thus, a plaintiff who arrives in court with clean hands may still find herself out of court if her hands become soiled during the litigation. *C.C.S. Communication Control, Inc. v. Skylar*, No. 86-7191, 1987 U.S. Dist. LEXIS 4280 (S.D.N.Y. June 1, 1987), aft without op., 983 F.2d 1048 (2d Cir. 1992). As one trial court explained: "It would be strange if a court of equity had power-because of public policy for its own protection-to throw out a case because it entered with unclean hands and yet would have no power to act if the unconscionable conduct occurred while the case was in court."

VII. When Spoliation Has Been Shown, it is the Proper Subject of Argument by Counsel

Once there has been proof of spoliation, it is a proper subject of argument by counsel. 6 *John Henry Wigmore, Evidence In Trials At Common Law* § 1807 (4th ed.1979) ("Where the existence of a material document or witness has appeared in the course of the testimony and yet the opponent has not produced the witness or document, the failure to produce is in evidence from the very nature of the situation, and therefore, when relevant, may be referred to [in argument by counsel]." (Citations omitted)).

McCormick on Evidence ("McCormick") treats spoliation of evidence as a form of admission by conduct. *Kenneth S. Broun, McCormick On Evidence* § 265 (6th ed. 2006) [hereinafter *McCormick*] ("As might be expected, wrongdoing by the party in connection with its case amounting to an obstruction of justice is also commonly regarded as an admission by conduct."). *Id.* ("By resorting to wrongful devices, the party is said to provide a basis for believing that he or she thinks the case is weak and not to be won by fair means, or in criminal cases that the accused is conscious of guilt."). When a party resorts to spoliation, that party provides a basis for inferring that the party believes the case could not be won without destroying evidence. *Id.* ("By resorting to wrongful devices, the party is said to provide a basis for believing that he or she thinks the case is weak and not to be won by fair means, or in criminal cases that the accused is conscious of guilt."). *Id.* ("The actor must be connected to the party, or, in the case of a corporation, to one of its superior officers."). *Id.*

"Moreover, the circumstances of the act must manifest bad faith. Mere negligence is not enough, for it does not sustain the inference of consciousness of a weak case." An influential law review article explains

the reasoning behind the adverse inference and the need for bad faith as follows: [Spoliation] indicates a belief relevant and detrimental to some feature of his case; therefore he holds that belief; therefore his case in this feature is defective. *John MacArthur Maguire & Robert C. Vincent, Admissions Implied from Spoliation or Related Conduct*, 45 Yale L.J. 226, 235 (1935).

Flury v. Daimler Chrysler Corp., 427 F.3d 939 (11th Cir. 2005) provides an interesting example. The plaintiff in that case fell asleep while driving his pickup truck at fifty-five miles per hour and crashed into a tree. He was wearing a seatbelt, but his airbag failed to deploy and he suffered a back strain on account of the crash. Soon after the accident, the plaintiff's lawyer sent a letter to the truck's manufacturer notifying the manufacturer of the accident and the airbag's failure to deploy. The manufacturer replied to the letter and requested the location of the vehicle for inspection purposes, but the plaintiff's lawyer did not respond to the request. Sometime between six months and one year after the accident, the plaintiff's insurer sold the truck for salvage, and the plaintiff had no knowledge of its whereabouts thereafter. A little more than six years after the accident, the plaintiff filed a federal court action against the truck's manufacturer claiming enhanced injury to his lower back as a result of the airbag's failure to deploy on account of an alleged manufacturing defect.

At the trial, the plaintiff introduced testimony from an accident reconstruction expert that the plaintiff's truck must have been moving at more than fifteen miles per hour when it hit the tree. The expert's testimony was based solely on the accident

report and post-accident photographs of the truck. The expert also testified that generally airbags are designed to not deploy at speeds less than eight miles per hour, to sometimes deploy at speeds between eight and fourteen miles per hour, and to always deploy at speeds of fifteen miles per hour or more. The expert concluded that the airbag should have deployed because the plaintiff crashed into the tree at more than fifteen miles per hour.

The judge explained at the conclusion of the trial, what spoliation was and instructed the jury that spoliation creates a rebuttable presumption that evidence not preserved was unfavorable to the party who caused the spoliation. The judge further instructed the jury that if it found that the plaintiff disposed of the truck before giving the defendant an opportunity to inspect it, the jury could presume that there was no defect, but the plaintiff could rebut the presumption. Despite the spoliation instruction, the jury returned a verdict of $250,000 for the plaintiff. On appeal, the Eleventh Circuit reversed, holding that dismissal was required for the plaintiff's spoliation of the evidence and that the spoliation instruction was insufficient to cure the prejudice to the defendant. The appellate court acknowledged that because dismissal is the most severe sanction, it should be ordered only where there is bad faith and lesser sanctions would not suffice. Still, the court determined that dismissal was warranted because the condition of the airbag and the truck was critical to the case, and the defendant was prejudiced by not being given an opportunity to examine them.

The court set out the following five factors to assess whether to order dismissal as a sanction for spoliation of evidence: (1) whether the defendant was

prejudiced as a result of the destruction of evidence; (2) whether the prejudice could be cured; (3) the practical importance of the evidence; (4) whether the plaintiff acted in good or bad faith; and (5) the potential for abuse if expert testimony about the evidence was not excluded.

Similarly, an order of dismissal as a sanction for spoliation was affirmed in *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583 (2d Cir. 2001) another airbag case. The Fourth Circuit decided that although it was not clear whether the spoliation was negligent or deliberate, dismissal was not an abuse of discretion because the loss of the airbag evidence was critical to the central issue in the case, and therefore highly prejudicial to the defendant. The court held that dismissal for spoliation of evidence would be warranted either if the spoliator's conduct was so egregious that it justified forfeiture of the claim, or if the spoliation substantially prevented the defendant from putting on a defense."

The *Flury* and *Silvestri* cases demonstrate the desirability of allowing a court to impose a harsher sanction than an adverse inference instruction for spoliation of evidence because in some circumstances, an adverse inference instruction may not be sufficient to deter spoliation or provide an effective remedy." *Barker v. Bledsoe*, 85 F.R.D. 545, 548 (W.D. Okla. 1979) ("A presumption as to certain evidence is simply not sufficient to protect against [the destruction of evidence]."); *Dale A. Oesterle, A Private Litigant's Remedies for an Opponent's Inappropriate Destructions of Relevant Documents*, 61 Tex. L. Rev. 1185 (1983) ("The hostile inferences created by destroying evidence do not seem to offset the strategic gains achieved by the document destroyer of

preventing his opponent's use of a particularly damaging document or of adding excessive litigation costs to the opponent's case. Most importantly, the inferences may not be strong enough to counter an opponent's remaining documents, which are carefully retained because of their support of the opponent's case.") (emphasis in original).

VIII. Prefiling Spoliation May Also be Sanctionable Under Rule 11

In certain instances, Rule 11 may apply to fraud on the court. *R.B. Ventures, Ltd. v. Shane*, No. 91-CIV-5678, 2000 U.S. Dist. LEXIS 10170 (S.D.N.Y. July 19, 2000) (citing *Bower v. Weisman*, 674 F. Supp. 109, 112 (S.D.N.Y. 1987)).While some courts have relied on their inherent powers to dismiss or default a litigant for committing fraud on the court and have imposed monetary sanctions under the authority of Rule 11 as well, *Eppes v. Snowden*, 656 F. Supp. 1267, 1281-82 (E.D. Ky. 1986) ("The remedy must be sufficient to serve universal notice that this conduct will not be tolerated. The remedy therefore must go further than a dismissal of the counter-claim .... What sanctions then, could be imposed that would impress a gentleman who would pay $2,000,000.00 for a horse .... His net worth is into seven figures. A penalty of $194,131.52, when compared to his net worth, would amount to something just under a 'tithe.'").

Other courts have premised dismissal or default directly on Rule 11. *Combs v. Rockwell Int'l Corp.*, 927 F.2d 486 (9th Cir. 1991) (relying on Rule 11 where counsel made 36 changes on deposition errata sheet after client advised that transcript was accurate and testimony correct); *Sun World, Inc. v. Lizarazu*

Olivarria, 144 F.R.D. 384, 389-90 (E.D. Cal. 1992). This latter use of Rule 11 appears justified by the text of the Rule in those situations where pleadings, motions, or other papers filed with the court contain- or incorporate-fraudulent materials or information. FED. R. Civ. P. 11(a) (1997) ("Every pleading, written motion, and other paper..."); *Id.* 11(c) (2) ("[T]he sanction may consist of, or include, directives of a nonmonetary nature ..."); advisory committee's notes to 1993 amendments ("The court has available a variety of possible sanctions to impose for violations, such as striking the offending paper ....").

In *Sun World, Inc. v. Lizarazu Olivarria*, 144 F.R.D. 384 (E.D. Cal. 1992) the defendant attached to a brief opposing a motion an altered contract (entitled Notice of Termination), which-if authentic-would have allowed the defendant to avoid liability. He also swore to the authenticity of the Notice of Termination in two affidavits filed with the court. The court did not hesitate to apply Rule 11 to the situation:

Application of Rule 11 to these facts is exceedingly simple. *Lizarazu* admittedly and intentionally defrauded the court by filing the Notice of Termination. He also committed perjury in at least two instances in furtherance of that fraud. Consequently, to say that the Notice of Termination and the two perjured documents were not well grounded in fact is a gross understatement. .. [T]he court finds that the only appropriate sanction is the striking of *Lizarazu's* answer, the dismissal of his counterclaim and the entry of default judgment against him on *Sun World's* complaint. *Lizarazu's* egregious conduct, his lack of repentance and his obvious disregard for this court's authority force the conclusion that no other sanction would be efficacious.

Accordingly, pursuant to Rule 11, the court hereby strikes *Lizarazu's* answer, dismisses his counterclaim, orders the entry of default judgment for *Sun World*, and orders *Lizarazu* to pay all costs and attorney's fees incurred by *Sun World* resulting from and relating to the fraudulent document.

IX. When Substantial Injustice Has Resulted as a Resulted of the Failure to Consider Pre-Filing Spoliation, Circuit Courts Have the Authority to Recall Mandates to Prevent Injustice.

Calderon v Thompson, 523 U.S. 538, 549 (1998) Accord at 567 (Souter J, dissenting) reads in pertinent part "the courts of appeals are recognized to have an inherent power to recall their mandates" to prevent the miscarriage of justice.

This Court has stated this is essential to prevent the integrity of judicial processes and decisions, and this is subject to review for abuse of discretion by this Court. *Hawaii Housing Auth. v Midkiff*, 453 U.S. 1323, 1324 (1983) (Rehnquist, J., in Chambers).

The circuit courts are split as to the criteria. *Scott v Singletary*, 38 F.3d 1547, 1551 (11th Cir. 1994) *Simmons v Lockhart*, 856 F.2d 1144, 1145 (8th Cir. 1988) *Nevius v Sumner*, 105 F.3d 453, 460 (9th Cir. 1996).

Conclusion

Petitioner moves this court for an order granting his Petition for a writ of certiorari.

Respectfully submitted,
s/Anant Kumar Tripati
Anant Kumar Tripati

EXHIBIT E

Arizona Department of Corrections Rehabilitation and Reentry

Legal Mail Log

Legal correspondence shall be opened and inspected for contraband only in the presence of the inmate (As outlined in Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR) Department Order 914, Inmate Mail). If the inmate is not in the unit the unopened Legal Mail to Complex Mail Room.

UNIT	DATE *(mm/dd/yyyy)*
CIBOLA	05/12/2023

All metal and other contraband have been removed prior to issuing to inmate.

Inmate Name *(Print name)*	ADCRR Number	Housing	Date *(mm/dd/yy)*	Signature	Received From / Mail To	Tracking Number	Contents	Outgoing Postage	Officer/Badge Number
TRIPATI, A	102081	4D15L	05/12/23		Sara Tirschwell 225 Powell PL Brentwood, TN 37027				
TRIPATI, A	102081	4D15L	05/12/23		Nichol Rowely Esq 8800 E. Raintree #100 Scottsdale, AZ 85260				
TRIPATI, A	102081	4D15L	05/12/23		Daniel Struck Esq 3100 W Ray Rd #300 Chandler, AZ 85226				
TRIPATI, A	102081	4D15L	05/12/23		Struck Love Bojanowski & Acedo 3100 W. Ray Rd #300 Chandler, AZ 85226				
TRIPATI, A	102081	4D15L	05/12/23		Quintairos, Prieto, Wood & Boyer 8800 E. Raintree #100 Scottsdale, AZ 85260				
TRIPATI, A	102081	4D15L	05/12/23		Arizona Attorney General 2005 N. Central Phoenix, AZ 85006				
TRIPATI, A	102081	4D15L	05/12/23		Michael Gottfried Esq 225 W. Madison Phoenix, AZ 85003				
TRIPATI, A	102081	4D15L	05/12/23		Jones Skelton & Hochuli 1 N. Central #900 Phoenix, AZ 85004				
TRIPATI, A	102081	4D15L	05/12/23		Joseph Conlon Esq 40 N. Central #2700 Phoenix, AZ 85007				
TRIPATI, A	102081	4D15L	05/12/23		Paul Carter Esq 416 W. Congress #200 Tucson, AZ 85701				

NOTE: Shift Commander shall sign and date upon completion of all Legal/Certified Mail distribution.

SHIFT COMMANDER NAME *(Last, First M.I.) (Please print)*	SIGNATURE	DATE *(mm/dd/yyyy)*
[illegible]	[illegible]	5-12-2023

5-12-23

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