

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-5104

CNA; CONTINENTAL CASUALTY COMPANY,
the Workers' Compensation Carrier
for RTR Business Products,
as Subrogee of Michael Lahoff;
MICHAEL LAHOFF, (brought in his name
and on his behalf by CNA and
Continental Casualty Company as subrogee)

v.

UNITED STATES OF AMERICA; KOREY LEWIS

CNA;
Continental Casualty Company;
Michael Lahoff,
Appellants

Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 06-cv-00126)
District Judge: Honorable Donetta W. Ambrose

Submitted Under Third Circuit LAR 34.1(a)
February 4, 2008

Before: MCKEE and AMBRO, Circuit Judges,
and IRENAS, * District Judge

(Opinion filed July 22, 2008)

ORDER AMENDING PRECEDENTIAL OPINION

AMBRO, *Circuit Judge*

It is now ordered that the published Opinion in the above case filed July 22, 2008, be amended as follows:

On page 8, top partial paragraph beginning “factual attack,” line 9, replace “Dist. Ct. Op. at 2-3 ” with “*CNA v. United States*, No. 06-126, 2006 WL 3366147, at *1 (W.D.Pa. Nov. 20, 2006)”.

On page 8, first full paragraph beginning “That the Government’s,” line 5, replace “Dist. Ct. Op. 3” with “*Id.*”.

On page 8, second full paragraph beginning “After a factual inquiry,” line 2, replace “Dist. Ct. Op. 6” with “*id.* at *3”.

On page 9, first partial paragraph beginning “authorized time,” line 3, replace “Dist. Ct. Op. 5” with “*Id.* at *2”.

On page 16, first full paragraph beginning “*Arbaugh* does not,” line 12, remove internal apostrophes from the quotation “ ‘count as jurisdictional,’ ” so that the quotation reads “count as jurisdictional,”.

On page 23, bottom partial paragraph beginning “Nonetheless, we hold,” line 6, remove the word “here” from the phrase “no factual disputes that are here relevant” so that it reads “no factual disputes that are relevant”.

On page 24, top partial paragraph beginning “space limitations,” line 1, replace “Dist. Ct. Op. 5” with “*CNA*, 2006 WL 3366147, at *2”.

*Honorable Joseph E. Irenas, Senior District Judge for the District of New Jersey, sitting by designation.

On page 33, bottom partial paragraph beginning “Subrogees also allege,” line 6, remove quotation marks from the quotation “shall not apply to”. This will change the parenthetical beginning on line 6 to read: (specifying that the provisions of the FTCA shall not apply to “[a]ny claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation . . . or based upon the exercise or performance [of] a discretionary function”).

By the Court,

/s/ Thomas L. Ambro, Circuit Judge

Dated: 29 September 2008