No.

IN THE
Supreme Court of the United States

W. A. GRIFFIN, M.D.
Petitioner,

v.

AETNA HEALTH INC.; COVENTRY HEALTHCARE OF GEORGIA, INC.,
Respondents,

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether or not the District court borrowed the appropriate state law for Erisa statutory penalty by applying a one year statue of limitations under O.C.G.A. § 9-3-28, even though the Georgia Supreme Court suggests that the limitation is twenty years under O.C.G.A. § 9-3-22 for *aggrieved* Georgians.

2. Starting in 2012, ERISA plan beneficiaries authorized their Georgia medical provider to be both the designated authorized representative and assignee of benefits. The original assignment of benefit did not expressly state that the medical provider had been assigned rights to statutory penalties claims. However, during the administrative appeals, the provider, in the dual role as assignee of benefits and designated authorized representative, requested ERISA plan documents from the plan administrator. The plan administrator failed to produce the documents upon certified request.

   In 2017, the medical provider obtained a retroeffective assignment of benefit that dated back to the original assignment that expressly authorized assignment for statutory penalty claims. Even so, the 11th Circuit stated that the provider never had the authority to request plan documents in 2012. Therefore, the retroeffective assignment could not be valid for statutory penalty claims if the requesting party never had the authority to request plan documents.

QUESTIONS PRESENTED

The Questions for this part is three fold:

1) Whether or not an assignee of benefits only has the authority to request ERISA plan documents from the plan administrator even if the original assignment does not confer rights to pursue statutory penalties claims.

2) Whether or not a designated authorized representative has the authority to request ERISA plan documents from the plan administrator .

3) Whether or not a retroeffective assignment that expressly confers rights to statutory penalties claims is valid if the *original* request came from a party that had the authority to request plan documents in accordance with ERISA claim and appeal procedures.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES

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CASES

Petitioner respectfully prays that a writ of certiorari issued to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States Court of Appeals appears

at **Appendix** ___A___to the petition and is

[ ] reported at__; or, [ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at

Appendix__B to the petition and is

[ ] reported at__; or, [ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 24, 2018.

[X] No petition for rehearing was timely filed in my case.

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including_____
_____(date) on___(date) in Application No.___

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

3.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

29 U.S.C. § 1132(c). Statutory Penalties

ERISA provides a penalty of up to $110 per day for the failure to provide plan documents. Any Administrator who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary . . . by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

Georgia O.C.G.A. 9-3-22

9-3-22. Enforcement of rights under statutes, acts of incorporation; recovery of wages, overtime, and damages

All actions for the enforcement of rights accruing to individuals under statutes or acts of incorporation or by operation of law shall be brought within 20 years after the right of action has accrued; provided, however, that all actions for the recovery of wages, overtime, or damages and penalties accruing under laws respecting the payment of wages and overtime shall be brought within two years after the right of action has accrued.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Georgia O.C.G.A. 9-3-28. Actions by informers

All actions by informers to recover any fine, forfeiture, or penalty shall be commenced within one year from the time the defendant's liability thereto is discovered or by reasonable diligence could have been discovered.

Georgia O.C.G.A. 9-3-24 Actions on simple written contracts

All actions upon simple contracts in writing shall be brought within six years after the same become due and payable.

STATEMENT OF THE CASE

Petitioner, W. A. Griffin, M.D., is a Georgia medical provider that treated five patients whom also happened to be a participants in an ERISA plan administered by Respondents. As a condition of service, Dr. Griffin required the patients to assign their health benefits. After receiving dismal reimbursements and adverse benefit determinations without any good explanations, Dr. Griffin exhausted ERISA appeals which included requests for plan documents via certified mail. After having zero luck getting paid and being short changed on the requests for plan documents, nearly three years ago on October 30, 2015, Petitioner filed a lawsuit against the Respondents for three ERISA counts: 1) payment of benefits 2) breaches of fiduciary duty 3) and statutory penalties. (See *Griffin v. Aetna Health et al.,* No. 1:15-CV-03750-AT, N.D. Ga. June 2nd, 2017..also known as *Aetna I*). After a year of back-and-forth filings, the District court granted Respondents a partial motion to dismiss that watered down the claims to payments of benefits only. Count 2 and Count 3 were dismissed, because the District court reasoned that Dr. Griffin did not have a valid assignment for those counts prior to filing *Aetna I.*

STATEMENT OF THE CASE
Continued

Right after the dismissal of counts 2 and 3 in *Aetna* I, on December 6, 2016, Petitioner refiled the dismissed counts under *Aetna II*, a new lawsuit that cleared up the technicality that her claims for statutory penalties and breaches of fiduciary duty in Aetna I were not valid, because "updated" retroactive assignments were obtained post-litigation. Aetna II is the current case before this court that was recently affirmed by the Eleventh Circuit.

Aetna II involved several counts: 1) breach of fiduciary duty 2) statutory penalties 3) self-dealing and 4) negligent misrepresentation. Unsurprisingly, every count was dismissed. However, for the purposes of this petition for writ of certiorari, Petitioner would like the the court to only address count two, statutory penalties claims.

Simply put, the issue in this petition is whether or not the District court borrowed the correct Georgia law in its holding that claims for ERISA statutory penalties are barred by one year statute of limitations in accordance with O.C.G. A. 9-3-28 (*Harrison v. Digital Health Plan*, 183F.3d 1235, 1238 (11th Cir. 1999); *Griffin v. RightChoice Managed Care, Inc. et al No.* 1:16-CV-03102 (N.D. Ga. December 16, 2016) .

STATEMENT OF THE CASE
Continued

The District court's reasoning conflicts with the recent (*emphasis added*) holding in the Georgia Supreme Court that expressly states that the claims for statutory rights by aggrieved parties is twenty years, not one year.(See *Western Sky Financial, LLC v. State of Georgia*, No. S16A1011; *State of Georgia v. Western Sky Financial, LLC,* No. S16X1012).

During the oral argument in the Eleventh Circuit, a circuit judge did clarify that Dr. Griffin was an aggrieved party and that the twenty year statute of limitation was applicable. However, another judge on the panel stated "What are we doing here?.. Dr. Griffin did not have the authority to request plan documents and did not possess those rights... at no point in time did the patient request plan documents..". For some reason, the 11th circuit got side tracked and failed to get properly briefed in the case. Dr. Griffin was not aware that the panel judges did not understand that she had obtained designated authorized representative consents from every single patient and that those forms were in Aetna and/or Coventry's possession during the appeals process. In fact, as a formality, every insurer requires that the patient or the patient's authorized representative submit appeals to the plan.

STATEMENT OF THE CASE
Continued

Nevertheless, the Eleventh Circuit failed to correct the error even after Dr. Griffin brought this to their attention during the en banc rehearing request. The 11th Circuit affirmed the District Court's opinion based upon the incorrect assumption that Dr. Griffin did not have rights to request documents in the first place. Both Appellant and Appellee never brought up whether or not Dr. Griffin had rights or the authority to request documents, because the parties had authorized consent forms on file long before litigation was initiated. The question of whether or not Dr. Griffin had rights to request documents in the first place was a point of contention that was *exclusively* maneuvered by the 11th Circuit. The litigating parties wanted to know whether or not the retroactive assignment was effective and determination of the correct statute of limitations for the ERISA statutory penalty claims in accordance with Georgia law—that was it! However, now, before the court are additional questions about who possesses the authority to request plan documents, statute of limitations, and retroeffective assignment of benefit.

REASONS FOR GRANTING THE PETITION

I. THE DISTRICT COURT'S DECISION CONFLICTS WITH ESTABLISHED GEORGIA SUPREME COURT CASE LAW THAT HAS NEVER BEEN ADDRESSED BY THIS COURT.

The Court should grant the Petition in order to resolve a conflict between federal court case law and Georgia Supreme Court case law. Here, the Georgia Supreme Court expressly acknowledged that the *aggrieved* Georgians have statutory rights that are uniquely protected by O.C.G.A. 9-3-22 for twenty years. (*See State of Georgia v. Western Sky Financial, LLC* No. S16X1012; *Western Sky Financial, LLC v. State of Georgia,* No. S16A1011). Those statutory rights include civil penalties that fall under ERISA governed plans. However, the District court ignored Georgia Supreme Court precedent and Georgia laws by chopping down statutory rights to something less than 1% of time the state law mandates. (**See Appendix B -District Court Opinion**).

The District court's decision is plainly incorrect. Where, as here, Georgia state law O.C.G.A. 9-3-22 should be borrowed as a statute of limitations for ERISA statutory penalties, the District court failed Georgia by the application of O.C.G.A. 9-3-28, which limits civil penalties to one year for non-aggrieved parties. This ERISA matter can only be resolved by the guidance of the United States Supreme Court.

REASONS FOR GRANTING THE PETITION -continued

II. TO THE DETRIMENT OF GEORGIANS, WITH PENSION AND WELFARE BENEFIT PLANS GOVERNED BY ERISA, THE ELEVENTH CIRCUIT HAS CREATED A CIRCUIT SPLIT IN THAT IT IS THE ONLY CIRCUIT THAT HAS NOT PROVIDED GUIDANCE FOR THAT STATUTE OF LIMITATIONS FOR ERISA STATUTORY PENALTY CLAIMS.

As such, it is the business of the Supreme Court to provide guidance on a legal issue that affects the majority of Georgians that have welfare benefits plans and pension plans. These are extraordinary circumstances that impacts thousands of citizens within the Eleventh Circuit. The Supreme Court should intervene and end the one-way rodeo taking place within the administration of welfare benefit plans in Georgia. Unpublished case law is being used as a primary legal tool by health plans and insurers in Georgia to win litigation. And, provider assignees and hospitals are being blocked in our courts with unpublished case law that would not hold water before this honorable Supreme Court.

REASONS FOR GRANTING THE PETITION *continued*

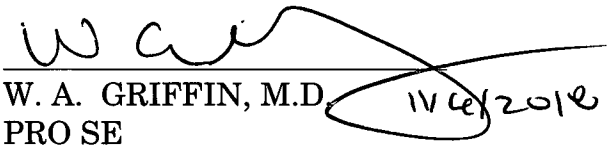
III. THE 11th CIRCUIT AND DISTRICT COURT'S DECISIONS ARE CATASTROPHIC AND NEEDS TO BE URGENTLY REVIEWD BY THE SUPREME COURT, BECAUSE IT WILL NOT PROVIDE AN INCENTIVE FOR PLAN ADMINISTRATORS TO BE IN COMPLIANCE WITH ERISA LAW.

The District court cases, *Aetna I* and *Aetna II*, that lead to this Petition are overflowing with ERISA fraud and disclosure violations. Clearly, Coventry, the plan administrator, does not have an ounce of respect for the laws that govern welfare benefit plans. If the Supreme Court does not correct the District's court decision and slap some sense into the 11th circuit, there will be no incentive for Aetna and other plan administrators to obey the laws and respect the law. As illustrated in this case, health insurance companies and self-funded plan administrators have been caught red- handed breaking ERISA laws; however, unless they are held accountable, NOTHING will change. With an increasing number of legally- savvy healthcare provider, assignees like Dr. Griffin on the scene, those days of non-compliance are limited. Meanwhile, the Supreme Court of the United States should set the record straight.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be granted.

Respectfully Submitted,



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