

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

JOHN LASCHKEWITSCH,

Petitioner,

v.

AMERICAN NATIONAL LIFE INSURANCE COMPANY

Respondent.

**CERTIFICATE ON PETITION FOR A RULE 44 REHEARING FROM
THE FOURTH CIRCUIT COURT OF APPEALS; FILED IN GOOD
FAITH, FOR NO PURPOSE OF DELAY, AND WITH SUBSTANTIAL
GROUND AND CONTROLLING PRECEDENTIAL EFFECTS**

Petitioner files this Rule 44.1, 2 petition for rehearing in good faith and for no purpose of delay, with substantial grounds and controlling precedential effects. The thirteen substantial grounds, with controlling precedential holdings, are as follows:

1. This Court, the NC Supreme Court, all U.S. Circuit Courts of Appeals, and NC contestability law required ANICO to file a court contest before the expiration of its contestable time period; but, ANICO first contested the policy and application within on February 5, 2015 (App. A), which was thirty four months untimely. See Petition for a Writ, pp. 2-3 and 6-16; Petition for Rehearing, pp. 2-8.

2. ANICO only prevailed on its collateral estoppel defense; however, no fees and damages are permitted by its agreement, ANICO and petitioner were not parties to an earlier suit or in privity with any other parties, as required under NC Supreme Court precedent, and the district court allowed ANICO fees for all of its defenses.

3. ANICO did not give petitioner required 30-day termination notice, provide petitioner a Page 1 Checklist that includes a Senior General Agent's Agreement, date any page of its alleged Agreement, prove that petitioner received pages 2-6 of its Agreement, provide petitioner notice of its termination *for cause*, as statutorily required, file its contest within NC three year statutes of limitation, file motions to stay or to compel arbitration, or file a motion to change venue to the State of Texas, and erred by filing for fees and damages, filing duplicated, excessive, redundant and unnecessary fees, and producing pages 1-5 of its alleged Agreement over five years in the future. Petition for a Writ, pp.16-20; Petition for Rehearing, pp. 8-11.

4. ANICO did not file an affidavit of prevailing market rates, pursuant to this Court's precedent, or a bill of costs within 14 days after judgment, such that its failure "constitutes a waiver of costs," pursuant to EDNC Local Rule 54.1(a)(3), did not brief a position statement, as ordered, and improperly cited eight legal cases by affidavit. Petition for a Writ, p.18; Petition for Rehearing, p.12.

5. The courts below did not review or address petitioner's special circumstances, the American Rule, and that petitioner was not sanctioned and did not act in bad faith or vexatiously, wantonly or for oppressive reasons, pursuant to this Court's precedent over fees. Petition for a Writ, pp. 21.

6. All courts have omitted that on March 23, 2010 Insured Ben had his first "consultation for possible ALS ...," the least certain degree of assumed ALS, with an ALS specialist in a North Carolina ALS "Certified Center of Excellence," which was after the incontestable March 15, 2010 policy was issued and delivered, and that Ben did not have probable, probable lab-supported or definite ALS until after the policy was placed in force by ANICO with applied premium. Petition for a Writ, pp. 22-25, Petition for Rehearing, pp. 12, 13, n. 9.

7. All courts have omitted the non-identical issues in this case, that judgments were not final in any case upon the district court's ruling, and that both petitioner and ANICO were neither parties to the earlier suit nor were in privity with another party, which bars ANICO's collateral estoppel defense, pursuant to North Carolina Supreme Court precedent. Petition for a Writ, pp. 25-26, Petition for Rehearing, p. 14; App. H, attached.

8. All courts have omitted that ANICO filed its contest beyond NC three year statutes of limitation for its breach and alleged fraud defenses and beyond NC four year statutes of limitation for its NC.G.S. Chapter 75 defenses and that its defenses cannot be tolled or suspended based on ANICO's discovery and "lack of knowledge" and failure to inquire of received statements. Petition for a Writ, pp. 27-28, 31-32.

9. All courts have omitted that ANICO cannot plead Rule 9(b) particularity over Ben's undated application, ANICO's undated policy amendment or the Agreement, which was not dated by petitioner, and Ben's exam for Mutual of Omaha, which is not part of the "Application for this Policy." Petition for a Writ, p. 29; Petition for Rehearing, p. 14.

10. All courts have omitted that ANICO ratified the policy beyond two years by receiving notice of insured Ben's death on April 6, 2012 and continuing to thereafter accept premium on April 11, 2012, June 18, 2012, and September 12, 2012 and by affirming the policy on September 17, 2012 since ANICO's President and Secretary then offered petitioner a Conversion Credit Privilege option on the in force policy. Petition for a Writ, pp. 30-31; Petition for Rehearing, p. 15, n. 10.

11. All courts have omitted that ANICO failed to attach a Buyers' Guide to the policy, which is an unfair and deceptive trade practice, pursuant to North Carolina law. Petition for a Writ, p. 35; Petition for Rehearing, p. 15.

12. All courts omitted that North Carolina's UDTP law applies to consumers only and that petitioner is a consumer, not ANICO, such that the lower courts erred by granting ANICO Chapter 75 damages. Petition for a Writ, p. 33.

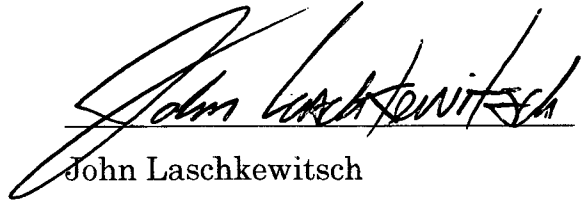
13. All courts have omitted ANICO's unfair claim settlement practices regarding ANICO's violations of N.C.G.S. 58-63-15(1), (2) and 58-63-15(11)(a), (d), (f), (i) and (n). Petition for a Writ, pp. 34-40.

14. The Court is respectfully requested to review the Indexed Appendices A-I and Appendices 1-54 (under seal), which were filed with petitioner's petition for a writ of certiorari, upon reviewing this Rule 44 petition for rehearing.

15. The foregoing substantial thirteen grounds are all supported by federal and state rules, laws, statutes, and controlling precedents from this Court, the North Carolina Supreme Court and U.S. Circuit Courts of Appeals, and are made in good faith and for no purpose of delay.

This the 28th day of December, 2018

Respectfully submitted,

A handwritten signature in black ink, reading "John Laschkewitsch", written over a horizontal line.

John Laschkewitsch

Petitioner *pro se*

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