

JAN 07 2019

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NO. 18-8175

IN THE
SUPREME COURT OF THE UNITED STATES OF AMERICA

WESSLEY J. GUNCHICK PETITIONER

VERSUS

BANK OF AMERICA RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS SEVENTH CIRCUIT CHICAGO ILLINOIS

PETITION FOR WRIT OF CERTIORARI

WESSLEY J GUNCHICK
POST OFFICE BOX 1520
DES PLAINES , ILLINOIS 60017-1520
312-730-4360

ORIGINAL

QUESTIONS PRESENTED

Did Respondent Bank Of America present any court case that would have allowed for a full due process to be fulfilled with the case at hand of Wessley J Gunchick Petitioner versus Bank of America Respondent ?

Did the cases presented by Respondent Bank Of America to wit, Nash versus Mercedes Benz and Hess versus Hartford Life meet the standards of juris prudence with the case at hand Wessley J Gunchick Petitioner versus Bank Of America Respondent ?

Was Respondent Bank Of America indeed arbitrary and capricious by not fulfilling the rules and bylaws set forth by The Employee Retirement Security Act of 1974; as amended /ERISA ?

Did the court rule (Fed R APP P34 (a)(2)(c) prematurely and in jest with the presentation by Respondent Bank Of America of the court cases Hess versus Hartford Life; Nash versus Mercedes Benz which were representative with the case at hand of Wessley J Gunchick Petitioner versus Bank Of America Respondent ?

Didn't both cases submitted before the court by Respondent Bank Of America of Nash versus Mercedes Benz and Hess versus Hartford Life, whereby both Nash And Hess respectively have employment contracts and agreements with their respective employers of Mercedes Benz and Hartford Life ?

Didn't same said Respondent Bank Of America have full knowledge that Petitioner Wessley J Gunchick had no such employment contract nor agreement with same said Respondent of Bank Of America ?

Wasn't Respondent Bank Of America Blatantly and openly failing to follow the rules and bylaws set forth by The Employee Retirement Security Act of 1974;as amended ?

With the recent Appelant Court ruling that was in favor of Respondent Bank Of America(See Appendix A) , doesn't such a ruling by the court present itself to the public who are/will be pension participants at risk / at the mercy of their respective employer who then can conjur and concoct a "witches bre" of a repective pension plan that favors their respective employer all under the guise of pure greed ?

Does Petitioner Wessley J Gunchick have the due process right for judicial review with the dispute against Respondent Bank Of America, to wit , failure of their discretionary authority to correctly attain correct pension benfits rightly due Petitioner under The Employee Retirement Income Security Act of 1974, as amended;(ERISA),502(A),29 U.S.C. 1132(a)(1)(b) ?

LIST OF PARTIES

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

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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TABLE OF AUTHORITIES CITED

CASES CITED:

- | | |
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STATUTES AND RULES :

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

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

OPINIONS BELOW

☒ 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,

☒ 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,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 9-17-2018.

☐ 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: 10-12-2018, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

* The Fifth Amendment to the United States Of America Constitution provides in pertinent part : No person shall be ... deprived of life , liberty, or property, without due process of law

* Thr Employee Retirement Income Security Act of 1974; as amended; (ERISA), 502(a), 29 U.S.C. 1132 (a) (1) (b), to rightly recover benefits due Petitioner Wesley J Gunchick from Respondent Bank Of America .

* Federal Rule (Fed R APP P 34(a)(2)(c) . Presentation of facts not adequate for due process with the ruling by U S Court Of Appeals ; (Wesley J Gunchick versus Bank Of America # 18-1420) .

STATEMENT OF THE CASE

Petitioner Wessley J Gunchick is a participant in a defined benefits pension plan that Respondent Bank Of America administers under the auspices of the The Employee Retirement Income Security Act of 1974; as amended . Petitioner Wessley J Gunchick herein disputes Respondent's pension plan administer's calculation of same said Petitioners pension plan benefit amount which is governed by The Employee Retirement Income Security Act of 1974; (ERISA) , 502(a), 29 U.S.C. 1132 (a)(a)(b) .

Respondent Bank of America never issued same said Petitioner Wessley J Gunchick any employment contract nor employment agreement to stipulate any discretionary authority that Respondent Bank Of America could have used as a firm legal merit/basis to properly/correctly calculate same said Petitioner's herein disputed pension amount with this petition filing of Writ Of Certiorari to The United States Of America Supreme Court .

Respondent Bank Of America arbitrarily and capriciously never issued a employment contract nor any employment agreement to same said Petitioner Wessley J Gunchick knowing full well that without one issued , this would give same said Respondent Bank Of America "free reign" to "design"/"formulate" a pension plan that would provide same said Petitioner Wessley J Gunchick the least amount of a eventual pension benefit amount to be paid out by same said Respondent Bank Of America . All of this done by Respondent Bank Of America under the guise of pure greed . Yet, let it be known to the court , that same said Respondent Bank Of America made reference with two cases in its defense of U S Court Of Appeals Case 18-1420 Wessley J Gunchick versus Bank Of America (See Appendix A), whereby a employment agreement/contract were indeed issued by their respective employers; Nash versus Mercedes Benz 489F Supp 2d 411 (D.N.J. 2007) ; Hess versus Hartford Life 274 F 3d 456 (7th Cir 2001) . Both of these cases failed to meet Juris Prudence and Federal Rule (FED R APP P 34(a)(2)(c) .

Further , let it be presented to the court , with Petitioner Wessley J Gunchick filing of this Writ Of Certiorari that Respondent Bank Of America by not issuing to same said Petitioner Wessley J Gunchick any employment contract nor employment agreement, same said Respondent Bank Of America used broad and unbridled discretionary authority to formulate a pension benefit plan amount to same said Petitioner Wessley J Gunchick . Further , let it be known that U S Court of Appeals ruling (Wessley J Gunchick versus Bank of America) (Appendix A) court stated "becasue the briefs and record adequately present the facts and legal arguements. and oral arguements would not significantly aid the court ." FED R APP P 34(a)(2)(c) . Petitioner

Wessley J Gunchick herein has clearly stated that the facts have not been adequately presented , to wit, for the U S Court of appeals to rightly rule under FED R APP 34(a)(2)(c) .

In addition , these same said cases presented as a defense by Respondent Bank Of America failed to meet Juris Prudence, since, both the cases of Nash versus Mercedes Benz and Hess versus Hartford Life , wherein both Nash/Hess had been issued guaranteed draw payments by their respective employers but with the case at hand, Petitioner Wessley J Gunchick versus Respondent Bank Of America , same said Petitioner Wessley J Gunchick never was issued a guaranteed draw pay out by same said Respondent Bank Of America . By and By , it is therefore deemed impossible for Respondent Bank Of America to have attained a accurate/correct calculation of the compensation component required with the rules/by laws of ERISA / The Employee Retirement Income Security Act Of 1974; as amended . with the formulation of a correct pension benefit amount rightly due for same said Petitioner Wessley J Gunchick .

REASONS FOR GRANTING PETITION FOR WRIT OF CERTIORARI

This petition of Writ Of Certiorari herein , by and by , Petitioner Wesley J Gunchick must be granted because the rule 29 U.S.C. 1132(a)(1)(b) adopted by the Seventh Circuit U S Court Of Appeals will/does have a significant nationwide impact for pension plan participants with the respective employers pension plan "formulation" .

The Seventh Circuit U S Court Of Appeals based their respective ruling of said case # 18-1420 on a legal ruling inference that Petitioner Wesley J Gunchick had a employment contract/agreement with Respondent Bank Of America, herein let it be known to the honorable court that same said Petitioner Wesley J Gunchick , to wit, that Respondent Bank Of America never issued Petitioner Wesley J Gunchick any employment contract nor employment agreement . Further, let it also be known to the most honorable court, the fact too, that Respondent Bank Of America never guaranteed any draw monies paid to Petitioner Wesley J Gunchick as a 100% commissioned Officer of the Bank during same said Petitioners course of his lengthy employment tenure with same said Respondent Bank Of America .

With this plainly stated of the aforementioned facts , Petitioner Wesley J Gunchick herein states to the most honorable court that the Seventh Circuit U S Court Of Appeals failed due process for same said Petitioner Wesley J Gunchick upon the application of the arbitrary and capricious standard with the review of same said Petitioners interpretation challenge under rule 29 U.S.C. 1132(a)(1)(b) . The Seventh Circuit U S Court Of Appeals with case number 18-1420 (Appendix A) indeed had conferred/concurred by stating with its ruling (Appendix A Page 3 Paragraph 5) "But Gunchick's case is distinguishable from Hess. In Hess , although the employment contract was not in the administrative record , the claimant communicated its terms to the benefits examiner and apparently tried to submit it for the examiner's review and the employer "stipulated that it calculated [the contractual "Base salary"] by averaging the employer's total commissions over the previous two years ." 274 F. 3d at 459-60, 462 . Under those circumstances , we said that it was arbitrary and capricious not to consider the contracts terms, id at 463 . Here , however, Gunchick never submitted his employment contract to the examiner or , as far as we know, referenced its terms . "

Since Respondent Bank Of America never issued a "the contract or an agreement about its terms" (Appendix A Page 4 Paragraph 1) to Petitioner Wesley J Gunchick as noted by the Seventh Circuit U S Court Of Appeals Case # 18-1420 ; The ruling under 29 U.S.C. (a)(1)(b) by the Seventh Circuit U S Court Of appeals failed due process by the court's own admission with the stated ruling "Therefore, we cannot say that Bank Of America's interpretation of the plan to exclude Gunchick's commissions, but not the draw, from the pension calculation was "arbitrary and capricious" ." (Appendix A)

By and By , let it be known hereto the most honorable court , that Seventh Circuit U S Court Of Appeals ruled under FED R APP P 34 (a)(2)(c) that "We have agreed to decide this case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral arguments would not significantly aid the court " (Appendix A Page 1 Paragraph 2) . Petitioner Wessley J Gunchick hereby states plainly the failure of due process under FED R APP P 34 (a)(2)(c) by the Seventh Circuits U S Court Of Appeals with a legal inference by stating plainly whether or not Petitioner had a employment contract/agreement with Respondent Bank Of America which with case 18-1420 this was/is a very important fact wherewith to present legal oral argument(s) further by same said Petitioner Wessley J Gunchick but as stated herein, same said Seventh Circuit U S Court Of Appeals had ruled (FED R APP P 34 (a)(2)(c)) same said case 18-1420; without due process wherefore Petitioner Wessley J Gunchick to rightly under due process to further present to Seventh District U S Court Of Appeals further facts and oral arguments, that indeed Petitioner Wessley J Gunchick never was issued a contract/agreement by same said Respondent Bank Of America . This clearly shows that Respondent was indeed arbitrary and capricious to not have issued a agreement/contract to same said Petitioner Wessley J Gunchick , this action gave Respondent Bank Of America free reign to formulate a pension plan not in the best interests of pension plan participant Wessley J Gunchick as ERISA demands and requires of employers .

CONCLUSION TO WRIT OF CERTIORARI

Petitioner Wessley J Gunchick herein states with this Writ Of Certiorari that indeed same said Petitioner does put forth substantial legal arguments/merits , to wit , that Respondent Bank Of America used unbridled discretionary authority for its own pension plan administrator to formulate a pension plan benefit amount for same said Petitioner Wessley J Gunchick that is a illusionary pension benefit amount , all under the guise of pure greed by same said Respondent Bank Of America . It is a real uncontested benefit amount arbitrarily and capriciously calculated/formulated for same said Petitioner Wessley J Gunchick by Respondent Bank Of America under the guise of due process and the fulfilling of The Employee Retirement Income Security Act Of 1974;As Amended ; (ERISA) 502(a), 29 U.S.C. 1132(a)(1)(b) .

Petitioner Wessley J Gunchick pleads the most honorable court that this Writ Of Certiorari be granted .

Respectfully Submitted ,

A handwritten signature in cursive script, reading "Wessley J. Gunchick".

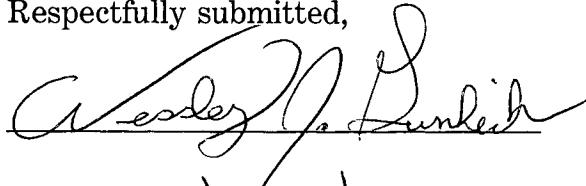
Wessley J Gunchick

4th of January 2019

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 11/29/2018