No. 18-8318

IN THE

SUPREME COURT OF THE UNITED STATES

HELEN GARDNER- PETITIONER

vs.

VERIZON COMMUNICATIONS, INC. - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals for the Second Circuit United States

PETITION FOR WRIT OF CERTIORARI

Helen Gardner
30 Third Avenue, Apt 5F
Brooklyn, New York 11217
718-838-8232

QUESTIONS PRESENTED

1. Do sections 502 (a)(2) of the Employee Retirement Security Act of 1974(ERISA), 29 U.S.C. 1132(a)(2), and 502(a)(3), 29 U.S.C. 1132(a)(3) authorize a participant in a defined contribution health insurance plan to sue for appropriate relief caused by breaches of fiduciary duties that harm individuals and plans, as held by the United States Supreme Court?
2. Has an act of Interference as defined in ERISA Section 510, 29 U.S.C. 1140 been committed when a Participant's Child Life Insurance Policy is terminated upon Participant's demand for payment on said policy?
3. Is an action by a Plan Participant seeking punitive damages against a fiduciary for said fiduciary' Failure to Provide Plan Documents within the meaning of ERISA section 502(c)(1), 29 U.S.C. 1132 (c)(1)?

List Of Parties

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

TABLE OF CONTENTS

INDEX OF APPENDICES

TABLE OF AUTHORITIES

Page(s)

CASES

Constitutional and Statutory Provisions Involved

Employee Retirement Income Security Act of 1974

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 for the Second Circuit appears at Appendix A to the petition and is

[√] unpublished.

The opinion of the United States District Court Eastern District of New York appears at Appendix B to the petition and is

[√] unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was August 23, 2018.

The date on which the United States District Court decided my case was March 26, 2018.

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

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Employee Retirement Income Security Act of 1974 (ERISA), are set forth in the appendix to this brief.

STATEMENT OF THE CASE

Petitioner retired from Verizon in 2006, after thirty-five (35) years of service. Verizon has collected Life Insurance Premium for Petitioner' Daughter through auto-pay to TD Bank, on the 1st of each and every month. Petitioner' Only Child, Sharae, passed away from Sickle Cell Anemia Disease on November 15, 2015 .

On November 16, 2015, Petitioner, Helen Gardner, called the Verizon Benefit Center to collect the payout on my Daughter's paid Life Insurance Policy. Petitioner relied on this payout in order to pay for funeral expenses. Given the information of my Daughter's passing, the Verizon representative chose to TERMINATE my paid insurance policy, thereby committing multiple ERISA VIOLATIONS:

By terminating the life insurance policy at the time payout was due, Verizon Communications, Inc. breached their fiduciary duty under 29 U.S.C. 1132 (a)(2) and (3). App-C.

By terminating the life insurance policy Verizon Communications, Inc. also committed an act of Interference against Petitioner's Protected Rights under ERISA 29 U.S.C. 1140. App-D.

By terminating the life insurance policy and refusing to give any legal explanation, by mail, or otherwise, Verizon Communications, Inc. committed yet another ERISA violation, Failure to Provide Plan Documents, 29 U.S.C. 1132(c)(1). App-E

The United States Court of Appeals for the Second Circuit Dismissed my case stating it "lacks an arguable basis either in law or in fact. They considered my claim to enforce my ERISA rights to be FRIVOLOUS, citing Neitzke v. Williams. The United States District Court Eastern District of New York refused to hear Plaintiff's motions of ERISA violations.

REASONS FOR GRANTING THE PETITION

1. ERISA and the UNITED STATES SUPREME COURT

This case is an ideal vehicle for upholding the rights of individuals and plans under the Employee Retirement Income Security Act of 1974.

On February 20, 2008, in *LaRue v. DeWolff, Boberg & Associates, Inc.*, No. 06-856 (2008), the U.S. Supreme Court ruled that an individual participant in a defined contribution plan may sue a fiduciary whose alleged misconduct impaired the value of plan assets in the participant's individual account under Section 502(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1132(a)(2). Writing for the majority, Justice Stevens held that LaRue could bring a claim under Section 502(a)(2), which allows for a claim of "appropriate relief" under Section 409.

Section 502(a)(3) of ERISA authorizes participants and beneficiaries to bring a civil action to enjoin any act which violates ERISA or "to obtain other appropriate equitable relief" to enforce any provisions of the statute. To redress a fiduciary breach 29 U.S.C. 1132(a)(3) states a petitioner can seek "such other and further relief as the Court deems just and proper".

The continued well-being and security of millions of American workers, retirees, and their dependents are directly affected by these plans. (Citation omitted).

The purpose of Section 510 is to "prevent persons and entities from taking actions that might cut off or **interfere** with a participant's ability to collect present or future benefits or which punish a participant for exercising his or her rights under an employee benefit plan". "Congress viewed §510 (29 U.S.C. 1140) as a crucial part of ERISA because, without it, employers would be able to circumvent the provision of promised benefits." Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 143 1990).

Under § 502(c)(1) of ERISA, 29 USC § 1132(c)(1), a court in its discretion may award up to *$110 per day* for each day against a plan administrator who fails to provide requested documents within 30 days. 29 U.S.C. §1132(c)(1). Petitioner never received any documentation from Verizon Communications, Inc. explaining the reason for the termination of her paid Life Insurance policy.

The aim of the statute "is to provide plan administrators with an incentive to meet requests for information in a timely fashion." *Davis v. Featherstone*, 97 F.3d 734, 738 (4th Cir. 1996). In *Faircloth v. Lundy Packaging Co.*, 91 F.3d 648 (4th Cir. 1996), the Fourth Circuit further explained that "[t]he purpose of § 502(c)(1) is not to compensate participants for injuries, but to punish noncompliance with ERISA. Accordingly, prejudice to the party requesting the documents is not a prerequisite to the imposition of penalties." 91 F.3d at 659 (citations omitted).

Punitive damages serve to effectuate the explicit goals Congress intended for ERISA.

Beyond doubt, deterrence is the predominant justification for punitive damages under ERISA. Deterrence becomes particularly crucial in commercial settings where fiduciaries may abuse the funds and the responsibilities entrusted to them. The need for punitive damages and the effect of deterrence is most acute in the situation where the defendant tacitly determines that he will engage in wrongful conduct and run the risk of later paying compensation for the conduct. If the wrongdoer is assessed just compensatory damages, the maximum penalty will merely restore him to the status quo and he is likely to resort to wrongful conduct again. On the other hand, if punitive damages exist, the risk of a substantial penalty may deter his wrongful conduct.

The deterrent value of punitive damages is greatest in affecting commercial behavior. (Citation omitted).

The Employee Retirement Income Security Act of 1974 (ERISA) provides that a Fiduciary is in violation of a Participant's ERISA rights if said Fiduciary:

a. **Interferes** with the rights of employees covered by plans.
b. **Improperly denies benefits** to current or former employees.
c. **Commits a Breach of Fiduciary Duty** toward employee or former employees covered by the plan.

2. The concept of "administration risk"

In every pension plan—regardless whether it is of the defined benefit or defined contribution variety—there exists what is often called "administration risk." Put simply, administration risk is "the danger that the persons responsible for managing and investing plan assets and paying claims may abuse their authority." See John H. Langbein, What ERISA Means By "Equitable": The Supreme Court's Trail of Error in Russell, Mertens, and Great-West, 103 Colum. L. Rev. 1317, 1323 (2002). It includes the risk that "[t]hey may do their job badly, or misuse plan assets for personal gain, or improperly refuse to pay promised benefits." Id.(footnotes omitted).

As this Court has repeatedly recognized, protecting workers and retirees against administration risk was the primary objective of Congress in enacting ERISA. See, e.g., Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 140 n.8 (1985) ("[T]he crucible of congressional concern was misuse and mismanagement of plan assets by plan administrators and ERISA was designed to prevent these abuses in the future."); Massachusetts v. Morash, 490 U.S. 107, 115 (1989) ("In enacting ERISA, Congress' primary concern was with the mismanagement of funds accumulated to finance employee benefits and the failure to pay employees benefits from accumulated funds.") (citation and footnote omitted).

Verizon's decision to terminate Sharae Gardner' life insurance policy when the time had come to collect on said policy was the epitome of arbitrariness and capriciousness. It was the ultimate act of misconduct and should not be allowed to go unpunished. By holding Verizon accountable for punitive damages, the United States Supreme Court will discourage future repetition of these egregious acts and will uphold individual and plan ERISA rights.

CONCLUSION

For the reasons set forth above, this Court should grant the petition for certiorari.

Respectfully submitted,

Date: November 20, 2018