No. 19-1334

IN THE

Supreme Court of the United States

SIGNODE INDUSTRIAL GROUP LLC AND ILLINOIS TOOL WORKS, INC.,

Petitioners,

v.

HAROLD STONE ET AL.,

Respondents.

On Petition for a Writ of *Certiorari* to the United States Court of Appeals for the Seventh Circuit

REPLY IN SUPPORT OF PETITION FOR A WRIT OF *CERTIORARI*

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REPLY BRIEF

I. The Decision Below Defies This Court's Decisions In *Tackett* And In *Reese*.

Respondents insist that the Seventh Circuit in no way "deviat[ed] from the *Tackett-Reese* rule." Opp. 9. They are incorrect.

1. *Tackett* and *Reese* reject one of the Sixth Circuit's "*Yard-Man* inferences"—that "a general durational clause *says nothing* about the vesting of retiree benefits" and that "to prevent vesting" there instead must be "a specific durational clause for retiree health care benefits." *M&G Polymers USA, LLC v. Tackett*, 574 U.S. 427, 438, 440 (2015) (internal quotation marks and citations omitted); *see CNH Indus. N.V. v. Reese*, 138 S. Ct. 761, 765–67 (2018). There is no daylight between that inference and what the Seventh Circuit decreed here: if an agreement contains an "express statement[] extending benefits beyond the term of agreement" then those benefits are vested unless the agreement "expressly allow[s] alteration or termination of benefits." Pet. App. 12a.

2. Respondents seek to sidestep this inconsistency by dismissing "the rule of *Tackett* and *Reese*" as establishing only "that 'ordinary principles of contract law' govern." Opp. 9–10. But *Tackett* and *Reese* are not so limited. They are clear that refusing to apply a general durational clause to an explicit promise of lifetime benefits does not accord with "ordinary principles of contract law." *Tackett*, 574 U.S. at 438; *Reese*, 138 S. Ct. at 766.

Respondents' narrowing of *Tackett* and *Reese* makes little sense given that the Sixth Circuit always professed that its inferences derived from "general principles of contract interpretation." *Tackett v. M&G Polymers USA, LLC*, 733 F.3d 589, 596 (6th Cir. 2013).[1] It did so, of course, because at least since *Textile Workers Union v. Lincoln Mills of Alabama*, it has been resolved that collective bargaining agreements, including those establishing ERISA plans, are construed according to ordinary principles of contract law. 353 U.S. 448, 455–57 (1957). To be sure, *Tackett* holds that although the Sixth Circuit "has long insisted that its *Yard–Man* inferences are drawn from ordinary contract law," the "inferences applied in *Yard–Man* and its progeny [do not] represent ordinary principles of contract law." 574 U.S. at 436, 438. But the point is Respondents cannot downplay the Seventh Circuit's divergence from *Tackett* and *Reese* by casting those decisions as having merely restated a principle that has been resolved for decades.

3. Respondents also seek to trivialize the significance of the decision below, calling the parties' dispute "prosaic" and asserting "that the Seventh Circuit did not adopt any new rule that might control future cases." Opp. 7, 11. But the impact of the decision below on future

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[1] *See UAW v. Yard–Man, Inc.*, 716 F.2d 1476, 1479 (6th Cir. 1983) (purporting to apply "basic principles of contractual interpretation"); *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1293 (6th Cir. 1991) ("The enforcement and interpretation of collective bargaining agreements is governed by traditional rules of contract interpretation."); *Noe v. PolyOne Corp.*, 520 F.3d 548, 552 (6th Cir. 2008) (stating that "basic rules of contract interpretation apply"); *Cole v. ArvinMeritor, Inc.*, 549 F.3d 1064, 1069 (6th Cir. 2008) (explaining that "basic rules of contract interpretation apply").

litigants cannot be dismissed with a wave of the hand. *See* Pet. 18–21.

To be sure, the Seventh Circuit did not purport to draw a unique "inference" about the inherent nature of collective bargaining, as the Sixth Circuit had done. *See Tackett*, 733 F.3d at 596. But the result is the same. For future litigants, the clear import of the decision below will be that when a collective bargaining agreement expressly promises lifetime benefits, a "general" reservation of rights clause will be read to "'*say[] nothing* about the vesting of retiree benefits.'" *See Tackett*, 574 U.S. at 438 (citation omitted). *Tackett* and *Reese* foreclose that result.

In this way, Respondents' insistence that the Seventh Circuit declared no such "special rule" parallels arguments that failed in *Reese*. Opp. 8-11, 15. There, despite this Court's directive in *Tackett* "to apply general durational clauses to provisions governing retiree benefits," 574 U.S. at 440, the Sixth Circuit deemed it "ambiguous" as to whether the parties intended for the general durational clause to limit the promise of lifetime benefits before relying on extrinsic evidence to hold that the benefits had vested, *Reese v. CNH Indus. N.V.*, 854 F.3d 877, 879 (6th Cir. 2017). This Court reversed, holding that the finding of ambiguity, while not couched in terms of an "inference[]," amounted to an impermissible "'refus[al] to apply general durational clauses to provisions governing retiree benefits.'" *Reese*, 138 S. Ct. at 763, 765–66. This case is similar. Although the Seventh Circuit did not purport to rely on an inference, it did just what this Court held was improper in *Tackett*—refused to apply a general limit on

the terms of a collective bargaining agreement to a promise of lifetime benefits.

4. The Seventh Circuit has, like the Sixth Circuit in *Reese*, sought to circumvent *Tackett* by avoiding mentions of inferences and categorical rules. But as *Reese* makes clear, there are no workarounds. The Petition should be granted to reaffirm the directive of this Court.

II. The Decision Below Has Created A Split Of Authority.

1. Respondents do not deny that the decision below conflicts with pre-*Tackett* decisions from the Second, Eighth, and Tenth Circuits. *See* Pet. 15 (discussing *Crown Cork & Seal Co. v. Int'l Ass'n of Machinists & Aerospace Workers*, 501 F.3d 912 (8th Cir. 2007); *Abbruscato v. Empire Blue Cross & Blue Shield*, 274 F.3d 90 (2d Cir. 2001); *Chiles v. Ceridian Corp.*, 95 F.3d 1505 (10th Cir. 1996)).[2] Nor could they. Those courts all have held that a general reservation of rights or durational clause limits an explicit promise of lifetime benefits. *Crown Cork & Seal*, 501 F.3d at 918 (applying general durational provisions to permit employer to terminate plan promising benefits would "continue[] until your death"); *Abbruscato*, 274 F.3d at 98–100 (holding that general reservation of employer's right to terminate "the plans" limited promise that benefits

[2] Respondents also do not deny that the decision below creates an intra-circuit conflict with the Seventh Circuit's pre-*Tackett* precedent. *See* Pet. 17–18 (discussing *United Auto Workers v. Rockford Powertrain, Inc.*, 350 F.3d 698, 703 (7th Cir. 2003), and *Cherry v. Auburn Gear, Inc.*, 441 F.3d 476, 483 (7th Cir. 2006)).

"'remain[] in force for the rest of [the beneficiaries'] lives, at no cost to them'"); *Chiles*, 95 F.3d at 1512 & n.2 (holding that "general reservation of rights" clause "allows the employer to retroactively change the medical benefits of retired participants, even in the face of clear language promising company-paid lifetime benefits"). Only this Court can resolve that conflict.

Respondents take aim at the two post-*Tackett* decisions discussed in the Petition, *Grove v. Johnson Controls, Inc.*, 694 F. App'x 864 (3d Cir. 2017) and *Kerns v. Caterpillar Inc.*, 791 F. App'x 568 (6th Cir. 2019). *See* Opp. 15–18. But these efforts miss the mark. Respondents once more rely on their argument that "the rule of *Tackett* and *Reese*" merely means "that 'ordinary principles of contract law' govern" to argue that there is no division among the circuits. Opp. 9–10, 15. Again, Respondents cannot paper over the significant break with existing law marked by the decision below by reducing this entire area of law to the uncontroversial question of whether ordinary principles of contract law apply to collective bargaining agreements.

2. Respondents go on to attempt to distinguish the contractual language in *Grove* and in *Kerns* with the contractual language here. Opp. 16-18. But this misses the forest for the trees. Doubtless, there are differences between the exact words used in the countless collective bargaining agreements negotiated across the Nation. But what matters is that there are no *material* differences between the 2002 Agreement and the collective bargaining agreements reviewed in *Grove* and in *Kerns*.

Regarding *Grove*, Respondents seek to emphasize "there was no language in *Grove* akin to the 'notwithstanding the expiration' language here." Opp. 16. But there is no material difference between the promise here that benefits shall not be terminated "notwithstanding the expiration of this Agreement, except as the Company and the Union may agree otherwise," Pet. App. 3a, and the promise in *Grove* that benefits will continue "'until a [retiree's] death'" and terminate only "'on the date of a [retiree's] death,'" 694 F. App'x at 868. If anything, the agreement here is more measured, as it permits termination "as the Company and the Union may agree otherwise." Pet. App. 3a. In all events, as Petitioners have explained, it misses the point to myopically focus on the promise to provide benefits beyond the terms of the agreement—what matters is whether that promise is limited by a reservation of rights or durational provision. *See* Pet. 11–12.

Respondents also argue that the agreement in *Grove* is different because it included "reservation-of-rights provisions allowing the employer to 'adopt, modify or terminate' the retirees' health insurance benefits without the union's consent." Opp. 16. But that just begs the question—did the general reservation of rights in Section 7 of the 2002 Agreement granting a unilateral right "to terminate the Pensioners' and Surviving Spouses' Health Insurance Agreement" apply to limit the specific promise of lifetime benefits? *See* Pet. App. 4a. The Seventh Circuit answered no. Under *Grove*, the answer to that question would have been yes.

As for *Kerns*, Respondents argue "[t]he distinction between contract language like that in *Kerns*" and the

agreement at issue here "could hardly be any clearer" because the agreement there specified that benefits would be available "'for the duration of any Agreement to which this Plan is a part.'" Opp. 16–17 (quoting *Kerns*, 791 F. App'x at 572). Again, this simply begs the question, as the agreement here provides that benefits will be available "notwithstanding the expiration of this Agreement, *except as the Company and the Union may agree otherwise*." Pet. App. 3a (emphasis added). Petitioners have argued, of course, that the parties so agreed in the very next section of the 2002 Agreement. *E.g.* Pet. 9-10. That reservation of rights serves the same function as the durational provision in *Kerns*, placing the Seventh Circuit's refusal to apply it as written at odds with the Sixth Circuit's decision in *Kerns*.

3. There is a clear conflict between the decision below and pre-*Tackett* decisions of the Second, Eighth, and Tenth Circuits. The only point of contention is whether the post-*Tackett* decisions in *Grove* and in *Kerns* also conflict with the Seventh Circuit's decision below. They very much do. But either way, the circuits are divided and only this Court can resolve that divide. The Petition should be granted.

III. The Decision Below Is Wrong On The Merits.

Respondents go to great lengths to argue "that the Seventh Circuit *correctly* applied the *Tackett-Reese* rule." Opp. 12. But not only is the underlying merit of the decision below beside the point at this stage, these efforts to root the Seventh Circuit's decision in blackletter contract law fall flat.

1. Under ordinary principles of contract law, "the parties' intentions control. Where the words of a contract in writing are clear and unambiguous, its meaning is to be ascertained in accordance with its plainly expressed intent." *Tackett*, 574 U.S. at 435 (internal quotation marks and citation omitted). Here, the 2002 Agreement is clear: the Retirees shall continue to have benefits "notwithstanding the expiration of this Agreement, *except as the Company and the Union may agree otherwise*." Pet. App. 3a (emphasis added). Then, in Section 7, the parties *agreed* that this promise would remain "in effect until February 29, 2004, thereafter subject to the right of either party on one hundred and twenty (120) days written notice … to terminate." Pet. App. 4a. This language means the Retirees shall have benefits until such time as the agreement is terminated in its entirety.

Respondents argue this straightforward reading gets it wrong because the "except as the Company and the Union may agree otherwise" provision "does not allow for other provisions *in the Agreement itself* to nullify the 'Continuation of Coverage' provision but rather allows for the prospect that some *subsequent* agreement between the Company and Union—and not any unilateral Company action—might later affect the retiree-benefit coverage." Opp. 14 (emphasis in original). But that carve out appears nowhere in the text of the 2002 Agreement and it is axiomatic that "[a] court may not, by interpretation or construction, engraft on a contract a limitation or restriction that is inconsistent with the expressed or apparent object of the parties." 11

Richard A. Lord, *Williston on Contracts* § 31:6, Westlaw (4th ed. updated May 2020).

2. Respondents proceed to argue it was appropriate for the Seventh Circuit to read this unexpressed limitation into the 2002 Agreement because omitting it would "'nullify' the key 'notwithstanding the expiration' language in the 'Continuation of Coverage' provision." Opp. 13 (citing Pet. App. 9a). But not only is this mistaken—construing these provisions according to their plain meaning in no way makes it *impossible* for the 2002 Agreement to be terminated in a way that would allow the Retirees to receive benefits, even though that is not what occurred here—it infers from silence an unwritten restriction to the reach of a reservation of rights clause. That, however, impermissibly "plac[es] a thumb on the scale in favor of vested retiree benefits" without giving any weight to "the traditional principle[s] that courts should not construe ambiguous writings to create lifetime promises" and "that 'contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement.'" *See Tackett*, 574 U.S. at 438, 441–42 (citation omitted).

What is more, Respondents do not wrestle with the textual difficulties their reading creates. The 2002 Agreement addressed a single topic—medical benefits for retired employees and their spouses. The termination right in Section 7 thus necessarily bears upon a single topic—medical benefits for retired employees and their spouses. To read Section 7 otherwise makes it superfluous, for there is no

significance to the termination of the agreement if the benefits conferred by the agreement remain vested.

The Seventh Circuit attempted to address this dilemma by finding that the agreement vested benefits in "those already eligible for them" (i.e., any pre-termination retirees), while Section 7 merely reserved for Petitioners the ability to terminate the 2002 Agreement, so as to "force the negotiation of a new Pensioners' Agreement" that would control entitlements for post-agreement "future retirees" (i.e., any post-termination retirees). Pet. App. 14a-15a. But this argument goes nowhere. First, when the parties entered into the 2002 Agreement, there was no expectation there would be *any* "future retirees."[3] Second, because the 2002 Agreement "covers only those [workers] who retire while it is still in effect," there would be nothing to prevent Respondents from adjusting "the scope of benefits for *future* retirees," even in the absence of Section 7. *See* Pet. App. 15a.

3. Respondents emphasize two pre-*Tackett* decisions from the Fourth and the Eleventh Circuits, which they claim hold that identical collective bargaining agreements vested retirees with lifetime medical benefits. Opp. 14 (citing *Keffer v. H.K. Porter Co.*, 872

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[3] *See generally* 11 Richard A. Lord, *Williston on Contracts* §§ 30:2, 30:6 (4th ed. 2012) (describing "fundamental and cardinal rule … that the intention of the parties is to be ascertained as of the time when they executed the contract" with due regard to "surrounding circumstances"). The circumstances surrounding Acme Packaging's bankruptcy and the prospects for the Riverdale Plant make clear that the parties understood the promised benefits would apply to a closed group. *See* Pet. 12 n.1.

F.2d 60 (4th Cir. 1989); *United Steelworkers of Am. v. Connors Steel Co.*, 855 F.2d 1499 (11th Cir. 1988)). But the agreements in those cases were not identical—they did not have termination provisions. *See Keffer*, 872 F.2d at 63; *United Steelworkers*, 855 F.2d at 1504. Further, even if they were on-point, they would only deepen the split that exists with the decisions cited above from the Second, Third, Sixth, Eighth, and Tenth Circuits.

Finally, Respondents preview their heavy reliance on extrinsic evidence. But as the Court noted in *Reese*, such evidence is relevant only if a contract is ambiguous and "a contract is not ambiguous unless, 'after applying established rules of interpretation, it remains reasonably susceptible to at least two reasonable but conflicting meanings.'" *Reese*, 138 S. Ct. at 765 (quoting 11 R. Lord, *Williston on Contracts* § 30:4 (4th ed. 2012)). This means such evidence comes into play only if the 2002 Agreement "could reasonably be read as vesting health care benefits for life." *Id.* It cannot and, in any event, the extrinsic evidence Respondents cite is far from compelling.[4] Moreover, because "courts should not construe ambiguous writings to create lifetime promises," any ambiguity would mean the agreement should not be read to confer vested benefits. *See Tackett*, 574 U.S. at 441 (citing 3 A. Corbin, Corbin on Contracts § 553, p. 216 (1960)).

4. In short, for lifetime benefits to vest, it is not enough to find, as the Seventh Circuit did, that a

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[4] *See* Br. of Defs. at 27–28, No. 19-1601, *Stone v. Signode Indus. Grp. LLC* (7th Cir. June 3, 2019), ECF No. 8; Reply Br. of Defs. at 14–17, No. 19-1601, *Stone v. Signode Indus. Grp. LLC* (7th Cir. Sept. 9, 2019), ECF No. 31.

reservation of rights clause "is not at all inconsistent with vesting." Pet. App. 13a. Rather, *Tackett* and *Reese* make clear that as a matter of ordinary principles of contract law, vesting must be the only reasonable construction of the agreement. *See Tackett*, 574 U.S. at 442; *Reese*, 138 S. Ct. at 766–67. Plainly, that is not true here, which is why Respondents' merits arguments fail.

CONCLUSION

The petition for a writ of *certiorari* should be granted.

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Respectfully submitted,

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