

No. 19-190

IN THE
Supreme Court of the United States

BERNARD McLAUGHLIN,
Petitioner,
v.

BOARD OF TRUSTEES OF THE NATIONAL ELEVATOR
INDUSTRY HEALTH BENEFIT PLAN
Respondent.

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

**BRIEF IN OPPOSITION OF THE
PETITION FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

As stated in the petition for writ of certiorari, the questions presented are:

1. After Third Circuit had affirmed an Order in favor of an ERISA plan by re-characterizing it as a monetizing of a lien rather than a personal money judgment, did the Court err by not correcting the ERISA Plan's misuse of that Order when the Plan docketed it under a state law available only for money judgments, contrary to ERISA's prohibition on relief at law?
2. Did the Third Circuit err by not permitting the Participant discovery on whether the Plan's withholding of benefits as a set-off had reached the point whether his indebtedness to the Plan has been satisfied?

CORPORATE DISCLOSURE STATEMENT

In accordance with United States Supreme Court Rule 29.6, Respondent Board of Trustees of the National Elevator Industry Health Benefit Plan asserts that it does not have a parent corporation, nor does any publically held corporation hold 10% or more of its stock.

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INTRODUCTION

Respondent, the Board of Trustees of the National Elevator Industry Employee Health Benefit Plan (“NEI Trustees”) respectfully submits that certiorari should be denied in this case. The questions presented by the petition are worded to make the issues on appeal seem more complex and compelling than they actually are. The petition simply seeks review of the Court of Appeals’ application of Fed. R. Civ. P. 60 to Petitioner’s attempt to have the judgment entered against him set aside. As such, it does not constitute a compelling issue for the Court to consider as it involves a factual finding and application to a properly stated rule of law, the review of which the Court disfavors.

STATEMENT OF THE CASE

This case is a straightforward reimbursement case arising from advancement of benefits related to a personal injury claim. Petitioner, Bernard McLaughlin was injured in an all-terrain vehicle (“ATV”) roll-over accident. At the time, Petitioner was a participant in the National Elevator Industry Employee Health Benefit Plan (“the Plan”). The Plan advanced medical benefits on behalf of Petitioner on the condition that he reimburse the plan should he obtain recovery from a third party. Petitioner received a settlement, but refused to reimburse the Plan, resulting in the plan filing suit to obtain reimbursement.

The NEI Trustees brought an action under 29 U.S.C. § 1132(a)(3) seeking “appropriate equitable relief” to enforce the Plan provisions through an equitable lien by agreement. McLaughlin defended the action, arguing in part that the Plan’s claim did not qualify as “equitable” because his settlement with the responsible party did not include medical expenses. The Plan and McLaughlin filed

cross-motions for summary judgment. On January 24, 2014, the district court granted summary judgment in favor of the NEI Trustees, finding that the Trustee's claim satisfied all of the elements of an equitable lien by agreement under this Court's decision in *Sereboff v. Mid Atlantic Medical Servs.*, 547 U.S. 356 (2006). On October 1, 2014, the United States Court of Appeals issued a non-precedential opinion affirming the ruling of the district court. *Bd. Of Trustees of the Nat'l Elevator Industry Health Benefit Plan v. McLaughlin*, 590 Fed.Appx. 154 (3rd Cir. 2014), *cert. denied*, 135 S. Ct. 1405 (2015)(hereinafter *McLaughlin I*"). This Court denied McLaughlin's petition for certiorari.

On December 21, 2015, the District Court entered a subsequent order specifying judgment in the amount of \$45,347.89 be entered in favor of the plan. Petitioner moved to vacate the judgment. The District Court denied the motion and the Court of Appeals affirmed. *National Elevator Industry Health Benefit Plan v. McLaughlin*, 674 Fed.Appx. 189 (3rd Cir. 2017)(hereinafter "McLaughlin II"). The Petitioner's request for rehearing was denied. Petitioner elected not to file a petition for writ of certiorari.

Petitioner then filed another action against the Plan challenging the Plan's right to enforce a set-off provision based upon Appellant's refusal to reimburse the plan. The District Court granted the Plan's motion to dismiss and the Court of Appeals again affirmed on April 11, 2017. *McLaughlin v. Bd. Of Trs. of the National Elevator Industry Health Benefit Plan*, 686 Fed.Appx. 118 (3rd Cir.

2017)(hereinafter “*McLaughlin III*”). Once again, the petitioner elected not to file a petition for writ of certiorari.

The Plan then docketed the judgment with the New Jersey Superior Court. Petitioner again filed a motion to vacate the judgment, alleging the docketing of the judgment constituted fraud, and that the judgment had been satisfied by continued contributions to the Plan on the part of his employer. The Petitioner requested discovery regarding the amount the Plan had collected. The District Court denied, stating that the motion was not timely filed pursuant to Fed. R. Civ. P. 60(c)(1). The Court of Appeals affirmed, and Petitioner subsequently filed the instant petition.

ARGUMENT

I. PETITIONER DOES NOT PRESENT ANY COMPELLING REASON FOR THE COURT TO HEAR THIS CASE

Whether a petition for writ of certiorari will be granted is a matter of discretion for the Court; however, guidelines regarding the exercise of that discretion are available. Rule 10 of the Supreme Court Rules outlines those considerations:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed

from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

None of the Sup. Ct. R. 10 criteria are present in this matter. There is no circuit split of any kind regarding the proposed issues. No state court decision presenting a conflict with any Federal law or court decision is present. There is no justification for exercise of the Court's discretionary supervisory power, as the issue at hand involves an application of a Federal Rule of Civil Procedure. Where there is a clear applicable rule on the issue, there is no need to invoke the discretionary power to create new procedural rules. *Dickerson v. United States*, 530 U.S. 428 (2000); *Carlisle v. United States*, 517 U.S. 416 (1996). This is an issue of application of the rule, not an issue where the supervisory power needs to be invoked. When taken together, Petitioner has failed to demonstrate any compelling issue requiring the review of this Court.

II. PETITION ALLEGES ONLY ERRONEOUS FACTUAL FINDINGS OR MISAPPLICATION OF A PROPERLY STATED RULE OF LAW

Petitioner seeks review of whether the Third Circuit erred in its refusal to correct the nature of the judgment entered against him; however, the Third Circuit did not reach the nature of the judgment. Instead, the Third Circuit found that district court correctly applied existing law in holding that the Petitioner's claim was time-barred.

Petitioner requested relief under Fed. R. Civ. P. 60(b)(3) asking the court to vacate the judgment against him arguing that the docketing of the judgment constituted fraud. The district court did not reach the merits of his claim, but instead denied the motion because it was outside the one-year time limitation set forth in Fed. R. Civ. P. 60(c). The district court rejected Petitioner's argument that the docketing of the judgment was a proceeding restarting the one-year time frame. On appeal, the Third Circuit affirmed the district court's "well-reasoned and thorough opinion."

The time-limitation on relief sought under Fed. R. Civ. P. 60(b)(3) is clearly and unambiguously limited to one-year from the "entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). Petitioner offers no explanation as to why he believes that the relief should be granted twenty-three months after entry of the judgment. Nor does he offer contrary authority from another circuit court of appeal or federal district court that needs to be reconciled by the United States Supreme Court.

Petitioner also requested relief under Fed. R. Civ. P. 60(b)(5) arguing that the judgment had been satisfied, released or discharged. Once again, the district court did

not reach the merits of the Petitioner's claim because the court found that the relief was time barred. While Rule 60(b)(5) motions are not subject to a specific time limitation, they must be filed within a reasonable time. Fed. R. Civ. P. 60(c)(1).

After reviewing the facts of this case, the district court determined that the Petitioner's motion was not filed within a reasonable time. The Third Circuit held that the district court did not abuse its discretion and affirmed. Petitioner argues that the district court erred in its factual determination, and believes that the facts support a finding that the Rule 60(b)(5) motion was filed within a reasonable time. Nevertheless, petitions for certiorari are rarely granted when the asserted error consists of erroneous factual findings. Sup. Ct. R. 10.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied. An analysis of Sup. Ct. R. 10 indicates that there is no compelling reason for the Court of Appeals' decision to be reviewed. There is no split among Circuits, no state court decision being challenged, and no conflicts between the questions at hand and settled law. An attempt to invoke the discretionary supervisory power of the Court is misplaced as the case involves an established Rule of Civil Procedure. Further, Petitioner is not presenting questions that will resolve a dispute in any issue of law; the questions presented are fact-based and involve the application of a timeliness requirement in a rule regarding relief from judgments. The Court of Appeals was well within its discretion to rule both claims time-barred, and there is no exception warranting the Court to

deviate from its standard practice outlined in Supreme Court Rule 10 in granting this petition.

Respectfully submitted,

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