

MAR 20 2020

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19-8202

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Linda Gough — PETITIONER  
(Your Name)

vs.

Bankers Life and Casualty Company — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Fourth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Linda Gough  
(Your Name)

6900 Wisconsin Ave, #30497  
(Address)

Bethesda, MD  
(City, State, Zip Code)

(202) 205-4000  
(Phone Number)

**ORIGINAL**

## QUESTIONS PRESENTED

Gough submitted a Fair Labor Standards Act violation against Bankers Life and Casualty Company to the Fourth Circuit because a partial decision occurred at the District Court of Maryland. The Fourth Circuit reviewed the record and found no reversible error. The Fourth Circuit affirmed the reasons stated by the district court.

The questions presented are:

1. Whether Bankers Life properly classified Gough as an independent contractor and not an employee?
2. Whether the “outside sales” exemption applies to *Linda Gough v. Bankers Life and Casualty Company*?
3. Whether Bankers Life violated the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964.

## LIST OF PARTIES PRESENTED

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

## RELATED CASES

To my knowledge there are no other cases directly related to the case in this Court.

Due to Pandemic and State of Emergency as a result of COVID-19, the law library I have access to is closed and has not responded to my email request for information.

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MD Code Ann., Labor and Employment § 8-201.1, Failure to Classify Employee (Lexis Nexis, 2016)

D.C. Code § 32 – 1331.12, Employee record-keeping requirements (2018)

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 is unpublished.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 Westlaw; 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 is unpublished.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 10/22/2019.

- 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: \_\_\_\_\_, 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 March 20, 2020 (date) on 1/21/2020 (date) in Application No. 19 A 1253.

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**

Fair Labor Standards Act

## STATEMENT OF THE CASE

Gough submitted a claim at court against Bankers Life and Casualty Company with the guidance of a free legal aid service. The initial complaint claimed sex discrimination, misclassification as an independent contractor, and stated she did not make minimum wage. After the judge provided a legal opinion, Gough then refiled the claim as a violation of the Fair Labor Standards Act.

The judge did not consider Gough's Surreply and therefore made a partial opinion on how the economic realities test applied to her duties selling insurance. The judge did not address if Bankers Life violated labor laws in how they hire and classify their workers.

In February 2016, Bankers Life hired Gough as a 1099 Insurance Agent, however, the result of how Bankers Life hired Gough and how she was able to perform the duties as an Insurance Agent were impractical and resulted in being underpaid violating the Fair Labor Standards Act.

Maryland and the District of Columbia, where Gough sold insurance, enacted new laws pertaining to this case while she worked at Bankers Life and while she defended herself at the District Court. Whether the Fair Labor Standards Act was violated under the "outside sales" exemption or as a minimum wage violation was not determined at previous courts.

## REASONS FOR GRANTING THE PETITION

This case fits the Court's criteria for granting review. The new laws in Maryland and the District of Columbia pertain to the Fair Labor Standards Act with

regard to the proper classification of employees and recordkeeping for 1099 Insurance Agents. The case has national importance as it may apply to other states labor laws and serve as a catalyst for Bankers Life to treat their Insurance Agents more professionally.

#### A. ARGUMENT SUMMARY

The court made three errors in the case. The first error leads into the second error, the court found Gough was properly classified as an independent contractor but failed to address how Bankers Life hiring practice affected Gough's business as an Insurance. Therefore, it will need to be determined if the "outside sales" exemption applies to the case or if there was a violation of the minimum wage law. Third, the sex discrimination charge was dismissed but subsequent evidence may indicate there was a violation of the Equal Pay Act.

##### I. Did Bankers Life Properly Classify Gough in the Insurance Agent Independent Contractor Position

To address whether Bankers Life properly classify Gough as an independent contractor under FLSA, the "economic realities test" of the wage hour laws for independent contractors must be considered. The following six factors are considered in determining whether a worker is economically dependent on the employer:

1. The degree of control, which the putative employer has over the manner in which the work is performed.

Gough states she was economically dependent on the employer, Bankers Life. The work Gough performed was done the same way as the other Insurance Agents at Bankers. She had the option to work from home away from the employer's premises in Gaithersburg, MD, but was reliant on their office to function.

ECF No. 45 Exhibit 2 - Roster illustrates the two days in the office (call center days) and appointment days. Appointment days show as being teamed with a named staff or self. The office was a convenient location that supported work on appointment days. It was customary to meet up with respective team members at Bankers Life office then leave for the appointment.

Meeting clients occurred on at least three days during the Monday through Friday workweek. Gough states she had the option to meet with clients on the weekend at her discretion. Bankers Life trained their Insurance Agents to meet at the clients' home, as their personal information was available to determine application variables for Bankers Life products. Between appointments Gough also would market door to door. There were times we would attempt to introduce ourselves to the neighbors but would most often leave our card in the door, hang a flyer on the doorknob, or wedge materials in the doorframe for clients expecting information.

Bankers Life did make an office available for the times clients wanted to meet at Bankers Life premises. To her best recollection, Gough did that for two clients, three if counting an appointment supporting her Unit Supervisor, Oswin Quezeda.

Omar Torres set the two call-center days. Gough did not have control over this. On call center days, Insurance Agents were expected to arrive in the morning and make phone

calls to book appointments. We would break for lunch then return for an afternoon meeting that required us to sign into account for our time.

After the meeting, we had flexibility in our schedule, as it was not until later it was best to catch people by phone. The work Gough did at this time included making calls to communicate with clients, and on-line course work to prepare for the appointments. This was also a time to go door-to-door, if the weather permitted. The incentive to show up at the office on was mentorship and getting to know the staff. It was not paid time and, as illustrated by Gough's IRS 1099 tax form for 2016, the effort did not support a living wage.

Gough had a file box of materials in the back of her car to put information together and provide an individualized folder to clients regarding the product they were interested in purchasing. However, all materials were taken from the Bankers Life Gaithersburg, MD office. Gough states to have submitted one application on her own. The Unit Supervisor approved applications, which could be done in person or over the phone when both people were in front of a computer with access to Bankers Life intranet.

Gough states the benefit of the job was that it required her to be responsible for her time; it provided flexibility in scheduling appointments, and flexibility in conducting some job duties but only to a certain degree.

The time doing on-line work may be documented from the company's software. Gough states she would utilize Bankers Life intranet for course work, to fill out applications, or view sales. Gough states that Insurance Agents would use the Oscar software to make phone calls. Gough stated she spent time marketing Bankers Life and

supporting senior staff. She states it was more of a Customer Service Representative or Office Representative position.

2. The opportunities for profit or loss dependent upon the managerial skill of the worker.

Gough states the opportunity for profit or loss was not balanced with regard to an accounting equation.

Gough was completely dependent on Bankers Life and did not have control of her income. ECF No. 44 Exhibit 2 shows that her Unit Supervisor, Oswin Quezada was no longer officially on the schedule starting the week of May 16, 2016. However, he stopped reporting to the office on a regular basis about halfway through her Successful New Agent (SNA) timeframe, which made her job complicated. Gough was not reassigned a new Unit Supervisor as Mr. Quezada was still officially an employee of Bankers Life. While his name is on the roster, he was not always present, and Gough was reassigned to go on appointments with other senior staff.

The relationship between the Insurance Agent and the Unit Supervisor was essential as it was to set us up to work independently. The Unit Supervisor was supposed to mentor and include their Insurance Agent in sales so we could learn how to sell policies on our own after SNA. When an Insurance Agent submitted an application, it would first be approved by their Unit Supervisor then sent to Bankers Life underwriters. The Unit Supervisor would receive a percentage of the sale after the underwriter approved the policy and the client paid for the insurance, regardless of whether they were present doing business with the client. Therefore, the relationship built during SNA was important for an

Insurance Agent to do well. When Mr. Quezada was absent, no one else could act in place of him to approve Gough's applications other than Omar Torres, the Unit Sales Manager. The roster illustrates that Gough was never teamed with Mr. Torres.

When Gough's Unit Supervisor was absent and/or was finally let go, Bankers Life did pair her with seasoned senior employees who were either Specialists or a Unit Supervisor. Gough could learn the business and go on appointments with them. This provided exposure to client interactions, but she was not being compensated properly for her time. Gough learned it was possible to be written onto each other's sales when closing business and receive a percentage of the sale. However, Gough states they had no incentive to take her on an appointment that booked business, as it would pull from their salary. Gough states was missing out on how to close business.

Furthermore, there was no incentive for senior staff to include Gough in sales, as they could not approve her application and receive a percentage of her sales unless it was Mr. Quezada, my appointed Unit Supervisor.

Gough was capable of working on her own illustrating managerial skill but the opportunity for her to make a profit was based on buying leads that she could not afford. Gough dressed professionally and was on time. When on her own, she met clients where they were most comfortable whether that be at their home or at the Bankers Life office in Gaithersburg. Gough never met a client at her personal residence. During the entire time, Gough states she marketed the company professionally.

Gough states she could not afford to purchase leads and the company provided no support to get a business started as compared to State Farm. The charge backs that occurred

affected her at a personal level with no ability to function professionally. Administratively, she had no business budget to work with to pay for leads or account for charge backs. Gough took personal financial risk each time she wrote or was involved with business. Gough took personal financial hits and had to pull money from her retirement funds to pay for chargebacks and for closing her account.

Gough provided support to senior staff on appointment days and helped to market Bankers Life products. She did not have control over her income and was manipulated to support senior Insurance Agent staff (all men) in an attempt to learn a business that she could not establish because she was not included in sales.

When Gough was involved in a sale any money received from a policyholder who bought insurance during an appointment was sent and deposited into an account at Bankers Life. The Agent Compensation Statement, ECF No. 10, was the record Gough used to keep track of her earnings as an Insurance Agent provided by Bankers Life. An Insurance Agent could track their debits earnings from sales and their credits of chargebacks and Errors and Omissions Insurance from the Agent Compensation Statement. Gough had her earnings from Bankers Life automatically deposited into my personal checking account.

Gough did not meet my quota. As she was still in training and not being compensated with a respectful salary, Gough states she did not feel confident in the business opportunity. She asked both Omar Torres and Oswin Quezada if funds were available to purchase leads. Both Mr. Torres and Mr. Quezada said she had to purchase leads on her own. Gough was provided no financial budget to build her own client base. The Bankers Life and Casualty Company wanted her to use her personal finances to start

up and run a business in their name. There was no access to credit for her representing Bankers Life as an independent contractor Insurance Agent.

Gough never made enough to open a business bank account, nor did Bankers Life provide one. Bankers Life provided no business budget to start Gough's 1099 Insurance Agent position. There was no business account for revenue or to cover expenses. The opportunity for profit or loss was not there.

There was no account or budget provided to her to cover rent space so she either used Bankers Life office, or worked from home, or met clients at their home. There was no business budget for her to purchase materials and equipment or for advertising preventing her from making a profit or account for business expenses.

Aside from Banker Life intranet, there was no account or budget for software to record and report Gough's business activities. She used hard files and the Agent Compensation Statement to keep track of the "independent contractor" Bankers Life business. There was no account or budget for Gough to buy or record leads, which prevented her from making a profit. Gough could not afford employee benefits nor were any provided by Bankers Life.

Gough states that the ability to generate more money based on skill and hard work that denotes independent contractor status is not supported by her experience at Bankers Life. This was not a matter of skill and hard work but of fraud.

Gough had limited control over her income and was manipulated to support senior staffs who were all men. Gough was on Medicaid; which Bankers Life does not pay into and therefore further oppressed her position.

In addition, Gough had a chargeback after her termination and did not know or have access to whether the policy was dropped or rewritten.

3. The putative employee's investment in equipment or material.

Gough used her personal computer and personal phone to conduct Bankers Life business. She found my investment of personal devises minor. There was software that the company provided its workers to upload onto their personal devices. They provided this software to all Insurance Agents who were responsible to invest in their own equipment.

A Bankers Life phone number was issued to her that she uploaded to her phone. Gough states that the amount of time required to make calls on call center days created equipment malfunctions on her cell phone. The overuse wore down the battery and created an unsafe temperature on the phone. This wear and tear on her iPhone should be noted.

Bankers Life software intensified the wear and tear on Gough's phone and abused her personal devices. When making calls, Gough states that the amount of battery use increased the phone temperature to a point it was not safe to use. Her cell phone got so hot that she could not hold it. Gough would take the case off the phone and place it directly on her desk to dial. There were a few times the phone showed a red level battery, at which point she would take a break from dialing. Gough states

that she recalls other independent contractors who commented on how hot their phone would get.

Bankers Life expectation that a standard personal cell phone had the capacity to handle the call volume on cell center days contributed to an unsafe work environment. Gough knows she was not the only one to experience a drain on their personal cell phone battery or experience high temperatures on a personal cell phone.

Gough uploaded Bankers Life intranet and Oscar onto her computer. The time spent making phone calls and doing on-line course work (applications and preparing for meetings) may be traced on the company software to document her time. Gough no longer has access this.

The overhead expenses were crossed with her using her personal computer and cellular phone. Gough states that she had a personal responsibility to pay her bills and upkeep her devices regardless of Bankers Life software installation. Gough made no investment in the Gaithersburg office and her “home office” was her personal residence.

Gough used my personal computer to tend to Bankers Life Business. Gough was reliant on the Bankers Life office to function. There was no account provided to her that Gough could purchase a software tool for bookkeeping. The tools Bankers Life provided to her as an Insurance Agent to keep track of business was internal. Gough had no external system to keep track of business other than her hard files.

On October 21, 2016, Gough received a letter from Bankers Life and Casualty Company regarding chargebacks within an Agent Holdback Account (Exhibit 1-1 pg).

While the termination letter stated her last day was on July 5, 2016, Gough was still accountable for sales made during my time as an independent contractor 1099 Insurance Agent based on 100 percent commission.

On December 7, 2016, Gough called the number on the letter and spoke with Julie Bell in account recovery. She explained that Gough was still being charged for Errors and Omissions Insurance (please refer to Document 10 Agent Compensation Statement), and told me that Gough was supposed to have enough money in the bank to cover one year of commissions.

The account held 10 percent of commission earnings up to one thousand dollars (\$1,000.00) to cover debt 90 days from the agents' termination date. This money was applied to chargebacks and Errors and Omissions Insurance.

The information that Gough was supposed to have enough money in the bank to cover one year of commissions was not covered in training, not explained by Omar Torres when meeting at the end of SNA and was not on the termination letter. Julie Bell offered to settle my account for \$407.65, which she accepted. The letter dated December 8, 2016, states the amount paid with a \$0 balance and that Gough's account is closed (Exhibit 2-1 pg). As you can see by the date on the letter, Gough was still tending to independent contractor business with Bankers Life up until the last month of the year 2016.

Gough used her personal savings to pay for closing my Bankers Life Agent Holdback Account. The time at Bankers Life never supported a minimum wage salary, certainly not a living wage, let alone enough to open a business account to cover one year's salary. Gough stated there may be other Banker Life 1099 Insurance Agents who

experienced chargebacks after leaving the company, although she states can only speak for how it affected her. The fact that Gough had an Agent Holdback Account and no account to hold one year of commissions (as explained by a Bankers Life employee, Julie Bell in Account Recovery, as the proper way to do business) illustrates Bankers Life negligence.

The fact that Gough had a corporate Bankers Life Agent Holdback Account but had no account to buy leads and generate sales is unbalanced and impossible way to conduct business. Gough was liable for operating expenses but had no access to credit during her time at Bankers Life. It is economically impossible to run a business in the capacity she was hired and trained. This was an unprofessional opportunity.

#### 4. The degree of skill required for the work.

By December 2016, Gough no longer had access to Bankers Life intranet but was still balancing her account with the company. Gough had no accounting software to record the transaction.

The payment Gough made for the Agent Holdback Account settlement offer was made on her personal credit card. She maintained physical files of Bankers Life business (Gough no longer has receipts for file folders or bins that she paid for personally but states that she is sure she could find the charge on her personal credit card, if needed). Gough would like to get reimbursed for this expense.

Gough did report taxes on the two quarters of business she conducted. In addition, the most recent communication from the Department of Treasury Internal Revenue Services is attached as a letter dated January 16, 2018 (Exhibit 3-2pgs).

Oswin Quezada, Bankers Life Unit Supervisor, sponsored her for exam preparation with a company called Exam FX. Within five months, she completed a self- directed online course, signed up for the exam through PSI and passed the insurance exam. Gough thinks other agents were provided different types of exam preparatory classes, but she states she completed the one for which she was sponsored. Gough paid for all of this out of her own pocket.

With regard to exam preparation, Gough was curious if all independent contractors were assigned the same vendor and course content. Only one option was presented to her. She questions Bankers Life discriminated against applicants by limiting exam preparatory options placing certain people in a more difficult program.

Gough had to study and pass the exam to obtain a Life and Health license through the MD Insurance Commission. Bankers Life then hired her as 1099 independent contractor Insurance Agent based off of 100 percent commission. Gough went through intense training to acquire the specialized knowledge of a Bankers Life Insurance Agent. She was then able to sell insurance. It required greater skill than would be demanded from the average salesperson.

Gough personally paid for a MD and DC license. The training was mandatory and voluntary. Once Gough acquired this specialized skill, she worked with her Unit Supervisor and other senior staff to book business. The primary duty was making sales to clients in need of life and health insurance policies. It was Bankers Life practice for Insurance Agents to meet clients in their home to sell policies.

Gough took initiative and honed my skills to the best of her ability. She set myself up so that she could put information together at home, on the road, or at the office. Gough prepared for appointments beforehand so that she could discuss the product and handle questions both on her own and when in the company of senior staff. However, to succeed Gough would have had to buy leads from a vendor of truly interested clients, which she states she could not afford, and the company did not provide support to do.

5. The permanence of the working relationship.

Gough states that she did not find Bankers Life investment in her as an independent contractor 1099 Insurance Agent as a permanent relationship. She said there is no comparison to how Bankers Life treats their Insurance Agents as compared to State Farm.

In ECF No. 44, Gough explained how State Farm offers paid training and startup funds to their 1099 independent contractor Insurance Agents. ECF No. 44 Exhibit 1 indicates an 80 percent success rate for State Farm Agents. A true Agent at State Farm is a 1099 independent contractor who receives support to open their own office independent of other agents after 17 weeks training, assistance to help pay for expenses, bonuses exceeding \$20,000, subsidies of \$17,000 month in premiums, and 18 months minimum mentoring under the Agent Aspirant Program.

Unfortunately, after three volatile months as a Bankers Life Insurance Agent, Gough said did not feel comfortable pursuing the 1099 position at State Farm until she gained experience as support staff first. Employees at a State Farm office are entitled to benefits such as vacation, social security, sick leave, and health insurance.

Bankers Life offered none of these benefits and the turnaround rate of agents was 46 percent. Salary.com lists \$50,000 as an average salary for an Insurance Agent with opportunity to grow income. Gough states she made nowhere near this at Bankers Life.

No pensions, profit sharing, vacation, paid sick leave, social security, or other employee benefit were available to her through Bankers Life. Although, she was eligible, she could not afford the life insurance that she was selling because she did not make enough money.

Gough approached the independent contractor 1099 Insurance Agent job at Bankers Life as a career. The income that she made did not support work at a level of full-time, part-time, hourly wage, or seasonal status and there was no way she could estimate a monthly or yearly income worth maintaining a business. Gough was not set up to succeed.

Thus, Gough states this was an indicated to her a lack of permanence of the working relationship. Gough states the 1099 independent contractor status as a career is favorable when it pays a wage one can estimate. This did not happen for Gough at Bankers Life.

6. Whether the services rendered is an integral part of the putative employer's business.

Gough was hired by and represented Bankers Life. Gough did not control meaningful aspects of the work being performed; Gough did not have the opportunity to make a profit and was not compensated for my time appropriately.

There was a \$3000 quota that was to be met by Agents during the three-month SNA. After SNA, a quota called the “Rolling 6” was required to be met. The “Rolling 6” required \$6000 in sales every six weeks. The quotas were standard Bankers Life guidelines for their independent contractor 1099 Insurance Agents making 100 percent commission. Gough did not make the \$3000 quota during SNA but was offered to stay on and gain experience by Mr. Torres. Gough was not willing to volunteer her time as an independent contractor and she was not getting paid to support Bankers Life staff or to market the company. Gough could not run a business on loss alone.

Gough made phone calls to set appointments with the intent of booking business but in reality, it was marketing the company. Gough did market the company and did so professionally whether that was on the phone or in person. There was flexibility in the schedule to a degree, but it demanded a commitment from the Insurance Agent to act responsibly on their own, show up on time, dress appropriately as a professional, and sell business.

Gough could not afford to buy leads from her personal funds or salary. Bankers Life did not provide funds to provide leads. The leads that Bankers Life provided Gough were random lists of phone numbers one could categorize in a certain manner such as age or geographic location not by interest in buying insurance. For the most part, Gough was at the will of the Specialist or Unit Supervisor to succeed.

Gough was hired at Bankers Life as an Insurance Agent; it was an independent contractor 1099 position for which she signed off on. However, the “economic realities test” determines whether the job was classified properly. Gough states her experience at

Bankers Life was one that she was economically dependent on the employer, who at a certain level, could allow or prevent her to succeed as an Insurance Agent.

Therefore, Gough pleads Bankers Life misclassified her as an independent contractor during the course of her employment and that FLSA does not exempt her from its protections. Gough think Bankers Life violated FLSA by classifying her as an independent contractor when she performed job functions sufficient to classify her as an employee.

As a Bankers Life Insurance Agent, Gough did sell insurance in Maryland and the District of Columbia. The Court will need to decide if there is a violation of the Fair Labor Standards Act and following respective laws in MD and DC were violated where she sold insurance. MD Code Ann., Labor and Employment § 8-201.1, Failure to Classify Employee (Lexis Nexis, 2016). D.C. Code § 32 – 1331.12, Employee record-keeping requirements (2018).

## II. Did Bankers Life Violate the FLSA “Outside Sales” Exemption

During the course of my employment, the FLSA “outside sales” exemption would apply to the independent contractor position Gough had at Bankers Life. Gough did not know how to present this properly because she did not have an attorney.

Bankers Life hired her as 1099 independent contractor Insurance Agent based off of 100 percent commission. It required greater skill than would be demanded from the average salesperson. Gough had to study and pass an exam to obtain a license as well as

go through intense training to acquire the specialized knowledge of a Bankers Life Insurance Agent. The primary duty was making sales to clients in need of life and health insurance policies. It was Bankers Life practice for Insurance Agents to meet clients in their home to sell policies.

It is necessary for the Court to determine if Bankers Life breached their contract with Gough and as a result, violated the FLSA “outside sales” exemption criteria listed below:

- Gough made less than \$455/week during my time at Bankers Life,
- Gough did not receive a minimum salary regardless of how much work she performed or how many hours she worked,
- The job classification was that of a 1099 independent contractor.

Supporting Facts and Arguments to Satisfy the Outside-salesperson Exemption:

1. The employee was regularly and customarily engaged away from the employer's place of business and the employee regulated her own hours while on the employer's premises;

The job was administrative in nature. It was directly related to Bankers Life business operations by selling products provided by the company and to the benefit of customers in need of life and health insurance. It involved exercising independent judgment and discretion about matters of significance. Gough provided materials; educated customers on the products available as well as answered questions to help them decide what insurance best suited their needs. Gough supported senior staff or she herself would then fill out applications and worked with underwriters to get the best price available for the client.

ECF No. 44 Exhibit 2– two office days were for calls center days. Agents could spend half day at office and other half at home to accommodate catching people in the afternoon/evening hours; then there was three to four appointment field days. Agents would solicit potential clients door-to-door as well as over the phone.

Gough states she regulated her own hours, however, the Bankers Life software allowed for flexibility in work location. Appointments were encouraged to happen at the clients' home.

2. The employee spend 20 percent of less of her work hours on nonexempt tasks;

The primary duty of this job was to sell life and health insurance. The duties involved making calls to book appointments then meeting those clients to sell insurance. It was administrative in nature however; it may be compared to customer service work due to call days and supporting senior staff on appointments. In addition to meeting clients at their home, we would also market the neighborhood knocking on doors to introduce ourselves.

3. The employee was paid on the basis of commissions, fees, or guaranteed salary and was advised of her status as an outside salesperson;

Gough was hired as an Insurance Agent using the 1099 tax form to classify her as an independent contractor making 100 percent commission. She was advised and trained of her status of an outside salesperson. We were to meet clients at their home to sell insurance.

Gough was hired as a Bankers Life Insurance Agent as a 1099 independent contractor. She did not have access to assets during her time at Bankers Life. Gough was

under the supervision of senior staff that did not include her in sales. Gough was unable to meet the quotas established by Bankers Life or support myself. The dualism of how Gough was hired as an Insurance Agent and the manner that she had to conduct business was unreasonable. Gough neither or made salary respective of the specialized knowledge required by Bankers Life Insurance Agents nor the professional background she brought to the job. Gough could neither establish a business as an independent contractor nor make a living wage.

At the information session in August 2015, Bankers Life misrepresented the Insurance Agent as a career position. She was induced to enter their training program and made a personal investment to acquire the specialized knowledge to sell their life and health insurance policies. Gough relied on their representations that she could depend on their support to make a career. Gough believe Bankers Life breach their contract and broke this promise and as a result she has suffered a FLSA violation.

### III. Did Bankers Life Violate the FLSA Equal Pay Act

After the Judge dismissed Gough's sex discrimination claim against Bankers Life his Opinion, Gough submitted documents to the court that demonstrate that she experienced depressed wages and living standards necessary for her health and efficiency during her experience with Bankers Life.

In her Amended Complaint, ECF No. 39, Gough explained how the salary she made impacted the requirements for rent and health insurance in the area where she lived. She was unable to afford her basic needs. Therefore, based off of the salary that she made, Gough states that Bankers Life contributed to depressed wages and living standards.

The information Gough provided in the Opposition to Defendant's Motion to Dismiss Plaintiff's Amended Complaint, ECF No. 44, illustrate an unfair method of competition. Gough is female and the work she performed was similar to work performed by males, for which males received higher pay.

ECF No. 44 - Exhibit 2 (15 pages) includes the weekly roster list for her SNA timeframe at Bankers Life. The senior staffs, which are underlined, are the last names of all men. This is the case on all 14 pages of weekly roster assignments. This may support a discrimination claim under EEOC. Gogh attempted to find Banker Life executives online but this information was not available.

The men who are underlined on that roster are all Insurance Agents, like herself, who performed the same job that required equal skill, effort, and responsibility and which were performed under similar working conditions, therefore, the Court will need to determine if the Equal Pay Act under FLSA was violated.

Aside from being male, the underlined senior staff met their Bankers Life quota and had the title of Specialist or Unit Supervisor. This allowed these men to train new Insurance Agents, however, Gough believe this constituted an unfair method of competition.

Gough provided support to senior staff on appointment days and helped to market Bankers Life products. She did not have control over her income and was manipulated to support senior Insurance Agent staff (all men) in an attempt to learn a business that she could not establish because she was not included in sales.

It was never disclosed to Gough how these men generated revenue or were able to afford their leads. When she asked if Bankers Life could support her in buying leads,

Gough was told to buy her own. While the men were making quota and therefore a salary, Bankers Life used Gough (and the other 46 percent turn around rate Insurance Agents) to market their company for an unfair wage.

It is necessary for the Court to determine if Bankers Life violated the FLSA Equal Pay Act of 1963 and the Title VII of the Civil Rights Act of 1964, which resulted in lost wages, pain and suffering.

#### B.     LEGAL STANDARD

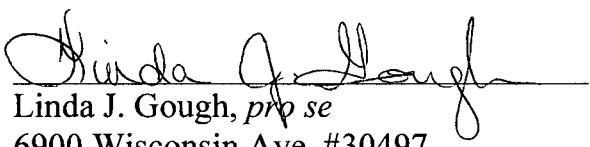
The Petition for a Writ of Certiorari is a simple and plain statement of the claim showing that the Petitioner, Linda Gough, is entitled to relief. In this case, Gough pleads 1) Bankers Life misclassified her as an independent contractor during the course of her employment, and 2) the FLSA does not exempt her from its protections, and 3) Bankers Life violated the Equal Pay Act.

Gough requests that the United States Supreme Court accept that she plead facts sufficient to “state of claim of relief that is plausible on its face” and that there is more than sheer possibility that the Defendant has acted unlawfully. This complaint contains factual allegations sufficient to apprise the Defendant, Bankers Life and Casualty Company, of what the claim is and the grounds upon which it rests.

## **CONCLUSION**

The Petition for a writ of certiorari should be granted.

Respectfully submitted,



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**Dated: March 20, 2020**