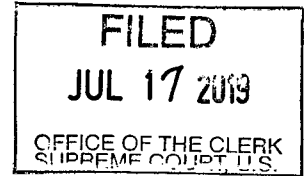


19-98  
No. \_\_\_\_\_



---

In The  
**Supreme Court of the United States**

---

KYLE D. KENNARD,

*Petitioner,*

v.

MEANS INDUSTRIES INCORPORATED,

*Respondent.*

---

**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Sixth Circuit**

---

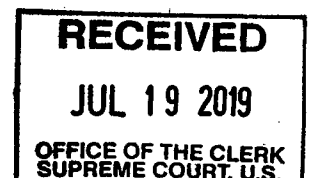
**PETITION FOR WRIT OF CERTIORARI**

---

Pro-Se Petitioner

KYLE D. KENNARD  
5912 Maple Rd.  
Vassar, Michigan 48768  
(989) 823-3820  
Email: [kkennard@lssu.edu](mailto:kkennard@lssu.edu)

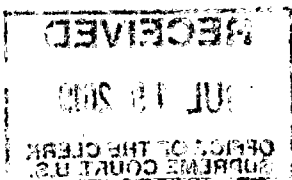
---



## QUESTIONS PRESENTED

The specific questions presented are:

1. Did the lower courts commit and allow fraud upon the court?
2. Did the lower courts deny my (Kyle Kennard) 5th and 14th Amendment rights, due process of law, procedural due process?
3. Did the Circuit Court administer its ruling under its own understanding of Fraud Upon the Court violating fraud upon the court definition of case law?



## **PARTIES TO THE PROCEEDINGS**

Petitioner: Kyle D. Kennard

Respondents: Means Industries Inc.

## **RELATED CASES**

Kennard v. Means Industries, Inc. Case No. 1:11-cv-15079 TLL-PTM ECF No. 61 U.S. District Court for the Eastern District of Michigan, Northern Division. Judgment entered June 13, 2013.

Kyle D. Kennard v. Means Industries Incorporated Case No. 13-1911 U.S. Court of Appeals for the Sixth Circuit, Judgment entered February 13, 2014.

Kennard v. Means Industries, Inc. Case No. 1:11-cv-15079 TLL-PTM ECF No. 76 U.S. District Court for the Eastern District of Michigan, Northern Division. Judgment entered June 26, 2014.

Kennard v. Means Industries, Inc. Case No. 1:11-cv-15079 TLL-PTM ECF No. 91 U.S. District Court for the Eastern District of Michigan, Northern Division. Judgment entered July 7, 2015.

Kyle D. Kennard v. Means Industries Incorporated Case No. 15-1872 U.S. Court of Appeals for the Sixth Circuit, Judgment entered August 19, 2016.

Kennard v. Means Industries, Inc. Case No. 1:11-cv-15079 TLL-PTM ECF No. 116 U.S. District Court For the Eastern District of Michigan, Northern Division. Judgment entered August 1, 2017.

**RELATED CASES – Continued**

Kennard v. Means Industries, Inc. Case No. 1:11-cv-15079-TLL-PTM ECF No. 119 U.S. District Court For the Eastern District of Michigan, Northern Division. Judgment entered October 12, 2018.

Kyle D. Kennard v. Means Industries Incorporated Case No. 18-2270 U.S. Court of Appeals for the Sixth Circuit, Judgment entered April 2, 2019.

Kennard v. Means Ind., Case No. 18-2270 Rehearing (6th Cir.), Judgment entered June 3, 2019.

## TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED .....	i
PARTIES TO THE PROCEEDINGS .....	ii
RELATED CASES .....	ii
TABLE OF CONTENTS .....	iv
TABLE OF AUTHORITIES.....	v
PETITION FOR A WRIT OF CERTIORARI .....	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS .....	2
STATEMENT OF THE CASE.....	3
FACTS OF THE CASE .....	10
REASONS FOR GRANTING THE PETITION ...	18
CONCLUSION.....	22
APPENDIX	
Court of Appeals Order .....	App. 1-5
District Court Order.....	App. 6-9
Denial of Petition for Rehearing En Banc .....	App. 10
Denial of Petition for Panel Rehearing.....	App. 10

## TABLE OF AUTHORITIES

	Page
CASES	
Aoude v. Mobil Oil Corp., 892 F.2d 1115 (1st Cir. 1989) .....	17
Bulloch v. United States, 763 F.2d 1115 (10th Cir. 1985) .....	15, 18
Carter v. Anderson, 585 F.3d 1007 (6th Cir. 2009) ....	15, 17
Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944) .....	18
H.K. Porter Co. v. Goodyear Tire & Rubber Co., 536 F.2d 1115 (6th Cir. 1976).....	16
Kennard v. Means Industries, Inc. Case No. 1:11-cv-15079 TLL-PTM ECF No. 61 U.S. District Court June 13, 2013 .....	6, 13
Kennard v. Means Industries, Inc. 555 F. Appx. 555 (6th Cir. 2014 Feb. 14, 2014 Case No: 13-1911 File Name: 14a0130n.06) .....	7, 14, 15
Kennard v. Means Indus. June 26, 2014 Case No. 1:11-cv-15079 TLL-PTM ECF No. 76 .....	7, 14
Kennard v. Means Industries, Inc., 2015 U.S. Dist. Lexis 87652 (July 7, 2015) Case No. 11-cv-15079 TLL-PTM ECF No. 91 .....	8
Kennard v. Means Indus., Inc., 2016 U.S. App. Lexis 15308 (August 19, 2016 Case No: 15-1872 File Name: 16a0487n.06) .....	9
Kennard v. Means Ind. Aug. 1, 2017 Case No. 1:11-cv-15079 TLL-PTM ECF No. 116 .....	10, 11, 12, 19

## TABLE OF AUTHORITIES – Continued

	Page
Kennard v. Means Ind., Case No. 1:11-cv-15079 (Eastern Michigan District Court Oct. 12, 2018) (App. 6-9) .....	10
Kennard v. Means Ind., Case No. 18-2270 (6th Cir. April 2, 2019) (App. 1-5) .....	14, 15, 16, 20
Toscano v. Commissioner, 441 F.2d 930 (9th Cir. 1971) .....	8, 17

## CONSTITUTIONAL PROVISIONS

U.S. Const. amend. V .....	10, 19, 20, 21
U.S. Const. amend. XIV .....	10, 19, 20, 21

## RELATED DOCUMENTS

Setoff Letter: Feb. 14, 2012 letter at 4, ECF No. 90, Ex. 5 .....	13
Setoff pension section 2.3: Case 1-11-cv-15079- TLL-PTM ECF No. 7-3 Filed 6/13/12 PageID. 132 page 1 of 2 .....	13
Setoff letter section 2.3: Case 1:11-cv-15079- TLL-PTM ECF No. 9-3 Filed 6/27/12 PageID. 229 page 1 of 5 .....	13, 14
ERISA Pension Contract: Case 1:11-cv-15079- TLL-PTM ECF No. 10-3 Filed 07/06/12 PageID. 296 page 1 of 17 .....	13
Administration Record: Case 1:11-cv-15079- TLL-PTM ECF No. 49 Filed 2/25/13 PageID. 1786 1 of 108 .....	13

## TABLE OF AUTHORITIES – Continued

	Page
Setoff Letter: Case 1:11-cv-15079-TLL-PTM ECF No. 58-3 Filed 03/20/13 Page ID. 2413 page 1 of 5.....	13
Setoff Letter: Case 1-11-cv-15079-TLL-PTM ECF 90-5 Filed 2/12/15 PageID. 3479 .....	8
C. J. S. Judgments 400, Westlaw .....	16

## STATUTES

28 U.S.C. § 1254(1).....	1
29 U.S.C. § 1001 <i>et seq.</i> .....	3
(ERISA or the Act), 29 U.S.C. §1132(a)(1)(B).....	3

## RULES

Fed. R. Civ. P. 26.....	11, 16, 18, 19, 20
Fed. R. Civ. P. 26(f).....	5, 9
Fed. R. Civ. P. 60(b) .....	10
Fed. R. Civ. P. 60(d)(3).....	<i>passim</i>
Fed. R. Evid. 301 .....	20



**PETITION FOR WRIT OF CERTIORARI**

Kyle Kennard, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

**OPINIONS BELOW**

The decision of the Court of Appeals for the Sixth Circuit is unpublished and is reprinted in the Appendix at *App. 1-5*. The decision of the Eastern District of Michigan Eastern Division is unpublished and is reprinted in the Appendix at *App. 6-9*. Rehearing and/or Rehearing en banc in an order filed in the Court of Appeals for the Sixth Circuit is unpublished and is reprinted in the Appendix at *App. 10*.

**JURISDICTION**

Petitioner seeks review of the decision of the United States Court of Appeals for the Sixth Circuit entered on April 2, 2019. Timely petitions for rehearing and rehearing en banc were denied on June 3, 2019. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).



**CONSTITUTIONAL PROVISIONS  
UNITED STATES CONSTITUTION**

United States Constitution, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



### STATEMENT OF THE CASE

This case involves a claim for disability pension benefits pursuant to the Employee Retirement Income Security Act (ERISA) 1974 Law 29 U.S.C. § 1001 *et seq.*

The actions and facts submitted for trial to the courts throughout Kennard v. Means Industries ERISA governed disability pension plan under 29 U.S.C. § 1132 (a)(1)(B) since November 2011.

The documented facts I have discovered in District Court files at the U.S. District Court for the Eastern District of Michigan, Northern Division, in the trial of Kennard v. Means Indus. will prove there was Fraud Upon the Court, Fed. R. Civ. P. 60(d)(3) and denial of my 5th and 14th Amendment rights of due process, equal protection of the laws.

The Circuit Court and District Courts own documents and statements will confirm this as stated in the petition for a Writ of Certiorari below.

As Petitioner, I began employment with Means in 1983. In 1990 (I) Kennard was exposed to incorrectly mixed synthetic oil that permanently damaged my lungs. Upon returning to work in clean air environment in 1992, I required life-long restrictions. My pulmonary condition became disabling in 2006. I filed a claim for workers compensation disability compensation. In 2007, I “redeemed” my workers compensation claim of \$220,000 pursuant to the Michigan Workers Disability Compensation Act. (MWDCA). I gave up any right to future workers compensation benefits

(medical, monetary weekly benefits, union seniority), but none of my monetary disability monthly benefits when it came to disability pension benefits under ERISA governed Pension Plan (UPIE Local 7358 and/or Local 6-358 Hourly Employees Retirement Plan, Means Industries, Vassar Plant. Amsted Corporation Chicago, IL. As stated at the Workers Compensation Redemption Hearing, Labor Department in the State of Michigan. Attendees: Attny. Noeski (Means), Attny. Allweil (Kennard) Magistrate Purcell (State of Michigan Labor Department (LARA), Workers Compensation Bureau.

I filed for Social Security Disability in 2007 and was approved in Oct. 2009. Retroactive to Feb. 14, 2006. Immediately after approval decision, I filed for Disability Pension Benefits under ERISA Pension Plan at Means Industries Inc.

Under the ERISA Pension Plan Section 2.3(b) at Means, I was required to see two (2) Doctors of the companies choosing for determination of permanent disability status.

I was denied my disability pension based on ***medical requirement only of the Means Pension Plan under ERISA*** on February 26, 2010 by the Plan Administrator<sup>1</sup> (District Court Case 1:11-cv-15079-TLL-PTM ECF No. 10-3 Filed 07/06/12 PageID. 308 page 13

---

<sup>1</sup> Original Plan Administrator from Means Industries Saginaw Michigan Ed Shemanski.

of 17, second (2) paragraph). It only states the first part of the section 2.3.

The entire section 2.3 (b) or (2) can be seen in document (District Court Case 1:11-cv-15079-TLL-PTM ECF No. 9-3 Filed 06/27/12 PageID. 230-231 page(s) 2-3 of 5).

On November 11, 2011 the matter was moved to the District Court.

I received a letter from *Amsted Pension Administration Center* dated *Feb. 8, 2012*. Case 1:11-cv-15079-TLL-PTM ECF No. 9-3 Filed 6/27/12 PageID. 233 page 5 of 5. In the letter it clearly stated when disability pension benefits to start Sept. 1, 2006 and the amount of monthly benefits (\$836.50) I was entitled to. It stated I would not be able to receive benefits even if I was determined disabled because of the setoff in section 2.3(b) of Means Pension Plan due to Workers Compensation redemption monies received.

My then attorney Mandel Allweil received letter(s) from defense Attorney MASUD Labor Law Group, Brian Swanson dated *Feb. 14, 2012* also the same letter I received from *Amsted Pension Administration Center* dated *Feb. 8, 2012*. (District Court See Case 1:11-cv-15079-TLL-PTM ECF No. 9-3 Filed 06/27/12 PageID. 229 page 1 of 5).

Allweil, at the time of receiving the letter(s) from Attorney Swanson, Allweil immediately called Swanson as required under this Courts Fed. R. Civ. P. 26(f) in Feb. 2012.

This discussion was at the request of Means' Attorney Swanson as stated: "If you have any questions or would like to discuss these matters further, please do not hesitate to contact me." Document(s) were filed Four (4) months after initial letter and conference between attorneys. (District Court, see Case 1:11-cv-15079-TLL-PTM ECF No. 9-3 Filed 6/27/12 PageID. 232 page 4 of 5, last sentence).

A discussion and understanding between attorneys on Plan section 2.3(b) setoff issue was settled as a defense for Means.<sup>2</sup> The District Court would have denied my disability pension based on Section 2.3(b) (the ERISA Pension Plan at Means Indus.) setoff issue would supersede the medical requirement of section 2.3(b) as well documented in the District Court records prove.

The stated Workers Compensation redemption was settled in May of 2007 two (2) years before medical requirement section 2.3(b) was required of me by the original Plan Administrator on November 17, 2009. (District Court see Case 1:11-cv-15079-TLL-PTM ECF No. 10-3 Filed 07/06/12 PageID. 310 page 15 of 17)

The District Court affirmed the decision of the original Plan Administrator's *medical denial section 2.3(b) of the Pension Plan* on June 13, 2013 (Case No. 1:11-cv-15079 TLL-PTM ECF No. 61) with the District Court knowing section 2.3 of the Pension Plan had

---

<sup>2</sup> Affidavit submitted to the 6th Circuit Court from Mandel Allweil.

been filed as a defense *on the record* for Means' Amsted Pension Administration Center by attorney Swanson.

This denial of my disability pension was then appealed by my then attorney Allweil in the Circuit Court of Appeal 6th Circuit. The Circuit Court reversed the District Court decision.

The 6th Circuit Court reversal of the District Court decision on **Feb 13, 2014** awarded my disability pension benefits. 6th Circuit opinion Kennard v. Means Industries (Cited Case No. 13-1911). "***Because there [is] no evidence in the "record" to support a termination or denial of benefits***, an award of benefits is appropriate ***without remand*** to the plan administrator" Id. Citing Shelby Cnty @ 373. [emphasis added]. See *Kennard v. Means Industries, Inc* 555 F. Appx. 555 (6th Cir. 2014). Feb. 14, 2014 Case No: 13-1911 File Name: 14a0130n.06

The District Court then remanded the decision back to the plan administrator for calculation of benefits I was entitled to on June 26, 2014 (See *Kennard v. Means Indus. June 26, 2014 (Case No. 1:11-cv-15079 TLL-PTM ECF No. 76)*).

District Court Stated:

"It is further **ORDERED** that this case is **RE-MANDED** to the Plan Administrator to determine the amount of benefits Kennard is entitled to, retroactive to the date on which benefits accrued under the Plan."

Upon remand, a new Plan administrator<sup>3</sup> at *Amsted Pension Administration Center* determined no disability benefits were owed because of setoff issue, letter dated **July 15, 2014**. The same section 2.3 information was previously filed with the District Court on June 27, 2012. Case 1:11-cv-15079-TLL-PTM ECF No. 9-3 Filed 6/27/12 PageID. 233 page 5 of 5.

This is where fraud upon the court Fed. R. Civ. P. 60(d) (3) happens also because the issue was already submitted to the District Court for the *original plan administrator* and *Amsted Pension Administration Center* by defense attorney Swanson for trial starting in November of 2011.

**“Fraud upon the court”** may take the form of a scheme or plan by a litigant, wholly without the involvement of counsel, that is intended to corrupt the court’s decision-making *Toscano v. Commissioner*, 441 F.2d 930, 934-36 (9th Cir. 1971).

Attorney Swanson, then *again* filed on **Feb. 12, 2015** the same setoff defense he had previously filed to the District Courts on June 27, 2012. (*See 1:11-cv-15079-TLL-PTM ECF No. 90-5 Filed 2/12/15 PageID. 3479 Page 1 of 5.*)

The District Court affirmed the new Plan administrator’s denial of disability pension benefits **July 7, 2015** *See Kennard v. Means Industries, Inc., 2015 U.S.*

---

<sup>3</sup> The New Plan Administrator Shirley Whitesell out of Chicago IL. 2014 *Amsted Pension Administration Center*.



*Dist. Lexis 87652 (July 7, 2015) Case No. 11-cv-15079 TLL-PTM ECF No 91.*

After that decision my then attorney, appealed this decision of the District Court remand because it conflicted with the mandate of the 6th Circuit Court of Appeals. The 6th Circuit Court rejected this argument. *See Kennard v. Means Indus., Inc., 2016 U.S. App. Lexis 15308 (August 19, 2016) Case No: 15-1872 File Name: 16a0487n.06.*

In the decision dated Aug. 19, 2016, the 6th Circuit Court of Appeals stated. "We deem Means's offset defense preserved because Kennard had notice of it and ample opportunity to rebut it".

Means' defense attorney Swanson did conceal the phone conference, facts of that discussion, rebuttal and settlement by my then attorney Mandel Allweil (affidavit) as stated on appeal under this Courts Fed. R. Civ. P. 26(f).

Defense attorney failed to inform defendant Means, *Amsted Pension Administration Center* of the section 2.3 conversations/settlement in Feb. 2012. Allowing section 2.3(b) setoff to be re-submitted on remand for denial of disability pension benefits by the District Court.

The District Court concealed the exact section 2.3 Plan documents, Means' ERISA Pension Plan contract, were on record as proven fact in this request for writ case files listed.

Fraud upon the court claim was filed by me because of the factual statement of the District Court judge states in order on August 1, 2017 (Case No. 11-cv-15079 TLL-PTM ECF No 116) **ORDER GRANTING IN PART RENEWED MOTION FOR ATTORNEY FEES. (pg. 7 footnote 3, Pg. 8 conversely. . . .)** The setoff issue was not adjudicated during trial as the facts state.

The District Court denied my 5th and 14th Amendment due process rights. The District Court did not look at any information I had submitted to the court for review. In denying my request for Fraud upon the Court under this Court's Fed. R. Civ. P. 60(d)(3), instead using this Court's own Fed. R. Civ. P. 60(b). *Kennard v. Means Ind., Case No. 1:11-cv-15079 (Eastern Michigan District Court Oct. 12, 2018) (App. 6-9)* The District Court was prejudiced in his decision. As stated below, in committing fraud upon the court.

---

### FACTS OF THE CASE

1. **The lower courts committed and allow fraud upon the court, also denied my (Kennard's) 5th and 14th Amendment rights, Due process of law, procedural due process in Kennard v. Means Industries Inc.**

The Circuit Court order(s) denying fraud upon the court, dated April 2, 2019 (App. 1-5)

"It is apparent from the record that no fraud on the court occurred" There are many court case

definitions of fraud upon the court. Each court may use a different analogy of the definition.

The section 2.3(b) of the Pension Plan was discussed under this Courts Fed. R. Civ. P. 26 as required during pre-trial duty to disclose. This conversation and settlement had to be disclosed by Means' defense attorney to the defendant Means Plan Administrator(s) or *Amsted Pension Administration Center* in **Feb. 2012**, a reason stated below.

As submitted to the Circuit Court of appeals (Case No. 18-2270 April 2, 2019), John Welch's disability settlement documents between Means Indus. attorneys MASUD Labor Law Group and Troy Haney (**2011-2013**) confirm a worker's compensation redemption does not affect any disability pension benefits. His settlement discusses the facts about Workers Compensation redemption language and section 2.3 setoff of Means Disability Pension Plan during the same dates as Kennard v. Means Indus. (Precedent set under Means ERISA Pension Plan). 14th Amendment "nor deny to any person within its jurisdiction the equal protection of the laws".

*In Kennard v. Means Inds. District Court order on Aug. 1, 2017 Case No. 11-cv-15079 TLL-PTM ECF No. 116 (footnote 3 pg. 7) district court states: "As discussed below, **the Plan Administrator should have addressed the setoff language in the Plan in the first instance**, avoiding a significant and unnecessary expenditure of judicial resources. Plan administrators should be incentivized to address all arguments,*

especially potentially dispositive ones, at the original review of the claim”.

The District Court Judge also stated in the same order: *Aug. 1, 2017 Case No. 11-cv-15079 TLL-PTM ECF No. 116 pg. 8*

**“Conversely**, while Means ultimately avoided payment of any benefits by advancing a setoff argument, that argument was not raised until late in the process. Means did not assert that defense in its motion for summary judgment before the Court. See ECF No. 50.(4). The Sixth Circuits first opinion did not address the argument. **Means “*did*” assert it upon remand and the argument ultimately proved meritorious.** But the merit of the position is undermined to a certain extent, by its untimeliness. Had the argument been directly highlighted before this Court and the Sixth Circuit, this litigation might have been dramatically shortened. Means has not tendered an explanation for why the setoff argument was not addressed originally by the Plan Administrator. Likewise Means has not explained why it did not raise the argument in its motion for judgment on the administrative record. *Means decision to omit the argument is made even more perplexing by the fact that Means was aware of the setoff argument prior to filing disparities motions. See Feb. 14, 2012 letter at 4, ECF No. 90, Ex. 5.* [emphasis added]

**Fact:** the District Courts own records show Plan document(s), section 2.3(b) both medical determination and setoff, were addressed (*ECF No. 10-3*) and filed by the defense attorney for *Amsted Pension Administration Center and Plan Administrator(s)* before trial (Case No. 1:11-cv-15079 TLL-PTM ECF No. **61 U.S. District Court June 13, 2013**) *Five (5) times*.

**Initial District Court Filing:** See 1:11-cv-15079-TLL-PTM ECF No. 7-3 **Filed 06/13/12** *PageID. 133 page 1 of 2*.

**Second District Court Filing:** Setoff Letters See 1:11-cv-15079-TLL-PTM ECF No. 9-3 **Filed 6/27/12** *PageID. 229 page 1 of 5*.

**Third District Court Filing:** ERISA Pension Contract See 1:11-cv-15079-TLL-PTM ECF No. 10-3 **Filed 07/06/12** *PageID. 296 Page 1 of 17*.

**Fourth District Court Filing:** Administrative Record See 1:11-cv-15079-TLL-PTM ECF No. 49 **Filed 2/25/13** *PageID. 1786 1 of 108*.

**Fifth District Court Filing:** See 1:11-cv-15079-TLL-PTM ECF No. 58-3 **Filed 03/20/13** *PageID. 2413 Page 1 of 5*.

District Court denial decision (Case No. 1:11-cv-15079 TLL-PTM ECF No. 61 U.S. District Court June 13, 2013) was determined with all the ***facts in the record*** at trial.

The reversal decision on **Feb 13, 2014** the **6th Circuit Court of appeals** stated:

6th Circuit opinion *Kennard v. Means Industries* (Cited Case No. 13-1911). “***Because there [is] no evidence in the record to support a termination or denial of benefits***, an award of benefits is appropriate without remand to the plan administrator” *Id.* Citing *Shelby Cnty @ 373. (see Kennard v. Means Industries, Inc 555 F. Appx. 555 (6th Cir. 2014) Feb. 14, 2014 Case No: 13-1911 File Name: 14a0130n.06* [emphasis added].

The District Court remand decision back to the plan administrator for calculation of benefits on **June 26, 2014** (See *Kennard v. Means Indus. June 26, 2014 (Case No. 1:11-cv-15079 TLL-PTM ECF No. 76)*).

District Court Stated:

“It is further **ORDERED** that this case is **RE-MANDED** to the Plan Administrator to determine the amount of benefits Kennard is entitled to, retroactive to the date on which benefits accrued under the Plan.”

District Court’s filed documents, states this information was submitted by Means attorney Swanson for *Amsted Pension Administration Center* letter *Feb. 8, 2012 (See 1:11-cv-15079-TLL-PTM ECF No. 9-3 Filed 6/27/12 PageID. 229 Page 5 of 5.)* One(1) year before trial and two (2) years before remand order. Amount entitled to \$836.50 monthly, Retroactive accrued date September 1, 2006. There was nothing else needed to award disability benefits.

What other information was needed for the District Court to determine the amount of monthly

disability pension benefits I was entitled to and when to start, it was in the record.

The District Court Judge committed fraud upon the court in its remand decision in this case, by definition:

“Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. . . . It is where the court or a member is corrupted or influenced or influence is attempted or where the judge had not performed his judicial function – thus where the impartial functions of the court have been directly corrupted.” *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985)

*“Fraud upon the court is conduct “on the part of an officer of the court” that is directed to the judicial machinery itself”; “is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth”; “is a positive averment or concealment when one is under duty to disclose”; “deceives the court.” Carter v. Anderson, 585 F.3d 1007, 1011 (6th Cir. 2009) [emphasis added]*

Any lower court decisions after (see *Kennard v. Means Industries, Inc* 555 F. Appx. 555 (6th Cir. 2014) Feb. 14, 2014 Case No: 13-1911 File Name: 14a0130n.06 were obtained by fraud upon the court Fed. R. Civ. P. 60(d)(3) in court proceedings.

**2. The Circuit Court administered its ruling under a cited definition of fraud upon the court which violated its own fraud upon the court definition.**

This Court should resolve the issue of pre-trial “*duty to disclose*” under Fed. R. Civ. P. 26, in defining fraud upon the court.

The Circuit Court cited:

C. J. S. Judgments 400, Westlaw [N]ondisclosure to the adverse party or court of facts pertinent to the matter before it, without more, does not constitute fraud upon the court.

H.K. Porter Co. v. Goodyear Tire & Rubber Co., 536 F.2d 1115, 1118 (6th Cir. 1976)

(Allegations of nondisclosure during pre trial discovery are not sufficient to support an action for fraud upon the court) (Case No. 18-2270 (6th Cir. April 2, 2019) App. 1-5, pg. 3)

As stated in Circuit Courts reason for denial for fraud upon the court Kennard v. Means Ind., Case No. 18-2270 (6th Cir. April 2, 2019) (App. 1-5) The setoff issue was disclosed and discussed between attorneys, also submitted to the District Court for trial. The information of the phone discussion was concealed from the courts during trial.

The Circuit Court contradicts its own “nondisclosure” cited cases above in their denial definition of fraud upon the court stating:



“Fraud upon the court is conduct “on the part of an officer of the court” that is directed to the judicial machinery itself”; “is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth”; “*is a positive averment or concealment when one is under duty to disclose*”; “deceives the court.” Carter v. Anderson, 585 F.3d 1007, 1011 (6th Cir. 2009) [emphasis added]

The Circuit Court’s denial conflicts with their own and other circuit court’s definition of fraud upon the court:

The requisite fraud on the court occurs where “it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party’s claim or defense.” *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir.1989).

**“Fraud upon the court”** may take the form of a scheme or plan by a litigant, wholly without the involvement of counsel, that is intended to corrupt the court’s decision-making *Toscano v. Commissioner*, 441 F.2d 930, 934-36 (9th Cir. 1971).

Fraud upon the court It strikes a discordant chord and threatens the integrity of the legal system as a whole, constituting “a wrong

against the institutions set up to protect and safeguard the public" (Hazel-Atlas Glass Co. v. Hartford-Empire, 322 U.S. 238, 246 [1944];

"Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. . . . It is where the court or a member is corrupted or influenced or influence is attempted or where the judge had not performed his judicial function – thus where the impartial functions of the court have been directly corrupted." Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985)

---

## REASONS FOR GRANTING WRIT OF CERTIORARI

### A

This Court should grant **Writ of Certiorari** to enforce the rule Fed. R. Civ. P. Rule 26. Duty to Disclose; General Provisions Governing Discovery. This Sixth Circuit Courts own "nondisclosure" cited case violates this Courts rule. The Sixth Circuit Courts definition of fraud upon the court conflicts with its own use and definition. Along with other cases of other Federal Courts use and definition as cited above.

**B**

This Court should grant **Writ of Certiorari**, at this point, the District Court and the Circuit Court of Appeals have supported one another with their definition of fraud upon the court (Fed. R. Civ. P. 60(d)(3), Fed. R. Civ. P. 26 and my 5th and 14th Amendments rights were violated during my trial, according to the factual evidence submitted to the District Court and Appellate Courts.

The District Court and Sixth Circuit Courts failed to follow this Courts Federal Rule of Civil Procedure 26 in Kennard v. Means Industries Inc.

The order of the District Court<sup>4</sup> stating the Pension Plan section 2.3(b) setoff issue not being addressed by the original Plan administrator before remand, was false.

District Court's own filed records show it did receive the document(s) filed by Means' attorney Brian Swanson. These file(s) state: Case No:, document number, date filed with the district court, page I.D. number are stamped at the top of each document.

There is no denying the District Court and defense attorney both withheld information from the original trial Kennard v. Means Industries Inc.

The District Court made its own decision to supersede the 6th Circuit Courts reversal decision to ask for

---

<sup>4</sup> Kennard v. Means Industries, Inc. Aug. 1, 2017 Case No. 11-cv-15079 Doc. 116.

something the District Court already had in its court files. What other calculations were needed for the District Court to determine the amount of monthly disability pension benefits I was entitled to and when to start?

Any lower court decisions after *Feb 13, 2014* date were obtained by fraud upon the court Fed. R. Civ. P. 60(d)(3) in court proceedings and denial of my due process under the 5th and 14th Amendment(s).

### C

This Court should grant **Writ of Certiorari**, to determine if this case meets the requirement of a prima facie case on petitioners behalf, under Federal Rule of Evidence 301. Where there was no rebuttal of the facts stated about the phone conference and conversation settlement pertaining to the language of the Workers Compensation agreement and language of that agreement on appeal by defense attorney to the 6th Circuit Court of Appeals *Kennard v. Means Ind.*, Case No. 18-2270.

### D

This Court's decision of this PETITION FOR WRIT OF CERTIORARI will affect millions of Americans who have cases in federal court where there was information discussed before the actual trial under this Courts Fed. R. Civ. P. 26 and then re-submitted when the decision of the court does not favor either

Plaintiff or Defendant or presiding judges expectations. The presiding judge knew of the defense evidence before trial and made a decision, then allowed the defense evidence in again in future court proceedings after a trial decision and appeal decision were made.

The information may never be properly adjudicated at trial as required by the 5th and 14th Amendment of the U.S. Constitution Due Process.

## **E**

Moreover, this petition for WRIT OF CERTIORARI, raises issues regarding relief available to ERISA benefit plan participants when individuals, officers of the court or fiduciaries actively concealed evidence from a determination or court proceedings in determining the rights to those ERISA plan benefits. Then officers of the court or fiduciary submitting the concealed evidence preventing payment of benefits regulated under ERISA law after a determination or judgment was entered on the language in the ERISA Plan Benefits in question.



**CONCLUSION**

The court should grant Kyle Kennard Petition For  
A Writ Of Certiorari To Review The Judgment Of The  
United States Court of Appeals For The Sixth Circuit.

Respectfully submitted,

Pro-Se Petitioner  
KYLE D. KENNARD  
5912 Maple Rd.  
Vassar, Michigan 48768  
(989) 823-3820  
Email: [kkennard@lssu.edu](mailto:kkennard@lssu.edu)

Date: 07/17/2019