No. 21-1310

In The Supreme Court of the United States

GARNET TURNER, VERNON BENTLEY, JAMES CARTRETTE, WILLIAM HUFF, RICHARD SCHOLL, KATHY SHEPHERD, TED SPIEWAK, and HERBERT VIDALES,

Petitioners,

v.

ALLSTATE INSURANCE COMPANY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

First Question

In this ERISA litigation involving terminated retiree life insurance benefits, whether the Eleventh Circuit properly affirmed that portion of the district court's summary judgment Memorandum Order and Opinion based on the undisputed factual record in holding that the reservation of rights language in the official plan documents unambiguously permitted Allstate to modify or terminate the life insurance benefits.

Second Question

Whether the Eleventh Circuit properly affirmed that portion of the district court's summary judgment Memorandum Order and Opinion based on the undisputed factual record when it analyzed all aspects of 29 U.S.C. § 1113, including allegations of fiduciary duty breaches by omission and determined that the Turner Plaintiffs and Klaas waived any arguments for extending the limitations period based on fraudulent conduct.

CORPORATE DISCLOSURE STATEMENT

Allstate Insurance Company, an Illinois insurance company, is a wholly-owned subsidiary of Allstate Insurance Holdings, LLC, which is a Delaware limited liability company. Allstate Insurance Holdings, LLC is a wholly-owned subsidiary of The Allstate Corporation, a Delaware corporation. The stock of The Allstate Corporation is publicly traded, and no publicly-held entity owns 10% or more of the stock of The Allstate Corporation.

PARTIES TO THE PROCEEDING

Petitioners Garnet Turner, Vernon Bentley, James Cartrette, William Huff, Richard Scholl, Kathy Shepherd, Ted Spiewak, and Herbert Vidales, collectively the "Turner Plaintiffs", along with separate Petitioner John Klaas (whose Petition has been filed and served but not yet docketed), were all plaintiffs in the district court proceeding and appellants in the court of appeals. The complaint of John Klaas, Case No. 2:15-cv-406, was consolidated with that of the Turner Plaintiffs, Case No. 2:13-cv-685. Allstate Insurance Company is the sole defendant in both matters and hereby responds to the Petition of the Turner Plaintiffs (and, to the extent the Court will consider it, to the Petition of Klaas).

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INTRODUCTION AND STATEMENT OF THE CASE

This unsuccessful ERISA class action involves retiree life insurance benefits that were properly terminated by Allstate Insurance Company. The governing plan documents expressly stated Allstate's right to terminate such benefits. Yet both the Turner Plaintiffs and John Klaas seek lifetime vested benefits based on alleged promises that are not in any of the governing plan documents. In 2013, the Turner Plaintiffs, all retired employees of Allstate Insurance Company, filed their action, Case No. 2:13-CV-685, against Allstate for declaratory judgment, injunctive relief, breach of fiduciary duty, and other relief under 29 U.S.C. §§ 1132(a)(1)(B) and (3). Doc. 1. In 2015, Plaintiff John Klaas (and others who are no longer involved) filed a similar action but based on a special retirement option offered to employees in 1994. Klaas's complaint, Case No. 2:15-cv-406, was consolidated with that of the Turner Plaintiffs. *See* Doc. 62.

The named plaintiffs began retiring from Allstate in and after 1991. The summary judgment record established that from 1981 until 1987 Allstate made written representations that retirees would receive "paid up" life insurance benefits, or such benefits "for life", and some of its agents individually made similar oral representations before 1981 and up through 2006. But consistently from 1990 on, Allstate's written plan documents informed participants that it reserved rights to terminate or modify the health and welfare benefits. From 1992 forward, Allstate consistently and

explicitly informed participants that their health and welfare benefits did not vest. Most importantly to the district court and the Eleventh Circuit, by 2007, Allstate provided such notices in plan documents devoted exclusively to retiree life insurance so that there was no mistake that the reservation of rights and non-vesting provisions applied to the life insurance benefits in question.

In July 2013, Allstate decided to cancel the retiree life insurance benefit (effective December 31, 2015) for those who retired between 1990 and 2013. These lawsuits followed that decision. In September 2020, and after voluminous discovery, the trial court found the relevant and material facts undisputed, found no evidence of fraudulent or concealing conduct by Allstate, and granted summary judgment in favor of Allstate. On plaintiffs' claims for declaratory and injunctive relief under the terms of the plan documents, viewed as a claim for recovery of benefits under 29 U.S.C. § 1132(a)(1)(B),[1] the court held that the relevant plan documents, including the no-vesting and reservation of rights provisions, were unambiguous and permitted Allstate to modify or terminate the insurance benefit as it ultimately chose to do. Doc. 431 at 16-28.

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[1] Count 1 in both operative complaints sought a claim for Declaratory Judgment and Injunction. Doc. 44 at 31 and Doc. 62 at 11. Count 3 of the Klaas complaint also asserted breach of contract. Doc. 62 at 15.

In ruling on Plaintiffs' fiduciary duty claim, viewed as seeking equitable relief under § 1132(a)(3),[2] the trial court held that, under 29 U.S.C. § 1113(1)(A), the last misstatement known to have been made by Allstate occurred in 2006. Doc. 431 at 30-31. With respect to any claims of omissions applicable to § 1113(1)(B), the trial court found the governing plan documents from 1990 forward were unambiguous and provided accurate information to retirees about their life insurance benefits. *Id.* at 31-32. The trial court rejected application of the 3-year limitations period based upon actual knowledge, found in 29 U.S.C. § 1113(2), or the extension of limitations to six years from discovery of the alleged fiduciary duty breach in the case of fraud or concealment found elsewhere in § 1113. *Id.* at 32-38. Indeed the court found no evidence existed to establish any fraudulent or concealing conduct. *Id.* at 37-38.

On appeal to the Eleventh Circuit, Plaintiffs renewed their arguments that the plan documents, if considered with the extrinsic historical representations, were ambiguous and thus the reservation of rights and the non-vesting provisions should not preclude their § 1132(a)(1)(B) claims for benefits. Based on a consistent line of authority from this Court and the Eleventh Circuit, the court affirmed the district court ruling that the plan documents were unambiguous and expressly provided Allstate with the right to modify or terminate the welfare benefits, including the

[2] Count 2 in both operative complaints sought a claim for Breach of Fiduciary Duty. Doc. 44 at 32 and Doc. 62 at 12.

life insurance benefit, and that the benefits were not vested under the Plan. App. 12-24.

Regarding the § 1132(a)(3) claims for equitable relief that were barred by the statute of limitations, the Turner Plaintiffs and Klaas attempted to contrast the trial court's 2016 preliminary injunction ruling, finding that evidence of fraudulent conduct by Allstate may exist to warrant relief, with the 2020 summary judgment ruling that found, after extensive discovery, that undisputedly there was no evidence of fraudulent conduct or concealment by Allstate. At the preliminary injunction hearing, the trial court was concerned that Allstate's historical representations may have only been intended to apply to other ERISA benefits (medical, dental, etc.) that did not include the life insurance benefit. In 2020, after discovery, the trial court found no evidence of fraudulent conduct and noted that from 2007 forward, Allstate's reservation of rights and nonvesting provisions were in plan documents devoted only to the life insurance benefit, and thus there could be no confusion that the reservation of rights applied to the life insurance benefit. Because the last alleged historical representations were made in 2006, the trial court granted summary judgment based on statute of limitations, claiming that the last act of any possible breach occurred more than six years before the lawsuits were filed.

On appeal of the limitations ruling, the Turner Plaintiffs and Klaas focused on § 1113(1), and presented *no* argument that the limitations period was either three years from actual knowledge or should be

extended because of fraud or concealment. The Eleventh Circuit discussed all parts of § 1113 and affirmed the district court's holding that the last act of any claimed misstatements occurred in 2006, that any omissive failure to correct or clarify misrepresentations were certainly made by 2007 when Plaintiffs received plan documents, here annual Summary Plan Descriptions ("SPDs") specific to the retiree life insurance that contained the reservation of rights and no-vesting provision, and that the 2013 notice terminating the benefit was not applicable because it was not a fiduciary act. App. 24-29. In footnote 7 of the majority opinion, consistent with the concurring opinion, the court pointed out that Plaintiffs abandoned on appeal any arguments of fraud or concealment. App. 27. In a concurring opinion, Judge Brasher considered an alternative argument about potentially misleading statements, but readily concluded that the appellants had not raised such a claim and it was therefore waived as a matter of law. App. 32-33.

REASONS FOR DENYING THE PETITION

I. The Benefit Claim Under 29 U.S.C. § 1132(a)(1)(B) Raises No Issue Meriting This Court's Review And Was Correctly Decided

The Turner Plaintiffs do not dispute or challenge the Eleventh Circuit's decision regarding their claim for insurance benefits under § 1132(a)(1)(B), and this aspect of the case fits squarely within this Court's prior

decisions in *M&G Polymers USA, LLC v. Tackett*, 574 U.S. 427 (2015) and *CNH Industrial, N.V. v. Reese*, 538 U.S. ___, 138 S. Ct. 761 (2018) that welfare benefits must be found in the written plan documents, that ERISA provides no substantive rights to health and welfare benefits, and that the vesting of such benefits, not required by law, must be expressly stated. *See also Schena v. Metro. Life Ret. Plan*, 244 Fed. Appx. 281 (11th Cir. 2007); *Jones v. Am. Gen. Life and Accident Ins. Co.*, 370 F.3d 1065 (11th Cir. 2004); and *Alday v. Container Corp.*, 906 F.2d 660 (11th Cir. 1990). While Klaas does contend the Eleventh Circuit erred here based on a 1994 special retirement option, he presents no arguments as to why this Court should hear this appeal other than his disagreement with the court's review of the summary judgment factual record. Indeed, the Eleventh Circuit specifically noted that the option alerted participants that "benefits, plans and programs . . . may be modified or terminated at any time", and referenced participants to the "summary plan description for details." Op. at 21.

Klaas then tries to suggest a circuit split now exits with the Third Circuit's decision in *In re New Valley*, 89 F.3d 143 (3d Cir. 1996) regarding courts' ability to review extrinsic evidence to determine if the plan documents were ambiguous. But *New Valley* involved a non-ERISA top-hat plan not subject to ERISA's writing requirements. The district court and the Eleventh Circuit readily and correctly distinguished this matter from *New Valley*. The Klaas petition in this respect presents nothing more than a request for fact-bound

review by this Court of a summary judgment factual record. Such a request does not merit plenary review.

II. The Eleventh Circuit's Decision Does Not Create A Circuit Split Regarding Fiduciary Duties Or Limitations

The Turner Plaintiffs try to suggest that the Eleventh Circuit's decision here with respect to ERISA's statute of limitations conflicts with the Second Circuit's decision in *Sullivan-Mestecky v. Verizon Comm'ns, Inc.*, 961 F.3d 91 (2d Cir. 2020). That opinion does not deal with the statute of limitations of 29 U.S.C. § 1113, and it is entirely consistent with the Eleventh Circuit here. Both recognize the possibility that omissions can form the basis of ERISA fiduciary duty claims, and both dismissed claims under §§ 1132(a)(1)(B) and (a)(3). What is unique here, but certainly was not at issue in *Sullivan-Mestecky*, is that the Eleventh Circuit determined on the unique facts of this case that any potential omission claims ended by 2006 when Allstate agents stopped making allegedly problematic statements, coupled with specific corrective language found in life insurance plan documents that expressly informed retirees their benefit had not vested and that Allstate reserved the right to terminate the benefit.

III. The Eleventh Circuit's Decision Does Not Deprive ERISA Participants Of A Remedy

The Turner Plaintiffs and Klaas imply that unless this Court acts, countless ERISA plan participants may be left without remedies based on statute of limitations concerns. That is simply not the case. The Turner Plaintiffs and Klaas pursued their fiduciary duty breach claims by focusing on Allstate's historical representations that it was providing "paid up" life insurance "for life". They now attempt to characterize their situation as a Catch-22, that Allstate stopped making "misrepresentations" in 2006, thus beginning the limitations clocks, but did not take away the benefit itself until 2015, after limitations expired. Therefore, the Turner Plaintiffs and Klaas contend they had no standing to sue before the benefit was actually taken away. That, however, mischaracterizes the circumstances.

A. Plaintiffs Waived Claims That Allstate Defrauded Them

The Turner Plaintiffs contend that they lacked standing to file suit before Allstate terminated their insurance benefit in 2013, but if they really believed Allstate purchased the wrong policy, one that should have contained vested benefits, they knew that and could have sued years ago. If the fiduciary duty breach is cast in this light, that Allstate in essence provided a group life policy on a "term" basis when it promised "paid up" (essentially equivalent to "whole" life policies), the trial court found, after extensive discovery by the parties,

no evidence that Allstate committed fraud by saying one thing, doing another, and then trying to conceal its conduct from the Turner Plaintiffs. The trial court also noted that the Turner Plaintiffs specifically alleged in their complaint that Allstate began paying their premiums upon retirement, indicating that they knew the group policy was not "paid up" and Klaas even received W-2 statements over time showing the premium payments being made on an ongoing basis. Doc. 431 at 36-37. This led the Eleventh Circuit to conclude that the Turner Plaintiffs and Klaas waived their arguments of fraud or concealment, and thus waived any arguments that limitations should be tolled on the basis of such alleged misconduct. If the Turner Plaintiffs and Klaas truly believed Allstate breached duties to them by buying the wrong product, they certainly had standing to sue long ago and simply sat on their rights.

B. Allstate Corrected Any Omissions In The Plan Documents

If the fiduciary duty breach is cast instead, as the Turner Plaintiffs and Klaas actually presented the case to the Eleventh Circuit, that Allstate failed to adequately correct its previous statements made outside of the plan documents, the Eleventh Circuit properly ruled that the summary judgment record did not support such a claim. Instead, the evidence established that Allstate long ago corrected any such misconduct by ceasing further misstatements and by consistently and correctly stating the situation in plan documents from 1990 forward, and specifically in plan documents

devoted to the life insurance benefit alone from 2007 forward.

While the Turner Plaintiffs suggest the Eleventh Circuit did not review their limitations arguments based on omissions and § 1113(1)(B), they misread the opinion. The appellate court addresses the possibility of a plan administrator failing to correct a misrepresentation, but the court discounts this argument, agreeing the district court's factual determination that Allstate "clarified that confusion by issuing subsequent SPDs that included reservation-of-rights provisions." App. 28. Indeed, as the Turner Plaintiffs themselves argue in several places within their petition,

> Allstate's breach or violation could have been cured by purchase of paid-up policies, *or by communications specifically dispelling the prior representations*, at any time before Allstate's final decision—conveyed by the July 2013 letter—to terminate retiree life insurance.

Turner Pet. at 11-12 (emphasis added). Communicating and dispelling any prior potential misrepresentations long before petitioners filed their claims is effectively what both the district court and the Eleventh Circuit determined Allstate did. The Turner Plaintiffs complain that this essentially converts a limitations ruling into a decision on the merits. Turner Pet. at 14. Indeed, so. That is precisely why the Eleventh Circuit concluded there was no legitimate benefits claim under § 1132(a)(1)(B) and why it determined

that anything remotely amounting to a fiduciary duty breach was well in the past, long ago corrected, and certainly long barred by the applicable limitations provisions in ERISA.

CONCLUSION

The petitioners fail to identify a Circuit split or any other basis for exercising this Court's plenary review. Instead, they present issues they waived below or seek this Court's review of a factbound summary judgment determination on which two lower courts have agreed. Allstate respectfully requests that the Court deny the petitions for certiorari.

Respectfully submitted,

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