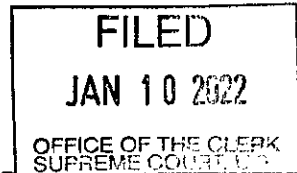


No. **21-6906** **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES



SAMANTHA J JACKSON

— PETITIONER

(Your Name)

vs.

AT&T RETIREMENT SAVINGS PLAN, et

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SAMANTHA JACKSON

(Your Name)

221 TENNESSEE STREET

(Address)

LAFAYETTE, LA 70501

(City, State, Zip Code)

337 380-3750

(Phone Number)

QUESTION(S) PRESENTED

Question 1: Did the district court require the Defendants to adhere to the rules regarding a Motion 12(b)(6) which prohibits claims asserted in a prior iteration of the complaint from being defended in the subsequent motion. Were the ERISA breach of fiduciary duty claims revived when the Defendants plead a new defense in their new Motion to Dismiss?

Question 2: The district court initially opined that the Plaintiff asserted valid ERISA breach of fiduciary duty claims. It later applied the settlor's function (Two-hats Doctrine) to the ERISA breach of fiduciary duty claims, stating that AT&T, Inc., the Plan sponsor, was acting in an employer's capacity when the alleged actions were committed -- amended plan, submitted supplemental income payout information; and calculated, withheld and remitted contributions.

A. Under the Settlor's function (Two-hats doctrine), AT&T, Inc., the Plan sponsor, would have only be acting in an employer's capacity when amending the plan if the amendment named the correct plan. Did the district court error in it's decision considering that the name on the amendment was different than the name of the Plan the Plaintiff participated in?

B. Actions committed in regards to the contributions of the Savings and Pension Plans are committed in a fiduciary capacity. Did the district court error when it dismissed all claims by stating that AT&T, Inc. was acting in an employer's capacity all actions were committed?

Question 3: Did the district court error when it failed to (1) accept the factual allegations set forth in the complaint as true, (2) draw all reasonable inferences in favor of the plaintiff, (3) address claims asserted against each defendant, and (4) use exhibits that support the claims to opine the claims?

Question 4: Reviewing a case de novo includes addressing the issues presented in the opposition to the report and recommendations and the questions presented in the appeal, and detailing the court's reasoning for it's decision. Did the District Court and the Appellate court address the issues/questions presented for their de novo review, and what of it's reasoning? Did their failure to address the issues/questions presented cause them not to realize the errors the Plaintiff had shown?

Question 5: Final judgements can be reversed for mistakes and inadvertence. Should the Court have reversed the district court's decision based on the errors shown?

LIST OF PARTIES

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

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

AT&T RETIREMENT SAVINGS PLAN; AT&T PENSION BENEFIT PLAN MOBILITY PROGRAM;
AT&T INCORPORATED; AT&T SERVICES, INCORPORATED; FIDELITY WORKPLACE
SERVICES, L. L. C.; AT&T MOBILITY SERVICES, L. L. C.

RELATED CASES

Jackson v. AT&T Retirement Savings Plan, et al, No.19-cv-116, U.S. District Court Western District of Louisiana. Judgement entered on March 25, 2020.

Jackson v. AT&T Retirement Savings Plan, et al, No. 20-30255, U.S. Court of Appeals Fifth Circuit. No judgement has been entered at this time.

Jackson v. AT&T Retirement Savings Plan, et al, No. 21-30052, U.S. Court of Appeals Fifth Circuit. Judgement entered on March 31, 2021.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A	ORDER OF UNITED STATES COURT OF APPEALS DENYING APPEAL
APPENDIX B	DECISION OF WESTERN DISTRICT OF LOUISIANA LAFAYETTE DIVISION
APPENDIX C	ORDER OF U. S. COURT OF APPEALS DENYING REHEARING AND REHEARING EN BANC
APPENDIX D	N/A
APPENDIX E	N/A
APPENDIX F	N/A

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937 1949, 173 L.Ed.2d 868 (2009)	5
Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); OSU Student All. v. Ray, 699 F.3d 1053, 1061 (9th Cir. 2012)	5
Camp v. Shannon, 162 Tex. 515, 348 S.W.2d 517, 519 (Tex. 1961); IAC, Ltd. v. Bell Helicopter Textron, Inc., 160 S.W.3d 191, 197 (Tex. App.—Fort Worth 2005, no pet.)	5
Iqbal, 129 S.Ct. at 1949, 1955, 1965, 1974, 167 L.Ed.2d 929 (2007) (citing Twombly, 550 U.S. at 556, 570.); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)	5
Pegram v. Herdrich, 530 U.S. 211, 225 (2000).	5
Timson v. Sampson, 518 F.3d 870, 872 (11th Cir.2008) (per curiam).	5

STATUTES AND RULES

Federal Rules of Civil Procedure 12(b)(6)
Standard on Motion to Dismiss for Failure to State a Claim for Relief.

Federal Rules of Civil Procedure 60(b)

ERISA § 3(21), 29 U.S.C. § 1002(21).

OTHER

N/A

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 ^C_____ to the petition and is

☐ reported at _____; 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 August 16, 2021.

☐ 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: November 15, 2021, 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. § 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

Federal Rules of Civil Procedure 12(b)(6)

The Standard on a Motion to Dismiss for Failure to State a Claim for Relief states that a Court must accept the factual allegations set forth in the complaint as true, and that all reasonable inferences should be drawn in favor of the plaintiff. To show a probable right of recovery, an applicant must present evidence that, under the applicable rules of law, tends to support its cause of action. Claims that were asserted in prior iterations of the complaint cannot be revived.

60(b) of the Federal Rules of Civil Procedure states, "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)."

ERISA provides that a person is a fiduciary with respect to a plan to the extent that "he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets ... or he has any discretionary authority or discretionary responsibility in the administration of such plan." ERISA § 3(21), 29 U.S.C. § 1002(21). The settlors function, known as the "Two-Hats" Doctrine, states that all actions regarding the contributions for the Savings and Pension plans are actions committed in a fiduciary capacity.

STATEMENT OF THE CASE

Plaintiff brought suit under ERISA on January 29, 2019. On March 25, 2020, the district court entered a final judgment dismissing Plaintiff's claims with prejudice. The Plaintiff filed a timely notice of appeal on April 9, 2020 (appeal number 20-30255). The Defendants filed a cross-appeal. The Appellant filed a Motion to Supplement the Record on Appeal, and Rule 60 (b) and 62.1(a) Motion were denied on December 22, 2020. The Notice of Appeal, Motion for Reconsideration and timely Motion for Rehearing and Rehearing En Banc were denied on November 15, 2021.

The district court previously denied the Defendants' Motion to Dismiss the ERISA breach of fiduciary duty claims, and ordered that an amendment be filed for details regarding the timeliness of those claims. The Defendants revived the ERISA breach of fiduciary duty claims in their new Motion to Dismiss pleading the Settlor's function, "Two-Hats" Doctrine". In this, they disregarded the Court's order which stated that they should only urge a motion regarding the timeliness of the ERISA breach of fiduciary duty claims.

The district court misapplied the "Two-Hats" Doctrine, and failed to address the claims against AT&T Mobility, AT&T Services, Fidelity and the Plans.

REASONS FOR GRANTING THE PETITION

The petition should be granted for the following reasons:

1. The Petitioner has timely filed the Notice of Appeal;
2. The Court failed to accept all of the factual allegations set forth in the complaint as true and construe them in the light most favorable to plaintiff. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *OSU Student All. v. Ray*, 699 F.3d 1053, 1061 (9th Cir. 2012); *Timson v. Sampson*, 518 F.3d 870, 872 (11th Cir. 2008) (per curiam).
3. The court failed to ensure that all reasonable inferences were drawn in favor of the plaintiff, even when she showed a probable right of recovery by presenting evidence (exhibits) that, under the applicable rules of law, supported her cause of action. It focused on its own thwarted assertions as well as those made by the defendants, and dismissed the claims even though it had not addressed each claim asserted against each of the Defendants.
4. The court allowed the Defendants to revive the ERISA Breach of Fiduciary Duty Claims, that were previously determined to be valid, to plead a new defense to the claims. The Fed. R. Civ. P. 12(b)(6) states that claims that were asserted in prior iterations of the complaint cannot be revived.
5. The Defendants were, in fact, acting in their fiduciary capacity when the ERISA breach of fiduciary duty claims were committed. ERISA provides that a person is a fiduciary with respect to a plan to the extent that "he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets ... or he has any discretionary authority or discretionary responsibility in the administration of such plan." ERISA § 3(21), 29 U.S.C. § 1002(21). The employer may take actions to the disadvantage of employee beneficiaries, when they act as employers (e.g., firing a beneficiary for reasons unrelated to the ERISA plan), or even as plan sponsors (e.g., modifying the terms of a plan allowed by ERISA to provide less generous benefits). " *Pegram v. Herdrich*, 530 U.S. 211, 225 (2000). all actions regarding the contributions for the Savings and Pension plans are actions committed in a fiduciary capacity.
6. The petition should be granted due to the district court's errors - misapplied the "Two-Hats"

Doctrine when it erroneously determined that AT&T, Inc., the Plan sponsor, was the Plaintiff's employer, and that AT&T, Inc., was acting in an employer's capacity when AT&T Mobility and AT&T Services committed the complained of actions regarding the contributions. In 2021, AT&T Services began remitting the contributions in a timely manner.

7. The Appellate court did not address the questions presented in the appeal, failed to provide reasoning for it's determination then denied the Rehearing and the Rehearing En Banc.

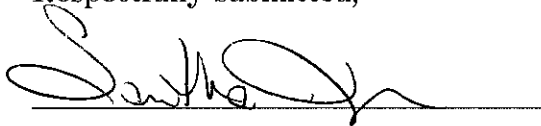
8. The petition should be granted so that justice can be obtained to the fullest extent of the law.

6

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



January 10, 2022

Date: _____