

No. 21-6982

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT STANLEY GORDON
Petitioner,

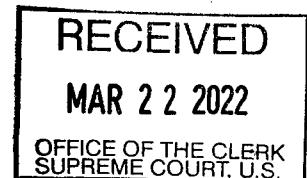
v.

METROPOLITAN LIFE INSURANCE COMPANY
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Reply Brief

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Questions Rejected

Respondent MetLife rejected the Plaintiff's questions from his Petition For Writ of Certiorari and re-words them to give completely new meanings in their Brief in Opposition.

- 1) The first question began as, "Whether ERISA long-term disability benefits can be denied after years of plan concealment.", meaning, as written in the Petition For Writ of Certiorari, "should MetLife, who repeatedly denies disclosure of their plan, plan documents, and other documents because they may have determined that they are irrelevant (SER 003) long enough (many years) to cause them to become the plan administrator, be allowed to deny benefits?"

MetLife interpreted this as "Whether the Court of Appeals for the Ninth Circuit properly upheld the decision of the United States District Court for the Northern District of California, which had determined on de novo review that Gordon's claim for long term disability benefits was not supported by the record that was before the District Court."

The record that was before the District Court was the "administrative record" that was written and maintained by MetLife (ADMIN Document 63, page 2), without certain parts that MetLife had probably determined was irrelevant (SER 003).

- 2) The second question began as "Whether a conflict of interest is acceptable when a defendant retains custody of evidence against them.", meaning, "Should ERISA law allow defendants sole discretion in deciding the relevance of evidence in legal disputes?"

MetLife interpreted this as “Whether the Court of Appeals for the Ninth Circuit correctly rejected Gordon’s attempt to raise for the first time on appeal matters that were said to call into question the decision of the District Court.”,

This is the same result as found in above, in question number 1. The record that was before the District Court was also before the Court of Appeals for the Ninth Circuit and was the “administrative record” that was written and maintained by MetLife (ADMIN Document 63, page 2), without certain parts that MetLife had probably determined was irrelevant (SER 003).

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:

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JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 27, 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: May 25, 2021 and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

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).

Statement of the Case

Introduction. First, the Plaintiff (myself) would like to apologize for any lack of content or proper procedure. He was recently informed that his health status has hit the lowest point possible, short of death. Last week he had surgery and has now been classified as terminal with stage IV pancreatic cancer. Yesterday, he started another round of chemotherapy, but has been told that it may not help much to improve or extend the time he has remaining. In fact, it will probably increase the amount of pain the Plaintiff experiences for just the short amount of added time he may receive from it. In fact, he has considered whether or not he should even pass on that treatment.

On numerous occasions, MetLife had wrongly and unfairly condemned the Plaintiff's actions on the following pages of their Brief in Opposition:

On page 10 (PDF page 16), MetLife attempts to discard the Plaintiff's cause to benefit the nation by questioning potential relief against them, regarding the ability to conduct what they call an "OCR search" of their managed record used in this case. His purpose was to address inconsistencies that may affect how the Federal Rules of Evidence are applied between various districts and circuits. Since it would benefit the Plaintiff's district, it would have in turn benefited the nation.

On page 3, MetLife states, "Gordon argued that documents were "missing" from the District Court's record". Again, they attempt to conceal the truth because it's their record, NOT the court's record. The Plaintiff's Petition states on numerous occasions that letters and documents were missing from the "administrative record", which MetLife wrote is maintained by MetLife (ADMIN Document 63, page 2), and which applies

to the missing letters and documents of the defendant-managed (MetLife) administrative record as described on the following pages of the Plaintiff's petition:

- 1) On page 2 (PDF page 9), the Plaintiff states, "documents (SER 002) that had become unavailable and possibly incorrectly determined as irrelevant (SER 003) in the defendant-managed administrative record".
- 2) On page 1, he states, "the administrative record does not include these documents".
- 3) On page 6, he states, "documents from the plaintiffs wrongful termination suit were transmitted to MetLife, but do not appear in the administrative record."
- 4) On page 12, he states, "that letter cannot be found in the administrative record".

On page 7, MetLife states, "The Petition claims records requests were "refused," but the referenced pages show only that documents were requested." This too, attempts to conceal the truth. There are at least a half-dozen letters sent to MetLife stating that record requests were refused and not just requested:

- 1) On January 8, 2010 (ADMIN 001097): Mr. Fleishman (the Plaintiff's former attorney) stated, "Since then I have requested several times that you provide me with the Plan documents which provide this limitation. You have repeatedly refused to do so." Was this a request or a refusal?
- 2) On December 14, 2009 (ADM1N 001431): Mr. Fleishman stated, "It has been over a month since I asked for these items. ERISA regulations require that you send me those documents in a timely manner."

- 3) On May 12, 2010 (ADMIN 001063): Mr. Fleishman stated, "I have asked MetLife for the plan document several times but have never been provided it."
- 4) On May 25, 2010 (ADMIN. 001057): Mr. Fleishman stated, "I have asked MetLife for the plan document governing Mr. Gordon's claim several times but have never been provided it."
- 5) On June 22, 2010 (ADMIN 001056): Mr. Fleishman stated, "I also asked for the plan document governing Mr. Gordon's claim several times but have never been provided it."
- 6) On July 9, 2010 (ADMIN 001054, 001055): Mr. Fleishman stated, "It has been-well over 30 days since then and I still have not been provided these documents." and "Regarding the claim file that I also sought, you had no excuse for not providing it to me."
- 7) On August 11, 2010 (ADMIN 001053): "Despite my many requests for the claim file and plan documents I have received no response from you."

There are many more examples of wrongful and unfair condemnation. However, the Plaintiff's health is failing and will not be able to list all of them. I hope this was enough.

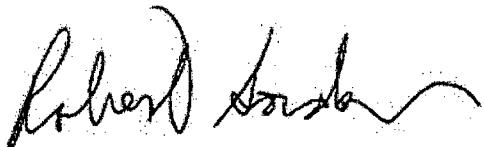
REASONS FOR GRANTING THE PETITION

- 1. Evidence** - Documentary evidence quality policies vary too greatly across the circuits and districts.
- 2. Concealment** - MetLife's number one priority.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert S. Balmer".

Date: March 17, 2022