No. _____

In The

Supreme Court of the United States

JOHN KLAAS,

Petitioner,

v.

ALLSTATE INSURANCE COMPANY,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

First Question

In an issue of critical importance affecting approximately hundreds of Allstate retirees, as well as ERISA beneficiaries elsewhere, who retired early upon the promise, *inter alia*, of life insurance benefits for the remainder of their lives, the Eleventh Circuit held that Allstate effectively reserved the right to cancel *all* the promised benefits at any time, even the day after the employees accepted the early retirement and signed waivers of valuable legal rights based upon promises of retirement benefits. The question is this: *Did the Eleventh Circuit critically err by concluding that the written agreements by the parties unambiguously reserved to Allstate the right to terminate all those benefits?*

Second Question

The Plaintiff in this case fully supports the Petition filed by the *Turner* Plaintiffs in the companion action filed this date with the Court in all respects and respectfully requests that this Court grant the aforesaid Petition. *Did the Eleventh Circuit critically err by applying the limitations period at 29 U.S.C. 1113(1)(A)? Was the Eleventh Circuit required to analyze Plaintiffs' fraud claims under an "in equity" standard, as opposed to "in law," and by not doing so, does its decision conflict with Cigna v. Amara?*

PARTIES TO THE PROCEEDING

Petitioner John Klaas was a plaintiff in the district court proceedings and an appellant in the court of appeals proceedings. The court of appeals refers to him and his fellow retirees as the "Klaas retirees." App. 8-10. Respondent Allstate Insurance Company was the defendant in the district court proceedings and an appellee in the court of appeals proceedings.

RELATED CASE

The *Turner* Petitioners' district court proceedings (*Garnet Turner, et al. v. Allstate Insurance Company*, Case No. 2:13-cv-685) were consolidated with *John E. Klass, et al. v Allstate Insurance Company*, Case No. 2:15-cv-406, and their court of appeals proceedings included the appeal of the *Klass* Plaintiff. *Turner* is the related case.

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PETITION FOR A WRIT OF CERTIORARI

John Klaas petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The Eleventh Circuit's opinion is reported at *Klaas v. Allstate Ins. Co.*, No. 20-14104, 2021 U.S. App. LEXIS 38473 (11th Cir. Dec. 28, 2021), 21 F.4th 759, and reproduced at App.1-33. The opinion of the District Court for the Middle District of Alabama is reported at *Turner v. Allstate Ins. Co.*, 491 F. Supp. 3d 1190 (M.D. Ala. 2020), and reproduced at App.34-78.

JURISDICTION

The Eleventh Circuit entered judgment on December 28, 2021. App.1-2. This Petition is timely filed after that judgment. *See* Supreme Court Rules 13.1, 30.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

This case involves the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq*. including specifically ERISA § 502(a)(1)(B), ERISA § 502(a)(1)(b), and ERISA § 502(a)(3).

INTRODUCTION AND STATEMENT OF THE CASE

In this action, Petitioner seeks a declaratory judgment, injunctive relief and other appropriate relief related to Allstate's attempt to terminate retiree life insurance benefits promised to its employees who were eligible for and decided to participate in a Special Retirement Opportunity (the "SRO") offered by Allstate to its home office employees in 1994.

In 2013, Allstate announced that it planned to terminate this promised life insurance benefit effective December 31, 2015. Appellant claims that termination of the retiree life insurance gave rise to a breach of contract type of claim for plan benefits pursuant to ERISA § 502(a)(1)(B), an equitable estoppel action pursuant to ERISA § 502(a)(1)(b), and/or a breach of fiduciary duty action pursuant to ERISA § 502(a)(3).

The SRO was offered to Allstate home office employees in 1994, the intent being to reduce the infrastructure of Allstate. To induce employees to accept early retirement, the SRO promised certain benefits to which the employees were not previously entitled, including enhanced retirement benefits, salary continuation, retiree medical insurance and the no cost retiree life insurance at issue in this case, which insurance was not previously guaranteed to employees upon their retirement, since such benefits were cancellable "at any time" according to the terms of Allstate's Summary Plan Descriptions.

At page 2, the SRO Details booklet stated:

> The Special Retirement Opportunity (SRO) is an offer to eligible home office employees to take advantage of salary continuation, retiree medical **and life insurance benefits** and an enhanced retirement benefit if they retire from Allstate on November 30, 1995. (Emphasis supplied).

The SRO Details booklet, together with other SRO documentation, also outlined the amounts of retiree life insurance coverage offered under the SRO, which varied according to the following formula:

> If you were insured under the plan on August 31, 1987, your retiree life insurance benefit **is** equal to the greater of:
>
> • 40% of the amount you were insured for as of August 31, 1987, but not more than $100,000; or
>
> • One times your qualified annual earnings on the date you retire, but not more than $10,000.
>
> If you became insured under the plan on or after September 1, 1987, your retiree life insurance benefit **is** one times your qualified annual earnings on the date you retire, but not more than $10,000. (Emphasis supplied).

Further, the SRO Details booklet stated:

> Retiree life insurance is provided **at no cost to you**. See your summary plan description for details. *Id.*, pg. 18. (Emphasis supplied)

> The SRO Details booklet clarified that the benefits the SRO provided were different and superseded normal retirement conditions:
>
> Benefits payable pursuant to the SRO, including benefits payable under the Plan, **supersede** all salary continuation, service allowance, and severance benefits payable under any other Allstate plan, policy, or agreement. (Emphasis supplied)

To obtain the benefits of the SRO, each SRO eligible employee was required to sign an SRO Election Form on or before December 2, 1994, a form which was designed to invoke for Allstate the protections of the waiver provisions of the ADEA, as amended by the OWBPA. The SRO Election Form, which indicated whether or not the employee had decided to accept the SRO, contained a General Release and Waiver Agreement ("SRO Release").

The SRO Release contained the following language:

> **In consideration for the benefits I will receive under the Allstate Retirement opportunity ("SRO")** for eligible employees of Allstate Insurance Company ("Allstate"), I . . . release waive and forever discharge Allstate . . . from any and all liability . . . arising out of, or connected, with my employment with Allstate . . . including any claim for age, race, color, religion, sex, national origin, or other types of discrimination under the Age Discrimination in Employment Act of 1967 . . . or any similar law . . .

I acknowledge that:

. . .

(g) **I understand that *any* SRO benefits paid or granted to me represent consideration for signing this Agreement and are not salary, wages or benefits *to which I was already entitled.*** (Emphasis supplied)

The SRO Release also contained an integration clause which read:

> **This agreement contains the entire Agreement between me and Allstate with respect to this subject matter . . . "**

Importantly, *there is no reservation of rights language in the SRO Release* which would allow Allstate to cancel the benefits offered to the SRO retirees *at any time.*

The Plaintiff timely appealed the final judgment to the Eleventh Circuit. Doc 433.

The Eleventh Circuit affirmed the judgment and held that SRO booklet's reservation-of-rights provisions resemble provisions we and other circuits previously interpreted as unambiguously allowing an employer to terminate a benefit plan. App. 19.

The Court concluded that it was not convinced that the aforesaid language could be reasonably interpreted as reserving the right to Allstate to terminate such benefits any time prior to the retirees' acceptance of the SRO and execution of the SRO release. In so

doing, the Court attempted to distinguish the Third Circuit decision in *In Re New Valley Corp.*, 89 F.3d 143 (3d Cir. 1996). However, the Court did not address the existence of the integration clause in the SRO Release in ruling against the SRO Retirees, which issue was directly raised by Klaas upon oral argument of the appeal.

REASONS FOR GRANTING THE PETITION

1. The Eleventh Circuit Critically Erred by Concluding that the Reservation of Rights language in the SRO Booklet did not Conflict with the Integration Clause of the OWBPA Waivers Signed by SRO Retirees.

Integration clauses are commonly used contract provisions to insure that the parties do not seek to use extrinsic evidence to alter or vary the terms of their contract. *Air Safety, Inc. v. Teachers Realty Corp.*, 706 N.E. 2d 882 (Ill. 1999). Such clauses are routinely enforced and here would preclude the reservation-of-rights language found in either the SRO Booklet or any summary plan descriptions from granting Allstate the right to terminate the benefits offered in the SRO upon which the SRO Retirees were counting.

Under Illinois law, the situs of the execution of the SRO Releases, parties to a contract including an integration clause cannot rely upon extrinsic evidence, such as the SRO Details Booklet, to supply terms not found in their contract. Therefore, the importation of

the reservation-of-rights language in the SRO Details Booklet, or any subsequent or even contemporary summary plan description would be prohibited. *See also Lewitton v. ITA Software, Inc.*, 585 F.3d 377 (7th Cir. 2009) and *Colagrossi v. UBS Securities, LLC*, 2014 WL 2515131 (N.D. Ill., 2014).

The Circuit Court simply missed the existence of the SRO Release integration clause and neglected to address its significance.

2. The Eleventh Circuit Critically Erred in Concluding that the SRO Details Booklet Unambiguously Reserved to Allstate the Right to Terminate All of the SRO Retirement Benefits (Even the Salary Continuation Benefits) at any Time.

One need only to look at the terms of the SRO Details booklet to illustrate how clear it was to the SRO participants that the benefits offered under the SRO, including retiree life insurance, were *not* susceptible to cancellation or modification since, according to Allstate, the SRO amended and superseded Allstate's welfare benefits plan.

The question is not whether the SRO retirees received *any* consideration for their agreement to retire early and execute waivers. Rather, the pertinent issue on this appeal is whether Allstate's reservation of rights language allows the cancellation of *all* or any of the SRO benefits "at any time," which, of course, would include a time prior to the conveyance of those

bargained-for benefits to SRO retirees. It would also include the salary continuance promised to the retirees.

In other words, can Allstate's language lawfully support denying those benefits to employees who, in reliance of the promise of those benefits, voluntarily surrendered their positions at Allstate and retired early? Any reasonable interpretation of that language would mandate an exactly opposite finding than that of the Circuit Court.

The SRO retirees had every right to expect that the coverage promised would last them and their families the rest of their lives. If Allstate intended otherwise, it is unlikely many employees would have elected early retirement and Allstate would have failed to clearly communicate its intentions in violation of both ERISA and ADEA/OWBPA requirements.

Appellant claims that the terms of the SRO and other Allstate plan documents are at least ambiguous with respect to Allstate's right to terminate the retiree life insurance. Appellant also believes the documentation, taken as a whole, has only one logical interpretation and asks this Court to declare that, as a matter of law, the SRO life insurance benefits were not cancellable once the SRO retiree accepted the SRO offer of early retirement.

As noted above, all proposed SRO Class Members executed a Release waiving claims under the ADEA/OWBPA when he or she accepted the SRO. The ADEA/OWBPA requires that such a waiver must be "in

exchange for consideration in addition to anything of value to which the individual is already entitled." ADEA § 7(f)(1)(D). Yet, Allstate claims it reserved the right to modify or terminate *all* benefits under the SRO, not just the retiree life insurance. Such interpretation would render all of the SRO consideration illusory at best. Furthermore, this interpretation would be in violation of the express provisions of the ADEA. This simply cannot be; nor does it represent the understanding of the Allstate employees who both participated in the creation of the SRO and accepted early retirement under the terms of the SRO.

Therefore, the only permissible interpretation of the SRO documentation precludes post-retirement termination of benefits. By contrast, Allstate's interpretation, which never entered into Allstate's consideration when it decided to cancel the benefit, at a minimum, raises an ambiguity which requires a trial to determine the intent of the parties.

Therefore, Allstate's interpretation of the SRO documentation to justify its decision to terminate the retiree life insurance directly contradicts what it communicated to SRO participants when the SRO was offered and violates ERISA § 404(a). Furthermore, Allstate's interpretation would render the waivers it obtained from the SRO retirees violative of the ADEA and, thus, as shown below, cannot withstand scrutiny.

When an ERISA plan is ambiguous, "[t]he issue becomes one of contract interpretation, and, if necessary, a consideration of the relevant extrinsic evidence

and the parties' course of dealing." *First Capital Life Ins. Co.-In Conservation v. AAA Commc'ns, Inc.*, 906 F. Supp. 1546, 1556 (N.D. Ga. 1995), *aff'd sub nom. First Capital v. AAA Commc'ns*, 104 F.3d 371 (11th Cir. 1996) (internal citation omitted); *see also Stewart v. KHD Deutz of America Corp.*, 980 F.2d 698 (11th Cir. 1993) (where labor contracts regarding ERISA plan coverage were ambiguous, the district court should have examined extrinsic evidence to resolve ambiguity); *In Re Unisys Corp.*, 58 F.3d 896 (3d Cir. 1995) (extrinsic evidence is properly considered if an ERISA plan is ambiguous). Further, effect should be given to all of a contract's provisions wherever possible. *Id.*, citing *Stewart*, 980 F.2d at 703.

"Courts construe ERISA plans, as they do other contracts, by 'looking to the terms of the plan' as well as to 'other manifestations of the parties' intent.'" *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 102, 133 S. Ct. 1537, 1549, 185 L. Ed. 2d 654 (2013) citing *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 113, 109 S. Ct. 948, 103 L. Ed. 2d 80 (1989). The words of a plan may appear clear, but they may at the same time "leave gaps". *Id.* A court must "look outside the plan's written language" to decide what an agreement means. *Id.*, citing *CIGNA Corp. v. Amara*, 563 U.S. 421, 131 S. Ct. 1866, 179 L. Ed. 2d 843 (2011); *see also Curtiss–Wright Corp. v. Schoonejongen*, 514 U.S. 73, at 80–81, 115 S. Ct. 1223 (1995).

"In undertaking that task, a court properly takes account of background legal rules—the doctrines that typically or traditionally have governed a given

situation when no agreement states otherwise." *Id., see also Wal–Mart Stores, Inc. Assoc. Health & Welfare Plan v. Wells*, 213 F.3d 398, 402 (7th Cir. 2000) (Posner, J.) ("[C]ontracts . . . are enacted against a background of common-sense understandings and legal principles that the parties may not have bothered to incorporate expressly but that operate as default rules to govern in the absence of a clear expression of the parties' [contrary] intent"); 11 *R. Lord, Williston on Contracts* § 31:7 (4th ed. 2012); *Restatement (Second) of Contracts* § 221 (1979). "Indeed, ignoring those rules is likely to frustrate the parties' intent and produce perverse consequences." *Id.*

For a document to be unambiguous, it must be reasonably capable of only one construction. 11 *Williston on Contracts* § 30:4 (4th ed.), citing *Shoney's LLC v. MAC East, LLC*, 27 So. 3d 1216 (Ala. 2009); *See also Citizens Bank & Tr. v. LPS Nat. Flood, LLC*, 51 F. Supp. 3d 1157 (N.D. Ala. 2014) holding that a contract susceptible of more than one reasonable meaning is ambiguous.

Williston on Contracts, in discussing ambiguity in contracts, also states:

> [A]lthough parties are free to enter into illusory agreements, the unlikelihood that they will do so may render a term in their agreement ambiguous as in [*In re New Valley Corp.*, 89 F.3d 143 (3d Cir. 1996)] involving the interpretation of a clause in an executive deferred compensation plan (commonly referred to as a "top hat" plan), which allowed the employer to

> terminate the plan "**at any time**." **At issue was whether the clause permitted termination after key employees had retired**.
>
> § 30:4.Ambiguity as a prerequisite to interpretation and construction, 11 *Williston on Contracts* § 30:4 (4th ed.) (Emphasis supplied)

In *In Re New Valley Corp.*, 89 F.3d 143, 148–49 (1996), the Third Circuit interpreted as ambiguous language similar to that found here, contained in a "top hat" plan, an unvested deferred compensation plan. There, the Court concluded that the language of the top hat plan should be interpreted according to ordinary principles of contract law. The issue in *In Re New Valley*, as here, was whether the phase "at any time" may be susceptible to more than one meaning. The *In Re New Valley* Court framed the issue as follows:

> . . . [T]he plan says it can be terminated 'at any time.' As a matter of plain language, [the employer] contends, this phrase is unambiguous. But this is not necessarily so. A common example shows that the meaning of 'at any time' depends on the context. Suppose an employer and employee enter into a contract stating that employee will work 40 hours per week for $500, payable at the end of the week. The contract further states that employment is at will and employer can change employee's wages 'at any time.' After working a week, employee goes to pick up her pay check. Employer informs employee that it has exercised its right to change her wages 'at any time,' and will be paying her $300 for that week's

> work. Despite the seemingly unambiguous 'at any time' language, it seems reasonable that an employee would not expect the reduction in salary to take place post-performance. Although this is not our situation, it makes clear that the words 'at any time' may admit of more than one reasonable interpretation.

Similarly, here Allstate could have included the words "including after retirement" in its SRO documentation, but one would have to wonder why someone would accept an early retirement package where the benefits could be revoked "at any time, including after retirement." When Allstate eventually added words of clarification to the "at any time" language of an early retirement plan when it offered the VTO, instead it made clear that the benefits were only subject to termination *prior* to acceptance, not after retirement.

See also Barrett v. Fox & Grove, Chartered, No. 01 C 5910, 2002 WL 31761410 (N.D. Ill. Dec. 9, 2002) (citing *In Re New Valley* in support of its holding that oral representations that a plan could not be terminated after retirement rendered the termination language ambiguous); *Carr v. First Nationwide Bank*, 816 F. Supp. 1476, 1493–94 (N.D. Cal. 1993) (language permitting amendment of top hat plan "at any time or from time to time" was inconsistent with other mandatory provisions in the plan; defendant's "reserved power to amend, modify or terminate the Plan [did] not entitle the [defendant] to avoid its express contractual obligations" with respect to vested benefits).

Because the SRO retirees were to receive the benefits of the SRO, including the life insurance at 40% of the previous coverage, as consideration in exchange for retiring and waiving certain rights, it follows that allowing Allstate to terminate those benefits after retirement would make the SRO benefits largely illusory—just as was the case in *In Re New Valley*.

The Circuit Court's attempt to distinguish *In re New Valley* fails for several reasons. The facts of that case are not no dissimilar as to require a different finding. That the *In re New Valley* case involves a "top hat" plan unlike here does not detract from the legal principles of contract interpretation which governs ERISA cases. The principles are the *same. See US Airways, Inc. v. McCutchen*, *supra*.

These erroneous conclusions clearly frustrated the parties' intentions, the hallmark of contract interpretation. They also result in a manifestly inequitable resolution of this dispute as elderly retirees, who average around 85 years of age, are now divested of important retirement benefits needed to sustain them and their families in the late stages of their lives.

CONCLUSION

The Court should grant a writ of certiorari for the foregoing reasons.

Respectfully submitted,

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