No. 22-5433

In the Supreme Court of the United States

TEDD WILSON, PETITIONER

v.

STATE FARM GENERAL INSURANCE COMPANY

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

The court of appeals dismissed for lack of jurisdiction the appeal from a summary judgment where the appellant filed his notice of appeal more than 30 days after the district court entered its judgment. The court of appeals summarily affirmed the district court's denial of the appellant's motion for reconsideration where that motion was untimely filed and raised no new arguments.

Does this case warrant Supreme Court review where there is no conflict with prior precedent, no issue of national importance, and no error to correct?

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29(6), counsel for Respondent certifies that the following is a complete list of all parent corporations and/or publicly held companies holding 10% or more of the corporation's stock:

State Farm Fire and Casualty Company, the correct party to this action, and State Farm General Insurance Company, incorrectly named as a party, are both wholly owned subsidiaries of parent company State Farm Mutual Automobile Insurance Company.

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OPINIONS BELOW

The opinion of the court of appeals is not reported in the Federal Reporter but is available at 2021 WL 4947322. Pet. App. 1-6. The judgment of the district court is reported at 532 F. Supp. 3d 1141. Pet. App. 15-39. The district court's order on reconsideration is not reported in the Federal Supplement but is available at 2021 WL 1816970. Pet. App. 10-14.

JURISDICTION

The judgment of the court of appeals was entered on October 25, 2021, and the petition for rehearing was denied on March 18, 2022. The petition for a writ of certiorari was filed on June 16, 2022, and docketed on August 23, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] Respondent was incorrectly named in the Petition as "State Farm General Insurance Company." The correct name is State Farm Fire and Casualty Company.

STATEMENT

I. FACTUAL BACKGROUND

A. Petitioner's baseball cards.

Petitioner collects baseball cards, some of which were insured through a "Personal Articles Policy" with Respondent. Pet. App. at 18, 20. When traveling from his home in Alabama to Las Vegas, Nevada, Petitioner carried with him approximately 30 insured baseball cards, which he believed to be valued at over $150,000. *Id.* at 18-20. When he checked into his hotel in Las Vegas, Petitioner noticed his baseball cards were missing. *Id.* He searched the hotel and contacted the taxi service he had used, but he did not locate the missing cards. *Id.* He ultimately filed a police report for the missing cards. *Id.*

B. The insurance policy.

Relevant here, the insurance policy contained a condition stating the "entire policy will be void if, whether before or after a loss, you have intentionally concealed or misrepresented a material fact or circumstance relating to this insurance." *Id.* at 20. Additionally, the policy provided that following a loss, the insured agreed:

> a. to be examined under oath and subscribe to the same as often as we reasonably require;
> b. that employees, members of your household or others will be produced for examination under oath to the extent that it is within your power to do so;
> c. to produce, if requested, the remains of the covered property; and
> d. to produce such records as we may need to verify the claim and its amount, and to permit copies of such records to be made if needed.

Id. at 21.

C. Investigation and denial of the insurance claim.

Following Petitioner's insurance claim regarding his lost baseball cards, Respondent exercised its option to examine him under oath to resolve questions of coverage. *Id.* at 21. While Petitioner sat for two examinations under oath, Petitioner was uncooperative in refusing to provide responsive information to the questions put to him. *Id.*

Respondent asked Petitioner to provide information regarding the date of purchase and the identities of businesses or persons from who he acquired the relevant baseball cards. *Id.* at 21-22. Petitioner did not provide this information. *Id.*

Respondent asked Petitioner to authorize the release of his phone records, to corroborate his statements regarding his attempts to locate and recover his lost baseball cards in Las Vegas. *Id.* 26-28. Petitioner refused. *Id.*

Respondent asked Petitioner to provide information regarding any previous claims of fire or theft of his property within the last ten years. *Id.* at 22. Petitioner refused to provide information beyond the last three years, and he averred that he had no fire or theft claims in that time period (2013-2016). *Id.* at 22-26.

Respondent asked Petitioner about his history of litigation. *Id.* at 29-30. Petitioner denied having been involved in any litigation other than "[m]aybe something minor." *Id.* In fact, Petitioner had been involved in other lawsuits[2] regarding the exact same issues here—insurance claims for lost baseball cards. *Id.*

[2] In April 2006, Petitioner sued Vigilant Insurance Company in Florida state court regarding Vigilant's denial of his claim for the alleged loss of approximately 46 baseball cards while traveling from his home in Florida to Las Vegas. Pet. App. at 30. Vigilant denied the claim because of Petitioner's failure "to provide virtually any of the documentation requested by Vigilant to support his ownership

On July 31, 2019, Respondent denied Petitioner's claim under the policy. Pet. App. at 31. Respondent explained that Petitioner had "failed and refused to comply" with the policy, including making "numerous misrepresentations," refusing to "answer questions related to the claim," and "intentionally concealing relevant information." *Id.*

II. PROCEEDINGS BELOW

A. District Court.

Following the denial of his insurance claim, Petitioner filed suit alleging breach of contract and bad faith. *Id.* Respondent moved to dismiss the complaint, and the district court converted the motion to one for summary judgment. *Id.* at 15-16. Finding that Petitioner failed to comply with the post-loss provisions of his insurance policy, the district court dismissed the breach of contract claim. *Id.* at 33. Because the contract claim failed, so too did the bad faith claim, which the district court also dismissed. *Id.* at 34. The district court entered its summary judgment and dismissal on March 31, 2021. *Id.* at 39.

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of the baseball cards or to verify the circumstances surrounding the alleged loss or theft." *Id.*; *see also Wilson v. Vigilant Ins. Co.*, No. 0:06-cv-60696-WPD, ECF No. 3, at 9 (S.D. Fla. May 25, 2006) (noting that Vigilant had previously paid a nearly identical claim in 2004 based on the alleged loss or theft of baseball cards in Petitioner's possession while traveling from Florida to Las Vegas).

In June 2013, United National Insurance Company sued Petitioner in the Southern District of Florida regarding an insurance claim for the alleged burglary of collectible baseball cards. Pet. App. at 30. United's investigation of the claim revealed "at least two prior disputed insurance claims involving an alleged loss of collectibles, at least one of which was under circumstances substantially similar to the instant loss." *Id.* (noting that Petitioner refused to provide information to substantiate his claim and that witness statements revealed "regularly solicits settlements of fraudulent insurance claims as a means of income"); *see United Nat'l Ins. Co. v. Wilson*, No. 1:13-cv-22039, ECF No. 1 (S.D. Fla. June 6, 2013) (noting also that the investigation revealed additional concerns, including that Petitioner used an alias or prior name with respect to one or more prior insurance claims and that photographs of the subject baseball cards appeared to have been back-dated).

On April 29, 2021, Petitioner filed a motion to reconsider the summary judgment. *See* Pet. App. at 12. Because Petitioner's motion was untimely under Rule 59(e), and because the motion did not present new arguments or evidence, the district court denied the motion to reconsider on May 6, 2021. *Id.* at 10-14.

B. Eleventh Circuit.

Petitioner filed a notice of appeal on May 19, 2021. *See* Pet. App. at 2. Finding that Petitioner's notice of appeal was untimely filed as to the district court's March 31 summary judgment order, the Eleventh Circuit dismissed that portion of the appeal for lack of appellate jurisdiction. *Id.*

As for the portion of the appeal from the district court's April 29 denial of the motion for reconsideration, the Eleventh Circuit found no abuse of discretion. *Id.* at 3-5 (noting that the reconsideration motion was untimely and repeated arguments Petitioner had previously made). Thus, the Eleventh Circuit summarily affirmed the decision of the district court. *Id.* at 5-6.

The Eleventh Circuit denied the request for panel rehearing and rehearing *en banc* on March 18, 2022. *Id.* at 9.

REASONS FOR DENYING THE PETITION

Petitioner disagrees with Respondent's denial of his insurance claim. This disagreement does not warrant Supreme Court review. Sup. Ct. R. 10.

The courts below followed well settled Supreme Court and Alabama law. The case carries individual, not national, importance. Even if the Court had the jurisdiction and the inclination, there is no error to correct.

The petition should be denied.

I. The Court lacks appellate jurisdiction over an appeal from the summary judgment decision, and even if the Court had jurisdiction, there is no conflict with prior precedent.

Petitioner contends that "the district court's decision to grant summary judgment directly conflicts with a previous ruling by the Supreme Court." Pet. at 2 (citing *Ins. Cos. v. Weides*, 81 U.S. 375 (1871)).

First, the Court lacks jurisdiction to consider this argument. As noted by the Eleventh Circuit, Petitioner's notice of appeal was untimely as to the district court's summary judgment decision. Pet. App. at 2 (noting that the summary judgment was entered on March 21, 2021, and the notice of appeal was filed on May 19, 2021); 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a). Thus, just as the Eleventh Circuit did not have jurisdiction to hear an appeal from the summary judgment order, neither does this Court.

Second, even if the Court had appellate jurisdiction, there is no conflict with prior Supreme Court precedent. In *Weides*, an insured made a claim for merchandise destroyed by a fire. 81 U.S. at 375. The Court noted "it is to be understood that the examination [under oath] contemplated [by the insurance policy at issue] relates to matters pertinent to the loss." *Id.* at 381. For that reason, the Court held that the insured was not required to answer questions related to settlement amounts received from other insuring companies, because such information had no bearing on the inquiry into the "actual loss sustained in consequence of the fire." *Id.* However, the Court also stated that if the evidence had shown the insured "refused to answer any

questions by which defendants could fairly estimate, or reasonably infer plaintiffs' real loss in the insured property" that "the verdict must be for the defendants." *Id.*

The decision in *Weides* is consistent with Alabama law requiring an insured to answer questions material to the claim. *See, e.g.*, *Baldwin Mut. Ins. Co. v. Adair*, 181 So. 3d 1033, 1043-46 (Ala. 2014) (explaining that an insured's compliance with post-loss obligations, including the provision of documentation to substantiate the loss and cooperation with the insurer's investigation, is a condition precedent to an insurer's obligation to pay); *State Farm Fire & Cas. Co. v. Richardson*, No. 07-0791-WS-B, 2008 WL 4531765, at *7 (S.D. Ala. Oct. 9, 2008) (granting State Farm's motion for summary judgment and discussing the insured's refusal to answer relevant questions and provide documents relevant to his claim).

The purpose of such post-loss conditions is "to provide a tool in the battle against moral hazard." *Pittman v. State Farm Fire & Cas. Co.*, 868 F. Supp. 2d 1335, 1347 (M.D. Ala. 2012), *aff'd*, 519 F. App'x 656 (11th Cir. 2013). To ascertain whether an insured has "caus[ed] the loss himself," the "post-loss duties require the insured to provide information that will shed light on the matter. If the insured refuses, his or her non-cooperation will in and of itself amount to a breach." *Id.* at 1347-48 (construing post-loss conditions as "strict conditions precedent to coverage"). Such provisions "force[] the insured to help the insurer investigate the merits of the claim at the outset rather than allowing him to stonewall and let him hold the threat of litigation over the insurer's head like the sword of Damocles." *Id.* at 1348.

Here, the insurance policy required Petitioner to submit to examination under oath and produce any records needed to verify his claims. Pet. App. at 21. Petitioner failed or refused to provide information as to the acquisition and identity of the allegedly lost baseball cards. *Id.* at 21-22. He failed or refused to release his phone records, to corroborate his statements regarding attempts to locate and recover the cards. *Id.* at 26-28. He failed or refused to provide information to distinguish multiple prior claims of lost baseball cards, many of which involved circumstances identical to the loss claimed here. *Id.* at 22-26, 29-30.

Additionally, the policy stated that it would "be void if" the insured "intentionally concealed or misrepresented a material fact or circumstance relating to this insurance." *Id.* at 20-21. Under oath, Petitioner denied having been involved in any litigation other than "[m]aybe something minor." *Id.* at 29-30. However, Petitioner has been involved in other lawsuits involving insurance claims for lost baseball cards. *Id.* at 16; *see also Wilson*, No. 0:06-cv-60696-WPD (S.D. Fla. 2006); *United*, No. 1:13-cv-22039 (S.D. Fla. 2013).

Thus, the district court correctly concluded that Petitioner had not complied with the conditions of his insurance policy, and Respondent's denial of the claim was not a breach of contract or bad faith. *See* Pet. App. at 33-34. This conclusion comports with Alabama law and Supreme Court precedent. *See Pittman*, 868 F. Supp. 2d at 1348-49 (noting that partial compliance is not enough and that the insured must respond to reasonable requests for information, even if they believe the requests to be "unreasonable and overly broad"); *see also* Pet. App. at 33 & n.5 (finding of fact by

the district court that Respondent's requests were reasonable). It does not warrant this Court's review. Sup. Ct. R. 10.

II. This case does not present an issue of national importance or provide the Court with a vehicle to legislate on behalf of the State of Alabama.

Petitioner also seems to contend[3] that this case is of "national importance" because "Alabama does not have a fair claims act." Pet. 7-8. But the Supreme Court is not in the business of legislating on behalf of the State of Alabama. *See, e.g.*, U.S. Const. arts. III-IV & amend. X.

This case involves an individual's disagreement with his insurer's denial of a claim. It does not present an issue of profound national importance or provide a vehicle for changing Alabama law. In short, it does not warrant this Court's review. Sup. Ct. R. 10.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 2022

[3] In support of this contention, Petitioner resorts to ad hominem attacks on Respondent's counsel and references a wholly unrelated RICO case from Illinois. Pet. at 7-9; Pet. App. at 40-41. These arguments are baseless and immaterial.