23-6970

In The Supreme Court of the United States

Kathy R. Allen; Jay K. Allen - *Petitioner(s)*

VS.

L3Harris Technologies, Inc. - *Respondent(s)*

On Petition for Writ of Certiorari
To The United States Court of Appeals for the Fourth Circuit
No. 22-1528

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Question 1 – Whether the USDC D.E. #51-52, #55 and USDC-COA4th's Doc. #23 Orders Have Reversible Err and/or Was an Abuse of Power and an Abuse of Discretion to Not Provide the Appellants With Mediation as Paid or Court-Appointed Mediation and/or Arbitration

2. Question 2 – Whether the USDC D.E. #51-52 , #55 and USDC-COA4th's Doc. #23 Orders Have Reversible Err and/or Was An Abuse Of Power And An Abuse Of Discretion to Not Provide the Appellants With a Court-Appointed Attorney the Appellants Requested

3. Question 3 – Whether the USDC D.E. #51-52 and USDC-COA4th's Doc. #23 Orders Have Reversible Error and/or Was An Abuse Of Power and An Abuse Of Discretion to Not Provide the Proper FRCP Rule 52 Findings Of Fact and is of National Importance To Courts And Circuit Court Litigation

4. Question 4 – Whether the USDC D.E. #51-52 and USDC-COA4th's Doc. #23 Orders' Analysis is Reversible Err and Questionable as Contractual Provisions vs. Non-contractual and to Determine the Proper SOLand Other Claims (among it to State Pre-emption, Negligence, Breach of Fiduciary Duty, and Standard Duty of Care) and is of National Importance to Court Proceedings and Court Litigation

5. Question 5 - Whether the D.E. #55 Order Is Flawed and Unsupported to Deny the Appellants' Rule 59 Motion and is of National Importance to Court Proceedings and Court Litigation

6. Question 6 - Whether The USDC D.E. #51-52, #55 and USDC-COA4th's Doc. #23 Orders' Analysis Is Flawed as Dismissal By Various Arguments In It Granting The Appellees' MTD Among It The U.S.C. 1983 State-Actors' Conduct and is of National Importance to Court Proceedings and Court Litigation

PARTIES TO PROCEEDINGS

Kathy R. Allen and Jay K. Allen are the Petitioners and filed the WCSC 2021 lawsuit for their mother against Respondent L3/Harris and were for claims for Employee Retirement Income Security Act (ERISA) for an employer benefit for their mother's life insurance policy. The Petitioners/Appellants are siblings (a sister and brother).

L3/Harris Technologies Inc. is the company o/a 2015 and after her retirement bought out the Petitioners' mother's former employer ITT Industries. When the Petitioners filed the insurance claim with L3/Harris o/a 2018 for her life insurance policy L3/Harris did not provide the payout of the policy saying the claim's statute of limitation (SOL) had expired, so the Petitioners filed the 2021 lawsuit in Wake County Superior Court for it and ultimately the Appellees (solely L3/Harris on appeal after the other Defendants 1-2, 4 settled by stipulation with the Appellants) removed it to the U.S.D.C. NC-ED on a federal statute question for ERISA for employer-paid benefits.

RELATED CASES AND HEARINGS

Wake County Superior Court (WCSC) case #21-CVS-3637 filed on March 16, 2021 – Transferred by the Defendants o/a April 15, 2021 as a question on federal statute to USDC Eastern District Of North Carolina (Western Division) (NC-ED) case #5:21-cv-00174-D *D.E. #11*

#5:21-cv-00174-D NC-ED January 10, 2022 case #5:21-cv-00174-D – Judge Dever III's Order granted Defendants' MTD NC-ED *D.E. #51*

#5:21-cv-00174-D NC-ED April 8, 2022 Judge Dever III's Order *D.E. #55* Denied Appellants' Rule 59 and Rule 52 Motion for Reconsideration (MFR) and requesting a Rule 52 findings of fact of the January 10, 2022 Order *D.E. #55*

#22-1528 USDC-Court of Appeals 4th Circuit (USDC-COA4th) July 27, 2023 case #22-1528 - Order *Doc #23* saying notice of appeal as untimely, but with no supporting analysis for why it was untimely and granting Appellees' MTD *Doc #15*. Was before WYNN and HEYTENS, Circuit Judges, and FLOYD, Senior Circuit Judge

#22-1528 USDC-COA4th July 27, 2023 case #22-1528 - Mandate *Doc. 24* issued for *Doc. 23*

#22-1528 USDC-COA4th August 8, 2023 case #22-1528 – Order *Doc. 27* Denied Appellants' Rule 52 findings of fact

#22-1528 USDC-COA4th August 10, 2023 case #22-1528 –Order - Temporary Stay Of Mandate for Appellants' *En banc* rehearing motion *Doc. #29*

#22-1528 USDC-COA4th September 25, 2023 case #22-1528 – Order *Doc. #30* - Denied Appellants' *Doc. #28 En banc* rehearing motion - No judge requested a poll on the petition for rehearing *en banc*. Entered at the direction of the panel: Judge Wynn, Judge Heytens, and Senior Judge Floyd

#22-1528 USDC-COA4th October 3, 2023 case #22-1528 – Order *Doc. #31* Mandate - Judgment entered July 27, 2023, takes effect - no vote was called.

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Cases

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully asks this Court for and to grant this writ of certiorari to review the Orders of cases #5:21-cv-00174-D USDC-Eastern District Of North Carolina (Western Division) (NC-ED) and #22-1528 USDC-COA 4th Circuit (USDC-COA4th) based on their being contrary to other U.S.D.C. Courts of Appeal decisions and this Court's rulings for disposition of cases among it for procedural appellate and local rules (among them for mediation and alternative dispute resolution (ADR), contrary to the federal rules, and for Federal Rules of Civil Procedures (FRCP) for findings of facts (Rule 52 and Rule 59), and to federal statutes for the Employee Retirement Income Security Act (ERISA), its benefits and violations of the employer-paid benefit plans.

OPINIONS

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is _____

[x] None-not a federal court case

The opinion of the United States district court appears at Appendix A_____ to the petition and is _____

[x] 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 _____

[x] None-not a state court case was a 2021 case reopen and removal to USDC

[ ] reported at; No opinion and is not a state civil action or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The Rule 14.(d) opinions on review are Judge Dever III's the NC-ED opinion for case #5:21-cv-00174-D and his D.E. #51 January 10, 2022 (Appendix A1 pp..5-18) and April 8, 2022 D.E. #55 rulings (see Appendix A1 pp. 19-20.) , and the purported judge-panel for case #22-1528 Judges WYNN and HEYTENS, Circuit Judges, and FLOYD, Senior Circuit Judge for the USDC-COA 4th Circuit's Doc. #23 (July 27, 2023 opinion affirming USDC-NC-ED's Order (Appendix A pp. 1-3), and USDC-COA's September 27, 2023 Orders *Doc. #29-31* denying the Appellants' *en banc* rehearing motion (see Appendix A pp. 8-10) and . Being so the Petitioners refer this Court to *see January 1, 2023 U.S. Supreme Court Rules* "....Rule 16... Disposition of a Petition for a Writ of Certiorari...2. Whenever the Court grants a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment is to be reviewed. The case then will be scheduled for briefing and oral argument. If the record has not previously been filed in this Court, the Clerk will request the clerk of the court having possession of the record to certify and transmit it...." The Petition directs the Court to USDC-COA4th Circuit website for the (Appendix A pp. 12-17) list of the documents filed.

JURISDICTION

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 27, 2023.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 10, 2023, and a copy of the order denying rehearing appears at Appendix A_____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including February 22, 2024 (date) on December 4. 2023 (date) in Application No. 23A503 _____.

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. _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

The Appellants' USDC NC-ED's #D.E. 56 notice of appeal was sent by certified mailed on May 2, 2022, file-stamped on May 9, 2022 (Appendix A1 pp.1-2) for Judge Dever's January 10, 2022 Order *D.E. #51* (Appendix A1 pp. 5-17), NC-ED D.E. 51 Defendants' MTD, D.E. #52, Judgment (Appendix A1, p. 18) that *granted* with prejudice the Defendants' MTD [D.E. #15], and the April 8, 2022 Order D.E. #55 (Appendix A1 pp. 19-20), denied the Appellants' D.E. #53 Rule 59 and for the Rule 52 (implicit or explicit) motions.

The USDC-COA4th's September 27, 2023 Opinion Doc. #23 (Appendix A pp. 1-3) affirmed NC-ED's final Order (D.E. #55), USDC-COA4th's Doc. #27 that denied the Appellants' Rule 52 motions requesting the findings of fact, was by Order Doc. #29 (Appendix A p. 8) denied Appellants' Doc. #25-26, motion for *en banc* rehearing motion, and see Doc. #29-31 (respectively the USDC-COA4th's Motion to Stay for *en banc* rehearing, Order denying *en banc*, and the mandate (Appendix A pp. 9,-10) (respectively August 10, 2023, September 25, 2023, and October 3, 2023) and are the USDC-COA4th's final Orders that provides this Court's jurisdiction for the Petition and by U.S.C. 1254(1) for the United States District Court of Appeals ruling.

By it the Petitioners have until December 24, 2023 to file the Petition and with U.S. Supreme Court's December 9, 2023 extension granted has until February 22, 2024 to file the Petition. See 28 U.S.C. 1254(1) "...Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree...."

But those final Orders in dismissing the appeals questions them as violation of a Constitutional right or by law and/or as due process by the U.S. Constitution's Fourteenth Amendment to provide a correct ruling among it to the Appellants' timely NC-ED notice of appeal and its transmittal to USDC-COA4th on May 10, 2022. The Petitioners' Doc. *#28 en banc* rehearing motion asked the judge-panel to verify and to provide a FRCP 52 findings of facts, and an analysis and include why its Order suggested the appeal was untimely and to provide which notice of appeal the USC-COA4th's Doc. #23 opinion is referring to as untimely, but by the USDC-COA4th's Order Doc. #27 (on the same day August 8, 2023) denied the motion for findings of fact and included in a sentence that no other reply or analysis or that none would be provided for the Appellants' Docs. #25-26 motion then denied the *en banc* rehearing motion (Doc. #28) and just dismissing the USDC-COA4th appeal by its Docs. #30-31 (Appendix A pp. 9-10). This is contrary to and noncompliance with the appellate court rules and federal rules of civil procedure (FRCP) and those of this Court that require Rule 52 findings of fact. To be non-prejudicial this Court might look to various circuit courts and its own opinions to determine theses rulings as contrary to them, but that also should include state rulings where a district court might remand to the claims to superior courts—being so some N.C. cases are included in this Petition—that question these rulings.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution Fourteenth Amendment provisions apply to this Petition and provides "....No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws...." The U.S. Const., art. III, § 2 provides in pertinent part: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...." In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The U.S. Constitution Article Section 1 "....No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Including Privileges and Immunities Clause.... *Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety*....the right to sue in courts, civil rights clause.... A civil right is an enforceable right or privilege, which if interfered with by another gives rise to an action for injury.... The Fourteenth Amendment made it illegal for a state to pass laws "which shall abridge the privileges or immunities of the citizens of the United States... [or] deprive any person of life, liberty, or property without due process of law, [or] deny to any person within its jurisdiction the equal protection of the laws...."

This was a N.C. case and by Article IV of the Constitution of the State of North Carolina judicial members and is against it to deprive the Appellants of rights secured thereunder to the opinion, the request for it and violating the N.C. Constitution Article I Sec. § 1, 7,18, 19, 21, and § 25 and deprived the Plaintiffs (Appellants) of their civil rights and due process for the appeal and litigation.

OTHER RELEVANT FEDERAL RULES OF CIVIL PROCEDURE (FRCP)

See "....Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings.(a) Findings and Conclusions.(1) *In General.* In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58...."

FACTUAL BACKGROUND

Petitioners, Kathy R. Allen and Jay K. Allen, who are having to proceed *pro se* hereby files this Petition for review by U.S. Supreme Court by 28 U.S.C. § 1254(1) for appropriate relief and to rescind, reverse and remand the included USDC NC-ED (D..E #51-52, #55) and USDC-COA4th's final Orders in this appeal (Doc. #23).

This case began as the Plaintiffs' 2021 (before then its 2020 case and voluntary Rule 41 dismissal) for the Wake County Superior Court, Raleigh, N.C. civil lawsuit for #21-CV-03637 case filed. The Defendants removed it to USDC NC-ED o/a April 2021 as a federal statute question. The Plaintiffs had filed it against their mother's employer (who Appellee-Respondent L3/Harris) had bought out or merged the company o/a 2015 and was for ERISA §501-503 [§ 1132] claims for their mother's (who passed a few years ago) employer-paid benefit for the life insurance policy provided to her by it (that was to be paid to her beneficiaries) and on its conversion and termination when the old employer (ITT Industries) and/or then the new employer (Mercer Defendent3) merged with it or another company and became Defendant L3/Harris (before doing so the company was L3 and Harris/EXELIS Company). Indeed the Petitioners think those claims have merit, and these Orders did not

provide for injunctive, equitable or other relief to the insurance policy that was to be paid after their mother passed—and is of national importance for state and circuit litigation and for compliance with federal statutes for such benefits and for ERISA.

O/a April 2021 and November 2021 the other three (3) Defendants provided for settlement with the Plaintiffs by stipulation (and/or before the case was filed with USDC-COA4th). So they are no longer parties for the appeal or this Petition—just L3/Harris whose reluctance to settlement questions their lack of good-faith (bad-faith) to resolve the lawsuit and among it of their violation of N.C.G.S. § 53 and § 58 insurance statutes who in doing so progressing the appeal to the USDC-COA4th and as questions of the rules of law, statutes and not paying the ERISA employer-paid plans' policy benefits. This indeed nationally is a concern of and has importance to employers, employees and to N.C. citizens for litigation of such civil actions in court proceedings nationally.

PROCEDURAL BACKGROUND

The Orders on Appeal are Flawed, Illogical and Denies Due Process

The USDC NC-ED case progressed to Judge Dever III's two Orders the January 10, 2022 Order Docs. #51, #52 granting L3/Harris' motion to dismiss (MTD), and D.E.#55 the April 8, 2022 Order denying the Plaintiffs' Fed R. 59 motion for reconsideration (MFR) D.E. #53 (see Appendix A1). See *Local Civil Rules – U.S. District Court for the Eastern District of North Carolina 2019* ("Local Rules"). Although the D.E. #51 Order provided what supposedly was the rationale for the dismissal it is incorrect and excessively ignored the Plaintiffs' reply (D.E. #31) document to L3/Harris' Docs. #8-9 filed April 20, 2022 MTD. See list of USDC-NC-ED documents filed and in Appendix A1, and USC-COA4th filings Appendix A and docket filings p. 12-17). By Federal R. 3 the appeal to USDC-COA4th

followed upon receiving Judge Dever III's denial of the R. 59 (as an implicit or explicit 52 motion) and in it requesting a useful findings of facts—all important nationally for state and district court litigations to support a dismissal—whether by a FRCP Rule 12(b)(6) or Rule 56 dismissal.

These Orders then went on appeal to USDC-COA4th filed on May 9, 2022 where the Appellants' filed at least one motion for an extension which they filed Doc. #11 on May 20, 2022 and the Appellees filing a MTD Doc. 15 on September 16, 2022 that the purported USDC-COA4th judge panel (Judges WYNN and HEYTENS, Circuit Judges, and FLOYD, Senior Circuit Judge) suggested they ruled September 27, 2023 affirming the USDC's (Judge Dever) final USDC Orders. But the USDC-COA4th Order (Doc #23) is vague as to what was untimely about and to which appeal they a referring to in the Order. Being so this Petition asks this Court to review it as err and an abuse of power and an abuse of discretion for the appeal dismissal, and as violation of the Appellants' 14th Amendment rights to due process and equal protection clauses for such rulings and determine the material facts in the Appellants' 2021 lawsuit and the Appellants' USDC-COA4th's September 6, 2022 informal brief filed with USDC-COA4th by LocalR. 34(b) for *pro se* litigants, and see *UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT [2021] Federal Rules of Appellate Procedure Local Rules of the Fourth Circuit Internal Operating Procedures December 1, 2021.*

STATEMENT OF THE CASE

INTRODUCTION

Why These Dismissals Have Importance for the Petition's Review

We know court litigation is difficult enough, but when it requires appeals to the USDC Court of Appeals and for district court decisions it becomes clear the judicial actors' and attorneys' conduct (handling the case—who are to be officers of the court) should be questioned as improper and as claims of due process rights and constitutional violations of the 14th Amendment, and as legal malpractice (among it negligence) against them. Both the USDC NC-ED. and USDC-COA4th courts erred in the rulings. This Court must correct it and deter attorneys from continuing such conduct when they knowingly file replies 'to make themselves look good', 'get court experience' or for some other personal motives or endeavors that benefit themselves instead of the rule of law and who deny their wrongs and avoid compensating or providing equitable relief to Appellants who have incurred a loss at the hands of such and of them, and of attorneys and the judges, and judge-panels who fail (as did these) to correct either these attorneys' conduct (as prejudicial) or who do not determine the an appellant's valid claims or merits for employees and employers nationally (and those of N.C.) who lose employer-benefits (as ERISA) by such companies who as fiduciaries fail to do (or as equitable relief).

Such attorneys and judges do and might think of court proceedings as their having no duty (and often thought-of as being adversarial to the other party), but due process, protecting deprivation of rights and cases as adversarial are two different things. This conduct instead should be to correct such rulings and judicial errors. Among this state and federal court proceedings (and nationally) must ensure this and such conduct is not allowed. These ideas on adversarial roles among the parties demands more—thus such rulings are problematic for the litigants (especially those *pro se*—who are already in a class considered

disadvantaged in court proceedings)—state actors who knowingly or not re influenced by this class to just dismiss their cases—often finding minute reason to do so. This Court granting this Petition and further briefing of this Petition will allow the Appellants to view the statistics and forums that have *pro se* cases and case dispositions that suggest court proceedings are discriminatory to *pro se* litigants in state and district court and appellate courts and it as appellate rule violations e.g. FRCP Rule 3 and Local Rules 27 and 34 for motions and informal briefs, and for ERISA fiduciaries violations to correct incorrect dismissals and dispositions.

But to save time *pro se* status is not necessarily the premise of this Petition. Indeed this Court has an opportunity to view that as well). Instead this Petition is premised on the due process, deprivation of it, and equal protections in the Bill of Rights and protections of the N.C. and U.S. Constitutions to at least be provided a 'fair day in court' to be heard and that appeals to the USDC-COA4th (and appellate courts) are to provide. See *Daniels v. Williams*, 474 U.S. 327, 106 S. Ct. 662 (1986)....a deprivation may be the consequence of a mistake or a negligent act, and the State may violate the Constitution by failing to provide an appropriate procedural response. In a procedural due process claim, it is not the deprivation of property or liberty that is unconstitutional; it is the deprivation of property or liberty without due process of law — without adequate procedures....", as were these dismissals.

STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

Question 1 – Whether the USDC D.E. #51-52, #55 and USDC-COA4th's Doc. #23 Orders Have Reversible Err and/or Was an Abuse of Power and an Abuse of Discretion to Not Provide the Appellants With Mediation as Paid or Court-Appointed Mediation and/or Arbitration or Alternative Dispute Resolutions (ADR)

N.C. state and circuit courts favor settlement of disputes—thus lack of good-faith (bad-faith) to resolve the dispute or the appeal is questionable conduct (as was L3/Harris') to not do so. USDC NC-ED provides ADR by Local Rule 101 et seq. Settlement and mediation are available to resolve disputes before and after a case has begun, and is of national importance to court litigation for citizens of the state and circuit courts and nationally that violate the 14th Amendment due process and equal protections clauses, and appellate rules by not providing opportunity for mediation. When a case is filed as was the Appellants' USDC NC-ED and the D.E. #18 extension to find a lawyer for the case, which was not granted it was to be *sua sponte*, but USDC (Judge Dever) did not at any time grant mediation (or as a requirement of Local Rule 3(b)). After USDC's dismissal the Appellants' motion filed also discussed mediation in their USDC-COA4th May 19, 2022 Doc. #10 (for stay for abeyance to find an attorney) and September 6, Doc. #13 for mediation, Doc. #22 May 30, 2023 supplement the record motion to mediation and October 19, 2023 Doc. #19 or mediation (supplement the record the case was on calendar more than 120 days) and as motions for mediation/arbitration—but was denied and later mooted. The USDC-COA4th's Order September 7, 2022 Doc. #14 indicated it would defer mediation as court-appointed or paid mediation and the attorney appointment motion—but later instead mooted it in the dismissal July 25, 2023 Order Doc. #23 and *end banc* rehearing August 10, 2023 Orders--thus denying and altogether not providing for any mediation.

Arbitration is no different than mediation (and ADR). Each of these have reasons for using them. As court-provided means to resolve a dispute mediation is a component of the local rules (as were the USDC) and USCCOA4th's by Rule 3(b) and the case's docketing and scheduling Order and case. It becomes questionable deprivation of the due process right

when an Appellant is not provided it upon motion or *Sua sponte* (which these Appellants did in various motions or if not implicitly doing so should have been *sua sponte* by the court). Engaging in such options for ADR is to lessen litigation and resolve the disputes by someone settlement of it. But both ADR and arbitration ultimately produces an agreement one usually contractual (arbitration) by federal rules for them, and the other used during the litigation would produce a settlement contract. USC and USC=-COA4th's not *sua sponte* gives the appearance of being bias to a *pro se* class of litigants, un-attentive to the docket requirements or just non-compliant with the procedural rules.

Although the Appellants are limited in time to research for a case that discusses violation of the mediation rules or one that this Court has decided violated the mediation rules there are several cases where arbitration clauses have been upheld and remanded by this Court that parties to such arbitration clauses comply with them. It is still 'state actors' conduct when mediation is ignored or denied or not granted. Nonetheless these both are means to resolve a dispute, and mediation and ADR are provided for in the local USDC and USC-COA4th rules but these courts failed to do so. See *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708 (2022). "....When a party who has agreed to arbitrate a dispute instead brings a lawsuit, the Federal Arbitration Act (FAA) entitles the defendant to file an application to stay the litigation....Sometimes, they engage in months, or even years, of litigation—filing motions to dismiss, answering complaints, and discussing settlement—before deciding they would fare better in arbitration...." Indeed an appellant's (and as these) appeals should be provided the option for ADR—but were denied by the purported Rule 12(b)(6) dismissal.

We know appellate courts should follow the rules that allowing mediation. See "....Local Rule 3(b). Docketing Statement. To assist counsel in giving prompt attention to

the substance of an appeal, to help reduce the ordering of unnecessary transcripts, to provide the Clerk of the Court of Appeals at the commencement of an appeal with the information needed for effective case management, and to provide necessary information for any mediation conference conducted under Local Rule 33, Rule 33. Appeal Conferences The court may direct the attorneys — and, when appropriate, the parties — to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. USDC Local Rule and Local Rule 33. Circuit Mediation Conferences. All civil and agency cases in which all parties are represented by counsel on appeal will be reviewed by a circuit mediator after the filing of the docketing statements Appendix A pp. 11-15) required by Local Rule 3(b)..." See *Carey v. Piphus*, 435 U.S. 247, 98 S. Ct. 1042 (1978). "....Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property...."*id Carey* (1978)"....In other cases, the interests protected by a particular constitutional right may not also be protected by an analogous branch of the common law of torts...."See [*Monroe v. Pape*, 365 U.S. 167, 81 S. Ct. 473 (1961)]"— Orders are non-compliance with its own local and appellate court rules.

When mediation was allowed [by the court rules] it should be provided and granted by motion or *sua sponte*. When this is not granted, consented to or done so by the local and appellate rules it questions the courts' compliance with them including the N.C.G.S. statutes (whether superior, court of appeals and district courts). The Appellees could have consented opted to do the private mediation or court-appointed mediation but refused to do so, and later the USDC-COA4th's Order just ignored mediation (mooting the motion by Doc. #23 upon dismissing it), and being so neither court ordered, held or granted

mediation. See a N.C. appellate court case *Mitchell v. Boswell*, 851 S.E.2d 646 (N.C. Ct. App. 2020) "....[here the parties were] ordered by the Superior Court to participate in a mediated settlement conference....The controlling statute of frauds for settlement agreements resulting from mediated settlement conferences is N.C.G.S. § 7A-38.1(l). N.C.G.S. § 7A-38.1(l) [mediation]...."

Although not specifically a case questioning not providing mediation or arbitrations and alternative dispute resolution (ADR) it does discuss rules and necessary for proper litigation and among it notice of aal Rule 3, and agency ruling and as filing requirements. See a Title VII and EEOC case *Fort Bend Cnty., Tex., v. Davis*, 139 S. Ct. 1843 (2019) "....The Court has therefore stressed the distinction between jurisdictional prescriptions and nonjurisdictional claim-processing rules, which "seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times...." It is a case with USDC and similar requirements to ERISA "....with the amount-in-controversy requirement for federal-court diversity jurisdiction....§ 1332(a) ("The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $ 75,000 ... and is between (1) citizens of different States ....A claim-processing rule may be "mandatory" in the sense that a court must enforce the rule if a party "properly raise[s]" it....may be forfeited...if the party asserting the rule waits too long to raise the point.....". By *id Fort Bend* mediation also should be "....instead, the requirement[sic arbitration]...prerequisite to suit [sic after suit]...." Indeed the Appellants' requested –when denied was contrary to the rules and deprived due process.

Being so procedural rules are for compliance and to follow them. If mediation (in USDC and lower courts) and jury trials (as appropriate) are allowed why were they not

provided in these appeals—except if it were error or non-compliance with the rules and statutes for them. In N.C. mediation is by N.C.G.S. § 7A-38.1(m) "....Right to jury trial. - Nothing in this section or the rules adopted by the Supreme Court implementing this section shall restrict the right to jury trial...." See *USDC-NC-ED Alternative Dispute Rules of Practice and Procedure ("ADR") (2013)* Local Rules 101, Rule 101.a Selection of Cases for Mediated Settlement Conference et seq. But USDC courts for ERISA cases also allow for jury trials (which the USDC-COA4th's Order Doc. 23 denied not reviewing (Judge Dever's) USDC D.E. #51-52, and #55 that were ruled as a bench trial) —but questionable as constitutional right deprivation that this Court has opportunity to and should in this Petition determine--among it to lessen court resources and resolve settlement of disputes.

Not only does mediation provide opportunity for case settlements it is clear settlement of cases is preferred nationally by agency rulemaking, and by this Court and the N.C. Supreme Court § 7A-37 and § 7A-38 options included alternative dispute resolution. The circuit courts' local rules provide for it in its jurisdiction, for bench and judge-panel trials (who also can do so *sua sponte)*—but these courts did not. See *Tully v. City of Wilmington*, 249 N.C. App. 204, 790 S.E.2d 854 (N.C. Ct. App. 2016) "....the arbitrariness which is inherently characteristic of an agency's violation of its own procedures...requires reversal irrespective of whether a new trial will produce the same verdict....". Not providing for mediation or arbitration is noncompliance with the local rules and violation of constitutional rights among it by the 14th amendment due process and equal protections clauses. See *Toomer v. Garrett*, 155 N.C.App. 462, 574 S.E.2d 76 (N.C. Ct. App. 2002) "....In general, substantive due process protects the public from government action that unreasonably deprives them of a liberty or property interest...If that liberty or property interest is a

fundamental right under the Constitution, the government action may be subjected to strict scrutiny...."

Further granting and briefing of this Petition will also allow the Appellants to determine the disposition of such litigant-mediation cases in the Fourth Circuit, nationally and filed this Court on mediations. *Pro se* litigants who are already in a discriminatory class would likely provide opportunity to the merits of their cases when they are allowed court-appointed mediation or it is provided *sua sponte* (as required by the local and appellant rules) to them and allowed opportunity for settlement and discussions among the parties of the case's dispute instead of dismissals that usually rule against *pro se* parties. Such noncompliance with the local and appellate rules violates 14th amendment due process.

See *id Carey* (1978) "....Because the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance...that procedural due process be observed, the denial of procedural due process should be actionable for nominal damages without proof of actual injury,...." It is of national importance to court (state and circuit) litigation when Appellants and citizens (as were these) are deprived of such rights. By this Petition this Court has an opportunity to determine the Orders' non-compliance with the rules for mediation and in not properly allowing the parties time to mediation.

Question 2 – Whether the USDC D.E. #51-52 , #55 and USDC-COA4th's Doc. #23 Orders Have Reversible Err and/or Was An Abuse Of Power And An Abuse Of Discretion to Not Provide the Appellants With a Court-Appointed Attorney the Appellants Requested

As with mediation for settlement of cases is preferred by state and circuit courts and for court proceedings. This includes provisions in arbitration cases or those with arbitration clauses. The local USDC provides for and usually are provided in the case scheduling

Order including an option for submission of the case to *pro bono* attorney court panel for *pro se* litigants (but was not provided *sua sponte)* or by any such court scheduling order—that usually includes Discovery (Rule 33 and Rule 34—so that also is prejudicial to the Appellants' relief to resolve for the dispute)—and contrary to the local rules provide for an appointment of an attorney by USDC-COA Local Rule 3(b) along with the mediation rules.

When *pro se* and other litigants think they will need to request an attorney (including for civil actions) the rule is available to them. The USDC local rules and FRCP appellate rules allow appointment of an attorney (or by the *pro bono* panel) for cases including civil actions—but were not provided it. USDC did not send or provide for this.. The Appellants filed the D.E. #13 for an appointment of an attorney for the case. But the Order D.E. #14 was to stay the motion, but was later mooted it in the case dismissal in the USDC-COA4th September 6, 2022 Doc. #13, for an appointment of an attorney to help them with their case—but later the court mooted it. In the USDC case it was just ignored and unconsented to by the Appellees, but the USDC NC-ED Order (Judge Dever) should have *sua sponte* provided an Order for it, but instead he ignored it and progressed the case and granted the Appellees' MTD (D.E. #9,9-1 to 9-3). USDC-COA 4th's Doc. #23 continued this deprivation by not determining this violation or its affect as a constitutional right and action appointment of an attorney for this civil action. *Id Fort Bernd* (2019) not specifically a case questioning not providing an attorney. It was allowed by the rules, and the Appellants' filed a motion for it whether "…. jurisdictional…[or]….nonjurisdictional claim-processing rules, which "seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times…." Doing so also would be beneficial to

the case and its resources properly provided—instead of the Appellants' having to litigate it themselves in less-learned forum.

As with the denying mediation discussion further granting and briefing of this Petition will also allow the Appellants to determine the disposition of such litigant cases in the Fourth Circuit and those filed this Court. Indeed *pro se* litigants who are already in a discriminatory class would likely provide better arguments for their cases when a court-appointed attorney is provided and allow opportunity for settlement among the parties or to the case's litigation instead of dismissals that usually rule against them. As with id *Morgan v. Sundance* (2022) "....A directive to a federal court to treat arbitration applications "in the manner provided by law" for all other motions is simply a command to apply the usual federal procedural rules, including any rules relating to a motion's timeliness. Or put conversely, it is a bar on using custom-made rules, ..." It is to procedural rules and settlement of disputes that courts should provide for an attorney and for *pro se* litigants and especially do so when they file the motion for it (as did the Appellants)—but both courts Orders failed to do so—not allowing time or option to incur such a lawyer is of interests for states, nationally, for circuit judiciaries and to litigation (including mediation as paid or court-appointed). Case dismissal is prejudicial to the litigation and court proceedings. FRCP provides the rules for settlement of disputes and is of national importance to court litigation for citizens of state and circuit courts and when not provided was non-compliant with the local and appellate rules and violated the Appellants' constitutional rights among it by the 14th amendment due process and equal protections clauses. It is of national importance to court (state and circuit) litigation when appellants and citizens are deprived and denied such rights and to ensure

these courts know them and are in compliance—not dismiss cases without properly determining them or doing so.

Question 3 – Whether the USDC D.E. #51-52 and USDC-COA4th's Doc. #23 Orders Have Reversible Error and/or Was An Abuse of Power and An Abuse of Discretion to Not Provide the Proper FRCP Rule 52 Findings Of Fact and is of National Importance To Courts And Circuit Court Litigation

The USDC D.E. #51-52's January 10, 2022 Order was an abuse of power and abuse of discretion and the statute of limitations (SOL) had not expired. Whether in a district court or district court of appeals judicial actors are accountable for non-compliance with the federal, local rules, and appellate rules. Being so this Petition asks this Court to exclude any purported immunity defense for these Orders (as judicial actors' decisions) but to determine its arguments as rulings void of an opportunity for a true 'day-in-court' for the #21-CV-03637 lawsuit transferred to USDC-NC-ED o/a April 2021, and for its claims of ERISA. In doing so this Court will see the Orders are to of U.S.C. 1983 conduct and is available relief for this Petition (because by it the Petitioners do not waive to file those claims later in a separate appropriate action and court).

Without Congress, legislation, and courts requiring attorneys and judge-panels (or the judicial systems and actors) to provide supporting rulings and do so by the appellate courts rules citizens nationally and of North Carolina. (*pro se* or represented parties) and in other court jurisdictions will suffer and so will their belief that courts are or will be fair in deciding their disputes. See *Deminski v. State Bd. of Educ.*, 858 S.E.2d 788, 2021 NCSC 58 (N.C. 2021). "....Court reviews de novo a trial court's order on a motion to dismiss....When reviewing a motion to dismiss, an appellate court considers "whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which

relief can be granted under some legal theory..... Such arbitrary classifications include prosecution due to a defendant's decision to exercise his statutory or constitutional rights." *Id Deminski* (citing *United States v. Goodwin*, 457 U.S. 368, 102 S. Ct. 2485 (1982) " ....[sic a criminal case][....Due process of law, then, requires that vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives after a new trial. And since the fear of such vindictiveness may unconstitutionally deter a defendant's exercise of the right to appeal or collaterally attack his first conviction, due process also requires that a defendant be freed of apprehension of such a retaliatory motivation on the part of the sentencing judge....]"

Goodwin discusses violation of due process and vindication by a state actor, but it is no different than a *pro se* litigant (or any litigant) who is not provided a proper findings of fact who then denies an appellant's MFR and it as a deterrance to a class (those *pro se*) for having exercised the right to a lawsuit (at the onset) or appeal and in questioning the analysis—indeed including in the Order (to somehow prove his decision) for why a Rule 60 motion would be denied as was the D.E. #55 questions the Order's as prejudicial and it as the state actor's reason for including it—and the Appellants' filings in opposition were not included or cited in the Order for the MFR. This Court must rescind, reverse and remand the Orders that dismissed the USDC NC-ED's case #5:21-cv-00174-D and USDC-COA4th's case No. 22-1528 as both just ignored the Appellants' opposition filings and are clearly their analysis has error. See *Anderson v. Bessemer City*, 470 U.S. 564, 105 S. Ct. 1504 (1985) a title VII case but no different than ERISA or constitutional violation of civil rights ....[a] finding is `clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with a definite

and firm conviction that a mistake has been committed." Although circuit courts and this Court's cases suggests deference should be provided to the bench trial judge—clearly a review of the findings or lack-thereof in the USDC-COA4th's Order fails and contrary to deference when the material facts exists as in the opposition filings and the Appellants' Rule 59 motion.

This Court's remand of these Orders will serve justice in N.C. courts and district courts instead of to attorneys' and Defendant-parties' ill-will conduct to not correct or right their wrongs or judge or judge-panel decisions (who we hope allow appeals such as this to 'fall-through-the-cracks'), and to do to allow these Petitioners a proper 'day-in-court' and so as to determine the lawsuit's merits and for the ERISA claims (502-502 [§ 1132] or similar and them for beneficiaries to employer-paid benefits. *Id Carey* (1978) "....To the extent that Congress intended that awards under § 1983 should deter the deprivation of constitutional rights, there is no evidence that it meant to establish a deterrent more formidable than that inherent in the award of compensatory damages...."—thus state claim pre-emption should be determined as federal common law claims where available and the findings of fact accurate.

An Order should provide a correct analysis, but the USDC's (Judge Dever) January 10, 2022 Order about the Plaintiffs' lawsuit did not for the insurance policy benefit. In fact it ambiguously says "...it is futile to do [reconsider the dismissal]...." Instead the claims were that the Plaintiffs' mother anticipated the insurance policy would be available for her survivors and in accordance with the ERISA plan. The Order instead ignored that L3/Harris' had questionable conduct and in doing so for their benefit instead of to the plan as questionable to it instituted a scheme of breach of fiduciary duty, *fraud and negligence* that

denied the policy payout and who continued this scheme in its termination, conversion or to its payout—leaving their mother (the employee—and others wo should have been enjoined as a Rule 23 class action) with no payout at all. The Appellants' motion for reconsideration (D.E. #53) to this Order and for (explicit or implicit) FRCP Rule 52 findings of fact, was denied in in this final April 10, 2022 (D.E. #55) Order ignoring the request for it and is a questionable ruling and contrary to the circuit courts and this Court's requirement for the findings of fact. *Id Anderson* (1985) citing *Pullman-Standard* v. *Swint*, 456 U.S. 273 (1982) .... aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding ...." by it the Orders also fail, because it then questions a bench trial without a jury and absence this demeanor and ignoring the Appellants' opposition filings (and Rule 59 arguments) as prejudicial and violation of due process constitutional right—among it the FRCP 38 and Seventh Amendment violation for jury trial decisions to the claims—as requested in the Complaint.

An USDC Order that does not provide a FRCP Rule 52 findings is contrary and noncompliance with the FRCP rules for decisions and should be remanded by the higher court (USDC-COA4th) to have it provided. But it did not do so in the appeal and among it is a procedural due process and 14th Amendment violation. A review of Judge Dever's (USDC) D..E #51-52 and D.E. #55 (denying the Appellants' MFR) Orders will indicate it provided no citation or analysis to the Appellants' USDC brief (D.E. #13) or their reply in opposition (D.E. #31,31-1) to the Appellees' USDC (D.E. #9, 9-1 to 9-3) MTD. The USDC Order just seemingly copied all or at least more than 95-99% of the Appellees' MTD (word-for-word) arguments as his analysis (then granted the MTD). At the same time the Order cited none of the Appellants' opposition filings or successive arguments in the D.E. #55

Order that denied their MFR. Indeed appellate courts and the USDC local rules allow for Rule 59 /52 motions, but the Order did not provide it or was excessively void in its analysis.

Later the USDC-COA4th also did not provide FRCP findings of facts in it July 27, 2023 Order (Doc. #23) or a useful or any FRCP Rule 52 (making USC-COA4th itself the subject of this Petition instead of to remand it to USDC to provide a findings of facts to its D.E. #55 Order (or to it as a Rule 60 motion—the Order suggested also would be denied if filed). But USDC-COA4th continued denying the Appellants' due process and a right of and in violation of the N.C. and U.S. Constitutions (as a property and liberty right) and as being deprived of a 'fair-day in court' or so the Appellants' could provide a proper *en banc* rehearing motion or it for use in this Petition. *Id Anderson* (1985) "....even when the district court's findings do not rest on credibility determinations, but are based instead on physical or documentary evidence or inferences from other facts....various Courts of Appeals have on occasion asserted the theory that an appellate court may exercise *de novo* review over findings not based on credibility determinations...."

Such rulings are contrary to this Court's decisions for FRCP Rule 52 in litigation decisions. This Petition provides this Court with the opportunity to correct this for court proceedings and by remand, rescinding or reversing these and such Orders that fail to do so—and to avoid constitutional violations in state and appellate litigation. and to determine the conduct (as was 3/Harris') to the termination and conversion of the plan and policy benefits and by ERISA § 502 - § 503 [§ 1132] , § 406 and ERISA et seq. were undetermined by these Orders. *Id Anderson* (1985) "..... the parties to a case on appeal have already been forced to concentrate their energies and resources on persuading the trial judge that their account of the facts is the correct one; requiring them to persuade three more judges at the

appellate level is requiring too much. As the Court has stated in a different context, the trial on the merits should be "the `main event' …." Being so this further questions the Orders to not incorporating the Appellants' replies into the Orders' analysis (seemingly copying all of the Appellees' MTD arguments and using those as the rational for the Order without referring to the opposition filings) and is a deprivation and a violation or rights and of national importance to the citizens of states (including N.C.), district and circuit courts for appellate courts (reviewers) who are to require FRCP 52 findings and to do so as to ensure rulings are supported. By this Petition this Court has an opportunity to review such rulings and ensure state and circuit courts' rulings require and are incompliance for the FRC52.

Question 4 – Whether the USDC D.E. #51-52, #55 and USDC-COA4th's Doc. #23 Orders' Analysis is Reversible Err and Questionable as Contractual Provisions vs. Non-contractual and to Determine the Proper SOLand Other Claims (State Pre-emption, Negligence, Breach of Fiduciary Duty, and Standard Duty of Care and Insurance Laws) and is of National Importance to Court Proceedings and Court Litigation

Filing a Complaint in civil actions such as the ERISA claims requires some date by which the time to file to present litigants' claims. The USDC D.E. #51-52 Order suggests (again it uses just the Appellees' MTD arguments—as *supra* not any of the Appellants' opposition replies) that the ERISA Plan's was contractual limitation statute of limitations (SOL) including it as a two year SOL. But we know court decisions should provide the proper analysis for determining the SOL. The usual standard is by when an appellant learns of a conduct or incurs a loss that requires a lawsuit to recover for it from an appellee (which by these Appellants is by when the Appellant learn of it) and the Order fails and is questionable and incorrect in the D..E #51-52 and #55 USDC Order analysis. But if the USDC Orders were correct they would still fail about the SOL and to it as contractual or not and to it as equitable action (including by ERISA § 502-503 or as L3/Harris' purported two-

year SOL by the plan (and L3/Harris MTD (D.E. #9, #91- to 9-3 arguments). When an appellee such as L3/Harris concedes the SOL (in the plan) would be after the date the person bringing an action knew, had or was provided notice, or otherwise had reason to know, of the circumstances giving rise to the action—dismissal should be correctly reviewed for the SOL and it as a material fact to the claims' merits. See *McCravy v. Metro. Life Ins. Co.*, 690 F.3d 176, 53 Empl. Benefits Cas. (BNA) 2605 (4th Cir. 2012) [citing Cigna v. Amara [U.S.] (2011)]. ".... If the employee never discovers the discrepancy, the plan provider continues to receive...profits on the provision in question without bearing the financial risk of having to provide coverage..."—no different than the Appellants' policy claim when they learned of their mother's employer-paid benefit—and state or national citizen would question as fiduciary conduct.

When courts such as the USDC and USDC-COA4th's Orders do not do so a(or incorrect) the SOL or as an ERISA pre-emption of the 'state claims' fails in this manner it subjects appellants to incorrect dismissals (or them as FRCP or local Rule 12(b)(6)). Appellate courts as was the USDC are to ensure the proper SOL is provided and determine it correctly. Clearly a Rule 12(b)(6) (now instead seemingly as a Rule 56 summary judgment)s and fails as the standard for review of Complaints—deviating from the proper standard or to accurately determine it including questions by the ERISA plan's contract language fails for dismissal when courts or appellate reviewers or both the USDC and USDC-COA4th when they fail to do so or not do by Local Rule 26 or by FRCP discovery (Rule 26) to determine the wording of such ERISA or contract plans whether the SOL has expired or to a N.C.G.S. 1-52 or N.C.G.S.1-15 SOL or by FRCP Rule 3 for commencing actions or by Rule 41 for reopened USDC cases). *Id Carey* (1978)"....To

the extent that Congress intended that awards under § 1983 should deter the deprivation of constitutional rights, there is no evidence that it meant to establish a deterrent more formidable than that inherent in the award of compensatory damages...."—thus state claim pre-emption should be determined as federal common law claims where available. See *Jefferson-Pilot Life Ins. Co. v. Spencer*, 336 N.C. 49, 442 S.E.2d 316 (N.C. 1994) "....statute of limitations A counterclaim against an insurance company for negligent misrepresentation of the beneficiary of an insurance policy was not barred by the statute of limitations.... Ordinarily, when the plaintiff is the beneficiary of the policy, such harm does not occur until the death of the insured...."and without more the Rule 12(b)(6) fails.

Instead both courts' Orders ignored determining the SOL or it as incorrect and was undetermined. Fiduciaries (such as L3/Harris) are to administer the ERISA plan for the benefit of the participants and their beneficiaries and survivors—clearly such terminations and conversions of benefits and civil actions would need to be but were not determined in the Order as the correct SOL. *Id Cigna v. Amara* (2011) "....We are asked about the standard of prejudice. And ...e conclude that the standard of prejudice must be borrowed from equitable principles, as modified by the obligations and injuries identified by ERISA itself. Rightfully when a case involves the rights of more than a few employes such USDC cases should be a Rule 23 class action (and so was the one against L3/Harris' conduct). These should be lawsuits that include all the employees who were affected by the ERISA plan's termination and conversion. Mediation or arbitration proceedings would have likely indicated this Rule 23 was required.. ERISA plans and how they are administered are of importance for compliance with N.C. statutes and insurance laws (and nationally) and to ensure ERISA fiduciaries' follow the rules. These are questions for review of court

proceedings, civil actions, and litigations that improperly rule these cases or do not properly determine the SOL—all subjecting ERISA plans and litigants' (*pro se* and represented parties) benefits to being loss or to providing no relief for a claim (as equitable or contractually).

When this happens the fiduciaries who do not payout policy benefits that were for employees or their beneficiaries to receive by such ERISA plans are unjustly enriched and by it the plans are who then suffer the loss. These questions are among the claims against L3/Harris and its role in these benefits not being paid, and as state clams (or expanded federal claims) for breach of contract, negligence and breach of a standard duty of care and as prohibited ERISA conduct to be determined in court proceedings—but were not and contrary to this Court's rulings and nationally to require determining the correct SOL—depriving the Appellants of due process and protection of life and liberty rights. See *id McCravy* citing *Cigna Corp. v. Amara*, 563 U.S. 421, 131 S. Ct. 1866, 179 L. Ed. 2d 843 (2011) "....The Supreme Court addressed whether broad remedies were available under Section [502] 1132(a)(3), with its "other appropriate equitable relief" language, stating: [sic it]... allows a participant, beneficiary, or fiduciary "to obtain other *appropriate equitable relief*...to redress violations of...ERISA...or the terms of the plan."

When a beneficiary (such as the Appellants) learns of or suspects there is an employee-paid benefit for a life insurance policy that is when an inquiry to the employer, insurer or plan administrator should be sent including its effect on plan exhaustion. But court precedents do not necessary require ERISA claim exhaustion with the plan insurer, employer or plan administration (and questionable as material facts to have this

determined and then to other options for relief including equitable). But the USDC NC-ED Order (and later the USDC-COA4th in also not determining it) suggests the Appellants were admitting to some sort of failure by saying they sent an inquiry in 2017-2018 to L3/Harris and the other Defendants. It is when those inquires failed and provided inconsistencies to an accounting of the whereabouts of the policy benefit that such Appellants should file a Complaint. Companies and employers often know months before whether they plan to terminate ERISA plan benefits (as did L3/Harris likely knew). See *Varity Corp. v. Howe*, 516 U.S. 489, 116 S. Ct. 1065 (1996) "....acting as an ERISA "fiduciary" when it significantly and deliberately misled respondents....violated the fiduciary obligations that ERISA § 404 imposes upon plan administrators. To participate knowingly and significantly in deceiving a plan's beneficiaries to save the employer money at the beneficiaries' expense is not to act ...solely in the interest of the participants and beneficiaries...."

Such employers, plan administrators and plan insurers (as did L3/Harris) have a fiduciary role to the plan. But they also have knowledge of the termination before plan participants. The claims in the Complaint are to be determined, but these Appellants' claims were to more than and not as the USDC NC-ED Order D.E. #51-52, #55 suggests (as a business decision) or as gratuitous to provide to employees, but was these employers (and new buyout employer), L3/Harris' conduct to elude this termination from the plan participants then abruptly terminated it a few months later after the company merger—without a word to the plan participants or beneficiaries—again benefiting themselves (all of the Defendants) from having to payout the plan benefits and doing so was not in the § 502 - § 503 interest of the plan participants. L3/Harris nor the other Defendants provide no

pertinent evidence that they did a follow-up to the on the promises they made after they suggest their letters notified the plan participants (and Appellants' mother) of the conversion and termination of the ERISA employer-paid benefit for the insurance policy.

If the court were to allow ERISA pre-empting for the state claims its SOL ruling would still fail and should be by ERJSA 413 ..... after the earlier of- (I) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission the latest date on which the fiduciary could have cured the breach or violation, or (2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation. See also the Restatement (Second) of Torts § 874, Comment *b* (1979) ("Violation of Fiduciary Duty") (although "[t]he remedy of a beneficiary against a defaulting or negligent trustee is ordinarily in equity," the beneficiary is entitled to all redress "for harm caused by the breach of a duty arising from the relation") ....." If 'state claims' are pre-empted L3/Harris' conduct should be reviewed as- § 502 - § 503 violations and expanded federal claims for prohibited § 406 conduct—not dismissal altogether, but to determine when determining the ERISA claims by when the Appellants learned of it.

This was an ERISA violation and constitutional right by due process a deprivation by both courts deprived it. *See Stephens v. Pension Benefit Guar. Corp.*, 755 F.3d 959 (D.C. Cir. 2014) . " .... Fourth ... Circuits have held exhaustion is not required when plaintiffs seek to enforce statutory ERISA rights rather than contractual rights created by the terms of a benefit plan .... allowing a plaintiff to bring a claim for breach of fiduciary duty in federal court before exhausting administrative remedies, ... the general principle ...in Doe that we do not give full credence to an ERISA fiduciary's assessment of his own allegedly wrongful conduct...." *See Hickey v. Digital Equipment Corp.*, 43 F.3d 941 (4th Cir. 1995). "...:we

agree with appellants that there was a conflict of interest here because of the financial benefit Digital would receive from a denial of benefits...." See *id Vaughn v. Owen Steel Co., Inc.*, 871 F. Supp. 247 (D.S.C. 1994) overturned both *Bigger* and *Berry]*.... Contract actions are legal in nature. Furthermore, they are generally fact-intensive disputes. In other words, they are quintessential jury issues .... "—and questionable as a state claims and to N.C.G.S. § 53 and § 58 insurance violations—all of importance to national court proceedings (state and district courts) and this Court's decisions as violation of 14th Amendment due process and prohibited violation ERISA violations by § 502-503 and § 406 for prohibited conduct. This Court by this Petition has an opportunity to review this conduct as deprivation of rights and to state insurance law violations and for employers, insurers, and plan administrators such as L3/Harris' ERISA role as a fiduciary duty and noncompliance with it in for these rulings.

Question 5 · Whether the D.E. #55 Order Is Flawed and Unsupported to Deny the Appellants' Rule 59 Motion or En banc Rehearing and is of National Importance to Court Proceedings and Court Litigation

Filing a motion for reconsideration for dismissal Orders are allowed by FRCP 59. The Appellants' D.E. #53 filing was such a motion, and when USDC denied without proper findings (but the Order also included a Rule 60 as an option –throwing it in the Order when it had not been requested—but allowed later if the Appellants were to file it-- then denied that option also—supposedly to keep the Appellants from filing a Rule 60 just in case the Appellants were thinking of doing so or filing a Rule 60 motion) but the Order as a Rule 59 still violated the 14th amendment due process clause to a 'proper day in court' to a proper analysis f or the Rule 59 (as or in not providing a proper analysis or the Rule 52 findings of fact for the Rule 59 motion) —all if importance to court proceedings' rulings and contrary to this Court's rulings for Rule 59 and 52 analyses. The USDC Order

Question 6 - Whether The USDC D.E. #51-52, #55 and USDC-COA4th's Doc. #23 Orders' Analysis Is Flawed as Dismissal By Various Arguments In It Granting The Appellees' MTD Among It The U.S.C. 1983 State-Actors' Conduct and is of National Importance to Court Proceedings and Court Litigation

Tribunal and appellate courts' rulings indeed must provide fair rendering of the material facts and merits of case by a standard of review. When they provide an incorrect analysis to the Complaint's or appeal's claims it again becomes questionable conduct for the analysis. This is usually reviewed by a higher court (such as this Court) as an abuse of power and an abuse of discretion and attributed to state actors' conduct among it by U.S.C. 1983. But such rulings also include a standard for review or *de novo* usually by FRCP 12(b)(6), Rule 56 for summary judgment or on the pleading, or a state actor (sometimes unknowingly) as just plain bias against an appellant or case claim. This sometimes requires litigants to motion to recuse judges. But then the analysis also can be incorrect and is a violation in its own right that this Petition can review. But this is then when the litigants and especially *pro se* litigants should not be discriminated against in the analysis. Often courts suggest they are more lenient to *pro se* parties. But that does not resolve the question of an incorrect analysis and ignoring or not determining material facts.

Motions for reconsideration by Rule 59/60 are how appellants ask to correct this, but when the Rule 59/60 is denied it further prejudices appellants to further loss and as violation of constitutional rights by the 14th Amendments and state actors' (and the litigants e.g. attorneys) non-compliance with local, appellate and procedural rules in the ruling including e.g. Rule 26 Discovery. The D.E. #51-52, and #55 Orders ignored other arguments in the Appellants' USDC brief. Later the USDC-COA4th's Order's Doc #23 continued this prejudice in ignoring the Appellants' informal brief and opposition replies to the Appellees'

USDC-COA4th MTD.. The USDC's Order's analysis is more than questionable for several of the Complaint's claims. The USC-COA4th's Doc. #23's dismissal Order later continued this questionable analysis as deprivation of rights and due process by it for constitutional violations of due process by affirming the USDC D.E. #51-52, #55 Orders (Appendix A1 pp. 5-17 and pp. 19-20) and doing so without the proper review of its own of the Orders—instead just affirming the USDC's as in (Appendix A pp. 1-3, and pp 8-10) saying the statute of limitations (SOL) had expired (but not explicitly providing in the Order which court's SOL it meant). The USDC's questionable analyses in the Orders are below (but to save space this Petition will not discuss each separately, but list them sparingly. Nonetheless the USDC and USDC-COA4th Orders have questionable and reversible err in the analyses--and all are of national importance as contrary to state, other circuit, court litigation and this Court's rulings and are:

- The state claims are reversable err and questionable to L3/Harris' conduct as fiduciary and violations of ERISA § 502 - § 503 as fiduciary and not pre-empted state claims. See *DARCANGELO v. VERIZON COMMUNICATIONS, INC.* No. 01-1679. 292 F .3d 181 (2002) " .... remaining four claims, relating to the confidentiality of medical records, unfair trade practices, privacy, and negligence, cannot be disposed of on preemption grounds at the motion to dismiss stage....that the four state law claims are preempted ... breach of contract claim is, of course, preempted and is transformed into a federal claim under ERISA § 502 for enforcement of the plan's fiduciary requirements. This would be as a 502(a)(3) claim or violation of § 406 [1106] among third-parties and as nonfiduciary claims—none the less as available remedial relief. See *Griggs v. E.l Dupont de Nemours & Co.,* 237 F.3d 371, 380 (4th Cir.2001) ("ERISA administrators have a

fiduciary obligation 'not to misinform employees through material misrepresentations and incomplete, inconsistent or contradictory disclosures...." At the same time *id Harris* " ... . In *Mertens,* we suggested, in dictum, that the "other person[s]" in §502(/) might be limited to the "cofiduciaries" made expressly liable under §405(a) for knowingly participating in another fiduciary's breach of fiduciary responsibility."

- The claims for ERISA § 502 and § 503 relief on the L3/Harris' conversion offer, termination and in L3/Harris' role in it as fiduciary and improperly denied the Appellants' requested Seventh Amendment (FRCP 38c) jury trial and violated the Appellants' rights by the 14th Amendment as due process. The 2021 Complaint requested a jury trial and by *id Vaughn* the plan if decided on a contractual theory was to provide a USDC 7th Amendment trial or a mix of a jury determination and a judge ruling.

- Employers and L3/Harris being gratuitous to provide the policy benefit was not the premise of the Complaint, but among it was to the policy's termination and conversion. Indeed it was L3/Harris' motive to not have to pay the benefit (and in such a merger, buyout and reorganization), and these company employees were older employee (thus already any termination was predatory to them). But ERISA § 502 - § 503 and § 406 for prohibited conduct still required he notifications and that they be correct for and to the termination and conversion. This also meant to ensure the plan participants did not lose the benefit or were to be in the best interests of the plan. It also it required a standard duty of care and as *supra* by *id HICKEY v. DIGITAL EQUIPMENT CORP* L3/Harris or a fiduciary would and had a motive to terminate the policy and the policy benefit would be loss—questionable conduct.

- The USDC D.E. #51-52, #55 (Appendix A1 pp. 5-17 and pp. 19-20) and Appendix A pp. 1-3, and pp 8-10) USDC-COA4TH'S Doc. #23 Orders are reversible error

to deny the Appellants' 14th amendment due process to determine equitable relief. We know companies providing ERISA plans should or are to notify employees of various plans and changes and that they be correct in the information contained in them. Orders that do not determine this (but the USDC's Order concedes that the Appellants are correct in that the L3/Harris (or one of the merging companies) sent letters and notifications out on their plan, but the question is what happened to these notifications and L3/Harris' promises in the letters after they sent them. The 2021 Complaint requested a jury trial and by *id Vaughn* the plan if decided on a contractual theory was to provide a USDC 7th Amendment jury trial not a bench trial and are violation of the Seventh Amendment and 14th Amendment for due process and are material facts, but it is not as the Order suggests just if the Appellants' mother did a conversion--thus questions the termination, conversion and notifications.

- L3/Harris' defense to the plan as administrative appeal exhaustion fails and is of national importance to court litigation and for ERISA benefits payable to beneficiaries and survivors by a contractual provision, or for the SOL by it or by ERISA (which is up to six years) or none by ERISA depending on the argument for the SOL and is a matter of material facts to the termination and the conversion of the policy if terminated and also among these are questions to terminations and conversions by N.C.G.S. insurance laws. The SOL date purported in the MTD as being by 2017 is inconsistent and an incorrect analysis, because the Plaintiffs filed in 2019 after they learned of the policy (and would be timely), and the Order concedes § 413 is the ERISA statute for a federal claim--within six years is timely.

- Denying the Fed. R. 41 savings clause for reopened cases fails by any of the USDC-COA4th's Order's analysis for it--and allowed tolling. See *Mayes v. Rapoport*, 198 F.3d 457 (4th Cir. 1999) "....[adding a] nondriver[s]ity] defendant [or such court] immediately

after removal but before any additional discovery has taken place, district courts should be wary that the amendment sought is for the specific purpose of avoiding federal jurisdiction...." See *Baltimore Cnty. v. Cigna*, 238 F. App'x 914 (4th Cir. 2007)" .... [Plaintiffs] moved to remand to state court, maintaining that complete diversity did not exist because defendants ... are both citizens of [the same state ...."

- The USDC Order's analysis fails in the claims for violation of the N.C. § 53 and § 58 insurance laws and are material facts undetermined by the Orders . See *Jefferson-Pilot Life Ins. Co. v. Spencer* 442 S.E.2d 316 (1994) 336 N.C. 49. " ... N.C.G.S. § 58-63-15 [Misrepresentations are prohibited] ... unfair methods of competition and unfair and deceptive acts or practices in the business of insurance....We have held that a violation of N.C.G.S. § 58-63-15(1) is an unfair and deceptive practice under N.C.G.S. § 75-1.1 establishing a claim under N.C.G.S. § 75-16...." Being so dismissal fails by Rule 12(b)(6) and as a standard for review to have not provided this analysis or have it determined as by *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868, 73 Fed. R. Serv. 3d 837 (2009 and questions the dismissal also instead as a Rule 56 summary judgment or as summary judgment on the pleadings and instead ruling the dismissal FRCP Rule 12(b)(6) when it is not). Nonetheless the Orders violate the local rules and deprivation of a protected right and due process and to determine the material facts. By N.C.G.S. 58-58-150. Employee life insurance defined this should have been covered by the statute .... " See D.E. 31 -1 ".... N.C.G.S. § 58-7-15. Kinds of insurance authorized. Here the letter suggested higher rates would higher. .. was predatory to older employees ADEA and OWBPA...[§ and 510] violation..." Without further determination by Discovery it is prejudicial to dismiss the insurance violation claims or should be remanded to the Superior Court or

provide equitable relief by ERISA § 502. N.C. sometimes follows California (CA) cases. See two CA cases *Fossen v. Blue Cross & Blue Shield of Montana, Inc.,* 660 F.3d 1102 (2011) Oct. 18, 2011 · United States Court of Appeals for the Ninth Circuit · No. I 0-3600 I 660 F.3d 1102 ...(The definition of "employee welfare benefit plan" appears at 29 U.S.C. §I 002(1).) . ... complete preemption test are no longer good law...." , and *Miller v. Gammie,* 335 F.3d 889, 900 (9th Cir.2003) .. .. [Plaintiffs] contest the district court's grant of summary judgment on their statutory unfair insurance practices claim . .. by ERISA on the merits, we must consider express preemption under ERISA § 514 and conflict preemption under ERISA § 502(a) .... the unfair insurance practices statute applies without regard to the existence of an ERISA plan ...."

Deny L3/Harris any Attorney Fees and/or Costs

That being so the appeals and this Petition were filed and the Orders as supra should be remanded, rescinded and reversed to have L3/Harris' conduct determined and to deter it. In doing it provided how the Orders as prejudicial to not only the Plaintiffs' mother (an employee with ITT Industries—the retirement employer), how the plan was affected by the merger, buyout, and reorganization of these companies, and as L3/Harris' violations of ERISA § 502- § 503, and § 406 for prohibited ERISA conduct. and in the benefit's termination and conversion. Denying justice, but rightfully should be a Rule 23 class action is also the proper relief, At the same time L3/Harris adamantly refused to do any pre-appeal settlement to resolve with the Plaintiffs (knowing the other Defendants had settled with the Plaintiff months before). This Court should be remanded, rescinded and reversed and deny any costs as their role in the ERISA policy whereabouts and to deter their conduct. Clearly L3/Harris acted in lack of good-faith (bad-faith) to settlement with the Appellants.

In Summary the Orders Are Incorrect, L3/Harris' Conduct Violated ERISA and a Standard Duty of Care to the Employee-Paid Benefit Plan (ERISA) and Is Of Importance Nationally For Court Litigation in Various Circuits and this Court

Litigation is to provide relief for a loss or wrong to citizens of the state and nationally. In these ERISA cases and appeals justice will be served in denying and holding the Appellees' responsible for their conduct and role in the plan and as a fiduciary. Indeed a Rule 23 class action was also the proper action for these cases. The Appellants' USDC NC-ED (removal) case's Complaint and brief provided how the Appellees' role in the ERISA plan were contrary to it. The D.E. #51-52, and #55 Orders' dismissal were prejudicial to not only the Appellants' mother (an employee with ITT Industries—the retirement employer), but ultimately the plan was affected by the merger, buyout, and reorganization of these Appellee-companies, and as L3/Harris' ERISA § 502- § 503 violations, and § 406 for prohibited ERISA conduct and was their conduct in the company-merger and in the benefit's termination and conversion. Because of the employer's conduct (and L3/Harris) that likely affected other employees and plan participants who loss this benefit it should be determined and so should it to it as to the interests of the plan. At the same time L3/Harris continued to refuse to do any pre-appeal settlement to resolve the case with the Appellants (knowing the other Defendants as plan administrators or insurers and as co-fiduciaries had settled with the Plaintiff months before). L3/Harris also continued this conduct in allowing this Petition to be filed without any pos-settlement of it and costing the Appellants' more monetary and in injury—clearly in bad-faith (in lack of good-faith) to settlement.

USDC and the USDC-COA4th's Orders are contrary to a proper ruling and analysis (among it by FRCP 52) for district and courts of appeal cases (including its own circuit precedence cases and rulings) and contrary to this Court for decisions. The Appellants have

been denied having the claims against L3/Harris properly determined as violation of ERISA or any other statute (including the state claims) —just ignoring also the Appellants' replies to the D.E. #9 MTD and D.E. #34 to that motion. Then USDC (Judge Dever) continued to do so in the D..E. #55 Order for the Appellants' D.E. #53 MFR (Rule 59) for their mother's plan benefit and insurance policy. That is prejudicial and deprivation of the N.C. Constitution and 14th Amendment constitutional rights including the due process clause of the U.S. Constitution.

This being so the Appellants ask this Court to grant this Petition, and to remand, rescind and reverse (to the as appropriate court), and so L3/Harris is held accountable for their role, as a fiduciary, in the policy whereabouts and to deter their conduct that required filing the USDC NC-ED and the USDC-COA4th cases. It is clear L3/Harris violated their fiduciary duty to the plan and employees. These are all of national importance and it to state and circuit court proceedings, and for ERISA employer-paid benefits and fiduciaries, and for proper ERISA plan compliance, plan and benefit terminations and conversions, and for the N.C.G.S. § 53 and § 58 insurance laws they violated in doing so. Based on that alone this Court should and must grant this Petition.

This 20th day of February, 2024.
Respectfully submitted, on behalf of Petitioners

Petitioner

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