

**INDEX TO APPENDICES**

42  
**APPENDIX A**

**APPENDIX A – Decisions of the United States District Court of Appeals 4<sup>th</sup> Circuit**

#22-1528 USDC-COA4th July 27, 2023 - Order Affirming USDC case <i>Doc. #23 and Mandate Doc. #24</i> Saying vaguely that the (or some but not saying which) notice of appeal was untimely, but with no supporting analysis for why it was untimely and Granted Appellees' MTD # <i>Doc #15</i> .....	1-7
#22-1528USDC-COA4th August 8, 2023 – Order Denied Appellants' Rule 52 findings of fact <i>Doc. #27</i> .....	8
#22-1528 USDC-COA4th August 10, 2023 –Order - Temporary Stay of Mandate for Appellants' <i>En banc</i> rehearing motion <i>Doc. #29</i> .....	9
#22-1528 USDC-COA4th September 27, 2023 – Order - Denied Appellants' <i>Doc. #28 En banc</i> rehearing motion - No judge requested a poll on the petition for rehearing <i>en banc</i> . Entered at the direction of the panel: Judge Wynn, Judge Heytens, and Senior Judge Floyd <i>Doc. #30</i> .....	10
#22-1528USDC-COA4th October 3, 2023 – Order <i>Doc. #31</i> Mandate - Judgment entered July 27, 2023, takes effect - no judge called for a vote.....	11
#22-1528USDC-COA4th Docket filings.....	12-17

## Appendix A

**UNPUBLISHED****UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

---

**No. 22-1528**

---

KATHY R. ALLEN; JAY K. ALLEN,

Plaintiffs - Appellants,

v.

L3HARRIS TECHNOLOGIES, INC.,

Defendant - Appellee,

and

METLIFE; MERCER HEALTH BENEFITS ADMINISTRATION, LLC;  
LINCOLN HERITAGE LIFE INSURANCE CO.,

Defendants.

---

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:21-cv-00174-D)

---

Submitted: July 25, 2023

---

Decided: July 27, 2023

---

Before WYNN and HEYTENS, Circuit Judges, and FLOYD, Senior Circuit Judge.

---

Affirmed by unpublished per curiam opinion.

---

Kathy R. Allen, Jay K. Allen, Appellants Pro Se. Michael Douglas McKnight, Savannah Trimmer, OGLETREE DEAKINS NASH SMOAK & STEWART, PC, Raleigh, North

## Appendix A

Carolina, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.

## Appendix A

## PER CURIAM:

Kathy R. Allen and Jay K. Allen (collectively, Appellants) appeal the district court's orders dismissing their civil complaint and denying their motion for reconsideration. Because the notice of appeal was filed more than 30 days after the court entered the order dismissing the complaint, that order is not properly before this court. *See* Fed. R. App. P. 4(a)(1)(A). With respect to the court's order denying Appellants' postjudgment motion, we have reviewed the record and find no reversible error. Accordingly, we affirm the district court's postjudgment order. We also deny all pending motions. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

## Appendix A

FILED: July 27, 2023

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUITNo. 22-1528, Kathy Allen v. L3Harris Technologies, Inc.  
5:21-cv-00174-D

## NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

**PETITION FOR WRIT OF CERTIORARI:** The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; [www.supremecourt.gov](http://www.supremecourt.gov).

**VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:**

Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov), or from the clerk's office.

**BILL OF COSTS:** A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

## Appendix A

**PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC:**

A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

**MANDATE:** In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

## Appendix A

**U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM**  
**(Civil Cases)**

**Directions:** Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

- Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is \$500 (effective 12/1/2013). The \$5 fee for filing a notice of appeal is recoverable as a cost in the district court.
- Itemize the costs (not to exceed \$.15 per page) for copying the necessary number of formal briefs and appendices. (Effective 10/1/2015, the court requires 1 copy when filed; 3 more copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.
- Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).

Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number & Caption: \_\_\_\_\_

Prevailing Party Requesting Taxation of Costs: \_\_\_\_\_

Appellate Docketing Fee (prevailing appellants):		Amount Requested: _____			Amount Allowed: _____	
Document	No. of Pages	No. of Copies		Page Cost (<\$.15)	Total Cost	
	Requested	Allowed (court use only)	Requested	Allowed (court use only)	Requested	Allowed (court use only)
<b>TOTAL BILL OF COSTS:</b>					<b>\$0.00</b>	<b>\$0.00</b>

1. If copying was done commercially, I have attached itemized bills. If copying was done in-house, I certify that my standard billing amount is not less than \$.15 per copy or, if less, I have reduced the amount charged to the lesser rate.
2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Certificate of Service**

I certify that on this date I served this document as follows:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix A

FILED: July 27, 2023

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 22-1528  
(5:21-cv-00174-D)

---

KATHY R. ALLEN; JAY K. ALLEN

Plaintiffs - Appellants

v.

L3HARRIS TECHNOLOGIES, INC.

Defendant - Appellee

and

METLIFE; MERCER HEALTH BENEFITS ADMINISTRATION, LLC; LINCOLN  
HERITAGE LIFE INSURANCE CO.

Defendants

---

JUDGMENT

---

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

## Appendix A

FILED: August 8, 2023

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 22-1528  
(5:21-cv-00174-D)

---

KATHY R. ALLEN; JAY K. ALLEN

Plaintiffs - Appellants

v.

L3HARRIS TECHNOLOGIES, INC.

Defendant - Appellee

and

METLIFE; MERCER HEALTH BENEFITS ADMINISTRATION, LLC; LINCOLN  
HERITAGE LIFE INSURANCE CO.

Defendants

---

---

O R D E R

---

Upon consideration of appellant's motion for Rule 52 findings of fact for the July 27, 2023, order, the court denies the motion. The court speaks through its written orders and opinions and no additional clarification will be provided.

The court extends the time for filing a petition for rehearing and rehearing en banc to 09/07/2023.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

## Appendix A

FILED: August 10, 2023

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 22-1528  
(5:21-cv-00174-D)

---

KATHY R. ALLEN; JAY K. ALLEN

Plaintiffs - Appellants

v.

L3HARRIS TECHNOLOGIES, INC.

Defendant - Appellee

and

METLIFE; MERCER HEALTH BENEFITS ADMINISTRATION, LLC; LINCOLN  
HERITAGE LIFE INSURANCE CO.

Defendants

---

TEMPORARY STAY OF MANDATE

---

Under Fed. R. App. P. 41(b), the filing of a timely petition for rehearing or rehearing en banc stays the mandate until the court has ruled on the petition. In accordance with Rule 41(b), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

## Appendix A

FILED: September 25, 2023

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 22-1528  
(5:21-cv-00174-D)

---

KATHY R. ALLEN; JAY K. ALLEN

Plaintiffs - Appellants

v.

L3HARRIS TECHNOLOGIES, INC.

Defendant - Appellee

and

METLIFE; MERCER HEALTH BENEFITS ADMINISTRATION, LLC; LINCOLN  
HERITAGE LIFE INSURANCE CO.

Defendants

---

O R D E R

---

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wynn, Judge Heytens, and Senior Judge Floyd.

For the Court

/s/ Nwamaka Anowi, Clerk

## Appendix A

FILED: October 3, 2023

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 22-1528  
(5:21-cv-00174-D)

---

KATHY R. ALLEN; JAY K. ALLEN

Plaintiffs - Appellants

v.

L3HARRIS TECHNOLOGIES, INC.

Defendant - Appellee

and

METLIFE; MERCER HEALTH BENEFITS ADMINISTRATION, LLC;  
LINCOLN HERITAGE LIFE INSURANCE CO.

Defendants

---

M A N D A T E

---

The judgment of this court, entered July 27, 2023, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Nwamaka Anowi, Clerk

## Appendix A

### General Docket United States Court of Appeals for the Fourth Circuit

**Court of Appeals Docket #:** 22-1528

**Nature of Suit:** 3791 Employee Retirement

Kathy Allen v. L3Harris Technologies, Inc.

**Appeal From:** United States District Court for the Eastern District of North Carolina at Raleigh

**Fee Status:** fee paid

**Docketed:** 05/10/2022

**Termed:** 07/27/2023

#### Case Type Information:

- 1) Civil Private
- 2) private
- 3) null

#### Originating Court Information:

**District:** 0417-5 : 5:21-cv-00174-D

**Presiding Judge:** James C. Dever, III, U. S. District Court Judge

**Date Filed:** 04/15/2021

**Date Order/Judgment:**

04/08/2022

01/10/2022

**Date Order/Judgment EOD:**

04/08/2022

01/10/2022

**Date NOA Filed:**

05/09/2022

**Date Rec'd COA:**

05/09/2022

#### Prior Cases:

None

#### Current Cases:

None

**KATHY R. ALLEN**  
Plaintiff - Appellant

Kathy R. Allen  
Direct: 202-399-6225  
Email: allenk1101@comcast.net  
[NTC Pro Se]  
26 55th Street, NE  
Washington, DC 20019-6760

**JAY K. ALLEN**  
Plaintiff - Appellant

Jay K. Allen  
Direct: 202-399-6225  
Email: jaykallen1@comcast.net  
[NTC Pro Se]  
2526 Poole Road  
Raleigh, NC 27610-2820

v.

**L3HARRIS TECHNOLOGIES, INC.**  
Defendant - Appellee

Michael Douglas McKnight  
Direct: 919-789-3159  
Email: michael.mcknight@ogletree.com  
[COR NTC Retained]  
OGLETREE DEAKINS NASH SMOAK & STEWART, PC  
8529 Six Forks Road  
Raleigh, NC 27615

Savannah Trimmer  
Direct: 919-789-3142  
Email: savannah.trimmer@ogletreedeakins.com  
[COR NTC Retained]  
OGLETREE DEAKINS NASH SMOAK & STEWART, PC  
Suite 600  
8529 Six Forks Road  
Raleigh, NC 27615

**METLIFE**  
Defendant

**MERCER HEALTH BENEFITS ADMINISTRATION, LLC**  
Defendant

## Appendix A

LINCOLN HERITAGE LIFE INSURANCE CO.  
Defendant

## Appendix A

KATHY R. ALLEN; JAY K. ALLEN

Plaintiffs - Appellants

v.

L3HARRIS TECHNOLOGIES, INC.

Defendant - Appellee

and

METLIFE; MERCER HEALTH BENEFITS ADMINISTRATION, LLC; LINCOLN HERITAGE LIFE INSURANCE CO.

Defendants

## Appendix A

05/10/2022	<input type="checkbox"/> <u>1</u> 1 pg, 56.47 KB	Case docketed. Originating case number: 5:21-cv-00174-D. Case manager: CHalupa. [1001159987] [22-1528] CH [Entered: 05/10/2022 12:58 PM]
05/10/2022	<input type="checkbox"/> <u>2</u> 14 pg, 269.8 KB	INFORMAL BRIEFING ORDER filed. Mailed to: Kathy Allen, Jay Allen. [1001159990] Informal Opening Brief due 06/03/2022. Informal response brief, if any: 14 days after informal opening brief served. [22-1528] CH [Entered: 05/10/2022 01:00 PM]
05/10/2022	<input type="checkbox"/> <u>3</u>	ASSEMBLED ELECTRONIC RECORD docketed. Originating case number: 5:21-cv-00174-D. Record in folder? Yes. Record reviewed? Yes. PSR & SOR included? N/A. [1001159994] [22-1528] CH [Entered: 05/10/2022 01:04 PM]
05/18/2022	<input type="checkbox"/> <u>4</u> 1 pg, 70.71 KB	APPEARANCE OF COUNSEL by Michael D. McKnight for L3Harris Technologies, Inc.. [1001164594] [22-1528] Savannah Trimmer [Entered: 05/18/2022 04:41 PM]
05/18/2022	<input type="checkbox"/> <u>5</u> 1 pg, 77.63 KB	APPEARANCE OF COUNSEL by Savannah M. Singletary for L3Harris Technologies, Inc.. [1001164604] [22-1528] Savannah Trimmer [Entered: 05/18/2022 04:48 PM]
05/18/2022	<input type="checkbox"/> <u>6</u> 2 pg, 50.07 KB	DISCLOSURE STATEMENT by L3Harris Technologies, Inc.. Was any question on Disclosure Form answered yes? Yes [1001164623] [22-1528] Savannah Trimmer [Entered: 05/18/2022 05:01 PM]
05/19/2022	<input type="checkbox"/> <u>7</u> 2 pg, 156.45 KB	REPRESENTATION STATEMENT (FRAP 12) by Jay K. Allen and Kathy R. Allen. [1001165075] [22-1528] Jay Allen [Entered: 05/19/2022 01:15 PM]
05/19/2022	<input type="checkbox"/> <u>8</u> 2 pg, 115.83 KB	DISCLOSURE STATEMENT by Kathy R. Allen. Was any question on Disclosure Form answered yes? No [1001165084] [22-1528] Jay Allen [Entered: 05/19/2022 01:21 PM]
05/19/2022	<input type="checkbox"/> <u>9</u> 2 pg, 115.58 KB	DISCLOSURE STATEMENT by Jay K. Allen. Was any question on Disclosure Form answered yes? No [1001165089] [22-1528] Jay Allen [Entered: 05/19/2022 01:24 PM]
05/19/2022	<input type="checkbox"/> <u>10</u> 3 pg, 160.58 KB	MOTION by Jay K. Allen and Kathy R. Allen to place case in abeyance.. Date and method of service: 05/19/2022 ecf. [1001165318] [22-1528] Jay Allen [Entered: 05/19/2022 04:53 PM]
05/20/2022	<input type="checkbox"/> <u>11</u> 1 pg, 56.02 KB	ORDER filed extending briefing order deadlines. Informal Opening Brief due 09/06/2022; administratively terminating Motion for abeyance [10]. Copies to all parties. Mailed to: Allen. [1001165653] [22-1528] TF [Entered: 05/20/2022 12:23 PM]
09/06/2022	<input type="checkbox"/> <u>12</u> 28 pg, 611.77 KB	INFORMAL OPENING BRIEF by Jay K. Allen and Kathy R. Allen. [1001224771] [22-1528] Jay Allen [Entered: 09/06/2022 02:55 PM]
09/06/2022	<input type="checkbox"/> <u>13</u> 2 pg, 158.07 KB	MOTION by Jay K. Allen and Kathy R. Allen to Appellants continue to be pro se and request to have some court-appointed representation for the appeal, to mediate case, to appoint/assign counsel. Date and method of service: 09/06/2022 ecf. [1001224781] [22-1528]--[Edited 09/07/2022 by CH--to modify docket text] Jay Allen [Entered: 09/06/2022 03:04 PM]
09/07/2022	<input type="checkbox"/> <u>14</u> 1 pg, 54.18 KB	ORDER filed deferring action on Motion to appoint/assign counsel; Motion to mediate case filed by Appellants Kathy R. Allen and Jay K. Allen [13] [13]. Copies to all parties. Mailed to: Kathy Allen. [1001225374] [22-1528] CH [Entered: 09/07/2022 11:00 AM]
09/16/2022	<input type="checkbox"/> <u>15</u> 30 pg, 318.48 KB	INFORMAL RESPONSE BRIEF by L3Harris Technologies, Inc.. [1001231113] [22-1528] Michael McKnight [Entered: 09/16/2022 10:12 AM]
09/27/2022	<input type="checkbox"/> <u>16</u> 2 pg, 181.38 KB	MOTION by Jay K. Allen and Kathy R. Allen to extend filing time for informal reply brief Time to view Appellees informal brief and reply. until At least October 21, 2022 or NLT October 28, 2022... Date and method of service: 09/27/2022 ecf. [1001237490] [22-1528] Jay Allen [Entered: 09/27/2022 04:59 PM]
10/05/2022	<input type="checkbox"/> <u>17</u> 1 pg, 54.27 KB	ORDER filed granting Motion to extend filing time to file the informal reply brief [16]. Informal reply brief due 10/28/2022. No paper copies required unless case has been tentatively calendared or copies otherwise ordered. Copies to all parties. [1001242852] [22-1528] CH [Entered: 10/05/2022 04:16 PM]
10/19/2022	<input type="checkbox"/> <u>18</u> 4 pg, 90.65 KB	DOCKETING STATEMENT by Jay K. Allen and Kathy R. Allen.. [1001251167] [22-1528] Jay Allen [Entered: 10/19/2022 04:41 PM]
10/19/2022	<input type="checkbox"/> <u>19</u> 3 pg, 174.45 KB	MOTION by Jay K. Allen and Kathy R. Allen Motion to file docketing sheet late, to extend filing time for docketing statement, to mediate case. Date and method of service: 10/19/2022 ecf. [1001251179] [22-1528] Jay Allen [Entered: 10/19/2022 04:49 PM]
10/20/2022	<input type="checkbox"/> <u>20</u> 1 pg, 55.4 KB	ORDER filed granting Motion to extend filing time to file docketing statement [19]; deferring action on Motion to mediate case filed by Appellants Kathy R. Allen and Jay K. Allen [19]. Copies to all parties. Mailed to: Kathy Allen. [1001251439] [22-1528] CH [Entered: 10/20/2022 09:50 AM]
10/28/2022	<input type="checkbox"/> <u>21</u> 25 pg, 396.86 KB	INFORMAL REPLY BRIEF by Jay K. Allen and Kathy R. Allen. [1001256854] [22-1528] Jay Allen [Entered: 10/28/2022 02:07 PM]
05/30/2023	<input type="checkbox"/> <u>22</u> 4 pg, 196.54 KB	MOTION by Jay K. Allen and Kathy R. Allen to mediate case. Date and method of service: 05/30/2023 ecf. [1001375638] [22-1528] Jay Allen [Entered: 05/30/2023 12:04 PM]

## Appendix A

07/27/2023	<input type="checkbox"/> <a href="#">23</a> 3 pg, 102.72 KB	UNPUBLISHED PER CURIAM OPINION filed. Motion disposition in opinion--denying motion to mediate case [22], denying motion to mediate case [19], denying motion to mediate case [13]; denying motion to continue to be pro se and request to have some court-appointed representation for the appeal [13]; denying motion to appoint/assign counsel [13]. Originating case number: 5:21-cv-00174-D. Copies to all parties and the district court/agency. Mailed to: Kathy Allen. [1001410118] [22-1528] EB [Entered: 07/27/2023 10:13 AM]
07/27/2023	<input type="checkbox"/> <a href="#">24</a> 4 pg, 154.61 KB	JUDGMENT ORDER filed. Decision: Affirmed. Originating case number: 5:21-cv-00174-D. Entered on Docket Date: 07/27/2023. Copies to all parties and the district court/agency. Mailed to: Kathy Allen. [1001410124] [22-1528] EB [Entered: 07/27/2023 10:15 AM]
08/07/2023	<input type="checkbox"/> <a href="#">25</a> 6 pg, 188.92 KB	MOTION to clarify with combined motion to extend filing time for petition for rehearing and rehearing en banc, titled as "Motion for Rule 52 findings of fact for the July 27, 2023 order" by Kathy R. Allen and Jay K. Allen. Date and method of service: 08/07/2023 ecf. [1001416391] [22-1528]--[Edited 08/08/2023 by CH--to add/modify docket text/relief] Jay Allen [Entered: 08/07/2023 09:37 PM]
08/08/2023	<input type="checkbox"/> <a href="#">26</a> 14 pg, 1.34 MB	Amended petition/motion by Jay K. Allen and Kathy R. Allen amending [25]. Document: FileAmendedAppellantsMotionForRule52FindingsOfFact.pdf. [1001416983] [22-1528] Jay Allen [Entered: 08/08/2023 01:09 PM]
08/08/2023	<input type="checkbox"/> <a href="#">27</a> 1 pg, 48.13 KB	ORDER filed denying Motion to clarify with combined motion to extend filing time for petition for rehearing and rehearing en banc, titled as "Motion for Rule 52 findings of fact for the July 27, 2023 order" [25]; extending the time for filing petition for rehearing and rehearing en banc to 09/07/2023. Copies to all parties. Mailed to: Kathy Allen. [1001416984] [22-1528] CH [Entered: 08/08/2023 01:10 PM]
08/10/2023	<input type="checkbox"/> <a href="#">28</a> 29 pg, 2.32 MB	PETITION for rehearing and rehearing en banc by Jay K. Allen and Kathy R. Allen. [1001418682] [22-1528] Jay Allen [Entered: 08/10/2023 05:01 PM]
08/10/2023	<input type="checkbox"/> <a href="#">29</a> 1 pg, 75.15 KB	Mandate temporarily stayed pending ruling on petition for rehearing or rehearing en banc. Mailed to: Kathy Allen. [1001418692] [22-1528] CH [Entered: 08/10/2023 05:21 PM]
09/25/2023	<input type="checkbox"/> <a href="#">30</a> 1 pg, 51.84 KB	COURT ORDER filed denying Motion for rehearing and rehearing en banc [28]. Copies to all parties. Mailed to: K Allen. [1001444461] [22-1528] AW [Entered: 09/25/2023 09:05 AM]
10/03/2023	<input type="checkbox"/> <a href="#">31</a> 1 pg, 75.85 KB	Mandate issued. Referencing: [24] Judgment Order, [23] unpublished per curiam Opinion. Originating case number: 5:21-cv-00174-D. Mailed to: Kathy Allen. [1001449331] [22-1528] CH [Entered: 10/03/2023 09:24 AM]

## Appendix A

**Documents and Docket Summary**  
 **Documents Only**

**Include Page Numbers**

**Selected Pages:**  **Selected Size:**

---

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
10/24/2023 14:01:26			
<b>PACER Login:</b>	jaykallen1	<b>Client Code:</b>	
<b>Description:</b>	Docket Report (filtered)	<b>Search Criteria:</b>	22-1528
<b>Billable Pages:</b>	3	<b>Cost:</b>	0.30

**APPENDIX A1**

**APPENDIX A1 – Decisions of the United States District Court North  
Carolina-Eastern Division (USDC NC-ED)**

#5:21-cv-00174-D NC-ED January 10, 2022 case – Judge Dever III’s Order granted Defendants’ MTD NC-ED D.E. #51-52.....	5-19
#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 D.E. 53 Motion for Reconsideration (MFR) requesting a Rule 52 findings of fact of the January 10, 2022 Order D.E. #51-52.....	20

RECEIVED

MAY 09 2022  
mrb

PETER A. MOORE, JR., CLERK  
US DISTRICT COURT, EDNC

Appendix A1

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Case No. 5:21-cv-00174-D

Kathy R. Allen (Plt1) )  
Jay K. Allen (Plt2) )  
Plaintiffs )  
Vs. ) APPELLANTS' NOTICE OF APPEAL  
Metropolitan Life Insurance Company, )  
ITT industries, Mercer Corp / Harris )  
EXELIS, and Lincoln Heritage Life )  
Insurance Company Defendants. )

From: IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Case No. 5:21-cv-00174-D

and was transferred 2021 from Wake County Superior Case: #21-CVS03637  
By 4<sup>th</sup> Circuit Rule 3(a) or a more appropriate rule Appellants, Kathy R. Allen and Jay K. Allen, hereby give notice of appeal to NC-ED for just Defendant L3/Harris/ ITT industries / Harris EXELIS (as L3/Harris) for its judgment and final orders of January 10, 2022 and April 8, 2022 to the United States Court of Appeals for the 4<sup>th</sup> Circuit entered in this action in the 10<sup>th</sup> District Court NC-ED Wake County located at Post Office Box 25670 Raleigh, NC 27611. The other defendants MetLife, Mercer, and Lincoln Heritage settled in and were dismissed in 2021. The Rule 3(e) \$505 filing and docketing fee is enclosed as a money order. The Appellants wish to reserve the right to and for this court to transfer this notice of appeal as timely to the more appropriate state or federal court for it later if required.

This 2nd day of May, 2022.

Respectfully submitted,

Plaintiff1

/s/ Kathy R. Allen (ProSe)



Certificate of Service address:

26 55<sup>th</sup> Street NE

Washington, DC 20019-6760

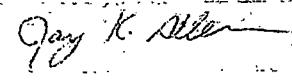
Alternate address: 2526 Poole Road

Raleigh, NC 27610-2820

E-mail address: allenk1101@comcast.net

Telephone No: (202) 399-6225

Plaintiff2

/s/ 

Jay K. Allen (ProSe)

2526 Poole Road Raleigh, NC 27610

Telephone No: (919) 395-1319

E-mail address: jaykallen1@comcast.net

**CERTIFICATE OF SERVICE**

I hereby certify that on 05-02-2022 a copy of APPELLANTS' NOTICE OF APPEAL to Defendant L3/Harris/ ITT industries / Harris/EXELIS (as L3/Harris) Case No. 5:21-cv-00174-D and was transferred 2021 from Wake County Superior Case: #21-CVS03637 was sent as below. Defendants Lincoln Heritage Life, MetLife, and Mercers rightfully should no longer be included in the filings, but the Orders included them. Being so they should delete themselves from the filings and parties list.

Copy was served by mail, eFiled and/or by E-mail as below to:

Clerk of Court

United States District Court /NC-ED

Attn: Civil Filings/Notice of Appeal

Post Office Box 25670

Raleigh, NC 27611

By eFiling and/or E-mail a copy to:

Michael D. McKnight, Esq.

Ogletree, Deakins, Nash Smoak & Stewart, P.C.

8529 Six Forks Road Forum IV, Suite 600 Raleigh, NC 27615

(919) 789-3159 michael.mcknight@ogletree.com

Attorneys for Defendant L3Harris Technologies, Inc.

Additional copies:

Kathy R. Allen

26 55<sup>th</sup> Street NE Washington, DC 20019-6760 Pro Se Plaintiff allenk1101@comcast.net

Jay K. Allen 2526 Poole Road Raleigh, NC 27610-2820 Pro Se Plaintiff

jaykallen1@comcast.net

Dated: 05-02-2022

Respectfully submitted,

Plaintiff1

/s/ Kathy R. Allen (ProSe)



Certificate of Service address:

26 55<sup>th</sup> Street NE Washington, DC 20019-6760

Alternate address:

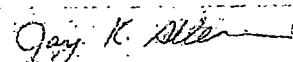
2526 Poole Road Raleigh, NC 27610-2820

E-mail address: allenk1101@comcast.net

Telephone No: (202) 399-6225

Plaintiff2

/s/ Jay K. Allen (ProSe)



2526 Poole Road Raleigh, NC 27610-2820

Telephone No: (919) 395-1319

E-mail address: jaykallen1@comcast.net

Page 2 of 20

PLACE THIS LABEL TO THE LEFT OF THE POSTAGE

2  
Washington, DC 20019-6760

RECEIVED

MAY 09 2022

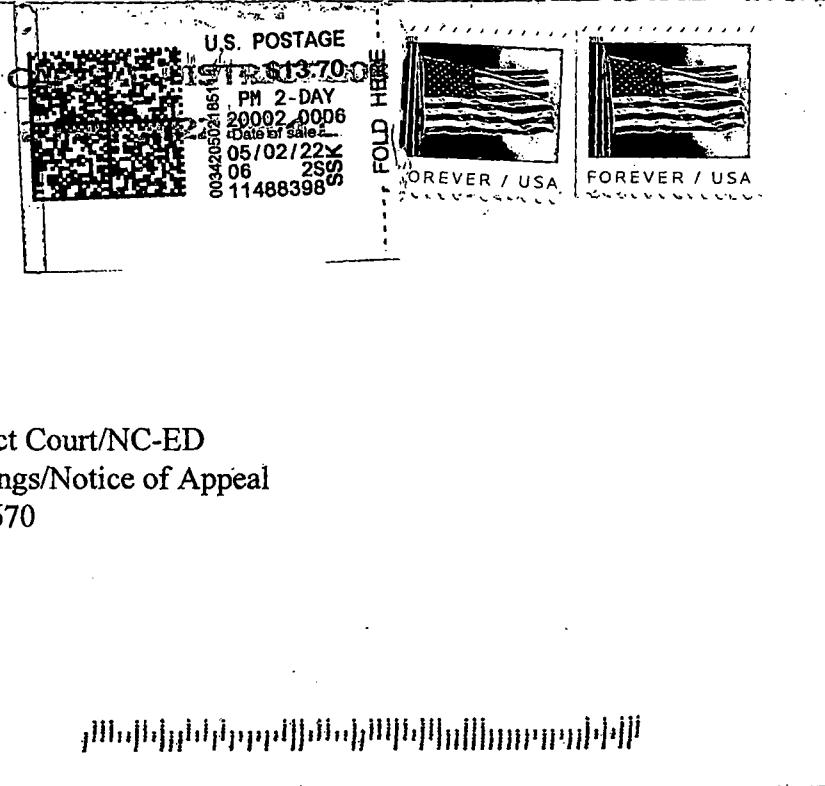
PETER A. MOORE, JR., CLERK  
US DISTRICT COURT, EDNC

USPS CERTIFIED MAIL®



9502 8067 1086 2122 1897 73

RETURN RECEIPT



27611-557070



Page 3 of 20

Page 4 of 20

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:21-CV-174-D

KATHY R. ALLEN, and JAY K. ALLEN, )  
Plaintiffs, )  
v. )  
METLIFE, et al., )  
Defendants. )

ORDER

On March 16, 2021, Kathy R. Allen ("Kathy") and Jay K. Allen ("Jay") (collectively the "Allens" or "plaintiffs") filed this action pro se in Wake County Superior Court against Metropolitan Life Insurance Company ("MetLife"), ITT Industries ("ITT"), Harris EXELIS,<sup>1</sup> Mercer Health Benefits Administration, LLC ("Mercer"), and Lincoln Heritage Life Insurance, Co. [D.E. 1-1]. On March 26, 2021, plaintiffs served the summons and complaint on counsel for the defendants. On April 15, 2021, L3Harris, with the consent of the other defendants, removed the case to this court based on federal question jurisdiction [D.E. 1]. The Allens allege claims concerning their mother's life insurance policy arising under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1001, et seq., federal common law, and state law. On April 22, 2021, L3Harris moved to dismiss the Allens' complaint and filed a memorandum in support [D.E. 8-9]. On July 12, 2021, the Allens responded in opposition [D.E. 31]. On July 19, 2021,

---

<sup>1</sup> In June 2019, Harris Corporation merged with L3 Technologies, Inc. See [D.E. 1] 1 n.1. As part of the merger, Harris Corporation changed its name to L3Harris Technologies, Inc. ("L3Harris"). Id. In 2015, Harris Corporation acquired Exelis, Inc. Id. Exelis was part of ITT Exelis, a spin-off of ITT Corporation, which plaintiffs identify in the complaint as "ITT Industries." Id. As a result, L3Harris is appearing in this action on behalf of the defendants identified in the Complaint as "ITT Industries" and "Harris EXELIS." Id.

L3Harris replied [D.E. 34]. As explained below, the court grants L3Harris's motion to dismiss.

I.

Plaintiffs are the adult children of Rebecca Johnson ("Johnson"). See Compl. [D.E. 1-1] 2, ¶¶ 4–5. Johnson worked for ITT or one of its affiliates until her retirement in 1987. See id. ¶ 7; [D.E. 9] 3. ITT sponsored a life insurance benefits plan for active employees and certain retirees, the ITT Salaried Retiree Life Insurance Plan (the "Plan"). When Johnson retired, she was eligible to participate in the Plan. See Compl. at 2, ¶ 7; [D.E. 9] 3. As of January 1, 2010, the Plan's life insurance benefits were insured by a MetLife group policy. See Plan [D.E. 9-1] at 2, 5. In October 2011, Exelis, Inc. ("Exelis"), a part of ITT, became the Plan's sponsor and administrator. See id. at 75. In May 2015, Harris Corporation acquired Exelis, and Harris assumed responsibility for the Plan. See id. at 74. In June 2019, Harris Corporation merged with another company and became L3Harris. See supra n.2.

On November 9, 2015, Exelis, then a part of Harris Corporation, amended the Plan. See Plan at 18–21. A January 1, 2016 Summary of Material Modifications ("SMM") memorialized and explained the amendment. See id. at 74–77. Among other changes, the amendments added a forum-selection provision, a contractual limitations period, and a termination date to the Plan. See id. As for the termination date, the amendments specified the Plan would terminate on January 1, 2016. See id. Specifically, the termination provision stated:

[E]ffective as of January 1, 2016, the Plans hereby are terminated, such that no benefit (whether a basic life, supplemental life, optional life, dependent life or survivor income benefit or otherwise) shall be payable under the Plans upon the death of a retiree or disabled former employee (whether a retiree or disabled former employee as of the date hereof or an active employee as of the date hereof who subsequently terminates employment from the Corporation and its subsidiaries) occurring after December 31, 2015; provided, however, that for the avoidance of doubt, this provision in no event shall be interpreted to limit any conversion rights which may inure to a retiree or disabled former employee under any insurance policy

maintained in connection with a Plan . . . .

See id. at 20 (emphasis omitted).

The Allens allege that Johnson received letters dated in June 2015 and November 10 and 27, 2015 regarding her employer-provided life insurance policy. Compl. ¶ 14. In the November 10, 2015 letter, L3Harris notified Johnson of the upcoming termination of her retiree life insurance under the Plan. See [D.E. 9-2]. L3Harris advised Johnson that her retiree life insurance would be discontinued after December 31, 2015, and that Johnson would no longer be eligible for company-sponsored retiree life insurance. See id. The letter explained that Johnson could convert her group life insurance to an individual personal policy from MetLife, who would provide additional information regarding Johnson's conversion options. See id. The letter told Johnson that any election to convert was due by January 31, 2016. See id. MetLife's November 27, 2015 letter similarly informed Johnson of her eligibility to convert her employer-provided group life insurance coverage to an individual MetLife policy. See [D.E. 9-3]. The letter specified a 45-day deadline for conversion—from the December 31, 2015 termination date until February 14, 2016—and provided instructions and a conversion application. See id.

On December 31, 2015, the Plan terminated. See Plan at 20. In March 2016, Johnson died. See Compl. ¶ 26. The Allens claim they asked MetLife about a policy several times from June 2017 and into 2018. See id. ¶ 28. The Allens also allege Jay submitted a claim form to MetLife around February 2018. See id. ¶ 50. On March 22, 2018, MetLife responded that Johnson's coverage had ended at the time of her death, no payment would be made, Jay could file an appeal within 60 days, and Jay could contact L3Harris for more information about the policy. See id. The Allens do not allege that they appealed MetLife's determination.

The Allens also allege that on February 21, 2018, Kathy sent a letter to Mercer, a benefits

administrator, about the policy. See id. ¶ 34. On June 11, 2018, Mercer responded that it had received the letter but did not have a policy for Johnson and asked Kathy to send more information. See id. ¶ 37. The Allens also allege that in response to their correspondence and supplemental information to Mercer, “Mercer/Harris” again told the Allens they did not have any policies for Johnson. See id. ¶¶ 45–46.

On November 19, 2019, the Allens sued defendants, seeking benefits under Johnson’s life insurance policy and seeking damages. See Compl. at 2. On March 17, 2021, the Allens voluntarily dismissed those claims after defendants removed the case to this court from North Carolina Superior Court. See [D.E. 9] 1–2. On March 16, 2021, the Allens filed this suit in North Carolina Superior Court and defendants timely removed to this court. See Compl. at 1; [D.E. 1]. The Allens thereafter dismissed MetLife, Mercer, and Lincoln as defendants. See [D.E. 17, 39, 43, 44, 49, 50]. L3Harris, the last remaining defendant, moves to dismiss the Allens’ claims. See [D.E. 14]. The Allens oppose the motion. See [D.E. 31].

## II.

A motion to dismiss under Rule 12(b)(6) tests the complaint’s legal and factual sufficiency. See Ashcroft v. Iqbal, 556 U.S. 662, 677–80 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 554–63 (2007); Coleman v. Md. Court of Appeals, 626 F.3d 187, 190 (4th Cir. 2010), aff’d, 566 U.S. 30 (2012); Giarratano v. Johnson, 521 F.3d 298, 302 (4th Cir. 2008). To withstand a Rule 12(b)(6) motion, a pleading “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Iqbal, 556 U.S. at 678 (quotation omitted); see Twombly, 550 U.S. at 570; Giarratano, 521 F.3d at 302. In considering the motion, the court must construe the facts and reasonable inferences “in the light most favorable to [the nonmoving party].” Massey v. Ojaniit, 759 F.3d 343, 352 (4th Cir. 2014) (quotation omitted); see Clatterbuck v. City of Charlottesville, 708

549, 557 (4th Cir. 2013), abrogated on other grounds by Reed v. Town of Gilbert, 576 U.S. 155 (2015). A court need not accept as true a complaint's legal conclusions, "unwarranted inferences, unreasonable conclusions, or arguments." Giarratano, 521 F.3d at 302 (quotation omitted); see Iqbal, 556 U.S. at 678–79. Rather, a party's factual allegations must "nudge[] [its] claims," Twombly, 550 U.S. at 570, beyond the realm of "mere possibility" into "plausibility." Iqbal, 556 U.S. at 678–79.

When evaluating a motion to dismiss, a court considers the pleadings and any materials "attached or incorporated into the complaint." E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc., 637 F.3d 435, 448 (4th Cir. 2011); see Fed. R. Civ. P. 10(c); Goines v. Valley Cnty. Servs. Bd., 822 F.3d 159, 166 (4th Cir. 2016); Thompson v. Greene, 427 F.3d 263, 268 (4th Cir. 2005). A court may also consider a document submitted by a moving party if it is "integral to the complaint and there is no dispute about the document's authenticity" without converting the motion into one for summary judgment. Goines, 822 F.3d at 166.

In support of its motion to dismiss, L3Harris argues that ERISA preempts the Allens' state law claims. See [D.E. 9] 12–13. L3Harris also argues the Allens' ERISA claims fail because the Allens are not beneficiaries under ERISA and lack standing to sue, the Plan was validly terminated, the Allens failed to exhaust the administrative remedies as the Plan required, and the claims are time barred. See id. at 16–22.

A.

The Allens allege several state tort and contract law claims. See Compl. at 6. Defendants respond that ERISA preempts the Allens' state law claims. See [D.E. 9] 12–14. Initially, the court considers whether the Plan was an employee welfare benefit plan under ERISA. ERISA governs all employee benefit plans established or maintained by any employer engaged in interstate commerce. See 29 U.S.C. § 1003(a)(1). An employee benefit plan includes an employee welfare benefit plan.

See id. § 1002(3). An employee welfare benefit plan is a plan, fund, or program that provides, among other things, death benefits to participants and beneficiaries through the purchase of insurance or otherwise. See id. § 1002(1). The Allens admit that the Plan was an employee welfare benefit plan under ERISA. See Compl. at 2, ¶¶ 31, 33–43, 48–50; [D.E. 31] ¶¶ 7–8.

ERISA contains an express preemption provision, which states, “the provisions of this subchapter and subchapter III shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.” 29 U.S.C. § 1144(a). ERISA’s preemption provision is “deliberately expansive, and designed to establish [benefit] plan regulation as exclusively a federal concern.” Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 45–46 (1987) (quotation omitted). ERISA also contains a savings clause which excepts from preemption state laws that “regulate[] insurance.” 29 U.S.C. § 1144(b)(2)(A). However, state common law and tort law claims do not regulate insurance just because the specific claims involve insurance coverage. See Pilot Life, 481 U.S. at 47–48 (state law claims for breach of contract, tort, and bad faith arising out of a denial of ERISA plan benefits relate to an ERISA plan and are preempted by ERISA). After all, Congress intended ERISA’s civil enforcement scheme to “be the exclusive vehicle for actions by ERISA-plan participants and beneficiaries asserting improper processing of a claim for benefits, and that varying state causes of action for claims within the scope of § 502(a) would pose an obstacle to the purposes and objectives of Congress.” Id. at 52.

“[I]n light of the objectives of ERISA and its preemption clause, Congress intended ERISA to preempt at least three categories of state laws that can be said to have a connection with an ERISA plan.” Coyne & Delany Co. v. Selman, 98 F.3d 1457, 1468 (4th Cir.1996). These three categories are: (1) “state laws that mandate employee benefit structures or their administration”; (2) “state laws

that bind employers or plan administrators to particular choices or preclude uniform administrative practice"; and (3) state laws that "provid[e] alternate enforcement mechanisms for employees to obtain ERISA plan benefits." *Id.* (quotations and alteration omitted); see Pilot Life, 481 U.S. at 48; Wilmington Shipping Co. v. New England Life Ins. Co., 496 F.3d 326, 342 (4th Cir. 2007). A state-law claim is an alternate enforcement mechanism for obtaining ERISA plan benefits, enforcing fiduciary duties, or forcing disclosure of information when it rests on the same allegations that support an ERISA claim and an employee brings it against a defendant owing a plan-created fiduciary duty to the employee. See Wilmington Shipping Co., 496 F.3d at 341–44; Darcangelo v. Verizon Commc'nns, Inc., 292 F.3d 181, 191–92 (4th Cir. 2002); Elmore v. Cone Mills Corp., 23 F.3d 855, 863 (4th Cir. 1994) (en banc). When the claim "is premised on the existence of an employee benefit plan so that in order to prevail, a plaintiff must plead, and the court must find, that an ERISA plan exists, ERISA preemption will apply." Griggs v. E.I. DuPont de Nemours & Co., 237 F.3d 371, 378 (4th Cir. 2001) (citation and quotations omitted); see Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 139–40 (1990); Pilot Life, 481 U.S. at 52–55.

The Allens allege state law claims including breach of contract, negligence, breach of duty of care, breach of fiduciary duty, fraud, tortious interference with an inheritance, wrongful death, bad faith, and unfair and deceptive trade practices. See Compl. These claims relate to the Allens' efforts to obtain life insurance benefits under the Plan following Johnson's death. Thus, ERISA preempts the Allens' state law claims, and the court dismisses those claims. See, e.g., Pilot Life, 481 U.S. at 44–48; Griggs, 237 F.3d at 378; Elmore, 23 F.3d at 863.<sup>2</sup>

---

<sup>2</sup> The Allens also mention "NC 58" in their complaint. Chapter 58 of the North Carolina General Statutes regulates insurance. See N.C. Gen Stat. § 58; see, e.g., Compl. ¶¶ 20, 43, 48, 53. However, the Allens do not specify any particular provision of Chapter 58 that would entitle them

As for the Allens' breach of fiduciary duty claims, ERISA provides relief for breaches of fiduciary duties arising from violations of ERISA or the terms of an ERISA plan. See 29 U.S.C. § 1132(a)(3); Griggs, 237 F.3d at 384. Accordingly, the court analyzes these claims under ERISA.

B.

The Allens' remaining claims under ERISA relate to the termination of the Plan, the resulting lack of a benefit payout under the Plan, and communication between defendants, Johnson, and the Allens about the Plan. The Allens have not alleged that Johnson converted her policy to an individual personal policy. Therefore, the Allens' claims depend on the existence of a policy covering Johnson at the time of her death or that the Plan's termination violated ERISA.

"ERISA does not create any substantive entitlement to employer-provided . . . welfare benefits." Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73, 78 (1995). And "[e]mployers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans. . . . When employers undertake those actions, they do not act as fiduciaries." Lockheed Corp. v. Spink, 517 U.S. 882, 890 (1996) (citations omitted); see Schoonejongen, 514 U.S. at 78. ERISA requires employers to manage welfare benefits plans as fiduciaries but allows employers to make business decisions about providing those plans. See Sejman v. Warner-Lambert Co., 889 F.2d 1346, 1348–49 (4th Cir.1989); In re White Farm Equip. Co., 788 F.2d 1186, 1193 (6th Cir. 1986). Thus, ERISA treats benefits under a welfare benefits plan differently than vested pension benefits. See Sejman, 889 F.2d at 1348; In re White Farm Equip. Co., 788 F.2d at 1193.

---

to relief or state any such claim with enough particularity. Thus, any such claim fails.

The Allens allege L3Harris violated its fiduciary duties by failing to continue the Plan and claim they are entitled to benefits under the Plan. L3Harris, however, validly terminated the Plan and was not acting as a fiduciary when it did so. See Lockheed Corp., 517 U.S. at 890. The Plan expressly provided authority to modify or terminate the Plan at any time. See Plan at 15. The Plan stated: "The Company expects to continue the ITT Salaried Retiree Life Insurance Plan" but cautioned that "it reserves the right to amend, modify, suspend or terminate the Plan, in whole or in part. Plan amendment, modification, suspension or termination may be made for any reason and at any time." Id. The Plan also stated that "while ITT expects to continue the Plan, it reserves the right to change or discontinue the Plan at any time with respect to some or all participants." Id. at 17.

After Exelis became a part of L3Harris in May 2015, Exelis amended the Plan. See Plan at 18–21. One of those amendments added a January 1, 2016 termination date. See id. ("[E]ffective as of January 1, 2016, the Plans hereby are terminated . . . ."). The SMM summarized the amendments and explained that "the Retiree Life Plans were terminated, effective as of January 1, 2016." Id. at 77. L3Harris notified Johnson about the changes to the Plan. L3Harris and MetLife sent letters to Johnson explaining that her retiree life insurance under the Plan would terminate and that she had a right to purchase coverage from MetLife under an individual policy. See [D.E. 9-2, 9-3]; Compl. ¶¶ 14–17, 19–22, 25, 39–40, 48.

L3Harris could amend and terminate the Plan and was not acting as a fiduciary when it did so. See, e.g., Lockheed Corp., 517 U.S. at 890. The Allens do not allege whether Johnson opted to purchase the individual conversion policy from MetLife, but her right to life insurance under the Plan ceased on January 1, 2016. Effective January 1, 2016, "no benefit (whether a basic life, supplemental life, optional life, dependent life or survivor income benefit or otherwise)[was] payable under the Plans upon the death of a retiree . . . occurring after December 31, 2015." Plan at 20.

When Johnson died in March 2016, Johnson no longer had coverage under the Plan. Therefore, the Allens fails to state a claim for benefits under the Plan or the Plan's termination. See, e.g., Blackshear v. Reliance Standard Life Ins. Co., 509 F.3d 634, 640 (4th Cir. 2007), abrogated on other grounds by Metro. Life Ins. Co. v. Glenn, 554 U.S. 105 (2008); Hughes v. 3M Retiree Med. Plan, 281 F.3d 786, 790–93 (8th Cir. 2002); Gable v. Sweetheart Cup Co., 35 F.3d 851, 855–59 (4th Cir. 1994).

Alternatively, the Allens' claims are untimely. ERISA requires a plaintiff to file a breach of fiduciary duty claim within "three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation." 29 U.S.C. §1113(2). ERISA does not contain a statute of limitations that applies to section 1132(a)(1)(B) benefits actions, but the Plan contains a contract term that imposes a deadline on filing legal actions. See Heimeshoff v. Hartford Life & Acc. Ins. Co., 571 U.S. 99, 105–08 (2013). "The principal that contractual limitations provisions ordinarily should be enforced as written is especially appropriate when enforcing an ERISA plan." Id. at 108. The Plan's contractual limitation provision provides that "no legal or equitable action (including a legal or equitable action under section 502 of ERISA) involving this plan may be commenced later than two years 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 (or if later, November 1, 2017)." Plan at 19.<sup>3</sup>

The Allens admit that by November 1, 2017, they were told that there was no policy covering their mother. See Compl. ¶ 40. The Allens originally sued defendants on November 19, 2019 in

---

<sup>3</sup> The Plan also provides for a limitations period after the end of an internal review appeal process. See Plan at 19. The Allens do not allege that they pursued an internal review appeal after they were informed that their mother was not covered by a policy and there would be no payout under the Plan.

North Carolina Superior Court. See Compl., Allen v. MetLife, No. 5:19-CV-572-H (E.D.N.C. Dec. 19, 2019), [D.E. 1-1]. Defendants removed the case to this court. On March 17, 2020, the Allens voluntarily dismissed their complaint under Federal Rule of Civil Procedure 41(a)(1)(A)(ii). See Stipulation of Dismissal, Allen v. MetLife, No. 5:19-CV-572-H (E.D.N.C. Mar. 17, 2020), [D.E. 36]. The Allens then refiled their suit in North Carolina Superior Court on March 16, 2021, just shy of one year after they dismissed their suit in this court. See [D.E. 1-1].

As for the Allens' claims for benefits under section 1132(a)(1)(B), the Plan's contractual limitations period of two years applies. See Plan at 19. Any claim the Allens had for benefits under the Plan arose when Johnson died in March 2016. See Blackshear, 509 F.3d at 641. Accordingly, the two-year contractual limitations period expired in March 2018. The Allens filed their original complaint on November 19, 2019, and their second complaint on March 16, 2021. Under either date, the Allens' claims for breach of fiduciary duties and for benefits are untimely.

As for the breach of fiduciary duty claims, ERISA required Johnson or the plan beneficiaries to file suit no later than three years after the earliest date that they had actual knowledge of the breach or violation. See 29 U.S.C. § 1113(2); Intel Corp. Inv. Comm. v. Sulyma, 140 S. Ct. 768, 776-77 (2020) (holding "the plaintiff must in fact have become aware" of the breach or violation). On November 10, 2015, L3Harris notified Johnson about the termination of retiree life insurance coverage under the Plan. See [D.E. 9-2]. Johnson had notice of claims related to the termination of the policy at that time. However, it is unclear when the Allens, plaintiffs in this action, knew about the Plan termination. Taking the allegations in complaint and all reasonable inferences drawn therefrom as true, the Allens discovered the alleged breach or violation in June 2017. See Comp. ¶¶ 6, 12, 28. Thus, the limitations period for the Allens' breach of fiduciary claims expired in June 2020.

The Allens filed their original suit on November 19, 2019, within the relevant limitations period. However, they did not file this action until March 16, 2021, after the limitations period for the breach of fiduciary claims expired. That the Allens' refiled their complaint in North Carolina Superior Court does not change this conclusion. North Carolina Rule of Civil Procedure 41 includes a one-year savings provision applicable to voluntary dismissals without prejudice, and the Allens filed this suit on March 16, 2021, which is within one year of their earlier voluntary dismissal. However, "a voluntary dismissal under the Federal Rules in a nondiversity case in federal court does not... invoke a savings provision." Bockweg v. Anderson, 328 N.C. 436, 439, 402 S.E.2d 627, 629 (1991). Accordingly, because defendants removed the Allens' original suit to federal court under the court's federal question jurisdiction, and the Allens' filed their voluntary dismissal under Federal Rule of Civil Procedure 41, the North Carolina Rules' savings provision did not apply. This result comports with the general principle in federal court that "a dismissal without prejudice operates to leave the parties as if no action had been brought at all." In re Matthews, 395 F.3d 477, 480 (4th Cir. 2005) (quotation omitted). Accordingly, the Allens' breach of fiduciary claims are untimely.

The Allens also allege various ERISA violations under section 501(a)(1)(B) related to failure to provide information to them or Johnson regarding the policy. See Compl. at 2, ¶¶ 25–30, 45; 29 U.S.C. § 1132. Under ERISA, plan administrators must maintain certain documents and provide documents and information to beneficiaries within 30 days upon demand. See 29 U.S.C. § 1132(c).

Assuming without deciding that the Allens are beneficiaries, L3Harris and Mercer fulfilled their obligations to provide information. The Allens acknowledge that L3Harris informed Johnson of the policy termination and her eligibility for conversion in November 2015 and that Mercer sent the SMM, memorializing the Plan amendments, in January 2016. See Compl. ¶¶ 9–10, 25–26, 36, 43. The Allens also acknowledge that L3Harris and Mercer responded to their inquiries about their

mother's policy by confirming there was not a current policy. See id. ¶¶ 27–28, 36–37. Thus, the Allens do not state a claim under ERISA's information request provisions.

III.

In sum, the court GRANTS L3Harris's motion to dismiss [D.E. 9], DISMISSES WITH PREJUDICE plaintiffs' complaint [D.E. 1-1], and DENIES as moot Mercer's motion to dismiss [D.E. 14]. Any proposed amendment would be futile. The clerk shall close the case.

SO ORDERED. This 10 day of January, 2022.

J. Dever  
JAMES C. DEVER III  
United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

KATHY R. ALLEN, and JAY K. ALLEN, )  
v. )  
Plaintiffs, )  
 )  
METLIFE, L3HARRIS TECHNOLOGIES, )  
INC., MERCER HEALTH BENEFITS )  
ADMINISTRATION, LLC, and LINCOLN )  
HERITAGE LIFE INSURANCE CO., )  
Defendants. )  
 )  
JUDGMENT IN A  
CIVIL CASE  
CASE NO. 5:21-CV-174-D

**Decision by Court.** This action came before this Court for ruling as follows.

**IT IS ORDERED, ADJUDGED, AND DECREED** that the court GRANTS L3Harris's motion to dismiss [D.E. 9], DISMISSES WITH PREJUDICE plaintiffs' complaint [D.E. 1-1], and DENIES as moot Mercer's motion to dismiss [D.E. 14]. Any proposed amendment would be futile.

**This Judgment Filed and Entered on January 10, 2022, and Copies To:**

Kathy R. Allen (via CM/ECF electronic notification)  
Jay K. Allen (via CM/ECF electronic notification)  
Elizabeth J. Bondurant (via CM/ECF electronic notification)  
Michael Douglas McKnight (via CM/ECF electronic notification)  
Shana L. Fulton (via CM/ECF electronic notification)  
Amanda S. Hawkins (via CM/ECF electronic notification)

DATE: **PETER A. MOORE, JR., CLERK**  
January 10, 2022 (By) /s/ Nicole Sellers  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:21-CV-174-D

KATHY R. ALLEN, and JAY K. ALLEN, )  
Plaintiffs, )  
v. ) ORDER  
METLIFE, et al., )  
Defendants. )

On January 10, 2022, this court dismissed Kathy R. Allen and Jay K. Allen's complaint (collectively the "Allens" or "plaintiffs") and closed the case. See [D.E. 51, 52]. On February 9, 2022, the Allens filed a motion for reconsideration. See [D.E. 53]. On March 2, 2022, defendant L3Harris responded in opposition [D.E. 54].

The court has considered the Allens' motion for reconsideration under the governing standard. See Fed. R. Civ. P. 59(e); Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007); Bogart v. Chapell, 396 F.3d 548, 555 (4th Cir. 2005); Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998); Hughes v. Bedsole, 48 F.3d 1376, 1382 (4th Cir. 1995). The Allens have not presented any arguments warranting reconsideration.

The Allens' motion also fails to meet Rule 60(b)'s threshold requirements and is denied as baseless. See Fed. R. Civ. P. 60(b); Aikens v. Ingram, 652 F.3d 496, 500-01 & n.3 (4th Cir. 2011) (en banc); Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403, 412 n.12 (4th Cir. 2010); Nat'l Credit Union Admin. Bd. v. Gray, 1 F.3d 262, 264 (4th Cir. 1993).

The motion for reconsideration lacks [D.E. 53] merit and is DENIED. The case remains closed.

Appendix A1

SO ORDERED. This 8 day of April, 2022.

  
JAMES C. DEVER III  
United States District Judge