No.

IN THE

Supreme Court of the United States

W. A. GRIFFIN, M.D.

Petitioner,

v.

COCA-COLA REFRESHMENTS USA, INC.; UNITED HEALTHCARE INSURANCE COMPANY

Respondents,

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether or not a plan administrator and/or plan fiduciary of an ERISA governed welfare benefit plan waived the rights to assert provider anti-assignment provisions when plan fiduciaries failed to notify the provider of the anti-assignment provision during the administrative appeals process.[1]

[1]Recently, the 11 th circuit has suggested that the State of Georgia does not have a mandatory provider assignment of benefit statue that expressly prohibits provider anti-assigment clauses in health plans. *See* Georgia § 33-24-54. See *Griffin v. Focus Brands, Inc.*, 635 Fed.Appx. 796 (2015); Additionally, even if the State of Georgia has a mandatory assignment of benefit statue, the 11th Circuit has stated that it would not be preempted by ERISA. See Griffin v. Coca-Cola Enterprises, Inc.686 Fed.Appx. 820, 11th Cir.(Ga.), Apr. 27, 2017. As such, the question in this petition focuses on conduct that waives provider anti-assignment provisions in plan documents.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES

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CASES

Petitioner respectfully prays that a writ of certiorari issued to review the judgment below.

OPINIONS BELOW

The opinion of the United States district court appears at

Appendix A to the petition and is

[ ] reported at___; or, [ ] has been designated for

publication but is not yet reported; or,

[**X**] is unpublished.

JURISDICTION

[**X**] For cases pending in the United States court of appeals:

The date on which the United States Court of Appeals received the Appellant Brief and Appellant Appendix was February 13, 2018.

[**X**] Case submitted in accordance with Supreme Court Rule 11: A petition for a writ of certiorari to review a case pending in a United States court of appeals, **before judgment is entered in that court**.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date:_____, and a copy of the order denying rehearing appears at Appendix_____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including_ _____(date) on___(date) in Application No. _____A____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Georgia § 33-24-54. Payment of benefits under accident and sickness policies to licensed nonparticipating or nonpreferred providers

...whenever an ... or self-insured health benefit plan, by whatever name called, which is issued or administered by a person licensed under this title provides that any of its benefits are payable to a participating or preferred provider of health care services licensed under the provisions of ... for services rendered, the person licensed under this title shall be required to pay such benefits either directly to any similarly licensed nonparticipating or nonpreferred provider who has rendered such services, has a written assignment of benefits, and has caused written notice of such assignment to be given to the person licensed under this title or jointly to such nonparticipating or nonpreferred provider and to the insured, subscriber, or other covered person; provided, however, that in either case the person licensed under this title shall be required to send such benefit payments directly to the provider who has the written assignment

STATEMENT OF THE CASE

Petitioner, W. A. Griffin, M.D., is a Georgia medical provider that treated a patient on December 12, 2012 who also happened to be a participant in an ERISA plan administered and sponsored by the Respondent, Coca-Cola Refreshments USA, Inc. United Healthcare Insurance Company is the claims fiduciary that was contracted to provide third party administrative services (TPA) to the plan. As a condition of service, Dr. Griffin required the patient to assign their health benefits and rights.

After providing services to a patient, Dr. Griffin did not get paid and followed-up with the plan administrator, though its claims fiduciary, United Healthcare, by submitting request for full and fair review (i.e. ERISA appeals) and detailed request for plan documents and contact information for the plan administrator. For example, relevant, sample excerpts from the appeal letter read verbatim:

This appeal is filed with the Plan Administrator of the above captioned plan, or appropriate named fiduciary or insurer of the plan. Any individual who is not designated as plan administrator or appropriate named fiduciary by this plan is required, by ERISA and as your fiduciary duty, to forward this legal document to such appropriate individual.

STATEMENT OF CASE
(continued)

A copy of the legal assignment of benefits from the participant of this plan under ERISA is enclosed to satisfy ERISA legal and derivative standing requirements.

Should this ERISA plan contains unambiguous anti-assignment clause prohibiting assignment of rights, benefits and causes of action in the SPD, the plan administrator is required to timely notify or disclose to the assignee of such prohibition by disclosing such SPD, especially on this appeal process, to avoid judicial unenforceability of your anti-assignment clause on judicial process.

In order to enable the participant and beneficiary of this claim to both appreciate the fatal inadequacy of this claim as it stands and to gain a meaningful review by knowing with what to supplement the record, and in order to secure a meaningful participation of a full and fair review of the denied claims, we hereby specifically request from you, this plan administrator or appropriate name fiduciary,

STATEMENT OF CASE
(Continued)

any copies of the plan documents under which this plan is operated and upon which the above captioned claim denial is based, procedures, formulas, methodologies, guidelines, schedules, protocols, and other guidelines; all documents which the plan reviewed or could have reviewed in denying this claim; consultant or service provider reports and the entire claim file pertinent to this claim denial, including but not limited to "if that information affects beneficiaries' material interests....." (U.S. Supreme Court, Pegram et al. v. Herdrich):

Identification of Plan Administrator of this employee benefit plan, including name, telephone number and postal mailing address; and if such plan administrator retained discretionary authority or control over the plan operation, if not, identification of any de facto plan administrator/fiduciary with designated or delegated discretionary authority;

STATEMENT OF CASE
(Continued)

Identification of Appropriate Named Fiduciary, Insurer designated to review benefits denials and make decisions on review (appeal), including specific name, telephone number and postal mailing address; and how such insurer obtained discretionary authority or control over plan operation;

In case of a Third Party Claim Administrator (TPA) without discretionary authority and with nonfiduciary status, provide a complete copy of plan document with unambiguous definitions and provisions of discretionary authority designation and specific ministerial duties authorized and specified for TPA.....

After exhausting administrative appeals, Petitioner filed a lawsuit in Northern District Court in Georgia. However, that lawsuit was dismissed due to plan anti-assignment provisions.

REASONS FOR GRANTING THE PETITION

I. THE DISTRICT COURT'S DECISION REFLECTS A CIRCUIT SPLIT THAT CAN ONLY BE RESOLVED BY THE UNITED STATES SUPREME COURT.

Here, Petitioner argued that Respondents waived the right to assert provider anti-assignment provisions after a lawsuit was filed. In fact, Petitioner specifically inquired about whether or not Respondents had provider anti-assignment provisions during the admininistrative appeals process. However, that question remained unanswered and Respondents failed to provide requested plan document that would have provided insight about the plan's provider assignment policy. Despite the above, the District court followed previous 11th circuit rulings in another Dr. Griffin case that held Petitioner's waiver arguments were not valid. (See *Griffin v. Coca-Cola Enterprises, Inc.686 Fed.Appx.* 820, 11th Cir.(Ga.), Apr. 27, 2017)

REASONS FOR GRANTING THE PETITION
(continued)

The rulings in the 11th Circuit are in direct conflict with the 5th Circuit. In *Hermann,* the 5th circuit had a similar scenario and agreed with Petitioner, a plan administrator or insurer could not raise anti-assignment defenses post litigation while it was clear that a provider relied on those assignments during the admininstrative appeals process. See *Hermann Hospital v. MEBA Medical & BenefitsPlan*,845 F.2d 1286 (5thCir.1988).[2]

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[2]Due to the new anti-assignment trend in the 11th circuit, another Georgia provider is currently trying to seek waiver options (see *Polk Medical Center, Inc. v Blue Cross and Blue Shield of Georgia, Inc.*, et al 1:17-CV-03692-TWT, NDC Georgia pending)

CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

2/13/2018

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