

IN THE SUPREME COURT OF THE UNITED STATES

HARRY J. CONNER

Petitioner

v.

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth
Circuit.

PETITION FOR REHEARING

For Respondent United States Government
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In propria persona
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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, petitioner respectfully petitions this Court for rehearing of its October 1, 2018, order denying the petition for a writ of certiorari in this case in light of this Court's determinations in *Lucia et al., v. SEC*, 585 U.S. ____ (2018).

INTERVENING CIRCUMSTANCES

Subsequent to the original filing of the petition in this case (July 12, 2017), this Court issued its June 28, 2018, decision in *Lucia, Id.* Whereby, this Court reaffirmed and reinforced its findings in *Freytag, v. Commissioner*, 501 U.S. 868 (1991), with respect to the Appointment Clause. In this decision, the Court again in its definitions set forth criteria in respect to the difference between the decisions and actions between those of an officer of the United States authorized to act on behalf of a federal agency and those acts of employees without statutory discretion whose decisions don't constitute those of the agency. In *Lucia*, Justice Kagan noted in delivering the opinion of the Court, the appointment clause of the Constitution lays out the permissible methods appointing "officers of the United States." *Id.* A class of government officials distinct from mere employees. Art. II § 2, cl. 2. In this instant case, the Court is requested to decide whether Legal Administrative Specialist (LASs) of the U.S. Office of Personnel Management's (OPM) Disability, Reconsideration and Appeals Unit qualify as such "officers" and therefore their findings of facts and legal conclusions in written correspondences in private disputes between MetLife and private citizens constitute acts of the agency resulting in Final Agency Decisions on behalf of OPM under the Administrative Procedure Act.(APA) 5 U.S.C. §§ 554-557.

In keeping with *Freytag and Lucia* the petitioner prays the Court finds they do not under the Appointment Clause. 5 U.S.C. § 3105; Art. II § 2 cl. 2. This fact is important in this instant case because on several different occasions, (in the original underlying Harry

Conner v. United States Postal Service et.al., U.S. District Court for Western District of Tennessee 2: 11-cv-02476-JTF-cgc rendered April 4, 2014, ECF 162 and 6th Circuit Court 14-5399, rendered February 26, 2015, rehearing en banc denied and *mandate issued June 18, 2015 (Conner I)*, in *Harry Conner v. Metropolitan Life Insurance Company et.al., U.S. District Court for the Western District of Tennessee 2:15-cv-02833-SHL-cgc, filed July 14, 2016, ECF 15-16, USCA 6th 16-6167 and in U.S. Supreme Court #17-8824, (Conner II)*, the lower courts have determined that such a document dated November 14, 2011, (exhibit “C” attached in appendix to the petition) as utilized in this case which was issued by OPM’s LAS Antionette Vanderhorst purported to have been a Final Agency Decision (FAD) under the APA. This document is important in this case because the petitioner alleges these type document have been used by MetLife in a continuous and illegal pattern to falsely change the narrative of federal and postal employees’ salary and employment history to conceal its underpayments under the Federal Employees Group Life Insurance (FEGLI) policy.

This document is also relevant in this case because it provided the legal and factual framework for the lower courts’ subject matter jurisdiction not to transfer this case to the U.S. Court of Federal Claims (CFC) in the original underlying proceedings as well as in the present case for the lower courts’ exercising of the doctrines of res judicata and issue preclusion in denying the petitioner’s claims for relief are frivolous. See Appendix attached to Petition exhibit “C 1 and 6th Circuit 16-6167.

QUESTION NOT PREVIOUSLY PRESENTED

Whether OPM LASs are officers of the United States under the Appointment Clause or mere employees not authorized to issue Final Agency Decisions under the APA ?

QUESTION IS OF NATIONAL IMPORTANCE

The petitioner avers this question is of national importance because MetLife by and through its officers, agents, directors and affiliates insures over 100 million people and over 4million federal and postal employees worldwide and it would be despicable and illegal for MetLife to be allowed to continue to gain tremendous profits from the systematic use of a fraudulent claims settling practices as in this case. This claims settling practice is otherwise unlawful because MetLife deliberately under calculates the amount of money to be paid on claims of the FEGLI policies issued prior to November 2, 1978, contrary to expressed Congressional intent by retroactively applying the termination clause of 5 U.S.C. § 8706, to depreciate Basic Life Insurance (BIA) under the policy, then intentionally devaluating or deleting any additional life insurance the deceased employee had by deliberately utilizing a fabricated FEGLI "Agency Certification of Insurance Status Forms" falsely represented to have come from the federal agency employer in order to alter and amend its obligations under the FEGLI policy in violation of federal law to under value and under pay otherwise viable claims after the employees dies. Thereby, constituting a fraudulent scheme.

This illegal policy and widespread practice of the intentional fraud of U.S. funds in joint activity federal employees of OPM and with the U.S. Department of Justice including the judiciary in order to conceal this fraudulent scheme from members of the public and other federal employees has been ongoing for over 40 years and continues to date. Because MetLife has an Office of Federal Employee Group Life Insurance (OFEGLI) which contracts with OPM to adjudicate claims under the FEGLI policy (FEGLI handbook page 1) and because MetLife is reimbursed from the fund from the Employees; Life Insurance Fund by and through the U.S. Treasury, (5 U.S.C. § 8714), this MetLife fraudulent scheme not only defrauded the petitioner of his opportunity to prove his claims entitling him to relief as well

as other beneficiaries and survivors of federal employees, members including judiciary, but defrauds the U.S. Government as well.

HISTORICAL FACTS RELEVANT TO QUESTION

On June 13, 2011, the petitioner filed his claims seeking monetary damages against the U.S. Government by and through its agencies the U.S. Postal Service (USPS) and the U.S. Office of Workers' Compensation Programs (OWCP) based upon an express or implied contract (FEGLI policy) in excess of \$10,000 which was between OPM and the Metropolitan Life Insurance Company (MetLife), in the United States District Court for the Western District of Tennessee rather than in the United States Court of Federal Claims. 28 U.S.C. § 1491. *Conner I, ECFs 1& 9*. Accompanying the complaint was a motion for leave to proceed *informa pauperis* which was granted on June 30, 2011, by order signed by then District Court Judge Bernice Donald. *Conner I, ECF 3*. Specifically, the petitioner alleged that the Government had failed in its responsibilities to negotiate and procure his deceased mother's FEGLI policy in the proper amount with proceeds collected under the guise of life insurance premiums taken from salary and later Federal Employee Compensation Act (FECA) benefits for over a period of 43 years (1967-2010). (*Conner I, ECF 1*).

On September 22, 2011, the petitioner sought to amend his complaint to add MetLife as a defendant for breach of the FEGLI contract by its failure to pay the full amount of life insurance in force at death as required under federal law. 5 U.S.C. § 8705(a). In response, the district court issued an invalid Order to issue and Effect Service of Process which was purported to have been signed by Judge Donald on October 27, 2011. (*Conner I, ECF 5*). This order was facially invalid because at the purported time of the signing of the order, Judge Bernice Donald had resigned her former district court judgeship 45 days earlier on

September 8, 2011 after receipt of her commission to the 6th Circuit Court of Appeals. (See [www. ca6.uscourts.gov](http://www.ca6.uscourts.gov) “Judge Bernice B. Donald).

In November of 2011, in response to this monetary dispute with MetLife in federal court where he sought to include MetLife as a defendant, an OPM LAS Antionette Vanderhorst, who at the time was a Legal Administrative Specialist of OPMs Disability, Reconsideration and Appeals, issued to the petitioner a document purporting to be an OPM FAD affirming a previous LASs (Karen Burgoon, Priority Correspondence Unit, OPM Retirement Operations Center) that was purported to be an OPM Initial Agency Decision (IAD) supposed to have been rendered under the APA on August 10, 2010. (exhibit “C” attached to the petition). As previously stated, MetLife illegally utilizes these instruments should a dispute involving its previous illegal adjudication in respect to the amount of money that is due under a FEGLI policy after the employee is deceased. (Conner I, ECF 4).

Utilizing this purported FAD and its material false factual findings and legal conclusions, MetLife was able to fraudulently change the narrative of the deceased’s employment and salary history in order to justify under payments of benefits due after death and thereby illegally altered and amended its previous obligations under the policy. This fraudulent act was accomplished by making four false material statements of facts regarding terms and conditions under her FEGLI policy appear to be true. One, that the instrument represented a formal FAD issued on the authority of OPM. When the petitioner now believes was improperly issued and falsely representing without the legal authority to adjudicate under the Appointment Clause of the Constitution. U.S. Const. Art. II § 2 cl. 2. Two, that the deceased’s life insurance terminated at the end of 12 months in non-pay status as would have occurred in the policies today. When under the terms of the policies as incorporated under federal law (5 U.S.C. § 8706) purchased prior to November 2, 1978, if an employee

either was in receipt of disability benefits at time of death or retired for disability retirement, their life insurance continued as their salary would have continued had the employee returned to work. Three, that USPS certified that her pay ceased in 1972. Id. When in actuality, the deceased was placed in the OWCP on temporary unable to return to duty status and received FECA benefits instead of salary until her death. Four, that effective September 25, 1981, the deceased was separated from service for disability retirement. When the deceased was never separated from service and there was never a SF 50 Notice of Personnel Action ever issued effectuating separation as required under federal law and this Court's precedence. 5 U.S.C. § 302(b) and *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). Thus, with this fraudulent instrument and incorrect statements made therein, MetLife was able to alter and change over 200 years of federal policy and law.

This document also contained false instructions that its findings could be appealed to district court. id. Knowing or should have known that claims seeking monetary damages against the United States and claims based upon implied or expressed contracts with the Government in excess of \$10,000 are in the exclusive jurisdiction of the CFC. 28 U.S.C. § 1491. Deceived by these material false statements and instructions, the petitioner was deceived, misdirected to and sought review in district court rather than the CFC as part of the prearranged plan between Cohen, MetLife by and through its agents, officers and employees acting on its behalf along with the OPM LAS deceivers acting in joint activity with U.S. Court Officers and U.S. DOJ employees as set forth in my complaint filed in Conner II. Where after initial and amended filing in federal court, the petitioner was ambushed as was previously set up by MetLife in preconceived agreement between MetLife and U.S. Congressman Steve Cohen whereby in exchange for campaign contributions and political donations, he would illegally use the power his office of U.S. Congressman and its

power of recommendation to federal judgeship to then U.S. Attorney for the Western District of Tennessee Edward Stanton III, and the involved Magistrate Charmaine Claxton to illegally obtain a predetermined result in MetLife's favor without a valid determination by a federal court with the subject matter jurisdiction to hear the original claims. Cohen then knew that once obtained, it would be easier to use the courts and doctrines of stare decisis, res judicata, issue preclusion and frivolousness to conceal original crimes from other federal courts in violation of the petitioner's 1st and 5th Amendment Constitutional rights to meaningful access to the courts and Due Process of Law.

Petitioner avers based upon subsequent obtained knowledge and belief, on June 7, 2012, then U.S. Attorney for Western District Edward Stanton III, directed AUSA Gary Vanasek to use the illegal litigation in district court to improperly transfer his deceased mother's official personnel file (OPF) to his custody for purposes of removing, forging and altering documents there from in violation of 18 U.S.C. § 1519, to be compiled into a manufactured administrative record in order to falsify more evidence in corroboration of false statements of facts stated in the alleged FAD. (exhibit "F" attached to petition and Conner I, ECF #113). On July 17, 2012, the district court originally acting without otherwise subject matter jurisdiction under federal law, proceeded in the original underlying proceedings violation of federal law and the petitioner's constitutional rights (28 U.S.C. § 1491(a) (1-2). *Simanonok v. Simanonok*, 918 F. 2d 947, 950-51 (Fed. Cir. 1990).

On January 18, 2013, the District Court issued an order staying the case. (Conner I, ECF 136, exhibit "A" attached to petition). On June 6, 2013, District Court Judge Fowlkes Jr., (Conner I, ECF 149) then acting in concert with Cohen, Stanton III, and Judge Claxton as part of the prearranged agreement with MetLife , then usurped the authority of the court by proceeding in the original underlying proceedings without having lifted the previous stay

of case and by referring all activities to the magistrate in the case for purposes of issuance of an unauthorized report and recommendation predetermined to give the factual findings and legal conclusions that were stated in the FAD *Chevron Difference* (*Chevron U.S.A. Inc., v. Natural Resources Defense Council*, 467 U.S. 837 (1984), which is the effect and force of law. (Conner I, ECF 149).

The magistrate in the original underlying proceedings who is also the presiding magistrate in these current proceedings not only gave the original FADs findings and legal conclusions *Chevron Difference*, but did so contrary to this Court's decision in *Bennett v. Spear*, 520 U.S. 154 (1997) requiring a two step analysis. ID. Here, had the magistrate did the two step, she would have discovered that the APA prohibits judicial review over claims seeking monetary damages in district court where other adequate remedies are available. (Conner I, id.). 5 U.S.C. §§ 702 and 704. The magistrate not only gave difference to the FAD but ordered her staff to terminate any prior evidence submitted to the court by the plaintiff because they were not motions. (See Conner I, ECF 144, "Minute Entry for proceedings").

The district court in the original case likewise without the stay of case being lifted, has twice adopted the magistrate's factual findings into its subsequent orders dismissing the cases with prejudice. (Conner I, ECF 162, page ID 3352, "Background"); (Conner II, U.S. Western District Court# 2:15-cv-02833-SHL-cgc). The Sixth Circuit in turn in the original underlying appeal assumed jurisdiction over a non-final and non-appealable order and has twice found that OPM had indeed issued the FAD and that OPM had made factual finds and conclusions of law that were stated therein. (COAs # 14-5399 and 16-6167). The petitioner avers, the Sixth Circuit's findings affirming Chevron difference for LASs findings and conclusions of law in violation of the Appointment Clause, while not published will continue in this circuit as unpublished precedent. In turn, this unpublished precedence will

have transformed OPM LAS employees who serve at the pleasure of their superiors and who in turn in the case of FEGLI adjudications act at the behest of MetLife in exchange for monetary benefit and who otherwise have no discretion under federal law or U.S.

Constitution to issue formal agency adjudications on behalf of the agency under the FEGLI policy, into decision makers on behalf of the agency in violation of the Appointment Clause.

Whereas absent this Court's written guidance will allow for MetLife's to continue its illegal claims settling practices by and through federal employees, agents, officials, contracting officers to continue to prosper along with their own operatives for their own personal gain to the detriment and expense of the beneficiaries and survivors of insured federal and postal employees.

The petitioner has made such timely challenges to the constitutional validity of the LASs to adjudicate FEGLI claims under the FEGLI policy on behalf of OPM in: the district court in "Plaintiff's Second Set of Objections to Magistrate's RR", Conner I, ECF 153, page ID 3254 ¶ 2, filed September 30, 2013; "Appellant Brief", Conner I, COA #14-5399, ECF 7, page ID 5, "Statement of Issues filed April 23, 2014; and Conner II, (Harry Conner v. Metropolitan Life Insurance Co., et al, U.S. District Court #2:15-cv-02833-SHL-cgc, (CONNER II, ECF 1, filed December 30, 2015; COA #16-6167), April 17, 2017 and in this Court in #17-8824.

This Court stated in *Ryder v. United States*, 515 U.S. 177, 183 (1995) and reiterated in *Lucia, Id.*, "One who makes a timely challenge to the constitutional validity of an appointment officer who adjudicates his case is entitled to relief." However, the petitioner avers that in this case, this Court has not only the authority but the obligation to the public interest to expose where possible and is so, federal LAS employees masquerading as if hooded nightriders under the color of federal office to be appointed officers of the United

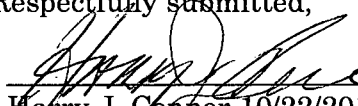
States under the Appointment Clause without the authority to act or render decisions on behalf of their employing agency or to issue adjudications in regard to FEGLI claims. See 5 C.F.R. § 870.102.

CONCLUSION

Whereas, the above stated goes directly to the question of whether the LASs who issue purported agency decisions in respect to the FEGLI policy are acting on behalf of their agency as purported in a discretionary fashion, or are they actually performing on behalf of MetLife in exchange for monetary gain in flagrant violations of federal law and ethics? This question is over relevancy because on November 14, 2011, the LASs in this cause purported to have the authority under the FEGLI policy to issue decisions to non federal employee members of the public on behalf of OPM under the Constitution's Appointment Clause (AC). U.S. Const. Art. II, § cl. 2 . Therefore, this Court's instruction as to whether LASs are authorized to act under the AC on behalf of their employing agencies in this fashion in respect to private adjudications of money disputes with MetLife under the FEGLI policy. In this and similar cases, this fact is important in the first place because such decisions are being utilized all over the world by MetLife to further its unlawful purposes that increases its profits by changing the narrative of federal employees' salary and employment histories after their death to justify under payment of claims in violation of federal law for its own personal gains and the profits of its shareholders. Therefore, the petitioner respectfully requests rehearing in this very important matter concerning constitutional rights and the government seizure of private property without just compensation in the form of employee salary and disability benefits under the guise of life insurance premiums without providing the insurance as promised. The petitioner requests the Court issue an order directing the U.S. Solicitor General to give the position of the United States in regards to the issues

raised. The petitioner further prays the Court will grant his informa pauperis motion and his petition for certiorari requiring the Sixth Circuit to recall its previous mandates issued resulting from fraud perpetrated in the lower courts and grant any and all other relief.

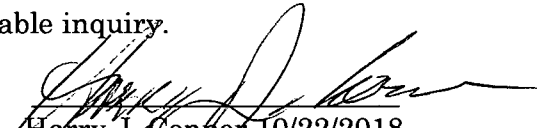
Respectfully submitted,


Harry J. Conner 10/22/2018

10/22/2018

VERIFICATION

I hereby swear under the penalty of perjury the facts stated herein are true and correct and are stated and based upon information and belief after reasonable inquiry.


Harry J. Conner 10/22/2018

10/22/18

No. 17-8824

IN THE

SUPREME COURT OF THE UNITED STATES

HARRY J. CONNER, PETITIONER

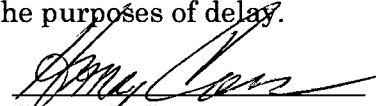
vs.

METROPOLITAN LIFE INSURANCE COMPANY et., al.

CERTIFICATE OF PETITIONER

Petitioner generally believes this petition for rehearing to be meritorious and hereby certifies that this position is presented in good faith and not for the purposes of delay.

October 22, 2018.


Harry J. Conner