No. _____

In the
Supreme Court of the United States

JUDITH K. KERNS; MARCIA E. NALLEY; AND SANDRA L. STEWART; ON BEHALF OF THE CLASS,
Petitioners,

v.

CATERPILLAR, INC.,
Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

With respect to the surviving spouse class members whose retiree-spouses died on or after January 10, 2005 (after expiration of the 1998 contracts) ("Group 2"), did the Sixth Circuit misapply *M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926 (2015), and related cases and misconstrue the applicable collectively-bargained agreements to find Group 2 surviving spouses have no right to healthcare benefits after the expiration of the agreements?

PARTIES TO THE PROCEEDING

The Petitioner class consists of surviving spouses of former hourly employees: (1) who were represented by the UAW in collective bargaining; (2) who retired from Caterpillar on or after March 16, 1998 and before January 10, 2005; and (3) whose employment at Caterpillar facilities in various locations was governed by the Central Labor Agreements and the related collective bargaining agreements. The class is represented by individual surviving spouses Judith K. Kerns, Marcia E. Nalley, and Sandra L. Stewart. Petitioners file this petition only with respect to the portion of the Sixth Circuit Decision affecting the surviving spouse class members whose retiree-spouses died on or after January 10, 2005 (i.e., after expiration of the 1998 contracts) (Group 2).

Respondent is Caterpillar, Inc.

LIST OF DIRECTLY RELATED PROCEEDINGS

There are no related cases or proceedings.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, on behalf of Group 2, submits this petition for writ of certiorari to review the opinion of the United States Court of Appeals for the Sixth Circuit.

KEY OPINIONS BELOW

Kerns v. Caterpillar Inc., 791 F.App'x 568 (6th Cir. 2019) ("Sixth Circuit Decision"), November 13, 2019, App. 1-9.

Kerns v. Caterpillar, Inc., 499 F.Supp.2d 1005 (M.D. Tenn. 2007), June 27, 2007, by the District Court for the Middle District of Tennessee ("MDTN"), denying Caterpillar's motion to dismiss, App. 209-252.

Kerns v. Caterpillar, Inc., No. 3:06-CV-01113, 2007 WL 2044092 (M.D. Tenn. July 12, 2007), granting class certification, App. 188-208.

Winnett v. Caterpillar, Inc., 703 F.Supp.2d 745, 749 (M.D. Tenn. 2010), March 26, 2010, denying in part, and granting, in part, the parties' cross motions for summary judgment (liability), App. 128-187.

Winnett v. Caterpillar Inc., No. 3:06-0235, 2011 WL 98586 (M.D. Tenn. Jan. 12, 2011), denying Caterpillar's first motion for reconsideration, App. 103-127.

Kerns v. Caterpillar Inc., 144 F.Supp.3d 963 (M.D. Tenn. 2015) November 17, 2015, decision and order of the MDTN denying Caterpillar's second motion for reconsideration, App. 19-50.

December 29, 2017 MDTN order awarding prejudgment interest, approving R.528, Ex. 1 [R.529][1] and granting the joint stipulation of calculations for principal damages and prejudgment interest, App. 14-16.

MDTN final judgment, App. 10-13.

JURISDICTION

Caterpillar filed a timely notice of appeal April 13, 2018. The Sixth Circuit had jurisdiction under 28 U.S.C. §1291 to review the MDTN final judgment. The Sixth Circuit opined on November 13, 2019. App. 1. The time to file this petition was extended to April 13, 2020. This petition is timely. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

A. Factual Background

This petition seeks review of the Sixth Circuit's misconstruction of contract language applied to Group 2.[2] The Sixth Circuit, relying on *Tackett*, found that surviving spouses whose retiree-spouse died on or after January 10, 2005 do not have vested healthcare benefits for their lifetimes, or otherwise beyond the expiration of the 1998 Insurance Plan Agreement

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[1] Citations to the district court record are denoted as R.___. Citations to the Sixth Circuit record are denoted as 18-5384, at ____.

[2] The Sixth Circuit affirmed and ruled in favor of surviving spouse class members whose retiree-spouses died before January 10, 2005 ("Group 1"). The claims of Group 1 are resolved.

("IPA") and its 1998 Group Insurance Plan ("GIP"). The Sixth Circuit found that the retiree death date before contract expiration, rather than the retirement date, was determinative whether Caterpillar must provide Group 2 with premium-free healthcare benefits for life. The only difference between Group 1 and Group 2 is whether the retiree died before or after the contract expired. The bargaining parties and the contractual text did not contemplate that the death date would determine whether surviving spouses were entitled to healthcare benefits. The Sixth Circuit erred in failing to consider the parties' bargaining history since at least 1988 and that benefits have been, and were to be, provided beyond the expiration of the agreements.

The negotiated agreements have explicit "lifetime" language. Since the 1960s, Caterpillar and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and various Local Unions ("UAW") have negotiated collective bargaining agreements ("CBAs") that provide medical benefits to surviving spouses of retirees. [Atwood Decl. 12/21/2009, R.208, Pg.ID 4304-05, ¶9]. Throughout most of the relationship, Caterpillar and the Union engaged in central bargaining, which agreements were memorialized in a Central Labor Agreement ("CLA"). [*Id.*, Pg.ID 4303, ¶5]. Each CLA since 1964 has included a negotiated Insurance Plan Agreement ("IPA") with an appended Group Insurance Plan ("GIP") that defines the healthcare benefits. [*Kerns* Plaintiffs' Local Rule 56.01 Statement of Material Facts 12/22/2009 ("KPSMF") R.217, Pg.ID 6049, ¶12; 1964 IPA and GIP, R.208-1, Pg.ID 4313-41].

On April 13, 2006, 3 surviving spouses of deceased retirees ("Plaintiffs") filed this lawsuit on behalf of a class of surviving spouses to enforce rights to vested, lifetime, premium-free healthcare benefits arising from the negotiated 1998 GIP. [Compl., R.40-1, Pg.ID 506-12; 1998 GIP, R.222-9, Pg.ID 6603-50; R.262, Pg.ID 9090, App. 130-32].

Caterpillar appealed from a final judgment of the MDTN, which held that the 1998 GIP unambiguously provided vested, lifetime, premium-free healthcare benefits for surviving spouses of deceased retirees who retired during the time the 1998 CLA was in effect. [Final Judgment, R.535, App.10-13; R.262, Pg.ID 9123, App. 169-71].

The Sixth Circuit focused on the 1998 agreements, and failed to review context and history. Since at least 1988, the agreements provided for healthcare benefits beyond expiration of particular contracts, based upon the retirement date (before expiration), not death date (before expiration). The MDTN found that under the 1988 agreements, Caterpillar and the UAW negotiated vested, lifetime benefits at no cost for surviving spouses regardless of retiree death date. Caterpillar acknowledged that surviving spouses of retirees who retired under the 1988 agreements have lifetime, no-premium healthcare that survives the expiration of the 1988 agreements.

1. <u>The 1988 CLA, IPA and GIP</u>

Caterpillar and the UAW bargained benefit plans for the 1988 CLA. [KPSMF, R.217, Pg.ID 6050, ¶14]. In Section 5.15 of the 1988 GIP, the parties agreed with

regard to *retiree* healthcare benefits: "[c]overage in accordance with this paragraph 5.15 shall be provided without cost to any such retired employee." [1988 GIP, R.233-1, Pg.ID 8329]. With regard to the healthcare benefits for *surviving spouses*, Caterpillar and the UAW agreed that "such Dependents' Coverage will be continued following the death of a retired Employee for the remainder of his surviving spouse's life without cost." [*Id.*, Pg.ID 8330].

In describing the 1988 GIP, Caterpillar counsel Torres agreed that it provided different, more "favorable language" to surviving spouses than to retirees.[3] [*Winnett* CLS PI oral argument Tr. 3/7/2008, R.224-17, Pg.ID 7618-19]. Specifically, Caterpillar found it significant that "there is an absence of such [lifetime] language as it relates to retirees." [*Id.*, Pg.ID 7617].

The district court found that under the 1988 GIP, the bargaining parties intended that both retirees and surviving spouses had lifetime, vested healthcare benefits without premiums: benefits that were intended to continue beyond the termination of the 1988 contracts. For the 1988 agreements, there was no distinction for surviving spouses whose retiree-spouse died after the 1988 contracts expired. They all had premium-free healthcare benefits under the 1988 contracts based on the pre-expiration retirement date,

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[3] Mr. Torres' remarks were in the related, but unconsolidated case of *Winnett v. Caterpillar, Inc.*, during an oral argument for the CLS subclass (whose benefits were governed by the 1988 GIP). *See Winnett v. Caterpillar, Inc.*, 496 F.Supp. 2d 904, 907-908 (M.D. Tenn. 2007), *rev'd in part*, 553 F.3d 1000 (6th Cir. 2009).

regardless of death date. [*Winnett* Mem. granting PI, R.225-4, Pg.ID 7835, 7837-38; R.262, Pg.ID 9104-05, App. 147-49].

2. Caterpillar's 1992 Unilateral Implementations

Labor disputes arose while the parties negotiated for a successor to the 1988 CLA. Following extensions, the 1988 CLA was terminated November 3, 1991. On March 5, 1992, Caterpillar declared impasse. [R.262, Pg.ID 9092, App. 133-34].

In April and December 1992, Caterpillar unilaterally implemented provisions of its last, best and final offer. [KPSMF, R.217, Pg.ID 6052, ¶22; Atwood Decl., R.208, Pg.ID 430, ¶¶17, 20]. The unilateral implementation included benefit plan documents. [1992 Unilateral Plan, R.222-6, R.222-7, R.222-8, Pg.ID 6416-6585].

Caterpillar's 1992 unilateral implementations changed the provision related to healthcare benefits *for retirees*. The 1992 unilateral benefit plan document also imposed a "cap" on Caterpillar's healthcare costs for retiree healthcare. [R.262, Pg.ID 9093, App. 134; Atwood Decl., R.208, Pg.ID 4306, ¶20].

Despite changes that affected *retirees*, the language applicable to *surviving spouses* in the 1992 Unilateral Plan remained essentially unchanged from the 1988 GIP. [KPSMF, R.217, Pg.ID 6053-54, ¶¶23-25]. Section 5.15 of the 1992 Unilateral Plan still provided, "such Dependents' Coverage will be continued following the death of a retired Employee for the remainder of his surviving spouse's life without cost." [1992 Unilateral

Plan, R.222-6, Pg.ID 6462]. Section 6.2(c), like the 1988 GIP, also stated:

> [S]uch Dependents' Coverage for any such surviving spouse . . . will continue . . . for the remainder of her life without cost."

[1992 Unilateral Plan, R.222-7, Pg.ID 6492-93].

3. The 1998 CLA, IPA and GIP

The UAW and Caterpillar resolved the labor dispute and agreed upon a 1998 CLA, IPA and GIP, effective March 16, 1998. [KPSMF, R.217, Pg.ID 6054, ¶26]. The 1998 GIP continued to include language in Section 5.15 that required *retirees* to potentially pay premiums for any over-the-cap amounts. Section V of the 1998 GIP makes clear that Caterpillar reserved no right under the agreement to terminate benefits while the IPA remained in effect. Section 5.1 of the GIP states that:

> [a] benefit shall be provided in accordance with this Section only for an Employee, while coverage is in effect with respect to him, or a Dependent of an Employee, while Dependent's Coverage for such benefit is in effect with respect to such Employee. Benefits in accordance with this Section will be provided to such Employee, retired Employee, and Dependents thereof for the duration of any Agreement to which this Plan is a part.

[1998 GIP, R.222-9, Pg.ID 6625].

a. 1998 GIP Language Relating to Surviving Spouses

In the 1998 GIP, the language relating to surviving spouses continued unchanged from the 1988 GIP and from the 1992 Unilateral Plan. Section 5.15 again provided that healthcare benefits "will be continued following the death of a retired Employee for the remainder of his surviving spouse's life without cost." [1998 GIP, R.222-9, Pg.ID 6646; Atwood Decl., R.208, Pg.ID 4308, ¶31].

Under Section 5.15 of the 1998 GIP, the effective date for healthcare benefits was the "retirement date" of the eligible employee, as the GIP expressly stated that, "[c]overage shall take effect on his retirement date." The retirement date was the operative moment, not the death date. [1998 GIP, R.222-9, Pg.ID 6645].

Section 5.15 of the 1998 GIP provided, "[d]ependents' Coverage shall be in effect in accordance with this paragraph 5.15 while Personal Coverage is in effect with respect to all Dependents of a retired Employee who were covered hereunder on the day preceding his retirement[.]" [1998 GIP, R.222-9, Pg.ID 6646]. Like all prior GIP versions, the 1998 GIP included the provision in Section 6.2(c) that "such Dependents' Coverage for any such surviving spouse . . . will continue in effect . . . for the remainder of her life without cost." [1998 GIP, R.222-10, Pg.ID 6690-91].

b. Relevant Language from the 1998 IPA

Section 9(a) of 1998 IPA contained general durational language. However, like all prior IPAs, the

1998 IPA durational provision included an evergreen rollover clause. It provided for an unlimited number of automatic one-year extensions, unless notice, the condition precedent for any modification or termination, was first provided. The first sentence in Section 9(a) stated:

> this Agreement shall remain in force until April 1, 2004, ***and thereafter*** from April 1 of one year until April 1 of ***the next succeeding year***, unless at least 60 (but not more than 90) days prior to April 1, 2004, or at least 60 (but not more than 90) days prior to April 1 of ***any succeeding year***, any party gives written notice to the other that it desires a modification or termination.

[1998 IPA, R.222-9, Pg.ID 6598] (emphasis added).

The second sentence in Section 9(a) provides for an alternative, conditional duration of the contract, applicable only if the condition precedent for any termination of the IPA (notice between 60-90 days prior to April 1) were first satisfied. That provision states:

> [i]n the event that any negotiations ***following such notice*** do not result in an agreement for renewal, with or without modification, prior to the April 1 next succeeding ***such notice***, this Agreement shall terminate at the end of any term (including any one-year extension in accordance with the foregoing) unless further extended by mutual agreement.

[*Id.*] (emphasis added).

Significantly, the third sentence in Section 9(a) relating to the durational language stated that, "[t]ermination of this Agreement shall not have the effect of automatically terminating the Plan." [*Id.*].

c. 1998 Addition of the VEBA Fund

One of the newly negotiated health benefits changes under the 1998 GIP was the creation of a Voluntary Employees' Beneficiary Association trust fund ("VEBA"). [KPSMF, R.217, Pg.ID 6057, ¶36]. The VEBA limited above-the-cap amounts that *retirees* would be liable to pay in premiums. [Atwood Decl., R.208, Pg.ID 4307, ¶25]. Caterpillar contributed to the VEBA, and the VEBA was charged for the *retirees'* above-the-cap costs until the VEBA ran out of funds. [*Id.*; VEBA Agreement, R.223-5, Pg.ID 7229; Bair 10/8/2009 Dep. Tr., R.225-7, Pg.ID 7893-98; Def. Response to KPSMF, R.243, Pg.ID 8585-86 ¶¶36-37]. VEBA monies were expected to be depleted sometime in 2004, and *retirees* were required to begin paying premiums after that. [Rapson Dep. Tr. 7/29/2009, R.225-14, Pg.ID 8017]. The VEBA was not charged for surviving spouses (who were not themselves Caterpillar former employees).

d. SPDs Related to the 1998 BenefitPlans

In November 1999, Caterpillar unilaterally issued new SPDs.[4] The Network SPD stated that, "[i]f you die while eligible to retire ***or following your retirement***,

[4] There were at least 2 versions of the 1999 SPDs [Indemnity SPD, R.222-13; Network SPD, R.223-1].

your surviving spouse will have coverage continued for his or her lifetime without cost." [Network SPD, R.223-1, Pg.ID 6989] (emphasis added). The Indemnity SPD stated that, "***[i]f you die following your retirement***, your surviving spouse will have coverage continued for his or her lifetime without cost." [Indemnity SPD R.222-13, Pg.ID 6896]. The SPDs did not say the retiree had to die before the contract expired in order for the surviving spouse to receive lifetime, no-premium healthcare benefits.

The Indemnity SPD stated "[s]ubject to applicable [CBAs], the company reserves the right to terminate the employee benefit plans." [Indemnity SPD, R.222-13, Pg.ID 6916]. The Network SPD, although relating to the same benefit plans and agreements, excludes the language relating to CBAs and stated only that, "[t]he company reserves the right to terminate the employee benefit plans." [Network SPD, R.223-1, Pg.ID 7009]. The Network SPD also stated that the SPD, "is subject to the terms and conditions of the applicable documents" [*Id.*, Pg.ID 7011]. No "Reservation of Rights" clause appears in the bargained 1998 CLA, IPA, or GIP.

4. <u>The 2004 CLA, IPA and GIP</u>

The UAW and Caterpillar negotiated a CLA, IPA and GIP that took effect January 10, 2005. [2004 IPA and GIP, R.223-2, Pg.ID 7018]. The exact termination date of the 1998 IPA is unclear.

For the first time, the Section 5.15 language that surviving spouses' healthcare coverage "will be continued following the death of a retired Employee for

the remainder of his surviving spouse's life without cost" or that surviving spouses' healthcare coverage "will continue . . . for the remainder of her life without cost" was removed. The 2004 GIP clearly states that "Retirees," "Dependents," and "Participants" all have obligations to contribute toward the over-the-cap Medical Expense Benefit coverage. [*Id.*, Pg.ID 7092]. Those 2004 GIP provisions apply to those who retire under the 2004 agreements, not to those who retired under the 1988, 1992 or 1998 agreements.

5. Extrinsic Evidence Confirms Surviving Spouse Healthcare Benefits Vested for "Life without Cost"

Caterpillar repeatedly represented, in writing, that healthcare benefits without premiums for surviving spouses of retirees who retired under the 1998 GIP were vested, to continue for "life without cost," and beyond the termination of the 1998 IPA. [R.276, Pg.ID 9300-05; R.217, Pg.ID 6060, 6086-81, ¶¶43, 100]. The extrinsic evidence does not differentiate based on the retiree death date.

From March 16, 1998 until January 10, 2005, Caterpillar repeatedly made written representations to *Kerns* class members that if the retiree passed away before them, they would receive healthcare benefits for the rest of their lives without cost (and the date of death or expiration date of the agreement were not listed as limiters). [lifetime letters, R.223-4, Pg.ID 7212-27]. Caterpillar routinely sent letters to surviving spouses shortly after the retiree passed, assuring each spouse that they would have healthcare coverage for

their lifetime. [R.217, Pg.ID 6048-49, 6060, ¶¶10, 43-44; R.243, Pg.ID 8575-76, 8588, ¶¶10, 43-44].

In addition to sending lifetime letters, Caterpillar typically: (1) had the surviving spouse sign a "Medical Expense Survivor's Coverage Hourly" form drafted by Caterpillar, and (2) made various notations on a "Survivor Insurance Information Card" that Caterpillar drafted. [Forms, R.223-3, Pg.ID 7141-7210; Cards, R.223-3, Pg.ID 7135-40]. Caterpillar's own internal documents, authored by it, make plain that Caterpillar applied the 1998 GIP to guarantee surviving spouses lifetime healthcare benefits beyond the termination date of the 1998 IPA. There was no distinction on the form or card for a death date before or after contract expiration. Nor is there any evidence that a pre-contract-expiration death date was a criterion under the 1988 agreements or the 1992 Unilateral Plan documents. For more on these documents and the VEBA, see Plaintiffs' appeal brief, 18-5384, R.32 at pp.12, 14-21. Nearly every surviving spouse lifetime letter expressly stated that the surviving spouse was eligible for "lifetime" medical coverage. [R.223-4, Pg.ID 7212-27]. Precisely zero letters, forms, cards, or other documents state that the surviving spouse's "life without cost" coverage was subject to premiums, that their coverage would end upon the termination of the 1998 IPA, or that it was in any way relevant whether their spouse expired before the contract.

The district court made the factual determination, "the extrinsic evidence presented to the court 'plainly supports the plaintiffs' position' that [surviving spouse] benefits had vested." It did so for both Groups 1 and 2.

Kerns v. Caterpillar, Inc., 144 F.Supp.3d 963, 971 (M.D. Tenn. 2015). [R.472, Pg.ID 12429; R.262, Pg.ID 9123 n.18, App. 171].

The MDTN further determined that vesting occurred under the 1998 GIP effective upon the retiree's ***retirement date***. [*Id.*, at Pg.ID 9125-26, App. 172-74]. During the CLS preliminary injunction hearing in *Winnett*, Caterpillar's former Director of Corporate Labor Relations, Jerry Brust, testified about retiree healthcare vesting as he understood it as applied to the 1988 GIP.[5] He stated Caterpillar "wanted to give employees an opportunity—if they were contemplating retiring in the near future . . . to make the decision whether they were going to in effect, ***cash in their chips*** and push them back from the table . . . and ***retire knowing that they had locked***

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[5] Section 5.15 of the 1988 GIP contained identical language to the relevant 1998 GIP language relating to surviving spouses, stating that, "such Dependents' Coverage will be continued following the death of a retired Employee for the remainder of his surviving spouse's life without cost." [1988 GIP, R.233-1, Pg.ID 8330]. While *Winnett* is distinct because it did not involve a class claiming benefits under the 1998 GIP, Caterpillar's interpretation of the Section 5.15 language applicable to retirees and to surviving spouses under the 1988 GIP remains pertinent because the contractual language relating to surviving spouses is identical to the 1998 GIP. The *Winnett* court found vested benefits for both CLS retirees and spouses under the 1988 GIP, but those claims were defeated due to the statute of limitations. *See Winnett v. Caterpillar, Inc.*, 579 F.Supp.2d 1008, 1023 (M.D. Tenn. 2008) *rev'd* 609 F.3d 404, 409 (6th Cir. 2010) (*Winnett II*). It is undisputed that Caterpillar does not charge premiums to the non-*Winnett*, non-CLS surviving spouses of retirees who retired (not died) under the 1988 GIP.

in at that point." *Kerns v. Caterpillar, Inc.*, 144 F.Supp.3d 963, 972-73 (M.D. Tenn. 2015) (emphasis added). [R.472, Pg.ID 12431, App. 38-39]. The district court found that, "Brust's use of the phrase 'locked in' suggests that Caterpillar knew these benefits could not be taken away." *Id.*, at 973. The MDTN found that the time of vesting was retirement and that the death date (post-contract expiration) did not affect a surviving spouse's right.

6. Events Leading to Litigation

Caterpillar sent an October 10, 2005 letter to surviving spouses,[6] [R.224-4, Pg.ID 7492-7501], stating monthly premiums would begin January 1, 2006. Thereafter, Caterpillar sent surviving spouses enrollment materials. [R.224-5, Pg.ID 7502-05]. None of the materials differentiated by retiree death date.

After Caterpillar sent the October 2005 letters, a number of surviving spouses objected. [Folley Dep. Tr., R.225-8, Pg.ID 7930-31; Francisco letter, R.233-4, Pg.ID 8435-38; form, R.223-3, Pg.ID 7159; 11/4/2005 Harvey letter, R.224-8, Pg.ID 7515]. In response, Caterpillar stated:

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[6] The 10/10/2005 letter was also sent to surviving spouses who were in the *Winnett* class. [R.224-4, Pg.ID 7492]. Caterpillar did not send any such letters to surviving spouses of retirees who retired under the 1988 IPA (whether the retiree died before or after the 1988 IPA termination). Caterpillar has never charged a premium to surviving spouses of non-CLS retirees who retired under the 1988 GIP, even though the applicable language is the same as at issue here.

> [w]e have . . . applied the terms of the group health plan that apply to your request. For the reasons set out below, we have determined that the healthcare premiums communicated to [you] previously are ***incorrect***,[7] and accordingly you will not be charged for medical premiums for your lifetime.

[3/28/2006 letter to Francisco, R.233-4, Pg.ID 8434; 3/29/2006 letter to Harvey, R.224-8, Pg.ID 7514] (emphasis added). Surviving spouses who complained about the upcoming premium charges ("the Squeaky Wheels") were placed in what Caterpillar called a "rate override" group who were ***not*** charged premiums. [R.224-8, Pg.ID 7519-20].

On the same day, Caterpillar informed all non-complaining surviving spouses (regardless of death date) that they ***would*** be required to start paying premiums. [R.224-11, Pg.ID 7530]. Caterpillar stated:

> There has been a delay in the collection of this premium. As a result, the premium will begin effective April 1, 2006 for healthcare coverage during that month. You will not be required to pay premiums retroactively.

[*Id.*]

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[7] The rate override group was based on who complained, not the date of any retiree's death before or after expiration.

This lawsuit was filed April 13, 2006.[8] [Compl., R.40-1]. Four days later, in apparent response, Caterpillar reversed course for most of Group 1 and sent a letter that it was voluntarily "waiv[ing]" healthcare premiums for them. [R.224-13, Pg.ID 7533-38]. Caterpillar continued to charge premiums to surviving spouses whose retiree-spouses died on or after January 10, 2005 (Group 2). [R.262, Pg.ID 9099, App. 141].

7. Caterpillar Proposes Unpublished Letters of Agreement Using Death Date; UAW Disputes.

Meanwhile, in late 2005, Caterpillar representative Glynn approached the UAW about the upcoming premium charges. Caterpillar proposed 2 alternative letters of agreement on January 10 and 11, 2006, both of which would provide healthcare benefits without premiums only to Group 1 (see R.224-10, Ex. 28, WP Ex. 78, Rapson 7/29/2009 Dep. Tr. 8, Pg.ID 7526-29; R.225-13, Ex. 48, Glynn 6/18/2009 Dep. Tr. 202-04; R.225-14, Ex. 49, Rapson 7/29/2009 Dep. Tr. 46, Pg.ID 8024). The UAW did not agree to either letter because they made the retiree death date determinative. The UAW's position was the retirement was the vesting date and all 1998 agreement surviving spouses had the same rights. [R.225-1, Ex. 36, 7/8/2008 Atwood Tr. 140-43, Pg.ID 7684-85, Winnett PI; R.225-14, Ex. 49, Rapson 7/29/2009 Dep. Tr. 47, Pg.ID 8024]. Atwood

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[8] The case was subsequently transferred to the MDTN. All proceedings from the Western District of Tennessee were docketed in the MDTN as R.40 and R.41 with all prior docket entries as attachments.

testified that "just because a spouse's retired spouse had not died prior to January 10, 2005, it ought not to have changed their right to the benefits that her retired husband or retired wife had prior to the date of January 10, 2005." (R. 225-1, Ex. 36, 7/8/2008 Atwood Tr. 144, *Winnett* PI, R.217, ¶ ¶96-99, Pg.ID 6079-80).

B. Procedural History

The district court denied Caterpillar's motion to dismiss. *Kerns v. Caterpillar, Inc.*, 499 F.Supp.2d 1005 (M.D. Tenn. 2007). [R.77, Pg.ID 2315-47; R.78, Pg.ID 2348, App. 209-252]. The district court granted class certification. *Kerns v. Caterpillar, Inc.*, No. 3:06-CV-01113, 2007 WL 2044092 (M.D. Tenn. 2007). [R.79, Pg.ID 2349-64, App. 188-208]. The class consists of:

> surviving spouses of former hourly employees: (1) who were represented by the UAW in collective bargaining; (2) who retired from Caterpillar on or after March 16, 1998 and before January 10, 2005; and (3) whose employment at Caterpillar's facilities in Memphis, TN, York, PA, Denver, CO, and Aurora, Peoria, East Peoria, Mapleton, Mossville, Morton, Decatur and Pontiac, IL was governed by the Central Labor Agreements and the related collective bargaining agreements. Any person who is presently the spouse of a living retiree cannot be a class member at this time.

[R.80, Pg.ID 2365, App. 207-08]. The case was bifurcated (liability and damages). [R.176, Pg.ID 4164-68].

On March 26, 2010, the district court granted in part and denied in part, motions for summary judgment (liability). *Winnett v. Caterpillar, Inc.*, 703 F.Supp.2d 745, 749 (M.D. Tenn. 2010). [R.262-263, App. 128-87].

Caterpillar has twice sought reconsideration. In October 2010, Caterpillar filed its first motion to reconsider (in light of *Winnett v. Caterpillar Inc.*, 609 F.3d 404 (6th Cir. 2010) ("*Winnett II*"), and *Wood v. Detroit Diesel Corp.*, 607 F.3d 427 (6th Cir. 2010)). [R.266-267]. The MDTN denied Caterpillar's motion as to the *Kerns* class. *Winnett v. Caterpillar Inc.*, No. 3:06-0235, 2011 WL 98586 (M.D. Tenn. 2011). [R.280, App. 103-127].

Caterpillar filed a second motion to reconsider (due to *M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926 (2015)). *Tackett* overruled the application of certain inferences previously established in *Int'l Union, UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983) ("*Yard-Man*"), and its progeny. The district court denied Caterpillar's motion. *Kerns v. Caterpillar Inc.*, 144 F.Supp.3d 963 (M.D. Tenn. 2015). [R.472-473, App. 19-50]. The MDTN determined it had not applied any *Yard-Man* inferences and the plain language of the 1998 GIP unambiguously conferred vested lifetime, premium-free healthcare benefits to the class.

After completing the damages phase (see *Kerns v. Caterpillar Inc.*, No. 3:06-CV-1113, 2014 WL 4171997 (M.D. Tenn. Aug. 20, 2014); *Kerns v. Caterpillar, Inc.*, No. 3: 06-CV-1113, 2015 WL 235872 (M.D. Tenn. Jan. 16, 2015)), on December 29, 2017, the district court entered an order granting monetary damages [R.517]

and prejudgment interest [R.528-529, Pg.ID 12743-54, App. 253-262]. [R.531].

On March 30, 2018, Final Judgment was entered in favor of the surviving spouse class. Caterpillar was "permanently enjoined from charging class members monthly premium charges … for the remainder of their lifetimes." [R.535, Pg.ID 12774, App. 10-13]. Caterpillar appealed. On November 13, 2019, the Sixth Circuit issued its opinion affirming in favor of Plaintiff class as to Group 1 and reversing and remanding as to Group 2, only. *Kerns v. Caterpillar Inc.*, 791 F.App'x 568 (6th Cir. 2019), App. 1-9.

REASONS FOR GRANTING THE PETITION

Tackett and its progeny command that CBAs be interpreted like any other contracts and Courts should not read lifetime promises into agreements that are otherwise ***silent*** as to the duration. This case presents explicit, unambiguous lifetime promise that many prior cases sought to infer from, but which were lacking in, the 4 corners of the agreement. This case raises an issue of first impression: whether an explicit promise to provide lifetime, no cost healthcare benefits in a collectively-bargained GIP is sufficient to vest lifetime healthcare benefits, beyond the expiration of the contract, despite the presence of a general durational clause with an evergreen rollover provision. The Sixth Circuit's overzealous misapplication of *Tackett* creates a split in the jurisprudence that must be righted.

The 1998 GIP specifically provided in the 2 relevant portions—Sections 5.15 and 6.2(c)—that healthcare benefits will be provided following the death of an

eligible retiree "for the remainder of his surviving spouse's life without cost" and that "such Dependents' Coverage for any such surviving spouse . . . will continue . . . for the remainder of her life without cost." These plain, unambiguous promises in the 4 corners of a GIP are precisely what is called for in the post-*Tackett* era to guarantee that a particular benefit is vested for life, beyond the expiration date of the contract.

Where a promise for lifetime healthcare is unambiguously and explicitly provided in a specific provision of a GIP, the general durational clause does not govern. This is particularly true where, as here, the applicable durational provision in IPA Section 9(a) contains unambiguous language, that "[t]ermination of this Agreement shall not have the effect of automatically terminating the Plan." Further, where the general durational clause contains an evergreen clause that does not expire by its own terms, the more specific provision expressly providing for a benefit duration of "life" governs.

The plain language in Section 5.15 unambiguously links eligibility for Dependents' Coverage to the qualifying Caterpillar retiree-spouse's *retirement date*. This Court's decision in *Winnett I* and Caterpillar's own understanding support the application of the principle that the key moment at which retirement benefits vest is retirement, not death. The district court did not err by holding that class benefits under the 1998 GIP vested upon retirement. The Sixth Circuit erred in finding otherwise. Group 2's rights are the same as the affirmed Group 1's rights. The retiree death date

(before contract expiration) is not material to the obligation. The Sixth Circuit impermissibly expanded the contract when it should have ascertained the specific language to construe the bargaining parties' intent in the context of the contract's history.

A. The Plain Language of the 1998 GIP Unambiguously Provided for Vested, "Lifetime" Benefits without Premiums for Surviving Spouses of Deceased Retirees Who Retired During the 1998 CLA.

Precedent requires applying ordinary contract principles to the 1998 contracts. The Sixth Circuit did not do so. Instead, the Sixth Circuit's outcome-driven decision adopts the same artificial "thumb on the scale" analysis that was rejected in *Tackett* and *Reese* and by the Sixth Circuit in decisions that followed. The Sixth Circuit has drifted far afield in its *Tackett* jurisprudence.

The language from the agreements in this case is different from any analyzed since *Tackett* and *Reese* were decided. Section 5.15 of the 1998 GIP provided that healthcare benefits "will be continued following the death of a retired Employee ***for the remainder of his surviving spouse's life*** without cost." [1998 GIP, R.222-9, Pg.ID 6646]. The 1998 GIP included an additional provision applicable to surviving spouses in Section 6.2(c) that "such Dependents' Coverage for any such surviving spouse . . . will continue in effect . . . ***for***

the remainder of her life without cost."[9] [1998 GIP, R. 222-10, Pg.ID 6690-91].

"Where the words of a contract in writing are clear and unambiguous, its meaning is to be ascertained in accordance with its plainly expressed intent." *M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926, 933 (2015) (*quoting* 11 R. Lord, Williston on Contracts § 30:6, p.108 (4th ed. 2012) (Williston)). The 1998 GIP's use of the explicit, specific durational language that benefits will be provided "for . . . life" or "for the remainder of her life" is a clear, unambiguous expression of the parties' intent to vest lifetime benefits. This explicit "for life" language expresses the parties' specific intent as to duration beyond the agreement expiration.

The Sixth Circuit Decision is short on reasoned analysis and ignores the contracts' evolution (i.e., 1988,

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[9] The above-cited paragraph contains additional language above the quoted text that relates to other categories of surviving spouses (not class members) and are plainly not eligible for lifetime duration health coverage at no cost. Those surviving spouses are provided with health care limited to a particular duration and are required to pay premiums. [1998 GIP, R.222-10, Pg.ID 6691]. This language demonstrates that Caterpillar knew how to include language requiring others to "pay the applicable full group coverage" or to terminate coverage at a specific time frame other than "lifetime," such as "after the expiration of 24 months of coverage" or "in no event less than 36 months." ***This plain language within the 4 corners of the negotiated agreement*** demonstrates that Caterpillar applied durational limitations to some surviving spouses but not to the *Kerns* class. The "in no event less than 36 months" language for non-class members also demonstrates that the bargaining parties intended even those benefits to continue beyond the expiration date of the IPA.

1992, 1998). The Sixth Circuit did not identify a single case involving a contract containing specific durational language that would provide a healthcare benefit to plaintiffs "for life." In *Tackett*, the contract language did not include any reference to the duration of retiree healthcare benefits, and the only reference to cost was that qualifying retirees "will receive a full Company contribution towards the cost of benefits." *Tackett v. M&G Polymers USA, LLC*, 733 F.3d 589, 594 (6th Cir. 2013), *vacated and remanded*, 135 S.Ct. 926, (2015).

In *Reese*, "the agreement was 'silent' on whether healthcare benefits vested for life." *CNH Indus. N.V. v. Reese*, 138 S.Ct. 761, 764 (2018) (internal citation omitted). The contract language in *Kelsey-Hayes* promised only that the healthcare benefits an employee had "at the time of retirement shall be continued," without making any explicit reference to "life" or duration. *Int'l Union v. Kelsey-Hayes Co.*, 130 F.Supp.3d 1111, 1119 (E.D. Mich. 2015), *aff'd in part as modified sub nom. Int'l Union, UAW v. Kelsey-Hayes Co.*, 854 F.3d 862 (6th Cir. 2017), *cert. granted, judgment vacated sub nom.*, *Kelsey-Hayes Co. v. Int'l Union, UAW*, 138 S.Ct. 1166 (2018).

In *Watkins*, the CBA expressly limited the duration of the benefits, stating that, "'[f]or the duration of this Agreement, the Insurance Program shall be that which is attached hereto, hereinafter referred to as the Program.'" *Watkins v. Honeywell Int'l Inc.*, 875 F.3d 321, 322 (6th Cir. 2017), *reh'g denied* (Nov. 28, 2017).

In *Fletcher*, the CBA provision stated only that, "Employees ages 50-55 with 30 years of service, who leave the company prior to becoming pension eligible,

will be eligible for retiree healthcare benefits when they commence their pension benefits (age 55 or later)." *Fletcher v. Honeywell Int'l, Inc.*, 892 F.3d 217, 224 (6th Cir. 2018). In *Fletcher*, in *dicta*, the opinion discussed language related to surviving spouses, ***there were no surviving spouse plaintiffs*** and Honeywell admitted it had the obligation to provide their benefits for their lifetimes, irrespective of the retiree death date. Any discussion in *Fletcher* about surviving spouses was *dicta*. The Sixth Circuit impermissibly relied upon *Fletcher*, without considering the differences and acknowledged obligations.

The Sixth Circuit found that *dicta* in *Fletcher* precludes surviving spouses from lifetime healthcare under the 1998 GIP if their retiree spouse died after the expiration of the 1998 contract. However, in *Fletcher*, it was undisputed that surviving spouses were entitled to vested lifetime healthcare benefits, and the issue of ***when*** surviving spouse benefits vested was plainly not contested, or argued, on appeal. *See Fletcher v. Honeywell Int'l, Inc.*, 17-3277, Appellee Br., R.24, pp.3, 15, 18, 25, 29, 44. The court's *Fletcher* analysis regarding the event at which the non-party surviving spouse healthcare benefits vested was *dicta* and is not controlling.

While the surviving spouse language in *Fletcher* is similar to that in the 1998 GIP, the "time of vesting" analysis in *Fletcher* is flawed. Because the *Fletcher* court determined the CBAs did not provide for vested *retiree* healthcare benefits, and it was conceded that surviving spouses had vested, lifetime healthcare benefits, the court did not look at any language

regarding the effective date by which ***any*** benefits vested. Indeed, it is unclear whether any such language existed regarding ***when*** surviving spouse benefits vested.

The 1998 GIP provides that, "Dependents' Coverage" [which begins upon the retirement date] "will be continued following the death of a retired Employee for the remainder of his surviving spouse's life without cost." [1998 GIP, R.222-9, Pg.ID 6646]. Further, "Personal Coverage is in effect with respect to all Dependents of a retired Employee who were covered hereunder ***on the day preceding his retirement***[.]" [*Id.*]. These provisions unambiguously link vesting to retirement, not death. Accordingly, the *dicta* from *Fletcher*, which did not include or analyze any similar language from the *Fletcher* CBA regarding the time of vesting, is unpersuasive and should not be applied.

None of the contractual language in any of the cases cited by the Sixth Circuit involved specific durational language, or that a healthcare benefit would be provided "for life." Those cases are not applicable because of the distinct contractual language, and those *outcomes* are not precedent.

The only case cited by the Sixth Circuit that could be construed to contain durational language is *Cooper v. Honeywell Int'l, Inc.*, 884 F.3d 612, (6th Cir. 2018) (deciding only a preliminary injunction). The contract in *Cooper* contained a reservation of rights clause (not the case in *Kerns*). Even though the Sixth Circuit determined the *Cooper* retirees "are unlikely to succeed on the merits," 884 F.3d at 623, it is well established that, "findings of fact and conclusions of law with

regard to [a] preliminary injunction are not binding at trial." *Brown v. Int'l Bhd. of Elec. Workers, Local Union No. 58 AFL-CIO*, 936 F.2d 251, 256 (6th Cir. 1991); *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). It is error to rely on an interlocutory opinion rendered in a case that has yet to be decided on the merits to defeat the merits of an entirely separate, fully-litigated case with distinct facts.

Here, unlike *Cooper*, discovery was completed, summary judgment was litigated, damages were determined, and 2 motions to reconsider were denied. The holdings in *Cooper* do not govern and, given the distinct facts and procedural posture, the reasoning is not persuasive.

Even assuming *arguendo* that *Cooper* applies, this case meets the standard outlined in *Cooper* for benefits to survive beyond the termination of the 1998 CLA and IPA for Group 2. The benefits here would be vested under *Cooper* because the 1998 IPA and GIP contain: (1) specific durational language stating that the benefits will be provided "for life," and (2) additional, specific language applicable to the general durational clause stating that benefits shall not automatically terminate with the CLA and IPA. [1998 IPA, R. 222-9, Pg.ID 6598; 1998 GIP, R.222-9, Pg.ID 6646; 1998 GIP, R. 222-10, Pg.ID 6690-91]. The CBA in *Cooper* included no language indicating that benefits could survive beyond the term of the CBA. The Sixth Circuit stated that, in order for benefits to vest beyond the term provided by the general durational clause, "the provision must say something more—for example, 'retirees will continue to be covered under the plan

until age 65***, regardless whether this CBA expires before they reach that age***.'" *Id.*, at 620 (emphasis in original).

This 1998 IPA contains precisely the additional language called for in *Cooper*. Section 9(a), directly underneath the general durational language, states, "***[t]ermination of this Agreement shall not have the effect of automatically terminating the Plan***." [1998 IPA, R.222-9, Pg.ID 6598] (emphasis added). Specific lifetime language, plus language expressing an intent for benefits to survive beyond the general durational clause is precisely what *Cooper* required. [1998 GIP, R.222-10, Pg.ID 6690 (stating that surviving spouse benefits extend to certain qualifying individuals "in no event less than a period of 36 months . . . .")].

The *Tackett* era was initiated to ensure that courts do not read lifetime language into contracts when such language is not present in the 4 corners of the agreement. This Court in *Tackett* held that, "when a contract is ***silent as to the duration of retiree benefits***, a court may not infer that the parties intended those benefits to vest ***for life***." *M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926, 937 (2015) (emphasis added); *see Serafino v. City of Hamtramck*, 707 F. App'x 345, 352 (6th Cir. 2017). The Sixth Circuit stated that, "[i]f *Tackett* tells us anything . . . it is that the use of the future tense ***without more***—without words committing to retain the benefit ***for life***—does not guarantee lifetime benefits." *Gallo v. Moen Inc.*, 813 F.3d 265, 271 (6th Cir.), *cert. denied*, 137 S.Ct. 375 (2016) (emphasis added).

Because this 1998 GIP clearly states, in plain, unambiguous language that healthcare benefits "will be continued following the death of a retired Employee ***for the remainder of his surviving spouse's life*** without cost," there is no concern under *Tackett* that any impermissible inference was drawn ***from silence***. [1998 GIP, R.222-9, Pg.ID 6646] (emphasis added). The CBA states explicitly that these benefits last "for life." No inference is required. None of the specific language supports the Sixth's Circuit's logical leap that in order to qualify for benefits, the retiree must expire before the contract.

This case is unique post-*Tackett*. We not only have express "for life" language,[10] but also "for life plus" language: a combination of: (1) explicit durational language applicable to a specific benefit; plus (2) language stating that either (a) a particular benefit shall survive the durational clause or (b) language stating that the expiration of the durational clause shall not automatically terminate the benefits in the plan. The Sixth Circuit's misapplication of *Tackett* disregards this Court's jurisprudence.

The language in the 1998 IPA and GIP meet the *Tackett* standards to unambiguously vest "lifetime" healthcare benefits with no premiums for surviving

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[10] "For life" language above is sufficient under *Tackett*. Justice Ginsburg's concurrence stated, "no rule requires 'clear and express' language in order to show that parties intended health-care benefits to vest." *Tackett,* 135 S.Ct. at 936 (Ginsburg, J. concurring). Accordingly, *Tackett* cannot require "for life plus" language as a prerequisite to vesting.

spouses of deceased retirees who retired during the 1998 CLA - and that includes Group 2.

In the words of Caterpillar's Jerry Brust, employees had the option under the GIP to "***cash in their chips*** and push them back from the table … and ***retire knowing that they had locked in [healthcare for their surviving spouses] at that point***." *Kerns v. Caterpillar, Inc.*, 144 F.Supp.3d 963, 972-73 (M.D. Tenn. 2015) (emphasis added). [R.472, Pg.ID 12431, App. 38-9]. Part of the value of the retiree-spouse's "chips" included the guarantee that, after they died, if they left a survivor, the survivor would have healthcare "for . . . ***life without cost***." [1998 GIP, R.222-9, Pg.ID 6646]. Once the employee made the decision to cash in their chips and retire, they had a vested right that their survivor, if any, would have lifetime, no cost healthcare, beyond contract expiration.

B. The General Durational Provision in the 1998 IPA (with an Evergreen Rollover Clause) Does Not Defeat the Unambiguous Specific Durational Provisions Vesting Lifetime Benefits For Group 2

There are 2 particular clauses in the 1998 IPA and GIP that Caterpillar would argue defeat the lifetime language in Sections 5.15 and 6.2(c) of the 1998 GIP. The first provision is the general durational clause contained in the first sentence of Section 9(a) of the IPA. [1998 IPA, R.222-9, Pg.ID 6598]. The second provision is a clause that the Sixth Circuit found to be a durational clause in Section 5.1 of the 1998 GIP. [1998 GIP, R.222-9, Pg.ID 6625]. The district court rejected the arguments, stating, despite the presence of

a general durational clause, "the language in the 1998 GIP was 'sufficient to unambiguously vest in the surviving spouse a right to lifetime no cost health benefits.'" [R.472, Pg.ID 12429, App. 35-6) (internal quotation marks omitted)].

"Rights which accrued or vested under [an] agreement will, as a general rule, survive termination of the agreement." *Litton Fin. Printing Div. v. N.L.R.B.*, 501 U.S. 190, 207 (1991). When analyzing whether a general durational clause should be applied to limit a benefit provided in a CBA, courts recognize, "specific and general contractual terms usually work in tandem." *Cole v. Meritor, Inc.*, 855 F.3d 695, 700 (6th Cir.), *cert. denied*, 138 S.Ct. 477 (2017). General durational clauses provide a default rule, a point at which the agreements expire ***absent more specific language relevant to a particular term***. *Gallo v. Moen Inc.*, 813 F.3d 265, 271-72 (6th Cir.), *cert. denied*, 137 S.Ct. 375 (2016). "Well-founded principles of contract law establish that 'specific terms and exact terms are given greater weight than general language.'" *Royal Ins. Co. of Am. v. Orient Overseas Container Line Ltd.*, 525 F.3d 409, 420 (6th Cir. 2008) (*quoting* Restatement (Second) of Contracts §203 (1981)). A general durational clause will not defeat benefits where a specific term provides a specific alternative duration or there is a "clear indication in the CBA that the general durational clause is not intended to apply to retiree health care." *See Fletcher v. Honeywell Int'l, Inc.*, 892 F.3d 217, 223 (6th Cir. 2018).

In *Fletcher*, the Sixth Circuit reviewed the claims of *retirees* seeking lifetime healthcare benefits.[11] The CBA in *Fletcher* contained the following promise relating to *surviving spouses*: "[u]pon the death of a retiree, the Company will continue coverage for the spouse and dependent children for their lifetime." *Fletcher*, 892 F.3d at 220. The retirees had less favorable language. *Fletcher v. Honeywell Int'l, Inc.*, No. 3:16-CV-302, 2016 WL 6780020 at *5 (S.D. Ohio Nov. 15, 2016), *rev'd*, 892 F.3d 217 (6th Cir. 2018). The Sixth Circuit held that retirees were unambiguously not entitled to lifetime healthcare because the contract contained "[1] no promise to provide benefits for the lifetime of the retiree and [2] no indication that they are exempt from the general durational clause governing the agreement."[12] *Fletcher*, 892 F.3d at 224.

The *Fletcher* surviving spouses, on the other hand, were exempted from the limitations of the general durational clause, and entitled to lifetime healthcare, because the contract "explicitly provide[d] for ***lifetime*** benefits for surviving spouses and dependents." *Id*., at 225 (emphasis added). Like the *Fletcher* surviving

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[11] Surviving spouses were not parties in *Fletcher*, and the issue of whether surviving spouse's benefits were vested under the contract was not raised on appeal. Honeywell admitted survivors were entitled to lifetime, premium-free health care. *Fletcher v. Honeywell Int'l, Inc.*, 17-3277, Appellee Br., R.24, pp.3, 15, 18, 25, 29, 44.

[12] The rule articulated in *Fletcher* requires only (1) a lifetime promise ***or*** (2) a clear indication that the durational clause is not intended to defeat retiree health care. *Fletcher* does not require both.

spouses, the *Kerns* Group 2 surviving spouses were explicitly provided with lifetime benefits under Section 5.15 and 6.2(c) of the 1998 GIP. Further, and unlike the retirees in *Fletcher*, the *Kerns* class has language exempting their benefits from automatic termination at the time the general durational clause lapses. [1998 IPA, R. 222-9, Pg.ID 6598]. The general durational clause in the first sentence of 1998 IPA Section 9(a) does not defeat the explicit, specific, and unambiguous promise to provide ***lifetime*** healthcare to surviving spouses under the 1998 GIP.

The Sixth Circuit cited *Cooper*, arguing that notwithstanding Section 5.15's use of the phrase "remainder of the surviving spouse's life," nothing in the 1998 contract says that the Plaintiffs "will continue to be covered . . . ***regardless [sic] whether this CBA expires***." [see 18-5384, R. 22, Def. Appeal Br., at pp. 23]. *Cooper* is not persuasive. According to the reasoning in *Cooper*, Section 9(a) of the 1998 IPA would have to read: "[t]ermination of this Agreement shall not have the effect of automatically terminating the Plan[,]" [1998 IPA, R. 222-9, Pg.ID 6598], . . . "until this agreement ends."[13] *Cooper v. Honeywell Int'l, Inc.*, 884 F.3d 612, 616 (6th Cir. 2018). This is an absurd reading that would render the clause in IPA Section 9(a) illusory, in violation of the rules of contract interpretation. *See Moore v. Menasha Corp.*, 690 F.3d 444, 451 (6th Cir. 2012). *Cooper* should not be applied

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[13] *Cooper* stated that, "[a]bsent a longer time limit in the context of a specific provision, the general durational clause supplies a final phrase to every term in the CBA: '***until this agreement ends***.'" *Cooper*, 884 F.3d at 616.

in this absurd manner.[14] For further analysis of Section 9(a) and its application, see Plaintiffs' appeal brief at 18-5384, R.32, pp. 46-50. The Sixth Circuit's misconstruction of *Tackett* creates a split in this Court's jurisprudence.

C. Section 5.1 Is Not a Durational Clause; Its Terms Unambiguously Guarantee Caterpillar Reserved No Right to Terminate Benefits

The Sixth Circuit erroneously found that the provision in Section 5.1 of the 1998 GIP is a "durational clause" that limits the duration of any benefits to the duration of the IPA. Section 5.1, states, in relevant part that:

> [a] benefit shall be provided in accordance with this Section only for an Employee, while coverage is in effect with respect to him, or a Dependent of an Employee, while Dependent's Coverage for such benefit is in effect with respect to such Employee. Benefits in accordance with this Section will be provided to such

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[14] The conclusions of law in *Cooper* are not controlling because it analyzed only whether the district court properly granted a preliminary injunction and only to retirees. *See Brown v. Int'l Bhd. of Elec. Workers, Local Union No. 58 AFL-CIO*, 936 F.2d 251, 256 (6th Cir. 1991); *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). Further, (*see supra*) even applying *Cooper*, Group 2 Class Plaintiffs prevail because the 1998 GIP expressly promises ***lifetime*** health care to the *Kerns* class, ***and*** the 1998 IPA contains a clause stating that the durational clause does not apply to automatically terminate the negotiated benefits. [1998 IPA, R.222-9, Pg.ID 6598].

> Employee, retired Employee, and Dependents thereof for the duration ***of any Agreement to which this Plan is a part***.

[1998 GIP, R.222-9, Pg.ID 6625] (emphasis added).

This clause does not answer how long any benefit or agreement will last. Rather, this clause is expressly tied to "the duration ***of any Agreement to which this is part***." [1998 GIP, R.222-9, Pg.ID 6625] (emphasis added). Because it refers back to "the duration of any agreement" to which Section 5.1 is a part, the clause itself does not define how long any particular benefit or agreement will last. The duration of benefits under the GIP are in no way defined or determined by Section 5.1. The Sixth Circuit erred in relying upon Section 5.1.

Further, Section 5.1 contains no limiting language that is a traditional component of an effective "durational clause." Unlike *Reese, Fletcher* and *Watkins*, the clause in Section 5.1 does not use the word "until." *Reese*, 138 S.Ct. at 764; *Fletcher*, 892 F.3d at 224; *Watkins*, 875 F.3d at 322. Unlike *Serafino*, it does not provide an effective date range, such as, "[t]he duration of this contract . . . shall run from July 1, 2007 to June 30, 2011." *Serafino,* 707 F. App'x at 348.

Caterpillar did not bargain any language that would limit, rather than merely guarantee, benefits. "When the intent of the parties is unambiguously expressed in the contract, that expression controls, and the court's inquiry should proceed no further." *Tackett*, 135 S.Ct. at 938. Section 5.1 of the 1998 GIP unambiguously guarantees that benefits will be

provided, at least, for the duration of any agreements to which it is a part.[15]

If Section 5.1 were determined to be "subject to more than one reasonable interpretation," *Reese*, 138 S.Ct., at 763, and is therefore deemed ambiguous, the district court made the factual determination that the extrinsic evidence in this case "'plainly supports the plaintiffs' position' that [*Kerns* class'] benefits had vested." *Kerns v. Caterpillar, Inc.*, 144 F.Supp.3d 963, 971 (M.D. Tenn. 2015) (emphasis added). [R.472, Pg.ID 12429, App. 35-6; R.262, Pg.ID 9123 n.18, App. 171].

Tackett commands courts to interpret CBAs consistently with federal labor policy. *Tackett*, 135 S.Ct. at 933. The text of the operative documents must be construed in the context of the bargaining history of these particular parties, not copying over an inapplicable analysis from some other bargaining parties' agreements. The district court correctly construed the language in the context. The Sixth Circuit failed to do so.

Lifetime healthcare benefits for both Group 1 and Group 2 vested on the retiree-spouse's retirement date, not on the death date. It is undisputed that eligibility for *retiree* healthcare benefits vested under the 1998 GIP on retirement. The GIP expressly stated that,

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[15] The specific provision of Section 5.15 would supersede the more general provision in Section 5.1. "Well-founded principles of contract law establish that 'specific terms and exact terms are given greater weight than general language.'" *Royal Ins. Co. of Am. v. Orient Overseas Container Line Ltd.*, 525 F.3d 409, 420 (6th Cir. 2008) (*quoting* Restatement (Second) of Contracts § 203 (1981)).

"[c]overage shall take effect on his retirement date." [1998 GIP, R.222-9, Pg.ID 6645]. The 1998 GIP also provided that, "Personal Coverage is in effect with respect to all Dependents of a retired Employee who were covered hereunder ***on the day preceding his retirement***[.]" [1998 GIP, R. 222-9, Pg.ID 6646] (emphasis added). Further, Section 5.15 states, "Dependents' Coverage under this Section 5.15 is in effect with respect to such retired employee . . . ." [*Id.*, Pg.ID 6645-46]. Thus, by the plain language of Section 5.15 of the 1998 GIP, the effective vesting date for Dependents' Coverage was the date of the eligible Caterpillar retiree-spouse's retirement. The district court agreed, holding that "the date of retirement determines whether the rights vested, not the date of death." [R.262, Pg.ID 9120, App. 166-67].

Nonetheless, the Sixth Circuit concluded that Group 2's benefits were defeated because their retiree-spouses died after the expiration of the 1998 agreements. That ignores the plain language of the 1998 GIP cited above, and fails to cite any other language in the 1998 GIP or elsewhere to support that *death* is the key moment at which lifetime benefits vested.

Here, unlike in *Winnett v. Caterpillar, Inc.*, 553 F.3d 1000, 1010 (6th Cir. 2009), the Group 2 *Kerns* retiree-spouses all retired during the effective period of the 1998 IPA and GIP. As the district court correctly stated, *Winnett I* "more clearly stands for the proposition that the 'key moment' at which future benefits vest is the moment of ***retirement***." [R.262, Pg.ID 9125] (emphasis added). That analysis further

supports the district court's construction here and demonstrates that the Sixth Circuit has gone too far in its misapplication of *Tackett*.

CONCLUSION

Petitioner Class urges the Court to grant the petition for a writ of certiorari and schedule the case for briefing and argument.

Respectfully submitted,

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