

No. 13-550

In the
Supreme Court of the United States

GLENN TIBBLE, ET AL.,

Petitioners,

v.

EDISON INTERNATIONAL, ET AL.,

Respondents.

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

**BRIEF OF DRI—THE VOICE OF THE
DEFENSE BAR AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENTS**

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INTEREST OF THE *AMICUS CURIAE* ¹

Amicus curiae DRI—The Voice of the Defense Bar is an international organization of more than 22,000 attorneys involved in the defense of civil litigation. DRI is committed to enhancing the skills, effectiveness, and professionalism of defense attorneys. Because of this commitment, DRI seeks to promote the role of defense attorneys, to address issues germane to defense attorneys and their clientele, and to improve the civil justice system. DRI has long participated in the ongoing effort to make the civil justice system fairer, more consistent, and more efficient.

To promote these objectives, DRI participates as *amicus curiae* in cases that raise issues important to its membership, clientele, and the judicial system. DRI members have extensive experience with the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001, *et seq.*, and regularly defend against ERISA benefit claims. As a result, DRI seeks to ensure that benefit claims are enforced fairly, efficiently, and predictably.

Although Petitioners’ claims here are for breach of fiduciary duty under ERISA §§ 502(a)(2) and (a)(3), DRI is concerned about the effect of the Court’s decision on benefit claims under

¹ Pursuant to Supreme Court Rule 37.6, DRI certifies that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from DRI, its members, and its counsel, made any monetary contribution toward the brief’s preparation and submission. Counsel consented to the brief’s filing in letters that are on file with the Clerk’s office.

§ 502(a)(1)(B). To that end, DRI focuses on the distinction between fiduciary duty claims and benefit claims. DRI requests that the Court keep in mind that Petitioners' claims for breach of fiduciary duty are very different from claims for individual recovery of benefits under ERISA § 502(a)(1)(B). DRI strives to ensure that courts enforcing ERISA keep this distinction clear. In the event the Court considers Petitioners' "continuing violation" theory to toll accrual of Petitioners' fiduciary duty claims, the Court's decision should be crafted to avoid affecting benefit claims under ERISA § 502(a)(1)(B).

SUMMARY OF THE ARGUMENT

The Ninth Circuit's judgment should be affirmed because Petitioners' claims are untimely. *See* 29 U.S.C. § 1113(1). In reaching that conclusion, the Court should preserve ERISA's distinction between benefit claims and fiduciary duty claims. Because the question presented concerns only the timeliness of Petitioners' fiduciary duty claims, this Court's decision should be narrowly tailored to avoid benefit claims under § 502(a)(1)(B).

1. Benefit claims are fundamentally different from fiduciary duty claims. ERISA provides individual monetary relief for benefit claims under § 502(a)(1)(B), but not for fiduciary duty claims. *See* 29 U.S.C. § 1132(a). Moreover, ERISA's statute of repose does not apply to benefit claims; it applies only to fiduciary duty claims. *See* 29 U.S.C. § 1113(1). And because fiduciary duty claims are equitable in nature, the doctrine of laches serves as an independent bar to untimely claims.

2. The division between benefit claims and fiduciary duty claims should be maintained by courts enforcing ERISA. If the Court considers Petitioners' continuing violation theory for fiduciary duty claims, the Court's decision and analysis should not affect benefit claims under § 502(a)(1)(B). Every circuit court to consider the issue has rejected the continuing violation theory to toll benefit claims. These circuits correctly reason that a single decision that serves as the basis for a benefits claim cannot continue in time to toll the limitations period for filing suit. Petitioners' continuing violation theory therefore should not be exported to benefit claims under § 502(a)(1)(B).

ARGUMENT

I. Benefit Claims Are Fundamentally Different From Fiduciary Duty Claims.

Maintaining the division between benefit claims and fiduciary duty claims is essential to ensure ERISA's consistent and predictable enforcement. The Court's decision in this case should preserve this important distinction.

A. ERISA's Text Distinguishes Benefit Claims From Fiduciary Duty Claims.

ERISA's detailed civil enforcement scheme empowers certain aggrieved parties to bring a civil lawsuit to recover, among other things, for wrongful denial of benefits and breach of fiduciary duties. 29 U.S.C. § 1132(a). ERISA unambiguously sets forth different requirements for benefit claims and fiduciary duty claims.

First, ERISA provides different relief for benefit claims. A participant or beneficiary can bring suit under ERISA § 502(a)(1)(B) “to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.” 29 U.S.C. § 1132(a)(1)(B). Recovery for benefit claims can include individual monetary damages in the form of accrued benefits due. *Id.*

In contrast to the recovery available under § 502(a)(1)(B), ERISA does not provide an *individual* monetary remedy for fiduciary duty claims other than benefit denials. ERISA § 502(a)(2) allows an individual, in a representative capacity on behalf of the plan, to bring a claim for breach of fiduciary duty to recover “equitable or remedial relief as the court may deem appropriate.” 29 U.S.C. § 1109; *see also LaRue v. Dewolff*, 552 U.S. 248, 256 (2008) (holding that “§ 502(a)(2) does not provide a remedy for individual injuries distinct from plan injuries”). And recovery under ERISA § 502(a)(3) is explicitly limited to equitable relief. 29 U.S.C. § 1132(a)(3); *Great-West Life & Ann. Ins. Co. v. Knudson*, 534 U.S. 204, 221 (2002) (“[Section] 502(a)(3), by its terms, only allows for *equitable* relief.”). This section acts as a “safety net, offering appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy.” *Varsity Corp. v. Howe*, 516 U.S. 489, 512 (1996).

Second, the limitations period applicable to benefit claims is different from fiduciary duty claims that are not based on benefit denials. ERISA does not include a statute of limitations for benefit claims

under § 502(a)(1)(B). Instead, federal courts look to and apply the most analogous state statute of limitations or plan-imposed limits. *Bd. of Regents v. Tomanio*, 446 U.S. 478, 483–85 (1980). Courts do not, however, “borrow” the accrual date from state law. The accrual date for a benefits claim is governed by federal law, which holds generally that an ERISA claim for denial of benefits accrues when the plan issues a “final denial,” unless the plan specifies a different “reasonable” accrual date. *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 134 S. Ct. 604, 610 (2013). Circuit courts across the country categorically reject Petitioners’ continuing violation theory in denial-of-benefit cases. *See infra*, Part II.

Unlike benefit claims, ERISA *does* contain an explicit provision within which other fiduciary duty claims may be brought against plan fiduciaries. If fiduciaries breach their duty, aggrieved participants have a limited period of time to challenge such breach:

No action may be commenced under this subchapter with respect to a fiduciary’s breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of—

(1) six years after

(A) the date of the last action which constituted a part of the breach or violation, or

(B) in the case of an omission the latest date on which the

fiduciary could have cured the breach or violation, or
(2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation; except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

29 U.S.C. § 1113. This provision is a statute of repose—an absolute barrier to liability three or six years after the alleged breach. *See CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2182 (2014) (holding that a similar provision under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is a statute of repose); *see also* Resp. Br. at 44–47. Petitioners phrase the issue before the Court as one involving a statute of limitations, but Petitioners’ claims are governed by ERISA’s statute of repose. *See* 29 U.S.C. § 1113. For the reasons set forth in Respondents’ Brief, Petitioners’ failure at trial to prove subsequent and distinct breaches within the repose period is fatal to their claims. *See* Resp. Br. at 39–45.

Any question regarding the timeliness of Petitioners’ claims should be answered by the doctrine of laches, which bars their claims entirely. *See* Restatement (Second) of Trusts § 219 (1959) (“The beneficiary cannot hold the trustee liable for a breach of trust if he fails to sue the trustee for the breach of trust for so long a time and under such circumstances that it would be inequitable to permit

him to hold the trustee liable.”). The six-year statute of repose under § 1113 is merely an outside time limit for Petitioners’ claims.

The Ninth Circuit’s judgment should therefore be affirmed because Petitioners’ claims for breach of fiduciary duty are barred by ERISA’s statute of repose and the doctrine of laches.

B. Benefit Claims Cannot Be Disguised As Fiduciary Duty Claims.

The Court should preserve ERISA’s purposeful division between benefit claims and other types of fiduciary duty claims and “respect the ‘policy choices reflected in the inclusion of certain remedies and the exclusion of others.’” *Varity Corp.*, 516 U.S. at 515 (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987)). Any attempt by plan participants or beneficiaries to camouflage benefit claims as fiduciary duty claims is fundamentally at odds with ERISA’s statutory text. ERISA provides individual recovery for benefit claims under § 502(a)(1)(B) because adequate relief is available in the form of accrued benefits due. *See Varity Corp.*, 516 U.S. at 515 (“[W]here Congress elsewhere provided adequate relief for a beneficiary’s injury, there will likely be no need for further equitable relief . . .”). On the other hand, relief for other types of breach of fiduciary duties does not include the payment of benefits to individual participants. *See* 29 U.S.C. § 1132(a).

For these reasons, the Court should carefully limit its decision to the issues before it and should avoid affecting benefit claims under § 502(a)(1)(B). A decision that is narrowly tailored to Petitioners’

claims will help preserve ERISA's careful division between benefit claims and fiduciary duty claims.

II. The Continuing Violation Theory Is Inapplicable To Benefit Claims.

The Ninth Circuit correctly rejected Petitioners' continuing violation theory as applied to fiduciary duty claims. As Respondents rightly observe, Petitioners have abandoned the continuing violation theory they pursued in the lower courts. *See* Resp. Br. at 42–45. Nevertheless, DRI urges that the continuing violation theory is also untenable as applied to benefit claims under § 502(a)(1)(B). Every circuit court to address the issue has unequivocally rejected the argument that each monthly benefit payment received by a participant under an ERISA plan is an accrual event giving rise to a new statute of limitations for benefit claims. This Court's decision therefore should not affect the unanimous circuit court decisions that have foreclosed any attempt to circumvent the limitations applicable to benefit claims through a continuing violation theory.

Several circuits have also rejected the continuing violation theory for disability benefit claims under § 502(a)(1)(B). *See Riley v. Metro. Life Ins. Co.*, 744 F.3d 241, 246 (1st Cir. 2014) (reasoning that the continuing violation theory is “inapplicable where the alleged wrong is based on an alleged one-time miscalculation of ERISA benefits”); *Miller v. Fortis Benefits Ins. Co.*, 475 F.3d 516, 522 (3d Cir. 2007) (rejecting the theory “whereby a new cause of action would accrue upon each underpayment of benefits owed under the plan”). And other circuits have

rejected the continuing violation theory for § 502(a)(1)(B) claims for benefits due under a terminated welfare benefit plan, *see Adamson v. Armco, Inc.*, 44 F.3d 650, 653–54 (8th Cir. 1995), and an improper freeze of reimbursement benefits, *see Pisciotta v. Teledyne Indus., Inc.*, 91 F.3d 1326, 1332 (9th Cir. 1996) (per curiam).

The policies underlying ERISA support these decisions. ERISA’s primary purpose is to promote predictability: ERISA seeks to “induc[e] employers to offer benefits by assuring a predictable set of liabilities.” *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 379 (2002). Allowing participants and beneficiaries to challenge denial of benefits under a continuing violation theory would undermine any semblance of predictability that ERISA purports to ensure. As these circuit decisions make abundantly clear, each monthly benefit payment (or lack thereof) does not give rise to a new statute of limitations for benefit claims under § 502(a)(1)(B). Because the availability of a continuing violation theory in a benefits case is not before the Court, and there is no dispute among the circuits that the continuing violation theory is unavailable for benefit claims, this Court’s decision should be narrowly tailored to avoid that issue.

CONCLUSION

For these reasons, the Court should affirm the decision below as untimely under the doctrine of laches and ERISA’s statute of repose, and carefully craft its decision not to affect benefit claims under ERISA § 502(a)(1)(B).

Respectfully submitted,

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