No. _____

In The

Supreme Court of the United States

DWIGHT HARRISON,

Petitioner,

v.

BERT BELL/PETE ROZELLE
NFL PLAYER RETIREMENT PLAN,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

"There is no doubt about the centrality of ERISA's object of protecting employees' justified expectations of receiving the benefits their employers promised them." *Central Laborer's Pension Fund v. Heinz*, 541 U.S. 739, 743 (2004).

Dwight Harrison played in the National Football League from 1971 until 1980. He earned two vested pensions, a regular retirement pension and a Legacy pension, the latter created for players who were vested in the NFL Retirement Plan before 1993 by a 2011 collective bargaining agreement. Both of Harrison's pensions were calculated as a lump sum and taken by the NFL plan trustees. His regular pension was taken in 1997 and his Legacy pension was taken in 2012 to partially satisfy a default judgment obtained by the plan against Harrison for an alleged overpayment of disability benefits made by the plan.

The Questions Presented are:

1. When the same ERISA plan provides both pension and welfare benefits, may a plan fiduciary with discretion and the power to collect overpayments by offset of future benefits take a participant's vested pension to reimburse the plan for overpaid welfare benefits without violating the anti-alienation and non-forfeiture provisions of ERISA?

QUESTIONS PRESENTED – Continued

2. Can collateral estoppel bar an ERISA claimant from making a pension benefit claim even though the pension benefit and the plan that provides it did not exist when the judgments said to bar the claim are rendered?

3. Is it an abuse of discretion not to give an ERISA plan participant limited relief from a judgment under Rule 60(b)(6) so that his regular vested pension is restored when the judgment allowing the offset of his entire pension is taken after the participant's court-appointed attorney has withdrawn and he is acting pro se, there is evidence that he is unable to participate meaningfully in court proceedings due to a mental condition, he makes a number of misguided pro se efforts to overturn the judgment, and the District Court is not advised by the plan's counsel prior to the judgment that the debt being collected by the plan does not fall within the limited statutory exceptions that allow a plan trustee to offset pension benefits nor of this Court's ruling in *Guidry v. Sheet Metal Workers National Pension Fund*, that other exceptions to ERISA's anti-alienation provision are to be left to Congress?

PARTIES TO THE PROCEEDING

All of the parties are included in the caption of the case on the cover page.

CORPORATE DISCLOSURE STATEMENT

Petitioner Dwight Harrison is an individual who does not fall within the scope of the Supreme Court Rule 29.6's corporate disclosure statement.

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The per curiam opinion of the United States Court of Appeals for the Fifth Circuit is in the Appendix to this petition, pages 1-2 and is unpublished. The Fifth Circuit's opinion affirmed the unpublished opinion of the United States District Court, Eastern District of Texas, which is also within the Appendix to this petition, pages 3-36.

STATEMENT OF JURISDICTION

The Fifth Circuit's decision was rendered on November 3, 2014. No petition for rehearing was filed. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

Statutory Provisions

Employee Retirement Income Security Act of 1974 (ERISA)

a. ERISA Section 2(b)

> §2 *Congressional findings and declaration of policy*
>
> (a) . . .
>
> (b) *Protection of interstate commerce and beneficiaries by requiring disclosure*

and reporting, setting standards of conduct, etc., for fiduciaries

> It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries by . . . providing for appropriate remedies, sanctions, and ready access to the Federal courts. 29 U.S.C. §1001(b)

b. ERISA Section 203(a)

(a) *Nonforfeitability Requirements*

> Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age . . . 29 U.S.C. §1053(a)

c. ERISA Sections 206(d)(1) and 206(d)(4)

§206(d) *Assignment or alienation of plan benefits*

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated. 29 U.S.C. §1056(d)(1)

. . .

(4) paragraph (1) shall not apply to any offset of a participant's benefits provided under an employee pension benefit plan against an amount that the participant

is ordered or required to pay to the plan if –

> (A) the order or requirement to pay arises –
>
> > (i) under a judgment of conviction for a crime involving such plan,
> >
> > (ii) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of this subtitle, or
> >
> > (iii) pursuant to a settlement agreement between the Secretary and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation(or alleged violation) of part 4 of this subtitle by a fiduciary or any other person, **(and)** (emphasis added)
>
> (B) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan . . . 29 U.S.C. §1056(d)(4)

d. ERISA Section 502(a)(1)(B)

§502 *Civil Enforcement*

(a) *Persons Empowered to bring a civil action*

A civil action may be brought

(1) by a participant or beneficiary –

. . .

(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)

Rules

a. Federal Rule of Civil Procedure 60(b)

Rule 60(b) *Grounds for Relief from a Final Judgment, Order, or Proceeding*. On motion and just terms, the court may relieve a party or its legal representatives from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

b. Federal Rule of Civil Procedure 60(c)

Rule 60(c) *Timing and Effect of the Motion.*

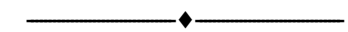
(1) *Timing*. A motion under Rule 60(b) must be made within a reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

INTRODUCTION

The Employee Retirement Income Security Act of 1974 (ERISA) was enacted to protect the retirement benefits of millions of pension plan participants and their beneficiaries. 29 U.S.C. §1001(a). ERISA's anti-alienation provision, §206(d), is integral to the protection that it provides. The NFL Retirement Board's offset of Harrison's two vested pensions blatantly violated ERISA's anti-alienation provision. Thus far, the NFL Board trustees have succeeded in circumventing

ERISA's central purpose, the protection of retirement benefits, and the decisions of the District Court and Fifth Circuit Court of Appeals have allowed it. These decisions invite other plan sponsors and trustees to structure and manage their benefit plans in the same manner so that vested retirement benefits can be taken by the trustees to reimburse the plan for overpaid welfare benefits.

Claims by plan administrators seeking reimbursement for overpaid welfare benefits are common but the litigation is problematic because it does not fit squarely into ERISA's remedial scheme. Creating a composite plan with fiduciary powers to collect overpaid welfare benefits by offsetting vested retirement benefits presents an attractive self-help solution for plan sponsors and administrators. The offset remedy is sure and immediate. The result is that vested retirement benefits are forfeited, undermining the central purpose of ERISA. This case presents the opportunity for the Court to soundly reject this method of circumventing the anti-alienation provision, conduct that has stripped Harrison of his two pensions and provides a paradigm that puts retirement benefits at risk for other participants who have vested retirement benefits and receive welfare benefits. This Court should reiterate that exceptions to the anti-alienation provision are to be left to Congress.



STATEMENT OF THE CASE

Dwight Harrison played in the National Football League for ten years, from 1971 until 1980. App. 3. He was a vested participant in the NFL Retirement Plan, a composite plan that provides both pension and welfare benefits. App. 4.

1. The NFL Board Awards Harrison Disability Benefits

In 1993 the plan trustees awarded Harrison disability benefits for depression and anxiety disorder. App. 4. The plan trustees found that Harrison had been disabled since 1984 and awarded him back benefits. App. 4.

2. The Plan's 1996 Judgment Against Harrison Due To Discovery Sanctions

In 1994 Harrison filed a lawsuit claiming that his disability was caused by his NFL career, thus entitling him to a greater monthly disability benefit. App. 4-5. The plan counterclaimed for return of the disability benefits that it previously paid to Harrison, alleging that Harrison exaggerated his condition and never met the plan's definition of disability. App. 5. Harrison, pro se, sought representation by legal counsel once the counterclaim was filed. *Harrison v. The Bert Bell/Pete Rozelle NFL Player's Retirement Plan*, No. 95-cv-2040, Dkt. No. 30 (Order for Sanctions Under Fed. R. Civ. P. 37(b)(2)(c), S.D. Tex. Oct. 11, 1996). The Court denied Harrison's request for counsel and

struck his answer to the counterclaim. *Id*. The Court then awarded a default judgment against Harrison due to discovery sanctions. *Id.*, Dkt. No. 33 (Final Judgment, Dec. 2, 1996). The plan was granted judgment against Harrison in the total amount of $352,252.06, consisting of $236,626.00 in disability benefits previously paid to Harrison, $99,122.50 in attorney's fees, and $16,503.56 in litigation expenses. App. 5. This was the 1996 judgment. App. 5.

3. The Retirement Board's Offset of Harrison's Retirement Pension in January 1997

In January 1997, the plan's actuary determined that as of January 1, 1997 the present value of Harrison's non-forfeitable vested retirement pension was $130,528. App. 5. At its January 1997 meeting the NFL Retirement Board decided to offset the present value of Harrison's entire NFL pension and apply it to the 1996 judgment debt. App. 5.

4. Harrison's First Failed Effort to Regain His Pension; The 2002 Judgment

Harrison filed a lawsuit, again pro se, in the Eastern District of Texas, Cause No. 9:00-cv-306 which, among other things, was liberally construed to challenge the NFL Board's January 1997 offset of his entire regular pension. App. 6-7. Harrison was appointed counsel because his "alleged disability stemmed from a mental condition and because his spouse Jacqueline Harrison, appeared at a preliminary hearing in

Harrison's stead and asserted that Harrison was unable to participate meaningfully in court proceedings." *Harrison v. The Bert Bell/Pete Rozelle NFL Player's Retirement Plan*, No. 9:00-cv-306, Dkt. No. 25 (Page 8, Report and Recommendations, E.D. Tex. June 25, 2002). Harrison's court-appointed counsel withdrew. App. 6-7. Briefed on the law by the plan's counsel alone, District Judge John Hannah, Jr. ruled in favor of the plan, deciding that "the (Plan's) decision to offset (Harrison's) future retirement benefits cannot be challenged as unlawful, unreasonable, or in bad faith."[1] App. 8. This was the 2002 judgment. App. 9. Harrison, still pro se, sought reconsideration of this decision but his motions for reconsideration were deemed untimely. App. 9.

5. The Plan Resumes Payment of Harrison's Pension Due to Clerical Error; The 2009 Judgment

Although they had taken his entire pension in 1997, the plan administrators resumed pension payments to Harrison from 2003 until 2007 due to an alleged clerical error. App. 9-10. The payments stopped once they realized their error and Harrison filed another

[1] There were two pending motions for summary judgment that Harrison had filed pro se: one simply attached a copy of his original complaint and the second sought summary judgment on the grounds that the NFL Plan failed to answer in twenty days and had engaged in "deceitful maneuvering." *Harrison,* No. 9:00-cv-306, Dkt. No. 25 (Page 9, Report and Recommendations, E.D. Tex. June 25, 2002).

pro se lawsuit in the Eastern District of Texas. App. 10. The District Court ruled that Harrison's claim for his retirement benefits was barred by *res judicata* due to the 2002 judgment. App. 10-11. This was the 2009 judgment. App. 11. Harrison filed a pro se appeal to the Fifth Circuit Court of Appeals but his appeal was untimely. App. 11.

6. The NFL's Creation of the Legacy Pension; The Taking of Harrison's Legacy Pension in 2012

In 2011 the NFL and NFL Players Association entered into a new collective bargaining agreement in which the Legacy pension benefit was established for players who played in the NFL and were vested prior to 1993. App. 11. In response to his application for his Legacy pension, the NFL Retirement Board notified Harrison by letter dated May 24, 2012 that his Legacy pension benefit had a present value of $134,199.77, that the present value of his Legacy pension was taken by the trustees to partially satisfy the 1996 judgment, that his Legacy benefit was reduced to $0 in partial satisfaction of his indebtedness, that he still owed the plan $162,851.43, and that he was "akin to a person who received a lump sum payment of his entire benefit under the plan" and was therefore "no longer a participant in the plan" and "was not eligible to make further claims under the plan." App. 12.

7. Harrison Files Suit, Claiming a Right to his Legacy Pension and Seeking Restoration of his Regular Pension

After his administrative appeal was ignored, Harrison, this time represented by counsel, filed suit for his Legacy benefits under §502(a)(1)(B) of ERISA, alleging that the taking of his Legacy pension was an abuse of the Board's discretion because it violated the plain language of the plan and also the anti-alienation and non-forfeiture provisions of ERISA. App. 12-13. He also sought a declaration that he remained a participant of the plan. App. 13. His third claim was for extraordinary relief under Fed. R. Civ. P. 60(b)(6) from the 2002 judgment that allowed the taking of his regular pension. App. 13-14. Harrison sought relief based upon his pro se status, evidence of mental deficiencies, and plan counsel's omission of controlling legal authority that was directly adverse to the trustees' claim that it could seize Harrison's pension and apply its present value to the default judgment debt. App. 13-14.

8. The District Court Rules Against Harrison

The District Court ruled that Harrison's Legacy pension benefit claim was collaterally estopped by the prior judgments in 2002 and 2009 that allowed the offset of Harrison's entire regular pension. App. 30-33. Alternatively, the Court found that the taking of Harrison's Legacy pension was within the Board's discretion because the plan gave it authority to collect overpayments by offsetting future benefit payments,

holding that because of "the prior rulings in favor of the Plan as to the offset issue and the language of the Plan document, the court is unable to conclude the NFL Trustees' interpretation of the Plan provisions and their actions constitute an abuse of discretion." App. 33-34. The District Court did not explain how the taking of Harrison's Legacy pension could be reconciled with ERISA's anti-alienation provision and the plan's spendthrift clause, which tracked ERISA's anti-alienation provision in order to make the NFL Retirement Plan a qualified plan for tax purposes.

The District Court did not decide Harrison's second claim for a declaration that he remained a plan participant since the plan represented in its briefing that it intended to continue to treat Harrison as a participant. App. 34-35.

The District Court denied Harrison's claim for extraordinary relief under Fed. R. Civ. P. 60(b)(6) finding it untimely and the circumstances not exceptional enough to merit such relief. App. 22-24. The Court found *Guidry* and the Fifth Circuit cases that were omitted by plan's counsel in its briefing not directly adverse to the offset of Harrison's regular pension because "none of these cases squarely addresses an ERISA plan's ability to recoup past overpayments of disability benefits by withholding future retirement benefits under a plan that encompasses both disability and retirement benefits." App. 24.

9. The Fifth Circuit Affirms

In a per curiam opinion, the Fifth Circuit affirmed the decision "for the reasons convincingly stated by the district court in its impressive twenty-five page opinion." App. 2.

REASONS FOR GRANTING THE PETITION

A. The First Issue: The District Court and Fifth Circuit's Decisions Directly Conflict with ERISA's Anti-Alienation Provision, the *Guidry* Decision, and Undermine ERISA'S Central Purpose

The anti-alienation provision of ERISA identifies the limited exceptions when a plan trustee may offset pension benefits to collect on a judgment in favor of the plan. The right to offset vested retirement benefits for the overpayment of welfare benefits that come from the same plan is not one of the listed exceptions. The exceptions allowing offset of a vested retirement benefit are limited to civil judgments for a breach of fiduciary duty by the participant, a settlement between the Department of Labor or the Pension Benefit Guaranty Corporation and the participant involving a breach of fiduciary duty, or a criminal conviction involving the plan. 29 U.S.C. §1056(d)(4)(A). In addition, the judgment or order in favor of the plan must specifically provide for the offset. 29 U.S.C. §1056(d)(4)(B).

The Fifth Circuit's per curiam opinion affirmed the District Court's decision that offsetting a participant's vested pension to satisfy an alleged overpayment of welfare benefits falls within a plan trustees' discretion, i.e., does not violate the anti-alienation provision of ERISA. This stands in direct conflict to this Court's decision in *Guidry v. Sheet Metal Worker's National Pension Fund*, 493 U.S. 365 (1990).

Guidry disallowed a constructive trust over pension benefits as a result of Guidry's embezzlement of funds from his union, finding that the constructive trust sought by the union violated ERISA's statutory prohibition on assignment or alienation of pension benefits. In reversing the Tenth Circuit's decision to allow the constructive trust under ERISA's equitable relief provision, §409(a), this Court instructed that it is for Congress not the courts to identify the exceptions to the anti-alienation provision:

> "Nor do we think it appropriate to approve any generalized exception – either for employee malfeasance or for criminal conduct – to ERISA's prohibition on the assignment or alienation of pension benefits. Section 206(d) reflects a considered congressional policy choice, a decision to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them. If exceptions to this policy are to be made, it is for Congress to undertake the task.

> As a general matter, courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text. The creation of such exceptions, in our view, would be especially problematic in the context of an antigarnishment provision. Such a provision acts, by definition, to hinder the collection of a lawful debt. A restriction on garnishment therefore can be defended only on the view that the effectuation of certain broad social policies sometimes take precedence over the desire to do equity between particular parties. It makes little sense to adopt such a policy and then to refuse enforcement whenever enforcement appears inequitable. A court attempting to carve out an exception that would not swallow the rule would be forced to determine whether the application of the rule in particular circumstances would be 'especially' inequitable. The impracticability of defining such a standard reinforces our conclusion that the identification of any exception should be left to Congress."

Guidry, 493 U.S. at 376-377.

1. The National Importance of the First Issue: Allowing the Offset of Vested Pension Benefits for Overpaid Welfare Benefits Puts Pension Benefits Across the Country at Risk and Undermines ERISA's Central Purpose

The decisions of the District Court and Fifth Circuit are potentially devastating to employees with vested retirement benefits. Welfare benefit reimbursement claims are common. *Great-West v. Knudson*, *Sereboff v. Mid Atlantic Medical Services*, and *US Airways v. McCutchen* were all welfare reimbursement claims.[2] They often arise under the following circumstances: 1) a back disability award from the Social Security Administration which results in an overpayment of disability benefits from an ERISA disability benefit plan, 2) a third-party tort settlement or judgment which results in an overpayment of medical benefits from an ERISA health benefit plan, 3) a mistake or mistakes by the plan administrator that result in overpayments, or 4) a plan administrator's downward adjustment of medical benefits. Taking an employee's vested retirement benefits to reimburse a plan for welfare benefit overpayments is an immediate remedy that avoids the thicket of whether or not the plan is seeking equitable relief. The District

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[2] *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002); *Sereboff v. Mid Atlantic Medical Services, Inc.*, 547 U.S. 356 (2006); and *US Airways, Inc. v. McCutchen*, ___ U.S. ___, 133 S.Ct. 1537 (2013).

Court's decision and Fifth Circuit's affirmation of that decision puts earned retirement benefits at substantial risk across the nation.

Consider the facts of *US Airways v. McCutchen.* They are not unusual. The plan paid $66,866 in medical benefits to plan participant James McCutchen's medical providers for treatment for injuries he suffered as a result of a car accident caused by a third party. *US Airways*, 133 S.Ct. at 1543. Since the plan required reimbursement from the participant if he or she recovered money for the same injuries from another party, the plan administrator requested reimbursement from McCutchen after he received a third-party tort settlement and recovery from his own insurance carrier for the same injuries for which the plan benefits were paid. *Id*. After McCutchen refused to reimburse the plan, the plan administrator filed suit under §502(a)(3) of ERISA. *Id.*

Along with these facts assume that McCutchen had a vested pension and his pension benefits were governed by the same plan that provided his medical benefits. Assume further that the composite plan gave US Airways, as plan administrator, the right to offset future benefits for the overpayment of any plan benefits. Under these circumstances US Airways would have an easy self-help remedy and avoid having to file suit for equitable relief under §502(a)(3) of ERISA. The plan administrator would offset $66,866 of McCutchen's vested retirement benefits. The plan is repaid in full with a simple accounting adjustment or internal transfer of funds. This method

of circumventing ERISA's anti-alienation provision may become known as the "Harrison offset," in tribute to the man whose two pensions were taken by the NFL plan trustees in this manner.

B. The Importance of the Second Issue: This Broad Application of Collateral Estoppel Violates §502(a)(1)(B), ERISA's Promise of Ready Access to the Federal Courts for Benefit Denials, and Does Not Serve the Public Interest in the Protection of Retirement Benefits

The District Court ruled that under the doctrine of collateral estoppel the judgments in 2002 and 2009 barred Harrison from pursuing his Legacy pension claim. Collateral estoppel requires that: 1) the issues presented be the same, 2) no significant change in the controlling facts or legal principles since the prior judgments, and 3) no special circumstances warrant an exception to the application of the doctrine. *Montana v. United States*, 440 U.S. 147 (1979). The District Court found Harrison's Legacy benefit claim was barred by collateral estoppel because the judgments in 2002 and 2009 "addressed the identical issue – whether the Plan could set off Harrison's retirement benefits to satisfy the 1996 judgment." App. 32.

The Supreme Court should grant certiorari on this issue because it is important when considering ERISA benefit claims to limit the application of collateral estoppel to those claims arising after judgment that involve the same plan and the same benefits. Barring a claim for a new pension benefit by

broadly categorizing it as being just another retirement benefit, without consideration of the plan terms that govern the new pension benefit, violates §502(a)(1)(B) and ERISA's promise that plan participants are to be given ready access to the Federal Courts for benefit denials. 29 U.S.C. §1001(b).

Like any claim brought under §502(a)(1)(B), Harrison's Legacy benefit claim was bound up with the terms of the plan that created and governed the Legacy benefit. A section 502(a)(1)(B) claim is limited to recovering benefits due under the plan, enforcing rights under the terms of the plan, or clarifying rights to future benefits under the terms of the plan. 29 U.S.C. §1132(a)(1)(B). The Legacy benefit did not exist until 2011 and the plan trustees offset Harrison's Legacy benefit in 2012. App. 29. The judgments in 2002 and 2009 could not have addressed the issue before the Court: whether or not Harrison was entitled to his Legacy pension benefit under the terms of the plan that governed the Legacy pension.

The doctrine of collateral estoppel is meant to promote judicial economy, prevent inconsistent results, and curtail the expense of repeated litigation by not giving a claimant who has had a full and fair opportunity to litigate an issue to judgment a second opportunity to litigate the same issue. *Montana,* 440 U.S. at 153. Harrison did not have a full and fair opportunity to litigate the issue of whether or not he was entitled to his Legacy pension benefit under the terms of the plan until 2012 because the Legacy

pension and the plan that governed it did not exist and his Legacy pension was not taken until 2012.

Also, this issue is important because the District Court's broad application of collateral estoppel results in immunity for plan trustees for subsequent violations of ERISA. In *Lawlor v. National Screen Service Corp.*, this Court found that a settlement agreement over anti-trust violations resulting in dismissal with prejudice of the pending litigation did not immunize the parties from subsequent violations of the anti-trust laws. *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 329 (1955). This Court stressed that such a broad view of *res judicata* would not serve the public interest in the enforcement of the anti-trust laws. *Id*. The taking of Harrison's entire regular pension in 1997 did not mean that the NFL Board was afforded an exemption from its obligation to subsequently abide by the plan and ERISA's anti-alienation provision as to Harrison. The prior judgments did not grant them the freedom to violate both the plan and the anti-alienation provision by taking Harrison's entire Legacy pension 15 years later. Such a broad application of collateral estoppel does not serve the public interest in the enforcement of the provisions of ERISA that are meant to protect retirement benefits.

In addition, special circumstances warrant an exception to the application of collateral estoppel. In the 2002 case Harrison was pro se after his court-appointed attorney withdrew. His spouse testified that he was unable to participate meaningfully in court proceedings because of a mental condition. Whether

ERISA's anti-alienation provision prevented the taking of Harrison's regular pension was evidently not considered by the District Court in its 2002 judgment, as the Court found "no policy or other reason to condition lawfulness of (the) Plan's offset upon an explicit plan provision authorizing same." App. 8-9. On the contrary, §206(d)(1) of ERISA requires an explicit plan provision prohibiting the assignment or alienation of retirement benefits. The Court had not received any briefing on a very basic issue: whether the offset of Harrison's entire retirement pension was a violation of the non-forfeiture and anti-alienation provisions of ERISA. Given these circumstances, collateral estoppel should not have been applied.

C. The Third Issue: The Extraordinary Circumstances of this Case Present an Ideal Opportunity to Further Define the Boundaries of Relief Under Rule 60(b)(6)

"In simple English, the language of the 'other reason' clause, for all reasons except the five particularly specified, vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott v. United States*, 335 U.S. 601, 614-615 (1949).

The District Court's judgment in 2002 exemplifies why attorneys have a responsibility of candor to a tribunal when the opposing party is left pro se and unable to meaningfully participate. Plan counsel's failure to advise the Court of the limited exceptions

that identify when plan administrators may offset vested retirement benefits that are set forth in §206(d)(4), along with the omission of this Court's decision in *Guidry*, led the District Court to the following conclusion:

> "In the instant matter, the defendant's decision to offset plaintiff's future retirement benefits cannot be challenged as unlawful, unreasonable or in bad faith. Before any offset occurred, a United States district court of competent jurisdiction entered final judgment regarding Harrison's liability to NFL Plan, and also established the specific amount owed. The decision that Harrison owed money to NFL Plan was made not by the NFL Plan, but by an independent and impartial court in a full-blown adversary proceeding, with both sides represented by counsel, and following precepts and constraints of Due Process.[3] As a result, there can be no concern that NFL Plan's offset was arbitrary and capricious. This, then, is an instance when there exists no policy or other

[3] It is unclear why the Court mistakenly believed that Harrison was represented by counsel when the 1996 judgment was obtained and why the Court mistakenly believed there was an adversarial proceeding that led to that judgment. The judgment was a default judgment due to discovery sanctions against Harrison while Harrison was pro se. *Harrison v. The Bert Bell/Pete Rozelle NFL Player's Retirement Plan*, No. 95-cv-2040, Dkt. No. 30 (Order For Sanctions Under Fed. R. Civ. P. 37(b)(2)(c), S.D. Tex. Oct. 11, 1996); Dkt. No. 33 (Final Judgment, S.D. Tex. Dec. 2, 1996).

> reason to condition lawfulness of NFL Plan's offset upon an explicit plan provision authorizing same."

App. 8-9.

But Harrison's claim for relief under Rule 60(b)(6) doesn't only rest upon these omissions of controlling authority. Additional factors contribute to form the extraordinary circumstances that justify some relief under Rule 60(b)(6): (1) the evidence that Harrison could not meaningfully participate in court proceedings due to a mental condition, (2) his court-appointed attorney's withdrawal, (3) subsequent to judgment, Harrison's many pro se efforts to contest the taking of his pension, even though he couldn't meaningfully do so, (4) the payment of Harrison's pension from 2003 until 2007, alleviating the need to seek relief from the 2002 judgment until his pension payments were stopped again in 2007, (5) the ongoing harm done to Harrison – every month for the remainder of his life he will not receive a pension check from the NFL, and (6) the importance of aligning the judgment with Congress's goal in enacting ERISA, "making sure that, if a worker has been promised a defined pension benefit upon retirement – and if he has fulfilled whatever conditions are required to obtain a vested benefit – he actually will receive it." *Nachman Corp. v. Pension Benefit Guaranty Corp*., 446 U.S. 359, 375 (1980).[4]

[4] As the District Court's decision reflects, between 2000 and 2009 Harrison, pro se, filed three lawsuits, one untimely appeal

(Continued on following page)

These circumstances present an ideal opportunity for the Supreme Court to consider the boundaries of Rule 60(b)(6) relief: whether or not a breach of the obligation of candor by counsel when considered in tandem with the withdrawal of opposing counsel and a person's continued pro se efforts but proven inability to be a meaningful adversary can be a reason to grant Rule 60(b)(6) relief. The District Court denied Harrison Rule 60(b)(6) relief because it found that Harrison's lack of candor claim "fits more appropriately under Rule 60(b)(3), which must be brought within one year after the entry of judgment."[5] App. 25. Harrison believes that this is a misapplication of Rule 60(b)(3), since an attorney's obligation of candor to a tribunal is not the equivalent of fraud, misrepresentation, or misconduct by an opposing party.

The circumstances also present an opportunity for the Supreme Court to make clear that it meant what it said in *Guidry*. The Fifth Circuit affirmed the District Court's denial of Rule 60(b)(6) relief because the District Court found that the case law that Plan counsel failed to disclose was not directly adverse to the trustee's position that Harrison's

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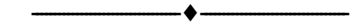
to the Fifth Circuit, and a number of motions to try and regain his pension. App. 5-11. He also sought to reinstate his disability benefits in the lawsuit that resulted in the 2002 judgment. App. 7.

[5] Fed. R. Civ. P. 60(c) requires that request for relief from a judgment under Rule 60(b)(3), a request based upon fraud, misrepresentation or misconduct by an opposing party, must be brought within one year.

pension could be taken. The District Court found that *Guidry*, *Great-West Life & Annuity Co. v. Knudson*, 534 U.S. 204 (2002) and the Fifth Circuit cases cited by Harrison that disallowed an offset of pension benefits, *Herberger v. Shanbaum*, 897 F.2d 801 (5th Cir. 1990) and *McLaughlin v. Lindemann*, 853 F.2d 1307 (5th Cir. 1998), were not directly adverse to the trustees' position because "none of these cases squarely addresses an ERISA plan's ability to recoup past overpayments of disability benefits by withholding future retirement benefits under a plan that encompasses both disability and retirement benefits." App. 24. Notably, Harrison's pensions were not withheld but were taken by way of offset.

In addition to being a reason for denying Rule 60(b)(6) relief, this was a basis for denying Harrison his Legacy pension. This holding is directly adverse to congressional intent, as §206(d)(4) clearly identifies the circumstances when a plan administrator can offset vested retirement benefits and an overpayment of welfare benefits from the same plan is not one of those exceptions. Also, this holding contravenes this Court's instruction in *Guidry*. Exceptions to the anti-alienation clause are to be left to Congress.



CONCLUSION

The actions of the NFL trustees and the decisions below provide a roadmap for plan administrators and claims administrators who seek an easy and sure way

to recapture overpaid welfare benefits: create composite plans that provide both welfare and pension benefits and allow the offset of pension benefits to repay the plan for overpaid welfare benefits. The actions of the NFL trustees and the decisions below are bound to undermine the central purpose of ERISA, the protection of retirement benefits. Writ of Certiorari should be granted as to the first issue to protect employees with vested retirement benefits and their families by soundly rejecting this method of circumventing ERISA's anti-alienation provision.

Writ of Certiorari should be granted as to the second issue because it is important when considering the application of collateral estoppel to an ERISA benefit claim that the claim be barred only if it involves the same plan and the same benefit that was considered in the prior litigation. This overbroad application of collateral estoppel stripped Harrison of his right to challenge the offset of his new pension benefit and creates a precedent that infringes upon ERISA's promise that a claimant will have ready access to the Federal Courts for benefit denials.

Because of the extraordinary facts and the harm done to Harrison, this case presents a unique opportunity for this Court to further define the boundaries of Rule 60(b)(6). Writ of Certiorari should be granted as to the third issue.

This Writ of Certiorari should be granted as to the three questions presented.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 14-40366

DWIGHT HARRISON,

Plaintiff-Appellant,

versus

BERT BELL/PETE ROZELLE
NFL RETIREMENT PLAN,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:13-CV-74

(Filed Nov. 3, 2014)

Before REAVLEY, SMITH, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

In this ERISA case, a former NFL player, Dwight Harrison, sues to challenge the plan administrator's

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

denial of certain retirement benefits. The district court granted summary judgment in favor of the administrator, holding that the claim was barred by collateral estoppel and that, in the alternative, the administrator did not abuse its discretion, under ERISA, in denying benefits. The court also denied a request to grant relief under Federal Rule of Civil Procedure 60(b) regarding a previous suit by Harrison.

We have reviewed the briefs, the applicable law, and pertinent portions of the record and have heard the helpful arguments of counsel. There is no reversible error, so the judgment is AFFIRMED, essentially for the reasons convincingly stated by the district court in its impressive twenty-five-page opinion.

UNITED STATES DISTRICT COURT		EASTERN DISTRICT OF TEXAS
DWIGHT HARRISON,	§	
Plaintiff,	§	
	§	
versus	§	CIVIL ACTION
	§	NO. 1:13-CV-74
BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN,	§	
	§	
	§	
Defendant.	§	

MEMORANDUM AND ORDER

(Filed Mar. 21, 2014)

Pending before the court are the parties' competing motions pertaining to Plaintiff Dwight Harrison's ("Harrison") pension benefits: Harrison's Motion for Summary Judgment (#12) and Defendant Bert Bell/Pete Rozelle NFL Player Retirement Plan's ("the Plan" or "the NFL Plan") Motion for Judgment on the Pleadings (#13). Having considered the pending motions, the submissions of the parties, the pleadings, and the applicable law, the court is of the opinion that Harrison's motion should be denied and the Plan's motion should be granted.

I. Background

From 1971 to 1980, Harrison was a professional football player in the National Football League. While

a player, Harrison participated in the NFL Plan,[1] which provided both retirement and disability benefits for NFL players.

August 13, 1993, marks the beginning of the parties' dispute over the benefits provided under the Plan. On that date, Harrison made a claim under the Plan for disability benefits. In his application, he claimed to have been totally and permanently disabled since January 1, 1984, as a result of major depression and anxiety disorder. Having determined that Harrison was eligible for disability benefits as claimed, Harrison was awarded a monthly benefit of $1,729.00 beginning in November 1993 as well as a lump sum payment of $184,756.00 for past due benefits.

Subsequently, Harrison sought enhanced benefits on the basis that he was disabled due to football-related injuries. The Retirement Board (also referred to as the NFL Trustees), however, disagreed and declined to increase Harrison's disability benefits. As a result, he filed suit in the United States District Court for the Southern District of Texas, Houston Division. On June 5, 1995, Harrison sued the Plan seeking additional total and permanent disability

[1] The NFL Plan is an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.* At the time of his retirement from the NFL, Harrison was vested in the NFL Plan. He had ten credited seasons.

benefits.[2] In response, the Plan asserted a counterclaim against Harrison to recover disability benefits that the Plan alleged constituted overpayments.[3] The court, United States District Judge Kenneth M. Hoyt, ruled against Harrison and in favor of the Plan, entering judgment (the "1996 judgment") against Harrison for $352,252.06 ($236,626.00 representing disability benefits previously paid to Harrison, $99,122.50 for attorneys' fees, and $16,503.56 for litigation expenses). The Plan did not immediately collect this judgment. Rather, Harrison's regular retirement benefits were reduced to present value at the time – $130,528.00. That amount was then applied as an offset to the 1996 judgment. In other words, because Harrison had previously received disability benefits in excess of the total value of his retirement benefits, the Plan informed Harrison that the value of his pension would be completely offset against his debt to the Plan.

On May 31, 2000, Harrison, proceeding *pro se,* filed another lawsuit in the Southern District of Texas seeking reconsideration of the final judgment entered by Judge Hoyt. United States District Judge Nancy Atlas dismissed the case with prejudice because "the prior judgment is now final and non-appealable,

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[2] Harrison was represented by counsel for only a short period of time in that case.

[3] The basis for this characterization is that the Plan's investigation of Harrison revealed that he had not been totally and permanently disabled since January 1, 1984, as he had claimed.

and because the current proceeding is an untimely request for relief from judgment under Rule 60(b) of the Federal Rules of Civil Procedure." Subsequently, Harrison filed a motion to dismiss the suit voluntarily, which was granted.

Thereafter, Harrison filed a *pro se* request for reconsideration of the 1996 judgment. He also submitted a motion for summary judgment on August 24, 2000. On October 13, 2000, Judge Hoyt denied both motions, stating that the judgment entered on December 2, 1996, "was not appealed and no jurisdictional basis exists for the Court to re-open this case."

Undeterred, Harrison, again proceeding *pro se,* instituted a third action. This time he filed suit in the United States District Court for the Eastern District of Texas, Lufkin Division, on December 8, 2000. *See Harrison v. Bert Bell/Pete Rozelle NFL Player's Retirement Plan,* Case No. 9:00-CV-306 (E.D. Tex. Dec. 8, 2000). The case was assigned to United States District Judge John Hannah, Jr., who referred pretrial matters to United States Magistrate Judge Earl S. Hines.[4] The court construed Harrison's suit as having four objectives:

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[4] Although Harrison's complaint was filed *pro se,* Judge Hines appointed him an attorney. After an investigation, however, Harrison's attorney moved to withdraw as counsel and submitted an *in camera* brief detailing for the court his reasons for concluding that legal representation would not likely enable

(Continued on following page)

(1) overturning the 1996 judgment of the [Southern District] that:

(a) declared Harrison ineligible for disability benefits, and

(b) awarded [the Plan] judgment for previously paid [disability] benefits;

(2) removing liens placed on Harrison's property by [the Plan] pursuant to the 1996 judgment;[5]

(3) reinstating and increasing *disability* benefits; and

(4) invalidating [the Plan's] offset of future *retirement* benefits in partial satisfaction of the 1996 judgment.

See Case No. 9:00-CV-306, Docket No. 25, Report & Recommendation (Jan. 25, 2002) (emphasis in original). Judge Hines concluded the court "lack[ed] authority to grant [Rule 60] relief" because "Harrison's request for relief from the 1996 judgment [had] to be brought in the [S]outhern [D]istrict of Texas where the original judgment was entered, not . . . in the [E]astern [D]istrict of Texas." The court also determined that res judicata barred "Harrison's attempt to reinstate and increase disability benefits."

Harrison to succeed in his case. Judge Hines granted counsel's motion, and Harrison reverted to *pro se* status.

[5] This issue is not pertinent to the instant action.

With regard to Harrison's quest to invalidate the Plan's offset of future retirement benefits in partial satisfaction of the 1996 judgment, Judge Hines recommended ruling against the Plan, reasoning:

> [The Plan] has neither provided a copy of the benefit plan, nor provided evidence that [the Plan's] decision was made pursuant to a plan provision.

Nonetheless, acting on the Plan's objection to that portion of the Report and Recommendation, the district court, Judge Hannah, held as follows:

> In this case, the plan grants discretionary authority to the administrator. Accordingly, the arbitrary-and-capricious standard [of review] applies. The touchstone of arbitrary and capricious conduct is unreasonableness. The inquiry is not whose interpretation is most persuasive, but whether the administrator's interpretation is unreasonable. . . . A decision is not arbitrary and capricious if it is based on a reasonable interpretation and made in good faith. . . .
>
> In the instant matter, the [Plan's] decision to offset [Harrison's] future retirement benefits cannot be challenged as unlawful, unreasonable, or in bad faith. Before any offset occurred, a United States district court of competent jurisdiction entered final judgment regarding Harrison's liability to [the] Plan, and also established the specific amount owed. The decision that Harrison owed money to [the] Plan was made not by [the] Plan, but

> by an independent and impartial court in a full-blown adversarial proceeding, with both sides represented by counsel, and following precepts and constraints of Due Process. As a result, there can be no concern that [the] Plan's offset was arbitrary and capricious. This, then, is an instance when there exists no policy or other reason to condition lawfulness of [the] Plan's offset upon an explicit plan provision authorizing same.

Summary judgment, therefore, was granted in favor of the Plan, and Harrison's claims against the Plan were dismissed on March 19, 2002 (the "2002 judgment").

Following entry of the 2002 judgment, Harrison sought reconsideration of Judge Hannah's ruling in two separate motions filed in April and August 2002. The first motion alleged that Harrison did not receive timely service of the Report and Recommendation. The second motion claimed that the court's ruling overlooked language in the Plan document that described a former player's retirement benefits as "non-forfeitable" and, therefore, any offset of future retirement benefits against the 1996 judgment contradicted the express terms of the Plan. On February 14, 2003, the court denied both motions, opining that neither of the grounds asserted by Harrison are "cognizable under Rule 60" of the Federal Rules of Civil Procedure.

At some point in 2003, Harrison began receiving monthly retirement benefits, allegedly due to a

clerical error on the part of the Plan. Such payments ceased when the error was identified in 2007.[6] As a result, on July 5, 2007, Harrison filed a *pro se* lawsuit in the Eastern District of Texas challenging the Plan's decision to withhold his retirement benefits. The case was assigned to the undersigned judge and referred for pretrial matters to United States Magistrate Judge Keith F. Giblin. *See Harrison v. Nat'l Football League Player Benefits,* Case No. 1:07-CV-473 (E.D. Tex. July 5, 2007).

Acting on a motion for summary judgment filed by the Plan, Judge Giblin issued a Report and Recommendation, dated March 16, 2009, recommending that the court grant summary judgment in favor of the Plan. *See* Report & Recommendation, Case No. 1:07-CV-473, Docket No. 30 (Mar. 16, 2009). Judge Giblin found that Harrison's claims were barred by res judicata (because they were previously litigated in the case before Judge Hannah) and Harrison was precluded from relitigating either his claim for benefits or his claim regarding the Plan's withholding of his benefits as an offset, reasoning that those issues were "clearly adjudicated and fully litigated in the previous proceedings." Judge Giblin alternatively held that the Plan did not abuse its discretion when it decided to withhold Harrison's benefits.[7] This court

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[6] Altogether, Harrison was paid $75,327.20 in retirement benefits between 2003 and 2007.

[7] On this point, Judge Giblin opined:

> Having been presented no differing facts or issues other than those before Judge Hannah when he reached

(Continued on following page)

adopted Judge Giblin's Report and Recommendation and entered final judgment against Harrison on April 15, 2009 (the "2009 judgment"). On January 18, 2011, the United States Court of Appeals for the Fifth Circuit rejected Harrison's appeal as untimely.

In a recent collective bargaining agreement between the NFL owners and the NFL Players Association, an additional pension benefit called the Legacy Credit Pension was created. The NFL sent out a letter to all former NFL players, including Harrison, announcing that the Legacy benefit was a "new benefit that applies to ALL players who were vested in the pension prior to 1993, regardless of whether they are currently receiving a pension check, and is provided as a new benefit in the Bert Bell/Pete Rozelle NFL Player Retirement Plan."

Harrison applied for Legacy pension benefits in December 2011. On May 24, 2012, however, the Retirement Board sent a letter to Harrison explaining that his request for Legacy benefits was denied in light of the remaining unpaid balance from the 1996

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that decision, the Court will adopt those findings and concludes that the Defendant has carried its burden in showing that the Plan administrator did not abuse its discretion when it made the decision to withhold Mr. Harrison's retirement benefits. Mr. Harrison did not respond with any evidence in opposition to this conclusion. Accordingly, no issue of genuine material fact exists on the appropriateness of the Plan's decision in this matter under the relevant abuse of discretion standard.

judgment against him ($221,724.00) and the retirement benefits in the amount of $75,327.20 mistakenly paid to Harrison between 2003 and 2007. The letter also stated that the present value of Harrison's Legacy benefit, $134,199.77, had been used to reduce the total amount of Harrison's indebtedness, leaving an unpaid balance of $162,851.43.[8]

On February 1, 2013, Harrison filed the instant lawsuit contesting the NFL Trustees' decision to offset Harrison's Legacy Pension Benefit in partial satisfaction of Harrison's indebtedness to the Plan as well as its determination that Harrison is no longer a participant in the Plan. Harrison also seeks extraordinary relief (pursuant to FED. R. CIV. P. 60(b)(6)) from the judgment in Case No. 9:00-CV-306, contending that the NFL Plan Trustees and their counsel

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[8] The letter states in relevant part:

> The Retirement Board determined to reduce your Legacy Benefit to $0 in partial satisfaction of your current indebtedness to the Plan. After application of the Legacy Benefit, your indebtedness to the Plan is reduced to $162,851.43, plus interest.
>
> The Retirement Board determined once again that you no longer have a vested right to retirement benefits under the Plan, you are no longer a participant in the Plan, and therefore are not eligible for any Plan benefits. As before, the Retirement Board found that you are akin to a person who has received a lump sum payment of his entire benefit under a plan. It is well-settled that such a person is no longer a participant in that plan and is not eligible to make further claims under that plan.

were not candid with the court about controlling authority that was allegedly directly adverse to their position that they could offset Harrison's vested pension and Harrison was unable to respond substantively to the Plan's motions because of his pro se status and his mental deficiencies.

A. Harrison's Motion for Summary Judgment

In his motion for summary judgment, Harrison asserts that (1) the NFL Plan Trustees abused their discretion in offsetting his Legacy Pension Benefit, (2) the NFL Plan Trustees abused their discretion in declaring that Harrison was no longer a participant, and (3) pursuant to FED. R. CIV. P. 60(b)(6), Harrison is entitled to extraordinary relief from the 2002 judgment entered in Cause No. 9:00-CV-306. More specifically, Harrison argues that the offset of Harrison's Legacy Pension was an abuse of discretion because it violated the spendthrift clause of the Plan as well as ERISA's anti-alienation provision, 29 U.S.C. § 1056(d)(1). He also asserts that the NFL Plan Trustees' declaration that Harrison was no longer a participant in the plan was an abuse of discretion because it violated the Plan document's nonforfeiture provision and ERISA's nonforfeiture clause, 29 U.S.C. § 1053(a). Finally, Harrison maintains that he is entitled to limited relief from the 2002 judgment to the extent that his regular pension is restored because of the combination of Harrison's *pro se* status and mental deficiencies and the NFL Plan Trustees' lack of candor about controlling authority that was

allegedly directly adverse to their position in that suit; namely, that they could seize Harrison's pension and credit it against the 1996 judgment taken against Harrison in litigation over disability benefits.

In response, the Plan asserts that the primary issue is not whether the Plan abused its discretion when it decided to withhold Harrison's future benefits to recoup past overpayments; rather, it argues that Harrison's claims fail because they are barred by res judicata and collateral estoppel. Alternatively, the Plan maintains that Harrison indisputably received an overpayment of benefits – "monies that were not rightfully Harrison's" – and, therefore, the Plan document, federal law, and case law allow the Plan to withhold Harrison's benefits to recover past overpayments.

B. The Plan's Motion for Judgment on the Pleadings

On August 1, 2013, the Plan filed a motion for judgment on the pleadings, asserting that Harrison's lawsuit should be dismissed for several reasons. First, the Plan claims that two federal courts have rejected the same legal theories Harrison advances here and, thus, res judicata and collateral estoppel bar the instant action. The Plan also argues that the relief Harrison requests should be denied because the Plan document explicitly permits the recovery of overpayments from future benefits and the Plan Trustees' interpretations of and decisions based upon the Plan

document are entitled to the highest standard of judicial deference under ERISA.

Harrison counters that the doctrines of res judicata and collateral estoppel do not bar his claim for Legacy benefits because the decision to offset his Legacy benefit was not made until May 9, 2012, subsequent to any court rulings on the issue of offset. Similarly, Harrison contends that these doctrines do not preclude his second claim, which challenges the May 2012 determination by the Retirement Board that Harrison is no longer a participant in the Plan. Finally, Harrison asserts that res judicata and claim preclusion do not bar his argument that he is entitled to relief from the 2002 judgment based on opposing counsels' purported lack of candor regarding adverse legal authority and Harrison's inability to represent himself effectively because these issues have never been litigated.

II. Analysis

A. Summary Judgment Standard

A party may move for summary judgment without regard to whether the movant is a claimant or a defending party. *See Apache Corp. v. W&T Offshore, Inc.,* 626 F.3d 789, 794 (5th Cir. 2010); *CQ, Inc. v. TXU Mining Co., L.P.,* 565 F.3d 268, 272 (5th Cir. 2009). Rule 56(a) of the Federal Rules of Civil Procedure provides that summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is

entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). The party seeking summary judgment bears the initial burden of informing the court of the basis for his motion and identifying those portions of the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any, which he believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986); *QBE Ins. Corp. v. Brown & Mitchell, Inc.,* 591 F.3d 439, 442 (5th Cir. 2009); *Warfield v. Byron,* 436 F.3d 551, 557 (5th Cir. 2006); *Lincoln Gen. Ins. Co. v. Reyna,* 401 F.3d 347, 349 (5th Cir. 2005). A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986); *accord Poole v. City of Shreveport,* 691 F.3d 624, 627 (5th Cir. 2012); *Bayle v. Allstate Ins. Co.,* 615 F.3d 350, 355 (5th Cir. 2010); *Wiley v. State Farm Fire & Cas. Co.,* 585 F.3d 206, 210 (5th Cir. 2009); *EMCASCO Ins. Co. v. Am. Int'l Specialty Lines Ins. Co.,* 438 F.3d 519, 523 (5th Cir. 2006). Where "the movant bears the burden of proof on an issue, either because he is the plaintiff or as a defendant he is asserting an affirmative defense, he must establish beyond peradventure *all* of the essential elements of the claim or defense to warrant judgment in his favor." *Fontenot v. Upjohn Co.,* 780 F.2d 1190, 1194 (5th Cir. 1986) (emphasis in original); *see Addicks Servs., Inc. v. GGP-Bridgeland, LP,* 596 F.3d 286, 293 (5th Cir. 2010); *Martin v. Alamo Cmty. Coll. Dist.,* 353 F.3d 409, 412 (5th Cir. 2003); *Chaplin v.*

NationsCredit Corp., 307 F.3d 368, 372 (5th Cir. 2002).

Once a proper motion has been made, the nonmoving party may not rest upon mere allegations or denials in the pleadings but must present affirmative evidence, setting forth specific facts, to demonstrate the existence of a genuine issue for trial. *Celotex Corp.,* 477 U.S. at 322 n.3 (quoting FED. R. CIV. P. 56(e)); *Anderson,* 477 U.S. at 256; *Bayle,* 615 F.3d at 355; *EMCASCO Ins. Co.,* 438 F.3d at 523; *Smith ex rel. Estate of Smith v. United States,* 391 F.3d 621, 625 (5th Cir. 2004). "[T]he court must review the record 'taken as a whole.'" *Reeves v. Sanderson Plumbing Prods., Inc.,* 530 U.S. 133, 150 (2000) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986)); *see Riverwood Int'l Corp. v. Emp'rs Ins. of Wausau,* 420 F.3d 378, 382 (5th Cir. 2005). All the evidence must be construed in the light most favorable to the nonmoving party, and the court will not weigh the evidence or evaluate its credibility. *Reeves,* 530 U.S. at 150; *Downhole Navigator, LLC v. Nautilus Ins. Co.,* 686 F.3d 325, 328 (5th Cir. 2012); *EEOC v. Chevron Phillips Chem. Co., LP,* 570 F.3d 606, 615 (5th Cir. 2009); *Lincoln Gen. Ins. Co.,* 401 F.3d at 350; *Smith ex rel. Estate of Smith,* 391 F.3d at 624. The evidence of the nonmovant is to be believed, with all justifiable inferences drawn and all reasonable doubts resolved in its favor. *Groh v. Ramirez,* 540 U.S. 551, 562 (2004) (citing *Anderson,* 477 U.S. at 255); *Cotroneo v. Shaw Env't & Infrastructure, Inc.,* 639 F.3d 186, 192 (5th Cir. 2011); *Tradewinds Envtl.*

Restoration, Inc. v. St. Tammany Park, LLC, 578 F.3d 255, 258 (5th Cir. 2009).

B. Judgment on the Pleadings

Rule 12(c) of the Federal Rules of Civil Procedure provides: "[a]fter the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings." FED. R. CIV. P. 12(c); *accord Hughes v. The Tobacco Inst., Inc.,* 278 F.3d 417, 420 (5th Cir. 2001); *see Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.,* 313 F.3d 305, 312 (5th Cir. 2002); *Jones v. Greninger,* 188 F.3d 322, 324 (5th Cir. 1999). "A motion brought pursuant to FED. R. CIV. P. 12(c) is designed to dispose of cases where the material facts are not in dispute and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially noticed facts." *Herbert Abstract Co. v. Touchstone Props., Ltd.,* 914 F.2d 74, 76 (5th Cir. 1990); *see Great Plains Trust Co.,* 313 F.3d at 312; *United States v. Renda Marine, Inc.,* 750 F. Supp. 2d 755, 763 (E.D. Tex. 2010), *aff'd,* 667 F.3d 651 (5th Cir. 2012), *cert. denied,* 133 S. Ct. 1800 (2013). Such motions are treated as a motion for judgment on the pleadings based on a failure to state a claim upon which relief can be granted. *See Truong v. Bank of Am., N.A.,* 717 F.3d 377, 381 (5th Cir. 2013); *Gentilello v. Rage,* 627 F.3d 540, 543-44 (5th Cir. 2010) ("We evaluate a motion under Rule 12(c) for judgment on the pleadings using the same standard as a motion to dismiss under Rule 12(b)(6) for failure to state a claim."); *Johnson v. Johnson,* 385 F.3d 503,

529 (5th Cir. 2004) (same). The primary focus is whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief. *See United States v. 0.073 Acres of Land,* 705 F.3d 540, 543 (5th Cir. 2013); *Great Plains Trust Co.,* 313 F.3d at 312; *Hughes,* 278 F.3d at 420.

"'Pleadings should be construed liberally, and judgment on the pleadings is appropriate only if there are no disputed issues of fact and only questions of law remain.'" *Great Plains Trust Co.,* 313 F.3d at 312 (quoting *Hughes,* 278 F.3d at 420). In making such a determination, the court is restricted to the pleadings and must accept all allegations as true. *See Hughes,* 278 F.3d at 420 (citing *St. Paul Ins. Co. v. AFIA Worldwide Ins. Co.,* 937 F.2d 274, 279 (5th Cir. 1991)); *see also Great Plains Trust Co.,* 313 F.3d at 312. The court will not, however, accept as true conclusory allegations or unwarranted deductions of fact. *See Great Plains Trust Co.,* 313 F.3d at 313.

C. Rule 60(b)

Rule 60(b) provides that a court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b).

"The party seeking relief from a judgment or order bears the burden of demonstrating that the prerequisites for such relief are satisfied." *Turner v. Chase,* No. 08-3884, 2010 WL 2545277, at *2 (E.D. La. June 16, 2010) (citing *Motorola Credit Corp. v. Uzan,* 561 F.3d 123, 126 (2d Cir. 2009)); *see United States v. City of New Orleans,* 947 F. Supp. 2d 601, 615 (E.D. La.), *aff'd,* 731 F.3d 434 (5th Cir. 2013). "A decision with respect to a motion to reconsider pursuant to Rule 60(b) is left to the 'sound discretion of the district court and will only be reversed if there is an abuse of that discretion." *Laborde v. Lunceford,* No. 6:10-CV-30, 2010 WL 3946508, at *3 (E.D. Tex. Oct. 8, 2010) (quoting *Steverson v. GlobalSantaFe Corp.,* 508 F.3d 300, 303 (5th Cir. 2007)); *see United States v. City of New Orleans,* 731 F.3d 434, 440 (5th Cir. 2013) (recognizing that a decision on a Rule 60(b) motion is reviewed for an abuse of discretion); *Gov't Fin. Servs. One Ltd. P'ship v. Peyton Place, Inc.,* 62 F.3d 767, 770

(5th Cir. 1995) ("[T]o overturn the district court's denial of [a] Rule 60(b) motion, it is not enough that a grant of the motion might have been permissible or warranted; rather, the decision to deny the motion must have been sufficiently unwarranted as to amount to an abuse of discretion.") (internal quotations omitted).

Under Rule 60(b)(6), a district court may relieve a party from an order or proceeding for any reason which justifies relief, other than those also enumerated in Rule 60(b). *See Rocha v. Thaler,* 619 F.3d 387, 399-400 (5th Cir. 2010), *cert. denied,* 132 S. Ct. 397 (2011). "Rule 60(b)(6) is a grand reservoir of equitable power to do justice in a particular case when relief is not warranted by the preceding clauses, [and] [the Fifth Circuit] [has] also narrowly circumscribed its availability, holding that Rule 60(b)(6) relief will be granted only if extraordinary circumstances are present." *Balentine v. Thaler,* 626 F.3d 842, 846 (5th Cir. 2010), *cert. denied,* 131 S. Ct. 2992 (2011) (quoting *Batts v. Tow-Motor Forklife Co.,* 66 F.3d 743, 747 (5th Cir. 1995)). "'[T]he rule seeks to strike a delicate balance between two countervailing impulses: the desire to preserve the finality of judgments and the "incessant command of the court's conscience that justice be done in light of all the facts."'" *Borne v. River Parishes Hosp., L.L.C.,* No. 12-30749, 2013 WL 5977133, at *2 (5th Cir. Apr. 22, 2013) (quoting *Seven Elves, Inc. v. Eskenazi,* 635 F.2d 396, 401 (5th Cir. 1981) (quoting *Bankers Mortg. Co. v. United States,* 423 F.2d 73, 77 (5th Cir.), *cert. denied,* 399 U.S. 927

(1970))). A motion under Rule 60(b), however, "is not a substitute for a timely appeal, and it is an improper vehicle for challenging mistakes of law or reasserting arguments on the merits of a claim." *Borne,* 2013 WL 5977133, at *2 (citing *Pryor v. U.S. Postal Serv.,* 769 F.2d 281, 286 (5th Cir. 1985)); *In re Chinese-Manufactured Drywall Prods. Liab. Litig.,* No. 09-7791, 2011 WL 2443693, at *2 (E.D. La. June 14, 2011).

As detailed above, Harrison seeks "limited relief" pursuant to Rule 60(b)(6) from the 2002 judgment issued by Judge Hannah which allowed the offset of Harrison's entire vested pension benefit. According to Harrison, the "extraordinary circumstances" that merit relief from the 2002 judgment include a combination of Harrison's inability to represent himself and the NFL Trustees' and their counsels' lack of candor about controlling statutory, Fifth Circuit, and Supreme Court authority that was directly adverse to the contention that the Plan had a right to offset Harrison's pension benefit.

Harrison's request is denied for several reasons. First, the court does not find that "exceptional circumstances" exist here. Harrison asserts that the Plan's attorneys wrongfully failed to cite *Great-West Life & Annuity Co. v. Knudson,* 534 U.S. 204 (2002), *Guidry v. Sheet Metal Workers Nat'l Pension Fund,* 493 U.S. 365 (1990), *McLaughlin v. Lindemann,* 853 F.2d 1307 (5th Cir. 1998), and *Herberger v. Shanbaum,* 897 F.2d 801 (5th Cir. 1990) in the prior proceedings, asserting that these cases are directly adverse to the Plan's position regarding its authority to offset

Harrison's retirement benefits. Essentially, Harrison argues that both Judge Hannah and Judge Giblin reached an incorrect result because they applied the wrong law. Such an argument is foreclosed, however, as a Rule 60(b)(6) motion is not a substitute for a timely appeal, "particularly where, as here, a mistake of law is alleged to be the primary ground of the appeal." *Hess v. Cockrell,* 281 F.3d 212, 216 (5th Cir. 2002).

In any event, the aforementioned cases are not directly adverse to the Plan's position. In *McLaughlin,* the Fifth Circuit held that a beneficiary's pension benefits could not be reduced as part of the trust's effort to satisfy a legal judgment against the beneficiary resulting from the beneficiary's liability "as a nonfiduciary who knowingly participated in the trustee's breach of trust." 853 F.2d at 1309. Similarly, in *Herberger,* the court concluded that a beneficiary's pension benefits cannot be reduced even where the beneficiary is a trustee of the plan, and the judgment resulted from the beneficiary-trustee's breach of his fiduciary duties to the plan. 897 F.2d at 802-04. The *Knudson* case involved the issue of whether a plan could recover "restitution" from the beneficiaries personally under ERISA § 502(a)(3), in which the court found that the action was not authorized under § 503(a)(3) because "petitioners [were] seeking legal relief – the imposition of personal liability on [the beneficiaries] for a contractual obligation to pay money." 534 U.S. at 207, 221. Finally, the *Guidry* court held that a constructive trust imposed on future unpaid pension benefits for the purpose of collecting a

judgment against the plaintiff for embezzling union funds violated ERISA's anti-alienation provision. 493 U.S. at 367, 372, 376. None of these cases squarely addresses an ERISA plan's ability to recoup past overpayments of disability benefits by withholding future retirement benefits under a plan that encompasses both disability and retirement benefits. As a result, the court rejects the notion that the Plan's counsel was duty-bound to cite the authorities on the basis that such cases are "directly adverse."

Second, a motion brought under Rule 60(b) must be made within a "reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." FED. R. CIV. P. 60(c). Harrison did not move for relief from the 2002 judgment until February 1, 2013, nearly eleven years after the judgment was entered. Notwithstanding the liberal treatment afforded to *pro se* litigants, they still must comply with procedural rules. *See Vafaiyan v. City of Wichita Falls,* 398 F. App'x 989, 990 (5th Cir. 2010); *Moss v. Clark,* No. 2:10-CV-0259, 2014 WL 947325, at *5 (N.D. Tex. Mar. 11, 2014); *accord United States v. Beckton,* 740 F.3d 303, 306 (4th Cir. 2014). For these reasons, the court finds that Harrison did not seek relief pursuant to Rule 60(b)(6) within a reasonable period of time. *See Simmons v. Twin City Towing,* 425 F. App'x 401, 403 (5th Cir. 2011) ("In the absence of any known exceptional circumstances, nine years after the entry of judgment cannot be considered 'within a reasonable time' under any understanding of that phrase.").

Third, Rule 60(b)(6) is a "catch-all provision, meant to encompass circumstances not covered by Rule 60(b)'s other enumerated provisions." *See Hess,* 281 F.3d at 216; *accord Margoles v. Johns,* 798 F.2d 1069, 1073 n.6 (7th Cir. 1986) ("Relief under Rule 60(b)(6) is appropriate only if the grounds asserted for relief do not fit under any of the other subsections of Rule 60(b)."); *Hindi v. Toyota Motor Corp.,* No. 2:05-CV-11, 2011 WL 865488, at *4 (E.D. Tex. Mar. 10, 2011) ("Plaintiff cannot circumvent the time limitations of Rule 60(c)(1) by asserting a Rule 60(b)(6) motion with allegations that are more appropriate to support a Rule 60(b)(3) motion [which pertain to fraud, misrepresentation, or misconduct by the opposing party]."). Harrison's allegation that the Plan's attorneys concealed controlling authority fits more appropriately under Rule 60(b)(3), which must be brought within one year after the entry of judgment.

D. Preclusive Effect of Prior Judgments

Federal courts have traditionally adhered to the related doctrines of res judicata, or claim preclusion, and collateral estoppel, or issue preclusion, when confronted with prior judgments in related cases. *See Allen v. McCurry,* 449 U.S. 90, 94 (1980); *Comer v. Murphy Oil USA, Inc.,* 718 F.3d 460, 466-67 (5th Cir. 2013). "Res judicata incorporates the doctrines of merger and bar, thereby extending the effect of a judgment to the litigation of all issues relevant to the same claim between the same parties, whether or not those issues were raised at trial." *St. Paul Mercury*

Ins. Co. v. Williamson, 224 F.3d 425, 436 (5th Cir. 2000). "Collateral estoppel precludes the relitigation of issues actually adjudicated, and essential to the judgment, in a prior suit between the parties on a different cause of action." *Id.* The United States Supreme Court and other courts have recognized that these doctrines "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *Allen,* 449 U.S. at 94 (citing *Montana v. United States,* 440 U.S. 147, 153-54 (1979)); *see also Matter of Brady, Tex., Mun. Gas Corp.,* 936 F.2d 212, 220 (5th Cir.), *cert. denied,* 502 U.S. 1013 (1991).

1. Res Judicata

Under the doctrine of res judicata, a final judgment is an absolute bar to a subsequent lawsuit between the same parties upon the same claims or causes of action. *See United States v. Mendoza,* 464 U.S. 154, 158 n.3 (1984); *Federated Dep't Stores, Inc. v. Moitie,* 452 U.S. 394, 398 (1981); *Bradberry v. Jefferson Cnty.,* 732 F.3d 540, 548 n.6 (5th Cir. 2013); *In re Paige,* 610 F.3d 865, 870 (5th Cir. 2010). "Claim preclusion, or res judicata, bars the litigation of claims that either have been litigated or should have been raised in an earlier suit." *Test Masters Educ. Servs., Inc. v. Singh,* 428 F.3d 559, 570 (5th Cir. 2005) (citing *Petro-Hunt, LLC v. United States,* 365 F.3d 385, 395 (5th Cir. 2004); *In re Southmark Corp.,* 163 F.3d 925, 934 (5th Cir.), *cert. denied,* 527 U.S. 1004

(1999)); *see Comer,* 718 F.3d at 467; *Turner v. Pleasant,* 663 F.3d 770, 775 (5th Cir. 2011). Res judicata bars all claims that were or could have been litigated in the prior action, not merely those that were adjudicated. *See Rivet v. Regions Bank,* 522 U.S. 470, 476 (1998); *Moitie,* 452 U.S. at 398; *In re Paige,* 610 F.3d at 870; *Travelers Ins. Co. v. St. Jude Hosp.,* 37 F.3d 193, 195 (5th Cir. 1994), *cert. denied,* 514 U.S. 1065 (1995). Thus, "'a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.'" *San Remo Hotel, L. P. v. City & Cnty. of San Francisco,* 545 U.S. 323, 336 n.16 (2005) (quoting *Allen,* 449 U.S. at 94).

The Fifth Circuit has established a four-prong test for assessing the preclusive effect of prior judgments:

> "'For a prior judgment to bar an action on the basis of res judicata, the parties must be identical in both suits, the prior judgment must have been rendered by a court of competent jurisdiction, there must have been a final judgment on the merits and the same cause of action must be involved in both cases.'"

In re Intelogic Trace, Inc., 200 F.3d 382, 386 (5th Cir. 2000) (quoting *Nilsen v. City of Moss Point,* 701 F.2d 556, 559 (5th Cir. 1983) (quoting *Kemp v. Birmingham News Co.,* 608 F.2d 1049, 1052 (5th Cir. 1979), *overruled on other grounds by Southmark Props. v. Charles House Corp.,* 742 F.2d 862, 870 (5th Cir.

1984))); *see Comer,* 718 F.3d at 467. "If these conditions are satisfied, all claims or defenses arising from a 'common nucleus of operative facts' are merged or extinguished." *Proctor & Gamble Co. v. Amway Corp.,* 376 F.3d 496, 499 (5th Cir. 2004).

The elements of res judicata have been satisfied with regard to Harrison's regular retirement benefits.[9] Harrison and the Plan were both parties to Case No. 9:00-CV-306. The United States District Court for the Eastern District of Texas is considered a court of competent jurisdiction as it exercised its federal question jurisdiction over the suit pursuant to 28 U.S.C. § 1331. Judge Hannah entered final judgment and granted summary judgment in favor of the Plan, dismissing Harrison's claims. As previously discussed, Judge Hannah specifically rejected Harrison's claim challenging the Plan's decision to withhold future retirement benefits as an offset based upon the 1996 judgment (wherein Judge Hoyt found Harrison liable to the Plan for previously overpaid disability benefits, costs, and attorneys' fees). The withholding of future retirement benefits as an offset to recover the 1996 judgment is precisely the issue about which Harrison complains in this case. That specific claim was adjudicated by Judge Hannah in 2002, and res judicata bars its relitigation here. Notably, on April 15, 2009,

[9] Because the prior lawsuits were all filed in the United States District Courts for the Southern and Eastern Districts of Texas and are matters of public record, the court takes judicial notice of their dispositions.

this court entered final judgment in Case No. 1:07-CV-473 upon adopting Judge Giblin's Report and Recommendation stating that Harrison's offset argument was barred by res judicata.

Moreover, "the res judicata consequences of a final, unappealed judgment on the merits [are not] altered by the fact that the judgment may have been wrong . . . " *Moitie,* 452 U.S. at 394; *accord Comer,* 718 F.3d at 466; *Segrest v. Segrest,* 649 S.W.2d 610, 612 (Tex.), *cert. denied,* 464 U.S. 894 (1983). "[A]n '"erroneous conclusion" reached by the court in the first suit does not deprive the defendants in the second action of their right to rely upon the plea of *res judicata*. . . . A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause [of action].'" *Moitie,* 452 U.S. at 398 (quoting *Baltimore S. S. Co. v. Phillips,* 274 U.S. 316, 325 (1932)).

The Legacy benefit, however, did not exist until 2011, subsequent to the prior judgments in this case. Further, the Plan did not reject Harrison's request for Legacy benefits until May 24, 2012. Thus, Harrison's claim for Legacy benefits did not arise until after entry of the 2002 and 2009 judgments. *Am. Home Assurance Co. v. Chevron, USA, Inc.,* 400 F.3d 265, 272 (5th Cir. 2005) ("The doctrine of res judicata does not bar a party from bringing a claim that arose subsequent to a prior judgment involving the same parties."). Accordingly, Harrison's claim challenging

the non-payment of Legacy benefits to satisfy the 1996 judgment is not barred by res judicata.

2. Collateral Estoppel

Under the principle of collateral estoppel, when an issue of ultimate fact has been determined by a final and valid judgment, that issue cannot be litigated in a future lawsuit. *San Remo Hotel, L.P.,* 545 U.S. at 336 n.16; *New Hampshire v. Maine,* 532 U.S. 742, 748-49 (2001); *Vines v. Univ. of La. at Monroe,* 398 F.3d 700, 705 (5th Cir. 2005), *cert. denied,* 546 U.S. 1089 (2006) (citing *Ashe v. Swenson,* 397 U.S. 436, 443 (1970)). Collateral estoppel "'is limited to matters distinctly put in issue, litigated, and determined in the former action.'" *Brister v. A. W. I., Inc.,* 946 F.2d 350, 354 (5th Cir. 1991) (quoting *Diplomat Elec., Inc. v. Westinghouse Elec. Supply Co.,* 430 F.2d 38, 45 (5th Cir. 1970)); *accord Next Level Commc'ns LP v. DSC Commc'ns Corp.,* 179 F.3d 244, 250 (5th Cir. 1999). Thus, "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Allen,* 449 U.S. at 94 (citing *Montana,* 440 U.S. at 153); *accord San Remo Hotel, L.P.,* 545 U.S. at 336 n.16; *see also Archer v. Warner,* 538 U.S. 314, 319-20 (2003).

"A judgment is preclusive in federal court if: (1) the prior federal decision resulted in a judgment on the merits; (2) the same fact issue was litigated in

that court; and (3) the issue's disposition was necessary to the prior action's outcome." *Fin. Acquisition Partners LP v. Blackwell,* 440 F.3d 278, 284 (5th Cir. 2006) (citing *Am. Home Assurance Co.,* 400 F.3d at 272). Additionally, there must not be any special circumstances that render the application of collateral estoppel unfair. *Bradberry,* 732 F.3d at 548 (stating also that these "equitable considerations apply only to 'offensive collateral estoppel'"); *Fin. Acquisition Partners LP,* 440 F.3d at 284 (citing *Winters v. Diamond Shamrock Chem. Co.,* 149 F.3d 387, 391 (5th Cir. 1998), *cert. denied,* 526 U.S. 1034 (1999)). Finally, the facts and the legal standard used to assess those facts must be the same in both proceedings. *Fin. Acquisition Partners LP,* 440 F.3d at 284; *Next Level Commc'ns LP,* 179 F.3d at 250; *RecoverEdge L.P. v. Pentecost,* 44 F.3d 1284, 1291 (5th Cir. 1995). Nevertheless, the "actual claims and the subject matter of each suit may differ." *Next Level Commc'ns LP,* 179 F.3d at 250 (citing *RecoverEdge L.P.,* 44 F.3d at 1291).

Harrison's claims against the Plan in both this action and in Case Nos. 9:00-CV-306 and 1:07-CV-473 challenge the Plan's decision to withhold his future retirement benefits to recover the 1996 judgment for overpaid disability benefits, costs, and attorneys' fees. This issue was actually adjudicated in the prior cases and final judgments were entered. The Report and Recommendation issued in Case No. 1:07-CV-473 stated in relevant part:

> Relatedly, Mr. Harrison is also precluded from relitigating his claim for benefits and

> regarding the Plan's withholding of his benefits based on the offset because those issues were clearly adjudicated and fully litigated in the previous proceedings discussed herein. The issue presented by Mr. Harrison's claim in this case that his benefits were wrongly withheld is identical to the issue already disposed of by Judge Hannah in the earlier-filed suit. Judge Hannah entered final judgment in favor of the [Plan] on that exact issue. *See Vines v. Univ. of La. at Monroe,* 398 F.3d 700, 705 (5th Cir.), *cert. denied,* 546 U.S. 1089 (2006) ("the doctrine of collateral estoppel applies to prevent issues of ultimate fact from being relitigated between the same parties in a future lawsuit if those issues have once been determined by a valid and final judgment"). It follows that the Plan has established that Mr. Harrison's claims are barred under the [doctrine of] issue preclusion o[r] collateral estoppel as a matter of law.

Further, Judge Hannah's opinion stated: "the [Plan's] decision to offset [Harrison's] future retirement benefits cannot be challenged as unlawful, unreasonable, or in bad faith." Although the Legacy retirement benefit was not created until 2011, Harrison advances the same argument in this case (that the Plan may not withhold future retirement benefits to satisfy the 1996 judgment). The decisions in the prior cases addressed the identical issue – whether the Plan could setoff Harrison's retirement benefits to satisfy the 1996 judgment. Thus, the court finds that

the same offset argument was fully litigated in the earlier cases, the decision was essential to the prior judgments, and the litigants are the same. The doctrine of collateral estoppel, therefore, bars Harrison's claim challenging the Plan's decision to offset future retirement benefits (including the Legacy benefit).

E. Retirement Board's Decision

Alternatively, the court finds that the Retirement Board did not abuse its discretion in withholding Harrison's Legacy benefits to satisfy the 1996 judgment based on disability overpayments.[10] The Retirement Board has the "full and absolute discretion, authority and power to interpret, control, implement, and manage the Plan and the Trust." Section 8.2(o) of the Plan document vests the Retirement Board with broad authority to "recover any overpayment of

[10] Where, as here, an employee benefit plan gives its administrator or fiduciary discretionary authority to determine eligibility for benefits and to construe the terms of the plan, a reviewing court must evaluate the plan administrator's decision under an abuse of discretion standard. *Firestone Tire & Rubber Co. v. Bruch,* 489 U.S. 101, 115 (1989); *see Anderson v. Cytec Indus., Inc.,* 619 F.3d 505, 512 (5th Cir. 2010); *Holland v. Int'l Paper Co. Retirement Plan,* 576 F.3d 240, 246 (5th Cir. 2009); *Sanders v. Unum Life Ins. Co. of Am.,* 553 F.3d 922, 925 (5th Cir. 2008). Under this standard, when " 'the plan fiduciary's decision is supported by substantial evidence and is not arbitrary and capricious, it must prevail.' " *Sanders,* 553 F.3d at 925 (quoting *Corry v. Liberty Life Assurance Co. of Boston,* 499 F.3d 389, 397 (5th Cir. 2007)); *see Anderson,* 619 F.3d at 512; *Love v. Dell, Inc.,* 551 F.3d 333, 336 (5th Cir. 2008).

benefits through reduction or offset of future benefit payments or other method chosen by the Retirement Board." Given the prior rulings in favor of the Plan as to the offset issue and the language of the Plan document, the court is unable to conclude the NFL Trustees' interpretation of the Plan's provisions and their actions constitute an abuse of discretion. *See Celi v. Trustees of Pipefitters Local 537 Pension Plan,* No. 10-11152, 2011 WL 5926669, at *4-5 (D. Mass. Nov. 28, 2011) (holding that the terms of the plan document allowed plan to recover overpayments of disability benefits through a reduction of pension benefits); *Eubanks v. Prudential Ins. Co. of Am.,* 336 F. Supp. 2d 521, 532 (M. D.N. C. Sept. 2, 2004) (permitting the plan administrator to recoup overpaid disability benefits).

F. Plan Participant

Harrison next contends that the Retirement Board abused its discretion when it determined that he is no longer a Plan participant. The Plan concedes, however, that "[it] has effectively treated [Harrison] as if he were a participant" and "will continue to do so, and it will continue to withhold Harrison's benefits until it has recouped every dollar of its past overpayments." After withholding the present value of the Legacy benefit, Harrison still remains

overpaid.[11] Because Harrison is not currently entitled to additional retirement benefits without regard to his status as a participant and in view of the Plan's representation that it intends to treat Harrison as a participant, the court need not reach this issue.

G. Entitlement to Disability Benefits

Citing Paragraph 60 of the Complaint, the Plan asserts in its motion that Harrison requests a declaration that he is entitled to future disability benefits. Harrison's response, however, states that he "has no pending claim for disability benefits[,] and a "decision on a disability claim was not part of the 2012 decision by the NFL Plan Trustees that is being challenged in this lawsuit." Thus, a ruling on this claim is not necessary.

[11] The 1996 judgment embodied overpaid disability benefits in the amount of $236,626.00 (as well as $99,122.50 for attorneys' fees and $16,503.56 for litigation expenses). Harrison was also overpaid $75,327.20 in regular pension benefits between 2003 and 2007, for a total of $311,953.20 in overpaid benefits, excluding interest, attorneys' fees, and costs. The present value of Harrison's regular pension, as calculated by the Retirement Board in 1997, was $130,528.00, and the present value of his Legacy benefit, as calculated by the Retirement Board in 2012, was $134,199.77. After subtracting the present values of Harrison's regular retirement and Legacy benefits from Harrison's indebtedness to the Plan, he remains overpaid.

III. Conclusion

For the reasons set forth above, Harrison's motion for summary judgment is DENIED, and the Plan's judgment on the pleadings is GRANTED. All relief not expressly granted herein is DENIED.

SIGNED at Beaumont, Texas, this 21st day of March, 2014.

/s/ Marcia A. Crone
MARCIA A. CRONE
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT	EASTERN DISTRICT OF TEXAS

DWIGHT HARRISON, Plaintiff, *versus* BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN, Defendant.	§ § § § § § § § §	CIVIL ACTION NO. 1:13-CV-74

FINAL JUDGMENT

(Filed Mar. 21, 2014)

In accordance with the court's Memorandum and Order, dated March 21, 2014, the court enters final judgment in favor of Defendant Bert Bell/Pete Rozelle NFL Player Retirement Plan. Plaintiff shall take nothing by his suit.

THIS IS A FINAL JUDGMENT.

SIGNED at Beaumont, Texas, this 21st day of March, 2014.

/s/ Marcia A. Crone
MARCIA A. CRONE
UNITED STATES
DISTRICT JUDGE