

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GARNET TURNER, individually)
and on behalf of all others similarly)
situated,)

SUZANNE WILLINGHAM, individually)
and on behalf of all others similarly)
situated,)

DONALD KERR, individually)
and on behalf of all others similarly)
situated,)

Plaintiffs,)

v.)

ALLSTATE INSURANCE COMPANY,)

Defendant.)

CASE NO: 2:13-cv-00685

CLASS ACTION
COMPLAINT

AMENDED CLASS ACTION COMPLAINT

The Plaintiffs, by and through their attorneys, hereby bring this amended civil action for declaratory judgment, breach of contract, injunctive relief, breach of fiduciary duty, and other relief. They bring the action individually and on behalf of all others similarly situated, pursuant to the Federal Rule of Civil Procedure 23, and allege upon personal knowledge, information, and belief as to those similarly situated as follows:

1. The Plaintiffs and the members of the Class they propose to represent are entitled to relief for these reasons: (1) the Defendant, Allstate Insurance Company (“Allstate”), has engaged in deceptive activities which are: (a) inimical to the Plaintiffs and Class, and (b) due to be declared unlawful, and (2) Allstate, by engaging in the wrongdoing alleged, has obstructed and continues to obstruct Federal Law, in violation of the Employee Retirement Income Security Act of 1974 (“ERISA”) sections 502(a)(1)(B) and 502(a)(3). An order restraining Allstate from such obstruction is due, as is a judgment for other equitable relief and for attorneys’ fees.

2. This action arises under ERISA sections 502(a)(1)(B) and 502(a)(3). Donald Kerr is bringing a cause of action under ERISA section 502(a)(1)(B), or in the alternative, the catch-all provision of 502(a)(3). Garnet Turner and Suzanne Willingham are bringing a cause of action under the catch-all provision of 502(a)(3).

PARTIES, JURISDICTION, AND VENUE

3. Plaintiffs Garnet Turner and Suzanne Willingham are adult residents and citizens of the State of Alabama who reside, and resided at all times material, in Montgomery County. The activities they complain of have been directed against them by Allstate in Montgomery County.

4. Plaintiff Donald Kerr is an adult resident and citizen of the State of Washington who resides, and resides at all times material, in Longview, Washington. The activities he complains of have been directed against him by Allstate in Cowlitz County, Washington.

5. According to the Alabama Secretary of State, Defendant Allstate Insurance Company is incorporated in the State of Illinois and maintains its principal place of business in the State of Illinois. It is a citizen of the State of Illinois according to 28 U.S.C. § 1332. It may be served for process at its agent for service: CT Corporation System, 2 North Jackson Street Suite 605, Montgomery, AL 36104.

6. This Court has original and/or exclusive jurisdiction over this action because Plaintiffs assert a claim for benefits due under an employee welfare benefit plan that is provided by Allstate. Jurisdiction over this action is based upon 28 U.S.C. § 1331, federal subject matter jurisdiction. The claims in this case arise under ERISA.

7. This Court has personal jurisdiction over Allstate, because, *inter alia*, it maintains and has maintained sufficient minimum contacts with and in the State of Alabama at all times material to this action.

8. Some of the events complained of in this lawsuit occurred in this judicial district, making venue here proper. Certain of the benefits at issue in this

action would have been or were to be received in Montgomery County, Alabama and the breach of fiduciary duty, breach of contract, and tortuous conduct partly occurred in Montgomery County, Alabama.

CLASS ACTION ALLEGATIONS

9. Plaintiffs bring this action on behalf of themselves and others similarly situated as a class action pursuant to Federal Rule of Civil Procedure 23.

The Class which Plaintiffs seek to represent is composed of and defined as:

a. All Allstate Insurance Company retirees that were provided or are provided life insurance benefits at no cost to the retiree but who Allstate has decided will no longer be provided life insurance benefits at no cost to the retiree after December 31, 2015.

b. Garnet Turner and Suzanne Willingham seek to represent a subclass of all Allstate Insurance Company retirees that received a promise or representation from Allstate that they would be provided life insurance benefits at no cost to the retiree for life.

c. Donald Kerr seeks to represent a subclass of all Allstate Insurance Company retirees who, on or about their retirement date, received written documentation confirming their entitlement to a specified amount of Allstate paid retiree life insurance.

10. The following persons are excluded from the definition of the Class:

- a. U.S. District Court judges, magistrate judges of any U.S. District Court, judges of the U.S. Court of Appeals for the Eleventh Circuit, and U.S. District Court personnel having any involvement with administration and/or adjudication of this lawsuit;
- b. Class counsel and their employees; and
- c. Employees of Metlife or Minnesota Life Insurance Company who insured the Allstate Retiree Life Insurance Plan.

11. This action has been brought and may properly be maintained as a class action pursuant to the provisions of the Federal Rules of Civil Procedure, for these reasons:

- a. Members of the Class are geographically distributed and so numerous that their joinder is impractical; and
- b. Common questions of law or fact exist as to all members of the Class and predominate over any questions affecting only individual Class members. Some common questions include, but are not limited to, the following:

(i) Whether Allstate violated ERISA by unilaterally and arbitrarily cancelling Plaintiffs' and the Class's Allstate paid retiree life insurance benefits;

(ii) Whether Allstate breached its fiduciary duties, breached its contracts, and / or should be equitably estopped under ERISA Sections 502(a)(1)(B) and 502(a)(3) for engaging in a systemic pattern of representation that caused Plaintiffs and the Class to be harmed;

(iii) Whether Plaintiffs and the Class are entitled to an order enjoining Allstate from cancelling the Allstate paid retiree life insurance benefits;

(iv) Whether Plaintiffs and Class are entitled to (1) declaratory judgment in their favor, (2) an injunction restraining Allstate from such violations of law, (3) other equitable relief, and (4) an attorney fee as provided for under ERISA.

c. Plaintiffs' claims are typical of the claims of the members of the Class under Federal Rule of Civil Procedure 23. Each member of the Class currently receives life insurance which historically has been provided at no cost to the Allstate retiree. Each member of the Class has received,

should receive, or will receive, notice that Allstate will cease providing this important benefit effective December 31, 2015, giving the putative class an option to purchase new coverage at their own cost – a radical departure from the benefits previously contracted for, promised, and represented. The claims of the Plaintiffs and the Class arising out of Allstate’s actions are identical. The claims of each sub class, respectively, are identical.

d. The Plaintiffs will fairly and adequately protect the interest of the Class as required by Federal Rule of Civil Procedure 23. The Plaintiffs have no interests which are adverse to the interest of the Class. The Plaintiffs have retained counsel who has substantial experience in the prosecution of class actions.

e. The prosecution of separate actions by individual members of the Class would create the risk of (i) inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Allstate; or (ii) adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interest of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

f. Pursuant to Federal Rule of Civil Procedure 23(b)(2), Allstate has acted or refused to act on grounds generally applicable to, and causing injury to, the Plaintiffs and Class, and, therefore, declaratory and injunctive is appropriate.

g. The questions of law or fact common to the Class predominate over questions affecting only individual members. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy under Federal Rule of Civil Procedure 23. The harm suffered by many individual members of the Class may not be great enough to warrant the expense and burden of individual litigation, which would make it difficult or impossible for individual members of the Class to redress the wrongs done to them. Individualized litigation would also present the potential for inconsistent or contradictory judgments and would magnify the delay and expense to all parties and the court system in multiple trials of the complex factual issues of the case. By contrast, the conduct of this action as a class action presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each class member.

PLAINTIFFS' ALLEGATIONS

12. Garnet Turner began working for Allstate Insurance Company as an employee agent in 1963. He grew his book of business supporting Allstate and its customers for the next 32 years until which time he retired. He retired in 1995 after achieving the Life Achievement Award, being a member of the Honor Ring for 32 years, and being a member of the National Conference Champions for 32 years. Allstate represented and promised to provide him with \$90,000 of life insurance to continue in effect for the remainder of his life at no additional cost to him. Suzanne Willingham began working for Allstate Insurance Company as an employee in the claims department on February 14, 1974. She retired on December 31, 1996, with a promised \$24,000 in Allstate paid life insurance. Allstate represented and promised to provide her with this benefit.

13. Donald Kerr began working for Allstate Insurance Company as a resident adjuster on December 7, 1964. He worked the next 26 years until his retirement on September 1, 1991. During his tenure with Allstate, he became a claims analyst. Allstate represented and promised to provide Plaintiff with \$30,000 of life insurance to continue in effect for the remainder of his life at no additional cost to him. On or about his retirement, Donald Kerr received documentation from Allstate expressly stating that his \$30,000 of life insurance “will remain at that figure without further contribution from you.” Furthermore,

Allstate expressly provided that his “service and membership with us [Allstate] entitles you [Kerr] to the amount of life insurance shown below . . .” That amount was \$30,000. The documents were drafted by the plan fiduciary [See attached Exhibit A].

14. Allstate elected to provide certain employees, upon retirement, a company paid Life Insurance benefit under its Group Life and AD&D Insurance Plan (“Plan”). The Plan Administrator, appointed by Allstate, is as follows:

Employee Benefits Division Director
Allstate Insurance Company
2775 Sanders Road, Suite F5
Northbrook, IL 60062-6127

The Plan provides that the Plan Administrators, “as the claims fiduciary, have the authority to determine all questions arising under the provisions of the Plan, including the power to determine the rights and eligibility of participants or any other persons, and to remedy ambiguities, inconsistencies or omissions.” The plan administrators are not defined further but are located at Allstate’s headquarters.

15. The Non-Claims Employee Plan section entitled “WHEN YOU RETIRE” provides Allstate retirees with “Retiree Life Insurance.” Regular full-time or regular part-time employees who retired in accordance with Allstate’s retirement policy who were continuously insured under the Plan, and began that insurance after September 1, 1987, for ten or more years immediately prior to

retirement were entitled to the employee's Qualified Annual Earnings at the time of retirement, but no more than \$10,000.

16. The same section provides that regular full-time or regular part-time employees who were insured under the Plan on August 31, 1987, continued their life insurance coverage after September 1, 1987, and who were continuously insured under the Plan for ten or more years immediately prior to retirement were entitled to more benefits. Specifically, these employees were entitled to the greater of (1) 40% of the amount insured for as of August 31, 1987, but not more than \$100,000, or (2) one times the employee's Qualified Annual Earnings on the date of retirement, but no more than \$10,000.

17. The Claims Employee Plan is substantively the same except that it provides Claims Employees with a different method of calculating their promised and contracted for life insurance benefits.

18. Allstate further provided under this section that "Retiree Life Insurance is provided at no further cost to you [the retiree]."

19. Plaintiffs were insured under their Plan prior to September 1, 1987. They continuously paid on their life insurance policy until retirement. Upon retirement, the Plaintiffs' self-paid life insurance converted to Retiree Life Insurance and Allstate began paying the premiums as the Plan provides and as Allstate promised and represented.

20. Throughout Plaintiffs' employment and even during retirement, Allstate represented and promised that Plaintiffs and other retirees would receive retiree life insurance benefits paid for by Allstate until death. The promises and representations were made by Plaintiffs' superiors, managers, and plan administrators who were in seniority positions acting on behalf of the Allstate Plan administrator and as a fiduciary. Such people held fiduciary positions with control over the Plan and routinely represented to Plaintiffs that Allstate would pay, for life, the premiums associated with the life insurance they were provided upon their retirement. In one such situation, William Gregg, a Vice President of Allstate and acting in a fiduciary capacity at the time, represented that Allstate would pay Mr. Turner's life insurance, upon retirement, for life. The representation was made during a national sales meeting / trip for which Mr. Turner was expressly invited. Mr. Gregg was speaking to the audience and describing to Mr. Turner and his fellow employees their retirement benefits in an effort to persuade them to continue working for Allstate at compensations below industry averages. Bob Shepherd, Paul Wilkerson, and Tony Pastereo are known to have made similar representations in meetings to which Mr. Turner was expressly invited to discuss his employment and retirement benefits. These representations were made, in at least four such situations, at the following locations: The Broadmoor, Colorado Springs, CO, The Homestead, Hot Springs, VA, Ceasar's Palace, Las Vegas, NV,

Houston Oaks, Houston, Texas and Hawaii. Paul Wilkerson made similar representations during the 1972 and 1975 sales conferences that Mr. Turner and others were expressly invited to. Allstate was aware that its employees were relying upon such representations to their detriment. Plaintiffs and Class members are unable to afford similar coverage today because their ages as of July 2, 2013, prevent reasonably priced life insurance. Upon information and belief, the same representations were made to Class members.

21. The promise and representation of permanent life insurance from retirement to death at no additional cost to the retiree was a substantial incentive and consideration for the continued work of Plaintiffs for Allstate up to the date of their retirement. Employees relied upon these now known to be false representations by not purchasing life insurance at a younger age and by relying upon the promise of such life insurance in their financial planning. Allstate's fiduciaries made affirmative representations as inducements to keep Plaintiffs as employees until retirement. Such representations permitted Allstate to keep key employees, retire some employees early, and pay employees at a rate less than others in the same industry in a similar position.

22. Upon retirement and as an inducement to retire, Donald Kerr, received a document entitled "Allstate Retiree Group Life Insurance Record" that provided that his "service and membership with [Allstate] entitles [him] to the amount of life

insurance shown below.” This document is signed by Allstate’s authorized “Human Resource Department,” who is the fiduciary of the life insurance plans at issue. Allstate fiduciaries knew that these documents, created and distributed by it, were misleading and in fact made express promises to Kerr that were in direct contradiction to the Plan [See attached Exhibit A]. Upon information and belief, this form letter and document were provided to members of the sub-class he seeks to represent.

23. On or about July 2, 2013, Allstate, through its Executive Vice President and Chief Administrative Officer, wrote to Plaintiffs, and upon information and belief, the Class, terminating their life insurance benefits:

After careful consideration, beginning January 1, 2016, we have made the decision to no longer pay the premium for your current retiree life insurance benefit. Your current retiree life insurance benefit will remain in effect and Allstate will continue to pay for your premium coverage until December 31, 2015. However, at that time your company-paid coverage will end. You will be given the opportunity to continue coverage but at your own cost.

The receipt of this letter by Plaintiffs was the first notice of any kind that Allstate was not going to keep its promise of lifetime no-cost life insurance. For years Allstate had promised this benefit and had kept the promise by paying all premiums. The receipt of the letter was likewise the first notice to the Plaintiffs that the oral and written promises referenced elsewhere in the complaint were false, and would not be continued after January 1, 2016.

24. On or about January 1, 2016, Plaintiffs will be required to pay their own retiree life insurance premiums which are at a substantially higher rate than the premiums that Allstate pays for them today. Life insurance rates are based upon, among other considerations, the age of the insured; the older the applicant, the higher the rate. Plaintiffs are elderly and life insurance rates are significantly higher than they were when Allstate represented to them that their life insurance benefits would be provided at no cost to them for life. Would Allstate not have represented to Plaintiffs that their retiree life insurance benefits would be paid throughout retirement and until death, they would have obtained other life insurance coverage at a reasonable rate. It was not until July 2, 2013, that Plaintiffs became aware of Allstate's ERISA violations.

25. Plaintiffs provided valuable services to Allstate in consideration for the promise and representation of permanent life insurance at no additional cost to them after their retirement.

26. Plaintiffs will be irreparably harmed if the above described life insurance coverage paid for by Allstate is terminated December 31, 2015.

27. Plaintiffs have detrimentally relied upon the presence of such permanent life insurance in making financial plans for themselves and their family and Allstate was aware of their reliance yet failed to make any retractions of their representations until July 2, 2013.

28. Had Allstate not represented to Plaintiffs that these life insurance benefits would be provided by Allstate, upon retirement, for life then they would have purchased insurance coverage at a reasonable rate while younger.

COUNTS

COUNT ONE

DECLARATORY JUDGMENT

28. Plaintiffs adopt, re-assert, and incorporate all of the foregoing allegations.

29. There exists between Plaintiffs, on the one hand, and Allstate, on the other hand, an actual justiciable controversy with respect to the matters set forth here, as to which Plaintiffs are entitled to have a declaration of rights and further relief as set forth herein.

30. The Plaintiffs are entitled a judgment declaring:

a. That Allstate violates ERISA by cancelling Plaintiffs' Allstate paid retiree life insurance benefits;

b. That Allstate, under ERISA, must continue to pay Plaintiffs' retiree life insurance benefits until their death, as has been promised and represented to them by Allstate;

c. That Allstate, under ERISA, owes a fiduciary duty to Plaintiffs to communicate accurate information concerning their retiree life insurance benefits;

d. That Allstate, under ERISA, breached its fiduciary duty owed to Plaintiffs by not communicating accurate information concerning their retiree life insurance benefits;

f. That Plaintiffs and the Class are entitled attorneys' fees against Allstate under ERISA.

COUNT TWO

BREACH OF FIDUCIARY DUTY

31. Plaintiffs adopt, re-assert, and incorporate all of the foregoing allegations.

32. ERISA was enacted "to protect...the interests of participants in employee benefit plans and their beneficiaries...by establishing standards of conduct, responsibility, and obligations for fiduciaries of employee benefit plans ...and providing for appropriate remedies...and ready access to the Federal Courts." *Jones v. American General Life & Accident Ins. Co.*, 370 F.3d 1065, 1071 (11th Cir. 2004) (quoting *Varity Corp. v. Howe*, 516 U.S. 489, 513 (1996) (quoting ERISA § 2(b), 29 U.S.C. § 1001(b))).

33. ERISA requires plan fiduciaries to discharge their duties "solely in the interests of the participants and beneficiaries" and "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a).

34. ERISA defines "fiduciaries" to include persons identified as such in the plan, ERISA § 402(a), 29 U.S.C. § 1102(a), and persons who exercise any discretionary authority or responsibility concerning the management or administration of the plan. 29 U.S.C. § 1002(21)(A) .

The weight of authority recognizes that the term "fiduciary" is to be liberally construed, a position that is consistent with the remedial purposes of ERISA. See *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 284 F. Supp. 2d 511, 544 (S.D. Tex. 2003), quoting *Ariz. State Carpenters Pension Trust Fund v. Citibank*, 125 F.3d 715, 720 (9th Cir. 1997), citing *John Hancock Mut. Life Ins. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 96, 114 S. Ct. 517, 126 L. Ed. 2d 524 (1993), and quoting *Mertens v. Hewitt Associates*, 508 U.S. 248, 262, 113 S. Ct. 2063, 124 L.Ed.2d 161 (1993) ("Fiduciary status under ERISA is to be construed liberally, consistent with ERISA's policies and objectives,' and is defined 'in functional terms of control and authority over the plan,...thus expanding the universe of persons subject to fiduciary duties-and to damages-under § 409(a).'")

Eslava v. Gulf Telephone Co., Inc., 418 F. Supp. 2d 1314, 1321-22 (S.D. Ala. 2006).

35. Employers that retain responsibility for administering their own benefit plans are considered fiduciaries under ERISA. *Varity Corp. v. Howe*, 516

U.S. 489, 498 (1996); *Hamilton v. Allen-Bradley Co., Inc.*, 244 F.3d 819, 824-26 (11th Cir. 2001).

36. Employers act in a fiduciary capacity when communicating with employees about plan benefits. *Varity*, 516 U.S. at 502-03; *Hamilton*, 244 F.3d at 827; *In re Unisys Corp. Retiree Medical Benefit "ERISA" Litig.*, 57 F.3d 1255, 1261, n. 10 (3d Cir. 1995); *McMunn v. Pirreli Tire, LLC*, 161 F. Supp. 2d 97, 129-30 (D. Conn. 2001). In this action, the Plans at issue expressly define Allstate as the Plan Administrator and expressly define itself as a fiduciary. Those employees who made representations and communications are fiduciaries under the law.

37. Allstate acted in a fiduciary capacity when it made promises and representations to Plaintiffs and, upon information and belief, to the Class that their life insurance benefits would remain until death at no cost to the retiree.

38. An ERISA plan fiduciary's "responsibility when communicating with the beneficiary encompasses more than merely a duty to refrain from intentionally misleading a beneficiary. ERISA administrators have a duty not to misinform employees through material representations and incomplete, inconsistent or contradictory disclosures." *Griggs v. E.I. Dupont De Nemours & Co.*, 237 F.3d 371, 380 (4th Cir. 2001) (citation and internal quotations omitted).

39. A fiduciary's duty of disclosure entails not only a negative duty not to misinform, but also an affirmative duty to inform when it knows that silence might

be harmful. *Unisys*, 57 F.3d at 1262; *James v. Pirelli Armstrong Tire Corp.*, 305 F.3d 439, 452 (6th Cir. 2002). In this action, Allstate was required to not only provide accurate information concerning the Plan but also inform its employees that it may choose to cancel the no cost to retiree life insurance benefit. It failed to do that and violated ERISA when it sent the July 2, 2013, letter that made Allstate's representations false and misleading.

40. ERISA § 502(a)(3) authorizes awards of "appropriate equitable relief" to plan participants and beneficiaries who rely to their detriment on inaccurate information from plan fiduciaries about plan benefits. *Jones*, 370 F. 3d at 1071-74. Section 502(a)(3) is a "catchall" provision and was to "act as a safety net, offering appropriate equitable relief for injuries caused by violations [of ERISA] that § 502 does not elsewhere adequately remedy." *Varity*, 516 U.S. at 512, 515.

41. An injunction enforcing a plan fiduciary's representation to plan participants about their benefits constitutes "appropriate equitable relief" under ERISA. *Unisys*, 57 F.3d at 1269 (holding retirees' claims for "an injunction ordering specific performance of the assurances *Unisys* made...are restitutionary in nature and thus equitable."); *Gregg v. Transportation Workers of Am . Int'l, No. 1* :99-CV-02659- PAG, Memorandum of Opinion and Order, pp . 6-10 (M.D . Tenn . June 24, 2004) (holding that an order requiring the defendants to provide the plaintiffs the coverage they had been promised constituted "appropriate equitable

relief”) (citing *Brown v. Aventis Pharmaceuticals, Inc.*, 341 F.3d 822 (8th Cir. 2003)).

42. ERISA § 502(a)(3) expressly authorizes the imposition of injunctions or "other appropriate equitable relief to redress violations of the Act. 29 U.S.C. §§ 1132(a)(3).

43. Allstate breached its fiduciary duty to provide Plaintiffs with complete and accurate information about their retiree life insurance benefits. Allstate also remained silent when it knew that Plaintiffs were relying upon Allstate’s representations as to retiree’s true and accurate life insurance benefits. Allstate represented to Plaintiffs and promised them that they would receive free, lifetime group life coverage upon retirement when Allstate knew it was not true. Plaintiffs relied upon this affirmative representation to their detriment. Allstate should be enjoined from benefitting from its representations and be held liable to Plaintiffs and the Class for its breach of fiduciary duties. Such representations were systematically made to the Class as well.

44. ERISA § 502 (g)(1) authorizes awards of attorneys’ fees and expenses of litigation to the prevailing party in appropriate cases. 29 U.S.C. § 1132(g)(1). Allstate is required to pay attorneys’ fees and expenses because of its culpability and ability to satisfy such an award, Plaintiffs’ cause to resolve significant legal questions through this action, and the deterrent effect such an award may have on

others in the same or similar situation. *Wright v. Hanna Steel Corp.*, 270 F.3d 1336, 1344 (11th Cir. 2001).

COUNTY THREE

BREACH OF ERISA SECTION 502(a)(1)(B)

45. Plaintiffs adopt, re-assert, and incorporate all of the foregoing allegations.

46. Donald Kerr and the sub class he seeks to represent allege that Allstate violated ERISA section 502(a)(1)(B). This section provides them the right to recover benefits, enforce rights to benefits, or clarify rights to future benefits. Furthermore, section 502(a)(1)(B) provides for, and Donald Kerr seeks, equitable estoppel which is a viable cause of action against Allstate. *Jones*, 370 F.3d at 1069.

47. To the extent that the Plan documents are otherwise unambiguous, Allstate's decision to provide employees with a document confirming their entitlement to a specified amount of Allstate paid life insurance, renders any contrary language in the Plan ambiguous.

48. Plaintiff is informed and believes that the subclass he seeks to represent received similar documentation at retirement, without any indication that the Allstate paid amount of life insurance would be altered, modified, or terminated.

49. Indeed, Allstate, for years, kept its promise to provide this benefit to its retired employees, and paid death benefits to those who unfortunately passed away.

50. Allstate's written confirmation at retirement in documents which appear not to be a Plan document, creates ambiguity in the Plan document, entitles the Plaintiff to enforce the insurance benefits promised (oral and written), and Allstate should be equitably estopped from taking any action to the contrary. In the alternative, Donald Kerr, and the subclass he represents, are entitled to relief under section 502(a)(3) and pleads allegations substantially similar to those of Garnet Turner and Suzanne Willingham.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of THEMSELVES and all others similarly situated, request an order and judgment against Allstate which –

1. Certifies the Class and appoints Plaintiffs and their counsel to represent the Class.
2. Grants declaratory judgment to the Plaintiffs and Class.
3. Enjoins Allstate from doing the wrong alleged.
4. Awards a reasonable attorneys' fee to the Plaintiffs and Class for the common and public good obtained in this action.

5. Grants such other, further and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

BY: /s Taylor C. Bartlett

Taylor C. Bartlett
ASB-2365-A51B
W. Lewis Garrison, Jr.
ASB-3591-N74W
Christopher B. Hood
ASB-2280-S35H
Attorneys for Plaintiff

Of Counsel:

Heninger Garrison Davis LLC
2224 First Avenue North
Birmingham, AL 35203
205-326-3336

CERTIFICATE OF SERVICE

I certify that on November 27, 2013, a copy of the foregoing was filed with the Clerk of Court using the CM/ECF system, which will send notice of such filing to the following counsel of record:

David Middlebrooks
Lehr, Middlebrooks, and Vreeland, P.C.
2021 Third Avenue North,
Birmingham, AL 35203

Emily Marie Olson
Anne. E. Rea
Christopher Kenneth Meyer
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603

/s Taylor C. Bartlett
Taylor C. Bartlett