STATE OF MICHIGAN

IN THE COURT SUPREME COURT

RITA KENDZIERSKI, BONNIE HAINES, GREG DENNIS, LOUISE BERTOLINI, JOHN BARKER, JAMES COWAN, VINCENT POWIERSKI, ROBERT STANLEY, ALAN MOROSCHAN, and GAER GUERBER, on behalf of themselves and those who are similarly situated,

Plaintiffs-Appellees

v

COUNTY OF MACOMB,

Defendant-Appellant.
_____/

Supreme Court No. 156086

Court of Appeals
No. 329576

Macomb County Circuit Court
No. 10-001380-CK

SUPPLEMENTAL BRIEF BY DEFENDANT-APPELLANT
COUNTY OF MACOMB

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STATEMENT OF FACTS

On January 24, 2018, this Court ordered that oral argument on whether to grant the application or take other action be scheduled, and that the appellant shall file a supplemental brief, with an appendix. (Apx 76a, order) The Court further directed that parties in their supplemental briefs should not submit mere restatements of their application papers. (*Id*) This supplemental statement of facts, and those set forth in the Argument below, are submitted to concisely reference the underlying facts, previously set forth in detail in the application, so as to prepare a sufficiently comprehensive appendix.

Underlying Facts

This is a class action by retirees of Macomb County who have asserted that the County's unilateral changes to retiree healthcare benefits, an increase of prescription drug co-payments in 2009, and benefit changes and reductions 2010, violated collective bargaining agreements ("CBAs") dating back to 1987. (Apx 77a-85a, Complaint, ¶ 2) While plaintiffs in the complaint pled that they are entitled, in perpetuity, to that level of healthcare described in the CBAs in place at the time of their respective retirements, they have since asserted in this litigation only that the changes in 2009 and 2010 were improper because they violated the terms of the CBAs in effect at that time, those covering the 2008-2010 period.[1] Plaintiffs also asserted that the benefits in those CBAs are vested and unalterable for their lifetimes. (See Apx 86a-117a, plaintiffs' motion for summary disposition, hereinafter "MSD")

[1] Plaintiffs in their prior briefing have cited to and quoted primarily from the CBAs in place from 2005 through 2007 in discussing the retiree healthcare benefits provided for by the CBAs. The unilateral changes by the County at issue occurred in 2009 and 2010, a period governed by CBAs in place from 2008 through 2010. Benefits and copays changed between these CBAs, as set forth above, but plaintiffs do not complain about the changes in the CBAs, only about extra-CBA changes in 2009 and 2010.

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CBAs Modification And Durational Clauses

As stated on their face sheet, each of the CBAs was in effect for a specific period, usually three years, with a beginning date and an end date. (See e.g., Apx 124a-178a, exemplar excerpts of CBAs and coversheets, excerpts of exhibit 2 to plaintiffs' MSD) Each of the CBAs contained in the final Article, a "termination or modification" provision. (See Apx 394a-402a, CBA summaries) The typical "termination or modification" provision provided that the CBA was in effect until a specific end date, and could be terminated or modified thereafter upon 120 days written notice:

> Termination or Modification
>
> A This Agreement shall continue in full force and effect until December 31, 2007 [year would vary according to contract period].
>
> B. If either party wishes to terminate or modify this Agreement, said party shall provide written notice to the other party to that effect. Said notice shall be made no later than one hundred twenty (120) days prior to the termination date in Paragraph A, above. If neither party files a notice of termination or modification, or if each party giving notice of termination or modification withdraws said notice prior to the termination date in Paragraph A, above, this Agreement shall continue in full force and effect from year to year thereafter, subject to timely notice of termination or modification by either party in subsequent year(s) of an extended Agreement. [Apx 222a, Local 411 exemplar 2005-2007 CBA, Article 39]

As the CBA termination or modification date approached, the CBAs were renegotiated and revised, with the new three year CBAs effective on the termination date of the prior agreements, or the Agreement was extended until dates otherwise agreed to through negotiation, with or without modification. (See Apx 124a-178a, exemplar excerpts from Local 412 CBAs from 1987 to 2010, plaintiffs' MSD exhibit 2, further discussed in Argument II, below)

The CBAs also had a Complete Agreement clause:

> The parties acknowledge that during the negotiations which resulted in this Agreement each had the limited right and opportunity to make demands and proposals with respect to all subjects of collective bargaining and that all

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agreements and understandings, expressed, implied, written or oral, are set forth in this Agreement. This Agreement expresses the complete understanding of the Parties on the subject of wages, working conditions, hours of work and conditions of employment. [Apx 221a, Local 411 exemplar 2005-2007 CBA, Article 37]

See also Apx 394a-423a, Summaries of CBA excerpts of defendant's MSD, exhibit C.

CBA Provisions Regarding Retiree Insurance Benefits

The 2008 – 2010 CBAs during which the challenged insurance changes were made, in Article 19(B) provided that the County would provide active employees, and non-Medicare eligible retirees, with Blue Cross/Blue Shield Preferred Provider (PPO) coverage (instead of the Blue Cross/Blue Shield MVF1 Master Medical, previously specified in the 2005-2007 CBAs), and HMO coverage. The following sets forth all of the provisions in the retiree Insurance Benefits Article of that CBA. Those cited by the Court of Appeals, and plaintiffs, as creating ambiguity and supporting their claim of vesting, are identified by italics:

INSURANCE BENEFITS

A. Life Insurance ***

B. Hospital-Medical Insurance:

1. Active Employees * * *

2. Retirees: The Employer *will provide fully paid* Blue Cross/Blue Shield Preferred Provider (PPO) coverage or its substantial equivalence *to the employee and the employee's spouse*, after eight (8) years of service with the Employer, *for the employee who leaves employment because of retirement and is eligible for and receives benefits under the Macomb County Employees' Retirement Ordinance*, based upon the following conditions and provisions:

For all employees on or after January 1, 2006, the Employer will provide fully paid Blue Cross Blue Shield Preferred Provider Organization (PPO) coverage or its substantial equivalence to the employee and the employee's spouse, after fifteen (15) years of service with the Employer, for the employee who leaves employment because of retirement and is eligible for and receives benefits under the Macomb County Employees' Retirement Ordinance, based upon the following conditions:

For all employees hired on or after February 27, 2009, the Employer will provide fully paid Blue Cross Blue Shield Preferred Provider Organization

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(PPO) coverage or its substantial equivalence for the employee's spouse, after (20) years of service with the Employer, for the employee who leaves employment because of retirement and is eligible for and receives benefits under the Macomb County Employees Retirement Ordinance, based upon the following conditions and provisions:

Effective on or after February 27, 2009, an employee who retires after fifteen (15) years of service and before twenty (20) years of service with the Employer, will be provided the option of paying for spousal health care under the County group health plan at the time the employee becomes eligible for health care coverage.

a. Coverage shall be limited to the current spouse of the retiree, at the time of retirement or DROP, provided such employee shall retire on or after January 1, 1974. *Coverage for the eligible spouse will terminate upon the death of the retiree unless the retiree elects to exercise a retirement option whereby the eligible current spouse receives applicable retirement benefits following the death of the retiree.*

b. Preferred Rx Managed Prescription Drug Program: An eligible retiree, and the person who is said retiree's spouse at the time of retirement, covered by the traditional Blue Cross/Blue Shield indemnity health care plan will be enrolled in the Preferred Rx Managed Prescription Drug Program. Coverage is as follows:

   (1) *The employee leaves employment because of retirement an is eligible for and receives benefits under the Macomb County Employees' Retirement Ordinance*.

   (2) Co-pays for prescriptions received from an approved Blue Cross/Blue Shield Preferred Rx network pharmacy will be $5.00.

   (3) Co-pays for maintenance prescriptions, received from an approved Blue Cross/Blue Shield Preferred Rx provider by mail-order, will be $2.00.

   Effective January 1, 2006, an eligible retiree, and the person who is said retiree's spouse at the time of retirement, covered by a Blue Cross/Blue Shield health care plan will be enrolled in the Preferred Rx Management Prescription Drug Program. Coverage is as follows:

   (1) The *employee leaves employment because of retirement and is eligible for and receives benefits under the Macomb County Employees' Retirement Ordinance*.

   (2) Co-pays for prescriptions received from an approved Blue Cross/Blue Shield Preferred Rx network pharmacy will be $5.00.

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(3) Co-pays for maintenance prescriptions, received from an approved Blue Cross/Blue Shield Preferred Rx provider by mail-order, will be $5.00.

(4) Mandatory Mail-Order for Maintenance Drugs.

c. *Retired employees and/or their current spouse, shall apply and participate in the Medicare Program, if eligible, at their expense as required by the Federal Insurance Contribution Act, a part of the Social Security Program, at which time the Employer's obligation shall be only to provide "over 65 supplemental" hospital-medical benefit coverage. Failure to participate in the aforementioned Medicare Program, shall be cause for termination of Employer paid coverage of applicable hospital-medical benefits, as outlined herein for employees who retire and/or their current spouse.*

d. *Employees who retire under the provisions of the Macomb County Employees' Retirement Ordinance, and/or their current spouse, who subsequently are gainfully employed, shall not be eligible for hospital-medical benefits, during such period of gainful employment*, as hereinafter defined:

Gainful employment is defined as applying to retire and/or spouse of retirement who are employed subsequent to the employment retirement. If such employment provides hospital-medical coverage for both retiree and spouse, the County is not obligated to provide said coverage unless and until the coverage of either person is terminated. If the coverage is not provided to retiree and spouse, the County will provide hospital-medical coverage for the person not covered.

e. Employees who retire under the provisions of the Macomb County Employees' Retirement Ordinance and current spouse, shall, if eligible apply for and participate in ANY National Health Insurance program offered by the U.S. Government. Failure to participate, if eligible, shall be cause for termination of Employers paid hospital-medical benefits as outlined.

f. The employer shall offer retirees the option of selecting the "Preferred Provider Organization" program.

g. Each retiree who is eligible for hospital medical insurance and elects not to participate in any County-sponsored health care plan and who has coverage by another employer, shall be paid $1,500 annually. Pro-rated payments up to $750.00 will be made semi-annually to each retiree who has not been on any County-sponsored health care plan.

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> Retirees shall be required to show proof annually that a spouse has health care coverage that includes the retiree before said retiree will be declared eligible to receive the $1,500 annual payment.
>
> Retirees whose spouse's health care plan cease to cover the retiree, shall be allowed to enroll in a County sponsored health care plan by showing proof that the spouse's coverage has ceased. In such cases, the retiree shall be allowed to enroll in a County-sponsored pal an the next billing period.* * *

C. Health Maintenance Organization (see Appendix D)

* * *

3. Retirees: The Employer will provide Health Maintenance Organization option for current and future retirees of the bargaining unit, provided the premium does not exceed the cost of the present insurance.

   A retiree will have the option of retaining his/her HMO coverage at time of retirement or converting from Blue Cross/Blue Shield to HMO coverage during the County's annual open enrollment period.

   * * *

H. Determination of substantial equivalency, as expressed herein, will be subject to review and agreement by the Parties to this Agreement, prior to implementation of same. [Apx 383a-388a, 2008-2010 exemplar CBA, Local 411, insurance provisions, exhibit B to defendant's MSD]

2009 And 2010 Changes To Healthcare Benefits Challenged By Class

In 2009, the prescription co-pay under the BC/BS Traditional and BC/BS PPO plans for non-Medicare-eligible retirees were changed by the County from a flat $5 co-pay to a $0/$10/$20 co-pay, depending on whether the prescription was generic, formulary or non-formulary, respectively, and from a $2 co-pay to a $5/$10/$20 co-pay under Health Alliance Plan ("HAP") and Blue Care Network. (Apx 441a-442a, defendant's MSD exhibit G, notification of new prescription drug program) In 2010, Medicare-eligible retirees received a supplemental health plan from United American Insurance Company (administered by AmWins), and the prior options for Health Alliance Plan, Blue Care Network, BCBS PPO and BCBS Traditional were

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eliminated. (Apx 445a-457a, MSD exhibit I, Gelman affidavit, Apx 443a-445a, MSD exhibit H, Summary plan comparisons for 2009 and 2010 plans for Medicare eligible)

In 2010, non-Medicare eligible retirees were transitioned to Blue Cross/Blue Shield of Michigan PPO 6 or Blue Care Network HMO. The Blue Cross Traditional, Community Blue PPO 5, and Health Alliance Plan HMO were eliminated. Retirees transitioning from HMO to HMO continued to have the same services covered. (Apx 458a-473a, defendant's MSD exhibit J, Summary plan comparisons for 2009 and 2010 plans for non-Medicare eligible)

Cross Motions For Summary Disposition And Trial Court Opinion

The trial court bifurcated discovery, limiting it to liability, and not allowing discovery regarding damages. The parties each filed motions for summary disposition (Apx 86a-117a, 360a-380a), that were decided by the trial court by opinion and order entered on September 16, 2015 (Apx 57a-68a). The trial court first held that the language of the various CBAs was unambiguous regarding retiree healthcare coverage, and that the CBAs did not provide a certain duration or level of retiree healthcare coverage beyond the term of each CBA. The trial court further held, however, that plaintiffs had established, by extra contractual statements by County representatives, that the County had a "custom" of providing lifetime benefits, but that there were no representations that the level of coverage was unalterable. Finally, the trial court held that plaintiffs had failed to establish a breach of contract, but that the County was obligated to provide retirees with lifetime healthcare benefits by virtue of the extra-contractual statements. (Apx 57a-68a, 9/16/15 opinion)

Court of Appeals Opinion

Plaintiffs appealed, and the County cross appealed. The Court of Appeals in a published opinion issued April 18, 2017, held that, under Macomb County's collective bargaining

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agreements covering the periods from 2000 to 2010, "retiree healthcare benefits are vested." (Apx 73a) The Court so concluded because (1) the CBAs were "silent" on the issue of whether the healthcare benefits vested (they "do not expressly state whether the benefits were promised indefinitely or only for the duration of the CBA"), (2) other contract language created a "latent ambiguity" as to vesting because events triggering the modification of retiree healthcare benefits, such as death of an employee or coverage through another employer, can occur "far beyond the three-year term of the CBAs," allowing resort to extrinsic evidence, and (3) extrinsic evidence of a bond proposal and statements by the County Executive in 2014, and by a human resources representative, establish an intent in the 2008-2010 CBAs that the healthcare benefits described therein were vested. (Apx 72a-73a) The Court of Appeals then directed that the trial court enter an order granting plaintiffs motion for summary disposition and for a permanent injunction. (*Id.*)

ARGUMENT

I This Court Should Reverse The Judgment Of The Court Of Appeals, In Lieu Of Granting Leave To Appeal, And Hold That: Where A Collective Bargaining Agreement Is Silent As To Vesting Of Retiree Benefits, And Any Potential Ambiguity As To An Intent To Vest Can Be Fully Resolved Within The Four Corners Of The Agreement By Application Of Contract Language, Including The General Durational Clause, Basic Contract Principles Preclude Resort To Extrinsic Evidence, And The CBA Must Be Enforced As Written, With No Vesting.

The first issue presented by defendant's application for leave to appeal warrants peremptory action, without the grant of leave to appeal or further briefing and argument. As did the United States Supreme Court in *CNH Indus NV v Reese*, 583 US__ (2/20/18) (exhibit A), in a very similar context, this Court should reverse the judgment of the Court of Appeals, in lieu of granting leave to appeal, and hold that: where a collective bargaining agreement is silent as to vesting of retiree benefits, and any potential ambiguity as to an intent to vest can be fully resolved within the four corners of the agreement by application of the contract language,

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including the general durational clause, basic contract principles preclude resort to extrinsic evidence, and the CBA must be enforced as written, with no vesting.

In *Arbuckle v GM LLC*, 499 Mich 521, 531-532; 885 NW2d 232 (2016), this Court applied the "basic principles of contract interpretation" set forth by the Court in *M&G Polymers USA, LLC v Tackett*, 574 US__; 135 S Ct 926, 936-37; 190 L Ed 2d 809 (2015), to find no vesting of vesting of retiree benefits under federal law:

> Indeed, basic principles of contract interpretation instruct that "courts should not construe ambiguous writings to create lifetime promises" and, absent a contrary intent, that "'contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement.'" For "when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life." [*Arbuckle, supra*, 540, quoting *M&G Polymers USA, LLC v Tackett*, 574 US__; 135 S Ct 926, 936-37; 190 L Ed 2d 809 (2015) footnotes omitted.]

The "basic principles of contract interpretation" set forth in *M&G Polymers USA, LLC v Tackett, supra*, and applied by this Court in *Arbuckle*, are consistent with Michigan law. *Harper Woods Retirees Ass'n v City of Harper Woods*, 312 Mich App 500, 512-513; 879 NW2d 897 (2015) In *Arbuckle, supra*, in applying these basic contract principles common to both Federal and Michigan substantive law, the Court concluded that a Letter of Agreement between the union and employer in 1990, in which the parties agreed that there would be no coordination of benefits, did not establish a vested right in plaintiff who retired then, where it provided that the coordination prohibition would continue until termination or earlier amendment of the CBA which expired in 1993. The same conclusion of no vesting is required here where the general durational clause here (Apx 222a), unambiguously covers the entire agreement.

While the Court of Appeals in its decision in this matter relied upon *Arbuckle* and *Tackett*, the Court failed to faithfully apply their principles to the interpretation of the CBAs in this case. The Court of Appeals here, in finding ambiguity in silence, and disregarding the

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general durational and complete agreement clauses to find ambiguity as to vesting, engaged in the same deviation from ordinary contract principles that just led the U.S. Supreme Court to summarily reverse the Sixth Circuit Court of Appeals, in *CNH Indus NV v Reese*, 583 US__ (2/20/18). In reversing *Reese v CNH Indus NV*, 854 F3d 877 (CA 6 2017), *rehearing en banc denied*, 2017 US App. LEXIS 16927 (CA 6, 8/28/2017), the Supreme Court in *CNH Indus NV v Reese*, slip opinion n 2 at pp 5-6, reaffirmed the reasoning and application of *Tackett* principles in *Gallo v Moen Inc*, 813 F3d 265 (CA 6, 2016) (where, as discussed at length in defendant's application, the Court held that there could be no vesting based upon silence, in the presence of a general durational clause).

In *CNH Indus NV v Reese*, the Supreme Court granted certiorari and, without further briefing or oral argument, summarily decided the merits in a single, per curiam decision. The Court of Appeals in *Reese* had turned to extrinsic evidence to find vesting of retiree benefits by finding ambiguity in a manner similar to the Court of Appeals here, while purporting to follow *Tackett, supra*, and to distinguish *Gallo*. *Reese v CNH Indus NV*, 854 F3d 877 (CA 6 2017). The Sixth Circuit in *Reese* "found ambiguity…by applying several" inferences, similar to those applied by the Michigan Court of Appeals here: "It declined to apply the general durational clause to the health care benefits, and then it inferred vesting from the presence of specific termination provisions for other benefits and the tying of health care benefits to pensioner status." *Reese*, slip opinion, pp 6-7. The Supreme Court condemned this use of so-called *Yard-Man*[2] "inferences [that the Sixth Circuit] once used to presume lifetime vesting, … to render a

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[2] *International Union, United Auto, Aerospace, & Agricultural Implement Workers of Am v Yard-Man, Inc*, 716 F2d 1476 (CA 6, 1983).

collective-bargaining agreement ambiguous as a matter of law, thus allowing courts to consult extrinsic evidence about lifetime vesting." *Reese*, slip opinion at p 1.

The Supreme Court found the ambiguity analysis of the Sixth Circuit (like that of the Court of Appeals here), to be an aberration:

> Tellingly, no other Court of Appeals would find ambiguity in these circumstances. When a collective-bargaining agreement is merely silent on the question of vesting, other courts would conclude that it does not vest benefits for life.3 Similarly, when an agreement does not specify a duration for health care benefits in particular, other courts would simply apply the general durational clause.4 And other courts would not find ambiguity from the tying of retiree benefits to pensioner status.5 [*Reese*, slip opinion p 7, footnotes omitted.]

The Supreme Court in *Reese* concluded that there was neither ambiguity nor vesting where, *inter alia*, the CBA contained a general durational clause that applied to all benefits, unless the agreement specified otherwise, and no provision specified that the health care benefits were subject to a different durational clause:

> If the parties meant to vest health care benefits for life, they easily could have said so in the text. But they did not. And they specified that their agreement "dispose[d] of any and all bargaining issues" between them. *Id*., at A–115. Thus, the only reasonable interpretation of the 1998 agreement is that the health care benefits expired when the collective-bargaining agreement expired in May 2004. [*Reese,* slip opinion, p 8]

The analysis of the Court of Appeals in this case in finding ambiguity based on silence as to vesting, and improper use of inferences reflects the same disregard of basic contract principles, rejected by this Court in *Arbuckle*, *supra*, and the Supreme Court in *Reese*. Here, as in *Reese*, if "the parties meant to vest health care benefits for life, they easily could have said so in the text. But they did not." *Reese, supra*, slip opinion, p 8. Instead, the parties agreed to a general durational clause.

Additionally, as in *Reese*, there was in the CBAs here an express complete agreement clause. (Apx 221a) To find vesting in the face of contract silence by turning to extrinsic

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evidence "conflict[s] with the principle of contract law that the written agreement is presumed to be the whole agreement of the parties.'" *Arbuckle*, 540, quoting *Tackett*. Indeed, each of the CBAs here contained a waiver and complete agreement clause, declaring that "all agreements and understandings, expressed, implied, written or oral, are set forth in this agreement," and that the "Agreement expresses the complete understandings of the Parties on the subject of...benefits..." (Apx 221a, exemplar complete agreement, Local 412 CBA) Fundamental Michigan contract law too respects such an integration clause. See *UAW-GM Human Resource Ctr v KSL Rec Corp*, 228 Mich App 486, 502;579 NW2d 411 (1998) ("[W]hen the parties include an integration clause in their written contract, it is conclusive and parol evidence is not admissible to show that the agreement is not integrated except in cases of fraud that invalidate the integration clause or where an agreement is obviously incomplete 'on its face' and, therefore, parol evidence is necessary for the 'filling of gaps.'")

But, the Court of Appeals here simply disregarded the contract language--the general durational and complete agreement clauses--electing instead to infer ambiguity as to intent to vest because (1) the CBAs were "silent" on the issue of whether the healthcare benefits vested, and did not have a durational clause specific to these benefits (they "do not expressly state whether the benefits were promised indefinitely or only for the duration of the CBA"), and (2) events triggering the modification of retiree healthcare benefits, such as death of an employee or coverage through another employer, can occur "far beyond the three-year term of the CBAs." *Kendzierski, supra*, Apx 72a-73a.

As noted by the Supreme Court in *Reese, supra*, and by this Court in *Arbuckle v GM LLC*, 540, "in the context of applying basic contract principles to welfare benefit plans, the federal Courts of Appeals have repeatedly held that, because (as here) employers are not legally

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required to vest benefits, the intention to vest must be found in "clear and express language" in the agreement. See *Arbuckle,* 540, n 49, citing *Sprague v Gen Motors Corp,* 133 F3d 388, 400-401 (CA 6, 1998) (en banc) (refusing to infer an employer's lifetime commitment to vest healthcare benefits to retirees from silence and ambiguous language in a non-CBA contract); *Arbuckle*, n 58 citing and quoting *Bland v Fiatallis North America, Inc*, 401 F3d 779, 784 (CA 7, 2005) ("Upon vesting, benefits become forever unalterable, and because employers are not legally required to vest benefits, the intention to vest must be found in 'clear and express language' in plan documents."); *Vallone v CNA Fin Corp*, 375 F3d 623, 632 (CA 7, 2004) (stating that "a modification that purports to vest welfare benefits must be contained in the plan documents and must be stated in clear and express language"); *Sengpiel v BF Goodrich Co*, 156 F3d 660, 667 (CA 6, 1998) (stating that the intent to vest must be found in the plan documents and stated in clear and express language); *UAW v Skinner Engine Co*, 188 F3d 130, 139 (CA 3, 1999) (stating that an employer's commitment to vest welfare-plan benefits must not be inferred lightly and must be stated in clear and express language).

In *Sprague v General Motors*, *supra*, in dealing with the vesting of healthcare benefits in non-collectively bargained contracts, the Court too held that an employer's commitment to vest lifetime benefits should not be inferred lightly, and that the "intent to vest must be found in the plan documents and must be stated in clear and express language," *Sprague,* at 400.

Where, as here, the contracts contained a general durational clause, silence as to vesting cannot create ambiguity as to an intent to vest. Instead, the intent to vest must be stated expressly.

Upon application of these basic principles to the CBAs here, it is apparent that the Court of Appeals erred in going beyond the four corners of the CBAs that, the Court acknowledged,

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were silent as, to and contained no contractual promise of vesting of, retiree healthcare benefits. As set forth in defendant's application, the three CBA terms that the Court of Appeals held created ambiguity as to an intent to vest and extend beyond the three year contract ad infinitum, and warranted resort to extrinsic evidence, in fact and logic created no ambiguity as to an intent to vest at all, particularly in the face of the general durational clause. These three provisions setting forth events that will affect retiree healthcare benefits--(1) continuation of spousal coverage upon death of the retiree (Apx 385a), (2) termination of coverage if the retiree fails to enroll in Medicare at age 65 (Apx 386a), and (3) suspension of coverage if the retiree obtains coverage through another employer (Apx 386a) all are capable of occurring, and unquestionably do occur within the three year term of the CBAs, to affect some new retirees. Within any given three year period, a new retiree may die; a new retiree may obtain other employment; a new retiree may turn 65. That it is possible that such events affecting benefits under a CBA also can occur after the contract's end, does not create ambiguity as to an intent as to whether the benefits extend and remain unalterable beyond the express three year term of the contract. These three provisions do not create ambiguity as to whether retirement healthcare would otherwise vest so as to continue beyond the three year term of the CBAs.

Moreover, even if in the three terms identified by the Court of Appeals potentially created an ambiguity as to the duration of retiree benefits, that possible ambiguity was completely resolved by application of the general durational clause within the contracts at issue. While events after the end of the contract *could* alter retiree benefits, *if* those benefits were vested under the CBA, the general durational clause established that all commitments under the CBA ended, and became alterable, or terminable, at a specific date. As reasoned by the Sixth Circuit in *Gallo v Moen Inc*, 813 F3d 265, 269 (CA 6, 2016), "not only do the CBAs fail to say

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that Moen committed to provide unalterable healthcare benefits for life to retirees, everything they say about the topic was contained in a three-year agreement. If we do not expect to find "elephants in mouseholes" in construing statutes [citation omitted], we should not expect to find lifetime commitments in time-limited agreements, *Tackett*, 135 S Ct at 936."

Finally, defendant submits that the Court should by a decision on the merits in this matter provide clear guidance to Michigan's governmental employers, and the unions who represent their employees, that the retiree rights will not vest in the presence of a general durational clause, in the absence of specific vesting language. The Court of Appeals opinion requiring resort to extrinsic evidence when CBAs are silent as to vesting has plunged local governments into confusion. It will have an adverse, state-wide impact on every Michigan governmental agency with a retirement system and retiree health care coverage, in creating uncertainty and the specter of retiree benefit obligations that have not been contractually agreed to. As set forth so eloquently by the Michigan Municipal League, Michigan Association of Counties, Michigan Townships Association and State Bar of Michigan, Public Corporation Law Section, as amici curiae, to impose such unfunded liabilities on municipalities will create crushing debt without a corresponding revenue source, and will force local governments into financial emergencies, emergency management, and even bankruptcy. (Motion, p 4)

Where, as here, there is a general durational clause that otherwise renders employee and retiree benefits in the CBAs subject to modification after expiration of the contract, an employer's commitment to vest lifetime benefits to retirees in a CBA must be stated in express language, so as to create an exception to the general durational clause. Here, given the general durational clause, the silence of the CBAs as to vesting, and specification that the CBAs expressed the complete agreement of the parties, the contract language relied on by the Court of

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Appeals, and plaintiffs, is not sufficient to warrant a finding of ambiguity as to the parties' intent regarding vesting so as to permit turning to extrinsic evidence beyond the contract. The opinion and judgment of the Court of Appeals should be reversed in lieu of granting leave to appeal.

II Alternatively, Even Assuming Arguendo, That The Collective Bargaining Agreements Were Ambiguous With Respect To Whether Retiree Healthcare Benefits Were Vested, The Court Of Appeals Clearly Erred In Holding That, As A Matter Of Law, Extrinsic Evidence Established An Agreement That The Benefits As Described In The CBAs Were Vested And Unalterable Without Consent; At A Minimum A Question Of Fact Remains For The Trier of Fact.

Even if the CBAs are ambiguous, so as to permit consideration of extrinsic evidence, the extrinsic evidence in the record before the Court of Appeals does not establish, as a matter of law, an agreement by the County that the benefits specified in the CBAs in and before 2010 were vested for life and unalterable. At a minimum, the extrinsic evidence in the record established an issue of fact as to whether there was a contractual promise by the County in the decades of CBAs prior to 2010 to provide retiree lifetime healthcare benefits, and if so, what benefits were promised, and whether they were alterable after each three year contract period. Should this Court reach this issue, defendant submits that there are questions of fact that should be resolved on remand to the trial court.

Specifically, retiree healthcare benefits have been modified with nearly every CBA since 1987. (See Apx 124a-178a) The CBAs since 1986 have been negotiated with the County of Macomb by 23 Unions on behalf "of regular employees," generally effective every three years. (See, e.g., Apx 179a, Local 411 2005-2007 CBA exemplar, p 1) Healthcare benefits for retirees under the CBAs changed over the years. Effective dates of some changes would vary within a given CBA, depending on the timing of negotiations, but representative of the general timing of the changes in retiree benefits are the CBAs for Local 412, that were summarized by plaintiffs

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below. (See generally, Apx 118-123a: summary of CBA benefit changes of Local 412 benefit changes, exhibit 1 to plaintiffs' MSD; Apx124a-178a, excerpts of CBA provisions regarding healthcare for Local 412, excerpt of exhibit 2 to plaintiffs' MSD)

Under the 1986-1988 CBAs, the County was to provide fully paid Blue Cross-Blue Shield coverage for the employee who leaves employment because of retirement and is eligible for and receives pension benefits, specified as BCBS MVFI Master Medical, or its substantial equivalent; spousal BC/BS hospital medical coverage for retirees who retire after January 1, 1974; a drug co-pay of $3 for "present and future retirees," and for the spouses of those who retire after April 1, 1973. The employer's "only" obligation to retired employees who reach age 65 was to provide "over-65 supplemental" hospital-medical benefit coverage. (Apx 124a-131a, CBA Insurance benefit exemplars, plaintiffs' MSD ex 2)

Revisions to benefits in the 1989-1991 CBAs were: increasing the prescription drug co-pay from $3 to $5 for employees who retire on or after January 1, 1989; requiring all retirees covered by Blue Cross to participate in "healthcare savings," known as "mandatory Second Surgical Opinion," and "Predetermination of Elective Admissions" as soon as possible after ratification; and requiring the employer to offer to retirees covered by Blue Cross the option of selecting the PPO program, and an HMO option. Other provisions remained substantively the same. (Apx 132a-138a)

Benefit provisions in the 1992-1994 CBAs remained substantially similar to those in prior CBAs. (Apx 139a-144a)

Revisions to retiree benefit provisions in the 1995-1996 CBAs were that employees who had retired on or after January 1, 1989 (during the prior CBAs), and who were covered by the traditional Blue Cross/Blue Shield indemnity plan, would be enrolled in the Preferred Rx

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Managed Prescription Drugs Program, with co-pays of $5 from a Preferred Rx network pharmacy, and of $2 for prescriptions received by mail-order. Other provisions, including a $3 drug copay for pre-1989 retirees, remained the same. (Apx145a-151a)

The 1997-1999 CBAs eliminated the $3 drug copay provision entirely. All retirees in a traditional Blue Cross plan were to be enrolled in the Preferred Rx Managed Program, with a $5 copay for prescriptions from a Preferred Rx Pharmacy, and a copay of $2 for "maintenance prescriptions" from an approved Preferred Rx provider by mail-order. (Apx 152a-158a)

The 2000-2004 CBAs revised the health savings requirement to require participation only in "Predetermination of Elective Admissions," and allowed the employer to begin a program to coordinate and eliminate overlapping health care coverage, by eliminating coverage for retirees who were covered by their spouses' insurance and agreed to accept monetary payment for foregoing coverage. The $5/$2 prescription drug copays remained the same, as did the other substantive provisions. (Apx 159a-165a)

The 2005-2007 CBAs included a new provision providing that, for employees hired after January 1, 2006, hospital medical coverage would be provided upon retirement after 15 years of service. Prescription drug coverage for retirees was revised and copays increased from the $5/$2 copay as provided in the 2000-2004 CBAs, to a $5/$5 copay for both Pharmacy and mail order prescriptions. The 2005-2007 CBAs further imposed on retirees mandatory mail order for maintenance drugs. Other provisions remained substantively the same. (Apx 166a-172a)

The 2008-2010 CBAs continued the $5/$5 prescription drug copay, and mandatory mail order, but eliminated the mandatory healthcare savings requirement for Elective Admissions. The CBAs also eliminated the requirement that Blue Cross Blue Shield Hospital Medical Master Medical Coverage be offered, and instead required the County to offer Blue Cross Blue Shield

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Preferred Provider Organization (PPO) coverage or its substantial equivalent. The CBAs further provided that for employees hired after February 27, 2009, PPO coverage would be provided for spouses of eligible retirees after 20 years of service, and the retiree who retired after between 15 and 20 years would have the option of paying for spousal health care. Other provisions remained substantively the same. (Apx 173a-178a)

Thus, substantive changes to retiree healthcare coverage from 1989 to 2010 included: in the 1989 CBA increasing the prescription drug copay from $3 to $5 for new (1989 and after) retirees, and requiring all retirees to participate in healthcare savings; in the 1997 CBAs, eliminating the $3 copay for pre-1989 retirees, and imposing a $5/$2 copay on all covered prescriptions; in 2002, adding PPO and HMO options; in 2005 imposing a $5/$5 copay for all covered prescriptions, and requiring mail order for maintenance drugs, and in 2008, substituting the requirement of providing BC/BS Master Medical, for a requirement of providing a BC/BS PPO. (Apx 118a-123a, 124a-178a)

The record established that during the period in which the challenged changes to healthcare insurance were made, the County understood that the Unions in fact did not represent or negotiate on behalf of former employees, who were already retired at the time of negotiations. (Apx 433a-440a, deposition of Eric Herppich, Director of Human Resources and Labor Relations for the County of Macomb, pp 63-64, 99, 108) The Unions too took this position; during negotiations specifically regarding the 2008-2010 CBAs, when the County tried to broach the topic of retired former employees with several unions, the unions "responded that they do not represent the retirees as they are no longer part of the bargaining units." (Apx 474a-475a,

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7/10/15 affidavit of Herppich)[3] As to retirees, there was "no one to get agreement with." (Apx 439a, Herppich dep, p 103) The CBA provisions regarding retiree benefits would therefore apply to those active employees who will retire during the contract, and not to existing retirees, who were former employees. (Apx 438a-439a, Herppich dep, pp 100-101) However, the County would look to the CBAs for guidance in making decisions on benefit changes for retirees, that would usually be similar, although not always identical, to the benefits negotiated with the Unions for active employees. (Apx 435a, 437a, Herppich dep, pp 63-64, 91-92)

Further evidencing that benefits did not vest under the CBAs is that many additional modifications were made for retirees outside of the CBAs. (Apx 474a-478a, Defendant's MSD exhibits, Human Resource's Bulletins re changes in benefits)

The materials cited by the Court of Appeals at best create factual questions, as to whether vesting was intended and, if so, what were the benefits that were vested, and what retirees were covered. (See Apx, 269a-320a, 2014 bond proposal, Apx 424a-432a, defendant's MSD exhibit D, Bertolli dep, p 30; Apx 429a-432a, defendant's MSD exhibit E, Cowan dep, pp 23-25, 54)

Accordingly, even assuming arguendo, that the collective bargaining agreements were ambiguous with respect to whether retiree healthcare benefits were vested, the Court of Appeals clearly erred in holding that, as a matter of law, extrinsic evidence established an agreement that the benefits as described in the CBAs were vested and unalterable without consent; at a minimum a question of fact remains for the trier of fact.

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[3] While Unions may represent and bargain for already-retired employees with respect to nonvested benefits, see *Arbuckle v GM LLC*, 499 Mich 521, 539; 885 NW2d 232 (2016) (federal law), this did not occur here with respect to the challenged changes.

III Regardless Of Whether Retiree Healthcare Benefits Vested, The Court Of Appeals Erred In Ordering That Plaintiffs' Motion For Summary Disposition Be Granted Where Neither The Trial Court Nor The Court Of Appeals Addressed Whether The 2009 And 2010 Changes Breached The 2008-2009 CBAs, And Where Defendant Is Entitled To Summary Disposition And/Or Issues Of Fact Remain.

Plaintiffs are not entitled to summary disposition as they requested, and as directed by the Court of Appeals--that the County breached the CBAs and that plaintiffs are entitled to a return to the status quo before the 2009 and 2010 plan changes. As set forth in the application, changes to the health care plans not were inconsistent with the benefits granted by the 2008-2010 CBAs. (See exemplar benefits provision in 2008-2010 CBA, Apx 381a-393a) Further, as set forth above, those benefits were only granted to employees who became retirees under the 2008-2010 CBAs. Neither the Court of Appeals nor the trial court addressed the issue of whether, regardless of whether healthcare benefits "vested," the changes in 2009 and 2010 actually breached the contractual rights agreed to in the 2008-2010 CBAs. Defendant submits that it is entitled to summary disposition, or in the alternative and at a minimum, there are questions of fact as to breach of contract, that must be resolved by the trier of fact.

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RELIEF REQUESTED

WHEREFORE, defendant-appellant County of Macomb respectfully requests that this Honorable Court peremptorily reverse the Court of Appeals and hold that that plaintiffs and other retirees do not have a vested right to lifetime, unalterable healthcare benefits, and affirm the trial court's judgment dismissing this class action breach of contract lawsuit.

Alternatively, defendant asks that this Court hold that summary disposition should not be granted to plaintiffs, as there remains an issue of fact as to whether and what retiree benefits vested, and that summary disposition should be granted to the County as set forth in Argument III of defendant's application, as the changes in benefits in 2009 and 2010 did not violate the terms of the collective bargaining agreements.

Respectfully submitted,

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EXHIBIT A

Per Curiam

SUPREME COURT OF THE UNITED STATES

CNH INDUSTRIAL N.V., ET AL. *v.* JACK REESE, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 17–515. Decided February 20, 2018

PER CURIAM.

Three Terms ago, this Court's decision in *M&G Polymers USA, LLC* v. *Tackett*, 574 U. S. ___ (2015), held that the Court of Appeals for the Sixth Circuit was required to interpret collective-bargaining agreements according to "ordinary principles of contract law." *Id.*, at ___ (slip op., at 1). Before *Tackett*, the Sixth Circuit applied a series of "*Yard-Man* inferences," stemming from its decision in *International Union, United Auto, Aerospace, & Agricultural Implement Workers of Am.* v. *Yard-Man, Inc.*, 716 F. 2d 1476 (1983). In accord with the *Yard-Man* inferences, courts presumed, in a variety of circumstances, that collective-bargaining agreements vested retiree benefits for life. See *Tackett*, 574 U. S., at ___–___ (slip op., at 7–10). But *Tackett* "reject[ed]" these inferences "as inconsistent with ordinary principles of contract law." *Id.*, at ___ (slip op., at 14).

In this case, the Sixth Circuit held that the same *Yard-Man* inferences it once used to presume lifetime vesting can now be used to render a collective-bargaining agreement ambiguous as a matter of law, thus allowing courts to consult extrinsic evidence about lifetime vesting. 854 F. 3d 877, 882–883 (2017). This analysis cannot be squared with *Tackett*. A contract is not ambiguous unless it is subject to more than one reasonable interpretation, and the *Yard-Man* inferences cannot generate a reasonable interpretation because they are not "ordinary principles of contract law," *Tackett*, *supra*, at ___ (slip op., at 14). Because the Sixth Circuit's analysis is "*Yard-Man* re-born,

re-built, and re-purposed for new adventures," 854 F. 3d, at 891 (Sutton, J., dissenting), we reverse.

I

A

This Court has long held that collective-bargaining agreements must be interpreted "according to ordinary principles of contract law." *Tackett*, 574 U. S., at ___ (slip op., at 7) (citing *Textile Workers* v. *Lincoln Mills of Ala.*, 353 U. S. 448, 456–457 (1957)). Prior to *Tackett*, the Sixth Circuit purported to follow this rule, but it used a unique series of "*Yard-Man* inferences" that no other circuit applied. 574 U. S., at ___ (slip op., at 7). For example, the Sixth Circuit presumed that "a general durational clause" in a collective-bargaining agreement "'*says nothing* about the vesting of retiree benefits'" in that agreement. *Id.*, at ___–___ (slip op., at 9–10) (quoting *Noe* v. *PolyOne Corp.*, 520 F. 3d 548, 555 (CA6 2008)). If the collective-bargaining agreement lacked "a termination provision specifically addressing retiree benefits" but contained specific termination provisions for other benefits, the Sixth Circuit presumed that the retiree benefits vested for life. *Tackett, supra*, at ___–___ (slip op., at 7–8) (citing *Yard-Man*, *supra*, at 1480). The Sixth Circuit also presumed vesting if "a provision . . . 'tie[d] eligibility for retirement-health benefits to eligibility for a pension." 574 U. S., at ___ (slip op., at 10) (quoting *Noe*, *supra*, at 558).

This Court's decision in *Tackett* "reject[ed] the *Yard-Man* inferences as inconsistent with ordinary principles of contract law." 574 U. S., at ___ (slip op., at 14). Most obviously, the *Yard-Man* inferences erroneously "refused to apply general durational clauses to provisions governing retiree benefits." 574 U. S., at ___ (slip op., at 12). This refusal "distort[ed] the text of the agreement and conflict[ed] with the principle of contract law that the written agreement is presumed to encompass the whole

agreement of the parties." *Ibid.*

The *Yard-Man* inferences also incorrectly inferred lifetime vesting whenever "a contract is silent as to the duration of retiree benefits." 574 U. S., at ___ (slip op., at 14). The "traditional principle," *Tackett* explained, is that "'contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement.'" *Id.*, at ___ (slip op., at 13) (quoting *Litton Financial Printing Div., Litton Business Systems, Inc.* v. *NLRB*, 501 U. S. 190, 207 (1991)). "[C]ontracts that are silent as to their duration will ordinarily be treated not as 'operative in perpetuity' but as 'operative for a reasonable time.'" 574 U. S., at ___ (slip op., at 13) (quoting 3 A. Corbin, Corbin on Contracts §553, p. 216 (1960)). In fact, the Sixth Circuit had followed this principle in cases involving noncollectively bargained agreements, see *Sprague* v. *General Motors Corp.*, 133 F. 3d 388, 400 (1998) (en banc), which "only underscore[d] *Yard-Man*'s deviation from ordinary principles of contract law." *Tackett*, *supra*, at ___ (slip op., at 13).

As for the tying of retiree benefits to pensioner status, *Tackett* rejected this *Yard-Man* inference as "contrary to Congress' determination" in the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 891. 574 U. S., at ___ (slip op., at 11). The Sixth Circuit adopted this inference on the assumption that retiree health benefits are "'a form of delayed compensation or reward for past services,'" like a pension. *Id.*, at ___ (slip op., at 4) (quoting *Yard-Man*, *supra,* at 1482). But ERISA distinguishes between plans that "resul[t] in a deferral of income," §1002(2)(A)(ii), and plans that offer medical benefits, §1002(1)(A). See *Tackett*, 574 U. S., at ___ (slip op., at 11). *Tackett* thus concluded that this and the other "inferences applied in *Yard-Man* and its progeny" do not "represent ordinary principles of contract law." *Id.*, at ___ (slip op., at 10).

B

Like *Tackett*, this case involves a dispute between retirees and their former employer about whether an expired collective-bargaining agreement created a vested right to lifetime health care benefits. In 1998, CNH Industrial N. V. and CNH Industrial America LLC (collectively, CNH) agreed to a collective-bargaining agreement. The 1998 agreement provided health care benefits under a group benefit plan to certain "[e]mployees who retire under the . . . Pension Plan." App. to Pet. for Cert. A–116. "All other coverages," such as life insurance, ceased upon retirement. *Ibid.* The group benefit plan was "made part of" the collective-bargaining agreement and "r[an] concurrently" with it. *Id.*, at A–114. The 1998 agreement contained a general durational clause stating that it would terminate in May 2004. *Id.*, at A–115. The agreement also stated that it "dispose[d] of any and all bargaining issues, whether or not presented during negotiations." *Ibid.*

When the 1998 agreement expired in 2004, a class of CNH retirees and surviving spouses (collectively, the retirees) filed this lawsuit, seeking a declaration that their health care benefits vested for life and an injunction preventing CNH from changing them. While their lawsuit was pending, this Court decided *Tackett*. Based on *Tackett*, the District Court initially awarded summary judgment to CNH. But after reconsideration, it awarded summary judgment to the retirees. 143 F. Supp. 3d 609 (ED Mich. 2015).

The Sixth Circuit affirmed in relevant part. 854 F. 3d, at 879. The court began by noting that the 1998 agreement was "silent" on whether health care benefits vested for life. *Id.*, at 882. Although the agreement contained a general durational clause, the Sixth Circuit found that clause inconclusive for two reasons. First, the 1998 agreement "carved out certain benefits" like life insurance

"and stated that those coverages ceased at a time different than other provisions." *Ibid.*; see App. to Pet. for Cert. A–116. Second, the 1998 agreement "tied" health care benefits to pension eligibility. 854 F. 3d, at 882; see App. to Pet. for Cert. A–116. These conditions rendered the 1998 agreement ambiguous, according to the Sixth Circuit, which allowed it to consult extrinsic evidence. 854 F. 3d, at 883. And that evidence supported lifetime vesting. *Ibid.* The Sixth Circuit acknowledged that these features of the agreement are the same ones it used to "infer vesting" under *Yard-Man*, but it concluded that nothing in *Tackett* precludes this kind of analysis: "There is surely a difference between finding ambiguity from silence and finding vesting from silence." 854 F. 3d, at 882.[1]

Judge Sutton dissented. See *id.*, at 887–893. He concluded that the 1998 agreement was unambiguous because "the company never promised to provide healthcare benefits for life, and the agreement contained a durational clause that limited *all* of the benefits." *Id.*, at 888. Judge Sutton noted that, in finding ambiguity, the panel majority relied on the same inferences that this Court proscribed in *Tackett*. See 854 F. 3d, at 890–891. But ambiguity, he explained, requires "two competing interpretations, both of which are fairly plausible," *id.*, at 890, and "[a] forbidden inference cannot generate a plausible reading," *id.*, at 891. The panel majority's contrary decision, Judge Sutton concluded, "abrad[ed] an inter-circuit split (and an intra-circuit split) that the Supreme Court just sutured shut." *Id.*, at 890.[2]

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[1] After accepting the retirees' reading of the 1998 agreement, the Sixth Circuit remanded for the District Court to reconsider the reasonableness of CNH's proposed modifications to the health care benefits. See 854 F. 3d 877, 884–887 (2017). CNH does not challenge that determination, and we express no view on it.

[2] By "intra-circuit split," Judge Sutton was referring to the Sixth Circuit's earlier decision in *Gallo* v. *Moen Inc.*, 813 F. 3d 265 (2016).

Per Curiam

II

The decision below does not comply with *Tackett's* direction to apply ordinary contract principles. True, one such principle is that, when a contract is ambiguous, courts can consult extrinsic evidence to determine the parties' intentions. See 574 U. S., at ___ (GINSBURG, J., concurring) (slip op., at 1) (citing 11 R. Lord, Williston on Contracts §30:7, pp. 116–124 (4th ed. 2012) (Williston)). But a contract is not ambiguous unless, "after applying established rules of interpretation, [it] remains reasonably susceptible to at least two reasonable but conflicting meanings." *Id.*, §30:4, at 53–54 (footnote omitted). Here, that means the 1998 agreement was not ambiguous unless it could reasonably be read as vesting health care benefits for life.

The Sixth Circuit read it that way only by employing the inferences that this Court rejected in *Tackett*. The Sixth Circuit did not point to any explicit terms, implied terms, or industry practice suggesting that the 1998 agreement vested health care benefits for life. Cf. 574 U. S., at ___ (GINSBURG, J., concurring) (slip op., at 2). Instead, it found ambiguity in the 1998 agreement by applying several of the *Yard-Man* inferences: It declined to apply the general durational clause to the health care benefits, and then it inferred vesting from the presence of specific ter-

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That decision concluded that a collective-bargaining agreement did not vest health care benefits for life, relying on the general durational clause and rejecting the same inferences that the Sixth Circuit invoked here. See *id.*, at 269–272. The conflict between these decisions, and others like them, has led one judge in the Sixth Circuit to declare that "[o]ur post-*Tackett* case law is a mess." *International Union, United Auto, Aerospace & Agricultural Implement Workers of Am.* v. *Kelsey-Hayes Co.*, 872 F. 3d 388, 390 (2017) (Griffin, J., dissenting from denial of rehearing en banc). To date, the en banc Sixth Circuit has been unwilling (or unable) to reconcile its precedents. See *ibid.* (Sutton, J., concurring in denial of rehearing en banc) (agreeing that this conflict "warrants en banc review" but voting against it because "there is a real possibility that we would not have nine votes for any one [approach]").

mination provisions for other benefits and the tying of health care benefits to pensioner status.

Tackett rejected those inferences precisely because they are not "established rules of interpretation," 11 Williston §30:4, at 53–54. The *Yard-Man* inferences "distort the text of the agreement," fail "to apply general durational clauses," erroneously presume lifetime vesting from silence, and contradict how "Congress specifically defined" key terms in ERISA. *Tackett*, 574 U. S., at ___–___ (slip op., at 11–14). *Tackett* thus rejected these inferences not because of the *consequences* that the Sixth Circuit attached to them—presuming vesting versus finding ambiguity—but because they are not a valid way to read a contract. They cannot be used to create a reasonable interpretation any more than they can be used to create a presumptive one.

Tellingly, no other Court of Appeals would find ambiguity in these circumstances. When a collective-bargaining agreement is merely silent on the question of vesting, other courts would conclude that it does *not* vest benefits for life.[3] Similarly, when an agreement does not specify a duration for health care benefits in particular, other courts would simply apply the general durational clause.[4] And other courts would not find ambiguity from the tying of retiree benefits to pensioner status.[5] The approach taken in these other decisions "only underscores" how the

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[3] See, *e.g.*, *International Union, United Auto, Aerospace & Agricultural Implement Workers of Am.* v. *Skinner Engine Co.*, 188 F. 3d 130, 147 (CA3 1999); *Joyce* v. *Curtiss-Wright Corp.*, 171 F. 3d 130, 135 (CA2 1999); *Wise* v. *El Paso Natural Gas Co.*, 986 F. 2d 929, 938 (CA5 1993); *Senn* v. *United Dominion Industries, Inc.*, 951 F. 2d 806, 816 (CA7 1992).

[4] See, *e.g.*, *Des Moines Mailers Union, Teamsters Local No. 358* v. *NLRB*, 381 F. 3d 767, 770 (CA8 2004); *Skinner Engine Co.*, 188 F. 3d, at 140–141.

[5] See, *e.g.*, *id.*, at 141; *Joyce*, *supra*, at 134; *Anderson* v. *Alpha Portland Industries, Inc.*, 836 F. 2d 1512, 1517 (CA8 1988).

decision below "deviat[ed] from ordinary principles of contract law." *Tackett*, *supra*, at ___ (slip op., at 13).

Shorn of *Yard-Man* inferences, this case is straightforward. The 1998 agreement contained a general durational clause that applied to all benefits, unless the agreement specified otherwise. No provision specified that the health care benefits were subject to a different durational clause. The agreement stated that the health benefits plan "r[an] concurrently" with the collective-bargaining agreement, tying the health care benefits to the duration of the rest of the agreement. App. to Pet. for Cert. A–114. If the parties meant to vest health care benefits for life, they easily could have said so in the text. But they did not. And they specified that their agreement "dispose[d] of any and all bargaining issues" between them. *Id.*, at A–115. Thus, the only reasonable interpretation of the 1998 agreement is that the health care benefits expired when the collective-bargaining agreement expired in May 2004. "When the intent of the parties is unambiguously expressed in the contract, that expression controls, and the court's inquiry should proceed no further." *Tackett*, *supra*, at ___ (GINSBURG, J., concurring) (slip op., at 1) (citing 11 Williston §30:6, at 98–104).

* * *

Because the decision below is not consistent with *Tackett*, the petition for a writ of certiorari and the motions for leave to file briefs *amici curiae* are granted. We reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.