APPENDIX

APPENDIX A

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 17a0283p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 17-3120

[Filed December 13, 2017]

SUN LIFE ASSURANCE COMPANY OF CANADA, *Plaintiff-Appellant*,

v.

RICHARD E. JACKSON; SIERRA N. JACKSON, individually and as the personal representative on behalf of the Estate of Bruce D. Jackson, *Defendants-Appellees*.

Appeal from the United States District Court
for the Southern District of Ohio at Dayton.
No. 3:14-cv-00041—Walter H. Rice, District Judge.

Argued: November 28, 2017

Decided and Filed: December 13, 2017

Before: GILMAN, SUTTON, and STRANCH,
Circuit Judges.

COUNSEL

ARGUED: Joshua Bachrach, WILSON ELSER, MOSKOWITZ EDELMAN & DICKER LLP, Philadelphia, Pennsylvania, for Appellant. James D. Brookshire, DUNGAN & LEFEVRE CO., LPA, Troy, Ohio, for Appellee Sierra N. Jackson. Eirik Cheverud, UNITED STATES DEPARTMENT OF LABOR, Washington, D.C., for Amicus Curiae. **ON BRIEF:** Joshua Bachrach, WILSON ELSER, MOSKOWITZ EDELMAN & DICKER LLP, Philadelphia, Pennsylvania, for Appellant. James D. Brookshire, Glen R. McMurray, DUNGAN & LEFEVRE CO., LPA, Troy, Ohio, for Appellee Sierra N. Jackson. Stephanie Lewis, UNITED STATES DEPARTMENT OF LABOR, Washington, D.C., for Amicus Curiae. Richard E. Jackson, Boise, Idaho, pro se.

OPINION

SUTTON, Circuit Judge. Bruce Jackson married Bridget Jackson in 1993, and Sierra Jackson, their only child, arrived in 1995. They divorced in 2006. In their separation agreement, Bruce and Bridget agreed to maintain any employer-related life insurance policies for the benefit of Sierra until she turned 18 or graduated from high school. At the time, Bruce had an employer-sponsored life insurance policy that listed his uncle, Richard Jackson, as the sole beneficiary. Bruce never changed the beneficiary of the policy to Sierra before he died in 2013. Litigation ensued, and the district court ordered Sun Life to pay the life insurance

proceeds to Sierra. Because the divorce decree suffices as a qualified domestic relations order that "clearly specifies" Sierra as the beneficiary under the Employee Retirement Income Security Act, 29 U.S.C. § 1056(d)(3)(C), we affirm.

I.

In 2003, Bruce Jackson signed up for a life insurance plan sponsored by his employer, Samaritan Health Partners, and governed by the Employee Retirement Income Security Act, better known as ERISA. Sun Life Assurance Company took over management of Bruce's insurance policy in 2008. Bruce died in 2013. At his death, Bruce was insured for $48,000 in basic life insurance and $191,000 in optional life insurance. The question is whether Richard Jackson, Bruce's uncle, or Sierra Jackson, Bruce's only child, receives the money.

When Bruce signed up for the life insurance policy in 2003, he listed Richard as its sole beneficiary. When Bruce and Bridget divorced in 2006, their divorce decree incorporated the following provision:

> **Article IX: Life Insurance**
>
> In order to secure the obligation of the parties to support their child during her minority, Father and Mother shall maintain, unencumbered, all employer-provided life insurance, now in existence at a reasonable cost, or later acquired at a reasonable cost, naming their minor child as primary beneficiary during her minority; and the obligation to do so shall continue until she . . . reach(es) the age of eighteen (18) or

> graduates from high school, whichever occurs last . . . .

R. 29-1 at 29.

Bruce never changed the beneficiary designation in his policy to account for the terms of the divorce decree. At the time of Bruce's death, Sierra was still in high school. Richard and Sierra, as one might expect, made competing claims to Sun Life for the policy's benefits. After learning of both Richard and Sierra's claims, Sun Life decided to pay all of the proceeds to Richard, and litigation involving Sun Life, Richard, and Sierra followed.

Sun Life sought a declaratory judgment that it properly paid the proceeds to Richard. Sierra filed a counterclaim seeking a declaration that she was the lawful beneficiary. The district court issued a decision in Sierra's favor and ordered Sun Life to pay $239,000 plus interest to Sierra. *Sun Life Assurance Co. of Can. v. Jackson*, No. 3:14-cv-41, 2016 WL 4184444, at *14 (S.D. Ohio Aug. 5, 2016). Sun Life appeals.

II.

In deciding whether Sierra or Richard is entitled to the proceeds of this life insurance policy, we must resolve two questions. One: What is the test for determining whether a qualified domestic relations order permissibly changed the beneficiary of an ERISA-covered life insurance plan? Two: Does this divorce decree satisfy that test?

A.

The "clearly specifies" test. Subject to certain exceptions, ERISA mandates that an employee benefit plan's assets are to be "held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses." 29 U.S.C. § 1103(c)(1). The plan administrator must determine participants and beneficiaries "in accordance with the documents and instruments governing the plan." *Id.* § 1104(a)(1)(D). ERISA preempts "any and all State laws insofar as they . . . relate to any employment benefit plan." *Id.* § 1144(a). Before 1984, this provision arguably would have prevented the enforcement of the court order at issue in this case. *See Hawkins v. Comm'r of Internal Revenue*, 86 F.3d 982, 988 (10th Cir. 1996) (describing the "judicial rift" about preemption of domestic relations orders that existed before 1984).

In 1984, Congress amended ERISA to provide greater protection for spouses and dependents after a divorce. *See* S. Rep. No. 98-575, at 1, 3 (1984); H.R. Rep. No. 98-655, pt. 1, at 1, 30–31 (1984). One such protection was an exemption from ERISA's general preemption provision for "qualified domestic relations orders." 29 U.S.C. § 1144(b)(7). A qualified domestic relations order includes any state "judgment, decree, or order" relating to the provision of "child support, alimony payments, or marital property rights" that recognizes an "alternate payee's right to . . . benefits" and meets a number of other requirements. *Id.* § 1056(d)(3)(B)(i)–(ii).

This case turns on those requirements. Here they are:

> A domestic order meets the requirements of this subparagraph only if such order clearly specifies—
>
> > **(i)** the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,
> > **(ii)** the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,
> > **(iii)** the number of payments or period to which such order applies, and
> > **(iv)** each plan to which such order applies.

Id. § 1056(d)(3)(C).

In adding this provision to ERISA, Congress provided that plan administrators could treat a domestic relations order entered prior to the Act's effective date (January 1, 1985) "as a qualified domestic relations order even if such order does not meet the requirements of such amendments." Retirement Equity Act of 1984, Pub. L. No. 98–397, § 303(d), 98 Stat. 1426, 1453. As a result, we have held that domestic relations orders entered before 1985 need only "substantially comply" with this provision. *Metro. Life Ins. Co. v. Marsh*, 119 F.3d 415, 422 (6th Cir. 1997). But *Marsh* cabined this relaxed standard to pre-1985 orders. "As the divorce decree was written before the REA amended ERISA in 1984," *Marsh* explained, "we should not demand literal compliance." *Id.* When the Second Circuit adopted *Marsh*'s substantial compliance test, *Metro. Life Ins. Co. v. Bigelow*, 283

F.3d 436, 443 (2d Cir. 2002), it likewise limited its application to pre-1985 orders, *Yale-New Haven Hosp. v. Nicholls*, 788 F.3d 79, 85 (2d Cir. 2015).

The Jacksons divorced long after 1985. The divorce decree dates from 2006, meaning that, to be a qualifying plan, Sierra must meet the standards of § 1056(d)(3)(C) and thus must show that the Jacksons' divorce decree "clearly specifies" the required information.

While a "clearly specifies" standard demands more than a "substantially complies" standard, that does not mean it requires Simon Says rigidity or demands magic words. One may "clearly specify" something by implication or inference so long as the meaning is definite. *See* Oxford English Dictionary 159 (2d ed. 1989) (To specify means "to mention, speak of, or name (something) definitely or explicitly"); Webster's New International Dictionary 2415 (2d ed. 1934) ("to mention or name in a specific or explicit manner").

A few everyday examples illustrate the point. A cashier asks the grocery store customer: "paper or plastic?" The customer could signal his preference for plastic bags by saying "plastic." But he could just as clearly specify his choice by saying "not paper."

So too of a sports fan asked this question: Who is the greatest basketball player of all time: Michael Jordan or LeBron James? He might respond "LeBron James," which clearly specifies the answer. Or he might respond "Number 23," which does not clearly specify the answer. But if he responded "Number 23 of the Cleveland Cavaliers," no one would be confused.

The sports fan did not *state* "LeBron James." But he did *specify* him. And clearly so.

A similar approach, informed by common sense and context, applies to the naming of the beneficiary of a life insurance policy. The statute does not require that a particular provision of the divorce decree clearly specify the relevant details. It requires the entire "domestic order" to do so, examined in full, not silo by silo. *See Russell v. Citigroup, Inc.*, 748 F.3d 677, 681 (6th Cir. 2014). After all, plan administrators act as fiduciaries and must follow reasonable procedures in distributing benefits. *See* 29 U.S.C. § 1056(d)(3)(G), (I). It would not be reasonable for a fiduciary to fail to consider the entirety of the decree documents being interpreted. All of this demonstrates that the statute's "clearly specifies" test does not require, as Sun Life argues, any "strict" *method* of compliance. *See* Brief for Appellant at 10–11.

Sierra and the Department of Labor, as *amicus curiae*, argue that this legal standard frustrates Congress's purpose of protecting spouses, ex-spouses, and dependents. No doubt, the words of the law seek to allow participants to alter their employment benefits more easily in response to changes in family status. But Congress rarely legislates to effectuate a single purpose. And it rarely pursues any given purpose at all costs. The essence of legislative choice is to decide how much of a particular objective to achieve at a particular cost to other interests. *See Contract Courier Servs. v. Research & Special Programs Admin.*, 924 F.2d 112, 115 (7th Cir. 1991).

Two competing considerations were at play in this instance: flexibility and administrability. The new law

gave family members greater flexibility in changing the beneficiaries of an employee plan. But it poured that new idea into an old scheme, one that demanded uniformity and a standard procedure for how to process claims and disburse benefits easily without undue risk of delay and litigation. *Kennedy v. Plan Adm'r for DuPont Sav. & Inv. Plan*, 555 U.S. 285, 300–01 (2009).

Congress balanced these twin aims through § 1144(b)(7) and § 1056(d)(3)(C). Those provisions protect spouses and dependents by allowing a state order, outside of the four corners of the employee benefit plan, to modify the distribution of the plan's benefits. 29 U.S.C. § 1144(b)(7). At the same time, the provisions protect plan administrators by requiring the order to be clear about the identity of the alternate payee and the benefits to be redirected. *Id.* § 1056(d)(3)(C). To lighten the load on one side of the tradeoff is to increase the burden on the other.

We realize that this Court appeared to slip *Marsh* from its statutory mooring and applied the "substantially complies" test, rather than the "clearly specifies" legislative test, to post-1985 orders in two unpublished opinions. *Mattingly v. Hoge*, 260 F. App'x 776, 780 (6th Cir. 2008); *Metro. Life Ins. Co. v. Clark*, 159 F. App'x 662, 665 (6th Cir. 2005). But *Clark* went on to conclude that the divorce decree at issue was not only in substantial compliance but also in "literal compliance" with the statute. 159 F. App'x at 665. And it is difficult to tell whether *Mattingly* relied on the relaxed standard and thus whether the standard made any difference to the outcome of the case. *See* 260 F. App'x at 780. Unpublished decisions of this Court in any event are non-precedential and bind only the

parties to those cases. *FDIC v. Dover*, 453 F.3d 710, 715 (6th Cir. 2006).

The Department of Labor also claims that the Seventh, Ninth, and Tenth Circuits have adopted a "substantially complies" test and urges us to follow them. But neither the Seventh Circuit nor the Tenth Circuit mentions that phrase. *Metro. Life Ins. Co. v. Wheaton*, 42 F.3d 1080 (7th Cir. 1994); *Hawkins*, 86 F.3d 982; *Carland v. Metro. Life Ins. Co.*, 935 F.2d 1114 (10th Cir. 1991). In *Wheaton*, to the contrary, the Seventh Circuit concluded that "the literal reading of ERISA as amended by the Retirement Equity Act . . . makes more practical sense than a flexible reading" and emphasized that the "clearly specifies" language of § 1056(d)(3)(C) is "explicit and emphatic." 42 F.3d at 1084. And the Tenth Circuit in *Hawkins* likewise concluded that "accept[ing] anything less than what [§ 1056(d)(3)(C)] expressly requires would . . . read language out of a statute" and thus refused to do "violence to the plain meaning of the statute." 86 F.3d at 992. And although the Ninth Circuit has stated that it "require[s] substantial compliance" with the statutory requirements, it also cautioned that "an overly expansive interpretation may render the specificity requirements toothless," and concluded that "[t]he pivotal question is whether the dissolution order 'clearly contains the information specified in the statute.'" *Hamilton v. Wash. State Plumbing & Pipefitting Indus. Pension Plan*, 433 F.3d 1091, 1097 (9th Cir. 2006) (quoting *Stewart v. Thorpe Holding Co. Profit Sharing Plan*, 207 F.3d 1143, 1154 (9th Cir. 2000)).

To the extent these courts undertake a contextual inquiry that examines the decree in its entirety when applying the statute, we do not disagree. That indeed is required. And to the extent any court means to adopt a "substantially complies" test for post-1985 orders, it neglects a congressional directive that, to borrow a phrase, is clearly specified.

B.

Application of the "clearly specifies" test. In assessing whether the Jacksons' divorce decree "clearly specifies" the information required by the statute, we may consider the divorce decree and the two other documents it incorporates: the Jacksons' separation agreement and their shared parenting plan. The three documents, taken together, satisfy each of the relevant requirements, entitling Sierra to the benefits.

Name and mailing address of participant? The statute first requires the order to clearly specify the name and last known mailing address of the plan participant. 29 U.S.C. § 1056(d)(3)(C)(i). Article IX of the separation agreement notes that "Father and Mother" shall maintain life insurance. R. 29-1 at 29. These terms unambiguously refer to Bruce Jackson and Bridget Jackson, who are identified as the parents of Sierra Jackson on Page 1 of the agreement. That page also lists their respective mailing addresses.

Name and mailing address of alternate payee? The statute next requires the order to clearly specify the name and mailing address of each alternate payee from the payee identified in the plan. 29 U.S.C. § 1056(d)(3)(C)(i). Article IX requires Bruce to maintain life insurance "naming their minor child as primary

beneficiary." R. 29-1 at 29. Page 1 states that "[t]he parties have one (1) child born the issue of this marriage, namely: Sierra N. Jackson, born February 9, 1995." *Id.* at 24. The agreement thus clearly specifies Sierra Jackson as the alternate payee.

As for the mailing address, the shared parenting plan designates Bruce and Bridget Jackson as the shared "residential parent[s] and legal custodian[s]" of Sierra Jackson. *Id.* at 20. The decree also states, as a court finding, that the "parties will be spending near equal time with the child." *Id.* at 16. And again the mailing addresses of both Bruce and Bridget Jackson are listed on the front page of the separation agreement.

Amount or percentage of benefits? The statute next requires the order to clearly specify the amount or percentage of the participant's benefits to be paid to each alternate payee. 29 U.S.C. § 1056(d)(3)(C)(ii). Article IX specifies that Bruce shall maintain "all employer-provided life insurance . . . naming their minor child as primary beneficiary." R. 29-1 at 29. Because the agreement identifies all employer-provided life insurance and names no other beneficiaries, Sierra plainly is entitled to 100% of the benefit proceeds.

Number of payments or applicable period? The statute next requires the order to clearly specify the number of payments or the period to which such order applies. 29 U.S.C. § 1056(d)(3)(C)(iii). Article IX says that

> the obligation . . . shall continue until [Sierra] (a) reach(es) the age of eighteen (18) or graduates from high school, whichever occurs

> last; or (b) is otherwise emancipated, or (c) some other event occurs which relieves the parties of the obligation of child support, and provided, however, that the duty of child support shall not continue past the age of nineteen (19) unless ordered by a court.

R. 29-1 at 29. This language plainly identifies the period during which Sierra is the alternate payee.

Plan identity? The statute next requires the order to clearly specify each plan to which the order applies. 29 U.S.C. § 1056(d)(3)(C)(iv). Here too Article IX speaks unambiguously by referring to "all employer-provided life insurance." R. 29-1 at 29.

Sun Life offers a number of competing arguments. They are unpersuasive. Sun Life points out that Article IX in broader scope says that Bruce "shall maintain . . . all employer-provided life insurance, now in existence at a reasonable cost, or later acquired at a reasonable cost, naming their minor child as primary beneficiary." *Id.* Sun Life argues that this creates ambiguity as to which plans are at issue. But the reasonable cost qualification most naturally speaks to the extent of Bruce's obligation to maintain life insurance in the first instance. There is little dispute that, once Bruce entered into a life insurance plan, Sierra would be the beneficiary. There was thus no need for the plan administrator to conduct an open-ended inquiry into whether a life insurance plan was acquired at reasonable cost. It is no coincidence that, in the litigation below, no one ever asked whether Bruce's payment for the policy, $16.82 per pay period, was reasonable.

Sun Life faults the order for not specifying whether it pertained to Bruce's basic or optional insurance. It also points out that it did not begin managing Bruce's plan until 2008, two years after the decree was executed. But "all" means all—basic and optional coverage, no matter who manages the plan, and no matter when they assume those duties.

Sun Life also argues that Bruce's optional life insurance is not "employer-provided life insurance" under the agreement because Bruce, rather than his employer, paid the plan premiums. True, but the optional life insurance plan was a group policy offered only through his employer. And there would be no reason for the agreement to specify "employer-provided life insurance now in existence at a reasonable cost" if "employer-provided life insurance" covered only policies completely paid for by Bruce's employer. R. 29-1 at 29.

Even if the divorce decree and accompanying documents satisfy these specificity requirements, Sun Life argues that the remedial clause of the decree precludes Sierra from obtaining relief. "The parties' minor child," that provision reads, "shall have a valid claim against the probate estate of a non-compliant party." R. 29-1 at 30. But this provision does not state that the child has a claim against *only* the probate estate to the exclusion of everybody else. It just provides an alternate right of action. Sierra at any rate does not seek relief for a breach of the decree. She seeks relief because the decree amounts to a qualified domestic relations order under ERISA that entitles her to the life insurance proceeds.

In a variation on this theme, Sun Life argues that Bruce and Bridget failed to comply with the decree's

requirements to change the name of the beneficiary and monitor the beneficiary designation and thus extinguished any rights Sierra may have had against Sun Life. Cut from the same cloth, this claim fails for much the same reason. These shortcomings may have entitled Sierra to take action against the probate estate and perhaps those rights now have been forfeited. But today Sierra brings a claim under ERISA, not a common-law contract claim. Her parents' (alleged) non-compliance with the decree does not limit Sierra's rights under ERISA. As long as the order suffices as a qualified domestic relations order, she deserves the proceeds of her father's life insurance policy.

Sun Life's argument that Sierra cannot pursue her claim because it was not timely notified of the existence of the order also fails. Sun Life does not dispute that Sierra's attorney provided Sun Life with a copy of the order well before the payment was issued to Richard; this notice was sufficient to preserve Sierra's claim despite being received after Bruce's death. *See Nicholls*, 788 F.3d at 86–87 (upholding the validity of posthumous *nunc pro tunc* orders as qualified domestic relations orders); *Files v. ExxonMobil Pension Plan*, 428 F.3d 478, 489 (3d Cir. 2005) (holding that a qualified domestic relations order may be pursued posthumously); 29 C.F.R. § 2530.206(c)(2) (noting that a qualified domestic relations order may be issued posthumously).

Richard Jackson, the unfortunate victim of this saga, has filed a pro se brief in which he seeks damages for loss of income related to this lawsuit. The district court rejected these claims below as meritless. And Richard never filed a notice of appeal challenging that

ruling. We thus have no authority to address it. 28 U.S.C. § 2107(a).

For these reasons, we affirm.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 17-3120

[Filed December 13, 2017]

SUN LIFE ASSURANCE COMPANY OF CANADA, Plaintiff - Appellant,	)
v.	)
RICHARD E. JACKSON; SIERRA N. JACKSON, individually and as the personal representative on behalf of the Estate of Bruce D. Jackson, Defendants - Appellees.	)

Before: GILMAN, SUTTON, and STRANCH, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court for the Southern District of Ohio at Dayton.

THIS CAUSE was heard on the record from the district court and was argued by counsel for the appellant, appellee Sierra N. Jackson, and the Amicus Curiae.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION

Case No. 3:14-cv-41

[Filed January 12, 2017]

SUN LIFE ASSURANCE COMPANY OF CANADA,
Plaintiff,

v.

RICHARD E. JACKSON, *et al.*,
Defendants.

JUDGE WALTER H. RICE

ENTRY SUSTAINING PLAINTIFF SUN LIFE ASSURANCE COMPANY OF CANADA'S MOTION TO STAY EXECUTION OF PAYMENT OBLIGATION PURSUANT TO COURT ORDER DATED AUGUST 5, 2016 (DOC. #76); SUN LIFE'S PAYMENT OBLIGATION TO DEFENDANT SIERRA N. JACKSON AND ITS EQUITABLE REIMBURSEMENT CLAIM AGAINST DEFENDANT RICHARD E. JACKSON ARE STAYED PENDING EXHAUSTION OF ALL AVENUES OF APPEAL BY SUN LIFE; SUN

LIFE SHALL POST SUPERSEDEAS BOND IN THE AMOUNT SET FORTH BELOW UPON FILING NOTICE OF APPEAL; PURSUANT TO RULE 54(b), JUDGMENT SHALL ENTER IN FAVOR OF SIERRA JACKSON AND AGAINST SUN LIFE AND RICHARD JACKSON AS TO SIERRA JACKSON'S CLAIMS FOR DECLARATORY RELIEF AND RECOVERY OF BENEFITS, SHALL ENTER IN FAVOR OF SUN LIFE AND AGAINST SIERRA JACKSON AS TO SIERRA JACKSON'S CLAIM FOR CIVIL PENALTIES, AND SHALL ENTER IN FAVOR OF SUN LIFE AND AGAINST RICHARD JACKSON AS TO SUN LIFE'S CLAIM FOR INJUNCTIVE RELIEF; SIERRA JACKSON MAY, WITHIN THIRTY (30) DAYS OF JUDGMENT BEING ENTERED, MOVE FOR AWARDS OF PREJUDGMENT INTEREST AND ATTORNEY FEES; TERMINATION ENTRY

In an August 5, 2016, Decision and Entry, the Court found that Defendant Sierra N. Jackson ("Sierra") was the proper payee of an insurance policy managed by Plaintiff Sun Life Assurance Company of Canada ("Sun Life"), the proceeds of which Sun Life had paid to Defendant Richard E. Jackson ("Richard"). Doc. #66. Sierra's motion for judgment was overruled, however, as to her claim for civil penalties against Sun Life. *Id.,* PAGEID #1094. The Court also found that Sun Life was entitled to injunctive relief against Richard. The Court ordered Sun Life to remit the policy proceeds, plus interest, to Sierra within ninety (90) days of the Entry, but did not order entry of judgment, because Sun Life's equitable reimbursement claim against

Richard under 29 U.S.C. § 1132(a)(3) remained pending. *Id.,* PAGEID #1095-96.

Sun Life intends to appeal the Court's August 6, 2016, decision as to the Court's finding that Sierra is the proper payee and its ordering of Sun Life to remit the policy proceeds to Sierra, pending entry of final judgment in favor of Sierra and against Sun Life and Richard to that effect. Sun Life moves that its obligation to remit be stayed pending exhaustion of all possible avenues of appeal. Doc. #76, PAGEID #1129. Sun Life further moves that the Court stay its pending equitable claim against Richard, arguing that "it is entirely secondary to the issue of whether additional funds are owed to Defendant Sierra N. Jackson." *Id.* As there would be no need to pursue its equitable claim against Richard if he were ultimately found to be the proper payee, Sun Life argues that staying the matter pending "exhaustion of all available avenues of appeal[] preserves valuable resources and is in the interest of judicial economy." *Id.,* PAGEID #1130. While Richard filed no response to Sun Life's motion, Sierra responded on November 29, 2016, stating that she "has no objection to the relief sought by [Sun Life]." Doc. #78, PAGEID #1137.

The Court, finding good cause shown, SUSTAINS the Motion to Stay Execution of Payment Obligation Pursuant to Court Order Dated August 5, 2016. Doc. #76. Sun Life's payment obligation to Sierra and equitable reimbursement claim against Richard are STAYED pending exhaustion of all avenues of appeal by Sun Life. Pursuant to Rule 62(d), Sun Life must post a supersedeas bond upon filing its notice of appeal, in the amount of two hundred thirty-nine thousand

dollars ($239,000.00), plus costs and post-judgment interest. Doc. #66, ¶ 9, PAGEID #1095.

Pursuant to Rule 54(b) and the above reasoning, the Court, finding no just reason for delay, orders judgment to enter in favor in favor of Sierra and against Sun Life and Richard as to Sierra's claims for declaratory relief and recovery of benefits. Further, judgment shall enter in favor of Sun Life and against Sierra as to Sierra's claim against Sun Life for civil penalties. Also, judgment shall enter in favor of Sun Life and against Richard as to Sun Life's claim for injunctive relief. Finally, pursuant to the Court's August 5, 2016, Entry, Sierra's attorney may, within thirty (30) days of judgment being entered, submit a motion for awards of prejudgment interest and attorney fees, along with a supporting lodestar calculation for the latter.[1]

Date: January 12, 2017

/s/ Walter H. Rice
WALTER H. RICE
UNITED STATES DISTRICT JUDGE

[1] On October 27, 2016, Richard filed a Response to Court Order for Richard E. Jackson's Response to Interrogatories and Requests for Production of Documents ("Response"), in regards to the Court ordering Richard to respond to Sun Life's discovery requests. Doc. #75 (citing Doc. #72). The staying of Sun Life's equitable claim against Richard means that his obligation to respond to Sun Life's discovery requests is also stayed, and his Response is moot.

UNITED STATES DISTRICT COURT
for the

Civil Action No. 3:14-cv-41

[Filed January 12, 2017]

Sun Life Assurance Company of Canada *Plaintiff*	)
v.	)
Richard E. Jackson, et al., *Defendant*	)

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

□ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ the amount of _____ dollars ($_____), which includes prejudgment interest at the rate of _____ %, plus post judgment interest at the rate of _____% per annum, along with costs.

□ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ recover costs from the plaintiff *(name)*_____.

☒ other: Judgment shall enter in favor of Sierra Jackson and against Sun Life and Richard Jackson as to Sierra Jackson's claims for Declaratory Relief and Recovery of Benefits, in favor of Sun Life and against Sierra Jackson as to Sierra Jackson's claim for Civil Penalties and in favor of Sun Life and

against Richard Jackson as to Sun Life's claim for Injunctive Relief.

This action was *(check one)*:

□ tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.

□ tried by Judge _____ without a jury and the above decision was reached.

☒ decided by Judge Walter H. Rice on a motion for Stay

Date: 1/12/2017

CLERK OF COURT
/s/
Signature of Clerk or Deputy Clerk

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION

Case No. 3:14-cv-41

[Filed August 5, 2016]

SUN LIFE ASSURANCE COMPANY OF CANADA,
Plaintiff,

v.

RICHARD E. JACKSON, *et al.*,
Defendants.

JUDGE WALTER H. RICE

DECISION AND ENTRY SUSTAINING IN PART AND OVERRULING IN PART DEFENDANT SIERRA N. JACKSON'S MOTION FOR JUDGMENT (DOC. #51); SUSTAINING IN PART, OVERRULING IN PART AND NOT RULING UPON IN PART SUN LIFE ASSURANCE COMPANY OF CANADA'S MOTION FOR JUDGMENT (DOC. #50); AND OVERRULING RICHARD E. JACKSON'S MOTION FOR JUDGMENT ON THE ADMINISTRATIVE RECORD (DOC. #53), ALL WITH REASONING AND RELIEF

ORDERED SET FORTH HEREIN; OVERRULING AS MOOT SIERRA JACKSON'S MOTION TO STRIKE RICHARD JACKSON'S JANUARY 2, 2016, LETTER WITH ATTACHMENTS (DOC. #61); SUSTAINING SIERRA JACKSON'S MOTION TO DISMISS CROSSCLAIM AGAINST RICHARD JACKSON WITHOUT PREJUDICE (DOC. #62); DIRECTIONS TO PARTIES; JUDGMENT SHALL ULTIMATELY ENTER IN FAVOR OF SIERRA JACKSON AND AGAINST SUN LIFE AND RICHARD JACKSON

This matter is before the Court on cross-motions for judgment by Plaintiff Sun Life Assurance Company of Canada ("Plaintiff' or "Sun Life"), Doc. #50, Defendant, Counter-Claimant and Cross-Claimant Sierra N. Jackson ("Sierra"), Doc. #51 , and Defendant Richard E. Jackson ("Richard"). Doc. #53. Sun Life seeks a declaratory judgment that it properly paid proceeds of an insurance policy managed by Sun Life ("Policy") on the life of a Bruce Jackson ("Bruce") to Richard, Bruce's uncle. In the alternative, it seeks to enjoin Richard from dissipating the Policy proceeds and to obtain other equitable relief against Richard. Doc. #1. Sierra, Bruce's daughter, seeks a declaratory judgment that she was the proper payee of the Policy proceeds. Also, she seeks recovery of those proceeds, and statutory damages against Sun Life for alleged violations of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1101 *et seq.* Doc. #4. Richard, appearing *pro se*, seeks damages, including attorney fees, to compensate him for the "loss of production time and income-generating resources." Doc. #53, PAGEID #954. Also, Sierra moves to strike a letter filed by

Richard with the Court on January 2, 2016, Doc. #59, which she claims contains inadmissible evidence. Doc. #61. Finally, Sierra moves, pursuant to Rule 41(a)(2), to dismiss without prejudice her crossclaim against Richard. Doc. #62. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

For the reasons set forth below, Sierra's motion for judgment is OVERRULED with respect to her claim for statutory damages and SUSTAINED in all other respects. Sun Life's motion for judgment is OVERRULED with respect to its claim for declaratory judgment, and is SUSTAINED IN PART and NOT RULED UPON IN PART with respect to its claim for injunctive relief against Richard. Richard's motion for judgment on the administrative record is OVERRULED. Sierra's motion to strike is OVERRULED AS MOOT, and her motion for voluntary dismissal of her crossclaim against Richard is SUSTAINED.

I. RELEVANT FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Bruce and Bridget L. Jackson ("Bridget") married on December 31, 1993, and Sierra, the only child of the marriage and Bruce's only child, was born on February 9, 1995. Doc. #29-1, ¶¶ 3-4, PAGEID #576. Beginning on or about November 1, 2003, Bruce, at the time an employee of Samaritan Health Partners, now a division of Premier Health Partners ("Employer" or "Premier"), began to participate in an employee benefit plan sponsored by Premier and governed by ERISA ("Plan"). The Plan included the Policy, which came under the management of Sun Life as of January 1, 2008. Doc. #19-1, PAGEID #254-81, Doc. #19-2,

PAGEID #282-301. The Policy provided for $48,000 in basic benefits and $191,000 in optional, or supplemental, benefits. Doc. #19-2, PAGEID #300. Bruce designated Richard as the beneficiary of the Policy. *Id.,* PAGEID #309.

On January 20, 2006, a final Judgment Entry - Decree of Divorce was entered in the Miami County, Ohio, Court of Common Pleas as between Bridget and Bruce ("Decree" or "Jackson Decree"). Doc. #29-1, PAGEID #576. The Decree included a provision that Bruce and Bridget would "be spending near equal time with the child." *Id.,* ¶ 9, PAGEID #577. The Decree incorporated by reference a Separation Agreement and Shared Parenting Plan ("Separation Agreement"), which was entered into by Bridget and Bruce on January 13, 2006. *Id.*, PAGEID #576, 585. Article IX of the Separation Agreement mandated that:

> In order to secure the obligation of the parties to support their child during her minority, [Bruce and Bridget] shall maintain, unencumbered, all employer-provided life insurance, now in existence at a reasonable cost, or later acquired at a reasonable cost, naming their minor child as primary beneficiary during her minority, and the obligation to do so shall continue until she (a) reach(es) the age of eighteen (18) or graduates from high school, whichever occurs last. . . .

Id., PAGEID #590. Despite this mandate, Bruce never changed the beneficiary of the Policy from Richard to Sierra.

On February 27, 2013, prior to Sierra graduating from high school, Bruce died. Doc. #19-2, PAGEID #306; Doc. #19-5, PAGEID #396. On July 17, 2013, James D. Brookshire ("Brookshire"), counsel for Sierra, wrote a letter to Sherry Jenkins ("Jenkins"), Employee Benefits Manager for Premier, in an attempt to make a claim for benefits under the Policy. Doc. #19-4, PAGEID #360-61 . Brookshire asked Jenkins to provide "any and all forms necessary to claim the basic life insurance benefits and supplemental life insurance benefits." *Id.*, PAGEID #361. On July 19, 2013, Jenkins informed Sun Life National Account Manager Sarah Victory ("Victory") of the correspondence from Brookshire, and also notified Sun Life that Richard, the listed beneficiary, had not yet made a claim for benefits. *Id.*, PAGEID #341-42. On July 30, 2013, Lisa Larson ("Larson"), the Sun Life employee responsible for claims under the Policy, spoke with Bruce's mother, who informed Larson that Sierra had "already set up the estate for [Bruce]." *Id.*, PAGEID #340. That same day, Larson sent a letter to Jenkins and Richard, requesting additional information with respect to Bruce's death and beneficiary designations. Doc. #19-3, PAGEID #322-23. On August 8, 2013, Richard submitted a Death Benefits Claim Packet to Sun Life. *Id.*, PAGEID # 326.

On August 26, 2013, Brookshire sent a letter via certified mail to Victory, renewing Sierra's claim for benefits. Doc. #29-1, PAGEID #574. Brookshire argued that other claims for the Policy proceeds were invalid, because the Decree was a Qualified Domestic Relations Order ("QDRO") under ERISA, and Article IX of the Separation Agreement required Bruce to designate Sierra as the beneficiary. *Id.*, PAGEID #574-75. Thus,

Brookshire claimed, under ERISA, Sierra was the lawful beneficiary of the Policy proceeds. *Id.*, PAGEID #575. Brookshire asked for the forms necessary to complete Sierra's claim, *id.*, and attached file-stamped copies of the Decree and Separation Agreement. Doc. #29-1, PAGEID #576-94. On September 12, 2013, Larson again wrote to Richard and Jenkins, asking for the certified original death certificate and proof, if any, that Bruce had designated Richard as the beneficiary for the Policy's optional proceeds. Doc. #19-3, PAGEID #327-29. On September 24, 2013, Richard sent a certified copy of the death certificate to Larson, Doc. #19-2, PAGEID #306; Doc. #19-3, PAGEID #331, and on October 2, 2013, Sun Life paid the Policy's basic proceeds of $48,784.77 (including interest) to Richard. Doc. #19-3, PAGEID #332-34. In an October 10, 2013, email, Jenkins informed Victory that the "basic life beneficiary that [is] printed on our forms [is] also applicable for the optional life beneficiary." Doc. #19-4, PAGEID #349 (emphasis removed). Thus, because "Bruce name[d] his beneficiary as 100% primary to Richard Jackson[, t]his would be applicable for the basic and optional life benefit." *Id.* Victory forwarded Jenkins's email to Larson, and on October 15, 2013, Sun Life paid the Policy's optional proceeds of $194,309.79 (including interest) to Richard. Doc. #19-3, PAGEID #335-37.

On November 4, 2013, Joanna Bouthot ("Bouthot"), Sun Life's Manager of Group Life Claims, informed Brookshire that Sun Life had paid the entire Policy proceeds to Richard. Doc. #19-4, PAGEID #354. On November 19, 2013, Brookshire sent an email to Bouthot, claiming that "[a]s a matter of law, the August 26, 2013[,] notice of Ms. Jackson's claim was

effective when Sun Life's Cleveland office received it on August 28, 2013." *Id.*, PAGEID #355. Having received Sierra's claim, Brookshire argued, "Sun Life was required to evaluate Ms. Jackson's claims prior to paying any money to Richard Jackson." *Id.*, PAGEID #356. Brookshire again claimed that the Decree was a QDRO, and thus Sierra "has been and remains the sole lawful beneficiary of the Sun Life insurance policies." *Id.*, PAGEID #358 (emphasis in original). Brookshire requested copies of the Policy, the contact information for the Policy's payee and information about the process, if any, by which Sierra could appeal the denial of her claim. *Id.*, PAGEID #358-59. Sun Life filed the present action in this Court on February 6, 2014, seeking a declaratory judgment that it properly paid the Policy proceeds to Richard, and also seeking injunctive relief and interpleader relief. Doc. #1. On February 27, 2014, Sierra filed an answer and counterclaim against Sun Life for judgment, seeking: a declaratory judgment that she was the lawful Plan beneficiary; recovery of benefits; statutory damages; and attorney fees. Doc. #4. Also, Sierra filed a crossclaim against Richard for conversion. *Id.* On June 2, 2015, the Court sustained Sun Life's motion for voluntary dismissal of Count III (Interpleader Relief) of Sun Life's Complaint. Doc. #46.

II. STANDARDS OF REVIEW

A. Denial of Benefits

Sierra has raised claims payment for benefits of the Policy proceeds, and for declaratory judgment with respect to those proceeds, both of which are properly brought as claims for denial of benefits under 29 U.S.C. § 1132(a)(1)(B). In a case involving denial of benefits,

the factual determinations made by a plan's claims administrator are subject to *de novo* review by this Court, "unless the plan clearly grants to the administrator discretion to construe the terms of the plan or to make benefit determinations." *Jones v. Metro. Life Ins. Co.*, 385 F.3d 654, 660 (citing *Wilkins v. Baptist Healthcare Sys., Inc.*, 150 F.3d 609, 613 (6th Cir.1998)).

> Normally, when a plan gives its administrator discretion to construe and interpret the plan . . ., a court reviews the administrator's decision on the eligibility of benefits under the "arbitrary and capricious" standard. However, this deferential standard does not apply to a plan administrator's determination of questions of law . . . ; a court reviews those questions *de novo.*

Daft v. Advest, Inc., 658 F.3d 583, 594 (6th Cir. 2011) (citations omitted). Sun Life, in its motion, concedes that "the central issue [in this case] is one of law," Doc. #50, PAGEID #685 n.1, specifically, whether the Decree is a QDRO. Thus, the Court must review Sun Life's decision to pay the Policy proceeds to Richard, and not Sierra, *de novo.* The Court, in its review, is limited to the materials contained in the administrative record, *Wilkins*, 150 F.3d at 619 (Gilman, J., concurring), unless "evidence outside the record 'is offered in support of a procedural challenge to the administrator's decision, such as an alleged lack of due process afforded by the administrator or alleged bias on its part.'" *Johnson v. Connecticut Gen. Life Ins. Co.*, No. 08-3347, 324 F. App'x 459, 466 (6th Cir. 2009) (quoting *Wilkins*, 150 F.3d at 619).

B. Other Relief Sought

In addition seeking payment of benefits, Sierra seeks statutory damages against Sun Life, and Sun Life seeks a declaratory judgment regarding the proper payee, and, in the alternative, equitable relief against Richard pursuant to 29 U.S.C. § 1132(a)(3). Doc. #1, ¶¶ 22-24, PAGEID #7. As both Sun Life and Sierra "seek[] remedies beyond ERISA plan benefits, . . . a motion for summary judgment [is] the appropriate procedural vehicle." Doc. #50, PAGEID #685 n.1; *accord*: *Craft v. Prudential Ins. Co. of Am.*, No. C2-CV-03-1007, 2006 WL 495972, at *13 (S.D. Ohio Feb. 28, 2006) (Frost, J.) (evaluating motion for judgment under 29 U.S.C. § 1132(a)(3) as motion for summary judgment).

Summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment must be entered "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The moving party always bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material fact. *Id.* at 323; *see also Boretti v. Wiscomb*, 930 F.2d 1150, 1156 (6th Cir. 1991).

Once the moving party has met its initial burden, the nonmoving party must present evidence that creates a genuine issue of material fact making it

necessary to resolve the difference at trial. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Once the burden of production has so shifted, the party opposing summary judgment cannot rest on its pleadings or merely reassert its previous allegations. It is not sufficient to "simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). Rule 56 requires the nonmoving party to go beyond the pleadings and present some type of evidentiary material in support of its position. *Celotex*, 477 U.S. at 324. "The plaintiff must present more than a scintilla of evidence in support of his position; the evidence must be such that a jury could reasonably find for the plaintiff." *Michigan Prot. & Advocacy Serv., Inc. v. Babin*, 18 F.3d 337, 341 (6th Cir. 1994).

"Summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. In determining whether a genuine dispute of material fact exists, a court must assume as true the evidence of the nonmoving party and draw all reasonable inferences in favor of that party. *Id.* at 255. If the parties present conflicting evidence, a court may not decide which evidence to believe. Credibility determinations must be left to the fact-finder. 10A Wright, Miller & Kane, *Federal Practice and Procedure Civil 3d*, 2726 (1998).

In determining whether a genuine dispute of material fact exists, a court need only consider the materials cited by the parties. Fed. R. Civ. P. 56(c)(3).

"A district court is not . . . obligated to wade through and search the entire record for some specific facts that might support the nonmoving party's claim." *InterRoyal Corp. v. Sponseller*, 889 F.2d 108, 111 (6th Cir. 1989), *cert. denied*, 494 U.S. 1091 (1990). However, if it so chooses, the court may consider other properly presented materials in the record. Fed. R. Civ. P. 56(c)(3).

III. SUN LIFE AND SIERRA'S MOTIONS

A. Decree is a QDRO

"ERISA contains a broad preemption clause, the effect of which is generally to trump state law with respect to the designation of beneficiaries under ERISA-controlled insurance policies. However, ERISA exempts from such preemption any divorce decree that constitutes a [QDRO]." *Kent v. Minnesota Life Ins. Co.*, No. 2012-78 (WOB-JGW), 2013 WL 8632345, at *4 (E.D. Ky. Oct. 29, 2013) (citing *Metro. Life Ins. Co. v. Marsh*, 119 F.3d 415, 420, 421 (6th Cir.1997)); *see also* 29 U.S.C. § 1144(a) (preemption), (b)(7) (exception for QDROs). The parties do not dispute that the Policy is controlled by ERISA. Thus, if the decree is not a QDRO, then the language in the Policy naming Richard as the beneficiary preempts Article IX's mandate that Bruce designate Sierra as the beneficiary, and Richard is the proper payee. If, however, the decree is a QDRO, then Article IX's requirement that Sierra be designated as the beneficiary controls, and Sierra is the proper payee. The issue of whether the Decree is a QDRO is a threshold question of law, and one the Court must address before it may evaluate the other arguments raised by the parties. *Stewart v. Thorpe Holding Co. Profit Sharing Plan*, 207 F.3d 1143, 1150 n.5 (9th Cir.

2000); *see also Seaman v. Johnson*, No. 02-1208, 91 F. App'x 465, 469 (6th Cir. 2004) ("where the proper distribution of assets is arguably controlled by a state-court domestic relations order, the threshold question is whether that order represents a QDRO as defined by 29 U.S.C. § 1056 of ERISA. That initial question is one for the federal courts.").

For the Decree to be considered a QDRO, it must first meet the requirements of a domestic relations order under ERISA. 29 U.S.C. § 1056(d)(3)(B)(ii). The parties do not dispute that the Decree qualifies as a domestic relations order. Second, the Decree must specify:

> (i) [T]he name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,
> (ii) [T]he amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,
> (iii) [T]he number of payments or period to which such order applies, and
> (iv) [E]ach plan to which such order applies.

29 U.S.C. § 1056(d)(3)(C). The Jackson Decree meets the first half of sub-section (i), by listing Bruce's name and mailing address. Doc. #29-1, PAGEID #576. Moreover, the Decree specifies the period to which Article IX applied: until the later of Sierra's eighteenth birthday or her graduation from high school. *Id.*, PAGEID #590. Such language satisfies sub-section (iii).

Sun Life claims that the Jackson Decree failed to: (1) identify Sierra as the beneficiary; (2) specify the percentage of benefits to be paid to her; (3) list her mailing address; or (4) name the plan or plans that were to be covered by the decree. Thus, Sun Life argues, the Decree failed to comply with part of sub-section (i) and the entireties of sub-sections (ii) and (iv), and the Decree is not a QDRO. Doc. #50, PAGEID #698-99 (citing *Mack v. Mack*, No. 08-11009, 2009 WL 910681 , at *4 (E.D. Mich. Apr. 1, 2009)). The first two alleged deficiencies are immaterial. Article IX of the Decree states that the sole primary beneficiary of any insurance policy on the life of Bruce and Bridget shall be "their minor child." Doc. #29-1 , PAGEID #590. As Sierra was the only child of Bruce and Bridget's marriage, 100% of the benefits of any policy should be paid to her, thus satisfying sub-section (ii). For that same reason, the fact that Sierra was not specifically named in Article IX does not prevent the Decree from substantially complying with sub-section (i).

With respect to Sierra's mailing address, the Ohio Supreme Court has held that when a divorce decree, like the Jackson Decree:

> [P]rovides for shared parenting of a child, each parent, regardless of where the child is physically located or with whom the child is residing at a particular point in time, as specified in the order, is the residential parent, the residential parent and legal custodian, or the custodial parent of the child.

Fisher v. Hasenjager, 116 Ohio St.3d 53, 2007-Ohio-5589, 876 N.E.2d 546, ¶ 25 (quoting Ohio Rev. Code§ 3109.04(K)(6)) (internal quotation marks

omitted). Thus, Sierra argues, by operation of law, her address is presumed to be the home address of either Bruce or Bridget, depending on which parent she was staying with at the time in question. Sun Life counters that Sierra's argument is belied by the administrative record, which shows that Sierra's home address during his senior year of high school was different than the respective addresses of Bruce and Bridget listed on the Decree. Moreover, Bruce's address at the time of his death was different than what was listed on the Decree. Doc. #57, PAGEID # 985-86 (citing Doc. #19-5, PAGEID #396; Doc. #29-1, PAGEID #576); Doc. #19-2, PAGEID #306.

The Court in *Marsh* held that, for the purposes of substantial compliance with sub-section (i), "[t]he decree contains the addresses of the children since it provides the address of their [parent] in whose custody they were placed." *Marsh*, 119 F.3d at 422. Similarly, it is undisputed that, at the time of Bruce's death, Sierra was a full-time high school student who was subject to a shared parenting plan. Thus, the Court finds that the Jackson Decree, which listed both Bruce and Bridget's names and addresses, also listed Sierra's address for the purpose of compliance with 29 U.S.C. § 1056(d)(3)(i).[1]

Finally, Sun Life argues that Article IX provides no guidance as to whether "the Divorce Decree applies to the [Policy], or any other plan or policy . . . . If multiple

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[1] The cases cited by Sun Life, and the cases that cite to *Marsh* for the above proposition, did not disqualify a decree from being a QDRO because the beneficiary, at the time of death, was not residing at the address listed in the Decree.

plans or policies existed, it would be impossible to know which plan the Divorce Decree was intended to apply to and override." Doc. #50, PAGEID #697. Thus, Sun Life claims, the Decree did not comply with 29 U.S.C. § 1056(d)(3)(iv), and is not a QDRO. *Id.*, PAGEID #698. Article IX required Bruce and Bridget to designate Sierra as the beneficiary of "all employer-provided life insurance, now in existence at a reasonable cost, or later acquired at a reasonable cost." Doc. #29-1, PAGEID #590. Article IX did not identify any life insurance policy or policies, or even specify Bruce or Bridget's employers; nor did it specify what constituted "a reasonable cost" for life insurance. Other courts have found that when a divorce decree omits similar details, that decree is not a QDRO. *Lavelle v. Lavelle*, No. 1 :11-CV-600, 2011 WL 12832312, at *3 (N.D. Ohio Jul. 12, 2011) (provision that included obligations of parties to "[m]aintain and pay the premiums for life insurance upon his or her life currently in effect . . ." did not "meet the minimum requirements of a QDRO," as there was no "ERISA policy specifically identified in the order."); *Deaton v. Cross*, 184 F. Supp. 2d 441, 444 (D. Md. 2002) ("any policy of insurance available to him through his employer" was too ambiguous to satisfy 29 U.S.C. § 1056(d)(3)(C)(iv)).

Sierra argues that Sun Life is asking the Court to require literal compliance with 29 U.S.C. § 1056(d)(3)(C)(iv), when substantial compliance is all that is required. Doc. #51 , PAGEID #755 (citing *Mattingly v. Hoge*, No. 07-5253, 260 F. App'x 776, 780 (6th Cir. 2008); *Metro. Life Ins. Co. v. Clark*, No. 05-1069, 159 F. App'x 662, 665 (6th Cir. 2005); *Marsh*, 119 F.3d at 422). Sierra is correct that the Decree need only substantially comply with 29 U.S.C. § 1056(d)(3)(C),

meaning that the QDRO "permit[s] identification of the plan and is not ambiguous . . . . [W]e should not demand literal compliance where Congress' intent has been to give effect to domestic relations orders where it is clear what the decree intended." *Marsh*, 119 F.3d at 422. Article IX satisfies all of the *Marsh* requirements. First, the intent of Article IX is apparent on its face: to ensure that Sierra, as the only child of the marriage, was cared for financially in the event of either Bruce or Bridget's death. Second, there is no dispute that Bruce, through the Policy, had insurance provided by his employer on the date of the Decree's entry. There is no record of Bruce having maintained life insurance from previous employers, if any. Therefore, the Policy is readily identifiable as the only "employer-provided life insurance, now in existence." Doc. #29-1, PAGEID #590.

Third, the additional language in the Decree, "at a reasonable cost," and "employer-provided health insurance . . . later acquired," *id.,* do not render the Decree ambiguous, because they do not refer to other plans. Rather, they are properly read as contingencies, none of which materialized. As discussed above, Bruce never changed employers or acquired new Premier-provided insurance after the Decree and Judgment were entered. The phrase "at a reasonable cost," has been litigated mostly when post-decree circumstances (*e.g.*, loss of employer subsidy, age and health of party to decree) have required trial courts to determine whether insurance can be obtained or maintained at a reasonable cost to the party to the decree. *See, e.g.*, *Rock v. Rock*, 2d Dist. Montgomery No. 25311 , 2013-Ohio-390; *Vlah v. Vlah*, 11th Dist. Geauga No. 97-G-2049, 1997 WL 750812 (Nov. 28, 1997); *Pope v. Pope*,

6th Dist. Lucas No. L-96-198, 1997 WL 177697 (Apr. 11, 1997); *Yost v. Unanue*, 109 Ohio App. 3d 294, 296, 299-300, 671 N.E.2d 1374 (5th Dist. 1996). In this case, there is no dispute among the parties as to whether Bruce's payment for the Policy—$16.82 per pay period, Doc. #19-2, PAGEID #308— is a reasonable cost. Nor is there evidence of any event, *e.g.*, loss of employment, which would have made it impossible for Bruce to maintain the Policy at a reasonable cost. In sum, the contingencies listed in the Decree, which could have resulted in uncertainty regarding whether the Policy was covered by the Decree, never occurred, and thus do not render the Decree ambiguous.

As a matter of law, the Decree substantially complied with 29 U.S.C. § 1056(d)(3)(C), is a QDRO, and is exempt from ERISA's broad preemption provision.

B. Sierra is the Proper Payee of, and Should be Awarded, the Policy Proceeds

Sun Life argues that, even assuming *arguendo* that the Decree is a QDRO, Sierra's motion should be overruled. Doc. #50, PAGEID #703. Sun Life proffers four main supporting arguments, which the Court addresses in turn.

1. Sierra's Remedies not Limited to Probate Claim

Sun Life notes that "Article IX of the Divorce Decree states that 'the parties' minor child and the other party shall have a valid claim against the probate estate of a non-compliant party to the extent that this provision has not been fully obeyed.'" Doc. #50, PAGEID #703 (emphasis removed) (quoting Doc. #29-1, PAGEID

#591). Sun Life claims that, because the Decree was incorporated into a final judgment, any person who, by the Decree, is afforded a remedy against Bruce's estate for alleged noncompliance by Bruce, is limited to a claim against his estate. *Id.*, PAGEID #705-06 (citing *Hohertz v. Estate of Hohertz*, 802 N.W.2d 141, 146 (Neb. App. 2011); *Stadalsky v. Stadalsky*, 8th Dist. Cuyahoga No. 51878, 1987 WL 7885 (Mar. 12, 1987)).

Sierra argues that a limitation of remedy to a claim against Bruce's probate estate is contrary to the plain language of ERISA and the legislative intent of the section on QDROs, which was enacted to '"give enhanced protection to the spouse and dependent children in the event of divorce or separation."' Doc. #58, PAGEID #1018 (emphasis in original) (quoting *Boggs v. Boggs*, 520 U.S. 833, 847, 117 S.Ct. 1754, 138 L.Ed.2d 45 (1997)). Further, Sierra claims, there is no language in the decree that limits her remedy to a claim against the probate estate, and under ERISA, a "QDRO cannot be used solely to relinquish a beneficiary's claim to benefits governed by ERISA." *Id.*, PAGEID #1010 (citing *Kennedy v. Plan Admin. For DuPont*, 555 U.S. 285, 129 S.Ct. 865, 172 L.Ed.2d 662 (2009)) (emphasis added).

Sierra's argument is persuasive. The intent of the remedy provision in Article IX is apparent on its face: to provide Sierra with an express remedy against the probate estate of Bruce or Bridget in the case of non-compliance by one or both; Article IX contains no language that would purport to limit Sierra's other remedies, and to read in additional limitations would contravene ERISA's plain language and its legislative intent. Moreover, Sun Life's correct statement of law—

that "parties are bound by the remedies and terms of the separation agreement they have agreed upon and entered into," Doc. #50, PAGEID #705 (emphasis added)—undercuts its argument. Sierra was not a party to the Decree; nor did she give up valuable consideration in exchange for limiting her remedies to an action against Bruce's estate. Further, and contrary to Sun Life's assertion, *id.*, Sierra is not attempting to assert her rights under the Decree, or attempting otherwise to be bound by it. Rather, Sierra has sought a declaratory judgment that, under ERISA, Article IX is a QDRO, and, consequently, that she is the proper recipient of the Policy proceeds. Thus, the state court cases cited by Sun Life in support of its argument[2] are inapposite, and certainly are not binding on this Court.

Further, Sun Life argues that, "in the absence of an otherwise specific remedy, the typical remedy for a party's failure to comply with a domestic relations order is to file for contempt—not to seek relief from a third party who was unaware of the divorce decree." Doc. #50, PAGEID #706 (citing *Waites v. Waites*, 5th Dist. Fairfield, No. 15-CA-1, 2015-Ohio-2916; *Byron v. Byron*, 10th Dist. Franklin No. 03AP-819, 2004-Ohio-2143; *Saeks v. Saeks*, 24 Ohio App.3d 67, 493 N.E.2d 280 (2d Dist. Montgomery)). However, in all three of

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[2] Doc. #50, PAGE ID #705-06 (citing *Hohertz*, 802 N.W .2d at 146 (Neb. App. 2011); *Harper v. Harper,* 8th Dist. Cuyahoga No. 96454, 2011-Ohio-5276; *Kelly v. Kelly*, 2d Dist. Champaign No. 2008 CA 28, 2009-Ohio-6586; *J.F. v. D.B.*, 165 Ohio App.3d 791 , 2006-Ohio-1175, 848 N.E.2d 873 (9th Dist.); *McGee v. McGee*, 168 Ohio App. 3d 512, 2006-Ohio-4417 860 N.E.2d 1054 (9th Dist.); *Franchini v. Franchini*, 11th Dist. Geauga No. 2002-G-2467, 2003-Ohio-6233; *Zamonski v. Wan*, 2d Dist. Montgomery No. 19392, 2003-Ohio-780; *Stadalsky*, 1987 WL 7885, at *3.

the cited cases, a party to the divorce decree sought a contempt order against an ex-spouse for non-compliance with that decree. *Waites*, 2015-Ohio-2916, at ¶ 2; *Byron*, 2004-Ohio-2143, at ¶ 1; *Saeks*, 24 Ohio App. 3d at 69. Sun Life cites no caselaw in support of its argument that a non-party to a divorce decree must file a contempt motion to enforce its rights under that decree.

Moreover, to impose such strict limitations on remedies would not only violate ERISA's plain language and statutory intent, it may also be illogical in this instance. Sierra, as noted above, set up Bruce's estate. Doc. #19-4, PAGEID #340. If Sierra served as the administratrix of Bruce's estate, then she would represent the estate in any claim or legal proceeding against the estate. Thus, Sierra, in an individual capacity, may have been forced to pursue a claim against herself in a representative capacity. Finally, and most importantly, the gravamen of Sierra's counterclaims and motion is not that Bruce deprived her of her rights under the Decree by not changing the beneficiary on the Policy. Rather, it is that Sun Life, in paying the Policy proceeds to Richard in contravention of a valid QDRO, violated ERISA, and that Sun Life should be ordered to pay her the Policy proceeds. Doc. #4, ¶¶ 25, 29-30, PAGEID #156-57. Sierra's claims are properly brought under ERISA, and the Decree does not prevent her from bringing those claims.

2. Bruce and Bridget's Failure to Comply with Article IX does not Extinguish Sierra's Claim Against Sun Life

Sun Life claims that Bruce and Bridget failed to comply with the Decree's requirements to change the name of the beneficiary (Bruce), monitor the beneficiary designation (Bruce and Bridget), and contact Premier or Sun Life to ensure that the beneficiary designation had been changed (Bridget). Doc. #50, PAGEID #707-08 (citing Doc. #19-2, PAGEID #308-09; Doc. #29-1, PAGEID #574-94. Sun Life argues that, regardless of whether the Decree is a QDRO, Bruce and Bridget's failure to comply with Article IX extinguished any rights that Sierra may have had vis-à-vis Sun Life, which was not a party to the Decree, was not in privity with any party to the Decree, and was unaware of the Decree until after Bruce's death. *Id.,* PAGEID #710-11.

As above, the cases cited by Sun Life are inapposite. Both *Ballard Grp., Inc. v. DNP Int'l Inc.*, No. 1:05-cv-547, 2006 WL 3168348, at *1 (S.D. Ohio Nov. 1, 2006) (Barrett, J.), and *Schrader v. Schrader*, 4th Dist. Hocking No. 03CA20, 2004-Ohio-4104, deal with state common law issues of privity and whether a contract may be enforced against a particular non-party to that contract. While Sierra may not bring a breach of contract action with respect to the Decree against Sun Life, she has brought an ERISA claim regarding denial of benefits, not a claim for common law breach of contract. Moreover, because the Decree has been determined to be a QDRO, "the beneficiary is determined by its language alone, without respect to

any beneficiary designation form. The only requirement is that the ERISA plan administrator must receive the QDRO." *Metro. Life Ins. Co. v. Cronenwett*, 162 F. Supp. 2d 889, 900 n.5 (S.D. Ohio 2001) (Rice, C.J.). As discussed above, a QDRO may not be used solely to extinguish an the rights of an intended beneficiary under that QDRO. Doc. #58, PAGE ID #1010 (citing *Kennedy*, 555 U.S. 285). Thus, upon Bruce's death and receipt of the Decree, Sun Life was required—under ERISA, rather than any common law contract principle—to pay benefits to Sierra. Any noncompliance with Article IX by Bruce or Bridget cannot be used to limit Sierra's rights under ERISA.

While Sun Life was not aware of the Decree until after Bruce's death, the record unambiguously shows that Sierra's attorney provided Sun Life with a copy of the Decree at least five weeks prior to its payment of the Policy's basic proceeds to Richard. Doc. #19-3, PAGEID #332-34; Doc. #29-1, PAGEID #574.[3] The facts that Sun Life was not a party to the Decree, and was unaware of the Decree's existence until after Bruce's death, do not, by themselves, defeat Sierra's

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[3] Both cases cited by Sun Life in support of its argument that it had insufficient notice, Doc. #50, PAGEID #713, are readily distinguishable. Sun Life concedes that, in *Winters v. Kutrip*, the claimant did not submit a copy of the relevant QDRO to the insurer until "two weeks after the plan ha[d] paid benefits to the named beneficiary in accordance with the terms of the plan." *Id.* (citing *Winters*, No. 01-3751, 47. F. App'x 143, 147-48 (3d Cir. 2002)) The issue before the Court in *Robinette v. Hunsecker*, was whether a divorce decree modified posthumously could qualify as a valid QDRO. 66 A.3d 1093, 1104-05, 212 Md. App. 76 (Md. Ct. Spec. App. 2013). In this case, the Decree was a valid QDRO, and was entered into more than seven years prior to Bruce's death.

counterclaims, and to the extent that Sun Life's motion for judgment is based on those facts, it must be overruled.

3. Richard's Right to Policy Proceeds Never Vested

As discussed above, Sun Life was not made aware of the Decree's existence until after Bruce's death. Under Ohio law, the rights of a life insurance policy's designated beneficiary vests upon the insured's death, and any attempt to change the beneficiary after that point is ineffective. Doc. #50, PAGEID #711-12 (citing *Stone v. Stephens*, 92 Ohio App. 53, 57, 110 N.E.2d 18 (2d Dist. 1950)). Sun Life argues that principle applies even when, as here, the Policy is governed by ERISA. Consequently, Sun Life claims, Richard's expectancy interest in the Policy proceeds vested upon Bruce's death, and Sierra's claim with respect to the Policy proceeds was untimely, even assuming *arguendo* that she would have otherwise been the proper payee. *Id.*, PAGEID #712 (citing *Chastain v. AT&T*, No. CIV-04-0281-F, 2007 WL 3357516, at *10 (W.D. Okla. Nov. 8, 2007); *Foss v. Lucent Tech. Inc.*, No. 03-CV-5017(DMC), 2006 WL 3437586, at *9 (D.N.J. 2006); *Phoenix Mut. Life Ins. Co. v. Adams*, 828 F. Supp. 379, 386 (D.S.C. 1993)). Sierra claims that, because the Decree is a QDRO, Bruce's designation of Richard "as the beneficiary of the basic life insurance benefits was unenforceable, and [Richard] has no interest in the Policy benefits that could ever vest." Doc. #58, PAGEID #1026.

As discussed above, the beneficiary listed in the QDRO is the proper payee, regardless of the beneficiary named on the Policy's designation form. *Cronenwett*,

162 F. Supp. 2d at 900 n.5. Thus, Sierra is not attempting to alter the beneficiary designation or claim that her rights vested prior to Bruce's death. Rather, by operation of law, the beneficiary designation changed once the Decree was entered in 2006, and upon entry, Sierra obtained an expectancy interest in the Policy proceeds. That expectancy interest vested upon Bruce's death, and because Sun Life received the QDRO prior to payment, it was obligated to pay the insurance proceeds to Sierra, rather than to Richard.

4. Remand to Sun Life is Unnecessary

Sun Life argues that, if the Court were to determine that it had engaged in a flawed decision-making process in determining that Richard was the proper payee of the Policy proceeds, then the matter should be remanded to Sun Life for further review, rather than the Court issuing an order awarding benefits to Sierra. Doc. #50, PAGEID #715-16 (citing *Javey v. Lucent Tech., Inc. LTD Plan*, 741 F.3d 686, 699 (6th Cir. 2014); *Elliott v. Metro. Life Ins. Co.*, 473 F.3d 613, 622 (6th Cir. 2006)). However, "where a plan administrator properly construes the plan documents but arrives at the wrong conclusion that is simply contrary to the facts, a court should award benefits." *Shelby Cnty. Health Care Corp. v. Majestic Star Casino*, 581 F.3d 355, 373-74 (6th Cir. 2009) (internal quotation marks and citation omitted). Whether Sun Life undertook a flawed-decision making process in its initial determination is irrelevant; no additional review by Sun Life is necessary when the relevant documents compel the following conclusions as matters of law: (1) that the Decree is a QDRO; and (2) Sierra is the only proper payee of the Policy proceeds. Accordingly,

the Court will enter an order mandating payment to Sierra, without remanding to Sun Life for rehearing.[4]

C. Sierra has no Viable Claim for Statutory Damages

Sierra claims that, despite twice submitting her claim for Policy benefits and requesting Policy documents from Sun Life directly on two other occasions, Sun Life refused to review her claim or to send her a copy of the Policy and claim forms to which she was allegedly entitled under the law. Doc. #51, PAGEID #762-63 (citing Doc. #19-4, PAGEID #354-59, Doc. #29-1 , PAGEID #574-75). Sierra argues that Sun Life, in refusing to respond to Sierra's requests for documents, violated 29 U.S.C. § 1024(b)(4)(B), *id.*, PAGEID #765, and that Sun Life's refusal to investigate her claim for Policy benefits "arbitrarily, recklessly, indifferently, or intentionally disregarded Sun Life's duties to Ms. Jackson." *Id.*, PAGEID #766. Sierra claims that those refusals subject Sun Life to statutory damages under ERISA. *Id.*, PAGEID #763-64 (citing 29 U.S.C. § 1132(c)(1)).

Only plan administrators may be held liable for statutory damages under 29 U.S.C. § 1132(c)(1). *Butler v. United Healthcare of Tennessee*, 764 F.3d 563, 569-70 (6th Cir. 2014). A plan administrator is "(i) the person specifically so designated by the terms of the

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[4] As Jenkins stated in an October 10, 2013, email to Victory, "[t]he basic life beneficiary that [is] printed on our forms [is] also applicable for the optional life beneficiary." Doc. #19-4, PAGEID #349 (emphasis removed). Thus, Sun Life must pay $48,000 in basic proceeds and $191 ,000 in optional proceeds, plus interest, to Sierra.

instrument under which the plan is operated; [or] (ii) if an administrator is not so designated, the plan sponsor." 29 U.S.C. § 1002(16)(A). The term "plan administrator" is not defined within the Policy or elsewhere in the administrative record, and Sun Life claims that Premier is the plan sponsor, which is defined as "the employer in the case of an employee benefit plan established or maintained by a single employer," 29 U.S.C. § 1002(16)(B)(i). Thus, Sun Life argues, as it is neither the Plan administrator nor Plan sponsor, statutory damages may not be assessed against it. Doc. #50, PAGEID #716 (citing *Caffey v. Unum Life Ins. Co.*, 302 F.3d 576, 584-85 (6th Cir. 2002)) (internal quotation marks and citations omitted) (when a plan administrator is not specified, "ERISA's default provision dictates that [employer], not [insurer], is the plan administrator. . . . Consequently, even if [plaintiff] could show that [insurer] failed to respond to written requests for a summary plan description, [insurer] would not be liable for statutory damages under § 1132(c).").

The Policy states that "[t]he Plan Administrator has delegated to Sun Life its entire discretionary authority to make all final determinations regarding claims for benefits under the benefit plan insured by this Policy." Doc. #19-2, PAGEID #296. Sierra argues that, given the complete delegation by Premier, and that "it is undisputed that Sun Life is required to pay claims under the Policy from its own assets[,] . . . Sun Life is the administrator of the Policy." Doc. #58, PAGEID #1028 (citing *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 128 S.Ct. 2343, 171 L.Ed.2d 299 (2008)). However, for two reasons, *Glenn* is inapplicable, and Sierra's claim for statutory damages against Sun Life fails as a

matter of law. First, in *Glenn*, both the claimant and the insurer understood the insurer to be the plan administrator for the policies in question. 554 U.S. at 108. However, "[t]he role of claims administrator usually does not confer on that party the status of plan administrator. Quite often, indeed, the claims administrator and the plan administrator are not the same." *Butler*, 764 F.3d at 570 (6th Cir. 2014) (internal quotation marks and citation omitted). It is undisputed that Sun Life is the claims administrator, "the entity that 'administers claims for employee welfare benefit plans and has the authority to grant or deny claims.'" *Id.* (quoting *Moore v. Lafayette Life Ins. Co.*, 458 F.3d 416, 438 (6th Cir. 2006)). However, the Policy's plain language demonstrates unambiguously that Sun Life is not the plan administrator—if it were, then there would be no need for the "Plan Administrator [to] delegate[] to Sun Life its entire discretionary authority." Doc. #19-2, PAGEID #296 (emphasis added).

Second, *Glenn* involved a claim for benefits under 29 U.S.C. § 1132(a)(1)(B), not for statutory damages under 29 U.S.C. § 1132(c). 554 U.S. at 108. *Glenn* did not address the issue of an entity against whom statutory damages could be assessed under 29 U.S.C. § 1132(c), and even after *Glenn*, the Sixth Circuit has stated consistently that only plan administrators may be subject to such damages. *Butler*, 764 F.3d at 570; *McCollum v. Life Ins. Co. of N. Am.*, No. 11-2257, 495 F. App'x 694, 705 (6th Cir. 2012). Because Sun Life is not the Policy's plan administrator, Sierra's motion for judgment is overruled with respect to her counterclaim for statutory damages.

D. Sun Life's Equitable Claim Against Richard

In Count I of its Complaint, Sun Life, pursuant to 29 U.S.C. § 1132(a)(3), sought "to enjoin Richard E. Jackson from dissipating the Plan Benefits and to order Richard E. Jackson to deposit the Plan Benefits with the registry of this Court." Doc. #1, ¶¶ 24, PAGEID #74. In its motion for judgment, Sun Life stated that it "reserves the right to seek reimbursement from Richard Jackson for the Plan Benefits previously paid to him, as equitable relief," Doc. #50, PAGEID #719, if the Court were to determine that Sierra, and not Bruce, was the proper payee of the Policy proceeds. 29 U.S.C. § 1132(a)(3) permits an action "by a . . . fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations." Section IV of the Policy requires Sun Life to "pay the amount of Life Insurance in force on the Employee's date of death," Doc. #19-1 , PAGEID #275, and the Court has already determined that Sierra, not Richard, is the proper payee, and that Richard has no rights to the proceeds. As dissipation of the Policy proceeds by Richard would violate the Policy, an injunction to prevent such action is proper under 29 U.S.C. § 1132(a)(3). Thus, Sun Life's motion for judgment is sustained in part; Richard is enjoined from further dissipating the Policy proceeds, and must deposit the remaining proceeds, if any, with the Clerk of Court.

Sun Life's attempt to obtain reimbursement from Richard for any funds already spent, however, presents

a distinct issue. Sun Life relies on *Sereboff v. Mid Atl. Med. Servs., Inc.*, 547 U.S. 356, 126 S.Ct. 1869, 164 L.Ed.2d 612 (2006), in which the respondent insurer had paid the petitioners' medical expenses resulting from an automobile accident, and petitioners subsequently received a settlement from the tortfeasors. The insurer pursued an equitable claim against the petitioners under 29 U.S.C. § 1132(a)(3) to recoup its payments. *Sereboff*, 547 U.S. at 360. The Court noted that the petitioner sought to recover funds in a specifically identifiable account, and that the relevant, ERISA-governed plan required that the insureds reimburse the insurer for any payments made under the above circumstances. Moreover, the Court noted that the proceeds of the respondent's payments were within the possession and control of petitioners, who had set aside the funds in a separate account pending the outcome of the litigation. *Id.* at 360, 362-63. The Court held that that respondent's claim, while seeking money damages and sounding in contract, was actually a claim for an equitable lien on those specific funds, and, thus, an action under 29 U.S.C. § 1132(a)(3) to recover those funds was appropriate. *Id.* at 368-69.

However, unlike in *Sereboff*, there is no restriction in the Policy that set forth circumstances under which repayment of the Policy proceeds is required by the payee. Richard, in his motion for judgment, argues that "[t]he payments did not include any restrictions on [his] immediate or elected use of life insurance proceeds." Doc. #53, PAGEID #951. Sun Life does not cite any caselaw suggesting that this Court may impose an equitable lien to the extent that the Policy proceeds have already been dissipated, and where the payee has not done so in violation of any term of the Plan.

Moreover, even if 29 U.S.C. § 1132(a)(3) would allow for the imposition of an equitable lien under the above circumstances, Sun Life's claim for such a lien with respect to proceeds already dissipated may not be possible in light of the Supreme Court's decision in *Montanile v. Bd. of Trustees of Nat'l Elevator Indus. Health Benefit Plan*, 577 U.S. ---, 136 S.Ct. 651, 193 L.Ed.2d 556 (2016), in which the Court clarified the limits of the *Sereboff* holding and, consequently, the equitable relief available to Sun Life. Specifically, the Court stated that *Sereboff*:

> [L]eft untouched the rule that all types of equitable liens must be enforced against a specifically identified fund in the defendant's possession. . . . That is because the basic premise of an equitable lien by agreement is that, rather than physically taking the plaintiff's property, the defendant constructively possesses a fund to which the plaintiff is entitled.

136 S.Ct. at 659-60 (emphasis in original). Unlike the petitioners in *Sereboff*, there is no evidence as to whether Richard kept the Policy proceeds in a separate account or if he comingled the proceeds with his other accounts. Nor is there evidence that any of Richard's assets are fairly traceable to the Policy proceeds. Absent a particular fund or the ability to identify and trace the Policy proceeds, it is uncertain, in light of the ruling in *Montanile*, whether Sun Life can bring an equitable claim under ERISA to recoup such proceeds.

Accordingly, Richard is required to submit, within thirty (30) days of this Entry, an accounting of the remaining Policy proceeds, and evidence of any separate accounts in which he has maintained Policy

proceeds, or of any comingling of the Policy proceeds and his other accounts. Sun Life and Richard must submit, within thirty (30) days of this Entry, briefing on the issue of whether, in light of *Montanile*, Sun Life's claim with respect to the Policy proceeds that Richard has already dissipated is equitable or legal in nature, and whether such a claim may be brought under 29 U.S.C. § 1132(a)(3).

E. Sierra's Crossclaim for Conversion Properly Dismissed without Prejudice

In her motion for judgment, Sierra declared her intention to "seek leave of the Court to dismiss [her] conversion claim [against Richard] without prejudice," Doc. #51, PAGEID #767, and, on June 29, 2016, moved, pursuant to Rule 41(a)(2), to dismiss the crossclaim. Doc. #62. There is no indication that Sierra complied with the local rule requiring her, prior to filing a Rule 41(a)(2) motion, to consult with Richard to determine whether the he would consent to a dismissal without prejudice. S.D. Ohio Civ. R. 7.3 Nonetheless, Richard, in his memorandum *contra*, did not object to the lack of consultation or to the relief sought—dismissal without prejudice. Doc. #64. Rather, in the only portion of his memorandum pertaining to Sierra's motion to dismiss, Richard states that Sierra's motion "essentially reverses [her] original position on the 'necessary' status of Richard Jackson and [his] continued laborious involvement [in the case]. . . . The original [necessary] status was unfounded." *Id.*, PAGEID #1058. Richard's argument is not persuasive. As noted in her motion for judgment, and by the Court above, "[t]he record before the Court does not definitively show whether the funds paid by Sun Life to Defendant Richard E. Jackson have

been commingled." Doc. #51, PAGEID #767. Sierra's attorney concluded that, in light of a recent appellate court decision, Ohio law "appears to prohibit a conversion claim as to funds if they have been commingled ." *Id.* (citing *Ihenacho v. Ohio Inst. of Photography and Tech.*, 2d Dist. Montgomery CA No. 24191, 2011-Ohio-3730, ¶¶ 26). The above legal conclusion of Sierra's counsel constitutes good cause to dismiss the conversion claim without prejudice.

Moreover, to the extent that Richard is objecting to his continued involvement in this case, he cannot reasonably argue that he is prejudiced by the dismissal of a claim against him. Accordingly, Sierra's Rule 41(a)(2) motion is sustained, and her crossclaim for conversion against Richard is dismissed without prejudice.[5]

F. Summation

The Jackson Decree is a QDRO, and is enforceable against Sun Life. Sierra's rights in the basic and optional Policy proceeds vested upon Bruce's death. As Sun Life had notice of the QDRO prior to payment of the proceeds, it was required to pay those proceeds to Sierra. However, Sun Life is not the Policy's plan administrator, and, therefore, is not subject to statutory damages. Thus, Sierra's motion for judgment is sustained with respect to her claims for declaratory judgment and for recovery of benefits, and is overruled

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[5] The Court has reached the above decision without evaluating the other arguments in Richard's memorandum *contra*, which, as Sun Life correctly notes, "are unrelated to Ms. Jackson's motion[,] and Sun Life has responded to these allegations on numerous occasions." Doc. #65, PAGEID #1062.

with respect to her claim for statutory damages.[6] Sierra's motion for voluntary dismissal without prejudice of her crossclaim against Richard is sustained. Sun Life's motion for judgment is overruled with respect to its claim for declaratory judgment; its motion with respect to its claim for injunctive relief is sustained to the extent that Sun Life seeks to enjoin Richard from further dissipating the Policy proceeds, and is not ruled upon to the extent that Sun Life is seeking to recover from Richard Policy proceeds that have already been dissipated.

The specific relief ordered by the Court with respect to the above conclusions is set forth more fully below.

IV. RICHARD'S MOTION

Richard, in his *pro se* motion for judgment, seeks $323,650.00 in compensatory damages to account for the time spent and opportunity costs incurred in defending this case. Doc. #53, PAGEID #953-54. Also, Richard renews his claim that he was never a proper party to the action. *Id.*, PAGEID #953.

The Court notes that Richard has raised the argument that he is not a proper party in two previous motions to dismiss. Doc. #3, 7. The Court overruled

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[6] Sierra, in her reply memorandum "reserves the right to petition for an award of attorneys [fees] if the Court grants judgment in her favor." Doc. #58, PAGEID #1029. The Court may, in its discretion, award attorney fees to a prevailing beneficiary in an ERISA case. *First Trust Corp. v. Bryant*, 410 F.3d 842, 850 (6th Cir. 2005). Accordingly, Sierra may file a petition, post-judgment, to recover attorney fees, demonstrating good cause as to why fees should be awarded in this case, and submitting a lodestar calculation for the proper amount of fees.

those motions as "lacking any legal or evidentiary basis upon which to entertain [them] at this stage of the proceedings." Doc. #23, PAGEID #487. However, even assuming that such an argument is ripe for the Court's review at this juncture, Richard's argument is still not persuasive. As Sun Life correctly points out, Richard, as the Policy's named beneficiary and payee, has been a necessary party in the litigation to this point, "because the Court could [have] determine[d] that he was incorrectly paid benefits," Doc. #57, PAGEID #1004, and the Court has determined precisely that. Thus, Sun Life must pay Sierra the basic and optional Policy proceeds, despite having already paid those proceeds to Richard. Moreover, Sun Life's claim for equitable relief against Richard remains pending before this Court.

Richard's claim for damages to compensate for "the loss of production time and income-generating resources," Doc. #53, PAGEID #954, is futile. As this Court previously noted, Richard has not brought any claim against Sun Life or Sierra. Doc. #40, PAGEID #658. Moreover, the Court has determined that Sierra, not Richard, was the proper payee of the Policy proceeds, and has enjoined Richard from further dissipating the proceeds. As Richard is not the prevailing party in any judgment, he is not entitled to costs under Fed. R. Civ. P. 54. Therefore, Richard's motion for judgment is OVERRULED.[7]

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[7] The Court notes that none of the materials submitted by Richard in his January 2, 2016, letter to the Court supplementing his motion for judgment, Doc. #59, alter its conclusions that Richard was a proper party to this case and that Richard is not entitled to judgment, costs or attorney fees. Thus, Sierra's motion to strike Richard's letter, Doc. #61 , is overruled as moot.

V. CONCLUSION

For the foregoing reasons:

1. Sierra's Motion for Judgment, Doc. #51 , is OVERRULED with respect to her claim for statutory damages and SUSTAINED in all other respects;

2. Sun Life's Motion for Judgment, Doc. #50, is OVERRULED with respect to its claim for declaratory judgment, and is SUSTAINED IN PART and NOT RULED UPON IN PART with respect to its claim for injunctive relief;

3. Richard's Motion for Judgment on the Administrative Record, Doc. #53, is OVERRULED;

4. Sierra's Motion to Strike Richard's January 2, 2016, Letter with Attachments, Doc. #61 , is OVERRULED AS MOOT;

5. Sierra's Motion to Dismiss Crossclaim Against Defendant Richard E. Jackson Without Prejudice Per Fed. R. Civ. P. 41(a)(2), Doc. #62, is SUSTAINED;

6. Richard is enjoined from further dissipating the Policy proceeds, and is ordered to deposit the remaining proceeds, if any, with the Clerk of Court, within thirty (30) days of this Entry;

7. Richard is ordered to submit, within thirty (30) days of this Entry, an accounting of the remaining Policy proceeds, and evidence, if any, of a specific account in which he

maintained the Policy proceeds, or of any comingling of the proceeds with his general accounts;

8. Sun Life and Richard are ordered to submit, within thirty (30) days of this Entry, briefing on the issue of whether, in light of *Montanile*, Sun Life's claim with respect to Policy proceeds already dissipated is equitable or legal in nature and, whether such a claim may be brought properly under 29 U.S.C. § 1132(a)(3);

9. Sun Life is ORDERED to remit to Sierra forty-eight thousand dollars ($48,000.00) in basic proceeds and one hundred ninety-one thousand dollars ($191,000.00) in optional proceeds, plus interest, from the date of Bruce's death, within ninety (90) days of this Entry;

10. Sierra may, within thirty (30) days of ultimate judgment, submit a petition for attorney fees and a supporting lodestar calculation; and

11. Judgment shall ultimately enter in favor of Sierra and against Sun Life and Richard.

Date: August 5, 2016

/s/ Walter H. Rice
WALTER H. RICE
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 17-3120

[Filed January 18, 2018]

SUN LIFE ASSURANCE COMPANY OF CANADA, Plaintiff-Appellant,	)
v.	)
RICHARD E. JACKSON; SIERRA N. JACKSON, INDIVIDUALLY AND AS THE PERSONAL REPRESENTATIVE ON BEHALF OF THE ESTATE OF BRUCE D. JACKSON, Defendants-Appellees.	)

O R D E R

BEFORE: GILMAN, SUTTON, and STRANCH, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

APPENDIX E

Statutory Provisions Involved

29 U.S.C. § 1056. Form and payment of benefits

(d) Assignment or alienation of plan benefits

* * *

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term "qualified domestic relations order" means a domestic relations order—

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies—

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

* * *