No. _____

In The
Supreme Court of the United States

HAWAII MANAGEMENT ALLIANCE ASSOCIATION,

Petitioner,

v.

RANDY RUDEL,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

If state statutes create an adjudicatory procedure that is contrary to the exclusive civil enforcement mechanism under the Employee Retirement Income Security Act of 1974 ("ERISA"), can they provide the "relevant rule of decision" in an action brought under 29 U.S.C. § 1132 (ERISA § 502(a))?

LIST OF PARTIES

Before the court of appeals:

Petitioner Hawaii Management Alliance Association ("HMAA") was the respondent-appellant.

Respondent Randy Rudel was the petitioner-appellee.

Hawaii Medical Services Association filed an *amicus curiae* supporting the interests of the HMAA and argued in the proceedings.

The U.S. Department of Labor filed an *amicus curiae* brief supporting neither party and requested affirmance of the district court's denial of Mr. Rudel's motion for remand and denial of HMAA's motion for summary judgment.

CORPORATION DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court, HMAA hereby certifies that it has no parent corporation and that no public company holds 10% or more of its stock.

RELATED CASES

Rudel v. Hawaii Management Alliance Association, No. 15-00539-JMS-RLP, U.S. District Court for the District of Hawaii. Judgment entered on November 21, 2017.

RELATED CASES—Continued

Rudel v. Hawaii Management Alliance Association, Nos. 17-17395 and 17-17460, U.S. Court of Appeals for the Ninth Circuit. Judgment entered on September 11, 2019.

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The opinion of the court of appeals (*see* HMAA's Appendix ("Pet. App.") 1) is reported at 937 F.3d 1262. The opinion and order of the district court granting Mr. Rudel's motion for summary judgment and denying HMAA's motion for summary judgment (*see* Pet. App. 30) is not reported but available at 2017 WL 4969331.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on September 11, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Pursuant to Sup. Ct. Rules 14.1(e)(v) and 29.4(c), HMAA states that 28 U.S.C. § 2403(b) may apply to this matter and a copy of this petition has been served on the Attorney General of Hawaii. The courts below did not certify this issue to the Attorney General of Hawaii pursuant to 28 U.S.C. § 2403(a).

STATUTORY PROVISIONS INVOLVED

Haw. Rev. Stat. § 431:13-103(a)(10) provides:

Unfair methods of competition and unfair or deceptive acts or practices defined

(a) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

* * *

(10) Refusing to provide or limiting coverage available to an individual because the individual may have a third-party claim for recovery of damages; provided that:

(A) Where damages are recovered by judgment or settlement of a third-party claim, reimbursement of past benefits paid shall be allowed pursuant to section 663-10;

(B) This paragraph shall not apply to entities licensed under chapter 386 or 431:10C; and

(C) For entities licensed under chapter 432 or 432D:

(i) It shall not be a violation of this section to refuse to provide or limit coverage available to an individual because the entity determines that the individual reasonably appears to have coverage available under chapter 386 or 431:10C; and

(ii) Payment of claims to an individual who may have a third-party claim for recovery of damages may be conditioned upon the individual first signing and submitting to the entity documents to secure the lien and reimbursement rights of the entity

> and providing information reasonably related to the entity's investigation of its liability for coverage.
>
> Any individual who knows or reasonably should know that the individual may have a third-party claim for recovery of damages and who fails to provide timely notice of the potential claim to the entity, shall be deemed to have waived the prohibition of this paragraph against refusal or limitation of coverage. "Third-party claim" for purposes of this paragraph means any tort claim for monetary recovery or damages that the individual has against any person, entity, or insurer, other than the entity licensed under chapter 432 or 432D[.]

Haw. Rev. Stat. § 663-10 provides:

> **Collateral sources; protection for liens and rights of subrogation**
>
> (a) In any civil action in tort, the court, before any judgment or stipulation to dismiss the action is approved, shall determine the validity of any claim of a lien against the amount of the judgment or settlement by any person who files timely notice of the claim to the court or to the parties in the action. The judgment entered, or the order subsequent to settlement, shall include a statement of the amounts, if any, due and owing to any person

determined by the court to be a holder of a valid lien and to be paid to the lienholder out of the amount of the corresponding special damages recovered by the judgment or settlement. In determining the payment due the lienholder, the court shall deduct from the payment a reasonable sum for the costs and fees incurred by the party who brought the civil action in tort. As used in this section, lien means a lien arising out of a claim for payments made or indemnified from collateral sources, including health insurance or benefits, for costs and expenses arising out of the injury which is the subject of the civil action in tort. If there is a settlement before suit is filed or there is no civil action pending, then any party may petition a court of competent jurisdiction for a determination of the validity and amount of any claim of a lien.

(b) Where an entity licensed under chapter 432 or 432D possesses a lien or potential lien under this section:

> (1) The person whose settlement or judgment is subject to the lien or potential lien shall submit timely notice of a third-party claim, third-party recovery of damages, and related information to allow the lienholder or potential lienholder to determine the extent of reimbursement required. A refusal to submit timely notice shall constitute a waiver by that person of section 431:13-103(a)(10). An entity shall be entitled to reimbursement

of any benefits erroneously paid due to untimely notice of a third-party claim;

(2) A reimbursement dispute shall be subject to binding arbitration in lieu of court proceedings if the party receiving recovery and the lienholder agree to submit the dispute to binding arbitration, and the process used shall be as agreed to by the parties in their binding arbitration agreement; and

(3) In any proceeding under this section to determine the validity and amount of reimbursement, the court or arbitrator shall allow a lienholder or person claiming a lien sufficient time and opportunity for discovery and investigation.

For purposes of this subsection:

"Third-party claim" means any tort claim for monetary recovery or damages that the individual has against any person, entity, or insurer, other than the entity licensed under chapter 432 or 432D.

"Timely notice of a third-party claim" means a reasonable time after any written claim or demand for damages, settlement recovery, or insurance proceeds is made by or on behalf of the person.

29 U.S.C. § 1132(a) (ERISA § 502(a)) provides:

Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought—

> (1) by a participant or beneficiary—
>
> (A) for the relief provided for in subsection (c) of this section, or
>
> (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;
>
> (2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;
>
> (3) by a participant, beneficiary, or 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 or (ii) to enforce any provisions of this subchapter or the terms of the plan[.]

29 U.S.C. § 1144(b)(2)(A) (ERISA § 514(b)(2)(A)) provides:

Other laws

(a) Supersedure; effective date

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan

described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

(b) Construction and application

(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

STATEMENT OF THE CASE

By enacting ERISA, 29 U.S.C. § 1001 *et seq.*, Congress envisioned "a uniform regulatory regime over employee benefit plans." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004). Congress recognized that employers, insurers, and administrators of benefit plans need uniform standards and duties for "processing claims and paying benefits." *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 150 (2001). Employees enrolled in an ERISA-governed plan are entitled to receive "benefits due" as determined by "the terms of [their] plan," 29 U.S.C. § 1132(a), and not by the varying laws of the states in which each plan participant resides.

The Ninth Circuit upended this uniform regulatory regime by permitting Haw. Rev. Stat. §§ 431:13-103(a)(10) and 663-10 to "provide a relevant rule of decision in a federal ERISA action to determine the validity of the insurer's lien on tort settlement proceeds" even though the statutes duplicate, supplement, and supplant the ERISA civil enforcement remedy. According to the panel's decision, state law may override the terms of employee benefits plans that allow ERISA plan administrators to offset or recoup benefit payments by amounts that beneficiaries have recovered from third parties, including by way of settlements. This ability of ERISA plan administrators is critical in protecting ERISA-governed funds when beneficiaries have been made whole by other means.

The Ninth Circuit's decision contradicts established law of this Court and other circuits that a state

statute cannot provide the relevant rule of decision if it duplicates, supplements, or supplants the ERISA civil enforcement remedy. Consistent with this law, the Ninth Circuit should have held that Haw. Rev. Stat. §§ 431:13-103(a)(10) and 663-10 conflict with the policy of exclusive federal remedies embodied in ERISA.

FACTUAL BACKGROUND

Mr. Rudel was riding his motorcycle home from work on Highway 190 in Kailua-Kona, Hawaii, and sustained injuries when a car collided into his motorcycle. Pet. App. 3, 32. As a participant in an employee benefit plan sponsored by his employer, Mr. Rudel received health insurance benefits from HMAA for his medical care resulting from the accident. Pet. App. 32. After his accident, Mr. Rudel informed HMAA that he would be seeking damages from the other driver.

Under the terms of the HMAA ERISA plan, HMAA has a right to be reimbursed for any benefits it provides to a plan participant where the participant recovers from a third party in connection with the injury or illness for which the HMAA plan paid benefits:

> [HMAA] shall have a right to be reimbursed for any benefits [it] provides, from any recovery received from or on behalf of any third party or other source of recovery in connection with the injury or illness, including, but not limited to, proceeds from any settlement . . . [And] shall have a first lien on such recovery proceeds, up to the amount of total benefits

> [HMAA] pay[s] or have paid related to the injury or illness. The [participant or beneficiary] must reimburse [HMAA] for any benefits paid, even if the recovery proceeds obtained (by settlement judgment, award, insurance proceeds, or other payment):
>
> - Do not specifically include medical expenses;
> - Are stated to be for general damages only. . . .

Pet. App. 42.

On August 17, 2015, Mr. Rudel settled tort claims against the driver-tortfeasor for $1,500,000.00, which was a policy limits settlement offered by the driver's automobile insurance carrier. Pet. App. 3. The settlement release between Mr. Rudel and his carrier provided that the settlement amount "constitutes general damages . . . and does not duplicate medical payments, no-fault payments, wage loss, temporary disability benefits or other special damages previously received by Randy Rudel." Pet. App. 33. After HMAA received notice of the settlement, HMAA informed Mr. Rudel that because it paid $400,779.70 for medical claims related to Mr. Rudel's accident-related injuries, it was entitled, under the terms of the Plan, to be reimbursed in the amount of $400,779.70. *Id*.

Mr. Rudel first filed a *Petition for Determination of Validity of Claim of Lien of HMAA Pursuant to HRS §§ 431:13-103(a)(10) and 663-10* in the Circuit Court of the Third Circuit, State of Hawai'i ("Petition"). Pet.

App. 6. In his Petition, Mr. Rudel claimed that Haw. Rev. Stat. §§ 431:13-103(a)(10) and 663-10 nullified the terms of the Plan because his third-party settlement paid only "general damages" and because the Hawaii statutes only permit reimbursement for "special damages." Pet. App. 6. Mr. Rudel requested that the state court therefore find that HMAA is not entitled to any reimbursement from his settlement funds. *Id*.

HMAA removed the action to federal court based on ERISA preemption. Pet. App. 6. Mr. Rudel sought remand of the action back to state court, but the district court denied Mr. Rudel's motion to remand and held that Mr. Rudel's claim was completely preempted by ERISA § 502(a). Pet. App. 7, 48. The district court found that Mr. Rudel's Petition satisfied both prongs of the test set forth in *Aetna Health Inc. v. Davila*, 542 U.S. 200 (2004)—that (1) the plaintiff could have brought his claim under ERISA § 502(a)(1)(B) and (2) there is no other independent legal duty implicated by the defendant's actions. Pet. App. 45-48 (citing *Davila*, 542 U.S. at 210).

Following the district court's ruling on Mr. Rudel's motion to remand, Mr. Rudel filed a Motion for Determination of Validity of Claim of Lien of HMAA and HMAA filed a motion for partial summary judgment. Pet. App. 6-7. While Mr. Rudel argued that HMAA was not entitled to any reimbursement, HMAA responded that ERISA preempts the Hawaii statutes on which Mr. Rudel relies and HMAA's reimbursement claim is valid under the terms of the plan. Pet. App. 6.

The district court held that, having found the Hawaii statutes completely preempted by ERISA for purposes of jurisdiction under *Davila*, "the action now continues as if it had been filed as a § 502(a) action." Pet. App. 48. However, the district court opined that Hawaii law may still apply to Mr. Rudel's ERISA § 502(a) action if it is saved from preemption as a law "which regulates insurance" under ERISA § 514(b)(2)(A). Pet. App. 52-60 (although "[Haw. Rev. Stat.] § 663-10 clearly supplements ERISA's remedial scheme under § 502(a), and so the action is completely preempted for purposes of removal jurisdiction . . . § 431:13-103(a)(10) can still apply (if it is saved from express preemption as a law 'which regulates insurance' under [ERISA] § 514(b)(2)(A))."). In examining Haw. Rev. Stat. § 431:13-103(a)(10), which provides that reimbursement of past benefits paid is allowed under § 663-10, the district court opined that Haw. Rev. Stat. § 431:13-103(a)(10) neither provides a remedy nor a new cause of action under state law. Pet. App. 58. Instead, HRS § 431:13-103(a)(10) operates simply "'to define the scope of a benefit provided' to members of HMAA's Plan." *Id*. (internal quotations omitted).

Ultimately, the district court concluded that HRS § 431:13-103(a)(10) is saved from preemption under ERISA § 514 because it meets both prongs of the test from *Kentucky Association of Health Plans v. Miller*, 538 U.S. 329, 342 (2003), as to whether a state law regulates insurance for the purposes of ERISA § 514(b)(2)(A). Pet. App. 60-64. The district court further held that the Hawaii statutes provided the

"relevant rule of law" in assessing the merits of Mr. Rudel's claim. Pet. App. 59 (citing, *inter alia, UNUM Life Ins. Co. of Am. v. Ward*, 526 U.S. 358, 377 (1999)). Accordingly, the district court denied HMAA's motion for partial summary judgment and held that Mr. Rudel's Petition survives HMAA's ERISA preemption challenge. Pet. App. 64-65.

The Ninth Circuit affirmed the district court's decisions regarding preemption, "which held that the statutes were saved from preemption and provided the relevant rule of decision." Pet. App. 3.

REASONS FOR GRANTING THE PETITION

A. The Ninth Circuit Has Decided an Important Federal Question in a Way That Conflicts with Relevant Decisions of this Court

In *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987), the Court held that ERISA § 502(a) can serve as a basis for preemption that is both separate from express preemption under ERISA § 514(a) and unaffected by the savings clause under ERISA § 514(b). "The six carefully integrated civil enforcement provisions found in § 502(a) of the statute as finally enacted provide strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly." *Id.* (quoting *Mass. Mutual Life. Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985)) (emphasis in original). The federal scheme would be "completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law

that Congress rejected in ERISA"; thus, Congress intended the powerful preemptive force of ERISA § 502(a) to displace state actions "purport[ing] to authorize a remedy unavailable under the federal provision." *Id.* at 54-55. Accordingly, because Congress carefully weighed which rights of action to include and which to omit, any right of action not included must be deemed to have been excluded. *Id.* at 54; *see also Ingersoll Rand Co. v. McClendon*, 498 U.S. 133, 144-45 (1990).

Since *Pilot Life*, the Court has continued to recognize preemption-on-the-merits under ERISA § 502(a) as set forth by *Pilot Life* for "state laws held to be incompatible with ERISA's enforcement scheme." *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 381-83 (2002) (evaluating whether the statute at issue fell within "*Pilot Life's* categorical preemption"). Notably, this Court has held that "any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted." *Davila*, 542 U.S. at 209. This Court has cautioned that "[u]nder ordinary principles of conflict preemption, . . . even a state law that can arguably be characterized as 'regulating insurance' will be preempted if it provides a separate vehicle to assert a claim for benefits outside of, or in addition to, ERISA's remedial scheme." *Id.* at 217-18.

Therefore, after finding that a statute is "saved" under the savings clause in ERISA § 514(a) from express preemption as a law that "regulate[s] insurance[,]" if the statute duplicates, supplements, or

supplants the exclusive civil enforcement provisions of ERISA § 502(a), a court must conclude that the statute is preempted on the merits. *Pilot Life*, 481 U.S. at 53-54; *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142-43 (1990); *Rush Prudential*, 536 U.S. at 377-86; *Elliot v. Fortis Benefits Ins. Co.*, 337 F.3d 1138, 1143-44 (9th Cir. 2004) ("In addition to the straightforward application of the *Metropolitan Life* test, *Pilot Life* also introduced the concept of preemption by ERISA § 502(a), 29 U.S.C. § 1132(a)."). A law that conflicts with the remedial scheme set forth in ERISA § 502(a) cannot avoid preemption under the savings clause, because the savings clause "must be interpreted in light of the congressional intent to create an exclusive federal remedy in ERISA § 502(a)." *Davila*, 542 U.S. at 217; *see also Pilot Life*, 481 U.S. at 52.

In *Rush Prudential*, the Court held that an Illinois law giving an external review entity the power to determine medical necessity of services for a health maintenance organization subscriber was "saved" state insurance regulation. The Court opined that the state external-review law operated more like a benefits mandate (*i.e.*, like a substantive insurance standard) and "provide[d] no new cause of action under state law and authorize[d] no new form of ultimate relief." *Id.* at 379. The Court, however, recognized that a "State might provide for a type of 'review' that would so resemble an adjudication as to fall within *Pilot Life's* categorical bar[.]" *Id.* at 382. In fact, all nine Members of the Court agreed that if the independent review statute had created an additional claim or an additional

remedy, it would have been preempted under *Pilot Life* and its progeny. *See id.* at 379-80 ("[T]he state statute does not enlarge the claim for benefits beyond the benefits available in any action brought under § [502(a)]. And . . . the relief ultimately available would still be what ERISA authorizes in a suit for benefits under § [502(a)]. This case therefore does not involve the sort of additional claim or remedy exemplified in *Pilot Life*, [*Metropolitan Life*], and *Ingersoll-Rand*. . . ."); *id.* at 388 (Thomas, J., dissenting) (citing *Pilot Life* for the proposition that, "as the Court concedes," a state-law claim is preempted "if it supplements the remedies provided by ERISA").

Rush Prudential turned not on any disagreement over the validity of *Pilot Life's* prohibition on benefits adjudications that supplement ERISA § 502(a), but on the majority's determination that the independent review provision was sufficiently different from arbitration or adjudication that it was not an alternative means of determining entitlement to benefits forbidden under *Pilot Life*. *See id.* at 381-82. The majority rejected the dissent's view that the Illinois external review law imposed "an alternative scheme of arbitral adjudication at odds with the manifest congressional purpose to confine adjudication of disputes to the courts." *Id.* at 381-82. The Court held that while the statute "does resemble an arbitration provision . . . to the extent that the independent reviewer considers disputes about the meaning of a contract and receives 'evidence' in the form of medical records, statements from physicians, and the like[,]" the external reviewer

does "not hold the kind of conventional evidentiary hearing common in arbitration, but simply received medical records submitted by the parties" to ultimately come "to a professional judgment of his own." *Id.* at 383. "[R]eference to an independent reviewer is similar to the submission to a second physician, which many health insurers are required by law to provide before denying coverage." *Id.* Therefore, the second-opinion procedure for dispute resolution did not enlarge the scope of liability under ERISA. *Id.*

The Ninth Circuit's decision below is not only incompatible with *Rush Prudential*, but with *Davila* and *Pilot Life* as well. Haw. Rev. Stat. §§ 431:13-103(a)(10) and 663-10 impermissibly set forth a state adjudicatory process requiring an ERISA plan to have its lien rights determined in a state court proceeding under state law that exists contrary to and beyond the carefully crafted civil enforcement provisions in ERISA § 502(a).[1] Haw. Rev. Stat. § 431:13-103(a)(10) provides that an insurer commits an "unfair act or practice" by "[r]efusing to provide or limiting coverage available to an individual because the individual may have a third-party claim for recovery of damages; provided that [w]here damages are recovered by judgment or settlement of a third-party claim, reimbursement of past benefits shall be allowed *pursuant to section 663-10*."

[1] Notably, the Hawaii statutes do not limit lien determination proceedings to state court, but allow for these matters to be heard in federal court. By contrast, ERISA § 502 actions mandate exclusive federal court jurisdiction.

Id. (emphasis added). Haw. Rev. Stat. § 663-10(a) provides in relevant part:

> In any civil action in tort, *the court*, before any judgment or stipulation to dismiss the action is approved, *shall determine the validity of any claim of a lien against the amount of the judgment or settlement* by any person who files timely notice of the claim to the court or to the parties in the action. The judgment entered, or the order subsequent to settlement, shall include *a statement of the amounts, if any*, due and owing to any person determined by the court to be a holder of a valid lien and *to be paid to the lienholder out of the amount of the corresponding special damages recovered by the judgment or settlement.* . . . If there is a settlement before suit is filed or there is no civil action pending, then *any party may petition a court of competent jurisdiction for a determination of the validity and amount of any claim of a lien*.

Haw. Rev. Stat. § 663-10(a) (emphases added).

The Hawaii statutes require an ERISA plan insurer to submit to a court procedure to adjudicate entitlement to reimbursement of its lien—including the limitation of the insurer's reimbursement to the amount of corresponding "special damages" recovered in a judgment or settlement. The judicial lien determination process set forth by these statutes also requires timely notice of the lien, any third-party recovery, and related information; binding arbitration upon agreement; discovery; and investigation. *Id.*

Unlike the state statute at issue in *Rush Prudential* that "provide[d] no new causes of action" and did not "enlarge the [plaintiff's] claim beyond the benefits available in any [§ 502(a)] action," the statutory scheme under Haw. Rev. Stat. §§ 431:13-103(a)(10) and 663-10 more closely resembles "contract interpretation or evidentiary litigation before a neutral arbiter" than "a practice (having nothing to do with arbitration) of obtaining another medical opinion." *Rush Prudential*, 536 U.S. at 383. The judicial review permitted under Haw. Rev. Stat. § 663-10 is precisely the type of adjudication barred by *Pilot Life*, which held that ERISA § 502(a) is the "exclusive vehicle for actions by ERISA-plan participants and beneficiaries asserting improper processing of a claim for benefits." *Pilot Life*, 481 U.S. at 52.

The Fourth Circuit's decision in *Singh v. Prudential Health Care Plan, Inc.*, 335 F.3d 278 (4th Cir. 2003) further exemplifies and contrasts the difference between a state law that provides no new causes of action and does not enlarge a plaintiff's claim beyond the benefits available in any § 502(a) action versus the Hawaii statutes at issue here. In *Singh*, the Fourth Circuit determined that a Maryland anti-subrogation law "does not supply a prohibited alternative remedy" and "simply . . . defin[ed] the scope of a benefit provided to members of HMOs in Maryland—i.e., entitlement to retain their full benefit and not have it reduced by recoveries from third parties." *Singh*, 335 F.3d at 289.[2]

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[2] "The Maryland HMO Act, on which Singh relied in her complaint, regulates any person or organization that provides its

The Ninth Circuit relied on this holding to find that Haw. Rev. Stat. §§ 431:13-103(a)(10) and 663-10 operate to define the scope of benefits provided by an ERISA-governed plan. Pet. App. 25 (citing *Singh* and holding that "[t]he Hawaii Statutes operate to define the scope of a benefit provided by the Plan; they do not create additional remedies not permitted by ERISA.").

Haw. Rev. Stat. §§ 431:13-103(a)(10) and 663-10, however, are unlike the anti-subrogation law in *Singh*. The Hawaii statutes are not simply anti-reimbursement laws for all the reasons stated above. The Hawaii State Legislature *could have* passed an anti-subrogation law, but they did not do so here. Rather, they opted to subject insurers to an adjudicatory lien determination process. These state statutes should not be permitted to escape ERISA's powerful preemptive force when ERISA and the plan should govern reimbursement rights.

ERISA requires that "[e]very employee benefit plan shall be established and maintained pursuant to a written instrument." 29 U.S.C. § 1102. As the Court explained in *U.S. Airways v. McCutchen*, 569 U.S. 88 (2013), ERISA's "statutory scheme . . . is built around

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members with healthcare services on a 'prepaid basis.' Based on an HMO's provision of healthcare on a prepaid basis, the Maryland Court of Appeals construed the HMO Act to prohibit HMOs from 'pursu[ing] its members for restitution, reimbursement, or subrogation after the members have received damages from a third-party tortfeasor.'" *Id.* at 281 (citing Md. Code Ann., Health-Gen. II § 19-701(f) and *Riemer v. Columbia Medical Plan, Inc.*, 747 A.2d 677, 697 (Md. 2000)).

reliance on the face of written plan documents." *Id.* at 100-01 (citing *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 83 (1995)). "The plan, in short, is at the center of ERISA." *Id.* at 101. Under these well-established principles, the Court has refused to create a "federal common law of waiver" to override the terms of the plan documents. *Kennedy v. Plan Adm'r for DuPont Sav. & Inv. Plan*, 555 U.S. 285, 303 (2009). Instead, emphasizing "the virtues of adhering to an uncomplicated rule," and stating "the cost of less certain rules would be too plain," the Court solidified ERISA jurisprudence with the plan documents rule, which it characterized as "a straightforward rule of hewing to the directives of the plan documents[.]" *Id.* at 300-01.

Recognizing "the wisdom of protecting the plan documents rule," in the years since *Kennedy*, the Court has swept aside anything "that might obscure a plan administrator's duty to act in accordance with the documents and instruments." *Id.* at 303. For instance, in *CIGNA Corp. v. Amara*, 563 U.S. 421 (2011), the Court unanimously struck down the lower court's attempted reformation of a plan document, holding that it has "found nothing suggesting that the provision [of ERISA on which the plan participant premised her claim, § 502(a)(1)(B)] authorizes a court to alter those terms . . . where that change, akin to the reform of a contract, seems less like the simple enforcement of a contract as written and more like an equitable remedy." *Id.* at 436. Rather, the terms of the ERISA plan document govern a claim under ERISA § 502(a)(1)(B). *See* ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)

(A civil action may be brought by a participant or beneficiary "to recover benefits due to him *under the terms of his plan*, to enforce his *rights under the terms of the plan*, or to clarify his rights to further benefits *under the terms of the plan*.") (emphases added); *see also* ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) (a participant, beneficiary or fiduciary may bring a civil action "to enjoin any act or practice which violates any provision of this subchapter or *the terms of the plan*" or "to enforce any provisions of this subchapter or *the terms of the plan*.") (emphases added).

If Haw. Rev. Stat. §§ 431:13-103(a)(10) and 663-10 provide the "relevant rule of decision" in an ERISA § 502(a) action, then participants in an insured ERISA plan can simply ignore their ERISA plan's terms by purposely structuring their tort settlements to exclude "special damages" using a judicial procedure provided under state law that conflicts with ERISA's remedial regime. Because the state statutes duplicate, supplement or supplant ERISA's exclusive remedies, they cannot provide the "relevant rule of decision" in an action under ERISA § 502(a).[3] As the Ninth Circuit's

[3] Not only would permitting participants to proceed under Haw. Rev. Stat. § 431:13-103(a)(10) exceed ERISA § 502(a)'s civil enforcement rights because ERISA plan participants and insurers would be able to seek adjudication of an insurer's reimbursement lien rights (that arise under an ERISA-governed Plan) from a state court in a proceeding under state law, but it also incorrectly expands the scope of Haw. Rev. Stat. § 431:13-103(a)(10) because there is no private right of action for an insured to bring a claim under this statute. *See* Haw. Rev. Stat. § 431:13-107 ("[a]ll remedies, penalties and proceedings set forth in this article are to be invoked solely and exclusively by the commissioner.").

decision runs directly contrary to this principle, review by the Court is warranted to correct the Ninth Circuit's plain departure from this Court's prior decisions.

B. The Ninth Circuit Has Decided an Important Federal Question in a Way That Conflicts with Decisions of Other United States Courts of Appeals on the Same Important Matter

Contrary to the Ninth Circuit's holding here, a number of circuits have recognized that claims brought by ERISA plan beneficiaries alleging state-law claims that seek rights or remedies in addition to those available under ERISA will be preempted under *Pilot Life*. For instance, in *Ramirez v. Inter-Continental Hotels*, 890 F.2d 760 (5th Cir. 1989), the Fifth Circuit considered whether an ERISA plan beneficiary's state-law claims for violations of Section 16 of the Texas Insurance Code and Texas's Unfair and Deceptive Acts and Practices statutes were preempted on the merits. The court observed that although Section 16 was directed specifically at the insurance industry (as exemplified by its placement in the insurance code), "it also incorporates wholesale the Texas Deceptive Trade Practices Act, a law of general application, and provides a remedy for violations of that law by an insurance company." *Id.* at 763 (internal citation omitted). As a result, the court concluded that Section 16 was not "saved" and was preempted under *Pilot Life* for affording additional remedies:

> Even if section 16, by virtue of its location within the Texas Insurance Code, bears a

> closer relationship to the regulation of insurance than does the Mississippi law of bad faith, this lawsuit is in one vital respect indistinguishable from *Pilot Life*. Ramirez, like the plaintiff in *Pilot Life*, seeks to recover, under a state law cause of action, remedies unavailable to him under ERISA. To interpret the savings clause as authorizing such inconsistent state remedies would be to defeat Congressional intent by destroying the exclusivity of ERISA's civil enforcement provisions.

Id. at 763-64.

The First Circuit has held similarly. In *Hotz v. Blue Cross & Blue Shield of Massachusetts, Inc.*, 292 F.3d 57 (1st Cir. 2002), an ERISA plan beneficiary brought an action under Massachusetts General Laws Chapter 93A, a generally applicable state unfair and deceptive acts and practices statute, claiming her health insurer violated a state law prohibiting unfair claim settlement practices under Massachusetts General Laws Chapter 176D, § 3(9). The court reexamined and adhered to its prior precedent, which had held that state-law tort claims challenging a utilization review decision are completely preempted by ERISA. *Id.* at 60 (citing *Danca v. Private Health Care Sys., Inc.*, 185 F.3d 1 (1st Cir. 1999)). The critical inquiry, the *Hotz* court held, is whether the claim "challenged 'the process used to assess a participant's claim for a benefit payment under the plan.'" *Id.* (quoting *Danca*, 185 F.3d at 6). Such claims—including claims sounding in tort for money damages—fall "within the ambit" of ERISA's exclusive remedial provision and are completely

preempted. *Id.*; *see id.* at 58 n.1 (describing the cause of action for damages and attorney's fees). Despite any alleged "shift of emphasis by the Supreme Court," the First Circuit held that a state action for damages and attorney's fees was precisely within the scope of the *Pilot Life* rule and thus completely preempted. *Id.* at 61 (citing *UNUM Life Ins. Co. of Am. v. Ward*, 526 U.S. 358 (1999)).

The Tenth Circuit likewise has rejected the notion that a plan beneficiary can sue in tort, finding that a state tort action for bad faith was an impermissible attempt to obtain remedies precluded by Section 502(a) and therefore is preempted. *Conover v. Aetna U.S. Healthcare, Inc.*, 320 F.3d 1076, 1079-80 (10th Cir. 2003) (citing *Gaylor v. John Hancock Mut. Life Ins. Co.*, 112 F.3d 460, 466 (10th Cir. 1997)).

The crux of these cases is that "[a] state law claim may be preempted, but if the claim is under a law or regulation that is saved under ERISA § 514(b)(2)(A), then that law or regulation can 'suppl[y] the relevant rule of decision for [an ERISA] § 502(a) suit' *so long as it is not providing relief above and beyond what ERISA § 502 would provide*." *Roche v. Aetna, Inc.*, 167 F. Supp. 3d 700, 709 (D.N.J. 2016) (citing *UNUM Life Ins.*, 526 U.S. at 377) (emphasis added). The Hawaii statutes provide relief above and beyond what ERISA § 502 would provide and therefore cannot supply the relevant rule of decision for an ERISA § 502(a) action.

C. The Ninth Circuit Has Decided an Important Federal Question in a Way That Conflicts with a Decision of the Hawaii Supreme Court

In *Hawaii Management Alliance Ass'n v. Insurance Commissioner*, 100 P.3d 952 (Haw. 2004), the Hawaii Supreme Court relied on *Pilot Life* and *Rush Prudential* to strike down a portion of a Hawaii statute contained in the state's Insurance Code that provided members of an ERISA health plan with the right to participate in an independent external review subsequent to a health plan's final internal coverage decision and subsequent to an exhaustion of administrative remedies. After finding that the statute "regulates insurance" and is therefore saved from preemption, the Hawaii Supreme Court found that the statute conflicts with ERISA's civil enforcement remedy and is therefore preempted under ERISA § 502(a). *Id.* at 960.

The court recognized that "a state statute might 'so resemble an adjudication as to fall within Pilot Life's categorical bar[,]'" *Id.* (citing *Rush Prudential*, 536 U.S. 381), and held that the statute was unlike that in *Pilot Life* in that it more closely resembles "contract interpretation or evidentiary litigation before a neutral arbiter[,]" particularly in light of the "right of either party to seek judicial review" under the statute, "allowing for judicial determination of a claimant's entitlement to benefits." *Id.* This, the court held, "is precisely the type of adjudication barred by *Pilot Life*. . . ." *Id.* (citing *Pilot Life*, 536 U.S. at 52). "Thus, although the Hawaii legislature is entitled to regulate insurance by requiring external review (because external review

laws are not necessarily preempted by ERISA), [the statute] too closely resembles adjudication and therefore is preempted by [ERISA § 502(a)]." *Id.*

Under Hawaii Supreme Court precedent, therefore, Haw. Rev. Stat. §§ 431:13-103(a)(10) and 663-10 should have suffered the same fate before the Ninth Circuit. The statutes provide for judicial determination of an ERISA plan participant's benefits through the lien determination process in state court under state law. *See* Haw. Rev. Stat. § 663-10 ("In any civil action in tort, *the court*, before any judgment or stipulation to dismiss the action is approved, *shall determine the validity of any claim of a lien* against the amount of the judgment or settlement by any person who files timely notice of the claim to the court or to the parties in the action." (emphases added)).

D. The Issue Presented in this Case is Important, Significant, and Warrants the Court's Review

The issue presented in this case is both legally and practically significant. Whether ERISA preempts state laws is of fundamental importance to plan administrators, beneficiaries, employees, and claimants nationwide. As Congress opined when passing ERISA, "the continued well being and security of millions of employees and their dependents are directly affected by [employee benefit plans]; . . . [the plans] are affected with a national public interest [and] they have become an important factor affecting the stability of employment

and the successful development of industrial relations." 29 U.S.C. § 1001(a).

The skyrocketing costs of health and disability benefits demand a consistent approach to benefits administration. For this reason, ERISA plans typically include reimbursement provisions to reduce plan costs and to lower premiums for all plan participants. *See Zurich Am. Ins. Co. v. O'Hara*, 604 F.3d 1232, 1237-38 (11th Cir. 2010) ("Reimbursement inures to the benefit of all participants and beneficiaries by reducing the total cost of the Plan."). This Court has carefully honed the preemptive force and scope of ERISA's remedial scheme. But the Ninth Circuit has now allowed state statutes that "duplicate, supplement, or supplant" ERISA's civil enforcement remedy to survive a conflict preemption analysis, which undermines congressional intent that § 502(a) be "the exclusive vehicle for actions by ERISA-plan participants and beneficiaries asserting improper processing of a claim for benefits, and that varying state causes of action for claims within the scope of § 502(a) would pose an obstacle to the purposes and objections of Congress." *Pilot Life*, 481 U.S. at 53. "[D]iffering state regulations affecting an ERISA plan's 'system for processing claims and paying benefits' impose 'precisely the burden that ERISA preemption was intended to avoid.'" *Egelhoff*, 532 U.S. at 150 (citation omitted). This Court regularly grants review to eradicate such circuit-by-circuit and state-by-state distortions in the administration and payment of ERISA benefits. *See*, *e.g.*, *Amara*, 563 U.S. at 435; *McCutchen*, 569 U.S. at 94; *Sereboff v. Mid Atl. Med.*

Servs., Inc., 547 U.S. 356, 361 (2006). Inasmuch as the Ninth Circuit's decision creates disorder in the already complex area of ERISA preemption and remedies, review under these circumstances should be permitted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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