No. 21-1376

IN THE

Supreme Court of the United States

MARY ALEXANDRE,

Petitioner,

v.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA,

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

Tamara Smith Holtslag
Counsel of Record
Lincoln A. Rose
PEABODY & ARNOLD LLP
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210-2261
617-951-2100
tsmith@peabodyarnold.com
lrose@peabodyarnold.com

Dated: 06/23/2022

BATEMAN & SLADE, INC. STONEHAM, MASSACHUSETTS

QUESTIONS PRESENTED

(1) Whether, upon transfer of the underlying case from United States District Court for the Southern District of Florida to the United States District Court for the District of Massachusetts, pursuant to 28 U.S.C. § 1404(a), the First Circuit Court of Appeals correctly affirmed the District Court's application of the law of "transferee" court rather than the law of "transferor" court to interpret issues of federal law.

(2) Whether the First Circuit Court of Appeals correctly applied the decisional law of its circuit, namely its analytical framework for interpreting the term "accident" under an Accidental Death and Dismemberment Policy governed by the Employee Retirement Income Security Act of 1974 (ERISA), as set forth in Wickman v. Northwestern National Insurance Co., 908 F.2d 1077 (1st Cir. 1990), to conclude the insurance policy excludes coverage for the insured's death.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1(a), the Defendant/Appellee National Union Fire Insurance Company of Pittsburgh, PA. is a direct, wholly-owned (100%) subsidiary of AIG Property Casualty U.S., Inc., which is a wholly-owned (100%) subsidiary of AIG Property Casualty Inc., which is a wholly-owned (100%) subsidiary of American International Group, Inc., which is a publicly held corporation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES:

RULES:

INTRODUCTION

In an 11-page opinion, the First Circuit Court of Appeals affirmed the District Court's decision that National Union Fire Insurance Company of Pittsburgh, Pa. (National Union) did not abuse its discretion in denying Mary Alexandre (the Petitioner) accidental death and dismemberment (AD&D) benefits on the basis that her husband's death was not an accident under the plan it administered on behalf of the Petitioner's employer. The First Circuit's decision was based firmly on the factual record and longstanding precedent.

The Petitioner repeats two primary arguments which rely on inapplicable decisional law and were rejected by both lower courts.

First, the Petitioner once again argues that, following a transfer under 28 U.S.C. § 1404(a), a court should apply the law of the transferor court rather than that of the transferee court when interpreting a question of federal law, which involved an ERISA plan here. However, this argument defies precedent across all circuits; and even the Petitioner acknowledges that "the United States Courts of Appeals have ruled consistently with the First Circuit's" holding in this case and prior precedent, including AER Advisors, Inc. v. Fidelity Brokerage Services, LLC, 921 F.3d 282 (1st Cir. 2019), cert. denied, 140 S. Ct. 1105 (2020), that issues of federal law are to be decided under the law of the transferee court.

Second, the Petitioner contends that there is a circuit split concerning interpretation of the term "accident" in AD&D policies and that the First Circuit should have applied the Eleventh Circuit's precedent that favors a presumption against suicide "when the evidence is inconclusive as to whether the deceased died by accidental or intentional means." Horton v. Reliance Standard Life Ins. Co., 141 F.3d 1038, 1040 (11th Cir. 1998). In so arguing, the Petitioner ignores that the First Circuit did not find the evidence "inconclusive" concerning the means by which the decedent died, thus making the Horton framework inapplicable, but acknowledged that "the district court also considered the Eleventh Circuit's presumption against suicide, as set forth in Horton, but found it to be overcome." (A11). The First Circuit thus had no difficulty applying First Circuit precedent, including the framework set out in Wickman v. Northwestern National Insurance Co., 908 F.2d 1077 (1st Cir. 1990), to the facts of this case while still acknowledging, as the district court did in *dicta*, the framework of Horton. As such, the Petitioner does not raise any direct conflict between the circuits or the analytical framework they apply when interpreting an "accident" under AD&D policies. The result of this fact-specific case would be the same under either circuit's law.

Given her meritless arguments, the Petitioner's request that this Court: (1) examine AER Advisors and settled law as to the application of the transferee court's precedent to questions of federal law; and (2) evaluate whether a presumption against suicide should have been applied to her ERISA claim, does not warrant review. There is no circuit split to

resolve; the First and Eleventh Circuits' approaches to analyzing an "accident" under AD&D policies are actually compatible. Further, this Court seldom grants certiorari to review the application of longstanding law to case-specific facts, such as the means of death here.

Where both lower courts have made "concurrent findings," this Court will not overturn them absent "a very obvious and exceptional showing of error," Exxon Co. v. Sofec, Inc., 517 U.S. 830, 841 (1996). The Petitioner does not even assert that the lower courts made such an error. As such, the Petitioner has not made a showing worthy of review by this Court. For these reasons, the petition should be denied.

STATEMENT OF THE CASE

A. The AD&D Plan Sponsored By National Union

PricewaterhouseCoopers (PwC), the Petitioner's employer, sponsored AD&D Insurance Plan No. PAI19125750 (the Plan) on behalf of its eligible employees. (A28). The Petitioner was enrolled in the Plan and her husband, Marzuq Muhammad, was an insured and she was his beneficiary. (A29). PwC assigned fiduciary responsibility for claims determination to National Union. (A28). Specifically, the Plan states that PwC "has assigned fiduciary responsibility for claim determination to [National Union]. [National Union] has the right to interpret the provisions of this Plan, and its decisions are conclusive and binding." (A28). The Plan provides coverage "[i]f Injury to the Insured Person results in

death within 365 days of the date of the accident that caused the Injury[.]" (A28-29). In turn, the Plan defines Injury, in relevant part, as bodily injury "which is sustained as a direct result of an unintended, unanticipated accident that is external to the body[.]" (A29). The Plan also contained an exclusion which precludes coverage for "suicide or any attempt at suicide[.]" (A29).

B. The Death Of Marzuq Muhammad

On May 18, 2018, Marzuq Muhammad and his brother Mujihad Muhammad[1] traveled to Atlanta, GA and stayed at the Hyatt Regency Hotel. (A29). According to the investigation of the Fulton County Medical Examiner's Office, during the early morning hours of May 20, 2018, at approximately 1:45 a.m., Mujihad was asleep in his hotel room on the tenth floor when Marzuq entered the room and sat on the side of his brother's bed. (A29). Marzuq squeezed Mujihad's hand which awoke Mujihad. Mujihad then saw Marzuq sprint out the door and then heard a loud noise. (A29). Mujihad left his room and found Marzuq one floor below on a flower arrangement on the ninth-floor ledge of the hotel's atrium lobby. (A29). Per the Medical Examiner's report, which included percipient witness statements, Mujihad was yelling "no, no keep still." (A30). Specifically, a witness in the hotel atrium heard and reported to the responding police that he heard Mujihad yell "no, no keep still, don't do it." (A30). Marzuq then rolled off the ninth-floor ledge to the atrium below. (A30). He was pronounced dead at

[1] Marzuq Muhammad and Mujihad Muhammad will be referred to by their first names to avoid any confusion as they share the same last name.

the scene. (A30). The Georgia Department of Public Health investigated and ruled Marzuq's death to be a suicide. (A30).

C. National Union's Denial Of The Petitioner's Claim

After Marzuq's death, the Petitioner submitted a claim under the Plan for AD&D benefits. (A31). National Union denied her claim on July 31, 2019 because it determined that Marzuq's death was not the result of an "unintended, unanticipated accident but was the result of suicide[.]" (A31). In coming to this conclusion, National Union considered the Petitioner's claim form, Marzuq's death certificate, the autopsy report, the City of Atlanta Incident Report and the Fulton County Medical Examiner's Investigative Summary. (A31).

The Petitioner, through counsel, appealed National Union's denial of AD&D benefits. (A31). National Union's ERISA Appeal Committee rejected the Petitioner's appeal on May 4, 2020. (A31). As part of her appeal, the Petitioner submitted a new September 3, 2019 declaration from Mujihad which differed in several respects from the account he provided to the authorities 15 months earlier at the time of Marzuq's death on May 20, 2018. (A31). National Union again engaged with all the evidence presented by Petitioner, considered same, and concluded that Mujihad's declaration to be less credible than the weight of other substantial evidence, including the contemporaneous reports compiled by Georgia state and local officials. (A32).

D. This Litigation

The Petitioner filed suit against National Union pursuant to § 502(a)(1)(B) of ERISA in the U.S. District Court for the Southern District of Florida seeking a declaration that she was entitled to the $500,000 accidental death benefit under the Plan. (A32-33). National Union moved for a change in venue pursuant to 28 U.S.C. § 1404(a). (A33). This motion was granted, and this action was transferred to the U.S. District Court for the District of Massachusetts. (A33). Prior to the action being transferred, the Petitioner moved for summary judgment and her motion was deemed still pending following the transfer. (A33). National Union thus cross-moved for summary judgment following the transfer. (A33).

On January 2, 2021, the District Court (Saylor, C.J.) allowed National Union's motion for summary judgment and entered judgment in favor of National Union. (A8). The District Court correctly applied First Circuit precedent, having nonetheless considered in *dicta* the Eleventh Circuit Horton case on which Petitioner relies, and found that National Union did not abuse its discretion in determining that Marzuq's death was not a covered "accident" under the AD&D Policy. (A38-42).

Indeed, the District Court held, in its analysis of Horton, that:

> [t]he presumption applies only when the evidence is inconclusive as to whether the deceased died by accidental or intentional means. Here, the evidence is

> not inconclusive. Even though Mujihad's declaration casts some doubt on whether Marzuq's death was intentional, there is substantial evidence, including the investigative summary and death certificate, that indicates it was.

(A41) (internal citations and quotations omitted).

The Petitioner filed a notice of appeal on February 18, 2021. (A8). On January 3, 2022, the First Circuit Court of Appeals affirmed the district court's decision and held that, as the transferee court, its case law controlled under AER Advisors, Inc. v. Fidelity Brokerage Services, LLC, 921 F.3d 282 (1st Cir. 2019), and therefore, under the framework articulated in Wickman v. Northwestern National Insurance Co., 908 F.2d 1077 (1st Cir. 1990), National Union's determination was neither arbitrary, capricious nor an abuse of discretion. (A21). In so holding, the First Circuit stated that "the district court … considered the Eleventh Circuit's presumption against suicide, as set forth in Horton, but found it to be overcome." (A11). The Petitioner submitted a petition for rehearing *en banc* which was denied by the First Circuit on February 4, 2022. (A43).

REASONS FOR DENYING THE PETITION

The Petitioner provides no legitimate basis for the Court to review the bedrock rule of law, as pronounced in AER Advisors and every other circuit court, that a transferee court is to apply its own decisional law to a federal question following a transfer pursuant to 28 U.S.C. § 1404(a). In fact, the Petitioner acknowledges that the Circuit Courts are in agreement on this issue. Further, the First Circuit's adherence to AER Advisors on this issue cannot be faulted where the Court was petitioned to take up that case, too, but the petition for certiorari was denied. See AER Advisors, Inc. v. Fidelity Brokerage Services, LLC, 140 S. Ct. 1105 (2020). AER Advisors is sound precedent, properly applied by the lower courts to these facts.

Petitioner also claims that there is a split of authority among the First and Eleventh Circuits on the interpretation of the term "accident" in an ERISA policy, arguing that Eleventh Circuit law (Horton) should have applied instead of First Circuit law (Wickman) to render a different outcome. While the frameworks employed by the Circuits may not be exact, they are not in conflict. Even the Eleventh Circuit has favorably regarded the Wickman approach as "on eminently sound ground" in Buce v. Allianz Life Ins. Co., 247 F.2d 1133 (11th Cir. 2001); as such, there is clearly no split in authority. This fact-specific case would have the same outcome under either the Wickman or Horton framework, as both courts below found that National Union's determination that Marzuq Muhammad's death was not an "accident" was backed by substantial factual

evidence and not an abuse of its discretionary authority as it pertains to benefits decisions.

I. There is No Basis for Reviewing Whether the Law of the Transferor or the Transferee Circuit Applies Following a Transfer Pursuant to 28 U.S.C. § 1404(a) Because the Circuits Uniformly Hold That the Law of the Transferee Court Applies To Questions of Federal Law.

The Petitioner contends that her Petition should be granted so that the Court can "end the uncertainty attendant upon the choice of law rule which applies following the transfer ... of a civil action which is governed by [] federal law." However, earlier in her Petition, the Petitioner concedes that "with one exception,[2] the United States Courts of Appeals have ruled consistently" that the law of the transferee court applies. In the First Circuit, AER Advisors, Inc. v. Fidelity Brokerage Services, LLC, 921 F.3d 282 (1st Cir. 2019) is the precedent by which its courts consistently hold that, upon transfer pursuant to 28 U.S.C. § 1404(a), the law of the transferee court applies to federal questions, to wit: "when one district court transfers a case to another, the norm is that the transferee court applies its own Circuit's cases on the meaning of federal law." Id. at 288. Both the Petitioner and the First Circuit have noted that "every Circuit to do so has concluded that" the law of the transferee circuit applies. Id.

[2] In fact, as discussed below, the purported "exception" has been abrogated on other grounds and the dicta concerning which Circuit's law applies has been heavily criticized by other Circuits and even lower courts.

Moreover, "[e]ven the Eleventh Circuit – the very Circuit whose law [the Petitioner] say[s] should apply – flatly rejects the notion that a transferee court must always use the transferor Circuit's interpretation of federal law." Id. citing Murphy v. F.D.I.C., 208 F.3d 959, 966 (11th Cir. 2000). The late Justice Ginsburg concurred with this approach as well. See In re Korean Air Lines Disaster of Sept. 1, 1983, 829 F.2d 1171, 1175 (D.C. Cir. 1987). There can be no question that AER Advisors, Inc. is sound precedent, insofar as the Court very recently denied a petition for writ of certiorari on this very issue in AER Advisors, Inc. v. Fidelity Brokerage Services, LLC, 140 S. Ct. 1105 (2020). No developments since warrant the Court revisiting same. Thus, the First Circuit's application of AER Advisors, Inc. to the instant case in support of its decision to apply the law of its circuit (as the transferee court) rather than the law of the Eleventh Circuit (the transferor court) is bedrock.

The Petitioner's arguments, recycled from the below proceedings, have also been advanced by other litigants and similarly rejected by the Circuit Courts. The Petitioner relies on case law that has been so heavily criticized that their value, persuasive or otherwise, is questionable. For example, the Petitioner again relies upon Van Dusen v. Barrack, 376 U.S. 612 (1964) and Ferens v. John Deere Co., 494 U.S. 516 (1990) in support of her argument that the law of the transferor court should apply. However, as the First Circuit noted in the proceedings below, these cases "held that in diversity cases the transferee courts must apply the substantive law of the transferor courts[.]" (A18). As such, "[n]othing in Van

Dusen [or Ferens] compels one federal court to apply another's interpretation of federal law after a case's transfer." AER Advisors, Inc., 921 F.3d at 290. Additionally, the First Circuit pointedly noted that it "considered and rejected this exact argument in AER Advisors, explaining that Van Dusen and Ferens are diversity cases." (A19). There is no basis for the Court to disrupt or expand the long-standing precedent of Van Dusen and Ferens on this point of law.

The Petitioner additionally cites to Berry Petroleum Company v. Adams & Peck, 518 F.2d 402, 408 (2d Cir. 1975) in an attempt to support her argument that the law of the transferor court should apply. However, this case has been abrogated on other grounds and so heavily criticized for its holding regarding which circuit's law applies that it has been ignored by its own circuit. As one court has noted:

> Although the Second Circuit did once note in dictum that the substantive law of the Fifth Circuit would apply in a federal action commenced in the Northern District of Texas and transferred by the Judicial Panel on Multidistrict Litigation, that dictum is not consistently followed by the District Courts of this Circuit, and it has been disapproved by commentators on grounds that the rule of [Van Dusen] should not affect a transferee court's application of *federal* law.

In re General Development Corp. Bond Litigation, 800 F. Supp. 1128, 1135 n.6 (1992) (internal citations

omitted) (emphasis in original). Furthermore, the "Second Circuit has recently noted its agreement with the principle that 'a transferee court [should] be free to decide a federal claim in the manner it views as correct without deferring to the interpretation of the transferor circuit.'" Id. quoting In re Pan American Corp., 950 F.2d 839, 847 (2d Cir. 1991); see also Center Cadillac, Inc. v. Bank Leumi Trust Co. of New York, 808 F. Supp. 213, 223 (S.D.N.Y. 1992) ("Berry Petroleum's reliance on In re Plumbing Fixtures and Van Dusen is not persuasive.").

Therefore, there is no basis for the Court to grant certiorari on this issue where the Circuit Courts of Appeal have uniformly answered the question that the law of the transferee court controls in non-diversity cases involving questions of federal law.

II. Substantial Evidence Supported National Union's Benefit Determination and, as a Result, There Is No Split in Authority Implicated Concerning the Interpretation of the Term "Accident" Under an ERISA Plan.

The Petitioner contends that the First Circuit's opinion in the instant matter "confirmed the existence of a circuit split concerning the construction of the term 'accident.'" However, this contention misconstrues both the First and Eleventh Circuits' judicial decisions in an attempt to manufacture a circuit split where there is none.

In Wickman, the First Circuit formulated a subjective/objective test to determine whether a death constitutes an "accident" under an AD&D policy. See

Wightman v. Securian Life Insurance Co., No. 18-11285-DJC, 2020 WL 1703772, at *5 (D. Mass. April 8, 2020). The Wickman test is comprised of three parts. See McGillivray v. Life Ins. Co. of N. Am., 519 F. Supp.2d 157, 163 (D. Mass. 2007). First, courts consider what the reasonable expectations of the insured were at the time of the incident that caused his or her death. See Wickman, 908 F.2d at 1088. Second, "[i]f the fact-finder determines that the insured did not expect an injury similar in kind to that suffered," the inquiry then asks whether the insured's expectation was reasonable. Id. Lastly, "if it is determined that the insured's subjective expectation is simply unknowable based on the available evidence, the fact-finder must turn to 'an objective analysis of the insured's expectations.'" Id. quoting McGillivray, 519 F. Supp.2d at 163.

Under Horton, the Eleventh Circuit articulated that "when the evidence is *inconclusive* as to whether the deceased died by accidental or intentional means, use of the legal presumptions against suicide and in favor of accidental death are appropriate." Horton, 141 F.3d at 1040. (Emphasis supplied with italics.)

Thus, while the First and Eleventh Circuits do not employ exactly the same framework or test for determining whether a death is an "accident," both circuits examine the evidence in compatible ways, and the courts do not employ different definitions of what constitutes an "accident." In fact, quite the opposite of a "circuit split," the Eleventh Circuit actually cited the Wickman approach approvingly in Buce v. Allianz Life Ins. Co., 247 F.2d 1133 (11th Cir. 2001), stating that:

> In Wickman ... the term 'accident', in an ERISA-governed group policy, was defined as an 'unexpected, external, violent and sudden event' – a definition the First Circuit charitably described as 'somewhat less than dispositive.' In circumstances of this sort ... the First Circuit was on eminently sound ground in ... focusing [] on the objectively reasonable expectations of a person in the perilous situation that the decedent had placed himself in.

Id. at 1146. Therefore, the result would be the same when either analytical framework is applied to the facts of this case. Indeed, the Petitioner effectively concedes that Marzuq's death is not an accident under the Wickman framework as the First Circuit remarked that "[the Petitioner] does not offer any argument that she can prevail under the Wickman framework, even though she recognizes that binding precedent likely requires us to adhere to Wickman instead of Horton." (A21).

With regard to Horton, the Petitioner both misinterprets and overstates its framework. Horton's presumption against suicide only comes into play "***when the evidence is inconclusive*** as to whether the deceased died by accidental or intentional means." Horton, 141 F.3d at 1040 (emphasis supplied with bolding and italics). The presumption against suicide is inapplicable here because the evidence is not inconclusive as to whether Marzuq died by accidental or intentional means. The First Circuit recounted that:

> AIG [National Union] considered the Fulton County Medical Examiner's Investigate Summary – which captured the accounts of two percipient witnesses, including an otherwise unaffiliated witness's statement that he heard Mujihad yelling "no[,] no, keep still, don't do it" immediately prior to Marzuq's fall – as well as Marzuq's final Death Certificate listing his cause of death as a suicide ... we agree with the district court that these "contemporaneous and impartial" documents "authored by ... state official[s] in the exercise of [their] official duties" are probative.

(A23-24).

While the Petitioner may disagree with National Union's determination based on this evidence, a litigant's contesting evidence does not render that evidence inconclusive. In that regard, the First Circuit found that it "agree[d] with the district court that National Union reasonably engaged with [the Petitioner's] contrary evidence – namely Mujihad's later sworn declaration and 'reasonably rejected [it] as less credible than the contemporaneous, neutral evidence from the state.'" (A24). Moreover, the District Court did consider in *dicta* the Horton framework on which the Petitioner relies but found that:

> even assuming that [Horton] is persuasive, it is still of little help to

> plaintiff. The presumption applies only 'when the evidence is inconclusive as to whether the deceased died by accidental or intentional means.' Here, the evidence is not inconclusive. Even though Mujihad's declaration casts some doubt on whether Marzuq's death was intentional, there is substantial evidence, including the investigative summary and death certificate, that indicates it was. Accordingly, even considering the presumption against suicide, [National Union's] denial of benefits was not arbitrary, capricious, or an abuse of discretion.

(A42) (internal citations omitted). As such, the Horton presumption against suicide was considered but it was determined that substantial evidence rebutted the presumption and established that Marzuq's death was not an accident.[3]

Lastly, the Petitioner cites to Nichols v. UniCare Life & Health Insurance Company, 739 F.3d 1176 (8th Cir. 2014) and proclaims that the Eighth Circuit Court of Appeals "noted the existence of a conflict between the First Circuit's approach in

[3] In a footnote, the Petitioner cites a laundry list of cases, most of which were decided in the early to mid-1900's, in which state appellate courts have applied a presumption against suicide. However, these cases provide little value to the Petitioner where they pre-date by decades the enactment of ERISA, and the federal body of law that has grown up around ERISA since. Further, ERISA "supersede[s] any and all State laws insofar as they relate to any employee benefit plan." 29 U.S.C. § 1144(a).

Wickman and the Eleventh Circuit's approach in Horton[.]" However, the Petitioner conspicuously does not cite any language from Nichols acknowledging this purported circuit split. To the contrary, Nichols does not evince a "circuit split" on how the circuits analyze one's death as an "accident" under an AD&D policy.

In Nichols, the insured was found dead in bed and her autopsy stated that the manner of death could not be determined but her cause of death was due to mixed drug intoxication. Id. at 1179. In the year prior, the insured was prescribed numerous prescription medications which were found at the scene of her death. Id. The insurer argued that there was no coverage because the insured's death was not an accident, citing the Wickman framework. Id. at 1180. The Eighth Circuit Court of Appeals disagreed and upheld the district court's decision that "all of the evidence indicates that [the insured's] death was the unexpected result of ingesting prescribed medications." Id. at 1183. What's more, the Eighth Circuit held that its decision was bolstered by the Horton presumption against suicide but that they "need not even rely on the presumption because as noted above, [the insured] has met his burden to establish entitlement ... to accidental death benefits." Id. at 1183 n.4. Thus, contrary to the Petitioner's suggestion that Nichols identifies a circuit split, its outcome hinged on the particular facts of that case including the drug evidence and personal, medicinal habits of the deceased, allowing the Eighth Circuit to conclude that the insured's death was an "accident" under either framework.

Nichols is essentially the factual inverse of the present matter. There, the insured presented substantial evidence of accidental death, whereas here, the weight of the evidence fails to support death by an "unintended, unanticipated accident" but instead suicide. In Nichols, the Eighth Circuit did not even need to consider Horton's presumption against suicide because the plaintiff had established that the insured's death was an accident under the Wickman framework. Conversely here, the lower courts concluded that the Petitioner failed to establish that Marzuq's death was an accident under the Wickman framework, and thus, Horton's presumption against suicide need not even be considered. Moreover, as discussed above, even when the presumption is considered it is rebutted by the substantial fact-specific evidence as the District Court correctly noted. Therefore, just as in Nichols, whether the Wickman or the Horton framework is applied to these facts, the outcome is the same under the AD&D Policy.

Rather than evincing a circuit split, Nichols shows how the Wickman and Horton frameworks complement one another and can be utilized harmoniously by the courts when examining evidence to discern whether one's death is accidental or not under an ERISA plan. However, as discussed above, the evidence concerning Marzuq Muhammad's unfortunate death was not inconclusive and, as a result, Horton's presumption did not, and does not, come into play.

Accordingly, for all these reasons, there is no circuit split as to how the term "accident" is analyzed under an ERISA plan for this court to reconcile.

Further, under the particular facts of this case, there was substantial evidence that Marzuq Muhammad's death was sadly not an "accident," which overcame any presumption against suicide in any event. The lower courts' application of Wickman over Horton to these facts was simply not outcome-determinative.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

By its attorneys,

Tamara Smith Holtslag
Counsel of Record
Lincoln A. Rose
PEABODY & ARNOLD LLP
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210-2261
617-951-2100
tsmith@peabodyarnold.com
lrose@peabodyarnold.com

Dated: 06/23/2022