No. 21-

In the

Supreme Court of the United States

SWAGELOK ASSOCIATES WELFARE BENEFITS PLAN,

Petitioner,

v.

LAURA PATTERSON AND ERIC PATTERSON,

Respondent.

On Petition for Writ of Certiorari from the Ohio Supreme Court

PETITION FOR WRIT OF CERTIORARI

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May 31, 2022

QUESTION PRESENTED

Petitioner Swagelok Associates Welfare Benefits Plan (the "Plan") provided medical benefits coverage to Respondent Laura Patterson when she was injured in an automobile accident. Ms. Patterson filed an action in the Ohio Court of Common Pleas, seeking a declaration that the Plan had no right to reimbursement out of Ms. Patterson's potential third party recovery, and to "bar" the Plan from enforcing its reimbursement rights with respect to any potential recovery she received from a third party in connection with the accident. The Ohio Court of Appeals for the Ninth District, Summit County, construed the Pattersons' claims as arising under both ERISA Section 502(a)(1)(B) and Section 502(a)(3), and held that, because the claim was, in part, a claim for benefits under Section 502(a)(1)(B), the state court had jurisdiction over the matter pursuant to ERISA Section 502(e)(1). The Ohio Supreme Court rejected the Plan's request to take jurisdiction of an appeal, thereby affirming the Ohio Appellate Court's ruling.

The question presented is: Is a state law action brought by a Plan Participant for an injunction barring an ERISA welfare benefit plan from enforcing its subrogation/reimbursement terms a claim for equitable relief pursuant to ERISA Section 502(a)(3), 29 U.S.C. 1132(a)(3), and therefore a claim over which the federal courts have exclusive jurisdiction under Section 502(e)(1), 29 U.S.C. 1132(e)(1), or may such an action proceed in state court?

PARTIES TO THE PROCEEDINGS

The following were parties to the proceedings in the Supreme Court of the State of Ohio:

1. Petitioner Swagelok Associates Welfare Benefits Plan, petitioner on review, is an ERISA "welfare benefit plan" within the meaning of 29 U.S.C. § 1002(1), providing medical benefits coverage to eligible employees of the Swagelok Company.

2. Laura and Eric Patterson, respondents on review, are "participants" or "beneficiaries" within the meaning of 29 U.S.C. § 1002(7) and 1002(8). Laura Patterson was injured in an automobile accident and the Plan provided medical benefits coverage on her behalf relating to injuries she suffered in the accident.

RULE 29.6 DISCLOSURE STATEMENT

Swagelok Company is not a subsidiary or affiliate of a publicly owned corporation.

STATEMENT OF RELATED PROCEEDINGS

There are no related proceedings within the meaning of Rule 14.1(b)(iii).

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Swagelok Associates Welfare Benefits Plan respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of Ohio.

OPINIONS BELOW

The Opinion of the Ohio Court of Appeals, Ninth Appellate District, Medina County, Ohio, is unreported, as is the Order of the Supreme Court of Ohio declining to exercise jurisdiction over Petitioner's appeal. (Pet. App. 1a-23a, 27a-28a)

JURISDICTION

The Ohio Supreme Court declined jurisdiction on February 1, 2022. (Pet. App. 24a, 28a). On April 20, 2022, Justice Kavanaugh extended the time for filing a petition for certiorari to May 31, 2022. Jurisdiction rests on 28 U.S.C. § 1257(a).

STATUTE INVOLVED

Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), provides in relevant part:

> A civil action may be brought * * * 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[.]

Section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B), provides in relevant part:

> A civil action may be brought—
>
> (1) by a participant or beneficiary—
>
> (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;

Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1), provides:

> Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States

shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 1021(f)(1) of this title. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

INTRODUCTION

For nearly three decades, this Court has wrestled with questions regarding the nature and scope of ERISA's "appropriate equitable relief" provision found in Section 502(a)(3) of ERISA's civil enforcement mechanism, and the interplay between that statutory provision and Section 502(a)(1)(B) of the statute which directly concerns claims for plan benefits. *See, e.g., Cigna Corp v. Amara,* 563 U.S. 421 (2011); *Varity Corp v. Howe*, 516 U.S. 489 (1996); *Mertens v. Hewitt*, 508 U.S. 248 (1993). In *Varity*, the Court addressed the interplay of these provisions at length, emphasizing that Section 502(a)(3) is a "catchall" provisions offering appropriate equitable relief for injuries that have no other adequate remedy under ERISA. *See* 516 U.S. at 512. This ruling built upon prior authority interpreting Section 502(a)(3) as one authorizing "those categories of relief that were *typically* available in equity," including "injunction or restitution." *Mertens*, 508 U.S. at 255-56 (emphasis in original); *see also Amara*, 563 U.S. at 440 (discussing equitable remedies under (a)(3), observing "[t]he District Court's affirmative and negative injunctions obviously fall within this category").

In contrast to Section 502(a)(3), Section 502(a)(1)(B) allows an ERISA plan participant or beneficiary to bring an action "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 benefits under the plan." 29 U.S.C. § 1132(a)(1)(B). Put succinctly, Section 502(a)(1)(B) permits participants and beneficiaries to pursue their right to benefits under the terms of a Plan and can therefore encompass legal relief, whereas Section

502(a)(3) permits a court to award the more limited remedy of "appropriate equitable relief" to address other violations of ERISA or enforce plan terms.

Consistent with this distinction, this Court has repeatedly emphasized that a request for an equitable remedy to enforce plan terms presents a claim for "other equitable relief" under ERISA 502(a)(3), and not a claim for benefits under Section 502(a)(1)(B). Indeed, in the last 20 years alone, this Court has on four separate occasions felt it necessary to try and help clarify for lower courts the proper scope of a claim under Section 502(a)(3) and what remedies are available under that statutory provision in cases involving the very fact pattern presented here: a participant or beneficiary disputes the right of an ERISA welfare benefit plan to seek reimbursement where the plan provides medical benefits coverage for injuries caused by a third party and the ERISA plan participant or beneficiary also receives a recovery for those injuries from that third party. *See Montanile v. Board of Trustees*, 136 S.Ct. 651 (2016); *U.S. Airways v. McCutchen*, 569 U.S. 88 (2013); *Sereboff v. Mid-Atlantic Medical Services*, 547 U.S. 356 (2006); *Great-West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204 (2002).

This case presents a narrow but clear situation where this Court needs to build on its prior jurisprudence regarding ERISA subrogation and reimbursement claims and this time specifically clarify the contours of federal and state court subject matter jurisdiction when those claims are involved. The Ohio Court of Appeals' decision brings to the forefront important federal questions about the

intersection of Section 502(a)(1)(B) and Section 502(a)(3) and how proper construction of the relief sought by plan participants pursuant to ERISA impacts federal and state court subject matter jurisdiction. This jurisdictional question arises as a consequence of Section 502(e)(1) of the statue, which provides:

> *Except for actions under subsection (a)(1)(B) of this section*, the district courts of the United States shall have *exclusive jurisdiction* of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 1021(f)(1) of this title. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

29 U.S.C. § 1132(e)(1) (emphasis added). Accordingly, while state courts have concurrent subject matter jurisdiction over claims under Section 502(a)(1)(B) of ERISA, federal courts have exclusive jurisdiction over nearly all other claims arising under ERISA, including those under Section 502(a)(3) of the statute.

The legislative decision to vest exclusive jurisdiction in the federal courts for the majority of actions arising under ERISA promotes one of the underlying goals of the statute, which is "to provide a uniform regulatory regime over employee benefit plans" by ensuring the uniform treatment of employee

welfare benefit plans across the country. *See Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004) (discussing legislative purpose of ERISA). The careful and intentional decision to permit concurrent state court jurisdiction for only the most basic of claims under the statute—those that involve the denial of benefits under the provisions of plan or the enforcement of medical child support orders, which is an area of the law in which state courts are intimately involved and familiar—emphasizes the importance of federal courts, with their underlying expertise in interpretating and applying the terms of ERISA, deciding any and all more nuanced questions of statutory and benefit plan interpretation.

This exclusive federal court jurisdiction is particularly critical when it comes to claims for equitable relief under Section 502(a)(3), which provide a mechanism whereby the court is asked to fashion a remedy in equity (and this Court has recognized there are many equitable remedies which can be chosen) to address violations of the plan document or the statute itself. This type of equitable relief does not merely address an error in one specific benefits decision or medical support order affecting one plan participant. Instead, the equitable relief available under this provision addresses general claims of plan misadministration or breaches of fiduciary duty that could impact multiple or all plan participants. Such a powerful remedial tool with widespread effects calls for the special expertise and uniformity of decision of the federal courts, which is precisely why Congress chose to reserve jurisdiction over such claims exclusively to the federal courts under ERISA.

In the instant case—despite openly acknowledging the Pattersons' request for an order barring the Plan from enforcing its reimbursement rights as a claim arose, at least in part, under the exclusive federal jurisdiction of Section 502(a)(3)—the Ohio state courts improperly found they had subject matter jurisdiction over the claim. The logic underpinning this decision required improperly characterizing the Pattersons' claim as arising under both Section 502(a)(1)(B) and Section 502(a)(3)—in clear contravention of *Varity* and its progeny—before improperly using their limited state court concurrent jurisdiction over Section 502(a)(1)(B) claims to fashion "other appropriate equitable relief" that barred the plan from enforcing its subrogation and reimbursement rights—in clear contravention of the jurisdictional provisions in 502(e)(1). Taken together, these actions have the potential to release a torrent of litigation seeking equitable relief regarding the subrogation rights of employee welfare benefit plans into the Ohio state courts, undermining the exclusive jurisdiction of the federal courts over such matters and threatening to disturb the well-reasoned body of federal case law developed to ensure uniform treatment of employee welfare benefit plans across the country.

More specifically, Laura and Eric Patterson filed an action in the Ohio Court of Common Pleas seeking an order "barring any exercise of any claimed subrogation/reimbursement interest for the benefits paid on the Plaintiff, Laura Patterson's, behalf." (Pet. App. 9a-10a). The trial court entered summary judgment in the Pattersons' favor and rejected Swagelok's argument that the court lacked subject matter jurisdiction over the claim. The Ohio Court of

Appeals affirmed the trial court's decision, rejecting Swagelok's assertion that the Pattersons' claim arose under ERISA Section 502(a)(3), and thus was exclusively within the subject matter jurisdiction of the federal courts. (Pet App. 1a-23a). The Ohio Court of Appeals conceded that the Pattersons "sought to bar Swagelok from exercising any claimed right to subrogation" and noted "[a]lthough their request can be construed as a civil action to enforce the terms of the plan under Section 1132(a)(3), it can also be construed as a civil action 'to enforce [their] rights under the terms of the plan' under Section 1132(a)(1)(B)" over which the state courts had concurrent jurisdiction. (Pet. App. 10a). Swagelok sought review of that determination with the Ohio Supreme Court, arguing that the court of appeals erred in construing the Pattersons' claim as arising under Section 502(a)(1)(B), and therefore within the concurrent jurisdiction of state and federal courts, and also arguing that the court of appeals erred by openly accepting jurisdiction over a claim it construed as arising in part under Section 502(a)(3), which is exclusively within the jurisdiction of the federal courts. The Ohio Supreme Court declined to review the matter (Pet. App. 24a, 27a-28a).

Certiorari review is warranted under Rule 10(b) and 10(c) because the Ohio Court of Appeals' ruling decided an important federal question in a manner inconsistent with decisions of this Court and the United States Courts of Appeal. The Ohio Court of Appeals improperly conflated claims under Sections 502(a)(3) and Section 502(a)(1)(B) of ERISA, and improperly held that state courts have jurisdiction over claims under Section 502(a)(3). These rulings are

contrary to rulings of this Court and a multitude of United States Court of Appeals rulings that: (a) claims under Sections 502(a)(3) and 502(a)(1)(B) are not coextensive and may not be brought to redress the same injury; and (b) claims for "appropriate equitable relief" under Section 502(a)(3) are within the exclusive jurisdiction of federal courts.

Congress has specifically vested federal courts with exclusive jurisdiction over the vast majority of claims under ERISA, including those for equitable relief under Section 502(a)(3). This mandate is critical to accomplish the primary goal of the statute, which is to ensure a uniform body of case law around employee welfare benefit plans across the country. The lower court's ruling threatens this purpose and runs counter to the Congressional mandate by improperly rendering Ohio state courts a repository for ERISA claims that belong exclusively in federal court. The Court's intervention is needed now to correct course and prevent state courts in Ohio—and potentially elsewhere—from improperly lumping claims seeking other equitable relief to either enforce or invalidate a plan's subrogation and reimbursement rights under the terms of the plan with claims seeking a determination as to a participant's right to benefits under ERISA Section 502(a)(1)(B) and, by doing so, destroying a plan's right to have such equitable determinations made by federal courts alone. The Ohio court's misconstruction of the Pattersons' claim seeking classic equitable relief in the form of an order "barring" an ERISA plan's actions as, in part, a claim under Section 502(a)(1)(B), is in direct contravention of this Court's ruling in *Varity* and its progeny, and has led to Ohio state courts intruding on an area of

exclusive federal court jurisdiction. This intrusion threatens the underlying remedial purposes of ERISA and cannot be allowed to stand.

A. The Pattersons' request for an order barring the Plan from pursuing its reimbursement rights must be construed as a claim for equitable relief under Section 502(a)(3) and not a claim to enforce a contractual right to benefits under 502(a)(1)(B).

1. One injury cannot serve as the basis for a claim under both Section 502(a)(1)(B) and Section 502(a)(3).

The Ohio Court of Appeals' decision construing the Pattersons' request for an order that would bar the Plan from pursuing its reimbursement rights as a claim arising "in part" under 502(a)(1)(B) and "in part" under 502(a)(3) is inconsistent with the decisions of this Court and the federal Courts of Appeal. This inconsistency and the Ohio courts' subsequent decision to exercise jurisdiction over the claim despite federal courts having exclusive jurisdiction over claims under Section 502(a)(3) threatens the underlying purpose of ERISA, which this Court has observed was expressly enacted "to provide a uniform regulatory regime over employee benefit plans." *Davila*, 542 U.S. at 208.

Considering the Pattersons' request for a judgment "barring any exercise of claimed subrogation/ reimbursement interest for benefits paid on [Laura Patterson's] behalf" as a claim under "either" Section 502(a)(1)(B) or 502(a)(3) is plainly contradictory to the authority of this Court, which has held that each subsection of Section 502(a) provides for distinct forms of relief in different situations. Specifically, in *Varity Corp v. Howe*, 516 U.S. 489 (1996), the Court addressed whether and how plaintiffs could seek an

order reinstating them into their former retirement plans after Varity allegedly breached its fiduciary duties and duped them into transferring into a different corporate subsidiary with a different, less lucrative retirement plan. In discussing the potential relief available under the six civil enforcement provisions of ERISA Section 502(a), the Court noted that four of the six subsections (Sections 502(a)(1), (a)(2), (a)(4), and (a)(6)) delineated specific relief available to alleviate specific areas of Congressional concern. 516 U.S. at 512. With regard to the remaining two subsections—including specifically Section 502(a)(3)—this Court observed:

> The language of the other two subsections, the third and the fifth, creates two "catchalls," providing "appropriate equitable relief" for "any" statutory violation. This structure suggests that these "catchall" provisions act as a safety net, offering appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy.

516 U.S. at 512.

Inherent in this observation is that a claim under the "catchall" of Section 502(a)(3) cannot be the same as a claim under Section 502(a)(1)(B), as Section 502(a)(3) serves to fill a gap by allowing "appropriate equitable relief" only where Section 502(a)(1)(B)'s straightforward provisions permitting recovery of wrongfully denied benefits cannot provide relief. In this regard, multiple Courts of Appeal have specifically held that one underlying injury cannot

support both a claim for "other equitable relief" under Section 502(a)(3) and a claim for benefits under Section 502(a)(1)(B). *See, e.g., Rochow v. Life Ins. Co. of North America*, 780 F.3d 364, 373 (6th Cir. 2015) (rejecting effort to "repackage" benefits denial claim as one for equitable relief under 502(a)(3) and noting that such impermissible repackaging occurs when "in addition to the particular adequate remedy provided by Congress, a duplicative or redundant remedy is pursued to redress the same injury"); *Lefler v. United Healthcare of Utah, Inc.*, 72 F. App'x 818, 816 (10th Cir. 2003) (claim under (a)(3) not cognizable where (a)(1)(B) provides adequate relief for same injury); *Odgen v. Blue Bell Creameries U.S.A., Inc.*, 348 F.3d 1284 (11th Cir. 2003) (citing *Varity* and holding plaintiff could not simultaneously pursue (a)(1)(B) and (a)(3) claims to redress the same injury); *Tolson v. Avondale Indus.*, 141 F.3d 604, 610-11 (5th Cir. 1998) (same). Characterizing the Pattersons' claim for relief as a sort of "hybrid" claim under both provisions is thus fundamentally improper and inconsistent with federal authority interpreting ERISA. Accepting this petition for certiorari will thus permit the Court to clarify the proper classification of this type of claim and provide critical guidance to state courts throughout the country.

2. Seeking a declaration regarding the subrogation/reimbursement rights of the Plan and an injunction preventing the Plan from pursing reimbursement and/or subrogation must be viewed as a claim under 502(a)(3).

Here, the Pattersons sought a declaration regarding the subrogation rights of the Plan with regard to their third-party recovery and an injunction

that would bar the Plan from thereafter enforcing its subrogation and/or reimbursement rights under the terms of the Plan. No allegedly denied benefits were sought through these claims as allowed for under Section 502(a)(1)(B). Accordingly, the Pattersons' claims cannot be construed as arising under this provision.

To the contrary, the Pattersons' request for an order that would bar the Plan from enforcing its subrogation rights is clearly an action to "enjoin any act or practice which violates any provision of this chapter or the terms of the plan" under Section 502(a)(3)(A). And, even if the request is considered as one for a declaratory judgment that the subrogation or reimbursement terms of the plan are invalid, such claims have been considered by various courts of appeals as claims for equitable relief under Section 502(a)(3), not claims for benefits under Section 502(a)(1)(B). *See, e.g.*, *Rodriguez v. Tennessee Laborers Health & Welfare Fund*, 463 F.3d 473, 476-77 (6th Cir. 2006); *Hill v. Blue Cross & Blue Shield of Mich*, 409 F.3d 710, 718 (6th Cir. 2005) (construing claim by plan participant seeking an injunction barring a plan administrator from using allegedly defective claims procedures under the terms of the plan as a claim arising under 502(a)(3)).

That the Pattersons' request should be construed to arise under (a)(3) is reinforced by this Court's precedent, which holds that where, as here, a plaintiff seeks a declaratory judgment in essence to assert a defense to an impending or threatened action—*i.e.*, the Plan's attempts at reimbursement—it is the character of *that* threatened action that determines

the nature of the claim. *See Franchise Tax Bd. of Calif. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 19 (1983) ("Federal courts have regularly taken original jurisdiction over declaratory judgment suits in which, if the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question."); *see also Public Service Commission v. Wycoff Co.*, 344 U.S. 237, 248 (1952). Relying on this authority the Sixth Circuit Court of Appeals has specifically found that a plan participant or beneficiary who files suit seeking to have a plan's reimbursement or subrogation rights declared invalid is bringing a claim under Section 502(a)(3), because the "character of the action" such plaintiffs seek to preempt is one arising under (a)(3). *See Rodriguez*, 463 F.3d at 476-77. The *Rodriguez* court's conclusion that a preemptive challenge to an ERISA plan's subrogation/ reimbursement rights arises under (a)(3) has only been strengthened by this Court's subsequent precedent under *Sereboff* and *McCutchen* squarely holding that such claims by plan fiduciaries arise precisely under that section of ERISA.

In short, despite acknowledging that the Pattersons sought injunctive and/or declaratory relief "to bar Swagelok from exercising any claimed right to subrogation" under Section 502(a)(3) (Pet. App. 10a)), and in clear contravention of *Varity* and its progeny, the Ohio Court of Appeals held that their claim could be construed as a claim under <u>both</u> Section 502(a)(1)(B) and 502(a)(3) of ERISA. This conclusion cannot be squared with *Varity* or the rulings of United States Courts of Appeal, which make clear that one injury cannot be addressed by simultaneous claims

under 502(a)(3) and 502(a)(1)(B) and that a request to bar the plan from enforcing its subrogation and reimbursement rights is a claim arising solely under Section 502(a)(3).

Given that such a claim falls within the exclusive subject matter jurisdiction of the federal courts, it is of the utmost importance that this Court correct the Ohio Court of Appeals' error. Doing so is necessary to preserve the uniform interpretation and administration of welfare benefit plans across the country by ensuring claims for "other appropriate equitable relief" under ERISA are heard exclusively by the federal courts, which have been expressly designated as the exclusive deciders of such claims and which have the expertise to properly render decisions and fashion equitable remedies in line with the express Congressional purposes of ERISA. On the other hand, a failure to do so will result in a proverbial "race to the courthouse" with ERISA plan participants preemptively filing suit in state courts in an effort to have those claims deemed "hybrid" claims with Section 502(a)(1)(B), and thus divest federal courts of jurisdiction, whereas ERISA plan fiduciaries will proceed in federal court in accordance with *Montanile, McCutchen, and Sereboff*.

B. Even if the Pattersons' claimed injury could be addressed under both 502(a)(1)(B) and 502(a)(3) simultaneously, ERISA's civil enforcement mechanisms divest the state court of jurisdiction due to the federal courts' exclusive jurisdiction over claims arising under 502(a)(3).

Even if the Ohio Court of Appeals was correct that the Pattersons' claim could proceed under both sections of ERISA simultaneously, once it acknowledged that the Pattersons' claim arose, at least in part, under Section 502(a)(3), it should have ruled that the trial court was without jurisdiction to hear the claim. *Shofer v. Hack Co.*, 970 F.2d 1316, 1319 (4th Cir. 1992) (where ERISA claims are within the exclusive jurisdiction of the federal courts, state courts are plainly without jurisdiction); *Pension Trust Fund for Operating Engineers v. Triple A Machine Shop*, 942 F.2d 1457, 1461 (9th Cir. 1991) (because of the exclusive jurisdiction of federal courts over ERISA § 502(a)(3) claims, state court had no jurisdiction to hear these claims); *Blue Cross & Blue Shield of Ala. v. Weitz*, 913 F.2d 1544, 1548 (11th Cir. 1990) (finding exclusive federal jurisdiction over claim seeking equitable restitution of benefit payments erroneously made to third party providers); *Administrative Comm v. Gauf*, 188 F.3d 767, 772 (7th Cir., 1999) (reversing district court's refusal to exercise jurisdiction over plan fiduciary's claim for reimbursement under ERISA Section 502(a(3)).

Because of the federal courts' exclusive jurisdiction over claims under Section 502(a)(3), they cannot be

litigated or decided in state courts, and any ruling by the state court as to the reimbursement or subrogation rights of the Plan in a claim brought, whether in whole or in part, under Section 502(a(3) has no effect. *See Pension Tr. Fund For Operating Engineers v. Triple A Mach. Shop, Inc.,* 942 F.2d 1457, 1460 (9th Cir. 1991) ("[A] state court judgment cannot act to bar claims over which federal courts have exclusive jurisdiction."); *compare also, e.g.*, *Iowa Health Sys., Inc. v. Graham*, No. 07-CV-4030, 2009 WL 2222780, at *5 (C.D. Ill. July 23, 2009) (explaining that plan was not barred under doctrine of res judicata from seeking to equitably enforce reimbursement terms of plan under Section 502(a)(3) even though state court had purportedly issued a declaratory judgment barring the plan from asserting its subrogation lien because any such claim fell under Section 502(a)(3) and the federal courts exclusive jurisdiction); *see also Pactiv Corp v. Sanchez*, Case No. 13-cv-8182, 2015 WL 4508667 (N.D. Ill. July 23, 2015) (rejecting assertion that state court rulings precluded plan's (a)(3) claim, noting "[g]iven the exclusive jurisdiction provision, the courts that were involved in the workers' compensation award and subsequent State Court Judgment could not have exercised subject matter jurisdiction over the ERISA claim at issue here"). Indeed, a state court cannot exercise "supplemental jurisdiction" over exclusively federal claims. *See, e.g.*, *Iowa Health Sys., Inc. v. Graham*, No. 07-4030, 2008 WL 2959796, at *2 (C.D. Ill. July 30, 2008) (citing *Health Cost Controls v. Skinner,* 44 F.3d 535, 536 (7th Cir.1995); *River Park, Inc. v. City of Highland Park,* 184 Ill.2d 290, 317 (1998)) ("While a district court may exercise supplemental jurisdiction over a state law claim, state courts may not exercise

jurisdiction over exclusive federal claims."); *see also Silberkleit v. Kantrowitz*, 713 F.2d 433, 435–36 (9th Cir. 1983) (finding abstention improper as to claims over which federal courts had exclusive jurisdiction because, despite some overlap in issues and parties, the state court could not issue a ruling in the case before it as to exclusive federal claims).

In light of this clear overextension of the state court's power—not to mention the inefficiency of entering such "declarations" where they would have no preclusive effect were the plan to subsequently bring a proper claim for equitable relief against plan participants and beneficiaries under Section 502(a)(3)—it is imperative that this Court step in to consider these important ERISA jurisdictional questions to provide guidance to the courts below and correct the error perpetrated by the Ohio state courts. By inventing and then exercising jurisdiction over such a "hybrid" claim, the Ohio Court of Appeals' decision sets the stage for conflicting federal and state decisions on the same set of plan terms, as federal courts have routinely considered claims seeking a declaration as to the subrogation or reimbursement rights of the plan as a claim under the exclusive federal jurisdiction of Section 502(a)(3), and federal precedent makes clear that any state court decision as to such a claim cannot preclude the federal court from hearing the case and making its own independent decision. The situation created by the Ohio state courts' ruling in this case thus not only countermands clear Congressional intent and this Court's precedent that such disputes be decided exclusively in federal court, but results in squandered judicial resources, increased litigation, and potentially conflicting

decisions. For these reasons, this Court's immediate intervention and direction is warranted.

CONCLUSION

The Ohio Court of Appeals made two key errors in deciding this case that conflict with the decisions of this Court and the United States Courts of Appeal, and those errors pose a threat to the underlying purposes of ERISA and warrant the attention and correction of this Court. Specifically, it found that the one set of facts resulting in one potential injury could proceed simultaneously as a claim "in part" under Section 502(a)(3) and "in part" under Section 502(a)(1)(B), despite the fact that the claim did not involve any wrongfully denied benefits. It then found that the trial court properly retained jurisdiction over the claim despite that it arose, at least in part, under Section 502(a)(3), which is unquestionably a claim over which federal courts have exclusive jurisdiction. By compounding these errors, the Ohio Court of Appeals' decision threatens the uniform nature of the case law surrounding employee welfare benefit plans, undercutting the essential purpose of ERISA, a rare statute designed to ensure uniformity by comprehensively occupying the regulatory space and completely preempting state law.

This decision threatens the right of ERISA plans in Ohio to have equitable determinations regarding the plan's reimbursement and subrogation rights be made by federal courts alone as required by ERISA Section 502(e)(1). The Ohio Court of Appeals' misconstruction of federal law has led Ohio state courts to intrude on an area of exclusive federal court jurisdiction, opening the door for Ohio state courts to

begin accepting jurisdiction over and deciding claims under Section 502(a)(3) of ERISA in addition to federal courts, and greatly increasing the risk that ERISA plans with participants in Ohio will be subject to inconsistent obligations. This grave risk must be rectified immediately by this Court to protect the essential purposes of ERISA.

Respectfully submitted,

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May 31, 2022

APPENDIX

APPENDIX A

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Appeals Cases #20CA0075-M & #20CA0078-M

LAURA L. PATTERSON *et al*

Appellees / Cross-Appelants

vs

AMERICAN FAMILY INSURANCE CO. *et al*

Defendants / Appellant / Cross-Appellee

Please be advised that a Decision/Order of Judgment was filed in the above entitled case on SEPTEMBER 30, 2021.

DAVID B. WADSWORTH
CLERK OF COURTS

By: /s/ [Illegible]
Deputy Clerk

Notice was sent to Counsel of Record and/or Parties not represented by Counsel on September 30, 2021.

Cc: BENJAMIN P. PFOUTS; J. FRANCIS MACKEY; SHAUN D. BYROADS; DARAN P. KIEFER; JAY HANSON; STEPHEN J. PROF; WESLEY E. STOCKARD; NOAH LIPSCHULTZ

STATE OF OHIO)
) ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

C.A. No. 20CA0075-M
20CA0078-M

LAURA L. PATTERSON, *et al*.

Appellees / Cross-Appellants

v.

AMERICAN FAMILY INSURANCE COMPANY, *et al*.

Appellant / Cross-Appellee

APPEAL FROM JUDGMENT ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 2017-CV-0585

DECISION AND JOURNAL ENTRY

Dated: September 30, 2021

HENSAL, Presiding Judge.

{¶1} Swagelok Associates Welfare Benefit Plan ("Swagelok") has appealed a judgment of the Medina County Court of Common Pleas that granted summary judgment to Eric and Laura Patterson on their declar-

atory judgment claim and declared that Swagelok does not have a right to subrogation. The Pattersons have cross-appealed the denial of their motion for sanctions. For the following reasons, this Court affirms.

I.

{¶2} The underlying facts of this case are not in material dispute. Mr. Patterson enrolled in a health benefits plan that was offered by his employer, the Swagelok Company. Following his enrollment, Mrs. Patterson was injured in a motor vehicle collision, which she alleges was caused by another driver. Swagelok paid benefits towards Mrs. Patterson's treatment and believes it is entitled to be reimbursed from any sums the Pattersons recover from the other driver. The Pattersons filed a complaint against the other driver and included a claim against Swagelok, seeking a declaration that Swagelok has no right to subrogation. Swagelok counterclaimed, seeking subrogation. After the Pattersons amended their complaint and discovery ended, both parties moved for summary judgment. The trial court granted judgment to the Pattersons and declared that Swagelok does not have a contractual right to subrogation. The court, however, denied the Pattersons' motion for attorney fees. Swagelok has appealed the court's judgment, assigning four errors. The Pattersons have cross-appealed the denial of their motion for attorney fees, assigning two errors. We will address Swagelok's first three assignments of error together because they each concern the trial court's jurisdiction over the Pattersons' claims against Swagelok.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED BY FINDING SWAGELOK PLAN WAIVED ERISA PREEMPTION OF OHIO'S DECLARATORY JUDGMENT STATUTE AS SUCH CLAIM IS "COMPLETELY PREEMPTED" BY 29 U.S.C. §1132.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED BY NOT FINDING THE PATTERSONS' ACTION SEEKING TO "ENJOIN", "BAR" OR "PREVENT' AN ERISA PLAN'S PRACTICE OF SEEKING REPAYMENT AS AN ERISA CLAIM UNDER 29 U.S.C. §1132(a)(3) FOR WHICH OHIO STATE LAW COURTS LACK SUBJECT MATTER JURISDICTION.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED IN FINDING THE PATTERSONS' COMPLAINT WAS AN ACTION UNDER 29 U.S.C. §1132(a)(1)(B) WHERE NO PROVISION OF THE ERISA PLAN WAS SOUGHT TO BE ENFORCED AS A REMEDY BUT SOUGHT TO "ENJOIN", "BAR" OR "PREVENT" THE PLAN'S PRACTICE OF SEEKING RECOVERY.

{¶3} In each of its first three assignments of error, Swagelok argues that the trial court did not have jurisdiction to consider the Pattersons' declaratory judgment claim because such claims have been preempted by the Employee Retirement Income Security Act of 1974, commonly known as ERISA. Under Civil Rule 56(C), summary judgment is appropriate if:

> [n]o genuine issue as to any material fact remains to be litigated; (2) the moving party

> is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, *Inc.*, 50 Ohio St.2d 317, 327 (1977). To succeed on a motion for summary judgment, the party moving for summary judgment must first be able to point to evidentiary materials that demonstrate there is no genuine issue as to any material fact, and that it is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). If the movant satisfies this burden, the nonmoving party "must set forth specific facts showing that there is a genuine issue for trial." *Id.* at 293, quoting Civ.R. 56(E). This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996).

{¶4} In its first assignment of error, Swagelok focuses on the trial court's determination that it waived its preemption argument by not raising it as an affirmative defense in its answer to the Pattersons' amended complaint. According to Swagelok, its preemption defense directly challenged the subject-matter jurisdiction of the trial court, which was not subject to waiver.

{¶5} Civil Rule 8(C) provides that a party shall "set forth affirmatively" "any * * * matter constituting an avoidance or affirmative defense." Rule 12(B) provides that "[e]very defense * * * to a claim for relief * * * shall be asserted in the responsive pleading thereto if one is required," but allows certain defenses to be made by motion instead, such as "lack of jurisdiction

over the subject matter" under Rule 12(B)(1). "Affirmative defenses other than those listed in Civ.R. 12(B) are waived if not raised in the pleadings or in an amendment to the pleadings." *Jim's Steak House, Inc. v. City of Cleveland*, 81 Ohio St.3d 18, 20 (1998). Rule 12(H)(3), however, provides that, "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction on the subject matter, the court shall dismiss the action."

{¶6} The Ohio Supreme Court has recognized that "[t]he controlling language of Sections 1132(e)(1) and (a)(1)(B), Title 29, U.S. Code, expressly limits the types of actions that may be brought against benefit plans in state courts" and that "[a]ny action that is not included in subsection (a)(1)(B) falls within the exclusive subject matter jurisdiction of federal courts." *Richland Hosp., Inc. v. Raylon*, 33 Ohio St.3d 87, 90 (1987). Thus, Swagelok's argument that the Pattersons' claim was preempted under ERISA concerned the subject matter jurisdiction of the trial court. It, therefore, may be raised by Swagelok at any time. Civ.R. 12(H)(3); *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶ 11. Accordingly, we must conclude that the trial court incorrectly determined that Swagelok waived its preemption defense. The error may have been harmless, however, because the trial court also determined that the Pattersons' claim was not preempted.

{¶7} Regarding whether the Pattersons' claim was preempted, Swagelok argues in its second assignment of error that the Pattersons' declaratory judgment claim must be characterized as a claim under Section 1132(a)(3) that can only be brought in federal court. In its third assignment of error, Swagelok argues that the trial court incorrectly determined that, even

if the Pattersons' claim is an ERISA claim under Section 1132(a)(3), it is also a claim under Section 1132(a)(1)(B), which may be filed in state court.

{¶8} In relevant part, Section 1144(a) of Title 29 of the United States Code provides that "the provisions of this subchapter * * * shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan[.]" Section 1132(e)(1) provides that, "[e]xcept for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by * * * a participant[.]" "State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) * * * of subsection (a) of this section." *Id.* Accordingly, if a claim is brought under Section 1132(a)(1)(B), a state court has concurrent jurisdiction. If it is not, federal courts have exclusive jurisdiction.

{¶9} "In determining the scope of its jurisdiction under a federal statute, a state court of general subject-matter jurisdiction possesses a 'deeply rooted presumption in favor of concurrent' state and federal jurisdiction." *Girard v. Youngstown Belt Ry. Co.*, 134 Ohio St.3d 79, 2012-Ohio-5370, ¶ 16, quoting *Mims v. Arrow Fin. Servs., L.L.C.*, 565 U.S. 368, 378 (2012). Section 1132(a)(1)(B) provides that 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 future benefits under the terms of the plan[.]" Section 1132(a)(3) provides that a civil action may be brought by a participant or beneficiary "(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[.]"

{¶10} In their amended complaint, the Pattersons demanded that the trial court "issue a judgment declaring that [Swagelok] does not have a contractual right to be subrogated * * * or reimbursement by [Mrs. Patterson] for any benefits paid on [her] behalf[.]" They also demanded a judgment "declaring that [Swagelok] does not have a contractual subrogation or reimbursement interest for any benefits paid on behalf of [Mrs. Patterson], and barring any exercise of any claimed subrogation/reimbursement interest for benefits paid on [her] behalf."

{¶11} Multiple courts have held that a declaratory judgment action seeking a declaration of rights, status, or other legal relations is an action "to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan" under Section 1132(a)(1)(B). 29 U.S.C. 1132(a)(1)(B); *Edgefield Holdings*, *LLC v. Gilbert*, No. 02-17-00359-CV, 2018 WL 4495566, *6 (Tex.App. Sept. 20, 2018). Like in this case, in *Bradburn v. Merman*, 12th Dist. Clermont No. CA99-02-11, 1998 WL 1145402 (Oct. 25, 1999), the Bradburns were participants in an employee benefit plan at the time they were injured in an automobile collision. After the plan paid benefits to them, the Bradburns filed for a declaratory judgment that the plan had no right to subrogation. *Id.* at *1. The Twelfth District Court of Appeals determined that the trial court correctly denied the plan's motion to dismiss the Bradburns' declaratory judgment claim on preemption grounds because the claim was "a request by plan participants for the court to enforce their

rights under the terms of the plan." *Id.* at *2. That meant the court "had concurrent jurisdiction * * * under the exception set forth in Section I 132(e)(1)[.]" *Id.* Likewise, in *Beasecker v. State Auto Ins. Co.*, 2d Dist. Darke No. 1530, 2001 WL 85782 (Feb. 2, 2001), the Second District Court of Appeals determined that a claim by plan participants regarding whether their benefit plan was entitled to subrogation was a request to enforce their rights under the plan and, therefore, fell under the concurrent jurisdiction exception to preemption. *Id.* at *5.

{¶12} The Pattersons' claim against Swagelok sought a declaration that Swagelok does not have a contractual right to subrogation and, relatedly, sought to bar Swagelok from exercising any claimed right to subrogation. Although their request can be construed as a civil action to enforce the terms of the plan under Section 1132(a)(3), it can also be construed as a civil action "to enforce [their] rights under the terms of the plan" under Section 1132(a)(1)(B). "[T]he fact that [a] complaint has attributes of a claim under section 1132(a)(3) does not mean that it is not also a claim for benefits under the plan" under Section 1132(a)(1)(B). *Langston v. Wilson McShane Corp*, 776 N.W.2d 684, 692 (Minn.2009). Upon review of the record, we conclude that the trial court did not err when it determined that the Pattersons' declaratory judgment claim against Swagelok was not preempted. Swagelok's first, second, and third assignments of error are overruled.

ASSIGNMENT OF ERROR IV

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY HOLDING ERISA LAW PROHIBITS ENFORCEMENT OF THE SPD AS PART OF THE ACTUAL "PLAN".

{¶13} In its fourth assignment of error, Swagelok argues that the trial court incorrectly determined that it is not entitled to subrogation under the terms of the plan. According to Swagelok, the subrogation term is contained within the health benefits Summary Plan Description ("SPD") that is incorporated by reference into the "wrap" plan document that concerns all of its various employee welfare benefits. "Courts construe ERISA plans, as they do other contracts, by 'looking to the terms of the plan' as well as to 'other manifestations of the parties' intent.'" *US Airways*, *Inc. v. McCutchen*, 569 U.S. 88, 102 (2013), quoting *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 113 (1989).

{¶14} As Swagelok notes, its benefits program contains different documents. One is titled "Plan Document" and describes all the various benefits available to employees, including health care, dependent care and flexible spending accounts, life insurance, long-term disability, dental care, vision, accidental death, and others. *See* 29 U.S.C. 1102 (providing for the establishment of employee benefit plans pursuant to a written instrument and outlining required and optional requirements). Regarding health benefits, the Plan Document provides that "[t]he Health Care Program shall be provided through a Benefits Contract with the insurance carrier noted in Appendix A or shall be self-funded by the Employer." The Plan Document does not contain any provisions that give Swagelok the right of reimbursement or subrogation. Regarding its inter-

pretation, the Plan Document provides that the plan administrator shall use its discretion to interpret its terms and purpose to resolve any conflicts. In the event the administrator "is unable to resolve any conflict between the provisions of this Plan and the Governing Documents, the provisions of the Governing Documents will prevail * * *." "'Governing Documents' means the documents that contain the substantive provisions governing benefits provided by each of the Welfare Programs listed in the attached Appendices." The Plan Document also contains a "Notice of Coverage" section that provides that, "[w]ithin any time limits required by * * * ERISA, Employer shall issue to each Associate a Summary Plan Description, which shall outline the Associate's benefits under this Plan. In the case of any discrepancy between the terms contained in this Plan document and the Summary Plan Description, this Plan document shall control." In Appendix A, the Plan Document identifies the companies that will be administering the medical benefit program and instructs anyone seeking a full description of the benefits to "please read the Governing Documents."

{¶15} The Plan Document thus refers to two other documents: the Governing Documents and the SPD. It clarifies that language in the Governing Documents controls over the Plan Document, but the language of the Plan Document controls over the SPD.

{¶16} The Governing Documents for the medical benefits program were not provided to the trial court. The SPD for the program, however, was provided. The SPD indicates that it describes the health benefits available to employees and their families and includes summaries of who is eligible, what services are covered and not covered, how benefits are paid, and the

employee's rights and responsibilities. *See* 29 U.S.C. 1022 (providing that a summary plan description must be furnished to participants and outlining its required contents). Going through different categories of health care services, the SPD indicates what percentage of expenses is Swagelok's responsibility and what percentage is the employee's responsibility. For many of the categories, it also contains more extensive sections that detail exactly what services are or are not covered and any additional limitations on such coverage. The SPD also contains a section on subrogation and reimbursement that provides that Swagelok has a right to both. Regarding the interpretation of benefits, the SPD provides that Swagelok has sole and exclusive discretion to interpret benefits and any other terms, conditions, limitations, and exclusions under the plan. The SPD also provides, however, that, "[i]f the language, terms or meaning of the actual text of the Swagelok Company Welfare Plan Document differs from language, text or meaning of this Summary, the Swagelok Welfare Plan Document will control." Thus, the SPD, like the Plan Document, indicates that the language of the Plan Document controls over any language in the SPD.

{¶17} Swagelok argues that the Plan Document and SPD are the only two documents that detail the parameters of the health benefits program and that there are no separate "Governing Documents." According to Swagelok, the SPD is the "Governing Documents" and its terms are incorporated into the Plan Document, supplementing that document and adding the subrogation provision. The trial court rejected Swagelok's arguments, noting that the SPD indicates that it is only providing summaries and that the Plan Document does not contain source information about the particulars of the health benefit

program. The court reasoned that the Governing Documents must therefore be the benefits contracts that Swagelok has entered with the companies administering the health benefits program. It noted that the Plan Document's definition of benefit contracts provides that the terms of those contracts are incorporated into the Plan Document, supplementing its provisions. The court also noted that a Swagelok representative testified that Swagelok has a contract with an insurance company that indicates what specific health benefits will be covered.

{¶18} Addressing the relationship between a benefit plan and its summary, the United States Supreme Court has been clear that "summary documents, important as they are, provide communication with beneficiaries *about* the plan, but * * * their statements do not themselves constitute the *terms* of the plan * * *." *CIGNA Corp. v. Amara*, 563 U.S. 421, 438 (2011); *McCutchen*, 569 U.S. at 92, fn.1. In *Amara*, the Supreme Court noted that a plan is developed by its sponsor, who creates the basic terms and conditions, including a procedure for amending the plan. *Amara* at 437. The summary, on the other hand, is provided by the plan's administrator. *Id.;* 29 U.S.C. 1024(b)(1). Noting its prior finding that ERISA carefully distinguishes between the role of the plan sponsor and administrator, the Supreme Court concluded that there was "no reason to believe that the statute intends to mix the responsibilities by giving the administrator the power to set plan terms indirectly by including them in the summary plan descriptions." *Amara* at 437.

{¶19} Swagelok argues that, in some circumstances, a summary document has been deemed part of the plan, such as in *Board of Trustees v. Moore*, 800 F.3d

214 (6th Cir.2015). In *Moore*, however, there was a trust document that authorized the Board to develop a welfare benefits plan, administer the plan, and act as fiduciary to the plan. Instead of drafting a welfare benefits plan, the Board "went straight to [the] creation of a summary plan description[.]" *Id.* at 219. Under those circumstances, because there was no separate plan document and the summary was specifically approved by the Board, the Sixth Circuit construed the summary as the controlling ERISA plan. *Id.* at 220; *see also*, *e.g.*, *Alday v. Container Corp. of America*, 906 F.2d 660, 665 (11th Cir.1990) (explaining that the summary document "clearly functioned as the plan document required by ERISA."); *Rhea v. Alan Ritchey*, *Incorporated Welfare Benefit Plan*, 858 F.3d 340, 344 (5th Cir.2017) (explaining that "SPD was functioning as both an SPD and written instrument.").

{¶20} In this case, the Plan Document contains all the features required of an employee benefit plan. 29 U.S.C. 1102(b) (specifying that a plan must include a procedure for funding the plan, a procedure for administering the plan, a procedure for amending the plan, and the basis on which payments are made to and from the plan). It also incorporates by reference the terms of any benefits contract that Swagelok enters to specify the nature and amount of benefits provided by any of its employee-welfare programs. Unlike in the cases cited by Swagelok, the SPD does not function as both the summary under Section 1022 and the "written instrument" under Section 1102(a)(1). There is also no language in the Plan Document that provides the administrator of the benefit plan authority to amend the Plan Document by including additional terms in the SPD.

{¶21} Upon review of the record, we conclude that the trial court correctly determined that the SPD could not add a subrogation and reimbursement provision to the Plan Document. Because the Plan Document does not contain such provisions and Swagelok did not produce any evidence that the Governing Documents include such provisions, we conclude that the trial court also correctly determined that Swagelok does not have a contractual right to subrogation or reimbursement. Accordingly, the trial court correctly granted summary judgment to the Pattersons. Swagelok's fourth assignment of error is overruled.

CROSS-APPEAL ASSIGNMENT OF ERROR I

THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING THAT SWAGELOK AND/OR ITS COUNSEL DID NOT VIOLATE R.C. 2323.51 FOR FAILING TO PRODUCE THE PLAN DOCUMENT REQUESTED AND MAKING FALSE STATEMENTS REGARDING ITS EXISTENCE AND THE NATURE OF THE SPDS RELIED ON.

{¶22} In their first assignment of error, the Pattersons argue that the trial court should have sanctioned Swagelok under Revised Code Section 2323.51 because of its delay in producing the Plan Document and for making false statements regarding the SPD. Section 2323.51 provides that "any party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal." R.C. 2323.51(B)(1). The definition of frivolous conduct includes conduct that "obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including * * * causing unnecessary delay * * *[,]" "a

needless increase in the cost of litigation[,]" "is not warranted under existing law," "consists of allegations or other factual contentions that have no evidentiary support[,]" or "consists of denials or factual contentions that are not warranted by the evidence[.]" R.C. 2323.51(A)(2)(a). "[A]nalysis of a claim under [R.C. 2323.51(A)(2)] boils down to a determination of (1) whether an action taken by the party to be sanctioned constitutes 'frivolous conduct,' and (2) what amount, if any, of reasonable attorney fees necessitated by the frivolous conduct is to be awarded to the aggrieved party." (Alterations sic.) *P.N. Gilcrest Ltd. Partnership v. Doylestown Family Practice*, *Inc.*, 9th Dist. Wayne No. 10CA0035, 2011-Ohio-2990, ¶ 32, quoting *Ceol v. Zion Industries*, *Inc.*, 81 Ohio App.3d 286, 291 (9th Dist.1992).

{¶23} This Court's standard of review depends on the part of the analysis at issue. A trial court's factual findings will not be overturned if they are supported by competent, credible evidence. *S & S Computer Sys.*, *Inc. v. Peng*, 9th Dist. Summit No. 20889, 2002-Ohio-2905,119. We review questions of law, such as whether a claim is warranted under existing law, de novo. *Jefferson v. Creveling*, 9th Dist. Summit No. 24206, 2009-Ohio-1214, ¶ 16; *City of Lorain v. Elbert*, 9th Dist. Lorain No. 97CA006747, 1998 WL 195724, *2-3 (Apr. 22, 1998). Finally, we review the decision whether to impose sanctions for improper conduct under an abuse of discretion standard. *Gilcrest* at ¶ 29. An abuse of discretion occurs if the court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶24} Following a hearing on the Pattersons' motion for sanctions, a magistrate found that the Pattersons sent SwageIok initial discovery requests that sought

the Plan Document required by 29 U.S.C. 1102, the SPD required by 29 U.S.C. 1022, any administrative services contracts, any modification statements, and any contracts between Swagelok and any plan administrators. In October 2017, Swagelok responded and produced the SPD but not the Plan Document. In January 2018, the Pattersons scheduled the deposition of Swagelok's plan representative, but Swagelok sought a protective order. On February 28, 2018, Swagelok supplemented its discovery response and provided the Plan Document. The deposition occurred on April 2, 2018.

{¶25} The magistrate found that Swagelok considered the SPD to be both the controlling plan document and the summary document required by ERISA. Because there is conflicting case law about that issue, he found that Swagelok's failure to produce the Plan Document in October 2017 was not conclusively frivolous conduct. He also found that Swagelok provided the Plan Document voluntarily in February 2018, which was still a month before the deposition of the plan administrator. The magistrate also found that the Pattersons failed to prove that they were adversely affected by the delay in receiving the Plan Document, noting that they did not identify what specific additional expenses they incurred from the delay. The magistrate also noted that one of Swagelok's primary defenses was whether the Pattersons could even file their action in state court, which was unrelated to the language of the Plan Document or SPD. He found that Swagelok's defense that the court did not have jurisdiction was also not frivolous considering the conflicting case law on the issue. The Pattersons objected to the magistrate's decision, but the trial court overruled their objections. The court determined that Swagelok's initial failure to disclose the

Plan Document did not rise to the level of frivolous conduct under the specific facts of this case. It also determined that the legal arguments Swagelok made throughout the case and in its motion for sanctions did not violate Section 2323.51(A)(2)(a). It, therefore, adopted the decision of the magistrate in full and denied the Pattersons' motion for attorney fees.

{¶26} The Pattersons argue that the trial court incorrectly found that they did not request the Plan Document in their initial discovery requests. They also argue that it was not reasonable for Swagelok to believe that it complied with their discovery requests by producing only the SPD. Notably, the Pattersons argue that it was unreasonable for Swagelok's counsel to accept Swagelok's representation that the SPD was the only document pertaining to the health benefits plan. The Pattersons also argue that the court incorrectly determined that they were required to file a motion to compel before seeking sanctions against Swagelok. According to the Pattersons, they could not have filed a motion to compel even if it was required because Swagelok had specifically told them that the Plan Document did not exist. The Pattersons also argue that the eventual production of the Plan Document did not alleviate Swagelok's prior violations and that they did suffer harm from the delay. According to the Pattersons, they explained in various pleadings that they had to seek additional discovery to address the inconsistencies in the documents Swagelok had produced, resulting in substantial delays and attorney fees. The Pattersons further argue that, under Section 2323.51(B)(1), they were not required to separate out the attorney fees they incurred specifically from the frivolous conduct.

{¶27} Although arguing that Swagelok's conduct was frivolous, the Pattersons do not explain which part of the definition of Section 2323.51(A)(2) the conduct met. We agree that some of the findings made by the magistrate and adopted by the trial court may not be accurate. They are tangential, however, to the primary issue of whether Swagelok's failure to produce the Plan Document with its initial discovery response constituted frivolous conduct.

{¶28} According to Swagelok's benefit program manager, she understood that the SPD was part of a larger and greater document that they referred to as "the Wrap plan." She described the Wrap plan as something that consolidated all of Swagelok's various benefit plans, but she also asserted that amendments to each individual plan might be in the SPD for health benefits, the SPD for vision benefits, and so forth.

{¶29} The trial court found credible that Swagelok considered the SPD to be the controlling document regarding Swagelok's subrogation and reimbursement rights. In support of its finding, the court noted the case law that holds that a SPD can be the controlling plan document under ERISA. The court also noted that the Pattersons did not ask the benefit program manager why Swagelok did not provide the Plan Document with its initial discovery response.

{¶30} Upon review of the record, we conclude that the Pattersons have not established that Swagelok's failure to produce the Plan Document initially "obviously serve[d] merely to harass or maliciously injure" the Pattersons. R.C. 2323.51(A)(2)(a)(i). We also conclude that the trial court correctly determined that Swagelok's position was warranted under existing law because there is case law holding that a SPD can also be a company's plan document under ERISA.

R.C. 2323.51(A)(2)(a)(ii). We further conclude that the Pattersons did not demonstrate that Swagelok's conduct "consist[ed] of allegations or other factual contentions that have no evidentiary support" or "consist[ed] of denials or factual contentions that are not warranted by the evidence" under Sections 2323.51(A)(2)(a)(iii) and (iv).

{¶31} Any misstatements in the magistrate's decision that were adopted by the trial court were harmless. Because the Pattersons did not establish that Swagelok engaged in frivolous conduct, any incorrect statements by the trial court regarding the amount that the Pattersons may recover for such conduct were also harmless. We conclude that the trial court did not err when it determined that Swagelok did not violate Section 2323.51. The Pattersons' first assignment of error is overruled.

CROSS-APPEAL ASSIGNMENT OF ERROR II

THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO ADDRESS WHETHER SWAGELOK AND ITS COUNSEL VIOLATED R.C. 2323.51 FOR FILING THEIR MOTION FOR SANCTIONS.

{¶32} In their second assignment of error, the Pattersons argue that the trial court failed to address whether the motion for sanctions that Swagelok filed against them was frivolous. The Pattersons note that Swagelok requested that the trial court award it attorney fees because they allegedly continued seeking contracts, financial records, and depositions even though it had provided all the documentation it possessed concerning its right to subrogation. Swagelok argued that the Pattersons were needlessly attempting to drive up the cost of the litigation by continuing to seek copious amounts of discovery.

According to the Pattersons, Swagelok's motion was frivolous because all their requests were within the bounds of discovery and Swagelok only ever produced the Plan Document because of their additional discovery requests.

{¶33} In its ruling on the Pattersons' motion for attorney fees, the court first considered whether Swagelok engaged in frivolous conduct when it initially failed to disclose the Plan Document. It determined that Swagelok's conduct did not rise to the level of frivolous conduct. The court then wrote: "[n]or can the Court find the legal arguments made by Swagelok during the case or Swagelok's motion for sanctions against the Plaintiffs violates R.C. 2323.51(A)(2)(a)." The trial court, therefore, did consider whether Swagelok's motion for sanctions constituted frivolous conduct. The Pattersons' second assignment of error is overruled.

III.

{¶34} Swagelok's assignments of error are overruled. The Pattersons' assignments of error are also overruled. The judgment of the Medina County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to both parties.

/s/ Jennifer Hensal
JENNIFER HENSAL
FOR THE COURT

CARR, J.
TEODOSIO, J.
CONCUR.

APPEARANCES:

SHAUN D. BYROADS and DARAN KIEFER, Attorneys at Law, for Appellant/Cross-Appellee.

BENJAMIN P. PFOUTS, Attorney at Law, for Appellees/Cross-Appellants.

APPENDIX B

THE SUPREME COURT OF OHIO

CASE ANNOUNCEMENTS

February 1, 2022

[Cite as *02/01/2022 Case Announcements*, 2022-Ohio-258.]

MERIT DECISIONS WITHOUT OPINIONS

2021-1461. State ex rel. Myers v. Turner.
In Habeas Corpus. Sua sponte, cause dismissed.
O'Connor, C.J., and Kennedy, Fischer, DeWine, Donnelly, Stewart, and Brunner, JJ., concur.

2021-1465. Saunders v. Greene Cty. Court of Common Pleas.
In Habeas Corpus. Sua sponte, cause dismissed.
O'Connor, C.J., and Kennedy, Fischer, DeWine, Donnelly, Stewart, and Brunner, JJ., concur.

2021-1466. Johnson v. Greene Cty. Court of Common Pleas.
In Habeas Corpus. Sua sponte, cause dismissed.
O'Connor, C.J., and Kennedy, Fischer, DeWine, Donnelly, Stewart, and Brunner, JJ., concur.

2021-1468. Nolan v. Greene Cty. Court of Common Pleas.
In Habeas Corpus. Sua sponte, cause dismissed.
O'Connor, C.J., and Kennedy, Fischer, DeWine, Donnelly, Stewart, and Brunner, JJ., concur.

2021-1476. State v. McDonald.
In Habeas Corpus. Sua sponte, cause dismissed.
O'Connor, C.J., and Kennedy, Fischer, DeWine, Donnelly, Stewart, and Brunner, JJ., concur.

2021-1502. McComas v. Greene Cty. Court of Common Pleas.
In Habeas Corpus. Sua sponte, cause dismissed.
O'Connor, C.J., and Kennedy, Fischer, DeWine, Donnelly, Stewart, and Brunner, JJ., concur.

2021-1506. Davis v. Jones.
In Habeas Corpus. Sua sponte, cause dismissed.
O'Connor, C.J., and Kennedy, Fischer, DeWine, Donnelly, Stewart, and Brunner, JJ., concur.

2021-1509. Hopkins v. Fairborn Mun. Court.
In Habeas Corpus. Sua sponte, cause dismissed.
O'Connor, C.J., and Kennedy, Fischer, DeWine, Donnelly, Stewart, and Brunner, JJ., concur.

2021-1521. State ex rel. Wilson v. Hildebrand.
In Habeas Corpus. Sua sponte, cause dismissed.
O'Connor, C.J., and Kennedy, Fischer, DeWine, Donnelly, Stewart, and Brunner, JJ., concur.

2021-1524. State v. Carter.
In Habeas Corpus. Sua sponte, cause dismissed.
O'Connor, C.J., and Kennedy, Fischer, DeWine, Donnelly, Stewart, and Brunner, JJ., concur.

2021-1525. Thornton v. Greene Cty. Court of Common Pleas.
In Habeas Corpus. Sua sponte, cause dismissed.
O'Connor, C.J., and Kennedy, Fischer, DeWine, Donnelly, Stewart, and Brunner, JJ., concur.

MOTION AND PROCEDURAL RULINGS

2021-1442. State v. Brown.
Mahoning App. No. 19 MA 0136, 2021-Ohio-2853. On motion for leave to file delayed appeal. Motion granted. Appellant shall file a memorandum in support of jurisdiction within 30 days.

O'Connor, C.J., and DeWine, J., dissent.

2021-1443. State v. Fulford.
Muskingum App. No. CT2020-0021, 2021-Ohio-356. On motion for leave to file delayed appeal. Motion granted. Appellant shall file a memorandum in support of jurisdiction within 30 days.

2021-1450. State v. Ladson.
Cuyahoga App. No. 105914, 2018-Ohio-1299. On motion for leave to file delayed appeal. Motion granted. Appellant shall file a memorandum in support of jurisdiction within 30 days.

O'Connor, C.J., and DeWine and Brunner, JJ., dissent.

APPEALS ACCEPTED FOR REVIEW

2021-1395. State v. Joyce.
Lake App. No. 2021-L-006, 2021-Ohio-3476. Sua sponte, cause held for the decision in 2020-1266, *State v. Maddox*.

DeWine, J., dissents.

2021-1398. State v. Waggle.
Muskingum App. No. CT2020-55, 2021-Ohio-3457. Sua sponte, cause held for the decision in 2020-1266, *State v. Maddox*.

APPEALS NOT ACCEPTED FOR REVIEW

2021-1351. Asamoah v. TS Tech Americas, Inc.
Franklin App. No. 21AP-404.

2021-1359. Huston v. Huston.
Summit App. No. 30123.

2021-1360. State v. Fry.
Cuyahoga App. No. 109593, 2021-Ohio-2838.
Brunner, J., dissents and would accept the appeal on proposition of law No. I.

2021-1362. Jaffe v. Cleveland Clinic Found.
Cuyahoga App. No. 110164.

2021-1366. Hennessy v. Durrani.
Hamilton App. Nos. C-200145 through C-200148.
Fischer, J., not participating.

2021-1368. Upchurch v. Durrani.
Hamilton App. No. C-200384.
Fischer, J., not participating.

2021-1369. State v. Arab.
Lucas App. No. L-20-1119, 2021-Ohio-3378.

2021-1371. Asamoah v. Capital One.
Franklin App. No. 21AP-499. Appellant's motion to impose sanctions denied.

2021-1372. Asamoah v. Pennsylvania Higher Edn. Assistance Agency.
Franklin App. No. 21AP-512.

2021-1373. State v. Pennington.
Hamilton App. No. C-200358, 2021-Ohio-3365.
Fischer and DeWine, JJ., not participating.

2021-1378. State v. Brenson.
Delaware App. No. 21CAA060029.
Brunner, J., dissents and would remand the cause for the court of appeals to consider Civ.R. 6(D) and App.R. 14(C).

2021-1381. Schlegel v. Summit Cty.
Summit App. No. 29804, 2021-Ohio-3451.

2021-1382. Pollock v. Brian J. Britt, D.D.S., L.L.C.
Cuyahoga App. No. 110489, 2021-Ohio-3820.
Donnelly and Brunner, JJ., dissent.

2021-1383. State v. King.
Stark App. No. 2020 CA 00064, 2021-Ohio-1636.

2021-1384. Lilly v. Neal.
Montgomery App. No. CA 29148.

2021-1385. Dayton v. Stewart.
Montgomery App. No. 29056, 2021-Ohio-3518.
Stewart, J., dissents.

2021-1388. Patterson v. Am. Family Ins. Co.
Medina App. Nos. 20CA0075-M and 20CA0078-M. Appellee's motion/notice to assert conditional cross-proposition of law denied.
O'Connor, C.J., and Donnelly and Brunner, JJ., would deny appellee's motion as moot.

2021-1390. Patrick v. Patrick.
Cuyahoga App. No. 110979.
Brunner, J., dissents.

2021-1396. Eaton Twp. Bd. of Trustees v. Grafton.
Lorain App. Nos. 19CA011555 and 19CA011559, 2021-Ohio-3446.

2021-1397. In re Guardianship of Baker.
Montgomery App. No. 29145, 2021-Ohio-3692.
Donnelly, J., dissents.

2021-1399. State v. Andrews.
Lucas App. No. L-20-1199, 2021-Ohio-3507.
Stewart, J., dissents.

2021-1400. Martcheva v. Dayton Bd. of Edn.
Montgomery App. No. 29144, 2021-Ohio-3524.

2021-1417. State v. Harris.
Summit App. No. 29583, 2020-Ohio-4365.

2021-1429. State v. Neff. Ottawa
App. No. OT-20-004.

2021-1430. Wisehart v. Wisehart.
Preble App. No. CA2021-01-001, 2021-Ohio-3649.

2021-1435. In re J.R.
Cuyahoga App. Nos. 110397 and 110398, 2021-Ohio-3673.

2021-1441. State v. Miller.
Lake App. No. 2021-L-040, 2021-Ohio-3882.

2021-1447. Jackson v. Ohio Dept. of Rehab. & Corr.
Franklin App. No. 21AP-96.
Brunner, J., dissents.

2021-1452. State v. Davic.
Franklin App. No. 11AP-555, 2012-Ohio-952.

2021-1456. State v. Jackson.
Montgomery App. No. 29001, 2021-Ohio-3115.

2021-1472. State v. Stiver.
Hamilton App. No. C-210229, 2021-Ohio-3713.

RECONSIDERATION OF PRIOR DECISIONS

2021-1113. C.S. v. G.T.
Franklin App. No. 19AP-804. Reported at 165 Ohio St.3d 1456, 2021-Ohio-4033, 176 N.E.3d 759. On motion for reconsideration and production of a certificate of the existence of a federal question. Motion denied.

2021-1115. Taylor v. Butler Cty. Court of Common Pleas.
In Prohibition. Reported at 165 Ohio St.3d 1454, 2021-Ohio-4033, 176 N.E.3d 754. On motion for reconsideration. Motion denied. Demands "for dismissal for fraud on the court" and "for validation of subscribed oath of office" denied. "Private, international, administrative remedy demand No. GBR-04072020-ALT" denied.

APPENDIX C

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

[Filed September 25, 2018]

Case No. 17 CIV 0585

LAURA L. PATTERSON, *et al*.,

Plaintiffs,

vs.

AMERICAN FAMILY INSURANCE COMPANY, *et al*.,

Defendants.

JUDGE CHRISTOPHER J. COLLIER

JUDGMENT ENTRY

This matter is before the Court upon the following:

(1) Defendant, Swagelok Associates Welfare Benefit Plan-Medical Benefits Program's Motion for Summary Judgment and Award of Attorney Fees and Costs;

(2) Plaintiffs' Motion to Strike Portions of Defendant, Swagelok Associates Welfare Benefit Plan-Medical Benefits Program's Motion for Summary Judgment;

(3) Plaintiffs' Combined: (1) Memorandum in Opposition to Defendant, Swagelok Associates Welfare Benefit Plan-Medical Benefits Program's Motion for Summary Judgment and

Award of Attorney Fees and Costs; (2) Plaintiffs' Cross-Motion for Summary Judgment; and (3) Plaintiffs' Motion for Attorney Fees Pursuant to R.C. 2323.51 (with request for a hearing);

(4) Swagelok Benefits Plan's Reply in Support of Motion for Summary Judgment and Award of Attorney Fees and Opposition to Plaint's Motion for Summary Judgment;

(5) Swagelok Benefits Plan's Opposition to Plaintiffs' Motion for Attorney Fees and to Strike Section "F" of the Plans Motion for Summary Judgment;

(6) Plaintiffs' Reply to Defendant Swagelok Associates Welfare Benefits Plan-Medical Benefits Program's Opposition to Plaintiffs' Motion for Attorney Fees and to Strike Section "F" of the Plan's Motion for Summary Judgment; and

(7) Plaintiffs' Response to: "Swagelok Benefits Plan's Reply in Support of Motion for Summary Judgment and Award of Attorney Fees and Opposition to Plaintiff's Motion for Summary Judgment"

FACTUAL BACKGROUND

On July 1, 2015, the Plaintiff, Laura Patterson, was injured in a motor vehicle accident. Plaintiffs allege the accident was caused by the negligence of Defendant, Jessica Mrdjanov.

At the time of the collision Plaintiff Laura Patterson was a covered beneficiary for health benefits under the Defendant, Swagelok Associates Welfare Benefit Plan-Medical Benefits Program ("Defendant Swagelok Plan"), which was offered through her husband, the

Plaintiff Eric Patterson's employer, the Swagelok Company. Defendant Swagelok Plan is an employer sponsored health benefit plan that is subject to the federal Employee Retirement Income Security Act of 1974 ("ERISA").

Prior to the collision, Plaintiff Eric Patterson enrolled himself and his wife (Plaintiff Laura Patterson) into the Defendant Swagelok Plan via an online portal. In doing so, Eric Patterson agreed to the terms contained in the "Plan Document" which served as the controlling written document for Defendant Swagelok Plan. The "Plan Document" is required by 29 U.S.C. 1102 of ERISA. The "Plan Document" that pertains to the Swagelok Plan does not contain any terms stating that Defendant Swagelok Plan is entitled to be subrogated to a beneficiary or reimbursed by a beneficiary for medical benefits paid that were caused by the negligence of a third party.

After Plaintiff Eric Patterson enrolled into the Defendant Swagelok Plan, the Swagelok Company sent beneficiaries of the Defendant Swagelok Plan, including Plaintiff Eric Patterson, Summary Plan Descriptions ("SPDs") for the years 2015 and 2016 via Email. The Swagelok Company, as the plan sponsor of the Defendant Swagelok Plan, is required to provide SPDs to beneficiaries of the Defendant Swagelok Plan under 29 U.S.C. 1022. SPDs are meant to provide beneficiaries with a summary of the benefits provided under the Plan. Both the 2015 and 2016 SPD produced in this case specifically state that Defendant Swagelok Plan is entitled to be subrogated to a beneficiary and reimbursed by a beneficiary for medical benefits paid that were caused by the negligence of a third party. Thus, the SPD differs from the Swagelok "Plan Document."

Also at the time of the collision, the Swagelok Company had contracted with UnitedHealthcare, Inc. ("United") to provide administrative services for the Swagelok Plan. As part of this agreement, Swagelok Company agreed to or entered into certain 'Benefit Contract(s)" with United which set forth the medical benefits, or coverage, that Defendant Swagelok Plan would cover, and at what rates pursuant to the agreements entered into between United and certain in-network medical providers.

United claims that it paid $24,175.84 in medical benefits on Laura Patterson's behalf as a result of the accident. Defendant Swagelok Plan claims it is contractually entitled to be: (1) subrogated to the Plaintiff Laura Patterson to seek recovery against Defendant Mrdjanov; and (2) reimbursed directly by the Plaintiff Laura Patterson for medical benefits paid on her behalf.

In the present case, the Plaintiffs set forth a claim for declaratory judgment pursuant to R.C. 2721.02 and R.C. 2721.03 against Defendant Swagelok Plan seeking an order that Defendant Swagelok Plan is not entitled to be subrogated to the Plaintiff Laura Patterson or reimbursed by the Plaintiff Laura Patterson pursuant to contract, and, even if it is, it is not entitled to the amount that it claims. Defendant Swagelok Plan has asserted a cross-claim against Defendant Mrdjanov claiming that it is subrogated to the Plaintiff Laura Patterson's negligence claim up to the $24,175.84 in past medical benefits paid.

The Plaintiffs and Defendant Swagelok Plan both move for summary judgment on Plaintiffs' declaratory judgment claim.

DEFENDANT SWAGELOK PLAN'S ARGUMENTS

Defendant Swagelok Plan argues it has contractual subrogation and reimbursement rights because the Plan Document incorporates the 2015 and 2016 SPDs because the SPDs are "Governing Documents," as that term is defined under the Plan Document. The Defendant Swagelok Plan reasons that the SPDs are considered "Governing Documents" under the Plan Document because the SPDs contain terms that give Defendant Swagelok Plan subrogation and reimbursement rights that are not contained in the Plan Document. Defendant Swagelok Plan then argues in its reply brief that the SPDs are considered "Governing Documents" under the Plan Document because they contain the substantive terms of the medical benefits covered by the Swagelok Plan. The Defendant Swagelok Plan relies on both federal and Ohio authority.

In the alternative, Defendant Swagelok Plan argues this court lacks subject matter jurisdiction to decide the Plaintiffs' declaratory judgment claim because the Plaintiffs' claim is actually a claim under 29 U.S.C. 1132(a)(3) to which federal courts have exclusive jurisdiction to decide pursuant to 29 U.S.C. 1132(e).

Also, in the alternative, Defendant Swagelok Plan argues the Plaintiffs' declaratory judgment claim is preempted by 29 U.S.C. 1144(a).

Finally, Defendant Swagelok Plan argues it is entitled to attorney fees and costs under RC. 2323.51 and 29 U.S.C. 1132(g)(1).

PLAINTIFFS' ARGUMENTS

The Plaintiffs argue that pursuant to both federal and Ohio authority, Defendant Swagelok Plan does not have contractual rights to be subrogated to Laura

Patterson and that Ms. Patterson is not required to reimburse the Swagelok Plan for any medical benefits paid on her behalf

First, the Plaintiffs point out that Defendant Swagelok Plan has failed to provide any evidence that it actually paid the $24,175.84 that was paid on Ms. Patterson's behalf or that it actually reimbursed United for the $24,175.84 paid on Laura Patterson's behalf, so that Defendant Swagelok Plan has failed to show it has the subrogation or reimbursement rights that it claims, as opposed to United.

Second, the Plaintiffs argue the SPDs are not binding contracts themselves and were not even in existence when Eric Patterson agreed to the Plan Document.

Third, the Plaintiffs argue the plain language contained in both the Plan Document and SPDs state that the Plan Document is the controlling document in determining the rights and obligations between Defendant Swagelok Plan and the Plaintiff Laura Patterson, and not any SPD.

Fourth, the Plaintiffs argue that the SPDs are not incorporated by the Plan Document because the SPDs state that they are only "summaries" and both the SPDs and the Plan Document state that where there is any "inconsistency" between the Plan Document and an SPD or where the two may "differ," the Plan Document controls (not the SPD). Further, the SPDs are not "Governing Documents" as that term is defined under the Plan Document because they do not contain any of the "substantive provisions governing benefits provided." Instead, the "substantive provisions governing benefits provided" are contained in the Plan Document and the "Benefits Contracts" that were entered into between Swagelok and United, which are

referenced to and incorporated in the Plan Document. Additionally, if the SPDs were to be considered "Governing Documents" and therefore incorporated into the Plan Document, this would create a conflict and require this court to ignore the conflict provisions contained in both the SPDs and the Plan Document which state that the terms contained in the Plan Document govern, not the language contained in the SPDs.

Fifth, the Plaintiffs state this court has jurisdiction to hear their declaratory judgment claim because it is not a claim pursuant to 29 U.S.C. 1132(a)(3), but instead is a claim for declaratory judgment pursuant to R.C. 2721.02 and R.C. 2721.03, and that even if Plaintiffs' claim was to be considered a claim under 29 U.S.C. 1132(a)(3), then it would also have to be considered a claim under 29 U.S.C.1132(a)(1)(B) which gives federal and state courts concurrent jurisdiction pursuant to 29 U.S.C. 1132(e)(1).

Sixth, Plaintiffs point out that this court has already addressed the Defendant Swagelok Plan's preemption argument in denying its motion to dismiss, and that this portion of its motion for summary judgment should therefore be struck and disregarded by this court because a motion to reconsider is a legal nullity. Further, Plaintiffs argue that the Defendant's preemption argument has been waived since it is an affirmative defense that Defendant Swagelok Plan failed to raise in its Answer to Plaintiffs' First Amended Complaint.

Finally, the Plaintiffs argue that Defendant Swagelok Plan is not entitled to attorney fees and costs under R.C. 2323.51 and 29 U.S.C. 1132(g)(1), but instead, it is the Plaintiffs that are entitled to reasonable attorney fees under R.C. 2323.51 for the

Defendant Swagelok Plan's frivolous behavior in this case.

ANALYSIS

A. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate, pursuant to Civ. R. 56(C), when:

> (1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, *Inc*., 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). Specifically, "the moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact." *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996 Ohio 107, 662 N.E.2d 264 (1996). The moving party bears the burden of supporting the motion by pointing to some evidence in the record of the type listed in Civ. R. 56(C). *Id.*

If the moving party satisfies this burden, the burden shifts to the non-moving party under Civ. R. 56(E), which states, in pertinent part, that:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings,

> but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

When deciding matters of summary judgment, the "judge's function is not to personally weigh the evidence and determine the truth of the matter, but to determine **whether there is a genuine issue of fact for the trial.**" *Anderson v. Liberty Lobby*, *Inc*., 477 U.S. 242, 249 (1986) (emphasis added).

B. JURISDICTION

Defendant Swagelok Plan claims that federal courts have exclusive jurisdiction to hear the Plaintiffs' declaratory judgment claim in this case pursuant to 29 U.S.C. 1132(e)(1) because the Plaintiffs' claim is actually a claim brought under 29 U.S.C. 1132(a)(3). 29 U.S.C. 1132(e)(1) states:

> Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 1021(f)(1) of this title. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

Thus, if the Plaintiffs' claim is one under 29 U.S.C. 1132(a)(3) then federal courts have exclusive jurisdiction, unless it is also considered a claim under 29 U.S.C. 1132(a)(1)(B), in which case state and federal courts have concurrent jurisdiction.

29 U.S.C. 1132(a)(3) states:

> (a) PERSONS EMPOWERED TO BRING A CIVIL ACTION. A civil action may be brought—
>
> * * *
>
> (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;

Here, Plaintiffs have not brought a claim under 29 U.S.C. 1132(a)(3). Instead, Plaintiffs brought a claim seeking a declaratory judgment under R.C. 2721.02 and R.C. 2721.03.

R.C. 2721.02(A) titled "Force and effect of declaratory judgments-action or proceeding against insurer?" states:

> [C]ourts of record may declare rights, status, and other legal relations whether or not further relief is or could be claimed * * * The declaration may be either affirmative or negative in form and effect. The declaration has the effect of a final judgment or decree.

R.C. 2721.03 titled "Construction or validity of instrument or legal provision" states:

> [A]ny person interested under a * * * written contract, or other writing constituting a contract or any person whose rights, status, or other legal relations are affected by a * * * contract * * * may have determined any question of construction or validity arising under the instrument * * * contract, or

> franchise and obtain a declaration of rights, status, or other legal relations under it.

Nowhere in the Plaintiffs' Complaint or Amended Complaint is 29 U.S.C. 1132(a)(3) mentioned. Instead, Plaintiffs' claim against Defendant Swagelok Plan seeks a declaratory judgment under R.C. 2721.02 and R.C. 2721.03 to determine the contractual subrogation and reimbursement rights of Defendant Swagelok Plan in this case.

It does not appear that Plaintiffs' claim for declaratory judgment is a claim "to enjoin any act or practice which violates * * * the terms of the plan * * *." Instead, the Plaintiffs seek an order holding that Defendant Swagelok Plan does not have the subrogation and reimbursement rights it claims it has pursuant to the Plan Document, since no such provisions exist under the Plan Document. *Cottrill v. Allstate Ins Co.*, S.D. Ohio No. 2:09-cv-714, 2009 WL 3673017 (Oct. 30, 2009).

Even if the Plaintiffs' claim was to be considered a claim under 29 U.S.C. 1132(a)(3), then it must also be considered a claim under 29 U.S.C. 1132(a)(1)(B) which gives both state and federal courts concurrent jurisdiction. 29 U.S.C. 1132(a)(1)(B) states:

> (a) PERSONS EMPOWERED TO BRING A CIVIL ACTION A civil action may be brought—
>
> (1) by a participant or beneficiary—
>
> * * *
>
> (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**;

(Emphasis added.) 29 U.S.C. 1132(a)(1)(B). If Plaintiffs' declaratory judgment claim in this case was to be considered a claim "to enjoin any act or practice which violates * * * the terms of the plan * * *" under 29 U.S.C. 1132(a)(3), then it would also have to be considered a claim "to enforce [Ms. Patterson's] rights under the terms of the plan" under 29 U.S.C. 1132(a)(1)(B) which, under 29 U.S.C. 1132(e)(1) gives this court concurrent jurisdiction. *Richland Hospital, Inc. v. Ralyon*, 33 Ohio St.3d 87, 90, 516 N.E.2d 1236 (1987); *Bradburn v. Merman*, 12th Dist. Clermont No. CA99-02-011,1998 WL 1145402 (Oct. 25, 1999); *See also Relph v. Northwitt, Inc.*, S.D. Ohio No. 3:13-cv-138, 2013 WL 4081127 (Aug. 13, 2013); *Petsch v. Hampton Inn*, 8th Dist. Cuyahoga No. 95039, 2011-Ohio-838; *QualChoice, Inc. v. Nationwide Ins. Co.*, 8th Dist. Cuyahoga No. 91964, 2009-Ohio-1696; *Community Ins. Co. v. Rowe*, 85 F.Supp.2d 800 (S.D.Ohio 1999).

C. PREEMPTION

Defendant Swagelok Plan also argues, in the alternative, that the Plaintiffs' declaratory judgment claim is preempted by federal law under 29 U.S.C. 1144(a).

On July 20, 2017, Defendant Swagelok Plan filed its motion to dismiss the Plaintiffs' Complaint against it wherein this same preemption argument was raised. Plaintiffs filed their memorandum in opposition on July 31, 2017, and on December 18, 2017, this Court issued an order denying Defendant Swagelok Plan's motion to dismiss.

The Plaintiffs move to strike this portion of Defendant Swagelok Plan's motion for summary judgment

arguing that it is in effect a motion to reconsider a final order.

Although the preemption argument raised in Defendant Swagelok Plan's motion for summary judgment is the same preemption argument the Defendant Swagelok Plan raised earlier in this case in its motion to dismiss and relies upon the same statute and same two United States Supreme Court decisions, the standard of review is not the same. Further, under the procedural posture of this case, the Court does not agree that the denial of the Defendant's motion to dismiss was conclusively a final appealable order. Accordingly, the Plaintiffs' motion to strike this portion of Defendant Swagelok Plan's motion for summary judgment is denied.

The Plaintiffs further point out the defense of preemption is an affirmative defense that was not raised by Defendant Swagelok Plan in this case.

The defense that a claim is preempted is an affirmative defense that must be raised by a defendant in its answer. *Betz v. Penske Truck Leasing Co., LP.*, 10th Dist. Franklin No. 11ap-982, 2012-Ohio-3472, ¶ 36 ("Under federal law interpreting ERISA, pre-emption of state law claims is an affirmative defense that is waived if not timely pled."). Here, Defendant Swagelok Plan did not specifically raise the affirmative defense that the Plaintiffs' state law claim for declaratory judgment is preempted by federal law in its Answer to the Plaintiffs' Amended Complaint. (Defendant Swagelok Plan did assert an affirmative defense stating "Court lacks subject matter jurisdiction over this action for contract interpretation and enforcement." To the contrary, this Court does have subject matter jurisdiction to interpret and enforce contracts and to adjudicate actions for declaratory judgment.)

The Court finds the defense of preemption is waived. Defendant Swagelok Plan's argument that the Plaintiffs' claim against it in this case is preempted is not well taken.

D. THE DEFENDANT SWAGELOK PLAN HAS FAILED TO PROVIDE ANY EVIDENCE OF PAYMENTS MADE ON BEHALF OF THE PLAINTIFF

In support of its subrogation and reimbursement claims for payments made on behalf of the Plaintiff Laura Patterson, Defendant Swagelok Plan relies on a summary of payments created by United which summarizes payments made by United on behalf of Laura Patterson. However, because Defendant Swagelok Plan (as opposed to United) is claiming to have subrogation and reimbursement rights in this case, Defendant Swagelok Plan was required to provide evidence of payments made on Laura Patterson's behalf, not payments made by another third party (here, United) on Laura Patterson's behalf. As explained by the Eighth District in *Isbell v. Kaiser Found Health Plan*, 85 Ohio App.3d 313, 619 N.E.2d 1055 (8th Dist. 1993), the party claiming a right to subrogation or reimbursement must produce evidence demonstrating that it made the payments that it is claiming to be subrogated or reimbursed for. *Isbell* at *316.

Because Defendant Swagelok Plan has failed to produce any evidence that it made the payments it claims to have made on behalf of the Plaintiff Laura Patterson, and because such payments serve as a basis for Defendant Swagelok Plan's claimed subrogation and reimbursement rights in this case, Defendant Swagelok Plan's subrogation and reimbursement claims must fail.

However, even assuming Defendant Swagelok Plan had produced evidence of payments made on behalf of the Plaintiff Laura Patterson, Defendant Swagelok Plan's claims would still fail as discussed below.

E. THE DEFENDANT SWAGELOK PLAN'S CONTRACTUAL CLAIMS OF SUBROGATION AND REIMBURSEMENT

The parties do not dispute that Defendant Swagelok Plan is subject to federal ERISA law. Defendant Swagelok Plan claims that it is contractually entitled to be subrogated to Laura Patterson or reimbursed by Laura Patterson in this case for the medical expenses paid on her behalf following the subject collision under both Ohio and federal law. Plaintiffs deny that the Defendant Swagelok Plan is contractually entitled to be subrogated or reimbursed in this case under an application of both federal and Ohio precedent.

Whether Ohio or federal law is applied, the result is the same.

1. Application of Ohio Law

"The focus of conventional subrogation *is the agreement of the parties*." (Emphasis in original) *Nationwide Mut. Fire Ins. Co. v. Sonitrol*, *Inc. of Cleveland*, 109 Ohio App.3d 474, 482, 672 N.E.2d 687 (8th Dist. 1996), citing *State v. Jones*, 61 Ohio St.2d 99, 101, 399 N.E.2d 1215 (1980). "Moreover, contractual subrogation clauses are controlled by contract principles, including those of interpretation of language." *Sonitrol*, *Inc. of Cleveland* at 482, citing *Blue Cross & Blue Shield Mut. Of Ohio v. Hrenko*, 72 Ohio St.3d 120, 122, 647 N.E.2d 1358 (1995); *See also Westfied Ins. Group v. Affinia Dev.*, *L.L.C.*, 5th Dist. Knox No. 12-CA-2, 2012-Ohio-5348, ¶ 21 ("Contractual subrogation

clauses are controlled by the usual rules of contract interpretation.").

"When construing the terms of an insurance contract, courts must give the words their plain and ordinary meaning." *Welker v. Motorists Mut. Ins. Co.*, 82 Ohio St.3d 182, 185, 694 N.E.2d 966 (1998). "However, it is well-settled that, where provisions of a contract of insurance are reasonably susceptible of more than one interpretation, they will be construed strictly against the insurer and liberally in favor of the insured." *King v. Nationwide Ins. Co.*, 35 Ohio St.3d 208, 211, 519 N.E.2d 1380 (1988); *James Yeager Homebuilders, Inc. v. Foss*, 9th Dist. Summit No. 23888, 2008-Ohio-548, ¶ 9 ("[A]ny ambiguity in contractual terms will be construed against the drafter."). "In this regard, a policy is ambiguous only if its terms are subject to more than one reasonable interpretation." *Hacker v. Dickman*, 75 Ohio St.3d 118, 119-120, 661 N.E.2d 1005 (1996).

"In construing an agreement, th[e] Court must attempt to give effect to each and every part of it, and avoid any interpretation of one part that will annul another part." *Inchaurregui v. Ford Motor Co.*, 9th Dist. Lorain No. 98CA007187, 2000 WL 727544, *3 (June 7, 2000), citing *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.*, 78 Ohio St.3d 353, 363, 678 N.E.2d 519 (1997).

In the present case, the Plan Document is the controlling document or contract so that any terms providing Defendant Swagelok Plan with subrogation or reimbursement rights in this case would need to be in the Plan Document itself or in another document that is incorporated by the Plan Document. There is no dispute that the Plan Document does not itself contain any subrogation or reimbursement provisions.

Defendant Swagelok Plan claims the Plan Document incorporates the 2015 and 2016 SPDs produced in this case (the relevant portions of the 2015 and 2016 SPDs relied on in this case are the same) and that because the SPDs contain terms that provide Defendant Swagelok Plan with subrogation and reimbursement rights, Defendant Swagelok Plan has a contractual right to subrogation or reimbursement in this case.

However, the SPDs themselves state that they only "describe" and are only "summaries" of the benefits provided and the "rights and responsibilities [of beneficiaries] under the Plan." Further, the SPDs state:

> This SPD is designed to meet your information needs and the disclosure requirements of the Employee Retirement Income Security Act of 1974 (ERISA). It supersedes any previous printed or electronic SPD for this Plan. **If the language, terms or meaning of the actual text of the Swagelok Company Welfare Plan Document differs from Language, text, or meaning of this Summary, the Swagelok Welfare Plan Document will control.**[1]
>
> * * *
>
> This is not to be construed as a contract of or for employment **If there should be any inconsistency between the contents of this summary and the content of the Plan, your rights shall be determined under the Plan and not under this summary.**[2]

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[1] (Emphasis added.) 2015 SPD at pg. 1.

[2] (Emphasis added.) *Id.* at pg. 2.

The Plan Document in this case also contains a conflict provision similar to the one contained in the SPDs:

> Within any time limits required by the Code or ERISA, Employer shall issue to each Associate a Summary Plan Description, which shall outline the Associate's benefits under this Plan. **In the case of any discrepancy between the terms contained in this Plan document and the Summary Plan Description this Plan document shall control.**[3]

Thus, applying the plain meaning of these terms, if the SPDs and Plan Document "differ," are "inconsistent," or there is a "discrepancy" as to whether Defendant Swagelok Plan is entitled to be subrogated to Laura Patterson or reimbursed by Laura Patterson, then the Plan Document will control. Clearly, the Plan Document and SPDs "differ," are "inconsistent," and there is a "discrepancy" in this regard since only the SPDs provide Defendant Swagelok Plan with reimbursement and subrogation rights in this case, and the Plan Document does not. Thus, the Plan Document would control so that Defendant Swagelok Plan would not be entitled to be subrogated to or reimbursed by Ms. Patterson in this case.

Defendant Swagelok Plan also argues that the SPDs are nonetheless incorporated into the Plan Document, so that the subrogation and reimbursement terms contained in the SPDs are incorporated as well. Defendant Swagelok Plan argues this is because the SPDs are considered "Governing Documents" as that term is defined in the Plan Document

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[3] Plan Document at pg. 29.

and that "Governing Documents" are incorporated into the Plan Document.

The Defendant Swagelok Plan refers to Section 5.11 of the Plan Document which states:

> SECTION 5.11 -HIGH-DEDUCTABLE HEALTH PROGRAM
>
> Health Care Coverage for Participants shall be provided through a Benefits Contract with the health insurance carder listed in Appendix A.[4]

Appendix A of the Plan Document states:

Insurance Carrier	Contract Number
UnitedHealthcare	72994

* * *

*For a full description of the benefits, please read the Governing Documents.[5]

Appendix A states that the benefits provided under Defendant Swagelok Plan are contained in "Governing Documents." The term "Governing Documents" is defined by the Plan Document as:

> (z) "Governing Documents" means **documents that contain the substantive provisions governing benefits provided** by each of the Welfare Programs listed in the attached Appendices. As the Governing Documents are amended or superseded, the amended successor documents will automatically become part

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[4] *Id.* at pg. 12.

[5] (Emphasis added.) Plan Document at Appendix A.

> of the Governing Documents of the Welfare Programs listed in the Appendices.[6]

The SPDs cannot be considered "Governing Documents" because they only "describe" and "summarize" the benefits provided by the Plan Document. Nor would the SPDs be considered "Governing Documents" because they contain subrogation and reimbursement provisions as subrogation and reimbursement are not benefits to a beneficiary and do not amount to substantive provisions.

Instead, the "Governing Documents" referred to in the Plan Document, that being the documents containing substantive provisions governing benefits provided by Defendant Swagelok Plan, are the "Benefits Contracts" entered into and referred to in the Plan Document. This is stated in the Plan Document itself. Section 4.5 of the Plan Document states:

> SECTION 4.5 - BENEFITS CONTRACTS
>
> Employer may . . . enter into a contract or contracts with an insurance company or insurance companies and may establish or participate in any trust or other funding arrangement **to provide any or all of the benefits of the Plan. Employer may . . . contract with third parties or may adopt a written document to specify the nature and amount of benefits to be provided by one or more welfare programs . . . Any such contract or contracts shall be as named in the attached Appendices of this Plan, and shall in their entirety be considered part of this Plan and**

[6] (Emphasis added.) Plan Document at pg. 5.

> **incorporated herein by reference.** Employer's purchase of or participation in such a contract or contracts for stated benefits, and benefits and coverage for any individual Participant thereunder, shall be subject to all limitations and exclusions specified in the **Benefits Contract** including, but not limited to, coverage of Dependents, amount of deductible or co-payment which remain the obligation of the Participant, limitations on the nature and amount of covered expenses, and exclusions of uninsurable individuals or of specified expenses.[7]

Appendix A refers to benefits contracts entered into between Swagelok and United which contain "a full description of the benefits." This was further reiterated by the representative of Defendant Swagelok Plan who testified that the medical benefits and coverage under the Swagelok Plan is contracted for between Swagelok and United:

> Q. Yes. Who determines whether or not the healthcare services that that beneficiary receives, whether or not that is covered, and whether that doctor should get paid?
>
> A. UnitedHealthcare does decide. But, we have a contract with UnitedHealthcare. So, we know what is going to be covered. We have a grid of what is covered. For example, preventive care is covered at 100%.
>
> Q. Now, is that something that United came up with, or is that something that Swagelok came up with?

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[7] Plan Document at pp. 10-11.

> A. United presented it to Swagelok, and Swagelok signed off on it.
>
> Q. So, that's something that United already had, being that they are an insurance company, probably, based off the type of insurance coverage they have.
>
> A. Correct.
>
> Q. And, presented it to Swagelok, and say "Hey, here's what we have and you guys can use, as far as what's covered."
>
> A. They have a template. All insurance carriers have templates.[8]

Therefore, the Plan Document, SPDs, and the testimony from Defendant Swagelok Plan's representative all undermine Defendant Swagelok Plan's argument that the SPDs are the "Governing Documents" referred to in the Plan Document. Instead, it is the separate contracts, known as the "Benefits Contracts," entered into between Swagelok and United that are referred to in the Plan Document that contain the "substantive provisions governing benefits provided" by the Defendant Swagelok Plan which would therefore constitute "Governing Documents," not the SPDs. Defendant Swagelok Plan has not produced any of the "Benefits Contracts" referred to and incorporated into the Plan Document that provide the Swagelok Plan with any subrogation or reimbursement rights.

Further, to interpret the Plan Document as incorporating the terms contained in the SPDs would require the Court to ignore the conflict provisions contained in the SPDs and the Plan Document, since

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[8] Leslie Dep. 25:8-26:6.

these documents are "inconsisten[t]" and "differ" with regards to whether Defendant Swagelok Plan is entitled to subrogate or be reimbursed for benefits paid which were caused by the negligence of a third party. *Inchaurregui*, 9th Dist. Lorain No. 98CA007187, 2000 WL 727544, *3 (June 7, 2000). Such an interpretation would also create an ambiguity or conflict between the subrogation/reimbursement terms and the conflict terms, thus requiring an interpretation in favor of the insured Plaintiff, Laura Patterson.

Thus, under Ohio law, Defendant Swagelok Plan does not have contractual subrogation or reimbursement rights in this case.

2. Application of Federal Law.

Under ERISA, Defendant Swagelok Plan is required to have a written instrument (often referred to as the "Plan Document" or "Master Plan Document") that governs the plan pursuant to 29 U.S.C. 1102 and provide beneficiaries with "Summary Plan Descriptions" or "SPDs" pursuant to 29 U.S.C. 1022 which describe the benefits and rights of beneficiaries under the plan.

In *CIGNA Corp. v. Amara*, 563 U.S. 421,131 S.Ct. 1866, 179 L.Ed.2d 843 (2011), the United States Supreme Court held:

> [W]e conclude that the summary documents, important as they are, provide communication with beneficiaries *about* the plan, but that their statements do not themselves constitute the *terms* of the plan for purposes of § 502(a)(1)(B).

(Emphasis in original.) *Amara* at 438.

Two years later the United States Supreme Court decided *US Airways*, *Inc. v. McCutchen*, 569 U.S. 88, 133 S.Ct. 1537, 185 L.Ed.2d 654 (2013), which both Defendant Swagelok Plan and Plaintiffs rely on.

In *McCutchen*, the court held that equitable principles, such as the make whole doctrine, could not override contrary provisions contained in an ERISA plan. The court in *McCutchen* reiterated, "[w]e have made clear that the statements in a summary plan description "communicat[e] with beneficiaries *about* the plan, but . . . do not themselves constitute the *terms* of the plan." (Emphasis in original.) *Id.* at fn. 1, citing *Amara* at 1878.

Following *Amara* and *McCutchen*, courts have consistently held that where there is a Plan Document and an SPD, the Plan Document governs so that where subrogation/reimbursement provisions are contained in an SPD but not in a Plan Document, the plan does not have contractual subrogation/reimbursement rights since the Plan Document is the controlling document or contract. *See*, *e.g. US Airways*, *Inc. v. McCutchen*, W.D. Pennsylvania No. 2:08cv1593, 2016 WL 1156778 (Mar. 16, 2016); *Maher v. Aetna Life Insurance Co.*, 186 F.Supp.3d 1117, 1124 (W.D. Wash.2016) ("Subsequent [to *Amara*] courts have consistently held that SPDs cannot conflict with plan documents."); *Prichard v. Metropolitan Life Ins. Co.*, 783 F.3d 1166, 1169 (9th Cir.2015) ("We are aware that, since *Amara*, several federal courts have stated that an SPD may constitute a formal plan document, consistent with *Amara*, so long as the SPD neither adds to nor contradicts the terms of existing Plan documents."); *Krieger v. Nationwide Mut. Ins. Co.*, D. Ariz. No. CV1 1-01059-PHX-DGC, 2012 WL 1029526, *5 (March 27, 2012) ("Clearly, Plaintiff cannot obtain

additional benefits on the basis of allegedly deficient terms in the SPD."); *Canada v. American Airlines, Inc. Pilot Retirement Benefit Program*, 572 Fed.Appx. 309, 314 (6th Cir.2014); *Engleson v. Unum Life Ins. Co. of Am.*, 723 F.3d 611, 620 (6th Cir.2013), *cert. denied*, __U.S. __, 134 S.Ct. 1024, 188 L.Ed.2d 119 (2014) ("Since *Amara*, we have observed that SPDs are not legally binding, nor parts of the benefit plans themselves. Because SPDs lack controlling effect in the face of plan language to the contrary, we do not feel compelled to read the regulation in a manner that . . . Engleson asks us to do.") (Citations omitted.); *Apollo Education Group Inc. v. Henry*, 150 F.Supp.3d 1078 (D.Ariz. 2015); *Maher v. Aetna Life Insurance Co.*, 186 F.Supp.3d 1117 (W.D. Wash.2016).

Defendant Swagelok Plan relies on the decisions of *Mull v. Motion Picture Industry Health Plan*, 865 F.3d 1207 (9th Cir. 2017) and *Board of Trustees v. Moore*, 800 F.3d 214 (6th Cir.2015) to support their argument that SPDs may control over a Plan Document. However, the decisions in both *Mull* and *Moore* are distinguishable to the present case. In those cases, there was no separate Plan Document that satisfied the written instrument requirement under 29 U.S.C. 1102 of ERISA. Instead, the document or documents in *Mull* and *Moore* simultaneously served as both the Plan Document and SPD. *See Harris-Frye v. United of Omaha Life Ins. Co.*, E.D.Tenn. No. 1:14-CV-72, 2015 WL 5562196 (Sept. 21, 2015) (distinguishing *Moore* where an SPD and separate Plan Document existed); *Zino v. Whirlpool Corp.*, 141 F.Supp.3d 762 (N.D.Ohio 2015) (same).

Here, unlike *Mull* and *Moore*, there exists a separate Plan Document and SPDs. Further, unlike *Moore* and *Mull*, here, the Plan Document and the SPDs all

contain conflict provisions which state that the Plan Document controls over the SPDs.

This Court finds that the decisions of *Apollo Education Group Inc. v. Henry*, 150 F.Supp.3d 1078 (D.Ariz. 2015) and *Maher v. Aetna Life Insurance Co.*, 186 F.Supp.3d 1117 (W.D. Wash.2016) are more on point to the present case. In *Apollo* and *Maher*, a separate Plan Document either existed or was referred to by the SPD.

Here, because there is both a separate Plan Document and SPDs, and both the Plan Document and SPDs refer to the Plan Document as controlling, Defendant Swagelok Plan does not have contractual subrogation or reimbursement rights in this case given the terms of the Plan Document do not afford the Defendant Swagelok Plan any such rights.

F. ATTORNEY FEES

Defendant Swagelok Plan also seeks attorney fees under 29 U.S.C. 1132(g)(1). The motion is denied.

Both Defendant Swagelok Plan and Plaintiffs seek attorney fees under R.C. 2323.51 as well. R.C. 2323.51 prohibits a party or their attorney from engaging in frivolous conduct As used in R.C. 2323.51, the term "conduct" includes "the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action * * * or the taking of any other action in connection with a civil action." R.C. 2323.51(A)(1)(a).

"Frivolous conduct" under R.C. 2323.51 is described as:

> (i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper

purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

(ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

(iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

R.C. 2323.51(A)(2)(a)(i)-(iv).

R.C. 2323.51(B)(1) states that:

[A]ny party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal.

R.C. 2323.5103)(2)(a) states:

An award may be made pursuant to division (B)(1) of this section upon the motion of a party * * * but only after the court * * * sets a date for a hearing to be conducted * * * to determine whether particular conduct was

> frivolous, to determine, if the conduct was frivolous, whether any party was adversely affected by it, and to determine, if an award is to be made, the amount of that award * * *.

In the present case, Defendant Swagelok Plan claims the Plaintiffs acted frivolously for the discovery sought in this case. Defendant Swagelok Plan filed a motion for a protective order. There is no indication that the Plaintiffs acted contrary to this court's instructions following any hearings regarding the parties' ongoing discovery issues during the case. Further, the discovery sought in this case, consisting of one set of paper discovery and one deposition, was not necessarily unreasonable or out of the ordinary to warrant sanctions under R.C. 2323.51. Defendant Swagelok Plan's motion for attorney fees pursuant to R.C. 2323.51 is denied.

As to the Plaintiffs' motion for attorney fees pursuant to R.C. 2323.51, the Plaintiffs initially specifically requested the Plan Document in Plaintiffs' requests for production of documents, which Defendant Swagelok Plan did not produce along with the other documents produced in response to Plaintiffs' requests for production of documents on October 10, 2017. Defendant Swagelok Plan initially claimed that no such document existed.

For example, in its Answer to the Plaintiffs' Amended Complaint, the Defendant Swagelok Plan stated in paragraphs 33 and 36:

> 33. This answering Defendant denies allegation contained in paragraph 45. The sentence relied on by Plaintiffs clearly states "if'. No "Swagelok Welfare Plan Document" exists and therefore the SPD language does not

> differ. The Swagelok SPD is the controlling language for the rights of the Plan and its beneficiaries.
>
> * * *
>
> 36. This Answering defendant admits paragraph 48 and further states the SPD is the only written instrument required by ERISA

Further, in response to the Plaintiffs' requests for admissions, number 21, Defendant Swagelok Plan was specifically asked to admit or deny that it had failed to produce the Plan Document that pertained to the Swagelok Plan. The Swagelok Plan denied that it had not produced the Plan Document and again referred to the SPD as being produced.

After the Plaintiffs noticed Defendant Swagelok Plan's deposition, Defendant Swagelok Plan produced the missing Plan Document.

The plan document was a key piece of evidence in this case. The Court is unaware of any explanation Defendant Swagelok Plan offered for its initial withholding of the Plan Document and claim that no such document existed.

Accordingly, this matter is referred to the Magistrate with instructions to schedule any oral evidentiary hearing to determine if an award of attorney fees in favor of the Plaintiffs is appropriate pursuant to R.C. 2323.51.

HOLDING

Defendant Swagelok Plan's motion for summary judgment is DENIED. The Plaintiffs' motion for summary judgment is GRANTED. It is hereby declared that the Defendant Swagelok Plan does not

have a contractual right to be subrogated to, or reimbursed by, the Plaintiff, Laura Patterson, for any medical benefits that were paid on her behalf following the July 1, 2015 motor vehicle accident.

Costs shall be assessed to Defendant Swagelok Plan.

IT SO ORDERED, ADJUDGED, AND DECREED.

/s/ Christopher J. Collier
JUDGE CHRISTOPHER J. COLLIER

The Clerk of Courts is instructed to serve a copy of this Order to the below listed parties or their attorneys as mandated by Civil Rule 53(D)(2)(a)(ii).

Atty. Pfouts
Atty. Merriam
Atty. Byroads

Copies of this Order were mailed by the Clerk of Courts on 9-25-18 .

/s/ Christy Simmons
DEPUTY CLERK OF COURT