No. 21-1516

IN THE
Supreme Court of the United States

SWAGELOK ASSOCIATES WELFARE BENEFITS PLAN,

Petitioner,

v.

LAURA PATTERSON, ET VIR

Respondents.

On Petition for Writ of Certiorari from the Ohio Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED

Petitioner, a group health plan subject to ERISA, by and through its administrator, UnitedHealth, asserted contractual subrogation/reimbursement rights for medical benefits paid on Respondent's behalf. Petitioner's claims were in question. As is routinely done in such situations, Respondent asserted a declaratory judgment claim against Petitioner requesting the state trial court to declare Petitioner's contractual rights along with the underlying tort claims. Respondent did not seek an "injunction" and the trial court did not issue an "injunction" preventing Petitioner from being able to enforce otherwise valid contractual subrogation/reimbursement rights or override plan terms as Petitioner again tries to claim to a now 5th court. Neither did the Peitioner ever seek removal to federal court during the state court proceedings based on complete preemption.

The questions presented are: (1) is a declaratory judgment claim brought by a beneficiary/participant against an ERISA plan entity to declare contractual subrogation/reimbursement rights completely preempted by Section 502(a) of ERISA and if so, is the claim completely preempted by subsection 502(a)(3) as opposed to subsection 502(a)(1)(B) of 502(a)? And if the answer to the foregoing is in the the affirmative and subsection 502(a)(3); (2) is the defense of complete preemption by Section 502(a)(3) of ERISA waived if the defendant fails to ever seek removal to federal court during the state court proceedings?

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INTRODUCTION

Like in all of its other pleadings filed in the four lower courts over the course of the past 5 years (three state courts and one federal district court), Petitioner's Brief is premised on a mischaracterization of the Respondent's claim against it (misstatement of fact), misrepresentation of the state courts' decisions, misinterpretation and misapplication of federal court precedent, and seeks a novel decision from this Court that would delete clear statutory language, undue decades of consistent state and federal court jurisprudence, and impose impractical results that would flood federal courts with run of the mill state tort cases or fracture cases in a manner that would risk conflicting state and federal court judgments in the same case.

Petitioner's Brief relies on the proposition that Respondent's claim which requested the trial court to interpret the plan document governing the plan and which Respondent agreed to (the contract) to determine and declare what contractual subrogation and reimbursement rights ("subrogation" and "reimbursement" shall be collectively referred to as "S/R" herein) Petitioner possessed was actually a claim for an "injunction" to override plan terms and prevent the Petitioner from enforcing otherwise valid plan terms, and that the state courts treated Respondent's claim as such and issued such an "injunction." Petitioner's argument follows that because such "injunctive" relief is only available under Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), and not Section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B), Respondent's claim was really a claim under Section 502(a)(3) or completely preempted by Section 502(a)(3), as opposed to Section 502(a)(1)(B). Going on, Petitioner argues that because

Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1) only provides state and federal courts with concurrent jurisdiction over Section 502(a)(1)(B) claims, and federal courts with exclusive jurisdiction over Section 502(a)(3) claims, the state trial court lacked jurisdiction over Respondent's claim against it since it was really a claim under Section 502(a)(3) or completely preempted by Section 502(a)(3).

The reality is Respondent did not seek such an "injunction," nor did the state trial court issue such an "injunction" preventing the enforcement of otherwise valid contractual rights. Instead, Respondent (and the Petitioner) asked the trial court to interpret the governing plan document and declare what contractual S/R rights, if any, Petitioner and its fiduciaries possessed, which is all the state trial court did. There was no "injunction" to prevent the enforcement of valid plan terms sought or any "injunction" that prevented the enforcement of valid plan terms issued by the state trial court.

Given that Petitioner's argument is built entirely upon this faulty mischaracterization, it cannot stand to create any conflict that would warrant this Court's review.

The second part of Petitioner's Brief relies on a misstatement of the state appellate court's holding. Petitioner argues that the state appellate court held that Respondent's declaratory judgment claim was a claim simultaneously brought pursuant to Sections 502(a)(1)(B) and 502(a)(3), which is impermissible, since it must be one or the other. The state trial and appellate courts actually held that Petitioner's claim was what it said it was—a declaratory judgment claim asking the court to declare contractual rights claimed by Petitioner. The appellate court went on in addressing Petitioner's argument that Respondent's

state declaratory judgment claim was completely preempted by Section 502(a)(3) such that the trial court lacked jurisdiction pursuant to Section 502(e)(1), and held that even if completely preempted by a Section of 502(a) of ERISA, Respondent's claim would more appropriately be completely preempted by Section 502(a)(1)(B), over which Section 502(e)(1) provides state and federal courts with concurrent jurisdiction. This holding was consistent with federal precedent on this issue which holds Section 502(a)(3) is the "catchall provision" of Section 502(a) and is only available where other relief under Section 502(a), including 502(a)(1)(B) concurrent state and federal jurisdiction relief, is unavailable.

There is no conflict between the state courts' decisions and federal jurisprudence. To the contrary, the state courts' decisions were in conformity with both federal and state court precedent, including this Court's jurisprudence. U.S. Sup. Ct. R. 10(b)-(c).

Finally, Petitioner's appeal to public policy lacks merit and is exaggerated given that the state courts' decisions again followed both federal and other state court precedent. State courts have been deciding contractual S/R claims at the same time as the underlying tort claims from which they stem in cases since contractual S/R in injury cases was invented by health insurance companies. Conversely, the new "jurisdictional immunity" that Petitioner by and through its fiduciaries seek from this Court would result in federal courts being flooded by run of the mill state tort claim cases and create potentially conflicting decisions by state and federal courts in the same case.

STATEMENT OF THE CASE

In 2015, Respondent was injured in a motor vehicle accident caused by the negligence of another driver. Respondent was a beneficiary of a group employee health benefit plan (the "Swagelok Plan") that was subject to ERISA. Following the collision, the Swagelok Plan's administrator, UnitedHealth Group, Inc. ("United"), contacted Respondent claiming to have contractual S/R rights for medical expenses paid on Respondent's behalf. (Pet. App. 32a-34a).

In 2017, Respondent filed a lawsuit in state court which, in addition to tort claims against the negligent driver, included a claim against Petitioner pursuant to Ohio R.C. 2721.02 and .03 (Ohio's declaratory judgment statutes) to interpret and declare what S/R rights, if any, Petitioner had under the governing plan document. (Pet. App. 34a). Contrary to Petitioner's Brief, Respondent's claim was not a claim under Section 502(a)(3) of ERISA, or a claim seeking an "injunction" to prevent the enforcement of contractual rights, or to override otherwise valid contractual terms. (Pet. App. 41a, holding "[i]t does not appear that [Plaintiff's] claim for declaratory judgment is a claim 'to enjoin any act or practice which violates * * * the terms of the plan * * *.' Instead, the [Plaintiff] seek[s] an order holding that Defendant Swagelok Plan does not have the [S/R] rights it claims it has pursuant to the Plan Document[.]") Neither does any section under Chapter 2721 of the Ohio Revised Code provide for such "injunctive" relief. Thus, Respondent could not have sought the "injunctive" relief that Petitioner claims Respondent obtained even if she wanted to since this relief was not available. The sections under Chapter 2721 of the Ohio Revised Code only permit declaratory relief where a contractual dispute exists. In fact, at both the state trial and

appellate levels, Petitioner even acknowledged Respondent's claim as one to declare rights under the governing plan document, not one seeking the type of "injunction" it now claims. For example, in its docketing statement filed with the state appellate court, Petitioner acknowledged:

> Probable issues for appeal: The granting of Summary Judgment in a *declarations action* finding no subrogation or reimbursement rights on the part of a health plan.
>
> Type of action in trial court? *Declaratory Judgment*.

(emphasis added).

In response to Respondent's amended complaint, Petitioner filed an answer and cross-claim asserting claims as a contractual subrogee to a portion of Respondent's claims for recovery. (Pet. App. 34a).

At no point during the state court proceedings did Petitioner ever seek removal to federal court on the basis that Respondent's claim was completely preempted by any portion of Section 502(a) of ERISA. Instead, Petitioner did the exact opposite and litigated its contractual S/R right claims before the state trial court. Petitioner even filed a motion for summary judgment prior to the close of discovery requesting the state trial court to issue an order declaring that Petitioner possessed the contractual S/R rights it

claimed.[1] In response, Respondent filed her cross-motion for summary judgment. (Pet. App. 31a, 34a).

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[1] Even if Petitioner had sought removal after filing its motion for summary judgment, which was filed after participating in the state court proceedings (i.e. filing numerous pleadings including a motion to dismiss and participating in the discovery process), Petitioner's right to removal would have been waived at that point. *See Foster v. Chesapeake Ins. Co., Ltd.*, 933 F.2d 1207, 1216-17 (3d Cir. 1991), cert. denied, 502 U.S. 908, 112 S. Ct. 302, 116 L. Ed. 2d 245 (1991) (holding the right to remove to federal court may be waived); *Resolution Trust Corp. v. Bayside Developers*, 43 F.3d 1230, 1240 (9th Cir. 1994) ("A party, generally the defendant, may waive the right to remove to federal court where, after it is apparent that the case is removable, the defendant takes actions in state court that manifest his or her intent to have the matter adjudicated there, and to abandon his or her right to a federal forum.") (internal citations omitted); *Yusefzadeh v. Nelson, Mullins, Riley & Scarborough, LLP*, 365 F.3d 1244, 1246 (11th Cir. 2004) (holding a state court defendant may waive his right to remove to federal court based on "active participation" in the state court proceedings prior to seeking removal); *City of Albuquerque v. Soto Enterprises, Inc.*, 864 F.3d 1089, 1099 (10th Cir. 2017) (holding a state court defendant waives his right to removal upon filing a motion to dismiss on the merits in state court). While Petitioner argues that removal based on complete preemption solely by Section 502(a)(3) is really a jurisdictional defense in light of Section 502(e)(1), complete preemption of the state court action by Section 502(a)(3), and therefore conversion of the state law claim into a Section 502(a)(3) claim, is required first before Section 502(e)(1) can apply to provide exclusive federal court jurisdiction. Petitioner failed to seek such conversion in federal court and instead argued for the conversion by complete preemption of Respondent's state law declaratory judgment claim into a Section 503(a)(3) claim for the first time to the state appellate court. This argument was correctly rejected by the state appellate court since, as discussed *infra*, even if completely preempted by Section 502(a), complete preemption by Section 502(a)(1)(B) takes priority over complete preemption by Section 502(a)(3). Perhaps the court in *Estate of Krasnow v. Texaco, Inc.* put it best in rejecting a similar post judgment removal attempt

The trial court, relying on the governing plan document which did not provide Petitioner or any other fiduciary with S/R rights, entered summary judgment in favor of Respondent and held that Petitioner did not have contractual S/R rights. Again, the trial court did not issue an "injunction" barring Petitioner from enforcing otherwise valid contractual rights. (Pet. App. 3a-4a, 16a, 34a, 59a-60a). The trial court simply declared the contractual S/R rights that were in dispute, as requested by both the Petitioner and Respondent. (*Id*.).

Petitioner then appealed the state trial court's order to the Court of Appeals for the Ninth District of Ohio. On appeal, Petitioner argued for the first time that Respondent's declaratory judgment claim was completely preempted by Section 502(a)(3) of ERISA such that the trial court lacked jurisdiction over the Respondent's claim under Section 502(e)(1). (*See* Pet. App. 35a, the state trial court's order outlining Petitioner's arguments which included conflict preemption by Section 514(a) of ERISA, 29 U.S.C. § 1144(a), but did not include complete preemption by Section 502(a)). First, the state appellate court again rejected Petitioner's argument that Respondent's claim was not a declaratory judgment claim, but was actually a claim seeking "injunctive" relief such that it was really a claim under Section 502(a)(3). (Pet. App. 9a). The state appellate court then went on to reject Petitioner's argument that Respondent's state law declaratory judgment claim is completely preempted by Section 502(a) and only capable of being

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by a losing state court defendant: "a defendant must not be allowed to test the waters in state court and, finding the temperature not to its liking, beat a swift retreat to federal court." 773 F.Supp. 806, 809 (E.D.Va. Oct. 1, 1991).

completely preempted by subsection (3) of Section 502(a), as opposed to subsection (1)(B), such that the trial court lacked jurisdiction over Respondent's would-be-converted-into 502(a)(3) claim. (Pet. App. 9a-10a). In addressing this argument, the appellate court, relying on other state court jurisprudence, held that even if completely preempted by Section 502(a), complete preemption by Section 502(a)(1)(B) would be the appropriate choice which provides concurrent jurisdiction to state courts. (*Id*.).

In sum, the state courts cut through Petitioner's attempts to change Respondent's claim into a claim for injunctive relief through word-smithing and out-of-context quoting, and correctly treated Respondent's declaratory judgment claim as a declaratory judgment claim. That is also how the state trial court treated it, otherwise, the trial court would have issued an "injunction" in granting Respondent's motion for summary judgment. There was no "injunction" issued by the state trial court. (Pet. App. 59a-60a).

Shortly after Petitioner filed its appeal of the state trial court's order with the state appellate court, and while that appeal was pending, Petitioner also filed a separate, parallel lawsuit in the Federal District Court for the Northern District of Ohio asserting a claim under Section 502(a)(3) of ERISA for contractual reimbursement of benefits paid on Respondent's behalf against Respondent and her counsel. *Swagelok Co. v. Patterson*, N.D.Ohio No. 5:18CV2822 (Resp. App. 1a-2a). The Petitioner's parallel federal lawsuit was in effect an attempted second appeal of the state trial court's order since it sought an order from the district court that would contradict the state trial court's. At a hearing on Respondent's motion to dismiss, the federal district court indicated that it agreed with the state trial

court's opinion and order granting Respondent summary judgment against Petitioner, and that it would be dismissing Petitioner's complaint as duplicative. In its written order, however, the district court decided to temporarily stay the case until the state appeals process had been exhausted prior to dismissing the case. *Swagelok Co. v. Patterson*, N.D.Ohio No. 5:18CV2822, 2019 WL 1903588 (April 29, 2019) (Resp. App. 1a-5a).[2]

Following the federal district court staying Petitioner's duplicative lawsuit and the state appellate court unanimously affirming the trial court's decision, Petitioner appealed to the Ohio Supreme Court. A unanimous Ohio Supreme Court declined to accept jurisdiction. (Pet. App. 28a). That's 12 judges in 4 separate courts that have all rejected Petitioner's attempts to change Respondent's claim into something different and claims that the state trial court issued an "injunction" that prevented Petitioner from being able to enforce otherwise valid contractual rights.

REASONS FOR DENYING CERTIORARI

I. RESPONDENT'S CLAIM AGAINST THE PETITIONER DID NOT SEEK, AND THE STATE TRIAL COURT DID NOT ISSUE, AN "INJUNCTION" PREVENTING PETITIONER FROM ASSERTING OTHERWISE VALID CONTRACTUAL S/R RIGHTS.

Petitioner again attempts to claim that the state courts "openly acknowledge[ed]" Respondent's declaratory judgment claim as one that was actually

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[2] The district court case is being identified and attached in accordance with U.S. Sup. Ct. R. 15.2 and 14.1(b)(iii).

a "request for an order barring the Plan from enforcing its reimbursement rights" such that it was a claim under Section 502(a)(3) over which federal courts have exclusive jurisdiction pursuant to Section 502(e)(1). (Pet. Br. 8). This is a misstatement. The state courts and federal court did not interpret or treat Respondent's claim as one seeking an injunction barring the Plan and its fiduciaries from enforcing otherwise valid reimbursement rights. Petitioner's own argument suggests and is premised on Petitioner having actually possessed reimbursement rights, otherwise the trial court couldn't have "enjoined" Petitioner from enforcing those rights and Respondent couldn't have sought such an "injunction."

Petitioner's argument takes Respondent's claim for declaratory judgment out of context by focusing on the latter portion of the prayer for relief which sought that the Plan be "barred" from enforcing S/R rights after it is determined and declared that no such rights actually exist, (Pet. App. 9a-10a, 34a), which would go without saying since there would be no contractual S/R rights to enforce at that point. Thus, while the inclusion of the word "barred" at the end of the prayer was admittedly redundant, Petitioner cannot unilaterally vaporize the whole previous portion of the claim and prayer which sought a declaration of contractual S/R rights and then convert Respondent's claim into one that sought to enjoin the enforcement of valid and existing contractual S/R rights. Nonetheless, Petitioner has spent five years attempting to deceive numerous state and federal courts into believing that this run of the mill declaratory judgment claim was actually a claim that sought an injunction preventing the enforcement of valid S/R rights, or the overriding of plan terms, by focusing on the Respondent's use of the word "barred."

This argument requires the ignoring and deletion of the rest of the claim and prayer for relief (i.e. contextual fallacy) since no such overriding or prevention of enforcing plan terms was sought. Most importantly, none of the state courts treated the claim as an injunction claim to override otherwise valid plan terms. In fact, no Section under Chapter 2721 of the Ohio Revised Code provides for such injunctive or equitable relief. Thus, technically, Petitioner could have, and in fact did, file a separate case in federal court attempting to enforce its alleged reimbursement rights without violating any "injunction" issued by the state trial court because no such "injunction" had been issued by the state court.[3] This is why Petitioner was not subject to penalties from the state court for violating an injunction when it filed its subsequent parallel lawsuit in federal court.

On appeal to the Ninth District, Petitioner argued that Respondent's declaratory judgment claim was completely preempted[4] by Section 502(a)(3) of ERISA,

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[3] Such a duplicative lawsuit would however implicate other mechanisms that exist to prevent duplicative claims and federal courts acting as appellate courts over state court proceedings, including the doctrines of res judicata, issue and claim preclusion, and *Rooker-Feldman*.

[4] ERISA contains both types of federal preemption—complete preemption which is derived from Section 502(a) and conflict preemption which is derived from Section 514(a). Unlike conflict preemption, when complete preemption applies the state law claim is converted into the federal law claim that completely preempts it. Dismissal is not a remedy when a state law claim is completely preempted, only removal to federal court. *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 62-66, 107 S.Ct. 1542, 95 L.Ed.2d 55 (1987) (holding state law claims seeking relief within the scope of Section 502(a)(1)(B) of ERISA's civil enforcement scheme are completely preempted); *Rudel v. Hawai'i Mgmt. All. Ass'n*, 937 F.3d 1262, 1270 (9th Cir. 2019) (Recognizing that when

as opposed to Section 502(a)(1)(B), such that the state court lacked jurisdiction over Petitioner's claim because, under Section 502(e)(1) of ERISA, federal courts have exclusive jurisdiction over claims brought pursuant to Section 502(a)(3). (Pet. App. 7a-8a).

As the state appellate court correctly recognized, under Section 502(e)(1), state and federal courts have concurrent jurisdiction over Section 502(a)(1)(B) claims, and federal courts have exclusive jurisdiction over Section 502(a)(3) claims. (Pet. App. 9a-10a). Congress specifically intended for state courts to retain jurisdiction over 502(a)(1)(B) claims, and there is a "deeply rooted presumption in favor of concurrent state court jurisdiction, rebuttable if Congress affirmatively ousts the state courts of jurisdiction over a particular federal claim." *Mims v. Arrow Fin. Servs., L.L.C.*, 565 U.S. 368, 378, 132 S. Ct. 740, 181 L. Ed. 2d 881 (2012) (internal citations omitted). Thus, the court correctly recognized in addressing this argument that, even assuming Respondent's claim was to be completely preempted by Section 502(a) of ERISA despite the Petitioner failing to seek removal to federal court, the determinative issue would be which subsection of 502(a) Respondent's state claim would be completely preempted by because, if

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complete preemption applies, "a state-law claim ceases to exist, because, upon removal to federal court, 'the state-law claim is simply recharacterized as the federal claim that Congress made exclusive.' ") (internal citations omitted); *Darcangelo v. Verizon Communications, Inc.*, 292 F.3d 181, 187 (4th Cir. 2002) (a claim based on state law that is completely preempted by Section 502(a) "is transformed into a federal claim under ERISA § 502[.]"). Again, Petitioner never sought removal despite claiming on appeal for the first time that Respondent's state claim was completely preempted by Section 502(a)(3) of ERISA. *See* fn. 1, *supra*.

completely preempted by 502(a)(1)(B), the state trial court would have had concurrent jurisdiction anyways, but if completely preempted by 502(a)(3), the state court would have lacked jurisdiction.

Section 502(a)(1)(B) permits beneficiaries or participants "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(a)(3) permits beneficiaries, participants, or fiduciaries of a plan "(A) to *enjoin* any act or practice which violates * * * the terms of the plan, or (B) to obtain other appropriate *equitable* relief * * * (ii) to enforce * * * the terms of the plan." (emphasis added); *U.S. Airways, Inc. v. McCutchen*, 569 U.S. 88, 95, 133 S. Ct. 1537, 185 L. Ed. 2d 654 (2013), citing *Sereboff v. Mid Atlantic Medical Services, Inc.*, 547 U.S. 356, 369, 126 S. Ct. 1869, 164 L. Ed. 2d 612 (2006) (an action pursuant to § 502(a)(3) requires equitable relief be the nature of the recovery requested).

Since Section 502(a)(3) only provides for injunctive or other equitable relief, and Respondent did not seek nor the state trial court order injunctive or equitable relief, it could not be considered a claim under 502(a)(3) or considered completely preempted by 502(a)(3).

On the other hand, as the state appellate court recognized, a claim to declare rights could, and in fact should, appropriately be considered a claim under 502(a)(1)(B) to enforce Respondent's rights under the terms of the plan document or to clarify (i.e. interpret and declare) her rights to retain the benefits that Petitioner sought to claw-back. *CIGNA Corp. v. Amara*, 563 U.S. 421, 436, 131 S.Ct. 1866, 179 L.Ed.2d 843 (2011) ("502(a)(1)(B) speaks of '*enforc[ing]*' the

'terms of the plan,' not of *changing* them.") (emphasis in original); *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 394 n. 5, 122 S. Ct. 2151, 153 L. Ed. 2d 375 (2002) (describing Section 502(a)(1)(B) relief to include "an action to recover benefits, obtain a declaratory judgment that one is entitled to benefits, and to enjoin an improper refusal to pay benefits[.]") (internal citations omitted); *Boggs v. Boggs*, 520 U.S. 833, 856, 117 S. Ct. 1754, 138 L. Ed. 2d 45 (1997) (recognizing an action by a participant for declaratory judgment relief as a claim under 29 U.S.C. § 1132(a)(1)(B)); *Denny's, Inc. v. Cake*, 364 F.3d 521, 525 n. 3 (4th Cir. 2004), cert. denied, 543 U.S. 940, 125 S. Ct. 344, 160 L. Ed. 2d 249 (2004) (holding that an action only seeking a declaratory judgment would not be to enforce or remedy a violation of ERISA or the Plan, such that it cannot be brought under Section 502(a)(3)); *Prudential Ins. Co. v. Doe*, 76 F.3d 206, 210 (8th Cir. 1996) (holding "[Defendant] may be correct that nothing in ERISA specifically grants a fiduciary the authority to file a declaratory judgment action to interpret a policy" because, unlike beneficiaries and participants, fiduciaries may not assert claims under Section 502(a)(1)(B), but are limited to asserting claims under subsections (a)(2)-(3) of Section 502(a)) (internal citations omitted); *Gulf Life Ins. Co. v. Arnold*, 809 F.2d 1520, 1523-24 (11th Cir. 1987) (holding a fiduciary's declaratory judgment claim could not be considered a civil action seeking "equitable relief" under Section 502(a)(3), and that "[Section 502(a)(1)(B)] expressly acknowledges the right of participants/beneficiaries to seek a declaratory judgment[.]"); *Transamerica Occidental Life Ins. Co. v. DiGregorio*, 811 F.2d 1249 (9th Cir. 1987) (holding a fiduciary's claim to interpret its contract did not fit under the purview of Section 502(a)(3)).

Again, Respondent did not seek to change or prevent the enforcement of plan terms, only to interpret and declare such rights, which is exactly what the trial court did. Thus, none of the state courts erred in holding that even if Respondent's state law declaratory judgment claim was completely preempted by Section 502(a), Respondent's declaratory judgment claim would more appropriately be completely preempted by Section 502(a)(1)(B), as opposed to 502(a)(3), such that the state court would have concurrent jurisdiction anyways under Section 502(e)(1).

II. THE STATE APPELLATE COURT DID NOT HOLD THAT RESPONDENT'S CLAIM WAS COMPLETELY PREEMPTED BY BOTH SECTIONS 502(a)(1)(B) AND 502(a)(3) OF ERISA.

Neither did the state appellate court hold that Respondent's declaratory judgment claim was both a claim under Sections 502(a)(1)(B) and 502(a)(3), or that it was completely preempted by both Sections 502(a)(1)(B) and 502(a)(3), simultaneously, as Petitioner claims. (Pet. Br. 8, 12). This is because, as Petitioner even acknowledges later on in its Brief, Pet. Br. 13-14, Section 502(a)(3) is the "catchall" provision of Section 502(a) such that a claim for equitable relief under 502(a)(3) may only be brought if relief is not available under 502(a)(1)(B). *Varity Corp. v. Howe*, 516 U.S. 489, 515, 116 S.Ct. 1065, 134 L.Ed.2d 130 (1996); *Wilkins v. Baptist Healthcare Sys., Inc.*, 150 F.3d 609, 615 (6th Cir. 1998) ("The Supreme Court clearly limited the applicability of § 1132(a)(3) to beneficiaries who may not avail themselves of § 1132's other remedies."); *Korotynaska v. Metropolitan Life*

Ins. Co., 474 F.3d 101, 106-07 (4th Cir. 2006) (citing collection of cases).

Here, the state appellate court correctly recognized that "[m]ultiple courts have held that a declaratory judgment action seeking a declaration of rights, status, or other legal relations is an action * * * under Section 1132(a)(1)(B)" such that the state court had concurrent jurisdiction anyways under Section 502(e)(1) even if completely preempted. (Pet. App. 9a) (internal citations omitted).

The state courts' decisions—that a claim seeking clarification and interpretation of plan terms is appropriately considered a claim under Section 502(a)(1)(B)—is consistent with federal court precedent, including prior decisions from this Court, as was explained *supra* at pp. 13-14 (citing collection of cases).

As the state appellate court recognized, not only was its decision consistent with federal jurisprudence, but also with other state courts outside of Ohio. (Pet. App. 9a).

Nonetheless, in its Brief, Petitioner misinterprets decisions from this Court in an attempt to make it appear that the state courts' decisions conflicted with prior decisions from this Court. (Pet. Br. 5, citing *Montanile v. Board of Trustees*, 577 U.S. 136, 136 S.Ct. 651 (2016); *U.S. Airways, Inc. v. McCutchen*, 569 U.S. 88 (2013); *Sereboff v. Mid-Atlantic Medical Services*, 547 U.S. 356 (2006); and *Great-West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204 (2002)). However, Petitioner conveniently, and undoubtedly strategically, fails to mention the key fact in each of these cases that makes them inapposite to the present case. In each of the decisions cited by Petitioner it was a *fiduciary* of the plan that asserted

a claim against a beneficiary or participant to assert contractual S/R rights. *Montanile,* 577 U.S. 136, 136 (2016); *McCutchen*, 569 U.S. 88, 88 (2013); *Sereboff*, 547 U.S. 356, 360 (2006); *Knudson*, 534 U.S. 204, 208 (2002). This fact is crucial because fiduciaries are excluded from asserting claims under 502(a)(1)(B), such that in each of these cases the fiduciaries were limited to bringing a claim under 502(a)(3) which, in effect, required them to assert their contractual S/R claims in federal court in accordance with Section 502(e)(1). *Compare*, cases cited *supra* at pp. 13-14. Here, Respondent was a beneficiary such that relief under 502(a)(1)(B) was available to her which takes precedent over 502(a)(3)—the "catchall" provision of Section 502(a).

Petitioner also cites the Sixth Circuit's decision in *Rodriguez v. Tenn. Laborers Health and Welfare Fund*, 463 F.3d 473 (6th Cir. 2006) for the proposition that any claim seeking a declaration of contractual plan rights can only be considered a claim under Section 502(a)(3), and never Section 502(a)(1)(B). (Pet. Br. 15). This is not what *Rodriguez* held. In *Rodriguez*, the plan participant specifically brought a claim under "29 U.S.C. § 1132(a)(3)" in federal court seeking a declaration of rights *in addition to* "equitable relief" to "enforce ERISA," and for "attorney fees for Plaintiff's attorney under ERISA." *Id*. at 475. Again, no such "equitable" relief, relief for any violations of ERISA, or statutory attorney fees under ERISA was sought as part of Respondent's claim, and the trial court did not order any such beyond-declaratory-relief. Thus, this portion of Petitioner's brief also relies on misinterpretations of the state courts' holding (that the state court determined Respondent's claim was both a claim under Sections 502(a)(1)(B) and 502(a)(3)), and misrepresentations of federal

precedent in an attempt to create the appearance of a conflict. Without any real conflict, certiorari is not appropriate. U.S. Sup. Ct. R. 10(b)-(c).

III. PUBLIC POLICY DOES NOT FAVOR THE PROPOSITION OF LAW THAT THE PETITIONER SEEKS FROM THIS COURT.

Again, the lower courts held that even if Respondent's claim for declaratory relief was completely preempted by Section 502(a) of ERISA, it would more appropriately be considered completely preempted by subsection 502(a)(1)(B) which would provide the state court with concurrent jurisdiction anyways under Section 502(e)(1), as opposed to completely preempted by subsection 502(a)(3)—the "catchall" subsection of 502(a). This is consistent with the unambiguous statutory language itself and both federal and state precedent across the United States.

Nonetheless, Petitioner appeals to public policy reasons as to why this Court should create a new rule that would effectively obliterate state declaratory judgment actions against ERISA entities and usurp the portions of Sections 502(a)(1)(B) and 502(e)(1) of ERISA which provide state and federal courts with concurrent jurisdiction. *Gulf Life Ins. Co.*, 809 F.2d 1520, 1523-25 (11th Cir. 1987) (recognizing that Congress carefully crafted Section 502(a) by determining who may seek certain relief under its various subsections). Starting at Pet. Br. 21, Petitioner argues that permitting the bringing of declaratory actions in state court will result in fiduciaries like United simply ignoring any unfavorable judgments issued by state courts and then filing duplicative, parallel lawsuits in federal

court asserting claims under Section 502(a)(3), despite the conflicting judgments obviously posed by such duplicative federal lawsuits. Pet. Br. 20 (describing state courts' entering of declarations in contexts such as this case as "inefficien[t]" because "they would have no preclusive effect were the plan [through its fiduciaries] to subsequently bring a proper claim for equitable relief against plan participants and beneficiaries under Section 502(a)(3)[.]"). Petitioner has done just that and filed a separate lawsuit in federal court against Respondent under Section 502(a)(3) after the state trial court issued its order declaring that Petitioner did not have contractual S/R rights and even after Petitioner had also filed an appeal in state court to the trial court's decision. (Resp. App. 1a-5a).

First, Petitioner's public policy argument ignores the fundamental principal that federal courts are inherently courts of limited jurisdiction that possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994) (internal citations omitted). Congress specifically intended states to retain jurisdiction over certain claims involving ERISA plans and fiduciaries, including concurrent jurisdiction over Section 502(a)(1)(B) claims. Section 502(e)(1); *see also* Section 514(b)(2)(A).

Second, as was suggested by the federal district court in the case filed by Petitioner against Respondent below, the duplicative lawsuits threatened by Petitioner would be subject to dismissal under the doctrines of res judicata, issue and claim preclusion, and *Rooker-Feldman*, in addition to being frivolous and contrary to the very fiduciary duty that

plan fiduciaries owe to plan participants and beneficiaries. One would think that threats of frivolous conduct if a Petitioner doesn't get its way would only dissuade certiorari.

On the other hand, if this Court were to obliterate state declaratory judgment actions against ERISA entities and the portions of Sections 502(a)(1)(B) and 502(e)(1) that provide concurrent jurisdiction to state courts—thereby leaving participants and beneficiaries with only 502(a)(3) as an option for challenging claimed contractual S/R rights by fiduciaries (assuming declaratory relief could be considered "equitable" relief under Section 502(a)(3), which it would not, *see* pp. 13-14, *supra*), the practical results would be undesirable. Any time a participant or beneficiary wished to obtain clarification or question a fiduciary's contractual S/R right claims to claw-back benefits, participants would be required to file such actions in federal court under Section 502(a)(3) along with the rest of the tort claims that such claimed S/R rights stem from. *See* Fed.R.Civ.P. 19(a)(1)(B) (requiring joinder of parties claiming an interest relating to the subject of the action). This would result in federal courts being flooded by otherwise run-of-the-mill state tort claim cases that are native to state courts. The only other option would be for beneficiaries to file their underlying tort claims in state court, and then file a separate declaratory judgment action in federal court under Section 502(a)(3) against the plan fiduciaries asserting contractual S/R right claims. This would result in potentially conflicting judgments between state and federal courts. For example, a federal court declaring that a fiduciary is entitled to the entire amount of money claimed to satisfy reimbursement rights while a state court jury decides that less than all of the

medical benefits paid by the health plan were caused by the underlying tortious conduct. There is, however, a third option. Beneficiaries and participants could simply forego questioning a fiduciary's contractual S/R claims and become limited to only asserting his/her underlying tort claims in state court. In other words, a new form of immunity afforded to fiduciary's who assert contractual S/R rights. A very convenient last option to avoid the practical dilemmas that would be created by the new proposition of law that Petitioner seeks from this Court. And therein lies the core motivation of United's current petition.

CONCLUSION

Petitioner's Brief is premised on misstatements of fact and misrepresentations of law.

Respondent's claim against Petitioner sought a declaration of claimed contractual S/R rights. It was not a claim for "injunctive" or other equitable relief under Section 502(a)(3) of ERISA to override or enjoin the enforcement of otherwise valid contractual S/R rights.

The state courts did not hold that Respondent's declaratory judgment claim was a claim under both Sections 502(a)(1)(B) and 502(a)(3) of ERISA, or completely preempted by both Sections 502(a)(1)(B) and 502(a)(3) of ERISA, simultaneously. The courts correctly held that even if Respondent's declaratory judgment claim was completely preempted by Section 502(a), complete preemption by subsection 502(a)(1)(B) was more appropriate than subsection 502(a)(3), the "catchall" provision of 502(a), such that the state court would have concurrent jurisdiction anyways under Section 502(e)(1).

For all these reasons, the petition for writ of certiorari should be denied as it fails to meet any of the criteria set forth in U.S. Sup. Ct. R. 10.

Respectfully submitted,

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August 2, 2022

APPENDIX

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APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 5:18CV2822

SWAGELOK CO.,

Plaintiffs,

vs.

LAURA PATTERSON, et al.,

Defendants.

JUDGE JOHN ADAMS

ORDER AND DECISION

(Resolving Docs. 5, 13, 18, 22, 33, 39, 40 & 41)

Pending before the Court are various motions filed by Plaintiff Swagelok Co., Defendants Laura Patterson and Amourgis & Associates, LLC, and third-party defendants UnitedHealth Group, Inc., United HealthCare Services, Inc., United HealthCare Insurance Company, Optum, Inc., and Kreiner & Peters Co., L.P.A. The Court now resolves those motions.

On December 7, 2018, Swagelok filed this complaint seeking a declaration that it has a right of reimbursement for funds paid to Defendant Laura Patterson. Swagelok also sought to enjoin Defendant Amourgis & Associates, LLC from disbursing any funds in its possession that were related to a settlement reached by Patterson. Swagelok sought default judgment against Amourgis & Associates on February 4, 2019. Doc. 13. On February 20, 2019, the law firm sought to vacate the Clerk's entry of default. Doc. 18. On March 1, 2019, both defendants sought to dismiss the complaint. Doc. 22. On March 1, 2019 and March 4, 2019, both defendants answered the complaint. With her answer, Patterson asserted numerous claims against the now third-party defendants. On March 15, 2019, Swagelok sought to strike the answer of the law firm. Doc. 33.

Despite the flurry of motions filed by the parties, the Court conducted a case management conference on March 26, 2019. During that conference, the Court informed Swagelok that its complaint would be dismissed. The Court now explains its reasoning.

In *Colorodo River*, the Supreme Court declared that, in deciding whether to defer to the concurrent jurisdiction of a state court, a district court must consider such factors as (1) whether the state court has assumed jurisdiction over any res or property; (2) whether the federal forum is less convenient to the parties; (3) avoidance of piecemeal litigation; and (4) the order in which jurisdiction was obtained. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 818-19 (1976). *Colorado River* abstention rests on considerations of "wise judicial administration" and the general principle against duplicative litigation. *Id*. at 817. "[T]he consideration

that was paramount in Colorado River itself [was] the danger of piecemeal litigation." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 19, (1983).

The threshold question in *Colorado River* abstention is whether there are parallel proceedings in state court. *Crawley v. Hamilton County Comm'rs*, 744 F.2d 28, 31 (6th Cir. 1984). The state court proceedings need not be identical, merely "substantially similar." *Romine v. Compuserve Corp.*, 160 F.3d 337, 340 (6th Cir. 1998). There is also no requirement that the parties in the state court proceedings be identical to those in the federal case. *Heitmanis v. Austin*, 899 F.2d 521, 528 (6th Cir. 1990). The Sixth Circuit's "focus in these cases, once [it has] found that a parallel state proceeding exists, has been on the relative progress of the state and federal proceedings." *Bates v. Van Buren Twp.*, 122 F. App'x 803, 807 (6th Cir. 2004).

There can be no dispute that there is an existing state court proceeding that is "substantially similar" to the claims raised in the complaint. In her state court proceeding, Patterson sought and received a declaration that there was no right of reimbursement – the precise issue raised in the federal complaint. Swagelok asserts before this Court that the state court lacked jurisdiction over such a claim. However, the timing of the filing of Swagelok's complaint weighs heavily in favor of abstention. It was not until nearly three months *after* Swagelok received an unfavorable ruling in state court that it filed suit herein. Further, the state court proceedings have still not wound their way through the appellate process, so the state court proceedings remain parallel to this proceeding.

While the state court proceedings remain pending, the complaint in this matter is hereby

PERPETUALLY STAYED and ADMINISTRATIVELY CLOSED. If necessary, any proper party may seek to reopen these proceedings following the conclusion of the state court proceedings. Based upon this finding, the motion for a temporary restraining order (Doc. 5), the motion for default judgment (Doc. 13), the motion to vacate default (Doc. 18), the motion to dismiss the complaint (Doc. 22), and the motion to strike the answer (Doc. 33), are DENIED AS MOOT.

With respect to the third-party complaint, Patterson concedes that her claims are improper third-party claims as they are independent from the complaint. Patterson seeks to avoid dismissal of these claims by requesting that the Court realign the parties. The motion to realign (Doc. 41) is DENIED. Realigning the parties would serve to allow an improper addition of parties and claims. The Court declines to do so. As Patterson has requested dismissal of her claims without prejudice as an alternative, the Court treats her assertion as a Rule 41 notice of coluntary dismissal. As no answer to the third-party complaint has been filed, the third-party complaint is hereby dismissed without prejudice. The motion to dismiss the third-party complaint (Doc. 39) is hereby DENIED AS MOOT.

Patterson and Amourgis & Associates also seek sanctions based upon the filing of the complaint. However, the argument for sanctions is dependent upon a finding that the state court judgment is correct. As the state court proceedings have not come to a full and final conclusion, the motion for sanctions is premature. Accordingly, the motion for sanctions (Doc. 40) is DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

April 29, 2019
Date

/s/ Judge John R. Adams
JUDGE JOHN R. ADAMS
UNITED STATES
DISTRICT COURT