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No. 21-

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In the
Supreme Court of the United States

COLLETTE CAMPBELL,

Petitioner,

v.

WE TRANSPORT, INC.,
A NEW YORK CORPORATION; AND
UNIMERICA LIFE INSURANCE COMPANY
OF NEW YORK, A NEW YORK CORPORATION,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the "Cat's Paw Doctrine" is applicable in this case when established claims procedures in an ERISA group insurance claim are not followed when disbursing death benefit claims?

2. Whether an ERISA group life insurance policy is a "Probate Asset" when there are no written contractual provisions in the policy to provide for a situation when there is no beneficiary on file, missing beneficiary, no designated/name beneficiary?

3. Whether an employer/sponsor breached their duties when they failed to properly maintain beneficiary records?

4. Whether an insurance carrier breached their duties when they applied unwritten contractual provisions in expediting a death benefit claim?

5. Whether the District Court and the Court of Appeals erred by upholding the fiduciaries determination that the death benefit claim in this case was properly processed within ERISA mandates?

6. Whether insurance fraud and fraud on the courts was committed?

LIST OF PROCEEDINGS

United States Court of Appeals for the Second Circuit
No. 20-1289

Collette Campbell, *Plaintiff-Appellant* v. We Transport, Inc., a New York Corporation, Unimerica Life Insurance Company of New York, a New York Corporation, *Defendants-Appellees*.

Date of Final Opinion: May 14, 2021

Date of Rehearing Denial: July 6, 2021

United States District Court Eastern District of New York

No. 18-CV-5354 (MKB) (LB)

Collette Campbell, Administrator Representative of the Estate of Willie Campbell, Deceased, *Plaintiff*, v. We Transport, Inc., a New York Corporation, and Unimerica Life Insurance Company of New York, a New York Corporation, *Defendants*.

Date of Final Judgment: March 31, 2020

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, *Pro Se*, Collette Campbell, respectfully asks that a writ of certiorari issue to review the judgments and opinions of the United States Court of Appeals for the Second Circuit.

Petitioner believes this case is unique and has precedential value. This case is a good vehicle for the SUPREME COURT OF THE UNITED STATES to address the pitfalls when sponsors, third parties, or insurance carriers do not maintain adequate beneficiary records, misplace them, or the insured does not name/designate a beneficiary when there is no written contractual provision.



OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Second Circuit, dated May 14, 2021, is reported and is included below at App.1a. The Rehearing Order Denial, dated July 6, 2021, is included below at App.89a. The Judgment of the United States District Court for the Eastern District of New York, dated March 31, 2020, granting Summary Judgment for the Defendants, is included below at App.6a.



JURISDICTION

The United States Court of Appeals for the Second Circuit entered the order denying a petition for rehearing on July 6, 2021. (App.1a) This Court has jurisdiction under 28 U.S.C. § 1254(1).



STATEMENT OF THE CASE

A. Nature of the Case

Petitioner *Pro Se*, Collette Campbell, brought this action against WE TRANSPORT INC. and Unimerica to the EASTERN DISTRICT COURT, (EDNY), (Brooklyn). This court has jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(a).

Respondent(s) are the sponsor and the administrator of ERISA Group Life Insurance Policy# GL304835.

1. Her complaint alleges ERISA violations with respect to adverse denial of death benefits when the sponsor issued a letter for her to submit an original death certificate along with a completed death benefit claim form. (A238), (A007-A013).
2. EDNY grants summary judgment for respondent(s). (A243-A277) and (A278).

Petitioner, *Pro Se*, Collette Campbell appeals the lower court's decision to the UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT. This court has jurisdiction under 28 U.S.C. § 1291.

1. Petitioner questioned whether the contractual provision vest the carrier with discretion to determine beneficiaries when there is no written election to determine who the proper beneficiary is. The Certificate of Coverage only vest the carrier with Discretionary Authority (SA-13)

“When making a benefit determination under the Policy, We have discretionary authority to determine the Covered Person’s or Dependent’s eligibility, if applicable for benefits and to interpret the terms and provisions of the Policy. This provision applies, however, only where the interpretation of the Policy is governed by the Employee Retirement Income Security Act (ERISA).”

Petitioner had equitable rights as the administrator of the Estate of Willie Campbell and as the payer of his funeral expenses to receive the proceed from his group life insurance policy despite We Transport’s allegation that there was no beneficiary on file after she provided them with satisfactory proof for her claim to be processed. The Certificate of Coverage states, “The rights of the Policyholder, Covered Person, or beneficiary shall not be affected by any provision not contained: (a) in the policy, riders, endorsements or amendments signed by the policyholder and Us; (b) in the policyholder application; (c) in an individual statement submitted with an application; (d) the Certificate.

Respondent(s) were only vested with discretionary authority to determine the Covered Person’s or Dependent’s eligibility for benefits.

2. Petitioner questioned whether she received a full/fair review since she was never apprised of competing claimants until after proceeds from the policy were disbursed. The lower court ordered respondent(s) to provide her with the administrative record. Upon receipt of the administrative records, Petitioner observed that the claims administrator contacted the alleged adopted children identified in the Facility of Payment form she provided per their request. Petitioner never stated they were legally adopted. Respondents never investigated if the adopted children were legally adopted. This information was not disclosed to petitioner until after the death benefits were improperly disbursed (A046).

A full and fair review of adverse claim determinations for an employee benefit plan governed by ERISA requires that plan administrators follow proper procedural protocols in how they review claims, how much weight they assign different types of records, and how they reach their decisions. *Easter v. Cayuga Med. Ctr. at Ithaca Prepaid Health Plan*, 217 F. Supp. 3d 608, 623 (N.D.N.Y. 2016) (citing *Martucci v. Hartford Life Ins. Co.*, 863 F. Supp. 2d 269, 274 (S.D.N.Y. 2012) which in turn cites *Hobson v. Metro. Life Ins. Co.*, 574 F.3d 75, 86-87 (2nd Cir. 2009).

The fiduciary must also inform the beneficiary of what evidence it relied on and provide the beneficiary the opportunity to examine the evidence. ERISA requires that a beneficiary be afforded the opportunity to submit issues and comments. *Lidoshore v. Health Fund* 917, 994 F. Supp. 229, 236-237, (S.D.N.Y. 1998), (quoting *Grossmuller*); *Pesca v. Board of Trustees, Mason Tenders' District Council Pension Fund*, 879 F. Supp. 23, 25 (S.D.N.Y. 1995).

Petitioner never saw any evidence until the district court ordered the respondents to disclose the administrative record. The failure to disclose the administrative was manifestly prejudicial to the Petitioner.

3. Petitioner questioned whether an interpleader was required. ERISA mandates that a beneficiary named by the insured should be the recipient of the death benefit. Here, both respondents engaged in the creation of competing claimants (SA-118) Petitioner provided satisfactory proof per the sponsor's request; thereafter informed the claims administrator that they did not have a beneficiary on file. The Certificate of Coverage provides Death Benefits (SA-17)

"We will pay the Covered Person's beneficiary the amount of insurance in force on the date of death when WE receive satisfactory proof of a Covered Person's death. The benefit will be paid in accordance with the beneficiary section."

The Beneficiary section provides in part (SA-17):

"The Covered Person's beneficiary will the person(s) he names in writing to receive any amount of insurance payable due to his death."

"If there is no named beneficiary living at the Covered Person's death, We will pay any amount due to the estate or, at Our option, to his:

1. Legal spouse
2. Natural or legally adopted children in equal shares; or
3. estate."

B. Statement of Facts

Petitioner was the sister of the late Willie Campbell. He was employed by We Transport from the period of July 1, 2010, through July 27, 2017. He was a participant in an ERISA-governed life insurance plan No. GL-304835, established by his employer. His date of death is July 28, 2017 (SA-50). We Transport is the sponsor, Unimerica is the insurance carrier ((SA-237).

On August 1, 2017, We Transport issued a letter to petitioner (A238) asking her for an original death certificate and a completed Life Insurance Form to submit to the Insurance Carrier for processing. The sponsor never disclosed that they did not have a beneficiary designation on file. We Transport initiated the death benefit claims process.

On August 10, 2017, We Transport forwarded petitioner's completed Death Claim form for death benefits along with an original death certificate to the Insurance Carrier (Unimerica) advising there was no beneficiary on file (SA-52). The question is, Why would the sponsor initiate the claims process with the Petitioner if she was not the beneficiary without disclosing that there was no beneficiary on file?

On August 14, 2017, Unimerica forwards petitioner a beneficiary kit (SA-176).

On August 17, 2017, Unimerica forwards petitioner a letter informing her that the claim cannot be process because a Claimant's Facility of Payment Affidavit was needed since there is no beneficiary designation on file. (SA-177).

About August 24, 2017, Petitioner complies. (SA-178-SA181).

On August 30, 2017, Unimerica creates competing claimant by sending a letter to Jeanelle Campbell stating that they cannot process her claim she needs to complete A Request for Group Life Insurance form (SA-241). They further provided her with a copy of the original death certificate that the petitioner provided to them (SA-118). The only claim they had at the time was the satisfactory proof provided by the Petitioner and the facility of payment per Unimerica's request.

On August 30, 2017, Unimerica creates competing claimant by sending a letter to Takia Campbell stating that they cannot process her claim she needs to complete a Request for Group Life Insurance form. (SA-74). The only claim they had at the time was the satisfactory proof provided by the Petitioner and the facility of payment per Unimerica's request.

About September 11, 2017, Unimerica issued avails from Willie's life insurance policy to Jeanelle Campbell. (SA-290).

About September 13, 2017, Unimerica issued avails from Willie's life insurance policy to Takia Campbell.

On September 14, 2017, Petitioner was appointed Voluntary Administrator of Wille Campbell's Estate

(A105). Suffolk County Surrogate's Court No. 2017-3178/A. The administration letter states in part:

"The decedent's assets must be used to pay (in the following order) (1) expenses of administration, (2) reasonable funeral expenses (including reimbursing persons who have advanced funds to pay the funeral expense bill) and (3) the decedent's debts, including Medicaid expenses. Any remaining assets are to be paid or transferred to the persons legally entitled thereof."

On September 20, 2017, Petitioner submitted funeral expenses to Unimerica (A106-A109) and a payment request for funeral expenses, (SA-119)-(SA-120); (SA-188).

On September 20, 2017, Petitioner sent a letter to Unimerica which states in part:

"Unimerica has not provided me with their policy in accordance with the beneficiary/facility of payment provision in the above-mentioned policy, yet they requested the affidavit be completed in its entirety and signed before a notary public. To date, they still refuse to provide me with their policy in accordance with the beneficiary/facility of payment provision in the above-mentioned policy. Therefore, I, Collette Campbell retroactively (August 24, 2017) withdraw my consent to release United Healthcare Insurance Company and any of its subsidiaries/affiliates and employees from any/all liabilities in consideration of payment from Group Life

Insurance Policy 304835, Claim Number 200733304". (SA-119-SA-120).

About October 11, 2017, Petitioner writes to Unimerica challenging their verbal decision to deny her claim. Unimerica verbally told her that an administrator, sister(s), and an estate does not receive any avails from a group life insurance policy. The letter also provides what her understanding is of Life Insurance Beneficiary, and of Facility of Payment clauses. Petitioner request a written response on the status of her claim and for Unimerica to disclose their policies regarding payment of claims. Petition believes she was entitled to this information. She wanted a written response to why her claim was denied or had not been expedited. (SA-134)-(SA-135).

On October 27, 2017, Unimerica creates two additional claimants. Takia Campbell sends a fax to Unimerica stating it is her understanding that Unimerica will extend the insurance benefit claims to Bruce and Bayquan Campbell, (SA-138), (SA-144). Takia Campbell forwards Request for Group Life Insurance benefits along with general power of attorney to Unimerica on behalf of Bruce and Bayquan Campbell. Both requests are endorsed on October 28, by Takia Campbell.

About November 7, 2017, Unimerica issued avails from Willie's life insurance policy to Bruce Campbell, c/o Takia Campbell POA (SA-288).

About November 15, 2017, Unimerica issued avails from Willie's life insurance policy to Bayquan Campbell, c/o Takia Campbell POA (SA-287).

On November 16, 2017, Unimerica sends WE Transport a letter stating Willie Campbell's life

insurance claim, which was recently closed due to We are unable to approve benefits to Ms. Campbell as she is not the beneficiary. (SA-155).

On November 16, 2017, Unimerica issues a letter to Collette Campbell stating that she provided them with the completed Facility of Payment affidavit dated August 24, 2017. Two weeks later, after receipt of Payment affidavit, petitioner provided them with a copy of her appointment as the Estate Administrator. Unimerica concluded that their payment to the beneficiaries identified in the Facility of payment was made in accordance to the policy provisions. Therefore, they could not consider petitioners claim (SA-156-SA-157).

Part G of the Facility of Payment form states:
(SA-180)

**"INFORMATION ABOUT THE
INSURED'S ESTATE"**

1. Has an Estate been opened or will be opened?
Response: YES.
2. If no, I certify that there has not nor is there expected to be an estate to be opened or any executor or administrator or other representative appointed for the insured estate.

About November 30, 2017, Unimerica responded to Petitioner complaint to New York State Department of Financial Services. The Consultant's letter reveals that Unimerica notified the Department of Financial Services that the petitioner initiated the claims (SA-273). However, We Transport initiated the claim (A-238). This letter was omitted from the administrative

records. Petitioner submitted the August 1, 2017, letter to the EDNY. The letter further states:

“Pursuant to this policy provision, when an insured has immediate family members, who survive (spouse or children), We pay the immediate family members in the order of priority listed in the above policy.”

However, the EDNY established that there was no order of priority.

The Consultant also admits that based on the petitioner's facility of payment submission, they contacted additional claimants in effect causing competing claimants. They further report that Willie's benefit was paid appropriately according to the terms of the governing policy (SA-273), (SA-274) and (SA-275).

A letter dated January 18, 2017, was sent by Unimerica to the Petitioner stating they completed their review of her claim and that the original claim decision was process appropriately in accordance with the provisions of the policy. (The date is incorrect, should read January 18, 2018. Willie was alive on January 18, 2017).

The letter also states, (The policy is clear, when a beneficiary is not named, we, Unimerica Life Insurance Company; of New York, can pay at our option pay benefits to, the spouse, children, or estate. We exercised our option, consistent with our claims process, and paid benefits in the order outlined by the policy. Accordingly, benefits have been paid appropriately and are not payable to the estate. As a result, we have made the decision to uphold to the original

determination. Therefore, your claim is not payable, (SA-281)-(SA-282).

About February 18, 2018, Petitioner responds to the January 18, 2017, letter (SA-283), (SA-284). She states, "there is no dispute that Unimerica's policy specifically states."

"If there is no named beneficiary living at the covered persons death, Unimerica will pay any amount due to the estate, or at their option to his 1, Legal spouse, 2, Natural or legally adopted children; in equal shares or 3. Estate".

"As you are fully aware, the provision is not contained in the Policy. There is no language in said policy that provides a provision when a beneficiary is not named or on file that Unimerica can facilitate a payment."

"The death benefits in this claim became a Probate asset. If there is no named beneficiary and a will, proceeds should be paid to the decedent's estate to be distributed according to the will."

"Unimerica cannot create ambiguity to negate the policy terms of their contract."

"Under ERISA, the plan is not subject to alternative interpretations. The Estate of Willie Campbell is entitled to receive the death benefits in accordance with the terms and provisions of said policy."

"It is difficult to understand why an administrator would want to intentionally deny the benefits to the estate when Unimerica

has imputed knowledge that there is no provision contained in the policy. The rights of any policyholder, insured or beneficiary shall not be effected by a provision not contained in the policy”

Lastly, Petitioner demands Unimerica to make a check payable to the ESTATE OF WILLIE CAMPBELL. She also requested copies of all documents, records, or other information regarding her claim. She also requested that they identify those to whom they made payment.



REASONS FOR GRANTING THE PETITION

I. THIS CASE INVOLVES QUESTIONS OF EXCEPTIONAL IMPORTANCE. A WRIT IS NECESSARY TO SECURE AND MAINTAIN UNIFORMITY OF COURT DECISIONS INVOLVING INTERPRETATIONS OF GROUP LIFE INSURANCE WRITTEN CONTRACTUAL PROVISION.

A review is required to establish a clear, concise decision when ERISA group sponsors and insurance carriers fail to follow established claims procedures.

This Court provided a road map for plan administrators. In *Kennedy v. Plan Administrator for DuPont*, 555 U.S. 285 (2009). The Supreme Court held that an “ERISA claims stand or falls by the terms of the plan.” ERISA encourages employers to give a plan participant “a clear set of instructions for making its own instructions clear” and thereby precludes “enquires into nice expressions of intent” to determine the proper beneficiary. In this case, the

certificate of coverage does not include a specific procedure for no beneficiary on file, no named/designated beneficiary, or alleged missing beneficiary form. The decision in Kennedy also applies to welfare benefits.

The communication in Unimerica's certificate is not clear and straightforward. Where terms of a plan are ambiguous, a question has arisen as to what rules of interpretation should be applied to determine if the carrier's interpretation was reasonable. In *Kunin v. Benefit Trust Life Insurance Co.*, 910 F.2d 534 (9th Cir. 1990), the (the Circuit held that the rule of *contra proferentem* applies (i.e., ambiguities in insurance contracts are construed against the Insurer), (A047).

II. "THE CAT'S PAW DOCTRINE" FROM THE FABLE "THE MONKEY AND THE CAT."

Petitioner was the beneficiary of her brothers group life insurance policy. We Transport initiated the claims process by obtaining satisfactory proof (certified death certificate and completed death benefit claim form) from Collette Campbell. However, We Transport submitted the satisfactory proof to Unimerica stating there was no beneficiary on file.

However, ERISA § 209 requires the employer to retain all records necessary to determine the benefits due (or may become due). This requirement includes the insured beneficiary designation We Transport alleged was not on file.

Unimerica, sent Petitioner a "beneficiary kit," thereafter, obtaining a facility of payment form for her claim to be process and to release them from liability. However, Unimerica did not process her valid

claim. They obtained additional claimant(s) to wrest the benefits from the Petitioner.

The District Court ordered the respondent(s) to provide her with the Administrative Records. The Administrative Record released to the Petitioner in December 2018 does not contain the letter WE Transport sent to Collette Campbell. The record does not contain any facility of payment forms, or certified death certificates from the additional claimant(s). The record does not provide any proof that the other claimants are legally adopted.

Although the District Court identifies the Petitioner as the "Aunt," the petitioner informed the lower court that she does not know any of the claimants. Two of the claimants identified themselves as Willie's adopted children during the funeral arrangements. Petitioner has no knowledge if they are legally adopted, foster children, stepchildren or whoever.

Petitioner believes she was the named/designated beneficiary based on We Transport's request for satisfactory proof to process the death benefit claim and what her brother stated to her prior to his death.

The circumstances here is a different spin on the "theory." Petitioner believes it is applicable. The death benefits were wrest from her.

III. THIS IS A VERY UNIQUE CASE. THERE IS NO CASE IN THIS COURT OR ANY CIRCUIT THAT HAS PERMITTED ERISA FIDUCIARIES TO PROCESS DEATH BENEFIT CLAIMS IN THE MANNER THAT OCCURRED.

Campbell v. We Transport Inc., No. 18CV5354 (E.D.N.Y.) (2018). *"Jackman Financial Corp., v.*

Humana Insurance Co., 641 F.3d 860 (7th Cir.), [No. 10-2112], (May 31, 2011), is the only case found with similarities.

In *Jackman Financial Corp., v. Humana Insurance Co.*, the Seventh Circuit, dealt with the exact facility of payment clause. The clause covered the situation in which the named beneficiary is not alive at the time of the insured death. In this case, the clause gave Humana the option to pay the proceeds of the policy to the insured's spouse, children, parents, siblings, or estate.

In *Campbell v. WE Transport*, the facility of payment clause is the same. The clause covered the situation in which the named beneficiary is not alive at the time of the insured death. In this case, the clause gave Unimerica the authority to pay the proceeds of the policy to the insured's Estate, or at their option to the spouse, children or legally adopted children, or estate.

Petitioner's case is distinguishable. In Jackman, the insured named a beneficiary who was not alive at the time of the insured death. The carrier properly exercised its rights under the facility of payment clause by selecting a substitute beneficiary.

Here, the sponsor initiated the claims process; obtained satisfactory proof (certified death certificate and completed claim form) then submitted the forms to the claims administrator alleging there was no beneficiary on file. According to the allegation, the insured did not name a beneficiary, or they misplaced his beneficiary designation. WE Transport was only obliged to contact Collette Campbell if she was the named beneficiary. Petitioner believed she was the

beneficiary based on the letter from WE Transport and her conversations with her deceased brother prior to his death.

Here, based on the allegation that there was no beneficiary on file Unimerica requested the petitioner to complete a facility of payment affidavit form. Thereafter, Unimerica obtained additional claim forms from the named adopted children petitioner identified in the facility of payment affidavit form.

The question then becomes, (a) What happened to the beneficiary form? (b) Why would the sponsor request satisfactory proof to process the claim if the Petitioner was not the beneficiary? (c) Why did respondent(s) neglect to notify Petitioner there was competing claims?

The Petitioner's case is distinguishable from Jackman. In the 7th Circuit, the provision only covers the situation when a named/designated beneficiary is not living. In Jackman, the insured named a beneficiary who was not alive at the time of the insured death. The carrier properly exercised its rights under the facility of payment clause by selecting a substitute beneficiary.

Furthermore, petitioner did not make an assignment with the funeral home. Funeral expenses were paid with her personal credit card. She was equitably entitled to be reimbursed for the funeral expenses that she advanced.

Unimerica improperly exercised its rights under the facility of payment clause. The facility of payment clause in Willie's group life insurance does not give the carrier the authority to choose a beneficiary when there is an allegation of no beneficiary on file,

or the beneficiary designation was misplaced. Consistent with Jackman, the clause only gives them the authority if the insured named a beneficiary who was not alive at the time of the insured death.

INTERPLEADER

An ERISA plan confronted with competing claims is required to decide simultaneously which claim(s), if any to accept, and the claim(s) if any to deny, then, if any of the denied claims are appealed to, give the accepted claim(s) a chance to respond and decide simultaneously which ones on appeal if any to accept, and which to deny. Unimerica never afforded Collette Campbell or the other claimants this opportunity. Since there is no established relationship with Collette and the additional claimant(s), she concludes that the additional claimant(s) were never informed of her claim. She believes Unimerica disbursed the avails from her brother's insurance policy prematurely and to the wrong beneficiaries.

The DOL (Department of Labor), suggested that the Plan inter-plead when there is a conflict about benefit entitlement so that the parties may resolve the issues at no cost to the plan even if the Plan is totally responsible for the dispute. It is well established in this matter that the Respondent(s) created competing claimant(s).

In *Campbell v. We Transport Inc.*, No. 18CV5354 the Magistrate Judge said that the carrier is not required to commence an interpleader action.

A Rule 22 Interpleader would have been appropriate for the court to decide who the proper beneficiary was. Who was equitably entitled to the proceeds? Their unreasonable decision has left the petitioner strug-

gling to pay Willie's funeral expenses. To date, there is still an outstanding balance on her credit card for Willie's funeral expenses.

In cases where there is competing claimants to death benefits the district courts have entertained an interpleader action. *Metro. Life Ins. Co. v. Mitchell*, 966 F. Supp.2d 97, 102 (E.D.N.Y. 2013), *Metro. Life Ins. Co. v. Carey*, No. 16CV3814DLISJB, 2017 WL 435152, at *3 (E.D.N.Y. Sept. 29, 2017).

The evidence in the administrative record does not support their actions. Respondent(s) creation of competing claims, also, created an additional problem when they fail to obtain facility of payment form from the additional claimants and fail to initiate an Interpleader. Without additional liability releases. The additional claimants cannot be included in any litigation initiated by the Petitioner.

IV. SINCE UNWRITTEN CONTRACTUAL PROVISION INTERPRETATIONS IS AT ISSUE HERE THE DISPOSITION IN THIS CASE WAS INAPPROPRIATE.

Because the written contractual provision at issue does not confer the carrier with discretion, to determine the proper beneficiary where there is no written election, the "interpretation of an insurance agreement is a question of law."

In *Lees v. Allstate Ins. Co.*, 764 F. App'x 70 (2nd Cir.), as amended (Apr. 15, 2019) (summary order) (quoting *US. Fid. & Guar. Co. v. Fendi Adele S.R.L.*, 823 F.3d 146, 149 (2nd Cir. 2016) (citation omitted)). Consequently, if the carrier's interpretation is legally incorrect, the determination is under applicable standard review. Arbitrary and capricious cannot stand.

There is no written provision in their Certificate of Coverage that provides for the situation where there is no beneficiary on file, or when there is no named/designated beneficiary that respondent(s) can optionally "construe/apply unwritten provisions/terms to process their death benefit claims (A 62).

A "contract should be construed so as to give full meaning and effect to all of its provisions") quoting *Orchard Hill Master Fund Ltd. v. SBA Commc'ns Corp.*, 830 F.3d 152, 157 (2nd Cir. 2016); 11 Samuel Williston, WILLISTON ON CONTRACTS § 32.5 (4th ed. 1999) ("To the extent possible, and except to the extent that the parties manifest a contrary intent . . . every word, phrase or term of a contract must be given effect").

The carrier's interpretation omits the term "*no named beneficiary living at the Covered Person's death*" and omits first listed ("pay to the Estate").

New York Law is clear: "There being no surviving named beneficiary, pursuant to the terms of these policies, the proceeds are payable to the estate of the insured." *Matter of Pinnock*, 83 Misc.2d 233, 371 N.Y.S.2d 797, 804 (Surr. Ct. Bronx Co. 1975) (citing *Matter of Bobula*, 45 Misc. 2nd 745, 257 N.Y.S.2d 645 [Sur. Ct. 1965], *rev'd* 25 A.D. 2d 241, 269 N.Y.S.2d 599, 4 Scott, SCOTT AND ASCHER ON TRUSTS (2d Ed.) § 494.4; *Union Cent. Life Ins. Co. v. Elizabeth Trust Co.*, 119 N.J. Eq. 505, 183A. [Ch. 1936]).

ERISA

Petitioner mentions the following as being applicable in this matter.

- Erisa § 502 (a)(1)(B)(2)-Provides beneficiaries a cause of action against plans, and plan administrator for denial of benefits or rights under and ERISA plan and allows beneficiaries to enforce the plans terms and to requires plan administrations to meet their duties to provide plan benefits in accordance with the plan.
- Erisa § 502 (a)(3) -Provides a remedy to recover plan benefits under 502 (a)(1)(b) and the right to obtain equitable relief.
- Erisa § 502 (a)(2)- Provides a cause of action through section 409 (a) for breach of fiduciary to provide competent and timely claims administration.
- Erisa § 502 (c), U.S.C. § 1132(3)-Provides for penalties for an administrator's refusal to supply required information, who fail to provide certain information, who fails or refuses to comply with any request for information which such an administrator is required to furnish to a beneficiary.

Courts have held that an insurer that undertakes plan administrator responsibilities become a de facto plan administrator and can be liable under § 502(c). *Law v. Ernst*, 956 F.2d 364 (1st Cir. 1992).

- Erisa § 502 (d)(2)-Provides any money judgment against an employee benefit plan shall be enforceable only against the Plan as an entity and shall not be enforceable against any other person. Here, The Plan is WE Transport.

- Erisa § 503 (29 U.S.C. § 1133 (1)(2))-Provides adequate notice in writing to any beneficiary whose claims for benefits under the plan has been denied setting forth specific reasons for denial.

Here, the reasoning is contrary to their Certificate's written contractual terms and provisions.

V. THE DECISION OF THE CIRCUIT COURT AND DISTRICT COURT SHOULD NOT STAND.

This case is a good vehicle for the SUPREME COURT OF THE UNITED STATES to address the pitfalls when sponsors, third parties, or insurance carriers do not maintain adequate beneficiary records, misplace them, or the insured does not name/designate a beneficiary when there is no written contractual provision.

This case exposes how insurance sponsors and insurances carriers can wrest benefits from a named beneficiary under the allegation of (1) no beneficiary on file, (2) under the guise of discretionary authority, and (3) under the guise they can construe/apply unwritten terms of a plan when processing claims.

ERISA mandates that fiduciaries must have (1) Duty of Loyalty and Act in the sole interest of the insured and beneficiaries, (2) Duty to Act Prudently encompasses care, skills, prudence, and diligence, (3) Duty to Act in Accordance with the Plan Documents so long as the plan contains provisions that are not contrary to ERISA, the plan provisions must be followed.

The issues raised here for seeking certiorari are being raised to show that something went awry with

the processing of this claim. The triggering issue is the allegation by WE Transport that there was no beneficiary on file and no written contractual provision that vest the carrier with discretion to process the claim in the way it was done. Four years later, Petitioner is still paying for her brother's funeral with accruing interest. Willie Campbell had a will.



CONCLUSION

The petition for a writ of certiorari should be granted for all the reasons set forth.

Respectfully submitted,

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