

No. 21-699

IN THE
Supreme Court of the United States

COLLETTE CAMPBELL,

Petitioner,

v.

WE TRANSPORT, INC., *et al.*,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, the undersigned counsel for Respondents states as follows:

- (i) Respondent Unimerica Life Insurance Company of New York is a wholly-owned subsidiary of UnitedHealthcare Insurance Company. UnitedHealthcare Insurance Company is a wholly-owned subsidiary of UHIC Holdings, Inc. UHIC Holdings, Inc. is a wholly-owned subsidiary of United HealthCare Services, Inc. United HealthCare Services, Inc. is a wholly-owned subsidiary of UnitedHealth Group Incorporated. UnitedHealth Group Incorporated is a publicly traded corporation that has no parent corporation and no publicly traded corporation owns 10% or more of its stock.
- (ii) Respondent WE Transport, Inc. does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

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INTRODUCTION

Respondents Unimerica Life Insurance Company of New York (“Unimerica”) and WE Transport, Inc. (“WE Transport,” and, together with Unimerica, “Respondents”), by and through their attorneys, Robinson & Cole LLP, respectfully submit this brief in opposition to *pro se* Petitioner Collette Campbell’s (“Campbell” or “Petitioner”) Petition for a Writ of Certiorari, seeking review of the Opinion of the United States Court of Appeals for the Second Circuit, entered on May 14, 2021 and reproduced in the appendix to the Petition at App. 1a-5a, by which the Second Circuit affirmed in all respects the District Court’s judgment holding that Unimerica’s decision to deny Campbell’s claim for life insurance benefits in the amount of \$15,000 under the WE Transport employee welfare benefit plan (the “Plan”), which is governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, *et seq.*, as amended (“ERISA”), was not arbitrary and capricious. As more fully discussed below, Petitioner has not established any reason for this Court to grant her Petition for a Writ of Certiorari and, accordingly, the Petition should be denied.

STATEMENT OF THE CASE

I. The Plan

At all relevant times, Willie Campbell (the “Decedent”) was a participant in the ERISA-governed Plan, provided through his employment with WE Transport, which Plan included coverage for life insurance funded by a group life insurance policy no. GL-304835 (the “Policy”) issued and administered by Unimerica. (App. 63a). The total

amount of the Decedent's life insurance benefits under the Plan was \$15,000. (*Id.*). Petitioner is the Decedent's sister. (App. 64a).

At all relevant times, Unimerica served as the Plan's life insurance claims administrator, with full discretionary authority to determine eligibility for life insurance benefits under the Plan and with authority to pay covered life insurance benefits under the Plan. (App. 64a). Specifically, the Plan provided that Unimerica had "discretionary authority to determine the Covered Person's or Dependent's eligibility" for life insurance benefits. (*Id.*)

The Plan further provided: "The Covered Person's beneficiary will be 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, [Unimerical] will pay any amount due to the estate or, at [Unimerica's] option, to his: 1. legal spouse; 2. natural or legally adopted children in equal shares; or 3. estate." (App. 64a) (emphasis added).

II. Unimerica's Payment Of The Life Insurance Benefits In Accordance With The Plan's Facility Of Payment Provision

The Decedent passed away of July 28, 2017. (App. 64a). On or about August 14, 2017, Unimerica received a letter from WE Transport enclosing a proof of death claim form, the death certificate for the Decedent and the Decedent's time records for three months prior to the last day worked. (*Id.*). WE Transport noted that it did not have a beneficiary form on file for the Decedent. (*Id.*).

WE Transport also noted in the same letter that it was contacted by the Petitioner, who was stating that she was “next of kin sister.” (*Id.*).

By letter dated August 17, 2017, Unimerica informed Petitioner that it could not process her claim for life insurance benefits under the Plan because she had not completed a Claimant’s Facility of Payment Affidavit (the “Facility of Payment Affidavit”). (App. 65a). As stated in the August 17 letter, a Facility of Payment Affidavit was required because there was no beneficiary designation on file. (*Id.*)

On or about August 30, 2017, Unimerica received Petitioner’s sworn Facility of Payment Affidavit. (App. 65a). In her Facility of Payment Affidavit, Petitioner stated that the Decedent was survived by four adopted children: Jeanelle Owen (Campbell), Takia Campbell, Bruce Campbell and Bayquan Campbell. (*Id.*). Petitioner provided home addresses for Jeanelle Owen and Takia Campbell and stated that Bruce Campbell’s and Bayquan Campbell’s addresses were unknown to her. (*Id.*)

In the Facility of Payment Affidavit, Petitioner affirmed: “The information I have provided herein is true, correct, and complete to the best of my knowledge. I understand that the completion of this form does not guarantee payment under the above policy. I understand that if payable, policy proceeds will be paid pursuant to the beneficiary/facility of payment provision in the above referenced policy based on the information that I have provided herein. I understand and agree that the payment of the proceeds (in whole or in part) under the above reference group insurance policy will be paid

pursuant to its term[s] to either myself, paid amongst the surviving relatives of the insured or will be paid to the [i] nsured's estate." (App. 65a) (emphasis added). Thereafter, Unimerica contacted two of the Decedent's children whose addresses were listed in Petitioner's Facility of Payment Affidavit – Jeannelle Campbell and Takia Campbell. (App. 66a).

On or about September 8, 2017, Unimerica received Jeannelle Campbell's completed proof of death claim form, in which she stated that she was the Decedent's daughter. (App. 66a). Upon receiving Jeannelle Campbell's completed proof of death claim form, Unimerica sent her a letter, dated September 8, 2017, in which it informed her that her claim for life insurance benefits under the Plan had been approved and that the benefit amount payable to her was \$3,750 (*i.e.*, one quarter of the total benefit amount payable under the Plan), plus interest to date in the amount of \$4.02, for the total amount of \$3,754.02. (*Id.*). Payment of Plan benefits to Jeannelle Campbell was made by check dated September 11, 2017, which she then deposited. (*Id.*).

On or about September 12, 2017, Unimerica received Takia Campbell's completed proof of death claim form, in which she stated that she was the Decedent's daughter. (App. 66a). Upon receiving Takia Campbell's completed proof of death claim form, Unimerica sent her a letter, dated September 12, 2017, in which it informed her that her claim for life insurance benefits under the Plan had been approved and that the benefit amount payable to her was \$3,750 (*i.e.*, one quarter of the total benefit amount payable under the Plan), plus interest in the amount of \$4.19, for the total amount of \$3,754.19. (*Id.*). Payment of

Plan benefits to Takia Campbell was made by check dated September 13, 2017, which she then deposited. (*Id.*).

On or about September 19, 2017, after Unimerica had already issued payments of benefits under the Plan to Jeannelle Campbell and Takia Campbell, Unimerica received a letter from the Petitioner, dated September 18, 2017, by which she requested that the Plan life insurance proceeds be distributed to the Decedent's estate. (App. 67a). Attached to Petitioner's September 18, 2017 letter was a September 14, 2017 letter from the Suffolk County Surrogate's Court to Petitioner, stating that the "the court has recently filed [Petitioner's] affidavit for Voluntary Administration" and that Petitioner "now ha[d] the authority to administer the [D]ecedent's property that is listed in the affidavit." (*Id.*). Also attached to Petitioner's September 18, 2017 letter were receipts of payments she had made for Decedent's funeral service. (*Id.*)

On or about September 21, 2017, after Unimerica had already issued payments of benefits under the Plan to Jeannelle Campbell and Takia Campbell, Unimerica received another letter from the Petitioner, dated September 20, 2017, by which she requested that the Plan life insurance proceeds be distributed to her personally and to the Decedent's estate. (App. 67a).

On or about October 27, 2017, Unimerica received a facsimile from Takia Campbell, in which she stated that her brothers, Bruce and Bayquan Campbell, have been located and that they were both incarcerated. (App. 67a). Attached to Takia Campbell's October 27, 2017 facsimile was Bruce Campbell's completed proof of death claim form, in which he stated that he was the Decedent's son,

and a signed and notarized General Power of Attorney, by which Bruce Campbell appointed Takia Campbell as his attorney-in-fact, authorizing her to “manage and conduct all of [his] affairs and to exercise all of [his] legal rights and powers.” (App. 67a-68a). Also attached to Takia Campbell’s October 27, 2017 facsimile was Bayquan Campbell’s completed proof of death claim form, in which he stated that he was the Decedent’s son, and a signed and notarized General Power of Attorney, by which Bayquan Campbell appointed Takia Campbell as his attorney-in-fact, authorizing her to “manage and conduct all of [his] affairs and to exercise all of [his] legal rights and powers.” (*Id.*).

By letter dated November 6, 2017, Unimerica informed Bruce Campbell that his claim for life insurance benefits under the Plan had been approved and that the benefit amount payable to him was \$3,750 (*i.e.*, one quarter of the total benefit amount payable under the Plan), plus interest in the amount of \$8.99, for the total amount of \$3,758.99. (App. 68a). Payment of Plan life insurance benefits to Bruce Campbell was made by check dated November 7, 2017, which he (or Takia Campbell, as his attorney-in-fact) then deposited. (*Id.*).

By letter dated November 14, 2017, Unimerica informed Bayquan Campbell that his claim for life insurance benefits under the Plan had been approved and that the benefit amount payable to him was \$3,750 (*i.e.*, one quarter of the total benefit amount payable under the Plan), plus interest in the amount of \$9.69, for the total amount of \$3,759.69. (App. 68a). Payment of Plan life insurance benefits to Bayquan Campbell was made by check dated November 15, 2017, which he (or Takia Campbell, as his attorney-in-fact) then deposited. (*Id.*).

III. Unimerica’s Denial of Petitioner’s Claim for Decedent’s Life Insurance Benefits

By letter dated November 16, 2017, Unimerica informed Petitioner that her claim for life insurance benefits under the Plan had been denied. (App. 68a). Specifically, Unimerica noted that the Plan provided that, “[i]f there is no named beneficiary living at the Covered Person’s death, [Unimerica] will pay any amount due to the estate or, at [Unimerica’s] option, to his: 1. legal spouse; 2. natural or legally adopted children in equal shares; or 3. estate.” (App. 69a). Unimerica further explained that, upon receipt of Petitioner’s completed Facility of Payment Affidavit, which advised Unimerica that the Decedent had four adopted children, Unimerica “began to follow [its] established claim payment practices” in accordance with the Plan provisions. (App. 69a). Unimerica further noted that “[i]t was not until more than two weeks after [Unimerica’s] receipt of the [Facility of] Payment Affidavit that [Petitioner] provided [Unimerica] with copies of [her] appointment as the Estate Administrator and demand for payment to the estate.” (*Id.*) Unimerica’s November 16, 2017 letter informed Petitioner of her right under the Plan to administratively appeal Unimerica’s initial adverse benefit determination. (*Id.*).

IV. Unimerica’s Full And Fair Review Of Petitioner’s Administrative Appeal

By letter dated November 26, 2017, Petitioner appealed Unimerica’s initial adverse benefit determination with respect to her claim for life insurance benefits under the Plan. (App. 69a). On appeal, Petitioner argued that “it appears that Unimerica utilized [the Facility of Payment

Affidavit] to deceptively release Unimerica from liability.” (App. 70a).

By letter dated January 18, 2018,¹ Unimerica advised Petitioner that it decided to uphold its initial adverse benefit determination concerning Petitioner’s claim for life insurance benefits under the Plan. (App. 70a). Unimerica noted that the Plan is governed by ERISA and that it granted Unimerica full 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.” (*Id.*). Unimerica explained that, consistent with its normal claims processes and the terms of the Plan, it appropriately exercised its option and paid life insurance benefits to the Decedent’s children. (*Id.*). Unimerica also advised Petitioner that she could bring a civil action under ERISA §502(a). (*Id.*).

V. Procedural History

Petitioner commenced this action on September 24, 2018 by filing her Complaint and seeking relief under ERISA §§502(a)(1)(B), 502(a)(3), 502(c)(1) and 503(2). (App. 50a-58a, 71a). Thereafter, Respondents moved for summary judgment on all of Petitioner’s claims. (App. 71a).

(i) Magistrate Judge’s Report and Recommendation

The District Court referred Respondents’ Motion for Summary Judgment to a Magistrate Judge for a Report and Recommendation. (App. 61a). On March

1. There is a typographic error in the letter stating that it is dated January 18, 2017 instead of January 18, 2018. (App. 70a).

2, 2020, the Magistrate Judge issued a Report and Recommendation, finding that Respondents' Motion for Summary Judgment should be granted in all respects and that Petitioner's Complaint should be dismissed. (App. 60a-88a). Specifically, the Magistrate Judge found that the Plan "expressly grants Unimerica 'discretionary authority' to construe the terms of the Plan to determine eligibility for benefits," and that, therefore, "the Court should apply the arbitrary and capricious standard of review to plaintiff's challenge regarding the denial of benefits." (App. 75a). The Magistrate Judge further held that Unimerica's denial of Petitioner's claim for Decedent's life insurance benefits under the Plan was not arbitrary and capricious because "Unimerica exercised its option to disburse the benefits to [the Decedent's] adopted children in accordance with the Plan" and "[n]othing in the Plan required Unimerica to pay the Plan proceeds in any particular order." (App. 78a). The Magistrate Judge also noted that, "[c]ontrary to [Petitioner's] claims, both during the initial denial and on administrative appeal, Unimerica explained how it exercised its discretion to disburse the proceeds to [the Decedent's] adopted children," and that, "based on the Facility of Payment affidavit that [Petitioner] completed and signed, [Petitioner] expressly affirmed that 'if payable, policy proceeds will be paid *pursuant to the beneficiary of payment provision in the above referenced policy* based on the information that [she had] provided herein.'" (App. 79a-80a) (emphasis in the original).

The Magistrate Judge also held that, in addition to not being entitled to Plan benefits under ERISA §502(a)(1)(B), Petitioner was also not entitled to any relief pursuant to ERISA §§502(a)(3), 502(c)(1) and 503(2). Specifically,

the Magistrate Judge held that: (i) Petitioner’s claim for breach of fiduciary duty pursuant to ERISA §502(a)(3), by which she sought monetary damages, fails as a matter of law because it is duplicative of her claim for monetary damages under ERISA §502(a)(1)(B); (ii) Petitioner’s claim for statutory disclosure penalties under ERISA §502(c) (1) fails as a matter of law because she made requests for claims documents by telephone instead of making written requests, she improperly directed her requests to Unimerica instead of the Plan Administrator, and, in any event, under ERISA §104(b)(4), she was not entitled to the documents she sought, such as information about the beneficiaries or other claim documents; and (iii) Petitioner’s claim that she was denied a full and fair review in violation of ERISA §503(2) fails as a matter of law because “the record reflects that Unimerica evaluated the information [Petitioner] provided, followed its procedure to disburse the life insurance proceeds as set forth in the Plan, timely denied [Petitioner’s] claim, timely denied [Petitioner’s] appeal after an independent review, and notified [Petitioner] of its reasoning.” (App. 82a-87a).

**(ii) District Court’s Memorandum and Order
Granting Respondents’ Motion for Summary
Judgment**

On March 31, 2020, following Petitioner’s filing of her Objections to Magistrate Judge’s Report and Recommendation, the District Court issued a Memorandum and Order, by which the Court adopted Magistrate Judge’s Report and Recommendation and granted Respondents’ motion for summary judgment as to all of Petitioner’s claims. (App. 16a-59a). The District Court noted that “[Petitioner’s] objections to

the [Report & Recommendation] are largely repetitive of the arguments made in her opposition papers, or are otherwise conclusory or hard to follow,” but, “in light of [Petitioner’s] *pro se* status, the Court reviews the findings and recommendations in the [Report and Recommendation] *de novo*.” (App. 41a).

The District Court’s Order stated that the “highly deferential” arbitrary and capricious standard “is the appropriate standard of review to be applied to Unimerica’s decision to deny [Petitioner’s] claim for benefits” because the Plan language “clearly grants discretionary authority to Unimerica.” (App. 44a-45a). Applying this standard, the District Court concluded that “no jury could reasonably find that Unimerica’s decision to deny [Petitioner’s] claim was arbitrary and capricious,” as “the evidence in the record demonstrates that Unimerica reasonably interpreted the provisions of the Policy and that its decision was supported by substantial evidence.” (App. 48a). Specifically, the District Court found that, “[i]n distributing the proceeds of the Claim to [the Decedent’s] four adopted children, Unimerica appropriately exercised its ‘option’ to ‘pay any amount due’ to the insured’s ‘natural or legally adopted children in equal shares.’” (App. 50a). Accordingly, the District Court granted Respondents’ summary judgment motion as to Petitioner’s claim for Plan benefits under ERISA §502(a)(1)(B). (*Id.*)

In addition, the District Court granted Respondents’ summary judgment motion as to Petitioner’s claim for breach of fiduciary duty under ERISA §502(a)(3) on the ground that Petitioner was seeking “distribution of ‘death benefits’ to [the Decedent’s] estate, and to [Petitioner], to cover the funeral costs,” which constitute compensatory damages not available under ERISA §502(a)(3). (App. 52a).

The District Court also granted Respondents' summary judgment motion with respect to Petitioner's claim under ERISA §502(c)(1) for statutory nondisclosure penalties. (App. 52a-56a). Specifically, the District Court held that, "assuming without deciding that Unimerica could be liable under section 502(c)(1)," Petitioner is not entitled to statutory damages because her requests to Unimerica for "certain information and records" were not made in writing and therefore "did not constitute proper requests under section 104(b)(4)," and, "[t]o the extent [Petitioner] requested information from Unimerica in writing," Unimerica "either provided that information or was not required to do so." (App. 54a-55a). The District Court also noted that Petitioner "has not identified any authority for the proposition that Unimerica was required to disclose to Petitioner the identity of the beneficiaries or the documentation and records associated with the Claim, and the Court is not aware of any." (App. 56a). As noted by the District Court, to the extent Petitioner was entitled to receive any documents under ERISA §104(b)(4), those were "the formal legal documents that govern or confine a plan's operations, rather than the routine documents with which or by means of which a plan conducts its operations." (*Id.*) (internal citation and quotation marks omitted).

Finally, the District Court granted Respondents' summary judgment motion with respect to Petitioner's claim under ERISA §503(2) for full and fair review, finding that "Unimerica issued a written denial of [Petitioner's] claim, laying out the basis for its decision, including the relevant provisions of the Policy, and informing [Petitioner] of her right to appeal the decision," and that, "[a]fter [Petitioner] exercised her right to appeal the Initial Denial and an independent review had been conducted,

Unimerica issued a written denial of [Petitioner's] appeal, again laying out the basis for its decision and informing [Petitioner] of her right to file a civil action." (App. 58a).

(iii) District Court's Memorandum and Order Denying Petitioner's Motion for Reconsideration

After Petitioner filed a motion for reconsideration of the District Court's March 31, 2020 Order, the District Court issued an August 18, 2020 Memorandum and Order denying Petitioner's motion. (App. 8a-15a). The District Court noted that the March 31, 2020 Order was issued "after carefully reviewing the administrative record" and addressing all of Petitioner's arguments in opposition to Respondents' motion for summary judgment. (App. 9a-10a). The District Court concluded that Petitioner "has not met the standard for reconsideration" because she "has not pointed to any controlling law or facts that the Court overlooked, and as [Respondents] correctly note, '[Petitioner] has made the same arguments several times before this Court,'" "first in opposition to [Respondents'] motion for summary judgment, and then in objecting to the [Report and Recommendation].'" (App. 14a).

(iv) Second Circuit's Opinion Affirming District Court's Judgment in All Respects

Following Petitioner's appeal to the United States Court of Appeals for the Second Circuit from the District Court's Order granting Respondents' motion for summary judgment, the Second Circuit issued its Opinion dated May 14, 2021, by which it affirmed the District Court's Order in all respects. (App. 1a-5a). Specifically, the Second Circuit agreed with the District Court that Respondents were

entitled to summary judgment with respect to Petitioner’s ERISA §502(a)(1)(B) claim for life insurance benefits under the Plan because “Unimerica’s interpretation of its policy language was rational,” and, accordingly, Unimerica’s decision to pay the life insurance benefits to the Decedent’s adopted children “was not arbitrary and capricious.” (App. 3a).

In addition, the Second Circuit upheld the District Court’s grant of summary judgment to Respondents with respect to Petitioner’s “full and fair review” claim under ERISA §503(2) because, “[e]ven assuming that [Petitioner], who is not a plan participant, is qualified to seek relief under [ERISA §503(2)],” she “is not entitled to obtain the relief she seeks” given that “the typical remedy” for an ERISA §503(2) violation is “remand for further administrative review, in which the full and fair review can be supplied.” (App. 4a) (internal quotation marks omitted). As explained by the Second Circuit in its Opinion, where, as here, “the basis for the benefits determination and all relevant records have been provided through subsequent litigation,” and “the Court is satisfied that the challenged benefits determination was made on a rational basis, the typical remedy of remand would serve no purpose and a suit such as [Petitioner’s] seeking relief under [ERISA §503(2)] should be denied as futile.” (App. 4a).

Finally, the Second Circuit agreed with the District Court that there is no merit to Petitioner’s argument that Respondents “should have begun an interpleader action to resolve her dispute with them over her brother’s life insurance benefits.” (App. 4a). The Second Circuit noted that the District Court correctly held that “the fact that

[Respondents] *could have* filed an interpleader action does not mean that they violated their statutory obligations under ERISA when they chose not to do so,” and Petitioner “identifies no basis in ERISA for requiring [Respondents] to pursue such an action.” (*Id.*) (emphasis in the original).

On June 2, 2021, Petitioner filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. By Order entered on July 6, 2021, the Second Circuit denied the petition.

REASONS FOR DENYING THE PETITION

In the proceeding below, the Second Circuit correctly upheld the District Court’s award of summary judgment to Respondents on all of Petitioner’s claims because the evidence in the record demonstrates that Unimerica reasonably interpreted the Plan’s facility of payment provision, that its payment of the life insurance benefits under the Plan to the Decedent’s four adopted children was supported by substantial evidence in the record, and that, accordingly, Unimerica’s decision to deny Petitioner’s claim for life insurance benefits under the Plan was not arbitrary and capricious. The Second Circuit’s Opinion was not in conflict with the decision of another United States Court of Appeals, nor did it involve an important question of federal law that should be settled by this Court.

Based on the foregoing, and as more fully discussed below, it is respectfully requested that this Court issue an order denying Campbell’s Petition for a Writ of Certiorari.

I. THIS CASE DOES NOT INVOLVE A CIRCUIT CONFLICT OR AN IMPORTANT QUESTION OF FEDERAL LAW THAT SHOULD BE SETTLED BY THIS COURT

As stated in Rule 10 of the Rules of this Court, a petition for a writ of certiorari may be granted, in the Court’s discretion, “only for compelling reasons,” such as when: “(a) a United States court of appeals has entered a decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power; ... [or] (c) ... a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.”

Petitioner does not, and cannot, articulate any “compelling reason” why this Court should grant her Petition for a Writ of Certiorari. There is no Circuit split on any of the issues in this case, nor does the case present an important question of federal law that should be settled by this Court. This is a simple and straightforward case involving a denial of a claim for life insurance benefits under the ERISA-governed Plan pursuant to the plain language of the Plan’s facility of payment provision and pursuant to the full grant of discretionary authority to Unimerica in the Plan document.

To the extent Petitioner argues that the Second Circuit's Opinion conflicts with the Seventh Circuit's holding in *Jackman Financial Corp. v. Humana Insurance Co.*, 641 F3d 860 (7th Cir. 2011), her argument is entirely meritless. *Jackman* was similar to this case in that it involved a group plan with a facility of payment provision that provided for payment of life insurance benefits, at the plan administrator's option, "to any one or more of the following: Your spouse; Your children; Your parents; Your brothers and sisters; or Your estate." *Jackman*, 641 F.3d at 863. The Seventh Circuit in *Jackman*, like the Second Circuit in this case, upheld the lower court's holding that the claim administrator properly exercised its discretion in distributing life insurance proceeds to the decedent's children, instead of his mother or his estate, because the group plan's facility of payment provisions gave the claim administrator an unconditional right to choose "any one of the listed entities" and the claim administrator "was under no obligation to select either [the decedent's mother or his estate] as the substitute beneficiary." *Id.* at 865. Similarly, as held by the Second Circuit, the Plan's facility of payment provision did not obligate Unimérica to pay the life insurance benefits under the Plan to Petitioner or the Decedent's estate instead of his four adopted children. Therefore, *Jackman* is in accord with the Second Circuit's Opinion and there is no Circuit split on the issue of the enforceability of facility of payment provisions under the arbitrary and capricious standard of review.

Petitioner also argues that "[i]n the 7th Circuit, the [facility of payment] provision only covers the situation when a named/designated beneficiary is not living." (Petition, p. 17). To the extent Petitioner's argument can

be reasonably understood, she appears to argue that *Jackman* is distinguishable from this case in that the facility of payment provision in *Jackman* provided that payment would be made at the claim administrator's option "if the beneficiary [the employee] named is not alive at the employee's death," *Jackman*, 641 F.3d at 863, whereas the facility of payment provision in this case provided that payment would be made at Unimerica's option "[i]f there is no named beneficiary living at the Covered Person's death." (App. 64a). Petitioner's argument is meritless because the fact that the facility of payment clauses in *Jackman* and this case are not identical does not create a Circuit split or an important question of federal law that would necessitate this Court's review.

Accordingly, Petitioner's request for a Writ of Certiorari lacks any merit and should be denied.

II. THE SECOND CIRCUIT'S OPINION WAS CORRECT IN ALL RESPECTS

In addition to the fact that, as noted above, there is no jurisdictional basis for this Court to review the Second Circuit's determination, Respondents also note that the Second Circuit correctly applied the law in granting Respondents' motion for summary judgment.

The undisputed evidence in the record shows that the Decedent did not name a beneficiary of his life insurance proceeds under the Plan and that, under the Plan's facility of payment provision, "[i]f there is no named beneficiary living at the Covered Person's death, [Unimerica] will pay any amount due to the estate or, at [Unimerica's] option, to his: (1) legal spouse; (2) natural or legally adopted children

in equal shares; or (3) estate.” (App. 64a) (emphasis added). (emphasis added). The undisputed evidence in the record further shows that, after the Decedent’s passing, Petitioner completed and signed a Facility of Payment Affidavit, in which she provided to Unimerica the names of the Decedent’s four adopted children and affirmed that she “underst[ood] and agree[d] that the payment of the proceeds ... under the above referenced group insurance policy [would] be paid ... pursuant to its term[s] to either [Petitioner] , ... the surviving relatives of the insured, or ... the insured’s estate.” (App. 65a).

Because there was no designated beneficiary of the Decedent’s life insurance benefits on file with WE Transport or Unimerica at the time of Decedent’s death, Unimerica paid the entirety of the life insurance benefits under the Plan, in the amount of \$15,000, to the Decedent’s four adopted children in equal shares in accordance with the clear and unambiguous terms of the Plan’s facility of payment provision. (App. 66a-68a). Based on the plain language of the Plan’s facility of payment provision, the Plan did not allow that payment of the life insurance benefits be made to Petitioner in her capacity as the Decedent’s sister, and the Plan did not mandate that payment of the life insurance benefits be made to Petitioner in her capacity as the administrator of the Decedent’s estate. (App. 64a). Notably, Petitioner was not even appointed as the administrator of the Decedent’s estate until after Unimerica had already issued payment of the life insurance benefits to two of the Decedent’s adopted children. (App. 67a). Accordingly, the Second Circuit correctly held that Unimerica’s denial of Petitioner’s claim for life insurance benefits under the Plan was reasonable, based on substantial evidence in the administrative record, and, thus, not arbitrary and capricious. While Petitioner

disagrees with Unimerica's interpretation of the Plan's facility of payment provision, the Second Circuit correctly held in its Opinion that Petitioner's interpretation of the facility of payment provision is not "equally plausible to that adopted by Unimerica." (App. 3a). In any event, it is well-established that, as the Second Circuit noted in its Opinion, "in applying the arbitrary and capricious standard, where both the plan administrator and a spurned claimant offer rational, though conflicting, interpretations of plan provisions, the administrator's interpretation must be allowed to control." (*Id.*) (citing *McCauley v. First Unum Life Ins. Co.*, 551 F.3d 126, 132 (2d Cir. 2008)). *See also, e.g., Trombetta v. Crain Fed. Bank for Sav. Emp. Stock Ownership Plan*, 102 F.3d 1435, 1438 (7th Cir. 1996) ("The arbitrary and capricious standard is the least demanding form of judicial review of administrative action, and any questions of judgment are left to the administrator of the plan").

Petitioner appears to argue that the Plan's facility of payment provision is ambiguous and that the Second Circuit should have applied the rule of *contra proferentem* in determining whether Unimerica's denial of Petitioner's claim for life insurance benefits under the Plan was arbitrary and capricious. (Petition, p. 14). Petitioner's argument lacks any merit because, as noted above, the Plan on its face specifies how payment of life insurance benefits should be made if there is no named beneficiary on file – specifically, the Plan clearly and unambiguously provides that, "[i]f there is no named beneficiary living at the Covered Person's death, [Unimerica] will pay any amount due to the estate or, at [Unimerica's] option, to his: 1. legal spouse; 2. natural or legally adopted children in equal shares; or 3. estate." (App. 3a). Therefore, the Second

Circuit correctly held that Unimerica’s “interpretation of its policy language was rational” and “its decision to pay [Petitioner’s] brother’s life insurance benefits to his adopted children was not arbitrary and capricious.” (*Id.*)

Moreover, Petitioner’s argument that the Second Circuit should have applied the rule of *contra proferentem* in this case is baseless as a matter of law because it is well-established in the Second Circuit that “application of the rule of *contra proferentem* is limited to those occasions in which this Court reviews an ERISA plan *de novo*” and that “the rule of *contra proferentem* is inapplicable” where, as here, the court reviews the adverse benefit determination “pursuant to the highly deferential arbitrary and capricious standard of review.” *Pagan v. NYNEX Pension Plan*, 52 F.3d 438, 443-44 (2d Cir. 1995) ; *see also, e.g., White v. Coca-Cola Co.*, 542 F.3d 848, 857 (11th Cir. 2008) (noting that, when applying the arbitrary and capricious standard, the rule of *contra proferentem* does not apply”). Therefore, even if Petitioner had identified an ambiguous provision in the Plan, Respondents would have still prevailed because “[t]he rule of *contra proferentem* is limited to when a court ‘performs *de novo* review’ of an ERISA plan.” (App. 75a) (internal citation and quotation marks omitted).

Finally, Petitioner’s argument that Respondents should have commenced an interpleader action (Petitioner, pp. 18-19) fails as a matter of law because, as the Second Circuit correctly noted in its Opinion, Petitioner does not, and cannot, identify any “basis in ERISA for requiring [Respondents] to pursue such an action.” (App. 4a). Moreover, there was no reason for Unimerica to commence an interpleader because Petitioner, as the Decedent’s

sister, is not entitled to any benefits under the clear and unambiguous terms of the Plan's facility of payment provision, and Petitioner was not even appointed as the administrator of the Decedent's estate until after Unimerica had already issued payment of the life insurance benefits to two of the Decedent's adopted children. (App. 64a, 67a).

CONCLUSION

For the foregoing reasons, Respondents Unimerica Life Insurance Company of New York and WE Transport, Inc. respectfully submit that Petitioner has not established any reason for this Court to grant her Petition for a Writ of Certiorari and that, therefore, the Petition should be denied.

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Respectfully submitted,

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