No. _____

In the Supreme Court of the United States

GREGORY MAYER, *Petitioner*,

v.

HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY, *Respondent*.

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) Is a state law prescribing *de novo* judicial review for challenged benefit determinations, regardless of any discretion the Plan grants to the administrator, preempted by ERISA? If not, does enforcing such a state law with regard to the court challenge of a beneficiary who resides outside of the state in which the Plan was delivered violate the Commerce Clause (as the Second Circuit ruled below)?

2) Should lower courts assessing challenged benefit determinations enforce choice-of-law provisions contained in an ERISA Plan and, if so, which of the differing approaches employed by the circuits should a lower court apply?

PARTIES TO THE PROCEEDINGS

Petitioner Gregory Mayer was the plaintiff in the United States District Court and the appellant in the United States Court of Appeals. Respondent Hartford Life and Accident Insurance Company was the defendant in the District Court and the appellee in the Court of Appeals.

STATEMENT OF RELATED PROCEEDINGS

There are no proceedings in any court that are directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

Gregory Mayer petitions this Court for a Writ of Certiorari to review the published opinion of the Court of Appeals and underlying District Court decision.

OPINIONS BELOW

The August 12, 2021 Opinion of the United States Court of Appeals for the Second Circuit is published, *Mayer v. Ringler Assocs. Inc.*, 9 F.4th 78 (2d Cir. 2021), and appears at Appendix A. The March 26, 2020 Opinion and Order of the United States District Court for the Southern District of New York is unpublished and appears at Appendix B.

JURISDICTION

The Opinion of the United States Court of Appeals was entered on August 12, 2021. App. A. Appellant filed a timely petition for panel rehearing, which the Court of Appeals denied by Order entered September 13, 2021. Appx. D. This Court's jurisdiction is invoked under 28 U.S.C.A. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.*, provides in part, "A civil action may be brought-- (1) by a participant or beneficiary-- (A) for the relief provided for in subsection (c) of this section, or (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to

clarify his rights to future benefits under the terms of the plan…" 29 U.S.C.A. § 1132 (West).

Article 1, Section 8, Clause 3 of the United States Constitution (the Commerce Clause) grants Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

STATEMENT OF THE CASE

Petitioner is a Certified Financial Planner and Certified Structured Settlement Consultant licensed to sell annuities in all 50 states. From 2001 until the onset of his disability in September 2015, petitioner sold annuities as the owner, operator, and sole employee of Ringler Associates Scarsdale, Inc. ("Scarsdale") in New York. Scarsdale was an affiliated but independent contractor of Ringler Associates Inc. ("RAI"), a California company that acts as an umbrella company for more than 50 affiliates – Scarsdale among them, collecting and distributing back to its affiliates commissions for work done by employees of the affiliates selling annuities nationwide (like Mr. Mayer). Most of RAI's employees are in California where RAI is located; most of the affiliated companies and their employees are outside of California, including Mr. Mayer and Scarsdale located in New York.

In September 2015, Mr. Mayer underwent surgeries to his knees and spine. He attempted to work but, by December 2015, was unable to do so anymore.

He thus applied for long-term disability benefits under a group plan issued and administered by Hartford Life. The "Ringler Associates Incorporated

and Affiliates Long Term Disability Plan" provided coverage to RAI's employees and those of its more than 50 affiliated companies, including Scarsdale.

Hartford initially denied that Mr. Mayer was even disabled. After Mr. Mayer highlighted multiple factual inaccuracies in Hartford's determination, however, Hartford reversed its decision and agreed that Mr. Mayer was disabled and entitled to benefits under the Plan.

Hartford advised Mr. Mayer that it would determine the amount of benefits payable to Mr. Mayer. The Plan provided for payment of 66 2/3 percent of the disabled employee's compensation, defining the employee's "Monthly Rate of Basic Earnings" as the "average monthly rate of pay, including Bonuses and Commissions, from the Employer for the 2 calendar year(s) ending just prior to the date [he] bec[a]me Disabled." The Plan defined "Employer" as the Policyholder, with "Policyholder" identified as RAI "and Affiliates" – such as Scarsdale.

Petitioner provided documentation to Hartford showing that Scarsdale had paid him total W2 income of $151,842.01 in 2013, and $399,614.01 in 2014. Along with deferred compensation under a SEP plan, petitioner's total monthly benefit per the Plan was $15,521.49. All of Mr. Mayer's W-2s and Payroll Stubs were paid by Scarsdale under Scarsdale's Employer Tax Identification Number; all tax documents concerning Mr. Mayer's compensation where issued by Scarsdale under Scarsdale's tax-id number. Mr. Mayer did not receive W2 or any other form of income from RAI; he worked solely for and was paid solely by

Scarsdale, the documentation provided to Hartford Life showed.

Despite that, Hartford insisted that RAI, not Scarsdale, was Mr. Mayer's sole "Employer" under the Plan, and that only earnings information provided to Hartford Life by RAI would count in determining Mr. Mayer's benefits. Hartford said that petitioner's Pre-Disability Earnings were less than half of what Mr. Mayer's earning statements from Scarsdale – his actual employer – showed.

Hartford Life relied solely on inaccurate, misleading, and often false information that RAI's Operations Manager, Carol Ferrari, provided to Hartford, while ignoring entirely the salary and benefits information from Scarsdale, Mr. Mayer's actual employer. Petitioner (and by this point his retained attorney), told Hartford – repeatedly – that RAI was providing incorrect information to Hartford Life and that RAI was not his employer – Scarsdale was. Mr. Mayer stressed, repeatedly, that he did not receive any income from RAI – he worked solely for and was paid solely by Scarsdale. But Hartford continued disregarded all of this – insisting that only the inaccurate and false earnings information from RAI would be used to calculate Mr. Mayer's disability benefit, and telling Mr. Mayer that his gross monthly disability benefit under the Plan was only $6,944.45 – less than half of what the Scarsdale earnings documentation showed it was.

Mr. Mayer pursued Hartford's internal appeal process, stressing again that he worked solely for, and was paid solely by, Scarsdale, and that his benefits

should be calculated based on his total compensation from Scarsdale, not based on the incorrect information RAI provided. The Ringler Plan provided that Hartford – if rejecting a beneficiary's proof of loss – had to advise the beneficiary what proofs were needed to make it sufficient. Hartford never did this for Mr. Mayer, so Mr. Mayer had no chance to provide Hartford with whatever books or records (beyond the filed tax records he already provided) Hartford claimed was needed for his benefits calculation. The commissions that Mr. Mayer earned from Scarsdale, for instance, was a fact that could be proven by simple accounting. Yet Hartford did no such accounting, never asked for whatever documentation it claimed was still needed, and failed to even apply the correct time period for calculating commissions earned per the Plan's provisions. Hartford simply denied Mr. Mayer's internal appeal and maintained that it could pay Mr. Mayer the far lower monthly disability benefit based on the incorrect information that RAI had provided while ignoring the information from Scarsdale – Mr. Mayer's actual employer, and from Mr. Mayer and his attorney, detailing Mr. Mayer's actual earnings and consequent benefits payable under the Plan.

The District Court Lawsuit

Mr. Mayer charged that Hartford Life wrongfully calculated his benefits by disregarding the Plan's provisions and the documentation from Scarsdale showing his pre-disability earnings. But the District court denied the ERISA claim, rejecting Mr. Mayer's argument for a *de novo* standard of judicial review and affirming Hartford's determination under the

deferential arbitrary and capricious standard. Hartford Life's insistence on relying solely on earnings documentation from RAI, while disregarding the earnings information from Scarsdale, was "reasonable" and not arbitrary and capricious, the court ruled. Appx. B.

Mr. Mayer's Appeal

The District Court erred, Mr. Mayer argued below, by employing an arbitrary-and-capricious standard of review. California law applied and mandated a *de novo* standard of review because the Plan was implemented by a California company, covered (in part) California residents, was delivered in California, and contained a choice of law provision specifying that it was to be governed by California law – whose statutes mandated *de novo* review of challenged benefit determinations like Mr. Mayer's. *De novo* review applied, also, because Hartford did not strictly comply with ERISA's procedural requirements (29 C.F.R. § 2560.503-1) by (among other things) (i) failing to decide plaintiff's claim and subsequent appeals within 45 days or within a proper time extension; (ii) failing to provide requested documentation concerning plaintiff's appeal before it was decided, and (iii) disregarding evidence showing the proper determination of plaintiff's earnings and the identity of his "Employer" under the Plan (citing *Halo v. Yale Health Plan, Dir. of Benefits & Recs. Yale Univ.*, 819 F.3d 42 (2d Cir. 2016)).

The Court of Appeals affirmed, however, ruling that "the district court did not err in applying the arbitrary-and-capricious standard or in sustaining Hartford Life's determination" under that standard. The court

acknowledged that the Plan was delivered in California to a California company, and contained the choice of law provision prescribing application of California law – provisions routinely enforced in ERISA benefit determination challenges (citing *Arnone v. Aetna Life Ins. Co.*, 860 F.3d 97, 108 (2d Cir. 2017) ("Contractual choice of law provisions are generally enforceable under both New York law and federal common law")). But California Insurance Code § 10110.6(a) "applies only to the claims of California residents," the Court of Appeals ruled. "It does not apply to Mayer because he was a New York resident at all relevant times," the court said (even though Mr. Mayer had attended multiple mediations and conferences in California and sold a significant amount of annuities in California during the years in question, placing significant business with Pacific Life in California during those years). Appx 4. While the California statute could be read to apply to a non-resident like Mr. Mayer, who also was a Plan beneficiary, the court said "[s]uch an interpretation … would raise concerns under the Commerce Clause of the U.S. Constitution because it would allow for 'the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State'" (citing *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336, 109 S. Ct. 2491, 105 L. Ed. 2d 275 (1989); U.S. Const. art. I, § 8, cl. 3 (granting Congress power "[t]o regulate commerce ... among the several States")).

> … it is undisputed that Mayer was a resident of New York at all relevant times. He sold annuities, became disabled, and applied for long-

> term disability benefits in New York. To void the grant of discretionary authority to the claims administrator with respect to a New York resident's disability claim arising from activity in New York would have the impermissible 'effect of requiring out-of-state commerce to be conducted at the regulating state's direction" … In addition to the constitutional concerns it would raise and the tension it would create with prior case law, we note that Mayer's expansive interpretation of § 10110.6 would also 'undermine the significant ERISA policy interests of minimizing costs of claim disputes and ensuring prompt claims-resolution procedures' because the standard of review applicable to a given claimant would depend on the residence of any other person insured under the policy, assuming one might be from California. [Appx A]

De novo review was not compelled by any "strict adherence" requirement either, the court said, declining to consider several "violations of ERISA's claims-procedure regulations" that Mr. Mayer had highlighted; Hartford Life did not violate 29 C.F.R. § 2560.503-1 (h)(2)(iv) "by 'ignoring' documents that showed that Mayer was employed by RAI-Scarsdale rather than RAI," the court said. Appx 22. Agreeing with application of application of the deferential arbitrary and capricious standard, the court then quickly affirmed the district court's decision: "The district court correctly reviewed Hartford Life's determination under the arbitrary-and-capricious standard and correctly concluded that the final

determination was reasonable and supported by substantial evidence in the record." Appx 3, 26.

REASONS FOR GRANTING THE PETITION

I. The Court should clarify that a state law prescribing *de novo* judicial review for challenged benefit determinations – regardless of any discretion the Plan purports to grant to the administrator – is not preempted by ERISA and should apply to protect the rights of all plan beneficiaries.

In *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115, 109 S. Ct. 948, 103 L. Ed. 2d 80 (1989), this Court held that *de novo* is the *presumptive* standard of judicial review. *Firestone* said, however, that where a Plan expressly grants the administrator broad discretionary authority, a court can apply the less deferential standard of arbitrary and capricious review.

Since then, insurers have all ensured their Plans contain such express grants – effectively eliminating the *de novo* standard of review that *Firestone* said was ERISA's presumptively governing standard. Unsurprisingly, this has resulted in fewer successful ERISA challenges by plan beneficiaries and the erosion of plan beneficiary rights that ERISA in part was enacted to protect. As a result, many states, including California, have begun precluding insurance companies like Hartford Life to conceal unfair benefit determinations behind far too deferential standards of judicial review. Nothing in ERISA, the Court should clarify, precludes a state like California from

mandating *de novo* judicial review for benefit determination under Plans delivered in their state.

The Second Circuit reasoned that applying California's statute to protect Mr. Mayer as it would a beneficiary of the same Plan who lives in California "would raise concerns under the Commerce Clause of the U.S. Constitution because it would allow for 'the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State.'" *Mayer*, 9 F.4th at 85. But *Healy*, 491 U.S. at 336, which the Second Circuit cited for its Commerce Clause concern, dealt with a Connecticut statute that "requires out-of-state shippers of beer to affirm that their posted prices for products sold to Connecticut wholesalers are, as of the moment of posting, no higher than the prices at which those products are sold in the bordering States of Massachusetts, New York, and Rhode Island." *Healy*, 491 U.S. at 326. This Court affirmed the lower court rulings that "the Connecticut statute has the undeniable effect of controlling commercial activity occurring wholly outside the boundary of the State. Moreover, the practical effect of this affirmation law, in conjunction with the many other beer-pricing and affirmation laws that have been or might be enacted throughout the country, is to create just the kind of competing and interlocking local economic regulation that the Commerce Clause was meant to preclude." *Healy*, 491 U.S. at 337. Mr. Mayer's case does not present Commerce Clause concerns because California's statute does not try to "control[] commercial activity occurring wholly outside" California. The California statute is being applied to a

Plan delivered in California to a California company which covers California residents and non-residents alike. Hartford Life's policy provides it is to be governed by this California law. Applying the California statute to guarantee Mr. Mayer's right to the presumptive *de novo* judicial review that *Firestone* itself stressed is the presumptive standard does not have "the undeniable effect of controlling commercial activity occurring wholly outside the boundary of the State" as the Connecticut statute tried to do in *Healy*, 491 U.S. at 337.

There is a split of authority on whether state law bans like California's are valid or preempted under ERISA.

The Sixth and Seventh Circuits have held that state law discretionary bans are laws regulating insurance that are not preempted by ERISA per its savings clause, ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A); *see Am. Council of Life Insurers v. Ross*, 558 F.3d 600 (6th Cir. 2009) (Michigan ban on discretionary clauses is law regulating insurance saved from preemption by savings clause); *Fontaine v. Metro. Life Ins. Co.*, 800 F.3d 883, 886–89 (7th Cir. 2015); *Orzechowski v. Boeing Co. Non-Union Long-Term Disability Plan, Plan No. 625*, 856 F.3d 686, 692–95 (9th Cir. 2017); *see also Novak v. Life Ins. Co. of N. Am.*, 956 F. Supp. 2d 900, 905 (N.D. Ill. 2013) (considering Illinois Department of Insurance Regulation mandating judicial review of benefits determination per "reasonableness standard" as law regulating insurance not preempted by ERISA per savings clause).

The Ninth Circuit in *Standard Ins. Co. v. Morrison*, 584 F.3d 837 (9th Cir. 2009) ruled that a Montana decisions disapproving policies containing discretionary clauses was a law regulating insurance not preempted by ERISA under its savings clause. But in the more recent case of *Williby v. Aetna Life Ins. Co.*, 867 F.3d 1129, 1135 (9th Cir. 2017), the Ninth Circuit ruled that ERISA preempts the same California statute in question in Mr. Mayer's case here "insofar as it applies to Boeing's" self-funded plan at issue.

Some courts have avoided answering the question and simply assume that such state law bans are valid, *see*, *e.g.*, *Brake v. Hutchinson Tech. Inc. Grp. Disability Income Ins. Plan*, 774 F.3d 1193, 1196 (8th Cir. 2014) (court did not reach preemption, but cited to cases finding discretionary bans not preempted); *Ariana M. v. Humana Health Plan of Texas, Inc.*, 884 F.3d 246, 250 n.2 (5th Cir. 2018).

Other courts have ruled such state law bans invalid under overriding federal law, *see*, *e.g.*, *Hancock v. Metro. Life Ins. Co.*, 590 F.3d 1141 (10th Cir. 2009) (ruling Utah's ban on discretionary clauses preempted by ERISA because Utah rule "relates to the form, not the substance, of ERISA plans; it has no impact on risk pooling and fails to satisfy" the second prong of the test of laws regulating insurance). Hartford Life itself argued for invalidation of a New Jersey provision in *Baker v. Hartford Life Ins. Co.*, 440 F. App'x 66 (3d Cir. 2011), persuading the courts there that applying the New Jersey regulation to void the Plan's grant of discretion to Hartford would run afoul of ERISA preemption. "[A]ny state-law cause of action that

duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted" (citing *Aetna Health Inc. v. Davila*, 542 U.S. 200, 209, 124 S. Ct. 2488, 159 L. Ed. 2d 312 (2004)). "Plaintiff's construction of section 11:4-58.3 would in effect change the standard of review of every civil enforcement action under ERISA within the state of New Jersey whenever the plan in question grants discretionary authority to the plan administrator. This would directly violate the purpose of ERISA 'to provide a uniform regulatory regime over employee benefit plans.'" *Id*. at 208.

The Court should address this issue and hold that such state laws are valid and effective in mandating a *de novo* standard of judicial review of challenged benefit determinations. Though ERISA preempts state laws, ERISA's "savings clause" provides, "nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A). Because state law regulations like the California statute at issue impacts only those policies that purport to grant discretion to insurance companies, the regulation fits squarely into the savings clause and is valid, the Court should hold. This conclusion is consistent with *Firestone*'s holding that *de novo* review is the default standard for ERISA benefit challenges.

The Second Circuit said that applying California's statute to assess Mr. Mayer's challenge to Hartford's benefit determination also would "'undermine the

significant ERISA policy interests of minimizing costs of claim disputes and ensuring prompt claims-resolution procedures'" (Appx. A). We submit that such state laws are consistent with ERISA's goal of providing "a uniform regulatory regime over" ERISA plans, and with treating beneficiaries under the same Plan equally. Treating Mr. Mayer differently than beneficiaries of the same Plan who happen to live in California contravenes ERISA in this regard, we submit. Permitting states to prescribe a *de novo* standard of judicial review, and applying the prescribed standard to all plan beneficiaries regardless of their state of residence, is consistent, also, with the rationale of *Conkright v. Frommert*, 559 U.S. 506, 517, 130 S. Ct. 1640, 176 L. Ed. 2d 469 (2010), stressing that "ERISA induces employers to offer benefits by assuring a predictable set of liabilities, under uniform standards of primary conduct and a uniform regime of ultimate remedial orders and awards when a violation has occurred…"

Holding that ERISA permits state laws like California's here is consistent also with the Court's decision in *Rutledge v. Pharm. Care Mgmt. Ass'n*, 141 S. Ct. 474, 481, 208 L. Ed. 2d 327 (2020), which held that ERISA did not preempt an Arkansas statute regulating the rates at which pharmacy benefit managers reimburse pharmacies for prescription drug costs. The Court relied on "[t]he logic of" the Court's previous decision in *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 115 S. Ct. 1671, 131 L. Ed. 2d 695 (1995), to conclude that the Arkansas law "is merely a form of cost regulation . . . [that] applies equally to all PBMs and

pharmacies in Arkansas," and therefore is not subject to ERISA preemption because it did not have an impermissible connection with or reference to ERISA.

States likewise may choose whether or not to impose *de novo* review of benefit determinations as California did with regard to the Plan under which Mr. Mayer sought benefits. *Cf. Ellis v. Liberty Life Assurance Co. of Bos.*, 958 F.3d 1271, 1282–83 (10th Cir. 2020), *cert. denied*, 141 S. Ct. 2567 (2021) ("The issue before us, therefore, is whether any federal policy or interest demands the creation of a uniform federal rule either requiring or prohibiting enforcement of discretion-granting provisions in ERISA plans. If not, we should leave to state law whether to permit or allow such provisions.") Here, Mr. Mayer paid the same rate for the Ringler disability plan as beneficiaries living in California, yet Mr. Mayer received less judicial protection against Hartford Life's wrongful benefit determination. Recognizing the Ringler Plan's grant of discretion to the administrator for plan participants in some states, like New York for Mr. Mayer, but not in other states like those participants in California, does not promote efficiency, predictability, and uniformity – or the fair and equal treatment for all plan beneficiaries, which ERISA was enacted to protect and promote. *Conkright*, 559 U.S. at 517.

Hartford Life was able to hide behind the discretionary clause in its Plan – which all modern plans contain – even though California and twenty-plus other states have disallowed anything less than *de novo* judicial review precisely because of such insurer abuse. As Mr. Mayer argued, Hartford Life said RAI was Mr.

Mayer's sole "Employer" even though this contravened the plain language of the Plan's definitions of "Employer," "Policyholder," and "Monthly Rate of Basic Earnings," and even though the documentation provided to Hartford Life confirmed that only Scarsdale, not RAI, paid Mr. Mayer wages and earnings. Hartford Life added requirements that the Plan does not even contain – claiming the Plan required any earnings information to come from the claims administrator and empowered Hartford to ignore any other documentation about the disabled beneficiary's salary, bonuses, and commission. Though discretionary clauses typically apply to the insurer's medical determination of disability, Hartford Life claimed it enjoyed the same discretion to make a numbers calculation – using its claimed discretion to simply ignore more than half of the disabled beneficiary's earnings and pay him a monthly benefit that did not even approach the benefit he should receive under the Plan that is supposed to protect him and his family in case of disability. All of this was effectively overlooked by the lower courts' refusal to apply the *de novo* standard that California law says should have applied – simply stamping Hartford Life's determination as not arbitrary and capricious. The Court should grant Certiorari here and affirm that states like California are free to require *de novo* judicial review for challenged benefit determinations under Plans delivered in their state, and that this standard, which *Firestone* stressed is the presumptive standard of judicial review under ERISA, should apply to protect equally all beneficiaries of the Plan regardless of where they live.

II. The Court should clarify that lower courts assessing challenged benefit determinations should enforce choice-of-law provisions contained in the Plan, and clarify which of the differing circuit court approaches the lower court should apply.

The Court should clarify the validity under ERISA of choice-of-law provisions such as the one in the Ringer Plan in question, providing that the "policy is governed by the laws of the state where it is delivered" (California).

The circuits have applied federal choice-of-law principles to determine whether to give effect to a policy's choice-of-law provision but have differed in their approach.

The Ninth Circuit has said that a choice-of-law provision in an ERISA plan should be followed if "not unreasonable or fundamentally unfair." *Wang Lab'ys, Inc. v. Kagan*, 990 F.2d 1126, 1128–29 (9th Cir. 1993). The Eighth and Eleventh Circuits have followed *Wang*'s unreasonable-or-fundamentally-unfair test, *Brake*, 774 F.3d at 1197 (declining to apply law of South Dakota disallowing discretion clause); *Buce v. Allianz Life Ins. Co.*, 247 F.3d 1133, 1149 (11th Cir. 2001) (adhering to plan's choice of Georgia law).

The Sixth Circuit has adopted a different approach, applying the test set out in Section 187 of the Restatement (Second) of Conflict of Laws for when a contractual choice-of-law provision should be enforced. *See DaimlerChrysler Corp. Healthcare Benefits Plan v. Durden*, 448 F.3d 918, 922 (6th Cir. 2006) (noting

Section 187 of Restatement as providing, "(1) The law of the state chosen by the parties to govern their contractual rights and duties will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue; (2) The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.")

The Fifth Circuit in *Jimenez v. Sun Life Assur. Co. of Canada*, 486 F. App'x 398, 407–08 (5th Cir. 2012) noted both the *Wang* and *Durden* tests but declined to choose a standard because it held that the employee challenging the administrator's denial of benefits failed to satisfy his burden of overcoming the contractual choice-of-law provision under any approach.

Most recently, the Tenth Circuit in *Ellis*, 958 F.3d at 1284–89, stated, "In our view, the above three circuit approaches, all of which sound primarily in reasonableness, are inadequate because they overlook the uniformity and efficiency objectives central to

ERISA." The Tenth Circuit noted that "the choice-of-law issue obviously is most likely to arise for interstate employers. And it is precisely in plans for interstate employers that the need for a single legal regime is most pressing." ERISA preemption "ensures that the administrative practices of a benefit plan will be governed only by a single set of regulations" (citing *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 11, 107 S. Ct. 2211, 96 L. Ed. 2d 1 (1987)).

The Court should grant Certiorari to clarify that giving effect to choice of law provisions enables insurers to achieve certainty and uniformity with regard to which state law will apply to the Plan's benefit determinations – as Hartford Life did by choosing California per its choice of law provision in the Ringler Plan. *See Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 571 U.S. 99, 108, 134 S. Ct. 604, 187 L. Ed. 2d 529 (2013) (stressing ERISA does not intend a system so complex that administrative costs, or litigation expenses, unduly discourage employers from offering ERISA plans in the first place); *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 148, 121 S. Ct. 1322, 149 L. Ed. 2d 264 (2001) ("One of the principal goals of ERISA is to enable employers to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits"; "Uniformity is impossible, however, if plans are subject to different legal obligations in different States.") Choice of law provisions avoid an insurer having to "tailor" its plan "to the peculiarities of the law of each jurisdiction" which "is exactly the burden ERISA seeks to eliminate." *Id.*; H.R. Rep. No. 93-533, 1973 WL 12549,

at 4650 (1973) ("Finally, it is evident that the operations of employee benefit plans are increasingly interstate. The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws.")

Affirming the validity of choice of law provisions, and clarifying that the chosen law governs the challenges of all plan beneficiaries, not just the residents of the state where the plan is delivered, furthers ERISA's aims of uniformity and reduced administrative costs. When the plan is a single-state plan, every employee is treated the same. But for multistate plans, employees in different states may be treated differently if the meaning or enforceability of the provisions of the plan differ depending on the state where the beneficiary or employee lives. Those whose benefits are governed by discretion-denying statutes will have a better chance of receiving benefits than those governed by the law of states without such statutes. This Court in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 103 S. Ct. 2890, 77 L. Ed. 2d 490 (1983) expressed how such a state of affairs would run contrary to ERISA's intent to "minimize[ ] the need for interstate employers to administer their plans differently in each State in which they have employees," and would adversely affect plan beneficiaries by providing unequal treatment of beneficiaries under the same plan. A uniform rule enforcing an ERISA plan's choice of law and applying the chosen law to all plan participants ensures that administrators have predictable obligations and

reduced administrative costs as well as the equal treatment of plan beneficiaries, both of which are central to ERISA's purpose.

CONCLUSION

The Court should grant this Petition for a Writ of Certiorari.

Respectfully submitted,

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