No. 17-

IN THE

Supreme Court of the United States

ANKA V. MISCEVIC,
Interpleader Defendant-Cross/Plaintiff-Petitioner,
v.

ESTATE OF M.M., AND
SNEZANA J. KAPLAREVIC, GUARDIAN OF THE ESTATE,
Cross/Defendant-Respondents,
v.

LABORERS' PENSION FUND, AND
JAMES S. JORGENSEN, ADMINISTRATOR OF THE FUND,
Interpleader Plaintiffs.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The federal Employee Retirement Income Security Act ("ERISA") preempts any state laws "insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA's substantive provisions. 29 U.S.C. § 1144(a). In *Egelhoff* v. *Egelhoff*, this Court interpreted ERISA's preemption provision to apply to any state law that "has a connection with or reference to such a plan," and then held that ERISA preempts a Washington statute that negated a spousal life-insurance designation following a divorce. 532 U.S. 141, 147 (2001).

The Illinois Probate Act of 1975 ("the Illinois slayer statute") provides that a "person who intentionally and unjustifiably causes the death of another shall not receive any property, benefit, or other interest by reason of the death," and that the "property, benefit, or other interest shall pass as if the person causing the death died before the decedent." 755 Ill. Comp. Stat. 5/2-6.

The question presented is: whether ERISA preempts the Illinois slayer statute.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties appearing here and below are: (1) Anka V. Miscevic, Petitioner here and Appellant below; (2) the Estate of M.M. and Snezana J. Kaplarevic, Guardian of the Estate, Respondents here and Appellees below; and (3) the Laborers' Pension Fund and James S. Jorgensen, Administrator of the Fund. Petitioner is not a corporation.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Anka V. Miscevic, respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 880 F.3d 927 (7th Cir. 2018). Petition Appendix at 1a–18a ("Pet. App."). The opinion of the United States District Court for the Northern District of Illinois is not reported but is available at 2017 WL 5904664 (N.D. Ill. Mar. 24, 2017). Pet. App. at 21a–27a.

JURISDICTION

The United States Court of Appeals for the Seventh Circuit entered its judgment on January 29, 2018. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the U.S. Constitution provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof … shall be the supreme Law of the Land …." U.S. Const. art. VI. cl. 2.

The Contracts Clause of the U.S. Constitution provides: "No State shall … pass any … Law impairing the Obligation of Contracts …." U.S. Const. art. I, § 10.

The Employee Retirement Income Security Act provides: "the provisions of this subchapter … shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan ….” 29 U.S.C. § 1144(a).

The Illinois Probate Act of 1975 provides:

> A person who intentionally and unjustifiably causes the death of another shall not receive any property, benefit, or other interest by reason of the death, whether as heir, legatee, beneficiary, joint tenant, survivor, appointee or in any other capacity and whether the property, benefit, or other interest passes pursuant to any form of title registration, testamentary or nontestamentary instrument, intestacy, renunciation, or any other circumstance. The property, benefit, or other interest shall pass as if the person causing the death died before the decedent, provided that with respect to joint tenancy property the interest possessed prior to the death by the person causing the death shall not be diminished by the application of this Section …. A person convicted of first degree murder or second degree murder of the decedent is conclusively presumed to have caused the death intentionally and unjustifiably for purposes of this Section.

755 Ill. Comp. Stat. 5/2-6.

INTRODUCTION

The question whether ERISA preempts state "slayer statutes" has long confounded lower courts. Twice before, this Court has recognized the importance and difficulty of this question, but was not able to decide the question in either instance. See *Kennedy* v. *Plan Admin. for DuPont Sav. & Inv. Plan*, 555 U.S. 285, 304 n.14 (2009); *Egelhoff* v. *Egelhoff ex rel. Breiner*, 532 U.S. 141, 152 (2001). The split of authority thus has remained well entrenched, the question is important and continues to recur, and this petition offers the Court a published opinion from a federal appellate court that squarely addresses the arguments and decisions on both sides. In sum, the time is now for this Court to decide the question and this case presents the proper vehicle for its resolution.

Nearly every state has a "slayer statute" like Illinois' on its books. Although state slayer statutes vary considerably, they all direct that a person who intentionally kills another without justification or excuse typically cannot recover from the decedent's estate. The Seventh Circuit held that ERISA does not preempt Illinois' slayer statute. Pet. App. at 10a–11a. Reviewing their states' slayer statutes, appellate courts in Oregon and Nevada have reached the opposite conclusion. *Herinckx* v. *Sanelle*, 385 P.3d 1190, 1197 (Or. Ct. App. 2016); *Ahmed* v. *Ahmed*, 817 N.E.2d 424, 426 (Ohio Ct. App. 2004). The Nevada Supreme Court, in contrast, shares the Seventh Circuit's view. *Mack* v. *Estate of Mack*, 206 P.3d 98, 110 (Nev. 2009) (en banc). And this is to say nothing of the fractures among federal district courts, which frequently face this question in the form of a federal interpleader action (as was the case here). See *infra* at 11–14.

After squarely teeing up the question presented, the Seventh Circuit reached the wrong answer. The court simply noted the "presumption against preemption in areas of traditional state regulation such as family law," Pet. App. at 10a (quoting *Egelhoff*, 532 U.S. at 151), without closely reading the actual text of ERISA's preemption provision or applying this Court's holding that ERISA preempts any state law that "has a connection with or reference to" an ERISA-covered plan. *Egelhoff*, 532 U.S. at 147. Commenting that "Congress could not have intended ERISA to allow one spouse to recover benefits after intentionally killing the other spouse," the Seventh Circuit applied the Illinois slayer statute to negate a beneficiary designation in an ERISA-covered plan. Pet. App. at 10a. ERISA preemption requires precisely the opposite outcome.

By correcting the Seventh Circuit's error, this Court can resolve the important question of ERISA's preemptive reach. State and federal courts regularly face the question whether ERISA preempts state slayer statutes. The answer they give not only affects probate decisions, but also implicates the uniformity of benefit administration across the 50 states. See *Egelhoff*, 532 U.S. at 148 ("One of the principal goals of ERISA is to enable employers to establish a uniform administrative scheme."). The question at stake here also raises other constitutional concerns. Some state and federal courts have avoided ruling on preemption by instead holding that federal common law provides the same rule as the applicable state slayer statute. See*, e.g.*, *Ruark* v. *Bd. of Trs. of Boilermaker-Blacksmith Nat'l Pension Tr.*, No. Civ. AMD 02-2440, 2003 WL 23305154, at *2 (D. Md. June 9, 2003). But this approach just trades one difficult question for another. This Court has never adopted an ERISA-derived federal common law slayer rule, and even if the creation of federal common law in these circumstances is appropriate, the scope of the federal rule itself is unclear. The Contracts Clause also lurks in the background. To the extent an ERISA-covered plan constitutes a contract under the Contracts Clause, a state slayer statute voiding the plan's beneficiary designation would seem to "impair[]" that contract. U.S. Const. art. I, § 10. Here the Court has the opportunity to put these thorny questions to rest and provide clarity to courts and plan administrators alike.

STATEMENT OF THE CASE

Petitioner here, Anka Miscevic, was married to Zeljko Miscevic and together they had a son, M.M. Anka has a long history of serious mental illness, including paranoid delusions. On January 9, 2014, Anka killed Zeljko. Pet. App. at 2a. Anka was charged with first-degree murder in connection with Zeljko's death. Although Anka confessed to killing Zeljko, she maintained that she did so because she feared that Zeljko intended to kill her and her family. *Id.* The court acquitted Anka of first-degree murder by reason of insanity. *Id.*

Zeljko was a union member and holder of accrued pension benefits under the control of the ERISA-covered Laborers' Pension Fund ("Fund"). *Id.* at 3a. The Fund's plan documents provide that if a fully vested participant dies before benefits commence, a "Surviving Spouse Pension" benefit is payable to the participant's surviving spouse. Only if there is no surviving spouse does the benefit become payable to any minor children as a "Minor Child Benefit." *Id.* The Fund's plan documents do not provide for any exceptions to these rules in the event that a potential beneficiary takes the life of the plan participant. *Id.*

Following her acquittal, Anka sought her Surviving Spouse Pension from the Fund. *Id.* The Estate of M.M. and its guardian, Snezana Jacic Kaplarevic, claimed that the Illinois slayer statute barred Anka from receiving anything from the Fund, and that the Estate of M.M. instead was entitled to a Minor Child Benefit. *Id.* at 4a. The Fund was forced to file a federal interpleader action, with its accompanying expense and disruption to the Fund, to determine the proper beneficiary. *Id.* at 3a. After the parties filed cross-motions for judgment under Fed. R. Civ. P. 12(c), the district court held that the Illinois slayer statute precluded Anka from recovering, and that the Estate of M.M. was entitled to a Minor Child Benefit. *Id.* at 4a.

On appeal, Anka explained that ERISA preempts the Illinois slayer statute because the slayer statute "relates to" benefits payable by the Fund, 29 U.S.C. § 1144(a), and otherwise affects uniform plan administration. *Id.* at 7a. Anka accordingly claimed that the district court erred in holding that the slayer statute precluded her from receiving Fund benefits. *Id.* at 4a. Anka argued in the alternative that, even if the slayer stature were not preempted, her acquittal on the basis of insanity entitled her to the benefits. *Id.* The Estate of M.M. argued that ERISA did not preempt the Illinois slayer statute, and that Anka was barred by both the slayer statute and common law principles from receiving benefits from the Fund. Brief of Appellees at 3, *Laborers' Pension Fund* v. *Miscevic* v. *Estate of M.M.*, No. 17-2022 (7th Cir. Oct. 13, 2017).

The Seventh Circuit affirmed. *Id.* at 18a. It held that "[s]layer laws are an aspect of family law, a traditional area of state regulation," and that Anka had not overcome the "presumption against pre-emption in areas of traditional state regulation such as family law." *Id.* at 9a–10a. The Seventh Circuit contrasted Illinois' slayer statute with the Washington statute at issue in *Eglehoff*, which modified a person's spousal life-insurance designation following a divorce. *Id.* at 6a, 10a. According to the Seventh Circuit, the Washington statute "implicated an area of core ERISA concern" and "interfered with nationally uniform plan administration" in a way that Illinois' slayer statute does not. *Id.* at 10a (citation omitted). Other than noting that many slayer statutes pre-date ERISA, the Seventh Circuit did not explain why slayer statutes' disruptive effect on nationally uniform plan administration was any different than the statute preempted in *Egelhoff*. *Id.* at 7a. After finding Illinois' slayer statute not preempted, the Seventh Circuit applied the statute to bar Anka from recovering Zeljko's pension benefits, even though she was found not guilty by reason of insanity. *Id.* at 11a–18a.

REASONS FOR GRANTING THE PETITION

I. STATE AND FEDERAL COURTS DISAGREE WHETHER ERISA PREEMPTS STATE SLAYER STATUTES

State and federal courts are split on whether ERISA preempts state slayer statutes. At least two state appellate courts and one federal district court have held that ERISA preempts state slayer statutes, relying largely on this Court's *Egelhoff* decision. In line with *Egelhoff*'s two-prong analysis, those courts have asked whether the relevant state slayer statute "binds ERISA plan administrators to a particular choice of rules for determining beneficiary status" or "interferes with nationally uniform plan administration." 532 U.S. at 147–48. Holding that state slayer statutes change the rules for deciding beneficiary status and thus undermine nationally uniform plan administration, those courts conclude that *Egelhoff's* logic directs a determination that ERISA preempts the challenged statutes.

By contrast, at least one state supreme court and two federal district courts have reached the opposite conclusion post-*Egelhoff*, either erroneously holding that preemption is unwarranted because of a supposed uniformity among state slayer statutes, or relying on an inchoate federal common law slayer rule to avoid the preemption question altogether.

A. State appellate courts disagree whether ERISA preempts state slayer statutes.

Relying on *Egelhoff*, the Ohio Court of Appeals and the Oregon Court of Appeals have independently held that ERISA preempts state slayer statutes. See *Ahmed*, 817 N.E.2d at 426 ("Under [*Egelhoff*], ERISA preempts [the state slayer statute], since plan administrators would otherwise be obliged to master the relevant laws of the 50 states and contend with litigation, thus undermining the goals of ERISA."); *Herinckx*, 385 P.3d at 1197 ("[W]e hold that [the state slayer statute] as applied here, is preempted by ERISA."). However, without even mentioning this Court's *Egelhoff* decision, the Nevada Supreme Court reached the opposite conclusion. See *Mack*, 206 P.3d at 110 (holding that the state's "slayer statute does not fall within the category of laws that have been recognized as preempted by ERISA").

In *Ahmed*, the Ohio case, the primary beneficiary of a life-insurance policy was convicted of murdering the plan participant, and the son of the decedent plan participant brought a declaratory-judgment action to determine the proper beneficiary of the decedent's life-insurance policy. 817 N.E.2d at 426–27. Ohio's slayer statute provides that no one who is convicted of murder, aggravated murder, or voluntary manslaughter "shall in any way benefit by the death" of a decedent. *Id.* at 428; Ohio Rev. Code § 2105.19(A). Moreover, "[a]ll property of the decedent, and all money, insurance proceeds, or other property or benefits payable or distributable in respect of the decedent's death, shall pass or be paid or distributed as if the person who caused the death of the decedent had predeceased the decedent." *Id.*

The Ohio Court of Appeals held that ERISA preempts the Ohio slayer statute. The court applied this Court's two-prong analysis from *Egelhoff* and asked whether the state law binds plan administrators to a particular choice of rules for determining beneficiary status or interferes with nationally uniform plan administration. First, the Ohio court noted that 44 states and the District of Columbia have enacted a slayer statute, but that these statutes differ in substantive ways, including with respect to: (1) "the nature of the killing that disqualifies the beneficiary," (2) "the varying burdens of proof upon the person seeking to disqualify the killer as beneficiary," and (3) whether "a slayer statute only supplements, rather than supersedes, common law." *Ahmed*, 817 N.E.2d at 430–31. The court held that the "variety of ways in which the different states enforce the general principle behind slayer statutes" necessarily implicates an area of core ERISA concern by "obliging ERISA plan administrators to pay benefits to the beneficiaries chosen by state law, rather than those identified in the plan documents." *Id.* at 431.

Second, the Ohio Court of Appeals held that the variation in state slayer statutes interferes with nationally uniform plan administration. *Id*. Noting that "[f]or all intents and purposes, slayer statutes affect the administration of ERISA plans in the same manner as the [divorce] statute discussed in *Egelhoff*," the court held that *Egelhoff* compelled the conclusion that "ERISA preempts Ohio's slayer statute." *Id*. at 430–31.

In *Herinckx*, the Oregon Court of Appeals similarly relied on *Egelhoff* to conclude that ERISA preempts the Oregon slayer statute. There, an ERISA plan beneficiary was allegedly responsible for the plan participant's death, prompting the plan participant's personal representatives to challenge the beneficiary's recovery of the plan participant's life-insurance proceeds. *Herinckx*, 385 P.3d at 1194. Oregon's slayer statute provides that "proceeds payable under [a policy or certificate of insurance on the life of the decedent] to or for the benefit of a slayer of [the] decedent or an abuser of [the] decedent, as beneficiary … of the decedent … must be paid to the secondary beneficiary or … to the personal representative of the estate of the decedent." *Id*. at 1196; Or. Rev. Stat. § 112.515.

Again, as in *Ahmed*, the Oregon Court of Appeals relied on the two-prong analysis from *Egelhoff* to hold that ERISA preempts the state rule. First, the Oregon court reasoned that the state slayer statute "governs a central matter of plan administration" because the statute affects the "payment of benefits from an ERISA plan by altering the plan's beneficiary." *Herinckx*, 385 P.3d at 1196. Second, the court held that the Oregon statute "interferes with nationally uniform plan administration," just like the divorce-revocation statute in *Egelhoff*. *Id*.

The Oregon court supported its conclusion with a survey of state slayer statutes, correctly recognizing that "slayer statutes can vary from state to state in material ways," and thereby substantially interfere with nationally uniform plan administration. *Id.* The court accordingly held that the Oregon slayer statute "has a prohibited connection with ERISA plans" and was thus preempted. *Id.* at 1197.

The Nevada Supreme Court, in contrast, recently reached the opposite conclusion. In *Mack*, a husband who killed his wife during divorce proceedings challenged the application of the Nevada slayer statute, arguing that ERISA preempts the state statute. 206 P.3d at 101–06. Like the Ohio and Oregon slayer statutes, the Nevada slayer statute "provides that a killer cannot profit or benefit from his wrong." *Id.* at 111; Nev. Rev. Stat. § 41B.200. The Nevada Supreme Court rejected the husband's challenge, holding that "Nevada's slayer statute is not preempted by ERISA." *Mack*, 206 P.3d at 111.

The Nevada Supreme Court reasoned that the "application of this statute will not affect the determination of an employee's eligibility for benefits," and that the statute would have no "impact on the method of calculating benefits due." *Id.* at 110. Perplexingly, the Nevada Supreme Court did not discuss this Court's *Egelhoff* decision and failed to address whether applying Nevada's slayer statute would implicate an area of core ERISA concern or undermine ERISA's goal of promoting nationally uniform plan administration.

B. Federal district courts disagree whether ERISA preempts state slayer statutes.

Much like the state appellate courts noted above, federal district courts disagree whether ERISA preempts state slayer statutes. See *ERISA Litigation: Preemption of Select State Laws*, Practical Law

Practice Note W-008-5981 (2018) ("The district courts disagree regarding whether ERISA preempts state slayer statutes."); *Nale* v. *Ford Motor Co. UAW Ret. Plan*, 703 F. Supp. 2d 714, 722 (E.D. Mich. 2010) ("Although it seems reasonably clear that the application of a state slayer statute may alter the distribution of benefits under an employee benefits plan, there is some debate among federal courts as to whether ERISA preempts state slayer statutes.").

In *Mitchell* v. *Robinson*, No. 1-11CV130 SNLJ, 2011 WL 6740422 (E.D. Mo. Dec. 22, 2011), for instance, a defendant-employer was sued by would-be claimants for wrongfully providing death benefits to the husband of a decedent-employee killed by the husband. *Id.* at *1. Missouri's slayer statute provides that "if a named beneficiary of a life insurance policy is convicted of killing the insured, the beneficiary is therefore 'disabled' from taking the proceeds of the policy." *Id.* at *2 (quoting statute).

Reasoning that "it is clear that … ERISA preempts Missouri's law," the district court cited *Egelhoff*'s rule that a state statute "run[ning] counter to ERISA's commands" and "interfere[ing] with nationally uniform plan administration" is preempted. *Id.* at *2–*5. The court then concluded that "ERISA applies" and the "state law claims are preempted." *Id.* at *4. Notably, the court also stated that the "decision is not at odds with the *Egelhoff* dicta regarding slayer laws because, although [the court] holds that plaintiffs' claims are governed by ERISA, [the court] may still apply the principles of Missouri's slayer law in adjudicating plaintiffs' ERISA claim." *Id.* at *5. The court appeared to be claiming the authority to prevent the husband from recovering as a matter of federal common law. See *id.* ("federal common law also encompasses the equitable principle that a person should not benefit from his wrongs").

At least two federal district courts have come out the other way after *Egelhoff*. In *Hartford Life & Accident Ins. Co.* v. *Rogers,* No. 3:13-CV-101, 2014 WL 5847548 (D.N.D. Nov. 12, 2014), the court applied *Egelhoff* and concluded that ERISA does not preempt North Dakota's slayer statute. The court then applied the slayer statute to hold that a husband who killed his wife could not recover from his wife's life-insurance policy. *Id.* at *1–*2. Without conducting any review of the distinctions among various state slayer statutes, the court took as given *Egelhoff*'s dictum suggesting that state slayer statutes "are more or less uniform nationwide." *Id.* at *2. The court concluded that "it would contradict federal common law and the congressional intent for ERISA to allow [the] defendant [] to recover ERISA benefits," "[i]n light of the longstanding principle against permitting slayers to benefit financially from the intentional or felonious killing of another." *Id.* at *3.

However, not all courts rely on the Court's dictum in *Egelhoff* to conclude that ERISA does not preempt state slayer statutes. For example, in *Union Sec. Life Ins. Co. of New York* v. *JJG-1994*, No. 1:10-CV-00369 LEK, 2011 WL 3737277 (N.D.N.Y. Aug. 24, 2011), the court held that a son who killed his father was "precluded from receiving [his father's] life insurance benefits under the New York slayer rule," which prohibits a "killer from profiting from his crime." *Id.* at *1–*2. The court concluded that "New York's Slayer Rule *Preempts ERISA*" without even mentioning *Egelhoff*. *Id.* (emphasis added). The court instead relied on a single pre-*Egelhoff* Second Circuit decision, which held that laws not preempted by ERISA are those "of general application—often traditional exercises of state power or regulatory authority—whose effect on ERISA is incidental." *Id.* at *2 (quoting *Aetna Life Ins. Co.* v. *Borges*, 869 F.2d 142, 146 (2d Cir. 1989)).[1]

II. THE SEVENTH CIRCUIT'S DECISION IS WRONG

The Seventh Circuit's ruling falls on the wrong side of the split in authority. ERISA's preemption provision states that ERISA "shall supersede *any and all* State laws insofar as they may now or hereafter *relate to* any employee benefit plan" covered by ERISA. 29 U.S.C. § 1144(a) (emphases added). This Court has "observed repeatedly that this broadly worded provision is 'clearly expansive.'" *Egelhoff*, 532 U.S. at 146; see also *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) (listing cases in which the Court has broadly applied ERISA preemption). A state statute "relates to" an ERISA plan "if it has a connection with or reference to such a plan." *Egelhoff*, 532 U.S. at 147 (quoting *Shaw* v. *Delta Air Lines, Inc.,* 463 U.S. 85, 97 (1983)).

ERISA preemption under § 1144(a) may occur "even if the law is not specifically designed to affect such plans, or the effect is only indirect," *Ingersoll-Rand Co.* v. *McClendon*, 498 U.S. 133, 137–39 (1990), and even if the law is "consistent with

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[1] In addition, in the years preceding this Court's *Egelhoff* decision, several federal district courts held that ERISA does not preempt state slayer statutes. *See, e.g.*, *New Orleans Electrical Pension Fund* v. *Newman*, 784 F. Supp. 1233, 1236 (E.D. La. 1992) ("[T]he Court finds that ERISA does not preempt the Louisiana killer statutes …."); *Mendez-Bellido* v. *Bd. of Trs. of Div. 1181, A.T.U. N.Y. Emps. Pension Fund & Plan*, 709 F. Supp. 329, 331 (E.D.N.Y. 1989) ("[T]he Court must conclude that a state law prohibiting a killer from profiting from her crime is not preempted by ERISA.").

ERISA's substantive requirements." *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985). Consequently, this Court has held in various contexts that ERISA preempts state statutes that change an employee benefit plan's designated beneficiary. See, *e.g.*, *Kennedy*, 555 U.S. at 288 (ERISA-covered plan documents determine pension designation); *Egelhoff*, 532 U.S. at 141 (ERISA preempts state law providing that the designation of a spouse as the beneficiary of a non-probate asset is revoked automatically following divorce); *Boggs* v. *Boggs*, 520 U.S. 833, 835–36 (1997) (ERISA preempts state law permitting testamentary transfer of a nonparticipant spouse's community-property interest in undistributed pension-plan benefits).

The Illinois slayer statute at issue here is preempted by ERISA under the two-prong analysis this Court applied in *Egelhoff*. First, the Illinois slayer statute "binds ERISA plan administrators to a particular choice of rules for determining beneficiary status." *Egelhoff*, 532 U.S. at 147. Here, the Fund was ordered to "pay benefits to the beneficiaries chosen by state law, rather than to those identified in the plan documents." *Id*. Second, the Illinois slayer statute "interferes with nationally uniform plan administration." *Id.* at 148. The Illinois slayer statute—like all slayer statutes—has its own set of rules and exceptions, and the Fund administrator must familiarize himself with these nuances to properly issue benefits (this protracted litigation itself is part of that familiarization process).

A. The Illinois slayer statute dictates the rules governing plan administration.

ERISA preempts the Illinois slayer statute because the statute purports to "govern[] the payment of benefits, a central matter of plan administration," *id.*, by dictating how ERISA plan administrators may distribute benefits. In *Egelhoff*, this Court held that ERISA preempts a Washington statute instructing that, following divorce, a non-probate asset listing the former spouse as the beneficiary "passes, as if the former spouse failed to survive the decedent." *Id.* at 147. The Court found ERISA preemption because application of the Washington statute would require plan administrators to "pay benefits to the beneficiaries chosen by [Washington] law, rather than to those identified in the plan documents." *Id.*

The Illinois slayer statute similarly "binds ERISA plan administrators to a particular choice of rules for determining beneficiary status." *Id.* The statute prohibits administrators from distributing benefits to the designated beneficiary of a plan if the beneficiary intentionally causes the death of the decedent. See 755 Ill. Comp. Stat. 5/2-6 (stating that the "property, benefit, or other interest shall pass as if the person causing the death died before the decedent"). This prohibition plainly contradicts ERISA's command that administrators make payments to a "beneficiary" who is "designated by a participant, or by the terms of [the] plan." See 29 U.S.C. § 1002(8); see also *Kennedy*, 555 U.S. at 304 (payment must be made according to ERISA plan documents). Therefore, like the divorce-revocation statute in *Egelhoff*, the Illinois slayer statute conflicts with—and is thus preempted by—ERISA.

That states traditionally have regulated inheritance and family law questions does not "immunize" the Illinois slayer statute from ERISA preemption—"ERISA certainly contemplated the pre-emption of substantial areas of traditional state regulation." See *Cal. Div. of Labor Standards Enf't* v. *Dillingham Const., N.A., Inc.*, 519 U.S. 316, 330 (1997). While there is a presumption against preemption in areas of traditional state regulation, that presumption can be overcome when state law "conflicts with ERISA or relates to ERISA plans." *Egelhoff*, 532 U.S. at 151. This Court, of course, found the presumption overcome in *Egelhoff*, which dealt with the effects of a divorce judgment—a question of matrimonial law far removed from typical federal concern. By directing the Fund administrator to disburse benefits in a manner other than according to the Fund's plan documents, the Illinois slayer statute clearly "relates to," 29 U.S.C. § 1144(a), and conflicts with the Fund's administration. In short, the ERISA-covered plan documents instruct the Fund to pay Anka and the Illinois slayer statute instructs the Fund to pay the Estate of M.M. This direct conflict invokes preemption. *Boggs*, 520 U.S. at 844 ("Conventional conflict preemption principles require pre-emption where compliance with both federal and state regulations is a physical impossibility ….").

B. The Illinois slayer statute interferes with nationally uniform plan administration.

The second prong of this Court's test from *Egelhoff* also calls for preemption, since the Illinois slayer statute interferes with nationally uniform plan administration. See *Egelhoff*, 532 U.S. at 147. The Seventh Circuit reached the opposite conclusion, resting in part on this Court's remark in *Egelhoff* that state slayer statutes are "more or less uniform nationwide." Pet. App. at 7a. A closer examination, however, reveals that state slayer statutes "vary from State to State in their details." *Egelhoff*, 532 U.S. at 160 (Breyer, J., dissenting) (outlining key differences).

At a minimum, state slayer statutes across the country differ in four important ways. First, state slayer statutes differ with respect to the standard of proof necessary to forfeit beneficiary status in the absence of a criminal conviction. Compare Ariz. Rev. Stat. Ann. § 14-2803(F) (requiring proof, in a civil proceeding, under preponderance of the evidence standard); Haw. Rev. Stat. § 560:2-803(g) (same); Or. Rev. Stat. § 112.555, with Ga. Code Ann. § 53-1-5(d) (requiring proof under clear and convincing evidence standard); Me. Rev. Stat. Ann., Tit. 18-A, § 2-803(e) (same).

Second, state slayer statutes differ with respect to their treatment of criminal convictions. Compare Ala. Code § 43-8-253(e) (treating judgment of conviction as conclusive when it becomes "final"), with Or. Rev. Stat. § 112.555 (treating judgment of conviction as conclusive only "[a]fter any right to appeal has been exhausted"); Haw. Rev. Stat. § 560:2-803(g) (same), with Ohio Rev. Code Ann. § 2105.19(A) (disqualifying the beneficiary only after she is convicted of or pleads guilty to one of a set of listed violations).

Third, state slayer statutes differ as to the behavior necessary for a party to forfeit beneficiary status. Compare Or. Rev. Stat. § 112.455 et seq. (denying recovery to either a "slayer" or an "abuser of a decedent"), with Ark. Code Ann. § 28-11-204 (disqualifying a beneficiary for committing either first- or second-degree murder); Cal. Prob. Code § 252 (denying life insurance proceeds only to a person "who feloniously and intentionally kills" the decedent); Ohio Rev. Code Ann. § 2105.19 (disqualifying a beneficiary for committing either aggravated murder, murder, voluntary manslaughter, or even if the slayer is found not guilty by reason of insanity).

Finally, while state slayer statutes typically provide a mandatory rule, at least some statutes allow persons to opt out of the statutory directive through their wills. See*, e.g.*, Wis. Stat. § 854.14(6)(b).

Given that state slayer statutes vary in material ways, any attempt to apply each statute to ERISA-covered plan beneficiaries living in different states would undermine nationally uniform plan administration at least as much as the divorce-revocation statute in *Egelhoff*. These different outcomes are not academic. Illinois' slayer statute, according to the Seventh Circuit, prohibits a person from recovering even after being acquitted of the murder on the basis of insanity.[2] See Pet. App. at 11a–18a. Under this interpretation of the Illinois' slayer statute, therefore, Anka is barred from recovering, and the Fund must pay Zeljko's pension proceeds to the Estate of M.M. But if this case had arisen in other states—states as diverse as Mississippi, California, or New Jersey, for instance, see *Estate of Armstrong* v. *Armstrong*, 170 So. 3d 510, 515 (Miss. 2015) (contrasting slayer statutes and applying the majority rule that an insanity-based acquittal preserves inheritance rights)—Anka would have received the Fund benefits based on her acquittal.

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[2] The Seventh Circuit interpreted the statute to bar a killer who was found insane from receiving benefits, even though the Illinois slayer statute is silent as to whether an acquittal by reason of insanity is an exception to the inheritance bar, and Illinois common law, as well as a nearly identical prior version of the statute, has long exempted insanity from the slayer rule. See *Holdom* v. *Grand Lodge Ancient Order United Workmen*, 43 N.E. 772, 774 (1895) (Where an insane beneficiary in a life policy kills the assured under such circumstances as would cause the killing to be murder if the beneficiary were sane, such killing does not cause a forfeiture of the policy, nor bar his right of recovery for the insurance money.").

These many state-law variations not only mean that persons like Anka will or will not recover depending on where they live (even though the applicable plan documents are the same from state to state), the variations also burden plan administrators, who "cannot make payments simply by identifying the beneficiary specified by the plan documents." *Egelhoff*, 532 U.S. at 148. Instead, absent preemption, the administrators must "familiarize themselves" with the varying state slayer statutes (as well as court decisions interpreting those statutes) "so that they can determine whether the named beneficiary's status has been 'revoked' by operation of law." *Id.* at 148–49. In practice, a federal interpleader action is often necessary to make this determination, as it was here. All of this means that plan administrators must expend limited plan resources to resolve—usually through litigation—distribution questions. That is "precisely the burden that ERISA preemption was intended to avoid." *Fort Halifax Packing Co.* v. *Coyne*, 482 U.S. 1, 10 (1987).

III. WHETHER ERISA PREEMPTS STATE SLAYER STATUTES IS AN IMPORTANT AND RECURRING ISSUE

A. State and federal courts regularly must decide between ERISA-covered plan documents and slayer rules.

There is no denying that "ERISA pre-emption questions are recurrent." *Boggs*, 520 U.S. at 839. It is thus no surprise that this Court has twice encountered the specific preemption issue presented here. See *Kennedy*, 555 U.S. at 304 n.14; *Egelhoff*, 532 U.S. at 152. On both occasions, after recognizing the issue's importance, the Court left it for another case. In *Egelhoff*, the Court did not address "if ERISA preempts … the various state statutes providing that a murdering heir is not entitled to receive property as a result of the killing" because "[t]hose statutes [were] not before [it]." 532 U.S. at 152. Similarly, in *Kennedy* the Court did not decide whether ERISA preempts state statutes prohibiting "a beneficiary who murders a participant [from] obtain[ing] benefits under the terms of the plan." 555 U.S. at 304 n.14. As in *Egelhoff*, the Court stated that "[t]he 'slayer' case is not before [it]" so it need "not address" the question. *Id.* The question is now presented.

Moreover, as noted above, pre- and post-*Egelhoff*, several state and federal district courts have not only faced the issue, but have issued opinions staking out their position. See *supra* 7–14. In addition, in the years since *Egelhoff* alone, many other courts have encountered the question of slayer-statute preemption, ultimately declining to resolve it. See *Guardian Life Ins. Co.* v. *Rowe*, No. 1:17 CV 547, 2017 WL 4286687, at *3 (N.D. Ohio Sept. 27, 2017); *Hattiesburg Clinic Prof'l Ass'n* v. *Clayton*, No. 2:16-CV-17-KS-MTP, 2017 WL 2960551, at *3 (S.D. Miss. Apr. 14, 2017); *Bean* v. *Alcorta*, No. SA:14-CV-604-DAE, 2015 WL 4164787, at *7 (W.D. Tex. July 9, 2015); *Cadle* v. *Shelton*, No. 2:11-CV-00787, 2013 WL 1282372, at *5 (S.D. Ohio Mar. 26, 2013); *Hartford Life & Accident Ins. Co.* v. *King*, No. 7:11CV411, 2012 WL 5472036, at *4 (W.D. Va. Apr. 30, 2012); *In re Estate of Burkland*, No. CIV.A. 11-5024, 2012 WL 13550, at *6 (E.D. Pa. Jan. 3, 2012); *UNUM Life Ins. Co. of Am.* v. *Mack*, No. 3:04CV247-MU, 2011 WL 2470668, at *1 (W.D.N.C. June 21, 2011); *Nale*, 703 F. Supp. 2d at 722; *Honeywell Sav. & Ownership Plan* v. *Jicha*, No. CIV. 08-4265 (DRD), 2010 WL 276237, at *6 (D.N.J. Jan. 15, 2010); *Life Ins. Co. of N. Am.* v. *Camm*, No. 4:02-CV-00106-DFH-WGH, 2007 WL 2316480, at *4–5 (S.D. Ind. Aug. 6, 2007);

Hagedorn v. *MetLife*, No. C05-1083Z, 2006 WL 1148230, at *4 (W.D. Wash. Apr. 27, 2006); *Conn. Gen. Life Ins. Co.* v. *Riner*, 351 F. Supp. 2d 492, 497 (W.D. Va. 2005), *aff'd sub nom. Conn. Gen. Life Ins. Co.* v. *Estate of Riner*, 142 F. App'x 690 (4th Cir. 2005); *Admin. Comm. for the H.E.B. Inv. & Ret. Plan* v. *Harris*, 217 F. Supp. 2d 759, 761 (E.D. Tex. 2002).

Many courts that avoid the preemption question instead rely on a presumed federal common law slayer rule. See *Camm*, 2007 WL 2316480, at *4–*5 (courts "have concluded they did not need to decide whether the state slayer's statutes were actually preempted because federal common law would produce the same result as the state statutes"). With this avoidance tendency come two additional reasons for this Court's review.

First, federal common law-based avoidance prevents the ERISA preemption question from properly reaching the federal courts of appeal. Other than this case, only one federal appellate court has had the opportunity to address the question presented. In *Standard Ins. Co.* v. *Coons*, the Ninth Circuit had the opportunity to decide whether ERISA preempts Oregon's slayer statute. No. 96-36299, 1998 WL 115579 (9th Cir. Mar. 16, 1998). Instead of resolving the question, however, the Ninth Circuit also held that, whether or not ERISA preempts Oregon's slayer statute, the outcome would be the same under federal common law. *Id.* at *1. Because of courts' apparent proclivity for federal common law, the decision below constitutes the only other occasion where a federal court of appeals has had the opportunity to decide this important question. Pet. App. at 7a–8a. If the Court misses the opportunity presented here, there is no telling how long it will take for the issue to resurface again.

Second, lower courts' penchant for implying federal common law requires this Court's supervisory attention in any event. The Court has said that "Congress expected courts would develop a federal common law of rights and obligations under ERISA-regulated plans." *Black & Decker Disability Plan* v. *Nord*, 538 U.S. 822, 831 (2003). But it also has said that any "authority … to develop a federal common law under ERISA is not the authority to revise the text of the statute." *Mertens* v. *Hewitt Assocs.*, 508 U.S. 248, 259 (1993) (citation omitted). The Court, moreover, has never used its claimed ERISA-derived common law authority to formally adopt a federal common law slayer rule, despite long ago recognizing the general principle. See *Mut. Life Ins. Co. of N.Y.* v. *Armstrong*, 117 U.S. 591, 600 (1886) ("It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of the party whose life he had feloniously taken."). If an ERISA-based federal common law rule is appropriate, this Court should clarify its contours. Cf. *Atherton* v. *F.D.I.C.*, 519 U.S. 213, 226 (1997) ("Absent some congressional authorization to formulate substantive rules of decision, federal common law exists only in such narrow areas as those concerned with the rights and obligations of the United States, interstate and international disputes implicating the conflicting rights of States or our relations with foreign nations, and admiralty cases.").

The Court's guidance in this regard is necessary because lower federal courts that have recognized a federal common law slayer rule have not clearly delineated the scope of that rule. Compare *Ruark*, 2003 WL 23305154, at *2 (declining to apply federal common law slayer rule because the plan beneficiary was drunk when he killed the plan participant and thus did not have "the intent to kill"), with *Mounts* v. *United States*, 838 F. Supp. 1187, 1194 (E.D. Ky. 1993) (applying the federal common law slayer rule to prevent a person from recovering after they caused the decedent's death by "reckless homicide"). Differing views of the scope of the federal common law slayer rule create a split within the split—not only do courts not know whether to apply state or federal law, they also do not know or do not agree on the applicable federal rule of decision (assuming it actually does control).

B. Resolving the question presented will promote uniform plan administration, protect Americans' financial security, and avoid an important constitutional question.

As noted above, see *supra* at 17–19, state slayer statutes differ significantly. The Illinois slayer statute (according to the Seventh Circuit) applies to persons found not guilty on the basis of insanity. Pet. App. at 11a–18a. Many other states limit their slayer statutes to persons who have been found guilty of murder. See *Armstrong*, 170 So. 3d at 515. Assuming no preemption, therefore, whether an administrator can distribute benefits to a plan participant's designated beneficiary depends on the particular directives of the state slayer statute. Cf. *Egelhoff*, 532 U.S. at 149–50 (stating ERISA should make employee-benefit administration simpler by freeing benefit-plan administrators from having "to master the relevant laws of 50 States and to contend with litigation").

It gets worse. Because of courts' uncertainty about ERISA's preemptive scope, a plan administrator first must review the court reporters before he even gets to the statute books. Of course, some courts have held that ERISA preempts the state slayer statute, some have held that it does not, and some have resolved the question through federal common law (which itself contains fractures). The existence of so many permutations is directly at odds with Congress's wish for clarity and national uniformity. Plan administrators should be able to distribute plan benefits without having to consult preemption experts and statute books at every turn.

Moreover, the scope of ERISA preemption is not mere legal arcana—it has important societal implications. As this Court has recognized, benefit plans play a central role in both the nation's economy and in Americans' financial security. See *Boggs*, 520 U.S. at 839 ("In large part the number of ERISA preemption cases reflects the comprehensive nature of the statute, the centrality of pension and welfare plans in the national economy, and their importance to the financial security of the Nation's work force."). Indeed, the importance of employee benefit plans motivated Congress to enact ERISA in the first place.

In passing ERISA, Congress expressly stated that federal control over benefit plans was necessary because the "continued well-being and security of millions of employees and their dependents [was] directly affected by these plans." 29 U.S.C. § 1001(a). Today, over forty years after ERISA's enactment, employee benefit plans play an even larger role in American society: America's workers have stored over $27 trillion in ERISA-covered plans. See *Frequently Asked Questions About 401(k) Plan Research*, Inv. Co. Inst., https://www.ici.org/policy/retirement/plan/401k/faqs_401k. Uncertainty as to the disposition of these assets undermines the "well-being and security of millions of employees and their dependents." 29 U.S.C. § 1001(a).

Finally, a decision holding that ERISA preempts state slayer statutes would avoid an even thornier constitutional problem. If ERISA does not preempt state slayer statutes, those statutes generally will operate to void the beneficiary designation agreed to in the plan documents and may thereby "impair[]" an "Obligation of Contract[]." U.S. Const. art. I, § 10; see also *Sveen* v. *Melin*, 138 S. Ct. 542 (U.S. 2017) (No. 16-1432). Better for the Court to adjudicate Congress's decision to preempt state law through ERISA then to delve into the question whether the Constitution's Contracts Clause may or may not require the same result. See *Gomez* v. *United States*, 490 U.S. 858, 864 (1989) (this Court's "settled policy [is] to avoid an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative interpretation poses no constitutional question").

IV. THIS CASE IS AN EXCELLENT VEHICLE

Anka argued at every phase of the proceedings below that ERISA preempts the Illinois slayer statute. The district court directly addressed the question, noting that "[s]ince Anka has cited no binding case law showing the Illinois Slayer Statute is preempted by ERISA, we cannot conclude ERISA preempts the Illinois Slayer Statute." Pet. App. at 26a. Similarly, the Seventh Circuit directly addressed Anka's claim that ERISA preempts Illinois' slayer statute: "we hold ... that ERISA does not preempt the Illinois slayer statute." Pet. App. at 10a–11a. The question whether ERISA preempts the Illinois slayer statute has been cleanly pressed by Anka and directly passed upon by the courts below.

Moreover, this Court's reversal of the Seventh Circuit's preemption holding necessarily will alter the Seventh Circuit's judgment. If this Court were to hold that ERISA preempts the Illinois slayer statute, then Anka would be free to argue on remand that her acquittal due to insanity entitles her to benefits from the Fund under the terms of the plan documents or any applicable federal common law rule.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[Filed 01/29/2018]

No. 17-2022

LABORERS' PENSION FUND and JAMES S. JORGENSEN, Administrator of the Fund,

Interpleader Plaintiffs,

v.

ANKA V. MISCEVIC,

Interpleader Defendant-Cross / Plaintiff-Appellant,

v.

ESTATE OF M.M., and SNEZANA J. KAPLAREVIC, Guardian of the Estate,

Cross / Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:16-cv-5865 – Charles P. Kocoras, *Judge*.

Argued January 9, 2018 –
Decided January 29, 2018

Before FLAUM, KANNE, and ROVNER, *Circuit Judges*.

FLAUM, *Circuit Judge*. In January 2014, Anka Miscevic ("Anka") killed her husband, Zeljko Miscevic ("Zeljko"). At a state criminal proceeding, the court determined that Anka intended to kill Zeljko without legal justification. However, the court also determined that Anka was insane at the time of the killing and found her not guilty of first degree murder by reason of insanity. Following the criminal trial, the Laborers' Pension Fund (the "Fund") brought an interpleader action to determine the proper beneficiary of Zeljko's pension benefits. Anka claimed she was entitled to a Surviving Spouse Pension. The Estate of M.M. (Anka and Zeljko's child) argued that Anka was barred from recovering from the Fund by the Illinois slayer statute. After both parties filed motions seeking a judgment on the pleadings, the district court ruled in favor of the Estate of M.M. It determined that the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001–1461, did not preempt the Illinois slayer statute, and that the statute barred even those found not guilty by reason of insanity from recovering from the deceased. We affirm.

I. Background

The factual background is undisputed. On January 9, 2014, Anka killed her husband Zeljko at their home. The State of Illinois charged Anka with first degree murder. At the criminal trial, the parties stipulated to the details: Anka stabbed Zeljko with a large kitchen knife while he was asleep; Anka struck Zeljko in the head with a baseball bat in order to prevent him from calling the police; and Anka told the police that she loved Zeljko but killed him because "she feared that he intended to kill her and her family." Anka has a history of serious mental illness, including paranoid delusions, and has received mental health treatment. Anka and Zeljko had one living child, thirteen-year-old M.M.

At trial, Judge Liam Brennan of the Circuit Court of DuPage County determined that the state established each element of first degree murder beyond a reasonable doubt. Specifically, he found that "Anka Miscevic intended to kill Zeljko Miscevic without legal justification." Judge Brennan also determined, however, that Anka established by clear and convincing evidence that she was insane at the time of the offense. Therefore, Judge Brennan found Anka not guilty by reason of insanity.

Prior to his death, Zeljko worked as a union laborer and earned a vested pension benefit from the Fund, to be paid to Zeljko upon his retirement as monthly annuity for his life. According to the Fund's governing documents, when a married participant dies before the benefit commences, the participant's spouse receives a Surviving Spouse Pension, a monthly annuity payable for the spouse's life. Where the deceased does not have a surviving spouse, the individual's minor child receives a Minor Child Benefit, a monthly benefit payable until the child reaches the age of twenty-one. After Zeljko's death, both Anka and the Estate of M.M. sought to recover Zeljko's pension benefits. The Fund and its administrator filed an interpleader action to determine the proper beneficiary.

Neither the Fund's documents nor ERISA address whether a claimant who killed the Fund participant can receive a benefit. However, a section of the Illinois Probate Act of 1975, known as the "slayer statute," provides that "[a] person who intentionally and unjustifiably causes the death of another shall not receive any property, benefit, or other interest by reason of the death." 755 Ill. Comp. Stat. 5/2-6. A determination of whether the statute applies "may be made by any court of competent jurisdiction separate and apart from any criminal proceeding arising from the death." *Id.* In such a situation, "[t]he property, benefit, or other interest shall pass as if the person causing the death died before the decedent." *Id.*

Both Anka and the Estate of M.M. moved for judgment on the pleadings. The Estate of M.M. argued that the Illinois slayer statute barred Anka from recovery. Anka claimed that ERISA preempts the slayer statute, or alternatively, that the statute does not apply because she was found not guilty of Zeljko's murder by reason of insanity. On March 24, 2017, the district court granted the Estate of M.M.'s motion for judgment on the pleadings, concluding that ERISA does not preempt the Illinois slayer statute and that the slayer statute barred Anka from receiving benefits from the Fund. This appeal followed.

II. Discussion

"We review de novo the district court's order granting judgment on the pleadings." *Int'l Union of Operating Eng'rs Local 139 v. Schimel*, 863 F.3d 674, 677 (7th Cir. 2017). Likewise, we review de novo a district court's preemption ruling. *Kolbe & Kolbe Health & Welfare Benefit Plan v. Med. Coll. of Wis., Inc.*, 657 F.3d 496, 504 (7th Cir. 2011).

A. ERISA Preemption

ERISA's preemption clause states that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" described by ERISA. 29 U.S.C. § 1144(a). The key to determining whether the preemption clause applies is the interpretation of the words "relate to." *Kolbe*, 657 F.3d at 504. "A law 'relates to' an employee benefit plan if it has a connection with or reference to such a plan." *Id*. Therefore, ERISA "preempts a state law claim if the claim requires the court to interpret or apply the terms of an employee benefit plan." *Id.* (quoting *Collins v. Ralston Purina Co.*, 147 F.3d 592, 595 (7th Cir. 1998)).

While ERISA is expansive, it does not preempt a state law claim "merely because it requires a cursory examination of ERISA plan provisions." *Id.* (quoting *Trs. of AFTRA Health Fund v. Biondi*, 303 F.3d 765, 780 (7th Cir. 2002)). Indeed, "[s]ome state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 100 n.21 (1983). And where the state law is "a traditional area of state regulation," the party seeking preemption must overcome "'the starting presumption that Congress does not intend to supplant state law.'" *Biondi*, 303 F.3d at 775 (quoting *De Buono v. NYSLA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 814 (1997)). In short:

> [T]o determine whether a state law has the forbidden connection [to ERISA], we look both to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive, as well as to the nature of the effect of the state law on ERISA plans.

Egelhoff v. Egelhoff, 532 U.S. 141, 147 (2001) (internal quotation marks omitted) (quoting *Cal. Div. of Labor Standards Enf't v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 325 (1997)); *see also Kolbe*, 657 F.3d at 504 ("The question whether a certain state action is preempted by federal law is one of congressional intent." (quoting *Ingsersoll–Rand Co. v. McClendon*, 498 U.S. 133, 137–38 (1990))).

In *Egelhoff*, the Supreme Court held that ERISA preempted a Washington statute which provided that a dissolved or invalidated marriage would revoke earlier beneficiary designations to the former spouse.[1] 532 U.S. at 144–152. First, the Court held that "[t]he statute [bound] ERISA plan administrators to a particular choice of rules for determining beneficiary status," noting that "[t]he administrators [were required to] pay benefits to the beneficiaries chosen by state law, rather than to those identified in the plan documents." *Id.* at 147. Second, the Court determined that the statute "govern[ed] the payment of benefits, a central matter of plan administration." *Id.* at 148. Finally, the Court stressed that the statute "interfere[d] with nationally uniform plan administration" because "[u]niformity is impossible . . . if plans are subject to different legal obligations in different States."[2] *Id*. In sum, the Court concluded that the Washington statute "directly conflict[ed] with ERISA's requirements that

[1] At the time, that statute stated:

> If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

Egelhoff, 532 U.S. at 144 (quoting Wash. Rev. Code § 11.07.010(2)(a) (1994)). The statute applies to "all nonprobate assets," including an "employee benefit plan." *Id.* (quoting Wash. Rev. Code § 11.07.010(1), (5)(a)).

[2] The Court noted that plan administrators would be required to "familiarize themselves with state statutes so that they can determine whether the named beneficiary's status ha[d] been 'revoked' by operation of law." *Egelhoff*, 532 U.S. at 148–49.

plans be administered, and benefits be paid, in accordance with plan documents," and therefore, "impose[d] 'precisely the burden that ERISA preemption was intended to avoid.'" *Id.* at 150 (quoting *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 10 (1987)).

Anka argues that the Court's opinion in *Egelhoff* "compels a conclusion that [the Illinois slayer statute] is preempted." She maintains that based on *Egelhoff*, "the only logical conclusion that may be drawn with respect to [the Illinois slayer statute] is that it is preempted pursuant to [ERISA] as a law that 'relates to' employee benefit plans." We disagree.

Critically, the Court in *Egelhoff* commented that slayer statutes present a different question than the Washington statute at issue in that case. The Court acknowledged that, "[i]n the ERISA context, . . . 'slayer' statutes could revoke the beneficiary status of someone who murdered a plan participant." *Id.* at 152. Nevertheless, the Court stressed "that the principle underlying the statutes—which have been adopted by nearly every State—is well established in the law and has a long historical pedigree predating ERISA." *Id.* It opined that, "because the statutes are more or less uniform nationwide, their interference with the aims of ERISA is at least debatable." *Id.* Eight years later, the Court again declined to address whether ERISA preempts state slayer laws. *See Kennedy v. Plan Adm'r for DuPont Sav. & Inv. Plan*, 555 U.S. 285, 304 n.14 (2009).

Since *Egelhoff*, no federal court of appeals has faced the question of whether ERISA preempts state slayer statutes.[3] But many district courts have. The majority

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[3] Prior to *Egelhoff*, in an unpublished opinion, the Ninth Circuit declined to resolve whether ERISA preempted the Oregon

of those courts, though ultimately declining to resolve the question, have noted that *Egelhoff* seems to suggest that ERISA does not preempt state slayer statutes.[4] And a few courts have explicitly held that ERISA does not preempt a state slayer statute. *See, e.g.*, *Hartford Life & Accident Ins. Co. v. Rogers*, No. 3:13-cv-101, 2014 WL 5847548, at *2–3 (D.N.D. Nov. 12, 2014) ("ERISA does not preempt North Dakota's slayer statute because awarding benefits to the defendant . . . is contrary to federal common law and congressional intent for ERISA."); *Union Sec. Life Ins. Co. of N.Y. v. JJG-1994*, No. 1:10-cv-00369, 2011 WL 3737277, at *2 (N.D.N.Y. Aug. 24, 2011) (concluding that "New York's slayer rule . . . is not preempted by ERISA" because it is "of general application . . . [and its] effect on ERISA is incidental" (quoting *Aetna Life Ins. Co. v. Borges*, 869 F.2d 142, 146 (2d Cir. 1989))); *Mack v. Estate of Mack*, 206 P.3d 98, 110 (Nev. 2009)

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slayer statute "because the outcome of [the] case would be the same either way." *Standard Ins. Co. v. Coons*, No. 96-36299, 1998 WL 115579, at *1 (9th Cir. Mar. 16, 1998).

[4] *See, e.g.*, *Life Ins. Co. of N. Am. v. Camm*, No. 4:02-cv-00106, 2007 WL 2316480, at *4–5 (S.D. Ind. Aug. 6, 2007); *Prudential Ins. Co. of Am. v. Davidson*, No. 1:14-cv-1879, 2015 WL 4734746, at *7 n.7 (N.D. Ga. Aug. 10, 2015); *Bean v. Alcorta*, No. SA:14-cv-604, 2015 WL 4164787, at *7 (W.D. Tex. July 9, 2015); *Box v. Goodyear Tire & Rubber Co.*, 51 F. Supp. 3d 1147, 1153 & n.3 (N.D. Ala. 2014); *In re Estate of Burkland*, No. 11-5024, 2012 WL 13550, at *6 & n.8 (E.D. Pa. Jan. 3, 2012); *UNUM Life Ins. Co. of Am. v. Mack*, No. 3:04-cv-247, 2011 WL 2470668, at *1 (W.D.N.C. June 21, 2011); *Honeywell Sav. & Ownership Plan v. Jicha*, No. 08-4265, 2010 WL 276237, at *5 (D.N.J. Jan. 15, 2010); *Nale v. Ford Motor Co. UAW Ret. Plan*, 703 F. Supp. 2d 714, 722 (E.D. Mich. 2010); *Atwater v. Nortel Networks, Inc.*, 388 F. Supp. 2d 610, 614–15 (M.D.N.C. 2005); *Admin. Comm. for the H.E.B. Inv. & Ret. Plan v. Harris*, 217 F. Supp. 2d 759, 761–62 (E.D. Tex. 2002).

("We conclude that the Nevada slayer statute is not preempted by ERISA, as the application of this statute will not affect the determination of an employee's eligibility for benefits or the impact on the method of calculating benefits due." (citation omitted)).[5] At least two courts also reached this conclusion prior to *Egelhoff*. *See New Orleans Elec. Pension Fund v. Newman*, 784 F. Supp. 1233, 1236 (E.D. La. 1992); *Mendez-Bellido v. Bd. of Trs. of Div. 1181, A.T.U. N.Y. Emps. Pension Fund & Plan*, 709 F. Supp. 329, 331 (E.D.N.Y. 1989).

We agree with those courts that have held that ERISA does not preempt slayer statutes. Slayer laws are an aspect of family law, a traditional area of state regulation. *See Egelhoff*, 532 U.S. at 152 ("[T]he principle underlying [slayer] statutes . . . is well established

[5] Anka points to just two state court opinions that hold that ERISA preempts a state slayer statute. *See Herinckx v. Sanelle*, 385 P.3d 1190, 1195–97 (Or. Ct. App. 2016) (holding that, because the statute "both 'governs . . . a central matter of plan administration' and 'interferes with nationally uniform plan administration,' it has a 'prohibited connection with ERISA plans' and 'relates to' ERISA." (alteration in original) (quoting *Egelhoff*, 532 U.S. at 147–48)); *Ahmed v. Ahmed*, 817 N.E.2d 424, 431 (Ohio Ct. App. 2004) (holding that slayer statutes "'implicate[] an area of core ERISA concern' by obliging ERISA plan administrators to 'pay benefits to the beneficiaries chosen by state law, rather than those identified in the plan documents.'" (quoting *Egelhoff*, 532 U.S. at 147)). It is true, as those courts point out, that states' slayer statutes have at least some variety. *See Ahmed*, 817 N.E.2d at 430–31; *Herinckx*, 385 P.3d 1190, 1196–97. But we disagree with the conclusion that state slayer statutes interfere with the nationally uniform plan administration. Indeed, the *Ahmed* court's view that, "[f]or all intents and purposes, slayer statutes affect the administration of ERISA plans in the same manner as the statute discussed in *Egelhoff*," 817 N.E.2d at 430, is puzzling given that *Egelhoff* suggested that slayer statutes do *not* affect ERISA in the same way as the statute in that case. *See* 532 U.S. at 152.

in the law."); *Manning v. Hayes*, 212 F.3d 866, 872 (5th Cir. 2000) (noting that "the law of family relations," including the "fairly uniform set of state laws" describing the slayer law principle, has "traditionally been a fairly sacrosanct enclave of state law"). Thus, to demonstrate preemption, Anka "bears '[a] considerable burden'" and must overcome the "starting presumption" that Congress did not intend to supplant this "traditional area of state regulation." *Biondi*, 303 F.3d at 775 (quoting *De Buono*, 520 U.S. at 814); *see also Egelhoff*, 532 U.S. at 151 ("There is indeed a presumption against pre-emption in areas of traditional state regulation such as family law.").

Anka cannot overcome that presumption. In *Egelhoff*, the Court held that the "presumption [was] overcome" because "Congress ha[d] made clear its desire for preemption." 532 U.S. at 151. Specifically, the Court held that "the Washington statute ha[d] a prohibited connection with ERISA plans"; it "implicate[d] an area of core ERISA concern" and "interfere[d] with nationally uniform plan administration." *Id.* at 147–48. Here, in contrast, Anka failed to show that Congress intended to preempt ERISA. Unlike the Washington statute at issue in *Egelhoff*, the axiom that an individual who kills a plan participant cannot recover plan benefits is a well-established legal principle which predates ERISA. *Id*. at 152. Indeed, as courts have stated, "Congress could not have intended ERISA to allow one spouse to recover benefits after intentionally killing the other spouse." *Conn. Gen. Life Ins. Co. v. Riner*, 351 F. Supp. 2d 492, 497 (W.D. Va. 2005), *aff'd*, 142 F. App'x 690 (4th Cir. 2005); *see also Hartford Life & Acc. Ins. Co.*, 2014 WL 5847548, at *2; *Admin. Comm. for the H.E.B. Inv. & Ret. Plan v. Harris*, 217 F. Supp. 2d 759, 761 (E.D. Tex. 2002). Accordingly, we hold, consistent with the Court's dicta in *Egelhoff*, that ERISA does not preempt the Illinois slayer statute.

B. The Illinois Slayer Statute

Because ERISA does not preempt the Illinois slayer statute, we must next determine whether, as a matter of Illinois law, the slayer statute applies where the deceased was killed by an individual found not guilty by reason of insanity. The Illinois slayer statute provides that "[a] person who *intentionally* and *unjustifiably* causes the death of another shall not receive any property, benefit, or other interest by reason of the death." 755 Ill. Comp. Stat. 5/2-6 (emphases added). Thus, our task is to determine whether Anka, who was found not guilty by reason of insanity at a criminal proceeding, "intentionally" and "unjustifiably" caused Zeljko's death.

We "must defer to a state court's interpretation of the state's statute." *Williams v. Duckworth*, 738 F.2d 828, 833 (7th Cir. 1984); *see also L.S. Heath & Son, Inc. v. AT & T Info. Sys., Inc.*, 9 F.3d 561, 574 (7th Cir. 1993), *as amended on denial of reh'g* (Dec. 8, 1993), *and abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377 (2014) ("Of course, federal courts are bound to state court precedents in interpreting state law."). "In the absence of a decision by the highest state court, . . . [d]ecisions of intermediate appellate state courts generally control unless there are persuasive indications that the highest state court would decide the issue differently." *L.S. Health & Son*, 9 F.3d at 574. While the Illinois Supreme Court has not spoken on whether the current version of the Illinois slayer statute applies to an individual found not guilty of murder by reason of insanity, the Appellate Court of Illinois squarely addressed the issue in *Dougherty v. Cole*, 934 N.E.2d 16 (Ill. App. Ct. 2010).

The factual scenario in *Dougherty* is much the same as the one presented here. After stabbing his mother to death, a defendant testified during his criminal trial that he acted "at the direction of a voice inside his head" because that voice "'told' [him] she was the enemy." *Id.* at 21. The criminal trial court determined that the defendant "intended to kill [his mother] but lacked criminal intent due to mental illness," as "he was incapable of appreciating the criminality of his conduct." *Id.* It thus held he was not guilty by reason of insanity. *Id.* Later, the Appellate Court of Illinois was tasked to determine whether the Illinois slayer statute barred the defendant from inheriting from his deceased mother.

The court first examined the Illinois slayer rule's history. It noted that until 1983, the statute stated: "[a] person who is *convicted* of the murder of another shall not inherit from the murdered person." *Id.* at 19 (emphasis added). Thus, based on pre-1983 Illinois law, "[w]here an insane beneficiary . . . kill[ed] the assured under such circumstances as would cause the killing to be murder if the beneficiary were sane, such killing [did] not cause a forfeiture of the policy, nor bar[red] his right to recovery for the insurance money." *Blair v. Travelers Ins. Co.*, 174 N.E.2d 209, 211 (Ill. App. Ct. 1961) (alteration in original) (quoting *Holdom v. Grand Lodge of Ancient Order of United Workmen*, 43 N.E. 772, 774 (Ill. 1895)); *see also Lincoln Nat. Life Ins. Co. v. Johnson*, 669 F. Supp. 201, 203 (N.D. Ill. 1987) (concluding, based on pre-1983 Illinois law, that "it is clear that the murderous beneficiary rule . . . [did] not apply where the killer was insane at the time of the killing").[6]

In 1983, the statute was amended to its current form. *Dougherty*, 934 N.E.2d at 19. According to the court, "[t]his change significantly broadened the scope of beneficiaries who fell under the statute from only those convicted of murder to anyone who intentionally and unjustifiably causes a death, without regard to whether a criminal conviction results therefrom." *Id.* at 20; *see also In re Estate of Vallerius*, 629 N.E.2d 1185, 1188 (Ill. App. Ct. 1994) ("Obviously, the statute as amended in 1983 is, by design, much broader and more comprehensive . . . ."); *In re Estate of Hook*, 566 N.E.2d 759, 767 (Ill. App. Ct. 1991) ("[W]hile the prior [slayer statute] required conviction of the murder of another before a person could be barred from inheriting or receiving distribution from the estate of the murdered decedent, conviction of first or second degree murder under the present Act is not required . . . ." (citations omitted)).[7]

The court in *Dougherty* also examined the legislative history of the 1983 amendment, and noted that one representative "appear[ed] to make the point that the law at the time prohibited a convicted killer from inheriting, and the amendment to the law would

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[6] Although *Johnson* was decided in 1987, the killing at issue in that case occurred in 1982, so the pre-1983 rule for insane killers applied.

[7] *But see Johnson*, 669 F. Supp. at 203 n.1 (opining that the 1983 amendment "appears . . . not to have significantly altered the prior law on this subject"); *State Farm Life Ins. Co. v. Davidson*, 495 N.E.2d 520, 521 (Ill. App. Ct. 1986) ("[T]he amended version of [the slayer statute] in no way alters prior law, but is rather a legislative codification of Illinois decisions.").

extend the bar from taking to acquitted, insane killers who killed intentionally and unjustifiably." 934 N.E.2d at 22. The court thus determined that by passing the amendment, the Illinois legislature superseded the prior slayer rule regarding insane killers. *Id.* at 20; *see also State Farm Life Ins. Co. v. Smith*, 363 N.E.2d 785, 786 (Ill. 1977). In sum, the court held that "[w]here . . . an individual was insane for criminal purposes but nevertheless cognizant he was killing a person, the Slayer Statute will prevent him from benefitting from his actions." *Dougherty*, 934 N.E.2d at 22.

There is no evidence that the Illinois Supreme Court would disagree with the *Dougherty* court's analysis. Indeed, a textual examination of the Illinois slayer statute and the Illinois insanity statute leads to the same conclusion.[8] The slayer statute applies to bar recovery from any person who "*intentionally* and *unjustifiably* causes the death of another." 755 Ill. Comp. Stat. 5/2-6 (emphases added). And the Illinois insanity statute provides that "[a] person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, *he lacks substantial capacity to appreciate the criminality of his conduct*." 720 Ill. Comp. Stat. 5/6-2 (emphasis added). Put simply, an individual may not appreciate the criminality of her conduct, but still have "intentionally" and "unjustifiably" caused a death.

[8] It is true that the Illinois legislature could have been more specific. For example, the Ohio slayer statute states that "no person who is convicted of, pleads guilty to, *or is found not guilty by reason of insanity* of [murder] . . . shall in any way benefit by the death." Ohio Rev. Code. Ann. § 2105.19(A) (emphasis added). But contrary to Anka's suggestion, the mere fact that the Illinois statute does not specifically "address the situation of acquittal by reason of insanity" does not mean that the statute does not encompass such a situation.

Indeed, in this case, the judge at Anka's criminal trial made an explicit finding that Anka "intended" to murder Zeljko "without justification," despite concluding Anka was not guilty by reason of insanity.

The district court's conclusion in this regard is supported by the facts. First, Anka *intended* to kill Zeljko. As the district court properly reasoned, in analyzing the intent requirement of the Illinois slayer statute, "we do not consider criminal intent ('mens rea'), we consider civil intent. Civil intent only requires showing that a person intended his or her actions; there is no requirement that the person have knowledge that his or her actions were wrongful." *Laborers' Pension Fund v. Miscevic*, No. 1:16-cv-5865, 2017 WL 5904664, at *1 (N.D. Ill. Mar. 24, 2017); *accord Osman v. Osman*, 737 S.E.2d 876, 880 (Va. 2013). Here, Anka intentionally stabbed Zeljko in his sleep and intentionally hit Zeljko in the head with a baseball bat to prevent him from calling the police. To be sure, like the killer in *Dougherty*, Anka was unable to appreciate the criminality of her conduct. But also like the killer in *Dougherty*, Anka intended her actions.

Second, the killing was *unjustifiable*. An insanity defense is an "excuse" defense, not a "justification" defense, and "[c]riminal law theorists have long distinguished between [these] two types of affirmative defenses." Russell D. Covey, *Temporary Insanity: The Strange Life and Times of the Perfect Defense*, 91 B.U. L. Rev. 1597, 1632 (2011). In fact, "insanity and justification are directly at odds." *Id.* at 1641. "Justification . . . suggests praise for persons who are able to see situations clearly and exercise sound judgment under difficult circumstances. Insanity suggests tolerance or empathy for those who cannot see clearly at all." *Id.* at 1642. Put another way, justification defenses, like self-defense, allow "action which society otherwise seeks to prevent [to] become[] permissible under the circumstances." *People v. Allegri*, 487 N.E.2d 606, 608 (Ill. 1985). In contrast, excuse defenses, like insanity, "do[] not turn unacceptable behavior into permissible conduct, but only excuse[] the individual from criminal punishment for having violated a penal statute." *Id.*; *see also Osman*, 737 S.E.2d at 880–81 ("[A] person who has committed a justifiable homicide is not a person who has committed a 'wrong' . . . . A person who committed an excusable homicide, however, may have committed a wrong in the initial provocation."). Thus, while Anka's killing is excused because she "lack[ed] substantial capacity to appreciate the criminality of [her] conduct," it is not justified. *See* 720 Ill. Comp. Stat. 5/6-2.

Anka seeks to save her argument by asking us to look to other state courts. States are split as to "whether the insanity defense to criminal liability also applies as a defense to the application of the slayer statute." *Boyd v. Boyd*, 149 F. Supp. 3d 1331, 1336 (N.D. Ala. 2016) (declining to reach the issue). On the one hand, several states have determined that a finding of not guilty by reason of insanity negates a bar to inheritance. *See, e.g.*, *In re Armstrong*, 170 So.3d 510, 516 (Miss. 2015) ("Because an insane person lacks the requisite ability to willfully kill another person, the Slayer Statute is not applicable in cases where the killer is determined to be insane at the time of killing."); *In re Valamudi Estate*, 443 A.2d 1113, 1117 (N.J. Super. Ct. Law Div. 1982) ("[T]he perpetrator of a homicidal act committed while legally insane cannot be, as a matter of law, one 'who intentionally kills' within the meaning of [the New Jersey slayer statute].”); *Simon v. Dibble*, 380 S.W.2d 898, 899 (Tex. Civ. App. 1964) (concluding that an insane person is “not capable of willfully taking [a] life”).[9]

On the other hand, other state courts have held that their slayer statutes do bar individuals found not guilty by reason of insanity from recovering benefits. *See, e.g.*, *Osman*, 737 S.E.2d at 879–80 (concluding that even though the defendant “avoided criminal sanctions because, due to his mental illness, he did not understand his actions were wrongful,” he still “intended his actions”); *In re Estate of Kissinger*, 206 P.3d 665, 671 (Wash. 2009) (en banc) (holding that the slayer statute applied because “the trial court made very specific findings of fact and conclusions of law and determined that [the individual] acted with premediated intent”).

Ultimately, regardless of other state courts’ interpretations of other states’ slayer statutes, we are tasked with determining how the Illinois Supreme Court would interpret the Illinois slayer statute. In *Dougherty*, the Appellate Court of Illinois issued a clear and well-reasoned opinion: the Illinois slayer

[9] In other instances where a state court determined a slayer statute did not apply to individuals found not guilty by reason of insanity, the state’s statute had more restrictive requirements than Illinois. One required a killing to be intentional *and felonious*. *See, e.g., Ford v. Ford*, 512 A.2d 389, 397–99 (Md. 1986). Other states required a killing to be intentional (or willful) *and unlawful*. *See, e.g.*, *In re Estate of Brumage*, 460 So.2d 989, 990–91 (Fla. Dist. Ct. App. 1984); *Estates of Ladd v. Ladd*, 153 Cal. Rptr. 888, 891–94 (Ct. App. 1979); *Quick v. United Benefit Life Ins. Co*., 213 S.E.2d 563, 567 (N.C. 1975). And some states required the killer to be *criminally convicted*. *See*, *e.g*., *Turner v. Estate of Turner*, 454 N.E.2d 1247, 1252 (Ind. Ct. App. 1983); *In re Hoffman’s Estate*, 39 Pa. D. & C. 208, 209 (Orphans’ Ct. 1940).

statute applies to bar recovery by individuals who committed a killing but were found not guilty of murder by reason of insanity. We have no reason to believe that the Illinois Supreme Court would disagree with this decision. Therefore, we conclude the Illinois slayer statute bars Anka from recovering from Zeljko's pension benefits.

III. Conclusion

For the foregoing reasons, we AFFIRM the judgment of the district court.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Filed 05/11/17]

Case No. 16 C 5865

LABORERS' PENSION FUND AND JAMES S. JORGENSEN,
Plaintiff(s),

v.

ANKA V. MISCEVIC AND ESTATE OF M.M. *et al*,
Defendant(s).

Judge Charles P. Kocoras

AMENDED JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

❑ in favor of plaintiff(s) and against defendant(s) in the amount of $,

which ❑ includes pre–judgment interest.

❑ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

❑ in favor of defendant(s) and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

☒ other: The Estate of M.M and Snezana Jacic Kaplarevicis as Guardian of the Estate of M.M. are awarded Zeljko Miscevic's ERISA pension benefits. Furthermore, Anka Miscevic's cross claim seeking a constructive trust over life insurance benefits and other unspecified funds previously paid to the Estate of M.M and Snezana Jacic Kaplarevicis is denied. The Estate of M.M and Snezana Jacic Kaplarevicis as Guardian of the Estate of M.M. are entitled to the funds.

This action was (*check one*):

❑ tried by a jury with Judge presiding, and the jury has rendered a verdict.

❑ tried by Judge without a jury and the above decision was reached.

☒ decided by Judge Charles P. Kocoras on a motion for judgment on the pleadings.

Date: 5/11/2017

Thomas G. Bruton, Clerk of Court
Vettina Franklin, Deputy Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Filed 03/24/17]

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16 C 5865

LABORERS' PENSION FUND and JAMES S. JORGENSEN, administrator of the Fund,

Interpleader Plaintiffs / Counter Defendants,

v.

ANKA V. MISCEVIC and the ESTATE OF M.M.,

Interpleader Defendants.

ANKA V. MISCEVIC,

Cross-Plaintiff / Defendant,

v.

ESTATE OF M.M. and SNEZANA JACIC KAPLAREVIC, Guardian of the Estate,

Cross-Defendant / Counterclaimants.

Judge Charles Kocoras

ORDER

Now before the Court is Laborers' Pension Fund (the "Fund") and its administrator's interpleader action to determine the proper beneficiary of pension benefits earned by Zeljko Miscevic ("Zeljko"). Interpleader Defendant Anka Miscevic ("Anka") and Interpleader Defendant Estate of M.M. each filed individual cross-claims asserting themselves as the rightful beneficiaries. Both parties also filed motions seeking a judgment on the pleadings in their favor. For the following reasons, the Court grants the Estate of M.M.'s motion.

STATEMENT

On January 9, 2014, Anka murdered Zeljko at their home in Lombard, Illinois. Shortly thereafter, the State of Illinois charged Anka with first degree murder in criminal proceedings in the Eighteenth Judicial Circuit Court of DuPage County. *People of the State of Illinois v. Anka Miscevic*, 14 CF 58. Stipulations entered at trial reflected that Anka confessed to stabbing Zeljko with a large kitchen knife in his sleep with the intention of killing him. Additionally, Anka admitted to striking Zeljko in the head with a baseball bat to prevent him from calling the police. At the conclusion of Anka's bench trial, the court found that the prosecution established beyond a reasonable doubt all the elements of first degree murder. Specifically, the court held that Anka "intended to kill Zeljko without legal justification." *Id.* However, the court found Anka not guilty by reason of insanity.

I. Slayer Statute

Under Illinois' "Slayer Statutue," 755 ILCS 5/2-6, a "person who intentionally and unjustifiably causes the death of another shall not receive any property, benefit, or other interest by reason of the death." The law further states, "a determination under this [s]ection may be made by any court of competent jurisdiction separate and apart from any criminal proceeding arising from the death." *Id*. The question for this Court is whether Anka "intentionally and unjustifiably" caused the death of Zeljko.

Anka argues that the Slayer Statute only prevents someone from benefiting from an intentional wrongful act, and because she was insane at the time of the killing, she could not possess the necessary intent. However, in considering whether Anka is a slayer under 755 ILCS 5/2-6, we do not consider criminal intent ("mens rea"), we consider civil intent. Civil intent only requires showing that a person intended his or her actions; there is no requirement that the person have knowledge that his or her actions were wrongful. *See Dougherty v. Cole*, 934 N.E.2d 16, 21–22 (2010).

Here, Anka confessed that she intended to kill her husband. She also confessed that she struck her husband in the skull with a bat to prevent him from calling for help. Similarly to the court in *Dougherty*, we find that even if Anka did not know her actions were criminal, the intent requirement under 755 ILCS 5/2-6 is satisfied. *Id*. at 22 (holding that when an individual was insane for criminal purposes but nevertheless cognizant he was killing a person, the Slayer Statute will prevent him from benefitting from his actions).

Anka places unfounded dependence on *Lincoln National Life Insurance Co. v. Johnson*, 669 F. Supp. 201, 203 (N.D. Ill. 1987). In that case, the Court's ruling relied on an outdated version of the Illinois' Slayer Statute. *Id.* at 202. In *Lincoln*, the victim was killed in 1982. In 1983, the Illinois legislature adopted the current version of the Slayer Statute. The Statute, prior to the 1983 amendment, required that the slayer be convicted of murder before being barred from inheriting property from the deceased. *Id*. However, the 1983 amendment removed the murder conviction requirement and only required the intentional and unjustifiable causing of another's death. 755 ILCS 5/2-6. As the court noted in *Dougherty*, "this change significantly broadened the scope of . . . who fell under the statute from only those convicted of murder to anyone who intentionally and unjustifiably causes a death, without regard to whether a criminal conviction results therefrom." 934 N.E.2d at 20. Therefore, because Anka intentionally and unjustifiably caused the death of Zeljko, she is barred under Illinois' Slayer Statute from receiving Zeljko's pension benefits.

II. ERISA Does Not Preempt The Illinois Slayer Statute

The Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, et seq governs the administration of Zeljko's Plan. Congress passed ERISA to establish a comprehensive federal scheme for the protection of the participants and the beneficiaries of employee benefit plans. *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 44 (1987). ERISA's preemption clause specifies that the provisions of ERISA "supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). There is no established rule for determining whether a state law "relates to," and is therefore preempted by ERISA, or is "too remote," and can therefore coexist with the federal scheme. However, "[a] state-law claim is not expressly preempted under § 1144(a) merely because it requires a cursory examination of ERISA plan provisions." *Kolbe & Kolbe Health & Welfare Benefit Plan v. Med. Coll. of Wis., Inc.*, 657 F.3d 496, 504 (7th Cir. 2011). While there is limited case law discussing ERISA preemption when one spouse kills another spouse, federal district courts have held that ERISA does not preempt a state's slayer statute in such a situation. *See Admin. Comm. for the H.E.B. Inv. & Ret. Plan v. Harris*, 217 F. Supp. 2d 759, 761 (E.D. Tex. 2002); *New Orleans Electrical Pension Fund v. Newman*, 784 F. Supp. 1233 (E. D. La. 1992); *Mendez–Bellido v. Bd. of Trustees of Div*. 1181, 709 F. Supp. 329, 331 (E. D. N.Y. 1989). In light of this precedent, Anka attempts to support her notion that the Illinois Slayer Statute is preempted by ERISA by citing to *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001). However, her reliance on *Egelhoff* is misplaced. The Court stated:

> Respondents argue that if ERISA pre-empts this statute, then it also must pre-empt the various state statutes providing that a murdering heir is not entitled to receive property as a result of the killing. *See, e.g*., Cal. Prob. Code Ann. §§ 250-259 (West 1991 and Supp. 2000); 755 Ill., Comp. Stat., ch. 755, § 5/2-6 (1999). In the ERISA context, these 'slayer' statutes could revoke the beneficiary status of someone who murdered a plan participant. *Those statutes are not before us, so we do not decide the issue.* We note, however, that the principle underlying the statutes-which have been adopted by nearly every State-is well established in the law and has a long historical pedigree predating ERISA. *See, e.g*., *Riggs v. Palmer*, 115 N.Y. 506, 22 N.E. 188 (1889). And because the statutes are more or less uniform nationwide, their interference with the aims of ERISA is at least debatable.

Id. at 152 (emphasis added).

Even though the Court expressly noted that its ruling was not in regards to slayer statutes, Anka maintains that a finding of preemption is "inevitable based on the rationale behind the Court's determination" in *Egelhoff*. To support this, Anka cities to *Ahmed v. Ahmed*, 158 Ohio App. 3d 527 (Ohio App. 2004) and *Henrickx v. Sanelle*, 281 Or. App 869, 875–77 (2016), both state court cases where the courts found their state slayer statues were preempted by ERISA. These cases are not binding on this Court. Since Anka has cited no binding case law showing the Illinois Slayer Statute is preempted by ERISA, we cannot conclude ERISA preempts the Illinois Slayer Statute.

However, even if ERISA did preempt the Illinois' Slayer Statute, federal common law would prohibit Anka from benefiting because of her wrongdoing. None of ERISA's provisions address the distribution of benefits to a beneficiary responsible for killing the plan participant. 29 U.S.C. § 1001. When no controlling plan or statutory provision exists, federal common law decides which of the competing claimants receives the insurance proceeds. *See Thomason v. Aetna Life Ins. Co.*, 9 F.3d 645, 647 (7th Cir. 1993); *Manning v. Hayes*, 212 F.3d 866, 870–72 (5th Cir. 2000) (holding that when a beneficiary and a non-beneficiary of ERISA benefits have competing claims, district courts should employ federal common law to resolve the issue). The federal common law regarding slayers derives from the common law principle that no person should be permitted to profit from his or her own wrong. *See Prudential Ins. Co. of Am. v. Athmer*, 178 F.3d 473, 475 (7th Cir. 1999); *Prudential Life Ins. Co. v. Tull*, 690 F.2d 848, 849 (4th Cir. 1982) (citing *Shoemaker v. Shoemaker*, 263 F.2d 931, 932 (6th Cir. 1959). Hence, in deciding who is entitled to ERISA benefits between the Estate of M.M. and Anka, we find federal common law grants the ERISA benefits to the Estate of M.M.

For these reasons, we grant the Estate of M.M's motion for judgment on the pleadings. It is so ordered.

/s/ Charles P. Kocoras
Charles P. Kocoras
United States District Judge

Dated: 3/24/2017