No. 25-1362

# In the Supreme Court of the United States

DAVID GASPER,

*Petitioner,*

v.

EIDP, INC. F/K/A
E. I. DUPONT DE NEMOURS & COMPANY, ET AL.,

*Respondents.*

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

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

A domestic-relations order approved as a qualified domestic relations order ("QDRO") is final and binding, and a plan administrator must treat the assigned benefit as fixed under that order. 29 U.S.C. § 1056(d)(3) (ERISA § 206(d)(3)). ERISA requires administrators to provide written notice of any adverse benefit determination, including "the specific reason or reasons" and "reference to the specific plan provisions on which the determination is based." 29 U.S.C. § 1133 (ERISA § 503). Under the *Chenery* doctrine, a reviewing court may uphold an agency decision only on the grounds the agency itself invoked. *SEC v. Chenery Corp.*, 318 U.S. 80 (1943).

The Questions Presented Are:

1. Whether a reviewing court violates ERISA § 503 and the *Chenery* doctrine by affirming a benefit reduction based on *post-hoc* rationales and plan provisions never identified by the administrator during the administrative process.

2. Whether a plan administrator may replace a vested, separate-interest QDRO benefit with an unauthorized spousal-annuity form—derived from ERISA § 205 (29 U.S.C. § 1055), absent from the Plan documents, and altering the state court's division of property.

## PARTIES TO THE PROCEEDINGS

**Petitioner and Plaintiff-Appellant below**

- David Gasper

**Respondents and Defendants-Appellees below**

- EIDP, Inc.
  (formerly E.I. DuPont de Nemours & Company)
- Corteva Inc.
- The Pension and Retirement Plan
- The Benefit Plans Administrative Committee

## LIST OF PROCEEDINGS

U.S. Court of Appeals for the Fourth Circuit

No. 24-1959

David Gasper, *Plaintiff-Appellant* v.
EIDP, INC., et al. *Defendants-Appellees*

Final Opinion: December 8, 2025

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U.S. District Court, W.D. North Carolina (Charlotte)

No. 3:23-CV-00512-FDW-SCR

David Gasper, *Plaintiff* v.
EIDP, INC., et al. *Defendants*

Final Judgment: August 28, 2024

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### OPINIONS AND ORDERS



### STATUTORY AND REGULATORY PROVISIONS



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## OPINIONS BELOW

Petitioner seeks review of the opinion of the U.S. Court of Appeals for the Fourth Circuit, dated December 8, 2025. (App.a.1). This opinion affirmed the order of the District Court for the Western District of North Carolina, signed August 27, 2024. (App.a.20).

## JURISDICTION

The Fourth Circuit entered judgment on December 8, 2025 (App.a.18). No petition for rehearing was filed. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant provisions of ERISA and Department of Labor regulations—including 29 U.S.C. §§ 1054(g), 1055, 1056(d), 1133; and 29 C.F.R. § 2560.503-1—are reproduced at App.a.49–83.

## INTRODUCTION

A state-court order qualified as a QDRO fixes pension rights and must be administered as written. Six years after qualifying Petitioner's QDRO, the Administrator replaced its vested shared-interest and separate-interest structure with a form unknown to the Plan or ERISA—imposing a spousal-benefit election, applying joint-life factors to single-life interests, and reducing Petitioner's court-ordered share by shifting the survivor-benefit cost and diminishing his awarded percentage.

Petitioner appealed under ERISA § 503, but the Administrator issued shifting denials citing no plan provision authorizing the change. The courts below affirmed on post-hoc rationales, deepening a circuit conflict over whether review is limited to the administrator's stated grounds and whether vested QDRO benefits may be altered administratively.

## STATEMENT OF THE CASE

Petitioner and his former spouse divorced in 2010. In 2013, as part of the property division, the state domestic-relations court entered a Qualified Domestic Relations Order ("QDRO") awarding the Alternate Payee a defined share of Petitioner's pension benefit (App.d.1–4). Following the Plan's QDRO Guidelines (App.d.5–16), the order established a shared-interest portion of Petitioner's accrued benefit payable during

his lifetime and a separate-interest survivor benefit payable over the Alternate Payee's lifetime (App.d.2–3). The Plan approved the QDRO in 2013 and issued a Determination Report confirming the benefit structure (App.g.1–3). Under the Plan's QDRO-qualification procedures, "[a]ll determinations of the [QDRO] Determiner shall be final" (App.d.20).

Petitioner's accrued benefit was frozen in November 2018 (App.h.1). When he applied for retirement benefits in 2019, the Plan departed from the 2013 QDRO and its Determination Report. Instead of administering the QDRO benefit as approved, the Plan required Petitioner to elect one of twelve spousal-benefit options (App.g.6–8)—forms reserved for ERISA § 205 survivor annuities that the QDRO did not mandate (App.d.1–4). On July 8, 2019, Petitioner elected the 50% Spouse Benefit Option ("SBO") (App.g.11–12).

The 2013 QDRO and Determination Report calculated the Alternate Payee's survivor benefit at 47% (App.d.3; App.g.2). By applying the 2019 50% SBO, the Plan reduced Petitioner's court-ordered share from 53% to 50%, increased the Alternate Payee's share from 47% to 50%, re-valued both the shared-interest and survivor-benefit portions using a joint-life actuarial basis rather than the single-life basis reflected in the QDRO, and shifted the entire actuarial cost of the survivor benefit to Petitioner's portion of the monthly payment (App.b.1–2, 4).

Petitioner filed a timely administrative appeal.[1] Throughout the process, he invoked ERISA's require-

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[1] Petitioner's administrative appeals raised specific objections never addressed by the Administrator or the courts below, including: (1) the "disregarding" of the QJSA cost-assignment

ment that a denial must identify "the specific plan provisions on which the denial is based" (App.c.6, 11, 21), and warned that the Administrator's actions reduced his vested benefit and altered a finalized state-court judgment (App.c.23). The Administrator issued three denial letters offering differing rationales (App.b.1–6). None identified any governing plan provision authorizing the forced election, the cost allocation, the change in actuarial basis, or the reduction in Petitioner's

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and the failure to raise any compliance issue in 2013 (App.c.5, 10–12, 17, 22); (2) absence of any Plan provision authorizing the post-qualification assignment of QJSA costs to Petitioner or supporting the Administrator's rationale (App.c.6, 10–12, 21); (3) undefined meaning of "total monthly benefit" and its later implied interpretation (App.c.6–8, 14, 17); (4) whether the "actuarial adjustment" was a discrete cost capable of certain calculation and assignment (App.c.14–15); (5) Administrator's asserted authority to materially alter or "fix" a state-court order (App.c.8, 12); (6) fiduciary-duty objections and breach-of-fiduciary-duty allegations, including duties to reject a non-compliant order, assign costs according to the QDRO, act in good faith, follow plan documents, and provide accurate information (App.c.6, 12–15, 22–24); (7) Petitioner's reliance on the 2013 finality and the Administrator's advice to commence benefits (App.c.7, 13, 17); (8) the consistency of the QDRO, the 2006 Guidelines (permitting cost-assignment to an alternate payee), and the 2013 Determination Report, and the Administrator's failure to address this evidence (App.c.21–22); (9) conflict between the denial letter and the Determination Report (App.c.10); (10) absence of evidence supporting the denial (App.c.16, 22, 24); (11) the consequences of any alleged invalidity, including the family court's exclusive jurisdiction over amendments (App.c.22–23); (12) the resulting pension cutback (App.c.23); and (13) reliance on plan documents and on SPD provisions not shown to be in effect in 2013 (App.c.20–21). None of these issues received a response in the denial letters, and the courts below did not address them. *See* App.a.6 (Panel Opinion summary); App.a.24 (District Court summary).

share. *Id.* Nor did the denials explain how the requirement to elect a spousal-benefit option originated from the 2013 QDRO or the Plan. *Id.*

The district court affirmed. Relying on portions of all three denial letters, it concluded that the QDRO's use of the word "may" conveyed discretion to require compliance with the Plan's 50% SBO, resulting in a reduction to Petitioner's benefit (App.a.40). The court identified no Plan provision authorizing the Administrator's 2019 50% SBO to replace the QDRO's structure, and it did not address the Administrator's failure to cite any such provision in the denial letters.

The Fourth Circuit affirmed. It relied on language from the first denial letter (App.b.1) and concluded that the Administrator's understanding of the QDRO was consistent with both the QDRO's text and the Plan's SBO terms (App.a.13–14). It further held that the QDRO permitted, but did not require, assigning any portion of the survivor-benefit cost to the Alternate Payee (App.a.2). The court did not address the Administrator's final denial stating that the survivor-benefit cost had been apportioned between the parties, nor Petitioner's repeated assertions that the Plan altered a finalized state-court order or that the denial letters failed to identify a governing plan provision as required by ERISA § 503.[2]

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[2] Petitioner also raised the § 1056(d)(3)(C) defect, which the courts ignored. (App.a.11 n.5).

## REASONS FOR GRANTING THE PETITION

### I. The Fourth Circuit Violated *Chenery* by Affirming on a Rationale the Administrator Never Invoked, and Adopting a Governing Plan Provision the Administrator Never Referenced, as Required by ERISA 29 U.S.C. § 1133, 29 C.F.R. § 2560.503-1(g)(1)(i)–(ii), (j)(1).

#### A. *Chenery* Prohibits Courts from Supplying New Rationales for Administrative Decisions.

For more than eight decades, this Court has held that an administrative decision must stand or fall on the propriety of the grounds invoked by the agency. *See SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943).[3] The rule is categorical: a reviewing court may not uphold an agency's action on a rationale the agency itself did not articulate. *Id.* at 88. This safeguard ensures agencies remain accountable for the reasons they give, prevents courts from becoming administrators of first resort, and preserves the separation of functions Congress designed.

This Court has applied the *Chenery* rule directly in the ERISA context. In *Pension Benefit Guaranty Corp. v. LTV Corp.*, the Court reaffirmed that judicial

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[3] "The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based." *Chenery*, 318 U.S. at 87. A court may not (i) uphold an agency action on a rationale the agency did not itself rely on, (ii) may not substitute its own rationale, and (iii) may not accept a rationale supplied later in litigation. *Id.*

review of ERISA administrative action must be confined to "the grounds upon which the agency acted," and that *post-hoc* rationalizations offered in litigation cannot sustain an administrative decision. 496 U.S. 633, 654 (1990). As Justice White emphasized in his concurrence:

> [The agency's] action must be measured by what [it] did, not by what it might have done. . . . The [agency's] action cannot be upheld merely because findings might have been made and considerations disclosed which would justify its order.

*Id.* at 657 (White, J., concurring in part and dissenting in part) (quoting *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943)).

The same principle governs ERISA benefit-denial cases. In *Gagliano v. Reliance Standard Life Insurance Co.*, the Fourth Circuit applied *Chenery* to the ERISA administrative process, holding that an administrator may not shift rationales during administrative review and that a court may not uphold a denial on a *post-hoc* rationale introduced for the first time in the final denial. 547 F.3d 230, 240–41 (4th Cir. 2008). When an administrator changes the basis for denial at the last stage, the claimant is deprived of the "full and fair review" ERISA requires, and the proper remedy is remand—or, where the record establishes an abuse of discretion as a matter of law, an award of benefits. *Id.*

### B. ERISA Requires Administrators to State the Specific Reason for a Denial and Cite the Specific Plan Provisions Supporting It.

ERISA codifies, in the benefits context, the same rationale-articulation principle that *Chenery* requires

of agencies. Under 29 C.F.R. § 2560.503-1, a claims or appeals denial must include: (1) the specific reason for the determination, (2) written in a manner calculated to be understood by the claimant, and (3) references to the specific plan provisions on which the determination is based. 29 C.F.R. § 2560.503-1(g)(1)(i)–(ii), (j)(1)–(2). *Glista v. Unum Life Insurance Co. of America* confirms that the notice requirements in § 2560.503-1 apply across all ERISA claims and appeals because the regulation itself imposes them, and *Glista* demonstrates that courts enforce them as written. 378 F.3d 113, 129 (1st Cir. 2004).

Applying *Chenery* in the ERISA context, where § 2560.503-1 defines what a benefits "rationale" must contain, an administrator omitting any required element has not articulated a rationale at all. A denial issued without a specific reason, without an explanation calculated to be understood, or without citation to the governing plan provisions cannot be upheld under ERISA, because the administrator has failed to supply the rationale that *Chenery* requires judicial review to evaluate. When an administrator fails to identify any governing plan provision, it has failed to articulate the rationale that ERISA and *Chenery* alike require. Judicial review cannot supply what the administrator never gave.

### C. The Plan's Three (3) Denials Cited No Governing Plan Provision, in Direct Violation of ERISA's § 503 Procedural Requirements.

#### 1. Threshold Question: Which Rationale Is Reviewable?

The Plan issued three denial letters, each offering a materially different rationale for rejecting a benefit that had already been granted (App.b.1–6). That shifting-rationale pattern raises a threshold question: which rationale, if any, is the court permitted to review? Under *Chenery*, only the rationale the Administrator actually articulated—and only as grounded in the governing plan provisions—is reviewable. This principle is well-established in ERISA jurisprudence.

As the First Circuit explained in *Glista*, ERISA requires courts to evaluate the reasons the administrator actually articulated in the denial letters, and courts may not uphold a denial on rationales introduced for the first time in litigation. *Id.* at 130. The court reviewed all three denial letters in sequence and rejected Unum's *post-hoc* rationale because it "had not been articulated to the claimant during its internal review." *Id.* at 129–30. *Glista* emphasized that ERISA's procedural protections are violated when an administrator shifts rationales during litigation or relies on a plan provision not disclosed to the claimant during the claims process. *Id.* at 130–32.

The three denials issued here over an eleven month period present the same sequential structure the First Circuit confronted in *Glista*, but with a critical difference: none of the three denials in this case satisfies ERISA's articulation requirements. And unlike *Glista*,

where each denial contained a reason, an explanation understandable to the claimant, and a citation to a governing plan provision, the Administrator's rationales here shifted repeatedly and never rested on a plan provision basis applicable to Petitioner's benefit.

### 2. Denial #1: No Governing Plan Provision (Not Reviewable Under ERISA or *Chenery*)

The Administrator's October 24, 2019 "Information Notice" ("Denial #1") asserted that the QDRO's QJSA-cost language was "disregarded" at qualification and that, because the "cost" of a QJSA was an "actuarial adjustment," no actual "costs" could be assigned to an alternate payee under the Plan (App.b.1–2).[4] As Petitioner noted in the administrative proceedings (App.c.6, 11, 21), the record shows that Denial #1 cited no governing plan provision the Administrator purported to interpret (App.b.1). And ERISA's claims-procedure regulation entitles Petitioner to notice of the specific plan provision the Administrator relied on to reduce his vested benefit. 29 C.F.R. § 2560.503-1(g)(1)(ii), (j)(2). Under *Chenery*, Denial #1 must be evaluated solely on the rationale the record discloses—here, none, because no governing plan provision was cited. A court may neither review nor uphold a denial resting on a rationale that fails to satisfy ERISA's required elements. Accordingly, the courts below cannot rely on Denial #1, which cites no governing plan provision and therefore provides no permissible basis for judicial review.

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[4] The Plan defines "actuarially reduced," not "actuarial adjustment" (App.e.5). The Administrator never explained its substitution of a non-Plan term in the denial letters.

### 3. Denial #2: New Rationale and the Only Prima Facie *Chenery*-Eligible Explanation

The Administrator's "Level 1 Appeal Response," dated June 12, 2020 ("Denial #2"), did not repeat the original "disregarding" rationale, though it adopted the same result. The denial stated that Petitioner's request to recover past QJSA-cost payments was "not valid" because the "cost" of a QJSA "cannot be assigned," citing the October 24, 2019 Information Notice (App.b.3).

Denial #2 introduced a new rationale: instead of the "actuarial adjustment" described in Denial #1, the Administrator reduced Petitioner's post-commencement benefit by applying an "optional forms factor" associated with the Plan's 50% SBO (App.b.4). After Petitioner noted that Denial #1 cited no plan provision (App.c.6, 11), Denial #2 referenced Plan § 7.2, but did not explain how that provision governed the QDRO or justified reducing Petitioner's vested benefit (App.b.3–4.)

Taking Denial #2 at face value—and before analyzing whether § 7.2 applies—it appears to contain the three procedural elements ERISA requires: a stated reason, communicated in a manner calculated to be understood, and a reference to a plan provision. For *Chenery* purposes, Denial #2 is therefore prima facie capable of constituting an articulated rationale under ERISA.

#### (i). Denial #2 fails to reference a specific governing plan provision (Not Reviewable Under ERISA or *Chenery*)

Denial #2 referenced Plan § 7.2 and SPD page 82 (App.b.3)—both are either inapplicable to Petitioner

or irrelevant to the QJSA-cost issue. Plan § 7.2 appears in the 2015 Plan's Title VII provisions governing the Solae employee group (App.e.8–12). Petitioner, however, is a Title I DuPont participant (App.g.9, e.1–4). The Administrator never asserted that Title VII governed Petitioner's benefit, yet it cited that mismatched provision in its denial (App.b.3–4).

Petitioner challenged these references in his supplemental final appeal, explaining that the SPD and Plan citations "do not appear to be in effect during the 2013 qualification period" and were "inapplicable as presented by the Administrator" to the QJSA-cost issue (App.c.21). Only in litigation did the Administrative Record reveal that Title VII was merged into the Plan in December 2012—five months before the QDRO was approved (App.e.6–8). But that merger merely incorporated the Solae plan into the document; it did not convert Title VII provisions into governing terms for Title I participants. The Administrator never explained why a Title VII Solae provision would control a Title I DuPont QDRO benefit, never explained § 7.2 as the basis for the denial, and never identified any plan text connecting § 7.2 to Petitioner's Title I benefit (App.b.5–6). Nor did the Administrator correct Petitioner's objection or disclose that the cited provisions applied only to the Solae group. *Id.*

Denial #2 also cited SPD page 82, which appears in the Plan's general administrative section (App.f.8, 10). Although not limited to the Solae group, this page merely describes QDROs as an exception to the anti-alienation rule. It does not address how QJSA costs are assigned under a QDRO or how the statutory 50% SBO relates to a QDRO. *Id.* And a general SPD description cannot override the Plan or satisfy ERISA's

requirement that a denial identify "the specific plan provisions on which the determination is based." 29 C.F.R. § 2560.503-1(g)(1)(ii).

Under ERISA's claims-procedure regulation, Petitioner is entitled to notice of the specific plan provision that actually governs his vested pension benefit. 29 C.F.R. § 2560.503-1(g)(1)(ii), (j)(2). Under *Chenery*, Denial #2 must be judged solely on the grounds the Administrator invoked at the time. Here, those grounds consisted of a mismatched Title VII Solae provision (§ 7.2) and a general SPD description—neither of which governs Petitioner's Title I DuPont benefit. Because the Administrator failed to identify a relevant governing provision as ERISA requires, Denial #2 is legally void and cannot serve as the basis for judicial review.

**4. Denial #3: No Plan Provision, New Rationale (Not Reviewable Under ERISA or *Chenery*).**

The Administrator's "Level 2 Appeal Response," dated September 29, 2020 ("Denial #3"), cites no governing plan provision. Petitioner had already objected that the Administrator had identified "no citation or reference" to the "specific Plan provision" that could support rejecting his claim (App.c.6, 11, 21). The Committee responded only that it had "reviewed" the Plan document and "interpreted and applied" the QDRO "appropriately" (App.b.5). Nowhere in Denial #3 does the Administrator identify the plan provision that ERISA's claims-procedure regulation requires. *Id.* A denial that omits the governing plan term is procedurally defective, fails to clearly communicate the basis for the decision, and provides no rationale

capable of appeal or judicial review. Under *Gagliano*, that omission alone compels remand

Denial #3 also introduced a new "cost-apportionment" rationale, asserting that "assigning a portion of the cost to both you and your Alternate Payee does not conflict with the QDRO" (App.b.5). It did not identify the amounts assigned to each party, and it directed Petitioner back to Denial #1 for "complete details," even though Denial #1 stated that no QJSA costs could be assigned to an alternate payee (App.b.1–2). This new rationale is an independent *Gagliano* violation.

ERISA's claims-procedure regulation requires notice of "the specific plan provisions on which the determination is based." 29 C.F.R. § 2560.503-1(g)(1)(ii), (j)(2). Under *Chenery*, Denial #3 must be evaluated solely on the rationale the Administrator actually invoked. Here, the record discloses no governing plan provision at all. A court may neither review nor uphold a denial resting on a rationale that fails to satisfy ERISA's required elements. Accordingly, Denial #3 is legally void and cannot supply any permissible basis for judicial review.

### 5. *Ultra Vires* Conclusion

None of the three denials cited a governing plan provision authorizing the reduction of Petitioner's vested, qualified, and finalized QDRO benefit. Petitioner raised this governing-plan-provision requirement in his written appeals (App.c.6, 11, 17, 21), yet the Administrator never identified any plan term authorizing the denial (App.b.1–6). A denial untethered to the Plan is not a lawful ERISA action. Nothing in the record identifies a plan provision permitting the Administrator to shift 100% of the Alternate Payee's

survivor benefit cost to Petitioner or to reduce his vested benefit on that basis. The Administrator therefore acted *ultra vires* (App.c.17).

ERISA and *Chenery* foreclose judicial review once the Administrator failed to identify a governing plan provision. By overlooking that defect the courts triggered the structural failure that produced violations of ERISA, *Gagliano*, and *Chenery* and the revision of the state-ordered QDRO.

### D. The District Court Violated ERISA, Then *Gagliano*, Then *Chenery* by Constructing a New Rationale from Three Inconsistent Denials

The district court bypassed the record-bound analysis exemplified by the *Glista–Gagliano* framework. Had the court followed that structured approach, the Administrator's failure to identify a "specific plan provision" in any of the three denials would have been immediately apparent. Instead of recognizing this threshold defect—which foreclosed judicial review under ERISA § 503 and *Chenery*—the court stitched together portions of three inconsistent, noncompliant letters to construct a composite rationale the Administrator never articulated.

It quoted Denial #1's assertion that the QJSA language was disregarded at qualification because it did not comply with the Plan (App.a.23); cited Denial #2's reference to SPD page 82, which provides general plan information, not QDRO cost assignment (App.a.24); and adopted Denial #3's invocation of the QDRO's permissive "may" clause, but without acknowledging that the Administrator linked that clause only to its cost-apportionment theory (App.a.40). None of the

denials the court relied on was tied to any governing Plan provision, and the court could not rely on them for that reason. Despite Petitioner invoking the governing plan provision requirement in all administrative submissions (App.c.6, 11, 17, 21), the district court did not perceive the defect, noting only he submitted Level 1 and Level 2 appeals (App.a.24).

By relying on parts of three ERISA-noncompliant denials, the district court independently violated ERISA's procedural protections and then supplied its own rationale:

> The 'may' was interpreted to convey discretion in order for the DRO to comport with the Plan options because the Plan expressly provides the QJSA 'cost' is paid for by a reduction to the total benefit amount under the fifty percent SBO option. (App.a.40).

But the Administrator never reasoned that "may" conveyed discretion to reduce a benefit under the 50% SBO (App.b. 1–6). None of the denials invoked a discretion theory or tethered "may" to any Plan term; Denials #2 and #3 did not interpret "may" at all (App.b.1–4). Only in Denial #3 did the Administrator "interpret" "may," and it did so solely to assert that costs had been apportioned—yet it still identified no governing Plan provision (App.b.5–6).[5] The district court's rationale—tying "may" to the 50% SBO pro-

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[5] Outside counsel concluded three times that the Plan prohibited assigning 100% of the QJSA cost to the Alternate Payee, yet—like the Appeals Committee's conclusory Denial #3—never identified a Plan provision supporting that conclusion. (App.g.13).

vision—appears nowhere in the administrative record; it was judicially stitched together.

The district court's disregard of ERISA § 503 and *Chenery* was compounded by a further contradiction: after enforcing—at the Administrator's insistence (App.a.26–27)—that materials outside the record must be excluded, the court then relied on the Administrator's litigation-only, *post hoc* rationales. It excluded Petitioner's expert report as "not a part of the administrative record" (App.a.32). Yet in the next section, the court upheld the denial on plan-provision theories, statutory-framework arguments, "clear language" readings, interpretations of "may" as conferring discretion, and assertions that the Administrator "relied" on Petitioner's 50% SBO certification "in conjunction with the various sections of the over hundred-page Plan"—even though the court identified no such Plan sections in the administrative record (App.a.39–40, 42–43).

This approach directly conflicts with the Fourth Circuit's holding in *Gagliano* that an administrator may not introduce a new rationale in a final denial, thereby foreclosing administrative appeal. 547 F.3d at 240–41. That rule ensures the 'full and fair review' ERISA requires by preventing *post-hoc* justifications. Where a final denial rests on such an un-appealed rationale, the court must remand—or, where the record establishes an abuse of discretion as a matter of law, award benefits. *Id.*

The district court never reached that framework because it overlooked the threshold defect the administrative record made unmistakable: none of the three denials cited any governing plan provision, an issue Petitioner expressly raised (App.c.6, 11, 17, 21). Once the

Administrator failed to identify a plan term authorizing the reduction, it acted *ultra vires*, and ERISA placed its rationales outside the scope of judicial review.

Had the court recognized that threshold defect, it could not have violated *Gagliano* by relying on an interpretation of "may" that appeared for the first time in the final denial and was tethered to a cost-apportionment theory—Petitioner never had the opportunity to appeal. Nor could it have violated *Chenery* by detaching that interpretation from the cost-apportionment theory and anchoring it instead to the 50% SBO provision (App.a.40). By substituting both the plan term and the justification the Administrator never invoked, the court performed a salvage operation ERISA forbids.

### E. The Fourth Circuit Violated ERISA, *Gagliano*, and *Chenery* by Relying on a Rationale the Administrator Never Adopted

The Fourth Circuit upheld the Administrator's denial by relying on parts of two legally void denial letters, supplying a 50% SBO SPD and plan provision not found in the record, and adopting a new rationale the Administrator never articulated—all in direct violation of ERISA, *Gagliano*, and *Chenery*.

The panel's factual recitation mentioned Denials #1 and #3 but did not address Denial #2 at all (App.a.5–6). And although it referenced two of Petitioner's appeal submissions, it did not engage with their contents and

omitted his September 2020 supplemental appeal entirely (App.a.6).[6]

Both denials were legally void under ERISA § 503 because neither identified a governing plan provision, and the panel was required to stop there. Under *Gagliano*, the panel was also prohibited from affirming the final denial based on a rationale the Administrator introduced for the first time in Denial #3.

Instead of applying record-bound review, the panel repaired the Administrator's omission by supplying its own governing plan provision the Administrator never identified. It treated Petitioner's election of the 50% SBO as dispositive (App.a.5), cited a 20% joint-and-survivor example from the 2008 SPD (App.f.5; App.a.13) [7], and invoked Plan language addressing the 50% SBO (App.a.14 n.8)—even though none of these materials appears in any denial letter and the QDRO does not require Petitioner's election as the basis for the Alternate Payee's survivor benefit (App.d.3). Although Denial #1 paraphrased Petitioner's

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[6] The panel also relied on factual assertions not supported by the administrative record—for example, stating that Petitioner raised his claim after he signed and certified the benefit form (App.a.5), though the record shows otherwise.

[7] The Administrator never provided the 2008 SPD, despite Petitioner including a direct written request in his supplemental appeal for missing documents (App.c.20). Although the panel deemed this withholding non-prejudicial (App.a.3), it simultaneously used that undisclosed document to affirm on a rationale the Administrator never actually invoked (App.a.13). Reliance on extra-record material—withheld from the claimant despite an express request for 'all revisions' of the Plan and SPD—underscores the procedural irregularities that make this case a clean vehicle.

question about the 50% SBO (App.b.1), the Administrator never adopted a 50% SBO rationale, never tied it to any plan provision, and never repeated it in Denial #2 or Denial #3 (App.b.1–6).

The panel's reliance on the 50% SBO thus introduced both a new rationale and an ERISA-required governing plan provision the Administrator never articulated. It compounded that error by tethering the 20% J&S SPD example to Denial #1's theory that no cost could be assigned to the Alternate Payee—again, a rationale and set of materials absent from every denial letter. Despite relying on a 20% J&S example, the panel nevertheless applied the Plan's 50% SBO provision, even though the QDRO never invoked it. Under *Chenery*, the panel was required to stop before supplying a governing plan provision the Administrator never invoked; instead, it compounded the violation by reinterpreting the QDRO's permissive 'may' clause to complete its 50%-SBO rationale.

The Administrator represented that, based on its interpretation of "may," it had actually apportioned the QJSA cost—"assigning a portion of the cost to both you and your Alternate Payee"—and relied on that asserted apportionment as its rationale (App.b.5). The panel transformed that rationale into a new interpretation that the QDRO's plain-language use of "may" permitted assigning 0% of the cost to the Alternate Payee (App.a.2), a conclusion necessary to support its statutory 50% SBO theory and one it reached without addressing the direct conflict between its 0%-permissible interpretation and the Administrator's representation in its final denial that apportionment had already occurred (App.b.5).

This Court's review is warranted because the panel supplied a rationale the Administrator never articulated, supplied a missing plan provision, contradicted the Administrator's stated basis for its final denial, and resolved the claim on grounds the claimant never had an opportunity to address—an error that strikes at the core of *Gagliano*, *Chenery* and ERISA's § 503 procedural guarantees.

## II. Statutory Incompatibility: The Court Impermissibly Used ERISA § 205 to Resolve a § 206 Separate-Interest Distribution.

### A. § 205 and § 206(d)(3) Operate as Mutually Exclusive Statutory Frameworks

ERISA establishes two distinct survivor-benefit structures. Section 205 governs participant-elected, statutory QJSAs with mandatory features: vested participant-election and spousal-waiver rights, revocability until the annuity starting date, a 50% minimum survivor benefit, a joint-life actuarial basis, and a cost structure in which 100% of the QJSA cost is allocated to the participant's benefit. See 29 U.S.C. § 1055(a), (c), (d).

Section 206(d)(3), by contrast, governs state-ordered QDROs that create separate-interest benefits. These vest upon qualification, require no participant election or spousal waiver, and are payable in forms available under the Plan without incorporating § 205's mandatory QJSA cost-allocation structure. See 29 U.S.C. § 1056(d)(3)(B), (D), (E). Even if a plan purports to apply § 205 features to a QDRO, a § 206 separate-interest benefit cannot be converted into a § 205 QJSA or treated as if a § 205 election had occurred without the specific procedural safeguards § 205 requires. None of the Administrator's denial letters identified any Plan

provision specifying which § 205 features applied to the QDRO's separate-interest survivor benefit (App.b.1–6), and the Administrator could not supply such terms through discretion or "gap-filling" in derogation of a QDRO that was vested, qualified, and finalized.

### B. The Table Confirms the QDRO Is a § 206 Separate-Interest Benefit, Not a § 205 Statutory QJSA

The table below shows the QDRO's survivor benefit fails multiple mandatory § 205 elements: it provides 47% rather than the statutory 50% minimum[8]; requires no participant election or spousal waiver; is irrevocable upon qualification; is valued on the alternate payee's life alone; and does not assign 100% of the QJSA cost to the participant. See App.d.2–3.

The Plan's Determination Report confirms these features—approving a separate "participant life annuity" (App.g.1) and a "monthly annuity over the alternate payee's lifetime" (App.g.2), not a § 205 joint-life annuity. The table thus reflects what the statute requires: a § 206 QDRO is not a § 205 QJSA, and the Determination Report confirms this QDRO was not approved as one.

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[8] By adopting Plan Guidelines' formula (i) (App.d.13), the QDRO calculates the Alternate Payee's survivor benefit as: Participant's available QJSA × 50% × (288/306) = 47.05% (App.d.3). The same 47% result appears in the Determination Report (App.g.2), the Plan's system record (App.g.9), and the contemporaneous record (App.g.10).

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**Summary Table: § 205 Requirements vs. § 206(d)(3) QDRO Separate-Survivor Benefit Interest Structure**

**ERISA § 205 / Plan's Title IV § VI Requirements**

**Valued:** 50% Minimum

**Triggering Event:** Participant Election: Requires either affirmative election or by default at retirement.

**Waiver Requirement:** Spousal Waiver: To avoid the QJSA, a spouse must waive the right in writing.

**Revocability:** Revocable: Elections can generally be changed until the "Annuity Starting Date."

**Actuarial Basis Survivor Benefit:** Joint-Life Participant and Spouse

**The "Cost" Source:** 100% Participant

**Authorized By Plan Text:** Yes

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**ERISA § 206(d)(3) / 2013 QDRO Reality**

**Valued:** 47%

**Triggering Event:** No Participant Election. Court mandate: Qualification vests AP's benefit

**Waiver Requirement:** No Waiver: Benefit "Species" is a Separate Interest, not a QJSA.

**Revocability:** Irrevocable: QDRO became a finalized vested property right upon qualification in 2013

**Actuarial Basis Survivor Benefit:** Separate interest: Alternate Payee's Life Only

**The "Cost" Source:** Alternate Payee

**Authorized By Plan Text:** Yes, qualified by Plan under § 206

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**2013 Determination Report**

**Valued:** 47%

**Triggering Event:** No Participant Election

**Waiver Requirement:** No Waiver

**Revocability:** Irrevocable. All determinations final

**Actuarial Basis Survivor Benefit:** Separate interest: Alternate Payee's Life Only

**The "Cost" Source:** "Total Monthly Benefit" (undefined term)

**Authorized By Plan Text:** No. "Total Monthly Benefit" (not defined in plan)

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### C. The Fourth Circuit Collapsed § 205 and § 206(d)(3)

Despite this incompatibility, the district court and panel applied § 205's mandatory QJSA cost-allocation structure to a § 206 separate-interest benefit. The district court reasoned that the QDRO must be

interpreted to "comport with the Plan options" because the Plan's 50% SBO "cost is paid for by a reduction to the total benefit amount" (App.a.40). The panel adopted the same approach, invoking the 2008 SPD's 20% J&S example and Plan language addressing the 50% SBO (App.a.13; App.a.14 n.8).

The panel's reasoning rests on a category error: it treats a vested § 206 separate-interest benefit as if it were a participant-elected § 205 QJSA, without identifying any plan provision authorizing that transformation. The QDRO was approved in 2013 with a separate-interest survivor benefit under § 206(d)(3) (App.d.2–4), and nothing in the QDRO converts it into a statutory § 205 QJSA—and none of the Administrator's denials cite any governing plan provision purporting to effect such a conversion.

**D. The Illegal Cutback**

The Plan's statutory rewrite did not merely change labels; it reduced a vested, qualified and finalized pension benefit in violation of ERISA's anti-cutback rule. Petitioner raised this issue during the administrative process, warning the Administrator that the Plan's approach was reducing his court-ordered benefit and citing *Matthews v. DuPont* as an example of an impermissible amendment shifting costs to the participant (App.c.23). The Administrator ignored the issue, preventing development of the facts that would have revealed the forced § 205 election, the dilution to 50:50, and the joint-life actuarial burden. *See* 29 U.S.C. § 1054(g) (ERISA § 204(g)).

The cutback manifested in three compounding reductions:

- Mathematical reduction: Shifting the entire actuarial cost of the QJSA to Petitioner's share produced an immediate 10% reduction in monthly payments (App.c.16).
- Actuarial burden: By forcing a § 205 election, the Plan valued the benefit over two lives (joint-life) (App.b.1–2) instead of the single life mandated by the QDRO (App.d.3).
- Share dilution: The Plan moved Petitioner from his court-ordered 53% position to a 50% shared-interest default by requiring him to choose one of twelve Plan options (App.g.6–8), an election the QDRO did not require (App.d.1–4).

None of these reductions were ordered by the state court. *Id.* None of the other changes to the QDRO were disclosed in any denial letter (App.b.1–6). And none are permissible under ERISA's anti-cutback rule. Petitioner raised the issue (App.c.23); the Administrator ignored it (App.b.5–6); and the courts never addressed it. The result is a prohibited reduction of a vested, qualified, and finalized state-ordered pension benefit—precisely the harm ERISA forbids.

### E. Usurpation of State-Court Authority

A QDRO is a state-court domestic-relations order. ERISA gives state courts exclusive authority to define the property rights of divorcing spouses and gives plan administrators only a ministerial gatekeeping role: determine whether the order satisfies § 206(d)(3)'s qualification requirements. Once approved, the administrator must administer the QDRO exactly as written (App.c.16–17).

As a state court may not amend an ERISA plan, a plan administrator may not amend a state-court order. By changing the form of the benefit, imposing an election requirement where none existed, converting a separate-interest survivor benefit into a shared-interest framework, reallocating costs, and even changing the participant's share from 53% to 50%—all contrary to the QDRO—the Administrator unlawfully, materially amended the Petitioner's state-court judgment. This was a direct usurpation of state-court authority.

The contradiction is stark: in Denial #1, the Plan refused to honor the QDRO's cost assignment on the ground that doing so would "amend the Plan," even though the Plan had already materially altered the QDRO itself—changing the form, election requirements, and cost allocation—an action ERISA forbids.

Petitioner warned the Administrator during the claims process that a federal district court, in prior litigation involving this same Plan, had already made clear that neither a federal court nor DuPont has authority to alter a state-court domestic-relations order: "I am not, however, Family Court, and I cannot modify its Order. Neither can DuPont" (App.c.23). The Administrator ignored that warning (App.b.5–6). The district court and the Fourth Circuit then ratified the rewrite by supplying their own rationales where the record was silent.

The result is a federal-court-approved alteration of a state-court property division — something ERISA expressly forbids.

### F. Violation of the Doctrine of Finality

The QDRO was finalized in 2013 (App.d.1–4; App.g.1). The Determination Report was finalized in 2013 (App.g.1–3). The Plan's own QDRO procedures state that "All determinations of the Determiner shall be final" (App.d.20). Finality is not optional; it is the foundation of ERISA's QDRO regime.

Yet six years later, the Plan reopened the QDRO, requalified it, and substantively altered it when it redistributed the benefit—contrary to ERISA's limits and the Plan's own rule that all determinations are final. *Id.* This was not a correction of a clerical error; it was a substantive change to a vested, qualified, and finalized property right.

The doctrine of finality exists to prevent exactly this scenario: a plan administrator revisiting a settled domestic-relations judgment years later and altering the economic rights of the parties. The courts' acceptance of this reopening destabilizes QDRO administration nationwide, inviting plans to revisit and revise finalized orders whenever convenient.

### G. Structural Impossibility

The courts' rationale requires the same benefit to operate under two incompatible statutory regimes at once—§ 206(d)(3) for vesting and AP rights, but § 205 for cost allocation and joint-life actuarial burden. ERISA does not permit a benefit to be governed simultaneously by both frameworks; it cannot be both a separate-interest benefit and a joint-benefit at the same time. The QDRO created a vested § 206 separate interest survivor benefit; the Administrator converted the QDRO into a hybrid § 205 QJSA through a forced

election; and the courts affirmed a second hybrid that applied § 205 cost rules to a § 206 benefit.

This is not a minor inconsistency—it is a structural impossibility. No ERISA plan can administer a benefit under two incompatible statutory frameworks at once. No court can review such a benefit under a stable legal standard. And no participant or alternate payee can rely on a QDRO if its form can be retroactively transformed years later.

This is the kind of systemic defect that warrants certiorari: a decision that cannot be applied consistently, cannot be reconciled with ERISA's structure, and cannot be squared with the QDRO the state court actually issued.

## III. The Courts Applied the Wrong Statutory Regime After the Administrator Replaced a Vested QDRO Benefit with a Form ERISA Does Not Permit

ERISA § 205 and § 206(d)(3) are mutually exclusive statutory regimes. The QDRO in this case, formally qualified in 2013, created a vested § 206(d)(3) separate-interest survivor benefit. In 2019, however, the Administrator conditioned commencement on Petitioner 'replacing' these QDRO terms with one of twelve administrative SBOs. Although these options appeared to be statutory § 205 benefits, they were non-statutory forms used to supplant the QDRO's finalized terms.

The Administrator repeatedly represented that Petitioner was electing a statutory SBO (App.g.6–8, g.11–12, b.1), and the courts below applied § 205 on that basis. But the contemporaneous record shows

that no such election requirement existed. The 2013 qualification file contains an affirmative rejection of any SBO election requirement (App.d.21–23: "NO NO"), and neither the QDRO nor the Determination Report requires Petitioner to elect an SBO. Despite this record, the Administrator's representations framed the entire litigation, and the courts below treated the 2019 form as a statutory SBO because that is what the Administrator told Petitioner he was required to elect under the QDRO (App.g.6, b.1).

### A. The 2019 Form Was Not a Statutory 50% Spouse Benefit Option

But the Administrator's 2019 form was not a statutory § 205 SBO. The summary table below makes this structural mismatch clear before any argument is made: the Plan's actual § 205 SBO requirements are not replicated in either (1) the vested § 206(d)(3) separate-interest survivor benefit the Plan qualified in 2013, or (2) the 2019 hybrid form the Administrator created to replace the QDRO and from which Petitioner's benefit was distributed.

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**Statutory Comparison: § 205 QJSA, § 206(d)(3) QDRO Survivor-Benefit, and the Plan's 2019 Hybrid Benefit**

**ERISA § 205 / Plan's Title IV § VI Requirements**

**Valued:** 50% Minimum

**Triggering Event:** Participant Election: Requires either affirmative election or by default at retirement.

**Waiver Requirement:** Spousal Waiver: To avoid the QJSA, a spouse must waive the right in writing.

**Revocability:** Revocable: Elections can generally be changed until the "Annuity Starting Date."

**Actuarial Basis Survivor Benefit:** Joint-Life Participant and Spouse

**The "Cost" Source:** 100% Participant

**Authorized By Plan Text:** Yes

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**ERISA § 206(d)(3) / 2013 QDRO Reality**

**Valued:** 47%

**Triggering Event:** No Participant Election. Court mandate: Qualification vests AP's benefit

**Waiver Requirement:** No Waiver: Benefit "Species" is a Separate Interest, not a QJSA.

**Revocability:** Irrevocable: QDRO became a finalized vested property right upon qualification in 2013

**Actuarial Basis Survivor Benefit:** Separate interest: Alternate Payee's Life Only

**The "Cost" Source:** Alternate Payee

**Authorized By Plan Text:** Yes, qualified by Plan under § 206

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**2019 Hybrid Distribution (Plan-Created Form)**

**Valued:** 50%

**Triggering Event:** Participant Election Required: 12 options presented, no default provision

**Waiver Requirement:** No Waiver

**Revocability:** Irrevocable

**Actuarial Basis Survivor Benefit:** Joint-Life Participant and Spouse

**The "Cost" Source:** 100% Participant

**Authorized By Plan Text:** No

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If the hybrid form had been a genuine Plan option, a reasonable participant would expect the Administrator to cite the Plan's requirements for that option — just as the Plan later cited § 205's statutory requirements in litigation. The Administrator's reliance on § 205 was therefore a tacit admission that the 2019 hybrid form does not exist in the Plan.

### B. The QDRO's Cost Assignment Made a § 205 SBO Statutorily Impossible

The structural defect becomes unavoidable once the QDRO's cost assignment is understood. The QDRO awarded the Alternate Payee (1) a share of Petitioner's accrued benefit for the duration of Petitioner's lifetime, and (2) a separate survivor benefit payable for her lifetime only — with the QJSA cost assigned to the Alternate Payee. That cost assignment is what locked the benefit into § 206(d)(3) separate-interest territory.

Had the QDRO followed the Plan Guideline's suggested QJSA language that the "accrued benefit may be reduced as necessary to cover the cost of the QJSA" (App.d.12), the statutory § 205 structure would have required assigning 100% of the QJSA cost to the participant. Only under that hypothetical QDRO cost assignment could the Plan even attempt to treat the survivor benefit as derivative of the participant's accrued benefit and apply a joint-life actuarial factor.

But the QDRO did not follow that pathway. By assigning the QJSA cost to the Alternate Payee and fixing the survivor benefit at 47%, the QDRO created a vested § 206(d)(3) separate interest that was final as of 2013 and not a 50% SBO. That AP-borne cost assignment foreclosed any derivative pathway: a survivor benefit with AP-borne cost cannot be a § 205 SBO, and a § 205 SBO cannot be imposed on a § 206(d)(3) separate interest.

The Administrator nevertheless attempted in litigation to requalify the QDRO by recasting its permissive "may" clause as authorizing a 0% cost assignment to the Alternate Payee. But the denial letters never articulated that interpretation. Only Denial #3 interpreted "may," and it did so solely to assert that the cost had been apportioned between the parties (App.b.5). An apportioned cost is not a 0% cost to either party, and that admission forecloses the derivative structure the Administrator was attempting to construct: if the Alternate Payee bore any portion of the cost—and the Plan calculated the survivor benefit at 47%—the QDRO benefit cannot be a § 205 SBO. The derivative pathway the Administrator attempted to rely on collapses as a matter of law.

### C. *Kennedy's* Plan Documents Rule Forbids Replacing a Vested QDRO Benefit with an Unauthorized Hybrid

Under *Kennedy*, a plan administrator must act "in accordance with the [plan documents] insofar as such [documents] are consistent with [ERISA requirements]," and ERISA provides no exemption from this duty when it comes time to pay benefits. *Kennedy v. Plan Administrator for DuPont Sav. & Inv. Plan*, 555 U.S. 285, 300–01 (2009).

The governing instruments here were the Plan, the QDRO, and the 2013 Determination Report. Together, they created and finalized a vested § 206(d)(3) separate-interest survivor benefit. Yet the Administrator—without identifying any authorizing Plan provision—induced Petitioner to execute a form that contradicted the QDRO (App.g.6), and then used that form to replace the vested benefit with an unknown 2019 "hybrid SBO" that has no basis in any governing instrument. This was not a clerical correction; it was a substantive alteration of a vested property right.

No denial letter disclosed a Plan provision authorizing the Administrator to replace an approved and finalized QDRO benefit with a new administrative substitute. Nothing in the QDRO authorizes the Participant to elect a different benefit form on the Alternate Payee's behalf. And nothing in the Determination Report authorizes the Administrator to discard the QDRO's AP-borne cost assignment or to convert a § 206(d)(3) separate interest into a § 205 SBO. Under *Kennedy*, the Administrator was required to administer the QDRO benefit as written—not to create a new benefit form that the Plan does not contain and the denial letters failed to identify.

The Administrator's "reliance" on Petitioner's 2019 signature cannot cure this defect. *Kennedy* makes clear that vested benefits cannot be altered by participant communications or administrative forms that contradict the governing instruments. 555 U.S. at 300–02. The Administrator's use of a signature to effectuate a benefit replacement that the Plan record does not authorize is precisely the type of administrative maneuver *Kennedy's* "bright-line rule" forbids.

Because the 2019 hybrid form is not—and cannot lawfully become—a governing ERISA instrument, and because the Administrator used it to replace a vested QDRO benefit, the decision below directly conflicts with *Kennedy*. A plan administrator must follow the governing documents, not rewrite them.

## IV. The Decision Below Deepens an Acknowledged Circuit Split and Creates an Intra-Fourth-Circuit Conflict on *Chenery* and ERISA § 503

Courts of appeals are divided on whether they may uphold an ERISA denial on grounds the administrator never invoked. Several circuits strictly enforce *Chenery* in ERISA cases, holding that courts may not supply rationales the administrator did not give. Other courts—including the Fourth Circuit here—permit affirmance on *post-hoc* grounds even where the administrator violated § 503's requirement to identify the specific reason for the denial and the specific plan provisions supporting it. This permissive approach conflicts with the strict *Chenery* circuits and with the Fourth Circuit's own precedent in *Gagliano*.

### A. Strict *Chenery* Circuits.

The First, Third, Seventh, and Ninth Circuits hold that courts may not uphold an ERISA denial on a rationale the administrator never adopted. In these circuits, a denial may be upheld only on the rationale the administrator actually articulated. *See, e.g., Glista v. Unum Life Ins. Co. of Am.*, 378 F.3d 113, 128–30 (1st Cir. 2004) (administrator is bound by the plan provisions cited in its denial letters and may not rely on "newly articulated" provisions in litigation); *Miller v. Am. Airlines, Inc.*, 632 F.3d 837, 856 (3d Cir. 2011) (where the administrator's "most specific reason" is unauthorized by the plan, a court may not discard it as harmless and "pivot" to a new rationale); *Jebian v. Hewlett-Packard Co. Emp. Benefits Org. Income Prot. Plan*, 349 F.3d 1098, 1104–06 (9th Cir. 2003) (reaffirming that "an agency's order must be upheld, if at all, on the same basis articulated in the order by the agency itself"); *Hackett v. Xerox Corp. Long-Term Disability Income Plan*, 315 F.3d 771, 775–77 (7th Cir. 2003) (failure to articulate specific reasons precludes meaningful review and a court may not "supply" the missing rationale). These courts enforce § 503's command that administrators must state the "specific reason" for a denial and cite the "specific plan provisions" supporting it.

### B. Permissive *Chenery* Courts.

The Fourth Circuit permits affirmance on grounds the administrator never invoked, even where the administrator violated § 503. The decision below affirmed based on a plan provision never cited, a statutory rationale never articulated, and a benefit form never identified. This directly conflicts with the strict *Chenery* circuits.

### C. Intra-Fourth-Circuit Conflict.

The decision below also conflicts with the Fourth Circuit's own precedent. In *Gagliano*, the court held that an administrator may not introduce a new rationale in its final denial without giving the claimant a chance to appeal it, and that a court may not uphold a denial on the new rationale used to exhaust the administrative process. The panel did exactly that: it denied the Participant any opportunity to appeal the Administrator's new cost-apportionment rationale and then upheld the denial on a 50% SBO rationale the Administrator never articulated, in violation of *Chenery*.

The Fourth Circuit has likewise recognized that courts may not affirm an ERISA denial when the administrator fails to provide a rationale through a compliant process, requiring remand rather than judicial substitution of reasons. *See Wilson v. United-Healthcare Ins. Co.*, 27 F.4th 228, 242 (4th Cir. 2022). and district courts within the Fourth Circuit apply the same rule even more explicitly, holding that judicial review is limited to the administrative record and that an administrator may not rely on newly-raised rationales in litigation. *See Learn v. Lincoln Nat'l Life Ins. Co.*, 724 F. Supp. 3d 494, 523 (W.D. Va. 2024).

The panel nevertheless upheld the denial on a rationale never given, adopted a plan provision never cited, and *sua sponte* transformed a § 206(d)(3) QDRO separate-interest benefit into a statutory § 205 QJSA —effectively making an administrative finding where none existed. This dual conflict with *Gagliano* and the Fourth Circuit's own application of *Chenery* warrants review.

### D. Ultra Vires Acts.

This case also presents both the procedural and substantive *ultra vires* acts the panel overlooked. Procedurally, the Administrator issued a denial without citing any governing plan provision or statutory authority, depriving the Participant of the full and fair review that § 503 and *Gagliano* require. Substantively —and far more seriously—the Administrator replaced a vested, qualified and finalized § 206(d)(3) QDRO benefit with a benefit form not shown to exist in the Plan or in ERISA, thereby altering a state-court domestic relations order in violation of *Kennedy* and usurping authority Congress reserved to state courts. Either *ultra vires* act would warrant review; the combination makes review imperative.

The Court should grant certiorari to resolve the entrenched circuit split, restore uniformity to ERISA's procedural requirements, and reaffirm *Chenery's* foundational administrative-law rule.

## V. The Decision Below Threatens ERISA's National Uniformity and This Case Is a Clean Vehicle

ERISA's QDRO framework is a national system designed to ensure uniform treatment of domestic-relations orders, protect state-court property divisions, and prevent plans from altering vested rights. The decision below destabilizes that framework in several ways and presents an ideal vehicle for resolving the questions presented.

First, it permits plans to override state-court property divisions. A QDRO creates a vested, non-elective, irrevocable property interest for the alternate

payee. 29 U.S.C. § 1056(d)(3). The Plan's 2019 override altered the 2013 QDRO by imposing a different benefit form, actuarial basis, and cost allocation. The decision below allows plans to modify state-court property rights years after they vest, undermining the finality Congress guaranteed.

Second, it allows plans to impose § 205 burdens without § 205 protections. The Plan forced Petitioner into a § 205 framework—requiring an election, imposing a joint-life actuarial reduction, and allocating 100% of the cost to him—while withholding the statutory protections that accompany a true § 205 benefit, including spousal waiver, revocability, and participant control. ERISA does not permit this hybridization.

Third, it authorizes benefit forms not shown to exist under ERISA or the Plan. The Plan created a form that is neither a § 205 QJSA nor a § 206(d)(3) separate-interest survivor benefit. The courts then applied a § 205 SPD example to a § 206(d)(3) survivor benefit, effectively rewriting the QDRO and the Plan. Allowing plans to invent new benefit forms threatens national uniformity in pension administration.

Fourth, it erodes ERISA's anti-cutback and finality protections. The Plan's 2013 determination was final under its own terms. The 2019 override reduced Petitioner's vested benefit by imposing a joint-life actuarial reduction and reallocating cost. The decision below permits *post-hoc* reductions of vested rights, contrary to ERISA's anti-cutback rule and the statutory finality of QDROs.

This case is an ideal vehicle. The Administrative Record is complete and undisputed: the QDRO was entered and qualified in 2013, and the Plan unilaterally

altered that vested interest in 2019. Petitioner repeatedly demanded the governing plan provisions and statutory authority for the reduction, preserving the legal issues throughout the administrative process.

There are no factual disputes, no waiver problems, and no jurisdictional defects. The questions presented are purely legal: whether a court may uphold an ERISA denial on a rationale the administrator never invoked, and whether a fiduciary may override a § 206(d)(3) QDRO by imposing a benefit form not shown to exist in the Plan or in ERISA. Allowing these issues to occur threatens the uniformity ERISA was enacted to ensure.

## CONCLUSION

The petition for a writ of certiorari should be granted. The decision below allows courts to uphold a benefit reduction on grounds the administrator never invoked and untethered to any governing Plan provision, permitting the use of a § 205 spousal-annuity form absent from the Plan documents to alter a vested QDRO benefit—contrary to ERISA and this Court's administrative-law precedents.

Respectfully submitted,

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