No. 25-470

In the Supreme Court of the United States

SCOTT CANNON, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BLAISE CANNON,
Petitioner,

v.

BLUE CROSS AND BLUE SHIELD OF MASSACHUSETTS, INC.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Petitioner's state law wrongful death claim is statutorily preempted by the Employee Retirement Income Security Act of 1974, *as amended,* 29 U.S.C. §§ 1001 *et seq*. ("ERISA"), because it relates to an employee welfare benefit plan and the Court must refer to the plan to adjudicate that claim.

2. Whether Petitioner's state law wrongful death claim is barred by the doctrine of complete preemption because: (1) ERISA comprehensively regulates the field of employee benefit administration; (2) the Decedent or his Estate representative could have brought suit for the denial of coverage under ERISA; and (3) the Defendant owed the Decedent no duty of care independent of the plan.

RULE 29.6 STATEMENT

Blue Cross and Blue Shield of Massachusetts, Inc. ("BCBS" or "Respondent") discloses that it has no parent corporation and there is no publicly held corporation owning 10 percent (10%) or more of its stock.

TABLE OF CONTENTS

Questions Presented i

Rule 29.6 Statement..... ii

Table of Authorities..... v

Opinions Below..... 1

Introduction..... 1

Statement of the Case..... 6

a. Factual Background..... 6

b. Procedural Background 8

Arguments 12

I. Petitioner's Wrongful Death Claim is Barred By Statutory and Complete ERISA Preemption 12

A. The Wrongful Death Statute is derivative in nature and a mere extension of Decedent's personal injury claim..... 13

B. The ERISA Framework..... 16

1. ERISA statutory preemption bars the wrongful death claim. 17

2. Petitioner's wrongful death claim is completely preempted..... 24

Reasons for Denying the Petition 31

Misstatements and Deficiencies in the Petition 33

Conclusion 35

Appendix

Appendix A

Respondent's Statement of Undisputed Material Facts, United States District Court for the District of Massachusetts, *Scott Cannon, Individually and as the Personal Representative of the Estate of Blaise Cannon* v. *Blue Cross and Blue Shield of Massachusetts, Inc.*, No. 1:23-cv-10950 (Feb. 28, 2024) App-1

TABLE OF AUTHORITIES

Cases

Aetna Health Inc. v. *Davila*,
542 U.S. 200 (2004).....2, 5, 11, 12, 16, 25, 27-30

Alessi v. *Raybestos-Manhattan, Inc.*,
451 U.S. 504 (1981).....2, 16

California Division of Labor Standards Enforcement v. *Dillingham Construction, N.A., Inc.*,
519 U.S. 316 (1997).....25

Cannon v. *Blue Cross and Blue Shield of Massachusetts*,
132 F.4th 86
(CA1 2025) 1-6, 10, 19, 20, 24, 31-32, 34

Carpenters Local Union No. 26 v. *U.S. Fidelity & Guar. Co.*,
215 F.3d 136 (CA1 2000) 16, 17, 28

Cleghorn v. *Blue Shield of Cal.*,
408 F.3d 1222 (CA9 2005) 17

Corcoran v. *United HealthCare, Inc.*,
965 F.2d 1321 (CA5 1992) 31

Correa v. *Schoeck*,
479 Mass. 686, 693 (2018) 30

Danca v. *Private Health Care Systems, Inc.*,
185 F.3d 1 (CA1 1999) 17, 23

Drinkwater v. *Metropolitan Life Ins. Co.*,
473 F.2d 821 (CA1 1988) 26

Ellis v. *Ford Motor Co.*,
628 F. Supp. 849 (D.Mass. 1986) 15

FMC Corp. v. *Holliday*,
498 U.S. 52 (1990).....18

GGNSC Admin. Serv., LLC v. *Schrader*,
484 Mass. 181, 140 (2020) 2, 5, 13-15

Hampers v. *W.R. Grace & Co., Inc.*,
202 F.3d 44 (CA1 2000) 2, 9, 10, 24

Harris v. *Harvard Pilgrim Health Care, Inc.*,
208 F.3d 274 (CA1 2000) 19

Ingersoll–Rand Co. v. *McClendon*,
498 U.S. 133 (1990)..... 17-19

Massachusetts Mut. Life Ins. Co. v. *Russell*,
473 U.S. 134 (1985).....26, 27

Mertens v. *Hewitt Assoc.*,
508 U.S. 248 (1993).....31

Metro. Life Ins. Co. v. *Taylor*,
481 U.S. 58 (1987).....12, 28

New York State Conf. of Blue Cross & Blue Shield Plans v. *Travelers Ins. Co.*,
514 U.S. 645 (1995).....16, 18, 21

Otero Carrasquillo v. *Pharmacia Corp.,*
466 F.3d 13 (CA1 2006) 19

Pilot Life Ins. Co. v. *Dedeaux*,
481 U.S. 47 (1987).....2, 10, 17, 25, 32

Pryzbowski v. *U.S. Healthcare, Inc.*,
245 F.3d 266 (CA3 2004) 27

Reich v. *Rowe*,
20 F.3d 25 (CA1 1994) 27

Rutledge v. *Pharm. Care Mgmt. Ass'n*,
592 U.S. 80 (2020).....3, 4, 6, 11, 21, 22, 31, 32, 34

Settles v. *Golden Rule Ins. Co.*,
927 F.2d 505 (CA10 1991) 22, 28, 31

Shaw v. *Delta Air Lines, Inc.*,
463 U.S. 85 (1983).....32

Sisson v. *Lhowe*,
460 Mass. 705 (2011) 15

Spain v. *Aetna Life Ins. Co.*,
11 F.3d 129 (CA9 1993) 22, 28, 31

Tolton v. *American Biodyne, Inc.*,
48 F.3d 937 (CA6 1995) 22, 28, 31

Turner v. *Fallon Community Health Plan, Inc.*,
127 F.3d 196 (CA1 1997), *cert. denied,*
523 U.S. 1072 (1998)..... 4, 10-12, 22, 23-26

Varity Corp. v. *Howe*,
516 U.S. 489 (1996).....27

Vartanian v. *Monsanto Co.*,
14 F.3d 697 (CA1 1994) 3, 25

Statutes

29 U.S.C. § 1132 .....2, 3, 6, 11, 17, 23-26, 28

29 U.S.C. § 1144 .....2, 4, 17, 18, 35

M.G.L. c. 229, § 2.....1, 14, 16, 26

Other Authorities

Restatement (Second) of Judgments § 46 comment c (1982).....15

Willis & Peverall, *The 'Vanishing Trial': Arbitrating Wrongful Death*, 53 U.Rich. L.Rev. 1339 (2019).....15

Rules

S. Ct. R. 10.....31, 33

OPINIONS BELOW

The First Circuit's opinion affirming the decision of the District of Massachusetts is published in *Cannon* v. *Blue Cross and Blue Shield of Massachusetts*, 132 F.4th 86 (CA1 2025), and is reproduced in Petitioner's Appendix at Pet. App.5a-17a. The decision of the District of Massachusetts granting Respondent's Motion for Summary Judgment is unpublished, and is reproduced in Petitioner's Appendix at Pet. App.19a-28a.

INTRODUCTION

Petitioner's wrongful death claim is ERISA preempted. Petitioner's decedent, Blaise Cannon ("Blaise" or "Decedent") was a beneficiary in an employee welfare benefit plan ("Plan"). BCBS administered health benefits under the Plan. Decedent sought coverage for a brand name asthma inhaler. Based upon its medication policies and the information provided, BCBS denied the request. Decedent died shortly thereafter. Petitioner, Blaise's father, sued bringing, *inter alia*, a claim pursuant to the Massachusetts Wrongful Death Statute, M.G.L. c. 229, § 2 ("Wrongful Death Statute"). Petitioner claims that had BCBS provided coverage for the inhaler, Decedent's death could have been prevented. The District Court granted Respondent's Motion for Summary Judgment, holding that Petitioner's wrongful death claim was ERISA preempted. The First Circuit correctly affirmed summary judgment based on ERISA preemption.

ERISA provides "a uniform regulatory regime over employee benefit plans" that "includes expansive pre-emption provisions, which are intended to ensure that employee benefit plan regulation would be 'exclusively a federal concern.'" *Aetna Health Inc.* v. *Davila*, 542 U.S. 200, 208 (2004) (internal citations omitted) (quoting *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)). ERISA's sweeping preemptive force includes both statutory preemption pursuant to 29 U.S.C. § 1144(a) and complete preemption 29 U.S.C. § 1132(a). *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U.S. 47, 56-57 (1987).

The Wrongful Death Statute permits an estate to file a personal injury civil action for negligence against a tortfeasor. The claim is purely derivative and "wrongful death liability is but an extension of the decedent's personal injury claim." *GGNSC Admin. Serv., LLC* v. *Schrader*, 484 Mass. 181, 140 (2020) (internal citations omitted).

Pursuant to statutory preemption, ERISA supersedes "any and all State laws insofar as they may now or hereinafter relate to any [covered] employee benefit plan." 29 U.S.C. § 1144(a). "[A]n impermissible connection with ERISA exists when 'a court must evaluate or interpret the terms of the ERISA-regulated plan to determine liability under the state law cause of action.'" *Cannon*, 132 F.4th at 90 (quoting *Hampers* v. *W.R. Grace & Co., Inc.*, 202 F.3d 44, 52 (CA1 2000)).

With respect to complete preemption, § 1132(a) is "the civil enforcement provision of ERISA," and "provides that a civil action may be brought by a participant or beneficiary to recover benefits due him under the terms of the plan, or to clarify his rights to

future benefits under the terms of the plan." *Vartanian* v. *Monsanto Co.*, 14 F.3d 697, 700-701 (CA1 1994) (quoting 29 U.S.C. § 1132(a)(1)(B)). "The relief expressly provided is to secure benefits under the plan rather than damages for a breach of the plan." *Id.* at 198. "ERISA does not create compensatory or punitive damage remedies where an administrator of a plan fails to provide benefits due under the plan." *Id.*

The Petition rests on two incorrect contentions. First, with respect to statutory preemption, Petitioner relies upon on *Rutledge* v. *Pharm. Care Mgmt. Ass'n*, 592 U.S. 80 (2020), for the proposition that his wrongful death claim is not preempted. *See* Petition at 5-9. Petitioner interprets *Rutledge* to shield his wrongful death claim from preemption because the Wrongful Death Statute does not mention or refer to either ERISA or insurance. Therefore, according to Petitioner, the statute does not "relate to" an ERISA plan and thus escapes the broad reach of ERISA preemption. *Id.* at 7-9.

Second, with respect to complete preemption, Petitioner states that he is not seeking an ERISA remedy because that remedy is only available to an ERISA "participant" or "beneficiary," of which he is neither. *Id.* at 9-11. Petitioner concedes that wrongful death claims are not permitted under 29 U.S.C. § 1132(a). *Id.* at 10. Without addressing the well-settled caselaw from the Massachusetts Supreme Judicial Court holding that wrongful death claims are purely derivative, Petitioner contends without support that his wrongful death claim "is independent from ERISA's remedial framework and not preempted by ERISA." *Id.*

The First Circuit correctly rejected both contentions. First, with respect to statutory preemption, the First Circuit looked to 29 U.S.C. § 1144(a), the case law of this Court, its own precedent (*Turner* v. *Fallon Community Health Plan, Inc.*, 127 F.3d 196, 199 (CA1 1997), *cert. denied,* 523 U.S. 1072 (1998)), and the unanimous case law of sister circuits. *Cannon*, 132 F.4th at 89-90. "[A]n impermissible connection with ERISA exists when 'a court must evaluate or interpret the terms of the ERISA-regulated plan to determine liability under the state law cause of action.'" *Id.* at 90. Here, the First Circuit determined that the wrongful death claim "relates to" the Plan because it arises from BCBS's decision denying the claim for the inhaler. *Id.* at 90. Furthermore, the wrongful death claim "relates to" an ERISA regulated Plan because it "affords remedies for the breach of obligations under that plan." *Id.* at 90 (quoting *Turner*, 127 F.3d at 199). The First Circuit held that "ERISA statutorily preempts wrongful death claims alleging that a defendant insurer improperly denied a decedent benefits under an ERISA plan, causing death." *Id.* (quoting *Turner*, 127 F.3d at 197-98).

Addressing Petitioner's main argument, the First Circuit observed that *Rutledge* dealt with the question of preemption as it related to a state statute "seeking uniformity of costs" in the pharmaceutical industry. *Id.* at 90-91. The preemption question in this case involves a state statute that provides a purely derivative remedy and the denial of an allegedly covered benefit to a plan participant. This Court dealt with a "very different type of challenge" in *Rutledge*, "not to a denial of benefits but to a

generally applicable statute." *Id.* The First Circuit held that *Rutledge* did not change the analysis or outcome here. *Id.* at 90. Thus, Petitioner's wrongful death claim is preempted.

Complete preemption bars Petitioner's claim because Blaise could have sued for coverage of the inhaler had he survived and exhausted the administrative remedies available. However, because BCBS owed Blaise no legal duty independent of the Plan, *Davila*, 542 U.S. at 210, he could not have brought a negligence cause of action for personal injuries allegedly suffered from an adverse benefit determination. The First Circuit concurred, holding that the wrongful death claim was completely preempted because ERISA relief is limited to "secur[ing] benefits under the plan rather than damages for a breach of the plan." *Cannon*, 132 F.4th at 91. Here, Petitioner candidly seeks damages—not benefits—under the Plan. *See* Petition at 10.

The First Circuit rejected Petitioner's "attempts to evade this outcome" by arguing that he is not a Plan participant or beneficiary. *Cannon*, 132 F.4th at 91-92. Pursuant to well-settled Massachusetts law, "wrongful death actions are derivative from, not independent from, 'what would have been the decedent's own cause of action for the injuries causing her death.'" *Id.* at 92 (quoting *Schrader*, 140 N.E.3d at 399). The Massachusetts Supreme Judicial Court "has rejected the argument that wrongful death actions represent 'a separate legal interest.'" *Id.* (quoting *Schrader*, 140 N.E.3d at 402). Petitioner's wrongful death claim is thus "merely derivative of any claim [the Decedent] could have brought for damages based on breach of the

[plan]." *Id.* Because any negligence claim brought by the Decedent "would have been preempted by § 1132(a)(1)(B)," the First Circuit properly concluded that Petitioner's "derivative wrongful death claim is similarly preempted." *Id.*

There exist no grounds to grant the Petition. First, there is no split in the circuit courts with respect to the issue presented. Like the First Circuit, all circuit courts that have addressed the issue have concluded that state-based wrongful death claims are ERISA preempted. Second, the decision comports with existing Supreme Court case law, including *Rutledge*. Third, at most, Petitioner contends that the First Circuit misapplied well-settled Supreme Court case law (namely, *Rutledge*), which is an insufficient basis to grant the Petition. The Petition should be denied because there are no compelling reasons for this Court to review the Opinion of the First Circuit.

STATEMENT OF THE CASE

a. Factual Background

Blaise was a dependent of an employee of SessionM, Inc. ("SessionM") as of March 2020. *See* BCBS Statement of Facts ("SOF") at ¶14 Respondent's Appendix at Resp.App.3).[1] Blue Cross

[1] As both the district court and First Circuit noted, because Petitioner failed to respond to BCBS's SOF, the factual allegations in Respondent's SOF were deemed admitted. *See* MSJ Decision (Pet.App.21a); *Cannon*, 132 F.4th at 89 (Pet.App.10a). Each factual allegation in the SOF is supported by reference to the pertinent documents of record that are not

and Blue Shield of Massachusetts, Inc. ("BCBS") issued to SessionM a Blue Care Elect Preferred Provider Plan (the "Plan"). *Id.* at ¶7 (Resp.App.2). BCBS administered health benefits under the Plan, which was sponsored and maintained by SessionM. *Id.* at ¶10. The Plan provided health insurance benefits to SessionM employees and their covered dependents, including domestic partners. *Id.* at ¶9. Decedent was a Plan benficiary. *Id.* at ¶12.

On or about March 18, 2020, Blaise sought a Wixela Inhub inhaler for the treatment of asthma. *Id.* at ¶ 23 (Resp.App.4-5). The Medication Request Form indicated a primary diagnosis of "Mild intermittent asthma, uncomplicated." *Id.* at ¶ 25 (Resp.App.5). BCBS reviewed the request with reference to its Medical Policy # 011: "Asthma and Chronic Obstructive Pulmonary Disease Medication Management criteria." SOF at ¶ 26 (Resp.App.5). BCBS denied the request because there was no evidence that Blaise first tried other inhalers as required by the Policy. *Id.* at ¶ 28 (Resp.App.5).

In its denial letter to the Decedent dated March 25, 2020 ("Denial Letter"), BCBS explained that its "Pharmacy Operations Unit considered" his request for coverage of Wixela Inhub to treat asthma. *Id.* at ¶ 29 (Resp.App.5). BCBS "could not approve coverage of this medication because there was no documentation of trying one prescription inhaled steroid, inhaled beta-agonist, inhaled mast cell stabilizer, oral albuterol, or theophylline product within the previous 130 days, and there was no

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here reproduced because the allegations now stand on their own, having been deemed admitted.

documentation of trying two" generic medications as required by the Policy. *Id.* The Denial Letter advised where on the BCBS website Blaise could find Medical Policy # 011 and the appeal process, including how to expedite review if urgent care was required. *Id.* at ¶ 30 (Resp.App.6). BCBS received no response to the Denial Letter. *Id.* at ¶ 31 (Resp.App.6). Neither Blaise nor anyone on his behalf appealed. *Id.* at ¶ 32 (Resp.App.6).

b. Procedural Background

On March 31, 2023, Petitioner (Decedent's father) filed a six-count state law Complaint in Middlesex County, Massachusetts, Superior Court. *See* MSJ Decision. (Pet.App.21a). Petitioner alleged that Blaise "sought coverage for Wixela Inhub inhaler for the treatment of asthma under the Policy in March 2020." *Id.* Petitioner alleged that BCBS denied the request and Blaise thereafter died of complications from asthma. SOF at ¶¶ 10-12 (Resp.App.3).

On May 1, 2023, BCBS removed the case to the District of Massachusetts and moved to dismiss on ERISA preemption. *See* MSJ Decision. (Pet.App.22a). Petitioner objected to BCBS's Motion, contending, *inter alia*, that there was insufficient evidence to show that the Plan was subject to ERISA. After a hearing, the Court reserved decision on the Motion and allowed "a brief period of discovery" limited to the Plan and related documents. *Id.*

On November 7, 2023, after further briefing, the Court denied the Motion to Dismiss because of disputed facts but set deadlines for discovery and

motions for summary judgment on the ERISA preemption issue.[2] *See id.*

BCBS moved for summary judgment on February 28, 2024, arguing that Petitioner's claims were both statutorily and completely preempted. *Id.* Petitioner objected to BCBS's Motion but conceded that claims for "declaratory judgment, breach of contract, bad faith, and loss of consortium may be preempted." *Id.* Petitioner contended that his wrongful death and punitive damages claims were not preempted because the Wrongful Death Statute does not refer to insurance or ERISA. Furthermore, Petitioner contended that he did not seek ERISA benefits because the Plan beneficiary—Blaise—had died and was therefore unable himself to assert ERISA claims. According to Petitioner, because the wrongful death claim could only be pursued by the Estate, it was not ERISA preempted.

On August 22, 2024, the District of Massachusetts granted BCBS's Motion for Summary Judgment, holding that all of Petitioner's claims were preempted by ERISA and Petitioner had failed to state an ERISA claim. *Id.* (Pet.App.19a-28a). The District Court held that the relatedness requirement of "Section 514(a) is satisfied if 'a court must evaluate or interpret the terms of the ERISA-regulated plan to determine liability under the state law cause of action.'" *Id.* (Pet.App.24a) (quoting *Hampers*, 202 F.3d at 52). The District Court further

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[2] Even if this Court were to determine that Petitoner's wrongful death claim is not preempted, BCBS would move to dismiss in the District Court based on the Petitioner's failure to exhaust administrative remedies.

held that "state law claims relate to an ERISA plan if they arise from the enforcement of rights under an ERISA-regulated plan." *Id.* (Pet.App.24a) (citing *Dedeaux*, 481 U.S. at 52-57; *Hampers*, 202 F.3d at 49-50; *Turner*, 127 F.3d at 199). The district court correctly concluded that Petitioner's wrongful death and punitive damages claims were preempted "because the Court would be required to consult the Policy to resolve them and because they arose from the alleged improper denial of benefits." *Id.* (Pet.App.24a). Accordingly, Judgment was entered for BCBS.

Petitioner appealed the Order and Judgment to the First Circuit. On appeal, Petitioner contended only that his wrongful death claim survived, conceding that his punitive damages claim was preempted. Petitioner conceded that any "state law claims that could have been brought by Blaise Cannon, such as breach of contract or bad faith, are not challenged as being preempted by ERISA." Petitioner contended that his wrongful death claim was not ERISA-preempted because the Wrongful Death Statute nowhere references either ERISA or insurance. Thus, Petitioner claimed, the Wrongful Death statue does not "relate to" an ERISA plan. Petitioner also argued that because ERISA benefits are only available to Plan participants and beneficiaries, of which he was neither, he is not limited to ERISA remedies and can pursue a wrongful death remedy.

The First Circuit disagreed and held that Petitioner's wrongful death claim was subject to both statutory and complete ERISA preemption. Statutory preemption applied to Petitioner's

wrongful death claim because the Wrongful Death Statute purports to provide a state law remedy "'for what is in essence a plan administrator's refusal to pay allegedly promised benefits,' and '[i]t would be difficult to think of a state law that 'relates more closely to an employee benefit plan than one that affords remedies for the breach of obligations under that plan.'" *Id.* (quoting *Turner*, 127 F.3d at 197-98).

It matters not how Petitioner attempts to portray the wrongful death claim. The wrongful death claim is based entirely on Respondent's denial of Decedent's request for coverage of an inhaler. The First Circuit correctly concluded that the wrongful death claim "relates to" the Plan and is thus statutorily ERISA-preempted.

In connection with the statutory preemption argument, the First Circuit rejected Petitioner's interpretation of and reliance upon *Rutledge*. *Id.* at 90-91. The Court noted that *Rutledge* dealt with a "very different type of challenge, not to a denial of benefits but to a generally applicable statute." *Id.* Unlike *Rutledge*, this case does "not challenge enforcement of a statute seeking uniformity of costs regardless of whether any costs were passed on to ERISA or non-ERISA plans." *Id.* at 91. This Court's ruling in *Rutledge* does not change the analysis or outcome for Petitioner. *Id.* at 90.

The First Circuit also correctly determined that the wrongful death claim was completely preempted pursuant to § 1132(a). Complete preemption applies to any state law cause of action that "duplicates, supplements, or supplants the ERISA civil enforcement remedy…" *Id.* at 91 (quoting *Aetna Health Inc.* v. *Davila*, 542 U.S. 200,

209 (2004)). Any state law that "conflicts with the clear congressional intent to make the ERISA remedy exclusive … is therefore preempted." *Id.* (quoting *Davila*, 542 U.S. at 209). Furthermore, if a participant or beneficiary "'could have brought his claim under ERISA § 502(a)(1)(B), and where there is no independent legal duty that is implicated by a defendant's actions,' preemption applies." *Id.* (quoting *Metro. Life Ins. Co.* v. *Taylor*, 481 U.S. 58, 66 (1987)).

Here, the Decedent, had he survived, could have brought a claim under ERISA § 502(a)(1)(B) for the denial of the inhaler. The Decedent could not, however, have brought a negligence cause of action for injuries allegedly suffered from the adverse benefit determination. The First Circuit held that Petitioner's wrongful death claim was completely preempted because it impermissibly seeks "damages for a breach of the plan" instead of "to secure benefits under the plan." *Id.* at 91 (quoting *Turner*, 127 F.3d at 198). The First Circuit affirmed the District Court's Decision granting BCBS's Motion for Summary Judgment. Petitioner filed a Petition for Rehearing En Banc. The First Circuit denied that Petition on May 14, 2025.

ARGUMENTS

I. Petitioner's Wrongful Death Claim is Barred By Statutory and Complete ERISA Preemption

A. The Wrongful Death Statute is derivative in nature and a mere extension of Decedent's personal injury claim.

Petitioner's sole argument is that his wrongful death claim escapes ERISA preemption. "In 1840, Massachusetts was the first State to enact a Wrongful Death Statute." *Schrader*, 484 Mass. 181, 187 (2020). In *Schrader*, the Supreme Judicial Court examined the history of the statute, its amendments, and the law of other jurisdictions and determined that a beneficiary's right to recover under the Wrongful Death Statute was purely derivative and dependent on the decedent's right to recover for negligence had he survived. *Id.* at 403-407; *see also Fabiano* v. *Philip Morris USA Inc.*, 492 Mass. 361 (2023) (citing *Schrader* and holding that because the claim is purely derivative, beneficiaries may only bring a wrongful death action if the statute of limitations for the underlying tort action had not expired at time of decedent's death).

The Wrongful Death Statute states, in pertinent part:

> "A person who (1) *by his negligence causes the death* of a person, or (2) by willful, wanton or reckless act causes the death of a person *under such circumstances that the deceased could have recovered damages for personal injuries if his death had not resulted*, …. shall be liable in damages in the amount of: (1) the fair monetary value

> of the decedent to the persons entitled to receive the damages recovered, as provided in section one, including but not limited to compensation for the loss of the reasonably expected net income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice of the decedent to the persons entitled to the damages recovered; (2) the reasonable funeral and burial expenses of the decedent; (3) punitive damages in an amount of not less than five thousand dollars in such case as the decedent's death was caused by the malicious, willful, wanton or reckless conduct of the defendant or by the gross negligence of the defendant; … A person shall be liable for the negligence or the willful, wanton or reckless act of his agents or servants while engaged in his business to the same extent and subject to the same limits as he would be liable under this section for his own act. *Damages under this section shall be recovered in an action of tort by the executor or administrator of the deceased.*"

G.L. c. 229, § 2 (emphasis added).

Because the claim of a beneficiary is derivative, "wrongful death liability is but an extension of the decedent's personal injury claim." *Schrader,* 140 N.E.3d at 402 (quoting Willis & Peverall, *The*

'Vanishing Trial': Arbitrating Wrongful Death, 53 U.Rich. L.Rev. 1339, 1352 (2019)). The Wrongful Death Statute does not create a new cause of action; it simply expands the remedies otherwise available for a negligence claim. "This means that 'the beneficiaries of the death action can sue only if the decedent would still be in a position to sue.'" *See id.* (quoting *Ellis* v. *Ford Motor Co.*, 628 F. Supp. 849, 858 (D.Mass. 1986), quoting Restatement (Second) of Judgments § 46 comment c (1982)). Indeed, the Wrongful Death Statute conditions compensation only "under such circumstances that the deceased could have recovered damage for personal injuries if his death had not resulted." *Schrader*, 140 N.E.3d at 404. As the *Schrader* Court observed:

> "[T]he Legislature expressly tethered a wrongful death claim to tortious conduct that caused the decedent's personal injury. In other words, where no cause of action for wrongful death exists unless the decedent could have sued for personal injury, then the wrongful death claim necessarily derives from the underlying tort. As we have noted in other contexts, 'claims for recovery based on personal injury, wrongful death, or loss of consortium are not distinct when they derive from the same constellation of facts.'"

Id. (quoting *Sisson* v. *Lhowe*, 460 Mass. 705, 710 (2011)). "Thus, the decedent's 'executor or administrator' can bring a negligence claim pursuant

to G.L. c. 229 § 2 only 'under such circumstances' in which the decedent could have raised an ordinary negligence claim." *Id.*

B. The ERISA Framework

"ERISA is a comprehensive statutory scheme that governs employee benefit plans." *Carpenters Local Union No. 26* v. *U.S. Fidelity & Guar. Co.*, 215 F.3d 136, 139 (CA1 2000). "When Congress conceived the ERISA scheme, it made manifest its intention to 'protect…the interests of participants in employee benefit plans and their beneficiaries…by establishing standards of conduct, responsibility, an obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies.'" *Id.* at 140 (quoting *New York State Conf. of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645, 657 (1995)). ERISA does not require employers "to provide any given set of minimum benefits," but it "envisions administrative oversight, imposes criminal sanctions, and establishes a comprehensive civil enforcement scheme." *Travelers*, 514 U.S. at 1674.

Because the "purpose of ERISA is to provide a uniform regulatory regime over employee benefit plans," ERISA "includes expansive pre-emption provisions, which are intended to ensure that employee benefit plan regulation would be 'exclusively a federal concern.'" *Aetna Health Inc.* v. *Davila*, 542 U.S. 200, 208 (2004) (internal citations omitted) (quoting *Alessi*, 451 U.S. at 523). Consequently, ERISA contains a broad preemption clause that states its provisions "supersede any and

all State laws insofar as they may now or hereafter relate to any employee benefit plan." *Dedeaux*, 481 U.S. at 45. (quoting 29 U.S.C. § 1144(a)).

"There are two strands to ERISA's powerful preemptive force." *Cleghorn* v. *Blue Shield of Cal.*, 408 F.3d 1222, 1225 (CA9 2005). This broad preemption regime includes both statutory preemption ("statutory," "express," and/or "514(a)" preemption), pursuant to 29 U.S.C. § 1144(a) and complete preemption ("complete," "conflict," and/or "502(a)" preemption) pursuant to 29 U.S.C. § 1132(a). *Dedeauxs,* 481 U.S. at 47, 56-57. "ERISA preempts, *inter alia*, two kinds of state laws: (1) laws that amount to 'alternative enforcement mechanisms' to those in ERISA (29 U.S.C. § at 1132(a)); and (2) laws that present the threat of conflicting and inconsistent regulation that would frustrate uniform national administration of ERISA plans." *Danca* v. *Private Health Care Systems, Inc.*, 185 F.3d 1, 7 (CA1 1999) (internal citations omitted). A court "must decide whether [statutory and complete preemption], singly or in combination, pre-empt the cause of action in this case." *Ingersoll–Rand Co.* v. *McClendon*, 498 U.S. 133, 137 (1990).

1. ERISA statutory preemption bars the wrongful death claim.

Pursuant to 29 U.S.C. § 1144(a), statutory preemption supersedes "any and all State laws insofar as they may now or hereinafter relate to any [covered] employee benefit plan." *Carpenters*, 215 F.3d at 139 (quoting 29 U.S.C. § 1144(a)). This "pre-emption clause is conspicuous for its breadth."

McClendon, 498 U.S. at 138 (quoting *FMC Corp.* v. *Holliday*, 498 U.S. 52, 58 (1990)). With respect to the breadth of § 1144(a) preemption, this Court held:

> The key to § 514(a) is found in the words 'relate to.' Congress used those words in their broad sense, rejecting more limited pre-emption language that would have made the clause 'applicable only to state laws relating to the specific subjects covered by ERISA.' Moreover, to underscore its intent that § 514(a) be expansively applied, Congress used equally broad language in defining the 'State law' that would be pre-empted. Such laws include 'all laws, decisions, rules regulations, or other State action having the effect of law.'

Id. at 138-139 (internal citations omitted).

Because "relate to" is not self-defining, "[w]e must simply go beyond the unhelpful text and the frustrating difficulty of defining its key term, and look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive." *Id.* at 140 (quoting *Travelers*, 514 U.S. at 656). In enacting § 1144(a), this Court found that Congress intended:

> to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden

> of complying with conflicting directives among States or between States and the Federal Government ..., [and to prevent] the potential for conflict in substantive law ... requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction.

McClendon, 498 U.S. at 142.

The First Circuit found that statutory preemption occurs when "a state cause of action relates to an employee benefit plan [and] where the cause of action requires 'the court's inquiry [to] be directed to the plan.'" *Otero Carrasquillo* v. *Pharmacia Corp.,* 466 F.3d 13, 20 (CA1 2006) (citing *McClendon*, 498 U.S. at 140–42); *see also Harris* v. *Harvard Pilgrim Health Care, Inc.*, 208 F.3d 274 (CA1 2000) (holding that "ERISA will be found to preempt state-law claims if the trier of fact necessarily would be required to consult the ERISA plan to resolve the Petitioner's claims").

The wrongful death claim is preempted because the Court is required to consult the Plan with respect to the benefit coverage determination. *See Otero*, 466 F.3d at 20. Here, the Plan was the sole source of any duty or obligation owed by BCBS to Blaise. This is evident from the allegations of the Complaint:

> 7. Defendant provided a policy of health insurance to Decedent, Blaise Cannon.
>
> …

> 9. Blaise Cannon sought coverage for Wixelia Inhub inhaler for the treatment of asthma under the Policy in March 2020.
> 10. Blaise Cannon was denied coverage for the treatment under the Policy.
> 11. Blaise Cannon was not provided coverage for the treatment by Defendant.
> …
> 13. Had Blaise Cannon received the treatment he sought, his complications from asthma and death could have been prevented and avoided.
> 14. Blaise Cannon was insured under the Policy for health insurance benefits, including inhalers and other medical procedures related to his asthma.
> 15. Blaise Cannon was wrongfully denied benefits under the Policy.
> …
> 22. The Policy was a contract between Blaise Cannon and Defendant.
> …
> 24. Defendant failed to perform its contractual obligations under the Policy.
> 25. Defendant breached the Policy by failing to provide Blaise Cannon benefits under the Policy.

See Compl., D. Mass. ECF No. 1-1. The Plan specifies what duties BCBS owed to Blaise with respect to his claim for Plan benefits. To determine whether BCBS correctly denied the claim for the inhaler, the Court must look – first and last – to the Plan. The wrongful death claim simply cannot be adjudicated without

reference to the Plan. Consequently, the claim is ERISA-preempted.

Petitioner contends that *Rutledge* v. *Pharmaceutical Care Mgmt. Ass'n.*, 592 U.S. 80 (2020), saves his wrongful death claim from preemption because the Wrongful Death Statute does not refer to ERISA or insurance regulation. *Rutledge*, however, is distinguishable. *Rutledge* concerned a claim brought by the Pharmaceutical Care Management Association relating to a state law enacted to regulate the reimbursement rates for prescription drugs set by Pharmacy Benefit Managers. In assessing whether the state law was related to an ERISA plan, this Court looked to case law where adjudication of a claim did not implicate any specific ERISA plan.

The First Circuit determined that *New York State Conf. of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645 (1995), controlled. *Travelers* involved commercial insurers and their trade associations contesting a state statute that imposed surcharges for certain patients. There was no specific plan, participant, or benefit determination at issue. This Court found that the state law statutes in both cases were "merely a form of cost regulation." *Rutledge*, 592 U.S. at 2020. Neither *Rutledge* nor *Travelers* concerned a specific benefit plan or claim determination. Neither case required reference to a specific plan to adjudicate the claim presented.

This action, on the other hand, pertains to BCBS's denial of a specific health care benefit claim by a participant's (the Decedent's) doctor seeking coverage for a certain inhaler under specific Plan

terms. The denial was based upon specific Plan documents and BCBS policies.

Rutledge is consistent with a determination that the Wrongful Death Statute is preempted. As stated in *Rutledge,* ERISA preempts state laws "that require providers to structure benefit plans in particular ways, such as by requiring payment of specific benefits," and that "govern[] a central matter of plan administration or interferes with nationally uniform plan administration." 592 U.S. at 87. Here, the Wrongful Death Statute impermissibly interferes with administration of the Plan because it provides an alternate means of challenging a benefit determination.

The courts of appeals that have addressed whether ERISA preempts a state-law wrongful death claim have unanimously found the claim preempted. *See*, *e.g.*, *Tolton* v. *American Biodyne, Inc.*, 48 F.3d 937, 942 (CA6 1995) (wrongful death claim related to ERISA plan as it alleged the "improper refusal to authorize benefits"); *Spain* v. *Aetna Life Ins. Co.*, 11 F.3d 129, 131 (CA9 1993) (wrongful death action preempted as it "'relates to" the administration and disbursement of ERISA plan benefits"); *Settles* v. *Golden Rule Ins. Co.*, 927 F.2d 505 (CA10 1991) (wrongful death claim "related" to ERISA plan as it required a finding that the defendant wrongfully denied coverage under the plan).

The First Circuit previously addressed the same preemption issue regarding the Wrongful Death Statute in *Turner*, 127 F.3d 196. This Court denied Turner's writ of certiorari (*cert. denied* 523 U.S. 1072 (1998)). The decedent in *Turner*—a beneficiary of her husband's ERISA health plan—

died after being denied experimental cancer treatment. Ruling on the defendant's motion for summary judgment, the district court determined that the wrongful death claim "related to" the ERISA plan because it arose from the plan fiduciary's adverse benefit determination under the terms of the plan. *Id.* The appeal to the First Circuit centered on Petitioner's contention that the state law claims should not be preempted because they provide remedies where none existed under ERISA. *Turner*, 127 F.3d at 199. The First Circuit affirmed, holding that the plaintiff's wrongful death claim was ERISA-preempted. With respect to the relatedness test, the First Circuit held that it "would be difficult to think of a state law that 'relates' more closely to an employee benefit plan than one that affords remedies for the breach of obligations under that plan." *Id.*

In this case, Decedent, had he lived, could have paid for the inhaler and then sued BCBS "to recover benefits due to him under the terms of the plan." *Id.* at 198. He could have sued to clarify his rights to future benefits under the Plan. 29 U.S.C. § 1132(a). He could not, however, have recovered consequential damages in a negligence cause of action against BCBS as a result of its benefit determination. *See Danca*, 185 F.3d at 7 (claims of negligence constituted "alternate enforcement mechanisms under ERISA § 502(a)"). As discussed, *supra*, the Wrongful Death Statute is derivative in nature. Because the Decedent could not have brought a negligence cause of action against BCBS, it follows that the Petitioner is similarly barred.

The Wrongful Death Statute does not create causes of action. It adds remedies to existing causes

of action. In this case, it adds a remedy to a personal injury negligence action (which ERISA does not permit) and one that the Decedent could not have brought against BCBS. Here, as in in *Turner*, the wrongful death claim relates to the ERISA Plan and is therefore preempted because it "affords [a] remed[y] for the breach of obligations under the [P]lan." 127 F.3d at 199. Concluding otherwise would result in conflicting and inconsistent state and federal regulation of the same employee benefit space.

Here, the Wrongful Death Statute "relates to" the Plan and is therefore ERISA preempted because the Court "must evaluate or interpret the terms of the ERISA-regulated plan to determine liability under the state law cause of action." *See Cannon*, 132 F.4th at 90 (quoting *Hampers*, 202 F.3d at 52). The wrongful death claim "relates to" this ERISA-regulated Plan because it arises from BCBS's adverse benefit determination wherein the claim for treatment (the inhaler) was denied. *See Turner*, 127 F.3d at 199-200. As a result, the wrongful death claim is statutorily preempted.

2. Petitioner's wrongful death claim is completely preempted.

Complete preemption bars Petitioner's wrongful death claim. Petitioner concedes that "[n]o claim for wrongful death can be brought under 29 U.S.C. § 1132(a)." *See* Pet. at 10. Petitioner contends that the wrongful death claim is not completely preempted because: (1) the Petitioner is not a Plan participant or beneficiary and therefore could not

bring a claim under § 1132(a); (2) the wrongful death claim could not have been brought by the Decedent because the claim did not arise until his death; and (3) the Wrongful Death Statute provides a remedy that is not available under ERISA. *See id. at* 11-14. None of these contentions exempts the wrongful death claim from preemption.

With respect to complete preemption, § 1132(a) is "the civil enforcement provision of ERISA," and "provides that a civil action may be brought by a participant or beneficiary to recover benefits due him under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." *Vartanian*, 14 F.3d at 700-701 (CA1 1994) (quoting 29 U.S.C. § 1132(a)(1)(B)). As stated by this Court, the "policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA." *Davila*, 542 U.S. at 209-210 (quoting *Dedeaux*, 481 U.S. at 54).

In this regard, complete preemption has been analyzed in terms of traditional field preemption, where "Congress evidences an intent to occupy a given field, any state law falling within that field is preempted." *Silkwood* v. *Kerr-McGee Corp.*, 464 U.S. 238, 249 (1984); *see also California Division of Labor Standards Enforcement* v. *Dillingham Construction, N.A., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring). Here, Congress specified with its enforcement mechanism the *exclusive* remedies available to plan participants contesting a benefit determination. Because the Wrongful Death Statute

permits the filing of a negligence-based personal injury action, which remedy is excluded from ERISA's enforcement mechanism, the claim is barred under the doctrine of field or complete preemption.

As discussed, *supra*, the Wrongful Death Statute is derivative and only permits the estate executor and/or administrator to bring a claim if the Decedent could have brought a personal injury negligence cause of action against the tortfeasor. M.G.L. c. 229 § 2. It is undisputed that the Plan is an ERISA plan. Thus, with respect to challenging the denial of his request for coverage of the inhaler, Decedent was limited to seeking those remedies specifically permitted through ERISA's civil enforcement mechanism, § 1132(a). It follows that because Decedent could not have brought a negligence cause of action against BCBS as a result of its benefit coverage determination, Petitioner's derivative wrongful death claim is likewise precluded. The claim is completely preempted because the Decedent could have brought a civil action pursuant to § 1132(a) for the denial of the inhaler and BCBS owed Decedent no other legal duty independent of the ERISA Plan.

"ERISA does not create compensatory or punitive damage remedies where an administrator of a plan fails to provide benefits due under the plan." *Turner*, 127 F.3d at 198 (citing *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U.S. 134 (1985); *Drinkwater* v. *Metropolitan Life Ins. Co.*, 473 F.2d 821, 825 (CA1 1988)). This "is not a minor technicality: damage awards may increase effective coverage but may also add significantly to the costs of coverage." *See id.* at 198-199. The plan fiduciary

"owes a duty to other plan participants who have a continuing interest in the solvency of the plan and the expenditure of its funds for *covered* medical expenses." *Id.* at 200 (emphasis in original) (citing *Varity Corp.* v. *Howe*, 516 U.S. 489 (1996)). This Court "has adamantly ruled that ERISA's express remedies are a signal to courts not to create additional remedies of their own." *See id.* at 199 (citing *Russell*, at 145-48; *Reich* v. *Rowe*, 20 F.3d 25, 31-33 (CA1 1994).

"If a participant or beneficiary believes that benefits promised to him under the terms of the plan are not provided, he can bring suit seeking provision of those benefits." *Davila*, 542 U.S. at 210. If coverage of promised benefits is denied, the plan participants can pay "for the treatment of benefits themselves and then [seek] reimbursement through a § 502(a)(1)(B) action, or [seek] a preliminary injunction." *Id.* (citing *Pryzbowski* v. *U.S. Healthcare, Inc.*, 245 F.3d 266, 274 (CA3 2004)). This Court has held:

> It follows that if an individual brings suit complaining of a denial of coverage for medical care, where the individual is entitled to such coverage only because of the terms of an ERISA-regulated employee benefit plan, and where no legal duty (state or federal) independent of ERISA or the plan terms is violated, then the suit falls 'within the scope of' ERISA § 502(a)(1)(B). In other words, if an individual, at some point in time, could have brought his claim under

> ERISA § 502(a)(1)(B), and where there is no other independent legal duty that is implicated by a defendant's actions, then the individual's cause of action is completely pre-empted by ERISA § 502(a)(1)(B).

See id. at 210 (quoting *Taylor*, 481 U.S. at 66 (1987)). "Therefore, any state-law cause of action that duplicates, supplements or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted." *See id.* at 209. On the other hand, those "state laws which touch upon enforcement but have no real bearing on the intricate web of relationships among the principal players in the ERISA scenario (e.g., the plan, the administrators, the fiduciaries, the beneficiaries, and the employer) are not subject to preemption on this basis." *Carpenters*, 215 F.3d at 141.

In addition to the First Circuit, all circuits that have decided the issue have likewise found that state wrongful death claims are subject to ERISA's complete preemption. *Tolton,* 48 F.3d at 943 (wrongful death claim completely preempted "even though ERISA does not provide the full range of remedies available under state law"); *Spain*, 11 F.3d at 131 (wrongful death action completely preempted even though civil enforcement mechanism excludes remedies); *Settles*, 927 F.2d at 510 (wrongful death claim completely preempted because § 1132(a) is the "exclusive vehicle for actions" alleging improper benefits determinations).

Davila is instructive. In *Davila*, two plan participants brought separate actions against their insurer "for alleged failures to exercise ordinary care in the handling of coverage decisions," in violation of the Texas Health Care Liability Act (THCLA). *Id.* at 204. The participants contended that the "complained-of actions violate legal duties that arise independently of ERISA or the terms of the employee benefit plans at issue," and that a "duty of ordinary care" existed, creating an "independent legal duty." *Id.* at 212. The Court of Appeals held that because the claims sounded in tort, not the contract-based claims permitted by § 502(a)(1)(B), the claims were not ERISA-preempted. *Id.* at 206.

This Court reversed. Regardless of the theory espoused, the participants brought "suit only to rectify a wrongful denial of benefits promised under ERISA-regulated plans, and [did] not attempt to remedy any violation of a legal duty independent of ERISA." *Id.* at 214. Interpretation of the terms of the ERISA plan formed "an essential part of their THCLA claim, and THCLA liability would exist here only because of petitioners' administration of ERISA-regulated benefit plans." *Id.* at 213. The "mere fact that the state cause of action attempts to authorize remedies beyond those authorized by ERISA § 502(a) put the cause of action outside the scope of the ERISA civil enforcement mechanism." *Id.* at 215. "The limited remedies available under ERISA are an inherent part of the 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans." *Id.* (citing *Dedaux*, 481 U.S. at 55).

The "only action complained of was Aetna's refusal to approve payment for Davila's Vioxx prescription. Further, the only relationship Aetna had with Davila was its partial administration of Davila's employer's benefit plan." *Id.* at 211. Therefore, the THCLA claim was completely preempted.

Davila compels the same result here. To bring a negligence cause of action, Petitioner must show that a duty existed between Decedent and BCBS, BCBS breached that duty, and the breach proximately caused Decedent's death. *See Correa* v. *Schoeck*, 479 Mass. 686, 693 (2018) (quoting *Jupin* v. *Kask*, 447 Mass. 141, 146 (2006)). To adjudicate the elements of this claim, the Court must look to the Plan. How else can this Court determine what duty BCBS owed to the Decedent, where BCBS's duties are defined by the Plan?

The relationship between Decedent and BCBS was governed solely by the Plan. The benefit determination at issue was governed solely by the Plan. As the district court observed, Petitioner has failed "to identify any duty BCBS owed [Decedent] other than the duty prescribed by the Policy itself." *See* Decision (Pet.App..25a, n.3). Regardless of how the claims are framed, because Petitioner "[brought] suit only to rectify a wrongful denial of benefits promised under [an] ERISA-regulated plan[]," the wrongful death claim is completely preempted. *Davila*, 542 U.S. at 214.

REASONS FOR DENYING THE PETITION

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." *See* S. Ct. R. 10. This Court considers review of matters only where "compelling reasons" exist. *Id.* This requirement is met when (a) there is conflict amongst the federal circuit courts, (b) "a state court of last resort has decided an important federal question in a way that conflicts" with another state court of last resort or a federal circuit court, and (c) a federal court of appeals or state court "has decided an important question of federal law that … should be settled by this Court" or an important federal question "in a way that conflicts with relevant decisions of this Court." *Id.* This Court should refuse the invitation for review because there exist no "compelling reasons" here to grant certiorari. *Id.*

First, no conflict exists amongst the circuit courts regarding the issue presented. *Id.* at 10(a). All circuit courts that have addressed whether a state-based wrongful death claim is preempted by ERISA have all decided the issue in the affirmative. *See Cannon*, 132 F.4th at 90; *Tolton*, 48 F.3d at 942; *Spain*, 11 F.3d at 131 (CA9 1993); *Corcoran* v. *United HealthCare, Inc.*, 965 F.2d 1321, 1332 (CA5 1992), abrogated on other grounds by *Mertens* v. *Hewitt Assoc.*, 508 U.S. 248 (1993); *Settles* v. *Golden Rule Ins. Co.*, 927 F.2d 505, 508-509 (CA10 1991). With circuit court unanimity, the issue does not beg this Court's review.

Second, the decision of the First Circuit comports with existing Supreme Court case law. Petitioner incorrectly argues that *Rutledge* v. *Pharm.*

Care Mgmt. Ass'n, 592 U.S. 80 (2020), controls and requires a different result. As the First Circuit observed, 132 F.4th at 90-91, Petitioner's reliance on *Rutledge* is misplaced. First, unlike *Cannon*, *Rutledge* did not concern a denial of a participant's benefit request. Rather, the petitioner companies in *Rutledge* sought to "challenge enforcement of a [state] statute seeking uniformity of costs regardless of whether any costs are passed on to ERISA or non-ERISA plans." *Cannon*, 132 F.4th at 91. The cases bear no resemblance to each other. Here, Petitioner's entire appeal focuses on whether ERISA preempts a state wrongful death remedy. *Rutledge* is not relevant because its facts and legal issues are wholly distinguishable from *Cannon*.

Cannon is consistent with relevant Supreme Court precedent. In *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U.S. 41, (1987), this Court "emphasized that the pre-emption clause is not limited to 'state laws specifically designed to affect employee benefit plans.'" *Id.* at 48 (quoting *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 98 (1983). Rather, state law causes of action that are based upon an "alleged improper processing of a claim for benefits under an employee benefit plan" are preempted. *Id.* Here, Petitioner's wrongful death claim is based entirely on Respondent's processing and denial of the Decedent's benefit claim relating to an inhaler. The fact that the Massachusetts' Wrongful Death Statute does not mention ERISA is irrelevant.

Even if this Court were to find that the First Circuit misapplied *Rutledge*, that would not provide a reason for granting certiorari. At most, Petitioner claims that the First Circuit misapplied settled

ERISA law. Pursuant to S. Ct. R. 10, a petition "is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Thus, assuming that the First Circuit misapplied *Rutledge*—which it did not—that alone does not provide a reason for review.

Finally, the issue presented is not an "important question of federal law that has not been, but should be, settled by this Court." S. Ct. R. 10(c). Rather, the decision of the First Circuit—and of all circuit courts that have addressed the issue—is the only reasonable interpretation of the scope of ERISA preemption. Pursuant to ERISA, Decedent's sole remedy for an allegedly improper benefit denial is the benefit itself—in this case, the value of the inhaler. The Decedent possessed no negligence remedy against the Respondent for the benefit denial.

Petitioner has conceded that his state common law negligence claim is preempted by ERISA. Yet, Petitioner contends that the wholly derivative remedy provided by the Wrongful Death Statute somehow escapes ERISA preemption. It does not. If the Wrongful Death Statute is not preempted, then beneficiaries of a deceased plan participant would be entitled to a far greater remedy than the deceased plan participant. Because the wrongful death remedy is wholly derivative, this cannot be. The Petitioner's argument is untenable.

MISSTATEMENTS AND DEFICIENCIES IN THE PETITION

Petitioner's Factual Background section, pp. 3-4, must be rejected. Petitioner provides no citation or

support for any factual allegation contained in the Petition. Pursuant to the District of Massachusetts' Local Rule 56.1, Respondent provided the Court with a Statement of Undisputed Facts in support of its Motion for Summary Judgment. Petitioner did not respond to that Statement. The District Court deemed the BCBS Statement of Undisputed Facts admitted and drew its factual background section exclusively from Respondent's Statement. (Pet. App. at 21a). Likewise, the First Circuit deemed Respondent's Statement of Undisputed Facts admitted and undisputed because of Petitioner's failure to respond. *See Cannon*, 132 F.4th at 89. Any recitation of factual background anywhere in the Petition that does not cite to Respondent's Statement of Undisputed Facts was not considered by the Courts below and should not now be considered by this Court.

Second, Petitioner misstates *Rutledge*. He claims that the First Circuit "ignored" the two-part preemption test set forth by Justice Thomas in his concurring opinion. *See* Petition at 6. However, as expressly stated by Justice Thomas, although he joined the Court's Opinion in full, he "[wrote] separately because [he] continue[d] to doubt our ERISA pre-emption jurisprudence." *Rutledge*, 592 U.S. at 92 (Thomas, J. concurring). The two-part preemption test was not part of the Court's Opinion and thus has no binding weight. The First Circuit appropriately did not rely on the two-part preemption test. Even had the First Circuit applied the test, it would have come to the same result because the Court found that the Wrongful Death

Statute attempted to govern the remedies available under ERISA, and thus, it "related to" ERISA plans.

Third, Section II(C) of the Petition presents a new argument on appeal that was neither briefed nor argued before either the district court or the First Circuit. Petitioner states that ERISA does not refer to wrongful death claims. Petitioner contends that had the drafters of ERISA meant to preempt such claims, they could have expressly done so. This new argument should not be reviewed because it is proffered here in the Petition for the first time. But even if this Court were to consider the argument, it carries no weight. ERISA's express preemption provision is indeed broad. Broad enough to encompass a tort-based wrongful death claim. *See* 29 U.S.C. § 1144(a).

CONCLUSION

This Court should deny certiorari.

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