CIVIL ACTION NO. 25-CV-101

IN THE

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ELINOR DASHWOOD, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF MARIANNE DAHSHWOOD AND A CLASS OF OTHERS SIMILARLY SITUATED,

Plaintiff-Appellants,

v.

WILLOUGHBY HEALTH CARE CO., WILLOUGHBY RX, AND ABC PHARMACY,

Defendant-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

BRIEF FOR THE APPELLANT

Team 15

Counsels for Appellants

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1. Should the Employee Retirement Income Security Act of 1974 ("ERISA"), a federal statute regulating employer-sponsored health insurance plans, preempt a wrongful death claim arising from a violation of a duty in Tennessee's pharmaceutical safety law that requires pharmacy benefit managers and pharmacists obtain express, written physician authorization before substituting a patient's prescribed drug with a non-generic, non-therapeutically equivalent medication?
2. Should the 6th Circuit affirm the Supreme Court's decision in *Amara* and hold that suits against fiduciaries for surcharge and disgorgement constitute "appropriate equitable relief" under ERISA Section 502(a)(3)?

STATEMENT OF THE CASE

I. Statement of facts

Marianne Dashwood had a full life. She was a "talented writer" and "had a promising career ahead of her" as an editor. Compl. ¶ 16. She was also a caring mother and the "sole bread winner" for her two-year-old son. Compl. ¶ 1. At only 28 years-old, Marianne had already experienced great tragedy; her husband passed away in a car accident a year before the events of this litigation. Compl. ¶ 16.

A few weeks before she died, Marianne was on a hike with her son. While on this hike she "cut her leg." Compl. ¶ 17. Marianne took the necessary safety precautions by "clean[ing] and dress[ing] the wound." Compl. ¶ 17. After developing an infection from the cut, Marianne made the responsible decision to visit a hospital. Compl. ¶ 17. The doctors there prescribed her an antibiotic, vancomycin, and she responded well. Compl. ¶ 17. After only a short stay, Marianne was released with "a five-day prescription for the same antibiotic." Compl. ¶ 17.

Marianne was responsible and insured. She participated in a healthcare plan sponsored by her employer. The plan was "fully insured by Defendant Willoughby Health Care" ("Willoughby Health"). Compl. ¶ 11. Willoughby Health administered "benefits through its subsidiary, Defendant Willoughby RX" which in turn owned a subsidiary pharmacy, Defendant ABC Pharmacy. Op. & Order 2–3.

Upon her release from the hospital, Marianne's sister Elinor Dashwood promptly brought the prescription to an ABC Pharmacy. Compl. ¶ 18. Instead of giving her the prescribed vancomycin that Marianne had responded well to in the hospital, the pharmacy gave her Bactrim. Compl. ¶ 18. Elinor carefully noted the difference and asked the pharmacist about the discrepancy. The pharmacist assured "Elinor that Bactrim was simply the generic form of vancomycin." Compl. ¶ 19.

The pharmacist was incorrect. Bactrim was not the generic form of vancomycin. Instead, it was a different medicine to which Marianne "had a well-documented allergy." Compl. ¶ 20. This mistake killed Marianne. She died from an allergic reaction to Bactrim.

The Defendants changed "Marianne's medication, not because of any legitimate medical reason, but because Bactrim is less expensive than vancomycin, and because its manufacturer provides Willoughby RX financial incentives to do so." Compl. ¶ 22. Although the hospital was well-aware of Marianne's allergy Defendants "switched her medication" without "consult[ing] her doctor about whether Bactrim was a safe and appropriate treatment for Marianne." Compl. ¶ 21.

II. Procedural History

This suit is brought by Elinor, the "appointed executor of her estate" and the "guardian and caretaker of Marianne's young son." Compl. ¶ 12. On May 14, 2025, Elinor filed a

complaint in the United States District Court for the Eastern District of Tennessee, alleging wrongful death against Defendants Willoughby RX and ABC Pharmacy and the breach of fiduciary duties against Defendants Willoughby Health Care and Willoughby RX. Compl. ¶ 34–43.

In her wrongful death suit under Tennessee Code Section 20-5-106, Elinor argued that Defendants "owed a duty to Marianne to dispense medications as prescribed and to refrain from substituting other medications unless authorized by a treating physician to do so." Compl. ¶ 35. She requests relief in the form of compensatory and punitive damages. Compl. Req. for Relief ¶ 1.

In her breach of fiduciary duty suit, Elinor claims that Defendants breached their fiduciary duty in violation of ERISA. Op. & Order 5. She requests relief in the form of "[e]quitable relief surcharging" Defendants for the "direct financial harm suffered" and "[d]isgorgement of all amounts" Defendants "profited through application of their drug switching program." Compl. Req. for Relief ¶ 4.

Defendants moved to dismiss the case for a failure to state a plausible claim for relief. Op. & Order 1. The court granted the motion holding that ERISA preempts the wrongful death claim and Plaintiff's failed to state a plausible claim. Op. & Order 11. It further held that Plaintiff's request for equitable relief was not available under ERISA Section 503(a)(3). Op. & Order 14. Elinor now appeals the court's decision.

SUMMARY OF THE ARGUMENT

This Court should overturn the lower court's decision, granting the Appellee's Motion to Dismiss for failure to state a claim. First, the wrongful death claim cannot be dismissed because it is not preempted by ERISA. ERISA expressly preempts state law claims that "relate to" an ERISA plan. Any state law claims that require an ERISA plan to pay specific benefits, choose who is or is not covered under the plan, and/or otherwise impose rules on the structure of the administration of the benefits are "relate[d] to" an ERISA plan. Since appellants wrongful death claim does not require Appellants to pay specific plan benefits or impose new rules on the benefits structure, it is not related to the ERISA plan and therefore not expressly preempted.

State law claims can also be impliedly preempted if they supplant or supplement ERISA exclusive civil enforcement mechanism. Any state law claim, therefore, that seeks to recover improperly denied benefits is impliedly preempted. Since Appellant's wrongful death claim is unconcerned with the denial of benefits and only complains about the negligent treatment decisions of the pharmacy benefit manager and pharmacist, it is not impliedly preempted by ERISA.

Additionally, professional negligence or malpractice claims against non-fiduciary service providers cannot be preempted. ABC Pharmacy was a non-fiduciary service provider, and the wrongful death claim turns on pharmaceutical malpractice. Therefore, ERISA preemption cannot even be attached to ABC Pharmacy.

Second, the request for remedies cannot be dismissed because it is permitted under ERISA Section 502(a)(3). This ERISA provision authorizes beneficiaries, like Marianne, to sue and obtain "appropriate equitable relief" to address violations of the plan or enforce the subchapter. The general definition for "appropriate equitable relief" differentiates between the

remedies that could be obtained in a premerger court of equity compared to a court of law. Only the remedies that could be granted in a court of equity, and not a court of law, are covered by "appropriate equitable relief."

As an addition to the general rule though, the Court created an exception for suits against fiduciaries. For suits against fiduciaries, beneficiaries may recover even legal damages. This distinction exists because the fact that the suit is against a fiduciary makes it a remedy that the courts of equity could have granted premerger. Since this exception was only created in dicta, it is not binding on the lower courts. Still, the 6th Circuit should opt to follow this exception because it aligns with the general rule, is persuasive, and many of the circuit courts have adopted this interpretation.

If the exception for suits against fiduciaries is recognized, then Marianne's claims constitute "appropriate equitable relief." Although she requests recovery via monetary damages, her suit is against a fiduciary.

ARGUMENT

I. Standard of Review

This Court reviews a district court's order granting a Rule 12(b)(6) motion to dismiss *de novo*. *Winget v. JP Morgan Chase Bank*, 537 F.3d 565, 572 (6th Cir. 2008). This Court must construe the First Amended Complaint in the light most favorable to the plaintiff, accept all factual allegations as true, and determine whether the complaint "contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation and citation omitted).

II. Appellant's wrongful death claim stemming from Willoughby Rx and ABC Pharmacy violating Tennessee's pharmaceutical safety law is not preempted by ERISA and must survive a dismissal for failure to state a claim.

This Court should reverse the United States District Court for the Eastern District of Tennessee's grant of Appellees' Motion to Dismiss for failure to state a claim. Appellant's wrongful death claim stems from Appellees' violation of Tennessee's pharmaceutical safety statute, Tennessee Code Section 63-1-202, which forbids pharmacies and pharmacy benefit managers ("PBMs") from substituting drugs without the express written authorization of the patient's treating physician. This Court should find that this wrongful death claim is not preempted by ERISA.

ERISA is a federal statute that provides minimum standards for employee benefit plans like employer-sponsored health insurance. Employee Retirement Income Security Act § 2, 29 U.S.C. § 1002. ERISA Section 514 expressly preempts any state law claim that relates to an employee benefit plan ("ERISA plan"). 29 U.S.C. § 1144(a). ERISA impliedly preempts state laws that interfere with ERISA's exclusive civil enforcement remedies set forth in ERISA Section 502(a). 29 U.S.C. § 1132(a); *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 66 (1987).

Appellees, Willoughby RX and ABC Pharmacy, violated Tennessee's pharmaceutical safety law by failing to obtain physician authorization before substituting Marianne's medication. Consequently, Marianne suffered a severe allergic reaction and died. Appellants' wrongful death claim is unrelated to the administration of the employee benefit plan and does not conflict with ERISA's exclusive civil enforcement remedies. The wrongful death claim, therefore, is not expressly or impliedly preempted by ERISA. Additionally, while Willoughby RX is a fiduciary, ABC Pharmacy is not. Compl. ¶ 14–15. Claims against non-fiduciary service providers like ABC Pharmacy cannot be preempted. The District Court, thus, erred in concluding that Marianne failed to state a claim under Tennessee's wrongful death statute.

A. Appellant's wrongful death claim stemming from Willoughby Rx and ABC Pharmacy violating Tennessee's pharmaceutical safety law is not expressly preempted by ERISA Section 514

ERISA Section 514 expressly preempts (1) "any and all state laws" that (2) "relate to" any (3) "employee benefit plan" ("ERISA plan"). 29 U.S.C. § 1144(a).[1] There is no dispute that Tennessee's wrongful death law and pharmaceutical safety law are "state laws", or that Marianne's employer-sponsored health insurance is an "ERISA plan" administered by Willougby Rx. Compl. ¶ 9–11. The key question is whether Elinor's wrongful death claim—based on a duty found in Tennessee's pharmaceutical safety law—"relate[s] to" that ERISA plan. It does not.

The Supreme Court has held that a law "relate[s] to" an ERISA plan when it has a "connection with" a plan. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983).[2] But taken to its

[1] ERISA Section 514(b) contains a "savings clause" which exempts "any law of any state which regulates insurance" from ERISA preemption 29 U.S.C. § 1144(b)(2)(B). We do not contend that Tennessee wrongful death statute regulates insurance.

[2] ERISA also preempts state laws that make "reference to" an ERISA plan. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983). Tennessee's wrongful death law nor its pharmaceutical safety law makes a "reference to" an ERISA plan.

extreme, a "connection with" could subsume sensible and indirectly related state laws. *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655–56 (1995). To avoid such "uncritical literalism," the Court starts with a strong presumption that Congress did not intend to supplant state law, especially those in areas traditionally regulated by the states, unless Congress' makes that intent unmistakably clear. *Id.* at 654–56. Consistent with that presumption, the Court finds that a state law has a "connection with" an ERISA plan only when it (1) "governs a central matter of plan administration" or (2) interferes with plan administrators' ability to operate one uniform, national plan system. *Rutledge v. Pharm. Care Mgmt. Ass'n*, 592 U.S. 80, 87 (2020).

State laws that force plans to provide specific benefits or to follow specific plan rules "govern a central matter of plan administration" and therefore are preempted. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983). In *Shaw*, the Court held that a state law which mandated employers pay pregnancy-related disability benefits was "connected with" an ERISA plan. 463 U.S. 85, 108. The Court reasoned that the state law had an impermissible connection because it compelled plans to pay specific benefits. *Id.* at 96–100. Similarly, in *Egelhoff v. Egelhoff,* the Court considered a Washington state law that automatically changed who received plan benefits following a divorce. 532 U.S. 141, 144 (2001). The Court concluded that the state law had a "connection with" an ERISA plan because "plan administrators must pay benefits to the beneficiaries chosen by state law, rather than to those identified in the plan documents." *Id*. at 147.

On the other hand, ERISA does not preempt generally applicable laws that regulate areas traditionally within a state's authority that have a "tenuous, remote, or peripheral" connection with an ERISA plan. *Travelers*, 514 U.S. at 661. In *Mackey v. Lanier Collection Agency & Serv.,*

Inc., the Supreme Court held that ERISA did not preempt Georgia's general garnishment laws as applied to the garnishment of a debtor's ERISA benefits. 486 U.S. 828, 830–38 (1988). The Court explained that traditional state causes of action such as "unpaid rent, failure to pay creditors, or even torts committed by an ERISA plan" are not preempted simply because an ERISA plan is involved. *Id.* at 833. So, for example, if an ERISA plan administrator rents office space and fails to pay rent, the landlord's state-law contract claim for unpaid rent would not be preempted. Similarly, in *De Buono v. NYSA-ILA Medical & Clinical Services Fund*, the Court upheld a state tax on medical centers, even as applied to hospitals owned and operated by an ERISA plan. 520 U.S. 806, 816 (1997). The Court emphasized the state's historic powers to regulate "health and safety." *Id.* at 814. While the tax was a revenue raising measure, rather than a regulation on hospitals, it operated in a field traditionally occupied by states. *Id.* Congress never intended to overturn general health care regulations; a matter historically left to local authorities. *Travelers*, 514 U.S. at 661–62. While any state law of general applicability will impose some burdens on the administration of ERISA plans, the Court explained "that simply cannot mean that every state law with such an effect is preempted." *De Buono,* 520 U.S. at 815–16.

ERISA also does not preempt state laws that merely have *economic effects* on ERISA plans. *Rutledge*, 592 U.S. at 88; s*ee also Aldridge v. Regions Bank*, 144 F.4th 828, 840 (6th Cir. 2025). In *Travelers*, the Court upheld a New York state law that required hospitals to collect surcharges from patients covered by some insurers and not others. 514 U.S. at 653–56. Even though the law increased costs for ERISA plans, it did not "bind plan administrators to any particular choice" of benefits or plan structure, so it was not "connect[ed] with" a plan. *Id.* at 659. More recently, the Court, in *Rutledge*, upheld an Arkansas law regulating how PBMs

reimburse pharmacies even though it increased costs for ERISA plans. 592 U.S. at 90. Respondents argued that the Arkansas law created "operational inefficiencies" increasing costs such that they had to change the benefits they offered. *Id.* at 89. The Court rejected the Respondent's argument finding that ERISA does not preempt state laws that increase costs on ERISA plans "even if plans decide to limit benefits or charge plan members higher rates as a result." *Id.* at 91. Furthermore, the mere fact that a state law ". . . causes some disuniformity in plan administration" does not entail preemption, "especially . . . if a law merely affects costs." *Id.* at 87. The Court reaffirmed that the "connection with" standard is "primarily concerned with preempting laws that require providers to structure benefit plans in particular ways, such as by requiring payment of specific benefits or by binding plan administrators to specific rules for determining beneficiary status." *Id.* at 86–87. Put simply, express preemption analysis depends on whether the state law substantively structures the benefits of an ERISA plan by requiring certain benefits or imposing new rules.

Appellant's wrongful death claim does not "relate to" an ERISA plan. Tennessee's wrongful death law allows a family to sue when a family member dies because of someone else's "wrongful act." Tenn. Code § 20-5-106. To prevail, the family must show that the defendant owed a duty to the person who died, the defendant negligently broke that duty, and caused a death, which resulted in harm to the surviving family members. Compl. ¶ at 34–38. The wrongful death law may be based on a wide range of breaches of duty, most of which have nothing to do with ERISA. Whether ERISA preemption applies therefore depends upon the particular duty alleged to be violated. *Pegram v. Herdrich*, 530 U.S. 211, 228 (2000). The wrongful death claim, here, is based on the Appellees violating duties created by Tennessee's pharmacy safety statute, Tennessee Code Section 63-1-202. Compl. ¶ at 35. The question,

therefore, is whether ERISA expressly preempts Tennessee's pharmaceutical safety law, the state law upon which Marianne's wrongful death claim is premised.

Since Tennessee's pharmaceutical safety law is generally applicable and regulates an area traditionally left for the states, it is not expressly preempted by ERISA. The law forbids PBMs and pharmacists from substituting drugs without the express authorization of the patient's treating physician. Compl. ¶ at 3. The law applies to all PBMs and pharmacists in the state regardless of whether they are connected with an ERISA plan. Regulations about health and safety have long been left to the states, and courts have recognized pharmaceutical regulations fall within this authority. *Pharm. Care Mgmt. Ass'n v. Wehbi*, 18 F.4th 956, 972 (8th Cir. 2021); s*ee Medicare Prescription Drug Benefit*, 70 Fed. Reg. 4194, 4278 (Jan. 28, 2005) (explaining that the Department of Health and Human Services has a "general position of deferring to States for regulating the practice of pharmacy"). Section 63-1-202 is a safety regulation. It prevents PBMs and pharmacists from substituting cheaper alternatives that may be unsafe or harmful to patients. Under the Tennessee law, only a doctor can authorize a change to a non-generic or non-equivalent medication, reinforcing that this law regulates medical treatment and patient safety, not the structure of plan benefits.

Tennessee's pharmaceutical safety law does not require the payment of specific benefits or impose new rules for determining beneficiary statute. *Rutledge*, 592 U.S. at 87. The pharmacy law does not tell ERISA plan administrators how to run their health plans. *Egelhoff*, 532 U.S. at 141. It does not require them to change their beneficiaries. *Id*. at 147. It does not require ERISA plans to offer more or less benefits. *Shaw*, 463 U. S. at 96–100. And since the law does not require administrators to apply different benefit standards in Tennessee versus other states, it does not disturb ERISA's goal of uniform national plan administration. *Rutledge*, 592 U.S. at 87.

Appellees may contend that the administrative burden and increased costs imposed by the pharmaceutical safety law is so high that it effectively forces them to abide by the physician's initial prescription. Appellees, therefore, may claim that the pharmacy law does, in fact, dictate how they provide benefits and disrupt uniform, national plan administration. The Supreme Court, however, has repeatedly rejected the notion that a state law merely increasing costs or administrative burdens leads to preemption. *Travelers*, 514 U.S. at 659; *De Buono*, 520 U.S. at 815–16; *Rutledge*, 592 U.S. at 87. The Court held that even if a state law incentivizes a particular administrative structure by increasing costs or administrative burdens, the state law is not preempted unless it dictates the substantive structure of the plan's benefits. *Rutledge*, 592 U.S. at 88. Nothing prevents Willoughby RX and ABC Pharmacy from offering the exact same benefits under their plan. They do not even need to change their drug formulary. They only need to ask permission before substituting medication. That *de minimis* burden does not substantively change the plan's benefit structure.

Furthermore, any supposed administrative burdens are wildly overstated. Tennessee Code Section 53-10-201, a different pharmaceutical statute already on the books, imposes a duty on pharmacists to prescribe the cheapest generic equivalent or biologically interchangeable equivalent under a patient's plan. Under Section 53-10-201, pharmacists do not need physician authorization unless the prescriber explicitly noted the medical necessity on the prescription. Under the canon of *in pari materia*, the court should attempt to harmonize the new with the old unless the legislature clearly intended to overturn existing statutes. *Morgenstern v. Revco D.S., Inc.,* 898 F.2d 498, 500 (6th Cir. 1990). A court, therefore, will determine that state law does not require physician authorization for the substitution of drugs that are generics or are therapeutically equivalent, but must obtain authorization for non-equivalent drugs. That

significantly narrows the administrative burden on ERISA plan administrators, making it less likely that the new Tennessee pharmaceutical safety law substantively impacts benefit structure. The new law's only goal is to protect patients from substitution that are non-equivalent and the adverse effects those drugs may have.

Since Tennessee's pharmaceutical safety law does not mandate benefits or a particular way of administration, the Appellees cannot overcome the "starting preemption that Congress does not intend to supplant state law." *Travelers*, 514 U.S. at 654. Appellant's wrongful death claim, thus, should not be expressly preempted.

B. Appellant's wrongful death claim stemming from Willoughby Rx and ABC Pharmacy's negligent treatment decision is not impliedly preempted by ERISA Section 502

A state law claim can also be preempted when it "conflicts" with ERISA's objectives. *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1990). This is called implied preemption. The Supreme Court explained that ERISA includes its own enforcement mechanism for plan participants or beneficiaries who are wrongfully denied benefits. 29 U.S.C. § 1132. ERISA Section 502(a) provides them with a right to sue to recover those benefits. *Id.* The Supreme Court held that Congress intended ERISA Section 502(a) civil enforcement mechanism to be the *only* way to challenge the wrongful denial of benefits. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987). Due to this, a state law cause of action that "duplicates, supplements, or supplants" ERISA's civil enforcement remedies are preempted. *Aetna v. Davila*, 542 U.S. 200, 209 (2004). In other words, a state law cannot create a "new cause of action under state law" or authorize a "new form of ultimate relief" that is really about the denial of benefits. *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 379 (2002).

In the medical context, the Supreme Court draws a clear line between two challenges: (1) benefit decisions and (2) treatment decisions. *Pegram v. Herdrich*, 530 U.S. 211, 228 (2000). Benefit decisions turn on the plan's coverage of a particular condition or medical procedure for its treatment. *Id.* at 228. Treatment decisions are the choices about how to go about diagnosing and treating a patient's condition. *Id.* Challenges to benefit decisions will generally be preempted. *Pilot Life*, 481 U.S. 43 (1987). Treatment decisions challenges, on the other hand, turn on *quality of the medical care* provided and will not be preempted. *Dukes v. U.S. Healthcare, Inc.*, 57 F.3d 350 (3d Cir. 1995). Questions arise, however, when a decision to deny care involves medical judgements or when an ERISA plan administrator acts as a medical care provider.

A wrongful death claim based on a plan refusing to cover a treatment after determining it was not medically necessary falls on the benefits side of the line and is preempted. *Tolton v. Am. Biodyne*, 48 F.3d 937, 942 (6th Cir. 1995). In *Tolton*, the plaintiff brought a wrongful death action against an ERISA plan administrator after their failure to cover psychiatric treatment leading to a suicide. *Id.* at 942. The denial occurred through a process called utilization review, in which the plan reviews a doctor's recommended treatment to decide whether it is medically necessary under the terms of the plan. Although this process involves medical judgement, this Circuit held that these were benefit decisions because they determine whether a plan will pay for treatment. Since the plaintiffs challenged conduct involving the processing benefits, the claim was preempted by ERISA. *Id.*

A wrongful death claim against an ERISA plan administrator acting as a medical care provider challenging the quality of care provided is not preempted. *Dukes,* 57 F.3d 350, 356. In *Dukes*, the Third Circuit consolidated cases where plaintiffs sued a Health Management

Organizations ("HMOs") under an agency and "direct negligence" theory alleging they received negligent medical treatment by doctors who were employed by the HMOs. *Id.* at 351. One of the plaintiffs alleged that the HMO's doctor negligently ignored symptoms of preeclampsia leading to her daughter being stillborn. *Id.* at 353. Our sister circuit explained that ERISA plan administrators, such as an HMO, can act in two different roles: benefits administrator or medical care provider. *Id.* at 361. When an entity makes decisions about whether it will pay for treatment, such as through utilization review, it acts as a benefits administrator and ERISA preemption applies. *Id.* at 360–61. But when the entity "provide[s], arrange[s] for, or supervise[s]" actual medical treatment, it acts as a medical service provider and ERISA preemption does not apply. *Id.* The court emphasized that the plaintiffs did not allege wrongly denied coverage. *Id.* Instead, the plaintiffs claimed that the HMOs were responsible for their poor quality of medical care because they arranged for and supervised their family members' treatment. *Id.* Since the claims did not challenge a benefit decision, the court held that the claims were not preempted by ERISA. *Id.* at 361.

Willoughby RX via its subsidiary ABC Pharmacy acted as a medical care provider and made a treatment decision to change Marianne's prescription. Willoughby RX substituted the prescription without any physician authorization violating Tennessee's pharmaceutical safety law. Then, Willoughby RX sent this changed prescription to ABC Pharmacy. By changing the prescription, Willoughby RX "provid[ed]" and "arrang[ed] for" Marianne's treatment. *Dukes*, 57 F.3d at 360. As an owner of ABC Pharmacy by directing them to change the prescription, Willoughby RX "supervis[ed]" the treatment. *Id* at 360. Elinor's wrongful death claim challenges this negligent treatment decision. The wrongful death claim, therefore, should not be impliedly preempted.

Appellees might claim that Willoughby RX and ABC Pharmacy abiding by the drug formulary is akin to the utilization review and the wrongful death claim should be preempted. But utilization review and formulary-based substitution are fundamentally different. Utilization review does not change what the doctor prescribed. It only decides whether the plan will pay for that prescribed treatment. Even if the plan refuses to cover it, the patient can still choose to pay for the original course of treatment out of pocket. In contrast, Willoughby RX and ABC Pharmacy changed the doctor's prescription. Willoughby RX and ABC Pharmacy never informed Marianne that they were refusing to cover Vancomycin. If they did that, Marianne could have decided to pay for Vancomycin herself. If they had informed Marianne of the denial of benefits, Willoughby RX and ABC Pharmacy would have been making a benefit decision, not a treatment decision. But by switching the medication without informing Marianne, Willoughby RX and ABC Pharmacy acted like medical care providers, rather than plan administrators. Doctors prescribe medication based on a patient's medical history, risk factors, and allergies. When the PBM or pharmacist substitutes a drug without approval, they override the medical judgments that go into a doctor's prescription. In benefits decisions, the prescription stays intact, but the plan simply decides whether it will pay for it.

Appellees may claim that Marianne was informed of substitution because the prescription was labelled as Bactrim rather than Vancomycin. When she was picking up the medication, Elinor noticed the change in the name of the prescribed drug. The argument would go, being notified of the decision, Marianne could have rejected the substitution and paid for the original prescription out of pocket. Therefore, formulary substitution is just like a utilization review. But there was no disclosure by Willoughby RX or ABC Pharmacy that *coverage was denied.* The

only notice provided was that the label on the prescription was different than the prescribed drug. The decision to change the medication was made before notice was provided.

Additionally, any supposed notice of coverage denial was obfuscated by the pharmacist. The pharmacist said that the Bactrim was just a generic form of Vancomycin, when it was not. Bactrim is a drug of a different class with different therapeutic effects. This information minimized the medical importance of the change and discouraged Elinor from asking more questions. This effectively eliminated the kind of patient choice that would be involved in utilization review because the plan would inform them that Vancomycin could still be obtained but not covered.

Second, benefit decisions are reversible, but this substitution without appropriate notice was not. If coverage is denied, a plan participant could appeal the decision and hope that the denial will be reversed. But when the wrong drug is substituted, the patient suffers immediate harm especially if they are allergic to the substituted drug.

Third, Elinor does not allege Marianne's benefits were improperly denied. In *Tolton*, the plaintiffs' claims specifically included a claim for the "negligent and intentional *refusal to authorize inpatient treatment*. . . in reckless disregard of [the defendant's] safety and *in violation of the insurance policy*." *Tolton*, 48 F.3d 937, 939 (6th Cir. 1995). The Sixth Circuit found that Tolton's "claims that arise from an allegedly improper denial of benefits to an ERISA beneficiary fall squarely within section 502(a)." *Id.* at 941. Marianne never alleges Willoughby RX and ABC Pharmacy wrongly refused to cover Vancomycin. Instead, she alleges in the First Amended Complaint that Willoughby RX and ABC Pharmacy breached a duty owed to Marianne "substituting Bactrim for the vancomycin that had been prescribed by Marianne's

treating doctor without obtaining that doctor's written permission to do so." Compl. at ¶ 36. That claim is about changing medical treatment, not denying ERISA plan benefits.

C. ABC Pharmacy, a nonfiduciary service provider, does not qualify for ERISA preemption

ERISA preemption cannot attach to a professional negligence or malpractice claim against a "nonfiduciary service provider." *Penny/Ohlmann/Nieman, Inc. v. Miami Valley Pension Corp.*, 399 F.3d 692, 703 (6th Cir. 2005). ERISA preempts state laws that "relate to" an ERISA plan. 29 U.S.C. § 1144(a). But Congress did not intend for ERISA "to preempt traditional state-based laws of general applicability that do not implicate the relations among the traditional ERISA plan entities, including the principals, the employer, the plan, the plan fiduciaries, and the beneficiaries." *Penny/Ohlmann/Nieman*, 399 F.3d at 698. Plans often contract with third parties like consultants, actuaries, record-keepers, and lawyers. *Id.* at 701. These kinds of third-party service providers are not fiduciaries, participants, or beneficiaries under the terms of the plan. *Id.* When a court is not required to determine whether the terms of the ERISA plan were violated, this Circuit explained that a malpractice suit against one of these nonfiduciary service providers does not implicate ERISA preemption. *Kloots v. Am. Express Tax & Bus. Servs., Inc.*, 233 F.3d 485, 489 (6th Cir. 2007).

While Willoughby RX is a plan fiduciary, ABC Pharmacy is not. Compl. ¶ 14–15. ABC Pharmacy only provided pharmaceutical services to the plan. Under state law, pharmacists have professional duties to not dispense medication if there is a foreseeable risk of adverse effects and inform patients about significant changes to their medications. Tenn. Code § 63-10-207. Tennessee Code Section 63-1-202 imposes a new professional duty on pharmacists to obtain authorization from a patient's treating physician before changing any medication. Elinor's wrongful death claim, therefore, presents three questions: (1) whether ABC Pharmacy

negligently changed Mariane's prescription without physician authorization, (2) whether there was a foreseeable risk of harm based on that change, and (3) whether ABC Pharmacy provided the patient incorrect information about that nature of that change. Compl. ¶ 34–38. None of these questions require a court to interpret the terms of the ERISA plan. They do not ask a court to determine whether ABC Pharmacy violated the terms of the plan. *Kloots*, 233 F.3d at 489. Thus, the wrongful death claim against ABC Pharmacy cannot be preempted by ERISA.

III. Appellant's request for damages for her wrongful death at the hands of Willoughby Health and Willoughby Rx is permitted under ERISA and must survive a dismissal for failure to state a claim.

The lower court erred in finding that Plaintiff's Complaint failed to state a claim. This Court should deny Defendant's Motion to Dismiss and allow the case to proceed to trial. Contrary to the lower court's holding, Defendants' actions caused a loss or other harm that is remediable under ERISA Section 502(a)(3). Op. & Order 11.

ERISA Section 502(a)(3) authorizes beneficiaries, like Marianne, to sue and obtain two possible types of relief. 29 U.S.C. § 1132(a)(3). First, they may sue "to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan." 29 U.S.C. § 1132(a)(3). Second, plaintiffs may sue "to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." 29 U.S.C. § 1132(a)(3). Marianne has sued under the second option. This is a broad provision; the Court has described it as "remedial" and a "catchall." *Varity Corp. v. Howe*, 516 U.S. 489, 518 (1996). It ensures that parties can recover even when they do not fit into the narrower paragraphs of the subsection. 29 U.S.C. § 1132(a); *Varity Corp. v. Howe*, 516 U.S. 489, 512.

Marianne sued under ERISA Section 502(a)(3) for "appropriate equitable relief." Compl. ¶ 9, 11; 29 U.S.C. § 1132(a)(3)(B). She requested relief under two alternative remedies. First, she

seeks "equitable relief surcharging" the Defendants "for the direct financial harm suffered by Plaintiff and Class members." Compl. Req. for Relief ¶ 3. Second, she seeks "disgorgement of all amounts by which" the Defendants "profited through application of their drug switching program." Compl. Req. for Relief ¶ 3. Both requested remedies are "appropriate equitable relief."

A. "Appropriate equitable relief" in ERISA Section 502(a)(3) includes suits for relief against fiduciaries

The U.S. Supreme Court first defined "appropriate equitable relief" as remedies that the courts of equity would typically have allowed before the merger of the courts of equity with the legal courts. *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 256 (1993). Under this definition, appropriate equitable relief included remedies "such as injunction, mandamus, and restitution, but not compensatory damages." *Mertens*, 508 U.S. at 256. Thus, in the early cases, a sharp line was drawn between "legal relief" like "[m]oney damages" and "appropriate equitable relief." *Id*.

To identify what was available in premerger equity courts, the Court relied on equity treatises. *Montanile v. Bd. of Tr. of Nat'l Elevator Indus. Health Benefit Plan*, 577 U.S. 136 (2016) ("To determine how to characterize the basis of a plaintiff's claim and the nature of the remedies sought, [the Court] turn[s] to standard treatises on equity, which establish the 'basic contours' of what equitable relief was typically available in premerger equity courts.") (internal citations omitted). These treatises provide the bounds of "appropriate equitable relief."

For suits against fiduciaries, though, the Court created an exception. Fiduciaries are typically treated as "trustees" in ERISA plans, a factor that the Court says "makes a critical difference." *Cigna Corp. v. Amara*, 563 U.S. 421, 439, 442 (2011). Before the merger of law and equity, suits against fiduciaries could be "brought only in a court of equity, not a court of law."

Id. at 439; 442 (explaining that whether the defendant "is analogous to a trustee makes a critical difference.").

Consequently, suits against fiduciaries fall into the category of "appropriate equitable relief" even when a plaintiff requests legal relief. The simple "fact" that the holding results in a monetary award "does not remove it from the category of traditionally equitable relief." *Id.* at 441 ("Equity courts possessed the power to provide relief in the form of monetary 'compensation' for a loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment.").

B. While the 6th Circuit has not previously accepted the exception for suits against fiduciaries, it should reconsider

There is a split among lower courts about whether to apply the fiduciary exception. This variation exists because while the Court laid out the exception with great detail in *Amara*, the discussion was technically dicta. Thus, although the Court was clear with its reasoning, lower courts are not absolutely bound. Even though the decision is not binding, the Court's reasoning is so persuasive that the 6th Circuit should adopt its interpretation. Although the 6th Circuit in *Aldridge* details a variety of reasons for dismissing this exception, none are sufficiently convincing. *Aldridge v. Regions Bank*, 144 F.4th 828, 847–850 (6th Cir. 2025).

First, while *Aldridge* disregarded *Amara* on the basis that it is dicta, that dismissal is premature. *Aldridge*, 144 F.4th at 847. Although the discussion in *Amara* is dicta, it spans eight pages of a twenty-one page opinion and includes a detailed explanation of its analysis. *Amara*, 563 U.S. at 435–43. Dismissing this analysis merely as dicta is misleading. Even though the discussion is dicta, the analysis is still persuasive. The general rule established in the original line of cases is that "appropriate equitable relief" is limited to categories of relief typically available

in equity. *See, e.g., Mertens*, 508 U.S. at 256; *Sereboff*, 547 U.S. at 363; *Knudson*, 534 U.S. at 217. But *Amara* is consistent with this line of cases. It merely establishes an exception for suits against fiduciaries, an exception that existed in premerger courts of equity. *Amara*, 563 U.S. at 442 ("[T]he fact that the defendant in this case, unlike the defendant in *Mertens*, is analogous to a trustee makes a critical difference.").

Second, it is an error to argue that *Amara*'s dicta conflicts with *Mertens*'s holding. *Aldridge*, 144 F.4th at 848. *Amara* explicitly distinguishes itself from *Mertens* based on whether the suit is against a fiduciary or nonfiduciary. Although *Aldridge* argues that "this distinction did not matter under the common law of trust," it's not clear that this is the complete story. *Id.* Rather, the Supreme Court describes that premerger "[e]quity courts possessed the power to provide relief in the form of monetary "compensation" for a loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment." *Amara*, 563 U.S. at 441. And "prior to the merger of law and equity this kind of monetary remedy against a trustee, sometimes called a 'surcharge,' was 'exclusively equitable.'" *Id.* at 442

Third, although the *Alridge* court argues that 6th Circuit precedent rejected the fiduciary-nonfiduciary distinction, that is not a sufficient reason to maintain outdated precedent. The 6th Circuit precedent *Aldridge* cites that extended *Mertens*'s to a case against a fiduciary was decided before *Amara*. *Amara*, 563 U.S. at 440 (decided in 2011); *Aldridge*, 144 F.4th at 849 (citing *Helfrich v. PNC Bank, Ky., Inc.*, 267 F.3d 477, 480–82 (6th Cir. 2001)). Thus, the sole reason to maintain the outdated precedent is if there is a "substantial reason" for the "refusal" to follow "Supreme Court dicta." *Aldridge*, 144 F.4th at 849. While the Court in *Aldridge* appeared to believe that there was substantial reason to maintain the old precedent, that argument is not well supported based on the other arguments in this Part.

Fourth, it is an overstatement to argue that the Supreme Court "distanced itself from *Amara*'s dicta." *Aldridge*, 144 F.4th at 849. *Aldridge*'s justification for this claim is that *Montanile* "reaffirmed *Mertens*'s holding and "relegated *Amara*'s dicta to a footnote." *Aldridge*, 144 F.4th at 849 (citing *Montanile*, 577 U.S. at 148 n.3). While this is an accurate description, the conclusion is exaggerated. *Montanile* does not explicitly disavow *Amara* and reaffirming *Mertens* is not necessarily at odds with acceptance of *Amara*. Both *Amara* and *Mertens* are consistent when *Amara* is seen as an exception that applies in suits against fiduciaries. *See Aramark Servs., Inc. v. Aetna Life Ins. Co.*, 162 F.4th 532, 543 (5th Cir. 2025) ("*Montanile* also explained that *Amara* did not overrule *Mertens* and *Great-West* . . . This came as no surprise: Amara, which treated fiduciary defendants, did not overrule *Mertens* and *Great-West* because those cases addressed a distinct issue (the remedy against non-fiduciary defendants).") (internal citations omitted). Moreover, the fact that *Amara* is only cited in a footnote aligns with this conclusion; *Amara* simply wouldn't apply to *Montanile*, involving a suit against a beneficiary.

Moreover, a majority of circuits have recognized this exception and decided that suits against fiduciaries are "appropriate equitable relief" even when a plaintiff requests legal damages. *See, e.g., Kenseth v. Dean Health Plan, Inc.*, 722 F.3d 869, 878–79 (7th Cir. 2013) ("The [*Amara*] Court thus clarified that equitable relief may come in the form of money damages when the defendant is a trustee in breach of a fiduciary duty."); *Aramark Servs., Inc.,* 162 F.4th at 543 ("Looking to Amara, this court held that '[b]ased on the depth of the Court's treatment of the issue, we are persuaded . . . that Amara's pronouncements about surcharge as a potential remedy under § 502(a)(3) should be followed.'") (internal citations omitted).

Although to date, the 6th Circuit has not accepted *Amara*'s argument for distinguishing suits against fiduciaries, it should. The *Amara* dicta is extensive and persuasive. The previous justifications the 6th Circuit gave for avoiding *Amara* should be reconsidered.

C. Marianne can recover under ERISA Section 502(a)(3)

Marianne's first request for relief is under the surcharge remedy. Compl. Request for Relief ¶ 3. Defendants do not dispute their fiduciary status, so the *Amara* standard should apply. Op. & Order 11. This fact pattern is on point with *Amara*; both cases involve the surcharge remedy and a suit against a fiduciary. *Amara*, 563 U.S. at 442. Since the suit is against a fiduciary, plaintiffs can recover even "monetary awards." *Amara*, 563 U.S. at 441. As the Court explains, surcharge remedies "committed by a fiduciary encompassing any violation of a duty imposed upon that fiduciary" "fall within the scope of the term 'appropriate equitable relief'" "insofar as an award of make-whole relief is concerned." *Id.* at 442. So, the requested relief under the surcharge remedy is "appropriate equitable relief."

Marianne's second request for relief is for "[d]isgorgement of all amounts by which" the Defendants profited. Compl. Req. for Relief ¶ 4. In general, requests for restitution are either equitable or legal depending on whether the party seeks recovery from a specific fund. A plaintiff requests "appropriate equitable relief" if they seek their "recovery through a constructive trust or equitable lien on a specifically identified fund." *Sereboff v. Mid Atl. Med. Servs.*, 547 U.S. 356, 363 (2006). On the other hand, a plaintiff who seeks to recover though "assets generally, as would be the case with a contract action at law" requests a legal remedy. *Sereboff,* 547 U.S. at 363; *Montanile*, 577 U.S. at 144–45. For instance, "an injunction to compel the payment of money past due under a contract, or specific performance of a past due monetary

obligation, was not typically available in equity" thus is not compensable under ERISA Section 502(a)(3). *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 210–11 (2002).

This general rule, though, should be subject to the same exception from *Amara* distinguishing between suits against fiduciaries and nonfiduciaries. The principle established in *Amara* is that when suits are against fiduciaries, equitable relief can be appropriate under ERISA Section 502(a)(3) even when it results in monetary compensation. The Court explains that "the fact that this relief takes the form of a money payment does not remove it from the category of traditionally equitable relief." *Amara*, 563 U.S. at 441. As long as the purpose of the award is "make-whole relief," monetary compensation from a fiduciary for breach of fiduciary duty is compensable. *Id.* at 442. Although the Court in *Amara* dealt with a surcharge remedy, the same logic applies to recovery under the disgorgement remedy. Marianne should be able to recover under both forms of requested relief.

CONCLUSION

For the foregoing reasons, Plaintiff-Appellant, Marianne, respectfully requests that this Court reverse the decision of the United States District Court for the Eastern District and remand this matter for further proceedings.

Respectfully Submitted,

/s/ Team #15

Counsels for the Appellants

DATED: January 23, 2026