No. ______

In the Supreme Court of the United States

OPTUMHEALTH CARE SOLUTIONS, LLC,

Petitioner,

v.

SANDRA M. PETERS,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Employee Retirement Income Security Act (ERISA) bars a plan fiduciary from causing the plan to engage in certain transactions with a "party in interest." 29 U.S.C. § 1106(a). "Congress defined 'party in interest' to encompass those entities that a fiduciary might be inclined to favor at the expense of the plan's beneficiaries." *Harris Tr. & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 242 (2000). Among those included in the statutory definition is "a person providing services to such plan." 29 U.S.C. § 1002(14)(B).

Consistent with that definition, the U.S. Court of Appeals for the Tenth Circuit has held that for a third-party service provider to qualify as a "person providing services" to the plan and thus a "party in interest," the service provider must have a relationship with the plan that preexists, and is independent of, the relationship created by the allegedly prohibited transaction. *Ramos v. Banner Health*, 1 F.4th 769, 786-87 (10th Cir. 2021). Breaking with the Tenth Circuit, the U.S. Court of Appeals for the Fourth Circuit held below that OptumHealth Care Solutions, a non-fiduciary service provider that had no preexisting relationship with Respondent Sandra Peters's health plan, could qualify as a "party in interest" by contracting with the plan's claims administrator and getting paid under those contracts.

The question presented is

For a service provider to qualify as a "party in interest" under 29 U.S.C. § 1106(a), must the service provider have a preexisting relationship with the plan

that is independent of the relationship created by the allegedly prohibited transaction?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE

Petitioner OptumHealth Care Solutions, LLC f/k/a OptumHealth Care Solutions, Inc., is a wholly owned subsidiary of OptumInsight Holdings, LLC, which is a wholly owned subsidiary of Optum, Inc. Optum, Inc. is a wholly owned subsidiary of United HealthCare Services, Inc., which is a wholly owned subsidiary of UnitedHealth Group Incorporated, a publicly held corporation.

Respondent Sandra Peters is an individual and the Plaintiff below.

Aetna Inc. and Aetna Life Insurance Company are defendants in the litigation but are not petitioners.

STATEMENT OF RELATED PROCEEDINGS

There are no proceedings that are directly related to this case.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE iii

STATEMENT OF RELATED PROCEEDINGS iii

TABLE OF AUTHORITIES vii

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

RELEVANT STATUTORY PROVISIONS 2

STATEMENT 7

REASONS FOR GRANTING THE PETITION 12

I. THE FOURTH CIRCUIT'S DECISION BELOW CREATED A SPLIT WITH THE TENTH CIRCUIT ON WHETHER ERISA § 406(a) PROHIBITS PLAN FIDUCIARIES FROM CONTRACTING WITH THIRD-PARTY SERVICE PROVIDERS 14

II. THE FOURTH CIRCUIT REACHED THE WRONG CONCLUSION BECAUSE IT IGNORED ERISA'S PLAIN LANGUAGE 18

III. THE FOURTH CIRCUIT'S RULE WILL CHILL PLAN FIDUCIARIES AND SERVICE PROVIDERS FROM ENTERING INTO ARM'S-LENGTH SERVICE CONTRACTS THAT BENEFIT PLANS AND THEIR MEMBERS 19

IV. THE COURT SHOULD RESOLVE THE QUESTION PRESENTED NOW 20

CONCLUSION 21

APPENDIX

Appendix A Opinion in the United States Court of Appeals for the Fourth Circuit (June 22, 2021)........................ App. 1

Appendix B Memorandum of Decision and Order in the United States District Court for the Western District of North Carolina Asheville Division (September 16, 2019)............. App. 82

Appendix C Judgment in Case in the United States District Court Western District of North Carolina Asheville Division (September 16, 2019)........... App. 105

Appendix D Memorandum of Decision and Order in the United States District Court for the Western District of North Carolina Asheville Division (March 29, 2019)................. App. 107

Appendix E Order Denying Petition for Rehearing in the United States Court of Appeals for the Fourth Circuit (July 20, 2021) .... App. 131

TABLE OF AUTHORITIES

Cases

Albert v. Oshkosh Corp.,
No. 20-C-901, 2021 WL 3932029
(E.D. Wis. Sept. 2, 2021) 17

Comm'r v. Keystone Consol. Indus., Inc.,
508 U.S. 152 (1993) 7

Conkright v. Frommert,
559 U.S. 506 (2010) 17

Conn. Nat'l Bank v. Germain,
503 U.S. 249 (1992) 18

Divane v. Nw. Univ.,
No. 16 C8157, 2018 WL 2388118
(N.D. Ill. May 25, 2018)................................. 16, 17

Griffin v. Oceanic Contractors, Inc.,
458 U.S. 564 (1982) 17

*Harris Tr. & Sav. Bank v. Salomon Smith
Barney, Inc.*, 530 U.S. 238 (2000) 7, 10, 20

Lockheed Corp. v. Spink,
517 U.S. 882 (1996) 7, 18

Ramos v. Banner Health,
1 F.4th 769 (10th Cir. 2021) 12, 15, 16

Rubin v. United States,
449 U.S. 424 (1981) 19

Sellers v. Anthem Life Ins. Co.,
316 F. Supp. 3d 25 (D.D.C. 2018 16

Sweda v. University of Pennsylvania,
923 F.3d 320 (3d Cir. 2019)........................... 15, 16

Statutes

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1291 1

28 U.S.C. § 1331 1

29 U.S.C. § 1002 .... 4, 5, 6

29 U.S.C. § 1002(14)(B) 18

29 U.S.C. § 1104(a)(1).. 16, 17

29 U.S.C. § 1106 ....*passim*

29 U.S.C. § 1108 .... 6, 7, 14

29 U.S.C. § 1132(a)(3).......................................*passim*

29 U.S.C. § 1132(e)(1) 1

Rules

Sup. Ct. R. 10(a) 11

Sup. Ct. R. 10(b) 13

PETITION FOR WRIT OF CERTIORARI

OptumHealth Care Solutions, LLC ("Optum" for short) petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's opinion (Pet. App. 1) is reported at 2 F.4th 199. The Fourth Circuit's order denying rehearing or rehearing *en banc* (Pet. App. 131) is unpublished. The district court's order granting summary judgment to Optum (Pet. App 82) is unpublished. The district court's order denying class certification (Pet. App. 107) is unpublished.

JURISDICTION

On July 20, 2021, the Fourth Circuit denied rehearing or rehearing *en banc*. Pet. App. 131. On October 15, 2021, the Chief Justice extended the time for Optum to file a petition for a writ of certiorari up through and including November 17, 2021. *See* Application No. 21A77. This Court's jurisdiction rests under 28 U.S.C. § 1254(1).

The Fourth Circuit exercised jurisdiction under 28 U.S.C. § 1291. The district court exercised jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

RELEVANT STATUTORY PROVISIONS

ERISA § 406(a) (29 U.S.C. § 1106) provides as follows:

(a) TRANSACTIONS BETWEEN PLAN AND PARTY IN INTEREST

Except as provided in section 1108 of this title:

(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) lending of money or other extension of credit between the plan and a party in interest;

(C) furnishing of goods, services, or facilities between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan; or

(E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 1107(a) of this title.

(2) No fiduciary who has authority or discretion to control or manage the assets of a plan shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 1107(a) of this title.

(b) TRANSACTIONS BETWEEN PLAN AND FIDUCIARY

A fiduciary with respect to a plan shall not—

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

(c) TRANSFER OF REAL OR PERSONAL PROPERTY TO PLAN BY PARTY IN INTEREST

A transfer of real or personal property by a party in interest to a plan shall be treated as a sale or exchange if the property is subject to a

mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a party-in-interest placed on the property within the 10-year period ending on the date of the transfer.

ERISA § 3 (29 U.S.C. § 1002) defines “party in interest” as follows:

(14) The term “party in interest” means, as to an employee benefit plan—

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation.

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a relative (as defined in paragraph (15)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E), or (G), or of the employee benefit plan; or

(I) a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of the Treasury, may by regulation prescribe a percentage lower than 50 percent for subparagraph (E) and (G) and lower than 10 percent for subparagraph (H) or (I). The Secretary may prescribe regulations for determining the ownership (direct or indirect) of profits and beneficial interests, and the manner in which indirect stockholdings are taken into account. Any person who is a party in interest with respect to a plan to which a trust described in section 501(c)(22) of title 26 is permitted to make payments under section 1403 of this title shall be treated as a party in interest with respect to such trust.

ERISA § 408 (29 U.S.C. § 1108) provides as follows:

(b) ENUMERATION OF TRANSACTIONS EXEMPTED FROM SECTION 1106 PROHIBITIONS

The prohibitions provided in section 1106 of this title shall not apply to any of the following transactions:

(2)(A) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services

> necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.

ERISA § 502(a)(3) (29 U.S.C. § 1132(a)(3)) provides as follows:

> **(a) PERSONS EMPOWERED TO BRING A CIVIL ACTION**
>
> A civil action may be brought—
>
> **(3)** by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) 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.

STATEMENT

1. Through ERISA § 406(a), Congress "categorically barr[ed] certain transactions deemed 'likely to injure the . . . plan.'" *Harris Tr. & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 242 (2000) (quoting *Comm'r v. Keystone Consol. Indus., Inc.*, 508 U.S. 152, 160 (1993)). Those prohibited transactions share a common feature: "[T]hey are struck with plan insiders, presumably not at arm's length." *Lockheed Corp. v. Spink*, 517 U.S. 882, 893 (1996); *see also Harris Tr.*, 530 U.S. at 242 (ERISA § 406(a) prohibits certain transactions with entities

that "a fiduciary might be inclined to favor at the expense of the plan's beneficiaries").

ERISA does not, however, preclude a plan fiduciary from entering into arm's-length arrangements with third-party service providers that deliver services to plans and their members. On the contrary, contracts between ERISA plans and third-party service providers (or between administrators and service providers) are commonplace and necessary. ERISA plans often contract with service providers for everything from accounting, recordkeeping, and claims-administration services to investment advice, actuarial advice, and legal advice. Those types of service contracts enable plans to serve their members.

2. In 2012 and 2013, Aetna entered into arm's-length contracts with Optum, a third-party service provider, giving certain Aetna plans and members access to Optum's networks of physical therapists and chiropractors. Pet. App. 87. The goal was to "lower medical costs for employers and members" (Pet. App. 86), and—as projected—the Aetna-Optum contracts generated millions of dollars in savings for Aetna plans and members. Pet. App. 90.

The process works as follows: An Aetna plan member visits an Optum-contracted chiropractor or physical therapist. That provider performs a service for the Aetna plan member and submits a claim to Optum. If the claim is timely and includes the required information, Optum forwards the claim to Aetna, using a procedure code specified in the Aetna-Optum contracts. Aetna determines whether to cover

the claim and (if covered) how much to pay based on the Aetna-Optum contract rate and then sends its determination back to Optum. If Aetna decides that the claim is covered under the Aetna member's plan, then Aetna calculates the member's financial responsibility (if any) and communicates its decision to Optum. Optum then pays the treating provider the contracted rate between Optum and that provider minus the amount that Aetna calculated as the member's financial responsibility. Pet. App. 89-90. For the Aetna plan and member, financial responsibility is capped at the Aetna-Optum per-visit rate.

Respondent Sandra Peters is a former member of a health plan sponsored and funded by Mars, Inc., her husband's former employer. Pet. App. 85. Aetna is a claims administrator for the Mars Plan. *Id.* Optum has never had a relationship with the Mars Plan (contractual or otherwise). Pet App. 90, 101.

Peters benefited from the Aetna-Optum arrangement. Between 2013 and 2015, Peters visited providers in Optum's networks and paid less than she would have absent the Aetna-Optum agreements. Pet. App. 90-92, 99.

3. Peters nevertheless filed a putative class action against Aetna and Optum asserting claims under ERISA and federal RICO. At the pleading stage, the district court dismissed the RICO claims with prejudice but allowed the ERISA claims to proceed. Peters argued that Aetna breached certain fiduciary duties to the Mars Plan by calculating plan and member financial responsibility for physical-therapy

and chiropractic claims based on the rates that Optum charged Aetna instead of the rates that Optum's downstream network providers charged Optum. Pet. App. 98-99. Peters also argued that Optum could be liable under ERISA § 502(a)(3) as a "party in interest" that knowingly participated in transactions prohibited by ERISA § 406(a). Pet. App. 100.

The district court denied class certification (Pet. App. 130) and granted summary judgment to Aetna and Optum. Pet. App. 104. In its opinion granting summary judgment, the district court held that, among other things, Optum served no fiduciary function vis-à-vis the Mars Plan (Pet. App. 100) and was not a "party in interest" because it was "undisputed that Optum had no pre-existing relationship with the Mars Plan, contractual or otherwise, and did not render services to the Plan itself other than providing its networks to the Plan." Pet. App. 101.

4. On appeal, the panel vacated the denial of class certification and affirmed in part and reversed in part the grant of summary judgment to Aetna and Optum.

As relevant here, the Fourth Circuit agreed that Optum served no fiduciary function for the challenged conduct but held that, under this Court's decision in *Harris Trust & Savings Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238 (2000), Optum could be liable under ERISA § 502(a)(3) as a non-fiduciary "party in interest" because a reasonable factfinder could conclude that Optum "had actual or constructive knowledge of the circumstances that rendered the

[alleged prohibited transactions] unlawful." *Peters*, 2 F.4th at 240.

The Fourth Circuit rejected the district court's conclusion that Optum could not qualify as a party in interest under ERISA § 406(a):

> While the district court indicated that Optum could not be a party in interest as a matter of law because Optum had no "pre-existing relationship[s]" with either the Plan or Aetna, this is incorrect. It is true enough that Optum had no prior relationship with the Plan before entering a service agreement with Aetna. But that means only that Optum was not a party in interest at the time it entered the agreement. Optum could become a party in interest after the execution of the Aetna-Optum contracts, when it became a service provider to the plan—that is, by making available its network of providers to plan members like Peters. . . . Thus, Optum could be a party in interest because it provided services to the plan at the time its administrative fees were paid.

Peters, 2 F.4th at 239-40 (internal quotation marks and alteration omitted). Put another way, the Fourth Circuit held that even though Optum was not a party in interest when it contracted with Aetna, it could have become a party in interest by providing services and getting paid under those same contracts.

Optum and Aetna petitioned the Fourth Circuit for rehearing or rehearing *en banc* on various issues,

including the panel's ruling on class certification and its ruling that Optum could qualify as a party in interest under ERISA § 406(a). The Fourth Circuit denied rehearing. Pet. App. 131.

REASONS FOR GRANTING THE PETITION

Through the decision below, the Fourth Circuit created a circuit split on a question that touches every ERISA plan across the country. *See* S. Ct. Rule 10(a). In the Tenth Circuit, ERISA § 406(a) does not categorically prohibit plan fiduciaries from contracting with third-party service providers. *Ramos v. Banner Health*, 1 F.4th 769, 787 (10th Cir. 2021). As the Tenth Circuit has recognized, holding otherwise would lead to "an absurd result: the initial agreement with a service provider would simultaneously transform that provider into a party in interest and make that same transaction prohibited under § 1106." 1 F.4th at 787.

But the Fourth Circuit has now broken with the Tenth, holding that even if a service provider had no preexisting relationship with a plan, it can nevertheless qualify as a party in interest under ERISA § 406(a) if it provides services and gets paid under an arm's-length agreement with the plan's claims administrator. *Peters*, 2 F.4th at 239-40.

If left to stand, the Fourth Circuit's decision will expose plan fiduciaries and non-fiduciary service providers to litigation "merely because they engaged in an arm's length deal." *Ramos*, 1 F.4th at 787. Many companies sponsor plans that have members across

the country, including members in both the Tenth Circuit and the Fourth Circuit. Those plans and their administrators contract with service providers of various types—ranging from healthcare services providers to accounting firms. Given the conflicting decisions in the Tenth and Fourth Circuits, plan fiduciaries whose plans touch both circuits are now faced with conflicting standards governing their efforts to hire third parties who could provide needed services to plans and members. Faced with that uncertainty, plan fiduciaries might shrink back from contracting with service providers for fear that an ERISA complaint might follow.

The same concerns might cause third-party service providers to do the same. They might think twice about contracting with plans for routine services, reducing the supply of those services and driving up prices. In the end, plan members could lose the benefit of services that could save them money or enhance their experience under their plan. That is an issue of national importance. *See* S. Ct. R. 10(b).

This Court should weigh in to confirm that ERISA does not prohibit plan fiduciaries from hiring and paying service providers.

I. THE FOURTH CIRCUIT'S DECISION BELOW CREATED A SPLIT WITH THE TENTH CIRCUIT ON WHETHER ERISA § 406(a) PROHIBITS PLAN FIDUCIARIES FROM CONTRACTING WITH THIRD-PARTY SERVICE PROVIDERS.

Subject to certain exemptions (*see, e.g.*, 29 U.S.C. § 1108), ERISA § 406(a) bars a plan fiduciary from causing a plan to engage in certain enumerated "transactions" involving a "party in interest." Although Optum is not a fiduciary vis-à-vis the Mars Plan, Peters contends that Optum can be liable under ERISA § 502(a)(3) for knowingly participating in transactions prohibited by ERISA § 406(a). *See Peters*, 2 F.4th at 239-40.

Peters has argued that the payments to Optum under the Aetna-Optum contracts constituted "transfer[s] to, or use by or for the benefit of a party in interest, of any assets of the plan" in violation of ERISA § 406(a)(1)(D). Pet. App. 92-93. She contends that the Mars Plan's supposed payments for Optum's fees were prohibited transactions. Pet. App. 100-02. But Optum has never received a payment from the Mars Plan; Aetna paid Optum under the parties' separate contracts. Pet. App. 90, 101. Even if it had, Optum is not a party in interest because it did not have an independent preexisting relationship with the Mars Plan before it contracted with Aetna.

That was the district court's conclusion below. Pet. App. 102. And if this case had arisen in the Tenth Circuit rather than the Fourth, that would have been the conclusion on appeal.

In *Ramos*, the Tenth Circuit rejected the argument that Peters presses in this case, explaining that it leads to "an absurd result: the initial agreement with a service provider would simultaneously transform that provider into a party in interest and make that same transaction prohibited under § 1106." 1 F.4th at 787. Instead, the Tenth Circuit concluded that "some prior relationship must exist between the fiduciary and the service provider to make the provider a party in interest under § 1106." *Id.* The court continued:

> ERISA cannot be used to put an end to run-of-the-mill service agreements, opening plan fiduciaries up to litigation merely because they engaged in an arm's length deal with a service provider. Instead, ERISA is meant to prevent fiduciaries from engaging in transactions with parties with whom they have pre-existing relationships, raising concerns of impropriety. Otherwise, a plan participant could force any plan into court for doing nothing more than hiring an outside company to provide recordkeeping and administrative services.

Id.

Contrast that holding with the Fourth Circuit's decision below. Although the Fourth Circuit panel agreed that "Optum was not a party in interest at the time it entered the agreement" with Aetna, it misconstrued the Third Circuit's decision in *Sweda v. University of Pennsylvania*, 923 F.3d 320 (3d Cir. 2019), to conclude that "Optum could be a party in

interest because it ‘provided services to the plan at the time [its administrative] fees were paid[.]’” *Peters*, 2 F.4th at 240 (quoting *Sweda*, 923 F.3d at 339). In other words, the Fourth Circuit held that Optum could qualify as a party in interest because it provided services and got paid under its agreement with Aetna even though Optum did not have a preexisting relationship with the Mars Plan.

The *Sweda* court did not announce a rule like the Fourth Circuit imagined; on the contrary, the Third Circuit credited as plausible *allegations* that certain service providers were parties in interest because they “provided services to the plan at the time fees were paid,” but the court affirmed the dismissal of claims under ERISA § 406(a)(1) because interpreting the statute “to create a per se prohibited transaction rule forbidding service arrangements between a plan and a party providing services to the plan” would be “absurd.” 923 F.3d at 339-40. “ERISA specifically acknowledges that certain services are necessary to administer plans,” the *Sweda* court explained (citing 29 U.S.C. § 1104(a)(1)(A)(ii)), so “interpreting [ERISA § 406(a)(1)] to prohibit necessary services would be absurd.” *Id.* at 337.

By holding that Optum could qualify as a party in interest by performing and getting paid under its contract with Aetna, the panel adopted the kind of circular reasoning that the Tenth Circuit and other courts facing the same question have rejected. *Ramos*, 1 F.4th at 787; *Sellers v. Anthem Life Ins. Co.*, 316 F. Supp. 3d 25, 34 (D.D.C. 2018) (same); *see also Divane v. Nw. Univ.*, No. 16 C8157, 2018 WL 2388118, at *10

(N.D. Ill. May 25, 2018) ("[I]t would be nonsensical to let a party state a claim for a prohibited transaction in violation of ERISA merely by alleging a plan paid a person for a service."), *aff'd* 953 F.3d 980 (7th Cir. 2020), *cert. granted Hughes v. Nw. Univ.*, 141 S. Ct. 2882 (2021); *Albert v. Oshkosh Corp.*, No. 20-C-901, 2021 WL 3932029, at *8 (E.D. Wis. Sept. 2, 2021) (same). The Tenth Circuit and those other courts have rejected the Fourth Circuit's approach for good reason: It would be absurd to interpret ERISA § 406(a)(1) to prohibit service contracts with third parties when ERISA otherwise acknowledges that administering a plan involves providing services. *See, e.g.*, 29 U.S.C. § 1104(a)(1)(A)(ii); *see also Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("It is true that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with legislative purpose are available.").

* * *

Whether a service contract qualifies as a prohibited transaction under ERISA should not turn on whether a case arises in Colorado or the Carolinas. And yet that is the reality after the Fourth Circuit's decision below. It should not be so, for Congress enacted ERISA to "induc[e] employers to offer benefits by assuring a predictable set of liabilities, under uniform standards of primary conduct and a uniform regime of ultimate remedial orders and awards when a violation has occurred." *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (internal quotation marks omitted).

II. THE FOURTH CIRCUIT REACHED THE WRONG CONCLUSION BECAUSE IT IGNORED ERISA'S PLAIN LANGUAGE.

The Fourth Circuit settled on an interpretation that produced an absurd result, not by following the statute's plain meaning, but by ignoring it. *See Conn. Nat'l Bank v. Germain,* 503 U.S. 249, 253 (1992) (in interpreting a statute, this Court "always turn[s] first to one, cardinal canon before all others": the plain-meaning rule).

ERISA § 406(a)(1) bars a plan fiduciary from causing the plan to engage in certain transactions with a "party in interest." 29 U.S.C. § 1106(a). The statute assumes that the entity with which the plan engages in the transaction is *already* a party in interest, not that it will become one by virtue of the transaction with the plan. Likewise, ERISA defines "party in interest" in relevant part to mean "a person *providing* services to such plan." 29 U.S.C. § 1002(14)(B) (emphasis added). The term "providing" assumes that the "person" is *already* providing services to the plan, not that the "person" will provide services to the plan in the future.

Together, those provisions confirm that for a service provider to qualify as a "party in interest" under ERISA § 406(a)(1), the service provider must have a relationship with the plan that preexists, and is independent of, the relationship created by the allegedly prohibited transaction. The Fourth Circuit should have started and stopped with the statutory

text. *Conn. Nat'l Bank,* 503 U.S. at 254 ("When the words of a statute are unambiguous," the "first canon is also the last: 'judicial inquiry is complete.'") (quoting *Rubin v. United States,* 449 U.S. 424, 430 (1981)).

III. THE FOURTH CIRCUIT'S RULE WILL CHILL PLAN FIDUCIARIES AND SERVICE PROVIDERS FROM ENTERING INTO ARM'S-LENGTH SERVICE CONTRACTS THAT BENEFIT PLANS AND THEIR MEMBERS.

What all prohibited transactions "have in common is that they generally involve uses of plan assets that are potentially harmful to the plan." *Spink*, 517 U.S. at 893. They "are commercial bargains that present a special risk of plan underfunding because they are struck with plan insiders, presumably not at arm's length." *Id.*

Instead of interpreting ERISA § 406(a) to reach *those* kinds of arrangements, the Fourth Circuit's decision below casts a shadow over arm's-length service contracts that do not raise any of the insider-dealing concerns that animate ERISA § 406(a). Plans depend on those service contracts; without them, plans would be hamstrung in their ability to serve their members.

Take the Aetna-Optum contracts at issue in this litigation. No one disputes that the contracts generated millions of dollars in savings for Aetna plans and members. Pet. App. 90. And yet Optum has now spent more than six years defending against

Peters's claims. Unless the Court steps in and corrects the Fourth Circuit's error, similar suits will follow.

IV. THE COURT SHOULD RESOLVE THE QUESTION PRESENTED NOW.

The time for resolving the question presented is now. Optum argued in the district court and the Fourth Circuit that it does not qualify as a "party in interest" under ERISA § 406(a) because it did not have a preexisting relationship with the Mars Plan. The district court addressed the argument head-on, as did the Fourth Circuit in a published opinion. The issue is teed up for this Court's review.

And resolving the question presented in Optum's favor will end the litigation against Optum. Peters's only remaining claim against Optum is that it can be liable under ERISA § 502(a)(3) and *Harris Trust* as a non-fiduciary party in interest that supposedly knowingly participated in transactions prohibited by ERISA § 406(a). A holding from this Court that Optum could not qualify as a party in interest under § 406(a) would bring an end to that claim.

* * *

Optum has now spent more than half a decade and millions of dollars defending against claims challenging service contracts that yielded millions of dollars in savings. Enough is enough.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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