No. 12-2074

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TODD ROCHOW and JOHN ROCHOW,
as personal representatives of the
ESTATE OF DANIEL J. ROCHOW,
Plaintiffs-Appellees,

vs.

LIFE INSURANCE COMPANY OF NORTH AMERICA,
Defendant-Appellant.

On Appeal from the Judgment of District Judge Arthur J. Tarnow,
United States District Court for the Eastern District of Michigan

BRIEF OF THE AMERICAN COUNCIL OF LIFE INSURERS, AMERICAN BENEFITS COUNCIL, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AND AMERICA'S HEALTH INSURANCE PLANS AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT LIFE INSURANCE COMPANY OF NORTH AMERICA AND REVERSAL OF THE JUDGMENT BELOW

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: No. 12-2074 Case Name: Rochow v. Life Ins. Co. of N. America

Name of counsel: Waldemar J. Pflepsen, Jr.

Pursuant to 6th Cir. R. 26.1, American Council of Life Insurers
Name of Party (amicus)
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No. American Council of Life Insurers ("ACLI") discloses that it is a nonprofit corporation, has no parent corporation, and does not issue shares of stock.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No publicly owned corporation not a party to the appeal has a financial interest in the outcome.*

* Pursuant to Fed. R. App. P. 29(c)(5), ACLI states that: (a) no party's counsel authored this brief in whole or in part, (b) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and (c) no person—other than ACLI, its members, or their counsel—contributed money that was intended to fund preparing or submitting this brief.

CERTIFICATE OF SERVICE

I certify that on March 28, 2014 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/Waldemar J. Pflepsen, Jr.

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: No. 12-2074 Case Name: Rochow v. Life Ins. Co. of N. America

Name of counsel: Waldemar J. Pflepsen, Jr.

Pursuant to 6th Cir. R. 26.1, American Benefits Council
Name of Party (amicus)
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No. American Benefits Council (the "Council") is a nonprofit corporation, has no stock owned by any other entity, and has no parent companies, subsidiaries, or affiliates.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No publicly owned corporation not a party to the appeal has a financial interest in the outcome.*

*Pursuant to Fed. R. App. P. 29(c)(5), the Council states that: (a) no party's counsel authored this brief in whole or in part, (b) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and (c) no person-other than the Council, its members, or their counsel-contributed money that was intended to fund preparing or submitting this brief.

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s/ Waldemar J. Pflepsen, Jr.

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: No. 12-2074 Case Name: Rochow v. Life Ins. Co. of N. America

Name of counsel: Waldemar J. Pflepsen, Jr.

Pursuant to 6th Cir. R. 26.1, Chamber of Commerce of the United States of America
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No. The Chamber of Commerce of the United States of America (the "Chamber") states that it is a nonprofit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No publicly owned corporation not a party to the appeal has a financial interest in the outcome.*

*Pursuant to Fed. R. App. P. 29(c)(5), the Chamber states that: (a) no party's counsel authored this brief in whole or in part, (b) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief, (c) no person -- other than the Chamber, its members, or their counsel --contributed money that was intended to fund preparing or submitting this brief.

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s/Waldemar J. Pflepsen, Jr.

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: No. 12-2074 Case Name: Rochow v. Life Ins. Co. of N. America

Name of counsel: Waldemar J. Pflepsen, Jr.

Pursuant to 6th Cir. R. 26.1, America's Health Insurance Plans
Name of Party (amicus)
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No. America's Health Insurance Plans ("AHIP") is a nonprofit corporation, has no parent corporation, does not issue shares of stock, and, therefore, no publicly held corporation owns 10% or more of its stock.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No publicly owned corporation not a party to the appeal has a financial interest in the outcome.*

* Pursuant to Fed. R. App. P. 29(c)(5), AHIP states that: (a) no party's counsel authored this brief in whole or in part, (b) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and (c) no person—other than AHIP, its members, or their counsel—contributed money that was intended to fund preparing or submitting this brief.

CERTIFICATE OF SERVICE

I certify that on March 28, 2014 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/Waldemar J. Pflepsen, Jr.

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES

Page

Statutes and Rules

Other Authorities

IDENTITY AND INTEREST OF AMICI CURIAE

Pursuant to a motion for leave under Federal Rule of Appellate Procedure 29(b), the American Council of Life Insurers ("ACLI"), the American Benefits Council ("Council"), the Chamber of Commerce of the United States of America ("Chamber"), and America's Health Insurance Plans ("AHIP") (collectively, "*Amici*") file this brief as *amici curiae* in support of Defendant-Appellant Life Insurance Company of North America ("LINA").

ACLI is the largest life insurance trade association in the United States, representing the interests of more than 300 legal reserve life insurer and fraternal benefit member companies operating in the United States. Most products sold by ACLI members in the group employee benefits market are purchased to fund benefits under plans subject to the requirements of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 *et seq.* ("ERISA").

The Council is a broad-based, nonprofit trade association founded in 1967 to protect and foster the growth of the nation's privately sponsored employee benefit plans. The Council's members are primarily large employer sponsors of employee benefit plans, including many Fortune 500 companies. Its members also include employee benefit plan support organizations, such as actuarial and consulting firms, insurers, banks, investment firms, and other professional organizations.

Collectively, its more than 380 members sponsor and administer plans covering more than 100 million plan participants and beneficiaries.

The Chamber is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases that raise issues of concern to the nation's business community. Many Chamber members provide employee benefits through employee-welfare plans subject to ERISA. The ability to purchase affordable health and disability coverage for the benefit of employees is of vital importance to the Chamber's members and their employees and their employees' dependents.

AHIP is the national association representing health insurance plans that provide health and supplemental benefits to more than 200 million Americans through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid. AHIP's members offer a broad range of products in the insurance marketplace, including health, disability, long-term care, dental, vision, and supplemental coverage. AHIP's membership includes a majority of insurers providing group disability insurance. AHIP seeks to facilitate,

preserve, and increase the availability of affordable benefit coverage related to health care and disability.

The undersigned *Amici* and their member companies have a strong interest in seeing the district court's unprecedented decision reversed.

ARGUMENT

The district court held that LINA wrongfully denied Plaintiff disability benefits owed to him, awarding Plaintiff $900,000 in benefits, plus attorneys' fees and costs. The district court also awarded Plaintiff a windfall of nearly $3.8 million in "disgorgement" of adjudged LINA "profits" under ERISA Section 502(a)(3), on the grounds that, by denying benefits, LINA also breached its fiduciary duties, and thus additional "equitable" remedies were appropriate. The decision, if affirmed, would significantly increase the risk, cost, and uncertainty associated with offering ERISA-governed employee benefits, including a dramatic increase in the expense and burden of resolving benefits cases. These effects will have negative repercussions for the availability and affordability of valuable employee benefits on which millions of American workers and their families depend. Regardless of those adverse affects, the district court committed legal error and its judgment should be reversed.

As the Supreme Court recently observed, "ERISA represents a 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan

and the encouragement of the creation of such plans." *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (citations omitted). "Congress sought to create a system that is not so complex that administrative costs, or litigation expenses, unduly discourage employers from offering ERISA plans in the first place." *Id.* (citations and internal alterations and quotations omitted). Of particular significance to the issue before this Court, the Supreme Court has also "noted that ERISA's carefully crafted and detailed enforcement scheme provides strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly." *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 209 (2002) (citations and internal quotations omitted; emphasis in original).

Here, the district court fashioned a purportedly "appropriate equitable" remedy under Section 502(a)(3) that is contrary to the carefully balanced scheme and purposes of ERISA, and inappropriately punitive in nature. As such, the decision should be reversed.

I. The District Court's Judgment Dramatically Increases The Risk, Expense, And Burden Associated With Providing And Administering ERISA Benefits.

The affirmance of the district court's judgment would have several serious and unwarranted "negative repercussions." *Rochow v. Life Ins. Co. of N. Am.*, 737 F.3d 415, 431, 435 (6th Cir. 2013) ("*Rochow II*") (McKeague, J. dissenting), *vacated*, Feb. 19, 2014. One of the most immediate repercussions would be to

significantly increase the time, complexity, and costs associated with litigating and resolving ERISA cases.[1]

This case is illustrative. Plaintiff filed a complaint on September 17, 2004. The district court granted summary judgment regarding Plaintiff's entitlement to benefits under Section 502(a)(1)(B) in less than a year, on June 24, 2005, based on a review of the administrative record.[2] LINA appealed, and this Court affirmed on April 3, 2007. After this Court issued its mandate, Plaintiff moved for an "equitable accounting," claiming that LINA had breached its fiduciary duties in denying his claim for benefits and that disgorgement was necessary to prevent LINA's unjust enrichment. Three years of discovery into LINA's financial records

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[1] Approximately 154,000 new long-term disability claims were approved by private employer insurer survey respondents in 2012. Council for Disability Awareness, "2013 CDA Long Term Disability Claims Review," at 4 (http://www.disabilitycanhappen.org/research/CDA_LTD_Claims_Survey_2013.pdf). Nevertheless, according to the Department of Labor's ERISA Advisory Council, "the ERISA dockets of most of the federal bench are dominated by disability cases." 2012 ERISA Advisory Council Report, "Managing Disability Risks in an Environment of Individual Responsibility" (http://www.dol.gov/ebsa/publications/2012ACreport2.html).

[2] Judicial review of a denial of benefit claim is conducted solely on the administrative record where, as here, the plan administrator has the discretionary authority to determine eligibility and construe policy terms. *See, e.g., Schwalm v. Guardian Life Ins. Co. of Am.*, 626 F.3d 299, 308 (6th Cir. 2010) ("A court may consider only that evidence presented to the plan administrator at the time he or she determined the employee's eligibility in accordance with the plan's terms.") (citations omitted).

and "profits" ensued, which included extensive fact and expert discovery, *Daubert* motions, and a full evidentiary hearing.

Thus, a streamlined adjudicatory process regarding Plaintiff's entitlement to benefits was transformed into protracted and expensive litigation, contrary to the legislative goal of making the administration of ERISA plans and benefit determinations as efficient as possible to encourage employers to offer employee benefits. *See, e.g.*, *Conkright*, 559 U.S. at 517; *Perry v. Simplicity Eng'g*, 900 F.2d 963, 967 (6th Cir. 1990) ("A primary goal of ERISA was to provide a method for workers and beneficiaries to resolve disputes over benefits inexpensively and expeditiously. . . . Permitting or requiring district courts to consider evidence from both parties that was not presented to the plan administrator would seriously impair the achievement of that goal.").

Another "negative repercussion" of the decision below is that it unjustifiably expands the overall financial risk and complexity associated with offering employee benefits and administering benefit claims. A benefit plan administrator is required by ERISA to review claims in accordance with plan documents and, as a result of a prudent review in accordance with ERISA, deny certain claims where appropriate. ERISA §§ 402(a)(1), (b)(4); 404(a)(1)(D). Under the district court's decision, plan sponsors and claims administrators could be liable for indeterminate amounts of "profit disgorgement" if they are held to have acted "arbitrarily and

capriciously" in denying plan benefits and, according to the district court, thereby breached their fiduciary duties.[3] This exposure to unpredictable liability would discourage employer plan sponsors from providing employee benefits under ERISA, directly contrary to the goals of Congress. *See, e.g., Conkright*, 559 U.S. at 517 ("ERISA 'induces 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.'") (quoting *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 379 (2002)).

As a related consequence, the expanded litigation costs and the overall increase in financial risk embodied in the district court's ruling would inevitably lead to attendant pressure to err on the side of granting claims for benefits even if they might not be valid. Under the district court's rationale, a plan administrator would otherwise risk being subject not only to an award of the plan benefits owed plus attorneys' fees but also to protracted litigation costs and a costly "disgorgement" award any time it erroneously denied benefits. To account for the increased cost and exposure, insurers would have to consider changing their pricing structure or limiting the level of insurance benefits they currently provide.

[3] *See, e.g.,* Order, RE 67, Page ID 932-43, at 936 ("Surely, arbitrary or capricious action by a fiduciary is a breach of the high standards that the law imposes on fiduciaries.").

Employers faced with the prospect of higher costs and increased liability exposure may reduce or eliminate benefits to employees or raise required employee contributions. The decision is thus directly contrary to ERISA's aim of encouraging the provision of benefits by allowing for an efficient system for adjudication of benefit claims and a predictable set of potential liabilities.

II. Awarding Plaintiff Monetary Relief Under Both ERISA Sections 502(a)(1)(B) And 502(a)(3) Conflicts With Supreme Court And Sixth Circuit Precedent And Provides Plaintiff An Impermissible Windfall.

ERISA's remedial goal, as applied to Plaintiff's claim here, is to restore Plaintiff to the position he would have been in had there been no wrongful denial of benefits—not to provide Plaintiff a windfall. *See Ford v. Uniroyal Pension Plan*, 154 F.3d 613, 618 (6th Cir. 1998); *Henry v. Champlain Enters., Inc.*, 445 F.3d 610, 624 (2d Cir. 2006) (Sotomayor, J.) ("The aim of ERISA is to make the plaintiffs whole, but not to give them a windfall."); *Bennett v. Conrail Matched Sav. Plan Admin. Comm.*, 168 F.3d 671, 677 (3d Cir. 1999) ("ERISA does no more than protect the benefits which are due to an employee under a plan"). Here, Plaintiff was made whole by recovering approximately $900,000 in benefits and attorneys' fees. The district court's additional award of nearly $3.8 million in "disgorgement" of adjudged LINA "profits" under ERISA Section 502(a)(3), however, was nothing more than an improper "windfall" benefit at odds with ERISA's "carefully reticulated" remedial scheme. *See Knudson,* 534 U.S. at 209

("ERISA is a 'comprehensive and reticulated statute,' the product of a decade of congressional study of the Nation's private employee benefits system.").

ERISA Section 502(a)(1)(B) is the exclusive remedial provision under which a plan participant like Rochow can recover monetary relief for benefits that were denied. As this Court has recognized, "[t]he Supreme Court clearly limited the applicability of § [502](a)(3) to beneficiaries who may not avail themselves of § [502]'s other remedies." *Wilkins v. Baptist Healthcare Sys., Inc.,* 150 F.3d 609, 615 (6th Cir. 1998) (citing *Varity Corp. v. Howe,* 516 U.S. 489, 512 (1996) (describing Section 502(a)(3) as a "'catchall'" provision that "act[s] as a safety net, offering appropriate equitable relief for *injuries* caused by violations *that § 502 does not elsewhere remedy*") (emphasis added)).[4] As LINA points out in its briefing and Plaintiff must concede, Rochow suffered only one injury as a result of one type of "ERISA-actionable" conduct by LINA: namely, LINA's wrongful denial of Rochow's disability benefits. That injury is addressed by—and, in Rochow's case, was redressed under—ERISA Section 502(a)(1)(B).

[4] *See also Wilkins,* 150 F.3d at 615 ("Because § [502](a)(1)(B) provides a remedy for [plaintiff's] alleged injury that allows him to bring a lawsuit to challenge the Plan Administrator's denial of benefits to which he believes he is entitled, he does not have a right to a cause of action for breach of fiduciary duty pursuant to § [502](a)(3)."). *Accord Varity,* 516 U.S. at 512 ("ERISA specifically provides a remedy for breaches of fiduciary duty with respect to the interpretations of plan documents and the payment of claims" under "§ 502(a)(1)(B).").

Though the district court observed, in circular fashion, that there was a "'need for further equitable relief' under the catchall provision" because "disgorgement . . . offers a remedy distinct from the relief offered through the benefits recovery provision," neither the district court nor Plaintiff can point to any separate and distinct wrongful conduct or resulting injury apart from the denial of Plaintiff's benefits that would even arguably warrant Section 502(a)(3) relief. *See* Appellees' Response to Petition for Rehearing *En Banc*, Dkt. No. 006111958155, at 6 (failing to identify any such additional injury suffered, Plaintiff admits that "any further remedy [under ERISA § 502(a)(3)] would constitute ***additional relief*** to address an ***additional and distinct injury***") (emphasis in original).[5]

Plaintiff successfully pursued applicable remedies available under Section 502(a)(1)(B), and recovered an enhanced award of attorneys' fees. As a matter of law, he is not entitled to recover a further "equitable" disgorgement award under

[5] The *Gore* and *Hill* decisions are thus readily distinguishable from the current case. *See Gore v. El Paso Energy Corp. Long Term Disability Plan*, 477 F.3d 833, 840 (6th Cir. 2007) ("In his complaint, Gore has alleged two separate and distinct injuries."); *Hill v. Blue Cross & Blue Shield of Michigan*, 409 F.3d 710, 718 (6th Cir. 2005) ("[A]n award of benefits . . . . will not change the fact that [defendant] is using an allegedly improper methodology for handling all . . . emergency-medical-treatment claims.").

Section 502(a)(3) by recharacterizing his denial of benefits claim as a "breach of fiduciary duty."[6]

III. The District Court's Disgorgement Award Is Punitive In Nature And Thus Impermissible Under ERISA.

The district court's "disgorgement of profits" award of nearly $3.8 million—in addition to $900,000 in benefits and attorneys' fees—is also improper because the award's gross disproportionality is punitive in nature, and neither ERISA Section 502(a)(1)(B) nor Section 502(a)(3) allows for punitive damages. *See Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 144 (1985) ("§ 502(a)(1)(B) . . .

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[6] The panel majority, echoing the concerns expressed in AARP's earlier *amicus curiae* brief, stated that without the availability of Section 502(a)(3) relief, insurers "would have the perverse incentive to deny benefits for as long as possible" because, "[a]s the U.S. Supreme Court and this court have recognized, ERISA fiduciaries that pay benefits already operate under an inherent conflict of interest." *Rochow II*, 737 F.3d at 426 (citing *Metro. Life Ins. Co. v. Glenn,* 554 U.S. 105, 112-115 (2008)). But that provides no warrant to expand the scope of Section 502(a)(3) relief. The Supreme Court in *Glenn* held that the existence of this conflict, which is present in the "lion's share" of benefits cases, should be considered as "a factor" in deciding whether a conflicted administrator abused its discretion in denying benefits. *Glenn,* 554 U.S. at 115-17. The majority's decision, however, seeks to catapult what the Supreme Court held to be a single factor in determining whether benefits were improperly denied under Section 502(a)(1)(B) into a wholesale revision to the scope of relief for benefit denials under ERISA's carefully crafted remedial scheme. Plaintiff's complaint in essence boils down to a disagreement with a regulatory scheme Congress created that has withstood the test of nearly 40 years. Moreover, as the *Glenn* Court recognized, insurers and other plan administrators are governed by market forces and regulatory oversight in the first instance, and ERISA "supplements marketplace and regulatory controls with judicial review of individual claims denials [under] § 1132(a)(1)(B)." *Id.* at 114-15.

says nothing about the recovery of extracontractual damages" or contains "text to support the conclusion" that it provides "a private right of action for compensatory or punitive relief"); *Varity*, 516 U.S. at 510 ("compensatory and punitive damages are not 'equitable relief' within the meaning of subsection [502(a)](3)") (citing *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255 (1993)). *See also Russell*, 473 U.S. at 148 ("In contrast to the repeatedly emphasized purpose to protect contractually defined benefits, there is a stark absence—in the statute itself and in its legislative history—of any reference to an intention to authorize the recovery of extracontractual damages.").

Similarly, to the extent that Plaintiff has characterized the disgorgement award as a permissible form of "prejudgment interest" (which *Amici* contend it is not), this Court has repeatedly held that prejudgment interest awarded to ERISA plaintiffs cannot be at rates so high that the award amounts to punitive damages.

> Although prejudgment interest is typically not punitive, an excessive prejudgment interest rate would overcompensate an ERISA plaintiff, thereby transforming the award of prejudgment interest from a compensatory damage award to a punitive one in contravention of ERISA's remedial goal of simply placing the plaintiff in the position he or she would have occupied but for the defendant's wrongdoing.

See Ford, 154 F.3d at 618; *accord Schumacher v. AK Steel Corp. Ret. Accumulation Pension Plan,* 711 F.3d 675, 686 (6th Cir. 2013). The district

court's $3.8 million award—more than quadruple the amount of benefits awarded—clearly violates this principle.

Whether characterized as a "disgorgement of profits" or an award of "prejudgment interest," the district court's excessive award is punitive in nature and therefore not permitted under ERISA.

CONCLUSION

For all of these reasons, the district court's judgment should be reversed.

Dated: March 28, 2014

Respectfully submitted,

/s/ Waldemar J. Pflepsen, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that, on this 28th day of March, 2014, I tendered a PDF copy of the foregoing Brief of the American Council of Life Insurers, American Benefits Council, the Chamber of Commerce of the United States of America, and America's Health Insurance Plans as *Amici Curiae* in Support of Defendant-Appellant Life Insurance Company of North America and Reversal of the Judgment Below to the Clerk of the U.S. Court of Appeals for the Sixth Circuit for filing using the Court's electronic filing and docketing system (CM/ECF).

/s/ Waldemar J. Pflepsen, Jr.
WALDEMAR J. PFLEPSEN, JR.