

July 17, 2019

[REDACTED]

Re: Appeal 2018-[REDACTED]; Case No. 206371; Delphi Hourly-Rate Employees' Pension Plan (the "Delphi Hourly Plan" or the "Plan")

Dear [REDACTED]:

The Appeals Board is responding to your appeal of PBGC's benefit determination of May 18, 2018. PBGC determined that you are not entitled to a PBGC-payable survivor annuity benefit under the Delphi Hourly Plan as the surviving spouse of [REDACTED] because you were found guilty of murder in his death. Although you are [REDACTED] designated beneficiary for the survivor annuity benefit under the Plan, PBGC determined that Michigan state law and the federal common law rendered you ineligible to receive the benefit. You claim that you will be exonerated from the murder conviction of [REDACTED] and are entitled to the survivor annuity benefit under the Delphi Hourly Plan.

I. Summary of decision

The Appeals Board decides that there is no basis for changing PBGC's determination that you are not entitled to a survivor annuity benefit. We find that you were convicted of the first-degree premeditated murder of your former spouse, [REDACTED], a participant under the Delphi Hourly Plan, in a Michigan state court, and the conviction has not been overturned. Because both Michigan state law and the federal common law predating the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"), prohibit an individual convicted of murder from benefiting from his or her crime, PBGC correctly determined that you are not eligible for a PBGC-payable survivor annuity benefit as the surviving spouse of [REDACTED]. Therefore, we uphold PBGC's determination and deny your appeal.

II. Background

PBGC is the United States government agency that insures pensions in accordance with Title IV of ERISA. If a plan sponsor is unable to support its defined benefit pension plan and the plan terminates, PBGC becomes the statutory trustee of the plan and pays guaranteed pension benefits according to the plan provisions, subject to legal limits set by Congress under ERISA.

General Motors Corporation (“GM”) spun off Delphi Automotive Systems Corporation (“Delphi”) effective January 1, 1999. As part of that arrangement, Delphi agreed to sponsor a new pension plan for its hourly employees to replace their previous coverage under the General Motors Hourly Rate Employees’ Pension Plan. The Delphi Hourly Plan’s original effective date was also January 1, 1999.

When the Delphi Hourly Plan terminated on July 31, 2009, it did not have sufficient assets to provide all benefits provided under the Plan, and PBGC became the statutory trustee on August 10, 2009. The terms of the Plan, the provisions of ERISA, and PBGC’s regulations determine the benefits PBGC can pay.

When PBGC becomes statutory trustee of a terminated plan, PBGC collects participant information and copies of the plan’s governing documents from the plan’s administrator and audits that data. PBGC relies on the information it receives from a plan administrator unless PBGC’s audit of that information shows that it is incorrect, or a participant supplies PBGC with documents showing that the information is incorrect.

PBGC records contain the following information:

- [REDACTED] was born on [REDACTED];
- You were born on [REDACTED];
- Mr. [REDACTED] was hired on [REDACTED], as an hourly employee of GM;
- Before May 28, 1999, his employment transferred from GM to Delphi;
- You and Mr. [REDACTED] were married on [REDACTED];
- Mr. [REDACTED] employment terminated on [REDACTED];
- When his employment terminated, he was eligible for a 30-year retirement type under the Delphi Hourly Plan;
- Mr. [REDACTED] began receiving a benefit under the Plan on his actual retirement date of [REDACTED], paid in the form of a Joint and 65% Survivor Pop-up Annuity (“J&65%SA” or “J&65%SA with Pop-up”);
- His date of death was [REDACTED];

On [REDACTED], you were found guilty of first-degree premeditated murder in the death of [REDACTED] and, on [REDACTED], sentenced to life in prison without eligibility for parole. You subsequently appealed the [REDACTED] conviction to the Michigan Court of Appeals. On [REDACTED], the Michigan Court of Appeals affirmed the [REDACTED] County Circuit Court’s conviction in a written opinion.¹ You then applied to the Michigan Supreme Court for

¹ *People v. [REDACTED]*, No. [REDACTED], [REDACTED] (Mich. Ct. App. [REDACTED]), provided as Enclosure 1.

leave to appeal the decision of the Michigan Court of Appeals. On [REDACTED], the Michigan Supreme Court denied your application for leave to appeal the decision of the Michigan Court of Appeals.²

On [REDACTED], you filed a motion for relief from judgment, which the Circuit Court denied on [REDACTED]. The Michigan Court of Appeals denied your appeal of this order on [REDACTED], and the Supreme Court of Michigan denied your application for leave to file an appeal on [REDACTED].

You have also filed in the United States District Court for the Eastern District of Michigan petitions under 28 U.S.C. § 2254 for Writs of Habeas Corpus by a Person in State Custody. Although two cases involving petitions for Writs of Habeas Corpus have been dismissed, Case No. [REDACTED] is currently pending. According to the District Court, you assert the following grounds for relief: (1) The conclusions and opinions of the officer in charge of the case improperly invaded the province of the jury; (2) There was misrepresentation by the court-appointed appellate attorney and misconduct by both prosecutors and the police; (3) There was misrepresentation by trial counsel and misconduct by both prosecutors and the police; and (4) The shooting was legally justified due to provocation.

III. Issue presented by your appeal of PBGC's determination

On May 18, 2018, PBGC issued a benefit determination letter, informing you that you are not entitled to a PBGC-payable benefit.³ The letter states in relevant part the following:

[REDACTED] was a participant in the plan. He was receiving benefits as a Joint and 65% Survivor Annuity with Pop-up. You were named as the beneficiary for survivor benefits upon his death. [REDACTED] died on [REDACTED]. You were found guilty of murder in his death. Because Michigan state law provides that an individual convicted of homicide cannot receive benefits with respect to the decedent's estate, and federal common law provides for similar treatment, we cannot pay you a survivor benefit.

You filed a timely appeal on May 29, 2018.⁴ Your appeal states in part the following:

Please reconsider your unknowing judgment until my last appeal to decide, or BACK PAY ME when I'm EXONERATED very soon now!

(Emphasis in original.)

² *People v. [REDACTED], [REDACTED]* (Mich. [REDACTED]), provided as Enclosure 2.

³ PBGC benefit determination letter dated May 18, 2018, provided as Enclosure 3.

⁴ Excerpts from your appeal are provided as Enclosure 4.

The primary issue presented by your appeal is whether you are entitled to receive a PBGC-payable benefit as the surviving spouse of [REDACTED]. As explained below, the Appeals Board finds that under either state or federal law, including ERISA, you are not entitled to a PBGC-payable benefit. Accordingly, PBGC correctly determined that you are not entitled to a survivor annuity benefit payable by PBGC.

IV. Discussion

A. Relevant Plan provisions

The Delphi Hourly Plan document in effect when Mr. [REDACTED] terminated employment was the Delphi Hourly-Rate Employees' Pension Plan, effective October 1, 2003.⁵ All defined benefit pension plans like the Delphi Hourly Plan must provide the pension benefits of participants in the form of a qualified joint and survivor annuity ("QJSA").⁶ A QJSA is an annuity for the life of the participant and a survivor annuity for "the life of [the participant's] spouse" that is at least 50 percent of the amount of the annuity payable for the joint lives of the participant and spouse.⁷

The Plan's QJSA is the J&65%SA form of benefit as described in Article II, Section 5 of the Plan. It is an annuity for the life of a participant and a survivor annuity for the "designated spouse" that is at least 50 percent of the amount of the annuity payable for the joint lives of the participant and spouse.⁸ If a participant predeceases his designated spouse, the designated spouse receives the survivor's benefit (i.e., 65% of the joint benefit) for the spouse's remaining lifetime. If a spouse predeceases the participant, the participant's benefit increases to an amount equal to what the participant would have received absent the survivor election. Because the participant's benefit "pops up" automatically on the death of a spouse, the retirement type is sometimes referred to as the J&65%SA with Pop-up.

The J&65%SA with Pop-up was the default form of benefit for married participants. Article II, Section 5(a) of the Plan provides that, upon retirement, a married participant "shall be deemed to have elected automatically a reduced amount of monthly basic benefit" to provide "a survivor benefit" for his "designated spouse."⁹ PBGC documents include a Pension Election Confirmation Statement indicating that [REDACTED] elected the survivor benefit option for you, his designated spouse.

⁵ See Enclosure 5 for a copy of the relevant Delphi Hourly Plan provisions.

⁶ ERISA § 205(a)(1); 29 United States Code ("USC") § 1055(a)(1). The provisions of ERISA are set forth in 29 USC §§ 1001 – 1461, but the Board will hereinafter cite to the ERISA statute in this decision.

⁷ ERISA § 205(d)(1).

⁸ See Enclosure 5, Article II, Section 5(a). Although the 2003 Plan does not define "designated spouse," it states in Article II, Section 5(b): "The beneficiary of a survivor benefit election shall be only the person who is the employee's spouse at such time and who has been such spouse for at least one year immediately prior to the effective date of such election."

⁹ See Enclosure 5, Article II, Section 5(a).

Payment of the Plan’s survivor annuity benefit does not depend upon the cause of the participant’s death. The Plan’s provisions do not, in other words, expressly deny benefits to a surviving spouse who is convicted of murdering a participant. After a participant dies, the survivor annuity benefit election may not be changed.¹⁰

B. Relevant state and federal law

1. Michigan state law and federal common law

In general, “slayer statutes”—i.e., “a statute that prohibits a person’s killer from taking any part of the decedent’s [property]”¹¹—are codifications of the equitable principle that a person should not benefit from his or her criminal act. Most states have enacted slayer statutes in their respective statutory codes,¹² and the principle underlying slayer statutes is long-standing under both state and federal common law.¹³ As the Supreme Court declared in *New York Mut. Life Inc. Co. v. Armstrong*:

It would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had willfully fired.¹⁴

Slayer statutes promote “criminal-law values of deterrence and retaliation,” but they are not criminal-law statutes.¹⁵ Slayer statutes are statutes of general applicability dealing with aspects of family law, a traditional area of state regulation.¹⁶ As such, federal courts are loathe to override the state interests represented therein:

When the state substantive law in question regulates family and family-property arrangements – matters that traditionally have been left to local law . . . – state interests ‘should be overridden by the federal courts only where clear and substantial interests of the

¹⁰ See Enclosure 5, Article II, Section 5(i).

¹¹ Black’s Law Dictionary (10th ed. 2014).

¹² *Egelhoff v. Egelhoff*, 532 U.S. 141, 152 (2001). One commentator has counted 47 states with slayer statutes, and the ones that do not reach the same or similar result through the common law precedent. Jennifer Piel, *Expanding Slayer Statutes to Elder Abuse*, 43 J. Am. Acad. Psychiatry Law 369 (2015).

¹³ See Restatement (Third) of Restitution and Unjust Enrichment § 45(2) (2011); Uniform Probate Code § 2-803 (2006); Restatement (Third) of Property: Wills and Other Donative Transfers § 8.4 (Homicide—the Slayer Rule) (2003); Bogert’s Trusts and Trustees, The Law of Trusts and Trustees § 478 (Property Acquired by killing another) (2018); see also, *Riggs v. Palmer*, 115 N.Y. 506 (1889).

¹⁴ 117 U.S. 591, 600 (1886) (ruling that a slayer could not profit from insurance proceeds (a non-probate asset) at the expense of killing the insured).

¹⁵ N. Cohen, *The Slayer Rule*, 92 B.U.L. Rev. 793, 798 (2012).

¹⁶ *Laborers’ Pension Fund v. Miscevic*, 880 F.3d 927, 933 (7th Cir. 2018) (citing *Egelhoff v. Egelhoff*, 532 U.S. 141, 152 (2001)); *Manning v. Hayes*, 212 F.3d 886, 872 (5th Cir. 2000).

National Government, which *cannot* be served consistently with respect for such state interests, will suffer major damage if the state law is applied.’ . . . The full force of this rule applies no less when the property in question consists of federally created benefits.¹⁷

Michigan, like fifteen other states, has adopted the Uniform Probate Code’s version of the slayer statute. Michigan’s slayer statute specifically provides that “[t]he felonious and intentional killing or the conviction of the felon for the abuse, neglect, or exploitation of the decedent does all the following,” to include: “The felonious and intentional killing . . . of the decedent . . . [r]evokes . . . [d]isposition or appointment of property made by the decedent to the killer in a governing instrument.”¹⁸ It further mandates generally that “[a] killer’s or felon’s wrongful acquisition of property or interest not covered by this section must be treated in accordance with the principle that a killer or felon cannot profit from his or her wrong.”¹⁹

The statute “is derived from the common-law rules that one who commits a murder cannot benefit by his or her criminal act.”²⁰ The provisions of a victim’s “donative” instruments are given effect as if the slayer predeceased the victim.²¹

2. Federal statutory law (ERISA)

The provisions of ERISA, a federal law, preempt the provisions of state laws that “relate to any employee benefit plan,” such as the Delphi Hourly Plan.²² In other words, state laws relating to employee benefit plans are generally subordinate to ERISA, a federal law, unless an exception applies.

Section 514(a) of ERISA provides as follows:

Except as provide in subsection (b) of this section, the provisions of this title and title IV [of ERISA] shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

Subsection (b) of Section 514 governs the construction and application of the doctrine of preemption embodied in ERISA. For example, subsection (b) sets forth several exceptions to ERISA’s preemption of State law, though none are applicable in this case. For instance, ERISA

¹⁷ *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 594-595 (1979) (internal citations omitted).

¹⁸ Michigan Compiled Laws (“MCL”) Section 700.2803(2)(a)(i) (June 27, 2016).

¹⁹ MCL Section 700.2803(5) (Forfeiture, revocation, or severance).

²⁰ *In re Nale Estate*, 290 Mich. App. 704, 707-708, 803 N.W.2d 907 (2010).

²¹ MCL Section 700.2803(4).

²² ERISA § 514(a).

does not preempt a State's criminal law or State laws regulating insurance, banking, or securities. By contrast, Slayer statutes are generally understood to fall within the category of State family or probate law.

The Supreme Court has formulated a two-part test for evaluating whether a state law "relates to" an employee benefit plan and is thus preempted: (1) Does the law refer to an employee benefit plan; and (2) Does the law have an impermissible connection with an employee benefit plan.²³ Under the first test, the Court has held that ERISA preempted a state law that expressly referred to and exempted ERISA welfare benefit plans from state garnishment procedures.²⁴ It similarly held that ERISA preempted a law in the District of Columbia that imposed requirements on ERISA health plans to provide health insurance coverage equivalent under a standard required by D.C. law.²⁵

Under the second test, relating to state laws with impermissible connections to employee benefit plans, not every state law that affects an ERISA plan will be preempted. To determine whether such a connection exists, courts "look both to 'the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive,' as well as to the nature of the state law's effect on ERISA plans."²⁶ If a state law has only an indirect effect on an ERISA plan, the likely result is that the law is not preempted.²⁷ If a state law interferes with Congress's objective under Section 514(a) of ERISA through regulation of "employee benefit structures or their administration," the likely result is preemption.²⁸

For example, in *Egelhoff v. Egelhoff*, a Washington state law was enacted to revoke beneficiary designations for decedents' interests in non-probate assets upon divorce.²⁹ Applying the second test, i.e., whether state law had an impermissible connection with an ERISA-covered plan, the Court found that the law interfered "with nationally uniform plan administration" and

²³ *California Div. of Labor Standards Enforcement v. Dillingham Const., N.A., Inc.*, 519 U.S. 316, 324-325 (1997).

²⁴ *Mackey v. Lanier Collection Agency Services*, 486 U.S. 825, 830 (1988).

²⁵ *District of Columbia v. Greater Washington Bd. of Trade*, 506 U.S. 125, 132-133 (1992).

²⁶ *Egelhoff v. Egelhoff*, 532 U.S. 141, 147 (2001) (quoting *Dillingham*, 519 U.S. at 325).

²⁷ *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 660 (1995) (state law which imposed surcharge on hospital patients insured by carriers other than BC/BS had only an "indirect economic effect on choices made by insurance buyers, including ERISA plans.").

²⁸ *Travelers*, 514 U.S. at 658.

²⁹ The Washington State statute provided as follows:

If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

Wash. Rev. Code § 11.07.010(2)(a) (1994).

was therefore preempted.³⁰ The Court reasoned that a “uniform administrative scheme” would be impossible if pension plans were “subject to different obligations in different states.”³¹ The Court also concluded that the Washington state statute conflicted with ERISA’s plan documents rule, requiring that “benefits be paid in accordance with plan documents.”³²

C. Interpreting statutes enacted against a background of pre-existing common law

Under a well-known canon of statutory construction, “[a] statute will be construed to alter the common law only when that disposition is clear.”³³ Though some courts have interpreted this canon to mean that “statutes in derogation of the common law are to be strictly construed,” the better view is that “statutes will not be interpreted as changing the common law unless they effect the change with clarity.”³⁴

The Supreme Court has applied this canon of statutory construction in a variety of cases. Under well-established Court precedent, “Congress is understood to legislate against a background of common law adjudicatory principles.”³⁵ “When a statute covers an issue previously governed by the common law, [the Court] interpret[s] the statute with the presumption that Congress intended to retain the substance of the common law.”³⁶ Accordingly, “where a common-law principle is well-established, . . . the courts may take it as a given that Congress has legislated with the expectation that the principle will apply, except ‘when a statutory purpose to the contrary is evident.’”³⁷

This canon of statutory interpretation is similarly applied in state courts. For instance, in a Michigan case of first impression, the court addressed the following issue: “Can [a] child, who murdered his mother for the purpose of securing his inheritance, be let into the inheritance under the statutes of descent?”³⁸ The trial court applied the statute of descent strictly, and because there was no exception for murder, held that it did not have the discretion to alter the legislative rules. The Michigan Supreme Court rejected the lower court’s interpretation, stating:

³⁰ *Egelhoff*, 532 U.S. at 148.

³¹ *Id.*

³² *Id.* at 150.

³³ A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* (1st edition 2012), at 318-319, Section 52 (Presumption Against Change in Common Law).

³⁴ *Id.*

³⁵ *Astoria Federal Savings & Loan Ass’n v. Solimino*, 501 U.S. 104, 108 (1991); *Samantar v. Yousef*, 560 U.S. 305, 320, note 13 (2010); see also *Gottlieb v. Carnival Corp.*, 436 F.3d 335, 339 (2d Cir. 2005).

³⁶ *Samantar v. Yousef*, 560 U.S. at 320, note 13; *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952); *United States v. Tex.*, 507 U.S. 529, 534 (1993).

³⁷ *Astoria Federal Savings & Loan Ass’n*, 501 U.S. at 108 (citing *Isbrandtsen Co. v. Johnson*, 343 U.S. at 783); *United States v. Tex.*, 507 U.S. at 534; see also *Kennedy v. DuPont Savings Plan*, 555 U.S. 285, 295, footnote 6 (2009) (Court suggested that reading the anti-alienation rule under section 205(d)(1) of ERISA to bar all waivers of benefit “unsound in light of background common law principles.”)

³⁸ *Garwols v. Bankers’ Trust Co.*, 251 Mich. 420, 422 (1930).

The statute is in general terms, and controls the descent and distribution of property under normal conditions. It does not provide that a son who murders his mother shall inherit her property. It cannot be conceived that the legislature had in mind so shocking a result in its enactment. In our opinion, it must be assumed that it intended to leave such an exceptional case to be determined by the rules of the common law which have so long had place in our jurisprudence.³⁹

Notwithstanding the absence of express statutory language, the Michigan Supreme Court construed the statute to be a bar to the son's inheritance of his mother's property.⁴⁰

D. Analysis of your appeal

The Appeals Board is confronted by the preliminary issue of which law should govern your appeal: state law, federal common law, or ERISA. To determine which law applies, the Board generally would need to determine whether ERISA, a federal law, preempts state law, or whether the state slayer statutes represent an area of traditional state law that ERISA does not preempt. The Supreme Court has not yet decided whether ERISA preempts slayer statutes, and there is only one federal circuit court of appeals decision on the preemption of slayer statutes, discussed below, and that court's jurisdiction does not include Michigan.

As explained below, the Appeals Board decides that it need not resolve the preemption issue to resolve your appeal. Because the Board finds that you are precluded from receiving a survivor annuity benefit under both the Michigan slayer statute and the equitable principle embodied in the federal common law in existence when ERISA was enacted, we need not decide which law applies to your appeal.⁴¹ In either case, PBGC would not pay you a survivor annuity benefit.

1. If ERISA does not preempt Michigan law, you are not entitled to a PBGC-payable benefit under the Delphi Hourly Plan

The Supreme Court has not decided whether ERISA Section 514(a) preempts state slayer statutes, including Michigan's. It has decided a preemption case under ERISA section 514(a) involving a state statute with certain characteristics analogous to slayer statutes using the second

³⁹ *Id.* at 429.

⁴⁰ *Id.* at 432-433.

⁴¹ For purposes of this appeal, we assume, without deciding, that the Michigan slayer statute would apply if it were not preempted by ERISA under the circumstances of your appeal. For example, if you appealed the Board's decision to the appropriate court under ERISA's venue provision, *see* ERISA § 4003(f)(2), and the court decided that state law should be applied, we expect that the court would engage in a choice of law analysis to determine whether Michigan law—which furnished the basis for your murder conviction in the state of Michigan—should be the applicable state law.

test above—i.e., whether the law presented an impermissible connection with an employee benefit plan.⁴²

In *Egelhoff v. Egelhoff*, referenced above, the Court decided that the Washington state statute that automatically revoked the designation of a spouse as a beneficiary of a nonprobate asset on divorce created “a prohibited connection with ERISA plans”; “implicate[d] an area of core ERISA concern;” and “interfere[d] with nationally uniform plan administration.”⁴³ The Court consequently held that the Washington state law was preempted by ERISA.

Although the Court in *Egelhoff* declined to say whether ERISA would also preempt *slayer statutes*, it suggested in *dicta* that slayer statutes might not be preempted:

In the ERISA context, these ‘slayer’ statutes could revoke the beneficiary status of someone who murdered a plan participant. Those statutes are not before us, so we do not decide the issue. We note, however, that the principle under the statutes – which have been adopted by nearly every State – is well established in the law and has a long historical pedigree predating ERISA. See, e.g., *Riggs v. Palmer*, 115 N.Y. 506 . . . (1889). And because the statutes are more or less uniform nationwide, their interference with the aims of ERISA is at least debatable.⁴⁴

Some courts have interpreted this language to suggest that slayer statutes are *not* preempted by ERISA.⁴⁵ And while numerous federal district courts have considered the preemption issue,⁴⁶ there has been only one decision in the federal circuit courts of appeal. In *Laborer’s Pension Fund v. Miscevic*,⁴⁷ the Seventh Circuit upheld a lower court’s ruling that the Illinois slayer statute was not preempted by ERISA.

In *Miscevic*, the federal appellate court deemed slayer laws to be “an aspect of family law,” and ruled that, to show preemption, the spouse convicted of first-degree murder had to overcome the presumption that Congress did not intend “to supplant this ‘traditional area of state regulation.’”⁴⁸ The *Miscevic* court distinguished the Washington state statute in *Egelhoff* from the Illinois slayer statute, which the court found embodied a “well-established legal principle

⁴² *Egelhoff*, 532 U.S. 141.

⁴³ *Egelhoff*, 532 U.S. at 147-149.

⁴⁴ *Egelhoff*, 532 U.S. at 152.

⁴⁵ See, e.g., *Admin. Comm. for the H.E.B. Inv. & Ret. Plan v. Harris*, 217 F. Supp. 2d 759 (E.D. Tex. 2002); *Mack v. Estate of Mack*, 206 P.3d 98 (Nev. 2009).

⁴⁶ The lower courts have not been consistent, but the majority have held that ERISA does not preempt state slayer statutes.

⁴⁷ 880 F.3d 927 (7th Cir. 2018).

⁴⁸ *Miscevic*, 880 F.3d at 933-934.

which predate[d] ERISA.”⁴⁹ The court found that the spouse could not overcome the presumption, relied on the Supreme Court’s dicta in *Egelhoff*, and held that the Illinois slayer statute was not preempted. Accordingly, the Illinois slayer law applied, preventing the spouse from recovering a survivor annuity benefit under the pension plan.⁵⁰

There is no similar precedent on ERISA preemption in the federal court of appeals for the Sixth Circuit, where Michigan is situated, or within the D.C. Circuit, if under ERISA’s venue provision, the U.S. District Court for the District of Columbia would be the “appropriate court” in which to appeal this decision;⁵¹ and it is unclear whether courts in either jurisdiction would follow the Seventh Circuit’s decision in *Miscevic*.

We note that a U.S. District Court in Michigan has upheld a pension plan’s determination that a spouse’s conviction of voluntary manslaughter was grounds for denying the plan’s survivor annuity benefit.⁵² In *Nale v. Ford Motor Co.*, the court found that, under the pension plan, benefit rights and eligibility were administered in accordance with federal law, but if federal law did not control, state law governed, which included Michigan’s slayer statute. The court noted that both state and federal common law prevented an individual from profiting from the killing of another.

Acknowledging the preemption issue, the *Nale* court reasoned that “[w]here ERISA preempts state law, but is silent or ambiguous on a particular question, the Court turns to federal common law.”⁵³ Although the *Nale* court cited *Egelhoff* and inferred from the quoted language above that ERISA would likely *not* preempt slayer statutes, the Michigan federal court concluded that because both federal common law and state law adopt the equitable principle of denying a killer the benefit of his or her crime, it did not need to decide the preemption issue—the resolution would be the same under either federal or state law. It therefore upheld the plan’s denial of benefits.

Assuming without deciding that ERISA does not preempt state law and that your claim would be governed by Michigan state law under applicable choice of law principles, regardless of the venue of the “appropriate court” under section 4003(f)(2) of ERISA, we conclude the Michigan slayer statute would bar your claim for the survivor annuity benefit under the Delphi Hourly Plan.

⁴⁹ *Id.*

⁵⁰ *Id.* at 937.

⁵¹ ERISA § 4003(f)(2).

⁵² *Nale v. Ford Motor Co. UAW Ret. Plan*, 703 F. Supp. 2d 714 (E.D. Mich. 2010).

⁵³ 703 F. Supp. 2d 722 (citing *Muse v. International Business Machines Corp.*, 103 F.2d 490, 495 (6th Cir. 1996)).

2. If ERISA preempts Michigan law, you are not entitled to a PBGC-payable benefit under the Delphi Hourly Plan.

As noted above, under ERISA § 514(a), ERISA's provisions "supersede any and all State laws" to the extent that such laws "relate to any employee benefit plan." Congress intended ERISA to provide pension plan administrators with a uniform body of rules to minimize the expense and burden of complying with an array of state laws.⁵⁴ In ruling that the Washington state revocation-on-divorce statute in *Egelhoff* was preempted, the Court explained:

The statute binds ERISA plan administrators to a particular choice of rules for determining beneficiary status. The administrators must pay benefits to the beneficiaries chosen by state law, rather than to those identified in the plan documents. The statute thus implicates an area of core ERISA concern. In particular, it runs counter to ERISA's commands that a plan shall 'specify the basis on which payments are made to and from the plan,' . . . , and that the fiduciary shall administer the plan 'in accordance with the documents and instruments governing the plan,' . . . , making payments to a 'beneficiary' who is 'designated by a participant, or by the terms of [the] plan.' In other words, unlike generally applicable laws regulating 'areas where ERISA has nothing to say,' . . . which we have upheld notwithstanding their incidental effect on ERISA plans, . . . , this statute governs the payment of benefits, a central matter of plan administration.⁵⁵

Thus, because slayer statutes affect a plan administrator's decision on paying pension plan benefits, some of the Court's reasons for finding that ERISA preempted the Washington state statute arguably apply in connection with slayer statutes.

Even if the Board decided, however, that ERISA preempted the Michigan slayer statute, that would not necessarily result in the payment of a survivor annuity benefit to you. As discussed above, Congress enacted ERISA in 1974 against a backdrop of long-standing state and federal common law that embodied the equitable principle that "no person should be permitted to profit from his own wrong."⁵⁶ Accordingly, because the common-law principle was well-established when ERISA was enacted, the Appeals Board is guided by the "presumption that Congress intended to retain the substance of the common law," which should be applied "unless a statutory purpose to the contrary is evident."⁵⁷ The Court has also stated that "to abrogate a common-law

⁵⁴ See *Ingersoll-Rand Co., v. McClendon*, 498 U.S. 133, 137 (1990).

⁵⁵ *Egelhoff*, 532 U.S. at 147-148 (citations and footnote omitted).

⁵⁶ *Prudential Life Inc. Co. v. Tull*, 690 F.2d 848, 849 (4th Cir. 1982) (citing *Shoemaker v. Shoemaker*, 263 F.2d 931 932 (6th Cir. 1959); *United States v. Kwasniewski*, 91 F. Supp. 847, 851 (E.D. Mich. 1950)).

⁵⁷ *Samantar v. Yousef*, 560 U.S. at 320, note 13; *Isbrandtsen Co. v. Johnson*, 343 U.S. at 783; *United States v. Tex.*, 507 U.S. at 534.

principle, the statute must 'speak directly' to the question addressed by the common law."⁵⁸ Hence the Board will not infer that Congress intended to eliminate the slayer principle in enacting ERISA.

ERISA is the federal law that establishes standards for the payment of survivor annuity benefits under a pension plan, but ERISA is silent on the treatment of a beneficiary whose murder of a participant brings about such payment.⁵⁹ If a participant is receiving a joint form of benefit under a pension plan, like the J&65%SA form of benefit under the Delphi Hourly Plan, and the beneficiary designated to receive the survivor annuity benefit is convicted of murdering the participant, neither ERISA nor the Delphi Hourly Plan expressly provides either for paying a beneficiary the Plan's survivor annuity benefit or for prohibiting the beneficiary from receiving the benefit. The Appeals Board thus concludes that Congress did not speak directly to the question addressed by the common law.

The Board also concludes that Congress did not intend to negate the slayer principle under ERISA's provisions. To be sure, one of Congress's purposes in enacting ERISA was to "enable employers 'to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits.'"⁶⁰ But unlike the *post-ERISA* revocation-on-divorce statutes of the type in *Egelhoff*, the Supreme Court has recognized that the *pre-ERISA* slayer statutes are "more or less" uniform and has deemed their presumed interference with ERISA's goal of uniformity "debatable."⁶¹ Consequently, the Board decides that application of the long-standing equitable principle under the federal common law to deny a survivor benefit to a spouse convicted of murder is not contrary to Congress's statutory purpose in ERISA of a uniform administrative scheme.⁶²

Nor is the slayer principle contrary to Congress's purpose behind section 404(a)(1)(D) of ERISA, i.e., the so-called "plan documents rule" under ERISA's fiduciary provisions, which requires a plan administrator to follow the plan documents in paying benefits. Under Section 404(a)(1) of ERISA, "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and— * * * (D) in accordance with the documents

⁵⁸ *United States v. Tex.*, 507 U.S. 529, 534 (1993) (citing *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978); *Milwaukee v. Illinois*, 451 U.S. 304, 315 (1981)).

⁵⁹ See, e.g., *Nale*, 703 F. Supp. 2d at 722 (ERISA silent on benefits payable to slayers).

⁶⁰ *Egelhoff*, 532 U.S. at 148 (citing *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987)).

⁶¹ *Egelhoff*, 532 U.S. at 152.

⁶² See *Connecticut Gen. Life Ins. Co. v. Riner*, 351 F. Supp. 2d 492, 497 (W.D. Va. 2005) ("Congress could not have intended ERISA to allow one spouse to recover benefits after intentionally killing the other spouse."); Cf. IRS Private Letter Ruling (PLR) 8908063, 1989 WL 594509 (Feb. 24, 1989) ("We believe that . . . the application of a 'killer' law overrides the normal spousal rules under section 401(a)(11) and 417 [of the Internal Revenue Code regarding the requirement and special rules for joint and survivor annuities]. To find otherwise would be to put a spouse who killed a participant spouse in a better posture than a spouse who abandoned or divorced a participant spouse. *We do not believe Congress could have intended such a result.*") (emphasis added).

and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title [I] and title IV.”⁶³

In enacting ERISA’s fiduciary provisions, Congress was guided by the common law of trusts: “ERISA’s legislative history confirms that the Act’s fiduciary responsibility provisions . . . ‘codif[y] and mak[e] applicable to [ERISA] fiduciaries certain principles developed in the evolution of the law of trusts.’”⁶⁴ As the Supreme Court explained in *Central States, Southeast & Southwest Areas Pension Fund v. Central Transport, Inc.*, “[r]ather than explicitly enumerating *all* of the powers and duties of trustees and other fiduciaries, Congress invoked the common law of trusts to define the general scope of [fiduciaries’] authority and responsibility.”⁶⁵

ERISA therefore “must be construed against the background of the common law of trusts.”⁶⁶ Under common law trust principles, the court in *Atwater v. Nortel Networks* concluded that a plan fiduciary with knowledge of a beneficiary’s indictment for the murder of a plan participant had a duty to delay benefit payments to the beneficiary until the “*beneficiary’s ability to receive plan benefits has been made.*”⁶⁷ In other words, a beneficiary who murders a plan participant is not eligible for benefits under an ERISA pension plan, even though the slayer is the named beneficiary under the plan’s documents.⁶⁸ Hence, in the exceptional circumstances presented in slayer cases, the Board finds that the statutory purpose underlying the plan documents rule, construed against the common law of trusts, is not contrary to the equitable principle embodied in slayer statutes and the common law.

3. Conclusion

The Appeals Board need not decide whether ERISA preempts Michigan law because we find that PBGC cannot pay you a survivor’s annuity benefit in any case. If ERISA does not preempt state law or state slayer statutes, particularly the slayer statute under Michigan law, we

⁶³ PBGC is the statutory trustee of the Delphi Hourly Plan, responsible for paying benefits under sections 4022 and 4061 of Title IV of ERISA. PBGC is not the Plan’s administrator or a fiduciary under section 404(a) of ERISA when it pays benefits to participants and their beneficiaries. The discussion of the plan documents rule under section 404(a)(1)(D) is included in this decision only to show that there is no statutory purpose under section 404(a)(1) contrary to the slayer principle.

⁶⁴ See *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989) (citing H.R. Rep. No. 93-533, pg. 11 (1973)).

⁶⁵ 472 U.S. 559, 570 (1985) (citing S. Rep. No. 93-127, p. 29 (1973), reprinted in 1974 U.S.C.C.A.N. 4639, 4865) (The fiduciary responsibility section, in essence, codifies and makes applicable to these fiduciaries certain principles developed in the evolution of the law of trusts.”); H.R. Rep. No. 93-533, p. 11 (1973) (same)); *Pegram v. Herdrich*, 530 U.S. 211, 224 (2000); *Faircloth v. Lundy Packing Co.*, 91 F.3d 648, 656 (4th Cir. 1996).

⁶⁶ *Firestone Tire*, 489 U.S. at 110-111; see also *Beck v. PACE Int’l*, 551 U.S. 96, 101 (2007) (the common law of trusts “serves as ERISA’s backdrop.”)

⁶⁷ *Atwater*, 388 F. Supp. 2d 610, 616 (M.D. N.C. 2005) (emphasis added).

⁶⁸ *Id.* (citing *Estate of Curtis by Curtis v. Prudential Ins. Co.*, 839 F. Supp. 491, 495 (E.D. Mich. 1993) (finding that “if defendants had, or should have had, notice that [husband of plan participant] was suspected in his wife’s murder, then . . . a prudent man, as defined by section [404(a)(1)(B)], would have delayed paying over the insurance proceeds . . . until the cloud surrounding the circumstances of the murder had cleared.”)); see also IRS Private Letter Ruling (PLR) 8908063, 1989 WL 59450, *supra*, note 62.

find that Michigan law would prevent PBGC from paying you the survivor annuity benefit under the Delphi Hourly Plan resulting from Mr. [REDACTED] death. Conversely, if ERISA preempts Michigan law under Section 514(a) of ERISA, we find that PBGC cannot pay you the survivor's annuity benefit because of the background principle embodied in the federal common law in 1974 when ERISA was enacted, denying murderers the benefit of their crime.

Although your petition for a writ of habeas corpus is pending in the Eastern District of Michigan, the Appeals Board will uphold PBGC's determination and deny your appeal. In the event your conviction is overturned and you are exonerated, you may reapply for your survivor annuity benefit under the Delphi Hourly Plan.

Decision

For the reasons explained above, the Appeals Board found no basis for changing PBGC's determination of [REDACTED]. Therefore, we are denying your appeal. This is the agency's final decision on this matter, and you may, if you wish, seek review of this decision in an appropriate United States District Court.

If you have questions, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



James L. Eggeman
Member, Appeals Board

Enclosures (5):

1. *People v.* [REDACTED], No. [REDACTED] (Mich. Ct. App. [REDACTED]) (4 pages)
2. *People v.* [REDACTED], [REDACTED] (Mich. [REDACTED]) (1 page)
3. PBGC Benefit Determination dated May 18, 2018 (2 pages)
4. Appeal by [REDACTED] (4 pages)
5. Excerpts of the Delphi Hourly Plan (6 pages)