No. 21-1290

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

LORNA SHIELDS,
Plaintiff-Appellant,

v.

UNITED OF OMAHA LIFE INSURANCE COMPANY,
Defendant-Appellee.

On Appeal from the United States District Court for the
District of Maine, Case No. 2:19-cv-00448-GZS

BRIEF OF THE SECRETARY OF LABOR AS AMICUS CURIAE SUPPORTING PLAINTIFF-APPELLANT

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STATEMENT OF THE ISSUES

Myron Shields was a participant in employer-sponsored life insurance plans issued by United of Omaha Life Insurance Company ("United"); his spouse, Lorna Shields ("Plaintiff"), was a beneficiary. When he began working in 2007 for his employer, Duramax, Mr. Shields sought to enroll in both basic and supplemental insurance coverage. To be eligible for enrollment in supplemental coverage above $100,000, which Mr. Shields purchased, United required applicants to submit evidence of insurability ("EOI")—*i.e.*, evidence of good health. Supplemental coverage above $100,000 began only when United deemed the EOI acceptable. Yet notwithstanding that Mr. Shields did not submit EOI—and that United did not approve it—United accepted premiums from Mr. Shields for a decade for the full amount of supplemental coverage he selected. When Plaintiff filed a claim for benefits following her husband's death, United refused to pay her any supplemental benefits above $100,000 on the ground that it did not have EOI on file for Mr. Shields.

Plaintiff filed suit under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.* Among other theories, Plaintiff alleged that United breached its fiduciary duties by accepting premiums from Mr. Shields for a decade for supplemental coverage as to which he was ineligible due to the absence of EOI. The district court entered summary judgment for United, finding

that Plaintiff did not meet her burden to prove that United breached its fiduciary duty because, among other things, the responsibility for collecting EOI forms rested with Mr. Shields's employer, not United. *Shields v. United of Omaha Ins. Co.*, No. 2:19-cv-00448-GZS, 2021 WL 982322, at *13 (D. Me. Mar. 16, 2021).

The Secretary's brief addresses the following question presented:[1]

Whether a fiduciary with discretionary authority to determine eligibility for enrollment breaches its fiduciary duties by failing to ensure eligibility at or near the time that it begins accepting premium payments.

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE

The Secretary of Labor has primary authority to interpret and enforce the provisions of Title I of ERISA to ensure fair and impartial plan administration and compliance with ERISA's requirements and purposes. *See* 29 U.S.C. §§ 1132, 1135; *Donovan v. Cunningham*, 716 F.2d 1455, 1462-63 (5th Cir. 1983). This case presents a recurring issue of life insurers denying claims for benefits under ERISA-covered plans due to the absence of EOI, which is required at the time of enrollment for certain types of insurance coverage. In these cases, insurers accept premium payment from plan participants—often for years—for coverage for which that they are not in fact eligible.

[1]The Secretary does not address the other questions raised on appeal.

To prevent participants from paying premiums for non-existent coverage, the Secretary has an interest in requiring fiduciaries with discretionary authority to make eligibility determinations to ensure that they make those determinations at or near the time they begin accepting premium payments. Therefore, the Secretary has an interest reversing the district court's rulings on the question presented, which this Court has never addressed.

The Secretary files this brief as amicus curiae pursuant to Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE CASE

A. Background[2]

Myron Shields was an employee of Duramax Maine LLC ("Duramax").[3] A-582. When he was hired in 2008, Duramax offered Mr. Shields two ERISA-covered life insurance plans, both issued by United. *See id*. The United Basic Life plan ("Basic Policy") provided coverage up to twice the employee's salary, not to exceed $300,000. A-583. This benefit could be supplemented with the United Voluntary Life plan ("Voluntary Policy"), which provided additional coverage of up to three times the employee's salary, not to exceed $200,000 (total coverage under both policies was thus capped at $500,000). *Id*. Duramax was the plan

[2] The Background is based primarily on the district court's Factual Background section.

[3] Citations to the Joint Appendix are noted with the abbreviation "A-_".

administrator. A-584. But United, for its part, had total authority to decide all questions of eligibility and benefits. The plan gave United "the discretion and the final authority to construe and interpret the Policy," which included the discretion not only to decide "all questions regarding the amount and payment of any Policy benefits," but also "the authority to decide all questions of eligibility." *Id.* The plan made clear that United's "interpretation of the Policy as to . . . eligibility shall be binding and conclusive on all persons." *Id.*

Under the 2007 version of the Voluntary Policy, in order to receive coverage in excess of $100,000 (the "Guarantee Issue limit" or "GI limit"), United required the applicant to provide "evidence of good health." A-202. Coverage above the GI limit began only when United "'approve[d] the statement of physical condition or other evidence of good health.'" *Id.* (citation omitted). In 2017, United updated the policy language to refer to EOI instead of "good health," but the terms are functionally the same. A-24, 61. EOI is defined in the plan as "proof of good health acceptable to [United]. This proof may be obtained through questionnaires, physical exams or written documentation." A-61.[4]

In addition to coverage under the Basic Policy, Mr. Shields elected coverage

[4] The district court reviewed the denial of Plaintiff's claim based on language from the 2007 policy, because United relied on language from that policy in deciding the claim. *Shields*, 2021 WL 982322, at *7 n.12. But the court added that it would have reached the same conclusion using language from the 2017 policy. *Id.* at *7 n.13.

under the Voluntary Policy for an amount equal to three times his salary, which exceeded the GI limit and thus required EOI. A-585. The only mention of an EOI requirement on Mr. Shields's election form was in the signature section, which stated that "coverage may be conditional upon my furnishing satisfactory evidence of insurability information." A-135. Mr. Shields designated Plaintiff as his beneficiary. *Id.*

United provided Duramax with EOI forms "with the expectation that Duramax would have the form completed by an employee who elected coverage" above the GI limit. A-137. United's "expectation appears to have been that Duramax would then forward the completed EOI Form to United." A-585. Duramax did not provide an EOI form to Mr. Shields or inform him that he was required to provide EOI in order to receive benefits under the Voluntary Policy in excess of the GI limit. A-586. United also did not request EOI from Duramax or Mr. Shields. *Id*. United maintains that it makes an insurability determination only when it is advised by the employer that an employee is enrolling for coverage that requires EOI. *Id.* "There is no evidence that United was so advised at the time Myron made his initial election." *Id.*

From 2008 until his death in 2018, Mr. Shields paid premiums for the full level of coverage (in excess of $100,000) he selected in the Voluntary Policy. A-586-87. During these years, Duramax worked with an insurance broker to secure

continued life insurance for its employees. A-586. In 2012, 2014, and 2016, Duramax provided its insurance broker with census data, which the broker sent to United in order to obtain new quotes. *Id.* The censuses listed the names and base salaries of each employee and how much supplemental coverage each had elected. *See id.* As a result, United knew which individuals in the Duramax plan were enrolled in coverage requiring EOI—including Mr. Shields—and thus could have verified whether it had EOI on file for those individuals. Nevertheless, United did not verify that Duramax employees were properly enrolled at their elected level of insurance coverage in connection with the biannual review of the census data. A-587.

In September 2017, after being diagnosed with cancer, Mr. Shields contacted Duramax's human resources (HR) manager to ask if there were any scenarios that would deny him life insurance benefits. *Id.* The HR manager responded that he did not know of any scenario where a death claim would not be honored. *Id.* Several weeks later, Mr. Shields asked for clarification as to the amount to which his wife would be entitled. *Id.* The HR manager responded that in addition to his Basic Policy coverage, the coverage under his Voluntary Policy was three times his annual salary, at a value of $188,000. *Id.* No mention of EOI occurred in this exchange, nor is there evidence that Mr. Shields or Duramax consulted with

United. *Id.* Mr. Shields remained employed at Duramax until his death on June 5, 2018. *Id.*

After Mr. Shields passed away, Plaintiff filed a claim seeking the benefits due under her husband's Basic and Voluntary Policies. "United did not learn of the lack of EOI until it began its review of [Plaintiff's] claim for benefits." A-588. Due to the lack of EOI, United partially denied Plaintiff's claim, disbursing $236,000—the $136,000 owed under the Basic Policy plus the $100,000 for which Mr. Shields was eligible under the Voluntary Policy without EOI. *Id.* United denied the remainder that Plaintiff sought under the Voluntary Policy, explaining that it had "no record of ever receiving or approving Evidence of Insurability." *Id.* Plaintiff challenged the partial denial, arguing that Mr. Shields paid all his premiums for his supplemental coverage for 10 years. A-589.

United upheld its initial determination, quoting the policy language and stating that approval of EOI was required before coverage above the GI limit would begin. *Id.* In March 2020, United refunded $8337.77 to Duramax, which was the total amount of all premiums Mr. Shields paid for coverage over the GI limit. A-590.

B. Proceedings Before the District Court

Plaintiff filed suit against United, asserting a claim for benefits pursuant to ERISA section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), and a claim for breach of

fiduciary duty pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3). *Id.* Following cross motions for judgment on the Administrative Record, the district court ruled in favor of United on both claims. Regarding the section 502(a)(1)(B) claim, the court concluded that United's denial of benefits was consistent with plan language requiring EOI for coverage under the Voluntary Policy above $100,000. A-590-600.

As to her fiduciary-breach claim, Plaintiff argued that United breached its fiduciary duty by accepting premiums from Mr. Shields over a 10-year period for supplemental coverage despite having found him uninsurable. A-600; Pl.'s Mot. for J. on the R. for J. Review at 15-16. United argued that it did not make an insurability determination, and that in any event it did not owe a fiduciary duty to ensure that Mr. Shields satisfied the requirements for coverage, as any such duty fell on Duramax as the plan administrator. A-600. United contended that, at most, it had only constructive knowledge of the missing EOI (based on the bi-annual census data it received), which is insufficient to establish a breach of fiduciary duty claim. *Id.*

The district court ruled in favor of United because it was "not convinced that [United's] fiduciary duties as claims administrator extended to checking the work of Duramax to ensure that it fulfilled its fiduciary duty as plan administrator to inform [Mr. Shields] of the EOI requirement." A-602. According to the court, both

the plan and ERISA placed such responsibility on the plan administrator, Duramax, and United "compiled close to a dozen different cases concluding that there can be no insurer liability under ERISA for improper or incomplete enrollments in life insurance plans." A-603. The court explained that Plaintiff's attempt to distinguish those cases depended on a factual premise—that Defendant made an "insurability determination" upon receiving the censuses—that was not in the record. *Id.*

Plaintiff timely appealed the decision.

SUMMARY OF ARGUMENT

It is undisputed that United was a fiduciary with *sole* discretionary authority for determining whether Duramax employees seeking to enroll in supplemental coverage above the GI limit were in fact eligible for such coverage. The Voluntary Policy made clear that such coverage required EOI, and that coverage began only when United deemed the EOI acceptable. Yet United had no system for ensuring that it made these eligibility determinations at or near the time it began accepting premiums for supplemental coverage, as this case aptly demonstrates. Indeed, despite accepting Mr. Shields's premiums for a decade for supplemental coverage above the GI limit, United never once verified whether he was eligible to be enrolled in that coverage in the first place. Instead, it did so only when Mr. Shields's widow sought the benefits for which her husband had spent the past ten years paying premiums. Numerous courts have held that an insurer breaches its

fiduciary duties by failing to ensure that it collects premiums only when coverage is actually in force. This court should follow suit and hold that United had the same duty here, and that it breached its fiduciary duties of prudence and loyalty by failing to discharge it.

In arguing to the contrary, United seeks to shift all blame to Mr. Shields's employer, Duramax, which it claims was responsible for ensuring that enrollment was complete. But this ignores that United, not Duramax, was the ultimate arbiter of whether a participant was insurable and thus eligible for coverage above the GI limit. And because only United had that authority, United was required to exercise it prudently and loyally. Yet by setting up a system in which it was completely blind to whether employees paying for supplemental coverage above the GI limit were actually eligible for that coverage—a system that resulted in Mr. Shields paying for non-existent coverage for ten years—United breached its fiduciary duties. The district court's ruling should be reversed.

ARGUMENT

United Breached Its Fiduciary Duties by Accepting Premium Payments from Mr. Shields for a Decade without First Ensuring His Eligibility for Coverage

A. United Was a Fiduciary By Virtue of its Authority to Determine Eligibility for Supplemental Coverage Above the GI Limit

At all relevant times, United was a fiduciary with sole discretionary authority to determine a participant's eligibility for coverage above the GI limit.

See 29 U.S.C. § 1002(21)(A)(i) and (iii) ("a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets . . . or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan"). Under the Voluntary Policy, United had exclusive authority to decide questions of eligibility for enrollment in coverage requiring EOI, like the supplemental coverage selected by Mr. Shields here. A-583-84. Indeed, coverage requiring EOI went into effect only if the EOI was "acceptable to [United]." A-584; A-583 ("Coverage above the GI limit began when United approve[d] the statement of physical condition or other evidence of good health") (internal quotations omitted). United was thus the ultimate arbiter of whether a participant was insurable and therefore eligible to be enrolled in supplemental coverage above the GI limit. *See* A-592 (giving United discretion as to how it interprets "good health" and decides which documents would suffice to meet its EOI requirement).

Accordingly, it is indisputable that United's fiduciary responsibilities included determining whether Mr. Shields was eligible to be enrolled in his requested level of insurance coverage. *See* A-587-593; *see also* 29 U.S.C. § 1002(21)(A)(iii). It is also indisputable that United was required under ERISA to exercise that duty prudently and loyally. 29 U.S.C. § 1104(a)(1)(A) and (B). Thus,

the only remaining question is what those standards required of United: whether it had to ensure it was accepting premium payments for supplemental coverage only from those individuals it deemed eligible for such coverage, or whether it was instead free to accept premium payments while completely blind to whether those paying premiums were in fact eligible for coverage. As explained below, ERISA required the former.

B. United Has a Fiduciary Obligation to Ensure Eligibility for Coverage Above the GI Limit At or Near the Time it Begins Accepting Premium Payments for Such Coverage

ERISA requires fiduciaries to discharge their duties prudently and "solely in the interest of the participants and beneficiaries." 29 U.S.C. § 1104(a)(1)(A) and (B). These twin requirements are among "the highest known to the law." *Braden v. Wal–Mart Stores, Inc*., 588 F.3d 585, 595, 598 (8th Cir. 2009) (quoting *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982)). An insurer with discretionary authority to make eligibility determinations who accepts premiums without ensuring eligibility falls far short of these high standards. As this case shows, such a system inevitably results in participants paying for coverage for which they are not eligible and their beneficiaries left holding the bag.

The Eighth Circuit endorsed this theory of fiduciary liability in *Silva v. Metropolitan Life Insurance Co*., 762 F.3d 711 (8th Cir. 2014), where it allowed the plaintiff to amend his complaint to add a fiduciary breach claim against a life

insurer for collecting premiums from a participant despite the absence of required EOI. *Id*. at 723. As here, the participant's employer handled enrollment and was supposed to send the EOI form to MetLife, *id.* at 715, which, like United, was responsible for determining eligibility. *Id.* at 717. Though the employer did not send MetLife EOI for the participant, MetLife still accepted his premiums until his death. *Id.* at 713-15. The plaintiff alleged "that MetLife breached its fiduciary duties to [the participant] by collecting insurance policy premiums from him for six months and then, after [the participant's] death, denying that he had a valid policy." *Id.* at 722. The Eighth Circuit agreed that the plaintiff properly alleged a fiduciary breach claim, and even stated that "[i]t was arguably fraudulent for MetLife to collect premiums from a[n] . . . employee who" was never told about the EOI requirement. *Id.* at 723. The court allowed the plaintiff to amend his complaint and add the ERISA section 502(a)(3) claim. *Id.* at 723-25.

In support of its reasoning in *Silva,* the Eighth Circuit cited the Fourth Circuit's decision in *McCravy v. Metropolitan Life Insurance Co.*, 690 F.3d 176 (4th Cir. 2012). In *McCravy*, MetLife denied the beneficiary's claim for life insurance benefits because the covered individual had aged out of coverage. *Id.* at 178. The beneficiary filed suit alleging that MetLife's actions—collecting premiums for coverage and thereby falsely indicating that the decedent was covered—violated its fiduciary duties under ERISA. *Id.* The Fourth Circuit agreed

that the beneficiary's claim could proceed, stating that a different outcome "would encourage abuse by fiduciaries":

> [F]iduciaries would have every incentive to wrongfully accept premiums, even if they had no idea as to whether coverage existed—or even if they affirmatively knew that it did not. The biggest risk fiduciaries would face would be the return of their ill-gotten gains, and even this risk would only materialize in the (likely small) subset of circumstances where plan participants actually needed the benefits for which they had paid. Meanwhile, fiduciaries would enjoy essentially risk-free windfall profits from employees who paid premiums on non-existent benefits but who never filed a claim for those benefits.

Id. at 183.

Here, United violated its responsibilities when it accepted Mr. Shields's premium payments for 10 years without first ensuring that he was eligible for the elected level of coverage. A participant's eligibility for supplemental coverage above the GI limit was unquestionably United's determination to make: coverage began only if Duramax employees provided EOI "acceptable to [United]." A-584. Yet United set up a system in which it was completely unaware as to whether employees for whom it accepted premiums had remitted the requisite EOI, and were actually eligible for such coverage. According to United, it makes insurability determinations only "when it is advised that an employee is enrolling for coverage that requires Evidence of Insurability." A-586. Absent such advice, United simply accepts premium payments no questions asked, and without inquiring into the coverages to which those payments correspond. Rather, it is only upon receiving a

claim for benefits by a participant's beneficiary that United seeks to verify that the participant was in fact eligible for coverage in the first instance.

Making matters worse is the fact that, in this case, the information United needed to verify Mr. Shields's eligibility was at its disposal nearly all along. Indeed, United received multiple census documents listing participants' names and coverage levels (including Mr. Shields's selection of coverage under the Voluntary Policy) throughout the ten-year period that Mr. Shields paid insurance premiums. *See* A-586. Yet United still failed to verify whether he was eligible to be enrolled in the supplemental coverage for which he was paying. Instead, by blithely accepting premium payments for a decade, United misled Mr. Shields into believing that he was covered. *See Harris v. Life Ins. Co. of N. Am.*, 419 F. Supp. 3d 1169, 1175 (N.D. Cal. 2019) ("accept[ing] these premiums after [husband's] coverage had lapsed was a breach of fiduciary duty because it was tantamount to confirming coverage [and] . . . . led [family] to believe that [husband's] life insurance policy was still in effect."). In doing so United breached its fiduciary duties.

C. Duramax's Responsibilities in the Enrollment Process Do Not Absolve United of its Fiduciary Duty to Ensure Eligibility

The district court held otherwise because it reasoned that Duramax was responsible for providing enrollment forms to its employees, and United had no obligation to "check[] the work of Duramax." A-602. The district court defined

United's role too narrowly. As the court recognized, "ERISA-governed plans . . . often have two types of 'administrators.'" A-581 (quoting *Butler v. United Healthcare of Tenn., Inc.*, 764 F.3d 563, 570 (6th Cir. 2014)). "The first type—a claims administrator—is the entity that administers claims for employee welfare benefit plans and has authority to grant or deny claims. The second type—a plan administrator—is usually the employer who adopted the benefit plan in question." *Id*. (internal quotation marks omitted). In such circumstances, "[the insurer] and [the employer] both have fiduciary obligations to plan participants under ERISA because they are both administrators of the Plan." *Silva*, 762 F.3d at 716 n.8 (citing 29 U.S.C. §§ 1002(16)(A) & 1102(a)(1)). Thus, regardless of Duramax's role, the question is whether United satisfied its own fiduciary obligations.[5]

And as explained, United was the *sole* arbiter of whether individuals selecting supplemental coverage above the GI limit were eligible for enrollment. United thus had a duty to ensure that they were eligible at or near the time it began accepting premiums from participants. And it breached its fiduciary duties by

[5] As the plan administrator, Duramax also had fiduciary obligations to plan participants under ERISA. However, because United had sole discretionary authority to determine eligibility for supplemental coverage above the GI limit, it follows that United had a fiduciary duty to ensure it was exercising that authority in accordance with ERISA's fiduciary standards. While Duramax had its own separate fiduciary obligations and obligations as a co-fiduciary to United under ERISA section 405, 29 U.S.C. § 1105, those obligations do not alter United's duties in any way.

failing to set up a prudent system to determine whether it had EOI forms for participants who elected supplemental coverage, much less whether the participant qualified for coverage. *See* A-592; *Gaines v. Sargent Fletcher, Inc. Grp. Life Ins. Plan*, 329 F. Supp. 2d 1198, 1221 (C.D. Ca. 2004) ("failure to construct a system to ensure that coverage is properly in place before accepting premium payments violated the requirement" of a procedural safeguard that resulted in fiduciary breach).

As a recent district court decision put it, a claims fiduciary "ha[s] a duty to ensure its system of administration d[oes] not allow it to collect premiums until coverage was actually in force." *See Skelton v. Davidson Hotels LLC, et al.*, No. CV 18-3334 (MJD/DTS), 2020 WL 6875503, at *6 (D. Minn. Nov. 23, 2020) (citing *Silva* and other cases). In *Skelton*, the insurer, Reliance, tried to absolve itself of liability based on the same rationale United advances here: that its acceptance of premiums despite the lack of EOI was completely the fault of the employer/plan administrator. *Id.* The court disagreed, finding that "Reliance had a duty to ensure its system of administration did not allow it to collect premiums until coverage was actually in force," and that it is clear [Reliance's] system was flawed as evidenced by the fact that an employee paid "premiums for insurance coverage for which she was never approved." *Id.* at *6.

Other "[c]ourts have repeatedly found failures in managing enrollment . . . amount to breaches of the duty of prudence." *Lanpher v. Metro. Life Ins. Co.*, 50 F. Supp. 3d 1122, 1151 (D. Minn. 2014); *see, e.g.*, *Harris*, 419 F. Supp. 3d at 1175 (insurer's acceptance of premiums for several months after coverage had lapsed "was a breach of fiduciary duty because it was tantamount to confirming coverage"); *Frye v. Metro. Life Ins. Co.*, No. 3:17-cv-31, 2018 WL 1569485, at *3-5 (E.D. Ark. Mar. 30, 2018) (employer and insurer breached fiduciary duties due to procedures with structural administrative defect that allowed employees to pay for coverage for dependents who were ineligible); *Gaines*, 329 F. Supp. 2d at 1204, 1219-20. (insurer who accepted premiums even though coverage was not in effect breached its fiduciary duties through failure to implement procedural safeguards).

Here, the compartmentalized system United created—with Duramax forwarding premiums to United but without United checking whether it had the required forms for the individuals electing supplemental coverage above the GI limit—is clearly "flawed as evidenced by the fact that it results in an employee . . . to pay premiums for insurance coverage for which [he] was never approved." *Skelton*, 2020 WL 6875503, at *6. United obviously had the *ability* to verify eligibility, as demonstrated by the fact that it did so at the time Plaintiff filed a claim for benefits; there is no reason it could not have done so years earlier, particularly given the census information it received indicating that Mr. Shields

was enrolled in supplemental coverage. Had Mr. Shields and his beneficiary known prior to Mr. Shield's death that EOI was missing, Mr. Shields could have submitted the EOI forms and potentially been approved, or made other arrangements for life insurance coverage. Yet because United chose not to assess his eligibility until Plaintiff filed a claim for benefits, Mr. Shields paid premiums for ten years without knowing that he lacked coverage.

This case is distinguishable from *Gordon v. CIGNA Corp.*, 890 F.3d 463 (4th Cir. 2018), where the Fourth Circuit found that the insurer (CIGNA) was not liable as a fiduciary where the employer failed to collect EOI forms, as any fiduciary liability for the mishap rested with the employer, not CIGNA. 890 F.3d at 474. In the first place, the employer in that case was responsible for "eligibility verification," *id.,* whereas here the responsibility for verifying eligibility for supplemental coverage above the GI limit rested solely with United. In addition, the court explained in *Gordon* that because the employer did not provide CIGNA with "individual information about specific employees," it was "unclear how the CIGNA Defendants could have even known that a particular employee was paying for coverage that had not been approved."[6] *Id.* at 476. In contrast, the record in this

[6] To be clear, an insurer's ignorance of the enrollment status of those from whom it accepts premiums does not excuse it from ensuring eligibility for enrollment. Rather, an insurer (like United here) with discretionary authority to decide eligibility that accepts premiums without knowing whether those paying them are eligible for coverage breaches its fiduciary duties.

case demonstrates that United regularly received census data with the names of every enrollee in the Duramax plan and the level of coverage they selected. *See* A-586. Therefore, United should have known that Mr. Shields was paying higher premiums for coverage that did not exist. Ignorance is thus not an available excuse.

CONCLUSION

For the foregoing reasons, the Secretary respectfully requests that the Court reverse the district court's entry of judgment for United on Plaintiff's fiduciary-breach claim under ERISA section 502(a)(3), and enter judgment for Plaintiff.

DATED: September 22, 2021

Respectfully submitted,

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COMBINED CERTIFICATIONS

I hereby certify that the attached brief complies with FED. R. APP. P. 29(a)(4)-(5), FED. R. APP. P. 32(a)(5) and FED. R. APP. P. 32(a)(6), because it has been prepared in proportionately spaced typeface using Microsoft Word in 14 point Times New Roman, and excluding the parts of the document exempted by FED. R. APP. P. 32(f), it contains 4,900 words.

I further certify that on September 22, 2021, I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

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