NAMING A DEFENDANT IN AN ERISA ACTION

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ABSTRACT

When an employee participating in an ERISA benefit plan files a claim, someone must determine whether the assets of the plan will be used to pay the claim or whether the claim will be denied. The employer either makes the decision or delegates it to a plan administrator. If the claim is denied, ERISA permits the employee to sue, but does not specify who may be named a defendant. The federal circuit courts are split three ways on the issue. First, some courts hold that only the plan itself may be named as a defendant. Second, other courts hold that both the plan and the plan administrator may be named as defendants. Third, still other courts hold that both the plan and the employer may be named as defendants. This Article argues that courts should permit suit against any entity that played a role in denying the claim. This approach (1) is consistent with the plain language of ERISA; (2) is consistent with the legislative intent behind ERISA of protecting employees from under-funded plans and erroneous benefit denials; (3) is consistent with Supreme Court precedent permitting fiduciaries to be sued under ERISA; and (4) creates an incentive for entities making benefits determinations to make those determinations correctly.

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OUTLINE

I. INTRODUCTION

Bob awoke in the middle of the night to sounds of someone breaking into his home. The intruder attacked Bob, and he was rushed to the hospital where he stayed for a number of days due to extensive injuries. When Bob finally left the hospital, he was unable to work for six months. Bob is an employee of Company A, which offers its employees the opportunity to participate in healthcare benefits and long-term disability programs. Bob has contributed to each of these programs during his employment. The hospital submits Bob's bills to Company B, which administers the healthcare and disability plans for Company A. Simultaneously, Bob also applies for disability benefits. Payment of the hospital bills and the claim for disability benefits are both denied. Bob must now deal with unpaid hospital bills; however, he has no income. Bob wants to sue.

Congress gave Bob the ability to sue over the denial of his claims under the Employment Retirement Insurance Security Act, commonly known as ERISA.[1] If Bob files a claim under ERISA, the leading question becomes who is the proper defendant in Bob's suit: the plan itself; his employer, Company A; the Plan Administrator, Company B; or a combination of the three. Federal circuit courts

[1] Employee Retirement Income Security Act of 1974 [ERISA], Pub. L. No. 93-406, 88 Stat. 829 (codified as amended 29 U.S.C. §§ 1001-1461 (2000)).

have taken three different approaches in answering this question. First, the Seventh and Ninth Circuits hold that the only proper defendant is the plan itself.[2] These courts reason that because the plain language of the statute only provides for an individual to recover benefits against the plan as an entity, the plan is the only proper defendant.[3] Second, the Third and Sixth Circuits hold that the employer can also be brought in as a defendant in certain cases.[4] These courts reason that an employer is a proper defendant when the employer acted as a fiduciary or retained control and authority over decisions involving the plan and distribution of benefits.[5] The Eighth and Eleventh Circuits hold that the plan administrator can be brought into a suit as a defendant.[6] These courts reason that a plan administrator is a proper party due to the discretion, responsibility, and control the administrator has over the plan.[7]

This Article argues that in an ERISA action, a plan participant should be permitted to name as defendants all parties who played a role in the denial of a claim, including the plan itself, the employer who sponsored the plan, and the plan administrator. This approach has four distinct advantages. First, it is consistent with

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[2] *See, e.g.*, Jass v. Prudential Health Care Plan, Inc., 88 F.3d 1482, 1492 (7th Cir. 1996) (stating that, based on the language of the statute, "[t]he appropriate defendant for a denial of benefits claim would be the Plan"); Gelardi v. Pertec Computer Corp., 761 F.2d 1323, 1324 (9th Cir. 1985) (per curium) (noting that ERISA allows recovery of benefits only against the plan).

[3] *Jass*, 88 F.3d at 1492 (relying on the Ninth Circuit's language in *Gelardi* that ERISA only permits suits against the plan); *Gelardi*, 761 F.2d at 1324 (stating that "ERISA permits suits to recover benefits only against the Plan as an entity").

[4] *See, e.g.*, Curcio v. John Hancock Mut. Life Ins. Co., 33 F.3d 226, 234 (3d Cir. 1994) (finding that when an employer acts as plan administrator, it assumes a fiduciary role and becomes subject to liability under ERISA); Sweet v. Consol. Aluminum Corp., 913 F.2d 268, 272 (6th Cir. 1990) (holding the employer a proper party in the ERISA suit when it exercised control over the decision to deny plan benefits).

[5] *Curcio*, 33 F.3d at 234 (stating that "a fiduciary is one that maintains discretionary authority or discretionary responsibility in the administration of the plan" and that this definition is met when the employer acts as plan administrator); *Sweet*, 913 F.2d at 272 (finding an employer a proper party to the suit when it "had some control in the decision to pay the benefits").

[6] *See, e.g.*, Layes v. Mead Corp., 132 F.3d 1246, 1249 (8th Cir. 1998) (finding the plan administrator a proper party to the suit); Garren v. John Hancock Mut. Life Ins. Co., 114 F.3d 186, 187 (11th Cir. 1997) (stating that "[t]he proper party defendant in an action concerning ERISA benefits is the party that controls administration of the plan").

[7] *Layes*, 132 F.3d 1246 (stating that the party who controls the administration of the plan is a proper defendant); *Garren*, 114 F.3d 187 (same).

the plain language of ERISA explicitly permitting suits against fiduciaries.[8] Second, it is consistent with the legislative intent behind ERISA to protect employees from improperly funded plans and erroneous benefit denials.[9] Third, it is consistent with the Supreme Court decision in *Varity Corp. v. Howe*[10] recognizing that fiduciaries can be sued under ERISA.[11] Fourth, it creates an incentive for parties making benefits determinations to make correct decisions.

Part II of this Article explains the legislative reasons for enacting ERISA. Part III addresses the split among the circuit courts as to who can properly be named as a defendant in an ERISA action. Part IV argues that allowing others besides the plan to be named as defendants does more to hold parties responsible for their actions and is consistent with Supreme Court rulings and the ERISA legislation. Part V concludes by providing a quick summary.

II. BACKGROUND: § 502 ERISA

A. ERISA Plans

Congress enacted ERISA (the "Act") in 1974 in an effort to protect beneficiaries and participants of employee benefit plans, such as long-term disability plans, health insurance plans, and pension plans.[12] These plans have been defined in section 1002 as:

> (1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or

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[8] *See Curcio*, 33 F.3d at 233-34 (providing the statutory definition for fiduciary under ERISA).

[9] ERISA, 29 U.S.C. § 1001b(c) (2000); *see also* Varity Corp. v. Howe, 516 U.S. 489, 497 (1996) (stating that one purpose of ERISA was "Congress' desire to offer employees enhanced protection for their plans"); H.R. REP. NO. 93-779, at 2 (1974) ("to make sure that those who do participate in such plans do not lose their benefits as a result of unduly restrictive forfeiture provisions or failure of the plan to accumulate and retain sufficient funds to meet its obligations").

[10] 516 U.S. 489.

[11] *Id.* at 503-04.

[12] ERISA § 2, 29 U.S.C. § 1001b(c); Varity Corp. v. Howe, 516 U.S. 489, 497 (1996); Tina Knight Kukanza, Case Note, Varity Corp. v. Howe: *Will It Cause An Increase In Litigation Against Employers Who Administer ERISA Plans?*, 48 MERCER L. REV. 965, 966-67 (1997).

> program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment . . . .
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> (2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program--
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> (i) provided retirement income to employees . . . .[13]

The cases described in Part III involve long-term disability, health insurance, and life insurance policies that fall under the definition of an ERISA plan in section 1002(1). One case in Part III involves a pension plan that qualifies as an ERISA plan under section 1002(2).

The statute sets forth standards of conduct, responsibilities and obligations of fiduciaries and provides appropriate remedies for injured parties, sanctions against responsible parties, and quicker access to federal courts.[14] The legislature intended to ensure that those who participated in these types of plans received their benefits and did not lose benefits due to failure of the plan to accumulate and retain sufficient funds to meet its obligations.[15]

B. Explanation of Section 502

Section 502(a)(1)(B) provides that "[a] civil action may be brought by a participant or beneficiary to recover benefits due to him under the terms of his plan,

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[13] ERISA § 3, 29 U.S.C. § 1002.

[14] ERISA § 2, 29 U.S.C. § 1001(b); Kukanza, *supra* note 11, at 966-67.

[15] H.R. REP. NO. 93-779, at 2 (1974) (stating that one purpose of ERISA is "to make sure that those who do participate in such plans do not lose their benefits as a result of unduly restrictive forfeiture provisions or failure of the plan to accumulate and retain sufficient funds to meet its obligations"); *see also* Massachusetts v. Morash, 490 U.S. 107, 112 (1989) ("ERISA was passed by Congress in 1974 to safeguard employees from the abuse and mismanagement of funds that had been accumulated to finance various types of employee benefits.").

to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."[16] This provision refers to the plan but does not clearly state who may or may not be named as a defendant. Courts stating that only a plan may be named as a defendant also point to section 502(d)(2).[17] This provision states that: "[a]ny money judgment under this title against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title."[18] ERISA allows for suit to be brought against a fiduciary under section 409(a) which states:

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plans any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.[19]

Fiduciary is defined in section 1002(21)(A):

> Except as otherwise provided in subparagraph (B), 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, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.[20]

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[16] ERISA § 502(a)(1)(B).

[17] *See infra* Part III.A.

[18] ERISA § 502(d)(2).

[19] ERISA § 409(a).

[20] ERISA § 3, 29 U.S.C. § 1002(21)(A).

Section 404(a) of ERISA requires a fiduciary to "discharge his duties with respect to plan solely in the interest of the participants and beneficiaries."[21]

In *Varity Corp. v. Howe*,[22] the Supreme Court held that a party determined to be a fiduciary can be liable to a plaintiff for individualized equitable relief for breach of fiduciary duties.[23] In *Varity*, the employer deliberately deceived the plan beneficiaries into believing their benefits would be safe if they switched employers, and thus benefit plans, to a newly established subsidiary of the company.[24] The Court interpreted the scope of fiduciary activity by defining what constituted discretionary acts of plan "management" and "administration."[25] The Court looked to trust law and what it meant to have fiduciary administration over a trust.[26] Under the law of trusts, a fiduciary is one who has the powers "necessary or appropriate for carrying out the purposes of a trust."[27] The Court applied this definition of a fiduciary to an ERISA claim.[28]

Next, the Court addressed whether the employer's actions met the statutory definition of fiduciary acts.[29] To enable beneficiaries to make informed choices about their continued participation in the plan, the employer provided detailed information regarding the likely future of their plan benefits.[30] The Court found that conveying this information was "an exercise of a power 'appropriate' to carrying out

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[21] ERISA § 404(a).

[22] 516 U.S. 489 (1996).

[23] *Id.* at 515.

[24] *Id.* at 493-94, 501.

[25] *Id.* at 502.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.* at 502-03.

[30] *Id.* at 501, 502.

an important plan purpose."[31] Thus, there was sufficient evidence to support the District Court's conclusion that the employer was a fiduciary.[32]

Having determined that the employer was acting as a fiduciary, the Court examined whether the employer breached its fiduciary duty.[33] The Court noted that ERISA section 404(a) "requires a 'fiduciary' to 'discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries.'"[34] Contrary to this section's requirements, the Court found that the employer "knowingly and significantly" deceived the "plan's beneficiaries in order to save the employer money" and therefore failed to act in the sole interest of the beneficiaries.[35] Because "lying is inconsistent with the duty of loyalty owed by [the fiduciary,]" the Court upheld the lower court's conclusion that the employer breached its fiduciary duty.[36]

The Third Circuit held in *Curcio v. John Hancock Mutual Life Insurance Co.*[37] that ERISA broadly defines a fiduciary.[38] The court stated that ERISA makes clear that a fiduciary is one who "maintains discretionary authority or discretionary responsibility in the administration of the plan."[39] The broader a court defines the term fiduciary, the more likely it is a defendant will be found to be a fiduciary and the plaintiff will be able to recover.

III. WHO CAN BE NAMED AS A DEFENDANT?

Six of the federal circuit courts have addressed, with varying results, the question of who to name as a defendant in an ERISA claim. The Seventh and Ninth

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[31] *Id.* at 502.

[32] *Id.* at 503.

[33] *Id.* at 506.

[34] *Id.* (quoting ERISA § 404(a), 29 U.S.C. § 1104(a) (2000)).

[35] *Id.*

[36] *Id.* at 506.

[37] 33 F.3d 226 (3d Cir. 1994).

[38] *Id.* at 233.

[39] *Id.* at 234.

Circuits have taken a strict interpretation of the statutory language in ERISA and held that only the plan itself may be named as a defendant.[40] The Eighth and Eleventh Circuits have held that a plan administrator can also be named as a defendant due to the control it has over the distribution of benefits under a plan.[41] The Third and Sixth Circuits have held that an employer can be named as a defendant due to the fiduciary relationship that exists between the employer and the employee.[42]

A. Only the Plan Can Be Named

In *Gelardi v. Pertec Computer Corp.*,[43] the Ninth Circuit held that ERISA permits suits only against the plan.[44] Joyce Gelardi, an employee of Pertec Computer Corporation ("Pertec"), submitted a claim for long-term disability benefits to her employer.[45] The plan under which she submitted her claim qualified as a self-funded employee welfare benefit plan as defined by ERISA.[46] Pertec hired a third party, Self Insurance Programs ("Self"), to be the plan administrator and have control over the plan.[47] Pertec was listed as the plan fiduciary in the plan summary.[48] Self initially denied Gelardi's benefits claim,[49] and had self delegated authority to the Pertec Employee Benefits Committee to review denied claims.[50] The Committee upheld the denial in this case.[51] Subsequently, Gelardi brought suit against Pertec and Self,

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[40] *See infra* Part III.A.

[41] *See infra* Part III.B.

[42] *See infra* Part III.C.

[43] 761 F.2d 1323 (9th Cir. 1985).

[44] *Id.* at 1324.

[45] *Id.*

[46] *Id.* (citing ERISA § 3, 29 U.S.C. § 1002(1) (1982)).

[47] *Gelardi*, 761 F.2d at 1324.

[48] *Id.* at 1325.

[49] *Id.* at 1324.

[50] *Id.*

[51] *Id.*

but did not include the plan itself.[52] Because the claim was not brought against the plan or a fiduciary, the district court granted summary judgment for the defendants.[53] Gelardi appealed.[54]

In holding that ERISA permits suits to recover benefits only against the plan itself, the court cited ERISA section 1132(a)(1)(B) and section 1132(d), which both refer to the plan.[55] The court also held that suits for breach of fiduciary duty could be brought only against the fiduciary and the court cited ERISA section 1109(a) and section 1105(a) in support of this holding.[56] The court stated that it was "self evident that neither [Pertec nor Self was] the [p]lan itself."[57] As a result, the court examined whether either party was a fiduciary.[58]

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[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.* Section 1132(a)(1)(B) of ERISA states "(a) Persons empowered to bring a civil action. A civil action may be brought (1) by a participant or beneficiary . . . (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan . . . ." ERISA § 502, 29 U.S.C. § 1132(a)(1)(B) (2000)). Section 1132(d), entitled "status of employee benefit plan as entity" states:

> (1) An employee benefit plan may sue or be sued under this title as an entity. Service of summons, subpoena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.
> (2) Any money judgment under this title against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title.

Id. at § 502, 29 U.S.C. § 1132(d).

[56] *Gelardi*, 761 F.2d at 1324-25.

[57] *Id.* at 1325.

[58] *Id.*

The circuit court first determined Pertec was not a fiduciary.[59] When Pertec hired Self to administer the plan, Pertec no longer retained discretionary control over the disposition of claims; therefore it was not a fiduciary.[60] Pertec and its board of directors could be held liable for breach of a fiduciary duty for the selection of the plan administrator because the board of directors selected Self to serve in this capacity; however, this claim was not brought before the court.[61] The court dismissed the fact that Pertec was labeled "plan fiduciary" in the plan summary because this label contradicted the plan and a clause in the plan stated the plan controlled in cases of contradictions.[62] In addition, the court found that Pertec was not a fiduciary despite Pertec employees serving on the Pertec Employees Benefits Committee.[63] The court reasoned that even though the committee had a fiduciary responsibility in reviewing claims, Pertec was only liable under ERISA when it exercised the fiduciary responsibility alleged to have been breached.[64]

Next, the court determined that Self was not a fiduciary.[65] The court stated that Self performed "only administrative functions."[66] Because, in the court's opinion, the company only "process[ed] claims within a framework of policies, rules, and procedures established by others", it was not a fiduciary.[67]

Similarly, in *Jass v. Prudential Health Care Plan Inc.*,[68] the Seventh Circuit cited to *Gelardi* and held that "'ERISA permits suits to recover benefits only against the Plan as an entity.'"[69] "Betty Jass participated in an employee benefit plan sponsored

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[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] 88 F.3d 1482 (7th Cir. 1996)

[69] *Id.* at 1490 (quoting *Gelardi*, 761 F.2d at 1324).

by her husband's employer, Granite City Steel Corporation."[70] Prudential Health Care (PruCare) administered the plan.[71] PruCare employed Karen Margulis, a nurse, who reviewed Jass's condition.[72] Jass underwent knee surgery and claimed she needed physical therapy to rehabilitate her knee.[73] Margulis determined therapy was not needed; therefore Jass was subsequently discharged from the hospital without rehabilitation.[74] Jass sued Margulis for negligence and brought a vicarious liability claim against PruCare for Margulis's alleged negligence.[75] The district court dismissed her claims due to jurisdictional issues and Jass appealed.[76]

The Seventh Circuit reviewed the lower court's dismissal of the claim against Margulis and upheld the dismissal, but on different grounds.[77] The court stated that Margulis could not be sued in her individual capacity because "'ERISA permits suits to recover benefits only against the [p]lan as an entity.'"[78] The court also relied on language in section 1132(d)(2), which limits the ability to sue an individual, to support its conclusion.[79] Section 1132(d)(2) provides that any money judgment will only be enforceable against the plan and not any other person unless liability against such a person is established in that person's individual capacity.[80] Therefore, the court determined that Margulis was an improper defendant and that "the appropriate

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[70] *Jass*, 88 F.3d at 1485.

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.* at 1486.

[77] *Id.* at 1490.

[78] *Id.* (quoting Gelardi v. Pertec Computer Corp., 761 F.2d 1323, 1324 (9th Cir. 1985)).

[79] *Id.* (quoting ERISA § 502, 29 U.S.C. § 1132(d)(2) (2000)) ("Any money judgment under this subchapter against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this subchapter.").

[80] *See* language quoted *supra* note 79.

defendant for a denial of benefits claim would be the plan, which in this case [was] PruCare."[81]

The Seventh Circuit upheld the dismissal of the claim against PruCare, but left room for Jass to amend her complaint.[82] The court dismissed the claim because Jass was seeking compensatory damages which were outside the scope of relief available under ERISA.[83] However, the court re-characterized Jass' claim from one alleging vicarious liability to "one alleging a denial of benefits", and held that Jass should be permitted an opportunity to amend her complaint in order to request appropriate relief.[84]

In the case of *Hemphill v. Unisys Corp*.,[85] a United States District Court in Utah also reached the conclusion that only the plan itself could be named as a defendant in an ERISA action.[86] Raymond Hemphill was injured in a car accident[87] He had a contract for health insurance with his employer, Unisys, and a health care provider, Alta Health Strategies, Inc.[88] Hemphill attempted to get his medical bills paid and applied for long term disability, but some benefits were denied.[89] As a result, Hemphill sued both his employer and his health care provider.[90]

The district court acknowledged there was a split among the circuit courts as to whether an employer can be named as a defendant in an ERISA action.[91] The

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[81] *Jass*, 88 F.3d at 1490.

[82] *Id.* at 1491.

[83] *Id.*

[84] *Id.*

[85] 855 F. Supp. 1225 (D. Utah 1994).

[86] *Id.* at 1234.

[87] *Id.* at 1229.

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *Id.* at 1233.

court observed that "[s]ome courts have summarily held that an employer is not a proper party defendant in an action to recover benefits."[92] Although other courts have recognized that a fiduciary may also be an appropriate defendant under ERISA, the court held there was no evidence to demonstrate Unisys had any control or influence over the plan.[93] As a result, the court stated that Hemphill should amend his compliant to name only the plan as a defendant in his suit.[94]

B. The Plan and Plan Administrator Can Be Named

In *Garren v. John Hancock Mutual Life Insurance Co.*,[95] the Eleventh Circuit held that the proper defendant in an ERISA action was the party that controls administration of the plan.[96] Curtis Garren filed suit after his employment benefit plan denied his son's medical claims.[97] John Hancock Mutual Life Insurance Company ("John Hancock") serviced the plan, and Georgia-Pacific Corporation ("Georgia-Pacific") employed Garren.[98] Although Garren brought suit against John Hancock, the district court dismissed the case after determining the company was not a proper defendant under ERISA.[99]

The circuit court upheld the lower court's determination that John Hancock was not the proper defendant because it was not the plan administrator.[100] The court determined that the employer, Georgia-Pacific, was the plan administrator and, thus, the proper defendant.[101] It reached this decision after looking into the role Georgia-

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[92] *Id.*

[93] *Id.* at 1234.

[94] *Id.*

[95] 114 F.3d 186 (11th Cir. 1997) (per curium).

[96] *Id.* at 187.

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] *Id.*

Pacific played in granting or denying benefit claims.[102] In addition, the Plan itself named Georgia-Pacific as the plan administrator with exclusive responsibility and complete discretionary authority to authorize or deny a claim.[103] According to the plan, Georgia-Pacific was to interpret all questions arising under the plan.[104] The circuit court held that an ERISA action should be brought against the plan administrator who in the case was the employer, Georgia-Pacific.[105]

The Eighth Circuit Court of Appeals reached a similar conclusion in two cases, *Layes v. Mead Corp.*[106] and *Hall v. LHACO Inc.*[107] In *Layes*, Ronnie Layes suffered from a misalignment of his lower extremities, a condition which was aggravated by the walking and standing required by his job.[108] As a result, Layes filed a claim under the long-term disability plan provided by his employer.[109] Mead Corporation ("Mead") was Layes's employer,[110] and CNA was the administrator of the long-term disability benefits plan.[111] CNA determined that Layes was not totally disabled and denied him benefits under the plan.[112] Subsequently, Layes filed an ERISA action against both CNA and Mead.[113] The district court granted summary judgment in favor of the defendants; Layes appealed.[114]

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[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] *Id.*

[106] 132 F.3d 1246 (8th Cir. 1998).

[107] 140 F.3d 1190 (8th Cir. 1998).

[108] *Layes*, 132 F.3d at 1248.

[109] *Id.* at 1249.

[110] *Id.* at 1248.

[111] *Id.* at 1249.

[112] *Id.*

[113] *Id.*

[114] *Id.* at 1248.

The circuit court upheld the lower court's finding that Mead was not a proper defendant because Mead did not exercise sufficient control over the plan.[115] Since CNA was the plan's sole administrator "at all relevant times," it was the proper defendant.[116] Layes argued that Mead attempted to exert control over Layes's claim through a series of letters, memos, and correspondence sent to CNA, thereby making Mead the plan administrator.[117] The court disagreed because the correspondence primarily took place before Layes filed a formal request for benefits and did not establish that Mead influenced CNA.[118] Thus, CNA was still considered to be the plan administrator and the proper defendant.[119]

In *Hall*, James Hall's son was in an accident and Hall submitted a claim under his health care plan.[120] LHACO, the third party administrator, reviewed the claim to determine if another insurer or a third party might be responsible for payment.[121] Because a third party may have been responsible for Hall's claim, LHACO asked Hall to fill out a subrogation questionnaire.[122] Hall refused to complete the questionnaire, and LHACO never paid his claim.[123] Hall sued LHACO after his claim was denied alleging that LHACO was the plan administrator.[124] Although the district court found that LHACO was the plan administrator, the court determined that LHACO was an improper defendant and granted LHACO summary judgment.[125] Hall appealed.[126]

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[115] *Id.* at 1249-50.

[116] *Id.* at 1249.

[117] *Id.*

[118] *Id.* at 1249-50.

[119] *Id.* at 1249.

[120] Hall v. LHACO, Inc., 140 F.3d 1190, 1192 (8th Cir. 1998).

[121] *Id.*

[122] *Id.*

[123] *Id.*

[124] *Id.*

[125] *Id.* at 1193.

The circuit court referred to the Eighth Circuit's holding in *Layes* that "the proper party against whom a claim for ERISA benefits may be brought 'is the party that controls administration of the plan, not the plan participant's employer.'"[127] As a result of the *Layes* decision, the court found that the district court's holding that LHACO was an improper defendant because it was the plan administrator was incorrect.[128] However, the court found that LHACO could not be held responsible since it was no longer associated with the plan and could not pay benefits to Hall.[129] The court stated that only a current plan administrator could pay out benefits; therefore "[t]he terms of Hall's [p]lan would necessarily have to be enforced against the [p]lan itself and the *present* administrator."[130]

In *Pippin v. Broadspire Services, Inc.*,[131] the United States District Court for the Western District of Louisiana heard Carla Pippin's complaints.[132] Pippin was a disabled employee whose benefits from her employer's plan were suddenly terminated.[133] Georgia Gulf employed Pippin, and Broadspire was the claims administrator.[134] The district court found that summary judgment was improper because an examination of the role Broadspire played in denying Pippin's benefits claim was necessary to determine if it was a proper party to the suit.[135]

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[126] *Id.*

[127] *Id.* at 1194 (citing Layes v. Mead Corp., 132 F.3d 1246, 1249 (8th Cir. 1998)).

[128] *Hall*, 140 F.3d at 1194.

[129] *Id.* at 1196.

[130] *Id.* (emphasis in original).

[131] No. Civ.A. 05-2125, 2006 WL 2588009 (W.D. La. Sept. 8, 2006).

[132] *Id.* at *1.

[133] *Id.*

[134] *Id.*

[135] *Id.* at *3.

C. The Plan and Employer Can Be Named

In *Sweet v. Consolidated Aluminum Corp.*,[136] the Sixth Circuit held that the employer, Consolidated Aluminum Corp. ("Consolidated"), was a proper defendant.[137] Edward Sweet was a retired employee of Consolidated who was receiving retirement benefits prior to his death.[138] Sweet elected to receive monthly installment payments for a guaranteed ten year period.[139] After Sweet went missing for a period of time, Manufacturer Hanover Trust, the Trustee of the pension plan, stopped payment until it could determine whether Sweet had passed away.[140] After Sweet was found to be deceased, the parties agreed to the payment of the amounts due under the guaranteed ten year period.[141] The court awarded prejudgment interest but refused to award costs and attorney fees to the plaintiff.[142] Both parties appealed.[143]

The administrator of Sweet's estate argued that the award of prejudgment interest was proper because payments due under the decedent's pension plan were improperly withheld.[144] The circuit court examined the relationship between the employer and the trustee to determine what role, if any, the employer played in the decision to withhold certain pension benefits owed to the estate.[145] The court found that a letter from the employer to the trustee instructing it not to pay any benefits until a final determination of death had been made proved that the employer maintained some control concerning the decision to pay the benefits.[146] Because

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[136] 913 F.2d 268 (6th Cir. 1990).

[137] *Id.* at 272.

[138] *Id.* at 269.

[139] *Id.*

[140] *Id.*

[141] *Id.*

[142] *Id.* at 270.

[143] *Id.*

[144] *Id.*

[145] *Id.* at 270, 272.

[146] *Id.* at 272.

Consolidated retained some control in the decision-making process, it was a proper defendant in the suit.[147] The court found error in the date used for calculating prejudgment interest and remanded the case to determine the proper amount of prejudgment interest.[148] Without explaining further, the court upheld the district court's denial of costs and attorney fees.[149]

Similarly to *Sweet*, in *Curcio v. John Hancock Mutual Life Insurance Co.*,[150] the Third Circuit held an employer was a proper defendant in an ERISA action.[151] Frederick Curcio was killed in an automobile accident while employed at a hospital owned by Capital Health Systems ("Capital Health").[152] Capital Health provided life insurance coverage to its employees through John Hancock Mutual Life Insurance Co. ("John Hancock").[153] After collecting some proceeds under the insurance coverage, Mr. Curcio's widow, Marita Curcio, sued both Capital Health and John Hancock for additional benefits.[154] The district court determined that Capital Health was neither the plan nor a fiduciary and granted summary judgment in favor of Capital Health; Curcio appealed.[155]

The circuit court stated that its task was to determine "whether Capital Health maintained any authority or control over the management of the plan's assets, management of the plan in general, or administration of the plan."[156] The court relied on section 1002(16)(A)(i) of ERISA, which "defines an 'administrator' as 'the person specifically so designated by the terms of the instrument under which the

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147 *Id.*

148 *Id.*

149 *Id.*

150 33 F.3d 226 (3d Cir. 1994).

151 *Id.* at 234.

152 *Id.* at 228-29.

153 *Id.* at 229.

154 *Id.*

155 *Id.* at 230-31.

156 *Id.* at 233.

plan is operated.'"[157] Capital Health labeled itself as plan administrator in the employee benefits booklets, and the court stated that it was "obvious . . . that a plan administrator [had] responsibility in the administration of the plan."[158] The court also distinguished this case from Ninth Circuit's decision in *Gelardi* because, unlike the facts in *Gelardi*, Capital Health did not hire an outside company to administer the plan.[159]

The circuit court determined that Capital Health made inaccurate representations concerning additional recovery that was available under the insurance company's clearly stated policy.[160] Capital Health distributed materials describing the plan to its employees rather than distributing materials provided by John Hancock.[161] Capital Health stated in its employee benefit booklet that it could modify, amend, or terminate the plan at any time.[162] The court held that Capital Health "maintained sufficient discretionary authority and responsibility in the administration of the plan" to satisfy the statutory definition of a fiduciary under ERISA and make it a proper party to the claim.[163]

IV. ANALYSIS

The various schemes governing which parties should be included as defendants in ERISA claims are fraught with both advantages and disadvantages. When only a plan can be named as a defendant, employers and plan administrators have an incentive to deny claims and save money to the detriment of employees. On the other hand, if anyone who played a role in denying a claim can be named a defendant, there is a greater incentive to carefully examine claims in an effort to avoid potential liability.

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[157] *Id.* at 234 (quoting ERISA § 3, 29 U.S.C. §1002(16)(A)(i) (2000)).

[158] *Curcio*, 33 F.3d at 234.

[159] *Id.* at 234 n.12.

[160] *Id.* at 229.

[161] *Id.* at 234.

[162] *Id.*

[163] *Id.*

A. Allowing Only the Plan to Be Named

There are both positives and negatives in allowing only the plan to be named as a defendant in an ERISA action. One advantage of this approach is that it makes the law clearer for plaintiffs. ERISA section 502(a)(1)(B) repeatedly refers to the plan in connection with bringing a civil action; therefore, suing the plan is consistent with the statutory language.[164]

However, there are two disadvantages to naming only the plan as a defendant. First, this practice may limit the reward a plaintiff is able to receive if a plan is under-funded. The legislature believed that employees should be protected from an improperly funded plan, which can be accomplished by allowing plaintiffs to name parties in addition to the plan as defendants.[165] The second disadvantage is that other responsible parties will not have an incentive to treat employees fairly if they cannot be sued. When a claim is denied, the plan saves money and the employer has to contributes less money to the plan. If only the plan can be sued, the employer and the plan administrator will have a greater incentive to save money by denying potentially legitimate claims, knowing they cannot be held responsible for their decisions.

The *Gelardi* Court recognized that parties other than the plan could be held liable for breach of fiduciary duties and refused to find either the employer or the plan administrator to be a fiduciary.[166] Accordingly, the plan was the only proper defendant.[167] The court's argument in *Gelardi* was circular. The court stated that the employer could not be held responsible as a fiduciary because "it retained no control over the disposition of claims" after appointing a plan administrator.[168] However, the court also stated that the plan administrator could be not be held liable because it was merely performing administrative duties established by others.[169] This result is unfair to plaintiffs. The party who makes the decision to deny a plaintiff benefits under a plan should have to support its decision when the employee decides to file

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[164] ERISA § 502(a)(1)(B), 29 U.S.C. § 1132 (2000).

[165] *See supra* note 15 and accompanying text.

[166] Gelardi v. Pertec Computer Corp., 761 F.2d 1323, 1325 (9th Cir. 1985).

[167] *Id.* at 1324.

[168] *Id.* at 1325.

[169] *Id.*

suit. An employer or any other parties involved in an employee benefit plan should not be "let off the hook" simply by pointing the finger at someone else.

B. Allowing the Plan Administrator to Be Named

There are four strong arguments in favor of permitting plaintiffs to name plan administrators as defendants. First, the plain language of ERISA permits a plan administrator to be sued.[170] Section 409 of ERISA allows an action to be brought against a fiduciary.[171] The statutory definition of fiduciary includes one who has "any discretionary authority or discretionary responsibility in the administration of such plan."[172] A plan administrator, by job title alone, has responsibility in the administration of a plan.

Second, if employees are allowed to name a plan administrator who played a role in the denial of a claim as a defendant, then administrators will have an incentive to make the right decisions. In a system where only the plan can be named as a defendant, the incentive to deny claims outweighs the incentive to approve them. When claims are denied, the employer saves money by contributing less money to the plan. Furthermore, because the employer chooses and pays the plan administrator, the employer's wishes may influence the plan administrator. No accountability exists if the plan administrator erroneously denies a claim and cannot be sued; therefore, the administrator has an incentive to err on the side of denying claims. Exposing plan administrators to liability may tip the incentives in favor of the employees.

Third, allowing employees to sue a third party plan administrator may ensure that those plan administrators take their duty to employees more seriously. Third party plan administrators may not believe they have loyalties to employees since they are only involved with them through the administration of the plan. But, if employees who are harmed by the decisions of plan administrators are able to sue them, plan administrators will remember that they handle employees claims carefully and fairly.

The fourth argument in support of naming plan administrators as defendants favors employers. If a third party administers the plan and the employer plays no

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[170] ERISA § 409(a), 29 U.S.C. § 1109(a) (2000).

[171] *Id.*

[172] ERISA § 3, 29 U.S.C. §1002(21)(A)(iii).

role in the denial or granting of benefits, then the employer should not be named as a defendant, thus, saving the employer from a potentially costly lawsuit.

The disadvantage to allowing plan administrators to be named as defendants is that it may deter third parties from administering benefit plans. If third parties are not willing to administer plans, this may place a heavy burden on employers to administer plans themselves, which may ultimately cause companies to not create plans in the first place.

C. Allowing the Employer to Be Named

An employer should be named as a defendant in an ERISA action if it participated in the decision of whether to grant or deny a benefit. The advantage to being able to name an employer as a defendant in a claim for ERISA benefits is that it holds accountable a party who may have done wrong. One purpose behind ERISA was to sanction responsible parties.[173] An employer is usually responsible in some manner for decisions made under the plan; therefore, it should be held accountable. An employer should not be able to create an employee benefit plan, take part in making decisions under that plan, and then hide behind the plan when something goes wrong.

In *Varity v. Howe*,[174] the Supreme Court held that ERISA authorized a lawsuit for individualized equitable relief when an employer breached a fiduciary obligation.[175] This case demonstrates that the Supreme Court does not interpret ERISA as narrowly as the court in the *Gelardi*. Although *Gelardi* may not have dealt with an employer's actions that were as severe as in *Varity*, it is unlikely that the *Gelardi* court would have found *any* party to be a fiduciary. If the employer was not a fiduciary because it had delegated duties to a plan administrator,[176] and the plan administrator was not a fiduciary because it was merely following rules established by the employer,[177] then it is difficult to imagine who the *Gelardi* Court would consider a fiduciary. Accordingly, *Gelardi* is inconsistent with the Supreme Court's decision in *Varity* that fiduciaries should be held accountable.

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[173] *See supra* note 15 and accompanying text.

[174] 516 U.S. 489, 506 (1996).

[175] *Id.* at 513.

[176] Gelardi v. Pertec Computer Corp., 761 F.2d 1323, 1325 (9th Cir. 1985).

[177] *Id.*

Similarly to the disadvantage of allowing the plan administrator to be named, the disadvantage of allowing plan participants to sue employers is that this may discourage employers from creating benefit plans in the first place.

D. Proposal

The better-reasoned approach would allow an ERISA plan participant who files an ERISA action to name as defendants all parties who played a role in the denial of a claim, including the plan itself, the employer who sponsored the plan, and the plan administrator. Allowing parties other than the plan to be named as a defendant results in greater accountability. In addition, this approach is consistent with the language of the ERISA legislation, the intent behind the legislation, and the Supreme Court's opinion in *Varity*. The statutory language in ERISA allows suits to be brought against the plan and against fiduciaries. Fiduciary should be interpreted broadly to include employers and plan administrators who play a role in denying an employee benefits.

V. CONCLUSION

The proper defendant in an ERISA action is any party that plays a role in the denial of a claim under an ERISA plan. These parties may include the plan, the employer who sponsored the plan, the plan administrator, and anyone else involved in deciding to deny a benefit to an employee. Four primary bases support this supposition.

First, the plain language of the statute permits a plaintiff to sue the plan and fiduciaries. Fiduciaries are defined, in part, as those who administer the plan.[178] A plan administrator obviously fits that description, as does an employer who plays a role in administrating the plan. However, an employer who plays no role in plan administration should not be subject to suit.

Second, allowing plaintiffs to name all parties who played a role in the denial of a claim as defendants is consistent with the legislative intent of Congress in creating ERISA. One purpose of ERISA was to protect employees from improperly funded plans and erroneous benefit denials.[179] Broadening the category of entities that may be sued for erroneous benefit denials would accomplish both of these purposes.

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[178] ERISA § 409(a), 29 U.S.C. § 1109(a) (2000).

[179] *See supra* notes 14-15 and accompanying text.

Third, this approach is consistent with the Supreme Court decision in *Varity* recognizing that fiduciaries can be sued under ERISA.[180] Entities making benefit decisions, whether employers or plan administrators, are fiduciaries who can and should be held accountable for their decisions.

Fourth, this approach places the proper incentives on parties making benefits determinations to make the correct decisions. If the decision-maker cannot be held liable, then the decision-maker, whether employer or plan administrator, will have a direct financial incentive to deny legitimate claims. Making decision-makers liable ensures they have an incentive to make proper benefits determinations.

[180] *See Varity v. Howe*, 516 U.S. 489, 498 (1996).