No. 24-12148

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JON HOAK, ANTHONY FANO, ALLAN QUICK, PATRICIA GIERING, and NANCY PARIN, on behalf of themselves and those similarly situated,

Plaintiffs-Appellees,

v.

ANDREA LEDFORD, et al.,

Defendants,

and

PLAN ADMINISTRATOR OF THE PLANS OF NCR CORPORATION,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
Case No. 15-cv-3983
The Honorable District Judge Amy Totenberg

MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR REHEARING AND REHEARING EN BANC

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Eleventh Circuit Rule 26.1-1(a)(3), the undersigned counsel for the Chamber of Commerce of the United States of America, as *amicus curiae*, certifies that, in addition to those identified in the briefs filed by Plaintiffs-Appellees and Defendant-Appellant, the following persons and entities may have an interest in the outcome of this case:

1. Janet Galeria, U.S. Chamber Litigation Center, counsel for *amicus curiae* the Chamber of Commerce of the United States of America.

2. Mariel A. Brookins, U.S. Chamber Litigation Center, counsel for *amicus curiae* the Chamber of Commerce of the United States of America.

3. Michael A. Scodro, Mayer Brown LLP, counsel for *amicus curiae* the Chamber of Commerce of the United States of America.

4. Richard E. Nowak, Mayer Brown LLP, counsel for *amicus curiae* the Chamber of Commerce of the United States of America.

5. Anastasiya K. Lobacheva, Mayer Brown LLP, counsel for *amicus curiae* the Chamber of Commerce of the United States of America.

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, the Chamber of Commerce of the United States of America states that it is a non-profit corporation, it does not have publicly traded stock, it does not have a parent corporation, no publicly held corporation owns ten percent or more of its stock, and it is not a subsidiary or affiliate of a publicly held corporation.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

Pursuant to Federal Rule of Appellate Procedure 29(b)(3), proposed *amicus curiae*, the Chamber of Commerce of the United States of America ("Chamber"), respectfully files this Motion seeking leave of Court to file an *amicus curiae* brief in support of Defendant-Appellant's Petition for Rehearing and Rehearing En Banc. The proposed brief is attached to this Motion. In support of this Motion, the Chamber states as follows:

1. The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million businesses and professional organizations of every size, in every industry sector, and from every region of the country.

2. The Chamber's members maintain, administer, or provide services to employee benefit plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA").

3. An important function of the Chamber is to represent its members' interests in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly participates as *amicus curiae* in this Court and in other courts on issues that arise under ERISA. *See, e.g.*, *Hughes v. Northwestern Univ.*, 142 S. Ct. 737 (2022); *Pizarro v. The Home Depot, Inc.*, 111 F.4th 1165 (11th Cir. 2024); *Smith v. CommonSpirit Health*, 37 F.4th 1160 (6th Cir. 2022).

4. For these reasons, the Chamber is uniquely positioned to provide a distinct perspective to the Court that current parties do not provide. The proposed *amicus* brief examines how the panel opinion's refusal to defer to the plan administrator's broad discretion in interpreting the terms of the at-issue employee benefit plans, including the terms governing plan termination, fosters uncertainty and undermines employer flexibility. The proposed *amicus* brief is therefore relevant to the disposition of the case and desirable. *See* Fed. R. App. P. 29(a)(3).

5. This filing is timely because this motion and the attached brief are being filed within a week of the date that Defendant-Appellant filed its opening brief. *See* 11th Cir. R. 29-3 and 29-4.

6. The Chamber affirms that no party's counsel authored the brief in whole or in part, and no person—other than the Chamber, its members, and its counsel—made a monetary contribution to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4).

WHEREFORE, proposed *amicus curiae* respectfully request that this Court grant this Motion and accept the Chamber's brief for consideration in this case.

October 14, 2025.

Respectfully submitted,

/s/ Michael A. Scodro
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CERTIFICATE OF COMPLIANCE

This Motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) and Eleventh Circuit Rule 29-1 because it contains 407 words excluding the parts of the Motion exempted by Fed. R. App. P. 32(f).

This Motion complies with the typeface and type style requirements of Fed. R. App. P. 27(d)(1)(E) and Eleventh Circuit Rule 29-1 because this Motion has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

/s/ Michael A. Scodro
Michael A. Scodro

CERTIFICATE OF SERVICE

I hereby certify that, on October 14, 2025, I caused the foregoing MOTION FOR LEAVE TO FILE BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR REHEARING OR REHEARING EN BANC to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Michael A. Scodro
Michael A. Scodro

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CERTIFICATE OF MERIT

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decisions of the Supreme Court of the United States and the precedents of this Circuit and that consideration by the full Court is necessary to secure and maintain uniformity of decisions in this Court: *Holloman v. Mail-Well Corp.*, 443 F.3d 832 (11th Cir. 2006); *Blankenship v. Metro. Life Ins. Co.*, 644 F.3d 1350 (11th Cir. 2011); *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989).

/s/ Michael A. Scodro
Michael A. Scodro

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INTEREST OF THE *AMICUS CURIAE*

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million businesses and professional organizations of every size, in every industry sector, and from every region of the country. Many of its members maintain, administer, or provide services to employee benefit plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). An important function of the Chamber is to represent its members' interests in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly participates as *amicus curiae* in this Court and in other courts on issues that arise under ERISA. *See, e.g.*, *Hughes v. Northwestern Univ.*, 595 U.S. 190 (2022); *Pizarro v. Home Depot, Inc.*, 111 F.4th 1165 (11th Cir. 2024).[1]

STATEMENT OF ISSUE

Whether a plan administrator may exercise its discretion to terminate certain employee benefit plans by providing lump-sum payments that are the actuarial equivalent of the annuity benefits provided by the plans when (i) Circuit precedent squarely permits the conversion of a benefit to an actuarially equivalent form and

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[1] No counsel for a party authored this brief in whole or in part. No party, no counsel for a party, and no person other than the Chamber, its members, and its counsel made a monetary contribution to fund the preparation or submission of this brief.

(ii) Supreme Court and Circuit precedent require deference to the plan administrator's discretionary decisions in administering and terminating a plan.

SUMMARY OF THE ARGUMENT

This appeal involves "top hat" benefit plans that provided annuities for certain company executives. The plans granted the plan administrator ("Administrator") broad discretion to construe and interpret plan terms. Each plan also gave the Administrator broad discretion to terminate the plan as long as the termination did not "adversely affect" participants' "accrued benefits." Exercising its discretion, the Administrator terminated the plans and paid each participant a lump sum equal to the actuarial equivalent value of his or her annuity benefit. That was a reasonable way to calculate the value of the participants' accrued benefits, consistent with decades of industry practice and Circuit precedent. Without affording any deference to the Administrator's interpretation of the plan, however, the district court held that the Administrator had to give participants *more* than their "accrued benefits" under the terminated plans.

This ruling was contrary to binding precedent and upended long-settled legal principles at the core of ERISA plan management. The ruling cannot be squared with this Court's decision in *Holloman v. Mail-Well Corp.*, 443 F.3d 832, 839 (11th Cir. 2006), which held on virtually identical facts that terminating a top-hat plan by paying lump-sum conversions based on actuarial estimates did not adversely affect participants' accrued benefits. And by declining to afford any deference to the Administrator's interpretation of the plan, the panel broke squarely from *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989), and *Blankenship v. Metropolitan Life Insurance Co.*, 644 F.3d 1350, 1355 (11th Cir. 2011).

As the Supreme Court has explained, ERISA seeks to encourage employers to offer benefit plans. *See Conkright v. Frommert*, 559 U.S. 506, 517 (2010). By effectively rendering it impossible for the Administrator to terminate the plans, the panel's ruling will disincentivize employers—particularly those in the Eleventh Circuit—from offering benefit plans at all.

ARGUMENT

I. The Panel's Opinion Departs Sharply From Circuit And Supreme Court Precedent.

A. This Court Has Held That Using Actuarial Methods To Accelerate Annuity Payments Does Not Categorically Reduce Benefits.

The panel's opinion breaks from well-established Circuit precedent. On virtually identical facts in *Holloman*, this Court upheld the plan administrator's authority to terminate a top-hat plan providing monthly annuity payments by paying a lump-sum amount to each participant. 443 F.3d at 839. Like the plans here, the plan in *Holloman* afforded the administrator discretion to terminate the plan—without specifying the actuarial assumptions the administrator must use to calculate the lump-sum amounts—as long as the termination did not reduce the participants' benefits. *Id.* at 835. The administrator there terminated the plan just as the Administrator did here—by paying each participant an actuarially-equivalent lump sum, calculated using life expectancy estimates from a mortality table, and then applying a discount rate. *Id.* at 835, 839-40. The plan's bar on reducing participant benefits, the Court reasoned, did not prohibit the administrator from using the methods it used to calculate participants' lump-sum payments. That is because, contrary to the plaintiffs' argument, using a mortality rate table and a discount rate to discount the lump sum to present value did not "necessarily amount[] to a reduction in benefits." *Id.* at 840.

Since this Court decided *Holloman*, moreover, other courts have likewise held that converting a plan annuity to a lump-sum payment does not adversely affect participants' accrued benefits. *See Taylor v. NCR Corp.*, 2015 WL 5603040, at *6 n.6 (N.D. Ga. 2015); *Starr v. MGM Mirage*, 2008 WL 11451257, at *7 (D. Nev. 2008). Indeed, a court interpreting the very plans at issue here correctly held that the administrator's "power to terminate a plan necessarily implies the power to pay out the benefit in a lump sum upon termination." *Taylor*, 2015 WL 5603040, at *6 n.6.

The panel ruling upends plan administrators' reasonable reliance on *Holloman* and later cases by rejecting precisely the methods these decisions approved. If lump-sum payments "adversely affect" participants' accrued benefits whenever "the lump sum le[ads] to a reduction in the amount of life annuity *of even a single participant*," as the panel held, Op. at 14 (emphasis added), then lump-sum payments are effectively barred entirely. Such payments necessarily require use of mortality tables, which can only "predict . . . probabilit[ies]"—it is impossible to divine the number of annuity payments a specific participant will need over the remainder of that participant's lifetime. *See Mortality Table,* Corporate Finance Institute, https://tinyurl.com/yb74nk5u (last visited Oct. 10, 2025).

And as *Holloman* recognized, requiring plans to pay more than the actuarial tables prescribe would require "the value of any lump-sum payment . . . to *exceed* the value of the stream of future payments that it was meant to replace." 443 F.3d at 840 (emphasis added). Indeed, the panel here reasoned that the Administrator could have paid participants a lump sum only if it were equivalent to the value of privately insured, state-backed annuities, which would have required the Administrator to furnish participants with a more valuable benefit in termination than they had under the plans. *See* U.S. Soc. Sec. Admin., Social Security Retirement Benefits and Private Annuities: A Comparative Analysis, No. 2017-01 (2017), https://tinyurl.com/bddnu6ft (explaining that annuitant's premiums "are typically protected up to a maximum amount, which is set by each state's insurance guaranty fund"). Just as in *Holloman*, requiring the Administrator to provide the participants with such a windfall would be contrary to the terms of the plans, an outcome this Court expressly rejected. 443 F.3d at 840.

B. Supreme Court And Circuit Precedent Require Deference To Administrators' Discretionary Termination Decisions.

The panel decision also breaks from Supreme Court precedent requiring reviewing courts to defer to the plan administrator when the plan "gives the administrator . . . discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Firestone*, 489 U.S. at 115. As the district court in this case recognized, the interpretation of the plans here was "subject to the sole discretionary authority of the Plan Administrator." A405. Nevertheless, the panel declined to defer to the Administrator because it characterized the "critical [plan] language"—that termination could not "adversely affect" the "accrued benefits" of "any" participant—as "unambiguous." Op. at 12-13.

Until now, however, it was well established that a plan administrator's construction of plan language is entitled to deference even if the reviewing court believes that reading is "de novo wrong." *Blankenship*, 644 F.3d at 1355. *Meadows ex rel. Meadows v. Cagle's, Inc.*, 954 F.2d 686, 691 (11th Cir. 1992) (Op. at 11), is not to the contrary. *Meadows* stands for the unremarkable proposition that a party cannot rely on extrinsic oral communications to support an interpretation contrary to a plan's plain language. *Id.* at 690-91. But the Administrator did not rely on any extrinsic evidence here. The plans are silent when it comes to permissible methods of termination, so the Administrator used its authorized discretion to determine how to calculate lump-sum payments whose value is actuarially equivalent to participants' plan benefits. The panel decision sidesteps *Firestone*, drastically cabining the discretion of plan administrators.

Nor did the Administrator's approach "undermine [participants'] justified expectations" or "controvert the clear terms of the Plan," as the panel reasoned. Op. at 10 (quoting *Thompson v. Ret. Plan for Emps. of S.C. Johnson & Son*, 651 F.3d 600, 608 (7th Cir. 2011), and *Scribner v. Worldcom, Inc.*, 249 F.3d 902, 911 (9th Cir. 2001)). Of course, a plan administrator cannot "redefine" plan terms by deciding that participants will no longer receive promised benefits. *Id.* That would "add to, subtract from or modify" plans terms, which the plans expressly forbid. *Id*. But calculating the lump-sum value of participants' annuities, such that the lump sums do not "adversely affect" the "accrued benefits" of "any participant," does not modify the plans. Rather, this approach reflects a quintessential discretionary judgment appropriately left to the plan administrator.

If anything, the Administrator's judgment was especially appropriate here, because the term "accrued benefits" is reasonably understood to refer to the benefits' value at termination (as measured by actuarial estimates) rather than the unknowable amount that a particular participant receiving a monthly annuity might possibly receive in the future, depending on how long they live. *See F.T.C. v. Leshin*, 618 F.3d 1221, 1231 (11th Cir. 2010) ("A contract is ambiguous where it is susceptible to two different interpretations, each one of which is reasonably inferred from the terms of the contract.”).

The Administrator’s interpretation of the plans’ termination provisions was plainly reasonable and entitled to deference. Whether a plan termination option “adversely affects” “any beneficiary’s” “accrued benefits” must be understood in context. Consistent with ERISA, plan administrators routinely convert participants’ annuity benefits to lump-sum payments, which necessarily results in certain longevity risk being transferred to participants. *See* Pension Benefit Guar. Corp., *Annuity or lump sum* (July 28, 2025) https://tinyurl.com/5cur9rx2 (explaining to pension recipients that an employer may “ask [them] to choose between an annuity and lump sum” when they stop working and that “outliv[ing] your retirement funds” is a “risk[]” of lump sums). The Administrator thus reasonably concluded here that this routine conversion did not “adversely affect” the participants’ “accrued benefits.” The panel’s decision second guessing that judgment is impossible to square with *Firestone* and *Blankenship* and should be vacated.

II. Administrators’ Discretion To Interpret Their Plans And Select Methods Of Plan Termination Is Exceptionally Important.

Affording plan administrators discretion to select a method for plan termination gives employers a powerful incentive to create such plans. As the Supreme Court explained, “ERISA represents a ‘careful balancing’ between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans." *Conkright*, 559 U.S. at 517. *Firestone* deference preserves that careful balance by fostering predictability and flexibility in implementing and terminating ERISA benefit plans. *See id.* at 517-20. By refusing to apply *Firestone* deference in reviewing the Administrator's termination decision—which was subject to broad discretion by the plans' terms—the panel opinion undermines those fundamental ERISA principles.

First, the opinion undercuts predictability. Judicial deference to the plan administrator prevents "unexpected and inaccurate plan interpretations that might result from *de novo* judicial review" and "serves the interest of uniformity" by "helping to avoid a patchwork of different interpretations of a plan . . . that covers employees in different jurisdictions." *Conkright*, 559 U.S. at 517. This case illustrates the point. Until now, courts have correctly assumed that "the power to terminate a plan necessarily implies the power to pay out the benefit in a lump sum upon termination." *Taylor*, 2015 WL 5603040, at *6 n.6. The panel's opinion—which strikes down an actuarially equivalent lump-sum conversion—allows different judges in different districts and different courts to reach different conclusions when interpreting the same or similar plan-termination provisions.

Indeed, if allowed to stand, plan administrators will be left guessing whether a reviewing court will substitute its judgment for the administrator's when determining proper benefits by concluding that the plan language affords no administrator discretion. *See Conkright*, 559 U.S. at 517 (noting that *Firestone* deference allows employer to "rely on the expertise of the plan administrator rather than worry about unexpected and inaccurate plan interpretations that might result from *de novo* judicial review"). To illustrate, here the Administrator's experienced outside counsel and advisors reasonably concluded that the plans' termination provisions were subject to discretionary interpretation and that a lump-sum payment would be "reasonably construed" as providing participants with their full benefit payment "provided the lump sum payment [was] the actuarial equivalent." Op. at 6. The panel found that that interpretation—even if reasonable—was not entitled to deference. This ruling creates massive uncertainty for plan administrators who must decide whether and how to terminate their plans.

Second, the panel's opinion erodes the flexibility of plan administrators, who must make critical plan decisions daily. Congress appropriately viewed "[f]lexibility" as "essential to achieve the basic objectives of private pension plans because of the variety of factors which structure and mold the plans to individual and collective needs of different workers, industries, and locations." S. Rep. No. 92-634, at 21 (1972); *see also Seaman v. Arvida Realty Sales*, 985 F.2d 543, 546 (11th Cir. 1993) ("ERISA's legislative history recognizes employers' need for flexibility in the design of benefits plans"). ERISA does not "mandate what kind of benefits employers must provide if they choose to have" a benefit plan. *Lockheed Corp. v.*

Spink, 517 U.S. 882, 887 (1996). By the same token, ERISA does not preclude plan administrators from terminating a plan and paying participants a lump sum equal to the actuarial equivalent value of their annuity benefit.

Following the panel's opinion, plan administrators now must provide participants with *additional* benefits at termination either by purchasing a private, replacement annuity or by providing participants with cash needed to secure such an annuity. *See* Op. at 7, 12. But neither ERISA nor the plans required the Administrator to do this. And federal judges generally lack the perspective and experience of plan administrators, who understand the complex webs of plan operations and must manage the interests of many participants. *See Conkright*, 559 U.S. at 520 ("Deference to plan administrators, who have a duty to all beneficiaries to preserve limited plan assets, helps prevent such windfalls for particular employees." (citation omitted)). The panel's *post hoc* rejection of the Administrator's reasonable interpretation of the plans' termination provision erodes ERISA's carefully balanced statutory scheme and the Supreme Court's longstanding adherence to *Firestone* deference.

CONCLUSION

The Chamber respectfully asks that the Court grant rehearing and rehearing *en banc*.

October 14, 2025.

Respectfully submitted,

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This Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

/s/ Michael A. Scodro
Michael A. Scodro

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