

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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

vs.

LIFE INSURANCE COMPANY OF NORTH AMERICA,
Defendant-Appellant.

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

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

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: No. 12-2074

Case Name: Rochow v. Life Ins. Co. of N. America

Name of counsel: Waldemar J. Pflapsen, Jr.

Pursuant to 6th Cir. R. 26.1, American Council of Life Insurers
Name of Party (amicus)

makes the following disclosure:

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

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

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

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

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

CERTIFICATE OF SERVICE

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

s/Waldemar J. Pflapsen, Jr.

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

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: No. 12-2074

Case Name: Rochow v. Life Ins. Co. of N. America

Name of counsel: Waldemar J. Pflepsen, Jr.

Pursuant to 6th Cir. R. 26.1, American Benefits Council
Name of Party (amicus)

makes the following disclosure:

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

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

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

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

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

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: No. 12-2074

Case Name: Rochow v. Life Ins. Co. of N. America

Name of counsel: Waldemar J. Pflapsen, Jr.

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

makes the following disclosure:

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

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

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

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

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

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s/Waldemar J. Pflapsen, Jr.

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: No. 12-2074

Case Name: Rochow v. Life Ins. Co. of N. America

Name of counsel: Waldemar J. Pflapsen, Jr.

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

makes the following disclosure:

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

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

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

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

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

CERTIFICATE OF SERVICE

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

s/Waldemar J. Pflapsen, Jr.

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UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

I. Nature of Motion and Movants' Interest

A. Nature of Motion

Pursuant to Federal Rule of Appellate Procedure 29(b), the American Council of Life Insurers (“ACLI”), the American Benefits Council (“Council”), the Chamber of Commerce of the United States of America (“Chamber”), and America’s Health Insurance Plans (“AHIP”) (collectively, “*Amici*”) respectfully move the Court for leave to file the accompanying consolidated brief (attached as Exhibit 1) as *amici curiae* in support of Defendant-Appellant Life Insurance Company of North America (“LINA”) and reversal of the district court’s judgment.¹ All parties consent to the filing of the accompanying brief.

Amici note that, although ACLI filed an *amicus curiae* brief in support of LINA’s petition for rehearing *en banc*, the Court’s grant of LINA’s petition has heightened the interest of other membership organizations, such as the Council, the Chamber, and AHIP, which have not previously presented their views on the important issues before the Court within the context of the current appeal.

¹ Consistent with Federal Rule of Appellate Procedure 29(d), the accompanying brief is half the length permitted for LINA’s Supplemental Brief, even though the brief is being tendered on behalf of four *amici curiae*.

B. Statement of Movants' Interest

ACLI is the largest life insurance trade association in the United States, representing the interests of more than 300 legal reserve life insurer and fraternal benefit member companies operating in the United States. Most products sold by ACLI members in the group employee benefits market are purchased to fund benefits under plans subject to the requirements of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 *et seq.* (“ERISA”). ACLI regularly advocates the interests of insurers and their millions of policyholders and beneficiaries before federal and state legislators, state insurance commissioners, federal regulators, administration officials, and the courts. ACLI often files *amicus curiae* briefs in cases, like this one, that involve issues of great importance to its members.

The Council is a broad-based, nonprofit trade association founded in 1967 to protect and foster the growth of the nation’s privately sponsored employee benefit plans. The Council’s members are primarily large employer sponsors of employee benefit plans, including many Fortune 500 companies. Its members also include employee benefit plan support organizations, such as actuarial and consulting firms, insurers, banks, investment firms, and other professional organizations. Collectively, its more than 380 members sponsor and administer plans covering more than 100 million plan participants and beneficiaries.

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

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

The undersigned *Amici* and their member companies and organizations have a strong interest in seeing the district court’s unprecedented “disgorgement” award reversed. The district court awarded approximately \$900,000 in benefits and attorneys’ fees under ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). Further, because LINA had purportedly breached ERISA fiduciary duties by denying Plaintiff’s claim for benefits, the district court later made an additional “equitable” award of nearly \$3.8 million in “disgorgement of profits” under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), notwithstanding that Plaintiff identified no additional and distinct wrongful conduct or resulting injury. If left standing, the district court’s “disgorgement of profits” award would expose *Amici* and their member companies to a dramatic increase in litigation costs and potential “equitable” liability, and it would interject huge inefficiencies into the current system of adjudicating employee benefit claims. Moreover, the decision is inconsistent with the express language and purposes of ERISA, as well as controlling judicial decisions. Accordingly, *Amici* have a significant interest in seeing the district court’s decision reversed.²

Amici respectfully seek to submit the accompanying consolidated brief to facilitate and inform the Court’s consideration of LINA’s appeal.

² As noted above, three of the four *Amici* have not previously appeared before the Court in this appeal, which, particularly now that it is being reviewed by the Court *en banc*, is of exceptional importance to all *Amici*.

II. Legal Standard

A motion for leave to file an amicus brief must state “(1) the movant’s interest; and (2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(b). “An *amicus curiae* brief which brings relevant matter to the attention of the Court that has not already been brought to its attention by the parties is of considerable help to the Court.” Fed. R. App. Proc. 29, 1998 advisory comm. note (quoting S. Ct. R. 37.1); *Garner v. Cuyahoga County Juvenile Court*, 554 F.3d 624, 636 (6th Cir. 2009) (“[A]n amicus brief can be helpful in elaborating issues properly presented by the parties.”).

III. Argument

Amici’s strong interest in this matter, as well as the informed industry and legal perspective the *Amici* offer to the Court, particularly on ERISA-governed plan benefit issues, are addressed in section I above. Moreover, the *Amici* respectfully suggest that their brief should be viewed as desirable because the matters addressed in the brief are relevant to the Court’s full appreciation and ultimate disposition of LINA’s appeal.

In addition to offering a broader industry perspective on the importance of the issues implicated in the trial court’s decision, the *Amici* provide additional perspective regarding the consequences the decision would have for employers and

plan sponsors that provide and administer employee benefits, and insurers and other service providers that offer products and services integral to the provision of those benefits. In sum, the overarching objective of the attached brief is to assist the Court in better understanding how the trial court's decision, if allowed to stand, would radically alter the carefully crafted statutory scheme that has governed the adjudication of, and available remedies for, benefit denial claims under ERISA for over 40 years.

IV. Conclusion

For these reasons, the undersigned *Amici* respectfully request that the Court grant this motion and permit them to appear as *amici curiae* and file the accompanying proposed brief in support of Defendant-Appellant LINA's appeal.

Dated: March 28, 2014

Respectfully submitted,

/s/ Waldemar J. Pflepsen, Jr.

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America's Health Insurance Plans*

CERTIFICATE OF SERVICE

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

/s/ Waldemar J. Pflapsen, Jr.

WALDEMAR J. PFLEPSEN, JR.