

*Elinor Dashwood*, Individually and on Behalf of the  
Estate of Marianne Dashwood and  
a *Class of Others Similarly Situated* (Appellant)

v.

*Willoughby Health Care Co.*, *WILLOUGHBY RX*,  
and *ABC Pharmacy, Inc.* (Appellees)<sup>1</sup>

**STUDENT ATTORNEYS:**

*Emma Wallace*

*Charles Bless*

**STUDENT JUDGE:** *Abigail Jackman*

**CASE INFORMATION:**

**I. PROCEDURAL POSTURE:**

- The estate of Marianne Dashwood filed a complaint against, Defendants, Willoughby Health Care, Willoughby RX, and ABC Pharmacy, alleging wrongful death and seeking \$10 million in compensatory and punitive damages in Count I.
- Count II seeks alleges breach of fiduciary duty under ERISA ad seeks equitable relief, including surcharge and disgorgement of all amounts by which the Willoughby Defendants profited.
- District Court granted Defendant’s Motion to Dismiss, holding that ERISA preempted the wrongful death claim in Court I and that the relief sought under Count II was unavailable as a matter of law.

**II. FACTS:**

Marianne was hospitalized in early December 2024 for MRSA, a life-threatening staph infection commonly referred to as MRSA. Marianne was treated with an intravenous antibiotic, vancomycin, and released on December 10 with a five-day prescription for the same antibiotic.

Upon Marianne’s discharge, her sister, Elinor Dashwood, brought the prescription to an ABC Pharmacy. Instead of the vancomycin that had been prescribed, they gave a five-day supply of Bactrim. The pharmacist informed her that Marianne’s insurance company switched the prescription to Bactrim, and that

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<sup>1</sup> This fact pattern is from the 2026 *Ellen A. (Nell) Hennessy – Employee Benefits Moot Court Competition*, a national competition. The DePaul Law team, Charles Bless, Cassy Spears, and Emma Wallace, placed third overall.

Bactrim was simply the generic form of vancomycin. In fact, vancomycin is in a class of antibiotics called fluoroquinolones, but Bactrim is an entirely different class of antibiotics called sulfa drugs. Marianne Dashwood had a well-documented allergy to sulfa. After taking Bactrim for just over a day, Marianne suffered a severe allergic reaction and died.

In switching her medication, neither Willoughby Health Care, Willoughby RX, nor ABC Pharmacy consulted her doctor about whether Bactrim was a safe and appropriate treatment for Marianne.

Prior to her death in 2024, Marianne Dashwood was a participant in a healthcare plan governed by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.* The plan is sponsored by her former employer, Cottage Press, located in Tennessee. The healthcare plan is fully insured by Defendant Willoughby Health Insurance Co. (“Willoughby Health”), a nationwide health care insurance company. Willoughby Health also administers benefits under the Plan and is expressly granted full discretionary authority to decide claims for benefits. Willoughby Health administers benefits through its subsidiary, Defendant Willoughby RX, which is a pharmacy benefit manager (“PBM”) that has developed and applies a “formulary” of preferred drugs in deciding prescription drug claims. Defendant ABC Pharmacy is a nationwide pharmacy chain, which in 2021 was acquired by and is now a subsidiary of Willoughby RX and is under the larger corporate umbrella of Willoughby Health Care.

### **III. ISSUES ON APPEAL:**

**ISSUE 1:** Whether ERISA preempts a state-law wrongful death claim based on a pharmacy benefit manager’s substitution of a prescription drug medication pursuant to an ERISA-governed plan’s terms.

**ISSUE 2:** Whether ERISA bars an ERISA plan participant from obtaining monetary relief in the form of a surcharge or disgorgement.

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*Moot Court Demonstration*