No. 11-1077

IN THE

Supreme Court of the United States

NICHOLAS & ASSOCIATES, INC., AND
KANELAND SCHOOL DISTRICT NO. 302,

Petitioners,

v.

CENTRAL LABORERS' PENSION FUND, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS

MOTION FOR LEAVE TO FILE AND BRIEF OF THE BUILDERS ASSOCIATION AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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Builders Association's Motion For Leave to File Brief as *Amicus Curiae* Supporting Petitioners

NOW COMES Builders Association and files this motion pursuant to Sup. Ct. R. 37.2(b), for leave to file a brief as *amicus curiae* in support of the Petitioners in the above-styled case presently before this Court for a writ of certiorari.

In support of this motion, Builders Association first avers that it requested the consent to the filing of a brief as *amicus curiae* from each of the parties to this case, but written consent was not obtained from any of the Respondents.

Builders Association requests the opportunity to present a brief as *amicus curiae* in this case because Builders Association is keenly interested in protecting the rights of general construction contractors and subcontractors in the State of Illinois.

The issues presented in this case, under what circumstances liability for delinquent contributions is determined and whether ERISA preempts, as an alternative enforcement mechanism, state causes of action brought under the Illinois Mechanics Lien Act, will have an important impact how payments are processed for all construction projects. Builders Association believes that the decision by the Appellate Court of Illinois will radically alter the manner in which construction payments are processed and the documents needed to approve such payments. The changes required by the decision below will affect all who participate in the construction industry: owners/developers,

contractors, sureties, title companies, and ERISA fringe benefit plans.

Builders Association is a leading trade association that has served the commercial construction industry since 1906. The members of this organization have annual construction billings of over $11 billion. Builders Association in its brief, *infra*, provides a unique and discerning analysis to the issues presented in this case. Builders Association's experience will bring to light matters, not addressed in the Petitioners' Petition, which will assist the Court in reaching a just solution to the questions presented.

WHEREFORE, Builders Association respectfully requests that its motion for leave to file a brief as *amicus curiae* be granted.

Respectfully submitted**,**

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INTEREST OF *AMICUS CURIAE*[1]

Builders Association is the largest and oldest trade association in the State of Illinois that represents the interests of the commercial construction industry. Our members include national construction firms that have annual accounts receivable of over $11 billion.

Builders Association respectfully requests that this Honorable Court grant the Petitioners' Petition for a Writ of Certiorari, because if this Court does so, it will then decide an issue confronted by many state Supreme Courts: whether state mechanics lien laws may be used as an alternative enforcement mechanism to recover from a general contractor or owner delinquent contributions owed by a subcontractor, who employed workers enrolled in ERISA benefit plans, when the general contractor is not a signatory to a collective bargaining agreement.

The fact that the general contractor in this matter did not sign a collective bargaining agreement is critical. Many of the Builders Association's members

[1] No party has made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus* made a monetary contribution intended to fund its preparation or submission. The parties have been given at least 10 days notice of *amicus'* intention to file this brief. The Petitioners have consented but the Respondents have not. At the request of the *amicus curie*, counsel for the Petitioners have assisted in the drafting of this brief.

have made and continue to make the decision to not be a signatory to a collective bargaining agreement. Until the Appellate Court of Illinois decided this matter, Builders Association and its members believed that a non-signatory could not be held liable for the delinquent contributions of a signatory. Builders Association and its members have relied on that understanding in entering into construction contracts and conducting business with subcontractors, suppliers and vendors, all of which may be a party to a collective bargaining agreement or liable to an ERISA benefit plan. For all of these reasons, Builders Association has a substantial interest in this case and a unique perspective on its proper resolution.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In the Employee Retirement Income Security Act ("ERISA"), Congress intended to provide a national, uniform body of law governing employee benefits plans ("Benefits Plans"), which includes an exclusive list of remedies for disputes relating to ERISA. *Blue Cross & Blue Shield Plans v. Travelers Ins. Co.,* 514 U.S. 645, 656 – 57 (1995) ("*Travelers*"); *Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 137 (1990)*; *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987). Not only does ERISA provide a uniform national system of regulation for Benefits Plans with respect to participation, funding, vesting requirements, rules concerning reporting, disclosure and fiduciary responsibility and remedies (*Ingersoll-Rand Co*., 498 U.S. at 137), it precludes the granting of special enforcement powers to plans in certain industries or states. *Romney v. Lin*, 94 F.3d 74, 81 (2nd Cir. 1996). Even laws of general applicability are preempted if they affect a matter central to plan administration. *Romney*, 94 F.3d at 81.

The question of whether a certain state action is preempted by federal law is one of Congressional intent and "the purpose of Congress is the ultimate touchstone." *Pilot Life Ins. Co.*, 481 U.S. at 45 (internal citation omitted). Congress, through ERISA, dictated who may be held liable for contributions and how contributions may be recovered. *Pilot Life Ins. Co*., 481 U.S. at 54. Section 515 of ERISA defines who is liable for contributions (29 U.S.C. § 1145, "Delinquent Contributions") and Section 502 provides the fiduciaries of ERISA plans

with a federal civil enforcement mechanism. 29 U.S.C. § 1132, "Civil Enforcement". ERISA Section 515 establishes that employers are liable for contributions in accordance with their collective bargaining agreements or plan requirements. 29 U.S.C. § 1145. By including some remedies and excluding others, Congress intended that the civil enforcement remedies included in ERISA were the exclusive remedies for benefit plans. *Pilot Life Ins. Co.*, 481 U.S. at 54 (the "deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive.").

An employer, or any other entity, can have no obligation to make contributions without being a signatory to a collective bargaining agreement or a participant in an ERISA benefits plan. Congress has expressly made employers who agree to be bound by the terms of a collective bargaining agreement or a benefits plan liable for such contributions. Congress' definition of an employer has been interpreted to include general contractors who enter into a subcontract with subcontractors who participate in a plan but only if the general contractor is bound to make contributions as a signatory to a collective bargaining agreement or the terms of a plan to which it agreed. See *Central States, Southeast & Southwest Areas Pension Fund v. Central Transport, Inc.*, 85 F.3d 1282 (7th Cir. 1996) (an employer is "a person who is obligated to contribute to a plan either as a direct employer or in the interest of an employer of

the plan's participants." *Central Transport*, 85 F.3d at 1287, quoting *Seaway Port Authority v. Duluth-Superior ILA Marine Association Restated Pension Plan*, 920 F.2d 503, 507 (8th Cir. 1990), cert. denied, 501 U.S. 1218 (1991)). This designation of "employer" is reflected in various collective bargaining agreements; "employer" as used in the Respondents agreements, and other collective bargaining agreements in the construction industry, only refers to signatories to the agreements. General contractors who are not signatories to a collective bargaining agreements are not employers under ERISA.

ERISA allows a federal cause of action for recovery of delinquent contributions, attorney's fees, interest or liquidated damages and equitable relief. 29 U.S.C. § 1132(g). There is no evidence that Congress simply forgot to give plans other remedies, such as mechanics lien rights. *Pilot Life Ins. Co.*, 481 U.S. at 54. Such omissions are significant in comprehensive regulatory schemes. *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825, 837 (1988). When Congress is silent in passing legislation, this Court presumes that Congress was aware of the issue, decided against including provisions in legislation and accepted the results of the decision not to provide an exemption or remedy. *See Mackey* 486 U.S. at 837. We must presume that the Congress made the conscious decision not to exempt mechanics liens from preemption in passing ERISA legislation.

This Honorable Court should grant the Petition for a Writ of Certiorari and reverse the decision of the Appellate Court of Illinois, because (1)

that decision is in direct conflict with Congressional intent and this Court's prior ERISA decisions; (2) *Trustees of the AFTRA Health Fund v. Biondi*, 303 F.3d 765 (7th Cir. 2002), upon which the Appellate Court of Illinois based its opinion in the instant case is inapplicable to this matter; and (3) it is in direct conflict with this Court's application of preemption.

ARGUMENTS FOR GRANTING THE PETITIONERS' PETITION

The Builders Association concurs with all of the arguments set forth by the Petitioners, and in this brief as *amicus curiae*, it will not present redundant arguments as to why this Honorable Court should accept the petition and reverse the Appellate Court of Illinois. The Builders Association believes that the Petitioners have overlooked additional arguments that will assist this Court and further demonstrate that the decision of the Appellate Court of Illinois is at odds with federal preemption jurisprudence, generally, and ERISA jurisprudence in particular: (1) the decision below is in direct conflict with Congressional intent and this Court's prior ERISA decisions; (2) the case the Appellate Court of Illinois bases its decision upon, *Trustees of the AFTRA Health Fund v. Biondi*, 303 F.3d 765 (7th Cir. 2002), is inapplicable to this matter; and (3) the decision below is in direct conflict with this Court's application of preemption.

I. Review by This Court is Warranted Because The Decision Below is in Direct Conflict with Congressional Intent and This Court's Prior ERISA Decisions.

Pursuant to ERISA Section 514(a), a state law is preempted if it "relate[s] to any employee benefit plan". 29 U.S.C. § 1144(a). This Court has further decided that a law relates to an ERISA benefit plan if "it has a connection with or reference to such a plan." *Shaw v. Delta Air Lines*, 463 U.S. 85, 97 (1983). In

Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645 (1995) ("*Travelers*"), this Court recognized that there is great difficulty in applying the "relate to" and "connection with" standard by noting that applying an uncritical literalism to the language in the statute does not answer the preemption question. *Travelers*, 514 U.S. at 656. The Court determined that it must go beyond the key terms and look to the objectives of the statute in order to determine "the scope of state law that Congress" intended to survive preemption. *Id*.

In enacting ERISA, Congress sought to protect the interests of benefit plan participants and their beneficiaries by establishing "substantive regulatory requirements for employee benefit plans and to 'provid[e] for appropriate remedies, sanctions, and ready access to the Federal courts.'" *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004), quoting 29 U.S.C. § 1001(b). "The purpose of ERISA is to provide a uniform regulatory regime over employee benefit plans." *Davila*, 542 U.S. at 208; *Travelers*, 514 U.S. at 657. The ERISA preemption clause was intended to avoid multiplicity of regulation so that the application of ERISA would be uniform. *Travelers*, 514 U.S. at 657. ERISA's preemption provisions are intentionally expansive, "which are intended to ensure that employee benefit plan regulation would be 'exclusively a federal concern.'" *Davila*, 542 U.S. at 208, quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523, (1981).

In *Travelers*, this Court held that the state law at issue was not preempted as it (1) had an indirect economic influence, (2) did not function as a

regulation and (3) did not affect the uniform administration of the ERISA plan. *Travelers*, 514 U.S. at 659-60.

In the matter addressed by the Petition, the Appellate Court of Illinois failed to follow congressional intent, and Supreme Court precedent, and determined that Illinois Mechanics Lien Act (770 ILCS 60/0.01, *et seq*., the "Act") is not preempted. This decision is patently incorrect because the Mechanics Lien Act, if applied to ERISA plans, regulates the actions of plan administrators and affects the uniform national administration of the ERISA benefits plans. Under the decision of the Appellate Court of Illinois, ERISA plans must now comply with all of the requirements of contractors and subcontractors set forth in the Act. See 770 ILCS 60/21(a) ("Subject to the provisions of Section 5,… worker or other person who shall furnish any labor, …shall be known under this Act as a sub-contractor, and shall have a lien for the value thereof, with interest on such amount from the date the same is due….").

Waivers of lien are permitted under Section 1 of the Act. 770 ILCS 60/1. Furthermore, under Section 5 of the Act, general contractors must provide property owners with "a statement in writing, under oath or verified by affidavit, of the names and addresses of all parties furnishing labor…and of the amounts due or to become due to each." 770 ILCS 60/5. In order to comply with these requirements, the ERISA benefit plans <u>*must*</u> provide contractor's sworn statements and waivers of lien or owners and title companies may withhold payment from contractors,

subcontractors, suppliers, vendors and ERISA plan participants.

II. Review by This Court is Warranted Because The Decision Below is Based on Inapplicable Case Law.

The Petitioners are correct in their argument that *AFTRA Health Fund v. Biondi*, 303 F.3d 765 (7th Cir. 2002) is inapplicable and the Appellate Court of Illinois erred when it based its opinion on that decision, because *Biondi* addressed an action for common law fraud perpetrated by a plan participant, and therefore is of little value in analyzing ERISA preemption relative to a mechanics lien claim when used to recover delinquent contributions. *Biondi* is also inapplicable as the common-law fraud cause of action was the *only remedy* available to the ERISA benefit plan; in that action the plaintiff's declaratory judgment action for restitution under ERISA had previously been dismissed. *Biondi*, 303 F.3d at 771. The Seventh Circuit held that the benefit plan was unable to bring suit under ERISA because plan administrators can only sue for equitable, not legal remedies, and the defendant did not directly receive payments from the plaintiff. *Id*.

The Respondents, in this litigation, can sue under the provisions contained in ERISA. The benefit plan Respondents have the right and had the ability to file an appropriate cause of action in the Northern District of Illinois against KMC Masonry, LLC for recovery of the delinquent contributions. In fact, on May 4, 2009, the Laborers' Pension Fund, Laborers' Welfare Fund of the Health and Welfare

Department of the Construction and General Laborers' District Council of Chicago and Vicinity and their administrator, James S. Jorgensen ("Laborers' Pension Respondents"), filed an ERISA action to recover the delinquent contributions in the Northern District of Illinois.[2] On June 23, 2009, the Honorable Charles R. Norgle, Sr. entered an Order granting the Laborers' Pension Respondents a default judgment against KMC Masonry. The Laborers' Pension Respondents sought recovery under ERISA and the federal court has entered a judgment in their favor regarding any delinquent contributions. However, they now seek to use Illinois Mechanics Lien Act as an alternative enforcement mechanism, and brought a claim against the non-signatory general contractor and owner.

The Respondents in this matter are using ERISA as an alternative enforcement mechanism. In *Biondi*, the plaintiff's sought recovery under a state cause of action because it was the *sole enforcement mechanism* – its ERISA causes of action had been previously dismissed. *Biondi* has no value and provides no guidance to a court addressing ERISA preemption. It is inapplicable to this matter and should not have been relied upon by the Appellate Court of Illinois. The court below failed to recognize that in *Biondi* the plaintiff had no other recourse but the state cause of action. This Petition arises from a matter in which the Respondents do have other legal

[2] It even appears as if the Laborers' Pension Respondents filed their federal ERISA suit before the state cause of action in the instant case.

means of recovery, and one set of Respondents has already secured a judgment to recover delinquent contributions. As a matter of law, *Biondi* is inapplicable and should never have been cited as the basis for denying preemption under ERISA.

III. Review by This Court is Warranted Because The Decision Below Ignores This Court's Application of Federal Preemption Jurisprudence.

Not only did the Appellate Court of Illinois err by misapplying *Travelers* and *Biondi*, it failed to recognize and appreciate this Court's recent decisions regarding federal preemption jurisprudence. Two recent decisions handed down by this Court are instructive as to how federal preemption should be applied.

A. Prior Case Law Regarding Preemption is Instructive and Applicable.

In *Kurns v. Railroad Friction Products Corp.*, No. 10-879, 565 U.S. __ (Feb. 29, 2012), this Court addressed whether the Locomotive Inspection Act (49 U.S.C. § 20701, *et seq.*) preempts state causes of action sounding in design defect and failure to warn. *Kurns*, No. 10-879, slip op. at 3. This Court held that the state causes of action were preempted for reasons applicable to the current Petition.

Even absent an express preemption provision, state law must defer to federal statutes in cases where (1) the federal statute conflicts with state law (*Kurns*, No. 10-879, slip op. at 4, quoting *Crosby v. National Foreign Trade Council*, 530 U. S. 363, 372

(2000)) and (2) based on the scope of the federal statute, Congress intended to occupy the entire field. *Kurns*, No. 10-879, slip op. at 4, quoting *Freightliner Corp. v. Myrick*, 514 U. S. 280, 287 (1995).

In *Kurns*, the petitioners/plaintiffs first argued that their claims were not preempted because the injury arose out of repair and maintenance rather than use on rail lines. *Kurns*, No. 10-879, slip op. at 7. The Court rejected the argument as an attempt to redefine the field of preempted state actions. *Id.* This Court held that the design defect action was preempted as a result of field preemption as the field was defined in prior case law, because the plaintiffs' claims were directed at the same subject as the Locomotive Inspection Act. *Id*. at 7-8.

The petitioners/plaintiffs' second state cause of action (failure to warn) was preempted for the same reason. The claim was directed to the equipment of a locomotive and, thus, covered by the Locomotive Inspection Act and preempted by prior case law. *Id*. at 9-10.

The Appellate Court of Illinois also ignored this Court's discussion of federal preemption in *Riegel v. Medtronic, Inc*., 552 U.S. 312 (2008). In *Riegel*, the petitioner/plaintiff brought a state cause of action alleging that a medical device violated New York State common law regarding the manner in which it was designed, labeled and manufactured. *Id*. at 320. The Second Circuit affirmed the trial court's dismissal, holding that the claims were preempted under the Medical Device Amendments of 1976 ("MDA", 21 U.S.C. § 360c, *et seq*.) "because they 'would, if successful, impose state requirements that

differed from, or added to,' the device-specific federal requirements." *Riegel*, 552 U.S. at 321, quoting *Riegel v. Medtronic, Inc.*, 451 F.3d 104, 121 (2nd Cir. 2006).

The preemption clause at issue in *Riegel* is similar in structure as the ERISA preemption clause, Section 514(a). Except for specifically listed exceptions, states may not establish or continue to enforce requirements (1) different from the MDA or (2) that relate to the safety or effectiveness of a medical device. *Riegel*, 552 U.S. at 316, citing 21 U.S.C. § 360k(a).

B. The Preemption Holdings in *Kurns* and *Riegel* Are Applicable to the Petition Currently Before This Court.

The holding in *Kurns* is instructive in this matter. While this Court has never explicitly held that "field preemption" applies to ERISA, in *Travelers* this Court quoted the Congressional record, which notes that the "narrow exceptions specified in the bill, the substantive and enforcement provisions…**are intended to preempt the field** for Federal regulations…." *Travelers*, 514 U.S. at 657, quoting 120 Cong. Rec. 29197, 29933 (1974) (emphasis added); see also *Pilot Life Ins. Co.*, 481 U.S. at 46; *Shaw*, 463 U.S. at 99. An award of damages acts as a state regulation and is a "potent method for governing conduct and controlling policy." *Kurns*, No. 10-879, slip op. at 11, quoting *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 247 (1959). If field preemption applies, then it is incontrovertible that the actions brought by the Respondents in state

court are preempted. The Respondents seek recovery for delinquent contributions that were owned under an ERISA benefits plan. If the field is preempted then the sole action for recovery is in federal court against the party who is legally obligated to make contributions, the employer.

If ERISA does not preempt the field, the state causes of action are, nonetheless, preempted under conflict preemption jurisprudence. The ERISA preemption provision is substantially similar to the provision in MDA. In *Riegel*, this Court held that a state tort action has the same effect as state regulation if that state tort law requires a medical device manufacturer to make a product safer than a FDA-approved device. *Riegel*, 552 U.S. at 325. A state tort action disrupts the federal scheme in the same manner as a state regulation. *Id*.

Riegel's preemption analysis can be applied to ERISA and the facts presented in the Petition. Allowing ERISA benefit plans to recover under state lien causes of action will disrupt the federal scheme. As argued in Section I, *supra*, if ERISA benefit plans are endowed with the rights of lien holders, they also must take the responsibilities and liabilities of all other lien claimants.

In order to foreclose a mechanics lien, a lien claimant may name as defendants any person who can claim a lien. 735 ILCS 5/15-1501(b). As ERISA benefit plans now have rights under the Act, if a single plan participant provided work on a project, the ERISA benefit plan may also be named as defendants.

The decision of the Appellate Court of Illinois has far-reaching unintended consequences that affect the regulation and administration of ERISA benefit plans. The decision will lead to additional requirements and liabilities that are clearly preempted by Section 514(a).

Under this Court's recent preemption jurisprudence, the decision below was incorrect. If Section 514(a) provides for field preemption, the Respondents causes of action are preempted as other remedies are available within the structure of ERISA. In the alternative, if Section 514(a) merely provides for conflict preemption, the Respondents causes of action are nevertheless preempted, because to benefit from Illinois Mechanics Lien Law, the ERISA benefit plans must submit themselves to state requirements, liability and regulation.

IV. Review by This Court is Warranted Because there is a Conflict Among the Various Circuit Courts of Appeal.

Circuits of the United States Court of Appeals have decided cases that are in conflict on the issue of ERISA preemption of mechanics lien claims and the interpretation of *Travelers* in those cases. The Federal Circuit Courts have rendered inconsistent opinions on whether mechanics lien acts are preempted by ERISA. The Second Circuit has held that ERISA preempts a benefit fund's attempt to use a mechanics lien law to supplement ERISA's enforcement mechanisms by adding to the exclusive list of parties liable under ERISA. *Plumbing Industry Board v. E.W. Howell Co. Inc.*, 126 F.3d 61,

68-69 (2nd Cir. 1997); *EklecCo v. Iron Workers Locals 40, 361, & 417 Union Sec. Funds,* 170 F.3d 353, 356-357 (2nd Cir. 1999). The Second Circuit cited to *Travelers* for support: "However, the *Travelers* Court clearly indicated that any state statute providing an alternative enforcement mechanism to ERISA is preempted. See *Id*. at 658, 115 S. Ct. at 1678." *EklecCo*, 170 F.3d at 356-357 (2nd Cir. 1999). It also concluded that it was following the majority of courts who had addressed the issue. *Plumbing Industry Board*, 126 F.3d at 69.

Like the Second Circuit, the First Circuit also has held that ERISA preempts mechanics lien laws. *Williams v. Ashland Engineering Co., Inc.,* 45 F.3d 588 (1st Cir. 1995); *McCoy v. Massachusetts Institute of Technology,* 950 F.2d 13 (1st Cir. 1991) cert. denied 112 S. Ct. 1939 (1992). However, in conflict with the Second Circuit, it retreated from that position because of its different interpretation of *Travelers*. *Carpenters Local Union No. 26 v. United States Fidelity & Guaranty Company,* 215 F.3d 136 (1st Cir. 2000) (abrogating *Williams*). The Ninth Circuit also deviated from its earlier precedents and the Second Circuit in holding that ERISA no longer preempted California's "stop notice" remedies based on its interpretation of the impact of *Travelers*. *Southern California IBEW-NECA Trust Funds v. Standard Industrial Electric Company*, 247 F.3d 920, 927-929 (9th Cir. 2001).

The Fifth Circuit held that ERISA preempts mechanics lien laws from being used to expand the collection mechanisms or parties liable for contributions to benefit plans specified in ERISA.

Iron Workers Mid-South Pension Fund v. Terotechnology Corp., 891 F.2d 548, 556 (5th Cir. 1990). The Fifth Circuit has not addressed the impact of *Travelers* on that decision.

Although not in the context of ERISA preemption, the Seventh Circuit has demonstrated an internal conflict regarding preemption of mechanics lien laws. It has held both that the use of lien laws to enforce obligations under a collective bargaining agreement may be preempted by federal law (although the question of ERISA preemption was not reached) *In Re*: *Bluffton Casting Corporation,* 186 F.2d 857, 863 (7th Cir. 1999); and may not be preempted; *In Re: Bentz Metal Products Company, Inc.*, 253 F.3d 283, 284 (7th Cir. 2001) (overruling *In Re: Bluffton*) (*en banc* with 5 of 12 judges dissenting). It also counseled within *In re: Bentz* that if entitlement to wages or other pay or the amount due were at issue, then the interpretation of a collective bargaining agreement would be necessary and preemption would apply. *Id.* at 289.

The Second Circuit is in conflict with First Circuit and the Ninth Circuit with respect to the impact of *Travelers* on preemption analysis relating mechanics liens and ERISA. They, along with the Fifth Circuit, are also in conflict regarding whether preemption applies to mechanic lien claims used by benefit funds.

CONCLUSION

WHEREFORE, the Builders Association respectfully request that this Court grant the Petition for a Writ of Certiorari to address the questions of

ERISA preemption of alternative state law remedies, specifically the Illinois Mechanics Lien Act. The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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