26-7035

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MARTHA BRENNAN CAMIRE, CRAIG JEFFERSON, DAVID LYN SHEPHERD, and DANIEL SCHIPPER, individually and as representatives of a class of participants and beneficiaries on behalf of the Pension Plan for Certain Salaried Employees of Alcoa USA Corp., the Pension Plan for Certain Hourly Employees of Alcoa USA Corp., and the Alcoa Subsidiaries Merged Inactive Plan,

Plaintiffs-Appellants,

v.

ALCOA USA CORP., ALCOA CORP., THE ALCOA BENEFITS MANAGEMENT COMMITTEE, WILLIAM F. OPLINGER, FIDUCIARY COUNSELORS, INC., and JOHN DOES 1–5,

Defendants-Appellees.

On Appeal from the United States District Court for the District of Columbia, No. 1:24-cv-01062-LLA, the Hon. Loren L. AliKhan

BRIEF OF *AMICI CURIAE* THE ERISA INDUSTRY COMMITTEE, THE AMERICAN BENEFITS COUNCIL, AND THE COMMITTEE ON INVESTMENT OF EMPLOYEE BENEFIT ASSETS INC. IN SUPPORT OF DEFENDANTS-APPELLEES & AFFIRMANCE

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

The ERISA Industry Committee ("ERIC") is a national non-profit business trade association representing approximately 100 of the nation's largest employers in their capacity as sponsors of employee benefit plans for their workers, retirees, and families.

The American Benefits Council (the "Council") is a national non-profit organization dedicated to protecting and fostering privately sponsored employee benefit plans. Collectively, the Council's more than 400 members either directly sponsor or provide services to retirement plans and health and welfare plans, covering virtually all Americans who participate in employer-sponsored programs.

The Committee on Investment of Employee Benefit Assets Inc. ("CIEBA") is a group of 120 of the country's leading Chief Investment Officer Fiduciaries who collectively oversee over $2.6 trillion in retirement plan assets, in plans benefitting approximately 18 million participants. CIEBA members are responsible for overseeing a substantial portion of the assets held in the private-sector retirement system and have a direct interest in its effective regulation.

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[1]This brief was principally authored by Amici along with Seyfarth Shaw LLP, counsel for Amici. No party's counsel authored this brief in whole or in part. Neither any party nor any party's counsel contributed money related to the preparation or submission of this brief. No person other than Amici, their members, and their counsel contributed money related to the preparation or submission of this brief.

ERIC, the Council, and CIEBA frequently participate as *amici curiae* in cases like this one that have the potential for far-reaching effects on employee benefit plan design or administration. This case attacks generally the ability of plan sponsors to terminate defined benefit plans, an important feature expressly permitted by ERISA and an option that encourages establishment and maintenance of pension plans. Because employers are not required to offer these benefits, suits that challenge lawful transactions tend to discourage creation of plans and have disturbing consequences for retirement security. Therefore, Amici submit this brief in support of Defendants-Appellees and affirmance.

Pursuant to Fed. R. App. P. 29(a)(4)(D), Amici state that all parties consented to filing of this brief prior to its submission, so no further leave is required. *See* Fed. R. App. P. 29(a)(2).

Pursuant to Circuit Rule 26.1. Amici state that they do not have any parent companies, and that no publicly-held company has a 10% or greater interest in any Amici. Amici further state that, pursuant to Circuit Rule 26.1(b), each of them meets the definition of "trade association," such that no listing of the names of members that have issued shares or debt securities to the public need be made.

I. INTRODUCTION

In a defined benefit pension plan like the one at issue here, upon retirement, participants are eligible to receive a fixed, periodic payment of benefits from a general pool, according to a formula set out in the plan document. *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 439–40 (1999). A pension plan participant has rights only to the benefit amount promised under the terms of the plan, and the employer in turn bears the investment and longevity risk and must cover any shortfall that might develop between the value of the plan's assets and the benefits it owes. *See id*.

In "pension risk transfer" transactions ("PRTs"), like the ones attacked in this case, a plan sponsor makes a non-fiduciary (settlor) decision (i.e., a decision that cannot be the basis for a claim alleging fiduciary liability) to purchase annuity contracts from an insurer to manage liability and investment risk. *See Lee v. Verizon Commc'ns, Inc.*, 837 F.3d 523, 537 (5th Cir. 2016) ("[W]e consider the decision to transfer pension assets outside ERISA coverage as a sponsor decision immune from fiduciary obligations."). Thus, because Plaintiffs are asserting claims that are premised on fiduciary involvement, those claims cannot be based on the decision to conduct a pension risk transfer. It is indisputable that a plan sponsor acts in its settlor capacity when deciding to replace the plan's ongoing obligation to provide certain benefits with the purchase of annuity contracts.

Once a defined benefit pension plan's assets are transferred, the insurer becomes obligated—pursuant to the terms of the annuity contract—to pay participants the same benefits on the same schedule as they would be owed under the plan. Those annuity purchases result in the transfer of assets, participants, and payment obligations from the plan to the insurers. The transactions change who pays the benefits, but do not impact the amount of any participant's benefit.

The use of annuities to satisfy defined benefit commitments pre-dates ERISA and continues to play a significant role in the private pension system. The Department of Labor ("DOL") found that, between 2000 and 2022, transactions involving single employer pension plans resulted in the purchase of annuities for more than 2.2 million plan participants, and involved more than $52 billion in 2022 alone.[2] Neither Plaintiffs nor their supporting amici cite a single instance in that span (or since) in which any participant was paid less than their ERISA plans would have paid them.

Despite the complete absence of any participant harm, the large dollar values of these transactions make them attractive targets for class action litigation. Because the cost of defense of even meritless class actions can quickly outstrip

[2] *See* Julie A. Su, Acting Secretary of Labor, Department of Labor Report to Congress on Employee Benefits Security Administration's Interpretive Bulletin 95-1 (June 2024), https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/secure-2.0/report-to-congress-on-interpretive-bulletin-95-1.pdf, at 5.

settlement costs, plaintiffs do not need to win these cases for them to be economically lucrative. Indeed, plan sponsors have incurred massive settlement costs related to ERISA class actions.[3] Opening the door to litigation regarding routine pension risk transfers would be directly contrary to one of the central purposes of ERISA because it would create significant disincentives for employers to establish defined benefit plans.

Against that backdrop, the District Court rightly held Plaintiffs suffered no actual harm when Alcoa transferred payment responsibility for their pension to Athene, and therefore Plaintiffs lack standing to sue over that transfer. *See Camire v. Alcoa USA Corp.*, No. CV 24-1062 (LLA), 2025 WL 947526, at *3 (D.D.C. Mar. 28, 2025). Nor did Plaintiffs' repeated attacks on the alleged "riskiness" of Athene, or the speculative possibility Athene might default on its payment obligations at an unknown point in the future, establish an imminent risk of harm to Plaintiffs. *Id.* at *7 & n.7. The District Court's decision should be affirmed

[3]*See* Encore Fiduciary, *ERISA Fiduciary Litigation in 2025: Plaintiff Law Firms Continue the Frenetic Pace, With Broader Allegations Against Both Retirement Plans and Health Plans*, The Fid Guru Blog (Feb. 9, 2026), https://encorefiduciary.com/erisa-fiduciary-litigation-in-2025-plaintiff-law-firms-continuefrenetic-pace/ (30 ERISA class action settlements in 2025, totaling $151.9 million); Aronowitz and Jozwiak, 401(k) Excessive Fee Litigation Spiked to 'Near Record Pace' in '24, https://www.planadviser.com/401k-excessive-fee-litigation-spiked-near-record-pace-24/ (settlements in ERISA class actions totaled $203.3 million in 2024); Aronowitz, 401(k) Litigation Continues At 'Fever Pitch,' https://www.planadviser.com/401k-litigation-continues-fever-pitch/ (calculating more than $900 million in ERISA class actions settlements from 2020-2023).

because it is settled law that plaintiffs cannot sue over the speculative possibility of future injury, and Plaintiffs here have alleged nothing more than that. *See Pub. Citizen, Inc. v. Nat'l Highway Traffic Safety Admin.*, 489 F.3d 1279, 1295 (D.C. Cir. 2007) (establishing standing based on increased risk of harm requires "*both* (i) a *substantially* increased risk of harm and (ii) a *substantial* probability of harm with that increase taken into account").

As the District Court recognized, comparative riskiness is not the same as a substantial risk of default. The weight of authority supports the District Court's conclusion. *See Dow v. Lumen Techs., Inc.*, No. 24-CV-02434-LTB-TPO, 2026 WL 2582196, at *4 (D. Colo. Sept. 1, 2026); *Dempsey v. Verizon Commc'ns, Inc.*, No. 24-cv-10004, 2026 WL 72197, at *8 (S.D.N.Y. Jan. 8, 2026) (allegations of insurer risk in PRT were "conclusory and speculative," and thus did not plausibly establish standing); *Schoen v. ATI, Inc.*, No. 2:24-CV-01109, 2025 WL 2970339, at *7 (W.D. Pa. Oct. 7, 2025), *report and recommendation adopted sub nom. Schoen v. ATC Inc.*, No. 2:24-CV-1109, 2026 WL 2146921 (W.D. Pa. July 27, 2026); *Bueno v. Gen. Elec. Co.*, No. 1:24-CV-0822, 2025 WL 2719995, at *10–12 (N.D.N.Y. Sept. 24, 2025). While a few other district courts have reached contrary decisions with respect to standing on near-identical factual allegations,[4] the *Schoen*

[4] *See Piercy v. AT&T*, No. CV 24-10608-NMG, 2026 WL 2905359, at *2 (D. Mass. Sept. 28, 2026); *Maneman v. Weyerhauser Co.*, No. C24-2050-KKE, 2026 WL 884985, at *6 (W.D. Wash. Mar. 31, 2026); *Doherty v. Bristol-Myers Squibb Co.*, No. 24-CV-06628, 2025 WL 2774406, at *5–7 (S.D.N.Y. Sept. 29, 2025).

court correctly rejected those decisions, recognizing that *Thole* ultimately directs the outcome. *Schoen*, 2025 WL 2970339, at *5 ("[T]he spirit of this Supreme Court case is most accurately captured in *Camire* and *Bueno*.").

Ultimately, the District Court's decision on standing should be affirmed for the simple, commonsense reason that Plaintiffs have experienced no harm from the transactions they challenge, which occurred as early as 2018. It is undisputed that following the transactions, they are owed *and have received* the same benefits on the same schedule as they were to receive from the Plan. In addition to being legally untenable because ERISA expressly permits such transfers, their claims of increased "risk" in moving from an ERISA-governed plan to an insurer-backed annuity ignore or attempt to minimize that (1) single-employer pension plans have a demonstrably higher failure rate than insurer-backed annuities, (2) even the PBGC does not guarantee full pension benefits in cases of plan failures, (3) the insurers involved in pension risk transfers are highly regulated, and (4) in the hypothetical, remote possibility of an insurer default, insured annuities have multiple layers of protection.[5] The reality is insurers have the administrative, investment and actuarial experience to manage the long-term obligations to pay pension benefits they assume through the annuity contracts, and doing so is a core part of their business. Transferring pension obligations to insurers through annuity

[5] *See infra* at 14–15.

contracts thus reduces participant risk, while allowing plan sponsors to devote their focus to operating their businesses.

Lest we enter another phase of unfounded ERISA class actions designed to compel settlement, it is imperative that these pension risk transfer claims be soundly rejected at the pleading stage. Motions to dismiss are an "important mechanism" in ERISA class actions, *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014), because surviving a motion to dismiss "elevates the possibility that 'a plaintiff with a largely groundless claim [will] simply take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value, rather than a reasonably founded hope that the discovery process will reveal relevant evidence.'" *Pension Ben. Guar. Corp. ex rel. St. Vincent Cath. Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 719 (2d Cir. 2013) (quoting *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 347 (2005)). Holding Plaintiffs to their burden on motions to dismiss helps "to prevent settlement extortion—using discovery to impose asymmetric costs on defendants in order to force a settlement advantageous to the plaintiff regardless of the merits of his suit." *Id.* (quoting *Am. Bank v. City of Menasha*, 627 F.3d 261, 266 (7th Cir. 2010) (internal quotation marks omitted)).

If these cases survive motions to dismiss, others are sure to follow, at great cost to plans and, ultimately, to plan participants.[6] The Court should affirm the lower court's dismissal.

II. DISCUSSION

A. Employee Benefit Plans Are Voluntary and Can Be Terminated.

"Nothing in ERISA requires employers to establish employee benefits plans." *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). Instead, ERISA reflects a series of policy decisions and represents a "careful balancing" between ensuring employees receive their benefits and encouraging employers to create and maintain benefit plans in the first place. *See Conkright v. Frommert*, 559 U.S. 506, 517 (2010); *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004).

As part of its "careful balancing," ERISA provides employers with the right to amend or terminate plans, while simultaneously ensuring the security of participant benefits. *See* 29 U.S.C. § 1341 (providing for termination of single-employer plans); *Chait v. Bernstein*, 645 F. Supp. 1092, 1099 (D.N.J. 1986), *aff'd*, 835 F.2d 1017 (3d Cir. 1987) ("[A]n employer may terminate a plan without

[6]Hallez, Companies transferred billions in pension assets to annuities. Here come the lawsuits, Investment News, March 14, 2024, *available at* https://www.investmentnews.com/life-insurance-and-annuities/news/companies-transferred-billions-in-pension-assets-to-annuities-here-come-the-lawsuits-250826 ("If it happens that the cases lead to large recoveries, or at least survive motions to dismiss or motions for summary judgment and end in settlements, that could mean more such cases.").

violating the fiduciary duties it must obey when administering the plan."). In fact, ERISA expressly requires certain pension risk transfers. *See* 29 U.S.C. § 1341(b)(3) (irrevocable insurance commitments required in standard plan termination).[7] These transactions, which have occurred for decades, transfer a sponsor's pension obligations and assets to an insurer using a bulk annuity contract.[8] The statute contains no requirement that (1) annuities be backed by the PBGC, or (2) participants receive any increased compensation for their benefits transitioning to an insurer or the "loss" of PBGC backing. *See* 29 U.S.C. § 1341(b). Through annuity purchases, a plan sponsor satisfies the statutory duty to provide that a participant will receive the promised monthly retirement benefit (the terms of which are reflected in the annuity contract). The statute specifically allows for individuals to cease being ERISA plan participants once their benefits are covered under annuity contracts. 29 U.S.C. § 1341(b)(3).[9]

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[7] In the preamble to its regulations introducing the annuity purchase requirement, the PBGC described the possibility of insurer default as an "unlikely event." *See* 46 Fed. Reg. 9532, at 9534 (1981).

[8] *See* De-risking Strategies of Defined Benefit Plans: Empirical Evidence from the United States, Soc'y of Actuaries 11 (Nov. 2020), https://www.soa.org/globalassets/assets/files/resources/research-report/2020/de-risking-strategies.pdf.

[9] Further support that plan participants are not guaranteed their eventual benefit payment will come from any specific source can be found in the standards governing plan "spin offs." *See* 26 CFR § 1.414(l)-1(n). Where a participant's right to benefits is the same before and after the transaction, the fact that a different payor is responsible for paying those benefits does not give rise to an actionable claim under ERISA. *See Blaw Knox Ret. Income Plan v. White Consol. Indus., Inc.*, 998 F.2d 1185, 1191 (3d Cir. 1993).

B. Insurance-Based Annuities Are An Important, Well-Established Part Of The Voluntary Retirement Benefit System.

It should not come as a surprise that ERISA calls for the purchase of insurance commitments to provide post-termination benefits to plan participants. Insurance products have served as one of the primary vehicles for funding pension plans since the early 1920s, and annuity contracts were among the first widely-used investments for funding pension plan obligations.[10] By the late 1980s, it was estimated more than half a trillion dollars in pension benefits, covering over 54 million people, were provided under insurance contracts.[11]

Several factors account for the widespread use of annuity products. Among the most significant is that insurance contracts and annuities allow employers to eliminate volatility from pension costs while meeting all benefit commitments.[12] In exchange for the premium, the insurer unconditionally guarantees payment of each

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[10] *See* Melone, Nature and Development of Private Pensions, in Life and Health Insurance Handbook 521 (D.W. Gregg and V.B. Lucas, 1973 ed.); Consumer Protection Comparison: The Federal Pension System and the State Insurance System, Nat'l Org. of Life and Health Ins. Guaranty Ass'n 10 (May 22, 2016), https://www.athene.com/binaries/content/assets/ausa-assets/advocacy/national-organization-of-life-and-health-insurance-guaranty-associations_pension-report.pdf; *see also* James M. Poterba, Nat'l Bureau of Econ. Res., The History of Annuities in the United States (1997), https://www.nber.org/system/files/working_papers/w6001/w6001.pdf, at 17.

[11] *See* ACLI 1989 Life Insurance Fact Book Update at 25 (1989) (estimating that, as of 1989, life insurance companies held $569 billion under contracts with pension plans).

[12] D. McGill and D. Grubbs, Fundamentals of Private Pensions at 526-27 (6th ed. 1989); *Mack Boring & Parts v. Meeker Sharkey Moffitt*, 930 F.2d 267, 269 (3d Cir. 1991).

participant's benefit as provided by the plan. Thus, the insurer—not the plan sponsor—carries the risk that actual plan costs will deviate and increase from the anticipated costs due to unexpected mortality experience, investment earnings, changes in spot interest rates resulting in unpredictable required contributions and balance sheet treatment, and the expenses of administration.

The ability to manage pension liabilities through annuity purchases plays a vital role in encouraging plan sponsors to provide retirement benefits. A pension risk transfer is one of the very few ways an employer can act to obtain certainty over future pension expenses. Employers might hesitate to offer defined benefit plans if the right to employ pension risk transfers is effectively taken away by the rule Plaintiffs invite this Court to adopt.[13]

In a 2022 study surveying 251 defined benefit plan sponsors considering transferring future pension risk, respondents cited the primary motivations for such transfers as market volatility (62% of respondents); inflation (59%); rising interest rates (55%); COVID-19's transitional phase between pandemic and endemic (50%); and the geopolitical environment (41%).[14] Another study found financial

[13]Issue Brief: Pension Risk Transfer, Am. Acad. of Actuaries 2-3 (Oct. 2016), https://www.actuary.org/sites/default/files/files/publications/PensionRiskTransfer10.16.pdf.

[14]Pension Risk Transfer Poll, MetLife 5 (2022), https://www.metlife.com/content/dam/metlifecom/us/homepage/institutionalRetirement/insights/PensionRisk/MetLife_2022_Pension_Risk_Transfer_Poll.pdf.

volatility and rising of PBGC premiums[15] were the primary forces driving plan sponsor interest in pension risk transfers.[16]

One need only look at recent market trends to understand how changes in economic conditions can impact an employer's handling of pension obligations. Until very recently, interest rates were at historically low levels, which placed pressure on retirement plans because lower interest rates are correlated with higher pension liabilities.[17] The COVID-19 pandemic drove down interest rates even further, placing still more strain on plan sponsors carrying pension liabilities. Together with the rapid rise in interest rates in 2022 and 2023 to address inflation

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[15]PBGC premiums in the single-employer program have climbed significantly over the years. From 2005-2024, the flat-rate premium plans are required to pay increased from $19 to $101 per participant, an increase of over 400%. From 2013-2025, the variable rate premium that underfunded plans must pay increased from only $9 (with a $400 per-participant cap) to $52 (with a $717 per-participant cap) per $1,000 of unfunded vested liabilities, representing a more than 475% increase. PBGC 2021 Data Tables, PBGC 43, Table S-39 (Feb. 12, 2024), https://www.pbgc.gov/sites/default/files/documents/2021-pension-data-tables.pdf; *Premium Rates: Current And Historical Information*, PBGC (Oct. 13, 2023), https://www.pbgc.gov/prac/prem/premium-rates; PBGC Annual Report 2025, PBGC 96 (Jan. 27, 2026), https://www.pbgc.gov/sites/default/files/documents/pbgc-annual-report-2025.pdf; PBGC Annual Report 2023, PBGC 2 (Nov. 15, 2023), https://www.pbgc.gov/sites/default/files/documents/pbgc-annual-report-2023.pdf; PBGC Annual Report 2022, PBGC 2 (Nov. 15, 2022), https://www.pbgc.gov/sites/default/files/documents/pbgc-annual-report-2022.pdf; PBGC Annual Report 2021, PBGC 2 (Nov. 15, 2021), https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2021.pdf.

[16]Pension De-Risking Study - Plan Sponsor Focus Group, Mercer & PBGC 5 (Nov. 2018), https://www.pbgc.gov/sites/default/files/appendix_i_de-risking_study-2018.pdf.

[17]De-risking Strategies of Defined Benefit Plans at 7.

concerns, those interest rate fluctuations highlighted very powerfully the inherent volatility in pension plan obligations. Because rising interest rates make annuity purchases less expensive, they present an attractive option for plan sponsors in the current economic environment.

While Plaintiffs suggest an insurance-backed annuity is riskier than an ERISA plan, insurance companies generally face stricter financial standards and more intensive oversight than single-employer pension plans,[18] and pension plans have far higher failure rates than insurers. Indeed, ERISA itself evinces that Congress was willing to rely on insurance companies to protect participants' benefits—plans backed by state-licensed insurers are exempted from ERISA's requirement that benefits be backed by a funded trust. *See* 29 U.S.C. § 1103(b)(1).

Despite Plaintiffs' claims of risk to their benefits, since the 2008 financial crisis, no active annuity issuer with remaining obligations has failed, while pension plan failures have claimed at least 931 single-employer plans covering more than 560,000 participants.[19] According to the PBGC, pension plan failures have triggered $8.5 billion in participant losses.[20] On the other hand, the DOL has noted

[18]*See* Consumer Protection Comparison at 4.
[19]Consumer Protection Comparison at 4.
[20]PBGC's Single-Employer Guarantee Outcomes, PBGC 5-6, 10-12 (May 2019), https://www.pbgc.gov/sites/default/files/2016-single-employer-guaranty-study.pdf ("PBGC Study").

that "not one plan participant/beneficiary has lost even a single red cent due to a PRT in the last thirty years."[21]

In the unlikely event of insurer default, in place of PBGC backing, commitments made by insurers are backed by an elaborate protective system, including (1) insurance company expertise in managing risk,[22] (2) stringent state regulation of insurers,[23] (3) review of insurers by ratings agencies,[24] (4) the availability of insurance company separate accounts,[25] and (5) state insurance guaranty associations.[26]

C. ERISA Does Not Require Selection Of The Single "Safest" Annuity Provider, and Subjective Claims of Risk Are Not Article III Injuries.

The District Court correctly found that Plaintiffs' allegations that they had been harmed by the selection of Athene failed to establish Article III standing,

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[21] Amicus Curiae Brief of the Acting U.S. Secretary of Labor in Support of the Appellant and Reversal at 30, *Doherty v. Bristol-Myers Squibb Co.*, No 26-1021 (2d Cir. July 21, 2026), Dkt. No. 64.1 [hereinafter DOL Amicus Curiae Brief, *Doherty*]; Amicus Curiae Brief of the Acting U.S. Secretary of Labor in Support of the Appellant and Reversal at 30, *Konya v. Lockheed Martin Corp.*, No. 25-2061 (4th Cir. Jan. 9, 2026), Dkt. No. 55-1 [hereinafter DOL Amicus Curiae Brief, *Konya*].

[22] *See* Issue Brief: Pension Risk Transfer at 12 ("Life and annuity insurance companies are in the business of managing long-term risks . . . .").

[23] *See* Consumer Protection Comparison at 16-18.

[24] *See id.* at 18.

[25] *See id.* at 15.

[26] *See id.* at 21-24; *see also* Issue Brief: Buy-Out Group Annuity Purchase Primer, Am. Acad. of Actuaries 11-12 (July 2023), https://www.actuary.org/sites/default/files/2023-07/Buy-Out_Group_Annuity_Purchase_Primer.pdf.

because Plaintiffs failed to allege facts showing that harm had materialized from that selection. *See Camire*, 2025 WL 947526, at *5.

This Court should affirm the district court's ruling, because Plaintiffs' allegations that Athene is comparatively riskier than other insurers fail to establish that there is a substantial risk that Athene will default on the obligation to pay Plaintiffs all of the benefits they are owed.[27] While that deficiency provides sufficient grounds to affirm the district court's dismissal without further examination of Plaintiffs' arguments regarding the comparative riskiness of Athene vis-à-vis other insurers, Plaintiffs' arguments fail to show harm for the additional reason that they rely on a misreading of Department of Labor Interpretative Bulletin 95-1 ("IB 95-1") and are not supported by ERISA's text.[28] Indeed, in its own amicus filings in other cases, the DOL expressly noted that Plaintiffs' arguments misinterpret IB 95-1.[29]

In contrast to the claim that IB 95-1 reflects a myopic focus on which annuity provider is ultimately selected, the bulletin in fact explains that ERISA's fiduciary duties are focused on *process*, and not on outcomes. In *Bussian v. RJR*

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[27] *See supra* at 6–7.

[28] Even if Plaintiffs correctly interpreted IB 95-1, that bulletin was not issued through notice and comment rulemaking, does not have the force of law, and does not create an independent cause of action. *See Bussian v. RJR Nabisco, Inc.*, 223 F.3d 286, 297 (5th Cir. 2000) (explaining enactment of IB 95-1).

[29] *See* DOL Amicus Curiae Brief, *Doherty* at 24–27; DOL Amicus Curiae Brief, *Konya* at 25–28.

Nabisco, Inc., 223 F.3d 286, 297-298 (5th Cir. 2000) (internal quotation marks and citations omitted), the Fifth Circuit held that the proper standard to judge the selection of an annuity provider is whether fiduciaries' "decisions [are] made with an eye single to the interests of the participants and beneficiaries." That standard does not require a plan fiduciary in a pension risk transfer to purchase Plaintiffs' idea of the "safest available annuity" or foreclose the selection of annuities issued by insurers that are relatively riskier than potential alternatives, and does not leave it to Plaintiffs (or others in their position) to select their preferred insurer. Indeed, the subjective nature of "safest available" presents its own problems. *Cf. Riley v. Murdock*, No. 95-cv-2414, 1996 WL 209613, at *1 (4th Cir. Apr. 30, 1996) (unpublished) (noting that "no federal court has adopted such a standard"—the same standard advocated by Plaintiffs here—and rejecting it). What's more, IB 95-1, on its face, contradicts any conclusion that fiduciaries must select the "safest annuity available" by explicitly describing situations where fiduciaries are not required to do so. *See* 29 C.F.R. § 2509.95-1(d) ("The Department recognizes that there are situations where it may be in the interest of the participants and beneficiaries to purchase other than the safest available annuity.").

The assertion that a fiduciary must select only the "safest" annuity available is also inconsistent with the Supreme Court's holding that "courts must give due regard to the *range of reasonable judgments* a fiduciary may make based on her experience and expertise." *Hughes v. Nw. Univ.*, 595 U.S. 170, 177 (2022)

(emphasis added). Indeed, the better reading of IB 95-1—as recognized in *Bussian*—is that it reflects a framework by which fiduciaries can reach a prudent selection. Plaintiffs' contention that there is, among available insurers in the annuity market, a predetermined "safest" option fiduciaries must select is a fiction, and invokes a standard the law does not require. Plaintiffs cannot claim to have been injured simply because they do not believe the "safest" insurer was selected when the pension risk transfers occurred.

If purely conclusory allegations that the purchase of annuities exposes participants to some future possible risk of loss are sufficient to give Plaintiffs standing to sue, any plan participant in any pension risk transfer will be invited to file a mirror-image version of this lawsuit. Allowing the claims pleaded here to survive dismissal would throw open the doors to expensive ERISA class action discovery as to every pension risk transfer and would enable participants who have suffered no harm to file and litigate claims in federal court. Such a result is incompatible with these transactions' recognized place in ERISA's voluntary pension system.[30]

Even if Plaintiffs' allegations were sufficient to establish harm (and they are not), the holding that they had no Article III standing should be affirmed because

[30] In its amicus filings in similar cases, the DOL noted that cases like this one would "wreak havoc on the American pension-plan system . . . if they are not curtailed." *See* DOL Amicus Curiae Brief, *Doherty* at 27–31; DOL Amicus Curiae Brief, *Konya* at 28–32.

Plaintiffs failed to plausibly allege a causal connection between selection of these insurers (the only fiduciary act alleged) and the harm they claim (i.e., removal from an ERISA plan, loss of PBGC protections, and "risk" that the responsible payor might default in the future).[31] Plaintiffs' alleged harms are not the result of selecting one insurer over another, but rather are the outcome of the settlor decision to conduct a pension risk transfer in the first place—a decision that is indisputably *not* a fiduciary act. In other words, even if Defendants had selected an annuity provider Plaintiffs would accept as the "safest," Plaintiffs would have ceased to be ERISA plan participants, their benefits would not be backed by the Plan, their employer, or the PBGC, and the responsibility for paying their benefits would have transferred to an insurer. Because the alleged injuries flow entirely from the non-fiduciary settlor decision to conduct a pension risk transfer—not from the fiduciary act of insurer selection—Plaintiffs cannot satisfy the traceability requirement of Article III standing. Plaintiffs are not truly challenging the insurer selection; they are challenging the non-fiduciary decision to conduct any pension risk transfer. This provides an additional reason to affirm the District Court's decision that Plaintiffs lack standing.

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[31] *See Wright v. Or. Metallurgical Corp.*, 360 F.3d 1090, 1099 (9th Cir. 2014) ("[A] plaintiff must show a causal link between the [fiduciary breach] and the harm suffered by the plan." (alterations and internal quotation marks and citations omitted)); *Friend v. Sanwa Bank Cal.*, 35 F.3d 466, 469 (9th Cir. 1994) ("ERISA holds a trustee liable for a breach of fiduciary duty only to the extent that losses to the plan result from the breach.").

D. Plaintiffs Are Still Entitled To—and Are Receiving—The Exact Same Benefit They Were Receiving Before the Transaction.

Facing the inarguable reality that they have received every dollar due of their pension, Plaintiffs attempt to conjure an injury claiming the transfer of payment obligations to Athene reduced the "value" of their assets (*i.e.*, rights to future benefit payments), despite the payments themselves remaining identical. The District Court rejected that theory, because Plaintiffs' only cognizable interest in their pension benefits was the monthly payments, which remain unchanged. *See Camire*, 2025 WL 947526 at *3. As another district court explained in *Dempsey*, Plaintiffs' pension interests are "inalienable and cannot be analogized to a lump sum payment or total value." *Dempsey*, 2026 WL 72197 at *9. Because Plaintiffs cannot benefit from or be harmed by changes in the present value of their benefits, this Court should affirm the District Court's holding that alleged changes in the present value do not plausibly assert a redressable injury.

Plaintiffs do not dispute that, in the transactions they challenge, the insurer assumed responsibility to pay Plaintiffs exactly the benefits they would have received had the transactions not occurred, and there is no allegation the insurer has failed to meet that commitment. Against that backdrop, the District Court reached the only conclusion permissible under *Thole*—Plaintiffs' theory of harm is "foreclose[d]." *Camire*, 2025 WL 947526 at *3. In *Thole*, the Supreme Court found the plaintiffs lacked standing because they "have been paid all of their

monthly pension benefits so far, and they are legally and contractually entitled to receive those same monthly payments for the rest of their lives." *See Thole v. U.S. Bank N.A.*, 590 U.S. 538, 540 (2020). The same is true of Plaintiffs here.

At most, Plaintiffs alleged they could conceive of a hypothetical set of facts under which the insurer might not meet its commitments at some undefined time in the future, and then—if that happens—the protections surrounding insurance-backed annuities might not provide them their benefits. The District Court declined to treat this rank speculation as a plausible injury. Consistent with the Supreme Court's admonition that a theory of standing that "relies on a highly attenuated chain of possibilities" is insufficient as a matter of law, this Court should affirm. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013).

In an attempt to manufacture an injury despite receiving all their benefits, Plaintiffs alleged that, because they are no longer participants in an ERISA plan, they have been injured through loss of PBGC backing of their pension. As described above, the consequence Plaintiffs describe is expressly permitted by ERISA, happens by operation of law, and is not an injury to Plaintiffs.[32]

Plaintiffs' final argument relies on the speculative prospect of future events—that is, the loss of PBGC backing will matter only if the insurer defaults

[32]*See* 29 C.F.R. § 2510.3-3(d)(2)(ii) (individual ceases to be plan participant where their benefit is fully guaranteed by an insurer and legally enforceable at the individual's choice against the insurer).

on its obligations, and if the safeguards pertaining to annuity products turn out to be insufficient protection. Further, Plaintiffs overvalue PBGC backing. While the PBGC undoubtedly provides important protections, it is not the panacea Plaintiffs claim. PBGC guarantees are capped by law and those caps can and have resulted in benefit reductions. In a study of 500 plans trusteed by the PBGC between 1988 and 2012, the PBGC's guarantee limitations reduced the benefits of 16% of all vested participants in plans trusteed by the PBGC.[33] Among those impacted participants, the average percentage reduction in benefits was nearly 24%.[34] The result? Where participants have had to rely on PBGC backing following a plan failure, they have lost $8.5 billion in benefits.[35] Over that same time, post-PRT annuitants (i.e., those who "lost" PBGC backing) have lost nothing.

The assertion—which pervades the Complaint—that Plaintiffs are now subject to a future risk of benefit loss without PBGC backing is beyond implausible; it is irrefutably false and should be rejected by the Court. Thus, under ordinary Article III standing analysis, Plaintiffs lack Article III standing for a simple, commonsense reason: They have received all of their vested pension benefits and are scheduled to do so for the rest of their lives. "Therefore, Plaintiffs have no ability to benefit from or be harmed by changes in the present value of the

[33]PBGC Study, at *i*, 5-6, 10-12.
[34]*Id.* at 7, Table 3.
[35]*Id.* at 5-6, 10-12.

pension benefits." *Dempsey*, 2026 WL 72197 at *9. "Winning or losing this suit would not change the plaintiffs' monthly pension benefits." *Thole*, 590 U.S. at 547; *Dempsey*, 2026 WL 72197 at *9; *see also Camire*, 2025 WL 947526 at *4.

III. CONCLUSION

For the foregoing reasons, the Court should affirm the judgment dismissing the Complaint for lack of Article III standing. Plaintiffs continue to receive every pension payment to which they are entitled, and the challenged pension-risk-transfer transactions neither reduced their benefits nor otherwise caused Plaintiffs a concrete, present injury. Moreover, Plaintiffs' asserted loss of ERISA protections, alleged diminution in the value of their annuities, and request for equitable relief do not independently establish standing absent an actual injury. Nor have Plaintiffs plausibly alleged an imminent future injury. Their allegations establish, at most, that Athene may be riskier than other annuity providers, not that Athene is substantially likely to fail or that Plaintiffs face a substantial probability of losing benefits.

Reversing the District Court's decision would suggest that any pension risk transfer can be challenged in federal court based solely on a plaintiff's subjective disagreement with the identity of the selected insurer. Such a rule would expose every pension risk transfer to costly class action litigation, creating powerful disincentives for employers to maintain defined benefit plans. This would be devastating to plan sponsors and, in turn, to participants who rely on them for

benefits, jobs, and retirement security. Because Plaintiffs' theory depends on a speculative chain of events and does not identify an actual or certainly impending injury, the District Court correctly held that they lack Article III standing. Its judgment should be affirmed.

THE ERISA INDUSTRY COMMITTEE, THE AMERICAN BENEFITS COUNCIL, AND THE COMMITTEE ON INVESTMENT OF EMPLOYEE BENEFIT ASSETS INC.

By their attorneys,

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