UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

RICHARD SPOHN, individually, and as representative of plan participants and plan beneficiaries of the IBM Personal Pension Plan,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES CORP., as Plan Administrator and Sponsor; the IBM RETIREMENT PLANS COMMITTEE, as Plan Administrator; and STATE STREET GLOBAL ADVISORS TRUST COMPANY, as independent fiduciary of the IBM Personal Pension Plan,

Defendants.

Case No. 1:25-cv-12475-PBS

BRIEF OF *AMICI CURIAE*
THE ERISA INDUSTRY, THE AMERICAN BENEFITS COUNCIL, AND THE COMMITTEE ON INVESTMENT OF EMPLOYEE BENEFIT ASSETS INC.
IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS

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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 430 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.

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. Amici submit this brief in support of granting Defendants' motions to dismiss.

[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.

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 value of their accrued benefit, and the employer in turn bears the investment risk and must cover any shortfall that might develop between the plan's investments and the benefits it owes. *See id.*

In "pension risk transfer" transactions, 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, to the extent Plaintiff is 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 transferred, the insurer becomes obligated to pay participants the same benefits on the same schedule as they would be owed under a defined benefit pension plan. Those purchases result in the transfer of assets, participants, and payment obligations from the plan and to the insurers. The transactions change who pays the benefits, but do not impact any person's benefit amounts.

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] Plaintiff does not 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 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 plans.

Plaintiff alleges Defendants breached fiduciary duties by transferring pension liabilities from an ERISA-governed retirement plan (the "Plan") to insurers Plaintiff characterizes as too risky. Lacking any specificity about the fiduciaries' process, Plaintiff asks the Court to assume from the choice of insurers that the selection process must have been flawed. If Plaintiff's allegations are sufficient to survive dismissal, the same basic allegations could be used to challenge every pension risk transfer transaction.

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[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.

[3] *See* 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).

Unable to claim he has experienced any change in benefits, Plaintiff's claims of harm from the challenged transactions are based on the fact that his benefits will be paid by an insurer rather than from an ERISA-governed retirement plan. But while the selection of the specific annuity provider is a fiduciary act, the illusory "harm" Plaintiff is claiming (*i.e.*, his removal from an ERISA plan, and replacement of Pension Benefit Guaranty Corporation ("PBGC") backing of his benefits with backing by state guaranty associations) does not result from that selection. Indeed, the purported "harm" Plaintiff claims is not an invasion of a legally-protected right, and does not satisfy Plaintiff's burden to plausibly allege Article III standing. *See Camire v. Alcoa USA Corp.*, No. 24-cv-1062, 2025 WL 947526, at *8 (D.D.C. Mar. 28, 2025). Indeed, ERISA expressly permits pension risk transfers, and the alleged "harms" Plaintiff pleads are natural consequences of every pension risk transfer, regardless of which insurer is involved.

Ultimately, Plaintiff has experienced no harm from the transactions he challenges. He does not dispute that, following the transactions, he is owed *and has received* the same benefits on the same schedule as he was to receive from the Plan. His 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) the PBGC does not guarantee pension benefits against all losses, (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.

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. If these cases survive motions to dismiss, others are sure to follow, at great cost

to plans and, ultimately, to plan participants.[4] The Court should grant Defendants' motions to dismiss.

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 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 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).[5] These transactions, which have occurred for decades, transfer a sponsor's pension obligations and assets to an insurer using a bulk annuity contract.[6] The statute contains no requirement that

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[4]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.").

[5] 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).

[6]*See* De-risking Strategies of Defined Benefit Plans: Empirical Evidence from the United States, Soc'y of Actuaries 11 (Nov. 2020),

(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.

Through annuity purchases, a plan sponsor satisfies the statutory duty to provide that a participant will receive a monthly retirement benefit (the terms of which are reflected in the annuity contract). Thus, while Plaintiff here claims he was allegedly "harmed" by being removed from participation in an ERISA plan, the statute specifically allows for individuals to cease being ERISA plan participants once their benefits are covered under annuity contracts.[7]

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.[8] 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.[9]

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https://www.soa.org/globalassets/assets/files/resources/research-report/2020/de-risking-strategies.pdf.

[7] 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).

[8] *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://bit.ly/437MO3n; *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.

[9] *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).

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.[10] In exchange for the premium, the insurer unconditionally guarantees payment of each 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 Plaintiff invites this Court to adopt.[11]

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%).[12] Another study found financial volatility and rising of PBGC premiums[13] were the

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[10]D. McGill and D. Grubbs, Fundamentals of Private Pensions at 526-27 (6th ed. 1989); *Mack Boring and Parts v. Meeker, Sharkey Moffitt*, 930 F.2d 267, 269 (3d Cir. 1991).
[11]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.
[12]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.
[13]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

primary forces driving plan sponsor interest in pension risk transfers.[14]

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.[15] 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 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 a natural solution for plan sponsors in the current economic environment.

While Plaintiff suggests 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,[16] 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

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participant, an increase of over 400%. From 2013-2024, the variable rate premium that underfunded plans must pay increased from only $9 (with a $400 per-participant cap) to $52 (with a $686 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 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.

[14]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.

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

[16]*See* Consumer Protection Comparison at 4.

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 Plaintiff's claims of risk to his 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.[17] According to the PBGC, pension plan failures have triggered $8.5 billion in participant losses.[18]

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,[19] (2) stringent state regulation of insurers,[20] (3) review of insurers by ratings agencies,[21] (4) the availability of insurance company separate accounts,[22] and (5) state insurance guaranty associations.[23]

C. ERISA Does Not Require Selection Of The Single "Safest" Annuity Provider.

Plaintiff's claims stem from the incorrect and misleading suggestion that ERISA requires fiduciaries to select the "safest annuity available." Plaintiff's pronouncement of this nonexistent requirement is not based on the text of ERISA, but instead on a misinterpretation of Department of Labor Interpretative Bulletin 95-1 ("IB 95-1").[24]

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[17]Consumer Protection Comparison at 4.
[18]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").
[19]*See* Issue Brief: Pension Risk Transfer at 12 ("Life and annuity insurance companies are in the business of managing long-term risks . . . .").
[20]*See* Consumer Protection Comparison at 16-18.
[21]*See id.* at 18.
[22]*See id.* at 15.
[23]*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.
[24] Even if Plaintiff 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

In contrast to the suggestion that IB 95-1 reflects a myopic focus on which an annuity provider is ultimately selected, the bulletin explains that ERISA's fiduciary duties are focused on *process*, and not on outcomes.[25] Notably, here, Plaintiff does not allege anything about the search process or selection criteria involved in the fiduciaries' actual selection process.

Rejecting the reading of IB 95-1 Plaintiff advances here, in *Bussian v. RJR Nabisco, Inc.*, 223 F.3d 286, 297-298 (5th Cir. 2000), 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 Plaintiff's idea of the "safest available annuity." 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 Plaintiff here—and rejecting it).

Plaintiff's suggestion 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

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of action. *See Bussian v. RJR Nabisco, Inc.*, 223 F.3d 286, 297 (5th Cir. 2000) (explaining enactment of IB 95-1).

[25]IB 95-1, on its face, contradicts Plaintiff's insistence 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.").

reach a prudent selection. The Court should reject Plaintiff's contention that there is, among available insurers in the annuity market, a predetermined "safest" option fiduciaries must select.

If purely conclusory allegations that the purchase of annuities exposes participants to some future possible risk of loss are sufficient to state a fiduciary breach claim, 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.

Finally, Plaintiff's claims fail because he cannot show a causal connection between selection of these insurers (the only fiduciary act alleged) and the harm he claims (i.e., removal from an ERISA plan, loss of PBGC protections, and "risk" that the responsible payor might default in the future).[26] These 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—a decision that is indisputably *not* a fiduciary act. In other words, even if Defendants had selected an annuity provider Plaintiff would accept as the "safest," Plaintiff would have ceased to be an ERISA plan participant, his benefit would not be backed by the Plan, his employer, or the PBGC, and the responsibility for paying his benefit would have transferred to an insurer. Plaintiff is not truly challenging the insurer selection; he is challenging the non-fiduciary decision to conduct any pension risk transfer.

[26] *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."); *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. Plaintiff Is Still Entitled To—and Is Receiving—The Exact Same Benefit.

Plaintiff baselessly alleges that, following the pension risk transfer, he faces some unquantifiable additional "risk," such that the value of his future benefits is substantially and quantifiably diminished. This claim is speculative, and Plaintiff alleges no facts plausibly supporting his theory that his benefits are at a greater risk now than they were prior to the pension risk transfer. Plaintiff does not dispute that, in the transactions he challenges, the insurer assumed responsibility to pay Plaintiff exactly the benefits he would have received had the transactions not occurred. And there is no allegation the insurer has failed to meet that commitment. Instead, Plaintiff claims there is some chance the insurer might fail in the future, and that failure might result in a loss of benefits. This claim is wildly speculative and implausible. In reality, Plaintiff's argument that he has been "harmed" by the purported "devaluing" of his pensions is simply an attempt to obscure that participants "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).

At most, Plaintiff alleges he can 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 him his full benefit. Plaintiff hasn't been harmed, and speculating as to ways he might be in the future is not sufficient. *See Knudsen v. MetLife Grp., Inc.*, 117 F.4th 570, 580 (3d Cir. 2024) ("allegations that stand on nothing more than supposition" cannot establish injury-in-fact).

In an attempt to manufacture an injury despite receiving all his benefits, Plaintiff alleges that, because he is no longer a participant in an ERISA plan, he has been injured through loss of

PBGC backing of his pension. As described above, the consequence he describes is expressly permitted by ERISA, happens by operation of law, and is not an injury to Plaintiff.[27]

Plaintiff's final argument relies on the speculative prospect of future events—that is, the loss of PBGC backing will matter only if the insurer defaults on its obligations, and if the safeguards pertaining to annuity products turn out to be insufficient protection. Further, Plaintiff overvalues PBGC backing. While the PBGC undoubtedly provides important protections, it is not the panacea Plaintiff claims. 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.[28] Among those impacted participants, the average percentage reduction in benefits was nearly 24%.[29] The result? Where participants have had to rely on PBGC backing following a plan failure, they have lost $8.5 billion in benefits.[30] Over that same time, post-PRT annuitants (i.e., those who "lost" PBGC backing) have lost nothing.

The assertion—which pervades the Complaint—that Plaintiff is 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, the 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. Winning or losing this suit would not change the plaintiffs' monthly pension benefits." *Thole v. U. S. Bank N.A*, 590 U.S. 538, 547 (2020); *Camire*, 2025 WL 947526, at *4.

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[27]*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).
[28]PBGC Study, at *i*, 5-6, 10-12.
[29]*Id.* at 7, Table 3.
[30]*Id.* at 5-6, 10-12.

III. CONCLUSION

Should meritless claims like these advance beyond swift dismissal, there is significant risk the floodgates will burst open to plaintiffs' firms looking for a payday. This would be devastating to plan sponsors and, in turn, to participants who rely on them for jobs and benefits. A pension system in which businesses can manage risk while protecting benefits is good for everyone, including participants. The Court should grant Defendants' motions to dismiss.

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

By their attorneys,

/s/ *Lynn A. Kappelman*

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DATED: November 24, 2025

CERTIFICATE OF SERVICE

I, Lynn A. Kappelman, hereby certify that on November 24, 2025, I caused a true and correct copy of the foregoing motion to be filed and served on all counsel of record via ECF

/s/ *Lynn A. Kappelman*
Lynn A. Kappelman