UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: CIGNA ERISA LITIGATION	MASTER FILE NO. 2:25-cv-02465
THIS DOCUMENT RELATES TO: ALL ACTIONS	Judge John M. Younge

[PROPOSED] BRIEF OF THE STABLE VALUE INVESTMENT ASSOCIATION AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICI CURIAE IN SUPPORT OF DISMISSAL

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INTEREST OF AMICI CURIAE[1]

The Stable Value Investment Association ("SVIA") is dedicated to educating employers, employees, government officials, and the public about the importance of saving for retirement and the contribution stable-value ("SV") investment products can make toward financial security. SVIA's membership represents all segments of the stable-value investment community, including public and private plan sponsors, insurance companies, banks, investment managers, and consultants. SVIA members collectively manage more than $800 billion in SV products offered in more than 244,000 defined contribution plans. SVIA's research and data give it the perspective to advocate for a sound framework for evaluating claims concerning the inclusion of SV investments as part of a diversified 401(k) plan line-up.

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation, representing approximately 300,000 direct members and indirectly representing the interests of more than three million businesses and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

SVIA and the Chamber submit this brief to provide crucial context about retirement-plan management, the wealth and diversity of SV options for retirement-plan lineups, and how this case is situated in the broader litigation landscape challenging ERISA fiduciaries' investment decisions.

[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION

This case is part of an ongoing surge in putative class actions challenging the management of employer-sponsored retirement plans. This explosion in litigation is not "a warning that retirees' savings are in jeopardy." Daniel Aronowitz, *Exposing Excessive Fee Litigation Against America's Defined Contribution Plans* 3, Euclid Specialty (Dec. 2020), https://tinyurl.com/469xhac8 ("*Excessive Fee Litigation*"). To the contrary, "in nearly every case, the asset size of many of these plans being sued has increased—often by billions of dollars"—over the last decade. *Id*. Nevertheless, many of these suits cherry-pick particular data points, disregard bedrock principles of plan management and investment strategies, and ignore critical context regarding investment management and defined-contribution-plan administration to create an illusion of mismanagement and imprudence.

The complaints typically follow a familiar playbook. Using the benefit of hindsight, these lawsuits challenge plan fiduciaries' decisions about the investment options made available to retirement plan participants by focusing on one or two factors about investment products or services—typically fees or performance—out of the myriad factors plan fiduciaries are required to consider. And then, offering a few cherry-picked comparators and a cherry-picked window of time, the plaintiffs allege that plan fiduciaries *must* have had a flawed decision-making process because they did not choose one of the plaintiffs' preferred alternatives.

This case is no different. Like many waves of ERISA class actions, this case is part of a spate of lawsuits filed by the same firm (Capozzi Adler) in rapid succession.[2] They target a highly

[2] *See also, e.g.*, *Batten v. Ricoh USA, Inc.*, No. 2:25-cv-04658 (E.D. Pa. filed Aug. 13, 2025); *Wolfe v. Amdocs, Inc.*, No. 3:25-cv-02186 (N.D. Tex. filed Aug. 13, 2025); *Halamek v. Philips North America LLC*, No. 1:25-cv-12003 (D. Mass. filed July 15, 2025); *Dell v. Stifel Fin. Corp.*, No. 4:25-cv-00993 (E.D. Mo. filed July 4, 2025); *Muldoon v. Penn State Health*, No. 1:25-cv-01181 (E.D. Pa. filed June 27, 2025); *Johnston v. Intermountain Healthcare*, 1:25-cv-00073 (D. Utah

specialized form of investments (SV investments), ignore critical context about these investments' unique characteristics that demonstrate the implausibility of the plaintiffs' claims, and offer simplistic (and hindsight-based) allegations of underperformance. These performance-focused allegations are misguided as a general matter given ERISA's focus on process rather than outcomes, but particularly so here: SV investments intentionally focus on asset *preservation*, not aggressive growth. They offer bond-like returns together with principal preservation and liquidity, making them an extremely useful component of a balanced and diversified portfolio, particularly for participants in or near retirement.

About 75% of plans feature SV investments, and these products vary considerably across key characteristics, including rates of return, fee structure, issuer diversification, asset transparency and ownership, and exit provisions—all of which make a particular SV investment more or less attractive depending on the circumstances and needs of a plan and its participants. Ignoring this context, the Consolidated Complaint provides almost *no* description of the Cigna Fixed Income Fund ("FIF") it calls imprudent, and what it does say is incoherent and contradictory. Moreover, it focuses entirely on *one* feature of the FIF—its "crediting rate," or rate of return—over a snapshot timeframe (much of which overlaps with particularly volatile market periods, including a uniquely high-interest-rate environment and the COVID pandemic), and it juxtaposes the FIF's crediting rate with those of a handful of other SV investments in the same period without regard to those funds' other characteristics. Failing that, the Consolidated Complaint falls back on speculation that Prudential, one of the many insurance companies holding and managing the FIF's assets, may become insolvent one day.

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filed June 3, 2025); *Clinton v. Baxter Int'l Inc.*, No. 25-cv-03368 (N.D. Ill. filed Mar. 28, 2025); *Gonzalez v. JP Morgan Chase Bank, NA*, 2:25-cv-01889 (D.N.J. filed March 14, 2025); *Carter v. Sentara Healthcare Fiduciary Comm.*, No. 25-cv-00016 (E.D. Va. filed Jan. 8, 2025).

That approach cannot be sufficient to plead a plausible fiduciary-breach claim. Congress designed ERISA to give fiduciaries flexibility to weigh *all* the relevant circumstances in choosing a plan lineup. Accordingly, the Supreme Court recognizes that "the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs," and so courts must "give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." *Mator v. Wesco Distribution, Inc.*, 102 F.4th 172, 184 (3d Cir. 2024) (quoting *Hughes v. Nw. Univ.*, 595 U.S. 170, 177 (2022)). Evaluation of an investment decision is thus "largely a process-based inquiry," *Smith v. CommonSpirit Health*, 37 F.4th 1160, 1166 (6th Cir. 2022), and the "focus[] [is] on a fiduciary's *conduct* in arriving at an investment decision, not on its *results*," *Pension Ben. Guar. Corp. ex rel. St. Vincent Cath. Med. Centers Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 716 (2d Cir. 2013) ("*PBGC*") (emphasis added; citation omitted).

Under this standard, the Consolidated Complaint's acontextual, hindsight-driven, and exclusive focus on the crediting rate over a cherry-picked window of time is *especially* inappropriate, given that SV investments are meant to prioritize stability and asset preservation together with positive, low-volatility returns over a long-term investment horizon, not short-term growth at any cost. Whether a plan should offer an SV investment that has a slightly lower crediting rate over another SV investment with materially distinct features is precisely one of the "difficult tradeoffs" fiduciaries are meant to weigh in their discretion. *Hughes*, 595 U.S. at 177.

Rigorously policing meritless allegations like these at the pleading stage matters. The ongoing tidal wave of litigation has left fiduciaries exposed to strike suits for virtually any choice they make, frustrating the flexibility and discretion ERISA is supposed to promote, and driving up insurance rates, litigation costs, and administrative burdens to the point where employers (particularly smaller, less-resourced ones) may be discouraged from offering plans at all.

ARGUMENT

I. Hindsight-based attacks on fiduciary decision-making are at odds with ERISA's process-based approach.

A. ERISA encourages the creation of benefit plans by affording flexibility and discretion to plan sponsors and fiduciaries.

When Congress enacted ERISA, it "did not *require* employers to establish benefit plans." *Conkright v. Frommert*, 559 U.S. 506, 516 (2010) (emphasis added). Rather, it crafted a statute intended to encourage employers to offer benefit plans while protecting the benefits promised to employees. *Id.* at 516-17. Congress recognized that plan sponsors and fiduciaries must make a range of decisions, often during considerable market uncertainty, and accommodate "competing considerations." H.R. Rep. No. 96-869(I), at 67 (1980), *reprinted in* 1980 U.S.C.C.A.N. 2918, 2935. Accordingly, Congress chose the flexible "prudent man" standard to define the scope of the duties fiduciaries owe to plans and their participants. 29 U.S.C. § 1104(a); *Fine v. Semet*, 699 F.2d 1091, 1094 (11th Cir. 1983). Neither Congress nor the Department of Labor ("DOL") provides a list of required or forbidden investment options, investment strategies, service providers, or compensation structures. And when Congress considered requiring plans to offer at least one index fund, the proposal failed. *See* H.R. 3185, 110th Cong. (2007). Indeed, DOL has declined to provide even *examples* of appropriate investment options, because doing so would "limit … flexibility in plan design." 57 Fed. Reg. 46,906, 46,919 (Oct. 13, 1992).

As courts have recognized, the broad discretion conferred by Congress is the "sine qua non of fiduciary duty." *Pohl v. Nat'l Benefits Consultants, Inc.*, 956 F.2d 126, 129 (7th Cir. 1992). Discretion is critical to the entire ERISA framework, particularly because there virtually never is a single "right" answer to the questions fiduciaries must answer. There are thousands of reasonable investment options with different investment styles and risk levels. For example, and particularly

relevant here, recent statistics show that over 244,000 plans (about 75% of all plans) offered SV investments, into which employees have invested over $800 billion in retirement savings.[3]

Given the vast array of options and the need to tailor solutions to participants and their diverse interests, plan fiduciaries are best positioned to weigh the pros and cons of various choices. If a fiduciary is subjected to constant litigation and Monday-morning quarterbacking over his decisions—with the benefit of hindsight and not based on "the circumstances as they reasonably appear[ed] to him at the time when he does the act," *Smith*, 37 F.4th at 1164 (quoting Restatement (Second) of Trusts § 174 cmt. b (1959))—that would eviscerate the discretion at ERISA's core.

B. ERISA does not police investment *outcomes*, but instead simply requires a prudent fiduciary *process*.

Because Congress has afforded fiduciaries significant discretion, "courts look to '*process* rather than *results*'" when evaluating an imprudent-fiduciary claim "and inquire 'whether a fiduciary employed the appropriate methods to investigate and determine the merits of a particular investment.'" *Cho v. Prudential Ins. Co. of Am.*, 2021 WL 4438186, at *7 (D.N.J. Sept. 27, 2021) (emphasis added) (citation omitted). This "context-sensitive" analysis therefore focuses on "the circumstances ... prevailing *at the time the fiduciary acts*." *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014) (emphasis added) (quotation marks omitted).

Given this focus on process, the most natural way to "plead a breach of the duty of prudence" is to "allege[] facts that would directly show that the fiduciaries employed unsound methods in making their investment decisions." *Anderson v. Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015, 1021-1022 (9th Cir. 2025) ("*Intel*") (collecting examples). To be sure, it is not automatically "fatal" when a complaint "contains no factual allegations referring *directly* to [the

[3] SVIA, *What Is Stable Value?* (June 9, 2025), https://tinyurl.com/y3jtu7wb; SVIA, *Stable Value at a Glance* (Sept. 18, 2025), https://tinyurl.com/2693p6xc ("*Stable Value at a Glance 2025*").

fiduciary's] knowledge, methods, or investigations at the relevant times." *PBGC*, 712 F.3d at 718. Sometimes "a plaintiff can make circumstantial factual allegations from which the court may reasonably infer from what is alleged that the process was flawed." *Intel*, 137 F.4th at 1022 (quotation marks omitted). But "[w]hen an ERISA plaintiff attempts to do so by relying on a theory that a prudent fiduciary in like circumstances would have selected a different fund based on the cost or performance of the selected fund," then at a bare minimum "that plaintiff must provide a sound basis for comparison." *Id.* (quotation marks omitted).

Accordingly, to state a claim by inference, "plaintiffs cannot rely, after the fact, on" disappointing plan performance, shorn of context. *PBGC*, 712 F.3d at 718 (quotation marks omitted). "Not only is hindsight 20/20, but it also does not meet the plausibility requirement." *Cho*, 2021 WL 4438186, at *8. "Nor is it necessarily sufficient to show that better investment opportunities were available at the time of the relevant decisions." *PBGC*, 712 F.3d at 718. Likewise, a "[p]laintiff does not adequately plead a claim merely by alleging that cheaper alternative investments exist in the marketplace." *Cho*, 2021 WL 4438186, at *9 (quotation marks omitted). Instead, if "a plaintiff asks a court to infer that a fiduciary used improper methods based on the performance of the investments[] ... he must compare that performance to funds or investments that are meaningfully similar." *Intel*, 137 F.4th at 1023; *see also Albert v. Oshkosh Corp.*, 47 F.4th 570, 581 (7th Cir. 2022) ("A complaint cannot simply make a bare allegation that costs are too high, or returns are too low. … Rather, it must provide a sound basis for comparison—a meaningful benchmark." (brackets and quotation marks omitted; ellipses in original)). In other words, as the Third Circuit has recognized, the "comparisons between the [challenged plan] and other plans" need not be "perfect," but those comparators must still offer "services … sufficiently similar to render the comparisons valid." *Mator*, 102 F.4th at 187-188; *see also id.* at 185 (taking

a "close examination" of comparison-based allegations and publicly accessible contextual documents to determine whether the *Twombly/Iqbal* standard is satisfied).[4]

Courts have applied this standard across a variety of ERISA cases. For example, courts have made short work of allegations that focus on a single metric, like a fund's performance, without any contextual analysis for why the fund might reasonably have been included among a plan's offerings.[5] Courts have also consistently held that inapt comparisons among materially different products cannot support a plausible claim of imprudence,[6] even when the comparators can be lumped into the same broad category and are offered by the same provider.[7]

The upshot of these cases is clear. To state a plausible imprudent-fiduciary claim, ERISA plaintiffs must either plead *direct* factual allegations of an imprudent process or else must have *strong circumstantial pleadings* that the fiduciary's investment choices were poor when measured against an array of meaningfully similar comparators. Hindsight-based allegations that ignore the

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[4] *See also Mator*, 102 F.4th at 184 n.3 (recognizing that the Supreme Court's decision in *Hughes* had abrogated Third Circuit precedent, *Sweda v. Univ. of Pa.*, 923 F.3d 320, 326 (3d Cir. 2019), that had erroneously rejected the *Twombly* standard for ERISA cases).

[5] *E.g.*, *Anderson v. Advance Publ'ns, Inc.*, 2023 WL 3976411, at *3 (S.D.N.Y. June 13, 2023) (collecting cases); *Smith*, 37 F.4th at 1166 (rejecting notion that "a showing of imprudence [could] come down to simply pointing to a fund with better performance").

[6] *E.g.*, *Intel*, 137 F.4th at 1034 ("putative comparators were not truly comparable because they had different aims, different risks, and different potential rewards" (quotation marks omitted)); *Davis v. Wash. Univ. in St. Louis*, 960 F.3d 478, 485 (8th Cir. 2020) (allegations about the performance of funds with "different aims, different risks, and different potential rewards that cater to different investors" say nothing about whether "one is better or worse than the other"); *Meiners v. Wells Fargo & Co.*, 898 F.3d 820, 823 (8th Cir. 2018) ("The fact that one fund with a different investment strategy ultimately performed better does not establish anything about whether the [challenged funds] were an imprudent choice at the outset.").

[7] *E.g.*, *Davis v. Salesforce.com, Inc.*, 2022 WL 1055557, at *2 n.1 (9th Cir. Apr. 8, 2022) (affirming district court's rejection of plaintiff's comparison between passively and actively managed JPMorgan target-date funds or "TDFs"); *Smith*, 37 F.4th at 1167 (performance differences between active and passive Fidelity TDFs were insufficient to support a claim of imprudence given their "distinct goals" and "distinct strategies"); *Meiners*, 898 F.3d at 823 (plaintiff improperly compared Wells Fargo TDFs to Vanguard TDFs "with a different investment strategy").

circumstances and considerations around a particular fiduciary choice are insufficient.

II. Attacking the use of a particular SV product in a vacuum based on hindsight differences in crediting rates is insufficient to state a claim.

A. As the case law repeatedly stresses, courts must consider context when determining whether imprudent-fiduciary allegations pass muster under Rule 12(b)(6). *Dudenhoeffer*, 573 U.S. at 425; *Hughes*, 595 U.S. at 177. And situating the Consolidated Complaint's allegations in the larger context of SV investments leads to a clear conclusion: the Consolidated Complaint's allegations fall far short of the plausibility standard.

SV investments are unique investment products that "provide bond-like returns" while preserving principal, and thus "provide[] [to] investors … an attractive risk/return profile."[8] They are also quite popular: as of 2025, "approximately 3 out of 4" defined-contribution plans offer some stable-value investment.[9] "Millions of plan participants" choose to invest in SV investments "to achieve their desired risk tolerance" in growing their retirement savings,[10] and they have invested well over $800 billion in SV investments offered in more than 244,000 plans, *see* pp. 1, 8, *supra*.

Because SV investments "provide an attractive principal preservation investment, insulating plan participants from day-to-day market volatility while providing them with relatively steady returns," they are "ideally suited for plan participants seeking to protect their retirement savings and provide a source of income during retirement." *Who Invests in Stable Value and Why?* Unsurprisingly, then, "data shows that stable value investors are predominantly represented by older plan participants, as those 60 years and older own approximately half of stable value assets

[8] SVIA, *Who Invests in Stable Value and Why?* (July 7, 2021), https://tinyurl.com/55yy9zxa; *Stable Value at a Glance 2025*.
[9] *Stable Value at a Glance 2025*.
[10] SVIA, *Stable Value Market Segments* (Dec. 31, 2022), https://tinyurl.com/5xj79ksu.

and those who are 50 years and older own approximately 85% of stable value assets." *Id.* Yet there are also "plan participants seeking to be more aggressive with their retirement investing" who invest in SV products as part of their overall retirement portfolio "since stable value has a low correlation to more volatile, higher returning investments like equities." *Id.* So "younger investors are also discovering stable value's benefits and critical role in their retirement portfolios." *Id.*

But SV products are not all the same; instead, they are as diverse as the employees who invest in them. Roughly speaking, SV products fall into three large buckets—(1) individually managed accounts, (2) pooled SV investments, and (3) insurance-company general and separate accounts—although there are many nuances and subdivisions within these broad categories. *See Stable Value Market Segments*. The first two categories are also called "synthetic" SV products.

Each of these categories has a distinctive structure that may cause them to be better suited for a particular plan and its participants. Individually managed accounts are "[t]ypically offered by an investment manager and managed for a specific plan's participants." *Stable Value Market Segments*. These accounts allow for significant customization but tend only to be available for plans with substantial assets. Pooled SV investments, in turn, are "[t]ypically offered by an investment manager and combine[] the assets of unaffiliated plans into one fund." *Id.* These funds are generally used by plans that do not meet the minimum size for an individually managed account or do not require plan-specific customization. Finally, as their name suggests, insurance-company SV investments are usually "[o]ffered and guaranteed by a single insurance company," and are either "backed by [the insurance company's] general account" (general-account SV products) or are offered and guaranteed "from a separate account" (separate-account SV products). *Id.*

Even *within* each category, the options vary widely with respect to key characteristics. Start with the different kinds of "crediting rates" these different categories of SV products tend to

provide investors. For some SV investments, like general-account products, the crediting rates are "[d]eclared in advance" and "guaranteed regardless of the performance of the underlying assets." *Stable Value Market Segments*. By contrast, individually managed accounts and pooled investments offer crediting rates that are determined by a formula and vary incrementally (for example, month by month) "[b]ased on the actual performance of the underlying assets." *Id*. Hence, much like the timing of a mortgage can determine a homebuyer's interest rate, the timing of investment in SV products is critical too, as it can determine the specific returns obtained.

Fee structures vary, too: individually managed accounts and pooled funds tend to use set, "disclosed" fees, whereas general-account products (and some separate-account products) use a "[s]pread," under which "compensation is the difference between actual investment earnings and [the] declared rate[]" for the fund, a figure that often "is not required to be disclosed." *Stable Value Market Segments*. For these products, the issuing insurance company bears all investment risk of providing the promised returns regardless of market conditions, retains any surplus return above the crediting rate as compensation, and absorbs any losses if actual investment performance falls short. Different SV investments have different exit provisions as well. Some (like many individually managed accounts) can provide for "[t]ermination at market value at any time" (which could result in a loss of principal) or termination at contract value over a period of 12 to 24 months; others (like many general- and separate-account products) "require structured payout over multiple years" in order to receive a total plan withdrawal at book value, enabling the issuer to invest in longer-term underlying investments, which can make higher crediting rates possible than if plan sponsors could exit the fund at will. *Id*. These types of termination provisions limit a plan's flexibility to shift from one SV product to another while preserving principal.

This variation means that the choice of a particular SV product depends on context and

investor-specific considerations, as each variation is an intentional trade-off made for strategic reasons. If a strictly guaranteed rate of return seems more suitable for a plan and its participants, a general-account product might be attractive. If maximum liquidity is a greater virtue depending on the characteristics of the plan and the experienced judgment of fiduciaries, an individually managed account might rank higher on the list. If maximum transparency into assets and fee structures is a higher priority, fiduciaries might go with an individually managed or pooled fund. Of course, as already discussed, fiduciaries must balance *all* these considerations (and more) to determine what blend of return level, compensation structure, asset transparency, and liquidity makes sense for their plan, and then consider how any particular SV option balances with the rest of the plan's investment menu. And that does not even take into account the characteristics (including reputation, service, or history) of a particular company offering the SV investment.

Despite these variations, all SV products are designed to provide a safe place for retirement savings and competitive rates of return over an investment cycle.

B. As even this high-level introduction to SV products makes clear, the acontextual, broad-brush allegations in the Consolidated Complaint are wholly insufficient to establish that the plan's fiduciaries imprudently chose the FIF.

Plaintiffs concede they cannot allege any facts that *directly* support the fiduciary-breach claims—they aver they have no knowledge of Defendants' decision-making process at all. Consol. Compl. ¶ 110. So, Plaintiffs' only hope is to plead strong "circumstantial factual allegations from which the court may reasonably infer from what is alleged that the process was flawed." *Intel*, 137 F.4th at 1022 (quotation marks omitted). For multiple reasons, they have failed to do so.

To start with, Plaintiffs' description of the FIF is cursory and incomplete. The Consolidated Complaint states that the FIF "is supported by four separate fully benefit-responsive

investment contracts, including a traditional investment contract and three synthetic investment contracts," Consol. Compl. ¶ 117, without offering further significant detail. For example, Plaintiffs make no allegations as to the substantive terms of the contract, let alone the FIF's strategy, credit risk, or interest rate risk, Defs.' Mem. Supp. Mot. Dismiss ("MTD") at 7.

Given these allegations (or lack thereof), it is essentially impossible to determine whether Plaintiffs have compared the FIF's crediting rates to those of "meaningfully similar" SV investments. *Intel*, 137 F.4th at 1023; *see also Mator*, 102 F.4th at 187-188 ("sufficiently similar"). Indeed, Plaintiffs do not allege any facts as to the individual funds in their carefully curated list of comparators and only describe some of those comparators as being "general account" or "traditional" investment products while failing entirely to identify the type of fund at issue for other comparators. *See* MTD at 8. Merely listing allegedly better-performing investments and baldly alleging they are "identical or substantially identical" to the FIF, Consol. Compl. ¶¶ 146-147, is not enough to overcome courts' "close examination of the complaint." *Mator*, 102 F.4th at 185; *Intel*, 137 F.4th at 1023 (citation omitted); *see also* pp. 7-9, *supra*. Instead, plaintiffs must "provide specific plan comparators … and plausibly allege" that what was selected was "sufficiently similar to render the comparisons valid." *Mator*, 102 F.4th at 188. That is particularly the case here, where Plaintiffs' bald allegation that the purported comparators are identical to the FIF is undercut by their failure to include a single synthetic fund as a comparator, particularly given that over 80% of the FIF's assets are in synthetic SV funds. *See* MTD at 14.

Moreover, *all* the Consolidated Complaint examines is returns by comparing crediting rates during a cherry-picked window of time. Consol. Compl. ¶¶ 146-149. But regardless of what kind of investment product is at issue, "a showing of imprudence cannot come down to simply pointing to a fund with a better performance" or return rate over some slice of time. *Forman v. TriHealth,*

Inc., 40 F.4th 443, 448-449 (6th Cir. 2022) (quotation marks omitted); pp. 8-9, *supra*. And that principle should have special force here. As a district court recognized in a recent post-trial decision, "a stable value option balances yield and capital preservation." *Iannone v. AutoZone, Inc.*, 2025 WL 2797074, at *16 (W.D. Tenn. Sept. 30, 2025). Accordingly, "fiduciaries are not required to chase the [SV investment with the] highest yield." *Id.*

After all, if one thing unites SV investments, it is their dependability as asset-*preservation* products. *See* pp. 9-10, *supra*. That cardinal feature surely deserves significant weight when evaluating a fiduciary's choice of SV product; market-beating returns are not the goal. As discussed, the statutory and regulatory framework encourages fiduciaries to examine *all* features of potential investment choices, not just raw performance, and DOL provides a safe harbor if certain plans offer "a broad range of investment alternatives," including "at least three" with "materially different risk and return characteristics," each of which when combined with investments in the other alternatives "tend to minimize through diversification the overall risk of a participant's portfolio," 29 C.F.R. § 2550.404c-1(b)(2)-(3)—including options that, like SV investments, prioritize asset preservation over maximizing returns. As courts have recognized, an acontextual, time-limited focus on rates of return is almost always guaranteed to fail the plausibility standard, but it is *especially* problematic in the context of a challenge to the choice of an SV investment with the aim of asset preservation over aggressive growth.[11] This Court should reaffirm that principle here.

[11] *Accord Barchock v. CVS Health Corp.*, 886 F.3d 43, 49-53 (1st Cir. 2018) (affirming dismissal of SV claim based on crediting rate and emphasizing that "conservativism in the management of a stable value fund—when consistent with the fund's objectives disclosed to the plan participants—is no vice"); *Lalonde v. Mass Mut. Ins. Co.*, 728 F. Supp. 3d 141, 156-57 (D. Mass. 2024) (dismissing SV claim because "simply selecting two alleged comparator funds with higher credit return rates over a seven-year period is the type of hindsight-based allegation which is insufficient to support a plausible inference of breach").

III. Fearmongering as to an insurer's insolvency risks does not plausibly suggest a plan fiduciary violated ERISA.

As part of this wave of class actions, some plaintiffs (including Plaintiffs here) have attempted to buttress their performance comparisons with speculation that the insurer offering the challenged SV investment allegedly has a higher risk of "insolvency" due to its use of offshore reinsurers, inadequate "surplus" assets, or reliance on affiliates. These allegations amount to no more than a scare tactic that one of the most respected and well-established insurance institutions in the United States, Prudential, is on the verge of collapse and in no way plausibly suggest a fiduciary breach.

As a preliminary matter, these complaints do not tie these allegations to their fiduciary-breach theories, which focus on the crediting rates of the FIF and Plaintiffs' cherry-picked comparators. Plaintiffs here do not suggest that Prudential's supposed institutional risk is what drives the Prudential SVF's crediting rate. Nor could they: crediting rates are generally calculated as "a function of the contract value of the investment contract, the market value of the underlying asset portfolio, and the yield and duration of the underlying asset portfolio." *Contra* Nick Gage & Christina Burton, *Stable Value Crediting Rates* 2 (Aug. 2025), https://tinyurl.com/mje5us7k. Put differently, what drives the crediting rate is asset and contract value, not alleged institutional risk. And tellingly, *three* insurance companies insure the FIF's assets, not just Prudential, and Plaintiffs have failed to include any explanation as to how the purported insolvency risk of a single insurer could lead to a breach of a fiduciary duty where two others remain untouched. *See* MTD at 17.

Allegations regarding an insurer's purported risk of insolvency appear to have been lifted from ERISA complaints about wholly different transactions—challenges to decisions by sponsors of defined-benefit plans (classic pension plans) to transfer their pension obligations to an insurer through the purchase of a group annuity contract. *Compare* Consol. Compl. ¶¶ 80-99, *with* Class

Action Compl. ¶¶ 53-67, 88-93, *Dempsey v. Verizon Commc'ns*, No. 1:24-cv-10004 (S.D.N.Y. Dec. 30, 2024), Dkt. 1; Am. Compl. ¶¶ 54-90, *Bueno v. G.E. Co.*, No. 1:24-cv-822 (N.D.N.Y. Dec. 6, 2024), Dkt. 56. But Plaintiffs have not made any effort to identify how those types of allegations are remotely relevant to underperformance claims in the defined-contribution context.

Moreover, these allegations ignore the myriad state and federal protections that have been put in place over the last thirty years to protect those who purchase insurance products—including SV investors. "[S]table value funds, contract providers, investment managers, and other service providers involved in stable value have multiple layers of regulatory oversight," including from "a variety of federal and state governmental regulatory bodies." SVIA, *Is Stable Value Regulated?* (July 23, 2021), https://tinyurl.com/537wvwh5. With respect to offerings by insurers specifically, "insurance companies … are regulated by each insurance company's home state's State Insurance Commissioner and governed by state law." *Id.* Additionally, "insurers participating in the stable value market must gain approval … from any state where they are licensed and plan to issue their contracts." Randy Myers, *Understanding the Insurance Side of Stable Value*, SVIA (July 7, 2021), https://tinyurl.com/2uer22u7.

These state regulators "review which types of investments are eligible to be held in a stable value product, and how the crediting rate will be calculated." *Id.* "Among the dozens of factors regulators examine … are the core terms of the contract and the commitments made by the insurance company in that contract." *Id.* The "dual aim of the review … is to protect consumers and the *solvency of the insurance company*." *Id.* (emphasis added). State regulators' review of insurance companies is so extensive that they even "make sure nothing is in a contract that could be construed as a waiver of remedies in the event of an insurer's insolvency" and "confirm that contracts are being issued to groups eligible to participate in stable value products under each

state's insurance code." *See id.* This close review continues "[o]nce a contract is issued" with "regulators becom[ing] increasingly focused on the reserves and the asset-liability match … because they care about the financial stability, or solvency, of the insurance company." *Id.* All of these extensive regulations, including those geared specifically towards the insurer's solvency, apply fully despite ERISA's expansive preemption provision because state insurance laws are expressly excepted from ERISA's preemptive reach. *See* 28 U.S.C. § 1144(b)(2)(A).

In addition to strict regulation under state insurance law, the actual structure of an SV investment can provide protection. As with many insurance products, many SV investments use what is known as a "separate account" structure. *See* MetLife, *Benefits of Separate Account Insulation for Stable Value* (June 30, 2023), bit.ly/4imSEnf ("*Benefits of Separate Account Insulation*"). A separate account guaranteed interest contract "is first supported by associated assets in a segregated separate account held by the issuing insurance company and then, to the extent necessary, by the insurer's general account assets and surplus." SVIA, *Separate Account GIC*, https://tinyurl.com/4ffz4zzs. The "securities held in the separate account are owned by the insurance company, but are held for the exclusive benefit of the plan or plans participating in the separate account." *Id.* In other words, "the assets in the account must legally be used to pay benefits due to the separate account contract holders before they can be used for anything else," meaning investors are protected if the insurer collapses. *See Benefits of Separate Account Insulation*. And just like every other SV product, separate account products too are heavily regulated because insurers "are required to report separate account assets in their annual and quarterly statutory statements to state regulators" and "[m]ost states also require the insurer to file an additional statement devoted exclusively to separate accounts." *See id.*

Finally, both reinsurance contracts and state guaranty associations further insulate SV

participants from the harms of insolvency. Many insurers have reinsurance contracts that serve as "essentially insurance for an insurance provider." ERISA Advisory Council, *Consultation Paper on Interpretive Bulletin 95-1*, at 24 (July 2023) ("*Consultation Paper*"), https://tinyurl.com/mtyycza8. They "transfer[] risk" from the insurance company to the reinsurance company, which "assumes all or part of one or more insurance policies" the insurance company issued. *Id.* Similarly, in many jurisdictions, "protection for stable value contracts is available from state guaranty associations." Paul Donahue, *Insurance Company Stable Value Contracts*, SVIA (Jan. 10, 2022), https://tinyurl.com/bdds4thm. These state guaranty associations "provide coverage up to state law limits in the event the issuing insurer becomes insolvent," providing yet another layer of protection for SV participants. *Consultation Paper* at 33.

Despite these extensive protections and fail-safes in place, Plaintiffs insist that Prudential faces "a substantial risk of going insolvent." Consol. Compl. at 28 (capitalization altered). All four ratings agencies disagree, rating both Prudential and Empower Annuity Insurance Company of America highly. *See* Prudential, *Financial Strength Ratings* (Oct. 29, 2025), https://tinyurl.com/mv6auwd2; Empower, *Financial Strength* (Nov. 13, 2025), https://tinyurl.com/3sv3ravz. And even as Plaintiffs cast aspersion on the reliability of ratings issued by rating agencies, Consol. Compl. ¶¶ 120-121, those rating agencies are themselves heavily regulated by the SEC, which has determined that each of these rating agencies "produce[s] credit ratings with integrity." *See* SEC Office of Credit Ratings, *Staff Report on Nationally Recognized Statistical Rating Organizations* 4 (Feb. 2024), https://tinyurl.com/44r2drrb.

In short, SV investments are not the wild west. They are subject to overlapping layers of protection that exist specifically to protect beneficiaries, all of which Plaintiffs ignore. Offering outlandish allegations about insolvency risks while completely ignoring the complex and

interlocking protections that exist through heavy state regulation does not plausibly suggest plan fiduciaries were asleep at the wheel simply because they chose an investment that was offered, in whole or in part, by an insurer that a plan participant does not prefer.

IV. Lawsuits like this one will harm plan participants and beneficiaries.

The surge of meritless ERISA lawsuits like this has real consequences: it puts fiduciaries in a bind and makes offering plans prohibitively costly and risky. That is wholly at odds with a primary purpose of ERISA—to *encourage* employers to voluntarily offer retirement plans and a diverse set of options within those plans. *See Conkright*, 559 U.S. at 517.

By focusing myopically on one factor and ignoring context, ERISA plaintiffs can manufacture claims based on virtually every possible fiduciary choice. And one complaint's supposedly imprudent choice is often another's prudent exemplar. For example, in 2017, plaintiffs sued General Electric for offering the GE RSP U.S. Equity Fund in its 401(k) plan. *See* Compl. ¶ 1, *Haskins v. Gen. Elec. Co.*, No. 17-cv-01960 (S.D. Cal. Sept. 26, 2017), ECF No. 1. In another case, plaintiffs held up *that very fund* as a "superior performing alternative[]." *See* Compl. ¶ 122, *Harding v. Southcoast Hosps. Grp.*, No. 20-cv-12216 (D. Mass. Dec. 14, 2020), ECF No. 1. Fiduciaries have even had to defend against "diametrically opposed" claims, giving new meaning to the phrase "cursed-if-you-do, cursed-if-you-don't."[12]

The same Scylla-and-Charybdis danger pervades SV cases: some plaintiffs, as here, have claimed that fiduciaries have been too *cautious* with their SV investments,[13] while others allege exactly the opposite.[14] The only certainty fiduciaries are left with is that they will be sued no

[12] *E.g.*, *Evans v. Akers*, 534 F.3d 65, 68 (1st Cir. 2008).
[13] *E.g.*, *Ellis v. Fid. Mgmt. Tr. Co.*, 883 F.3d 1, 9 (1st Cir. 2018) (alleging SV investment was managed too conservatively compared to others); *Jenkins v. Yager*, 444 F.3d 916, 925-26 (7th Cir. 2006) (similar); Compl., *Barchock v. CVS Health Corp.*, No. 16-cv-00061, (D.R.I. Feb. 11, 2016), ECF No. 1 (similar).
[14] *E.g.*, Third Am. Compl. ¶ 7, *Whitley v. J.P. Morgan Chase & Co.*, 12-cv-02548 (S.D.N.Y. Dec.

matter what they decide.

The ongoing wave of ERISA litigation has also "wreaked havoc on the market for fiduciary liability insurance." Jacklyn Wille, *Spike in 401(k) Lawsuits Scrambles Fiduciary Insurance Market*, Bloomberg Law (Oct. 18, 2021), https://tinyurl.com/46wk8zuv. Because ERISA litigation has become so common, fiduciary-liability insurers have been forced "to raise insurance premiums, increase policyholder deductibles, and restrict exposure with reduced insurance limits." *Excessive Fee Litigation* 4. If they are forced to absorb the cost of higher insurance premiums and higher deductibles, many employers will inevitably have to offer less generous plans—reducing their employer contributions, declining to cover administrator fees and costs when they otherwise would do so, and reducing services available to employees. And while large employers may have some capacity to absorb some of these costs, for smaller employers who "cannot purchase adequate fiduciary liability insurance to protect their plan fiduciaries, the next step is to stop offering retirement plans to their employees." *Id*. Put simply, suits like this one impose prohibitive costs on plan sponsors—and, by extension, participants and beneficiaries—with no offsetting benefits.

CONCLUSION

The Court should dismiss the Consolidated Complaint.

16, 2014), ECF No. 182 (alleging "inherently risky" SV product).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, James W. McGarry, certify that a copy of the foregoing motion, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on November 20, 2025.

Dated: November 20, 2025

/s/ *James W. McGarry*
James W. McGarry