No. 25-180

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

LOCKHEED MARTIN CORPORATION,

Defendant-Petitioner,

v.

BURCE KONYA, SIMON SHIFF, STEPHEN SCHWARZ, DIANA VASQUEZ, individually and as representatives of a class of participants and beneficiaries on behalf of the Lockheed Martin Corporation Salaried Employee Retirement Program and the Lockheed Martin Aerospace Hourly Pension Plan

Plaintiffs-Respondents.

On Petition for Permission to Appeal from the United States District Court
for the District of Maryland,
No. 8:24-cv-750 (Hon. Brendan A. Hurson)

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN BENEFITS COUNCIL, AND ERISA INDUSTRY COMMITTEE AS AMICI CURIAE IN SUPPORT OF PETITIONER

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CORPORATE DISCLOSURE STATEMENT

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INTEREST OF THE AMICI CURIAE[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country.

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. The Council's more than 430 members are primarily large, multi-state employers that provide employee benefits to active and retired workers and their families.

Many of *Amici's* members maintain, administer, and/or provide services to employee-benefit plans governed by the Employee Retirement Income Security Act

[1] No party or party's counsel authored this brief in whole or in part. No party, party's counsel, or person other than *Amici*, their members, or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

of 1974 ("ERISA"), covering virtually all Americans who work in the private sector and participate in employer-sponsored programs. *Amici* regularly participate as *amici curiae* in cases, like this one, that affect ERISA plan sponsors. *See, e.g.*, *Thole v. U.S. Bank N.A.*, 590 U.S. 538 (2020); *Trauernicht v. Genworth Financial Inc.*, No. 24-1880 (4th Cir.).

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is part of a wave of lawsuits challenging common transactions that ERISA expressly permits. *See* Lockheed Pet. 6 n.2. These transactions allow employers who sponsor retirement plans to obtain certainty over their pension obligations by transferring those obligations to insurance companies that specialize in annuity contracts—products that have played a significant role in private pension plans for over a century. The flurry of lawsuits filed by the same lawyers representing Plaintiffs here is premised on disagreement with the annuity provider chosen by independent fiduciaries and allegations that the annuity provider *might* someday stop paying the monthly payments that retirees were promised. Speculative allegations about a risk of future harm are insufficient to establish Article III standing, as Supreme Court precedent makes clear, but that is precisely what the district court erroneously permitted in this case.

The 28 U.S.C. § 1292(b) factors are not only amply satisfied, but this Court's review is necessary to avoid a serious chilling effect on common, legally permissible transactions that benefit plan sponsors and participants alike. *Amici* urge this Court to grant interlocutory review, provide much-needed guidance to lower courts, and reverse the decision below.

ARGUMENT

I. The standing issue presented by the wave of pension-risk-transfer cases brought by Plaintiffs' counsel is exceedingly important and warrants this Court's discretionary review.

Annuities play a significant role in the nation's private pension system and have for over a century. *See generally* James M. Poterba, Nat'l Bureau of Econ. Res., *The History of Annuities in the United States* (1997), https://tinyurl.com/2s4b2npu. One way that annuities play such a role is through pension risk transfers (PRTs) in which a plan sponsor transfers its pension obligations for some or all participants by using plan assets to purchase an annuity from an insurance company. U.S. Gov't Accountability Office, GAO-15-74, *Private Pensions: Participants Need Better Information When Offered Lump Sums That Replace Their Lifetime Benefits* 4-5 (2015) ("*Private Pensions*"), https://tinyurl.com/2acfcwaw. That purchase constitutes a distribution of benefits that satisfies the employer's pension obligation, and the insurer assumes responsibility for making payments. *Id.* For retirees whose benefits were transferred, the *source* of their monthly benefits changes, but the *amount* of benefits does not. *Id.* ERISA expressly permits PRTs, *see* 29 U.S.C. § 1341(b)(3)(A); *Lee* *v. Verizon Commc'ns, Inc.*, 837 F.3d 523, 538 (5th Cir. 2016), and the decision to engage in a PRT is a "settlor" function not subject to ERISA's fiduciary obligations, *see Lee*, 837 F.3d at 538; *Private Pensions* 6.

PRTs are a secure way to transfer benefits because annuities are backed by a significant amount of assets and are managed by insurers that specialize in such products: insurers' core function is the management of large pools of assets to meet their long-term obligations. Indeed, annuity contracts have been widely used to fund pension plan obligations for over a century.[2] Annuitants benefit from numerous structural protections, including strict regulation of insurance products under state insurance law, separation of the assets used to fund annuity payments from the insurer's general liabilities through a "separate account" structure, reinsurance, and backing by State Guaranty Associations in the event of the insurer's insolvency. ERISA Advisory Council, *Consultation Paper on Interpretive Bulletin 95-1*, at 1, 24, 29, 33-35 (July 2023), https://tinyurl.com/mv367u23. Those protections were dramatically enhanced in the early 2000s, when the federal and state regulatory landscapes were completely overhauled following the collapse of Executive Life Insurance Company in the early 1990s. Those improvements included changes to the standardized valuation techniques used by NAIC (the standard-setting

[2] *See generally* James M. Poterba, Nat'l Bureau of Econ. Res., *The History of Annuities in the United States* (1997), https://tinyurl.com/2s4b2npu.

organization governed by the chief insurance regulators of the 50 states), adoption of risk-based capital requirements, creation of a NAIC accreditation program for states, and enactment of individual state investment laws addressing investment risk. Meg Fletcher, *ELIC's Collapse Forces Regulatory Changes*, Business Insurance (May 9, 1999), https://tinyurl.com/bdzdrsh3.

PRTs also provide benefits for plan sponsors. Defined-benefit plan sponsors bear the financial risk of paying benefits irrespective of inflation, interest rates, life expectancies, or the investment performance of plan assets. That uncertainty, and its concomitant effect on pension obligations, can deter sponsors from continuing to offer generous retirement benefits, impact corporate transactions that can improve the financial condition of an employer, and deter investments in aspects of the business that can ultimately benefit employees, shareholders, customers, and the business as a whole. Given the economic turmoil created by the 2008 financial crisis and accompanying recession, the 2020 COVID-19 pandemic and accompanying recession, and geopolitical events, PRTs have become a particularly important tool for employers to manage their pension risk while safeguarding retirees' pension benefits.[3]

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[3] Pension Benefit Guaranty Corporation, *Updated Analysis of Single-Employer Pension Plan Partial Risk Transfers* (June 2024), https://tinyurl.com/47v7cxzs; Aon, *U.S. Pension Risk Transfer: Market Insights* (Mar. 2023), https://tinyurl.com/2udze8ar.

Recently, though, the certainty afforded by PRTs has been seriously undermined by the wave of lawsuits brought by Plaintiffs' counsel challenging this legally permissible practice. These lawsuits have not been filed because the procedural safeguards put in place have proved insufficient: not one plaintiff in any lawsuit has claimed she failed to receive her retirement benefits. Indeed, as the ERISA Advisory Council appointed by the Department of Labor has observed, "over the past 30+ years, no one has lost a penny under a PRT annuity." *Statement of the 2023 Advisory Council on Employee Welfare and Pension Benefit Plans to the U.S. Department of Labor Regarding Interpretive Bulletin 95-1*, at 4 (Aug. 29, 2023), https://tinyurl.com/2urfy3sm. Instead, these lawsuits acknowledge that retirees have received every monthly payment they were promised. Order 13.

Nevertheless, plaintiffs have sued, claiming that the annuity companies chosen by fiduciaries—typically *independent* fiduciaries, retained to offer a fresh perspective on the choice of an appropriate PRT annuity without any risk of bias in favor of the sponsor—were suboptimal and *might*, someday, years or even decades from now, default because they allegedly share *some* attributes of one insurer from the 1990s. These lawsuits ignore the regulatory overhaul that has happened in the intervening years creating substantial increased protections for annuitants. And they disregard jurisdictional restrictions imposed on federal courts by Article III's standing requirements—including the requirement, discussed at length in *Clapper v.*

Amnesty Int'l USA, that standing based on "threatened injury" must involve "*certainly impending*" harm "to constitute injury in fact, and that allegations of *possible* future injury are not sufficient." 568 U.S. 398, 409 (2013) (quotation marks omitted).[4]

But while these lawsuits challenge *PRTs* that have not caused any concrete or certainly impending harm, the *lawsuits themselves* have a real chilling effect on these legally permissible transactions that allow plan sponsors to obtain certainty over their pension obligations. As courts have recognized, "the prospect of discovery" in an ERISA class action "is ominous," which "elevates the possibility that a plaintiff with a largely groundless claim" will "us[e] discovery to impose asymmetric costs on defendants in order to force a settlement advantageous to the plaintiff regardless of the merits of his suit." *PBGC ex rel. St. Vincent Catholic Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 719 (2d Cir. 2013) (quotation marks omitted). The "ominous" nature of ERISA class actions is particularly acute in PRT lawsuits, where plaintiffs are asking for relief that would require plan sponsors to set aside *billions* of dollars for years or even decades, *just in case* the PRT provider

[4] The district court did not discuss *Clapper*'s "threatened injury" analysis; it mentioned *Clapper* only in citing parentheticals (Order 10, 13), and seemed to view the fact that the plaintiffs' theory of harm relied on a chain of future contingencies merely as an issue of prudential ripeness or statutory standing, not as an Article III issue (Order 28, 31).

might someday default. *E.g.*, Order 8 (citing complaint). That is after the plan sponsor has already spent billions *funding* the pension plan.

Article III exists to prevent federal courts from deciding disputes arising from theoretical harm that has not materialized and is not certainly impending. Yet that is precisely what the district court's order in this case permits. And the chilling effect caused by these suits provides ample reason for this Court to grant interlocutory review, which the district court and both parties apparently agree is appropriate. Lockheed Pet. 1, 9.

II. The district court's decision to punt the standing issue until after discovery is the wrong approach for a jurisdictional rule.

The district court did not find that Plaintiffs had "*clearly* allege[d] a concrete injury," as the Supreme Court has repeatedly emphasized (in ERISA cases in particular) is required by Article III. *Cunningham v. Cornell Univ.*, 145 S. Ct. 1020, 1032 (2025) (emphasis added; citation omitted); *accord Thole*, 590 U.S. at 544; *see also Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). To the contrary, the district court observed that Plaintiffs had "only barely" "eked out sufficient injury-in-fact to establish standing." Order 19, 20. The court nonetheless justified its decision to allow the case to proceed because Lockheed could raise Article III standing again at summary judgment after Plaintiffs have an opportunity to develop a factual record. Order 27.

That erroneous reasoning ignores that jurisdictional rules are not mere defenses to liability but rather limitations on the "authority" of federal courts to hear cases. *Spokeo*, 578 U.S. at 338 ("Standing … developed in our case law to ensure that federal courts do not exceed their authority as it has been traditionally understood."). That is why the Supreme Court requires facts establishing standing to be both "plausibly *and clearly*" alleged. *Thole*, 590 U.S. at 544 (emphasis added). And it is why the Court has held that standing may not "rel[y] on a highly attenuated chain of possibilities," *Clapper*, 568 U.S. at 410, or on "speculative" or "attenuated" assumptions, *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 383 (2024).

It is, of course, true that subject-matter jurisdiction "may be challenged at any time," as the district court noted. Order 27 (quotation marks omitted). It is also true that a plaintiff can establish standing at the pleading stage through well-pleaded factual allegations while later stages of litigation require *evidence* to back up those allegations. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). But that does not mean that at the pleading stage, federal-court jurisdiction can "eked out" or "only barely" established through spurious predictions of potential future harm. Order 19, 20. The district court's punt-jurisdiction-until-after-discovery approach is inconsistent with Supreme Court precedents governing standing in the pleading context, and this Court should grant interlocutory review to course correct in this important case.

III. This case also provides an opportunity for this Court to clarify Article III's standing requirements in the context of statutory suits for equitable relief.

The district court's confusion regarding standing premised on "threatened injury" is reason enough to grant interlocutory review. But granting Lockheed's petition would also provide this Court with the opportunity to offer guidance to district courts within the Circuit on an area of continuing confusion: the application of Article III's requirements in the context of statutory claims seeking equitable relief.

This issue is exceedingly important. In ERISA class actions, plaintiffs virtually always seek equitable relief (typically disgorgement) under 29 U.S.C. § 1132(a)(3). Before the Supreme Court's recent standing decisions (cases like *Thole* and *Clapper*, among others), some courts—including this one—had held that a plaintiff need not demonstrate injury in fact to seek equitable relief (including disgorgement) under ERISA, reasoning that such a rule was necessary to effectuate ERISA's purpose by preventing benefit from inuring to a breaching defendant even if the defendant's alleged ERISA violations caused the plan no harm. *See, e.g.*, *Pender v. Bank of Am. Corp.*, 788 F.3d 354, 366 (4th Cir. 2015); *Edmonson v.*

Lincoln Nat. Life Ins. Co., 725 F.3d 406, 417 (3d Cir. 2013); *Merrimon v. Unum Life Ins. Co. of Am.*, 758 F.3d 46, 53 (1st Cir. 2014).

Thole should have put those prior holdings to rest: the plaintiffs in *Thole* themselves sought disgorgement—a point that the dissenting Justices repeatedly emphasized. 590 U.S. at 558, 560, 561, 566 (Sotomayor, J., dissenting). But the Court nonetheless made clear that a "cause of action" for "equitable relief" does not satisfy Article III because "Article III standing requires a concrete injury." *Id.* at 544 (majority opinion). Even if Congress affords "a cause of action (with statutory damages available) to sue over the defendant's legal violation, Article III standing" nevertheless requires an alleged "physical, monetary, or cognizable intangible harm traditionally recognized as providing a basis for a lawsuit in American courts." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 427 (2021). "No concrete harm, no standing." *Id.* at 417.

Even after *Thole*, however, some courts have continued to adhere to these pre-*Thole* holdings—including the district court here and other district courts within this Circuit, which have erroneously read dicta in this Court's post-*Thole* precedents to endorse such a result. *See, e.g.*, Order 32 (citing *Peters v. Aetna Inc.*, 2 F.4th 199 (4th Cir. 2021)); *Davis on behalf of Old Dominion 401(k) Ret. Plan v. Old Dominion Freight Line, Inc.*, 2023 WL 5751524, at *5 (M.D.N.C. Sept. 6, 2023)); *see also*

Berkelhammer v. Automatic Data Processing, Inc., 2022 WL 3593975, at *15 (D.N.J. Aug. 23, 2022).

These decisions demonstrate continued confusion regarding how Article III applies to claims for equitable relief, including disgorgement, and a real need for clarity on the issue, particularly within this Circuit. This Court should take that opportunity by granting review in this case.

CONCLUSION

This Court should grant permission to appeal and reverse the district court's decision.

Date: August 8, 2025

Respectfully submitted,

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Dated: August 8, 2025

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