IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2204 & No. 25-2312

ROBERT F. COCKERILL, ET AL.,
Plaintiffs-Appellees,

v.

CORTEVA, INC., ET AL.,
Defendants-Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION NO. 2:21-cv-03966-MMB

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JURISDICTION

The district court had jurisdiction over this Employee Retirement Income Security Act ("ERISA") action under 28 U.S.C. § 1331 and 29 U.S.C. § 1332(e). On May 27, 2025, the district court ordered Defendants Corteva Inc., DuPont De Nemours Inc. ("New DuPont"), DuPont Specialty Products USA LLC ("Specialty Products"), The Pension and Retirement Plan ("Plan"), the Benefit Plans Administrative Committee ("Administrator"), and E.I. DuPont de Nemours & Co. ("Historical DuPont") to pay attorneys' fees and costs to Plaintiffs (the "Fee Award"). App.8, *as clarified by* App.239. On May 30, 2025, the district court entered Final Judgment for Plaintiffs on Counts II, IV, and VI, and for Defendants on all other Counts. App.7. Defendants moved under Rule 59(e) to alter the Final Judgment, which the district court denied on June 11, 2025. App.782. Defendants timely appealed the Fee Award and Final Judgment on June 25 and July 10, 2025. App.1, 4. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

This appeal arises from an ERISA class action challenging the Administrator's interpretation and administration of the Plan. The district court found for Plaintiffs on their fiduciary-duty claim (Count IV), cutback of accrued Optional Retirement benefits claim (Count VI), and Optional Retirement benefits claim (Count II), and awarded relief to two classes of Plan participants—the Early Retirement Class and the Optional Retirement Class.

The issues presented are:

1. Whether the district court erred in determining that Defendants breached their fiduciary duties (Count IV) to Plaintiffs by failing to provide Plaintiffs with adequate information about benefits for which they were ***ineligible***, when the allegedly inadequate disclosures could not impact a benefits decision or otherwise cause harm. App.120–41, 217–23, 452–59, 484–92.

2. Whether the district court erred in determining that the Administrator abused its discretion in denying severance-type Optional Retirement benefits to Plaintiffs (Counts II and VI) whose employment was not involuntarily terminated. App.114–20, 447–52.

3. Whether the district court abused its discretion in awarding retroactive benefit elections to Plaintiffs who failed to prove they would have elected the benefits but-for Defendants' conduct. App.7, 223–25, 461–67, 470–73, 506–10.

4. Whether the district court abused its discretion in certifying this action for class treatment—despite evidence that certain Rule 23 requirements were not met—and compounded the certification error by expanding the classes on the eve of final judgment. App.223, 227–28, 494–504, 721–23, 753–55.

5. Whether the district court abused its discretion in awarding attorneys' fees to Plaintiffs by misapplying the controlling factors for fee awards and improperly applying a multiplier to the award. App.8, 230, 239, 522, 725, 764.

RELATED CASES AND PROCEEDINGS

A panel of this Court denied Defendants' Petition for Leave to Appeal under Rule 23(f). *See Cockerill v. Corteva, Inc.*, No. 23-8051 (3d Cir. Apr. 12, 2024), Dkt. 13.

STATEMENT OF THE CASE

A. Factual background

Historical DuPont adopted the Plan in 1904. App.11. It provides a defined pension benefit that accrues over time and is payable at normal retirement age. App.16. The Plan provides two early retirement options for eligible participants: (i) the Early Retirement benefit is available to certain Historical DuPont employees who retire after reaching age 50 with at least 15 years of service; and (ii) the Optional Retirement benefit is available to Historical DuPont employees who retire after reaching age 50 with at least 15 years of service and whose employment would otherwise be "involuntarily terminated," subject to certain exclusions for corporate reorganizations (the "Business Reorganization Exceptions"). App.16–19. Both options pay a percentage (50% to 100%) of the normal retirement benefit based on the employee's age and years of service—with the Optional Retirement benefit typically being slightly larger than the Early Retirement benefit. App.16–18.

In September 2017, Historical DuPont merged with Dow Chemical Company to form DowDuPont, with the stated purpose of spinning-off into three separate public companies: Corteva (agriculture), New DuPont (materials science), and New Dow (chemicals). App.12. In November 2018, DowDuPont's CEO announced that, in connection with the Spin-Off, the Historical DuPont entity that sponsored

the Plan—and therefore the Plan itself—would be assumed by Corteva.[1] App.31. New DuPont separated from Corteva effective June 1, 2019, with each company becoming an independent publicly traded entity. As a result, New DuPont could no longer participate in the Plan, and New DuPont's employees were deemed "retired" from the Plan. App.34–35, 1240 (presentation to eligible employees explaining effect of the Spin-Off on benefits). Eligible New DuPont employees—who would thus no longer be working for any employer participating in the Plan—would have the opportunity to elect Early Retirement (but not Optional Retirement) immediately. *Id.* Optional Retirement was unavailable because New DuPont employees were not being "involuntarily terminated" from their jobs; rather, their employer (New DuPont) stopped participating in the Plan. App.26–27.

The Administrator is the named fiduciary for Plan administration. App.15. In anticipation of the Spin-Off, the Administrator re-affirmed a prior interpretation of the Plan's Optional Retirement provision. App.26–27. The Administrator determined that employees transferred without suffering a job loss during corporate spin-offs do not qualify for Optional Retirement benefits because (i) these benefits are premised on involuntary termination of employment, and their employment would

[1] Defendants' decision to place the Plan with Corteva is not at issue. The district court found that "Defendants provided several legitimate, nondiscriminatory business reasons to explain why they placed the Plan with Corteva." App.143. New DuPont's decision to cease participating in the Plan was a small, incidental part of a large, complicated spin-off transaction. Plaintiffs agreed that the Plan's finances were irrelevant to Plaintiffs' claims. App.113.

not be involuntarily terminated in a spin-off; and (ii) spin-offs fall within the Business Reorganization Exceptions. App.26–27, 78, 83. The Administrator explained this Plan interpretation was consistent with how the Plan was construed in prior, similar corporate reorganizations, including a 2015 spin-off involving Chemours. *Id.*

Before the 2019 Spin-Off, the Administrator and human resources personnel discussed how best to communicate information about the Spin-Off's impact. App.41–42. Anticipating potential bases of confusion, they created and distributed presentations, frequently asked question documents ("FAQs"), and other communications to provide helpful information. App.30, 32–34, 41–42, 102–03, 1096, 1100, 1204, 1208, 1238, 1301. The Administrator directed Plan participants to pre-existing Summary Plan Descriptions (SPDs), as well as online portals with information about benefit changes, presentations, benefit websites, user guides, and a telephone helpline staffed by representatives trained to address questions about the Spin-Off. App.30, 32–38, 40–42, 94–97, 102–03, 1082–85, 1095, 1308.

The communications generally focused on participants' benefits eligibility. App.79. The Plan distributed election packets to all employee-participants eligible to elect an unreduced Early Retirement benefit, and offered to send packets to participants eligible to elect a reduced Early Retirement benefit. App.92. Although the Administrator did not typically address benefits for which participants were ***ineligible***, the Administrator distributed a presentation for those who would be under the age of 50 at Spin-Off explaining that New DuPont and its subsidiaries (including

Specialty Products) would no longer be participating in the Plan as of the Spin-Off date. App.34–36, 79–80, 94, 1285. The presentation explained that those under age 50 at Spin-Off, but with at least 15 years of service, would be eligible for a deferred vested (or reduced) pension benefit, but not Early Retirement, because to qualify for Early Retirement an employee had to be at least age 50 when they or their employer stopped participating in the Plan. App.20–21, 36. The presentation also stated that "future service with New DuPont will not be recognized in determining eligibility for pension benefits as of June 1, 2019"—the Spin-Off date. App.36.

Months before the Spin-Off, effective October 1, 2018, DowDuPont instituted a "ring-fencing" policy that prevented employees from transferring between companies. App.102. On June 1, 2019, DowDuPont spun off Corteva, App.28, and changed DowDuPont's name to DuPont de Nemours, Inc. Under the corporate reorganization, Corteva was the parent company of Historical DuPont, the historic (and present) sponsor of the Plan. App.29. Employees of the spun-off entities continued in their same roles; no class member's employment was involuntarily terminated as a result of the Spin-Off. App.13, 28, 37, 90, 103–04.

B. Procedural background

The district court certified two classes: the Early Retirement Class and the Optional Retirement Class. App.215–16. Plaintiffs argued they are entitled to the Early Retirement or Optional Retirement benefits, notwithstanding the Spin-Off. App.415–16. The district court permitted Plaintiffs to present three liability theories

at a trial bifurcated into liability and remedies phases. App.445. Plaintiffs argued that: (1) the Administrator's denials of Early Retirement and Optional Retirement benefits (the "benefit denials") were an abuse of discretion and a "cutback" of the Optional Retirement benefit (Counts I, II, and VI); (2) Defendants breached their fiduciary duties by not clearly telling class members they were ***ineligible*** for the at-issue benefits (Count IV); and (3) the Spin-Off's corporate changes and related employee transfers unlawfully interfered with benefits (Count V).[2] This appeal relates only to Plaintiffs' first two theories; the district court ruled for Defendants on the third theory.

1. Plaintiffs' benefit and anti-cutback claims (Counts I, II, and VI)

Plaintiffs challenged the Administrator's Plan interpretation and benefit denials under ERISA § 502(a)(1)(B) and ERISA § 204(g). App.104–05, 145. The district court found for Plaintiffs on Counts II (Optional Retirement) and VI (anti-cutback), determining the Administrator abused its discretion in denying the Optional Retirement benefit to Optional Retirement Class members. App.115, 146–47. But the district court ruled for Defendants on Count I (Early Retirement) holding that the Administrator properly exercised its discretion to deny the Early Retirement benefit to the Early Retirement Class. App.108.

[2] Count III, an individual claim, was settled and voluntarily dismissed by the parties.

2. Plaintiffs' fiduciary-duty claim (Count IV)

Although the district court ruled that the Administrator properly denied Plaintiffs' request for Early Retirement, Plaintiffs argued in the alternative that Defendants breached their fiduciary duties under ERISA § 404 by not "plainly or understandably" informing Class members that, under the terms of the Plan, they would be ***ineligible*** for Early or Optional Retirement after the Spin-Off. App.413–14. At trial, Plaintiffs identified four facts they supposedly "needed to know" that Defendants purportedly failed to clearly communicate:

> (1) that they were being terminated from employment effective June 1, 2019 for purposes of Plan benefits;
>
> (2) that their new employer was not participating in the plan;
>
> (3) that if they were not yet age 50 on May 31, 2019, they could not get early retirement benefits and would never be able to; and
>
> (4) that despite being terminated, and even if they were over 50 at the time of the spin-off, they could not get Optional Retirement benefits because the Plan administrator decided that a spin-off is an exception to eligibility.

Id. Plaintiffs argued that Defendants' failure to clearly communicate this supposed "need-to-know" information harmed Plaintiffs by depriving them of opportunities to "take steps to protect their retirement benefits," "object," or "make alternative plans." *Id.*

At trial, just two witnesses—Cockerill and Benson—testified about the alleged impact of the purported inadequate communication by explaining they would have sought alternative employment at Corteva to try to remain eligible for the Early

Retirement or Optional Retirement benefit. App.786–87, 831–32. Cockerill—but not Benson—further claimed he would have had the "opportunity to be aware of the changes that were coming" and "have conversations with leadership and challenge their position and possibly drive [them] to a different conclusion." App.787. But no evidence supports Cockerill's fanciful contention that he could influence the merger and spin-off process that was many years in the making. Cockerill did not specify which leaders he would have attempted to persuade or what "different conclusion" he hoped would benefit him, and he admitted there was "no certainty" his efforts would succeed. App.787–88. Finally, Cockerill claimed that the alleged inadequate communications delayed commencement of this litigation. App.788 (testifying at trial that "we could have started this process much sooner"). Plaintiffs put on no evidence of any economic harm, or any other consequence from the purported inadequate disclosures.

At trial, the district court observed that Defendants provided "information related to the impact of the spin-off on Plan benefits, including but not limited to SPDs, a call center, FAQs, human resources personnel, PowerPoint Presentations, and various portals." App.102–03. Critically, the Court found Plaintiffs "had access to many of these communications, but … largely did not review [them]." App.103. Cockerill, for example, admitted that if he had viewed the presentation directed at under-50 participants it would have set off "alarm bells" because it clearly communicated he would be ineligible for Early Retirement post-Spin-Off. App.127.

The district court discussed some of Plaintiffs' purported "harms." First, the district court found that information the Administrator provided about the Spin-Off's impact on benefits was confusing, in part because the Administrator provided too many information resources. App.30, 103. Second, the district court correctly concluded that Plaintiffs could not have actually secured alternative employment with Corteva because the ring-fencing policy prevented intra-company transfers during the eight months before the Spin-Off. App.102. Even so, the district court concluded that Plaintiffs did not need to show "actual harm" to enforce "statutorily-created disclosure or fiduciary responsibilities." App.131.

After eliminating harm and causation as elements of Plaintiffs' claims, the district court found Defendants liable on Count IV because the purportedly inadequate disclosures prevented Plaintiffs from "know[ing] exactly where [they] stand with respect to the plan," App.130–32—even though the Court recognized that the named Plaintiffs largely never read the communications provided to them and that the Administrator was within its discretion to interpret the Plan to exclude the Early Retirement Class from Early Retirement eligibility. App.31, 103, 108.

3. Remedies phase rulings

Defendants moved to dismiss Plaintiffs' fiduciary-duty claim for lack of Article III standing, arguing Plaintiffs failed to prove at trial a concrete injury traceable to the alleged inadequate disclosures. App.484–93. The district court denied the motion, ruling, *inter alia*, that "disappointment" was an "adverse consequence" of the

purportedly inadequate disclosures sufficient to satisfy Article III. App.220–23 & n.4.

Plaintiffs argued that not only were they entitled to the at-issue benefits, but that class members should be permitted to elect the benefits retroactively—as early as June 1, 2019. App.463–66. Defendants objected, arguing that Plaintiffs failed to show how Defendants' conduct caused harm justifying a retroactive benefit election. App.508–10. The district court entered Final Judgment for Plaintiffs on Counts II, IV, and VI, ordering Defendants to permit both Classes to elect the at-issue benefits retroactive to any date of their choosing after June 1, 2019. App.7.

SUMMARY OF THE ARGUMENT

The district court's judgment contains multiple errors stemming from misapplication of binding precedent, an incorrect analysis of the essential elements of ERISA fiduciary-duty claims, and failure to defer to the Administrator's discretion to interpret the Plan and to supply omitted terms.

First, the district court erred by ruling for Plaintiffs on their fiduciary-duty claim (Count IV). Plaintiffs lack Article III standing because the alleged injuries—confusion and disappointment—are not concrete injuries traceable to Defendants' alleged fiduciary breaches. The district court also erred in declaring that detrimental reliance is not an element of fiduciary-duty claims premised on misrepresentations or omissions. The district court then applied an incorrect standard for materiality and

extended liability for misrepresentations or omissions immaterial to any retirement or benefits decision.

Second, the district court's rulings on Plaintiffs' Optional Retirement and cutback claims (Counts II and VI) are wrong as a matter of law. Plaintiffs did not suffer an involuntary termination of employment, as required by the Plan, and the district court failed to defer to the Administrator's interpretation of Plan terms. The Count VI anti-cutback claim turns on the same erroneous interpretation theory as the Count II benefits claim and fails for the same reasons.

Third, the district court erred in awarding retroactive benefit elections to Plaintiffs without requiring them to prove they would have elected the at-issue benefits but for Defendants' conduct.

Fourth, the district court's class-certification orders warrant reversal. The court abused its discretion in certifying the Optional Retirement Class because the class representatives are neither typical nor adequate. The district court also improperly certified Plaintiffs' fiduciary-duty claim (Count IV) despite the inherently individualized determinations of detrimental reliance (or causation and harm), which are not appropriately certified under Rules 23(b)(1) or (2). The district court compounded its error by improperly expanding the class definitions on the eve of judgment, adding individuals who were not similarly situated and whose claims are not supported by the record.

Fifth, the attorneys' fees award must be reversed if the merits award is reversed. Separately, the district court abused its discretion by misapplying the governing factors, awarding the full amount of fees requested without appropriate reductions, and compounding this error by applying an impermissible multiplier.

STANDARD OF REVIEW

In an appeal from a judgment entered after an ERISA bench trial, this Court exercises "plenary review over [the] district court's conclusions of law" and its "choice and interpretation of legal precepts." *Battoni v. IBEW Loc. Union No. 102 Emp. Pension Plan*, 594 F.3d 230, 233 (3d Cir. 2010) (quotations omitted). Findings of fact are reviewed for clear error. *Id.* "A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *U.S. ex rel. Int'l Bhd. of Elec. Workers Loc. Union No. 98 v. Farfield Co.*, 5 F.4th 315, 329 (3d Cir. 2021) (quotations omitted). A factual finding is also clearly erroneous if "it is 'completely devoid of minimum evidentiary support displaying some hue of credibility or bears no rational relationship to the supportive eviden[ce].'" *Berg Chilling Sys., Inc. v. Hull Corp.*, 369 F.3d 745, 754 (3d Cir. 2004) (citation omitted). Nonetheless, "a 'trial judge may [not] insulate his findings from review by denominating them credibility determinations, for factors other than demeanor and inflection go into the decision whether or not to believe a witness.'" *U.S. v.*

Marcavage, 609 F.3d 264, 281 (3d Cir. 2010) (citing *Anderson v. City of Bessemer City,* 470 U.S. 564, 575 (1985)) (alteration in original).

Challenges to an ERISA plan administrator's benefits denial, including interpretations and factual findings, are reviewed under a deferential arbitrary and capricious standard when the plan gives the administrator discretionary authority to determine benefit eligibility and construe plan terms. *See Fleisher v. Standard Ins. Co.*, 679 F.3d 116, 120–21 (3d Cir. 2012).

This Court reviews class-certification decisions and an award of attorneys' fees and costs for abuse of discretion, which occurs when the "decision rests upon a clearly erroneous finding of fact, an errant conclusion of law, or an improper application of law to fact." *In re Community Bank of N. Va.*, 622 F.3d 275, 290 (3d Cir. 2010) (quotations omitted) (class certification); *Nat'l Sec. Sys., Inc. v. Iola*, 700 F.3d 65, 104 (3d Cir. 2012) (fees award). "Whether an incorrect legal standard has been used is an issue of law to be reviewed *de novo*." *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 312 (3d Cir. 2008) (cleaned up).

ARGUMENT

A. The district court erred by entering judgment for Plaintiffs on their Count IV fiduciary-duty claim.

In Count IV, Plaintiffs asserted that Defendants' alleged failure to adequately communicate Plaintiffs' benefit ***ineligibility*** entitles Plaintiffs to the at-issue benefits. Plaintiffs characterize the alleged inadequate disclosure as a breach of ERISA fiduciary duties. For that claim, Plaintiffs must prove "(1) the defendant was acting

in a fiduciary capacity; (2) the defendant made affirmative misrepresentations or failed to adequately inform plan participants and beneficiaries; (3) the misrepresentation or inadequate disclosure was material; and (4) the plaintiff detrimentally relied on the misrepresentation or inadequate disclosure." *In re Unisys Corp. Retiree Med. Ben. ERISA Litig.*, 579 F.3d 220, 228 (3d Cir. 2009) ("*Unisys IV*"). The district court effectively eliminated the third and fourth elements, improperly expanded ERISA's disclosure requirements, and created benefit entitlements beyond the Plan's terms.

"[W]ritten documents and summary plan descriptions" are ERISA's "statutorily established means" to inform participants and beneficiaries of plan terms and benefits. *In re Unisys Corp. Retiree Med. Ben. ERISA Litig.*, 58 F.3d 896, 902 (3d Cir. 1995). Courts should not recognize fiduciary-duty claims that may "create a precedent for any beneficiary to make claims beyond those provided in a plan." *In re Unisys Corp. Retiree Med. Ben. ERISA Litig.*, 57 F.3d 1255, 1265 (3d Cir. 1995) ("*Unisys II*") (citation omitted).

ERISA's fiduciary disclosure duties are not limitless. Fiduciaries are obligated to provide only material information that affects participants' ability to make informed benefits decisions. *See Unisys IV,* 579 F.3d at 228. The district court ignored this limitation and wrongly imposed a duty to preemptively disclose every possible future benefit ineligibility. *See Harte v. Bethlehem Steel Corp.*, 214 F.3d 446, 454 (3d. Cir. 2000) (acknowledging that given "the potential administrative strain on an ERISA administrator," fiduciaries do not "have to regularly inform

beneficiaries every time a plan term affects them"); *Glaziers & Glassworkers Union Loc. No. 252 Annuity Fund v. Newbridge Sec., Inc.*, 93 F.3d 1171, 1182 (3d Cir. 1996) (explaining that a fiduciary does not have "an obligation to disclose all details of its personnel decisions that may somehow impact upon the course of dealings with a beneficiary"). ERISA requires disclosure only when the fiduciary knows that silence would be harmful and the information is material to a benefits decision. *See Bixler v. Cent. Pa. Teamsters Health & Welfare Fund*, 12 F.3d 1292, 1300 (3d Cir. 1993); *Horvath v. Keystone Health Plan E., Inc.*, 333 F.3d 450, 463 (3d Cir. 2003).

The district court's rulings undermine ERISA's purpose: protecting contractually defined benefits, not guaranteeing perfect foresight or exhaustive communication. *See US Airways, Inc. v. McCutchen*, 569 U.S. 88, 100 (2013). Plaintiffs assert they incorrectly assumed they would be eligible for the at-issue benefits after the Spin-Off. Whatever the basis for that assumption, it did not cause harm. It did not cause Plaintiffs to lose any benefits,[3] did not lead to a harmful benefits or retirement decision, and did not cost them their jobs or other valuable opportunities. Defendants neither encouraged Plaintiffs' incorrect assumptions nor were aware of Plaintiffs' assumptions, expectations, or purported confusion.

[3] Count IV is brought in the alternative to Counts I and II, wherein Plaintiffs claim the Administrator improperly denied them Early and Optional Retirement. App.439 ("[Plaintiffs'] argument is that **even if** Defendants properly interpreted the Plan in denying Optional and Early Retirement (losing on Counts I and II), Defendants breached their fiduciary obligations by not informing and/or actively misleading Plaintiffs in how the spin-off would affect them."); *see, e.g.*, *Unisys II*, 57 F.3d at 1265 (analyzing a similar alternatively pled fiduciary-duty claim).

The Court should reverse the judgment on Count IV because: (1) Plaintiffs cannot manufacture standing based on disappointment and speculation; (2) Plaintiffs did not prove detrimental reliance on the purportedly inadequate disclosures; (3) the disclosures are immaterial to a benefits or retirement decision; and (4) the fiduciary Defendant (the Administrator) did not know about—or make affirmative misrepresentations causing—Plaintiffs' assumptions about their benefit eligibility.

1. Plaintiffs lack Article III standing to assert a fiduciary-duty claim.

Constitutional standing requires proof that (1) the plaintiff suffered an injury in fact; (2) the injury is fairly traceable to the challenged conduct; and (3) the injury would likely be redressed by the requested relief. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338–39 (2016). "There is no ERISA exception to Article III." *Thole v. U.S. Bank N.A.*, 590 U.S. 538, 547 (2020). Plaintiffs must establish standing for ***each*** claim and form of relief. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021). Plaintiffs must show standing throughout the litigation, "with the manner and degree of evidence required at the successive stages of the litigation." *Id.* Where, as here, a case proceeds to trial, the plaintiff's standing must be supported by the evidence adduced at trial. *Id.* This Court reviews *de novo* the district court's conclusions relating to standing. *See Perelman v. Perelman*, 793 F.3d 368, 373 (3d Cir. 2015).

An injury-in-fact is "an invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical." *George v. Rushmore Serv. Ctr., LLC*, 114 F.4th 226, 234 (3d Cir. 2024).

A "bare procedural violation" of a statute like ERISA—"divorced from any concrete harm"—is not an injury-in-fact. *Spokeo*, 578 U.S. at 341; *Thole*, 590 U.S. at 542 (holding that defined-benefit plan participants cannot have Article III standing for ERISA fiduciary-duty claims merely by participating in the plan or having a general statutory right to sue). Even for statutory remedies and injunctive relief, Plaintiffs must still show an actual or imminent concrete harm stemming from a statutory violation. *TransUnion*, 594 U.S. at 426–27; *Boley v. Univ. Health Servs., Inc.*, 36 F.4th 124, 132–33 (3d Cir. 2022); *Huber v. Simon's Agency, Inc.*, 84 F.4th 132, 153 (3d Cir. 2023) ("Congress's creation of a statutory remedy does not make harm 'concrete'; what matters is whether the particular plaintiff has suffered 'any physical, monetary, or cognizable intangible harm traditionally recognized' in common law." (quoting *TransUnion*, 594 U.S. at 426–27)).

a. The allegedly deficient communications did not cause Plaintiffs' benefits denials.

Plaintiffs' benefit denials cannot support standing because they are not traceable to any alleged fiduciary breach based on Plan communications. The district court found that Defendants had a "fixed policy" of denying the at-issue benefits regardless of the adequacy of communications about those policies' (or the Spin-Off's) effects on benefit eligibility. App.120 n.26. Thus, the cause-in-fact of the benefit denials are the Plan's terms, the Administrator's interpretations of those terms,

and class members' eligibility criteria at Spin-Off.[4] Even if Defendants had perfectly communicated all the alleged "need to know" information, App.413–14, Plaintiffs' benefits claims would still have been denied. The benefits denials are therefore not "harms" traceable to any alleged inadequate communication and cannot support standing for the Count IV breach of fiduciary duty claim. *See Leuthner v. Blue Cross & Blue Shield of Ne. Pa.*, 454 F.3d 120, 128 (3d Cir. 2006) (ERISA plaintiffs lacked standing for fiduciary-duty claim premised on misrepresentations because the plan amendment injured plaintiffs, not any alleged misrepresentations).

b. "Confusion" and "disappointment" are not concrete injuries.

Plaintiffs also lack standing because no concrete harm flows from Plaintiffs' purported confusion or disappointment. "To be 'concrete,' an injury must be 'real, or distinct and palpable, as opposed to merely abstract.'" *Knudsen v. MetLife Grp., Inc.*, 117 F.4th 570, 577 (3d Cir. 2024) (citation omitted). A breach of fiduciary duty cannot support standing without some concrete harm. *Thole*, 590 U.S. at 542. For intangible harms, such as the confusion or disappointment Plaintiffs allege, "courts should assess whether the alleged injury to the plaintiff has a 'close relationship' to a harm 'traditionally' recognized as providing a basis for a lawsuit in American courts." *TransUnion*, 594 U.S. at 424 (citation omitted). "[I]ntense disappointment"

[4] Plaintiffs' standing to challenge the at-issue benefit denials (Counts I and II) cannot be a basis for standing for their alternatively pled breach of fiduciary duty claim (Count IV). Standing is claim-specific. *TransUnion*, 594 U.S. at 431.

is not a concrete harm. *Awala v. People Who Want To Restrict Our First Amend. Rts.*, 164 F. App'x 215, 217 (3d Cir. 2005).

This Court recently examined standing for inaccurate disclosure claims alleging non-monetary injuries under the Fair Debt Collection Practices Act ("FDCPA"). *See, e.g.*, *George*, 114 F.4th at 236. In *George*, the defendant sent plaintiff a letter that allegedly misidentified her creditor, which the plaintiff alleged was "confusing," "misleading," and "unclear." *Id.* at 231–32, 235. The complaint was silent as to "any consequences for George as a result" of the misleading communication. *Id.* at 231–32. The Court held that the plaintiff lacked standing under *TransUnion*, analogizing plaintiff's alleged harm from inaccurate disclosures to the harm protected by the tort of fraudulent misrepresentation. *Id.* at 234, 237. The Court explained that fraudulent misrepresentation requires more than mere receipt of the statement or even confusion caused by the statement. *Id.* at 236–37 (citing *Huber*, 84 F.4th at 148–49). Instead, the plaintiff must have suffered some "physical, monetary, or cognizable intangible harm" from reliance on the statement. *Huber*, 84 F.4th at 148.

Here, similar to the plaintiffs in *George* and *Huber*, Plaintiffs argued that certain benefit communications were misleading or unclear, causing confusion about benefit ***ineligibility***. Thus, to satisfy Article III, the alleged harm must be analogous to the harm from fraudulent misrepresentations. *Huber*, 84 F.4th at 148. Confusion alone is not enough; Plaintiffs must show concrete harm or some action or inaction

they took in reliance on the on the misleading or confusing communication. *George*, 114 F.4th at 236–37; *Huber*, 84 F.4th at 141, 149.

Plaintiffs cannot establish a concrete injury because there is no cognizable harm flowing from any confusion caused by the allegedly inadequate communications. *See George*, 114 F.4th at 237; *M.S. v. Premera Blue Cross*, 118 F.4th 1248, 1263 (10th Cir. 2024) (holding that ERISA plaintiffs lacked standing because they did not allege prejudice from the lack of notice of plan procedures). Similarly, the district court's observation that Plaintiffs "experienced disappointment," App.220, 223, cannot satisfy Article III. *See Awala*, 164 F. App'x at 217 (even "intense disappointment" cannot establish standing). Because Plaintiffs did not prove any specific adverse effects flowing from the purportedly unclear information, they lack standing.

c. Plaintiffs' speculative harms cannot satisfy Article III.

Plaintiffs' alleged injuries must also be "'actual or imminent' rather than merely 'conjectural or hypothetical.'" *Cottrell v. Alcon Lab'ys*, 874 F.3d 154, 167–68 (3d Cir. 2017) (citation omitted). This requirement distinguishes between plaintiffs who have been or will be harmed by the conduct and plaintiffs "who claim only that they 'can imagine circumstances in which they could be affected." *Id.* at 168; *see also Knudsen*, 117 F.4th at 580. In *Knudsen*, the plaintiffs asserted ERISA fiduciary-duty claims premised on allegedly lost benefits. 117 F.4th at 574–75. The plaintiffs described benefits they *might* have realized had the defendant not violated

ERISA. *Id.* This Court held that plaintiffs' harms could not establish standing because they were hypothetical. *Id.* at 582. Even if the defendant had not committed the ERISA violations, "it *may not* have taken" any of the actions that plaintiffs asserted might have benefited them. *Id.*

Here, as in *Knudsen*, there is no proof of actual harm stemming from the alleged fiduciary-duty breach. Cockerill's assertion that but for the alleged breach he would have had the opportunity to pressure leadership to "possibly drive [them] to a different conclusion" is pure conjecture. App.787–88. This theory of harm requires a chain of contingencies: ***if*** Cockerill pressured company leadership, the leadership ***may*** have changed Plan interpretations, and those changes ***might*** have benefited Cockerill. But, as in *Knudsen*, it is also possible that none of these events would occur. Indeed, Cockerill presented no evidence he had any influence over decision-making relating to the Spin-Off's multi-billion dollar corporate reorganization or benefits decisions. Cockerill himself admitted there was "no certainty" his hypothetical leadership-pressure campaign would have succeeded. *Id.* A factually unsupported theory of harm relying on "'ifs' and 'coulds' and 'woulds'" is too speculative to satisfy Article III's actual harm requirement. *Morales v. Commonwealth Fin. Sys., Inc.*, No. 22-3388, 2023 WL 8111458, at *3 (3d Cir. Nov. 22, 2023). "Mere confusion" and "speculative risk" are insufficient to confer standing. *Id.*; *see also Krauter v. Siemens Corp.*, 725 F. App'x 102, 107 (3d Cir. 2018) ("the risk of future negative effects on benefits is too speculative to confer standing.").

The district court erred in concluding Cockerill's purported "harm" satisfied Article III without requiring him to prove it was anything but rank speculation. *See* App.220, 222 (describing the deprivation of being able to pressure Defendants as a harm, without citing any evidence or discussing why this harm was non-speculative).

Cockerill's complaint that the alleged breach delayed this litigation is not cognizable harm either. There is no harm because Plaintiffs were "able to file [the] lawsuit within the prescribed limitations period." *Long v. Se. Pa. Transp. Auth.*, 903 F.3d 312, 325 (3d Cir. 2018). Finally, the district court's determination that Plaintiffs were purportedly "deprived of the opportunity" to challenge the Administrator's interpretation is similarly unavailing. App.220, 222. As demonstrated by this lawsuit, Plaintiffs challenged the determination.

2. Count IV fails because Plaintiffs failed to establish detrimental reliance.

The district court incorrectly held that detrimental reliance is not required for the Count IV fiduciary-duty claim. The court effectively created a causation-free, harm-free cause of action, impermissibly expanding fiduciary disclosure obligations and liability. This was error because: (a) detrimental reliance is mandated by this Court's precedent; (b) Plaintiffs' requested remedies require proof of detrimental reliance; and (c) Plaintiffs failed to prove detrimental reliance (or even harm and causation generally).

a. The district court erred in eliminating detrimental reliance as an element of Plaintiffs' claim.

The district court incorrectly declared that detrimental reliance is no longer an element of an ERISA fiduciary-duty claim premised on misrepresentations or omissions. *See* App.124. The district court's decision conflicts with this Court's precedent, is not supported by the district court's cited legal authorities, ignores *stare decisis*, and impermissibly expands fiduciary liability to conduct that does not result in foreseeable harm to beneficiaries.

This Court requires that plaintiffs prove detrimental reliance to prevail on a misrepresentation-based fiduciary-duty claim under ERISA § 404(a). *See Shook v. Avaya Inc.*, 625 F.3d 69, 73 (3d Cir. 2010). The Court recognized that "for breach of fiduciary duty violations, Congress has left it to the courts to 'develop a federal common law of rights and obligations under ERISA-regulated plans.'" *Jordan v. Fed. Exp. Corp.*, 116 F.3d 1005, 1013 (3d Cir. 1997). The Court's detrimental-reliance jurisprudence has evolved:

- First, this Court held that a fiduciary is liable only when its conduct **causes harm** to a beneficiary. *Unisys II*, 57 F.3d at 1267.
- Second, this Court held that fiduciaries are liable only for harm that is **reasonably foreseeable**. *In re Unisys Corp. Retiree Med. Benefit ERISA Litig.*, 242 F.3d 497, 508–10 (3d Cir. 2001) ("*Unisys III*").
- Finally, this Court combined these principles into **detrimental reliance,** which "encompasses both an injury and reasonableness." *Shook*, 625 F.3d at 73.

To avoid this jurisprudence, the district court reasoned that *CIGNA Corp. v. Amara*, 563 U.S. 421 (2011) eliminated detrimental reliance as a required element for all § 404(a) claims. *See* App.124 (citing App.187–89). The district court followed the Second Circuit's reading of *CIGNA* that if a substantive ERISA provision lacks a "standard for determining harm," then the standard must be borrowed from the relevant remedial provision—here, § 502(a)(3), which authorizes equitable remedies for ERISA violations. *See Osberg v. Foot Locker, Inc.*, 862 F.3d 198, 212 (2d Cir. 2017). The *Osberg* court held that because § 404(a) does not articulate a standard of harm, detrimental reliance is required only if the equitable remedy requires it. *Id.* at 212–13. Because the *Osberg* court found detrimental reliance is required only for equitable estoppel and not for remedies like plan reformation, the court reasoned that detrimental reliance was not required for plaintiffs pursuing plan reformation to remedy § 404(a) fiduciary breaches. *Id.*

The district court's application of *CIGNA* is flawed. First, *CIGNA* addressed the standard of harm only with respect to ***statutory*** disclosure obligations under ERISA §§ 102(a) and 104(b); it did not address the standard of harm applicable to § 404(a) claims. *See CIGNA*, 563 U.S. at 433. Because there are no allegations that Defendants violated any ERISA statutory disclosure requirement, the district court erred by disregarding binding precedent absent "clear precedent to the contrary."[5] *In*

[5] After *CIGNA*, at least three panels of this Court have required detrimental reliance in the context of misrepresentation-based fiduciary-duty claims, demonstrating the

re Horizon Healthcare Servs. Inc. Data Breach Litig., 846 F.3d 625, 638 (3d Cir. 2017). Also, the portion of *CIGNA* the district court cited is *dicta*, further reducing its precedential value.[6]

Second, it is wrong to apply *CIGNA*'s reasoning about ***statutory*** disclosure and reporting obligations to ***common-law*** fiduciary-disclosure duties, because the two duties are materially different. *See Jordan*, 116 F.3d at 1013. Because of differences between those duties, the Court "evaluate[s] fiduciary duty to inform claims differently from violations of ERISA's [statutory] reporting and disclosure requirements." *Id.* at 1014. While ERISA's disclosure and reporting requirements may lack a standard of harm, fiduciary-duty claims premised on misrepresentations require detrimental reliance. *Shook*, 625 F.3d at 73. The Court crafted this requirement as part of federal common law as Congress intended. *CIGNA*'s reasoning is thus inapposite.

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continuing validity of this requirement. *See Miller v. Campbell Soup Co. Ret. & Pension Plan Admin. Comm.*, No. 24-1812, 2025 WL 416090, at *2 (3d Cir. Feb. 6, 2025); *Staropoli v. Metro. Life Ins.*, No. 21-2500, 2023 WL 1793884, at *3 (3d Cir. Feb. 7, 2023); *Roarty v. Tyco Int'l Ltd. Grp. Bus. Travel Acc. Ins. Plan*, 546 F. App'x 85, 87 (3d Cir. 2013). These examples show this Court's strict tradition of following a prior panel's precedential opinion absent *en banc* review or other rare considerations. *See Joyce v. Maersk Line Ltd*, 876 F.3d 502, 508 (3d Cir. 2017).

[6] *Aldridge v. Regions Bank*, 144 F.4th 828, 847–49 (6th Cir. 2025) (declining to deviate from the Sixth Circuit's prior precedent on the basis of *CIGNA v. Amara* dicta from which the Supreme Court has since distanced itself (citing *Montanile v. Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan*, 577 U.S. 136, 148 n.3 (2016))); *Rose v. PSA Airlines, Inc.*, 80 F.4th 488, 503 (4th Cir. 2023); *Laurent v. PricewaterhouseCoopers LLP*, 945 F.3d 739, 748 (2d Cir. 2019).

Even if *CIGNA*'s equitable-relief discussion could apply to § 404(a) claims, this Court has noted that *CIGNA* "expressly declined to address 'other prerequisites' for equitable relief." *Engers v. AT&T, Inc.*, 466 F. App'x 75, 81 n.9 (3d Cir. 2011). *CIGNA* thus leaves undisturbed this Court's prerequisite that a plaintiff prove detrimental reliance as an element of misrepresentation-based fiduciary-duty claims regardless of the remedy sought. *See id.*; *Unisys III*, 242 F.3d at 510 ("reasonable foreseeability [of injury]" is a "prerequisite to legal responsibility on [] breach of fiduciary duty claims"); *Shook*, 625 F.3d at 73. This Court should therefore reject the district court's novel causation-free, harm-free standard for misrepresentation-based fiduciary-duty claims.

b. Plaintiffs must prove detrimental reliance because the ordered remedy is equivalent to estoppel.

The requirement to prove detrimental reliance also applies because Plaintiffs' desired remedy is equivalent to estoppel. The judgment requires Defendants to pay benefits not provided by the Plan's terms. App.7. Plaintiffs insisted these remedies were warranted because Plaintiffs were "misled into believing they would retain [their benefit eligibility] after the spin-off." App.469.

The district court's injunctive remedies "operate[] to place the person entitled to [the] benefit[s] in the same position he would have been in had the representations been true." *CIGNA*, 563 U.S. at 441. Courts equate such remedies to equitable estoppel and require the same elements of proof. *See id.*; *Unisys IV*, 579 F.3d at 237 (approving, under an equitable-estoppel theory, a remedy that granted plaintiffs

benefits beyond the terms of the plan and enjoined the defendant from denying the promised benefits). Because the injunctive remedy here is equivalent to estoppel, Plaintiffs had to prove detrimental reliance. Even *CIGNA* acknowledged that "when a court exercises its authority under § 502(a)(3) to impose a remedy equivalent to estoppel, a showing of detrimental reliance must be made." 563 U.S. at 443.

c. Plaintiffs did not prove detrimental reliance.

Plaintiffs' alleged disappointment about their ineligibility for the at-issue benefits is insufficient to establish detrimental reliance.

Detrimental reliance requires that Plaintiffs "must have taken some action as a result of the misrepresentation; the mere expectation of a continued benefit is not enough." *Shook*, 625 F.3d at 73. Detrimental reliance may include "decisions to decline other employment opportunities, to forego the opportunity to purchase supplemental health insurance, or other important financial decisions pertaining to retirement." *Id.* at 74. In *Haberern v. Kaupp Vascular Surgeons Ltd. Defined Benefit Pension Plan*, this Court reviewed an ERISA fiduciary-duty claim premised on a misrepresentation. 24 F.3d 1491, 1501–02 (3d Cir. 1994). The plaintiff alleged the defendants breached their fiduciary duties by not telling her that some of her compensation would be characterized as a bonus, and that this characterization would reduce her pension benefit. *Id.* at 1495, 1501–02. This Court held there was no evidence that the plaintiff could have or would have done anything differently if she had been told about the compensation characterization. *Id.* at 1502. Although the

characterization reduced the plaintiff's benefit, she did not show that she suffered damages "from the misrepresentation as distinguished from the design of the plan." *Id.*

Similarly, the district court here never identified damages Plaintiffs suffered because of the allegedly inadequate disclosures as distinguished from the design of the Plan. No Plaintiff testified they declined other employment opportunities or made damaging financial decisions based on their mistaken belief about benefit eligibility. Nor is there any evidence for Cockerill's implausible assertion that he might have tried to convince corporate leadership to make changes to relevant Plan interpretations or corporate decisions relating to a multifaceted, multi-billion dollar merger-and-spin transaction with a complex capital allocation structuring.

Because the district court erred in concluding Defendants were liable for breaching fiduciary duties based on misrepresentations or inadequate disclosures without Plaintiffs proving detrimental reliance, this Court should reverse the Judgment as to Count IV. *See, e.g.*, *Haberern*, 24 F.3d at 1501–02, 1506; *Hooven v. Exxon Mobil Corp.*, 465 F.3d 566, 571 (3d Cir. 2006) (noting that the district court found no detrimental reliance by plaintiffs who did nothing, like turning down a specific job offer, based on their mistaken understanding of benefits following a merger); *Burstein v. Ret. Acct. Plan For Emps. of Allegheny Health Educ. & Rsch. Found.*, 334 F.3d 365, 386 (3d Cir. 2003) (affirming the detrimental reliance requirement and findings that the plaintiff "alleged only the mere 'expectation that benefits

would materialize,' without alleging 'reliance on that expectation'"); *Nydes v. Equitable Res. Inc.*, 33 F. App'x 598, 601 (3d Cir. 2002) (agreeing with the district court that there was no possible reliance where "the decision if and when to leave [the employer] was simply never plaintiffs' to make"); *Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d 945, 962 (9th Cir. 2014) (holding that equitable remedies were unavailable for the plaintiff's breach of fiduciary duty claim, because the plaintiff "was not eligible to participate in the Plan, and the misinformation received ... did not prevent him from obtaining any benefit under the Plan to which he otherwise would have been entitled").

3. The district court erred in holding that the alleged misrepresentations and omissions were material.

Plaintiffs' fiduciary-duty claim also requires they prove the materiality of the alleged misrepresentations or omissions. *See Unisys IV*, 579 F.3d at 228. Materiality is a mixed question of law and fact. *See Fischer v. Philadelphia Elec. Co.*, 994 F.2d 130, 135 (3d Cir. 1993). For mixed questions, this Court applies the "clearly erroneous standard except that the District Court's choice and interpretation of legal precepts remain subject to plenary review." *Travelers Cas. & Sur. Co. v. Ins. Co. of N. Am.*, 609 F.3d 143, 156 (3d Cir. 2010).

A "misleading statement or omission by a fiduciary" is material only if "there is a substantial likelihood that it would mislead a reasonable employee in making an adequately informed retirement decision" or "a harmful decision regarding benefits[.]" *Unisys IV*, 579 F.3d at 228 (citation omitted); *see also Daniels v. Thomas &*

Betts Corp., 263 F.3d 66, 73 (3d Cir. 2001). Misrepresented or omitted information is material only if it would have made a beneficial difference to an employee's retirement or benefits decision. *See Unisys IV*, 579 F.3d at 232 (misrepresentations about duration of retiree medical benefits were material to deciding when and if to retire); *Horvath*, 333 F.3d at 462 (information about healthcare coverage immaterial to the plaintiff; there was no decision to make because "her employer offers no other options for healthcare coverage"); *Nydes*, 33 F. App'x at 601 (failing to disclose beneficial pension plan changes was immaterial because plaintiff "would not have been retained as an employee of [the defendant] … under any circumstances").

Here, the at-issue information was immaterial because none of the Plaintiffs could theoretically have made a "harmful decision;" there was simply "no decision" to make. Early Retirement class members were not eligible to elect Early Retirement because they were not age 50 at the time of the Spin-Off. Even a perfect disclosure would not have changed their age.

Optional Retirement class members were likewise ineligible for the Optional Retirement benefit because they had not experienced (and would not experience) an involuntary termination of employment. App.13, 17, 90. And the Administrator had determined that the Optional Retirement benefit was unavailable in connection with spin-offs and other reorganizations. Plaintiffs' ineligibility was the product of the Plan's terms, the Administrator's Plan interpretations, and their employers' decisions to cease participation in the Plan in connection with a corporate separation.

None of this was within Plaintiffs' control and no Plaintiff had any ability to change their eligibility status. Because more or clearer information about their benefit ***ineligibility*** would not have enabled Class members to elect a benefit for which they were ***ineligible***, the alleged misrepresentations or omissions were immaterial.

The district court erred by applying its own, incorrect definition of materiality. According to the district court, information is material if it helps an "individual participant know[] exactly where he stands with respect to the plan." App.130–31. The district court borrowed this language from *Firestone Tire & Rubber Co. v. Bruch*, in which the Supreme Court explained Congress' purpose in enacting ERISA ***statutory*** disclosure provisions. *See* 489 U.S. 101, 118 (1989). But the purpose of ERISA statutory disclosure provisions (which are not at issue here) has nothing to do with this Court's materiality jurisprudence for fiduciary-duty claims. *See Jordan*, 116 F.3d at 1014 ("[W]e evaluate fiduciary duty to inform claims differently from violations of ERISA's reporting and disclosure requirements."). Moreover, this Court has never adopted the expansive materiality definition the district court invented. The district court's materiality standard contradicts this Court's precedent and effectively neuters materiality as a limiting principle for ERISA misrepresentation cases. *Cf. Kousisis v. U.S.*, 145 S. Ct. 1382, 1398 (2025) ("The 'demanding' materiality requirement substantially narrows the universe of actionable misrepresentations.").[7]

[7] Taken to its ultimate conclusion, the district court's materiality standard would open plans to an unreasonable number of claims premised on purported failures to

4. Plaintiffs failed to prove that Defendants knew class members needed more information about their benefit ineligibility.

A fiduciary is liable for beneficiaries' benefits confusion only if the fiduciary (1) affirmatively misled the beneficiaries; or (2) knew the beneficiaries needed more information to avoid a harmful benefits decision and failed to speak. *UAW v. Skinner Engine Co.*, 188 F.3d 130, 149–50 (3d Cir. 1999). Neither condition is present here. Even if the district court found otherwise, those findings are unsupported by the evidence.

In *Skinner*, the plaintiffs alleged the defendant "promised habitually and consistently" that certain postretirement insurance benefits would be provided for life. *Id.* at 150. The plaintiffs argued the defendant knew or should have known that the plaintiffs were led to believe the at-issue benefits were for life and would never change. *Id.* They argued the defendant breached its fiduciary duties by failing to correct their mistaken belief. *Id.*

This Court explained that a fiduciary only has a duty to "speak when it knows that silence might be harmful." *Id.* at 149. It found that even if there were an assumption about the benefits' duration, the defendant did not create it. *Id.* at 150. Nor was there any evidence that the defendant had actual knowledge of the plaintiffs' assumption. *Id.* There was, therefore, no basis to make the defendant liable for the alleged confusion. *Id.* at 151.

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notify participants about eligibility issues—issues that the participants would be unable to change even if they knew about them.

Here, as in *Skinner*, Defendants did not make any promises to class members regarding their eligibility for the at-issue benefits or that the Spin-Off would not affect their benefit eligibility. Instead, Defendants created presentations to inform beneficiaries how the Spin-Off would impact them, which Cockerill acknowledged were adequate insofar as it related to him. App.127. At most, the district court takes issue with accurate statements which, with the benefit of hindsight, the district court deemed ambiguous or insufficient. App.128–29, 138 (criticizing the accurate phrase "very few changes to your benefits" or accurate characterization of the Spin-Off as a corporate restructuring with no substantial effects on employment); App.132 (criticizing the ambiguity of an accurate statement); App.133 n.35 (criticizing several more accurate statements).

Instead, the district court concluded that Defendants breached their fiduciary duties via omission: failing to adequately explain the effect of the Spin-Off on benefit ineligibility. *See* App.135–36, 139–40. The district court erred because there is no evidence that any fiduciary Defendant actually knew, before the Spin-Off, that class members needed additional information about their benefit ineligibility. *See Daniels*, 263 F.3d at 76 (explaining that "the employer's knowledge of an employee's knowledge and understanding is important to the liability issue ... in which an employer has not affirmatively misled the employee but has failed to provide the employee information which the employer knows the employee needs in order to protect himself from harm"); *Unisys IV*, 579 F.3d at 229 ("establishing a fiduciary's

liability as a result of inadequately disclosed information may involve an inquiry into 'the employer's knowledge of an employee's knowledge and understanding' in order to determine if the employer was aware of the confusion generated by its silence." (quoting *Daniels*, 263 F.3d at 76)).

The district court's finding that Defendants actually knew class members were confused and needed more information about their benefit ineligibility, App.41–43, 127, 132–33, is clearly erroneous. The evidence the district court relied on falls into three categories: (1) pre-Spin-Off internal emails identifying possible bases of confusion arising from the Spin-Off; (2) a call center training script; and (3) post-Spin-Off emails discussing beneficiaries' post-Spin-Off confusion. App.41–43, 127 & n.31. None of this evidence supports the district court's finding of actual knowledge. It instead shows diligence and transparency.

The pre-Spin-Off emails merely reveal that the Administrator had processes to answer questions, direct persons to appropriate resources, or identify and dispel possible confusion by improving beneficiary communications. *See* App.1096 (discussing creating FAQs to address Spin-Off related questions, which FAQs were then created, App.32–33); App.1100 (discussing possible confusion about benefits and suggestions to improve communications); App.1204 (discussing improvements to draft communications before sending); App.1238 (answering a hypothetical posed by a human resources employee); App.1208 & App.1301 (discussing appropriate resources to address employee questions). The emails occurred as much as eight

months before the Spin-Off and before the Administrator distributed communications and pension presentations to mitigate potential confusion. Similarly, the internal call-center script is one tool the Administrator used to train call-center staff to address possible questions from participants, showing the Administrator was preparing to address Spin-Off-related inquiries. *See* App.1309 ("The objective of this training is to educate DuPont Connection representatives on what is happening as it relates to the pension plan as Dow DuPont separates into 3 companies[.]"). Finally, the post-Spin-Off confusion expressed by retirees or other participants is irrelevant to showing Defendants' pre-Spin-Off knowledge. *See Iola*, 700 F.3d at 99–100 (holding that the district court clearly erred in finding actual knowledge existed without considering when the defendant acquired that knowledge). None of this evidence shows actual knowledge of confusion.

Instead, the district court inferred that, because the Administrator was aware of potential confusion eight months pre-Spin-Off (and took measures to prevent that confusion), the Administrator knew such confusion existed at the time of the Spin-Off and remained silent. App.137. The evidence does not support that inferential leap. Indeed, unrebutted testimony contradicts it. One of the Administrative Committee members assigned to handle Plan communications testified that she felt the communications clearly stated what beneficiaries needed to know and that the Administrators were not getting questions about the at-issue benefit ineligibility. App.880, 884–85. Another administrator testified that no participant ever told her

that they were having trouble understanding the effect of the Spin-Off. App.862. The district court's findings are thus "completely devoid of minimum evidentiary support … bear[ing] no rational relationship to the [evidence]." *Berg Chilling*, 369 F.3d at 754. Moreover, the district court's erroneous finding is based principally (if not exclusively) on documentary evidence. Because no credibility determinations were involved in relying on this evidence, this Court's review of the finding is not "particularly deferential." *Travelers*, 609 F.3d at 156–57.

Imposing liability based on such flimsy evidence penalizes an ERISA fiduciary who made a good-faith effort to steer beneficiaries through a complicated corporate reorganization, providing them with "information related to the impact of the spin-off on Plan benefits, including but not limited to SPDs, a call center, FAQs, human resources personnel, PowerPoint Presentations, and various portals." App.102–03. Defendants should not be liable without evidence that they were actually aware that participants were confused and needed more information to dispel the confusion. *See Skinner*, 188 F.3d at 150 (holding that ERISA defendant was not liable for failing to correct employee's mistaken assumptions about benefits absent affirmative misrepresentations or evidence the defendant knew about the employee's mistaken belief); *Staropoli v. Metro. Life Ins.*, No. 21-2500, 2023 WL 1793884, at *3 (3d Cir. Feb. 7, 2023) (affirming summary judgment for defendant on plaintiff's claim that the defendants "knew she was mistaken about [the plaintiff's

coverage] and therefore had a [fiduciary] duty to correct her misrepresentation" because the defendant "lacked actual knowledge of [the plaintiff's] ineligibility").

B. The district court erred by entering judgment for Plaintiffs on their Optional Retirement benefits claim and anti-cutback claim.

The same legal theory underpins Counts II (Optional Retirement benefits) and VI (Optional Retirement cutback): Plaintiffs assert that the Administrator improperly determined that the Spin-Off did not trigger Optional Retirement. Optional Retirement is a severance-type benefit available to Plan participants who meet the age and service-time requirements and whose employment would otherwise be "involuntarily terminated." App.1117 (Plan § D(1)(a)). But if the cause of the involuntary termination falls under the Plan's "Business Reorganization Exceptions," it does not trigger Optional Retirement. App.1117–18 (Plan §§ D(1)(c)–(d)). The Administrator determined that the Spin-Off would not cause involuntary terminations of employment and, in any event, that it falls under the "Business Reorganization Exceptions," and therefore did not trigger Optional Retirement. App.26–27.

Thus, to enter judgment for the Plaintiffs, the district court needed to find that the Administrator abused its discretion in determining that: (1) Optional Retirement Class Members were not involuntarily terminated from employment; and (2) the Spin-Off was excluded under the "Business Reorganization Exceptions." Because the district court failed to properly analyze these issues, the Court should reverse the judgment on Counts II and VI.

1. The district court disregarded the Administrator's determination that Plaintiffs were not involuntarily terminated.

Plaintiffs are not entitled to judgment on Count II because they did not suffer and were not at risk of an involuntary termination. The district court itself repeatedly found that Optional Retirement Class members were "transferred" from Historical DuPont to Specialty Products in February 2019, not terminated. *See* App.13 ("Defendants formally transferred certain employees from Historical DuPont"); App.28 ("Defendants had a right to—and did—transfer Plaintiffs and Class Members to different jobs and subsidiaries as part of the spin-off."); App.103–04 ("Prior to the spin-off, Historical DuPont transferred a portion of its business, assets, and employees to Specialty Products …. Employees were notified that they were being transferred"). Specialty Products, as a subsidiary of New DuPont, ceased its participation in the Plan effective June 1, 2019 when New DuPont separated from Historical DuPont and Corteva during the Spin-Off. These transferred employees continued their employment with Specialty Products both before and after the Spin-Off, retaining their same positions and salaries. *See* App.53–54, 59, 63–64, 67. These findings preclude Plaintiffs from proving they were or would have been involuntarily terminated.

The Administrator reasonably determined that Optional Retirement Class members did not suffer an involuntary termination of employment. App.27. The district court should have deferred to that determination. Deferential review is required where, as here, the plan gives the administrator discretionary authority to construe

plan terms. *See Firestone*, 489 U.S. at 108–09; App.105–06 (finding that the Plan had discretionary authority over the Plan).

The Administrator's determination must be upheld unless it was "an abuse of discretion or arbitrary and capricious." *Bergamatto v. Bd. of Trs. of the NYSA-ILA Pension Fund,* 933 F.3d 257, 263–64 (3d Cir. 2019) (citations omitted). In reviewing the Administrator's decision, the court "may not substitute its own judgment for that of plan administrators." *Stratton v. E.I. DuPont De Nemours & Co.*, 363 F.3d 250, 256 (3d Cir. 2004). "Mere lip service and mere citation to [the deferential] standard of review" is insufficient. *Hawks v. PNC Fin. Servs. Grp. Inc.*, No. 23-2636, 2024 WL 3664599, at *5 (3d Cir. Aug. 6, 2024). A court that "translate[s] its disagreement [with the administrator's reasoning] into a finding that [the] reasoning was arbitrary and capricious" violates the standard of review. *Id.*

The precise test for reviewing an administrator's determination depends on whether the Plan language is ambiguous. "Whether plan language is ambiguous or unambiguous is … a question of law subject to … *de novo* review." *Dowling v. Pension Plan For Salaried Emps. of Union Pac. Corp. & Affiliates*, 871 F.3d 239, 245–46 (3d Cir. 2017) (citation omitted). If the Plan's terms are unambiguous, the Administrator's interpretations must be upheld if they are "reasonably consistent with the plan's text." *Id.* at 245 (quotations omitted). If the language is ambiguous, the question is whether the Administrator reasonably interpreted the Plan. *See Howley v. Mellon Fin. Corp.*, 625 F.3d 788 (3d Cir. 2010). The Administrator has

discretion to supply omissions to the Plan where, as here, the Plan delegates that authority to the Administrator. *Dowling*, 871 F.3d at 247–49.

The district court erred in rejecting the Administrator's interpretation that the involuntary-termination provision means what it says: Optional Retirement requires an involuntary termination of employment. App.117–18. Rather than analyze the provision, the district court declared that nothing in the Plan or record "indicat[es] that Optional Retirement Benefits were meant only for employees who suffered an 'actual' employment loss." App.118. The district court's unsupported conclusion is contradicted by the Plan's plain language. The Administrator's decision was "reasonably consistent" with the Plan's language and that should have been the end of the inquiry. For that reason alone, the Court should reverse the judgment on Counts II and VI.

2. The district court failed to defer to the Administrator's determination that exceptions apply to the Spin-Off.

The Administrator also determined that Optional Retirement benefits were unavailable because the Business Reorganization Exceptions applied to the Spin-Off. The Administrator formalized its interpretation and noted that it was "consistent with the intent of the plan provisions and consistent with past practice." App.1105.

The district court erred in rejecting that interpretation. *See Felker v. USW Loc. 10-901*, 697 F. App'x 746, 750 (3d Cir. 2017) ("[I]t was reasonable for the Plan Administrator to determine that the [employees] did not meet the threshold eligibility requirements under the Plan" because it "was intended to benefit only those

negatively affected by the [plant shutdown]."); *Feeko v. Pfizer, Inc.*, 636 F. App'x 98, 105 (3d Cir. 2016) (holding that a benefit intended to "help employees who experience unemployment" is not serving its purpose if granted to transferred employees when "their responsibilities were the same, the physical location of their office remained the same, their salary and benefits remained largely unchanged, and there was no temporal gap in their employment").

The district court erred in finding that Defendants would be liable under Count II "even if the Plan language were ambiguous." App.118. As noted above, if the language is ambiguous, a court must determine whether the Administrator abused its discretion in interpreting the Plan. *See Howley*, 625 F.3d at 795. The Administrator here has discretionary authority to construe the Plan and supply omissions. *See* App.15; *also Dowling*, 871 F.3d at 247–49.

This Court has identified five factors courts should consider in determining the reasonableness of an administrator's interpretation of ambiguous plan language: "(1) whether the interpretation is consistent with the goals of the Plan; (2) whether it renders any language in the Plan meaningless or internally inconsistent; (3) whether it conflicts with the substantive or procedural requirements of the ERISA statute; (4) whether the [relevant entities have] interpreted the provision at issue consistently; and (5) whether the interpretation is contrary to the clear language of the Plan." *Howley*, 625 F.3d at 795.

The district court misapplied these factors. Its perfunctory analysis of the first factor failed to properly examine the Administrator's determination. The Administrator reasonably determined that the Spin-Off fell within the Business Reorganization Exceptions because, among other reasons, it was analogous to an asset sale. *See* App.815–16, 823 (committee member testifying that the Administrator considered a spin-off to be "analogous" to a "joint venture" or "sale of a business"). Indeed, the Spin-Off, like a "sale," involved the exchange of assets and employees with a different company (Specialty Products) for which Plaintiffs worked before and after the Spin-Off.

The other Business Reorganization Exceptions—such as an employee accepting work for a service provider at the job site or being transferred to a subsidiary—further support the Administrator's reading of the Plan as precluding Optional Retirement where the employee continues the same job at the same site for similar compensation. App.815–16 ("[T]he committee felt that the spin-off was similar in circumstances" to those listed Business Reorganization Exceptions because "[t]here was no termination of employment. There was no lack of work …. People continued to have their same jobs that they were doing."). Treating the Spin-Off similarly to the events listed in the Business Reorganization Exceptions is therefore consistent with the Plan's text and structure.

Applying the Business Reorganization Exceptions to the Spin-Off was also consistent with past practice and the Plan sponsor's intentions. The Administrator

examined prior spin-offs and business reorganizations and found that Optional Retirement was never made available to employees impacted by a spin-off. This was confirmed by every witness who testified on the topic. *See* App.21–22 (for "the Chemours spin-off … the [Administrator] determined that the Optional Retirement Benefit would not be available to Chemours employees who had been spun-off"); App.26–27 (same); *also* App.829–30 (the Administrator looked to "past practice" to determine the intent of the plan provisions); App.811, 815–16, 818, 823 (the Administrator "discussed the Chemours spin-off because it was very similar"); App.849 (the Administrator made an interpretation regarding "optional retirement in connection with the Chemours spin-off" and determined "that a company spin-off would meet the criteria" of the Business Reorganization Exceptions to be excluded).

Even so, the district court held that the Administrator's interpretation was an abuse of discretion because the purported "varied, shifting, and contradictory justifications for denying the Optional Retirement Benefit … coupled with the financial conflict of interest … reveal bias."[8] App.119. The district court's analysis is confused because it includes administrative records not relevant to the Optional

[8] The district court's decision was based in part on "Defendants' structural conflict of interest." App.119. But the district court also found that the "structural conflict of interest [is] negligible, and notes that it does not heavily favor Defendants or Plaintiffs." App.113. And the court failed to analyze how this purported conflict affected the Administrator's decisions. Without evidence that a conflict infected the Administrator's decisions, the structural conflict of interest here should have "'vanishing' significance" to the Court's analysis. *See Dowling*, 871 F.3d at 250; *also Conkright v. Frommert*, 559 U.S. 506, 513 (2010) (systemic conflicts of interest do not "strip a plan administrator of deference").

Retirement class claims—effectively comparing apples and oranges.[9] And while the reasoning in the administrative record denials may have been differently worded because Major and Benson sought Optional Retirement in different contexts,[10] the relevant interpretation and denial of benefits was consistent. The district court mischaracterized the wording differences as "procedural irregularities,"[11] App.119, when they were, at worst, imprecise use of terms. *See Feeko*, 636 F. App'x at 105 (a benefits decision citing incorrect facts or using terminology not in a plan suggest mere harmless error "as opposed to fundamental impropriety that calls into doubt the fiduciary neutrality of the [administrator]").

Finally, the district court failed to properly analyze the remaining *Howley* factors, all of which support the reasonableness of the Administrator's interpretation.

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[9] The district court erroneously cites to Cockerill's administrative record as a reason for its Optional Retirement ruling. Cockerill is not in the Optional Retirement Class and the reasons for denying his claim have nothing to do with the Optional Retirement Class's claims. The district court's review of irrelevant administrative records violates the ERISA record rule. *Noga v. Fulton Fin. Corp. Emp. Benefit Plan*, 19 F.4th 264, 271 (3d Cir. 2021) ("[J]udicial review of an ERISA fiduciary's discretionary adverse benefit decision is confined to the information contained in the administrative record.").

[10] Major never filed a claim seeking Optional Retirement as a result of the Spin-Off; he sought Optional Retirement as a result of being laid off by New DuPont ***two years after*** the Spin-Off. App.954. As such, it is unsurprising that his administrative record would have a different analysis than Benson's record, when Benson sought Optional Retirement *as a result of* the Spin-Off. App.900.

[11] "Procedural irregularities" are significant deviations from "normal eligibility-review processes." *Noga*, 19 F.4th at 267 (noting procedural irregularity where a company "deviated significantly from its normal eligibility-review processes, primarily through its anomalous requests for outside reevaluation of the participant"). "Procedural irregularities" does not refer to differences in how a plan administrator describes its reasoning.

The interpretation does not render any Plan language meaningless or internally inconsistent; it does not conflict with any of ERISA's substantive or procedural requirements; and it is not contrary to the clear Plan language. *See Howley*, 625 F.3d at 795. Instead, it is the district court's interpretation which is contrary to clear Plan language—by awarding Optional Retirement to class members who did not experience an involuntary termination of employment.

Accordingly, the Administrator's denial of Plaintiffs' claims for Optional Retirement was a reasonable exercise of discretion in interpreting the Plan's ambiguous terms and supplying omissions. It must be upheld. *See Orvosh v. Program of Grp. Ins. for Salaried Emp. of Volkswagen of Am., Inc.*, 222 F.3d 123, 129 (3d Cir. 2000) ("[A] plan administrator's decision will be overturned only if it is clearly not supported by the evidence in the record or the administrator has failed to comply with the procedures required by the plan." (quotations omitted)).

Even if the language of the Business Reorganization Exceptions is unambiguous, the district court still erred in rejecting the Administrator's interpretation. Although "spin-off" is not specifically listed in the Business Reorganization Exceptions, spin-offs, as noted above, share many characteristics with events that are listed and the Administrator had discretion to supply omissions consistent with the Plan's intent. Indeed, the district court explained that "a spin-off is an internal reorganization that retains ownership within the same corporate group," App.116–17, making a spin-off quite similar to a "wholly-owned subsidiary" transfer—one of the

Business Reorganization Exceptions. And a spin-off is *not* like a lay-off or restructuring transaction that would trigger Optional Retirement benefits. Thus, the Administrator's determination that spin-offs are an exception to Optional Retirement eligibility is reasonably consistent with the Plan's plain language. *See Bergamatto*, 933 F.3d at 264–65.

Instead of properly applying either test, the district court here weighed competing interpretations and substituted its judgment for that of the Administrator. This was error. *See Dowling*, 871 F.3d at 248 ("[W]hen granting deference 'we do not demand the best interpretation, only a reasonable one.'" (citation and emphasis omitted)). The appropriate deferential review requires reversal.

C. Plaintiffs did not prove an entitlement to retroactive benefits.

The district court erred in permitting both Classes to make retroactive benefit elections. *See* App.7. Awarding retroactive benefits is appropriate only if a plaintiff proves he would have elected the benefit but for the defendant's misconduct. *Cottillion v. United Ref. Co.*, 781 F.3d 47, 61–62 (3d Cir. 2015). Here, the crux of Plaintiffs' legal theory is that they assumed they were ***eligible*** for the at-issue benefits and were disappointed when they found out that they were ***ineligible***. If that were true, and Plaintiffs believed they were eligible for the benefits, then they could have and would have applied for them. Besides Cockerill, Plaintiffs failed to show that any Class member attempted to elect the at-issue benefits before filing suit. The

district court erred in awarding retroactive benefits without requiring Plaintiffs prove that Class members would have elected the benefit but for Defendants' conduct.

D. The district court's class certification errors warrant reversal.

1. The district court abused its discretion in certifying the Optional Retirement Class because the class representatives are not typical or adequate.

Neither Optional Retirement Class representative satisfies Rule 23's typicality and adequacy requirements: both representatives pursued claims that conflict with the class claims. Moreover, Benson does not want the relief sought by the Optional Retirement Class, and Major is unable to seek that relief because of his general release of all claims. The district court therefore abused its discretion in determining that Benson and Major were typical and adequate class representatives.

A class representative advancing claims based on a legal theory different from those of the class does not satisfy Rule 23's typicality requirement. *Beck v. Maximus, Inc.*, 457 F.3d 291, 295–96 (3d Cir. 2006). A named plaintiff does not satisfy Rule 23's adequacy requirement if their dissimilar claims present a fundamental conflict of interest with the class they seek to represent. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 184 (3d Cir. 2012). "A conflict is fundamental where it touches 'the specific issues in controversy.'" *Dewey*, 681 F.3d at 184 (citation omitted).

Both Optional Retirement Class representatives sought relief premised on legal theories that conflict with their class. Benson testified he did not want a reduced

pension benefit—the relief sought by the class he purports to represent. App.57. Instead, Benson wanted his benefit eligibility service to continue to accrue so he could take his **unreduced** Early Retirement benefit sooner. But his eligibility service could continue to accrue only if he remained employed with Historical DuPont. Benson's theory thus conflicts with the Optional Retirement Class claim that they were "involuntarily terminated" from Historical DuPont. Put differently, Benson's claim requires him being treated as a current **employee of a Plan participating employer (e.g., Historical DuPont)**, but the Optional Retirement Class is arguing they should be treated as being **involuntarily terminated from the participating employers**. Benson wants a fully ***unreduced*** **Early Retirement** benefit at an earlier age; the Optional Retirement Class wants a ***reduced*** **Optional Retirement** benefit made available to them. These fundamentally conflicting positions and issues are at the heart of the Optional Retirement Class claims. Benson is thus atypical and inadequate to represent the Optional Retirement Class.

Similar to Benson, Major's claim is starkly different from and in conflict with the Optional Retirement Class claims. Major never filed or exhausted a claim for Optional Retirement because of being "involuntarily terminated" by the Spin-Off. Rather, Major claimed the Optional Retirement benefit in connection with his **September 2021** involuntary termination from New DuPont (two years after the Spin-Off). *See* App.954. His claim is premised on the assumption he was **not** involuntarily terminated in 2019 in connection with the Spin-Off—the opposite contention at the

heart of the Optional Retirement Class claims. This fundamental conflict between Major and the Class renders Major atypical and inadequate.

Major also executed a Separation Agreement ("Release") that makes him atypical of most of the Optional Retirement Class and, in fact, precludes him from bringing most of the Optional Retirement claims. As the district court explained:

> [b]y its language, the contract released Major's 'Employer, its parent corporation, affiliates, subsidiaries, divisions, predecessors, … both individually and in their business capacities, and their employee benefit plans and programs and their administrators and fiduciaries' from 'any and all claims, known or unknown,' including ERISA claims '(except for any vested benefits under any tax qualified plan)[.]'

App.443 (quoting App.1220–21). Major thus released all claims, specifically including ERISA claims, except for claims for accrued benefits under the Plan. Counts IV and VI are statutory claims, not claims for accrued benefits under the Plan, and are released. The district court erred in concluding otherwise. *Compare* App.149 (concluding the Count VI statutory anti-cutback claim was a carved out claim under the Release because it "involves a benefit under the Plan"), *with Campbell Soup*, No. 24-1812, 2025 WL 416090, at *2 (affirming the effectiveness of a release and distinguishing between a claim for benefits and a fiduciary-duty claim, which is "not based on the Plan but rather on the alleged misrepresentations"), *and Johnston v. Indep. Blue Cross, LLC*, No. 19-cv-3524, 2021 WL 765771, at *4 (E.D. Pa. Feb. 26, 2021) (general release barred plaintiff's claims because the "claims seek to enforce her statutory rights, not her contractual rights to benefits under the plan"), *and Stanley v. George Wash. Univ.*, 394 F. Supp. 3d 97, 107 (D.D.C. 2019) (release carved out

only "contractual, or 'plan-based,' claims of the kind that typically are brought pursuant to ERISA § 502(a)(1)(B)" because the release carved out only "claims … **under** employee benefit plans"), *aff'd*, 801 F. App'x 792 (D.C. Cir. 2020) (emphasis added)).

The district court retained Major as a class representative in part because it erroneously determined Major's release was not effective. App.147–50, 223. The district court erred and misread *Schering Plough* as preventing beneficiaries from releasing fiduciary-duty claims under **ERISA § 502(a)(3).** *See* App.443 (citing *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 594 (3d Cir. 2009)). The *Schering Plough* fiduciary-duty claim was a plan-wide claim seeking "to restore losses sustained by the Plan as a result of defendants' breaches of their fiduciary obligations" under ERISA **§ 502(a)(2).** 589 F.3d at 591–92. The named plaintiff had executed an individual release. *Id.* at 593. This Court concluded an individual release could not apply to § 502(a)(2) claims because such claims belong to the plan—not the individual who executed the release. *Id.* at 594–95. Here, however, Plaintiffs are bringing claims on behalf of themselves under **§ 502(a)(3).** Such claims belong to the individual, not the plan, and thus can be released. The district court erred in not appreciating this distinction.

Major's Release thus renders him atypical and inadequate. *See Schering Plough*, 589 F.3d at 599–600, 602 (a named plaintiff subject to releases or other unique defenses may render class certification inappropriate where the plaintiff's

"interests and incentives may not be sufficiently aligned with those of the class" because the release may mean the plaintiff has no "monetary stake in the outcome"); *Beck*, 457 F.3d at 301 (unique defenses may render a plaintiff inadequate because they distract from common class concerns).

Neither Benson nor Major are typical of the Optional Retirement Class or adequate to serve as class representatives. The district court abused its discretion in certifying the Optional Retirement Class.

2. The district court abused its discretion in certifying Count IV for class treatment under Rules 23(b)(1) and (b)(2).

As discussed above, Plaintiffs' fiduciary-duty claim (Count IV) requires proof of detrimental reliance (or, at the very least, harm and loss causation), which are inherently individualized inquiries not compatible with class treatment. *See Schering Plough*, 589 F.3d at 592 n.5 (noting that the district court concluded Rule 23 could not be satisfied "because questions pertaining to individual reliance rendered a class action inappropriate" as to a failure-to-disclose claim).

First, the individualized standing determination required to order relief with respect to Count IV renders the fiduciary-duty claim unsuited for (b)(1) or (b)(2) certification. Even if this Court determines any class representative has standing for Count IV—they do not, *see supra* Part A.1—the district court must still determine whether ***each*** class member has standing to pursue the requested relief. *See TransUnion*, 594 U.S. at 431 ("Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not."); *Huber*, 84 F.4th at 155

("At the remedial phase, each class member must establish standing to recover individual damages."). Plaintiffs failed to establish that class members have standing to pursue the requested relief.

Second, determining appropriate relief for Count IV requires determining the alleged "harm" to Class members. This determination, like identifying harm for standing, requires individualized proof. Plaintiffs requested a retroactive election of benefits to remedy the harm of class members being "prevented in the period leading up to the spin-off (and for some time thereafter) from taking their retirement planning into their own hands." App.472. Even if ERISA protects "retirement planning" generally—and it does not—to what extent this vague harm justifies Plaintiffs' requested relief depends on individual circumstances, including whether class members would (or could) have elected a reduced benefit earlier if they had clearer communications, when that election would have been made, whether they were planning for retirement, and whether the supposed inadequate disclosures materially impacted that retirement planning. *See Cottillion*, 781 F.3d at 61–62 (holding that to justify retroactive relief, employees must prove they would have elected retirement ***but for*** the misconduct). Indeed, the existence of persons like Benson—who does not want a reduced pension benefit—illustrates the need for an individualized inquiry to determine standing and how, if at all, the allegedly inadequate Count IV disclosures harmed class members.

Class members' individual circumstances will determine whether they have standing for Count IV or suffered individualized harm justifying retroactive relief. *See Huber*, 84 F.4th at 154 ("The need for individualized inquiry to determine the standing of unnamed class members … stems not from our requirement that plaintiffs prove reliance as 'an element' … but from Article III's requirement of a concrete injury to establish standing."). "[M]aterial idiosyncrasies … permeate members' claims" making certification of Count IV under 23(b)(1) or (b)(2) inappropriate. *See* App.197. The district court abused its discretion in certifying Count IV for class treatment. This Court should reverse and remand this action to the district court with instructions to modify its class certification order and remove Count IV from the causes of action certified.

3. The district court improperly expanded the classes on the eve of Judgment.

a. The Judgment should have excluded employees rehired after the 2007 Plan freeze.

The district court erred by expanding the membership of the classes *after* both phases of the trial and on the eve of judgment. In an order addressing disputes over remedies, the district court stated:

> Individuals who had at least 15 years of service but were not yet age 50 prior to their break in service, and who were rehired after January 1, [2007],[12] are not excluded from the Optional Retirement or the Early Retirement Classes.

[12] The district court later corrected a typographical error in this order to make clear it was intended to read "2007." App.239, 759.

App.228.

Including employees rehired after January 1, 2007, as class members is improper. *First*, it contradicts the terms of the Plan. As the district court found, the Plan explicitly excludes anyone hired or rehired after January 1, 2007, from participating in the Plan. App.11. *Second*, Plaintiffs never argued that these individuals should be included in the class—until they did so at the very last minute. Plaintiffs' class certification briefing did not argue or even suggest that employees rehired after January 1, 2007, should be included in the class. App.295, 321. In fact, the rights of employees rehired on or after January 1, 2007, were not altered by the Spin-Off. They were already explicitly excluded from participating in the Plan and from receiving additional benefits based on service post-January 1, 2007.

By including employees rehired after January 1, 2007, who were excluded from the Plan more than a decade before the Spin-Off, the district court provided benefits to people who would not otherwise be eligible under the Plan's terms. This usurped the Administrator's discretionary authority to adjudicate these rehired employees' possible claims. Even though it was not an issue at trial or properly briefed, the district court summarily provided the rehired employees a remedy typically provided under ERISA § 502(a)(1)(B). This was clear error, and the Court should reverse the judgment to the extent that it allows individuals who were rehired after January 1, 2007, to be class members.

b. The district court erred in expanding the definition of the Optional Retirement Class.

The Judgment also improperly expanded the membership of the Optional Retirement Class. The class-certification order excluded from the Optional Retirement Class "anyone whose Early Retirement Benefits, at spin-off or through present, would be equal to, or greater than their Optional Retirement Benefit." App.215–16. This exclusion was forward-looking, and its purpose was to remove from the Optional Retirement Class any participant who suffered no injury. App.402. But the district court disregarded this exception and allowed employees whose Optional Retirement Benefits became equal to their Early Retirement Benefits to participate as class members. App.227.

Rule 23(c)(1)(C) allows a class-certification order to "be altered or amended before final judgment." Fed. R. Civ. P. 23(c)(1)(C). But the "goal of Rule 23(c)(1)(C) is to allow the court to make '[a] determination [whether the previous class certification should] be altered or amended [in view of] development of the facts [that might render] the original determination … unsound.'" *In re FleetBoston Fin. Corp. Sec. Litig.*, No. 02-cv-4561, 2007 WL 4225832, at *5 (D.N.J. Nov. 28, 2007) (quoting Notes of Advisory Comm., Subdivision (c)(1) (1966)); *see also Engers v. AT&T*, No. 98-cv-3660, 2005 U.S. Dist. LEXIS 41685, at *2 (D.N.J. Sept. 16, 2005) (citing *Zenith Lab'ys, Inc. v. Carter–Wallace, Inc.*, 530 F.2d 508, 512 (3d Cir. 1976)).

Courts analyze whether any "compelling reasons" exist for a change, including an "intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *City Select Auto Sales, Inc. v. David/Randall Assocs.*, 96 F. Supp. 3d 403, 413 (D.N.J. 2015) (citation omitted). While a district court has discretion under Rule 23(c)(1)(C), it abuses that discretion if it acts without reference to these standards.

Here, Plaintiffs did not point to any factual developments, a change in law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice. Instead, Plaintiffs baldly asserted that "the definition was intended to exclude only those who were already in full unreduced retirement pay status at spin-off." App.476–77. Plaintiffs' unsupported assertion renders the exclusion meaningless.

Moreover, if this Court determines retroactive elections unavailable, *see supra* Part C, the exclusion is consistent with the district court's authority and obligation to remove class members when it becomes apparent they are not injured. *See In re Wellbutrin Sr Direct Purchaser Antitrust Litig.*, No. 04-cv-5525, 2008 WL 1946848, at *10 (E.D. Pa. May 2, 2008) (*citing In re Relafen Antitrust Litig.*, 218 F.R.D. 337, 345 (D. Mass. 2003)) (acknowledging the court's "authority [to] later [] amend the definition to exclude members who have not suffered injury"); *see also In re Hydrogen Peroxide Antitrust Litig.*, 240 F.R.D. 163, 173, n.14 (E.D. Pa. 2007) ("Defendants are correct that plaintiffs 'must establish that each class member has,

in fact, been injured by the alleged conduct.'"). The exclusion did just that by removing class members who suffered no injury by the time of judgment because their Optional Retirement Benefits had become equal to their Early Retirement Benefits. The district court abused its discretion by allowing people with no injury to be included in the Optional Retirement Class and this Court should reverse that portion of the Judgment.

E. The attorneys' fees award should be reversed.

1. Because the Judgment should be reversed, the fee award should also be reversed.

Because the Court should reverse the Judgment and enter judgment for Defendants, it should also reverse the award of attorneys' fees and costs to the Plaintiffs. *See Foley v. Int'l Bhd. of Elec. Workers Loc. Union 98 Pension Fund*, 271 F.3d 551, 560 (3d Cir. 2001). Even if the Court reverses only a portion of the judgment, it should still vacate the attorneys' fees award and remand for reevaluation. *See, e.g.*, *Liberty Lincoln-Mercury v. Ford Motor Co.*, 134 F.3d 557, 570 (3d Cir. 1998) (vacating fee award after partially reversing judgment).

Here, the district court's fee award was based, in part, on the court's evaluation of the Plaintiffs' success. App.230–35. Thus, if the Court changes the Judgment in any respect, the propriety of the fee award must be reevaluated.

2. The fee award is an abuse of discretion.

Even if the Court affirms the judgment, it should reverse the attorney's fees award because the district court erred in its analysis of the *Ursic* factors, and the

amount awarded was unreasonable. *See Ursic v. Bethlehem Mines*, 719 F.2d 670 (3d Cir. 1983).

a. The district court misapplied the *Ursic* factors.

Plaintiffs are not automatically entitled to fees just because they prevailed on some claims. To the contrary, "there is no presumption that a successful plaintiff in an ERISA suit should receive an award in the absence of exceptional circumstances." *McPherson v. Emps.' Pension Plan of Am. Re-Ins. Co.*, 33 F.3d 253, 254 (3d Cir. 1994) (citation omitted). To determine whether a fee award is appropriate, the district court was required to consider and weigh five factors, as outlined in *Ursic*:

(1) the offending party's culpability or bad faith;

(2) the ability of the offending parties to satisfy the award of attorney's fees;

(3) the deterrent effect of an award of attorney's fees;

(4) the benefit conferred upon members of the plan as a whole; and

(5) the relative merits of the parties' positions.

719 F.2d at 673. A district court errs if it misapplies these factors. *See Martorana v. Bd. of Trs. of Steamfitters Loc. Union 420 Health, Welfare & Pension Fund*, 404 F.3d 797, 804–05 (3d Cir. 2005) (reversing attorney's fees award where court misapplied the *Ursic* factors). Here, these factors weigh against a fee award.

The district court erred in its analysis of several of these factors. Indeed, the district court's analysis of the "relative merits" factor completely missed the point.

The court should have considered the relative strengths of the parties' arguments. *McPherson*, 33 F.3d at 258. Instead, the district court discussed the relative strength of the parties themselves, App.233, which is completely irrelevant to analyzing Plaintiffs' entitlement to attorneys' fees. This failure alone warrants reversal. *See Martorana*, 404 F.3d at 804–05. Properly considered, this factor weighs against a fee award (and certainly would not support a fee award enhanced by a multiplier). The district court also failed to consider that Defendants prevailed on three of Plaintiffs' claims (Counts I, V, and VII). The fact that Plaintiffs prevailed on some claims says nothing about the relative strength of the parties' positions.

As to culpability or bad faith, the district court confusingly states that Plaintiffs failed to prove Defendants acted in bad faith—yet in the same breath concludes that Defendants are "culpable." App.232. The district court's reasoning is rooted in its judgment that, with the benefit of hindsight, Defendants' communications related to the Spin-Off could have been clearer. But the district court's present view of the cumulative effect of Defendants' communications has no bearing on Defendants' moral fault for Plaintiffs' confusion about benefits. This is particularly true where Defendants provided information via multiple channels and did not know class members, who largely did not review the available information, required more. App.103, 125–27.

The district court also erred in analyzing the deterrent-effect factor. The dispute primarily hinges on competing interpretations of Plan documents. There is no

evidence that an award of fees would deter any of the conduct at issue. Nor is there any evidence that a similar situation may exist in the future such that an award of fees here would have any impact on future conduct. Plaintiffs' arguments to the contrary are pure speculation and unsupported by any evidence.

The district court's analysis of the benefit-to-the-plan factor is similarly flawed, because there is **no** benefit to the Plan. To the contrary, the classes here comprise less than 10% of all Plan participants, App.29, and there is no evidence that a victory by class members will benefit anyone else in the Plan. If anything, the Judgment harms the Plan by requiring it to pay benefits to which Plaintiffs are not otherwise entitled.

The Spin-Off has already occurred, and no other Plan participants will be impacted by it. Moreover, the Plan has been frozen, preventing employees hired after 2007 from participating in the Plan and ceasing all increases to accrued benefits. App.11. There will never be other similarly situated participants who stand to benefit from this litigation.

b. The district court erred in awarding the full amount of the fees requested by Plaintiffs.

Plaintiffs' request to recover all fees they incurred was unreasonable and subject to reduction because they failed to discount their fees for achieving only partial success, duplicative work, and non-compensable fees and costs. This Court recently reaffirmed that "[w]hen the party entitled to fees 'succeeded on only some of his claims,' a district court should reduce fees to accurately reflect the 'results

obtained.'" *Kairys v. S. Pines Trucking, Inc.*, 75 F.4th 153, 165 (3d Cir. 2023) (holding that district court correctly reduced pre-verdict attorney fees by 25% to account for partial success). Plaintiffs prevailed on only three of their seven claims. Partial success does not warrant full fees. The district court should have limited the award to an appropriate proportion of the claimed fees.

c. The district court erred in applying a 1.5 multiplier to Plaintiffs' fees.

The district court further erred in applying a 1.5 multiplier to Plaintiffs' fee award after giving Plaintiffs' counsel their full rates in the lodestar analysis. Plaintiffs put on evidence that they incurred fees of $6,099,469.50 and asked that the court apply a 1.5 multiplier to the lodestar method of calculating fees. App.524, 530–34. Plaintiffs argued that an enhancement to the lodestar was warranted because "Plaintiffs' counsel have taken considerable risk in this litigation and have a fee agreement ... which provides for a contingency fee in the case of a monetary recovery to compensate for that risk." App.530. Plaintiffs acknowledge their efforts did not result in the creation of a common fund, but that nevertheless their lodestar should be enhanced to compensate them for their contingency risk. *Id.* Yet even Plaintiffs recognized that if the court were to apply a multiplier "it may be reasonable to reduce the hourly rates used to calculate the lodestar." App.532 n.22. For this reason alone, the Court should reject the use of a multiplier, or reverse the fee award and remand it to the district court with instructions to either eliminate the multiplier, reduce the hourly rates in the lodestar analysis, or both.

The Court should also reverse the application of the multiplier because, as discussed above, Plaintiffs prevailed on only three of seven claims. The use of a multiplier exacerbated the district court's error in failing to reduce the fees to account for the claims on which Plaintiffs did not prevail.

Finally, the use of a multiplier is barred by the Supreme Court's decision in *City of Burlington v. Dague*, 505 U.S. 557, 565–66 (1992). In *Dague*, the Supreme Court explained that "an enhancement for contingency would likely duplicate in substantial part factors already subsumed in the lodestar." *Id.* at 562. Thus, applying an enhancement factor to the fee that results from the lodestar method results in double counting and double recovery. *Id.* at 562–63. The Supreme Court rejected the argument that enhancement of the lodestar based on the contingency risk taken by lawyers is appropriate under "reasonable fees" provisions, because it incentivizes bringing "relatively meritless claims as [much as] relatively meritorious ones." *Id.* at 563. "'These statutes were not designed as a form of economic relief to improve the financial lot of lawyers.'" *Id.* (citation omitted).

This Court recognized *Dague* held "that contingency multipliers are not permitted for fees awarded pursuant to fee shifting statutes." *Goodman v. Pa. Turnpike Comm'n*, 293 F.3d 655, 677 (3d Cir. 2002); *see also Polselli v. Nationwide Mut. Fire Ins.*, 126 F.3d 524, 534–35 (3d Cir. 1997) (the considerations supporting an enhancement are already reflected in the lodestar method); *Brytus v. Spang & Co.*, 203 F.3d

238, 243 (3d Cir. 2000) (the statutory fee under ERISA must be calculated using the lodestar method without enhancement).

In the district court, Plaintiffs argued that *Dague* does not apply to ERISA's fee-shifting statute because the Supreme Court held in *Hardt v. Reliance Standard Life Insurance* that the ERISA fee provision is not a "prevailing party" provision. App.533 (citing 560 U.S. 242 (2010)). But nothing in *Dague* suggests that it is limited to "prevailing party" provisions; it explicitly applies to all "reasonable fee" shifting statutes. *See* 505 U.S. at 561–67 ("[O]ur case law construing what is a 'reasonable fee' applies uniformly to all [federal fee-shifting statutes]."); *Brundle ex rel. Constellis Emp. Stock Ownership Plan v. Wilmington Tr., N.A.*, 919 F.3d 763, 787 (4th Cir. 2019), *as amended* (Mar. 22, 2019) (observing, post-*Hardt*, that "a 'reasonable' fee under ERISA's fee provision (unlike a common fund award) precludes any compensation for contingency risk" (citing *Dague*, 505 U.S. at 565–67)).

The district court erred in compensating Plaintiffs' counsel for their contingency risk by applying an enhancement to the lodestar fee. This Court should reverse the award.

CONCLUSION

The district court's Judgment and attorneys' fees award should be reversed or vacated. The court's decision improperly expanded ERISA's disclosure scheme, disregarded the necessity to prove detrimental reliance (or harm and causation), ignored

the centrality of the written plan document, and failed to defer to the Administrator's reasonable Plan interpretations.

Dated: November 4, 2025.

Respectfully submitted,

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COMBINED CERTIFICATIONS

Lead counsel is a member in good standing of the bar of this Court.

This Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and this Court's order extending the word limit for this brief because it contains 15,748 words, excluding the parts of the Brief exempted by Rule 32(f). This Brief also complies with the typeface and type style requirements of Rules 32(a)(5) and 32(a)(6) and Local Rule 32.1 because it has been prepared in a proportionately spaced 14-point typeface, Times New Roman, using Microsoft Word.

Pursuant to Local Appellate Rule 31.1(c), I certify that the text of the electronic brief is identical to the text of the paper copies and that the electronic file was scanned with Symantec Web Security Service, version 9.8.1, and no viruses were detected.

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CERTIFICATE OF SERVICE

I certify that I served the foregoing Brief on counsel of record for all parties through the Court's Electronic Case Filing system on November 4, 2025.

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