

Consolidated Case Nos. 25-2204 and 25-2312

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

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

v.

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

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(Case No. 2:21-cv-03966-MMB)

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I. STATEMENT OF THE CASE

A. Factual Background.

At the heart of this case are employees of E.I. Du Pont De Nemours and Company (“Historical DuPont”) who were participants in the DuPont pension plan (“the Plan”). In return for their work, Historical DuPont promised Early Retirement benefits¹ and, for employees involuntarily terminated without cause, Optional Retirement benefits.² App.16-20 ¶¶30-39. Participants testified at trial that these benefits were central to their decision to spend their whole careers at DuPont. App.46-47 ¶¶134-136 and n.15, 56-58 ¶¶173-175 and 181, 60-61 ¶¶189-191, 66-67 ¶¶215-218, 68-69 ¶¶226-228; App.1348 ln.8 – App.1352 ln.18, App.1356 lns.21-24, *see also* 1460. But in 2019, DuPont undertook a corporate spin-off that radically altered participants’ hard-earned benefits while telling them nothing would change. Employees left work one day with Early or Optional benefit rights intact and, unbeknownst to them, went to work the next morning at the same

¹ Early Retirement is available to participants who were age 50 with 15 years of service. App.16, 1115-1116. The longer the employees’ tenure and the closer their age to 65, the greater the benefit. *Id.* An employee who is 58 or older can receive an unreduced Early Retirement benefit under the Rule of 85 when their years of service and age add up to 85. *Id.*, App.16.

² Optional Retirement is available to participants who were age 50 with 15 years of service, who are “involuntarily terminated for reasons other than discharge for dishonesty, insubordination, or other misconduct” or “for lack of work.” App.17 ¶35, 1117. There were “business exceptions” which did not include a corporate spin-off. App.18-19 ¶38, 20 ¶39, 1117.

location for the same salary but for a different employer with far more anemic retirement benefits.

In a 15-minute meeting, the Plan's Administrative Committee decided Historical DuPont's termination of those employees was not actually a termination under the Plan. It never told employees of that decision. The district court concluded that the Plan allowed spun-off employees to claim Optional Retirement benefits and that DuPont's reading of the Plan was so wrong that it was an abuse of discretion. The district court further determined that DuPont's miscommunication was a breach of its fiduciary duty. The district court therefore restored Optional Retirement Benefits.

As for Early Retirement, for those employees who were under age 50 at spin-off, termination of their employment with Historical DuPont and re-employment with a different entity (New DuPont) meant they would *never* be able to elect Early Retirement benefits. Rather than simply telling them so, DuPont gave participants a false sense of security through misleading and hard-to-access communications. The district court found this to be a breach of fiduciary duty and therefore reformed the Plan to give participants the choice they were denied.

App.7, 227-229.

DuPont's choice to obscure its actions denied employees the information necessary to take their retirement security into their own hands, walk out, find

alternative employment, lobby for change, or alter their long-term spending in light of their newly changed finances. App.1458-1460, App.1394 ln.10 – App.1395 ln.3, 1442-1443 (309:12-19). For Optional Retirement Class Members, it deprived them of the opportunity to seek benefits they were entitled to under the Plan.

1. Timeline.

In 2015, Historical DuPont announced its intent to merge with Dow Chemical Company (“Dow”). App.11 ¶5. In 2017, the merger was completed creating DowDuPont, with Dow and Historical DuPont as subsidiaries. App.1213 ¶1.

In 2017, DowDuPont announced its intention to create three new companies (the “spin-off”). App.12 ¶8. On June 1, 2019, DowDuPont completed the spin-off, creating Corteva Inc. (“Corteva”), Dow Inc., and DuPont De Nemours, Inc. (“New DuPont”). App.1213 ¶2. At spin-off, Historical DuPont, the original and current sponsor of the Plan, became a subsidiary of Corteva and Corteva assumed responsibility for the Plan. App.14 ¶18, App.31 n.8.

While a number of Plan participants were transferred to New DuPont, simultaneously the Plan shifted to Corteva. All participants who were transferred to New DuPont were deemed “terminated” for purposes of the Plan. App.13 ¶17, 1312, 1315, 1317-8, and App.1016 (showing Major’s “employee status” as

“terminated” effective 05-31-2019), App.1461 (showing Cockerill’s “employee status” as “terminated” effective 05-31-2019).

Shortly after the announcement that Historical DuPont would become a subsidiary of Corteva at spin-off, taking the Plan with it, the Committee received a memorandum asking it to make “a formal interpretation of the plan language to include corporate spin-offs as one of the exceptions to the applicability of Optional Retirement.” App.26 ¶¶64, 1462-3. Witnesses could not recall who asked for this interpretation. App.26 n.4, 82 ¶¶292, 88-89 ¶¶321. The Committee met for just 15 minutes and decided Optional Retirement Benefits would not be available to participants moving to New DuPont and that this was consistent with past practice and the intent of the Plan. App.26, 77. This ostensible “past practice” consisted of just one prior spin-off of the business known as “Chemours.” App.11 ¶¶4, 21-22 ¶¶43-46.

The district court found Appellants’ witnesses evasive about specifics of how the Committee determined that Optional Retirement did not apply in a spin-off. It noted that none of Appellants’ witnesses could recall the circumstances or details of the 15-minute meeting, and the Committee simply adopted the interpretation given to it by the author of the memorandum. App.45-46 ¶¶132. That is, the Committee did not make an independent determination. App.101.

Moreover, the Committee did not communicate its decision regarding Optional Retirement to Plan participants. App.79, 94 ¶¶274. The district court noted that the 2018 and 2019 SPDs said nothing about spin-off or exceptions to Optional Retirement. App.20 ¶39.

2. Communications About the Spin-Off Were Misleading, Unclear and Contradictory.

The evidence at trial included communications from DuPont, including its CEO, that misled participants about the effect of the spin-off on their Plan benefits. As the district court found, between November 8, 2018 and the spin-off “[Appellants] shirked their ERISA fiduciary duties” to Appellees because Appellants’ various communications were confusing, unclear, and did not contain “a single authoritative source of information about benefits after the spin-off.” App.138-141 ¶¶496-503, n.39; App.30 ¶76. *See also* App.27 nn.5-6, 30-31 nn.7-8, 48 n.16, 91-92, 96 ¶349, 103 ¶376. It also found that participants were repeatedly assured that the spin-off would result in few changes to benefits. App.24 ¶56, 31-2, 127-8. The district court noted that the participants credibly testified that they had no idea they were deemed terminated until months or years after the spin-off. App.53-54, 58-59, 63-64, 66, 69.

While the record is replete with evidence of confusing and incomplete communications about the impact of the spin-off on retirement benefits, a few examples will help make the point. In the first communication about the spin-off,

on November 1, 2018, DuPont’s CEO Ed Breen assured participants that “continuing to fulfill our obligations to plan participants is a top priority.” App.31. The district court found Breen’s statements to be misleading, if not incorrect. App.23 ¶¶55, 32 ¶¶81. Similarly, an FAQ document stated that “growth in age will continue to be recognized allowing these participants to age into an improved reduction factor.” App.33. Mary Dineen, who was responsible for the FAQ communication, admitted that the document did not clearly explain the effect of the spin-off on Early Retirement Benefits. App.33 ¶¶85. Her excuse was that there simply wasn’t enough time to be clear. *Id.*

DuPont knew that the communications were confusing. When a regional HR head explicitly asked for help and clarity in communicating changes to confused employees, both Lisa White, DuPont’s designated witness on communications, and Committee members obscured the actual impacts while acknowledging internally that such responses were inadequate. App.41-42 ¶¶ 110-116, 43 ¶¶119, 1439-1441 (299:13-307:16) (testimony regarding trial exhibit at App.1100-1101). Mary Dineen, DuPont’s communications leader for the pension Plan with respect to the merger and spin-off, App.1437 (21:04-13), acknowledged receiving emails from managers about the lack of clarity about the pension benefits at the spin-off and that the communications did not have the same level of detail as DuPont employees had come to expect based on their prior experience. App.1438 (296:05-

19). One email involving members of the Administrative Committee noted that “employees will not know if they are [eligible for] unreduced or reduced [benefits] so how can they tell that?” App.42 ¶115.

Nor was the situation improved by a supposedly explanatory “Portal” that was confusing, hard to access, and unclear on what materials applied to what group of employees. Even if the hard-to-find Power Point presentations buried in the Portal were accessed, they miscommunicated the impact of the spin-off on benefits. Indeed, Mary Dineen, Senior Manager for Global Employee Benefits, testified that the “PowerPoint presentations did not, in her opinion, communicate that under 50 employees could never receive Early Retirement benefits after the spin-off.” App.38.

Finally, the most important communication tool under ERISA, the operative SPD, contained no discussion of the impact of the spin-off at all. App.40 ¶108. That silence is especially problematic given Committee Member Mark Durkovic’s testimony that the SPD “is the primary place [participants] get their information about their plan benefits.” App.76 ¶263. Consistent with DuPont’s understanding, participants testified they relied on the SPD. App.46-47 ¶136, 49-50 ¶¶145 and 149, 61 ¶¶190-191, 63 ¶201, 68 ¶223, 68 ¶226, 1390 Ins.5-10.

3. Early Retirement Class Representative Robert Cockerill.

Mr. Cockerill, a third-generation DuPont employee, began working for Historical DuPont in 1992. App.46 ¶134. At the spin-off, Cockerill was over 49 years old and had nearly 28 years of service. App.53 ¶163. He planned to take the promised Early Retirement benefit, with an unreduced pension at age 58 under “the Rule of 85” under the Plan. App.45-46 ¶136 and n.15, 1352 lns.11-18, 1460.

However, DuPont’s choice to spin off Corteva (and with it the Plan) resulted in Cockerill being terminated from Historical DuPont, eliminating his ability to age into Early Retirement. App.53-54 ¶163. The district court found that only months after the spin-off did Cockerill understand Historical DuPont had terminated him and he would never receive Early Retirement benefits due to the changes in corporate structure. App.14, 54. He read the communications he received as reassuring him that he was not losing any benefits as a result of the spin-off. App.51. Had he known about the enormous change in his retirement possibilities, Cockerill could have made different employment, spending and lobbying choices. App.54 ¶167, App.1458-1460. Appellants’ misrepresentations stripped him of any such opportunity.

The other Early Retirement Class member who testified, Daniel Barish, similarly noted that he did not understand the enormous change to his benefits until

after it had happened, similarly denying him the opportunity to plan and budget accordingly. App.69-70 ¶¶ 232-235.

4. Optional Retirement Class Representatives Darrell Benson and Oliver Major.

Mr. Benson began working with Historical DuPont in 1996. App.56 ¶173. He was 56.8 years old and had 23 years of service at the spin-off. *Id.* Benson first sought to retire in 2022, long after the spin-off, because he believed he had reached the “magic number of 85.” App.57 ¶178, 834 lns.21-23. He contacted Corteva Connection, the Plan’s third-party administrator, and learned for the first time that he “no longer had access” to the Rule of 85 because, for purposes of the Plan, he had been terminated at spin-off. App.58-9 ¶183. Benson did not recall being notified that he was terminated from Historical DuPont or that he now worked for New DuPont, which was no longer a participating employer in the Plan. *Id.*

Mr. Major began working with Historical DuPont in 1997 as a manufacturing operator. App.60 ¶189. At spin-off, he was 54 years old with nearly 22 years of service. App.63 ¶206. As a result of the spin-off, Major was considered terminated. *See* App.1016 (Major record showing “employee status” as “terminated” effective 05-31-2019). As was the case with Cockerill and Benson, Major did not know that he had been terminated for purposes of the Plan at the date of spin-off. He testified that he had no reason to believe a termination had

occurred because he continued to complete the same work, in the same building, with the same salary and supervisor after the spin-off. App.63-4 ¶206. Major first discovered the termination in 2020, when Corteva Connection informed him that the earliest date he could obtain his full unreduced benefits had been pushed out by approximately 5 years. App.64 ¶207. A year later, when his position at New DuPont was eliminated, Mr. Major learned that he was no longer eligible for Optional Retirement Benefits. App. 65 ¶211. The district court found the testimony of Cockerill, Benson, Major, and Barish credible. App. 45 ¶130.

B. Relevant Procedural History.

The district court certified the Early Retirement Class and Optional Retirement Class. App.153, 178-9, 215-216. Following a six-day bench trial, the district court issued a 140-page Findings of Fact and Conclusions of Law, finding in favor of Appellees on Counts II (the Committee abused its discretion in denying Optional Retirement to spun-off employees), IV (Appellants breached their fiduciary duties through misleading communications and omissions) and VI (Appellants violated ERISA's anti-cutback provision by its interpretation of the Optional Retirement provision). App.9-150; App.150 ¶541. The parties submitted briefing on remedies and the district court issued a Final Judgment declaring that Optional Retirement Class members have the right to the benefits, ordering that the Plan be reformed to permit the Early Retirement Class members who continued employment

with New DuPont to age into the benefit, and allowing both Classes to elect those benefits retroactive to the date of the spin-off. App.7, 217-25, 227-29. Appellees filed a petition for attorneys' fees and costs which the district court granted. App.8, 230-39, 522-719.

II. SUMMARY OF ARGUMENT

Faced with an extremely thorough and fact-driven post-trial district court decision, Appellants try unsuccessfully to identify any reversible error. Their primary argument is that Class members were unharmed by the misconduct identified by the district court and thus lack Article III standing and/or failed to prove breach of fiduciary duty. But Appellees are far from mere bystanders with a theoretical interest in the outcome of this litigation. They are participants in an ERISA-governed pension plan whose employment was terminated without their knowledge, who were misinformed about the consequences of such termination on their pensions, and who were thus deprived of opportunity to elect Optional Retirement (if they were over 50 at the spin-off) or to pressure DuPont, seek alternative employment with better benefits, or otherwise plan for their retirement. Appellees have standing to pursue their breach of fiduciary duty claim because there were actual consequences to Appellants' misrepresentations, and because this claim (and its remedy) is analogous to a common-law breach of trust. Moreover,

there was no clear error in the district court’s finding that Appellants made material misrepresentations which harmed Class members.

Appellants further take issue with the district court’s determination that Optional Retirement benefits were available to spun-off participants, but their argument that the Plan was intended to exclude spin-offs from Optional Retirement cannot take precedence over the plain language of the Plan. Even if the Plan language were ambiguous – which it is not – the district court correctly found that Appellants’ interpretation was an abuse of discretion.

The district court was also well within its rights in certifying the Classes. Appellants’ efforts to undermine the Class representatives based on minor factual issues fail, and there are no individualized “damages” issues because the district court properly awarded the equitable remedy of Plan reformation (in addition to granting Optional Retirement Class members the opportunity to elect benefits retroactive to the date of the spin-off).

Finally, the district court’s award of fees to Appellees was not an abuse of discretion: Appellees certainly achieved some success on the merits, showed Appellants’ culpability, and took sufficient risk to warrant a multiplier in this hard-fought litigation. The district court’s decisions should be affirmed.

III. ARGUMENT

A. The District Court Properly Entered Judgment Against Appellants on the Breach of Fiduciary Duty Claim (Count IV).

1. Appellees Have Article III Standing to Assert Their Breach of Fiduciary Duty Claim.

To invoke federal court jurisdiction for purposes of Article III of the Constitution, “a plaintiff must demonstrate (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent, (2) that the injury was caused by the defendant, and (3) that the injury would likely be redressed by the requested judicial relief.” *Thole v. U.S. Bank, N.A.*, 590 U.S. 538, 540 (2020) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). Appellants argue that the district court erred in finding that Appellees established standing with respect to Count IV because Appellees did not suffer any cognizable injury. Br. 18-23.³ This Court reviews the district court’s legal conclusions relating to standing *de novo* and “the factual elements underlying that determination for clear

³ Appellants also assert that their breaches of fiduciary duty did not cause Appellees to be denied any benefits, so the causation/traceability requirement has not been met. Br. 18-19. This misconstrues the nature of the asserted injuries. *See Finkelman v. Nat’l Football League*, 810 F.3d 187, 197 (3d Cir. 2016) (noting that ‘[t]he choice among alternative definitions of the injury may control the determination of causation’) (citation omitted). Appellees do not contend that Appellants’ breaches caused their benefit denials. Rather, the injury is that they were prevented from knowing where they stood with respect to their pension benefits. *Infra* III.A.2.c. Appellants’ misleading and incomplete communications regarding the impact of the spin-off on Plan benefits caused this injury. App.130-31, 219-220.

error.” *Perelman v. Perelman*, 793 F.3d 368, 373 (3d Cir. 2015). The district court properly found that the injury to Class members – namely, the denial of information to which they were entitled under ERISA, preventing them from taking any action to mitigate the loss or know where they stood with respect to the Plan – was concrete and not speculative. App.219-222.

To establish an “injury-in-fact,” a plaintiff must show harm that is ‘concrete and particularized’. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016) (quoting *Lujan, supra*, at 560). But injury need not be economic, and may be “intangible” in nature. *Id.* Thus, the “injury-in-fact” requirement merely “serves to distinguish a person with a direct stake in the outcome of a litigation – even though small – from a person with a mere interest in the problem.” *U. S. v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 689 n.14 (1973) (citation omitted). This requirement “is not Mount Everest.” *In re Horizon Healthcare Serv. Inc. v. Data Breach Litig.*, 846 F.3d 625, 633 (3d Cir. 2017). To the contrary, it “is very generous, requiring only that the claimant allege some specific, identifiable trifle of injury.” *Perelman v. Perelman*, 919 F. Supp. 2d 512, 517 (E.D. Pa. 2013).

“[I]nformational injury” is sufficient to confer Article III standing and is established when the plaintiff has been “denied information to which she was legally entitled, and [] the denial caused some adverse consequences related to the purpose of the statute.” *Kelly v. RealPage, Inc.*, 47 F.4th 202, 212 (3d Cir. 2022).

a. Appellees Have Standing Based on Informational Injury.

Appellees have suffered an informational injury. The district court held, as a factual matter, that Appellants’ communications about the impact of the spin-off on eligibility for Early and Optional Retirement benefits were misleading. App.132-141. Participants are legally entitled to non-misleading communications about their employee benefits. *See, e.g., Varity Corp. v. Howe*, 516 U.S. 489, 502-506 (1996) (misleading representations about the future of plan benefits are a fiduciary breach); *In re Unisys Corp. Retiree Med. Benefits ERISA Litig.*, 579 F.3d 220, 228 (3d Cir. 2009) (fiduciaries have the duty “not to misinform employees through either misrepresentations or incomplete, inconsistent or contradictory disclosures” and “when a fiduciary speaks, it must speak truthfully”) (quotation omitted)); *Horvath v. Keystone Health Plan East, Inc.*, 333 F.3d 450, 456 (3d Cir. 2003) (“the disclosure requirements and fiduciary duties contained in ERISA create . . . certain rights, including the rights to receive particular information”). “[E]ntitlement to the information allegedly withheld is the *sine qua non* of the informational injury doctrine.” *Huber v. Simon’s Agency, Inc.*, 84 F.4th 132, 145 (3d Cir. 2023). The plaintiff in *Huber* failed to establish standing based on informational injury because she had received all of the information to which she was legally entitled, *id.* at 145-146. Here, however, the district court found based on voluminous evidence that Appellants failed to provide appropriate communications about the

implications of the spin-off on Appellees’ benefits under the Plan, and that conclusion is far from clearly erroneous. *Infra* III.A.2.c. and d.

Moreover, the lack of accurate information about the impact of the spin-off on Appellees’ rights to Early and Optional Retirement benefits caused “adverse consequences related to the purpose of the statute.” *Kelly*, 47 F.4th at 212. Appellees were prevented “from taking any action to prevent or mitigate this loss of benefits, such as pressuring [Appellants] or challenging the erroneous interpretation of the Plan (in the case of Optional Retirement Class),” App.220, and they lost the ability to seek alternative employment prior to the spin-off or to otherwise take retirement planning into their own hands. App.54 ¶167, 1458-59. This is sufficient to establish informational injury. *See Deutsch v. D&A Services LLC*, No. 22-1042, 2023 WL 2987568, at *3 (3d Cir. Apr. 18, 2023) (holding that “frustrat[ion]” of the “ability to intelligently choose [a] response” was an adverse consequence of purportedly deceptive practice, giving rise to informational injury). *George v. Rushmore Service Center, LLC*, 114 F.4th 226, 236 (3d Cir. 2024), is distinguishable. There, the complaint did not indicate that the plaintiff had been financially harmed or “suffered distress,” so the Court held that she could not establish informational injury due to lack of adverse consequences. Here, the trial evidence supports a finding that there are “downstream financial consequences” to Appellants’ misleading communications, *infra* III.A.1.a.-c., and Appellees

experienced distress from frustration of their reasonable expectations about pension benefits.⁴ App.54 ¶167, 69 ¶230, 1380 ln.22 – 1381 ln.2, App.1460.

The adverse consequences Appellees experienced are unquestionably related to ERISA’s purpose. Ensuring that plan participants know where they stand with respect to their pension benefits was one of Congress’ animating goals in enacting ERISA, as the district court recognized. App.219 (citing *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 118 (1989); H.R. Rep. No. 93-533, 93rd Cong., 1st Sess. 11 (1973)); *see also Gillis v. Hoechst Celanese Corp.*, 4 F.3d 1137, 1148 (3d Cir. 1993) (same). Thus, Appellees suffered an informational injury and have standing for Count IV.

b. Appellees Suffered a Traditionally Recognized Harm.

Even if the Court is not persuaded that there was an informational injury, Appellees have standing because their injury “has a ‘close relationship’ to a harm traditionally recognized as providing a basis for a lawsuit in American courts”.

TransUnion LLC v. Ramirez, 594 U.S. 413, 417 (2021).

⁴ *Awala v. People Who Want to Restrict Our First Amend. Rts.*, 164 F. App’x 215, 217 (3d Cir. 2005), and *M.S. v. Premiera Blue Cross*, 118 F.4th 1248, 1263 (10th Cir. 2024), also do not avail Appellants. Br. 21. Neither considered the informational injury doctrine. *Awala* does not stand for the proposition that intense disappointment (or “distress,” as the Third Circuit said in *George*) cannot qualify as an adverse consequence of withholding information to which the plaintiff is legally entitled. And the plaintiffs in *Premiera Blue Cross* did not identify *any* harm from defendants’ failure to provide notice of certain plan procedures. Here, Appellees have identified multiple harms.

In *CIGNA Corp. v. Amara*, 563 U.S. 421 (2011), the Supreme Court recognized that relief was traditionally available in equity for breaches of trust, and that reformation of a contract was within the traditional equitable power of a court to remedy fraud or mistake. *Id.* at 439-441. Here, Appellees were harmed by Plan fiduciaries' misleading communications because they were prevented from knowing their rights under the Plan, "from becoming disaffected . . . and from planning for their retirement." *See Amara v. CIGNA Corp.*, 775 F.3d 510, 527 (2d Cir. 2014). These harms bear a sufficiently close relationship to the traditional claim of breach of trust (and Appellees seek reformation, a remedy traditionally available for such a claim). *See Augenbaum v. Anson Invs. Master Fund LP*, No. 22-cv-249, 2024 WL 263208, at *5 (S.D.N.Y. Jan. 24, 2024) ("A breach of trust is a well-established traditional injury"); *Pender v. Bank of Am. Corp.*, 788 F.3d 354, 367 (4th Cir. 2015) ("Under traditional trust law principles, when a trustee commits a breach of trust, he is accountable for the profit regardless of the harm to the beneficiary"). *See also Huber*, 84 F.4th at 149 (holding that the plaintiff had standing due to an injury "of the same character as the harm from fraudulent misrepresentation," a common-law analogue to her statutory cause of action) (quotation omitted)). Appellees have standing on this basis as well.

c. Appellees Have Also Suffered Economic Injuries.

Appellees have a clear financial stake in this lawsuit, unlike in *Thole*, where the Supreme Court found the plaintiffs lacked standing because they would receive the same benefit whether they won or not. 590 U.S. 541. *See also Cottrell v. Alcon Lab 'ys*, 874 F.3d 154, 167-69 (3d Cir. 2017) (finding standing based on plaintiffs' economic interest in the litigation). Here, pursuant to the reformation remedy awarded by the district court, members of the Early Retirement Class have recovered the ability to continue to age into the Early Retirement benefits and retire as early as age 58 with an unreduced pension, or apply for the benefits beginning as early as age 50 that they unknowingly lost. App.7. And members of the Optional Retirement Class were economically harmed by misleading communications because they were deprived of the opportunity to apply for valuable pension benefits. The district court's remedy will enable Optional Retirement Class members to elect benefits retroactive to the date of the spin-off, a major financial benefit. App.7. This is sufficiently concrete for Article III standing purposes.⁵

Further, although it is unknowable whether any Class members' attempts to obtain alternative employment or undertake other corrective retirement planning

⁵ Appellants do not assert that Appellees' asserted injuries are not redressable by the requested relief.

such as changes in spending habits would have been effective, that some economic harms incurred by Class members cannot be fully quantified is not fatal to Article III standing. *See TransUnion*, 594 U.S. at 437 (recognizing possibility of “an actual harm that . . . is not readily quantifiable”); *Uzuegbunam v. Preczewski*, 592 U.S. 279, 293 (2021) (finding Article III standing where plaintiff sought nominal damages because injury was not quantifiable). Appellants deprived Appellees of the ability to take any of the possible corrective actions because they did not know they needed to.

Contrary to Appellants’ contention, Appellees’ allegations of harm are not merely “conjectural or hypothetical,” Br. 21 (citing *Cottrell*, 874 F.3d at 168, and *Knudsen v. MetLife Grp., Inc.* 117 F.4th 570, 582 (3d Cir. 2024)) (citation modified). The harms in this case are far different than those alleged in *Knudsen*, which related to a healthcare plan sponsor’s use of prescription drug rebates for its own corporate purposes rather than to benefit plan participants. Here, the fiduciaries were required to inform participants of their loss of eligibility for benefits due to the spin-off, and Class representatives stated they would have tried to do something to protect their retirements had they been so informed. App.1394 ln.10 - 1395 ln.3, 1418 ln.18 - 1419 ln.4.

Appellants insist that loss of a chance to pressure company leadership or otherwise mitigate the effects of the spin-off on their retirement benefits is too

speculative to confer standing. Br. 22-23. But the cases they cite are, again, distinguishable. *Morales v. Commonwealth Fin. Sys., Inc.*, No. 22-3388, 2023 WL 8111458, at *3 (3d Cir. Nov. 22, 2023), held that the risk of a lawsuit was not a cognizable injury, where the complaint was “bereft of any factual allegations” that the plaintiff had suffered *any* consequence from a deceptive debt collection letter. Here, Appellees have asserted more than the mere risk of possible future events; they have articulated actual adverse consequences from Appellants’ misleading communications. *Supra* III.A.1.a. And in *Krauter v. Siemens Corp.*, 725 F. App’x 102, 107 (3d Cir. 2018), the alleged harm was the *potential* loss of retirement benefits and there was no fiduciary misrepresentation claim, unlike here. None of the cases cited by Appellants hold that the loss of opportunity cannot qualify as an injury-in-fact absent proof that the plaintiff *would* have been successful.⁶ This Court should not invent such a rule, which would be inconsistent with well-established jurisprudence on standing. *See, e.g., Ecosystem Inv. Partners v. Crosby Dredging, L.L.C.*, 729 F. App’x 287, 292 (5th Cir. 2018) (holding “a plaintiff

⁶ Appellants further assert that their miscommunications did not harm Appellees because this case was filed within the limitations period. Br. 23. But the impetus to add the Optional Retirement class in the first and second amended complaints was Major’s second termination from employment and Benson’s attainment of the Rule of 85. The fact that these occurred within the limitations period was pure happenstance and both were harmed by the inability to apply for Optional Retirement due to the spin-off and as of the date of the spin-off. App.57 ¶178, 64 ¶207, district court Dkt. Nos. 45, 72, 73, 102.

suffers a constitutionally cognizable injury by the loss of an *opportunity to pursue a benefit* ... even though the plaintiff may not be able to show that it was *certain to receive* that benefit had it been accorded the lost opportunity”, and collecting cases).

2. The District Court Did Not Err in Finding that Appellants Breached Their Fiduciary Duties.

a. Proof of Detrimental Reliance is Not Required.

Appellants contend that the district court erred in holding that detrimental reliance was not an element of Appellees’ breach of fiduciary duty claim. Br. 24-27. The district court’s decision was based on *Amara* and its progeny. App.188. It noted that the Supreme Court “reasoned that remedies like reformation and surcharge generally do not require a showing of detrimental reliance.” *Id.* (citing *Amara* at 443–44). The district court acknowledged the “Third Circuit has not addressed CIGNA’s impact on § 404(a)(1)’s detrimental reliance element.

However, other circuits have.” *Id.* “In Osberg v. Foot Locker Inc., the [Second Circuit] Court held that CIGNA ‘mandates the conclusion that detrimental reliance need not be shown where’ a ‘plaintiff alleging a violation of § 404(a) seeks plan reformation.’” *Id.*, citing *Osberg*, 862 F.3d 198, 213 (2d Cir. 2017). *See also Silva v. Metropolitan Life Ins. Co.*, 762 F.3d 711, 720–23 (8th Cir. 2014) (holding detrimental reliance is not required for ERISA fiduciary breach claims seeking surcharge or reformation remedies). And “two in-Circuit district courts to address

the issue have agreed that CIGNA eliminated the detrimental reliance element of § 404(a) claims seeking reformation and surcharge.” App.189, citing *Cunningham v. Wawa*, 387 F. Supp. 3d 529, 540–42 (E.D. Pa. 2019); *Goldenberg v. Indel, Inc.*, No. 09-5202, 2012 WL 12906332 at *6 (D.N.J. Feb. 28, 2012).

Appellants do not address whether or to what extent *Shook v. Avaya Inc.*, 625 F.3d 69, 73 (3d Cir. 2010) and *In re Unisys Corp. Retiree Corp. Retiree Med. Benefit ERISA Litigation*, 242 F.3d 497, 508-510 (3d Cir. 2001), remain good law after *Amara*. Br. 24. Appellants also cite several post-*Amara* cases imposing a detrimental reliance requirement, Br. 25-26 n.5, but none of those cases involved reformation and are therefore inapposite.⁷

Appellants argue the district court’s application of *Amara* was “flawed” because *Amara* addressed violations of ERISA §§ 102(a) and 104(b) rather than fiduciary disclosure obligations under ERISA § 404(a). Br. 25-26. But Appellants do not explain why that matters, and it does not. The Court in *Amara* reasoned that where the ERISA provision at issue “do[es] not set forth any particular standard for determining harm,” whether reliance is required depends on whether the law of equity requires it for the specific remedy sought. 563 U.S. at 443. Like Sections 102 and 104, ERISA § 404(a) does not articulate a standard of harm. *Osberg*, 862

⁷ It also does not appear that the plaintiffs in *Shook* or *Unisys* sought reformation as the remedy for the defendants’ fiduciary misrepresentations.

F.3d at 212.⁸ Thus, under *Amara*'s reasoning, if the equitable remedy being sought for a § 404(a) violation does not require reliance, reliance need not be shown. Appellants insist that statutory reporting and disclosure obligations are “materially different” from common law fiduciary disclosure duties, Br. 26, but their cited case shows that the Third Circuit applies a *higher* standard to award a remedy for statutory reporting and disclosure claims. *Jordan v. Fed. Exp. Corp.*, 116 F.3d 1005 (3d Cir. 1997) at 1013-14 (holding that a plaintiff need not show “extraordinary circumstances” in order to obtain an equitable remedy under ERISA § 502(a)(3) for a fiduciary breach). Thus, if reliance is not required for plan reformation as a remedy for a statutory reporting violation, it is certainly not required for plan reformation as a remedy for a fiduciary breach. *Engers v. AT&T, Inc.*, 466 F. App'x 75, 81 n.9 (3d Cir. 2011), is not to the contrary. It affirmed that “extraordinary circumstances” are required to award equitable relief for a violation of ERISA's reporting and disclosure requirements, and held that *Amara* did not alter this rule – it did not deal with the prerequisites for equitable relief for a § 404(a) claim. *See id.* at 82-83 (dismissing fiduciary breach claim as inadequately pled and thus not reaching the question of available remedies).

⁸ Appellants cite *Shook*, 625 F.3d at 73, for the proposition that the standard of harm for fiduciary misrepresentation claims is detrimental reliance, but *Shook* did not actually consider whether ERISA § 404(a) contains a “standard of harm.” This Court should follow *Amara*, *Osberg*, *Silva*, and *Cunningham* in holding that whether reliance is required depends on the remedy sought.

Finally, Appellants suggest that this Court should ignore *Amara* because the portion cited by the district court was dicta, but the Supreme Court has not “distanced itself” from *Amara*’s discussion of detrimental reliance. Br. 26 & n.6 (citing *Aldridge v. Regions Bank*, 144 F.4th 828, 847-49 (6th Cir. 2025), which cited *Montanile v. Bd. of Trs. Of Nat’l Elevator Indus. Health Benefit Plan*, 577 U.S. 136, 148 n.3 (2016)). *Montanile* did not touch on whether detrimental reliance must be shown for a reformation remedy post-*Amara*.⁹ The Supreme Court’s statements in *Amara*, as well as the Second and Eighth Circuit’s interpretations thereof, are at least persuasive authority here.

b. Reformation is Distinct From Estoppel.

Next, Appellants argue that detrimental reliance must be shown because “Plaintiffs’ desired remedy is equivalent to estoppel.” Br. 27-28. Oddly, they rely on *Amara*, but the Supreme Court was quite clear that estoppel and surcharge are different equitable remedies with different proof requirements. 563 U.S. at 443 (noting that detrimental reliance is required for estoppel but not for reformation).

⁹ *Aldridge and Rose v. PSA Airlines, Inc.*, 80 F.4th 488, 503 (4th Cir. 2023) addressed surcharge as an equitable remedy, and *Montanile* addressed an equitable lien against a defendant’s general assets. Neither of these remedies are at issue here. And *Laurent v. Pricewaterhouse Coopers LLP*, 945 F.3d 739, 748 (2d Cir. 2019), while acknowledging that the discussion of reformation in *Amara* was technically dicta, supports Appellees: it held that courts may grant equitable relief including reformation to remedy ERISA violations “even in the absence of mistake, fraud, or other conduct traditionally considered to be inequitable.”

Unisys IV, 579 F.3d 220, 237 (3d Cir. 2009), which was decided before *Amara*, does not help Appellants because there the court *denied* a reformation remedy and instead ordered the defendant to pay the benefit it had led the plaintiffs to believe they would receive. *Id.* at 235-36. Here, the district court ordered Appellants to amend the Plan and to allow Class members to make Early Retirement benefit elections, a reformation remedy. App.7, 227-29, 239.

In sum, the district court correctly held that Appellees need not show detrimental reliance.¹⁰

c. Appellants' Misrepresentations and Omissions Were Material.

Whether a misrepresentation is “material” is a “mixed question of law and fact.” *Fischer v. Phila. Elec. Co.*, 994 F.2d 130, 135 (3d Cir. 1993) (citation omitted). “[W]hen the mixed questions immersed the district court in case-specific factual issues, [the Circuit’s] review is a deferential one for clear error. *United States ex rel. Int’l Bhd. of Elec. Workers Loc. Union No. 98 v. Fairfield Co.*, 5 F.4th 315, 329 (3d Cir. 2021).

¹⁰ Even if detrimental reliance were required, its proof is similar to that of materiality – it is a showing that the misleading and/or omitted information could have caused a reasonable participant to decide to “decline other employment opportunities, to forego the opportunity to purchase supplemental [employee benefits], or other important financial decisions pertaining to retirement.” *Unisys IV*, 579 F.3d at 229. *See also Jordan*, 116 F.3d at 1015 (information is material if there is a “substantial likelihood that it would mislead a reasonable employee in making an adequately informed retirement decision.” As discussed herein, Appellees have shown that Appellants’ misrepresentations were material.

As the district court stated, “A misleading statement or omission by a fiduciary” is material if ““there is a substantial likelihood that it would mislead a reasonable employee in making an adequately informed retirement decision,”” *Harte v. Bethlehem Steel Corp.*, 214 F.3d 446, 452 (3d Cir. 2000) (quoting *In re Unisys Corp. Retiree Medical Ben. ERISA Litig.*, 57 F.3d 1255, 1264 (3d Cir. 1995)). App.125. However, materiality is closely related to detrimental reliance. *See D’Iorio v. Winebow, Inc.*, 68 F. Supp. 3d 334, 353 (E.D.N.Y. 2014). Both inquiries are focused on whether the recipients of misleading information were harmed. *See* App.130. *Amara* clarified that the standard of harm depends on the equitable relief being sought. *Id.* None of the cases cited by Appellants re-evaluate the materiality inquiry in light of *Amara* and its progeny. *Cf.* Br. 30-31. The district court’s holding that harm does not require “the ability to make a benefit decision” was correct in light of *Amara*’s statement that harm includes “the loss of a right protected by ERISA or its trust-law antecedents.” App.130-31 (quoting *Amara*).¹¹

Here, the district court found as a factual matter numerous misrepresentations and omissions by Appellants. The SPD “was silent on the spin-off” and stated that benefits would be determined based on the employee’s age when they “terminate employment,” and Appellants “sooth[ed] [employees]

¹¹ Appellants cite *Kousisis v. U.S.*, 145 S.Ct. 1382, 1398 (2025), but that is a criminal case and applied a standard of materiality that has nothing to do with ERISA breach of fiduciary duty claims.

repeatedly with reassurances that the spin-off would have ‘very few changes to your benefits’” or employment. App.128 ¶465. *See also* App.31-34, 133 n.35, 135 ¶485. Appellants themselves “did not believe the FAQs clearly explained the import of the spin-off,” and “a reasonable employee could not have been expected to review the PowerPoint.” App.132-33 ¶473-78. Further, Appellants “never even informed Plan participants in any communications before spin-off that the Optional Retirement Benefit would no longer be available due to the spin-off.” App.135, ¶484. “Would the reasonable employee believe he was terminated from E.I. du Pont de Nemours (‘Historical DuPont’) and now worked for the entirely distinct DuPont de Nemours, Inc. (‘New DuPont’), let alone understand the Plan benefit implications? Certainly not.” App.129, ¶465.

These misrepresentations and omissions were material because Appellees were deprived of the opportunity to make adequately informed retirement decisions – in particular, Optional Retirement Class members were misled about the fact that their employment was being terminated in the spin-off, so they could not make an educated decision about whether to apply for Optional Retirement. App.27-28 ¶67 and nn.5-6, App.58-60 ¶¶183 and 186, App.63-64 ¶206. As the district court noted, misinformation is material if there is “‘a substantial likelihood that it would mislead a reasonable employee’ – not that it actually did.” App.129.

Further, participants were prevented from knowing where they stood with respect to the Plan. App.130-131.¹² In other words, they suffered “the loss of a right protected by ERISA or its trust-law antecedents.” 563 U.S. at 444. As discussed above, ERISA gives participants the right to non-misleading information from fiduciaries (similar to the traditional equitable claim for breach of trust). *Supra* III.A.1.b. The loss of this right is a cognizable harm under ERISA (as well as under Article III). *See also* App.131-32 (citing *Varity*, 516 U.S. at 515, allowing plaintiffs to pursue a remedy under § 502(a)(3) for fiduciary miscommunications even though they had no benefits due to them under the plan). There was no error in the district court’s decision on materiality.

¹² Appellants argue that the district court erred by relying on *Firestone*, 489 U.S. at 118, because the Supreme Court was discussing the purpose of ERISA’s statutory disclosure provisions. Br. 32. But ERISA’s fiduciary disclosure requirements are *broad*er than its express statutory reporting and disclosure requirements. *See Glaziers & Glassworkers Union Loc. No. 252 Annuity Fund v. Newbridge Sec., Inc.*, 93 F.3d 1171, 1180 (3d Cir. 1996) (explaining fundamental fiduciary duty to furnish information to beneficiaries); *Peralta v. Hispanic Business, Inc.*, 419 F.3d 1064, 1072 (9th Cir. 2005) (“in order to give meaning and effect to ERISA’s fiduciary purpose, more must be required of an administrator than mere compliance with ERISA’s express reporting and disclosure provisions”). Thus, the district court properly cited *Firestone* in determining that a plan administrator breaches its duty when it prevents participants from knowing where they stand with respect to the plan.

d. Appellants Knew or Should Have Known Their Representations Would Mislead Class Members.

Appellants claim that they are not liable for fiduciary breach unless they knew that participants “needed more information to avoid a harmful benefits decision and failed to speak.” Br. 33-37. But the Third Circuit has held knowledge of an employee’s confusion is not an element of a fiduciary breach claim. *Daniels v. Thomas & Betts Corp.*, 263 F.3d 66, 76 (3d Cir. 2001) (clarifying Appellants’ cited authority, *UAW v. Skinner Engine Co.*, 188 F.3d 139, 149-50 (3d Cir. 1999)). The *Daniels* court noted that such knowledge may be relevant where the “employer has not affirmatively misled the employee.” *Id.* (citing *Bixler v. Central Pa. Teamsters Health & Welfare Fund*, 12 F.3d 1292, 1300 (3d Cir.1993)). Here, the district court found as a factual matter Appellants affirmatively misled Plan participants, so *Skinner* is inapposite. App.23, 31-32, 127-129, 135, 138-41.¹³ The district court did not merely find “accurate statements” to be “ambiguous or insufficient”. Br. 34. Rather, it found Appellants’ representation to employees that the spin-off would result in “very few changes to your benefits” affirmatively deceptive: the spin-off resulted in the Plan being transferred to Corteva, meaning

¹³ The district court also found the Committee’s failure to tell anyone it interpreted Optional Retirement to be inapplicable in a spin-off a significant omission. App.135-136, 138-139. Between omissions and the affirmative misleading statements identified by the district court, harm to participants was “reasonably foreseeable.”

that Class members no longer worked for a participating employer and thus could never become eligible for Early Retirement. App.40 ¶109, 83-4 ¶298, 128-129 ¶465. Statements that the spin-off had “no substantial effects on employment” were also deceptive, as spun-off employees were terminated from Historical DuPont. *Id.* See also App.138 ¶497. Thus, under *Daniels*, the district court did not need to find that Appellants knew employees were confused about the impact of the spin-off.

However, the district court *did* find that Plan fiduciaries “‘as an objective matter, knew or should have known that a beneficiary would be confused’ by how the spin-off would affect Early Retirement benefits and failed to adequately convey its effect.” App.134 (quoting *Unisys*, 579 F.3d at 229). The district court explained that this “conclusion stems not only from an objective review of the communications, but also from the feedback Defendants received (including the emails from employees) which show Defendants’ knowledge that their employees were confused about the spin-off’s impact on their benefits.” App.134-135 (citing *Daniels*, 263 F.3d at 73), 41-43. Further, Appellants “betrayed their awareness of the confusion” they had sown by telling internal customer services representatives that New DuPont employees were “terminated as of spin-off” while telling plan participants that “nothing change[d]” at spin-off. App.127 ¶461 and n.31, 1312, 1315.

Appellants argue that these factual findings were clearly erroneous, asserting that the evidence relied on by the district court “shows diligence and transparency.” Br. 35. The “clearly erroneous” standard is highly deferential, requiring a “definite and firm conviction” that a mistake was made. *Concrete Pipe & Prods. of California, Inc. v. Constr. Laborers Pension Tr. for S. California*, 508 U.S. 602, 623 (1993). Appellants’ reliance on *Travelers Cas. and Sur. Co. v. Insurance Co. of North America*, 609 F.3d 143 (3d Cir. 2010) is misplaced. *Travelers* relied on *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 565 (1985), which said that if the “district court’s account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse....even when the district court’s findings do not rest on credibility determinations, but are based on physical or documentary evidence or inferences from other facts.”

The evidence overwhelmingly supports the district court’s finding that Appellants’ communications were opaque and misleading (and they knew it). *See, e.g.*, App.33 ¶85 (Dineen admitting the FAQs did not clearly explain the effect of the spin-off on Early Retirement benefits), App.41 ¶113 (human resources employee telling Committee there is still a lot of confusion), App.42 ¶115 (Committee noting that the PowerPoint presentations were confusing and “employees will not know if they are [eligible for] unreduced or reduced [benefits] how can they tell that?”), *Id.* ¶116 (human resources employee notifying

Committee they should circulate the PowerPoint presentations because “employees don’t tend to go into the portal as much.”), *Id.* ¶118 (reports from a lot of upset pensioners), App.43 ¶119 (bargaining employees did not know the spin-off’s effect on their pensions and Committee member responding by sending copy of 2018 FAQs even though Dineen said FAQs did not clearly explain this). There was no clear error in the district court’s decision on this issue.

B. The District Court Correctly Found in Appellees’ Favor on the Optional Retirement Claim.

Because the Plan confers discretion on the Plan Administrator, its interpretations of unambiguous terms must be upheld “as long as those interpretations are ‘reasonably consistent’ with the plan’s text.” *Dowling v. Pension Plan For Salaried Emps. of Union Pac. Corp. & Affiliates*, 871 F.3d 239, 245–46 (3d Cir. 2017) (citing *Fleisher v. Standard Ins. Co.*, 679 F.3d 116, 121 (3d Cir. 2012)). The Plan Administrator’s interpretations of ambiguous plan language will be sustained unless they are “arbitrary and capricious.” *Id.* (citing *McElroy v. SmithKline Beecham Health & Welfare Benefits Tr. Plan*, 340 F.3d 139, 143 (3d Cir. 2003)). While review under the arbitrary and capricious standard is deferential, “it is not without ‘some teeth’ and does not mean ‘no review.’” *Schlear v. Carpenters Pension & Annuity Fund of Phila. & Vicinity*, No. 22-1843, 2023 WL 3569971, at *4 (E.D. Pa. May 18, 2023) (citation omitted).

Under the Plan, Optional Retirement benefits are available to participants who reach age 50 and have at least 15 years of service, but are “involuntarily terminated for reasons other than discharge for dishonesty, insubordination, or other misconduct.” App.17. The Plan includes enumerated Business Exceptions to this provision where: (1) “the employee is offered and accepts employment with the buyer or joint venture at the site in conjunction with a sales agreement between the Company and a buyer of company assets or in conjunction with the formation of a joint venture”; (2) “the employee is offered and refuses employment with the buyer or joint venture at the site in conjunction with a sales agreement between the Company and a buyer of Company assets or in conjunction with the formation of a joint venture unless the offer is less than 80% of the employee’s Company wage or salary level or the rejection results in a job for another employee who would otherwise have been terminated for lack of work”; or (3) “the employee is transferred to or employed by a wholly-owned subsidiary of the Company, or is transferred to or employed by a subsidiary of the Company or a joint venture in which the Company participates that recognized Company service.” App.18-19. The Committee interpreted the Plan to include spin-offs as a Business Exception to Optional Retirement. App.12-13, 1105-1106.

The district court held that the Plan language is unambiguous and the Committee’s interpretation was not reasonably consistent with the Plan’s express

terms. App.115-118. Alternatively, it held that even if the Plan language is ambiguous, the Committee's interpretation was arbitrary and capricious. App.118-120.

1. Optional Retirement Class Members Were Terminated from Employment.

Appellants first argue that the district court erred because Optional Retirement Class members were not involuntarily terminated. Br. at 39-41. But as the district court properly found, Class members “lost employment with Historical DuPont due to the spin-off.” App.117 (emphasis added). *See also* App.139 n.39 (“As a matter of contract interpretation, Plaintiffs were involuntarily terminated at spin-off, entitling the Optional Retirement Class Members to benefits under the Plan”). They clearly did not choose to lose employment with Historical DuPont. App.27 n.6, App.1457. Thus, they were involuntarily terminated. *See* dictionary.com/browse/termination (defining “termination” as “an ending of employment with a specific employer”); dictionary.com/browse/involuntary (defining “involuntary” as “not by one’s own choice”). The district court noted Appellants’ semantic games about whether employees were “transferred” rather than “involuntarily terminated” App.27-28 nn.5-6 (referring to termination for some purposes and other names for other purposes); *see also* App.1458. But there is no dispute that Optional Retirement Class members were employed by Historical DuPont before the spin-off and were not employed by Historical DuPont after the

spin-off. App.28, 1016 (showing Major “employee status” as “terminated” effective 05-31-2019), App.1461 (showing Cockerill “employee status” as “terminated” effective 05-31-2019), App.1450 (342:24-343:12).

Appellants falsely assert that the Committee determined that Optional Retirement Class members “did not suffer an involuntary termination of employment.” Br. 39. In fact, the Committee said, confusingly, that “the pension plan participants who will be part of new DuPont are not being terminated under the PR&P but rather are separating from the controlled group sponsoring the PR&P.” App.1105-1106. In other words, their employment with the Plan sponsor (Historical DuPont) was ending as a result of the spin-off, and they would begin employment with new DuPont, a different corporate entity. “Separate” and “terminate” both mean “end” in the employment context. *See* [dictionary.com/browse/separate](https://www.dictionary.com/browse/separate) (defining “separate” as “to remove or sever from association, service, etc.”); *Orgill v. Norstan Commc’ns, Inc.*, No. CIV 01-1249, 2002 WL 35649498, at *4 (D.N.M. Dec. 5, 2002) (“The plain meaning of the phrases ‘date of separation’ or ‘date of termination’ . . . is the date the employee’s job ends”). The Committee did not actually interpret the term “involuntary

termination,”¹⁴ but even if it had, any interpretation excluding cessation of employment with a specific employer by corporate fiat would be unreasonable. *See Howley v. Mellon Financial Corp.*, 625 F.3d 788, 795 (3d Cir. 2010) (an interpretation that is “contrary to the clear language of the Plan” is an abuse of discretion).

The district court’s reference to “‘actual’ employment loss,” App.118, was in response to Appellants’ suggestion that Optional Retirement was intended as a sort of severance benefit, and thus allowing spun-off employees to elect it would have been inconsistent with the intent of the Plan because they were employed post-spin-off by New DuPont. *See* Br. at 39 (stating that “transferred employees” retained their “same positions and salaries” post spin-off). But the asserted purpose of a Plan provision cannot trump its plain meaning and the Committee did not articulate it. Moreover, as the district court found, the evidence does not support Appellants’ assertion that “Optional Retirement Benefits were meant only for employees who suffered an ‘actual’ employment loss.” App.118 ¶¶431-32. This Court need not, and should not, defer to a post-hoc rationalization by Appellants. *See, e.g., Rombach v. Plumbers Local Union No. 27 Pension Fund*, No. 24-2482,

¹⁴ Reading the Committee’s decision as a whole, the Committee was asked to, and did, determine that Optional Retirement was unavailable based on the Business Exceptions, not based on the absence of involuntary termination of employment. App.1105.

2025 WL 3110791, at *2 (3d Cir. Nov. 6, 2025) (*citing Gritzer v. CBS, Inc.*, 275 F.3d 291, 296 and n.4 (3d Cir. 2002)).

2. The Plan’s “Business Exceptions” to Optional Retirement Do Not Include a Spin-Off.

Next, Appellants argue that the district court erred in rejecting the Committee’s interpretation that the spin-off was a Business Exception to Optional Retirement. Br. 41-47. They are wrong. The district court correctly found that the Business Exceptions are not ambiguous. They provide that Optional Retirement is not available to participants in specific situations, none of which is a corporate spin-off. App.116-117 (determining that corporate spin-off is not in the Plan language and is not the same as the other business exceptions explicitly listed). The district court noted that Appellants “did not and cannot identify any Plan language or evidence in the administrative record that qualifies the spin-off as included within any written terms like “asset sale,” “joint venture,” or “parent-subsidiary.” App.117 (citing *Bohler-Uddeholm America, Inc. v. Ellwood Group, Inc.*, 247 F.3d 79, 94 n.3 (3d Cir. 2001)). The Committee’s interpretation was not reasonably consistent with the Plan language. *Id.*

Appellants argue that the district court erred in holding that even if the Plan language was ambiguous, the Committee’s interpretation was an abuse of

discretion. Br. 42. But they do not actually contend that the Business Exceptions are ambiguous.¹⁵ Thus, the District court's decision should be affirmed.

Moreover, the district court's conclusion that the Committee abused its discretion was correct. Appellants insist that the district court should have deferred to the Committee's finding that applying the Business Exceptions to spun-off employees was consistent with the Plan's intent. Br. 41-42. But again, the intent of the Plan does not override its terms, and the evidence adduced at trial did not support that Optional Retirement was intended to be as narrow as Appellants now say it is. App.118. Appellants' cite to *Feeko v. Pfizer, Inc.*, 636 F. App'x 98 (3d Cir. 2016), is unavailing. In *Feeko*, the plan at issue had the explicit purpose of providing employees "with benefits that will assist them with their transition" after termination and excluded transfer to a "successor company" from the definition of termination. *Id.* at 100. The court deferred to the plan administrator's interpretation of "successor" because it was consistent with the plan's purpose, noting that transitioned employees' "salary and benefits remained largely unchanged." *Id.* at

¹⁵ Appellants state that "[e]ven if the language of the Business Reorganization Exceptions is unambiguous, the district court still erred in rejecting the Administrator's interpretation" because spin-offs "share many characteristics with events that are listed and the Administrator had discretion to supply omissions consistent with the Plan's intent." Br. 46. Appellants cite no authority for this proposition, and it is wrong. *See, e.g., Freitas v. Geisinger Health Plan*, 542 F. Supp. 3d 283, 304 (M.D. Pa. 2021) (an interpretation is arbitrary and capricious if it requires terms to be inserted into the plan that do not exist).

105. Here, in contrast, the Business Exceptions are not explicit regarding their purpose and spun-off employees *did* suffer a significant adverse financial consequence from the cessation of their employment with Historical DuPont: loss of rights under the Plan. App.115-116 ¶¶ 423, 427, n.22, App.120 ¶439.

Appellants further assert that the Committee’s interpretation of the Business Exceptions is “consistent with past practice.” Br. 43-47. One Committee member testified that the spin-off was “analogous” to the specific transactions enumerated as Business Exceptions, App.78 ¶271, but the Business Exceptions are quite specific and do not encompass “analogous” or similar transactions. Further, as the district court correctly pointed out, the Committee members could not recall any discussions that took place about past practices. App.79, 100-101. Appellants offered a list of “corporate transactions . . . related to Historical DuPont and/or the Plan” which was prepared for this litigation, App.852 ln.7 - 853 ln.5, but the only spin-off transaction on the list was of Chemours and “[Appellants] did not introduce any evidence to demonstrate how, in 2015, the Administrative Committee interpreted the Plan in light of the Chemours spin-off.” App.100. Indeed, the single participant identified who applied for Optional Retirement after the Chemours spin-off was denied because the Committee determined he was not terminated for lack of work, not based on any of the Business Exceptions, App.100

¶365, proving the “past practice” rationale is unsupported and the district court properly refused to credit it. App.45-46 at ¶132, 78 ¶270, 83 ¶294.

The district court’s consideration of whether the Committee abused its discretion did not necessarily have to include (and was certainly not limited to) the so-called “*Howley* factors.” *Howley* quoted the since-overruled *Moench v. Robertson*, 62 F.3d 553, 566 (3d Cir. 1995), for five factors to be considered in determining whether an administrator’s plan interpretation is reasonable. 625 F.3d at 794-95.¹⁶ However, *Howley* also noted that courts must consider “evidence relating to ‘the nature, extent, and effect on the decision-making process of any conflict of interest’” on the part of the plan administrator. *Id.* at 794. Courts also consider whether the administrator’s decision was supported by substantial evidence. *See, e.g., McLeod v. Hartford Life & Acc. Ins. Co.*, 372 F.3d 618, 623-24 (3d Cir. 2004).

Here, the district court held that the Committee’s interpretation was contrary to the Plan language and not necessarily consistent with the purpose of Optional Retirement. App.117-119. This satisfies two of the “*Howley* factors.” Further, the district court found the Committee abused its discretion because its interpretation

¹⁶ The factors are: whether the interpretation is “consistent with the goals of the Plan, whether it renders any language in the Plan meaningless or internally inconsistent,” whether it conflicts with ERISA’s requirements, whether the administrator “interpreted the provision at issue consistently, and whether the interpretation is contrary to the clear language of the Plan.” *Id.* at 795.

of the Plan was affected by its structural conflict of interest. App.119-120. For example, the Committee denied Cockerill's claim for Optional Retirement on the ground that he was not "terminated for lack of work," without reference to the Business Exceptions. *Id.* But on appeal it found Optional Retirement is "not applicable when employment is terminated in connection with a corporate spin-off" without listing the Business Exception to which this applied. *Id.* Major's claim was denied because he was not terminated "due to lack of work," with no reference to the Business Exceptions. *Id.* Only Benson's claim was denied based on the Business Exceptions, but the district court noted that this was during the course of this litigation. *Id.* Appellants protest that the Committee's decision on Cockerill's claim is irrelevant to the Optional Retirement Class claims. Br. 44-45. Although it is true that Cockerill is not an Optional Retirement Class member, inconsistent interpretation of a Plan term supports a finding that the Committee acted arbitrarily and capriciously. *Howley*, 625 F.3d at 795. The district court's consideration of evidence from Cockerill's claim was appropriate because it bears on the Committee's bias and/or conflict of interest. *See Noga v. Fulton Fin. Corp. Emp. Benefit Plan*, 19 F.4th 264, 273-76 (3d Cir. 2021).

According to Appellants, the Committee's shifting rationales was a mere "imprecise use of terms." Br. 45. But this coupled with other circumstances – in particular, that the Committee was told by a corporate source exactly how to

interpret the Plan, met very briefly and had minimal discussions, and did not communicate its interpretation to Plan participants – was more than enough for the district court to find that the Committee abused its discretion. App.26-27, 118-119.

Thus, this Court should affirm the district court’s decision that a spin-off is not a Business Exception to Optional Retirement.

C. The District Court’s Award of Retroactive Relief Was Appropriate.

Appellants argue that the district court should not have permitted both Classes to make retroactive benefit elections, because they did not prove they “would have elected the benefit but for [Appellants’] misconduct,” Br. 47-48 citing *Cottillion v. United Refining Co.*, 781 F.3d 47, 61-62 (3d Cir. 2015).

Cottillion does not hold that participants must prove they would have elected a certain form of benefit in order to receive a retroactive award. In *Cottillion*, a participant was told 10 years after starting early retirement benefits that the plan had been reinterpreted, his benefits were being reduced, and the plan would recoup overpaid benefits. *Cottillion v. United Refining Co.*, No. 09-140E, 2013 WL 1419705, * 1 (W.D. Pa. Apr. 8, 2013). Two participants who had not yet elected benefits brought a class action under ERISA and the district court held that the reinterpretation violated ERISA. *Id.* at *12. The plaintiffs requested that the court award class members a lump sum calculated going back to the earliest date they could have elected early retirement. *Cottillion v. United Refining Co.*, No. 09-

140E, 2013 WL 5936368, *8 (W.D. Pa. Nov. 5, 2013). Alternatively, plaintiffs requested the option to elect immediate commencement of an unreduced early retirement benefit. *Id.* The court held that it would be “speculative” to award the lump sum because there was no evidence that those class members had decided not to commence early retirement benefits as a result of the cut-back. Instead, the court “adopt[ed] Plaintiffs’ alternative request and order[ed] Defendants to provide each class member who has reached their early retirement date with the opportunity to immediately commence receiving an unreduced benefit if they choose to do so.” *Id.* The Third Circuit affirmed as to liability and relief because the district court acted within its discretion. 781 F.3d at 62.

Here, the district court ordered relief for both Classes akin to the alternative request for relief awarded by the district court in *Cottillion*: notice and the opportunity to elect to commence benefits at a chosen date. App.7, 217. The *Cottillion* plaintiffs did not request that they be permitted to elect retroactive benefits, as Appellees did here, but nothing in *Cottillion* precludes such relief, particularly here where the district court made extensive findings that Plan participants were misled and left uninformed about their status and eligibility for benefits. *Supra* III.A.2.c. – d. Indeed, only the ability to elect retroactive relief will remedy the particular harm the district court found here: that Appellees were misinformed about the impact of the spin-off on their pensions and thus prevented

before and after the spin-off from taking retirement planning into their own hands. App.54 ¶167, App.1457-1460.

Permitting retroactive reenrollment or election of benefits is not an uncommon remedy where failure to disclose an amendment or the like caused harm to plan participants. *See, e.g., Lettrich v. J.C. Penney Co.*, 213 F.3d 765, 771 (3d Cir. 2000) (“participants may recover the benefits under the plan before the amendment if they can demonstrate cognizable prejudice from the company’s failure to fully comply with ERISA’s disclosure requirements”); *Veilleux v. Atochem N. Am.*, 929 F.2d 74, 76 (2d Cir. 1991) (“Where violations of ERISA disclosure provisions work a ‘substantive harm’ on plaintiffs who are denied benefits under the improperly disclosed plan, courts may ... grant the benefits.”). And it is consistent with the long-established principle that uncertainties are resolved against breaching fiduciaries and in favor of innocent participants in determining remedies. *See Donovan v. Bierwirth*, 754 F.2d 1049, 1056 (2d Cir. 1985). Appellants’ argument with respect to retroactive relief should be rejected.

D. There Was No Error in the District Court’s Class Certification.

The district court denied two motions to decertify the Classes, and this Court denied Appellants’ petition for review under Rule 23(f). App.217, 226, 417, 445. The district court’s decisions on class certification are reviewed for abuse of discretion, “which occurs if the district court’s decision rests upon a clearly

erroneous finding of fact, an errant conclusion of law or an improper application of law to fact.” *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 595 (3d Cir. 2009) (quotation omitted). There is no basis to disturb the district court’s decisions here.

1. The Optional Class Representatives Meet the Typicality and Adequacy Requirements.

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “[T]ypicality . . . does not require ‘that all putative class members share identical claims.’” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 531-32 (3d Cir. 2004). The typicality requirement ensures that class representatives are sufficiently similar to the rest of the class that allowing them to represent the class will be fair. *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 597 (3d Cir. 2009). This analysis sets a “‘low threshold’ for typicality.” *In re National Football League Players (NFL) Concussion Injury Litig.*, 821 F.3d 410, 428 (3d Cir. 2016) (citing cases). The similarity between claims of the representative and those of the class “does not have to be perfect.” *Schering Plough*, 589 F.3d at 598. “Even relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories’ [sic] or where the claim arises from the same practice or course of conduct.” *NFL*, 821 F.3d at 428. *See also Boley v. Univ. Health Servs., Inc.*, 36 F.4th 124, 134 (3d Cir. 2022).

The adequacy requirement of Rule 23(a)(4) is similarly not onerous. It requires that (1) plaintiff “has the ability and the incentive to represent the claims of the class vigorously” and (2) “there is no conflict between the individual’s claims and those asserted on behalf of the class.” *Larson v. AT & T Mobility LLC*, 687 F.3d 109, 132 (3d Cir. 2012).

Appellants argue that Benson and Major are not typical or adequate representatives for the Optional Retirement Class because they “pursued claims that conflict with the class claims.” Br. 48. Not so: their claims are identical to those of the other members of the Optional Retirement Class.

Appellants assert that Benson is atypical and inadequate because he “testified that he did not want a reduced pension benefit – the relief sought by the class he purports to represent.” Br. 48-49. This is a mischaracterization of his trial testimony. Benson lost the ability to receive Optional Retirement benefits at spin-off due to Appellants’ arbitrary and capricious interpretation of the Plan and failure to inform him or anyone else that they were eligible for these benefits at spin-off. He testified that had he understood this, he would have taken these reduced benefits at the time of the spin-off. App.1415 ln.19 - 1416 ln.7, 1419 lns.6-10. Regardless of whether any particular Optional Class member would have immediately applied for such benefits at spin-off or would have waited to gain a larger benefit, all of them – including Benson – were deprived of the opportunity to

make that choice. The fact that Benson at one point wanted unreduced Early Retirement benefits at age 59 does not render him an atypical or inadequate representative. He seeks retroactive Optional Retirement benefits in this litigation. App.1419 Ins.6-10. Benson's claims are therefore the same as those of the other Optional Retirement Class members, and he easily meets the typicality and adequacy requirements.

With respect to Major, Appellants contend he is atypical and inadequate because he claimed Optional Retirement two years after the spin-off. Br. 49-50. But like Benson and other members of the Optional Retirement Class, Major was not aware at the spin-off that his employment with Historical DuPont had been terminated. App.1427 Ins.13-16 - 1428 ln.7. He first applied for Optional Retirement in 2021 when he was terminated from New DuPont, but contrary to Appellants' assertion, he has never taken the position that "he was **not** involuntarily terminated in 2019 in connection with the Spin-Off." Br. 49. In his self-written appeal, Major stated that he had been informed by Corteva Connections personnel that "because Corteva separated from DuPont in 2019 the percentage remains at 70% and *an involuntary termination circumstance does not apply.*" App.954 (emphasis in original); *see also* App.982-983. He expressed confusion and dissatisfaction with the denial of Optional Retirement, but did not disagree that he was involuntarily terminated in 2019. *Id.* After retaining counsel

he exhausted the claim that he was eligible for Optional Retirement as of the spin-off date. App.955-965. There is no “fundamental” difference between his claim and that of the other members of the Optional Retirement Class. *See In re NFL*, 821 F.3d at 431-32.

Appellants further argue that the Release signed by Major renders him atypical and/or inadequate as an Optional Retirement Class representative. Br. 50-52. The district court correctly held that the release did not apply to Count II because it expressly excluded any claim to vested benefits under the Plan. App.147-150, 443, 1464 ¶4.b. (exceptions to release include vested benefits under any qualified plan). Appellants do not dispute this, but insist that Count VI was not a carved-out claim under the release because it is statutory, not “contractual” or “plan-based.” Br. 50-51. The district court held that “the basis of the claim is an entitlement to a benefit under the Plan” and noted that ERISA’s anti-cutback provision “prohibits an employer from decreasing or eliminating a participant’s accrued benefits by plan amendment.” App.149 (quoting *Bellas v. CBS, Inc.*, 221 F.3d 517, 522 (3d Cir. 2000)). Appellants do not explain why this was wrong, and none of their cited cases involved anti-cutback claims. And even if the anti-cutback claims were released, that would not be a fundamental conflict affecting Major’s typicality or adequacy as the relief sought by the Optional Class is the same for

Count II and Count VI, App.149, and there is no dispute that the release is ineffective as to Count II.

For Count IV, although Major released any breach of fiduciary duty claim against New DuPont or DuPont Specialty Products (his employer and its parent company at the time he signed the release), New DuPont is not named in Count IV. District court Dkt. No. 102 at p.39. Corteva, Historical DuPont, and the Committee – who *are* named in Count IV – are not released parties. App.1464 ¶4.a. Appellants misleadingly cite only a portion of the district court’s discussion of this issue, omitting its statement that there was “no evidence that” Corteva, Historical DuPont, or the Committee “qualify as New DuPont’s parent, affiliate, subsidiary, division, insurer, successor, or assign” or as its “predecessor.” *Compare* Br. 50 with App.443. Appellants do not contest this finding or point to any such evidence now.¹⁷ Br. 50-52. Because Major’s release does not apply to multiple parties named

¹⁷ Instead, Appellants focus on the district court’s holding that Major’s individual release could not apply to plan-wide claims under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2). Br. 51. Appellees agree that Count IV is brought under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), and thus the authority cited by the district court on that point was inapposite. But any error by the district court was harmless because Major did not release any breach of fiduciary duty claims against Corteva, Historical DuPont, or the Committee. *See GN Netcom, Inc. v. Plantronics, Inc.*, 930 F.3d 76, 88 (3d Cir. 2019) (error is harmless “if it is highly probable that the error did not affect the outcome of the case.”) (quoting *Glass v. Phila. Elec. Co.*, 34 F.3d 188, 191 (3d Cir. 1994)).

in Count IV, the release's existence does not render Major an atypical or inadequate representative of the Optional Retirement Class for Count IV.

2. Count IV Was Properly Certified Under Rule 23(b).

Certification under Rule 23(b)(1) is appropriate when a defendant is “obligated to treat all members of the class alike as a matter of law or other necessity.” *Cottillion v. United Ref. Co.*, No. 09-104E, 2013 WL 5936368 at *6 (W.D. Pa. Nov. 5, 2013), *aff’d*, 781 F.3d 47 (3d Cir. 2015) (citing *Amchem Prods. v. Windsor*, 521 U.S. 591, 614 (1997)). App.196. The district court certified Count IV under Rule 23(b)(1) because the claim was “based not on individual members’ circumstances, but whether . . . Employers misrepresented or failed to inform members how the spin-off affected benefits through uniform communications,” and deciding the claim for one member “would effectively decide it for everyone because Employers’ statutory obligations and the relevant facts are the same for all members.” App.198. *See also id.* at 196-97 (citing *Schering Plough*, 589 F.3d at 604, holding that ERISA breach of fiduciary duty claims “are paradigmatic examples of claims” certified under Rule 23(b)(1)). The district court also certified Count IV under Rule 23(b)(2) for similar reasons. App.198-199.

Appellants argue that the district court erred because Count IV requires individualized proof of detrimental reliance. Br. 52. But as discussed above,

detrimental reliance is not required for Count IV, so this argument fails. *Supra* III.A.2.a.

Similarly, there is no merit to Appellants’ suggestion that class certification was inappropriate due to the need to individually prove standing for absent class members. Neither *Huber* nor *TransUnion* stand for the proposition that every class member’s standing must be proven before a class can be appropriately certified. *Huber*, 84 F.4th at 155 (“We do not ‘requir[e] Article III standing of absent class members’ prior to certification”). *Huber* noted that where the class representatives and absent class members suffered informational injuries there is “no occasion to consider” this issue. *Id.* Appellees here have not sought or been awarded individual damages, so *Huber*’s comment that “each class member must establish standing to recover individual damages” at the remedial phase is inapposite. *Id.*¹⁸ Class members have standing for precisely the same reason the Class representatives do: because they suffered informational injury and loss of opportunity as a result of Appellants’ misrepresentations. *Supra* III.A.1- A.1.c. Individualized proof of harm is also not required because when the harm in this case is properly understood, it is clear that everyone in the Classes was harmed in the same way. *Supra* III.A.2.a. Appellants’ insistence that each Class member must show he would have made

¹⁸ *Cottillion*, 781 F.3d at 61-62, also addresses the impact of individual damages awards on class certification and is thus not on point. Br. 53.

different benefit elections if there had had been clearer communications is unmoored from the case law on the standard of harm and materiality in breach of fiduciary duty cases seeking a reformation remedy. *Id.*

Thus, the district court did not abuse its discretion in certifying the Classes under Rule 23(b).

3. The District Court Did Not Expand the Classes on the Eve of Judgment.

Appellants argue that the Early Retirement Class was expanded to include employees rehired after January 1, 2007, but the district court properly found that such employees were always part of the Class. App.782. It was Appellants who informed Appellees for the first time on the eve of Judgment that Appellants interpreted the Class definition to exclude such employees. App.721-22. The district court rejected Appellants' rationale, stating that "no language in the Plan excludes individuals with 15 years of service who were rehired after 2007 from eligibility for Early and Optional Retirement Benefits." App.782.

Appellants also argue, to no avail, that the district court expanded the Optional Retirement Class to include participants whose Early and Optional retirement benefits reached parity during the course of litigation and that these Class members have suffered no injury. Br. 56. This Court reviews the district court's interpretation of its own orders for abuse of discretion and "give[s] great

deference” to such interpretation. *In re Asbestos Products Liability Litigation* (No. VI), 718 F.3d 236, 244 (3d Cir. 2013) (quotation omitted).

After Appellees learned that Appellants were interpreting the Optional Retirement Class definition to exclude participants such as Benson whose benefit *became* unreduced during litigation, Appellees moved for clarification that the district court did not mean that Class members were excluded from retroactively electing Optional Retirement benefits simply due to the passage of time. App.475. This was not a request to alter or amend class certification. The district court agreed and granted the motion for clarification. App.227. In doing so, the district court “disagree[d] with [Appellants’] contention that this would be an improper expansion of the scope of the Optional Retirement Class.” App.227.

E. There Was No Error in the District Court’s Award of Attorneys’ Fees.

1. Attorneys’ Fees Awards Are Reviewed for Abuse of Discretion.

This Court is highly deferential to district courts’ awards of attorneys’ fees, including the amount of any award. *Ursic v. Bethlehem Mines*, 719 F.2d 670, 674-78 (3d Cir. 1983) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). The Court “may not upset a trial court’s exercise of discretion on the basis of a visceral disagreement with the lower court’s decision. Similarly, the appellate court may not reverse where the trial court employs correct standards and procedures, and

makes findings of fact not clearly erroneous.” *Lindy Bros. Builders of Philadelphia v. Am. Radiator & Standard Sanitary Corp.*, 540 F.2d 102, 116 (3d Cir. 1976).

During the four years this case was litigated, the district court observed counsel’s handling of discovery and class certification and summary judgment motions, as well as their performance at numerous hearings and a six-day trial. The district court was highly complimentary of the efforts and skill of counsel for all parties. App.231-34. The district court was in the best position to evaluate the attorneys’ performance, and it determined that Appellees’ counsel’s efforts were not just professional, necessary, and commensurate with the importance and complexity of the action, but that they “excelled.” Appellees urge this Court to affirm the district court’s award of attorneys’ fees. *See Anthuis v. Colt Indus. Operating Corp.*, 971 F.2d 999, 1012 (3d Cir. 1992) (“we ought not to substitute our judgment for that of the district court”).

2. Appellants Cannot Demonstrate that the District Court Abused Its Discretion in Awarding Fees.

Appellants argue that (1) the district court misapplied the *Ursic* factors, Br. 59-61; (2) because Appellees did not prevail on all their claims, the fee award should be reduced, Br. 61-62; and (3) the district court should not have applied a multiplier, Br. 62-64. None of these arguments support the conclusion that the district court’s fee award was an abuse of discretion.

a. The District Court Did Not Abuse Its Discretion in Applying the Ursic Factors.

Appellants contend that “there is no presumption that a successful plaintiff in an ERISA suit should receive an award in the absence of exceptional circumstances.” Br. 59 (citing *McPherson v. Emps.’ Pension Plan of Am. Re-Ins. Co.*, 33 F.3d 253, 254 (3d Cir. 1994)). But the district court did not rely on such a presumption. The correct test for awarding fees in ERISA cases was set forth by the Supreme Court in *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242 (2010), which holds that ERISA plaintiffs do not need to be prevailing parties in order to be awarded fees; they need only achieve “some degree of success on the merits.” *Id.* at 255; *see also Perelman*, 793 F.3d at 377 (“even...a losing party” can be entitled to fees under *Hardt*).

Appellants do not address, or even cite, *Hardt*’s “some success on the merits” test, presumably because Appellees have easily cleared this bar. Appellees obtained judgment in their favor against Appellants on multiple claims, and as a result Appellees have the opportunity to elect valuable benefits. This plainly exceeds “some success.”

As for the *Ursic* factors, it is not clear whether they are mandatory in a post-*Hardt* world; the Supreme Court has suggested they are not. *Hardt*, 560 U.S. at 254-55 (holding that the Fourth Circuit’s substantially identical five-factor test “bear[s] no obvious relation to § 1132(g)(1)’s text or to our fee-shifting

jurisprudence” and thus “are not required for channeling a court’s discretion when awarding fees under this section”); *see also Fama v. Design Assistance Corp.*, 520 F. App’x 119, 125 (3d Cir. 2013) (acknowledging *Hardt*’s holding that “the five-factor analysis...is ‘not required’”). While Appellees contend that the district court properly applied the *Ursic* factors, even if it had not, such error would not necessarily be reversible under the controlling test in *Hardt*.

Nonetheless, *Hardt* did not rule that courts are barred from using the five-factor test. *See Hardt*, 560 U.S. at 255 n.8. This Court has indicated that the *Ursic* factors are still a useful tool in determining whether a court should exercise its discretion to award fees. *See, e.g., Perelman*, 793 F.3d at 377. Thus, they are discussed below.

The *Ursic* factors are:

- (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 party is not required to satisfy all of these factors, and some may weigh more than others in a particular case; they are merely guideposts. *See, e.g.,*

Fields v. Thompson Printing Co., 363 F.3d 259, 275 (3d Cir. 2004); *Askew v. R.L. Reppert, Inc.*, No. 5:11-cv-04003, 2020 WL 4050605, at *2 (E.D. Pa. July 17, 2020).

Under the first factor, Appellants argue that 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.’” Br. 60. Appellants further claim that they were not “at moral fault.” *Id.* But the first *Ursic* factor does not require Appellees to show that Appellants were immoral. *See, e.g., Templin v. Independence Blue Cross*, 785 F.3d 861, 868 (3d Cir. 2015) (“[c]ulpable conduct is ‘reprehensible or wrong’ but need not involve ‘malice or a guilty purpose’” (quoting *McPherson*, 33 F.3d at 257)).

Furthermore, the factor is set in the disjunctive – “culpability or bad faith” – and thus culpability alone is sufficient, as the district court explained. App.232. The district court explained that Appellants are culpable because they “made misrepresentations and even more seriously, cloaked their decisions in subtle but misleading terminology so it was difficult for the employees...to know exactly what was happening to them and their pension rights[.]” *Id.* Fiduciary misrepresentation is sufficient to show culpability. *See In re Unisys Corp. Retiree Med. Benefits ERISA Litig.*, 579 F.3d 220, 239-40 (3d Cir. 2009).

Under the third factor, deterrence, Appellants contend that “[t]here is no evidence that an award of fees would deter any of the conduct at issue.” Br. 60-61. The district court concluded otherwise, stating that a fee award “will further the objectives of ERISA” and will likely “deter behavior that falls short of bad faith conduct.” App.233. Appellants continue to maintain employee benefit plans, and this case will serve as a reminder that these plans must be administered in accordance with fiduciary standards. *See, e.g., McPherson*, 33 F.3d at 258 (ERISA fee awards can serve a deterrent effect even where fiduciaries have not acted in bad faith); *DeMarinis v. Anthem Ins. Cos., Inc.*, No. 3:20-cv-713, 2025 WL 745604, at *6 (M.D. Pa. Mar. 7, 2025) (culpability was sufficient to demonstrate that fee award would act as a deterrent factor).

Under the fourth factor, Appellants contend that “[i]f anything, the Judgment harms the Plan by requiring it to pay benefits to which Plaintiffs are not otherwise entitled.” Br. 61. Again, Appellants misread the factor – it does not ask whether a benefit has been conferred on the plan, it asks whether there has been a benefit conferred “upon members of the plan.” The district court properly concluded that “this is a class action and numerous individuals who are members of a certified class will benefit from this decision[.]” App.233. Appellants complain that “less than 10% of all Plan participants” were affected by the judgment, but this is still a sizeable number – more than one thousand participants.

Furthermore, the Judgment is a boon even to Plan participants who were not Class members, because it incentivizes Appellants to fulfill their fiduciary duties in communicating to all participants in the future. The district court made this exact point, explaining that this was an “important case for the DuPont employee family and for other employees who have similar claims in the future, to follow the examples of procedure and substantive positions taken by Plaintiffs in this case which will benefit future classes of employees in ERISA litigation.” App.232. *See Thorpe v. Continental Cas. Co.*, No. CIV. A. 01-5932, 2003 WL 302401, at *2 (E.D. Pa. Jan. 31, 2003) (judgment will cause administrator to “be more thorough...as a result of the judgment against it and, therefore, all members of the insurance plan may benefit”).

Finally, under the fifth factor, Appellants contend that the district court incorrectly compared the relative strengths of the parties and not their positions. Br. 59-60. However, a review of the order as a whole, augmented by the district court’s Findings of Fact and Conclusions of Law, leaves no doubt as to how the district court viewed the parties’ respective positions. The district court ruled that Appellants arbitrarily and capriciously interpreted Plan language, violated ERISA’s anti-cutback provisions, and breached their fiduciary duties to participants by misinforming them about how the spin-off would affect their benefits. As noted above, while the district court found no bad faith, it concluded that there was

“abundant evidence” that Defendants “cloaked” their representations in a way that misled Plaintiffs about their benefits. App.232. As a result, many Class members “were severely prejudiced by not realizing that their retirement benefits had either been wiped out, or severely reduced.” App.235. The district court’s decisions in this matter leave little doubt as to the “relative merits.”

Appellees clearly achieved “some success on the merits” under *Hardt*, and the district court appropriately concluded that the *Ursic* factors also favored an award of fees. Thus, the district court did not abuse its discretion.

b. The District Court Did Not Abuse Its Discretion by Awarding Appellees’ Full Fees.

Appellants contend that the district court abused its discretion because Appellees did not prevail on all their claims and “[p]artial success does not warrant full fees.” Br. 61-62.

Success on all claims is not required to recover all fees. As the Supreme Court held, where the claims “involve a common core of facts” or are “based on related legal theories,” “counsel’s time will be devoted generally to the litigation as a whole.” *Hensley*, 461 U.S. at 435. “Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified.” *Id.* The Supreme Court was clear that “[i]n these circumstances the fee award should not

be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit.” *Id.* In sum, “Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney’s fee reduced simply because the district court did not adopt each contention raised.” *Id.* at 440.

Here, Appellees’ claims “involve a common core of facts” and are “based on related legal theories.” All of Appellees’ claims address the loss of Early and Optional retirement benefits as a result of the spin-off. All claims sought to establish Appellees’ right to elect those benefits retroactive to the spin-off date. In its final judgment, that is what the district court awarded: “Class Members shall be permitted to elect benefits effective on any date from the spin-off forward, unless otherwise agreed by the parties.” App.7. Because Appellees’ claims arose from the same set of facts and obtained the relief sought, there is no justification for reducing fees simply because the district court did not adopt all their theories.

Appellants only cite one case in support of their argument, *Kairys v. Southern Pines Trucking, Inc.*, 75 F.4th 153 (3d Cir. 2023), but it is distinguishable. There, the plaintiff brought six claims against his employer and succeeded on three of them. However, much of the time spent at trial was on the plaintiff’s three unsuccessful claims, which involved different operative facts and theories of liability. As the district court in *Kairys* put it, “a substantial portion of the case presented was tied to the claims on which [the plaintiff] did not ultimately prevail”.

Kairys v. Southern Pines Trucking, Inc., No. 2:19-cv-1031, 2022 WL 1457786, at *1 (W.D. Pa. May 9, 2022). Here, in contrast, all of Appellees' claims were ERISA-based and related to the Plan and their entitlement to benefits thereunder.

If anything, *Kairys* stands for the proposition that appellate courts defer to district courts on fee awards because district courts are more familiar with the facts and claims at issue, and are best situated to evaluate the attorneys' conduct and determine whether fees are commensurate with results. *See Kairys*, 75 F.4th at 166; *see also In re Unisys Corp.*, 579 F.3d at 240 (affirming district court's fee award in its entirety even though defendant prevailed on several claims and plaintiffs only recovered a portion of the relief sought).

c. The District Court Did Not Abuse Its Discretion in Awarding a 1.5 Multiplier.

Appellants assert three arguments against the district court's 1.5 fee multiplier: (1) Appellees were allegedly overpaid by receiving both their lodestar calculation and a multiplier; (2) Appellees allegedly had limited success; and (3) the Supreme Court's decision in *City of Burlington v. Dague*, 505 U.S. 557 (1992) precludes the multiplier.

None of these arguments are meritorious. Appellees' counsel litigated this case on a contingency fee arrangement and, as a result, assumed considerable risk. However, the district court chose not to award a monetary remedy; it ordered

reformation rather than equitable surcharge. This meant that no common fund – the typical vehicle through which class counsel receive fees – was created.

As a result, the risk taken on by counsel could not be fully compensated through the lodestar calculation typically utilized under ERISA’s fee-shifting provision, 29 U.S.C. § 1132(g). The only way to fully compensate counsel was by adjusting the lodestar upward; here, the district court did so by applying a 1.5 multiplier, which was well within its discretion. District courts throughout this Circuit have frequently awarded fees equivalent to lodestar multipliers in complex class actions to ensure counsel receive reasonable compensation. *See, e.g., Martin v. Foster Wheeler Energy Corp.*, No. 3:06-cv-0878, 2008 WL 906472, at *8 (M.D. Pa. Mar. 31, 2008) (“Lodestar multiples of less than four (4) are well within the range awarded by district courts in the Third Circuit”); *In re Cendant Corp. PRIDES Litigation*, 243 F.3d 722, 742 (approvingly listing cases with multipliers that “range from 1.35 to 2.99 ”).

As one court explained it, “contingent fees exist to compensate a prevailing plaintiff’s counsel for more than the fee-shifting provision, and...a contingency arrangement must be given weight in a court’s decisional calculus, even when a lodestar calculation is also performed.” *Brundle on behalf of Constellis Emp. Stock Ownership Plan v. Wilmington Tr., N.A.*, 258 F. Supp. 3d 647, 671 (E.D. Va. 2017) (quotations omitted). This is because “contingency fees are designed to transfer a

significant portion of the risk of loss to attorneys taking a case. Without compensating attorneys for that risk, access to courts would be difficult to achieve.” *Id.*

Appellants’ only response to this is to note that Appellees acknowledged below that if the district court applied a multiplier, “it may be reasonable to reduce the hourly rates used to calculate the lodestar.” App.532 n.22. However, Appellants cite no authorities requiring the district court to do so, and the court’s decision clearly reflected that the multiplier, on its own, appropriately compensated counsel for their skill and level of success.

Appellants’ second argument against the multiplier, that Appellees achieved limited success, is addressed above. As stated, Appellees were not required to succeed on all of their claims in order to be awarded fees, and Appellants have cited no authorities for the proposition that a multiplier is unavailable unless the plaintiff achieves complete success. The district court concluded that Appellees’ considerable success in this case warranted a 1.5 multiplier and exercised its discretion accordingly. That decision should be upheld.

Finally, *City of Burlington v. Dague* does not prohibit a multiplier in this case. *Dague* involved claims under the fee-shifting provisions of the Solid Waste Disposal Act and Clean Water Act, “prevailing party” statutes. *See* 42 U.S.C. § 6972(e); 33 U.S.C. § 1365(d). ERISA is not a “prevailing party” statute. It is a

“some success on the merits” statute, as the Supreme Court explained in *Hardt*, which was decided well after *Dague*.

Appellants contend that this is a distinction without a difference, and quote *Dague* as saying, “[O]ur case law construing what is a ‘reasonable fee’ applies uniformly to all [federal fee-shifting statutes].” Br. 63-64. This is misleading because the words Appellants have replaced in the brackets are actually “of them,” which the previous sentence clearly identifies as “prevailing party” statutes. 505 U.S. at 561-62.

If there were any doubt as to the difference, *Hardt* itself took great pains to distinguish ERISA’s fee-shifting provision from other statutory schemes: “Our ‘prevailing party’ precedents...do not govern the availability of fees awards under § 1132(g)(1)[.]” 560 U.S. at 253; *see also Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167 (2009) (“When conducting statutory interpretation, the Court ‘must be careful not to apply rules applicable under one statute to a different statute without careful and critical examination.’”). Thus, *Dague* does not extend to ERISA.

Appellants cite three cases from this Court in ostensible support, but one involved the Civil Rights Act, which has a “prevailing party” requirement, *Goodman v. Pennsylvania Turnpike Comm’n*, 293 F.3d 655, 677 (3d Cir. 2002) (examining 42 U.S.C. § 1988(b)), and another was not even decided under federal

law. *PolSELLI v. Nationwide Mut. Fire Ins.*, 126 F.3d 524, 534-35 (3d Cir. 1997) (applying Pennsylvania law).

The third case, *Brytus v. Spang & Co.*, 203 F.3d 238 (3d Cir. 2000), is an ERISA case, but does not assist Appellants. In *Brytus*, the district court rejected plaintiffs' counsel's argument that they should be paid fees from a common fund in addition to statutory fees under ERISA. This Court affirmed, but not because of *Dague*. Indeed, ERISA's fee-shifting provision was not even at issue on appeal: "It is important to note at the outset that counsel do not contend that the...fee paid to them...under the ERISA fee-shifting provision was calculated contrary to established Supreme Court precedent, and, in fact, they stipulated to that amount." *Id.* at 243. Thus, Appellants' cases do not support the proposition that *Dague* governs ERISA's fee-shifting provision, and Appellees are unaware of any post-*Hardt* cases from this Court that hold otherwise.

The district court's findings supporting its attorneys' fees ruling were not clearly erroneous, and its award was not an abuse of discretion. As a result, this Court should affirm.

IV. CONCLUSION

For the foregoing reasons, the district court's order certifying the Classes, its Judgment, and its award of attorneys' fees should be affirmed in their entirety.

DATED: January 2, 2026

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 15,809 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 using Todyl Secure Global Network (SGN), version 2, 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 January 2, 2026.

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