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CLIENT ALERT

Magistrate Judge Recommends Dismissal of Pension Risk Transfer Suit But Deviates from Earlier Rulings

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The early indicators are that a long-awaited motion to dismiss will do little to tamp down the rise of pension risk transfer ("PRT") class actions. On August 29, 2025, Magistrate Judge Paul Levenson of the District of Massachusetts issued a report and recommendation ("R&R") that the district court grant defendants' motion to dismiss in *Piercy, et al. v. AT&T Inc., et al.* ("*Piercy*"), No. 24-10608 (NMG), (D. Mass. 2024). The holdings contained in the R&R, which plaintiffs will likely challenge before they are adopted by the district court, recommend dismissal on the grounds that plaintiffs failed to plausibly allege defendants violated ERISA in selecting an annuity provider for defendants' PRT transaction. By diverging from other courts' reasoning and rejecting defendants' more broadly based challenge to plaintiffs' standing, the decision may leave the door open to future PRT lawsuits.

Background of PRT Litigation

PRT cases concern the transfer of assets and liabilities from employer-sponsored defined-benefit pension plans, which are governed by ERISA, to annuity providers, which are governed by insurance regulations. In recent years, private equity backed annuity providers have entered this marketplace to compete with the life insurers who offer annuities. In *Piercy*, the employer transferred its pension plan assets to an annuity provider backed by a private equity entity with a significant offshore structure, rather than a traditional insurance company. Retiree plaintiffs argued that this was an excessively risky choice that endangered their retirement security. The defendants—the employer who sponsored the pension plan and its independent fiduciary who oversaw the annuity provider selection process—moved to dismiss for lack of Article III standing based in part on the fact that the annuity provider never missed a payment.

In the 93-page opinion, Judge Levenson's reasoning deviated from the two prior merits rulings issued earlier in 2025: *Camire, et al. v. Alcoa USA Corp., et al.* ("*Camire*"), No. 24-1062 (LLA) (D.D.C. Mar. 28, 2025) and *Konya, et al. v. Lockheed Martin Corp.* ("*Konya*"), No. 24-750-BAH (D. Md. Mar. 28, 2025), which themselves reached different outcomes. On March 28, 2025, the *Camire* and *Konya* courts issued diverging rulings on motions to dismiss: *Camire* granted dismissal, while *Konya* denied it.

Piercy, together with *Camire* and *Konya*, are a part of a growing wave of PRT litigation filed in federal courts since early 2024. Ten of these cases are currently pending, but only three motion to dismiss decisions have been issued so far. Relying on *Thole v. U.S. Bank N.A.* ("*Thole*"), 590 U.S. 538 (2020), the *Camire* court found insufficient actual injury because participants in defined-benefit plans could not identify any monetary loss, while the *Konya* court found standing satisfied, emphasizing that the PRT transaction at issue removed the plan from ERISA's protection, eliminated Pension Benefits Guarantee Corporation ("PBGC") backing, and introduced concerns with the annuity provider's private equity ownership structure and use of a Bermuda subsidiary.

A Novel Ground for Dismissal

Judge Levenson addressed the threshold question of standing and whether plaintiffs had alleged a cognizable injury, but reached a third conclusion. R&R at 28. Concluding that standing turned on whether defendants selected an appropriate annuity provider, R&R at 22, Judge Levenson looked to the Department of Labor's Interpretive Bulletin on the Fiduciary Standard Under ERISA When Selecting an Annuity Provider, IB 95-1, 29 C.F.R. § 2509.95-1(c) (1999) ("IB 95-1"). He found IB 95-1 "persuasive" and reflective of the Department's "expertise." R&R at 32, 78. Of IB 95-1's "six factors for fiduciaries to consider in selecting an annuity provider in a PRT transaction," Judge Levenson focused on the fifth factor—the structure of the annuity contract and the guarantees supporting the annuities. Although plaintiffs advanced numerous arguments detailing the annuity provider's alleged riskiness, he found that they intentionally "skip[ed] over a potentially-critical factor": the use of a separate account for plan assets, which shields plan participants from the annuity provider's broader business risks. R&R at 79. On this basis, he

recommended dismissal, concluding that the facts did not establish standing where "annuities [are] secured by a separate account." R&R at 79.

The PRT Landscape Continues to Evolve

The dismissal of two of the three PRT cases to date does not come with much clarity for the PRT landscape. Judge Levenson's report and recommendation does not rule out other PRT theories. He disagreed with *Camire* in holding that plaintiffs who "have received every penny of their vested pension benefits" lack standing to sue. R&R at 11. He said Plaintiffs had correctly pointed out the heightened counterparty risk[1] associated with allegedly lower-rated annuity providers, R&R at 12–13, holding that "significantly-increased risk – not only imminent disaster – represents . . . a material, financially-quantifiable harm," R&R at 14, and noted it was inappropriate to "require plan members to wait until the Titanic [to] hit the iceberg before they have standing to object to a collision course." R&R at 15. He suggested courts must examine "whether the risks associated with [a] particular annuity are materially higher ('substantially increased'), as compared with the risks associated with an annuity that a dutiful fiduciary should properly have selected." R&R at 22.

This facts-and-circumstances approach suggests we will continue to see divergent decisions on PRT motions to dismiss; meaning PRT lawsuits will further proliferate. Employers and annuity providers should continue to monitor these latest legal developments closely.

[1] Judge Levenson compared counterparty risk to credit risk, which describes "the prospect that a borrow may ultimately be unable or unwilling to meet their obligations" from borrowed funds. R&R at 13. Counterparty risk, as used by Judge Levenson, expands this idea to apply to "any kind of transaction" where "any counterparty may prove unwilling or unable to meet its obligations." *Id.*

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