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ERISA Litigation Alert

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Schoen v. ATI: a "close call" dismissal that deepens the pension de-risking split

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A Pennsylvania federal court has handed plan sponsors another Article III standing win in the pension de-risking litigation wave, while candidly acknowledging that other judges have "reasonably" found the same allegations enough, and locating the split in how the standard is applied rather than in the standard itself.

What's the impact?

- *Thole* continues to do the heavy lifting: Four of plaintiffs' five standing theories failed because retirees whose monthly benefits are unaffected have no cognizable injury — and "[t]here is no ERISA exception to Article III."
- The surviving "substantial risk of future harm" theory failed even though the court assumed every allegation about Athene's finances was true — the causal chain was too attenuated, and the court demanded a plausible projection of default, not a catalogue of adverse facts about the annuity provider.
- The split is now unmistakable — *Konya* and *Doherty* reached the opposite result on nearly identical Athene allegations, and both are now on interlocutory appeal in the Fourth and Second Circuits — but the DOL has now weighed in twice as amicus on the sponsors' side, arguing both no standing and that the decision to de-risk is a settlor function.

In *Schoen v. ATI, Inc.*, No. 2:24-cv-1109, 2026 WL 2146921, 2026 U.S. Dist. LEXIS 165616 (W.D. Pa. July 27, 2026),[1] U.S. District Judge J. Nicholas Ranjan dismissed a putative class action challenging a risk transfer of approximately $1.5 billion in pension obligations in the defendant's Employee Retirement Income Security Act (ERISA)-governed pension plan to Athene Annuity and Life Assurance Company, holding that former ATI employees lacked Article III standing. Four of plaintiffs' five theories were foreclosed by *Thole v. U.S. Bank N.A.*, 590 U.S. 538 (2020); the fifth failed because the chain of contingencies preceding any lost benefit was too attenuated.

Background

According to the complaint, in October 2023, ATI transferred the benefit obligations of approximately 8,200 participants in its defined benefit pension plan, which pays a fixed monthly benefit that does not vary with investment performance, to Athene, which the court described as a private equity insurance firm. ATI engaged an independent fiduciary to recommend an annuity provider, and Athene was the insurer recommended. A putative class of former employees, represented by Schlichter Bogard LLC — the firm at the heart of this litigation wave — sued ATI, its administrative committee and committee members, and the independent fiduciary. Magistrate Judge Kezia O.L. Taylor recommended dismissal because none of the alleged harms were actual or imminent; on de novo review, Judge Ranjan agreed and adopted her report as the opinion of the court. The Pension Rights Center and the American Council of Life Insurers appeared as amici; the Department of Labor did not participate.

The court's analysis: *Thole* forecloses four theories

Plaintiffs alleged five categories of harm: (1) a reduction in the present value of their rights to receive retirement payments; (2) violation of quasi-contractual rights to receive the "safest annuity available" under 29 C.F.R. § 2509.95-1(c) (2026); (3) loss of their pensions' ERISA-mandated protections; (4) breach of fiduciary duty under the common law of trusts; and (5) creation of a substantial risk of future harm if Athene were to go under and reduce their pension payments. The magistrate judge found the first four precluded by *Thole*, and the court agreed. Quoting *Camire v. Alcoa USA Corp.*, No. CV 24-1062 (LLA), 2025 WL 947526, at *3 (D.D.C. Mar. 28, 2025), it explained that *Thole* "makes clear that Plaintiffs' only cognizable interest is in receiving their monthly benefits, which have been unaffected by the PRTs [pension risk transfers]," and that those benefits "will remain unaffected 'regardless of how well or poorly' Athene's assets are managed." As *Thole* put it, "[t]here is no ERISA exception to Article III." 590 U.S. at 547.

[1] The Westlaw report of this decision captions the defendant as "ATC Inc.," which appears to be a simple reporting error. The complaint, the docket, the magistrate judge's report and recommendation, and the court's own memorandum order all identify the defendant as ATI, Inc., formerly known as Allegheny Technologies Incorporated. We cite and refer to the case as *Schoen v. ATI, Inc.*

Where the case turned: "substantial risk" of future harm

The fifth theory was not precluded by *Thole*, so the court had to consider whether plaintiffs' allegations created a cognizable injury sufficient to confer Article III standing. Applying *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014), and the Third Circuit's guidance in *Clemens v. ExecuPharm Inc.*, 48 F.4th 146, 153 (3d Cir. 2022), under which even a "possible future injury" carrying an "objectively reasonable likelihood" of occurring will not suffice, the court agreed with the magistrate judge's analysis and conclusion, but found the question "a close call."

Plaintiffs marshaled detailed allegations about Athene's risk profile, all of which the court assumed to be true for purposes of the motion, without testing or resolving them. As alleged, these were: a high concentration of risky assets relative to surplus, including 20% of the portfolio in risky asset-backed securities and leveraged loans; roughly 80% of liabilities from pension risk transfers, such as ATI's reinsured through Bermuda affiliates; a ranking of 695 out of 698 active insurers on a critical metric of claim-paying ability; an independent study finding Athene's debt 14% riskier than that of its safest peers; private equity ownership, with private equity-owned companies defaulting at higher rates; and practices that plaintiffs said industry professionals have long associated with a substantial likelihood of default and that contributed to four insurer failures. Plaintiffs also drew parallels to Executive Life Insurance, whose 1991 collapse produced the very ERISA amendment and regulatory framework underpinning their theories.

That was not enough. Considered together with the rest of the complaint, the court held, the allegations showed nothing more than an "objectively reasonable likelihood" that Athene will fail, and the risk was hypothetical because it "relies on pure speculation that . . . unfavorable conditions will . . . occur . . . in a manner that will impact the relevant investments" — quoting *Bueno v. Gen. Elec. Co.*, No. 1:24-CV-0822 (GTS/DJS), 2025 WL 2719995, at *18 (N.D.N.Y. Sept. 24, 2025). Adopting *Camire*'s framing, the court explained that plaintiffs relied on a "highly attenuated chain of possibilities," quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013): Athene would first have to fail — suffering catastrophic losses, failing to mitigate them sufficiently to preserve plaintiffs' benefits, and failing to secure alternative funding; plaintiffs would then need benefits exceeding what their state guaranty associations cover, which is over $250,000 in most states; and finally, Athene's accounts would have to be underfunded or insufficient to cover participants' losses. Plaintiffs' own allegations showed the chain's weakness: They did not allege that the four similarly situated failed insurers had actually defaulted on their obligations to pay annuitants since being placed in rehabilitation by regulators. On that "albeit small sample size," the court observed that it "seem[ed] more likely than not that, even if Athene failed, Plaintiffs would still see no reduction in their retirement payments," and concluded that plaintiffs "haven't plausibly alleged that there is a significant likelihood Athene would default to a degree that their pensions would be affected."

A divided docket — and a DOL weighing in for sponsors

In a candid footnote, the court acknowledged that other courts have "reasonably found almost the same evidence" sufficient, deeming it "so egregious that it substantially increased the risk that Plaintiffs' [Athene-owned] retirement plan would fail and be unable to pay the participants' future pension benefits." The court located its own disagreement in the "application of the 'substantial risk' standard" rather than in the standard itself. The scorecard for the Athene docket is now divided:

- **Standing rejected:** *Schoen* (W.D. Pa.), *Camire* (D.D.C. Mar. 28, 2025), and *Bueno v. Gen. Elec. Co.*, 2025 WL 2719995 (N.D.N.Y. Sept. 24, 2025).
- **Standing sustained:** *Konya v. Lockheed Martin Corp.*, No. CV 24-750-BAH, 2025 WL 962066, at *8 (D. Md. Mar. 28, 2025), and *Doherty v. Bristol-Myers Squibb Co.*, No. 24-CV-06628 (MMG), 2025 WL 2774406, at *6 (S.D.N.Y. Sept. 29, 2025), on nearly identical Athene allegations. The court in *Piercy v. AT&T Inc.*, No. 24-cv-10608, 2025 WL 2505660 (D. Mass. Aug. 29, 2025), also found standing but dismissed on the merits under Rule 12(b)(6).
- **On appeal:** The defendants in both the *Konya* and *Doherty* cases sought and obtained the right to pursue interlocutory appeals of the standing rulings. These cases are now before the U.S. Courts of Appeals for the Fourth (No. 25-2061) and Second (No. 26-1021) Circuits, respectively. Oral argument has been set for September 16, 2026, in *Konya.* Briefing is under way in *Doherty*.

The Department of Labor (DOL) has now entered the fray on the sponsors' side, although not in *Schoen* itself. In January 2026, it filed its first public position since this litigation wave began: an amicus brief in the *Konya* appeal, arguing that the plaintiffs lack standing because they have received every benefit owed with no evidence of impending default, and that the decision to enter a pension risk transfer is a settlor function that does not implicate fiduciary duties at all; those attach only to the selection of the annuity provider. The DOL filed a second amicus brief, similarly supporting Bristol-Myers Squibb's appeal in the Second Circuit in July 2026. Both are framed as an effort to stop "regulation by litigation."

Practical takeaways

For plan sponsors, committees, and independent fiduciaries, whether defending one of these cases or evaluating a transfer now, *Schoen* confirms that Article III standing remains the most efficient path out and shows how courts on this side of the split are reasoning. The court, however, never evaluated the fiduciaries' processes or the relative "safety" of Athene's annuity. Almost every defense win in this line has come at the courthouse door, so the governance record remains the real exposure:

- **These cases are being won early — but a standing dismissal might not be the last word.** *Schoen* was decided on a motion to dismiss for lack of Article III standing, before any discovery into the transaction, the selection process, or Athene's finances; the court assumed every allegation to be true and still found no injury. That sequencing is what makes the defense valuable, and because standing is jurisdictional, it cannot be waived and remains available later if an early motion does not succeed. The flip side is that the dismissal was without prejudice, even though the court was explicit that it "nonetheless represents a final order" and directed the clerk to close the case: The ruling is appealable to the Third Circuit, which would apply its own *Clemens* framework, and plaintiffs remain free to return with different allegations or different named plaintiffs. A standing dismissal is not a holding that the transaction was prudent.

- **A catalogue of adverse facts is not a projection of default.** Rather than weigh the allegations about Athene, the court traced every contingency lying between the transaction and an actual missed benefit payment: catastrophic loss, failed mitigation, failed alternative funding, benefits above the guaranty association ceiling of over $250,000 in most states, and accounts insufficient to cover the shortfall. Plaintiffs' strongest evidence — a study estimating the economic loss to beneficiaries of choosing Athene at 14% and pricing the risk of Athene's bonds 21% above U.S. Treasuries — was, in the court's words, the closest they came to projecting a substantial risk of default, and it was not close enough. The court also drew a pointed inference from plaintiffs' own pleading: Because they did not allege that any of the four comparable failed insurers had actually defaulted on annuity obligations after being placed in rehabilitation, it "seem[ed] more likely than not that, even if Athene failed, Plaintiffs would still see no reduction in their retirement payments."
- **Pair the standing defense with the settlor-function argument.** Standing is not the only early off-ramp. If the decision to annuitize is a settlor function, much of what these complaints attack — the choice to de-risk at all — falls outside ERISA's fiduciary provisions, leaving only provider selection open to challenge.
- **Document the six factors, because the merits standard is still untested.** No court in this line has decided what the "safest annuity available" requires, and none has evaluated a provider selection on a developed factual record. The factors in DOL *Interpretive Bulletin* 95-1 remain the roadmap: portfolio quality and diversification; insurer size relative to the contract; capital and surplus; lines of business and other exposure; the structure of the contract and supporting guarantees, including separate accounts; and the availability of state guaranty association protection. Two points are easy to miss: The *Bulletin* contemplates that more than one provider may qualify as the safest available, and the DOL has confirmed it does not demand a single "correct" answer. For a sponsor weighing a transfer now, the transaction record, not the case law, remains what it will be judged on.
- **Watch the courts of appeals, not the district courts.** Every decision in this line is a district court ruling, and *Schoen*'s footnote explains why that matters: The judges are not

disagreeing about the governing standard, only about how to apply it, and nothing resolves that until an appellate court speaks. That is now on the near horizon in two circuits, with the Fourth Circuit reviewing *Konya* and the Second Circuit reviewing *Doherty*. The first circuit decision has the potential to carry significant persuasive weight for the rest of the country.

Nixon Peabody's ERISA Litigation team defends plan sponsors, committees, and fiduciaries in pension risk transfer and ERISA class action litigation nationwide, and counsels clients about annuity provider selection and IB 95-1 documentation before a transaction closes. For more information about the content of this alert, please contact your Nixon Peabody attorney or the authors of this alert.

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