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APPENDIX A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 16, 2017 Decided August 21, 2018

Reissued December 21, 2018

No. 17-5068

K. WENDELL LEWIS, ET AL.,
APPELLEES

V.

PENSION BENEFIT GUARANTY CORPORATION,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:15-cv-01328)

Charles L. Finke, Deputy Chief Counsel, *pro hac vice*, argued the cause for appellant. With him on the briefs were *Judith R. Starr*, General Counsel, *Kenneth J. Cooper*, Assistant General Counsel, *Paula J. Connelly*, Assistant Chief Counsel, and *Mark R. Snyder*, Attorney.

Anthony F. Shelley argued the cause for appellees. With him on the brief were *Timothy P. O'Toole* and *Michael N. Khalil*.

Before: GRIFFITH and PILLARD, *Circuit Judges*, and WILLIAMS, *Senior Circuit Judge*.

Opinion for the Court filed by *Circuit Judge* GRIFFITH.

Circuit Judge GRIFFITH: In this interlocutory appeal, we reverse the district court's decision allowing participants in a pension plan to seek recovery of an increase in the value of plan assets that took place after the plan had been terminated.

I

A

In 2005, Delta Airlines, Inc. ("Delta") filed for bankruptcy and stopped contributing to the pension plan it sponsored for its pilots. That plan was called the Delta Pilots Retirement Plan (the "Delta Plan"). The following year, Delta and the Pension Benefit Guaranty Corporation (the "Corporation") agreed to terminate the Delta Plan because it had insufficient assets to support the benefit payments it promised to the pilots.

Title IV of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1301-1461, created the Corporation "to ensure that employees and their beneficiaries would not be completely deprived of anticipated retirement benefits by the termination of pension plans before sufficient funds have been accumulated in the plans." *PBGC v. LTV Corp.*, 496 U.S. 633, 637 (1990) (internal quotation marks omitted). To that end, the Corporation collects premiums from plan sponsors like Delta and guarantees certain benefits to plan participants even if a plan terminates without enough money to pay its ongoing obligations. *See* 29 U.S.C. §§ 1306-1307, 1322, 1361; *LTV Corp.*, 496 U.S. at 636-38; *Davis v. PBGC* ("*Davis II*"), 734 F.3d 1161, 1164-65 (D.C. Cir. 2013). Importantly, guaranteed benefits are subject

to limitations outlined in Title IV. *See* 29 U.S.C. §§ 1322(b), 1361; *LTV Corp.,* 496 U.S. at 638.

When a plan terminates without enough funding to provide even the guaranteed benefits established by Title IV, a statutory trustee collects the plan's remaining assets and begins making promised payments according to a list of statutory priorities. *See* 29 U.S.C. §§ 1341(c)(iii)(B)(3), 1342(b)-(d), 1344; 29 C.F.R. pt. 4044. The Corporation then provides additional money from its own funds to make up the difference between those payments and the guaranteed benefits. *See* 29 U.S.C. § 1322; 29 C.F.R. pt. 4022; *LTV Corp.*, 496 U.S. at 637-38; *Davis II*, 734 F.3d at 1164-65. Although not required, the Corporation is almost always appointed as the statutory trustee who administers terminated plans, assuming this responsibility in addition to its role as guarantor. *See Boivin v. U.S. Airways, Inc.*, 446 F.3d 148, 150 (D.C. Cir. 2006). When Delta and the Corporation agreed to terminate the Delta Plan, they agreed the Corporation would become the statutory trustee.

The Corporation determined the Delta Plan had a deficit of over $2.5 billion in unfunded benefits when it terminated, almost $800 million of which were guaranteed under Title IV. Actuarial Case Memo for Delta Pilots Retirement Plan (Mar. 24, 2010), J.A. 201-03. Based on this information, the Corporation began paying estimated post-termination benefits to the pilots. It took six years, however, to finish making final benefit determinations. Administrative appeals filed by the pilots to challenge their benefit determinations concluded the following year, in 2013. *See* 29 C.F.R. pt. 4003 (explaining the process for determining post-termination benefits); *Davis v.*

PBGC ("*Davis I*"), 571 F.3d 1288, 1291 (D.C. Cir. 2009) (same); *Boivin*, 446 F.3d at 151 (same). If the Corporation found that participants were entitled to larger benefit payments than they were receiving under their initial estimates, the Corporation reimbursed those pilots with interest for any difference and adjusted their benefits going forward. *See* 29 C.F.R. § 4022.81-.83; *Davis I*, 571 F.3d at 1291.

B

Nearly 1,700 pilots in the Delta Plan or their beneficiaries sued the Corporation to further challenge their benefit determinations, assert violations of the Administrative Procedure Act, 5 U.S.C. § 706, and request various forms of injunctive and declaratory relief. The pilots also allege that the Corporation breached its fiduciary duty as statutory trustee in various ways, such as creating procedural obstacles for and withholding necessary information from participants who were trying to appeal their benefit determinations, improperly denying those appeals for untimeliness, hiring incompetent contractors to estimate the value of plan assets and leaving them unsupervised, and misallocating pension funds to younger participants who would not retire and collect the money for many years. Am. Compl. ¶¶ 66-72, J.A. 300-03. All of this, the pilots claim, allowed the Corporation to control Delta Plan assets for a longer period and collect "massive investment returns" rather than timely paying the pilots what they were owed. *Id.* ¶ 72, J.A. 303. The pilots argue that 29 U.S.C. § 1303(f)(1) authorizes "appropriate equitable relief" and so the Corporation "should be required to disgorge itself of this unjust enrichment." Am. Compl. ¶ 72, J.A. 303. And they ask

to recover this money individually instead of on behalf of the Delta Plan.

The Corporation moved to dismiss the breach of fiduciary duty claim on numerous grounds, including that 29 U.S.C. § 1344(c) prevents disgorgement in this case. Section 1344(c) provides that "[a]ny increase or decrease in the value of the assets of a single-employer plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the [C]orporation." Disgorgement, the Corporation explained, would impermissibly redirect to the pilots the post-termination increase in the value of plan assets.

The district court denied the Corporation's motion to dismiss and its subsequent motion for reconsideration. *Lewis v. PBGC*, 197 F. Supp. 3d 16 (D.D.C. 2016), *reconsideration denied*, No. 15-cv-1328, 2017 WL 7047932 (D.D.C. Jan. 23, 2017). The district court explained that the pilots were trying only to "recoup the alleged ill-gotten investment returns on [Delta] Plan benefits that the plaintiffs claim should have been distributed to them, not . . . divert from the Corporation any gains (or losses) from assets *properly* held in the [Delta] Plan." *Lewis*, 197 F. Supp. 3d at 26 (citation omitted); *accord Lewis*, 2017 WL 7047932, at *3. Such a claim, it said, might not be prohibited by § 1344(c). *Lewis*, 2017 WL 7047932, at *3.

However, the district court concluded that "the dearth of controlling precedent that supports the Court's determination regarding the fiduciary breach claim, coupled with the Corporation's credible contention that . . . ERISA does not permit the plaintiffs to pursue this claim, raise[s] a controlling question of law as to which a substantial ground for

difference of opinion exists." *Id.* The district court then certified for interlocutory appeal its order denying the motion to dismiss, and identified four "controlling questions of law" for us to consider: First, can individuals bring a fiduciary breach claim against the Corporation under § 1303(f) in addition to requesting judicial review of the Corporation's post-termination benefit determinations? Second, can plan participants in such a lawsuit recover more than their statutorily defined benefits under Title IV of ERISA? Third, can plan participants in such a lawsuit recover individual, as opposed to plan-wide, relief for the alleged fiduciary breach? And fourth, does § 1344(c) preclude the remedy of disgorgement of post-termination investment gains derived as a result of the alleged fiduciary breach? Order Certifying Interlocutory Appeal, J.A. 384-85; *see* 28 U.S.C. § 1292(b). We granted the petition for leave to file an interlocutory appeal. J.A. 653. Since that time, the district court has resolved in favor of the Corporation all other claims in this lawsuit. *Lewis v. PBGC*, No. 15-cv-1328, 2018 WL 2926157 (D.D.C. June 11, 2018).

The district court has jurisdiction over this case pursuant to § 1303(f), and we have jurisdiction under 28 U.S.C. § 1292(b) to decide this interlocutory appeal. We review de novo the district court's decision on the motion to dismiss. *Jones v. Kirchner*, 835 F.3d 74, 79 (D.C. Cir. 2016). Because we conclude that § 1344(c) prevents the pilots from recovering any post-termination increase in the value of Delta Plan assets, disgorgement is not an available remedy in this case and we do not address the other questions.

II

A

We begin by examining the text of § 1344(c), which provides in full:

> Any increase or decrease in the value of the assets of a single-employer plan occurring during the period beginning on the later of (1) the date a trustee is appointed under section 1342(b) of this title or (2) the date on which the plan is terminated is to be allocated between the plan and the [C]orporation in the manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the [C]orporation and the plan administrator in any other case. *Any increase or decrease in the value of the assets of a single-employer plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the [C]orporation.*

29 U.S.C. § 1344(c) (emphasis added).

The two halves of this subsection are in tension. The first half of § 1344(c) explains that any change in the value of plan assets occurring after "a trustee is appointed under § 1342(b)" or "the plan is terminated," whichever comes later, should be allocated "in a manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the [C]orporation and the plan administrator." This seems to conflict with the second, italicized half of § 1344(c), which clearly assigns all post-termination gains and losses to the Corporation. *See Kinek v. Paramount Commc'ns, Inc.*,

22 F.3d 503, 515 (2d Cir.), *amended on denial of reh'g* (June 13, 1994).

We need not resolve that conflict here. One of the two events referenced in the first half of § 1344(c) is the appointment of a *pre-termination* trustee under § 1342(b). *See* 29 U.S.C. § 1342(b)(1) (providing "for the appointment of a trustee to administer the plan . . . pending the issuance of a decree . . . ordering the termination of the plan"). There was no such trustee in this case. Indeed, the Corporation became the statutory trustee by an agreement with Delta only *after* the parties terminated the Delta Plan. *See id.* § 1342(c) (providing for appointment of a trustee when a plan terminates). And there was no court determination—which is contingent on a court-appointed trustee—nor agreement between the Corporation and the plan administrator—previously Delta, now the Corporation itself—to supply competing instructions as to the allocation of any post-termination increase or decrease in the value of plan assets. In short, the first half of § 1344(c) does not apply in this case.

Moreover, although we do not decide the question, the reference to § 1342(b) suggests the first half of § 1344(c) was meant to govern changes in the value of assets pending plan termination, while the second half allocates post-termination gains and losses to the Corporation. The pilots acknowledge as much, explaining that § 1344(c) "is properly treated as a measure giving necessary guidance on the thorny issue of whose accounts are to be 'credited' with the gains or losses during the lengthy period when a plan is in the process of being terminated . . . with the monies going to the Corporation's account (for the then-terminated plan) after termination." Pilots' Br.

47-48. The increase in the value of plan assets at issue in this case occurred after, not before, the plan terminated.

Recognizing that § 1342(b) governs the appointment of pre-termination trustees also reveals a potential defect in the first half of § 1344(c) itself. The first half of § 1344(c) applies "on the later of" the appointment of a pre-termination trustee or when the plan terminates. But a pre-termination, statutory trustee will by definition be appointed before plan termination, rendering meaningless the question of which event comes later. This suggests the first half of § 1344(c) contains a drafting error, as both parties agree. *See* Oral Arg. Tr. at 8-9, 20.[1]

We thus apply the second half of § 1344(c), which by its express terms governs the allocation of post-termination gains at issue in this case.

B

The Corporation argues that it is entitled under § 1344(c) to any post-termination increase in the value

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[1] Congress has considered amending § 1344(c). For example, in 1994 the U.S. House of Representatives considered a "clarification" to § 1344(c) as part of a larger bill, amending the subsection to read: "Any increase or decrease in the value of the assets of a single-employer plan occurring during the period beginning on ~~the later of (1)~~ the date a trustee is appointed under section 1342(b) of this title ~~or (2)~~ *and ending on* the date on which the plan is terminated ~~is to be~~ *shall be* allocated between the plan and the corporation in the manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the corporation and the plan administrator ~~in any other case~~ *(in any other case).* Any increase or decrease in the value of the assets of a single-employer plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the corporation." H.R. Rep. No. 103-632, at 204 (Aug. 26, 1994). But the House of Representatives never voted on the proposed bill.

of pension plan assets. In other words, the Corporation reasons, Congress has already decided who benefits or suffers the loss from a change in the value of plan assets once that plan has been terminated. Therefore, the Corporation concludes that the pilots cannot recover that money as equitable relief for an alleged breach of fiduciary duty. We agree.

The Corporation guarantees certain benefits to participants in pension plans. *See* 29 U.S.C. § 1322. And, in exchange for paying the difference between those benefits and the plan assets once the plan terminates, as well as absorbing any subsequent "decrease in the value of the assets of a . . . plan," Congress allocated any post-termination "increase" to the Corporation. *Id.* § 1344(c); *see Paulsen v. CNF Inc.*, 559 F.3d 1061, 1073 (9th Cir. 2009) ("ERISA . . . mandates that a post-termination increase or decrease in the [plan] assets be credited or suffered by [the Corporation]."). That money is not available to plan participants.

The pilots argue that statutory trustees of *terminated* pension plans have a fiduciary duty to plan participants, and § 1303(f)(1) authorizes "appropriate equitable relief" if that duty is breached. The pilots explain that 29 U.S.C. § 1132(a)(3)(B) in Title I of ERISA, which governs *ongoing* plans, provides for "appropriate equitable relief" as well. In that context, they continue, the Supreme Court has defined "equitable relief" as "those categories of relief that were *typically* available in equity." *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 256 (1993). The pilots insist that "[e]quity courts possessed the power to provide monetary 'compensation' for a loss resulting from a trustee's breach of duty, or to prevent the

trustee's unjust enrichment," *CIGNA Corp. v. Amara*, 563 U.S. 421, 441 (2011), through a remedy such as disgorgement. And they point out that other circuits have allowed claims for disgorgement to proceed under Title I with regard to ongoing plans. *See, e.g.*, *Pender v. Bank of Am. Corp.*, 788 F.3d 354, 364-65 (4th Cir. 2015); *Edmonson v. Lincoln Nat'l Life Ins. Co.*, 725 F.3d 406, 419-20 (3d Cir. 2013). *But see Rochow v. Life Ins. Co. of N. Am.*, 780 F.3d 364, 370-76 (6th Cir. 2015) (en banc).

According to the pilots, if disgorgement is available as "appropriate equitable relief" under § 1132(a)(3) to prevent the unjust enrichment of fiduciaries of ongoing plans, then the presumption of consistent usage dictates that disgorgement is also "appropriate equitable relief" under § 1303(f)(1) with regard to terminated plans. *See Envtl. Def. v. Duke Energy Corp.*, 549 U.S. 561, 574 (2007) (recognizing the "natural presumption that identical words used in different parts of the same act are intended to have the same meaning" (quoting *Atl. Cleaners & Dyers v. United States*, 286 U.S. 427, 433 (1932))). In fact, ERISA even equates the fiduciary status of a post-termination, statutory trustee with that of a fiduciary of an ongoing plan. *See* 29 U.S.C. § 1342(d)(3) ("[A] trustee appointed under this section [in Title IV] . . . shall be, with respect to the plan, a fiduciary within the meaning of [Title I]."). The pilots conclude that § 1344(c) says nothing about available remedies if the Corporation breaches its fiduciary duty and, as a result, should not limit the broad wording of § 1303(f)(1).

We are unpersuaded. Section 1344(c) does not apply to ongoing plans so "the presumption of consistent usage 'readily yields' to context." *Util. Air*

Regulatory Grp. v. EPA, 134 S. Ct. 2427, 2441 (2014) (quoting *Envtl. Def.*, 549 U.S. at 574). Ongoing plans are not subject to the same statutory instructions as terminated plans when it comes to "[a]ny increase or decrease in the value of the assets." 29 U.S.C. § 1344(c).

In addition, ERISA repeatedly qualifies the fiduciary status of post-termination trustees "to the extent that the provisions of [Title IV] are inconsistent" with fiduciary requirements. *Id.* § 1342(d)(3). Requiring the Corporation to disgorge a post-termination increase in the value of plan assets flatly contradicts § 1344(c). By statute, the pilots are entitled to their guaranteed benefits, while Congress directed that any post-termination increase or decrease in the value of plan assets should go to the Corporation. The pilots cannot circumvent that decision under the heading of equitable relief. In other words, disgorgement would not be "appropriate" here. *Id.* § 1303(f)(1).

The pilots also claim that "duties imposed on the statutory trustee do not fall by the wayside just because the [Corporation], and not a private party, becomes the trustee." *Wilmington Shipping Co. v. New Eng. Life Ins. Co.*, 496 F.3d 326, 337 (4th Cir. 2007). They reason that the Corporation should not be able to escape the liability for its misdeeds that would otherwise apply to a private trustee. Underlying this argument is an assumption that the pilots would be entitled to any post-termination increase in the value of plan assets if a private party, and not the Corporation, were the trustee in this case. But nothing in § 1344(c) suggests that the identity of the statutory trustee affects who takes gains and losses after the plan terminates. They all

go to the Corporation. The pilots cannot have the increase, and they presumably would not want the decrease, regardless of who acts as statutory trustee of the terminated Delta Plan.

The pilots' request for post-termination investment gains is fundamentally flawed. Because § 1344(c) does not depend on whether the Corporation acts as statutory trustee of the terminated plan, any post-termination change in the value of plan assets must be "credited to, or suffered by" the Corporation in its capacity as *guarantor*. 29 U.S.C. § 1344(c). This makes sense: Each participant's benefits are calculated at the time of plan termination and shielded from additional loss by the Corporation. If plan assets increase in value, the Corporation is likewise credited with that gain. The Corporation assumes this responsibility as guarantor of certain plan benefits. But the pilots sue the Corporation for fiduciary breach in its capacity as statutory *trustee*. *See* Am. Compl. ¶ 64, J.A. 300; 29 U.S.C. § 1342(d)(3) ("Except to the extent inconsistent with the provisions of [ERISA], . . . a trustee appointed under this section shall be . . . a fiduciary . . . ."). The disconnect between suing the Corporation in its role as statutory trustee, yet requesting a remedy that the Corporation can supply only in its role as guarantor, further demonstrates that disgorgement is inconsistent with the statutory scheme for terminated pension plans and therefore not "appropriate equitable relief." *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.").

Finally, the district court distinguished between assets *properly* held by the statutory trustee and assets held in breach of a fiduciary duty. *Lewis*, 197 F. Supp. 3d at 26; *accord Lewis*, 2017 WL 7047932, at *3. If the statutory trustee retains plan assets improperly, the argument goes, § 1344(c) simply does not apply and plan participants can recover any post-termination increase. The pilots repeat that argument here, suggesting it avoids any tension between the broad wording of "appropriate equitable relief" in § 1303(f)(1) and the directive in § 1344(c) that any post-termination increase or decrease in the value of plan assets goes to the Corporation.

We do not see this distinction in § 1344(c). And "given the express language of the statute" allocating post-termination gains and losses to the Corporation, we decline to create an "implied exception" to those unambiguous terms. *Bennett v. Arkansas*, 485 U.S. 395, 397-98 (1988). Indeed, § 1344(c) allocates to the Corporation "any" post-termination increase in the value of plan assets. "[T]he expansive word 'any' and the absence of restrictive language" promotes a sweeping application of that provision. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008). By contrast, we are reluctant to expand the scope of "appropriate equitable relief" in a way that would impose trustee liability on the Corporation in its role as guarantor.

This does not mean the pilots lacked possible remedies for their alleged injuries. Both parties agree that other forms of equitable relief are generally available in cases of fiduciary breach, including removal of the Corporation as statutory trustee of the terminated plan. *See, e.g.*, *Pineiro v. PBGC*, 318 F. Supp. 2d 67, 94 (S.D.N.Y. 2003); *cf.* 29 U.S.C. §

1109(a) (allowing for removal of an ongoing-plan fiduciary). And the pilots have been able to challenge their benefit determinations, although the district court rejected those claims on the merits.

But recovering the post-termination increase in the value of plan assets is not an available remedy where, as here, the limitation of § 1344(c) applies.

III

We reverse the district court's ruling that disgorgement is an available remedy against the Corporation and we remand to the district court for further proceedings consistent with this opinion.[2]

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[2] In their petition asking that we amend the opinion, the pilots assert that their amended complaint—specifically, the fiduciary breach claim—seeks remedies in addition to disgorgement, which the pilots hope to pursue on remand. *See* Pet. 6-11. The Corporation responds that the fiduciary breach claim seeks only disgorgement, the pilots have not pursued additional remedies throughout "multiple years of litigation," and the panel "should not resuscitate the fiduciary breach claim" "for reasons [the pilots] did not advance in the district court." Resp. 2, 8. Our "normal rule" is to avoid passing on an issue that the district court has not fully addressed, *Liberty Prop. Tr. v. Republic Props. Corp.*, 577 F.3d 335, 341 (D.C. Cir. 2009), and remand is particularly appropriate when the issue hinges on the proper construction of the available remedies in litigation over which the district court long presided, *see Blessing v. Freestone*, 520 U.S. 329, 345-46 (1997) (remanding because "the complaint is less than clear" with regard to the rights asserted and the specific relief sought, and that "defect is best addressed by sending the case back for the District Court to construe the complaint in the first instance, in order to determine exactly what rights, considered in their most concrete, specific form, respondents are asserting"). Therefore, we remand the matter to the district court for further proceedings consistent with this opinion, and specifically to determine in the first instance whether the amended complaint seeks remedies for the alleged

So ordered.

fiduciary breach in addition to disgorgement. Of course the implications of the opinion's statutory analysis remain unaltered.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

K. WENDELL LEWIS, et al., Plaintiffs,	)	Civil Action No. 15- 1328 (RBW)
v.	)	[Filed 07/06/16)]
PENSION BENEFIT GUARANTY CORPORATION, Defendant.	)	

MEMORANDUM OPINION

The plaintiffs, approximately 1700 former airline pilots, initiated this action against defendant Pension Benefit Guaranty Corporation ("Corporation") under the Employment Retirement Income Security Act, 29 U.S.C. §§ 1001–1461 (2012) ("ERISA"), asserting claims of breach of fiduciary duty, denial of benefits, and violations of the Administrative Procedure Act ("APA"), and seeking certain declaratory and injunctive relief. See generally First Amended Complaint ("Am. Compl.") ¶¶ 1–13, 63–156. Currently pending before the Court is the Pension Benefit Guaranty Corporation's Motion To Dismiss and To Strike ("Def.'s Mot."), in which the Corporation seeks to dismiss the plaintiffs' breach of fiduciary duty claim (Claim One), and to strike the

plaintiffs' demands for attorney's fees and for a jury trial.[1] Def.'s Mot. at 1. Upon consideration of the parties' submissions, the Court concludes that the Corporation's motion to dismiss Claim One of the Amended Complaint must be denied. However, the Court will grant the Corporation's motions to strike the attorney's fees and jury trial demands.[2]

I. BACKGROUND

A. The Corporation's Duties Under the ERISA

The ERISA was enacted in part to "ensure that employees and their beneficiaries would not be deprived of anticipated retirement benefits by the termination of pension plans before sufficient funds

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[1] Although the Corporation's motion also included a motion to strike the plaintiffs' demand for a jury trial, the plaintiffs have abandoned this demand, Plaintiffs' Opposition to Defendant's Motion To Dismiss and To Strike at 1 n.1 ("While the [Corporation] did not initially appear to object to the demand [for a jury trial], having now objected, there is no further reason to consider the demand or to address whether to strike it."), and the Court therefore need not address the substance of that initial challenge in this Memorandum Opinion.

[2] In addition to the filings already identified, the Court considered the following submissions in rendering its decision: (1) the Pension Benefit Guaranty Corporation's Memorandum in Support of Its Motion To Dismiss and To Strike ("Def.'s Mem."); (2) the Plaintiffs' Opposition to Defendant's Motion To Dismiss and Strike ("Pls.' Opp'n"); (3) the Pension Benefit Guaranty Corporation's Reply in Support of Its Motion To Dismiss and To Strike ("Def.'s Reply"); (4) the Plaintiffs' Notice of Supplemental Authority Regarding Defendant's Motion To Dismiss Claim One ("Pls.' Notice"); and (5) the PBGC's Response to Plaintiffs' Notice of Supplemental Authority Regarding Defendant's Motion To Dismiss Claim One ("Def.'s Response to Pls.' Notice").

[had] been accumulated in the plans." Pension Benefit Guar. Corp. v. R.A. Gray & Co., 467 U.S. 717, 720 (1984). As part of this statutory goal, the ERISA created the Corporation—a component within the Department of Labor—to, inter alia, "provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this subchapter applies." 29 U.S.C. § 1302(a)(2). The Corporation "administers and enforces Title IV of [the] ERISA." Pension Benefit Guar. Corp. v. LTV Corp., 496 U.S. 633, 637 (1990). As the Supreme Court explained:

> When a plan covered under Title IV terminates with insufficient assets to satisfy its pension obligations to the employees, the [Corporation] becomes trustee of the plan, taking over the plan's assets and liabilities. The [Corporation] then uses the plan's assets to cover what it can of the benefit obligations. The [Corporation] then must add its own funds to ensure payment of most of the remaining "nonforfeitable" benefits, i.e., those benefits to which participants have earned entitlement under the plan terms as of the date of termination.

LTV Corp., 496 U.S. at 637 (citing 29 U.S.C. §§ 1301, 1322, 1344).

B. Factual Background

This dispute originated with a September 2005 voluntary petition for bankruptcy filed by Delta Airlines, Inc. ("Delta"), which thereafter resulted in Delta not making contributions to the Delta Pilots

Retirement Plan ("Plan"), a tax-qualified deferred benefit plan under the ERISA and the Internal Revenue Code. Am. Compl. ¶¶ 28, 30, 33. The plaintiffs, former Delta pilots (or their spouses or estate executors) are participants and beneficiaries under the Plan. Id. ¶¶ 2, 29. Delta's post-bankruptcy negotiations with the pilots' union[3] regarding the Plan's termination, id. ¶ 33, yielded an agreement in which the union "would receive $650 million in notes and a $2.1 billion allowed general non-priority unsecured claim . . . , which Delta and [the union] intended to be used to 'replace unfunded benefits under the . . . Plan by using the proceeds to fund follow-on retirement plans and other payments or distributions to [active] pilots," id. ¶ 34 (second alteration in original) (quoting Am. Compl., Exhibit ("Ex.") A, at 2).

The Corporation objected to the proposed agreement between Delta and the pilots' union, asserting that it was "designed in substantial part to skirt [ERISA's] safeguards." Id. ¶ 35 (quoting Am. Compl., Ex. A, at 14). These safeguards are achieved through a six-tiered allocation scheme, in which benefits under a plan such as the Plan here are paid in order of statutory priority, which the Court will refer to as Categories 1 through 6. See id. ¶ 19; see also 29 U.S.C. § 1344(a)(1)–(6) (setting forth the order of priority a plan administrator is required to apply when allocating to participants the value of assets in a single-employer plan). Under the circumstances present here, "[Category 3] is the highest priority category . . . [under which] benefits are reserved for

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[3] The pilots were represented by the Air Line Pilots Association. See Am. Compl. ¶ 27.

those participants who were retirement-eligible at least three years prior to a plan's termination, under the plan provisions as they existed five years prior to plan termination." Am. Compl. ¶ 19. The proposed agreement between Delta and the pilots' union allegedly would have "improperly allowed funds which should properly go to the [Corporation] in connection with [the] ERISA's priority allocation scheme to leave the control of the plan sponsor/control group and thereby to fund pension benefits outside of [the] ERISA's asset allocation scheme[] . . . ." Id. ¶ 35 (citing Am. Compl., Ex. A, at 14–15). "In essence, the [proposed agreement] would allow Delta and [the pilots' union] to turn the asset allocation scheme on its head, putting younger active workers to the front of the line while relegating retirees living on a fixed income to the back." Id.

Over the Corporation's objections, the bankruptcy court approved the agreement between Delta and the pilots' union, and the Corporation "appealed [that] ruling to the district court." Id. ¶ 36. However, the Corporation later "withdrew" the appeal following the December 4, 2006 execution of a settlement agreement between Delta and the Corporation. Id. ¶ 39. Under the settlement agreement, the Corporation "received $225 million in notes, and a $2.2 billion unsecured bankruptcy claim." Id. On December 20, 2006, the bankruptcy court approved the settlement agreement between Delta and the Corporation. Id. ¶ 41. The Plan "was retroactively terminated as of September 2, 2006 . . ., and the [Corporation] became the [Retirement] Plan's Trustee as of December 31, 2006." Id. (italics omitted). The Corporation "obtained additional recoveries from Delta, which the [Corporation] initially valued as

being worth $1,279,423." Id. ¶ 45. The plaintiffs allege that they should have received a portion of these recoveries before active pilots, but represent that this did not occur because

> by placing the benefits of active pilots (not yet in pay status) ahead of [Category 3] retirees (already in pay status)[,] the [Corporation] was able to corrupt the statutory recovery ratio by ensuring that hundreds of millions of dollars remained, undiluted, within the agency's trust fund in order to maximize the [Corporation's] investment returns.

Id.

As trustee of the trust fund that held the Plan's assets, the Corporation initially valued those assets at approximately $1.984 billion and calculated that the Plan's Category 3 liabilities were approximately $2.13 billion, "such that [Category 3] liabilities were 93% funded by the [Retirement] Plan's assets." Id. ¶¶ 42–43. The Corporation also determined that the Plan's "PC4" or Category 4 liabilities were $761,904,660. Id. ¶ 44. The Corporation started making benefits payments under the Plan, but "[t]hose benefits were significantly less than the vested pension benefits the [plaintiffs] had been entitled to receive under the Plan and [the] ERISA." Id. ¶ 46. In making its benefits determinations, the Corporation was allegedly motivated by

> strong incentives to minimize and delay payments to participants from the trust fund, and to allocate assets

> away from retirement eligible participants towards younger participants, all in an effort to manipulate the asset allocation scheme in order to maximize investment returns on the trust fund and further its own financial wellbeing.

Id. ¶ 23.

The Corporation "maintained that Plan participants were unable to challenge [its] benefit determinations until the [Corporation] issued its final benefit determinations." Id. Between 2010 and 2012,

> the [Corporation] began mailing final benefit determination letters to Plan participants, informing them of the [Corporation's] final determinations (as insurer and trustee) of any guarantee funds they were entitled to under ERISA § 4022, any asset allocation payments they were entitled to under ERISA § 4044, and any recovery allocation they were entitled to under ERISA § 4022(c).

Id. ¶ 47.

Each plaintiff had forty-five days to appeal the Corporation's final benefit determination. Id. ¶ 49. The plaintiffs allege that the Corporation refused to extend the forty-five-day deadline "until its own internal records confirmed that a final benefit determination had issued." Id. ¶ 51. "Consequently, over 300 Plan participants who appealed the [Corporation's] determinations were later deemed 'untimely,' many missing the [Corporation]'s . . . 45-day deadline by a matter of days," id., although some

of these "untimely" designations were reversed for "good cause," id. n.13.

In addition, although the plaintiffs in May 2010 requested all information relied upon by the Corporation in reaching its final benefit determinations, only a "fraction" of that information had been produced by October 2011, prompting "a group of 1,784 participant, most of whom are [the plaintiffs] in this action, [to] file[] a consolidated appeal of the [Corporation's] benefit determinations under the Plan. Id. ¶ 53. That appeal was resolved by a September 2013 decision issued by the Corporation's Appeals Board that largely upheld the Corporation's final determinations. Id. ¶ 55; see generally id., Ex. H (Appeals Board decision) at 6 (summarizing the Appeals Board's conclusions). The Appeals Board decision constituted final agency action, id., Ex. H (Appeals Board decision) at 6, and this lawsuit was then initiated.

II. STANDARD OF REVIEW

For a complaint to survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the allegations in the complaint must state a facially plausible claim for recovery. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). To satisfy this requirement, the court must find that the complaint is sufficient to "raise a right to relief above the speculative level." Twombly, 550 U.S. at 555; see Iqbal, 556 U.S. at 678 ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'") (quoting Twombly, 550 U.S. at 570)). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a

defendant has acted unlawfully." Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 556).

"In evaluating a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court must construe the complaint in a light most favorable to the non-moving party and must accept as true all reasonable factual inferences drawn from well-pleaded factual allegations." Armenian Assembly of Am., Inc. v. Cafesjian, 597 F. Supp. 2d 128, 133–34 (D.D.C. 2009). However, legal conclusions masquerading as factual allegations are not enough to survive a motion to dismiss. Browning v. Clinton, 292 F.3d 235, 242 (D.C. Cir. 2002). Although the Court must, in general, limit its review to the allegations in the complaint, it may consider "documents upon which the complaint necessarily relies even if the document is produced not by the plaintiff in the . . . complaint but by the defendant in a motion to dismiss." Ward v. D.C. Dep't of Youth Rehab. Servs., 768 F. Supp. 2d 117, 119 (D.D.C. 2011) (quoting Hinton v. Corr. Corp. of Am., 624 F. Supp. 2d 45, 46 (D.D.C. 2009)).

III. ANALYSIS

A. The Breach of Fiduciary Duty Claim (Claim One)

1. Whether the Fiduciary Breach Claim Is Impermissibly Duplicative

The Corporation argues that the plaintiffs' breach of fiduciary duty claim under the ERISA is impermissibly duplicative of their claim for re-allocation of Plan benefits elsewhere in the Amended Complaint. Def.'s Mem. at 18. Claim One of the Amended Complaint alleges that the Corporation breached its fiduciary obligations under the ERISA

by: (1) seeking to withhold or delay the production of information critical to the understanding of the [Corporation's] benefit determination and asset allocation choices," Am. Compl. ¶ 66; (2) denying the plaintiffs an opportunity to lodge an informed appeal of the Corporation's final determination, id. ¶ 67; (3) "allowing its agency litigation counsel to advise its [A]ppeals [B]oard, and refusing to disclose the contacts between the two groups," id. ¶ 68; (4) outsourcing "many of its trustee responsibilities to independent contractors who lack[ed] the requisite competence or experience" to perform those duties adequately, then failing to monitor and remedy their inadequate performance, see id. ¶¶ 69–70; and (5) "manipulat[ing] the asset allocation process in such a manner as to create hundreds of millions of dollars of investment returns to itself, at [the plaintiffs'] expense," id. ¶ 71. As a result of these alleged fiduciary breaches, the plaintiffs contend that "the [Corporation] has unjustly earned massive investment returns off of assets that should have been timely allocated to [the p]laintiffs, and the [Corporation] should be required to disgorge itself of this unjust enrichment." Id. ¶ 72. But in addition to asserting these breaches of fiduciary duty, the Corporation notes that the plaintiffs have also pleaded, in Claims Two through Five of the Amended Complaint, various challenges to the Corporation's asset allocation and benefits determinations under the ERISA. See generally id. ¶¶ 73–150 (challenging the Corporation's prioritization and allocation of benefits due to the plaintiffs).

In support of its argument that the plaintiffs' fiduciary breach claim is impermissibly duplicative, the Corporation relies on this Court's observation in

Wright v. Metropolitan Life Insurance Co. that the majority of Circuits presented with a claim for breach of fiduciary duty and a separate claim for benefits under the ERISA "have held that a breach of fiduciary duty claim cannot stand where a plaintiff has an adequate remedy through a claim for benefits under § [1132](a)(1)(B)." 618 F. Supp. 2d 43, 55 (D.D.C. 2009) (Walton, J.) (quoting Clark v. Feder Semo & Bard, P.C., 527 F. Supp. 2d 112, 116 (D.D.C. 2007)). To date, no judge in this district court has deviated from that conclusion. See Boster v. Reliance Standard Life Ins. Co., 959 F. Supp. 2d 9, 31 (D.D.C. 2013) (denying amendment of the plaintiff's complaint to add a breach of fiduciary duty claim as futile because the only alleged injury resulting from the alleged breach was a loss of benefits, and "[t]he Court ha[d already] provided an adequate remedy for [the plaintiff's] loss of benefits" pursuant to the plaintiff's claim for benefits under 29 U.S.C. § 1132(a)(1), rendering "[a]ny further equitable relief . . . inappropriate"); Zalduondo v. Aetna Life Ins. Co., 845 F. Supp. 2d 146, 155 (D.D.C. 2012) (concluding that equitable relief pursuant to § 1132(a)(3) was not appropriate because "[t]he only harm alleged in [the complaint]—that is, the harm suffered by [the plaintiff] through Aetna's allegedly improper denial of her [benefits] request . . . is adequately provided for in the denial-of-benefits claim brought pursuant to § 1132(a)(1)(B)); Clark v. Feder, Semo & Bard, P.C., 808 F. Supp. 2d 219, 225–26 (D.D.C. 2011) (holding that the plaintiff "must choose" whether to proceed under a claim for benefits § 1132(a)(1)(B) or under a fiduciary breach claim under § 1132(a)(3)); Kifafi v. Hilton Hotels Ret. Plan, 616 F. Supp. 2d 7, 39 (D.D.C. 2009) (the plaintiff's breach of fiduciary duty claim "must be dismissed because a plan participant cannot proceed with a

breach of fiduciary duty claim under [§ 1132](a)(3) when relief is available under other remedial sections of ERISA." (citing, inter alia, Varity Corp. v. Howe, 516 U.S. 489, 515 (1996)). But see Moyle v. Liberty Mut. Ret. Benefit Plan, ___ F.3d ___, 2016 WL 2946271, at *10–11 (9th Cir. May 20, 2016) (recognizing that litigants may plead alternative theories of relief under 29 U.S.C. § 1132(a)(1)(B) and 1132(a)(3) so long as they do not obtain duplicate recoveries); Silva v. Metro. Life Ins. Co., 762 F.3d 711, 726 (8th Cir. 2014) ("We do not read Varity . . . to stand for the proposition that [the plaintiff] may only plead one cause of action to seek recovery of his son's supplemental life insurance benefits. Rather, we conclude [that] those cases prohibit duplicate recoveries when a more specific section of the [ERISA] . . . provides a remedy similar to what the plaintiff seeks under the equitable catchall provision, § 1132(a)(3)."). The District of Columbia Circuit has not addressed the issue.

In opposition, the plaintiffs assert that they are pursuing their fiduciary breach claim under a different provision of the ERISA, 29 U.S.C. § 1303(f), not under § 1132(a), and therefore the cases cited by the Corporation are inapposite. Pls.' Opp'n at 22. The Court agrees that there are sufficient textual differences between the civil enforcement provisions of § 1132(a), which are applicable to ERISA fiduciaries other than the Corporation, as compared to § 1303(f), which is "the exclusive means for bringing actions against the [C]orporation," rendering analyses based on cases analyzing the former provision distinguishable from this case. In relevant part, § 1132(a) enumerates several avenues of relief, including a claim "to recover benefits due to

[a plaintiff] under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan" pursuant to § 1132(a)(1)(B), or "other appropriate equitable relief" under § 1132(a)(3). See 29 U.S.C. § 1132(a). The Supreme Court's decision in Varity Corp. allowed an individual claim for breach of fiduciary duty to proceed under § 1132(a)(3) because no other civil enforcement remedy under § 1132(a) was available based on the circumstances presented in that case. 516 U.S. at 515 ("The plaintiffs in this case could not proceed under the first subsection [of § 1132(a)] because they were longer members of the . . . plan [at issue] and, therefore, had no 'benefits due [them] under the terms of [the] plan.' § [1132](a)(1)(B). They could not proceed under the second subsection because that provision, tied to § [1109], does not provide a remedy for individual beneficiaries. . . . They must rely on the third subsection or they have no remedy at all. We are not aware of any ERISA-related purpose that denial of a remedy would serve. Rather, we believe that granting a remedy is consistent with the literal language of the statute, the [ERISA]'s purposes, and pre-existing trust law.") (third and fourth alterations in original) (citation omitted)). In stark contrast, § 1303(f) is devoid of the several subparagraphs contained in § 1132(a), and instead authorizes only "any person . . . who is a participant or beneficiary, and is adversely affected by any action of the [C]orporation with respect to a plan in which such person has an interest . . . [to] bring an action against the [C]orporation for appropriate equitable relief . . . ." 29 U.S.C. § 1303(f)(1).

The plaintiffs assert that they "brought their case pursuant to § [1303](f)," and that "they could not even sue the [Corporation] under the provisions of § [1132] whatsoever." Pls.' Opp'n at 24. Thus, the plaintiffs themselves pursue their entire case—not merely their fiduciary breach claims—outside of the civil enforcement realm of § 1132, upon which the Corporation's "duplicative" argument relies. See id. Indeed, the Court's review of the allegations contained in Claims Two through Five reveals that the plaintiffs focus those claims on the Corporation's alleged failure to properly prioritize and calculate the allocation of assets in the terminated Plan in violation of 29 U.S.C. §§ 1322 and 1344, which are contained in Title IV of the ERISA and form part of the same ERISA subchapter that includes § 1303, cf. § 1303(f)(4) ("This subsection shall be the exclusive means for bringing actions against the corporation under this subchapter . . . ." (emphasis added)), and not upon any benefit allocation provision contained in Title I of the ERISA, wherein the separate civil enforcement provisions of § 1132 are found. See, e.g., Am. Compl. ¶ 76 (alleging in Claim Two that the Corporation's actions resulted in "Delta Pilots who were entitled to priority in the allocation of Plan assets – those in [Category] 3 – were deprived of pension benefits ERISA mandates that they receive, while those whom Congress placed further to the back of the line – those outside of [Category] 3 – received over $1.8 billion from Delta before the asset allocation process even began."); id. ¶¶ 86–101 (alleging in Claim Three that the Corporation misapplied § 1344 by failing to account for congressionally-mandated increases to the limit of compensation that may be used to calculate benefits); id. ¶¶ 113–27 (alleging in Claim Four that the

Corporation misapplied § 1344 by failing to account for congressionally-mandated increases in the amount of benefits that may be paid to plan participants in a given year); id. ¶¶ 131–49 (alleging in Claim Five that the Corporation, pursuant to its authority under 29 U.S.C. § 1362, incorrectly determined the ratio of recovered liabilities to be distributed to Plan participants and beneficiaries, as required by § 1322(c)). Because of the textual differences between § 1303(f) and § 1132(a), the Court agrees with the plaintiffs that the Corporation's challenge to the plaintiffs' fiduciary breach claims as duplicative of their other claims lacks merit.

2. Whether the Relief Sought by The Plaintiffs in Claim One Is "Appropriate Equitable Relief" Under § 1303(f)

Having concluded that the plaintiffs' fiduciary breach claim is not impermissibly duplicative of the plaintiffs' other ERISA claims, the Court now addresses whether the relief sought in Claim One of the Amended Complaint is "appropriate equitable relief" as required by § 1303(f). The plaintiffs allege that as a result of the breaches alleged in Claim One, the Corporation earned investment returns on undistributed benefits that should be disgorged. Am. Compl. ¶ 72. Further, the plaintiffs assert that, contrary to the Corporation's contention, any recovery on their breach of fiduciary duty claim may inure to them individually as opposed to the Plan at large. Pls.' Opp'n at 23–25. The threshold question for the Court to answer is whether the relief the plaintiffs seek, i.e., to recoup from the Corporation its alleged ill-gotten investment returns on assets that should have been

distributed to the plaintiffs, constitutes a claim for compensatory damages or one for equitable relief. In resolving this question, the Court is "'reluctant to tamper with [the] enforcement scheme' embodied in the statute by extending remedies not specifically authorized by its text." Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 209 (2002) (alteration in original) (quoting Mass. Mut. Life Ins. Co. v. Russell, 437 U.S. 134, 147 (1985)).

The Supreme Court in Mertens v. Hewitt Associates grappled with the legal-versus-equitable remedy distinction in its analysis of the phrase "appropriate equitable relief" in § 1132(a)(3).[4] See 508 U.S. 248, 255 (1993) ("Money damages are, of course, the classic form of legal relief. . . . And though we have never interpreted the precise phrase 'other appropriate equitable relief,' we have construed similar language . . . to preclude 'awards for compensatory or punitive damages.'" (citations omitted)). The Mertens decision established that "appropriate equitable relief" refers to "those categories of relief that were typically available in equity (such as injunction, mandamus, and restitution, but not compensatory damages)." 508 U.S. at 256; see also CIGNA Corp. v. Amara, 563 U.S.

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[4] As the Supreme Court generally "assume[s] that the same terms have the same meaning in different sections of the same statute," Barnhill v. Johnson, 503 U.S. 393, 406 (1992), the Court is persuaded that cases interpreting the meaning of the terms "appropriate equitable relief" in § 1132(a)(3)(B) may weigh heavily in the Court's analysis of the meaning of the same terms in § 1303(f). See also IBP, Inc. v. Alvarez, 546 U.S. 21, 33–34 (2005) (noting "the normal rule of statutory interpretation that identical words used in different parts of the same statute are generally presumed to have the same meaning").

421, 439 (2011) ("We have interpreted the term 'appropriate equitable relief' in § [1132](a)(3) as referring to those 'categories of relief' that, traditionally speaking (i.e., prior to the merger of law and equity), 'were typically available in equity.'" (quoting Sereboff v. Mid Atl. Med. Servs., Inc., 547 U.S. 356, 361 (2006), and Mertens, 508 U.S. at 256)). And, the Supreme Court in Harris Trust & Savings Bank v. Salomon Smith Barney, Inc. recognized that both restitution and disgorgement were remedies typically available in equity. 530 U.S. 238, 250 (2000) ("[I]t has long been settled that when a trustee in breach of his fiduciary duty to the beneficiaries transfers trust property to a third person, . . . "the beneficiaries may then maintain an action for restitution of the property (if not already disposed of) or disgorgement of the proceeds (if already disposed of) . . . ." (citing, inter alia, Restatement (Second) of Trusts §§ 284, 291, 294, 295, 297)).

Moreover, the Supreme Court in Amara stated that a district court's

> injunctions requir[ing] the plan administrator to pay to already retired beneficiaries money owed to them under the plan . . . [in] the form of a money payment does not remove [the remedy] from the category of traditionally equitable relief. Equity courts possessed the power to provide relief in the form of monetary "compensation" for a loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment. Indeed, prior to the merger of law and equity this type of

> monetary remedy against a trustee, sometimes called a "surcharge," was "exclusively equitable."

563 U.S. at 441–42 (emphasis added) (quoting Princess Lida of Thurn & Taxis v. Thompson, 305 U.S. 456, 464 (1939)). Following the Amara decision, the Seventh Circuit in Kenseth v. Dean Health Plan, Inc. recognized that a plaintiff's claim for "make-whole relief in the form of monetary compensation for a breach of fiduciary duty" could qualify as a form of "appropriate equitable relief" under 29 U.S.C. § 1132(a)(3). 722 F.3d 869, 891–92 (7th Cir. 2013).

Here, the plaintiffs' breach of fiduciary duty claim alleges that, as a result of the Corporation's alleged breaches, see Am. Compl. ¶¶ 64–71, it earned investment returns from Plan assets that should have been distributed to the plaintiffs, and that the Corporation should be required to disgorge those proceeds, id. ¶ 72. Consistent with the Supreme Court's holding in Amara, the Court concludes that the relief sought by the plaintiffs here is fairly characterized as "appropriate equitable relief" under § 1303. See also Moore v. CapitalCare, Inc., 461 F.3d 1, 13 (D.C. Cir. 2006) ("An accounting for profits 'is a restitutionary remedy based upon avoiding unjust enrichment' and its purpose is to 'disgorge gains received from improper use of the plaintiff's property or entitlements.'" (emphasis added) (quoting 1 Dan B. Bobbs, Law of Remedies § 4.3(5) (2d ed. 1993))); Foltz v. U.S. News & World Report, Inc., 627 F. Supp. 1143, 1167 (D.D.C. 1986) (allowing a claim for monetary compensation for a breach of fiduciary duty to proceed under § 1132(a)(3) because "the remedies traditionally

afforded beneficiaries by the common law of trusts include the recoupment from a breaching fiduciary of money damages, so that the beneficiary may be made whole." (citing Restatement (Second) of Trusts §§ 199(c), 205 (1959); G. Bogert & G. Bogert, The Law of Trusts and Trustees § 862 (2d rev. ed. 1982); III A. Scott, The Law of Trusts §§ 199.3, 205 (3d ed. 1967))). Thus, even if the plaintiffs' claim for disgorgement takes the form of a monetary payment for the breach of fiduciary duty they allege against the Corporation, such a remedy is not precluded under the ERISA.

To support its assertion that the ERISA precludes the disgorgement sought by the plaintiffs, the Corporation first argues that the plaintiffs "seek the purported increase in the value of the Plan's assets after termination," Def.'s Mem. at 14, a result it claims is prohibited by § 1344(c), which states that "[a]ny increase or decrease in the value of the assets of a single-employer plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the [C]orporation." Construing the allegations in the Amended Complaint in the light most favorable to the non-moving party, Cafesjian, 597 F. Supp. 2d at 133–34, the Court notes that the plaintiffs' fiduciary breach claim does nothing of the sort. Rather, Claim One seeks to recoup the alleged ill-gotten investment returns on Plan benefits that the plaintiffs claim should have been distributed to them, Am. Compl. ¶ 72, not, as the Corporation characterizes the claim, to divert from the Corporation any gains (or losses) from assets properly held in the Plan. The Court therefore rejects the Corporation's first argument.

The Corporation also argues that "the Sixth Circuit specifically rejected a claim for disgorgement of profits in a case where the plaintiff sought to recover ERISA plan benefits." Def.'s Mem. at 15 (citing Rochow v. Life Ins. Co. of N. Am., 780 F.3d 364 (6th Cir. 2015)). Even if the Rochow case were binding precedent on this Court, the Corporation's reliance on it would be unavailing. The issue before the Rochow court was whether an equitable recovery under § 1132(a)(3) was impermissibly duplicative of the plaintiff's recovery of unpaid benefits under § 1132(a)(1)(B). That opinion said nothing about the question of whether disgorgement is "appropriate equitable relief," and the Corporation's reliance on Rochow therefore misses the mark. Having already concluded that the plaintiffs' request for an equitable remedy in the form of disgorgement qualifies as "appropriate equitable relief" under § 1303(f), the Court rejects the Corporation's assertions that Claim One must be dismissed on this ground.

3. Whether the Plaintiffs May Recover Individually for the Alleged Fiduciary Breach

Related to the question of whether the type of relief (disgorgement) sought by the plaintiffs constitutes "appropriate equitable relief" is the question of whether any remedy may inure to the plaintiffs individually as opposed to the Plan at large. The Corporation asserts that any recovery inuring to the plaintiffs individually, as opposed to recoveries going to the Plan at large, is impermissible relief under the ERISA. See Def.'s Mem. at 11–14. In support of this argument, the Corporation relies on

29 U.S.C. § 1342, which states that the Corporation's fiduciary obligations are governed by Title I of the ERISA, except where inconsistent with Title IV, see 29 U.S.C. § 1342(d)(3), and the Supreme Court's holding in Russell, which held that any recoveries under Title I's fiduciary duty provision, § 1109, inure only to the plan as a whole. Def.'s Mem. at 14.

Beginning, as the Court must, with the statutory language, Harris Trust, 530 U.S. at 254, the Court observes at the outset that nothing in § 1303(f) suggests that the appropriate equitable relief allowed by that provision must inure only to the plan as a whole. It states, in relevant part that, "any person who is a . . . participant or beneficiary, and is adversely affected by any action of the corporation with respect to a plan in which such person has an interest, . . . may bring an action against the [C]orporation for appropriate equitable relief in the appropriate court." 29 U.S.C. § 1303(f)(1). The Court discerns nothing in this language suggesting that any equitable relief awarded by a Court should not inure to the person "with an interest in the plan," id., who is authorized to bring suit against the Corporation, and the Corporation has cited no authority that supports its proposition. The Court also observes that the language of § 1109 and § 1303(f)(1) are hardly identical, compare § 1109 ("Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan . . . and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary,

and shall be subject to such other equitable or remedial relief as the court may deem appropriate." (emphases added)) with § 1303(f)(1) (quoted above), rendering arguments arising from an analysis of remedies available under § 1109 less persuasive.

Further, the cases upon which the Corporation relies, see Def.'s Mem. at 12, do little to support its position, because none of them address the equitable remedies made available under § 1303(f), see Varity Corp., 516 U.S. at 515 (plaintiffs "could not proceed under [§ 1132(a)(2)] because that provision, tied to [§ 1109], does not provide a remedy for individual beneficiaries"); Russell, 473 U.S. at 141–48 (concluding that § 1109 provides only plan-wide relief); Murchison v. Murchison, 180 F. App'x 163, 265 (D.C. Cir. 2006) (remanding fiduciary breach claims against individual defendant pursuant to § 1109 to district court for the entry of an order requiring the fiduciary to distribute misappropriated funds to the plan); Repass v. AT&T Pension Benefit Plan, No. 3:14-CV-2686-L, 2015 WL 5021405, at *4 n.2 (N.D. Tex. Aug. 25, 2015) (noting that the plaintiff could not bring a fiduciary breach claim against the defendant pension benefit plan under § 1132(a)(2) because that provision provides only plan-wide relief); Wallace v. Blue Cross & Blue Shield of Ala., No. 14-0119-CG-C, 2014 WL 5335823, at *4 (S.D. Ala. Oct. 20, 2014) (dismissing plaintiffs' fiduciary breach claims against health insurance company because the plaintiffs impermissibly sought individual relief under § 1132(a)(2)); Zalduondo, 845 F. Supp. 2d at 154 (dismissing plaintiff's claim against health insurance company because the plaintiff sought individual relief under § 1132(a)(2)); Harris v. Koenig, 602 F. Supp. 2d 39, 50 (D.D.C. 2009) (holding that the plaintiffs'

breach of fiduciary claims against individual defendants properly sought plan-wide relief under § 1132(a)(2)).

As the plaintiffs note, the Supreme Court recognized in Varity Corp., albeit in analyzing whether equitable relief was available to the plaintiffs for alleged fiduciary breaches under 29 U.S.C. § 1132(a)(3), that § 1109 is not the only provision in the ERISA that provides a remedy for fiduciary breach. Pls.' Opp'n at 24; see Varity Corp., 516 U.S. at 511–12 ("[W]hy should one believe that Congress intended the specific remedies in § [1109] as a limitation? . . . To the contrary, one can read § [1109] as reflecting a special congressional concern about plan asset management without also finding that Congress intended that section to contain the exclusive set of remedies for every kind of fiduciary breach. After all, ERISA makes clear that a fiduciary has obligations other than, and in addition to, managing plan assets. . . . Why should we not conclude that Congress has provided yet other remedies for yet other breaches of other sorts of fiduciary obligation in another 'catchall' remedial section?"). The Court agrees that the Corporation's reliance on Russell, which limited the § 1109 remedies to plan-wide relief, is misplaced. Absent authority indicating that § 1303(f) does not provide an avenue for individual relief as an equitable remedy, the Court rejects the Corporation's arguments that the Amended Complaint fails to state a claim upon which relief may be granted on this ground.

4. The Corporation's Remaining Arguments

The Corporation's remaining arguments can be addressed with limited discussion. First, it asserts

that the plaintiffs' breach of fiduciary duty claim fails because the plaintiffs can recover no more than their statutory benefits, Defs.' Mem. at 15–17, relying primarily on Bechtel v. Pension Benefit Guaranty Corp., 781 F.2d 906 (D.C. Cir. 1986), and Dumas v. Pension Benefit Guaranty Corp., 253 F. App'x 602 (7th Cir. 2007), as support for this argument. In Bechtel, this Circuit affirmed the district's court's ruling that the Corporation had properly determined that it had previously allowed the distribution of plan benefits above the maximum benefit level guaranteed pursuant to 29 U.S.C. § 1322 and could thereafter recapture these overpayments by downwardly adjusting the level of future payments. 781 F.2d at 906. And in Dumas, the Seventh Circuit rejected the plaintiffs' claim that the Corporation had promised, by way of representations on an informational brochure, that they would be entitled to over $3000 in monthly pension benefits, not the roughly $400 monthly payments they had been receiving, which the Corporation had determined was all the plaintiffs were entitled to receive, based on their prior contributions into the pension plan. 253 F. App'x at 604. The plaintiffs argue that these cases are inapposite because neither involves a claim for breach of fiduciary duty, Pls.' Opp'n at 30, and the Court agrees. The Court finds no support in Bechtel or Dumas, which address what statutory benefits the Corporation is permitted to distribute under the ERISA, for the Corporation's argument that the plaintiffs' are barred from pursuing a claim of fiduciary breach.

The Corporation also argues that Claim One is implausible on its face because it alleges that the Corporation's breach of fiduciary duty was intended

to inflate its own coffers, a motivation the Corporation asserts is impossible given the Corporation's structure and purpose. See Def.'s Mem. at 23–24. The plaintiffs challenge this argument through several additional factual assertions in their opposing brief regarding the Corporation's funding and operations. See Pls.' Opp'n at 37–39. But all that is required by Rule 12(b)(6) is that the allegations in the Amended Complaint, which the Court must treat as true, Cafesjian, 597 F. Supp. 2d at 133–34, state a plausible claim for relief, Twombly, 550 U.S. at 570. The Corporation acts as a fiduciary in its role as statutory trustee of a terminated ERISA plan. See 29 U.S.C. § 1342(d)(3) ("Except to the extent inconsistent with the provisions of this chapter, or as may be otherwise ordered by the court, a trustee appointed under this section . . . shall be, with respect to a plan, a fiduciary within the meaning of [29 U.S.C. § 1002(21)] . . . ."). And the "ERISA requires a trust fund fiduciary to act 'solely in the interest' of a plan's participants and beneficiaries . . . ." Fink v. Nat'l Sav. & Trust Co., 772 F.2d 951, 955 (D.C. Cir. 1985) (quoting 29 U.S.C. § 1104(a)(1)(B)). Claim One alleges that the Corporation, in its capacity as trustee, engaged in various conduct, see generally Am. Compl. ¶¶ 63–71, that resulted in the Corporation "earn[ing] massive investment returns off of assets that should have been timely allocated" to the plaintiffs, id. ¶ 72. At this early stage in the case, the Court deems these allegations sufficient to state a plausible claim of fiduciary breach against the Corporation as trustee of the Plan. The Court will therefore allow the plaintiffs to proceed with Claim One of the Amended Complaint.

B. The Plaintiffs' Demand for Attorney's Fees

As the plaintiffs concede, their demand for attorney's fees must fail. See Am. Compl. at 126; Pls.' Opp'n at 1 n.1 ("Plaintiffs do not dispute that Stephens precludes an award of attorney's fees in this action . . . ."). It is settled law in this Circuit that the ERISA does not authorize the recovery of attorney's fees in an action against the Corporation under 29 U.S.C. § 1303(f). Stephens v. U.S. Airways Grp., Inc., 644 F.3d 437, 442 (D.C. Cir. 2011).[5] Further, because the plaintiffs failed to respond to the Corporation's arguments with respect to the availability of attorney's fees under the Equal Access to Justice Act, 5 U.S.C. § 502(a)(2) (2012), see generally Pls.' Opp'n, the Court shall deem the argument conceded by the plaintiffs, Hopkins v. Gen. Bd. of Global Ministries, 284 F. Supp. 2d 15, 25 (D.D.C. 2003) ("It is well understood in this Circuit that when a plaintiff files an opposition to a dispositive motion and addresses only certain arguments raised by the defendant, a court may treat those arguments that the plaintiff failed to address as conceded."), aff'd, 98 F. App'x 8 (D.C. Cir. 2004). The Court therefore grants the Corporation's motion to strike the plaintiffs' demand for attorney's fees.

IV. CONCLUSION

For the foregoing reasons, the Corporation's motion to dismiss Claim One of the Amended

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[5] This concession notwithstanding, the plaintiffs indicate that they wish to preserve the question of whether an attorney's fees demand under 29 U.S.C. § 1303(f)(3) may be permitted for potential en banc review by the Circuit. Pls.' Opp'n at 1 n.1.

Complaint will be denied. However, the Corporation's motion to strike the plaintiffs' demand for attorney's fees and for a jury trial will be granted.[6]

SO ORDERED this 6th day of July, 2016.

REGGIE B. WALTON
United States District Judge

[6] The Court will contemporaneously issue an Order consistent with this Memorandum Opinion.

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

K. WENDELL LEWIS, et al., Plaintiffs,	)	Civil Action No. 15- 1328 (RBW)
v.	)	[Filed 07/06/16]
PENSION BENEFIT GUARANTY CORPORATION, Defendant.	)	

ORDER

In accordance with the Memorandum Opinion issued on this same day, it is hereby

ORDERED that Pension Benefit Guaranty Corporation's Motion to Dismiss and To Strike, ECF Nos. 45 & 46, is **GRANTED IN PART AND DENIED IN PART**. It is further

ORDERED that the defendant's motion to dismiss Claim One of the First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) is **DENIED**. It is further

ORDERED that the defendant's motion to strike the plaintiffs' demand for attorney's fees is **GRANTED**. It is further

ORDERED that the defendants' motion to strike the plaintiffs' demand for a jury trial is **GRANTED**. It is further

ORDERED that the defendants shall file their Answer to the Amended Complaint on or before July 28, 2016.

SO ORDERED this 6th day of July, 2016.

REGGIE B. WALTON
United States District Judge

APPENDIX D

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5068 **September Term, 2018**

1:15-cv-01328-RBW

Filed On: December 21, 2018

K. Wendell Lewis, et al.,

Appellees

v.

Pension Benefit Guaranty Corporation,

Appellant

BEFORE: Griffith and Pillard, Circuit Judges; and Williams, Senior Circuit Judge

O R D E R

Upon consideration of the appellees' petition for panel rehearing filed October 5, 2018, and the response thereto, it is

ORDERED that petition be granted, but only to the extent that the petition requests that the final sentence of the opinion filed August 21, 2018, be clarified. It is

FURTHER ORDERED that the August 21, 2018 opinion be amended as follows:

Page 14 of the slip op., Section III, delete the last sentence and insert the following sentence and footnote in lieu thereof: We reverse the district court's

ruling that disgorgement is an available remedy against the Corporation and we remand to the district court for further proceedings consistent with this opinion.[1]

The Clerk is directed to issue the amended opinion.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

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[1] In their petition asking that we amend the opinion, the pilots assert that their amended complaint—specifically, the fiduciary breach claim—seeks remedies in addition to disgorgement, which the pilots hope to pursue on remand. *See* Pet. 6-11. The Corporation responds that the fiduciary breach claim seeks only disgorgement, the pilots have not pursued additional remedies throughout "multiple years of litigation," and the panel "should not resuscitate the fiduciary breach claim" "for reasons [the pilots] did not advance in the district court." Resp. 2, 8. Our "normal rule" is to avoid passing on an issue that the district court has not fully addressed, *Liberty Prop. Tr. v. Republic Props. Corp.*, 577 F.3d 335, 341 (D.C. Cir. 2009), and remand is particularly appropriate when the issue hinges on the proper construction of the available remedies in litigation over which the district court long presided, *see Blessing v. Freestone*, 520 U.S. 329, 345-46 (1997) (remanding because "the complaint is less than clear" with regard to the rights asserted and the specific relief sought, and that "defect is best addressed by sending the case back for the District Court to construe the complaint in the first instance, in order to determine exactly what rights, considered in their most concrete, specific form, respondents are asserting"). Therefore, we remand the matter to the district court for further proceedings consistent with this opinion, and specifically to determine in the first instance whether the amended complaint seeks remedies for the alleged fiduciary breach in addition to disgorgement. Of course the implications of the opinion's statutory analysis remain unaltered.

BY: /s/
Ken Meadows
Deputy Clerk

APPENDIX E

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5068 **September Term, 2018**

1:15-cv-01328-RBW

Filed On: December 21, 2018

K. Wendell Lewis, et al.,

Appellees

v.

Pension Benefit Guaranty Corporation,

Appellant

BEFORE: Garland, Chief Judge; Henderson, Rogers, Tatel, Griffith, Srinivasan, Millett, Pillard, Wilkins, and Katsas, Circuit Judges; Williams, Senior Circuit Judge

O R D E R

Upon consideration of appellees' petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken R. Meadows,
Deputy Clerk

APPENDIX F

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5068 **September Term, 2018**

FILED ON: AUGUST 21, 2018

K. WENDELL LEWIS, ET AL,

APPELLEES

V.

PENSION BENEFIT GUARANTY CORPORATION,

APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:15-cv-01328)

Before: GRIFFITH and PILLARD, *Circuit Judges*, and WILLIAMS, *Senior Circuit Judge*

J U D G M E N T

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED** that the judgment of the District Court appealed from in this cause is hereby reversed, in accordance with the opinion of the court filed herein this date.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/

Ken Meadows
Deputy Clerk

Date: August 21, 2018

Opinion for the court filed by Circuit Judge Griffith.

APPENDIX G

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-8001 **September Term, 2016**

1:15-cv-01328-RBW

Filed On: April 4, 2017

In re: Pension Benefit Guaranty Corporation

Petitioner

BEFORE: Kavanaugh, Millett, and Wilkins, Circuit Judges

O R D E R

Upon consideration of the petition for permission to appeal pursuant to 28 U.S.C. §1292(b), the response thereto, and the reply, it is

ORDERED that the petition for permission to appeal be granted. See 28 U.S.C. § 1292(b). Grant of the petition is without prejudice to reconsideration by the merits panel.

The Clerk is directed to transmit a copy of this order to the district court. The district court will file the order as a notice of appeal pursuant to Fed. R. App. P. 5. The district court is to certify and transmit the preliminary record to this court, after which the case will be assigned a general docket number and proceed in the normal course.

Per Curiam

APPENDIX H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

K. WENDELL LEWIS, et al., Plaintiffs,	)	Civil Action No. 15- 1328 (RBW)
v.	)	[Filed 01/23/2017]
PENSION BENEFIT GUARANTY CORPORATION, Defendant.	)	

ORDER

The plaintiffs in this civil action, who are pensioners and former Delta Airline pilots, allege that the defendant, the Pension Benefit Guaranty Corporation (the "Corporation"), breached its fiduciary obligations owed to them as trustee under the Employment Retirement Income Security Act ("ERISA"), improperly calculated benefits allegedly due to the plaintiffs under the ERISA, and violated the Administrative Procedure Act ("APA") during the course of determining the plaintiffs' pension benefits. First Amended Complaint ("Am. Compl.") ¶¶ 1–13, 63–156. The Court previously denied the Corporation's partial motion to dismiss the plaintiffs' breach of fiduciary duty claim pursuant to Federal Rule of Civil Procedure 12(b)(6), see Lewis v. Pension

Benefit Guar. Corp., ___ F. Supp. 3d ___, ___, 2016 WL 3676099, at *9 (D.D.C. July 6, 2016), which is Claim One of the First Amended Complaint, Am. Compl. ¶¶ 63–72. The Corporation now asks this Court to reconsider its denial of the motion to dismiss, or in the alternative, to certify for immediate appellate review under 28 U.S.C. § 1292(b) the issue of whether the ERISA precludes the plaintiffs from pursuing their fiduciary breach claim in conjunction with their other pending claims, during which the Corporation requests that the proceedings before this Court be stayed. See generally Motion for Reconsideration, or in the Alternative, for Certification to File Interlocutory Appeal, and for a Stay of Proceedings ("Def.'s Mot."). Upon careful consideration of the parties' submissions, the Court will deny the Corporation's motion for reconsideration, grant the Corporation's motion for certification, and grant in part and deny in part the Corporation's request for a stay.[1]

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[1] In addition to the documents already identified, the Court considered the following submissions in rendering its decision: (1) the Plaintiffs' Opposition to Defendant's Motion for Reconsideration, or in the Alternative, for Certification to File Interlocutory Appeal, and for a Stay of Proceedings ("Pls.' Opp'n"); (2) the [Pension Benefit Guaranty Corporation's] Reply in Support of Its Motion for Reconsideration, or in the Alternative, for Certification to File Interlocutory Appeal, and for a Stay of Proceedings ("Def.'s Reply"); (3) the Pension Benefit Guaranty Corporation's Memorandum in Support of Its Motion To Dismiss and To Strike ("Def.'s Dismissal Mem."); (4) the Plaintiffs' Opposition to Defendant's Motion To Dismiss and Strike ("Pls.' Dismissal Opp'n"); (5) the Pension Benefit Guaranty Corporation's Reply in Support of Its Motion To Dismiss and To Strike ("Def.'s Dismissal Reply"); (6) the Plaintiffs' Notice of Supplemental Authority Regarding Defendant's Motion To Dismiss Claim One ("Pls.' Dismissal

I. BACKGROUND

The plaintiffs' allegations are set forth in the Court's July 6, 2016 Memorandum Opinion. See Lewis, ___ F. Supp. 3d at ___, 2016 WL 3676099, at *1–3. In its motion to dismiss, the Corporation raised five arguments: (1) that the plaintiffs cannot recover individually on their fiduciary breach claim, see Def.'s Dismissal Mem. at 11–14; (2) that the relief sought by the plaintiffs, namely disgorgement, is precluded by 29 U.S.C. § 1344(c), see id. at 14–15; (3) that the breach of fiduciary duty claim impermissibly seeks more than the statutory benefits the plaintiffs are potentially entitled to receive, see id. at 15–17; (4) that the fiduciary breach claim is impermissibly duplicative of the plaintiffs' other claims for statutory benefits in Claims Two through Six of the First Amended Complaint, see id. at 18–22; and (5) that the fiduciary breach claim lacks plausibility because the Corporation, as a federal agency, cannot have acted with the intent to enlarge its own coffers as the plaintiffs allege, see id. at 23–24. After considering all of the Corporation's arguments, the Court concluded that the fiduciary breach claim is not impermissibly duplicative, see Lewis, ___ F. Supp. 3d at ___, 2016 WL 3676099, at *4–6, that the relevant civil enforcement provision in the ERISA does not bar the relief sought by the plaintiffs, see id. at *6–9, and that the allegations in the First Amended Complaint are sufficient to state a claim for fiduciary breach, see id. at *9. Following the Court's denial of the Corporation's motion to dismiss, the

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Notice"); and (7) the PBGC's Response to Plaintiffs' Notice of Supplemental Authority Regarding Defendant's Motion To Dismiss Claim One ("Def.'s Response to Pls.' Dismissal Notice").

Corporation timely filed the motion now before the Court.

II. STANDARDS OF REVIEW

A. Motions for Reconsideration Under Rule 54(b)

Under Rule 54(b), a motion for reconsideration may be granted "as justice requires," Cobell v. Norton, 355 F. Supp. 2d 531, 539 (D.D.C. 2005), and the Court has "broad discretion" in deciding whether to grant such relief, id. "[M]otions for reconsideration are vehicles for neither reasserting arguments previously raised and rejected by the court nor presenting arguments that should have been raised previously with the court." Said v. Nat'l R.R. Passenger Corp., ___ F. Supp. 3d ___, ___, 2016 WL 3211809, at *1 (D.D.C. June 9, 2016) (Walton, J.). Instead, courts deciding whether to reconsider interlocutory orders under Rule 54(b) assess whether the court "has patently misunderstood a party, has made a decision outside the adversarial issues presented to the [c]ourt by the parties, has made an error not of reasoning, but of apprehension, or where a controlling or significant change in the law or facts [has occurred] since the submission of the issue to the court." Lewis v. District of Columbia, 736 F. Supp. 2d 98, 102 (D.D.C. 2010) (quoting Cobell v. Norton, 224 F.R.D. 266, 272 (D.D.C. 2004)). "The burden is on the moving party to show that reconsideration is appropriate and that harm or injustice would result if reconsideration were denied." United States ex rel. Westrick v. Second Chance Body Armor, Inc., 893 F. Supp. 2d 258, 268 (D.D.C. 2012).

B. Certification of Interlocutory Appeals Under 28 U.S.C. § 1292(b)

A district court may in its discretion certify an order for interlocutory appeal when: (1) the order involves a controlling question of law, (2) as to which a substantial ground for difference of opinion concerning the ruling exists, and (3) an immediate appeal would materially advance the disposition of the litigation. 28 U.S.C. § 1292(b); see also APCC Servs., Inc. v. Sprint Commc'ns Co., 297 F. Supp. 2d 90, 95 (D.D.C. 2003) (citing Walsh v. Ford Motor Co., 807 F.2d 1000, 1002 n.2 (D.C. Cir. 1986)) (additional citation omitted). The party seeking interlocutory review has the burden of establishing all three elements to merit "departure from the basic policy of postponing appellate review until after the entry of a final judgment." APCC Services, 297 F. Supp. 2d at 95.

III. ANALYSIS

A. The Defendant's Request for Reconsideration

The Corporation contends that the Court's memorandum opinion denying dismissal of the breach of fiduciary duty claim contains four errors of law: (1) that individuals can bring fiduciary breach claims against the Corporation that duplicate claims for benefits, Def.'s Mot. at 5–7; (2) that plan participants can recover more from the Corporation than their benefits under Title IV of the ERISA, id. at 7–9; (3) that individual, as opposed to plan-wide, relief is available to the plaintiffs under Title IV, id. at 9; and (4) that 29 U.S.C. § 1344(c), which states that any increase or decrease in the value of plan assets after the plan's termination accrue to the

Corporation, is limited to assets "properly held" in the plan, id. at 10. In response to the plaintiffs' assertion that these arguments are merely repackaged versions of the Corporation's original contentions, P ls.' Opp'n at 5, the Corporation states that these four arguments are made in response to what it contends is the Court's "novel and expansive interpretation of Title IV," Def.'s Reply at 1.

In the Court's view, the Corporation's first three challenges merely reiterate arguments made in support of its motion to dismiss. See Def.'s Dismissal Mot. at 11–22 (arguing that the plaintiffs cannot recover individually for their fiduciary breach claim; that the breach of fiduciary duty claim impermissibly seeks more than the statutory benefits to which the plaintiffs are potentially entitled; and that the fiduciary breach claim is impermissibly duplicative of the plaintiffs' other claims for statutory benefits in Claims Two through Six of the First Amended Complaint). These contentions advance only the Corporation's original grounds for dismissal of the plaintiffs' fiduciary breach claim, not grounds for the Court's reconsideration of its decision not to dismiss the claim. See Shea v. Clinton, 850 F. Supp. 2d 153, 158 (D.D.C. 2012) ("Parties should not use motions for reconsideration to attempt to relitigate matters already settled.")

However, the Corporation's fourth ground for reconsideration merits some discussion. Rejecting the argument that the disgorgement sought by the plaintiffs was prohibited by § 1344(c), the Court stated the following:

> [T]he Corporation first argues that the plaintiffs' 'seek the purported increase in the value of the Plan's assets after

> termination, Def.'s [Dismissal] Mem. at 14, a result it claims is prohibited by § 1344(c), which states that '[a]ny increase or decrease in the value of the assets of a single-employer plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the [C]orporation.' Construing the allegations in the Amended Complaint in the light most favorable to the non-moving party, . . . the Court notes that the plaintiffs' fiduciary breach claim does nothing of the sort. Rather, Claim One seeks to recoup the alleged ill-gotten investment returns on Plan benefits that the plaintiffs claim should have been distributed to them, Am. Compl. ¶ 72, not, as the Corporation characterizes the claim, to divert from the Corporation any gains (or losses) from assets properly held in the Plan. The Court therefore rejects the Corporation's first argument.

Lewis, ___ F. Supp. 3d at ___, 2016 WL 3676099, at *7. Seizing upon the Court's "properly held" language in the opinion, the Corporation argues that § 1344 "expressly prohibit[s] claims by anyone to investment gains and losses" and that there is "no exception" to this prohibition. Def.'s Mem. at 10. The Corporation further argues that "[t]he Court's implication of such an exception undermines the express statutory language and the policy choice Congress made." Id. But as the Corporation acknowledges by using the terms

"surmise" and "implication" to describe the Court's language quoted above, and contrary to the Corporation's contention in its reply brief, see Def.'s Reply at 2, the "properly held" language in the Court's opinion is far from a "holding" or legal conclusion regarding the scope of § 1344(c); instead, the Court merely stated that the plaintiffs' fiduciary breach claim seeks disgorgement as a remedy for the Corporation's alleged unjust enrichment based on funds that would otherwise have been remitted to the plaintiffs and not retained in the Plan had the Corporation not committed the alleged fiduciary breaches, see Am. Compl. ¶ 72, a theory of relief the Court permitted to proceed beyond the motion to dismiss phase of this case, Lewis, ___ F. Supp. 3d at ___, 2016 WL 3676099, at *7. For these reasons, the Court, in its discretion, declines to reconsider its decision not to dismiss the plaintiffs' fiduciary breach claims.

B. The Defendant's Request for Certification

Although the Court declines to reconsider its decision not to dismiss the plaintiffs' breach of fiduciary duty claim, the Court does agree with the Corporation's alternative argument that this issue presents a circumstance in which interlocutory appeal is appropriate. As the Corporation recognizes, this Court's opinion appears to be the first to permit a claim for breach of fiduciary duty against the Corporation to proceed in conjunction with the plaintiffs' petition for judicial review of the Corporation's allocation and benefit determinations. Def.'s Reply at 4 (stating that this case presents issues "of first impression"). The Court is persuaded that the dearth of controlling precedent that supports

the Court's determination regarding the fiduciary breach claim, coupled with the Corporation's credible contention that the ERISA does not permit the plaintiffs to pursue this claim, raise a controlling question of law as to which a substantial ground for difference of opinion exists. See Judicial Watch, Inc. v. Nat'l Energy Policy Dev. Grp., 233 F. Supp. 2d 16, 19 (D.D.C. 2002) ("[A] controlling question of law is one that would require reversal if decided incorrectly or that could materially affect the course of litigation with resulting savings of the court's or the parties' resources.") (quoting In re Vitamins Antitrust Litig., No. 99-197, 2000 WL 673936, at *2 (D.D.C. Jan. 27, 2000))); APCC Services, 297 F. Supp. 2d at 97 ("A substantial ground for difference of opinion is often established by a dearth of precedent within the controlling jurisdiction and conflicting decisions in other circuits."). And while the Court regrets that an appeal of this issue may further delay the global resolution of these proceedings, the Court believes that an immediate appeal could spare the parties the expense of potentially protracted discovery involving the claims of over 1700 elderly plaintiffs, see APCC Services, 297 F. Supp. 2d at 100 ("An immediate appeal would conserve judicial resources and spare the parties from possibly needless expense if it should turn out that this Court's rulings are reversed."), who, even if they succeed on the merits, could not recover what would almost certainly be substantial attorney's fees associated with such discovery, see Stephens v. U.S. Airways Grp., Inc., 644 F.3d 437, 442 (D.C. Cir. 2011) ("[T]he [ERISA] does not authorize attorney's fees for actions against the [Corporation].").

Notwithstanding the Court's decision to certify an interlocutory appeal regarding the

plaintiffs' breach of fiduciary duty claim, the Court declines to stay the proceedings before it pending resolution of the appeal. 28 U.S.C. § 1292(b) states that an "application for an [interlocutory] appeal . . . shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order." As the Corporation notes, the remainder of the plaintiffs' case can proceed under the usual procedure for review of agency action under the APA in this District, Def.'s Reply at 7, i.e., by the filing of the administrative record and motions for summary judgment. Seeing no reason to further delay the Court's review of the merits of the plaintiffs' other claims, the Court will require the parties to file a joint proposed briefing schedule pursuant to Local Rule 16 to ensure that this dispute progresses to a timely resolution.

IV. CONCLUSION

For the reasons stated above, the Court will grant in part and deny in part the Corporation's motion. Accordingly, it is hereby

ORDERED that the Corporation's motion for reconsideration is **DENIED**. It is further

ORDERED that the Corporation's motion for certification to file an immediate appeal of the Court's order denying dismissal of the plaintiffs' breach of fiduciary duty claim is **GRANTED**.[2] It is further

ORDERED that the Corporation's request for a stay of the proceedings before this Court pending

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[2] A separate certification order shall be issued contemporaneously with the issuance of this Order.

the resolution of the appeal is **GRANTED IN PART AND DENIED IN PART**. The request is **GRANTED** with respect to the breach of fiduciary duty claim, and **DENIED** with respect to the plaintiffs' other claims. It is further

ORDERED that, on or before February 6, 2017, the parties shall file a joint proposed schedule for the filing of the administrative record in this case and the briefing of dispositive motions regarding the remaining claims in the First Amended Complaint.

SO ORDERED this 23rd day of January, 2017.

REGGIE B. WALTON
United States District Judge

APPENDIX I

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

K. WENDELL LEWIS, et al., Plaintiffs,	)	Civil Action No. 15- 1328 (RBW)
v.	)	[Filed 01/23/2017]
PENSION BENEFIT GUARANTY CORPORATION, Defendant.	)	

ORDER CERTIFYING INTERLOCUTORY APPEAL PURSUANT TO 28 U.S.C. § 1292(B)

Upon motion of the defendant, Pension Benefit Guaranty Corporation (the "Corporation"), the Court certifies that the Memorandum Opinion and Order issued July 6, 2016, in this case involves the following controlling questions of law as to which there is substantial ground for difference of opinion and that an immediate interlocutory appeal from that Order may materially advance the ultimate termination of the litigation:

1. Whether individuals can bring a fiduciary breach claim against the Corporation pursuant to 29 U.S.C. § 1303(f) in addition to claims for judicial review of the Corporation's benefit determinations;

2. Whether plan participants in such a lawsuit can recover more than the amount of their statutorily-defined benefits under Title IV of the Employment Retirement Income Security Act;

3. Whether plaintiffs in such a lawsuit may recover individual, as opposed to plan-wide, relief for the alleged fiduciary breach; and

4. Whether 29 U.S.C. § 1344 precludes the remedy of disgorgement of investment gains derived as a result of the alleged fiduciary breach.

SO ORDERED this 23rd day of January, 2017.

REGGIE B.
WALTON
United States
District Judge

APPENDIX J

29 U.S.C. § 1303. Operation of corporation

* * *

(f) Civil actions against corporation; appropriate court; award of costs and expenses; limitation on actions; jurisdiction; removal of actions.

(1) Except with respect to withdrawal liability disputes under part 1 of subtitle E [29 USCS §§ 1381 et seq.], any person who is a plan sponsor, fiduciary, employer, contributing sponsor, member of a contributing sponsor's controlled group, participant, or beneficiary, and is adversely affected by any action of the corporation with respect to a plan in which such person has an interest, or who is an employee organization representing such a participant or beneficiary so adversely affected for purposes of collective bargaining with respect to such plan, may bring an action against the corporation for appropriate equitable relief in the appropriate court.

(2) For purposes of this subsection, the term "appropriate court" means--

(A) the United States district court before which proceedings under section 4041 or 4042 [29 USCS § 1341 or 1342] are being conducted,

(B) if no such proceedings are being conducted, the United States district court for the judicial district in which the plan has its principal office, or

(C) the United States District Court for the District of Columbia.

(3) In any action brought under this subsection, the court may award all or a portion of the costs and expenses incurred in connection with such action to any party who prevails or substantially prevails in such action.

(4) This subsection shall be the exclusive means for bringing actions against the corporation under this title, including actions against the corporation in its capacity as a trustee under section 4042 [29 USCS § 1342] or 4049.

(5)(A) Except as provided in subparagraph (C), an action under this subsection may not be brought after the later of--

(i) 6 years after the date on which the cause of action arose, or

(ii) 3 years after the applicable date specified in subparagraph (B).

(B)(i) Except as provided in clause (ii), the applicable date specified in this subparagraph is the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

(ii) In the case of a plaintiff who is a fiduciary bringing the action in the exercise of fiduciary duties, the applicable date specified in this subparagraph is the date on which the plaintiff became a fiduciary with

respect to the plan if such date is later than the date specified in clause (i).

(C) In the case of fraud or concealment, the period described in subparagraph (A)(ii) shall be extended to 6 years after the applicable date specified in subparagraph (B).

(6) The district courts of the United States have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

(7) In any suit, action, or proceeding in which the corporation is a party, or intervenes under section 4301 [29 USCS § 1451], in any State court, the corporation may, without bond or security, remove such suit, action, or proceeding from the State court to the United States district court for the district or division in which such suit, action, or proceeding is pending by following any procedure for removal now or hereafter in effect.

29 U.S.C. § 1344. Allocation of assets

* * *

(c) Increase or decrease in value of assets.

Any increase or decrease in the value of the assets of a single-employer plan occurring during the period beginning on the later of (1) the date a trustee is appointed under section 4042(b) [29 USCS § 1342(b)] or (2) the date on which the plan is terminated is to be allocated between the plan and the corporation in the manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the corporation and the plan administrator in any other case. Any increase or decrease in the value of the assets of a single-employer plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the corporation.

APPENDIX K

List of Parties to the Proceeding

Abby, Darrell L
Abernathy, Jr., Jack Lenford
Acker, Charles F
Acquavella, Frank Angelo
Adam, Robert E
Adams, Erich H
Adams, Randall R
Adams, Robert (Estate of) A
Adams, Walter A
Addington, James T
Adlington, Paul R
Agnew, James D
Ahern, Frank L
Aigner, Steven A
Albang, Martin D
Albrecht, Kurt
Alderman, John P
Allen, Donald J
Allen, James R
Allen, Robert T
Allen, Ronald E
Allen, Ronald J
Allen, Jr., Robert Raegan
Alvarez, Richard E
Amabile, Nicholas (Estate of) L
Ames, Donald L
Anderson, Alan James
Anderson, Andrew J
Anderson, Clyde A
Anderson, J Eric
Anderson, John C
Anderson, John M
Anderson, Peter D

Andrews, Harry W
Anglin, Francis C
Anich, Louis P
Archer, Gregg B
Argo Jr., John T
Armstrong, James L
Arndt, Roger F
Arnold, William E
Arnold, II, James F
Asay, Donald E
Ascher, David P
Ash, Vernon G
Ashworth, David B
Askins, Robert (Estate of) D
Aucin, Lawrence F
Auer, Bernard J
Austin, David S
Avant, Thomas W
Averett, Gregg H
Averett, James H
Aversman, James R
Avirett, William U
Avramovich, Jim L
Babler, Myron J
Bachman, Leroy R
Baggett, Linwood (Estate of) M
Bailey, David Wayne
Baird Jr., James Garitty
Baker, Carson V
Baker, Larry W
Baker, Marvin C
Baker, Samuel W
Bales, III, Arthur W
Ball, John D
Ballance, Jr., Harry G
Barber, Gregory W

Barber, Raymond E
Barefoot, Thomas R
Barlow, Jr., George D
Baron, Doug E
Barr, George
Barrett, Benjamin B
Barrett, Jr., Paul H
Bartenfeld, Chelsea LeVone
Bartlett, Jerry N
Barton, Jon H
Bates, Leslie (Estate of) E
Bauer, Gerald H
Bauer, Russell C
Beardsley, Frederick (Estate of) J
Beaubien, III, James William
Beavers, Bruce M
Beck, Richard A
Beck, Thomas V
Becker, George L
Beckman, Robert W
Beede, William Patrick
Behrens, Earl H
Bell, Raymond L
Belline, Louis A
Bellury, Timothy W
Benham, Robert B
Bennett, Sterling N
Benson, Charles A
Bentley, Tommy R
Bentson, Roy B
Berg, George E
Berk, Dean H
Berman, Steven D
Berry, Damon R
Berry, Ronald James
Best, Douglas E

Bethel, Charles E
Bettcher, James R
Bezdek, Leo D
Bible, Jr., Charles L
Biles, Jr., George L
Bilotta, Jr., Joseph P
Biniasz, Albert C
Birchall, Jack L
Birge, John H
Birmingham, Michael
Bissell, Joseph H F
Black, Christopher S
Black, Reuben
Blackmon, Johnny (Estate of) Hopper
Blackwell, Byron R
Blackwood, Steven L
Blanton, Robert A
Blaskovich, Michael S
Blaz, Claudia (Estate of Delbert Schwab) Ann
Blaz, Jack (Estate of) G
Bloink, Robert J
Blomgren, Roy
Bloom, Wade D
Blosser, George E
Blubaugh, David E
Bluhm, Robert H
Boatwright, Ralph N
Bober, Michael John
Bodine, Jr., William R
Bodmer, John A
Bodnar, James J
Bogle, Kenneth J
Bolier, Michael R
Bolin, Duane A
Boltz, Ronald O
Bomar, III, James S

Bommer, William P
Bonaccorso, Robert F
Bonny, Jr, Ross F
Boone, Jr., Frederick O
Boone, Lloyd D
Borchert, Frederick C
Borland, Bruce F
Bos, Leland R
Boston, Douglas M
Bottoms, Sr., Frank M
Boustead, Barry C
Bowen, Michael M
Bowlin, Connie J
Bowlin, Ed (Estate of) M
Boyce, Allen W
Boyd, Jan "Jake" K
Boyd, John Earl
Boyd, Jr., Dan (Estate of) Lionel
Boyle Jr, William E
Bradford, Donald O
Bradley, Richard
Bramsen, Bryce L
Brandon, Robert (Estate of) A
Brant, William C
Brasher, James C
Braswell, Oscar D
Braswell, III, Ralph M
Bratton, Charles M
Bray III, Charles B
Brekke, James A
Brennison, Thomas A
Bridges, W Charles
Bridges, Jr., Daniel W
Brindell, William (Estate of) F
Brintnall Sr., William E
Bristow, Larry W

Brito, Harold S
Brock, Penny (Estate of William) L
Brockway, Charles Lloyd
Broderick, Ralph S
Bronson, William E
Brooks, Jimmie L
Brooks, William C
Bross, Stephen P
Brown, Andrew (Estate of) P
Brown, Charles Edmond
Brown, David (Estate of) A
Brown, Fred M
Brown, Kurt (Estate of) H
Brown, Mark J
Brown, Melvin L
Brown, Michael W
Brown, Randall H
Brown, Robert Craig
Brown, Robert G
Brubaker, Robert K
Bruce, David W
Brunasso, Leonard C
Brundridge, Ronald Gene
Brushwyler, Robert (Estate of) W
Bryant Sr., Robert M
Bucklin, William G
Buczek, Henry (Estate of) T
Budd, Thomas C
Buergey, William C
Buettner, Carl
Bukaty, Andrew L
Bulger, John F
Bumgarner, Charles R
Bundrick, Myrl W
Buntin, William Russell
Burch, Clarence Milton

Burge, James L
Burgess, Jerald
Burgy, Larry J
Burke, Edward Devin
Burke, Jr., Patrick J
Burkhardt, Winston D
Burkhead, Ferree R
Burnett, Gerald R
Burnett, Raymond "R.C." C
Burnfield, Charles D
Burns, John Forrest
Burns, Robert M
Burns, Robert D
Burton, Dennis E
Burton, Geren E
Bushey, Donald J
Butler, Ronald
Butler, III, Samuel B
Butt, Thomas P
Byde, Thomas E
Bye, Raymond
Byrd, James
Byrd, Lester M
Byrne, John C
Byrnes, Phillip J
Cagle, James V
Cahill, Michael J
Caiazza, Albert W
Cain, John B
Caldwell, John G
Callahan, Clarence W
Callanan, Dana
Callaway, William Edward
Calvanelli, Thomas J
Camp, Donald L
Camp Jr., Benjamin M

Campbell, Alan
Campbell, Arthur L
Campbell, Robert K
Campbell, Jr, Therman (Estate of) L
Candelario, Buddy W
Cann, David J
Cannon, Charles M
Cardinale, Patrick A
Carlon, Charles A
Carman, Timothy L
Carmical, Jr., Robert Louis
Carmichael, Walter C
Carpenter, Craig W
Carpenter, James D
Carr, Jack E
Carrington, Henry Gary
Carson, Robert A
Carter, James Larry
Carter, John R
Carter, Timothy J
Caruso, Francis (Frank) T
Casada, Laurence L
Casale, Lawrence C
Caster, Robert J
Castle, Clayton (Estate of) N
Catchings, John P
Catoni, Frederic N
Caughman, III, John S
Cauldwell, Malcolm D
Causey, Olin H
Cavanagh, Michael B
Cavato, Marty J
Caylor, Edward N
Cerak, John P
Ceraso, Charles David
Chabot, Richard Charles

Chaffin, Mark S
Chambless, Edward L
Champa, David A
Champley, Thomas A
Chauvin, Charles E
Cheatham, III, Robert Tracy
Chen, Ely
Chirhart, Kenneth G
Christensen, Noble C
Church, Jerry (Estate of) A
Churchel, Gene (Estate of) E
Cianci, James J
Cinibulk, Robert
Cintron, Eric L
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Clark, Bryan R
Clark, David J
Clark, Forrest
Clark, George B
Clark, Richard L
Clausen, Christian M
Clay, Stuart M
Cleveland, Craig (Estate of) D
Click, Alan R
Clifford, David (Estate of) W
Clifford, Timothy C
Cloes, Glenn D
Closson, Spencer W
Closson, Jr., Luke E
Cloudt, James D
Cloutier, Maurice (Estate of) B
Cochran, James C
Cochran, Mac H
Cody, Edward Emmett
Coe, Richard Eric
Coffin, John E

Colby, James S
Colby, Richard (Estate of) Emory
Cole, Jr, Clifford I
Colegrove, William D
Coleman, Craig S
Coley, George S
Collins, Sr., Donald (Estate of) B
Collins, Stan N
Coloney, Eric M
Colston, Phil E
Compton, James D
Compton, Raymond D
Conaboy, Michael J
Conrad, Edwin L
Content, Dale M
Cook, Darwin F
Cooley, John Eugene
Cooper, Ronald T
Cooper, William (Estate of) A
Cooper, Jr., John B
Copeland, David Joe
Coppola, Henry N
Corder, Robert D
Cordero, Denise Brown
Costa, Pat A
Costas, John N
Costilow, Bobby W
Coughlin, Joseph (Estate of) A
Courtney, Daniel (Estate of) H
Cousar, Harold W
Cox, Michael L
Crabtree, Michael C
Craft, Robert (Estate of) D
Craig, James R
Craine, Richard Phillip
Crawford, Stephen M

Crawford, Stephen R
Crawford, Jr., Dohrman G
Crispe, Ronald E
Croasdale, Thomas K
Crockett, Kenton W
Crofton, John D
Cronin, Edward C
Crookston, James A
Crotty, John W
Crow, Charles W
Crow, Richard D
Crow, Jr., Samuel W
Cuddeback, Robert L
Cullen, Bruce J
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Culpepper, David G
Cunningham, William S
Cunningham, William Tolliver
Curry, Walter R
Curtis, Gary L
Curtis, Richard (Estate of) Lee
Curtiss, Clark A
Cusick, Terry L
Daley, John M
Dambrie, Fred J
Daniel, Ray A
Dantzler, Bruce E
Daugherty, II, Frank William
Davis, David McCall
Davis, Guy W
Davis, Jr., James W
Davis, Robert W
Davis, Ronald (Estate of) S
Davis, Thompson Henry
Davis, III, George Trent
Dawson, Charles P

Day, Thomas
Deane, Andrew M
Dearden, Rex L
Dearie, John R
DeAugustinis, William C
Decker, Robert G
Degnan, James Edward
DeGuire, Dennis A
DeLine, William R
DeLuca, James (Estate of) R
DeMarino, Michael E
Dement, Bruce H
deMoss, Bruce T
Dempsey, David D
Derr, Robert J
Derrick, John A
Deschner, Patrick L
Destefano, Jr., Thomas M
Detwiler, Mark J
Detwiler, Wesley R
Develis, Joseph A
Dicke, Gary D
Dickson, Jr, Lewis H
Disosway, John F
Dixon, Charles (Estate of) A
Doherty, Francis A
Dolan, Richard M
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Donato, Aurelio O
Donckers, Ron L
Doonan, Jr., William W
Doubler, Bernard J
Draffin, James P
Drake, Roger E
Dreiling, Gerard F
Dresser, Paul F

Dressler, David C
Drover, Sr., Glenn (Estate of) F
Dubick, George Francis
Duclos, Roger A
Duerson, Stuart T
Duggin, Michael D
Dunlap, James V
Dunn, Bowman A
DuRant, Cecil J
Dvoracek, Albin B
Dvorak, William C
Dwyer, Robert J
Dye, James W
Eadie, Donald J
Earley, Jr., John G
Easley, Richard J
Easterlin, William M
Eastis, David W
Eaton, Brian J
Eberhardt, Dennis M
Eccard, Larry
Eckert, John E
Edmondson, Joseph F
Edson, Robert A
Edstrom, Eric A
Ehmer, James S
Eisenburg, Marcy M
Eison, III, Claude B
Elder, Joseph M
Eldridge, William F
Ellis, Joseph C
Ellis, Paul C
Elmore, Jimmy D
Engelbrecht, Donald J
English, Lewis W
Engren, Douglas G

Entrekin, Jr., Herbert L
Erckmann, Francis P
Erickson, Wayne P
Ervin, III, Charles E
Esselman, George D
Etherington, William W
Etter, George W
Eulenfeld, Sr., Benjamin R
Eveland, Roy R
Evens, Thomas G
Everill, Peter D
Everson, Jr., Kendall W
Every, Emmet R
Fagundes, Joseph M
Falconer, William J
Fallon, Jr., Peter J
Farinas, George G
Farnsworth, Gary M
Farquhar, Jerry L
Farrell, Donald
Fatuzzo, Jr, Joseph A
Faunce, III, John H
Feierabend, Carl W
Feldman, William M
Fenton, Larry W
Ferguson, James T
Fernandez, Ralph J
Fichter, Gary L
Fields, James H
Fife, Thomas C
Fink, James O
Finken, Stephen C
Finley, John W
Fisher, Charles S
Fisher, Douglas F
Fisher, Thomas M

Fitzgerald, James Timothy
FitzGibbons, Robert J
Fitzpatrick, John J
Fleming, David E
Fletcher, Claude F
Flocco, James Lee
Floyd, John W
Floyd, Michael R
Fogarty, Gerald M
Fogwell, George C
Foley, Michael (Estate of) J
Fonde, Richard I
Fontaine, Richard (Estate of) C
Foote, John H
Ford, Frederick C
Ford, Jr., John T
Formby, Ronnie (Estate of) R
Foster, Bobby R
Foster, Travis H
Fougner, Cyd L
Fow, John C
Frayser, III, Walter E
Frazer, Stuart A
Freeding Jr., Richard A
Friedman, Steven M
Fritz, Gene S
Frontczak, Jr., Arthur T
Fryman, Donn (Estate of) L
Fuller, George C
Fuller, Jr., Roger D
Fulleton, Allen J
Fulmer, Richard (Estate of) L
Gaasch, Roland C
Gaillard, William Bradley
Gaines, Alan L
Gallagher, Frederick G

Gallagher, Jr., William R
Galvin, Timothy J
Gandre, George P
Gannon, Thomas H
Gantt, Jr., Thomas E
Gardner, James B
Gardner, Richard D
Garner, James L
Garrison, Jesse R
Garver, Philip L
Gay, Jr., Charles Bateman
Geerlings, Jon (Estate of) L
Geisler, Shelia (Estate of Michael) M
Genellie, Jr., Gerard F
Gentile, Nicholas A
Geoghegan, John C
George, James G
Gianforte, John R
Gibbons, Thomas (Estate of) D
Gibson, George L
Gilmer, Thomas J
Gilmore, Charles P
Glantz, Richard E
Glazier, Patrick M
Glittenberg, Donald R
Godsey, Jan M
Goduti, Frederick Lawton
Goeken, William (Estate of)
Goff, Jr., William (Estate of) G
Goltry, Wallace H
Gooch, Richard A
Goode III, James J
Goodman, Robert A
Goodman, Thomas B
Goodrich, Jr., Lawrence Frank
Gordon, Fred G

Gorman, Jr., Edward J
Gottschang, John C
Goulding, Jerry C
Grandia, Dwight E
Graves, Edward P
Gray, James H
Gray, Stephen R
Green, Jerome F
Greene, Jr., Otis Jarield
Gregg, Charles N
Gregg, Wayne D
Gresham, Jr, Tyler R
Grice, Stephen T
Grieser, Gerald G
Griesinger, Robert D
Griffin, Lloyd H
Griffith, William A
Griffiths, Lee E
Grippo, Lawrence A
Groff, Douglas
Gross, Kenneth R
Gross, Jr., Kenneth E
Grove, Thomas W
Grubb, Ronald E
Gruebnau, Paul J
Grynkewich, Nicholas E
Gum, Michael E
Gunn, Stephen M
Haase, Alexander (Estate of) M
Hagle, Carol (Estate of) for Hagle, Conrad (Estate of) Wulf
Haglund, Robin Jeffrey
Hair, Charles A
Halcomb, Jr., Robert D
Hale, Ronald
Haley, Joseph R

Hall, Creston D
Hall, Frederick S
Hall, Jeffrey F
Hall, Micheal H
Hall, Robert F
Hall, Steven D.
Hallam, II, Thomas W
Halsor, Mark D
Hambleton, III, Bertram Leslie
Hamme, Curtis S
Hammon Jr., Milton E
Hamrick, Jr., Wendell (Estate of) H
Hand, Ernest L
Hansen, David E
Hansen, Donald (Estate of) L
Hanson, Gregg O
Hardy, Philip J
Harmon, Hobart M
Harper, James S
Harper, John Edwin
Harper, Malcolm L
Harper, Wayne D
Harris, Frederick B
Harris, Richard C
Harris, Robert (Estate of) D
Harrison, Albert V
Harrison, John C
Harrover, John S
Hart, William M
Harter, Jr., Nile L
Hartle, Christopher R
Harvey, Larry (Estate of) E
Harvison, Deborah (Estate of Dennis) W
Hassey, Thomas E
Hauf, James G
Hawkins, William "Bud" A

Hay, William (Estate of) M
Hayden, Harvey Lloyd
Hayes, Kenneth M
Hayes, Richard R
Haynes, Jimmy R
Hazen, David R
Hearnsberger, Eric
Heath, John P
Hedges, David M
Hedlund, Joel R
Heidt, William S
Heimer, Ralph E
Heins, Peter S
Heinz, Carl
Hendren, Carl M
Hendrickson, Richard N
Hendrickson, Warren B
Henry, Jr, Donald F
Hensler, John Dee
Hernes, Burnett A
Herriott, Robert P
Hersha, Scott C
Hertz, Gustav S
Herzog, Richard E
Hess, Fred (Estate of) G
Heuchling, Robert K
Heusinkveld, Daryl L
Hibbard, Edward L
Hichak, Michael Joseph
Hickey, Michael G
Hickox, David G
Higgins, Ernest W
Higginson, Carl R
Hilbig, Peter L
Hill, Herbert D
Hill, Robert M

Hillegas, Robert (Estate of) A
Hindle, Edward (Estate of) J
Hindman, Marion D
Hinds, Rodney S
Hines, Edward A
Hines, Johnny H
Hines, Jr., William C
Hinkle, Jr., Elmer E
Hirsch, Richard R
Hissem, Richard D
Hobbs, Robert W
Hobert, Donald L
Hodge, Fred P
Hodges, Warren (Estate of) J
Hoffman, Ross M
Hogan, John (Estate of) V
Hohlowski, Richard
Holahan, Peter M
Holdiness, Philip C
Hollister, Jack D
Holloway, Daniel E
Holmes, Richard N
Holmes, Stephen G
Holmes, Jr., Judson W
Holt, Thomas D
Honsinger, John H
Hoogerwerf, James J
Hooper, Richard W
Hooper, Victor J
Hope, Harry
Hopkins, 3rd, Stephen V
Hornfeck, Jeffrey N
Horrell, Roger T
Horton, III, Charles (Estate of) W
Hourin, James J
Houseman, William (Estate of) B

Hovey, Julian R
Hovrud, David L
Howson, Jr., Robert C
Hudson, Gurves R
Hudson, Paul J
Huffmaster, Donald A
Hughes, Jerry Milam
Hughes, Joe H
Hull, George (Estate of) G
Hull, Herbert (Estate of) D
Hulsey, Joe Foy
Hunter, Tommy M
Husemann, Arnold W
Hutson, III, James Leroy
Hyde, Donald F
Hyjek, Michael L
Ice, Allen M
Igoe, Jr., James J
Illies, Curtis (Estate of) A
Ilyin, Kathleen (Estate of Michael)
Ingham, James A
Ingram, John M
Ippolito, William L
Irving, Delmont S
Jackson, Timothy H
Jacobus, Thomas (Estate of) J
James, Kenneth (Estate of) C
Jameson, Robert Q
Jenkins, David H
Jensen, Russell H
Jensen, William L
Jetton, George
Jewett, Robert W
Johanson, Alan J
Johnson, Christopher W
Johnson, Clinton B

Johnson, Dennis A
Johnson, James Allen
Johnson, James B
Johnson, Jeffrey B
Johnson, Lance J
Johnson, Robert L
Johnson, Sheldon P
Johnson, Stephen E
Jolly, III, Hoyt A
Jones, Dennis B
Jones, Edmund R
Jones, James Austin
Jones, James Lofton
Jones, James R
Jones, Larry (Estate of) E
Jones, Leon (Estate of) M
Jones, Richard Dean
Jones, Richard L
Jones, Robert H
Jones, Roger N
Jones, Ronald C
Jones, Scott (Estate of) R
Jones, Thomas L
Jones, William Pickens
Jones, Wilton R
Jones, Jr, William D
Jordan, Patric
Jorgensen, Samuel C
Jorgensen, Stanley A
Jump, William (Estate of) G
Just, Peter (Estate of) G
Justinic, Raymond F
Kadetz, David H
Kailing, Gerald R
Kaiser, Arthur H
Kalember, Duane D

Kamback, Alan Clinton
Kammerer, George G
Kanaley, Jr., Thomas F
Kane, Robert
Kapp, William
Kapsaroff, John C
Karantz, Robert Lee
Karlovich, John M
Kaseman, Jeffrey M
Kasemeier, Douglas G
Kasold, Edward Frederick
Katka, Doran W
Kattula, William J
Kauffmann, Jr., Richard X
Keating, R Ford
Keibler, Stephen Irons
Kelley, Phillip (Estate of) J
Kellner, William (Estate of) Weitzel
Kellum, Billy H
Kelly, Bernard L
Kelly, Jack (Estate of) S
Kelly, Michael R
Keltner, Richard E
Kendall, Barry G
Kenna, Thomas C
Kennedy, John A
Kenney, Lawrence J
Kerr, David T
Kerr, Jr., Herb (Estate of) Field
Kerschner, William F
Kesler, Robert Walter
Ketelsen, Lee H
Kettenring, Jr., Alfred W
Key, Eugene W
Kilgore, Kim B
Kinder, Thomas D

King, John C
King, Mark L
Kingsbury, Robert W
Kinnebrew, III, Lee
Kirijan, Fred Joel
Kirk, Alfred E
Klauer, Robert F
Klein, Kirby J
Klindt, Michael J
Klock, Randolph Lee
Klock, Ruth M
Klumpp, William F
Knapp, Gerald A
Knehr, George H
Knox, William E
Knudson, Charles M
Kobernik, Ronald K
Kocisko, Lawrence Michael
Koerner, Jr., Daniel (Estate of) E
Kolb, Ronald (Estate of)
Kontor, Attila
Kopack, Daniel A
Koppie, Chad N
Korcheck, Stephen M
Kornegay, Linwood Cecil
Korthals, Ronald L
Kouba, Lambert "Bert" L
Kozimer, Kenneth G
Kraby, Arnold W
Kraft, Richard L
Kraker, Lawrence L
Kramer, David W
Krayniak, George L
Krone, Robert E
Kruger, Paul M
Krygiel, Joseph J

Kukier, Jesse V
Kull, Frederick J
Kupresin, Sam H
Kutner, Michael B
LaBerge, Phillip (Estate of) R
Ladd, Jr, Chester R
Lake, David C
LaLiberte, Wayne Richard
Lambe, Ronald J
Lamkin, Craig Smith
Lammers, Ross and Paula L
Lamons, Timothy O
Lance, Robert P
Lane, Douglas (Estate of) A
Lane, Margaret (Estate of Richard G.) A
Langas, Carl D
Langer, Rodney E
Langworthy, Ted F
Lanz, Enrique J
LaPointe, Arthur L
Larsen, Tryggve F
Larson, Allen L
Larson, Charles D
LaRue Jr., Wayne B
Lawrence, Robert (Estate of) N
Lawson, Robert Edward
Layman, Timothy K
Leadingham, Joseph B
Leatherbee, William E
Leatherbury, George W
LeBoutillier, Jr., Thomas
Lee, Robert H
Lehman, Brian L
Leineke, Alan (Estate of) L
Leistikow, Alfred W
Lemma, Dominic Christian

Lenard, Jr., Charles P
Lenny, Peter J
Lesher, Jr., John H
Lester, Benjamin N
Letkeman, Michael (Estate of) B
Lewis, Donald (Estate of) W
Lewis, Kenneth Wendell
Lewis, Roger Allan
Lindberg, Paul R
Linder, Jr, John I
Lindley, Robert F
Lindsey, Magness A
Lindstrom, John (Estate of) D
Link, David L
Linkroum, III, William H
Linteris, Richard L
Linton, Sidney E
Lloyd, Michael F
Loeber, Alexander W
Lomba, Jr., Robert S
Lord, William R
Lovas, Andre E
Loveless, Billy R
Lovell, William A
Lowe, Larry L
Lowry, Charles F
Lowry, Jr., Carl
Lucas, Charles L
Lucas, David N
Ludwig, Herbert D
Lumley, William B
Luplow, Kenneth
Lutz, Stephen Donald
Lynch, John Lawrence
Lynch, Jr., James D
Lyster, James

Machovina, William M
Mackey, Robert (Estate of) J
Mackintosh, III, Donald
Macko, Ronald R
Macomber, Mark B
Madden, Edward
Madigan, Edwin F
Magaro, Ray F
Maglio, Anthony G
Maguire, John P
Mairose, Donald F
Malone, Dan (Estate of) P
Mangham, James (Estate of) M
Manke, Joseph W
Manstrom, John C
Mantei, Ronald H
Marr, Larry W
Martella, Michael B
Martin, Daryl (Estate of) T
Martin, Earl J
Martin, Hall A
Martin, Kenneth E
Martin, Richard J
Martin, Roger
Martin, Thomas S
Martin, Jr., George T
Martin, Jr., Solomon G
Marzolino, Phillip S
Mason, David T
Mason, David W
Mason, Manfred
Mason, Nathan L
Massey, Walter (Estate of) M
Mastronardi, John (Estate of) A
Matherne, Mark H
Mathews, Arthur B

Matthews, James R
Matthews, Kenneth R
Matthews, William T
Mattingly, David L
Maxwell, Jr., Ernest (Estate of) R
May, Robert M
Mayer, John S
McAbee, Jr., Louis (Estate of) H
McAfee, Jr., Frank M
McBride, Walter G
McBride, William B
McBride, William F
McBrier, Timothy A
McCann, James H
McCarter, Truman M
McCarthy, Mark S
McCarthy, Richard M
McCauley, Keith Charles
McCloskey, James L
McCormick, Jackie P
McCormick, Thomas D
McCrary, Reginald (Estate of) J
McCue, Daniel M
McCurdy, John A
McElroy, Daniel J
McElroy, Peter A
McEncroe, Jr., Jack R
McEvoy, Robert E
McEwan, Llewellyn P
McGaw, Steven (Estate of) B
McGibney, Michael David
McGirl, Patrick
McGrath, Michael P
McGreevy, Stephen R
McHargue, Gary R
McHenry, David T

McIntosh, James
McKelvey, David
McKibben, Thomas J
McLain, John Mark
McMahon, Daniel B
McMillan, Jon V
McNeill, David R
McNeill, George V
McPherson, Alan M
Measles, Bobby G
Mecom, Jim H
Meloy, Thomas A
Mercer, Gene G
Meredith, Jack L
Merena, David B
Merkley, Thomas R
Merrell, Robert H
Merrill, Alma Brent
Merrill, Wayne R
Messier, Philip A
Messmore, Michael Henry
Metlick, Wesley R
Mewhirter, James R
Meyer, Thomas A
Miller, Dave A
Miller, Gary L
Miller, John (Estate of)
Miller, Robert (Estate of) A
Miller, Thomas J
Milligan, Jr., William F
Milliken, John L
Miltenberger, Michael Jeffrey
Mitchell, Robert E
Mobley, Harold R
Moll, George A
Monahan, Sr., Timothy P

Monesmith, Glenn A
Mongold, Joseph W
Montague, Harry J
Montgomery, Kenneth
Montoya, Ronald R
Moody, Victor (Estate of) R
Moore, Larry A
Moore, Paul L
Moore, Robert Lowery
Moore, Roger O
Moran, John D
Morey, Edward L
Morgan, Gregory C
Morgan, Howard B
Morgan, John
Morgan, Robert M
Morgan, Jr., Walter T
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Morris, Gregory L
Morris, Jerry L
Morris, Thomas H
Morrison, Robert J
Moser, Robert D
Motley, Paul B
Motschman, Jerye
Moyer, Gordon S
Moyer, Jr., Gilbert H
Mullan, Brian Francis
Mullaney, Michael J
Mullen III, John T
Mullin, Michael J
Mumme, David E
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Murphy, Hugh R
Murphy, Roger W
Murphy, Terance P

Murphy, Jr., H. Stetser
Murray, Samuel J
Murray, Scott B
Musser Jr., Kenneth Daryl
Nagy, Steve (Estate of) B
Nahas, Rafik E
Najarian, Harold M
Nance, Jr., John A
Nardecchia, Philip M
Natho, Jr., Paul
Neagle, Paul F
Neider, Robert J
Neidlinger, Darryl M
Nelan, James (Estate of) J
Nelson, William (Estate of) D
Nelson, Robert A
Nelson, William A
Nesz, Richard H
Nevins, Christopher F
Newbold, John S
Newkirk, Kenneth A
Newlin, Robert C
Nichols, Greg
Nichols, Stephen E
Nichols, Jr., Forrest Rhea
Nicotri, Robert (Estate of) A
Niven, Charles P
Norred, Curtis R
Norris, Vernon R
Nowicki, Steve W
Nutt, James H
OBrien, David F
O'Brien, Robert M
O'Connor, Kevin J
Odom, Clinton M
Olbright, Lawrence (Estate of) D

Olson, Darrell V
Olson, Gerald R
ONeal, Robert J
O'Neill, Kenneth John
Opbroek, Michael G
O'Rourke, Edwin L
Orrie, Ralph R
Ortman, James W
Osborn, Charles (Estate of) W
Otten, Raymond E
Owens, Dennis E
Owens, Sr., John D
Ozment, Charles M
Pace, Martin
Paciolla, Anthony F
Padgett, Douglas M
Palmer, Daniel C
Palmer, Donald A
Palmer, Stetson G
Pancharian, James J
Pankey, III, William Allen
Pannell, Alvin (Estate of) F
Pantesco, William J
Papandrea, Anthony R
Papera, Richard P
Papineau, Harry C
Parham, Elbie A
Parham, Robert A
Parker, David A
Parker, James Philip
Parkinson, Thomas P
Parr, Kenneth (Estate of) M
Parsons, John (Estate of) E
Parsons, Robert M
Pascal, James (Estate of) B
Pate, James (Estate of) R

Patton, Tommy (Estate of) V
Payne, Frederick B
Payne, James M
Payne, Jeffrey C
Peace, III, Samuel T
Pearce, Kay B
Pearce, Marc E
Pearson, Marce
Peart, Martha M
Peart, Jr., John Albert (Estate of) R
Peele, Willis M
Pell, John K
Pepper, Richard E
Perry, George L
Perry, Jr., John S
Peters, Kenneth J
Peters, Thomas H
Petersen, Alan K
Petersen, II, George W
Peterson, Larry Willard
Peterson, Robert L
Petritz, George L
Phelps, Kenneth W
Piacentino, Anthony P
Pickell Jr, Donald L
Pieczko, James Michael
Pierce, Albert L
Pierce, Harvey A
Pierson, Jr., Carl V
Pike, Dennis LaBarre
Pike, Jr., Robert Prescott
Piltz, Donald W
Pinkston, Charles M
Pisano, Jr., John Alexander
Pitts, William (Estate of) E
Plain, John R

Platts, Richard P
Plewes, David S
Plummer, David A
Poe, Joseph C
Pohl, Richard T
Pohlmeyer, Jack M
Pohoski, James
Poplet, Keith (Estate of) R
Porter, Pat (Estate of) K
Poteet, William T
Poust, Charles E
Powell, Jr., Prince S
Pratt, Michael A
Pressler, Gary (Estate of) N
Preston, Michael J
Price, Alan W
Price, Michael J
Primich, Charles G
Prox, Ron (Estate of)
Prucha, James (Estate of) T
Pupich, George (Estate of) S
Purtell, Theodore F
Quale, Richard B
Quarles, James T
Quilter, II, Charles J
Rabe, Louis Frederick
Ralston, David D
Rambo, Robert P
Randolph, David Robert
Raphael, Stephen T
Rasch, Anthony A
Rathbun, Charles D
Ratliff, Jr., James G
Ray, Jr., Clarence E
Raymond, Carl (Estate of) W
Raymond, Terry Alan

Reagor, Mary K
Reaume, Ronald R
Reed, Gary Lee
Reed, Jerry K
Reel, Harry J
Reese, James W
Rehnstrom, Edward E
Reidinger, Francis (Estate of) Carl
Reinhard, David J
Reinhart, Ronald (Estate of) A
Remley, David (Estate of) M
Remont, David R
Repp, Paul F
Rezeau, Gary L
Rhoades, Corlin-Ann Brooks
Rhyne, Gregory L
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Richardson, James B
Rickley, George
Riddick III, James T
Rieder, Christopher R
Riese, Carl H
Riffey, Jr., Douglas G
Rifkin, Bennett L
Riggins, Noel L
Riley, Michael F
Riley, Victor A
Rinderknecht, Ronald Paul
Rineman, Jon R
Rioux, Robert (Estate of) R
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Rivers, Jere W
Roach, Sr., Dale (Estate of) A
Roan, Thomas P

Robb, Patrick
Roberts, David L
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Robertson, Irene (Estate of James) C
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Robertson, Neil A
Robertson, Scott
Robertson, William G
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Rodammer, Larry L
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Rodway, William J
Rogers, George M
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Rollow, Lawrence D
Romero, Laurence M
Rosen, James M
Ross, Roger D
Rounds, Douglas T
Rowland, Mitchell L
Roy, Allan H
Royall, Robert (Estate of) T
Ruble, Steven (Estate of) Monroe
Rudy, Jr., Robert C
Rue, Harry (Estate of) F
Rumple, Jr., Thomas P
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Rupp, Clarence J
Rush, James M
Rushton, David G
Russell, Bobby L
Russell, James (Estate of) Laing

Russell, Rodney O
Russell, Thomas (Estate of) H
Rutledge, William (Estate of) D
Ryan, Donald J
Ryf, Steven R
Sachs, Stephen Lee
Sain, Phillip L
Salkeld, Warren R
Salzmann, James D
Sanches, III, Joseph A
Sander, Keith D
Sanders, Charles R
Sargent, Charles (Estate of) D
Saux, Jack E
Sawtelle, Jr, Raymond F
Scaggs, Billy R
Schalon, Lee E
Scheidt, Colin C
Schepman, Dennis W
Schlough, James E
Schmoker, Paul L
Schneider, Martin A
Schollmeyer, Bruce W
Schulze, Norman E
Schumy, Erik T
Scibona, Paul G
Sciurba, Carl R
Scofield, Stephen D
Scoggin Jr, Lockwood B
Scott, Karl J
Scott, Philip M
Scott, Robert E
Scott, Jr., Roland B
Screws, Donald R
Seals, Jr., John (Estate of) A
Sedgwick, Robert (Estate of) H

Seever, Thomas R
Selberg, Richard I
Sellen, Peter Alexander
Sellmer, John (Estate of) R
Senior, Michael W
Shandor, Richard A
Sharp, James T
Sharp, John M
Shaughnessey, III, Kerin L
Sheehy, Thomas W
Shelton, Robert D
Shepherd, Robert C
Shepherd, William S
Sherman, Craig A
Sherman, Jr., Charles Arthur
Sherrill, Daniel (Estate of) L
Shettle, Jr., Melvin L
Shields, Dennis J
Shinn, Jack W
Shipley, Edward R
Shirkey, Jack M
Short, Michael N
Shutack, Richard A
Sibley, James A
Sidenstricker, Charles R
Sievers, Richard B
Sigler, Robert W
Siler III, Maynard D
Simons, Charles Wetherill
Simpson, Gerald G
Singletary, Joe H
Sisson, ONeal L
Skjerven, David W
Skoog, David Robert
Skowronski, Steven A
Slater, Mitchell J

Smail, Jr., Richard F
Small, Ronald M
Smart, Harold Joseph
Smith, David M
Smith, Edward (Estate of) P
Smith, Gerald Buell
Smith, Glenn H
Smith, Gregor D
Smith, Michael A
Smith, Jr., Morgan C
Smith, Paul K
Smith, Reuben U
Smith, Robert C
Smith, Ronald V
Smith, Stephen L
Smith, II, Jerome G
Smith, Jr., Frederick B
Snead, William H
Snelling, Robert J
Snider, Jr., Charles Robert
Sniffin, Edward M
Snipes, Thomas F
Snodgrass, Guy B
Snyder, Jeffrey W
Sonnenberg, William T
Soodsma, Thomas N
Sorenson, Lynn D
Sorrelle, Lane S
Spangler, Taylor L
Speaks, William R
Spires, James A
Spivey, Don P
Springer, Carroll V
Stamps, Jerry L
Starkey, James P
Stauter, Jr., John A

Stearns, Richard D
Stedfield, William C
Steele, Michael J
Steele, Jr., Bert L
Steiner, Barry H
Stephens, Robert L
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Stevenson, David (Estate of) M
Stewart, George Alan
Stewart, Ronald Edwin
Stewart, William J
Stienecker, Craig A
Stites, Thomas S
Stitt, William D
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Stokes, III, Edward S
Stone, James R
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Stong, Stephen M
Stothart, Robert A
Stovall, Jr., Jack
Stovall, Warren S
Stover, Keith A
Stowe, James R
Stricker, Gary F
Strickland, Charles L
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Struble, James D
Stuart, Bruce
Stubsten, Dennis M
Stukas, Daniel R
Stump, Kern V
Sturniolo, Larry R

Suckow, James H
Sullivan, Paul J
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Sullivan, Steven (Estate of) B
Summers, Herbert (Estate of)
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Sundberg, Roger R
Sutkus, Carl J
Suttler, George L
Sutton, Larry K
Sutton, Michael R
Svoboda, Steven J
Swain, Frederick (Estate of) G
Sweetay, William (Estate of) Paul
Swettman Jr, William P
Swift, Jon N
Swofford, John C
Sword, Charles E
Sykes, Donald B
Szatkowski, Jr., Donald K
Sztanyo, Mark J
Taft, Jr., Walter (Estate of) Lars
Talton, Tom (Estate of) C
Tate, Jerry L
Tawes, Jr., John Paul
Tax, Cal (Estate of) W
Taylor, Creigh (Estate of) W
Taylor, Howard R
Taylor, James R
Taylor, Mark J
Taylor, Roger Williams
Taylor, Terry J
Taylor Jr., David N
Taylor, Jr., Lee O
Teal, Philip Russell
Tedrow, Richard C

Teeple, Donald (Estate of) J
Terwilliger, George
Thelen, Antoni A
Thelen, Peter W
Thome, Robert W
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Thompson, David J
Thompson, Don D
Thompson, Donald W
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Thompson, Stewart W
Thompson, Thomas G
Thompson, Jr., Vernon Carl
Thompson, Sr., John S
Thorne, Robert Harden
Thurman, III, John B
Thykeson, Clinton
Tibbs, Don F
Till, David R
Tillman, Jr., James (Estate of) C
Tinsley, III, Calvin (Estate of) W
Todd, Samuel John
Todd, William S
Tommasello, Charles S
Tourtellott, Richard (Estate of) B
Townsend, George (Estate of) J
Tregre, Jr., George W
Trent, William O
Trevathan, Robert B
Triolo, Frank (Estate of) C
Trogdon, Jr., Robert B
Trucksess, David Paul
Truesdale, Alva B
Tschurwald, Robert
Tullier, John D
Tully, Sr., Charles T

Turner, William F
Tushek, Gordon M
Twaddle, Robert R
Tweet, Theodore A
Tyler, Stephen R
Tysinger, Richard L
Ueckermann, Frederick
Ulrich Jr, V Kenneth
Unverzagt, John G
Urban, James E
Urban, John L
Urban, Kenneth P
Uselmann, Edwin D
Uskovich, John
Vadakin, Jeffrey J
Van Bebber, Jr., John G
Van Oss, Leland B
Van Vliet, Bruce Edward
Vance, Henry John
Vance, Kenson R
Vance, William
Vandenberg, George E
Vanderhorst, Thomas J
VanDeWalle, Henry J
Vantwout, William A
Varvil, Donald E
Vehige, Henry F
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Verner, Ronald J
Verrengia, Thomas James
Virtue, Patrick M
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Vorderbruggen, William
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Wade, James A
Waggener, Christopher N

Wagner, Christopher F
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Wakefield, Anthony L
Wakeman, Ernest G
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Walker, Don C
Walker, Joy Suzanne
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Wallace, Harold Boyette
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Walsh, Alan H
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Walters, Charles D
Walters, Thomas D
Walton, Michael J
Warburton, James W
Ward, Gerald P
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Ward, Richard Eugene
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Ware, Wayne E
Warner, Richard M
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Warren, Rogers Patton
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Wayne, Jr., Robert
Weast, Don R
Weaver, Jr., Robert O
Weber, Philip J
Webster, James W
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Weiler, Maurice David
Welch, Lee K
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Wells, Rodney L
Wendelbo, Lee R
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Werner, Jr., Paul A
West, John George
West, Stuart L
Westbrook, Charles R
Westman, John E
Wetherell, Jr., Charles Elton
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Weyrick, Max T
Whitcomb, Darrel D
White, Allan C
White, Donald R
White, James Louis
White, Steven J
Whitesell, Wilbur Larry
Whitford, Jeffrey (Estate of) B
Whitley, David (Estate of) L
Whorley, William W
Wick, Pete A
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Wiggins, William Michael
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Wilkening, Walter L
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Williams, Jr., David M
Williams, Donald R
Williams, James L
Williams, Jerry C

Williams, Lonnie R
Williams, Perry E
Williams, R. (Richard) Douglass
Williams, Robert Mark
Williams, Robert W
Williams, William W
Williams Jr., Arthur J
Williams, Jr., William F
Williamson, Bruce A
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Willoughby, Jerry D
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Wilson, Charles P
Wilson III, Jefferson D
Wirth, William J
Wirtzfeld, Thomas F
Wisecup, Ronald E
Witt, Gary Lon
Witt, Prentice
Wittig, Robert H
Wittmeyer, John R
Wittrig, William H
Wohlford, Gerald D
Wolcott, Keith
Wolff, Douglas M
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Wonsettler, James L
Wood, Gary Harris
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Wood, Jr, George A
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Woodall, Larry N
Woodruff, III, Berryman E
Woods, Charles R
Wortmann, John R

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Yarborough, Harry (Estate of) Candler
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Yockey, Donald R
Young, Alan H.
Yunes, Barry P
Zajic, Haldane M
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Zimmer, Edward T
Zimmerman, John A
Zipse, William P
Zody, Don A
Zollweg, Dennis C