Quick Takes:

Q1 2026 Review of Defined Contribution Regulation, Legislation, & Litigation

Regulatory Updates

DOL Issued Proposed Rule on Alternative Investments

On March 30, 2026, the Department of Labor (DOL) issued a notice of proposed rulemaking, titled Fiduciary Duties in Selecting Designated Investment Alternatives.[i] The proposal is intended to clarify ERISA fiduciary responsibilities when considering alternative investments in the retirement plan. The proposed rule follows the Executive Order (EO) issued by President Trump in August 2025 directing the Labor Secretary (in consultation with the Treasury Department and Securities and Exchange Commission) within 180 days to review and clarify guidance surrounding the inclusion of private market and digital investments in retirement plans in accordance with ERISA's fiduciary guidelines.[ii]

The August EO sought to make it easier to include private market investments (including debt, equity, credit and infrastructure) and cryptocurrencies in 401(k) plans. Lifetime income strategies were also cited in the EO. Importantly, the proposal is asset-neutral and does not require nor endorse the inclusion of any specific investment type. Instead, it outlines a process-based safe harbor under which fiduciaries who follow a prudent, well-documented decision-making process, considering factors such as fees, liquidity, valuation, complexity, and monitoring, may reduce fiduciary risk when selecting designated investment alternatives.

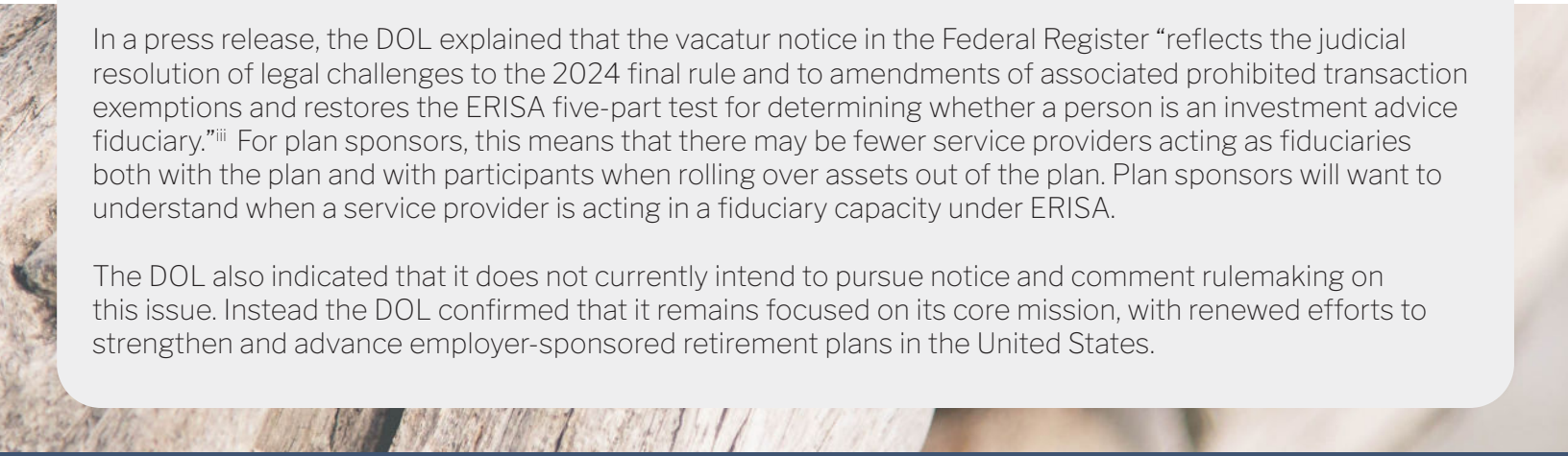
This is a proposed regulation; comments will be accepted for 60 days following publication in the Federal Register. No action is currently required.

DOL Officially Restores Previous Fiduciary Advice Rule

With the ink on two federal courts' vacatur still damp, the DOL has removed from the Code of Federal Regulations the Biden-era 2024 final rule, updated the 2024 amendments to PTE 2020-02 (and removed the preamble to the exemption), and republished the operative text of that exemption.

In a press release, the DOL explained that the vacatur notice in the Federal Register "reflects the judicial resolution of legal challenges to the 2024 final rule and to amendments of associated prohibited transaction exemptions and restores the ERISA five-part test for determining whether a person is an investment advice fiduciary."[iii] For plan sponsors, this means that there may be fewer service providers acting as fiduciaries both with the plan and with participants when rolling over assets out of the plan. Plan sponsors will want to understand when a service provider is acting in a fiduciary capacity under ERISA.

The DOL also indicated that it does not currently intend to pursue notice and comment rulemaking on this issue. Instead the DOL confirmed that it remains focused on its core mission, with renewed efforts to strengthen and advance employer-sponsored retirement plans in the United States.



"Narrow" Paper Statements Rule Proposal from DOL

The DOL has proposed "narrow" amendments to two separate electronic disclosure safe harbors for purposes of implementing section 338 of the SECURE 2.0 Act of 2022 (SECURE 2.0), which required retirement plans to provide paper benefit statements in certain cases.[iv] The proposed changes could increase mailing costs, require recordkeeper system updates, and introduce new compliance risks for plan sponsors relying heavily on electronic disclosure.

The proposal would take effect for plan years beginning after December 31, 2025 (i.e., 2026 plan years for calendar-year plans). Under SECURE 2.0, defined contribution (DC) plans would be required to provide at least one paper benefit statement each plan year, and defined benefit (DB) plans would have to provide at least one paper benefit statement every three years, unless a participant affirmatively elects electronic delivery.

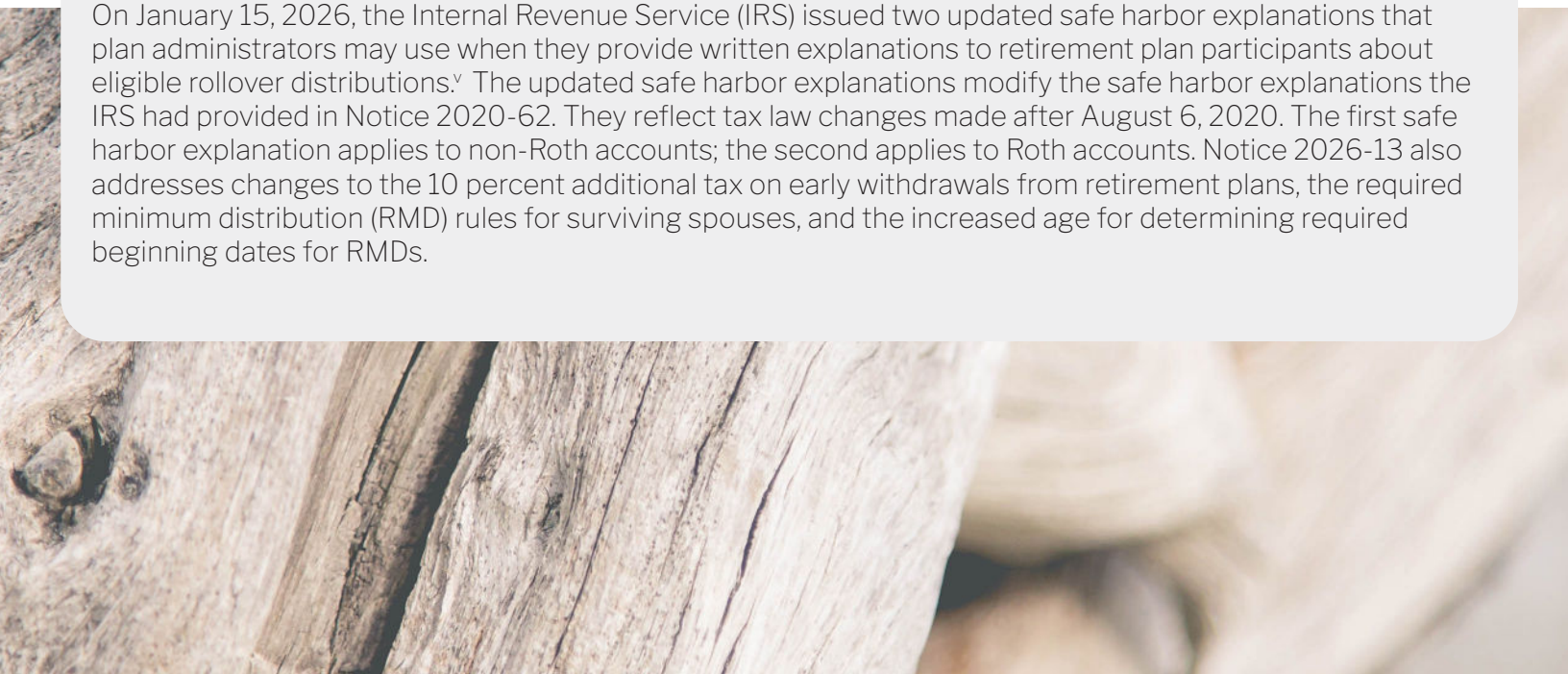
There are two exceptions to the paper requirement above: (i) plans may continue to rely on the 2002 electronic safe harbor for "wired-at-work" participants, provided they issue a one-time initial paper notice to newly eligible participants informing them of their rights or (ii) If a participant affirmatively elects electronic delivery — and the electronic statement is actually delivered. These are proposed, not final, regulations. Comments have been requested. However, during this time, there is an expectation of good faith compliance until the regulation is finalized. For plan sponsors, they should discuss with the provider of their notices (e.g., recordkeeper) to ensure compliance.

EBSA Enforcement Priorities Shift – More Cybersecurity, Less ESOPs

The Employee Benefit Security Administration (EBSA) announced in mid-January 2026 that its enforcement efforts would focus on cybersecurity, mental health and substance abuse benefits, benefit distributions, retirement asset management, surprise billing, and "criminal abuse of contributory plans." The release also said that Employee Stock Ownership Plans (ESOP), and missing participants would be removed from the "national enforcement project list" but as a practical matter, that does not mean that missing participants should be off the radar for plan sponsors as part of an ongoing fiduciary process.

IRS Updates Safe Harbor Rollover Explanations

On January 15, 2026, the Internal Revenue Service (IRS) issued two updated safe harbor explanations that plan administrators may use when they provide written explanations to retirement plan participants about eligible rollover distributions.[v] The updated safe harbor explanations modify the safe harbor explanations the IRS had provided in Notice 2020-62. They reflect tax law changes made after August 6, 2020. The first safe harbor explanation applies to non-Roth accounts; the second applies to Roth accounts. Notice 2026-13 also addresses changes to the 10 percent additional tax on early withdrawals from retirement plans, the required minimum distribution (RMD) rules for surviving spouses, and the increased age for determining required beginning dates for RMDs.



Legislative Updates

Legislation Would Permit Penalty/Tax Free Use of 401(k)s for Home Purchases

Freshman Rep. John McGuire (R-Va.) on January 21, 2026 introduced the Home Savings Act (H.R. 7185) to remove penalties and taxes for withdrawing from a 401(k) account when the money is used for closing costs and down payments associated with purchasing a home.[vi] This is proposed legislation that has yet to be finalized.

Congress Advances ERISA Litigation Reform, Former DOL Officials Challenge

Members of the House Committee on Education & Workforce advanced the ERISA Litigation Reform Act (H.R. 6084) in mid-March 2026 to the full House of Representatives by a party line vote of 19-13.[vii] The bill, proposed by Rep. Randy Fine (R-Fla.), received pushback from several Democrat members of the Committee.

The legislation would require plaintiffs to allege that fees are unreasonable in excessive fee suits, require plaintiffs to allege that an ESOP "paid more than fair value" for employer stock, and, in all ERISA cases, postpone discovery until after a case survives a motion to dismiss.

Eight former DOL officials are calling on lawmakers to reject that legislation. The bill was described as strengthening the pleading standards for lawsuits brought under the ERISA. More specifically, H.R. 6084 was said to clarify the burden of proof in certain fiduciary-related claims and establish a targeted stay of discovery during the early stages of litigation.

In a letter to House Education & Workforce Chairman and Ranking Member, the former DOL officials claim that "it replaces the settled expectations of a legal regime based on hundreds of years of trust law and ordinary rules of civil procedure with a new and untested framework that tips the scale in favor of defendants charged with prudently and loyally managing plan assets and will obstruct meritorious claims.[viii] They also assert that the legislation would override the United States Supreme Court's unanimous decision in Cunningham v. Cornell University while also heightening the "pleading and proof standards for a wide variety of transactions Congress viewed with special concern."

Litigation Updates

The Death of DC ERISA Class Action Suits?

An appellate court has rejected certification of a class seeking to sue plan fiduciaries who held BlackRock LifePath target date funds (TDFs) – in a ruling that has the potential to dampen the pace of ERISA class action litigation.

The lower court viewed the suit as one under ERISA section 502(a)(2) which allows participants to sue on behalf of the plan; this is common for these suits. It allows individually harmed plaintiffs to bring suit on behalf of the plan. And viewed that way, the district court certified a mandatory class under Rule 23(b)(1) which again is what we normally see in ERISA class action suits.

However, the U.S. Court of Appeals for the 4th Circuit viewed it differently. Instead of a plan recovery, the judges saw it as an attempt to recover individual damages — viewing the structure of a DC plan as very different from a DB program — where losses would truly be plan-wide.

They note, for example, the possibility that all the losses across the plan's 1,000 individual accounts totaled $100 million — and then comment that the loss, if any, to each account in the plan might "vary significantly depending on factors like how much money a participant had invested in the imprudent fund, how long he had held the investment, and the precise timing of when he had bought and sold."[ix]

This ruling could matter quite a bit for ERISA litigation strategy because it directly challenges the procedural foundation used in many of the large fiduciary-breach cases over the past 15–20 years.

Most DC ERISA suits to date sue under ERISA section 502(a)(2), which allows participants to recover losses to the plan — and they seek class certification under Rule 23(b)(1). It's easier to certify that kind of class, after all. Of course, this ruling doesn't kill ERISA class actions (though it will almost certainly have an impact in this one federal court district) — but it does arguably target the procedural "shortcut" that made many of them relatively easy to certify.

Federal Judge Slashes Scope of TIAA Rollover Case

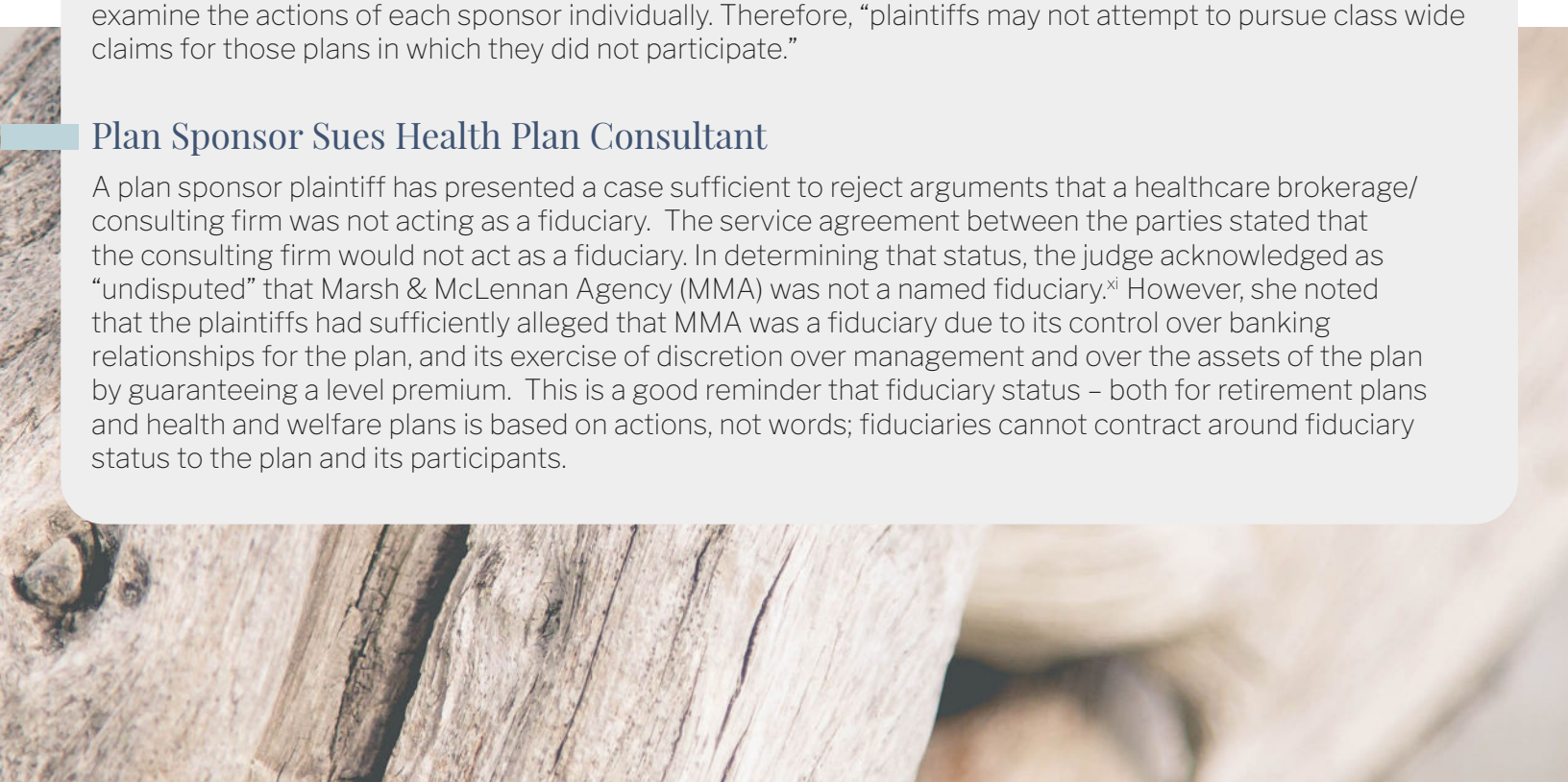
On March 3, 2026, Judge Katherine Polk Failla of the U.S. District Court for the Southern District of New York significantly narrowed the scope of the suit in Carfora v. TIAA which had sought to allege a "knowing participation" claim on behalf of participants in approximately 9,900 plans in which the named plaintiffs themselves did not participate.[x]

At issue was a program that places the plan participant in a model portfolio that often included TIAA-affiliated funds, providing ongoing investment advice that rebalances the assets if the account deviates from the model portfolio allocation by a certain amount. The participant-plaintiffs in question claim to have paid "multiple layers of fees in Portfolio Advisor, in an amount much higher than they would typically pay by retaining assets in an employer-sponsored retirement plan."

Because the plaintiffs' "knowing participation" claim depends on whether each plan sponsor breached its own fiduciary duty—and whether TIAA knowingly participated in that breach—the court would need to examine the actions of each sponsor individually. Therefore, "plaintiffs may not attempt to pursue class wide claims for those plans in which they did not participate."

Plan Sponsor Sues Health Plan Consultant

A plan sponsor plaintiff has presented a case sufficient to reject arguments that a healthcare brokerage/consulting firm was not acting as a fiduciary. The service agreement between the parties stated that the consulting firm would not act as a fiduciary. In determining that status, the judge acknowledged as "undisputed" that Marsh & McLennan Agency (MMA) was not a named fiduciary.[xi] However, she noted that the plaintiffs had sufficiently alleged that MMA was a fiduciary due to its control over banking relationships for the plan, and its exercise of discretion over management and over the assets of the plan by guaranteeing a level premium. This is a good reminder that fiduciary status – both for retirement plans and health and welfare plans is based on actions, not words; fiduciaries cannot contract around fiduciary status to the plan and its participants.



Duke Ducks 401(k) Forfeiture Reallocation Suit

A forfeiture reallocation suit, which acknowledged that the plan document permitted a choice between offsetting employer contributions or administrative expenses, has been dismissed.

The judge concluded that the plaintiff failed to state a valid claim because the defendants made an allowable decision under the plan about how forfeited contributions could be used. That decision did not reduce benefits to participants below what they were promised, and the employer did not contribute less than it was required to contribute.[xii] The judge also found that the plaintiff's allegations, that the employer could have paid administrative expenses itself and that the forfeited contributions were not used for those. There was not sufficient evidence to plausibly state a claim for a breach of fiduciary duty, or other ERISA violations.

Custom TDF Wins Dismissal of 401(k) Suit on "Meaningful Benchmark" Basis

A federal judge dismissed a lawsuit, finding that plaintiffs failed to plausibly show that their proffered indices and TDFs were meaningful benchmarks for the 3M TDFs.

"The Complaint's allegations on this question are comparatively high-level," District Judge Eric C. Tostrud wrote. "The Complaint first tries to show the S&P Indices are meaningful benchmarks by pointing to industry acceptance — it alleges that 'over 50% of TDFs use the [S&P Indices] as their primary prospectus benchmark to approximate performance'." [xiii]

He went on to comment that "The fact that roughly half of the surveyed TDFs benchmarked against the S&P Indices means roughly half did not. In other words, this figure does not show TDF-industry acceptance any more than it shows industry reluctance to benchmark against the S&P Indices. The question is whether there is a plausible basis for putting the 3M TDF Series in that half of TDFs that benchmark against the S&P Indices," — something Judge Tostrud noted the complaint failed to answer directly.

"Either the Complaint must plausibly allege that all TDFs are meaningful benchmarks for all other TDFs, or it must allege that the S&P Indices and 3M TDF Series share like composition," he explained. "The Complaint does not include either allegation."

Note that the "meaningful benchmark" requirement applied here has been an essential element in motion to dismiss victories by fiduciary defendants in several federal court jurisdictions. But it has not been uniformly accepted — and, as such, is on deck to be considered by the United States Supreme Court.

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[i] U.S. Department of Labor, Employee Benefits Security Administration, "Fiduciary Duties in Selecting Designated Investment Alternatives Proposed Rule," fact sheet, March 30, 2026, https://beta.dol.gov/research-data/fact-sheet/fiduciary-duties-selecting-designated-investment-alternatives-proposed-rule.
[ii] Donald J. Trump, "Democratizing Access to Alternative Assets for 401(k) Investors," Executive Order, August 7, 2025, https://www.whitehouse.gov/presidential-actions/2025/08/democratizing-access-to-alternative-assets-for-401k-investors/.
[iii] U.S. Department of Labor, Employee Benefits Security Administration, "US Department of Labor Restores Long-Standing Investment Advice Rule," news release, March 18, 2026, https://www.dol.gov/newsroom/releases/ebsa/ebsa20260318.
[iv] U.S. Department of Labor, Employee Benefits Security Administration, "Requirement to Provide Paper Statements in Certain Cases — Amendments to Electronic Disclosure Safe Harbors," proposed rule, 29 CFR Parts 2520 and 2560, RIN 1210-AC27, Federal Register, February 25, 2026, https://federalregister.gov/d/2026-03723.
[v] U.S. Department of the Treasury and Internal Revenue Service, "Safe Harbor Explanations — Eligible Rollover Distributions," Notice 2026-13, Internal Revenue Bulletin 2026-6 (January 15, 2026): 499, https://www.irs.gov/pub/irs-drop/n-26-13.pdf.
[vi] Home Savings Act, H.R. 7185, 119th Cong. (2026), https://www.congress.gov/bill/119th-congress/house-bill/7185/text.
[vii] ERISA Litigation Reform Act, H.R. 6084, 119th Cong. (2025), https://www.congress.gov/bill/119th-congress/house-bill/6084.
[viii] Letter from Phyllis C. Borzi, Former Assistant Secretary of Labor for Employee Benefits Security, et al., to Rep. Tim Walberg, Chairman, H. Comm. on Education & the Workforce, & Rep. Robert Scott, Ranking Member, H. Comm. on Education & the Workforce (Mar. 12, 2026).
[ix] Trauernicht v. Genworth Financial Inc., No. 24-1880, slip op. (4th Cir. Mar. 10, 2026).
[x] Carfora v. Teachers Insurance Annuity Association of America, No. 21 Civ. 8384 (KPF), slip op. at doc. 63 (S.D.N.Y. Aug. 21, 2023).
[xi] Oregon Potato Company et al v. Strong et al, No. 4:2025cv05139 (E.D. Wash. 2025).
[xii] Beroset v. Duke University, No. 1:25-cv-00919 (M.D.N.C. 2025).
[xiii] Batt v. 3M Co., No. 0:25-cv-03149 (ECT/DTS) (D. Minn. filed Aug. 7, 2025).