

# Dueling Alcoa, Lockheed Pension Decisions Hinge on Injury Risk

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- Lawsuits challenge move from company pensions to annuities
- Two early rulings turn on whether retirees have been injured

The litigation push against companies that use annuities to remove workers from their pension plans intensified over the past week, as judges reached opposite conclusions in cases against Alcoa USA Corp. and Lockheed Martin Corp.

Alcoa defeated claims challenging its purchase of annuities from subsidiaries of Athene Holding Ltd., while Lockheed retirees advanced their lawsuit over similar conduct. Both rulings turned on whether the plaintiff retirees had suffered an injury giving them standing to sue.

The Alcoa retirees lacked standing, according to Judge Loren L. AliKhan of the US District Court for the District of Columbia, because they didn't allege that Athene is substantially likely to fail—only that it's at “greater risk of failure than its competitors.”

But Judge Brendan A. Hurson parsed the facts differently, writing for the District of Maryland that although it was a “close call,” the Lockheed retirees had shown standing by alleging details about Athene's offshore structure and its connections to private equity, along with the “undisputed” fact that their benefits are no longer guaranteed by the federal pension insurer.

A handful of recent lawsuits have centered on employers' attempts to de-risk their pension plans by purchasing annuities from units of Athene, an Apollo Global Management subsidiary that's not named as a defendant in any of the cases. The lawsuits, which also target AT&T Inc., Lumen Technologies Inc., Bristol-Myers Squibb Co., and General Electric Co., say Athene uses a risky offshore structure that jeopardizes workers' ability to receive benefits without compensating them for taking on additional risk.

The legal question of standing—whether the retirees have suffered an injury they can sue over—will likely be a common thread running through these cases, Emily Seymour Costin, a partner with Alston & Bird LLP in Washington, said.

## What Harm?

The Alcoa opinion is “well-reasoned,” according to Costin, because the case is plagued by a fundamental flaw: “no participant has missed any monthly payments, and there is no imminent danger of any losses to their monthly benefit payments,” she said.

Katherine B. Kohn, a Thompson Hine LLP partner in Washington, agreed, adding that neither case alleges an “imminent risk that Athene will fail.”

“There are so many things that need to happen before they could ever experience any harm in the future,” Kohn said.

In dismissing the Alcoa case, Judge AliKhan acknowledged the retirees may find it “frustrating” that they could ultimately suffer a sufficient injury after the deadline to sue their employer has passed if Athene fails years down the road. In that case, they would still have the option of suing Athene itself, she said.

#### *‘Key Question’*

Both AliKhan and Hurson cited repeatedly to the US Supreme Court’s 2020 decision in *Thole v. US Bank NA*, which held that pension plan participants lacked standing to challenge investment decisions that didn’t jeopardize their ability to receive fixed benefits. Despite reaching different conclusions, both judges took care to note that the cases before them involved benefits that were no longer protected by the federal Employee Retirement Income Security Act or insured by the Pension Benefit Guaranty Corporation—factors not present in *Thole*.

How the retirees’ alleged injuries stack up against the injuries asserted in *Thole* will be a “key question” driving these pension risk transfer lawsuits, said Ada W. Dolph, a partner with Seyfarth Shaw LLP in Chicago.

According to Dolph, the *Thole* court appeared to leave a narrow path open for demonstrating standing in cases where pension mismanagement was “so egregious” that it substantially increased the risk that the plan and the employer would fail and be unable to pay benefits. The Alcoa and Lockheed decisions appeared to disagree on whether the retirees had met that standard.

Jerry Schlichter, founding partner of Schlichter Bogard LLC and counsel for both the Alcoa and Lockheed retirees, said his clients have standing because their benefits were swapped for an annuity that’s not the safest one available, which is the standard imposed by federal law.

“It remains our position that the financial marketplace demonstrates a loss of value for these annuities compared to the required safest annuity available,” Schlichter said, adding that he plans to appeal the Alcoa decision.

The marketplace values Athene annuities “very differently from the safest annuity, which is what’s required under the law,” he said. “The company cannot benefit from its selection of an annuity provider and must disgorge the benefit it received.”

Athene is a “safe and secure annuity provider” that enjoys strong credit ratings, a company spokesperson said.

“As we have consistently maintained, these are frivolous claims without merit, driven by predatory trial lawyers targeting the pension risk transfer industry as a whole,” the spokesperson said in an emailed statement. “We believe that the court in *Alcoa* got it right—that the plaintiffs’ claims have no merit.”

### ‘Not That Disparate’

Despite the different results, the holdings in the *Alcoa* and *Lockheed* cases “are not that disparate,” said Marcia S. Wagner, founder and managing partner of Wagner Law Group in Boston. She pointed out that Hurson’s opinion in the *Lockheed* case describes the retirees’ standing as a “close call” while noting that the case could ultimately fail for lack of standing at a later date.

The two decisions also suggest the *Lockheed* plaintiffs “provided more detailed evidence” about Athene’s risks, she said.

Whether the cases in this series advance to discovery or fail for lack of standing could ultimately turn on what allegations are used to show Athene’s riskiness and how well the defendants counter that narrative.

“The more the defendants are able to credibly debunk the plaintiffs’ assertions of Athene being an ‘unsafe’ selection and the risk of imminent harm, the more likely the court will determine the plaintiffs do not have standing,” Dolph said.

Attorneys for *Alcoa* and *Lockheed* didn’t respond to requests for comment.

The cases are *Camire v. Alcoa USA Corp.*, D.D.C., No. 1:24-cv-01062, 3/28/25; *Konya v. Lockheed Martin Corp.*, D. Md., No. 8:24-cv-00750, order docketed 3/31/25.

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