

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

RICHARD SPOHN, individually, and as
representative of plan participants and plan
beneficiaries of the IBM Personal Pension
Plan,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORP., as Plan Administrator and Sponsor;
the IBM RETIREMENT PLANS
COMMITTEE, as Plan Administrator; and
STATE STREET GLOBAL ADVISORS
TRUST COMPANY, as independent fiduciary
of the IBM Personal Pension Plan,

Defendants.

Civil Action No.: 25-12475

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Dated: September 5, 2025

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**Pro Hac Vice application forthcoming*

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Plaintiff Richard Spohn (“Plaintiff”) brings this action on behalf of himself and all others similarly situated against Defendants International Business Machines Corporation and the IBM Retirement Plans Committee (together, “IBM”) and State Street Global Advisors Trust Company (“State Street” and, collectively with IBM, “Defendants”). Plaintiff makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to the allegations specifically pertaining to himself, which are based on his personal knowledge.

NATURE OF THE ACTION

1. This is a class action on behalf of 132,000 affected IBM retirees who formerly participated in the defined benefit pension plan, the IBM Personal Pension Plan (hereinafter the “Plan”), administrated and sponsored by IBM and governed by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*

2. On September 13, 2022, IBM entered into a group annuity contract involving approximately \$16 billion in plan assets with the Prudential Insurance Company of America (“PICA”)¹ that resulted in approximately 100,000 of these retirees losing all of the uniform protections intended by Congress under ERISA, including the Federal backstop provided to all ERISA protected plans by the Pension Benefit Guaranty Corporation (“PBGC”).

3. Then, on September 11, 2024, IBM entered into a second group annuity contract involving approximately \$6 billion in plan assets with PICA² that resulted in an additional 32,000

¹ See PRUDENTIAL, *Prudential and MetLife entrusted to fulfill \$16B in pension obligations for 100,000 IBM retirement plan participants and beneficiaries*, (Sep. 13, 2022), <https://news.prudential.com/latest-news/prudential-news/prudential-news-details/2022/Prudential-and-MetLife-entrusted-to-fulfill-16B-in-pension-obligations-for-100000-IBM-retirement-plan-participants-and-beneficiaries-09-13-2022/default.aspx>.

² See PRUDENTIAL, *Prudential to fulfill \$6 billion in protected retirement obligations in second pension risk transfer with IBM* (Sep. 11, 2024), <https://news.prudential.com/latest-news/feature->

retirees losing all of the uniform protections intended by Congress under ERISA, including the Federal backstop provided to all ERISA protected plans by the PBGC.

4. The combination of unique risks posed by the IBM/PICA transactions are contrary to the best interests of the impacted IBM retirees and have resulted in less secure pension benefits for those retirees.

5. As such, these transactions were imprudent, disloyal and otherwise prohibited by ERISA. The IBM retirees have now been transformed into certificate holders under risky group annuities that are no longer regulated by ERISA or insured by the PBGC. As a consequence, impacted retirees are quite rightly fearful and concerned about their futures, the fate of their retirements, and the financial well-being of their beneficiaries.

6. ERISA imposes strict fiduciary duties on plan sponsors and their independent fiduciaries when they offload company pension obligations to insurance companies through the purchase of annuities. ERISA's fiduciary duties are "the highest known to the law." *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982). The statute requires fiduciaries to act with both prudence and loyalty, "solely in the interest of the" employees who participate in the plan. 29 U.S.C. § 1104(a)(1).

7. Defendants violated their fiduciary responsibilities in selecting PICA to pay pension benefits for IBM's 132,000 retirees.

8. Instead of going through a rigorous, independent and thorough selection process that took into consideration the requisite analysis that an ordinary and prudent ERISA fiduciary is required to undertake, Defendants chose to purchase substandard annuities for IBM retirees from

stories/feature-stories-details/2024/Prudential-to-fulfill-6-billion-in-protected-retirement-obligations-in-second-pension-risk-transfer-with-IBM/.

PICA, which are heavily dependent upon transactions with affiliates that are not transparent and expose plan participants to unreasonable amounts of risk and uncertainty. These affiliates are domiciled in “regulation light” jurisdictions such as Arizona and Bermuda where wholly owned captive reinsurers and affiliates are permitted to count debt instruments as assets and are not required to file publicly available financial statements in accordance with Statutory Accounting Principles (“SAP”), the requisite accounting standard under which all U.S. life insurance companies operate.³ Without clarity around the assets, liabilities, structure and claims paying ability of these wholly owned captive reinsurance companies and affiliates, Defendants could not possibly have met their obligations as prudent fiduciaries under ERISA.

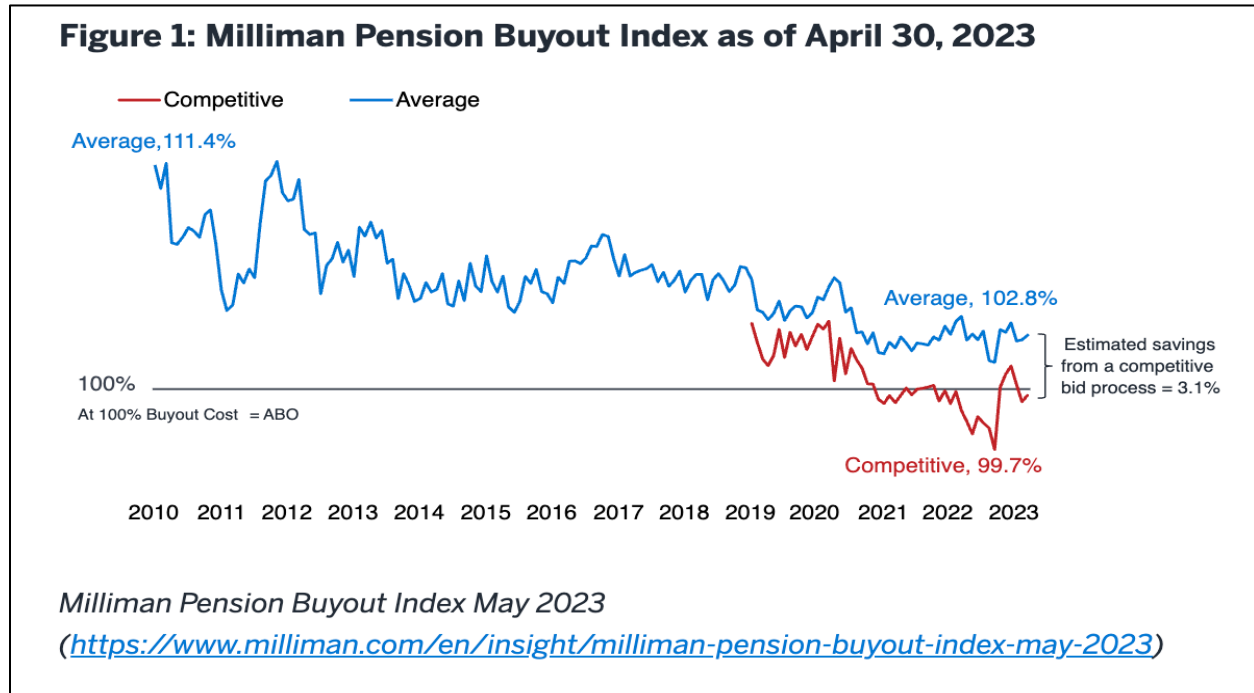
9. To be clear, this was done to save IBM money and make State Street money.

10. The spread between competitive and average bids in PRT transactions has widened, and employers like IBM choose the lowest-cost annuity provider in nearly 80% of PRT transactions:⁴

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³ See, e.g., Will Kenton, *What Is Statutory Accounting Principles (SAP)? Definition*, INVESTOPEDIA (last updated June 28, 2025), <https://www.investopedia.com/terms/s/sap.asp> (“The Statutory Accounting Principles (SAP) are a set of accounting regulations that govern the financial statements of insurance firms in the United States. They are prescribed by the National Association of Insurance Commissioners (NAIC). The overarching objective of SAP is to assist state regulators in monitoring the solvency of insurance companies.”); Kerry Pechter, *Bermuda’s Role in a Changing Annuity Industry*, RJI (Sep. 10, 2021), <https://retirementincomejournal.com/article/bermudas-role-in-a-changing-annuity-industry/> (“If low rates are a kind of desert, Bermuda represents a palm-fringed oasis. Its financial regulators use Generally Accepted Accounting Principles (GAAP). Under GAAP, estimates of annuity liabilities—what insurers owe to policyholders or contract owners—can be lower than under Statutory Accounting Principles (SAP), which insurers must follow when preparing financial statements for regulators in the US.”).

⁴ Fiona Ng et al., *Pension risk transfer: Staying current in a rapidly evolving market*, MILLIMAN (Jun 23, 2023), <https://www.milliman.com/en/insight/pension-risk-transfer-staying-current-evolving-market>; AON, *U.S. Pension Risk Transfer: Market Insights: March 2023*, at 12, whitepaper available for download at <https://www.aon.com/insights/reports/2023/us-pension-risk-transfer-market-insights> (“78% of the time, the lowest bidder was selected”).



11. Additionally, State Street has enormous financial stake in both Prudential, PICA’s direct parent and IBM, as explained below. *See infra* ¶¶ 166-171.

12. Defendants’ failure to reconcile massive, related party transactions that go directly to PICA’s ability to make pension payments to Plaintiff and Class Members for decades is at the heart of this case.

13. Attached hereto as **Exhibit A** and incorporated herein by reference is the Declaration, signed under penalty of perjury, of Thomas D. Gober, a Certified Fraud Examiner, for the purposes of analyzing the risk profile of PICA and comparing its risk profile with that of more suitable stewards for pension plan assets, using objective metrics and publicly available statutory financial statements (“Gober Decl.”).

14. Plaintiff maintains that Defendants ignored obvious red flags with respect to the scope and magnitude of PICA’s reliance upon affiliates within the same controlled group. In so doing, Defendants failed to conduct a reasonably thorough and complete analysis of PICA’s

exposure to captive and affiliated reinsurers and the specific risks and liquidity implications for off-loaded plan participants. According to Mr. Gober, PICA is among the riskiest insurance companies in the pension risk transfer (“PRT”) marketplace. Gober Decl. ¶ 36. It is not a suitable steward for Plan participants’ pensions.

15. Information about PICA’s exposure to affiliates can be readily obtained from its annual statutory financial statements that are filed in all U.S. jurisdictions where PICA transacts business. At a minimum, Defendants should have requested copies of statutory financial statements (which must be signed by top executives under penalty of perjury) that clearly detail affiliated party reinsurance and exposure to risky assets, including assets originated by affiliates. Had they done so, they would have realized that purchasing PICA issued group annuities for Plan participants was imprudent. If they did so, and chose PICA anyway, Defendants did so based on the cost savings and/or other financial benefits PICA offered to IBM and State Street out of self-interest, a course of action wholly inconsistent with the duties of loyalty that Defendants owed to the Plan participants under ERISA.

16. In choosing PICA, Defendants have unwillingly imposed on Plaintiff and the Class a material risk in violation of ERISA. Defendants’ own financial interests were improperly served in violation of ERISA that required they choose the “*safest available*” annuity provider. 29 C.F.R. § 2509.95-1 (emphasis added).

17. To remedy the breaches of fiduciary duties that led to the PICA deals, Plaintiff individually and on behalf of other individuals similarly situated, brings this action to obtain relief for Defendants’ ERISA violations, including requiring IBM contribute the amount it would have been required to pay in the form of fixed rate PBGC premiums into a fund for the benefit of all impacted plan participants, order Defendants to make good to the Class members all losses to

the Class resulting from Defendants' breach of fiduciary duties, including losses to the Class resulting from the transaction; order that Defendants pay the difference between the cost of selecting PICA as the annuity provider and the cost of selecting the safest annuity available, and/or equitable relief pursuant to 29 U.S.C. § 1132(a)(3) in the form of the imposition of a constructive trust, the posting of appropriate security to backstop the group annuity contract purchased from PICA, and injunctive relief to prevent IBM from holding the group annuity contract outside of the Plan and preventing IBM from depriving impacted retirees from ERISA's uniform and comprehensive protections.

JURISDICTION AND VENUE

18. The Court has federal subject matter jurisdiction under 28 U.S.C. § 1331 because Plaintiff's claims for relief arise under ERISA. 29 U.S.C. §§ 1001, *et seq.*

19. Venue of this action lies in the District of Massachusetts, pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 1132(e)(2), in that Defendant State Street maintains its principal place of business in this District, and Defendant IBM has substantial business operations in the District of Massachusetts.⁵ In addition, the alleged breaches occurred in this district because many class members earned their pension benefits while working for IBM in the District of Massachusetts, the breach took place in this district, and this district is a convenient forum for all parties to resolve this dispute.

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⁵ IBM also has an office in Cambridge, MA. *See* <https://ibm-zcouncil.com/venues/ibm-office-boston-ma-cambridge/>.

STANDING

20. Plaintiff has standing to bring this action based upon several distinct injuries-in-fact traceable directly to Defendants’ conduct that can be fully remedied by a decision from this Court.

21. The PICA annuitizations created a substantial risk of imminent harm that satisfies Article III. As described in detail below and in the attached Gober Declaration, PICA is a high-risk annuity provider likely to fail. *See, e.g.*, Gober Decl. ¶ 55 (“In 2024 alone, several life and annuity issuers were placed into rehabilitation or subjected to regulatory action These recent failures had two things in common[.]”). Should PICA fail, plan participants like Plaintiff will not receive the earned benefits to which they are entitled.

22. Even if PICA does not fail immediately, the scope and magnitude of the affiliated party reinsurance exposure that PICA has with affiliates located in “regulation light” jurisdictions, and their high concentrations of high risk assets, make PICA a likely candidate right now for state regulatory action that would cause immediate disruptions or delays in periodic payments that Plaintiff and Class Members expect to receive for the rest of their life and payments that Plaintiff and Class Members plan to leave to their spouses and/or beneficiaries. *See* Gober Decl. ¶ 29.

23. As noted in more detail below, affiliated party reinsurance, opaque modified coinsurance arrangements, and investments in affiliates led to a number of regulatory actions against other insurers in 2024 and 2025 that have already resulted in disruptions in payments to those insurer’s policyholders. In the case of PHL Variable, the Connecticut Superior Court entered a Moratorium Order that immediately and significantly reduced policy benefits, withdrawals and death benefit payouts tied to Guaranty Association cap limits, discussed in greater detail *infra*. Disruptions and delays are likely to occur in other notable insurance company rehabilitation

proceedings, including the Rehabilitation of Columbian Mutual Life Insurance Company (NY) and its subsidiary Columbian Life Insurance Company (Illinois). No insurance company has ever been successfully “rehabilitated” in the State of New York. The Executive Life of New York (“ELNY”) Rehabilitation lasted more than two decades and resulted in \$920,000,000 in losses to annuitants when the longstanding rehabilitation was converted to a liquidation that became effective in 2012—decades after the events that led to the inevitable reduction in benefits occurred. ELNY was a subsidiary of the Executive Life Insurance Company, which, as discussed below, failed in 1991 due to disruptions in the junk bond market and the failure of Drexel Burnam & Lambert. The Executive Life companies also faced regulatory action in New York due to questionable reinsurance practices in Bermuda, and ELNY’s attempt to solve their depleted surplus to satisfy the New York Insurance Commission through the use of Surplus Notes issued by affiliates to artificially bolster their surplus is similar to the high-risk practices identified in the Gober Declaration. *See* Gober Decl. ¶¶ 23-24, 43 (discussing how PICA’s captive reinsurers are able to use surplus notes); *id.* ¶ 25 (discussing use of contingent or conditional instruments). Clearly, a disruption in pension payments constitutes Article III standing, and, as with Executive Life and the other insurers described in this paragraph, it is likely to occur with respect to PICA as it engages in the same kinds of risky practices.

24. Plaintiff’s benefits have already been impaired by the loss of ERISA’s uniform protections, including uniform and complete annual disclosures, uniform protections from creditor claims, ERISA’s exacting fiduciary standards for Plan Fiduciaries, its funding requirements, and the backstop provided to all ERISA defined benefit plans by the PBGC.

25. While the PBGC provides substantial lifetime payments to pensioners in the event of a plan failure that are uniform, no matter where pensioners reside, the state guarantee association

(“SGA”) safety net is non-uniform, coverage amounts vary state to state (as described in more detail below) and SGAs are limited by statute in their ability to assess their membership in the event of an insolvency event. This non-uniform treatment of policyholders has a chilling effect on retirees. It impacts decisions related to relocating to be closer to family members, it impacts quality of life, and it has already created fear that a once secure pension is no more.

26. Plaintiff has also suffered harm. Plaintiff’s benefits are worth significantly less today than they were immediately prior to the IBM annuitization transactions as a result of Defendants’ improper and imprudent choice of PICA as steward for valuable pension assets. Plaintiff will be able to quantify the value of his lost benefits through expert actuarial testimony at trial, and Plaintiff will also be able to firmly establish that the transactions with PICA significantly and quantifiably reduced the value of his retirement security the moment the transactions occurred.

27. As described in more detail below, Plaintiff was significantly harmed by the fiduciary duty breaches by Defendants, which includes but is not limited to unwillingly imposing upon Plaintiff the risk premium associated with Defendants’ having selected PICA as a risky annuity provider. PICA’s extensive affiliated-party transactions mask its true, financial conditions. Moreover, PICA is under-reserved and concentrates its investments in risky assets, which means that, in the event of insolvency, PICA would be unable to fulfill its obligations to pay Plaintiff’s hard-earned pension benefits.

28. An analogy can be drawn by comparing annuities to bonds. Both provide a stream of income, but there are important differences in safety and risk.

29. A safe annuity is to a U.S. Treasury bond, as PICA is to a junk bond. PICA is cheaper up front but riskier in the long run. This distinction matters to Plaintiff but not Defendants.

30. Should PICA fail, Plaintiff’s and Class Members’ only recourse would be to

pursue a claim as third-party beneficiaries of annuity contracts they did not negotiate or sign. But even this avenue for seeking relief might be foreclosed to them. Life insurance companies, or their estates in Rehabilitation, will claim that they do not owe Plaintiff or Class Members any duty of care at all—let alone the highest fiduciary duty known to law that is a cornerstone of ERISA. Denial of a previously available right or remedy, including access to court, also sufficiently establishes standing under Article III.

PARTIES

31. Plaintiff Richard Spohn (“Plaintiff”) is a citizen of California who resides in San Martin, California. Plaintiff is a “participant,” as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), in the IBM Personal Pension Plan whose retirement benefits were annuitized in the 2022 transaction at issue in this case.

32. Plaintiff began working at IBM in or around September 1974 as a junior programmer. During his 36.5 years at IBM, Plaintiff held many titles, including system programmer, software developer, business partner relationship manager, corporate security lead, and first line manager. Plaintiff retired from IBM in March 2011.

33. PICA started making retirement benefit payments to Plaintiff on or around January 1, 2023.

34. Defendant International Business Machines Corp. (“IBM Corp.”) is incorporated in New York and has its principal place of business in Armonk, New York. IBM is a plan fiduciary because of its role in overseeing and appointing the other fiduciaries for the Plan. With respect to the transactions at issue, it acted as a fiduciary because it entered into a contract with PICA to purchase the group annuity.

35. Defendant IBM Retirement Plans Committee (the “Committee,” and, together with IBM Corp., “IBM”) is listed as the Plan administrator in Form 5500 filings with the Department of Labor. As such, it is a named fiduciary, and it is responsible for the general administration of the Plan.

36. Defendant State Street Global Advisors Trust Co. (“State Street,” and, together with IBM, “Defendants”) is a for-profit corporation with its principal place of business located at 1 Iron Street, Boston, Massachusetts 02210. State Street acted as the independent fiduciary with respect to the PICA annuity transactions and as such is a fiduciary with respect to its role in selecting PICA for the annuity transactions.

FACTUAL ALLEGATIONS

I. Background on the Transfer of Pension Benefit Responsibilities to Insurance Companies

37. In a defined benefit pension plan, the plan sponsor (typically the employer) agrees to pay monthly pension benefits to retirees as they come due for the rest of the participants’ lives, and it funds those benefits through assets contributed both initially and over time by the employer that are invested and held in trust for plan participants. The employer must pay the pension benefits, even if investment performance falls short of expectations.

38. The employer must also make additional contributions to the Plan in accordance with ERISA’s funding requirements, which demand additional plan contributions in certain circumstances, including if investment returns fall short of expectations and are insufficient to satisfy obligations to plan participants. Thus, the investment risk—the possibility that the plan’s investments will generate insufficient returns to cover the plan’s pension obligations and the expenses of operating the plan—is borne entirely by the plan sponsor.

39. If the sponsor goes bankrupt or otherwise lacks the resources to continue to fund

the Plan and pay required benefits, the PBGC—a wholly owned U.S. Corporation that administers an insurance program funded through annual premiums paid by all defined benefit pension plans or their sponsors—steps in as a backstop to pay benefits due.

40. These features of defined benefit plans make them both valuable and predictable for retirees. Such plans once dominated the American retirement system because they were correctly seen as a way to attract and retain the best workforce.

41. But because these plans are so valuable to employees, they are conversely expensive for employers. Consequently, as part of a recent trend by employers that sponsor defined benefit plans to improve their bottom lines, numerous sponsors have chosen to shift their liability for monthly pension payments to some or all of the plan participants, to an insurance company through the purchase of group annuity contracts.

42. The upside of such transactions—enjoyed by plan sponsors—is reduced costs⁶ and tax benefits;⁷ the downside—borne by plan participants—is the increased risk of losing promised retirement benefits because, if the annuity provider is unable to perform, the benefits are no longer guaranteed by their former employer and the PBGC.

43. Although these transactions are now a common way for employers to diminish their defined benefit liabilities (and to profit from such transactions) or to dispense with defined

⁶ See, e.g., Julie A. Su, *Department of Labor Report to Congress on Employee Benefits Security Administration's Interpretive Bulletin 95-1* (June 2024), U.S. DEP'T OF LABOR, at 5, <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/secure-2.0/report-to-congress-on-interpretive-bulletin-95-1.pdf> (“[P]lan sponsors have several reasons for engaging in pension risk transfers. Some may want to **avoid or reduce the cost** of maintaining the plan, the administrative responsibilities, or the impact and uncertainty that the plan’s funding may have on the contributing employers’ corporate balance sheets. ... Another reason plan sponsors may consider pension risk transfer is to **avoid or reduce the cost** of premiums payable to the Pension Benefit Guaranty Corporation (PBGC).”) (emphasis added) (internal citation omitted).

⁷ See *infra* ¶¶ 164-65.

benefit plans altogether, they are not new.

44. In the 1980s, hundreds of employers terminated their well-funded, federally insured defined benefit pension plans and bought retirement annuities from a variety of insurance companies, including Executive Life Insurance Company (“Executive Life”), which was then one of the country’s largest insurers, but which had embarked on a disastrous “junk bond” investment strategy.

45. The pension benefits of approximately 84,000 workers and retirees were transferred from the federally regulated pension system to Executive Life.

46. Executive Life was often selected by employers because it offered the lowest bid on group annuity contracts.⁸ Rather than choose a safer, more expensive annuity, employers placed their own financial interests over plan participants’ needs.

47. Those decisions proved disastrous when, in 1991, Executive Life became insolvent. A significant portion of its assets had been invested in high-risk, high-yield bonds procured through the Drexel Burnham Lambert (“Drexel”) investment bank, which then failed due to its risky bond strategy.

48. The failure of Drexel led to Executive Life defaulting on its annuity contracts, thereby failing to make good on its obligations to tens of thousands of pension annuitants. State regulators were required to seize the company in April 1991 to prevent a run. The debacle resulted in massive losses to pensioners and total losses to policy holders were estimated in the

⁸ See, e.g., *Pilkington PLC v. Perelman*, 72 F.3d 1396, 1397 (9th Cir. 1995) (“Of the four carriers that eventually submitted bids, ***Executive Life submitted the lowest by over \$13 million.***”) (emphasis added) (finding that ERISA allowed pension plan fiduciaries to sue a predecessor plan’s fiduciaries for losses incurred as a result of Executive Life’s collapse).

billions of dollars.⁹

49. Members of Congress were outraged by Executive Life’s implosion and its impact on retirees. In response, they enacted the Pension Annuitants Protection Act of 1994, Pub. L. No. 103-401 (Oct. 22, 1993) (“PAPA”), as an amendment to ERISA in order to prevent similar crises and ensure that plan participants would have legal recourse against risky pension transfers by plan fiduciaries.¹⁰ Through this amendment, ERISA now provides expressly that plan participants and beneficiaries ejected from the federal pension regulatory system by a plan sponsor’s purchase of annuities may sue for relief to, *inter alia*, assure the receipt of the benefits to which they are entitled. 29 U.S.C. § 1132(a)(9).

50. And in 1995, the Department of Labor (“DOL”) promulgated Interpretive Bulletin 95-1, 29 C.F.R. § 2509.95-1 (“IB 95-1”), which—like PAPA—aimed to prevent the irresponsible and therefore imprudent transfer of pension liabilities to insurance companies that are not sufficiently secure to guarantee retirement benefits, a principal animating force behind the enactment of PAPA and indeed ERISA itself. IB 95-1 has since been updated, consistent with that purpose.

51. IB 95-1 provides courts, regulated entities, and the public with the DOL’s expert

⁹ See, e.g., Lisa Girion, ‘Little People Floundering’ From Executive Life Losses, LA TIMES (Apr. 28, 2002), available at <https://www.latimes.com/archives/la-xpm-2002-apr-28-fi-execlife28-story.html> (“The Executive Life debacle has become a morass of insurance and banking laws and complex international investment deals. Lost in all the legal battles is the fact that thousands of policyholders are out billions of dollars.”).

¹⁰ See, e.g., 3 ERISA PRACTICE AND PROCEDURE § 8:92 (“ERISA was amended by the Pension Annuitants Protection Act of 1994, which amended ERISA by adding § 502(a)(9) to clarify that former participants or beneficiaries of terminated pension plans have standing to seek relief where, as here, a fiduciary breach has occurred involving the purchase of insurance contracts or annuities in connection with their termination as plan participants.”); see also *Kayes v. Pac. Lumber Co.*, 51 F.3d 1449 (9th Cir. 1995) (“Accordingly, under ERISA § 502(a)(9), 29 U.S.C. § 1132(a)(9), Plaintiffs have standing to sue for ‘appropriate relief, including the purchase of a back-up annuity to remedy the breach.’”) (internal citations omitted).

guidance on the fiduciary standards that apply under ERISA to the selection of an annuity provider when a fiduciary transfers defined benefit pension liabilities to an annuity provider. *See* IB 95-1(a).

52. It explains that selecting an annuity provider is a fiduciary decision under ERISA, 29 U.S.C. § 1104(a), and that employers therefore must act solely in the interest of the plan’s participants and beneficiaries and in accordance with ERISA’s strict prudence standard when selecting an annuity provider. IB 95-1(b) (citing 29 U.S.C. § 1104(a)).

53. Thus, to meet their loyalty and prudence obligations in selecting an annuity provider, fiduciaries must obtain the “safest annuity available,” unless good and substantial reasons dictate that a different (but safe) annuity better serves plan participants and beneficiaries. IB 95-1(c), (d). “[I]ncreased cost or other considerations could *never* justify putting the benefits of annuitized participants and beneficiaries at risk by purchasing an unsafe annuity,” and fiduciaries “may have to condition the purchase of annuities on additional employer contributions sufficient to purchase the safest available annuity.” IB 95-1(d) (emphasis added). Fiduciaries must also, at a minimum, “***conduct an objective, thorough and analytical search for the purpose of identifying and selecting providers from which to purchase annuities.***” IB 95-1(c) (emphasis added).

54. In performing that analysis, plan fiduciaries must consider “a number of factors relating to a potential annuity provider’s claims paying ability and creditworthiness[,]” and “[r]eliance solely on ratings provided by insurance rating services would not be sufficient to meet this requirement.” *Id.* For example, fiduciaries may consider:

- (i) the quality and diversification of the annuity provider’s investment portfolio;
- (ii) the size of the insurer relative to the proposed contract;

- (iii) the level of the insurer's capital and surplus;
- (iv) the lines of business of the annuity provider and other indications of an insurer's exposure to liability;
- (v) the structure of the annuity provider and other indications of an insurer's exposure to liability;
- (vi) the availability of additional protection through state guaranty associations and the extent of their guarantees.

29 CFR § 2509.95-1(c).

55. Moreover, in June 2024, the DOL's Employee Benefits Security Administration ("EBSA") "conducted more than 40 stakeholder meetings regarding the Interpretive Bulletin"¹¹ and reported its findings to Congress.

56. In its report to Congress, the EBSA noted stakeholder concern among topics including, *inter alia*, surplus, risky investment strategies,¹² the increasing involvement of private equity,¹³ reinsurance and modified coinsurance,¹⁴ insufficient disclosures pertaining to partial buy-out transactions,¹⁵ and, notably, the loss of PBCG protections.¹⁶

57. In the report, EBSA council members provided recommendations the DOL take with respect to updating and/or amending IB 95-1, including:

One member of the Council recommends DOL update 95-1 to provide for the ***consideration of additional factors in assessing an annuity provider's level of capital and surplus*** as it relates to its claims paying ability and creditworthiness.

DOL should update IB 95-1 to provide that in evaluating a potential annuity provider's level of capital and surplus, as well as its claims paying ability and creditworthiness, a fiduciary should evaluate additional issues,

¹¹ Julie A. Su, *Department of Labor Report to Congress on Employee Benefits Security Administration's Interpretive Bulletin 95-1*, at 2.

¹² *Id.* at 11-14.

¹³ *See generally id.*

¹⁴ *Id.* at 17-18.

¹⁵ *Id.* at 23-24.

¹⁶ *Id.* at 24-25.

including the insurer’s *risk-based capital (RBC) ratio; how reinsurance or modified coinsurance agreements with offshore affiliates or affiliates in states that have less strict requirements than the majority of U.S. states might affect the reported ratio*, especially with respect to significant allocation of their investment portfolios to alternative investments that come with greater risk; and whether the insurer is properly reserved under statutory accounting principles (“SAP”).¹⁷

58. These concerns—including but not limited to the insurer’s level of surplus, claims-paying ability, risk-based capital ratio, reinsurance and modified coinsurance, non-traditional liabilities, and loss of PBGC protections—are all present in the IBM/PICA transaction.

59. Defendants should have taken additional care in selecting PICA, in light of the fact that PICA’s parent company had—just months prior to the transaction—settled a \$35 million lawsuit alleging that it “*hid mortality trends and understated its life insurance reserves*, causing its stock to trade at inflated prices.”¹⁸ This lawsuit had been filed years before the transactions at issue (and settled months before the 2024 transaction), so Defendants should have been aware of this litigation.¹⁹

60. The plaintiffs in that case alleged, *inter alia*, that “[PRU] stated that current reserves were likely to be greater than necessary, thus falsely suggesting that its income and financial strength may be understated[.]” No. 2:19-cv-20839, ECF No. 22, at ¶ 8 (citing 2018 Form 10-K).

61. The plaintiffs also alleged “the Company’s earnings were overstated and liabilities understated, undermining the Company’s guidance and ability to drive growth going forward.” *Id.* ¶ 16.

¹⁷ *Id.* at 12.

¹⁸ Henrik Nilsson, *Prudential Inks \$35M Deal Over Investor’s Stock-Drop Suit*, LAW360 (Feb. 14, 2024), <https://www.law360.com/articles/1803134> (emphasis added).

¹⁹ See generally *City of Warren Police and Fire Retirement System v. Prudential Financial, Inc. et al.* (“*City of Warren*”), No. 2:19-cv-20839 (D.N.J. Nov 27, 2019); see also *City of Warren, Order Awarding Attorneys’ Fees and Expenses* ¶ 6, ECF No. 78 (“The Settlement has created a fund of \$35,000,000 in cash, ...”).

62. Likewise, here, Plaintiff alleges that PICA engages in practices that impact its ability to come up with liquidity and make good on its obligations. PICA's strength may be overstated and its liabilities understated due to, *inter alia*, PICA's use of captive reinsurers in secrecy jurisdictions, PICA's broad exposure to pension risk transfers generally, the fact that PICA and its insurer affiliates hold excessive concentrations of higher-risk, less liquid investments, and because PICA has billions of dollars of investments in affiliates. *See, e.g.*, Gober Decl. ¶ 69 ("Especially troubling are their concentrations of commercial mortgages, Schedule BA 'Other LT Invested Assets' and 'other Loan-Backed & Structured Securities.'"); *see also id.* ¶¶ 19, 39, 64.

II. The Annuity Transactions at Issue

63. On September 13, 2022, IBM reported as follows in a Form 8-K²⁰ filed with the United States Securities and Exchange Commission ("SEC"):

Item 8.01. Other Events.

On September 7, 2022, International Business Machines Corporation ("IBM" or the "Company") and State Street Global Advisors Trust Company, as independent fiduciary of the IBM Personal Pension Plan (the "Plan"), entered into two separate commitment agreements, one with The Prudential Insurance Company of America ("Prudential") and one with Metropolitan Life Insurance Company (collectively, the "Insurers") under which the Plan agreed to purchase nonparticipating single premium group annuity contracts that will transfer to the Insurers approximately \$16 billion of the Plan's defined benefit pension obligations related to certain pension benefits that began to be paid prior to 2016.

The purchase of the group annuity contracts closed on September 13, 2022. The contracts cover approximately 100,000 IBM participants and beneficiaries (the "Transferred Participants"). Under the group annuity contracts, each Insurer has made an irrevocable commitment, and will be solely responsible, to pay 50% of the pension benefits of each Transferred Participant that are due on and after January 1, 2023. Prudential will be the lead administrator. The transaction will result in no changes to the amount of benefits payable to the Transferred Participants.

The purchase of the group annuity contracts was funded directly by assets of the Plan and required no cash or asset contributions of the Company. As a result of the transaction, the Company expects to recognize a one-time non-cash pre-tax pension settlement charge of approximately \$5.9 billion (\$4.4 billion net of tax) in the third quarter of 2022. The actual

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https://www.sec.gov/ix?doc=/Archives/edgar/data/0000051143/000110465922099631/tm2225734d1_8k.htm

charge will depend on finalization of the actuarial and other assumptions. The pre-tax charge was not included in the GAAP forward-looking information released on July 18, 2022. This charge will not impact the Company's third quarter or full year 2022 operating (non-GAAP) profit or free cash flow.

64. Similarly, on September 11, 2024, IBM reported as follows in a Form 8-K²¹:

Item 8.01. Other Events.

On September 5, 2024, International Business Machines Corporation ("IBM" or the "Company") and State Street Global Advisors Trust Company, as independent fiduciary of the IBM Personal Pension Plan (the "Plan"), entered into a commitment agreement with The Prudential Insurance Company of America ("Prudential") under which the Plan will purchase a nonparticipating single premium group annuity contract that will transfer to Prudential approximately \$6 billion of the Plan's defined benefit pension obligations related to certain pension benefits that began to be paid prior to 2016.

The purchase of the group annuity contract closed on September 11, 2024. The contract covers approximately 32,000 Plan participants and beneficiaries (the "Transferred Participants"). Under the group annuity contract, Prudential has made an irrevocable commitment, and will be solely responsible, to pay the pension benefits of each Transferred Participant that are due on and after January 1, 2025. The transaction will result in no changes to the amount of benefits payable to the Transferred Participants.

The purchase of the group annuity contract was funded directly by assets of the Plan and required no cash contribution from the Company. As a result of the transaction, the Company expects to recognize a one-time non-cash pre-tax pension settlement charge of approximately \$2.7 billion (\$2.0 billion net of tax) in the third quarter of 2024. The actual charge will depend on finalization of the actuarial and other assumptions. The pre-tax charge was not included in the GAAP forward-looking information released on July 24, 2024. This charge will not impact the Company's third quarter or full year 2024 operating (non-GAAP) profit or free cash flow.

65. As a result of these transactions with PICA, 132,000 retirees will not receive pension benefits promised by IBM. Instead, PICA is now responsible for these pension benefits.

66. The IBM/PICA transactions were neither prudent nor loyal and, as such, they undermined the protective scheme set up by Congress in ERISA. These transactions eliminated IBM's obligations to pay many millions of dollars in annual premiums to the PBGC and placed the retirees in an inferior and non-uniform state regulated regime that only offers minimal protections through state guaranty associations ("SGAs"), which apply based on the state in which

²¹ https://www.sec.gov/Archives/edgar/data/51143/000110465924098942/tm2423753d1_8k.htm

the annuitants reside. These SGAs do not provide retirees with nearly as much uniform protection in the event of insolvency by PICA as does the PBGC under the federal ERISA-governed system, and most of them are not pre-funded and can only seek contributions from insurers in their state based on the amount of premium written in any given year.²² Prior to the 2022 transaction, Plaintiff and all putative class members had Plan benefits that were insured or guaranteed by the federal PBGC at age 65 up to the annual limit of approximately \$74,454.60 for a single life annuity (for the participant alone) and \$67,009.20 for a joint and 50% survivor annuity (which continues to provide benefits to surviving spouses for their lifetimes). These limits are per year, per retiree and that annual protection is for an unlimited number of consecutive years.²³ For a plan participant age 75, that coverage amount increases to \$226,341.96 per year for a straight life annuity and \$203,707.80 for joint and 50% survivor annuity as the protected annual PBGC benefit limit is much higher for older retirees and PBGC benefits increase as a function of age, unlike state guaranty association coverage limits which are per individual, per lifetime and wholly unsuitable for annuities that are generally paid out monthly over many years. Once Plaintiff and putative Class Members were removed from the Plan and transferred by IBM to PICA, they lost all federal PBGC protections which were replaced by the insufficient and varying state guaranty coverage amounts determined by the retirees' state of residence at the time of the insurance company insolvency or impairment. The amount of state guaranty coverage usually ranges from \$250,000

²² See, e.g., NY DEP'T OF FIN. SERVICES, *Guaranty Fund Protection in New York State* https://www.dfs.ny.gov/consumers/health_insurance/financial_stability_and_the_department_of_financial_services (last retrieved on July 26, 2025) ("The [New York] Guaranty Fund is funded through assessments against member insurers made after a member insurer is declared insolvent by a court of law. These funds are used to pay valid claims, as well as administrative expenses.").

²³ See PBGC, MAXIMUM MONTHLY GUARANTEE TABLES, <https://www.pbgc.gov/wr/benefits/guaranteed-benefits/maximum-guarantee> (last accessed Aug. 1, 2025).

to \$500,000 per individual, per lifetime depending upon the state of residency of the retiree at the time of insolvency or impairment of the annuity provider as determined under non-uniform state insurance laws.

67. Life expectancy is a range—not a date. As life expectancy continues to increase, the actual duration over which annuities like PICA must make payments to certificate holders like Plaintiff can be much longer than anticipated. This can present major issues down the road. The following example is illustrative:

Mr. Ponzi recommends that a plan fiduciary purchase an annuity contract from Joe’s Bar and Grill. Joe’s Bar and Grill only has enough cash to make payments for 10 years before it defaults.

68. In this example, ten years is not tomorrow. But forcing retirees to inadequate, lower means of subsistence in their later years is inconsistent with their hard-earned pension benefits that ERISA was designed to protect.

69. Moreover, delays and reductions in payments from SGAs in the event of insolvency or impairment is highly likely. This is because SGAs are funded through assessments of the member insurance companies. Most guaranty associations limit the amount of assessments authorized under the relevant Guaranty Association statute to a small percentage²⁴ of a member insurer’s average annual premiums received in their state of domicile during recent years.²⁵ And

²⁴ *E.g.*, 2%. *See, e.g.*, Cal. Ins. Code § 1067.08 (“[T]he total of all assessments authorized by the association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the health account *shall not in one calendar year exceed 2 percent* of that member insurer’s average annual premiums received in this state....”) (emphasis added).

²⁵ *See* AMERICAN COUNCIL OF LIFE INSURERS, *Insurance Guaranty Associations: Frequently Asked Questions* (June 2010), at <https://www.acli.com/-/media/acli/public/files/pdfs-public-site/public-public-policy/guarantee-associations-faq.pdf> (“These assessments (together with the assets of the insurer) are then used to pay, *up to statutory limits*, the covered claims of policyholders of the insolvent company. ... These assessments are based on each member’s share of premium during the *prior three years*.”) (emphasis added).

SGAs have never been tested with the failure of an annuity provider as large as PICA. Despite being a fraction the size of PICA, the Executive Life of New York rehabilitation lasted more than two decades and resulted in \$920,000,000 in losses to annuitants.

70. IBM retirees and their spouses and beneficiaries, especially those residing in states with the lowest protection levels, were immediately harmed by receiving unsafe and inappropriate annuities that are worth far less than available annuities that were safe and appropriate. Indeed, some would be left with less than two years of pension replacement coverage in the event of a liquidation of PICA. And this harm is not theoretical given the risky nature of PICA, which, as discussed next, is dramatically under-reserved and has concentrated investments in affiliated risky assets and exposure to affiliated reinsurers that hide its true financial condition.

71. Moreover, inferior coverage limits in the event of an insurance company insolvency create immediate, genuine and substantial economic harm for retirees. It influences retirees' quality of life, the ability to relocate to be closer to family members in other states, investment decisions involving other assets, and retiree healthcare choices and treatment. All of these lost benefits can be readily ascertained and quantified by experts.

72. By way of example, Plaintiff Spohn's pension was fully protected by the PBGC before his pension was offloaded to PICA in September of 2022. Prior to the transaction, no matter how long Mr. Spohn lives, there are no realistic scenarios where he would have his pension benefits reduced, even in the event that IBM goes out of business and the PBGC takes over the pension plan. If PICA were to fail on the other hand, and Mr. Spohn remained a California resident at the time of PICA's failure and had to depend upon the California Life and Health Insurance Guaranty Association for payment, the maximum amount of coverage he would be entitled to is 80% of \$250,000 or \$200,000 and that amount would only be paid out following a final order of

Liquidation. That is approximately \$216,000 less than the dollar amount of payments he is expected to receive over his lifetime based on his life expectancy taken directly from the Social Security Administration life expectancy tables.²⁶ Given this quantifiable shortfall, the loss of PBGC protection is a real and tangible harm for Mr. Spohn and others impacted by the annuitization transactions at issue in this case.

73. The impact on Mr. Spohn gets worse if he lives beyond his life expectancy, as his benefits are capped under state law while they would have been uncapped under ERISA.

74. Even aside from lifetime limits, retirees like Mr. Spohn, located in California, lose **20% of the present value of their coverage amount** immediately following any declaration of insolvency or impairment. Cal. Ins. Code § 1067.02. Thus, in California, **coverage is never 100% of the value of the annuity but is limited to 80% of the present value of the annuity contract** up to a maximum of \$250,000. Cal. Ins. Code § 1067-1067.18.²⁷

75. In addition to the immediate loss of PBGC coverage, as a result of the IBM/PICA transactions, Plaintiff and all other impacted retirees lost all of their uniform ERISA protected rights, including mandated annual financial disclosures, the ability to sue in federal court under a protective federal scheme that imposes exacting fiduciary duties on the company and others who manage the Plan and its assets, and a claims procedure that must be “full and fair.”²⁸ PICA is not

²⁶ See <https://www.ssa.gov/cgi-bin/longevity.cgi> (13 years from the date of this complaint x approximately \$32,000 annual pension = \$416,000).

²⁷ See also *FAQs*, CALIFORNIA LIFE & HEALTH INSURANCE GUARANTEE ASSOCIATION, <https://www.califega.org/About>. (“**Present value of annuity benefits including net cash surrender and net cash withdrawal values:** 80% of the present value up to a maximum of \$250,000.”).

²⁸ “Section 503 of ERISA requires plans to set up procedures to provide a full and fair review of denied benefit claims.” US DEP’T OF LABOR (EBSA), BENEFIT CLAIMS PROCEDURE REGULATION *FAQs*, <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/benefit-claims-procedure-regulation>.

required to disclose to any transferred retiree how his or her annuity funding is invested and who is in charge of the underlying investments. Nor is PICA required to explain the impact of all of the affiliated party transactions on PICA's reserves. On the contrary, PICA's reinsurance transactions with its captive and offshore affiliates and reinsurers are all secret.

76. The IBM/PICA transactions are not what Plaintiff and the potential class of retirees bargained for when they loyally served IBM. If their benefits were replaced by annuities, they had the right under ERISA and its implementing regulations to expect that these annuities would be the safest available and selected prudently and loyally. The involuntary removal of Plaintiff and the putative class of retirees from the Plan and transfer to PICA is not in Plaintiff's and putative Class Members' best interests because the group annuity contracts were risky and therefore imprudent, as discussed next.

III. IBM's and State Street's Choice of PICA was Imprudent

77. Even a cursory review of PICA's statutory filings reveals a shocking dependence on affiliated party transactions with wholly owned affiliates and captive reinsurers and affiliates in Bermuda. In SCHEDULE S - PART 3 - SECTION 1 of PICA's 2023 annual statement, PICA reports all of its ceded²⁹ reinsurance with affiliates and its opaque Modified Co-insurance ("ModCo") transactions with affiliates, described in detail herein. As set forth in the chart directly below, PICA reported liabilities offloaded (via reinsurance or ModCo) to wholly owned

²⁹ "Reinsurance ceded is the action taken by an insurer to pass off a portion of its obligation for coverage to another insurance company. ... Reinsurance assumed is the acceptance of that obligation by another insurance company." Caroline Banton, *Reinsurance Ceded: Definition, Types, Vs. Reinsurance Assumed*, INVESTOPEDIA (last updated Mar. 27, 2022), <https://www.investopedia.com/terms/r/reinsurance-ceded.asp>.

captives and affiliates in the amount of \$72,884,344,104 as of December 31, 2023.

ANNUAL STATEMENT FOR THE YEAR December 31, 2023 OF THE The Prudential Ins Co Am (NAIC #68241)

SCHEDULE S - PART 3 - SECTION 1

Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities

	Reserve Credit Taken	Modified Coinsurance Reserve
General Account - Authorized - Affiliates US - Captive	0	0
General Account - Authorized - Affiliates US - Other	59,576,712,067	0
General Account - Authorized - Affiliates Non-US - Captive	0	0
General Account - Authorized - Affiliates Non-US - Other	0	0
General Account - Authorized - Affiliates - Total	59,576,712,067	0
General Account - Unauthorized - Affiliates US - Captive	7,498,417	0
General Account - Unauthorized - Affiliates US - Other	0	0
General Account - Unauthorized - Affiliates Non-US - Captive	0	0
General Account - Unauthorized - Affiliates Non-US - Other	2,292,791,790	11,007,341,830
General Account - Unauthorized - Affiliates - Total	2,300,290,207	11,007,341,830
Total US	59,584,210,484	0
Total Non-US	2,292,791,790	11,007,341,830
TOTAL	\$61,877,002,274	\$11,007,341,830

TOTAL Res Cr + ModCo: \$72,884,344,104

Gober Decl. ¶ 15.

78. \$72.8 billion in affiliated party reinsurance and ModCo is especially shocking when compared to PICA's surplus, which is not only a measure of the risk associated with the annuitized pensions, but surplus is the only buffer protecting policyholders if PICA or RGA become insolvent or impaired. As set forth in the chart on the following page, as of December 31, 2023, PICA had a mere surplus of \$16 billion. This means that if even a portion of the \$72.8 billion in affiliated party reinsurance and ModCo is problematic, PICA will face extreme liquidity and solvency concerns.

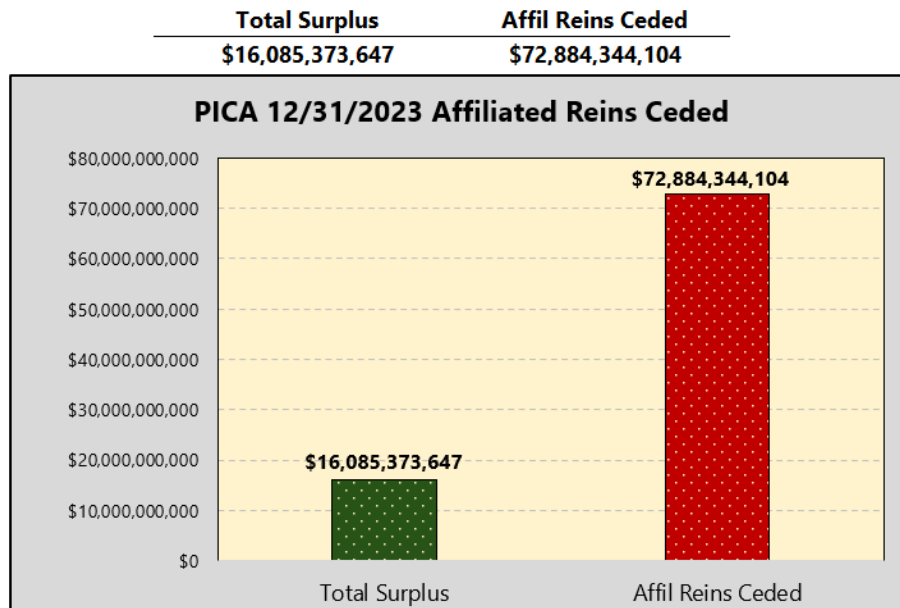
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PICA Dec 31, 2023 Sch S, Part 3 - Section 1:

Gober Decl. ¶ 16.

79. In addition to the credit for reinsurance that PICA has taken through non-arm's length transactions with affiliates, SCHEDULE S - PART 1 - SECTION 1 of PICA's own statutory financial statement shows all reinsurance assumed by PICA from its own affiliates. When PICA assumes reinsurance from an affiliate, it agrees to take financial responsibility for certain specified liabilities owed by those affiliates. The chart on the following page was prepared using data from PICA's 2023 Annual Statement, and it lists all reinsurance assumed by PICA from its affiliates including captives, U.S. affiliates, and non-U.S. affiliates as of December 31, 2023.

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ANNUAL STATEMENT FOR THE YEAR December 31, 2023 OF THE The Prudential Ins Co Am (NAIC #68241)

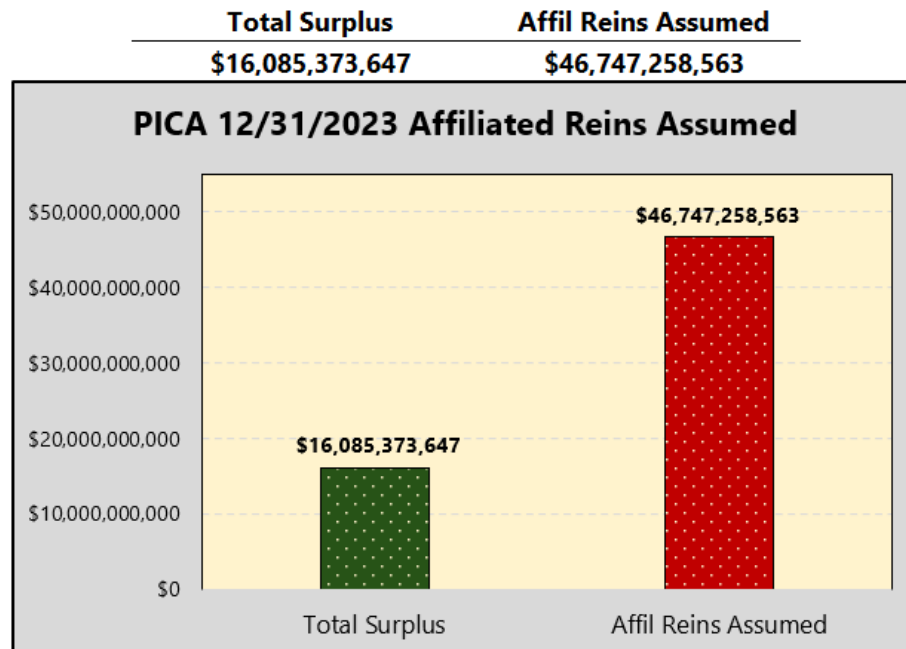
SCHEDULE S - PART 1 - SECTION 1**Reinsurance Assumed Life Insurance, Annuities, Deposit Funds and Other Liabilities**

	Reserve	Reinsurance Payable on Paid and Unpaid Losses	Modified Coinsurance Reserve
General Account - Affiliates - US - Captive	3,155,064,916	622,762,989	0
General Account - Affiliates - US - Other	470,381,323	31,402,000	0
General Account - Affiliates - Non-US - Captive	0	0	0
General Account - Affiliates - Non-US - Other	32,759,385,557	354,784,712	0
General Account - Affiliates - Total	36,384,831,796	1,008,949,701	0
Separate Accounts - Affiliates - US - Captive	0	0	0
Separate Accounts - Affiliates - US - Other	0	0	9,353,477,066
Separate Accounts - Affiliates - Non-US - Captive	0	0	0
Separate Accounts - Affiliates - Non-US - Other	0	0	0
Separate Accounts - Affiliates - Total	0	0	9,353,477,066
General Account & Separate Accounts - US	3,625,446,239	654,164,989	9,353,477,066
General Account & Separate Accounts - Non-US	32,759,385,557	354,784,712	0
TOTAL	\$36,384,831,796	\$1,008,949,701	\$9,353,477,066

TOTAL Res + Reins Payable + ModCo: \$46,747,258,563

Gober Decl. ¶ 17.

80. The bar graph below compares PICA's assumed reinsurance of \$46.7 billion, with its surplus of only \$16 billion.

PICA Dec 31, 2023 Sch S, Part 1 - Section 1:

Gober Decl. ¶ 18.

81. In addition to PICA taking billions of dollars in credit for reinsurance that it ceded to affiliates and in addition to PICA assuming billions in reinsurance obligations from its own affiliates, PICA affiliates, including Pruco Life Insurance Company (AZ) (“Pruco Life”) have likewise ceded billions in liabilities to the secret captive reinsurers domiciled in Arizona that are wholly owned by PICA itself. *See* Pruco Life’s reported reinsurance ceded totals from their sworn annual statement for year-end 2023, in particular SCHEDULE S - PART 3 - SECTION 1, highlighted in the chart set forth directly below.

ANNUAL STATEMENT FOR THE YEAR December 31, 2023 OF THE Pruco Life Insurance Co (NAIC #79227)

SCHEDULE S - PART 3 - SECTION 1

Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities

	Reserve Credit Taken	Modified Coinsurance Reserve
General Account - Authorized - Affiliates US - Captive	45,704,022,380	0
General Account - Authorized - Affiliates US - Other	83,080,596	0
General Account - Authorized - Affiliates Non-US - Captive	0	0
General Account - Authorized - Affiliates Non-US - Other	0	0
General Account - Authorized - Affiliates - Total	45,787,102,976	0
General Account - Unauthorized - Affiliates US - Captive	0	0
General Account - Unauthorized - Affiliates US - Other	0	0
General Account - Unauthorized - Affiliates Non-US - Captive	0	0
General Account - Unauthorized - Affiliates Non-US - Other	1,820,590,176	12,586,961,064
General Account - Unauthorized - Affiliates - Total	1,820,590,176	12,586,961,064
Total US	45,787,102,976	0
Total Non-US	1,820,590,176	12,586,961,064
TOTAL	\$47,607,693,152	\$12,586,961,064

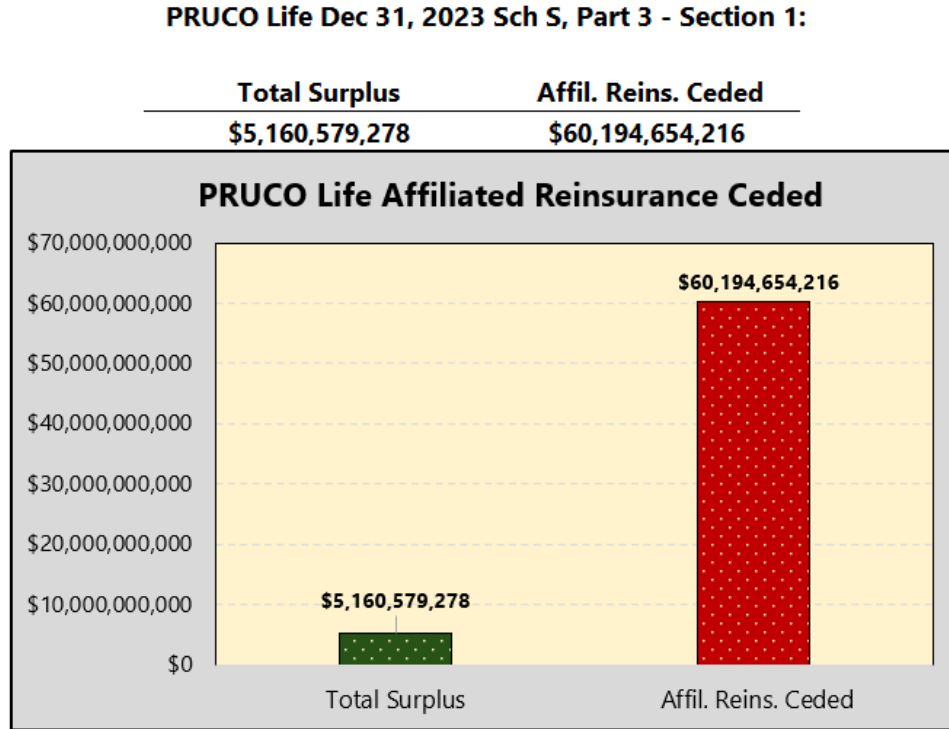
TOTAL Res Cr + ModCo: \$60,194,654,216

Gober Decl. ¶ 19.

82. While Pruco Life depends upon PICA’s wholly owned captives for more than \$60 billion in liabilities, Pruco Life’s total surplus as of December 31, 2023 was only \$5.16 billion. Said another way, if PICA’s wholly owned captives cannot make good on their IOU’s to Pruco Life, Pruco Life’s surplus will be entirely wiped out. This is demonstrated in the chart below.

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Gober Decl. ¶ 20.

83. In addition to all of the liabilities ceded to the secret captives by PICA, Pruco Life is also owed more than \$60 billion from PICA’s wholly owned Arizona captives and affiliates, most of which PICA values at zero.³⁰ This type of financial alchemy and circular non-arm’s length reinsurance among affiliates within the same controlled group exposes class members to significant and quantifiable risk of losing their hard-earned pension benefits that far exceeds the risk of loss that they would have if IBM had purchased a group annuity with an appropriate and more transparent insurer. *See* Gober Decl. ¶ 54 (“I am confident that PICA’s statutory surplus is significantly overstated when considering the exposure PICA has to Pruco Life ...”).

84. In addition to the circular movement of liabilities among affiliates, PICA’s

³⁰ *See infra* ¶ 115 (evidencing that PICA values the captives at zero).

affiliated captive reinsurers in Arizona all count surplus notes or other debt-like financing instruments as assets, a practice that understates the liabilities of the captives. Yet, as reported in the State of New Jersey Report on Group-Wide Examination of Prudential Financial, Inc., a report filed on June 26, 2023, all seven (7) Arizona captive reinsurance companies owned 100% by PICA (the “Arizona Captives”) employ this practice to prop up their financial statements funding “the assets supporting the non-economic reserves it retains with proceeds from the issuance of surplus notes or other financing instruments.” Gober Decl. ¶ 23.

85. Surplus notes are debt instruments that are subordinated to policyholder claims.³¹ Yet, all of the AZ Captives report their surplus notes as “assets,” including credit linked surplus notes,³² which are really debt instruments attached to a derivative contract.

86. PICA’s Arizona Captives also count conditional letters of credit and parental guarantees as assets. These types of conditional instruments could never be reported as “admitted assets” at a regulated U.S. based primary insurance company due to their conditional nature. *See* Gober Decl. ¶ 43.

87. The ability of PICA’s wholly owned affiliates to make good on their insider reinsurance “IOUs” is entirely speculative and opaque because PICA’s captives do not make their financials publicly available. *See* Gober Decl. ¶ 26; *see also id.* ¶ 38.

88. PICA has excessive exposure to ModCo transactions with those same affiliates and captives. In a typical arm’s length reinsurance contract, an insurance company like PICA

³¹ *See, e.g., GAAP & SAP Surplus Notes*, JONSONLAMBERT CPAS + CONSULTANTS, <https://ondemandlearning.johnsonlambert.com/gaap-sap-surplus-notes/> (“Surplus notes are a form of unsecured debt that is subordinated to all claims by policyholders and creditors.”).

³² “Surplus notes issued pursuant to ARS § 20-725 are to be reported as surplus items in the capital section rather than a liability in accordance with GAAP[.]” ARIZONA CAPTIVE INSURER REFERENCE GUIDE (Feb. 2022), https://difi.az.gov/sites/default/files/CID%20RefGuide_NonRRG%2002%202022.pdf.

transfers a portion of its liabilities and some of the associated assets to a reinsurance company. PICA remains liable to its policyholders but can claim against the reinsurer if certain agreed upon triggers are reached. With ModCo on the other hand, an insurance company like PICA keeps both the assets and all of the liabilities associated with certain blocks of business and only transfers risk and regulatory capital requirements to its reinsurer. As a consequence, PICA which has substantial ModCo exposure to affiliates, holds much less capital in the form of reserves than insurance companies that do not use ModCo—all other things being equal. ModCo also enables the ceding insurer to transfer asset risk to the reinsurer even though the assets themselves are held in a trust account under the control of the ceding insurer. This allows ceding insurers like PICA to artificially inflate their risk-based capital (“RBC”) ratios – a metric prescribed by the National Association of Insurance Commissioners (“NAIC”) to impose safe capital requirements on all insurance companies in order to avoid regulatory action and protect against insolvency. The RBC system calculates the amount of capital that an insurance company needs to hold to support asset risk, interest rate risk, insurance risk and other risks. Asset risk carries substantial weight in the RBC calculation. A high RBC ratio means that an insurance company is well capitalized; a low RBC ratio can trigger regulatory action. Because of PICA’s ModCo transactions, a significant component of the investment risk associated with risky assets like junk bonds, collateralized debt obligations (“CDOs”) collateralized loan obligations (“CLOs”), illiquid private debt or commercial real estate is transferred to their affiliated reinsurers and does not factor into their RBC calculations. As a result, PICA reports a higher RBC ratio than it would otherwise be required to report if the risky assets artificially off-loaded via ModCo transactions with its own wholly owned affiliates were included in its RBC calculations. *See* Gober Decl. ¶ 28.

89. As noted by the authors of *Regulatory Capital and Asset Risk Transfer*, published in the JOURNAL OF RISK AND INSURANCE in June 2023, “modified coinsurance allows insurers to report higher risk-based capital ratios” and “ModCo improves the RBC ratio of the ceding insurer because: (i) the ceding commission increases the level of capital, and (ii) the investment risk component of RBC decreases.”³³ But the actual financial condition of the insurer has not improved. The authors also compare ModCo to interest rate swaps: “ModCo contracts are similar to interest rate swaps wherein the ‘risk’ transfers to the counterparty but not the underlying assets and liabilities.”³⁴

90. An ERISA fiduciary should know that excessive exposure to ModCo with an affiliate is a red flag that warrants further inquiry. Yet, Defendants chose PICA even though PICA has billions in exposure to ModCo transactions with affiliates while companies like New York Life have **ZERO**.

91. ***Out of 702 life and annuity (“L&A”) carriers, 651 L&A carriers had zero affiliated ModCo as of year-end 2023.*** Gober Decl. ¶ 27.

92. Over the past decade, PRU has been systematically gutting reserves from its regulated insurance company subsidiaries, primarily PICA, by engaging in suspect transactions with wholly owned captive reinsurance affiliates located in Arizona and affiliates offshore in known “secrecy jurisdictions” where financial records are not publicly available, and reserve requirements are lax. *See* Gober Decl. ¶¶ 12 (stating that “the trail gets lost”); *see also id.* ¶ 29.

93. Since 2012, PICA has done at least tens of billions in PRT transactions in the U.S.

³³ Kyeonghee Kim et al., *Regulatory Capital and Asset Risk Transfer*, JOURNAL OF RISK AND INSURANCE, at pp. 3, 12 (last rev. Nov. 3, 2023), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4221205.

³⁴ Kyeonghee Kim et al., *Regulatory Capital and Asset Risk Transfer*, at 3.

See Gober Decl. ¶ 9 (“From 2012 when PICA first assumed responsibility for more than \$32.5 billion ...”). PICA has also provided reinsurance to a number of Pension Schemes in the U.K. and taken on billions more in longevity exposure in other countries around the world. Therefore, if longevity outpaces PICA’s assumptions, this also poses risk that PICA would not be able to fulfill its contractual obligations.³⁵

IV. PICA is Far Riskier than PRU

94. While PICA often refers to itself as simply “Prudential,” Prudential (“PRU”) and PICA have very different risk profiles. PRU—PICA’s direct parent—is a publicly traded financial conglomerate with \$1.496 trillion in assets under management as of April 30, 2024³⁶ and PRU owns hundreds of subsidiaries all over the world,³⁷ some of which are excellent credit risks. PRU derives substantial revenue from its regulated insurance company subsidiaries that offer individual life insurance and annuity products to consumers across the United States and around the world.

95. However, PRU routinely publishes the following disclaimer in press releases and other publications:

Pension and medical risk transfer products are insurance products issued by
The Prudential Insurance Company of America (PICA), Newark, NJ, a

³⁵ “Longevity risk refers to the chance that life expectancies and actual survival rates exceed expectations or pricing assumptions, resulting in greater-than-anticipated cash flow needs on the part of insurance companies or pension funds.” Julia Kagan, *Longevity Risk: What it is, How it Works, Special Considerations*, INVESTOPEDIA (June 24, 2021), available at <https://www.investopedia.com/terms/l/longevityrisk.asp>.

³⁶ PRUDENTIAL, *Prudential Financial, Inc. Announces First Quarter 2024 Results*, <https://news.prudential.com/latest-news/prudential-news/prudential-news-details/2024/Prudential-Financial-Inc.-Announces-First-Quarter-2024-Results/default.aspx> (“Assets under management of \$1.496 trillion versus \$1.417 trillion for the year-ago quarter.”).

³⁷ See, e.g., <https://www.sec.gov/Archives/edgar/data/1137774/000119312510043048/dex211.htm>.

wholly owned subsidiary of Prudential Financial Inc. (PFI). ***PICA is solely responsible for its contractual and financial obligations.***³⁸

96. It is only at the very end of PRU’s PRT press releases—including the press release covering the transaction at issue—where the above-referenced disclaimer appears.³⁹ PRU would be a more reasonable credit risk for the instant PRT transaction. However, PICA is not even close to suitable for the reasons detailed herein.

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³⁸ PRUDENTIAL, *Institutions*, <https://www.prudential.com/institutions> (emphasis added) (last accessed July 2, 2025); see also PRUDENTIAL, *Prudential to fulfill \$6 billion in protected retirement obligations in second pension risk transfer with IBM* (Sep. 11, 2024), <https://news.prudential.com/latest-news/feature-stories/feature-stories-details/2024/Prudential-to-fulfill-6-billion-in-protected-retirement-obligations-in-second-pension-risk-transfer-with-IBM/> (“Insurance products are issued by The Prudential Insurance Company of America (PICA), Newark, NJ. PICA is a Prudential Financial company. PICA is solely responsible for its financial condition and contractual obligations.”).

³⁹ *Id.*

PRUDENTIAL

NEWSROOM

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PRUDENTIAL TO FULFILL \$6 BILLION IN PROTECTED RETIREMENT OBLIGATIONS IN SECOND PENSION RISK TRANSFER WITH IBM

Sep. 11, 2024

Prudential has been selected for a second pension risk transfer with International Business Machines Corporation (IBM).

Under the terms of the transaction, the IBM Personal Pension Plan (the "Plan") has purchased a single premium group annuity contract that transfers to The Prudential Insurance Company of America, a subsidiary of Prudential Financial, Inc. (NYSE: PRU) approximately \$6 billion of the Plan's defined benefit pension obligations.

Prudential will assume responsibility for making retirement benefit payments to the transaction's population of approximately 32,000 retirees and their beneficiaries beginning Jan. 1, 2025.

This marks the second pension risk transfer agreement between Prudential and IBM. In 2022, Prudential was selected as one of two insurers for a \$16 billion total pension risk transfer, making it the second-largest pension buy-out ever in the U.S. market. The 2022 deal covered approximately 100,000 IBM retirees and beneficiaries, with Prudential acting as the lead administrator.

"Prudential is proud to again be entrusted to help protect the life's work of IBM retirees," said Julia Senchak, head of U.S. Pension Risk Transfer at Prudential Retirement Strategies. "Our deep commitment and expertise in flawlessly transitioning and administering benefit promises will provide participants with exceptional service and retirement security."

Since 1928, Prudential has been an innovator and leader in the pension risk transfer market, collaborating with clients to deliver solutions that help meet each organization's unique de-risking needs and financial objectives. Prudential revolutionized the modern pension risk transfer market with its pioneering pension buy-outs with General Motors and Verizon in 2012. Many similar transactions followed, including most recently, PSEG, Shell USA, a second transaction with Verizon, and an industry-first, union-based multiemployer plan transaction with Sound Retirement Trust.

ABOUT PRUDENTIAL

Prudential Financial, Inc., a global financial services leader and premier active global investment manager with approximately \$1.5 trillion in assets under management as of June 30, 2024, has operations in the United States, Asia, Europe, and Latin America. Prudential's diverse and talented employees help make lives better and create financial opportunity for more people by expanding access to investing, insurance, and retirement security. Prudential's iconic Rock symbol has stood for strength, stability, expertise, and innovation for nearly 150 years.

The Retirement Strategies team at Prudential delivers industry-leading solutions to help protect the life's work of more than 2.5 million individual and institutional customers and the people who rely upon them.¹ The business expands access to retirement security through its Individual Retirement protected growth and lifetime income strategies and its Institutional Retirement lines of business spanning U.S. Pension Risk Transfer, International Reinsurance, Stable Value, and Structured Settlements.

© 2024 Prudential Financial, Inc. and its related entities. Prudential, Prudential Retirement Strategies, the Prudential logo, the Rock symbol, and Rock Solid are service marks of PFI and its related entities, registered in many jurisdictions worldwide.

Insurance products are issued by The Prudential Insurance Company of America (PICA), Newark, New Jersey. PICA is a Prudential Financial company. PICA is solely responsible for its financial condition and contractual obligations.

Insurance products are issued by The Prudential Insurance Company of America (PICA), Newark, New Jersey. PICA is a Prudential Financial company. PICA is solely responsible for its financial condition and contractual obligations.

98. While PRU's misleading press releases are not the subject of this Complaint, all Defendants know that retirees only have recourse to PICA and not PRU as set forth in the group annuity contract. As a result, PRU's financial condition is not even remotely relevant at all to the obligations of Plan Fiduciaries to analyze the safety and security of the instant PICA transaction.

99. *PRU has no liability whatsoever to IBM pensioners in the event of a PICA insolvency.* That is one of the main reasons why Plan Fiduciaries must thoroughly and completely analyze PICA’s ability, as stand-alone entities to make good on their obligations to retirees. Defendants failed miserably in this regard.

100. At the same time PICA has been rapidly piling up PRT risk, PICA has also been systematically circumventing state insurance reserve requirements by abusing wholly owned captive reinsurance companies, primarily in Arizona, and more recently affiliated reinsurers in Bermuda, to “reinsure” blocks of insurance policy claims or other insurance liabilities such as annuity funded pension payments to retirees and other PRT risks. *See* Gober Decl. ¶ 41 (“[I]t seems highly unusual There is no legitimate business purpose for swapping so much risk with wholly owned affiliates other than to circumvent reserve requirements, avoid SAP reporting requirements and artificially distort RBC ratios.”). PICA and other PRU affiliates use Arizona and Bermuda as their “regulation light” jurisdictions of choice in order to exploit looser reserve and regulatory requirements and more favorable tax treatment.

101. Each time a PRU subsidiary enters into a reinsurance transaction with another PRU owned affiliate or captive reinsurer that holds risky debt-like instruments as assets, it effectively lowers reserves that are supposed to be set aside to cover insured liabilities leaving policyholders and pensioners at substantial risk. This type of circular reinsurance with affiliates and/or captives was deemed “financial alchemy” or “shadow insurance”⁴⁰ by the New York State Department of Financial Services (“DFS”) in June of 2013 when DFS conducted an extensive investigation into

⁴⁰ *Shining a Light on Shadow Insurance*, NEW YORK STATE DEP’T OF FINANCIAL SERVICES (June 2013), <https://02ec4c5.netsolhost.com/blog/wp-content/uploads/2013/06/NY-shadow-reinsurance-report-June-2013.pdf>.

these types of practices at New York-based insurance companies and their wholly owned captives and affiliates.

102. While the DFS investigation did not focus on PRU (domiciled in New Jersey), the Superintendent of Financial Services of the State of New York, Benjamin M. Lawskey, was so shocked by the risks associated with the “financial alchemy” he uncovered that he wrote a detailed and ominous letter to the Honorable Sherrod Brown, then Ranking Member of the U.S. Senate Committee on Banking, Housing and Urban Affairs, urging Senator Brown to address:

a troubling regulatory loophole that threatens the financial stability of the insurance markets, puts everyday policyholders at substantial risk, and provides billions of dollars in unearned tax deductions to large, multi-national corporations. That loophole is life insurance companies’ use of “shadow insurance” vehicles to divert policyholder reserves to other purposes, such as executive compensation, dividends, and acquisitions.⁴¹

103. PICA and its affiliates have engaged in the exact same kind of shadow insurance practices and other reserve-compromising transactions with affiliates. The mere fact that PICA’s secret captives and affiliates hold so many circular debt and debt-like instruments as assets should have raised a red flag for any reasonably prudent fiduciary. The fact that PICA has encouraged and enabled more than \$100 billion in affiliated party suspect reinsurance transactions with affiliates since 2012 alone should have immediately disqualified PICA from consideration as a sound choice for IBM pensioners, especially since PICA is solely responsible for its financial condition and contractual obligations.

104. Either State Street and/or IBM failed to examine the financial statements of the

⁴¹ See Letter dated April 27, 2015, from Benjamin M. Lawskey, Superintendent of Financial Services, State of New York to The Honorable Sherrod Brown, Ranking Member, U.S. Senate Committee on Banking, Housing and Urban Affairs, entered into the record during the Hearing Before the Committee on Banking, Housing, and Urban Affairs on April 28, 2015, at p. 46, <https://www.govinfo.gov/content/pkg/CHRG-114shrg97357/pdf/CHRG-114shrg97357.pdf> (last retrieved on August 3, 2025) (emphasis added).

affiliated reinsurers (which would be a blatant breach of their fiduciary duties), or, they failed to understand how PICA's exposure to their wholly owned affiliates created risk for the plan participants—whose interests should have been front and center. Both failures put IBM retirees at substantial risk that could easily have been avoided by following ERISA's mandates.

105. While the assets held by PICA's wholly owned captive reinsurers and affiliates may not be readily ascertainable due to the fact that the captives and affiliates are located in secrecy jurisdictions and do not file publicly available financial statements,⁴² the amount of credit that PICA has taken for reinsurance with its wholly owned affiliates is easy to obtain by simply reviewing readily available statutory financial statements as noted above.

106. When U.S. regulated insurance companies take credit for reinsurance with captives and affiliates that do not report under SAP or make financial statements publicly available it puts retirees at substantial risk. Affiliated party reinsurance transactions are not arm's length, as pricing is set within the same group of companies under common control. It amounts to nothing more than a circular movement of assets and liabilities that appears to provide security to policyholders while doing the exact opposite. Real assets vanish and they are replaced with speculative "IOU's."⁴³ See Gober Decl. ¶¶ 26, 31, 43.

⁴² "Captives' financial statements are typically not public. In 2013, regulators for the first time required life insurers to identify their *total* captive reinsurance activity separately in annual statements." OFFICE OF FINANCIAL RESEARCH, *Mind the Gaps: What do new Disclosures Tell us About Life Insurers' Use of Off-Balance-Sheet Captives?* (Mar. 17, 2016), at 1, available at https://www.financialresearch.gov/briefs/files/OFRbr_2016-02_Captive-Insurers.pdf; *see also id.* ("Because life insurers are a material part of the financial system, these gaps may mask financial stability vulnerabilities.").

⁴³ *See, e.g.*, Michael Batty, FEDS Notes, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM (Oct. 12, 2018) <https://www.federalreserve.gov/econres/notes/feds-notes/accounting-for-reinsurance-transactions-in-the-financial-accounts-of-the-united-states-20181012.html> ("[A] reinsurer can cede the policies it assumes to another reinsurer ('retrocession'), **creating chain of interdependence.**") (emphasis added).

107. PICA’s excessive interdependence within the PRU holding company system should have been a bright red flag for IBM and State Street. PICA both cedes liabilities to affiliates and reinsures affiliates, including its own wholly owned Arizona captives as noted below. Another PICA affiliate, PGIM, provides investment management services to PRU,⁴⁴ and PICA affiliates guarantee the obligations of other PICA affiliates in a glaring and circular manner.

108. Despite Lawsky’s ominous warning to Congress, PRU, through PICA, dramatically increased its use of shadow insurance after 2015 and PICA’s cumulative reserve credit taken for reinsurance with wholly owned affiliates and captive insurance companies domiciled in Arizona far exceeds PICA’s surplus. Just the two primary PRU carriers combined went from \$19.1 billion in shadow insurance transactions in 2012 to **\$133 billion** at year end 2023, as shown on the chart below.

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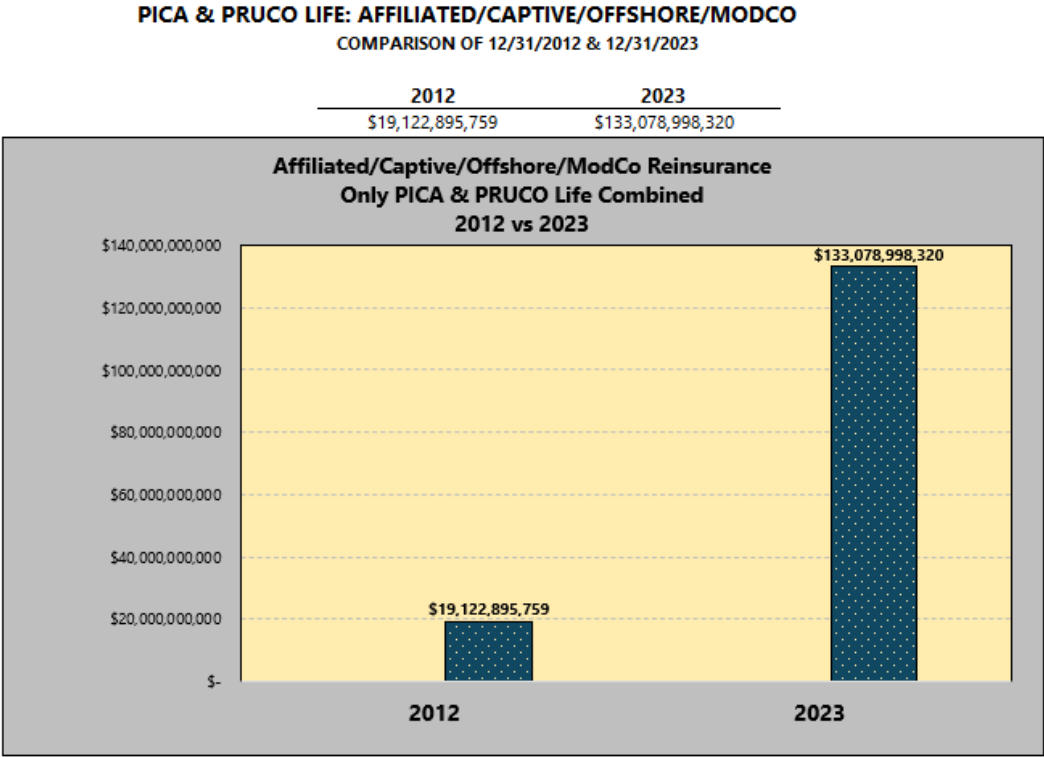
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⁴⁴ “PGIM is the investment management business of Prudential Financial, Inc. (PFI).” https://www.pgim.com/us/en/institutional/about-us/overview#:~:text=*PGIM%20is%20the%20investment%20management,Managers%20list%20published%20June%202024.



Gober Decl. ¶ 34.

109. PICA increased its exposure to reinsurance with non-arm’s length affiliates and captives in Arizona and Bermuda from \$7,794,844,220 in 2012, to **\$72,884,344,104** as of year-end 2023 as per the chart below.

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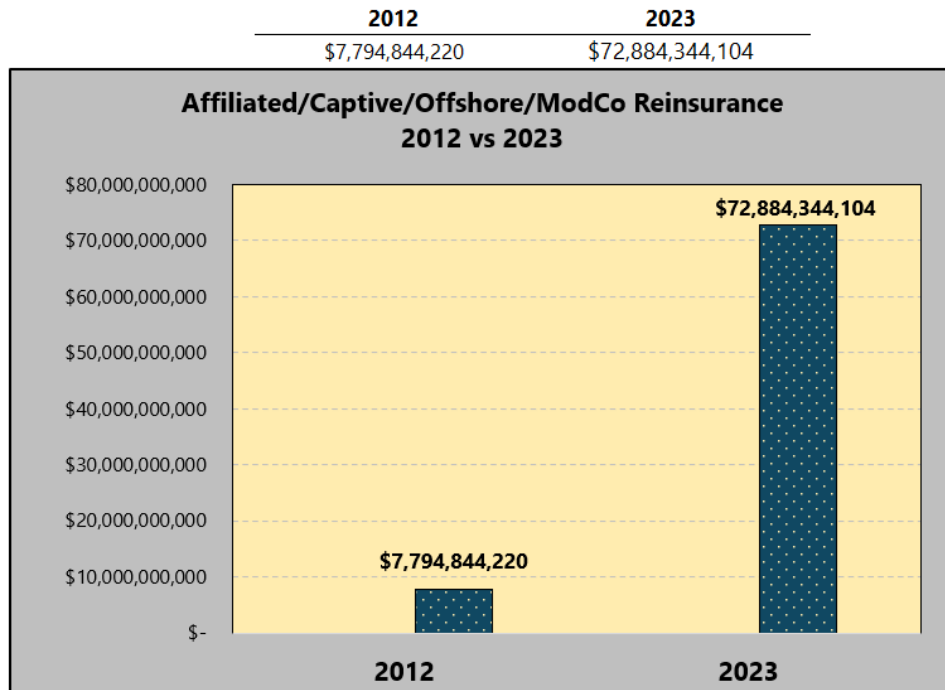
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PICA: AFFILIATED/CAPTIVE/OFFSHORE/MODCO

COMPARISON OF 12/31/2012 & 12/31/2023



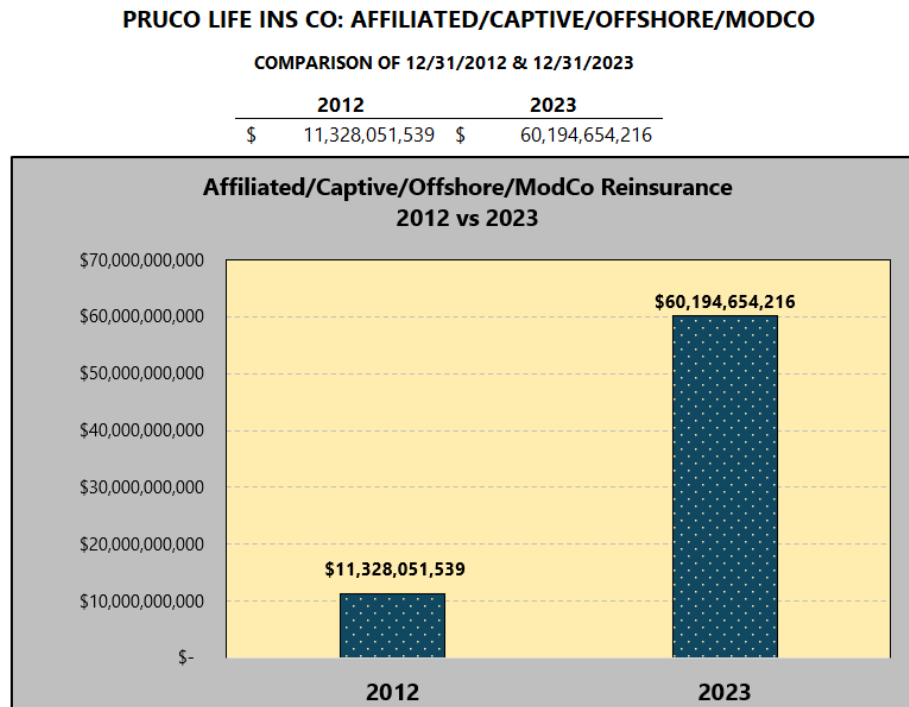
Gober Decl. ¶ 32.

110. PICA was a far more reasonable choice of annuity provider in 2012 as it had only taken \$7.8 billion in credit for reinsurance and ModCo with affiliates as reported on December 31, 2012. Contrast PICA at year end 2012 with PICA at year end 2023 and as depicted in the above chart, PICA's exposure to affiliates jumps tenfold to \$72.8 billion as at December 31, 2023.

111. Ironically, PICA in 2012 would have been a safer and more prudent choice than the PICA of today that is wholly dependent on non-arm's length, contrived transactions with wholly owned captives and affiliates that only serve to conceal PICA's true financial condition. New York Life would have been a far safer choice than PICA. In addition to New York Life, Pacific Life and Nationwide would have also been much more appropriate choices for the annuitization transactions than PICA. *See* Gober Decl. ¶ 69. All three of those companies participate in the

pension risk transfer business. However, these companies would have charged more money and so they were not selected for the annuitization transactions at issue.

112. In addition to PICA’s own dependence on affiliated captives and affiliated reinsurers, another affiliate, Pruco Life Insurance Company (“Pruco Life”), a wholly owned subsidiary of PICA, increased its affiliated party exposure from \$11,328,051,539 in 2012, to over \$60 billion dollars (**\$60,194,654,216**) as of year-end 2023. *See* the chart below.



Gober Decl. ¶ 33.

113. Both PICA and Pruco Life are wholly owned PRU subsidiaries. Combined, PICA and Pruco Life reported reinsurance “IOUs” or recoverables of \$133 billion from affiliates/captive reinsurers and those same affiliates/captive reinsurers reported **\$133 billion** in reinsurances payables as of year-end 2023. In other words, \$133 billion of PRU’s reinsurance is, if not worthless, circular in nature and internal within the PRU group rather than with arm’s length, independent, well capitalized reinsurance companies. *See* the chart below.

ANNUAL STATEMENT FOR THE YEAR 2023 OF THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

SCHEDULE Y

PART 2 - SUMMARY OF INSURER'S TRANSACTIONS WITH ANY AFFILIATES

Names of Insurers, Parent, Subsidiaries, Affils.	Reins Recov./ (Payable) and/or Reserve Credit Taken (Liability)	Total Captive & Offshore Payables to Affiliates
Prudential Legacy Insurance Company of New Jersey	\$ (47,330,009,584)	
Captive: Prudential Arizona Reinsurance Universal Co	\$ (18,702,977,557)	
Captive: Prudential Universal Reinsurance Company	\$ (11,289,411,284)	
Captive: Gibraltar Universal Life Reinsurance Co	\$ (4,885,738,352)	
Offshore: Lotus Reinsurance Company Ltd.	\$ (4,429,331,636)	
Captive: Prudential Term Reinsurance Company	\$ (3,838,169,748)	
Captive: Prudential Arizona Reinsurance Captive Co	\$ (3,543,086,059)	
Captive: Prudential Arizona Reinsurance Term Co	\$ (3,399,032,599)	
Captive: Dryden Arizona Reinsurance Term Co	\$ (1,543,328,775)	\$ (51,638,750,002)
Captive: Prudential Universal Reinsurance Entity Co	\$ (7,673,992)	
Prudential Seguros Mexico, S.A. de C.V.	\$ (2,047,438)	
Pruco Life Insurance Company of New Jersey	\$ 5,121,823,968	
The Gibraltar Life Insurance Co., Ltd.	\$ 7,817,159,971	
The Prudential Life Insurance Company, Ltd.	\$ 25,241,215,614	
The Prudential Insurance Company of America	\$ 25,263,214,461	
Pruco Life Insurance Company	\$ 35,527,393,010	
TOTAL:	\$0.00	

Gober Decl. ¶ 37.

114. In the snapshot above, a clear pattern emerges. The numbers in **red** represent amounts owed by the captives and affiliates and the numbers in **black** are recoverables, or, amounts owed by PICA's wholly owned captive reinsurance companies in Arizona and one offshore affiliate, Lotus Reinsurance Company Ltd. located in Bermuda, to PICA and other US based PICA affiliates. Nearly all of the reinsurers with very large amounts due to PRU regulated insurers are the Arizona Captives that do not file public financial statements. Those Arizona Captives owned by PICA owe more than **\$47 billion** to PRU affiliates. Such enormous amounts due from secretive "captives" cannot be detected on the balance sheets of the insurers because, rather than report the recoverables as assets, the \$47 billion recoverables are netted out of their

claims reserve liabilities, booking them as “contra-liabilities.” Those amounts are deducted from the claims reserve liabilities prior to reporting them on the balance sheet. While the financial statements of the “captives” owing more than \$47 billion to the regulated PRU insurers are not publicly available, any reasonable independent fiduciary would to inquire into whether or not the Arizona Captives had sufficient assets to make good on \$47 billion in IOUs to PICA and affiliates. Without definitive proof that the Arizona Captives have the financial ability to make good on more than \$47 billion in IOU’s, the ability of PICA to pay its debts in the ordinary course of business and its obligations to retirees is entirely uncertain. Yet, no information whatsoever about how IBM and State Street evaluated PICA’s financial capabilities has been made available to retirees.

115. In addition, while all of the Arizona Captives are wholly owned by PICA, PICA values its investment in most of its captives at zero. This is extremely troubling. How can Arizona affiliates with hundreds of billions in financial obligations to PICA and Pruco Life be fairly valued at zero? If they are, how can PICA be a prudent choice as an annuity provider. *See* below.

ANNUAL STATEMENT FOR THE YEAR 2023 OF THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
SCHEDULE D - PART 2 - SECTION 2
 Showing All COMMON STOCKS Owned December 31 of Current Year

1	2	Codes		5	6	Fair Value		9
		3	4			7	8	
CUSIP Identification	Description	Code	For- eign	Number of Shares	Book/ Adjusted Carrying Value	Rate Per Share Used to Obtain Fair Value	Fair Value	Actual Cost
744081-10-9 ...	PRUCO Life Insurance Company			250,000,000	5,160,579,278	20,642.000	5,160,579,278	6,033,948,757
000000-00-0 ...	Prudential Legacy Insurance Company of New Jersey			5,000,000,000	227,127,252	45.000	227,127,252	172,220,809
744055-24-4 ...	Prudential Realty Securities, Inc.			92,000	569,307,672	6,188,127.000	569,307,672	570,506,541
000000-00-0 ...	Prudential Retirement Insurance and Annuity Company			25,000,000	0	0.000	0	0
000000-00-0 ...	Prudential Arizona Reinsurance Universal			1,000,000	0	0.000	0	0
000000-00-0 ...	Prudential Arizona Reinsurance Term Company			1,000,000	0	0.000	0	0
000000-00-0 ...	Prudential Arizona Reinsurance Captive Company			1,000,000	0	0.000	0	0
000000-00-0 ...	Prudential Universal Reinsurance Company			1,000,000	0	0.000	0	0
000000-00-0 ...	Gibraltar Universal Life Reinsurance Company			1,000,000	0	0.000	0	0

Captives

PICA investments in captives valued at \$0.00

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116. Simply stated, if the value of the Arizona Captives identified above is zero, they cannot conceivably have the financial wherewithal to make good on their IOU's, which include tens of billions of dollars in reinsurance payables to PICA. *See* Gober Decl. ¶ 21 (“PICA valued ... [the] Arizona Captives, interestingly, at zero”).

117. In addition to the tens of billions of liabilities ceded to the Arizona Captives and newly created Bermuda reinsurers, PICA also entered into a significant number of highly suspect ModCo transactions. *See* Gober Decl. ¶ 39.

118. PICA affiliates have more than \$33 billion in seemingly circular ModCo transactions. It is circular and highly suspect for PICA to assume billions in ModCo from PRUCO Life Insurance Company of New Jersey, its wholly owned subsidiary while also ceding billions in ModCo to Pruco Life Insurance Company (AZ), another PICA affiliate located in Arizona. *See* Gober Decl. ¶ 40.

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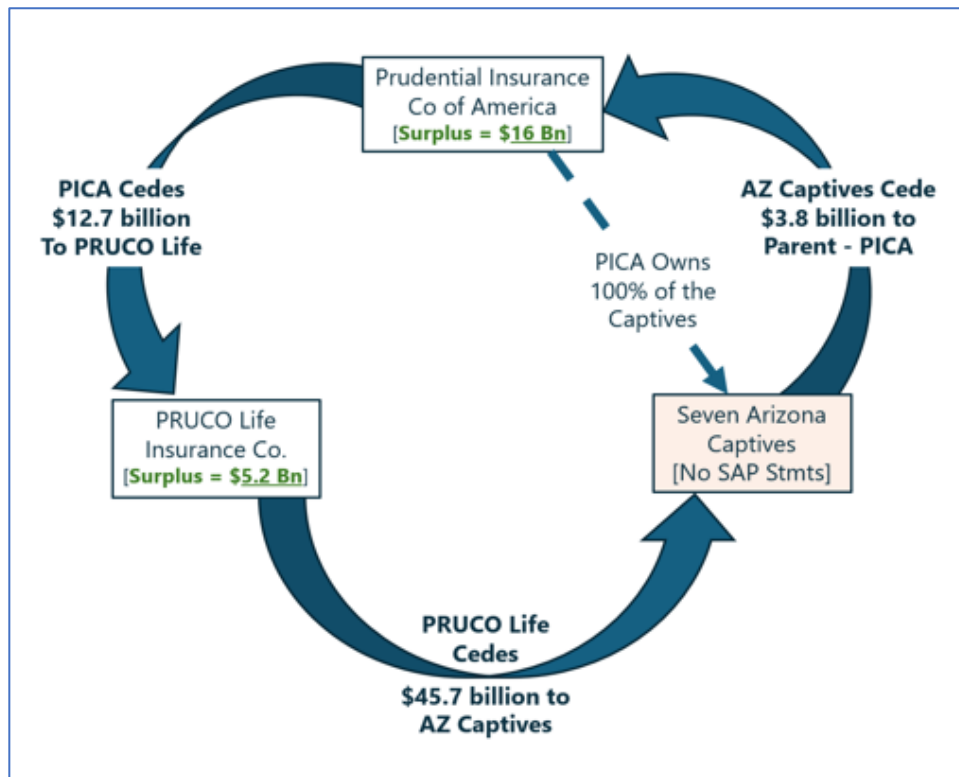
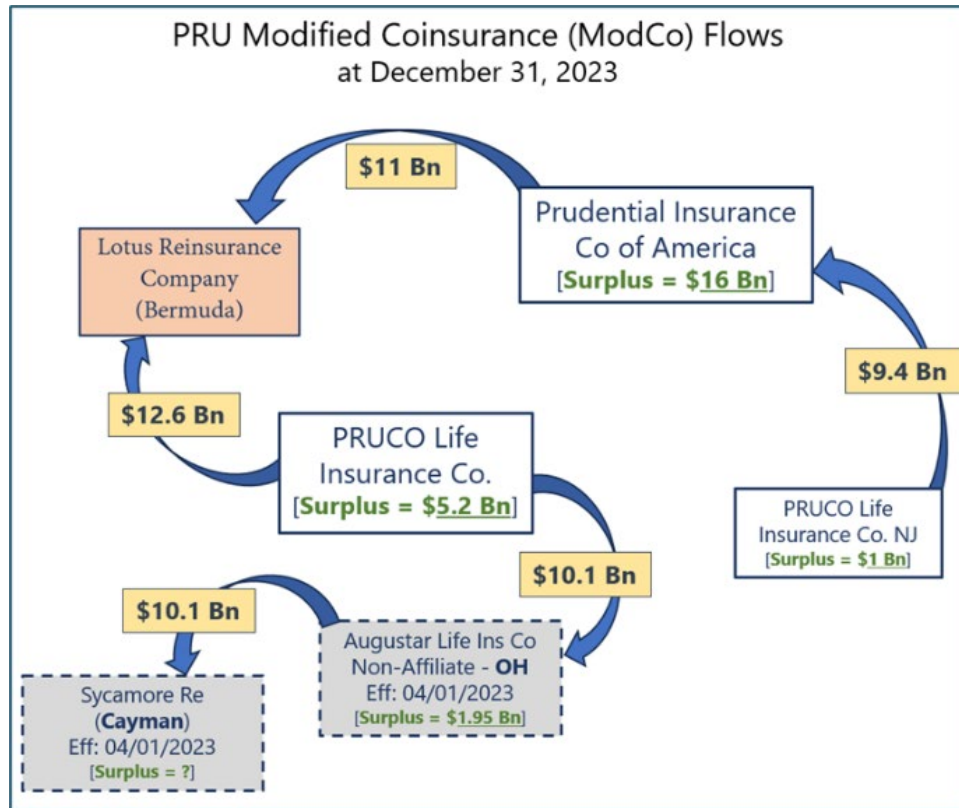
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Gober Decl. ¶ 40.

119. Similar to the concerns expressed above about the shadow insurance transactions using Arizona Captives, it seems highly unlikely that the affiliate ModCo transactions are legitimate, and they are most certainly not arm's length. At the very least, it seems highly unusual for Prudential to use ModCo for more than \$33 billion in related party transactions as these transactions involve little more than a swapping of IOUs for insurance risks that were underwritten and assumed at the regulated insurance company levels. There is no legitimate reason for swapping so much risk with wholly owned affiliates other than to avoid reporting requirements and artificially enhance risk-based capital ratios. Using and abusing circular ModCo to game RBC levels and thereby reduce minimum required surplus is directly contrary to the intended purpose of establishing minimum capital standards to reduce insolvency risk.

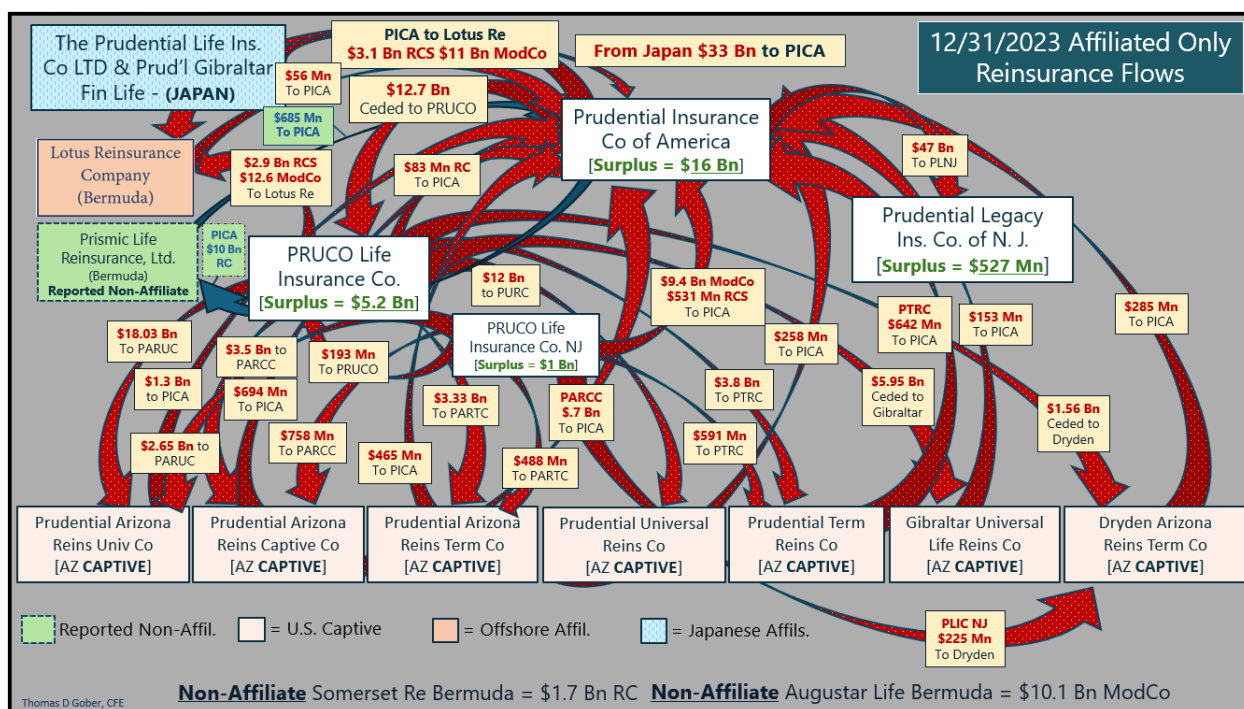
120. The Arizona Captives that maintain secret financial records are on the hook for a substantial portion of the **\$133 billion** that they will never be able to pay. More importantly, a significant amount of the \$133 billion that PRU insurers claim to be owed from affiliates and the Arizona Captives has already been up-streamed to PRU for non-policyholder purposes, including management fees, investment fees, affiliated reinsurance premiums, and dividends leaving the PRU regulated insurers dramatically under-reserved. In 2023 alone, PRU spent more than \$1 billion on stock buy-back transactions. Gober Decl. ¶ 42.

121. PICA's captive reinsurance companies in Arizona are allowed to replace real assets with "hollow assets" for reserving purposes including conditional letters of credit, circular parental guarantees, complex surplus notes, including credit linked surplus notes and other collateral of speculative value such as assets identified only as "LOC-like" on statutory financial statements. These type of "hollow assets" are not considered proper assets for an insurance company regulated in New Jersey or in any jurisdiction that adheres to the NAIC Accounting Practices & Procedures

Manual, NAIC Model Holding Company Act (NAIC Model Insurance Laws, Regulations and Guidelines, NAIC Model Act #440) and the NAIC Annual Statement Instructions. *See* Gober Decl.

¶ 43.

122. Based on a forensic review of public filings, as of year-end 2023, expert Certified Fraud Examiner Tom Gober was able to identify a staggering number of circular related-party transactions as set forth in the chart below:



Gober Decl. ¶ 44.

123. Through a detailed review of the entire PRU Holding Company System it becomes clear that there is a dangerous level of interdependence among the myriad affiliates. They reinsure each other, invest in each other, pay dividends to each other, pay management fees to each other and guarantee each other. The interdependence among affiliated entities is glaring, the movement of assets and liabilities circular and the risks far greater to pensioners than what prudence and loyalty permits of Plan fiduciaries such as IBM and State Street. All of the above information about PICA and its affiliates can be found in publicly available Statutory Financial Statements available

from PICA itself and also available by request made to the New Jersey Insurance Department and the NAIC. Had IBM and State Street done even a fraction of the analysis that Plaintiff did before filing the instant action, they could not possibly have reasonably concluded that the PICA transaction was consistent with their fiduciary duty under ERISA—the highest fiduciary duty in the land. In fact, given the scope and magnitude of PICA’s suspect transactions with wholly owned captives and affiliates, both on-shore and off-shore, to conclude that PICA was a secure steward of Plaintiff and Class Members’ pensions defies all logic and reeks of self-dealing.

124. Even PICA’s reported use of “unaffiliated reinsurers” does not appear to be accurate. By way of example, in 2023, PICA entered into a new reinsurance transaction of approximately \$10 billion (\$9.97 billion) with a newly formed offshore reinsurer, Prismic Life Reinsurance, Ltd. of Bermuda (“Prismic”). However, in SCHEDULE S – PART 3, (Reinsurance Ceded) PICA reported Prismic as non-affiliated even though PRU (PICA’s ultimate parent) is listed as one of two lead investors in Prismic. Another PRU affiliate, PGIM (PRU’s principal asset manager) provides asset management services to Prismic and PRU executives sit on the Prismic board of directors in order to “oversee its long-term strategy.”⁴⁵ It is simply not reasonable to describe PICA’s reinsurance relationship with Prismic as unaffiliated. Yet that is exactly how PICA describes it in public filings. *See* Gober Decl. ¶¶ 46-47.

125. Related party reinsurance requires mandatory additional regulatory scrutiny and the NAIC Model Holding Company Act, which has been adopted by all fifty states specifically requires that all transactions within an insurance holding company system shall be on terms that are “fair and reasonable[.]” N.Y. Ins. Law § 1505(a)(1); N.J. Stat. Ann. § 17:27A-4(a)(1)(a); Mass.

⁴⁵ <https://news.prudential.com/latest-news/prudential-news/prudential-news-details/2023/Prudential-Financial-Inc--and-Warburg-Pincus-announce-launch-of-Prismic-Life-Re-09-07-2023/default.aspx> (last retrieved Sep. 4, 2025).

Gen. Laws Ann. ch. 175, § 206C(m)(1). In addition, the Model Holding Company Act requires that books and records be so maintained as to clearly and accurately disclose the true nature and details of the transactions in question. N.Y. Ins. Law § 1505(b); N.J. Stat. Ann. § 17:27A-4(e); Mass. Gen. Laws Ann. ch. 175, § 206C(m)(4). Yet PICA reports under SAP and the Arizona captives and the Bermuda affiliates report under a different accounting regime known as generally accepted accounting principle (“GAAP”).⁴⁶

126. Defendants’ failure to reconcile massive, related party transactions that go directly to PICA’s ability to make pension payments to Plaintiff and all 132,000 Class Members for decades is at the heart of this case.

127. Also of note is the fact that Prismic reports under Bermuda GAAP and not SAP like PICA. This reporting discrepancy alone adds to the overall lack of transparency within the complex PRU holding company system. All of this suspect reporting on publicly filed statutory financial statements should have raised red flags for fiduciaries tasked with choosing safe and secure annuity contracts to replace ERISA-protected defined benefit plan obligations. How State Street and/or IBM could have ignored all of this publicly reported information and still chosen PICA as a suitable annuity provider for IBM plan participants defies logic.

128. PICA also ceded over \$2.29 billion to an affiliated Bermuda based reinsurer called Lotus Reinsurance Company Ltd. (“Lotus”). *See below.*

ANNUAL STATEMENT FOR THE YEAR 2023 OF THE PRUDENTIAL INSURANCE COMPANY OF AMERICA									
SCHEDULE S - PART 3 - SECTION 1									
Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities Without Life or Disability Contingencies, and Related Benefits Listed by Reinsuring Company as of December 31, Current Year									
1	2	3	4	5	6	7	8	Reserve Credit Taken	
NAIC Company Code	ID Number	Effective Date	Name of Company	Domiciliary Jurisdiction	Type of Reinsurance Ceded	Type of Business Ceded	Amount in Force at End of Year	Current Year	Prior Year
1499999	Total General Account - Unauthorized U.S. Affiliates						12,051,745	7,496,417	0
00000	AA-2731006	11/01/2006	Prudential Seguros, S.A. - Mexico	MEX	OTH/I	OL	970,291,947	0	0
00000	AA-2731006	11/01/2006	Prudential Seguros, S.A. - Mexico	URY	OTH/I	OL	8,865,417,130	0	0
00000	AA-3191481	01/01/2022	Lotus Reinsurance Company	BMU	OMB/I	OL	33,622,091,599	2,210,500,193	2,241,974,090
00000	AA-3191481	01/01/2022	Lotus Reinsurance Company	BMU	OMB/I	XXXXL	1,014,366,546	82,291,597	72,226,637

⁴⁶ *See supra* note 3.

129. According to Lotus, effective February 1, 2022, Lotus became a wholly owned subsidiary of Prudential International Insurance Holdings, Ltd. (“PIIH”),⁴⁷ which in turn is a direct wholly owned subsidiary of PRU. Lotus has extensive related party transactions with PRU, PICA, Prudential International Insurance Service Company, LLC and other PRU affiliates and PGIM provides discretionary investment advisory services to Lotus. *See* Gober Decl. ¶ 49. Prior to February 1, 2022, Lotus was wholly owned by PICA.⁴⁸ Lotus has extensive related party transactions with PRU, PICA, Prudential International Insurance Service Company, LLC and other PRU affiliates and PGIM provides discretionary investment advisory services to Lotus.⁴⁹

130. As of year-end 2023 PICA and PRUCO had ceded \$4.1 billion in liabilities to Lotus and consummated ModCo transactions totaling \$23.6 billion. Yet, Lotus only reported total assets of \$1.3 billion and liabilities of only \$23.7 million. Gober Decl. ¶ 50. Any reasonable fiduciary should have questioned the integrity of Lotus’s financial reporting.

131. The structure that PRU uses with its affiliated Bermuda Reinsurance Company Lotus has been described by investigative journalist and Annuity expert Kerry Pechter as the “Bermuda Triangle” phenomenon.

132. As Pechter wrote in the RETIREMENT INCOME JOURNAL (the “RIJ”):

⁴⁷ LOTUS REINSURANCE CO. LTD., FINANCIAL STATEMENTS AND REPORT OF INDEPENDENT AUDITORS, available at <https://cdn.bma.bm/documents/2023-06-30-15-52-10-Lotus-Reinsurance-Company-Ltd---2022-Financial-Statement.pdf>.

⁴⁸ STATE OF NEW JERSEY, *Coordination Examination Report Relating To The Condition Of The Prudential Insurance Company Of America Newark, New Jersey* (as of Dec. 31, 2021), at 25, https://www.nj.gov/dobi/division_insurance/solvency/finexamrpt68241prudentialins2021.pdf (“Effective February 1, 2022, PFI repositioned Lotus Re from being a wholly owned subsidiary of the Company to being a wholly owned subsidiary of Prudential International Insurance Holdings.”).

⁴⁹ *See, e.g., id.* (“The Company entered into an investment advisory agreement with PGIM, Inc. (“PGIM”), a PFI affiliated company, whereby PGIM provides discretionary investment advisory services to the Company, ...”).

What *RIJ* calls “the Bermuda Triangle” is a synergistic, much-varied business model involving a kind of triple accounting play between:

- A US domiciled life insurer that issues fixed-rate or fixed indexed annuities
- An asset manager with global reach and expertise in alternative assets and origination of high-yield loans
- A reinsurer in a jurisdiction (e.g., Bermuda, Cayman Islands, Vermont) that permits the valuation of annuity liabilities according to Generally Accepted Accounting Principles (GAAP) along with or instead of the more conservative Statutory Accounting Principles required of all US life insurers

In the Bermuda Triangle’s purest form, all three players belong to the same holding company. They may also have some overlapping ownership, or may be strategic partners. Life insurers who employ all or part of the Bermuda Triangle strategy include leading FA and/or FIA sellers like Athene Annuity & Life, Global Atlantic, AIG, MassMutual, and others. Together, Bermuda Triangle companies accounted for about half of the \$116.8 billion in 2021 fixed-rate/fixed indexed annuity sales reported by LIMRA’s Secure Retirement Institute.⁵⁰

133. A detailed review of PICA’s public filings and its overwhelming dependence upon affiliates is exactly the type of analysis contemplated by ERISA in order for an independent fiduciary to choose the “**safest available annuity**” or even a reasonably secure annuity. *See* 29 CFR § 2509.95-1 (emphasis added). IBM and State Street failed miserably in this regard.

134. Had Defendants considered the quality and diversification of PICA’s investment portfolio, they would have known that PICA reported close to \$18 billion in investments it lists as “Affiliated Investments” as of year-end 2023 which is more than 111% of its surplus.

135. Defendants would have known PICA has more than \$10 billion in investments it simply describes as “Other” Invested Assets.

136. Defendants would have known that PICA also reported as of year-end 2023

⁵⁰ Pechter, K., *Why RIJ Obsesses over the ‘Bermuda Triangle’*, RETIREMENT INCOME JOURNAL (May 5, 2022), <https://retirementincomejournal.com/article/why-rij-obsesses-over-the-bermuda-triangle/> (last accessed July 22, 2025).

“Other Loan-Backed” investments in the amount of \$10,838,636,616 and its exposure to Commercial Mortgages was \$16,349,437,360.

137. PICA takes on relatively riskier assets than its peers. *See, e.g.,* Gober Decl. ¶ 69 (“PICA and its insurer affiliates also hold excessive concentrations of higher-risk, less liquid investments ...”).

138. Executive Life failed, in part, due to similar, risky assets and dwindling surplus.⁵¹

139. Had Defendants considered the level of PICA’s capital and surplus they would have known that PICA’s Surplus as a percentage of its liabilities was reported at 5.7% as of year-end 2023 and Pruco Life’s was at 3.2%, well below industry averages which approximate 7.5%. Gober Decl. ¶ 52. But this low surplus is, in fact, substantially inflated because it does not account for the suspect reinsurance and ModCo transactions described herein.

140. By way of comparison, New York Life’s ratio of Surplus to Liabilities was approximately 12.2% as of year-end 2023,⁵² Teachers Ins. & Ann was at 13.8% as of year-end 2023⁵³ and Guardian Life was at 12.7%.⁵⁴ Clearly, all of these entities are objectively safer

⁵¹ *See* UNITED STATES GENERAL ACCOUNTING OFFICE, *Insurer Failures: Regulators Failed to Respond in Timely and Forceful Manner in Four Large Life Insurer Failures* (for release on Sept. 9, 1992), at 3-4, available at <https://www.gao.gov/assets/t-ggd-92-43.pdf> (“To cover the high rates promised to policyholders and maintain profitability, the four insurers invested in risky, high-yield assets. These insurers became heavily concentrated in the junk bond market and, to a lesser extent, invested in real estate-related assets.”).

⁵² *See* 2023 NY LIFE REPORT, at 3 (surplus of \$25,294,076,431 divided by total liabilities of \$206,607,540,338 = 0.122), available at <https://www.newyorklife.com/assets/docs/pdfs/financial-info/2023/NYLIC-4th-Qtr-2023-Statement.pdf>.

⁵³ *See* 2023 TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, at 3, <https://www.tiaa.org/public/pdf/tiaa-annual-statement-2023.pdf> (surplus of \$42,108,572,695 divided by total liabilities of \$304,392,436,386 = 0.138).

⁵⁴ *See* 2023 GUARDIAN LIFE INSURANCE CO. OF AMERICA, ANNUAL STATEMENT, at 3, https://assets.ctfassets.net/gaulnv66ynug/4Rzh4QH8LNdGeoffg8SAKY/98e3eafe36b1956087c7b4fcaa520a4f/4Q23_NAIC_-64246_-_2023_Guardian_Statutory_Statement.pdf (surplus of \$9,072,358,547 divided by total liabilities of \$71,193,824,441 = 0.127).

annuity providers than PICA even if Plan fiduciaries claim to have relied on PICA's stated surplus.

141. Had Defendants considered PICA's lines of business and PICA's exposure to liability they would have known that PICA's surplus is dramatically overstated taking into consideration all of the exposure PICA has to Pruco Life and its own exposure to wholly owned captive reinsurance companies in Arizona and affiliates in Bermuda. In 2023 alone, PICA took credit for reinsurance in the amount of **\$12.5 billion** for liabilities ceded to Pruco Life, its wholly owned subsidiary that also cedes to PICA's wholly owned Arizona Captives:

ANNUAL STATEMENT FOR THE YEAR 2023 OF THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

SCHEDULE S - PART 3 - SECTION 1

Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities Without Life or Disability Contingencies, and Related Benefits Listed by Reinsuring Company as of December 31, Current Year

4 Name of Company	5 Domi- ciliary Juris- diction	6 Type of Reinsurance Ceded	7 Type of Business Ceded	8 Amount in Force at End of Year	9 Reserve Credit Taken	
					9 Current Year	10 Prior Year
Pruco Life Insurance Company	AZ	00/1	AXXX	31,237,284,000	11,189,632,398	11,562,465,269
Pruco Life Insurance Company	AZ	00/1	AXXX	4,321,016,000	1,468,249,526	1,531,086,438

142. There does not appear to be any legitimate business reason for PICA to cede liabilities to wholly owned subsidiaries, and, when those subsidiaries also cede liabilities to *other* wholly-owned PICA subsidiaries, the circular nature of this shuffling around of obligations becomes clear. Unfortunately, circular reinsurance transactions with affiliates undermines policyholder security and puts pensioners at substantial risk.

143. Had Defendants considered the structure of PICA and other indications of PICA's exposure to liability they would have known that PICA is dramatically under reserved.

144. Tellingly, the UK Prudential Regulation Authority (the "PRA") "issued new requirements for its use on July 26 this year over concerns about 'a rapid build-up of risks' at UK

life insurers if growth in usage was left unchecked. Insurers had been using more funded reinsurance to help meet a surge in demand for pension risk transfer (PRT) deals.”⁵⁵

145. According to a Bank of England PRA Supervisory statement:

The PRA considers that there are increased risks in connection with funded reinsurance, including from a ***systematic use of funded reinsurance*** as an integral part of a firm’s business model or from the use of more complex arrangements where it may be more difficult for firms to assess the full extent of risks involved.⁵⁶

146. An “executive director for insurance supervision at the [Bank of England]’s Prudential Regulation Authority, told insurers it was concerned that the growth in funded reinsurance transactions ‘could, if not properly controlled, lead to a ***rapid build-up of risks in the sector***[.]’”⁵⁷

V. The Consequences of Suspect Transactions with Affiliates are Real and Imminent

147. The concerns about the consequences of all of PICA’s suspect transactions with affiliates are real and imminent. In 2024 alone, several life and annuity issuers were placed into rehabilitation or subjected to regulatory action as a direct and proximate result of imploded affiliated party reinsurance. These entities include the following: Columbian Mutual Life Insurance Company (“Columbian Mutual”), Columbian Life Insurance Company (“Columbian Life”), PHL Variable Insurance Company, 777 Reinsurance Ltd. (“777 Re”) and most recently Sentinel Security Life Insurance Company, Haymarket Insurance Company and Jazz Reinsurance

⁵⁵ <https://www.spglobal.com/market-intelligence/en/news-insights/articles/2024/12/uk-pension-risk-transfer-market-to-withstand-regulator-s-reinsurance-clampdown-85971157> (emphasis added).

⁵⁶ <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2024/ss524-november-2024-update.pdf> (emphasis added).

⁵⁷ Ian Smith, *Bank of England warns it will restrict reinsurance deals if controls are not improved*, FINANCIAL TIMES (July 26, 2024), <https://www.ft.com/content/5f6c6469-e134-4baa-90fe-e46a5bb373b6> (emphasis added).

Company (collectively, the “ACAP Companies”). The ACAP Companies were ordered to cease writing new business effective December 31, 2024, because the Utah Insurance Department determined that the ACAP Companies “are in a Hazardous Financial Condition and that such condition presents an immediate and significant danger to the public health, safety, or welfare, and that immediate action is necessary and in the public interest.”⁵⁸ All of the recent failures had one thing in common: excessive reliance upon non-arm’s length reinsurance with affiliates and the exact same type of financial alchemy that Plaintiff complains of in this case.

148. Colombian Mutual was placed into Rehabilitation by the New York State Department of Financial Services on August 13, 2024 following a failed merger and demutualization sponsored by Constellation Insurance Holdings, Inc. When the NYS Department of Financial Services conducted asset adequacy testing, it required Colombian Mutual to contribute more than \$100,000,000 to its asset adequacy reserves. This took Colombian Mutual’s surplus from \$25 million to negative \$88 million overnight. This led to an immediate ratings downgrade and regulatory action by the State of New York Department of Financial Services and parallel regulatory action by the Insurance Commissioner of the State of Illinois where Colombian Life Insurance Company, an affiliate of Colombian Mutual, is domiciled. While both Colombian Mutual and Colombian Life went from positive to negative surplus in short order, the adjustments to surplus have not yet taken into account the fact that Colombian Life ceded liabilities in the amount of \$587 million to Colombian Mutual—liabilities that neither entity has the financial wherewithal to meet. Policyholders have been and will continue to be impacted as two separate

⁵⁸ <https://www.ncdoi.gov/documents/regulatory-actions/utah-doi-emergency-order/open> (last accessed Aug. 2, 2025).

state mandated Rehabilitation proceedings erode estate assets while regulators and their appointees sort through the mess.

149. PHL Variable Insurance Companies and its subsidiaries, Concord Re, Inc. and Palisado Re, Inc. (“PHL”) were ordered into Rehabilitation on May 20, 2024. In connection with the PHL Rehabilitation, the Connecticut Insurance Commissioner determined that “further transaction of business would be financially hazardous to its policyholders, creditors and the public. Many of the reasons for PHL’s rehabilitation can be traced to non-arm’s length reinsurance transactions with affiliates.

150. PHL is heavily dependent upon reinsurance with affiliates and captives located in Connecticut and the Cayman Islands and reinsurance with another affiliate Nassau Life & Annuity Co. (“Nassau”) and circular reinsurance and suspect ModCo transactions with other Nassau and PHL affiliates.

151. As a result of the rehabilitation, the PHL Rehabilitator issued a Temporary Moratorium Order effective May 20, 2024 limiting policy withdrawals, surrenders and death benefit payouts to certain guaranty association cap limits. Policyholders were immediately impacted by the Moratorium Order that was made permanent on June 25, 2024 and continues to this day.

152. Similarly, the recent regulatory action by the Utah Insurance Department and the South Carolina Insurance Department directed at the ACAP Companies stems from highly suspect affiliated party transactions that the ACAP insurers entered into with captives and affiliates to allow the regulated insurance companies to avoid scrutiny. All of this started to unwind when scandals surfaced related to 777 Partners, LLC, the direct parent company of 777 Re. 777 Re assumed billions in opaque Modco liabilities from the ACAP entities. 777 Re surrendered its

reinsurance license to the Bermuda Monetary Authority on October 8, 2024, and the ACAP insurers recaptured all of the ceded ModCo liabilities. Now those liabilities (that never left the ACAP Companies in the first place) are in the hands of the Utah and South Carolina Departments of Insurance.

153. All of the recent regulatory events highlight just how suspect and opaque affiliated party reinsurance and ModCo transactions can be and just how risky this type of financial alchemy is for unsuspecting policyholders including pensioners like putative Class Members herein.

154. Based on the information set forth in this complaint, a reasonable independent fiduciary acting in the best interests of Plan Participants in accordance with ERISA's requirements could not possibly have chosen the PICA/RGA structure for Plaintiff and other putative Class Members.

VI. IBM's and State Street's choice of PICA was motivated by financial self-interest and was therefore disloyal and the transactions were prohibited by ERISA

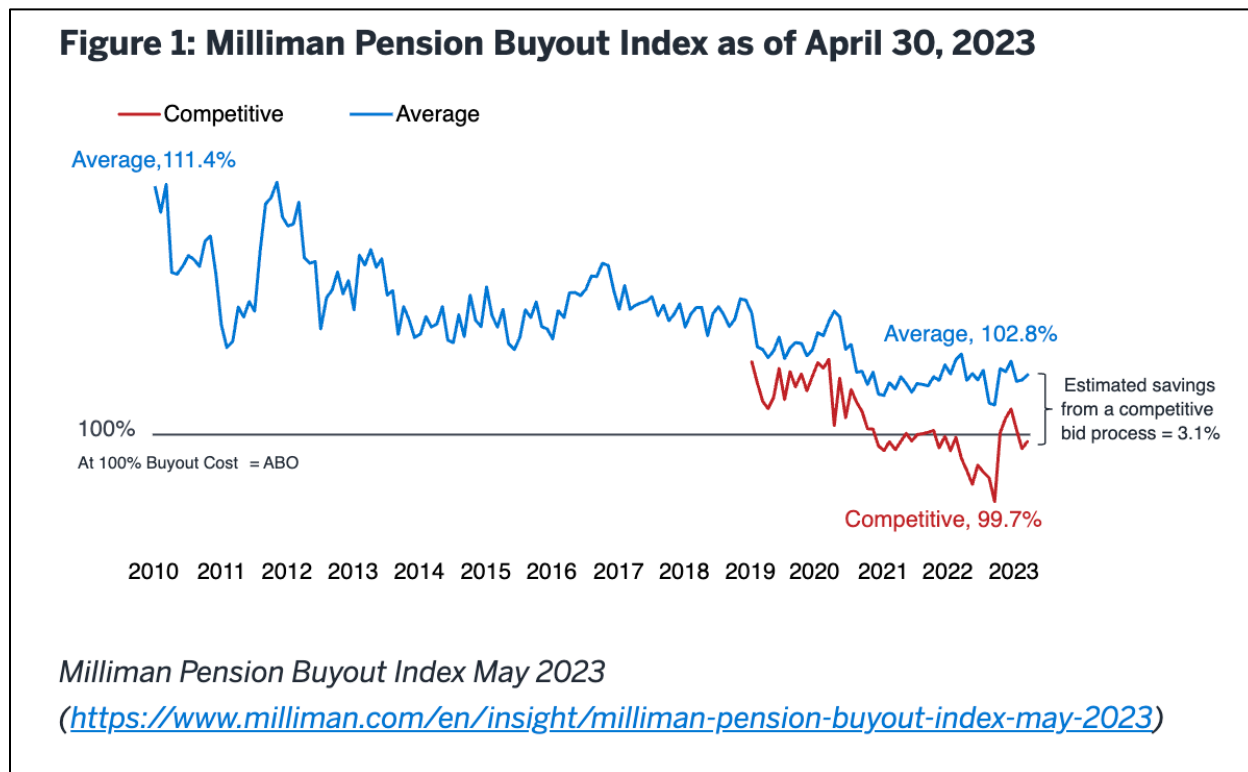
155. In choosing PICA for the annuity transaction at issue, IBM and State Street systematically ignored red flags like affiliated party reinsurance, high concentrations of risky assets and circular ModCo transactions as set forth *supra*.

156. IBM's reasons for doing so were to save millions of dollars and for immediate tax benefits. State Street's reasons for doing so are also suspect, given State Street's own, substantial financial interests in both PICA (through PRU) and IBM.

157. In a market with no shortage of stable and established annuity providers, no prudent and loyal fiduciary would have offloaded billions of participants' retirement savings to PICA under the circumstances then prevailing. IBM sacrificed the retirement security of retirees and beneficiaries for corporate profits.

158. With the dramatic increase in PRT transactions during 2022 as more firms entered

the space, Milliman (which is “among the world’s largest independent actuarial and consulting firms”⁵⁹) reported that the spread between average and competitive bids has widened, emphasizing the importance of fiduciaries ensuring that low bidders are not taking undue risks.⁶⁰ This wider range in premiums is shown below:



159. Indeed, the above composite was prepared using data from PICA⁶¹ among others.

160. Other sources confirm the trend of employers in PRT transactions selecting the lowest-cost annuity provider. In 2022, for partial buyouts, Aon⁶² reported that “[p]lan fiduciaries

⁵⁹ <https://www.linkedin.com/company/milliman>.

⁶⁰ See Fiona Ng et. al., *Pension Risk Transfer: Staying Current in a Rapidly Evolving Market*, MILLIMAN (June 23, 2023), <https://www.milliman.com/en/insight/pension-risk-transfer-staying-current-evolving-market>.

⁶¹ “Annuity pricing composites are provided by the following insurers: Prudential Insurance Company of America,” Mary Leong & Ryan Cook, *Milliman Pension Buyout Index March 2022*, MILLIMAN (Mar. 23, 2022), <https://www.my-milliman.com/en-GB/insight/Milliman-Pension-Buyout-Index-March-2022>.

⁶² Aon is “a global professional services firm.” <https://www.forbes.com/companies/aon/>.

selected the lowest bidder 78% of the time.”⁶³

161. Given this statistic, it is no coincidence that “Prudential has completed seven of the 10 largest U.S. pension risk transfers on record.”⁶⁴ Prudential completed seven (7) of ten (10) of the largest U.S. PRTs likely because Prudential offered the cheapest cost, and, in over 7 of 10 times, employers have been documented to have chosen the lowest cost annuity.

162. The primary reason IBM entered into the PICA transactions was to decrease its future liabilities, avoid paying fixed premiums to the PBGC, and the cost of uncertainty and volatility associated with its Plan.

163. By entering into the transaction with PICA, IBM saved millions of dollars by avoiding paying premiums to the PBGC. For single-employer plans like IBM’s, the premium due for each year is at least a “flat-rate premium based on the number of participants.”⁶⁵ Assuming all 132,000 retirees were still in the plan, IBM would have owed nearly \$14 million in flat-rate premiums in just 2025 alone.⁶⁶

164. Finally, IBM entered the transaction to obtain significant tax benefits.

165. According to IBM’s 2024 Annual report, IBM’s “2024 and 2022 tax benefits were driven by the tax impact of the pension settlement charges”:

Over the past several years, **the company has taken actions to reduce the risk profile of its worldwide retirement-related plans**, while at the same time increasing the funded status of the plans. In 2022 and 2024, non-participating single group annuity contracts were purchased from insurers which irrevocably transferred to the insurers certain defined benefit (“DB”) pension obligations and related plan assets, as described below. There were no changes to the amount of benefits payable to the participants and beneficiaries of the

⁶³ AON, *U.S. Pension Risk Transfer: Market Insights*, (Mar. 2023), at 12, <https://www.aon.com/insights/reports/2023/us-pension-risk-transfer-market-insights> (emphasis added).

⁶⁴ <https://www.prudential.com/institutions/pension-risk-transfer/2024-in-review>.

⁶⁵ <https://www.pbtc.gov/about/factsheets/page/premiums>.

⁶⁶ 132,000 participants * \$106 [Per Participant Rate for Flat-Rate Premium in 2025]) = \$13,992,000. See <https://www.pbtc.gov/employers-practitioners/premium-filings/rates>.

plans transferred. These pension transfers reduced the company's pension obligations and assets by approximately the same amount and were purchased using assets from their respective retirement plans with no additional funding contributions required from the company. Each transaction resulted in the recognition of a one-time, non-cash, pre-tax pension settlement charge ("pension settlement charge") in the respective period of the pension transfer.

...

In September 2022, the IBM Personal Pension Plan ("Qualified PPP") irrevocably transferred to insurers approximately \$16 billion of the Qualified PPP's DB pension obligations and related plan assets. As a result of this transaction, the company recognized a pension settlement charge of \$5.9 billion (\$4.4 billion net of tax) in the third quarter of 2022.

In September 2024, the Qualified PPP irrevocably transferred to an insurer approximately \$6 billion of the Qualified PPP's DB pension obligations and related plan assets. As a result of this transaction, the company recognized a pension settlement charge of \$2.7 billion (\$2.0 billion net of tax) in the third quarter of 2024.

...

The company reported a benefit from income taxes of \$218 million and \$626 million for the years ended December 31, 2024 and December 31, 2022, respectively. The 2024 and 2022 tax benefits were driven by the tax impact of the pension settlement charges, as described above.

166. State Street also placed its financial interests ahead of the retirement security of retirees.

167. First, *State Street is the third-largest shareholder in PRU*, PICA's direct parent, holding shares valued at more than \$1.8 billion.⁶⁷

168. Next, *State Street is also the third largest institutional holder in IBM*, holding approximately 54 million shares currently valued at \$13.4 billion.⁶⁸ This accounts for around 5.8% of all holdings in IBM.

⁶⁷ See <https://www.nasdaq.com/market-activity/stocks/pru/institutional-holdings> (last accessed Sep. 4, 2025).

⁶⁸ See <https://www.investing.com/equities/ibm-ownership> (last accessed Sep. 4, 2025).

169. Additionally, *the PRT enables State Street to prioritize its own interests via its holdings in IBM common stock*. State Street acted disloyally by purporting to be an “independent” fiduciary knowing full well that it can use Plaintiff and Class members’ votes to further its self-interest via proxy voting.⁶⁹ “In the case of pension plans, fiduciaries [like State Street] act as the proxy voters.”⁷⁰ Here, the fact that State Street is the third largest institutional investor in IBM, *and* engages in and can influence proxy voting, means that pensioners’ personal financial interests are more likely to be pushed aside in favor of IBM’s and State Street’s corporate interests.

170. Yet, despite obvious conflicts of interest, State Street claims to have acted as an “independent fiduciary” when it came to the choice of PICA for the instant IBM transaction, and State Street further claims that its choice of annuity provider was undertaken in the best interests of plan participants.

171. If an Article III Judge owned millions (let alone billions) in common stock in Prudential and/or IBM, they would be duty bound to recuse themselves from this case. State Street’s claim to have acted solely in the best interests of plan participants, even when it directly benefitted from IBM off-loading liabilities to PICA, is not credible.

172. Plaintiff maintains that Defendants intentionally failed to conduct an independent and impartial investigation when selecting PICA for the instant annuitization transaction. Plaintiff further maintains and will prove that State Street was hired to provide “cover” for IBM’s choice

⁶⁹ STATE STREET INVESTMENT MANAGEMENT, *Proxy Voting Choice Empowers Investors*, available at <https://www.ssga.com/us/en/about-us/what-we-do/asset-stewardship/proxy-voting-choice> (last accessed Sep. 4, 2025) (“Our proxy voting choice program covers over 81% of the eligible index equity assets we manage[.]”) (internal citation omitted).

⁷⁰ *Pension Plans and Proxy Voting*, SURVEY & BALLOT SYSTEMS, <https://www.surveyandballotsystems.com/blog/engagement/pension-plans-proxy-voting/#:~:text=In%20the%20United%20States'%20retirement,on%20ownership%20and%20specific%20issues> (last accessed Sep. 4, 2025).

of PICA and to give the appearance of legitimacy to a process that was fatally flawed and contrived from the outset.

173. In other words, *State Street purported to be independent but served to provide employers with a veneer of credibility*, in direct conflict with its fiduciary duty to act solely in the interests of Plan participants. Given the spread in premiums (*see supra* ¶ 158), selecting PICA enabled State Street to position itself for repeat engagements as a “independent” fiduciary in jumbo PRT deals, with major employers like IBM and Verizon.⁷¹ Public press releases cover these PRT deals, and State Street had financial incentive to select PICA (the cheapest option) as opposed to the *safest* required option, helping State Street to, *inter alia*, secure goodwill among new and existing plan sponsors.

174. One PRU article⁷² boasts that “[a] second jumbo PRT deal with the same insurer isn’t just extraordinary. It’s a testament.” However, choosing PICA for two major PRT deals is not at all “extraordinary,” given that employers choose the lowest-cost annuity provider in nearly 80% of PRT transactions. *See supra* ¶ 161 (“Given this statistic, it is no coincidence that ‘Prudential has completed seven of the 10 largest U.S. pension risk transfers on record.’”). Nor does PRU have any liability to IBM pensioners in the event of a PICA insolvency. *See supra* ¶¶ 96-99.

175. The detailed data contained herein, all of which is publicly available, shows that PICA is entirely dependent upon affiliates domiciled in secrecy jurisdictions to make good on their

⁷¹ *See, e.g.*, <https://news.prudential.com/latest-news/prudential-news/prudential-news-details/2024/Prudential-and-RGA-entrusted-to-fulfill-5.9-billion-in-pension-promises-for-Verizon/default.aspx>.

⁷² Discussing “Prudential and Verizon’s [r]elationship,” Verizon being another major employer like IBM who selected PICA. *See* <https://www.prudential.com/risk-transfer/verizon-and-prudential>.

liabilities to Plaintiff. The interdependence among affiliates within the same controlled group of companies, and the excessive amounts of sham reinsurance with captives and affiliates located in Arizona and Bermuda, would have led a loyal and prudent fiduciary to conclude that PICA was not a safe annuity provider for the 132,000 hard-earned pensions that were dumped on them by IBM with State Street's blessing.

176. The deal with PICA immediately reduced the value of Plaintiff's pension benefits. At the same time, by offloading liabilities to PICA, IBM improved its own financial position to the delight of one of its largest institutional investors—State Street. This type of self-dealing turns fiduciary duties on their head and is not permitted under ERISA.

177. The selection of PICA took away all of the uniform protections intended by Congress under ERISA and reduced earned benefits to which Plaintiff was entitled to benefits that are substantially and quantifiably less valuable.

178. Nor are pensioners adequately protected by PICA's separate account (to the extent a separate account is utilized).⁷³ Any separate account is a co-mingled insurance company separate account; as such, PICA reports results on a consolidated basis. In other words, all of PICA's liabilities associated with major PRT (including, but not limited to, a \$5.9 billion Verizon transaction in 2024,⁷⁴ a \$25.1 billion General Motors transaction in 2012, and the two transactions at issue in this case), are pooled in the same commingled separate account.

⁷³ See <https://www.prudential.com/risk-transfer/verizon-and-prudential> ("Certain insurance products used to transfer pension risk, ... ***may utilize a separate account established by PICA***, The payment obligations specified in the group annuity contracts for such products are insurance claims supported by the assets in the separate account, and if such assets are not sufficient, by the claims-paying ability of PICA, subject to certain terms conditions, and limitations.") (emphasis added).

⁷⁴ See <https://news.prudential.com/latest-news/prudential-news/prudential-news-details/2024/Prudential-and-RGA-entrusted-to-fulfill-5.9-billion-in-pension-promises-for-Verizon/default.aspx>.

179. PRU states that commingling is done to “aggregate assets from more than one retirement plan to achieve economies of scale[,]”⁷⁵ rather than to enhance the safety or security of retirees. However, in the context of a plan and transfer as large as IBM’s, the justification of economies of scale is questionable, as these transactions are enormous and would not require aggregation to achieve any efficiencies.

180. Indeed, one of the only benefits of any “insurance separate account”—let alone a *commingled* insurance separate account—is cost-efficiency. But the drawbacks, including issues with liquidity, outweigh any purported benefit and include:

- Inadequate Disclosures[;]
- Participant Transparency[;]
- Portfolio Construction Variability: Another risk is the potential for significant variability in the portfolio construction of separate accounts compared to their mutual fund equivalents. This variability can lead to unexpected investment outcomes[;]
- Liquidity[;]
- Recordkeeper Portability[;] and
- Muddled Fiduciary Oversight[.]⁷⁶

181. “In conclusion, [] insurance separate accounts ... come with risks related to inadequate disclosures, portfolio construction variability, liquidity, and additional due diligence requirements.”⁷⁷ For these reasons and more “[f]iduciaries should carefully evaluate the specific separate accounts they are considering adopting into their plans.”⁷⁸

182. Moreover, the amount in PICA’s separate account has to be considered in light of

⁷⁵ PRUDENTIAL, *Insurance Company Separate Accounts*, available at <https://supplements.pionline.com/uploads/supplements/RSBR852.pdf>.

⁷⁶ MULTNOMAH GROUP, *Insurance Separate Accounts Usage in Qualified Retirement Plans* (Sep. 12, 2024), available at <https://blog.multnomahgroup.com/forward-thinking/insurance-separate-accounts-in-qualified-retirement-plans> (last accessed Sep. 4, 2025).

⁷⁷ *Id.*

⁷⁸ *Id.*

the total PRT and other liabilities assumed by PICA, because “[c]ommingling funds can pose risks to policyholders as their premiums and claims payments may be mixed with other funds within an insurer's accounts. This raises concerns about the security and availability of these funds when needed to pay out claims. If an insurer faces financial difficulties or insolvency, commingled funds could be at risk of being used to cover other obligations, potentially leaving policyholders without adequate protection.”⁷⁹

183. Plaintiff did not choose PICA and Plaintiff had no say in any aspect of IBM’s decision to kick them out of the Plan. Plaintiff and putative Class Members are stuck as certificate holders under a group annuity contract they do not control and cannot surrender or exchange for an individual annuity contract with a better capitalized mutual insurance company owned by policyholders rather than shareholders like State Street.

VII. Recent Losses Driven By PICA’s Reinsurance Captives Further Show That Plaintiff’s Pension Benefits Are Far Less Secure As a Result of the Transactions

184. PICA had a *\$173 million capital decrease* in the year ended December 31, 2024. Gober Decl. ¶ 66. PICA’s decrease in capital and surplus was primarily driven by losses from its reinsurance captives. *Id.* For example, losses from PICA’s reinsurance captives drove a \$2.39 billion unrealized capital loss. *Id.* These losses followed two mergers of PICA’s captive reinsurers.

185. The first merger was effective March 28, 2024. The surviving entity, Prudential Arizona Reinsurance Captive Company (“PARCC”), was a result of a merger between Prudential Universal Reinsurance Company (“PURC”), Prudential Arizona Reinsurance Universal Company (“PARUC”), and Gibraltar Universal Life Reinsurance Company (“Gibraltar”). Gober Decl. ¶ 67.

⁷⁹ FASTERCAPITAL, *Commingling in the insurance industry: Examining potential conflicts* (updated Mar. 31, 2025), available at <https://fastercapital.com/content/Commingling-in-the-insurance-industry--Examining-potential-conflicts.html#Understanding-the-concept-of-commingling-in-the-insurance-industry>.

186. The second merger was effective November 20, 2024. The surviving entity, Prudential Arizona Reinsurance Captive Company (“PARCC”), was a result of a merger between Prudential Arizona Reinsurance Term Company (“PARTC”), Prudential Term Reinsurance Company (“PRTC”), and Dryden Arizona Reinsurance Term Company (“Dryden”). *Id.*

187. These losses further show that PICA’s wholly owned affiliates to make good on their insider reinsurance “IOUs” is entirely speculative and opaque, and Plaintiff’s pension benefits are not secure.

CLASS REPRESENTATION ALLEGATIONS

188. Plaintiff brings this action as a class action under Federal Rule of Civil Procedure 23. Plaintiff seeks to represent a class defined as the 132,000 Plan participants and beneficiaries ejected from the Plan by the PICA transactions (the “Class”).

189. Plaintiff reserves the right to modify the Class definition, including by using subclasses, as appropriate based on further investigation and discovery obtained in the case.

190. The “Class Period” is the time period beginning on the date established by the Court’s determination of any applicable statute of limitations, after considering of any tolling, concealment, and accrual issues, and ending on the date of entry of judgement.

191. The following people are excluded from the Class: (1) any Judge presiding over this action and members of her or her family; (2) Defendants, Defendants’ subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest (including current and former employees, officers, or directors); (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff’s counsel and Defendants’ counsel; and (6) the legal representatives, successors, and assigns of

any such excluded persons.

192. Plaintiff is empowered to bring this action under 29 U.S.C. § 1132(a)(2), (a)(3) and (a)(9).

193. **Numerosity/Ascertainability:** Members of the 132,000-member Class are so numerous that their individual joinder herein is impracticable. The identity of such membership is readily ascertainable from Defendants' records.

194. **Typicality:** The named plaintiff's claims are typical of the Class's claims. The Plaintiff's claims arise from the same conduct, and seeks to redress the same legal violations, as the Class's claims.

195. **Adequacy:** Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class Members he seeks to represent, he has retained competent counsel experienced in prosecuting class actions, and they intend to prosecute this action vigorously. The interests of Class Members will be fairly and adequately protected by Plaintiff and his counsel.

196. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over questions affecting only individual Class Members. Common legal and factual questions include, but are not limited to, whether Defendants violated 29 U.S.C. §§ 1104, 29 U.S.C. § 1105, and 29 U.S.C. § 1106, the proper form of relief, and whether Plaintiff and the members of the Class are entitled to attorneys' fees and costs.

197. **Superiority:** The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class Members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendants' liability. Individualized litigation

increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

198. **Rule 23(b)(1):** The prerequisites for a (b)(1) class are satisfied. Prosecution of separate actions by Class Members would risk establishing incompatible standards of conduct for Defendants. Additionally, adjudications as to individual Class Members would, as a practical matter, dispose of the interests of other members of the Class and substantially impair their ability to protect their interests.

199. **Rule 23(b)(2):** The prerequisites for a (b)(2) class are satisfied. Defendants' misconduct was generally applicable to the Class. The injunctive relief that Plaintiff seeks affects the Class as a whole. Individual Class Members do not have an interest in prosecuting their claims in this action individually because Class Members' claims are identical, and the injunctive relief sought will affect each Class Member equally.

200. **Rule 23(b)(3):** The prerequisites for a Rule 23 (b)(3) class are satisfied because common questions of law and fact predominate and are susceptible to class-wide proof. Classwide litigation of this action is also superior to individual litigation because there are no difficulties in managing this case as a class action and there is a strong need to concentrate the Class Members' claims in one action.

//

CAUSES OF ACTION

COUNT I

**Breach of Fiduciary Duty – 29 U.S.C. § 1104
Against IBM**

201. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above. Plaintiff brings this cause of action on behalf of himself and members of the Class against IBM.

202. IBM, at all relevant times, was a “fiduciary” as defined by ERISA with respect to the Plans and transactions at issue.

203. Under 29 U.S.C. § 1104(a)(1), IBM was thus required to “discharge [its] duties with respect to a plan solely in the interest of the participants and beneficiaries” and “for the exclusive purpose of (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan.” This duty requires that ERISA plans be operated for the “exclusive benefit” of plan participants, and ERISA relatedly provides that, except in limited circumstances inapplicable here, “the assets of a plan shall never inure to the benefit of any employer.” 29 U.S.C. § 1103(c)(1). IBM was also required to act “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.” 29 U.S.C. § 1104(a)(1)(B).

204. On information and belief, Defendant selected PICA not because doing so was in the interest of participants, their beneficiaries, and the security of their retirement benefits, but because it was the cheapest. Selecting PICA enabled IBM to save millions of dollars, including but not limited to the millions of dollars in annual premiums to the PBGC. Because Defendant’s goal and motivation was to save the company millions of dollars, Defendant’s search was biased

in favor of the lowest-cost provider and thus not objective or sufficiently thorough or analytical, thereby breaching the duty of prudence.

205. PICA was not a safe nor a reasonable choice of annuity provider, and there were far safer available annuities at the time of the transactions.

206. In order to satisfy their fiduciary duties under ERISA, plan fiduciaries must take steps to obtain the safest annuity available, which requires an objective, thorough, search to determine which annuity provider is best for plan participants. Fiduciaries must also, at a minimum, “conduct an objective, thorough and analytical search for the purpose of identifying and selecting providers from which to purchase annuities.” IB 95-1(c).

207. PICA was not the safest annuity available, its selection was not in Plaintiff’s best interest, and IBM did not take the necessary steps to identify and select providers or obtain the safest annuities available as required by ERISA.

208. The transfer of Plaintiff’s pension liabilities to PICA has caused Plaintiff immediate and irreparable injury; notably, the loss of ERISA’s uniform protections and the financial backstop provided by the PBGC.

209. As a result of the PICA transaction, the overall value of Plaintiff’s pension benefits decreased using objective and calculable metrics. Overall, Plaintiff’s benefits were reduced by the annuitization transaction, and his pension benefits are far less secure as a result of the transaction.

210. Plaintiff is also subject to a materially increased and substantial risk that he will not receive the full earned retirement benefits to which he is entitled, and that his receipt of periodic benefits will be disrupted and delayed.

211. In addition, by transferring pension obligations and related plan assets to PICA, Defendant avoided bearing the risk premium associated with this pension transfer by selecting a

lower-cost provider and shifting the associated risks—including that Plaintiff and Plan participants will not receive the earned benefits to which they are entitled. IBM imposed this risk unwillingly solely on Plaintiff and Class Members, and IBM put its own financial interest in front of the interest of plan participants, in violation of ERISA.

212. Regardless of whether the appropriate amount of plan assets was used to cover plan liabilities, IBM and State Street orchestrated a transaction that directly benefitted the IBM Defendants at plan participants' expense.

COUNT II
Breach of Fiduciary Duty and Co-Fiduciary Duties – 29 U.S.C. §§ 1104, 1105
Against State Street

213. Plaintiff incorporates by reference and re-allege herein all paragraphs alleged above. Plaintiff brings this cause of action on behalf of himself and members of the Class against State Street.

214. As a fiduciary, State Street was, like IBM, required to “discharge [its] duties with respect to a plan solely in the interest of the participants and beneficiaries.” 29 U.S.C. § 1104(a). It was also required to act “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.” 29 U.S.C. § 1104(a)(1)(B).

215. As a fiduciary, State Street also is liable for the acts of “another fiduciary with respect to the same plan” in the following circumstances:

- (i) if it participated knowingly in, or knowingly undertook to conceal, an act or omission of such fiduciary, knowing such act or omission was a breach;
- (ii) if, by its failure to comply with 29 U.S.C. § 1104(a)(1) in the administration of its specific responsibilities which gave rise to its

status as a fiduciary, it has enabled such other fiduciary to commit a breach; or

- (iii) if it had knowledge of a breach by such other fiduciary, unless it made reasonable efforts under the circumstances to remedy the breach.

See 29 U.S. Code § 1105.

216. State Street breached these duties through its participation and assistance in IBM's unlawful annuity transaction with PICA on behalf of the Plans.

217. State Street's actions did not comply with ERISA's "prudent person" standard of care.

218. State Street knowingly participated in, enabled, and made no reasonable efforts to remedy IBM's fiduciary breaches, including IBM's prohibited transactions with State Street and PICA.

COUNT III

Breach of Fiduciary Duty and Co-Fiduciary Duties – 29 U.S.C. § 1104, 1105 Against All Defendants

219. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above. Plaintiff brings this cause of action on behalf of himself and members of the Class against IBM and State Street.

220. 29 U.S.C. §§ 1132(a)(3) and 1132(a)(9) not only empower individuals to bring actions when their status as plan participants is terminated by annuitizations that violate ERISA, it also imposes substantive duties on certain non-fiduciaries.

221. Specifically, it creates liability for non-fiduciaries who knowingly participate in a fiduciary breach in violation of ERISA, 29 U.S.C. § 1104. *See generally* 29 U.S.C. § 1132(a)(3).

222. Plaintiff thus alleges, in the alternative to Counts I and II, that, even if any of the Defendants were non-fiduciaries for the purpose of the annuitization, those Defendants are liable

under 29 U.S.C. §§ 1132(a)(3) and 1132(a)(9) for participating in a fiduciary's ERISA violation. Among other things, all Defendants knew of the circumstances that rendered the other's conduct a breach of fiduciary duty and participated in that breach.

223. Specifically, IBM ostensibly engaged State Street for the purpose of selecting an annuity provider; yet IBM knew that State Street was one of IBM's largest institutional shareholders; knew that State Street's investigation of available annuity providers could not be objective or sufficiently thorough and reeked of self-dealing; knew that the deficient selection of PICA instead of a prudent alternative annuity provider would generate a massive cost savings and corporate benefit for IBM and State Street; and knowingly accepted those benefits by entering into the annuitization with PICA that was "recommended" by State Street.

224. Likewise, State Street knew or should have known that it ostensibly undertook the responsibility to investigate and select an annuity provider on behalf of IBM. State Street knew that IBM's engagement of State Street for this task was designed to confer legitimacy to a preordained outcome; knew that its investigation could not be objective or sufficiently thorough, and that its selection of PICA would generate material benefits for IBM and for itself; and knowingly accepted those benefits in the execution of the annuitization with PICA, to the detriment of plan participants.

COUNT IV
Prohibited Transaction – 29 U.S.C. § 1106
Against IBM (State Street as Party in Interest)

225. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above. Plaintiff brings this cause of action on behalf of himself and members of the Class against IBM.

226. Under ERISA, a plan fiduciary shall not “cause the plan to engage in a transaction” if the fiduciary “knows or should know that such transaction constitutes a direct or indirect... furnishing of ... services between the plan and a party in interest[.]” 29 U.S.C. § 1106(a)(1)(C).

227. IBM was at all times a fiduciary to the Plan. IBM caused the Plan to engage in the annuity transaction with actual or constructive knowledge that the transaction constituted a direct or indirect furnishing of services between State Street and the Plan.

228. When IBM caused the Plan to engage in the annuity transaction, State Street was a party in interest, including because State Street was a fiduciary of the Plan and a person providing services to the Plan. 29 U.S.C. § 1002(14). IBM knew of that fact when it caused the Plan to engage in the annuity transaction.

229. Even if IBM was not a fiduciary with respect to the relevant conduct, it is liable under 29 U.S.C. § 1132(a)(3) as a nonfiduciary party in interest, including because it knowingly participated in the breach or violation of other persons, including State Street.

COUNT V

Prohibited Transaction – 29 U.S.C. § 1106 Against State Street (IBM as Party in Interest)

230. Plaintiff incorporates by reference and re-allege herein all paragraphs alleged above. Plaintiff brings this cause of action on behalf of himself and members of the Class against State Street.

231. State Street was at all relevant times a fiduciary to the Plan.

232. State Street caused the Plan to engage in the annuity transaction with actual or constructive knowledge that the transaction constituted a direct or indirect (i) exchange of property between the Plan, on one hand, and IBM, on the other hand; (ii) furnishing of services between the Plan and IBM; and (iii) the transfer to, or use by or for the benefit of IBM, of Plan assets.

233. When State Street caused the Plan to enter into the annuity transaction, IBM and State Street were parties in interest, including because they were fiduciaries of the Plan and persons providing services to the Plan. 29 U.S.C. § 1002(14). State Street knew of these facts when it caused the Plan to engage in the annuity transaction.

234. Even if State Street were not a fiduciary with respect to the relevant conduct, it is liable under 29 U.S.C. § 1132(a)(3) as a nonfiduciary party in interest, including because it knowingly participated in the breach or violation of other persons, including State Street.

COUNT VI
Prohibited Transaction – 29 U.S.C. § 1106
Against State Street and IBM (PICA as Party in Interest)

235. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above. Plaintiff brings this cause of action on behalf of himself and members of the Class against IBM and State Street.

236. Under ERISA, a plan fiduciary shall not “cause the plan to engage in a transaction” if the fiduciary “knows or should know that such transaction constitutes a direct or indirect... furnishing of ... services between the plan and a party in interest.” 29 U.S.C. § 1106(a)(1)(C).

237. IBM and State Street were at all times fiduciaries to the Plan.

238. IBM and State Street also caused the Plan to engage in the annuity transaction with actual or constructive knowledge that the transaction constituted a direct or indirect (i) exchange of property between the Plan (on one hand) and PICA (on the other hand); (ii) furnishing of services between the Plan and PICA; and (iii) transfer to, or use by or for the benefit of PICA, of Plan assets, *see* 29 U.S.C. § 1106(a)(1)(A), (C), (D).

239. When IBM and State Street caused the Plan to engage in the annuity transaction, PICA was a party in interest, including because PICA was a person providing services to the Plan.

29 U.S.C. § 1002(14). IBM and State Street knew of that fact when they caused the Plan to engage in the annuity transaction.

240. Even if either IBM or State Street was not a fiduciary with respect to the relevant conduct, the nonfiduciary entity would be liable for knowingly participating in the other entity's breach and failing to make any reasonable effort under the circumstances to remedy the breach.

RELIEF DEMANDED

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated Plan participants and beneficiaries, prays for relief and judgment, as follows:

- a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiff as representative of the Class, and naming Plaintiff's attorneys as Class Counsel to represent the Class;
- b. For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- c. Order Defendants, through Plan amendment or otherwise, to place the group annuity contract inside the Plan as a Plan asset and to return the Class members to their former status as Plan participants;
- d. Order Defendants to remain secondarily liable for Plaintiff's pension benefits in the event of a PICA insolvency or impairment;
- e. Order Defendants to make good to the Class members all losses to the Class resulting from Defendants' breach of fiduciary duties, including losses to the Class resulting from the transaction;
- f. Order the Defendants to guarantee the annuity purchased from PICA through the purchase, at their expense, of appropriate guarantees from reliable re-insurers selected at arm's length through appropriate procedures or the posting of appropriate security, such as a surety bond;
- g. Order that IBM contribute the amount that it would have been required to pay to the PBGC in the form of fixed rate premiums into a fund for the benefit of all impacted plan participants and their spouses and/or beneficiaries;
- h. Order that Defendants pay Plaintiff and class members the difference between the cost of selecting PICA as the annuity provider and the cost of selecting the safest annuity available;
- i. Grant equitable relief pursuant to 29 U.S.C. § 1132(a)(3) in the form of the imposition of a constructive trust;

- j. Order Defendant to post adequate security to assure receipt by Plaintiff and class members of all retirement benefits covered by PICA annuities, plus prejudgment interest;
- k. Award to the Plaintiff and the class their attorney's fees and costs under 29 U.S.C. § 1132(g)(1) and the common fund doctrine;
- l. Order the payment of interest to the extent it is allowed by law; and
- m. Grant any other relief as the Court deems appropriate to remedy the ERISA violations.

JURY TRIAL DEMANDED

Pursuant to Fed. R. Civ. P. 38(b)(1), Plaintiff demands a trial by jury of all issues so triable.

Dated: September 5, 2025

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Yitzchak Kopel
Yitzchak Kopel

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Attorneys for Plaintiff

**Pro Hac Vice application forthcoming*

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

RICHARD SPOHN, individually, and as
representative of plan participants and plan
beneficiaries of the IBM Personal Pension
Plan,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORP., as Plan Administrator and Sponsor;
the IBM retirement plans committee, as Plan
Administrator; and State Street Global
Advisors Trust Company, as independent
fiduciary of the IBM Personal Pension Plan,

Defendants.

Civil Action No.

DECLARATION OF THOMAS GOBER

I, Thomas D. Gober, hereby declare as follows:

1. I am a Certified Fraud Examiner (“CFE”) whose primary career focus has been examinations and investigations of complex accounting fraud schemes in the insurance industry’s financial reporting. Except where otherwise stated, I have personal knowledge of the matters stated herein and if sworn as a witness could and would testify competently thereto.

2. I am the President and owner of Thomas Gober Forensic Accounting Services located in Beaver, Pennsylvania. I have a Bachelor of Science from Belhaven College, Jackson, Mississippi and a Master of Business Administration from the Millsaps College Else School of Management, Jackson, Mississippi. I have had extensive experience, beginning in 1985, in conducting examinations of virtually all types of insurance companies. I served as an external

consultant over a decade assisting the United States Attorneys' Office, the Federal Bureau of Investigation, and several other federal, state, and local law enforcement agencies in connection with criminal investigations of financial reporting within the insurance industry. In my service as a consultant, expert, and criminal investigator, I have reviewed and analyzed annual and quarterly financial statements, Statutory Reports of Examination, and all forms of documentation related to Financial Condition examinations.

3. From May 1985 through February 1992, I was employed as an insurance examiner by the Mississippi Department of Insurance, where I obtained accreditation (Accredited Financial Examiner) and certification as a Certified Financial Examiner. My duties involved financial statement analysis, insurance ratio calculations, statutory compliance, market conduct review, claims analysis time studies and preparation of examination reports. During my last three years with the Mississippi Department of Insurance, I served as Examiner-In-Charge. In my career as an insurance examiner, I conducted over 100 insurance company examinations, and it was my responsibility to examine the companies' financial condition, integrity, and transparency in accordance with the National Association of Insurance Commissioners ("NAIC") Examiners Handbook Guidelines, the NAIC Accounting Practices and Procedures Manual and all applicable state laws and regulations.

4. I have provided services as a consulting expert and/or a testifying expert in civil and criminal actions in federal, state, and local courts located in Alabama, California, Colorado, Mississippi, New York, Pennsylvania, Virginia, Washington state, and the District of Columbia in my role as a CFE. After my tenure with the Mississippi Department of Insurance, I have provided expert services for both plaintiffs and defendants in civil and criminal matters. I have 40 years of education and experience in statutory accounting of insurance companies, enhanced through my

deep dive analyses into insurance company financial reporting. The bulk of my work as a CFE is related to complex accounting issues in the insurance and reinsurance industries.

5. I have also spent the past five years with a focus on evaluating risk characteristics of life insurance and annuity (“L&A”) carriers. Specifically, I focus my analysis on risk by reverse-engineering statutory financial statements and examining counter-party risk and asset risk in order to identify liquidity and solvency concerns of L&A carriers. As an important aspect of the risk analysis, I also focus on lack of transparency in financial reporting.

6. I am familiar with the pension risk transfers involving International Business Machines Corporation as Plan Sponsor (“IBM”) and Prudential Insurance Company of America, Inc. (“PICA”) as the annuity provider. My familiarity comes from my regular review and analysis of PICA’s statutory filings dating back to 2012 and my more recent review of the following documents: (1) Prudential Financial, Inc. (“PRU”) press releases¹; (2) PICA’s statutory financial statements for the years ended 2012, 2021, 2023 and 2024; (3) Pruco Life Insurance Company’s statutory financial statements for the years ended 2012, 2021, 2023 and 2024; (5) PRU’s public SEC filings, including its form 10-k for the year ended December 31, 2022 (filed February 16, 2023), the year ended December 31, 2023 (filed February 21, 2024), and the year ended December 31, 2024 (filed February 21, 2025); (6) Lotus Reinsurance Company’s 2023 Financial Statements and Report of Independent Auditors; and (7) review and analysis of other carriers’ statutory

¹ <https://news.prudential.com/latest-news/prudential-news/prudential-news-details/2022/Prudential-and-MetLife-entrusted-to-fulfill-16B-in-pension-obligations-for-100000-IBM-retirement-plan-participants-and-beneficiaries-09-13-2022/default.aspx>, and <https://news.prudential.com/latest-news/feature-stories/feature-stories-details/2024/Prudential-to-fulfill-6-billion-in-protected-retirement-obligations-in-second-pension-risk-transfer-with-IBM/default.aspx> (last retrieved on September 2, 2025).

financial statements for comparison purposes, including New York Life Insurance Company and Massachusetts Mutual Life Insurance Company.

7. I prepared the charts, graphs and tables that are contained herein, and I believe that all of the charts, graphs and tables that I have prepared are accurate in all material respects.

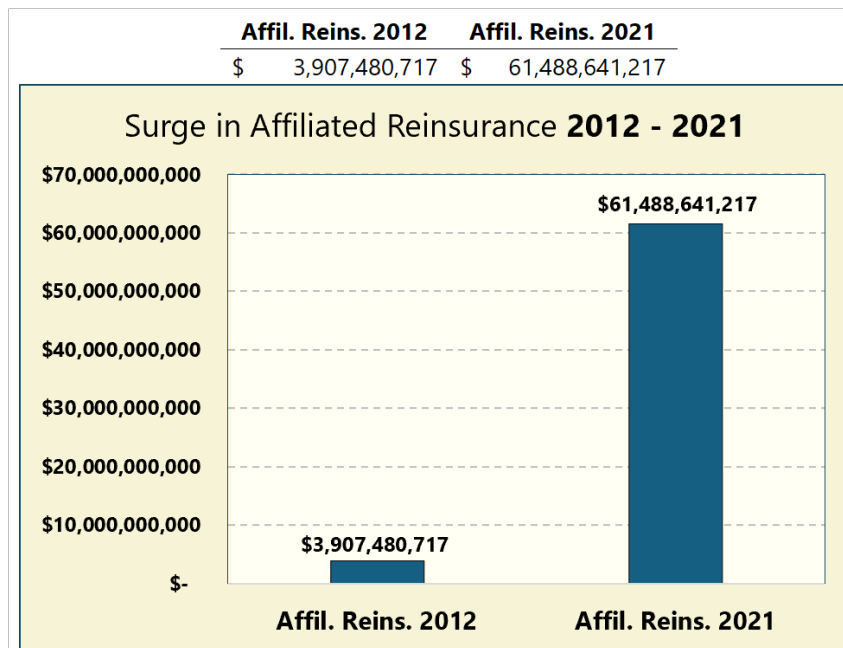
8. In this Declaration, I begin with an analysis of 2021 data regarding PICA's financial condition and then finish with 2024 data regarding PICA's financial condition.

2021 DATA AND ANALYSIS

9. From 2012 when PICA first assumed responsibility for more than \$32.5 billion in pension obligations owed to General Motors and Verizon pensioners² until year end 2021, PICA increased its exposure to affiliates dramatically.

² See <https://aon.mediaroom.com/2012-10-17-Verizon-Announces-Major-Pension-Settlement-Actions>; <https://aon.mediaroom.com/2012-6-1-GM-Announces-Major-Pension-Settlement-Actions#:~:text=On%20June%201%2C%20General%20Motors,status%20of%20their%20pensi on%20programs> (last retrieved on September 2, 2025).

10. In Schedule S - Part 3 - Section 1 of PICA's 2012 annual statement, PICA reported total ceded reinsurance to affiliates of \$3.9 billion. By year end 2021 based on Schedule S - Part 3 - Section 1 of PICA's 2021 annual statement, PICA's reported total ceded reinsurance to affiliates surged more than 15 times to \$61.5 billion. See chart below³:



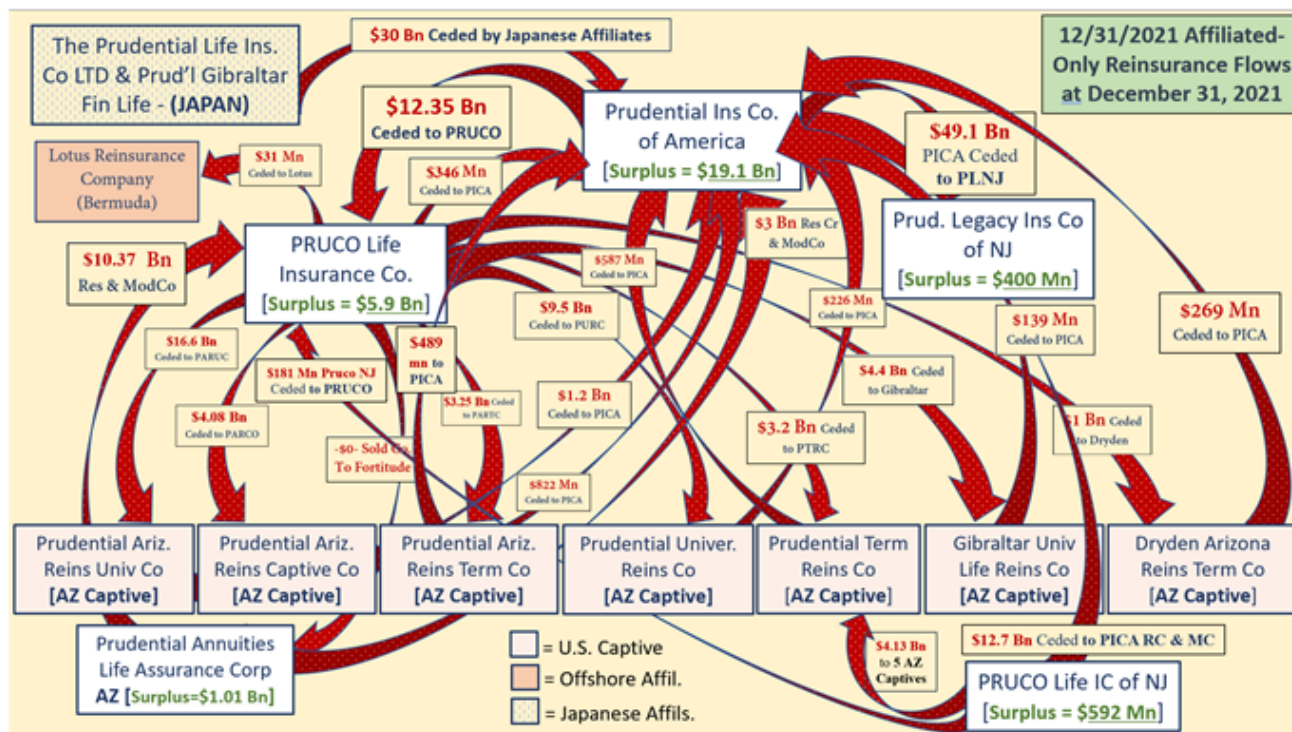
11. When PICA takes credit for reinsurance with an affiliate, it replaces admitted assets with an IOU from a related party in a transaction that is simply not arm's length.

12. When PICA's affiliate is located offshore or with a wholly owned captive in Arizona, the trail gets lost because those secrecy jurisdictions do not require the same public disclosure of financial information that is required of all US based L&A carriers that are required to file Annual Statements in accordance with uniform Statutory Accounting Principles ("SAP").

³ See 2012 & 2021 PICA statutory annual statements -Schedule S, Part 3 ceded to affiliates.

13. This type of regulatory arbitrage allows PICA to bid more aggressively for PRT business because it holds less capital in reserve to cover the PRT liabilities it assumes as a result of its non-arm's length reinsurance transactions with affiliated entities. PICA also sets reinsurance pricing internally and moves assets and liabilities around like chess pieces. Arm's length reinsurance with unaffiliated, well capitalized reinsurers can enhance policyholder security; non-arm's length reinsurance with wholly owned captives and affiliates does exactly the opposite and transfers substantial risk to policyholders. PICA may save substantial amounts by reinsuring liabilities with its own affiliates but none of those savings are passed on to policyholders. As reported at December 31, 2021, PICA's sister company Pruco Life Insurance Company, domiciled in Arizona, ceded more than \$42 billion in liabilities to PICA's wholly owned captives and reinsurers domiciled in Arizona. In addition, by year end 2021 PICA had also assumed 3.7 billion in liabilities from its wholly owned Arizona captive reinsurance subsidiaries, \$30 billion from its Japanese affiliates and \$14.7 billion of opaque Modified Co-insurance ("ModCo") from two affiliates: (i) Prudential Annuities Life Assurance Corporation, and (ii) Pruco Life Insurance Company of New Jersey. This data was obtained from PICA's 2021 annual statement, where PICA reports all of its assumed reinsurance (where PICA takes on additional liabilities from affiliates) and its ceded reinsurance with affiliates (where PICA offloads liabilities to affiliates), including PICA's unusual ModCo transactions with affiliates, described in more detail below.

14. Based on my own forensic review of public filings, as of year-end 2021, I prepared the chart below in order to identify the circular related-party transactions involving PICA and its affiliates.



2023 DATA AND ANALYSIS

15. By year end 2023, PICA had increased its exposure to affiliates and, as reflected in Schedule S - Part 3 - Section 1 of PICA's 2023 annual statement, PICA reported liabilities offloaded (via reinsurance or ModCo) to wholly owned captives and affiliates in the amount of \$72,884,344,104 as of December 31, 2023.

ANNUAL STATEMENT FOR THE YEAR December 31, 2023 OF THE The Prudential Ins Co Am (NAIC #68241)

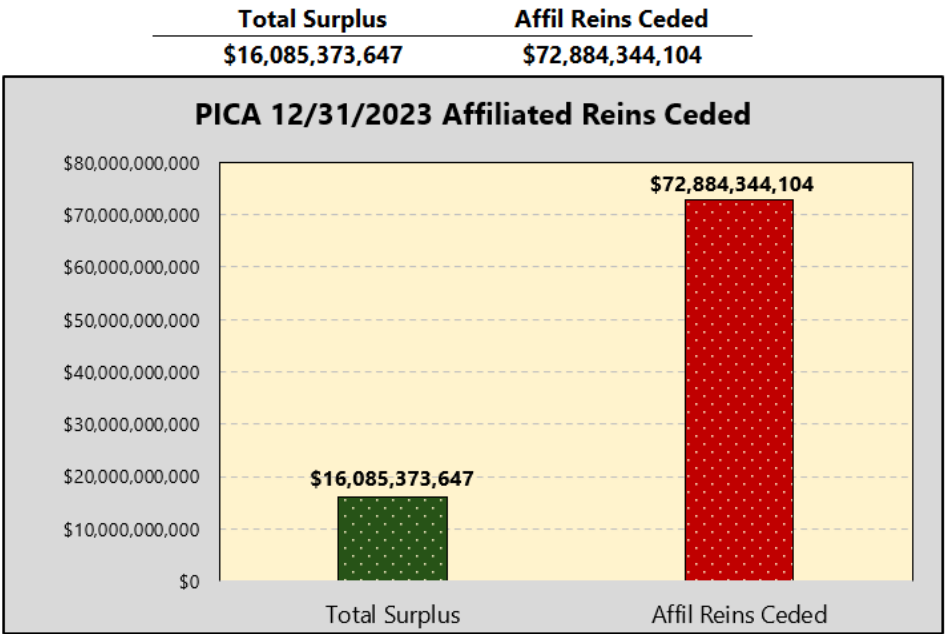
SCHEDULE S - PART 3 - SECTION 1**Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities**

	Reserve Credit Taken	Modified Coinsurance Reserve
General Account - Authorized - Affiliates US - Captive	0	0
General Account - Authorized - Affiliates US - Other	59,576,712,067	0
General Account - Authorized - Affiliates Non-US - Captive	0	0
General Account - Authorized - Affiliates Non-US - Other	0	0
General Account - Authorized - Affiliates - Total	59,576,712,067	0
General Account - Unauthorized - Affiliates US - Captive	7,498,417	0
General Account - Unauthorized - Affiliates US - Other	0	0
General Account - Unauthorized - Affiliates Non-US - Captive	0	0
General Account - Unauthorized - Affiliates Non-US - Other	2,292,791,790	11,007,341,830
General Account - Unauthorized - Affiliates - Total	2,300,290,207	11,007,341,830
Total US	59,584,210,484	0
Total Non-US	2,292,791,790	11,007,341,830
TOTAL	\$61,877,002,274	\$11,007,341,830

TOTAL Res Cr + ModCo: \$72,884,344,104

16. \$72.8 billion in affiliated party reinsurance and ModCo is much greater than PICA’s surplus, which is not only a measure of the risk associated with annuitized pensions, but surplus is the only buffer protecting policyholders (including pensioners) if PICA becomes insolvent or impaired. As set forth in the chart below, as of December 31, 2023, PICA had a surplus of \$16 billion. This means that if even a portion of the \$72.8 billion in affiliated party reinsurance and ModCo is uncollectable, PICA will face extreme liquidity and solvency concerns.

PICA Dec 31, 2023 Sch S, Part 3 - Section 1:



17. In addition to the credit for reinsurance that PICA has taken through non-arm's-length transactions with affiliates, Schedule S - Part 1 - Section 1 of PICA's own statutory financial statement shows all reinsurance assumed by PICA from its own affiliates. When PICA assumes reinsurance from an affiliate, it agrees to take financial responsibility for certain specified liabilities owed by those affiliates to policyholders. The chart below was prepared using data from PICA's 2023 Annual Statement, and it lists all reinsurance assumed by PICA from its affiliates including captives, U.S. affiliates, and non-U.S. affiliates as of December 31, 2023.

ANNUAL STATEMENT FOR THE YEAR December 31, 2023 OF THE The Prudential Ins Co Am (NAIC #68241)

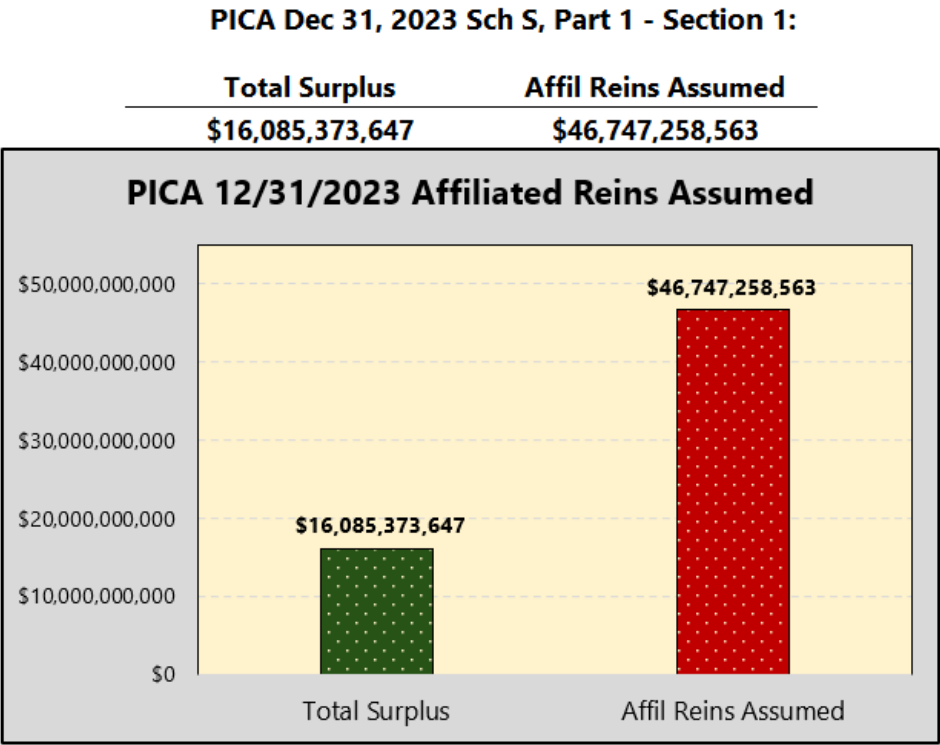
SCHEDULE S - PART 1 - SECTION 1

Reinsurance Assumed Life Insurance, Annuities, Deposit Funds and Other Liabilities

	Reserve	Reinsurance Payable on Paid and Unpaid Losses	Modified Coinsurance Reserve
General Account - Affiliates - US - Captive	3,155,064,916	622,762,989	0
General Account - Affiliates - US - Other	470,381,323	31,402,000	0
General Account - Affiliates - Non-US - Captive	0	0	0
General Account - Affiliates - Non-US - Other	32,759,385,557	354,784,712	0
General Account - Affiliates - Total	36,384,831,796	1,008,949,701	0
Separate Accounts - Affiliates - US - Captive	0	0	0
Separate Accounts - Affiliates - US - Other	0	0	9,353,477,066
Separate Accounts - Affiliates - Non-US - Captive	0	0	0
Separate Accounts - Affiliates - Non-US - Other	0	0	0
Separate Accounts - Affiliates - Total	0	0	9,353,477,066
General Account & Separate Accounts - US	3,625,446,239	654,164,989	9,353,477,066
General Account & Separate Accounts - Non-US	32,759,385,557	354,784,712	0
TOTAL	\$36,384,831,796	\$1,008,949,701	\$9,353,477,066

TOTAL Res + Reins Payable + ModCo: \$46,747,258,563

18. The bar graph below compares PICA’s assumed reinsurance of \$46.7 billion, with its surplus of only \$16 billion.



19. In addition to PICA taking billions of dollars in credit for reinsurance that it ceded to affiliates, and in addition to PICA assuming billions in reinsurance obligations from its own affiliates, PICA's affiliates, including Pruco Life Insurance Company (AZ) ("Pruco Life"), have likewise ceded billions in liabilities to the secret captive reinsurers domiciled in Arizona that are wholly owned by PICA itself. *See* Pruco Life's reported reinsurance ceded totals from their sworn annual statement for year-end 2023, in particular Schedule S - Part 3 - Section 1, highlighted in the chart set forth below.

ANNUAL STATEMENT FOR THE YEAR December 31, 2023 OF THE Pruco Life Insurance Co (NAIC #79227)

SCHEDULE S - PART 3 - SECTION 1

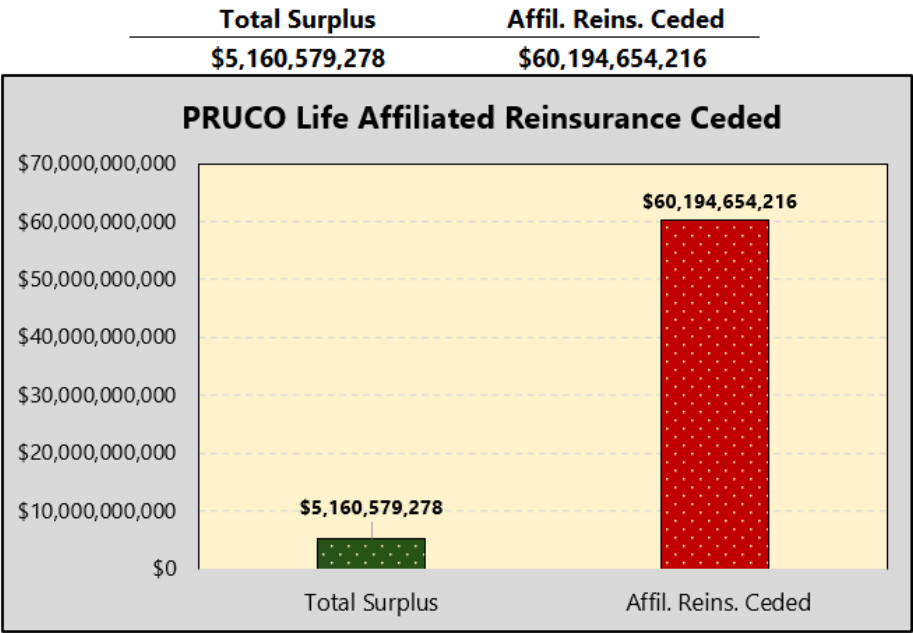
Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities

	Reserve Credit Taken	Modified Coinsurance Reserve
General Account - Authorized - Affiliates US - Captive	45,704,022,380	0
General Account - Authorized - Affiliates US - Other	83,080,596	0
General Account - Authorized - Affiliates Non-US - Captive	0	0
General Account - Authorized - Affiliates Non-US - Other	0	0
General Account - Authorized - Affiliates - Total	45,787,102,976	0
General Account - Unauthorized - Affiliates US - Captive	0	0
General Account - Unauthorized - Affiliates US - Other	0	0
General Account - Unauthorized - Affiliates Non-US - Captive	0	0
General Account - Unauthorized - Affiliates Non-US - Other	1,820,590,176	12,586,961,064
General Account - Unauthorized - Affiliates - Total	1,820,590,176	12,586,961,064
Total US	45,787,102,976	0
Total Non-US	1,820,590,176	12,586,961,064
TOTAL	\$47,607,693,152	\$12,586,961,064

TOTAL Res Cr + ModCo: \$60,194,654,216

20. While Pruco Life depends upon PICA’s wholly owned captives and other affiliates for more than \$60 billion in reinsurance ceded, Pruco Life’s total surplus as of December 31,2023, was only \$5.16 billion. Said another way, if PICA’s wholly owned captives and affiliates cannot make good on just 9% of the affiliated reinsurance ceded, their IOU’s to Pruco Life, Pruco Life’s surplus will be entirely wiped out. This is demonstrated in the chart below.

PRUCO Life Dec 31, 2023 Sch S, Part 3 - Section 1:



21. While Pruco Life is owed billions from the secret captives in Arizona, PICA valued most of their Arizona Captives, interestingly, at zero in their 2023 statutory annual statement, a portion of which is excerpted below:

ANNUAL STATEMENT FOR THE YEAR 2023 OF THE PRUI								
SCHEDULE D - PART								
Showing All COMMON STOCKS Owned D								
1	2	Codes		5	6	Fair Value		9
		3	4			7	8	
CUSIP Identifi- cation	Description	Code	For- eign	Number of Shares	Book/ Adjusted Carrying Value	Rate Per Share Used to Obtain Fair Value	Fair Value	Actual Cost
000000-00-0 ...	Prudential Arizona Reinsurance Universal .....	.....	.....	1,000,000	0	0.000	0	0
000000-00-0 ...	Prudential Arizona Reinsurance Term Company .....	.....	.....	1,000,000	0	0.000	0	0
000000-00-0 ...	Prudential Arizona Reinsurance Captive Company ...	.....	.....	1,000,000	0	0.000	0	0
000000-00-0 ...	Prudential Universal Reinsurance Company .....	.....	.....	1,000,000	0	0.000	0	0
000000-00-0 ...	Gibraltar Universal Life Reinsurance Company .....	.....	.....	1,000,000	0	0.000	0	0

22. Reinsurance ceded to *independent*, well-capitalized reinsurers with a real balance sheet allows insurers to share risk and plan strategically. Independent reinsurers bring their own funds to the table and pricing is negotiated at arm's length. Independent reinsurers can also provide strategic advice and risk management tools to their cedents. Non-arm's length reinsurance with affiliates within the same controlled group offers *none of these benefits*.

23. In addition to the circular movement of liabilities among affiliates, PICA's affiliated captive reinsurers in Arizona all count surplus notes or other debt-like financing instruments as assets, a practice that understates the liabilities of the captives. Yet, as reported in the State of New Jersey Report on Group-Wide Examination of Prudential Financial, Inc., a report filed on June 26, 2023, all seven (7) Arizona captive reinsurance companies owned 100% by PICA (the "Arizona Captives") employ this practice to prop up their financial statements by funding "the assets supporting the non-economic reserves it retains with proceeds from the issuance of surplus notes or other financing instruments."

24. Surplus notes are debt instruments that are subordinated to policyholder claims. Yet, all of the Arizona Captives report their surplus notes as “assets,” including credit linked surplus notes.

25. PICA’s Arizona Captives also include contingent instruments as admitted assets. These conditional instruments could never be reported as “admitted assets” at a regulated U.S. based primary insurance company due to their conditional nature – meaning they don’t even meet the definition of an asset (SSAP No. 4), much less an *admitted* asset.

26. The ability of PICA’s wholly owned captive reinsurance affiliates to make good on their insider reinsurance “IOU’s” is entirely speculative because PICA’s captives do not make their financials publicly available.

27. As of year-end 2023, PICA had exposure to ModCo transactions with affiliates that totaled more than \$11 billion. That amount was greater than 702 L&A carriers, of which 651 had zero affiliated ModCo.

28. ModCo enables the ceding insurer to transfer *asset risk* to the reinsurer even though the assets themselves are held in a trust account on the cedent’s books. Those ModCo account assets must be used to pay the cedent’s ModCo claims as they come due. However, the asset risks themselves are not factored into the cedent’s Risk Based Capital (“RBC”) ratio calculations which are a form of mandatory solvency reporting for all US based life insurance and annuity companies. This allows ceding insurers like PICA to artificially inflate their reported RBC ratios. The RBC system is intended to calculate the minimum amount of capital that an insurance company needs to hold to support asset risk, interest rate risk, insurance risk and other risks. Asset risk carries significant weight in the RBC calculation. A high RBC ratio is supposed to mean that an insurance company is well capitalized; a low RBC ratio can trigger regulatory action. Because of PICA’s

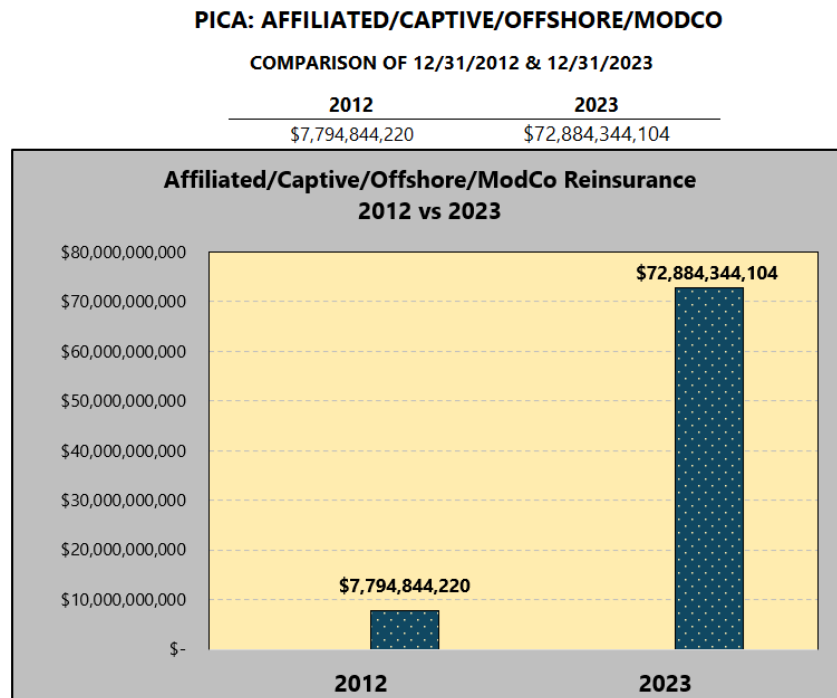
ModCo transactions, a significant component of the investment risk associated with risky assets like junk bonds, collateralized debt obligations (“CDOs”), collateralized loan obligations (“CLOs”), illiquid private credit, or commercial real estate was transferred to their affiliated reinsurers and does not factor into their RBC calculations. As a result, PICA reports higher (more favorable) RBC ratios than it would otherwise be required to report if the risky assets artificially off-loaded via ModCo transactions were included in its RBC calculations.

29. Each time PICA or any of its affiliates enter into a reinsurance transaction with an affiliate or captive reinsurer that holds risky debt-like instruments as assets, it effectively guts reserves that are supposed to be set aside to cover insured liabilities leaving policyholders and pensioners at substantial risk that future payments will be disrupted, delayed or wiped out altogether.

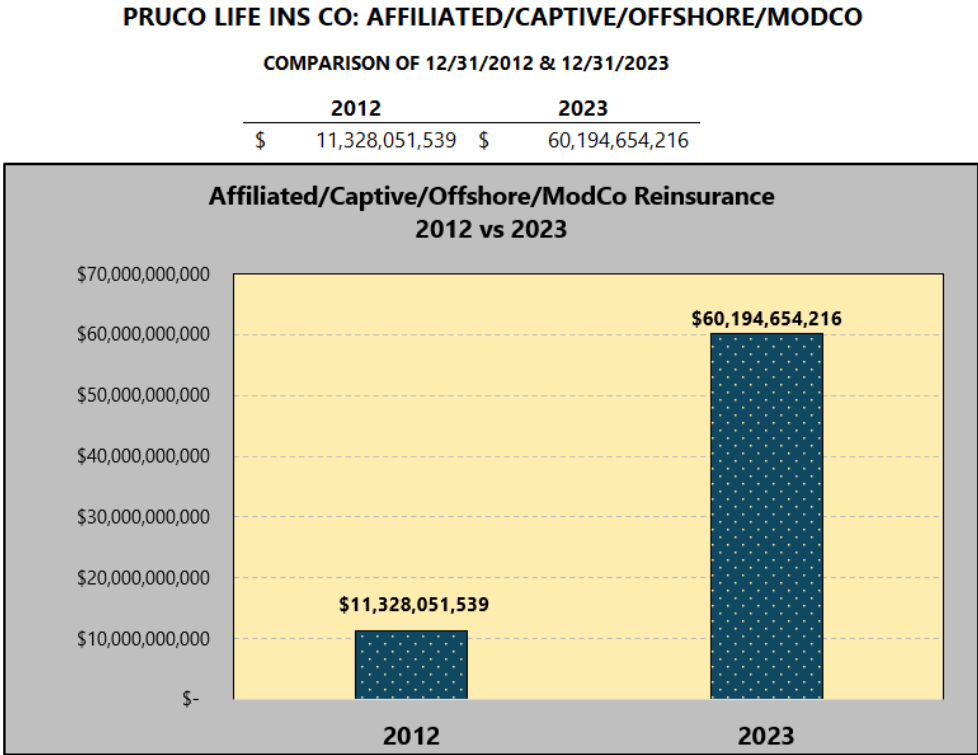
30. While the assets held by PICA’s wholly owned captive reinsurers and affiliates may not be readily ascertainable due to the fact that the captives and affiliates are located in secrecy jurisdictions and do not file publicly available financial statements, the amount of credit that PICA has taken for reinsurance with its wholly owned affiliates is easy to obtain by simply reviewing PICA’s readily available statutory financial statements.

31. Affiliated party reinsurance transactions are not arm’s length by definition as pricing is set within the same group of companies under common control. It amounts to nothing more than a circular movement of assets and liabilities. Real assets vanish and they are replaced with speculative IOU’s from affiliates that depend on other affiliates. While the cedent’s liabilities are immediately reduced by substantial amounts it is impossible to determine whether or not and to what extent, if any, the assuming affiliated reinsurers are capable of making good on their IOU’s.

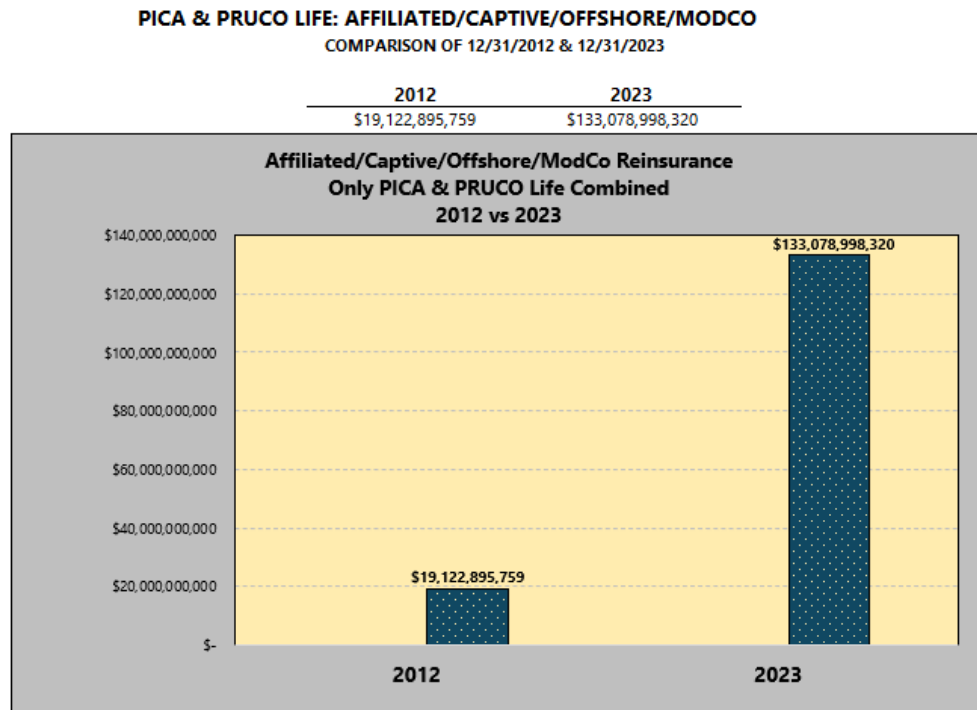
32. PICA increased its exposure to reinsurance with non-arm's length affiliates and captives in Arizona and Bermuda from \$7,794,844,220 in 2012 to **\$72,884,344,104** as of year-end 2023 as per the chart below.



33. Pruco Life Insurance Company, a wholly owned subsidiary of PICA, increased its affiliated party exposure from \$11,328,051,539 in 2012 to over \$60 billion dollars (\$60,194,654,216) as of year-end 2023. See the chart below:



34. PICA and Pruco Life combined went from \$19.1 billion in affiliated reinsurance transactions in 2012 to **\$133 billion** at year end 2023, as shown on the chart below.



35. Both PICA and Pruco Life are wholly owned subsidiaries of Prudential Financial, Inc. (“PRU”). Combined, PICA and Pruco Life reported reinsurance “IOUs” or recoverables of **\$133 billion** from affiliates/captive/offshore reinsurers and those same affiliates/captive/offshore reinsurers are reportedly obligated to pay **\$133 billion** in reinsurances payables as of year-end 2023. In other words, **\$133 billion** of PICA and Pruco Life’s reinsurance is circular in nature and internal within the PRU group rather than with arm’s length, independent, well capitalized and independent reinsurance companies.

36. PICA both cedes to and assumes liabilities from Pruco Life, its wholly owned subsidiary. PICA also both cedes to and assumes liabilities from its wholly owned captives and affiliated reinsurers in Arizona. See ¶¶ 14, 44, and 64. I have reviewed the statutory annual statements of hundreds of L&A carriers, and Pruco Life and PICA are among the riskiest L&A

carriers in the marketplace. With respect to only the affiliated ModCo, PICA and its affiliates combined for a total of \$32.95billion—only 3 L&A carriers had more exposure to affiliated ModCo as of December 31, 2023.

37. The chart below shows in more granular detail PICA's affiliated reinsurance transactions in 2023:

ANNUAL STATEMENT FOR THE YEAR 2023 OF THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

SCHEDULE Y

PART 2 - SUMMARY OF INSURER'S TRANSACTIONS WITH ANY AFFILIATES

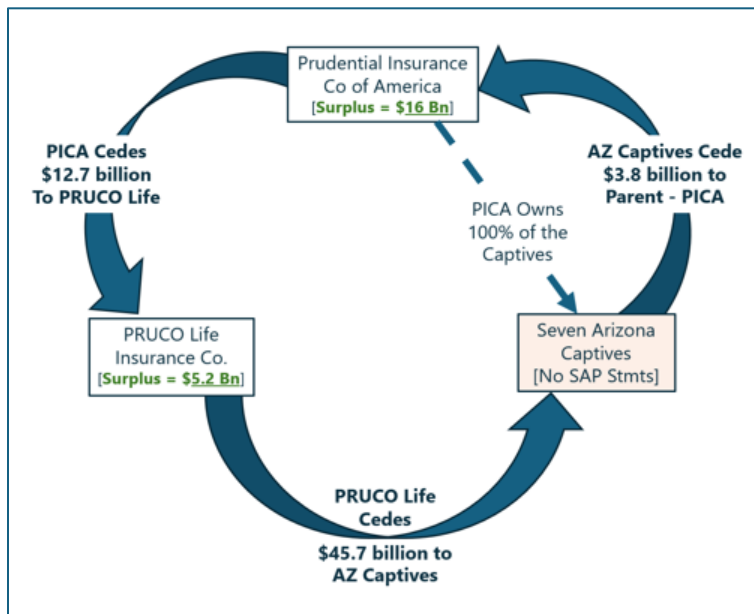
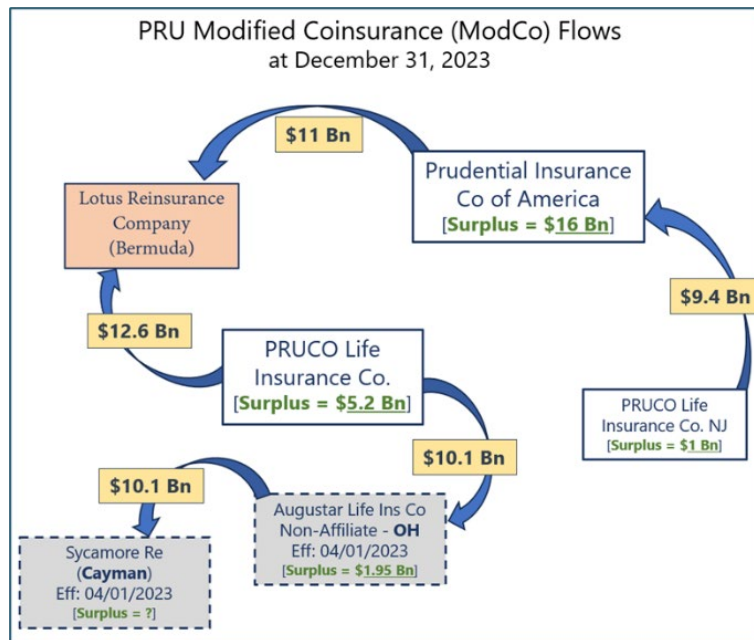
Names of Insurers, Parent, Subsidiaries, Affils. ▼	Reins Recov./ (Payable) and/or Reserve Credit Taken (Liability) ▼ ↑	Total Captive & Offshore Payables to Affiliates ▼
Prudential Legacy Insurance Company of New Jersey	\$ (47,330,009,584)	
Captive: Prudential Arizona Reinsurance Universal Co	\$ (18,702,977,557)	
Captive: Prudential Universal Reinsurance Company	\$ (11,289,411,284)	
Captive: Gibraltar Universal Life Reinsurance Co	\$ (4,885,738,352)	
Offshore: Lotus Reinsurance Company Ltd.	\$ (4,429,331,636)	
Captive: Prudential Term Reinsurance Company	\$ (3,838,169,748)	
Captive: Prudential Arizona Reinsurance Captive Co	\$ (3,543,086,059)	
Captive: Prudential Arizona Reinsurance Term Co	\$ (3,399,032,599)	
Captive: Dryden Arizona Reinsurance Term Co	\$ (1,543,328,775)	\$ (51,638,750,002)
Captive: Prudential Universal Reinsurance Entity Co	\$ (7,673,992)	
Prudential Seguros Mexico, S.A. de C.V.	\$ (2,047,438)	
Pruco Life Insurance Company of New Jersey	\$ 5,121,823,968	
The Gibraltar Life Insurance Co., Ltd.	\$ 7,817,159,971	
The Prudential Life Insurance Company, Ltd.	\$ 25,241,215,614	
The Prudential Insurance Company of America	\$ 25,263,214,461	
Pruco Life Insurance Company	\$ 35,527,393,010	
TOTAL:	\$0.00	

38. In the snapshot above, a clear pattern emerges. The numbers in red represent amounts owed by the captives and affiliates and the numbers in black are recoverables – or amounts owed by PICA's wholly owned captive reinsurance companies in Arizona, one offshore affiliate (Lotus Reinsurance Company Ltd. located in Bermuda), and PRU's Mexican subsidiary, to PICA and other PICA affiliates. Nearly all of the reinsurers with very large amounts due to PRU regulated insurers are the Arizona Captives that do not file public financial statements. Those Arizona Captives owned by PICA owe more than **\$47 billion** to PICA and affiliates. Such

enormous amounts due from secretive “captives” cannot be analyzed using the balance sheets of the insurers because, rather than report the recoverables as assets, the \$47 billion recoverables are netted out of their claims reserve liabilities. PICA reports its reinsurance recoverables from the Arizona Captives as “contra-liabilities”. Those contra-liabilities are deducted from PICA’s claims reserve liabilities *prior* to reporting them on PICA’s balance sheet. While the financial statements of the “captives” owing more than **\$47 billion** to PICA and affiliates are not publicly available, any reasonable independent fiduciary would inquire into whether or not the Arizona Captives had sufficient assets to make good on **\$47 billion** in IOUs to PICA and affiliates. Without definitive proof that the Arizona Captives have the financial ability to make good on more than **\$47 billion** in IOU’s, the ability of PICA to pay its debts in the ordinary course of business and meet its obligations to pensioners is entirely uncertain.

39. In addition to the tens of billions of liabilities ceded to the Arizona Captives and newly created Bermuda reinsurers, PICA also entered into a significant number of highly suspect ModCo transactions.

40. PICA affiliates have more than \$33 billion in seemingly circular ModCo transactions, as shown in the charts below:



41. Similar to the concerns expressed above about the affiliated reinsurance transactions using Arizona Captives, it seems highly unlikely that the affiliate ModCo transactions are legitimate, and they are most certainly not arm's length. At the very least, it seems highly unusual for PICA and affiliates to use ModCo for more than \$33 billion in related party transactions, as these transactions involve little more than a swapping of IOUs for insurance risks that were underwritten at the regulated insurance company levels. There is no legitimate business purpose for swapping so much risk with wholly owned affiliates other than to circumvent reserve requirements, avoid SAP reporting requirements and artificially distort RBC ratios. Using and abusing circular ModCo to game RBC levels and thereby reduce minimum required surplus is directly contrary to the intended purpose of establishing minimum capital standards to reduce insolvency risk.

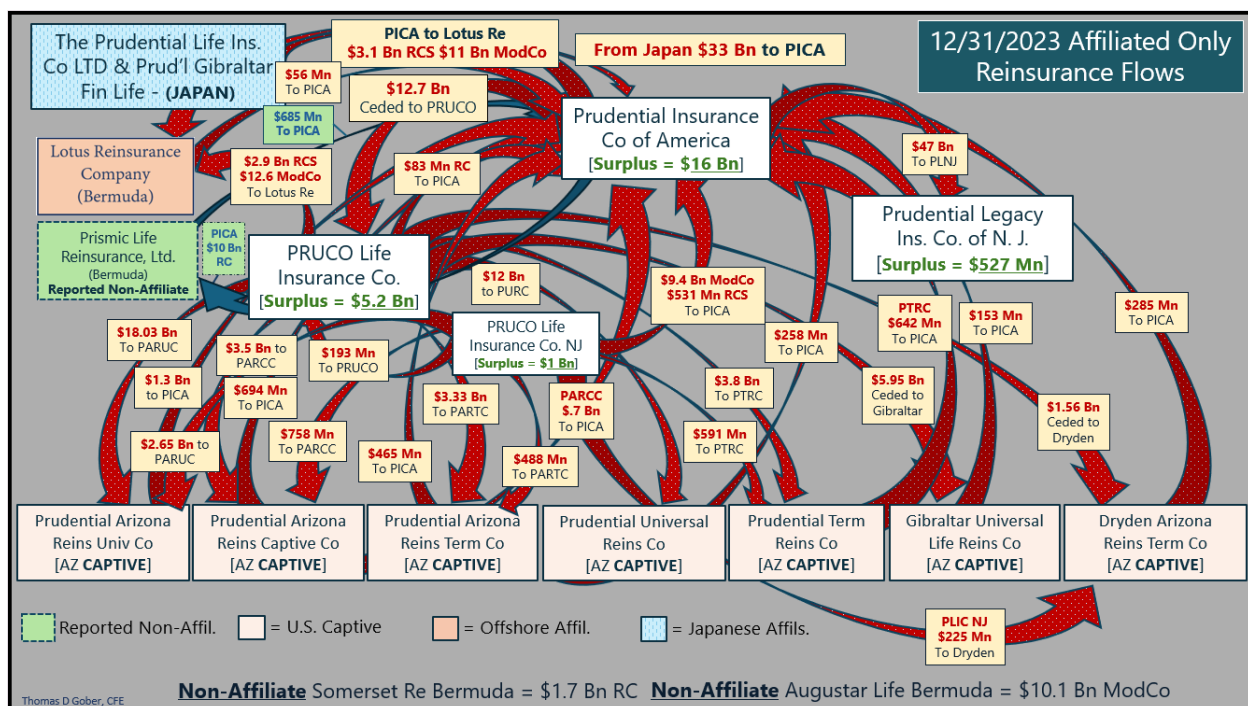
42. The Arizona Captives that maintain secret financial records are on the hook for a substantial portion of the **\$133** billion due to their insurer affiliates (primarily PICA and PRUCO Life). More importantly, a significant amount of the **\$133** billion that PRU insurers claim to be owed from affiliates and the Arizona Captives has already been up-streamed to PRU for non-policyholder purposes, including management fees, investment fees, affiliated reinsurance premiums, and dividends leaving the PRU regulated insurers dramatically under-reserved. In 2023 alone, PRU spent more than \$1 billion on stock buy-back transactions and in 2024, PICA up-streamed more than \$1.5 billion to PRU.⁴

43. PICA's captive reinsurance companies in Arizona are allowed to replace real assets with "hollow assets" for reserving purposes including conditional letters of credit, circular parental

⁴ <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001137774/000113777425000044/pru-20241231.htm> (last retrieved on September 2, 2025).

guarantees, complex surplus notes, including credit linked surplus notes and other collateral of speculative value such as contingent instruments reported as assets identified only with descriptors such as “LOC-like” on statutory financial statements. These type of “hollow assets” are not considered proper assets for an insurance company regulated in New Jersey or in any jurisdiction that adheres to the NAIC Accounting Practices & Procedures Manual, NAIC Model Holding Company Act and the NAIC Annual Statement Instructions.

44. Based on a forensic review of public filings, as of year-end 2023, I prepared the chart below in order to identify the number of circular related-party transactions involving PICA and its affiliates.



45. All of the above information about PICA and its affiliates, other than the captives and affiliates in Arizona or Bermuda, can be found in publicly available Statutory Financial Statements available from PICA itself and by request made to the New Jersey or Arizona Insurance Departments and/or the NAIC.

46. PICA's reported use of "unaffiliated reinsurers" does not appear to be accurate. By way of example, in 2023, PICA entered into a new reinsurance transaction of approximately \$10 billion (\$9.97 billion) with a newly formed offshore reinsurer, Prismic Life Reinsurance, Ltd. of Bermuda ("Prismic"). However, in Schedule S – Part 3, (Reinsurance Ceded) PICA reported Prismic as *non-affiliated* even though PRU (PICA's ultimate parent) is listed as one of two lead investors in Prismic, another PRU affiliate, PGIM (PRU's principal asset manager) provides asset management services to Prismic and PRU executives sit on Prismic's board of directors in order to "oversee its long-term strategy."⁵

47. While PICA maintains that Prismic is *unaffiliated*, Prismic's own 2023 Financial Statements and Report of Independent Auditors describes its reinsurance with PICA as "affiliated".

48. Related party reinsurance is supposed to require mandatory additional regulatory scrutiny and the NAIC Model Holding Company Act, which has been adopted by all fifty states, specifically requires that all transactions within an insurance holding company system shall be on terms that are "fair and reasonable." N.J. Stat. § 17:27A-4. In addition, the Model Holding Company Act requires that books and records be so maintained as to clearly and accurately disclose the true nature and details of the transactions in question. Yet PICA reports under SAP while neither the Arizona captives or the Bermuda affiliates report under US SAP with US state regulators, or otherwise.

49. PICA also ceded over \$2.29 billion to an affiliated Bermuda based reinsurer called Lotus Reinsurance Company Ltd. ("Lotus"). According to Lotus' own public filings, effective February 1, 2022, Lotus became a wholly owned subsidiary of Prudential International Insurance

⁵ <https://news.prudential.com/latest-news/prudential-news/prudential-news-details/2023/Prudential-Financial-Inc--and-Warburg-Pincus-announce-launch-of-Prismic-Life-Re-09-07-2023/default.aspx> (last retrieved on September 2, 2025).

Holdings, Ltd. (“PIIH”), which in turn is a direct wholly owned subsidiary of PRU. Prior to February 1, 2022, Lotus was wholly owned by PICA. Lotus has extensive related party transactions with PRU, PICA, Prudential International Insurance Service Company, LLC, and other PRU affiliates and PGIM provides discretionary investment advisory services to Lotus.

50. Lotus reported in their Financial Statements and Report of Independent Auditors that its total assets for the year end December 31, 2023, total only \$1.3 billion, while their total reported liabilities were only \$23.7 million. Yet, in 2023, PICA and Pruco Life ceded and took reserve credit for a total of \$6 billion and \$20 Billion in ModCo related to Lotus (which had direct impact on PICA and Pruco Life’s reporting of their own liabilities and surplus). Lotus’s reported total assets and liabilities are troublingly low compared to the amount of reinsurance assumed from PICA and affiliates.

51. PICA reported close to \$18 billion in investments it lists as “Affiliated” as of year-end 2023 more than 111% of its surplus. PICA has more than \$10 billion in investments it simply describes as “Other” Invested Assets and PICA also reported as of year-end 2023 “Other Loan-Backed” investments in the amount of \$10,838,636,616. PICA’s exposure to Commercial Mortgages was \$16,349,437,360 as of year-end 2023 as well.

52. PICA’s Surplus as a percentage of its liabilities was reported at 5.7% as of year-end 2023 and Pruco Life’s was at 3.2%—well below industry average which is approximately 7.5%. But this low surplus is, in fact, substantially inflated because it does not account for the impact of the affiliated reinsurance and ModCo transactions described herein.

53. By way of comparison, New York Life’s ratio of Surplus to Liabilities was 12.2% as of year-end 2023, Teachers Ins. & Ann was at 13.8% as of year-end 2023, and Guardian Life was at 12.7%.

54. I am confident that PICA's statutory surplus is significantly overstated when considering the exposure PICA has to Pruco Life and its own exposure to wholly owned captive reinsurance companies in Arizona and affiliates in Bermuda. In 2023 alone, PICA took credit for reinsurance in the amount of \$12.5 billion for liabilities ceded to Pruco Life, its wholly owned subsidiary that also cedes to PICA's wholly owned Arizona Captives. There does not appear to be any legitimate business purpose for PICA to cede liabilities to wholly owned subsidiaries and when those subsidiaries also cede liabilities to other wholly owned PICA subsidiaries the circular nature of this shuffling around of obligations becomes clear.

55. In 2024 alone, several life and annuity issuers were placed into rehabilitation or subjected to regulatory action as a direct and proximate result of imploded affiliated investments and shady affiliated party reinsurance transactions. These entities include the following: Columbian Mutual Life Insurance Company, Columbian Life Insurance Company, PHL Variable Insurance Company("PHL Variable"), and 777 Reinsurance Ltd. These recent failures had two things in common: excessive reliance upon non-arm's length reinsurance with affiliates and affiliated IOUs.

56. PHL Variable filed for Rehabilitation on May 20, 2024, and on that same day imposed a moratorium that limited withdrawals, death benefits and annuity payouts to certain prescribed limits. Many policyholder benefits were immediately impacted by the Moratorium Order on May 20, 2024. In the Rehabilitator's First Accounting and Status Report filed on November 20, 2024, just six months after the Petition for Rehabilitation was filed, the Rehabilitator promptly unwound a series of related party reinsurance transactions with PHL Variable captive affiliates Concord Re and Palisado Re and disallowed a permitted practice that allowed PHL Variable's captive reinsurers to hold an excess of loss agreement as an admitted asset and a pre-

paid services agreement with a one-time affiliate as an admitted asset. The Rehabilitator also determined that an affiliated note in the amount of \$149 million was fully impaired. As a result of these and other adverse determinations by the Rehabilitator, PHL Variable's approximate capital and surplus deficiency went from negative \$900,000,000 to negative \$2.1 Billion in six months' time. While the Rehabilitator in the PHL case may have properly reported more than a billion dollars in additional negative surplus in November of 2024, the injury to policyholders began occurring when the reinsurance and affiliated party deals started back in 2016.

2024 UPDATED COMPARISON TO 2023 DATA

57. I also reviewed PICA's statutory financial statements and schedules for the most recent year ended December 31, 2024 ("YE 2024").

58. In 2024, rather than reduce its respective exposure to affiliates, PICA continued its course of reliance on all manner of exposure to affiliates, especially affiliated investments and reinsurance ceded to affiliates in secrecy jurisdictions, both on and off-shore.

59. If Prismic were to be reclassified as an affiliate, PICA's exposure to affiliates goes up by another \$9.75 billion. There are also significant non-affiliated ceded off-shore reinsurance transactions reported at YE 2024 that are less than transparent. These transactions are reflected in paragraphs 64 and 65 below, and include third party reinsurance with Wilton Re Bermuda, Somerset Re Bermuda and Augustar Life (Ohio) which in turn retroceded liabilities to its secret Ohio captive.

60. PICA's assumed affiliated reinsurance increased to \$48.1 Billion from \$46.7 Billion.

61. While Pruco Life's (PICA's wholly owned subsidiary) exposure to affiliated captive reinsurance decreased from \$45.7 billion in 2023 to \$37.5 billion in 2024 (via restructuring of a

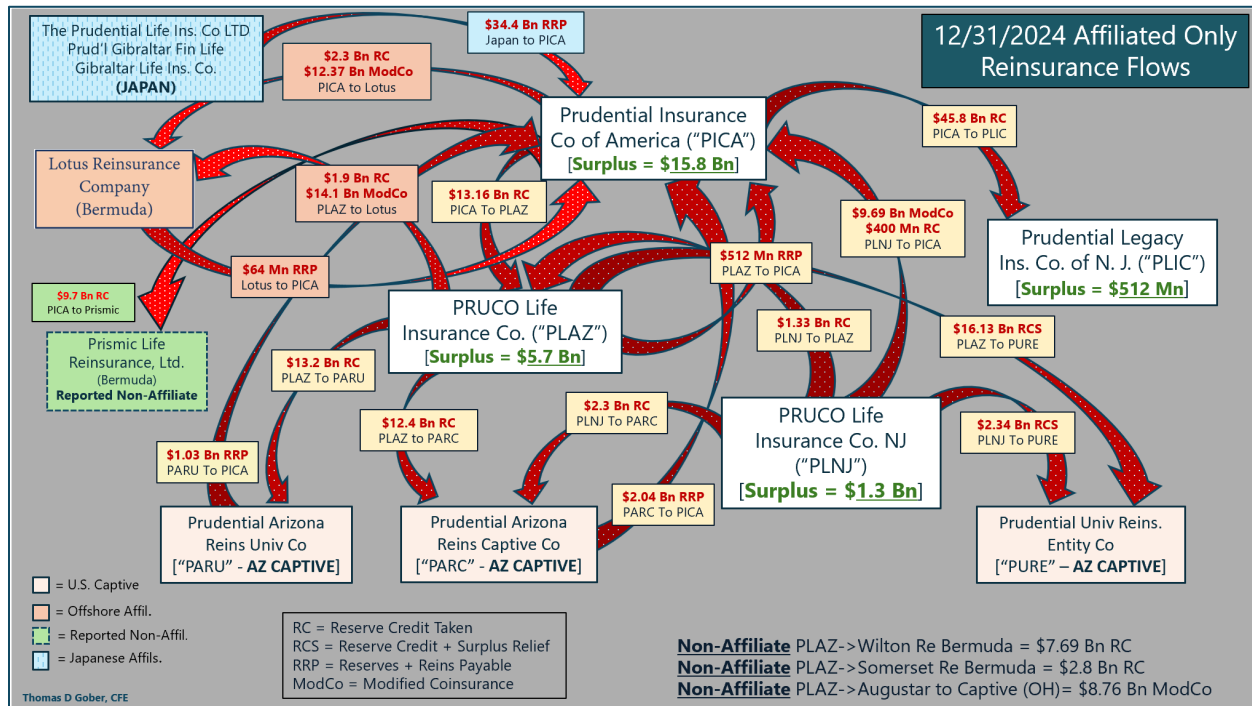
series of internal captive reinsurance agreements discussed further below), their ModCo with Lotus increased from \$12.6 billion to almost \$14.1 billion.

62. During 2024, PICA increased its investments in affiliates to \$18.6 billion but its surplus dropped to \$15.79 billion, increasing its affiliated investments to surplus ratio to 118%.

63. While PICA's exposure to affiliates increased significantly by year-end 2024, a number of PICA's Arizona Captives disappeared from the reinsurance reported on PICA's statutory financial statements. The disappearance of the Captives is described by PRU in its 10-k annual report (for year ended December 31, 2024) ⁶ as a restructuring of "a series of internal captive reinsurance arrangements" that "necessitated the unwinding of existing external financing facilities and entering into new ones". These disclosures hardly provide enough information to understand why this 'internal structuring' resulted in PICA's reported large devaluation of the common stock of its captives. According to PICA's Management Discussion and Analysis of Financial Condition and Results of Operations, PICA's 2024 decrease in capital and surplus was primarily driven by over \$2 billion of unrealized capital losses on affiliated common stock primarily attributed to [PICA's] investment in the captives." More specifically, PICA's statutory annual statements (Schedule D – Part 2 – Section 2) shows that PICA recorded over \$2.7 billion in unrealized valuation decrease as a result of their captive mergers; yet, as they did in 2023, their investment schedules also show that PICA carried the common stock of their captives at zero (\$0) book/adjusted carrying value.

⁶ <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001137774/000113777425000044/pru-20241231.htm>. (last retrieved on September 2, 2025).

64. Despite PICA's internal captive restructuring, PICA and its affiliates continue to carry on their books tens of billions of dollars in reinsurance transactions with their remaining three (3) Arizona captives and their Bermuda based reinsurers as highlighted in the diagram below.



65. Additional 2024 developments demonstrate PICA's exposure to affiliates. At YE 2024, PICA reported affiliated investments of \$18.62 billion, up from \$15.5 billion just two years prior.

66. PICA had a \$173 million dollar capital decrease in YE 2024. PICA's decrease in capital and surplus was primarily driven by losses from its reinsurance captives. For example, losses from PICA's reinsurance captives drove a \$2.39 billion unrealized capital loss. These losses followed two mergers of PICA's captive reinsurers.

67. The first merger was effective March 28, 2024. The surviving entity, Prudential Arizona Reinsurance Captive Company ("PARCC"), was a result of a merger between Prudential Universal Reinsurance Company ("PURC"), Prudential Arizona Reinsurance Universal Company

(“PARUC”), and Gibraltar Universal Life Reinsurance Company (“Gibraltar”). The second merger was effective November 20, 2024. The surviving entity, Prudential Arizona Reinsurance Captive Company (“PARCC”), was a result of a merger between Prudential Arizona Reinsurance Term Company (“PARTC”), Prudential Term Reinsurance Company (“PRTC”), and Dryden Arizona Reinsurance Term Company (“Dryden”).

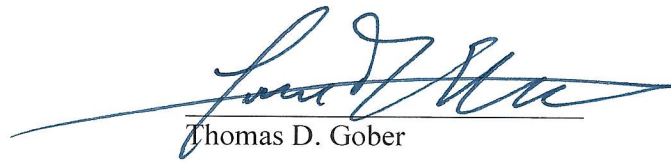
68. While PICA may have been forced to recognize a multi-billion-dollar loss in value related to the captives by merger accounting rules, the reported losses starkly demonstrate how the captives lack the financial wherewithal to make good on their assumed liabilities. More importantly, the recognition of the losses shows how policyholders can be harmed through the use of suspect reinsurance transactions with affiliates in secrecy jurisdictions – the moment the transactions take place even if PICA can hide the implications of those non-arm’s length transactions with affiliates for many years as identified herein.

69. As paragraphs 14, 40, 44 and 64 make clear, not only do PICA affiliates cede billions in liabilities to PICA’s wholly owned captives and affiliates, PICA’s captives and affiliates also retrocede (transfer) liabilities back to PICA and its affiliates making it extremely difficult to figure out what entity is currently on the hook for what liabilities. This type of circular shuffling of liabilities across entities and jurisdictions is inconsistent with Statutory Accounting Principles. PICA and its insurer affiliates also hold excessive concentrations of higher-risk, less liquid investments well in excess of their reported surplus. Especially troubling are their concentrations of commercial mortgages, Schedule BA “Other LT Invested Assets” and “other Loan-Backed & Structured Securities.” In addition, PICA alone holds \$18.62 billion of “Investments in Subsidiaries and Affiliates”. For these reasons, and as otherwise noted herein, New York Life,

Pacific Life, and Nationwide, all of whom participate in the pension risk transfer business, would have been more appropriate PRT annuity providers than PICA.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 5, 2025, in Beaver, Pennsylvania.



Thomas D. Gober

GLOSSARY OF TERMS

Prudential Entities	
Prudential Financial, Inc.	PRU
The Prudential Insurance Company of America	PICA
Pruco Life Insurance Company	Pruco Life
Pruco Life Insurance Company of New Jersey	Pruco Life NJ
Prudential Legacy Insurance Company of New Jersey	Prudential Legacy
Prudential Arizona Reinsurance Captive Company	PARC
Prudential Universal Reinsurance Entity Company	PUREC
Lotus Reinsurance Company Ltd.	Lotus
The Gibraltar Life Insurance Co., Ltd.	Gibraltar
The Prudential Life Insurance Company, Ltd.	PLIC
Prismic Life Reinsurance, Ltd.	Prismic Re
Financial Terms	
Captive Reinsurance	A form of self-insurance whereby, instead of diversifying its risk and liquidity by insuring part of its liabilities with a third-party insurer, the insurer creates a wholly-owned in-house subsidiary or affiliate to insure part of its liabilities. Captive reinsurance companies do not publicly file their financial statements as is required of all other U.S. insurers.
Collateralized Loan Obligations (“CLOs”)	A security backed by a pool of debt, often issued in tranches with senior secured at the top and an equity tranche at the bottom of the risk spectrum
Funding Agreement (“FA”)	A funding agreement is a deposit-type contract sold by insurance companies to investors whereby the investor provides a lump sum payment in return for guaranteed rate of return over a specified period of time. Due to their short-term nature, FAs can present a real threat to liquidity.
Life Insurance and Annuity (“L&A”) Carrier	An insurance company that issues life insurance policies and annuity contracts that provide periodic payments for life or some other defined period.
Modified Co-Insurance (“ModCo”)	A type of reinsurance whereby the insurer (or ceding company) does not transfer the assets but

	reportedly transfers its regulatory capital requirements and asset risks to the reinsurer. Although the assets and liabilities are held at the ceding company, the reinsurer is responsible for those liabilities.
National Association of Insurance Commissioners (“NAIC”)	A non-profit organization created and governed by the chief insurance regulators of all 50 states of the United States, the District of Columbia, and U.S. territories to set the standards for the U.S. insurance industry.
Receivership	A state law proceeding that occurs when an insurance carrier is unable to pay its liabilities. The domiciliary regulator takes control over the carrier’s assets to pay off its debts.
Reinsurance	Insurance for an insurance company
Retrocession	A form of insurance for a reinsurance company
Risk-Based Capital (“RBC”) Ratio	The measure is calculated by dividing an insurer’s total adjusted capital by its authorized control level as defined by the NAIC. It measures the amount of capital (or surplus) an insurer must hold to pay policyholders based on its level of risk. The higher the ratio, the safer the insurer.
Surplus	An insurer’s total assets less its total liabilities.
Surplus-to-Liability Ratio	A comparison between an insurer’s surplus and its liabilities. It is used to gauge an insurer’s surplus adequacy (<i>i.e.</i> , its ability to pay claims due to policyholders).