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September 14, 2026

By ECF

Patricia S. Dodszuweit
Clerk of Court
U.S. Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

**Re: Response to Appellant's Rule 28(j) Letter,
Lewandowski v. Johnson & Johnson et al., No. 26-1107**

Dear Ms. Dodszuweit:

The Government amicus briefs cited in Appellant's letter do not support her position on redressability.

Lewandowski seeks recompense under ERISA Section 1132(a)(3) for three categories of asserted injuries—premium overcharges, prescription overcharges, and lost time-value of money. Those are classic damages claims.

But Section 1132(a)(3) does not authorize damages; it authorizes “appropriate equitable relief.” So Lewandowski labels her requested relief as “surcharge,” which she contends is an “equitable remedy.”

The Government says “surcharge can qualify as ‘appropriate equitable relief.’” U.S. Br. 2. But the Government's position is far narrower than Lewandowski's. The Government defines surcharge as a

“*strictly limit[ed]*” remedy that does “no more” than restore to participants “the plan property—and only such property—that was promised to them under the plan’s terms.” DOL Br. 16, 19 (emphasis added). If that’s the test, Lewandowski cannot meet it. She nowhere claims she did not get what “*the plan*” promised. She claims that alleged fiduciary misconduct resulted in a plan that was not good enough and she should be compensated for its shortcomings. If surcharge covered that kind of consequential-damages claim, the remedy would not be strictly limited but boundless.

And even the Government’s position is overbroad. The Supreme Court already rejected the Government’s “[a]nalogizing” to pre-merger trust remedies to enlarge Section 1132(a)(3). *Great-West Life & Annuity Ins. v. Knudson*, 534 U.S. 204, 219 (2002) (discussing Solicitor General’s brief). From *Mertens* to *Montanile*, the Court has held that the “special equity-court powers applicable to trusts [do *not*] define the reach of § [1132](a)(3).” *Id.* Rather, relief under § 1132(a)(3) is limited to relief “*typically* available in equity,” *id.*, such as relief ordinarily awarded where equity courts had “concurrent” jurisdiction with law courts, *e.g.*, *Rose v. PSA Airlines, Inc.*, 80 F.4th 488, 500-02 (4th Cir. 2023). Money drawn “generally out of the defendant’s assets” is a quintessential “*legal*” remedy, not an equitable one.” *Montanile v. Bd. of Trs. of Nat’l Elevator Indus. Health Benefit Plan*, 577 U.S. 136, 145 (2016).

Those holdings “remain[] unchanged” by *CIGNA*’s dicta, *id.* at 148 n.3, on which the Government heavily but unpersuasively relies.

Dated: September 14, 2026

Respectfully submitted,

/s/ Kwaku Akowuah

Kwaku Akowuah

Counsel for Appellees

CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of September 2026, I electronically filed the foregoing brief with the Clerk for the United States Court of Appeals for the Third Circuit using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: September 14, 2026

Respectfully submitted,

/s/ Kwaku Akowuah

Kwaku Akowuah

Counsel for Appellees