No. 24-1443

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ERIE INDEMNITY COMPANY,
Plaintiff-Appellee,

v.

TROY STEPHENSON, CHRISTINA STEPHENSON,
and STEVEN BARNETT, in both their individual capacities
and in any representative capacities they may have
relating to ERIE INSURANCE EXCHANGE,
Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Pennsylvania, No. 1:22-cv-00093-CRE,
Hon. Cynthia Reed Eddy, United States Magistrate Judge

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

JURISDICTIONAL STATEMENT 4

ISSUES PRESENTED 6

STATEMENT OF RELATED CASES 7

STATEMENT OF THE CASE 8

A. Erie Insurance Exchange and the State Court Action 8

B. Indemnity's Federal Lawsuit 11

C. Indemnity's Preliminary Injunction Motion and the District Court's Opinion 16

SUMMARY OF ARGUMENT 20

STANDARD OF REVIEW 23

ARGUMENT 25

I. Indemnity has not carried its burden of showing that it is likely to succeed in establishing entitlement to a permanent injunction of the State Court Action. 26

A. Indemnity cannot show that the preclusive effect of the *Beltz* and *Ritz* judgments bars the State Court Action. 27

B. Indemnity has not shown that its anticipated claim-preclusion defense justifies an injunction of state-court proceedings. 39

II. Indemnity has not carried its burden of showing that it will suffer irreparable harm absent a preliminary injunction. 43

CONCLUSION 48

CERTIFICATES OF BAR MEMBERSHIP; TYPE-VOLUME, TYPEFACE, AND TYPE STYLE; IDENTICAL COMPLIANCE OF BRIEFS; AND VIRUS CHECK 49

Attachment: Joint Appendix Volume I, pp. 1–26

Notice of Appeal (Mar. 7, 2024) JA1

Order Granting Preliminary Injunction (Feb. 28, 2024) JA4

District Court Opinion (Feb. 28, 2024) JA6

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Cases **Page(s)**

Alexander & Alexander, Inc. v. Van Impe,
787 F.2d 163 (3d Cir. 1986) 30

Allegheny International, Inc. v. Allegheny Ludlum Steel Corp.,
40 F.3d 1416 (3d Cir. 1994) 30, 31, 32

Aristud-González v. Government Development Bank for Puerto Rico,
501 F.3d 24 (1st Cir. 2007) 45

Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers,
398 U.S. 281 (1970) 40, 46

Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission,
273 F.3d 337 (3d Cir. 2001) 45

Board of Trustees of Trucking Employees of North Jersey Welfare Fund, Inc. v. Centra,
983 F.2d 495 (3d Cir. 1992) 29

Choo v. Exxon Corp.,
486 U.S. 140 (1988) .... *passim*

Davis International, LLC v. New Start Group Corp.,
488 F.3d 597 (3d Cir. 2007) 5

Davis v. Pension Benefit Guaranty Corp.,
571 F.3d 1288 (D.C. Cir. 2009) 24

Elkadrawy v. Vanguard Group, Inc.,
584 F.3d 169 (3d Cir. 2009) 35, 36, 40

Gibson v. State Farm Mutual Automobile Insurance Co.,
994 F.3d 182 (3d Cir. 2021) 25

Huck ex rel. Sea Air Shuttle Corp. v. Dawson,
106 F.3d 45 (3d Cir. 1997) 36, 37

In re Revel AC, Inc.,
802 F.3d 558 (3d Cir. 2015) 46

Kremer v. Chemical Construction Corp.,
456 U.S. 461 (1982) 27

Labelle Processing Co. v. Swarrow,
72 F.3d 308 (3d Cir. 1995) 29

Lawlor v. National Screen Service Corp.,
349 U.S. 322 (1955) 30

Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.,
590 U.S. 405 (2020) 30

Marmon Coal Co. v. Director, Office of Workers' Compensation Programs,
726 F.3d 387 (3d Cir. 2013) 28

Morgan v. Covington Township,
648 F.3d 172 (3d Cir. 2011) 29, 35

Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharmaceuticals Co.,
290 F.3d 578 (3d Cir. 2002) 47

Reilly v. City of Harrisburg,
858 F.3d 173 (3d Cir. 2017) 25

Renegotiation Board v. Bannercraft Clothing Co.,
415 U.S. 1 (1974) 44

S.S. Body Armor I, Inc. v. Carter Ledyard & Milburn LLP,
927 F.3d 763 (3d Cir. 2019) 24

Siemens USA Holdings Inc. v. Geisenberger,
17 F.4th 393 (3d Cir. 2021) 43

Smith v. Bayer Corp.,
564 U.S. 299 (2011) 40, 41, 43, 45

Smith v. Potter,
513 F.3d 781 (7th Cir. 2008) 35

Steel Co. v. Citizens for a Better Environment,
523 U.S. 83 (1998) 5

Swartzwelder v. McNeilly,
297 F.3d 228 (3d Cir. 2002) 24, 25

Taylor v. Sturgell,
553 U.S. 880 (2008) 27

United States v. Apple MacPro Computer,
851 F.3d 238 (3d Cir. 2017) 5

Winter v. Natural Resources Defense Council, Inc.,
555 U.S. 7 (2008) 46

Statutes

28 U.S.C. § 1292 6

28 U.S.C. § 1651 .... 2, 26

28 U.S.C. § 2283 .... 26, 27, 39

INTRODUCTION

Plaintiff-Appellee Erie Indemnity Company (Indemnity) is a Pennsylvania public company that serves as attorney-in-fact and management agent for a reciprocal insurance exchange. In December 2021, a group of participants in the exchange sued Indemnity in Pennsylvania state court on behalf of the exchange, alleging that Indemnity violated its fiduciary duties in December 2019 and December 2020 during its annual process of setting the management fee that it would charge the exchange for the upcoming calendar year. Specifically, the state-court complaint alleges that Indemnity set an excessive fee rate in December 2019 for calendar year 2020 and again set an excessive rate in December 2020 for calendar year 2021. Indemnity did so, the complaint alleges, in order to funnel the proceeds from the exorbitant fee to its own shareholders at the exchange's expense, including by making a one-time special dividend payment of nearly $100 million to its shareholders on December 29, 2020.

Rather than respond to these allegations, Indemnity removed the case to federal court. While litigation to return the case to state court was ongoing, Indemnity filed this separate lawsuit against the individuals

who had acted on behalf of the exchange to bring the state-court action (Defendants-Appellants here). In this federal suit, Indemnity seeks the extraordinary relief of an injunction under the All Writs Act, 28 U.S.C. § 1651, to forbid the state-court action from proceeding. According to Indemnity, the state-court action is barred by claim preclusion based on two prior federal judgments dismissing fiduciary breach claims related to Indemnity's conduct in 2017 and before. Indemnity has argued that claim preclusion applies even though the earlier judgments rested on procedural grounds and did not address any issue going to the merits of the fiduciary breach claims, and even though the state-court action Indemnity wishes to enjoin seeks relief exclusively for breaches that Indemnity committed *after* those judgments became final and that, therefore, could not have been challenged in the earlier suits.

After Indemnity failed over the course of more than two years to convince any court that it had properly removed the state-court action, that action returned to the Pennsylvania court where it had originally been filed. That same day, a magistrate judge who had the parties' consent to conduct proceedings in this case (and who is referred to hereafter as the district court) entered a preliminary injunction barring

the state court from conducting any proceedings in the action. The district court held that Indemnity is likely to prevail on the merits of its claim-preclusion argument and to establish its entitlement to a federal injunction permanently barring the state-court action. The court also held, among other things, that Indemnity would be likely to suffer irreparable harm absent an injunction by having to defend itself in state court against the state-law fiduciary breach claim.

This Court should reverse and vacate the preliminary injunction. To be eligible for preliminary injunctive relief, Indemnity must establish both a likelihood of success on its ultimate claim to permanent injunctive relief under the All Writs Act and a likelihood of irreparable harm absent a preliminary injunction. Indemnity has established neither. This Court's precedent creates a bright-line rule that the preclusive effect of a final judgment does not extend to claims arising out of conduct that postdates the judgment. And in any event, Supreme Court precedent establishes that extraordinary relief under the All Writs Act is unwarranted here, because the state court is fully capable of adjudicating Indemnity's preclusion defense in the first instance. Relatedly, Indemnity cannot show that it will suffer irreparable harm if it must

litigate its preclusion defense as a defendant in state court, rather than as a plaintiff in federal court, and there is no basis for the district court's legal conclusion that being required to defend against an arguably precluded claim per se constitutes irreparable harm.

Because Indemnity has not established either of the two prerequisites for a preliminary injunction, the district court erred twice over in concluding that Indemnity is eligible for such relief. And because the district court's legal errors fatally infected its assessment of the remaining preliminary-injunction factors, the court's decision to grant such relief was an abuse of discretion through and through. This Court should reverse so that the state-court action can proceed at long last, after two and a half years (and counting) of delay.

JURISDICTIONAL STATEMENT

The district court held that it has subject-matter jurisdiction over this action under 28 U.S.C. § 1331 because Indemnity invokes the All Writs Act, 28 U.S.C. § 1651, in an attempt to protect two prior federal judgments. JA7 (Op. at 2); *see* JA41–42 (Compl. ¶ 17). Defendants-Appellants dispute this holding. This lawsuit seeks to enjoin the state-court litigation of claims that were not raised and could not have been

raised in the prior federal actions that Indemnity claims are implicated here, *see infra* at pp. 27–39, and the district court accordingly has no jurisdiction to grant the relief that Indemnity seeks. *See United States v. Apple MacPro Comput.*, 851 F.3d 238, 244 (3d Cir. 2017) ("The All Writs Act does not itself confer any subject matter jurisdiction, but rather only allows a federal court to issue writs 'in aid of' its existing jurisdiction." (quoting *Clinton v. Goldsmith*, 526 U.S. 529, 534 (1999))).

That said, Defendants-Appellants agree that the district court has "jurisdiction to decide" the preliminary matter of "whether, in the circumstances of the case, the All Writs Act authorize[s] or require[s] it to issue [a] requested injunction and whether the Anti-Injunction Act preclude[s] such an injunction." *Davis Int'l, LLC v. New Start Grp. Corp.*, 488 F.3d 597, 605 (3d Cir. 2007) (citations omitted); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 118 (1998) (Stevens, J., concurring in the judgment) (observing that "a court always has jurisdiction to determine its own jurisdiction").

Despite its lack of jurisdiction to do so, the district court on February 28, 2024, entered a preliminary injunction against Defendants-Appellants and the Court of Common Pleas of Allegheny County,

Pennsylvania, barring them from proceeding in the state-court litigation that this federal lawsuit seeks to permanently enjoin. JA4–5. Defendants-Appellants filed a timely notice of appeal on March 7, 2024. JA1–3. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1292(a)(1).

ISSUES PRESENTED

1. Whether Indemnity has demonstrated a likelihood of success on its claim that final judgments in two prior federal lawsuits that were filed in 2016 and 2017 and that raised fiduciary breach claims arising out of Indemnity's conduct in and before 2017 entitle Indemnity on claim-preclusion grounds to an injunction of a state-court lawsuit challenging Indemnity's subsequent conduct in December 2019 and thereafter.

2. Whether being required to respond in state court to claims that are supposedly barred by claim preclusion irreparably harms the state-court defendant where the defendant can respond by raising its claim-preclusion defense in the state court.

Both issues presented were raised in Indemnity's brief in support of a preliminary injunction (Dist. Ct. No. 57 at 5–11, 13–14), objected to in Defendants-Appellants' brief in opposition (Dist. Ct. No. 58 at 9–13, 14–15), and ruled on by the district court (JA15–24, JA24–25).

STATEMENT OF RELATED CASES

This lawsuit seeks to enjoin a pending lawsuit in the Court of Common Pleas of Allegheny County, captioned *Erie Insurance Exchange v. Erie Indemnity Co.*, No. GD-21-014814 (Pa. Ct. Comm. Pl. filed Dec. 8, 2021). That state-court action was previously removed to federal district court. *See Erie Ins. Exchange v. Erie Indem. Co.*, No. 2:22-cv-166 (W.D. Pa. removed Jan. 28, 2022). The district court's September 28, 2022, order remanding that action to state court was affirmed by this Court. *See Erie Ins. Exchange v. Erie Indem. Co.*, No. 23-1053, 68 F.4th 815 (3d Cir. 2023). The Supreme Court then denied Indemnity's petition for certiorari. *See* No. 23-434, 144 S. Ct. 1007 (mem.) (Feb. 26, 2024).

In support of its claim for injunctive relief in this case, Indemnity has argued that final judgments in two prior federal cases have preclusive effect on the claims raised in the state-court lawsuit at issue. Those prior cases are *Beltz v. Erie Indem. Co.*, No. 1:16-cv-179 (W.D. Pa. filed July 8, 2016), *aff'd*, No. 17-2774 (3d Cir. May 10, 2018), and *Ritz v. Erie Indem. Co.*, No. 1:17-cv-340 (W.D. Pa. filed Dec. 28, 2017).

STATEMENT OF THE CASE

A. Erie Insurance Exchange and the State Court Action

Erie Insurance Exchange (Exchange) is an unincorporated association through which policyholders, known as subscribers, agree to insure one another using a common pool into which the subscribers pay premiums. JA7 (Op. at 2). To participate, each subscriber signs an identical "Subscriber's Agreement" that governs the relationships among the subscribers and that appoints Indemnity, a Pennsylvania public corporation, as attorney-in-fact for Exchange and its subscribers. JA7 (Op. at 2); *see* JA183 (Subscriber Agr.). In addition to serving as attorney-in-fact, Indemnity is responsible for "managing [Exchange's] business and affairs," and the Subscriber's Agreement authorizes Indemnity to "retain up to 25% of all premiums written or assumed by [Exchange]" as a Management Fee to compensate it for performing its various duties. JA183 (Subscriber Agr.); *see* JA7 (Op. at 2). Indemnity represents that it sets its Management Fee rate once per year, based on its "evaluation of current year operating results compared to both prior year and industry estimated results for both Indemnity and … Exchange," along with

several other factors, including "projected revenue, expense[,] and earnings for the subsequent year." JA44–45 (Compl. ¶¶ 31–32).

Defendants-Appellants Troy Stephenson, Christina Stephenson, and Steven Barnett (collectively, the Subscribers) are Exchange subscribers. *See* JA11 (Op. at 6); JA78 (St. Ct. Compl. ¶¶ 13–16). On December 8, 2021, the Subscribers, acting on Exchange's behalf in their capacity as trustees *ad litem*, filed a lawsuit against Indemnity in the Court of Common Pleas of Allegheny County, Pennsylvania. *See Erie Ins. Exchange v. Erie Indem. Co.*, No. GD-21-014814 (Pa. Ct. Comm. Pl.) (hereafter, the State Court Action). The complaint in the State Court Action alleges that, "since December 10, 2019," Indemnity has breached fiduciary duties that it owes to Exchange. JA77 (St. Ct. Compl. ¶ 10). Specifically, "[o]n December 10, 2019, and December 8, 2020," Indemnity allegedly "set the Management Fee rate for 2020 and 2021, respectively," at the maximum of 25 percent, without justification and despite "substantial conflicts of interest." JA80–81 (St. Ct. Compl. ¶¶ 29–36). By "maximiz[ing] the Management Fee" during 2020 and 2021, the complaint alleges, Indemnity has "generate[d] excess profits which it has funneled" to its shareholders "to the detriment of the members of

Exchange." JA82 (St. Ct. Compl. ¶ 47). Specifically, by setting the management fee rate at 25 percent in December 2019 for the following year, Indemnity was able to increase the dividends paid to its shareholders in 2020 by 7.2 percent. JA84–85 (St. Ct. Compl. ¶¶ 60–62). And by setting the rate at 25 percent in December 2020 for the following year, Indemnity was able to increase the dividends paid to its shareholders in 2021 by an additional 7.3 percent and to declare and make a special, one-time dividend payment on December 29, 2020, that totaled nearly $100 million. JA85–86 (St. Ct. Compl. ¶¶ 63–65). In response to this course of self-dealing, the state-court complaint raises a claim of fiduciary breach against Indemnity under Pennsylvania law and seeks monetary and injunctive relief on Exchange's behalf. JA88–90 (St. Ct. Compl. ¶¶ 76–90).

Rather than responding to the complaint in the State Court Action, Indemnity removed the case to federal court, claiming that the Class Action Fairness Act (CAFA) supplied a basis for federal jurisdiction over the suit. *See Erie Ins. Exchange v. Erie Indem. Co.*, No. 2:22-cv-166, 2022 WL 4534746, at *1 (W.D. Pa. Sept. 28, 2022). The Subscribers moved to remand the case to state court, and the district court granted the motion, agreeing that the case was not a class action within the meaning of

CAFA. *Id.* The district court stayed the remand order while Indemnity appealed, *Erie Ins. Exchange v. Erie Indem. Co.*, No. 2:22-cv-166 (W.D. Pa.), ECF No. 43 (Oct. 3, 2022), and this Court ultimately affirmed, *Erie Ins. Exchange v. Erie Indem. Co.*, 68 F.4th 815, 817 (3d Cir. 2023). After the Supreme Court denied certiorari, *Erie Indem. Co. v. Erie Ins. Exchange*, No. 23-434, 144 S. Ct. 1007 (mem.) (Feb. 26, 2024), the district court lifted the stay, *Erie Ins. Exchange v. Erie Indem. Co.*, No. 2:22-cv-166 (W.D. Pa.), ECF No. 64 (Feb. 28, 2024). On February 28, 2024, over two years after the State Court Action had been filed, the case finally returned to the Court of Common Pleas of Allegheny County, JA12 (Op. at 7), only for the district court to immediately enjoin it, JA4–5 (Order).

B. Indemnity's Federal Lawsuit

In March 2022, while the Subscribers' motion to remand the State Court Action was pending in the district court, Indemnity filed this federal lawsuit. *See* JA56 (Compl. ¶¶ 72–73). Invoking the All Writs Act, 28 U.S.C. § 1651, and the Anti-Injunction Act, *id.* § 2283, Indemnity's federal complaint asks the district court to enjoin the Subscribers from pursuing the State Court Action, enjoin the Court of Common Pleas of Allegheny County from holding any proceedings in the action, and enjoin

all current and future Exchange subscribers from bringing the sort of fiduciary breach claim that is asserted in the action. JA65 (Compl. at 27). According to Indemnity, such relief is warranted because the State Court Action impermissibly attempts to relitigate a claim that is purportedly the subject of two prior federal judgments, JA57 (Compl. ¶¶ 75–77), one in *Beltz v. Erie Indemnity Co.*, No. 1:16-cv-179 (W.D. Pa.), and the other in *Ritz v. Erie Indemnity Co.*, No. 1:17-cv-340 (W.D. Pa.).

The first case Indemnity invokes, *Beltz*, was a putative class action filed in 2016 by three Exchange subscribers—none of whom is a party here—seeking relief on behalf of then-current and former Exchange subscribers and derivatively on behalf of Exchange itself.[1] JA143, 166, 168 (*Beltz* Compl. ¶¶ 10–12, 89, 103). The lawsuit challenged Indemnity's practice of retaining two categories of fees: "Service Charges" assessed against subscribers who wished to pay their premiums in installments rather than in a lump sum, and "Additional Fees" assessed against

[1] Because the plaintiffs in *Beltz* had filed an earlier federal suit that was dismissed without prejudice, *see Erie Ins. Exchange v. Stover*, No. 1:13-cv-37, 2014 WL 546707, at *4 (W.D. Pa. Feb. 10, 2014), *aff'd*, 619 F. App'x 118 (3d Cir. 2015), the district court here referred to the 2016 action as "*Beltz II*," *see* JA8–9 (Op. at 3–4). Indemnity has never argued that the earlier suit is relevant to its claims here, so all references to "*Beltz*" in this brief refer to the 2016 action and not to the earlier suit.

subscribers under certain other circumstances, such as where a subscriber sought to reinstate a policy following a lapse in coverage triggered by a failure to pay premiums. JA160–63 (*Beltz* Compl. ¶¶ 68–81). The *Beltz* complaint alleged that, by "unlawfully retaining and misappropriating the Service Charges and the Additional Fees," Indemnity exceeded the 25 percent compensation cap set out in the Subscriber's Agreement and breached a fiduciary duty owed to Exchange and its subscribers. JA170 (*Beltz* Compl. ¶ 112); *see* JA170–74 (*Beltz* Compl. ¶¶ 114–31, 136–40). The *Beltz* plaintiffs sought damages and an injunction barring Indemnity from "continuing to retain the Service Charges and Additional Fees." JA175 (*Beltz* Compl. at 36).

The district court dismissed the *Beltz* action. *Beltz v. Erie Indem. Co.*, 279 F. Supp. 3d 569, 585–86 (W.D. Pa. 2017). As relevant here, the court held that the fiduciary breach claims were untimely because, "[a]ssuming the existence of a fiduciary duty between [Indemnity] and [the *Beltz*] Plaintiffs," any breaches occurred in 1997, 1999, and 2008, when Indemnity's "decision[s] to retain Service Charges and Additional Fees were approved" by Indemnity's directors, such that the 2016 *Beltz*

action was filed outside the applicable two-year statute of limitations.[2] *Id.* at 581–82. This Court affirmed in May 2018 without "reach[ing] the merits or the timeliness of the[] fiduciary duty claims." *Beltz v. Erie Indem. Co.*, 733 F. App'x 595, 599 (3d Cir. 2018). The Court held that the plaintiffs had forfeited the claims by "advancing a different argument on appeal than they did in the District Court." *Id.* at 598.

The second case Indemnity invokes here, *Ritz*, was filed in December 2017 while *Beltz* was on appeal. *Ritz* was also a putative class action brought by an Exchange subscriber on behalf of then-current and former Exchange subscribers and derivatively on behalf of Exchange. JA128, 130 (*Ritz* Compl. ¶¶ 78, 92–93). According to the *Ritz* complaint, Indemnity had breached its fiduciary duty by, "[s]ince at least 2007, … authoriz[ing], tak[ing,] and retain[ing] excessive Management Fees from Exchange … in order to, *inter alia*, pay ever increasing dividends to the

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[2] The district court also rejected the *Beltz* plaintiffs' attempt to invoke the "continuing violations" exception to the statute of limitations. 279 F. Supp. 3d at 582–83. Although the plaintiffs maintained that the exception applied because they had alleged that Indemnity's directors "actively decided, each and every year," to retain the fees at issue, the district court held that this argument "mischaracterize[d] the[] Complaint," which alleged only that the directors "authorized and/or allowed" the challenged practices to continue. *Id.*

shareholders of Indemnity" at Exchange's expense. JA133 (*Ritz* Compl. ¶ 107). As the complaint explained, Indemnity had set the Management Fee at the maximum 25 percent every year from 2007 to 2017, and the sums Indemnity recovered "over the[se] years" as a result were "grossly excessive" in relation to the services Indemnity provided for Exchange. JA118 (*Ritz* Compl. ¶¶ 58, 60).

The district court dismissed the *Ritz* action in February 2019 on claim-preclusion grounds. *Ritz v. Erie Indem. Co.*, No. 1:17-cv-340, 2019 WL 438086, at *6 (W.D. Pa. Feb. 4, 2019). The court held that the "claims asserted … in [the *Ritz*] action could have been brought" in the *Beltz* action because both cases alleged conduct that "began at the same time, that … breache[d] the same provision of an identical Subscriber's Agreement and [that] allegedly caused damages to the same putative class." *Id.* at *4. The court further held that the *Beltz* and *Ritz* plaintiffs were "in privity with each other" because they were "cosigners to the same Subscriber's Agreement," *id.* at *6, such that the final judgment in *Beltz* barred the *Ritz* plaintiff from pursuing claims that "could have been" pleaded in the earlier case, *id.* at *5.

According to Indemnity's complaint in the current action, the State Court Action filed on behalf of Exchange in December 2021 to challenge Indemnity's conduct in December 2019 and thereafter improperly seeks to "relitigat[e] the claims decided in the *Beltz* … and *Ritz* actions." JA63 (Compl. ¶ 99). As a result, Indemnity maintains, a permanent injunction under the All Writs Act is "necessary" to prevent a "collateral attack" on the district court's prior judgments. JA65 (Compl. ¶ 108).

C. Indemnity's Preliminary Injunction Motion and the District Court's Opinion

Shortly after Indemnity filed this lawsuit, the district court stayed the case to await resolution of the Subscribers' then-pending motion to remand the State Court Action. JA33 (Dist. Ct. Dkt.). The district court lifted the stay in August 2023, after the district court had entered (and stayed) an order remanding that action to state court and after this Court had affirmed the remand order (which remained stayed while Indemnity sought Supreme Court review). JA34 (Dist. Ct. Dkt.). Indemnity then moved for a preliminary injunction in this case, requesting an order enjoining the Subscribers from pursuing the State Court Action and enjoining the Court of Common Pleas of Allegheny County from holding any proceedings in that action. JA69 (Mot. for Prelim. Inj. at 2).

In February 2024, two days after the Supreme Court denied review of this Court's opinion affirming remand of the State Court Action—and on the same day that the district court lifted its stay of the remand order and returned that action to state court—the district court granted Indemnity's motion for a preliminary injunction in this case. JA7 (Op. at 2). The district court first held that Indemnity is likely to succeed on its claim to relief under the All Writs Act because the State Court Action is barred by claim preclusion due to the final judgments in *Beltz* and *Ritz*.[3] JA15 (Op. at 10). After noting that both prior judgments were "final judgment[s] on the merits" for claim-preclusion purposes, JA17 (Op. at 12), the court observed that Indemnity and Exchange were parties in all three actions, and it held that although each case involved different "individual subscribers," all Exchange subscribers are in privity with one another because "their substantive legal relationship through the Subscriber's Agreement … result[s] in common interests in the outcome of litigation" on behalf of Exchange. JA18–19 (Op. at 13–14).

[3] Indemnity also argued that the State Court Action is barred by issue preclusion, but the district court did not address that argument. JA15 (Op. at 10 & n.4).

Moving to the final element of the claim-preclusion analysis, the court held that *Beltz*, *Ritz*, and the State Court Action "all involve[d] the same cause of action" because the plaintiffs in all three cases alleged that Indemnity "breached a fiduciary duty to the [s]ubscribers and Exchange by unreasonably taking the maximum allowable percentage of 25% under the Subscriber's Agreement and favoring [its] shareholders over the [s]ubscribers." JA19 (Op. at 14). The court recognized that the State Court Action is "limited to Indemnity's allegedly illegal conduct between 2019 and 2020" and so involves only conduct that "post-date[s]" the conduct at issue in *Beltz* and *Ritz*. JA21 (Op. at 16). But the district court nonetheless viewed Indemnity's 2019 and 2020 conduct as forming "part of the [same] transaction or series of connected transactions" as in *Beltz* and *Ritz*, such that the judgments in those cases "extinguished" the fiduciary breach claim in the State Court Action. JA21 (Op. at 16) (quoting *Elkadrawy v. Vanguard Grp., Inc.*, 584 F.3d 169, 174 (3d Cir. 2009)). As the district court saw it, "Indemnity's decision to set the Management Fee at 25% in 2019 and 2020 is part of a series of connected transactions beginning with Indemnity's original decision [in 2007] to set the Management Fee at 25%," and the fact that "Exchange may have

suffered additional damages in 2019 and 2020" as a result of Indemnity's continued adherence to the 2007 decision "does not equate to a new cause of action where there [is] no 'change of circumstances concerning material operative facts.'" JA24 (Op. at 19) (quoting *Huck ex rel. Sea Air Shuttle Corp. v. Dawson*, 106 F.3d 45, 49 (3d Cir. 1997)).

The district court then concluded that Indemnity would likely suffer irreparable harm absent a preliminary injunction. JA24–25 (Op. at 19–20). Although noting that this Court has not "specifically" addressed the issue, the court observed that "several courts have found that a party suffers irreparable harm if it is required to relitigate issues in state court that have been already decided in federal court." JA24 (Op. at 19). And based on its concern that "even a single state court might decline to accord preclusive effect" to the federal judgments that the district court held would likely bar the State Court Action, the district court found Indemnity "will" suffer such harm if the State Court Action is allowed to proceed. JA25 (Op. at 20) (first quoting *Dow AgroSciences, LLC v. Bates*, No. 5:01-cv-331, 2003 WL 22660741, at *21 (N.D. Tex. Oct. 14, 2003)). In contrast to this supposed harm, the court held that any harm caused by "[f]oreclosing Exchange from litigating in state court"

would not be "legitimate harm where Exchange and the Subscribers have had several full and fair opportunities to litigate their claims in federal court." JA25 (Op. at 20). Further opining that a preliminary injunction would serve the public interest by minimizing what the district court saw as duplicative litigation, the court ultimately granted Indemnity's motion and entered a preliminary injunction. JA25–26 (Op. at 20–21).

Because the district court entered this preliminary injunction the same day that it ordered the State Court Action remanded to state court, no state-court proceedings have taken place in the State Court Action since it was removed to federal court in January 2022. Today, two and a half years after the State Court Action was filed, Indemnity has yet to answer the allegations of fiduciary breach raised in that action.

SUMMARY OF ARGUMENT

The district court's grant of a preliminary injunction rested on two critical errors, each of which creates an independent basis for reversal.

First, the district court erred in holding that Indemnity is likely to succeed on the merits of its claim for permanent injunctive relief under the All Writs Act. This holding derived from the court's view that the fiduciary breach claim in the State Court Action is barred by claim

preclusion as a result of the *Beltz* and *Ritz* judgments. Claim preclusion, though, has no role to play here. The *Beltz* and *Ritz* judgments, issued in 2017 and February 2019, respectively, resolved claims arising out of misconduct that Indemnity allegedly committed in and before 2017. The State Court Action, by contrast, involves a claim arising out of misconduct that Indemnity allegedly committed in December 2019 and thereafter. This Court's precedent establishes the commonsense principle that the preclusive effect of a final judgment does not extend to claims that arise out of misconduct that postdates the judgment. Claim preclusion is meant to encourage plaintiffs to bring all related claims in a single lawsuit. Claims that do not accrue until after a lawsuit has ended cannot possibly have been brought as part of that earlier lawsuit. Applying preclusion to bar such claims, as the district court did, would allow a defendant who has prevailed once on a challenge to an ongoing course of flagrant misconduct (perhaps due to some technical error by the plaintiff) not only to avoid liability for the past actions that were not properly challenged but also to remain indefinitely insulated from legal challenges to its *future* misconduct.

What is more, the Supreme Court has held that an injunction of state-court proceedings under the All Writs Act is appropriate only where the claim asserted in those proceedings is so obviously precluded by a prior federal judgment that allowing the state court even to *consider* the claim (and any associated defenses) would threaten federal authority. Where a state-court defendant simply wishes to assert a run-of-the-mill preclusion defense, however, the Supreme Court has explained that respect for the federal-state balance requires a federal court to forbear from issuing extraordinary injunctive relief and to entrust the state's court system with the adjudication of the defense. Indemnity's claim-preclusion arguments are not even persuasive enough to prevail on their own terms, and they certainly are not so exceptionally compelling as to justify federal intervention in state-court proceedings.

Second, the district court erred in holding that Indemnity will suffer irreparable harm absent an injunction. A claim-preclusion defense, unlike immunity defenses, does not guarantee a defendant the right to be free from the burdens of standing trial, even though a successful defense will ultimately shield the defendant from liability. That being so, Indemnity has not shown that it will suffer irreparable harm if the State

Court Action proceeds. Like any other state-court defendant, Indemnity can raise claim preclusion as an affirmative defense in that action. And like any other state-court defendant, Indemnity can expect impartial adjudication of that defense by a competent tribunal. To characterize the bare fact of state-court litigation as irreparable harm would impermissibly impugn the integrity of state-court processes.

Each of the district court's errors creates an independent basis for reversal. Moreover, the errors infected the court's analysis of whether an injunction would harm Exchange and whether an injunction would disserve the public interest. This Court should reverse, vacate the preliminary injunction that the district court issued, and allow the Court of Common Pleas of Allegheny County to get on with its work.

STANDARD OF REVIEW

The decision whether to grant a motion for a preliminary injunction entails consideration of four factors: "(1) whether the movant has a reasonable probability of success on the merits; (2) whether irreparable harm would result if the relief sought is not granted; (3) whether the relief would result in greater harm to the non-moving party[;] and (4) whether the relief is in the public interest." *Swartzwelder v. McNeilly*,

297 F.3d 228, 234 (3d Cir. 2002). The determinations of the district court as to each factor of the preliminary injunction analysis "are reviewed according to the standard applicable to those particular determinations," with "legal conclusions … reviewed de novo, and factual findings … reviewed for clear error." *Id.*

Because Indemnity's likelihood of success on the merits of its claim to relief under the All Writs Act "involves a purely legal determination," the district court's decision on that factor is reviewed de novo. *S.S. Body Armor I, Inc. v. Carter Ledyard & Milburn LLP*, 927 F.3d 763, 772–73 (3d Cir. 2019). And because the district court's irreparable-harm ruling rested not on any case-specific factual findings but on the legal conclusion that being "required to relitigate issues in state court that have been already decided in federal court" per se constitutes irreparable harm, JA24 (Op. at 19), that ruling is reviewed de novo as well. *See, e.g.*, *Davis v. Pension Ben. Guar. Corp.*, 571 F.3d 1288, 1291 (D.C. Cir. 2009) (reviewing de novo "whether [a] movant" for a preliminary injunction "ha[d] established irreparable harm"). Finally, the district court's overall "weighing of the[] factors" to determine whether preliminary injunctive relief is ultimately warranted is reviewed for abuse of discretion.

Swartzwelder, 297 F.3d at 234. That said, a decision resting on "[l]egal errors" necessarily "amount[s] to an abuse of discretion." *Gibson v. State Farm Mut. Auto. Ins. Co.*, 994 F.3d 182, 186 (3d Cir. 2021).

ARGUMENT

This Court must reverse if the district court erred *either* in holding that Indemnity is likely to succeed on the merits of its claim to relief under the All Writs Act *or* in holding that Indemnity is likely to suffer irreparable harm absent a preliminary injunction. *See Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017) (reaffirming that "a movant for preliminary equitable relief *must* meet the threshold" for establishing likelihood of success on the merits and irreparable harm (emphasis added)). Because both holdings were erroneous, each creates an independently sufficient basis for reversal. What is more, the district court's legal errors infected its assessment of the remaining preliminary-injunction factors as well, reinforcing that its ultimate decision to grant a preliminary injunction was an abuse of discretion.

I. Indemnity has not carried its burden of showing that it is likely to succeed in establishing entitlement to a permanent injunction of the State Court Action.

Indemnity seeks to enjoin the State Court Action pursuant to the All Writs Act, which authorizes the district court to "issue all writs necessary or appropriate in aid of [its] … jurisdiction[] and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The Anti-Injunction Act, however, prohibits a federal court from "grant[ing] an injunction to stay proceedings in a State court except" under specified circumstances, including where an injunction is "necessary … to protect or effectuate [the federal court's] judgments." *Id.* § 2283. This exception is "strict and narrow," *Choo v. Exxon Corp.*, 486 U.S. 140, 148 (1988), but the district court held that Indemnity is likely to establish that the exception applies here because, in the district court's view, the fiduciary breach claim raised in the State Court Action is likely barred by claim preclusion as a result of the *Beltz* and *Ritz* judgments. JA15 (Op. at 10).

This holding was wrong for two reasons. First, the fiduciary breach claim in the State Court Action rests on a cause of action that is distinct from the causes of action that were dismissed in *Beltz* and *Ritz*. Second, Indemnity has not shown that the extraordinary remedy of enjoining

state-court litigation is "necessary" to protect the *Beltz* and *Ritz* judgments, 28 U.S.C. § 2283, where the state court is fully capable of adjudicating any claim-preclusion defense Indemnity might raise.

A. Indemnity cannot show that the preclusive effect of the *Beltz* and *Ritz* judgments bars the State Court Action.

Federal common law, which governs the preclusive effect of a prior federal judgment, recognizes two related preclusion doctrines. *Taylor v. Sturgell*, 553 U.S. 880, 891–92 (2008). Claim preclusion "forecloses 'successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit.'" *Id.* at 892 (quoting *New Hampshire v. Maine*, 532 U.S. 742, 748 (2001)). Issue preclusion, by contrast, "bars 'successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,' even if the issue recurs in the context of a different claim." *Id.* (quoting *New Hampshire*, 532 U.S. at 748–49). In essence, claim preclusion bars parties from making successive attempts to challenge "the same transaction," even if their later challenges invoke different legal or factual arguments, *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 481 n.22 (1982), while issue preclusion bars parties from using legal or

factual arguments that have already been rejected on the merits in a prior suit to challenge *other* transactions in a new action.

Claim preclusion formed the basis for the district court's ruling that Indemnity is likely to succeed on the merits in this case. JA15 (Op. at 10). To bear its burden of establishing that the State Court Action is barred by claim preclusion, however, Indemnity would have to "establish three elements: '(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action.'" *Marmon Coal Co. v. Dir., Off. of Workers' Comp. Progs.*, 726 F.3d 387, 394 (3d Cir. 2013) (quoting *Duhaney v. Att'y Gen.*, 621 F.3d 340, 347 (3d Cir. 2010)). Indemnity cannot satisfy the third of these elements because the State Court Action does not involve the same cause of action as the *Beltz* and *Ritz* suits.

Critically, the complaint in the State Court Action claims that Indemnity breached its fiduciary duty to Exchange by "setting the Management Fee rate at the maximum rate of 25% in December of 2019 and 2020 and allowing such amounts to be taken from Exchange over the course of" 2020 and 2021. JA89–90 (St. Ct. Compl. ¶ 85). The suit thus seeks relief for conduct that occurred *after* this Court affirmed the *Beltz*

judgment on May 10, 2018, *see* 733 F. App'x 595, and *after* the district court declined rehearing on the *Ritz* judgment on May 13, 2019, *see* 2019 WL 2090511, and the window for appeal elapsed. The claim in the State Court Action could not have been brought in prior actions that concluded *before* the conduct giving rise to the claim had even occurred.

Precedent confirms the commonsense point that a suit challenging conduct that occurs *after* the entry of final judgment in a prior suit does not seek to litigate the same transaction as the prior suit. This Court has joined at least "[f]ive other Courts of Appeals" in "adopt[ing] a bright-line rule that *res judicata* does not apply to events post-dating the filing of the initial complaint." *Morgan v. Covington Tp.*, 648 F.3d 172, 177–78 (3d Cir. 2011) (citing cases); *see, e.g.*, *Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 314 (3d Cir. 1995) (holding that a retired coal miner who had previously filed an unsuccessful application for medical benefits was "precluded from collaterally attacking the prior denial of benefits" but *not* precluded from filing a new claim "asserting that he is *now* eligible for benefits" based on updated medical evidence); *Bd. of Trs. of Trucking Emp's of N. Jersey Welfare Fund, Inc. v. Centra*, 983 F.2d 495, 505 (3d Cir. 1992) (rejecting as "indefensible" the idea that the plaintiff in a prior

suit "should have brought to the court's attention … claims based on conduct that had not yet occurred"); *Alexander & Alexander, Inc. v. Van Impe*, 787 F.2d 163, 166 (3d Cir. 1986) (noting that claim preclusion "does not bar claims arising *subsequent to* the entry of judgment" in a prior case "and which did not then exist or could not have been sued upon").

The Supreme Court, too, has observed that "[c]laim preclusion generally 'does not bar claims that are predicated on events that postdate the filing of the initial complaint.'" *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 590 U.S. 405, 414 (2020) (quoting *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 600 (2016)); *see Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322, 327–28 (1955) (noting that claim preclusion does not bar a later suit involving "essentially the same course of wrongful conduct" as a prior suit where "[t]he conduct … complained of" in the later suit "was all subsequent to the [earlier] judgment").

This Court's decision in *Allegheny International, Inc. v. Allegheny Ludlum Steel Corp.*, 40 F.3d 1416 (3d Cir. 1994), is instructive. There, a corporate parent sued its former subsidiary in 1989 for certain insurance costs that the parent had incurred after March 1986. *Id.* at 1420. The parent had previously sued the subsidiary in 1985, seeking to recoup

similar costs and requesting a "declaratory judgment holding [the former subsidiary] liable for future insurance claims." *Id.* at 1420–21. As part of a February 1986 settlement in the 1985 suit, the parent stipulated to dismissal with prejudice of the claims that it had asserted in that suit. *Id.* at 1419–20. Pointing to the prior dismissal of the insurance claims raised in the 1985 suit, including the claim for a declaratory judgment regarding the subsidiary's future liability, the subsidiary argued that claim preclusion barred the parent's claims in the 1989 suit. *Id.* at 1421.

This Court rejected that argument, holding that the parent's claims for insurance costs that it had incurred after March 1986 "d[id] not involve the same cause[] of action" as the 1985 suit because the parent "had not even incurred" the later expenses at the time the 1985 suit was dismissed with prejudice.[4] *Id.* at 1429; *see id.* at 1429 n.15 (observing that the parent's 1985 complaint "did not and could not allege" the claims asserted in the 1989 action). As the Court explained, when "damages for past conduct … are sought, the parties naturally would focus their

[4] *Allegheny International* applied Pennsylvania law and not federal common law, but Indemnity accepted below that "Pennsylvania law regarding claim preclusion essentially mirrors the federal doctrine." Dist. Ct. No. 57 (Br. in Support of Prelim. Inj.) at 5 n.3 (quoting *Laychock v. Wells Fargo Home Mortg.*, 399 F. App'x 716, 718–19 (3d Cir. 2010)).

attention on the existing monetary claims" even if "declaratory relief governing future events" is also sought. *Id.* at 1430. And the Court "cautio[ned]" against "according *res judicata* effect to the dismissal of the declaratory judgment aspects" of such an action precisely because "at a time when the claim for declaratory relief is dismissed, the circumstances on which future liability later may be predicated will not even exist." *Id.*

Like the subsidiary in *Allegheny International*, Indemnity seeks to rely on the dismissal of claims that it unlawfully enriched itself during a certain period (in 2017 and before) to preclude a claim that it continued to unlawfully enrich itself during a later period (in December 2019 onward). As in *Allegheny International*, that argument should fail. *Allegheny International* teaches that dismissal of a claim challenging one party's allegedly actionable conduct during a particular timeframe does not bar a subsequent claim challenging that party's similar conduct during a later timeframe. And this conclusion holds true even where two parties have an ongoing relationship and where the parties anticipate that the challenged conduct may well recur.

To be sure, *issue* preclusion might create an impediment where a party seeks to challenge the continuation of allegedly unlawful conduct

that occurs after a final judgment dismissing a claim based on earlier instances of similar conduct. For example, if the *Beltz* and *Ritz* judgments had rested on a legal determination that Indemnity bears no fiduciary duty to Exchange or on a factual determination that Indemnity labors under no conflict of interest, issue preclusion might bar a claim by the *Beltz* and *Ritz* plaintiffs (or a plaintiff in privity with them) that Indemnity committed fiduciary breach by engaging in later conduct that resembled the pre-2017 conduct at issue in *Beltz* and *Ritz*. But as this Court has repeatedly stated, *see supra* at pp. 29–30, applying *claim* preclusion under such circumstances makes no sense. Otherwise, purely procedural missteps like the ones that the *Beltz* and *Ritz* plaintiffs were found to have committed would not only (sensibly) foreclose those plaintiffs from collecting backward-looking relief based on past conduct that they had failed to properly challenge but would also (nonsensically) give the defendant carte blanche to continue engaging in similar conduct—even if flagrantly unlawful—indefinitely into the future without fear of legal consequence. The precedent that forecloses Indemnity's claim-preclusion argument thus rests on a solid foundation of common sense.

The district court erred in holding that claim preclusion applies here. In the district court's view, the complaint in the State Court Action asserts the same cause of action that the plaintiffs asserted in *Beltz* and *Ritz* because the complaint challenges "the exact conduct" that was at issue in those cases. JA23 (Op. at 18). This characterization, though, is wrong. The State Court Action challenges decisions that Indemnity made in 2019 and 2020 to set the Management Fee at 25 percent, and actions that Indemnity took subsequently based on those decisions, including the declaration and payment of a nearly $100 million special dividend to its own shareholders on December 29, 2020. The *Beltz* and *Ritz* cases, which were filed in 2016 and 2017 respectively, did not challenge—and indeed could not have challenged—that "exact conduct."

It is certainly true, as the district court noted, that many of the factual allegations in the complaint in the State Court Action explaining why Indemnity's conduct in 2019 and thereafter was unlawful mirror factual allegations that the *Beltz* and *Ritz* plaintiffs made to explain why Indemnity's earlier conduct was unlawful. *See* JA23 (Op. at 18). But this Court has rejected the argument that a final judgment on a claim based on earlier conduct bars a subsequent claim that challenges later, similar

conduct simply because there is "significant factual overlap" between the two claims. *Morgan*, 648 F.3d at 177; *see also, e.g.*, *Smith v. Potter*, 513 F.3d 781, 783 (7th Cir. 2008) (observing that where a defendant's allegedly unlawful conduct is "a practice, repetitive by nature, that happens to continue after [a] first suit is filed, or … an act, causing discrete, calculable harm, that happens to be repeated," the dismissal of an earlier suit "does not entitle the defendant to continue or repeat the unlawful conduct with immunity from further suit" (citation omitted)).

Rather than applying this established principle, the district court focused on language from *Elkadrawy v. Vanguard Group, Inc.*, 584 F.3d 169 (3d Cir. 2009), stating that the claims precluded by the final judgment in an action include all claims "with respect to all or any part of the transaction or series of connected transactions[] out of which the action arose." JA21 (Op. at 16) (quoting *Elkadrawy*, 584 F.3d at 174). *Elkadrawy*, however, is consistent with this Court's repeated adherence to the logical view that an action can "ar[i]se" only out of a "transaction or series of connected transactions" that *precedes* the filing of the action. In *Elkadrawy*, the plaintiff had previously filed a discrimination suit against his former employer. *Elkadrawy*, 584 F.3d at 171. After that suit

was dismissed, the plaintiff filed a new lawsuit, making new allegations of discrimination implicating "previously unmentioned" coworkers. *Id.* at 172. The Court held that the claims in the second lawsuit were "indisputably connected" to the claims in the first lawsuit and, therefore, barred by claim preclusion. *Id.* at 174. In so holding, though, the Court emphasized that, because the "new and discrete discriminatory events" alleged in the second lawsuit "took place prior" to the start of the first lawsuit, it was "beyond dispute" that they "'could have been brought' as part of [the plaintiff's] first complaint." *Id.* at 173–74. *Elkadrawy*, then, supports—rather than contradicts—the wealth of precedent holding that a final judgment does not bar subsequent claims based on conduct that postdates the judgment, even if that conduct is somehow "connected" to the conduct at issue in the earlier suit.

The other case on which the district court principally relied, *Huck ex rel. Sea Air Shuttle Corp. v. Dawson*, 106 F.3d 45 (3d Cir. 1997), likewise does not support claim preclusion here. In *Huck*, a seaplane company had been denied the use of certain ramps owned by the Virgin Islands Port Authority (VIPA) after a competitive bidding process in which a different bidder prevailed. *Id.* at 47. The company had previously

filed a lawsuit against VIPA and the successful bidder, challenging the outcome of the bidding process on various grounds. *Id.* After all of the company's claims had been rejected and judgment in the company's case became final, a shareholder in the company filed a derivative action on the company's behalf against VIPA, again challenging the outcome of the bidding process. *Id.* The shareholder "acknowledge[d] the identity of the two actions," but he "defend[ed] his right to file the second by contending that VIPA, in continuing to deny [the company] access to the ramps, drove his company into bankruptcy." *Id.* This Court rejected the shareholder's argument, holding that the fact of "continued damage" due to "the same conduct challenged"—and upheld as lawful—"in the earlier suit" was insufficient to "create[] a new cause of action that was not barred by res judicata." *Id.* at 49.

Huck thus stands for the proposition that new "*harm* that occur[s] after [a] first judgment" regarding a defendant's challenged conduct does not entitle a plaintiff to challenge that conduct anew. *Id.* at 50 (emphasis added). *Huck* does not stand for the proposition that claim preclusion bars a plaintiff from challenging new *misconduct* that the defendant commits after an earlier judgment has resolved claims regarding the

defendant's prior, similar conduct. Such a proposition would flatly contravene reams of binding precedent. *See supra* at pp. 29–32.

The district court's mistaken view that *Huck* applies here appears to have derived from a misunderstanding of the claim raised in the State Court Action. As the district court saw it, the State Court Action seeks relief on the ground that Exchange "suffered additional damages in 2019 and 2020" due to Indemnity's initial "[2007] decision to set the Management Fee at 25%"—a decision that was challenged, or could have been challenged, in *Beltz* and *Ritz*. JA24 (Op. at 19). But the State Court Action does *not* challenge any decision that Indemnity made in 2007. It challenges decisions Indemnity made "[o]n December 10, 2019, and December 8, 2020," when Indemnity "set the Management Fee rate for 2020 and 2021, respectively." JA80 (St. Ct. Compl. ¶ 29). Indemnity's own press releases confirm that Indemnity's board of directors "set the management fee rate[s]" for 2020 and 2021 on these dates, JA84, 86 (St. Ct. Compl. ¶¶ 60, 64), and Indemnity's complaint here states that the Management Fee rate "is set once a year" based on contemporaneous market conditions, such as "current year operating results compared to both prior year and industry estimated results," JA44–45 (Compl. ¶¶ 31–

32). Neither *Huck* nor any other precedent of this Court suggests that the *Beltz* and *Ritz* plaintiffs' procedural lapses in challenging the decisions Indemnity made during an earlier 2007 to 2017 timeframe forever bars Exchange and its subscribers from challenging Indemnity's ongoing, year-by-year rate-setting process in the future.

B. Indemnity has not shown that its anticipated claim-preclusion defense justifies an injunction of state-court proceedings.

Even putting aside that Indemnity's claim-preclusion defense lacks merit, Indemnity cannot show that it is likely to prevail on the merits by establishing that it is entitled to an injunction of the State Court Action. In arguing that a permanent injunction is appropriate notwithstanding the Anti-Injunction Act's baseline prohibition on federal injunctions of state-court proceedings, Indemnity invokes the Act's exception for injunctions that are "necessary … to protect or effectuate [federal] judgments." 28 U.S.C. § 2283. But although this exception is "founded in the well-recognized concepts of *res judicata* and collateral estoppel," not every viable preclusion defense falls within the exception. *Choo*, 486 U.S. at 147. For example, while federal principles of claim preclusion "bar[] not only claims that were brought in [a] previous action, but also claims

that could have been brought," *Elkadrawy*, 584 F.3d at 173 (quoting *Post v. Hartford Ins. Co.*, 501 F.3d 154, 169 (3d Cir. 2007)), the Anti-Injunction Act's "strict and narrow" relitigation exception permits federal injunctive relief only where state-court litigation involves "claims or issues … [that] actually have been decided by the federal court," *Choo*, 486 U.S. at 148.

That the scope of the religitation exception is narrower than the scope of the relevant preclusion principles reflects the Act's "core message … of respect for state courts." *Smith v. Bayer Corp.*, 564 U.S. 299, 306 (2011). After all, "[d]eciding whether and how prior litigation has preclusive effect is usually the bailiwick of the *second* court (here, the [state court])." *Id.* at 307. Preclusion accordingly must be "clear beyond peradventure" before a federal court can "resort[] to [the] heavy artillery" of enjoining state-court litigation. *Id.*; *see also Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 297 (1970) ("Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy."). As the Supreme Court has explained, "close cases have easy answers: The federal court

should not issue an injunction, and the state court should decide the preclusion question." *Smith*, 564 U.S. at 318.

This case, though, is "not even … close." *Id.* As explained in Part I.A., Indemnity cannot carry its burden of showing that the State Court Action is barred by traditional claim-preclusion principles. That being so, Indemnity certainly cannot carry the even heavier burden of showing "beyond peradventure," *Smith*, 564 U.S. at 307, that the *Beltz* and *Ritz* judgments "actually … decided," *Choo*, 486 U.S. at 148, the fiduciary breach claim presented in the State Court Action.

The *Beltz* judgment, for one, addressed an entirely different theory of fiduciary breach than the one presented in the State Court Action. The fiduciary breach claim in *Beltz* challenged Indemnity's allegedly "unlawful retention of the revenue generated by" two specific categories of fees that Indemnity collected "in addition to a percentage of premiums as prescribed in the Subscriber's Agreements." JA173 (*Beltz* Compl. ¶¶ 129–30). The State Court Action, however, does not challenge the additional fees that Indemnity collected over and above its Management Fee. Rather, the State Court Action focuses on the Management Fee *itself* and alleges that Indemnity breached its fiduciary duty by "setting the

Management Fee rate at the maximum rate of 25% in December of 2019 and 2020 and allowing such amounts to be taken from Exchange over the course of" 2020 and 2021. JA88 (St. Ct. Compl. ¶ 78). The matter of Indemnity's conduct with respect to the Management Fee was not even presented in the *Beltz* case, let alone "decided." *Choo*, 486 U.S. at 148.

The *Ritz* judgment also did not resolve the claim at issue in the State Court Action. The fiduciary breach claim in *Ritz* resembles the claim in the State Court Action in that it rested on allegations that "Indemnity … unreasonably withheld the highest amount permitted under the Subscriber's Agreement—*i.e.*, 25%—without good cause for doing so." *Ritz*, 2019 WL 438086, at *2. But the district court in *Ritz* did not decide the merits of the claim presented. Instead, it held that the claim—which sought relief for Indemnity's conduct dating back to 2007—was barred by claim preclusion because the claim "could have been brought" in the 2016 *Beltz* case. *Id.* at *4. And to the extent that Indemnity argues that the *Ritz* opinion's claim-preclusion analysis conclusively establishes that the fiduciary breach claim in the State Court Action is also barred by claim preclusion, Indemnity is wrong. Nothing in the *Ritz* opinion speaks at all—let alone "clear[ly] beyond

peradventure," *Smith*, 564 U.S. at 307—to whether fiduciary breach claims, like the one in the State Court Action, based on conduct that entirely postdates the *Beltz* judgment "could have been brought" in that action for purposes of claim preclusion. *Ritz*, 2019 WL 438086, at *4.

Ultimately, then, if this Court does not reject Indemnity's flawed claim-preclusion arguments outright, it should at minimum hold that those arguments belong in state court. Either way, this Court should reverse the district court's erroneous holding that Indemnity is likely to prevail on the merits of its claim that it is entitled to the extraordinary relief of a federal injunction of state-court proceedings.

II. Indemnity has not carried its burden of showing that it will suffer irreparable harm absent a preliminary injunction.

The district court also erred in holding that Indemnity has made the requisite showing that it is likely to suffer irreparable harm absent a preliminary injunction. *See Siemens USA Holdings Inc. v. Geisenberger*, 17 F.4th 393, 408 (3d Cir. 2021) (noting that a party seeking a preliminary injunction must show that such relief "[is] the only way of protecting the [party] from harm" (quoting *Campbell Soup Co. v. ConAgra, Inc.*, 977 F.2d 86, 91 (3d Cir. 1992))). In the district court's view, Indemnity has established two forms of harm: (1) being "forced to defend

itself in state court on issues" that the district court viewed as "already" having been "decided in federal court" and (2) "potentially being 'denied the benefits'" of the *Beltz* and *Ritz* judgments should the state court reject Indemnity's claim-preclusion defense. JA25 (Op. at 20) (quoting *Dow AgroSciences*, 2003 WL 22660741, at *18). Because Indemnity has no valid claim-preclusion defense, *see* Part I.A., these purported harms are illusory. But even setting aside that point, neither asserted injury would constitute the sort of harm that justifies a preliminary injunction.

As to the first claimed harm, the district court acknowledged that this Court has "not specifically held" that being required to assert an affirmative defense of claim preclusion in a state-court proceeding constitutes irreparable harm. JA24 (Op. at 19). And for good reason. As the Supreme Court has stated, "[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury." *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974). Meanwhile, to the extent that Indemnity maintains that it is injured by the bare fact of being required to assert its defenses at all, "[u]nlike qualified immunity or Eleventh Amendment sovereign immunity, claim preclusion is not based on a right to be free from all the

costs and burdens of having to be a party to a case in the first instance or from having to defend oneself." *Bell Atl.-Pa., Inc. v. Pa. Pub. Util. Comm'n*, 273 F.3d 337, 345 (3d Cir. 2001).

In short, having to make a claim-preclusion argument as a defendant in a state-court action does not constitute irreparable harm. *See Smith*, 564 U.S. at 307 (explaining that state courts are entirely capable of "[d]eciding whether and how prior [federal] litigation has preclusive effect"); *Aristud-González v. Gov't Dev. Bank for P.R.*, 501 F.3d 24, 26 (1st Cir. 2007) (affirming district court's conclusion that "there was no irreparable injury" when a plaintiff filed a state-court lawsuit that was allegedly barred by a prior federal judgment "because res judicata … defenses could be asserted in those state proceedings").

As to the second claimed harm, the risk that the state court could "potentially" reject a valid claim-preclusion argument also does not justify a preliminary injunction. JA25 (Op. at 20). To begin with, this theory of potential harm contravenes the Anti-Injunction Act's "core message … of respect for state courts." *Smith*, 564 U.S. at 306. Moreover, to carry its burden on irreparable harm, the proponent of preliminary relief must show that the feared harm is "more apt to occur than not." *In*

re Revel AC, Inc., 802 F.3d 558, 569 (3d Cir. 2015); *see Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) ("Issuing a preliminary injunction based only on a *possibility* of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the [proponent] is entitled to such relief." (emphasis added)). Indemnity has offered no basis for presuming that the Court of Common Pleas of Allegheny County is likely to mishandle its claim-preclusion defense. Finally, even if the state court were to issue a ruling on claim preclusion that "so interfer[ed] with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case," *Atl. Coast Line*, 398 U.S. at 295, Indemnity would not suffer irreparable harm because it could seek relief "through the state appellate courts and ultimately [the Supreme] Court," *id.* at 287.

In sum, Indemnity has not shown that it will suffer irreparable harm absent a preliminary injunction. The district court's contrary holding should be reversed.

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Ultimately, "an injunction is 'an extraordinary remedy, which should be granted only in limited circumstances.'" *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharms. Co.*, 290 F.3d 578, 586 (3d Cir. 2002) (quoting *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 800 (3d Cir. 1989)). As explained *supra* at p. 25, reversal is required if the district court erred in assessing *either* Indemnity's likelihood of success on the merits *or* the probability that Indemnity will suffer irreparable harm absent an injunction. Because the district court erred on both counts, reversal is doubly warranted.

What is more, the district court's erroneous view of the case's merits compromised its assessment of the two remaining preliminary-injunction factors. The district court discounted the harm that an injunction would inflict on Exchange, which has now been waiting *two and a half years* since filing the State Court Action to receive a substantive response from Indemnity on the merits of the fiduciary breach claim. The district court characterized this harm as not being "legitimate" only because it erroneously viewed the State Court Action as seeking to relitigate previously rejected claims. JA25 (Op. at 20). And based on the same error,

the district court held that a preliminary injunction would serve the public interest. JA25–26 (Op. at 20–21).

From top to bottom, then, reversible legal error infected the district court's decision to preliminarily enjoin the State Court Action. That decision was thus an abuse of discretion. This Court should reverse and allow the State Court Action to begin at last, after years of needless delay.

CONCLUSION

This Court should reverse and vacate the preliminary injunction entered by the district court.

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May 8, 2024

CERTIFICATES OF BAR MEMBERSHIP; TYPE-VOLUME, TYPEFACE, AND TYPE STYLE; IDENTICAL COMPLIANCE OF BRIEFS; AND VIRUS CHECK

1. Bar Membership. I certify that I am a member of the bar of this Court.

2. Type-Volume, Typeface, and Type Style. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and the Rules of this Court, it contains 9,943 words. This brief also complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook.

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4. Virus Check. I certify that a virus detection program (Microsoft Defender) has been run on the file and that no virus was detected.

/s/ Nicolas A. Sansone
Nicolas A. Sansone
Attorney for Defendants-Appellants

ATTACHMENT

No. 24-1443

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ERIE INDEMNITY COMPANY,
Plaintiff-Appellee,

v.

TROY STEPHENSON, CHRISTINA STEPHENSON,
and STEVEN BARNETT, in both their individual capacities
and in any representative capacities they may have
relating to ERIE INSURANCE EXCHANGE,
Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Pennsylvania, No. 1:22-cv-00093-CRE,
Hon. Cynthia Reed Eddy, United States Magistrate Judge

JOINT APPENDIX: VOLUME I (Pages 1–26)

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TABLE OF CONTENTS

Volume I	**Page**
Notice of Appeal (Mar. 7, 2024)	JA1
Order Granting Preliminary Injunction (Feb. 28, 2024)	JA4
District Court Opinion (Feb. 28, 2024)	JA6
Volume II	
District Court Docket Report	JA27
Complaint (Mar. 15, 2022)	JA38
Plaintiff's Motion for a Preliminary Injunction (Sept. 1, 2023)	JA68
Exhibit 1: Complaint, *Erie Ins. Exchange v. Erie Indem. Co.*, No. GD-21-014814 (Pa. Ct. Comm. Pl. Dec. 8, 2021)	JA72
Exhibit 2: Complaint, *Ritz v. Erie Indem. Co.*, No. 1:17-cv-340 (W.D. Pa. Dec. 28, 2017)	JA96
Exhibit 3: Complaint, *Beltz v. Erie Indem. Co.*, No. 1:16-cv-179 (W.D. Pa. July 8, 2016)	JA139
Exhibit 4: Subscriber's Agreement	JA182
Pre-Hearing Order (Sept. 21, 2023)	JA184
Joint Motion Regarding Evidentiary Hearing (Oct. 6, 2023)	JA186
Joint Exhibit and Witness List (Oct. 9, 2023)	JA192
Joint Proposed Findings of Fact and Conclusions of Law (Oct. 23, 2023)	JA196
Defendants' Motion for a Status Conference (Mar. 6, 2024)	JA228
Plaintiff's Opposition to Defendants' Motion for a Status Conference (Mar. 7, 2024)	JA232

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH

ERIE INDEMNITY COMPANY, Plaintiff, v. TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, in both their individual capacities and in any representative capacities they may have relating to ERIE INSURANCE EXCHANGE, Defendants.	Civil Action No. 1:22-cv-93-CRE

NOTICE OF APPEAL

Notice is hereby given that Defendants Troy Stephenson, Christina Stephenson, and Steven Barnett appeal to the United States Court of Appeals for the Third Circuit this Court's Order (ECF No. 80) and Memorandum Opinion (ECF No. 79) of February 28, 2024, granting Plaintiff's Motion for a Preliminary Injunction.

Respectfully submitted,

/s/ Kevin W. Tucker

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CERTIFICATE OF SERVICE

I, Kevin Tucker, do hereby certify that on March 7, 2024, pursuant to Local Rule 5.5 of the United States District Court for the Western District of Pennsylvania, I caused a true and correct copy of the foregoing document to be served by electronic means through the Court's transmission facilities upon all counsel of record.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE

ERIE INDEMNITY COMPANY, Plaintiff, vs. TROY STEPHENSON, CHRISTINA STEPHENSON, AND; AND STEVEN BARNETT, IN BOTH THEIR INDIVIDUAL CAPACITIES AND IN ANY REPRESENTATIVE CAPACITIES THEY MAY HAVE RELATING TO ERIE INSURANCE EXCHANGE; Defendants,	)	1:22-CV-00093-CRE

ORDER

AND NOW, this 28th day of February 2024, upon consideration of Erie Indemnity Company's Motion for a Preliminary Injunction (ECF No. 56), it is hereby ORDERED that the Motion is GRANTED.

IT IS FURTHER ORDERED that Troy Stephenson, Christina Stephenson, and Steven Barnett, and all those who may now be acting or who will act in concert with them, are preliminarily enjoined from pursuing *Erie Insurance Exchange v. Erie Indemnity Co.*, No. GD-21-014814 (Pa. Comm. Pl. Allegheny Cnty.), or any similar action; and the Court of Common Pleas of Allegheny County, Pennsylvania is preliminarily enjoined from conducting any further proceedings in *Erie Insurance Exchange v. Erie Indemnity Co.*, No. GD-21-014814 (Pa. Comm. Pl. Allegheny Cnty.).

IT IS FURTHER ORDERED that Indemnity shall file a motion to convert this preliminary injunction into a permanent injunction and entry of final judgment by **March 15, 2024**. Exchange

may respond by **March 29, 2024**.

IT IS FURTHER ORDERED that Indemnity shall serve a copy of this Memorandum Opinion and Order upon the Court of Common Pleas of Allegheny County, Pennsylvania, and shall file it on the docket of *Erie Insurance Exchange v. Erie Indemnity Co.*, No. GD-21-014814 (Pa. Comm. Pl. Allegheny Cnty.).

BY THE COURT:

s/ Cynthia Reed Eddy
United States Magistrate Judge

cc: All counsel of record via CM/ECF electronic filing

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE

ERIE INDEMNITY COMPANY, Plaintiff, vs. TROY STEPHENSON, CHRISTINA STEPHENSON, AND; AND STEVEN BARNETT, IN BOTH THEIR INDIVIDUAL CAPACITIES AND IN ANY REPRESENTATIVE CAPACITIES THEY MAY HAVE RELATING TO ERIE INSURANCE EXCHANGE; Defendants,	)	1:22-CV-00093-CRE

MEMORANDUM OPINION[1]

CYNTHIA REED EDDY, United States Magistrate Judge.

I. INTRODUCTION

Presently pending before the Court is Plaintiff Erie Indemnity's ("Indemnity") Motion for Preliminary Injunction. (ECF No. 56). Indemnity is seeking a preliminary injunction under the All Writs Act, 28 U.S.C. § 1651 and the Anti-Injunction Act, 28 U.S.C. § 2283 ("AIA") to enjoin Defendants Troy Stephenson, Christina Stephenson, Steven Barnett and all those in privity with them from pursuing the case *Erie Insurance Exchange v. Erie Indemnity Co.*, No. GD-21-014814 (Pa. Comm. Pl. Allegheny Cnty.) or any similar action and enjoin the Court of Common Pleas of Allegheny County from conducting any further proceedings in that case. The motion is fully

[1] All parties have consented to jurisdiction before a United States Magistrate Judge; therefore the Court has the authority to decide dispositive motions, and to eventually enter final judgment. *See* 28 U.S.C. § 636, *et seq*.

briefed and ripe for consideration. (ECF Nos. 57, 58, 60, 69). This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. For the reasons that follow, the motion for preliminary injunction is granted.

II. FINDINGS OF FACT[2]

The Erie Insurance Group ("Erie") is a Pennsylvania reciprocal insurance business founded in 1925 by H.O. Hirt. Reciprocal insurance is where each policyholder, or in Erie's case, each "Subscriber," exchanges reciprocal or inter-insurance contracts with each other providing indemnity among themselves. Erie is comprised of two key entities: "Exchange" and "Indemnity." Exchange is an unincorporated subscriber-owned reciprocal and acts as the insurer for policyholders, or Subscribers, who exchange insurance policies with each other. Exchange has no bylaws, constitution, employees, officers or directors. Indemnity is a Pennsylvania public corporation that manages the insurance functions and affairs for Erie's Subscribers.

The document that establishes and governs this framework between Exchange and Indemnity is the Subscriber's Agreement. Each Subscriber signs an identical version of the Agreement through which they appoint Indemnity as "attorney-in-fact" to manage Erie's affairs and in exchange for those services, each Subscriber authorizes Indemnity to retain up to 25% of all insurance premiums as "compensation." This is referred to as a "Management Fee" and has been set at the maximum rate of 25% from 2007 through the present litigation.

Individual Subscribers, through Exchange, have on several occasions attempted to raise breach of fiduciary duty claims challenging Indemnity's decision to set the Management Fee rate at the full 25% allowed under the Subscriber's Agreement alleging that Indemnity has a conflict

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[2] The Court makes the following findings of fact and conclusions of law. Fed. R. Civ. P. 52(a). Unless otherwise noted, the facts are undisputed.

of interest in setting the Management Fee and that Indemnity maximizes the Management Fee and its shareholding dividends resulting in Indemnity favoring its own financial interests over Exchange. Because the instant motion turns on the history of those cases challenging the 25% Management Fee rate, a full description of all pertinent cases follow.

a. *Beltz v. Erie Indem. Co.*, No. 1:16-cv-179 (W.D.Pa. 2016); No. 17-2774 (3d Cir. 2017) ("*Beltz II*").

On July 8, 2016, a group of Subscribers brought a putative class and derivative action in the United States District Court for the Western District of Pennsylvania, *Beltz v. Erie Indem. Co*., No. 1:16-cv-179 (W.D.Pa. 2017). The *Beltz II* Subscribers brought, among other claims, a direct breach of fiduciary duty claim and a breach of fiduciary duty claim purportedly on behalf of Exchange against Indemnity. The *Beltz II* Subscribers alleged, *inter alia*, that Indemnity breached its fiduciary duties for misappropriating service charges and additional fees under the Subscriber's Agreement provision that Indemnity could only withhold 25% of the premiums for its Management Fee. *Beltz v. Erie Indem. Co.*, 279 F. Supp. 3d 569, 575–78 (W.D. Pa. 2017). Specifically, service charges were levied on Subscribers who chose to pay their premiums in installments rather than in a lump sum, and the *Beltz II* Subscribers alleged that beginning in 1999, Indemnity's Board approved taking all the service charges revenue instead of keeping the charges in the Exchange. *Ibid*. The *Beltz II* Subscribers alleged that this breached the Subscriber's Agreement's 25% compensation cap. *Ibid*. Additionally, the *Beltz II* Subscribers alleged that beginning in 2008, Indemnity and its Board transferred all revenue from "additional fees" which were collected from Subscribers for checks or other payments returned unpaid, cancellation notices and charges for reinstatement of a policy following a lapse in coverage due to non-payment, to Indemnity. *Ibid*.

The district court dismissed the breach of fiduciary duty claims holding that such claims

were barred by the applicable statute of limitations because the decision to keep the service charges and additional fees occurred in 1997, 1998 and/or 2008. *Id.* at 581–583. In so holding, the district court rejected the *Beltz II* Subscriber's argument that the statute of limitations did not expire under the "continuing violations" doctrine because "Plaintiffs by their own allegations, knew of the wrongfulness of the decision to retain Service Charges at the time those decisions were made. Plaintiffs should have brought those claims within the applicable statute of limitations, and cannot now rely on the continuing violations doctrine as a 'means for relieving [them] from their duty to exercise reasonable diligence in pursuing their claims.' " *Id.* at 583 (quoting *Cowell v. Palmer Twp.*, 263 F.3d 286, 292 (3d Cir. 2001)) (alteration in original).

On appeal, the United States Court of Appeals for the Third Circuit affirmed the district court's decision holding they "forfeited their fiduciary duty claims by advancing a different argument on appeal than they did in the District Court." *Beltz v. Erie Indem. Co.*, 733 F. App'x 595, 598 (3d Cir. 2018).

b. *Ritz v. Erie Indem. Co.*, No. 1:17-CV-340 (W.D.Pa. 2019) ("*Ritz*")

On December 28, 2017, a Subscriber brought a putative class and derivative action in the United States District Court for the Western District of Pennsylvania in *Ritz v. Erie Indem. Co.*, No. 1:17-CV-340 (W.D.Pa. 2019) ("*Ritz*"). The *Ritz* Subscriber brought, among other claims, a putative class claim for a breach of fiduciary duty and a derivative breach of fiduciary duty claim on behalf of Exchange. Specifically, the *Ritz* Subscriber alleged that Indemnity breached its fiduciary duties to Exchange and the Subscribers "for taking excessive management fees" under the Subscriber Agreement's 25% Management Fee provision. *Ritz v. Erie Indem. Co.*, No. 1:17-CV-00340-CRE, 2019 WL 438086, at *1 (W.D. Pa. Feb. 4, 2019). It was "undisputed that Indemnity never withheld any amount exceeding 25%, but rather, Ritz argue[d] that the breach of

fiduciary duty [was] based upon Indemnity 'taking the maximum 25% Management Fee year after year without valid grounds' since 2007 to present." *Id.* (quoting *Ritz* Compl. No. 1:17-cv-340-CRE (W.D.Pa. 2017) (ECF No. 1) at ¶¶ 53, 54).

The district court dismissed the *Ritz* Subscriber's breach of fiduciary duty claim based on claim preclusion finding that the breach of fiduciary duty claims could have been brought in the *Beltz II* action because it was based upon the exact conduct: that Indemnity took excessive management fees under the Subscriber's Agreement. *Id.* at *4. The Court explained:

> [B]oth cases detail an alleged scheme by Indemnity and its Board to favor shareholders over the subscribers by allegedly violating the 25% compensation cap mandated by the Subscriber's Agreement. The *Beltz II* plaintiffs narrowly tailored their causes of action by focusing on whether it was a breach for Indemnity and its Board to keep extra-contractual payments which exceeded the 25%, while Ritz broadly alleges that Indemnity and the Board exceeded the 25% compensation cap by unreasonably taking the maximum allowable percentage. Both cases allege that this scheme began at the same time, that it breaches the same provision of an identical Subscriber's Agreement and allegedly caused damages to the same putative class. Both Ritz and the *Beltz II* plaintiffs allege that Indemnity abused its attorney-in-fact position and the Board members abused their positions of power to misappropriate management fees to favor Indemnity's shareholders by deliberately breaching the same contractual provision – the compensation cap in the Subscriber's Agreement – and seek that those funds be returned to the Exchange as damages for the alleged breach. Ritz simply propounds a broader theory of recovery than that sought by the *Beltz II* plaintiffs. Ritz's complaint does not include any new material facts that occurred after the filing of the *Beltz II* complaint such that the *Beltz II* plaintiffs could not have known about the theory of recovery touted by Ritz here. Because proposing a different theory of recovery based upon the same liability causing conduct does not entitle a plaintiff to another proverbial bite at the apple, Ritz's complaint is claim precluded.

Id. at *4. Moreover, the Court found that the *Ritz* Subscriber's claims were further claim precluded because the conduct specifically complained of in the *Ritz* complaint was actually included in the *Beltz II* complaint,[3] and because the *Beltz II* plaintiffs were capable of including *Ritz*'s cause of

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[3] *See Ritz*, 2019 WL 438086, at *5 comparing *Beltz II* Complaint ("since at least 2007, Indemnity has retained the maximum amount of 25% allowed by the Subscriber's Agreement of all premiums written or assumed by Exchange. . . [and] has repeatedly taken the full amount

action for the excessive retention of Management Fees, these were the "same causes of action" for claim preclusion purposes. The Court therefore dismissed the *Ritz* Subscriber's fiduciary duty claims with prejudice on February 4, 2019. *Id*. at *6. The *Ritz* judgment was not appealed.

c. <u>*Erie Ins. Exchange v. Erie Indem. Co.*, No. GD-21-014814 (Pa. Comm. Pl. Allegheny Cnty.); No. 2:22-cv-166-CRE (W.D.Pa. 2022) (the "State Court Action")</u>

On December 8, 2021, another group of individual Subscribers initiated an action in the Court of Common Pleas of Allegheny County as trustees ad litem for the Exchange alleging two causes of action for breach of fiduciary duty alleging that "since December 10, 2019" Indemnity breached its fiduciary duty to the Exchange "by charging Exchange an annual 'Management Fee' which is used not to cover the costs of serving as the attorney-in-fact and managing agent for Exchange" but is provided to a minority group of shareholders for their personal gain. (ECF No. 57-1 at ¶ 10). The individual Subscribers allege that Indemnity set the Management Fee rate at 25% for both December 2019 and December 2020 and that Indemnity's Board has a conflict of interest in setting the rate, because it maximizes the Management Fee to generate excess profits for the shareholders in detriment to the Exchange. *Id*. at ¶¶ 46-47. Exchange limits the time frame for this conduct and only includes allegations that Indemnity set the Management Fee rate at 25% in December 2019 and December 2020 and does not include any information regarding Indemnity's decision to set the Management Fee at 25% prior to December 2019.

Indemnity removed the case to this Court, which Plaintiffs moved for remand. This Court granted Plaintiff's motion to remand, which was affirmed by the United States Court of Appeals

allowable pursuant to the Subscriber's Agreement") with *Ritz* Complaint (Indemnity "has retained the maximum amount of Management Fees allowed by the Subscriber's Agreement – 25% of all premiums written or assumed by the Exchange . . . and have abused their position of trust by charging and keeping excessive Management Fees.") (emphasis in original omitted).

for the Third Circuit and the United States Supreme Court denied certiorari. *Erie Ins. Exch. by Stephenson v. Erie Indem. Co.*, 68 F.4th 815, 817 (3d Cir. 2023), *cert. denied sub nom. Erie Indem. Co. v. Erie Ins. Exch.*, No. 23-434, 2024 WL 759808 (U.S. Feb. 26, 2024). After the expiration of all federal appeals, the Court remanded this case to the Court of Common Pleas of Allegheny County, Pennsylvania on February 28, 2024. *See Erie Ins. Exch. v. Erie Indemn. Co.*, No. 2:22-cv-166-CRE (W.D.Pa. 2022) Order of Feb. 28, 2024 (ECF No. 64).

d. *Erie Indem. Co., v. Troy Stephenson*, No. 1:22-CV-93 (W.D.Pa. 2022) (the "AIA Action")

On March 15, 2022, Indemnity filed the instant action against the State Court Action Plaintiffs, Troy Stephenson, Christina Stephenson and Steven Barnett in their individual capacities and in any representative capacities they may have relating to Exchange, seeking injunctive relief pursuant to the All-Writs Act and the AIA. The present AIA action seeks to enjoin the State Court Action filed in December 2021 by those individuals, who have purported to act on behalf of Exchange. Presently pending before the Court is a motion for preliminary injunction by Indemnity.

III. STANDARD OF REVIEW

a. Preliminary Injunction

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (citations omitted). In determining whether a preliminary injunction should be granted, a district court must consider:

> (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.

Iles v. de Jongh, 638 F.3d 169, 172 (3d Cir. 2011) (citations omitted).

In determining "success on the merits," it is enough for the movant to show that it is likely to succeed on at least one claim to issue injunctive relief. *Trefelner ex rel. Trefelner v. Burrell Sch. Dist.*, 655 F. Supp. 2d 581, 590 (W.D. Pa. 2009). In determining "irreparable harm," the movant must show a clear showing of immediate irreparable injury that is so unusual that money cannot compensate for the harm, as "[t]he availability of adequate monetary damages belies a claim of irreparable injury." *Frank's GMC Truck Ctr., Inc. v. Gen. Motors Corp.*, 847 F.2d 100, 102 (3d Cir. 1988).

A plaintiff must produce evidence sufficient to prove all four factors for a court to issue preliminary injunctive relief. *The Pitt News v. Fisher*, 215 F.3d 354, 366 (3d Cir. 2000); *New Jersey Hosp. Ass'n v. Waldman*, 73 F.3d 509, 512 (3d Cir. 1995) (citation omitted). "A plaintiff's failure to establish any element in its favor renders a preliminary injunction inappropriate." *NutraSweet Co. v. Vit-Mar Enterprises, Inc.*, 176 F.3d 151, 153 (3d Cir. 1999).

b. Anti-Injunction Act, 22 U.S.C. § 2283 and All-Writs Act, 28 U.S.C. § 1651(a)

Indemnity brings this action under the "relitigation exception" of the Anti-Injunction Act, 22 U.S.C. § 2283 ("AIA"). The AIA provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283. The AIA "is an absolute prohibition against [federal courts] enjoining state court proceedings, unless the injunction falls within one of three specifically defined exceptions." *Atl. Coast Line R. Co. v. Bhd. of Locomotive Engineers*, 398 U.S. 281, 286 (1970). The AIA "exceptions are narrow and are not to be enlarged by loose statutory construction." *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988) (citations, quotation marks and brackets omitted).

Where, as here, the injunction sought is not "expressly authorized by Act of Congress," the state court proceedings can only be enjoined if it is necessary "in aid of [the federal court's] jurisdiction" or "to protect or effectuate [a federal court's] judgments." 28 U.S.C. § 2283; *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 261 F.3d 355, 364 (3d Cir. 2001). The provision for "allowing injunctions that are necessary 'to protect or effectuate [a court's] judgments' is also known as the 'relitigation exception' to the Anti Injunction Act." *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 261 F.3d at 364 (citation omitted). "The relitigation exception was designed to permit a federal court to prevent state litigation of an issue that previously was presented to, and decided by, the federal court." *Chick Kam Choo*, 486 U.S. at 147. The relitigation exception "is founded in the well-recognized concepts of res judicata and collateral estoppel." *Id.* The "essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings [must] actually have been decided by the federal court." *Id.* at 148.

"The Supreme Court has therefore urged that courts proceed with caution when considering issuing an injunction under the Anti-Injunction Act. 'A federal court does not have inherent power to ignore to limitations of §2283 and to enjoin state court proceedings merely because those proceedings interfere with a protected federal right or invade an area preempted by federal law, even when the interference is unmistakably clear.' " *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 261 F.3d 355, 364 (3d Cir. 2001) (quoting *Atlantic Coast Line R.R. Co.*, 398 U.S. at 294). While the "to protect or effectuate its judgments" language is "admittedly broad," it implies "that some federal injuncti[ve] relief may be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." *Atlantic Coast Line R.R. Co.*, 398 U.S. at 295.

Additionally, "[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy." *Id.* at 297.

Should a federal court determine that injunctive relief is necessary, the All-Writs Act, 28 U.S.C. § 1651(a) acts in tandem with the AIA and permits the issuance of "all writs necessary or appropriate in aid of [a federal court's] jurisdiction and agreeable to the usages and principals of law[,]" including injunctive relief. 28 U.S.C. § 1651(a); *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 261 F.3d 355, 365 (3d Cir. 2001).

IV. CONCLUSIONS OF LAW

a. Success on the Merits

i. Claim Preclusion

Indemnity argues that the State Court Action is barred by claim preclusion from the *Beltz II* and *Ritz* litigation. Because the Court agrees that Indemnity is likely to succeed on its claim preclusion argument, only that claim will be addressed.[4] *See supra Trefelner ex rel. Trefelner*, 655 F. Supp. 2d at 590.

Claim preclusion – also referred to as *res judicata* – "gives dispositive effect to a prior judgment if a particular issue, although not litigated, could have been raised in the earlier proceeding." *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 276 (3d Cir. 2014). "If a later suit advances the same claim as an earlier suit between the same parties, the earlier suit's judgment prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding." *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 590 U.S. ---, ---, 140 S. Ct. 1589, 1594–95,

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[4] Indemnity likewise asserts issue preclusion principals in support of its action.

206 L. Ed. 2d 893 (2020) (cleaned up). "Suits involve the same claim (or 'cause of action') when they arise from the same transaction, or involve a common nucleus of operative facts." *Id.* at 1595 (internal quotation marks and citations and alterations omitted). Generally, claim preclusion "does not bar claims that are predicated on events that postdate the filing of the initial complaint[]" that "give rise to new material operative facts that in themselves, or taken in conjunction with the antecedent facts create a new claim to relief." *Lucky Brand Dungarees, Inc.*, 140 S. Ct. at 1596 (cleaned up).

Claim preclusion applies where there has been (1) a final judgment on the merits in an earlier proceeding that involved (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action. *Bd. of Trustees of Trucking Emps. of N. Jersey Welfare Fund, Inc. - Pension Fund v. Centra*, 983 F.2d 495, 504 (3d Cir. 1992). In determining whether these elements have been met, a court should "not apply this conceptual test mechanically," but rather should focus "on the central purpose of the doctrine, [which is] to require a plaintiff to present all claims arising out [of] the same occurrence in a single suit." *Sheridan v. NGK Metals Corp.*, 609 F.3d 239, 260 (3d Cir. 2010) (internal quotations and citations omitted). In so doing, "piecemeal litigation" is avoided and the court conserves scare "judicial resources." *Id.* The underlying purpose of claim preclusion is to "relieve the parties of the cost and vexation of multiple lawsuits, ... prevent[ ] inconsistent decisions, [and] encourage reliance on adjudication." *Marmon Coal Co. v. Dir., Off. of Workers' Comp. Programs*, 726 F.3d 387, 394 (3d Cir. 2013) (citations omitted). Importantly here, claim preclusion "bars not only claims that were brought in the previous action, but also claims that could have been brought." *Blunt*, 767 F.3d at 276. "This analysis does not depend on the specific legal theory invoked, but rather [on] the essential similarity of the underlying events giving rise to the various legal claims." *Elkadrawy v. Vanguard Grp., Inc.*, 584

F.3d 169, 173 (3d Cir. 2009) (internal citations and quotations omitted). A "prior judgment's preclusive effect then extends not only to the claims that the plaintiff brought in the first action, but also to any claims the plaintiff could have asserted in the previous lawsuit. . . . Claim preclusion similar reaches theories of recovery: a plaintiff who asserts a different theory of recovery in a separate lawsuit cannot avoid claim preclusion when the events underlying the two suits are essentially the same." *Beasley v. Howard*, 14 F.4th 226, 231–32 (3d Cir. 2021) (citations omitted). In other words, claim preclusion is based upon "the essential similarity of the underlying events giving rise to the various legal claims" rather than the "specific legal theory invoked[.]" *United States v. Athlone Indus., Inc.*, 746 F.2d 977, 983–84 (3d Cir. 1984); *see accord. Sheridan v. NGK Metals Corp.*, 609 F.3d 239, 261 (3d Cir. 2010).

1. Final Judgment on the Merits

Both *Beltz II* and *Ritz* resulted in a final judgment on the merits. *Beltz II* was dismissed for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) and for claim preclusion purposes constitutes a final "judgment on the merits." *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 399 n. 3 (1981). Additionally, the *Beltz II* fiduciary duty claim was dismissed as untimely, which is considered a final judgment on the merits. *McHale v. Kelly*, 527 F. App'x 149, 152 (3d Cir. 2013) (unpublished) (dismissal with prejudice on statute of limitations grounds is a judgment on the merits for claim preclusion purposes) (citing *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 506 (2001)). *See also Elkadrawy*, 584 F.3d at 173 ("The rules of finality . . . treat a dismissal on statute-of-limitations ground . . . as a judgment on the merits.") (citation omitted). Likewise, *Ritz* was dismissed with prejudice after having found it was barred by claim preclusion and constitutes a final judgment on the merits for claim preclusion purposes. *See Fairbank's Cap. Corp. v. Milligan*, 234 F. App'x 21, 23 (3d Cir. 2007) (unpublished)

("A dismissal 'with prejudice' is treated as an adjudication of the merits and thus has preclusive effect.") (citing *Gambocz v. Yelencsics*, 468 F.2d 837, 840 (3d Cir. 1972)). Therefore, Indemnity has established the "final judgment on the merits" element for claim preclusion.

2. Same Parties or Their Privies

The parties in the State Court Action involve the same parties and their privies as the parties in *Beltz II* and *Ritz*. Indemnity and Exchange were parties in *Beltz II* and *Ritz* and are also parties in the State Court Action. Further, the individual subscribers who litigated the prior action in *Beltz II* and *Ritz* are in privity with the individual subscribers in the State Court Action.

While Exchange argues that the individual subscribers change from year to year, and therefore this litigation involves different parties than those who litigated in *Beltz II* and *Ritz*, this argument entirely ignores that claim preclusion can be based upon privity. (ECF No. 58 at 14). Privity has "traditionally been understood as referring to the existence of a substantive legal relationship, such as by contract, from which it was deemed appropriate to bind one of the contracting parties to the results of the other party's participation in litigation." *Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc.*, 571 F.3d 299, 311 (3d Cir. 2009). A "substantive legal relationship" essentially "refers to one in which 'the parties to the first suit are someone accountable to nonparties who file a subsequent suit raising identical issues.' " *McLaughlin v. Bd. of Trustees of Nat'l Elevator Indus. Health Benefit Plan*, 686 F. App'x 118, 122 (3d Cir. 2017) (unpublished) (citing *Pelt v. Utah*, 539 F.3d 1271, 1290 (10th Cir. 2008)). *See also Taylor v. Sturgell*, 553 U.S. 880, 893-95 (2008) (outlining traditional nonparty preclusion categories). Privity may be found in "a variety of fiduciary, contractual or property relationship[s] between current and prior litigants." *McLaughlin*, 686 F. App'x at 122 (quoting *Pelt*, 539 F.3d at 1290). While the individual Plaintiffs in each of the cases are not identical, their substantive legal

relationship through the Subscriber's Agreement – that all individual Plaintiffs sign and are co-beneficiaries of – result in common interests in the outcome of litigation. *See Ritz*, 2019 WL 438086, at *6 (finding that all Subscribers are in privity for claim preclusion purposes because they "are all cosigners to the same Subscriber's Agreement" making them "co-beneficiaries of and cosignatories to the same contract that obligates Indemnity to provide the management services for the Exchange."). Accordingly, Indemnity has established the "same parties or their privies" element of claim preclusion.

3. Same Cause of Action

The "same cause of action" element is met where, regardless of the legal theory invoked, "the acts complained of were the same, . . . the material facts alleged in each suit were the same and . . . the witnesses and documentation required to prove such allegations were the same." *Athlone Industries, Inc.*, 746 F.2d at 984.

Indemnity argues that because the Court has already concluded that *Beltz II* and *Ritz* involved the same cause of action, and because the State Court Action is predicated upon the exact conduct complained of in *Beltz II* and *Ritz*, that the "same cause of action" element is met.

Indemnity is correct that *Beltz II*, *Ritz* and the State Court Action all involve the same cause of action: Plaintiffs in all three cases argue that Indemnity breached a fiduciary duty to the Subscribers and Exchange by unreasonably taking the maximum allowable percentage of 25% under the Subscriber's Agreement and favoring shareholders over the Subscribers.[5] Exchange

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[5] Exchange specifically describes its cause of action in the State Court Action as follows:

> In setting the Management Fee rate at the maximum rate of 25% in December 2019 and 2020 and allowing such amounts to be taken from Exchange over the course of the last two years – in large part to fund dividend payments to [Indemnity's] shareholders – [Indemnity] breached its fiduciary duties owed to Exchange.

State Court Action Compl. (ECF No. 57-1 ¶¶ 78, 85).

Exchange specifically describes its cause of action in *Ritz* as follows:

> Since at least 2007, Indemnity has retained the maximum amount of Management Fees allowed by the Subscriber's Agreement – 25% of all premiums written or assumed by Exchange – as compensation for services performed pursuant to the Subscriber's Agreement. As described further below, Indemnity and the Board have breached their fiduciary obligations to Exchange and the Subscribers and have abused their position of trust by charging and keeping excessive Management Fees. . . . Indemnity and the Board have breached their fiduciary duties to Exchange and the Class by unlawfully diverting to Indemnity hundreds of millions of dollars of revenue that belongs to Exchange and the Class . . . by taking the maximum 25% Management Fee year after year without valid grounds. To be sure, the conflicted and self-interested members of the Board have charged and taken grossly excessive Management Fees from the Exchange and the Subscribers and funneled the money to themselves and other Indemnity stockholders through substantial dividend payments.
>
> . . .
>
> Since at least 2007, Indemnity and the Directors have sought to profit at the direct expense of Plaintiff and the Class and, among other things, have authorized, taken and retained excessive Management Fees from Exchange and the Class in order to, *inter alia*, pay ever increasing dividends to the shareholder of Indemnity and thereby improve their own financial positions. The funds used to pay the grossly excessive Management Fees taken by Indemnity and the Directors would have been used for the benefit of the Plaintiff and the Class had they not been taken by Indemnity. Instead, Indemnity and its stockholders directly benefitted from the funds. Indemnity and the Directors breached their fiduciary duties to Plaintiff and the Class by authorizing, enabling and/or otherwise permitting Indemnity to retain excessive Management Fees from Exchange. As a result of Indemnity and the Director's breach of their respective fiduciary duties to Plaintiff and the Class by authorizing, enabling, and/or otherwise permitting Indemnity to retain excessive Management Fees from Exchange.

Ritz Compl. (ECF No. 57-2 ¶¶ 44, 53; 107-109).

Exchange specifically describes its cause of action in *Beltz II* as follows:

> [S]ince at least 2007, Indemnity has retained the maximum amount of 25% allowed by the Subscriber's Agreement of all premiums written or assumed by Exchange. Indemnity has not disclosed any rationale or justification that it is entitled to the entire 25%, rather, Indemnity has repeatedly taken the full amount allowable pursuant to the Subscriber's Agreement. The value for the services rendered by

argues that the claims in the State Court Action could not have been brought in the previous actions because the breach of fiduciary duty cause of action is limited to Indemnity's allegedly illegal conduct between 2019 and 2020 and therefore post-dated the prior two complaints, could not have been brought in the previous action and does not qualify as the same cause of action for claim preclusion purposes. However, Exchange's attempt to limit the claims in the State Court Action to only conduct occurring between 2019 and 2020 does not defeat claim preclusion principals. "A claim extinguished by [claim preclusion] 'includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction or series of connected transactions, out of which the action arose.' " *Elkadrawy*, 584 F.3d at 174 (quoting Restatement (Second) of Judgments § 24(1) (1982) (emphasis in original)). A case decided by the United States Court of Appeals for the Third Circuit emphasizes this point: *Huck on Behalf of Sea Air Shuttle Corp. v.*

> Indemnity, as attorney-in-fact, must be reasonable, and any amount taken in excess of that is a breach of fiduciary duty.
>
> . . .
>
> Beginning in or around 1997 and continuing to the present, Indemnity and the Directors deviated from 70 years of prior conduct, and authorized, enabled and/or otherwise permitted Indemnity to retain Service Charges and/or Additional Fees as compensation in addition to a percentage of all premiums written or assumed by Exchange. The Service Charges and Additional Fees would have been used for the benefit of Plaintiffs and the Class had they not been retained by Indemnity. Instead, Indemnity and its shareholders directly benefitted from the taking of this additional compensation. Indemnity and the Directors breached their fiduciary duties to Plaintiffs and the Class by authorizing, enabling and/or otherwise permitting Indemnity to retain the Service Charges and Additional Fees in addition to a percentage of premiums as prescribed in the Subscriber's Agreements. As a result of [Indemnity's] breach of [its] . . . fiduciary duties, Plaintiffs and the Class have suffered substantial damages, including, but not limited to, monetary losses stemming from Indemnity's unlawful retention of the revenue generated by the Service Charges and Additional Fees.
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> *Beltz II* Compl. (ECF No. 57-3 ¶¶ 84; 127-130).

Dawson, 106 F.3d 45 (3d Cir. 1997).

In *Huck*, the plaintiff who owned or operated seaplanes brought suit against the Virgin Islands Port Authority ("VIPA") after VIPA's refusal to allow plaintiff to use VIPA seaplane ramps. 106 F.3d at 47. The district court entered summary judgment in favor of VIPA and plaintiff did not appeal that order. *Id.* Instead, plaintiff filed a second action against VIPA and various Virgin Island government and VIPA officials based on the same conduct alleged in the original complaint and contended he could file the second suit because VIPA's continued refusal to allow access to the seaplane ramps drove his company into bankruptcy. *Id.* The district court held that plaintiff's claims were barred by claim preclusion, finding that plaintiff's claims "arose out of the same transaction and events that gave rise to the earlier lawsuit, and that the same had been earlier adjudicated." *Id.* The district court further held that plaintiff "could not avoid the effects of [claim preclusion] simply because he was now asserting a different degree or extent of damage than earlier alleged [and t]he fact that he continued to suffer from the effects of the earlier judgment did not render the claims to be not fully litigated." *Id.* The Court of Appeals affirmed the district court. *Id.* at 52. It rejected plaintiff's argument that his continued denial of access to the seaplane ramps created a new cause of action as "absurd" because it challenged the exact conduct the court determined was not illegal in the previous suit. *Id.* at 49. It further rejected plaintiff's argument that claim preclusion did not apply because he was alleging a cause of action for harm that occurred after the first judgment, he may prove different facts to support that cause of action. *Id.* at 50. The Court of Appeals found that argument "an incorrect statement of the law," and that it had "no merits to [plaintiff's] claim that he suffered a separate injury as the result of the continued losses from denial of access to the sea ramps." *Id.* at 50 (citing Restatement (Second) of Judgments § 25 cmt. b.).

In the instant matter, Exchange is complaining of the exact conduct that was previously included in *Beltz II* and *Ritz* – that Indemnity took excessive Management Fees under the Subscriber's Agreements by setting the rate at the full 25% allowable under the Agreements, it was detrimental to Exchange and the Subscribers by keeping funds from staying in the Exchange and by doing so, Indemnity breached its fiduciary duty to Exchange and the Subscribers. That Exchange now limits the time frame to 2019 and 2020 in the State Court Action does not defeat claim preclusion, as the material facts alleged in *Beltz II*, *Ritz* and the State Court Action are identical. Exchange and the Subscribers allege in each action that:

- Indemnity's Board is controlled by the Hirt Family and Indemnity and the Board have enriched shareholders by taking excessive Management Fees (State Court Action Compl. (ECF No. 57-1) at ¶¶ 37-47; 40-42; *Ritz* Compl. (ECF No. 57-2) at ¶¶ 33-38; 52, 74-77; *Beltz II* Compl. (ECF No. 57-3) at ¶¶ 48-51; 59, 84),
- Indemnity prevented money from remaining in the Exchange by setting the Management Fee at the maximum rate of 25% (State Court Action Compl. (ECF No. 57-1) at ¶ 75; *Ritz* Compl. (ECF No. 57-2) at ¶ 108; *Beltz II* Compl. (ECF No. 57-3) at ¶ 66),
- Indemnity and its Board have a conflict of interest in setting the Management Fee and acted for their own benefit over Exchange and its Subscribers (State Court Action Compl. (ECF No. 57-1) at ¶¶ 36, 48-57, 79-81; *Ritz* Compl. (ECF No. 57-2) at ¶¶ 5-6, 45-51; *Beltz II* Compl. (ECF No. 57-3) at ¶ 66), and
- This conflict serves as the basis for Indemnity's breach of fiduciary duty to Exchange and the Subscribers. (State Court Action Compl. (ECF No. 57-1) at ¶¶ 54, 76-90; *Ritz* Compl. (ECF No. 57-2) at ¶¶ 52-54, 103-11; *Beltz II* Compl. (ECF No. 57-3) at ¶¶ 66,

84, 122-31, 136-40).

Like in *Huck*, the gravamen of Exchange's State Court Action is the same as the earlier dismissed actions. That Exchange may have suffered additional damages in 2019 and 2020 following the *Beltz II* and *Ritz* decisions does not equate to a new cause of action where there are no "change of circumstances concerning material operative facts." *Huck on Behalf of Sea Air Shuttle Corp.*, 106 F.3d at 49. It remains that Indemnity's decision to set the Management Fee at 25% began in 2007 and that conduct was challenged in *Beltz II* and *Ritz*. Exchange's current challenge in the State Court Action relates to "maintaining" that rate at 25% in 2019 and 2020. State Court Action Compl. (ECF No. 57-1) at ¶¶ 60, 64 (alleging that Indemnity "agreed to **maintain** the current management fee rate paid to Erie Indemnity Company by Erie Insurance Exchange at 25 percent" in December 2019 and December 2020) (emphasis added). Therefore, Indemnity's decision to set the Management Fee at 25% in 2019 and 2020 is part of a series of connected transactions beginning with Indemnity's original decision to set the Management Fee at 25% and is based on the same cause of action as *Beltz II* and *Ritz*. Accordingly, Indemnity has established the "same cause of action" element of claim preclusion, and it is likely that Indemnity will succeed on the merits of its claim for preliminary injunction purposes.

b. Irreparable Harm

Although the Court of Appeals for the Third Circuit has not specifically held, several courts have found that a party suffers irreparable harm if it is required to relitigate issues in state court that have been already decided in federal court. *Se. Pennsylvania Transp. Auth. v. Pennsylvania Pub. Util. Comm'n*, 210 F. Supp. 2d 689, 726 (E.D. Pa. 2002), *aff'd sub nom. Nat'l R.R. Passenger Corp. v. Pennsylvania Pub. Util. Comm'n*, 342 F.3d 242 (3d Cir. 2003); *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 667 (5th Cir. 2003); *In re Dublin Sec., Inc.*, 133 F.3d

377, 381 (6th Cir. 1997); *In re SDDS, Inc.*, 97 F.3d 1030, 1041 (8th Cir. 1996); *Daewoo Elecs. Corp. of Am. v. W. Auto Supply Co.*, 975 F.2d 474, 478 (8th Cir. 1992); *Ballenger v. Mobil Oil Corp.*, 138 F. App'x 615, 622 (5th Cir. 2005) (unpublished). In this case, Indemnity will suffer irreparable harm by being forced to defend itself in state court on issues already decided in federal court and potentially being "denied the benefits of the judgments in its favor from this Court[,]" especially considering that "even a single state court might decline to accord preclusive effect" to the Court's prior judgments in *Beltz II* and *Ritz*. *Dow Agrosciences, LLC. v. Bates*, No. CIV.A. 5:01-CV-331-C, 2003 WL 22660741 at *18; *21 (N.D. Tex. Oct. 14, 2003). Accordingly, Indemnity has established it will suffer irreparable harm if it is not granted an injunction.

c. Harm to Non-moving Party

"While issuing an injunction in this case will foreclose the opportunity for [Exchange] to relitigate issues in the state court," this is not a "legitimate harm" that must be balanced in determining whether to issue an injunction. *In re SDDS, Inc.*, 97 F.3d at 1041. Foreclosing Exchange from litigating in state court is not a legitimate harm where Exchange and the Subscribers have had several full and fair opportunities to litigate their claims in federal court. "[T]he rules of equity do not require that they be given a second bite at the apple in the state forum in order to obtain a more favorable result." *In re SDDS, Inc.*, 97 F.3d at 1041 (citing *Hart Steel Co. v. R.R. Supply Co.*, 244 U.S. 294, 299 (1917)). Accordingly, Indemnity has established that this factor weighs in favor of granting an injunction.

d. Public Interest

Lastly, the public interest is served by granting an injunction here. The public interest is served by precluding "parties from contesting matters that they have had a full and fair opportunity to litigate[,] protects their adversaries from the expense and vexation attending multiple lawsuits,

conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Montana v. United States*, 440 U.S. 147, 153–54 (1979). Accordingly, Indemnity has established that the public interest is served by granting its request for a preliminary injunction.

V. CONCLUSION

Based on the foregoing, Indemnity has demonstrated it is entitled to a preliminary injunction pursuant to the All Writs Act and its motion for preliminary injunction is GRANTED. An appropriate Order follows.

DATED this 28th day of February, 2023.

BY THE COURT:

s/Cynthia Reed Eddy
United States Magistrate Judge

cc: All counsel of record via CM/ECF electronic filing

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Opening Brief for Defendants-Appellants and Joint Appendix Volume I with the Clerk of Court for the United States Court of Appeals for the Third Circuit on May 8, 2024, using the Appellate Electronic Filing system. I certify that all participants in this case are registered CM/ECF users who have consented to electronic service and that service will be accomplished by the CM/ECF system.

/s/ Nicolas A. Sansone
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