

10-792-cv(L)

10-934-cv(CON)

In the
United States Court of Appeals
for the **Second Circuit**

PATRICK L. GEARREN, on behalf of themselves and a class of persons similarly situated, JAN DEPERRY, on behalf of themselves and a class of persons similarly situated, MARY SULLIVAN, individually and on behalf of all others similarly situated, HARVEY SULLIVAN, individually and on behalf of all others similarly situated, CYNTHIA DAVIS, individually and on behalf of all others similarly situated,
Plaintiffs-Appellants,

v.

THE MCGRAW-HILL COMPANIES, INC., THE PENSION INVESTMENT COMMITTEE OF MCGRAW-HILL, MARTY MARTIN, THE BOARD OF DIRECTORS OF THE THE MCGRAW-HILL COMPANIES, INCORPORATED, WINFRIED BISCHOFF, DOUGLAS N. DAFT, LINDA KOCH LORIMER, HAROLD MCGRAW, III, HILDA OCHOA-BRILLEMBOURG, SIR MICHAEL RAKE, JAMES H. ROSS, EDWARD B. RUST, JR., KURT L. SCHMOKE, SIDNEY TAUREL, ROBERT J. BAHASH, HENRY HIRSCHBERG, ALEX MATURRI, JAMES H. MCGRAW, IV, DAVID L. MURPHY, JOHN C. WEISENSEEL, KATHLEEN A. CORBET, PHIL EDWARDS, PEDRO ASPE, ROBERT P. MCGRAW, AND JOHN DOES 1-20,
Defendants-Appellees.

**On Appeal from the United States District Court
for the Southern District of New York (Foley Square)**

BRIEF OF APPELLANTS AND SPECIAL APPENDIX

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FEDERAL RULE OF APPELLATE PROCEDURE
26.1 DISCLOSURE STATEMENT

[Publisher Note: *Pursuant to Rule 26.1, a corporate disclosure statement has been omitted in this sample, because a statement is only required for non-governmental corporations.*]

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Jurisdictional Statement.....	4
III.	Statement of Issues Presented for Review.....	4
IV.	Statement of the Case	5
V.	Statement of Facts.....	6
	A. The Parties	6
	B. The Plans	7
	C. The Complaints Adequately Alleged That Defendants Failed To Prudently And Loyal-ly To Manage The Plans’ Investment In Company Stock	10
	1. The Complaints Adequately Alleged That McGraw-Hill Stock Was An Imprudent Investment For Retirement Savings Accounts.....	10
	2. The Complaints Adequately Alleged That Defendants Knew Or Should Have Known That McGraw-Hill Stock Was An Imprudent Investment For Participants’ Retirement Savings	14
	3. The Complaints Adequately Alleged That Defendants Failed To Provide Critical Information To Participants Regarding The Risks Of Investment In McGraw-Hill Stock.....	17
VI.	Summary of Argument	18
VII.	Argument	20
	A. Standard Of Review	20
	B. The Complaints Adequately Alleged An Imprudent Investment Claim	20

1.	Defendants Were Not Entitled To Any Presumption Of Prudence	20
a.	ERISA’s Duty Of Prudence.....	20
b.	The Presumption of Prudence Discussed By Other Circuit Courts of Appeal.....	21
c.	This Court Should Declare That No Presumption Of Prudence Applies In This Case	23
2.	Even If Defendants Were Entitled To A Presumption Of Prudence, The Presumption Should Not Be Applied On A Motion To Dismiss.....	27
3.	Verge of Collapse Is Not The Proper Standard For Rebutting A Presumption Of Prudence	31
4.	Even If Defendants Were Entitled To A Presumption Of Prudence, The District Court Erred In Its Holding That The Complaints Do Not Allege Facts Which Overcome The Presumption	34
C.	The Complaints Adequately Alleged A Failure to Disclose Claim	37
1.	An ERISA Fiduciary’s Duty To Communicate.....	37
2.	The District Court’s Ruling Ignores The Differences Between Defined Benefits And Defined Contribution Plans	39
3.	Defendants Breached ERISA’s Disclosure Duties	43
D.	The District Court Erred In Dismissing Plaintiffs’ Other Claims.....	50
E.	The District Court Erred Denying the Gearren Plaintiffs’ Request To Amend.....	50
VIII.	CONCLUSION.....	51
	CERTIFICATE OF COMPLIANCE.....	53

CERTIFICATE OF SERVICE54

SPECIAL APPENDIX

TABLE OF AUTHORITIES

Federal Cases

<i>Abu Dhabi Commercial Bank v. Morgan Stanley & Co. Inc.</i> , 651 F. Supp. 2d 155 (S.D.N.Y. 2009)	51
<i>Ashcroft v. Iqbal</i> , 129 S. Ct. 1937 (2009)	29, 34
<i>Ballone v. Eastman Kodak Co.</i> , 109 F.3d 117 (2d Cir. 1997)	49
<i>Basic Inc. v. Levinson</i> , 485 U.S. 224 (1988)	43
<i>Bixler v. Cent. Pa. Teamsters Health & Welfare Fund</i> , 12 F.3d 1292 (3d Cir. 1994).....	38, 40, 41
<i>Board of Trustees of the CWA/ITU Negotiated Pension Plan v. Weinstein</i> , 107 F.3d 139 (2d Cir. 1997).....	40, 41
<i>Braden v. Wal-Mart Stores, Inc.</i> , 588 F.3d 585 (8th Cir. Mo. 2009)	30
<i>Braden v. Wal-Mart Stores, Inc.</i> , No. 08-3798, 2009 WL 4062105 (8th Cir. 2009)	26
<i>Brieger v. Tellabs, Inc.</i> , 629 F. Supp. 2d 848 (N.D. Ill. 2009)	45
<i>Bunch v. W.R. Grace & Co.</i> , 555 F.3d 1 (1st Cir. 2009)	23, 32
<i>Cent. States, Southeast & Southwest Areas Pension Fund v. Cent. Transp., Inc.</i> , 472 U.S. 559 (1985)	3, 24
<i>Chambers v. Time Warner, Inc.</i> , 282 F.3d 147 (2d Cir. 2002).....	20
<i>Dardaganis v. Grace Capital, Inc.</i> , 889 F.2d 1237 (2d Cir. 1989)	24
<i>Devlin v. Empire Blue Cross & Blue Shield</i> , 274 F.3d 76 (2d Cir. 2001).....	40, 41, 49
<i>DiFelice v. U.S. Airways, Inc.</i> , 497 F.3d 410 (4th Cir. 2004)	32

<i>Donovan v. Bierwirth</i> , 680 F.2d 263 (2d. Cir.), cert. denied, 459 U.S. 1069 (1982).....	14, 21, 31
<i>Eddy v. Colonial Life Ins. Co. of Am.</i> , 919 F.2d 747 (D.C. Cir. 1990)	40, 41
<i>Edgar v. Avaya, Inc.</i> , 503 F.3d 340 (3d Cir. 2007)	passim
<i>Erickson v. Pardus</i> , 551 U.S. 89 (2007)	27
<i>Esden v. Bank of Boston</i> , 229 F.3d 154 (2d Cir. 2000)	25
<i>Gerosa v. Savasta & Co.</i> , 329 F.3d 317 (2d Cir. 2003).....	21
<i>Harzewski v. Guidant Corp.</i> , 489 F.3d 799 (7th Cir. 2007)	43, 47
<i>Heidgerd v. Olin Corp.</i> , 906 F.2d 903 (2d Cir. 1990)	44
<i>Herman v. NationsBank Trust Co.</i> , 126 F.3d 1354 (11th Cir. 1997)	37
<i>Hicks v. Fleming Cos.</i> , 961 F.2d 537 (5th Cir. 1992).....	39
<i>Howard v. Gleason Corp.</i> , 901 F.2d 1154 (2d Cir. 1990).....	37
<i>Hughes Aircraft Co. v. Jacobson</i> , 525 U.S. 432 (1999)	19
<i>In re Citigroup ERISA Litig.</i> , No. 07 Civ. 9790, 2009 U.S. Dist. LEXIS 78055 (S.D.N.Y. Aug. 31, 2009)	35, 40, 46
<i>In re Morgan Stanley ERISA Litig.</i> , No. 07 Civ. 11285, 2009 U.S. Dist. LEXIS 125538 (S.D.N.Y. Dec. 9, 2009).....	49
<i>In re Pfizer Inc. ERISA Litig.</i> , No. 04 Civ. 10071, 2009 U.S. Dist. LEXIS 22637 (S.D.N.Y. Mar. 20, 2009)	36
<i>In re Polaroid ERISA Litig.</i> , 362 F. Supp. 2d 461 (S.D.N.Y. 2005)	31, 36
<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008)	23, 31, 32, 33

<i>In re Unisys Sav. Plan Litig.</i> , 74 F.3d 420 (3d Cir. 1996).....	37, 38, 46
<i>In re WorldCom, Inc. ERISA Litig.</i> , 263 F. Supp. 2d 745 (S.D.N.Y. 2003).....	36
<i>John Blair Communications, Inc. Profit Sharing Plan v. Telemundo Group, Inc. Profit Sharing Plan</i> , 26 F.3d 360 (2d Cir. 1994).....	21
<i>Katsaros v. Cody</i> , 744 F.2d 270 (2d Cir. 1984).....	32
<i>Keach v. U.S. Trust Co.</i> , 419 F.3d 626 (7th Cir. 2005)	32
<i>Kirschbaum v. Reliant Energy, Inc.</i> , 526 F.3d 243 (5th Cir. 2008).....	22, 30, 32, 35
<i>Krohn v. Huron Mem’l Hosp.</i> , 173 F.3d 542 (6th Cir. 1999).....	40, 41
<i>Kuper v. Iovenko</i> , 66 F.3d 1447 (6th Cir. 1995).....	passim
<i>LaLonde v. Textron, Inc.</i> , 369 F.3d 1 (1st Cir. 2004)	23
<i>LaRue v. DeWolff, Boberg & Assocs., Inc.</i> , 552 U.S. 248, 128 S. Ct. 1020 (2008).....	19, 41, 42
<i>Layaou v. Xerox Corp.</i> , 238 F.3d 205 (2d Cir. 2001).....	37, 44
<i>Leibowitz v. Cornell University</i> , 445 F.3d 586 (2d Cir. 2006)	29
<i>Lonecke v. Citigroup Pension Plan</i> , 584 F.3d 457 (2d Cir. 2009)	41
<i>McCarthy v. Dun & Bradstreet Corp.</i> , 482 F.3d 184 (2d Cir. 2007)	20
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792 (1973).....	28
<i>Moench v. Robertson</i> , 62 F.3d 553 (3d Cir. 1995)	passim
<i>Morrissey v. Curran</i> , 567 F.2d 546 (2d Cir. 1977).....	9
<i>Morse v. Stanley</i> , 732 F.2d 1139 (2d Cir. 1984).....	21

<i>Pa. Fed'n, Bhd. of Maint. of Way Emples. v. Norfolk Southern Corp. Thoroughbred Ret. Inv. Plan,</i> No. 02-9049, 2004 U.S. Dist. LEXIS 1987 (E.D. Pa. Feb. 4, 2004).....	45
<i>Pugh v. Tribune Co.</i> , 521 F.3d 686 (7th Cir. 2008)	31
<i>Rogers v. Baxter Int'l Inc.</i> , 521 F.3d 702 (7th Cir. 11. 2008)	48
<i>Samuel v. Bellevue Hosp. Ctr.</i> , No. 08-4635-cv, 2010 U.S. App. LEXIS 3048 (2d Cir. Feb. 17, 2010).....	29
<i>Shalala v. Ill. Council on Long Term Care</i> , 529 U.S. 1 (2000).....	29
<i>Steinman v. Hicks</i> , 352 F.3d 1101 (7th Cir. 2003)	23, 45
<i>Swierkiewicz v. Sorema N.A.</i> , 534 U.S. 506 (2002).....	passim
<i>Tocker v. Philip Morris Cos.</i> , 470 F.3d 481 (2d Cir. 2006)	44
<i>Varsity Corp. v. Howe</i> , 516 U.S. 489 (1996)	49
<i>Vaughn v. Bay Eenvt'l. Mgmt.</i> , 567 F.3d 1021 (9th Cir. 2009).....	42
<i>Ward v. Avaya Inc.</i> , 299 Fed. Appx. 196 (3d Cir. 2008).....	30
<i>Wright v. Or. Metallurgical Corp.</i> , 360 F.3d 1090 (9th Cir. 2004).....	30, 31, 35

Statutes

28 U.S.C. § 2072.....	21, 26
29 U.S.C. § 1001	26
29 U.S.C. § 1104.....	passim
29 U.S.C. § 1132.....	4, 37

Rules

Fed. R. Civ. P. 12 5, 20

Fed. R. Civ. P. 828

Fed. R. Civ. P. 928

Fed. R. Evid. 30125

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Other

17A Am. Jur. 2d CONTRACTS § 39144

Brief Of Amicus Curiae Hilda L. Solis, Secretary Of The United States
Department Of Labor In Support Of Appellant Requesting Reversal in *In Re:
Citigroup ERISA Litig.*, 09-3804-cv (Dec. 28, 2009) 22, 23, 26, 27

H.R. Rep. No. 93-553, 93d Cong., 1st Sess. 17 (1973), 1974 U.S.C.C.A.N. 4639,
465526

Restatement (Third) Trusts § 929

I. INTRODUCTION [***Publisher Note:** *This section is not required under the Second Circuit Local Rules or Federal Rules of Appellate Procedure.*]

This is a consolidated appeal from the Federal Rule of Civil Procedure 12(b)(6) dismissal of two class actions arising under the Employee Retirement Income Security Act of 1974 (“ERISA”).¹ The complaints below alleged that the fiduciaries of The McGraw-Hill Companies, Inc.’s (“McGraw-Hill” or the “Company”) retirement plans – the 401(k) Savings and Profit Sharing Plan of The McGraw-Hill Companies, Inc. and Its Subsidiaries (the “McGraw-Hill Plan”) and the Standard and Poor’s 401(k) Savings and Profit Sharing Plan for Represented Employees (the “S&P Plan,” and collectively the “Plans”) – failed to fulfill their statutory duties of prudence and loyalty when they allowed plan participants to invest nearly \$200 million of retirement savings in McGraw-Hill common stock (such stock in the Plans being in the form of the McGraw-Hill Stock Fund or the McGraw-Hill Companies Stock Account investment options) (the “Stock Fund”), while McGraw-Hill’s Standard & Poor’s subsidiary (“S&P”) was engaged in highly controversial securities rating practices, by consistently affording triple-A ratings to high risk securities.

¹ The *Gearren* and *Sullivan* cases were treated as related cases below and were the subject of joint hearings and the single dismissal opinion, but they were not formally consolidated. The appeals from the dismissal of the two cases have been consolidated in this Court by Order entered on April 21, 2010.

The balance of the brief has been eliminated for this sample. For a copy of the complete brief please call our office. Thank you.