

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

	:	
EVA L. HANNA and SHELLEY F.	:	Case No. 09-CV-2593 JWL/GLR
WHITSON, Individually, on Behalf of the	:	
Yellow Roadway Corporation Retirement	:	
Savings Plan, YRC Regional Transportation,	:	CLASS ACTION COMPLAINT
Inc. 401(k) Plan, the New Penn Motor	:	FOR VIOLATIONS OF THE
Express, Inc. 401(k) Retirement Plan, and on	:	EMPLOYEE RETIREMENT
Behalf of All Others Similarly Situated,	:	INCOME SECURITY ACT OF 1974
	:	("ERISA")
Plaintiffs,	:	
v.	:	
	:	
YRC WORLDWIDE, INC., The Benefits	:	JURY TRIAL DEMANDED
Administrative Committee, William D.	:	
Zollars, Harold D. Marshall and John Does 1-	:	
20,	:	
	:	
Defendants.	:	

COMPLAINT

Plaintiffs Eva L. Hanna and Shelley F. Whitson ("Plaintiffs"), individually and on behalf of the relevant retirement savings plans alleged below, and, to the extent deemed necessary by the Court, a class of similarly situated participants and beneficiaries (the "Participants") of (1) the Yellow Roadway Corporation Retirement Savings Plan, (2) the New Penn Motor Express, Inc. 401(k) Retirement Plan and (3) YRC Regional Transportation, Inc. 401(k) Plan (collectively the "Plans"), by their attorneys, allege the following for their Complaint (the "Complaint").

NATURE OF ACTION

1. Plaintiffs are Participants in the Plans. The Plans cover eligible employees of YRC Worldwide Inc. ("YRCW or the "Company") and their affiliated companies.

Plaintiffs bring this action pursuant to § 502(a)(2) and (3) of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1132(a)(2) and (3), as representatives of the Plans and, to the extent deemed necessary by the Court, on behalf of a class of all Participants in the Plans for whose individual accounts the Plans invested in the YRC Worldwide Inc. Stock Fund (the “Fund”) from April 6, 2009 to the present (the “Class Period”).

2. As more fully set forth below, Defendants breached their fiduciary duties owed to the Plans and the Participants, including those fiduciary duties set forth in ERISA § 404, 29 U.S.C. § 1104, and Department of Labor Regulations, 29 C.F.R. § 2550. As a result of these breaches, Defendants are liable to the Plans for all losses resulting from each such breach of fiduciary duty. Plaintiffs also seek equitable relief.

3. Plaintiffs’ claims arise out of the Plans’ imprudent investment in the Fund. The Plans’ continued investment in the Fund was imprudent because the Fund was an excessively risky investment for retirement assets in light of the Company’s dire financial condition, which included:

- a. deteriorating demand for trucking services and increased expenses;
- b. significant difficulties securing appropriate credit facilities;
- c. an excessive increase in the Company’s debt to equity ratio;
- d. numerous downgrades of YRCW’s credit ratings; and
- e. an exorbitantly high debt-default and bankruptcy risk, including an Altman Z-score (“Z-score”) - a financial formula commonly used by financial professionals to predict whether a company is likely to go bankrupt - which indicated that YRCW was on the verge of bankruptcy.

As a consequence of these excessive risks, it was imprudent for Defendants to (1) offer the Fund as a Plan investment option, (2) invest Plan retirement assets in the Fund, and (3) invest Fund assets in Company stock during the Class Period. The imprudence of investing in the Fund was vividly realized on November 2, 2009, when the Company announced an exchange offering in which creditors would acquire 95% of the Company's common stock, effectively wiping out the Plan's investment in the Fund.

4. As these risks increased to imprudent levels, Defendants did not take appropriate action to protect the Plans' assets invested in the Fund or the Fund's assets invested in YRCW stock. Consequently, the Plans and their participants suffered significant losses.

5. Plaintiffs allege that it was imprudent to permit the Plans to invest in the Fund and the Fund to invest in YRCW stock during the Class Period because the investment in the Fund was excessively risky as the Company teetered on the brink of bankruptcy (Count I). Plaintiffs also allege that those Defendants who had a duty to appoint and monitor those fiduciaries with authority or control over the Plans' assets breached their duty to appoint and monitor (Count II). Finally, Plaintiffs allege that all Defendants are liable as co-fiduciaries (Count III).

JURISDICTION AND VENUE

6. Plaintiffs' claims arise under and pursuant to ERISA § 502, 29 U.S.C. § 1132.

7. This Court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

8. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because this is a District where the Plans were administered, where breaches of fiduciary duty took place and/or where one or more Defendants reside or may be found.

THE PARTIES

9. **Plaintiff Eva L. Hanna** is a resident of the state of Ohio. Plaintiff was a Participant in the Yellow Roadway Corporation Retirement Savings Plan at all times relevant to the Complaint and maintained an investment in the Fund in her individual account in that Plan during the Class Period.

10. **Plaintiff Shelley F. Whitson** is a resident of the state of Kansas. Plaintiff was a Participant in the Yellow Roadway Corporation Retirement Savings Plan at all times relevant to the Complaint and maintained an investment in the Fund in her individual account in that Plan during the Class Period.

11. **Defendant YRCW** is a Delaware corporation with its principal office located at 10990 Roe Avenue, Overland Park, Kansas. YRCW is one of the largest transportation service providers in the world. YRCW is a holding company with the following wholly-owned operating subsidiaries (a) YRC National Transportation, (b) YRC Regional Transportation, comprised of the brands New Penn Motor Express (“New Penn”), Holland and Reddaway, (c) YRC Logistics, and (d) YRC Truckload (“Truckload”) comprised of the brand Glen Moore. YRCW is the Sponsor of the Plans and, on information and belief as described more fully below, a fiduciary of the Plans.

12. **Defendant Benefits Administrative Committee of YRC Worldwide (“Administrative Committee” or “Committee”)** is the Plan Administrator for the each of the Plans. YRC Regional Transportation Inc 401K Retirement Plan (as Amended and

Restated January 1, 2006) (“YRC Regional Plan Document”), sec. 9.1(b); YRCW Form 11-K filed with the SEC on June 29, 2007 for the Yellow Roadway Corporation Retirement Savings Plan (“Yellow 11-K”), sec 1(a).

13. **Defendant Harold D. Marshall (“Marshall”)** is Vice President-Employee Benefits of YRCW. Marshall is also the Chairman of the Administrative Committee as evidenced by his signing the Plans’ Form 11-K Annual Reports and representing his capacity as being “Chairman Benefits Administrative Committee.”

14. **Defendants John Does 1 to 10** are individual members of the Committee whose names are not currently known (together with Marshall, “Committee Members”). Upon information and belief, the Committee Members were all senior officers and employees of YRCW who served on the Committee in the ordinary course of their employment and for no additional compensation, who exercised authority or control over the Plan, Plan assets and/or the Fund. As a result of their employment as senior employees of the Company, the Committee Members knew or should have known all of the facts alleged herein.

15. **Defendant William D. Zollars (“Zollars”)** is the Chief Executive Officer (“CEO”) of YRCW and Chairman of its Board of Directors. On information and belief, his responsibilities included appointing and monitoring senior management at YRCW. Moreover, as a member of the Board of Directors, the Plans vested him with the responsibility to appoint and monitor the members of the Administrative Committee.

CLASS ACTION ALLEGATIONS

16. Plaintiffs bring this action individually and on behalf of the Plans and, to the extent deemed necessary by the Court, as a class action pursuant to Rules 23(a), (b)(1)

and/or (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure, if and to the extent a class is deemed necessary, on behalf of a class consisting of all current and former Participants in the Plans for whose individual accounts the Plans held shares of YRCW common stock (directly and/or through shares in the Fund) from April 6, 2009 to the present (the "Class").

17. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are, at minimum, thousands of members of the Class. YRCW's annual report on Form 10-K for the fiscal year ended December 31, 2007 states that there were 22,700 employees as of year end 2007.

18. Common questions of law and fact exist as to all members of the Class which predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether Defendants were fiduciaries;
- (b) Whether Defendants breached their fiduciary duties;
- (c) Whether the Plans and the Participants were injured by such breaches; and
- (d) Whether the Class is entitled to damages and injunctive relief.

19. Plaintiffs' claims are typical of the claims of the other members of the Class, as Plaintiffs and all members of the Class sustained injury arising out of Defendants' wrongful conduct in breaching their fiduciary duties and violating ERISA as complained of herein.

20. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained able counsel with extensive experience in class action ERISA litigation. The interests of Plaintiffs are coincident with and not antagonistic to the interests of the other class members.

21. Prosecution of separate actions by members of the class would create a risk of inconsistent adjudications with respect to individual members of the class which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the class would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

22. Questions of law and questions of fact which are common to the members of the class will predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this Complaint, taking into account:

(a) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(d) the difficulties likely to be encountered in the management of a class action.

23. Moreover, because the damages suffered by many of the Participants will be relatively small, the expense and burden of individually litigating their rights would make it impossible to redress the wrongs alleged herein individually.

DESCRIPTION OF THE PLANS

24. At all times relevant to this Complaint, the Plans were Employee Benefit Plans within the meaning of ERISA § 3(3) and 3(2)(A), 29 U.S.C. § 1002(3) and 1002(2)(A), and “Employee Pension Benefit Plans” within the meaning of ERISA §3(2)(A), 29 U.S.C. § 1002(2)(A).

25. The Plans were "Eligible Individual Account Plans" within the meaning of ERISA §407(d)(3), 29 U.S.C. §1 107(d)(3), and "Qualified Cash or Deferred Arrangement Plans" within the meaning of I.R.C. § 401(k), 26 U.S.C. § 401(k).

26. The Plans were “Defined Contribution” and “Individual Account” plans within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34), in that the Plans provided for individual accounts for each Participant and for benefits based solely upon the amount contributed to the Participant’s account, and any income, expenses, gains and losses, and any forfeitures of accounts of other Participants which could be allocated to such Participant’s accounts.

27. The Plans were voluntary contribution Plans whereby Participants elected to contribute a portion of their compensation to the Plans (“Employee Contributions”). The Company also made contributions to the Plans on behalf of its employee Participants. (“Matching Contributions”). These contributions were then invested by the Plans as follows.

Yellow Roadway Corporation Retirement Savings Plan

28. Under the Yellow Roadway Corporation Retirement Savings Plan,

Participants were able to contribute Employee Contributions as follows:

A participant may make pretax and after-tax contributions subject to Internal Revenue Service (IRS) and Plan limitations. Effective January 1, 2004 (January 1, 2000 in the case of an employee of Roadway LLC or any of its subsidiaries), the Plan provides for automatic enrollment and a pretax contribution of 3% of compensation for employees who are eligible to participate. Employees may affirmatively elect not to participate in the Plan or elect a higher or lower contribution rate, subject to the IRS and Plan limitations.

Yellow 11-K, sec. 1(b).

29. Employee Contributions were invested in investment options (“Investment Options”) which were, on information and belief, selected by the Administrative Committee as follows:

Participants may direct the investment of future contributions made by them and on their behalf in any of a number of discretionary investment funds, except performance-based contributions and 50% of the nondiscretionary matching contributions, which are invested in Company common stock. The discretionary investment funds represent a broad range of investment options with investment categories that range from those having potentially more inflation risk and less investment risk to those having less inflation risk and more investment risk, including a brokerage account feature. Participants may change their investment options daily.

Yellow 11-K, sec. 1(e).

30. The Company made matching contributions to Participants’ individual plan accounts (“Matching Contributions”) as follows:

The Employers make a nondiscretionary matching contribution equal to 50% of each participant’s pretax contributions for the plan year up to 6% of the participant’s compensation for the plan year.

Yellow 11-K, sec. 1(b).

31. All Matching Contributions, discretionary matching contributions and

performance-based contributions were invested in the Fund.

Nondiscretionary matching contributions may be made in cash, Company common stock, or other property as determined by the Company; provided that such contributions shall be invested in Company common stock. The Employers may make an additional discretionary matching contribution equal to a percentage of each participant's pretax contributions for the plan year up to 6% of each participant's compensation for the plan year. There were no discretionary contributions in 2005 or 2006.

For each plan year, the Employers may make performance-based contributions in cash, Company common stock, or other property as determined by the Company; provided that such contributions shall be invested in Company common stock. Any performance-based contribution allocated to the participants' accounts is allocated based on the proportion of an individual participant's compensation to the total of all participant compensation. There were no performance-based contributions in 2005 or 2006.

Yellow 11-K, sec. 1(b)

32. As of December 31, 2006, the Yellow Roadway Corporation Retirement Savings Plan had \$101,661,552 invested in the Fund. Yellow 11-K, sec. 5 and 6.

YRC Regional Transportation 401(k) Plan

33. Under the YRC Regional Transportation Plan, Participants were able to contribute Employee Contributions as follows:

Eligible employees can contribute a percentage of their cash compensation, as defined by the Plan, subject to certain limitations under the Code.

YRCW Form 11-K filed with the SEC on June 29, 2007 for the YRC Regional Transportation, Inc. 401(k) Retirement Plan ("YRC Regional 11-K"), sec. 1(d).

34. Employee Contributions were invested in Investment Options which were selected by the Administrative Committee.

The Administrative Committee shall have the discretionary responsibility and authority to control the operation and administration of the Plan in accordance with the terms of the Plan, including, without limiting the generality of the foregoing, . . . (ix) issuance of directions to the Trustee as to the investment of the Plan assets, including the purchase and sale of Employer Stock; [and] (x)

selection of Investment Funds

YRC Regional Plan Document, sec. 9.2(a).

Participants may direct the investment of future contributions made by them and on their behalf in any of a number of discretionary investment funds. The discretionary investment funds represent a broad range of investment options with investment categories that range from those having potentially more inflation risk and less investment risk to those having less inflation risk and more investment risk, including a brokerage account feature. Participants may change their investment options daily.

The Plan currently offers 24 mutual funds, one managed income portfolio and one money market fund as investment options for participants.

YRC Regional 11-K, sec. 1(g).

35. The Company made Matching Contributions to Participants' individual plan accounts as follows:

Each of the Employers may provide matching contributions, nonelective contributions and/or discretionary contributions.

YRC Regional 11-K, sec. 1(d).

Each Plan Year, an Employer may contribute to the Plan, on behalf of each of the Employer is Eligible Employee's who authorizes Salary Reduction Contributions during the Plan Year, a Matching Contribution in an amount determined in the sole and exclusive discretion of the Board, subject to the requirements of Section 4.3. An Employer may make Matching Contributions in cash, Company Stock, property or any combination thereof.

YRC Regional Plan Document, 3.5(a)(1).

36. On information and belief, Matching Contributions were invested in the Fund.

37. As of December 31, 2006, the YRC Regional Transportation, Inc. 401(k) Retirement Plan had \$2,220,145 invested in the Fund.

New Penn Motor Express 401(k) Plan

38. Effective January 1, 2007, the New Penn Motor Express 401(k) Plan commenced investing in the Fund as follows:

Effective January 1, 2007, the Plan was amended as follows: . . . (c) The Company will make a nondiscretionary matching contribution equal to 50% of a participant's elective deferrals up to 6% of the participant's compensation; provided that 50% of such matching contribution will be in YRC Worldwide Inc. common stock.

YRCW Form11-K filed with the SEC on June 29, 2007 for the New Penn Motor Express 401(k) Plan, sec 9(c).

DEFENDANTS WERE FIDUCIARIES

39. At all times relevant to this Complaint, Defendants were fiduciaries of the Plans because:

- (a) they were so named; and/or
- (b) they exercised authority or control respecting management or disposition of the Plans' assets; and/or
- (c) they exercised discretionary authority or discretionary control respecting management the Plans; and/or
- (d) they had discretionary authority or discretionary responsibility in the administration of the Plans.

ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

40. In that regard, a person is a fiduciary even if a plan does not name him as such or by its terms assign fiduciary duties to him where by his conduct he engages in fiduciary activities. The test for whether a person (or entity) is a fiduciary is functional and based on actual conduct. Those who have control over management of a plan or plan assets are fiduciaries regardless of the labels or duties assigned to them by the language of a

plan. Moreover, in order to fulfill the express remedial purpose of ERISA, the definition of “fiduciary” is to be construed broadly.

41. A fiduciary may not avoid his fiduciary responsibilities under ERISA by relying solely on the language of the plan documents. While the basic structure of a plan may be specified within limits by the plan sponsor, the fiduciary may not follow the plan document if to do so leads to an imprudent result under ERISA § 404(a)(1)(d), 29 U.S.C. § 1104(a)(1)(D).

Defendant Administrative Committee and the Committee Members

42. On information and belief, the Committee was the Plan Administrator and the Named Fiduciary of each of the Plans. On information and belief, the Committee had and exercised fiduciary authority or control over the management and disposition of the Plans' assets, including selecting and monitoring the prudence of Plan Investment Options, including the Fund and the Fund's investment in YRCW stock. On information and belief, the Committee had the ability and fiduciary responsibility to prepare and disseminate written communications to Participants containing information to be used by Participants in managing their Plan investments, such as investing in the Fund.

43. Consequently, in light of the foregoing powers, duties, responsibilities, and actions, the Committee was, on information and belief, both a named fiduciary of the Plans pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), and a *de facto* fiduciary within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that it exercised discretionary authority or discretionary control with respect to management of the Plans, exercised authority or control with respect to management or disposition of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

44. The Committee Members were fiduciaries because, as members of the Committee, they managed, administered and operated the Plan, exercised authority or control over the management and disposition of Plan assets and disseminated Plan communications to Participants. Upon information and belief, as Committee Members, they selected and monitored Plan Investment Options, including the Fund and monitored the Fund's investment in YRCW stock.

Defendant YRC Worldwide

45. Defendant YRCW is a fiduciary because, on information and belief, YRCW actually managed, administered and operated the Plans, exercised authority or control over the management and disposition of the Plans' assets and disseminated the Plans communications to Participants. In particular:

a. Upon information and belief, YRCW, through its treasury, human resources, and legal departments, directed the Plan Trustee concerning the investment of Plan assets in the Fund and the investment of Fund assets in YRCW stock.

b. Upon information and belief, the Committee met infrequently and spent very little time on matters relating to administration of the Plan and the Plan's investments. Rather, upon information and belief, these jobs were performed by YRCW's employees acting in the scope of their day-to-day duties and, in particular, by YRCW's human resources, legal, corporate communications, finance and treasury personnel. On information and belief, YRCW's employees monitored Plan investments and communicated with Participants concerning Plan investments and investment risk and return characteristics, including the Fund.

c. Upon information and belief, the Committee Members were

appointed and served on the Committee as part of and in the ordinary course of their job responsibilities without any additional compensation. Accordingly, the Company is responsible and liable for their actions.

Defendant Marshall

46. Defendant Marshall is a fiduciary within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21) because, as Chairman of Administrative Committee, by and through his Committee duties, he exercised authority or control with respect to management of the Plans, exercised authority or control with respect to management or disposition of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans, as more fully described above.

Defendant Zollars

47. Defendant Zollars is a fiduciary because he had the power and authority to appoint the Committee Members. YRC Regional Plan Document, 9.1(b).

48. Moreover, on information and belief, Defendant Zollar exercised additional authority and control over the Plan and the Plans' investments, including the Plans' investments in the Fund, by exercising control over the Committee and its members as employees of YRCW, they acted at his direction as the Company's CEO.

49. Consequently, in light of the foregoing duties, responsibilities, and actions, Zollar, as the Company's CEO, was a fiduciary of the Plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period in that he exercised discretionary authority or discretionary control with respect to management of the Plans, exercised authority or control with respect to management or disposition of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

FIDUCIARY DUTIES UNDER ERISA

50. **The Statutory Requirements.** ERISA imposes strict fiduciary duties upon plan fiduciaries. ERISA § 404(a), 29 U.S.C. § 1104(a), states, in relevant part, that:

[A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of providing benefit to participants and their beneficiaries; and defraying reasonable expenses of administering the plan; with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and Title IV.

51. **The Duty of Loyalty.** ERISA imposes on a plan fiduciary the duty of loyalty--that is, the duty to “discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of . . . providing benefits to participants and their beneficiaries”

52. The duty of loyalty entails a duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an “eye single” to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor.

53. **The Duty of Prudence.** Section 404(a)(1)(B) also imposes on a plan fiduciary the duty of prudence--that is, the duty “to discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise

of a like character and with like aims. . . .”

54. **The Duty to Inform.** The duties of loyalty and prudence include the duty to disclose and inform. These duties entail: 1) a negative duty not to misinform; 2) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and 3) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries. These duties to disclose and inform recognize the disparity that may exist, and in this case did exist, between the training and knowledge of the fiduciaries, on the one hand, and the Participants, on the other.

55. Pursuant to the duty to inform, fiduciaries of the Plans were required under ERISA to furnish certain information to Participants. Defendants were required to furnish the Summary Plan Description (“SPD”) and a Prospectus to Participants. The SPD, the Prospectus and all information contained or incorporated therein constitutes a representation in a fiduciary capacity upon which Participants were entitled to rely in determining the identity and responsibilities of fiduciaries under the Plans and in making decisions concerning their benefits and investment and management of assets allocated to their accounts:

The format of the summary plan description must not have the effect of misleading, misinforming or failing to inform participants and beneficiaries. Any description of exceptions, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure or otherwise made to appear unimportant. Such exceptions, limitations, reductions, or restrictions of plan benefits shall be described or summarized in a manner not less prominent than the style, captions, printing type, and prominence used to describe or summarize plan benefits. The advantages and disadvantages of the plan shall be presented without either exaggerating the benefits or minimizing the limitations. The description or summary of restrictive plan provisions need not be disclosed in the summary plan description in close conjunction with the description or summary of benefits, provided that adjacent to the benefit description the page on which the restrictions are described is noted.

29 C.F.R. § 2520.102-2(b). Here, upon information and belief, Defendants purported to make that required disclosure concerning the Fund by incorporating by reference into the Plans' Prospectus and/or SPD, all of YRCW's filings under Sections 13(a) and (c), 14 and/or 15 of the Securities Exchange Act.

56. **The Duty to Investigate and Monitor Investment Alternatives.** With respect to a pension plan such as the Plans, the duties of loyalty and prudence also entail a duty to conduct an independent investigation into, and continually to monitor, the merits of the investment alternatives in the Plans including employer securities, to ensure that each investment is a suitable option for the Plans.

57. **The Duty to Monitor Appointed Fiduciaries.** Fiduciaries who have the responsibility for appointing other fiduciaries have the further duty to monitor the fiduciaries thus appointed. The duty to monitor entails both giving information to and reviewing the actions of the appointed fiduciaries. In a 401(k) plan such as the Plans the monitoring fiduciaries must therefore ensure that the appointed fiduciaries:

(a) possess the needed credentials and experience, or use qualified advisors and service providers to fulfill their duties;

(b) are knowledgeable about the operations of the Plans the goals of the Plans and the behavior of Plans' participants;

(c) are provided with adequate financial resources to do their jobs;

(d) have adequate information to do their jobs of overseeing the Plans' investments with respect to company stock;

(e) have access to outside, impartial advisors when needed;

(f) maintain adequate records of the information on which they base their decisions and analysis with respect to Plans' investment options; and

(g) report regularly to the monitoring fiduciaries.

The monitoring fiduciaries must then review, understand, and approve the conduct of the hands-on fiduciaries.

58. **The Duty Sometimes to Disregard Plan Documents.** A fiduciary may not avoid his fiduciary responsibilities by relying solely on the language of the plan documents.

While the basic structure of a plan may be specified, within limits, by the plan sponsor, the fiduciary may not blindly follow the plan document if to do so leads to an imprudent result or if such is the result of a lack of loyalty. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

59. **Co-Fiduciary Liability.** A fiduciary is liable not only for fiduciary breaches within the sphere of his own responsibility, but also as a co-fiduciary in certain circumstances. ERISA § 405(a), 29 U.S.C. § 1105(a), states, in relevant part, that:

In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; or

(2) if, by his failure to comply with section 404(a)(1) in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or

(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

60. **Non-Fiduciary Liability.** Under ERISA non-fiduciaries who knowingly participate in a fiduciary breach may themselves be liable for certain relief under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

SUBSTANTIVE ALLEGATIONS

61. YRCW is one of the largest transportation service providers in the world. The Company specializes in the heavyweight shipping of industrial, commercial, and retail goods in national, regional, and international markets. YRCW is the holding company for a portfolio of brands including YRC, YRC Reimer, YRC Glen Moore, YRC Logistics, New Penn, Holland and Reddaway.

62. Throughout the Class Period, the YRCW's financial condition deteriorated to a state in which the Company was on the brink of bankruptcy. During this time period, YRCW debt to equity ratio increased to excessive levels and, as set forth below, rendered further investment in the Fund imprudent. In addition, all three major credit rating agencies dramatically cut YRCW's ratings, from at or near "Investment Grade" to the verge of "Default."

63. The Company's financial condition, when viewed through the lens of objective financial formulas, plainly indicated that YRCW was not a prudent retirement investment.

YRCW Suffers Financial Distress

64. YRCW faced significant competitive challenges which substantially increased the risk of investment in the Company. Beginning at least by 2007, the demand for goods shipped on U.S. highways declined dramatically, as compared to very strong

demand levels in 2005 and the first half of 2006. The decline in demand was largely due to the slowing U.S. economy faced with waning residential construction, increasing energy costs, declining retail sales, falling home prices and shrinking credit markets. Each of these factors, negatively affected demand for shipping and dramatically increased the business risks at the Company.

65. On October 25, 2007, YRCW announced that the Company's performance was negatively impacted by a declining market:

"The weak domestic shipping market continues to significantly impact the operating performance of all our companies," stated Bill Zollars, Chairman, President and CEO of YRC Worldwide. "YRC National Transportation and YRC Logistics have responded aggressively to the difficult operating environment and their results compare favorably to overall industry performance. YRC Regional Transportation faced additional challenges from consumer mix and integration issues, and as a result, performed well below expectations. We are taking appropriate actions to address these performance issues."

YRC Worldwide reported the following consolidated results for the third quarter 2007:

Operating income was \$88 million compared to operating income of \$178 million in 2006.

66. At the end of third quarter of 2007, YRCW's debt to equity ratio was 2.53. The Company's debt was two and a half times more than its equity.

67. On December 13, 2007, Standard & Poor's Rating Services ("S&P") reduced its corporate credit ratings on YRCW to junk status.¹ In particular, the

¹ Credit ratings issued by the three main credit rating agencies, Standard & Poor's Rating Services ("S&P"), Moody's and Fitch, are commonly used by investment professionals, including fiduciaries, to evaluate investment risk and/or the likelihood an entity will default or file bankruptcy. *See Report on the Role and Function of Credit Rating Agencies in the Operation of the Securities Markets, As Required by Section 702(b) of the Sarbanes-Oxley Act of 2002, U.S. Securities and Exchange Commission, January 2003, p. 5* (recognizing the central role of credit ratings; "Today, credit ratings affect securities markets in many ways, . . . including the

Company's rating was lowered to BB+ from BBB-. Under S&P's guidelines, a "BBB-" rating is provided to corporate credit that is "Non Investment grade" or "Speculative." In connection with the downgrade, S&P stated "The rating actions reflect worse-than-expected financial performance and operating profitability, weak credit metrics, and concerns regarding YRC's near-term operating outlook. According to S&P, the Company's outlook was "negative."

68. By the end of 2007, YRCW had suffered three consecutive quarters of declining operating income.

69. The Altman Z-Score ("Z-Score"), developed in 1968 by Prof Edward I. Altman of the Stern School of Business at New York University, is bankruptcy prediction model commonly accepted and used by financial analysts for predicting the likelihood of a company filing for bankruptcy. *See National Wildlife Federation v. EPA*, 286 F.3d 554, 565-66 (D.C. Cir. 2002) (upholding Federal agency's use of the Altman Z-score bankruptcy analysis, finding that it "has been quite accurate over these last 25 years and remains an objective, established tool") (internal quotes and citations omitted).

70. A Z-Score greater than 2.99 is the "safe zone" – meaning a company is unlikely to go bankrupt; a score of 1.88 to 2.99 is a the "grey zone" and a score less than 1.88 is the "distress zone" where there is a high probability the company will go bankrupt within two years.

71. As of December 31, 2007, YRCW's Z-Score was 2.9385. The Company fell out of the "safe zone" it had consistently occupied and into the "grey zone" indicating

ability of fiduciaries and others to make particular investments").

that the Company had a greater probability of bankruptcy. In addition, YRCW's debt to equity ratio rose to 3.55.

72. On January 2, 2008, YRCW filed a Form 8-K announcing that it expected to incur non-cash impairment charges during the fourth quarter of 2007 relating to prior acquisitions in the pre-tax range of \$700 to \$800 million (\$650 to \$750 million after taxes).

73. On January 3, 2008, Fitch lowered YRCW's Bank Loan Debt Rating and Senior Unsecured Debt Rating to junk status. The ratings were lowered from BBB- to BB+ (Non investment Grade Speculative).

74. On January 28, 2008, YRCW announced its results for the fourth quarter of 2007. Including the previously reported impairment charge, "full-year 2007 results were a loss per share of \$11.17 compared to EPS of \$4.74 in 2006." In connection with the dismissal results, the Company's CEO stated:

"The economic environment was challenging throughout 2007 and it was increasingly so in the fourth quarter," stated Bill Zollars, Chairman, President and CEO of YRC Worldwide. "Looking forward, we expect the first quarter to also be difficult given it is seasonally the softest and we don't anticipate the economy improving in the near term. As the largest less-than-truckload provider, we are well positioned to benefit from economic recovery, when it occurs."

75. On February 7, 2008, YRCW filed a Form 8-K announcing that their subsidiaries, USF Holland and USF Reddaway, would be closing certain service centers within their service territories.

76. On February 21, 2008, S&P lowered YRCW's corporate credit rating from BB+ to BB.

77. On April 18, 2008, the Company announced that it had entered into Amendment to its Credit Agreement in connection with its senior revolving credit facility.

The amendment would effectively increase YRCW's annual interest expense \$1.5 million and \$4 million. The announcement stated that the Amendment:

- increases the interest rates and fees applicable to the revolving credit facility and term loan as set forth in the definition of "Applicable Rate" in Section 1.01 of the Credit Facility; effective with this amendment, the interest rate on amounts outstanding under the revolving credit facility and term loan is LIBOR plus 100 basis points and LIBOR plus 125 basis points, respectively, and the facility fee for the revolving credit facility is 25 basis points; the Company expects interest expense to increase \$1.5 – 4.0 million annually with this amendment . . .

78. On April 21, 2008, YRCW suffered additional reductions in its credit ratings. Fitch lowered the Company's Senior Unsecured Debt rating from BB+ to BB. Moody's lowered its Senior Unsecured Debt rating from Ba1 to Ba3. Moody's also lowered YRCW's Probability of Default Rating from Ba1 to Ba2, indicating a greater probability that YRCW would face bankruptcy.

79. On April 24, 2008, the Company announced its earnings for the first quarter of 2008. YRCW suffered a loss per share of \$.81 per share:

"YRC Worldwide Inc. (NASDAQ: YRCW) today announced a first quarter 2008 loss per share of \$.81, including previously announced reorganization charges related to USF Holland and USF Reddaway of \$.13 per share and losses on property disposals of \$.02 per share."

As of the quarter ended March 31, 2008, the Company's debt to equity ratio was 4.59, indicating that total liabilities were over four and a half times equity.

80. On July 24, 2008, YRCW announced its earnings for the second quarter of 2008. The Company announced that it had "diluted earnings per share of \$.62 for the second quarter 2008, including a previously announced curtailment gain of \$.39 per share and charge of \$.09 per share for significant claim activity.

81. On September 8, 2008, Fitch lowered YRCW's Senior Unsecured Debt

from BB to BB- (Non investment Grade Speculative).

82. As of September 30, 2008, the Company's debt to equity ratio had risen to 4.60.

83. On October 3, 2008, the Company announced that it had borrowed \$325 million from its senior revolving credit to pay down senior notes:

YRC Worldwide Inc. (NASDAQ: YRCW) announced today that on October 2, 2008 the company drew down \$325 million on its senior revolving credit facility, which matures August 17, 2012. The company plans to use the funds to redeem all of the outstanding \$225 million 8.25% senior notes due December 1, 2008 and its entire outstanding \$100 million 6.5% senior notes due May 1, 2009. The redemption of the notes is scheduled for November 3, 2008.

"Given the unrest in the credit markets, we believe it is in the best interest of YRC to satisfy these maturities early," stated Bill Zollars, Chairman, President and CEO of YRC Worldwide. "Our current financial condition is solid; and with no further note maturities until 2010, we are well positioned to weather this economic environment."

As the note redemptions and the draw on the senior revolving credit facility will occur in the same quarterly reporting period, the company does not expect these specific actions to have an affect on its aggregate outstanding indebtedness at the end of the fourth quarter 2008. The company expects to remain in full compliance with all terms of its credit agreement. After taking into account the October 2, 2008 draw, the company has nearly \$400 million of borrowing capacity remaining under its credit facilities. In addition, these redemptions will satisfy all of the company's significant maturities through March 2010.

84. By October, 2008, YRCW stock price dropped dramatically. In an attempt to stem the stock price decline, the Company reaffirmed its cash flow.

YRC Worldwide Inc. (NASDAQ: YRCW) today reaffirmed that it expects to have positive free cash flow in both the third and fourth quarters of 2008 with a significant debt reduction for the year. In addition, the company expects to remain in full compliance with all terms of its credit agreement, including the leverage ratio.

"With more than \$9 billion in annual revenue and comprehensive networks

in the national and regional markets, we continue to provide excellent service to our customers each and every day,” stated Bill Zollars, Chairman, President and CEO of YRC Worldwide. “Despite the continuing unrest in the broad financial markets, our current financial position is solid and we remain well positioned to weather this economic environment.”

85. On October 14, 2008, Fitch lowered YRCW’s Bank Loan Debt Rating from BBB- to BB+ and its Senior Unsecured Debt Rating from BB- to CCC+. With respect to Senior Unsecured Debt, the rating indicated that YRCW had “substantial risks” of default.

86. In October 23, 2008, YRCW announced its earning for the third quarter of 2008. The Company stated:

YRC Worldwide Inc. (NASDAQ: YRCW) today announced diluted earnings per share of \$.63 for the third quarter of 2008, including a previously announced curtailment gain of \$.84 per share and gains on property disposals of \$.21 per share. The quarter also included charges of \$.10 per share related to reorganization costs. In the third quarter of 2007, the company reported \$.70 of diluted earnings per share. The third quarter 2008 results do not reflect any potential impairment charges that may result from the tests the company is currently performing, as announced on October 8, 2008. If an impairment charge is required, the charge will be non-cash in nature and excluded from the calculation of the leverage ratio in determining the company’s compliance with the leverage ratio limitation under its credit and asset backed securitization facilities.

YRC Worldwide generated \$52.2 million of cash from operating activities during the quarter and, when taking into account the \$40.4 million of cash inflow from net capital expenditures, third quarter free cash flow was \$92.6 million. The company’s leverage ratio of total debt to trailing twelve months earnings before interest, taxes, depreciation and amortization, or EBITDA, (as those terms are defined in the company’s credit facilities) was 3.18 times against a limit of 3.75 times for the third quarter 2008. As of December 31, 2008, through the remaining term of the credit facilities, the leverage ratio limitation is 3.5 times. Total balance sheet debt was reduced by \$11.4 million for the third quarter and \$50.3 million since December 31, 2007.

“Throughout the third quarter, the operating environment progressively weakened resulting in lower than expected volumes and more competitive pricing,” stated Bill Zollars Chairman, President and CEO of YRC Worldwide. “Although the economy slowed more than we expected during

the quarter, we still generated solid free cash flow and paid down debt, in addition to removing significant cost from our business,” Zollars added.

87. On November 12, 2008, YRCW suffered another credit rating reduction. Moody’s lowered the Company’s Senior Unsecured Debt rating from Ba3 to B2. Moody’s also lowered YRCW’s Probability of Default Rating from Ba2 to B1, indicating that YRCW default rating was “Highly Speculative.”

88. On November 19, 2008, S&P lowered YRCW’s corporate credit rating from BB to B indicating that YRCW’s credit was highly speculative.

89. On November 20, 2008, the Company announced that -- as a result of significant downgrades in its credit -- it would be forced, under the terms of its credit agreements, to collateralize certain assets. YRCW announced:

YRC Worldwide Inc. (NASDAQ: YRCW) announced today the financial impact of yesterday’s credit rating change from S&P. The credit rating is considered a trigger event under the credit agreement. This trigger event requires the company to collateralize its remaining unencumbered assets, which primarily include its real estate and revenue equipment. The company estimates the market value of these assets to be around \$1.5 billion.

90. On December 3, 2008, the Company announced that it had negotiated concessions from the International Brotherhood of Teamsters to modify the current labor agreement. The Teamsters agreed to a 10% reduction in all wages. The Company reported:

Bill Zollars, Chairman, President and CEO of YRC Worldwide, commented, “During this economic recession, we have already taken a number of steps to improve our financial and competitive position, as we continue aggressive short-term actions to meet the current environment as we plan for our long-term success. We are in the process of working with our union partners to modify the terms of our labor contract in a way that allows us to be more competitive with non-union carriers in the short-term and, at the same time, protect and sustain the financial health of our dedicated employees and our company going forward.”

Zollars continued, “This modification would address our operating cost structure, which is higher than a number of companies in our industry, due primarily to pension plan funding obligations. Funding pensions for our own Teamsters employees is affordable; however, paying for all the retirees and former employees of failed companies as required under our current plans makes us less competitive.”

While working on a longer-term solution to this issue, YRC Worldwide is seeking immediate cost savings through proposed changes for the remainder of the contract including:

- A 10 percent reduction in all wages paid, inclusive of scheduled increases
- Suspension of Cost of Living Adjustments (COLA)

91. On December 4, 2008, S&P lowered YRCW’s corporate credit rating from B to CC indicating that YRCW’s credit was extremely speculative. The following day, Moody’s lowered the Company’s ratings to Ca indicating that the Company was in default with little prospect for recovery.

92. On December 31, 2008, YRCW Z-Score suffered a dramatic decline to 1.9608 indicating that the Company was operating in the lower depths of the “grey zone” with a much greater probability of bankruptcy.

93. On January 8, 2009, the Company announced “that its union employees represented by the International Brotherhood of Teamsters have voted overwhelmingly to modify the current labor agreements for the company’s Yellow Transportation, Roadway, Holland and New Penn business units.” The Company further announced:

The modified contract included a 10 percent reduction in all wages paid, inclusive of scheduled increases, and the suspension of cost of living adjustments (COLA) for the remaining life of the contract. In exchange, Teamsters employees will receive a 15 percent ownership stake in YRC Worldwide, allowing them to share in future company performance. Contributions to the health, welfare and pension plans will continue as previously negotiated.

94. On January 9, 2009, Fitch lowered YRCW's Bank Loan Debt Rating from BB to B and its Senior Unsecured Debt Rating from CCC+ to C, indicating that the company was on the verge of default.

95. On January 29, 2009, YRCW announced its earnings for the fourth quarter of 2008. The Company announced:

YRC Worldwide Inc. (NASDAQ: YRCW) today announced a loss per share for the fourth quarter 2008 of \$1.63, excluding impairment charges of \$2.51 per share, and for the full year 2008 a loss per share of \$1.22, excluding impairment charges of \$15.70 per share. When including impairment, the fourth quarter loss was \$4.14 per share compared to a loss of \$12.99 per share in the fourth quarter of last year and a full year loss of \$16.92 per share compared to a full year loss of \$11.17 per share in 2007. The fourth quarter impairment charge consisted of \$141 million related to the Roadway trade name as the company introduced a new YRC brand for the integrated network of Yellow Transportation and Roadway. The impairment charge also included goodwill of \$59 million at YRC Logistics.

96. On February 18, 2009, Fitch lowered YRCW's Bank Loan Debt Rating from B to B-.

97. On March 9, 2009, YRCW announced a cut of approximately 2000 jobs.

98. On March 31, 2009, YRCW's financial condition had fallen into the distress zone. The Company's Z-score was 1.4302 which indicated that bankruptcy was likely. Moreover, as of March 31, 2009, the Company's debt to equity ratio had risen significantly to 12.99 -- indicating that YRCW's total liabilities were nearly thirteen times the value of the Company's equity.

99. On April 7, 2009, YRCW's stock price dropped 27% the largest decline in six months after reporting an "accelerated" decline in shipping volumes in the first quarter. With respect to YRCW's dramatic price drop Bloomberg reported

YRC Worldwide Inc., the biggest U.S. trucking company, fell the most in six months in Nasdaq trading after reporting an “accelerated” decline in shipping volumes.

* * * *

Nationwide cargo volume declined 29 percent in the first quarter from a year earlier because of the weak economy and the company’s initiatives to reduce costs, according to a slide presentation for delivery by Chief Financial Officer Timothy Wicks at an analyst meeting. The presentation was filed with the U.S. Securities and Exchange Commission.

100. On April 23, 2009, YRCW announced its earnings for the first quarter of 2009. The Company announced:

YRC Worldwide Inc. (NASDAQ: YRCW) today announced a loss per share for the first quarter 2009 of \$2.63, excluding significant charges as listed below, and a loss per share of \$4.34 when including the charges. The company’s loss per share in the first quarter of 2008 was \$.82.

We made significant investments in our company during the first quarter to enhance our position in the market and improve our future operating performance,” stated Bill Zollars, Chairman, President and CEO of YRC Worldwide. “Unfortunately, the economy progressively weakened throughout the quarter making it more challenging to get ahead of the volume declines. With that said, the March 1 integration of our national networks allowed us to remove substantial capacity and reset the volume needs of our network, while significantly enhancing our service offering to the customer.”

101. On June 18, 2009, YRCW’s financial circumstances grew even worse as it struggled to make its pension contribution payments. The Company announced that it was forced to provide its real estate as collateral in lieu of making pension contributions:

YRC Worldwide Inc. (NASDAQ: YRCW) announced today that it has finalized an agreement with Central States, Southeast and Southwest Areas Pension Fund (“Central States”) in which the company will provide certain of the company’s real estate as collateral in lieu of making pension contribution payments during the second quarter. The estimated combined contribution payment deferral to Central States is approximately \$83 million. The agreement calls for the company to repay the deferred contributions over three years beginning in January 2010.

* * * *

In addition, YRC Worldwide announced that it finalized an amendment to its credit agreement with its lenders that permits the company and its subsidiaries to grant second priority liens on certain owned real estate in conjunction with the pension deferrals described above. The amendment also releases escrow funds of \$73 million, generated from the company's prior real estate transactions, to pay down the revolving credit facility without reducing the company's borrowing availability under the facility.

102. On June 30, 2009, YRCW's reported its earnings for the second quarter of 2009. The Company stated:

YRC Worldwide Inc. (NASDAQ: YRCW) today reported its results for the second quarter and provided an update on its comprehensive plan. For the quarter, the company announced a loss per share of \$3.53, excluding significant charges as detailed below, and a loss per share of \$5.20 when including the charges. By comparison, the company reported earnings per share in the second quarter of 2008 of \$.23, when excluding a curtailment gain related to the harmonization of retirement plans across the company for its non-contractual employees, and earnings per share of \$.62 when including the curtailment gain.

"The second quarter was focused on executing our comprehensive plan to realize efficiencies from the YRC integration, restore financial strength and position our operating companies for future success," stated Bill Zollars, Chairman, President and CEO of YRC Worldwide. "As a result of the March integration of Yellow and Roadway, the further rightsizing of our networks in relation to volumes and the overall economic environment, we recorded some significant charges that we believe are not reflective of the underlying operating results of our company. Although we will continue to enhance the efficiencies of our networks, we do not expect to record charges of this magnitude going forward."

* * * *

"We continue to win new business, and customers have returned shipments to our networks, though it has not happened as quickly or at the levels we were initially expecting," said Zollars. "Although misinformation about our financial stability creates noise in the marketplace, many of our key customers stand firmly behind our plans and show their support with their business every day. We believe that as we continue to make significant progress on our plans, the tremendous support of our employees, lenders and other stakeholders can provide all of our customers with the confidence they need to completely return."

103. As of the end of second quarter of 2009, the Company's debt to equity ratio rose excessively to 33.89. More significantly, on June 30, 2009, YRCW's Z-score plummeted to 0.5819 indicating an even higher probability of bankruptcy.

104. On August 12, 2009, Stifel Nicolaus ("Stifel"), the investment advisory firm, downgraded YRCW from Hold to Sell. Stifel observed that it was becoming increasingly likely that YRCW will go bankrupt. Stifel stated that YRCW's frequent need to amend credit agreements and failure to meet low cash flow and earnings expectations suggests there's no turnaround coming. Further, Stifel stated that the Teamsters concessions did not amount to a long-term fix. Analyst David Ross of Stifel noted:

While we have tried to be more constructive on YRC, as many have piled on the bankruptcy bandwagon, and have looked for ways the company could survive, the seemingly constant need to amend its credit agreements and continued failure to meet already dismal cash flow and earnings expectations lead us to believe there is no 'turn' around the corner.

105. On November 2, 2009, YRCW announced that it intended to launch an exchange offer in which YRCW's creditors would take 95% of YRCW's stock, effectively wiping out the Plan's investment in the Fund.. In significant part, YRCW's noteholders would exchange approximately \$536.8 million in Notes for shares of common stock and a new Class A convertible Preferred Stock, which together on an as-if converted basis would represent 95% of the Company's common stock. The exchange offer would create more than 1 billion new shares of stock on top of the 60 million currently owned by shareholders. Once those new shares were issued, current shareholders would own about 5% of the company.

106. The market response to this announcement was swift and dramatic: YRCW's stock price dropped 64% the day the exchange agreement was announced.

107. Defendants were aware of the proposed exchange offer for at least most of the year prior to the announcement. Commenting on the offer, YRCW's CEO, Bill Zollars stated, "This is something we've been talking about for most of the year in terms of the final step in our comprehensive play."

108. On November 9, 2009, YRCW announced that it was commencing the exchange offer:

Overland Park, Kan., Nov 09, 2009 /PRNewswire-FirstCall via COMTEX News Network/ -- YRC Worldwide Inc. (Nasdaq: YRCW) announced that it is commencing an exchange offer today for all of the following outstanding series of notes:

-- the company's 5.0% Net Share Settled Contingent Convertible Senior Notes and 5.0% Contingent Convertible Senior Notes due 2023,

-- the company's 3.375% Net Share Settled Contingent Convertible Senior Notes and 3.375% Contingent Convertible Senior Notes due 2023, and

-- the 8 1/2% Guaranteed Notes due April 15, 2010 of the company's wholly owned subsidiary, YRC Regional Transportation, Inc.

with an aggregate face value of approximately \$536.8 million, plus accrued and unpaid interest. The debt instruments will be exchanged for shares of the company's common stock and new Class A Convertible Preferred Stock in such amounts as are set forth in the company's Registration Statement on Form S-4 filed today with the Securities and Exchange Commission (the "SEC"), which together on an as-if converted basis would represent approximately 95% of the company's issued and outstanding common stock.

109. Reviewed in totality, YRCW's financial circumstances, including its credit-ratings, debt-to-equity ratio, and Z-Scores during the Class Period indicated, objectively, that YRCW was on the verge of bankruptcy or impending collapse which would significantly impair the value of Fund shares or render them valueless. Consequently, any

Plan investment in Fund during the Class Period was imprudent.

CAUSES OF ACTION

A. Count I: Failure to Prudently and Loyal Management of the Plans and Assets of the Plans

110. Plaintiffs incorporate by reference the paragraphs above.

111. This Count alleges fiduciary breach against all Defendants (the "Prudence Defendants").

112. As alleged above, during the Class Period, the Prudence Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or de facto fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

113. As alleged above, the scope of the fiduciary duties and responsibilities of the Prudence Defendants included managing the assets of the Plans for the sole and exclusive benefit of the Plans' Participants and beneficiaries and with the care, skill, diligence, and prudence required by ERISA. The Prudence Defendants were directly responsible for, among other things, selecting prudent investment options, eliminating imprudent options and directing the trustee regarding the same, evaluating the merits of the Plans' investments on an ongoing basis, and taking all necessary steps to ensure that the Plans' assets were at all times invested prudently.

114. Yet, contrary to their duties and obligations under the Plans' documents and ERISA, the Prudence Defendants failed to loyally and prudently manage the assets of the Plans. Specifically, during the Class Period, these Defendants knew or should have known that the Fund was no longer a suitable and appropriate investment for the Plans, but was,

instead, an imprudent investment in light of the Company's fundamental weaknesses and the excessive risk associated with an investment in YRCW stock.

115. Nonetheless, during the Class Period, these Defendants failed to act to protect the Plans and their participants and *inter alia* continued to permit the Plans to offer the Fund as an investment option for Employee and Matching Contributions and continued to permit the Plans to invest those contributions in the Fund and permit the Fund to invest in Company stock. They did so despite the fact that they knew or should have known that the prices of Fund and Company stock shares were excessively risky.

116. The Prudence Defendants were obliged to prudently and loyally manage all of the Plans' assets. However, their duties of prudence and loyalty were especially significant with respect to Company stock because: (a) company stock is a particularly risky and volatile investment, even in the absence of company misconduct; and (b) Participants tend to underestimate the likely risk and overestimate the likely return of investment in company stock.

117. The Prudence Defendants had a duty to follow a regular, appropriate systematic procedure to evaluate the prudence of investing in the Fund, but either had no such procedure or failed to follow it. Moreover, they failed to conduct and act on the results of an appropriate investigation of the merits of continued investment in the Fund. Such an investigation would have revealed to a reasonably prudent fiduciary the imprudence of continuing to make and maintain investment in the Fund under these circumstances.

118. The Prudence Defendants breached their fiduciary duty respecting the Plans' investment in Company stock described above, under the circumstances alleged herein, in

that a prudent fiduciary acting under similar circumstances would have made different investment decisions.

119. The Prudence Defendants were obligated to discharge their duties with respect to the Plans with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

120. According to United States Department of Labor ("DOL") regulations and case law interpreting this statutory provision, a fiduciary's investment or investment course of action is prudent if: (a) he has given appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties; and (b) he has acted accordingly.

121. According to DOL regulations, "appropriate consideration" in this context includes, but is not necessarily limited to:

(a) A determination by the fiduciary that the particular investment or investment course of action is reasonably designed, as part of the portfolio (or, where applicable, that portion of the plan portfolio with respect to which the fiduciary has investment duties), to further the purposes of the plan, taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action; and

(b) Consideration of the following factors as they relate to such portion of the portfolio:

(i) The composition of the portfolio with regard to diversification;

(ii) The liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan; and

(iii) The projected return of the portfolio relative to the funding objectives of the plan.

122. Given the conduct of the Company as described above, the Prudence Defendants could not possibly have acted prudently when they continued to invest the Plans' assets in Company stock because, among other reasons:

(a) The Prudence Defendants knew of and/or failed to investigate the failures of and dangers to the Company as alleged above; and

(b) The risk and volatility associated with the investment in Company stock during the Class Period was by far above and beyond the normal, acceptable risk associated with investment in company stock.

123. This abnormal investment risk could not have been known by the Plans' Participants, and the Prudence Defendants knew that it was unknown to them, as it was to the market generally, because the fiduciaries never disclosed it.

124. Knowing of this extraordinary risk, and knowing the Participants did not know it, and given the volatility in the Company's stock the Prudence Defendants had a duty to avoid permitting the Plans or any Participant from investing the Plans' assets in the Fund or Company stock.

125. Further, knowing that the Plans were not adequately diversified, but were heavily invested in Company stock, the Prudence Defendants had a heightened responsibility to divest the Plans of Company stock if it became or remained imprudent.

126. The Prudence Defendants breached their fiduciary duties by, *inter alia*, failing to engage appropriate independent advisors who could make independent judgments concerning the Plans' investment in the Company; failing to notify appropriate federal agencies, including the DOL, of the facts and circumstances that made Company stock an unsuitable investment for the Plans; failing to take such other steps as were necessary to ensure that Participants' interests were loyally and prudently served; with respect to each of these above failures, doing so in order to avoid adversely impacting their own compensation or drawing attention to the Company's condition and inappropriate practices; and by otherwise placing their own and the Company's interests above the interests of the Participants with respect to the Plans' investment in Company stock.

127. As a consequence of the Prudence Defendants' breaches of fiduciary duty alleged in this Count, the Plans suffered tremendous losses. If the Prudence Defendants had discharged their fiduciary duties to prudently invest the Plans' assets, the losses suffered by the Plans would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary duty alleged herein, the Plans, and indirectly Plaintiffs and the other Class members, lost millions of dollars of retirement savings.

128. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109, 1132(a)(2) and (a)(3), the Prudence Defendants are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

B. Count II: Failure to Monitor Fiduciaries

129. Plaintiffs incorporate by reference the allegations above.

130. This Count alleges fiduciary breach against Defendant Zollar (the "Monitoring Defendant").

131. As alleged above, upon information and belief, during the Class Period the Monitoring Defendant was a de facto fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Thus, he was bound by the duties of loyalty, exclusive purpose, and prudence.

132. As alleged above, the scope of the fiduciary responsibilities of Defendant Zollar included the responsibility to appoint, remove, and, thus, monitor the performance of the members of the Committee, including Defendant Kaufman.

133. Under ERISA, a monitoring fiduciary must ensure that monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of a plan's assets, and must take prompt and effective action to protect the plan and participants when they are not.

134. The monitoring duty further requires that appointing fiduciaries have procedures in place so that on an ongoing basis they may review and evaluate whether the "hands-on" fiduciaries are doing an adequate job (for example, by requiring periodic reports on their work and the plan's performance, and by ensuring that they have a prudent process for obtaining the information and resources they need). In the absence of a sensible process for monitoring their appointees, the appointing fiduciaries would have no basis for prudently concluding that their appointees were faithfully and effectively performing their obligations to the plan's participants or for deciding whether to retain or remove them.

135. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order to prudently manage the plan and the plan's assets, or that may have an extreme impact on the plan and the fiduciaries' investment decisions regarding the plan.

136. Defendant Zollar breached his fiduciary monitoring duties by, among other things:

(a) failing, at least with respect to the Plans' investment in Company stock, to properly monitor his appointee(s), to properly evaluate their performance, or to have any proper system in place for doing so, and standing idly by as the Plans suffered enormous losses as a result of appointees' imprudent actions and inaction with respect to Company stock;

(b) failing to ensure that the monitored fiduciaries appreciated the true extent of Company's inappropriate business practices, and the likely impact of such practices on the value of the Plans' investment in Company stock;

(c) to the extent any appointee lacked such information, failing to provide complete and accurate information to all of their appointees such that they could make sufficiently informed fiduciary decisions with respect to the Plans' assets and, in particular, the Plans' investment in the Fund; and

(d) failing to remove appointees whose performance was inadequate in that they continued to permit the Plans to make and maintain investments in the Fund despite the practices that rendered Company stock an imprudent investment during the Class Period.

137. As a consequence of Zollar's breaches of fiduciary duty, the Plans suffered tremendous losses. If Zollar had discharged his fiduciary monitoring duties as described above, the losses suffered by the Plans would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary duty alleged herein, the Plans and indirectly Plaintiffs and the other Class members, lost millions of dollars of retirement savings.

138. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109, 1132(a)(2) and (a)(3), Zollar is liable to restore the losses to the Plans caused by his breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

C. Count III: Co-Fiduciary Liability

139. Plaintiffs incorporate by reference the allegations above.

140. This Count alleges co-fiduciary liability against all Defendants (the "Co-Fiduciary Defendants").

141. As alleged above, during the Class Period the Co-Fiduciary Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or de facto fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

142. As alleged above, ERISA § 405(a), 29 U.S.C. § 1105(a), imposes liability on a fiduciary, in addition to any liability which he may have under any other provision, for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if he knows of a breach and fails to remedy it, knowingly participates in a breach, or enables a breach. The Co-Fiduciary Defendants breached all three provisions.

143. Knowledge of a Breach and Failure to Remedy. ERISA § 405(a)(3), 29 U.S.C. § 1105(a)(3), imposes co-fiduciary liability on a fiduciary for a fiduciary breach by another fiduciary if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach. Upon information and belief, each Defendant knew of the breaches by the other fiduciaries and made no efforts, much less reasonable ones, to remedy those breaches. In particular, they did not communicate their knowledge of the Company's improper activity to the other fiduciaries.

144. In particular, because Zollar knew of the Company's failures and inappropriate business practices, he also knew that the Prudence Defendants were breaching their duties by continuing to invest in Company stock. Yet, he failed to undertake any effort to remedy these breaches and, instead, compounded them by downplaying the significance of the Company's failed and inappropriate business practices and obfuscating the risk that the practices posed to the Company, and, thus, to the Plans.

145. Knowing Participation in a Breach. ERISA § 405(a)(1), 29 U.S.C. § 1105(a)(1), imposes liability on a fiduciary for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach. Zollar knowingly participated in the breaches of the Prudence Defendants because, as alleged above, he had actual knowledge of the facts that rendered Company stock an imprudent retirement investment and, yet, ignoring his oversight responsibilities, permitted the Prudence Defendants to breach their duties. Moreover, as alleged above, each of the Defendants participated in the management of the Plans' improper investment in the Fund and, upon information and belief, knowingly participated

in the improper management of that investment by the other Defendants.

146. Enabling a Breach. ERISA § 405(a)(2), 29 U.S.C. § 1105(a)(2), imposes liability on a fiduciary if, by failing to comply with ERISA § 404(a)(1), 29 U.S.C. §1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled another fiduciary to commit a breach.

147. Zollar's failure to monitor the Prudence Defendants enabled those Defendants to breach their duties.

148. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly Plaintiffs and the Plans' other Participants and beneficiaries, lost millions of dollars of retirement savings.

149. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109, 1132(a)(2) and (a)(3), the Co-Fiduciary Defendants are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

CAUSATION

150. The Plans suffered millions of dollars in losses of vested benefits because substantial assets of the Plans were imprudently invested or allowed to be invested by Defendants in the Fund during the Class Period in breach of Defendants' fiduciary duties.

151. Had the Defendants properly discharged their fiduciary and co-fiduciary duties, including the monitoring and removal of fiduciaries who failed to satisfy their ERISA-mandated duties of prudence and loyalty, eliminating Company stock as an investment alternative when it became imprudent, and divesting the Plans of Company stock when maintaining such an investment became imprudent, the Plans would have

avoided some or all of the losses that they suffered.

REMEDY FOR BREACHES OF FIDUCIARY DUTY

152. The Defendants breached their fiduciary duties in that they knew or should have known the facts as alleged above and, therefore, knew or should have known that the Plans' assets should not have been invested in the Fund during the Class Period.

153. As a consequence of the Defendants' breaches, the Plans suffered a significant loss of vested benefits.

154. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) authorizes a plan participant to bring a civil action for appropriate relief under ERISA § 409, 29 U.S.C. § 1109. Section 409 requires "any person who is a fiduciary...who breaches any of the...duties imposed upon fiduciaries...to make good to such plan any losses to the plan....". Section 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate....".

155. Plaintiffs and the Class and the Plans are therefore entitled to relief from Defendants in the form of:

(a) a monetary payment to the Plans to make good to the Plans the loss of vested benefits to the Plans resulting from the breaches of fiduciary duties alleged above in an amount to be proven at trial based on the principles described above, as provided by ERISA § 409(a), 29 U.S.C. § 1109(a);

(b) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §§ 409(a), 502(a)(2) and (3), 29 U.S.C. §§ 1109(a), 1132(a)(2) and (3);

(c) reasonable attorney fees and expenses, as provided by ERISA § 502(g), 29 U.S.C. § 1132(g), the common fund doctrine, and other applicable law;

(d) taxable costs and interest on these amounts, as provided by law; and

(e) such other legal or equitable relief as may be just and proper,

including certification of a class in the event such is deemed required.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

A. A Declaration that Defendants, and each of them, have breached their ERISA fiduciary duties to the Plans and participants;

B. An Order compelling Defendants to make good to the Plans all losses to the Plans resulting from Defendants' breaches of their fiduciary duties, including loss of vested benefits to the Plans resulting from imprudent investment of the Plans' assets; to restore to the Plans all profits the Defendants made through use of the Plans' assets; and to restore to the Plans all profits which the participants would have made if Defendants had fulfilled their fiduciary obligations;

C. Imposition of a constructive trust on any amounts by which any Defendant was unjustly enriched at the expense of the Plans as the result of breaches of fiduciary duty;

D. An Order enjoining Defendants, and each of them, from any further violations of their ERISA fiduciary obligations;

E. An Order requiring Defendants to appoint one or more independent fiduciaries to participate in the management of the Plans' investment in Company stock;

F. Actual damages in the amount of any losses the Plans suffered, to be allocated among the participants' individual accounts in proportion to the accounts' losses;

G. An Order awarding costs pursuant to 29 U.S.C. § 1132(g);

H. An Order awarding attorneys' fees pursuant to the common fund doctrine, 29 U.S.C. § 1132(g), and other applicable law; and

I. An Order for equitable restitution and other appropriate equitable and injunctive relief against the Defendants, including class certification if deemed necessary.

JURY DEMAND

Plaintiffs demand trial by jury in Kansas City, Kansas.

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Respectfully submitted,

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