

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**

PATRICK M. COUCH, Individually And On  
Behalf Of All Others Similarly Situated,

Plaintiff,

vs.

YRC WORLDWIDE INC., MICHAEL T.  
BYRNES, CASSANDRA C. CARR, HOWARD  
M. DEAN, DENNIS E. FOSTER, PHILLIP J.  
MEEK, MARK A. SCHULZ, WILLIAM L.  
TRUBECK, CARL W. VOGT, WILLIAM D.  
ZOLLARS, TIMOTHY A. WICKS, THE  
BENEFITS ADMINISTRATIVE COMMITTEE  
OF YRC WORLDWIDE, INC., HAROLD D.  
MARSHALL, and JOHN DOES 1-20,

Defendants.

**Civil Action:** 10-CV-2023 KHV/DJW

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE  
EMPLOYEE RETIREMENT INCOME SECURITY ACT**

Plaintiff, on behalf of the YRC Regional Transportation, Inc. 401(k) Retirement Plan (“YCR Plan”), the New Penn Motor Express, Inc. 401(K) Retirement Plan (“New Penn Plan”), and the Yellow Roadway Corporation Retirement Savings Plan (“Yellow Roadway Plan”) (collectively, the “Plans”), covering substantially all employees of YRC Worldwide Inc. and its subsidiaries (collectively, “YRC” or the “Company”), individually and on behalf of all others similarly situated (the “Participants”), alleges as follows:

**INTRODUCTION**

1. Plaintiff brings this action on behalf of the Plans and all Participants and beneficiaries in the Plans to recover losses to the Plans for which the fiduciaries of the Plans are liable pursuant to Sections 409 and 502(a)(2) of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §§ 1109 and 1132(a)(2). In addition, under ERISA § 502(a)(3), 29 U.S.C.

§ 1132(a)(3), Plaintiff seeks other equitable relief from Defendants, including, without limitation, injunctive relief and, as available under applicable law, a constructive trust, restitution, equitable tracing, and other monetary relief.

2. From March 23, 2006 through the present (the “Class Period”), the Plans acquired and held shares of YRC common stock (“YRC Stock” or “Company Stock”), which was offered as one of the retirement saving options in the participant contribution component of the Plans.

3. Defendants, each having certain responsibilities regarding the management and investment of Plans’ assets, breached their fiduciary duties to the Plans and Participants by failing to prudently and loyally manage the Plans’ investment in Company Stock by, among other things: (i) continuing to offer Company Stock as a retirement saving option; (ii) continuing to acquire and hold shares of Company Stock in the Plans when it was imprudent to do so; (iii) failing to provide complete and accurate information to Participants regarding the Company’s financial condition and the prudence of investing in Company Stock; and (iv) maintaining the Plans’ pre-existing investment in Company Stock when it was no longer a prudent investment for the Plans.

4. As a result of Defendants’ fiduciary breaches, as alleged herein, the Plans suffered substantial losses, resulting in the depletion of millions of dollars of the retirement savings and anticipated retirement income of the Plans’ Participants. Under ERISA, the breaching fiduciaries are obligated to restore to the Plans the losses resulting from their fiduciary breaches.

5. Because Plaintiff’s claims apply to the Participants as a whole, and because ERISA authorizes Participants such as Plaintiff to sue for plan-wide relief for breach of fiduciary duty, Plaintiff brings this as a class action on behalf of all Participants of the Plans during the

Class Period. Plaintiff also brings this action as participants seeking plan-wide relief for breaches of fiduciary duties on behalf of the Plans.

6. In addition, because the information and documents on which Plaintiff's claims are based are, for the most part, solely in Defendants' possession, certain of Plaintiff's allegations are by necessity upon information and belief. At such time as Plaintiff has had the opportunity to conduct additional discovery, Plaintiff will, to the extent necessary and appropriate, amend the Complaint or, if required, seek leave to amend to add such other additional facts as are discovered that further support each of the following Counts below.

### **JURISDICTION AND VENUE**

7. ***Subject Matter Jurisdiction.*** This is a civil enforcement action for breaches of fiduciary duties brought pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a). This Court has original, exclusive subject matter jurisdiction over this action pursuant to the specific jurisdictional statute for claims of this type, ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1). In addition, this Court has subject matter jurisdiction pursuant to the general jurisdictional statute for "civil actions arising under the . . . laws . . . of the United States." 28 U.S.C. § 1331.

8. ***Personal Jurisdiction.*** ERISA provides for nation-wide service of process, ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). All of Defendants are residents of the United States, and this Court therefore has personal jurisdiction over them. This Court also has personal jurisdiction over them pursuant to Fed. R. Civ. P. 4(k)(1)(A), because they all would be subject to the jurisdiction of a court of general jurisdiction in this District.

9. ***Venue.*** Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). YRC is headquartered in Overland Park, Kansas.

## **PARTIES**

### **Plaintiff**

10. ***Plaintiff Patrick M. Couch*** (“Couch”) is a former YRC employee, a participant in the Plan, and held YRC Stock in the Plan during the Class Period.

### **Defendants**

11. ***Defendant YRC*** provides transportation services for the shipment of industrial, commercial, and retail goods in the United States and internationally. The Company’s operating units include YRC National Transportation, YRC Regional Transportation, YRC Logistics, and YRC Truckload. YRC National Transportation unit offers a range of services for the transportation of industrial, commercial, and retail goods, such as apparel, appliances, automotive parts, chemicals, food, furniture, glass, machinery, metal, metal products, non-bulk petroleum products, rubber, textiles, wood, and other manufactured products or components in regional, national, and international markets, primarily through the operation of owned or leased equipment.

12. ***Defendant Michael T. Byrnes*** (“Byrnes”) was, at all relevant times, a Director of the Company. During the Class Period, upon information and belief, Defendant Byrnes was a fiduciary within the meaning of ERISA, because he exercised discretionary authority or discretionary control with respect to the appointment of the Plans fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans’ assets.

13. ***Defendant Cassandra C. Carr*** (“Carr”) was, at all relevant times, a Director of the Company. During the Class Period, upon information and belief, Defendant Carr was a

fiduciary within the meaning of ERISA, because she exercised discretionary authority or discretionary control with respect to the appointment of the Plans fiduciaries and with respect to the management of the Plans, she possessed discretionary authority or discretionary responsibility in the administration of the Plans, and she exercised authority or control with respect to the management of the Plans' assets.

14. ***Defendant Howard M. Dean*** ("Dean") was, at all relevant times, a Director of the Company. During the Class Period, upon information and belief, Defendant Dean was a fiduciary within the meaning of ERISA, because he exercised discretionary authority or discretionary control with respect to the appointment of the Plans fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans' assets.

15. ***Defendant Dennis E. Foster*** ("Foster") was, at all relevant times, a Director of the Company. During the Class Period, upon information and belief, Defendant Foster was a fiduciary within the meaning of ERISA, because he exercised discretionary authority or discretionary control with respect to the appointment of the Plans fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans' assets.

16. ***Defendant Phillip J. Meek*** ("Meek") was, at all relevant times, a Director of the Company. During the Class Period, upon information and belief, Defendant Meek was a fiduciary within the meaning of ERISA, because he exercised discretionary authority or discretionary control with respect to the appointment of the Plans fiduciaries and with respect to

the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans' assets.

17. ***Defendant Mark A. Schulz*** ("Schulz") was, at all relevant times, a Director of the Company. During the Class Period, upon information and belief, Defendant Schulz was a fiduciary within the meaning of ERISA, because he exercised discretionary authority or discretionary control with respect to the appointment of the Plans fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans' assets.

18. ***Defendant William L. Trubeck*** ("Trubeck") was, at all relevant times, a Director of the Company. During the Class Period, upon information and belief, Defendant Trubeck was a fiduciary within the meaning of ERISA, because he exercised discretionary authority or discretionary control with respect to the appointment of the Plans fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans' assets.

19. ***Defendant Carl W. Vogt*** ("Vogt") was, at all relevant times, a Director of the Company. During the Class Period, upon information and belief, Defendant Vogt was a fiduciary within the meaning of ERISA, because he exercised discretionary authority or discretionary control with respect to the appointment of the Plans fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the

management of the Plans' assets.

20. ***Defendant William D. Zollars*** ("Zollars") was Chairman, President and Chief Executive Officer of the Company since November 1999. During the Class Period, upon information and belief, Defendant Zollars was a fiduciary within the meaning of ERISA, because he exercised discretionary authority or discretionary control with respect to the appointment of the Plans fiduciaries and with respect to the management of the Plans, he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans' assets.

21. Defendants Byrnes, Carr, Dean, Foster, Meek, Schulz, Trubeck, Vogt, and Zollars are hereinafter referred to as the "Director Defendants."

22. ***Defendant Timothy A. Wicks*** ("Wicks") was Executive Vice President and Chief Financial Officer of YRC Worldwide since October 2008.

23. ***Defendant the Benefits Administrative Committee of YRC Worldwide, Inc.*** ("Benefits Committee"). Upon information and belief, the Benefits Committee is comprised of certain Company employees/officers. The Benefits Committee is charged with the day-to-day management and administration of the Plans and/or management and disposition of the Plans' assets.

24. ***Defendant Harold D. Marshall*** ("Marshall") was the Chairman of the Benefits Committee during the Class Period. Defendant Marshall is also Vice President – Employment Benefits of the Company. Defendant Marshall signed the YRC Plan Form 11-K, dated June 29, 2007, New Penn Plan Form 11-K, dated June 29, 2007, and the Yellow Roadway Plan Form 11-K, dated June 29, 2007.

25. ***Defendants John Does 1-20*** are persons who had the duty and responsibility to

properly appoint, monitor and inform the members of the Benefits Committee (as defined above) and/or other persons who exercised day-to-day responsibility for the management and administration of the Plans and their assets. John Does 1-20 failed to properly appoint, monitor and inform such persons in that these Defendants failed to adequately inform such persons about the true financial and operating condition of the Company or, alternatively, these Defendants did not adequately inform such persons of the true financial and operating condition of the Company (including the financial and operating problems being experienced by YRC during the Class Period identified herein) but nonetheless continued to allow such persons to offer YRC Stock as investment options under the Plans when the market prices of YRC Stock was artificially inflated and when YRC Stock was not prudent investments for Participants' retirement accounts under the Plans. Liability is only asserted against each of these Defendants for such periods of time as these Defendants acted as a fiduciary with respect to the Plans.

### **CLASS ACTION ALLEGATIONS**

26. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and the following class of persons similarly situated (the "Class"):

All persons who were Participants in or beneficiaries of the Plans at any time between March 23, 2006 and the present, inclusive (the "Class Period) and whose accounts held Company Stock or units in the YRC Stock Fund, but excluding all Defendants, and their heirs or successors in interest.

27. 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 Plaintiff at this time, and can only be ascertained through appropriate discovery.

28. Common questions of law and fact exist as to all members of the Class and 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 each owed a fiduciary duty to Plaintiff and members of the Class;

(b) whether Defendants breached their fiduciary duties to Plaintiff and members of the Class by failing to act prudently and solely in the interests of the Plans' Participants and beneficiaries; and

(c) whether Defendants violated ERISA.

29. Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff and the other members of the Class each sustained a diminution of vested benefits arising out of Defendants' wrongful conduct in violation of federal law as complained of herein.

30. Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action, ERISA, and complex civil and commercial litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

31. Class action status in this ERISA action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members or the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members of the Class parties to the actions, or substantially impair or impede their ability to protect their interests.

32. Class action status is also warranted under the other subsections of Rule 23(b) because: (i) prosecuting separate actions by the members of the Class would create a risk of

establishing incompatible standards of conduct for Defendants; (ii) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole; and (iii) questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

33. In the alternative, Plaintiff requests that the Court allow them to proceed under ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2). Section 502(a)(2), 29 U.S.C. § 1132(a)(2) states that “[a] civil action may be brought -- “ “by the Secretary [of Labor], or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title[.]” ERISA Section 409(a), 29 U.S.C. § 1109(a), sets forth that:

Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable *to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary*, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

(Emphasis added).

## THE PLANS

### A. The YRC Plan

34. The YRC Plan is an “employee pension benefit plan” as defined by §§ 3(3) and (3)(2)(A) of ERISA, 29 U.S.C. §§ 1002(3) and 1002(2)(A).

35. The YRC Plan is legal entity that can sue or be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1).

36. In this action for breach of fiduciary duty, the YRC Plan is neither a plaintiff nor a

defendant. Rather, Plaintiff requests relief for the benefit of the YRC Plan and for the benefit of its Participants.

37. The YRC Plan is “defined contribution plan” or “individual account” plan within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34), in that the YRC Plan provides for individual accounts for each participant and for benefits based solely upon the amount contributed to the Participants’ account, and any income, expenses, gains and losses, and any forfeitures of accounts of other Participants which may be allocated to such Participants’ accounts. Consequently, retirement benefits provided by the YRC Plan are based solely on the amounts allocated to each individual’s account.

38. The YRC Plan is a voluntary contribution plan whereby Participants make contributions to the YRC Plan and direct the YRC Plan to purchase investments with those contributions from options pre-selected by Defendants which are then allocated to Participants’ individual accounts.

39. The YRC Plan Participants may invest their contributions and employer contributions in one or more of the investment options offered by the YRC Plan. Investment income, representing interest and dividends, and changes in the fair value of investments, are credited to each participant on a daily basis based upon individual investment options selected.

40. YRC is the Plans Sponsor.

41. The YRC Plan is administered by the Benefits Committee. The YRC Plan assets were held by Fidelity Management Trust Company, as trustee.

42. Effective January 1, 2006, the YRC Plan name was changed from USF Employees’ 401(k) Retirement Plan to YRC Regional Transportation, Inc. 401(k) Retirement Plan to reflect the name change of USF Corporation to YRC Regional Transportation, Inc.

43. Effective January 1, 2006, the YRC Plan was amended as follows: (a) YRC Worldwide Inc. is the Plan sponsor; (b) the Benefits Committee of YRC is the Plan Administrator; and (c) change the name of the Plan to the YRC Regional Transportation, Inc. 401(k) Retirement Plan.

**B. New Penn Plan**

44. The New Penn Plan is an “employee pension benefit plan” as defined by §§ 3(3) and (3)(2)(A) of ERISA, 29 U.S.C. §§ 1002(3) and 1002(2)(A).

45. The New Penn Plan is legal entity that can sue or be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1).

46. In this action for breach of fiduciary duty, the New Penn Plan is neither a plaintiff nor a defendant. Rather, Plaintiff requests relief for the benefit of the New Penn Plan and for the benefit of its Participants.

47. The New Penn Plan is “defined contribution plan” or “individual account” plan within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34), in that the New Penn Plan provides for individual accounts for each participant and for benefits based solely upon the amount contributed to the Participants’ account, and any income, expenses, gains and losses, and any forfeitures of accounts of other Participants which may be allocated to such Participants’ accounts. Consequently, retirement benefits provided by the New Penn Plan are based solely on the amounts allocated to each individual’s account.

48. The New Penn Plan is a voluntary contribution plan whereby Participants make contributions to the New Penn Plan and direct the New Penn Plan to purchase investments with those contributions from options pre-selected by Defendants which are then allocated to Participants’ individual accounts.

49. The New Penn Plan Participants may invest their contributions and employer contributions in one or more of the investment options offered by the New Penn Plan. Investment income, representing interest and dividends, and changes in the fair value of investments, are credited to each participant on a daily basis based upon individual investment options selected.

50. Effective January 1, 2007, the New Penn Plan was amended as follows: (a) YRC is the Plan Sponsor; (b) the Benefits Committee of YRC is the Plan Administrator; and (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 Stock.

**C. Yellow Roadway Plan**

51. The Yellow Roadway Plan is an "employee pension benefit plan" as defined by §§ 3(3) and (3)(2)(A) of ERISA, 29 U.S.C. §§ 1002(3) and 1002(2)(A).

52. The Yellow Roadway Plan is legal entity that can sue or be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1).

53. In this action for breach of fiduciary duty, the Yellow Roadway Plan is neither a plaintiff nor a defendant. Rather, Plaintiff requests relief for the benefit of the Yellow Roadway Plan and for the benefit of its Participants.

54. The Yellow Roadway Plan is "defined contribution plan" or "individual account" plan within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34), in that the Yellow Roadway Plan provides for individual accounts for each participant and for benefits based solely upon the amount contributed to the Participants' account, and any income, expenses, gains and losses, and any forfeitures of accounts of other Participants which may be allocated to such Participants'

accounts. Consequently, retirement benefits provided by the Yellow Roadway Plan are based solely on the amounts allocated to each individual's account.

55. The Yellow Roadway Plan is a voluntary contribution plan whereby Participants make contributions to the Yellow Roadway Plan and direct the Yellow Roadway Plan to purchase investments with those contributions from options pre-selected by Defendants which are then allocated to Participants' individual accounts.

56. The Yellow Roadway Plan Participants may invest their contributions and employer contributions in one or more of the investment options offered by the Yellow Roadway Plan. Investment income, representing interest and dividends, and changes in the fair value of investments, are credited to each participant on a daily basis based upon individual investment options selected.

57. The Yellow Roadway Plan sponsor, YRC, has appointed the Benefits Committee as the Plan Administrator and Fidelity Management Trust Company as the Plan trustee. Fidelity Investments Institutional Operations Company, Inc., an affiliate of the Plan trustee, provides record-keeping services.

58. In general, employees of YRC, Meridian IQ, Inc., MIQ LLC, Roadway Express, Inc., Roadway LLC, Roadway Reverse Logistics, Inc., YRC Worldwide Technologies, Inc., Yellow Transportation, Inc., and YRC Worldwide Enterprise Services, Inc. are eligible to participate in the Yellow Roadway Plan. Generally, employees are not eligible to participate in the Yellow Roadway Plan if the employees are covered by collective bargaining agreements, working outside the United States on a permanent basis, non-resident aliens, leased employees, classified as independent contractors, or eligible to participate in a similar plan sponsored by an affiliate of the Company.

59. Full-time employees become eligible to participate in the Yellow Roadway Plan on the one-month anniversary of their employment with an employer and shall be eligible to become a participant on the first day of the calendar month after the completion of the one-month anniversary. Part-time employees generally become eligible to participate in the Yellow Roadway Plan on the first anniversary of their employment in which they have been credited with at least 1000 hours of service during the prior year.

60. Contributions to the Yellow Roadway Plan can be made by both the Employers and their employees. A participant may make pretax and after-tax contributions subject to Internal Revenue Service (“IRS”) and Yellow Roadway Plan limitations.

61. Effective January 1, 2004 (January 1, 2000 in the case of an employee of Roadway LLC or any of its subsidiaries), the Yellow Roadway 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 Yellow Roadway Plan or elect a higher or lower contribution rate, subject to the IRS and Yellow Roadway Plan limitations.

62. 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.

63. 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.***D. The Plans Merge**

64. On March 2, 2009, the Company filed a Form 10-K filed with the SEC. This Form 10-K stated in relevant part:

YRC Worldwide and its operating subsidiaries sponsored defined contribution plans, primarily for employees that collective bargaining agreements do not cover. The plans principally consist of contributory 401(k) savings plans and noncontributory plans. The YRC Worldwide contributory 401(k) savings plan (YRC Retirement Savings Plan) consisted of both a fixed matching percentage and a discretionary amount. The maximum nondiscretionary company match for the YRC Worldwide plan is equal to 25% of the first 6% in cash and 25% of the first 6% in YRC Worldwide common stock, for a total match of 50% of the first 6% of before-tax participant contributions. *Effective in October 2008, the entire employer match was satisfied with cash versus cash and common stock. Any discretionary contributions for the YRC Worldwide 401(k) savings plan are determined annually by the Board of Directors and may be in the form of cash, stock or other property.* YRC Regional Transportation sponsored a 401(k) plan for its operating companies where eligible employees can contribute up to 50% of their cash compensation and each of the operating companies may also contribute a discretionary amount. New Penn sponsored a 401(k) plan that, effective January 1, 2007, provided for a company match similar to that provided by the YRC Worldwide plan. Employer contributions for the year ended December 31, 2008, 2007 and 2006, were \$24.7 million, \$31.0 million and \$25.5 million, respectively.

Effective January 1, 2004, YRC Worldwide established a noncontributory profit sharing plan that included a nondiscretionary company contribution based on years of participation service and compensation, with a maximum fixed contribution of 5% of compensation for more than ten years of participation service. This profit sharing plan also provided for a discretionary performance based contribution of a maximum of 2 1/2% of compensation. The Board of Directors determined any discretionary contributions annually. Contributions have been made in cash. In May 2008, this plan was suspended. New Penn provided a noncontributory profit sharing plan for employees not covered by collective bargaining agreements. Any contributions were discretionary employer contributions. Employer contributions to our noncontributory profit sharing plans in 2008, 2007 and 2006, totaled \$5.4 million, \$3.8 million and \$2.9 million, respectively.

*Effective December 31, 2008, we merged all domestic 401(k) savings plans and profit sharing plans into the YRC Retirement Savings Plan that continues to consist of both a fixed matching percentage and a discretionary amount.* In light of the current economy, as of January 1, 2009, we have suspended all employer matching contributions. We intend to resume these contributions in the second half of 2009.

(Emphasis added).

**E. The Plans Fiduciaries**

65. *Named Fiduciaries.* ERISA requires every plan to provide for one or more named fiduciaries of the plan pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1002(21)(A). The person named as the “administrator” in the plan instrument is automatically a named fiduciary, and in the absence of such a designation, the sponsor is the administrator. ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

66. *De Facto Fiduciaries.* ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under ERISA § 402(a)(1), but also any other persons who in fact perform fiduciary functions. Thus, a person is a fiduciary to the extent “(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.” ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

67. Each of Defendants was a fiduciary with respect to the Plans and owed fiduciary duties to the Plans and Participants under ERISA in the manner and to the extent set forth in the governing the Plans documents, through their conduct, and under ERISA.

68. As fiduciaries, Defendants were required by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1) to manage and administer the Plans and the Plans' investments solely in the interest of the Plans' 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.

69. Plaintiff does not allege that each Defendant was a fiduciary with respect to all aspects of the Plans' management and administration. Rather, as set forth below, Defendants were fiduciaries to the extent of the specific fiduciary discretion and authority assigned to or exercised by each of them, and, as further set forth below, the claims against each Defendant are based on such specific discretion and authority.

#### **FACTUAL BASIS OF THE FIDUCIARY BREACHES**

70. On March 23, 2006, YRC filed a Form 8-K with the SEC. The Company's March 22, 2006 press release was appended to this Form 8-K. It stated that the Company expected first quarter 2006 earnings per share ("EPS") to be in the range of \$0.65 to \$0.70, drastically cutting its first-quarter earnings guidance, from its previously announced \$1.00 to \$1.05 per share for the quarter. Analysts surveyed by Thomson First Call were expecting earnings of \$1.05 a share.

71. The Company announced that: "Although our business levels remain ahead of last year, *overall volumes for the quarter are projected to come in below our expectations across all of our asset-based business units.*" It further stated: "In addition to general competitive pressure, some of our large retail customers have made significant inventory adjustments in the quarter, which have impacted our business levels." The Company stated that it was taking steps to control costs and that it would announce its revised 2006 earnings guidance in late April. The stock fell \$4.70, or 10.42%, in after-hours trading to \$40.57.

72. Thus, as of March 22, 2006, Defendants knew or should have known that the Company's management expected the weak performance to continue into the foreseeable future, and they negligently allowed the imprudent investment of the Plans' assets in YRC Stock to continue.

73. On April 25, 2006, YRC filed a Form 8-K with the SEC. The Company's April 24, 2006 press release was appended to this Form 8-K. This fiduciary communication reported net income and diluted EPS of \$42,136,000.00 and \$0.71, respectively, for the quarterly period ended March 31, 2006.

74. The April 24, 2006 press release quoted Defendant Zollars as stating:

Despite good revenue growth in all areas of our company, the quarter did not come in where we had planned. Given the first quarter, we have taken aggressive steps to improve our financial performance going forward. The economy still looks healthy, our brands remain strong and our synergy programs are on track.

75. The April 24, 2006 press release was materially inaccurate because it failed to disclose that growth in all areas of the Company did not come in where management had planned because of the under-performance of USF and the difficulties encountered in integrating USF, which was acquired on May 24, 2005 for \$1.3 billion. Defendants knew or should have known this, and they negligently allowed the imprudent investment of the Plans' assets in YRC Stock to continue.

76. On July 28, 2006, YRC filed a Form 8-K with the SEC. The Company's July 27, 2006 press release was appended to this Form 8-K. This fiduciary communication reported net income and diluted EPS of \$92,252,000.00 and \$1.58, respectively, for the quarterly period ended June 30, 2006.

77. The July 27, 2006 press release quoted Defendant Zollars as stating:

We feel good about the progress made during the quarter at all of our business units. We expected to quickly get back on track after

the first quarter results and we did. We anticipate a healthy economy and look forward to a solid second half of the year.

78. The July 27, 2006 press release was materially inaccurate because it failed to disclose that the Company's financial performance was suffering due to (i) the under-performance of USF and the difficulties encountered in integrating USF; and (ii) the fact that its business base had significantly diminished due to a recession that had been adversely impacting its customers.

79. On October 27, 2006, YRC filed a Form 8-K with the SEC. The Company's October 26, 2006 press release was appended to this Form 8-K. This fiduciary communication reported a continuation of the down-spiraling, reporting net income and diluted EPS of \$95,785,000.00 and \$1.64, respectively, for the quarterly period ended September 30, 2006.

80. The October 26, 2006 press release quoted Defendant Zollars as stating:

We have been pleased with the solid results our business units have delivered so far in 2006. With that said, ***the economy is growing at a much slower pace and we believe that will impact our earnings growth in the fourth quarter.***

(Emphasis added).

81. The October 26, 2006 press release was materially inaccurate because it failed to disclose that the Company's financial performance was suffering due to (i) the under-performance of USF and the difficulties encountered in integrating USF; and (ii) the fact that its business base had significantly diminished due to a recession that had been adversely impacting its customers.

82. On February 2, 2007, YRC filed a Form 8-K with the SEC. The Company's February 1, 2007 press release was appended to this Form 8-K. This fiduciary communication reported that the Company's quarterly net profit had fallen dramatically. It disclosed 2006 fourth-quarter net income of \$46,459,000.00 or \$0.80 cents a share, compared with \$76.85

million, or \$1.30 per share, a year earlier. Wall Street analysts had predicted quarterly EPS of \$1.00, according to *Reuters Estimates*. In addition, this fiduciary communication stated that the Company expected:

- (a) Full year 2007 EPS between \$4.70 and \$4.90.
- (b) Full year 2007 consolidated revenue of \$10.2 billion, interest expense around \$90 million and a consolidated income tax rate of 38.6%.

83. The February 1, 2007 press release quoted Defendant Zollars as stating:

We delivered solid results in 2006, but below our expectations. ***With that said, the economy is growing at a much slower pace and that impacted our fourth quarter and will impact us as we head into 2007.***

(Emphasis added).

84. The February 1, 2007 press release was materially inaccurate because it failed to disclose that the Company's financial performance was suffering due to (i) the under-performance of USF and the difficulties encountered in integrating USF; and (ii) the fact that its business base had significantly diminished due to a recession that had been adversely impacting its customers. Moreover, there was no reasonable basis for the guidance that was presented.

85. On April 30, 2007, YRC filed a Form 8-K with the SEC. The Company's April 26, 2007 press release was appended to this Form 8-K. This fiduciary communication reported net income and diluted EPS of \$1,279,000.00 and \$0.02, respectively, for the quarterly period ended March 31, 2007 as compared to net income and diluted EPS of \$42,136,000.00 and \$0.71, respectively, for the quarterly period ended March 31, 2006. In addition, this fiduciary communication stated that the Company expected:

- (a) Full year 2007 adjusted, diluted EPS between \$4.00 and \$4.20.
- (b) Full year 2007 consolidated revenue of \$10.2 billion, interest expense

around \$90 million and a consolidated income tax rate of 39.0%.

86. The April 26, 2007 press release quoted Defendant Zollars as stating:

Our results were impacted by a weaker economy and extremely difficult operating conditions during the first quarter . . . . The economy grew more slowly than anticipated in the first quarter, and the general consensus of economists appears to be pushing out an improving economy by one quarter which will continue to impact us as we move through 2007.

87. Based upon the foregoing, as of April 26, 2007, Defendants knew or should have known that the Company's management expected the weak performance to continue through 2007, in part due to under-performance of USF and the difficulties encountered in integrating USF and in part due to a waning economy, and they negligently allowed the imprudent investment of the Plans' assets in YRC Stock to continue. Moreover, there was no reasonable basis for the guidance that was presented.

88. On July 27, 2007, YRC filed a Form 8-K with the SEC. The Company's July 26, 2007 press release was appended to this Form 8-K. This fiduciary communication reported net income and diluted EPS of \$55,367,000.00 and \$0.95, respectively, for the quarterly period ended June 30, 2007 as compared to net income and diluted EPS of \$92,252,000.00 and \$1.58, respectively, for the quarterly period ended June 30, 2006.

89. The July 26, 2007 press release quoted Defendant Zollars as stating:

The transportation industry continues to experience soft volumes year over year, and most economists have pushed out economic strengthening until late in the year. ***The slower economic conditions will continue to impact the company as we move through 2007.***

The unpredictability of the economy directly impacts the company's ability to provide an accurate 2007 forecast. Therefore, for the balance of this year the company will not provide annual EPS guidance.

(Emphasis added).

90. Based upon the foregoing comments, it is apparent that as of July 26, 2007

Defendants knew or should have known that (i) the Company's management expected the weak performance to continue for the balance of this year (in part due to under-performance of USF and the difficulties encountered in integrating USF and in part due to a waning economy), and that (ii) the Company's future was so uncertain that the Company's management could not even provide guidance for the next several months, and they negligently allowed the imprudent investment of the Plans' assets in YRC Stock to continue.

91. On October 26, 2007, YRC filed a Form 8-K with the SEC. The Company's October 25, 2007 press release was appended to this Form 8-K. This fiduciary communication reported net income and diluted EPS of \$40,744,000.00 and \$0.70, respectively, for the quarterly period ended September 30, 2007 as compared to net income and diluted EPS of \$95,785,000.00 and \$1.64, respectively, for the quarterly period ended September 30, 2006.

92. The October 25, 2007 press release quoted Defendant Zollars as stating:

***The weak domestic shipping market continues to significantly impact the operating performance of all our companies. 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 . . . . The transportation industry continues to be impacted by lower volumes, and the economic outlook is uncertain. Our results will continue to be impacted by the soft economy.***

(Emphasis added).

93. Based upon these comments, there is no question that Defendants knew or should have known that the Company's management expected the weak performance to continue, and they negligently allowed the imprudent investment of the Plans' assets in YRC Stock to continue.

94. The October 25, 2007 press release was materially inaccurate because it failed to

disclose that the Company's financial performance was suffering due to (i) the under-performance of USF and the difficulties encountered in integrating USF; and (ii) the fact that its business base had significantly diminished due to a recession that had been adversely impacting its customers. Moreover, it was materially inaccurate because it failed to disclose that the Company had been aggressive pricing its services to acquire market share, and that the aggressive pricing was the "start the death spiral" and that some of YRC's larger customers had been moving to more consolidated models that in many cases allow them to use their internal fleets and reduce volumes with external carriers.

95. On October 29, 2007, *Standard & Poor's* ("S&P") put YRC's credit ratings on creditwatch with negative implications, citing the trucking firm's "worse-than-expected operating performance in recent months and concerns over its near-term outlook." S&P has had a triple 'B' minus rating on YRC's long-term corporate rating, which is S&P's lowest investment-grade rating.

96. On November 16, 2007, *MarketWatch* published an article entitled *YRC sees same weak trucking trends as FedEx*, which stated:

YRC announced that it was seeing the same continued rough conditions in the trucking market as FedEx Corp. Bill Zollars, YRC's chairman and chief executive, said in an interview with *Dow Jones Newswires* that the market continues to deteriorate amid weakness in the manufacturing, housing and retail sectors, and hasn't hit bottom yet. ***He said that he sees no signs that suggest when the market might improve.***

FedEx cut its earnings guidance for its fiscal second quarter and the full fiscal year, citing high fuel costs and weak less-than-truckload trends, triggering share declines in the trucking sector. Less-than-truckload carriers consolidate freight for more than one customer in a single truck.

"The announcement from FedEx was very consistent with our view," Zollars said. YRC announced a drop in third-quarter earnings on October 25, 2007 citing a weak domestic shipping market. ***Trends in the sector, which turned sour early this year, have remained negative since that earnings announcement,***

*Zollars said. “It’s gotten a little bit worse every month, and unfortunately that continues,”* he said.

*“What I will say is that we haven’t seen the bottom of this thing yet,”* he added.

Zollars noted that, to forecast where the market is heading, YRC looks for trends in both the size of shipments and the number of shipments, with shipment size usually the first to indicate when the market shifts direction. So far, the company hasn’t seen positive signs there. *He also noted that YRC stopped giving guidance around the middle of this year due to the difficulty in forecasting conditions in the market, and when things might improve. “We basically threw up our hands,”* Zollars said.

The FedEx news sent shares plunging throughout the trucking sector, including at YRC, where shares recently traded down 10.2% to \$18.05 and have reached the lowest level in about six years.

FedEx shares, meantime, were recently off 4.7% to \$96.61.

*According to Zollars, shipping trends are weak across the economy, but “anything related to auto and housing is in real recession right now”. He noted that, while YRC doesn’t move lumber, it ships many other products used in new housing construction, and has seen a big impact there. The trucking firm is also a big shipper of automotive supplies,* Zollars said.

He said weakness is spread across the U.S., although the West Coast is in better shape due to imports from Asia.

When YRC released third-quarter results, it also announced some changes aimed at streamlining the management structure and creating opportunities to enhance profitability. At the time, Zollars said the company was targeting \$100 million over the next six months through the combination of enhanced operating performance, the elimination of redundant activities and other cost reductions.

(Emphasis added).

97. It is clear from the foregoing that Defendant Zollars expected business to get worse (“What I will say is that we haven’t seen the bottom of this thing yet”) and that YRC’s management had no grasp on the Company’s earnings capability going forward (“We basically threw up our hands”). Despite these facts, Defendants negligently allowed the imprudent investment of the Plans’ assets in YRC Stock to continue.

On January 2, 2008, *Reuters* published an article which stated:

*YRC announced that it expects to take fourth-quarter pretax charges of up to \$800 million to reflect the declining value of acquisitions, sending its shares down 8 percent to their lowest level in more than nine years.*

*The noncash impairment charges between \$700 million and \$800 million would reflect current market conditions and mainly relate to the fair value of the former USF Corp, which YRC, North America's largest trucking company, acquired in 2005. The remainder of the charges would relate to Roadway, which YRC bought in 2003.*

After the announcement, investment bank R.W. Baird & Co cut its target price for YRC to \$18 from \$22, citing "ongoing concern over execution" but kept its "neutral" rating on the stock.

YRC is a less-than-truckload company, which consolidates small loads into a single truck.

*Like the rest of the U.S. trucking sector, YRC has been hit since the third quarter of 2006 by weak freight volumes and intense price competition due to the housing sector slowdown, lackluster retail sales, falling auto sales and faltering U.S. economic growth.*

*YRC officials in a conference call with analysts after announcing the charges said they had seen no improvement in the economy or the less-than-truckload market in the fourth quarter.*

*"It's not a good economic environment right now," Chief Executive Officer Bill Zollars told analysts.*

*But while YRC has suffered with the rest of the sector, analysts have highlighted the company's continuing struggle to integrate USF, which is a regional operator.*

*YRC officials on the conference call said that up to \$650 million in charges would relate to a decline in estimated fair value for USF, with up to \$150 million related to a reduction in the calculated fair values of USF and Roadway.*

*"Freight environment appears to be stable but at weak levels and with no signs of improvement," Baird analyst Jon Langenfeld wrote in a research note.*

The company said in a statement that the charges will not affect YRC's cash flow or its ability to obtain financing, and will not change YRC's outlook for these units.

*The company stopped providing an earnings outlook for investors last year, citing economic uncertainty.*

YRC said it is making progress in efforts to cut costs and improve its operations. Last month it reached a tentative agreement with the Teamsters union toward a new five-year labor contract. Company officials said YRC was on track to complete a plan to cut \$100 million in costs.

YRC shares were down \$1.36 at \$15.73 in midday trading on Nasdaq. YRC shares had reached a 52-week low of \$15.87 on Nov. 21, down more than 64 percent from a 52-week high of \$47.09 hit on Feb. 22. The company is trading at 7.3 times estimated earnings, compared with a sector average of 17.3 times.

(Emphasis added).

98. Based upon the foregoing, it is clear that Defendant Zollars expected business to get worse (“What I will say is that we haven’t seen the bottom of this thing yet”) and that YRC’s management had no grasp on the Company’s earnings capability going forward (“We basically threw up our hands”). Thus, as of January 2, 2008, Defendants knew or should have known that the Company’s management expected the weak performance to continue into the foreseeable future, and they negligently allowed the imprudent investment of the Plans’ assets in YRC Stock to continue.

99. On January 28, 2008, YRC filed a Form 8-K with the SEC. The Company’s January 28, 2008 press release was appended to this Form 8-K. This fiduciary communication reported net loss and diluted loss per share of (\$735,771,000.00) and (\$12.99), respectively, for the quarterly period ended December 31, 2007 as compared to net income and diluted earnings per share of \$46,459,000.00 or \$0.80 cents a share for the quarterly period ended December 31, 2006.

100. The January 28, 2008 press release quoted Defendant Zollars as stating:

The economic environment was challenging throughout 2007 and it was increasingly so in the fourth quarter. 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.

101. The January 28, 2008 press release was materially inaccurate because it failed to disclose that the Company had been aggressively pricing its services to acquire market share, and that the aggressive pricing was the “start the death spiral” and that some of YRC’s larger customers had been moving to more consolidated models that in many cases allow them to use their internal fleets and reduce volumes with external carriers.

102. During a January 28, 2008 conference call, Defendant Zollars stated:

You might think of our strategy over the last few years in three stages. The first was an acquisition strategy where we tried to build the scale of the company and build the capabilities of the company so that we could do more things for our pretty sizable customer base. The second phase was really the synergy phase where we started to pick up opportunities that were either duplications in processes or uses of best practice in one company that we could transfer to the others. And then the third phase of the strategy, integration, which is the phase we are currently in. And just as kind of a reminder, integration is a process, a continuum, and not simply an on and off switch. So we are going to talk to you today about where we are in that process or that continuum of integration as we bring together different pieces of our companies in a more effective way, but realize that that process is likely to go on for several years. And we’ll get into as much detail there as we can as well. So let me just kind of quickly review the results for the quarter and the year.

As you all know, I think operating conditions this year have been particularly tough and as really contrast to the last downturn in the economy, this one kind of gradually took place over all of 2007 and in fact began at the end of 2006. And rather than the kind of steep drop-off we had in the 2001/2002 timeframe, this time it was more month after month of consistent erosion. We also had very poor performance from our regional companies and that was really exacerbated by the performance of the regionals over the last two quarters of the year. We’re going to talk to you, as I said, a little bit later about our plans for recovery there.

\* \* \*

. . . one of the other things that we’ve done from a strategic standpoint was to take a look at the technology platforms that we had. These were separate between Yellow and Roadway and really kind of precluded us from moving any further down this integration path until we really addressed that. So we made a decision in the fourth quarter to go ahead and move Yellow and Roadway under the same operating platform from a technology standpoint. That was what triggered the \$10 million write-off, which made some of the systems obsolete that we had been

developing, or had used. So we are going to be moving to a common technology platform here which will allow us really enhanced visibility and the ability to manage across all of our networks much more effectively than we have in the past. We'll also obviously have lower maintenance costs but the real opportunity here is to begin to manage all of these assets more comprehensively and obviously then that gives us more strategic flexibility as we go forward. So that will be an ongoing process as we go through 2008, building that common platform so that we can really increase our opportunities here for better asset utilization and visibility as we move forward.

103. In addition, during the conference call, an analyst asked Defendant Zollars what happened with Holland and Reddaway and he responded as follows:

The problem with both Holland and Reddaway is that we expanded beyond the business density, and those of you that follow transportation as your day job, know that density is the god of all transportation, regardless of what mode you are talking about. So once you start to develop a plan that drives your coverage beyond your density level, you start to get in trouble. We did that at both companies. And then we started to try and fill up with density in those areas as we expanded, ***and that got us into a bit of an aggressive pricing posture and then we start the death spiral.*** So it's all about making sure that you serve the customers effectively with the proper amount of density. It's kind of a back-to-basics strategy.

104. Defendants knew or should have known the foregoing facts and negligently allowed the imprudent investment of the Plans' assets in YRC Stock to continue.

105. On April 25, 2008, YRC filed a Form 8-K with the SEC. The Company's April 24, 2008 press release was appended to this Form 8-K. This fiduciary communication reported net loss and diluted loss per share of (\$45,875,000.00) and (\$0.81)), respectively, for the quarterly period ended March 31, 2008 as compared to net income and diluted EPS of \$46,459,000.00 or \$0.80 cents a share as compared to net income and diluted EPS of \$1,279,000.00 and \$0.02, respectively, for the quarterly period ended March 31, 2007.

106. The April 24, 2008 press release quoted Defendant Zollars as stating:

The soft economy, severe winter weather and record fuel prices created a very difficult operating environment in the first quarter. With that said, we have taken a number of actions that address the

areas within our control and we are seeing benefits from those efforts. Despite the macroeconomic challenges that we are facing, we believe that we have turned the corner and expect meaningful earnings improvement starting with the current quarter. ***Although the practice of providing earnings guidance was suspended in 2007, due in great part to uncertainty in the economy, which remains difficult to predict, the company determined that investors should be provided with additional near-term clarity regarding the anticipated performance of YRCW.*** Based upon the internal actions the company has already implemented, including securing a more competitive labor contract, renewing its credit agreement, and making footprint changes at YRC Regional Transportation, YRCW expects to earn between \$.30 and \$.40 per share in the second quarter, which ends June 30, 2008.

Given our solid action plans and the momentum that is underway, we are excited about the future of YRC and what we can do for our customers, employees and investors.

(Emphasis added).

107. The April 24, 2008 press release was materially inaccurate because it failed to disclose that YRC's larger customers had been moving to more consolidated models that in many cases allowed them to use their internal fleets and reduce volumes with external carriers.

108. During an April 25, 2008 conference call, Defendant Zollars stated:

. . . the changes that we made to the geographic footprints of Holland and Reddaway have been effective. The larger change was made at Reddaway, obviously, and as a result service is back to their typical high standards and their margins have improved significantly. We expect Reddaway to make money in the second quarter since they are now back to their natural market. The footprint changes at Holland only involve six smaller locations in the South, so the network change impact was less. However, other actions have been taken to improve the efficiency of the Holland network. Substantial headway has been made at Holland, and we expect them to turn profitable some time during this quarter. This is significant given the fact that they represented the majority of the first quarter loss at the regional segment. It's also important to reinforce the fact that we have completed the footprint changes at the regional companies. Over the course of time we'll fine-tune these networks, but we now have the most profitable footprints in place for our regional companies . . . . ***The changes that we made at Reddaway had an almost immediate impact. There's a little bit of trailing cost associated with closures, but we did see a very quick turnaround there in terms of moving back toward profitability pretty quickly. And that's understandable given the size of the closures that we did at Reddaway. So we do get weekly information on profitability from the regional companies so we***

*can track that on almost a real-time basis and at Reddaway, it snapped back pretty quickly.* At Holland, as we mentioned, there weren't as many terminal closures, so the impact from the terminal closures was not nearly as significant. But we've been doing a lot of other things at Holland on both the network side as well as the customer side that have given us good traction there. And we've got several weeks of improvement that's very significant going on in Holland. So we've got pretty good momentum in both companies, and that's really what led us to the comments that we made.

(Emphasis added).

109. The foregoing representations were materially inaccurate because the Company's Holland and Reddaway operations were not moving back toward profitability pretty quickly.

110. On July 25, 2008, YRC filed a Form 8-K with the SEC. The Company's July 24 2008 press release was appended to this Form 8-K. This fiduciary communication reported net income and diluted EPS of \$36,274,000.00 and \$0.62, respectively, for the quarterly period ended June 30, 2008 as compared to net income and diluted EPS of \$55,367,000.00 and \$0.95, respectively, for the quarterly period ended June 30, 2007.

111. The April 24, 2008 press release quoted Defendant Zollars as stating:

In spite of a challenging economy, our positive momentum continued in the quarter and we significantly improved our sequential results, delivering earnings consistent with previously issued guidance for the quarter. Our actions to improve operational efficiency, get our regional companies back on track and reduce overhead costs have been effective. We are carrying that momentum forward as we implement further operational improvements in the third quarter.

112. The July 25, 2008 press release was materially inaccurate because it failed to disclose that (i) some of YRC's larger customers had been moving to more consolidated models that in many cases allowed them to use their internal fleets and reduce volumes with external carriers; that (ii) the customer anxiety surrounding the integration of Yellow and Roadway caused a significant loss of business and the fact that; (iii) competitive pricing was eroding the Company's bottom line; and that (iv) the Company's management expected a material loss

during the second half of 2008.

113. On July 25, 2008, YRC held a conference call during which Defendant Zollars stated that a key objective during the second quarter involved the national companies.

According to Defendant Zollars:

The goal was to complete all the planning necessary for successful execution of the changes of operations at Yellow and Roadway. That preparation work was completed on a timely basis, which enabled the changes of operations to take place as scheduled in early July. These changes are the first of three phases planned for this year, the second coming later this summer and the third is scheduled for this fall. The resulting new velocity networks improved speed, reliability, and efficiency all at the same time. As mentioned previously, we wheeled at accelerated service and about 40,000 lanes while reducing over 20 million circuitous miles. That is worth about \$40 million.

Also at the national companies, the work continues as we work toward Yellow and Roadway being on the same operating technology. While this effort is obviously large and likely will last through 2009, it is not inventing new technology. Rather, it is utilizing existing technologies in a more effective manner. This is an important project, as we see significant opportunities for being able to view the freight flows of these two large networks through one lens. Another objective for the quarter was to make meaningful progress toward the consolidation of our corporate sales forces. This compliance sales team will bring all the capability of YRC to our largest customers through one point of contact. You may recall that we started this process 18 months ago by establishing enterprise solutions to address our most complex and largest customers. We are on schedule with this initiative in the corporate town area and should have the transition completed during August. So far, customer response to these changes has been overwhelmingly positive.

114. Defendant Zollars' comments were materially inaccurate because customer response to the changes had been overwhelmingly positive. As later admitted customer anxiety surrounding the integration of Yellow and Roadway caused a significant loss of business.

Moreover, the Company was not utilizing existing technologies in a more effective manner.

115. During an October 24, 2008 conference call, Defendant Zollars stated:

Regarding the third quarter, it did not turn out the way we expected when we talked in early September. I'll give you a little color on why but then I'd like to spend our time talking about the National

integration and how it will change our results going forward. ***Throughout the third quarter the economic environment progressively weakened resulting in lower than expected volumes and more competitive pricing. But we were not expecting a seasonal peak in September, we would have expected at least a normal end of the quarter spike which didn't happen in any of our operating companies . . . . You might recall that we expected the year-over-year gap in volumes to narrow as the quarter progressed but given the continued decline in the economy and mode shifts in some of our customer logistics models, that did not happen. Regarding the mode shifts, over the last year some of our larger customers have been moving to a more consolidated models that in many cases allow them to use their internal fleets and reduce volumes with external carriers.*** We expect these trends to slow down as we move through 2009 since there is a base level of LTL volumes that is essential to our customer supply chains. Even though our year-over-year volume trends are fairly consistent with previous quarters ***the sequential change in operating income was more significant given that our base volume levels are now lower and pricing.***

(Emphasis added).

116. The comments made during the October 24, 2008 conference call were materially inaccurate due to non-disclosure of the fact that (i) customer anxiety surrounding the integration of Yellow and Roadway caused a significant loss of business and the fact that (ii) the Company's management expected a material fourth quarter loss and an impairment charges of approximately \$200 million.

117. Defendants knew or should have known the foregoing facts and negligently allowed the imprudent investment of the Plans' assets in YRC Stock to continue.

118. On November 10, 2008, YRC filed a Form 10-Q with the SEC for the quarterly period ended September 30, 2008. This fiduciary communication reported a net income loss and a diluted loss per share of (\$720,382,000) and (\$12.57), respectively as compared to net income and diluted EPS of \$40,744,000.00 and \$0.70, respectively, for the quarterly period ended September 30, 2007 respectively.

119. On January 30, 2009, YRC filed a Form 8-K with the SEC. The Company's

January 29, 2009 press release was appended to this Form 8-K. This fiduciary communication reported a net loss for the 2008 fourth quarter of (\$244,409,000.00) and a diluted loss per share of \$4.14).

120. The press release stated that the fourth quarter included an impairment charge 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.

121. The January 30, 2009 press release quoted Defendant Zollars as admitting: *“Although we were not pleased with this level of performance, it was consistent with our internal expectations and those of our banking group.”* (Emphasis added).

122. Thus, as of January 30, 2009, Defendants knew or should have known that the Company’s management expected the weak performance to continue into the foreseeable future, and they negligently allowed the imprudent investment of the Plans’ assets in YRC Stock to continue.

123. On April 24, 2009, YRC filed a Form 8-K with the SEC. The Company’s April 23, 2009 press release was appended to this Form 8-K. This fiduciary communication reported net loss and diluted loss per share of (\$257,404,000.00) and (\$4.34), respectively, for the quarterly period ended March 31, 2009 as compared to net income and diluted EPS of (\$45,875,000.00) and (\$0.81), respectively, for the quarterly period ended March 31, 2008.

124. The April 23, 2009 press release quoted Defendant Zollars as stating:

We made significant investments in our company during the first quarter to enhance our position in the market and improve our future operating performance. 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 . . . . Our volumes were impacted by multiple factors, most notably the economy and business diversion due to customer anxiety surrounding the integration of Yellow and Roadway. Some customers have already returned business, which was temporarily diverted, but it is difficult to predict at what levels or how quickly the rest will come back . . . . We have integrated our national networks, fundamentally reduced our infrastructure, and lowered our breakeven point, while enhancing service. We remain on track to remove a run-rate of over \$600 million of costs that should position us well when the economy improves. Our limited visibility to the economy makes it challenging to provide specific earnings guidance, though we will give you updates as the line of sight becomes more clear.

125. The April 23, 2009 press release was materially inaccurate because it failed to disclose that the integration of Yellow and Roadway caused had caused material billing errors.

126. On July 31, 2009, YRC filed a Form 8-K with the SEC. The Company's July 30, 2009 press release was appended to this Form 8-K. This fiduciary communication reported net loss and diluted loss per share of (\$309,037,000.00) and (\$5.20), respectively, for the quarterly period ended June 30, 2009.

127. The July 30, 2009 press release quoted Defendant Zollars as stating:

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. 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. 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.

\* \* \*

We have seen signs of encouragement in the economy including stabilization in our absolute volumes, though we think it is too early to confirm that this is the bottom of the recession. We remain optimistic that economic improvement could happen earlier than expected but we do not have it reflected in our financial plans until we progress through 2010.

128. During a July 30, 2009 conference call, Defendant Zollars stated:

*As we move into the third quarter, the global recession that's plagued our industry for the last few years appears to have stabilized, but **we don't get much growth from the economy and don't expect much growth from the economy for the remainder of 2009 or for that matter in 2010 . . . . We also believe our volumes are being impacted by tactics from our competitors that are clearly targeted at buying market share at any price and attempting to make our financial position seem worse than it is.***

(Emphasis added).

129. Thus, as of July 30, 2009, Defendants knew or should have known that the Company's management expected the weak performance to continue into the foreseeable future, and they negligently allowed the imprudent investment of the Plans' assets in YRC Stock to continue.

130. In addition, during this July 30, 2009 conference call, Defendant Wicks stated:

We also recognize some rewrites in the second quarter that primarily related to first quarter revenue. With the switch to one billing system in March as part of the integration, it took several months for the correction of certain invoices to be identified and processed.

Approximately \$12 million of these revenue adjustments were recorded at national in the second quarter, and those primarily related to first quarter shipment. We have seen the billing adjustments come down and stabilize during the second quarter and we don't believe that this will be an issue going forward.

131. In response to this disclosure, the following dialogue took place:

Jason Seidl - Dahlman Rose & Company

I apologize because you guys are throwing a lot at us right now. You talked about some of the re-rates in the quarter costing you \$12 million. Can you just go over that again real quickly for me?

Timothy Wicks

I'd be glad to. Essentially if you think about the integration that we did and we moved from two information systems really to one information system, and the customer invoice information changing from one of those systems to the other, we had some pricing information that turned out not to be correct and when we put out those invoices, we had to spend a significant amount of time while working with those customers to adjust invoices, re-rate those invoices, get them priced correctly in order to collect the revenue. So think about freight we would have handled during March as we were doing the integration and the fact that we would have invoiced for that freight sometime during March but we would have been collecting it during April and May and then understanding how much we needed to adjust those invoices and working through that in June we had much better visibility to what that number was by the time we got into the May/June time frame and so we've taken that as an adjustment to the revenue based on the collection of those invoices as well as our understanding that we had inaccurate pricing information in the customer files that transitioned in those cases.

132. On October 30, 2009, YRC filed a Form 8-K with the SEC. The Company's October 30, 2009 press release was appended to this Form 8-K. This fiduciary communication reported net loss and diluted loss per share of (\$158,736,000.00) and (\$2.67), respectively, for the quarterly period ended September 30, 2009 as compared to net income and diluted EPS of \$36,608,000.00 and \$0.63, respectively, for the quarterly period ended September 30, 2008.

133. The October 30, 2009 press release quoted Defendant Zollars as stating:

We gained significant momentum in the third quarter as we executed on our comprehensive plan to improve operating efficiencies, restore financial strength and position our company for future success. We achieved significant sequential improvement from the first half of the year. In fact, YRC Regional Transportation and YRC Logistics were profitable for the quarter, and our operating cash flow trends improved sequentially during the quarter despite the continued economic downturn.

134. On November 2, 2009, the *TheStreet* published an article which stated that YRC's "shares fell sharply on a massive spike in volume Monday after the trucking giant revealed details of its debt exchange offer, which would mean massive dilution if successful." According to the article:

YRC Worldwide said its exchange offer, with full participation, would see noteholders exchange approximately \$536.8 million in notes plus accrued and unpaid interest for shares of common stock and new Class A convertible preferred stock. Together on an as-if converted basis, it would represent 95% of YRC Worldwide's common stock. The offer also contains a provision to give stock options to the YRC Worldwide's union employees. The debt exchange is expected to help YRC Worldwide gain cash and remain afloat. In recent months, the company has struggled while trying to stave off bankruptcy, resorting to massive job cuts and selling real estate. Several analysts weighed in on the debt offering Monday after the company's announcement. ***RBC Capital Markets said in a research note that the firm believes that YRC's stock has no value and therefore their price target is zero. Meanwhile, JPMorgan analysts said that based on the current base of about 60 million shares, 95% ownership would imply that YRC Worldwide would issue 1.2 billion shares to noteholders. If the post-exchange share count totals 1.2 billion to 1.3 billion, the implied value of YRC Worldwide shares would only be around 80 cents a share.***

Last month, YRC Worldwide said its lenders had agreed to extend certain provisions under certain credit facilities until Oct. 30. "By extending the revolver reserve, we retain the flexibility needed to reach an agreement with the lenders that will fully support our comprehensive plan," Bill Zollars, YRC Worldwide's chairman and CEO, said in a statement on Oct. 12.

(Emphasis added).

### **THE LAW UNDER ERISA**

135. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), provides, in pertinent part, that a civil action may be brought by a participant for relief under ERISA § 409, 29 U.S.C. § 1109.

136. ERISA § 409(a), 29 U.S.C. § 1109(a), "Liability for Breach of Fiduciary Duty," provides, in pertinent part, that any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

137. ERISA § 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B), provides, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the Participants and beneficiaries, for the exclusive purpose of providing benefits to 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.

138. These fiduciary duties under ERISA § 404(a)(1)(A) and (B) are referred to as the duties of loyalty, exclusive purpose and prudence, and are the “highest known to the law.” They entail, among other things:

(a) the duty to conduct an independent and thorough investigation into, and continually to monitor, the merits of all the investment alternatives of a plan, including in this instance the Plans, which invested in YRC Stock, to ensure that each investment is a suitable option for the Plans;

(b) the 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 Plans’ sponsor; and

(c) a duty to disclose and inform, which encompasses: (i) a negative duty not to misinform; (ii) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (iii) a duty to convey complete and accurate information material to the circumstances of Participants and beneficiaries.

139. ERISA § 405(a), 29 U.S.C. § 1105(a), “Liability for breach by co-fiduciary,” provides, in pertinent part, that “. . . [i]n 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 fails to disclose, an act or omission of such other fiduciary, knowing such act or omission is a breach; (2) if, by his failure to comply with section 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 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.”

140. Plaintiff therefore brings this action under the authority of ERISA § 502(a)(2) for plan-wide relief under ERISA § 409(a) to recover losses sustained by the Plans arising out of the breaches of fiduciary duties by Defendants for violations under ERISA § 404(a)(1) and ERISA § 405(a).

#### **DEFENDANTS’ FIDUCIARY STATUS**

141. ERISA requires every plan to provide for one or more named fiduciaries who will have “authority to control and manage the operation and administration of the plan.” § 402(a)(1), 29 U.S.C. § 1102(a)(1).

142. During the Class Period, all of the Defendants acted as fiduciaries of the Plans pursuant to § 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A) and the law interpreting that section. As outlined herein, Defendants all had discretionary authority and control with respect to the management of the Plans and/or the management or disposition of the Plans’ investments and assets, and/or had discretionary authority or responsibility for the administration of the Plans.

143. During the Class Period, Defendants’ direct and indirect communications with the Plans’ Participants included statements regarding investments in Company Stock. Upon

information and belief, these communications included, but were not limited to, SEC filings, annual reports, press releases, Company presentations made available to the Plans' Participants via the Company's website and the plan-related documents which incorporated and/or reiterated these statements. Defendants also acted as fiduciaries to the extent of this activity.

144. In addition, under ERISA, in various circumstances, non-fiduciaries who knowingly participate in fiduciary breaches may themselves be liable. To the extent any of the Defendants are held not to be fiduciaries, they remain liable as non-fiduciaries who knowingly participated in the breaches of fiduciary duty described below.

#### **CAUSATION**

145. Upon information and belief, the Plans suffered millions of dollars in losses in Plans benefits because substantial assets of the Plans were imprudently invested or allowed to be invested by Defendants in YRC Stock during the Class Period, in breach of Defendants' fiduciary duties. These losses to the Plans were reflected in the diminished account balances of the Plans' Participants.

146. Defendants are responsible for losses in the Plans benefits caused by the Participants' direction of investment in YRC Stock, because Defendants failed to take the necessary and required steps to ensure effective and informed independent participant control over the investment decision-making process, as required by ERISA § 404(c), 29 U.S.C. § 1104(c), and the regulations promulgated thereunder. Defendants provided inaccurate and incomplete information to the Plans Participants regarding the true health and ongoing profitability of the Company, thereby misrepresenting the Company's soundness as an investment vehicle. As a consequence, Participants could not exercise independent control over

their investments in YRC Stock, and Defendants remain liable under ERISA for losses caused by such investment.

147. Had Defendants properly discharged their fiduciary and/or co-fiduciary duties, including the provision of full and accurate disclosure of material facts concerning investment in YRC Stock, eliminating such Company Stock as an investment alternative when it became imprudent, and divesting the Plans from their holdings of YRC Stock when maintaining such an investment became imprudent, the Plans would have avoided a substantial portion of the losses that it suffered.

148. Also, reliance is presumed in an ERISA breach of fiduciary duty case. Nevertheless, to the extent that reliance is an element of the claim, Plaintiff relied to his detriment on the misstatements and omissions that Defendants made to the Plans Participants.

#### **REMEDY FOR BREACHES OF FIDUCIARY DUTY**

149. 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 YRC Stock during the Class Period. As a consequence of Defendants' breaches, the Plans suffered significant losses.

150. 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 . . . ."

151. With respect to calculation of the losses to a plan, breaches of fiduciary duty result in a presumption that, but for the breaches of fiduciary duty, the Participants and

beneficiaries in the Plans would not have made or maintained their investments in the challenged investment and, where alternative investments were available, that the investments made or maintained in the challenged investment would have instead been made in the most profitable alternative investment available. In this way, the remedy restores the values of the Plans' assets to what they would have been if the Plans had been, properly administered.

152. Plaintiff and the Class 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 losses 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) and 502(a)(2-3), 29 U.S.C. §§ 1109(a) and 1132(a)(2-3); (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; (e) interest on these amounts, as provided by law; and (f) such other legal or equitable relief as may be just and proper.

153. Under ERISA, each defendant is jointly and severally liable for the losses suffered by the Plans in this case.

### **CAUSES OF ACTION**

#### **FIRST CLAIM: INVESTMENT IN YRC STOCK (AGAINST ALL DEFENDANTS)**

154. Plaintiff re-alleges and incorporates herein by reference the allegations set forth above.

155. Pursuant to ERISA § 409(a), 29 U.S.C. § 110(a), any fiduciary who breaches any of the responsibilities, obligations or duties imposed by ERISA § 404 shall be personally liable

to make good to a plan any losses to that plan resulting from each breach and shall be subject to such other equitable and remedial relief as the court may deem appropriate.

156. Pursuant to ERISA § 404, Defendants had a duty to discharge their duties with respect to the Plans solely in the interests of the Participants and for the exclusive purpose of providing benefits to the Participants. Defendants' selection, monitoring, and continuation of the investment alternatives under the Plans were subject to the above-described fiduciary duties. By their continuing to offer YRC Stock as an investment under the Plans, when YRC's true adverse financial and operating condition was being concealed, Defendants breached each of these fiduciary duties.

157. As a consequence of Defendants' breaches, the Plans suffered losses.

158. Defendants are individually liable to make good to the Plans any losses to the Plans resulting from each breach.

159. Pursuant to ERISA § 502(a)(3), 11 U.S.C. § 1132(a)(3), the Court should also award appropriate equitable relief, including in the form of restitution.

**SECOND CLAIM: MISREPRESENTATION AND NONDISCLOSURE  
(AGAINST ALL DEFENDANTS)**

160. Plaintiff re-alleges and incorporates herein by reference the allegations set forth above.

161. Pursuant to ERISA § 409(a), 29 U.S.C. § 110(a), any fiduciary who breaches any of the responsibilities, obligations or duties imposed by ERISA § 404 shall be personally liable to make good to a plan any losses to that plan resulting from each breach and shall be subject to such other equitable and remedial relief as the court may deem appropriate.

162. Pursuant to ERISA § 404, Defendants had a duty to discharge their duties with respect to the Plans solely in the interests of the Participants and for the exclusive purpose of providing benefits to the Participants.

163. Defendants breached these fiduciaries in that they made material misrepresentations and nondisclosures as alleged above.

164. The Plans Participants relied upon, and are presumed to have relied upon, Defendants' material misrepresentations and nondisclosures to their detriment.

165. As a consequence of Defendants' material misrepresentations and misleading omissions, the Plans suffered losses.

166. Defendants are individually liable to make good to the Plans any losses to the Plans resulting from each breach.

167. Pursuant to ERISA § 502(a)(3), 11 U.S.C. § 1132(a)(3), the Court should also award appropriate equitable relief, including in the form of restitution.

**THIRD CLAIM: DIVIDED LOYALTY  
(AGAINST ALL DEFENDANTS)**

168. Plaintiff re-alleges and incorporates herein by reference the allegations set forth above.

169. Pursuant to ERISA § 409(a), 29 U.S.C. § 110(a), any fiduciary who breaches any of the responsibilities, obligations or duties imposed by ERISA § 404 shall be personally liable to make good to a plan any losses to that plan resulting from each breach and shall be subject to such other equitable and remedial relief as the court may deem appropriate.

170. Pursuant to ERISA § 404, Defendants had a duty to discharge their duties with respect to the Plans solely in the interests of the Participants and for the exclusive purpose of providing benefits to the Participants.

171. Defendants breached their fiduciary obligations when they acted in their own interests rather than solely in the interests of the Participants and Beneficiaries.

172. As a consequence of these breaches, the Plans suffered losses.

173. Defendants are individually liable to make good to the Plans any losses to the Plans resulting from each breach.

174. Pursuant to ERISA § 502(a)(3), 11 U.S.C. § 1132(a)(3), the Court should also award appropriate equitable relief, including in the form of restitution.

**FOURTH CLAIM: MISMANAGEMENT OF THE PLANS ASSETS  
(AGAINST ALL DEFENDANTS)**

175. Plaintiff re-alleges and incorporates herein by reference the allegations set forth above.

176. Pursuant to ERISA § 409(a), 29 U.S.C. § 110(a), any fiduciary who breaches any of the responsibilities, obligations or duties imposed by ERISA § 404 shall be personally liable to make good to a plan any losses to that plan resulting from each breach and shall be subject to such other equitable and remedial relief as the court may deem appropriate.

177. Pursuant to ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), Defendants were required to discharge their duties with respect to the Plans solely in the interests of the Participants with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and of like aims, and to diversify investments in the Plans so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

178. Defendants breached these duties in that the Plans invested in YRC Stock when the price of YRC Stock was artificially inflated and when YRC Stock was not a prudent

retirement investment, thereby failing to diversify assets so as to minimize the risk of large losses.

179. As a consequence of these breaches, the Plans suffered losses.

180. Defendants are individually liable to make good to the Plans any losses to the Plans resulting from each breach.

181. Pursuant to ERISA § 502(a)(3), 11 U.S.C. § 1132(a)(3), the Court should also award appropriate equitable relief, including in the form of restitution.

**FIFTH CLAIM: BREACH OF THE DUTY TO PROPERLY APPOINT, MONITOR  
AND INFORM THE COMMITTEE AND MEMBERS OF THE COMMITTEE  
(AGAINST THE MONITORING DEFENDANTS ONLY)**

182. Plaintiff re-alleges and incorporates herein by reference the allegations set forth above.

183. Upon information and belief, Director Defendants (the “Monitoring Defendants”) had the duty and responsibility to properly appoint, monitor and inform the members of the Committee and/or other persons who exercised day-to-day responsibility for the management and administration of the Plans and their assets.

184. The Monitoring Defendants failed to properly appoint, monitor and inform such persons in that the Monitoring Defendants failed to adequately inform such persons about the true financial and operating condition of the Company or, alternatively, the Monitoring Defendants did adequately inform such persons of the true financial and operating condition of the Company (including the financial and operating problems being experienced by YRC during the Class Period identified herein) but nonetheless continued to allow such persons to offer YRC Stock as an investment option under the Plans even though the market price of YRC Stock was artificially inflated and even though YRC Stock was not a prudent investment for Participants’ retirement accounts under the Plans.

185. As a consequence of these breaches, the Plans suffered losses.

186. The Monitoring Defendants are individually liable to make good to the Plans any losses to the Plans resulting from each breach.

187. Pursuant to ERISA § 502(a)(3), 11 U.S.C. § 1132(a)(3), the Court should also award appropriate equitable relief, including in the form of restitution.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment and relief as follows:

A. Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff's counsel as Class Counsel;

B. Declaring that Defendants, and each of them, have breached their ERISA fiduciary duties to the participants;

C. Declaring that Defendants, and each of them, are not entitled to the protection of ERISA § 404(c)(1)(B), 29 U.S.C. § 1104(c)(1)(B);

D. Ordering Defendants to make good to the Plans all losses to the Plans resulting from Defendants' breaches of their fiduciary duties, including losses to the Plans resulting from imprudent investment of the Plans' assets, and to restore to the Plans all profits 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;

E. Imposing a Constructive Trust on any amounts by which any Defendants was unjustly enriched at the expense of the Plans as the result of breaches of fiduciary duty;

F. Ordering Defendants to appoint one or more independent fiduciaries to participate in the management of the Plans' investment in YRC Stock;



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*Attorneys for Plaintiff*

**DEMAND FOR JURY TRIAL**

In accordance with Rule 38 of the Federal Rules of Civil Procedure, Plaintiff respectfully demands a jury trial of all issues triable to a jury in this action.

**DESIGNATION OF PLACE OF TRIAL**

Pursuant to Local Rule 40.2, Plaintiff hereby requests that the trial of this matter be held in Kansas City, Kansas.

**DYSART TAYLOR LAY COTTER &  
McMONIGLE P.C.**

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