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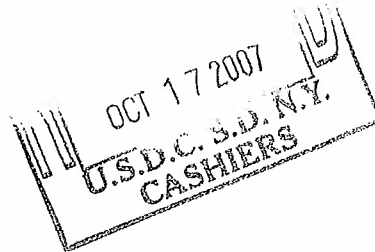
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07 CIV 9319



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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:  
UNISYSTEMS, INC. EMPLOYEES PROFIT  
:  
SHARING PLAN on behalf of itself  
:  
and all others similarly situated,  
:  
:  
Plaintiff,  
:  
:  
v.  
:  
STATE STREET BANK AND  
:  
TRUST COMPANY,  
:  
STATE STREET GLOBAL  
:  
ADVISORS, INC. and JOHN DOES 1-20,  
:  
Defendants.  
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CLASS ACTION COMPLAINT

Plaintiff Unisystems, Inc. Employees Profit Sharing Plan, on behalf of itself and all others similarly situated, by and through its undersigned attorneys Bernstein Litowitz Berger & Grossmann LLP and Keller Rohrback L.L.P., alleges the following based upon knowledge with respect to its own acts, and on information and belief, based upon facts obtained through investigation by its counsel.

**I. PRELIMINARY STATEMENT**

1. This complaint arises from Defendants State Street Bank and Trust Company's ("State Street Bank") and State Street Global Advisors, Inc.'s ("SSGA") (collectively "State Street") reckless disregard of the best interests of investors in conservative bond funds managed by State Street in violation of the Employee Retirement Income Security Act of 1974 ("ERISA"). State Street breached its fiduciary duties under ERISA to thousands of ERISA plans and plan participants and beneficiaries by causing State Street's purportedly conservative bond funds that are held in collective trusts by State Street and offered to retirement plans throughout the country ("Bond Funds") to invest in high-risk and highly leveraged financial instruments tied to, among other things, mortgage backed securities. State Street represented those bond funds, described in detail below, to be conservative investments designed to closely track, and slightly out-perform, designated bond market indices. In reality, State Street converted the purportedly-stable conservative investments into a high-stakes gamble in breach of State Street's fiduciary duties under ERISA

2. Contrary to their representations about the Bond Funds' low-risk profile, State Street invested the assets of these Bond Funds in high-risk derivative instruments backed by mortgages and mortgage-backed securities. Further compounding the risk to Plaintiff and the Class, State Street highly leveraged the Bond Funds' investments in such

instruments by borrowing money to purchase those instruments – in some case by ratios as high as six to one – thereby exponentially increasing the risk to which ERISA plans and plan participants and beneficiaries in these purportedly “stable” and “predictable” funds were exposed. In addition to these highly leveraged investments in mortgage-backed securities, State Street also improperly invested in exotic financial instruments such as Treasury futures, options on futures, interest rate swaps, and interest rate “swaptions.”

3. An analyst at Lipper, Inc. summarized State Street’s mismanagement of these funds: “When you’re investing in an investment-grade debt fund, you are expecting some level of preservation of capital. Some funds have held certain subprime issues, and for their intrepid adventures, investors have suffered terribly.”

4. The recent collapse of the subprime mortgage industry exposed the aggressive gamble State Street took with the retirement assets invested by ERISA plans and plan participants and beneficiaries in the Bond Funds. The value of the mortgage-backed securities in which State Street had invested plummeted, with some of the Bond Funds performing nearly 30 percent below the benchmark indices they purported to track. That performance resulted from the nearly 70 percent collapse in value of the mortgage-backed securities held by the fund. Moreover, the subprime collapse eviscerated demand for such securities, forcing State Street to sell those mortgage-backed securities into an illiquid market. By the time ERISA plans and plan participants and beneficiaries became aware of the dire consequences of State Street’s imprudence, and demanded the withdrawal of their funds, there was no market for the securities, further compounding the losses to investors in the bond funds.

5. State Street's imprudent actions have caused the ERISA plans that offered the Bond Funds for which State Street served as the Investment Manager to suffer hundreds of millions of dollars of losses.

6. State Street's conduct was a gross dereliction of its fiduciary duties under ERISA for which State Street is personally liable. Accordingly, Plaintiff alleges that State Street, as the investment manager for the Bond Funds for ERISA retirement plans throughout the country, breached its duties of prudence, loyalty, and exclusive purpose under ERISA §404(a) by investing the assets of the Bond Funds recklessly and imprudently.

7. This action is brought on behalf of Plaintiff's ERISA plan, as well as all other similarly situated plans throughout the country that offered the Bond Funds as investment options for their participants. All of these plans were subject to, and affected by, State Street's conduct in the same manner and with the same effect. Plaintiff seeks losses to these plans for which State Street is personally liable pursuant to ERISA §§ 409 and 502(a)(2), 29 U.S.C. §§ 1109, and 1132(a)(2). In addition, under § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), Plaintiff seeks other equitable relief from State Street, including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, equitable tracing, and other monetary relief.

8. ERISA §§ 409(a) and 502(a)(2) authorize ERISA plan participants and plan fiduciaries such as Plaintiff to sue in a representative capacity for losses suffered by the plans as a result of breaches of fiduciary duty. Pursuant to that authority, Plaintiff brings this action as a class action under Fed. R. Civ. P. 23 on behalf of plans that offered

the Bond Funds and suffered losses due to State Street's gross dereliction of its fiduciary duties under ERISA during the Class Period.

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

## **II. JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1). This claims asserted herein are brought as a class action under Rule 23 of the Federal Rules of Civil Procedure.

11. Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

## **III. THE PARTIES**

### **A. THE PLAINTIFF:**

12. Plaintiff Unisystems, Inc. Employees Profit Sharing Plan (the "Unisystems Plan") is an ERISA-qualified plan established for the benefit of employees of Unisystems, Inc. ("Unisystems"). Unisystems is a publishing company headquartered in New York, New York. During the Class Period, the Unisystems Plan invested in the Intermediate Bond Fund for Employee Trusts ("Intermediate Bond Fund"), and the Unisystems Plan suffered losses as a result. State Street served as the Investment Manager for the Unisystems Plan, and in particular, the Intermediate Bond Fund.

**B. THE DEFENDANTS:**

13. State Street Bank is a registered financial holding company with its principal place of business in Boston, Massachusetts, and which maintains an office in New York, New York.

14. SSGA purports to be the world's largest institutional asset manager. SSGA's principal office is located in Boston, Massachusetts. SSGA acted as the Investment Manager to the Bond Funds as that term is defined by ERISA § 3(38), 29 U.S.C. § 1002(38).

15. John Does 1-20. Plaintiff currently lacks the names of the individual State Street employees responsible for discharging State Street's duties and responsibilities as the Investment Manager under ERISA for the Bond Funds at issue. Once the names of these persons are identified, to the extent necessary and appropriate, Plaintiff will amend the Complaint to add their true identities.

**IV. CLASS ACTION ALLEGATIONS**

16. **Class Definition.** Plaintiff brings this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2), and, in the alternative, (b)(3) of the Federal Rules of Civil Procedure on behalf of Plaintiff and the following class of persons similarly situated (the "Class"):

All qualified ERISA plans, and the participants and beneficiaries thereof, who were invested in the Intermediate Bond Fund for Employee Trusts, the Daily Bond Market Fund, the Core Intermediate Credit Bond Fund, the Daily Corporate / Government Credit Bond Fund, the SSGA Yield Plus Fund, the Total Bond Market fund, the SSGA Bond Market Fund, the Limited Duration Bond Fund or any other Bond Fund managed by State Street for qualified ERISA retirement plans that suffered losses as a result of the same conduct described herein (the "Bond Funds") between January 1, 2007 and October 5, 2007. Specifically excluded from the Class are the individual Defendants herein, officers and/or

directors of the Defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which a Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party, other than qualified ERISA plans offered by State Street or any of its affiliates to its employees and which suffered losses as well due to investment in the Bond Funds.

17. **Numerosity.** 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, Plaintiff believes that hundreds of ERISA qualified plans throughout the country offer the Bond Funds, and sustained losses as a result, and that these plans collectively have thousands of participants and beneficiaries.

18. **Commonality.** The claims of Plaintiff and the members of the Class have a common origin and share a common basis. The claims of all Class Members originate from the same misconduct, breaches of duties and violations of ERISA, perpetrated by the Defendants. Proceeding as a nationwide class is particularly appropriate here because the Bond Funds are held in collective trusts managed by State Street, in which assets of every plan that offers the Bond Funds are pooled, and, therefore, State Street's imprudent actions affected all plans that invested in the Bond Funds in the same manner.

19. Furthermore, common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. The many questions of law and fact common to the Class include:

- a. Whether Defendants breached their fiduciary duties under ERISA;

b. Whether Defendants deviated from the true and proper purpose of the Bond Funds when they invested in highly risky, exotic, and speculative investments in the Bond Funds;

c. Whether Defendants failed to provide complete and accurate information to plan sponsors, fiduciaries, and participants when they invested in highly risky, exotic, and speculative investments in the Bond Funds;

d. Whether Defendants' acts proximately caused losses to the plans at issue, and if so, the appropriate relief to which Plaintiff and the Class are entitled;

20. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class because: (a) to the extent Plaintiff seeks relief on behalf of the Plans pursuant to ERISA § 502(a)(2), its claims on behalf of the Plans are not only typical to, but identical to a claim under this section brought by any Class member; and (2) to the extent Plaintiff seeks relief under ERISA § 502(a)(3) on behalf of itself for equitable relief, that relief would affect all Class members equally. If brought and prosecuted individually, each of the members of the Class would necessarily be required to prove the instant claims upon the same material and substantive facts, upon the same remedial theories and would be seeking the same relief.

21. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action, complex, and ERISA litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class. The proposed representative will undertake to vigorously protect the interests of the absent members of the Class.



22. **Rule 23(b)(1)(A) & (B) Requirements.** Class action status in this ERISA action is warranted under the Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status also is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of 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 not parties to the actions, or substantially impair or impede their ability to protect their interests.

23. **Rule 23(b)(2) Requirements.** Certification under 23(b)(2) is warranted because 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.

24. **Rule 23(b)(3) Requirements.** In the alternative, certification under Rule 23(b)(3) is appropriate because 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.

## V. THE ERISA PLANS AT ISSUE

25. Plaintiff Unisystems Plan invested in the Intermediate Bond Fund for Employee Trusts. The Unisystems Plan is a profit sharing plan for the employees of Unisystems, Inc. The Plan was established in 1976 to provide retirement and other incidental benefits to Unisystems employees and was amended and restated in 2000 to comply with all applicable statutes, including the Employee Retirement Income Security

Act of 1974 (ERISA) and the Internal Revenue Code of 1986, and all applicable rulings and regulations thereunder.

26. Pursuant to State Street's agreements with Unisystems, State Street Bank accepted appointment as Investment Manager of the Unisystems Plan as that term is defined in Section 3(38) of ERISA. Those agreements required that "State Street shall exercise the same care in the safekeeping of the assets held in the [Unisystems Plan] Account... with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."

27. At all relevant times, the Unisystems Plan maintained investment objectives that required the investment of approximately 40% of its assets in conservative, non-volatile fixed income investments. Specifically, prior to May 2007, the specified allocation of the Unisystems Plan required that 40% of the Unisystem Plan Portfolio be invested in Fixed Income. The Investment Objectives of the Unisystem Plan as agreed to by State Street stated:

The Investment Objective of the Portfolio shall be to match, as closely as possible, the return of a composite benchmark comprised of: 50% Standard and Poor's 500 Index, 5% MSCI EAFE Index, 5% Russell 2000 Index, and 40% Passive Intermediate Government Credit Bond Index weighted at their appropriate capitalization weights (the "Portfolio"). The Portfolio also seeks to maintain a level of volatility (measured as standard deviation of returns) which approximates that of the composite benchmark returns.

28. In May 2007, Unisystems and State Street agreed to amend the Investment Objectives of the Unisystems Plan, to state as follows:

The Investment Objective of the Portfolio shall be to match, as closely as possible, the return of a composite benchmark comprised of: 35% Standard and Poor's 500 Index, 5% S&P

MidCap Index, 5% Russell 2000 Index, 15% MSCI ACWI ExUS Index, 38% Lehman Brothers Intermediate Government Credit Bond Index and 2% 90-day T-Bills weighted at their appropriate capitalization weights (the "Portfolio"). The Portfolio also seeks to maintain a level of volatility (measured as standard deviation of returns) which approximates that of the composite benchmark returns..

29. Although the index used as a benchmark for equity investments changed in May 2007, State Street invested the Unisystems Plan in the same Intermediate Bond Fund for Employee Trusts at all relevant times.

30. In addition to the Intermediate Bond Fund for Employee Trusts, State Street operated and managed several other funds, the assets of which were held in collective trusts by State Street, including the Daily Bond Market Fund, the Core Intermediate Credit Bond Fund, the Daily Corporate / Government Credit Bond Fund, the SSGA Yield Plus, the Total Bond Market fund, SSGA Bond Market Fund, and the Limited Duration Bond Fund, all of which were described as low-risk investment vehicles, purportedly designed to track or slightly exceed the Lehman Brothers Aggregate Bond Index. Upon information and belief, State Street served as the ERISA Investment Manager for each ERISA plan throughout the country that offered one or more of the Bond Funds.

31. Numerous ERISA plans offered the Bond Funds as a conservative investment option for participants' retirement savings. ERISA plans and plan participants directed hundreds of millions of dollars of retirement savings into the Bond Funds.

32. On information and belief, State Street pooled the assets of the respective Bond Funds and managed the collective fund pursuant to a common strategy. As alleged herein, at some juncture in early 2007, State Street's management deviated from its

stated-strategy and directed the assets into leveraged positions on high-risk investments, including mortgage-backed securities, exposing all of the Bond Funds to enormous risk.

33. Because all of the Bond Funds were held in collective trusts by State Street and centrally managed, State Street's imprudent conduct with respect to the Bond Fund affected all ERISA Plans that offered the Bond Funds in the same manner, that is, they all were exposed to the same unacceptable risk, and suffered losses because of the same imprudent management by State Street.

## VI. DEFENDANTS' FIDUCIARY STATUS

34. **Named Fiduciaries.** Every plan must have one or more "named fiduciaries." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1). 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).

35. **De Facto Fiduciaries.** ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), 29 U.S.C. § 1102(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).

