

Supreme Court Mortgage Foreclosure Committee
c/o Administrative Office of the Illinois Courts
3101 Old Jacksonville Road
Springfield, Illinois 62704

Banks foray into subprime lending was ill-conceived and ill-considered and that Citizen of Illinois must accept that Fifth Third and other Illinois Banks embarked an improvident and even perhaps disastrous foray into subprime lending, which in turn caused a substantial disaster to homeowners losing their home BECAUSE OF THE BANK'S PRACTICES.

Banks and a reasonable fiduciary, under fiduciary law, SHOULD have taken steps to protect against many imprudent investments of banks. Illinois would have hoped the BANKING Industry would have regulated themselves, but this is now a legal matter between Banks and Homeowners in foreclosure and/or Homeowners owning homes and rental property worth far less than the banks appraised.

UNDER NEW ILLINOIS LAW, Illinois Banks should post PUBLIC NOTICES and under law send letters to lenders who qualify for reduced loan interest rates on their homes and rental property NOW worth far less than the loan. Qualifying homeowners, whose homes are worth less than the appraised value of their loans and/or equity loan, should have the bank, under law, automatically LOWER the interest rate to 1 percent so the homes will be SAVED from FORECLOSURE.

ANOTHER SETTLEMENT BANKS NEED TO ACCEPT due to their unlawful foray into subprime lending: Reduce the loan interest rates or the bank must BUY back the property at their APPRAISED value. If example, if rental property was purchased for \$80,000 and the bank approved an appraised value of the rental property for \$80,000, it should be unlawful to now say the rental property is now worth \$30,000 and to foreclosure on it. The property owner can get a 1% loan interest, the bank reevaluate the loan and the property owner gets a \$50,000 credit. In other words, the loan should be reduce \$50,000, in this example and the equity interest rate should be 1%.

The Sixth Circuit certainly recognized the improvident unlawful practice of banks dealing with pensions/ERISA and the IL Supreme Court should too. See next page (Sixth Circuit).



November 16, 2011

Via ECF

The Honorable Leonard Green, Clerk
United States Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202-3988

Re: Case No. 11-3012, *John Dudenhoefer, et al v. Fifth Third Bancorp, et al*
Originating Case No. : 08-00538

Dear Mr. Green:

On behalf of Plaintiff-Appellants ("Plaintiffs"), I write to supplement our briefing in the above-referenced appeal to include *Advanta Corp. ERISA Litig.*, 2011 WL 4528341 (E.D. Pa. Sept. 30, 2011), as supplemental authority under FRAP 28(j).

Advanta supports Plaintiffs' contention that even if the Court were to apply the *Kuper*¹/*Moench*² presumption at the pleadings stage, Plaintiffs' allegations would still rebut the presumption. The plaintiffs in *Advanta* overcame the *Moench* presumption by alleging facts which showed the imprudence of owning company stock when viewed in "the totality of circumstances." *Id.* at * 3. Such facts included the precipitous drop in value of the company stock while the officers and directors were aware the company was facing financial difficulties. *Id.* Similarly, the totality of the circumstances in the instant matter demonstrates the impudence of Fifth Third stock during the Class Period and rebuts the presumption of prudence. *See, e.g.*, Brief of Appellants at 6-12 (setting forth the facts underlying Defendants' breaches of fiduciary duty). Indeed, the District Court acknowledged that "the complaint's allegations perhaps demonstrate that Fifth Third's foray into subprime lending was ill-conceived and ill-considered" and that it "must accept that Fifth Third embarked on an improvident and even perhaps disastrous foray into subprime lending, which in turn caused a substantial decline in the price of its common stock." R. 81 at 16, 20. Thus, Plaintiffs have alleged plausibly that a reasonable fiduciary would have taken steps to protect his wards from the imprudent investment in Fifth Third stock.

¹ *Kuper v. Iovenko*, 66 F.3d 1447 (6th Cir. 1995).

² *Moench v. Robertson*, 62 F.3d 553, 564-65 (3d Cir. 1995).



Respectfully yours,

KESSLER TOPAZ
MELTZER & CHECK, LLP

A handwritten signature in black ink, appearing to read "Mark K. Gyandoh". The signature is written over a horizontal line.

Mark K. Gyandoh

cc: Counsel of record (by email)

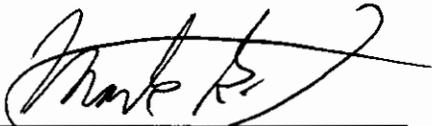


CERTIFICATE OF SERVICE

I certify that, on November 16, 2011, I caused to be served a copy of the foregoing Letter with the Clerk of the Court and the following parties via electronic mail:

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Dated: November 16, 2011



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