



false and misleading, and as a result, Genworth securities traded at artificially inflated prices.” Paragraph 65 alleges that Genworth Financial, Inc. (“Genworth”) issued a press release containing the 2011 third-quarter results which reported net income, earnings per share, strong international capital generation, contribution to that strength by its Australian subsidiary, a plan to pursue an Initial Public Offering of a minority interest in the subsidiary, a purpose to free capital (from the proceeds of the IPO) for “redeployment”, and a “flat sequential” loss ratio of the Australian subsidiary at 48 percent. An extensive quotation follows, adding even more allegations. The reader is unable to understand which of the many allegations are claimed to be false and misleading, or why. Similarly, paragraph 67 of the Amended Complaint, alleging the coverage of an “earnings conference call with analysts the next day”, contains numerous additional assertions, with no indications as to where the alleged deficiencies lie.

The Amended Complaint is full of such meaningless prolixity and ambiguity.

Plaintiff also must allege, “with respect to each act or omission,” and “with particularity”, the “facts giving rise to a strong inference that the defendant acted with the required state of mind,” that is, with *scienter*. 15 U.S.C. §78u-4(b)(3). Plaintiff purports to satisfy their pleading requirements beginning with ¶102 of the Amended Complaint, in a section entitled “Defendants Make Further Revelations About the Fraud in Their 1Q 2012 Statements,” and beginning with ¶105 in a section entitled “Additional Scienter Allegations”. Paragraph 102 alleges an announcement of losses recognized by the Australian subsidiary, a statement of disappointment by the parent’s acting chief executive officer, the resignation of another officer, and a reference to an “elevated loss experience”. Paragraph 105 begins a string of general statements, with references forward and backward, asking the reader to infer “*scienter*” from various generally-pleaded reports and documents.

Defendants Genworth, Michael D. Frazier, and Martin P. Klein (“Defendants”) moved to dismiss the complaint by motion filed December 2, 2014. (Dkt. No. 29). The motion was accompanied by 24 exhibits and, accompanying a reply declaration, 6 more exhibits. That was met by Plaintiffs’ motion to strike one of the exhibits, to convert defendants’ motion to dismiss to a motion for summary judgment, and to begin discovery. (Dkt. No. 33).

All motions are denied. I decline to consider at this time matters outside the pleadings, as presented by Defendants. *See* Fed R. Civ. P. 12(b)(6). I am not able to distinguish in Defendants’ motion their arguments based on deficiencies of the pleadings, from their arguments based on inadequate merits, in light of the documents presented by Defendants. *Sua sponte*, however, and based on my own reading of the Amended Complaint, I rule that it fails to plead a coherent claim for relief, satisfying the command of the PSLRA, 15 U.S.C. §78u-4, and Rules 8(a)(2) and 9(b) of the Federal Rules of Civil Procedure.

Plaintiff has leave to file a Second Amended Complaint, on or before April 17, 2015. The Second Amended Complaint shall endeavor to allege a “short and plain statement” of its claim, satisfying the requirement of Fed. R. Civ. P. 9(b) that the complaint “state with particularity the circumstances”, that is, the statements, “constituting fraud”. The pleading also must “specify each statement alleged to have been misleading,” and “the reason or reasons why,” but plainly and clearly, and not in an effusive ambiguity as the Amended Complaint does. *See* 15 U.S.C. §78u-4(b)(1). And, finally, the Second Amended Complaint must allege, “with respect to each act or omission” that is false and misleading, and with “particularity,” the facts giving rise to a strong inference that the defendant acted with *scienter*. 15 U.S.C. §78u-4(b)(2). The showing must be specific to the company as well as to each of the two individual

defendants. What the law requires for pleading, in other words, is more thought and analysis, and less volubility.

The Clerk shall mark documents 29 and 33 terminated. The oral argument scheduled for April 29, 2015 is canceled. Defendants shall file their Answer (or motion) by May 8, 2015. Counsel shall appear for a case management conference on May 22, 2015, at 10:00 a.m.

SO ORDERED.

Dated: New York, New York  
March 25, 2015

A handwritten signature in black ink, appearing to read "Alvin K. Hellerstein", written over a horizontal line.

ALVIN K. HELLERSTEIN  
United States District Judge