

No. 18-2729

**In the United States Court of Appeals
for the Third Circuit**

In re: ALLERGAN ERISA LITIGATION

ANDREW J. ORMOND, on behalf of the Allergan, Inc. Savings and
Investment Plan, the Actavis, Inc. 401(k) Plan, himself, and a class consisting of
similarly situated participants of the Plan; JACK XIE,
Appellants

**On Appeal from the United States District Court
For the District of New Jersey
Case No. 2:17-cv-01554-SDW-LDW**

**OPENING BRIEF FOR APPELLANTS AND
APPENDIX VOL. 1, Pages A-1-A-19**

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I. Statement of Jurisdiction

Plaintiffs-Appellants Andrew J. Ormond and Jack Xie (“Plaintiffs”), individually and as Plaintiffs in the class action against fiduciaries (collectively, “Defendants”) of the Allergan, Inc. Savings and Investment Plan and each of its predecessor plans (the “Plan” or “Plans”) submit this brief in support of their appeal of a July 2, 2018 order granting Defendants’ motion to dismiss and a July 2, 2018, opinion dismissing Plaintiffs’ action (the “Opinion”) by the Honorable Susan D. Wigenton of the United States District Court for the District of New Jersey (the “District Court”) and the final judgment (“Judgment”) entered in accordance therewith.

The District Court had subject matter over the federal questions presented by Plaintiffs’ Complaint (“Complaint”) under 28 U.S.C. § 1331. This Court has jurisdiction over this appeal under 28 U.S.C. § 1291 because the Judgment was a final decision of the District Court, and because Plaintiffs timely filed a notice of appeal on August 2, 2018, within thirty days of entry of the Opinion and Judgment.

II. Statement of Issues Presented for Review

1. Whether the District Court erred in determining that Plaintiffs failed to state a breach of fiduciary duty claim for the Defendants’ failure to prudently manage the Plan’s assets in violation of ERISA §§ 404(a)(1)(B) and 405, 29 U.S.C. §§ 1104(a)(1)(B) and 1105.

This claim was pled in Plaintiffs' Complaint (A-91-93), Defendants moved to dismiss it (A-107), and the Court granted Defendants' motion to dismiss (A-4-5).

2. Whether the District Court erred in concluding that Plaintiffs did not plead an alternative action that the Defendants could have taken that would have been consistent with the securities laws and that a prudent fiduciary in the same circumstances would not have viewed as more likely to harm the Plan's Company Stock Fund investment option (the "Fund") than to help it.

This claim was pled in Plaintiffs' Complaint (A-76-88), Defendants moved to dismiss it (A-107), and the Court granted Defendants' motion to dismiss (A-4-5).

3. Whether the District Court erred in determining that Plaintiffs failed to state a claim for breach of duty of loyalty in violation of ERISA §§ 404(a)(1)(A) and 405, 29 U.S.C. §§ 1104(a)(1)(A) and 1105.

This claim was pled in Plaintiffs' Complaint (A-94-97), Defendants moved to dismiss it (A-107), and the Court granted Defendants' motion to dismiss (A-4-5).

4. Whether the District Court erred in holding that Plaintiffs' claim that certain Defendants failed to monitor adequately their appointed fiduciaries should be dismissed.

The balance of this brief has been omitted for this sample.
For a complete version of this brief, please contact our office.

Thank you.