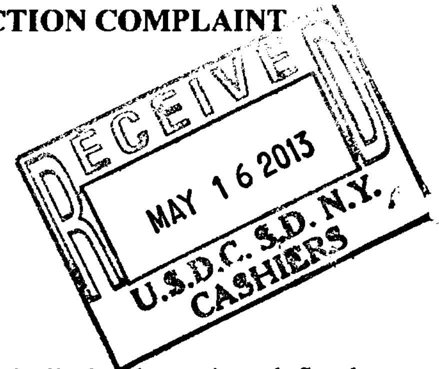
JUDGE TORRES

13 CV 3299

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SKIN PATHOLOGY ASSOCIATES, INC., as fiduciary of THE SKIN PATHOLOGY ASSOCIATES, INC. 401(k) PROFIT SHARING PLAN individually and on behalf of all others similarly situated,	No. ______________
Plaintiff,	
v.	**CLASS ACTION COMPLAINT**
MORGAN STANLEY & CO., INC., and ING LIFE INSURANCE AND ANNUITY COMPANY,	
Defendants.	



Plaintiff brings this action on behalf of itself and all others similarly situated as defined below, and by its attorneys alleges the following for its Complaint against Defendants, Morgan Stanley & Co., Inc. ("Morgan Stanley"), and ING Life insurance and Annuity Company ("ING"):[1]

I. NATURE OF THE ACTION AND SUMMARY OF CLAIMS

1. Plaintiff Skin Pathology Associates, Inc. sponsors and administers the Skin Pathology Associates, Inc. 401(k) Profit Sharing ("Plan" or "SPP") for its employees. Plaintiff is a fiduciary of the SPP.

2. Morgan Stanley was retained to act as the broker for the SPP and as its agent in locating and procuring an investment/recordkeeping platform for the Plan. As a result of Morgan Stanley's actions, the SPP retained ING as its investment/recordkeeping platform provider.

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[1] Allegations that do not concern the Plaintiff specifically are based on information and belief.

Summary of Claims Against Morgan Stanley

3. Morgan Stanley is a "party in interest" with respect to the Plan under the Employee Retirement Income Security Act of 1974, 29 U.S.C §1001, *et seq*. ("ERISA"), in that it provides, *inter alia*, brokerage services to the Plan as alleged below. Morgan Stanley engaged in multiple prohibited transactions under 29 U.S.C. § 1106.

4. In connection with serving as broker to retirement plans, Morgan Stanley established and administers its Alliance Partner program. Defendant ING and other financial institutions Morgan Stanley designates as its Alliance Partners provide investment/recordkeeping platform services to these retirement plans.

5. Morgan Stanley promotes and sells to its retirement plan customers such as Plaintiff the investment/recordkeeping platforms offered by its "Alliance Partners."

6. As consideration for serving as broker for Plaintiff and other retirement plans, Morgan Stanley receives certain compensation. Over and above this compensation, some ***but not all*** Alliance Partners pay Morgan Stanley additional compensation (the "Additional Compensation"). The Additional Compensation is based solely on the amount of plan assets invested with the Alliance Partner, and thus Morgan Stanley is paid Additional Compensation only if it convinces its retirement Plan brokerage customers such as Plaintiff to retain an "Additional Compensation"-paying Alliance Partner to provide an investment/recordkeeping platform.

7. Morgan Stanley performs ***no*** additional work for the plans that retain Alliance Partners that pay it Additional Compensation.

8. The Additional Compensation is purely a "pay-to-play" fee. Because Morgan Stanley performs ***no*** additional work for the Additional Compensation, Morgan Stanley's receipt of Additional Compensation is a prohibited transaction" under ERISA.

9. Morgan Stanley labors under a conflict of interest in that its economic incentive is to direct the Plan to purchase investment/recordkeeping platform services from the Alliance Partners that pay it Additional Compensation, as opposed to other platform providers which do not. The Alliance Partner program, and its prohibited transactions, take advantage of that conflict of interest.

10. Morgan Stanley receives a direct economic benefit from taking advantage of this conflict in that it is paid Additional Compensation.

11. Plaintiff brings this action against Morgan Stanley pursuant to § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), for the Plan and on behalf of a class as defined below of similarly situated fiduciaries, participants and beneficiaries consisting of all "employee benefit plans" under ERISA, 29 U.S.C. § 1002(1) (collectively with the Plan, the "Plans"), which retained Morgan Stanley as broker and which retained Alliance Partners who paid Additional Compensation to Morgan Stanley.

Summary of Claims Against ING

12. ING, Morgan Stanley's Alliance partner, is both a fiduciary under ERISA, 29 U.S.C. § 1002(21), and a "party in interest" with respect to the Plan under ERISA, 29 U.S.C. § 1002(14).

13. ING participates in and takes advantage of Morgan Stanley's conflict of interest in that it pays Additional Compensation to Morgan Stanley in exchange for being listed as an

Alliance Partner. ING receives a direct economic benefit from exploiting this conflict in that it receives Plaintiff's business.

14. Plaintiffs bring this action against ING pursuant to §§ 502(a)(2) and (3) of ERISA, 29 U.S.C. §§ 1132(a)(2) and (3), for the Plan and a sub-class consisting of all similarly situated fiduciaries, participants and beneficiaries of all "employee benefit plans" under ERISA, 29 U.S.C. § 1002(1) (collectively with the Plan, the "Plans"), which retained Morgan Stanley as broker and ING as the investment/recordkeeping platform provider.

15. Plaintiff, the Class and Sub-Class seek from Morgan Stanley and ING all monetary, injunctive and other relief which may properly be awarded. *See* Fed. R. Civ. P. 54(c).

II. JURISDICTION AND VENUE

16. Plaintiff's claims arise under and pursuant to ERISA § 502, 29 U.S.C. § 1132.

17. This Court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and 28 U.S.C. § 1331.

18. Venue is proper in this District because a Defendant, Morgan Stanley, resides in this District and the alleged breach took place here. 29 U.S.C § 1132(e)(2)

III. THE PARTIES.

19. Plaintiff, Skin Pathology, is a corporation with its principal place of business in Birmingham, AL. It is the sponsor and plan administrator of the SPP.

20. Defendant, Morgan Stanley, is a corporation with its principal place of business in New York, NY.

21. Defendant ING is a corporation with its principal place of business in Windsor, CT.

IV. SUBSTANTIVE ALLEGATIONS

Description of the Plan

22. The Plan is an Employee Benefit Plan within the meaning of ERISA §§ 3(3) and 3(2)(A), 29 U.S.C. §§ 1002(3) and 1002(2)(A). The purpose of the Plan is to provide retirement benefits to Plan participants.

23. The Plan is a "defined contribution" or "individual account" plan within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34). The Plan provides individual accounts for each Participant and pays benefits to each Participant based upon the amount of money in his or her individual account. Thus, the amount of benefits received by each Participant in the Plan depends upon the amount of money invested in the Participant's account, the performance of the accounts' investments, and the fees charged by the companies who manage the Plan assets. The Plan is a typical 401(k) retirement plan similar to those offered by employers throughout the country.

Administration of the Plan

24. Morgan Stanley was retained as SPP's broker to obtain a bundled investment/recordkeeping program for the Plan. Morgan Stanley did not conduct a wide-ranging search in order to find the best platform for the SPP but simply worked from its pre-existing roster of so-called Alliance Partner firms. According to Morgan Stanley:

> Morgan Stanley has a number of programs to select from [the Alliance Partners] which will form the foundation of your company's retirement plan. We will work with you to select a program that fits your company's size, service requirements, and investment option preferences.

25. As part of its "Corporate Solutions/ Retirement Plans," Morgan Stanley promoted its Alliance Partners, who, it said; provide "excellent plan administration, accurate recordkeeping, timely reporting, informative Plan sponsor reporting, powerful online access and compliance testing services.

26. Morgan Stanley performed these same services for all Plan customers concerning the Alliance Partner program, regardless of whether the Alliance Partner paid Additional Compensation.

27. Based on ING's status as one of Morgan Stanley's Alliance Partners. Plaintiff filed an application with ING for a form Allocated Pension or Profit Sharing Plan Contract (the "Contract"). Effective July 31, 2007, the Contract was issued to the Plan.

28. Pursuant to the Contract, the Plan transferred the Plan's assets to ING, and ING took control over those assets in its capacity as Plan trustee or custodian and held those assets in accounts it established and maintained, including Fixed, Separate, Trustee and Participant Accounts. ING selected and made available for the Plan various investment options, including a number of mutual funds ("Funds") managed by a wide range of well-known fund families (the "Fund Houses"), including but not limited to American Century, American Funds, Fidelity, Franklin Templeton, ING, Oppenheimer, PIMCO, T. Rowe Price, UBS and Vanguard. Significantly, ING had complete discretion to determine the Funds it "offered" and "made available" for investment" and could limit the number of available Fund options. (Contract sec. 1.11, 1.18, 3.02). Moreover, ING had the right and complete discretion to substitute, eliminate or add any Funds when necessary to manage its business. Plaintiff had no rights at all, other than the right to receive notice of a change. (Contract sec. 8.05.)

29. ING pays sales compensation to Plan brokers, like Morgan Stanley, either as an up-front commission calculated as a percentage of the purchase price of a Fund investment and payable at the time of purchase of Fund shares, and/or as a percentage of the on-going asset value of an investment while the investment was owned and payable periodically after the purchase date.

Morgan Stanley's Additional Compensation from Some Alliance Partners, Including ING

30. In addition to the compensation alleged above, Morgan Stanley required some ***but not all*** of its Alliance Partners, including ING, to pay Morgan Stanley Additional Compensation. This Additional Compensation is also calculated as a percentage of Plan assets invested by the Plans with the Alliance Partner it retains for its investment/recordkeeping platform.

31. Since Morgan Stanley's Additional Compensation was based on a percentage of Plan assets held by the Alliance Partner, Morgan Stanley sent periodic invoices to ING and other Alliance Partners for payment of Additional Compensation as additional retirement contributions to the Plans were made and as the value of Plan assets changed. Thus, the Additional Compensation to be paid and in fact paid to Morgan Stanley was shown in multiple periodic invoices and made in multiple separate transactions, all occurring after: (1) Morgan Stanley became the Plans' broker and as such a "party in interest"; (2) the Plans entered into investment/recordkeeping platform agreements such as the Contract, rendering ING and other platform providers fiduciaries and "parties in interest"; and (3) the Plan invested Plan assets in investment options such as the Funds.

32. Records of Morgan Stanley's invoices and Alliance Partner payments of those invoices were not provided to Plaintiff and, upon information and belief, were not provided to Class members or the Plans.

33. Since the Additional Compensation depends solely on the amount of Plan assets invested through the Alliance Partner program, Morgan Stanley is paid only if it successfully convinces its retirement Plan brokerage customers such as Plaintiff to retain an Alliance Partner that pays Additional Compensation for investment/recordkeeping services.

34. Some firms in Morgan Stanley's Alliance Partner program do not pay Morgan Stanley Additional Compensation, including American Funds, DWS Retirement Services, Oppenheimer and Putnam. This—combined with the fact that Morgan Stanley performs ***no*** more work for the retirement Plans that retain Alliance Partners that pay Additional Compensation than it does for those that do not—demonstrates that the Additional Compensation is unrelated to any work done by Morgan Stanley on behalf of any of the Plans, and that the Additional Compensation is simply a "pay to play" fee to enable financial institutions such as ING to be Alliance Partners.

35. Morgan Stanley has previously been sanctioned for similar practices, agreeing to pay $50 million in civil penalties as surrendering profits to resolve actions brought by the National Association of Securities Dealers ("NASD") and the Securities and Exchange Commission ("SEC") in 2003. As the NASD Vice Chairman aptly stated at the time, "[i]nvestors expect and are entitled to informed, objective, and untainted recommendations from their brokers and their firms when it comes to which mutual funds to buy"; and "those who choose to embrace

commissions, higher payouts, and extra bonuses over their duty to render conflict-free advice to their customers" should be sanctioned.

36. The Alliance Partner program is structured to take advantage of a conflict of interest Morgan Stanley has created. As it has set up the Alliance Partner program, Morgan Stanley has a clear conflict of interest because it has an economic incentive to direct the Plans to purchase investment/recordkeeping platform services from those Alliance Partners that pay Additional Compensation as opposed to other platform providers who may be equally or better qualified. Morgan Stanley receives a direct economic benefit from taking advantage of this conflict in that it is paid Additional Compensation equal to a percentage of Plan assets invested with the Alliance Partner that pays Additional Compensation. Indeed, if Morgan Stanley is not successful in exploiting the conflict, it receives no Additional Compensation. ING participates in and takes advantage of this conflict in that it pays the Additional Compensation to Morgan Stanley in exchange for Plaintiff's business.

37. Morgan Stanley knew or should have known it received Additional Compensation from ING and other Alliance Partners while performing no additional work for the Plan or the Plans, that it was acting under a conflict of interest, that it was being paid unreasonably high compensation for the services it performed for Plans which retained Alliance Partner platform providers that paid Additional Compensation, and that it participated in prohibited transactions under ERISA.

38. ING knew or should have known it paid Additional Compensation to Morgan Stanley and that Morgan Stanley was acting under a conflict of interest and that it was a party to prohibited transactions under ERISA.

39. Morgan Stanley and ING were at all times relevant hereto acting together and in concert and as co-venturers, joint venturers or co-conspirators.

V. CLASS ACTION ALLEGATIONS

The Morgan Stanley Class

40. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of all similarly situated fiduciaries, participants and beneficiaries on behalf of all "employee benefit plans" under ERISA, 29 U.S.C. § 1002(1) (collectively with the Plan, the "Plans"), which retained Morgan Stanley as broker and which retained Alliance Partners who paid Additional Compensation to Morgan Stanley (the "Class"). The Class does not include Morgan Stanley, ING or any other Alliance Partner which paid or pays Additional Compensation as defined herein.

41. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown at this time and can only be ascertained through appropriate discovery, Plaintiff believes there are, at minimum, thousands of members of the Class in that Morgan Stanley has disclosed that it is broker for approximately 13,000 plans. The number and identity of class members can easily be determined from the books and records of Morgan Stanley.

42. 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 Morgan Stanley Class are:

(a) whether Morgan Stanley was a "party in interest" with respect to the Plans;

(b) whether Morgan Stanley received Additional Compensation as alleged;

(c) whether Morgan Stanley's receipt of Additional Compensation violates ERISA's prohibited transaction provisions; and

(d) whether the Class is entitled to injunctive and other equitable relief such as disgorgement of all Additional Compensation.

43. Plaintiff's claims are typical of the claims of the members of the Class, as Plaintiff and members of the Class sustained injury and/or are entitled to relief arising out of Morgan Stanley's wrongful conduct in violating ERISA as complained of herein.

44. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained competent counsel. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

45. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since joinder of all members of the Class is impracticable. Furthermore, because the injury suffered by the individual Class members may be relatively small, the expense and burden of individual litigation makes it impracticable for the Class members individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

The ING Sub-Class

46. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a sub-class of all similarly situated fiduciaries, participants and beneficiaries on behalf of all "employee benefit plans" under ERISA, 29 U.S.C. § 1002(1) (collectively with the Plan, the "Plans"), which retained Morgan Stanley as broker and ING as the investment/recordkeeping platform provider (the "ING Sub-Class").

47. The members of the ING Sub-Class are so numerous that joinder of all members is impracticable. While the exact number of ING Sub-Class members is unknown at this time and

can only be ascertained through appropriate discovery, Plaintiff believes there are, at minimum, thousands of members of the ING Sub-Class. The number and identity of class members could easily be determined from ING's books and records.

48. Common questions of law and fact exist as to all members of the ING Sub-Class and predominate over any questions affecting solely individual members of the ING Sub-Class. Among the questions of law and fact common to the ING Sub-Class are:

(a) whether ING was a fiduciary and/or party in interest of the plans for which it acted as investment/recordkeeping platform provider;

(b) whether Morgan Stanley was a "party in interest" with respect to the Plans for which ING acted as platform provider;

(c) whether ING's conduct violates ERISA's fiduciary duty and prohibited transaction provisions; and

(d) whether the ING Sub-Class is entitled to damages and injunctive and other equitable relief.

49. Plaintiff's claims are typical of the claims of the members of the ING Sub-Class, as Plaintiff and members of the ING Sub-Class sustained injury arising out of ING's wrongful conduct and/or are entitled to relief due to ING's violating ERISA as complained of herein.

50. Plaintiff will fairly and adequately protect the interests of the members of the ING Sub-Class. Plaintiff has retained competent counsel. Plaintiff has no interests antagonistic to or in conflict with those of the ING Sub-Class.

51. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since joinder of all members of the ING Sub-Class is impracticable. Furthermore, because the injury suffered by the individual ING Sub-Class members may be relatively small, the expense and burden of individual litigation makes it

impracticable for the ING Sub-Class members individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

VI. COUNTS

COUNT I: VIOLATION OF ERISA'S PROHIBITED TRANSACTION PROVISIONS AGAINST MORGAN STANLEY

52. Plaintiff incorporates by reference all preceding paragraphs as if set forth fully herein.

53. As alleged above, Morgan Stanley is a "party in interest" under ERISA in that it provides brokerage services to the Plans. 29 U.S.C. § 1002(14) (b).

54. Morgan Stanley has engaged in prohibited transaction violations of ERISA. The provision of services to a Plan by a party in interest is a "prohibited transaction" if the party in interest receives compensation that is "more than reasonable." 29 U.S.C. §§ 1106(a)(1)(C), 1108(b)(2). That is, a transaction is prohibited if it "constitutes a direct or indirect furnishing of goods, services or facilities between the plan and a party in interest," unless "no more than reasonable compensation is paid therefor." 29 U.S.C. §§ 1106(a)(1)(C), 1108(b)(2).

55. The Contract, the ongoing investment of Plan assets with ING pursuant to the Contract, Morgan Stanley's invoices to ING based on amounts invested by the Plan pursuant to the Contract and ING's payment of those invoices, which collectively constituted the mechanism for payment of Additional Compensation to Morgan Stanley concerning Morgan Stanley's brokerage services to the Plan, were transactions which resulted in Morgan Stanley receiving Additional Compensation in exchange for performing no work other than the brokerage services it provided the Plan for which it was already compensated. Since these transactions enabled and caused payment to Morgan Stanley for Morgan Stanley's brokerage services to the Plans, those

transactions constitute "a direct or indirect furnishing of goods, services or facilities between the plan and a party in interest." By receiving Additional Compensation for which it did no work other than the brokerage services for which it was already being compensated, Morgan Stanley is receiving "more than reasonable compensation," especially since Morgan Stanley would have done the work for no Additional Compensation as it did in other Alliance Partner relationships,

56. Morgan Stanley, as a party in interest, was, as alleged herein, paid more than reasonable compensation for its brokerage "service" by means of prohibited transactions under ERISA § 406(a)(1), 29 U.S.C. § 1106(a)(1).

57. As a result of these violations of ERISA, Plaintiff, the Class and the Plans are entitled to appropriate equitable relief from Morgan Stanley, including disgorgement of all Additional Compensation, pursuant to § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3).

COUNT II: VIOLATION OF ERISA'S PROHIBITED TRANSACTION PROVISIONS AGAINST ING

58. Plaintiff incorporates by reference all preceding paragraphs as if set forth fully herein.

59. As alleged above, ING exercised "any authority or control respecting management or disposition of [Plan] assets" and is an ERISA fiduciary in that it held and invested Plan assets pursuant to the Contract. 29 U.S.C. § 1102(a)(1). ING is also a "party in interest" under ERISA in that it provided services to the Plan. 29 U.S.C. § 1002(14)(b).

60. As alleged above, Morgan Stanley is a "party in interest" under ERISA. 29 U.S.C. § 1002(14)(b).

61. ING is liable under ERISA's prohibited transaction provisions as a result of its payment of Additional Compensation to Morgan Stanley.

62. ING, as a fiduciary, ***caused the Plan***, in violation of ERISA § 406(a)(1), 29 U.S.C § 1106(a)(1), to "engage in," and ***engaged in***, a prohibited transaction or transactions on an ongoing basis by accepting, holding and investing Plan assets pursuant to the Contract, knowing that those transactions resulted in a direct or indirect furnishing of services between plan and a party in interest (Morgan Stanley) for in excess of reasonable compensation through the Alliance Partner program.

63. ING, as a party in interest, violated ERISA § 406(a)(1), 29 U.S.C § 1106(a)(1), by making payments to Morgan Stanley as alleged herein which constituted and were in excess of reasonable compensation for Morgan Stanley's brokerage "service" concerning ING's service as platform provider for the Plan.

64. As a result of these violations of ERISA, Plaintiff, the Subclass and the Plans are entitled to damages and appropriate equitable relief from ING, including disgorgement, pursuant to §§ 502(a)(2) and (3) of ERISA, 29 U.S.C. §§ 1132(a)(2) and (3).

COUNT III: VIOLATION OF ERISA'S FIDUCIARY AND LOYALTY PROVISIONS AGAINST ING

65. Plaintiff incorporates by reference all preceding paragraphs as if set forth fully herein.

66. As alleged above, ING exercised "any authority or control respecting management or disposition of [Plan] assets" and is an ERISA fiduciary. 29 U.S.C. § 1102(a)(1).

67. Under ERISA § 404(a)(1)B), 29 U.S.C § 1104(a)(1)(B), a fiduciary such as ING has a duty of prudence to the Plan and its participants and beneficiaries to act "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."

68. It is and was a breach of fiduciary duty of prudence for ING, a fiduciary, to pay Morgan Stanley in excess of reasonable compensation and to participate in Morgan Stanley receiving in excess of reasonable compensation as alleged above.

69. Second, under ERISA § 404(a)(1), 29 U.S.C § 1104(a)(1)(A), plan fiduciaries such as ING have a duty of loyalty:

> "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries; and
>
> (ii) defraying reasonable expenses of administering the plan;"

70. ING breached its duty of loyalty under ERISA § 404(a)(1)(A) by paying Morgan Stanley in excess of reasonable compensation and participating in Morgan Stanley receiving in excess of reasonable compensation as alleged above, particularly because it breached this duty of loyalty in order to become listed as an Alliance Partner which was completely in ING's interest and not remotely in the Plans' interest.

71. As a result of these violations of ERISA, Plaintiff, the Subclass and the Plans are entitled to damages and appropriate equitable relief from ING, including disgorgement, pursuant to §§ 502(a)(2) and (3) of ERISA, 29 U.S.C. §§ 1132(a)(2) and (3).

VII. STANDING

72. ERISA § 502(a), 29 U.S.C. § 1132(a), authorizes a plan fiduciary 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 . . . ." ERISA § 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate".

73. Pursuant to Section 502(a)(3) of ERISA a plan fiduciary may bring suit "(A) to enjoin any act or practice which violates any provision of" ERISA Title I, or "(B) to obtain other appropriate equitable relief . . . ." Plaintiff, as a fiduciary of the Plan, has standing to bring this suit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

A. An Order determining that the instant action may be maintained as a class action, with appropriate subclass, under Rule 23, Federal Rules of Civil Procedure, appointing Plaintiff as class representative of the Class and ING Sub-Class and determining that Plaintiff's counsel satisfy the prerequisites of Rule 23(g) with respect to both the Class and the ING Sub-Class;

B. A Declaratory judgment or judgments that ING's and Morgan Stanley's conduct violated ERISA;

C. Actual damages to be paid by ING in the amount of any losses the Plans suffered;

D. Imposition of a Constructive Trust on any amounts by which Morgan Stanley was unjustly enriched by receipt of Additional Compensation;

E. An Order for equitable restitution and disgorgement of any Additional Compensation Morgan Stanley obtained and other appropriate equitable relief against Morgan Stanley;

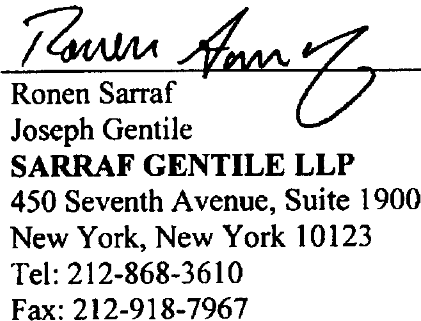
F. An Order enjoining Morgan Stanley from receiving, and ING from paying, any further Additional Compensation;

G. An Order for any other relief which the Court deems just and proper;

H. An Order awarding costs pursuant to 29 U.S.C. § 1132(g); and

I. An order awarding attorneys' fees pursuant to 29 U.S.C. § 1132(g) and the common fund doctrine.

Plaintiff, Skin Pathology Associates, Inc. on behalf of the Skin Pathology Associates, Inc. 401(k) Profit Sharing Plan

By: 

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