

2. This court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

3. Professional Workers Master Contract Group (“MCG”) and the National Production Workers Union Local 707 (“Union”) pursuant to an agreement between them established the United Employee Benefit Fund (“Fund”) to provide welfare benefits and to utilize Fund assets to pay or provide medical, death, disability and child care facility benefits to the Fund’s participants.

4. The participants of the Fund include both Union and non-Union employees of MCG’s employer members, consisting of approximately 550 participants.

5. The Fund is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a).

6. Venue of this action lies in the Northern District of Illinois, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Fund is administered in Northbrook, Illinois, in Cook County within this district.

DEFENDANTS

7. The Fund is named as a defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

8. At all relevant times, David Fensler served as one of the Fund’s named Trustees and as the Fund Manager, in these positions he had authority, control, and responsibility over the assets of the Fund, including all parts of the process related to the distribution of plan assets to the Fund’s participants.

9. Based on Fensler's control and responsibility of the Fund's assets, and his status as a named trustee for the Fund, Fensler was a fiduciary to the Fund within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

10. At all relevant times, Defendant Anthony Monaco served as one of the Fund's named Trustees, in this position he had authority, control, and responsibility over the assets of the Fund, including all parts of the process related to disbursement of plan assets to the Fund's participants.

11. Based on Monaco's status as a named trustee and his authority over the Fund's assets, Monaco was a fiduciary to the Fund within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

ALLEGATIONS

12. Paragraphs 1 through 11 above are hereby re-alleged and incorporated herein.

13. The Fund's governing documents provide in pertinent part that:

- a. A participant may apply in writing for a loan from the Fund.
- b. The Trustees may approve such a loan up to the amount of all or a portion of the present value of a Participant's death benefit to the extent necessary to meet an "Emergency Need."
- c. An "Emergency Need" means an immediate and heavy financial need that cannot be met from other reasonably available resources caused by certain enumerated causes, including medical expenses, tuition expenses, and preventing an eviction.

d. Upon application of a participant, the Trustees, in their sole discretion and in accordance with the Fund's policy, may make a loan or loans to such participants.

e. Loans are required to have a level amortization with payments due not less than quarterly and with interest at a reasonable rate.

f. Loans required collateral consisting of property including the actuarially computed value of the participant's death benefit of sufficient value to adequately secure the repayment of the loan.

14. Each participant in the Fund is a party in interest within the meaning of ERISA § 3(14)(H); 29 U.S.C. § 1002(14)(H).

15. Between January 1997 and December 31, 2009, Fensler and Monaco (the "Trustees"), approved at least 194 "loans" from the Fund to individual participants.¹ The Trustees continued to approve "loans" to participants in 2010.

16. Forty-two of the "loans" to participants approved by the Trustees, through December 31, 2009, had no supporting loan documentation. The other 152 "loans" had promissory notes with a stated interest rate that ranged from 1% to 9% and required equal quarterly payments over a 5 year period.

17. During the above time period, the Trustees knew or should have known when the amount of the "loan" made, including "loan(s)" outstanding, exceeded 50% of the present value of the participant's vested accrued benefit under the Fund. In some instances, the "loans" approved by the Trustees exceeded 50% of the present value of the participant's vested accrued benefit.

¹ The complaint refers to the transfer of plan assets to parties in interest as "loans," for simplicity. The Secretary does not assert or recognize that the transfer of plan assets by the Trustees, referred to as "loans" in this action constitute participants loans as that term is used in ERISA § 408(b)(1).

18. Through December 31, 2009, none of the “loans” approved by the Trustees had been paid back to the Fund in full. Only six of the participants had ever made any payments to the Fund on the “loans” issued to them. As of December 31, 2009, the Fund identified \$7,196,442 in assets as outstanding “loans” owed to the Fund.

19 From July 2008 to December 31, 2009, the Trustees approved “loans” totaling at least \$1,022,604.00.

20. The Trustees have made no efforts to enforce the terms of the “loan” documents or to collect any payments on the outstanding “loans.” The Trustees simply identify the vast majority of the “loans” as delinquent.

21. Upon information and belief, the Trustees never intended to collect payments on the “loans” they issued to the participants

22. The “loans” authorized by the Trustees from the Fund to individual participants were instead a method of distributing plan assets to the participants prior to the participant’s death.

23. The Fund’s governing documents required the Trustees to administer the Fund in accordance with the Fund’s documents and applicable laws.

24. By the conduct described in paragraphs 12 through 23 above, the Defendants Fensler and Monaco:

a. failed to discharge their duties with respect to the Fund solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

b. failed to discharge their duties with respect to the Fund solely in the interest of the participants and beneficiaries and in accordance with the documents and instruments governing the Fund in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D);

c. caused the Fund to engage in transactions that they knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of any assets of the Fund in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

A. Ordering Defendants to correct the prohibited transaction in which they engaged;

B. Ordering Defendants to restore to the Fund any losses, including lost opportunity costs, resulting from fiduciary breaches committed by them or for which they are liable;

C. Awarding the Secretary the costs of this action; and

D. Ordering such further relief as is appropriate and just.

Respectfully submitted,

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