UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
STEPHANIE J. JOCHIMS, **ROBERT C. JOCHIMS,** and **WESTERN STEEL ERECTION 401(K) PLAN**,	:	Case No.
Defendants.	:	

COMPLAINT

Plaintiff, THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor ("Secretary"), alleges:

JURISDICTION AND VENUE

1. This action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1001, et seq., and is brought by the Secretary under ERISA §§ 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2) and (5), to enjoin acts and practices which violate the provisions of Title I of ERISA, to obtain appropriate equitable relief for breaches of fiduciary duty under ERISA § 409, 29 U.S.C. § 1109, and to obtain such further equitable relief as may be appropriate to redress violations and to enforce the provisions of Title I of ERISA.

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

3. Western Steel Erection, Inc. ("Western Steel") established the Western Steel Erection 401(k) ("Plan") to provide retirement benefits to the Plan's participants. Western Steel ceased operations on or around February 21, 2010.

4. The Plan 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).

5. Venue for this action lies in the District of Minnesota, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan was administered in Long Lake, Hennepin County, Minnesota, within this district.

DEFENDANTS AND PARTIES IN INTEREST

6. The Plan 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.

7. From October 16, 2009 to present, Defendant Robert C. Jochims ("Robert Jochims") was a named trustee of the Plan; was a fiduciary to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and was a party in interest to the Plan within the meaning of ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

8. From October 16, 2009 to present, Defendant Stephanie J. Jochims ("Stephanie Jochims") was Western Steel's president and sole owner, exercised authority and control over Western Steel and its assets; exercised authority and control over the management of the Plan and the assets of the Plan; was a named trustee of the Plan; was a fiduciary to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A);

and was a party in interest to the Plan within the meaning of ERISA § 3(14)(A) and (E), 29 U.S.C. § 1002(14)(A) and (E).

9. From October 16, 2009 to present, Western Steel was the Plan Sponsor and Plan Administrator of the Plan; was a fiduciary to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and was a party in interest to the Plan within the meaning of ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

VIOLATIONS

COUNT I - UNREMITTED EMPLOYEE CONTRIBUTIONS AND EMPLOYEE LOAN REPAYMENTS TO THE PLAN

10. Paragraphs 1 through 9 above are hereby re-alleged and incorporated herein.

11. During the period from October 16, 2009 through February 21, 2010, the Plan's governing documents stated that participants could elect to defer a portion of their wages to be contributed to the Plan.

12. During the period from October 16, 2009 through February 21, 2010, the Plan's governing documents provided that participants could obtain participant loans from their individual Plan accounts and repay them through after-tax payroll deductions.

13. During the period from October 16, 2009 through February 21, 2010, Stephanie Jochims had authority and control over whether Western Steel remitted withheld employee contributions and loan repayments to the Plan.

14. During the period from October 16, 2009 through February 21, 2010, Western Steel withheld $1,651.67 from its employees' pay as contributions to the Plan. Western Steel retained the withheld employee contributions in its general assets.

15. During the period from October 16, 2009 through February 21, 2010, Defendant Stephanie Jochims caused Western Steel to retain employee contributions to the Plan that had been withheld from its employees' pay and failed to ensure that the $1,651.67 in withheld employee contributions was remitted to the Plan.

16. During the period from October 16, 2009 through February 21, 2010, Western Steel withheld $3,515.00 from employees' pay as participant loan repayments to the Plan. Western Steel retained the withheld participant loan repayments in its general assets.

17. During the period from October 16, 2009 through February 21, 2010, Defendant Stephanie Jochims caused Western Steel to retain participant loan repayments to the Plan that had been withheld from employees' pay and failed to ensure that the $3,515.00 in withheld participant loan repayments was remitted to the Plan.

18. Based on the facts described in paragraphs 10 through 17, Defendant Stephanie Jochims:

a. failed to ensure that Plan assets were held in trust in violation of ERISA § 403(a), 29 U.S.C. § 1103(a);

b. permitted the assets of the Plan to inure to the benefit of an employer in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);

c. failed to discharge her duties with respect to the Plan 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);

d. caused the Plan to engage in transactions that she 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 Plan in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

e. dealt with the Plan assets in her own interest or for her own account in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

f. acted in a transaction involving the Plan on behalf of a party whose interests were adverse to the interest of the Plan and to the interest of the Plan's participants and beneficiaries in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

19. Robert Jochims failed to ensure that Stephanie Jochims remitted employee contributions and loan repayments to the Plan and made no inquiry as to her conduct as described in paragraphs 14 through 18, and thereby, enabled Stephanie Jochims to breach her fiduciary duties.

20. By the conduct in paragraph 19, Robert Jochims as a trustee of the Plan failed to discharge his duties with respect to the Plan 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).

21. By the conduct in paragraphs 19 and 20, Robert Jochims is liable, pursuant to ERISA § 405(a)(2); 29 U.S.C. § 1105(a)(2), for his co-fiduciary Stephanie Jochims's breaches of her fiduciary duties, as described in paragraphs 14 through 18, because Robert Jochims failed to comply with ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1) in the administration of his specific responsibilities which gave rise to his individual status as a

fiduciary of the Plan and enabled Stephanie Jochims to commit the breaches described in paragraph 18.

22. Robert Jochims is liable, pursuant to ERISA § 405(b)(1)(A), 29 U.S.C. § 1105(b)(1)(A), for the breaches of fiduciary responsibility by a co-trustee, as described in paragraphs 14 through 18, because he failed to use reasonable care to prevent a co-trustee from committing a breach.

23. As a direct and proximate result of Defendants Robert Jochims and Stephanie Jochims's fiduciary breaches, the Plan has suffered injury and losses for which they are personally liable and subject to appropriate equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

COUNT II - FAILURE TO TERMINATE THE PLAN AFTER COMPANY CEASED OPERATIONS AND TERMINATED ALL EMPLOYEES

24. Paragraphs 1 through 9 above are hereby re-alleged and incorporated herein.

25. When Western Steel ceased operations on or around February 21, 2010, Western Steel terminated all its employees' employment.

26. Pursuant to the Plan documents, all employees become fully vested in their individual retirement accounts with the Plan upon their individual termination.

27. To date, the Plan has not been terminated.

28. The Plan continues to incur fees and costs that would have been avoided with a proper and timely termination of the Plan and issuance of distributions of Plan assets to the Plan's participants.

29. As of August 5, 2013, the Plan has 12 remaining participants with a total balance of $77,222.00.

30. Based on the facts described in paragraphs 24 through 29, Defendants Stephanie Jochims and Robert Jochims:

a. failed to discharge their duties with respect to the Plan 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); and

b. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like a capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

31. As a direct and proximate result of Defendants Robert Jochims and Stephanie Jochims's fiduciary breaches, the Plan has suffered injury and losses for which they are personally liable and subject to appropriate equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for a judgment:

A. Permanently enjoining Defendants Robert Jochims and Stephanie Jochims from violating the provisions of Title I of ERISA;

B. Removing Defendants Robert Jochims and Stephanie Jochims from any positions that they now have as fiduciaries to the Plan;

C. Permanently enjoining Defendants Robert Jochims and Stephanie Jochims from serving as fiduciaries or service providers to any ERISA-covered employee benefit plan;

D. Ordering Defendant Stephanie Jochims to correct the prohibited transaction in which she engaged;

E. Ordering Defendants Robert Jochims and Stephanie Jochims to restore to the Plan all losses, including lost opportunity costs, resulting from fiduciary breaches committed by them or for which they are liable;

F. Appointing an independent fiduciary to administer and terminate the Plan.

G. Ordering Defendants Robert Jochims and Stephanie Jochims to pay the fees and expenses of the independent fiduciary;

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

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

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

/s/ Bruce C. Canetti
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