

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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**THOMAS E. PEREZ**, Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

**PRO SYSTEMS, CORP.,  
PRO RESOURCES, CORP.,  
MICROPRO, INC., JAMES PICHE,  
MICHAEL BRODSHO and the PRO SYSTEMS  
CORPORATION GROUP HEALTH PLAN,**

Defendants.  
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CIVIL ACTION

Case No. 14-CV-01326

**COMPLAINT**

Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor (“Secretary”), alleges as follows:

1. This action arises under Title I of 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 that 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 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. The Pro Systems Corporation Group Health Plan was 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).

4. Venue lies in the District of Minnesota pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Health Plan was administered in Detroit Lakes, Becker County, Minnesota, within this district.

**DEFENDANTS AND PARTIES IN INTEREST UNDER ERISA**

5. Defendant Pro Systems Corporation (“Pro Systems”), is a Minnesota corporation that, from January 1, 2006, through December 31, 2011, maintained its principal place of business in Detroit Lakes, Becker County, Minnesota.

6. Defendant PRO Resources Corporation (“PRO Resources”), is a Minnesota corporation that, from January 1, 2006, through December 31, 2011, maintained its principal place of business in Detroit Lakes, Becker County, Minnesota.

7. Defendant MICROPRO, Inc. (“MICROPRO”), is a Minnesota corporation that, from January 1, 2006, through December 31, 2011, maintained its principal place of business in Detroit Lakes, Becker County, Minnesota.

8. Pro Systems, PRO Resources, and MICROPRO (collectively, the “Companies”), from January 1, 2006, through December 31, 2011, were professional employer organizations (“PEOs”) that were engaged in the business of providing human resources services to their clients (“client employers”), including payroll processing, administration, and human resources consulting. As part of the service agreements between the Companies and their client employers, the Companies provided and administered benefit programs, including health insurance and prescription drug coverage plans, in which the employees of their client employers participated.

9. From 2006 to 2008, each of the Companies filed a separate Form 5500 Annual Return/Report of Employee Benefit Plan (“Form 5500”) for each of the health plans that they sponsored:

- a. Pro Systems filed on behalf of “Pro Plan 125,” effective as of January 6, 1992;
- b. PRO Resources filed on behalf of “PRO Resources 125 Plan,” effective as of January 1, 2001; and
- c. MICROPRO filed on behalf of “Micro 125 Plan,” effective as of January 1, 1999.

10. In 2008, the Companies consolidated the Pro Plan 125, the PRO Resources 125 Plan, and the Micro 125 Plan into the “Pro Systems Corporation Cafeteria Plan” (the “Health Plan”). In 2008, 2009, and 2010, the Companies filed one Form 5500 on behalf of the Health Plan. The 2010 Plan Document and Summary Plan Description refer to the Plan as the “ProSystems Corporation Group Health Plan.”

11. Participation in the Health Plan was reserved for eligible employees of the Companies’ client employers; participation in the Health Plan was not available to employees of Pro Systems, PRO Resources, or MICROPRO.

12. The individual client employers who opted to provide benefits to their employees through the Health Plan and paid contributions for the benefits offered by the Health Plan each sponsored their own individual “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), which are subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a).

13. From January 1, 2006, through December 31, 2011, each of the Companies were owned by James Piche (a 22% owner), Michael Brodsho (a 26% owner), Robert Poolman (a 26% owner), and Bruce Braaten (a 26% owner).

14. From January 1, 2006, through December 31, 2011, Pro Systems was the plan administrator of the Health Plan; exercised authority and control respecting management and disposition of the Health Plan's assets; had discretionary authority and discretionary responsibility in the administration of the Health Plan; and was a fiduciary of the Health Plan within the meaning of ERISA §§ 3(21)(A)(i) and (iii), 29 U.S.C. §§ 1002(21)(A)(i) and (iii).

15. From January 1, 2006, through December 31, 2011, Pro Systems provided the following services to the Health Plan:

- a. Enrolled new Health Plan participants;
- b. Updated the stop-loss insurance carrier and claims administrator on a regular basis with the current Health Plan participants enrolled in the Health Plan;
- c. Scheduled payroll deductions for Health Plan participants;
- d. Answered Health Plan participants' questions about the Health Plan; and
- e. Transferred funds from its general operating accounts into two separate corporate bank accounts from which benefit claims were paid (the "Benefits Accounts").

16. From January 1, 2006, through December 31, 2011, as a fiduciary and service provider to the Health Plan, Pro Systems was a party in interest to the Health Plan within the meaning of ERISA §§ 3(14)(A) and (B), 29 U.S.C. §§ 1002(14)(A) and (B).

17. From January 1, 2006, through December 31, 2011, PRO Resources exercised authority and control over the management and disposition of assets of the Health Plan.

Therefore, from January 1, 2006, through December 31, 2011, PRO Resources was a fiduciary of the Health Plan within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

18. From January 1, 2006, through December 31, 2011, MICROPRO exercised authority and control over the management and disposition of assets of the Health Plan.

Therefore, from January 1, 2006, through December 31, 2011, MICROPRO was a fiduciary of the Health Plan within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

19. From January 1, 2006, through December 31, 2011, as fiduciaries to the Health Plan, PRO Resources and MICROPRO were parties in interest to the Health Plan within the meaning of ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

20. From January 1, 2006, through approximately July 10, 2010, James Piche:

- a. Was the chief operating officer of Pro Systems;
- b. Exercised authority and control over the Companies, including the Companies' general operating accounts into which Health Plan assets, including "other insurance costs" fees, were deposited;
- c. Had decision-making authority with respect to the Health Plan;
- d. Made renewal decisions regarding the Health Plan's coverage with Noridian Mutual Insurance Company ("NMIC");
- e. Authorized the weekly deposits from the Companies' general operating accounts into the Benefits Accounts from January 1, 2006, through December 31, 2011; and
- f. Was an authorized signer on the Benefits Accounts.

21. Therefore, from January 1, 2006, through approximately July 10, 2010, James Piche exercised authority and control over the management and disposition of assets of the

Health Plan; was a fiduciary of the Health Plan within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i); and was a party in interest to the Health Plan within the meaning of ERISA §§ 3(14)(A) and (H), 29 U.S.C. §§ 1002(14)(A) and (H).

22. From January 1, 2006, through December 31, 2011, Michael Brodsho:
  - a. Was the chief executive officer of Pro Systems;
  - b. Had decision-making authority with respect to the Health Plan;
  - c. Made renewal decisions regarding the Health Plan's coverage with NMIC and Noridian Benefit Plan Administrators ("NBPA");
  - d. Had signature authority on the general operating accounts at Pro Systems and MICROPRO into which contributions made by the Companies' participating client employers ("client employer contributions"), participating employee contributions withheld from participants' payroll ("employee contributions"), and Consolidated Omnibus Reconciliation Act payments ("COBRA payments") were deposited; and
  - e. Exercised authority and control over the Companies, including the Companies' general operating accounts into which Health Plan assets, including "other insurance costs" fees, were deposited.

23. Therefore, from January 1, 2006, through December 31, 2011, Michael Brodsho exercised authority and control over the management and disposition of assets of the Health Plan; was a fiduciary of the Health Plan within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i); and was a party in interest to the Health Plan within the meaning of ERISA §§ 3(14)(A) and (H), 29 U.S.C. §§ 1002(14)(A) and (H).

24. From January 1, 2006, through December 31, 2011, the Health Plan consisted of the Health Plan created by Pro Systems and the plans created by each of the individual client

employers who opted to provide benefits to their employees through the Health Plan and paid contributions for the benefits offered by the Health Plan.

25. The Health 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.

**GENERAL ALLEGATIONS**

26. The Health Plan provided medical, prescription drug, vision, dental, life, and accidental death and dismemberment benefits to participating employees of individual client employers who opted to provide benefits to their employees through the Health Plan.

27. The Health Plan's dental, vision, life, and accidental death and dismemberment benefits were fully insured benefits.

28. The Health Plan's medical and prescription drug benefits were self-funded and were paid from the Benefits Accounts, which were funded by client employer contributions, employee contributions, and COBRA payments.

29. As PEOs, the Companies would process the client employers' payroll on the client employers' given payroll date. The paychecks received by employees would be net payroll checks from which the Companies had deducted, among other things, any employee contributions for the Health Plan.

30. The Companies billed the client employers each pay period for employee compensation, payroll taxes, fees, expenses, and benefits.

31. The fees identified in the Companies' invoices to the client employers compensated the Companies for payroll processing and human resources consulting.

32. In collecting monies for participation in the Health Plan, the Companies identified two sums to be paid in their invoices to client employers: a sum for “other insurance costs” and a sum to be used to pay claim expenses.

33. The claims expenses were paid through client employer contributions, employee contributions, and COBRA payments. The claims expenses consisted of medical claims, prescription claims, associated administrative expenses, and stop-loss insurance coverage premiums.

34. When the Companies received the Health Plan employee contributions, client employer contributions, and COBRA payments, they initially placed those monies in the respective Companies’ general operating accounts.

35. The Companies then forwarded the client employer contributions, employee contributions, and COBRA payments, intended for Health Plan claims expenses, from the Companies’ general operating accounts to the Benefits Accounts on a weekly basis. The amounts in the Benefits Accounts were Health Plan assets to be utilized for the exclusive purpose of paying for Health Plan benefits.

36. Employee contributions were withheld from the paychecks of participating eligible employees when the Companies processed each client employer’s payroll; these employee contributions were immediately transferred to the Benefits Accounts. The client employer contributions were billed monthly to the client employers.

37. The Companies were responsible for selecting and negotiating with third-party service providers to provide stop-loss insurance coverage and claims administration for the benefits provided under the Health Plan.

38. Pro Systems contracted with NMIC to provide claims administration and stop-loss insurance for the Health Plan from January 1, 2006, through December 31, 2009.

39. Pro Systems contracted with NBPA to provide claims administration and stop-loss insurance for the Health Plan from January 1, 2010, through December 31, 2011.

40. Health Plan participants presented their health insurance cards to their medical providers when receiving medical or prescription drug benefits. The medical providers billed NBPA or NMIC (collectively, "Noridian"). Noridian then billed Pro Systems on a weekly basis for claims received during each week. In accordance with its agreement with Pro Systems, Noridian electronically withdrew the weekly-billed amount from the Benefits Accounts.

41. Noridian provided the following services to the Health Plan:

- a. Calculated recommended rates to charge participants and client employers for single coverage, single-plus-dependent coverage, and family coverage;
- b. Received medical and prescription drug claims from health care providers, pharmacies, participants, and beneficiaries;
- c. Examined medical and prescription drug claims to determine eligibility, apply network discounts, and make adjustments to claims submissions;
- d. Arranged and directly disbursed payments to health care providers after medical and prescription drug claims were adjudicated;
- e. Prepared and distributed explanations of benefits to participants and beneficiaries;
- f. Arranged and made payments directly to health care providers when claims exceed individual and aggregate limits;
- g. Assisted in drafting the summary plan description;

h. Established a membership record and provided identification cards for each subscriber; and

i. Provided a weekly report of claim payments and summary of claims paid.

### **COUNT ONE**

#### **The Companies' Collection of "Other Insurance Costs" Fees**

42. Paragraphs 1 through 41 above are realleged and incorporated in these allegations.

43. Noridian annually recommended a premium structure to the Companies for the Health Plan. The rates calculated by Noridian were based on the Health Plan's forecasted administrative and claims expenses.

44. Noridian's suggested premiums included an amount to pay for the expected claim volume on a monthly basis, a stop-loss insurance premium, and an administration fee payable to Noridian to administer and adjudicate the Health Plan's claims.

45. Noridian's suggested premiums did not include the "other insurance costs" billed and collected by the Companies.

46. From January 1, 2006, through December 31, 2011, the Companies established, assessed, and collected a fee for "other insurance costs" from each client employer at a monthly rate ranging from \$80 to \$160 per month per participant. Other than the phrase "other insurance costs" in the Companies' invoices, nothing in the client service agreements or the Companies' invoices directly identified what services were provided by the Companies in exchange for the "other insurance costs" fee.

47. While the client employer contributions (excluding the "other insurance costs" fees), employee contributions, and COBRA payments were transferred to the Benefits Accounts, the Companies retained the "other insurance costs" fees in their general operating accounts without disclosing these fees were being used for non-Health Plan purposes. From January 1,

2006, through December 31, 2011, the Companies retained a total of \$1,045,256.55 in “other insurance costs” fees from the Health Plan.

48. The Companies invoiced the “other insurance costs” fees to client employers without ever identifying that these fees went solely to the Companies.

49. In completing the Form 5500, the Companies never disclosed that they were being paid the “other insurance costs” fees.

50. The Companies were the only ones who knew that the “other insurance costs” fees were transferred and used by the Companies for non-Health Plan purposes.

51. The “other insurance costs” fees were Health Plan assets under ERISA and the Companies converted these Health Plan assets to their own use.

52. By retaining for their own benefit the “other insurance costs” fees as alleged in paragraphs 43 through 51 above during the period January 1, 2006, through December 31, 2011, the Companies and Michael Brodsho:

a. failed to act solely in the interest of the participants and beneficiaries of the Health Plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

b. caused the Health Plan to engage in transactions that the Companies and Michael Brodsho knew or should have known constituted a direct or indirect furnishing of goods, services, or facilities between the Health Plan and a party in interest, in violation of ERISA § 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C);

c. caused the Health Plan to engage in transactions that the Companies and Michael Brodsho 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 assets of the Health Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

d. dealt with assets of the Health Plan in their own interests in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

e. acted on behalf of a party whose interests are adverse to the interests of the Plan or the interests of its participants and beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

53. By retaining for their own benefit the “other insurance costs” fees as alleged in paragraphs 43 through 51 above during the period January 1, 2006, through July 10, 2010, James Piche:

a. failed to act solely in the interest of the participants and beneficiaries of the Health Plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

b. caused the Health Plan to engage in transactions that James Piche knew or should have known constituted a direct or indirect furnishing of goods, services, or facilities between the Health Plan and a party in interest, in violation of ERISA § 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C);

c. caused the Health Plan to engage in transactions that James Piche 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 assets of the Health Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

d. dealt with assets of the Health Plan in his own interest in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

e. acted on behalf of a party whose interests are adverse to the interests of the Plan or the interests of its participants and beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

54. As a direct and proximate result of the Companies, James Piche, and Michael Brodsho's fiduciary breaches, the Health 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 TWO**

##### **Transfers from the Health Plan to Pro Systems, PRO Resources, and James Piche**

55. Paragraphs 1 through 41 above are realleged and incorporated in these allegations.

56. On or about May 3, 2006, the Companies and James Piche caused the Health Plan to transfer \$50,000 in Health Plan assets from one of the Benefit Accounts to a PRO Resources general corporate account.

57. The \$50,000 transfer in Health Plan assets from one of the Benefit Accounts to a PRO Resources general corporate account was used for non-Health Plan purposes.

58. On or about May 24, 2006, the Companies and James Piche caused the Health Plan to transfer \$25,000 in Health Plan assets from one of the Benefit Accounts to James Piche.

59. The \$25,000 transfer in Health Plan assets from one of the Benefit Accounts to James Piche was used for non-Health Plan purposes.

60. On or about August 10, 2006, the Companies and James Piche caused the Health Plan to transfer \$30,000 in Health Plan assets from one of the Benefit Accounts to a PRO Resources general corporate account.

61. The \$30,000 transfer in Health Plan assets from one of the Benefit Accounts to a PRO Resources general corporate account was used for non-Health Plan purposes.

62. On or about October 3, 2006, the Companies and James Piche caused the Health Plan to transfer \$100,000 in Health Plan assets from one of the Benefit Accounts to a PRO Resources general corporate account.

63. The \$100,000 transfer in Health Plan assets from one of the Benefit Accounts to a PRO Resources general corporate account was used for non-Health Plan purposes.

64. On or about April 22, 2009, the Companies and James Piche caused the Health Plan to transfer \$30,000 in Health Plan assets from one of the Benefit Accounts to a Pro Systems general corporate account.

65. The \$30,000 transfer in Health Plan assets from one of the Benefit Accounts to a Pro Systems general corporate account was used for non-Health Plan purposes.

66. On or about September 27, 2010, the Companies and Michael Brodsho caused the Health Plan to transfer \$35,000 in Health Plan assets from one of the Benefit Accounts to a PRO Resources general corporate account.

67. The \$35,000 transfer in Health Plan assets from one of the Benefit Accounts to a PRO Resources general corporate account was used for non-Health Plan purposes.

68. By the allegations described in paragraphs 56 through 65 above, the Companies and James Piche:

- a. failed to ensure that all assets of the Health Plan did not inure to the benefit of the Companies, in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);
- b. failed to act solely in the interest of the participants and beneficiaries of the Health Plan and for the exclusive purpose of providing benefits to participants and

their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

c. caused the Health Plan to engage in transactions which the Companies and James Piche 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 assets of the Health Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

d. dealt with assets of the Health Plan in their own interests in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

e. acted on behalf of a party whose interests are adverse to the interests of the Health Plan or the interests of its participants and beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

69. By the allegations described in paragraphs 66 through 67 above, the Companies and Michael Brodsho:

a. failed to ensure that all assets of the Health Plan did not inure to the benefit of the Companies, in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);

b. failed to act solely in the interest of the participants and beneficiaries of the Health Plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

c. caused the Health Plan to engage in transactions which the Companies and Michael Brodsho 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 assets of the Health Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

d. dealt with assets of the Health Plan in their own interests in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

e. acted on behalf of a party whose interests are adverse to the interests of the Health Plan or the interests of its participants and beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

70. As a direct and proximate result of the Companies, James Piche, and Michael Brodsho's fiduciary breaches, the Health 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 that this Court enter a judgment:

A. Permanently enjoining each Defendant from violating the provisions of Title I of ERISA;

B. Permanently enjoining each Defendant from acting as a fiduciary or service provider to any ERISA-covered employee benefit plan;

C. Requiring an accounting, at the Companies, James Piche, and Michael Brodsho's expense, for all losses to the Health Plan and all unjust enrichment or profits resulting from the conduct alleged in this Complaint.

D. Ordering each Defendant to make good to the Health Plan all losses, including interest, resulting from fiduciary breaches committed by such Defendant or for which such Defendant is liable;

E. Requiring each Defendant to disgorge all unjust enrichment or profits received as a result of fiduciary breaches committed by them or for which they are liable;

F. Ordering Pro Systems, MICROPRO, PRO Resources, James Piche, and Michael Brodsho to correct the prohibited transactions in which they engaged, plus appropriate interest;

G. Requiring Pro Systems, MICROPRO, and PRO Resources to disclose in detail to former, current, and future clients information concerning the amounts retained by the Companies as “other insurance costs” fees and all other fees that the Defendants received or will receive as a result of the Defendants’ involvement with the Health Plan;

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

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

**M. PATRICIA SMITH**  
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**CHRISTINE Z. HERI**  
Regional Solicitor

s/Kevin M. Wilemon

**KEVIN M. WILEMON**  
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