

3. The N.C. Caro M.D., S.C. Defined Benefit Plan (the "Plan") is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), that is subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a). N.C. Caro M.D., S.C., (the "Practice") created the Plan on January 1, 1999, and amended and restated the Plan on May 29, 2007, effective as of January 1, 2007. The Plan is named as a defendant in this action pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

4. 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 Plan is administered in Chicago, Cook County, Illinois, within this district.

DEFENDANTS AND OTHER PARTIES

5. At all relevant times, defendant the Practice, an Illinois corporation, was the Plan's sponsor, the Plan's administrator, and a fiduciary of the Plan within the meaning of ERISA § 3(21)(A)(i) and (iii), 29 U.S.C. § 1002(21)(A)(i) and (iii), and 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).

6. At all relevant times, defendant Nicholas C. Caro ("Caro") was the president and sole owner of the Practice, and sole trustee of the Plan since it was established, and a fiduciary of the Plan within the meaning of ERISA § 3(21)(A)(i) and (iii), 29 U.S.C. § 1002(21)(A)(i) and (iii), and 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).

7. At various times, Caro conducted his medical practice under other names, including, "Nicholas Caro M.D., LLC," "Elegance Anti-Aging Center," and the "St. George

Corrective Vision Center, Inc., S.C.” Caro was the president of George Corrective Vision Center, Inc., S.C.

8. Caro filed for Chapter 7 bankruptcy protection in the U.S. Bankruptcy Court for the Northern District of Illinois, on July 15, 2011, Bankruptcy Petition No. 11-29162.¹

9. Caro’s wife, Patricia Caro, was a member of SDLP, LLC, at the time it received a transfer of Plan assets. Patricia Caro was a party in interest to the Plan within the meaning of ERISA § 3(14)(F) and (H), 29 U.S.C. § 1002(14)(F) and (H).

ALLEGATIONS
(Transfer of Plan Assets to Caro and Others)

10. Paragraphs 1 through 9 above are realleged and incorporated herein by reference.

11. The Plan was established by the Practice in 1999 to provide pension, disability, and death benefits to eligible employees of the Practice. The Practice amended and restated the Plan on May 9, 2007, effective as of January 1, 2007.

12. For the Plan year ending on December 31, 2005, Caro, signing as Plan Administrator, reported to the federal government that the Plan held \$247,919 in assets.

13. From at least April 27, 2006, through February 29, 2008, Caro liquidated in excess of \$263,951 from the Plan’s investment accounts and transferred said funds to accounts held in Caro’s name, accounts held in his former medical practice’s name (St. George Corrective Vision Center, Inc., S.C.), accounts held in his wife’s company’s name (SDLP, LLC), and at least two other unidentified accounts.

14. As sole trustee of the Plan, Caro had the discretionary and signatory authority to receive, manage, and dispose of Plan assets.

¹ The Secretary will seek to enforce a monetary judgment in accordance with the Bankruptcy Code by filing a *Complaint To Determine Dischargeability Of Debt* in Nicholas C. Caro’s bankruptcy case on or before October 17, 2011.

15. On or about May 3, 2006, Caro deposited in excess of \$71,000 in assets transferred from the Plan to his personal account, including the following:

a.	May 3, 2006	\$26,233.39
b.	May 3, 2006	\$33,486.76
c.	May 3, 2006	\$11,355.25

16. During the period from January 22, 2007, through March 6, 2007, Caro deposited \$55,000 in assets transferred from the Plan to accounts held by unknown entities, including the following:

a.	January 22, 2007	\$25,000.00
b.	February 27, 2007	\$15,000.00
c.	March 6, 2007	\$15,000.00

17. On or about January 23, 2007, Caro deposited \$25,000 in assets transferred from the Plan to an account held by SDLP, LLC.

18. During the period from April 5, 2007, through February 29, 2008, Caro deposited in excess of \$112,000 in assets transferred from the Plan to accounts held by St. George Corrective Vision Center, Inc., S.C., including the following:

a.	April 5, 2007	\$5,000.00
b.	April 5, 2007	\$5,000.00
c.	November 21, 2007	\$29,992.00
d.	February 29, 2008	\$30,513.57
e.	February 29, 2008	\$25,766.85
f.	February 29, 2008	\$7,322.86
g.	February 29, 2008	\$9,281.00

19. Funds transferred from the Plan's assets, as described in paragraphs 15 through 18 above, were used to pay for, among other things, the Practice's operating expenses and legal fees.

20. The transfers of Plan assets, as described in paragraphs 15 through 18 above, were not used to provide benefits to the Plan's participants or pay Plan expenses.

21. By the conduct described in paragraphs 12 through 20 above, defendant Caro:
- a. failed to ensure that all assets of the Plan were held in trust and did not inure to the benefit of the Practice, in violation of ERISA § 403(a) and (c)(1), 29 U.S.C. § 1103(a) and (c)(1); and
 - b. failed to act solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and its beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);
 - c. failed to discharge his 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 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); and
 - d. caused the Plan to engage in transactions that he 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 Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);
 - e. dealt with assets of the Plan in his own interest, in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and
 - f. acted on behalf of a party whose interest 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).

22. By the conduct described in paragraph 18 above, defendant the Practice:

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

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

c. failed to discharge its 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 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); and

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

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

f. acted on behalf of a party whose interest 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).

23. Defendant the Practice failed to act solely in the interest of the participants and beneficiaries of the Plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of the Plan's administration when it

allowed the Plan to engage in the activities in paragraphs 12 through 20 above, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

24. Defendant the Practice is liable, pursuant to ERISA § 405(a)(2), 29 U.S.C. § 1105(a)(2), for the breaches of fiduciary responsibility by a co-fiduciary, as described in paragraphs 12 through 20 above, because by failing to comply with ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), in the administration of its specific responsibilities that gave rise to its status as a fiduciary to the Plan, it enabled such other fiduciary to commit a breach.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

- A. Permanently enjoining defendants Caro and the Practice from violating the provisions of Title I of ERISA;
- B. Ordering defendants Caro and the Practice to make good to the Plan any losses, including interest, resulting from fiduciary breaches committed by them or for which they are liable;
- C. Requiring defendants Caro and the Practice to disgorge any profits received as a result of fiduciary breaches committed by such defendants;
- D. Ordering defendants Caro and the Practice to correct the prohibited transactions in which they engaged, plus appropriate interest;
- E. Permanently enjoining defendant Caro from acting as a fiduciary or service provider to any ERISA-covered employee benefit plan;
- F. Removing defendants Caro and the Practice from their positions as fiduciaries with respect to the Plan;

G. Appointing an independent fiduciary to terminate the Plan consistent with the Plan's governing documents, the Internal Revenue Code, and ERISA, distribute its assets to the participants and beneficiaries, and conclude any Plan-related matters connected with the proper termination of the Plan;

H. Order defendants Caro and the Practice to pay all reasonable fees and expenses incurred by the independent fiduciary in administering and terminating the Plan;

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

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

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