

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

SETH D. HARRIS, :  
ACTING SECRETARY OF LABOR, :  
UNITED STATES DEPARTMENT OF LABOR, :

Plaintiff, :

v. :

Civ. A. No. 1:12-cv-01321

(AJT;TCB)

INNOVATIVE LOGISTICS TECHNIQUES, INC., :  
AND THE INNOVATIVE LOGISTICS :  
TECHNIQUES INC. 401(K) PLAN AND TRUST, :

Defendants. :

**CONSENT JUDGMENT**

Plaintiff, Seth D. Harris, Acting Secretary of Labor, United States Department of Labor ("Secretary"), has filed a Complaint in this action pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, alleging certain violations by Innovative Logistics Techniques, Inc. ("Innovative" or "Defendant"). The Innovative Logistics Techniques Inc. 401(k) Plan and Trust ("Plan") was joined as a party defendant under Fed. R. Civ. P. 19(a) solely to assure that complete relief could be granted and is a party to this Consent Judgment for the same reason.

Counsel for the Secretary has engaged in settlement discussions with counsel for Innovative. The Secretary and Innovative have agreed to resolve this case with respect to Innovative and the Plan relating to all claims alleged in the Complaint. Defendants admit to the jurisdiction of this Court over them and the subject matter of this action. Defendants further consent to the entry of this Consent Judgment by this Court, the terms of which are set forth

herein:

1. The Secretary's Complaint alleges that Innovative violated Sections 403, 404, and 406 of ERISA, 29 U.S.C. §§ 1103, 1104, and 1106.

2. For purposes of this Consent Judgment, Innovative admits that the Court has jurisdiction over it and the subject matter of this action.

3. The Secretary has agreed to resolve all claims asserted in the Complaint against Innovative for the equitable relief set forth below.

4. The Secretary and Innovative understand and agree that entry of this Consent Judgment is without prejudice to the Secretary's right to investigate and redress violations of ERISA, if any, not alleged in the Complaint, including the Secretary's right to institute future enforcement actions with respect to any other such matter. It is further understood that this paragraph shall not constitute a waiver by Innovative of any defenses, legal or equitable, to any such future action.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that:

- a. This Court has jurisdiction over this action and the Defendants.
- b. Without admitting or denying any wrongdoing, Innovative shall restore \$122,799.07 to the Innovative Logistics Techniques, Inc. 401(k) Plan as restitution. This amount reflects restitution \$94,954.91 in Plan forfeiture account funds, and \$27,844.16 in pre-judgment interest. Defendant Innovative shall further restore \$10,769.00 to the Plan for the costs and expenses related to the hiring of an independent fiduciary for the Plan. The total amount Innovative shall restore to the Plan is **\$133,568.07**.

- c. Payment of restitution required by paragraph (b) shall be made payable to "GTRUST Financial Partners FBO Innovative Logistics Techniques, Inc. 401(k) Plan and Trust" and sent to GTRUST Financial Partners 900 S. Kansas Avenue, Topeka, KS 66612. Three equal payments of \$44,522.69 shall be made on or before June 30, 2013, October 30, 2013 and December 30, 2013.
- d. The Plan shall redistribute the restitution to the Plan participants in amounts necessary to restore their losses incurred as a result of the fiduciary breaches alleged in the Complaint.
- e. Upon receiving proof of the restitution payment, the Secretary shall assess a penalty against Innovative in the amount of \$26,713.61 which represents 20 percent of the applicable recovery amount of \$133,568.07 pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l). Innovative waives its right to contest said penalty but preserves its right to request a penalty waiver. Unless Innovative applies for a waiver, Innovative shall pay the penalty within ten (10) days of receipt of the notice of assessment. If Innovative applies for a waiver to reduce or eliminate the penalty amount pursuant to ERISA § 502(l)(3), 29 U.S.C. § 1132(l)(3), and is denied such waiver by the Secretary, Innovative shall pay any applicable penalty amount within ten (10) days of the Secretary's denial.
- f. Innovative is removed as the Plan Administrator of the Plan.
- g. GTRUST Financial Partners is appointed as the independent fiduciary of the Plan with plenary authority over Plan administration, management and disposition of the Plan's assets, including termination of the Plan. GTRUST Financial Partners shall be

compensated an amount from the Plan not to exceed \$21,538.00 for the performance of its duties and costs incurred, including all actions necessary or appropriate to terminate the Plan. Innovative shall reimburse the Plan for \$10,769.00 of this amount as provided in paragraph (b) herein. The balance of \$10,769.00 shall be paid from the funds being restored to the Plan's forfeiture account.

- h. Innovative and the Plan, their agents, representatives, servants and employees and all persons acting by or under their authority shall cooperate with the independent fiduciary in the performance of its duties. Innovative and the Plan shall provide their full cooperation to the independent fiduciary relative to any need for participant or financial data that may exist with regard to any record of the Plan.
- i. Innovative is permanently enjoined from serving as trustee, fiduciary, advisor, or administrator to any employee benefit plan, as that term is defined at Section 3(3) of ERISA, 29 U.S.C. § 1002(3). Innovative is permanently enjoined from serving in any capacity that involves decision-making authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan.
- j. If Innovative files for any form of bankruptcy prior to the full payment of restitution to the Plan, Innovative will not oppose any proof of claim that the Secretary files in the bankruptcy proceeding for any amount still owing.
- k. The Secretary and Innovative shall each bear their own costs, expenses, and attorneys' fees incurred to date in connection with any stage of this proceeding, including but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

l. This Consent Judgment shall operate as a final disposition of all claims alleged in the Complaint that could have been asserted against Innovative, the Plan and the officers, directors and representatives identified in Attachment A hereto upon the occurrence of either of the following:

(1) one year has passed after the last restitution payment is made by Innovative under paragraph 4(b) and provided that Innovative has not filed for bankruptcy protection; or

(2) a Court of competent jurisdiction has made a final determination which is not subject to appeal that any restitution payments made by Innovative are not subject to disgorgement by the Plan in an Innovative bankruptcy case.

m. Nothing in this Consent Judgment is binding on any governmental agency other than the United States Department of Labor.

n. This Court retains jurisdiction of this action for purposes of enforcing compliance with the terms of this Consent Judgment.

o. The Court directs the entry of this Consent Judgment as a final order of this Court.

Date: July 10, 2013

  
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Anthony J. Trenga  
United States District Judge

Anthony J. Trenga  
United States District Judge

Defendant Innovative Logistics  
Techniques, Inc.  
consents to entry of this Consent Judgment

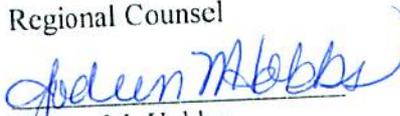
M. Patricia Smith  
Solicitor of Labor

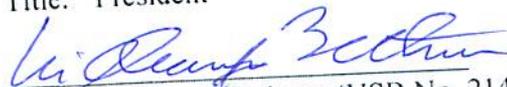
Catherine Oliver Murphy  
Regional Solicitor

Joanne Roskey  
Regional Counsel



By: Richard E. Stewart  
Title: President

  
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Jodeen M. Hobbs  
Attorney

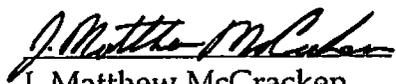
  
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U.S. DEPARTMENT OF LABOR

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