

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HILDA L. SOLIS, Secretary of Labor, :
United States Department of Labor, :
 :
Plaintiff, :
 :

v. :

Case No. 12-cv-02992

JOHN DOMBEK JR., JOHN DOMBEK III, :
the **WISCONSIN TOOL & STAMPING CO.** :
401(K) PROFIT SHARING PLAN & TRUST, :
the **J.D. ACQUISITION 401(k) PROFIT** :
SHARING PLAN AND TRUST, and the :
JJD INDUSTRIES GROUP HEALTH PLAN, :
 :
Defendants. :

Judge John J. Tharp, Jr.

REVISED **JUDGMENT**

Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor (the "Secretary"), Plaintiff in the above-styled action, having filed her complaint and Defendants John Dombek III, John Dombek Jr., the J.D. Acquisition 401(k) Profit Sharing Plan and Trust (the "J.D. Acquisition 401(k) Plan"), and the JJD Industries Group Health Plan (the "Group Health Plan") having been duly served, and defendants John Dombek III, John Dombek Jr., the J.D. Acquisition 401(k) Plan, and the Group Health Plan having failed to plead or otherwise defend with the time prescribed by law, and default of the defendants having been duly entered by this Court, and the truth of the allegations contained in the complaint having been made to appear by the declaration of Plaintiff's Senior Investigator; now, therefore upon application of the Plaintiff and for cause shown,

JUDGMENT IS HEREBY ENTERED against Defendants John Dombek III, John Dombek Jr., the J.D. Acquisition 401(k) Plan, and the Group Health Plan in accordance with the prayer of the complaint in the above-styled action; and it is:

ORDERED, ADJUDGED, AND DECREED that:

1. Defendant John Dombek III is hereby removed from his position as a fiduciary with respect to the J.D. Acquisition 401(k) Plan, the Group Health Plan, and the Wisconsin Tool and Stamping Company 401(k) Profit Sharing Plan and Trust (the "WTSC 401(k) Plan");
2. Defendant John Dombek Jr. is hereby removed from his position as a fiduciary with respect to the WTSC 401(k) Plan;
3. Defendants John Dombek III and John Dombek Jr. are hereby enjoined, for a period of five years beginning on the date this order is entered, from acting as fiduciaries or service providers to any employee benefit plan covered by the Employee Retirement Income Security Act of 1974 ("ERISA") as amended, 29 U.S.C. §§ 1001 *et seq.*;
4. Defendants John Dombek III and John Dombek Jr. are jointly and severally liable to the WTSC 401(k) Plan in the amount of \$22,164.45 for unremitted contributions and lost opportunity costs;
5. Defendants John Dombek III and John Dombek Jr. are ordered to pay the WTSC 401(k) Plan the amount of \$22,164.45 within ten (10) days of the entry of this Judgment;
6. Defendant John Dombek III is liable to the J.D. Acquisition 401(k) Plan in the amount of \$2,222.78 for unremitted contributions and lost opportunity costs;
7. Defendant John Dombek III is ordered to pay the J.D. Acquisition 401(k) Plan the amount of \$2,222.78 within ten (10) days of the entry of this Judgment;

8. Defendant John Dombek III is liable to the Group Health Plan in the amount of \$45,134.08 for unremitted contributions and lost opportunity costs;

9. Defendant John Dombek III is ordered to pay the Group Health Plan the amount of \$45,134.08 within ten (10) days of the entry of this Judgment;

10. M. Larry Lefoldt, 690 Towne Center Blvd., Ridgeland, Mississippi 39157 is hereby appointed to serve as the independent fiduciary of the WTSC 401(k) Plan and the J.D. Acquisition 401(k) Plan (the "401(k) Plans") in order to distribute the assets of the 401(k) Plans and terminate the 401(k) Plans, and to serve as the independent fiduciary of the Group Health Plan for the purpose of receiving and distributing the monies received on behalf of the Group Health Plan from Defendant John Dombek III pursuant to paragraph 9 of this Judgment. The independent fiduciary shall have the following powers, duties and responsibilities with respect to the 401(k) Plans:

a. The independent fiduciary shall have responsibility and authority to collect, liquidate, and manage such assets of the 401(k) Plans for the benefit of the eligible participants and beneficiaries for the 401(k) Plans who are entitled to receive such assets, until such time that the assets of the 401(k) Plans are distributed to the eligible participants and beneficiaries of the 401(k) Plans, but not later than sixty (60) days after the entry of this Judgment;

b. At such time that all of the assets of the 401(k) Plans are distributed to the eligible participants and beneficiaries of the 401(k) Plans, but not later than sixty (60) days after the entry of this Judgment, the independent fiduciary shall terminate the 401(k) Plans, consistent with the 401(k) Plans' governing documents, the Internal Revenue Code, and ERISA;

c. The independent fiduciary shall have responsibility and authority to receive and distribute all monies received on behalf of the Group Health Plan from Defendant John Dombek III pursuant to paragraph 9 of this Judgment to the following individuals, except Defendant John Dombek III and Defendant John Dombek Jr., who (i) were Group Health Plan participants during the period April 5, 2010, through September 17, 2010, and (ii) had voluntary employee contributions withheld from their pay for remittance to the Group Health Plan or to Blue Cross Blue Shield of Illinois for the payment of health insurance premiums during this period and such contributions were not remitted to the Group Health Plan or to Blue Cross Blue Shield of Illinois. The independent fiduciary shall allocate the aforementioned money to the Group Health Plan participants equal to their pro rata share of the total unremitted contributions and lost income owed to each participant;

d. The independent fiduciary shall exercise reasonable care and diligence to identify and locate each participant and beneficiary of the 401(k) Plans and the Group Health Plan who is eligible to receive a payment under the terms of this Judgment and to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled;

e. The independent fiduciary shall have full access to all data, information and calculations in the 401(k) Plans' and the Group Health Plan's possession or under their control, including that information contained in the records of the 401(k) Plans' and the Group Health Plan's custodial trustees and other service providers, bearing on the distribution of benefit payments, participant account balances and current plan assets;

f. The independent fiduciary may retain such persons and firms including but not limited to accountants and attorneys, as may be reasonably required to perform his duties hereunder;

g. For the services performed pursuant to this Judgment related to the administration and termination of the WTSC 401(k) Plan, the independent fiduciary shall receive compensation not to exceed \$6,935.00 for fees and expenses reasonably and necessarily incurred related to the administration and termination of the WTSC 401(k) Plan. The independent fiduciary shall provide an itemized billing statement to Defendants John Dombek III and John Dombek Jr. prior to the final distribution of assets of the WTSC 401(k) Plan; if the independent fiduciary is not paid by Defendants John Dombek III and John Dombek Jr. within thirty (30) days of sending such billing statement, then the independent fiduciary shall be paid from the assets of the WTSC 401(k) Plan;

h. For the services performed pursuant to this Judgment related to the administration and termination of the J.D. Acquisition 401(k) Plan, the independent fiduciary shall receive compensation not to exceed \$1,990.00 for fees and expenses related to the administration and termination of the J.D. Acquisition 401(k) Plan. The independent fiduciary shall provide an itemized billing statement to Defendant John Dombek III prior to the final distribution of assets of the J.D. Acquisition 401(k) Plan; if the independent fiduciary is not paid by Defendant John Dombek III within thirty (30) days of sending such billing statement, then the independent fiduciary shall be paid from the assets of the J.D. Acquisition 401(k) Plan;

i. Prior to paying any independent fiduciary fees or expense related to the receipt and distribution of monies received on behalf of the Group Health Plan from Defendant John Dombek III pursuant to paragraph 9 of this Judgment, the independent fiduciary shall present to the Court an itemized fee application, including hourly rates of pay, and dates and hours of work, accompanied by a description of the work performed, as well as itemized statement of expenses;

j. The independent fiduciary shall provide the Regional Director of the Employee Benefits Security Administration ("EBSA"), 230 South Dearborn Street, Suite 2160, Chicago, Illinois 60604 (the "EBSA Regional Director") a copy of said fee application when it is filed with the Court;

k. Absent objection from the Secretary within fifteen (15) business days, the fee application shall be deemed approved and the independent fiduciary shall be paid from the assets of the Group Health Plan. If the Secretary objects, the Court will decide whether the independent fiduciary's fee/expense request should be granted;

l. The independent fiduciary shall obtain bonding in an amount that meets the requirements of ERISA § 412, 29 U.S.C. § 1112. The costs incurred by the independent fiduciary in obtaining such bonding shall be paid by the 401(k) Plans and from the monies received on behalf of the Group Health Plan from Defendant John Dombek III pursuant to paragraph 9 of this Judgment;

11. Upon final termination of the 401(k) Plans and distribution of the assets of the 401(k) Plans, the independent fiduciary shall provide proof of such termination and distribution of the Plans' assets to the EBSA Regional Director; and

12. Upon receipt and distribution of the monies received on behalf of the Group Health Plan from Defendant John Dombek III pursuant to paragraph 9 of this Judgment, the independent fiduciary shall provide proof of any distributions of the Group Health Plan's assets

to the EBSA Regional Director.

Dated: November 28, 2012

A handwritten signature in cursive script, appearing to read "John J. Tharp". The signature is written in black ink and is positioned above a horizontal line.

JOHN J. THARP
UNITED STATES DISTRICT COURT JUDGE