

FILED  
U.S. DISTRICT COURT  
BALTIMORE DIVISION  
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SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA**

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

**1:12-cv-0301 TWP-MJD**

v.

KAREN S. CURRY and DANNY WOODS,  
individually and as fiduciaries of the  
HEARTLAND FOODS, INC. 401(K) PROFIT  
SHARING PLAN, HEARTLAND FOODS, INC.  
and the HEARTLAND FOODS, INC. 401(K)  
PROFIT SHARING PLAN,  
Defendants.

**COMPLAINT**

Plaintiff, Hilda L. Solis, Secretary of Labor, United States Department of Labor (the  
"Secretary"), alleges:

**JURISDICTION AND VENUE**

1. This action arises under Title I of the Employee Retirement Income Security Act  
of 1974 ("ERISA"), as amended, 29 U.S.C. Secs. 1001, *et seq.*, and is brought by the Secretary  
under ERISA Secs. 502(a)(2) and (5), 29 U.S.C. Secs.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 Sec. 409, 29 U.S.C. Sec. 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 Sec. 502(e)(1), 29 U.S.C. Sec. 1132(e)(1).

3. Heartland Foods, Inc. 401(k) Profit Sharing Plan ("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).

4. Heartland Foods, Inc. ("Heartland" or "the Company"), an Indiana corporation, is the sponsor of the Plan.

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

#### DEFENDANTS

6. At all relevant times, Defendant Karen S. Curry was the president and 54% owner of Heartland and a trustee and fiduciary of the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A), and a party in interest to the Plan within the meaning of ERISA §3(14)(A), (C), (E) and (H), 29 U.S.C. §1002(14)(A), (C), (E) and (H).<sup>1</sup>

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<sup>1</sup> Karen S. Curry, along with her husband, John A. Curry filed for personal bankruptcy on September 12, 2011 in the U.S. Bankruptcy Court, Southern District of Indiana, Case No. 2:11-81298-FJO-7. Because the Secretary is prosecuting this civil action pursuant to the Department of Labor's police and regulatory power under Title I of ERISA, the Secretary's action is "an action or proceeding by a governmental unit ... to enforce such governmental unit's ... police or regulatory power," and is excluded from the operation of the automatic stay provisions of the Bankruptcy Code pursuant to 11 U.S.C. Sec. 362(b)(4). The Secretary's efforts to enforce any monetary portion of any judgment obtained against Defendants will be consistent with the Bankruptcy Code.

7. At all relevant times, Defendant Danny Woods was an officer and 46% owner of Heartland and a fiduciary of the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A), and a party in interest to the Plan within the meaning of ERISA §3(14)(A), (C) and (H), 29 U.S.C. §1002(14)(A), (C) and (H).

8. At all relevant times, Defendant Heartland Food, Inc. was the Plan Administrator and a fiduciary of the Plan within the meaning of ERISA §3(16)(A), 29 U.S.C. §1002(16)(A) and ERISA §3(21), 29 U.S.C. §1002(21) and a party in interest to the Plan within the meaning of ERISA § 3(14)(A), (C), and (G); 29 U.S.C. §1002(14)(A), (C) and (G).

9. 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.

### COUNT I

#### **Unremitted participant contributions and loan repayments and late contributions and loan repayments**

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

11. Upon information and belief, from on or about January 1, 2008 to on or about December 31, 2010, Defendant Karen S. Curry, or Defendant Danny Woods, with the knowledge of each other, withheld \$85,232.08 from the paychecks of employees as contributions and loan repayments to the Plan but did not segregate this money from Heartland's general assets. These monies remained commingled with the general assets of Heartland, were used for Heartland's general operating expenses and were never remitted to the Plan.

12. Upon information and belief, from on or about January 1, 2008 to on or about

December 31, 2010, Defendant Karen S. Curry, or Defendant Danny Woods, with the knowledge of each other, withheld money from the paychecks of employees as contributions and loan repayments to the Plan but did not segregate them from Heartland's general assets as soon as they reasonably could do so. These monies remained commingled with the general assets of Heartland and were used for Heartland's general operating expenses

13. The withheld amounts, described in paragraphs 11 and 12 above, commingled with the general assets of Heartland, were assets of the Plan within the meaning of ERISA.

14. Defendants used these plan assets for the benefit of themselves and not for the benefit of the participants and beneficiaries of the Plan.

15. Defendants failed to ensure that plan assets were paid into the Plan.

16. By the conduct described in paragraphs 10 through 15 above, Defendants Karen S. Curry, Danny Woods and Heartland:

a. violated ERISA §403(a) and (c)(1), 29 U.S.C. §1103(a) and (c)(1), which requires that all assets of an employee benefit plan shall be held in trust and never inure to the benefit of the employer;

b. 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 Plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

c. caused the Plan to engage in transactions which they 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); and

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

e. in their individual or other capacity acted in transactions involving the Plan on behalf of parties (or represented parties) whose interests were adverse to the interests of the Plan, or the interests of its participants or beneficiaries in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

17. Defendant Karen S. Curry and Defendant Danny Woods are liable, pursuant to ERISA §405(a), 29 U.S.C. §1105(a), during the time periods when Defendant Curry and Defendant Woods acted as fiduciaries of the Plan.

## **COUNT II**

### **Improper transfers of plan assets**

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

19. In 2008, the Plan's assets were held in a trust account with A.G. Edwards in the name of the Plan. These assets were plan assets within the meaning of ERISA. Defendants Curry and Woods were listed as authorized signers on this account.

20. Upon information and belief, from on or about July 15, 2008 to on or about December 12, 2008, Defendant Danny Woods, transferred or caused to be transferred a total of \$171,225.00 in Plan assets into a checking account in Heartland's name at Old National Bank

and Regions Bank. Defendant Karen S. Curry knew about these transfers and no defendant pursued return of the transferred funds to the Plan. The check numbers and amounts deposited into the Company's accounts are as follows:

|            | <u>Date<br/>Written</u> | <u>Amount</u>       | <u>Date<br/>Deposited</u> |
|------------|-------------------------|---------------------|---------------------------|
| Check 2069 | 7/15/2008               | \$23,225.00         | 7/17/2008                 |
| Check 2070 | 7/17/2008               | \$8,000.00          | 7/17/2008                 |
| Check 2071 | 7/29/2008               | \$15,000.00         | 7/30/2008                 |
| Check 2072 | 7/29/2008               | \$15,000.00         | 7/30/2008                 |
| Check 2073 | 8/13/2008               | \$20,000.00         | 8/14/2008                 |
| Check 2074 | 8/14/2008               | \$10,000.00         | 8/14/2008                 |
| Check 2076 | 8/22/2008               | \$20,000.00         | 8/22/2008                 |
| Check 2077 | 12/12/2008              | <u>\$60,000.00</u>  | 12/23/2008                |
| Total      |                         | <u>\$171,225.00</u> |                           |

21. By the conduct described in paragraphs 18 through 20 above, Defendants

Karen S. Curry, Danny Woods and Heartland:

a. violated ERISA §403(a) and (c)(1), 29 U.S.C. §1103(a) and (c)(1), which requires that all assets of an employee benefit plan shall be held in trust and never inure to the benefit of the employer;

b. 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 Plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

c. caused the Plan to engage in transactions which they 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); and

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

e. in their individual or other capacity acted in transactions involving the Plan on behalf of parties (or represented parties) whose interests were adverse to the interests of the Plan, or the interests of its participants or beneficiaries in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

22. Defendant Karen S. Curry and Defendant Danny Woods are liable, pursuant to ERISA §405(a), 29 U.S.C. §1105(a), during the time periods when Defendants Curry and Woods acted as fiduciaries of the Plan.

### **COUNT III**

#### **Failure to follow Plan document**

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

24. On or about January 26, 2011, Defendant Danny Woods calculated and requested from Defendant Karen S. Curry a distribution from the Plan of \$25,000.00 for Plan participant Michael Litke and a distribution from the Plan of \$11,000.00 for himself.

25. Defendant Curry made these distributions from the Plan.

26. Both of the distributions referred to in paragraph 24 exceeded the 75% distribution permitted by the Plan.

27. The distribution to Michael Litke (an employee of Heartland and a party in interest

to the Plan pursuant to ERISA §3(14)(H), 29 U.S.C. §1002(14)(H)), exceeded the allowable distribution by \$18,436.23 and the distribution to Danny Woods exceeded the allowable distribution by \$3,174.48.

28. By the conduct described in paragraphs 23 through 27 above, Defendants Karen S. Curry, Danny Woods and Heartland:

a. 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 Plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

b. failed to discharge their duties with respect to the Plan in accordance with the documents and instruments governing the Plan in violation of ERISA Sec. 404(a)(1)(D), 29 U.S.C. Sec. 1104(a)(1)(D);

c. caused the Plan to engage in transactions which they 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); and

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

e. in their individual or other capacity acted in transactions involving the Plan on behalf of parties (or represented parties) whose interests were adverse to the interests of the Plan, or the interests of its participants or beneficiaries in violation of ERISA §406(b)(2), 29

U.S.C. §1106(b)(2).

29. Defendant Karen S. Curry and Defendant Danny Woods are liable, pursuant to ERISA §405(a), 29 U.S.C. §1105(a), during the time periods when Defendants Curry and Woods acted as fiduciaries of the Plan.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Secretary prays for judgment:

- A. Permanently enjoining defendants from violating the provisions of Title I of ERISA;
- B. Ordering defendants to make good to the Plan any losses, including lost opportunity costs, resulting from fiduciary breaches committed by such defendant or for which such defendant is liable;
- C. Ordering each defendant to correct the prohibited transactions in which he, she or it engaged, restore any losses to the Plan, and pay appropriate interest;
- D. Requiring the Plan to set off from the fiduciaries' individual accounts the amount of losses, including lost opportunity costs, resulting from the trustees' fiduciary breaches, as authorized by Section 1502(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, Section 1502(a), 111 Stat. 788, 1058-59 (1997) (codified at 29 U.S.C. §1056(d)(4)), if the losses to the Plan are not otherwise restored to the Plan by the defendants;
- E. Permanently enjoining the defendants from serving as fiduciaries or service providers to any ERISA-covered employee benefit plan;
- F. Ordering the appointment of an independent fiduciary to oversee the Plan;
- G. Ordering the defendants, as parties in interest, to disgorge any profits received as a

result of prohibited transactions in which they engaged;

- H. Awarding the Secretary the costs of this action; and
- I. Ordering such further relief as is appropriate and just.

M. PATRICIA SMITH  
Solicitor of Labor

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Regional Solicitor

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