

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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DEC 28 2012

JAMES N. HEN. Clerk
By: *[Signature]*

Deputy Clerk

FILE NO.

SECRETARY OF LABOR,)
United States Department of Labor,)

Plaintiff,)

v.)

THE HARTFORD CONSTRUCTION)
GROUP LLC; THE HARTFORD)
CONSTRUCTION LLC 401(k) PROFIT)
SHARING PLAN & TRUST; THE)
HARTFORD CONSTRUCTION GROUP)
LLC GROUP HEALTH PLAN;)
and TRAVIS M. DONNELLY)

Defendants.)

1:12-CV-4465

AT

COMPLAINT
(Injunctive Relief Sought)

Plaintiff HILDA L. SOLIS, Secretary of Labor, UNITED STATES
DEPARTMENT OF LABOR ("Secretary") alleges as follows:

1. This cause of action arises under the Employee Retirement
Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001, et seq., and is brought by
the Secretary under §§502(a)(2) and (5) of ERISA, 29 U.S.C. §§1132(a)(2) and (5),
to enjoin acts and practices which violate the provisions of Title I of ERISA, to
obtain appropriate relief for breaches of fiduciary duty under ERISA §409, 29
U.S.C. §1109, and to obtain such other further relief as may be appropriate to
redress violations and enforce the provisions of that Title.

2. This court has subject matter jurisdiction over this action pursuant to ERISA §502(e)(1), 29 U.S.C. §1132(e)(1).

3. Venue lies in the Northern District of Georgia, Atlanta Division pursuant to §502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2).

The Hartford Construction Group LLC 401(k) Profit Sharing Plan

4. The Hartford Construction Group LLC 401(k) Profit Sharing Plan (hereinafter "the Hartford Plan") is an employee benefit plan within the meaning of §3(3) of ERISA, 29 U.S.C. §1002(3), subject to coverage under ERISA pursuant to §4(a), 29 U.S.C. §1003(a), and is joined as a party defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to ensure that complete relief may be granted.

5. The Hartford Construction Group LLC ("Hartford" or the "Company"), a Georgia corporation, Sponsor and Plan Administrator of the Hartford Plan, was at all relevant times a "fiduciary" to the Hartford Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A), and a "party in interest" to the Hartford Plan within the meaning of ERISA §3(14)(A), (B), (C), and (G), 29 U.S.C. §1002(14)(A), (B), (C), and (G).

6. Travis M. Donnelly, an individual, sole owner and CEO of Hartford and Hartford Plan Trustee, was at all relevant times a "fiduciary" to the Hartford Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A),

and a "party in interest" to the Hartford Plan within the meaning of ERISA §3(14)(A) and (H), 29 U.S.C. §1002(14)(A) and (H).

7. The Hartford Plan was established by Hartford in May of 2008.

8. The Hartford Plan permitted participants to contribute a portion of their pay to the Hartford Plan through payroll deductions.

9. In accordance with 29 C.F.R. §2510.3-102, participant contributions were required to be forwarded to the Plan on the earliest date on which such contributions could reasonably be segregated from the employer's general assets.

10. Between February 26, 2009 and June 17, 2009, Defendants Hartford and Travis M. Donnelly withheld employee contributions in the approximate amount of \$3,400.46, failed to segregate the contributions from Company assets as soon as they reasonably could do so and failed to timely forward them to the Hartford Plan in accordance with ERISA.

11. During the period that participant contributions were not remitted to the Hartford Plan as required, Defendants caused or allowed the contributions to be commingled with the general assets of Hartford.

12. Defendants have failed to take action to restore to the Hartford Plan the full amount of the un-remitted contributions plus lost interest

in the approximate amount of \$513.99 as of October 1, 2012, that would have accrued but for the actions described in the preceding paragraphs.

13. Defendants failed to monitor, control or attempt to rectify the acts of one another with respect to the Hartford Plan.

The Hartford Construction Group LLC Group Health Plan

14. The Hartford Construction Group LLC Group Health Plan (hereinafter "the Hartford GHP") is an employee benefit plan within the meaning of §3(3) of ERISA, 29 U.S.C. §1002(3), subject to coverage under ERISA pursuant to §4(a), 29 U.S.C. §1003(a), and is joined as a party defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to ensure that complete relief may be granted.

15. Hartford was at all relevant times a "fiduciary" to the Hartford GHP within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A), and a "party in interest" to the Hartford GHP within the meaning of ERISA §3(14)(A), (C), and (G), 29 U.S.C. §1002(14)(A), (C), and (G).

16. Travis M. Donnelly, an individual, sole owner and CEO of Hartford, was at all relevant times a "fiduciary" to the Hartford GHP within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A), and a "party in interest" to the Hartford GHP within the meaning of ERISA §3(14)(A) and (H), 29 U.S.C. §1002(14)(A) and (H).

17. The Hartford GHP was established by Hartford, and Humana Employers Health Plan of Georgia, Inc. (hereinafter "Humana") was retained as the Hartford GHP's insurance provider on October 15, 2008.

18. Participants contributed a portion of their pay to the Hartford GHP through payroll deductions for insurance premiums.

19. At all relevant times, Defendants Hartford and Travis Donnelly were the only entities or individuals with authority and discretion to manage and control assets of the Hartford GHP.

20. In accordance with 29 C.F.R. §2510.3-102, participant contributions were required to be forwarded to the Hartford GHP on the earliest date on which such contributions could reasonably be segregated from the employer's general assets.

21. On or about October 22, 2009, Humana cancelled its policy with Hartford retroactive to March 31, 2009, due to Defendants Hartford's and Travis M. Donnelly's failure to remit required premium payments.

22. During the period February 26, 2009 through June 17, 2009, Defendants Hartford and Travis Donnelly withheld employee contributions in the approximate amount of \$4,905.33, failed to segregate the contributions from Company assets as soon as they reasonably could do so, and failed to timely forward them to the Hartford GHP in accordance with ERISA.

23. During the periods that participant contributions were not remitted to the Hartford GHP as required, Defendants caused or allowed the contributions to be commingled with the general assets of Hartford.

24. Defendants have failed to take action to restore to the Plan the full amount of the un-remitted contributions.

25. Due to Defendants Hartford's and Travis Donnelly's failure to ensure that premiums were paid to Humana, and due to Humana's cancellation of its insurance coverage, approximately \$20,000 in health benefits were denied to Hartford GHP participants.

26. By the actions described in paragraphs 10 through 13 and 21 through 25, Defendants, as fiduciaries of the Hartford Plan and the Hartford GHP (collectively "the Plans"),

(a) failed to discharge their duties with respect to the Plans solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their 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);

(b) failed to discharge their duties with respect to the Plans 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

person 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);

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

(d) failed to ensure that all assets of the Plans be held in trust, in violation of ERISA §403(a), 29 U.S.C. §1103(a);

(e) caused the Plans to engage in transactions which they knew or should have known constituted the direct or indirect transfer of Plan assets to, or use of Plan assets by or for the benefit of a party in interest, in violation of ERISA §406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D);

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

(g) acted in the transactions described involving the Plans on behalf of a party whose interests were adverse to the interests of the plan or the interests of its participants and beneficiaries in violation of §406(b)(2) of ERISA, 29 U.S.C. §1106(b)(2).

27. Defendants are each liable for the breaches of the other, pursuant to §405(a) of ERISA, 29 U.S.C. §1105(a), in that they either (1).

participated knowingly in an act of the other fiduciary, knowing such act was a breach, in violation of §405(a)(1) of ERISA, 29 U.S.C. §1105(a)(1); (2) failed to monitor or supervise the other fiduciary and thereby enabled the breach, in violation of §405(a)(2) of ERISA, 29 U.S.C. §1105(a)(2); or (3) had knowledge of a breach by the other fiduciary and failed to make reasonable efforts under the circumstances to remedy the breach, in violation of §405(a)(3) of ERISA, 29 U.S.C. §1105(a)(3).

WHEREFORE, pursuant to §502(a)(2) and (5) of ERISA, 29 U.S.C. §1132(a)(2) and (5), Plaintiff prays that the Court:

- A. Permanently enjoin Defendants from serving as fiduciary, administrator, officer, trustee, custodian, agent, employee, representative, or having control over the assets of any employee benefit plan subject to ERISA;
- B. Enjoin Defendants from engaging in any further violations of Title I of ERISA;
- C. Order Defendants, jointly and severally, to restore to the Plans all losses, including lost earnings and interest, which occurred as a result of the breaches of their fiduciary obligations;
- D. Appoint a successor fiduciary or administrator to the Plans, at Defendants' expense;

- E. Award Plaintiff the costs of this action; and
- F. Provide such other relief as may be just and equitable.

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