

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

SETH D. HARRIS, Acting Secretary of Labor, :
Successor to Hilda L. Solis, :
United States Department of Labor, :

Plaintiff, :

v. :

THERESA A. HELLMAN and **ROBIN M. POLIN**, individually and as fiduciaries of the :
SPECIALTY STAFF, INC. 401(k) PLAN, :
SPECIALTY STAFF, INC., and the :
SPECIALTY STAFF, INC. 401(k) PLAN, :

Defendants. :

CASE NO. 1:13-cv-1056

COMPLAINT

Plaintiff, Seth D. Harris, Acting Secretary of Labor, successor to Hilda L. Solis, United States Department of Labor (the “Secretary”), alleges:

This action arises under Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. Ch. 18, Subch. I, 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.

PARTIES

1. Plaintiff is the Acting Secretary of the United States Department of Labor and has authority to bring this civil action under ERISA Secs. 502(a)(2) and (5), 29 U.S.C. Secs. 1132(a)(2) and (5).

2. At all relevant times, Defendant Specialty Staff, Inc. (“Specialty”) was an Indiana corporation registered with the State of Indiana and located in Indianapolis, Marion County, Indiana. Defendant Specialty sponsored the Specialty Staff, Inc. 401(k) Plan (“the Plan”). Defendant Specialty ceased operating in December 2010. The Indiana Secretary of State revoked Defendant Specialty’s corporate charter on or about February 3, 2012.

3. At all relevant times, Defendant Theresa A. Hellman (“Hellman”) was a fiduciary of the Plan. Her last known residence was in Noblesville, Hamilton County, Indiana.

4. At all relevant times, Defendant Robin M. Polin (“Polin”) was a fiduciary of the Plan. She presently resides in Indianapolis, Marion County, Indiana.

JURISDICTION AND VENUE

5. This court has jurisdiction over this action pursuant to ERISA Sec. 502(e)(1), 29 U.S.C. Sec. 1132(e)(1).

6. The Specialty Staff, Inc. 401(k) Plan (the “Plan”) is an employee pension benefit plan as defined in Sections 3(2) and (3) of ERISA, 29 U.S.C. Secs. 1002(2) and (3), and is therefore subject to the coverage of ERISA pursuant to Section 4(a) thereof, 29 U.S.C. Sec. 1003(a).

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

DEFENDANTS AND PARTIES IN INTEREST

8. At all relevant times, Defendant Hellman was a fiduciary of the Plan within the meaning of ERISA Secs. 3(21)(A)(i) and (iii), 29 U.S.C. Secs. 1002(21)(A)(i) and (iii), and was a party in interest to the Plan within the meaning of ERISA Secs. 3(14)(A) and (C), 29 U.S.C. Secs. 1002(14)(A) and (C).

9. At all relevant times, Defendant Polin was a fiduciary of the Plan within the meaning of ERISA Secs. 3(21)(A)(i) and (iii), 29 U.S.C. Secs. 1002(21)(A)(i) and (iii), and was a party in interest to the Plan within the meaning of ERISA Sec. 3(14)(A), 29 U.S.C. Sec. 1002(14)(A).

10. At all relevant times, Defendant Specialty was an employer and plan administrator and was therefore a fiduciary of the Plan within the meaning of ERISA Sec. 3(21)(A), 29 U.S.C. Sec. 1002(21)(A), and a party in interest to the Plan within the meaning of ERISA Secs. 3(14)(A) and (C), 29 U.S.C. Secs. 1002(14) (A) and (C).

11. The Plan is named as a defendant pursuant to Rule 19(a) of the *Federal Rules of Civil Procedure* solely to assure that complete relief can be granted.

GENERAL ALLEGATIONS

12. Defendant Specialty established the Plan on April 1, 2007, as an employee pension benefit plan that allowed participating employees of Defendant Specialty to defer receipt of varying amounts of their compensation and to contribute those deferred amounts into the Plan for investment and subsequent distribution. The Plan also permitted Defendant Specialty to make matching contributions and profit-sharing contributions into the Plan on behalf of its participating employees.

13. The assets contributed to the Plan by and on behalf of participating employees of Defendant Specialty were held in trust by Defendant Hellman in her capacity as the Plan's trustee. Defendants Specialty and Hellman retained the Hartford Life Insurance Company ("Hartford") to act as an asset custodian and third-party administrator for the Plan. As of September 13, 2012, the records maintained by Hartford showed that the Plan had 13 participants and that the amount of their contributions and investments totaled \$44,044.23.

14. Defendants Specialty, Hellman, and Polin exercised discretionary authority and control with respect to employee and employer contributions into the Plan and distributions out of the Plan.

15. Defendant Specialty ceased doing business in or around December 2010. The Indiana Secretary of State revoked Defendant Specialty's corporate charter on or about February 3, 2012.

16. The last Form 5500 (Annual Report of Employee Benefit Plan) filed with the Plaintiff Secretary was for the Plan's year ending in 2009. No contributions have been made to the Plan since 2010, and none of its assets have been distributed since February 2011. The Plan has not been terminated.

FAILURE TO ADMINISTER THE PLAN

17. Paragraphs 1 through 16 above are re-alleged and incorporated herein by reference.

18. As fiduciaries of the Plan, Defendants Specialty, Hellman, and Polin did not assure that every Form 5500 for the Plan was timely filed, did not pay Hartford its legitimate expenses as asset custodian and third-party administrator, and did not otherwise properly adminis-

ter the Plan. For a period of more than two years, those Defendants have failed to perform their fiduciary responsibility to administer the Plan, have not provided for any successor entity to administer the Plan, have not distributed the Plan's assets, and have not terminated the Plan.

19. Through the acts and omissions described in paragraphs 1 through 18 above, Defendants Specialty, Hellman, and Polin breached their obligations to the Plan by failing to

(a) discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA Sec. 404(a)(1)(A), 29 U.S.C. Sec. 1104(a)(1)(A),

(b) discharge their duties with respect to the Plan solely in the interests 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 Sec. 404(a)(1)(B), 29 U.S.C. Sec. 1104(a)(1)(B), and

(c) discharge their duties with respect to the Plan solely in the interests of the participants and beneficiaries and in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with ERISA, in violation of ERISA Sec. 404(a)(1)(D), 29 U.S.C. Sec. 1104(a)(1)(D).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff Secretary prays for judgment as follows:

(A) That Defendants Specialty, Hellman, and Polin be removed as fiduciaries of the Plan and that an independent fiduciary be appointed to replace them in order to complete the

Plan's administration (including the distribution of participants' and beneficiaries' interests) and then terminate the Plan;

(B) That Defendants Specialty, Hellman, and Polin be permanently enjoined from violating Title I of ERISA, 29 U.S.C. Ch. 18, Subch. I, and from ever again serving as a fiduciary or service provider for any ERISA-covered employee benefit plan; and

(C) That Plaintiff Secretary be awarded the costs of this action and such other and further relief as may be equitable.

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