IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

THOMAS E. PEREZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, v. TIMOTHY A. CLARK, CENTRAL PENNSYLVANIA PULMONARY ASSOCIATES, LLC, AND CENTRAL PENNSYLVANIA PULMONARY ASSOCIATES, LLC 401(K) PLAN Defendants.	Civil Action No. 1:13-cv-02949-WWC

FILED
HARRISBURG, PA

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Gary L. Hollinger,
Acting Clerk

CONSENT JUDGMENT

Plaintiff, 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 Defendant Timothy A. Clark and Defendant Central Pennsylvania Pulmonary Associates, LLC, ("Company"). Central Pennsylvania Pulmonary Associates, LLC 401 (k) Plan ("Plan") was joined as a party defendant and Fed. R. Civ. P. 19(a) solely to assure that complete relief could be granted.

Counsel for the Secretary has engaged in settlement discussions with counsel for defendants Timothy A. Clark and Central Pennsylvania Pulmonary Associates, LLC. ("Company"). The parties have agreed to resolve this case without further litigation. Mr. Clark and the Company waive answering the Complaint and consent to the entry of this Consent Judgment against them by this Court, the terms of which are set forth herein:

1. The Secretary's Complaint alleges that Mr. Clark and the Company violated Sections 403, 404 and 406 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1103, 1104 and 1106.

2. For purposes of this Consent Judgment, Mr. Clark and the Company admit that the Court has jurisdiction over them and the subject matter of this action.

3. The Secretary has agreed to resolve all claims against Mr. Clark and the Company for the following relief:

a. agreement by Mr. Clark that he is liable to make full restitution to the Central Pennsylvania Pulmonary Associates LLC 401(k) Plan ("Plan");

b. forfeiture by Mr. Clark of his individual Plan account and waiver of his right to receive repayment of a sum owing to his Plan account;

c. agreement by Mr. Clark to pay to the Plan the difference, if any, between the full restitution amount and the amount that is forfeited by Mr. Clark from his individual Plan account;

d. removal of Mr. Clark as Trustee of the Plan and removal of the Company as Plan Administrator;

e. permanent injunction against Mr. Clark and the Company from serving as trustees, fiduciaries, advisors, or administrators to any employee benefit plan covered by ERISA; and

f. payment by Mr. Clark of the costs and expenses of an independent fiduciary to the Plan ("independent fiduciary") who will be appointed by the Court to administer, manage and dispose of Plan assets.

4. The Secretary, Mr. Clark and the Company 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 Mr. Clark or the Company 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 Mr. Clark and the Company.

b. Mr. Clark shall restore $29,878.20 to the Plan, ($27,537.31 in missing employee contributions and loan repayments and $2,340.89 in lost opportunity costs), as restitution, and that Mr. Clark shall further restore $1,000.00 to the Plan for the costs and expenses of the independent fiduciary. **The total amount restored to the Plan shall be $30,878.20.**

c. Mr. Clark is a participant in the Plan. The Plan is deemed amended to allow forfeiture of Mr. Clark's individual Plan account to the extent necessary to satisfy Paragraph b and to permit the reallocation and distribution of the restitution to Plan participants and the payment of the costs and expense of the independent fiduciary. The Plan shall immediately set off Mr. Clark's individual Plan account against the amount of losses resulting from his fiduciary breaches, as authorized by Section 1502 of the Taxpayer Relief Act of 1991, Pub. L. No. 105-34, § 1502, 111 Stat. 788 (1997). A copy of this Consent Judgment shall be filed with the Plan records.

d. If Mr. Clark's individual Plan account is less than the total amount necessary to restore the full amount of $30,878.20 to the Plan ($29,878.20, inclusive of lost opportunity costs, to be redistributed to Plan participants and $1,000.00 to pay the costs and expenses of the independent fiduciary), Mr. Clark shall pay the deficiency within ten (10) days of the entry of this Consent Judgment.

e. The Plan shall redistribute the restitution to the Plan participants in amounts necessary to restore their losses incurred as a result of Mr. Clark's breaches. No part of the restitution amount shall be redistributed to the individual account balance of Mr. Clark.

f. Mr. Clark's spouse has waived her rights to qualified joint and survivor annuity/or qualified preretirement survivor annuity form of benefit, pursuant to Section 205 (c) of ERISA, 29 U.S.C. § 1055(c). A copy of the executed waiver is attached.

g. If Mr. Clark files for bankruptcy in the future prior to the full payment of $30,878.20 to the Plan, Mr. Clark will not oppose any proof of claim that the Secretary files in any future bankruptcy proceeding for any amount still owing to the Plan pursuant to this Consent Judgment and agrees that this debt is nondischargeable in bankruptcy.

h. Within thirty (30) days of making the required restitution, Mr. Clark shall provide written confirmation to EBSA's Washington District Office, 1335 East-West Highway, Suite 200, Silver Spring, Maryland 20910 that the restitution and distributions required by this Consent Judgment have been made. The written

confirmation shall include a copy of all bank statements, checks, IRA statements, or any other information and documents deemed necessary by EBSA to confirm compliance with this Consent Judgment.

i. Upon receiving proof of payment of restitution, the Secretary shall assess a penalty against Mr. Clark of 20 percent of the applicable recovery amount pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l). Unless he applies for a waiver, Mr. Clark shall pay any applicable penalty within ten days of receipt of the notice of assessment. If Mr. Clark 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, he shall pay any applicable penalty amount within ten days of the Secretary's denial.

j. Mr. Clark is removed as Trustee of the Plan and the Company is removed as Plan Administrator.

k. GTRUST Financial Services 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 within one year from the date of the entry of this Consent Judgment. GTRUST Financial Services shall be compensated for the performance of its duties and costs incurred in the amount of $1,000.00. That amount shall be paid from the Plan's assets, but Mr. Clark shall reimburse the Plan in that same amount as provided in paragraph (b) herein.

l. Mr. Clark, the Company and the Plan, their agents, representatives, servants and employees and all persons acting by or under his authority shall cooperate with

the independent fiduciary in the performance of its duties. Mr. Clark, the Company 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.

m. Mr. Clark and the Company are permanently enjoined from serving as trustees, fiduciaries, advisors, or administrators to any employee benefit plan, as that term is defined at Section 3(3) of ERISA, 29 U.S.C. § 1002(3). Mr. Clark and the Company are 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.

n. The Secretary, Mr. Clark and the Company 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.

o. This Consent Judgment shall operate as a final disposition of all claims asserted by the Secretary against Mr. Clark and the Company in the Complaint.

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

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

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

Date: 4/22/14

William W. Caldwell

United States District Judge

Defendant
Central Pennsylvania Pulmonary LLC
waives filing an Answer and consents
to entry of this Consent Judgment

By: Timothy A. Clark
Title: President

Defendant Timothy A. Clark
waives filing an Answer and consent
to entry of this Consent Judgment

Timothy A. Clark

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