

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\*\*\*\*\*

THOMAS E. PEREZ, Secretary of Labor, \*  
United States Department of Labor, \*

Plaintiff, \*

v. \*

H.C. WATSON CORP., \*  
D/B/A INTERIM HEALTHCARE, \*  
JAMES C. WATSON, \*  
As an Individual and Fiduciary to the \*  
H.C . Watson Corp. Deferred Savings and \*  
Profit Sharing Plan, \*

And \*

MELISSA MOORE f/k/a Melissa Belanger \*  
And Melissa Greenlaw, \*  
As an Individual and Fiduciary to the \*  
H.C. Watson Corp. Deferred Savings and \*  
Profit Sharing Plan, \*

Defendants. \*

\*\*\*\*\*

CIVIL ACTION NO. 1:14-cv-13797

**COMPLAINT**

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of  
Labor (the “Secretary”), alleges:

1. This action arises under Title I of the Employee Retirement Income Security  
Act of 1974 (“ERISA” or the “Act”), 29 U.S.C. §§ 1001 *et seq.*, as amended, and is  
brought by the Secretary to enjoin acts and practices which violate the provisions of Title  
I of ERISA and to obtain appropriate relief in order to redress violations and enforce the  
provisions of that Title pursuant to ERISA §§ 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2)  
and (5).

JURISDICTION AND VENUE

2. The Court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

3. Venue with respect to this action lies in the District of Massachusetts pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132 (e)(2).

THE PARTIES

4. The Secretary is charged with the responsibility of protecting the interests of participants in, and beneficiaries of, employee benefit plans, pursuant to ERISA, 29 U.S.C. § 1001, *et seq.*

5. The H.C. Watson Corp. Deferred Savings and Profit Sharing Plan (the “Plan”) is an employee benefit plan within the meaning of ERISA §§ 3(2)(A) and 3(3), 29 U.S.C. §§ 1002(2)(A) and (3) and is subject to coverage under the Act pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a).

6. H.C. Watson Corporation d/b/a Interim HealthCare, (“HCW”) established the Plan with an original effective date of March 23, 1987. The latest amendment to the Plan took effect on November 29, 2007. The purpose of the Plan is to enable participants, HCW employees, to save for retirement. The Plan is designed to provide retirement benefits for the exclusive benefit of its participants and their beneficiaries.

7. The Plan is a defined contribution and 401(k) deferral plan. The Plan is funded by amounts withheld from qualifying employee paychecks as contributions to the Plan, in accordance with each participant’s election, and by discretionary employer matching or qualified non-elective contributions. Employees contribute to the Plan through weekly or biweekly salary withholdings. Plan participants are fully vested in

employee contributions, rollover contributions, qualified non-elective contributions, and any earnings thereon. The Plan also provides for participant loans.

8. Defendant HCW, a New York corporation registered to do business in Maine, Massachusetts, Rhode Island and New York, had an office and place of business at 72 Atlantic Place, South Portland, Maine, within the jurisdiction of this Court during the relevant period covered by this Complaint. HCW is an employer within the meaning of ERISA § 3(5), 29 U.S.C. § 1002(5). Pursuant to the Summary Plan Description and the Plan's Adoption Agreement used with a Fidelity Volume Submitter Plan (Fidelity Basic Plan Document 14), HCW is the Plan Administrator. For at least some of this period, HCW performed administration of the Plan from its offices in Danvers, Massachusetts before transferring such services to its Maine location.

9. At all relevant times to this action, HCW has been the plan sponsor, as defined by ERISA § 3(16)(B)(i), 29 U.S.C. § 1002(16)(B)(i), and has acted as plan administrator for the Plan, as defined by ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A). In its capacity as plan administrator, and based on the facts set forth in paragraph 8, HCW is a fiduciary with respect to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

10. At all relevant times to this action, HCW has been the plan sponsor and employer of employees covered by the Plan. Accordingly, HCW is a party in interest within the meaning of ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

11. Defendant James C. Watson ("Watson"), the President and CEO of HCW, was a named fiduciary to the Plan as documented with the Plan Trustee, Fidelity Investments, and also acted as the plan administrator on behalf of HCW, as documented

with the Plan Trustee, Fidelity Investments. Watson resides at 152 State Street, Unit 3, Newburyport, MA 01950.

12. At all relevant times to this action, in his capacity as a named fiduciary and in his role as acting as the plan administrator on behalf of HCW, Watson was and is a fiduciary with respect to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

13. At all relevant times to this action, Watson has been a fiduciary to the Plan based on the facts set forth in paragraph 11. Accordingly, Watson is a party in interest within the meaning of ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

14. Defendant Melissa Moore (“Moore”) f/k/a Melissa Belanger and Melissa Greenlaw, was Vice President of Operations at HCW from in or about 2009 until May, 2014. In her capacity as Vice President of Operations, Defendant Moore also determined which payments were made on a weekly or biweekly basis and determined how much would be sent to Fidelity Investments from the amount of funds withheld from employee contributions. According to a June 28, 2011 letter from Watson, which Moore also signed, to Plan Trustee, Fidelity Investments, Moore was a named fiduciary to the Plan. Moore resides at 317 Bennett Road, New Gloucester, ME 04260.

15. At all relevant times to this action, in her capacity as a named fiduciary and/or in her decision making role regarding the transmittal of contributions to the Plan, Moore was a fiduciary with respect to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

16. At all relevant times to this action, Moore has been a fiduciary to the Plan based on the facts set forth in paragraph 14. Accordingly, Moore is a party in interest within the meaning of ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

CLAIMS FOR EMPLOYEE CONTRIBUTIONS

17. The Secretary adopts and incorporates by reference the averments and allegations of paragraphs 1 through 16.

18. For the period beginning in and around February 10, 2011 through in and around June 13, 2014, monies were withheld from HCW employee paychecks for deposit in the Plan. The monies withheld represent employee contributions to the Plan and employee loan repayments on loans taken from the Plan. Pursuant to 29 C.F.R. § 2510.3-102, employee contributions become Plan assets as soon as they can be reasonably segregated from the assets of the employer and in no event later than fifteen (15) calendar days following the month in which the monies were withheld from employee compensation. Loan repayments are treated as Plan assets in the same manner as employee contributions.

19. As fiduciaries to the Plan, Defendants HCW, Watson, and Moore were responsible for ensuring that any and all monies and other property due to the Plan were received, collected and forwarded to the Plan, and for otherwise properly managing the assets of the Plan.

20. For the period beginning in and around February 10, 2011 through in and around June 13, 2014, Defendants HCW, Watson and Moore failed to take appropriate measures to receive and collect all employee contributions and loan repayments due the Plan, and to ensure that withheld employee contributions and loan repayments, as assets

of the Plan, were properly forwarded to the Plan. Said unremitted employee contributions total at least approximately \$ 122,048.54. Said unremitted loan repayments total at least approximately \$ 30,575.50.

21. In failing to ensure that all amounts withheld from employee paychecks were received, collected, forwarded and deposited, or timely received, collected, forwarded, and deposited, Defendants HCW, Watson and Moore chose instead to use the withheld funds to satisfy the obligations of HCW, the plan sponsor, and for purposes unrelated to the Plan.

22. Defendants' failure to receive, collect and forward employee contributions and loan repayments to the Plan (whether timely or at all) has resulted in losses to the Plan, including both unremitted and untimely remitted contributions and loan repayments, and lost earnings.

23. Despite multiple subpoenas issued by the Secretary to HCW, HCW never produced payroll or deposit records for the time period January 1, 2010 through in or around February 9, 2011 sufficient to determine whether Defendants received, collected and forwarded employee contributions and loan repayments to the Plan during this time period. Accordingly, on this basis, unremitted or untimely remitted employee contributions and loan repayments, as well as lost earnings, may be greater.

24. On account of the acts set forth in paragraphs 18 through 22, Defendants HCW, Watson and Moore have breached their fiduciary duties by failing to discharge their obligations with respect to the Plan solely in the interest of the participants and beneficiaries of the Plan and for the exclusive purpose of providing benefits and

defraying reasonable expenses of plan administration, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

25. On account of the acts set forth in paragraphs 18 through 22, Defendants HCW, Watson and Moore have breached their fiduciary duties by failing to discharge their obligations with respect to the Plan 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) of ERISA, 29 U.S.C. § 1104(a)(1)(B).

26. On account of the acts set forth in paragraphs 18 through 22, Defendants HCW, Watson and Moore have breached their fiduciary duties by failing to administer the Plan in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of Title I and Title IV of ERISA, in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). Said documents and instruments require that the contributions be transmitted to the Plan for the exclusive purpose of providing retirement benefits to the participants and for administering the Plan.

27. On account of the acts set forth in paragraphs 18 through 22, Defendants HCW, Watson and Moore have breached their fiduciary duties by causing or permitting the Plan to engage in prohibited transactions which they knew or should have known constituted transfers of Plan assets to, or use of Plan assets by or for the benefit of a party in interest, namely HCW, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106 (a)(1)(D).

28. On account of the acts set forth in paragraphs 18 through 22, Defendant HCW has breached its fiduciary duties by dealing with assets of the Plan in its own interest or for its own account, in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

29. On account of the acts set forth in paragraphs 18 through 22, Defendants HCW, Watson and Moore have breached their fiduciary duties by acting in prohibited transactions involving the Plan on behalf of a party whose interests are adverse to the interests of the Plan, its participants and beneficiaries, namely HCW, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106 (b)(2).

30. Defendants HCW, Watson and Moore are liable as co-fiduciaries pursuant to ERISA §405(a), 29 U.S.C.1105(a) for the violations described in paragraphs 18 through 29 because (1) each Defendant knowingly participated in acts of another fiduciary, knowing that such acts were breaches of duty, (2) each Defendant, by his failure to comply with ERISA §404(a)(1), 29 U.S.C. §1104(a) in the administration of his specific responsibilities which give rise to his status as a fiduciary, enabled such other fiduciaries to commit breaches of duty, and (3) given that each fiduciary had knowledge of the breach, each failed to make reasonable efforts under the circumstances to remedy the breaches.

31. Pursuant to, *inter alia*, ERISA § 104, 29 U.S.C. § 1024, HCW, as plan administrator for the Plan, must file annual reports with the Secretary (“Form 5500s”). Since 2010, however, HCW has not filed a Form 5500 with the Secretary. Therefore, HCW is in violation of ERISA § 104, 29 U.S.C. § 1024.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays that this Court:

1. Order Defendants HCW, Watson and Moore to restore to the Plan all losses incurred as a result of the fiduciary breaches, prohibited transactions and other violations in which they participated or for which they are liable, with appropriate lost earnings;
2. Permanently enjoin Defendants HCW, Watson and Moore from engaging in any further violations of Title I of ERISA;
3. Permanently enjoin Defendants Watson and Moore from serving as a fiduciary for any employee benefit plan subject to ERISA;
4. Require Defendants HCW, Watson and Moore to correct the prohibited transactions which they caused or in which they participated;
5. Requiring, to the extent necessary, an offset of any Plan account balance of Defendants Watson and Moore to be used for the benefit of the other, non-fiduciary Plan participants to make their Plan accounts whole;
6. Award the Secretary the costs of this action; and
7. Provide such other relief as is just and equitable.

Respectfully submitted,

M. Patricia Smith  
Solicitor of Labor

Post Office Address:  
Office of the Solicitor  
J.F.K. Federal Building  
Room E-375  
Boston, MA 02203  
Tel. (617) 565-2500

Michael D. Felsen  
Regional Solicitor

Marjorie A. Butler  
ERISA Counsel

Fax (617) 565-2142

/s/ Nathan P. Goldstein  
Nathan Goldstein  
Trial Attorney  
United States Department of Labor  
Attorneys for the Plaintiff

Date: October 6, 2014