

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

2012 NOV 19 P 3 06

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

HILDA L. SOLIS, SECRETARY OF LABOR, :
UNITED STATES DEPARTMENT OF LABOR, :

Plaintiff, :

v. :

Civ. A. No/12- 1321

AJT/TeB

INNOVATIVE LOGISTICS TECHNIQUES, INC., :
AND THE INNOVATIVE LOGISTICS :
TECHNIQUES INC. 401(K) PLAN AND TRUST, :

Defendants. :

COMPLAINT

Hilda L. Solis, Secretary of Labor, United States Department of Labor, hereby alleges:

Jurisdiction and Venue

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 Sections 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 Section 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 Title I of ERISA.

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

3. The Innovative Logistics Techniques, Inc. 401(k) Plan (the "401(k) Plan" or the "Plan") is an employee benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. §

1002(3), and is therefore subject to the coverage of the Act, pursuant to Section 4(a) of ERISA, 29 U.S.C. § 1003(a). The Plan is administered Fairfax, Virginia.

4. Venue with respect to this action lies in Eastern District of Virginia, pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

5. The relevant time period is January, 2007 to the present.

The Parties

6. The Secretary, pursuant to Sections 502(a)(2) and (5) of ERISA, 29 U.S.C. §§ 1132(a)(2) and (5), has the authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and others who commit violations of ERISA.

7. Innovative Logistics Techniques, Inc. is the Plan Sponsor and Plan Administrator of the Plan ("the Company" or "Innovative"). During the relevant time period, Innovative exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and had discretionary authority or discretionary responsibility in the administration of the Plan. Innovative, therefore, is a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party in interest as that term is defined in Sections 3(14)(A) and (C) of ERISA, 29 U.S.C. §§ 1002(14)(A) and (C).

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

General Allegations

9. Innovative established the 401(k) Plan in 1989. The Plan permitted participants to

contribute a portion of their pay to the Plan as elective salary deferrals (“employee contributions”) through payroll deductions.

10. For payroll periods between January 1, 2007 and April 1, 2011 (“the relevant period”), Innovative deducted money from the participants’ pay as employee contributions or participant loan repayments to the Plan. During the relevant period, Innovative failed to remit employee contributions and participant loan repayments to the Plan. In addition, Innovative remitted certain employee contributions and participant loan repayments late without interest.

11. Unremitted employee contributions and participant loan repayments are assets of the Plan within the meaning of ERISA. Defendant Innovative failed to segregate the Plan assets from the general assets of the Company.

12. Between December, 2010 and March, 2011, the Company authorized the transfers of funds from the Plan's forfeiture account to pay fees for services that were unrelated to the provision of benefits under the Plan. The transferred funds were not used to pay for the reasonable expenses of administering the Plan but rather paid the fees for services that benefitted Innovative and its parent company, Innolog Holdings Corporation.

13. The forfeiture account contained Plan assets within the meaning of ERISA.

Violations

14. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts by reference the averments and allegations of paragraphs 1-13 inclusive.

15. By the actions and conduct described in paragraphs 9-13, defendant Innovative Logistics, as a fiduciary of the Plan:

- a. failed to ensure that all assets of the Plan were held in trust by one or more trustees, in violation of Section 403(a) of ERISA, 29 U.S.C. § 1103(a);
- b. failed to ensure that the assets of the Plan did not inure to the benefit of the company in violation of Section 403(c)(1) of ERISA, 29 U.S.C. § 1103(c)(1);
- c. failed to 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 their beneficiaries and defraying reasonable expenses of administering the Plan, in violation of Section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A);
- d. failed to discharge their duties with respect to the Plan 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 Section 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B);
- e. caused the Plan 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 Section 406(a)(1)(D) of ERISA, 29 U.S.C. § 1106(a)(1)(D); and
- f. dealt with assets of the Plan in their own interest or for their own account, in violation of Section 406(b)(1) of ERISA, 29 U.S.C. § 1106(b)(1).

Prayer for Relief

16. WHEREFORE, the Secretary prays that this Court issue an Order:
- a. Ordering the Company to restore to the Plan all losses, including interest or lost opportunity costs and the costs of the independent fiduciary, which were caused by its fiduciary misconduct;
 - b. Removing the Company as a fiduciary of the Plan and of any employee benefit plan for which the Company acts as fiduciary;
 - c. Permanently enjoining the Company from acting directly or indirectly, in any fiduciary capacity, with respect to any employee benefit plan subject to ERISA;
 - d. Permanently enjoining the Company from exercising any custody, control, or decision making authority with respect to the assets of any employee benefit plan covered by ERISA;
 - e. Appointing an independent fiduciary, at the Company's expense, with plenary authority and control with respect to the management and administration of the Plan, including the authority to marshal assets on behalf of the Plan, to pursue claims on behalf of the Plan;
 - f. Ordering the Company, its agents, employees, service providers, banks, accountants, and attorneys to provide the Secretary and the independent fiduciary with all of the books, documents, and records relating to the finances and administration of the Plan, and to make an accounting to the Secretary and to the independent fiduciary of all contributions to the Plan and all transfers, payments, or expenses incurred or paid in connection with the Plan;

- h. Awarding plaintiff, Secretary of Labor, the costs of this action; and
- i. Awarding such other relief as is equitable and just.

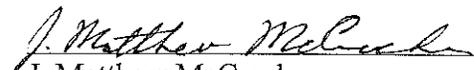
Respectfully submitted,

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