

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

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

Plaintiff,

CIVIL ACTION

v.

**PETER CONNOR, GORDON CONNOR,
WD FLOORING, LLC, NICOLET HARDWOODS
CORPORATION, and
CONNOR COMPANIES HEALTH AND
WELFARE PLAN,**

Case No. 14-C-489
Judge William Griesbach

Defendants.

CONSENT ORDER AND JUDGMENT WITH RESPECT TO ALL DEFENDANTS

Thomas E. Perez, Secretary of Labor, United States Department of Labor (“Secretary”), pursuant to the provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §§1001, *et seq.*, filed a complaint on April 29, 2014, against Peter Connor, Gordon Connor, WD Flooring, LLC, Nicolet Hardwoods Corporation, and Connor Companies Health and Welfare Plan a/k/a Connor Companies Health and Welfare Benefit Plan (“Health Plan”), alleging breaches of fiduciary obligations under Title I of ERISA.

Defendants Peter Connor, Gordon Connor, WD Flooring, LLC, Nicolet Hardwoods Corporation, and the Health Plan, having waived service of process and answer, admit to the jurisdiction of this court over them and the subject matter of this action. Defendants neither admit nor deny the allegations in the Secretary’s complaint.

The Secretary and Defendants Peter Connor, Gordon Connor, WD Flooring, LLC, Nicolet Hardwoods Corporation, and the Health Plan agree to resolve all claims and issues between and among them regarding the captioned matter (except for the imposition by the Secretary of any penalties pursuant to ERISA §502(l), 29 U.S.C. §1132(l), and any proceeding related thereto), and do now accordingly consent to the entry of this Consent Order and Judgment (“Judgment”) by the Court.

The parties agree that, if the Secretary assesses a penalty pursuant to ERISA §502(l) in connection with the violations alleged in this matter, the “applicable recovery amount” shall be the total amount paid in accordance with this Judgment.

Now, therefore, upon consideration of the record herein, and as agreed to by the parties hereto, the Court finds that it has jurisdiction to enter this Consent Order and Judgment, and being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Defendants Peter Connor, Gordon Connor, WD Flooring, LLC, and Nicolet Hardwoods Corporation, are enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §§1001, *et seq.*

2. Defendants Peter Connor, Gordon Connor, WD Flooring, LLC, and Nicolet Hardwoods Corporation, are jointly and severally liable for \$59,102.03 in losses owed to pay unpaid Health Plan claims as a result of the ERISA §§404 and 406 violations asserted by the Secretary with respect to the Health Plan.

3. Within seven (7) days of the entry of this Consent Order and Judgment Defendants Peter Connor, Gordon Connor, WD Flooring, LLC, and Nicolet Hardwoods Corporation, shall issue checks totaling \$59,102.03 directly to the Health Plan participants in the amounts listed in attached Exhibit A. Defendants Peter Connor, Gordon Connor, WD Flooring, LLC, and Nicolet Hardwoods Corporation's payments to the participants/beneficiaries are being made pursuant to the agreement between the Defendants and the Secretary and approved by this Judgment.

a. Within fourteen (14) days after the issuance of the aforementioned checks Defendants Peter Connor, Gordon Connor, WD Flooring, LLC, and Nicolet Hardwoods Corporation, shall provide copies of the checks to the Employee Benefits Security Administration Regional Director, 230 South Dearborn, Room 2160, Chicago, Illinois 60604 ("Regional Director").

b. Within fourteen (14) days after an issued check to restore monies to the participants or beneficiaries of the Health Plan pursuant to this Consent Order and Judgment has been cashed by the payee, Defendants Peter Connor, Gordon Connor, WD Flooring, LLC, and Nicolet Hardwoods Corporation, shall provide copies of the canceled check(s) verifying these payments to the Regional Director.

4. Defendants Peter Connor, Gordon Connor, WD Flooring, LLC, and Nicolet Hardwoods Corporation, shall exercise reasonable care and diligence to identify and locate each participant and beneficiary of the Health Plan identified on attached Exhibit A who is eligible to receive a payment under the terms of this Consent Order and Judgment and to disburse to each

such eligible participant or beneficiary the payment to which he or she is entitled as set forth on Exhibit A. In the event some or all of the payments for unpaid claims to be made as set forth on Exhibit A relate to outstanding amounts a participant (or the participant's dependents/beneficiaries) owe to health care providers for services covered or claimed to be covered under the Health Plan on or before December 31, 2010, Defendants have no further responsibility to pay those health care providers or otherwise resolve any amounts owed. For purposes of locating participants or beneficiaries identified in Exhibit A that are not current employees or beneficiaries of current employees, Defendants shall comply with the guidance in EBSA Field Assistance Bulletin 2004-02 (Sept. 30, 2004) available at <http://www.dol.gov/ebsa/regs/fab2004-2.html>.

5. If any checks Defendants send to the Health Plan participants or beneficiaries identified on Exhibit A pursuant to paragraph three (3) are returned to the Defendants uncashed or if after sixty (60) days of issuance any checks remain outstanding but not returned, Defendants are ordered to deposit these monies with the clerk of the court pursuant to Federal Rule of Civil Procedure 67. When sending such monies to the Court the Defendants shall provide a copy of the order and identify the amount owed to each individual whose checks were returned. This information and the money shall be sent to the Clerk of the Eastern District of Wisconsin, 362 U.S. Courthouse, 517 East Wisconsin Ave., Milwaukee, Wisconsin 53202. Within fourteen (14) days of depositing monies with the clerk of the court, the Defendants shall send a copy of the documents submitted to the court to the Regional Director. With respect to any funds deposited with the Court for checks that remained outstanding but not returned after sixty (60) days of issuance, in the event the original outstanding but not returned check is thereafter negotiated by the participant or beneficiary, Defendants may file with the Court proof

that the original check was negotiated and Defendants shall be entitled to a refund of such amount from the funds on deposit with the Court. If the Defendants make any such filing with the Court, the Defendants shall provide a copy of the filing at the time of filing to the Regional Director.

6. Each party agrees to bear his or its own attorneys' fees, costs, and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

7. Within ten (10) days of Defendants' satisfaction of the requirements in paragraph 3 and 5 above, the Secretary shall file a full satisfaction of the monetary judgment.

8. Nothing in this Judgment is binding on any government agency other than the United States Department of Labor and its sub-agencies.

IT IS SO ORDERED this 7th day of July, 2014.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
U.S. District Court Court