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SOL:SMG:SG  
(11)00915

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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HILDA L. SOLIS, Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

PROGRESSIVE MACHINE COMPANY, INC. 401(k)  
PLAN

Defendant.

:  
:  
Civil Action File  
:  
No.  
:  
**COMPLAINT**

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Plaintiff, Hilda L. Solis, Secretary of Labor, United States Department of Labor (the  
“Secretary”), to the best of her knowledge, information, and belief alleges:

1. This action arises under Title I of the Employee Retirement Income Security Act of  
1974 (“ERISA”), as amended, 29 U.S.C. §§1001 *et seq.*, and is brought by the Secretary against  
the Progressive Machine Company, Inc. 401(k) Plan to enjoin practices in violation of Title I and  
to obtain such further equitable relief as may be appropriate to redress violations and to enforce the  
provisions of Title I of ERISA.

## **JURISDICTION AND PARTIES**

2. The defendant, Progressive Machine Company, Inc. 401(k) Plan (the “Plan”), is a defined contribution plan, qualifying as an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), and subject to coverage by the Act under 29 U.S.C. §1003(a). The Plan was sponsored by Progressive Machine Company, Inc. (“the Company”), an employer of employees covered by the Plan. The last known address of the Company is 21 Van Natta Drive, Ringwood, NJ, 07456.

3. Jurisdiction over this action is conferred upon the Court by ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

4. Venue for this action lies in the District of New Jersey, where the plan and plan sponsor are located, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

5. The Plaintiff Secretary of Labor has authority to bring this civil action under ERISA §§ 502(a)(5), 29 U.S.C. §§ 1132(a)(5).

## **ALLEGATIONS**

6. The Plan was established on or about January 4, 2005.

7. Ann Bufardeci, Controller, and Stephen J. Honczarenko, President and Plan Administrator, served as Trustees of the Plan when it was established.

8. Ann Bufardeci resigned from Progressive Machine Company, Inc., in 2005, and at that time ceased performing any fiduciary functions for the Plan.

9. Following Ann Bufardeci's resignation, Stephen J. Honczarenko became the sole individual with signatory authority for the Plan. He was responsible for its administration, distribution of assets, and day-to-day management.

10. On or about March 17, 2010, Stephen J. Honczarenko pled guilty to one criminal violation of ERISA § 501, 29 U.S.C. § 1131, for failure to file a required form 5500 report in connection with a 401(k) benefit plan.

11. On or about October 4, 2010, Stephen J. Honczarenko was sentenced to three years probation. The terms of his probation prohibit him from holding any position of authority with respect to any employee benefit plan, including serving as a plan administrator or benefit plan trustee.

12. Stephen J. Honczarenko stopped performing his fiduciary duties in 2010, at the time of his sentencing, and did not ensure the appointment of a new fiduciary to manage the Plan or oversee the distribution of the Plan's assets. No individual or entity has come forward to assume fiduciary responsibility for the Plan or to distribute its assets to Plan participants, and there is no fiduciary actively functioning on behalf of the Plan.

13. The Company is no longer in business.

14. The Plan has not been formally terminated.

15. Lord Abbett, located at 1701 Route 70 East, Cherry Hill, NJ 08034, is and has been the custodian of the Plan assets at all times relevant to this litigation.

16. As of March 19, 2012, the assets held in the Plan had a value of approximately \$81,463, and there were approximately seventeen plan participants.

17. Plan participants are unable to obtain distributions of funds from the Plan without instructions to the asset custodian from a duly appointed trustee or other fiduciary.

## **VIOLATIONS**

18. By the conduct and circumstances described in paragraphs 6-17, the Plan exists without a named fiduciary and without its assets being held in trust by a trustee in violation of ERISA §§ 402 and 403, 29 U.S.C. §§ 1102 and 1103.

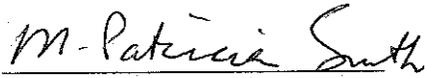
**PRAYER FOR RELIEF**

Wherefore, the Secretary prays for judgment:

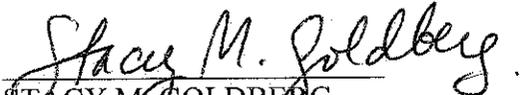
- A. Appointing an independent trustee and fiduciary to administer the plan and distribute the Plan's assets to its participants and beneficiaries; and,
- B. Ordering such further relief as is appropriate and just.

DATED: Nov. 28, 2012  
New York, New York

Respectfully submitted,

  
M. PATRICIA SMITH  
Solicitor of Labor

  
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