

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

THOMAS E. PEREZ, Successor to Seth D. Harris,
Secretary of Labor, United States Department of Labor,

Plaintiff,

v.

POLARIS AMERICA, LLC; CHRISTOPHER FILOS;
and the POLARIS AMERICA, LLC 401(k) PROFIT
SHARING PLAN,

Defendants.

CASE NO.

COMPLAINT

Plaintiff Seth Harris, Acting Secretary of Labor, United States Department of Labor,
successor to Hilda L. Solis (the "Secretary"), alleges:

JURISDICTION AND VENUE

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 under ERISA §§ 502(a)(2) and (5), 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 equitable relief for breaches of fiduciary duty under ERISA § 409, 29 U.S.C. § 1109, and to obtain such further equitable relief as may be appropriate to redress violations and to enforce the provisions of Title I of ERISA.

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

3. Venue of this action lies in the Southern District of Ohio, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Polaris America, LLC 401(k) Profit Sharing Plan (the “Plan”) was administered in Columbus, Ohio, in Delaware County, within this District.

DEFENDANTS

4. Defendant Polaris America, LLC (“Polaris”), the sponsor of the Plan, is the administrator of the Plan and a fiduciary of the Plan within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A).

5. Defendant Christopher Filos (“Filos”) is the sole owner of Polaris America, LLC, the sole Plan trustee, and a Plan fiduciary within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A).

6. The Plan is a defined contribution employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a).

7. The Plan is a named defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure to assure that complete relief can be granted.

FACTUAL ALLEGATIONS

8. Polaris was registered in Ohio on December 21, 2009 as a foreign (state of Delaware) limited liability company. It had a place of business in Columbus, Ohio where it was engaged in the business of engineering and manufacturing wind turbines, but, upon information and belief, Polaris is no longer in business in Ohio.

9. The Plan became effective on January 1, 2010. Filos is the Plan's only trustee and fiduciary.

10. Siegal Actuarial Consulting, Inc. is the Plan's third party administrator.

11. American Funds Retirement Plan Services ("AFRPS") is the Plan's asset custodian and record keeper.

12. According to AFRPS, as of June 18, 2013, the Plan has three participants and \$16,072.37 in total Plan assets.

13. To the best of the Secretary's knowledge, information and belief, neither Polaris nor Christopher Filos has filed for bankruptcy.

14. On August 8, 2012, the U.S. Department of Labor's Employee Benefits Security Administration's Cincinnati Regional Office received a telephone call from a Plan participant who stated that he was unable to secure a distribution, which he requested on November 1, 2011, from the Plan.

15. To the best of the Secretary's knowledge, information and belief, no individual or entity has taken fiduciary responsibility for the operation and administration of the Plan and its assets.

16. To the best of the Secretary's knowledge, information and belief, the Plan has not been formally terminated.

17. To the best of the Secretary's knowledge, information and belief, no Annual Report Form 5500 has been filed for the Plan for any Plan year.

18. Since the person designated to act on behalf of the Plan failed to administer the Plan, participants and beneficiaries of the Plan have not been able to obtain distributions from the Plan of

their individual account balances.

VIOLATIONS

19. By the conduct described in paragraphs 8 through 18 above, Defendants Polaris and Filos:

a. 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 its beneficiaries; and defraying reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A); and

b. 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 ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

20. As a direct and proximate result of these breaches committed by defendants, the Plan has suffered injury for which it is entitled to equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

- A. Permanently enjoining Defendants Polaris and Filos from violating the provisions of Title I of ERISA;
- B. Removing Defendants Polaris and Filos as Plan fiduciaries;
- C. Ordering the appointment of an independent fiduciary to administer the Plan

in order to effectuate its termination and the distribution of Plan assets to the participants and beneficiaries;

D. Enjoining Defendants Polaris and Filos from serving as a fiduciary or service provider to any ERISA-covered employee benefit plan.

E. Awarding the Secretary the costs of this action; and ordering such further relief as is appropriate and just.

Respectfully submitted,

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