

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SETH D. HARRIS, :
ACTING SECRETARY OF LABOR, :
UNITED STATES DEPARTMENT OF LABOR, :

Plaintiff, :

v. :

Civil Action

No.3:13-cv-00854-JMM

CHARLES YASKULSKI, :
EAGLE WARRANTY CORPORATION, :
and EAGLE WARRANTY CORPORATION :
PROFIT SHARING PLAN :

Defendants. :

MOTION TO APPROVE AND ENTER CONSENT JUDGMENT

Plaintiff, Secretary of Labor, United States Department of Labor, through his undersigned counsel, hereby moves this Court to Approve and Enter the Consent Judgment of Charles Yaskulski, Eagle Warranty Corporation and the Eagle Warranty Corporation Profit Sharing Plan as agreed to by the parties. In support thereof, the Secretary represents that the parties have reached an agreement for the purposes of settling the above-captioned matter. The terms of this agreement are set forth in the attached Consent Judgment, which has been signed by the Plaintiff and the Defendants.

Please note that, due to the pending Bankruptcy of the Eagle Warranty Corporation (U.S. Bankruptcy Court, Middle District of Pennsylvania (Wilkes-Barre), Bankruptcy Petition No. 5:09-bk-09823-RNO), Trustee John J. Martin is the authorized party to enter into this Consent Judgment on behalf of Eagle Warranty Corporation and the Eagle Warranty Corporation Profit

Sharing Plan. Please also note that Escrow Agent David Tomaine, Esquire of David J. Tomaine Law Offices, located at 960 Scranton Carbondale Highway, Eynon, PA 18403, is authorized to disburse all funds currently held in the escrow account referenced in the attached Consent Judgment in the manner described within the attached Consent Judgment.

WHEREFORE, for the reasons set forth above, the Secretary respectfully requests that the Court Approve and Enter the Consent Judgment attached hereto.

Respectfully Submitted,

M. Patricia Smith
Solicitor of Labor

Catherine Oliver Murphy
Regional Solicitor

/s/ Joanne Jarquin
Regional Counsel for ERISA
MD ID # 23797
Office of the Solicitor
Suite 630E, The Curtis Center
170 S. Independence Mall West
Philadelphia, PA 19106-3306
jarquin.joanne@dol.gov
(215) 861-5126
(215) 861-5162 (FAX)

/s/ Andrea J. Appel
Senior Trial Attorney
Office of the Solicitor
Suite 630E, The Curtis Center
170 S. Independence Mall West
Philadelphia, PA 19106-3306
appel.andrea@dol.gov
(215) 861-5125
(215) 861-5162 (FAX)

U.S. DEPARTMENT OF LABOR
Attorneys of Plaintiff

Consent Judgment against them by this Court, the terms of which are set forth herein:

1. The Secretary's Complaint alleges that Defendants violated Sections 403, 404 and 406 of ERISA, 29 U.S.C. §§ 1103, 1104 and 1106.
2. For purposes of this Consent Judgment, Defendants admit that the Court has jurisdiction over them and the subject matter of this action.
3. The Secretary has agreed to resolve all claims asserted in the Complaint against Defendant Yaskulski and Defendant Eagle Warranty Corporation for the equitable relief set forth below.
4. The Secretary and the Defendants understand and agree that entry of this Consent Judgment is without prejudice to the Secretary's right to investigate and redress violations of ERISA, if any, not alleged in the Complaint, including the Secretary's right to institute future enforcement actions with respect to any other such matter. It is further understood that this paragraph shall not constitute a waiver by Defendants of any defenses, legal or equitable, to any such future action.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that:

- a. This Court has jurisdiction over this action and the Defendants.
- b. Defendant Yaskulski shall sign over his rights to \$20,500 from the escrow account currently being held for the legal matters involving the Pennsylvania Attorney General as restitution to the Plan for \$16,523.74 in missing employee contributions, \$483.76 in lost opportunity costs and \$3,492.50 for the costs and expenses related to the hiring of an independent fiduciary for the Plan.

- c. Payment of the restitution required by paragraph (b), which totals \$20,500, shall be made payable to “Lefoldt & Co., P.A. FBO Eagle Warranty Corporation Profit Sharing Plan” and sent to Lefoldt & Co., P.A., 690 Towne Center Boulevard, P.O. Box 2848, Ridgeland, MS 39158-2848. The payment shall be made directly from the escrow account without any intervening access by Defendant Yaskulski.
- d. Upon receiving proof of the restitution payment, the Secretary shall assess a penalty against Defendant Yaskulski in the amount of \$4,100 which represents 20 percent of the applicable recovery amount of \$20,500 pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l). Defendant Yaskulski hereby waives his right to contest said penalty, but preserves his right to request a penalty waiver pursuant to ERISA § 502(l)(3), 29 U.S.C. § 1132(l)(3). Unless Defendant Yaskulski applies for a waiver, he shall pay the penalty within ten (10) days of receipt of the notice of assessment. If Defendant Yaskulski applies for a waiver to reduce or eliminate the penalty amount pursuant to ERISA § 502(l)(3), 29 U.S.C. § 1132(l)(3), and is denied such waiver by the Secretary, he shall pay any applicable penalty amount within ten (10) days of the Secretary’s denial. Such payment shall be mailed, via regular mail, to ERISA – Civil Penalties, P.O. Box 71360, Philadelphia, PA 19176-1360.
- e. Eagle Warranty is removed as the Plan Administrator of the Plan.
- f. Lefoldt & Co., P.A. is appointed as the independent fiduciary of the Plan with plenary authority over Plan administration, management and disposition of the Plan’s assets, including termination of the Plan. Lefoldt & Co., P.A. shall be compensated by the

Plan an amount not to exceed \$3,492.50 for the performance of its duties and costs incurred in accordance with the proposal attached as Government Exhibit 1.

- g. Defendant Yaskulski is permanently enjoined from serving as trustee, fiduciary, advisor, or administrator to any employee benefit plan, as that term is defined at Section 3(3) of ERISA, 29 U.S.C. § 1002(3). Defendant Yaskulski is permanently enjoined from serving in any capacity that involves decision-making authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan.
- h. Defendant Yaskulski is permanently enjoined from violating any provisions of ERISA in the future.
- i. The Secretary and the Defendants shall each bear their own costs, expenses, and attorneys' fees incurred to date in connection with any stage of this proceeding, including but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.
- j. This Consent Judgment shall operate as a final disposition of all claims asserted by the Secretary against all of the defendants in the Complaint.
- k. Nothing in this Consent Judgment is binding on any governmental agency other than the United States Department of Labor.
- l. This Court retains jurisdiction of this action for purposes of enforcing compliance with the terms of this Consent Judgment.

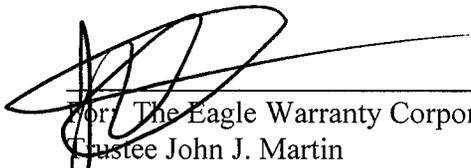
m. The Court directs the entry of this Consent Judgment as a final order for the Plaintiff Secretary of Labor and against Defendant Yaskulski and Defendant Eagle Warranty.

Date: _____

Defendants Charles Yaskulski,
The Eagle Warranty Profit Sharing Plan and
The Eagle Warranty Corporation
waive service and answer and
consent to entry of this Consent Judgment


For: Charles Yaskulski


For: The Eagle Warranty Profit Sharing Plan
Trustee John J. Martin
Law Offices of John Martin
1022 Court Street
Honesdale, PA 18431

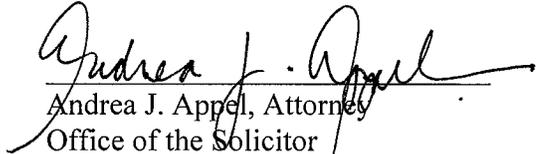

For: The Eagle Warranty Corporation
Trustee John J. Martin
Law Offices of John J. Martin
1022 Court Street
Honesdale, PA 18431

United States District Judge

M. Patricia Smith
Solicitor of Labor

Catherine Oliver Murphy
Regional Solicitor

Joanne Roskey
Counsel for ERISA


Andrea J. Appel, Attorney
Office of the Solicitor
170 S. Independence Mall West
Suite 630 E, The Curtis Center
Philadelphia, PA 19147
(215) 861-5125/(215) 861-5125 (fax)
appel.andrea@dol.gov
PA Bar No. 74-611

Attorneys for Plaintiff
U.S. DEPARTMENT OF LABOR