

**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. _____

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

Defendants. :

COMPLAINT

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

Jurisdiction and Venue

1. This action arises under the Employee Retirement Income Security Act of 1974 ("ERISA" or "the Act"), 29 U.S.C. § 1001, et seq., and is brought to obtain relief under Sections 409 and 502 of ERISA, 29 U.S.C. §§ 1109 and 1132, in the form of remedies that will redress violations to obtain appropriate relief for breaches of fiduciary duty under ERISA Section 409, 29 U.S.C. § 1109, and to obtain such further relief as may be appropriate to 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 Eagle Warranty Corporation Profit Sharing Plan ("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 in Eynon, Pennsylvania.

4. Defendant Charles Yaskulski resides in the Middle District of Pennsylvania.

5. Venue with respect to this action lies in the Middle District of Pennsylvania, pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

The Parties

6. The Secretary, pursuant to Sections 502(a)(2) and (5) of the Act, 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. Eagle Warranty Corporation (“Eagle”) is the sponsor and Plan Administrator of the Plan. At all relevant times, Eagle exercised discretionary authority or discretionary control respecting management of the Plan and 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. Eagle is therefore a fiduciary of the Plan within the meaning of ERISA Section 3(21), 29 U.S.C. § 1002(21), and a party in interest as that term is defined in ERISA Section 3(14)(A), 29 U.S.C. § 1002(14)(A). As an employer whose employees are covered by the Plan, Eagle is also a party in interest as that term is defined in ERISA Section 3(14)(C), 29 U.S.C. § 1002(14)(C).

8. At all relevant times, Charles Yaskulski (“Yaskulski”) was President and Chief Executive Officer of Eagle and a trustee of the Plan. At all relevant times, Yaskulski had discretionary authority or discretionary responsibility in the administration of the Plan. He is

therefore a fiduciary of the Plan within the meaning of ERISA Section 3(21), 29 U.S.C. § 1002(21), and a party in interest as that term is defined in ERISA Sections 3(14)(A), 29 U.S.C. §§ 1002(14)(A). As a Director and Owner of Eagle, Yaskulski is a party in interest as that term is defined in ERISA Sections 3(14)(H), 29 U.S.C. §§ 1002(14)(H).

9. 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

10. Eagle established the Plan on or about January 1, 2003.

11. During some or all of the time from January 1, 2003 through May 31, 2009, Eagle deducted money from the participants' pay as employee elective salary deferrals to the Plan. Beginning in approximately January 2006, some of these salary deferral contributions were not remitted to the Plan. In addition, many salary deferral contributions that were remitted to the plan were remitted late.

12. Where salary deferral contributions were remitted late to the Plan, Eagle failed to add interest to the delinquent contributions.

13. Unremitted employee contributions are assets of the Plan within the meaning of ERISA. Defendants Eagle and Yaskulski failed to segregate the Plan assets from the general assets of Eagle.

14. Yaskulski failed to ensure that the Plan assets described in paragraph 13, supra, were collected by the Plan.

15. By failing to comply with ERISA Section 404(a)(1) in failing to discharge his duties as Trustee with respect to the Plan solely in the interest of the participants and

beneficiaries, Yaskulski enabled Eagle to commit a fiduciary breach of ERISA.

16. Eagle and Yaskulski knew that the other had violated ERISA but did not make reasonable efforts to remedy the breaches.

17. On December 11, 2009, Eagle ceased operations.

18. On December 21, 2009, Eagle filed a bankruptcy petition under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Pennsylvania.

Violations

19. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts by reference the averments and allegations of paragraphs 1-18, inclusive.

20. By the actions and conduct described in paragraphs 10-18, defendants Eagle and Yaskulski, as fiduciaries of the Plan,

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

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 Section 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B);

- c. failed to ensure that all assets of the Plan be held in trust by one or more trustees, in violation of ERISA Section 403(a), 29 U.S.C. § 1103(a);
- d. failed to ensure that the assets of the Plan did not inure to the benefit of Eagle, in violation of ERISA Section 403(c)(1), 29 U.S.C. § 1103(c)(1);
- 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 ERISA Section 406(a)(1)(D), 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 ERISA Section 406(b)(1), 29 U.S.C. § 1106(b)(1).

21. By the actions and conduct described in paragraphs 10-18, defendants Eagle and Yaskulski,

- a. by failing to comply with the Section 404(a)(1) of ERISA in the administration of his specific fiduciary responsibility and thereby enabling Eagle to commit a breach of ERISA, Yaskulski is liable for Eagle's breaches of fiduciary responsibility, pursuant to ERISA § 405(a)(2), 29 U.S.C. § 1105(a)(2); and
- b. by failing to make reasonable efforts to remedy the breaches of which they had knowledge, are each liable for the other's fiduciary breaches, pursuant to ERISA § 405(a)(3), 29 U.S.C. § 1105(a)(3).

Prayer for Relief

22. WHEREFORE, the Secretary prays that this Court issue an order:
- a. Removing Charles Yaskulski and Eagle as fiduciaries of the Plan and of any

- employee benefit plan for which they act as fiduciaries;
- b. Permanently enjoining Yaskulski and Eagle from acting directly or indirectly, in any fiduciary capacity, with respect to any employee benefit plan subject to ERISA;
 - c. Permanently enjoining Yaskulski and Eagle from exercising any custody, control, or decision making authority with respect to the assets of any employee benefit plan covered by ERISA;
 - d. Appointing an independent fiduciary 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, and to take all appropriate action with respect to the Plan and the distribution of benefits to the Plan's participants and beneficiaries, with all costs of the independent fiduciary to be paid by the defendants;
 - e. Ordering the defendants, their 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;
 - f. Ordering the defendants to restore any losses, including lost opportunity costs, to the Plan caused by their fiduciary misconduct;
 - g. Requiring the Plan to set off any individual account balance of Charles

Yaskulski against the amount of losses, including lost opportunity costs, resulting from their fiduciary breaches, as authorized by 29 U.S.C. § 1056(d)(4), if the losses are not otherwise restored to the Plan by defendants;

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

Respectfully Submitted,

M. Patricia Smith
Solicitor of Labor

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Regional Counsel, ERISA

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U.S. DEPARTMENT OF LABOR

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