

3. On January 1, 2003, IDS Sales & Engineering, Inc. (“IDS”) established the IDS Sales & Engineering, Inc. Retirement Savings Plan (“Plan”) to provide retirement benefits to Plan participants.

4. The Plan is an 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 § 4(a), 29 U.S.C. §1003(a).

5. Venue for this action lies in the Western District of Wisconsin pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because the Plan was administered in Madison, Dane County, Wisconsin.

DEFENDANTS AND PARTIES IN INTEREST

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

7. From 2006 to present, IDS was the sponsor and administrator of the Plan; a fiduciary of the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A); and a party in interest to the Plan within the meaning of ERISA §§3(14)(A) and (C), 29 U.S.C. §§1002(14)(A) and (C).

8. In February 2011, IDS ceased business operations but as of February 11, 2014, IDS remains an active corporation according to the corporation and business entity records of the Wisconsin Secretary of State.

9. From 2003 to March 1, 2011, Defendant Stratton was the President and sole owner of IDS; exercised authority and control over IDS and its assets; exercised authority and control over the management of the Plan and its assets; was a named trustee of the Plan; was a fiduciary of the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A); and was

a party in interest to the Plan within the meaning of ERISA §§3(14)(A), (E) and (H), 29 U.S.C. §§1002(14)(A), (E) and (H).¹

COUNT I

(Failure to remit employee salary deferral contributions to Plan)

10. Paragraphs 1 through 9 above are hereby re-alleged and incorporated herein.

11. From 2003 through February 28, 2011, the Plan's governing documents provided, in pertinent part, that participants could make pre-tax contributions to the Plan as salary deferrals from their compensation on an annual basis and also permitted participants to take loans from their Plan accounts.

12. From 2006 through February 28, 2011, Defendant Stratton had authority and control over Plan management and the disposition of Plan assets and exercised those powers.

13. From 2003 through February 28, 2011, Defendant Stratton had authority over IDS's corporate bank account, including the determination of which creditors, including the Plan, the company would pay, as well as when the payments would be made.

14. Defendant Stratton oversaw the administration and management of the Plan and his authorization was necessary in order for IDS to remit employee salary contributions and loan

¹ On June 18, 2013, Defendant Stratton filed for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Wisconsin (Madison), Case No.13-29315; the case was subsequently transferred to the Bankruptcy Court for the Eastern District of Wisconsin (Milwaukee), where it is still pending. On January 17, 2014, the Secretary filed an *Adversary Complaint* in Defendant Stratton's bankruptcy case asking the Bankruptcy Court to order that, due to his defalcation as a fiduciary, Defendant Stratton's debt to the Plan be declared nondischargeable under §523(a)(4) of the Bankruptcy Code. Because the Secretary is prosecuting this civil action pursuant to the United States Department of Labor's police and regulatory power under Title I of ERISA, the Secretary's instant *Complaint* is "an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." It is, therefore, excluded from the operation of the automatic stay provisions of the Bankruptcy Code pursuant to 11 U.S.C. §362(b)(4). The Secretary's efforts to enforce any monetary portion of any judgment obtained against Defendant Stratton will be consistent with the Bankruptcy Code.

repayments to the Plan. Therefore, Defendant Stratton had control over plan assets collected via payroll deductions and held in IDS's accounts, prior to being deposited into the Plan.

15. From December 1, 2010 through February 28, 2011, IDS withheld \$14,435.61 in employee contributions from its employees' paychecks for remittance to the Plan. These monies were retained in IDS's corporate bank account and never remitted.

16. From December 1, 2010 through February 28, 2011, Defendant Stratton caused IDS to hold \$14,435.61 employee Plan contributions in IDS's corporate bank account beyond the time they were reasonably separable and used them to pay IDS's general operating expenses.

17. Based on the facts described in paragraphs 11 through 17 above, Defendants IDS and Stratton:

a. failed to hold all assets of the Plan in trust in violation of ERISA §403(a), 11 U.S.C. §1103(a);

b. permitted the Plan's assets to inure to the benefit of the employer and failed to hold them for the exclusive purpose of providing benefits to Plan participants and their beneficiaries and defraying reasonable expenses of Plan administration in violation of ERISA §403(c)(1), 29 U.S.C. §1103(c)(1);

c. failed to act solely in the interest of Plan participants and their beneficiaries and for the exclusive purpose of providing benefits to Plan participants and their beneficiaries and defraying reasonable expenses of Plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

d. caused the Plan to engage in transactions which they knew or should have known constituted a direct or indirect transfer to, or use by, or for the benefit of a party in interest, of assets of the Plan, in violation of ERISA §406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D);

e. dealt with assets of the Plan in their own interest in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

f. acted on behalf of a party whose interests are adverse to the interests of the Plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

18. As a direct and proximate result of Defendant IDS's and Defendant Stratton's fiduciary breaches, the Plan has suffered injury and losses for which they are personally liable and subject to appropriate equitable relief, pursuant to ERISA §409, 29 U.S.C. §1109.

COUNT II

(Failure to remit employee salary deferral contributions and loan repayments to the Plan in a timely manner)

19. Paragraphs 1 through 14 above are hereby re-alleged and incorporated herein.

20. During the period from February 2, 2010, through November 24, 2010, IDS withheld \$31,523.42 in employee contributions and \$167.40 in employee loan repayments from employees' paychecks and failed to remit these amounts to the Plan in a timely manner. IDS held the employees' contributions and employee loan repayments in IDS's corporate bank account for up to 71 days after they should have been remitted and then remitted them to the Plan.

21. During the period from February 2, 2010, through November 24, 2010, Defendant Stratton caused IDS to withhold \$31,523.42 in employee contributions and \$167.40 in participant loan repayments from employees' paychecks and failed to ensure that those amounts were remitted to the Plan in a timely manner.

22. Based on the facts described in paragraphs 21 through 22 above, Defendants IDS and Stratton:

a. failed to hold all assets of the Plan in trust in violation of ERISA §403(a), 11 U.S.C. §1103(a);

b. permitted the Plan's assets to inure to the benefit of the employer and failed to hold them for the exclusive purpose of providing benefits to Plan participants and their beneficiaries and defraying reasonable expenses of Plan administration in violation of ERISA §403(c)(1), 29 U.S.C. §1103(c)(1);

c. failed to act solely in the interest of Plan participants and their beneficiaries and for the exclusive purpose of providing benefits to Plan participants and their beneficiaries and defraying reasonable expenses of Plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

d. caused the Plan to engage in transactions which they knew or should have known constituted a direct or indirect transfer to, or use by, or for the benefit of a party in interest, of assets of the Plan, in violation of ERISA §406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D);

e. dealt with assets of the Plan in their own interest in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

f. acted on behalf of a party whose interests are adverse to the interests of the Plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

23. As a direct and proximate result of Defendant IDS's and Defendant Stratton's fiduciary breaches, the Plan has suffered injury and losses for which they are personally liable and subject to appropriate equitable relief, pursuant to ERISA §409, 29 U.S.C. §1109.

COUNT III

(Failure to maintain fidelity bond for fiduciaries)

24. Paragraphs 1 through 9 above are hereby re-alleged and incorporated herein.

25. From September 1, 2010, to the present time, the fiduciaries have failed to maintain a fidelity bond for the Plan.

26. By the conduct described in paragraph 25 above, Defendants IDS and Stratton failed to ensure that the fiduciaries of the Plan who handled the funds or other property of the Plan were bonded against losses to the Plan resulting from acts of fraud or dishonesty in violation of ERISA §412(a), 29 U.S.C. §1112.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining Defendants IDS and Stratton from violating the provisions of Title I of ERISA;

B. Ordering Defendants IDS and Stratton to correct the prohibited transaction in which they engaged;

C. Ordering Defendants IDS and Stratton to restore to the Plan losses, including lost opportunity costs, resulting from fiduciary breaches committed by them or for which they are liable;

D. Permanently enjoining Defendants IDS and Stratton from serving as fiduciaries or service providers to any ERISA-covered employee benefit plan.

E. Removing Defendants from any positions that they now have as fiduciaries to the Plan;

F. Appointing an independent fiduciary to terminate the Plan, with the Defendants

paying all related costs;

- G. Awarding the Secretary the costs of this action; and
- H. Ordering such further relief as is appropriate and just.

DATE: February 12, 2014

Respectfully submitted,

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