

LUIS A. GARCIA
Trial Attorney
JANET M. HEROLD
Regional Solicitor
DANIELLE L. JABERG
IAN H. ELIASOPH
Counsel for ERISA
Office of the Solicitor (SOL#1400195)
United States Department of Labor
350 South Figueroa St., Suite 370
Los Angeles, California 90071-1202
Telephone: (213) 894-2681
Facsimile: (213) 894-2064
Email: garcia.luis.a@dol.gov

Attorneys for Plaintiff,
United States Department of Labor

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

THOMAS E. PEREZ, Secretary
of Labor, UNITED STATES DEPARTMENT OF
LABOR,

Plaintiff,

v.

CHARLES W. BULLER; PARK PLACE WOOD
PRODUCTS, INC., an Oregon corporation; and
PARK PLACE WOOD PRODUCTS, INC.
RETIREMENT SAVINGS PLAN, an employee
pension benefit plan,

Defendants.

Case No. 3:15-cv-00747

**COMPLAINT FOR VIOLATIONS OF
ERISA (29 U.S.C. § 1109)**

Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor (the
“Secretary”), alleges:

1. This action arises under Title I of the Employee Retirement Income Security Act
of 1974 (“ERISA”), as amended, 29 U.S.C. §§ 1001-1191c, and is brought by the Secretary un-

der 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 relief as may be appropriate to redress 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 District of Oregon, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because: Charles W. Buller resides and conducts business in this District; Park Place Wood Products, Inc. conducted business in this District; the Park Place Wood Products, Inc. Retirement Savings Plan was administered within this District; and the alleged breaches of fiduciary duties by the named Defendants took place in this District.

DEFENDANTS

4. At all relevant times, Defendant Charles W. Buller (“Buller”), President, Director and sole owner of Park Place Wood Products, Inc., and Named Trustee and Named Fiduciary of the Park Place Wood Products, Inc. Retirement Savings Plan, was and is a fiduciary of the Park Place Wood Products, Inc. Retirement Savings Plan, within the meaning of ERISA § 3(21)(A)(i) and (iii), 29 U.S.C. § 1002(21)(A)(i) and (iii), and a party in interest to the Park Place Wood Products, Inc. Retirement Savings Plan within the meaning of ERISA § 3(14)(A), (E) and (H), 29 U.S.C. § 1002(14)(A), (E) and (H). Defendant Buller currently resides and conducts business in Beavercreek, Oregon.

5. At all relevant times, Defendant Park Place Wood Products, Inc., an Oregon corporation (“Park Place” or the “Company”), was and is the sponsor and Plan Administrator of the Park Place Wood Products, Inc. Retirement Savings Plan, a fiduciary of the Park Place Wood

Products, Inc. Retirement Savings Plan, within the meaning of ERISA § 3(21)(A)(i) and (iii), 29 U.S.C. § 1002(21)(A)(i) and (iii), 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). The Company conducted business in Oregon City, Oregon, but was administratively dissolved on January 25, 2013.

6. The Park Place Wood Products, Inc. Retirement Savings Plan (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 ERISA § 4(a), 29 U.S.C. § 1003(a). The Plan is named as a Defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure, solely to assure that complete relief can be granted.

ALLEGATIONS

I. FAILURE TO REMIT EMPLOYEE CONTRIBUTIONS TO THE PLAN

7. Paragraphs 1 through 6 above are realleged and incorporated herein by reference.

8. The Plan was established effective January 1, 1991, by the Company, the Plan sponsor, to provide benefits to its employees upon retirement, death or disability.

9. The Plan was restated and amended by the Company on January 1, 2008.

10. The Plan’s governing documents provide, in pertinent part, that participants could make salary reduction contributions to the Plan, and that such deferred amount would be remitted to the Plan by the Company and allocated to the individual participants’ accounts.

11. During the period from January 1, 2010 through December 31, 2012, Defendants Park Place and Buller withheld at least \$53,611 from employees’ pay for salary reduction contributions to the Plan and participant loan repayments. Defendants Park Place and Buller failed to remit the amounts so withheld into the Plan’s accounts, and instead, retained and commingled the withheld contributions and participant loan repayments in Company accounts.

12. Employee contributions are required to be remitted to the Plan on the earliest date that they could reasonably be segregated from the Company's assets. Based on a review of the Company's demonstrated patterns and practices, the employee contributions could have been reasonably segregated from the Company assets within 5 business days.

13. By the conduct described in paragraphs 11 and 12 above, Defendants Park Place and Buller, acting in their fiduciary capacities:

a. failed to hold the assets of the Plan in a trust in violation of ERISA § 403(a), 29 U.S.C. § 1103(a);

b. permitted the assets of the Plan to inure to the benefit of the Company, in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);

c. failed to act solely in the interest of the participants and beneficiaries of the 401(k) Plan and for the exclusive purpose of providing benefits to 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. failed to act with 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);

e. caused the Plan to engage in transactions that they knew or should have known constituted a direct or indirect lending of money or other extension of credit between the Plan and a party in interest, in violation of ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B);

f. 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); and

g. dealt with assets of the Plan in their own interests and 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)(1) and (2), 29 U.S.C. § 1106(b)(1) and (2).

14. As a direct and proximate result of the breaches of fiduciary duties committed by Defendants Park Place and Buller, as described in paragraphs 11 through 13 above, the Plan has suffered losses in the sum of \$53,611, including lost-opportunity income, which continues to accrue from at least January 1, 2013, for which the Defendants Park Place and Buller are jointly and severally liable pursuant to ERISA § 409, 29 U.S.C. § 1109.

15. Defendant Park Place is liable as a co-fiduciary pursuant to ERISA § 405(a), 29 U.S.C. § 1105(a), for the violations alleged in paragraphs 11 to 13 above because (i) the Company knowingly participated in, or knowingly undertook to conceal, acts or omissions, of Defendant Buller; (ii) the Company enabled Defendant Buller to commit such breaches by its failure to comply with ERISA § 404(a)(1)(A), (B) and (D), 11 U.S.C. § 1104(a)(1)(A), (B) and (D), in the administration of its specific responsibilities which gave rise to its status as a fiduciary; and (iii) the Company had knowledge of Defendant Buller's breaches and failed to make reasonable efforts under the circumstances to remedy such breaches.

16. Defendant Buller is liable as a co-fiduciary pursuant to ERISA § 405(a), 29 U.S.C. § 1105(a), for the violations alleged in paragraphs 11 and 13 above because (1) he knowingly participated in, or knowingly undertook to conceal, acts or omissions of Defendant Park Place; (2) he enabled Defendant Park Place to commit such breaches by his failure to comply

with ERISA § 404(a)(1)(A), (B) and (D), 11 U.S.C. § 1104(a)(1)(A), (B) and (D), in the administration of his specific responsibilities which gave rise to his status as a fiduciary; and (3) he had knowledge of Defendant Park Place's breaches and failed to make reasonable efforts under the circumstances to remedy such breaches.

II. COMMINGLING AND MISAPPROPRIATION OF PLAN ASSETS

17. Paragraphs 1 through 16 above are realleged and incorporated herein by reference.

18. Between July 15, 2011 and December 17, 2012, Defendant Buller withdrew from the Plan's Savings Plan the total sum of \$131,550 and deposited the funds into his or the Company's bank account. A summary of the withdrawals is set forth in Table 1 below.

TABLE 1

Date of Withdrawal	Check # and Park Place Retire Savings Plan UA 1-1-91 Acct. Number	Amount of Withdrawal	Payee	Signor	Deposited to Name on Account
07/15/11	# 235 Ending in 5464	\$58,000.00	Charles Buller	Charles Buller	Charles Buller
11/01/11	# 237 Ending in 5464	\$10,000.00	Charles Buller	Charles Buller	Charles Buller
11/02/11	# 238 Ending in 5464	\$15,000.00	Charles Buller	Charles Buller	Charles Buller
12/09/11	# 101 Ending in 4307	\$34,000.00	Park Place Wood Products	Charles Buller	Park Place Corporate Acct.
12/23/11	# 107 Ending in 4307	\$5,000.00	Park Place Wood Products	Charles Buller	Park Place Corporate Acct.

12/27/11	# 109 Ending in 4307	\$7,000.00	Park Place Wood Products	Charles Buller	Park Place Corporate Acct.
11/21/12	# 110 Ending in 4307	\$1,800.00	Park Place Wood Products	Charles Buller	Park Place Corporate Acct.
12/17/12	# 111 Ending in 4307	\$750.00	Park Place Wood Products	Charles Buller	Park Place Corporate Acct.
Total		\$131,550			

19. At the time of the withdrawals summarized in Table 1, Defendant Buller's Plan account balance was approximately \$62,682.80. The remainder of the transferred Plan assets belonged to the accounts of other Plan participants.

20. Defendants Park Place and Buller used the withdrawn Plan assets for non-Plan purposes, including Defendant Park Place's business expenses and Defendant Buller's personal expenses.

21. By the conduct described in paragraphs 18 through 20 above, Defendants Park Place and Buller, acting in their fiduciary capacities:

- a. failed to hold the assets of the 401(k) Plan in a trust in violation of ERISA § 403(a), 29 U.S.C. § 1103(a);
- b. permitted the assets of the Plan to inure to the benefit of the Company, in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);
- c. failed to act solely in the interest of the participants and beneficiaries of the Plan and for the exclusive purpose of providing benefits to 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. failed to act with 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);

e. caused the Plan to engage in transactions that they knew or should have known constituted a direct or indirect lending of money or other extension of credit between the Plan and a party in interest, in violation of ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B);

f. 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);

g. dealt with assets of the Plan in their own interests and 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)(1) and (2), 29 U.S.C. § 1106(b)(1) and (2); and

h. received consideration for their own personal accounts from a party dealing with such Plan in connection with a transaction involving the assets of the Plan, in violation of ERISA § 406(b)(3), 29 U.S.C. § 1106(b)(3).

22. As a direct and proximate result of the breaches of fiduciary duties committed by Defendants Park Place and Buller, as described in paragraphs 18 through 21 above, the Plan has suffered losses, including lost-opportunity income which continues to accrue, for which the Defendants are jointly and severally liable pursuant to ERISA § 409, 29 U.S.C. § 1109.

23. Defendant Park Place is liable as a co-fiduciary pursuant to ERISA § 405(a), 29 U.S.C. § 1105(a), for the violations alleged in paragraph 21 above because (i) the Company knowingly participated in, or knowingly undertook to conceal, acts or omissions, of Defendant Buller; (ii) the Company enabled Defendant Buller to commit such breaches by its failure to comply with ERISA § 404(a)(1)(A), (B) and (D), 11 U.S.C. § 1104(a)(1)(A), (B) and (D), in the administration of its specific responsibilities which gave rise to its status as a fiduciary; and (iii) the Company had knowledge of Defendant Buller's breaches and failed to make reasonable efforts under the circumstances to remedy such breaches.

24. Defendant Buller is liable as a co-fiduciary pursuant to ERISA § 405(a), 29 U.S.C. § 1105(a), for the violations alleged in paragraph 21 above because (1) he knowingly participated in, or knowingly undertook to conceal, acts or omissions, of Defendant Company; (2) he enabled Defendant Company to commit such breaches by his failure to comply with ERISA § 404(a)(1)(A), (B) and (D), 11 U.S.C. § 1104(a)(1)(A), (B) and (D), in the administration of his specific responsibilities which gave rise to his status as a fiduciary; and (3) he had knowledge of Defendant Park Place's breaches and failed to make reasonable efforts under the circumstances to remedy such breaches.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

A. Ordering Defendants Park Place and Buller to restore to the Plan any losses, including lost-opportunity income, resulting from fiduciary breaches committed by them or for which they are liable;

B. Ordering Defendants Park Place and Buller to correct the prohibited transactions in which they engaged or which they caused the Plan to engage;

- C. Permanently enjoining Defendants Park Place and Buller from violating the provisions of Title I of ERISA;
- D. Removing Defendant Buller from any position he now holds as a fiduciary of the Plan;
- E. Permanently enjoining Defendants Park Place and Buller from serving as fiduciaries of, or service providers to, any ERISA-covered employee benefit plan;
- F. Ordering the appointment of an independent fiduciary to administer, conduct an accounting, terminate and distribute the assets of the Plan to the non-breaching fiduciaries;
- G. Ordering Defendants Park Place and Buller to pay for the reasonable fees and expenses of the independent fiduciary.
- H. Awarding the Secretary the costs of this action; and
- I. Ordering such further equitable relief as is appropriate and just.

Dated: May 1, 2015

M. PATRICIA SMITH
Solicitor of Labor
JANET M. HEROLD
Regional Solicitor
DANIELLE L. JABERG
IAN H. ELIASOPH
Counsel for ERISA

By: 

LUIS A. GARCIA
Trial Attorney
Attorneys for Plaintiff
THOMAS E. PEREZ
Secretary of Labor
United States Department of Labor