

Defendants waive service and answer of the complaint, hereby admit that this Court has jurisdiction over them and the subject matter of this action.

The Plaintiff and Defendants have agreed to resolve all matters as alleged in the complaint (except for the imposition by Plaintiff of any penalty pursuant to ERISA Sec. 502(l), 29 U.S.C. 1132(l), and any proceedings related thereto), and said parties do now consent to entry of a Consent Order and Judgment by this Court in accordance therewith.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Judgment and Order.

IT IS THEREFORE ORDERED that:

- 1. Defendant Thomas Fernandes is permanently enjoined and restrained from violating the provisions of Title I of ERISA.**
- 2. Defendant Thomas Fernandes is liable to the 401(k) Plan for \$7,710.85, which represents lost opportunity costs for late contributions and loan repayments for employees of Air Gage Company, Reska Spline Products, Inc. and Airtronics Gage and Machine Company for the period January 3, 2008 through March 8, 2013. Defendant Thomas Fernandes is also liable to the Health Plan for \$3,432.36 which represents Air Gage Company employee health premiums which were not forwarded to the Health Plan and interest calculated through March 8, 2013. Therefore, Defendant Fernandes is liable to the Plans for a total of \$11,143.21.**
- 3. Defendant Thomas Fernandes shall pay \$11,143.21 directly to the former participants/beneficiaries of the Plans in the amounts listed on Attachment A on or before May 15, 2013.**

4. **Defendant Thomas Fernandes shall exercise reasonable care and diligence to identify and locate each participant and beneficiary of the Plan who is eligible to receive a distribution. Defendant Fernandes may rely upon the procedures for locating lost participants that are described in Field Assistant Bulletin 2004-02 of the Department of Labor, Employee Benefits Security Administration (Attachment B) and Revenue Procedure 94-22 of the Internal Revenue Service. If, after exhausting these procedures, participants or their beneficiaries cannot be located for the purposes of distribution, Defendant Fernandes shall promptly notify the Regional Director, EBSA, U.S. Department of Labor, 1885 Dixie Highway, Room 210, Fort Wright, KY 41011, of the names, last-known addresses and social security numbers of said participants or beneficiaries.**

5. **Once payment is made to the former participants/beneficiaries of the Plans, Defendant Thomas Fernandes shall be removed as fiduciary of the Plans and shall be permanently enjoined from serving as a fiduciary or service provider to any ERISA-covered employee benefit plan. Defendant Fernandes shall also notify the Regional Director of EBSA in Fort Wright, Kentucky when all payments have been made and provide cancelled checks as proof of payments.**

6. **Should Defendant Thomas Fernandes fail to make the payment described in paragraph 3 above on or before May 15, 2013, that amount shall become due and payable immediately by Defendant Fernandes together with post-judgment interest pursuant to 28 U.S.C. Section 1961 with no further notice or demand required by Plaintiff to Defendant.**

7. **Each party agrees to pay his, her or its own attorneys' fees, costs and other**

expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

8. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Judgment and Order.

9. Nothing in this Consent Judgment and Order is binding on any government agency other than the U.S. Department of Labor.

Dated: JUN 10 2013

TERKENCE G. BERG
UNITED STATES DISTRICT COURT JUDGE

The parties hereby apply for and consent to the entry of this Consent Judgment and Order.

FOR PLAINTIFF SECRETARY OF LABOR,

Maureen M. Cafferkey
MAUREEN M. CAFFERKEY
Senior Trial Attorney for Plaintiff
SETH D. HARRIS, Acting Secretary of Labor,
successor to Hilda L. Solis,
U.S. Department of Labor
881 Federal Office Building
1240 East Ninth Street
Cleveland, Ohio 44199
Telephone: (216) 522-3872
Facsimile: (216) 522-7172
E-mail: cafferkey.maureen@dol.gov

Dated 5/13/13

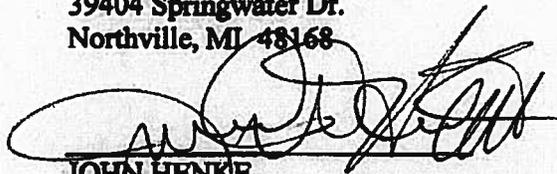
FOR DEFENDANTS:

Thomas Fernandes
THOMAS FERNANDES

Dated 4/10/13

**Individually and as fiduciary of the Air Gage
Company 401(k) Plan and the Air Gage
Company Health Care Plan**

**39404 Springwater Dr.
Northville, MI 48168**



**JOHN HENKE
Attorney for Defendants Thomas Fernandes,
Air Gage Company 401(k) Plan and the Air Gage
Company Health Care Plan**

Dated 4/10/13.

**Fried Saperstein Abbatt, PC
29800 Telegraph Rd.
Southfield, MI 48034
Phone: (248) 353-6508
jwhenke@aol.com**

ATTACHMENT A**Consent Judgment and Order**
Case #: 2:13-cv-10079-BAF-DRG

	<u>Name</u>	<u>401k Plan</u>	<u>Health Plan</u>	<u>Total</u>
1	John S. Adams	\$26.67	\$79.31	\$105.98
2	Dennis R. Amolsch		\$99.81	\$99.81
3	Douglas Anderson		\$47.96	\$47.96
4	Charles T. Beadle	\$636.61	\$31.10	\$667.70
5	Christopher Bleau	\$62.01	\$79.31	\$141.32
6	Charles G. Burleson	\$1,107.77	\$31.10	\$1,138.87
7	Paul M. Burns	\$159.00	\$106.42	\$265.42
8	Steven A. Carcone		\$137.52	\$137.52
9	Janet L. Emery	\$41.35	\$69.95	\$111.30
10	James G. Ferrara	\$14.46	\$31.10	\$45.55
11	Toby N. House	\$12.64	\$152.36	\$165.00
12	Gary J. Isaacson	\$177.06	\$75.49	\$252.55
13	Anthony Iverson	\$154.21	\$194.33	\$348.54
14	Dennis G. Kanowski	\$2.43	\$91.33	\$93.75
15	Donald W. Kumpula	\$146.45	\$73.82	\$220.27
16	Douglas J. Lakin	\$46.39	\$56.64	\$103.04
17	Mark G. Lauderback	\$48.32	\$69.16	\$117.48
18	Kevin L. Mann	\$594.63	\$41.54	\$636.18
19	Michael L. McGrew	\$63.14	\$172.54	\$235.68
20	Steven W. Mechalko	\$123.60	\$116.84	\$240.44
21	Steven C. Mersino	\$18.89	\$62.09	\$80.98
22	Terry A. Mlynarek	\$0.10	\$204.85	\$204.95
23	Benjamin J. Marcum		\$20.34	\$20.34
24	Christopher Murray		\$47.96	\$47.96
25	Daniel L. Morneweck	\$74.66	\$73.82	\$148.47
26	Nikhil K. Shah		\$190.67	\$190.67
27	Wayne A. Soper	\$90.86	\$54.77	\$145.63
28	Thomas Z. Studzinski	\$369.84	\$78.60	\$448.44
29	Richard E. Towne	\$198.82	\$84.02	\$282.84
30	Norman R. Tucker	\$5.70	\$138.62	\$144.33
31	Michael R. Walker		\$78.60	\$78.60
32	Kevin J. White	\$38.83	\$135.02	\$173.85
33	Charlie White		\$178.58	\$178.58
34	Kenneth A. Yee	\$5.39	\$147.74	\$153.13
35	Glen E. Fuller	\$87.45		\$87.45
36	Peter C. Johnson	\$558.18		\$558.18

37	Robert M. Jones	\$366.10		\$366.10
38	Larry J. Lapanowski	\$90.41		\$90.41
39	David H. Mapes	\$367.22		\$367.22
40	John B. Robson	\$6.21		\$6.21
41	Charles D. Wickham III	\$6.25		\$6.25
42	Giovanni Arcuri	\$45.07	\$137.52	\$182.59
43	Juan R. Rodriguez	\$16.82	\$41.54	\$58.37
44	Edward P. Chetcuti	\$25.38		\$25.38
45	Arthur L. Gauthier	\$46.62		\$46.62
46	Xuemel Zhang	\$5.18		\$5.18
47	Jerald A. Bosel	\$96.17		\$96.17
48	Mark S. Doyle	\$179.74		\$179.74
49	Theodore R. Swantek	\$126.15		\$126.15
50	Kevin D. Tracy	\$347.44		\$347.44
51	Lawrence J. Triggs	\$225.89		\$225.89
52	Alice O. Trysh	\$3.79		\$3.79
53	Scott Casebeer	\$184.50		\$184.50
54	Terry W. Hutson	\$47.12		\$47.12
55	William A. Cook	\$172.90		\$172.90
56	Jeffrey L. Danner	\$63.33		\$63.33
57	Timothy P. Quinn	\$1.32		\$1.32
58	Michael T. Smith	\$236.85		\$236.85
59	Gregory W. Warren	\$41.09		\$41.09
60	Lara White	\$84.16		\$84.16
61	Daniel L. Greenberg	\$59.70		\$59.70
TOTAL:		\$7,710.85	\$3,432.36	\$11,143.21

ATTACHMENT B

Consent Judgment and Order

Case #: 2:13-cv-10079-BAF-DRG

Field Assistance Bulletin 2004-02

September 30, 2004

Memorandum For: Virginia C. Smith
Director of Enforcement, Regional Directors

From: Robert J. Doyle
Director of Regulations and Interpretations

Subject: Fiduciary Duties and Missing Participants in Terminated Defined Contribution Plans

Issue

What does a plan fiduciary need to do in order to fulfill its fiduciary obligations under ERISA with respect to: (1) locating a missing participant of a terminated defined contribution plan; and (2) distributing an account balance when efforts to communicate with a missing participant fail to secure a distribution election?

Background

All plan assets must be distributed as soon as administratively feasible after the date of a plan termination in order to effectively complete a plan termination under Internal Revenue Code requirements.⁽¹⁾ Prior to any distribution, the Code requires a plan administrator to contact all participants for affirmative directions regarding distribution of their account balances.⁽²⁾ This notice requirement extends to all participants, regardless of their length of service or the size of their account balances, because all participants vest in their account balances upon termination of the plan.⁽³⁾

In the context of terminated defined contribution plans, some participants may be unresponsive to written notices from plan administrators asking for direction regarding the distribution of their account balances: these participants are commonly referred to as missing participants.⁽⁴⁾ As a result of participants' unresponsiveness, plan administrators often are unable to effectively wind-up the plans' financial affairs and are confronted with an array of issues related to their duties under the fiduciary responsibility provisions of ERISA to search for missing participants and distribute their benefits.

The Department has previously issued guidance to fiduciaries of terminated defined contribution plans on the handling of certain missing participant issues. However, Field Offices have, in the course of their investigations, found that plan fiduciaries use a variety of methods in searching for missing participants and distributing account balances when a search proves unsuccessful. Additional guidance, therefore, has been requested concerning the obligations of plan fiduciaries that are confronted with missing participant issues in terminated defined contribution plans.⁽⁵⁾

Analysis

Consistent with the requirements of section 404(a) of ERISA, a fiduciary must act prudently and solely in the interest of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan. Also, under section 404(a)(1)(D) of ERISA, fiduciaries are required to act in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of Title I and IV. Section 402(b)(4) of ERISA provides that every employee benefit plan shall specify the basis on which payments are made to and from the plan. Section 403(a) of ERISA generally requires that the assets of a plan be held

in trust by a trustee. In the case of plan terminations, fiduciaries must also ensure that the allocation of any previously unallocated funds is made in accordance with the provisions of section 403(d) of ERISA.

Under Title I of ERISA, the decision to terminate a plan is generally viewed as a "settlor" decision rather than a fiduciary decision relating to the administration of the plan. However, the steps taken to implement this decision, including steps to locate missing participants, are governed by the fiduciary responsibility provisions of ERISA.⁽⁶⁾ Further, in our view, while the distribution of the entire benefit to which a participant is entitled ends his or her status as a plan participant and the distributed assets cease to be plan assets under ERISA, a plan fiduciary's choice of a distribution option is a fiduciary decision subject to the general fiduciary responsibility provisions of ERISA.⁽⁷⁾

It is our view that a plan fiduciary must take certain steps in an effort to locate a missing participant or beneficiary before the plan fiduciary determines that the participant cannot be found and distributes his or her benefits in accordance with this Bulletin. These steps are identified below under the heading "Search Methods." It also is our view that, in determining any additional steps that may be appropriate with regard to a particular participant, a plan fiduciary must consider the size of the participant's account balance and the expenses involved in attempting to locate the missing participant. Accordingly, the specific steps that a plan fiduciary takes to locate a missing participant may vary depending on the facts and circumstances. This consideration of additional steps is discussed below under the heading "Other Search Options." Reasonable expenses attendant to locating a missing participant may be charged to a participant's account, provided that the amount of the expenses allocated to the participant's account is reasonable and the method of allocation is consistent with the terms of the plan and the plan fiduciary's duties under ERISA.⁽⁸⁾ Whatever decisions are made in connection with locating of missing participants or the distribution of assets on their behalf, plan fiduciaries must be able to demonstrate compliance with ERISA's fiduciary standards.

Search Methods

In the context of a defined contribution plan termination, one of the most important functions of the plan's fiduciaries is to notify participants of the termination and of the plan's intention to distribute benefits. In most instances, routine methods of delivering notice to participants, such as first class mail or electronic notification, will be adequate. In the event that such methods fail to obtain from the participant the information necessary for the distribution, or the plan fiduciary has reason to believe that a participant has failed to inform the plan of a change in address, plan fiduciaries need to take other steps to locate the participant or a beneficiary. In our view, some search methods involve such nominal expense and such potential for effectiveness that a plan fiduciary must always use them, regardless of the size of the participant's account balance. A plan fiduciary cannot distribute a missing participant's benefits in accordance with the distribution options discussed below unless each of these methods proves ineffective in locating the missing participant. However, a plan fiduciary is not obligated to take each of these steps if one or more of them are successful in locating the missing participant. These methods are:

1. **Use Certified Mail.** Certified mail can be used to easily ascertain, at little cost, whether the participant can be located in order to distribute benefits.
2. **Check Related Plan Records.** While the records of the terminated plan may not have current address information, it is possible that the employer or another plan of the employer, such as a group health plan, may have more up-to-date information with respect to a given participant or beneficiary. For this reason, plan fiduciaries of the terminated plan must ask both the employer and administrator(s) of related plans to search their records for a more current address for the missing participant. If there are privacy concerns, the plan fiduciary that is engaged in the search can request the employer or other plan fiduciary to contact or forward a letter on behalf of the terminated plan to the participant or beneficiary, requesting the participant or beneficiary to contact the plan fiduciary.
3. **Check With Designated Plan Beneficiary.** In connection with a search of the terminated plan's records or the records of related plans, plan fiduciaries must attempt to identify and contact any individual that the missing participant has designated as a beneficiary (e.g., spouse, children, etc.) for