

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

HILDA L. SOLIS, Secretary of Labor,)
United States Department of Labor,)

Plaintiff,)

v.)

Civil Action No. _____

HENSLEY ENGINEERING GROUP, LLC,)
THE HENSLEY ENGINEERING GROUP)
401(K) PLAN, and LISA HENSLEY)

Defendants.)

COMPLAINT

Plaintiff, Hilda L. Solis, Secretary of Labor, United States Department of Labor, brings this action against Defendants, Hensley Engineering Group, LLC, The Hensley Engineering Group 401(k) Plan (the “Plan”), and Lisa Hensley, pursuant to Sections 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(5), of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq. (“ERISA”), for appropriate equitable and remedial relief under ERISA Sections 409 and 502(a)(5), 29 U.S.C. §§ 1109 and 1132(a)(5), to enjoin violations of the provisions of Title I of ERISA, and to obtain other appropriate relief to redress violations and to enforce the provisions of Title I of ERISA.

I. JURISDICTION

Jurisdiction of this action is conferred upon the Court by ERISA Section 502(e)(1), 29 U.S.C. § 1132(e)(1).

II. VENUE

Venue of this action lies in the United States District Court for the District of New Mexico pursuant to ERISA Section 502(e)(2), 29 U.S.C. § 1132(e)(2).

III. THE PLAN

A. The Hensley Group Engineering 401(k) Plan (“Plan”) is, and at all times hereafter mentioned was, an employee benefit plan within the meaning of ERISA Section 3(3), 29 U.S.C. § 1002(3). The Plan was established by, and at all times hereinafter mentioned was maintained by, an employer engaged in commerce or in an industry or activity affecting commerce and is subject to Title I including Title I, Part 4 of ERISA pursuant to ERISA Sections 4(a)(1) and 401(a), 29 U.S.C. §§ 1003(a)(1) and 1101(a). During all times hereinafter mentioned, the Plan has been administered in Albuquerque, New Mexico within the jurisdiction of this Court.

IV. THE DEFENDANTS

A. Defendant Hensley Engineering Group, LLC is, and at all times hereinafter mentioned was, a New Mexico limited liability company doing business within the jurisdiction of this Court. At all times hereinafter mentioned, Hensley Engineering Group, LLC has been an employer and Plan sponsor with respect to the Plan within the meaning of ERISA Sections 3(5) and 3(16)(B), 29 U.S.C. §§ 1002(5) and 1002(16)(B). Additionally, at all times hereinafter mentioned, Hensley Engineering Group, LLC has been a fiduciary and a party in interest with respect to the Plan within the meaning of ERISA Sections 3(14) and 3(21)(A), 29 U.S.C. §§ 1002(14) and 1002(21)(A). At all times hereinafter mentioned, Hensley Engineering Group, LLC has also been the Plan administrator pursuant to Section 3(16)(A)(ii), 29 U.S.C. §§ 1002(16)(A)(ii), because it is the Plan sponsor and the Plan document designates it as the Plan

administrator.

B. At all relevant times, Defendant Lisa Hensley was a fiduciary and a party in interest with respect to the Plan within the meaning of ERISA Sections 3(14) and 3(21)(A), 29 U.S.C. §§ 1002(14) and 1002(21)(A). At all relevant times, Defendant Lisa Hensley was President of Hensley Engineering Group, LLC and acted on its behalf with respect to the Plan, specifically in conducting the daily administration of the Plan as the functional Plan Administrator and as the named Trustee of the Plan. At all relevant times, Defendant Lisa Hensley had and exercised discretionary authority over Plan assets, including, but not limited to, determining when and whether employee contributions would be remitted to the Plan. During all relevant times, Defendant Lisa Hensley conducted her job duties concerning the administration of the Plan in Albuquerque, New Mexico, within the jurisdiction of this Court.

C. The Plan, as described in paragraph III, above, 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.

V. ERISA VIOLATIONS

A. Defendants Hensley Engineering Group, LLC and Lisa Hensley, fiduciaries with respect to the Plan, violated the provisions of ERISA in that they:

(1) Caused the assets of the Plan to inure to the benefit of the Employer and Plan Sponsor and Lisa Hensley, and failed to hold Plan assets for the exclusive purposes of providing benefits to participants in the Plan and their beneficiaries in violation of Section 403(c)(1) of ERISA, 29 U.S.C. §1103(C)(1);

(2) 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 in violation of Section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A);

(3) Failed to discharge their duties to the Plan with the care, skill, prudence and diligence under the circumstances 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 Section 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B);

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

(5) Dealt with the assets of the Plan in their own interests or for their own accounts in violation of Section 406(b)(1) of ERISA, 29 U.S.C. § 1106(b)(1);

(6) Engaged in transactions involving the Plan on behalf of a party whose interests were adverse to the interests of such plan and the interests of its participants and beneficiaries in violation of Section 406(b)(2) of ERISA, 29 U.S.C. § 1106(b)(2);

B. During the period of June 2007 through December 2007, the aforementioned violations occurred in, but were not limited to, the following Plan transactions: failing to remit employee contributions and Plan assets to the Plan; permitting Hensley Engineering Group, LLC, a party in interest, and/or Lisa Hensley, a party in interest, to use Plan assets for its and/or her own benefit; failing to segregate Plan assets; and failing to properly administer the Plan. The fiduciaries' violations during Plan Year 2007 resulted in \$48,528.30 in employee contributions

not being deposited into the Plan. As a result, the Plan has lost opportunity costs that cannot be accurately calculated until the \$48,528.30 in employee contributions that have yet to be deposited into the Plan are remitted.

VI. DIRECT LIABILITY

As a result of engaging in breaches of its fiduciary responsibilities, obligations, or duties and by engaging in transactions prohibited by ERISA, as described in Part V of this Complaint, Defendants, Hensley Engineering Group, LLC and Lisa Hensley, have caused the Plan to suffer financial losses for which they are jointly and severally liable pursuant to ERISA Section 409(a), 29 U.S.C. § 1109(a).

VII. COFIDUCIARY LIABILITY

Pursuant to the provisions of ERISA Section 405, 29 U.S.C. § 1105, Defendants, Hensley Engineering Group, LLC and Lisa Hensley, fiduciaries with respect to the Plan, are personally liable for the breaches of fiduciary responsibility set forth in paragraph V, above, committed by their co-fiduciaries with respect to the Plan.

VIII. PRAYER

WHEREFORE, cause having been shown, plaintiff, the Secretary of Labor, prays that this Court:

1. Permanently enjoin Defendants Hensley Engineering Group, LLC and Lisa Hensley from violating the provisions of ERISA;

2. Order Defendants Hensley Engineering Group, LLC and Lisa Hensley to restore all losses to the Plan, with interest thereon, resulting from their breaches of fiduciary obligations, to correct all prohibited transactions, and if necessary, to offset any claims or benefits which they may have against or with the Plan against the amount of losses, including lost opportunity costs, resulting from their violations;

3. Order Defendants to appoint an independent fiduciary to be approved by Plaintiff and the Court to marshal the assets of the Plan and to process account distribution when reasonable and appropriate to do so;

4. Order that any expenses associated with the appointment of an independent fiduciary and the subsequent administration of the Plan be paid by Defendants;

5. Enjoin Defendants Hensley Engineering Group, LLC and Lisa Hensley from acting as fiduciaries to the Plan or any other employee benefit plan covered by ERISA;

6. Award plaintiff costs of this action; and

7. Provide such other remedial relief as may be appropriate.

<p>LOCAL COUNSEL:</p> <p>KENNETH J. GONZALES United States Attorney</p> <p>ELIZABETH M. MARTINEZ Assistant United States Attorney</p> <p>United States Attorney District of New Mexico P.O. Box 607 Albuquerque, New Mexico 87103 Telephone: (505) 346-7274 Facsimile: (505) 346-7296</p>	<p>Respectfully Submitted,</p> <p>M. PATRICIA SMITH Solicitor of Labor</p> <p>JAMES E. CULP Regional Solicitor</p> <p>ROBERT A. GOLDBERG Counsel for ERISA</p> <p><u>s/ Robert C. Beal</u> ROBERT C. BEAL Senior Trial Attorney Trial Attorney-in-Charge TX Bar No. 01951400 Email: beal.robert@dol.gov</p> <p>U.S. Department of Labor Office of the Solicitor 525 S. Griffin Street, Suite 501 Dallas, TX 75202 (972) 850-3100 (972) 850-3101-fax</p> <p>Attorneys for Plaintiff</p> <p>RSOL No. 10-00686</p>
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