

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THOMAS E. PEREZ ,)
SECRETARY OF LABOR,)
UNITED STATES DEPARTMENT OF LABOR,)
Plaintiff,) CIVIL ACTION
) NO. 8:13-cv-378-CRZ
v.)
)
DAVID E. DOLL,)
Defendant.)

CONSENT JUDGMENT

Plaintiff has filed his Complaint, and Defendant, David E. Doll, has admitted the allegations of the complaint and has agreed to the entry of this Judgment without contest.

Defendant, David E. Doll, admits that this Court has jurisdiction over the parties and that this Court has jurisdiction of this action pursuant to ERISA section 502(e)(1), 29 U.S.C. § 1132(e)(1), and that venue lies with the United States District Court for the District of Nebraska, pursuant to ERISA Section 502(e)(2), 29 U.S.C. § 1132(e)(2).

The parties have agreed that this Consent Judgment shall fully settle all claims of the Secretary asserted against Defendants in the Complaint (except for the imposition by Plaintiff of any penalty pursuant to ERISA Section 502(1), 29 U.S.C. § 1132(l), and any proceedings related thereto). The parties have agreed to entry of this Consent Judgment. It is, therefore, upon motion of Counsel for Plaintiff, and this Court having jurisdiction over the parties to this Consent Judgment, and this Court being empowered to provide the relief described herein, and for cause shown:

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. Defendant David E. Doll violated Sections 403, 404, and 406 of the Employee Retirement Income Security Act (ERISA) of 1974, as amended (29 U.S.C. §§ 1103, 1104, and 1106).
2. Defendant David E. Doll is permanently enjoined and restrained from violating the provisions of ERISA Sections 403, 404, and 406, 29 U.S.C. § 1103, 1104, and 1106.
3. Defendant David E. Doll shall begin payments of \$500.00 per month on January 15, 2015, with subsequent payments on the 15th of each month thereafter, to restore losses totaling \$3,465.36 to the Double D Excavating, LLC 401(k) Plan (the "401(k) Plan") and allocated to participant accounts for employee payroll withholdings not forwarded to the 401(k) Plan plus lost earnings of \$3,724.30 (distributed pro rata), as set forth on Attachment A, attached hereto and incorporated herewith;
4. At such time as the amount set forth in Paragraph 3 above is totally repaid, Defendant David E. Doll shall continue payments of \$500.00 per month to repay \$2,608.05 in health insurance premiums that were withheld in payroll deductions and not forwarded to the Double D Excavating Health Plan for 20 employee participants plus lost earnings of \$111.97 (distributed pro rata), as set forth on Attachment B, attached hereto and incorporated herewith. These payments shall be made directly to the participants for the missing health insurance premiums plus lost earnings.

5. At such time as the amount set forth in Paragraph 4 above is totally repaid, Defendant David E. Doll shall continue payments of \$500.00 per month to include repayment of \$2,067.98 in dental insurance premiums that were withheld in payroll deductions and not forwarded to the Double D Excavating Health Plan for 21 employee participants plus lost earnings of \$60.69 (distributed pro rata), as set forth on Attachment C, attached hereto and incorporated herewith. These payments shall be made directly to the participants for the missing dental insurance premiums plus lost earnings.

6. Should Defendant fail to pay any of the installment payments described above on or before the dates due, and such failure remain uncured for a period of 15 days beyond the due date for such payment, the entire amount of the balance shall become due and payable immediately with no further notice or demand required by Plaintiff. Defendant David E. Doll shall have the right to make greater payments toward the balance of the money owed, without penalty. Post judgment interest shall accrue at the rate set for federal civil judgments, pursuant to 28 U.S.C. § 1961, and shall be due and payable to the affected participants.

7. Evidence of each monthly payment of \$500 shall be submitted, by the 30th of the month in which payments are made, to:

Regional Director
Kansas City EBSA Regional Office
Two Pershing Square
2300 Main Street, Suite 1100
Kansas City, MO 64108

8. For civil penalty purposes, the “applicable recovery amount” pursuant to

ERISA § 502(l)(2), 29 U.S.C. § 1132(l)(2), in this matter is the total restitution amount, or \$12,038.35, plus any post-judgment interest paid pursuant to this Consent Judgment. The penalty assessed will equal twenty percent (20%) of the “applicable recovery amount.” Defendant David E. Doll agrees that he must either (1) pay the assessed penalty within sixty days of service of notice of the assessment, or (2) timely file a request for waiver or reduction of the penalty, pursuant to ERISA § 502(l)(3) and 29 C.F.R. §§ 2570.80 through 2570.88. If a request for waiver or reduction of the penalty is rejected by the Employee Benefits Security Administration, Defendant David E. Doll shall accept the Agency’s denial and pay the penalty, if any, as set forth in the Employee Benefits Security Administration determination letter.

9. Nothing in this Judgment is binding on any governmental agency other than the United States Department of Labor, Employee Benefit Security Administration.

10. Each party shall bear his or her own attorneys' fees, costs and other expenses incurred by such party to date in connection with any stage of the above-referenced proceeding including, but not limited to, attorneys' fees, costs and other expenses which may be available under the Equal Access to Justice Act, as amended.

11. This Consent Judgment represents a full, final and complete judicial resolution of all claims alleged in the Secretary’s Complaint. The parties to this Consent Judgment expressly waive any and all claims of any nature which each may have against the other, or any of their officers, agents, attorneys, employees or representatives, arising out of or in connection with the allegations contained in Plaintiff’s Complaint, or based

on the Equal Access to Justice Act, as amended.

12. This Court shall retain jurisdiction over this action and the parties hereto as may be necessary to enforce the provisions of the judgment.

13. By signing their names to this Consent Judgment, the parties hereto represent that they are informed and understand the effect and purpose of this Consent Judgment.

The Court directs the entry of this Consent Judgment as a final Order.

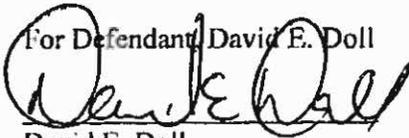
January 6, 2015.

BY THE COURT:



Cheryl R. Zwart
United States Magistrate Judge

Entry of this judgment is hereby consented to:

For Defendant David E. Doll


David E. Doll
Defendant



Aaron Smicall
Attorney(s) for Defendant

SMITH, GARDNER, SLUSKY, LAZER, POHREN & ROGERS, LLP
8712 West Dodge Road
Suite 400
Omaha, NE 68114-3431

Telephone: (402) 392-0101
E-mail: asmeall@lawsgs.com
For Plaintiff, the Secretary of Labor

M. Patricia Smith
Solicitor of Labor
Connecticut Bar No. 371708

Christine Z. Heri
Regional Solicitor
Illinois Bar No. 6204656

H. Alice Jacks
Associate Regional Solicitor
Missouri Bar No. 24482



Susan J. Willer
Attorney
Oklahoma Bar No. 017798

Attorneys for Plaintiff, U.S. Secretary of Labor
Office of the Solicitor
Two Pershing Square
2300 Main Street
Suite 1020
Kansas City, MO 64108
Telephone: (816) 285-7260
Fax: (816) 285-7287
E-mail: willer.susan@dol.gov

U.S. Department of Labor
Attorneys for Plaintiff

Attachment A

Restoration Payment to the Double D Excavation 401(k) Plan

<u>Participant</u>	<u>401(k) Withholdings</u>
David Bruha	\$ 1,961.52
Nicholas Doll	\$ 76.92
Daniel Edwards	\$ 348.40
William Erhart	\$ 304.20
Jonathan Eyman	\$ 180.05
Bradon Gregerson	\$ 105.74
Kenneth Heidvogel	\$ 178.02
Monte Heiman	\$ 790.50
Larry Jensen	\$ 136.18
Cort Lavato	\$ 726.90
Dustin McCarter	\$ 404.27
Chad Peterson	\$ 687.83
Larry Protasky	\$ 488.64
David Stuckey	\$ 426.19
<u>Matthew Yeshnowski</u>	<u>\$ 150.00</u>
Total	\$ 6,965.36
Minus uncredited payments	\$ 3,500.00
Amended Total	\$ 3,465.36
Plus Lost Earnings	\$ 3,724.30
(distributed pro rata)	

Attachment B

Restoration Payment to the Double D Excavation Health Plan

<u>Participant</u>	<u>Health Premium Withholdings</u>
Patrick Armstrong	\$ 88.24
Wendell Asp	\$ 270.64
David Bruha	\$ 409.13
Daniel Edwards	\$ 88.24
William Erhart	\$ 443.36
Brandon Fisher	\$ 88.24
Bradon Gregerson	\$ 88.24
Kenneth Johnson	\$ 128.27
Christopher Kumpf	\$ 88.24
Coreen Lahoda	\$ 132.48
Merlin Lambrecht	\$ 40.03
Madonna Manhart	\$ 44.12
Deborah Nelson	\$ 128.27
Scott Pries	\$ 44.12
Darrell Rahe	\$ 221.68
Feliciano Sanchez-Galvan	\$ 128.27
Michael Schultingkemper	\$ 44.12
Dustin Skutnik	\$ 44.12
Chad Speckmann	\$ 44.12
David Stuckey	\$ 426.19
Total	\$ 2,608.05
Plus Lost Earnings (distributed pro rata)	\$ 111.97

Attachment C

Restoration Payment to the Double D Excavation Dental Plan

<u>Participant</u>	<u>Dental Premium Withholdings</u>
Patrick Armstrong	\$ 27.96
Wendell Asp	\$ 151.10
Chad Caldwell	\$ 69.90
J Guadalupe Chavez	\$ 69.90
Robert Coddington	\$ 63.60
Daniel Edwards	\$ 63.60
William Erhart	\$ 289.00
Brandon Fisher	\$ 62.91
Larry Jensen	\$ 62.91
Christopher Kumpf	\$ 62.91
Coreen Lahoda	\$ 289.00
Madonna Manhart	\$ 69.90
Dustin McCarter	\$ 69.90
Scott Pries	\$ 20.97
Larry Protasky	\$ 289.00
Darrell Rahe	\$ 221.68
Rodrigo Salazar	\$ 62.91
Dustin Skutnik	\$ 69.90
Chad Speckmann	\$ 69.90
David Stuckey	\$ 69.90
William Turner	\$ 62.91
Richard Yeshnowski	\$ 69.90

Total \$ **2,067.98**

Plus Lost Earnings \$ **60.69**
(distributed pro rata)