

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JULIE A. SU, Acting Secretary of Labor,)
U.S. Department of Labor,)
)
Plaintiff,)
)
v.)

Case No. 1:22-cv-01030

**DAVID FENSLER; JOHN)
FERNANDEZ; GARY MEYERS; L.)
STEVEN PLATT; HERBERT O.)
MCDOWELL III; DAVID SCHWALB;)
ROBBINS, SALOMON, & PATT, LTD.;)
ROBBINS DIMONTE, LTD.; UNITED)
PREFERRED COMPANIES, LTD.;)
and the UNITED EMPLOYEE BENEFIT)
FUND TRUST,)
)
Defendants.)**

Hon. Nancy L. Maldonado

**CONSENT ORDER AND JUDGMENT BETWEEN THE ACTING SECRETARY
OF LABOR AND DEFENDANTS L. STEVEN PLATT; ROBBINS, SALOMON, &
PATT, LTD.; AND ROBBINS DIMONTE, LTD.**

Plaintiff Julie A. Su, Acting Secretary of Labor, United States Department of Labor (“Acting Secretary”), pursuant to the provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001, *et seq.*, filed a complaint against Defendants David Fensler, John Fernandez, Gary Meyers, L. Steven Platt (“Platt”), Herbert O. McDowell III, David Schwalb, Robbins, Salomon, & Patt, Ltd. (“RSP”), Robbins DiMonte, Ltd. (“Robbins DiMonte”), and United Preferred

Companies, alleging breaches of their fiduciary responsibilities under ERISA §§ 403, 404, and 406, with respect to the United Employee Benefit Fund Trust (“Fund”).¹

Defendants Platt, RSP, and Robbins DiMonte, have waived service of process and admitted to the jurisdiction of this Court over them and the subject matter of this action.

The Acting Secretary and Defendants Platt, RSP, and Robbins DiMonte have agreed to resolve all matters in controversy in this action between them 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 Order and Judgment.

IT IS THEREFORE ORDERED, ADJUDICATED, AND DECREED that:

1. Defendants Platt, RSP, and Robbins DiMonte shall restore a total of \$883,333.34 to the Fund. This restoration amount includes losses to the Fund and lost opportunity costs. The \$883,333.34 restoration to the Fund resolves both the case pending before this Court, 22-cv-1030 (“DOL case”), and the other pending case in the Northern District of Illinois involving the Fund and Defendants Platt, RSP, and Robbins DiMonte, 22-cv-0952 (“IF case”).² Within 30 days of the entry of both this Consent Order and Judgment for the DOL case and approval of the settlement between Defendants Platt, RSP, and Robbins DiMonte in the IF case, Defendants Platt, RSP, and Robbins DiMonte shall restore a total of \$883,333.34 to the Fund. The 30-day period

¹ The Fund was named as a defendant in this action pursuant to Federal Rule of Civil Procedure 19, solely to assure that complete relief can be granted.

² Defendants Platt, RSP, and Robbins DiMonte and the IF will simultaneously file a motion for approval of the settlement reached in the IF's case amongst those parties to the IF's case.

begins when this Consent Order and Judgment is entered, and the IF's settlement is approved in the IF's case.

2. Defendants Platt, RSP, and Robbins DiMonte shall provide the Acting Secretary with satisfactory proof³ of the restoration described in paragraph 1 above by submitting written documentation to Ruben R. Chapa, Regional Director of the Employee Benefits Security Administration, Chicago Regional Office, 230 S. Dearborn St., Room 2160, Chicago, IL 60604 ("Regional Director"), within ten (10) calendar days following restoration.

3. Defendants Platt, RSP, and Robbins DiMonte shall remit the restoration required in paragraph 1 to the Fund in the care of the Independent Fiduciary, Receivership Management, Inc. ("Independent Fiduciary").

4. In the event the Fund is terminated before the restoration required by paragraph 1 has been made, Defendants Platt, RSP, and Robbins DiMonte will coordinate with the Independent Fiduciary to make the restoration described in paragraph 1.

5. Upon restoring the amount in paragraph 1 above, the Acting Secretary has determined Defendants Platt, RSP, and Robbins DiMonte shall be and hereby is assessed a total penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), of \$176,666.66. Therefore, the Acting Secretary hereby does and will accept as full satisfaction of the assessed penalty, the amount of \$176,666.66. Defendants Platt, RSP, and Robbins DiMonte waive their right to a separate notice of assessment of the penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), the service requirement of 29 C.F.R. § 2570.83, and its right to seek any further reductions of or relief from the penalty under ERISA § 502(l), 29 U.S.C. § 1132(l).

³ Satisfactory proof includes electronic proof of cancelled checks, ACH, wire transfers, or other methods of payment.

Defendants shall pay the penalty under ERISA § 502(l), 29 U.S.C. § 1132(l) within five calendar days of remitting the restoration amount required in paragraph 1 above, by ACH transfer, PayPal, or debit card at <https://www.pay.gov/public/form/start/1063197296>.

6. Defendants Platt, RSP, and Robbins DiMonte are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. § 1001 *et seq.*

7. Defendant Platt is permanently barred from serving as a fiduciary, trustee, administrator, or service provider to any ERISA-covered Plan.

8. Defendants Platt, RSP, and Robbins DiMonte may not seek direct or indirect contribution or indemnification from the Fund. Platt, RSP, and Robbins DiMonte agree that any indemnification agreement signed by Platt or under which he, RSP, or Robbins DiMonte could claim contribution or indemnification as against the Fund is void and unenforceable. Platt, including anyone acting on his behalf or in representation of him, agrees to ensure that no monies are sought from the Fund or paid out from the Fund pursuant to any such indemnification agreement.

9. Defendants Platt, RSP, and Robbins DiMonte will not assert any claims under ERISA or under any other state or federal law against the Fund regarding this litigation, litigation filed by the Fund, and litigation filed by participants or beneficiaries against the Fund, including, but not limited to, claims for breach of contract or negligence.

10. Defendants Platt, RSP, and Robbins DiMonte agree to accept electronic service via email of any Rule 45 subpoenas for documents, testimony at deposition, and testimony at trial issued in this case at the following email address for Defendant Platt: lsplatt@icloud.com and the following email address for Defendants RSP and Robbins

DiMonte: Kimberly.blair@wilsonelser.com. Defendants Platt, RSP, and Robbins

DiMonte agree they will not move to quash any Rule 45 subpoenas served on them in this case.

11. Each party agrees to bear 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.

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

13. Nothing in this Order is binding on any government agency other than the United States Department of Labor.

14. The Court finds that there is no just reason to delay the entry of this Consent Order and Judgment and, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, expressly directs the entry thereof as a Final Order and Judgment.

DATED: 5/1/2024



NANCY L. MALDONADO
UNITED STATES DISTRICT JUDGE

The parties hereby consent to the entry of this consent order and judgment:

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

/s/Lydia J. Faklis

LYDIA J. FAKLIS
Trial Attorney

AARON P. WENZLOFF
Trial Attorney

Attorneys for **JULIE A. SU**
Acting Secretary of Labor
U.S. Department of Labor, Plaintiff

Office of the Solicitor
U.S. Department of Labor
230 S. Dearborn St., Room 844
Chicago, IL 60604
Telephone No.: 312-353-6992
Fax No.: 312-353-5698
Faklis.Lydia.J@dol.gov
Wenzloff.Aaron.P@dol.gov

/s/ L. Steven Platt

L. Steven Platt

/s/ Edward F. Ruberry

Edward F. Ruberry
Edward David Mizera
Ruberry, Stalmack & Garvey, LLC
10 S. LaSalle St., Suite 1800
Chicago, Illinois 60603
ed.ruberry@ruberry-law.com
edward.mizera@ruberry-law.com

Attorneys for L. Steven Platt

/s/ R. Kymm Harp

Representative for Robbins,
Salomon & Patt, Ltd. and
Robbins DiMonte, Ltd.

/s/ Kimberly E. Blair

Kimberly E. Blair
Wilson Elser Moskowitz Edelman &
Dicker LLP
55 West Monroe Street - Suite 3800
Chicago, IL 60603-5001
kimberly.blair@wilsonelser.com

Attorneys for Robbins, Salomon & Patt,
Ltd. and Robbins DiMonte, Ltd.