

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

R. ALEXANDER ACOSTA, Secretary
of Labor, United States Department of
Labor,

Plaintiff,

v.

Case No. 3:15-cv-94-J-32JRK

TRUSS SYSTEMS, LLC, TRUSS
SYSTEMS, LLC PROFIT SHARING
PLAN, a benefit plan, ANDREA LYNN
MCCARTHY, an individual, and LISA
HALL, an individual,

Defendants.

ORDER AND JUDGMENT

This Court granted Plaintiff's Motion for Summary Judgment (Doc. 23) on April 14, 2017, resolving all matters in controversy in this action, except for the imposition by Plaintiff of any penalty pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l), and any proceedings related thereto.

Accordingly, it is **ORDERED, ADJUDGED, AND DECREED** that:

1. The Court has jurisdiction over the parties to this Order and the subject matter of this action and is empowered to provide the relief herein.

2. Defendants Truss Systems, LLC, Andrea Lynn McCarthy ("McCarthy") and Lisa Hall ("Hall"), their agents, servants, employees and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from violating the provisions of Title I of ERISA.

3. Defendants Truss Systems, LLC, McCarthy and Hall hereby are permanently enjoined from acting as a fiduciary, trustee, agent, or representative in any capacity to any employee benefit plan, as defined by ERISA.

4. As a result of their fiduciary breaches, Defendants Truss Systems, LLC, McCarthy and Hall have caused the Plan losses of \$25,253.93 in lost earnings and pre-judgment interest, for which they are jointly and severally liable.

5. Defendants shall, on or before July 21, 2017, pay the sum of \$25,253.93 and pre-judgment interest (using the IRS section 6621(a)(2), 26 U.S.C. § 6621(a)(2), underpayment rate) through the Independent Fiduciary as described in paragraph 7 below, to be allocated to the accounts of all the participants and beneficiaries and former participants and beneficiaries, with the exception that none of this sum shall be allocated to the accounts of Defendants McCarthy and Hall.

6. Defendants shall pay post-judgment interest, calculated in accordance with 28 U.S.C. § 1961, from the date of entry of judgment in this case.

7. AMI Benefit Plan Administrators, Inc. is appointed as the Independent Fiduciary to Truss Systems, LLC Profit Sharing Plan (“the Plan”) at Defendants Truss Systems LLC’s, McCarthy’s and Hall’s expense and:

a. The Independent Fiduciary must terminate the Plan and collect, marshal, and administer all of the Plan's assets, lost earnings, pre-judgment interest and post-judgment interest, including:

i. those monies identified in paragraphs 5 and 6 above, and

ii. to the extent permitted by law, the restitution being collected from Defendant McCarthy by the Clerk of Court pursuant to the Clerk's Notes and Judgment in the criminal proceeding, United States of America v. Andrea Lynn McCarthy, U.S. District Court, Middle District of Florida (Jacksonville Division), Case No. 3:15-cr-69-J-JRK, Documents 36 and 38,

b. and pay such assets, lost earnings, pre-judgment interest and post-judgment interest to the Plan participants, beneficiaries and former participants and beneficiaries, with the exception that none of these sums shall be allocated to the accounts of Defendants McCarthy and Hall; and, take such further actions with respect to the Plan as may be appropriate.

c. The Independent Fiduciary will have all the rights, duties, and responsibilities of any fiduciary or trustee described under the Plan documents or the applicable law.

d. The Defendants must deliver or otherwise make available to the Independent Fiduciary any information, documents, files or other compilations, wherever and however stored, that are reasonably necessary to perform the duties of Independent Fiduciary within ten business days of any request from the Independent Fiduciary.

e. The Independent Fiduciary in the performance of his duties may retain such assistance as he may require, including attorneys, accountants, actuaries and other service providers, subject to pre-approval by the Court.

f. The Independent Fiduciary is authorized to give instructions respecting the disposition of assets of the Plan.

g. The Independent Fiduciary is authorized to receive reasonable fees and expenses. The payment of administrative expenses and all fees to the Independent Fiduciary, his assistants, attorneys, accountants, actuaries, and other necessary service providers are payable by Defendants McCarthy, Hall, and Truss Systems, LLC (the "Company"). Any disputes concerning these payments will be resolved by the Court.

h. The Independent Fiduciary or his agents, employees or representatives may not be held personally responsible for any claims against the Plan which existed, arose, matured, or vested prior to the appointment of the successor fiduciary.

i. The Independent Fiduciary is to comply with all applicable rules and laws.

j. The Independent Fiduciary shall provide reports to Plaintiff quarterly, advising the status of the actions required in this Judgment.

8. Once the corrective actions required in this Order and Judgment are complied with, the Secretary is required to assess a civil penalty pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l). The penalty under § 502(l) is equal to 20 percent of the "applicable recovery amount" as that term is defined by ERISA. Any dispute as to this amount will be resolved by the Court.

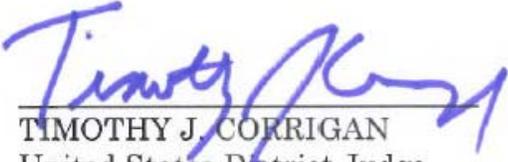
9. This Order and Judgment resolves all claims of Plaintiff's Complaint with the following exceptions:

a. This Judgment does not adjudicate or otherwise affect any potential civil money penalties that may be assessed under § 502 (l) of the Act.

b. This Judgment does not affect or bind any governmental agency other than the United States Department of Labor.

c. This Court retains jurisdiction for purposes of enforcing compliance with the terms of this Order and Judgment.

DONE AND ORDERED in Jacksonville, Florida the 2nd day of June, 2017.


TIMOTHY J. CORRIGAN
United States District Judge

sj

Copies:

Counsel of record