

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Edward Hugler<sup>1</sup>, Acting Secretary of Labor,  
United States Department of Labor,

Case No. 16cv3245 (PAM/FLN)

Plaintiff,

v.

**ORDER**

Michael E. Weinhagen, Weinhagen  
Tire Co., Inc., and Weinhagen Tire Co.,  
Inc. 401(k) Plan,

Defendants.

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Plaintiff, 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 Michael E. Weinhagen and Weinhagen Tire Co., Inc., alleging breaches of their fiduciary responsibilities under ERISA §§ 403, 404, and 406, 29 U.S.C. §§ 1103, 1104, and 1106, with respect to the Weinhagen Tire Co., Inc. 401(k) Plan (“Plan”). Furthermore, the Plan was named as a Defendant pursuant to Federal Rule of Civil Procedure 19(a) solely to assure that complete relief would be granted. Defendants waive service of process of the complaint and admit to the jurisdiction of this Court over them and the subject matter of this action.

The Secretary and Defendants agree to resolve all matters in controversy in this action between them (except for the imposition by the Secretary of any penalty pursuant

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), acting Secretary of Labor Edward Hugler has been automatically substituted as a party to replace former Secretary Thomas Perez.

to ERISA § 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 the Court.

The parties agree that, if the Secretary of Labor assesses a penalty pursuant to ERISA § 502(l) in connection with the violations alleged in this matter, the “applicable recovery amount” shall include all amounts paid in accordance with this Consent Order and Judgment.

On September 22, 2016, Defendants restored \$4,000 to the Plan. On November 4, 2016, Defendants restored \$37,754.00 to the Plan. These monies represent unremitted salary deferral contributions and lost opportunity costs to the Plan for the period of February 1, 2010 through May 27, 2015. Defendants have provided the Secretary with satisfactory proof of these restorations to the Plan.

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.

Accordingly, **IT IS HEREBY ORDERED that:**

1. From at least January 1, 2009, to the present, Defendants Michael E. Weinhagen and Weinhagen Tire Co., Inc. were fiduciaries to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

2. From at least January 1, 2009, to the present, Defendant Michael E. Weinhagen was a party in interest to the Plan within the meaning of ERISA § 3(14)(A), (E) and (H), 29 U.S.C. § 1002(14)(A), (E), and (H).

3. From at least January 1, 2009, to the present, Defendant Weinhagen Tire Co., Inc. was a party in interest to the Plan within the meaning of ERISA § 3(14)(A), (C) and (G), 29 U.S.C. § 1002(14)(A), (C), and (G).

4. As fiduciaries and parties in interest, Defendants Michael E. Weinhagen and Weinhagen Tire Co., Inc. violated ERISA §§ 403(c)(1), 404(a)(1)(A), 406(a)(1)(D), 406(b)(1) and (2), 29 U.S.C. §§ 1103(c)(1), 1104(a)(1)(A), 1106(a)(1)(D), 1106(b)(1) and (2).

5. Defendants Michael E. Weinhagen and Weinhagen Tire Co., Inc. are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §1001 *et seq.*

6. Defendants Michael E. Weinhagen and Weinhagen Tire Co., Inc. shall retain Larry Cumpston, CPA, Lawrence Cumpston & Associates, PLLP, 3801 E. Lafayette Frontage Road, Suite 110, St. Paul, MN 55107, as Plan Co-Administrator. The new Plan Co-Administrator shall also act as the Plan recordkeeper and be a Plan fiduciary.

7. By April 30, 2017, Defendants Michael E. Weinhagen and Weinhagen Tire Co., Inc. shall file all delinquent Form 5500 Annual Reports through the U.S. Department of Labor's delinquent filer program.

8. Defendants Michael E. Weinhagen and Weinhagen Tire Co., Inc. shall maintain copies of all Plan documents at Defendants' principal place of business, 206 South Wabasha, St. Paul, MN 55107.

9. Each party agrees to bear his 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.

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

11. Nothing in this Consent Order and Judgment is binding on any government agency other than the United States Department of Labor.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: April 11, 2017

*s/ Paul A. Magnuson* \_\_\_\_\_  
Paul A. Magnuson  
United States District Court Judge