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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

ELAINE L. CHAO, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

MICHAEL LINDER; ELIZABETH LINDER;
JOSEPH/ANTHONY & ASSOCIATES, INC.;
LIZ/MAR AND ASSOCIATES, INC.;
BRIAN DISKIN; FRED SCHREIER;
THOMAS KISTING; MACHINERY MOVERS
RIGGERS & MACHINERY ERECTORS LOCAL 136
SUPPLEMENTAL PENSION PLAN; MACHINERY
MOVERS, RIGGERS & MACHINERY ERECTORS
LOCAL 136 DEFINED CONTRIBUTION PLAN;
MACHINERY MOVERS, RIGGERS & MACHINERY
ERECTORS LOCAL 136 HEALTH AND
WELFARE PLAN; IRON WORKERS LOCAL 380
RETIREMENT AND SEVERANCE PLAN; IRON
WORKERS LOCAL 498 DEFINED CONTRIBUTION
PLAN; IRON WORKERS LOCAL 498 DEFINED
BENEFIT PLAN; IRON WORKERS LOCAL 498
HEALTH AND WELFARE PLAN; EAST CENTRAL
ILLINOIS PIPE TRADES PENSION FUND;
OPERATIVE PLASTERS AND CEMENT MASONS
LOCAL 18 PENSION PLAN; OPERATIVE
PLASTERS AND CEMENT MASONS LOCAL 18
ANNUITY PLAN; SHEET METAL WORKERS
LOCAL 218 (D) DEFINED CONTRIBUTION
RETIREMENT PLAN; AND SHEET METAL
WORKERS LOCAL 218 (S) PENSION PLAN,

Defendants.

CIVIL ACTION

05C 3812
File No.

JUDGE MORAN

MAGISTRATE JUDGE ASHMAN

FILED

JUN 29 2005

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

COMPLAINT

Plaintiff, ELAINE L. CHAO, Secretary of Labor, United States Department of Labor

("Secretary"), alleges:

JURISDICTION AND VENUE

1. This action arises under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, et seq., and is brought by the Secretary under ERISA §§502(a)(2) and (5), 29 U.S.C. §§1132(a)(2) and (5), to enjoin acts and practices which violate the provisions of Title I of ERISA, to obtain appropriate equitable relief for breaches of fiduciary duty under ERISA §409, 29 U.S.C. §1109, and to obtain such further equitable relief as may be appropriate to redress the violations and to enforce the provisions of Title I of ERISA.

2. This court has jurisdiction over this action pursuant to ERISA §502(e)(1), 29 U.S.C. §1132(e)(1).

3. The named collectively bargained multi-employer plans (collectively "the Plans") are employee benefit plans within the meaning of ERISA §3(3), 29 U.S.C. §1002(3), which are subject to the provisions of Title I of ERISA pursuant to ERISA §4(a), 29 U.S.C. §1003(a):

a. The Machinery Movers, Riggers & Machinery Erectors Local 136 Supplemental Pension Plan ("Local 136 Supplemental Plan"), the Machinery Movers, Riggers & Machinery Erectors Local 136 Defined Contribution Plan ("Local 136 Defined Contribution Plan") and the Machinery Movers, Riggers & Machinery Erectors Local 136 Health and Welfare Plan ("Local 136 Health and Welfare Plan") (collectively "the Local 136 Plans");

b. The Iron Workers Local 380 Retirement and Severance Plan ("Local 380 Retirement Plan");

c. The Iron Workers Local 498 Defined Benefit Plan ("Local 498 Defined Benefit Plan"), the Iron Workers Local 498 Defined Contribution Plan ("Local 498 Defined Contribution Plan") and the Iron Workers Local 498 Health and Welfare Plan ("Local 498 Health and Welfare Plan") (collectively "Local 498 Plans");

d. The East Central Illinois Pipe Trades Pension Fund (“East Central Pension Plan”);

e. The Operative Plasterers and Cement Masons Local 18 Pension Plan (“Local 18 Defined Benefit Plan”), and the Operative Plasterers and Cement Masons Local 18 Annuity Plan (“Local 18 Defined Contribution Plan”) (collectively “Local 18 Plans”).

f. The Sheet Metal Workers Local 218 (D) Defined Contribution Retirement Plan (“Local 218 Defined Contribution Plan”), and the Sheet Metal Workers Local 218 (S) Pension Plan (“Local 218 Pension Plan”), (collectively “Local 218 Plans”).

4. Venue of this action lies in the Northern District of Illinois, Eastern Division, pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because Joseph/Anthony and Associates, Inc. maintained business offices at 1395 B Main Street, Crete, Will County, Illinois, within this district and division.

THE DEFENDANTS

Joseph/Anthony and Associates, Inc.

5. At all relevant times, defendant Joseph/Anthony and Associates, Inc. (JAA), a third party plan administrator and plan consultant, was a fiduciary and a party in interest to the Plans in the following ways:

a. JAA exercised discretionary authority and control over the assets of the Local 136 Plans, the Local 380 Retirement Plan, the Local 498 Plans and the Local 18 Plans by its payment of those plans’ expenses and further exercised discretionary authority and control over the assets of the Local 136 Defined Benefit Plan, the Local 136 Health and Welfare Plan, the Local 498 Defined Benefit Plan, the Local 498 Health and Welfare Plan and of the Local 218 Pension Plan by transferring, without authorization, moneys from plan accounts designated for

the payment of insurance premiums; was a fiduciary to all of the aforesaid plans within the meaning of ERISA §3(21)(A)(i) , 29 U.S.C. §1002(21)(A)(i); and, as a fiduciary and service provider to said plans, was a party in interest to the plans within the meaning of ERISA §§3(14)(A) and (B), 29 U.S.C. §§1002(14)(A) and (B);

b. JAA rendered investment advice for a fee with respect to the assets of the Local 498 Defined Benefit Plan; was a fiduciary to said plan within the meaning of ERISA §§3(21)(A)(ii) and, 29 U.S.C. §1002(21)(A)(ii); and, as a fiduciary and service provider to said plan, was a party in interest to the plan within the meaning of ERISA §§3(14)(A) and (B), 29 U.S.C. §§1002(14)(A) and (B); and,

c. JAA exercised discretionary authority and control respecting management of the East Central Pension Plan, the Local 18 Plans and the Local 218 Plans; was a fiduciary to the aforesaid plans within the meaning of ERISA §§3(21)(A)(i) and 29 U.S.C. §1002(21)(A)(i); and, as a fiduciary and service provider to the aforesaid plans, was a party in interest to the plans within the meaning of ERISA §§3(14)(A) and (B), 29 U.S.C. §§1002(14)(A) and (B).

Michael Linder

6. At all relevant times, defendant Michael Linder ("Linder"), the president of JAA, performed all of the fiduciary functions on behalf of JAA that made JAA a fiduciary to all of the Plans; was a fiduciary to all of the Plans within the meaning of ERISA §3(21)(A)(i) , 29 U.S.C. §1002(21)(A)(i); was also a fiduciary to the Local 498 Defined Benefit Plan within the meaning of ERISA §3(21)(A)(ii) , 29 U.S.C. §1002(21)(A)(ii); and, as a fiduciary and service provider to all of the Plans, he was a party in interest to all of the Plans within the meaning of ERISA §§3(14)(A) and (B), 29 U.S.C. §§1002(14)(A) and (B).

Liz/Mar and Associates, Inc. and Elizabeth Linder

7. At all relevant times, Liz/Mar and Associates, Inc. (Liz/Mar), a brokerage firm that was located at the same business address as JAA, received fees, negotiated by JAA and Linder, as a result of the investments made by the Plans for which JAA acted as a third party administrator and/or consultant; and Elizabeth Linder (E. Linder), Linder's wife, was the president and primary owner of Liz/Mar and the secretary of JAA.

Local 136 Plan Trustee Fred Schreier

8. At all relevant times, Fred Schreier ("Schreier") was a Plan Trustee of the Local 136 Plans, and, as a Plan Trustee, had the discretionary authority for the administration and management of the plans, including, *inter alia*, the discretionary authority to hold plan assets and to take any action which he deemed necessary for the protection of plan assets; was a fiduciary to the Local 136 Plans within the meaning of ERISA §3(21)(A)(i) and (iii), 29 U.S.C. §1002(21)(A)(i) and (iii), and, as a fiduciary, was a party in interest to the Local 136 Plans within the meaning of ERISA §3(14)(A), 29 U.S.C. §1002(14)(A).

Local 380 Plan Trustee Brian Diskin

9. At all relevant times, Brian Diskin ("Diskin") was a Plan Trustee of the Local 380 Retirement Plan, and, as a Plan Trustee, had the discretionary authority for the administration and management of the plan, including, *inter alia*, the discretionary authority to hold plan assets and to take any action which he deemed necessary for the protection of plan assets; was a fiduciary to the Local 380 Retirement Plan within the meaning of ERISA §3(21)(A)(iii), 29 U.S.C. §1002(21)(A)(iii); and, as a fiduciary, was a party in interest to the Local 380 Retirement Plan within the meaning of ERISA §3(14)(A), 29 U.S.C. §1002(14)(A).

Local 498 Plan Administrator Thomas Kisting

10. At all relevant times, Thomas Kisting ("Kisting") was the Plan Administrator for the Local 498 Plans, and, as Plan Administrator, had the discretionary authority for the administration and management of the plans; was a fiduciary to the Local 498 Plans and the within the meaning of ERISA §3(21)(A)(iii), 29 U.S.C. §1002(21)(A)(iii), and, as a fiduciary, was a party in interest to the Local 498 Plans within the meaning of ERISA §3(14)(A), 29 U.S.C. §1002(14)(A).

The Named Plans

11. The Plans are named as defendants herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

**FIDUCIARY BREACHES INVOLVING THE LOCAL 136 PLANS: COUNTS ONE –
ELEVEN**

COUNT ONE

**Fees Received by JAA and Liz/Mar as a Result of the Local 136 Plans' Investments in
Investment Products of Nationwide Insurance Company**

12. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

13. On or about August 26, 1997, JAA entered into a Master Service Agreement with Nationwide Insurance Company ("Nationwide"), where, for a fee, JAA agreed to perform various administrative services for Nationwide with respect to Taft-Hartley plan investors referred by JAA to Nationwide.

14. On or about October 23, 1997, the Local 136 Defined Contribution Plan entered into fixed and variable group annuity contracts with Nationwide.

15. On or about October 1, 1999, the Local 136 Defined Benefit Plan entered into fixed and variable group annuity contracts with Nationwide.

16. As a result of the Local 136 Defined Contribution Plan's and the Local 136 Defined Benefit Plan's investments with Nationwide, JAA and Liz/Mar received fees from Nationwide characterized, respectively, as "administrative override fees" and "trailer commission fees." In addition, as a result of investments made by all client plans with Nationwide, including the Local 136 Defined Contribution and Defined Benefit Plans, JAA received sales incentive bonuses called "Pinnacle Payments."

17. By the conduct described in paragraphs 12 - 16 above, JAA and Linder:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A); and

b. received consideration for their own personal account from a party dealing with such plan in connection with a transaction involving the assets of the plan, in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

18. Plan Trustee Fred Schreier had knowledge of the Nationwide investment fees, did not communicate that knowledge to the other Plan Trustees and took no steps to remedy the breach in violation of ERISA §405(a)(1) and (3), 29 U.S.C. §1132(a)(1) and (3).

19. Liz/Mar and E. Linder knowingly participated in the violations involving the Nationwide fees. For this reason, the Secretary may obtain equitable relief from Liz/Mar and E. Linder under ERISA §502(a)(5), 29 U.S.C. §1132(a)(5).

COUNT TWO

Commissions Received by Liz/Mar as a Result of the Local 136 Defined Benefit Plan's Investments in Investment Products of United of Omaha Life Insurance Company

20. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

21. On or about March 12, 1998, the Local 136 Defined Benefit Plan entered into a variable group annuity contract with United of Omaha Life Insurance Company ("United of Omaha").

22. As a result of the Local 136 Defined Benefit Plan investments with United of Omaha, United of Omaha paid Liz/Mar commissions in accordance with an agreement negotiated with United of Omaha by Linder, as Liz/Mar's representative.

23. By the conduct described in paragraphs 20 - 22 above, Linder:

a. failed to act solely in the interest of the participants and beneficiaries of the Local 136 Defined Benefit Plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A); and

b. received consideration for their own personal account from a party dealing with such plan in connection with a transaction involving the assets of the plan, in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

24. Liz/Mar and E. Linder knowingly participated in the violations involving the United of Omaha commissions. For this reason, the Secretary may obtain equitable relief from Liz/Mar and E. Linder under ERISA §502(a)(5), 29 U.S.C. §1132(a)(5).

COUNT THREE

Fees Received by JAA and Liz/Mar as a Result of the Local 136 Defined Benefit Plan's Investments in Investment Products of Pan American Life Insurance Company

25. The allegations contained in paragraphs 1 through 11 are hereby incorporated in this Count.

26. On or about July 24, 1998, the Local 136 Defined Benefit Plan entered into a variable group annuity contract with Pan American Life Insurance Company ("Pan-American").

27. As a result of the Local 136 Defined Benefit Plan investments with Pan American, Pan American paid fees to JAA and Liz/Mar in accordance with an agreement negotiated with Pan American by Linder as JAA's and Liz/Mar's representative.

28. By the conduct described in paragraphs 25 - 27 above, Linder and JAA:

a. failed to act solely in the interest of the participants and beneficiaries of the plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A); and

b. received consideration for their own personal account from a party dealing with such plan in connection with a transaction involving the assets of the plan, in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

29. Liz/Mar and E. Linder knowingly participated in the violations involving the Pan American commissions. For this reason, the Secretary may obtain equitable relief from Liz/Mar and E. Linder under ERISA §502(a)(5), 29 U.S.C. §1132(a)(5).

COUNT FOUR

JAA's Unauthorized Transfers of Money to itself from a Local 136 Health and Welfare Plan Account Designated for the Payment of Stop Loss Insurance Premiums

30. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

31. Without the approval of the board of trustees for the Local 136 Health and Welfare Plan, JAA deducted fees from a plan account designated for the payment of stop loss insurance premiums.

32. By the conduct described in paragraphs 30 – 31 above, JAA and Linder:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

b. dealt with assets of a plan in their own interest or acted on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants and beneficiaries, in violation of ERISA §§406(b)(1), 29 U.S.C. §§1106(b)(1); and

c. acted on behalf of a party whose interests were adverse to the interests of a plan or the interests of its participants and beneficiaries, in violation of ERISA §§406(b)(2), 29 U.S.C. §§1106(b)(2).

33. Plan Trustee Fred Schreier had knowledge that JAA transferred money to itself from the plan account designated for the payment of stop loss insurance premiums, did not communicate that knowledge to the other Plan Trustees and took no steps to remedy the breach in violation of ERISA §405(a)(1) and (3), 29 U.S.C. §1132(a)(1) and (3).

COUNT FIVE

JAA's Unauthorized Transfers of Money to itself from the Local 136 Defined Benefit Plan Account Designated for the Payment of Death Benefit Insurance Premiums

34. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

35. Without the approval of the board of trustees for the Local 136 Defined Benefit Plan, JAA transferred money to itself from a plan account designated for the payment of death benefit insurance premiums

36. By the conduct described in paragraphs 34 - 35 above, JAA and Linder:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

b. dealt with assets of a plan in their own interest or acted on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants and beneficiaries, in violation of ERISA §§406(b)(1), 29 U.S.C. §§1106(b)(1); and

c. acted on behalf of a party whose interests were adverse to the interests of a plan or the interests of its participants and beneficiaries, in violation of ERISA §§406(b)(2), 29 U.S.C. §§1106(b)(2).

37. Plan Trustee Fred Schreier had knowledge of JAA's transfer of money to itself from the plan account designated for the payment of death benefit insurance premiums, did not communicate that knowledge to the other Plan Trustees and took no steps to remedy the breach in violation of ERISA §§405(a)(1) and (3), 29 U.S.C. §§1132(a)(1) and (3).

COUNT SIX

JAA's Unauthorized Disbursement of Travel and Expense Payments to its Employees from the Assets of the Local 136 Defined Benefit Plan

38. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

39. Without the approval of the board of trustees for the Local 136 Defined Benefit Plan, JAA disbursed travel and other expense payments to its employees from the assets of the Local 136 Defined Benefit Plan.

40. By the conduct described in paragraphs 38 - 39 above, JAA and Linder:

- a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);
- b. caused a plan to engage in transactions which they knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of assets of the plan, in violation of ERISA §406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D);
- c. dealt with assets of a plan in their own interest or acted on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and
- d. acted on behalf of a party whose interests were adverse to the interests of a plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

COUNT SEVEN

JAA's Unauthorized Disbursement of Travel and Expense Payments to its Employees from the Assets of the Local 136 Health and Welfare Plan

41. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

42. Without the approval of the board of trustees for the Local 136 Health and Welfare Plan, JAA disbursed travel and other expense payments to its employees from the assets of the Local 136 Health and Welfare Plan.

43. By the conduct described in paragraphs 41 - 42 above, JAA and Linder:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

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

c. dealt with assets of a plan in their own interest or acted on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

d. acted on behalf of a party whose interests were adverse to the interests of a plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

COUNT EIGHT

JAA's Disbursement of a Loan to itself from the Assets of the Local 136 Defined Contribution Plan

44. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

45. JAA disbursed a loan to itself from the assets of the Local 136 Defined Contribution Plan.

46. By the conduct described in paragraphs 44 - 45 above, JAA and Linder:

a. failed to act solely in the interest of the participants and beneficiaries of the plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

b. caused the plan to engage in transactions which they knew or should have known constituted a lending of money or other extension of credit between a plan and a party in interest in violation of ERISA §406(a)(1)(B), 29 U.S.C. §1106(a)(1)(B);

c. dealt with assets of a plan in their own interest or for their own account in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

d. acted on behalf of a party whose interests were adverse to the interests of a plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

COUNT NINE

Brokerage Referral Fees Received by Liz/Mar as a result of the Local 136 Defined Benefit Plan's Investments with LaSalle Street Securities

47. The allegations contained in paragraphs 1 through 11, are hereby incorporated in

this Count.

48. On or about July 1997, the Local 136 Defined Benefit Plan opened a brokerage account with LaSalle Street Securities ("LaSalle").

49. As a result of the Local 136 Defined Benefit Plan's investments with LaSalle, LaSalle paid brokerage referral fees to Liz/Mar through Linder.

50. By the conduct described in paragraphs 47 - 49 above, Linder:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

b. dealt with assets of a plan in their own interest or for their own account in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1);

c. acted on behalf of a party whose interests were adverse to the interests of a plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2); and,

d. received consideration for his own personal account from a party dealing with a plan in connection with a transaction involving the assets of the plan, in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

51. Liz/Mar and E. Linder knowingly participated in the violations involving the brokerage referral fees. For this reason, the Secretary may obtain equitable relief from Liz/Mar and E. Linder under ERISA §502(a)(5), 29 U.S.C. §1132(a)(5).

COUNT TEN

Brokerage Referral Fees Received by Liz/Mar as a result of the Local 136 Health and Welfare Plan's Investments with Inter Securities, Inc.

52. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

53. On or about November 1996, the Local 136 Health and Welfare Plan opened a brokerage account with Inter Securities, Inc. ("Inter Securities").

54. As a result of the Local 136 Health and Welfare Plan's investment with Inter Securities, Inter Securities paid brokerage referral fees to Liz/Mar through Linder.

55. By the conduct described in paragraphs 52 - 54 above, Linder:

- a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);
- b. dealt with assets of a plan in their own interest or for their own account in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1);
- c. acted on behalf of a party whose interests were adverse to the interests of a plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2); and,
- d. received consideration for his own personal account from a party dealing with a plan in connection with a transaction involving the assets of the plan, in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

56. Liz/Mar and E. Linder knowingly participated in the violations involving the brokerage referral fees. For this reason, the Secretary may obtain equitable relief from Liz/Mar and E. Linder under ERISA §502(a)(5), 29 U.S.C. §1132(a)(5).

COUNT ELEVEN

Plan Trustee Schreier's Acceptance of a Gift of a Motorcycle from Linder to Influence His Actions with respect to the Local 136 Defined Benefit and Defined Contribution Plans

57. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

58. On or about January 1999, Plan Trustee Schreier accepted a gift of a motorcycle valued at over \$19,000.00 from Linder to influence his actions with respect to the Local 136 Defined Benefit and Defined Contribution Plans.

59. By the conduct described in paragraphs 57 - 58, Plan Trustee Schreier:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A); and,

b. received consideration for his own personal account from a party dealing with a plan in connection with a transaction involving the assets of the plan in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

60. Linder participated in and knowingly undertook to conceal Plan Trustee Schreier's fiduciary breach with respect to his acceptance of the gift of the motorcycle in violation of ERISA §405(a)(1), 29 U.S.C. §1132(a)(1).

FIDUCIARY BREACHES INVOLVING THE LOCAL 380 RETIREMENT PLAN
COUNTS TWELVE – THIRTEEN

COUNT TWELVE

**Fees Received by JAA and Liz/Mar as a Result of the Local 380 Retirement Plans’
Investments in Nationwide Investment Products**

61. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

62. As previously alleged, on or about August 26, 1997, JAA entered into a Master Service Agreement with Nationwide, where, for a fee, JAA agreed to perform various administrative services for Nationwide with respect to Taft-Hartley plan investors referred by JAA to Nationwide.

63. On or about August 27, 1997, the Local 380 Retirement Plan entered into fixed and variable group annuity contracts with Nationwide.

64. As a result of the Local 380 Retirement Plan’s investments with Nationwide, JAA and Liz/Mar received fees from Nationwide characterized, respectively, as “administrative override fees” and “trailer commission fees.” In addition, as a result of investments made by all client plans with Nationwide, including the Local 380 Retirement Plan, JAA received sales incentive bonuses called “Pinnacle Payments.”

65. By the conduct described in paragraphs 61 - 64 above, JAA and Linder:

- a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A); and

b. received consideration for their own personal account from a party dealing with such plan in connection with a transaction involving the assets of the plan, in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

66. Liz/Mar and E. Linder knowingly participated in the violations involving the Nationwide fees. For this reason, the Secretary may obtain equitable relief from Liz/Mar and E. Linder under ERISA §502(a)(5), 29 U.S.C. §1132(a)(5).

COUNT THIRTEEN

Fees received by JAA as a result of the Local 380 Retirement Plan's Investment with Gartmore Trust Company

67. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

68. On or about March 2, 1998, the Local 380 Retirement Plan invested in a fund managed by Gartmore Trust Company ("Gartmore").

69. As a result of the Local 380 Retirement Plan's investments with Gartmore, Gartmore paid fees to JAA.

70. By the conduct described in paragraphs 67 - 69 above, JAA and Linder:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A); and

b. received consideration for their own personal account from a party dealing with such plan in connection with a transaction involving the assets of the plan, in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

71. Plan Trustee Brian Diskin had knowledge of the Gartmore investment fees paid to JAA, did not communicate that knowledge to the other Plan Trustees and took no steps to remedy the breach in violation of ERISA §§405(a)(1) and (3), 29 U.S.C. §§1132(a)(1) and (3).

FIDUCIARY BREACHES INVOLVING THE LOCAL 498 PLANS: COUNTS
FOURTEEN – NINETEEN

COUNT FOURTEEN

Fees Received by JAA and Liz/Mar as a Result of the Local 498 Defined Benefit and Defined Contribution Plans' Investments in Nationwide Investment Products

72. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

73. As previously alleged, on or about August 26, 1997, JAA entered into a Master Service Agreement with Nationwide, where, for a fee, JAA agreed to perform various administrative services for Nationwide with respect to Taft-Hartley plan investors referred by JAA to Nationwide.

74. On or about October 1, 1999, the Local 498 Defined Benefit Plan entered into a variable group annuity contract with Nationwide.

75. On or about September 1, 1997, the Local 498 Defined Contribution Plan entered into fixed and variable group annuity contracts with Nationwide.

76. As a result of the Local 498 Defined Benefit Plan's and the Local 498 Defined Contribution Plan's investments with Nationwide, JAA and Liz/Mar received fees from Nationwide characterized, respectively, as "administrative override fees" and "trailer commission fees." In addition, as a result of investments made by all client plans with Nationwide, including the Local 498 Defined Benefit and Defined Contribution Plans, JAA received sales incentive bonuses called "Pinnacle Payments."

77. By the conduct described in paragraphs 72 - 76 above, JAA and Linder:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A); and

b. received consideration for their own personal account from a party dealing with such plan in connection with a transaction involving the assets of the plan, in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

78. Plan Administrator Thomas Kisting ("Kisting") had knowledge of the Nationwide investment fees, did not communicate that knowledge to the Plan Trustees and took no steps to remedy the breach in violation of ERISA §§405(a)(1) and (3), 29 U.S.C. §§1132(a)(1) and (3).

79. Liz/Mar and E. Linder knowingly participated in the violations involving the Nationwide fees. For this reason, the Secretary may obtain equitable relief from Liz/Mar and E. Linder under ERISA §502(a)(5), 29 U.S.C. §1132(a)(5).

COUNT FIFTEEN

JAA's Unauthorized Transfers of Money to itself from the Local 498 Health and Welfare Plan Account Designated for the Payment of Stop Loss Insurance Premiums

80. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

81. Without the approval of the board of trustees for the Local 498 Health and Welfare Plan, JAA deducted fees from a plan account designated for the payment of stop loss insurance premiums.

82. By the conduct described in paragraphs 80 - 81 above, JAA and Linder:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

b. dealt with assets of a plan in their own interest or acted on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

c. acted on behalf of a party whose interests were adverse to the interests of a plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

83. Plan Administrator Kisting had knowledge of JAA's deduction of fees from the plan account designated for the payment of stop loss premiums, did not communicate that knowledge to the Plan Trustees and took no steps to remedy the breach in violation of ERISA §§405(a)(1) and (3), 29 U.S.C. §§1132(a)(1) and (3).

COUNT SIXTEEN

JAA's Unauthorized Transfers of Money to itself from the Local 498 Defined Benefit Plan Account Designated for the Payment of Death Benefit Insurance Premiums

84. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

85. Without the approval of the board of trustees for the Local 498 Defined Benefit Plan, JAA deducted fees from a plan account designated for the payment of death benefit insurance premiums.

86. By the conduct described in paragraphs 84 - 85 above, JAA and Linder:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

b. dealt with assets of a plan in their own interest or acted on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

c. acted on behalf of a party whose interests were adverse to the interests of a plan or the interests of its participants and beneficiaries, in violation of ERISA §§406(b)(2), 29 U.S.C. §§1106(b)(2).

87. Plan Administrator Kisting had knowledge of JAA's transfer of money to itself from the Local 498 Defined Benefit Plan account designated for the payment of death benefit insurance premiums, did not communicate that knowledge to the Plan Trustees and took no steps to remedy the breach in violation of ERISA §§405(a)(1) and (3), 29 U.S.C. §§1132(a)(1) and (3).

COUNT SEVENTEEN

The Payment of Brokerage Referral Fees to Liz/Mar as a result of the Local 498 Defined Benefit Plan's Investment with LaSalle Street Securities

88. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

89. On or about January 1995, the Local 498 Defined Benefit Plan opened a brokerage account with LaSalle.

90. As a result of the Local 498 Defined Benefit Plan's investment with LaSalle, LaSalle paid Liz/Mar brokerage referral fees through Linder.

91. By the conduct described in paragraphs 88 - 90 above, Linder:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

b. dealt with assets of a plan in his own interest or for their own account in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

c. acted on behalf of a party whose interests were adverse to the interests of a plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

d. received consideration for his own personal account from a party dealing with a plan in connection with a transaction involving the assets of the plan, in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

92. Liz/Mar and E. Linder knowingly participated in the violations involving the referral fees. For this reason, the Secretary may obtain equitable relief from Liz/Mar and E. Linder under ERISA § 502(a)(5), 29 U.S.C. §1132(a)(5).

COUNT EIGHTEEN

The Payment of Brokerage Referral Fees to Liz/Mar as a result of the Local 498 Defined Benefit Plan's Investment with Inter Securities, Inc.

93. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

94. On or about August 1997, the Local 498 Defined Benefit Plan opened a brokerage account with Inter Securities.

95. As a result of the Local 498 Defined Benefit Plan's investment with Inter Securities, Inter Securities paid brokerage referral fees to Liz/Mar through Linder.

96. By the conduct described in paragraphs 93 - 95 above, Linder:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

b. dealt with assets of a plan in his own interest or for his own account in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

c. acted on behalf of a party whose interests were adverse to the interests of a plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

d. received consideration for his own personal account from a party dealing with a plan in connection with a transaction involving the assets of the plan, in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

97. Liz/Mar and E. Linder knowingly participated in the violations involving the referral fees. For this reason, the Secretary may obtain equitable relief from Liz/Mar and E. Linder under ERISA § 502(a)(5), 29 U.S.C. § 1132(a)(5).

COUNT NINETEEN

Plan Administrator Kisting's Acceptance of a Gift of a Motorcycle from Linder to Influence His Actions with respect to the Local 498 Defined Benefit and Defined Contribution Plans

98. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

99. On or about January 1999, Plan Administrator Kisting accepted a gift of a motorcycle valued at over \$19,000.00 from Linder to influence his actions with respect to the Local 498 Defined Benefit and Defined Contribution Plans.

100. By the conduct described in paragraphs 98 - 99, Plan Administrator Kisting:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A); and

b. received consideration for his own personal account from a party dealing with a plan in connection with a transaction involving the assets of the plan in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

101. Linder participated in and knowingly undertook to conceal Plan Administrator Kisting's fiduciary breach with respect to his acceptance of the gift of the motorcycle in violation of ERISA §405(a)(1), 29 U.S.C. §1132(a)(1).

FIDUCIARY BREACHES INVOLVING THE EAST CENTRAL PENSION PLAN:
COUNT TWENTY

COUNT TWENTY

**Fees Received by JAA and Liz/Mar as a Result of the East Central Pension Plan's
Investments in Investment Products of Nationwide Insurance Company**

102. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

103. On or about August 26, 1997, JAA entered into a Master Service Agreement with Nationwide Insurance Company ("Nationwide"), where, for a fee, JAA agreed to perform

various administrative services for Nationwide with respect to Taft-Hartley plan investors referred by JAA to Nationwide.

104. On or about July 1, 2000, the East Central Pension Plan entered into a variable group annuity contract with Nationwide.

105. As a result of the East Central Pension Plan's investment with Nationwide, JAA and Liz/Mar received fees from Nationwide characterized, respectively, as "administrative override fees" and "trailer commission fees." In addition, as a result of investments made by all client plans with Nationwide, including the East Central Pension Plan, JAA received sales incentive bonuses called "Pinnacle Payments."

106. By the conduct described in paragraphs 102 through 105 above, JAA and Linder:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A); and

b. received consideration for their own personal account from a party dealing with such plan in connection with a transaction involving the assets of the plan, in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

107. Liz/Mar and E. Linder knowingly participated in the violations involving the Nationwide fees. For this reason, the Secretary may obtain equitable relief from Liz/Mar and E. Linder under ERISA §502(a)(5), 29 U.S.C. §1132(a)(5).

**FIDUCIARY BREACHES INVOLVING THE LOCAL 18 PLANS: COUNT TWENTY-
ONE**

COUNT TWENTY-ONE

**Fees Received by JAA and Liz/Mar as a Result of the Local 18 Plans' Investments in
Nationwide**

108. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

109. On or about August 26, 1997, JAA entered into a Master Service Agreement with Nationwide Insurance Company ("Nationwide"), where, for a fee, JAA agreed to perform various administrative services for Nationwide with respect to Taft-Hartley plan investors referred by JAA to Nationwide.

110. On or about July 29, 1999, the Local 18 Defined Benefit Plan entered into variable and fixed variable group annuity contracts with Nationwide.

111. On or about July 29, 1999, the Local 18 Defined Contribution Plan entered into variable and fixed variable group annuity contracts with Nationwide.

112. As a result of the Local 18 Plans' investment with Nationwide, JAA and Liz/Mar received fees from Nationwide characterized, respectively, as "administrative override fees" and "trailer commission fees." In addition, as a result of investments made by all client plans with Nationwide, including the Local 18 Plans, JAA received sales incentive bonuses called "Pinnacle Payments."

113. By the conduct described in paragraphs 108 - 112 above, JAA and Linder:

- a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries

and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A); and

b. received consideration for their own personal account from a party dealing with such plan in connection with a transaction involving the assets of the plan, in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

114. Liz/Mar and E. Linder knowingly participated in the violations involving the Nationwide fees. For this reason, the Secretary may obtain equitable relief from Liz/Mar and E. Linder under ERISA §502(a)(5), 29 U.S.C. §1132(a)(5).

FIDUCIARY BREACHES INVOLVING THE LOCAL 218 PLANS: COUNT TWENTY-TWO - TWENTY-THREE

COUNT TWENTY-TWO

Fees Received by JAA and Liz/Mar as a Result of the Local 218 Plans' Investments in Investment Products of Nationwide Insurance Company

115. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

116. On or about August 26, 1997, JAA entered into a Master Service Agreement with Nationwide Insurance Company ("Nationwide"), where, for a fee, JAA agreed to perform various administrative services for Nationwide with respect to Taft-Hartley plan investors referred by JAA to Nationwide.

117. On or about March 1, 2000, the Local 218 Pension Plan entered into variable and fixed variable group annuity contracts with Nationwide.

118. On or about December 1, 1997, the Local 218 Defined Contribution Plan entered into variable and fixed variable group annuity contracts with Nationwide.

119. As a result of the Local 218 Plans' investment with Nationwide, JAA and Liz/Mar received fees from Nationwide characterized, respectively, as "administrative override fees" and "trailer commission fees." In addition, as a result of investments made by all client plans with Nationwide, including the Local 218 Plans, JAA received sales incentive bonuses called "Pinnacle Payments."

120. By the conduct described in paragraphs 115 - 119 above, JAA and Linder:

a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A); and

b. received consideration for their own personal account from a party dealing with such plan in connection with a transaction involving the assets of the plan, in violation of §406(b)(3), 29 U.S.C. §1106(b)(3).

121. Liz/Mar and E. Linder knowingly participated in the violations involving the Nationwide fees. For this reason, the Secretary may obtain equitable relief from Liz/Mar and E. Linder under ERISA §502(a)(5), 29 U.S.C. §1132(a)(5).

COUNT TWENTY-THREE

JAA's Unauthorized Transfers of Money to itself from a Local 218 Pension Plan Account Designated for the Payment of Death Benefit Insurance Premiums

122. The allegations contained in paragraphs 1 through 11, are hereby incorporated in this Count.

123. Without the approval of the board of trustees for the Local 218 Pension Plan, JAA deducted fees from a plan account designated for the payment of death benefit insurance

premiums.

124. By the conduct described in paragraphs 122 – 123 above, JAA and Linder:

- a. failed to act solely in the interest of the participants and beneficiaries of a plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of plan administration, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);
- b. dealt with assets of a plan in their own interest or acted on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and
- c. acted on behalf of a party whose interests were adverse to the interests of a plan or the interests of its participants and beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2).

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

- A. Permanently enjoining defendants JAA, Linder, Liz/Mar, E. Linder, Schreier, Diskin and Kisting from violating the provisions of Title I of ERISA;
- B. Ordering defendants JAA, Linder, Liz/Mar, E. Linder, Schreier, Diskin and Kisting to restore to the Plans all losses incurred as a result of breaches of their fiduciary duties and violations they committed or for which they are liable, with appropriate interest;
- C. Requiring defendants Linder, Liz/Mar and E. Linder to disgorge all ill-gotten gains resulting from their violations of Title I of ERISA.
- D. Ordering defendants JAA, Linder, Liz/Mar, E. Linder, Schreier, Diskin and Kisting to correct the prohibited transactions in which they engaged;

E. Permanently enjoining defendants JAA, Linder, Liz/Mar, E. Linder, Schreier, Diskin and Kisting from serving as fiduciaries or service providers to any ERISA-covered employee benefit plan;

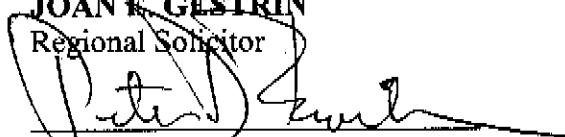
F. Requiring the Plans (other than the Health and Welfare Plans) to set off the individual accounts of defendants Schreier, Diskin and Kisting, or any monies they are due to receive under the Plans as plan participants, against the amount of losses incurred by the Plans for which they served as fiduciaries, including lost opportunity costs, resulting from their fiduciary breaches, as authorized by §1502(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, §1502(a), 111 Stat. 788, 1058-59 (1997) (codified at 29 U.S.C. §1056(d)(4)), if the losses are not otherwise restored to the Plan by defendants;

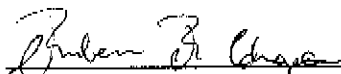
G. Awarding the Secretary the costs of this action; and

H. Ordering such further relief as is appropriate and just.

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