

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND)	
EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	Case No. 1:06-cv-04859
v.)	Hon. Robert W. Gettleman
)	
AA CAPITAL PARTNERS, INC. AND)	
JOHN A. ORECCHIO,)	
)	
Defendants.)	

**MOTION OF THE SECRETARY OF LABOR FOR LEAVE TO FILE A BRIEF
AS AMICUS CURIAE ON THE PENDING ATTORNEYS' FEES ISSUE**

Hilda Solis, the United States Secretary of Labor ("the Secretary"), in her capacity as the federal officer statutorily responsible for interpreting and enforcing the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., respectfully moves this Court for leave to file a brief as amicus curiae to address issues raised by the General Partners' motion for payment of attorneys' fees in Millwrights' Local No. 1102 Supplemental Pension Fund, et al. v. AA Private Equity Investors Management LLC, et al., Case No. 08-cv-7183 (N.D. Ill.) (Docket No. 468).

In support of this motion, the Secretary, through undersigned counsel, states as follows:

1. The Millwrights case involves allegations that the General Partners violated ERISA in its management of plan assets. On February 4, 2009, the General Partners in that case filed a motion for payment of attorneys' fees and a supporting memorandum (Docket Nos. 468 & 469). Specifically, the General Partners seek an order directing the

Receiver to release funds necessary for the General Partners to retain and pay counsel in connection with the defense of the Millwrights case.

2. The Receiver, the Carpenters, Local 324, and the Millwrights filed objections (Docket Nos. 486, 488, 490, 491). Among other things, the Millwrights argue that the General Partners are ERISA fiduciaries with respect to the Funds they manage, that the released funds would come from ERISA-covered plan assets, and that the General Partners' contractual claim to fees violates Section 410 of ERISA, 29 U.S.C. § 1110, which expressly prohibits contractual provisions that purport to relieve a fiduciary from its statutory or contractual obligations (Docket No. 491 at 12). On extension, the General Partners' Reply was filed March 11, 2009 (Docket No. 508) arguing that granting their motion for attorney's fees would not violate ERISA.

3. The General Partners' motion for attorneys' fees thus raises issues under ERISA Section 410 concerning the validity of agreements that purportedly require that the assets of an ERISA-covered plan be used to pay the defense costs and attorneys' fees of the plan's fiduciaries in a case in which they are accused of breaching their ERISA duties and causing resulting losses to the plans.

4. A status hearing has been set for March 20, 2009 at 9 AM (Docket No. 500). The Secretary is not aware of any further briefing scheduled.

5. The Secretary has significant interests in the proper application of the safeguards Congress established through ERISA for the administration of employee benefits plans and the protection of participants in those plans. Secretary of Labor v. Fitzsimmons, 805 F.2d 682 (7th Cir. 1986) (en banc). In particular, the Secretary has an interest in the proper resolution of the issue pending before this Court on whether the defendants'

contractual claim to fees violates ERISA Section 410 both because it relates to her general interest in enforcing fiduciary standards and protecting plan assets, and because she has brought a related suit, Chao v. AA Capital Partners, Inc., Case No. 1:08-cv-02029 (N.D. Ill.), that alleges fiduciary breaches and seeks recovery out of the same general pool of assets.

Wherefore, because this Court's ruling is likely to impact the ability of the plan participants to recover funds in the event the Millwrights' ERISA suit is successful, and may likewise affect the Secretary's litigation against AA Capital Partners relating to these plans, the Secretary moves for leave to file an amicus brief on or before April 3, 2009, to bring her position on these issues to the Court's attention. In addition, the Secretary requests an opportunity to be heard at any oral argument on the General Partners' motion.

Respectfully submitted,

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