UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (Dayton)

R. ALEXANDER ACOSTA, Secretary of Labor, United States Department of Labor,	:	
	:	Case No. 3:18-cv-338
Plaintiff,	:	
v.	:	
CHEMSTATION INTERNATIONAL, INC.; and the **CHEMSTATION INTERNATIONAL, INC. BENEFIT PLAN**,	:	
Defendants.	:	

COMPLAINT

Plaintiff R. Alexander Acosta, 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 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 Chemstation International, Inc. Benefit Plan, (the "Plan") is an employee benefit plan within the meaning of ERISA §3(3), 29 U.S.C. §1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA §4(a), 29 U.S.C. §1003(a). The Plan is named as a defendant in this Complaint solely for the purpose of ensuring complete relief among the parties under Fed. R. Civ. P. 19.

4. Venue of this action lies in the Southern District of Ohio, Western Division, pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), and L.R. 82.1(b), because the Plan is administered in Dayton, Montgomery County, Ohio, within this district and division.

DEFENDANT

5. At all relevant times, Defendant Chemstation International, Inc. ("Chemstation") was a corporation, organized under Ohio law, with a principal place of business in Dayton, Ohio.

6. At all relevant times, Defendant Chemstation was the Plan's sponsor; the Plan Administrator of the Plan; an employer of employees who were covered by the Plan; and a fiduciary to the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A).

GENERAL ALLEGATIONS

7. The Plan is a self-insured, group welfare plan that provides medical benefits to employees of Chemstation.

8. At all relevant times, Defendant Chemstation established the contribution levels that Plan participants and beneficiaries were required to pay in order to receive their elected level of benefits under the Plan.

9. At all relevant times, Defendant Chemstation withheld contributions from its employees' pay, based on Defendant Chemstation's established contribution levels and the level of benefits elected by Plan participants and beneficiaries, and was responsible for remitting these withholdings to the Plan's trust account.

COUNT I
Discrimination Based on a Health Status-Related Factor

10. Paragraphs 1 through 9 above are realleged and incorporated herein by reference.

11. For Plan years 2014 and 2015, Defendant Chemstation established and implemented Plan premiums that varied depending on whether participants successfully participated in a wellness program called "Healthy Rewards."[1]

12. Participants who participated in "Healthy Rewards" received reductions in their Plan premiums if they attained or maintained a specified number of health outcomes related to participants' (and for employee/spouse and family plans, participants' spouses') body mass index; blood pressure; LDL cholesterol level; glucose level; and use/nonuse of tobacco products.

13. To receive a reduction in their Plan premiums, participants (and for employee/spouse and family plans, participants' spouses) had to attain or maintain at least three specified health outcomes in Plan year 2014 and at least four specified health outcomes in Plan year 2015.

14. During Plan years 2014 and 2015, Plan participants and beneficiaries who did not participate in Healthy Rewards, or did participate, but failed to attain or maintain the

[1] As used in this Complaint, "Healthy Rewards," refers to the wellness program established and administered by Defendant Chemstation to the Plan's participants and beneficiaries. Another wellness program, also called Healthy Rewards, was offered to the Plan's participants and beneficiaries by the Plan's service provider, Business Administrators & Consultants, Inc. ("BAC"). However, the Secretary is not alleging any violations of ERISA with respect to BAC's wellness program, and therefore, references in this Complaint to "Healthy Rewards" refer exclusively to the wellness program established and administered by Defendant Chemstation.

specified number of health outcomes, were required to pay more in Plan premiums than similarly-situated participants and beneficiaries who participated in Healthy Rewards and attained or maintained the specified number health outcomes.

15. During Plan years 2014 and 2015, Defendant Chemstation did not provide any alternative standard (reasonable or otherwise) by which Plan participants and beneficiaries could obtain the discounted Plan premiums offered to similarly-situated participants and beneficiaries who participated in Healthy Rewards and attained or maintained the specified number health outcomes.

16. During Plan years 2014 and 2015, none of the materials disseminated by Defendant Chemstation to Plan participants and beneficiaries, describing the terms of Healthy Rewards, disclosed the availability of any alternative standard (reasonable or otherwise) by which Plan participants and beneficiaries could obtain discounted Plan premiums, other than by participating in Healthy Rewards and attaining or maintaining the specified number health outcomes.

17. During Plan years 2014 and 2015, Defendant Chemstation implemented and administered the Plan's discriminatory contribution levels, by among other things, collecting additional contributions from participants and beneficiaries who did not participate in Healthy Rewards, or did participate, but failed to attain or maintain the specified number of health outcomes.

18. By requiring Plan participants and beneficiaries to pay a premium or contribution that was greater than such premium or contribution for similarly-situated participants and beneficiaries enrolled in the Plan on the basis of a health status-related factor, Defendant Chemstation administered the Plan in a manner that violated ERISA §702(b), 29 U.S.C. §1182(b).

19. By the conduct described in Paragraphs 11 through 18, Defendant Chemstation:

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. failed to discharge its duties with respect to the Plan solely in the interests of the participants and beneficiaries and in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with ERISA, in violation of ERISA §404(a)(1)(D), 29 U.S.C. §1104(a)(1)(D); and

C. caused the Plan to require participants to pay a premium or contribution which was greater than such premium or contribution for a similarly situated participant enrolled in the Plan on the basis of a health status-related factor in relation to the participant or to an individual enrolled under the Plan as a dependent of the individual, in violation of ERISA § 702(b), 29 U.S.C. § 1182(b).

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining Defendant Chemstation from violating the provisions of Title I of ERISA and to administer the Plan in compliance with ERISA § 702, 29 U.S.C. § 1182 and the implementing regulations;

B. Ordering Defendant Chemstation to make good to the Plan any losses, including interest, resulting from fiduciary breaches committed by it or for which it is liable;

C. Requiring Defendant Chemstation to make appropriate restitution to participants and beneficiaries who did not receive the discounted Plan premium during Plan year 2014 and 2015 and/or to disgorge all unjust enrichment or profits received as a result of its violations of ERISA.

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

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

Respectfully submitted,

Dated: October 15, 2018

/s/ Matthew M. Scheff
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