

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS PENSION FUND;
and HOWARD McDOUGALL, Trustee;

and

CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS HEALTH AND
WELFARE FUND; and HOWARD
McDOUGALL, Trustee;

Plaintiffs,

v.

VANGUARD SERVICES, INC., an Indiana
corporation; DRIVER'S, INC., an Ohio
corporation; VANGUARD SOUTHEAST,
INC., a South Carolina corporation; VMT
VANGUARD COMPANIES, INC., an
Indiana corporation; VANGUARD
SERVICES (CANADA), INC., a Canadian
corporation; VANGUARD OF DELAWARE,
INC., a Delaware corporation; CROSSSTONE,
LLC, an Indiana limited liability company;
PINERIDGE INSURANCE COMPANY, INC.,
a Barbados corporation; V.O. FREIGHT
SERVICES, INC, a Delaware corporation;

Defendants.

Case No. 09 C 4721

Judge George W. Lindberg

Magistrate Judge Morton Denlow

CONSENT JUDGMENT

WHEREAS, the Plaintiffs filed their complaint on August 4, 2009; and

WHEREAS, each of the Defendants hereby waives service of process; and

WHEREAS, the parties consent to the entry of judgment as below set forth.

NOW, THEREFORE, the parties consent and stipulate to and the Court makes the following findings of fact and conclusions of law:

1. Plaintiff Central States, Southeast and Southwest Areas Pension Fund (the "Pension Fund") is a multiemployer pension plan within the meaning of sections 3(2), 3(37) and 4001(a)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1002(2), 1002(37) and 1301(a)(3).

2. Plaintiff Howard McDougall is a present trustee of the Pension Fund and he and his fellow trustees are the plan sponsor of the Pension Fund within the meaning of ERISA § 4001(a)(10), 29 U.S.C. § 1301(a)(10). He and his fellow trustees administer the Pension Fund at 9377 West Higgins Road, Rosemont, Cook County, Illinois.

3. Pursuant to ERISA §§ 502(a)(3), 515, 4221(b)(2), and 4301(a)(1), 29 U.S.C. §§ 1132(a)(3), 1401(b)(2) and 1451(a)(1), the trustees of the Pension Fund, by and through their designated trustee Howard McDougall, are authorized to bring this action on behalf of the Pension Fund, its participants and beneficiaries.

4. Plaintiff Central States, Southeast and Southwest Areas Health and Welfare Fund (the "Health and Welfare Fund") is a multiemployer welfare plan within the meaning of ERISA §§ 3(1) and 3(37), 29 U.S.C. §§ 1002(1) and 1002(37).

5. Plaintiff Howard McDougall is a present trustee of the Health and Welfare Fund. He and his fellow trustees administer the Health and Welfare Fund at 9377 West Higgins Road, Rosemont, Cook County, Illinois.

6. Pursuant to ERISA §§ 502(a)(3) and 515, 29 U.S.C. §§ 1132(a)(3) and 1145,, the trustees of the Health and Welfare Fund, by and through their designated trustee Howard McDougall, are authorized to bring this action on behalf of the Health and Welfare Fund, its participants and beneficiaries.

7. Defendant Vanguard Services, Inc. (“Vanguard”) is an Indiana corporation with its principal place of business located in the State of Indiana, and is an “employer” and a “party in interest” as those terms are defined, respectively, by ERISA §§ 3(5) and 3(14)(c), 29 U.S.C. §§1002(5) and 1002(14)(c).

8. Defendant Drivers, Inc. (“DI”) is an Ohio corporation that at all relevant times has been a wholly-owned subsidiary of Vanguard.

9. Defendant Vanguard Southeast, Inc. (“VSE”) is a South Carolina corporation that at all relevant times has been a wholly-owned subsidiary of Vanguard.

10. Defendant VMT Vanguard Companies, Inc. (“VMT”) is an Indiana corporation that at all relevant times has been a wholly-owned subsidiary of Vanguard.

11. Defendant Vanguard Services (Canada), Inc. (“VANC”) is a Canadian corporation that at all relevant times has been a wholly-owned subsidiary of Vanguard.

12. Defendant Vanguard of Delaware, Inc. (“VOD”) is a Delaware corporation.

13. At all relevant times James W. Malarney and Ronald D. Creager have owned, directly and indirectly, 100 percent of the voting stock of both Vanguard and VOD.

14. Defendant CrossStone, LLC (“CSS”) is an Indiana limited liability company that at all relevant times has been a wholly-owned subsidiary of VOD.

15. Defendant Pineridge Insurance Company, Inc. ("PINE") is a Barbados corporation that at all relevant times has been a wholly-owned subsidiary of VOD.

16. Defendant V.O. Freight Services, Inc. ("VOF") is South Carolina corporation that at all relevant times has been a wholly-owned subsidiary of VOD.

17. Vanguard was bound by certain collective bargaining agreements and participation agreements executed by and between itself and Local Unions affiliated with the International Brotherhood of Teamsters.

18. Pursuant to those collective bargaining agreements and participation agreements, Vanguard agreed to pay contributions to the Pension Fund and the Health and Welfare Fund on behalf of certain covered employees.

19. Vanguard owes \$10,978.20 in contributions and \$563.01 in interest (through July 31, 2009) to the Pension Fund . These contributions are owed as the result of severance pay paid in July 2008 to certain participants covered under a collective bargaining agreement and a participation agreement between Vanguard and Teamsters Local Union No. 528.

20. Vanguard owes \$14,995.80 in contributions and \$769.47 in interest (through July 31, 2009) to the Health and Welfare Fund . These contributions are owed as the result of severance pay paid in July 2008 to certain participants covered under a collective bargaining agreement and a participation agreement between Vanguard and Teamsters Local Union No. 528.

21. Vanguard triggered a complete withdrawal under ERISA § 4203, 29 U.S.C. § 1383 from the Pension Fund in 2008 (the “Withdrawal”).

22. On the date of the Withdrawal, Vanguard, VSE, DI, VMT, VANC, VOD, CSS, PINE, and VOF (the “Vanguard Controlled Group”) were trades or businesses under common control within the meaning of ERISA § 4001(b)(1), 29 U.S.C. § 1301(b)(1), and the regulations promulgated thereunder.

23. As a result of the Withdrawal, each member of the Vanguard Controlled Group, jointly and severally, has incurred withdrawal liability to the Pension Fund in the principal amount of \$4,769,353.60, as determined pursuant to ERISA §§ 4201 and 4211, 29 U.S.C. § 1381 and 1391 (the “Withdrawal Liability”).

24. On July 28, 2009, the Pension Fund issued a notice and demand to the Vanguard Controlled Group for payment of the Withdrawal Liability in accordance with ERISA §§ 4202(2) and 4219(b)(1), 29 U.S.C. §§ 1382(2) and 1399(b)(1), which was received by the Vanguard Controlled Group, through Vanguard, on July 29, 2009 (the “Assessment”).

25. The notice and attached invoice notified the Vanguard Controlled Group that it was required to discharge its liability in a lump sum payment on or before August 1, 2009, pursuant to ERISA § 4219(c)(5)(B), 29 U.S.C. § 1399(c)(5)(B), and Appendix E, Section 5(e)(2)(E) of the Central States Pension Plan.

26. The Vanguard Controlled Group has not paid the withdrawal liability due to the Pension Fund.

27. Each member of the Vanguard Controlled Group waives the right to request review of the Assessment pursuant to ERISA § 4219, 29 U.S.C. § 1399, to initiate arbitration with respect to the assessment pursuant to ERISA § 4221, 29 U.S.C. § 1401, or to otherwise challenge the Assessment.

28. Both the Pension Fund Trust Agreement and the Health and Welfare Trust Agreement provide for post-judgment interest due from the date the judgment is entered until the date of payment computed and charged on the entire judgment balance at an annualized interest rate equal to two percent (2%) plus the prime interest rate established by JPMorgan Chase Bank, NA for the fifteenth (15th) day of the month for which the interest is charged compounded annually.

29. Each Defendant waives service of process.

30. Each Defendant consents to personal jurisdiction and venue in the United States District Court for the Northern District of Illinois, Eastern Division.

31. Each Defendant consents to the immediate registration of this Consent Judgment.

32. Each Defendant waives the right to appeal this Consent Judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

A. That judgment be entered in favor of Plaintiffs, the Central States, Southeast and Southwest Areas Pension Fund and Howard McDougall, trustee, and against the Defendant Vanguard Services, Inc. for \$10,978.20 in contributions, and \$563.01 in interest

(through July 31, 2009) awarded pursuant to ERISA §§ 502(g)(2) and 515, 29 U.S.C. §§ 1132(g)(2) and 1145.

B. That judgment be entered in favor of Plaintiffs, the Central States, Southeast and Southwest Areas Pension Fund and Howard McDougall, trustee, and against the Defendants Vanguard Services, Drivers, Inc., Vanguard Southeast, Inc., VMT Vanguard Companies, Inc., Vanguard Services (Canada), Inc., Vanguard of Delaware, Inc., CrossStone, LLC, Pineridge Insurance Company, Inc., and V.O. Freight Services, Inc., jointly and severally, in the amount of \$4,769,353.60, awarded pursuant to ERISA §§ 502(g)(2) and 4301(b), 29 U.S.C. §§ 1132(g)(2) and 1451(b).

C. That judgment be entered in favor of Plaintiffs, the Central States, Southeast and Southwest Areas Health and Welfare Fund and Howard McDougall, trustee, and against the Defendant Vanguard Services, Inc., for \$14,995.80 and \$769.47 in interest (through July 31, 2009) awarded pursuant to ERISA §§ 502(g)(2) and 515, 29 U.S.C. §§ 1132(g)(2) and 1145.

D. Plaintiffs are awarded post-judgment interest from the date the judgment is entered until the date of payment computed and charged on the entire judgment balance at an annualized interest rate equal to two percent (2%) plus the prime interest rate established by JPMorgan Chase Bank, NA for the fifteenth (15th) day of the month for which the interest is charged compounded annually.

E. This Consent Judgment shall not bar an action by the Plaintiffs against any of the Defendants under the doctrine of claim preclusion (*res judicata*) or issue preclusion

(collateral estoppel) for any claim for contributions other than for the contributions due as a result of the severance payments identified in paragraphs 19 and 20, or for any claim for withdrawal liability other than for the Assessment as identified in paragraph 24.

F. That Plaintiffs are awarded execution for the collection of the judgment and cost granted hereunder and may immediately register the judgment.

G. Defendants waive their right to appeal this Consent Judgment.

APPROVED:

CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS PENSION FUND
and HOWARD McDOUGALL, trustee

By: _____

Title: _____

Date: _____

CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS HEALTH AND
WELFARE FUND, and HOWARD
McDOUGALL, trustee

By: _____

Title: _____

Date: _____

VANGUARD SERVICES, INC.,
an Indiana corporation

By: _____

Title: _____

Date: _____

DRIVER'S, INC.,
an Ohio corporation

By: _____

Title: _____

Date: _____

VANGUARD SOUTHEAST, INC.,
a South Carolina corporation

By: _____

Title: _____

Date: _____

VMT VANGUARD COMPANIES, INC.,
an Indiana corporation

By: _____

Title: _____

Date: _____

VANGUARD SERVICES (CANADA), INC.,
a Canadian corporation

By: _____

Title: _____

Date: _____

VANGUARD OF DELAWARE, INC.,
a Delaware corporation

By: _____

Title: _____

Date: _____

CROSSSTONE, LLC,
an Indiana limited liability company

By: _____

Title: _____

Date: _____

PINERIDGE INSURANCE COMPANY,
INC., a Barbados corporation

By: _____

Title: _____

Date: _____

V.O. FREIGHT SERVICES, INC.,
a South Carolina corporation

By: _____

Title: _____

Date: _____

ENTERED:

United States District Judge

Date: _____