

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

JULIE SU, Acting Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

**MISSOURI BANKERS ASSOCIATION,
INCORPORATED, MISSOURI BANKERS
ASSOCIATION VOLUNTARY EMPLOYEES
BENEFICIARY ASSOCIATION PLAN¹,
BANKERS BENEFIT CORPORATION,
MISSOURI BANKERS ASSOCIATION
VOLUNTARY EMPLOYEES
BENEFICIARY ASSOCIATION BOARD OF
TRUSTEES, MICHAEL W. ANDERSON,
DIANA BENNETT, KIMBERLY CORBIN,
DWAYNE A. FALK, DAVID M. GOHN,
JESSICA GREEN, R. SCOTT HARRIS,
THOMAS P. KLEBBA, PATRICK KUSSMAN,
ERIC MCCLURE, ROBERT E. MICKEY, JR.,
THOMAS PAGE, BENJAMIN POLEN, K.
CLAYTON ROGERS, MARK THOMPSON,
and CARL WATSON,**

Defendants.

Docket No. 2:23-cv-4121

COMPLAINT

Plaintiff Julie Su, Acting Secretary of Labor, United States Department of Labor
("Secretary"), alleges as follows:

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

¹ The Plan is named as a defendant herein pursuant to Federal Rule of Civil Procedure 19(a) solely to assure that complete relief can be granted.

ERISA § 502(a)(2) and (5), 29 U.S.C. § 1132(a)(2) and (5), to enjoin acts and practices that 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 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. Venue lies in the Western District of Missouri, Central Division, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered in Jefferson City, Missouri, within this district.

GENERAL ALLEGATIONS

A. The MEWA

4. The Missouri Bankers Association, Incorporated (“MBA”) established the Missouri Bankers Association Voluntary Employees Beneficiary Association Plan (“Plan”) on February 1, 1976 and revised and restated the trust agreement on December 30, 1983 to create the present trust agreement. This trust agreement established a trust fund under which the Plan provides employee welfare benefits.

5. The Plan provides, among other things, self-funded medical and other health and welfare benefits to employees and eligible employee dependents of multiple participating employers.

6. MBA sponsors and maintains the Plan. MBA is a trade/professional organization that represents the interests of state banks and savings and loans companies in Missouri and is based in Jefferson City, Missouri. MBA is an association of employers tied by a common interest unrelated to the provision of Plan benefits. The employers that make up MBA are banks and

savings and loan companies engaged in the banking industry in the state of Missouri. MBA provides multiple benefits and services to member employers, in addition to the Plan, including education, training and advocacy.

7. The Plan is a self-insured multiple employer welfare arrangement (“MEWA”) within the meaning of section 3(40) of ERISA, 29 U.S.C. § 1002(40).

8. The Plan is established or maintained by MBA which qualifies as an employer as that term is defined in 29 U.S.C. § 1002(5) in that MBA is a group or association of employers acting for an employer in relation to an employee benefit plan.

9. MBA and the employers who are members of MBA are engaged in commerce or in an industry or activity affecting commerce.

10. Based on the allegations set forth above, the Plan is a MEWA covered by ERISA under 29 U.S.C. §§ 1003(a) and 1002(5). Because the Plan is covered by ERISA, the Plan’s assets are also subject to coverage of ERISA pursuant to section 4(a) of ERISA, 29 U.S.C. § 1003(a).

11. The Plan is joined as a party defendant herein pursuant to Federal Rule of Civil Procedure 19(a) solely to ensure complete relief may be granted.

B. The Fiduciaries

12. The Missouri Bankers Association Voluntary Employees Beneficiary Association Board of Trustees (“MBA VEBA Board”) are trustees to the Plan with broad discretionary authority over the Plan, including the management and investment of the Plan assets in the trust fund, determining what benefits will be offered and funding methods, claims procedures, and the selection of service providers. As such, the MBA VEBA Board is a fiduciary to the Plan under Section 3(21)(A) of ERISA.

13. As set forth in more detail below, Michael W. Anderson, Diana Bennett, Kimberly Corbin, Dwayne A. Falk, David M. Gohn, Jessica Green, R. Scott Harris, Thomas P. Klebba, Patrick Kussman, Eric McClure, Robert E. Mickey, Jr., Thomas Page, Benjamin Polen, K. Clayton Rogers, Mark Thompson, and Carl Watson (collectively “Trustees”) were Trustees on the MBA VEBA Board during time periods relevant to the allegations in this Complaint.

14. From at least January 1, 2018, to the present, Michael W. Anderson was a Trustee on the MBA VEBA Board.

15. From at least June 1, 2011 to December 31, 2017, Diana Bennett was a Trustee on the MBA VEBA Board.

16. From at least June 1, 2020 to approximately December 31, 2020, Kimberly Corbin was a Trustee on the MBA VEBA Board.

17. From at least June 1, 2020, to the present, Dwayne A. Falk was a Trustee on the MBA VEBA Board.

18. From at least June 1, 2011 to December 31, 2017, David M. Gohn was a Trustee on the MBA VEBA Board.

19. From at least June 1, 2020 to the present, Jessica Green was a Trustee on the MBA VEBA Board.

20. From at least January 1, 2018 to the present, R. Scott Harris was a Trustee on the MBA VEBA Board.

21. From at least January 1, 2014 to December 31, 2019, Thomas P. Klebba was a Trustee on the MBA VEBA Board.

22. From at least January 1, 2018 to May 31, 2020, Patrick Kussman was a Trustee on the MBA VEBA Board.

23. From at least March 1, 2018 to December 31, 2021, Eric McClure was a Trustee on the MBA VEBA Board.

24. From at least June 1, 2020 to the present, Robert E. Mickey, Jr. was a Trustee on the MBA VEBA Board.

25. From at least January 1, 2014 to December 31, 2019, Thomas Page was a Trustee on the MBA VEBA Board.

26. From at least January 1, 2018 to August 31, 2019, Benjamin Polen was a Trustee on the MBA VEBA Board.

27. From at least June 1, 2011 to December 31, 2017, K. Clayton Rogers was a Trustee on the MBA VEBA Board.

28. From at least June 1, 2016 to December 31, 2017, Mark Thompson was a Trustee on the MBA VEBA Board.

29. From at least March 1, 2018 to the present, Carl Watson was a Trustee on the MBA VEBA Board.

30. While serving as a Trustee, each Trustee identified in paragraphs 14 to 29 above, had and exercised discretionary authority or discretionary control respecting management of the Plan and Plan assets and exercised authority or control respecting disposition of Plan assets. Therefore, each Trustee was a fiduciary to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), during the time periods alleged in paragraphs 14 to 29 above.

31. MBA is a Missouri nonprofit corporation with a principal office in Jefferson City, Missouri. MBA has the authority to select and approve MBA VEBA Board members, to amend the terms of the Plan's trust agreement, and to terminate the trust. MBA had and exercised

discretionary authority over the administration of the Plan and is a fiduciary as that term is defined under ERISA Section 3(21)(A).

32. Bankers Benefit Corporation (“BBC”) is a Missouri entity operating in Jefferson City, Missouri which provides third-party administrative services to the Plan. MBA is the sole owner of BBC. BBC provides advice to the MBA VEBA Board and exercises discretion in the administration of the Plan, and is therefore, a fiduciary under Section 3(21)(A) of ERISA.

COUNT ONE

33. Paragraphs 1 through 32 above are realleged and incorporated in these allegations.

34. During the relevant time period, Defendants MBA, BBC and the MBA VEBA Board, including the individual Trustees during their tenures, were jointly responsible for administering the Plan, including determining the premium rates to set and collect, the fees and expenses to be paid, and setting and establishing Plan reserve funds to pay claims, fees and expenses.

35. Since at least 2016, Defendants failed to establish and accumulate adequate reserve funds for the proper administration of the Plan and the payment of claims putting the Plan’s ability to continue to pay participant claims at serious risk.

36. In at least the following years, the Plan operated with negative net assets: 2016, 2017 and 2019 through 2022.

37. By the allegations described in this Count One, from at least January 1, 2016 to the present, Defendants:

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 beneficiaries, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

b. failed to discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

38. As a direct and proximate result of the breaches committed by Defendants as set forth above, the Plan has suffered injury and losses for which it is entitled to equitable relief pursuant to ERISA § 409, 29 U.S.C. § 1109.

39. Pursuant to ERISA § 405(a)(2) through (3), 29 U.S.C. § 1105(a)(2) through (3), Defendant MBA is liable for the breaches of their co-fiduciaries as described above, in that it (1) failed to monitor or supervise the other fiduciaries and thereby enabled the breach; and (2) had knowledge of a breach by the other fiduciaries and failed to make reasonable efforts under the circumstances to remedy the breach.

40. Pursuant to ERISA § 405(a)(3), 29 U.S.C. § 1105(a)(3), Defendant BBC is liable for the breaches of their co-fiduciaries as described above, in that they had knowledge of a breach by the other fiduciaries and failed to make reasonable efforts under the circumstances to remedy the breach.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays that this Court enter a judgment:

A. Permanently enjoining Defendants from violating the provisions of Title I of ERISA;

B. Ordering Defendants to establish and maintain adequate reserve funds and make good to the Plan any losses, including interest, resulting from fiduciary breaches committed by such Defendants or for which such Defendants are liable;

- C. Awarding the Secretary the costs of this action; and
- D. Ordering such further relief as is appropriate and just.

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

EVERT H. VAN WIJK
Associate Regional Solicitor

/s/Laura M. O'Reilly
Laura O'Reilly
MO Bar #65294
Katharine K. Sangha
MO Bar #66196
2300 Main Street, Suite 10100
Kansas City, MO 64108
(816) 285-7260
(816) 285-7277 (direct line)
(816) 285-7287 (fax)
oreilly.laura.m@dol.gov
sangha.katharine.k@dol.gov

U.S. Department of Labor
Attorneys for Plaintiff