

**UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF OHIO**

HILDA L. SOLIS, Secretary of Labor, :
United States Department of Labor, :

Plaintiff :

v. :

File No.: 10-730

**BELRON U.S., INC. (f/k/a SAFELITE GROUP, :
INC.), RETIREMENT PLAN :
ADMINISTRATIVE COMMITTEE, SAFELITE :
ASSOCIATES' RETIREMENT SAVINGS :
PLAN and SGC ASSOCIATES' PENSION :
PLAN,** :

Defendants :

COMPLAINT

Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor (the “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 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 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 Safelite Associates' Retirement Savings Plan (the "Savings 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).

4. The SGC Associates' Pension Plan ("Pension Plan"), formerly known as the Safelite Glass Corp. Associates Pension Plan and Lear Siegler Diversified Holdings Corp. Pension 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).

5. The Savings Plan and Pension Plan (collectively referred to as 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.

6. Venue of this action lies in the Southern District of Ohio pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because the Plans are administered in Columbus, Franklin County, Ohio, within this district.

DEFENDANTS

7. On or about March 2007, Belron International acquired Safelite Group, Inc. and merged Safelite Group and Belron, Inc., one of its subsidiaries, to form Belron U.S., Inc. ("Belron"), a Delaware corporation.

8. On January 1, 1992, the Safelite Glass Corporation, later known as the Safelite Group, Inc., ("Safelite") established the Savings Plan. Pursuant to the terms of the Savings Plan's governing documents, between January 1, 1992 and March 2007, Safelite was the sponsor

of the plan, the Savings Plan's Administrator pursuant to §3(16)(A) ERISA, 29 U.S.C. §1002(16)(A), a fiduciary of the Savings Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A), and a party in interest to the Savings Plan within the meaning of ERISA §§3(14)(A) and (C), 29 U.S.C. §§1002(14)(A) and (C).

9. Pursuant to the governing documents of the Savings Plan, any successor of Safelite would become the plan's administrator. From March 2007 through the present, Belron, as the successor of Safelite, was the administrator of the Plan pursuant to §3(16)(A) of ERISA, 29 U.S.C. §1002(16)(A), a fiduciary of the Savings Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A), and a party in interest to the Savings Plan within the meaning of ERISA §§3(14)(A) and (C), 29 U.S.C. §§1002(14)(A) and (C).

10. On September 12, 1997, Safelite assumed sponsorship of the Pension Plan. Pursuant to the terms of the Pension Plan's governing documents, between January 1, 1997 and September 2007 Safelite was the sponsor of the plan, and a party in interest to the Pension Plan within the meaning of ERISA §3(14)(C), 29 U.S.C. §1002(14)(C).

11. Pursuant to the governing documents of the Pension Plan, any successor of Safelite would become the sponsor of the Plan. From March 2007 through the present, Belron, as the successor of Safelite, was the sponsor of the Plan and a party in interest to the Pension Plan within the meaning of ERISA §3(14)(C), 29 U.S.C. 1002(14)(C).

12. Pursuant to the governing documents of the Pension Plan, the Retirement Plan Administrative Committee was the Plan Administrator of the Pension Plan. At all relevant times Safelite's and Belron's duties as the Plans' Administrator to the Savings Plan were delegated to the Retirement Plan Administrative Committee (the "Retirement Committee"). The Retirement

Committee was a fiduciary of both the Savings Plan and the Pension Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A).

COUNT ONE
(Payment of unreasonable expenses to Brooks Hamilton & Associates)

13. Paragraphs 1 through 12 above are realleged and incorporated herein by reference.

14. During the period 2002 through 2007, Brooks Hamilton & Associates (“Brooks”) provided services, including administrative, legal and consulting services, to the Plans. As a service provider to the Plans, Brooks was a party in interest to the Plans pursuant to §3(14)(B), 29 U.S.C. 1002(14)(B). Throughout this period, no formal written document was executed by Belron, its predecessors, Brooks, the Retirement Committee or the Plans for the provision of services to the Plans. Services were provided by Brooks to the Plans based on oral communications and sporadic e-mail correspondence.

15. Prior to February 1, 2003, Brooks charged the Savings Plan on a per participant basis for its administrative, actuarial, legal and consulting services.

16. After February 1, 2003, Brooks charged the Savings Plan a retainer fee for its services. The Savings Plan paid Brooks between \$70,000 and \$85,000 annually for legal and consulting services. In addition to the retainer fees, Brooks received fees for special projects.

17. After February 1, 2003, Brooks charged the Pension Plan a retainer fee for its services. The Savings Plan paid Brooks between \$30,000 and \$15,000 annually for legal and consulting services. In addition to the retainer fees, Brooks received fees for special projects.

18. During the period January 1, 2002 through December 31, 2007, the Retirement Plan Administrative Committee failed to adequately monitor the services Brooks performed for the Plans and failed to determine whether services were actually being provided to the Plans by Brooks for the fees the Plans were paying to Brooks.

19. During the period January 1, 2002 through December 31, 2007, the Retirement Committee caused the Plans to pay Brooks for expenses that were unnecessary to the operation of the Plans and made these payments pursuant to an unreasonable fee arrangement. These payments were made from the Pension Plan's accounts or the Savings Plan's forfeiture account.

20. By the conduct described in paragraphs 14 through 19 above, the Retirement Committee:

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

b. caused the Plans to engage in a transaction it knew or should have known constituted a direct or indirect furnishing of goods, services, or facilities between the Plans and a party in interest, in violation of ERISA §406(a)(1)(C), 29 U.S.C. §1106(a)(1)(C);

21. Defendant Belron, as the successor to Safelite, is liable, pursuant to ERISA §405(a)(2), 29 U.S.C. §1105(a)(2), for the breaches of fiduciary responsibility by a cofiduciary, as described in paragraph 20 above, because by failing to comply with ERISA §404(a)(1) in the administration of its specific responsibilities which gave rise to its status as a fiduciary, it enabled such other fiduciaries to commit a breach.

COUNT TWO

(Payment of settlor expenses to Brooks Hamilton & Associates and Aon)

22. Paragraphs 1 through 12, 14 through 17 above are realleged and incorporated herein by reference.

23. During the period 2002 through 2007, Aon provided administrative, actuarial and consulting services to the Pension Plan. As a service provider to the Pension Plan, Aon was a party in interest to the Pension Plan pursuant to §3(14)(B), 29 U.S.C. 1002(14)(B).

24. During the period January 1, 2002 through December 31, 2007, the Retirement Committee failed to adequately monitor the services Brooks and Aon provided and charged to the Plans.

25. During the period January 1, 2002 through December 31, 2007, the Retirement Committee caused the Plans to pay Brooks and Aon for corporate expenses and settlor expenses that were unnecessary to the operation of the Plans. These payments were made from the Pension Plan's accounts or the Savings Plan's forfeiture account.

26. After January 1, 2006, the Savings Plan's governing documents provided in pertinent part that "the trustee will pay from the trust fund all fees and reasonable expenses incurred by the plan, to the extent such fees and expenses are for the ordinary and necessary administration of the plan and are not settlor expenses as determined by the DOL."

27. By the conduct described in paragraphs 22 through 26 above, the Retirement Committee:

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

beneficiaries and defraying reasonable expenses of Plans 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 Plans solely in the interests of the participants and beneficiaries and in accordance with the documents and instruments governing the Plans 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);

c. caused the Plans to engage in a transaction it knew or should have known constituted a direct or indirect furnishing of goods, services, or facilities between the Plans and a party in interest, in violation of ERISA §406(a)(1)(C), 29 U.S.C. §1106(a)(1)(C);

d. dealt with the assets of the Plans in its own interest or for its own accounts, in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and

e. acted in transactions involving the Plans on behalf of a party (or represented a party) whose interests were adverse to the interests of the Plans or the interests of the participants or beneficiaries, in violation of ERISA §406(b)(2), 29 U.S.C. §1106(b)(2);

28. Defendant Belron, as the successor to Safelite, is liable, pursuant to ERISA §405(a)(2), 29 U.S.C. §1105(a)(2), for the breaches of fiduciary responsibility by a cofiduciary, as described in paragraph 27 above, because by failing to comply with ERISA §404(a)(1) in the administration of its specific responsibilities which gave rise to its status as a fiduciary, it enabled such other fiduciaries to commit a breach.

COUNT THREE
(Failure to locate missing participants and beneficiaries)

29. Paragraphs 1 through 12 above are realleged and incorporated herein by reference.

30. During the period January 1, 2002 through January 1, 2003, the Savings Plan's governing documents provided in pertinent part:

In the event that a benefit becomes payable under the Plan and the committee is unable to locate the participant or his beneficiary after sending written notice to his last known address and the U.S. Social Security Administration, such participant or beneficiary shall be presumed dead and such benefit shall be forfeited

31. During the period January 1, 2003 through January 1, 2006, the Savings Plan's governing documents provided in pertinent part:

Lost participant or beneficiary – plan administrator, after a reasonable effort and time, is unable to locate participant or beneficiary in order to make a distribution, the distribution amount may be forfeited, as permitted under applicable laws and regulations. In determining what is a reasonable effort and time, the plan administrator may follow any applicable guidance provided under the statute, regulation, or IRS or DOL guidance.

32. During the period January 1, 2006 through the present, the Savings Plan's governing documents provided in pertinent part:

(A) Attempt to locate: The Plan administrator shall use one or more of the following methods to locate a lost participant: (1) provide a distribution notice to the lost participants last known address; (2) use IRS letter forwarding procedures; (3) use a commercial locator service or (4) use Social Security Administration search program.

33. Between 2002 and 2007, the Retirement Committee sent letters to eligible participant's or beneficiaries' last known addresses to notify them of their Savings Plan distributions; 1,698 of which were returned as undeliverable.

34. Between 2002 and 2007, the Retirement Committee failed to implement any procedures to locate these missing participants and beneficiaries and caused their distribution checks to be placed in the Savings Plan's forfeiture account.

35. By the conduct described in paragraphs 30 through 34 above, the Retirement Committee:

a. failed to act solely in the interest of the participants and beneficiaries of the Savings 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 Savings 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);

36. Defendant Belron, as the successor to Safelite is liable, pursuant to ERISA §405(a)(2), 29 U.S.C. §1105(a)(2), for the breaches of fiduciary responsibility by a cofiduciary, as described in paragraph 35 above, because by failing to comply with ERISA §404(a)(1) in the administration of its specific responsibilities which gave rise to its status as a fiduciary, it enabled such other fiduciaries to commit a breach.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining defendants Belron, Inc. and the Retirement Plan Administrative Committee from violating the provisions of Title I of ERISA;

B. Ordering defendants Belron, Inc. and the Retirement Committee to make good to the Plans any losses, including interest, resulting from fiduciary breaches committed by them or for which they are liable;

C. Ordering defendants Belron, Inc. and the Retirement Committee to correct the prohibited transactions in which they engaged;

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

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