

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRYAN J. YOLLES, an individual,

Plaintiff,

-vs-

Case No.

Hon.

**W. B. Doner & Company, d/b/a Doner Advertising,
a/k/a Doner, a Michigan corporation,**

Defendant.

**COUZENS, LANSKY, FEALK, ELLIS,
ROEDER & LAZAR, P.C.**

**By: David A. Lawrence (P48630)
Lawrence F. Schiller (P33844)**

**Attorneys for Plaintiff
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COMPLAINT

Plaintiff Bryan Yolles, through his attorneys Couzens, Lansky, Fealk, Ellis, Roeder & Lazar, P.C., brings this Complaint as follows:

I. PARTIES AND JURISDICTION

1. Plaintiff currently is an individual citizen of the State of Connecticut.
2. Defendant W. B. Doner & Company, d/b/a Doner Advertising, a/k/a Doner (“Doner”) is a Michigan corporation which has its principal place of business in Michigan, and conducts substantial business activity and formerly employed Plaintiff within the Eastern District of Michigan.
3. At all relevant times, Defendant was an “employer” as defined in Section 3(5) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) (29 USC Section 1002(5)).

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4. At all relevant times, Defendant maintained the W. B. Doner and Company Equity Pension Plan (the “Plan”), a “pension plan” as defined in Section 3(2)(A) of ERISA (29 USC Section 1002(2)(A)).

5. At all relevant times, Defendant was a “plan sponsor,” as defined in Section 3(16)(B) of ERISA (29 USC Section 3(16)(B)), of the Plan.

6. The Plan, at all relevant times, was a “defined benefit plan” as defined in Section 3(35) of ERISA (29 USC Section 1002(35)), which was qualified or intended to be qualified under Sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended (the “Code”).

7. Defendant was, at all relevant times, the “administrator” of the Plan as defined in Section 3(16)(A) of ERISA (29 USC Section 1002(16)(A)).

8. Plaintiff is a “participant” (as defined in Section 3(7) of ERISA (29 USC Section 1002(7))) under Defendant’s Plan.

9. This suit is brought by Plaintiff under Section 502(a)(1)(A) of ERISA (29 USC Section 1132(a)(1)(A)) for appropriate relief under Section 502(c)(1) of ERISA (29 USC Section 1132(c)(1)).

10. This suit is also brought by Plaintiff under Section 502(a)(1)(B) of ERISA (29 USC Section 1132(a)(1)(B)) to clarify Plaintiff’s rights to future benefits under the Plan

11. This suit is also brought under Section 502(a)(3) of ERISA (29 USC Section 1132(a)(3)) to enjoin an act which violates Part 5 of ERISA and to seek other appropriate relief (29 USC Sections 1131-1148).

12. Jurisdiction of this Court is proper pursuant to Section 502(e)(1) of ERISA (29 USC Section 1132(e)(1)), since this action arises under Title 5 of ERISA. Jurisdiction of this Court is proper without regard to the amount in controversy or the citizenship of the parties, pursuant to Section 502(f) of ERISA (29 USC Section 1132(f)).

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13. Venue is proper in this Court pursuant to Section 502(e)(2) of ERISA (29 USC Section 1132(e)(2)) because, at all relevant times, the Defendant resided and was employed, the Plan is administered, and the breach occurred in this District.

II. COMMON ALLEGATIONS

14. Plaintiff realleges the allegations of Paragraphs 1 through 13 of this Complaint.

15. Plaintiff became an employee of Defendant in August, 1991, and from July 1, 1997 until October 1, 2007, was resident in Defendant's Michigan office.

16. When Plaintiff met the eligibility requirements for participation in the Plan pursuant to its terms, Plaintiff became a "participant" in the Plan and began accruing benefits under the Plan.

17. Plaintiff first contacted Defendant on October 2, 2007, immediately after his termination of employment, requesting information concerning his pension benefits under the Plan, including a copy of the Plan's Summary Plan Description and benefit statements.

18. Thereafter followed more than ten (10) further contacts by Plaintiff, both by telephone and e-mail, with Defendant's Chief Financial Officer and other employees of Defendant responsible for human resources and employee benefits, again requesting appropriate documentation concerning Plaintiff's pension benefits under the Plan.

19. Finally, after more than five (5) months attempting to obtain the requested documents from Defendant, and having received no such documents, Plaintiff's attorney sent a certified letter to Defendant's Chief Financial Officer on March 10, 2008, which was received by Defendant on March 11, 2008 (see attached Exhibit A). The letter requested from Defendant, among other things, a copy of the Plan's Summary Plan Description and a statement showing Plaintiff's accrued benefit under the Plan, documents which it is the right of Plaintiff, as a participant in the Plan, to receive (Section 102(a) of ERISA (29 USC Section 1022a) and Section 105(a) of ERISA (29 USC Section 1025(a))).

20. Moreover, one of Plaintiff's attorneys spoke with Defendant's Chief Financial Officer in May, 2008, and was promised that appropriate documents would be forthcoming.

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21. Documents were neither delivered nor made available to either Defendant or Defendant's counsel, nor were further voice-mail messages left by Plaintiff's counsel returned by Defendant until May 6, 2009, when Defendant's Chief Financial Officer once again promised to forward to Plaintiff's counsel (via fax) a recent benefit statement and the Plan's Summary Plan Description. To date, no such documents have been delivered or forwarded.

**COUNT I - VIOLATION OF ERISA --
FAILURE TO PROVIDE REQUESTED DOCUMENTS WITHIN 30 DAYS**

22. Plaintiff realleges the allegations of Paragraphs 1 through 21 of this Complaint.

23. Section 502(c)(1)(B) of ERISA (29 USC Section 1132(c)(1)(B)) authorizes this Court to award a participant up to \$110 per day for each day that the administrator has not delivered certain requested documents to the participant within thirty (30) days of the request for such documents and to provide other relief that it deems proper.

24. Plaintiff, a participant in the Plan, properly requested in writing on March 10, 2008 that Defendant, the administrator of the Plan, provide certain documents to which Plaintiff is entitled.

25. Defendant failed to provide the requested documents within thirty (30) days of the request by Plaintiff, and has not yet provided the requested documents

WHEREFORE, Plaintiff hereby prays for (i) a judgment against Defendant equal to the statutory amount of \$110 per day for each day in excess of thirty (30) days following receipt by Defendant of the first written request made by or on behalf of Defendant for the above-referenced documents and statements which have not been delivered to or made available to Plaintiff, (ii) an order from this Court directing that Defendant deliver the requested documents to Plaintiff, (iii) costs and attorney fees, and (iv) such other relief as the Court deems just.

**COUNT II - VIOLATION OF ERISA --
FAILURE TO PROVIDE CLARIFICATION REGARDING FUTURE BENEFITS**

26. Plaintiff realleges the allegations of Paragraphs 1 through 25 of this Complaint.

27. Section 502(a)(1)(B) of ERISA (29 USC Section 1132(a)(1)(B)) authorizes that a civil action may be brought by a participant in order for that participant to clarify his or her rights to future benefits under a plan.

28. Plaintiff, a participant in the Plan, requested that Defendant, the administrator of the Plan, provide certain information and documents to which Plaintiff is entitled so that Plaintiff can determine his right to future benefits under the Plan and so that he can make application for such benefits when permitted to do so.

29. Defendant has failed to provide any cooperation whatsoever with regard to Plaintiff's request for documents and information in an attempt by Plaintiff to clarify his right to future benefits under the Plan.

WHEREFORE, Plaintiff hereby prays for (i) an order from this Court directing Defendant to appropriately cooperate with Plaintiff so that he can clarify his benefits under the Plan, (ii) costs and attorney fees, and (iii) such other relief as the Court deems just.

Respectfully submitted,

**COUZENS, LANSKY, FEALK, ELLIS,
ROEDER & LAZAR, P.C.**

By:/s/ David A. Lawrence

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Dated: May 8, 2009