

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CAROL CHESEMORE, DANIEL DONKLE,
THOMAS GIECK, MARTIN ROBBINS and
NANNETTE STOFLET, on behalf of themselves,
Individually, and on behalf of all others similarly
situated,

Plaintiffs,

v.

ALLIANCE HOLDINGS, INC., A.H.I., INC.,
DAVID B. FENKELL, PAMELA KLUTE,
JAMES MASTRANGELO, STEPHEN W.
PAGELOW, JEFFREY A. SEEFELDT,
ALPHA INVESTMENT CONSULTING
GROUP, LLC and JOHN MICHAEL MAIER

Defendants

and

TRACHTE BUILDING SYSTEMS, INC.
EMPLOYEE STOCK OWNERSHIP PLAN
and ALLIANCE HOLDINGS, INC.

Nominal Defendants.

On October 6, 2011, the court held oral arguments on the motions for summary judgment and issued a number of rulings for the reasons articulated from the bench. For purposes of the record, this order memorializes those rulings. Accordingly,

IT IS ORDERED that:

- 1) The Motion for Summary Judgment (dkt. #288) by Defendants Alpha Investment Consulting Group, LLC and John Michael Maier (“Alpha Defendants”) is DENIED.
- 2) The Motion for Summary Judgment (dkt. #292) by Defendants Pamela Klute, James Mastrangelo and Jeffrey A. Seefeldt (“Trustee Defendants”) is DENIED.

- 3) The Motion for Summary Judgment (dkt. #299) by Defendants A.H.I., Inc., Alliance Holdings, Inc. Employee Stock Ownership Plan, Alliance Holdings, Inc. and David B. Fenkell (“Alliance Defendants”) is GRANTED IN PART AND DENIED IN PART, as follows:
 - a. Alliance Defendants’ motion is GRANTED with respect to Count I (ERISA § 208) of Plaintiffs’ Amended Complaint (dkt. #254). The Court finds that Plaintiffs failed to identify sufficient evidence that the accounts of Trachte employees diminished in value immediately after being transferred from the Alliance ESOP into the Trachte ESOP.
 - b. Alliance Defendants’ motion with respect to Count II (ERISA § 404) is GRANTED insofar as Count II rests on the premise that defendants violated ERISA § 208 and DENIED in all other respects.
 - c. Alliance Defendants’ motion seeking a finding that plaintiffs are not entitled to certain forms of equitable relief is RESERVED.
 - d. Alliance Defendants’ motion is DENIED in all other respects.
- 4) The Motion for Summary Judgment (dkt. #303) by Defendant Stephen W. Pagelow is GRANTED on all counts.
- 5) The Motion for Partial Summary Judgment (dkt. #307) by Plaintiffs Carol Chesemore, Daniel Donkel, Thomas Gieck, Martin Robbins and Nannette Stoflet is GRANTED IN PART AND DENIED IN PART.
 - a. Plaintiffs’ motion for summary judgment on Count I (ERISA § 208) is DENIED.
 - b. Plaintiffs’ motion for summary judgment requesting a finding that the Alpha Defendants were fiduciaries with respect to the Trachte ESOP is GRANTED. The Court finds that the Alpha Defendants accepted, contractually, a fiduciary role to provide a valuation for the Trachte ESOP and to direct the Trustees of the Trachte ESOP with respect to the 2007 Transaction.

- c. Plaintiffs' motion for summary judgment requesting a finding that the Trustee Defendants were discretionary fiduciaries and not directed fiduciaries is DENIED.

Entered this 28th day of March, 2012.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge