

IN THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF COLUMBIA

JAMES BOLAND, JOHN FLYNN, HENRY KRAMER, GERALD O'MALLEY, KEN LAMBERT, GERARD SCARANO, TIMOTHY DRISCOLL, EUGENE GEORGE, ROBERT HOOVER, MATTHEW AQUILINE, GREGORY R. HESS, MICHAEL SCHMERBECK, WILLIAM MCCONNELL, CHARLES COSTELLA, and JOHN TRENDELL, as Trustees of, and on behalf of, the BRICKLAYERS & TROWEL TRADES INTERNATIONAL PENSION FUND 620 F Street, N.W. Washington, DC 20004 (202) 783-3788,

and

JAMES BOLAND, JIM ALLEN, MATTHEW AQUILINE, TED CHAMP, BRUCE DEXTER, TIM DRISCOLL, EUGENE GEORGE, GREGORY HESS, ROBERT HOOVER, FRED KINATEDER, MARK KING, HENRY KRAMER, KEN KUDELA, DAN KWIATKOWSKI, KEN LAMBERT, WILLIAM MCCONNELL, EDWARD NAVARRO, JIM O'CONNOR, JOHN PHILLIPS, CHARLES RASO, MARK ROSE, KEVIN RYAN, GERARD SCARANO, MICHAEL SCHMERBECK, JOSEPH SPERANZA, JEREMIAH SULLIVAN, JR., RICHARD TOLSON, JOHN TRENDELL, and FRED VAUTOUR, as Trustees of, and on behalf of, the INTERNATIONAL MASONRY INSTITUTE The James Brice House 42 East Street Annapolis, MD 21401,

Plaintiffs,

v.

TEDDY WAYNE WORKMAN, INDIVIDUALLY Route 19, Box 286 Gypsy, WV 26361,

Defendant.

Civil Action No:

COMPLAINT

Plaintiffs, by their attorneys, DICKSTEIN SHAPIRO LLP, complaining of the Defendant, Teddy Wayne Workman, Individually, allege as follows:

## **CAUSE OF ACTION**

### **Jurisdiction and Venue**

1. This is an action brought by the fiduciaries of the Bricklayers & Trowel Trades International Pension Fund (“IPF” or “Fund”), and the fiduciaries of the International Masonry Institute (“IMI”) to enforce the terms of the Plan and Trust Agreements adopted by the IPF and IMI, and the provisions of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). This action arises under the laws of the United States, specifically Sections 502(a)(3), 502(g)(2), and 515 of ERISA, 29 U.S.C. §§ 1132(a)(3), 1132(g)(2), 1145. Pursuant to Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1), jurisdiction is therefore conferred on this Court.

2. The IPF is administered in the District of Columbia, and the IMI is partly administered and managed in the District of Columbia. Venue for the claims asserted in this lawsuit is conferred on this Court pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), which provides:

(2) Where an action under this subchapter is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

### **Parties**

3. Plaintiffs, James Boland, John Flynn, Henry Kramer, Gerald O’Malley, Ken Lambert, Gerard Scarano, Timothy Driscoll, Eugene George, Robert Hoover, Matthew Aquiline, Gregory R. Hess, Michael Schmerbeck, William McConnell, Charles Costella, and John Trendell, are Trustees of, and sue on behalf of, the IPF. The IPF is an “employee benefit plan” within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3), and is a “multiemployer

plan” within the meaning of Section 3(37) of ERISA, 29 U.S.C. § 1002(37). The Trustees of the IPF, in their respective capacities as fiduciaries, bring this action on behalf of, and for the benefit of, the participants and beneficiaries of the IPF.

4. The IPF also is authorized to effect collections on behalf of the IMI pursuant to a written Assignment of Claims and the Collection Procedures of the Central Collection Unit of the Bricklayers and Allied Craftworkers (“Collection Procedures”).

5. Plaintiffs, James Boland, Jim Allen, Matthew Aquiline, Ted Champ, Bruce Dexter, Tim Driscoll, Eugene George, Gregory Hess, Robert Hoover, Fred Kinateder, Mark King, Henry Kramer, Ken Kudela, Dan Kwiatkowski, Ken Lambert, William McConnell, Edward Navarro, Jim O’Connor, John Phillips, Charles Raso, Mark Rose, Kevin Ryan, Gerard Scarano, Michael Schmerbeck, Joseph Speranza, Jeremiah Sullivan, Jr., Richard Tolson, John Trendell, and Fred Vautour, are Trustees of, and sue on behalf of, the IMI. The IMI is an “employee benefit plan” within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3), and is a “multiemployer plan” within the meaning of Section 3(37) of ERISA, 29 U.S.C. § 1002(37). The Trustees of the IMI, in their respective capacities as fiduciaries, bring this action on behalf of, and for the benefit of, the participants of the IMI.

6. Defendant, Teddy Wayne Workman, Individually, is, and all times hereinafter mentioned was, the principal officer and controlling owner of Workman Masonry, LLC, a company that maintained offices and conducted business in the state of West Virginia. Mr. Workman is a resident of the state of West Virginia.

7. Defendant employs or has employed members of the International Union of Bricklayers and Allied Craftworkers and its affiliated local unions (“the Union”).

## Violation Charged

8. Workman Masonry, acting through its authorized agents, representatives, or officers, executed a collective bargaining agreement with the Union. The collective bargaining agreement is annexed hereto as Exhibit A and is hereinafter referred to as the "Agreement."

9. Pursuant to the Agreement, Workman Masonry agreed to make certain payments to the IPF and IMI for each hour of covered work it performed.

10. Having submitted some contributions, Workman Masonry demonstrated an awareness of the obligation to make those payments.

11. Although Workman Masonry submitted payment for contributions due the IPF and IMI for covered work performed during the month of December 2008, Workman Masonry's check was returned by the bank due to non-sufficient funds in Workman Masonry's account. Despite repeated requests by the IPF, Workman Masonry failed to submit a replacement for its check returned by the bank due to non-sufficient funds.

12. Accordingly, on April 30, 2009, the IPF and IMI filed a Complaint in this Court against Workman Masonry LLC ("Workman Masonry") for the recovery of delinquent fringe benefit contributions due Plaintiffs as a result of Workman Masonry's performance of covered work during December 2008 under a collective bargaining agreement it signed with a local union affiliate of the International Union of Bricklayers and Allied Craftworkers (*Flynn, et al. v. Workman Masonry LLC et al.*, Civil Action No. 09-0787, HHK).

13. The Complaint sought \$16,358.39, representing known delinquent contributions due the IPF and IMI for covered work performed by Workman Masonry during December 2008. Under the terms of the Plan and Trust Agreements adopted by the IPF and IMI, the Collection Procedures, and ERISA, the Complaint also sought interest in the amount of

\$497.48, calculated at the rate of 15 percent per annum from the Due Date through April 30, 2009, liquidated damages in the amount of \$3,271.68, calculated at the rate of 20 percent of the delinquent contributions, the \$350.00 cost of filing the action, and \$5,000 in attorney's fees and costs. *See* ERISA Section 502(g)(2), 29 U.S.C. § 1132(g). The Complaint also asked the Court to direct Workman Masonry to comply with its obligations to submit all required reports and to make all contributions due and owing to the IPF and IMI, to order Workman Masonry to pay the costs and disbursements of the IPF's action, and to award such other relief as the Court deemed appropriate, including judgment for any contributions and interest thereon that may accrue, and/or be found due and owing, subsequent to the filing of the Complaint, as well as any resulting statutory damages under ERISA.

14. The Trustees of the IPF and IMI filed this Complaint in faithful performance of the fiduciary duties imposed upon them under Section 404(a)(1) of ERISA, 29 U.S.C. § 1104(a)(1).

15. On October 2, 2009, Plaintiffs filed a Motion for Entry of Default Judgment with this Court in the above-referenced action.

16. On October 27, 2009, this Court entered Judgment in the amount of \$25,753.46 in favor of Plaintiffs and against Defendant, Workman Masonry. *See* Judgment attached hereto as Exhibit B.

17. Plaintiffs, with the assistance of West Virginia counsel, have sought to execute on the Judgment awarded by this Court in the above-referenced action, but to date, Workman Masonry has failed to pay any of the moneys due Plaintiffs on this Judgment.

18. Upon information and belief, the limited liability company status of Workman Masonry was terminated in the state of West Virginia on September 10, 2008, thereby dissolving the company for all purposes other than winding up its affairs.

19. Nevertheless, after September 10, 2008 (including in December 2008), Teddy Wayne Workman continued to carry on the business of Workman Masonry beyond winding up. Accordingly, Mr. Workman is personally liable for the debts of Workman Masonry under West Virginia law, including the delinquent contributions and related statutory damages owed for covered work performed by Workman Masonry during December 2008 while Workman Masonry was dissolved.

20. By virtue of his carrying on of the business of Workman Masonry after September 10, 2008 (including in December 2008), and consistent with West Virginia law, Mr. Workman is personally liable as an “employer” under ERISA for the amounts owed by Workman Masonry to the Plaintiffs for covered work performed after September 10, 2008, including the amounts reflected in the Judgment entered by this Court on October 27, 2009.

21. Plaintiffs have brought the present action in faithful performance of the fiduciary duties imposed upon them under Section 404(a)(1) of ERISA, 29 U.S.C. § 1104(a)(1). Plaintiffs have been, and are, incurring attorney’s fees as a direct result of Defendant’s failure to properly submit contributions in accordance with the terms and conditions of the Agreement and failure to pay the amounts owed to Plaintiffs pursuant to the Judgment previously entered by this Court.

**WHEREFORE**, Plaintiffs pray for judgment against Defendant, Teddy Wayne Workman, Individually, as follows:

1. That Teddy Wayne Workman be found individually liable for payment of the debts of Workman Masonry LLC incurred after September 10, 2008.

2. For the total amount of \$26,103.46, which is constituted as follows:


a. For payment on the Judgment in the amount of \$25,753.46 awarded by this Court in favor of Plaintiffs and against Workman Masonry in *Flynn, et al. v. Workman Masonry LLC et al.*, Civil Action No. 09-0787, HHK, for covered work performed during December 2008; and

b. For the costs of filing this action in the amount of \$350.00 (ERISA Section 502(g)(2)(D), 29 U.S.C. § 1132(g)(2)(D));

3. In the amount of Five Thousand Dollars (\$5,000.00), and such additional amounts as may be incurred, representing attorney's fees and costs of this action (ERISA Section 502(g)(2)(D), 29 U.S.C. § 1132(g)(2)(D));

4. Such other relief as this Court deems appropriate, including judgment for any contributions and interest thereon that may accrue, and/or be found due and owing, subsequent to the filing of this Complaint, as well as any resulting statutory damages thereon under ERISA.

Dated: May 27, 2011

By:   
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