

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Trustees of the Chicago Plastering Institute Pension
Trust, *et al.*,

Plaintiffs,

v.

Solarcrete Energy Efficient Building Systems Inc.

Defendant.

Case No. 04-cv-7820
Judge Gottschall

DECLARATION OF JOHN STOECKERT

I, John Stoeckert, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct.

1. I am a staff accountant at the certified public accounting firm of Piotrowski & Gebis (“P&G”). This declaration is based upon my personal knowledge and upon the records of P&G to which I have free access, and in particular P&G’s file pertaining to the “payroll audit” of the Defendant Solarcrete Energy Efficient Building Systems Inc. (“Solarcrete”). I am competent to testify as a witness if necessary.

2. I have reviewed various documents marked as exhibits to Plaintiffs’ Motion for Entry of Judgment and am familiar with their contents. I refer to those exhibits in this declaration simply as “Exhibit ___.”

3. I was asked in September 2009 to revise the time card analysis previously prepared for trial in this case in January 2009 (the “Original Time Card Report”) in order to take into account the Court’s rulings in its Memorandum Opinion and Order dated September 17, 2009 (“Opinion”). The end result of my efforts is the report that constitutes Exhibit 3, which I will refer to in this Declaration as the “Revised Time Card Report.”

4. In the course of preparing the Revised Time Card Report, I carefully reviewed and became familiar with the Original Time Card Report, the time cards that formed the basis of the Original Time Card Report, the workpaper file maintained by P&G relating to Solarcrete, and the Court's Opinion.

5. The work that I performed in connection with creating the Revised Time Card Report falls into the following categories: (a) verifying the accuracy of the Original Time Card Report and correcting any errors discovered; (b) revising the Original Time Card Report to comply with the Court's Opinion; (c) computing additional defined reportable "hours paid" in order to determine the proper amount of the contributions owed to the Retirement Savings Fund; (d) removing working assessments for employees for whom the Union had no valid dues withholding authorizations on file; and (e) updating interest and liquidated damages. I also updated the report to show my firm's total fees incurred in connection with this matter.

A. Correction of Errors

6. In the process of revising the report to comply with the Opinion, I discovered what I believed to be misclassifications in the Original Time Card Report's characterization of hours shown on certain of the time cards.

7. Certain of these time cards, which comprise Exhibit 4, indicated hours in the categories deemed to be covered plastering work ("shotcrete" and "finish") that the original report excluded. The Revised Time Card Report reclassifies these hours. I have made handwritten notations in the margins, either along the right-hand side or along the bottom, indicating the correct number of additional reportable hours in plastering categories shown on each time card.

8. All remaining time cards that were inaccurately classified in the original report comprise Exhibit 5. The most common misclassification regarding these time cards was the classification in the original report as “non-plastering” hours of hours that were sufficiently ambiguous that I believed they should be re-designated as “unknown” hours. In other instances I removed hours included in the original report that I did not believe were supported by the time cards. As with Exhibit 4, I have made handwritten notations in the margins, either along the right-hand side or along the bottom, indicating the number of hours properly included from each time card.

B. Revisions to Report Consistent with Court’s Opinion

9. The Court found that Defendant owed contributions and dues only on those hours identified by employees on the time cards as “shotcrete” and “finishing,” as well as for forty-five percent of the hours that employees did not identify on their timecards as having been spent in a particular task (characterized as “unknown hours” on the Original Time Card Report and the Revised Time Card Report), so long as “there is some basis for supporting that the worker in question did wall installation work.” (Opinion at 16-17.)

10. Pursuant to these instructions, I removed from the report all additional reportable hours that had been reported as “wall erection” or “wall prep” on the time cards and that had been included in the Original Time Card Report. These hours do not appear in the Revised Time Card Report.

11. Also pursuant to the Court’s instructions, I have included in the Revised Time Card Report as additional reportable hours forty-five percent of the hours classified as “unknown” hours (after the reclassifications described above in paragraphs 7 and 8 had been

made) for all employees for whom there was “some basis for supporting that the worker in question did wall installation work.”

12. After consultation with Fund counsel, I proceeded under the assumption that, by “some basis for supporting that the worker in question did wall installation work,” the Court intended that we include only those employees for whom there was evidence that they performed work covered under Solarcrete’s collective-bargaining agreements with the Union.

13. After consultation with Fund counsel, I assumed that the following constituted “some basis for supporting” that an employee had performed covered work:

- a. there was at least one time card among those produced by Solarcrete on which the employee indicated that he had performed work in the “shotcrete” or “finish coat” categories;
- b. Solarcrete had reported hours or paid contributions to the Funds for the employee; or
- c. an employer other than Solarcrete with a collective-bargaining relationship with the Union has reported hours or paid contributions to the Funds for the employee.

I included in the Revised Time Card Report forty-five percent of the “unknown” hours reported on time cards submitted by any employee who fell into at least one of these categories.

14. In order to determine whether an employee fell into category (a) above, I simply reviewed the time cards.

15. In order to determine whether an employee fell into category (b) above, I reviewed the contribution reports submitted to the Funds by Solarcrete which are included in our

work papers and admitted into evidence as Plaintiffs' Trial Exhibit 17, starting at page WP-444.

16. In order to determine whether there were any employees who did not fall into either category (a) or (b) but did fall into category (c), I sent to the Fund Office a list of all employees for whom we had time cards showing "unknown hours" but who did not fall into categories (a) or (b). The Fund Office returned the list to me with markings indicating three Solarcrete employees on the list for whom it had received contributions from signatory employers. This list is Exhibit 6.

C. Computation of Additional Reportable Hours Paid

17. Unlike the other Funds, for which the collective-bargaining agreements provide that contributions are to be calculated based upon the number of hours an employee actually works in covered employment, the Retirement Savings Fund provides that contributions be calculated based upon the number of hours for which the employee is *paid*. For instance, an employee who works four hours of overtime in a week and is paid time and a half for those hours has effectively been paid for six hours; while the other funds would receive contributions on just four hours, the Retirement Savings Fund should receive contributions on six hours. The Original Time Card Report did not account for this distinction between hours paid and hours worked and thus understated the contributions owed to the Retirement Savings Fund. The Revised Time Card Report corrects this omission.

18. For purposes of determining whether an employee had worked overtime and thus should receive additional credit for "hours paid," I have computed additional hours paid beyond the hours worked in accordance with the definition found in the collective-bargaining agreement only when the employee's time cards showed more than eight hours

in a day spent in covered work or showed work on a Saturday or Sunday, which hours were spent at least in part in covered or unclassified work. If the day included hours for more than one classification (shotcrete, finish coat, unknown, or non-covered work), the “hours paid” were allocated based upon the percentage relationship of the covered or unknown hours to the hours for the day. The total unknown “hours paid” were then reduced to forty-five percent for inclusion in the revised report.

19. Contributions were not required to the Retirement Savings Fund until June 1, 1999, so I did not compute additional reportable hours paid prior to that date.

D. Dues Authorizations

20. I removed from the Revised Time Card Report any claim for union dues (shown as “Working Assessment” on the Report) for employees for any month during which the Union did not have an executed dues withholding authorization on file. To make this determination, I sent the Union a list of the names of all of the employees for whom covered hours were included on the Revised Time Card Report, and the Union sent me copies of authorization cards for all of these employees for whom it had valid dues withholding authorizations. I have compiled a list summarizing the cards that I was sent, although the original cards are available upon request. This list is Exhibit 8.

E. Interest and Liquidated Damages

21. The Revised Time Card Report includes interest on the delinquent contributions. As with the initial Payroll Audit Report and the initial time card report, interest on the delinquencies is computed at the rate of 1% per month, compounded monthly.

22. The Revised Time Card Report also includes double interest for the ERISA Funds and, for the Chicago Plastering Institute (indicated as the “Institute” on the Revised Time Card Report) and Chicagoland Safety Council (indicated as the “CEA”), liquidated damages in the amount of 20% of the delinquent contributions in lieu of double interest.

23. The Revised Time Card Report does not include interest, double interest, or liquidated damages on Working Assessments. However, I have calculated prejudgment interest on the Working Assessments at the annual rate of 6.5%, compounded monthly.

24. I have calculated the average Prime Rate as published in the Wall Street Journal from May 1, 1997 through the present, and that rate is 6.5%. I calculated the average rate by adding together the Prime Rates in effect on the last day of each month from May 1997 through the present and dividing by the total number of months in that period.

25. Prejudgment interest on the working assessments through December 31, 2009, totals \$4,337.42.

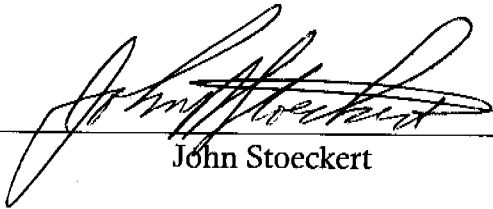
26. As set forth in the Revised Time Card Report, total Additional Reportable Hours Worked after making the foregoing adjustments are now 10,899.5, which represents a reduction of 3,927.5 hours from the Original Time Card Report.

27. Total Additional Reportable Hours Paid for which contributions are owed to the Retirement Savings Fund for the period June 1, 1999 through November 30, 2004, are 8,630.50, which is 431.25 hours more than the number of Total Additional Reportable Hours Worked during this period.

28. Working assessments dropped from a total of \$14,619.54 in the Original Time Card Report to \$5,524.89 in the Revised Time Card Report.

29. As summarized on the Revised Time Card Report, total contributions and working assessments owed to the Plaintiffs after making all of the changes described above are now \$95,613.03, which is a reduction of \$37,316.79 from the Original Time Card Report.

Executed on November 16, 2009.



John Stoeckert