

**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 GARY GEBIS

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

1. I am a partner in the certified public accounting firm of Piotrowski & Gebis (“P&G”). I was the partner in charge of the audit of Defendant Solarcrete Energy Efficient Building Systems, Inc. (“Solarcrete”) on behalf of the Plaintiff Funds. I testified at trial in this matter, and I am competent to offer further testimony as a witness if necessary. This declaration is based upon my personal knowledge and upon the records of P&G kept under my dominion and control, in particular P&G’s file pertaining to the audit of Solarcrete.

2. Fund Counsel has provided me with a copy of the Court’s Memorandum Opinion and Order (“Opinion”) dated September 17, 2009, which I have carefully read.

3. Fund Counsel has also provided me with a copy of a set of exhibits to its Motion for Entry of Judgment, which I have reviewed and am familiar with. I refer to those exhibits in this Declaration simply as “Exhibit ___.”

REVISED TIME CARD REPORT

4. P&G has issued a revised report (the “Revised Time Card Report”) in connection with its examination of the time cards disclosed on the first day of trial in this matter and subsequently tendered to P&G by Fund Counsel. My office completed the Revised Time Card Report on November 9, 2009. I supervised the work performed by P&G’s staff and reviewed the Revised Time Card Report and checked it for accuracy. While the calculations described below were performed primarily by staff accountant John Stoeckert, I collaborated extensively with Mr. Stoeckert in the production of the Revised Time Card Report and am very familiar with its contents and the procedures according to which it was created. The Revised Time Card Report comprises Exhibit 3.

5. The Revised Time Card Report includes several categories of revisions made since P&G issued the original time card report that was admitted as Plaintiffs’ Trial Exhibit 23 (the “Original Time Card Report”). Generally, the Revised Time Card Report differs from the Original Time Card Report in six respects: (a) it corrects misclassifications discovered in the original Time Card Report; (b) it eliminates additional reportable hours based upon time reported as “wall erection” or “wall prep” on the time cards; (c) it has added additional reportable hours equivalent to forty-five percent of the indeterminate, “unknown” hours on the time cards for all employees for whom evidence existed that they were plasterers who performed some covered work for Solarcrete; (d) it calculates additional reportable hours paid in order to determine the proper contributions owed to the Retirement Savings Fund; (e) it removes working assessments for employees for whom the Union had no valid dues withholding authorization on file; and (f) it updates interest, liquidated damages, and audit fees.

6. More specifically, the Revised Time Card Report differs from the Original Time Card Report in the following (and only the following) respects:

- a. Certain misclassifications in the original report discovered in our review of the time cards have been remedied. These include both time cards that showed plastering hours that were not originally included and time cards that showed non-plastering hours that were originally marked as plastering hours, as well as time cards that had previously been classified as “non-plastering” hours but that were sufficiently ambiguous that they should have been classified as “unknown” hours.
- b. All additional reportable hours computed on the basis of hours indicated on time cards as “wall erection” or “wall prep” have been removed. (Hours indicated on time cards in all other categories were not included in the Original Time Card Report, but rather excluded as “Non-Plastering Hours”).
- c. Additional reportable hours have been included representing forty-five percent of the “Unknown Hours” shown on the time cards, but only for employees falling into at least one of the following categories:
 - i. all employees for whom Solarcrete had submitted at least one time card on which shotcrete or finish coat hours were indicated;
 - ii. all employees for whom Solarcrete has ever reported hours or paid contributions to the Funds; or
 - iii. all employees not falling into the prior two groups but for whom the Funds have received contributions from another employer signatory to a collective-bargaining agreement with the Union.

- d. To determine the contributions owed to the Retirement Savings Fund, we computed additional reportable hours paid, which were inadvertently omitted from the Original Time Card Report.
 - e. Claims for working assessments (also referred to as “union dues”) were removed for periods for which an employee had not signed a dues authorization.
 - f. Interest was updated to December 31, 2009.
 - g. For the ERISA Funds, the 20% liquidated damages set forth in the prior Time Card Report have been changed to “double interest.”
 - h. Audit fees were updated through the date of the report. A more detailed discussion of P&G’s fees is set forth below.
7. P&G has also calculated pre-judgment interest on the Working Assessments at the average prime rate during the period May 1, 1997, to the present, which totals \$5,522.89.
8. 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.
9. Total additional reportable hours paid 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.
10. Working assessments claimed dropped from a total of \$14,619.54 in the Original Time Card Report to \$5,524.89 in the Revised Time Card Report.
11. As summarized on the Revised Time Card Report, total contributions and working assessments owed to the Plaintiffs after making all of the additions and deletions described

above are now \$95,613.03, which is a net reduction of \$37,316.79 from the Original Time Card Report.

12. P&G's fees through November 9, 2009, as described more fully below, now total \$48,025.00. The total amount due, consistent with the Court's findings as set forth in the Order (but excluding attorneys' fees and costs), and including pre-judgment interest on the Union's claim for dues, is therefore **\$478,809.98**.

AUDIT FEES

13. As one of the P&G's founding partners and the supervising partner in charge of all audits that P&G performs for the Plaintiffs, including the Solarcrete Audit, I have been involved in all of P&G's hiring decisions, personally know all of the firm's employees, and am familiar with the background and work experience of all of the individuals who worked on the audit of Solarcrete.

14. I am a partner in P&G. I received a B.B.A. in Public Accounting from Loyola University in 1973. I have over thirty years of experience in conducting payroll audits for multiemployer benefit plan clients. P&G billed the Plaintiffs \$80 per hour for my services prior to January 1, 2006, \$100 per hour from January 2006 through December 2008, and \$120 per hour since January 1, 2009. The only exceptions are tasks beyond routine work on the audit, such as depositions and preparing for and testifying at trial, for which P&G billed the Plaintiffs \$125 to \$200 per hour prior to January 1, 2006, \$125 to \$250 per hour from January 2006 through December 2008, and \$160 to \$250 per hour since January 1, 2009.

15. William G. Piotrowski is a partner in P&G. He received his B.S. degree in Accounting from DePaul University in 1980. He has over twenty years of experience in conducting payroll audits for multiemployer benefit plan clients. P&G billed the Plaintiffs \$80

per hour for his services prior to January 1, 2006, \$100 per hour from January 2006 through December 2008, and \$120 per hour since January 1, 2009.

16. John K. Stoeckert is a staff accountant at P&G. He received his B.S. degree in Accounting from the University of Illinois at Champaign in 1964. He has been a certified public accountant for thirty-nine years and has about five years of experience in conducting payroll audits for multiemployer benefit plan clients at P&G. P&G billed the Plaintiffs \$90 per hour for his services, all of which were performed after January 1, 2009.

17. Mary Kedzie is a staff accountant at P&G. She received her B.S. degree in Accounting from the University of Illinois at Chicago in 1982. She has four years of experience in conducting payroll audits for multiemployer benefit plan clients at P&G. P&G billed the Plaintiffs \$62.50 per hour for her services prior to January 1, 2006, and \$75 per hour from January 2006 through December 2008.

18. Carl Bendlin currently works primarily as P&G's office administrator, but is also an accountant. He has performed both administrative duties and staff accountant duties in connection with the Solarcrete matter. He received his B.A. degree in Accounting and Business Management from Concordia University in 1994. He has five years of experience in conducting payroll audits and performing administrative functions for multiemployer benefit plan clients at P&G. P&G billed the Plaintiffs \$62.50 per hour for staff accountant duties prior to January 1, 2006, \$75 per hour from January 2006 through December 2008, and \$90 per hour since January 1, 2009. Prior to January 1, 2009, P&G billed the Plaintiffs \$40 per hour for his administrative duties, and \$50 per hour since January 1, 2009.

19. Teri McMillan worked for P&G as an administrator and did no accounting work in connection with the Solarcrete case. P&G billed the Plaintiffs \$40 per hour for her work

on the case, which totaled 1.75 hours in clerical tasks related to trying to schedule the audit with Solarcrete in May, June, and December 2004.

20. Shelley Hermanson and did no accounting work in connection with the Solarcrete case. P&G billed the Plaintiffs \$40 per hour for her work on the case, which totaled 1.25 hours in the clerical tasks of scheduling and faxing communications to Solarcrete.

21. Stephanie Haddrill and did no accounting work in connection with the Solarcrete case. P&G billed the Plaintiffs \$40 per hour for her work on the case, which totaled 3 hours in scheduling, photocopying, and other administrative tasks.

22. Each of the above-named individuals maintains a contemporaneous record of how much time he or she spends working on a particular matter each day. All P&G employees maintain Day-Timer calendars in which they contemporaneously record their chargeable and non-chargeable time daily, by client and type of work. Each employee utilizes these contemporaneous records when preparing his or her semi-monthly time reports, which are then entered into the firm's billing system. These records detail the particular auditors to work on each file, the dates on which the work was performed, and the number of hours of work performed. All Day-timer calendars are maintained by the firm and are available upon request. Since August 2009, P&G has also begun documenting in the workpapers for each engagement a breakdown of the staff field/office work by category.

23. The audit work papers and correspondence, admitted into evidence at trial as Plaintiffs' Trial Exhibit 17, contain information regarding when various aspects of the field work, as well as production, review, and revision of the report, calculations made at the request of Fund Counsel, and preparation and participation in this litigation took place.

24. I have reviewed the information described above—P&G’s contemporaneous billing records and dates appearing on correspondence and documents in our audit work papers—and on the basis of this information I have been able to determine what tasks the firm’s auditors were engaged in for all of the hours billed to the Plaintiffs in connection with this case.

25. Exhibit 9 is a spreadsheet that I prepared that sets forth my breakdown, by audit task and by auditor, of all the time billed to the Plaintiffs in this case for each half-month period since the engagement began in May 2004. The columns in the spreadsheet are as follows:

- a. The first column, labeled “AssignmentNumber,” contains a five-digit number used by my office to identify this engagement.
- b. The second column, labeled “SumOfChargeHours,” lists the total number of billable hours for each biller for each half-month period.
- c. The third column, labeled “ClientNumber,” is used to identify the client for which the engagement is performed—in this case the Chicago Plastering Institute Fringe Benefit Funds. Additionally, this number identifies whether time billed was for accounting work or administrative work. All time billed to client number 1034 is accounting work; all time billed to client numbers 4400, 4401, 4402, or 4404 is billed at the rates for administrative work described above.
- d. The fourth column, labeled “LastName,” is used to identify the staff persons who worked on this engagement, whom I have identified above.

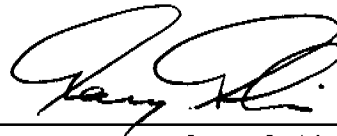
- e. The fifth column, labeled "Date," is used to identify the last day of the half-month period in which the work was performed.
- f. The sixth column, labeled "Expenses," is used to identify any expenses that P&G incurred and for which it billed the Funds in connection with the described work.
- g. The final column, labeled "Description," is a description of the work performed.

26. The source of the hours included on the spreadsheet are the firm's semi-monthly time reports prepared by each employee. The source of the firm's semi-monthly time reports are Day-timer calendars utilized by each employee in which they contemporaneously record all daily hours worked by client/task. These records are available to the Defendant upon request.

27. In total, P&G has incurred expenses totaling \$341.67 for which it has billed the Funds. P&G has spent a total of 490.25 hours in connection with this matter, for which it has incurred fees (and for which it has billed the Funds) a total of \$48,025.00, including the \$341.67 in expenses.

28. The portion of our fees and expenses incurred between October 31, 2007, and January 31, 2009—that is, the portion of our fees and expenses related to the examination of the time cards, generation of the Original Time Card Report, and my testimony at trial in January 2009—was \$17,225.00.

Executed on November 16, 2009.



Gary Gebis