

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

LABORERS' PENSION FUND and)	
LABORERS' WELFARE FUND OF THE)	
HEALTH AND WELFARE DEPARTMENT)	
OF THE CONSTRUCTION AND GENERAL)	
LABORERS' DISTRICT COUNCIL OF)	
CHICAGO AND VICINITY, JAMES S.)	
JORGENSEN,)	
Plaintiffs,)	No. 08 C 6266
)	Judge Hibbler
v.)	
GIOENCO CONSTRUCTION, INC.,)	
)	
Defendant.)	

**PLAINTIFFS' MOTION FOR
DAMAGES**

Plaintiffs', the Laborers Pension Fund and Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity (the "Laborers' Funds"), request that the Court enter a finding of damages against Gioenco Construction, Inc. In support of this motion, plaintiffs state:

1. On October 31, 2008, plaintiffs filed a Complaint under the Employee Retirement Income Security Act of 1973 ("ERISA"), as amended, 29 U.S.C. §§1143 and 1132(g)(2) and under the Labor Management Relations Act ("LMRA"), as amended, 29 U.S.C. §185(a) seeking an audit for the period from April 1, 2006 through the present and for unpaid contributions in which the auditor's report reflects are owed to the Laborers' Funds. On December 16, 2008, this Court entered a default judgment after the defendant failed to answer or otherwise plead in response to the Complaint.

2. In addition, after filing said complaint, plaintiffs became aware that an earlier audit

report covering the period from April 27, 2005 through March 31, 2006 showing findings of \$2,593.33, in principal contributions was also owed to the plaintiffs. Plaintiffs request leave to amend the instant complaint with those contributions owed to the Funds as disclosed by an unpaid audit report covering the period from April 27, 2005 through March 31, 2006.

3. As shown by the report from Richard J. Wolf and Company, Inc., and as established by the affidavit of Michael Christopher, the Funds' Field Representative, principal contributions are owed to the Welfare, Pension, Training, MCI AF, CCA, LECET, LDCLMCC and for Union dues in the amount of \$2,593.33, for the period from April 27, 2005 through March 31, 2006.

4. The Company also submitted books and records for an audit covering the period from April 1, 2006 through November 30, 2008 to Levinson, Simon & Sprung, P.C., who prepared a report showing that unpaid principal contributions are owed to the Welfare, Pension, Training, MCI AF, CCA, LECET, LDCLMCC and for Union dues in the amount of \$23,099.52. (See, M. Christopher Affidavit, Exhibit A.)

5. Liquidated damages and interest are due as established by paragraph 5 of Mr. Christopher's affidavit. Liquidated damages are owed in the amount of \$259.34 with respect to the April 2005 through March 2006 audit report. With respect to the April 2006 through November 2008 report, liquidated damages are owed in a total amount of \$4,445.09, which consists of \$174.82 in ten percent penalties, and \$4,270.27 in twenty percent penalties. Interest is also owed at the rate of prime plus two percent as charged by Chase Bank on all delinquent amounts owed from the date of the delinquency on forward. In this matter both reports reflect interest in the amount of \$441.85 through March 4, 2009.

6. This Company has past due penalties in the amount of \$1,945.13, and audit fees in

the amount of \$600.00 for the Richard J. Wolf report and \$842.83 for the Levinson, Simon & Sprung report.

7. Reasonable attorneys' fees and costs are established by an affidavit of Karen I. Engelhardt, plaintiffs' counsel, in the amount of \$2,432.50 attorney's fees and \$485.00 in costs consisting of service fees and filing fees. (Exhibit B.)

Wherefore, plaintiffs drafted a proposed judgment order for a total judgment against in the amount of \$37,144.59, an order for a surety bond and an order requiring the Company to report and pay contributions for the period from December 2008 through the present.

Respectfully submitted,

/s/Karen I. Engelhardt
One of plaintiffs' attorneys

Wesley G. Kennedy
Karen I. Engelhardt
Angie Cowan
Josiah Groff
Allison, Slutsky & Kennedy, P.C.,
230 W. Monroe Street Suite 2600
Chicago, IL 60606
(312) 364-9400

March 13, 2009