

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

| | | |
|------------------------------|---|----------------------|
| TERRENCE J. HANCOCK, et al., |) | |
| |) | |
| Plaintiffs, |) | CIVIL ACTION |
| |) | |
| vs. |) | NO. 09 C 0225 |
| |) | |
| ARMATO PAVING, INC., |) | JUDGE JOHN W. DARRAH |
| an Illinois corporation, |) | |
| |) | |
| Defendant. |) | |

MOTION FOR ENTRY OF JUDGMENT

Plaintiffs, by and through their attorneys, default having been entered against the Defendant on September 9, 2009, request this Court enter judgment against Defendant, ARMATO PAVING, INC., an Illinois corporation. In support of that Motion, Plaintiffs state:

1. On September 9, 2009, this Court entered default against Defendant and granted Plaintiffs' request for an order directing Defendant to turn over its monthly fringe benefit contribution reports for June 2009 forward.

2. On October 26, 2009, Plaintiffs received Defendant's monthly fringe benefit contribution reports for June 2009 through August 2009 and the fringe benefit contributions due thereon for June 2009, July 2009 and a partial payment towards the August 2009 fringe benefit contributions. A balance of \$790.12 remains due to the Welfare Fund and \$637.77 to the Pension Fund for August 2009. Unfortunately, said reports were untimely submitted to Plaintiffs, and therefore, Defendant has incurred liquidated damages for said time period.

3. On February 19, 2009, Defendant submitted its monthly fringe benefit contribution reports for October 2008 and November 2008 without the payment of the fringe benefit

contributions due thereon. Accordingly, Defendant is delinquent in contributions to the Welfare Fund in the amount of \$10,716.00 and to the Pension Fund in the amount of \$8,652.00, for a total of \$19,368.00. (See Affidavit of Terrence J. Hancock).

4. Defendant untimely submitted its fringe benefit contribution reports and the fringe benefit contributions due thereon for June 2008 through November 2008 and June 2009 through August 2009. Therefore, Plaintiffs have assessed twenty (20%) percent liquidated damages and interest calculated through October 20, 2009 pursuant to the Interest Rate Table, see, Rev. Rul. 2008-54, against the Defendant for the stated time period as follows:

| <u>Fund</u> | <u>Liquidated Damages</u> | <u>Interest</u> |
|-------------|---------------------------|-----------------|
| Welfare | \$7,448.63 | \$8,253.75 |
| Pension | \$6,014.08 | \$6,516.43 |

(Hancock Aff. Par. 11).

5. Further, on December 4, 2007, Plaintiffs' counsel sent Defendant a letter confirming Plaintiffs would waive liquidated damages, attorneys' fees, costs and audit fees if Defendant remained current in its submission of reports and contributions for a 12-month period. Defendant never acknowledged its agreement to the terms of the waiver by executing the bottom of the December 4, 2007 letter and returning said letter to Plaintiffs' counsel. Defendant also failed to remain current in its submission of reports and contributions for the 12-month period. Accordingly, Defendant owes \$1,837.80 to the Welfare Fund and \$1,510.32 to the Pension Fund, for a total of \$3,348.12. (Hancock Aff. Par. 12).

6. In addition, Plaintiffs' firm has expended \$435.00 in costs and \$5,420.00 in attorneys' fees, for a total of \$5,855.00, in the instant litigation. (See Affidavit of Catherine M. Chapman).

7. Based upon the documents attached hereto, Plaintiffs request entry of judgment in the total amount of \$56,804.01.

WHEREFORE, Plaintiffs respectfully request this Court to enter judgment in the amount of \$56,804.01.

/s/ Cecilia M. Scanlon

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that she electronically filed the foregoing document (Motion) with the Clerk of Court using the CM/ECF system, and further certifies that I have mailed the above-referenced documents by United States Mail to the following non-CM/ECF participant on or before the hour of 5:00 p.m. this 12th day of November 2009:

Mr. Dean Armato, Registered Agent/Secretary
Armato Paving, Inc.
19800 Glenwood Road
Chicago Heights, IL 60411

/s/ Cecilia M. Scanlon

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