

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

**PLAINTIFFS' MOTION TO REOPEN CASE AND FOR
ENTRY OF JUDGMENT AGAINST DEFENDANTS**

NOW COME Plaintiffs, CARPENTERS FRINGE BENEFIT FUNDS OF ILLINOIS, *et al.*, by their attorneys, and move the Court for the entry of an order reopening this action and entering judgment against Defendants. In support of the Motion, Plaintiffs state as follows:

1. This action was originally brought by the Plaintiffs, the Trustees of the jointly-administered, labor-management employee benefit plans collectively known as the Carpenters Fringe Benefit Funds of Illinois, alleging, *inter alia*, that Defendant breached its obligations under the terms of the collective bargaining agreement entered into with the Carpenters Union Local 790 and the Agreements and Declarations of Trust under which the Plaintiff Funds are maintained.

2. Specifically, Plaintiffs allege that Defendant failed to submit amounts due pursuant to an audit of Defendants' payroll books and records for the time period July 1, 2006 through May 31, 2008 and failed to remit payment of liquidated damages incurred for the late payment of fringe benefit contributions due for work performed on its behalf by beneficiaries of the Plaintiff Funds.

The Complaint was brought pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1132, 1145.

3. On September 23, 2009, Plaintiffs' oral motion for entry of default was granted and this case was set for prove-up on October 29, 2009.

4. On October 29, 2009, Plaintiffs' counsel reported to the Court that the parties reached an agreement. Accordingly, the Court scheduled a status hearing for January 13, 2010.

5. On January 13, 2010, a status hearing was held and the Court entered default against the Defendants and set the matter for prove-up on January 26, 2010.

6. On January 19, 2010, Plaintiffs' filed its motion for entry of judgment for Defendants' failure to submit all amounts due pursuant to the Promissory Notes executed on February 20, 2009 for the repayment of the audit amounts due and amounts due for subsequently submitted monthly fringe benefit contribution reports. The motion was scheduled to be heard by the Court on January 26, 2010.

7. On January 26, 2010, Plaintiffs' counsel notified the Court that Defendant submitted all missing monthly installment payments due pursuant to the Promissory Notes executed on February 20, 2009. Accordingly, Plaintiffs' oral motion to voluntarily dismiss this action without prejudice and with leave to move for reinstatement within 45 days was granted.

8. As of the date of filing the instant motion, Defendants failed to submit the February 16, 2010 installment payment of \$2,380.07 due and the March 16, 2010 installment payment of \$2,380.07 will be due at the time of presentment of the instant motion. In addition, Defendant, Weaver Construction, Inc., failed to submit its monthly fringe benefit contribution reports due for the months of January and February 2010.

9. For all the reasons stated, the Plaintiffs hereby move the Court for the entry of an Order reopening this action and for entry of judgment against the Defendants. Specifically, Plaintiffs request:

- A. That judgment be entered in favor of Plaintiffs and against Defendants to include the amount of \$16,660.49 representing the amount remaining due pursuant to the Promissory Note executed on February 20, 2009 for the repayment of the audit amounts due.
- B. That judgment be entered in favor of Plaintiffs and against Defendants to include \$4,338.75 in attorneys' fees and \$520.00 in costs incurred by the Plaintiffs in this matter.
- C. That Plaintiffs have such further relief as may be deemed just and equitable by the Court.

/s/ Jennifer L. Dunitz-Geiringer

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that she electronically filed the foregoing document (Motion to Reopen Case and for Entry of Judgment Against Defendants) with the Clerk of Court using the CM/ECF system, and further certifies that I have mailed the above-referenced document by United States Mail to the following non-CM/ECF participants on or before the hour of 5:00 p.m. this 11th day of March 2010:

Mr. Todd Weaver, Registered Agent/President
Weaver Construction, Inc.
1853 Dovetail Point
Sycamore, IL 60178

Mr. Todd Weaver
1853 Dovetail Point
Sycamore, IL 60178

/s/ Jennifer L. Dunitz-Geiringer

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