

IN THE UNITED STATES DISTRICT COURT
FOR THE 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, and JAMES S.
JORGENSEN, Administrator of the Funds

Plaintiffs,

v.

LATIN PAVERS, INC.,

Defendant.

Case No. 12 C 0071

Honorable Joan B. Gottschall

AFFIDAVIT OF JAMES FOSCO

STATE OF ILLINOIS)

COUNTY OF COOK)

James Fosco, being first duly sworn on oath, deposes and states as follows:

1. I am a Field Representative of the Field Department, employed by 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 "Funds"), the plaintiffs in the above referenced action. My responsibilities include oversight of collection of amounts owed by Latin Pavers, Inc. (the "Company"), which has been a signatory employer since September 13, 2001. A copy of the Company's Collective Bargaining Agreement was attached to the Complaint in the above captioned lawsuit. This affidavit is submitted in support of the Funds' motion for damages against the Company.

2. The Funds' auditors of the firm of Richard J. Wolf & Company, Inc., reviewed the

Exhibit 1

Company's records for the audit period covering November 1, 2009 through December 31, 2011. The auditors' findings are reflected in its report, dated April 27, 2012. This report shows principal contributions owed to the Welfare, Pension, Training, LMDC, WGC, LECET funds and for Union dues in the total amount of \$49,102.55.

3. A copy of the audit report was sent to the Company with a letter demanding payment for the audit findings. Subsequently, the Company presented objections to the audit findings, and, after due consideration and a review of additional information, the Funds agreed to revise down the audit. The revised audit is attached to the plaintiffs' motion as Exhibit 2 and shows the principal contributions owed to the Welfare, Pension, Training, LMDC, WGC, LECET funds and for Union dues in the total amount of \$22,423.92.

4. Based on the revised audit, I prepared a summary report which is attached hereto as Exhibit 1A, reflecting the principal contributions, union dues, liquidated damages and audit costs that the Company owes pursuant to its Collective Bargaining Agreement and the respective Trust Agreements. According to these Agreements, the Funds are entitled to liquidated damages at the rate of twenty (20) percent of the amount owed in principal contributions to the Pension, Welfare, Training funds, and at the rate of ten (10) percent of the amount owed in principal contributions to the LMDC, WGC and LECET funds and for Union dues. Thus, \$4,233.64 is owed for liquidated damages due to the principal contributions to the Pension, Welfare, and Training funds, and \$125.56 is owed for liquidated damages due to amounts owed to the LMDC, WGC, and LECET funds and for Union dues.

5. The Funds are also entitled pursuant to its Collective Bargaining Agreement and the respective Trust Agreements to the amount of twelve (12) percent accumulated interest for all amounts owed by the Company to date. I have calculated the accumulated interest owed by the

Company through July 31, 2013, and entered the amount of \$5,495.97 owed for accumulated interest into my summary reports as well.

6. Additionally, at the time, the Funds filed this lawsuit the Company ceased submitting payments on a prior note. The note payment schedule is attached hereto as Exhibit 1B, and shows that \$4,694.24 is owed from the Company's prior note delinquency. This amount is also listed on my summary report.

7. The Company has ceased operating, but should it resume operations in the future, the Funds reserve the right to audit the as yet unaudited period from January 1, 2012 in accordance with its Collective Bargaining Agreement and the respective Trust Agreements, and at the direction of the Funds' trustees in regard to collection matters. The Funds may also file a new lawsuit if necessary to collect any additional outstanding amounts owed by the Company.

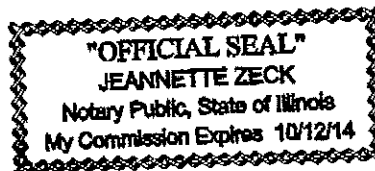
8. The Company is further obligated pursuant to its Agreements for the audit costs in the amount of \$900.00, as well as responsible by law for the reasonable attorneys' fees and court costs incurred by the Funds in obtaining judgment in this matter.

FURTHER AFFIANT SAYETH NOT.


James Bosco, Field Representative

Subscribed and sworn to before me
this 1st day of August, 2013


NOTARY PUBLIC



LABORERS' PENSION & WELFARE FUNDS

8/1/2013

RE-DONE WOLF AUDIT, REVISED

EMPLOYER LATIN PAVERS, INC.

CODE 22780

FOLLOWING ARE THE FIGURES OWED BY THE ABOVE MENTIONED CONTRACTOR AS A RESULT OF THE AUDIT.

11-1-09 - 12-31-11 ADDITIONAL HOURS	HOURS	WELFARE	RATE	PENSION	RATE	TRAINING		DUES	IDC/MCC	RATE	WGC	RATE	LECET	RATE	TOTAL
						FUND	RATE								
<u>SUBS:</u>															
6-1-10 - 5-31-11	277.27	2,947.38	10.63	2,376.20	8.57	124.77	0.45	268.40	33.27	0.12	22.18	0.08	19.41	0.07	5,791.61
6-1-11 - 12-31-11	712.00	8,672.16	12.18	6,279.84	8.82	320.40	0.45	689.22	85.44	0.12	56.96	0.08	49.84	0.07	16,153.86
<u>MEN NOT REPORTED:</u>															
11-1-09 - 5-31-10	25.00	228.25	9.13	209.25	8.37	10.00	0.40	24.20	3.00	0.12	2.00	0.08	1.75	0.07	478.45
<u>SUBTOTAL</u>															
	1,014.27	11,847.79		8,865.29		455.17		981.82	121.71		81.14		71.00		22,423.92
10% PENALTIES								98.18	12.17		8.11		7.10		125.56
20% PENALTIES						91.03									4,233.65
AUDIT COSTS		450.00		450.00											900.00
ATTORNEY FEES															
UNPAID PRIOR NOTE PMTS.		2,842.08		1,852.16											4,694.24
ACCUM. INTEREST		3,012.26		2,294.37		118.13			31.65		21.10		18.46		5,495.97
TOTAL DUE		20,521.69		15,234.88		664.33		1,080.00	165.53		110.35		96.56		37,873.34

Exhibit 1 A

PAYMENT PLAN WORKSHEET

Exhibit 1 B

3/19/2012

COMPANY LATIN PAVERS, INC.

CODE 22780

PHONE# (815)730-8826

CONTACT PERSON MARTHA

NUMBER OF PAYMENTS 24

FIELD REP JF

PAYMENT PLAN COVERS THE MONTHS OF NOTE LATE FEES FROM PRIOR NOTE

TOTAL WELFARE & PENSIO 7,041.21

LESS 20% DOWN

EQUALS AMOUNT FINANCE 7,041.21

PLUS ATTORNEY COSTS

PLUS AUDIT COSTS

PLUS NOTE INTEREST

7,041.36

WELFARE PAYMENT

177.63

145.76

293.39

24

7,041.36

TOTAL W & P

7,041.36

20%

ITEM	DESCRIPTION	DATE	AMOUNT	PAID	CHECKS	DATE	BALANCE	ENTER	20% LATE
1	7/1/11	177.63	177.63	2587.1	8/15/11	145.76	2587.1	8/15/11	6,747.97
2	8/1/11	177.63	177.63	2587.2	8/15/11	145.76	2587.2	8/15/11	6,454.58
3	9/1/11	177.63	177.63	2589.0	9/1/11	145.76	2589.0	9/1/11	6,161.19
4	10/1/11	177.63	177.63	2593.4	9/22/11	145.76	2593.4	9/22/11	5,867.80
5	11/1/11	177.63	177.63	2598.7	10/21/11	145.76	2598.7	10/21/11	5,574.41
6	12/1/11	177.63	177.63	2610.0	1/6/12	145.76	2610.0	1/6/12	5,281.02
7	1/1/12	177.63	177.63	2610.1	1/6/12	145.76	2610.1	1/6/12	4,987.63
8	2/1/12	177.63	177.63	2617.1	2/21/12	145.76	2617.1	2/21/12	4,694.24
9	3/1/12	177.63	177.63						4,394.24
10	4/1/12	177.63	177.63						4,094.24
11	5/1/12	177.63	177.63						3,794.24
12	6/1/12	177.63	177.63						3,494.24
13	7/1/12	177.63	177.63						3,194.24
14	8/1/12	177.63	177.63						2,894.24
15	9/1/12	177.63	177.63						2,594.24
16	10/1/12	177.63	177.63						2,294.24
17	11/1/12	177.63	177.63						1,994.24
18	12/1/12	177.63	177.63						1,694.24
19	1/1/13	177.63	177.63						1,394.24
20	2/1/13	177.63	177.63						1,094.24
21	3/1/13	177.63	177.63						794.24
22	4/1/13	177.63	177.63						494.24
23	5/1/13	177.63	177.63						194.24
24	6/1/13	177.63	177.63						94.24
TOTALS	7,041.36	4,263.12	1,421.04	2,778.24	926.08				4,694.24