

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 CATHERINE)
WENSKUS, Assistant Administrator of the)
Funds.)
Plaintiffs,)
v.)
PAN AMERICAN CONCRETE COMPANY,)
Defendant.)

Case No. 17 C 3156
Judge John Z. Lee

PLAINTIFFS' MOTION FOR JUDGMENT ORDER

Plaintiffs, Laborers' Pension Fund and the Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity (the "Funds"), and Catherine Wenskus, Administrator of the Funds, move this Court to enter judgment against Pan American Concrete Company. In support of this motion the Funds state as follows:

1. On March 26, 2018, the Funds filed a Motion for Summary Judgment, a Memorandum in Support thereof, Statement of Material Facts Pursuant to Rule 56.1(a), Affidavits and Exhibits in accordance with Rule 56 of the F. R. of C. P., and the Court's local rules (Dk# 41-44).¹ Defendant asked this Court to extend its date to Respond several times, and after attempting settlement, on July 9, 2018, (Dk # 58), the Court ordered Defendant to file a Response to Plaintiffs' motion by August 13, 2018. No Response has been filed.

¹ Plaintiffs are seeking judgment under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., for \$513,691.41, which includes principal contributions, damages, interest, and audit fees. A request is made for leave to file a petition for attorneys' fees and costs.

2. On August 14, 2018, Defendant’s counsel from the firm of DiMonte & Lizak moved to withdraw their appearances on behalf of the Defendant. Plaintiffs’ counsel has informed the Court that postponing judgment against the Defendant is detrimental to the Funds’ interests. Defendant’s counsel informed the Court that the Defendant is no longer operating and its assets are being sold under the control of its secured creditors, and that the Defendant will no longer contest entry of judgment.

3. Plaintiffs are seeking judgment for principal contributions based on an audit covering the period from July 1, 2015 through March 31, 2017, as follows:

Principal audit contributions	
July 1, 2015-March 31, 2017	\$ 79,618.95
Penalties	\$ 15,774.58
Audit costs	\$ 2,696.91
Accumulated penalties	\$ 91,544.18
Interest.....	\$ 7,540.12
Total.....	\$ 197,174.74

In addition, the Funds are seeking judgment for amounts owed from May 2017 through November 2017, which amounts were determined from the Company’s reporting information as follows:

Principal contributions	
May 2017-November, 2017	\$ 253,562.90
Penalties	\$ 50,002.34
Interest.....	\$ 12,951.33
Total.....	\$ 316,516.67

Plaintiffs are entitled to judgment for principal, liquidated damages, audit costs, interest and accumulated penalties in the amount of \$513,691.41. (See, Affidavit by Michael Christopher, Exhibit 1, attached hereto which was presented to the Court in the Funds motion for summary

judgment. Also attached are Exhs. 8 and 9, spreadsheets reflecting amounts owed as provided in Christopher's affidavit).

4. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs under ERISA, 29 U.S.C. § 1132(g)(2)(D), to enforce payment of contributions under ERISA, 29 U.S.C. § 1145, where a judgment is entered in favor of the plan. In addition, the parties' Joint Agreement provides, in Article VIII, paragraph 4:

...[I]n the event the Trustees place the account in the hands of legal counsel for collection, the delinquent Employer shall be liability for reasonable attorneys' fees and for all reasonable costs incurred in the collection process including court fees, audit fees, etc.

Reasonable attorneys' fees shall mean: All reasonable attorneys' fees in the amounts for which the Trustees become legally bound to pay, including recovery of liquidated damages, interest, audit costs, filing fees and any other expenses incurred by the Trustees.

Attorneys' fees are awarded where a judgment is entered on behalf of the Funds pursuant to ERISA, 29 U.S.C. § 1132(g)(2), and pursuant to the terms of the collective bargaining agreements and Trust Agreements. In this case, reasonable attorneys' fees and costs are established by an affidavit of Karen I. Engelhardt, plaintiffs' counsel. This affidavit reflects that based on hourly records the amount of \$ 26,233.00 is owed to the Funds' for its counsel's attorney's fees and \$ 469.00 is owed to the Funds to reimburse its costs, consisting of filing and service fees. (Exhibit 2, Affidavit of Karen I. Engelhardt).

Wherefore, Plaintiffs request judgment entered against Pan American Concrete Company, Inc., in the total amount of \$ 540,393.31. A draft order has been filed.

Respectfully submitted,

Karen I. Engelhardt
One of Plaintiffs' attorneys

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