

**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.

**HARMON MOTOR SERVICES & )  
CONSTRUCTION, INC., )  
Defendant. )**

**Case No. 17 C 3921**

**Honorable Harry D. Leinenweber**

**AFFIDAVIT OF ROCCO MARCELLO**

STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

Rocco Marcello being first duly sworn on oath, deposes and states as follows:

1. I am a 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 "Laborers' Funds"), the Plaintiffs in the above referenced action. My responsibilities include oversight of the collection of amounts owed by Harmon Motor Services & Construction, Inc. (the "Company"). This affidavit is submitted in support of the Laborers' Funds' motion for prove up of damages.

2. The Company has been a signatory employer since September 8, 2012, as reflected by the Laborers' Funds' records and as is shown in the collective bargaining agreement that was attached to the Complaint as Exhibit A, which is a true and correct copy of the agreement between

the Company and the Construction and General Laborers' District Council of Chicago and Vicinity and its affiliated local ("Union"), on file with the Laborers' Funds.

3. The Company submitted its books and records to the Funds' designated auditors from the firm of Richard J. Wolf & Company, Inc. ("Wolf"), who prepared an audit report reflecting unpaid contributions owed for the period from September 8, 2012 through August 31, 2013. The report showed principal contributions owed to the Welfare, Pension, Training, CAICA, LDCLMCC and LECET funds, and for Union dues in the total amount of \$1,761.66. The audit also showed that the Company was unable to show proof of the contractual bond requirements. A copy of the Wolf audit report is attached to Plaintiffs' motion for prove up damages as Exhibit A.

4. The Company also submitted its books and records to the Laborers' Funds' designated auditors from the firm of Legacy Professionals, LLP ("Legacy"), who prepared an audit report reflecting unpaid contributions owed for the period from September 1, 2013 through March 31, 2016. The report showed principal contributions owed to the Welfare, Pension, Training, CAICA, LDCLMCC and LECET funds, and for Union dues in the total amount of \$15,585.43. A copy of the audit report is attached to Plaintiffs' motion for prove up damages as Exhibit B.

5. The respective Agreements and Declarations of Trust of the Laborers Funds, to which the Company, is bound, require payment of liquidated damages in the amount of 20 percent of the principal amount of delinquent contributions to the Welfare, Pension, and Training funds. Therefore, liquidated damages are owed in the amount of \$330.04 pursuant to the Wolf audit report, and \$2,923.28 pursuant to the Legacy audit report based on the Company's delinquent contributions to those funds. The same agreements establish that liquidated damages are due in the amount of 10 percent of the principal amount of delinquent contributions to the LDCLMCC, CAICA and LECET funds, and for Union dues. Therefore, liquidated damages are owed in the amount of \$11.15 per the

Wolf audit and \$96.90 per the Legacy audit based on the delinquent contributions to those funds and Union dues. Interest is owed at the rate of 12 percent on all delinquent amounts owed from the date of the delinquency forward. Thus, the amount of \$181.94 in interest is owed pursuant to the Wolf audit and \$5,555.01 pursuant to the Legacy audit. The specific basis for these amounts are detailed in my Summary Reports as to the respective findings of the Wolf and Legacy audits. (See Exhibit C1 and C2 attached to Plaintiffs' motion for prove up damages).

6. Audit costs for the work performed by Wolf, charged to the Laborers' Funds in this matter are \$600.00, as shown in Wolf's audit report (See Exhibit A attached to Plaintiffs' motion for prove up damages) and \$2,501.28, as shown in Legacy's audit report (See Exhibit B attached to Plaintiffs' motion for prove up damages). The respective Agreements and Declarations of Trust of the Laborers' Funds, to which the Company is bound, require that it pay those audit costs.

7. As required by Article IX , paragraph 1 of the collective bargaining agreement, all employers are required to procure, carry and maintain a surety bond in an amount that is satisfactory to the Union. This bond must be in excess of \$5,000.00 to guarantee the payment of wages, Pension and Welfare Trust Contributions during the term of the Agreement. The Company failed to show proof that it has obtained such a bond.



Rocco Marcello  
Field Department Representative

Subscribed and sworn to before me  
this 8 day of January 2018

  
NOTARY PUBLIC



