

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WILLIAM K. DUFFY, KENNETH HUBER, PHILLIP
CAPOBIANCO, JOHN DUFFY, PAUL O'BRIEN, MARC
HERBST, JAMES HANEY, JR., JAMES PRATT, III,
SCOTT ADRIAN and ROBERT AHEARN as Trustees of
LOCAL 138, 138A & 138B, INTERNATIONAL UNION
OF OPERATING ENGINEERS WELFARE FUND,
LEGAL FUND, APPRENTICESHIP TRAINING FUND,
and ANNUITY FUND, MICHAEL FANNING as CEO of
the CENTRAL PENSION FUND,

Plaintiffs,

-against-

EAST PORT EXCAVATION & UTILITIES
CONTRACTORS, INC., EASTPORT MANOR
CONSTRUCTION, INC. and STEVEN GOVERNALE,

Defendants.
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~~PROPOSED~~ JUDGMENT

**Case No. 07-CV-0217
(DRH)(ARL)**

This action having been commenced on January 17, 2010 by the filing of the Complaint and issuance of a Summons, and copies of the Summons and Complaint having been served upon defendant pursuant to Rule 4(h)(1) of the Federal Rules of Civil Procedure; a non-jury trial was held on June 6, 7, and 20, 2011; pursuant to an Memorandum and Order dated September 19, 2013, issued by the Honorable Judge Denis R. Hurley directing Plaintiffs to submit a proposed Judgment, upon notice;

NOW, on motion of Archer, Byington, Glennon & Levine, LLP, attorneys for the plaintiffs, and upon the proceedings herein, it is

ORDERED, ADJUDGED AND DECREED, that plaintiffs WILLIAM K. DUFFY, KENNETH HUBER, PHILLIPLIP CAPOBIANCO, JOHN DUFFY, PAUL O'BRIEN, MARC HERBST, JAMES HANEY, JR., JAMES PRATT, III, SCOTT ADRIAN and ROBERT AHEARN

as Trustees of LOCAL 138, 138A & 138B, INTERNATIONAL UNION OF OPERATING ENGINEERS WELFARE FUND, LEGAL FUND, APPRENTICESHIP TRAINING FUND, and ANNUITY FUND, MICHAEL FANNING as CEO of the CENTRAL PENSION FUND, (the "FUNDS") have judgment, jointly and severally, against defendants, EAST PORT EXCAVATION & UTILITIES CONTRACTORS, INC., EASTPORT MANOR CONSTRUCTION, INC., and STEVEN GOVERNALE., having their place of business at 601 Portion Road, Suite 216, Ronkonkoma, New York, 11779, that plaintiffs are hereby awarded judgment against defendants for delinquent fringe benefit contributions due and owing pursuant to an audit on defendants' books and records for the period of June 1, 2000 to December 31, 2005, in the sum of \$133,734.66 plus interest in the amount of \$71,417.70 through September 19, 2013 on the unpaid contributions, totaling \$205,152.35; plus liquidated damages in a sum equal to interest calculated of the unpaid contributions as provided in § 502(g)(2)(C) of ERISA, 29 U.S.C. § 1132(g)(2)(C), totaling \$71,417.70; plus the costs and disbursements of the action, audit costs, and reasonable attorneys' fees, as demanded in the Complaint and as provided in § 502(g)(2)(D) of ERISA, 29 U.S.C. § 1132(g)(2)(D), amounting to \$39,52⁷1.00 in attorney's fees, \$24,165.33 in audit fees, and \$2,444.22 in costs, respectively, and amounting in all as of September 19, 2013 in the amount of \$342,70⁶1.60, plus additional per diem interest and liquidated damages from September 19, 2013, until date of entry of judgment in the amount of \$19.02 and that plaintiffs have execution therefore.

Dated: Central Islip, New York

U.S.D.J.

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