

MAR 20 2007 *deem*

ORIGINAL

JAMES N. HATTEN, Clerk
By: *[Signature]* Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

ATLANTA DIVISION

MAY 11 2007

ELAINE L. CHAO,
Secretary of Labor,
U.S. Department of Labor,

Plaintiff,

vs.

MANUFACTURING AND INDUSTRIAL WORKERS
UNION BENEFIT FUND, WILLIAM HOPE,
ROBBY LARKIN, GARY COUCH, ROGER GUE,
AND PAMELA BARLOW,

Defendants.

JAMES N. HATTEN, Clerk
By: *[Signature]* Deputy Clerk

FILE NO.

1-07-CV-0654

JEC

CONSENT JUDGMENT AND ORDER

This action was brought by Plaintiff, ELAINE L. CHAO, Secretary of the United States Department of Labor (the "Secretary"), against Defendants Hope, Larkin, Couch, Gue and Barlow, ("the Settling Defendants"), pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et. seq. ("ERISA"). The Secretary's Complaint alleged that the Settling Defendants created the Manufacturing and Industrial Workers Union

Benefit Fund ("MIWU Fund") solely as a mechanism to dump International Union of Public and Industrial Workers Canadian Benefit Fund ("IUPIW Fund") liabilities or, alternatively, knew or should have known that the MIWU Fund was not a financially viable fund and was established solely to accept IUPIW Fund liabilities which it could not pay due to Defendants' imprudent financial management of the IUPIW Fund. The Settling Defendants admit that this Court has jurisdiction to adjudicate this action. The Secretary and the Settling Defendants expressly waive Findings of Fact and Conclusions of Law and consent to the entry of this Consent Judgment as a full and complete resolution of all of the civil claims and issues raised against the Settling Defendants in the complaint without trial or adjudication of any issue of fact or law.

It is therefore, upon joint motion and for good cause shown, ORDERED ADJUDGED AND DECREED that:

1. The Settling Defendants admit that, as alleged in the Secretary's Complaint, they violated ERISA when they transferred unadjudicated benefit claims from the IUPIW Fund to the MIWU Fund on or about January 2005. No

restitution is to be paid under this Consent Judgment; however, the amounts to be paid by the Settling Defendants to the IUPIW Fund under the Consent Judgment and Order in Civ. No. 05-CV-3053-BBM (the "CBF Judgment") shall be used to pay the expenses of both Funds and unpaid claims of the participants and beneficiaries of both the IUPIW and MIWU Funds, the majority of whom are the same persons.

2. The Parties consent to the appointment of Betty Cordial as the Independent Fiduciary of the MIWU Fund.

- a. The Independent Fiduciary is hereby directed to terminate the MIWU Fund and to collect, marshal, and administer the assets of the MIWU Fund, including those sums owing and payable to it, process the MIWU Fund's unadjudicated claims and pay those which are found to be legitimate pursuant to the terms of the applicable plan documents, identify all creditors of the MIWU Fund and the amount of their claims, and take such further actions with respect to the MIWU Fund as she may determine are appropriate; provided, however, that the Independent Fiduciary shall not pursue any ERISA claims settled hereunder against

the Settling Defendants. The Independent Fiduciary is also authorized to exercise full authority and control with respect to the management or disposition of the assets of the MIWU Fund, including authority over all bank accounts.

- b. For the reasons stated in paragraph 1, above, the Independent Fiduciary's fees shall be paid from the IUPIW Fund's assets. Prior to obtaining payment for services and expenses authorized pursuant to this consent judgment, the Independent Fiduciary shall present to the court an itemized fee application, including hourly rates of pay, and dates and hours of work, accompanied by a description of work performed, as well as an itemized statement of expenses. The Independent Fiduciary shall provide to the Secretary of Labor at the address below a copy of said fee application when it is filed with the court. Absent objection from the Secretary within fifteen business days, the fee application shall be deemed approved. If the Secretary objects, the court will decide whether the Independent

Fiduciary's request should be granted.

- c. The Independent Fiduciary shall send her fee application to the Secretary at the following address:

Billy Beaver, EBSA Regional Director
U.S. Department of Labor
1055 E. Colorado Blvd.
Suite 200
Pasadena, CA 91106

3. All hospitals, physicians, pharmacists, therapists, laboratories and other health care or service providers ("Providers"), including their agents, employees, representatives, and assigns are hereby enjoined from commencing or continuing any judicial, administrative, enforcement, collection or other proceeding, asserting any lien, providing negative reports to any credit rating or credit rating reporting entity, and threatening to take any such action against the MIWU Fund or any participant, beneficiary, or insured covered or intended to be covered by the MIWU Fund.
4. The Settling Defendants and any entities they own or control are permanently enjoined from: a) serving or acting, directly or indirectly, for compensation or

otherwise, as a trustee, fiduciary, service provider, agent, consultant or representative with respect to any employee benefit plan subject to ERISA; b) exercising any discretionary authority or control, directly or indirectly, with respect to the management or administration of any fund, or any other plan or arrangement offering employee benefits covered by ERISA; c) occupying any position that involves, directly or indirectly, decision making authority with respect to, or custody or control of, the assets or administration of any employee benefit plan subject to ERISA; d) communicating with current or former IUPIW Fund or MIWU Fund participants or the people or entities listed on Exhibit 1, attached hereto, about the creation of, or transfer to, any fund subject to ERISA; and e) providing any services to the MIWU Fund except as may be directed by the Independent Fiduciary. For the purposes of this paragraph, the International Union of Petroleum and Industrial Workers, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("USW"), the International Union of Petroleum and Industrial Workers

401(k) Plan, the International Union of Petroleum and Industrial Workers Retirement Plan, and the International Union of Petroleum Workers Staff Retirement Plan shall not be deemed to be entities owned or controlled by the Settling Defendants solely as a result of Defendant Barlow's position as an officer of the International Union of Petroleum and Industrial Workers or the USW. However, Defendants shall not use these entities to communicate with current or former IUPIW Fund or MIWU Fund participants or the people or entities listed on Exhibit 1, attached hereto, about the creation of, or transfer to, any fund subject to ERISA.

5. The Settling Defendants, directly or indirectly, personally or through or with an agent, affiliate, partnership, entity or individual, are enjoined from marketing, selling participation in, or recruiting employers or employees for any employee benefit plan or any other arrangement offering employee benefits covered by ERISA. However, nothing in this Consent Judgment is intended to preclude any Settling Defendant from serving in any representative capacity for a legitimate labor

organization covered by the National Labor Relations Act (NLRA), subject to the prohibitions set forth in this Judgment. In such capacity, the Settling Defendants may negotiate collective bargaining agreements, as defined in 29 C.F.R. §2510.3-40, with bona fide employers on behalf of a legitimate labor organization covered by the NLRA. If the Settling Defendants negotiate collective bargaining agreements, as described above, which provide for benefits under ERISA-covered plans, the Settling Defendants shall provide a copy of the CBF Judgment to all employers and to all service providers, including health insurance providers, to the ERISA-covered plans and shall obtain a written acknowledgement from these entities that they have received the CBF Judgment. If the collective bargaining agreements do not provide for ERISA-covered benefits at the time of the Settling Defendants' collective bargaining activities, but are later amended to so provide, then the Settling Defendants shall provide a copy of the CBF Judgment to the above-mentioned entities within 5 days of the amendment. The Settling Defendants shall not negotiate collective bargaining agreements which provide benefits

through multiple employer welfare arrangements, as defined in ERISA § 3(40), 29 U.S.C. §1002(40), or self-funded welfare arrangements covered by ERISA.

6. The Independent Fiduciary shall provide a copy of this Consent Judgment to the MIWU Fund's presently employed professionals and service providers within ten (10) days after the entry of the Consent Judgment. The Independent Fiduciary shall provide a copy of the Consent Judgment to each newly hired professional or service provider and, as a prerequisite for retaining the professional or service provider performing services for the MIWU Fund, shall obtain a written acknowledgement from such person or entity that the professional or service provider has read the Consent Judgment. The Independent Fiduciary shall obtain written acknowledgements from newly hired professionals or service providers that they have received copies of the Consent Judgment. The Independent Fiduciary may not appoint or hire any person or any entity directly or indirectly related to the Settling Defendants, any current or former IUPIW Fund or MIWU Fund service provider (other than Greentree Administrators) or employer association that

has been or is covered by the IUPIW Fund or MIWU Fund, including but not limited to, the people or entities listed on Exhibit 1, attached hereto.

7. The Independent Fiduciary shall provide a copy of this Consent Judgment to the MIWU Fund's participants within 30 days after its entry by the Court. Alternatively, the Independent Fiduciary may issue letters to the Fund participants directing them to an internet site containing a copy of the Consent Judgment.

8. The Settling Defendants shall cooperate fully with the Independent Fiduciary in her efforts to administer the MIWU Fund by:

- a. Providing reasonable and necessary assistance to the Independent Fiduciary, when asked, concerning questions pertaining to the operation of the MIWU Fund and other issues necessary to administer the MIWU Fund and recover any losses of the MIWU Fund;
- b. Making available to the Independent Fiduciary all books, records, bank accounts, electronic hardware and software, data files, and any indicia of ownership of the MIWU Fund's assets; and

c. Making available to the Independent Fiduciary documents of every nature relating in any manner to the MIWU Fund's management and operation.

9. The Settling Defendants shall provide reasonable cooperation in any subsequent U.S. Department of Labor enforcement efforts arising out of or related to the subject matter of this consent judgment and enforcement efforts respecting Manufacturing and Industrial Workers Union Benefit Fund, Contractors and Merchants Association/Progressive Health Alliance and their principals, including consensual appearances at depositions and/or trial. In the event the Settling Defendants are required to appear or testify more than one hundred miles from their residence or are required to stay overnight, Defendants will be reimbursed the reasonable and necessary expenses incurred in traveling to and from and staying at the location designated for their appearance or testimony.

10. The MIWU Fund and each Defendant hereby releases the Secretary and her officers, agents, attorneys, employees, and representatives, both in their individual and governmental capacities, from all actions, claims and

demands of whatever nature, including those arising under any statute, rule or regulation, that relate in any manner to the filing, prosecution, and maintenance of this civil action or any other proceeding or investigation incident thereto, including, but not limited to, claims for costs, fees or other expenses under the Equal Access to Justice Act, as amended. The Secretary hereby releases the Settling Defendants, and each of them, from all actions, claims and demands of whatever nature arising under Title I of ERISA that relate in any manner to the MIWU Fund or to the filing, prosecution, and maintenance of this civil action or any other proceeding or investigation incident thereto, including, but not limited to, claims for costs, fees or other expenses under the Equal Access to Justice Act, as amended

11. Each party to this Consent Judgment shall bear his, her or its own costs, expenses, and attorney's fees in connection with this action.

12. This Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of enforcing the terms of this Consent Judgment.

13. By signing this Consent Judgment, the Settling Defendants represent that they have been informed by Counsel of the effect and purpose of this Consent Judgment and agree to be bound by its terms. This Consent Judgment is not binding on any governmental agency or person other than the Secretary of the United States Department of Labor.

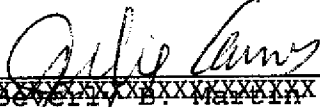
14. Each representative who signs this Consent Judgment represents that he or she is authorized and empowered to execute this Consent Judgment on behalf of himself/herself and that he or she has fully disclosed any conflicts of interest relating to his/her representation for purposes of executing this Consent Judgment.

15. This Consent Judgment, together with its exhibit, represents a full, final and complete judicial resolution of all of the civil claims contained in this action between the Secretary and the Settling Defendants, and the parties agree that all claims alleged in the complaint are hereby settled with respect to said Defendants and will be dismissed with prejudice. This Consent Judgment shall not prevent or have any effect upon the liability of any

persons or entities, other than the Settling Defendants, should the Secretary name other persons or entities as defendants in any subsequent action based on the matters described herein.

16. This Consent Judgment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

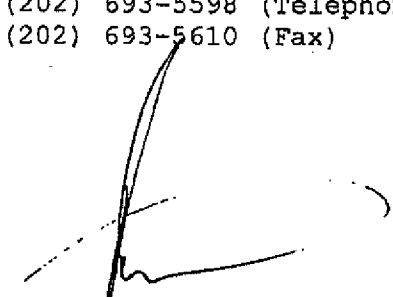
SO ORDERED this 10 day of ^{May}~~APRIL~~
~~MARCH~~, 2007.


XXXXXXXXXXXXXXXXXXXXX JULIE E. CARNES
~~Beverly B. Martin~~
United States District Judge

ADDRESSES:

Office of the Solicitor
U.S. Department of Labor
61 Forsyth Street, S.W.
Room 7T10
Atlanta, GA 30303
(404) 562-2057 (Telephone)
(404) 562-2073 (Fax)

Office of the Solicitor
U.S. Department of Labor
200 Constitution Ave., N.W.
Room N-4611
Washington, D.C. 20210
(202) 693-5598 (Telephone)
(202) 693-5610 (Fax)



Randall A. Constantine
Mazursky Constantine LLC
3424 Peachtree Road
Suite 2400, Monarch Tower
Atlanta, GA 30326-1118
Telephone (404) 888-8877
Facsimile (404) 926-2977
RConstantine@MCBenefitsLaw.com
Counsel for Hope, Couch, Larkin, Gue and Barlow

JONATHAN L. SNARE
Acting Solicitor of
Labor

TIMOTHY D. HAUSER
Associate Solicitor

THOMAS C. SHANAHAN
Attorney
Georgia Bar No.637598

*MARCIA E. BOVE
Trial Attorney

By: 
*DANIEL J. CHASEK
Trial Attorney

Attorneys for the
Secretary of Labor,
United States
Department of Labor

* Pro Hac Vice Applications Pending

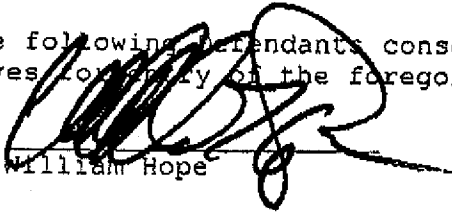
03/15/2007 08:54 9287639745

WILLIAM HOPE

PAGE 03

The following defendants consent to the entry and Plaintiff
moves for entry of the foregoing Judgment:

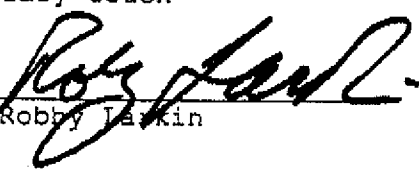
By:


William Hope

By:

Gary Couch

By:


Robby Larkin

By:

Roger Gue

By:

Pamela Barlow

03/15/2007 08:58 5524081073
SEP 03 08 07:12 AM
03/15/2007 08:58 5524081073

IUPIW
IUPIW

PAGE 03
P. 1
03

The following Defendants consent to the entry and Plaintiff moves for entry of the foregoing Judgment:

By: _____
William Hope

By: Gary Couch
Gary Couch

By: _____
Robby Larkin

By: _____
Roger Gue

By: _____
Pamela Barlow

FROM : SILVIA

FAX NO. : 9092420662

Mar. 19 2007 12:00PM P2

The following Defendants consent to the entry and Plaintiff moves for entry of the foregoing Judgment:

By: _____
William Hope

By: _____
Gary Couch

By: _____
Robby Larkin

By: 
Roger Lue

By: 
Pamela Barlow

Exhibit 1

Contractors & Merchants
Oak Tree Administrators
First Class Administrators
South by Southwest Employers Assoc.
Mitchel Coneley
Cherille Shelp O'Connor
Kent Traynor
John Kudra
Terrance LaFave
Raymond Palombo
Jean Thornton
Thomas Palombo
Tina Palombo
Traci MacKinen
Sandi Fernandez
Jim Miller
Larry Conner
Raymond W. Moore
Triangle Benefit Solutions, Inc.
Triangle Billing Services
Len Steinberg
Brad Wessler
Claims Benefit Management, Inc.
Nathan "Buddy" Foreman
Stephen L. Saeks
Healthnet
Healthmed, Inc.
Sales Connection
S&S Health Benefits
Jo Ann Beltz
Geoffrey "Joe" Beltz
George Beltz
Tamara Clonce