

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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EUGENE SCALIA, SECRETARY OF LABOR,  
UNITED STATES DEPARTMENT OF LABOR,

Plaintiff,  
vs.

WILLIAM D. HAYES, et al.,  
Defendants. :

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~~XXXXXX~~ Consent Judgment  
Case No. 20-CIV-00578 (ILG)(CLP)

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Plaintiff Eugene Scalia, Secretary of Labor, United States Department of Labor, (the "Secretary") and Defendants William D. Hayes, Christopher Gorman, Martin Sanders, Thomas Wilson, Carole Raftrey, Frank Mizerik, Marco Berardi, Estate of Lawrence Weiss and United Derrickmen & Riggers Association, Local Union No. 197 ( collectively, "the Defendants"<sup>1</sup>) agree to the entry of this Consent Judgment as a complete resolution of all issues in connection between them in this matter.

This Action was filed by the Secretary pursuant to Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001 et seq., and by the authority vested in him by ERISA 502(a)(2) and (5) against the Defendants for breaches of fiduciary duty under ERISA 404, 405 and 406, 29 U.S.C. §§ 1104, 1105, 1106. Defendants have filed an Answer setting forth their response to the Secretary's allegations.

By entering into this Consent Judgment, Defendants neither admit nor deny the allegations in the Complaint but stipulate to each of the terms below:

JURISDICTION, VENUE AND PARTIES

<sup>1</sup> Defendant Jeremy Moses was not served in this matter because he could not be located. The Secretary hereby dismisses his claims against Mr. Moses with prejudice.

1. This Court has subject matter jurisdiction over this action pursuant to ERISA 501(e)(1), 29 U.S.C. §1132(e)(1).
2. Venue with respect to this action lies in the United States District Court for the Eastern District of New York pursuant to ERISA 502(e)(2), 29 U.S.C. §1132(e)(2).
3. This Court has personal jurisdiction over Defendants for purposes relevant to this matter including the entry of this Consent Judgment pursuant to ERISA 502(d)(1), 29 U.S.C. §1132(d)(1).

### **PARTIES**

4. The Secretary, pursuant to ERISA 502(a)(2) and (5), 29 U.S.C. §1132(a)(2) and (5), has authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and other parties who are in violation of ERISA.
5. At all relevant times, United Derrickmen & Riggers Association, Local Union No. 197 (“Local 197”), headquartered at 47-10 32<sup>nd</sup> Place, Suite 403, Long Island City, New York 11101, is and has been an employee organization within the meaning of ERISA § 3(4), 29 U.S.C. §1002(4).
6. At all relevant times, the Derrickmen’s Welfare Fund, Local 197, the Derrickmen’s Pension Fund, Local 197, Derrickmen’s Annuity Fund, Local 197 and the Derrickmen’s Apprenticeship Fund, Local 197 (collectively “the Local 197 Funds”) were and are employee benefit plans within the meaning of ERISA 3(3), 29 U.S.C. §1003(3) and multiemployer plans within the meaning of ERISA 2(37), 29 U.S.C. §1002(37).

7. At all relevant times, Local 197 was a party in interest with respect to each of the Local 197 Funds within the meaning of ERISA 3(14)(A) and (D), 29 U.S.C. §1002(14)(A) and (D).

8. At all relevant times William Hayes was a union appointed trustee of the Local 197 Funds, served as a fund coordinator to the Local 197 Funds and served as the Business Manager, Financial Secretary, and Treasurer of Local 197 and received a salary and other employment benefits paid by Local 197.

9. At all relevant times, Defendant Hayes, in combination with the members of the Boards of Trustees of the Local 197 Funds, exercised discretionary authority and control respecting the management and disposition of the Local 197 Funds and the assets of the Local 197 Funds, and had discretionary authority or discretionary responsibility in the administration of the Local 197 Funds and was therefore a fiduciary of the Funds within the meaning of ERISA 3(21), 29 U.S.C. §1002(21). Defendant Hayes was also a party in interest with respect to each of the Local 197 Funds within the meaning of ERISA 2(14)(A), (B), and (H), 29 U.S.C. §1002(14)(A)(B) and (H).

10. At all relevant times, Defendants Christopher Gorman, Martin Sanders, Thomas Wilson and Carole Raffrey also served as trustees appointed to the Local 197 Funds by Local 197.

11. At all relevant times, Defendants Christopher Gorman, Martin Sanders, Thomas Wilson and Carole Raffrey exercised discretionary authority and control respecting the management and disposition of the Local 197 Funds and the assets of the Local 197 Funds, and had discretionary authority or discretionary responsibility in the administration of the Local 197 Funds and were therefore fiduciaries of the Local 197 Funds within the meaning of ERISA

2(21), 29 U.S.C. §1002(21). Defendants Christopher Gorman, Martin Sanders, Thomas Wilson and Carole Raffrey were also parties in interest with respect to each of the Local 197 Funds within the meaning of ERISA 2(14)(A),(B), and (H), 29 U.S.C. §1002(14)(A)(B) and (H).

12. At all relevant times, Frank Mizerik, Marco Berardi and Lawrence Weiss exercised discretionary authority and control respecting the management and disposition of the Local 197 Funds and the assets of the Local 197 Funds, and had discretionary authority or discretionary responsibility in the administration of the Local 197 Funds and were therefore fiduciaries of the Funds within the meaning of ERISA 2(21), 29 U.S.C. §1002(21). Defendants Frank Mizerik, Marco Berardi and Lawrence Weiss were also parties in interest with respect to each of the Local 197 Funds within the meaning of ERISA 2(14)(A),(B), and (H), 29 U.S.C. §1002(14(A), (B), and (H).

#### **STATEMENT OF RELEVANT FACTS**

13. Since 1978, the salary and benefits of the Local 197 fund coordinator and the Local 197 clerical employee(s) have been allocated between Local 197 and the Local 197 Funds. In 2013, Local 197 and the Local 197 appointed and the employer appointed trustees of the Local 197 Funds requested that the Funds' accountant produce an "Analysis of Shared Expense Allocation." The expenses to be allocated pursuant to this policy included the salaries and employment benefits of the Defendant William Hayes and Local 197 clerical employee Tina Palmiotto, the rental and other overhead costs of the office space utilized by Hayes and Palmiotto, and the auditing and collection costs by the Union to recover contributions to the Local 197 Funds.

14. The Analysis of Shared Expense Allocation prepared by the Local 197 Funds' accountant was received by the Defendant trustees and approved by the trustees at a Board of Trustees meeting held on January 30, 2013

15. The Secretary has alleged that the Analysis of Shared Expense Allocation was not properly documented and did not reference any analysis of whether Hayes and Palmiotto provided necessary services to the Funds or whether the allocation presented reasonable compensation for any such allocated services.

16. The Secretary has also alleged that many of the allocated services conducted by Hayes were not necessary services for the Local 197 Funds but were instead union related activities.

17. Following the Trustees' approval and adoption of the Analysis of Shared Expense Allocation between Local 197 and the Local 197 Funds, from February 2013 through March 2017 for Mr. Hayes and through the present for Ms. Palmiotto and her successor, the Local 197 Funds reimbursed to Local 197 an amount equal to the following percentages of the salary and benefit costs paid to Mr. Hayes and Ms. Palmiotto by Local 197:

Welfare Fund	19%
Annuity Fund	13%
Pension Fund	22%
Apprenticeship Fund <sup>2</sup>	6%

18. The Secretary filed this action on January 31, 2020.

**THE SECRETARY'S ALLEGATIONS AGAINST THE DEFENDANTS**

19. The Secretary has alleged that:

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<sup>2</sup> The parties agree that prohibited transfers were not in fact made from the Apprenticeship Fund. Therefore no money will be restored to the Apprenticeship Fund pursuant to this Consent Judgment.

a. Defendant Hayes dealt with assets of the Local 197 Funds and acted adversely to the interests of the Local 197 Funds and in his own interest or for his own account in violation of 29 U.S.C. §1106(b)(1) and (2);

b. The Trustees caused or permitted the Local 197 Funds to engage in a transaction which they knew or should have known constituted the direct or indirect furnishing of goods, services or facilities between the Local 197 Funds and Local 197 which was a party in interest with the Local 197 Funds in violation of their fiduciary duty under 29 U.S.C. §1104(a)(1)(A) and (B); and

c. The employer-appointed trustees failed to protect the Local 197 Funds by knowingly participating in their co-trustees' plan to shift union expenses onto the Local 197 Funds and by failing to make reasonable efforts to remedy those breaches of fiduciary duty by the Local 197 appointed trustees.

**ORDER**

The Secretary and the Defendants have agreed to resolve all remaining matters in controversy in this action and consent to the entry of this Consent Judgment by this Court.

Upon due consideration of the record herein, and as agreed to by the Secretary and the Defendants, the Court finds it has jurisdiction to enter this Consent Judgment.

IT IS THEREFORE ORDERED THAT:

1. No Local 197 Fund will transfer money to Local 197 for the purpose of subsidizing, sharing, or reimbursing: a) any portion of any salary for any person serving simultaneously as a Local 197 employee and as a fiduciary to any of the Local 197 Funds, or b) any portion of Local 197's rent or overhead expenses.

2. The trustees of the Local 197 Funds will cause the Funds to enter into separate leases for any space they occupy in the offices of Local 197.
3. The Funds may reimburse Local 197 in compliance with Title I of ERISA for reasonable expenses for necessary services performed by non-fiduciary shared employees for the benefit of each Fund. Every year, the Trustees will adopt a reimbursement schedule for any such expenses. The reimbursement schedule will be based on an allocation study that is reasonable, documented, and prepared by a certified public accountant, and that is updated as necessary when facts and circumstances change. The costs of preparing such studies shall be shared equally between the Local 197 Fund sponsors and the Local 197 Funds, so that the Local 197 Funds collectively pay no more than half of that cost.
4. Defendant Local 197 may negotiate with employers that contribute to the Local 197 Funds to establish a contribution obligation by said employers to a Labor Management Cooperation Committee ("LMCC") formed pursuant to 29 U.S.C. §185(c)(9) for the purposes of improving communications between labor and management and reducing potential problems which reduce the competitiveness and inhibit the economic development of the industry, a sum which in the aggregate from all such employers contributing to said LMCC in any calendar year is necessary and sufficient to reimburse Local 197 for the salary and benefits of any paid union officer who is a fiduciary to the Funds and also provides administrative services to the Local 197 Funds that are determined by the Local 197 Fund's certified public accountant to be reasonable, documented, and of value to the Local 197 Fund participants.

5. The Defendants agree to pay or cause to be paid a total settlement amount of Five Hundred and Seventy Thousand (\$570,000.00) Dollars. The sum of \$475,000.00 shall be transferred to the Local 197 Funds in the following amounts in separate checks or wire transfers, which is inclusive of all reimbursements from the Funds to Local 197 at any time through July 30, 2020 and also inclusive of any pre-judgment interest:

Local 197 Welfare Fund	\$163,281.25
Local 197 Pension Fund	\$207,812.50
Local 197 Annuity Fund	\$103,906.25

6. The Secretary hereby assesses a payment under ERISA §502(l), 29 U.S.C. §1132(l), of 20% of the restitution of \$475,000.00 paid pursuant to this Consent Judgment. Defendants waive their rights to a separate notice of assessment under ERISA Section 502(l), 29 U.S.C. § 1132(l), to the service requirement of 29 C.F.R. §2570.83, and to contest the assessment. Defendants shall pay or cause to be paid the 502(l) Payments totalling \$95,000.00 to the U.S. Department of Labor no later than September 1, 2020. Checks for the 502(l) Payments shall be made payable to the United States Department of Labor as follows:

- a. One check in the amount of \$32,656.25, with Case # 30-105989 (50) in the memorandum field;
- b. One check in the amount of \$41,562.50, with Case # 30-105990(48) in the memorandum field;
- c. One check in the amount of \$20,781.25 with Case # 30-105988 (48) in the memorandum field;

and mailed to either of the following addresses:

Standard (Regular U.S. Mail) Remittance Address:

ERISA Civil Penalty  
P.O. Box 6200-36  
Portland, OR 97228-6200

or

Express Mail or Commercial Overnight Delivery Address:

U.S. Bank  
Attn: ERISA Civil Penalty #6200-36  
17650 NE Sandy Blvd.  
PD-OR-C1GL  
Portland, OR 97230

The checks shall be accompanied with a transmittal letter that identifies the case numbers for which the payments are made.

7. Immediately after the payments pursuant to paragraph 5 and 6 are made, Defendants shall provide proof of payment to the Secretary, by emailing copies of the cancelled checks or records of wire transfers to Supervisory Investigator Ivette Maddi at [maddi.ivette@dol.gov](mailto:maddi.ivette@dol.gov).
8. Each party shall bear its own costs and fees incurred in the course of the investigation and litigation. Defendants waive any and all claims arising under the Equal Access to Justice Act, L. No. 96-481 (1980) re-enacted at Pub. L. No 99-80 (1985) and amended at Pub. L. No. 104-121 (1996).
9. This Consent Judgment does not affect or bind any governmental agency, excluding the U.S. Department of Labor.
10. This Court retains jurisdiction for all purposes in connection with this action and this Consent Judgment.
11. This Consent Judgment is a full and final resolution of all claims that have been or could have been asserted in this action.

12. This Consent Judgment may be executed in counterparts by facsimile or email, each of which shall be deemed to be an original, but all of which, if taken together, shall constitute the same instrument.

FOR THE SECRETARY OF LABOR:

Dated: August 31, 2020



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Suzanne Demitrio Campbell  
Senior Trial Attorney  
U.S. Department of Labor, Office of the Solicitor

FOR UNITED DERRICKMEN & RIGGERS ASSOCIATION, LOCAL UNION NO. 197 :

Dated: August 27, 2020

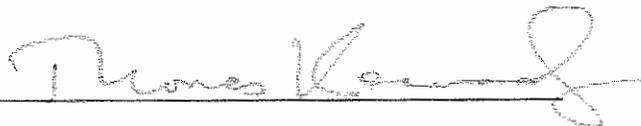


By: Steven C. Farkas, Esq.

Title: Attorney

FOR MARCO BERARDI, CHRISTOPHER GORMAN, WILLIAM D. HAYES, FRANK MIZERIK, CAROLE RAFTREY, MARTIN SANDERS, THOMAS WILSON, ANTHONY VESPA, AND THE ESTATE OF LAWRENCE WEISS :

Dated: August 20, 2020



By: Thomas Kennedy, Esq.

Title: Attorney

So ordered.

\_\_\_\_/s/ I. Leo Glasser\_\_\_\_

9/2/2020