

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

ANN H. WOMER BENJAMIN,
Superintendent, Ohio Department
of Insurance, in her capacity as
Rehabilitator of Builders & Contractors
Employee Benefit Association Trust,

Plaintiff,

Case No. 03 CVH09 10020

v.

JUDGE SCHNEIDER

A Day In the Country, et al.,

Defendants.

MOTION OF PLAINTIFF FOR ORDER
SETTING FORTH PROCEDURES FOR MANAGING DISCOVERY

Pursuant to Rules 5(A) and 7(B) of the Ohio Rules of Civil Procedure, Plaintiff Ann H. Womer Benjamin, Ohio Superintendent of Insurance, in her capacity as the Rehabilitator of Builders & Contractors Employee Benefit Association Trust respectfully moves this Court for an Order setting forth procedures for managing discovery. The grounds for this Motion are fully set forth in the attached Memorandum in Support. In

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COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
2008 SEP - 5 AM 9:50
CLERK OF COURTS-CV

addition, an Order detailing the proposed procedures is included for the Court's convenience.

Respectfully submitted,
JIM PETRO
Attorney General, State of Ohio

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State of Ohio, representing Ann H. Womer
Benjamin, Superintendent of the Ohio
Department of Insurance, as Rehabilitator
For Builders and Contractors Employee
Benefit Association Trust*

MEMORANDUM IN SUPPORT

On September 12, 2003, Plaintiff Ann H. Womer Benjamin, Ohio Superintendent of Insurance, in her capacity as the Rehabilitator of Builders & Contractors Employee Benefit Association Trust (the "Rehabilitator") filed a Complaint, pursuant to R.C. §§ 1739.14 and 1739.15, against 172 defendants to recover assessments due under the terms of the Builders & Contractors Employee Benefit Association Trust (the "Trust"). This Complaint sought money from the named Defendants to replenish the Trust's required surplus and reserve amounts for the year 2001.

Subsequent to the filing of the September 12, 2003 Complaint, it was determined that the premiums and assessments collected for the years 2000 and 2002 were not sufficient to

cover the related losses and operating expenses for those years. Therefore, the Rehabilitator filed a Motion with this Court to amend her original Complaint and to include claims for the assessments due for 2000 and 2002 from the business entities and individuals that participated in the Trust during those years. The proposed Amended Complaint included claims against 530 defendants.

On March 2, 2004, this Court granted the Rehabilitator's Motion to Amend. The Amended Complaint has been filed contemporaneously with this Motion and will be served upon each of the named defendants together with this Motion.

It is the objective of the Rehabilitator to proceed with this litigation as efficiently as possible to preserve the resources of the Trust. To that end, the Rehabilitator recognizes that strict compliance with Civ. R. 5(A) would tax the resources of the Trust and potentially that of the defendants. Civil Rule 5(A) provides, in relevant part:

(A) Service: when required

Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, **every paper relating to discovery required to be served upon a party unless the court otherwise orders**, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper **shall be served upon each of the parties**. (Emphasis added).

Serving each of the 530 defendants named in this action with each and every discovery request and each set of responses to discovery requests would amount to thousands of dollars in copying costs, postage, and human capital for the Rehabilitator and Defendants alike.

To avoid unnecessary expense and preserve the resources of the parties, the Rehabilitator proposes that Civ. R. 5(A) be modified so that discovery need only be served

upon the party to whom it is directed and responses to any discovery requests need only be served on the party propounding the requests. In the interest of providing each defendant a fair and full opportunity to access all discovery in this case, the Rehabilitator further proposes that she provide all defendants with access to all discovery through the Internet.

The details for this proposed plan to modify the rules of Civil Procedure with respect to service of discovery are outlined in the Order and accompanying exhibits that are attached herewith. The plan that is proposed in the attached Order will preserve the resources of the parties, provide for a more efficient and effective discovery process, and in no way prejudices any of the parties.

For the foregoing reasons, the Rehabilitator respectfully requests that this Court grant her Motion for Order Setting Forth Procedures for Managing Discovery and enter the Order that is attached hereto.

Respectfully submitted,
JIM PETRO
Attorney General, State of Ohio

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Necol Russell-Washington (0073367)
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State of Ohio, representing Ann H. Womer
Benjamin, Superintendent of the Ohio
Department of Insurance, as Rehabilitator
For Builders and Contractors Employee
Benefit Association Trust*

CERTIFICATE OF SERVICE

This is to certify that a copy of foregoing Motion Of Plaintiff For Order
Setting Forth Procedures For Managing Discovery, was served upon the following defendants by
First Class Mail, postage prepaid, this ~~5th~~^{6th} day of April, 2004.

A Day In The Country
4744 State Route 39
Berlin, OH 44610

Ace Special T-Shirts
334 N. Mulberry Street
Post Office Box 202
Tremont City, OH 45372

Airfasco Industries Inc.
207 Schneider Street NE
N. Canton, OH 44720

B.T. Ramsay & Co.
Post Office Box 488
Aurora, OH 44202

Barbara King
12613 Imperial Avenue
Cleveland, OH 44120

Beard Insurance Agency
2920 Niles Cortland Road
Post Office Box 549
Cortland, OH 44410

Bennett/Dover Home Remod.
c/o Daniel Thomas
Kolick & Kondzer
24500 Center Ridge Rd. #175
Westlake, OH 44145-5697

Berresford Enterprises
c/o Donald Antrim
Buckingham Doolittle &
Burroughs, LLC
191 West Nationwide Ste. 300
Columbus, OH 43215-2568

Bestway Bath Systems Inc.
6543 Harrison Avenue
Cincinnati, OH 45247

Bollin Label Systems
c/o Joseph R. Torda
Barkan & Robon, Ltd.
1701 Woodland Drive
Maumee, OH 43537-4092

Bruderly Excavating Co.
17380 Middletown Road
North Benton, OH 44449

Buckstone Foods, Inc.
404 Vienna Avenue
Niles, OH 44446

Business Equipment Co.
c/o Peter Cultice
Cultice & Brown
121 North Fourth Street
Zanesville, OH 43702

Cambridge Senior Comm.
Post Office Box 1090
Cambridge, OH 43725

Command Plastic
c/o Timothy G. Warner, Esq.
Spieth, Bell, McCurdy & Newell
Co. LPA
925 Euclid Avenue, Suite 2000
Cleveland, OH 44115

Congress Insurance Agency
2858 West Market Street
Akron, OH 44333

Crick Construction
13046 Diagonal Road
Salem, OH 44460

Davidson Industries
c/o James W. Ehrman
Statutory Agent
201 East Commerce Street
Youngstown, OH 44503

Deborah Ligotti
11875 Market St. Ext. Rt. 7
N. Lima, OH 44452

Diane Dinkens
843 Marilyn Drive
Kent, OH 44240

Dodson Furniture Inc.
5480 Youngstown Warren Road
Niles, OH 44446

E.L. Stone Company, Inc.
c/o J. Francis Mackey
Amer Cunningham Co. LPA
159 South Main Street
Sixth Floor, Key Building
Akron, OH 44308-1322

F.A.P. Industries
156 Nulf Drive
Columbiana, OH 44408

Goal Tenders Enterprise
1100 East Street
Fairport Harbor, OH 44077

Hillis & Small, Co. L.P.A.
825 Adair Avenue
Zanesville, OH 43701

J.A. Rocco, D.D.S.
20 Seagate Drive #102
Naples, FL 34103

Kehler Landscaping
25840 Chester Road
Avon Lake, OH 44011

Labrinth Imaging Systems
26401 Emery Road, #102
Cleveland, OH 44128

Lois Blackburn
c/o Shannon McCue
Renner Kenner Grieve Bobak
Taylor & Weber
First National Tower, Fourth Flr.
Akron, OH 44308-1456

Matkoz Inc.
c/o Robert M. Matukewecz
Statutory Agent
225 Penbrooke Drive
Findlay, OH 45840

Empire Corporation
c/o Karl L. Hay
Statutory Agent
500 First National Tower
Akron, OH 44308

Fehrman Tool & Die
8824 Clay Pike Road
Byesville, OH 43723

Guernsey Motel Corp.
c/o Mr. Tim Longstreth
Statutory Agent for
Guernsey Motel Corp.
Post Office Box 160
Zanesville, OH 43702-0160

Holland Pontiac
7977 Hills & Dales Road
Massillon, OH 44646

K.M.A. And Associates Inc.
820 West Superior Suite 640
Cleveland, OH 44113

Kenneth Cowens M.D. Inc.
333 Park Avenue
Youngstown, OH 44504

Lashley Tractor Sales Inc.
24821 State Route 313
Quaker City, OH 43773

Lucas Distributing
17911 Harland Avenue
Cleveland, OH 44119

McQuaid's Distributing
c/o Ralph Zuzolo, Sr.
700 Youngstown-Warren Road
Niles, OH 44446

Esterle Mold & Machine
c/o John Childs
Brennan Manna & Diamond LLC
75 Market Street
Akron, OH 44308

FGM Landscaping
2196 Lakeland Avenue
Post Office Box 770975
Lakewood, OH 44107

Hearn Paper Company
556 N. Meridian Road
Youngstown, OH 44509

Homes For Kids Of Ohio
31 North Main Street
Niles, OH 44446

Kathryn Y. Parks
18404 Hazelwood Avenue
Maple Heights, OH 44137

King Expediting
3777 Catalina Drive #A
Dayton, OH 45431-1759

Leasco Equipment Services
c/o Kyle Stroh
Metz & Bailey
33 East Schrock Road
Westerville, OH 43081

Marion Tile & Carpet
1705 Gypsy Road
Niles, OH 44446

Michael Day Enterprises
c/o John Susany
Stark & Knoll Co. LPA
76 South Main Street, Ste. 1512
Akron, OH 44308

Milton Brooks
7603 Kennedy Court
Mentor, OH 44406

Northeast Tire Mold, Inc.
156 Opportunity Parkway
Post Office Box 1429
Akron, OH 44307

Patierno Contracting Inc.
2800 East Midlothian Blvd.
Struthers, OH 44471

Production Packaging
c/o Robert Palma
100 Federal Plaza East, Ste. 300
Youngstown, OH 44503

R.B. Thomas Electric, Inc.
c/o Colin Skinner
Oldham & Dowling
195 South Main Street, Ste. 300
Akron, OH 44308

Republic Mills Inc.
c/o Alan Berliner
Thompson Hine LLP
10 West Broad Street, Suite 700
Columbus, OH 43215-3435

Rose Maran
19617 Gardenview Drive
Maple Heights, OH 44137

Sgf Management Inc.
c/o Rex Miller
Lesh Casner & Miller
606 Belden Whipple Building
4150 Belden Village Street N.W.
Canton, OH 44718-3651

Superior Maintenance
1032 Perry Road
Jefferson, OH 44047-9761

Muskingum Pediatric
751 Forest Ave Suite 100
Zanesville, OH 43701

OH Eye Associates, Inc.
c/o E. Carroll Thurnton, Jr.
Newman, Olson & Kerr
11 Federal Plaza Cent. Ste. 1200
Youngstown, OH 44503

Pleasantview Nursing Home
c/o Martin J. Boether
Harrington Hoppe & Mitchell Ltd.
26 Market Street, Suite 1200
Youngstown, OH 44503

Quality Builders
60456 Patch Road
New Concord, OH 43762

R.H. Little Co., Inc.
c/o Donald DAVIS
Slater Zurz & Gilbert
One Cascade Plaza, Suite 2210
Akron, OH 44308

Rixan Associates, Inc
c/o Irvin Zipperstein
118 West First Street
Talbot Tower, Suite 650
Dayton, OH 45402

Russell Automotive Center
15565 Chillicothe Road
Chagrin Falls, OH 44022

Slats & Nails Inc.
5610 Lindentree Road
Mineral City, OH 44656

T.C. Hunan House, Inc.
c/o William Costello
3401 Enterprise Parkway #406
Beachwood, OH 44122

Nescor Plastics Corp.
c/o John Susany
Stark & Knoll Co. LPA
76 South Main Street, Ste. 1512
Akron, OH 44308

Palmer Bros. Concrete
12205 East Gypsy Lane Road
Bowling Green, OH 43402

Portage Packaging
145 River Street
Kent, OH 44240

R & R Enterprises Of OH
Post Office Box 878
Springfield, OH 44501

R.L. Smith Printing
210 W. Wood Street
Post Office Box 419
Youngstown, OH 44501

Robert W. Egolf Construct
4479 Clearview Drive
Canfield, OH 44406

Sandy's Tire Sales
c/o W. Chad Kelligher
405 Niles-Cortland S.E. Ste. 203
Warren, OH 44484

Steven Downer, Dpm
409 Second Street
Marietta, OH 45750

Tavens Container
c/o Timothy G. Warner, Esq.
Spieth, Bell, McCurdy & Newell
925 Euclid Avenue, Suite 2000
Cleveland, OH 44115

Tewel Corporation
c/o Don Duda
Ronald James Rice Co. LPA
48 West Liberty Street
Hubbard, OH 44425

The Roekel Company
36 South 2nd Street
Zanesville, OH 43701

Tony's Lawn Care
7910 Stacy Road
Sandusky, OH 44870

W.T. Pettit & Sons Co. Inc.
c/o Timothy Jacob
Manchester Bennett Powers &
Ullman
201 East Commerce Street
Youngstown, OH 44503-1641

West Branch Nursing Home
c/o Martin Boetcher
Harrington Hoppe & Mitchell Ltd
26 Market Street, Suite 1200
Youngstown, OH 44503

Zeiger Industries
c/o Martin Boecher
Harrington Hoppe & Mitchell
Ltd.
26 Market Street, Suite 1200
Youngstown, OH 44503

The A.G. Stafford Co.
c/o Merle D. Evans
Day Ketterer Raley Wright &
Rybolt Ltd.
Millennium Center, Suite 300
200 North Market Avenue North
Canton, OH 44701-4213

Therm-O-Link
c/o Michael Marando
Harrington Hope & Mitchell Ltd.
108 West Main Avenue S.W.
Suite 500
Warren, OH 44482-1510

Unity Presbyterian Church
c/o James Scott
Tribble Scott & Padden
139 Courthouse Square
Cambridge, OH 43725

Warren G. Jones Const.
c/o Paul Miller
3465 South Arlington Rd. Ste. A
Akron, OH 44312-5272

William R. Dorsey D.O. Inc.
c/o Charles W. Slicer, Jr.
Statutory Agent
318 West Fourth Street
Dayton, OH 45402

Ziegler Companies
c/o John Prelac
Day Ketterer Raley Wright &
Rybolt Ltd.
Millennium Center, Suite 300
200 North Market Avenue North
Canton, OH 44701-4213

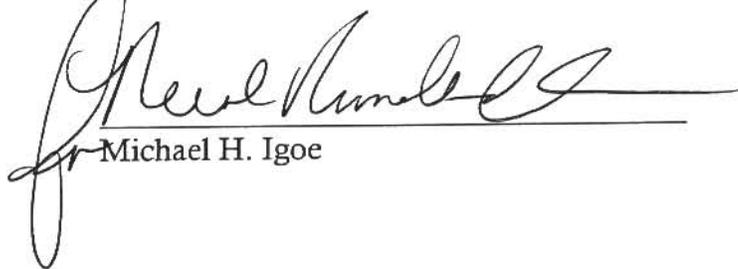
The Mocha House Inc.
c/o Chad Kellegher
Brutz & Kelligher, Ltd.
405 Niles-Courtland SE Ste. 203
Warren, OH 44484

Tony Pesce Chrysler-Plymouth
c/o Randil Rudloff
151 East Market Street
Warren, OH 44482

Vess Warner Inc.
12 Warner Second Street
Warner, OH 45745-8844

Wayne's Truck & Auto Rep.
4324 Street Rt. 5 SW
Newton Falls, OH 44444

William T. Stark
1245 Shannon Road
Girard, OH 44420



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