

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,

v.

CASE NO. 03 CVH 09-10020
JUDGE SCHNEIDER

A DAY IN THE COUNTRY, ET AL.,

DEFENDANTS.

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
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CLERK OF COURTS

**MOTION OF PLAINTIFF FOR PARTIAL SUMMARY JUDGMENT
AS TO EMPLOYER-MEMBERS' LIABILITY FOR ASSESSMENTS
UNDER R.C. § 1739.15**

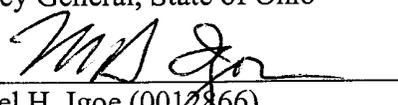
Plaintiff Ann H. Womer Benjamin, Superintendent, Ohio Department of Insurance, in her capacity as Rehabilitator of Builders & Contractors Employee Benefit Association Trust ("Plaintiff"), hereby submits her Motion for Partial Summary Judgment as to the Employer-Members' Liability for Assessments. Plaintiff further respectfully requests that this Court grant her Motion, as there are no genuine issues of material fact as to whether the Employer-Members are liable for the unpaid obligations incurred by the Builders & Contractors Employee Benefit

Association Trust, and Plaintiff is entitled to judgment as a matter of law. The grounds for this Motion are more fully set forth in the attached Memorandum in Support and exhibits.

Respectfully submitted,

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Employee Benefit Association Trust

MEMORANDUM IN SUPPORT

I. STATEMENT OF RELEVANT FACTS

Builders and Contractors Employee Benefit Association Trust is a Multiple Employer Welfare Arrangement, which is governed by R.C. Chapter 1739. (See certified copies of the MFWA Renewal Licenses for years 1999 through 2003, attached hereto as Exhibit A). Plaintiff Ann H. Womer Benjamin¹, Superintendent, Ohio Department of Insurance, brought this action in her capacity as the court-appointed Rehabilitator on behalf of the Builders & Contractors Employee Benefit Association Trust, pursuant to the Order of the Court of Common Pleas of Franklin County, Ohio entered on March 4, 2002 in *J. Lee Covington, II, Superintendent of*

¹ Ann H. Womer Benjamin has succeeded J. Lee Covington II, as Superintendent of Insurance, and thus was substituted as Plaintiff in the case.

Insurance v. Builders and Contractors Employee Benefit Association Trust, Case No. 02CVH-02-2010 (the “Rehabilitation Court”) (See the Agreed Order Appointing Rehabilitator, attached hereto as Exhibit B).

Pursuant to paragraph 7(c) of the Rehabilitation Order and R.C. § 3903.14(B), the Rehabilitator is vested with authority to take such action as she considers necessary or appropriate to reform or revitalize the Builders & Contractors Employee Benefit Association Trust, including, but not limited to, collecting all claims, accounts receivables, agents’ balances, reinsurance proceeds and other amounts owing to the Trust. On September 4, 2003, the Rehabilitator moved for approval of a Rehabilitation Plan, which Plan provided, among other things, that “[t]he Rehabilitator will also levy further assessments as necessary to fund the run-off of the Trust.” The Rehabilitation Court approved this Plan on November 20, 2003.

The authority vested in Plaintiff to levy assessments on behalf of Builders & Contractors Employee Benefit Association Trust against its Employer-Members for the legal obligations of the Builders & Contractors Employee Benefit Association Trust is codified in R.C. § 1739.15. In accordance with R.C. § 1739.15, the Employer-Members were issued three separate assessments. The first assessment occurred on or about July 1, 2001, prior to the Rehabilitation, whereby the Employer-Members were issued written notice of an assessment equal to one month’s premium (“July 2001 Assessment”) due to the Trust’s reported surplus falling below minimum statutory requirements. The July 2001 Assessment was issued to all Employer-Members who were active members of the Trust prior to May 1, 2001 and still active members as of July 1, 2001.

The second assessment occurred on or about September 15, 2002, post-Rehabilitation, whereby the Employer-Members were issued a written notice of a second assessment (“September 2002 Assessment”) due to the Trust’s reported surplus again falling below

minimum statutory requirements. The September 2002 Assessment was issued to all Employer-Members who were active members of the Trust at any time during the 2001 calendar year.

Following the second assessment, on September 12, 2003, Plaintiff filed a Complaint against those Employer-Members of the Trust who failed to pay their assessments pursuant to R.C. § 1739.14 and 1739.15 and the Rehabilitation Plan.

Following the filing of the Complaint, on November 17, 2003, a third assessment was issued due to the Trust's reported surplus falling below minimum statutory requirements in years 2000 and 2002 ("November 2003 Assessment").² The November 2003 Assessment was issued to all Employer-Members who were active members of the Trust at any time during the 2000 and/or 2002 calendar years.

Thereafter, on April 5, 2004, Plaintiff amended its Complaint to include those Employer-Members who failed to pay their November 2003 Assessment.

By this Motion, Plaintiff seeks a judgment in her favor finding the Employer-Members liable for any assessments as a matter of law. Plaintiff reserves the issue as to the amount of any assessment against the Employer-Members for a later time.

II. LAW AND ARGUMENT

A. Summary Judgment Standard

Ohio Civil Rule 56(C) provides that summary judgment shall be granted if (1) no genuine issue of material fact remains to be litigated; (2) it appears from the evidence that reasonable minds can reach but one conclusion and that conclusion is adverse to the non-moving party; and (3) the moving party is entitled to summary judgment as a matter of law. Civ.R. 56(C); see also

² Because the assessments in the original Complaint have been referred to as the 2001 and 2002 assessments, the plaintiff refers to this new assessment as the November 2003 Assessment even though it is attributed to years 2000 and 2002.

Temple v. Wean United, Inc. (1977), 50 Ohio St.2d 317, 327; *Doctors Hospital v. Hazelbaker* (Franklin 1995), 106 Ohio App.3d 305. In addition, Rule 56(E) provides that:

When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial.

The United States and Ohio Supreme Courts encourage courts to utilize summary judgment “to isolate and dispose of factually unsupported claims and defenses, and [the rule] should be interpreted in a way that allows it to accomplish this purpose.” *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 324-35.

The *Celotex* standard has been clarified by *Dresher v. Burt* (1996), 75 Ohio St.3d 280, which held that a party moving for summary judgment bears the initial burden of demonstrating that there is no genuine issues of material fact concerning an essential element of the opponent's case. To do so, the movant must affirmatively point to evidentiary materials of the type listed in Civ.R. 56(C) that a court is to consider in granting summary judgment. Then, “[i]f the moving party has satisfied its initial burden, the non-moving party has a reciprocal burden outlined in the last sentence of Civ.R. 56(E).” *Dresher*, 75 Ohio St.3d at 293.

B. Employer-Members Are Statutorily Liable For The Unpaid Obligations Incurred In The Trust.

Builders & Contractors Employee Benefit Association Trust was established and organized under the laws of Ohio as a Multiple Employer Welfare Arrangement and given authority to transact business under R.C. Chapter 1739. (See certified copies of the MEWA Renewal Licenses for years 1999 through 2003, attached hereto as Exhibit A). Ohio Revised Code Chapter 1739 governs Multiple Employer Welfare Arrangements in Ohio and bestows proportionate liability amongst all members for the obligations arising out of the arrangement.

R.C. § 1739.15 (A) provides, in pertinent part, that:

A member of a multiple employer welfare arrangement operating a group self-insurance program is liable for all legal obligations of the arrangement, including any obligations of the arrangement to pay claims against it arising out of any occurrence, incident, or accident covered under sections 1739.01 to 1739.22 of the Revised Code, in proportion to the ratio of the total number of covered employees employed by the member on the first day of the month that the obligations arose to the total number of covered employees employed by all members of the arrangement at the time the obligation arose.

Therefore, pursuant to her statutory authority provided in R.C. 1739.15, as well as the directives provided by the Rehabilitation Plan approved by the Rehabilitation Court on November 20, 2003, Plaintiff, in her capacity as Rehabilitator of the Builders & Contractors Employee Benefit Association Trust, levied assessments against the Employer-Members for payment of their proportionate share of the then estimated \$1.5 million in unpaid obligations of the Builders & Contractors Employee Benefit Association Trust.³ As Plaintiff was well within her authority to levy such assessments against the Employer-Members for the unpaid obligations of the Trust, Plaintiff's Motion for Partial Summary Judgment As to Employer-Members' Liability for Assessments Pursuant to R.C. § 1735.15 should be granted.

C. Equity Demands That Employer-Members Be Held Liable For The Unpaid Obligations Incurred By The Trust.

Besides being statutorily obligated, the principles of equity demand that the Employer-Members be held responsible for the unpaid obligations of the Trust. Multiple Employer Welfare Arrangements, such as the Builders & Contractors Employee Benefit Association Trust, are established for the purposes of permitting existing groups of employers to provide health insurance benefits for their employees and their dependents. (See generally, R.C. 1739.01(F))

³ Note that the amount is not at issue in this motion, only the ability to assess the Employer-Members.

and 1739.02(A)). Employer-Members, in exchange, derive substantial benefits from their participation in the arrangement, including tax deductions, as well as other economic advantages.

Currently, the arrangement at issue, the Builders & Contractors Employee Benefit Association Trust, owes more than \$1.5 million in adjudicated unpaid medical claims, as well as a potential additional estimated \$500,000 in other claims. (See Affidavit of James M. Young, Deputy Rehabilitator, attached hereto as Exhibit C). The inability of the Trust to pay the staggering amount of unpaid obligations has resulted in the Ohio Department of Insurance's rehabilitation of the Trust.

The Builders & Contractors Employee Benefit Association Trust is categorized as a self-insured Trust; the implication of such a categorization is that the Trust is funded solely by the Employer-Members of the Trust. In other words, there is no other source of funds within the Trust, or any other reasonable recourse available, to pay the more than \$2 million in estimated unpaid claims and obligations.

The current deficiencies for years 2000 through 2002 are the result of not charging Employer-Members sufficient premiums during those years. As hindsight now makes apparent, the cost of the claims incurred through the Trust during 2000 through 2002 exceeded the premiums paid by the Employer-Members during the same period. Had the Employer-Members funded the Trust with higher premiums during those years, the Trust would have been able to pay the more than \$2 million in estimated claims and obligations arising during those years.

Plaintiff anticipates Defendant Employer-Members will argue the Rehabilitator has no authority to assess them to cure the deficit because they were unaware they were participating in a multiple employer welfare arrangement. Aside from all the legal reasons why the Rehabilitator is well within her legal rights to levy assessments, the harsh reality is that these unpaid claims

and obligations must be satisfied. If the Employer-Members are not responsible for these debts, then the individual employees will be. Such a result would be contrary to the long standing equitable principle that when one of two parties must suffer a loss, the loss shall fall on the party whose conduct brought about the situation. See generally, *Welsh v. Tonti*, 163 N.E. 2d 698 (Franklin C.P., 1958), citing *Selser v. Brock* (1854), 3 Ohio St. 302, last syllabus, and *Wilson v. Hicks* (1884), 40 Ohio St. 419, 429.

Notwithstanding the paucity of Ohio case law addressing multiple employer welfare arrangements and even less Ohio case law addressing assessments under such arrangements, the equitable principle found in *Welsh* is applicable to the instant matter. In fact, other jurisdictions that have dealt with similar multiple employer welfare arrangement issues, have applied the *Welsh* principle to equitably resolve the matter.

A Florida appellate court, in *In re Intl. Forum of Florida Health Benefit Trust v. South Broward Hosp. District, et al.* (1992), 607 So. 2d 432, not only addressed the liquidator's ability to assess, but applied the long-standing equitable principle found in *Welsh* to determine the party responsible for paying the assessment.

The issue decided by the *In re Intl. Forum* Court was whether the Florida Department of Insurance, as liquidator of a collapsed multiple employer welfare arrangement ("IFF MEWA"), was able to lawfully assess for unpaid claims and whom was responsible for payment of the assessment, employer-members or their individual employees. In affirming the lower court's ruling that employer-members, as opposed to their employees, were liable for payment of the unpaid obligations of IFF MEWA, the appellate court reached its conclusion by finding that the purpose of Florida's Multiple Employer Welfare Arrangement Act, similar to the purpose of all multiple employer welfare arrangements, is to "permit existing groups of employers to provide

collective health insurance benefits for their employees.” Id. at 435. The *In re Intl. Forum* Court further reasoned that if the employer were not obligated to satisfy the assessment, the “effect would be to release the employers from their obligations and to harm the employees for whom the employers selected the Multiple Employer Welfare Arrangement insurance.” Id. at 437. The *In re Intl. Forum* Court then concluded that because the assessment provisions of Florida’s Multiple Employer Welfare Arrangement statute are “designed, in part, to protect employees, the equitable decision to assess the employers is supported by the long-established equitable principle recognizing that if two innocent parties are injured by a third, either by negligence or fraud, the one who made the loss possible must bear the legal responsibility.” Id. at 437, citing *Exchange Bank of St. Augustine v. Florida Nat’l Bank of Jacksonville*, 292 So. 2d 361, 363 (Fla. 1974); *Niccolls v. Jennings*, 92 So. 2d 829, 832-33 (Fla. 1957); *Inman v. Rowsey*, 41 So. 2d 655, 659 (Fla. 1949); *Griffin v. Gulf Life Ins. Co.*, 146 So. 2d 901, 903 (Fla. 1st DCA 1962).

The reasoning of the *In re Intl. Forum* Court is equally instructive in the instant case. Here, as mentioned above, assessing the Employer-Members, as opposed to assessing their individual employees, is the best solution in a bad situation. The employees are the only truly innocent victims in this matter. The Employer-Members made the decision that their employees would participate in the Builders & Contractors Employee Benefit Association Trust, as opposed to a traditional commercial health insurance plan. The Employer-Members received business tax deductions for their decision to participate in the Trust. The Employer-Members also gained financially through the relatively lower premiums charged to participate in such a trust. Most important, the Employer-Members had a contractual mechanism available to monitor and challenge the business of the trust—the entitlement to cast votes at membership meetings. The individual employees, in contrast, had no such mechanism available to them. Rather, the

individual employees were at the mercy of the decisions by Employer-Members. Simply put, the individual employees were least able to protect themselves, and should not now be compelled to suffer the loss, when they did not reap the corresponding economic benefits.

Accordingly, the only equitable result is to levy assessments against the Employer-Members, the group primarily and ultimately responsible to fund the Trust and who derived the economic benefits from their participation in the Trust.

D. The Existence or Non-Existence of a Master Agreement is Irrelevant to Whether Employee-Members Are Liable for the Unpaid Obligations of the Trust.

Most of the Employer-Members executed written agreements, typically referred to as Master Agreements, to become members of the Trust. The existence of a written agreement, however, or even the absence of language concerning potential assessments in such an agreement, is of no consequence to the creation of a Multiple Employer Welfare Arrangement or the liability of the Employer-Members under R.C. § 1739.15.

The creation of a Multiple Employer Welfare Arrangement is determined by reference to § 3(40) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(40).⁴

Under § 3(40) (A) of ERISA, a Multiple Employer Welfare Arrangement is specifically defined as:

[A]n employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan) which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1)⁵

⁴ ERISA comprehensively regulates employee benefit plans, including those providing medical, surgical, or hospital benefits by requiring the reporting and disclosure of financial and other pertinent information; by establishing uniform standards for fiduciaries of employee benefit plans; and by providing for appropriate remedies in both state and federal courts. *Richland Hosp., Inc. v. Carter-Jones Lumber Co.* (1987), 33 Ohio St. 3d 87, 88, citing Sections 1001(b), 1132 and 1144, Title 29, U.S. Code.

⁵ Section 3(1) of ERISA, 29 U.S.C. § 1002(1) list the benefits, in pertinent part, as medical, surgical, or hospital care benefits or benefits in the event of sickness, accident, disability, or death.

to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries * * * *

Section 3(40) (A) of ERISA, 29 U.S.C. § 1002(40).

Additionally, the definitional section of Ohio's Multiple Employer Welfare Arrangement statute also defines a Multiple Employer Welfare Arrangement in language virtually identical to that found under ERISA's definition. Ohio Revised Code § 1739.01(F) defines a Multiple Employer Welfare Arrangement, as follows:

[A]n employer welfare benefit plan, *trust*, or other arrangement, whether such plan, trust, or arrangement is subject to the "Employee Retirement Income Security Act of 1974," 88 Stat. 829, 29 U.S.C.A 1001, as amended, that is *established or maintained for the purpose of offering or providing*, through group insurance or *group self-insurance programs*, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability or death, to the *employees, and their dependents, of two or more employers*, or two or more self-employed individuals and their dependents.

R.C. § 1739.01(F) (emphasis added).

Accordingly, irrespective of whether a written agreement existed, or even the Defendants' interpretation of the language contained within such an agreement, a Multiple Employer Welfare Arrangement existed once the arrangement met the statutory definition of such provided under ERISA and Ohio's Multiple Employer Welfare Arrangement statute.

E. The Definition of "Agreement" is Irrelevant to Whether Defendants Are Liable for the Legal Obligations of the Trust

Defendants may contend further that their Master Agreement did not conform to the definition of "Agreement" found in R.C. § 1739.01⁶ and, therefore, the assessment provisions of

⁶ Ohio Revised Code Section 1739.01(A) defines "Agreement" as:

R.C. § 1739.15 does not apply to the Builders & Contractors Employee Benefit Association Trust. Such a contention fails, however. The term “Agreement” is not found anywhere in the provisions of R.C. § 1739.15⁷, nor does the imposition of liability depend on the existence of an “Agreement,” as the term is defined in R.C. § 1739.01(A). Rather, the imposition of liability under R.C. § 1739.15 is dependant upon the existence of (1) a Member; and (2) a Multiple Employer Welfare Arrangement – both of which are separately defined within R.C. § 1739.01.

A “Member” is defined in R.C. § 1739.01(E), as:

[A]n individual or an employer that is a member of an organization sponsoring a multiple employer welfare arrangement.

And, as referenced above, a Multiple Employer Welfare Arrangement is defined in R.C. § 1739.01(F).

Because each Defendant meets the definition of a “Member,” and the Builders & Contractors Employee Benefit Association Trust meets the definition of a “Multiple Employer Welfare Arrangement,” the definition or even the existence of an “Agreement” is not relevant to Defendants’ liability. In accordance with the above definition of “Member” found in R.C. § 1739.01(E), under the terms of the Master Agreements, the Employer-Members were required to maintain membership in one of three sponsoring organizations of the Builders & Contractors Employee Benefit Association Trust: Wholesale and Retail Employees Benefit Association (WREBA); Manufacturers Employee Benefit Association (MEWA); or Builders & Contractors

[A] written agreement executed by members of a multiple employer welfare arrangement that establishes an arrangement, provides for its operations, and through which each member agrees to assume and discharge all liability under sections 1739.01 to 1739.22 relating to or arising out of the operation of the arrangement in proportion to the ratio of the total number of covered employees employed by the member at the time the liability arose to the total number of covered employees employed by all members of the arrangement at the time the liability arose.

⁷ R.C. § 1739.15 (A) provides that “[a] member of a multiple employer welfare arrangement operating a group self-insurance program is liable for all legal obligations of the arrangement. (Emphasis added.)

Employee Benefit Association (BCEBA). And, in accordance with the above definitions of a multiple employer benefit association found in ERISA and Ohio's companion statute, it is beyond dispute that that the Builders & Contractors Employee Benefit Association Trust was established and maintained for the purpose of offering or providing, through group insurance or group self-insurance programs, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability or death, to the employees, and their dependents, of two or more employers, or two or more self-employed individuals and their dependents.

Additionally, pursuant to the provisions of R.C. § 1739.03(A), employers are prohibited from entering into any agreements to participate in such arrangements, unless the arrangement has been authorized to operate as a Multiple Employer Welfare Arrangement in the State of Ohio through a Certificate of Authority issued by the Ohio Department of Insurance. Certified copies of the MEWA Renewal Licenses have been attached as Exhibit A.

Therefore, there is no genuine issue of material fact as to whether Defendants are liable for the unpaid obligations of the Builders & Contractors Employee Benefit Association Trust, as provided under R.C. § 1739.15, and reasonable minds could reach no other conclusion adverse to Plaintiff. Accordingly, Plaintiff is entitled to judgment as a matter of law that employer-members are liable for the prior assessments issued for the Builders & Contractors Employee Benefit Association Trust.

F. Defendants Would Be Unjustly Enriched By Not Being Held Liable for the Unpaid Obligations of the Trust.

Unjust enrichment occurs when one party bestows a benefit on another party or individual, "without receiving just compensation for the reasonable value of the services rendered." *Sammarco v. Anthem Ins. Cos., Inc., et al.* (1998), 131 Ohio App.3d 544, 557. In the instant matter, it is evident that Defendants were conferred benefits in the form of medical,

surgical or hospital care for themselves and/or their employees. Further, Defendants certainly had knowledge that they received such health benefits. To permit Defendants to avoid their obligation to pay their proportionate share of the deficiencies incurred during the time period that Defendants took full advantage of such health benefits and business tax deductions permitted through their membership in the Trust would be unjust.

III. CONCLUSION

Based on the foregoing, construing the evidence most strongly in favor of Defendants, there is no genuine issue of material fact, reasonable minds can come to but one conclusion and that conclusion is adverse to Defendants, and Plaintiff is entitled to judgment as a matter of law. Accordingly, Plaintiff respectfully requests that her Motion for Partial Summary Judgment that Employer-Members are Liable for Assessments be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion of Plaintiff for Partial Summary Judgment as to Employer-Members' Liability for Assessments under R.C. § 1739.15 was served upon the 16th day of August, 2004 upon the following

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Necol Russell-Washington



Bob Taft, Governor
Ann Womer Benjamin, Director

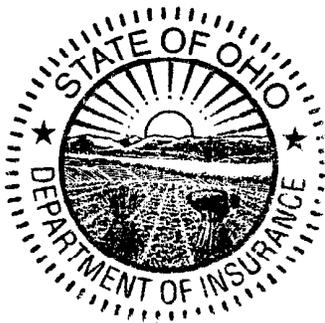
2100 Stella Court, Columbus, OH 43215-1067
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CERTIFICATION

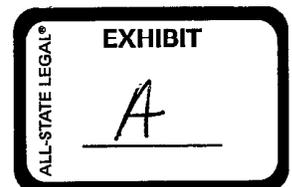
I, Sandra A. Ellis, an employee of the Legal Division of the Ohio Department of Insurance, do hereby certify that, the attached copies of the "MEWA Renewal License" with the effective dates of January 1, 1999, January 1, 2000, January 1, 2001, January 1, 2002 and January 1, 2003, for Builders & Contractors Employee Benefit Trust, are copies of the original, contained in the records maintained in the ordinary course of business by this agency.

Signed and dated this 13th day of August 2004.

Sandra A. Ellis
Paralegal
Office of Legal Services



Ann H. Womer Benjamin, Superintendent





**STATE OF OHIO
DEPARTMENT OF INSURANCE**

2100 Stella Court
Columbus, Ohio 43215-1067

MEWA RENEWAL LICENSE

ISSUED BY
THE OFFICE OF LIFE AND HEALTH SERVICES
November 1, 1999

ISSUED TO
BUILDERS & CONTRACTORS EMPLOYEE BENEFIT TRUST
2858 West Market Street, Suite N
Akron, Ohio 44333

EFFECTIVE THIS DAY
JANUARY 1, 1999

A handwritten signature in cursive script that reads "J. Lee Covington II".

J. LEE COVINGTON II, COMMISSIONER OF INSURANCE

This license is not transferable and must be renewed annually



**STATE OF OHIO
DEPARTMENT OF INSURANCE**

2100 Stella Court
Columbus, Ohio 43215-1067

MEWA RENEWAL LICENSE

ISSUED BY
THE OFFICE OF LIFE AND HEALTH SERVICES
September 5, 2000

ISSUED TO
BUILDERS & CONTRACTORS EMPLOYEE BENEFIT TRUST
2858 West Market Street, Suite N
Akron, Ohio 44333

**EFFECTIVE THIS DAY
JANUARY 1, 2000**

J. LEE COVINGTON II, COMMISSIONER OF INSURANCE

This license is not transferable and must be renewed annually



**STATE OF OHIO
DEPARTMENT OF INSURANCE**

2100 Stella Court
Columbus, Ohio 43215-1067

MEWA RENEWAL LICENSE

ISSUED BY
THE OFFICE OF LIFE AND HEALTH SERVICES
December 04, 2001

ISSUED TO
BUILDERS & CONTRACTORS EMPLOYEE BENEFIT TRUST
2858 West Market Street, Suite N
Akron, Ohio 44333

EFFECTIVE THIS DAY
JANUARY 1, 2001

A handwritten signature in black ink, reading "J. Lee Covington II". The signature is written in a cursive style with a prominent initial "J" and a double underline at the end.

J. LEE COVINGTON II, COMMISSIONER OF INSURANCE

This license is not transferable and must be renewed annually



**STATE OF OHIO
DEPARTMENT OF INSURANCE**

2100 Stella Court
Columbus, Ohio 43215-1067

MEWA RENEWAL LICENSE

ISSUED BY
THE OFFICE OF LIFE AND HEALTH SERVICES
June 26, 2002

ISSUED TO
BUILDERS CONTRACTORS EMPLOYEE BENEFITS ASSOCIATION
68 Baker Blvd., Suite 100
Akron, Ohio 44333

EFFECTIVE THIS DAY
JANUARY 1, 2002

J. LEE COVINGTON II, COMMISSIONER OF INSURANCE

This license is not transferable and must be renewed annually



**STATE OF OHIO
DEPARTMENT OF INSURANCE**

2100 Stella Court
Columbus, Ohio 43215-1067

MEWA RENEWAL LICENSE -

ISSUED BY
THE OFFICE OF LIFE AND HEALTH SERVICES
MARCH 20, 2003

ISSUED TO
BUILDERS & CONTRACTORS EMPLOYEE BENEFIT TRUST
68 Baker Blvd., Suite 100
Akron, Ohio 44333

EFFECTIVE THIS DAY
JANUARY 1, 2003

A handwritten signature in cursive script, reading "Ann Womer Benjamin".

ANN WOMER BENJAMIN, COMMISSIONER OF INSURANCE

This license is not transferable and must be renewed annually

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

J. LEE COVINGTON, II,
Superintendent of Insurance
Ohio Department of Insurance
2100 Stella Court
Columbus, Ohio 43215,

Plaintiff,

vs.

BUILDERS AND CONTRACTORS
EMPLOYEE BENEFIT ASSOCIATION TRUST,
2858 West Market Street, Suite N
Akron, Ohio 44333,

Defendant.

CASE NO. 02CVH-02-2010

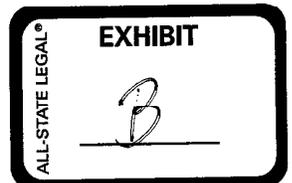
JUDGE Pfeiffer

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
02 MAR -4 PM 12:10
CLERK OF COURTS

AGREED ORDER APPOINTING REHABILITATOR

This cause came before this Court on the complaint of J. Lee Covington, II, Superintendent of Insurance of the State of Ohio, pursuant to R.C. 3903.12(A) and (L). Plaintiff appeared by and through the Ohio Attorney General, Betty D. Montgomery.

After having heard and considered the facts set forth in Plaintiff's complaint, this Court finds that the law and facts are as Plaintiff has alleged in his complaint and that there exists a present and urgent necessity for the immediate entry of this order. This Court further finds that:



~~1. Defendant Builders and Contractors Employee Benefit Association Trust~~
(hereinafter referred to as "Builders And Contractors") is in such condition that its further transaction of business would be financially hazardous to its policyholders, creditors or the public, as described under R.C. 3903.12(A).

2. Defendant Builders and Contractors, its members, officers, directors, agents, employees, partners, representatives and those acting in concert with it should be enjoined and restrained from conducting, operating or engaging in the business of insurance or any other business of Defendant under any charter, permit, license, registration, certificate of authority, power or privilege of Defendant, and that any banks, savings and loan association, corporation, depositors, employers' welfare trusts, unions, agents, or other legal entities should be enjoined and restrained from removing or disposing of any of the assets, books, records, or property of Defendant, or of any debt or claim owed to, by or for said Defendant, without the express written authorization of the Rehabilitator.

3. Without the appointment of a Rehabilitator, Defendant is not in a condition to continue the insurance business and may cause harm to the interests of its policyholders, creditors or the public in general, and that unless restrained, Defendant will be forced to operate in a condition contrary to the best interests of Defendant's policyholders, creditors and the general public.

4. Without the appointment of a Rehabilitator, the assets of Defendant may become dissipated, causing irreparable and immediate injury of the policyholders, Defendant creditors and the general public.

~~5. Defendant, on February 13, 2002, consented to the appointment of a~~
Rehabilitator in accordance with R.C. 3903.12(L) and waived both service of process
and the holding of a formal hearing to show cause in connection with said
appointment.

It is hereby ORDERED, ADJUDGED and DECLARED as follows:

1. Sufficient cause exists for the rehabilitation of Defendant.
2. J. Lee Covington, II, Superintendent of Insurance for the State of Ohio,
and his successors in office, is appointed Rehabilitator of Defendant Builders and
Contractors for the purpose of rehabilitation of defendant pursuant to the provisions of
R.C. Chapter 3903.
3. The Rehabilitator may appoint a Chief Deputy Rehabilitator and other such
Deputy Rehabilitators as he deems necessary for purposes of rehabilitation of
Defendant pursuant to the provisions of R.C. Chapter 3903.
4. The Rehabilitator shall forthwith take and secure possession of all assets
and property of Defendant, including, but not limited to, all property, contracts,
deposits, securities, rights of action, accounts, safe deposit boxes and books and
records of Defendant, wherever located, and administer them under the general
supervision of the Court.
5. The Rehabilitator is vested by operation of law with the title to all
property, deposits, securities, contracts, rights of action, books, records and other
assets of Defendant as of the date of the entry of this Order directing Rehabilitation,
and is authorized to deal with same in his own name as Rehabilitator.

~~insurance, equipment, inventory and supplies required, and to do any and every other~~
act necessary to enable him to perform the duties imposed upon him by this Order.

(e) The Rehabilitator shall take all steps necessary to place all bank accounts, stock certificates, securities, certificates of deposit and other financial instruments of Defendant into his own name, and shall use any accounts of Defendant as an operating fund for the business of the rehabilitation of Defendant, and shall keep a true and correct account of any and all receipts or expenditures which he shall make as Rehabilitator in the course of the operation of said business.

(f) The Rehabilitator may, in his discretion, withhold or discontinue the payment of any pending claims against or involving Defendant until such time as the Rehabilitator has sufficient time to evaluate the claims and the overall financial condition of the Defendant.

8. If it appears to the Rehabilitator that there has been criminal or tortious conduct, wrongful sequestration or diversion of Defendant Builders and Contractors's assets, or breach of any contractual or fiduciary obligation detrimental to Defendant by any officer, manager, agent, director, trustee, broker, employee of Defendant or other person, he may pursue all appropriate legal remedies on behalf of Defendant.

9. If the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger or other transformation of Defendant is appropriate, he shall prepare a plan to effect such changes. Upon application of the Rehabilitator for approval of the plan, and after such notice and hearings as this Court may prescribe, the Court may either approve or disapprove the plan proposed, or may

~~modify it and approve it as modified.~~ Any plan approved under this section shall be, in the judgment of this Court, fair and equitable to all parties concerned. If the plan is approved, the Rehabilitator shall carry out the plan.

10. The Rehabilitator shall have the power and authority under Sections 3903.26 and 3903.27 of the Revised Code to avoid fraudulent or preferential transfers. The Rehabilitator shall review all transactions, agreements, contracts, transfers of property or other actions agreed upon, entered into, made or incurred by Defendant within one year immediately prior to the filing of the complaint for rehabilitation. The Rehabilitator is hereby authorized to withhold or suspend any payments on any such transaction, agreement, contract, transfer of property or any other obligation of Defendant that may be due or owing for a period of ninety days or until such time as is necessary for the Rehabilitator to properly review such debt or claim. No legal action shall be taken or filed by a creditor or other person for any such amounts due against Defendant on any such transaction, agreement, contract, transfer of property or other action incurred or made within one year of the filing of the complaint for rehabilitation, and no delivery of or furnishing of services required thereby shall be suspended, discounted or terminated by such creditors or other persons during the ninety-day period of time that the Rehabilitator is reviewing such debt or claim, without further order of this Court.

11. The Rehabilitator is hereby granted and given all powers and authority under any and all statutes and under the common laws of this state authorizing the appointment of Rehabilitators, and, particularly, is granted and given all powers and

~~authority contained in R.C. Chapter 3903, including, without limitation, those~~
enumerated herein.

12. All officers, directors, trustees, employees or agents of Defendant, or any other person, firm, association, partnership, corporation or other entity in charge of any aspect of Defendant's affairs, including, but not limited to, banks, savings and loan associations, financial or lending institutions, brokers, stock or mutual associations, or any parent, holding company, subsidiary or affiliated corporation, or any other representative acting in concert with Defendant, shall cooperate with the Rehabilitator in the performance of his duties. The definition of "to cooperate" shall include, but not be limited to, a duty to do both of the following:

(a) Rely promptly in writing to any inquiry from the Rehabilitator requesting such a reply; and

(b) Immediately deliver to, and immediately make available to, the Rehabilitator any books, accounts, documents, records, information, computers, tapes, discs, writings, any other recording of information, pertaining to, or the property of, Defendant in his possession, custody or control.

(c) Disclose verbally or in writing, in the transmission requested by the Rehabilitator, the exact whereabouts of such items and information referenced in paragraph (b) above, if not in possession, custody or control of the officers, directors, trustees, employees or agents of Defendant, or any other person, firm, association, partnership, corporation or other entity in charge of any aspect of Defendant's affairs.

~~13. No member, officer, director, employee, partner, agent, representative of~~
Defendant, or any other person acting in concert with Defendant, shall obstruct or interfere with the Rehabilitation in the conduct of his duties as Rehabilitator, and these persons are hereby restrained, except under the express authorization of the Rehabilitator or by the further order of this Court, from doing, operating and conducting the business of insurance of Defendant under any charter, permit, license, power or privilege, belonging to or heretofore issued by or to said Defendant, and from in any manner conducting, doing or engaging in the business of insurance; from disposing of, using, transferring, selling, assigning, canceling, hypothecating or concealing in any manner or in any way, any books, records, equipment, money, accounts receivable, stocks (including the stock of Defendant), bonds, assets, notes, funds or any property or other assets of Defendant, whether real, personal or mixed or of any kind or nature, wherever situated including any claims or cause of action that Defendant might have against any person, firm association or corporation, belonging to, owned by, in the possession of, or claimed by Defendant; and disposing of any account, debt, deposit, share account, trust account, or any other asset owned, owned to, or held for the benefit of Defendant or under any other name.

14. All officers, directors, employees, agents, servants, representatives of Defendant and those acting in concert with Defendant, shall, by sworn written statement, inform the Rehabilitator of the nature, description and location of all assets or other property of Defendant not located on the premises of Defendant, including, but not limited to, all bank accounts, safe deposit boxes, safes, stock certificates,

~~bonds, certificates of deposit, cash, security or any other property, real personal or mixed, and these persons are specifically ordered and enjoined from disposing of, records or reports of Defendant, except under the express authorization of the Rehabilitator or by the further order of this Court.~~

15. All officers, directors, trustees, managers, employees or agents of Defendant, or any other person, firm, association, partnership, corporation or other entity in charge of any aspect of Defendant's affairs, including, but not limited to, banks, savings and loan associations, trust companies, financial or lending institutions, brokers, stock or mutual associations, any parent, holding company, subsidiary or affiliated corporation, or any other persons, firms, corporations, associations, depositories, employers, unions, welfare trusts, or other legal entities or any other representative acting in concert with Defendant, are hereby restrained as follows, except with the written consent of the Rehabilitator:

(a) From disposing of, using, releasing, transferring, withdrawing, allowing to be withdrawn or concealing in any manner or in any way the property or assets of Defendant, of any kind or nature whatsoever, wherever situated, or from disposing of any account, or any other assets owned, owed to or held for the benefit of defendant, or any account, debt, share account, trust account, or other assets owned or held individually, jointly, or severally, for Defendant, whether such account, debt, deposit, share account, trust account, or any other assets owned or held for such Defendant, or under any other name, except under the express written authorization of the Rehabilitator or by the further order of this Court.

~~(b) From doing anything, directly or indirectly, to prevent the Rehabilitator~~
from gaining access to, acquiring, examining or investigating any books, documents or records pertaining to or concerning Defendant or its affairs, under whatever name such books, documents or records may be filed or found or wheresoever such books, documents or records may be found or situated.

(c) From interfering in any way with the lawful acts of the Rehabilitator who has been appointed herein or from disposing of, converting, dissipating, or concealing in any manner or in any way any of the assets, books, property, records, or reports of Defendant.

16. Any action or proceeding pending in any Court in which Defendant is a party or is obligated to defend a party, is hereby stayed for a period of ninety days and such additional time as is necessary for the Rehabilitator to obtain proper representation and prepare for further proceedings. The Rehabilitator shall take such action respecting such pending litigation as he considers necessary in the interests of justice and for the protection of policyholders, creditors and the public. The Rehabilitator shall immediately consider all litigation pending outside this state and shall petition the Courts having jurisdiction over such litigation for stays wherever necessary to protect the estate of Defendant.

17. Any action by or against Defendant that might have been commenced when the complaint for rehabilitation was filed may be continued for at least ninety days after this order of rehabilitation is entered.

18. ~~All third persons dealing with interests in real property or other property~~
of Defendants are charged with notice of this order as provided in R.C. 3903.13(A).

19. The Rehabilitator may appoint one or more special duties, who shall have the powers and responsibilities of the Rehabilitator granted under this order, and may employ such clerks and assistants or security personnel as he considers necessary, such persons serving at the pleasure of the Rehabilitator.

20. The compensation of the Chief Deputy Rehabilitator, the Deputy Rehabilitators and any other special deputies, clerks, and assistants and all expenses of taking and securing possession of the property and affairs of Defendant and of conducting the rehabilitation of Defendant shall be fixed by the Rehabilitator, with the approval of this Court and shall be paid out of the funds or assets of Defendant. In the event that the property of Defendant does not contain sufficient cash or liquid assets to defray the costs incurred, the Superintendent of Insurance may advance the costs so incurred out of any appropriation for the maintenance of the Department of Insurance. Any amounts so advanced for expenses of administration shall be repaid

to the Superintendent for the use of the Department out of the first available money of

Defendant.

Beverly H. Pfeiffer
JUDGE

APPROVED:

BETTY D. MONTGOMERY (0007102)
Attorney General

Lawrence D. Pratt

LAWRENCE D. PRATT (0021870)
SCOTT MYERS (0040686)
Assistant Attorneys General
Health and Human Services Section
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Columbus, Ohio 43215-3428
(614) 466-8600

BUILDERS AND CONTRACTORS EMPLOYEE
BENEFIT ASSOCIATION TRUST

BY: *Gene M. Napier*
Trustee & Secretary

Builders and Contractors.ord

THE STATE OF OHIO Franklin County, ss	I, JOHN O'GRADY, Clerk OF THE COURT OF COMMON PLEAS, WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FORE- GOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <i>agreed order</i>	
NOW ON FILE IN MY OFFICE.	
WITNESS MY HAND AND SEAL OF SAID COUNTY	
THIS <i>4</i> DAY OF <i>April</i> A.D. 20 <i>02</i>	JOHN O'GRADY, Clerk
By <i>[Signature]</i>	Deputy

IN COMMON PLEAS COURT OF 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 CVH 09-10020

v.

JUDGE SCHNEIDER

A DAY IN THE COUNTRY, ET AL.,

DEFENDANTS.

AFFIDAVIT OF JAMES M. YOUNG

STATE OF OHIO :
 : SS
COUNTY OF FRANKLIN :

I, James M. Young, being first duly cautioned and sworn, depose and state:

1. I am employed as a Deputy Rehabilitator, and my job duties include maintaining the books and records of Builders & Contractors Employee Benefit Association Trust, and calculating the outstanding health claim liabilities pertaining to the Builders & Contractors Employee Benefit Association Trust.

2. I report directly to Douglas L. Hertlein, the Chief Deputy Rehabilitator responsible for rehabilitating the Builders & Contractors Employee Benefit Association Trust, and Ann H. Womer Benjamin, Superintendent, Ohio Department of Insurance, in her capacity as the Rehabilitator of the Builders & Contractors Employee Benefit Association Trust.

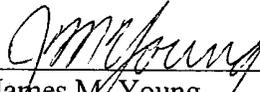
3. The facts stated within this Affidavit are based on my personal knowledge, as well as information or records provided or available to me in my capacity as Deputy Rehabilitator.



4. As of June 30, 2004, the unpaid health claims of the Builders & Contractors Employee Benefit Association Trust that have been verified and approved for payment total approximately \$1,502,562.94.

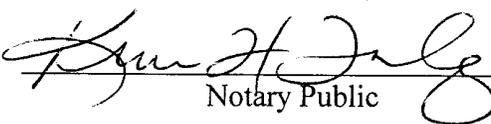
5. In addition, there is an estimated \$500,000 in other claims that the Builders & Contractors Employee Benefit Association Trust may be obligated to pay.

FURTHER AFFIANT SAYETH NAUGHT.



James M. Young
Deputy Rehabilitator

Subscribed and sworn before me this 16th day of August, 2004.



Notary Public



KIM H. FINLEY
Attorney At Law
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03 R.C.