

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

MAR 21 2007

JAMES N. HATTEN, Clerk

James N. Hatten
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ELAINE L. CHAO,)
Secretary of Labor,)
U.S. Department of Labor,)
)
Plaintiff,)
)
vs.)
)
INTERNATIONAL UNION OF PUBLIC)
AND INDUSTRIAL WORKERS CANADIAN)
BENEFIT FUND, WILLIAM HOPE,)
ROBBY LARKIN, GARY COUCH, ROGER GUE,)
AND PAMELA BARLOW,)
Defendants.)

FILE NO. 05-CV-3053 BBM

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 pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et. seq., ("ERISA"). Defendants William Hope, Robby Larkin, Gary Couch, Roger Gue, and Pamela Barlow (collectively "Defendants") admit that this Court has jurisdiction to adjudicate this action. The Secretary and the 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 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. Defendants admit that their transfer of \$1,258,689 in unpaid claims from the International Union of Public and Industrial Workers Canadian Benefit Fund ("IUPIW Fund") to the International Union of Industrial and Independent Workers Fund on or about April 26, 2004 violated ERISA, as alleged in the Secretary's Complaint. Defendants shall pay, as restitution for this violation, the amounts described in this Consent Judgment, below.

2. Chubb Insurance Company ("Chubb") issued Fiduciary Liability Policy No. 8158-6174 to the IUPIW Fund (the "Policy"). Chubb has agreed to pay to the IUPIW Fund within thirty calendar days of the entry of this Order the balance of the Policy's Limits of Liability remaining after payment of defense costs incurred by Insureds under the Policy in the amounts set forth below in order to resolve this case. Upon payment by Chubb as set forth herein, Chubb is released from any and all liability of

any kind to any party under the Policy.

3. Within thirty calendar days following the entry of this Consent Judgment, Chubb shall pay on behalf of its Insureds under the Policy the Limits of Liability remaining after the payment of Defense Costs, which consist of the following two payments : (1) \$542,727 to the IUPIW Fund through the Independent Fiduciary, and (2) \$57,273 to:

U.S. Department of Labor (via regular mail)
ERISA Civil Penalty
P.O. Box 70942
Charlotte, NC 28272-0942

Or

U.S. Department of Labor (via overnight courier)
QLP Wholesale Lockbox NC0810
Lockbox #70942
1525 West WT Harris Blvd
Charlotte, NC 28262

as a civil penalty pursuant to section 502(1) of ERISA, 29 U.S.C. § 1132(1) (please write EBSA Case No. 72-030434 on the check and include a copy of this consent judgment), and the regulations promulgated thereto. Defendants waive the notice of assessment and service requirement of 29 C.F.R. § 2570.83 with respect to this penalty. The Secretary has assessed the statutory penalty in accordance with Section 502(1) of ERISA but has resolved the penalty

for the amount stated above. Should any amount remain available after payment of Defense Costs, the remainder shall be paid over to the Independent Fiduciary for the IUPIW Fund for payment of claims.

4. The Parties consent to the appointment of Betty Cordial as the Independent Fiduciary of the IUPIW Fund.

a. The Independent Fiduciary is hereby directed to terminate the IUPIW Fund and to collect, marshal, and administer the assets of the IUPIW Fund, including those sums owing and payable to it, process the IUPIW 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 IUPIW Fund and the amount of their claims, and take such further actions with respect to the IUPIW Fund as she may determine are appropriate; provided, however, that the Independent Fiduciary shall not pursue any ERISA claims settled hereunder against 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 IUPIW Fund,
including authority over all bank accounts.

b. Defendants have represented and provided
account statements as of February 28, 2007
demonstrating that the IUPIW Fund holds at
least \$345,017.66 in Comerica Bank-California,
Account Numbers 1891079947, 1891190173,
1892277524, \$377,450.42 in a certificate of
deposit at Comerica Bank account number
898750000001631, and \$40,138.03 (Canadian) in
Canadian Imperial Bank of Commerce, Account
Numbers 22-11513 and 22-11610. Defendants
represent these assets are free and clear of
liens and or encumbrances, and at the time they
execute this Consent Judgment, Defendants will
transfer \$345,017.66 and \$40,138.03 (Canadian)
to an escrow account set up by the Independent
Fiduciary. Defendants will also transfer
ownership of the CD presently valued at
\$377,450.42 to the Independent Fiduciary, for
the benefit of the IUPIW Fund, within 10
calendar days of executing this Consent
Judgment. Within 10 calendar days of entry of

this Consent Judgment by the Court, Defendants will transfer the balance of the escrow account to the Independent Fiduciary. Any additional funds, including but not limited to credits, deposits participant contributions or premiums received into any of the afore-mentioned accounts between the execution of the Consent Judgment and the appointment of the Independent Fiduciary will also be promptly transferred to the escrow account of the Independent Fiduciary.

- c. In addition to the payments set forth above, Defendants shall transfer to the IUPIW Fund and deposit in an account designated by the Independent Fiduciary within 90 calendar days following the entry of this Consent Judgment the sum of \$20,000.
- d. 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.

- e. 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

5. 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 IUPIW Fund or any participant, beneficiary, or insured covered or intended to be covered by the IUPIW Fund.

6. Defendants and any entities they own or control are removed from having any positions they may currently hold with respect to the IUPIW Fund, including but not limited to their roles as IUPIW Fund trustees, and 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 such 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

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 IUPIW 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 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 participants or the people or entities listed on Exhibit 1, attached hereto, about the creation of, or transfer to, any fund subject to ERISA.

7. 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 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, 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 Defendants negotiate collective bargaining agreements, as described above, which provide for benefits under ERISA-covered plans, Defendants shall provide a copy of this Consent 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 Consent Judgment. If the collective bargaining agreements do not provide for ERISA-covered benefits at the time of the Defendants' collective

bargaining activities, but are later amended to so provide, then the Defendants shall provide a copy of the Consent Judgment to the above-mentioned entities within 5 days of the amendment. 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.

8. The Independent Fiduciary shall provide a copy of this Consent Judgment to the IUPIW 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 IUPIW 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 Defendants, any current or former IUPIW Fund service provider (other than Greentree Administrators) or employer association that has been or is covered by the IUPIW Fund, including but not limited to, the people or entities listed on Exhibit 1, attached hereto.

9. The Independent Fiduciary shall provide a copy of this Consent Judgment to the IUPIW 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.

10. The Defendants shall cooperate fully with the Independent Fiduciary in her efforts to administer the IUPIW Fund by:

- a. Providing reasonable and necessary assistance to the Independent Fiduciary, when asked, concerning questions pertaining to the operation of the IUPIW Fund and other issues necessary to administer the IUPIW Fund and recover any losses of the IUPIW 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 IUPIW Fund's assets; and

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

11. 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 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.

12. The IUPIW 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 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 IUPIW 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

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

14. 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.

15. By signing this Consent Judgment, the 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.

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

17. 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 Defendants named in the Secretary's complaint, 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.

18. 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.

This action is DISMISSED.

SO ORDERED this 21st day of March, 2007.

Beverly B. Martin

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)

s/Randall A. Constantine
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 Defendants

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: s/Daniel J. Chasek
*DANIEL J. CHASEK
Trial Attorney

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

03/15/2007 08:54 9287639745

WILLIAM HOPE

PAGE 02

Defendants consent to the entry and Plaintiff moves for entry of the foregoing judgment:

By: 

William Hope

By: _____

Gary Couch

By: 

Robby Farlin

By: _____

Roger Gue

By: _____

Pamela Barlow

03/15/2007 08:58 5624061073

IUPIW

PAGE 02

P-2

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 P1

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 C. Lee
Roger Lee

By: Pamela Barlow
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