

ORIGINAL

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO ex rel.)
 AMERICAN GREETINGS)
 CORPORATION, et al.,)
)
 Relators,)
)
 vs.)
)
 JUDGE NANCY A. FUERST, et al.,)
)
 Respondents.)

Case No. 2010-0582

**ORIGINAL ACTION IN
PROHIBITION AND MANDAMUS**

RELATORS' SUBMISSION OF EVIDENCE

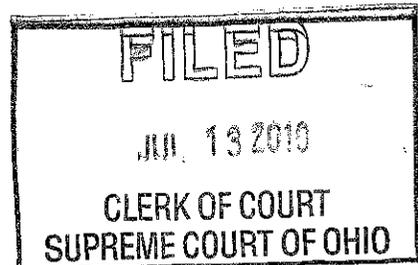
Volume II of II

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**COUNSEL FOR THE INDIVIDUAL
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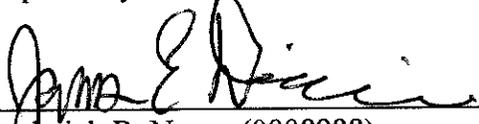
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Pursuant to S. Ct. Prac. R. X, Section 7, Relators submit the following evidence in support of their arguments, which is attached to the Affidavit of Frederick R. Nance:

- Tab 1. Verified Shareholder Derivative Complaint for Breach of Fiduciary Duties, Abuse of Control, Gross Mismanagement, Constructive Fraud, Corporate Waste and Unjust Enrichment And Violations of Ohio Revised Code §1701.93
- Tab 2. Defendants' Motion to Transfer Case to the Commercial Docket
- Tab 3. Plaintiff's Opposition to Defendants' Motion to Transfer Case to the Commercial Docket
- Tab 4. Defendants' Reply In Support of Defendants' Motion to Transfer Case to the Commercial Docket
- Tab 5. Individual Defendants' Appeal of Order Denying Motion to Transfer Case to the Commercial Docket
- Tab 6. Real Party in Interest American Greetings Corporation's Notice of Joinder in the Individual Defendants' Appeal of Order Denying Motion to Transfer to Commercial Docket.
- Tab 7. Plaintiff's Brief in Opposition to Defendants' Appeal of Order Denying Motion to Transfer Case to the Commercial Docket
- Tab 8. Individual Defendants' Motion for Leave to File Instantly a Reply In Support of Order Denying Motion to Transfer Case to the Commercial Docket
- Tab 9. Annual Return/Report of Employee Benefit Plan – Electrical Workers Pension Fund Local 103 I.B.E.W.
- Tab 10. Amended Complaint, *Sheehan v. Nigro Elec.*, 1:00-cv-10196 (D. Mass.)
- Tab 11. Complaint, *Sheehan v. McDonald*, 1:05-cv-11495 (D. Mass.)
- Tab 12. Complaint, *Sheehan v. Richard W. Reid Elec. Co., Inc.*, 1:05-cv-10424 (D. Mass.)
- Tab 13. Verified Complaint, *Gambino v. Howse*, 1:10-cv-10925 (D. Mass.)
- Tab 14. Verified Complaint, *Gambino v. Tri State Signal*, 1:09-cv-11973 (D. Mass.)
- Tab 15. Memorandum of Law in Support of Motion for Electrical Workers Pension Fund, Local 103, I.B.E.W. for Appointment as Lead Plaintiff and Approval of Selection of Lead Counsel, *Safron Capital Corp. v. Chesapeake Energy Corp.*, 1:09-cv-1826 (S.D.N.Y)

Respectfully submitted:



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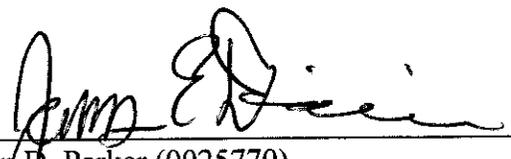
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OF COUNSEL FOR THE INDIVIDUAL
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DATED: July 13, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Relators' Submission of Evidence was served by regular U.S. mail this 13th day of July 2010 upon the following:

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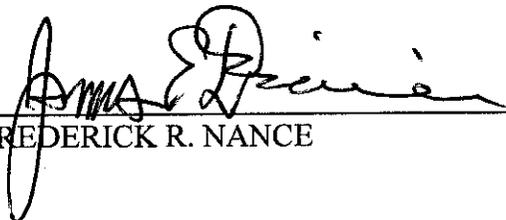
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FREDERICK R. NANCE

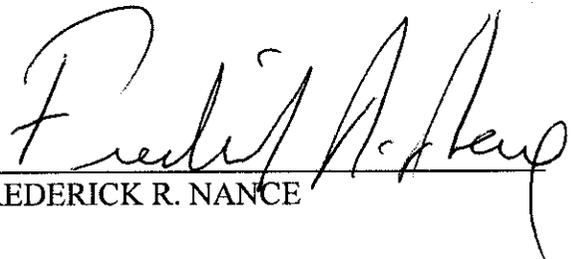
5. Attached hereto as Exhibit 4 is a true and correct copy of Defendants' Reply In Support of Defendants' Motion to Transfer Case to the Commercial Docket.
6. Attached hereto as Exhibit 5 is a true and correct copy of Individual Defendants' Appeal of Order Denying Motion to Transfer Case to the Commercial Docket.
7. Attached hereto as Exhibit 6 is a true and correct copy of Real Party in Interest American Greetings Corporation's Notice of Joinder in the Individual Defendants' Appeal of Order Denying Motion to Transfer to Commercial Docket.
8. Attached hereto as Exhibit 7 is a true and correct copy of Plaintiff's Brief in Opposition to Defendants' Appeal of Order Denying Motion to Transfer Case to the Commercial Docket.
9. Attached hereto as Exhibit 8 is a true and correct copy of Individual Defendants' Motion for Leave to File *Instantly* a Reply In Support of Order Denying Motion to Transfer Case to the Commercial Docket.
10. Attached hereto as Exhibit 9 is a true and correct copy of the Annual Return/Report of Employee Benefit Plan filed by the Electrical Workers Pension Fund Local 103 I.B.E.W.
11. Attached hereto as Exhibit 10 is a true and correct copy of the Amended Complaint, without exhibits, filed in *Sheehan v. Nigro Elec.*, 1:00-cv-10196 (D. Mass.).
12. Attached hereto as Exhibit 11 is a true and correct copy of the Complaint, without exhibits, filed in *Sheehan v. McDonald*, 1:05-cv-11495 (D. Mass.)
13. Attached hereto as Exhibit 12 is a true and correct copy of the Complaint, without exhibits, filed in *Sheehan v. Richard W. Reid Elec. Co., Inc.*, 1:05-cv-10424 (D. Mass.)

14. Attached hereto as Exhibit 13 is a true and correct copy of the Verified Complaint, without exhibits, filed in *Gambino v. Howse*, 1:10-cv-10925 (D. Mass.)

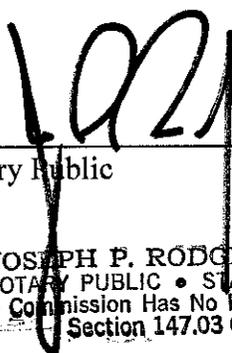
15. Attached hereto as Exhibit 14 is a true and correct copy of the Verified Complaint, without exhibits, filed in *Gambino v. Tri State Signal*, 1:09-cv-11973 (D. Mass.)

16. Attached hereto as Exhibit 15 is a true and correct copy of the Memorandum of Law in Support of Motion for Electrical Workers Pension Fund, Local 103, I.B.E.W. for Appointment as Lead Plaintiff and Approval of Selection of Lead Counsel filed in *Safron Capital Corp. v. Chesapeake Energy Corp.*, 1:09-cv-1826 (S.D.N.Y)

FURTHER AFFIANT SAYETH NAUGHT.


FREDERICK R. NANCE

SWORN TO AND SUBSCRIBED before
me this 12th day of July 2010.


Notary Public
JOSEPH P. RODGERS, ATTY.
NOTARY PUBLIC • STATE OF OHIO
My Commission Has No Expiration Date
Section 147.03 O.R.C.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ELECTRICAL WORKERS PENSION
FUND LOCAL 103 I.B.E.W., derivatively
on behalf of AMERICAN GREETINGS
CORPORATION,

Plaintiff,

v.

MORRY WEISS, JEFFREY WEISS, ZEV
WEISS, SCOTT S. COWEN, JOSEPH S.
HARDIN, JR., CHARLES A. RATNER,
JERRY SUE THORNTON, JOSEPH B.
CIPOLLONE, STEPHEN R. HARDIS, and
HARRIET MOUCHLY-WEISS,

Defendants,

-and-

AMERICAN GREETINGS
CORPORATION,

Nominal Defendant.

) CASE NO: CV 09-687985

) JUDGE PETER J. CORRIGAN

) ADMINISTRATIVE AND PRESIDING
) JUDGE NANCY A. FUERST

) **Oral Argument Requested**

**INDIVIDUAL DEFENDANTS' APPEAL OF ORDER DENYING
MOTION TO TRANSFER TO COMMERCIAL DOCKET**

Pursuant to Temporary Rule 1.04(C)(1) of the Rules of Superintendence for Courts of Ohio, Defendants Morry Weiss, Jeffrey Weiss, Zev Weiss, Scott S. Cowen, Joseph S. Hardin, Jr., Charles A. Ratner, Jerry Sue Thornton, Joseph B. Cipollone, Stephen R. Hardis and Harriet Mouchly-Weiss (the "Individual Defendants") respectfully appeal the Judgment of the Honorable Peter J. Corrigan entered on Friday March 5, 2010 (Exhibit A) denying transfer of this case to the Commercial Docket.

INTRODUCTION

This is a “derivative case” involving the “rights, obligations, liability. . . of an officer [or] director of a business entity owed to or from the business entity.” (Temp. Sup. R. 1.03(A).)¹ Accordingly, on March 2, 2010, the Individual Defendants and Nominal Defendant American Greetings -- the real plaintiff in interest -- moved to transfer this case to the Commercial Docket pursuant to the Ohio Supreme Court’s Temporary Rules, which *mandate* transfer of such derivative cases. (See Motion, Exhibit C.)

Plaintiff, a pension fund, opposed transfer on a single ground: it claimed to be a “labor organization” and argued that the Temporary Rules prohibit transfer of cases in which a “labor organization” is a party. (See Opp’n, Exhibit D.)

Despite the clear applicability of Temporary Rule 1.03(A) and Defendants’ demonstration that the “labor organization” exclusion did not apply to this case (Reply, Exhibit E), Judge Corrigan (incorrectly) denied Defendants’ Motion without explanation.

ARGUMENT

I. THE TEMPORARY RULES REQUIRE TRANSFER OF THIS CASE TO THE COMMERCIAL DOCKET.

As set forth in Defendants’ Motion, this derivative action was purportedly brought on behalf of American Greetings by the Electrical Workers Pension Fund Local 103 I.B.E.W (the “Pension Fund”), an American Greetings shareholder. (Complaint, Exhibit F.) In its Complaint, the Pension Fund claims the Individual Defendants breached their fiduciary duties to American Greetings by allegedly directing or allowing American Greetings to illegally backdate stock options. (Compl. ¶¶ 1-12.)

¹ For the Court’s convenience, a copy of relevant provisions of the Rules of Superintendence for Courts of Ohio is attached as Exhibit B.

The Pension Fund did not -- and could not -- dispute that the plain language of the Temporary Rules *require* that “derivative actions” like this one involving the “rights, obligations, liability, or indemnity of an officer [or] director” be transferred to the Commercial Docket. (Temp. R. 1.03(A).) Indeed, the Eight District Court of Appeals recently considered the propriety of an order transferring a similar shareholder derivative case to the Commercial Docket and concluded that transfer was not just proper, it was *required*. *State ex rel. Carr v. McDonnell*, 921 N.E. 2d 251, 255-56 (8th Dist. 2009).² The court further noted that if one of the parties had not moved to transfer, the trial court would have been required to transfer the case *sua sponte*. It is therefore beyond dispute that this derivative action belongs on the Commercial Docket.

II. THE “LABOR ORGANIZATION” EXCLUSION DOES NOT PRECLUDE TRANSFER OF THIS CASE TO THE COMMERCIAL DOCKET.

Temporary Rule 1.03(B) -- the rule upon which the Pension Fund relied in opposing transfer -- does not state that transfer is prohibited merely because a party claiming to be a labor organization is a named party. Rather, the Rule clearly and unambiguously states that “[a] commercial docket judge shall not accept a civil case into the commercial docket of the pilot project court if the *gravamen of the case* relates to any of the following (7) Cases in which a labor organization is a party[.]” (Emphasis added).³ Here, the Pension Fund’s identity is irrelevant to this case because the gravamen of the case relates to its status as an American Greetings shareholder, merely one of thousands entitled, under certain circumstances not present

² For the Court’s convenience, a copy of the Appellate Court’s decision in *State ex rel. Carr v. McDonnell*, 921 N.E. 2d 251, 255-56 (8th Dist. 2009), is attached as Exhibit G.

³ Where a rule is clear and unambiguous on its face, it should be applied as written. *See Bryant v. Dayton Casket Co.*, 433 N.E.2d 142 (Ohio 1982). Individual Defendants respectfully submit that the language and structure of Rule 1.03(B) are clear and unambiguous and ask the Court to apply the rule as it is written by considering not only whether a labor organization is a party but whether the party’s identity as a labor organization is related to the gravamen of the case.

here, to sue derivatively on behalf of American Greetings. Identical claims could have been made by any other American Greetings stockholder -- whether a hedge fund, an individual stockholder or another pension fund. Indeed, the “true plaintiff” (and beneficiary of any “damages” awarded if liability is found) is a corporation -- the nominal defendant, American Greetings. Because the Pension Fund brings its claims derivatively on behalf of American Greetings (Compl. at 2), plaintiff’s identity is irrelevant to the analysis of whether this case should be transferred to the Commercial Docket.

The Pension Fund’s interpretation of Temporary Rule 1.03(B) is contrary to basic canons of statutory construction.⁴ The Pension Fund asks the Court to ignore the plain language of the Rule, which dictates that the phrase “if the gravamen of the case relates to any of the following” in the section heading qualifies and limits the language in the subsections below. In fact, the Pension Fund would read this language out of the Rule altogether.

The Pension Fund’s interpretation would also lead to an illogical and absurd result that would undermine the policy behind the Supreme Court’s decision to create the Commercial Docket. The Supreme Court specifically intended that shareholder “derivative actions” relating to the rights, obligations and potential liability of officers and directors of Ohio corporations be transferred to the Commercial Docket. Derivative actions are often filed by pension funds whose only connection to the case is that they own stock in the corporation on whose behalf they seek

⁴ Courts must consider the language of the rule in context, “construing words and phrases in accordance with rules of grammar and common usage.” *Bartchy v. State Bd. of Education*, 897 N.E.2d 1096, 1102 (Ohio 2008). Furthermore, courts must give effect to all words in a rule and cannot “pick out one sentence and disassociate it from the context, but must look to the four corners of the enactment to determine the intent of the enacting body.” *State ex rel. Nation Bldg. Tech. Academy v. Ohio Dept. of Edu.*, 913 N.E.2d 977, 981 (Ohio 2009) (citing *State v. Wilson*, 673 N.E.2d 1347, 1350 (Ohio 1997).) And finally, courts should interpret the rule so as to avoid illogical or absurd results. *State ex rel. Asti v. Ohio Dept. of Youth Servs.*, 838 N.E.2d 658, 664 (Ohio 2005).

to sue. Thus, interpreting Temporary Rule 1.03(B) to prohibit transfers of cases to the Commercial Docket even where a party actually is a labor organization (as opposed to a pension fund) would allow lawyers to thwart the Supreme Court's intention by simply filing the action on behalf of one of their pension fund clients. This is not what the Supreme Court intended.

III. THE PENSION FUND IS NOT A "LABOR ORGANIZATION."

Even if plaintiff's legally meritless interpretation were correct, this case should still be transferred because the Pension Fund is not a "labor organization" under the Temporary Rules.

The Pension Fund argued that it is a "labor organization" as that term is defined in the National Labor Relations Act. (Opp'n at 1 (citing 29 U.S.C. §152(5).) The Pension Fund's only support for this assertion, though, was a footnote cite to the website of the International Brotherhood of Electrical Workers Local 103, where it stated that the "mission of Local 103, I.B.E.W., is a simple one -- to provide the most skilled and productive workforce in the world, while at the same time protecting the rights and benefits of worker." (Opp'n at 2, n.1.)

That argument is disingenuous, at best. Documents the Pension Fund filed with the federal government and in other litigation prove that the Pension Fund and Local 103 of the I.B.E.W. are legally distinct entities: the Pension Fund is a sophisticated institutional investor with more than a half-billion dollars in investments, while Local 103 of the I.B.E.W. is a labor union -- the type of "labor organization" envisioned by the Supreme Court in Temporary Rule 1.03(B)(7). Only the Pension Fund is a party to this litigation. The labor union has no role whatever in this case.

For example, the Pension Fund's annual report, which it is required to file with the federal government, reveals that it is a multiemployer pension plan within the meaning of

Section 3(37) of ERISA. (See Annual Return/Report of Employee Benefit Plan, Exhibit H.)⁵ Consistent with its filings with the federal government, the Pension Fund has stated in sworn submissions to courts in other cases that it is an “employee pension benefit plan’ within the meaning of §3(2)(A) of ERISA” (see Verified Complaint, *Gambino, et al. v. Tri State Signal*, 1:09-CV-11973-NG, (Exhibit I, at ¶ 4) and that it is a “large, sophisticated institutional investor” with “vast resources.” (See Mem. of Law in Supp. of Mot. for Elec. Workers Pension Fund, Local 103, I.B.E.W. for Appointment as Lead Pl. and Approval of Selection of Lead Counsel, Exhibit J, at 8.)

The Pension Fund should not be permitted to mask its true legal identity to avoid transfer of this case to the Commercial Docket, where it belongs.

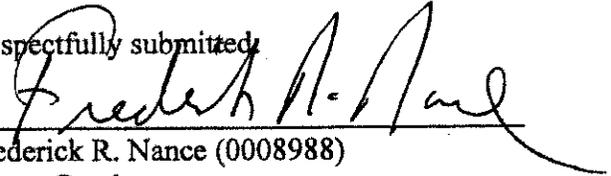
CONCLUSION

For the foregoing reasons, and for those reasons set forth in American Greetings’ Appeal of Order Denying Transfer of Case to Commercial Docket, the Individual Defendants respectfully request that the Court reverse the Judgment of the Honorable Judge Peter J. Corrigan and enter an order transferring this case to the Commercial Docket.

⁵ The Pension Fund’s report for 2006 -- the most recent year publicly available -- lists \$644,135,381 in investments. (*Id.* at 3.) The report also reveals that the Pension Fund is managed by a board of trustees (*id.* at 1) which, by law, must be made up of equal numbers of representatives from the union *and* management. 29 U.S.C. §186(c)(5).

Dated: March 10, 2010

Respectfully submitted,



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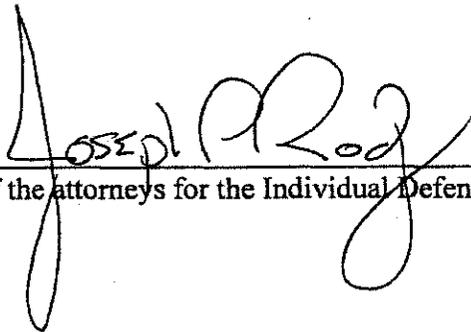
CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the Individual Defendants' Appeal of Order Denying Motion to Transfer to Commercial Docket was served by REGULAR U.S. MAIL this 10th day of March 2010 upon:

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One of the attorneys for the Individual Defendants

Print

DOCKET INFORMATION

Case Number: CV-09-687985

Case Title: ELECTRICAL WORKERS PENSION FUND LOCAL 103 I.B.E.W. vs. MORRY WEISS ET AL

Image Viewer: [AlternaTIFF](#)

DOCKET INFORMATION

Date	Side	Type	Description	Image
03/05/2010	N/A	JE	DEFENDANT(S) MORRY WEISS(D1), JEFFREY WEISS(D2), ZEV WEISS (D3), SCOTT S. COWEN(D4), JOSEPH S. HARDIN JR(D5), CHARLES A. RATNER(D6), JERRY SUE THORNTON(D7), JOSEPH B. CIPOLLONE(D8), STEPHEN R. HARDIS(D9), HARRIET MOUCHLY-WEISS(D10) and AMERICAN GREETINGS CORPORATION AN OHIO CORPORATION(D11) MOTION TO TRANSFER CASE TO THE COMMERCIAL DOCKET FREDERICK R NANCE 0008988, FILED 03/02/2010, IS DENIED. CLPAL 03/04/2010 NOTICE ISSUED	
03/04/2010	N/A	OT	DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO TRANSFER CASE TO THE COMMERCIAL DOCKET (W).....JOSEPH P. RODGERS 0069783	
03/03/2010	P1	OT	P1 ELECTRICAL WORKERS PENSION FUND LOCAL 103 I.B.E.W OPPOSITION TO DEFTS MOTION TO TRANSFER CASE TO THE COMMERCIAL DOCKET (W). JACK LANDSKRONER 0059227	
03/02/2010	D	MO	DEFENDANT(S) MORRY WEISS(D1), JEFFREY WEISS(D2), ZEV WEISS (D3), SCOTT S. COWEN(D4), JOSEPH S. HARDIN JR(D5), CHARLES A. RATNER(D6), JERRY SUE THORNTON(D7), JOSEPH B. CIPOLLONE(D8), STEPHEN R. HARDIS(D9), HARRIET MOUCHLY-WEISS(D10) and AMERICAN GREETINGS CORPORATION AN OHIO CORPORATION(D11) MOTION TO TRANSFER CASE TO THE COMMERCIAL DOCKET FREDERICK R NANCE 0008988 03/05/2010 - DENIED	
03/01/2010	N/A	OT	CASE AND FILE REMANDED BACK TO COURT OF COMMON PLEAS FROM U.S. DISTRICT COURT, NORTHERN DIST. OF OHIO.... USDC NO. 1:09CV875	
10/21/2009	P1	CS	REFUND CASE COST DEPOSIT TO LANDSKRONER,GRIECO,MADDEN,LTD	
08/28/2009	D9	SF	DEPOSIT AMOUNT PAID STEPHEN R HARDIS	
08/28/2009	D9	SF	DEPOSIT REQUIRED FOR REFUND \$18.21 STEPHEN R HARDIS	
08/28/2009	D5	SF	DEPOSIT AMOUNT PAID JOSPEH S HARDIN JR.	
08/28/2009	D5	SF	DEPOSIT REQUIRED FOR REFUND \$18.21 JOSPEH S HARDIN JR.	
08/28/2009	D11	\$\$	PAYMENT ON ACCOUNT MADE ON BEHALF OF WEISS/JEFFREY/ IN THE AMOUNT OF \$18.21 PAYMENT ON ACCOUNT MADE ON BEHALF OF COWEN/SCOTT/S. IN THE AMOUNT OF \$18.21 PAYMENT ON ACCOUNT MADE ON BEHALF OF RATNER/CHARLES/A. IN THE AMOUNT OF \$18.21 PAYMENT ON ACCOUNT MADE ON BEHALF OF	

<u>RULE</u>	<u>TITLE</u>	<u>CORRESPONDING FORMER RULE(S)</u>
<u>67</u>	<u>Estates of Minors of Not More than Ten Thousand Dollars</u>	
<u>68</u>	<u>Settlement of Injury Claims of Minors</u>	
<u>69</u>	<u>Settlement of Claims of or Against Adult Wards</u>	
<u>70</u>	<u>Settlement of Wrongful Death and Survival Claims</u>	
<u>71</u>	<u>Counsel Fees</u>	
<u>72</u>	<u>Executor's and Administrator's Commissions</u>	
<u>73</u>	<u>Guardian's Compensation</u>	
<u>74</u>	<u>Trustee's Compensation</u>	
<u>75</u>	<u>Local Rules</u>	
<u>76</u>	<u>Exception to the Rules</u>	
<u>77</u>	<u>Compliance</u>	
<u>78</u>	<u>Probate Division of the Court of Common Pleas - Case Management in Decedent's Estates, Guardianship, and Trusts</u>	
<u>79-98</u>	<u>Reserved</u>	
<u>99</u>	<u>Effective Date</u>	C.A. 99, C.P. 99, M.C. 99
	<u>Temporary Rules</u>	
<u>1.01</u>	<u>Definition</u>	
<u>1.02</u>	<u>Designation and Organization</u>	
<u>1.03</u>	<u>Scope of the Commercial Docket</u>	
<u>1.04</u>	<u>Transfer of Case to the Commercial Docket</u>	
<u>1.05</u>	<u>Special Masters</u>	
<u>1.06</u>	<u>Commercial Docket Case Management Plan</u>	
<u>1.07</u>	<u>Rulings on Motions and Submitted Cases</u>	
<u>1.08</u>	<u>Commercial Docket Case Disposition Time Guideline</u>	
<u>1.09</u>	<u>Publication of Opinions and Orders</u>	
<u>1.10</u>	<u>Pilot Project Evaluation</u>	
<u>1.11</u>	<u>Term of Temporary Rules 1.01 through 1.11</u>	

Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio were approved by the Supreme Court on May 6, 2008, effective July 1, 2008:

Temp. Sup. R. 1.01. Definitions

As used in Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio, "business entity" means a for profit or nonprofit corporation, partnership, limited liability company, limited liability partnership, professional association, business trust, joint venture, unincorporated association, or sole proprietorship.

(A) Designation of pilot project courts

The Chief Justice of the Supreme Court shall designate up to five courts of common pleas to participate in the commercial docket pilot project pursuant to Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio. Such courts shall be styled "pilot project courts." The Supreme Court Task Force on Commercial Dockets shall recommend to the Chief Justice courts for designation as pilot project courts. The Chief Justice shall not designate a court as a pilot project court unless the court agrees to participate in the commercial docket pilot project.

(B) Establishment of commercial docket

Notwithstanding any rule of the Rules of Superintendence for the Courts of Ohio or local rule of court to the contrary, each pilot project court is authorized to establish and maintain a commercial docket pursuant to the requirements of Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio.

(C) Designation and training of commercial docket judges

(1) The Chief Justice of the Supreme Court shall designate one or more sitting judges of each pilot project court to hear all cases assigned to the commercial docket. Such judges shall be styled "commercial docket judges." In the event of the death, resignation, or removal from or forfeiture of office of a commercial docket judge, the Chief Justice may designate another sitting judge of that pilot project court to serve as a commercial docket judge. The Supreme Court Task Force on Commercial Dockets shall recommend to the Chief Justice candidates for designation as commercial docket judges. The Chief Justice shall not designate a judge as a commercial docket judge unless the judge agrees to participate in the commercial docket pilot project.

(2) Each commercial docket judge shall complete an orientation and training seminar on the administration of commercial dockets to be offered or approved by the Supreme Court of Ohio Judicial College.

(A) Cases accepted into the commercial docket

A commercial docket judge shall accept a civil case, including any jury; non-jury; injunction, including any temporary restraining order; class action; declaratory judgment; or derivative action, into the commercial docket of the pilot project court if the case is within the statutory jurisdiction of the court and the gravamen of the case relates to any of the following:

- (1) The formation, governance, dissolution, or liquidation of a business entity, as that term is defined in Temporary Rule 1.01 of the Rules of Superintendence for the Courts of Ohio;
- (2) The rights or obligations between or among the owners, shareholders, partners, or members of a business entity, or rights and obligations between or among any of them and the entity;
- (3) Trade secret, non-disclosure, non-compete, or employment agreements involving a business entity and an owner, sole proprietor, shareholder, partner, or member thereof;
- (4) The rights, obligations, liability, or indemnity of an officer, director, manager, trustee, partner, or member of a business entity owed to or from the business entity;
- (5) Disputes between or among two or more business entities or individuals as to their business or investment activities relating to contracts, transactions, or relationships between or among them, including without limitation the following:
 - (a) Transactions governed by the uniform commercial code, except for consumer product liability claims described in division (B)(2) of this rule;
 - (b) The purchase, sale, lease, or license of, or a security interest in, or the infringement or misappropriation of, patents, trademarks, service marks, copyrights, trade secrets, or other intellectual property;
 - (c) The purchase or sale of a business entity or the assets of a business entity;
 - (d) The sale of goods or services by a business entity to a business entity;
 - (e) Non-consumer bank or brokerage accounts, including loan, deposit, cash management, and investment accounts;

(f) Surety bonds and suretyship or guarantee obligations of individuals given in connection with business transactions;

(g) The purchase, sale, lease, or license of, or a security interest in, commercial property, whether tangible, intangible personal, or real property;

(h) Franchise or dealer relationships;

(i) Business related torts, such as claims of unfair competition, false advertising, unfair trade practices, fraud, or interference with contractual relations or prospective contractual relations;

(j) Cases relating to or arising under state or federal antitrust laws;

(k) Cases relating to securities, or relating to or arising under federal or state securities laws;

(l) Commercial insurance contracts, including coverage disputes.

(B) Cases not accepted into the commercial docket

A commercial docket judge shall not accept a civil case into the commercial docket of the pilot project court if the gravamen of the case relates to any of the following:

(1) Personal injury, survivor, or wrongful death matters;

(2) Consumer claims against business entities or insurers of business entities, including product liability and personal injury cases, and cases arising under federal or state consumer protection laws;

(3) Matters involving occupational health or safety, wages or hours, workers' compensation, or unemployment compensation;

(4) Environmental claims, except those arising from a breach of contractual or legal obligations or indemnities between business entities;

(5) Matters in eminent domain;

(6) Employment law cases, except those involving owners described in division (A)(3) of this rule;

(7) Cases in which a labor organization is a party;

(8) Cases in which a governmental entity is a party;

- (9) Discrimination cases based upon the United States constitution, the Ohio constitution, or the applicable statutes, rules, regulations, or ordinances of the United States, the state, or a political subdivision of the state;
- (10) Administrative agency, tax, zoning, and other appeals;
- (11) Petition actions in the nature of a change of name of an individual, mental health act, guardianship, or government election matters;
- (12) Individual residential real estate disputes, including foreclosure actions, or non-commercial landlord-tenant disputes;
- (13) Any matter subject to the jurisdiction of the domestic relations, juvenile, or probate division of the court;
- (14) Any matter subject to the jurisdiction of a municipal court, county court, mayor's court, small claims division of a municipal court or county court, or any matter required by statute or other law to be heard in some other court or division of a court;
- (15) Any criminal matter, other than criminal contempt in connection with a matter pending on the commercial docket of the court.

Temp. Sup. R. 1.04.

Transfer of Case to the Commercial Docket

(A) Random assignment

A case filed with a pilot project court shall be randomly assigned to a judge in accordance with the individual assignment system adopted by the court pursuant to division (B)(2) of Rule 36 of the Rules of Superintendence for the Courts of Ohio.

(B) Transfer procedure

(1) If the gravamen of a case filed with a pilot project court relates to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, the attorney filing the case shall include with the initial pleading a motion for transfer of the case to the commercial docket.

(2) If the gravamen of the case relates to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, if the attorney filing the case does not file a motion for transfer of the case to the commercial docket, and if the case is assigned to a non-commercial docket judge, an attorney representing any other party shall file such a motion with that party's first responsive pleading or upon that party's initial appearance, whichever occurs first.

(3) If the gravamen of the case relates to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, if no attorney representing a party in the case files a motion for transfer of the case to the commercial docket, and if the case is assigned to a non-commercial docket judge, the judge shall sua sponte request the administrative judge to transfer the case to the commercial docket.

(4) If the case is assigned to the commercial docket and if the gravamen of the case does not relate to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, upon motion of any party or sua sponte at any time during the course of the litigation, the commercial docket judge shall remove the case from the commercial docket.

(5) Copies of a party's motion for transfer of a case to the commercial docket filed pursuant to division (B)(1) or (2) of this rule shall be delivered to the administrative judge.

(C) Ruling or decision on transfer

(1) A non-commercial docket judge shall rule on a party's motion for transfer of a case filed under divisions (B)(1) or (2) of this rule no later than two days after the filing of the motion. A party to the case may appeal the non-commercial docket judge's decision to the administrative judge within three days of the non-commercial docket

judge's decision. The administrative judge shall decide the appeal within two days of the filing of the appeal.

(2) An administrative judge shall decide the sua sponte request of a non-commercial docket judge for transfer of a case made under division (B)(3) of this rule no later than two days after the request is made.

(D) Review of transfer

(1) The factors set forth in Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio shall be dispositive in determining whether a case shall be transferred to or removed from the commercial docket pursuant to division (B) of this rule.

(2) The decision of the administrative judge as to the transfer of a case under division (C) of this rule is final and not appealable.

(E) Adjustment of other case assignments

To guarantee a fair and equal distribution of cases, a commercial docket judge who is assigned a commercial docket case pursuant to division (B) of this rule may request the administrative judge to reassign a similar civil case by lot to another judge in the pilot project court.

(A) Appointment

(1) With the consent of all parties in a commercial docket case, a commercial docket judge may appoint a special master to do any of the following with regard to the case:

(a) Perform duties consented to by the parties;

(b) Hold trial proceedings and make or recommend findings of fact on issues to be decided by the judge without a jury if appointment is warranted by some exceptional condition or the need to perform an accounting or resolve a difficult computation of damages;

(c) Address pretrial and post-trial matters that cannot be addressed effectively and timely by the judge.

(2) A special master shall not have a relationship to the parties, counsel, the case, or the commercial docket judge that would require disqualification of a judge under division (E) of Canon 3 of the Code of Judicial Conduct unless the parties consent with the judge's approval to appointment of a particular person after disclosure of any potential grounds for disqualification.

(3) In appointing a special master, the commercial docket judge shall consider the fairness of imposing the likely expenses on the parties and shall protect against unreasonable expense or delay.

(B) Order appointing a special master

(1) A commercial docket judge shall give the parties notice and an opportunity to be heard before appointing a special master. Any party may suggest candidates for appointment.

(2) An order appointing a special master shall direct the special master to proceed with all reasonable diligence and shall include each of the following:

(a) The special master's duties, including any investigation or enforcement duties, and any limits on the special master's authority under division (C) of this rule;

(b) The circumstances, if any, under which the special master may communicate ex parte with the commercial docket judge or a party;

(c) The basis, terms, and procedure for fixing the special master's compensation.

(3) A commercial docket judge may amend an order appointing a special master at any time after notice to the parties, and an opportunity to be heard.

(C) Special master's authority

Unless the appointing order expressly directs otherwise, a special master shall have authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently the assigned duties. The special master may impose appropriate sanctions for contempt committed in the presence of the special master and may recommend a contempt sanction against a party and sanctions against a nonparty.

(D) Evidentiary hearings

Unless the appointing order expressly directs otherwise, a special master conducting an evidentiary hearing may exercise the power of the commercial docket judge to compel, take, and record evidence.

(E) Special master's orders

A special master who makes an order shall file the order with the clerk of the court of common pleas and promptly serve a copy on each party. The clerk shall enter the order on the docket.

(F) Special master's reports

A special master shall report to the commercial docket judge as required by the order of appointment. The special master shall file the report and promptly serve a copy of the report on each party unless the commercial docket judge directs otherwise.

(G) Action on special master's order, report, or recommendations

(1) In acting on a special master's order, report, or recommendations, the commercial docket judge shall afford the parties an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the special master with instructions.

(2) A party may file an objection to or a motion to adopt or modify the special master's order, report, or recommendations no later than fourteen days after a copy is served, unless the court sets a different time.

(3) The court shall decide all objections to findings of fact made or recommended by the special master in accordance with the same standards as a ruling of a magistrate under paragraph (D)(3) of Rule 53 of the Rules of Civil Procedure, unless the parties, with the commercial docket judge's approval, stipulate either of the following:

(a) The findings will be reviewed for clear error;

(b) The findings of a special master appointed under division (A)(1)(a) or (b) of this rule will be final.

(4) The commercial docket judge shall decide de novo all objections to conclusions of law made or recommended by a special master.

(5) Unless the order of appointment establishes a different standard of review, the commercial docket judge may set aside a special master's ruling on a procedural matter only for an abuse of discretion.

(H) Compensation

(1) The commercial docket judge shall fix the special master's compensation before or after judgment on the basis and terms stated in the order of appointment, but the judge may set a new basis and terms after notice and an opportunity to be heard.

(2) The compensation of the special master shall be paid either by a party or parties or from a fund or subject matter of the case within the commercial docket judge's control.

(3) The commercial docket judge shall allocate payment of the special master's compensation among the parties after considering the nature and amount of the controversy and the extent to which any party is more responsible than other parties for the reference to a special master. An interim allocation may be amended to reflect a decision on the merits.

Temp. Sup. R. 1.06.

Commercial Docket Case Management Plan

The Supreme Court Task Force on Commercial Dockets shall establish a model commercial docket case management pretrial order to provide for the issuance of a commercial docket case management plan tailored to the requirements of the commercial docket. A commercial docket judge may use the model commercial docket case management pretrial order. Notwithstanding any contrary provision of a case management plan adopted by a pilot project court pursuant to division (B)(1) of Rule 5 of the Rules of Superintendence for Courts of Ohio, a commercial docket case management plan issued by a commercial docket judge shall govern the litigation of each commercial docket case assigned to that judge.

(A) Rulings on motions

(1) A commercial docket judge shall rule upon all motions in a commercial docket case within sixty days of the date on which the motion was filed.

(2) If a commercial docket judge fails to rule upon a motion in a commercial docket case within sixty days of the date on which the motion was filed, an attorney representing the movant shall provide the judge with written notification alerting the judge of this fact. The attorney shall provide a copy of the notification to all other parties to the case.

(B) Submitted cases

(1) A commercial docket judge shall issue a decision in all commercial docket cases submitted for determination after a court trial within ninety days of the date on which the case was submitted.

(2) If a commercial docket judge fails to issue a decision in a commercial docket case submitted for determination after a court trial within ninety days of the date on which the case was submitted, an attorney representing a party to the case shall provide the judge with written notification alerting the judge of this fact. The attorney shall provide a copy of the notification to all other parties to the case.

(A) Time guideline

Except for a case designated as complex litigation pursuant to Rule 42 of the Rules of Superintendence for the Courts of Ohio, a pilot project court shall aspire to have each case assigned to a commercial docket judge to disposition within eighteen months of the date on which the case was filed. This time guideline is not mandatory, but rather is intended to serve as a benchmark and assist pilot project courts and commercial docket judges in measuring the effectiveness of their case management.

(B) Notification of delay

If a commercial docket judge has not disposed of a commercial docket case assigned to the judge within eighteen months of the date on which the case was filed, the judge shall notify the Court Statistical Reporting Section of the Supreme Court as to the cause for delay for the purpose of providing the information to the Supreme Court Task Force on Commercial Dockets.

Temp. Sup. R. 1.09.

Publication of Opinions and Orders

Opinions and dispositive orders of the commercial docket judges shall be promptly posted on the website of the Supreme Court.

Temp. Sup. R. 1.10.

Pilot Project Evaluation

The Supreme Court Task Force on Commercial Dockets shall collect, analyze, correlate, and interpret information and data concerning the commercial docket of each pilot project court. The Task Force may request the assistance of the Court Statistical Reporting Section at the Supreme Court and collect additional information from pilot project courts as needed.

Temp. Sup. R. 1.11.

Term of Temporary Rules 1.01 through 1.11

Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio adopted by the Supreme Court on May 6, 2008 shall take effect on July 1, 2008 and shall remain in effect through July 1, 2012, unless extended, modified, or withdrawn by the Supreme Court prior to that date. Any commercial docket case pending after the term of these temporary rules shall continue pursuant to the requirements of the rules until final disposition thereof.

FILED

2010 MAR -2 P 4:11

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ELECTRICAL WORKERS PENSION)
FUND LOCAL 103 I.B.E.W., derivatively)
on behalf of AMERICAN GREETINGS)
CORPORATION,)

Plaintiff,)

v.)

MORRY WEISS, JEFFREY WEISS, ZEV)
WEISS, SCOTT S. COWEN, JOSEPH S.)
HARDIN, JR., CHARLES A. RATNER,)
JERRY SUE THORNTON, JOSEPH B.)
CIPOLLONE, STEPHEN R. HARDIS, and)
HARRIET MOUCHLY-WEISS,)

Defendants,)

-and-)

AMERICAN GREETINGS)
CORPORATION,)

Nominal Defendant.)

CASE NO: CV-09-68798

JUDGE PETER J. CORRIGAN

**DEFENDANTS' MOTION TO TRANSFER
CASE TO THE COMMERCIAL DOCKET¹**

Defendants respectfully move this Court to transfer this case to the Commercial Docket in accordance with Temporary Provision 4 of the Rules of Superintendence for Courts of Ohio.

The Temporary Rules provide:

¹ Pursuant to Temp. Sup. R. 1.04(B)(5), a copy of this Motion shall be delivered to the Administrative Judge.

[A] commercial docket judge shall accept a civil case, including any . . . *derivative action*, into the commercial docket . . . if the case is within the statutory jurisdiction of the court and the gravamen of the case relates to any of the following:

* * *

(4) The rights, obligations, liability, or indemnity of an officer, director, manager, trustee, partner, or member of a business entity owed to or from the business entity[.]

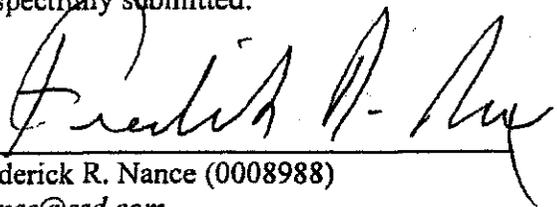
(Temp. Sup. R. 1.03 (emphasis added)).

This derivative action alleges, among other things, various breaches of fiduciary duty by officers and directors of American Greetings, and falls squarely within the scope of the commercial docket. Furthermore, the gravamen of the action does not relate to the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for Courts of Ohio. Accordingly, defendants request that their motion be granted.

A proposed Order is attached for the Court's convenience.

Dated: March 2, 2010

Respectfully submitted:



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ATTORNEYS FOR DEFENDANTS

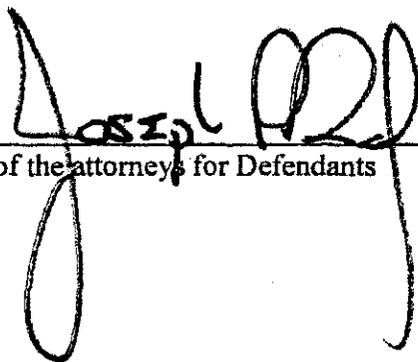
CERTIFICATE OF SERVICE

I certify that a true and accurate copy of this Motion to Transfer was served by
REGULAR U.S. MAIL and E-MAIL this 2nd day of March 2010 upon:

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ATTORNEYS FOR PLAINTIFF


One of the attorneys for Defendants

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ELECTRICAL WORKERS PENSION) CASE NO: CV-09-687985
FUND LOCAL 103 I.B.E.W., derivatively)
on behalf of AMERICAN GREETINGS)
CORPORATION,)
)
Plaintiff,)
)
v.)
)
MORRY WEISS, *et al.*,) **JOURNAL ENTRY**
)
Defendants,)
)
-and-)
)
AMERICAN GREETINGS)
CORPORATION,)
)
Nominal Defendant.)

**ORDER GRANTING MOTION TO TRANSFER
CASE TO THE COMMERCIAL DOCKET**

The Court hereby finds that the Motion to Transfer this case to the Commercial Docket in accordance with Temporary Rules 1.03 and 1.04 of the Rules of Superintendence for Courts of Ohio is well taken and hereby GRANTS the motion.

The Clerk of Courts is hereby ORDERED to transfer the case to the Commercial Docket.

Assigned Judge

Administrative Judge

Commercial Docket Judge

IN THE COURT OF COMMON PLEAS
 CUYAHOGA COUNTY, OHIO

ELECTRICAL WORKERS PENSION FUND LOCAL 103 I.B.E.W., etc.) : 58 Case No. CV-09-687985
 2010 MAY)

AND E. FUERST Judge Peter J. Corrigan
 Plaintiff)
 OF COURTS)
 CUYAHOGA COUNTY)

vs.)

MORRY WEISS, et al.)

Defendants)

and)

AMERICAN GREETINGS CORP.)

Nominal Defendant)

PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO TRANSFER
CASE TO THE COMMERCIAL DOCKET

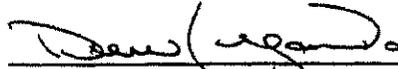
Plaintiff, The Electrical Workers Pension Fund Local 103 I.B.E.W. ("Local 103") respectfully requests that this Court deny defendants' Motion to Transfer Case To The Commercial Docket. Transfer is prohibited by Temporary Rule 1.03(B)(7), which states that "A commercial docket judge shall not accept a civil case into the commercial docket . . . [in] cases in which a labor organization is a party." TEMP. SUP. R. 1.03(B)(7) (emphasis added). The National Labors Relations Act broadly defines a labor organization as:

Any organization of any kind or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employees concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of work.

See 29 U.S.C. § 152(5). See also O.R.C. § 4117.01(D).

Plaintiff, Local 103, is a labor organization as defined under 29 U.S.C. § 152(5) and as stated in Temporary Rule 1.03(B)(7).¹ Therefore, Temporary Rule 1.03(B)(7) prohibits the transfer of this case to the commercial docket, and defendants' Motion to Transfer must be denied.

Respectfully submitted,



Jack Landskroner (0059227)

Drew Legando (0084209)

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Counsel for Plaintiffs

¹ "The mission of Local 103, I.B.E.W., is a simple one – to provide the most skilled and productive workforce in the world, while at the same time protecting the rights and benefits of every worker." See www.ibew103.com.

CERTIFICATE OF SERVICE

I certify that a copy of this brief was sent via regular mail on March 3, 2010, to the following counsel of record:

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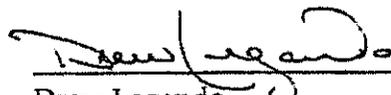
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FILED
IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

2010 MAR -4 A 9:43

ELECTRICAL WORKERS PENSION) CASE NO: CV 09-687985

FUND LOCAL 103 I.B.E.W., derivatively)

on behalf of AMERICAN GREETINGS)
CORPORATION,)
CLERK OF COURTS)
CUYAHOGA COUNTY)

Plaintiff,)

v.)

MORRY WEISS, JEFFREY WEISS, ZEV)
WEISS, SCOTT S. COWEN, JOSEPH S.)
HARDIN, JR., CHARLES A. RATNER,)
JERRY SUE THORNTON, JOSEPH B.)
CIPOLLONE, STEPHEN R. HARDIS, and)
HARRIET MOUCHLY-WEISS,)

Defendants,)

-and-)

AMERICAN GREETINGS)
CORPORATION,)

Nominal Defendant.)

DOCKET

MAR 4 2010

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION
TO TRANSFER CASE TO THE COMMERCIAL DOCKET**

In its Opposition to Defendants' Motion to Transfer Case to the Commercial Docket, Plaintiff Electrical Workers Pension Fund, Local 103, I.B.E.W. ("Pension Fund"), argues that this case should not be transferred to the Commercial Docket pursuant to Temporary Provision 4 of the Rules of Superintendence for Courts of Ohio because it claims the Temporary Rules prohibit transfer of cases where a labor organization like the Pension Fund is a party. (Opp. at 1.) But the Temporary Rules only bar transfer of cases to the Commercial Docket where the party's identity as a labor organization relates to the gravamen of the case. Here, the Pension

Fund is merely a shareholder attempting to sue derivatively on behalf of American Greetings Corporation (“American Greetings” or “the Corporation”) and, as such, its identity is irrelevant to the gravamen of the case.

ARGUMENT

As set forth in Defendants’ Motion to Transfer Case to the Commercial Docket, this is a derivative action purportedly brought on behalf of American Greetings by the Pension Fund, an American Greetings Shareholder. (Mot. at 1). In its Complaint the Pension Fund claims certain current and former directors and officers breached their fiduciary duties to American Greetings by allegedly directing or allowing the Corporation to illegally backdate millions of dollars worth of stock options granted to top officers and directors over the past 18 years.

As demonstrated in defendants’ Motion, the plain language of Temporary Rule 1.03(A) requires a derivative action like this one involving the “rights, obligations, liability, or indemnity of an officer [or] director” to be transferred to the Commercial Docket. (Mot. at 2 (citing Temp. Sup. R. 1.03(A))). In fact, the Eighth District recently considered the propriety of an order transferring to the Commercial Docket a very similar shareholder derivative action alleging breach of fiduciary duty. *See State ex rel. Carr v. McDonnell*, 921 N.E. 2d 251, 255-256 (8th Dist. 2009). The court concluded that under the Temporary Rules the transfer of the case to the Commercial Docket was not only proper but *required*, noting that if one of the parties had not made the motion to transfer, the trial court would have been required to transfer the case *sua sponte*. *Id.* at 256.

To avoid the plain language of Temporary Rule 1.03(A), the Pension Fund relies on Temporary Rule 1.03(B)(7), which it claims prohibits transfer of cases “in which a labor organization is a party.” (Opp. at 1 (citing Temp. Sup. R. 1.03(B)(7))). The Pension Fund argues

that it is a “labor organization” and, as such, this case cannot be transferred to the Commercial Docket.

Even assuming *arguendo* that the Pension Fund is a “labor organization,” the Temporary Rule cited by the Pension Fund does not bar transfer of this case to the Commercial Docket. Temporary Rule 103(B) – the full rule from which the Pension Fund creatively excerpted in its Opposition – does not prohibit the transfer to the Commercial Docket of *all* cases in which a labor organization is a party, only those cases in which a labor organization is a party *and* the fact that the party is a “labor organization” relates to the “gravamen of the case.” Temp. Sup. R. 103(B). The Pension Fund carefully excised this language from its discussion of Temporary Rule 1.03(B)(7) to create the false impression of a blanket ban on cases in which a “labor organization” is a party. (*See* Opp. at 1-2). But read as a whole, Temporary Rule 1.03(B) is plainly intended to preclude the transfer of only those cases in which a party is a labor organization *and* the party’s identity as a labor organization is related to the “gravamen of the case.” Excluding or ignoring this language as the Pension Fund intends would run afoul of well-established principles of statutory construction that require the Court to give effect to all of the words and phrases in a statute or rule. *See, e.g. E. Ohio Gas Co. v. Pub. Utilities Comm.*, 39 Ohio St. 3d 295, 299, 530 N.E.2d 875 (1988) (basic rule of statutory construction requires that no words in statutes be ignored).

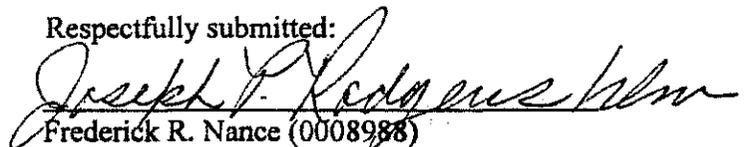
Here, the Pension Fund’s identity as a labor organization (if indeed it were determined to be one) is irrelevant to the gravamen of the case. Other than the case caption and a single paragraph defining the parties, there is nothing in the Complaint that would suggest the Pension Fund even *is* a labor organization, let alone that its identity as a labor organization has some relevance to the claims it purports to bring on behalf of American Greetings. The Pension Fund

is acting merely in its capacity as a holder of American Greetings' stock and identical claims could have been made by any other American Greetings stockholder – whether a hedge fund, an individual stockholder or another pension fund. The Pension Fund brings its claims derivatively on behalf of American Greetings (Compl. at 2) and, in so doing, effectively relegates itself to irrelevance in the instant analysis of whether the case should be transferred to the Commercial Docket.

Since the Pension Fund's claimed identity as a labor organization is irrelevant to the claims it purports to bring on behalf of American Greetings, Temporary Rule 1.03(B)(7) should not preclude the transfer of this case to the Commercial Docket. Instead, Defendants respectfully submit that the Court should apply the plain language of Temporary Rule 1.03(A), follow the well-reasoned analysis of *State ex rel. Carr v. McDonnell*, 921 N.E. 2d at 255-256, and transfer this case to the Commercial Docket.

Dated: March 4, 2010

Respectfully submitted:



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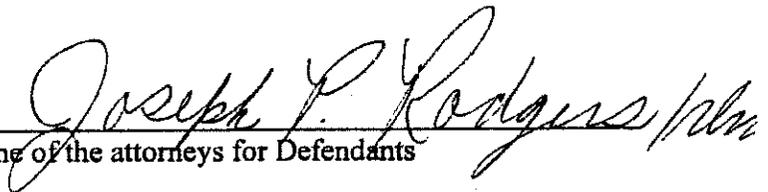
CERTIFICATE OF SERVICE

I certify that a true and accurate copy of this Reply in Support of Defendants' Motion to Transfer Case to the Commercial Docket was served by REGULAR U.S. MAIL this 4th day of March 2010 upon:

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ATTORNEYS FOR PLAINTIFF



One of the attorneys for Defendants

FILED

IN THE COMMON PLEAS COURT
OF CUYAHOGA COUNTY, OHIO

MAR 20 P 12:33

ELECTRICAL WORKERS PENSION FUND,
LOCAL 103, I.B.E.W., Derivatively on Behalf of)
AMERICAN GREETINGS CORPORATION)
256 Freeport Street)
Dorchester, MA 02122)

Plaintiff,

vs.

MORRY WEISS
4500 University Parkway
University Heights, OH 44118

Also serving:

MORRY WEISS
3164 Miro Drive North
Palm Beach Gardens, FL 33410

- and -

JEFFREY WEISS
23501 Ranch Road
Beachwood, OH 44122

- and -

ZEV WEISS
2420 Buckhurst Drive
Beachwood, OH 44122

- and -

SCOTT S. COWEN
2 Audobon Place, #801
New Orleans, LA 70118

- and -

JOSEPH S. HARDIN, JR.
820 Picacho Lane
Montecito, CA 93108

- and -

CHARLES A. RATNER
26980 South Park Boulevard
Shaker Heights, OH 44120

- and -

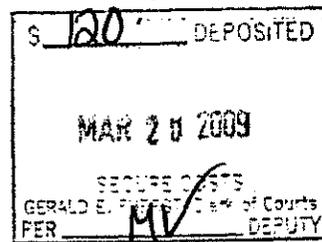
NO.
JUDGE

Complaint

PETER J CORRIGAN
CV 09 687985

VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT FOR
BREACH OF FIDUCIARY DUTIES,
ABUSE OF CONTROL, GROSS
MISMANAGEMENT, CONSTRUCTIVE
FRAUD, CORPORATE WASTE AND
UNJUST ENRICHMENT AND
VIOLATIONS OF OHIO REVISED CODE
§1701.93

DEMAND FOR JURY TRIAL



CV09687985

56363364



JERRY SUE THORNTON)

40 Fairway Trail)

Chagrin Falls, OH 44022)

Also serving:)

Jerry Sue Thornton)

201 North Westshore Drive, Apt. 2002)

Chicago, IL 60601)

- and -)

JOSEPH B. CIPOLLONE)

10740 Sherwood Trail)

North Royalton, OH 44133)

- and -)

STEPHEN R. HARDIS)

52 Wychwood Drive)

Chagrin Falls, OH 44022)

- and -)

HARRIET MOUCHLY-WEISS)

415 East 52nd Street, Apt. 9H)

New York, NY 10022)

Defendants,)

- and -)

AMERICAN GREETINGS CORPORATION, an)

Ohio corporation,)

One American Road)

Cleveland, OH 44144)

Also serving:)

c/o Registered Agent:)

CSC - Lawyers Incorporating Service)

50 West Broad Street, Ste. 1800)

Columbus, OH 43215)

Nominal Defendant.)

NATURE OF THE ACTION

1. This is a shareholder derivative action brought by a shareholder of American Greetings Corporation ("American Greetings" or the "Company") on behalf of the Company. The derivative claims are asserted against American Greetings' Board of Directors (the "Board") and certain of its current and former senior executives and directors (collectively, "defendants"). American Greetings designs, manufactures and sells seasonal greetings cards and other social expression products. It also owns and operates over 400 card and gift retail shops throughout North America.

2. Plaintiff's investigation has revealed that American Greetings has secretly backdated millions of options to its top officers and directors for over a decade, reporting false financial statements and issuing false proxies to shareholders. Backdating stock options is now recognized as a deceptive practice companies throughout the securities markets have used to conceal grants of "in-the-money" options or options otherwise with more intrinsic value than disclosed, without reporting the corresponding requisite compensation expense.

3. Backdating stock options illicitly confers upon option recipients options of a far greater value than that represented by the option date and price. For example, if a company grants options on June 10, when its stock price is \$26.00, but records the option date as February 10, when the stock price was only \$20.00, and prices the option at fair market value on the purported date of grant, *i.e.*, \$20.00, then the recipients of the option garner a hidden riskless profit, compensation expense is understated by \$6.00 for each option, and the company receives \$6.00 less that it should have upon the option's exercise. Similarly, if a company grants options on June 10, when its stock price is \$26, but records the option date as February 10, when the stock price was only \$20.00, and prices the option at a fixed percentage of fair market value on the purported date of grant, *e.g.*, 50%, for a price of \$10.00, then the recipients of the option garner a hidden riskless profit, compensation

expense is understated by \$3.00 for each option, and the company receives \$3.00 per share less than it should have upon the option's exercise.

4. Statistical analysis and extensive review of the Company's SEC filings reveals that American Greetings' stock option grants to officers and directors were often priced at or near (or based on a percentage of) the lowest closing price for the month, quarter and/or year. This occurred with highly improbable frequency. Indeed, the odds that American Greetings priced certain of its options by chance (rather than manipulation) are well over 1 in 1000. *See infra* ¶¶66-75.

5. This action seeks to remedy defendants' violations of state law, including breaches of fiduciary duty, abuse of control, constructive fraud, corporate waste, unjust enrichment and gross mismanagement, arising out of a scheme and wrongful course of business whereby defendants allowed American Greetings insiders to divert millions of dollars of corporate assets to themselves via the manipulation of grant dates associated with hundreds of thousands of stock options granted to American Greetings insiders. Each of the defendants also participated in the concealment of the backdating option scheme complained of herein and/or refused to take advantage of the Company's legal rights to require these senior insiders to disgorge illicitly obtained compensation and proceeds diverted to them since the 1990s.

6. Between 1996 and the present, defendants also caused American Greetings to file false and misleading statements with the Securities and Exchange Commission ("SEC"), including proxy statements filed with the SEC which stated that the options granted by American Greetings carried with them an exercise price equal to, or based on a percentage of, the fair market value of American Greetings stock (closing price) *on the date of grant*.

7. Lynn Turner, the SEC's former Chief Accountant, described undisclosed backdating as follows: "It's like allowing people to place bets on a horse race after the horses have crossed the

finish line.” Arthur Levitt, former Chairman of the SEC, described backdating as stealing: “It is ripping off shareholders in an unconscionable way” and “represents the ultimate in greed.”

8. In fact, defendants were aware that the practices employed by the Board allowed the stock option grants to be backdated to dates when the Company’s shares were trading at or near the lowest price for that relevant period. By now, defendants’ backdating scheme has yielded stock option grants to the Company’s executive officers worth millions of dollars. These grants were included in more than \$38 million in stock sale proceeds for defendants and other Company insiders.

9. Defendants’ misrepresentations and wrongful course of conduct violated Ohio law. By authorizing and/or acquiescing in the stock option backdating scheme, defendants: (i) caused American Greetings to issue false statements; (ii) diverted millions of dollars of corporate assets to senior American Greetings executives; and (iii) subjected American Greetings to potential liability from regulators, including the SEC and the Internal Revenue Service (“IRS”).

10. As stated by Harvey Pitt, former Chairman of the SEC, “backdating” plainly violates both the federal securities laws and state corporate fiduciary laws:

What’s so terrible about backdating options grants?

For one thing, it likely renders a company’s proxy materials false and misleading. Proxies typically indicate that options are granted at fair market value. But if the grant is backdated, the options value isn’t fair – at least not from the vantage point of the company and its shareholders.

* * *

Securities law violations are not the only potential problems with backdating options grants. Backdating may violate the Internal Revenue Code, and companies may not be able to deduct the options payments. On the state level, backdating could involve a breach of fiduciary duty, a waste of corporate assets and even a usurpation of a corporate opportunity.

* * *

More fundamentally, the financial statements of a company that has engaged in backdating may require restatement. The options may not be deductible, and the

expenses, as well as the various periods to which they may have been allocated, may also be incorrect. . . .

More to the point, what does this kind of conduct say about those who do it and those who allow it to occur (either wittingly or unwittingly)?

Those who backdate options grants violate federal and state law. And those on whose watch this conduct occurs are also potentially liable: If they knew about the backdating, they're participants in fraudulent and unlawful conduct. If they didn't know about the backdating, the question will be: Should they have done more to discover it?

Harvey Pitt, *The Next Big Scandal*, Forbes.com.

11. Defendants' gross mismanagement and malfeasance over the past decade has exposed American Greetings and its senior executives to criminal and civil liability for issuing false and misleading financial statements. Specifically, defendants caused or allowed American Greetings to issue statements that failed to disclose or misstated the following: (i) that the Company had problems with its internal controls that prevented it from issuing accurate financial reports and projections;(ii) that because of improperly recorded stock-based compensation expenses, the Company's financial results violated Generally Accepted Accounting Principles ("GAAP"); (iii) that the Company's notes to financial statements materially understated the value of stock option grants to insiders; and (iv) that the Company's public statements (including its financial statements) presented an inflated view of American Greetings' earnings and earnings per share.

12. Defendants' malfeasance and mismanagement during the relevant period has wreaked millions of dollars of damages on American Greetings. The Company's senior executives were incentivized to over-pay themselves, to profit from their misconduct by cashing in on under-priced stock options and to issue false financial statements to cover up their misdeeds. Defendants' breaches of fiduciary duties in the administration of the Company's stock option plans so polluted the plans with grant date manipulations so as to void all grants made pursuant to the plans. Meanwhile, certain of the defendants and other insiders, who received undisclosed in-the-money

stock and/or knew material non-public information regarding American Greetings' internal control problems, abused their fiduciary relationship with the Company by accepting backdated options, exercising those options, and selling their personally held shares. This action seeks recovery for American Greetings against defendants, for American Greetings' Board of Directors, as currently composed, is simply unable or unwilling to do so.

JURISDICTION AND VENUE

13. This Court has jurisdiction over nominal party American Greetings because American Greetings is an Ohio corporation that conducts business in and maintains operations in this County, and over each individual defendant named herein because each individual has sufficient minimum contacts with Ohio so as to render the exercise of jurisdiction by the Ohio courts permissible under traditional notions of fair play and substantial justice. Each of the individual defendants has conducted or continues to conduct business in this County, and certain of the individual defendants are citizens of Ohio and reside in this County.

14. Venue is proper in this Court because nominal party American Greetings' principal business address is located in this County and because one or more of the individual defendants either resides in or maintains offices in this County, a substantial portion of the transactions and wrongs of which plaintiff complains, including defendants' violations of fiduciary duties owed American Greetings and the Company's shareholders occurred in this County, and because the individual defendants received substantial compensation in this County by doing business here and engaged in activities (of which plaintiff complains) that had an effect in this County.

PARTIES

15. Plaintiff Electrical Workers Pension Fund, Local 103, I.B.E.W. ("Local 103") holds 13,700 shares of Class A common stock of nominal party American Greetings, and has held the Company's common stock at all relevant times since at least November 30, 2000.

16. Nominal party American Greetings is an Ohio corporation with its principal business located at One American Road, Cleveland, Ohio.

17. Defendant **Morry Weiss** ("M. Weiss") has been Chairman of the Board of Directors since 1992. From 1978 to 1987 he acted as Chief Operating Officer and from 1987 to 2003 he acted as Chief Executive Officer of the Company. M. Weiss accepted hundreds of thousands of backdated options, in contravention of the express authorization of the Company's shareholders and the Company's stock option plans. M. Weiss knew the adverse non-public information about the business of American Greetings, as well as its finances, markets, and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and/or Board meetings and committees thereof, and via reports and other information provided to him in connection therewith. Through this and his acceptance of hundreds of thousands of backdated options, M. Weiss knew that the Company's directors and officers were backdating stock option grants.

18. M. Weiss participated in the preparation of management representation letters to American Greetings' auditors that falsely omitted (i) breaches of the Company's internal controls, namely the backdating of stock options; (ii) material inflation of the Company's reported financial results due to the false underreporting of compensation expense; and (iii) the resulting irregularities of the Company's deceptive stock option granting practices and false financial reporting that would require a restatement of the Company's financial statements and/or the withdrawal or modification of audit opinions certifying the Company's financial reports.

19. Although he disregarded that he and other of the Company's directors and officers were backdating and/or accepting backdated stock option grants, M. Weiss participated in the preparation of, and approved, false and misleading statements, including press releases and SEC

filings, and he signed the Company's Reports on Form 10-K, Reports on Forms 3, 4 and 5, Proxy Statements and Sarbanes-Oxley Certifications attached to American Greetings' Reports on Forms 10-K and 10-Q. M. Weiss also sold at least 1,006,958 class B shares of stock directly to the Company in 2006, knowing the price of those shares was artificially inflated by false financial statements the Company issued, as alleged herein.

20. Defendant **Jeffrey Weiss** ("J. Weiss"), son of M. Weiss, has been President and Chief Operating Officer of American Greetings since June 2003. J. Weiss has also been a director of the Company since 2003. Previously J. Weiss acted as Executive Vice President of the Company's North American Greeting Card Division from March 2000 until June 2003, and has been an employee of the Company since 1988. J. Weiss accepted tens of thousands of backdated options in contravention of the express authorization of the Company's shareholders and the Company's stock option plans. J. Weiss knew the adverse non-public information about the business of American Greetings, as well as its finances, markets, and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and/or Board meetings and committees thereof, and via reports and other information provided to him in connection therewith. Through this and his acceptance of tens of thousands of backdated options, J. Weiss knew that the Company's directors and officers were backdating stock option grants.

21. J. Weiss participated in the preparation of management representation letters to American Greetings' auditors that falsely omitted (i) breaches of the Company's internal controls, namely the backdating of stock options; (ii) material inflation of the Company's reported financial results due to the false underreporting of compensation expense; and (iii) the resulting irregularities of the Company's deceptive stock option granting practices and false financial reporting that would

require a restatement of the Company's financial statements and/or the withdrawal or modification of audit opinions certifying the Company's financial reports.

22. Although he disregarded that he and other of the Company's directors and officers were backdating and/or accepting backdated stock option grants, J. Weiss participated in the preparation of, and approved, false and misleading statements, including press releases and SEC filings, and he signed the Company's false and misleading Reports on Form 10-K, Reports on Forms 3, 4 and 5 and Proxy Statements. J. Weiss also sold at least 136,862 class B shares of stock directly to the Company in 2006, knowing the price of those shares was artificially inflated by false financial statements the Company issued, as alleged herein.

23. Defendant Zev Weiss ("Z. Weiss"), son of M. Weiss and brother of J. Weiss, has been Chief Executive Officer of American Greetings since June 2003. Z. Weiss has also been a director of the Company since 2003. Z. Weiss has been an employee of the Company since 1992. Z. Weiss accepted tens of thousands of backdated options in contravention of the express authorization of the Company's shareholders and the Company's stock option plans. Z. Weiss knew the adverse non-public information about the business of American Greetings, as well as its finances, markets, and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and/or Board meetings and committees thereof, and via reports and other information provided to him in connection therewith. Through this and his acceptance of tens of thousands of backdated options, Z. Weiss knew that the Company's directors and officers were backdating stock option grants.

24. Z. Weiss participated in the preparation of management representation letters to American Greetings' auditors that falsely omitted (i) breaches of the Company's internal controls,

namely the backdating of stock options; (ii) material inflation of the Company's reported financial results due to the false underreporting of compensation expense; and (iii) the resulting irregularities of the Company's deceptive stock option granting practices and false financial reporting that would require a restatement of the Company's financial statements and/or the withdrawal or modification of audit opinions certifying the Company's financial reports.

25. Although he disregarded that he and other of the Company's directors and officers were backdating and/or accepting backdated stock option grants, Z. Weiss participated in the preparation of, and approved, false and misleading statements, including press releases and SEC filings, and he signed the Company's false and misleading Reports on Form 10-K, Reports on Forms 3, 4 and 5, Proxy Statements and Sarbanes-Oxley Certifications attached to American Greetings' Reports on Forms 10-K and 10-Q. Z. Weiss also sold at least 177,034 class B shares of stock directly to the Company in 2006, knowing the price of those shares was artificially inflated by false financial statements the Company issued, as alleged herein.

26. Defendant **Scott S. Cowen** ("Cowen") has been a director of American Greetings since 1989. Cowen has been a member of the Audit and Compensation Committees since at least 1993. Cowen granted hundreds of thousands of backdated options and accepted tens of thousands of backdated options, in contravention of the express authorization of the Company's shareholders and the Company's stock option plans. Cowen knew the adverse non-public information about the business of American Greetings, as well as its finances, markets, and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and/or Board meetings and committees thereof, and via reports and other information provided to him in connection therewith. Through this

and his approval and acceptance of hundreds of thousands of backdated options, Cowen knew that the Company's directors and officers were backdating stock option grants.

27. Cowen participated in (and did work in connection with) one meeting of the Compensation Committee in each of 1996-1997, two meetings in 2000, four meetings in each of 2001-2003, and four meetings in each of 2006-2007, during which he engaged in backdating options. Cowen also executed at least one consent in each of these periods of time, in which he approved the granting of backdated options. Cowen also did work and/or communicated with the Company's external auditors in connection with three meetings of the Audit Committee in each of fiscal 1996-1997 and 1999-2002, four meetings of the Audit Committee in each of fiscal 1998 and 2003, five meetings of the Audit Committee in fiscal 2004, seven meetings of the Audit Committee in each of fiscal 2005 and 2006, and six meetings of the Audit Committee in fiscal 2007, during which he withheld from the Company's auditors (i) breaches of the Company's internal controls, namely the backdating of stock options; (ii) material inflation of the Company's reported financial results due to the false underreporting of compensation expense; and (iii) the resulting irregularities of the Company's deceptive stock option granting practices and false financial reporting that would require a restatement of the Company's financial statements and/or the withdrawal or modification of audit opinions certifying the Company's financial reports.

28. Although he disregarded that American Greetings' directors and officers were backdating stock option grants, Cowen participated in the preparation of, and approved, false and misleading statements, including press releases and SEC filings, and he signed the Company's false and misleading Reports on Form 10-K, Reports on Forms 3, 4 and 5, and Proxy Statements. Cowen also sold at least 4,800 class B shares of stock directly to the Company in 2006, knowing the price of

those shares was artificially inflated by false financial statements the Company issued, as alleged herein.

29. Defendant **Joseph S. Hardin, Jr.** ("Hardin") has been a director of American Greetings since 2004. Hardin has been a member of the Compensation Committee since 2006 and was a member of the Audit Committee from 2004 to 2005. Hardin granted and accepted backdated options, in contravention of the express authorization of the Company's shareholders and American Greetings' stock option plans. Hardin knew the adverse non-public information about the business of American Greetings, as well as its finances, markets, and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and/or Board meetings and committees thereof, and via reports and other information provided to him in connection therewith. Through this and his approval and acceptance of tens of thousands of backdated options, Hardin knew that the Company's directors and officers were backdating stock option grants.

30. Hardin participated in (and did work in connection with) four meetings of the Compensation Committee in each of 2006-2007, during which he engaged in backdating options. Hardin also executed at least one consent in each of these periods of time, in which he approved the granting of backdated options.

31. Although he disregarded that the Company's directors and officers were backdating stock option grants, Hardin participated in the preparation of, and approved, false and misleading statements, including press releases and SEC filings, and he signed American Greetings' false and misleading Reports on Form 10-K, Reports on Forms 3, 4 and 5, and Proxy Statements. Hardin also sold at least 2,358 class B shares of stock directly to the Company in 2006, knowing the price of

those shares was artificially inflated by false financial statements the Company issued, as alleged herein.

32. Defendant **Charles A. Ratner** ("Ratner") has been a director of American Greetings since 2000. Ratner was a member of the Compensation Committee from 2001 to 2006. Ratner granted and accepted backdated options, in contravention of the express authorization of the Company's shareholders and American Greetings' stock option plans. Ratner knew the adverse non-public information about the business of the Company, as well as its finances, markets, and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and/or Board meetings and committees thereof, and via reports and other information provided to him in connection therewith. Through this and his approval and acceptance of hundreds of thousands of backdated options, Ratner knew that American Greetings' directors and officers were backdating stock option grants.

33. Ratner participated in (and did work in connection with) four meetings of the Compensation Committee in each of 2001-2003, and at least one meeting in 2006, during which he engaged in backdating options. Ratner also executed at least one consent in each of these periods of time, in which he approved the granting of backdated options.

34. Although he disregarded that American Greetings' directors and officers were backdating stock option grants, Ratner participated in the preparation of, and approved, false and misleading statements, including press releases and SEC filings, and he signed the Company's false and misleading Reports on Form 10-K, Reports on Forms 3, 4 and 5, and Proxy Statements. Ratner also sold at least 12,447 class B shares of stock directly to the Company in 2006, knowing the price

of those shares was artificially inflated by false financial statements the Company issued, as alleged herein.

35. Defendant **Jerry Sue Thornton** ("Thornton") has been a director of American Greetings and member of the Board's Audit Committee since 2000. Thornton accepted thousands of backdated options, in contravention of the express authorization of the Company's shareholders and American Greetings' stock option plans. Thornton knew the adverse non-public information about the business of the Company, as well as its finances, markets, and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and/or Board meetings and committees thereof, and via reports and other information provided to him in connection therewith. Through this, her acceptance of thousands of backdated options, and responsibility for overseeing the Company's transition to Statement of Financial Accounting Standards No. 123R, *Share Based Payment* (see ¶¶ 144-145 and 207-209), Thornton knew that the Company's directors and officers were backdating stock option grants.

36. Thornton did work and/or communicated with the Company's external auditors in connection with three meetings of the Audit Committee in each of fiscal 2000-2002, four meetings of the Audit Committee in fiscal 1998, five meetings of the Audit Committee in fiscal 2004, seven meetings of the Audit Committee in each of fiscal 2005 and 2006, and at six meetings of the Audit Committee in fiscal 2007, during which she withheld from the Company's auditors (i) breaches of the Company's internal controls, namely the backdating of stock options; (ii) material inflation of the Company's reported financial results due to the false underreporting of compensation expense; and (iii) the resulting irregularities of the Company's deceptive stock option granting practices and false

financial reporting that would require a restatement of the Company's financial statements and/or the withdrawal or modification of audit opinions certifying the Company's financial reports.

37. Although she disregarded that American Greetings' directors and officers were backdating stock option grants, Thornton participated in the preparation of, and approved, false and misleading statements, including press releases and SEC filings, and she signed the Company's false and misleading Reports on Form 10-K, Forms 3, 4 and 5, and Proxy Statements.

38. Defendant **Joseph B. Cipollone** ("Cipollone") has been Vice President and Corporate Controller of American Greetings since 2001, and has been an employee of the Company since 1991. Cipollone accepted tens of thousands of backdated options in contravention of the express authorization of the Company's shareholders and American Greetings' stock option plans. Cipollone knew the adverse non-public information about the business of the Company, as well as its finances, markets, and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and/or Board meetings and committees thereof, and via reports and other information provided to him in connection therewith. Through this, his acceptance of tens of thousands of backdated options, and his oversight of the recordation of stock option grants, Cipollone knew that the Company's directors and officers were backdating stock option grants.

39. Cipollone signed and/or participated in the preparation of management representation letters to the Company's auditors that falsely omitted (i) intentional breaches of the Company's internal controls, namely the backdating of stock options; (ii) material inflation of the Company's reported financial results due to the false underreporting of compensation expense; and (iii) the resulting irregularities of the Company's deceptive stock option granting practices and false financial

reporting that would require a restatement of the Company's financial statements and/or the withdrawal or modification of audit opinions certifying the Company's financial reports.

40. Although he disregarded that directors and officers were backdating stock option grants, Cipollone participated in the preparation of, and approved, false and misleading statements, including the Company's Reports on Form 10-Q and 10-K, Reports on Forms 3, 4 and 5, and false and misleading Sarbanes-Oxley Certifications attached to American Greetings' Reports on Forms 10-K and 10-Q.

41. Defendant **Stephen R. Hardis** ("Hardis") was a director of American Greetings from 1999 to 2008. Hardis was simultaneously a member of the Board's Compensation Committee and Audit Committee from 2000 to 2007. Hardis granted and accepted backdated options, in contravention of the express authorization of the Company's shareholders and American Greetings' stock option plans. Hardis knew the adverse non-public information about the business of American Greetings, as well as its finances, markets, and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and/or Board meetings and committees thereof, and via reports and other information provided to him in connection therewith. Through this and his approval and acceptance of hundreds of thousands of backdated options, Hardis knew that the Company's directors and officers were backdating stock option grants.

42. Hardis participated in (and did work in connection with) two meetings of the Compensation Committee in 2000, four meetings in each of 2001-2003, and four meetings in each of 2006-2007, during which he engaged in backdating options. Hardis also executed at least one consent in each of these periods of time, in which he approved the granting of backdated options. Hardis also did work and/or communicated with the Company's external auditors in connection with

three meetings of the Audit Committee in each of fiscal 2000-2002, four meetings of the Audit Committee in fiscal 2003, five meetings of the Audit Committee in fiscal 2004, and seven meetings of the Audit Committee in each of fiscal 2005 and 2006, during which he withheld from the Company's auditors (i) breaches of the Company's internal controls, namely the backdating of stock options; (ii) material inflation of the Company's reported financial results due to the false underreporting of compensation expense; and (iii) the resulting irregularities of the Company's deceptive stock option granting practices and false financial reporting that would require a restatement of the Company's financial statements and/or the withdrawal or modification of audit opinions certifying the Company's financial reports.

43. Although he disregarded that the Company's directors and officers were backdating stock option grants, Hardis participated in the preparation of, and approved, false and misleading statements, including press releases and SEC filings, and he signed American Greetings' false and misleading Reports on Form 10-K, Reports on Forms 3, 4 and 5, and Proxy Statements. Hardis also sold at least 1,022 class B shares of stock directly to the Company in 2006, knowing the price of those shares was artificially inflated by false financial statements the Company issued, as alleged herein.

44. Defendant **Harriet Mouchly-Weiss** ("Mouchly-Weiss") was a director of American Greetings from 1998 to 2007. Mouchly-Weiss was simultaneously a member of the Board's Compensation Committee and Audit Committee from 1999 to 2007. Mouchly-Weiss granted and accepted backdated options, in contravention of the express authorization of the Company's shareholders and American Greetings' stock option plans. Mouchly-Weiss knew the adverse non-public information about the business of American Greetings, as well as its finances, markets, and present and future business prospects, via access to internal corporate documents, conversations and

connections with other corporate officers and employees, attendance at management and/or Board meetings and committees thereof, and via reports and other information provided to her in connection therewith. Through this and her approval and acceptance of hundreds of thousands of backdated options, Mouchly-Weiss knew that the Company's directors and officers were backdating stock option grants.

45. Mouchly-Weiss participated in (and did work in connection with) two meetings of the Compensation Committee in 2000, four meetings in each of 2001-2003, and four meetings in each of 2006-2007, during which she engaged in backdating options. Mouchly-Weiss also executed at least one consent in each of these periods of time, in which she approved the granting of backdated options. Mouchly-Weiss also did work and/or communicated with the Company's external auditors in connection with three meetings of the Audit Committee in each of fiscal 2000-2002, four meetings of the Audit Committee in fiscal 2003, five meetings of the Audit Committee in fiscal 2004, and seven meetings of the Audit Committee in each of fiscal 2005 and 2006, during which she withheld from the Company's auditors (i) breaches of the Company's internal controls, namely the backdating of stock options; (ii) material inflation of the Company's reported financial results due to the false underreporting of compensation expense; and (iii) the resulting irregularities of the Company's deceptive stock option granting practices and false financial reporting that would require a restatement of the Company's financial statements and/or the withdrawal or modification of audit opinions certifying the Company's financial reports.

46. Although she disregarded that the Company's directors and officers were backdating stock option grants, Mouchly-Weiss participated in the preparation of, and approved, false and misleading statements, including press releases and SEC filings, and she signed American Greetings' false and misleading Reports on Form 10-K, Reports on Forms 3, 4 and 5, and Proxy Statements.

DEFENDANTS' DUTIES

47. Each officer and director of American Greetings named herein owed the Company and American Greetings' shareholders the duty to exercise a high degree of care, loyalty and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the Company's directors and officers complained of herein involves knowing, intentional and culpable violations of their obligations as officers and directors of American Greetings. Further, the misconduct of the Company's officers has been ratified by American Greetings' Board, which has failed to take any legal action on behalf of the Company against them.

48. By reason of their positions as officers, directors and fiduciaries of American Greetings and because of their ability to control the business and corporate affairs of the Company, the defendants owed American Greetings and its shareholders fiduciary obligations of candor, trust, loyalty and care, and were required to use their ability to control and manage the Company in a fair, just, honest and equitable manner, and to act in furtherance of the best interests of American Greetings and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit. In addition, as officers and/or directors of a publicly held company, the defendants had a duty to refrain from utilizing their control over American Greetings to divert assets to themselves via improper and/or unlawful practices. Defendants also had a duty to promptly disseminate accurate and truthful information with respect to the Company's operations, earnings and compensation practices.

49. Because of their positions of control and authority as directors or officers of American Greetings, each of the defendants was able to and did, directly and indirectly, control the wrongful acts complained of herein. As to the defendants who are or were directors, these acts include: (i) agreement to and/or acquiescence in defendants' option backdating scheme; and (ii)

willingness to cause American Greetings to disseminate false proxy statements and periodic filings with the SEC, which contained false and misleading financial statements, failed to disclose defendants' option backdating scheme and omitted the fact that executive officers were allowed to backdate their stock option grants in order to manipulate the strike price of the stock options they received. Because of their positions with American Greetings, each of the defendants was aware of these wrongful acts, had access to adverse non-public information and was required to disclose these facts promptly and accurately to the Company's shareholders and the financial markets but failed to do so.

50. Due to defendants' breach of their fiduciary duty of loyalty in the administration of the stock option plans, plaintiff seeks to have the directors' and officers' stock option grants voided and gains from previous grants returned to the Company. In the alternative, plaintiff seeks to have all of the unexercised outstanding options granted to defendants cancelled, the financial gains obtained via the exercise of such options returned to the Company and to have defendants revise the Company's financial statements to reflect the truth concerning these option grants.

51. To discharge their duties, the directors of American Greetings were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the business and financial affairs of American Greetings. By virtue of such duties, the officers and directors of American Greetings were required, among other things, to:

(a) manage, conduct, supervise and direct the business affairs of American Greetings in accordance with all applicable laws (including federal and state laws, government rules and regulations and the charter and bylaws of American Greetings);

(b) neither engage in self-dealing nor knowingly permit any officer, director or employee of American Greetings to engage in self-dealing;

(c) neither violate nor knowingly permit any officer, director or employee of American Greetings to violate applicable laws, rules and regulations;

(d) remain informed as to the status of American Greetings' operations, including its practices in relation to the cost of allowing the pervasive backdating and improperly accounting for such, and upon receipt of notice or information of imprudent or unsound practices, to make a reasonable inquiry in connection therewith, and to take steps to correct such conditions or practices and make such disclosures as are necessary to comply with the U.S. federal securities laws and their duty of candor to the Company's shareholders;

(e) prudently protect the Company's assets, including taking all necessary steps to recover corporate assets (cash, stock options) improperly paid to Company executives and directors together with the related costs (professional fees) proximately caused by the illegal conduct described herein;

(f) establish and maintain systematic and accurate records and reports of the business and affairs of American Greetings and procedures for the reporting of the business and affairs to the Board and to periodically investigate, or cause independent investigation to be made of, said reports and records;

(g) maintain and implement an adequate, functioning system of internal legal, financial and accounting controls, such that American Greetings' financial statements – including its expenses, accounting for stock option grants and other financial information – would be accurate and the actions of its directors would be in accordance with all applicable laws;

(h) exercise control and supervision over the public statements to the securities markets and trading in American Greetings stock by the officers and employees of American Greetings; and

(i) supervise the preparation and filing of any financial reports or other information required by law from American Greetings and to examine and evaluate any reports of examinations, audits or other financial information concerning the financial affairs of American Greetings and to make full and accurate disclosure of all material facts concerning, *inter alia*, each of the subjects and duties set forth above.

52. Each defendant, by virtue of his or her position as a director and/or officer, owed to the Company and to its shareholders the fiduciary duties of loyalty, good faith and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the defendants complained of herein involves *ultra vires* and illegal acts, bad faith violations of their obligations as directors and/or officers of American Greetings, and a reckless disregard for their duties to the Company and its shareholders which defendants were aware or should have been aware posed a risk of serious injury to the Company. The conduct of the defendants who were also officers and/or directors of the Company during the relevant period has been ratified by director defendants who comprised a super majority of American Greetings' Board during the relevant period.

53. Defendants breached their duties of loyalty and good faith by allowing or by themselves causing the Company to misrepresent its financial results and prospects, as detailed herein *infra*, and by failing to prevent the defendants from taking such illegal actions. As a result, American Greetings has expended and will continue to expend significant sums of money. Such expenditures include, but are not limited to, improvidently paid compensation (including secretly overvalued options) and the issuance of under-priced stock by the exercise of backdated options.

AIDING AND ABETTING AND CONCERTED ACTION

54. In committing the wrongful acts alleged herein, defendants have pursued or joined in the pursuit of a common course of conduct and acted in concert with one another in furtherance of their common plan.

55. During all times relevant hereto, defendants collectively and individually initiated a course of conduct which was designed to and did: (i) conceal the fact that the Company was allowing its directors and senior officers to divert millions of dollars to American Greetings insiders and directors and causing American Greetings to misrepresent its financial results; (ii) maintain defendants' executive and directorial positions at American Greetings and the profits, power and prestige which defendants enjoyed as a result of these positions; (iii) deceive the investing public, including shareholders of American Greetings, regarding defendants' compensation practices and American Greetings' financial performance.

56. The purpose and effect of defendants' common course of conduct was, among other things, to disguise defendants' violations of law, breaches of fiduciary duty, abuse of control, gross mismanagement, corporate waste and unjust enrichment, to conceal adverse information concerning the Company's operations and financial condition, to receive in-the-money stock options and enhance their executive and directorial positions and the proceeds they would receive from the exercise of options and sale of stock.

57. Defendants accomplished their common enterprise and/or common course of conduct by causing the Company to purposefully and/or recklessly engage in the option backdating scheme alleged herein and misrepresent the Company's financial results. Each of the defendants was a direct, necessary, and substantial participant in the common enterprise and/or common course of conduct complained of herein.

58. * Each of the defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each of the defendants acted with knowledge of the primary wrongdoing, substantially assisted in the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

**AMERICAN GREETINGS' STOCK OPTION PLANS AUTHORIZED
BY THE SHAREHOLDERS**

59. At all relevant times American Greetings granted stock options pursuant to the 1992 Stock Option Plan, 1996 Employee Stock Option Plan, and the 1997 Equity and Performance Incentive Plan (collectively, the "Plans"). A fundamental requirement of American Greetings' stock option plans was in all relevant instances that the exercise price of stock options be the fair market value (the closing price) of the Company's common stock *on the date of the grant or day prior to the date of the grant of the option.*

60. In all relevant instances with respect to stock options granted under the Plans, the Plans required that the purchase price shall not be less than 100% of the fair market value (closing price) of such share of stock on the date the option is granted or the date prior to the date the option is granted. See 1992 Stock Option Plan, §4 ("not less than the price of the Class A Common Shares . . . at the close of business on the date preceding that on which the option is granted"); 1996 Employee Stock Option Plan, §4 ("not . . . less than the [closing] price of the Class A Common Shares . . . on the last business day preceding that day on which the Option is granted"); 1997 Equity and Performance Incentive Plan, §4(b) ("not . . . less than the Market Value per share on the Date of Grant").

61. The expiration date of options granted under the Plans was ten years after the date of grant of the option. See 1992 Stock Option Plan, §3 ("ten (10) years from the date granted"); 1996

Employee Stock Option Plan, §3 (“ten (10) years from the date granted”); 1997 Equity and Performance Incentive Plan, §§4(n), 9(a) (“ten years from the Date of Grant”). Options granted under the Plans were subject to vesting periods, including one year after date of grant for 25% of shares, followed by additional vesting of 25% for each successive three-year period under the 1997 Equity and Performance Incentive Plan. *See* 1997 Equity and Performance Incentive Plan, §9(a)(ii). *See also* 1992 Stock Option Plan, §6; 1996 Employee Stock Option Plan, §6.

62. The aforementioned fundamental requirements of the Plans directly contradict backdating a stock option to a date prior to its actual grant and pricing that option as if it were granted prior to the actual date of the grant, or accepting a backdated option. They also contradict backdating a stock option to a date prior to its actual grant date and thereby underreporting compensation expense and tax liability, which violates Ohio laws as well as the Internal Revenue Code. Nonetheless, the Stock Option and Compensation Committees over the years repeatedly approved stock options which on their face were backdated. The Stock Option and Compensation Committees backdated stock options and priced those options (purportedly at fair market value) as if they were granted prior to the date of the actual grant.

AMERICAN GREETINGS CORP.
Alleged Backdated Stock Option Grants

Purported Option Grant Date (Expiration Date)	Price	Some Directors & Officers Who Received Grants	Number of Options Received ¹	Option Exercised, Stock Sold ²	Defendants and Others Who Engaged in Backdating the Purported Stock Option Grant
3/30/1992 (3/30/2002)	\$19.81	J. Groetzinger	4,500	√	H. Stone
3/22/1996 (3/25/2006)	\$27.00	G. Weiss	3,600	√	A. Ratner, Cowen, Jacobs, Wagner and Zaleznik
10/28/1996 (10/28/2006)	\$28.75	J. Weiss	3,000		A. Ratner, Cowen, Jacobs, Wagner and Zaleznik
5/22/2000 (5/22/2010)	\$16.81	J. Weiss	12,000	√	Cowen, Hardis, Mouchly-Weiss
12/22/2000 (12/22/2010)	\$8.50	J. Kahl	8,000	√	C. Ratner, Cowen, Hardis, Mouchly-Weiss
		C. Ratner	8,000		
		J. Thornton	8,000		
4/4/2001 (4/4/2011)	\$9.95	M. Weiss	322,000	√	C. Ratner, Cowen, Hardis, Mouchly-Weiss
		Erwin Weiss	58,000	√	
		G. Weiss	50,200	√	
		J. Weiss	62,200	√	
		Z. Weiss	41,317	√	
		D. Beittel	25,200	√	
		M. Birkholm	40,200		
		D. Cable	29,400	√	
		J. Charlton	12,600	√	
		J. Cipollone	23,740	√	
		M. Corrigan	52,600	√	
		S. Cowen	24,200	√	
		J. Groetzinger	42,000		
		S. Hardis	17,800	√	
		J. Kahl	5,000	√	
		W. Mason	38,000	√	
		W. Meyer	55,600		
		Mouchly-Weiss	19,400	√	
		P. Papesh	50,000	√	
		C. Ratner	5,000	√	

¹ Number of options received is split adjusted. If options were exercised, the split adjusted quantity is indicated as of the exercise. Otherwise, the quantity is fully split adjusted.

² "√" indicates the recipient exercised/converted all or a substantial portion of the options received and thereafter sold, transferred or exchanged the stock issued from the option exercise. See *infra* ¶200 (insider trading table).

Purported Option Grant Date (Expiration Date)	Price	Some Directors & Officers Who Received Grants	Number of Options Received ¹	Option Exercised, Stock Sold ²	Defendants and Others Who Engaged in Backdating the Purported Stock Option Grant
		P. Ripple	35,320		
		J. Spira	14,400	√	
		H. Stone	24,200	√	
		J. Thornton	5,000	√	
6/25/2001 (6/25/2011)	\$10.47	P. Linton	20,000	√	C. Ratner, Cowen, Hardis, Mouchly-Weiss
3/1/2002 (3/1/2012)	\$14.00	M. Weiss	18,000		C. Ratner, Cowen, Hardis, Mouchly-Weiss
		Erwin Weiss	10,000		
		G. Weiss	7,000	√	
		J. Weiss	14,000	√	
		Z. Weiss	14,000	√	
		D. Beittel	12,500	√	
		J. Cipollone	7,700	√	
		M. Corrigan	11,000	√	
		S. Cowen	4,000		
		J. Groetzinger	10,000		
		S. Hardis	4,000		
		J. Kahl	4,000		
		P. Linton	11,000	√	
		W. Mason	10,000	√	
		W. Meyer	10,000		
		Mouchly-Weiss	10,000		
		C. Ratner	4,000		
		H. Stone	4,000		
		J. Thornton	4,000		
7/12/2006 (7/12/2016)	\$21.08	J. Thornton	1,000		C. Ratner, Cowen, Hardis, Hardin, Mouchly-Weiss
		Ratner	1,000		
		Mouchly-Weiss	1,000		
		S. Hardis	1,000		
		J. Hardin	1,000		
		S. Cowen	1,000		
10/2/2006 (10/2/2016)	\$22.95	B. McGrath	32,000		C. Ratner, Cowen, Hardis, Hardin, Mouchly-Weiss

63. The Stock Option Committee exclusively administered the Company's stock option plan at all relevant times until February 28, 1994, at which time the Stock Option Committee merged with the Compensation Committee. Thereafter, the Compensation Committee exclusively granted stock options during the relevant period. Specifically, Cowen has been a member of the Compensation Committee since at least 1992, Hardis was a member on the Compensation

Committee from 2000 to 2008, Ratner has been a member of the Compensation Committee since 2001, and Hardin has been a member of the Compensation Committee since 2005.

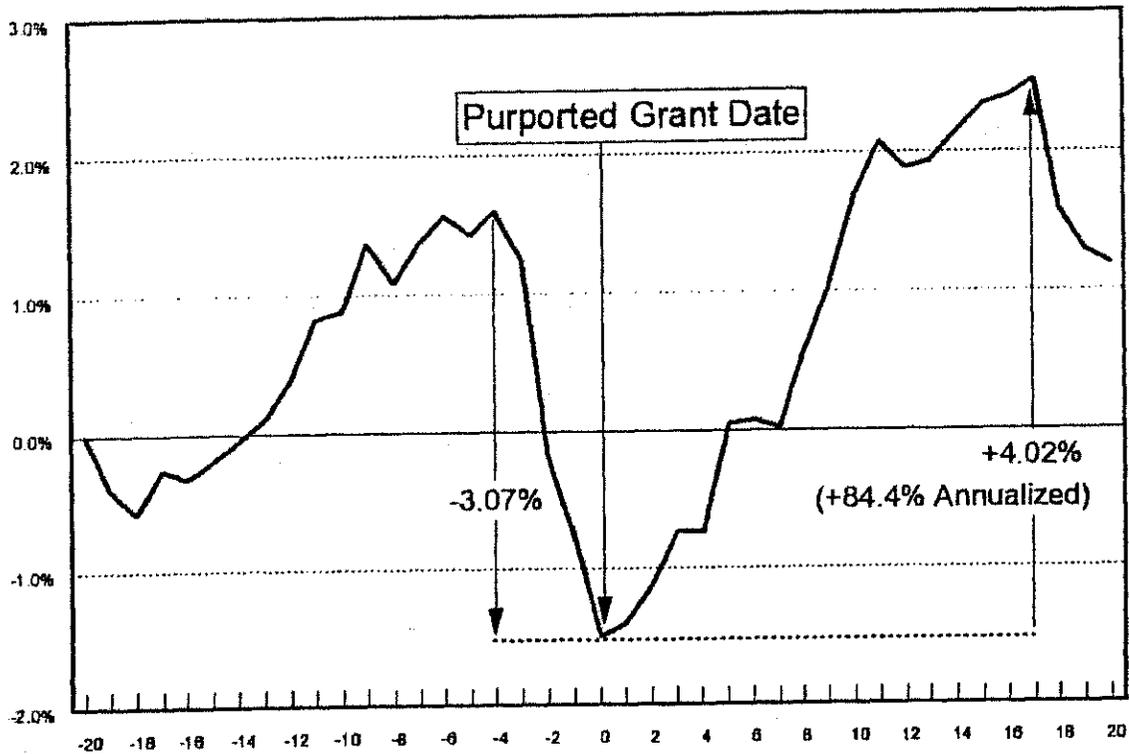
64. The Stock Option and Compensation Committees had the responsibilities to “administer” the Company’s Plans. Responsibilities to administer the Company’s stock option plans have never been anything less than full authority and sole discretion to, as a committee, grant stock options, determine the persons to whom and the time or times at which options will be granted, and determine the type and number of options to be granted and the terms of such options (including price), among other things. *See* 1992 Stock Option Plan, §8 (Stock Option Committee “shall be empowered by the Board of Directors to exercise all authority otherwise possessed by the Board with respect to the Company’s stock option plans”); 1992 Stock Option Plan, §2 (Stock Option Committee “upon such terms and conditions as it may determine, authorize the granting to officers . . . options . . . and may fix the number of shares to be covered by each such option”); 1996 Employee Stock Option Plan, §10 (“The Plan shall be administered by the Compensation Committee, which shall . . . be empowered by the Board to exercise all authority otherwise possessed by the Board with respect to the Company’s stock option plans.”); 1996 Employee Stock Option Plan, §2 (“The Compensation Committee . . . upon such terms and conditions as it may determine, grant options . . . to officers . . . and may fix the number of shares to be covered by each option.”); 1997 Equity and Performance Incentive Plan, §4 (Compensation Committee “upon such terms and conditions as it may determine, authorize the granting to Participants of options to purchase Common Shares”); *see also* 1997 Equity and Performance Incentive Plan, §16(a).

65. Abusing their authority and committing *ultra vires* acts, Cowen, Hardis, Ratner and Hardin violated American Greetings’ stock option plans, in that they: (i) backdated and retroactively priced stock options; and (ii) in collusion with one another, other defendants, or former executives

of the Company, determined and granted option awards dated with dates other than the dates the awards were authorized properly, employees were entitled to receive the options, or the option or price was known. Each of these defendants abused their authority in causing the backdating and retroactive pricing to occur without disclosure.

66. An objective analytical review using court-accepted methodologies, of all publicly reported stock option dates in option grants to directors and officers of American Greetings from 1992 until 2007 reveals that discretionary stock option grants tended to be dated: (i) near or on the very day that American Greetings' stock price hit its low price for the month, quarter and/or year; and/or (ii) in advance of significant stock price increases. To illustrate, the following graph depicts the *cumulative* increase/decrease in American Greetings' stock price preceding and following all publicly reported stock option dates in option grants to directors and officers of American Greetings from 1992 until 2007.

Cumulative Decrease/Increase In American Greetings Stock Price In 20 Trading Days Before and After All Reported Option Dates: 1992-2007



67. The data points reflected in the graph above are cumulative, meaning they represent the cumulative effect or average of increases and decreases in American Greetings' closing stock price in each of the 20 trading days before and after all the purported option grant dates. American Greetings' closing stock price might have been less or more at any point in time for a particular grant. But the cumulative data points clearly and objectively demonstrate the predominance of data preceding and following the option dates, namely that options were dated shortly after significant decreases in American Greetings' stock price and preceding very large increases in the stock's price. As demonstrated in the graph, American Greetings' stock price tended to decrease as much as 3% in the 20 trading days preceding the purported option grant date and tended to increase as much as 4% (84% annualized) in the 20 trading days following the purported option grant date. Equally

significant, the data shows that purported option grant dates tended to be at the lowest closing price in the 20-trading-day period before and after the purported option grant date.

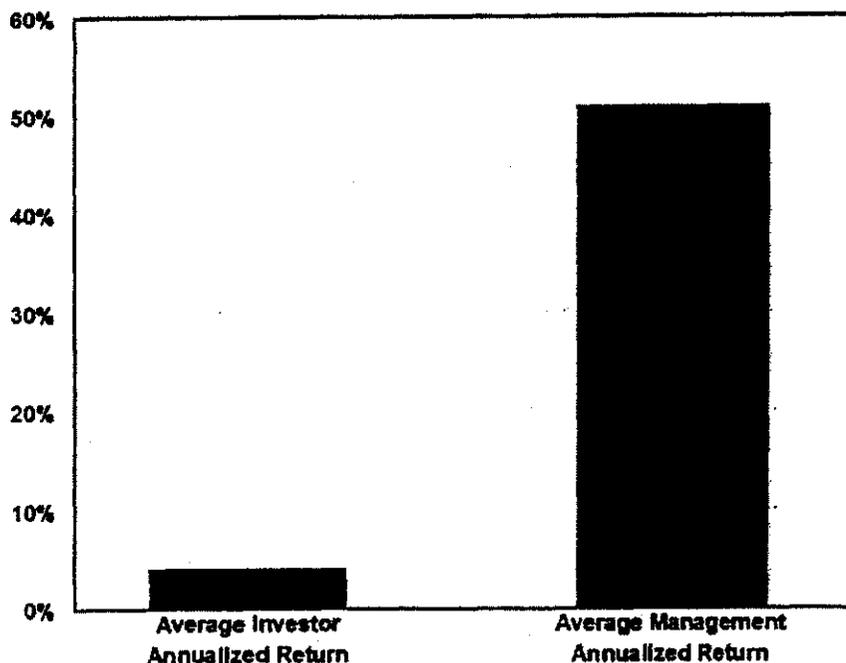
68. Indeed, approximately 1 out of every 5 discretionary option grants to American Greetings' directors and officers was dated and priced based on American Greetings' lowest closing stock price of the month. The odds of that happening absent intentional manipulation are so extremely remote (well over 1,000 to 1) that backdating is the most rational explanation.

69. The Merrill Lynch methodology examines the "20 day period subsequent to options pricing in comparison to stock price returns for the calendar year in which the options were granted."³ According to Merrill Lynch, "companies should not be generating any systematic excess return in comparison to other investors as a result of how options pricing events are timed." This 20-day analysis makes sense because, "[t]heoretically, if the timing of options grants is an arm's length process, and companies haven't systematically taken advantage of their ability to backdate options within the 20-day windows that the law provided prior to the implementation of Sarbanes Oxley in 2002, there shouldn't be any difference between the two measures." This analysis has also been referred to as "the easiest and simplest way" to measure the pricing of options. New York University finance professor David Yermick and University of Iowa finance professor Erik Lie said that 20-day post-grant price surges are "a reasonable yardstick to detect possible backdating" and that "[u]sing a longer period, such as a year, wouldn't be a good way to spot backdating of a few days or weeks because the longer-term trading would overwhelm any backdating effect."

³ Several decisions acknowledge the usefulness of the Merrill Lynch and CFRA analyses in determining whether a pattern of backdating exists. See, e.g., *Belova v. Sharp*, No. CV-07-299-MO, 2008 U.S. Dist. LEXIS 19880, at *11-*12 (D. Or. Mar. 13, 2008); *In re CNET Networks, Inc.*, 483 F. Supp. 2d 947, 957 (N.D. Cal. 2007); *In re Computer Scis. Corp. Derivative Litig.*, No. CV 06-05288 MRP (Ex), 2007 U.S. Dist. LEXIS 25414, at *44-*45 (C.D. Cal. Mar. 27, 2007); *Ryan v. Gifford*, 918 A.2d 341, 354-55 (Del. Ch. 2007); *Conrad v. Blank*, 940 A.2d 28, 39 n.30 (Del. Ch. 2007).

70. Using Merrill Lynch's methodology in comparing annualized 20-day increases/decreases in American Greetings' stock price following management grant dates ("management annualized return") to public investor annualized returns ("investor annualized return"), plaintiff analyzed all of the publicly reported stock option dates to directors and officers of American Greetings from 1992 until 2007. There were over 50 separate grant dates. The analysis revealed that, between 1992 and 2007, the average management annualized return on publicly reported grants was approximately 51%, while the average investor annualized return was approximately 4%. In other words, there was a significant disparity between management returns and the public investor return – the average management annualized return being nearly 1300% *higher* than (or 13 times) the investor annualized return.

**Average Investor Annualized Return vs. Average Management Annualized Return
For All Reported Options To Directors & Officers Of American Greetings Corp. 1992 - 2007***



*See paragraph 71 for definition of "Investor Annualized Return" and "Management Annualized Return".

71. Furthermore, the disparity of returns demonstrated by the Merrill Lynch analytical methodology is consistent with the disparity of returns shown when the management annualized return of the individually alleged backdated grants in particular is determined and compared with the investor annualized return in the same fiscal year. These option grants also fell on suspiciously fortuitous dates, e.g., dates where American Greetings' closing stock price was the lowest or near the lowest of the month quarter or year.

Option Price Rankings, Management Annualized Return Following Option Date, and Investor Annualized Return in Same Fiscal Year⁴

Option Date	Option Price Ranking by Month, Quarter or Year	Management Annualized Return	Investor Annualized Return
03/30/1992	Lowest of the month	28.57%	-6.81%
03/22/1996	Lowest of the month	-33.33%	11.71%
10/28/1996	Lowest of the month	0%	11.71%
05/22/2000	Lowest of the month	702.6%	-22.03%
12/22/2000	Lowest of the month, quarter and year	741.18%	-22.03%
04/04/2001	Lowest of the month, quarter and year	144.72%	4.79%
06/25/2001	Third lowest of the month and quarter	73.93%	4.79%
03/01/2002	Lowest of the month and quarter	475.71%	-6.29%
07/12/2006	Third lowest of the month, fourth lowest of the quarter	113.57%	11.07%
10/02/2006	Lowest of the month, second lowest of the quarter	91.76%	11.07%
	Average:	233.87%	1.26%

72. In determining alleged backdated option grants, plaintiff also screened each grant according to the methodology used by the Center for Financial Research and Analysis ("CFRA").

⁴ See ¶70 for definition of "management annualized return" and "investor annualized return."

"CFRA considers a company's options backdating risk to be significant when a company has, on three or more occasions, granted options to executives at exercise prices and dates that matched exactly or were close to a 40-day low in the company's stock price." In assessing the likelihood of backdating, the CFRA Report uses the following criteria: (i) where the price on the grant date is within 105% of the 10 or 40 day period stock price low following date of grant; and (ii) the stock price range for the 40 day period (highest stock price minus lowest stock price) is greater than 10% of the lowest stock price. All but one of the alleged backdated stock option grant dates tested positive under these criteria. In addition, on three occasions, the Company granted options to executives at dates where closing prices matched exactly or were close to a 40-day low in American Greetings' stock price, making backdating risk "significant" under CFRA's methodology. In fact, three option grants to executives were dated and priced based on a closing price that matched exactly or was close to a *quarterly* low in American Greetings' stock price.

73. Another indication of backdating may be seen in the period of time between the purported grant date and the date the grant was disclosed to the SEC. Thus, plaintiff also reviewed the amount of time between the purported stock option grant date and disclosure of the grants to the SEC via Forms 3, 4 or 5. Grants that are not disclosed to the SEC in a timely fashion are more likely backdated. "If executives are backdating, a longer reporting lag implies that, on average, they were backdating aggressively, seeking a lower exercise price. This in turn implies that the extent of stock price rise following the manager-designated grant date will be positively correlated with the reporting lag." M. P. Narayanan, Cindy A. Schipani & H. Nejat Seyhun, *The Economic Impact of Backdating of Executive Stock Options*, 105 Mich. L. Rev. 1597, 1603 (2007).

74. With respect to a number of the alleged backdated option grants there are no known SEC Forms 4 showing the changes in beneficial ownership from these purported grants. In other

cases Forms 4 or holdings records evidencing these backdated grants (and others) were filed by defendants and others months or over a year after the purported grant date.

75. Similarly, stock option grants are more likely backdated when they are discretionary and granted by a sporadic method.⁵ Accordingly, plaintiff also reviewed each grant to determine whether or not it was granted in a sporadic fashion or on a fixed date pursuant to a non-discretionary stock option plan. The alleged backdated grants were discretionary and sporadic.

76. The following describes some of the backdated option grants and their recipients. As demonstrated by the graphs, accompanying data and the results of the Merrill Lynch and CFRA methodologies expressed herein, significant decreases in the price of American Greetings' stock tended to precede the dates of alleged backdated grants and following those dates the price of the Company's stock tended to significantly increase. Overall, post-option-date stock price movement was positive, pre-option-date stock price movement tended to be negative, and post-option-date returns tended to exceed pre-option-date returns.

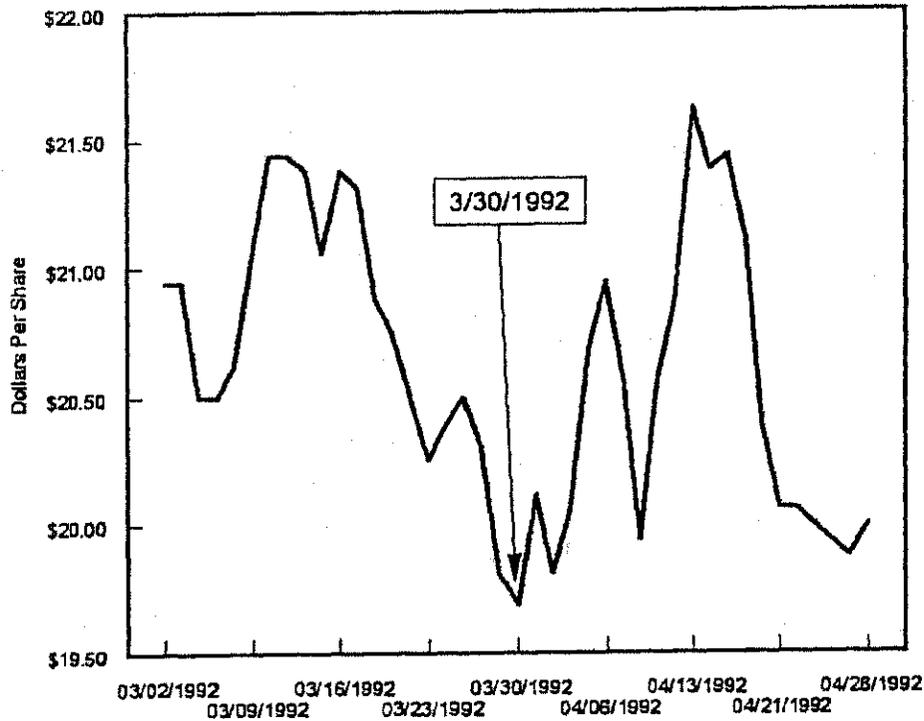
⁵ That a stock option grant might be issued pursuant to a non-discretionary fixed date plan only reduces, but does not eliminate, the likelihood that stock options were being backdated. For example, in a recent stock option backdating action against CNET Networks, Inc., the company was forced to re-price so-called non-discretionary fixed date grants and admit that those grants were not actually granted on the fixed-date required by the applicable stock option plan.

Option Grant Backdated to March 30, 1992

77. These options were granted to Jon Groetzinger ("Groetzinger"). They were dated and priced based on the date on which American Greetings' stock reached the lowest closing price for the month. The 10- and 20-day increases in American Greetings' stock price following the option date were 9.8% and 1.6%, respectively, with the annualized increases being 354.3% and 28.6%, respectively.

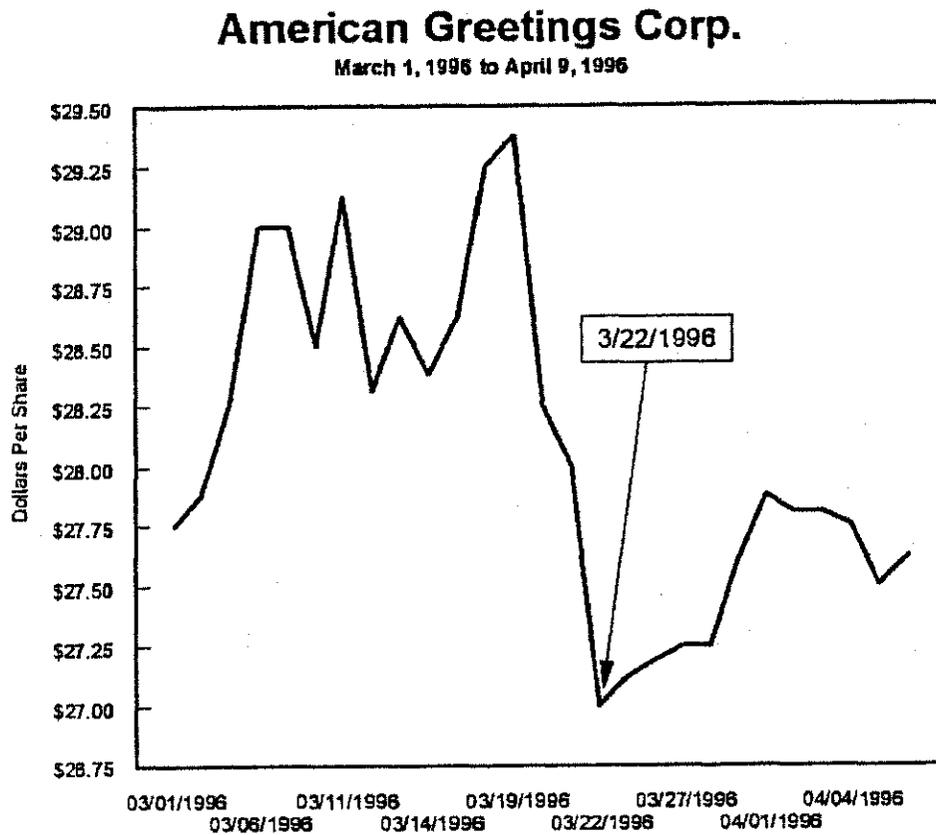
American Greetings Corp.

March 2, 1992 to April 28, 1992



Option Grant Backdated and Retroactively Priced to March 22, 1996

78. These options were granted to Gary Weiss ("G. Weiss"). They were dated March 25, 1996 and priced based on the date on which American Greetings' stock reached the lowest closing price for the month, March 22, 1996. The 10- and 20-day increases/decreases in American Greetings' stock price following the option date were 1.8% and -1.8%, respectively, with the annualized increases being 66.7% and -33.3%, respectively.

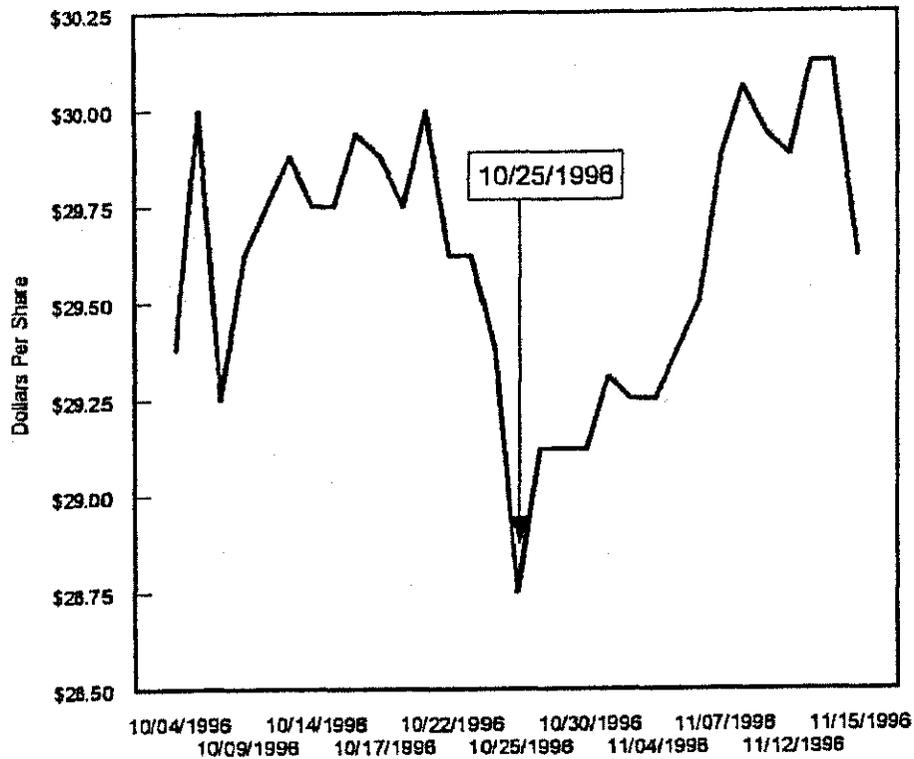


Option Grant Backdated and Retroactively Priced to October 25, 1996

79. These options were granted to J. Weiss. They were dated October 28, 1996 and priced based on the date on which American Greetings' stock closed at the lowest closing price for the month, October 25, 1996. The 10- and 20-day increases in American Greetings' stock price following the option date were 4.6% and 0%, respectively, with the annualized increases being 164.4% and 0%, respectively.

American Greetings Corp.

October 4, 1996 to November 15, 1996

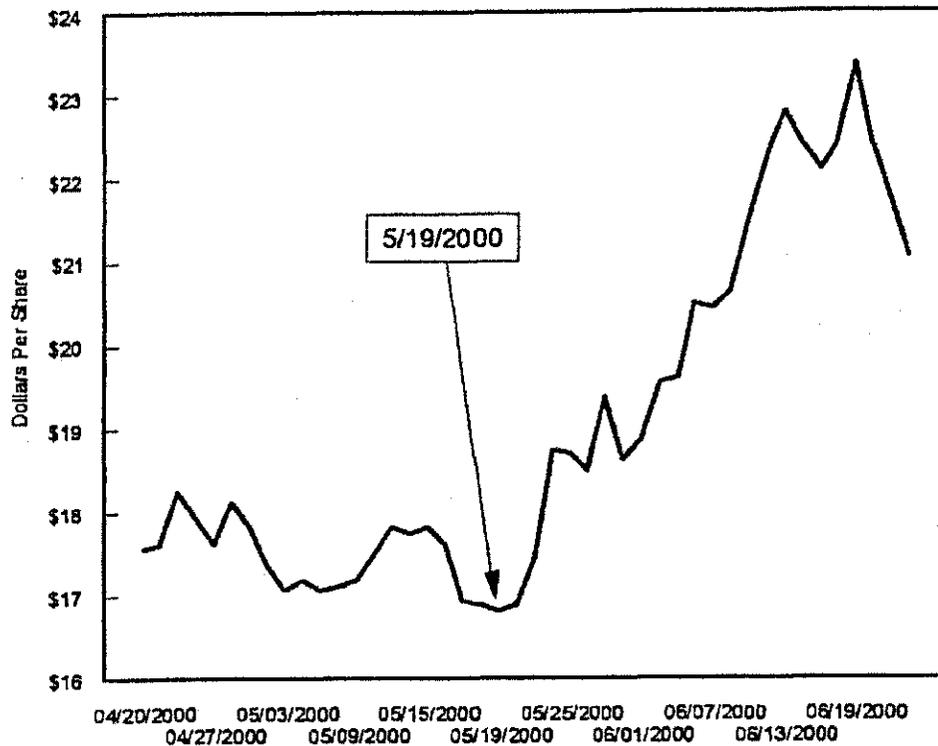


Option Grant Backdated and Retroactively Priced to May 19, 2000

80. These options were granted to J. Weiss. They were dated May 22, 2000, and priced based on the date on which American Greetings' stock reached the lowest closing price for the month, May 19, 2000. The 10- and 20-day increases in American Greetings' stock price following the option date were 16.7% and 39.0%, respectively, with the annualized increases being 602.2% and 702.6%, respectively.

American Greetings Corp.

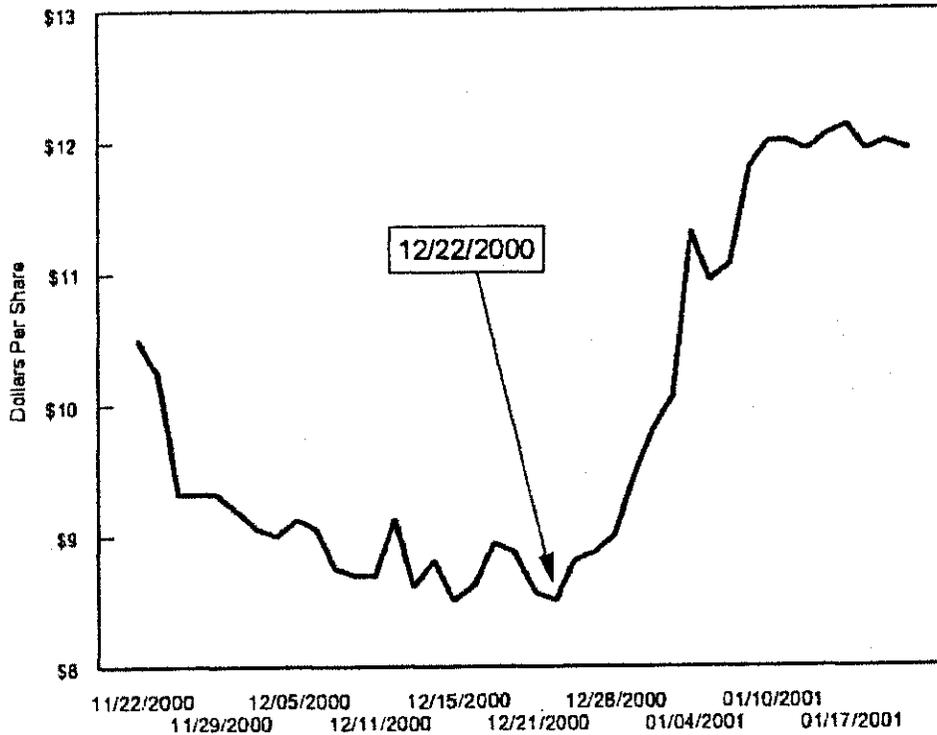
April 20, 2000 to June 22, 2000



Option Grant Backdated to December 22, 2000

81. These options were granted to Jack Kahl ("Kahl"), Ratner and Thornton. They were dated and priced based on the date on which American Greetings' stock reached the lowest closing price for the month, quarter and year. The 10- and 20-day increases in the Company's stock price following the option date were 40.0% and 41.2%, respectively, with the annualized increases being 1403.0% and 741.2%, respectively.

American Greetings Corp.
November 22, 2000 to January 22, 2001

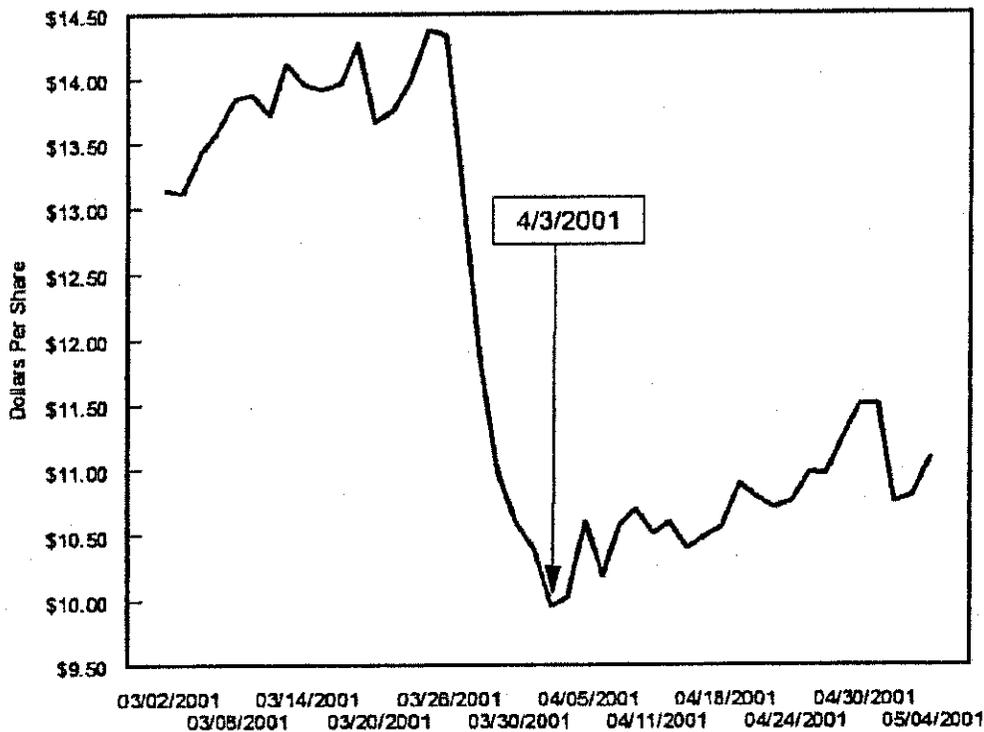


Option Grant Backdated and Retroactively Priced to April 3, 2001

82. These options were granted to M. Weiss, G. Weiss, J. Weiss, Z. Weiss, Cowen, Hardis, Mouchly-Weiss, Ratner, Harry Stone ("Stone"), Thornton and others. They were dated April 4, 2001, and priced based on the date on which American Greetings' stock reached the lowest closing price for the month, quarter and year, April 3, 2001. The 10- and 20-day increases in the Company's stock price following the option date were 6.2% and 8.0%, respectively, with the annualized increases being 224.3% and 144.7%, respectively.

American Greetings Corp.

March 2, 2001 to May 4, 2001

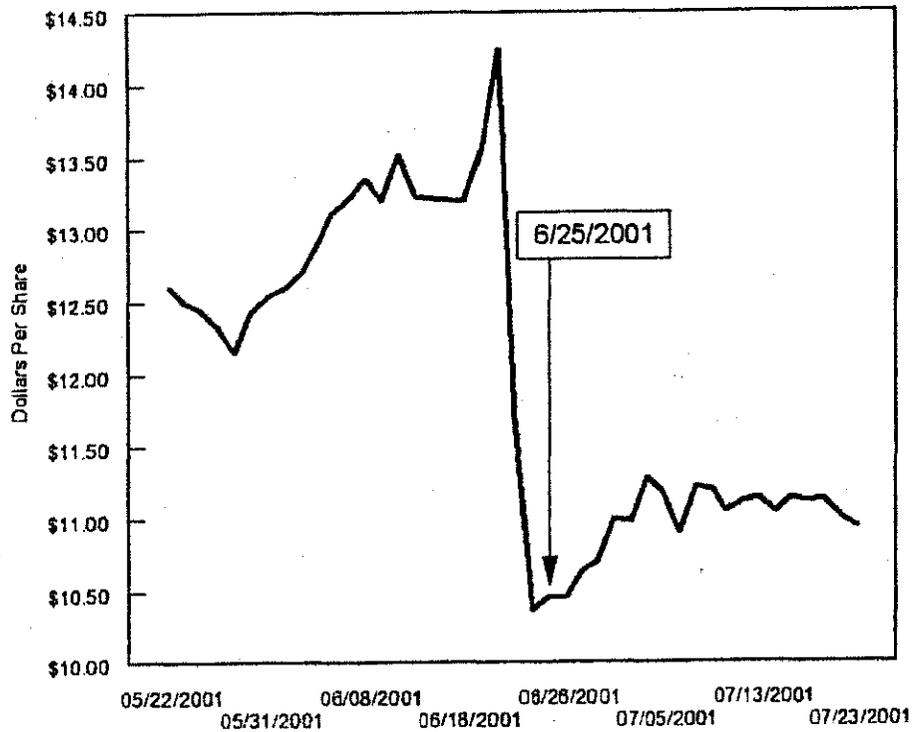


Option Grant Backdated to June 25, 2001

83. These options were granted to Pamela Linton ("Linton"). They were dated and priced based on the date on which American Greetings' stock reached the third lowest closing price for the month and quarter. The 10- and 20-day increases in the Company's stock price following the option date were 7.0% and 4.1%, respectively, with the annualized increases being 251.0% and 73.9%, respectively.

American Greetings Corp.

May 22, 2001 to July 23, 2001

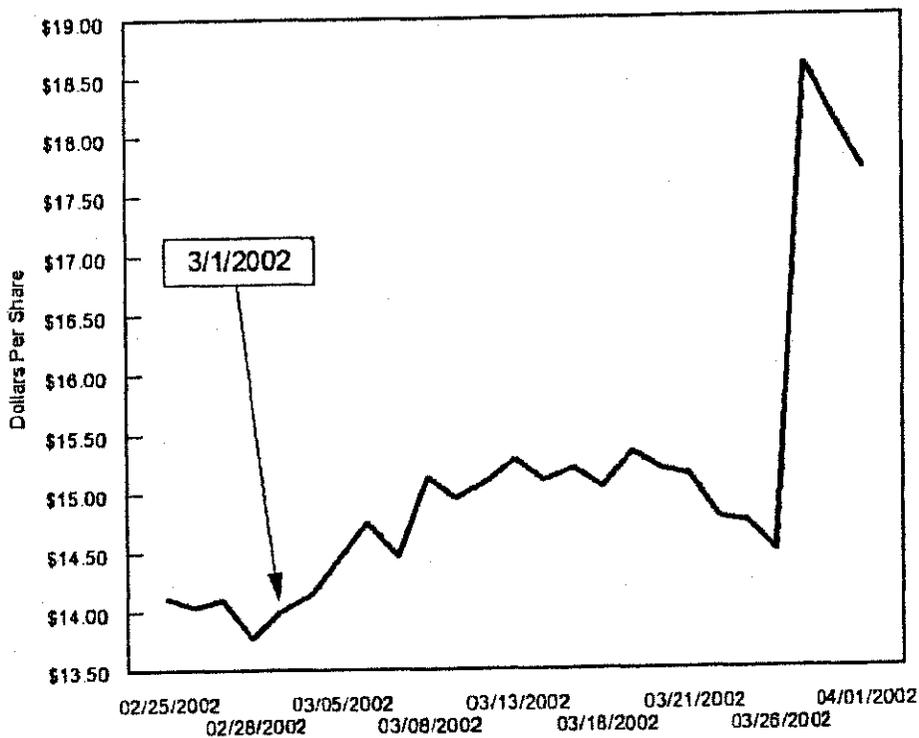


Option Grant Backdated to March 1, 2002

84. These options were granted to M. Weiss, Erwin Weiss, G. Weiss, J. Weiss, Z. Weiss, Cowen, Hardis, Mouchly-Weiss, Ratner, Stone, Thornton and others. They were dated and priced based on the date on which American Greetings' stock reached the lowest closing price for the month and quarter. The 10- and 20-day increases in the Company's stock price following the option date were 8.6% and 26.4%, respectively, with the annualized increases being 308.6% and 475.7%, respectively.

American Greetings Corp.

February 25, 2002 to April 1, 2002

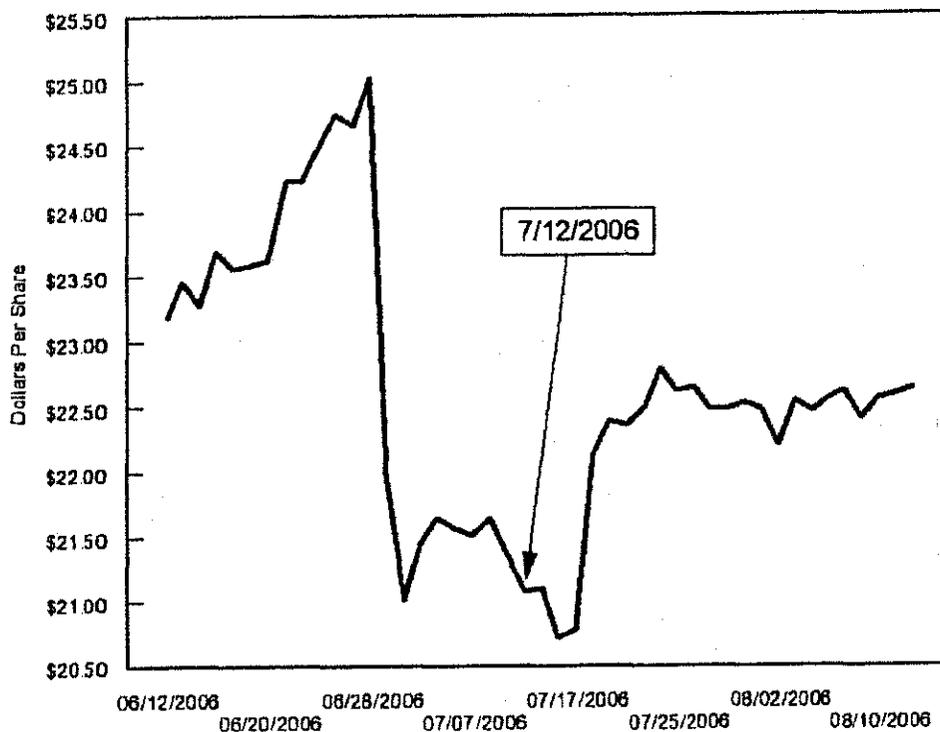


Option Grant Backdated to July 12, 2006

85. These options were granted to Thornton, Ratner, Mouchly-Weiss, Hardis, Hardin and Cowen. They were dated and priced based on the date on which American Greetings' stock reached the third lowest closing price for the month and fourth lowest closing price for the quarter. The 10- and 20-day increases in the Company's stock price following that date were 7.4% and 6.3%, respectively, with the annualized increases being 268.1% and 113.6%, respectively.

American Greetings Corp.

June 12, 2006 to August 14, 2006

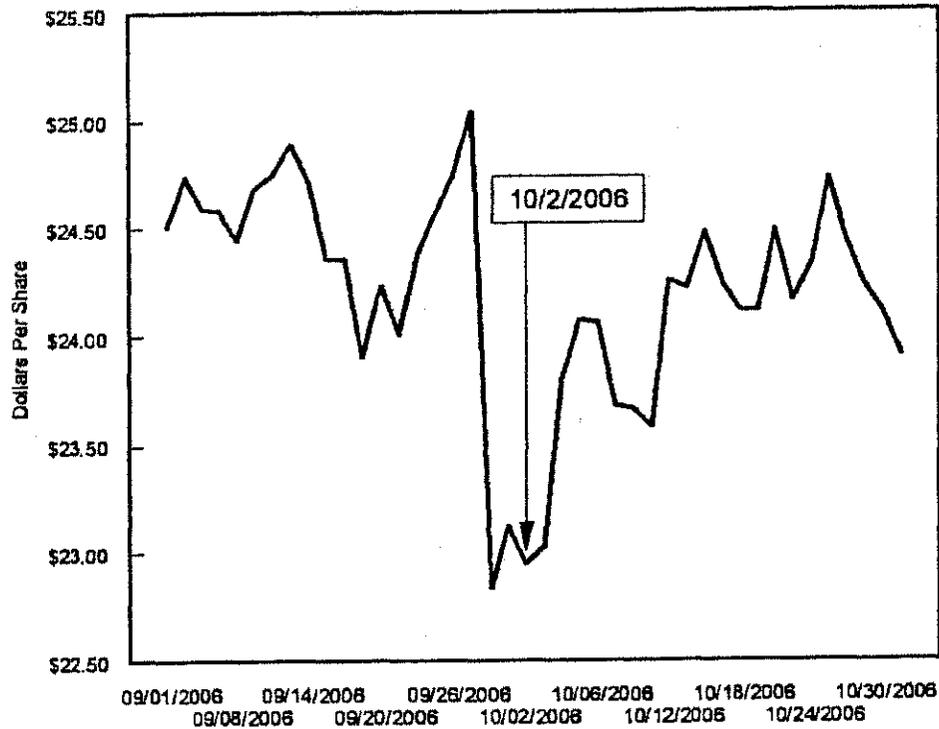


Bullet-Dodge Option Grant Backdated to October 2, 2006

86. These options were granted to Brain McGrath ("McGrath"). They were dated and priced based on the date on which American Greetings' stock reached the lowest closing price for the month and second lowest closing price for the quarter. The 10- and 20-day increases in the Company's stock price following that date were 6.7% and 5.1%, respectively, with the annualized increases being 240.0% and 91.8%, respectively.

American Greetings Corp.

September 1, 2006 to October 31, 2006



87. This option grant was manipulated in two independent and actionable ways. First, the grant was a bullet-dodging event. Second, it was backdated once certain defendants ascertained

American Greetings' stock price was fully depressed from the issuance of a terrible earnings disappointment, by virtue of waiting for the stock price to ascend for two trading days.

88. Between shortly before the end of American Greetings' second fiscal quarter, August 31, 2006 and the morning of September 28, 2006, M. Weiss, J. Weiss, Z. Weiss, Cipollone, Cowen, Hardis, Ratner and Hardin (among others) became aware that the Company would report earnings per share for that quarter well below the bottom of the range of the Company's EPS guidance to analysts and published expected earnings by analysts. The earnings miss expected was substantial: a \$0.23 per share *loss* versus positive earnings of \$0.06 per share in the previous year's same quarter, and approximately 50% *less* than management's guidance (and published analyst expectations) for the quarter. These defendants knew American Greetings' forthcoming earnings report would at a minimum have a short-term damning effect on the Company's stock price. Consequently, Cowen, Hardis, Ratner and Hardin were requested to not (and did not) issue stock options until after announcement of the earnings disappointment. Expecting the dramatic earnings miss would depress American Greetings' stock price below fair market value, these defendants waited to grant McGrath stock options until after the Company decided to issue its second quarter financial results. This grant not only violated the fair market value exercise price restrictions of American Greetings' stock option plans, the timing of grants in this manner (bullet dodging) was contrary to the shareholder-approved purposes of the Company's stock option plans.

89. On the morning of September 28, 2006, the Company announced its financial results for the second quarter ended August 31, 2006. Adjusted earnings per share were negative \$0.23, well below the \$0.06 EPS of the previous second quarter, and approximately 50% below management guidance and analyst expectations. As analysts issued their negative reports, American Greetings' stock price plummeted, posting close to the single largest one-day loss of the year.

90. To ensure they could price options at the lowest price possible, the Compensation Committee then waited until American Greetings' stock price had turned back upward for two days and then backdated McGrath's option grant to October 2, 2006. The insiders' plan worked well. In retrospect, that closing price turned out to be the second lowest closing price of the quarter.

91. The issuance of options identified above violated American Greetings' stock option plans as set forth at ¶¶59-75. Indeed, the options identified above were *not* dated with the date when they were granted. As alleged herein these *ultra vires* acts also contradicted the Company's statements in SEC filings and other reports to American Greetings' shareholders and violated federal and state securities laws. The secret practice of backdating stock option grants to themselves and their colleagues was in breach of defendants' fiduciary duties, including their duties of good faith, honesty and loyalty, owed to American Greetings and its shareholders.

92. The backdating, among other things, enabled defendants to (i) hide the fact that the Company was paying higher compensation to executives and employees by awarding them more valuable options on the grant date than represented, (ii) avoid recording the hidden compensation as compensation expense, and (iii) thus conceal reductions in the Company's net income, shareholder's equity and tax obligations. Keeping the scheme secret also hid the injury to the Company which occurred when executives and employees exercised the options and made capital contributions to American Greetings that were less than they should have paid, had the options not been granted in-the-money or otherwise with greater intrinsic value than represented.

93. The backdating also conferred great personal financial benefits on defendants. American Greetings' stock traded at prices propelled in part by the false financial statements defendants had caused the Company to issue. Indeed, American Greetings' stock price significantly increased in response to the Company's reported financial statements that overstated income, net

income, and earnings per share as a result of the backdating. While the price of American Greetings' stock was artificially inflated, defendants and other insiders engaged in insider trading, selling more than \$38 million worth of the Company's stock in violation of securities laws. And American Greetings' directors in particular profited handsomely from the backdating. Those on the Board who engaged in backdating, alone, cashed in their options and garnered proceeds from stock sales of over \$14 million.

AMERICAN GREETINGS' FALSE AND MISLEADING PROXY STATEMENTS

94. In its proxy statements the Company (and numerous defendants) repeatedly communicated to American Greetings' shareholders (i) that stock option grants would be determined pursuant to authorization of the shareholders and in accordance with American Greetings' stock option plans, (ii) the Company had been granting and would continue to grant stock options dated and priced based on fair market value relative to the date of the grant of the option, in accordance with American Greetings' stock option plans, (iii) that stock options were being granted prudently and consistent with the Company's compensation policies to compensate management through future growth in the Company's market value (*i.e.*, not by granting backdated "in-the-money" stock options), so that option holders would benefit only when, and to the extent, the Company's stock price increased after the grant, and (iv) that the Audit Committee had fulfilled its duties to help ensure the adequacy of the Company's internal controls in recommending the inclusion of the Company's financial statements in its periodic SEC filings. The proxies also referenced options prices, market prices on purported grant dates and grant dates (identifiable by expiration date or otherwise) in stating the equity holdings of, and options grants to, officers and directors, but omitted that the grants were backdated and therefore stock option compensation was artificially inflated and underreported.

95. The statements in American Greetings' proxies (many of which are identified below) were materially false and misleading and omitted material information about the Company's improper stock option practices, as detailed herein. In truth, and as those who signed and approved the Company's proxy statements knew or were negligent or severely reckless in not knowing, stock options at American Greetings were (i) backdated in violation of the Company's stock option plans, (ii) otherwise determined and granted in contravention of the vested authority provided by shareholders and the stock option plans, and (iii) dated with dates prior to the dates the awards were properly authorized, employees were entitled to receive the options, or the option or price was known. Furthermore, those defendants who sat on the Audit Committee were in fact circumventing the Company's internal controls and withholding from American Greetings' external auditors their knowledge of backdating.

96. As former SEC Chairman Harvey L. Pitt stated: "What's so terrible about backdating options grants? For one thing, it likely renders a company's proxy materials false and misleading. Proxies typically indicate that options are granted at fair market value. But if the grant is backdated, the options value isn't fair – at least not from the vantage point of the company and its shareholders."

97. By issuing false and misleading statements in American Greetings' proxy statements, the defendants identified below were able to: (i) increase the numbers of authorized shares of common stock of American Greetings from which defendants could gain shares by exercise of their backdated stock options; (ii) gain the ability to grant to themselves and others backdated stock options; and (iii) obtain elected directorships enabling them to perpetuate the scheme. Were the truth disclosed, the Company's shareholders would not have reasonably followed defendants' recommendations concerning the proposals submitted for their approval in the Company's proxy statements identified below.

98. American Greetings relied upon the facts stated in the Company's false and misleading proxy statements to seek the shareholders' vote for approval of the proposals identified herein. Thus, both the Company and its shareholders relied on the following materially false proxy statements.

Proxy Statement Filed in Connection with the 1996 Annual Meeting

99. On or about June 28, 1996, American Greetings filed with the SEC its definitive proxy statement for the 1996 annual meeting of shareholders ("1996 Proxy Statement" or "1996 Proxy"). The 1996 Proxy Statement was reviewed and approved by M. Weiss and Cowen. The 1996 Proxy included a "Report of the Compensation Committee" signed by Cowen.

100. The 1996 Proxy Statement made numerous significant representations concerning American Greetings' stock option plans, for instance, relating to the purpose of stock option grants, how stock options were being granted, and how stock options would be granted in the future.

(a) The 1996 Proxy Statement communicated that stock option grants were not being backdated and would not be backdated in the future. In the Report of the Compensation Committee, the 1996 Proxy stated the Company's "compensation philosophy reflects its belief that the compensation of its executive and non-executive officers should . . . motivate[] officers . . . by tying officers' compensation to the performance of the Company" and "align the interests of its officers with the long-term interests of the Company's shareholders through the award of stock options." 1996 Proxy at 10. It further stated that under the Company's "long-term equity-based incentive compensation programs," which include stock options, the Company was "tying officer compensation directly to shareholder return," because "[a]n officer benefits if the price of the company's shares increases." *Id.* at 12. The 1996 Proxy also affirmed options were being "granted at 100 percent of fair market value at the close of business on the last business day preceding the date of grant" (*id.*), and the Compensation Committee would "assure [compensation] programs are

consistent with the objective of increasing shareholder value.” *Id.* at 14. The 1996 Proxy made similar statements related to the granting of options and suggesting options were accurately dated to be the grant date.

(b) In recommending approval of the 1996 Employee Stock Option Plan, the 1996 Proxy communicated (among other things) that the purpose of the plan was to align director, officer and employee interests with shareholder interests by awarding options such “officers and selected key employees of the Company” would have “opportunity to share in future appreciation in the share value of the Company’s stock.” 1996 Proxy at 19. It further stated that the exercise price of options under the plan “may not be less than the price of the Class A Common Shares quoted by the National Association of Securities Dealers at the close of business on the date preceding that on which the option is granted.” *Id.* Supporting these representations, the proposed 1996 Employee Stock Option Plan was attached to the 1996 Proxy Statement and expressly referenced. The attached plan further served to represent that incentive option exercise prices under the plan would be based on the last closing price of the Company’s common stock preceding the date of grant. This was stated in sum and substance throughout the plan’s provisions concerning stock option grant exercise prices.

101. The 1996 Proxy Statement representations were made in connection with and essential to a number of proposals American Greetings’ Board made to the Company’s shareholders for a vote.

(a) The first proposal concerned “ELECTION OF DIRECTORS” – including certain of the same directors who were backdating and/or receiving backdated stock options and making misrepresentations to the Company’s shareholders. Each defendant then a director explicitly recommended that American Greetings’ shareholders “VOTE FOR” the election of each of the nominee directors. 1996 Proxy at 4-5.

(b) The second proposal was "APPROVAL OF [THE] 1996 EMPLOYEE STOCK OPTION PLAN." Each defendant then a director explicitly recommended American Greetings' shareholders "VOTE FOR THE ADOPTION" of the 1996 Employee Stock Option Plan. 1996 Proxy at 19-20.

Proxy Statement Filed in Connection with the 1997 Annual Meeting

102. On or about June 27, 1997, American Greetings filed with the SEC its definitive proxy statement for the 1997 annual meeting of shareholders ("1997 Proxy Statement" or "1997 Proxy"). The 1997 Proxy Statement was reviewed and approved by M. Weiss and Cowen. The 1997 Proxy included a "Report of the Compensation Committee" signed by Cowen.

103. The 1997 Proxy Statement made numerous significant representations concerning American Greetings' stock option plans, for instance, relating to the purpose of stock option grants, how stock options were being granted, and how stock options would be granted in the future.

(a) The 1997 Proxy Statement communicated that stock option grants were not being backdated and would not be backdated in the future. In the Report of the Compensation Committee, the 1997 Proxy stated the Company's "compensation philosophy reflects its belief that the compensation of its executive and non-executive officers should . . . motivate[] officers . . . by tying officers' compensation to the performance of the Company" and "align the interests of its officers with the long-term interests of the Company's shareholders through the award of stock options." 1997 Proxy at 8. It further stated that under the Company's "long-term equity-based incentive compensation programs," which include stock options, the Company was "tying officer compensation directly to shareholder return," because "[a]n officer benefits if the price of the Company's shares increases." *Id.* at 9. The 1997 Proxy Statement also affirmed options were being "granted at 100 percent of fair market value at the close of business on the last business day preceding the date of grant" (*id.*) and the Compensation Committee would "assure [compensation]

programs are consistent with the objective of increasing shareholder value.” *Id.* at 10. The 1997 Proxy made similar statements related to the granting of options and suggesting options were accurately dated to be the grant date.

(b) In recommending approval of the 1997 Equity and Performance Incentive Plan, the 1997 Proxy stated options may be granted “at a price not less than fair market value.” 1997 Proxy at 17. Supporting these representations, the proposed 1997 Equity and Performance Incentive Plan was attached to the 1997 Proxy Statement and expressly referenced. The attached plan further served to represent that option exercise prices under the plan would be not less than fair market value of the Company’s common stock on the date of grant. For example, §4 of the attached Plan stated the option price per share “may not be less than the Market Value per Share on the Date of Grant” (*id.* at 25), and in defining “Date of Grant” the attached Plan further stated such date “shall not be earlier than the date on which the Board takes action with respect” to the option. *Id.* at 23. This was stated in sum and substance throughout the plan’s provisions concerning stock option grant exercise prices.

104. The 1997 Proxy Statement representations were made in connection with and essential to a number of proposals American Greetings’ Board made to the Company’s shareholders for a vote.

(a) The first proposal concerned “ELECTION OF DIRECTORS” – including certain of the same directors who were backdating and/or receiving backdated stock options and making misrepresentations to the Company’s shareholders. Each defendant then a director explicitly recommended that American Greetings’ shareholders “VOTE FOR” the election of each of the nominee directors. 1997 Proxy at 3.

(b) The second proposal was for approval of the "1997 EQUITY AND PERFORMANCE INCENTIVE PLAN." Each defendant then a director explicitly recommended American Greetings' shareholders "VOTE FOR THE ADOPTION" of the 1997 Equity and Performance Incentive Plan. 1997 Proxy at 16, 21.

Proxy Statement Filed in Connection with the 1998 Annual Meeting

105. On or about June 26, 1998, American Greetings filed with the SEC its definitive proxy statement for the 1998 annual meeting of shareholders ("1998 Proxy Statement" or "1998 Proxy"). The 1998 Proxy Statement was reviewed and approved by M. Weiss and Cowen. The 1998 Proxy included a "Report of the Compensation Committee" signed by Cowen.

106. The 1998 Proxy Statement made numerous significant representations concerning American Greetings' stock option plans, for instance, relating to the purpose of stock option grants, how stock options were being granted, and how stock options would be granted in the future. In the Report of the Compensation Committee, the 1998 Proxy stated the Company's "compensation philosophy reflects its belief that the compensation of its executive and non-executive officers should . . . motivate[] officers . . . by tying officers' compensation to the performance of the Company" and "align the interests of its officers with the long-term interests of the Company's shareholders through the award of stock options." 1998 Proxy at 9. It further stated that under the Company's "long-term equity-based incentive compensation programs," which include stock options, the Company was "tying officer compensation directly to shareholder return," because "[a]n officer benefits if the price of the Company's shares increases." *Id.* at 10. The 1998 Proxy Statement also affirmed options were being "granted at 100% of fair market value at the close of business on the last business day preceding the date of grant or at not less than market value on the date of grant" (*id.*), and the Compensation Committee would "assure [compensation] programs are consistent with the objective of increasing shareholder value." *Id.* at 11. The 1998 Proxy made

similar statements related to the granting of options and suggesting options were accurately dated to be the grant date.

107. The 1998 Proxy Statement representations were made in connection with and essential to a number of proposals American Greetings' Board made to the Company's shareholders for a vote.

(a) The first proposal concerned "ELECTION OF DIRECTORS" – including certain of the same directors who were backdating and/or receiving backdated stock options and making misrepresentations to the Company's shareholders. Each defendant then a director explicitly recommended that American Greetings' shareholders "VOTE FOR" the election of each of the Director nominees. 1998 Proxy at 4.

(b) The third proposal concerned "ADOPTION OF AMENDED ARTICLE FOURTH TO AMENDED ARTICLES OF INCORPORATION TO INCREASE AUTHORIZED CLASS A COMMON SHARES AND CLASS B COMMON SHARES" by 93.8 million and 7.9 million shares, respectively, to make stock "available for . . . grants under the Company's employee stock option plans," among other things. Each defendant then a director explicitly recommended that American Greetings' shareholders "VOTE FOR THE ADOPTION OF THIS PROPOSAL." 1998 Proxy at 17.

Proxy Statement Filed in Connection with the 1999 Annual Meeting

108. On or about June 25, 1999, American Greetings filed with the SEC its definitive proxy statement for the 1999 annual meeting of shareholders ("1999 Proxy Statement" or "1999 Proxy"). The 1999 Proxy Statement was reviewed and approved by M. Weiss, Cowen and Mouchly-Weiss. The 1999 Proxy included a "Report of the Compensation Committee" signed by Cowen and Mouchly-Weiss.

109. The 1999 Proxy Statement made numerous significant representations concerning American Greetings' stock option plans, for instance, relating to the purpose of stock option grants, how stock options were being granted, and how stock options would be granted in the future. In the Report of the Compensation Committee, the 1999 Proxy stated the Company's "compensation philosophy reflects its belief that the compensation of its executive and non-executive officers should . . . motivate[] officers . . . by tying officers' compensation to the performance of the Company" and "align the interests of its officers with the long-term interests of the Company's shareholders through the award of stock options." 1999 Proxy at 7. It further stated that under the Company's "long-term incentive compensation programs," which include stock options, the Company was "tying officer compensation directly to shareholder return," because "[a]n officer benefits if the price of the Company's shares increases." *Id.* at 9. The 1999 Proxy Statement also affirmed options were being "granted at 100% of fair market value at the close of business on the last business day preceding the date of grant or at not less than market value on the date of grant" (*id.*) and the Compensation Committee would "assure [compensation] programs are consistent with the objective of increasing shareholder value." *Id.* at 10. The 1999 Proxy made similar statements related to the granting of options and suggesting options were accurately dated to be the grant date.

110. The 1999 Proxy Statement representations were made in connection with and essential to the first proposal American Greetings' Board made to the Company's shareholders for a vote. The first proposal concerned "ELECTION OF DIRECTORS" – including certain of the same directors who were backdating and/or receiving backdated stock options and making misrepresentations to the Company's shareholders. Each defendant then a director explicitly recommended that American Greetings' shareholders "VOTE FOR" the election of each of the Director nominees. 1999 Proxy at 3.

Proxy Statement Filed in Connection with the 2000 Annual Meeting

111. On or about June 23, 2000, American Greetings filed with the SEC its definitive proxy statement for the 2000 annual meeting of shareholders ("2000 Proxy Statement" or "2000 Proxy"). The 2000 Proxy Statement was reviewed and approved by M. Weiss, J. Weiss, Hardis, Cowen and Mouchly-Weiss. The 2000 Proxy included a "Report of the Compensation Committee" signed by Cowen, Hardis and Mouchly-Weiss.

112. The 2000 Proxy Statement made numerous significant representations concerning American Greetings' stock option plans, for instance, relating to the purpose of stock option grants, how stock options were being granted, and how stock options would be granted in the future.

(a) The 2000 Proxy Statement communicated that stock option grants were not being backdated and would not be backdated in the future. In the Report of the Compensation Committee, the 2000 Proxy stated the Company's "compensation philosophy reflects its belief that the compensation of its executive and non-executive officers should . . . motivate[] officers . . . by tying officers' compensation to the performance of the Company" and "align the interests of its officers with the long-term interests of the Company's shareholders through the award of stock options." 2000 Proxy at 9. It further stated that under the Company's "long-term equity-based incentive compensation programs," which include stock options, the Company was "tying officer compensation directly to shareholder return," because "[a]n officer benefits if the price of the Company's shares increases." *Id.* at 10. The 2000 Proxy Statement also affirmed options were being "granted at 100% of fair market value at the close of business on the last business day preceding the date of grant or at not less than market value on the date of grant" (*id.*) and the Compensation Committee would "assure [compensation] programs are consistent with the objective of increasing shareholder value." *Id.* at 11. The 2000 Proxy made similar statements related to the granting of options and suggesting options were accurately dated to be the grant date.

(b) In recommending approval of an amendment to the 1997 Equity and Performance Incentive Plan, to increase the number of shares authorized for option grants by 500,000 shares, the 2000 Proxy summarized, attached and expressly referenced the proposed amended 1997 Equity and Performance Incentive Plan. The summary explicitly stated, and the attached plan further served to represent, option exercise prices under the plan would be not less than fair market value of the Company's common stock on the date of grant. For example, §4 of the attached Plan stated the option price per share "may not be less than the Market Value per Share on the Date of Grant," and in defining "Date of Grant" the attached Plan further stated such date "shall not be earlier than the date on which the Board takes action with respect" to the option. This was stated in sum and substance throughout the plan's provisions concerning stock option grant exercise prices.

113. The 2000 Proxy Statement representations were made in connection with and essential to a number of proposals American Greetings' Board made to the Company's shareholders for a vote.

(a) The first proposal concerned "ELECTION OF DIRECTORS" – including certain of the same directors who were backdating and/or receiving backdated stock options and making misrepresentations to the Company's shareholders. Each defendant then a director explicitly recommended that American Greetings' shareholders "VOTE FOR" the election of each of the nominee directors. 2000 Proxy at 4, 5.

(b) The second proposal was for approval of the amendment to the "1997 EQUITY AND PERFORMANCE INCENTIVE PLAN" to "INCREASE... SHARES AUTHORIZED FOR GRANTS" by 500,000 shares, for (among other things) option grants. Each defendant then a director explicitly recommended American Greetings' shareholders "VOTE FOR

THE ADOPTION" of the amendment to the 1997 Equity and Performance Incentive Plan. 2000 Proxy at 16.

(c) The third proposal was for "REAPPROVAL AND AMENDMENT OF CERTAIN CEO/COO COMPENSATION PLANS," which plans provided for bonuses to the CEO and COO. Each defendant then a director explicitly recommended American Greetings' shareholders "VOTE FOR THE ADOPTION" of the proposal to reapprove and amend the compensation plans. 2000 Proxy at 17.

Proxy Statement Filed in Connection with the 2001 Annual Meeting

114. On or about June 22, 2001, American Greetings filed with the SEC its definitive proxy statement for the 2001 annual meeting of shareholders ("2001 Proxy Statement" or "2001 Proxy"). The 2001 Proxy Statement was reviewed and approved by M. Weiss, Hardis, Cowen, Thornton, Mouchly-Weiss and Ratner. The 2001 Proxy included a "Report of the Compensation Committee" signed by Cowen, Hardis, Ratner and Mouchly-Weiss. The 2001 Proxy also included a "Report of the Audit Committee" signed by Hardis, Cowen, Mouchly-Weiss and Thornton.

115. The 2001 Proxy Statement made numerous significant representations concerning American Greetings' stock option plans, for instance, relating to the purpose of stock option grants, how stock options were being granted, and how stock options would be granted in the future.

(a) The 2001 Proxy Statement communicated that stock option grants were not being backdated and would not be backdated in the future. In the Report of the Compensation Committee, the 2001 Proxy stated the Company's "compensation philosophy reflects its belief that the compensation of its executive and non-executive officers should . . . motivate[] officers . . . by tying officers' compensation to the performance of the Company" and "align the interests of its officers with the long-term interests of the Company's shareholders through the award of stock options." 2001 Proxy at 10. It further stated that under the Company's "long-term incentive

compensation programs,” which include stock options, the Company was “tying officer compensation directly to shareholder return,” because “[a]n officer . . . benefits if the price of the Company’s shares increases.” *Id.* at 11. The 2001 Proxy Statement also affirmed options were being “granted at 100% of fair market value at the close of business on the last business day preceding the date of grant or at not less than market value on the date of grant” (*id.*) and the Compensation Committee would “assure [compensation] programs are consistent with the objective of increasing shareholder value.” *Id.* at 12. The 2001 Proxy made similar statements related to the granting of options and suggesting options were accurately dated to be the grant date. For example, the 2001 Proxy falsely stated the April 4, 2001 options were granted by the Board “on April 4, 2001.” 2001 Proxy at 26.

(b) In recommending approval of an amendment to the 1997 Equity and Performance Incentive Plan, to increase the number of shares authorized for option grants by 7,000,000 shares, the 2001 Proxy summarized, attached and expressly referenced the proposed amended 1997 Equity and Performance Incentive Plan. The summary explicitly stated, and the attached plan further served to represent, option exercise prices under the plan would be not less than fair market value of the Company’s common stock on the date of grant. For example, §4 of the attached plan stated the option price per share “may not be less than the Market Value per Share on the Date of Grant,” and in defining “Date of Grant” the attached plan further stated such date “shall not be earlier than the date on which the Board takes action with respect” to the option. This was stated in sum and substance throughout the plan’s provisions concerning stock option grant exercise prices.

116. The 2001 Proxy Statement contained a “Report of the Audit Committee” made with respect to the Company’s financial statements for the fiscal year ended February 28, 2001, which

included American Greetings' 1999-2001 financial statements and selected financial data from the Company's 1997-2001 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), all of which were falsified by the backdating alleged herein. The Audit Committee's charter, referenced in and attached to the 2001 Proxy, demonstrated the Audit Committee's substantial oversight authority and responsibilities aimed at ensuring the Company's integrity of reported financial results, soundness of internal controls, adequacy of disclosures and compliance with laws and regulations. In the report Hardis, Cowen, Mouchly-Weiss and Thornton represented they had fulfilled their duties to help ensure the adequacy of the Company's internal controls and endorsed the integrity of American Greetings' financial statements and internal controls and adequacy of disclosures. In so doing, they stated (among other things) that the committee "recommend[ed] to the Board of Directors that the audited financial statements for the year ended February 28, 2001, be included in the Company's 2001 Annual Report on Form 10-K for filing with the Securities and Exchange Commission." 2001 Proxy at 13.

117. The 2001 Proxy Statement representations were made in connection with and essential to a number of proposals American Greetings' Board made to the Company's shareholders for a vote.

(a) The first proposal concerned "ELECTION OF DIRECTORS" – including certain of the same directors who were backdating and/or receiving backdated stock options and making misrepresentations to the Company's shareholders. Each defendant then a director explicitly recommended that American Greetings' shareholders "VOTE FOR" the election of each of the nominee directors. 2001 Proxy at 4, 5.

(b) The second proposal was for approval of the amendment to the "1997 EQUITY AND PERFORMANCE INCENTIVE PLAN" to "INCREASE ... SHARES AUTHORIZED FOR GRANTS" by 7,000,000 shares, for "solely ... stock option grants." Each defendant then a director explicitly recommended American Greetings' shareholders "VOTE FOR THE ADOPTION" of the amendment to the 1997 Equity and Performance Incentive Plan. 2001 Proxy at 18.

(c) The third proposal was for "APPROVAL OF PERFORMANCE-BASED COMPENSATION ARRANGEMENTS FOR THE CHIEF EXECUTIVE OFFICER AND OTHER NAMED EXECUTIVE OFFICERS," which arrangements provided for bonuses to the CEO and other named officers. Each defendant then a director explicitly recommended American Greetings' shareholders "VOTE FOR THE ADOPTION" of the proposal to approve and amend the compensation plans. 2001 Proxy at 19.

Proxy Statement Filed in Connection with the 2002 Annual Meeting

118. On or about June 28, 2002, American Greetings filed with the SEC its definitive proxy statement for the 2002 annual meeting of shareholders ("2002 Proxy Statement" or "2002 Proxy"). The 2002 Proxy Statement was reviewed and approved by M. Weiss, Hardis, Cowen, Thornton, Mouchly-Weiss and Ratner. The 2002 Proxy included a "Report of the Compensation Committee" signed by Cowen, Hardis, Ratner and Mouchly-Weiss. The 2002 Proxy also included a "Report of the Audit Committee" signed by Hardis, Cowen, Mouchly-Weiss and Thornton.

119. The 2002 Proxy Statement made numerous significant representations concerning American Greetings' stock option plans, for instance, relating to the purpose of stock option grants, how stock options were being granted, and how stock options would be granted in the future. The 2002 Proxy Statement communicated that stock option grants were not being backdated and would not be backdated in the future. In the Report of the Compensation Committee, the 2002 Proxy stated

the Company's "compensation philosophy reflects its belief that the compensation of its executive and non-executive officers should . . . motivate[] officers . . . by tying officers' compensation to the performance of the Company" and "align the interests of its officers with the long-term interests of the Company's shareholders through the award of stock options." 2002 Proxy at 9. It further stated that under the Company's "long-term incentive compensation programs," which include stock options, the Company was "tying compensation . . . directly to shareholder return," because "[a]n officer . . . benefits if the price of the Company's shares increases." *Id.* at 10. The 2002 Proxy Statement also affirmed options were being "granted at 100% of fair market value at the close of business on the last business day preceding the date of grant or at not less than market value on the date of grant" (*id.* at 11) and the Compensation Committee would "assure [compensation] programs are consistent with the objective of increasing shareholder value." *Id.* at 12. The 2002 Proxy made similar statements related to the granting of options and suggesting options were accurately dated to be the grant date.

120. The 2002 Proxy Statement contained a "Report of the Audit Committee" made with respect to the Company's financial statements for the fiscal year ended February 28, 2002, which included American Greetings' 2000-2002 financial statements and selected financial data from the Company's 1998-2002 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), all of which were falsified by the backdating alleged herein. The Audit Committee's charter, referenced in and attached to the 2001 Proxy, demonstrated the Audit Committee's substantial oversight authority and responsibilities aimed at ensuring the Company's integrity of reported financial results, soundness of internal controls, adequacy of disclosures and compliance with laws and regulations. In the report Hardis, Cowen, Mouchly-Weiss and Thornton represented they had fulfilled their duties to help ensure the

adequacy of the Company's internal controls and endorsed the integrity of American Greetings' financial statements and internal controls and adequacy of disclosures. In so doing, they stated (among other things) that the committee "recommended to the Board of Directors that the audited financial statements for the year ended February 28, 2002, be included in the Company's 2002 Annual Report on Form 10-K for filing with the SEC." 2002 Proxy at 13.

121. The 2002 Proxy Statement representations were made in connection with and essential to the first proposal American Greetings' Board made to the Company's shareholders for a vote. The first proposal concerned "ELECTION OF DIRECTORS" – including certain of the same directors who were backdating and/or receiving backdated stock options and making misrepresentations to the Company's shareholders. Each defendant then a director explicitly recommended that American Greetings' shareholders "VOTE FOR" the election of each of the director nominees. 2002 Proxy at 3, 4.

Proxy Statement Filed in Connection with the 2003 Annual Meeting

122. On or about June 27, 2003, American Greetings filed with the SEC its definitive proxy statement for the 2003 annual meeting of shareholders ("2003 Proxy Statement" or "2003 Proxy"). The 2003 Proxy Statement was reviewed and approved by M. Weiss, J. Weiss, Z. Weiss, Hardis, Cowen, Thornton, Mouchly-Weiss and Ratner. The 2003 Proxy included a "Report of the Compensation Committee" signed by Cowen, Hardis, Ratner and Mouchly-Weiss. The 2003 Proxy also included a "Report of the Audit Committee" signed by Hardis, Cowen, Mouchly-Weiss and Thornton.

123. The 2003 Proxy Statement made numerous significant representations concerning American Greetings' stock option plans, for instance, relating to the purpose of stock option grants, how stock options were being granted, and how stock options would be granted in the future. The 2003 Proxy Statement communicated that stock option grants were not being backdated and would

not be backdated in the future. In the Report of the Compensation Committee, the 2003 Proxy stated the Company's "compensation philosophy reflects its belief that the compensation of its executive and non-executive officers should . . . motivate[] officers . . . by tying officers' compensation to the performance of the Company" and "align the interests of its officers with the long-term interests of the Company's shareholders through the award of stock options." 2003 Proxy at 10. It further stated that under the Company's "long-term incentive compensation programs," which include stock options, the Company was "tying officer compensation . . . directly to shareholder return," because "[a]n officer . . . benefits if the price of the Company's shares increases." *Id.* at 11. The 2003 Proxy Statement also affirmed options were being "granted at 100% of fair market value at the close of business on the last business day preceding the date of grant or at not less than market value on the date of grant" (*id.* at 12) and the Compensation Committee would "assure [compensation] programs are consistent with the objective of increasing shareholder value." *Id.* at 13. The 2003 Proxy made similar statements related to the granting of options and suggesting options were accurately dated to be the grant date.

124. The 2003 Proxy Statement contained a "Report of the Audit Committee" made with respect to the Company's financial statements for the fiscal year ended February 28, 2003, which included American Greetings' 2001-2003 financial statements and selected financial data from the Company's 1999-2003 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), all of which were falsified by the backdating alleged herein. The Audit Committee's charter, referenced in and attached to the 2001 Proxy, demonstrated the Audit Committee's substantial oversight authority and responsibilities aimed at ensuring the Company's integrity of reported financial results, soundness of internal controls, adequacy of disclosures and compliance with laws and regulations. In the report Hardis,

Cowen, Mouchly-Weiss and Thornton represented they had fulfilled their duties to help ensure the adequacy of the Company's internal controls and endorsed the integrity of American Greetings' financial statements and internal controls and adequacy of disclosures. In so doing, they stated (among other things) that the committee "recommended to the Board of Directors that the audited financial statements for the year ended February 28, 2003, be included in the Company's 2003 Annual Report on Form 10-K for filing with the [SEC]." 2003 Proxy at 14.

125. The 2003 Proxy Statement representations were made in connection with and essential to the first proposal American Greetings' Board made to the Company's shareholders for a vote. The first proposal concerned "ELECTION OF DIRECTORS" – including certain of the same directors who were backdating and/or receiving backdated stock options and making misrepresentations to the Company's shareholders. Each defendant then a director explicitly recommended that American Greetings' shareholders "VOTE FOR" the election of each of the director nominees. 2003 Proxy at 4, 5.

Proxy Statement Filed in Connection with the 2006 Annual Meeting

126. On or about May 11, 2006, American Greetings filed with the SEC its definitive proxy statement for the 2006 annual meeting of shareholders ("2006 Proxy Statement" or "2006 Proxy"). The 2006 Proxy Statement was reviewed and approved by M. Weiss, J. Weiss, Z. Weiss, Hardis, Cowen, Thornton, Mouchly-Weiss and Ratner. The 2006 Proxy included a "Report of the Compensation Committee" signed by Cowen, Hardis, Ratner and Mouchly-Weiss. The 2006 Proxy also included a "Report of the Audit Committee" signed by Hardis, Cowen, Mouchly-Weiss and Thornton.

127. The 2006 Proxy Statement made numerous significant representations concerning American Greetings' stock option plans, for instance, relating to the purpose of stock option grants, how stock options were being granted, and how stock options would be granted in the future. The

2006 Proxy Statement communicated that stock option grants were not being backdated and would not be backdated in the future. In the Report of the Compensation Committee, the 2006 Proxy stated the Company's "compensation philosophy reflects its belief that the compensation of its executive and non-executive officers should . . . align the interests of its officers with the long-term interests of the Company's shareholders through the award of stock options." 2006 Proxy at 12. It further stated that under the Company's "long-term incentive compensation programs," which include stock options, the Company was "link[ing] compensation for officers and certain key employees directly to shareholder return," because "[a]n officer holding stock options benefits if the price of the Company's shares increases." *Id.* at 14. The 2006 Proxy Statement also affirmed options were being "granted at 100% of fair market value at the close of business on either the last business day preceding the date of grant, or on the date of grant (depending on the actual plan under which the grant is made)." *Id.* at 15. The 2006 Proxy made similar statements related to the granting of options and suggesting options were accurately dated to be the grant date.

128. The 2006 Proxy Statement contained a "Report of the Audit Committee" made with respect to the Company's financial statements for the fiscal year ended February 28, 2006, which included American Greetings' 2004-2006 financial statements and selected financial data from the Company's 2002-2006 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), all of which were falsified by the backdating alleged herein. The Audit Committee's charter, referenced in the 2006 Proxy, demonstrated the Audit Committee's substantial oversight authority and responsibilities aimed at ensuring the Company's integrity of reported financial results, soundness of internal controls, adequacy of disclosures and compliance with laws and regulations. In the report, Hardis, Cowen, Mouchly-Weiss and Thornton represented they had fulfilled their duties to help ensure the adequacy

of the Company's internal controls and endorsed the integrity of American Greetings' financial statements and internal controls and adequacy of disclosures. In so doing, they stated (among other things) that the committee "recommended to the Board of Directors that the Company's audited financial statements be included in its Annual Report on Form 10-K for the year ended February 28, 2006, for filing with the Securities and Exchange Commission." 2006 Proxy at 24.

129. The 2006 Proxy Statement representations were made in connection with and essential to the first proposal American Greetings' Board made to the Company's shareholders for a vote. The first proposal concerned "ELECTION OF DIRECTORS" – including certain of the same directors who were backdating and/or receiving backdated stock options and making misrepresentations to the Company's shareholders. 2006 Proxy at 8. Each defendant then a director explicitly recommended that American Greetings' shareholders "vote FOR all of the . . . nominees."

Id.

Proxy Statement Filed in Connection with the 2007 Annual Meeting

130. On or about May 17, 2007, American Greetings filed with the SEC its definitive proxy statement for the 2007 annual meeting of shareholders ("2007 Proxy Statement" or "2007 Proxy"). The 2007 Proxy Statement was signed by Z. Weiss and reviewed and approved by M. Weiss, J. Weiss, Z. Weiss, Hardis, Hardin, Cowen, Thornton, Mouchly-Weiss and Ratner. The 2007 Proxy included a "Report of the Compensation Committee" signed by Cowen, Hardis, Hardin, Ratner and Mouchly-Weiss. The 2007 Proxy also included a "Report of the Audit Committee" signed by Hardis, Cowen, Mouchly-Weiss and Thornton.

131. The 2007 Proxy Statement made numerous significant representations concerning American Greetings' stock option plans, for instance, relating to the purpose of stock option grants, how stock options were being granted, and how stock options would be granted in the future. The 2007 Proxy Statement communicated that stock option grants had not been backdated.

(a) In its discussion under "Long-Term Incentive Compensation," the 2007 Proxy (specifically the Board and Compensation Committee) stated that stock option awards "are consistent with our pay for performance principles because stock options align the interests of executives with those of the shareholders," and that "stock options are inherently performance based in that all the value received by the recipient from a stock option is based on the growth of the stock price above the option price." 2007 Proxy at 29. The 2007 Proxy Statement also affirmed option vesting was based on the "date of grant" and in fiscal 2007, *i.e.*, from March 2006 to March 2007, "the exercise price of each stock option granted was based on the fair market value of [American Greetings'] common shares on the grant date." *Id.* at 30. And in discussing the Company's historical practices with respect to annual grants of stock options that "have been made," the 2007 Proxy stated the "exercise price of any such grant is the closing price of our common shares on the grant date." *Id.*

(b) The 2007 Proxy also stated that "to further align non-employee directors' interests with [American Greetings'] shareholders, each year non-employee directors receive an annual grant of options to purchase [the Company's] Class A common shares." 2007 Proxy at 53. When identifying stock option grants, including the backdated July 12, 2006 options, the 2007 Proxy stated the grant date of the backdated July 12, 2006 options was "July 12, 2006" and the options had "an exercise price equal to the closing price of [American Greetings'] Class A common shares on the date of grant." *Id.* at 53-54. The 2007 Proxy made similar statements related to the granting of options and suggesting options were accurately dated to be the grant date.

132. The 2007 Proxy Statement contained a "Report of the Audit Committee" made with respect to the Company's financial statements for the fiscal year ended February 28, 2007, which included American Greetings' 2005-2007 financial statements and selected financial data from the

Company's 2003-2007 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), all of which were falsified by the backdating alleged herein. The Audit Committee's charter, referenced in the 2007 Proxy, demonstrated the Audit Committee's substantial oversight authority and responsibilities aimed at ensuring the Company's integrity of reported financial results, soundness of internal controls, adequacy of disclosures and compliance with laws and regulations. In the report, Hardis, Cowen, Mouchly-Weiss and Thornton represented they had fulfilled their duties to help ensure the adequacy of the Company's internal controls and endorsed the integrity of American Greetings' financial statements and internal controls and adequacy of disclosures. In so doing, they stated (among other things) that the committee "recommended to the Board of Directors that the audited financial statements be included in [the Company's] Annual Report on Form 10-K for the year ended February 28, 2007, for filing with the Securities and Exchange Commission." 2007 Proxy at 58.

133. The 2007 Proxy Statement representations were made in connection with and essential to a number of proposals American Greetings' Board made to the Company's shareholders for a vote.

(a) The first proposal concerned "ELECTION OF DIRECTORS" – including certain of the same directors who were backdating and/or receiving backdated stock options and making misrepresentations to the Company's shareholders. Each defendant then a director explicitly recommended that American Greetings' shareholders "*vote 'FOR' all of the . . . nominees.*" 2007 Proxy at 9.

(b) The second proposal was for "APPROVING THE AMERICAN GREETINGS CORPORATION 2007 OMNIBUS INCENTIVE COMPENSATION PLAN" to "replace [the] 1997 Equity and Performance Incentive Plan." 2007 Proxy at 13. Each defendant then a director

explicitly recommended American Greetings' shareholders "*approve*[e] *the 2007 Omnibus Incentive Compensation Plan.*" *Id.* at 19.

Proxy Statement Filed in Connection with the 2008 Annual Meeting

134. On or about May 19, 2008, American Greetings filed with the SEC its definitive proxy statement for the 2008 annual meeting of shareholders ("2008 Proxy Statement" or "2008 Proxy"). The 2008 Proxy Statement was signed by Z. Weiss and reviewed and approved by M. Weiss, J. Weiss, Z. Weiss, Hardis, Hardin, Cowen, Thornton and Ratner. The 2008 Proxy included a "Report of the Compensation Committee" signed by Cowen, Hardis, Hardin and Ratner. The 2008 Proxy also included a "Report of the Audit Committee" signed by Hardis, Cowen and Thornton.

135. The 2008 Proxy Statement made numerous significant representations concerning American Greetings' stock option plans, for instance, relating to the purpose of stock option grants, how stock options were being granted, and how stock options would be granted in the future. The 2008 Proxy Statement communicated that stock option grants had not been backdated. In its discussion under "Long-Term Incentive Compensation," the 2008 Proxy (specifically the Board and Compensation Committee) stated that stock option awards "are consistent with our pay for performance principles because stock options[] align the interests of executives with those of the shareholders," and that "stock options are inherently performance based in that all the value received by the recipient from a stock option is based on the growth of the stock price above the option price." 2008 Proxy at 34-35. And in discussing the Company's historical practices with respect to annual grants of stock options that "have been made," the 2008 Proxy stated the "exercise price of any such grant is the closing price of our common shares on the grant date." *Id.* at 36.

136. The 2008 Proxy Statement contained a "Report of the Audit Committee" made with respect to the Company's financial statements for the fiscal year ended February 29, 2008, which included American Greetings' 2006-2008 financial statements and selected financial data from the

Company's 2004-2008 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), all of which were falsified by the backdating alleged herein. The Audit Committee's charter, referenced in the 2008 Proxy, demonstrated the Audit Committee's substantial oversight authority and responsibilities aimed at ensuring the Company's integrity of reported financial results, soundness of internal controls, adequacy of disclosures and compliance with laws and regulations. In the report, Hardis, Cowen and Thornton represented they had fulfilled their duties to help ensure the adequacy of the Company's internal controls and endorsed the integrity of American Greetings' financial statements and internal controls and adequacy of disclosures. In so doing, they stated (among other things) that the committee "recommended to the Board of Directors that the audited financial statements be included in [the Company's] Annual Report on Form 10-K for the year ended February 29, 2008, for filing with the Securities and Exchange Commission." 2007 Proxy at 61.

(a) The 2008 Proxy Statement representations were made in connection with and essential to the first proposal American Greetings' Board made to the Company's shareholders for a vote. The first proposal concerned "ELECTION OF DIRECTORS" – including certain of the same directors who were backdating and/or receiving backdated stock options and making misrepresentations to the Company's shareholders. 2008 Proxy at 9. Each defendant then a director explicitly recommended that American Greetings' shareholders "*vote 'FOR' all of the... nominees.*" *Id.*

False and Misleading Forms 3, 4 and 5

137. American Greetings, with the knowledge, approval and participation of each of the defendants, filed with the SEC Forms 3, 4 or 5 that falsely reported the dates of American Greetings stock option grants to the defendants and others, for each of the option grants referenced in ¶¶77-87, *supra*. Those forms incorrectly stated the grant date of the options in the transaction date column for

the derivative securities section of the forms. In addition, certain forms otherwise falsely communicated in explanatory notes that options were granted on the option date.

BACKDATING AMERICAN GREETINGS' STOCK OPTIONS FALSIFIED THE COMPANY'S FINANCIAL STATEMENTS

138. Backdating American Greetings' stock options materially falsified the Company's financial statements by causing the understatement of compensation expense, the overstatement of earnings and the overstatement of shareholders' equity, among other things. For over a decade, defendants caused and/or allowed the Company to understate its compensation expense by not properly accounting for its stock options under GAAP and thus overstated the Company's net earnings.

139. Pursuant to Accounting Principles Board Opinion ("APB") No. 25, the applicable GAAP provision at the time of the options grants set forth herein, an option that is in-the-money on the measurement date has intrinsic value, and the difference between its exercise price and the quoted market price must be recorded as compensation expense to be recognized over the vesting period of the option. If the stock's market price on the date of grant exceeds the exercise price of the options, the corporation must recognize the difference as an expense, which directly impacts earnings. It is well known that "in-the-money" stock options must be recorded as an expense. But backdated stock options cause a company to not properly expense its option grants because the actual grant date escapes detection. Thus, American Greetings did not properly expense its backdated options and this was with full knowledge of the defendants who engaged in the backdating and/or received backdated options.

140. Although defendants received lucrative "in-the-money" options that were reported as market value options, they and American Greetings did not disclose this to shareholders or, worse, did not report the tens of millions of dollars of compensation expense (and reduced earnings)

incurred by the Company as a result of those backdated options. The backdated options falsified the Company's financial statements and periodic reports, not only during the quarterly and annual periods in which they were granted, but also as the options vested and were exercised in the following years. The Company has yet to recognize additional compensation expense resulting from backdated grants to its executives and directors.

141. Nor did defendants and American Greetings properly report defendants' compensation to the IRS. For years, defendants caused the Company to violate IRS rules and regulations as a result of backdated stock options. Internal Revenue Code §162(m) generally limits a publicly traded company's tax deductions for compensation paid to each of its named executive officers to \$1 million unless the pay is determined to be "performance-based." In order for compensation to be performance-based, the compensation committee must have set pre-established and objective performance goals. The goals must then be approved by the shareholders. Section 162(m) defines stock options as performance-based provided they are issued at an exercise price that is no less than the fair market value of the stock on the date of the grant. According to former SEC Chairman Harvey Pitt: "What [§162(m)] did was create incentives to find other forms of compensation so people could get over the \$1 million threshold without running afoul of the code." Stock options American Greetings purportedly issued were not taken into account in calculating whether the compensation of certain executives exceeded the \$1 million compensation cap when they should have been, because they were backdated to be "in-the-money."

142. Additionally, defendants failed to ensure that the Company maintained a system of internal accounting controls sufficient to provide assurances that stock option grants were recorded as necessary to permit the proper preparation of financial statements in conformity with GAAP,

including APB No. 25, and SEC rules and regulations. As stated by Harvey Pitt, former Chairman of the SEC:

Options backdating calls a company's internal controls into question. Many discussions of backdating start with the observation that backdating is not, per se, illegal. That is wrong. Options backdating frequently involves falsification of records used to gain access to corporate assets If corporate directors were complicit in these efforts, state law fiduciary obligations are violated. Backdating is not only illegal and unethical, it points to a lack of integrity in a company's internal controls.

Harvey Pitt, *Lessons of the stock option scandal*, Fin. Times, June 2, 2006, at 15. Through their fiduciary duties of good faith and loyalty, defendants owed to American Greetings a duty to ensure that the Company's financial reporting fairly presented, in all material respects, the operations and financial condition of the Company. In order to adequately carry out these duties, it is necessary for the defendants to know and understand the material non-public information to be either disclosed or omitted from the Company's public statements. This material non-public information included the problems the Company faced because of its deficient internal controls.

Audit Committee Members Who Engaged in Backdating Options Turned a Blind Eye to Internal Control Failures and Inadequate Disclosures

143. The conduct of certain members of the Board was particularly egregious because of their special obligations as members of American Greetings' Audit Committee. Not only did Hardis, Cowen and Thornton approve and/or accept backdated option grants in violation of the Company's stock option plans, they also turned a blind eye to their explicit obligations to report to American Greetings' external auditors the internal control failures (as members of the Audit Committee) caused by that conduct and the conduct of their fellow directors in backdating options. Nonetheless, Hardis, Cowen and Thornton reported no audit failures and recommended that the Company's financial statements be included in its SEC filings year after year.

144. As members of the Audit Committee, Hardis, Hardin, Cowen and Thornton had the highest obligation to inform American Greetings' external auditors of the backdating deception. Despite possessing knowledge that they and fellow members of the Board had approved millions of backdated option grants, they turned a blind eye to the backdating when performing their duties and their Audit Committee duties in particular. For example, as reported to shareholders in the Audit Committee's originating Charter, the Audit Committee shall consider, in consultation with the independent auditor and the senior internal auditing executive, the adequacy of the corporation's internal financial controls, and review the Company's financial statements and significant findings based on the auditor's review. See Audit Committee Charters adopted 2001, 2004. Specifically, Hardis, Hardin, Cowen and Thornton were to: (i) monitor the integrity of the Company's financial statements, reports and other financial information provided by American Greetings to any governmental body or the public; (ii) monitor the integrity of the Company's auditing, accounting and financial reporting processes; (iii) monitor the independence and performance of the Corporation's outside auditors and Internal Audit Department; (iv) monitor the Company's compliance with legal and regulatory requirements; and (v) review the adequacy of and compliance with the Company's financial policies and procedures and systems of internal control. See Audit Committee Charters adopted 2001, 2004. In so doing, the Audit Committee was empowered and authorized to "conduct any investigation appropriate in fulfilling its responsibilities." See *id.*

145. The Audit Committee Charters set forth extensive responsibilities, including reviewing with the Company's independent accountants the adequacy and effectiveness of the accounting and financial controls of the corporation, the plan and results of the annual audit, and material events or transactions and the reasoning for the appropriateness of accounting principles and financial disclosure practices used or proposed to be adopted by the Company. For example, among

other things, Hardis, Hardin, Cowen and Thornton were charged with oversight of the Company's disclosure controls and procedures, including applicable internal controls and procedures for financial reporting and internal controls relating to the authorization of transactions and the safeguarding and control of assets and were to consider the impact on the Company of any significant deficiencies in the design or operation of internal controls and procedures for financial reporting or material weaknesses therein and any fraud involving management or other employees that was reported to the Committee and were to oversee appropriate corrective actions. See Audit Committee Charters adopted 2001, 2004. They also had responsibility for reviewing with the Company: (i) any significant deficiencies in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize and report financial data; (ii) any material weakness in the Company's internal controls; and (iii) any fraud, whether or not material, involving management or other employees who have a significant role in the Company's internal controls. *Id.*

146. Indeed, the members of the Audit Committee were charged with the Board's fiduciary responsibility to ensure the integrity of the Company's reported financial results and internal control systems. Nonetheless, during Cowen's meetings and communications with the Company's auditors from 1997 onward, during Hardis's meetings and communications with the Company's auditors from 2000 onward, and during Thornton's meetings and communications with the Company's auditors from 2001 onward, Hardis, Cowen and Thornton, respectively, withheld from the Company's auditors: (i) intentional breaches of the Company's internal controls, namely the backdating of stock options; (ii) material inflation of the Company's reported financial results due to the false underreporting of compensation expense; and (iii) the resulting irregularities of the Company's deceptive stock option granting practices and false financial reporting that would require

a restatement of (or charges to) the Company's financial statements and/or the withdrawal or modification of audit opinions certifying the Company's financial reports.

False Financial Statements

147. Specifically, since fiscal 1997, American Greetings has reported false and misleading fiscal and quarterly financial results which materially understated its compensation expenses and thus overstated the Company's earnings as follows:

Fiscal Year	Reported Earnings (in millions)	Reported Diluted EPS From Continuing Operations
1994	\$1,769.96	\$1.77
1995	\$1,868.93	\$2.00
1996	\$2,003.04	\$1.54
1997	\$2,161.09	\$2.22
1998	\$2,198.76	\$2.37
1999	\$2,205.71	\$2.65
2000	\$2,175.24	\$1.81
2001	\$2,518.81	\$1.31
2002	\$1,927.35	\$1.09
2003	\$1,995.86	\$1.54
2004	\$1,953.73	\$1.46
2005	\$1,883.37	\$0.94
2006	\$1,875.10	\$1.71
2007	\$1,794.29	\$0.85
2008	\$1,776.45	\$1.77

148. Since fiscal 2007, American Greetings has also reported false and misleading financial statements that materially understated the weighted average fair value per share at date of grant for options granted during the fiscal years as follows:

Fiscal Year	Understated Weighted Average Fair Value Per Share at Purported Date of Grant for Options Granted During Fiscal Year (unadjusted for stock splits)

2001	\$4.14
2002	\$3.33
2003	\$5.96
2004	\$6.09
2005	\$7.41
2006	\$7.69

149. The effect of the backdating and the backdating itself is, and always has been, material to American Greetings' financial statements and should have been reported long ago. Relevant guidance on whether accounting items are material is found in the Supreme Court's ruling in *TSC Indus. v. Northway, Inc.*, 426 U.S. 438, 449 (1976), and in SEC Staff Accounting Bulletin No. 99 ("SAB 99"), released August 12, 1999. The Court ruled in *TSC* that a fact is material to investors if there is "a substantial likelihood that the . . . fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." 426 U.S. at 449. SAB 99 explains that both "quantitative" and "qualitative" factors help determine an item's materiality, rather than purely quantitative factors alone. Qualitative factors that can make a misstated fact material include, among others:

- (a) whether the misstatement has the effect of increasing management's compensation – for example, by satisfying requirements for the award of bonuses or other forms of incentive compensation;
- (b) whether the misstatement arises from an item "capable of precise measurement";
- (c) whether the misstatement masks a change in earnings;
- (d) whether the misstatement concerns a segment or other portion of the registrant's business that has been identified as playing a significant role in the registrant's operations or profitability; and

(e) whether the misstatement affects the registrant's compliance with regulatory requirements.

150. The backdating in this case and its effect is material under both a qualitative and a quantitative analysis. First, there is a substantial likelihood that the reasonable investor would consider that facts about backdating significantly alter the total mix of information about American Greetings. That is because, among other things, improper backdating of stock options reflects the degree to which the Company's insiders promote their own interests ahead of the Company's. The SEC has stated that the integrity of a company's management "is always a material factor." Second, the improper backdating increased management's and directors' compensation, and reduced requirements for those insiders to gain bonuses and incentive compensation. Third, the correct dates of option grants and the correct closing prices for stock on those dates can be precisely recorded and measured. Fourth, the improper backdating of stock options masked the Company's true net income, which should have been reported as lower, due to greater compensation expenses. Fifth, the improper backdating affects the incentives for management and directors to improve the Company's operations and profitability. Sixth, the improper backdating of stock options violates financial-reporting requirements of public companies and violates tax laws related to compensation expenses. Further, the backdating here was intentional conduct and therefore, by its nature, was material.

151. Although any of the above qualitative factors would have identified the defendants' stock option backdating as "material," the backdating also was material under quantitative criteria. Backdating contributed to the defendants' ability to sell tens of millions of dollars worth of the Company's stock while in possession of material, non-public adverse information about the backdating practices. Therefore, the defendants' only appropriate response would be to properly

correct the errors for each of the periods affected by the backdating scheme and thus provide the shareholders and the investing public the transparency they deserve.

152. In addition, under current accounting rules, a financial misstatement that appears immaterial as to a single reporting period may have a cumulative material impact on other periods. In such a situation, the misstatement must be disclosed, according to SEC Staff Accounting Bulletin No. 108 ("SAB 108"). This principle, which is reflected in SAB 108, has always been recognized in the financial accounting concept of materiality. For over ten years American Greetings understated compensation expense and overstated its earnings as a result of stock option backdating. The conduct and its effect in these individual years from fiscal 1997 onward was material in and of itself. Cumulatively, the financial statement effect is even more significant.

153. American Greetings' materially false and misleading financial statements were included in periodic reports filed with the SEC. The results were also included in press releases issued by the Company.

American Greetings' Materially False and Misleading Reports on Form 10-K

154. American Greetings' Reports on Form 10-K filed from 1997 through 2008 contained false and misleading financial statements and other statements understating compensation expense, overstating shareholders' equity, and overstating income (or understating loss), net income (or net loss) and earnings (or loss) per share. The notes to the Company's financial statements falsely communicated that stock options were being granted in accordance with American Greetings' stock option plans, namely by pricing options based on the Company's stock price on the date of the grant. And they falsely stated the weighted average fair value per share at date of grant for American Greetings' options, as well as compensation cost. The notes to the Company's financial statements further materially overstated pro forma net earnings and earnings per share (or understated pro forma net loss and loss per share) as if compensation cost for the Company's stock-based compensation

plans had been determined based on the estimated fair value of the options at the grant dates. These Reports on Form 10-K were false and misleading because (among other things) defendants were backdating and mispricing stock options. As those who engaged in the backdating and/or received backdated options knew, many purportedly at market option grants were backdated and retroactively priced to be "in-the-money."

The Fiscal 1997 Report on Form 10-K

155. On or about May 27, 1997, the Company filed with the SEC its Report on Form 10-K for the fiscal year ended February 28, 1997 (the "1997 10-K"). The 1997 10-K was simultaneously distributed to shareholders and the public. The 1997 10-K included American Greetings' 1996-1997 financial statements and selected financial data from the Company's 1993-1997 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. Because stock options identified herein were backdated to be "in-the-money," the option grants constituted significant unreported non-cash compensation expense. As a result, American Greetings' compensation expense was understated and its income, net income and shareholders' equity were overstated.

156. The 1997 10-K also falsely communicated that option grants were not granted at less than market value at the date of grant and falsely rationalized the lack of recorded compensation expense, stating "because the exercise price of the Corporation's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized." 1997 10-K at 30. The 1997 10-K also materially understated the weighted average fair value of options granted. Because options had been backdated to be "in-the-money," the value of those options was understated, and so too was the weighted average fair value of those options. Similarly, "[p]ro forma" net income and earnings per share purportedly reported under Statement of Financial

Accounting Standards No. 123, *Accounting for Stock-Based Compensation* ("SFAS No. 123") were materially overstated because the fair value of options granted and related compensation costs were understated. *Id.*

157. The 1997 10-K was signed by defendants M. Weiss and Cowen.

The Fiscal 1998 Report on Form 10-K

158. On or about May 14, 1998, the Company filed with the SEC its Report on Form 10-K for the fiscal year ended February 28, 1998 (the "1998 10-K"). The 1998 10-K was simultaneously distributed to shareholders and the public. The 1998 10-K included American Greetings' 1997-1998 financial statements and selected financial data from the Company's 1994-1998 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. Because stock options identified herein were backdated to be "in-the-money," the option grants constituted significant unreported non-cash compensation expense. As a result, American Greetings' compensation expense was understated and its income, net income and shareholders' equity were overstated.

159. The 1998 10-K also falsely communicated that option grants were not granted at less than market value at the date of grant and falsely rationalized the lack of recorded compensation expense, stating "because the exercise price of the Corporation's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized." 1998 10-K at 38. The 1998 10-K also materially understated the weighted average fair value of options granted. Because options had been backdated to be "in-the-money," the value of those options was understated, and so too was the weighted average fair value of those options. Similarly, "[p]ro forma" net income and earnings per share purportedly reported under SFAS No. 123 were

materially overstated because the fair value of options granted and related compensation costs were understated. *Id.*

160. The 1998 10-K was signed by defendants M. Weiss and Cowen.

The Fiscal 1999 Report on Form 10-K

161. On or about May 27, 1999, the Company filed with the SEC its Report on Form 10-K for the fiscal year ended February 28, 1999 (the "1999 10-K"). The 1999 10-K was simultaneously distributed to shareholders and the public. The 1999 10-K included American Greetings' 1998-1999 financial statements and selected financial data from the Company's 1995-1999 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. Because stock options identified herein were backdated to be "in-the-money," the option grants constituted significant unreported non-cash compensation expense. As a result, American Greetings' compensation expense was understated and its income, net income and shareholders' equity were overstated.

162. The 1999 10-K also falsely communicated that option grants were not granted at less than market value at the date of grant and falsely rationalized the lack of recorded compensation expense, stating "because the exercise price of the Corporation's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized." 1999 10-K at 42. The 1999 10-K also materially understated the weighted average fair value of options granted. Because options had been backdated to be "in-the-money," the value of those options was understated, and so too was the weighted average fair value of those options. Similarly, "[p]ro forma" net income and earnings per share purportedly reported under SFAS No. 123 were materially overstated because the fair value of options granted and related compensation costs were understated. *Id.* at 42-43.

163. The 1999 10-K was signed by defendants M. Weiss, Mouchly-Weiss and Cowen.

The Fiscal 2000 Report on Form 10-K

164. On or about May 26, 2000, the Company filed with the SEC its Report on Form 10-K for the fiscal year ended February 29, 2000 (the "2000 10-K"). The 2000 10-K was simultaneously distributed to shareholders and the public. The 2000 10-K included American Greetings' 1998-2000 financial statements and selected financial data from the Company's 1996-2000 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. Because stock options identified herein were backdated to be "in-the-money," the option grants constituted significant unreported non-cash compensation expense. As a result, American Greetings' compensation expense was understated and its income, net income and shareholders' equity were overstated.

165. The 2000 10-K also falsely communicated that option grants were not granted at less than market value at the date of grant and falsely rationalized the lack of recorded compensation expense, stating "because the exercise price of the Corporation's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized." 2000 10-K at 45. The 2000 10-K also materially understated the weighted average fair value of options granted. Because options had been backdated to be "in-the-money," the value of those options was understated, and so too was the weighted average fair value of those options. Similarly, "[p]ro forma" net income and earnings per share purportedly reported under SFAS No. 123 were materially overstated because the fair value of options granted and related compensation costs were understated. *Id.* at 45-46.

166. The fiscal 2000 10-K was signed by defendants M. Weiss, Cowen, Hardis and Mouchly-Weiss.

The Fiscal 2001 Report on Form 10-K

167. On or about May 3, 2001, the Company filed with the SEC its Report on Form 10-K for the fiscal year ended February 28, 2001 (the "2001 10-K"). The 2001 10-K was simultaneously distributed to shareholders and the public. The 2001 10-K included American Greetings' 1999-2001 financial statements and selected financial data from the Company's 1997-2001 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. Because stock options identified herein were backdated to be "in-the-money," the option grants constituted significant unreported non-cash compensation expense. As a result, American Greetings' compensation expense was understated and its income, net income and shareholders' equity were overstated.

168. The 2001 10-K also falsely communicated that option grants were not granted at less than market value at the date of grant and falsely rationalized the lack of recorded compensation expense, stating "because the exercise price of the Corporation's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized." 2001 10-K at 50. The 2001 10-K also materially understated the weighted average fair value of options granted. Because options had been backdated to be "in-the-money," the value of those options was understated, and so too was the weighted average fair value of those options. Similarly, "[p]ro forma" net income and earnings per share purportedly reported under SFAS No. 123 were materially overstated because the fair value of options granted and related compensation costs were understated. *Id.* at 50-51.

169. The 2001 10-K was signed by defendants M. Weiss, Cowen, Hardis, Ratner, Thornton and Mouchly-Weiss.

The Fiscal 2002 Report on Form 10-K

170. On or about May 29, 2002, the Company filed with the SEC its Report on Form 10-K for the fiscal year ended February 28, 2002 (the "2002 10-K"). The 2002 10-K was simultaneously distributed to shareholders and the public. The 2002 10-K included American Greetings' 2000-2002 financial statements and selected financial data from the Company's 1998-2002 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. Because stock options identified herein were backdated to be "in-the-money," the option grants constituted significant unreported non-cash compensation expense. As a result, American Greetings' compensation expense was understated and its income, net income and shareholders' equity were overstated.

171. The 2002 10-K also falsely communicated that option grants were not granted at less than market value at the date of grant and falsely rationalized the lack of recorded compensation expense, stating "because the exercise price of the Corporation's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized." 2002 10-K at 60. The 2002 10-K also materially understated the weighted average fair value of options granted. Because options had been backdated to be "in-the-money," the value of those options was understated, and so too was the weighted average fair value of those options. Similarly, "[p]ro forma" net income and earnings per share purportedly reported under SFAS No. 123 were materially overstated because the fair value of options granted and related compensation costs were understated. *Id.* at 60-61.

172. The 2002 10-K was signed by defendants M. Weiss, Cowen, Hardis, Ratner, Thornton, Mouchly-Weiss and Cipollone.

The Fiscal 2003 Report on Form 10-K

173. On or about May 29, 2003, the Company filed with the SEC its Report on Form 10-K for the fiscal year ended February 28, 2003 (the "2003 10-K"). The 2003 10-K was simultaneously distributed to shareholders and the public. The 2003 10-K included American Greetings' 2001-2003 financial statements and selected financial data from the Company's 1999-2003 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. Because stock options identified herein were backdated to be "in-the-money," the option grants constituted significant unreported non-cash compensation expense. As a result, American Greetings' compensation expense was understated and its income, net income and shareholders' equity were overstated.

174. The 2003 10-K also falsely communicated that option grants were not granted at less than market value at the date of grant and falsely rationalized the lack of recorded compensation expense, stating "[b]ecause the exercise price of the Corporation's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized." 2003 10-K at 46-47. The 2003 10-K also materially understated the weighted average fair value of options granted. Because options had been backdated to be "in-the-money," the value of those options was understated, and so too was the weighted average fair value of those options. Similarly, "[p]ro forma" net income and earnings per share purportedly reported under SFAS No. 123 were materially overstated because the fair value of options granted and related compensation costs were understated. *Id.*

175. The 2003 10-K was signed by defendants M. Weiss, Cowen, Hardis, Ratner, Thornton, Mouchly-Weiss and Cipollone.

The Fiscal 2004 Report on Form 10-K

176. On or about May 4, 2004, the Company filed with the SEC its Report on Form 10-K for the fiscal year ended February 29, 2004 (the "2004 10-K"). The 2004 10-K was simultaneously distributed to shareholders and the public. The 2004 10-K included American Greetings' 2002-2004 financial statements and selected financial data from the Company's 2000-2004 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. Because stock options identified herein were backdated to be "in-the-money," the option grants constituted significant unreported non-cash compensation expense. As a result, American Greetings' compensation expense was understated and its income, net income and shareholders' equity were overstated.

177. The 2004 10-K also falsely communicated that option grants were not granted at less than market value at the date of grant and falsely rationalized the lack of recorded compensation expense, stating "[b]ecause the exercise price of the Corporation's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized." 2004 10-K at 50. The 2004 10-K also materially understated the weighted average fair value of options granted. Because outstanding options had been backdated to be "in-the-money," the value of those options was understated, and so too was the weighted average fair value of those options. Similarly, "[p]ro forma" net income and earnings per share purportedly reported under SFAS No. 123 were materially overstated because the fair value of options granted and related compensation costs were understated. *Id.* at 51.

178. The 2004 10-K was signed by defendants M. Weiss, Z. Weiss, J. Weiss, Cowen, Hardis, Ratner, Thornton, Mouchly-Weiss and Cipollone.

The Fiscal 2005 Report on Form 10-K

179. On or about May 11, 2005, the Company filed with the SEC its Report on Form 10-K for the fiscal year ended February 28, 2005 (the "2005 10-K"). The 2005 10-K was simultaneously distributed to shareholders and the public. The 2005 10-K included American Greetings' 2003-2005 financial statements and selected financial data from the Company's 2001-2005 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. Because stock options identified herein were backdated to be "in-the-money," the option grants constituted significant unreported non-cash compensation expense. As a result, American Greetings' compensation expense was understated and its income, net income and shareholders' equity were overstated.

180. The 2005 10-K also falsely communicated that option grants were not granted at less than market value at the date of grant and falsely rationalized the lack of recorded compensation expense, stating "[b]ecause the exercise price of the Corporation's stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized." 2005 10-K at 51. The 2005 10-K also materially understated the weighted average fair value of options granted. Because outstanding options had been backdated to be "in-the-money," the value of those options was understated, and so too was the weighted average fair value of those options. Similarly, "[p]ro forma" net income and earnings per share purportedly reported under SFAS No. 123 were materially overstated because the fair value of options granted and related compensation costs were understated. *Id.* at 51-52.

181. The 2005 10-K was signed by defendants M. Weiss, Z. Weiss, J. Weiss, Cowen, Hardis, Hardin, Ratner, Thornton, Mouchly-Weiss and Cipollone.

The Fiscal 2006 Report on Form 10-K

182. On or about May 10, 2006, the Company filed with the SEC its Report on Form 10-K for the fiscal year ended February 28, 2006 (the "2006 10-K"). The 2006 10-K was simultaneously distributed to shareholders and the public. The 2006 10-K included American Greetings' 2004-2006 financial statements and selected financial data from the Company's 2002-2006 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. Because stock options identified herein were backdated to be "in-the-money," the option grants constituted significant unreported non-cash compensation expense. As a result, American Greetings' compensation expense was understated and its income, net income and shareholders' equity were overstated.

183. The 2006 10-K also falsely communicated that option grants were not granted at less than market value at the date of grant and falsely rationalized the lack of recorded compensation expense, stating "[b]ecause the exercise price of the Corporation's stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized." 2006 10-K at 47. The 2006 10-K also materially understated stock-based compensation expense determined under the fair value based method, because outstanding options had been backdated to be "in-the-money" and the value of those options was understated. Similarly, "[p]ro forma" net income and earnings per share purportedly reported under SFAS No. 123 were materially overstated because stock-based compensation expense was understated. *Id.* at 48.

184. The 2006 10-K was signed by defendants M. Weiss, Z. Weiss, J. Weiss, Cowen, Hardis, Hardin, Ratner, Thornton, Mouchly-Weiss and Cipollone.

The Fiscal 2007 Report on Form 10-K

185. On or about April 30, 2007, the Company filed with the SEC its Report on Form 10-K for the fiscal year ended February 28, 2007 (the "2007 10-K"). The 2007 10-K was simultaneously distributed to shareholders and the public. The 2007 10-K included American Greetings' 2005-2007 financial statements and selected financial data from the Company's 2003-2007 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders' equity), which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. Because stock options identified herein were backdated to be "in-the-money," the option grants constituted significant unreported non-cash compensation expense. As a result, American Greetings' compensation expense was understated and its income, net income and shareholders' equity were overstated.

186. The 2007 10-K also falsely communicated that, historically, option grants had not been granted at less than market value at the date of grant and falsely rationalized the lack of recorded compensation expense, stating: "Prior to March 1, 2006, the Corporation followed Accounting Principles Board Opinion No. 25 Because the exercise price of the Corporation's stock options equals the fair market value of the underlying stock on the date of grant, no compensation expense was recognized." 2007 10-K at 65. The 2007 10-K also falsely communicated that American Greetings was continuing to the grant options at not less than fair market value on the date of grant, stating "options to purchase common shares are granted to directors, officers and other key employees at the then-current market price." *Id.*

187. The 2007 10-K falsely understated the total intrinsic value of options exercised in 2005 and the "weighted average fair value per share" of options granted during fiscal 2007 because options had been backdated to be "in-the-money," and the value of those options was understated.

2007 Form 10-K at 66. Similarly, “[p]ro forma” net income and “[e]arnings per share” were overstated, as purportedly reported under Statement of Financial Accounting Standards No. 123R, *Share Based Payment* (“SFAS No. 123R”), because the fair values of options previously granted and related “[s]tock-based compensation expense” were understated. *Id.* at 65.

188. The 2007 10-K was signed by defendants M. Weiss, Z. Weiss, J. Weiss, Cowen, Hardis, Hardin, Ratner, Thornton, Mouchly-Weiss and Cipollone.

Fiscal 2008 Report on Form 10-K

189. On or about April 29, 2008, the Company filed with the SEC its Report on Form 10-K for the fiscal year ended February 29, 2008 (the “2008 10-K”). The 2008 10-K was simultaneously distributed to shareholders and the public. The 2008 10-K included American Greetings’ 2006-2008 financial statements and selected financial data from the Company’s 2004-2008 financial statements (including income statement and balance sheet data, *i.e.*, net income, net income per share and shareholders’ equity), which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. Because stock options identified herein were backdated to be “in-the-money,” the option grants constituted significant unreported non-cash compensation expense. As a result, American Greetings’ compensation expense was understated and its income, net income and shareholders’ equity were overstated.

190. The 2008 10-K also falsely communicated that, historically, option grants had not been granted at less than market value at the date of grant and falsely rationalized the lack of recorded compensation expense, stating: “Prior to March 1, 2006, the Corporation followed Accounting Principles Board Opinion No. 25 Because the exercise price of the Corporation’s stock options equals the fair market value of the underlying stock on the date of grant, no compensation expense was recognized.” 2008 10-K at 70. The 2008 10-K also falsely

communicated that American Greetings was continuing to the grant options at not less than fair market value on the date of grant, stating "options to purchase common shares are granted to directors, officers and other key employees at the then-current market price." *Id.*

191. The 2008 10-K falsely understated the "weighted average fair value per share" of options granted during fiscal 2008 because options had been backdated to be "in-the-money," and the value of those options was understated. 2008 10-K at 71. Similarly, "[p]ro forma" net income and "[e]arnings per share" were overstated, as purportedly reported under SFAS No. 123R, because the fair values of options previously granted and related "[s]tock-based compensation expense" were understated. *Id.* at 70.

192. The 2008 10-K was signed by defendants M. Weiss, Z. Weiss, J. Weiss, Cowen, Hardis, Hardin, Ratner, Thornton and Cipollone.

False and Misleading Sarbanes-Oxley Certifications

193. The Reports on Form 10-K for fiscal years ended February 28 or 29, 2003 through 2007 each contained Sarbanes-Oxley Certifications. M. Weiss signed the Certifications for the 2003 Form 10-K. Z. Weiss signed the Certifications for the 2004 Form 10-K. Z. Weiss and Cipollone signed the Certifications for the 2005 Form 10-K. Z. Weiss signed the Certifications for the 2006-2008 Form 10-Ks. Those Certifications provided (among other things) that: (i) the "report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading"; (ii) the "financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows" of the Company; and (iii) they had "disclosed . . . to [American Greetings'] auditors and the audit committee of [registrant's] board of directors (or persons performing the equivalent function): (a) [a]ll significant deficiencies and material weakness in the design or operation of internal control . . . ;

and (b) [a]ny fraud, whether or not material, that involves management or other employees who have a significant role in [American Greetings'] internal control over financial reporting."

194. The Sarbanes-Oxley Certifications were false because, as M. Weiss, Z. Weiss and Cipollone knew or recklessly disregarded, the Reports on Form 10-K contained false and misleading statements as a result of the backdating alleged herein. Backdating by Board members, including Cowen, Hardis, Hardin, Ratner and Mouchly-Weiss, had been concealed from the Company's auditors, and the backdating scheme constituted a fraud that involved the top levels of management (including Cipollone, M. Weiss, Z. Weiss and J. Weiss) and Audit Committee members – those who had the most significant role in American Greetings' internal controls.

False and Misleading Reports on Form 10-Q

195. Cipollone signed the reports on Form 10-Q filed by American Greetings or about July 13, 2001, October 15, 2001, January 14, 2002, July 15, 2002, October 15, 2002, January 14, 2003, July 15, 2003, October 15, 2003, January 14, 2004, July 9, 2004, September 30, 2004, January 7, 2005, July 8, 2005, October 7, 2005, January 9, 2006, July 5, 2006, October 4, 2006, January 3, 2007, July 5, 2007, October 3, 2007, January 2, 2008, July 9, 2008, and October 8, 2008.

196. The Reports on Form 10-Q identified contained the Company's interim unaudited financial statements for current and previous reporting periods, which were false and misleading for *understating* compensation expense and *overstating* income, net income and earnings per share. These reports were false and misleading because (among other things) defendants were backdating stock options. As Cipollone knew through receiving backdated options, as alleged herein, option grants were being backdated and thus constituted significant unreported non-cash compensation expense.

197. The Reports on Form 10-Q filed on October 15, 2002 and January 14, 2003 each contained Sarbanes-Oxley Certifications signed by M. Weiss. The Reports on Form 10-Q filed on

July 15, 2003, October 15, 2003, January 14, 2004, July 9, 2004, September 30, 2004 and January 7, 2005 each contained Sarbanes-Oxley Certifications signed by Z. Weiss. The Report on Form 10-Q filed July 8, 2005 contained Sarbanes-Oxley Certifications signed by Z. Weiss and Cipollone. The Reports on Form 10-Q filed October 7, 2005, January 9, 2006, July 5, 2006, October 4, 2006, January 3, 2007, July 5, 2007, October 3, 2007, January 2, 2008, July 9, 2008 and October 8, 2008 each contained Sarbanes-Oxley Certifications signed by Z. Weiss.

198. Those Sarbanes-Oxley Certifications provided (among other things) that: (i) the “report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading”; (ii) the “financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows” of the Company; and (iii) they had “disclosed . . . to [American Greetings’] auditors and the audit committee of [registrant’s] board of directors (or persons performing the equivalent function): (a) [a]ll significant deficiencies and material weakness in the design or operation of internal control . . . ; and (b) [a]ny fraud, whether or not material, that involves management or other employees who have a significant role in [American Greetings’] internal control over financial reporting.”

199. The Sarbanes-Oxley Certifications were false because, as M. Weiss, Z. Weiss and Cipollone knew or recklessly disregarded, the Reports on Form 10-Q contained false and misleading statements as a result of the backdating alleged herein. Backdating by Board members, including Cowen, Hardis, Hardin, Ratner and Mouchly-Weiss, had been concealed from the Company’s auditors, and the backdating scheme constituted a fraud that involved the top levels of management

(including Cipollone, M. Weiss, Z. Weiss and J. Weiss) and Audit Committee members – those who had the most significant role in American Greetings' internal controls.

INSIDER TRADING

200. While defendants issued false and misleading periodic reports and proxy statements, causing shares to trade at artificially inflated levels, they were also causing the Company to grant them millions of stock options, many backdated to be priced at prices lower than which legitimate grants would be priced. Insiders, including defendants, exercised many of these stock options, contributing to their ability to sell over \$38 million worth of American Greetings' stock:

Insider	Date	Shares	Price	Proceeds
David Beittel	4/17/2002	25,200	\$17.50	\$441,000
	4/5/2004	11,400	\$22.04	\$251,256
	4/5/2004	850	\$22.14	\$18,819
	10/1/2004	11,750	\$25.00	\$293,750
		49,200		\$1,004,825
Michael Birkholm	6/23/1998	3,000	\$49.00	\$147,000
		3,000		\$147,000
Dale Cable	4/4/1996	3,500	\$27.75	\$97,125
	4/2/2002	21,100	\$18.00	\$379,800
		24,600		\$476,925
John Charlton	5/14/2002	6,300	\$23.00	\$144,900
		6,300		\$144,900
Joseph Cipollone	1/2/2003	3,300	\$15.79	\$52,107
	1/2/2003	2,700	\$15.78	\$42,606
	4/2/2004	10,240	\$22.31	\$228,454
	4/2/2004	7,700	\$22.31	\$171,787
	4/2/2004	7,500	\$22.31	\$167,325
	4/2/2004	6,000	\$22.31	\$133,860
	4/2/2004	4,375	\$22.31	\$97,606
	7/3/2007	6,100	\$28.95	\$176,595
	7/3/2007	5,700	\$29.00	\$165,300
	7/3/2007	5,500	\$28.90	\$158,950
	7/3/2007	4,300	\$28.99	\$124,657
7/3/2007	3,200	\$28.82	\$92,224	

	7/3/2007	1,800	\$28.92	\$52,056
	7/3/2007	1,400	\$28.96	\$40,544
	7/3/2007	1,100	\$28.91	\$31,801
	7/3/2007	1,000	\$28.80	\$28,800
	7/3/2007	900	\$28.87	\$25,983
	7/3/2007	800	\$28.97	\$23,176
	7/3/2007	700	\$28.88	\$20,216
	7/3/2007	700	\$28.98	\$20,286
	7/3/2007	600	\$28.94	\$17,364
	7/3/2007	450	\$29.01	\$13,055
	7/3/2007	400	\$28.85	\$11,540
	7/3/2007	400	\$28.86	\$11,544
	7/3/2007	400	\$28.93	\$11,572
	7/3/2007	300	\$28.89	\$8,667
	7/3/2007	200	\$28.81	\$5,762
	7/3/2007	100	\$29.04	\$2,904
	7/3/2007	67	\$29.03	\$1,945
	7/3/2007	33	\$29.02	\$958
		<u>77,965</u>		<u>\$1,939,644</u>
Mary Corrigan-Davis	4/7/1998	1,450	\$47.93	\$69,499
	12/29/2003	50,000	\$21.26	\$1,063,000
	7/7/2004	8,500	\$23.46	\$199,410
	7/7/2004	350	\$23.52	\$8,232
		<u>60,300</u>		<u>\$1,340,141</u>
Scott Cowen	7/19/2004	12,100	\$23.15	\$280,115
	10/30/2007	2,400	\$25.97	\$62,328
	10/30/2007	2,300	\$25.70	\$59,110
	10/30/2007	1,400	\$25.67	\$35,938
	10/30/2007	1,400	\$25.73	\$36,022
	10/30/2007	700	\$25.74	\$18,018
	10/30/2007	600	\$25.76	\$15,456
	10/30/2007	400	\$25.69	\$10,276
	10/30/2007	200	\$25.68	\$5,136
	10/30/2007	200	\$25.72	\$5,144
	10/31/2007	100	\$25.65	\$2,565
		<u>21,800</u>		<u>\$530,108</u>
Edward Fruchtenbaum	12/21/1998	16,500	\$40.00	\$660,000
	12/21/1998	9,000	\$40.00	\$360,000
	12/21/1998	9,000	\$40.00	\$360,000
	12/21/1998	3,500	\$41.50	\$145,250
	12/21/1998	1,000	\$41.63	\$41,630

		39,000		\$1,566,880
Michael Goulder	4/20/2007	35,000	\$25.50	\$892,500
		<u>35,000</u>		<u>\$892,500</u>
Jon Groetzinger	4/2/1996	10,500	\$27.81	\$292,005
	4/2/1996	4,500	\$27.81	\$125,145
		<u>15,000</u>		<u>\$417,150</u>
Stephen Hardis	7/9/2003	17,800	\$19.84	\$353,152
		<u>17,800</u>		<u>\$353,152</u>
John Klipfell	4/3/1996	5,000	\$27.81	\$139,050
	6/30/1997	2,500	\$37.13	\$92,825
	4/2/1998	2,500	\$48.19	\$120,475
	4/2/1998	2,500	\$48.38	\$120,950
		<u>12,500</u>		<u>\$473,300</u>
Harvey Levin	4/9/1996	3,000	\$27.63	\$82,890
	6/30/1997	3,000	\$37.00	\$111,000
		<u>6,000</u>		<u>\$193,890</u>
Pamela Linton	1/5/2004	3,400	\$21.48	\$73,032
	1/5/2004	3,000	\$21.44	\$64,320
	1/5/2004	3,000	\$21.40	\$64,200
	1/5/2004	2,600	\$21.41	\$55,666
	1/5/2004	1,000	\$21.46	\$21,460
	1/5/2004	1,000	\$21.43	\$21,430
	1/5/2004	600	\$21.47	\$12,882
	1/5/2004	400	\$21.45	\$8,580
	4/5/2004	11,250	\$22.10	\$248,625
	10/13/2004	10,900	\$25.87	\$281,983
	10/13/2004	100	\$25.93	\$2,593
		<u>37,250</u>		<u>\$854,771</u>
William Mason	10/3/1996	5,000	\$28.88	\$144,400
	10/7/1996	5,000	\$30.00	\$150,000
	4/17/1997	3,000	\$30.75	\$92,250
	6/24/1997	10,000	\$36.38	\$363,800
	4/2/1998	5,000	\$48.19	\$240,950
	6/26/2003	10,000	\$19.25	\$192,500
	1/2/2004	10,000	\$21.60	\$216,000
	4/22/2004	4,900	\$21.80	\$106,820
	4/22/2004	3,100	\$21.81	\$67,611
	7/19/2004	6,000	\$23.50	\$141,000
	10/4/2004	4,000	\$25.49	\$101,960

	7/11/2005	8,000	\$26.22	\$209,760
	7/11/2005	2,000	\$26.25	\$52,500
	10/4/2005	12,600	\$27.53	\$346,878
	10/4/2005	2,300	\$27.45	\$63,135
	10/4/2005	1,400	\$27.63	\$38,682
	10/4/2005	1,300	\$27.52	\$35,776
	10/4/2005	1,000	\$27.46	\$27,460
	10/4/2005	700	\$27.62	\$19,334
	10/4/2005	500	\$27.64	\$13,820
	10/4/2005	400	\$27.43	\$10,972
	10/4/2005	400	\$27.44	\$10,976
	10/4/2005	300	\$27.25	\$8,175
	10/4/2005	300	\$27.42	\$8,226
	10/4/2005	300	\$27.51	\$8,253
	10/4/2005	300	\$27.66	\$8,298
	10/4/2005	200	\$27.39	\$5,478
	10/4/2005	200	\$27.61	\$5,522
	10/4/2005	100	\$27.41	\$2,741
	10/4/2005	100	\$27.57	\$2,757
	10/4/2005	100	\$27.60	\$2,760
	10/4/2005	100	\$27.67	\$2,767
	10/4/2005	100	\$27.55	\$2,755
	5/2/2007	3,200	\$25.56	\$81,792
	5/2/2007	1,800	\$25.65	\$46,170
	5/2/2007	1,600	\$25.55	\$40,880
	5/2/2007	1,000	\$25.60	\$25,600
	5/2/2007	400	\$25.62	\$10,248
	5/2/2007	400	\$25.63	\$10,252
	5/2/2007	400	\$25.68	\$10,272
	5/2/2007	300	\$25.66	\$7,698
	5/2/2007	100	\$25.57	\$2,557
	5/2/2007	100	\$25.67	\$2,567
	7/6/2007	24,500	\$28.75	\$704,375
	7/6/2007	2,200	\$28.76	\$63,272
	7/6/2007	1,500	\$28.77	\$43,155
	7/6/2007	700	\$28.78	\$20,146
	7/6/2007	400	\$28.79	\$11,516
		<u>137,300</u>		<u>\$3,784,816</u>
Brian McGrath	4/20/2007	10,850	\$25.49	\$276,567
		<u>10,850</u>		<u>\$276,567</u>
Willaim Meyer	1/15/1998	2,000	\$40.13	\$80,260
		<u>2,000</u>		<u>\$80,260</u>
Harriet Mouchly-	12/22/2000	1,777	\$8.88	\$15,780

Weiss	4/4/2002	19,400	\$17.30	\$335,620
		21,177		\$351,400
Patricia Papesh	4/9/1996	3,000	\$27.38	\$82,140
	4/2/1997	1,500	\$30.88	\$46,320
	9/29/1997	3,500	\$34.88	\$122,080
	3/28/2002	10,400	\$18.15	\$188,760
	4/1/2002	39,600	\$17.34	\$686,664
	58,000		\$1,125,964	
Charles Ratner	8/5/2004	4,800	\$23.05	\$110,640
	8/5/2004	200	\$23.17	\$4,634
		5,000		\$115,274
James Spira	12/27/2002	15,000	\$16.23	\$243,450
	1/3/2003	2,000	\$16.00	\$32,000
	1/6/2003	13,000	\$16.00	\$208,000
	5/15/2003	15,000	\$16.00	\$240,000
	7/1/2003	15,000	\$19.37	\$290,550
	7/7/2003	17,500	\$20.00	\$350,000
	10/1/2003	9,000	\$19.35	\$174,150
	10/1/2003	4,700	\$19.20	\$90,240
	10/1/2003	1,300	\$19.31	\$25,103
	10/3/2003	17,500	\$20.00	\$350,000
	1/2/2004	17,500	\$21.75	\$380,625
	1/2/2004	2,200	\$21.75	\$47,850
	4/15/2004	6,900	\$21.00	\$144,900
	4/15/2004	300	\$21.06	\$6,318
	7/1/2004	17,500	\$23.17	\$405,475
	7/1/2004	2,200	\$23.05	\$50,710
	7/1/2004	1,300	\$23.53	\$30,589
	7/1/2004	1,000	\$23.54	\$23,540
	7/1/2004	550	\$23.57	\$12,964
	7/1/2004	300	\$23.52	\$7,056
	7/1/2004	100	\$23.56	\$2,356
	9/1/2004	25,533	\$25.00	\$638,325
	10/1/2004	18,483	\$25.00	\$462,075
	1/3/2005	2,200	\$24.58	\$54,076
	1/3/2005	1,000	\$24.48	\$24,480
	1/3/2005	1,000	\$24.70	\$24,700
1/3/2005	900	\$24.50	\$22,050	
1/3/2005	350	\$24.51	\$8,579	
3/14/2005	13,033	\$25.00	\$325,825	
4/1/2005	5,151	\$25.37	\$130,681	
	227,500		\$4,806,666	

Harry Stone	12/22/1998	900	\$39.81	\$35,829
	1/9/2002	962	\$15.57	\$14,978
	1/10/2002	5,000	\$15.36	\$76,800
	4/4/2002	9,200	\$17.20	\$158,240
	4/4/2002	1,800	\$17.29	\$31,122
	4/4/2002	1,000	\$17.30	\$17,300
	6/26/2003	6,900	\$19.37	\$133,653
	6/26/2003	500	\$19.42	\$9,710
		26,262		\$477,632
Jerry Thornton	7/1/2004	1,500	\$23.12	\$34,680
	7/1/2004	1,000	\$23.13	\$23,130
	12/26/2007	1,400	\$21.24	\$29,736
	12/26/2007	600	\$21.23	\$12,738
	12/26/2007	400	\$21.27	\$8,508
	12/26/2007	100	\$21.25	\$2,125
		5,000		\$110,917
James Van Arsdale	4/1/1997	20,000	\$31.50	\$630,000
		20,000		\$630,000
Erwin Weiss	1/13/1998	8,300	\$40.94	\$339,802
	3/26/1999	4,500	\$24.00	\$108,000
	9/2/2004	10,728	\$25.34	\$271,848
	9/2/2004	1,600	\$25.02	\$40,032
	9/2/2004	635	\$25.06	\$15,913
	11/5/2004	30,536	\$27.20	\$830,579
		56,299		\$1,606,174
Gary Weiss	9/30/1997	900	\$36.44	\$32,796
	9/30/1997	200	\$36.44	\$7,288
	9/30/1997	120	\$36.88	\$4,426
	9/30/1997	100	\$36.44	\$3,644
	6/26/1998	1,000	\$50.63	\$50,630
	6/26/1998	900	\$50.63	\$45,567
	6/26/1998	100	\$50.63	\$5,063
	6/27/2003	25,200	\$19.75	\$497,700
	4/2/2004	13,825	\$22.26	\$307,745
	4/2/2004	2,100	\$22.35	\$46,935
	4/2/2004	1,900	\$22.39	\$42,541
	4/2/2004	1,500	\$22.36	\$33,540
	4/2/2004	1,200	\$22.38	\$26,856
4/2/2004	300	\$22.37	\$6,711	
		49,345		\$1,111,441

Jeffrey Weiss	4/9/1996	3,800	\$27.63	\$104,994
	11/19/1996	2,000	\$29.13	\$58,260
	7/24/1997	6,000	\$34.63	\$207,780
	5/29/1998	1,050	\$47.75	\$50,138
	6/1/1998	2,000	\$47.75	\$95,500
	6/1/1998	700	\$47.75	\$33,425
	4/2/2004	34,800	\$22.31	\$776,388
	4/2/2004	16,970	\$22.26	\$377,752
	9/2/2004	5,215	\$25.34	\$132,148
	7/6/2005	17,500	\$26.42	\$462,350
	7/6/2005	9,400	\$26.62	\$250,228
	7/6/2005	5,700	\$26.40	\$150,480
	7/6/2005	5,400	\$26.60	\$143,640
	7/6/2005	5,100	\$26.58	\$135,558
	7/6/2005	4,500	\$26.39	\$118,755
	7/6/2005	3,000	\$26.64	\$79,920
	7/6/2005	2,800	\$26.43	\$74,004
	7/6/2005	2,700	\$26.59	\$71,793
	7/6/2005	2,600	\$26.63	\$69,238
	7/6/2005	1,900	\$26.52	\$50,388
	7/6/2005	1,800	\$26.68	\$48,024
	7/6/2005	1,700	\$26.61	\$45,237
	7/6/2005	1,500	\$26.38	\$39,570
	7/6/2005	1,400	\$26.72	\$37,408
	7/6/2005	1,400	\$26.72	\$37,408
	7/6/2005	1,200	\$26.66	\$31,992
	7/6/2005	1,100	\$26.65	\$29,315
	7/6/2005	1,100	\$26.67	\$29,337
	7/6/2005	800	\$26.55	\$21,240
	7/6/2005	700	\$26.50	\$18,550
	7/6/2005	700	\$26.54	\$18,578
	7/6/2005	500	\$26.47	\$13,235
	7/6/2005	500	\$26.88	\$13,440
	7/6/2005	500	\$26.88	\$13,440
	7/6/2005	400	\$26.41	\$10,564
	7/6/2005	400	\$26.44	\$10,576
	7/6/2005	400	\$26.71	\$10,684
	7/6/2005	300	\$26.57	\$7,971
	7/6/2005	300	\$26.75	\$8,025
	7/6/2005	300	\$26.75	\$8,025
	7/6/2005	300	\$26.76	\$8,028
	7/6/2005	300	\$26.76	\$8,028
	7/6/2005	200	\$26.48	\$5,296
	7/6/2005	100	\$26.51	\$2,651
		151,035		\$3,919,361

Morry Weiss	12/23/2004	207,653	\$27.91	\$5,795,595
		<u>207,653</u>		<u>\$5,795,595</u>

Zev Weiss	4/6/1998	800	\$48.06	\$38,448
	4/6/1998	200	\$48.06	\$9,612
	4/7/1998	100	\$48.06	\$4,806
	9/2/2004	5,694	\$25.34	\$144,286
	7/6/2005	17,000	\$26.42	\$449,140
	7/6/2005	9,500	\$26.43	\$251,085
	7/6/2005	9,200	\$26.38	\$242,696
	7/6/2005	8,600	\$26.62	\$228,932
	7/6/2005	8,600	\$26.62	\$228,932
	7/6/2005	7,739	\$26.60	\$205,857
	7/6/2005	7,739	\$26.60	\$205,857
	7/6/2005	6,900	\$26.32	\$181,608
	7/6/2005	5,900	\$26.40	\$155,760
	7/6/2005	5,600	\$26.58	\$148,848
	7/6/2005	4,900	\$26.59	\$130,291
	7/6/2005	4,500	\$26.39	\$118,755
	7/6/2005	3,800	\$26.52	\$100,776
	7/6/2005	3,000	\$26.64	\$79,920
	7/6/2005	3,000	\$26.64	\$79,920
	7/6/2005	2,600	\$26.63	\$69,238
	7/6/2005	2,600	\$26.63	\$69,238
	7/6/2005	2,000	\$26.31	\$52,620
	7/6/2005	2,000	\$26.41	\$52,820
	7/6/2005	1,800	\$26.55	\$47,790
	7/6/2005	1,700	\$26.68	\$45,356
	7/6/2005	1,700	\$26.68	\$45,356
	7/6/2005	1,500	\$26.61	\$39,915
	7/6/2005	1,500	\$26.61	\$39,915
	7/6/2005	1,400	\$26.50	\$37,100
	7/6/2005	1,400	\$26.72	\$37,408
	7/6/2005	1,400	\$26.72	\$37,408
	7/6/2005	1,200	\$26.54	\$31,848
	7/6/2005	1,200	\$26.66	\$31,992
	7/6/2005	1,200	\$26.66	\$31,992
	7/6/2005	1,100	\$26.29	\$28,919
	7/6/2005	1,000	\$26.47	\$26,470
	7/6/2005	1,000	\$26.65	\$26,650
	7/6/2005	1,000	\$26.65	\$26,650
	7/6/2005	900	\$26.44	\$23,796
	7/6/2005	900	\$26.67	\$24,003
	7/6/2005	900	\$26.67	\$24,003
	7/6/2005	800	\$26.34	\$21,072
	7/6/2005	600	\$26.30	\$15,780

	7/6/2005	566	\$26.88	\$15,214
	7/6/2005	566	\$26.88	\$15,214
	7/6/2005	400	\$26.48	\$10,592
	7/6/2005	300	\$26.51	\$7,953
	7/6/2005	300	\$26.71	\$8,013
	7/6/2005	300	\$26.71	\$8,013
	7/6/2005	200	\$26.33	\$5,266
	7/6/2005	200	\$26.37	\$5,274
	7/6/2005	200	\$26.57	\$5,314
	7/6/2005	200	\$26.75	\$5,350
	7/6/2005	200	\$26.75	\$5,350
	7/6/2005	100	\$26.36	\$2,636
		<u>149,704</u>		<u>\$3,987,058</u>
George Wenz	6/29/1998	2,000	\$50.56	\$101,120
		<u>2,000</u>		<u>\$101,120</u>
		Total: <u>1,534,840</u>		<u>\$38,615,430</u>

201. This also does not account for the hundreds of thousands of "in-the-money" backdated stock options Company insiders continue to hold and which continue to vest.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

202. Plaintiff brings this action derivatively in the right and for the benefit of American Greetings to redress injuries suffered and to be suffered by the Company as a direct result of defendants' violations of state law, breaches of fiduciary duty, abuse of control, constructive fraud, gross mismanagement, corporate waste and unjust enrichment, as well as the aiding and abetting thereof, by the defendants.

203. Plaintiff will adequately and fairly represent the interests of American Greetings and its shareholders in enforcing and prosecuting their rights.

204. Plaintiff owns American Greetings' stock and held the Company's stock during the times relevant to defendants' alleged illegal and wrongful course of conduct. To the extent plaintiff alleges facts that occurred prior to when it owned American Greetings stock, such allegations are to demonstrate a pattern and practice of backdating, repeated breaches of the duty of loyalty, *ultra vires*

acts and violations of state law, false statements, and the state of mind of defendants, among other things, in support of plaintiff's claims, which seek redress only for the false statements, transactions and other wrongful conduct that occurred when plaintiff owned American Greetings stock.

205. Based upon the facts set forth throughout this Complaint, applicable law and the longstanding rule that equity does not compel a useless and futile act, a pre-filing demand upon the American Greetings' Board to institute this action against the officers and members of American Greetings' Board is excused as futile. All of American Greetings' directors as of the lawsuit's filing knowingly accepted backdated stock options, three engaged in backdating stock options, and all approved false and misleading SEC filings.

**American Greetings Corp. Board of Directors as of Lawsuit Filing Dominated
by Those Who Accepted and/or Granted Backdated Options**

Defendant Director	Board Tenure	Accepted Backdated Options	Granted Backdated Options	Signed and/or Approved False & Misleading SEC Filings in Relevant Period	Granted Stock Options and/or Worked on Audit Committee in Relevant Period	Insider Trading Proceeds
M. Weiss	1971-filing	√		√ (1993-2008)		\$5.7MM
J. Weiss	2003-filing	√		√ (2003-2008)		\$3.9MM
Z. Weiss	2003-filing	√		√ (2003-2008)		\$3.9MM
Thornton	2000-filing	√		√ (2000-2008)	Audit Committee: 2000-2008	\$110K
Hardin	2004-filing	√	√	√ (2004-2008)	Comp. Committee: 2006-2008 Audit Committee: 2004-2005	
Cowen	1989-filing	√	√	√ (1993-2008)	Comp. Committee: <1993-2008 Audit Committee: <1993-2008	\$530K
Ratner	2000-filing	√	√	√ (2000-2008)	Comp. Committee: 2001-2006	\$115K

206. Indeed, through their deceptive conduct alleged herein, including backdating stock options and making false and misleading statements and omissions in Forms 4 and 5, proxy statements and Reports on Forms 10-K and 10-Q, more than a majority of American Greetings' Board engaged in *ultra vires* and illegal acts and through their fraud controlled the Company to

accomplish and perpetuate the backdating of stock options. In fact, the Board is dominated by three members of the Weiss family, who, in the aggregate, received over 500,000 backdated options, and three other members of the Board who granted (and received) the backdated options. The only other member of the Board, Thornton, *also* accepted backdated options and (like Cowen and Hardin) withheld from the Company's auditors that the Company's upper echelon were backdating stock options.

207. As for those directors who, besides granting and/or accepting backdated options, also sat on the Audit Committee during 2005-2006, including Hardin, Thornton and Cowen, those directors turned a blind eye to the Company's historical stock option granting practices (*e.g.*, backdating), or did not inform themselves about those practices to the extent reasonably appropriate under the circumstances. Each was a member of the Audit Committee during years in which significant accounting changes were required with respect to stock-based compensation expense. Those changes required looking back at all outstanding and unvested stock option grants to determine the fair value of such awards as of the grant date, using a methodology that the Company had not historically used to determine compensation expense and report expenses and earnings in the Company's consolidated financial statements. Indeed, the Company and Audit Committee members evaluated the impact of SFAS No. 123R for over a year prior to the effective date the Company was required to adopt it.

208. Effective March 1, 2006, the Company was required to (and did) adopt the fair value recognition provisions of SFAS No. 123R.⁶ SFAS No. 123R required the Company to expense all stock option grants (including all previously granted outstanding unvested grants) under the fair

⁶ SFAS No. 123R was originally effective for the first interim or annual period beginning after June 15, 2005, but the SEC extended the compliance date.

value methodology of SFAS No. 123, which required measuring option grant value as of the grant date. The impact of this accounting change was significant and the Company reported SFAS No. 123R as a "SIGNIFICANT" accounting policy. For example, the Company's reported earnings for fiscal 2005 and 2006 were each reduced by \$0.07 per share after application of the fair value methodology.

209. Not only were Hardin, Thornton and Cowen directors who signed the Company's Reports on Form 10-K for fiscal 2005 and 2006, both years in which the Company recognized SFAS No. 123R as a significant accounting policy impacting the Company and in which the Company reported financial statements falsified by improperly reported stock-based compensation, they were members of the Audit Committee. Accordingly, these directors had a specific duty to inquire into the basis for changes to the Company's financial reporting as a result of the imposition of this significant accounting policy that personally impacted them as Board members responsible for overseeing stock option administration and the Company's internal controls and financial reporting and disclosures. These directors need simply have requested the records pertaining to the Company's outstanding option grants and, given the backdating, at a minimum he would have noted discrepancies between granting and option dates and/or inadequate documentation to support option dates and a fair value determination for stock options. Given the Company's failure to disclose any deficiency whatsoever in its historical stock option granting practices or internal controls related thereto, or in its previous stock-based compensation accounting or financial reporting, it is apparent these directors did not make a reasonable inquiry or turned a blind eye to the backdating, in light of their granting and/or acceptance of backdated options.

210. A pre-filing demand would be a useless and futile act because:

(a) The members of American Greetings' Board have demonstrated their unwillingness and/or inability to act in compliance with their fiduciary obligations and/or to sue themselves and/or their fellow directors and allies in the top ranks of the corporation for the violations of law complained of herein. These are people they have developed professional relationships with, who are their friends and/or relatives and with whom they have entangling financial alliances, interests and dependencies, and therefore, they are not able to and will not vigorously prosecute any such action.

(b) American Greetings' Board and senior management participated in, approved and/or permitted the wrongs alleged herein to have occurred and participated in efforts to conceal or disguise those wrongs from American Greetings' stockholders or recklessly and/or negligently disregarded the wrongs complained of herein, and are therefore not disinterested parties. As a result of their access to and review of internal corporate documents, or conversations and connections with other corporate officers, employees, and directors and attendance at management and/or Board meetings, each of the defendants knew the adverse non-public information regarding the improper stock option grants and financial reporting. Pursuant to their specific duties as Board members, the director defendants are charged with the management of the Company and to conduct its business affairs. Defendants breached the fiduciary duties that they owed to American Greetings and its shareholders in that they failed to prevent and correct the improper stock option granting and financial reporting. Certain directors are also dominated and controlled by other directors and cannot act independently of them. Thus, American Greetings' Board cannot exercise independent objective judgment in deciding whether to bring this action or whether to vigorously prosecute this action because each of its members participated personally in the wrongdoing or are dependent upon other defendants who did.

(c) The acts complained of constitute violations of the fiduciary duties of loyalty owed by American Greetings' officers and directors, bad faith acts, *ultra vires* acts and illegal acts, and are incapable of ratification.

(d) The defendants control a substantial percentage of American Greetings' voting stock.

(e) The members of American Greetings' Board have benefited, and will continue to benefit, from the wrongdoing herein alleged and have engaged in such conduct to preserve their positions of control and the perquisites derived thereof, and are incapable of exercising independent objective judgment in deciding whether to bring this action.

(f) Any suit by the directors of American Greetings to remedy these wrongs would likely further expose their own liability under the federal securities laws, which could result in additional civil and/or criminal actions being filed against one or more of the defendants, thus, they are hopelessly conflicted in making any supposedly independent determination whether to sue themselves.

(g) American Greetings has been and will continue to be exposed to significant damages due to the wrongdoing complained of herein, yet the current Board has not filed any lawsuits against itself or others who were responsible for that wrongful conduct to attempt to recover for American Greetings any part of the damages the Company suffered and will suffer thereby.

(h) In order to properly prosecute this lawsuit, it would be necessary for the directors to sue themselves and the other defendants, requiring them to expose themselves and their comrades to millions of dollars in potential civil liability and criminal sanctions, or IRS penalties. This they will not do.

(i) American Greetings' current and past officers and directors are protected against personal liability for their acts of mismanagement, waste and breach of fiduciary duty alleged in this Complaint by directors' and officers' liability insurance which they caused the Company to purchase for their protection with corporate funds, *i.e.*, monies belonging to the stockholders of American Greetings. However, due to certain changes in the language of directors' and officers' liability insurance policies in the past few years, the directors' and officers' liability insurance policies covering the defendants in this case contain provisions which eliminate coverage for any action brought directly by American Greetings against these defendants, known as, *inter alia*, the "insured versus insured exclusion." As a result, if these directors were to sue themselves or certain of the officers of American Greetings, there would be no directors' and officers' insurance protection and thus, this is a further reason why they will not bring such a suit. On the other hand, if the suit is brought derivatively, as this action is brought, such insurance coverage exists and will provide a basis for the Company to effectuate a recovery.

(j) In order to bring this action for breaching their fiduciary duties, the members of American Greetings' Board would have been required to sue themselves and/or their fellow directors and allies in the top ranks of the Company, who are their personal friends or relatives and with whom they have entangling financial alliances, interests and dependencies, which they would not do.

211. Plaintiff has not made any demand on shareholders of American Greetings to institute this action since such demand would be a futile and useless act for the following reasons:

(a) The conduct of which plaintiff complains cannot be ratified, for it involves *ultra vires*, illegal and/or fraudulent acts;

(b) American Greetings is a publicly traded company with over 41 million Class A common shares outstanding, and over 15,000 beneficial owners of stock, including beneficial owners for whom the Company's stock is held by a stockbroker in the name of the brokerage firm;

(c) Making demand on such a number of shareholders would be impossible for plaintiff who has no way of finding out the names, addresses or phone numbers of shareholders; and

(d) Making demand on all shareholders would force plaintiff to incur huge expenses, assuming all shareholders could be individually identified.

CONCEALMENT AND TOLLING OF THE STATUTE OF LIMITATIONS

212. The Counts alleged herein are timely. As an initial matter, defendants wrongfully concealed their manipulation of the stock option plans, through strategic timing and fraudulent backdating, by issuing false and misleading proxy statements, by falsely reassuring public investors that American Greetings' option grants were made in accordance with the Company's stock option plans, and by failing to disclose that backdated options were, in fact, actually issued on dates other than those disclosed, and that strategically timed option grants were issued based on the manipulation of insider information that ensured that the true fair market value of the Company's stock was, in fact, higher than the publicly traded price on the date of the option grant.

213. Indeed, defendants took affirmative steps to conceal the backdating at American Greetings by authorizing or otherwise causing the Company to issue proxy statements, Reports on Form 10-Q, Reports on Form 10-K, Sarbanes-Oxley Certifications, and other SEC filings and public statements that were false and misleading. Defendants also signed or otherwise authorized Forms 3, 4 and 5 that were false and misleading. These SEC filings omitted the true grant date and proper price for backdated options, and failed to disclose options were being backdated and mispriced. Many of these SEC filings also contained affirmative misrepresentations that stock options were

being priced based on fair market value as of the date of the grant and were otherwise determined and granted in accordance with American Greetings' stock option plans.

214. As alleged herein, M. Weiss, Z. Weiss, Cipollone and the defendant directors who are members of American Greetings' Audit Committee also misrepresented the adequacy of the Company's internal controls and disclosures, the integrity of the Company's financial statements, and that American Greetings' auditors were apprised of all material facts, including fraudulent acts by members of management. These false and misleading SEC filings prevented plaintiff and American Greetings' other public shareholders from becoming aware of the backdating practices at the Company and the Company's false and misleading financial statements.

215. Plaintiff alleges the following Counts for redress of all alleged conduct that occurred during the period in which it owned American Greetings stock.

FIRST CAUSE OF ACTION

Breach of Fiduciary Duty and/or Aiding and Abetting Against All Defendants

216. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

217. Each of the defendants agreed to and did participate with the other defendants and/or aided and abetted one another in a deliberate course of action designed to divert corporate assets in breach of fiduciary duties the defendants owed to the Company.

218. Defendants engaged in *ultra vires*, illegal and/or fraudulent acts by backdating and accepting stock options in violation of American Greetings' stock plans, and (having backdated and/or received backdated stock options) by causing American Greetings to file false and misleading financial statements. In so doing, defendants violated SEC rules and regulations, state law and the Internal Revenue Code with respect to the reporting of compensation and tax liabilities. This

conduct could not have been ratified by a simple majority of shareholders. Furthermore, the Board, through its deceptive conduct pleaded herein, acquired *de facto* control of American Greetings to accomplish and perpetuate its self dealing in backdated "in-the-money" options.

219. The conduct of each defendant constitutes actual omissions involving negligence, default, breach of duty or breach of trust. Indeed, the defendants have violated fiduciary duties of care, loyalty, candor and independence owed to American Greetings and its public shareholders, have engaged in unlawful self dealing, and have acted to put their personal interests and/or their colleagues' interests ahead of the interests of American Greetings and its shareholders.

220. Defendants caused American Greetings to issue options of more value than authorized or reported. They also exercised backdated options, causing the Company to issue and sell stock at prices lower than what the option exercise price would have been absent the backdating. In addition, defendants sold overvalued class B stock to the Company (*see supra* ¶¶19, 22, 25, 28, 31, 34, 43) and also otherwise caused the Company to purchase overvalued common stock due to their falsification of American Greetings' financial statements. Defendants did this (among other reasons) to replenish the Company's treasury stock in order to support the issuance of more backdated options. Their false statements and omissions in option contracts and SEC filings (including Proxies, Reports on Forms 10-K and 10-Q, Forms 3-5, and Sarbanes Oxley certifications) concealed defendants' conduct.

221. As demonstrated by the allegations above, defendants failed to exercise the care required and breached their duties of loyalty, good faith, candor and independence owed to American Greetings and its public shareholders, and they failed to disclose material information and/or made material misrepresentations to shareholders regarding defendants' option backdating scheme.

222. By reason of the foregoing acts, practices and course of conduct, the defendants have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations toward American Greetings and its public shareholders.

223. As a proximate result of defendants' conduct, American Greetings has been injured and is entitled to damages.

SECOND CAUSE OF ACTION

Accounting Against All Defendants

224. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

225. At all relevant times, defendants, as directors and/or officers of American Greetings, owed the Company and its shareholders fiduciary duties of good faith, care, candor and loyalty.

226. In breach of their fiduciary duties owed to American Greetings and its shareholders, the defendants caused American Greetings, among other things, to grant backdated stock options to themselves and/or certain other officers and directors of American Greetings and/or failed to properly investigate whether these grants had been improperly made. Defendants also sold class B stock directly to the Company (*see supra* ¶¶19, 22, 25, 28, 31, 34, 43), which stock was overvalued due to their falsification of the Company's financial statements as alleged herein. By this wrongdoing, the defendants breached their fiduciary duties owed to American Greetings and its shareholders.

227. The defendants possess complete and unfettered control over the improperly issued stock option grants and the books and records of the Company concerning the details of such improperly backdated stock option grants to certain of the defendants and defendants' sales of stock directly to the Company.

228. As a result of defendants' misconduct, American Greetings has been substantially injured and damaged financially and is entitled to a recovery as a result thereof, including the proceeds of those improperly granted options which have been exercised and sold and the profits from defendants' sales of stock directly to the Company.

229. Plaintiff demands an accounting be made of all stock option grants made to any of the defendants, including, without limitation, the dates of the grants, the amounts of the grants, the value of the grants, the recipients of the grants, the exercise date of stock options granted to any of the defendants, as well as the disposition of any proceeds received by any of the defendants via sale or other exercise of backdated stock option grants received by those defendants.

230. Plaintiff also demands an accounting be made of all of defendants' stock sales to the Company, including, without limitation, the dates of the sales, the amount of stock sold, the prices of the stock sold, as well as the disposition of any proceeds received by defendants from the sale of stock to the Company.

THIRD CAUSE OF ACTION

Abuse of Control Against All Defendants

231. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

232. The defendants employed the alleged scheme for the purpose of maintaining and entrenching themselves in their positions of power, prestige and profit at, and control over, American Greetings, and to continue to receive the substantial benefits, salaries and emoluments associated with their positions at American Greetings. As a part of this scheme, defendants actively made and/or participated in the making of or aided and abetted the making of, misrepresentations regarding American Greetings.

233. Defendants' conduct constituted an abuse of their ability to control and influence American Greetings.

234. By reason of the foregoing, American Greetings has been damaged.

FOURTH CAUSE OF ACTION

Gross Mismanagement Against All Defendants

235. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

236. Defendants had a duty to American Greetings and its shareholders to prudently supervise, manage, and control the operations, business, and internal financial accounting and disclosure controls of American Greetings.

237. Defendants, by their actions and by engaging in the wrongdoing described herein, abandoned and abdicated their responsibilities and duties with regard to prudently managing the businesses of American Greetings in a manner consistent with the duties imposed upon them by law. By committing the misconduct alleged herein, defendants breached their duties of due care, diligence, and candor in the management and administration of American Greetings' affairs and in the use and preservation of American Greetings' assets.

238. During the course of the discharge of their duties, defendants knew or recklessly disregarded the unreasonable risks and losses associated with their misconduct, yet defendants caused American Greetings to engage in the scheme complained of herein which they knew had an unreasonable risk of damage to American Greetings, thus breaching their duties to the Company. As a result, defendants grossly mismanaged American Greetings.

239. By reason of the foregoing, American Greetings has been damaged.

FIFTH CAUSE OF ACTION

Constructive Fraud Against All Defendants

240. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

241. As corporate fiduciaries, defendants owed to American Greetings and its shareholders a duty of candor and full accurate disclosure regarding the true state of American Greetings' business and assets and their conduct with regard thereto.

242. As a result of the conduct complained of, defendants made, or aided and abetted the making of, numerous misrepresentations to and/or concealed material facts from American Greetings' shareholders despite their duties to, *inter alia*, disclose the true facts regarding their stewardship of American Greetings. Thus they have committed constructive fraud and violated their duty of candor.

243. By reason of the foregoing, American Greetings has been damaged.

SIXTH CAUSE OF ACTION

Corporate Waste Against All Defendants

244. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

245. By failing to properly consider the interests of the Company and its public shareholders, by failing to conduct proper supervision, and by giving away millions of dollars to defendants via the option backdating scheme, defendants have caused American Greetings to waste valuable corporate assets.

246. As a result of defendants' corporate waste, they are liable to the Company.

SEVENTH CAUSE OF ACTION

Unjust Enrichment Against All Defendants

247. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

248. As a result of the conduct described above, defendants will be and have been unjustly enriched at the expense of American Greetings, in the form of unjustified salaries, benefits, bonuses, stock option grants and other emoluments of office.

249. All the payments and benefits provided to the defendants were at the expense of American Greetings. The Company received no benefit from these payments. American Greetings was damaged by such payments.

250. Certain of the defendants sold American Greetings stock for a profit during the period of deception, misusing confidential non-public corporate information. These defendants should be required to disgorge the gains which they have and/or will otherwise unjustly obtain at the expense of American Greetings. A constructive trust for the benefit of the Company should be imposed thereon.

EIGHTH CAUSE OF ACTION

Common Law Rescission Against All Defendants

251. Plaintiff incorporates by reference and realleges each and every allegation contained above as though fully set forth herein.

252. As a result of the acts alleged herein, the stock option contracts between the defendants and American Greetings entered into during the relevant period were obtained through defendants' fraud, deceit and abuse of control. Further, the backdated stock options were illegal grants and thus invalid as they were not authorized in accordance with the terms of the publicly filed

contracts regarding the defendants' employment agreements and the Company's stock option plan which was also approved by American Greetings' shareholders and filed with the SEC.

253. All contracts which provide for stock option grants between the defendants and American Greetings and were entered into during the relevant period should, therefore, be rescinded, with all sums paid under such contracts returned to the Company, and all such executory contracts cancelled and declared void.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment as follows:

A. Awarding money damages in excess of \$25,000 against all defendants, jointly and severally, for all losses and damages suffered as a result of the acts and transactions complained of herein, together with pre-judgment interest, to ensure defendants do not participate therein or benefit thereby;

B. Directing all defendants to account for all damages caused by them and all profits and special benefits and unjust enrichment they have obtained as a result of their unlawful conduct, including all salaries, bonuses, fees, stock awards, options and common stock sale proceeds, and imposing a constructive trust thereon;

C. Directing American Greetings to take all necessary actions to reform and improve its corporate governance and internal control procedures to comply with applicable law, including, but not limited to, putting forward for a shareholder vote resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote adoption of the following Corporate Governance policies:

(i) a proposal strengthening American Greetings' Board structure by improving the independence of the Board;

(ii) a proposal to strengthen the American Greetings Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board;

(iii) appropriately test and then strengthen the internal audit and control function;

(iv) rotate independent auditing firms or audit partners every four years; and

(v) control and limit insider stock selling and the terms and timing of stock option grants.

D. Ordering the imposition of a constructive trust over defendants' stock options and any proceeds derived therefrom;

E. Awarding punitive damages;

F. As to all improperly dated and/or improperly priced options that have been exercised, ordering defendants to make a payment to the Company in an amount equal to the difference between the prices at which the options were exercised and the exercise prices the options should have carried if they were priced at fair market value on the actual date of grant;

G. As to all improperly dated and/or improperly priced options that have been granted but not yet exercised or expired, ordering the Company to rescind such options so they carry the exercise prices they should have carried if they were priced at fair market value on the actual date of grant;

H. Awarding costs and disbursements of this action, including reasonable attorneys', accountants' and experts' fees; and

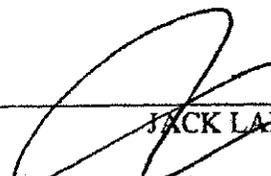
I. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

DATED: March 20, 2009

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JACK LANDSKRONER (0059227)



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Attorneys for Plaintiff

VERIFICATION

I, Richard P. Gambino, Administrator of the Electrical Workers Pension Fund, Local 103, I.B.E.W., hereby verify that I am familiar with the allegations in the VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT FOR BREACH OF FIDUCIARY DUTIES, ABUSE OF CONTROL, GROSS MISMANAGEMENT, CONSTRUCTIVE FRAUD, CORPORATE WASTE AND UNJUST ENRICHMENT, and that I have authorized the filing of the VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT FOR BREACH OF FIDUCIARY DUTIES, ABUSE OF CONTROL, GROSS MISMANAGEMENT, CONSTRUCTIVE FRAUD, CORPORATE WASTE AND UNJUST ENRICHMENT, and that the foregoing is true and correct to the best of my knowledge, information and belief.

ELECTRICAL WORKERS PENSION FUND,
LOCAL 103, I.B.E.W.

DATED: 3-17-09

By 
Richard P. Gambino, Administrator



3 of 3 DOCUMENTS

STATE OF OHIO, EX REL., LEONARD F. CARR, RELATOR vs. JUDGE
NANCY McDONNELL, ET AL., RESPONDENTS

No. 93138

COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY

184 Ohio App. 3d 373; 2009 Ohio 2488; 2009 Ohio App. LEXIS 2076

May 22, 2009, Released

SUBSEQUENT HISTORY: Affirmed by *State ex rel. Carr v. McDonnell*, 2009 Ohio 6165, 124 Ohio St. 3d 62, 2009 Ohio 6165, 918 N.E.2d 1004, 2009 Ohio LEXIS 3338 (Ohio, Dec. 1, 2009)

PRIOR HISTORY: [***1]

MOTION NO. 421703. ORDER NO. 422128.
Carr v. Acacia Country Club Co., 2009 Ohio 628, 2009 Ohio App. LEXIS 544 (Ohio Ct. App., Cuyahoga County, Feb. 12, 2009)

DISPOSITION: COMPLAINT DISMISSED.

COUNSEL: FOR RELATOR: Leonard F. Carr, L. Bryan Carr, The Carr Law Firm, Mayfield Hts., Ohio; Robert P. Demarco, Solon, Ohio.

FOR RESPONDENT, JUDGE NANCY McDONNELL: Robert A. Zimmerman, Kahn Kleinman, Cleveland, Ohio.

FOR RESPONDENTS, JUDGE EILEEN A. GALLAGHER AND JUDGE JOHN P. O'DONNELL: Mark D. Tucker, Benesch, Friedlander, Coplan & Aronoff, Columbus, Ohio.

JUDGES: LARRY A. JONES, J. CHRISTINE T. MCMONAGLE, P.J., and MARY J. BOYLE, J., CONCURS.

OPINION BY: LARRY A. JONES

OPINION

[*375] JOURNAL ENTRY AND OPINION

WRIT OF MANDAMUS AND PROHIBITION

LARRY A. JONES, J.:

[**P1] Leonard F. Carr ("Carr"), the relator, has filed a complaint for a writ of prohibition, a writ of mandamus, and peremptory writs of prohibition and mandamus. Carr has named, as respondents, Judge Nancy McDonnell, Judge Eileen A. Gallagher, and Judge John P. O'Donnell, and seeks an order from this court that: (1) prohibits Judge John P. O'Donnell from exercising any jurisdiction in *Carr v. Acacia Country Club Co., et al.*, Cuyahoga County Court of Common Pleas Case No. CV-635329 and *Carr v. Acacia Country Club Co., et al.*, Cuyahoga County Court of Common Pleas Case No. CV-682363; (2) commands Judge Nancy McDonnell and/or [**2] Judge Eileen A. Gallagher to transfer Cuyahoga County Court of Common Pleas Case Nos. CV-635329 and CV-682363 from the commercial docket of Judge John P. O'Donnell to the docket of Judge Nancy M. Russo; and (3) issue peremptory writs of prohibition and mandamus, since it appears beyond a doubt that Carr is entitled to the requested writs of prohibition and mandamus. The respondents have filed a joint motion to

dismiss, which we grant for the following reasons.

[**P2] The following facts, which are pertinent to this original action, are gleaned from Carr's verified complaint and attached exhibits, the respondents' joint motion to dismiss, and Carr's brief in opposition to the motion to dismiss. Carr is a shareholder of the Acacia Country [*376] Club Company ("Acacia"). On September 11, 2006, shareholders of Acacia filed a complaint, in *Corcelli, et al. v. Acacia Country Club Co., et al.*, Cuyahoga County Court of Common Pleas Case No. CV-600980 ("Acacia I"), demanding the production and copying of the books and records of Acacia. *Acacia I* was assigned to the docket of Judge Nancy Margaret Russo.

[**P3] On September 11, 2007, Carr filed a shareholders derivative action against Acacia and its directors, in [***3] *Carr v. Acacia Country Club Co., et al.*, Cuyahoga County Court of Common Pleas Case No. CV-635329 ("Acacia II"). The action, as filed in *Acacia II*, was transferred to the docket of Judge Nancy Margaret Russo and consolidated with *Acacia I*.

[**P4] On January 21, 2009, Carr filed a complaint, in *Carr v. Acacia Country Club Co., et al.*, Cuyahoga County Court of Common Pleas Case No. CV-682363 ("Acacia III"), which was grounded in the claim of breach of fiduciary duty of the directors and officers of Acacia. Carr also sought the appointment of a receiver. *Acacia III* was assigned to the docket of Judge Nancy Margaret Russo.

[**P5] On March 11, 2009, four defendants in *Acacia III* filed a motion captioned "Initial Appearance and Motion to Transfer Case to Commercial Docket." The four defendants, through the motion to transfer, requested the assignment of *Acacia III* to the commercial docket of the Cuyahoga County Court of Common Pleas, a pilot program established by the Supreme Court of Ohio through Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio. The motion to transfer *Acacia III* to the commercial docket was denied on March 12, 2009. On March 13, 2009, an appeal [***4] was taken to the Administrative Judge of the Cuyahoga County Court of Common Pleas, with regard to the denial of the motion to transfer *Acacia III* to the commercial docket. Judge Nancy McDonnell, the Administrative Judge, recused herself from hearing the appeal. On March 19, 2009, Judge Eileen A. Gallagher, the Acting Administrative Judge, granted the appeal and

ordered the transfer of *Acacia III* to the commercial docket. Judge John P. O'Donnell was assigned to preside over *Acacia III*.

[**P6] On March 23, 2009, the defendants in *Acacia II* filed a motion to transfer the case to the commercial docket. Apparently, Judge Nancy Margaret Russo denied the motion to transfer *Acacia II* to the commercial docket, since an appeal of the denial of the motion to transfer was filed with Judge Nancy McDonnell, the Administrative Judge, on March 26, 2009. On March 31, 2009, Judge Nancy McDonnell recused herself from hearing the appeal. On April 2, 2009, Judge Eileen A. Gallagher, the Acting Administrative Judge, granted the appeal and ordered the transfer of *Acacia II* to the commercial docket. Judge John P. O'Donnell was assigned to preside over *Acacia II*.

[*377] [**P7] On April 14, 2009, Carr filed his complaint for a [***5] writ of prohibition, a writ of mandamus, and peremptory writs of prohibition and mandamus. On April 20, 2009, this court issued a sua sponte order that granted an alternative writ of prohibition and temporarily stayed all proceedings in *Acacia II* and *Acacia III*. On May 4, 2009, the respondents filed their joint motion to dismiss Carr's original action. On May 12, 2009, Carr filed his brief in opposition to the motion to dismiss.

[**P8] The standards for issuing a writ of prohibition are well-established. The relator must demonstrate that: (1) the respondent is about to exercise judicial or quasi-judicial authority; (2) the exercise of the judicial or quasi-judicial authority is not authorized by law; and (3) the denial of the writ will cause injury to the relator for which no other adequate remedy exists in the ordinary course of the law. *State ex rel. Wright v. Ohio Bur. of Motor Vehicles*, 87 Ohio St. 3d 184, 1999 Ohio 17, 718 N.E.2d 908; *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 1997 Ohio 340, 686 N.E.2d 267. A writ of prohibition will not issue to prevent an erroneous judgment, to serve the purpose of an appeal, or to correct mistakes of the lower court in deciding questions within [***6] its jurisdiction. *State ex rel. Sparto v. Juvenile Court of Drake County (1950)*, 153 Ohio St. 64, 90 N.E.2d 598; *Rosen v. Celebrezze*, 172 Ohio App.3d 478, 2007 Ohio 3771, 875 N.E.2d 659. Furthermore, a writ of prohibition shall be used with great caution and shall not issue in doubtful cases. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas (1940)*, 137

184 Ohio App. 3d 373, *377; 2009 Ohio 2488, **P8;
2009 Ohio App. LEXIS 2076, ***6

Ohio St. 273, 28 N.E.2d 641; State ex rel. Jones v. McGinty, Cuyahoga App. No. 92602, 2009 Ohio 1258.

[**P9] The Supreme Court of Ohio, with regard to the second and third elements of an action in prohibition, has held that if a trial court possesses general subject-matter jurisdiction over a cause of action, the trial court possesses the authority to determine its own jurisdiction and an adequate remedy at law, vis-a-vis an appeal, exists to challenge an adverse decision. *State ex rel. Enyart v. O'Neill, 71 Ohio St.3d 655, 1995 Ohio 145, 646 N.E.2d 1110; State ex rel. Pearson v. Moore (1990), 48 Ohio St.3d 37, 548 N.E.2d 945.*

[**P10] The Supreme Court of Ohio, however, has also recognized an exception to this general rule. Where an inferior court patently and unambiguously lacks jurisdiction over the cause, prohibition will lie to prevent [***7] any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions. *State ex rel. Fogle v. Steiner, 74 Ohio St.3d 158, 1995 Ohio 278, 656 N.E.2d 1288; State ex rel. Lewis v. Moser, 72 Ohio St.3d 25, 1995 Ohio 148, 647 N.E.2d 155.* Thus, the availability of an adequate remedy at law is immaterial, if the lower court's lack of jurisdiction is patent and unambiguous. *State ex rel. Rogers v. McGee Brown, 80 Ohio St.3d 408, 1997 Ohio 334, 686 N.E.2d 1126.*

[*378] [**P11] The respondents' motion to dismiss is premised upon the application of *Civ.R. 12(B)(6)*. Dismissal of an original action pursuant to *Civ.R. 12(B)(6)*, is mandated if, after presuming the truth of all material factual allegations as presented in the relator's complaint and making all reasonable inferences in favor of the relator, it appears beyond a doubt that the relator can prove no set of facts entitling the relator to the requested relief. *State ex rel. Triplett v. Ross, 111 Ohio St.3d 231, 2006 Ohio 4705, 855 N.E.2d 1174; State ex rel. Buck v. Maloney, 102 Ohio St.3d 250, 2004 Ohio 2590, 809 N.E.2d 20.* Applying the aforesaid test, we cannot find that Carr has established that he [***8] is entitled to a writ of prohibition or a writ of mandamus. *State ex rel. Peffer v. Russo, 110 Ohio St.3d 175, 2006 Ohio 4092, 852 N.E.2d 170; State ex rel. Conkle v. Sadler, 99 Ohio St.3d 402, 2003 Ohio 4124, 792 N.E.2d 1116.*

[**P12] Herein, Carr has demonstrated that Judge John P. O'Donnell has exercised and will continue to exercise jurisdiction in *Acacia II* and *Acacia III*. Carr,

however, has failed to demonstrate that Judge John P. O'Donnell is patently and unambiguously without authority to preside over *Acacia II* and *Acacia III*, vis-a-vis the commercial docket. Carr has also failed to demonstrate that he does not possess an adequate remedy in the ordinary course of the law.

[**P13] Initially, we find that the Cuyahoga County Court of Common Pleas is a court of general jurisdiction and possesses original jurisdiction in all civil cases in which the sum or matter in dispute exceeds the exclusive jurisdiction of county courts. See *R.C. 2305.01*. There exists no question that *Acacia II* and *Acacia III* are civil cases in which the sum or matter in dispute exceeds the exclusive jurisdiction of any county court. As a duly elected or appointed judge of the Cuyahoga County Court of Common Pleas, Judge John [***9] P. O'Donnell possesses the authority to determine whether *Acacia II* and *Acacia III* fall within his jurisdiction, since a court having general jurisdiction of the subject-matter of an action possesses the authority to determine its own jurisdiction. *State ex rel. Rootstown Local School Dist. Bd. of Edn. v. Portage Cty. Court of Common Pleas (1997), 78 Ohio St.3d 489, 678 N.E.2d 1365; State ex rel. Bradford v. Trumbull Cty. Court, 64 Ohio St. 3d 502, 1992 Ohio 132, 597 N.E.2d 116; Rolfe v. Galvin, Cuyahoga App. No. 86471, 2006 Ohio 2457.*

[**P14] In addition, the Supreme Court of Ohio, on May 6, 2008, approved Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio, which created the commercial docket pilot project. The commercial docket was created in order to expedite the resolution of any commercial claim that falls within the parameters of Temp.Sup.R. 1.03, which includes, inter alia, the following: (1) formation, governance, dissolution, or liquidation of a business entity; (2) rights or obligations between owners, shareholders, partners or members; (3) trade secrets, non-disclosure, non-compete, or employment agreements; [*379] (4) rights, obligations, liability [***10] or indemnity of an officer, director, manager, trustee, or partner; and (5) dispute between or among two or more business entities or individuals as to business or investment activities. Clearly, the gravamen of *Acacia II* and *Acacia III*, a shareholders derivative action and breach of a fiduciary duty claim, fall within the parameters of Temp.Sup.R. 1.03(A).

[**P15] Temp.Sup.R. 1.04(B) further defines the

procedure for the transfer of a civil action to the commercial docket and provides that:

"(B) Transfer procedure

If the gravamen of a case filed with a pilot project court relates to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, the attorney filing the case shall include with the initial pleading a motion for transfer of the case to the commercial docket.

If the gravamen of the case relates to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, if the attorney filing the case does not file a motion for transfer of the case to the commercial docket, and if the case is assigned to a non-commercial docket judge, an attorney representing any other party [***11] shall file such a motion with that party's first responsive pleading or upon that party's initial appearance, whichever occurs first.

If the gravamen of the case relates to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, if no attorney representing a party in the case files a motion for transfer of the case to the commercial docket, and if the case is assigned to a non-commercial docket judge, the judge shall sua sponte request the administrative judge to transfer the case to the commercial docket."

[**P16] Temp.Sup.R. 1.04(C) further establishes the procedure that is to be employed if a motion to transfer to the commercial docket is denied and provides that:

"(C) Ruling or decision on transfer

A non-commercial docket judge shall rule on a party's motion for transfer of a

case filed under divisions (B)(1) or (2) of this rule no later than two days after the filing of the motion. A party to the case may appeal the non-commercial docket judge's decision to the administrative judge within three days of the non-commercial docket judge's decision. The administrative judge shall decide the appeal within two days of the filing [***12] of the appeal.

An administrative judge shall decide the sua sponte request of a non-commercial docket judge for transfer of a case made under division (B)(3) of this rule no later than two days after the request is made."

[*380] [**P17] Applying Temp.Sup.R. 1.03 and Temp.Sup.R. 1.04 to the facts, as presented by Carr and the respondents, can only result in the finding that the transfer of *Acacia II* and *Acacia III*, to the commercial docket, was mandated. The gravamen of *Acacia II* and *Acacia III* falls directly within the scope of the commercial docket as established by Temp.Sup.R. 1.03(A). The facts, as presented by the parties, demonstrate that *Acacia III* was transferred to the commercial docket via Temp.Sup.R. 1.04(B)(2) and the resulting appeal as brought before the acting Administrative Judge pursuant to Temp.Sup.R. 1.04(C) and (D).

[**P18] The facts, as presented by the parties, demonstrate that the transfer of *Acacia II*, to the commercial docket was mandated by Temp.Sup.R. 1.04(B)(3), regardless of the failure of any party to file a timely request for transfer pursuant to Temp.Sup.R. 1.04(B)(1) or Temp.Sup.R. 1.04(B)(2).¹ Accordingly, we can only find that *Acacia II* and *Acacia III* were properly transferred [***13] to the commercial docket of the Cuyahoga County Court of Common Pleas. Once again, Carr has failed to demonstrate that Judge John P. O'Donnell is patently and unambiguously without jurisdiction to preside over *Acacia II* and *Acacia III*. Cf. *State ex rel. Brooks v. O'Malley*, 117 Ohio St.3d 385, 2008 Ohio 1118, 884 N.E.2d 42; *State ex rel. Prentice v. Ramsey*, Cuyahoga App. No. 89061, 2008 Ohio 1418.

¹ Carr argues that since the commercial docket did not exist when *Acacia II* was filed, Temporary

Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio do not apply. Temp.Sup.R. 1.04 does not explicitly prohibit the transfer on any existing commercial case to the commercial docket. In fact, since Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio are procedural and not substantive in nature, they can be applied to any civil cases that exist when the temporary rules took effect. Cf. *Ackison v. Anchor Parking Co.*, 120 Ohio St. 3d 228, 2008 Ohio 5243, 897 N.E.2d 1118; *Norfolk Southern Railway Co. v. Bogle*, 115 Ohio St. 3d 455, 2007 Ohio 5248, 875 N.E.2d 919. See, also, *Dicenzo v. A-Best Products Co.*, 120 Ohio St.3d 149, 2008 Ohio 5327, 897 N.E.2d 132.

[**P19] [***14] Notwithstanding the applicability of Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio to the transfer of *Acacia II* and *Acacia III* to the commercial docket, we find that an additional basis exists, which vests Judge John P. O'Donnell with the necessary jurisdiction to preside over *Acacia II* and *Acacia III*. Pursuant to *Sup.R. 4(B)* and *Sup.R. 36*, the Administrative Judge or Acting Administrative Judge of the Cuyahoga County Court of Common Pleas possesses the discretionary authority to reassign any case between different judges of the Cuyahoga County Court of Common Pleas. *Cleveland v. N.E. Ohio Regional Sewer Dist.* (Sept. 14, 1989), *Cuyahoga App. No. 55709*, 1989 Ohio App. LEXIS 3589. See, also, *Brickman & Sons, Inc. v. Natl. City Bank*, 106 Ohio St. 3d 30, 2005 Ohio 3559, 830 N.E.2d 1151; *Schuker v. Metcalf* (1986), 22 Ohio St. 3d 33, 22 Ohio B. 27, 488 N.E.2d 210. Herein, *Acacia II* and *Acacia III* were transferred to Judge John P. O'Donnell by order of the Acting Administrative Judge, Eileen A. Gallagher. The transfer of the two cases was made pursuant to *Sup.R. 4(B)* and *Sup.R. 36*. Thus, once again, Judge John P. O'Donnell was [*381] not patently and unambiguously without jurisdiction to preside [***15] over *Acacia II* and *Acacia III*, vis-a-vis the transfer of the two pending actions to the commercial docket as made pursuant to *Sup.R. 4(B)* and *Sup.R. 36*.

[**P20] Carr has also failed to establish that he possesses no other adequate remedy in the ordinary course of the law. Upon the conclusion of *Acacia II* and *Acacia III*, and the rendering of a final appealable order as required by *R.C. 2505.02*, Carr possesses the right to

raise the claim of improper assignment of a judge on appeal. In fact, the Supreme Court of Ohio has held that a claim of improper assignment of a judge must be raised through a direct appeal and not through prohibition or mandamus. *State ex rel. Keith v. McMonagle*, 106 Ohio St.3d 61, 2005 Ohio 3669, 831 N.E.2d 433; *State ex rel. Key v. Spicer*, 91 Ohio St.3d 469, 2001 Ohio 98, 746 N.E.2d 1119; *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28, 6 Ohio B. 50, 451 N.E.2d 225, cert. denied (1983), 464 U.S. 1017, 78 L. Ed. 2d 723, 104 S. Ct. 548. Thus, Carr has failed to establish that he is entitled to a writ of prohibition.

[**P21] Carr's request for a writ of mandamus is premised upon the claim that he possesses a clear legal right and that the respondents possess a clear legal duty to remove [***16] *Acacia II* and *Acacia III* from the commercial docket and return the cases to the docket of Judge Nancy Margaret Russo. Carr's request for a writ of mandamus, however, is directly related to the request for a writ of prohibition and the arguments that: (1) *Acacia II* and *Acacia III* were improperly transferred to the commercial docket; and (2) that Judge John P. O'Donnell patently and unambiguously lacks the necessary jurisdiction to preside over the transferred cases. Since we have found that *Acacia II* and *Acacia III* were not improperly transferred to the commercial docket and that Judge John P. O'Donnell does possess the necessary jurisdiction to preside over the two transferred cases, we can only find that Carr's request for a writ of mandamus must fail. Carr has failed to establish that he possesses any clear legal right or that the respondents possess any clear legal duty to remove *Acacia II* and *Acacia III* from the commercial docket and return the two cases to the docket of Judge Nancy Margaret Russo. *R.C. 2731.01*; *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914; *State ex rel. Middletown Bd. of Edn. v. Butler Cty. Budget Comm.* (1987), 31 Ohio St. 3d 251, 31 Ohio B. 455, 510 N.E.2d 383.

[**P22] [***17] It must also be noted that Carr, through his request for a writ of mandamus, actually seeks a prohibitory injunction to enjoin enforcement of Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio. Carr further seeks a declaration that Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio are not applicable to *Acacia II* and *Acacia III*. The Supreme Court of Ohio has held that:

[**P23] ""In general, if the allegations of a complaint for a writ of mandamus indicate that the real objects sought are a declaratory judgment and a prohibitory injunction, the complaint does not state a cause of action in mandamus [*382] and must be dismissed for want of jurisdiction."" *State ex rel. Phillips v. Lorain Cty. Bd. of Elections* (2001), 93 Ohio St.3d 535, 537, 2001 Ohio 1627, 757 N.E.2d 319, quoting *State ex rel. Grendell v. Davidson* (1999), 86 Ohio St.3d 629, 634, 1999 Ohio 130, 716 N.E.2d 704. * * * "[W]e must examine [relators'] complaint 'to see whether it actually seeks to prevent, rather than to compel, official action.'" *State ex rel. Cunningham v. Amer Cunningham Co., L.P.A.*, 94 Ohio St.3d 323, 324, 2002 Ohio 789, 762 N.E.2d 1012, quoting *State ex rel. Stamps v. Montgomery Cty. Automatic Data Processing Bd.* (1989), 42 Ohio St.3d 164, 166, 538 N.E.2d 105.

[**P24] [***18] Herein, the real objectives of Carr's mandamus claim are: (1) a declaratory judgment that Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio are not applicable to *Acacia II* and *Acacia III*; and (2) a prohibitory injunction that prevents *Acacia II* and *Acacia III* from being transferred to the commercial docket of the

Cuyahoga County Court of Common Pleas. Thus, we lack jurisdiction over Carr's mandamus claim. *State ex rel. Reese v. Cuyahoga Cty. Bd. of Elections*, 115 Ohio St.3d 126, 2007 Ohio 4588, 873 N.E.2d 1251; *State ex rel. Mackey v. Blackwell*, 106 Ohio St.3d 261, 2005 Ohio 4789, 834 N.E.2d 346.

[**P25] Accordingly, we grant the respondents' joint motion to dismiss Carr's complaint for a writ of prohibition, a writ of mandamus, and peremptory writs of prohibition and mandamus. The sua sponte order of April 20, 2009, which granted an alternative writ of prohibition with regard to further proceedings in *Acacia II* and *Acacia III*, is ordered vacated. Costs to Carr. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by *Civ.R. 58(B)*.

Complaint dismissed.

LARRY A. JONES, JUDGE

CHRISTINE [***19] T. MCMONAGLE, P.J., and

MARY J. BOYLE, J., CONCURS



Form 5500
Department of the Treasury
Internal Revenue Service
Department of Labor
Employee Benefits Security Administration
Pension Benefit Guaranty Corporation

Annual Return/Report of Employee Benefit Plan

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6039D, 6047(e), 6057(b), and 6058(a) of the Internal Revenue Code (the Code).

Complete all entries in accordance with the instructions to the Form 5500.

Official Use Only
OMB Nos. 1210 - 0110
1210 - 0089
2006
This Form is Open to Public Inspection

Part I. Annual Report Identification Information

For the calendar plan year 2006 or fiscal plan year beginning November 01, 2006, and ending October 31, 2007

- A This return/report is for: (1) [X] a multiemployer plan; (2) [] a single-employer plan (other than a multiple-employer plan); (3) [] a multiple-employer plan; (4) [] a DFE (specify)
B This return/report is: (1) [] the first return/report filed for the plan; (2) [] the amended return/report; (3) [] the final return/report filed for the plan; (4) [] a short plan year return/report (less than 12 months).
C If the plan is a collectively-bargained plan, check here [X]
D If you filed for an extension of time to file, check the box and attach a copy of the extension application [X]

Part II. Basic Plan Information - enter all requested information.

- 1a Name of plan: ELECTRICAL WORKERS PENSION PLAN LOCAL 103 I.B.E.W.
1b Three-digit plan number (PN): 001
1c Effective date of plan (mo., day, yr.): January 01, 1958
2a Plan sponsor's name and address (employer, if for a single-employer plan) (Address should include room or suite no.): JOINT BOARD OF TRUSTEES ELECTRICAL WORKERS LOCAL 103 IBEW, 256 FREEPORT ST FL 2, DORCHESTER MA 02122-2845
2b Employer Identification Number (EIN): 04-6063734
2c Sponsor's telephone number: 617-288-5999
2d Business code (see instructions): 525100

Caution: A penalty for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established. Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules, statements and attachments, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of plan administrator: RICHARD P. GAMBINO
Date: 08/15/2008
Typed or printed name of individual signing as plan administrator

Signature of employer/plan sponsor/DFE: MICHAEL P. MONAHAN
Date: 08/15/2008
Typed or printed name of individual signing as employer, plan sponsor or DFE as applicable

For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500. Form 5500 (2006)

- 3a Plan administrator's name and address (if same as plan sponsor, enter "Same"): SAME
3b Administrator's EIN
3c Administrator's telephone number

4 If the name and/or EIN of the plan sponsor has changed since the last return/report filed for this plan, enter the name, EIN and the plan number from the last return/report below: b EIN, c PN

a Sponsor's name

5 Preparer information (optional) a Name (including firm name, if applicable) and address

b EIN

c Telephone no.

6 Total number of participants at the beginning of the plan year

6 7,559

7 Number of participants as of the end of the plan year (welfare plans complete only lines 7a, 7b, 7c, and 7d)

a Active participants

a 5,100

b Retired or separated participants receiving benefits

b 1,568

c Other retired or separated participants entitled to future benefits

c 635

d Subtotal. Add lines 7a, 7b, and 7c

d 7,303

e Deceased participants whose beneficiaries are receiving or are entitled to receive benefits

e 364

f Total. Add lines 7d and 7e

f 7,667

g Number of participants with account balances as of the end of the plan year (only defined contribution plans complete this item)

g

h Number of participants that terminated employment during the plan year with accrued benefits that were less than 100% vested

h

i If any participant(s) separated from service with a deferred vested benefit, enter the number of separated participants required to be reported on a Schedule SSA (Form 5500)

i 102

8 Benefits provided under the plan (complete 8a through 8c, as applicable)

a Pension benefits (check this box if the plan provides pension benefits and enter the applicable pension feature codes from the List of Plan Characteristics Codes (printed in the instructions)):

1B 1G

b Welfare benefits (check this box if the plan provides welfare benefits and enter the applicable welfare feature codes from the List of Plan Characteristics Codes (printed in the instructions)):

9a Plan funding arrangement (check all that apply)

- (1) Insurance
- (2) Section 412(i) insurance contracts
- (3) Trust
- (4) General assets of the sponsor

9b Plan benefit arrangement (check all that apply)

- (1) Insurance
- (2) Section 412(i) insurance contracts
- (3) Trust
- (4) General assets of the sponsor

10 Schedules attached (Check all applicable boxes and, where indicated, enter the number attached. See instructions.)

a Pension Benefit Schedules

- (1) R (Retirement Plan Information)
- (2) T (Qualified Pension Plan Coverage Information)

If a Schedule T is not attached because the plan is relying on coverage testing information for a prior year, enter the year

- (3) B (Actuarial Information)
- (4) E (ESOP Annual Information)
- (5) SSA (Separated Vested participant Information)

b Financial Schedules

- (1) H (Financial Information)
- (2) I (Financial Information - Small Plan)
- (3) A (Insurance Information)
- (4) C (Service Provider Information)
- (5) D (DFE/Participating Plan Information)
- (6) G (Financial Transaction Schedules)

SCHEDULE B
(Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security
Administration

Pension Benefit
Guaranty Corporation

Actuarial Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974, referred to as ERISA, except when attached to Form 5500-EZ and, in all cases, under section 6059(a) of the Internal Revenue Code, referred to as the Code.
Attach to Form 5500 or 5500-EZ if applicable.
See separate instructions.

Official Use Only
OMB No. 1210 - 0110

2006

This Form is Open to Public
Inspection (except when
attached to Form 5500-EZ)

For the calendar plan year 2006 or fiscal plan year beginning November 01, 2006, and ending October 31, 2007

if an item does not apply, enter "N/A." Round off amounts to nearest dollar.

Caution: A penalty of \$1,000 will be assessed for late filing of this report unless reasonable cause is established.

A Name of plan

ELECTRICAL WORKERS PENSION PLAN LOCAL 103 I.B.E.W.

C Plan sponsor's name as shown on line 2a of Form 5500 or 5500-EZ

JOINT BOARD OF TRUSTEES ELECTRICAL WORKERS LOCAL 103 IBEW

B Three digit
plan number 001

D Employer Identification
Number

04-6063734

E Type of Plan: (1) Multiemployer (2) Single-employer (3) Multiple-employer

F 100 or fewer participants in prior plan year

Part I Basic Information (To be completed by all plans)

1a Enter the actuarial valuation date: November 01, 2006

b Assets

(1) Current value of assets	b(1)	\$658,212,954
(2) Actuarial value of assets for funding standard account	b(2)	\$644,135,381
c (1) Accrued liability for plans using immediate gain methods	c(1)	\$782,763,335
(2) Information for plans using spread gain methods:		
(a) Unfunded liability for methods with bases	c(2)(a)	
(b) Accrued liability under entry age normal method	c(2)(b)	
(c) Normal cost under entry age normal method	c(2)(c)	

Statement by Enrolled Actuary (see instructions before signing):

To the best of my knowledge, the information supplied in this schedule and on the accompanying schedules, statements and attachments, if any, is complete and accurate, and in my opinion each assumption used in combination, represents my best estimate of anticipated experience under the plan. Furthermore, in the case of a plan other than a multiemployer plan, each assumption used (a) is reasonable (taking into account the experience of the plan and reasonable expectations) or (b) would, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption were reasonable; in the case of a multiemployer plan, the assumptions used, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations).

	08/14/2008
Signature of actuary	Date
HAL S. TEPPER	G 0803918
Print or type name of actuary	Most recent enrollment number
THE SAVITZ ORGANIZATION	617-663-4856
Firm Name	Telephone number (including area code)
275 GROVE STREET, SUITE 2-400 NEWTON MA 02466	
Address of the Firm	

If the actuary has not fully reflected any regulation or ruling promulgated under the statute in completing this schedule, check the box and see instructions

1d Information on current liabilities of the plan:

(1) Amount excluded from current liability attributable to pre-participation service (see instructions)	d(1)	
(2) "RPA '94" information:		
(a) Current liability	d(2)(a)	\$903,000,277
(b) Expected increase in current liability due to benefits accruing during the plan year	d(2)(b)	\$25,341,511
(c) Current liability computed at highest allowable interest rate (see instructions)	d(2)(c)	
(d) Expected release from "RPA '94" current liability for the plan year	d(2)(d)	
(3) Expected plan disbursements for the plan year	d(3)	\$38,378,723
2 Operational information as of beginning of this plan year:		
a Current value of the assets (see instructions)	2a	\$658,212,954
b "RPA '94" current liability:	(1) No. of Persons (2) Vested Benefits (3) Total benefits	
(1) For retired participants and beneficiaries receiving payments	1833 \$352,300,469	\$352,300,469
(2) For terminated vested participants	569 \$31,443,711	\$31,443,711
(3) For active participants	5157 \$408,074,046	\$519,256,097
(4) Total	7559 \$791,818,228	\$903,000,277

c If the percentage resulting from dividing line 2a by line 2b(4), column (3), is less than 70%, enter such percentage

2c %

3 Contributions made to the plan for the plan year by employer(s) and employees:

(a) Mo.-Day-Year	(b) Amount paid by employer	(c) Amount paid by employees	(a) Mo.-Day-Year	(b) Amount paid by employer	(c) Amount paid by employees
	\$41,540,786				

3 Totals (b) \$41,540,786 (c)

4 Quarterly contributions and liquidity shortfall(s):

a Plans other than multiemployer plans, enter funded current liability percentage for preceding 4a %

year (see instructions)

b If line 4a is less than 100%, see instructions, and complete the following table as applicable:

	(1) 1st	(2) 2nd	(3) 3rd	(4) 4th
Liquidity shortfall as of end of Quarter of this plan year				

5 Actuarial cost method used as the basis for this plan year's funding standard account computation:

- a Attained age normal b Entry age normal c Accrued benefit (unit credit)
- d Aggregate e Frozen initial liability f Individual level premium
- g Individual aggregate h Other (specify)
- i Has a change been made in funding method for this plan year? Yes No
- j If line i is "Yes," was the change made pursuant to Revenue Procedure 95-51 as modified by Revenue Procedure 98-10? Yes No
- k If line i is "Yes," and line j is "No" enter the date of the ruling letter (individual or class) approving the change in funding method

6 Checklist of certain actuarial assumptions:

- a Interest rate for "RPA '94" current liability: 6a 5.79% N/A
- b Weighted average retirement age: 6b 59 N/A
- c Rates specified in insurance or annuity contract N/A 6c
- d Mortality table code for valuation purposes:

	Pre-Retirement	Post-Retirement	
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> N/A
- (1) Males d(1) 9 9
- (2) Females d(2) 9 9
- e Valuation liability interest rate N/A 6e 7.50% 7.50% N/A
- f Expense loading N/A 6f 3.5% % N/A
- g Annual withdrawal rates:

	Male	Female	
(1) Age 25	g(1) 0.00%	0.00%	
(2) Age 40	g(2) 0.00%	0.00%	
(3) Age 55	g(3) 0.00%	0.00%	
- h Salary Scale N/A 6h % % N/A
- i Estimated investment return on actuarial value of assets for the year ending on the valuation date 6i 6.5%
- j Estimated investment return on current value of assets for the year ending on the valuation date 6j 11.3%

7 New amortization bases established in the current plan year:

(1) Type of Base	(2) Initial Balance	(3) Amortization Charge/Credit
1	\$43,212,834	\$4,553,919
2	(\$3,093,373)	(\$282,266)
3	\$7,148,324	\$563,030

8 Miscellaneous information:

- a If a waiver of a funding deficiency or an extension of an amortization period has been approved for this plan year, enter the date of the ruling letter granting the approval
- b If one or more alternative methods or rules (as listed in the instructions) were used for this plan year, enter the appropriate code in accordance with the instructions 1
- c Is the plan required to provide a Schedule of Active Participant Data? If "Yes," attach schedule. (see instructions) Yes No

9 Funding standard account statement for this plan year:

Charges to funding standard account:

- a Prior year funding deficiency, if any 9(a)
- b Employer's normal cost for plan year as of valuation date 9(b) \$19,339,577
- c Amortization charges as of valuation date:

	Outstanding Balance	
(1) All bases except funding waivers	(\$ 524,748,848)	c(1) \$57,248,120
(2) Funding waivers	(\$)	c(2)
- d Interest as applicable on lines 9a, 9b, and 9c 9d \$2,820,117
- e Additional interest charge due to late quarterly contributions, if applicable 9e
- f Additional funding charge from Part II, line 12u, if applicable N/A 9f 0
- g Total charges. Add lines 9a through 9f 9g \$79,407,814
- h Prior year credit balance, if any 9h \$148,426,804
- i Employer contributions. Total from column (b) of line 3 9i \$41,540,786

Outstanding Balance

j	Amortization credits as of valuation date	(\$ 237,694,090)	9j	\$36,866,779
k	Interest as applicable to end of plan year on lines 9h, 9i, 9j		9k	\$14,019,139
l	Full funding limitation (FFL) and credits			
	(1) ERISA FFL (accrued liability FFL)	i (1) \$327,100,736		
	(2) "RPA '94" override (90% current liability FFL)	l(2) \$135,772,247		
	(3) FFL credit		l(3)	
m	(1) Waived funding deficiency		m(1)	
	(2) Other credits		m(2)	
n	Total credits. Add lines 9h through 9k, 9l(4), 9l(5), 9m(1), and 9m(2)		9n	\$240,853,508
o	Credit balance: If line 9n is greater than line 9g, enter the difference		9o	\$161,445,694
p	Funding deficiency: If line 9g is greater than line 9n, enter the difference		9p	
	Reconciliation account:			
q	Current year's accumulated reconciliation account:			
	(1) Due to additional funding charges as of the beginning of the plan	q (1)		
	(2) Due to additional interest charges as of the beginning of the plan year	q(1)		
	(3) Due to waived funding deficiencies:			
	(a) Reconciliation outstanding balance as of valuation date	q (1)		
	(b) Reconciliation amount. Line 9c(2) balance minus line 9q(3)(a)	q(1)		
	(4) Total as of valuation date		q(4)	
10	Contribution necessary to avoid an accumulated funding deficiency. Enter the amount in line 9p or the amount required under the alternative funding standard account if applicable		10	
11	Has a change been made in the actuarial assumptions for the current plan year? If "Yes," see instructions			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Part II Additional Information for Certain Plans Other Than Multiemployer Plans

12	Additional required funding charge (see instructions):			
a	Enter "Gateway %." Divide line 1b(2) by line 1d(2)(c) and multiply by 100. If line 12a is at least 90%, go to line 12u and enter -0-. If line 12a is less than 80%, go to line 12b. If line 12a is at least 80% (but less than 90%), see instructions and, if applicable, go to line 12u and enter -0-. Otherwise, go to line 12b		12a	%
b	"RPA'94" current liability. Enter line 1d(2)(a)		12b	
c	Adjusted value of assets (see instructions)		12c	
d	Funded current liability percentage. Divide line 12c by 12b and multiply by 100		12d	%
e	Unfunded current liability. Subtract line 12c from line 12b		12e	
f	Liability attributable to any unpredictable contingent event benefit		12f	
g	Outstanding balance of unfunded old liability		12g	
h	Unfunded new liability. Subtract the total of lines 12f and 12g from line 12e. Enter -0- if negative.		12h	
i	Unfunded new liability amount (% of line 12h)		12i	
j	Unfunded old liability amount		12j	
k	Deficit reduction contribution. Add lines 12i, 12j, and 1d(2)(b)		12k	
l	Net charges in funding standard account used to offset the deficit reduction contribution. Enter a negative number if less than zero		12l	
m	Unpredictable contingent event amount:		12m	
	(1) Benefits paid during year attributable to unpredictable contingent event	m(1) 0		
	(2) Unfunded current liability percentage. Subtract the percentage on line 12d from 100%	m(2) %		
	(3) Enter the product of lines 12m(1), 12m(2), and 12m(3)	m(4)		
	(4) Amortization of all unpredictable contingent event liabilities	m(5)		
	(5)"RPA '94" additional amount (see instructions)	m(6)		
	(6) Enter the greatest of lines 12m(3), 12m(4), or 12m(5)		m(7)	
	Preliminary Calculation			
n	Preliminary additional funding charge: Enter the excess of line 12k over line 12l (if any), plus line 12m(6), adjusted to end of year with interest		12n	
o	Contributions needed to increase current liability percentage to 100% (see instructions)		12o	
p	Additional funding charge prior to adjustment: Enter the lesser of line 12n or 12o		12t	
q	Adjusted additional funding charge. (% of line 12p)		12u	
For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500 or 5500EZ.			v2.3	Schedule B (Form 5500) 2006

(Form 5500)
 Department of the Treasury
 Internal Revenue Service
 Department of Labor
 Employee Benefits Security Administration
 Pension Benefit Guaranty Corporation

Service Provider Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974.

OMB No. 1210-0110
 2006

This Form is Open to Public Inspection

File as an attachment to Form 5500.

For the calendar plan year 2006 or fiscal plan year beginning November 01, 2006 and ending October 31, 2007

A Name of plan
 ELECTRICAL WORKERS PENSION PLAN LOCAL 103 I.B.E.W.
C Plan sponsor's name as shown on line 2a of Form 5500
 JOINT BOARD OF TRUSTEES ELECTRICAL WORKERS LOCAL 103 IBEW

B Three digit plan number 001
D Employer Identification Number
 04-6063734

Part I Service Provider Information (see instructions)

1 Enter the total dollar amount of compensation paid by the plan to all persons, other than those listed below, who received compensation during the plan year: 1 \$1,084,223

2 On the first item below list the contract administrator, if any, as defined in the instructions. On the other items, list service providers in descending order of the compensation they received for the services rendered during the plan year. List only the top 40. 103-12 IEs should enter N/A in columns (c) and (d).

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position	(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan	(g) Nature of <u>service code(s)</u> (see instructions)
ENTRUST CAPITAL, INC.	13-3933026	INVESTMENT ADVISOR	NONE		\$458,320	20
PACIFIC INVESTMENT	95-2632339	INVESTMENT ADVISOR	NONE		\$415,632	20
BOSTON COMPANY	04-3404967	INVESTMENT ADVISOR	NONE		\$385,451	20
LSV INTERNATIONAL	23-2772200	INVESTMENT ADVISOR	NONE		\$332,583	20
LSV ASSET MANAGEMENT	23-2772200	INVESTMENT ADVISOR	NONE		\$305,822	

20

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
INTERCONTINENTAL	04-3613055	INVESTMENT ADVISOR
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
NONE		\$249,999
		(g) Nature of <u>service code(s)</u> (see instructions)
		20

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
CAPITAL MGMT ASSOCIATES	32-0005556	INVESTMENT ADVISOR
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
NONE		\$231,668
		(g) Nature of <u>service code(s)</u> (see instructions)
		20

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
ASB CAPITAL MANAGEMENT	52-2288019	INVESTMENT ADVISOR
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
NONE		\$177,903
		(g) Nature of <u>service code(s)</u> (see instructions)
		20

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
MDT ADVISERS	94-3267050	INVESTMENT ADVISOR
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
NONE		\$96,202
		(g) Nature of <u>service code(s)</u> (see instructions)
		20

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
AMALGAMATED BANK	13-4920330	INVESTMENT ADVISOR
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
NONE		\$87,877
		(g) Nature of <u>service code(s)</u> (see instructions)
		20

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
RIVER ROAD	43-2076925	INVESTMENT ADVISOR
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
NONE		\$84,363
		(g) Nature of <u>service code(s)</u> (see instructions)
		20

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
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DELAWARE COMPANY		23-2859590		INVESTMENT ADVISOR	
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan	(g) Nature of <u>service code(s)</u> (see instructions)		
NONE		\$83,600	20		
(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position			
MARGO CONSULTING		04-3555078		INVESTMENT ADVISOR	
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan	(g) Nature of <u>service code(s)</u> (see instructions)		
NONE		\$50,000	20		
(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position			
DAVID W. HEALEY AND ASSOCIATES		75-3102874		ATTORNEY	
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan	(g) Nature of <u>service code(s)</u> (see instructions)		
NONE		\$40,549	22		
(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position			
CLARK CONSULTING		52-2103928		ACTUARY	
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan	(g) Nature of <u>service code(s)</u> (see instructions)		
NONE		\$30,000	11		
(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position			
SAVITZ ORGANIZATION OF MA, INC.		26-1371674		ACTUARY	
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan	(g) Nature of <u>service code(s)</u> (see instructions)		
NONE		\$15,000	11		
(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position			
VITALE CATURANO & COMPENAY		04-2775195		ACCOUNTANT	
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan	(g) Nature of <u>service code(s)</u> (see instructions)		
NONE		\$8,650	10		
(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position			
CONTRACT ADMINISTRATOR					
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan	(g) Nature of <u>service code(s)</u> (see instructions)		

12

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
RICHARD GAMBINO	04-2775195	EMPLOYEE
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
EMPLOYEE	\$35,620	(g) Nature of <u>service code(s)</u> (see instructions)
		10

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
KAREN MARTELL	04-6063734	EMPLOYEE
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
EMPLOYEE	\$43,207	(g) Nature of <u>service code(s)</u> (see instructions)
		24

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
LAUREN SHEEHAN	04-6063734	EMPLOYEE
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
EMPLOYEE	\$7,962	(g) Nature of <u>service code(s)</u> (see instructions)
		24

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
HEATHER THORNE	04-6063734	EMPLOYEE
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
EMPLOYEE	\$7,396	(g) Nature of <u>service code(s)</u> (see instructions)
		24

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
KATHY LYNCH	04-6063734	EMPLOYEE
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
EMPLOYEE	\$21,678	(g) Nature of <u>service code(s)</u> (see instructions)
		24

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
EILEEN MCDERMOTT	04-6063734	EMPLOYEE
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
EMPLOYEE	\$9,109	(g) Nature of <u>service code(s)</u> (see instructions)
		24

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
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KASEY FLAHERTY	04-6063734	EMPLOYEE
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
EMPLOYEE	\$7,881	
		(g) Nature of <u>service code(s)</u> (see instructions)
		24

(a) Name	(b) Employer identification number (see instructions)	(c) Official plan position
KATHY ROMAN	04-6063734	EMPLOYEE
(d) Relationship to employer, employee organization, or person known to be a party-in-interest	(e) Gross salary or allowances paid by plan	(f) Fees and commissions paid by plan
EMPLOYEE	\$8,983	
		(g) Nature of <u>service code(s)</u> (see instructions)
		24

Part II Termination Information on Accountants and Enrolled Actuaries (see instructions)

(a) Name	VITALE CATURANO & COMPANY LTD	(b) EIN	042775195
(c) Position	AUDITOR		
(d) Address	80 CITY SQUARE BOSTON MA 02129-3742		
(e) Telephone No.	617-912-9000		
Explanation	CHANGE IN PLAN AUDITOR FOR EXPERTISE		
For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500. v2.3			Schedule C (Form 5500) 2006

SCHEDULE D (Form 5500)

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

DFE/Participating Plan Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA).

Official Use Only
OMB No. 1210-0110

2006
This Form is Open to
Public Inspection

File as an attachment to Form 5500.

For the calendar plan year 2006 or fiscal plan year beginning November 01, 2006, and ending October 31, 2007

A Name of plan or DFE	B Three-digit plan number
ELECTRICAL WORKERS PENSION PLAN LOCAL 103 I.B.E.W.	001
C Plan sponsor's name as shown on line 2a of Form 5500	D Employer Identification Number
JOINT BOARD OF TRUSTEES ELECTRICAL WORKERS LOCAL 103 IBEW	04-6063734

Part I Information on interests in MTIAs, CCTs, PSAs, and 103-12 IEs (to be completed by plans and DFEs)

(a) Name of MTIA, CCT, PSA, or 103-12IE	IBEW NECA EQUITY INDEX FUND
(b) Name of sponsor of entity listed in (a)	CHEVY CHASE TRUST COMPANY
(c) EIN-PN	522037618007
(d) <u>Entity Code</u>	C
(e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions)	\$58,408,688

Part II Information on Participating Plans (to be completed by DFEs)

(a) Name of MTIA, CCT, PSA, or 103-12IE	LSV INTL VALUE EQUITY TRUST
(b) Name of sponsor of entity listed in (a)	LSV ASSET MANAGEMENT
(c) EIN-PN	200726879001
(d) <u>Entity Code</u>	C
(e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions)	\$41,987,610

Part II Information on Participating Plans (to be completed by DFEs)

(a) Name of MTIA, CCT, PSA, or 103-12IE	INTL ALPHA SELECT SL FUND
(b) Name of sponsor of entity listed in (a)	STATE STREET BANK & TRUST CO

(c) EIN-PN 040025081196 (d) Entity Code C (e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions) \$40,743,342

Part II Information on Participating Plans (to be completed by DFEs)

(a) Name of MTIA, CCT, PSA, or 103-12IE AFL-CIO BUILDING INVESTMENT TRUST

(b) Name of sponsor of entity listed in (a) MERCANTILE-SAFE DEPOSIT & TRUST CO

(c) EIN-PN 526328901001 (d) Entity Code C (e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions) \$39,561,869

Part II Information on Participating Plans (to be completed by DFEs)

(a) Name of MTIA, CCT, PSA, or 103-12IE IBEW NECA STABLE VAL POOLED INV FD

(b) Name of sponsor of entity listed in (a) US TRUST COMPANY, N.A.

(c) EIN-PN 936223188002 (d) Entity Code C (e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions) \$33,194,399

Part II Information on Participating Plans (to be completed by DFEs)

(a) Name of MTIA, CCT, PSA, or 103-12IE EB REAL ESTATE FUND

(b) Name of sponsor of entity listed in (a) CHEVY CHASE TRUST COMPANY

(c) EIN-PN 526257033006 (d) Entity Code C (e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions) \$16,288,752

Part II Information on Participating Plans (to be completed by DFEs)

(a) Name of MTIA, CCT, PSA, or 103-12IE MULTI-EMPLOYER PROPERTY TRUST

(b) Name of sponsor of entity listed in (a) NEW TOWER TRUST COMPANY

(c) EIN-PN 526218800001 (d) Entity Code C (e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions) \$13,472,640

Part II Information on Participating Plans (to be completed by DFEs)

(a) Name of MTIA, CCT, PSA, or 103-12IE LONGVIEW ULTRA 1 CONSTRUCTION LN FD

(b) Name of sponsor of entity listed in (a) AMALGAMATED BANK TRUST DEPT

(c) EIN-PN 134920330006 (d) Entity Code C (e) Dollar value of interest in MTIA, CCT, PSA, or 103-12IE at end of year (see instructions) \$11,694,476

Part II Information on Participating Plans (to be completed by DFEs)

(a) Plan Name

(b) Name of plan sponsor

(c) EIN-PN -

For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500. v2.3

Schedule D (Form 5500) 2006

SCHEDULE H (Form 5500) Department of the Treasury Internal Revenue Service

Department of Labor Employee Benefits Security Administration

Pension Benefit Guaranty Corporation

Financial Information

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA) and section 6058(a) of the Internal Revenue Code (the Code).

File as an attachment to Form 5500.

Official Use Only OMB No. 1210 - 0110

2006

This Form is Open to Public Inspection

For the calendar plan year 2006 or fiscal plan year beginning November 01, 2006, and ending October 31, 2007

A Name of plan ELECTRICAL WORKERS PENSION PLAN LOCAL 103 I.B.E.W.	B Three digit plan number 001
C Plan sponsor's name as shown on line 2a of Form 5500 or 5500-EZ JOINT BOARD OF TRUSTEES ELECTRICAL WORKERS LOCAL 103 IBEW	D Employer Identification Number 04-6063734

Part I Asset and Liability Statement

1 Current value of plan assets and liabilities at the beginning and end of the plan year. Combine the value of plan assets held in more than one trust. Report the value of the plan's interest in a commingled fund containing the assets of more than one plan on a line-by-line basis unless the value is reportable on lines c(9) through c(14). Do not enter the value of that portion of an insurance contract which guarantees, during this plan year, to pay a specific dollar benefit at a future date. Round off amounts to the nearest dollar. DFEs do not complete lines 1b(1), 1b(2), 1c(8), 1g, 1h, 1i, and, except for master trust investment accounts, also do not complete lines 1d and 1e. See instructions.

Assets	(a) Beginning of Year	(b) End of Year
a Total noninterest-bearing cash	a \$2,142,499	\$380,374
b Receivables (less allowance for doubtful accounts):		
(1) Employer contributions	b(1) \$4,252,988	\$5,485,524
(2) Participant contributions	b(2)	
(3) Other	b(3) \$6,563,151	\$23,912,646
c General investments:		
(1) Interest-bearing cash (incl. money market accounts and certificates of deposit)	c(1) \$81,013,960	\$115,397,378
(2) U.S. Government securities	c(2) \$103,672,936	\$8,839,396
(3) Corporate debt instruments (other than employer securities):		
(A) Preferred	c(3)A	
(B) All other	c(3)B \$15,405,312	\$154,082,166
(4) Corporate stocks (other than employer securities):		
(A) Preferred	c(4)A	
(B) Common	c(4)B \$147,823,684	\$125,253,279
(5) Partnership/joint venture interests	c(5) \$74,587,984	\$73,834,290
(6) Real Estate (other than employer real property)	c(6)	
(7) Loans (other than to participants)	c(7)	
(8) Participant loans	c(8)	
(9) Value of interest in common/collective trusts	c(9) \$218,713,776	\$255,351,776
(10) Value of interest in pooled separate accounts	c(10)	
(11) Value of interest in master trust investment accounts	c(11)	
(12) Value of interest in 103-12 investment entities	c(12)	
(13) Value of interest in registered investment companies (e.g., mutual funds)	c(13) \$21,822,660	\$22,930,760
(14) Value of funds held in insurance co. general account (unallocated contracts)	c(14)	
(15) Other	c(15) \$70,139,255	\$128,453,068
d Employer-related investments:		
(1) Employer securities	d(1)	
(2) Employer real property	d(2)	
e Buildings and other property used in plan operation	e	
f Total assets (add all amounts in lines 1a through 1e)	f \$746,138,205	\$913,920,657
Liabilities		
g Benefit claims payable	g	
h Operating payables	h \$588,263	\$764,987
i Acquisition indebtedness	i \$15,453,714	\$52,975,741
j Other liabilities	j \$71,883,274	\$112,664,337
k Total liabilities (add all amounts in lines 1g through 1j)	k \$87,925,251	\$166,405,065
Net Assets		
l Net assets (subtract line 1k from line 1f)	l \$658,212,954	\$747,515,592

Part II Income and Expense Statement

2 Plan income, expenses, and changes in net assets for the year. Include all income and expenses of the plan, including any trust(s) or separately maintained fund(s) and any payments/receipts to/from insurance carriers. Round off amounts to the nearest dollar. DFEs do not complete lines 2a, 2b(1)(E), 2e, 2f, and 2g.

Income	(a) Amount	(b) Total
a Contributions		
(1) Received or receivable in cash from: (A) Employers	a(1)(A) \$41,540,786	
(B) Participants	a(1)(B)	
(C) Others (including rollovers)	a(1)(C)	
(2) Noncash contributions	a(2)	
(3) Total contributions. Add lines 2a(1)(A), (B), (C), and line 2a(2)	a(3)	\$41,540,786
b Earnings on investments:		
(1) Interest:		
(A) Interest-bearing cash (including money market accounts and certificates of		

deposit)	b(1)(A)	\$8,298,981	
(B) U.S. Government securities	b(1)(B)		
(C) Corporate debt instruments	b(1)(C)		
(D) Loans (other than to participants)	b(1)(D)		
(E) Participant loans	b(1)(E)		
(F) Other	b(1)(F)		
(G) Total interest. Add lines 2b(1)(A) through (F)	b(1)(G)		\$8,298,981
(2) Dividends (A) Preferred stock	b(2)(A)		
(B) Common stock	b(2)(B)	\$4,638,888	
(C) Total dividends. Add lines 2b(2)(A) and (B)	b(2)(C)		\$4,638,888
(3) Rents	b(3)		
(4) Net gain (loss) on sale of assets: (A) Aggregate proceeds	b(4)(A)		
(B) Aggregate carrying amount (see instructions)	b(4)(B)		
(C) Subtract line 2b(4)(B) from line 2b(4)(A)	b(4)(C)		
(5) Unrealized appreciation (depreciation) of assets: (A) Real Estate	b(5)(A)		
(B) Other	b(5)(B)		
(C) Total unrealized appreciation of assets. Add lines 2b(5)(A) and (B)	b(5)(C)		
(6) Net investment gain (loss) from common/collective trusts	b(6)		\$76,227,221
(7) Net investment gain (loss) from pooled separate accounts	b(7)		
(8) Net investment gain (loss) from master trust investment accounts	b(8)		
(9) Net investment gain (loss) from 103-12 investment entities	b(9)		
(10) Net investment gain (loss) from registered investment companies (e.g., mutual funds)	b(10)		
c Other Income	c		\$170,341
d Total income. Add all income amounts in column (b) and enter total	d		\$130,876,217
Expenses			
e Benefit payment and payments to provide benefits:			
(1) Directly to participants or beneficiaries, including direct rollovers	e(1)	\$37,295,901	
(2) To insurance carriers for the provision of benefits	e(2)		
(3) Other	e(3)		
(4) Total benefit payments. Add lines 2e(1) through (3)	e(4)		\$37,295,901
f Corrective distributions (see instructions)	f		
g Certain deemed distributions of participant loans (see instructions)	g		
h Interest expense	h		
i Administrative expenses: (1) Professional fees	i(1)	\$92,199	
(2) Contract administrator fees	i(2)		
(3) Investment advisory and management fees	i(3)	\$3,633,107	
(4) Other	i(4)	\$652,372	
(5) Total administrative expenses. Add lines 2i(1) through (4)	i(5)		\$4,277,678
j Total expenses. Add all expense amounts in column (b) and enter total	j		\$41,573,579
Net Income and Reconciliation			
k Net income (loss) (subtract line 2j from line 2d)	k		\$89,302,638
l Transfers of assets			
(1) To this plan	l(1)		
(2) From this plan	l(2)		

Part III Accountant's Opinion

3 The opinion of an independent qualified public accountant for this plan is (see instructions):

a Attached to this Form 5500 and the opinion is (1) Unqualified 2 Qualified (3) Disclaimer (4) Adverse

b Not attached because:

- (1) the Form 5500 is filed for a CCT, PSA, or MTIA
- (2) the opinion will be attached to the next Form 5500 pursuant to 29 CFR 2520.104-50

c Check this box if the accountant performed a limited scope audit pursuant to 29 CFR 2520.103-8 and/or 2520.103-12(d)

d If an accountant's opinion is attached, enter the name and EIN of the accountant (or accounting firm)

MCGLADREY & PULLEN, LLP 42-0714325

Part IV Transactions During Plan Year

4 CCTs and PSAs do not complete Part IV. MTIAs, 103-12 IEs, and GIAs do not complete 4a, 4e, 4f, 4g, 4h, 4k, or 5. 103-12 IEs also do not complete 4j.

During the plan year:

	Yes	No	Amount
a Did the employer fail to transmit to the plan any participant contributions within the maximum time period described in 29 CFR 2510.3-102? (see instructions)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
b Were any loans by the plan or fixed income obligations due the plan in default as of the close of plan year or classified during the year as uncollectible? Disregard participant loans secured by participant's account balance. (Attach Schedule G (Form 5500) Part I if "Yes" is checked)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
c Were any leases to which the plan was a party in default or classified during the year as uncollectible? (Attach Schedule G (Form 5500) Part II if "Yes" is checked)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
d Did the plan engage in any nonexempt transaction with any party-in-interest? (Attach Schedule G	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	

8 If this is a defined benefit pension plan, were any amendments adopted during this plan year that increased or decreased the value of benefits? If yes, check the appropriate box(es). If no, check the "No" box. (see instructions)

Increase No

Part IV Coverage (See instructions.)

9 Check the box for the test this plan used to satisfy the coverage requirements

the ratio percentage test

average benefit test

For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500. v8.2 Schedule R (Form 5500) 2006

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Proposed Lead Counsel for the Class*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SAFRON CAPITAL CORPORATION,
Individually and On Behalf of All Others Similarly
Situated,

Plaintiff,

vs.

CHESAPEAKE ENERGY CORPORATION,
AUBREY K. MCCLENDON, MARCUS C.
ROWLAND, MICHAEL A. JOHNSON,
RICHARD K. DAVIDSON, FRANK A.
KEATING, BREENE M. KERR, CHARLES T.
MAXWELL, MERRILL A. MILLER, JR.,
DONALD L. NICKLES, FREDERICK B.
WHITTEMORE, UBS INVESTMENT BANK,
ABN AMRO, BANC OF AMERICA
SECURITIES LLC and WELLS FARGO
SECURITIES,

Defendants.

Electronically Filed

Civil Action No. 1:09-cv-01826-LTS

Judge Laura T. Swain

Mag. Judge Kevin Nathaniel Fox

**MEMORANDUM OF LAW IN SUPPORT OF
THE MOTION OF ELECTRICAL WORKERS PENSION FUND,
LOCAL 103, I.B.E.W. FOR APPOINTMENT AS
LEAD PLAINTIFF AND APPROVAL OF SELECTION OF LEAD COUNSEL**

Class member Electrical Workers Pension Fund, Local 103, I.B.E.W. ("Local 103") respectfully submits this Memorandum of Law in support of its motion, pursuant to Section 27(a)(3) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77z-1(a)(3), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), for an order: (i) appointing Local 103 as Lead Plaintiff of a class of all persons or entities who purchased the stock of Chesapeake Energy Company ("Chesapeake" or the "Company"); (ii) approving Local 103's selection of Labaton Sucharow LLP ("Labaton Sucharow") as Lead Counsel for the class; and (iii) granting such other and further relief as the Court may deem just and proper.

PRELIMINARY STATEMENT

This case alleges that Chesapeake, certain of its officers and directors, and the underwriters of its July 15, 2008 secondary public offering (the "Offering") (collectively, "Defendants") violated the federal securities laws by issuing materially false and misleading statements concerning, *inter alia*, key information about the Company's natural gas hedging contracts. The above-captioned action (the "Action") is brought on behalf of all persons who purchased Chesapeake common stock in the Offering (the "Class").

Pursuant to the PSLRA, the Court should appoint the "most adequate plaintiff" to serve as Lead Plaintiff in the action. 15 U.S.C. § 77z-1(a)(3)(B)(i). In that regard, the Court should determine which movant has the "largest financial interest" in the relief sought by the Class in this litigation and has made a *prima facie* showing that it is an adequate class representative under Rule 23 of the Federal Rules of Civil Procedure. 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I). Having suffered losses totaling approximately \$26,807 as a result of its investment in Chesapeake common stock, Local 103 believes it has suffered the largest financial loss of any other movant seeking appointment as lead plaintiff in the Action and, as such, has the largest

financial interest in the outcome of this litigation and otherwise meets the applicable requirements of Rule 23 of the Federal Rules of Procedure ("Rule 23"). *See* Certification and Loss Analysis, Exs. A and B to the accompanying Declaration of Alan I. Ellman ("Ellman Decl.").

Local 103 also satisfies the adequacy and typicality requirements of Rule 23, as discussed *infra*. Local 103 is a sophisticated institutional investor who stands in the shoes of all other class members and is ready and able to spearhead this litigation in the best interests of the class. Indeed, the PSLRA's legislative history shows that Local 103 is precisely the type of sophisticated institutional investor whose participation in securities class actions the PSLRA was meant to foster. In short, Local 103 is the "most adequate plaintiff" and should be appointed Lead Plaintiff.

Pursuant to 15 U.S.C. § 77z-1(a)(3)(B)(v), the Lead Plaintiff shall select and retain counsel to represent the class, subject to court approval. Local 103's selection of Labaton Sucharow as Lead Counsel should be approved because, as demonstrated below, the firm has successfully litigated securities class actions for decades and has the requisite experience and resources to prosecute this Action.

STATEMENT OF FACTS

Chesapeake is the third largest independent producer of natural gas in the U.S. Chesapeake's strategy is focused on discovering, acquiring and developing conventional and unconventional natural gas reserves in the U.S., east of the Rocky Mountains. On July 15, 2008, Chesapeake completed a secondary public offering of 28.75 million shares of common stock at \$57.25 per share (including the underwriters' 3.75 million share overallotment), receiving approximately \$1.65 billion in gross proceeds, with net proceeds of \$1.59 billion (after

underwriting and other costs). The registration statement and prospectus (collectively, the “Registration Statement”) filed with the Securities and Exchange Commission in connection with the Offering failed to disclose numerous facts which were required to be stated therein, including:

(a) That the Company’s exposure to natural gas price declines had not been adequately limited by the hedging actions the Company had undertaken prior to the Offering, including its decision to increase its hedge position from 20 percent to 80 percent of its production, as a growing proportion of the hedging agreements on Chesapeake’s 2009 production contained so-called “knockout” provisions that eliminated the counter-party’s financial obligation once the price of natural gas fell below a certain benchmark;

(b) Though the Company disclosed it had entered into hedging contracts to protect its production from falling prices, the Registration Statement failed to disclose that a significant proportion of these contracts had been made with one of the underwriters in the Offering, Lehman Brothers, but based on Lehman Brothers’ rapidly declining financial condition, Lehman Brothers would be unable to fulfill its financial commitment—rendering Chesapeake’s “protection” meaningless;

(c) In the months leading up to the Offering, Chesapeake’s aggressive hedging activities (and those of certain of the underwriter defendants) had been significantly running up the price of natural gas and Chesapeake’s stock price, which moves in tandem with natural gas prices;

(d) That Chesapeake’s “land men”, *i.e.*, lease brokers, had been aggressively bidding up the prices Chesapeake was obligated to pay in leases and royalty agreements in the months leading up to the Offering, causing Chesapeake to pay unreasonably high prices for certain leases and royalty contracts;

(e) That the Company was failing to write down impaired goodwill on the assets it was acquiring, causing its balance sheet and financial results to be artificially inflated; and

(f) That the Company's internal controls were inadequate to prevent the Company from improperly reporting its goodwill.

Local 103 and other Class members suffered hundreds of millions of dollars in damages as a result of their purchases of Chesapeake stock. As the truth about Chesapeake and its operations reached the market during late 2008 and early 2009, the price of Chesapeake stock declined to less than \$12 per share, approximately 80 percent below the Offering price.

ARGUMENT

I. LOCAL 103 SHOULD BE APPOINTED LEAD PLAINTIFF

A. The Procedural Requirements Pursuant to the PSLRA

The PSLRA sets forth a detailed procedure for the selection of a lead plaintiff to oversee securities class actions brought pursuant to the Federal Rules of Civil Procedure. *See* 15 U.S.C. § 77z-1(a)(3). First, the plaintiff who files the initial action must, within 20 days of filing the action, publish a notice to the class informing class members of their right to file a motion for appointment as lead plaintiff. 15 U.S.C. § 77z-1(a)(3)(A)(i). The plaintiff who filed the first complaint in this Action published a notice on *BusinessWire* on February 25, 2009. *See* Notice, Ellman Decl., Ex. C. This notice indicated that applications for appointment as lead plaintiff were to be made no later than April 27, 2009. Within 60 days after publication of the required notice, any member or members of the proposed class may apply to the Court to be appointed as lead plaintiff, whether or not they have previously filed a complaint in this action. 15 U.S.C. § 77z-1(a)(3)(A) and (B).

Next, according to the PSLRA, the Court shall appoint as Lead Plaintiff the movant that the Court determines to be most capable of adequately representing the interests of class

members within 90 days after publication of the initial notice of pendency. 15 U.S.C. § 77z-1(a)(3)(B)(i). In determining who is the “most adequate plaintiff,” the PSLRA provides that:

[T]he court shall adopt a presumption that the most adequate plaintiff in any private action arising under this chapter is the person or group of persons that –

- (aa) has either filed the complaint or made a motion in response to a notice . . .
- (bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and
- (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure [pertaining to class actions].

15 U.S.C. § 77z-1(a)(3)(B)(iii)(I); *Glauser v. EVCI Career Colleges Holding Corp.*, 236 F.R.D. 184, 187 (S.D.N.Y. 2006) (McMahon, J.).

B. Local 103 is the “Most Adequate Plaintiff”

1. Local 103 Has Made a Timely Motion for Appointment as Lead Plaintiff

Pursuant to the provisions of the PSLRA and within the requisite time frame after publication of the notice, Local 103 timely moves this Court to be appointed Lead Plaintiff on behalf of all plaintiffs and class members covered by the Action.

2. Local 103 Has the Largest Financial Interest in the Outcome of the Action

Pursuant to the PSLRA, the statutory presumption is that the “most adequate plaintiff” is the class member who “has the largest financial interest in the relief sought by the class” that also satisfies the applicable requirements of Rule 23. 15 U.S.C. § 77z-1(a)(3)(B)(iii)(bb); *Albert Fadem Trust v. Citigroup Inc.*, 239 F. Supp. 2d 344, 347 (S.D.N.Y. 2002) (Swain, J.). As illustrated in the loss calculations submitted with its motion, Local 103 suffered a loss of \$26,807 on its Class Period investments in Chesapeake stock. *See* Ellman Decl., Ex. B. Accordingly,

Local 103 believes that it has the largest financial interest of any lead plaintiff candidate before the Court and, thus, should be appointed Lead Plaintiff.

3. Local 103 Otherwise Satisfies Rule 23

According to the PSLRA, in addition to possessing the largest financial interest in the outcome of the litigation, the lead plaintiff must also “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. § 77z-1(a)(3)(B)(iii)(cc). Rule 23(a) provides that a party may serve as a class representative if the following four requirements are satisfied:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

Of the four prerequisites to class certification, only two—typicality and adequacy—directly address the personal characteristics of the class representative. Consequently, in deciding a motion to serve as lead plaintiff, the Court should limit its inquiry to the typicality and adequacy prongs of Rule 23(a). *See Albert Fadem Trust*, 239 F. Supp. 2d at 347 (quoting *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998) (Bricant, J.)). As detailed below, Local 103 satisfies both the typicality and adequacy requirements of Rule 23, thereby fulfilling the requirements for its appointment as Lead Plaintiff.

(a) Local 103 Fulfills the Typicality Requirement

Under Rule 23(a)(3), the claims or defenses of the representative party must be typical of those of the class. Typicality exists “where the claims of the Lead Plaintiff arise [from] the same course of conduct that gives rise to the claims of the other class members, where these claims are based on the same legal theory, and where the class members and Lead Plaintiff were injured by

the same conduct.” *Glauser*, 236 F.R.D at 188-89 (citation omitted). However, the claims of the Lead Plaintiff need not be identical to the claims of the class to satisfy typicality. *See Constance Sczensy Trust v. KPMG LLP*, 223 F.R.D. 319, 325 (S.D.N.Y. 2004) (Stein, J.).

Local 103 seeks to represent a class of purchasers of the stock of Chesapeake who have identical, non-competing and non-conflicting interests. Local 103 satisfies the typicality requirement because it: (1) purchased or acquired shares of Chesapeake during the Class Period, (2) at prices alleged to have been artificially inflated by Defendants’ materially false and misleading statements and/or omissions; and (3) suffered damages upon disclosure of the truth. *See Albert Fadem Trust*, 239 F. Supp. 2d at 347-48 (discussing typicality requirement). Thus, Local 103’s claims are typical of those of other class members since their claims and the claims of other class members arise out of the same course of events.

(b) Local 103 Fulfills the Adequacy Requirement

Under Rule 23(a)(4), the representative party must “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The adequacy requirement is satisfied where the proposed lead plaintiff “does not have interests that are antagonistic to the class that he seeks to represent and has retained counsel that is capable and qualified to vigorously represent the interests of the class that he seeks to represent.” *Glauser*, 236 F.R.D. at 189 (citation omitted); *Albert Fadem Trust*, 239 F. Supp. 2d at 348 (same). Local 103’s interests in this Action are perfectly aligned with the interests of absent class members, and Labaton Sucharow, its selected lead counsel, has decades of experience effectively prosecuting securities class actions. Accordingly, the Court can be assured that Local 103 and its selected counsel will more than adequately protect the interests of absent class members.

4. **Local 103 is the Prototypical Lead Plaintiff Envisioned by the PSLRA**

In addition to satisfying the requirements of Rule 23, Local 103 is precisely the type of large, sophisticated institutional investor—the prototypical lead plaintiff—envisioned by the framers of the PSLRA. As noted by Congress in the Statement of Managers, the PSLRA was enacted “to increase the likelihood that institutional investors will serve as lead plaintiff,” in part, because “[i]nstitutional investors and other class members with large amounts at stake will represent the interests of the plaintiff class more effectively than class members with small amounts at stake.” H.R. Rep. No. 104-369, at 34 (1995), *as reprinted in* 1995 U.S.C.C.A.N. 730, 733.

Local 103, an electrical workers union in Eastern Massachusetts, manages more than \$1.5 billion in assets. Local 103 is a sophisticated institutional investor with vast resources sufficient to adequately litigate this action and supervise class counsel. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 264 (3d Cir. 2001) (noting that the legislative intent behind enacting the PSLRA was to encourage large institutional investors to serve as lead plaintiff); *see also Weiss v. Friedman, Billings, Ramsey Group, Inc.*, No. 05-cv-04617 (RJH), 2006 WL 197036, at *1 (S.D.N.Y. Jan. 25, 2006) (Holwell, J.) (same). Thus, as demonstrated above, Local 103 is the prototypical lead plaintiff under the PSLRA.

II. **THE COURT SHOULD APPROVE LOCAL 103’S CHOICE OF COUNSEL**

Pursuant to 15 U.S.C. § 77z-1(a)(3)(B)(v), the lead plaintiff shall, subject to Court approval, select and retain counsel to represent the Class. Labaton Sucharow has had a leading role in numerous important actions on behalf of defrauded investors. Labaton Sucharow served as lead counsel in the Waste Management securities litigation, which resulted in a settlement of \$457 million, one of the largest common-fund securities class action settlements ever achieved at that time. *See* Labaton Sucharow Firm Resume, Ellman Decl., Ex. D; *see also In re Waste*

Mgmt., Inc. Sec. Litig., 128 F. Supp. 2d 401, 432 (S.D. Tex. 2000) (stating that Labaton Sucharow “ha[s] been shown to be knowledgeable about and experienced in federal securities fraud class actions”). Also, Labaton Sucharow is currently serving as Lead or Co-Lead Counsel in the securities fraud cases against American International Group, HealthSouth, Countrywide, Bear Stearns, Fannie Mae and others. In *In re Monster Worldwide, Inc. Sec. Litig.*, No. 07-cv-2237 (S.D.N.Y. filed Mar. 15, 2007), Judge Rakoff appointed Labaton Sucharow as lead counsel, stating that “the Labaton firm is very well known to . . . courts for the excellence of its representation.” (*Id.*, Hr’g Tr. 24:25-25:1, June 14, 2007).

CONCLUSION

For the foregoing reasons, Local 103 respectfully requests that the Court: (i) appoint Electrical Workers Pension Fund, Local 103, I.B.E.W. as Lead Plaintiff; (ii) approve Labaton Sucharow LLP as Lead Counsel for the Class; and (iii) granting such other and further relief as the Court may deem just and proper.

Dated: April 27, 2009

Respectfully submitted,

LABATON SUCHAROW LLP

By: /s/ Christopher J. Keller

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for the Class*

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RICHARD P. GAMBINO, as he is ADMINISTRATOR,
ELECTRICAL WORKERS' HEALTH AND WELFARE
FUND, LOCAL 103, I.B.E.W.; ELECTRICAL WORKERS'
PENSION FUND, LOCAL 103, I.B.E.W.; ELECTRICAL
WORKERS' SUPPLEMENTARY HEALTH AND
WELFARE FUND, LOCAL 103, I.B.E.W.; ELECTRICAL
WORKERS' DEFERRED INCOME FUND, LOCAL 103,
I.B.E.W.; ELECTRICAL WORKERS' JOINT
APPRENTICE AND TRAINING FUND, LOCAL 103,
I.B.E.W.; ELECTRICAL WORKERS' EDUCATIONAL
AND CULTURAL FUND; LAWRENCE J. BRADLEY,
as he is EXECUTIVE SECRETARY-TREASURER,
NATIONAL ELECTRICAL BENEFIT FUND,

Plaintiffs,

vs.

TRI-STATE SIGNAL, INC.,

Defendant,

and

MIDDLESEX SAVINGS BANK,

Trustee.

C.A. No.

VERIFIED COMPLAINT

NATURE OF ACTION

1. This is an action brought pursuant to §§502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1132(a)(3) and (d)(1) and 1145 and pursuant to §301 of the Labor Management Relations Act ("LMRA"), as amended, 29 U.S.C. §185, by employee benefit plans to enforce the obligation to pay fringe benefit

contributions and interest due to the plans under the terms of a collective bargaining agreement and the plans.

JURISDICTION

2. The Court has exclusive jurisdiction of this action pursuant to §502(a), (e) and (f) of ERISA, 29 U.S.C. §1132(a), (e) and (f), and §301 of the LMRA, as amended, 29 U.S.C. §185, without respect to the amount in controversy or the citizenship of the parties.

PARTIES

3. Plaintiff Richard P. Gambino is the Administrator of the Electrical Workers' Health and Welfare Fund, Local 103, I.B.E.W. Richard P. Gambino is a fiduciary within the meaning of §3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The Electrical Workers' Health and Welfare Fund, Local 103, I.B.E.W. is an "employee welfare benefit plan" within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

4. Plaintiff Richard P. Gambino is the Administrator of the Electrical Workers' Pension Fund, Local 103, I.B.E.W. Richard P. Gambino is a fiduciary within the meaning of §3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The Electrical Workers' Pension Fund, Local 103, I.B.E.W. is an "employee pension benefit plan" within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

5. Plaintiff Richard P. Gambino is the Administrator of the Electrical Workers' Supplementary Health and Welfare Fund, Local 103, I.B.E.W. Richard P. Gambino is a fiduciary within the meaning of §3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The Electrical Workers' Supplementary Health and Welfare Fund, Local 103, I.B.E.W. is an "employee welfare

benefit plan” within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

6. Plaintiff Richard P. Gambino is the Administrator of the Electrical Workers’ Deferred Income Fund, Local 103, I.B.E.W. Richard P. Gambino is a fiduciary within the meaning of §3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The Electrical Workers’ Deferred Income Fund, Local 103, I.B.E.W. is an “employee pension benefit plan” within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

7. Plaintiff Richard P. Gambino is the Administrator of the Electrical Workers’ Joint Apprenticeship and Training Trust Fund, Local 103, I.B.E.W. Richard P. Gambino is a fiduciary within the meaning of §3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The Electrical Workers’ Joint Apprenticeship Training Trust Fund is an “employee welfare benefit plan” within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

8. Plaintiff Richard P. Gambino is the Administrator of the Electrical Workers’ Educational and Cultural Fund, Local 103, I.B.E.W. The Electrical Workers’ Educational and Cultural Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

9. Plaintiff Lawrence J. Bradley is the Executive Secretary-Treasurer of the National Electrical Benefit Fund. Lawrence J. Bradley is a fiduciary within the meaning of §3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The National Electrical Benefit Plan is an “employee pension benefit plan” within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 2400 Research Boulevard, Suite #500, Rockville, Maryland.

10. The Health and Welfare, Pension, Supplementary Health and Welfare, Deferred Income, Joint Apprenticeship and Training Fund, and National Electrical Benefit Fund are multi-employer plans within the meaning of §3(37)(A) of ERISA, 29 U.S.C. §1002(37)(A). They are hereinafter collectively referred to as “the Funds.”

11. Defendant Tri-State Signal, Inc. (hereinafter “Tri-State”) is a Massachusetts corporation with a principal place of business at 111 Crescent Avenue, Chelsea, Massachusetts, and is an employer engaged in commerce within the meaning of §3(5) and (12) of ERISA, 29 U.S.C. §1002(5) and (12) and within the meaning of §301 of the LMRA, 29 U.S.C. §185.

12. Upon information and belief, Middlesex Savings Bank is a banking institution holding assets of the Defendant.

GENERAL ALLEGATIONS OF FACT

13. On or about March 5, 1999, Tri-State signed a Letter of Assent authorizing the Boston Chapter, NECA as its collective bargaining representative for all matters contained in, or pertaining to, the then current and any subsequent collective bargaining agreements between Boston Chapter, NECA and Local Union, 103, I.B.E.W (the “Union”). A copy of Tri-State’s signed agreement (“Letter of Assent”) is attached hereto as Exhibit A.

14. Tri-State has been a party to successive collective bargaining agreements, including the agreement which is currently effective for the period September 1, 2006 through August 31, 2011, a copy of which is attached hereto as Exhibit B (“NECA Agreement”).

15. The NECA Agreement, like its predecessor agreements, requires signatory employers to make contributions to Plaintiff Funds for each hour worked by covered employees. The NECA Agreement specifies the amount to be contributed by an employer to each of Plaintiff Funds for each hour worked and specifies further that these amounts are to be paid by the 15th of

the subsequent month. The NECA Agreement also specifies that working dues are to be deducted from the pay of each employee and forwarded to the Funds. The Funds and the Union have a separate agreement which allows the Funds to collect the working dues on behalf of the Union.

16. Section 502(g)(2) of ERISA mandates that a signatory contractor such as Tri-State pay interest using the rate provided under the relevant plan, if applicable. 29 U.S.C. §1132(g)(2). Here, Section 6.37(f) of the NECA Agreement provides that a delinquent fee must be paid for all payments made after the 15th of the month. The Trustees of the Funds have determined that the delinquent fee to be charged on the late payment of contributions be set at 1.5 percent per month. See Funds' Collection Policy, §4.05, attached hereto as Exhibit C.

17. Tri-State has failed to pay the balance of contributions it owes for work performed by its employees during the month of July, 2009, and has not paid any contributions for work performed by its employees during the months of August, September, and October, 2009. According to remittance reports that Tri-State submitted to the Funds, by which it delineated the hours worked by each of its employees per month, Tri-State continues to owe contributions totaling \$19,309.25 for work performed in July, 2009, \$53,864.68 for work performed in August, 2009, and \$68,633.15 for work performed in September, 2009. Contributions due for work performed in October, 2009 are currently unliquidated because the Funds have not yet received a remittance report from Tri-State for that month.

18. Further, Tri-State will owe interest once its outstanding contributions for July through October, 2009 have been paid, but the interest owed for these late payments cannot be calculated until they are in fact paid.

19. Funds' counsel demanded payment of the delinquent July and August, 2009 contributions via certified mail sent to Tri-State on September 18, 2009. A copy of Funds' counsel's September 18, 2009 letter, along with the signed return receipt, is attached hereto as Exhibit D. September, 2009 contributions subsequently came due on October 15, 2009, and October, 2009 contributions subsequently came due on November 15, 2009.

20. To date, the aforementioned contributions remains due and owing.

**COUNT I - VIOLATION OF ERISA -
UNPAID AND UNDERPAID CONTRIBUTIONS**

21. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 20 above.

22. Absent an order from this Court, the Defendant will continue to refuse and fail to pay the contributions it owes the Funds for the months of July through October, 2009, and the Funds and their participants will be irreparably damaged.

23. The failure of Tri-State to make payment of all contributions owed on behalf of all covered employees violates §515 of ERISA, 29 U.S.C. §1145.

24. A copy of this Complaint is being served upon the Secretary of Labor and the Secretary of the Treasury by certified mail as required by §502(h) of ERISA, 29 U.S.C. §1132(h).

**COUNT II - VIOLATION OF THE
COLLECTIVE BARGAINING AGREEMENT**

25. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 24 above.

26. The failure of Tri-State to pay contributions owed on behalf of all covered employees violates the terms of the NECA Agreement.

RELIEF REQUESTED

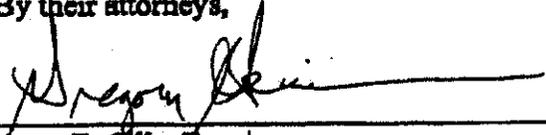
WHEREFORE, Plaintiffs request this Court to grant the following relief:

- a. Order the attachment by trustee process of the bank accounts of Tri-State held by Middlesex Savings Bank;
- b. Order the attachment of the machinery, inventory and accounts receivable of Tri-State;
- c. Enter a preliminary and permanent injunction enjoining Tri-State from refusing or failing to make payment of contributions owed to Plaintiff Funds;
- d. Enter judgment in favor of the Plaintiff Funds on Count I in the amount of \$141,807.08, representing contributions owed for July through September, 2009, together with an as-yet unliquidated amount of contributions owed for the month of October, 2009, plus any additional amounts determined by the Court to be owed the Funds or which may become due during the pendency of this action, together with interest on the unpaid contributions, liquidated damages, attorneys' fees and costs, pursuant to 29 U.S.C. §1132(g)(2);
- e. Enter judgment in favor of the Plaintiff Funds on Count II in the amount of \$141,807.08, representing contributions owed for July through September, 2009, together with an as-yet unliquidated amount of contributions owed for the month of October, 2009, plus any additional amounts determined by the Court to be owed the Funds or which may become due during the pendency of this action; and
- f. Such further and other relief as this Court may deem appropriate.

Respectfully submitted,

RICHARD P. GAMBINO, as he is
ADMINISTRATOR, ELECTRICAL
WORKERS' HEALTH AND WELFARE
FUND, LOCAL 103, I.B.E.W., *et al.*,

By their attorneys,



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Dated: November 17, 2009

VERIFICATION

I, Richard P. Gambino, Administrator for the Electrical Workers' Health & Welfare Fund, Local 103, I.B.E.W., verify that I have read the above Complaint, and the allegations set forth therein are true and accurate based on my personal knowledge, except for those allegations based on information and belief, and, as to those allegations, I believe them to be true.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 16 DAY OF NOVEMBER, 2009.



Richard P. Gambino

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ELECTRICAL WORKERS PENSION FUND
LOCAL 103 I.B.E.W., derivatively on behalf
OF AMERICAN GREETINGS
CORPORATION,

Plaintiff,

vs.

MORRY WEISS, *et al.*

Defendants,

and

AMERICAN GREETINGS CORPORATION,

Nominal Defendant.

CASE NO. CV 09-687985

JUDGE PETER J. CORRIGAN

ADMINISTRATIVE AND PRESIDING
JUDGE NANCY A. FUERST

**REAL PARTY IN INTEREST AMERICAN GREETINGS CORPORATION'S
NOTICE OF JOINDER IN THE INDIVIDUAL DEFENDANTS' APPEAL OF ORDER
DENYING MOTION TO TRANSFER TO COMMERCIAL DOCKET**

Real party in interest American Greetings Corporation ("American Greetings") hereby joins Defendants Morry Weiss, Jeffrey Weiss, Zev Weiss, Scott S. Cowen, Joseph S. Hardin, Jr., Charles A. Ratner, Jerry Sue Thornton, Joseph B. Cipollone, Stephen R. Hardis and Harriet Mouchly-Weiss (the "Individual Defendants") in appealing the March 5, 2010 order of the Honorable Peter J. Corrigan denying Defendants' Motion to Transfer this case to the Commercial Docket.

Temporary Provision 4 of the Rules for Superintendence for Courts of Ohio (the “Temporary Rules”) **requires** the transfer of this matter because this derivative action involves the “rights, obligations, liability, or indemnity of officer[s] [or] director[s]” to American Greetings. (Temp. Sup. R. 1.03(A).) Further, assuming *arguendo* that Plaintiff Electrical Worker’s Pension Fund, Local 103, I.B.E.W. (“Pension Fund”) is a labor organization—which it is not—Temporary Rule 1.03(B)(7) does not bar the transfer of this matter because Pension Fund’s purported status as a labor organization is irrelevant to the gravamen of this action. Moreover, as an Ohio corporation and the real party in interest in this action, American Greetings is entitled to have its rights and obligations adjudicated on the Commercial Docket, as intended by the Ohio Supreme Court.

DISCUSSION

As was recently explained by the Eighth District Court of Appeals, Temporary Rule 1.03(A) mandates that a derivative action, such as the case at bar, be transferred to the Commercial Docket. *State ex rel. Carr v. McDonnell* (Cuyahoga App. 2009), 184 Ohio App. 3d 373, 380. Indeed, even if neither party had requested such a transfer, Temporary Rule 1.03(A) would obligate the trial court to transfer the case *sua sponte*. *Id.*

In order to avoid this clear dictate of the Ohio Supreme Court, Pension Fund argues that the transfer is prohibited by Temporary Rule 1.03(B)(7), because Pension Fund is purportedly a “labor organization.” Pension Fund’s argument is misplaced. As set forth in the Individual Defendants’ Appeal, Pension Fund is not a “labor organization.” (See Individual Defendants’ Appeal at 7-8.). More importantly, Temporary Rule 1.03(B)(7) only prohibits a transfer where the **gravamen** of a party’s claim is related to its status as a labor organization. (Temp.Sup.R. 103(B)(7).) Here that is not the case. To the contrary, in the present instance, Pension Fund (as a shareholder) is merely bringing a derivative action for wrongs that have allegedly been

sustained by **American Greetings**. Pension Fund's purported status as labor organization thus is wholly irrelevant to the gravamen of its claims. The claims herein belong to American Greetings, an Ohio Corporation.

As the court explained in *Boedeker v. Rogers* (Cuyahoga App. 2000), 140 Ohio App. 3d 11, "in [a] stockholders' derivative action the right of the plaintiff to maintain the action is derivative or secondary." *Id.* at 20. Indeed, "the stockholder, as a nominal party, has no right, title or interest in the claim itself." *Id.* To the contrary, although named as a defendant in a derivative action, the corporation "is the real party in interest, the stockholder being at best the nominal plaintiff." *Rosenbaum v. Bernhard* (1970), 396 U.S. 531, 538-39. The "heart of the action is the corporate claim," and any proceeds recovered in a derivative action belong exclusively to the corporation. *Id.* at 538; *see also Pacemaker Plastics Co., Inc. v. AFM Corp.* (N.D. Ohio 2001), 139 F.Supp.2d 851, 855 (owner of a derivative cause of action is the corporation itself). Put simply, Pension Fund in its status as a pension fund has no dog in this fight, and its unwarranted claim to be a "labor organization" is irrelevant to its alleged cause of action.

As the real party in interest, and the party whose rights will be adjudicated herein, American Greetings--an Ohio Corporation--is entitled to have this matter transferred to the Commercial Docket, where its claims may be resolved on an expedited basis in the manner intended by the Ohio Supreme Court. Nominal plaintiff, a Massachusetts pension fund, should not be permitted to thwart the plain dictates of Temporary Rule 1.03(A), particularly where Pension Fund's purported status as a labor organization is wholly unrelated to the gravamen of its claims. Exactly as in *State ex rel. Carr*, nominal plaintiff's derivative claims herein fall

squarely within the scope of Temporary Rule 1.03(A), and this Court should follow *Carr* and transfer this matter to the Commercial Docket.

Dated: March 10, 2010

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing was served to the following via EMAIL and REGULAR U.S. Mail, postage prepaid on March 10, 2010:

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*One of the Attorneys for Nominal Defendant
American Greetings Corporation*

IN THE COMMON PLEAS COURT
OF CUYAHOGA COUNTY, OHIO

ELECTRICAL WORKERS PENSION FUND,
LOCAL 103, I.B.E.W., Derivatively on Behalf
of AMERICAN GREETINGS
CORPORATION,

Plaintiff,

vs.

MORRY WEISS, et al.,

Defendants,

- and -

AMERICAN GREETINGS CORPORATION,
an Ohio corporation,

Nominal Defendant.

Case No. 09-cv-687985

Judge Peter J. Corrigan

ADMINISTRATING AND PRESIDING
JUDGE NANCY A. FUERST

PLAINTIFF'S BRIEF IN OPPOSITION TO
DEFENDANTS' APPEAL OF JUDGE
CORRIGAN'S ORDER DENYING
DEFENDANT'S MOTION TO TRANSFER
TO COMMERCIAL DOCKET

I. Introduction

Plaintiff, Electrical Workers Pension Fund, Local 103, I.B.E.W. ("plaintiff"), respectfully submits this opposition to the Individual Defendants' Appeal of Order Denying Motion to Transfer to Commercial Docket ("Appeal") and Real Party in Interest American Greetings Corporation's Notice of Joinder in the Individual Defendants' Appeal of Order Denying Motion to Transfer to Commercial Docket ("Notice of Joinder").¹

In denying defendants' request to transfer this action to the commercial docket, the Honorable Peter J. Corrigan reviewed extensive briefing on the issue by both parties. Defendants submitted a Motion to Transfer Case to the Commercial Docket ("Motion") (Appeal, Ex. C) which sought transfer to the commercial docket based on the same arguments raised in this Appeal. Plaintiff opposed this Motion. See Plaintiff's Opposition to Defendants' Motion to Transfer Case to the Commercial Docket. (Appeal, Ex. D.) The defendants also

¹ Defendants are Morry Weiss, Jeffrey Weiss, Zev Weiss, Scott S. Cowne, Joseph S. Hardin Jr., Charles Ratner, Jerry Sue Thornton, Joseph B. Cipollone, Stephen R. Hardis and Harriet Mouchly-Weiss (collectively referred to as the "Individual Defendants") and Nominal Defendant American Greetings (referred to as the "Company" or "American Greetings").

submitted a Reply in Support of Their Motion to Transfer Case to the Commercial Docket. *See* Appeal, Ex. E. With the parties' briefing before him, the Honorable Peter J. Corrigan correctly denied defendants' Motion.

This appeal represents mere dissatisfaction with Judge Corrigan's ruling and not, as defendants' contend, an error of law. Judge Corrigan properly denied defendants' motion because Rule 1.03(B) of the Temporary Rules of Superintendence for Courts of Ohio ("Rules") (Appeal, Ex. B) specifically precludes transfer to the commercial docket of "[c]ases in which a labor organization is a party." Temp. R. 1.03(B)(7). Here, plaintiff is a labor organization for purposes of Rule 1.03(B) and is a party. A plain reading of the Rules supports plaintiff's position that this action "shall not" be transferred to the commercial docket. Temp. R. 1.03(B).

II. Temporary Rule 1.03(B)(7) Prohibits Transfer of This Action to the Commercial Docket

A plain reading of Rule 1.03(B) bars this action from being transferred to the commercial docket. Rule 1.03(B) sets out 15 exceptions to transfer to the commercial docket.² *See* Temp. R. 1.03(B)(1)-(15). Rule 1.03(B)(7) specifically excludes from transfer "a civil case . . . if the gravamen of the case relates to . . . [c]ases in which a labor organization is a party." Temp. R. 1.03(B)(7). Plaintiff clearly falls within this exception. Judge Corrigan agreed with plaintiff's interpretation of the Rule when plaintiff raised it before him in opposition to defendants' Motion.

The exception for labor organizations set forth in Rule 1.03(B)(7) is an unambiguous statement of the drafters' intent to exclude from the Commercial Docket Pilot Program any cases where a labor organization is a party. Defendants' reliance on the word "gravamen" from the perambulatory language of Rule 1.03(B) is misplaced.

Defendants assert that Rule 1.03(B) is "clear and unambiguous" and direct the Court to look beyond the identity of the named party to the "gravamen" of the action itself. *See* Appeal at 3 & n.3. But the plain language of Rule 1.03(B) directs the Court to consider the status of the parties to the Action, not the nature of the action. *See* Rule 1.03(B)(7). As the members of the Task Force clearly stated in their Interim Report regarding the proposed temporary rules:

² Even if this action should be transferred under Rule 1.03(A), which plaintiff does not concede, Rule 1.03(B) specifically precludes such transfer.

The cases accepted into the commercial docket would be disputes relating to business entities and disputes between business entities. This is set forth in proposed Sup. R. Temp. 3(A). Under Sup R. Temp. 3(B), other cases—including those involving consumers, labor organizations, and residential foreclosures, and cases in which the government is a party—would not be eligible for the commercial docket.

See Exhibit A at 2, Interim Report to the Ohio Supreme Court, March 2008. (Emphasis added)

Furthermore, defendants' interpretation of the Rules ignores all four corners of Rule 1.03(B). See Rule 1.03(B)(1)-(15). Indeed, a review of the four corners demonstrates the drafters excluded "[c]ases in which a labor organization is a party" from transfer to the commercial docket. *Id.*

The plain language of Rule 1.03(B) states that labor organizations are excluded from transfer based on their status as a party. Beyond that, however, the totality of Rule 1.03(B) also demonstrates the intent of the drafters. Thirteen of the fifteen exceptions in Rule 1.03(B) relate to particular causes of action, with only two exceptions that do not specify the type of action, of which Rule 1.03(B)(7) is one. As Rule 1.03(B)(7) plainly states: "Cases in which a labor organization is a party" shall be excluded from transfer. Rule 1.03(B)(7) does *not* reference the "matters" involved or description of the type of "claim" or type of "dispute[]" as is the case with Rule 1.03(B)(1)-(6) and (9)-(15). *Id.*³ The drafters intentionally omitted reference to the type of "claim" or "dispute[]" in the subsection of the rule dealing with labor organizations as parties. *Id.* The purpose of Rule 1.03(B)(7) was to exclude from transfer all actions in which a labor organization is a party. Not only is this interpretation of the statute logical, it results in consistent outcomes – namely, universal exclusion from the commercial docket of cases in which a labor organization is a party. Defendants' interpretation of Rule 1.03(B), on the other hand, would result in confusion and inconsistent results based on their ambiguous reading of the statute.

³ For example, 1.03(B)(1) excludes from transfer "[p]ersonal injury, survivor, or wrongful death matters." Clearly then, actions relating to those "matters" are excluded. The same is true for Rule 1.03(B)(2), which excludes from transfer "[c]onsumer claims against business entities or insurers of business entities, including product liability and personal injury cases, and cases arising under federal or state consumer protection laws." Clearly then, actions relating to "[c]onsumer claims" are excluded from being transferred to the commercial docket. These exclusions clearly identify the "gravamen" of the action that should be excluded.

In addition, exclusion from transfer based on status as a labor organization is consistent with Rules 1.03(B)(3), 1.03(B)(6) and 1.03(B)(9) that concern actions which, in many cases, would include a "labor organization" as a party. For example, Rule 1.03(B) includes the following three exclusions to transfer:

Matters involving occupational health or safety, wages or hours, workers' compensation, or unemployment compensation;

* * *

Employment law cases, except those involving owners described in division (A)(3) of this rule;

* * *

Discrimination cases based upon the United States constitution, the Ohio constitution, or the applicable statutes, rules, regulations, or ordinances of the United States, the state, or a political subdivision of the state.

See Rules 1.03(B)(3),(6) and (9).

These three exceptions are expansive in scope and would include many cases in which a "labor organization" would be a party. This raises the question, if these three exclusions to Rule 1.03(A) cover situations in which a labor organization would be a party, why did the drafters also include a provision specifically excluding cases in which a labor organization is a party? The answer is that the drafters of the Rules intended to exclude from transfer all cases in which a labor organization is a party. Furthermore, the existence of these three exclusions to Rule 1.03(A) is contrary to defendants' stated position that the "gravamen" of the action must relate to the cause of action brought by the labor organization in order for Rule 1.03(B)(7) to apply – as opposed to the labor organization being the party.

Defendants' assertion that plaintiff's interpretation would "lead to an illogical and absurd result" again ignores a full reading of Rule 1.03(B). Appeal at 4. If the drafters merely intended to exclude from Rule 1.03(A) cases in which the gravamen relates to a labor organization, as opposed to its status as a party, then Rule 1.03(B)(7) would have been unnecessary because Rules 1.03(B)(3), 1.03(B)(6) and 1.03(B)(9) would cover these circumstances. Instead, the drafters inserted Rule 1.03(B)(7) as a catch-all to ensure that all actions in which a labor organization is a party would be excluded.

III. Plaintiff Is a Labor Organization for Purposes of Rule 1.03(B)(7)

The definition of a labor organization is broad and plaintiff falls within the definition for purposes of Rule 1.03(B)(7). Because the term "labor organization" is not defined in the Rules it is appropriate to look to how that term is defined by statute. *Caygill v. Jablonski*, 78 Ohio App. 3d 807, 812 (Ohio Ct. App. 1992). The National Labor Relations Act ("NLRA") broadly defines labor organization as "any organization of any kind" including, "employee representation committee" or "*plan*," "which exists for the purpose, *in whole or in part*, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." See 29 U.S.C. §152(5) (emphasis added). Plaintiff here clearly falls within this broad definition.

Plaintiff is an employee pension benefit plan, also known as a Taft-Hartley Fund. Taft-Hartley Funds came into existence after passage of the Taft-Hartley Act, which was passed in 1947 as an amendment to the NLRA. As an employee pension benefit plan, plaintiff must comply with certain provisions of the Employment Retirement Income Act of 1974 ("ERISA"), specifically Title I, which is regulated and enforced by the U.S. Department of Labor.⁴

Taft-Hartley funds, such as plaintiff, have the following distinct characteristics: (1) one or more *employers contribute to the fund*; (2) *the fund is collectively bargained* with each participating employer; (3) *the fund and its assets are managed by* a joint board of trustees equally *representative of management and labor*; (4) *assets are placed in a trust fund*, legally distinct from the union and the employers, *for the sole, and exclusive benefit of the employees and their families*; and (5) mobile employees can change employers without losing coverage provided the new job is with an employer who participates in the same Taft-Hartley fund.

Three elements must be met for an entity to fall into the broad definition of a labor organization: (1) employee participation; (2) a purpose to "deal" with the employer; and (3) the element of dealing must concern wages, hours or other terms and conditions of employment. 29 U.S.C. §152(5). Plaintiff satisfies these three elements. *First*, the fund's participants are all employees. *Second*, plaintiff "deals" with the employer. As noted above, one aspect of a Taft-Hartley Fund is that the fund is collectively bargained with each participating employer and

⁴ A pension benefit plan is defined in §3(2) of ERISA as a plan maintained by an *employer or employee organization that provides retirement income to employees*, or the deferral of income for periods extending to the termination of employment or beyond. 29 U.S.C. §1002(2)(A).

the employer contributes to the fund. If the employer ceases payments, it is the fund's duty to collect the delinquent contributions. Thus, the fund does "deal" with the employer.⁵ *Third*, the fund concerns itself with the terms and condition of employment since it is responsible for the management of employee funds and assets.

IV. American Greetings' Notice of Joinder Does Not Represent the True Interests of the Company or Its Shareholders

Plaintiff brought this derivative action for the benefit of American Greetings to redress injuries suffered by the Company as a direct result of defendants' violations of state law, breaches of fiduciary duty, abuse of control, constructive fraud, gross mismanagement, corporate waste and unjust enrichment, as well as the aiding and abetting thereof, by the defendants. Plaintiff's claims arise from defendants' alleged approval and acceptance of stock options backdated in violation of the Company's shareholder-approved stock option plans. *See* Appeal, Ex. F, ¶¶17-46, 59-91. The American Greetings' directors named in the Complaint (Appeal, Ex. F), knowingly accepted backdated stock options, three engaged in backdating stock options, and all approved false and misleading SEC filings. *Id.*, ¶205. Plaintiff was required to bring this action on behalf of the Company, because American Greetings' current Board of Directors ("Board") would not institute this action against the Individual Defendants because American Greetings' Board is beholden to many of the Individual Defendants and is comprised of many of the Individual Defendants. That same Board, made up of many of the Individual Defendants cannot now be deemed to represent the true interests of the Company and shareholders since the current Board's interests are aligned with the Individual Defendants.

⁵ The Supreme Court in *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959), defined "dealing with" in broader terms than merely "collective bargaining." *Id.*

American Greetings Corp. Board of Directors as of Lawsuit Filing Dominated by Those Who Accepted and/or Granted Backdated Options						
Defendant Director	Board Tenure	Accepted Backdated Options	Granted Backdated Options	Signed and/or Approved False & Misleading SEC Filings in Relevant Period	Granted Stock Options and/or Worked on Audit Committee in Relevant Period	Insider Trading Proceeds
M. Weiss	1971- filing	√		√ (1993-2008)		\$5.7M M
J. Weiss	2003- filing	√		√ (2003-2008)		\$3.9M M
Z. Weiss	2003- filing	√		√ (2003-2008)		\$3.9M M
Thornton	2000- filing	√		√ (2000-2008)	Audit Committee: 2000-2008	\$110K
Hardin	2004- filing	√	√	√ (2004-2008)	Comp. Committee: 2006- 2008 Audit Committee: 2004-2005	
Cowen	1989- filing	√	√	√ (1993-2008)	Comp. Committee: <1993- 2008 Audit Committee: <1993-2008	\$530K
Ratner	2000- filing	√	√	√ (2000-2008)	Comp. Committee: 2001-2006	\$115K

Because of this inherent conflict of interest, this Court should not pay heed to American Greetings' Notice of Joinder.

Ultimately American Greetings and its shareholders will benefit from the successful prosecution of this action. However, at this time, American Greetings is controlled by an executive team and Board whose interests are contrary to any attempt at redress for the harms caused to the Company by the Individual Defendants and as alleged in the Complaint. The Individual Defendants who now control American Greetings are the same individuals who allowed certain defendants to backdate stock options for their benefit to the detriment of the Company. The members of American Greetings' Board, the same individuals who authorized the filing of the Notice of Joinder, have already demonstrated their unwillingness and/or inability to act in compliance with their fiduciary obligations and/or to sue themselves and/or

their fellow directors and allies in the top ranks of the corporation for the violations of law complained of herein. See ¶210(a). Thus, it is hard to imagine that that same Board has filed the Notice of Joinder with the true interests of the Company as opposed to the interests of the defendants.

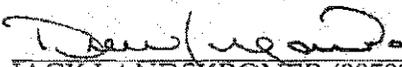
To be sure, until its Notice of Joinder, Nominal Defendant American Greetings had placed "no dog in [any] fight." Notice of Joinder at 3. For example, when the Individual Defendants improperly removed this case to federal court, it was plaintiff who successfully remanded the action back to state court where it properly belonged and where the action was originally filed. Moreover, very recently, American Greetings was represented by the same attorneys representing the Individual Defendants. American Greetings and the Board that currently controls it, is controlled by the Individual Defendants and its interests currently lie with the Individual Defendants – not with the Company or its shareholders.

V. Conclusion

For the reasons stated herein, Defendants' Appeal and Nominal Defendant American Greetings' Notice of Joinder should be denied.

DATED: March 12, 2010

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CERTIFICATE OF SERVICE

The above-signed certifies that a copy of this brief was sent via regular mail on March 13, 2010, to the following counsel of record:

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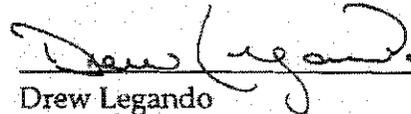
and

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and

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Attorneys for Individual Defendants


Drew Legando

The Supreme Court of Ohio

SUPREME COURT TASK FORCE ON COMMERCIAL DOCKETS

MEMORANDUM

TO: Chief Justice Thomas J. Moyer

FROM: Members of the Task Force

DATE: March 10, 2008

RE: Interim Report and Proposed Temporary Rules of Superintendence

The Task Force on Commercial Dockets is submitting this interim report to inform you on the Task Force's progress in developing a pilot program to establish commercial dockets in some of the Ohio courts of common pleas. We also request that the attached Temporary Rules of Superintendence for Courts of Ohio be submitted to the Justices of the Supreme Court for approval in order to move the pilot project into the implementation phase.

The Task Force has met ten times. With the assistance of the Corporate Law Center at the University of Cincinnati College of Law, our thinking has been informed by a comprehensive review of what other states have done to create commercial dockets and business courts. The Task Force has also developed five Work Groups that have developed recommendations for discussion and approval by the Task Force.

The pilot project (described in more detail below) is designed to concentrate commercial cases in front of a limited number of judges ("commercial docket judges"). This will enable the commercial docket judges to develop: (1) greater expertise with respect to case management of commercial disputes, (2) greater familiarity with the relevant principles of law, and (3) a better understanding of the business context for commercial disputes. The Task Force also supports a consistent approach to commercial docket cases in the courts that participate in the pilot project to promote efficiency and as an aid to the commercial docket judges and to the parties before the court.

Based on the experience in other states, we believe the commercial docket will expedite the resolution of commercial cases. Resolving these cases more quickly and efficiently will require less of the court's resources. Consequently, the commercial docket should improve the administration of justice for all. An efficient process will also improve Ohio's business climate and promote economic growth.

The Task Force also proposes that the Supreme Court post decisions and dispositive orders of the commercial docket judges on the Supreme Court's website. With a greater body of case law on commercial matters, lawyers can better advise their clients in planning business transactions and in evaluating alternate courses of conduct.

EXHIBIT A

Subject to comments from and revisions by the Justices of the Supreme Court, the Task Force proposes the following:

- The Task Force will coordinate with the Administrative Judge and/or Presiding Judge and present the pilot project to the judges in Cuyahoga, Franklin, Hamilton, Lucas and Montgomery counties. If the court agrees to participate in the pilot project, the Task Force would ask for volunteers from the judges to serve as commercial docket judges. The number of commercial docket judges in each county needs to permit concentration of the commercial cases to allow expertise to develop, without overburdening a single judge and creating a bottleneck. The Chief Justice would designate the commercial docket judges based on the recommendation of the Task Force. This is described in proposed Sup. R. Temp. 2(B).
- The cases accepted into the commercial docket would be disputes relating to business entities and disputes between businesses. This is set forth in proposed Sup. R. Temp. 3(A). Under Sup. R. Temp. 3(B), other cases – including those involving consumers, labor organizations, and residential foreclosures, and cases in which the government is a party – would not be eligible for the commercial docket.
- Procedurally, the attorney filing a case that falls under the scope of the commercial docket would include a motion for the transfer of the case to the commercial docket when the case is filed (*See Annexes B and C for sample plaintiff and defendant motions and Annex D for a sample court order*). If the attorney does not file a motion for transfer of the case to the commercial docket, any other party in the case would file a motion for transfer with its first responsive pleading or upon its initial appearance, whichever occurs first. If no party files a motion for transfer of the case to the commercial docket, the judge to whom the case is assigned must ask the Administrative Judge to transfer the case to the commercial docket. If a case is improperly assigned, the commercial docket judge can remove the case from the commercial docket. An order of the Administrative Judge as to the transfer of the case would not be subject to review or appeal. This is set out in proposed Sup. R. Temp. 4.
- For each commercial docket case transferred to a commercial docket judge, that judge would request that the Administrative Judge transfer a case from the civil docket of the commercial docket judge. There would be no change in assignments for criminal cases. This is set out in proposed Sup. R. Temp. 4(E).
- Opinions and dispositive orders rendered in commercial docket cases would be published on the Supreme Court's website. This is stated in proposed Sup. R. Temp. 9.
- The Task Force also believes that a rule similar to the Federal rule allowing the use of special masters would be an aid to commercial docket judges in resolving some commercial docket cases. This is set out in proposed Sup. R. Temp. 5.

EXHIBIT A

While we recognize some additional administrative burden for the recordkeeping associated with the commercial docket in the participating counties, and some cost for publication of decisions and orders of the commercial docket judges on the Supreme Court's website, we do not believe additional resources will be necessary to implement the pilot project.

The Task Force expects to stay in contact with the pilot project courts and commercial docket judges to learn if there are aspects of the pilot project that should be revised or adjusted to make the commercial docket better achieve its objectives, whether in the pilot project phase or as part of a broader initiative that the Supreme Court may undertake. If the Supreme Court identifies aspects of the pilot project that deserve particular focus in operation and evaluation, we would appreciate those suggestions. We hope not to burden the Supreme Court with further requests, but even in the pilot phase there may be some adjustments that may require that the Supreme Court modify the temporary rules.

Once there is a preliminary selection of potential commercial docket judges in the participating counties, the Task Force would present an orientation and training seminar for those judges (*See* proposed Sup. R. Temp. 2(B)(2)). In addition, with the assistance of the Ohio State Bar Association and the Supreme Court of Ohio Judicial College, the program would include CLE presentations providing an overview of Ohio commercial and business laws.

The Task Force has developed a template for a case management order. The Task Force will ask for suggestions from the commercial docket judges participating in the pilot project for revisions to the template and will encourage the judges to adopt a consistent approach to case management for commercial docket cases in all the pilot project courts (*See* proposed Sup. R. Temp. 6).

The Task Force is well aware that a report on the pilot project is due to the Court in mid-2009, and we are working to implement the pilot project in mid-2008. Accordingly, the Task Force respectfully requests that the Temporary Rules of Superintendence attached as Annex A be submitted to the Justices of the Supreme Court for approval in order to initiate the pilot project.

Respectfully submitted,

Honorable John P. Bessey, Co-Chair
Patrick F. Fischer, Co-Chair
Honorable Reeve W. Kelsey
James Kennedy
Honorable William A. Klatt
Harry Mercer
Scott North
Robert G. Palmer
Jeanne M. Rickert
Jack Stith
Adrian Thompson

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ELECTRICAL WORKERS PENSION)	CASE NO: CV 09-687985
FUND LOCAL 103 I.B.E.W., derivatively)	
on behalf of AMERICAN GREETINGS)	JUDGE PETER J. CORRIGAN
CORPORATION,)	
)	ADMINISTRATIVE AND PRESIDING
Plaintiff,)	JUDGE NANCY A. FUERST
)	
v.)	
)	
MORRY WEISS, JEFFREY WEISS, ZEV)	
WEISS, SCOTT S. COWEN, JOSEPH S.)	
HARDIN, JR., CHARLES A. RATNER,)	
JERRY SUE THORNTON, JOSEPH B.)	
CIPOLLONE, STEPHEN R. HARDIS, and)	
HARRIET MOUCHLY-WEISS,)	
)	
Defendants,)	
)	
-and-)	
)	
AMERICAN GREETINGS)	
CORPORATION,)	
)	
Nominal Defendant.)	

**INDIVIDUAL DEFENDANTS' MOTION FOR LEAVE
TO FILE *INSTANTER* A REPLY IN SUPPORT OF APPEAL OF ORDER
DENYING MOTION TO TRANSFER TO COMMERCIAL DOCKET**

Individual Defendants respectfully request leave to file *instanter* the attached brief reply (little more than one page) in further support of their Appeal of Judge Corrigan's Order Denying Defendant's Motion to Transfer to Commercial Docket.

**REPLY IN FURTHER SUPPORT OF APPEAL OF ORDER
DENYING MOTION TO TRANSFER TO COMMERCIAL DOCKET**

In its Opposition, the Pension Fund concedes that (1) derivative actions like this one *must* be transferred to the Commercial Docket, and (2) its self-proclaimed description as a “labor organization” has nothing whatsoever to do with the claims it purports to bring on behalf of American Greetings. Notwithstanding, the Pension Fund continues to insist that this case cannot be transferred based on its unsupported and self-serving assertion in this case—as opposed to the other cases in which it admitted that it was a sophisticated pension fund—that it is a “labor organization.” (Opp’n at 2-4.) The Pension Fund’s argument is meritless.

The Pension Fund does not dispute that if a lawsuit identical to this one were filed by an individual shareholder or institutional investor, the Temporary Rules would require transfer. But because it was filed by a shareholder now calling itself a “labor organization,” transfer is forbidden. That makes no sense. Transfer to the commercial docket should not boil down to the caption of a complaint, but instead on the essence of the claim. That is what the Supreme Court envisioned; that is the only fair reading of the applicable Temporary Rules.

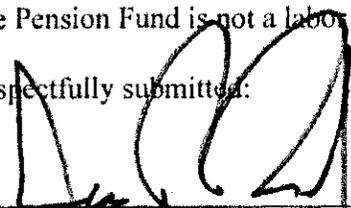
Equally meritless is the Pension Fund’s attempt to portray itself as a “labor organization” in the first place. Even if an NLRA definition applied, the Pension Fund cannot seriously claim that it concerns itself with the “terms and conditions of employment” as that phrase is commonly understood. (Opp’n at 6). Likewise, although the Pension Fund also claims that it is “collectively bargained with each participating employer” and manages the assets in the fund¹ (Opp’n at 5-6), that argument mischaracterizes the respective roles of a labor union and a pension fund. A pension fund has no role in the collective bargaining process; a pension fund is the *result* of the collective bargaining process and merely administers the distribution of benefits

¹ Individual Defendants do not concede the propriety of using the definition of “labor organization” from the NLRA or the Pension Fund’s characterization of the law related thereto.

obtained through that process by a union. Indeed, the equal representation of management and labor on the board overseeing the Pension Fund both render impossible any role for the Pension fund in collective bargaining and demonstrates that the Pension Fund is not a labor organization.

Dated: March 12, 2010

Respectfully submitted:



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ATTORNEYS FOR THE INDIVIDUAL
DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the INDIVIDUAL DEFENDANTS' MOTION FOR LEAVE TO FILE INSTANTER A REPLY IN SUPPORT OF APPEAL OF ORDER DENYING MOTION TO TRANSFER TO COMMERCIAL DOCKET was served by REGULAR U.S. MAIL and E-MAIL this 12th day of March 2010 upon:

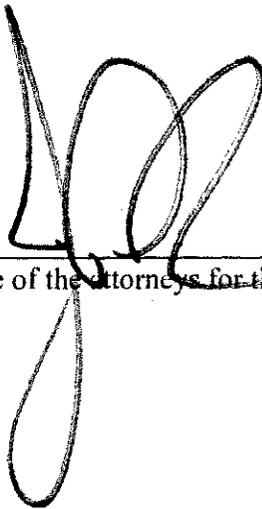
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ATTORNEYS FOR NOMINAL DEFENDANT
AMERICAN GREETINGS CORPORATION



One of the Attorneys for the Individual Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RUSSELL F. SHEEHAN, as he is ADMINISTRATOR,
ELECTRICAL WORKERS' HEALTH AND
WELFARE FUND, LOCAL 103, I.B.E.W.;
ELECTRICAL WORKERS' PENSION FUND,
LOCAL 103, I.B.E.W.; ELECTRICAL WORKERS'
SUPPLEMENTARY HEALTH AND WELFARE
FUND, LOCAL 103, I.B.E.W.; ELECTRICAL
WORKERS' DEFERRED INCOME FUND,
LOCAL 103, I.B.E.W.; ELECTRICAL WORKERS'
JOINT APPRENTICESHIP AND TRAINING
FUND, LOCAL 103, I.B.E.W.; ELECTRICAL
WORKERS' EDUCATIONAL AND CULTURAL
FUND; ANTHONY J. SALAMONE, as he is
ADMINISTRATOR, NATIONAL ELECTRICAL
BENEFIT FUND; and LOCAL 103, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
Plaintiffs

vs.

NIGRO ELECTRICAL CORP.,
Defendant

and

EASTERN BANK,
Trustee

and

FRIEL URBAN CONSTRUCTION, LTD. and
G. GREENE CONSTRUCTION CO., INC.,
Reach-and-Apply Defendants

f. in open Court
10/5/00
MM
USDC

C.A. No. 00-10196 NG

AMENDED COMPLAINT

NATURE OF ACTION

1. This is an action brought pursuant to §§502 and 515 of the Employee Retirement
Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1132(a)(3) and (d)(1) and

1145 and §301 of the Labor Management Relations Act ("LMRA"), as amended, 29 U.S.C. §185 by employee benefit plans and a union to enforce the obligations to make contributions to such plans due under the terms of a collective bargaining agreement and the plans and to pay dues.

JURISDICTION

2. The Court has exclusive jurisdiction of this action pursuant to §502(a), (e) and (f) of ERISA, 29 U.S.C. §§1132(a), (e) and (f), without respect to the amount in controversy or the citizenship of the parties.

PARTIES

3. Plaintiff Russell F. Sheehan is the Administrator of the Electrical Workers Health and Welfare Fund, Local 103, I.B.E.W. Electrical Workers' Health and Welfare Fund, Local 103, I.B.E.W. is an "employee welfare benefit plan" within the meaning of §3(3) of ERISA, 29 U.S.C. §1002(3). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

4. Plaintiff Russell F. Sheehan is the Administrator of the Electrical Workers' Pension Fund, Local 103, I.B.E.W. The Electrical Workers' Pension Fund, Local 103, I.B.E.W. is an "employee pension benefit plan" within the meaning of §3(2) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

5. Plaintiff Russell F. Sheehan is the Administrator of the Electrical Workers' Supplementary Health and Welfare Fund, Local 103, I.B.E.W. The Electrical Workers' Supplementary Health and Welfare Fund, Local 103, I.B.E.W. is an "employee welfare benefit plan" within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

6. Plaintiff Russell F. Sheehan is the Administrator of the Electrical Workers' Deferred Income Fund, Local 103, I.B.E.W. The Electrical Workers' Deferred Income Fund, Local 103, I.B.E.W. is an "employee pension benefit plan" within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

7. Plaintiff Russell F. Sheehan is the Administrator of the Electrical Workers' Joint Apprenticeship and Training Trust Fund, Local 103, I.B.E.W. The Electrical Workers' Joint Apprenticeship Training Trust Fund is an "employee welfare benefit plan" within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

8. Plaintiff Russell F. Sheehan is the Administrator of the Electrical Workers' Educational and Cultural Fund, Local 103, I.B.E.W. The Electrical Workers' Educational and Cultural Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

9. Plaintiff Anthony J. Salamone is the Executive Secretary-Treasurer of the National Electrical Benefit Fund. The National Electrical Benefit Plan is an "employee pension benefit plan" within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 2400 Research Boulevard, Suite #500, Rockville, Maryland.

10. The Health and Welfare, Pension, Supplementary Health and Welfare, Deferred Income, Joint Apprenticeship and Training Fund, and National Electrical Benefit Fund are multi-employer plans within the meaning of §3(37) of ERISA, 29 U.S.C. §1002(37). They are hereinafter collectively referred to as "the Funds."

11. Plaintiff Local 103, International Brotherhood of Electrical Workers is a labor organization within the meaning of §301 of the LMRA, 29 U.S. C. §185. Local 103 is administered at 256 Freeport Street, Boston, Massachusetts.

12. Defendant Nigro Electrical Corp. (hereinafter "Nigro" or "the Employer") is a Massachusetts corporation with a principal place of business at 18 Sunset Drive, Wakefield, Massachusetts, and is an employer engaged in commerce within the meaning of §3(5) and (12) of ERISA, 29 U.S.C. §1002(5) and (12).

13. Eastern Bank is a banking institution holding assets of the defendant.

14. Reach-and-Apply Defendant Friel Urban Construction, Ltd. ("Friel") is a Massachusetts corporation with a principal place of business at 169 W. Second Street, South Boston, Massachusetts, and is an employer engaged in commerce within the meaning of §3(5) and (12) of ERISA, 29 U.S.C. §1002(5) and (12). Upon information and belief, Friel is indebted to Nigro Electrical Corp.; thus, certain sums are due or will hereafter become due Nigro from said Reach-and-Apply Defendant. The Funds have a legal or equitable interest in these sums which cannot be reached to be attached or taken on execution until such time as they come into the possession of Nigro.

15. Reach-and-Apply Defendant G. Greene Construction Co., Inc. ("Greene") is a Massachusetts corporation with a principal place of business at 240 Lincoln Street, Allston, Massachusetts, and is an employer engaged in commerce within the meaning of §3(5) and (12) of ERISA, 29 U.S.C. §1002(5) and (12). Upon information and belief, Greene is indebted to Nigro Electrical Corp.; thus, certain sums are due or will hereafter become due Nigro from said Reach-and-Apply Defendant. The Funds have a legal or equitable interest in these sums which cannot

be reached to be attached or taken on execution until such time as they come into the possession of Nigro.

GENERAL ALLEGATIONS OF FACT

16. On or about August 31, 1991, defendant Nigro signed a letter of assent authorizing the Boston Chapter, NECA as its collective bargaining representative for all matters contained in, or pertaining to, the then current and any subsequent collective bargaining agreements between Boston Chapter, NECA and Local Union, 103, I.B.E.W. A copy of Nigro's signed agreement ("letter of assent") is attached hereto as Exhibit A.

17. Because of the letter of assent, Nigro has been a party to successive collective bargaining agreements, including the agreement which is effective from September 1, 1997 through August 31, 2000 ("the Agreement"). A copy of the relevant portions of this 1997-2000 Agreement is attached hereto as Exhibit B.

18. The Agreement, like its predecessor agreements, requires employers to make contributions to Plaintiff Funds for each hour worked by covered employees. The Agreement specifies the amount to be contributed by an employer to each of Plaintiff Funds for each hour worked. Employers are also required to file monthly Remittance Reports, on which employers calculate the payments they owe.

19. Section 4.6 of the Agreement provides that the employer will deduct dues from each members' paycheck.

**COUNT I - VIOLATION OF ERISA -
DELINQUENT CONTRIBUTIONS**

20. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 19 above.

21. Nigro submitted contributions through August, 1999 and failed to make any payments thereafter.

22. Letters were sent from the Funds' Administrator to Nigro, in October, November and December, 1999 notifying it of its delinquency.

23. On or about October 28, 1999, December 2, 1999 and January 3, 2000, letters from the Funds' counsel were also sent to Nigro, requesting payment of all unpaid contributions, together with the delinquency fee and attorney's fees then due, pursuant to the terms of the collective bargaining agreement.

24. To date, Nigro has failed and refused to pay the Funds the contributions due for work performed after August, 1999. Based on Remittance Reports submitted by Nigro, and taking into account the value of a \$10,000.00 bond that Nigro had posted to cover delinquent contributions, Nigro still owes the Funds \$37,756.39 in delinquent contributions for the period September through December, 1999.

25. The failure of Nigro to make contributions on behalf of all covered employees as required by the terms of the Funds and the collective bargaining agreement violates §515 of ERISA, 29 U.S.C. §1145.

26. Absent an order from this Court, the defendant will continue to refuse to pay the monies it owes to the Funds, and the Funds and their participants will be irreparably damaged.

27. A copy of this Complaint is being served upon the Secretary of Labor and the Secretary of the Treasury by certified mail as required by §502(h) of ERISA, 29 U.S.C. §1132(h).

COUNT II - VIOLATION OF LMRA
DELINQUENT CONTRIBUTIONS

28. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 27 above.

29. The failure of Nigro to make contributions on behalf of all covered employees as required by the terms of the collective bargaining agreement violates §301 of LMRA, 29 U.S.C. §185.

RELIEF REQUESTED

WHEREFORE, plaintiff Funds requests this Court to grant the following relief:

- a. Order the attachment by trustee process of the bank accounts of Nigro held by Eastern Bank.
- b. Order the attachment of the machinery, inventory and accounts receivable of defendant Nigro.
- c. Enter a preliminary and permanent injunction enjoining Nigro from refusing or failing to make contributions to Plaintiff Funds.
- d. Enter a preliminary and permanent injunction enjoining Nigro from refusing or failing to pay dues to Plaintiff Union.
- e. Enter a temporary restraining order against each of the Reach-and-Apply Defendants, and their agents, servants, employees, attorneys, and upon those persons in active participation or concert with them and those persons acting at their command who receive actual notices of this order by personal service or otherwise, and each and every one of them, from secreting, concealing, destroying, damaging, selling, transferring, pledging, encumbering, assigning or in any way or manner disposing of or reducing the value of, or making any payment

to Nigro Electrical Corp. on account of the sums that are due or will hereafter become due Nigro from the Reach-and-Apply Defendants.

f. After notice and a hearing, enter an Order containing prayer "e" or entering prayer "e" as a preliminary injunction;

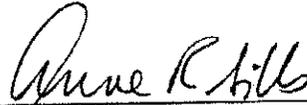
g. Enter judgment in favor of the Plaintiff Funds in the principal amount of \$37,756.39 in unpaid contributions and dues, plus any additional amounts determined by the Court to be owed by Nigro or which may become due during the pendency of this action, together with interest on the unpaid contributions at the rate prescribed under §6621 of the Internal Revenue Code, liquidated damages, reasonable attorneys' fees, and costs, all pursuant to 29 U.S.C. §1132(g)(2); and

h. Such further and other relief as this Court deem appropriate.

Respectfully submitted,

RUSSELL F. SHEEHAN, as he is
ADMINISTRATOR, ELECTRICAL
WORKERS' HEALTH AND WELFARE
FUND, LOCAL 103, I.B.E.W., et al,

By their attorneys,



Anne R. Sills, Esquire
BBO #546576
Segal, Roitman & Coleman
11 Beacon Street
Suite #500
Boston, MA 02108
(617) 742-0208

Dated: October 5, 2000

ARS/ars&ts
3013 97383/amdcmplt.doc
00-045

In signing this letter of assent, the undersigned firm does hereby authorize BOSTON CHAPTER, N.E.C.A.

as its collective bargaining representative for all matters contained in or pertaining to the current and any subsequent approved INSIDE labor agreement between the BOSTON CHAPTER, N.E.C.A. and Local Union 103

IBEW. In doing so, the undersigned firm agrees to comply with, and be bound by, all of the terms and conditions contained in said current and subsequent approved labor agreements. This authorization, in compliance with the current approved labor agreement, shall become effective on the 30th day of AUGUST 1991. It shall remain in effect until terminated by the undersigned employer giving written notice to the BOSTON CHAPTER, N.E.C.A.

and to the Local Union at least one hundred sixty (150) days prior to the then current anniversary date of the applicable approved labor agreement.

The Employer agrees that if a majority of its employees authorize the Local Union to represent them in collective bargaining, the Employer will recognize the Local Union as the NLRB Section 9(a) collective bargaining agent for all employees performing electrical construction work within the jurisdiction of the Local Union on all present and future jobsites.

In accordance with Orders issued by the United States District Court for the District of Maryland on October 10, 1980, in Civil Action HM-77-1302, if the undersigned employer is not a member of the National Electrical Contractors Association, this letter of assent shall not bind the parties to any provision in the above-mentioned agreement requiring payment into the National Electrical Industry Fund, unless the above Orders of Court shall be stayed, reversed on appeal, or otherwise nullified.

SUBJECT TO THE APPROVAL OF THE INTERNATIONAL PRESIDENT, IBEW

NAME OF FIRM

NIGRO ELECTRICAL CORPORATION

-245-8225 telephone (Type or Print) One Center Street, Suite 206, Wakefield, MA 01880

* Federal Employer Identification No.: _____

-246-1946 fax

SIGNED FOR THE EMPLOYER

BY: Dennis M. Nigro (original signature)

NAME* DENNIS M. NIGRO (Type or Print)

TITLE PRESIDENT

DATE AUGUST 31, 1991

SIGNED FOR THE UNION* 103 IBEW
BY: Russell F. Sheehan (original signature)

NAME* RUSSELL F. SHEEHAN

TITLE BUSINESS MANAGER

DATE AUGUST 31, 1991 NOV 4 - 1991

RECEIVED
INTERNATIONAL OFFICE - I. B. E. W.
J. J. Barry, President
This approval does not make the International Party to this agreement

INSTRUCTIONS

- * **NAME OF CHAPTER OR ASSOCIATION**
Insert full name of NECA Chapter or Contractors Association involved.
- * **TYPE OF AGREEMENT***
Insert type of agreement. Example: Inside, Outside Utility, Outside Commercial, Outside Telephone, Residential, Motor Shop, Sign, Tree Trimming, etc. The Local Union must obtain a separate assent to each agreement the employer is assenting to.
- * **LOCAL UNION**
Insert Local Union Number.
- * **EFFECTIVE DATE**
Insert date that the assent for this employer becomes effective. Do not use agreement date unless that is to be the effective date of this Assent.

- * **EMPLOYER'S NAME**
Print or type Company name
- * **FEDERAL EMPLOYER IDENTIFICATION NO.**
Insert the identification number which must appear on all forms filed by the employer with the Internal Revenue Service.
- * **SIGNATURES**
- * **SIGNER'S NAME**
Print or type the name of the person signing the Letter of Assent. International Office copy must contain actual signatures—and reproduced—of a Company representative as well as a Local Union officer.

A MINIMUM OF FOUR COPIES OF THE JOINT SIGNED ASSENTS MUST BE SENT TO THE INTERNATIONAL OFFICE FOR PROCESSING.
IMPORTANT: These forms are printed on special paper and no carbon paper is required for duplicate copies. Remove from the pad enough copies of the form for a complete set and complete the form (the image will transfer to succeeding copies). CAUTION: do not write on padded forms: unused forms below will be spoiled.

B



AGREEMENT AND WORKING RULES

**Governing the
ELECTRICAL INDUSTRY OF
GREATER BOSTON**

Between

**ELECTRICAL WORKERS UNION
LOCAL 103, I.B.E.W.
OF GREATER BOSTON**

and

**ELECTRICAL CONTRACTORS
ASSOCIATION
OF GREATER BOSTON, INC.
BOSTON CHAPTER,
NATIONAL ELECTRICAL
CONTRACTORS ASSOCIATION**

SEPTEMBER 1, 1997 - AUGUST 31, 2000

The only benefit plans in which first-year apprentices and unindentured apprentices must participate are local health and welfare plans and the National Electrical Benefit Fund (NEBF).

3.8 An apprentice is to be under the supervision of a Journeyman Wireman at all times. Journeymen are not required to constantly watch the apprentice but are to lay out the work required and permit the apprentice to perform the work on his/her own. Journeymen are permitted to leave the immediate work area without being accompanied by the apprentice. Only a sixth-period apprentice shall be permitted to work alone on any job without supervision of a Journeyman Wireman.

3.9 The parties to this Agreement shall be bound by the Joint Apprenticeship and Training Trust Fund Agreement, which shall conform to Section 302 of the Labor-Management Relations Act of 1947, as amended, ERISA and other applicable regulations.

The Trustees authorized under this Trust Agreement are hereby authorized to determine the reasonable value of any facilities, materials or services furnished by either party. All funds shall be handled and disbursed in accordance with the Trust Agreement.

3.10 All Employers subject to the terms of this Agreement shall contribute one and one-tenth (1.1) percent of the applicable Journeyman's rate for each hour worked by Journeymen and apprentices above the second period. This sum shall be due the Trust Fund by the same date as is their payment to the NEBF under the terms of the Employees Benefit Agreement.

ARTICLE IV

NATIONAL ELECTRICAL BENEFIT FUND

4.1 It is agreed that in accord with the Employees Benefit Agreement of the National Electrical Benefit Fund ("NEBF"), as entered into between the National Electrical Contractors Association and the International Brotherhood of Electrical Workers on September 3, 1946, as amended,

and now delineated as the Restated Employees Benefit Agreement Trust, that unless authorized otherwise by the NEBF, the individual Employer will forward monthly to the NEBF's designated local collection agent, an amount equal to 3 percent of the gross monthly labor payroll paid to, or accrued by, the employees in this bargaining unit, and a completed payroll report prescribed by the NEBF. The payment shall be made by check or draft and shall constitute a debt due and owing to the NEBF on the last day of each calendar month, which may be recovered by suit initiated by the NEBF or its assignee. The payment and the payroll report shall be mailed to reach the office of the appropriate local collection agent not later than fifteen (15) calendar days following the end of each calendar month.

The individual Employer accepts, and agrees to be bound by, the Restated Employees Benefit Agreement and Trust.

An individual Employer who fails to remit as provided above shall be additionally subject to having this Agreement terminated upon seventy-two (72) hours' notice, in writing, being served by the Union, provided the individual Employer fails to show satisfactory proof that the required payments have been paid to the appropriate local collection agent.

The failure of an individual Employer to comply with the applicable provisions of the Restated Employees Benefit Agreement and Trust shall also constitute a breach of this Labor Agreement.

HEALTH & WELFARE FUND

4.2 To finance the Local 103, IBEW, Health & Welfare Trust Fund, it is mutually agreed between the parties hereto that the Employer will contribute for each actual hour worked by the employees in the bargaining unit, represented by the Union under this Agreement, the applicable sum designated in Appendix "A" of this Agreement.

These contributions are to underwrite the cost of the Health & Welfare Fund established by a declaration of trust dated December 28, 1950.

All payments are due monthly, not later than the fifteenth (15th) day of the month following the incurring of the obligation.

LOCAL 103 PENSION FUND

4.3 To finance the Local 103, IBEW, Pension Trust Fund, it is mutually agreed between the parties hereto that the employer will contribute for each actual hour worked by the employees in the bargaining unit, represented by the Union under this Agreement, the applicable sum designated in Appendix "A" of this Agreement.

These contributions are to underwrite the cost of the Local 103, IBEW, Pension Trust Fund established by a declaration of trust dated August 1, 1958.

All payments are due monthly, not later than the fifteenth (15th) of the month following the incurring of the obligation.

DEFERRED INCOME FUND

4.4 To establish a Deferred Income Fund under a declaration of trust which became effective August 3, 1970, it is mutually agreed that the Employer will contribute for each actual hour worked by the employees in the bargaining unit, represented by the Union under this Agreement, the applicable sum designated in Appendix "A" of this Agreement.

ELECTRICAL INDUSTRY LABOR MANAGEMENT COOPERATION TRUST (EQUALITY FUND)

4.5 To establish an Equality Fund under a declaration of trust which became effective October, 1997, it is mutually agreed that the Employer will contribute for each actual hour worked by the employees in the bargaining unit, represented by the Union under this Agreement, the applicable sum designated in Appendix "A" of this Agreement.

WORKING ASSESSMENT

4.6 The Employer agrees to deduct, upon receipt of a voluntary written authorization, the additional working dues from the pay of each IBEW member. The amount to be deducted shall be the amount specified in the approved Local Union By-Laws. Such amount shall be certified to the Employer by the Local Union upon request by the Employer.

NATIONAL ELECTRICAL INDUSTRY FUND

4.7 Each individual Employer shall contribute an amount not to exceed one percent nor less than .2 of one percent of the productive electrical payroll, as determined by each Local Chapter and approved by the Trustees, with the following exclusions:

(1) Twenty-five percent of all productive electrical payroll in excess of 75,000 man-hours paid for electrical work in any one (1) Chapter area during any one (1) calendar year, but not exceeding 150,000 man-hours.

(2) One hundred percent of all productive electrical payroll in excess of 150,000 man-hours paid for electrical work in any one (1) Chapter area during any one (1) calendar year.

(Productive electrical payroll is defined as the total wages [including overtime] paid with respect to all hours worked by all classes of electrical labor for which a rate is established in the prevailing labor area where the business is transacted.)

Payment shall be forwarded monthly to the National Electrical Industry Fund in a form and manner prescribed by the Trustees no later than fifteen (15) calendar days following the last day of the month in which the labor was performed. Failure to do so will be considered a breach of this Agreement on the part of the individual Employer.

ADMINISTRATIVE MAINTENANCE FUND

4.8 Administrative Maintenance Fund (AMF) – Effective September 1, 1997, each Employer signatory to this Agreement shall contribute ten cents (\$0.10) per hour, up to a maximum of 150,000 man-hours per year, for all hours worked by all employees covered by this Agreement to the AMF.

The fund shall be administered solely by the Boston Chapter National Electrical Contractors Association, Inc., and shall be utilized to pay for the Association's costs of the labor contract administration including negotiations, labor relations, disputes and grievance representation performed on behalf of the signatory Employers. In addition, all other administrative functions required of the management such as service on all funds as required by federal law.

The AMF contribution shall be submitted with all other benefits as delineated in the Labor Agreement by the fifteenth (15th) of the following month in which they are due to the administrator receiving funds. In the event any employer is delinquent in submitting the required Administrative Maintenance Fund to the designated administrator, the administrator shall have the authority to recover any funds, along with any attorney fees, court costs, interest at one (1) percent per month and liquidated damages receiving such funds. The enforcement for the delinquent payments to the fund shall be the sole responsibility of the fund or the Employer, not the Local Union. These monies shall not be used to the detriment of the I.B.E.W.

LOCAL LABOR MANAGEMENT COOPERATION COMMITTEE

4.9 To establish a Local Labor Management Cooperative Committee under a declaration of trust which became effective October , 1997, it is mutually agreed that the Employer will contribute for each actual hour worked by the employees in the bargaining unit, represented by the Union under this Agreement, the applicable sum designated in Appendix "A" of this Agreement.

COLLECTION OF DELINQUENT PAYMENTS

4.10 The Electrical Construction Trust Funds as contained herein shall serve, under the direction of the Trustees or their designees, as collection agent for all jointly administered trust funds and any other funds assigned by the Joint Conference Committee. The individual Employer, as defined herein, shall be bound by rules and regulations promulgated by the Trustees of the Trust Funds as regards collection procedures, including but not limited to legal fees and interest charges.

To the extent an individual Employer becomes delinquent, as determined by the Joint Conference Committee, in making trust fund payments as set forth in this Section, such Employer shall be required to furnish employment records as allowed under Section 6.34 (g) of this Agreement and a current list of projects to include the names and addresses of the project owner, construction manager, general contractor, or any other subcontractor for whom the Employer has performed work.

The required report and payment by check shall be sent or delivered to the Electrical Construction Trust Funds office to arrive not later than the fifteenth (15th) of the month following the incurring of the obligation.

CREDIT UNION PAYROLL DEDUCTION

4.11 Upon written authorization for payroll deduction, the Employer will deduct the amount specified by employees and forward such amount to the Delta-Wye Federal Credit Union on the fifteenth (15th) of the month following the incurring of obligation. The Credit Union will bear all costs in payroll deduction forms and such other material as they may require for such deductions. The parties will make reasonable attempt to implement weekly electronic deposits of credit union deductions on a voluntary basis.

manpower withheld or withdrawn until the Employer becomes current in his Trust Fund obligations, provided the Employer fails to show proof that delinquent payments have been paid.

PAYROLL RECORDS ACCESS

6.35 (g) The parties to this Agreement, upon reasonable request, shall be allowed to examine the Employers' payroll records of all employees working under the terms of this Agreement.

ARTICLE VII NATIONAL LABOR MANAGEMENT COOPERATION COMMITTEE

7.1 The parties agree to participate in the NECA-IBEW National Labor-Management Cooperation Fund, under authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. subsection 175(a) and Section 302(c) (9) of the Labor-Management Relations Act, 29 U.S.C. subsection 186 (c) (9). The purpose of this Fund includes the following:

(1) to improve communication between representatives of labor and management;

(2) to provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organization effectiveness;

(3) to assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) to study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the electrical construction industry;

(5) to sponsor programs which improve job security, enhance economic and community development, and promote the general welfare of the community and the industry;

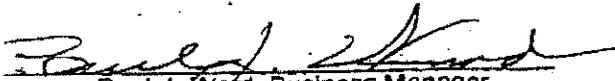
(6) to encourage and support the initiation and operation of similarly constituted local labor-management cooperation committees;

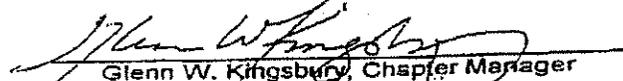
ZONE A (BOSTON)

	9/1/97	1/1/98	9/1/98	9/1/99	
CONTRIBUTIONS LEGEND:					
H&W	\$5.00	\$5.00	\$5.00	\$5.00	per hour
PEN	\$2.45	\$2.75	\$2.75	\$3.25	per hour
DI	\$0.33	\$0.32	\$0.32	\$2.75	per hour
JATF	\$0.50	\$0.50	\$1.00	\$0.34	per hour
EQFD	\$0.01	\$0.01	\$0.01	\$1.00	per hour
LLMCC	\$0.01	\$0.01	\$0.01	\$0.01	per hour
NLMCC	\$0.10	\$0.10	\$0.10	\$0.01	per hour
AMF	3%	3%	3%	3%	of gross pay
NEBF	1%	.65%	.65%	.65%	of gross pay
NEIFISC					
Report on MPR Box:					
V.					
Local Labor-Management Cooperation Committee					
National Labor-Management Cooperation Commit	III.				
Administrative Maintenance Fund	IV.				
National Electrical Benefit Fund	I.				
National Electrical Industry Fund/Service Charge	II.				
Working Assessment	VII.	\$1.12	\$0.82	\$0.82	per hour

**ZONE C
MONTHLY PAYROLL REPORT (MPR): PROCEDURES**

- I. National Electrical Benefit Fund: 3% of gross payroll
 - II. National Electrical Industry Fund/Service Charge: 1% of gross payroll 9/1/97
.65% of gross payroll 1/1/98
- *(Note: NEIF/SC is applicable to NECA members only and not included in Total Package)
- III. National Labor-Management Cooperation Committee: \$0.01 per hour (up to 150,000 hours per year)
 - IV. Administrative Maintenance Fund: \$0.10 per hour (up to 150,000 hours per year)
 - V. Grand Total of Actual Hours Worked multiplied by the DESIGNATED SUM. Sums represent the total of Health & Welfare, Pension, JATF, Deferred Income, Equality Funds, and LLMCC. A & B Rate Apprentices are exempt from the Deferred Income and should be listed on a separate MPR to ensure accurate reporting.
- | | | | |
|------------------|---------------|-----------------------|------------------|
| | | A&B Rate Apprentices: | All Others: |
| DESIGNATED SUMS: | as of 9/1/97: | \$8.22 per hour | \$11.84 per hour |
| | as of 1/1/98: | \$8.52 per hour | \$12.14 per hour |
| | as of 9/1/98: | \$9.52 per hour | \$13.14 per hour |
| | as of 9/1/99: | \$9.53 per hour | \$13.15 per hour |
- VI. Grand Total of all contributions. Mail report and check payable to State Street Bank & Trust Co. to: Electrical Construction Trust Funds, 256 Freeport St.(2nd Floor), Dorchester, MA 02122
 - VII. Working Assessment: Mail the Local Union's (gold) copy of this report, and a check payable to "Local Union 103, IBEW" to: Financial Secretary, Local 103, IBEW, 256 Freeport St., Dorchester, MA 02122.
- Reports should be mailed to their respective offices not later than 15 calendar days following the end of each calendar month. Call 617-969-2521 for Monthly Report Forms.


Paul J. Ward, Business Manager
Local Union 103, IBEW


Glenn W. Kingsbury, Chapter Manager
Boston Chapter, NECA

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RUSSELL F. SHEEHAN, as he is ADMINISTRATOR,
ELECTRICAL WORKERS' HEALTH AND
WELFARE FUND, LOCAL 103, I.B.E.W.;
ELECTRICAL WORKERS' PENSION FUND,
LOCAL 103, I.B.E.W.; ELECTRICAL WORKERS'
SUPPLEMENTARY HEALTH AND WELFARE
FUND, LOCAL 103, I.B.E.W.; ELECTRICAL
WORKERS' DEFERRED INCOME FUND,
LOCAL 103, I.B.E.W.; ELECTRICAL WORKERS'
JOINT APPRENTICESHIP AND TRAINING
FUND, LOCAL 103, I.B.E.W.; ELECTRICAL
WORKERS' EDUCATIONAL AND CULTURAL
FUND; ANTHONY J. SALAMONE, as he is
ADMINISTRATOR, NATIONAL ELECTRICAL
BENEFIT FUND; and LOCAL 103, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,

Plaintiffs

vs.

ROBERT L. MCDONALD d/b/a DESIGN WIRING,
Defendant

and

SOVEREIGN BANK,
Trustee

05 - 11495 PBS

MAGISTRATE JUDGE RBC

RECEIPT # 65611
AMOUNT \$ 250
SUMMONS ISSUED 4
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. Riv
DATE 7/14/05

C.A. No.

COMPLAINT

NATURE OF ACTION

1. This is an action brought pursuant to §§502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1132(a)(3) and (d)(1) and 1145 and §301 of the Labor Management Relations Act ("LMRA"), as amended, 29 U.S.C. §185

by employee benefit plans to enforce the obligations to make contributions to such plans due under the terms of a collective bargaining agreement and the plans.

JURISDICTION

2. The Court has exclusive jurisdiction of this action pursuant to §502(a), (e) and (f) of ERISA, 29 U.S.C. §§1132(a), (e) and (f), without respect to the amount in controversy or the citizenship of the parties.

PARTIES

3. Plaintiff Russell F. Sheehan is the Administrator of the Electrical Workers Health and Welfare Fund, Local 103, I.B.E.W. Electrical Workers' Health and Welfare Fund, Local 103, I.B.E.W. is an "employee welfare benefit plan" within the meaning of §3(3) of ERISA, 29 U.S.C. §1002(3). The Fund is administered at 256 Freeport Street, Dorchester, Massachusetts, within this judicial district.

4. Plaintiff Russell F. Sheehan is the Administrator of the Electrical Workers' Pension Fund, Local 103, I.B.E.W. The Electrical Workers' Pension Fund, Local 103, I.B.E.W. is an "employee pension benefit plan" within the meaning of §3(2) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 256 Freeport Street, Dorchester, Massachusetts, within this judicial district.

5. Plaintiff Russell F. Sheehan is the Administrator of the Electrical Workers' Supplementary Health and Welfare Fund, Local 103, I.B.E.W. The Electrical Workers' Supplementary Health and Welfare Fund, Local 103, I.B.E.W. is an "employee welfare benefit plan" within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 256 Freeport Street, Dorchester, Massachusetts, within this judicial district.

6. Plaintiff Russell F. Sheehan is the Administrator of the Electrical Workers' Deferred Income Fund, Local 103, I.B.E.W. The Electrical Workers' Deferred Income Fund, Local 103, I.B.E.W. is an "employee pension benefit plan" within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 256 Freeport Street, Dorchester, Massachusetts, within this judicial district.

7. Plaintiff Russell F. Sheehan is the Administrator of the Electrical Workers' Joint Apprenticeship and Training Trust Fund, Local 103, I.B.E.W. The Electrical Workers' Joint Apprenticeship Training Trust Fund is an "employee welfare benefit plan" within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 256 Freeport Street, Dorchester, Massachusetts, within this judicial district.

8. Plaintiff Russell F. Sheehan is the Administrator of the Electrical Workers' Educational and Cultural Fund, Local 103, I.B.E.W. The Electrical Workers' Educational and Cultural Fund is administered at 256 Freeport Street, Dorchester, Massachusetts, within this judicial district.

9. Plaintiff Anthony J. Salamone is the Administrator of the National Electrical Benefit Fund. The National Electrical Benefit Plan is an "employee pension benefit plan" within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 2400 Research Boulevard, Suite #500, Rockville, Maryland.

10. The Health and Welfare, Pension, Supplementary Health and Welfare, Deferred Income, Joint Apprenticeship and Training Fund, and National Electrical Benefit Fund are multi-employer plans within the meaning of §3(37) of ERISA, 29 U.S.C. §1002(37). They are hereinafter collectively referred to as "the Funds."

11. Plaintiff Local 103, International Brotherhood of Electrical Workers (“Local 103” or the “Union”) is a labor organization within the meaning of §301 of the LMRA, 29 U.S.C. §185. Local 103 is administered at 256 Freeport Street, Dorchester, Massachusetts.

12. On information and belief, defendant Robert L. McDonald is a Massachusetts resident d/b/a Design Wiring (hereinafter “Design” or “the Employer”). His principal place of business is 43 Trull Road, Tewksbury, Massachusetts and he is an employer engaged in commerce within the meaning of §3(5) and (12) of ERISA, 29 U.S.C. §1002(5) and (12).

13. On information and belief, Sovereign Bank is a banking institution holding assets of the defendant.

GENERAL ALLEGATIONS OF FACT

14. On or about June 19, 1989, defendant Design signed a letter of assent authorizing the Boston Chapter, NECA as its collective bargaining representative for all matters contained in, or pertaining to, the then current and any subsequent collective bargaining agreements between Boston Chapter, NECA and Local Union, 103, I.B.E.W. A copy of Design’s signed agreement (“Letter of Assent”) is attached hereto as Exhibit A.

15. Because of the letter of assent, Design has been a party to successive collective bargaining agreements, including the agreement which is effective from September 1, 2003 through August 31, 2006 (“the Agreement”). A copy of the relevant portions of the 2003-2006 Agreement is attached hereto as Exhibit B.

16. The Agreement, like its predecessor agreements, requires employers to make contributions to Plaintiff Funds for each hour worked by covered employees. The Agreement specifies the amount to be contributed by an employer to each of Plaintiff Funds for each hour

worked. Employers are also required to file monthly Remittance Reports, on which employers calculate the payments they owe.

17. Section 4.9 of the Agreement requires employers that become delinquent in their trust fund contributions to furnish employment records and a current list of projects, including the names and addresses of the owner, manager, general contractor and or subcontractor for whom it has worked. Section 6.38(g) of the Agreement further provides that upon request, the parties thereto shall be allowed to examine the employer's payroll records.

18. Section 4.6 of the Agreement provides that the employer will deduct working dues from the pay of union members upon receipt of authorization from such members and remit those dues to the Union.

**COUNT I - VIOLATION OF ERISA -
DELINQUENT CONTRIBUTIONS**

19. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 18 above.

20. Design has neither made payments for work performed since December, 2004, nor has it submitted remittance reports for this time period. Without the remittance reports, the Funds are unable to liquidate Design's liability.

21. By certified letters dated January 31, May 4, and June 8, 2005, the Funds' attorney notified Design of its delinquency for the above-mentioned periods and demanded payment.

22. To date, Design has failed and refused to respond to these letters or to make any payments to the Funds.

23. The failure of Design to make contributions on behalf of all covered employees as required by the terms of the Funds and the collective bargaining agreement violates §515 of ERISA, 29 U.S.C. §1145.

24. Absent an order from this Court, the defendant will continue to refuse to pay the monies it owes to the Funds, and the Funds and their participants will be irreparably damaged.

25. A copy of this Complaint is being served upon the Secretary of Labor and the Secretary of the Treasury by certified mail as required by §502(h) of ERISA, 29 U.S.C. §1132(h).

**COUNT II - VIOLATION OF LMRA
DELINQUENT CONTRIBUTIONS**

26. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 25 above.

27. The failure of Design to make contributions on behalf of all covered employees as required by the terms of the collective bargaining agreement violates §301 of LMRA, 29 U.S.C. §185.

**COUNT III - VIOLATION OF LMRA
DELINQUENT DUES**

28. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-27 above.

29. On information and belief, Design deducted dues from its employees' paychecks for the unreported hours and failed to remit those dues to the Union.

30. Design owes the Union an as yet unliquidated amount of dues for the period January, 2005 to the present.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request this Court to grant the following relief:

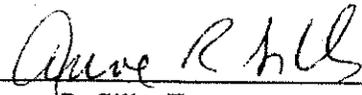
- a. Order the attachment by trustee process of the bank accounts of McDonald and Design held by Sovereign Bank;
- b. Order the attachment of the machinery, inventory and accounts receivable of defendant Design;
- c. Enter a preliminary and permanent injunction enjoining Design from refusing or failing to make contributions to Plaintiff Funds;
- d. Enter a preliminary and permanent injunction enjoining Design from refusing or failing to provide the payroll and work records as required by the collective bargaining agreement;
- e. Enter a preliminary and permanent injunction enjoining Design from refusing or failing to remit dues;
- f. Enter judgment in favor of the Plaintiff Funds in the amount determined by the Court to be owed by Design or which may become due during the pendency of this action, together with interest on the unpaid contributions at the rate prescribed under §6621 of the Internal Revenue Code, liquidated damages, reasonable attorneys' fees, and costs, all pursuant to 29 U.S.C. §1132(g)(2);
- g. Enter judgment in favor of the Plaintiff Union in the amount determined by the Court to be owed by Design or which may come due during the pendency of this action, and;

h. Such further and other relief as this Court deem appropriate.

Respectfully submitted,

RUSSELL F. SHEEHAN, as he is
ADMINISTRATOR, ELECTRICAL
WORKERS' HEALTH AND WELFARE
FUND, LOCAL 103, I.B.E.W., et al,

By their attorneys,



Anne R. Sills, Esquire
BBO #546576
Gregory A. Geiman, Esquire
BBO #655207
Segal, Roitman & Coleman
11 Beacon Street
Suite #500
Boston, MA 02108
(617) 742-0208

Dated: July 13, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE
2005-7 10 2:53
U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

05 10424

RUSSELL F. SHEEHAN, as he is ADMINISTRATOR,
ELECTRICAL WORKERS' HEALTH AND
WELFARE FUND, LOCAL 103, I.B.E.W.;
ELECTRICAL WORKERS' PENSION FUND,
LOCAL 103, I.B.E.W.; ELECTRICAL WORKERS'
SUPPLEMENTARY HEALTH AND WELFARE
FUND, LOCAL 103, I.B.E.W.; ELECTRICAL
WORKERS' DEFERRED INCOME FUND,
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JOINT APPRENTICESHIP AND TRAINING
FUND, LOCAL 103, I.B.E.W.; ELECTRICAL
WORKERS' EDUCATIONAL AND CULTURAL
FUND; ANTHONY J. SALAMONE, as he is
ADMINISTRATOR, NATIONAL ELECTRICAL
BENEFIT FUND; and LOCAL 103, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,

MAGISTRATE JUDGE W. J. ...

Plaintiffs,

vs.

RICHARD W. REID ELECTRICAL COMPANY, INC.,
Defendant,

and

CITY OF BOSTON, PUBLIC FACILITIES DEPARTMENT,
Reach-and-Apply Defendant

RECEIPT # 62561
AMOUNT \$ 50
SUMMONS ISSUED Y67
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. GLK
DATE 3/7/05

C.A. No.

COMPLAINT

NATURE OF ACTION

1. This is an action brought pursuant to §§502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1132(a)(3) and (d)(1) and 1145 and §301 of the Labor Management Relations Act ("LMRA"), as amended, 29 U.S.C. §185

by employee benefit plans to enforce the obligations to make contributions to such plans due under the terms of a collective bargaining agreement and the plans.

JURISDICTION

2. The Court has exclusive jurisdiction of this action pursuant to §502(a), (e) and (f) of ERISA, 29 U.S.C. §§1132(a), (c) and (f), without respect to the amount in controversy or the citizenship of the parties.

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11. Plaintiff Local 103, International Brotherhood of Electrical Workers ("Local 103" or the "Union") is a labor organization within the meaning of §301 of the LMRA, 29 U.S.C. §185. Local 103 is administered at 256 Freeport Street, Dorchester, Massachusetts.

12. Defendant Richard W. Reid Electrical Company, Inc. (hereinafter "Reid" or "the Employer") is a Massachusetts corporation with a principal place of business at 23 Walkers Brook Drive, Reading, Massachusetts, and is an employer engaged in commerce within the meaning of §3(5) and (12) of ERISA, 29 U.S.C. §1002(5) and (12).

13. Reach-and-apply defendant City of Boston, Public Facilities Department (hereinafter "City") is a department of a municipality incorporated under the laws of the Commonwealth of Massachusetts with a principal place of business at City Hall Plaza, Boston, Massachusetts. Upon information and belief, Reid has filed suit against City in a state court matter that the parties are currently attempting to resolve through the use of mediation. The Funds have a legal or equitable interest in the sums from the resulting settlement or from any other means of resolving the lawsuit, and these sums cannot be reached to be attached or taken on execution until such time as they come into the possession of Reid.

GENERAL ALLEGATIONS OF FACT

14. On or about May 2, 1988, defendant Reid signed a letter of assent authorizing the Boston Chapter, NECA as its collective bargaining representative for all matters contained in, or pertaining to, the then current and any subsequent collective bargaining agreements between Boston Chapter, NECA and Local Union, 103, I.B.E.W. A copy of Reid's signed agreement ("Letter of Assent") is attached hereto as Exhibit A.

15. Because of the letter of assent, Reid has been a party to successive collective bargaining agreements, including the agreement which is effective from September 1, 2003

through August 31, 2006 ("the Agreement"). A copy of the relevant portions of the 2003-2006 Agreement is attached hereto as Exhibit B.

16. The Agreement, like its predecessor agreements, requires employers to make contributions to Plaintiff Funds for each hour worked by covered employees. The Agreement specifies the amount to be contributed by an employer to each of Plaintiff Funds for each hour worked. Employers are also required to file monthly Remittance Reports, on which employers calculate the payments they owe.

17. Section 4.6 of the Agreement provides that the employer will deduct working dues from the pay of union members upon receipt of authorization from such members and remit those dues to the Union.

**COUNT I - VIOLATION OF ERISA -
DELINQUENT CONTRIBUTIONS**

18. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 17 above.

19. According to the Remittance Reports that Reid has submitted to the Funds, Reid employed electricians between March and August, 2004 and accrued a liability to the Funds of \$493,553.73 in fringe benefit contributions for the work they performed during this time period. Reid also owes an as yet unliquidated amount in fringe benefit contributions for work performed in September, 2004. Without remittance reports for this period, the Funds are unable to liquidate Reid's additional liability.

20. By certified letters dated April 28 and June 17, 2004, the Funds' attorney notified Reid of its delinquency for the above-mentioned periods and demanded payment.

21. Reid subsequently paid the Funds \$239,431.82 toward its contribution liability, thereby reducing the balance due through August, 2004 to \$254,121.91.

22. To date, however, Reid has failed to pay the Funds the \$254,121.91 in fringe benefit contributions still owed through August, 2004, and the as yet unliquidated amount owed for the period September, 2004 to the present.

23. The failure of Reid to make contributions on behalf of all covered employees as required by the terms of the Funds and the collective bargaining agreement violates §515 of ERISA, 29 U.S.C. §1145.

24. Absent an order from this Court, the defendant will continue to refuse to pay the monies it owes to the Funds, and the Funds and their participants will be irreparably damaged.

25. A copy of this Complaint is being served upon the Secretary of Labor and the Secretary of the Treasury by certified mail as required by §502(h) of ERISA, 29 U.S.C. §1132(h).

**COUNT II - VIOLATION OF LMRA
DELINQUENT CONTRIBUTIONS**

26. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 25 above.

27. The failure of Reid to make contributions on behalf of all covered employees as required by the terms of the collective bargaining agreement violates §301 of LMRA, 29 U.S.C. §185.

**COUNT III - VIOLATION OF LMRA
DELINQUENT DUES**

28. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-27 above.

29. On information and belief, Reid deducted dues from its employees' paychecks for the unreported hours and failed to remit those dues to the Union.

30. Reid owes the Union \$12,586.06 in dues for the period March through August, 2004 and an as yet unliquidated amount of dues for the period September, 2004 to the present.

COUNT IV - REACH-AND-APPLY AGAINST THE CITY

31. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-30 above.

32. Reid has filed a state court action against the City, claiming damages in excess of \$1.9 million for a breach of contract resulting from work done by Reid for the City. Upon information and belief, the parties are currently attempting to resolve a piece of this litigation through the use of mediation. The Funds have a legal or equitable interest in the sums from the resulting settlement or from any other means of resolving the lawsuit, and these sums cannot be reached to be attached or taken on execution until such time as they come into the possession of Reid.

33. Further, there is no known insurance available to satisfy the judgment the Funds will obtain against Reid.

34. The funds held by the City cannot be attached or taken on execution except pursuant to G.L. c. 214, §3(6).

RELIEF REQUESTED

WHEREFORE, Plaintiffs request this Court to grant the following relief:

a. Order the attachment of the machinery, inventory and accounts receivable of defendant Reid;

b. Enter a preliminary and permanent injunction enjoining Reid from refusing or failing to make contributions to Plaintiff Funds;

c. Enter a preliminary and permanent injunction enjoining Reid from refusing or failing to remit dues;

d. Enter judgment in favor of the Plaintiff Funds in the amount of \$254,121.91 and any additional amounts determined by the Court to be owed by Reid or which may become due during the pendency of this action, together with interest on the unpaid contributions at the rate prescribed under §6621 of the Internal Revenue Code, liquidated damages, reasonable attorneys' fees, and costs, all pursuant to 29 U.S.C. §1132(g)(2);

e. Enter judgment in favor of the Plaintiff Union in the amount of \$12,586.06 and any additional amount determined by the Court to be owed by Reid or which may come due during the pendency of this action;

f. Enter a temporary restraining order against the City and its agents, servants, employees, attorneys, and upon those persons in active participation or concert with them and those persons acting at their command who receive actual notices of this order by personal service or otherwise, and each and every one of them, from secreting, concealing, destroying, damaging, selling, transferring, pledging, encumbering, assigning, or in any way or manner disposing of or reducing the value of, or making any payment to Reid on account of sums that are due or will hereafter become due Reid from the City;

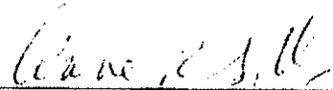
g. After notice and a hearing, enter an Order containing prayer "f" or entering prayer "f" as a preliminary injunction; and

h. Such further and other relief as this Court deem appropriate.

Respectfully submitted,

RUSSELL F. SHEEHAN, as he is
ADMINISTRATOR, ELECTRICAL
WORKERS' HEALTH AND WELFARE
FUND, LOCAL 103, I.B.E.W., et al,

By their attorneys,



Anne R. Sills, Esquire
BBO #546576
Gregory A. Geiman, Esquire
BBO #655207
Segal, Roitman & Coleman
11 Beacon Street
Suite #500
Boston, MA 02108
(617) 742-0208

Dated: March 2, 2005

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RICHARD P. GAMBINO, as he is ADMINISTRATOR,
LOCAL 103, I.B.E.W. HEALTH BENEFIT PLAN;
ELECTRICAL WORKERS' PENSION FUND, LOCAL
103, I.B.E.W.; ELECTRICAL WORKERS' DEFERRED
INCOME FUND, LOCAL 103, I.B.E.W.; JOINT
APPRENTICESHIP AND TRAINING FUND; and
LAWRENCE J. BRADLEY, as he is EXECUTIVE
SECRETARY-TREASURER, NATIONAL ELECTRICAL
BENEFIT FUND,

Plaintiffs,

vs.

BRADFORD E. HOWSE d/b/a HOWSE SECURITY &
CONTROLS,

Defendant, and

CITIZENS BANK,

Trustee.

C.A. No.

VERIFIED COMPLAINT

NATURE OF ACTION

1. This is an action brought pursuant to §§502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1132(a)(3) and (d)(1) and 1145 and pursuant to §301 of the Labor Management Relations Act ("LMRA"), as amended, 29 U.S.C. §185, by employee benefit plans to enforce the obligation to pay benefit contributions and interest due to the plans under the terms of a collective bargaining agreement and the plans.

JURISDICTION

2. The Court has exclusive jurisdiction of this action pursuant to §502(a), (e) and (f) of ERISA, 29 U.S.C. §1132(a), (e) and (f), and §301 of the LMRA, as amended, 29 U.S.C. §185, without respect to the amount in controversy or the citizenship of the parties.

PARTIES

3. Plaintiff Richard P. Gambino is the Administrator of the Local 103, I.B.E.W. Health Benefit Plan (“Health Plan”). The Health Plan is an “employee welfare benefit plan” within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Health Plan is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

4. Plaintiff Richard P. Gambino is also the Administrator of the Electrical Workers’ Pension Fund, Local 103, I.B.E.W. (“Pension Fund”). The Pension Fund is an “employee pension benefit plan” within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Pension Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

5. Plaintiff Richard P. Gambino is also the Administrator of the Electrical Workers’ Deferred Income Fund, Local 103, I.B.E.W. (“Deferred Income Fund”). The Deferred Income Fund is an “employee pension benefit plan” within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Deferred Income Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

6. Plaintiff Richard P. Gambino is also the Administrator of the Joint Apprenticeship and Training Fund (“JATC”). The JATC is an “employee welfare benefit plan” within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The JATC is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

7. Plaintiff Lawrence J. Bradley is the Executive Secretary-Treasurer of the National Electrical Benefit Fund (“National Fund”). The National Fund is an “employee pension benefit plan” within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The National Fund is administered at 2400 Research Boulevard, Suite #500, Rockville, Maryland.

8. The Health Plan, Pension Fund, Deferred Income Fund, JATC, and National Fund

are multi-employer plans within the meaning of §3(37)(A) of ERISA, 29 U.S.C. §1002(37)(A). They are hereinafter collectively referred to as “the Funds.”

9. On information and belief, at all times relevant hereto, defendant Bradford E. Howse has been president of and has done business as Howse Security & Controls (hereinafter “Howse”), and is an employer engaged in commerce within the meaning of §3(5) and (12) of ERISA, 29 U.S.C. §1002(5) and (12) and within the meaning of §301 of the LMRA, 29 U.S.C. §185.

10. Upon information and belief, Citizens Bank is a banking institution holding assets of the Defendant.

GENERAL ALLEGATIONS OF FACT

11. On or about May 2, 2000, Howse signed a Letter of Assent authorizing the Boston Chapter, NECA as its collective bargaining representative for all matters contained in, or pertaining to, the then current and any subsequent collective bargaining agreements between Boston Chapter, NECA and Local Union, 103, I.B.E.W. A true and accurate copy of the Letter of Assent is attached hereto as Exhibit A.

12. Because of the Letter of Assent, Howse has been a party to successive collective bargaining agreements, including the agreement which is currently effective for the period September 1, 2006 through August 31, 2011, a copy of which is attached hereto as Exhibit B (“NECA Agreement”).

13. The NECA Agreement, like its predecessor agreements, requires signatory employers to pay benefit contributions to Plaintiff Funds for covered employees. The NECA Agreement specifies the amount to be contributed and specifies further that these amounts are to be paid by the 15th of the subsequent month.

14. Section 502(g)(2) of ERISA mandates that a signatory contractor such as Howse pay interest using the rate provided under the relevant plan, if applicable. 29 U.S.C. §1132(g)(2). Here, Section 6.37(f) of the NECA Agreement provides that a delinquent fee must be paid for all payments made after the 15th of the month. The Trustees of the Funds have determined that the delinquent fee to be charged on the late payment of contributions be set at 1.5 percent per month. This interest is calculated from the date contributions were due until the date that they are actually paid. The Trustees have further determined that employers that are delinquent as of December 1st in payments due prior thereto to the Electrical Workers Deferred Income Fund, Local 103, I.B.E.W. ("DIF"), shall pay a liquidated damages assessment equal to the amount of the delinquency as of December 1st multiplied by the percentage used to allocate net investment income to individual accounts under the DIF for the year ending on November 30.

15. Howse has failed to pay benefit contributions for the months of November 2008 through February, 2009, totaling \$4,750.00. It also owes the Funds \$305.76 in past due interest for previous late payments of benefit contributions.

16. Funds' counsel sent a letter to Howse via first class and certified mail, return receipt requested, demanding payment of the November, 2008 through February, 2009 benefit contributions, together with the \$305.76 in interest on previous delinquent payments and attorney's fees. A copy of Fund counsel's letter of April 20, 2010 is attached hereto as Exhibit C.

17. To date, despite repeated demands, the aforementioned benefit contributions and interest on late payments remain due and owing in the amount of \$5,055.76, plus continuing interest, liquidated damages, and reasonable attorney's fees and costs.

COUNT I - VIOLATION OF ERISA -CONTRIBUTIONS AND INTEREST

18. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 17 above.

19. Absent an order from this Court, the Defendant will continue to refuse and fail to pay the delinquent benefit contributions it owes the Funds for the months of November, 2008 through February, 2009, plus the interest on late payments, and the Funds and their participants will be irreparably damaged.

20. A copy of this Complaint is being served upon the Secretary of Labor and the Secretary of the Treasury by certified mail as required by §502(h) of ERISA, 29 U.S.C. §1132(h).

COUNT II - VIOLATION OF COLLECTIVE BARGAINING AGREEMENT

21. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 20 above.

22. The failure of Howse to pay benefit contributions owed on behalf of covered employees and to pay interest on these late payments violates the terms of the NECA Agreement.

RELIEF REQUESTED

WHEREFORE, plaintiffs request this Court to grant the following relief:

a. Order the attachment by trustee process of the bank accounts of Howse held by Citizens Bank;

b. Order the attachment of the machinery, inventory and accounts receivable of Howse;

c. Enter a preliminary and permanent injunction enjoining Howse from refusing or failing to make payment of the contributions it owes to Plaintiff Funds;

d. Enter judgment on Count I in the amount of \$4,750.00 for benefit contributions owed for the months of November, 2008 through February, 2009, \$305.76 in past-due interest, plus any additional amounts determined by the Court to be owed by Howse or which may become due during the pendency of this action, together with continuing interest, liquidated damages, and reasonable attorneys' fees and costs, all pursuant to 29 U.S.C. §1132(g)(2);

e. Enter judgment on Count II in the amount of \$4,750.00 for benefit contributions owed for the months of November, 2008 through February, 2009, \$305.76 in past-due interest, plus any additional amounts determined by the Court to be owed by Howse or which may become due during the pendency of this action, together with reasonable attorneys' fees and costs in accordance with the collective bargaining agreement; and

f. Such further and other relief as this Court may deem appropriate.

Respectfully submitted,

RICHARD P. GAMBINO, as he is
ADMINISTRATOR, LOCAL 103, I.B.E.W.
HEALTH BENEFIT PLAN, *et al.*,

By their attorneys,

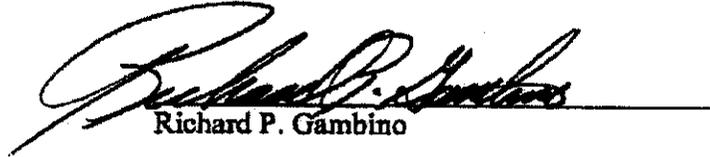
/s/ Kathryn S. Shea
Kathryn S. Shea, BBO # 547188
Anne R. Sills, BBO #546576
Segal Roitman, LLP
111 Devonshire Street, 5th Floor
Boston, MA 02109
(617) 742-0208, Ext. 232
kshea@segalroitman.com

Dated: June 4, 2010

VERIFICATION

I, Richard P. Gambino, Administrator for the Local 103, I.B.E.W. Health Benefit Plan, et al., verify that I have read the above Complaint, and the allegations set forth therein are true and accurate based on my personal knowledge, except for those allegations based on information and belief, and, as to those allegations, I believe them to be true.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 3 DAY OF
MAY, 2010.


Richard P. Gambino

KSS/ks&ams
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RICHARD P. GAMBINO, as he is ADMINISTRATOR,
ELECTRICAL WORKERS' HEALTH AND WELFARE
FUND, LOCAL 103, I.B.E.W.; ELECTRICAL WORKERS'
PENSION FUND, LOCAL 103, I.B.E.W.; ELECTRICAL
WORKERS' SUPPLEMENTARY HEALTH AND
WELFARE FUND, LOCAL 103, I.B.E.W.; ELECTRICAL
WORKERS' DEFERRED INCOME FUND, LOCAL 103,
I.B.E.W.; ELECTRICAL WORKERS' JOINT
APPRENTICE AND TRAINING FUND, LOCAL 103,
I.B.E.W.; ELECTRICAL WORKERS' EDUCATIONAL
AND CULTURAL FUND; LAWRENCE J. BRADLEY,
as he is EXECUTIVE SECRETARY-TREASURER,
NATIONAL ELECTRICAL BENEFIT FUND,
Plaintiffs,

vs.

TRI-STATE SIGNAL, INC.,
Defendant,

and

MIDDLESEX SAVINGS BANK,
Trustee.

C.A. No.

VERIFIED COMPLAINT

NATURE OF ACTION

1. This is an action brought pursuant to §§502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1132(a)(3) and (d)(1) and 1145 and pursuant to §301 of the Labor Management Relations Act ("LMRA"), as amended, 29 U.S.C. §185, by employee benefit plans to enforce the obligation to pay fringe benefit

contributions and interest due to the plans under the terms of a collective bargaining agreement and the plans.

JURISDICTION

2. The Court has exclusive jurisdiction of this action pursuant to §502(a), (e) and (f) of ERISA, 29 U.S.C. §1132(a), (e) and (f), and §301 of the LMRA, as amended, 29 U.S.C. §185, without respect to the amount in controversy or the citizenship of the parties.

PARTIES

3. Plaintiff Richard P. Gambino is the Administrator of the Electrical Workers' Health and Welfare Fund, Local 103, I.B.E.W. Richard P. Gambino is a fiduciary within the meaning of §3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The Electrical Workers' Health and Welfare Fund, Local 103, I.B.E.W. is an "employee welfare benefit plan" within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

4. Plaintiff Richard P. Gambino is the Administrator of the Electrical Workers' Pension Fund, Local 103, I.B.E.W. Richard P. Gambino is a fiduciary within the meaning of §3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The Electrical Workers' Pension Fund, Local 103, I.B.E.W. is an "employee pension benefit plan" within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

5. Plaintiff Richard P. Gambino is the Administrator of the Electrical Workers' Supplementary Health and Welfare Fund, Local 103, I.B.E.W. Richard P. Gambino is a fiduciary within the meaning of §3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The Electrical Workers' Supplementary Health and Welfare Fund, Local 103, I.B.E.W. is an "employee welfare

benefit plan” within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

6. Plaintiff Richard P. Gambino is the Administrator of the Electrical Workers’ Deferred Income Fund, Local 103, I.B.E.W. Richard P. Gambino is a fiduciary within the meaning of §3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The Electrical Workers’ Deferred Income Fund, Local 103, I.B.E.W. is an “employee pension benefit plan” within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

7. Plaintiff Richard P. Gambino is the Administrator of the Electrical Workers’ Joint Apprenticeship and Training Trust Fund, Local 103, I.B.E.W. Richard P. Gambino is a fiduciary within the meaning of §3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The Electrical Workers’ Joint Apprenticeship Training Trust Fund is an “employee welfare benefit plan” within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

8. Plaintiff Richard P. Gambino is the Administrator of the Electrical Workers’ Educational and Cultural Fund, Local 103, I.B.E.W. The Electrical Workers’ Educational and Cultural Fund is administered at 256 Freeport Street, Boston, Massachusetts, within this judicial district.

9. Plaintiff Lawrence J. Bradley is the Executive Secretary-Treasurer of the National Electrical Benefit Fund. Lawrence J. Bradley is a fiduciary within the meaning of §3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The National Electrical Benefit Plan is an “employee pension benefit plan” within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 2400 Research Boulevard, Suite #500, Rockville, Maryland.

10. The Health and Welfare, Pension, Supplementary Health and Welfare, Deferred Income, Joint Apprenticeship and Training Fund, and National Electrical Benefit Fund are multi-employer plans within the meaning of §3(37)(A) of ERISA, 29 U.S.C. §1002(37)(A). They are hereinafter collectively referred to as "the Funds."

11. Defendant Tri-State Signal, Inc. (hereinafter "Tri-State") is a Massachusetts corporation with a principal place of business at 111 Crescent Avenue, Chelsea, Massachusetts, and is an employer engaged in commerce within the meaning of §3(5) and (12) of ERISA, 29 U.S.C. §1002(5) and (12) and within the meaning of §301 of the LMRA, 29 U.S.C. §185.

12. Upon information and belief, Middlesex Savings Bank is a banking institution holding assets of the Defendant.

GENERAL ALLEGATIONS OF FACT

13. On or about March 5, 1999, Tri-State signed a Letter of Assent authorizing the Boston Chapter, NECA as its collective bargaining representative for all matters contained in, or pertaining to, the then current and any subsequent collective bargaining agreements between Boston Chapter, NECA and Local Union, 103, I.B.E.W (the "Union"). A copy of Tri-State's signed agreement ("Letter of Assent") is attached hereto as Exhibit A.

14. Tri-State has been a party to successive collective bargaining agreements, including the agreement which is currently effective for the period September 1, 2006 through August 31, 2011, a copy of which is attached hereto as Exhibit B ("NECA Agreement").

15. The NECA Agreement, like its predecessor agreements, requires signatory employers to make contributions to Plaintiff Funds for each hour worked by covered employees. The NECA Agreement specifies the amount to be contributed by an employer to each of Plaintiff Funds for each hour worked and specifies further that these amounts are to be paid by the 15th of

the subsequent month. The NECA Agreement also specifies that working dues are to be deducted from the pay of each employee and forwarded to the Funds. The Funds and the Union have a separate agreement which allows the Funds to collect the working dues on behalf of the Union.

16. Section 502(g)(2) of ERISA mandates that a signatory contractor such as Tri-State pay interest using the rate provided under the relevant plan, if applicable. 29 U.S.C. §1132(g)(2). Here, Section 6.37(f) of the NECA Agreement provides that a delinquent fee must be paid for all payments made after the 15th of the month. The Trustees of the Funds have determined that the delinquent fee to be charged on the late payment of contributions be set at 1.5 percent per month. See Funds' Collection Policy, §4.05, attached hereto as Exhibit C.

17. Tri-State has failed to pay the balance of contributions it owes for work performed by its employees during the month of July, 2009, and has not paid any contributions for work performed by its employees during the months of August, September, and October, 2009. According to remittance reports that Tri-State submitted to the Funds, by which it delineated the hours worked by each of its employees per month, Tri-State continues to owe contributions totaling \$19,309.25 for work performed in July, 2009, \$53,864.68 for work performed in August, 2009, and \$68,633.15 for work performed in September, 2009. Contributions due for work performed in October, 2009 are currently unliquidated because the Funds have not yet received a remittance report from Tri-State for that month.

18. Further, Tri-State will owe interest once its outstanding contributions for July through October, 2009 have been paid, but the interest owed for these late payments cannot be calculated until they are in fact paid.

19. Funds' counsel demanded payment of the delinquent July and August, 2009 contributions via certified mail sent to Tri-State on September 18, 2009. A copy of Funds' counsel's September 18, 2009 letter, along with the signed return receipt, is attached hereto as Exhibit D. September, 2009 contributions subsequently came due on October 15, 2009, and October, 2009 contributions subsequently came due on November 15, 2009.

20. To date, the aforementioned contributions remains due and owing.

**COUNT I - VIOLATION OF ERISA -
UNPAID AND UNDERPAID CONTRIBUTIONS**

21. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 20 above.

22. Absent an order from this Court, the Defendant will continue to refuse and fail to pay the contributions it owes the Funds for the months of July through October, 2009, and the Funds and their participants will be irreparably damaged.

23. The failure of Tri-State to make payment of all contributions owed on behalf of all covered employees violates §515 of ERISA, 29 U.S.C. §1145.

24. A copy of this Complaint is being served upon the Secretary of Labor and the Secretary of the Treasury by certified mail as required by §502(h) of ERISA, 29 U.S.C. §1132(h).

**COUNT II - VIOLATION OF THE
COLLECTIVE BARGAINING AGREEMENT**

25. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 24 above.

26. The failure of Tri-State to pay contributions owed on behalf of all covered employees violates the terms of the NECA Agreement.

RELIEF REQUESTED

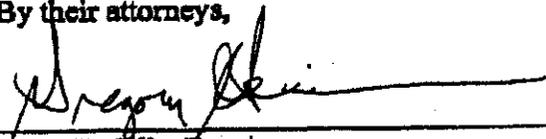
WHEREFORE, Plaintiffs request this Court to grant the following relief:

- a. Order the attachment by trustee process of the bank accounts of Tri-State held by Middlesex Savings Bank;
- b. Order the attachment of the machinery, inventory and accounts receivable of Tri-State;
- c. Enter a preliminary and permanent injunction enjoining Tri-State from refusing or failing to make payment of contributions owed to Plaintiff Funds;
- d. Enter judgment in favor of the Plaintiff Funds on Count I in the amount of \$141,807.08, representing contributions owed for July through September, 2009, together with an as-yet unliquidated amount of contributions owed for the month of October, 2009, plus any additional amounts determined by the Court to be owed the Funds or which may become due during the pendency of this action, together with interest on the unpaid contributions, liquidated damages, attorneys' fees and costs, pursuant to 29 U.S.C. §1132(g)(2);
- e. Enter judgment in favor of the Plaintiff Funds on Count II in the amount of \$141,807.08, representing contributions owed for July through September, 2009, together with an as-yet unliquidated amount of contributions owed for the month of October, 2009, plus any additional amounts determined by the Court to be owed the Funds or which may become due during the pendency of this action; and
- f. Such further and other relief as this Court may deem appropriate.

Respectfully submitted,

RICHARD P. GAMBINO, as he is
ADMINISTRATOR, ELECTRICAL
WORKERS' HEALTH AND WELFARE
FUND, LOCAL 103, I.B.E.W., *et al.*,

By their attorneys,



Anne R. Sills, Esquire
BBO #546576

Gregory A. Geiman
BBO #655207

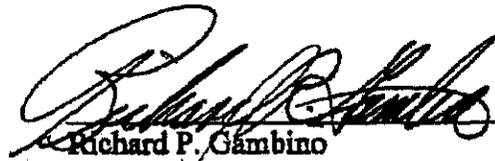
Segal Roitman, LLP
111 Devonshire Street, 5th Floor
Boston, MA 02109
(617) 742-0208 Ext. 252
ggeiman@segalroitman.com

Dated: November 17, 2009

VERIFICATION

I, Richard P. Gambino, Administrator for the Electrical Workers' Health & Welfare Fund, Local 103, I.B.E.W., verify that I have read the above Complaint, and the allegations set forth therein are true and accurate based on my personal knowledge, except for those allegations based on information and belief, and, as to those allegations, I believe them to be true.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 16 DAY OF
NOVEMBER, 2009.


Richard P. Gambino

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Proposed Lead Counsel for the Class*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SAFRON CAPITAL CORPORATION,
Individually and On Behalf of All Others Similarly
Situated,

Plaintiff,

vs.

CHESAPEAKE ENERGY CORPORATION,
AUBREY K. MCCLENDON, MARCUS C.
ROWLAND, MICHAEL A. JOHNSON,
RICHARD K. DAVIDSON, FRANK A.
KEATING, BREENE M. KERR, CHARLES T.
MAXWELL, MERRILL A. MILLER, JR.,
DONALD L. NICKLES, FREDERICK B.
WHITTEMORE, UBS INVESTMENT BANK,
ABN AMRO, BANC OF AMERICA
SECURITIES LLC and WELLS FARGO
SECURITIES,

Defendants.

Electronically Filed

Civil Action No. 1:09-cv-01826-LTS

Judge Laura T. Swain

Mag. Judge Kevin Nathaniel Fox

**MEMORANDUM OF LAW IN SUPPORT OF
THE MOTION OF ELECTRICAL WORKERS PENSION FUND,
LOCAL 103, I.B.E.W. FOR APPOINTMENT AS
LEAD PLAINTIFF AND APPROVAL OF SELECTION OF LEAD COUNSEL**

Class member Electrical Workers Pension Fund, Local 103, I.B.E.W. ("Local 103") respectfully submits this Memorandum of Law in support of its motion, pursuant to Section 27(a)(3) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77z-1(a)(3), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), for an order: (i) appointing Local 103 as Lead Plaintiff of a class of all persons or entities who purchased the stock of Chesapeake Energy Company ("Chesapeake" or the "Company"); (ii) approving Local 103's selection of Labaton Sucharow LLP ("Labaton Sucharow") as Lead Counsel for the class; and (iii) granting such other and further relief as the Court may deem just and proper.

PRELIMINARY STATEMENT

This case alleges that Chesapeake, certain of its officers and directors, and the underwriters of its July 15, 2008 secondary public offering (the "Offering") (collectively, "Defendants") violated the federal securities laws by issuing materially false and misleading statements concerning, *inter alia*, key information about the Company's natural gas hedging contracts. The above-captioned action (the "Action") is brought on behalf of all persons who purchased Chesapeake common stock in the Offering (the "Class").

Pursuant to the PSLRA, the Court should appoint the "most adequate plaintiff" to serve as Lead Plaintiff in the action. 15 U.S.C. § 77z-1(a)(3)(B)(i). In that regard, the Court should determine which movant has the "largest financial interest" in the relief sought by the Class in this litigation and has made a *prima facie* showing that it is an adequate class representative under Rule 23 of the Federal Rules of Civil Procedure. 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I). Having suffered losses totaling approximately \$26,807 as a result of its investment in Chesapeake common stock, Local 103 believes it has suffered the largest financial loss of any other movant seeking appointment as lead plaintiff in the Action and, as such, has the largest

financial interest in the outcome of this litigation and otherwise meets the applicable requirements of Rule 23 of the Federal Rules of Procedure (“Rule 23”). *See* Certification and Loss Analysis, Exs. A and B to the accompanying Declaration of Alan I. Ellman (“Ellman Decl.”).

Local 103 also satisfies the adequacy and typicality requirements of Rule 23, as discussed *infra*. Local 103 is a sophisticated institutional investor who stands in the shoes of all other class members and is ready and able to spearhead this litigation in the best interests of the class. Indeed, the PSLRA’s legislative history shows that Local 103 is precisely the type of sophisticated institutional investor whose participation in securities class actions the PSLRA was meant to foster. In short, Local 103 is the “most adequate plaintiff” and should be appointed Lead Plaintiff.

Pursuant to 15 U.S.C. § 77z-1(a)(3)(B)(v), the Lead Plaintiff shall select and retain counsel to represent the class, subject to court approval. Local 103’s selection of Labaton Sucharow as Lead Counsel should be approved because, as demonstrated below, the firm has successfully litigated securities class actions for decades and has the requisite experience and resources to prosecute this Action.

STATEMENT OF FACTS

Chesapeake is the third largest independent producer of natural gas in the U.S. Chesapeake’s strategy is focused on discovering, acquiring and developing conventional and unconventional natural gas reserves in the U.S., east of the Rocky Mountains. On July 15, 2008, Chesapeake completed a secondary public offering of 28.75 million shares of common stock at \$57.25 per share (including the underwriters’ 3.75 million share overallotment), receiving approximately \$1.65 billion in gross proceeds, with net proceeds of \$1.59 billion (after

underwriting and other costs). The registration statement and prospectus (collectively, the “Registration Statement”) filed with the Securities and Exchange Commission in connection with the Offering failed to disclose numerous facts which were required to be stated therein, including:

(a) That the Company’s exposure to natural gas price declines had not been adequately limited by the hedging actions the Company had undertaken prior to the Offering, including its decision to increase its hedge position from 20 percent to 80 percent of its production, as a growing proportion of the hedging agreements on Chesapeake’s 2009 production contained so-called “knockout” provisions that eliminated the counter-party’s financial obligation once the price of natural gas fell below a certain benchmark;

(b) Though the Company disclosed it had entered into hedging contracts to protect its production from falling prices, the Registration Statement failed to disclose that a significant proportion of these contracts had been made with one of the underwriters in the Offering, Lehman Brothers, but based on Lehman Brothers’ rapidly declining financial condition, Lehman Brothers would be unable to fulfill its financial commitment—rendering Chesapeake’s “protection” meaningless;

(c) In the months leading up to the Offering, Chesapeake’s aggressive hedging activities (and those of certain of the underwriter defendants) had been significantly running up the price of natural gas and Chesapeake’s stock price, which moves in tandem with natural gas prices;

(d) That Chesapeake’s “land men”, *i.e.*, lease brokers, had been aggressively bidding up the prices Chesapeake was obligated to pay in leases and royalty agreements in the months leading up to the Offering, causing Chesapeake to pay unreasonably high prices for certain leases and royalty contracts;

(e) That the Company was failing to write down impaired goodwill on the assets it was acquiring, causing its balance sheet and financial results to be artificially inflated; and

(f) That the Company's internal controls were inadequate to prevent the Company from improperly reporting its goodwill.

Local 103 and other Class members suffered hundreds of millions of dollars in damages as a result of their purchases of Chesapeake stock. As the truth about Chesapeake and its operations reached the market during late 2008 and early 2009, the price of Chesapeake stock declined to less than \$12 per share, approximately 80 percent below the Offering price.

ARGUMENT

I. LOCAL 103 SHOULD BE APPOINTED LEAD PLAINTIFF

A. The Procedural Requirements Pursuant to the PSLRA

The PSLRA sets forth a detailed procedure for the selection of a lead plaintiff to oversee securities class actions brought pursuant to the Federal Rules of Civil Procedure. *See* 15 U.S.C. § 77z-1(a)(3). First, the plaintiff who files the initial action must, within 20 days of filing the action, publish a notice to the class informing class members of their right to file a motion for appointment as lead plaintiff. 15 U.S.C. § 77z-1(a)(3)(A)(i). The plaintiff who filed the first complaint in this Action published a notice on *BusinessWire* on February 25, 2009. *See* Notice, Ellman Decl., Ex. C. This notice indicated that applications for appointment as lead plaintiff were to be made no later than April 27, 2009. Within 60 days after publication of the required notice, any member or members of the proposed class may apply to the Court to be appointed as lead plaintiff, whether or not they have previously filed a complaint in this action. 15 U.S.C. § 77z-1(a)(3)(A) and (B).

Next, according to the PSLRA, the Court shall appoint as Lead Plaintiff the movant that the Court determines to be most capable of adequately representing the interests of class

members within 90 days after publication of the initial notice of pendency. 15 U.S.C. § 77z-1(a)(3)(B)(i). In determining who is the “most adequate plaintiff,” the PSLRA provides that:

[T]he court shall adopt a presumption that the most adequate plaintiff in any private action arising under this chapter is the person or group of persons that –

- (aa) has either filed the complaint or made a motion in response to a notice . . .
- (bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and
- (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure [pertaining to class actions].

15 U.S.C. § 77z-1(a)(3)(B)(iii)(I); *Glauser v. EVCI Career Colleges Holding Corp.*, 236 F.R.D. 184, 187 (S.D.N.Y. 2006) (McMahon, J.).

B. Local 103 is the “Most Adequate Plaintiff”

1. Local 103 Has Made a Timely Motion for Appointment as Lead Plaintiff

Pursuant to the provisions of the PSLRA and within the requisite time frame after publication of the notice, Local 103 timely moves this Court to be appointed Lead Plaintiff on behalf of all plaintiffs and class members covered by the Action.

2. Local 103 Has the Largest Financial Interest in the Outcome of the Action

Pursuant to the PSLRA, the statutory presumption is that the “most adequate plaintiff” is the class member who “has the largest financial interest in the relief sought by the class” that also satisfies the applicable requirements of Rule 23. 15 U.S.C. § 77z-1(a)(3)(B)(iii)(bb); *Albert Fadem Trust v. Citigroup Inc.*, 239 F. Supp. 2d 344, 347 (S.D.N.Y. 2002) (Swain, J.). As illustrated in the loss calculations submitted with its motion, Local 103 suffered a loss of \$26,807 on its Class Period investments in Chesapeake stock. *See* Ellman Decl., Ex. B. Accordingly,

Local 103 believes that it has the largest financial interest of any lead plaintiff candidate before the Court and, thus, should be appointed Lead Plaintiff.

3. Local 103 Otherwise Satisfies Rule 23

According to the PSLRA, in addition to possessing the largest financial interest in the outcome of the litigation, the lead plaintiff must also “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. § 77z-1(a)(3)(B)(iii)(cc). Rule 23(a) provides that a party may serve as a class representative if the following four requirements are satisfied:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

Of the four prerequisites to class certification, only two—typicality and adequacy—directly address the personal characteristics of the class representative. Consequently, in deciding a motion to serve as lead plaintiff, the Court should limit its inquiry to the typicality and adequacy prongs of Rule 23(a). *See Albert Fadem Trust*, 239 F. Supp. 2d at 347 (quoting *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998) (Brieant, J.)). As detailed below, Local 103 satisfies both the typicality and adequacy requirements of Rule 23, thereby fulfilling the requirements for its appointment as Lead Plaintiff.

(a) Local 103 Fulfills the Typicality Requirement

Under Rule 23(a)(3), the claims or defenses of the representative party must be typical of those of the class. Typicality exists “where the claims of the Lead Plaintiff arise [from] the same course of conduct that gives rise to the claims of the other class members, where these claims are based on the same legal theory, and where the class members and Lead Plaintiff were injured by

the same conduct.” *Glauser*, 236 F.R.D at 188-89 (citation omitted). However, the claims of the Lead Plaintiff need not be identical to the claims of the class to satisfy typicality. *See Constance Sczensy Trust v. KPMG LLP*, 223 F.R.D. 319, 325 (S.D.N.Y. 2004) (Stein, J.).

Local 103 seeks to represent a class of purchasers of the stock of Chesapeake who have identical, non-competing and non-conflicting interests. Local 103 satisfies the typicality requirement because it: (1) purchased or acquired shares of Chesapeake during the Class Period, (2) at prices alleged to have been artificially inflated by Defendants’ materially false and misleading statements and/or omissions; and (3) suffered damages upon disclosure of the truth. *See Albert Fadem Trust*, 239 F. Supp. 2d at 347-48 (discussing typicality requirement). Thus, Local 103’s claims are typical of those of other class members since their claims and the claims of other class members arise out of the same course of events.

(b) Local 103 Fulfills the Adequacy Requirement

Under Rule 23(a)(4), the representative party must “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The adequacy requirement is satisfied where the proposed lead plaintiff “does not have interests that are antagonistic to the class that he seeks to represent and has retained counsel that is capable and qualified to vigorously represent the interests of the class that he seeks to represent.” *Glauser*, 236 F.R.D. at 189 (citation omitted); *Albert Fadem Trust*, 239 F. Supp. 2d at 348 (same). Local 103’s interests in this Action are perfectly aligned with the interests of absent class members, and Labaton Sucharow, its selected lead counsel, has decades of experience effectively prosecuting securities class actions. Accordingly, the Court can be assured that Local 103 and its selected counsel will more than adequately protect the interests of absent class members.

4. Local 103 is the Prototypical Lead Plaintiff Envisioned by the PSLRA

In addition to satisfying the requirements of Rule 23, Local 103 is precisely the type of large, sophisticated institutional investor—the prototypical lead plaintiff—envisioned by the framers of the PSLRA. As noted by Congress in the Statement of Managers, the PSLRA was enacted “to increase the likelihood that institutional investors will serve as lead plaintiff,” in part, because “[i]nstitutional investors and other class members with large amounts at stake will represent the interests of the plaintiff class more effectively than class members with small amounts at stake.” H.R. Rep. No. 104-369, at 34 (1995), *as reprinted in* 1995 U.S.C.C.A.N. 730, 733.

Local 103, an electrical workers union in Eastern Massachusetts, manages more than \$1.5 billion in assets. Local 103 is a sophisticated institutional investor with vast resources sufficient to adequately litigate this action and supervise class counsel. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 264 (3d Cir. 2001) (noting that the legislative intent behind enacting the PSLRA was to encourage large institutional investors to serve as lead plaintiff); *see also Weiss v. Friedman, Billings, Ramsey Group, Inc.*, No. 05-cv-04617 (RJH), 2006 WL 197036, at *1 (S.D.N.Y. Jan. 25, 2006) (Holwell, J.) (same). Thus, as demonstrated above, Local 103 is the prototypical lead plaintiff under the PSLRA.

II. THE COURT SHOULD APPROVE LOCAL 103’S CHOICE OF COUNSEL

Pursuant to 15 U.S.C. § 77z-1(a)(3)(B)(v), the lead plaintiff shall, subject to Court approval, select and retain counsel to represent the Class. Labaton Sucharow has had a leading role in numerous important actions on behalf of defrauded investors. Labaton Sucharow served as lead counsel in the Waste Management securities litigation, which resulted in a settlement of \$457 million, one of the largest common-fund securities class action settlements ever achieved at that time. *See* Labaton Sucharow Firm Resume, Ellman Decl., Ex. D; *see also In re Waste*

Mgmt., Inc. Sec. Litig., 128 F. Supp. 2d 401, 432 (S.D. Tex. 2000) (stating that Labaton Sucharow “ha[s] been shown to be knowledgeable about and experienced in federal securities fraud class actions”). Also, Labaton Sucharow is currently serving as Lead or Co-Lead Counsel in the securities fraud cases against American International Group, HealthSouth, Countrywide, Bear Stearns, Fannie Mae and others. In *In re Monster Worldwide, Inc. Sec. Litig.*, No. 07-cv-2237 (S.D.N.Y. filed Mar. 15, 2007), Judge Rakoff appointed Labaton Sucharow as lead counsel, stating that “the Labaton firm is very well known to . . . courts for the excellence of its representation.” (*Id.*, Hr’g Tr. 24:25-25:1, June 14, 2007).

CONCLUSION

For the foregoing reasons, Local 103 respectfully requests that the Court: (i) appoint Electrical Workers Pension Fund, Local 103, I.B.E.W. as Lead Plaintiff; (ii) approve Labaton Sucharow LLP as Lead Counsel for the Class; and (iii) granting such other and further relief as the Court may deem just and proper.

Dated: April 27, 2009

Respectfully submitted,

LABATON SUCHAROW LLP

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