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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK VICINAGE

PATRICK BYRNE and PAUL DRAZEN, : Civil Action No. 05-68 (DMC)
as TRUSTEES OF THE LABORERS' :
INTERNATIONAL UNION OF NORTH :
AMERICA LOCAL 734 PENSION FUND :
and LABORERS' INTERNATIONAL :
UNION OF NORTH AMERICA LOCAL :
734 WELFARE AND EDUCATIONAL :
FUND, :

Plaintiffs, :

v. :

LOUIS CALASTRO, SALVATORE : **AMENDED ANSWER, CROSSCLAIM,**
SALERNO, MICHAEL ROSADO, : **COUNTERCLAIM AND**
JOSEPH GAMBARDELLA, PETER : **THIRD-PARTY COMPLAINT**
RIZZO, JOHN FRITZSCH, AUGUST :
VERGALITO, RHODA VERGALITO, :
JAMIE DOLAN, EDWARD DOLAN, :
BERNARD DWYER, ISAAC BAROCUS :
a/k/a "Irving Barocus", FRANK :
PERNICE, CHARLES J. PURCELL, :
CJP ACCOUNTING, INC., PURCELL :
ORGANIZATION, INC., DENNIS J. :
JASTRZEBSKI, DDS JOHN DOES 1-26, :
and ABC CORPORATIONS 1-26, :

Defendants. :

PETER RIZZO, :
Third-Party Plaintiff, :

v. :

RAYMOND POCINO, :
Third-Party Defendant :

Defendant, Peter Rizzo, by way of answer to Plaintiffs'
Verified Complaint, hereby says:

NATURE OF THE CASE

1. Defendant, Peter Rizzo, denies the allegations contained in paragraph 1 of the Plaintiffs' Complaint.

JURISDICTION AND VENUE

2. Defendant, Peter Rizzo, admits the allegation contained in paragraph 2 of the Plaintiffs' Complaint.

3. Defendant, Peter Rizzo, admits the allegation contained in paragraph 3 of the Plaintiffs' Complaint.

PARTIES

4. Defendant, Peter Rizzo, admits the allegations contained in the first sentence of paragraph 4 of Plaintiffs' Complaint. Defendant, Peter Rizzo, denies the remaining allegations set forth in paragraph 4 of Plaintiffs' Complaint.

5. Defendant, Peter Rizzo, admits the allegations contained in the first sentence of paragraph 5 of Plaintiffs' Complaint. Defendant, Peter Rizzo, denies the remaining allegations contained in paragraph 5 of Plaintiffs' Complaint.

6. Defendant, Peter Rizzo, admits the allegations contained in paragraph 6 of Plaintiffs' Complaint.

7. Defendant, Peter Rizzo, admits the allegations contained in paragraph 7 of Plaintiffs' Complaint.

8. Defendant, Peter Rizzo, admits the allegations contained in paragraph 8 of Plaintiffs' Complaint.

9. Defendant, Peter Rizzo, admits the allegations contained in paragraph 9 of Plaintiffs' Complaint wherein it is alleged that Joseph Gambardella was the Vice President of Laborers' Local No. 734 and an employee trustee of the Funds, but denies the remaining allegations contained in that paragraph.

10. Defendant, Peter Rizzo, admits the allegations contained in the first sentence of paragraph 10 of Plaintiffs' Complaint, but denies the allegations contained in the second sentence of paragraph 10 of Plaintiffs' Complaint.

11. Defendant, Peter Rizzo, admits the allegations contained in the first sentence of paragraph 11 of Plaintiffs' Complaint, but he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of paragraph 11 of Plaintiffs' Complaint.

12. Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of Plaintiffs' Complaint.

13. Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of Plaintiffs' Complaint.

14. Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of Plaintiffs' Complaint.

15. Defendant, Peter Rizzo, admits the allegations contained in paragraph 15 of Plaintiffs' Complaint.

16. Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of Plaintiffs' Complaint.

17. Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of Plaintiffs' Complaint.

18. Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of Plaintiffs' Complaint.

19. Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of Plaintiffs' Complaint.

20. Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of Plaintiffs' Complaint.

21. Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of Plaintiffs' Complaint.

22. Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of Plaintiffs' Complaint.

FACTUAL BACKGROUND

23. Defendant, Peter Rizzo, admits the allegations contained in paragraph 23 of Plaintiffs' Complaint.

24. Defendant, Peter Rizzo, admits the allegations contained in paragraph 24 of Plaintiffs' Complaint.

25. Defendant, Peter Rizzo, admits the allegations contained in paragraph 25 of Plaintiffs' Complaint.

26. Defendant, Peter Rizzo, admits the allegations contained in paragraph 26 of Plaintiffs' Complaint, except that Defendant, Peter Rizzo, did not become a fiduciary to the Funds until appointed Fund Administrator on September 14, 2004.

27. Defendant, Peter Rizzo, admits the allegations contained in paragraph 27 of Plaintiffs' Complaint, except that Defendant, Peter Rizzo, did not become a "fiduciary" to the Funds until appointed Fund Administrator on September 14, 2004.

28. Defendant, Peter Rizzo, denies the allegations contained in paragraph 28 of Plaintiffs' Complaint.

29. Defendant, Peter Rizzo, denies the allegations contained in paragraph 29 of Plaintiffs' Complaint.

30. Defendant, Peter Rizzo, denies the allegations contained in paragraph 30 of Plaintiffs' Complaint.

31. Defendant, Peter Rizzo, denies the allegations contained in paragraph 31 of Plaintiffs' Complaint.

32. Defendant, Peter Rizzo, denies the allegations contained in paragraph 32 of Plaintiffs' Complaint.

33. Defendant, Peter Rizzo, denies the allegations contained in paragraph 33 of Plaintiffs' Complaint.

34. Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of Plaintiffs' Complaint.

35. Defendant, Peter Rizzo, admits the allegations contained in the first sentence of paragraph 35 of Plaintiffs' Complaint. Defendant, Peter Rizzo, denies the allegations contained in the second sentence of paragraph 35 of Plaintiffs' Complaint.

36. Defendant, Peter Rizzo, denies the allegations contained in paragraph 36 of Plaintiffs' Complaint.

37. Defendant, Peter Rizzo, denies the allegations set forth in paragraph 37 of Plaintiffs' Complaint.

38. Defendant, Peter Rizzo, denies the allegations contained in paragraph 38 of Plaintiffs' Complaint.

39. Defendant, Peter Rizzo, admits the allegations contained in the first two sentences of paragraph 39 of Plaintiffs' Complaint; but Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 39 of Plaintiffs' Complaint.

40. Defendant, Peter Rizzo, denies the allegations contained

in paragraph 40 of Plaintiffs' Complaint.

41. Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of Plaintiffs' Complaint.

42. Defendant, Peter Rizzo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of Plaintiffs' Complaint, except that Defendant, Peter Rizzo, denies all of the allegations contained in paragraph 42, subsections (a), (b), (c), (d) and (e) of Plaintiffs' Complaint.

43. Defendant, Peter Rizzo, admits the allegations contained in paragraph 43 of Plaintiffs' Complaint wherein it is alleged that Patrick Byrne has requested the trustees to terminate Mr. Rizzo and to date the employer trustees have refused to do so. Defendant, Peter Rizzo, specifically denies the allegations contained in paragraph 43 alleging an association with the Genovese crime family as alleged in paragraph 43 of Plaintiffs' Complaint.

COUNT I

44. In answer to paragraph 44 of Count I of Plaintiffs' Complaint wherein the Plaintiffs adopt by reference certain paragraphs of the Complaint, Defendant, Peter Rizzo, admits, denies and alleges to the same affect and in the same manner as he admitted, denied and alleged to those specific paragraphs in paragraphs 1 through 43 of this Answer.

45. Defendant, Peter Rizzo, denies the allegations contained in paragraph 45 of Plaintiffs' Complaint.

46. Defendant, Peter Rizzo, denies the allegations contained in paragraph 46, subparagraphs (a), (b), (c), (d), (e) and (f) of Plaintiffs' Complaint.

47. Defendant, Peter Rizzo, denies the allegations contained in paragraph 47, subparagraphs (a), (b) and (c) of Plaintiffs' Complaint.

48. Defendant, Peter Rizzo, denies the allegations contained in paragraph 48 of Plaintiffs' Complaint.

49. Defendant, Peter Rizzo, denies the allegations contained in paragraph 49 of Plaintiffs' Complaint.

50. Defendant, Peter Rizzo, denies the allegations contained in paragraph 50 of Plaintiffs' Complaint.

COUNT II

51. In answer to paragraph 51 of Count II of Plaintiffs' Complaint wherein the Plaintiffs adopt by reference certain paragraphs of the Complaint, Defendant, Peter Rizzo, admits, denies and alleges to the same affect and in the same manner as he admitted, denied and alleged to those specific paragraphs in paragraphs 1 through 50 of this Answer.

52. Defendant, Peter Rizzo, denies the allegations contained in paragraph 52 of Plaintiffs' Complaint.

53. Defendant, Peter Rizzo, denies the allegations contained in paragraph 53 of Plaintiffs' Complaint.

COUNT III

54. In answer to paragraph 54 of Count III of Plaintiffs' Complaint wherein the Plaintiffs adopt by reference certain paragraphs of the Complaint, Defendant, Peter Rizzo, admits, denies and alleges to the same affect and in the same manner as he admitted, denied and alleged to those specific paragraphs in paragraphs 1 through 53 of this Answer.

55. Defendant, Peter Rizzo, admits the allegations contained in paragraph 55 of Plaintiffs' Complaint.

56. Defendant, Peter Rizzo, denies the allegations contained in paragraph 56 of Plaintiffs' Complaint.

57. Defendant, Peter Rizzo, denies the allegations contained in paragraph 57 of Plaintiffs' Complaint.

COUNT IV

58. In answer to paragraph 58 of Count IV of Plaintiffs' Complaint wherein the Plaintiffs adopt by reference certain paragraphs of the Complaint, Defendant, Peter Rizzo, admits, denies and alleges to the same affect and in the same manner as he admitted, denied and alleged to those specific paragraphs in paragraphs 1 through 57 of this Answer.

59. Defendant, Peter Rizzo, denies the allegations contained in paragraph 59 of Plaintiffs' Complaint.

60. Defendant, Peter Rizzo, denies the allegations contained in paragraph 60 of Plaintiffs' Complaint.

COUNT V

61. In answer to paragraph 61 of Count V of Plaintiffs' Complaint wherein the Plaintiffs adopt by reference certain paragraphs of the Complaint, Defendant, Peter Rizzo, admits, denies and alleges to the same affect and in the same manner as he admitted, denied and alleged to those specific paragraphs in paragraphs 1 through 60 of this Answer.

62. Defendant, Peter Rizzo, denies the allegations contained in paragraph 62 of Plaintiffs' Complaint.

63. Defendant, Peter Rizzo, denies the allegations contained in paragraph 63, subparagraphs (a), (b), (c) and (d) of Plaintiffs' Complaint.

64. Defendant, Peter Rizzo, denies the allegations contained in paragraph 64 of Plaintiffs' Complaint.

65. Defendant, Peter Rizzo, denies the allegations contained in paragraph 65 of Plaintiffs' Complaint.

66. Defendant, Peter Rizzo, denies the allegations contained in paragraph 66 of Plaintiffs' Complaint.

67. Defendant, Peter Rizzo, denies the allegations contained in paragraph 67 of Plaintiffs' Complaint.

COUNT VI

68. In answer to paragraph 68 of Count VI of Plaintiffs' Complaint wherein the Plaintiffs adopt by reference certain paragraphs of the Complaint, Defendant, Peter Rizzo, admits, denies and alleges to the same affect and in the same manner as he admitted, denied and alleged to those specific paragraphs in paragraphs 1 through 67 of this Answer.

69. Defendant, Peter Rizzo, denies the allegations contained in paragraph 69 of Plaintiffs' Complaint.

70. Defendant, Peter Rizzo, denies the allegations contained in paragraph 70 of Plaintiffs' Complaint.

FIRST DEFENSE

Plaintiffs fail to state a cause of action upon which relief can be granted. Defendant, Peter Rizzo, did not become a fiduciary of the Funds until being appointed Fund Administrator.

SECOND DEFENSE

Defendant, Peter Rizzo, affirmatively alleges that Plaintiffs' claims are barred by the doctrine of waiver.

THIRD DEFENSE

Defendant, Peter Rizzo, affirmatively alleges that Plaintiffs' claims are barred by the doctrine of latches.

FOURTH DEFENSE

Defendant, Peter Rizzo, affirmatively alleges that Plaintiffs' claims are barred by the doctrine of estoppel.

FIFTH DEFENSE

Defendant, Peter Rizzo, affirmatively alleges that Plaintiffs' claims are barred by due to Plaintiffs' failure to exhaust internal remedies available including arbitration.

SIXTH DEFENSE

Plaintiffs claims are barred by the applicable statute of limitations.

SEVENTH DEFENSE

Defendant, Peter Rizzo, alleges the Plaintiffs are guilty of unclean hands.

EIGHTH DEFENSE

Defendant, Peter Rizzo, alleges that any injuries that may have been sustained by Plaintiffs, as alleged in Plaintiffs' Complaint, occurred as a result of Mr. Byrne's and Mr. Pocino's failure to exercise ordinary care, in that they knew or should have known of the alleged non-essential excessively paid positions with the Funds but took no action. Therefore, Plaintiffs' alleged injuries were caused in whole or in part or were contributed to by Plaintiffs' own negligence.

CROSSCLAIM

Defendant, Peter Rizzo, by way of crossclaim against Defendant, John Fritzsch, hereby says:

1. Defendant, Peter Rizzo, has held various positions for Local 734 Laborers' International Union of North America and also

the Local 734 Welfare and Educational Fund and the Local 734 Pension Fund.

2. At no time prior to September 14, 2004, when Peter Rizzo was appointed the Fund Administrator, did Peter Rizzo have any authority to hire employees, recommend hiring employees, authority to set salaries for employees, recommend setting salaries for employees, or any other input into hiring or the day-to-day finances of the Funds and had no discretionary or fiduciary control over Fund assets or Fund management or administration.

3. Pursuant to the Employment Agreement John Fritzsch had with the Local 734 Welfare and Educational Fund and the Local 734 Pension Fund, Mr. Fritzsch had authority to hire employees and set their salaries, cause raises to salaries and was responsible for supervising Fund personnel to ensure the employees were fulfilling their job duties and responsibilities.

4. Defendant, John Fritzsch, was responsible for hiring, setting the salaries and supervising Defendants, Rhoda Vergalito, Jamie Dolan, Bernard Dwyer, Isaac Barocus, and Frank Pernice.

5. Defendant, John Fritzsch, as Fund Administrator, was also responsible for hiring professionals and vendors for the Funds and setting their salaries.

6. Defendant, John Fritzsch, as Fund Administrator, was responsible for the hiring of Charles J. Purcell, CJP Accounting, Inc. and Dennis J. Jastrzebski, DDS and was responsible for setting

their compensation packages and was responsible for supervising their services.

7. Upon information and belief, Defendant, John Fritzsch, concealed from the Trustees salaries and increases in salaries for some of the Defendants and vendors.

8. The answering Defendant, Peter Rizzo, while denying any wrongdoing and while denying any liability on his part, states that the co-Defendant, John Fritzsch, has breached his fiduciary duty pursuant to 28 U.S.C. Sections 1104, 1105 and 1109 and is liable for any and all damages asserted herein, and is a joint tortfeasors and therefore demand contributions from him under the terms of the New Jersey Joint Tort Feasors Act, N.J.S.A. 2A:53-1, et. al. and the New Jersey Comparative Negligence Act N.J.S.A. 2A:15-51 5.1, et. seq. for any judgment that may be entered in this cause on behalf of the Plaintiffs.

9. While denying any wrongdoing, and while denying any liability of the Defendant, Peter Rizzo, for damages alleged, if judgment is recovered by the Plaintiffs against Defendant, Peter Rizzo, it is asserted that the negligence, if any, was not morally culpable, but was merely constructive, technical, imputed or vicarious and that the Plaintiffs damages, if any, arose through Defendant's, John Fritzsch's, breach of fiduciary duty under 29 U.S.C. Sections 1104, 1105 and 1109 and the direct and primary negligence of co-Defendant, John Fritzsch. The answering

Defendant, Peter Rizzo, hereby demands indemnification from co-Defendant, John Fritzsch, of all damages asserted by the Plaintiffs.

WHEREFORE, judgment is demanded against co-Defendant, John Fritzsch, for complete indemnification, including attorney's fees and costs for this suit.

COUNTERCLAIM

Defendant, Peter Rizzo, by way of counterclaim against Patrick Byrne, as Union Trustee of the Laborers' International Union of North America Local 734 Pension Fund and the Laborers' International Union of North America Local 734 Welfare and Educational Fund, hereby says:

1. On or about October 22, 2002, Local 734 of the Laborers' International Union of North America (hereinafter referred to as "Local 734") agreed to voluntary supervision by the International Union. The International Union appointed Raymond Pocino as the supervisor of Local 734. Mr. Pocino, in turn, appointed Patrick Byrne as the deputy supervisor. Mr. Pocino, as supervisor, turned over the day-to-day control of Local 734 to the control of deputy supervisor, Patrick Byrne.

2. It was the deputy supervisor, Patrick Byrne, who had full authority to take charge of the affairs of Local 734, including appointing Union trustees at his discretion.

3. As deputy supervisor of Local 734, Patrick Byrne, was to

take whatever steps necessary for the preservation of Local 734 and its interests, including the interests of its members.

4. As deputy supervisor of Local 734, Patrick Byrne, had direct supervision over Union trustees, Michael Rosado and Joseph Gambardella, and was responsible for their activities as Union Trustees.

5. When Deputy Byrne took over supervision of the Union, he knew or should have known of the employment of Frank Pernice as Business Representative and Rhoda Vergalito and Jamie Dolan, who were or had been on, Local 734 (Union) payroll.

6. From the Spring of 2003 through October 4, 2004, the deputy supervisor's attorneys sat as special counsel or general counsel to the Local 734 Welfare and Educational Fund and the Local 734 Pension Fund. The attorneys were reporting to both the supervisor, Raymond Pocino, and deputy supervisor, Patrick Byrne.

7. The operations of the Funds were clearly within the purview of the supervisor and deputy supervisor of the Unions.

8. The top forty (40) wage earners and providers for the Local 734 Welfare and Educational Fund are listed on the Form 5500, Schedule C which is filed with the United States Treasury which would include the Defendants herein and their salaries.

9. It was deputy supervisor Byrne who forced Frank Pernice to give up his position as Business Representative of the Union in August of 2003 and recommended he be hired and work for the Funds.

10. In or about December of 2003, deputy supervisor Byrne learned that the Funds may have been allegedly paying salaries for no-show jobs. (Verified Complaint, par. 36). Plaintiff, Patrick Byrne, did not notify the employer trustees, employee trustees or the Fund Administrator of his finding. Plaintiff, Patrick Byrne, took no steps concerning the information he had prior to October of 2004 concerning the information of alleged no-show jobs at the Funds.

11. Plaintiff, Patrick Byrne, as deputy supervisor, knew, or should have known, all of the alleged non-essential excessively paid jobs in the Funds as asserted in the Complaint, from the time he became deputy supervisor to the present. Plaintiff, Patrick Byrne, took no action to stop same.

12. On or about October 6, 2004, Patrick Byrne was appointed as a Union Trustee on the Funds.

13. Since October 6, 2004, Patrick Byrne was a fiduciary of the Funds and had the power to hire, fire and had discretionary control over the assets of the Funds and the administration of the Funds.

14. Before the Operational Report was prepared, Plaintiff, Patrick Byrne, released information from that audit to third parties, in violation of the Confidentiality Agreement.

15. Since October 6, 2004, Patrick Byrne has breached his fiduciary duty to the Funds in violation of 29 U.S.C. Sections

1104, 1105 and 1109 and has impeded the Funds' operations.

16. Plaintiff, Patrick Byrne, is also guilty of negligence and breach of duty of care as to the members of the Union who are participants and beneficiaries of the Funds. As a result of Patrick Byrne's breaches and negligence, Patrick Byrne has caused the Defendant, Peter Rizzo, to incur damages and is continuing to cause damages.

WHEREFORE, Defendant, Peter Rizzo, demands judgment against Patrick Byrne and requests the following relief:

- A. Compensatory and consequential damages, including interest;
- B. Costs of suit, including attorney's fees; and
- C. Seeks such other relief as the Court deems just and proper.

THIRD-PARTY COMPLAINT

Defendant, Peter Rizzo, by way of Third-Party Complaint against Raymond Pocino, hereby says:

1. On or about October 22, 2002, Local 734 of the Laborers' International Union of North America (hereinafter referred to as "Local 734") agreed to voluntary supervision by the International Union. The International Union appointed Raymond Pocino as the supervisor of Local 734. Mr. Pocino, as supervisor, had day-to-day control of Local 734.

2. It was the supervisor, Raymond Pocino, who had full

authority to take charge of the affairs of Local 734, including appointing Union trustees at his discretion.

3. As supervisor of Local 734, Raymond Pocino, was to take whatever steps necessary for the preservation of Local 734 and its interests, including the interests of its members.

4. As supervisor of Local 734, Raymond Pocino, had direct supervision over Union trustees, Michael Rosado and Joseph Gambardella, and was responsible for their activities as Union trustees.

5. When supervisor Raymond Pocino took over supervision of the Union, he know or should have known of the employment of Frank Pernice as Business Representative and Rhoda Vergalito and Jamie Dolan who were or had been on Local 734 (Union) payroll.

6. From the Spring of 2003 through October 4, 2004, the supervisor's attorneys sat as special counsel or general counsel to the Local 734 Welfare and Educational Fund and the Local 734 Pension Fund. His attorneys were reporting to Raymond Pocino.

7. The operations of the Funds were clearly within the purview of the supervisor.

8. The top forty (40) wage earners and providers for the Local 734 Welfare and Educational Fund are listed on the Form 5500, Schedule C which is filed with the United States Department of Treasury which indicated the Defendant herein.

9. It was deputy supervisor Byrne, in conjunction with

supervisor Raymond Pocino, who forced Frank Pernice to give up his position as Business Representative of the Union in August of 2003 and recommended he be hired and work for the Funds.

10. In or about December of 2003, deputy supervisor, Patrick Byrne, learned of alleged no-show jobs with the Funds. Upon information and belief, deputy supervisor, Patrick Byrne, reported his findings to supervisor, Raymond Pocino. Raymond Pocino, took no steps to exercise his power as supervisor to remove the union trustees upon learning of the information. Raymond Pocino did not advise the Employer trustees or Union trustees of the Funds or the Fund Administrator of the finding. Raymond Pocino, as supervisor, did not take any corrective action upon learning of these alleged facts.

11. Raymond Pocino, as supervisor, knew, or should have known, all of the alleged non-essential excessively paid jobs that were asserted in the Complaint from the time he became supervisor forward. Mr. Pocino did nothing to stop same.

12. On or about October 20, 2004, Raymond Pocino removed Michael Rosado as Union Trustee and appointed himself to replace Mr. Rosado.

13. Since October 20, 2004, Raymond Pocino was a fiduciary of the Funds and had the power to hire, fire and had discretionary control over the assets of the Funds and the administration of the Funds.

14. Before the operational audit was prepared, Mr. Pocino released the information from that audit to third parties in violation of the Confidentiality Agreement.

15. Since October 20, 2004, Raymond Pocino has breached his fiduciary duty to the Funds in violation of 29 U.S.C. Sections 1104, 1105 and 1109 and has impeded the Funds' operations.

16. Raymond Pocino, is guilty of negligence and breach of duty of care as to the members of the Union who are participants and beneficiaries of the Funds. As a result of Raymond Pocino's breaches and negligence, Raymond Pocino has caused the Defendant, Peter Rizzo, to incur damages and is continuing to cause damages.

WHEREFORE, Defendant, Peter Rizzo, demands judgment against Raymond Pocino and requests the following relief:

A. Compensatory and consequential damages, including interest;

B. Costs of suit, including attorney's fees; and

C. Seeks such other relief as the Court deems just and proper.

Dated: January 27, 2005

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By: _____ /S/
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