

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

N.E.C.A. - LOCAL UNION 313 I.B.E.W. :
HEALTH & WELFARE FUND, et al, :
 :
Plaintiffs : C.A. No. 99-140 JJF
 :
v. :
 :
A.F. SCATASTI, INC., :
 :
Defendant :

Christopher Carlton, Esquire of MORRIS, NICHOLS, ARSHT & TUNNELL, Wilmington, Delaware
Attorney for Plaintiffs

Robert D. Goldberg, Esquire of BIGGS AND BATTAGLIA, Wilmington, Delaware
Attorney for Defendant

MEMORANDUM OPINION

November 28, 2001

Wilmington, Delaware

Farnan, District Judge.

I have been requested by Plaintiffs in this matter to enter a Judgment Order in the amount of \$27,070.00 against Defendant (D.I. 30). Defendant objects to the amount suggested by Plaintiffs, noting that a substantial portion of the \$27,070.00 represents for attorney fees and interest and not principal amounts Defendant owed to Plaintiffs pursuant to E.R.I.S.A. obligations (D.I. 31). Plaintiffs have submitted a document dated October 3, 2001 entitled "Trustee Delinquent Report" which establishes that \$26,116.33 is owed by Defendant for attorney fees and \$4,205 for interest on late contributions (D.I. 30 - Attachment).

I am not in a position to analyze the relationship of Plaintiffs and Defendant and what interest each sought to maintain during the payment collection effort. Also, I do not understand why the relatively small amount of money that constituted Defendant's obligation to Plaintiffs was not paid pursuant to a reasonable payment plan or by earlier action against the surety. I do understand that it can cost a lot of money to litigate; and other than a superficial comparison of the amount recovered to fees requested, I am unable to critically evaluate the reasonableness of the fees requested by Plaintiffs' attorney. It seems to me that both sides of this dispute have presented reasonable justification for their present position on the amount of the Judgment Order that must be entered. Despite this finding, I am persuaded that fairness requires a compromise somewhere in between the parties' views of the appropriate dollar amount, and therefore, I conclude that the Judgment Order should be in the amount of \$18,000.00 in favor of Plaintiffs against Defendant. I award this amount of money by considering and weighing the following:

- 1) The principal amount initially demanded by Plaintiffs which weighs in favor of

Plaintiffs;

- 2) The surety guarantee available to ultimately collect the funds which weighs in favor of Defendant;
- 3) The fiduciary obligations of each party in the litigation owed to third parties which weighs in favor of Plaintiffs;
- 4) The inability of the parties to compromise the debt by a payment plan which favor of the Plaintiffs;
- 5) The principal amount recovered which weighs in favor of Defendant.

In sum, Plaintiffs were required to pursue Defendant for the payment of monies entrusted to both Plaintiffs and Defendant by innocent third parties and, within reason, what it costs to achieve payment must be borne by the party who did not timely perform its payment obligations (i.e. the Defendant).

A Judgment Order in the amount of \$18,000 in favor of Plaintiffs and against Defendants will be entered.

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Plaintiffs	:	C.A. No. 99-140 JJF
	:	
v.	:	
	:	
A.F. SCATASTI, INC.,	:	
	:	
Defendant	:	

JUDGMENT ORDER

At Wilmington, this 28th day of November, 2001, for the reasons set forth in the Memorandum Opinion issued this date,

IT IS HEREBY ORDERED this 28th day of November, 2001 that Judgment in the amount of \$18,000 is awarded to the Plaintiffs against the Defendant.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE