

STATE OF INDIANA)
)
COUNTY OF MARION)

IN THE MARION SUPERIOR/CIRCUIT
COURT
CAUSE NO. ~~49005 09 07 PL 034768~~

DENNIS MCALLEN, DENNIS DITTRICK,
CHERYL LAKES, and SHIRLEY O'NEIL, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

WARREN L. WILLIAMS, THOMAS
EDDINGTON, MICHAEL ROBINSON, E. ANNE
MOUDY, NATHAN SCHNELLENBERGER,
LINDA STEELE, C. DARVIN STILWELL,
SHERRY WATKINS, ROBERT FRANKEL,
DAVID M. KARANDOS, MORGAN STANLEY
& CO., INC., UBS FINANCIAL SERVICES, INC.,
INDIANA STATE TEACHERS ASSOCIATION,
EDWARD P. SULLIVAN and RICHARD J.
DARKO,

Defendants.

CLASS ACTION

FILED

JUL 24 2009

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Elizabeth J. White
CLERK OF THE MARION CIRCUIT COURT

CLASS ACTION COMPLAINT

I. INTRODUCTION

1. This case arises from the Defendants' individual and collective breaches of fiduciary duties through mismanagement and improper investments of the Plaintiffs' and class members' money that was held in the Indiana State Teachers Association Insurance Trust (the "Plan"). These breaches of fiduciary duties resulted in devastating losses to the Plan to the detriment of the Plan itself and its beneficiaries.

2. Plaintiffs have filed a similar action in the United States District Court for the Southern District of Indiana which brings federal law claims against these defendants under the

federal Employee Retirement Income Security Act of 1974, (“ERISA”) (the “Federal Action”). Certain defendants, however, have taken the position in the Federal Action that the Plan which lies at the heart of these claims is not subject to ERISA and that the federal court lacks subject matter jurisdiction over the Federal Action and that no claim relating to this matter can be brought under ERISA. Accordingly, Plaintiffs now bring this action in state court which raises only state law claims.

3. As set forth in detail below, the Defendants—namely the Indiana State Teachers Association (“ISTA”), which created and was actively involved in the operation of the Plan, the former Trustees of the Plan, General Counsel to ISTA who is also the Interim Plan Director, and the Plan’s investment advisor and broker—invested substantial portions of Plan funds in high-risk, often illiquid investments, including hedge funds, derivatives, private equities, and long-term real estate investments, that were unsuited for the purposes of the Plan, and that were inconsistent with the fiduciary duties created thereunder.

4. As a result of the Defendants’ breaches of fiduciary duties, the Plan lacks the resources to fund the claims for health care and disability benefits of thousands of Plan participants and beneficiaries, and faces a projected deficiency of approximately \$67 million. ISTA recently notified schools participating in its benefits programs that approximately 650 disabled teachers’ long-term disability (“LTD”) benefits would be terminated after July 2009.

5. ISTA also recently announced that it had completely relinquished control of both ISTA and the Plan to the National Education Association (“NEA”). This drastic measure reflects the extraordinary severity of the Plan’s financial problems caused by the Defendants’ breaches of fiduciary duties.

6. As part of the NEA's exertion of control over ISTA and the Plan, all nine of the Plan's Trustees resigned or were terminated, and the NEA appointed Edward Sullivan to act as "Sole Trustee" of the Plan. However, the Trust Agreement requires that the Plan be operated by nine Trustees and contains no provision for the appointment of a sole trustee. Edward Sullivan's complete control over the administration of the Plan is thus in violation of the terms of the Trust Agreement. This, in addition to other apparent violations of the Trust Agreement and conflicts of interest, which are detailed below, provides the basis for Plaintiffs' request that the Court exercise its authority under Indiana law to provide appropriate equitable relief to redress violations of the Plan by appointing eight additional Trustees to serve with Sullivan to administer the Plan consistent with its terms.

7. Days after notifying schools that LTD benefits would be cut off entirely, the NEA and ISTA announced that they had formed a "partnership" to marshal sufficient funds to ensure that LTD benefits would be paid in full. However, the NEA and ISTA admitted that the details of this partnership had not yet been finalized or reduced to writing, including the source of money to fund tens of millions of dollars in LTD benefits. The NEA and ISTA further stated that the details of their partnership might remain completely confidential. Without any details of where the money is going to come from, or even an assurance that the details would be explained once they were worked out, the promise by the NEA and ISTA that LTD benefits will continue provides cold comfort to disabled teachers who rely on these benefits to pay their monthly living expenses. Plaintiffs' counsel have repeatedly asked counsel for the NEA, ISTA, and other Defendants to provide details and documentation of their Trust, including requests during a telephonic conference with the court in the Federal Action, but the Defendants have refused to provide any details or documentation.

8. Plaintiffs bring two types of claims:

A. Plaintiffs bring class action claims on behalf of themselves and all other similarly-situated participants in and beneficiaries of the Plan, seeking recoveries for losses caused by the Defendants' breaches of fiduciary duties and other wrongdoing.

B. Plaintiffs also bring non-class action claims asking the Court to enforce the terms of the Trust Agreement, which requires that nine Trustees administer the Trust. In violation of this requirement, the Trust is currently being administered by Defendant Edward Sullivan as "Sole Trustee." Plaintiffs ask that the Court appoint eight additional Trustees to serve with Sullivan, so that the Trust is administered by the required nine Trustees.

II. PARTIES

9. Plaintiff Dennis McAllen is a school teacher at Southport Middle School in Indianapolis, Indiana, and is a resident of Marion County, Indiana. McAllen is a participant in the Plan and is a beneficiary of the Plan.

10. Plaintiff Dennis Dittrick is a disabled former school teacher who is currently receiving LTD benefits from the Plan. He is a resident of Marion County, Indiana, and is a participant in the Plan and is a beneficiary of the Plan.

11. Plaintiff Cheryl Lakes is a disabled former school teacher who is currently receiving LTD benefits from the Plan. She is a resident of Marion County, Indiana, and is a participant in the Plan and is a beneficiary of the Plan.

12. Plaintiff Shirley O'Neil is a disabled former school teacher who is currently receiving LTD benefits from the Plan. She is a resident of Marion County, Indiana, and is a participant in the Plan and is a beneficiary of the Plan.

13. Defendant Warren L. Williams was a Trustee of the Plan and the Executive Director of ISTA until May 14, 2009, at which time he announced his resignation. Mr. Williams' resignation came almost simultaneously with disclosures concerning the misappropriation and improper investment of Plan participants' money that is alleged in this Complaint. Williams was a fiduciary and/or Trustee of the Plan.

14. Defendant Thomas Eddington is a former Trustee of the Plan and was a fiduciary and/or Trustee of the Plan.

15. Defendant Michael Robinson is a former Trustee of the Plan and was a fiduciary and/or Trustee of the Plan.

16. Defendant E. Anne Moudy is a former Trustee of the Plan and was a fiduciary and/or Trustee of the Plan.

17. Defendant Nathan Schnellenberger is a former Trustee of the Plan and was a fiduciary and/or Trustee of the Plan. Schnellenberger is the current President of ISTA.

18. Defendant Linda Steele is a former Trustee of the Plan and was a fiduciary and/or Trustee of the Plan.

19. Defendant C. Darvin Stilwell is a former Trustee of the Plan and was a fiduciary and/or Trustee of the Plan.

20. Defendant Sherry Watkins is a former Trustee of the Plan and was a fiduciary and/or Trustee of the Plan.

21. Defendant Robert Frankel is the former Director of Plan who resigned May 1, 2009, and was a fiduciary and/or Trustee of the Plan.

22. Defendant David M. Karandos is a Senior Vice President at Morgan Stanley & Co., Inc. and former employee of UBS Financial Services, Inc., who, for a fee, provided

investment advisory and broker services to the Plan during the Class Period. Karandos is liable for the breaches of trust and fiduciary duties of the named Trustees due to his knowing participation in and aiding of those breaches.

23. Defendant Morgan Stanley & Co., Inc. (“Morgan Stanley”) is a Delaware corporation with its principal office located in New York, New York. Morgan Stanley is liable for the breaches of trust and fiduciary duties of the named Trustees due to its knowing participation in and aiding of those breaches.

24. Defendant UBS Financial Services, Inc. (“UBS”) is a Delaware corporation with its principal office located in the State of New York. UBS is liable for the breaches of trust and fiduciary duties of the named Trustees due to its knowing participation in and aiding of those breaches.

25. Defendant Indiana State Teachers Association is an Indiana non-profit corporation with its headquarters and principal office located in Indianapolis, Indiana. ISTA is liable for the breaches of trust and fiduciary duties of the named Trustees due to its knowing participation in and aiding of those breaches.

26. Defendants Edward P. Sullivan is currently the Sole Trustee of the Plan and is the Trustee of the “trusteeship” the NEA instituted over ISTA on or about May 16, 2009.

27. Defendant Richard J. Darko is the current Interim ISTA Insurance Trust Fund Director and General Counsel of ISTA. Darko is liable for the breaches of trust and fiduciary duties of the named Trustees due to his knowing participation in and aiding of those breaches.

III. OVERVIEW OF THE PLAN

28. During the Class Period, the assets of the Plan were held in trust by the Trustees pursuant to the December 17, 2002 Amendment and Restatement of the Agreement and

Declaration of Trust Establishing I.S.T.A. Insurance Trust, a copy of which is attached as Exhibit A, and referred to as the “Trust Agreement.”

29. Through the Plan, ISTA is one of the largest group benefit providers in Indiana. Its stated goal is to provide high quality health and disability benefits at a competitive price to Indiana school employees and their families.

30. The Plan also provides benefits to non-school and non-public employees, including employees of ISTA.

31. Throughout the Class Period, the Plan offered health and disability insurance to its participants, who paid periodic premiums for these benefits.

32. The Plan includes participants throughout the State of Indiana, with more than 100,000 Plan participants. The Plan is accessible to employees in nearly 90% of the public school corporations in Indiana, as well as employees of ISTA.

33. The Plan claims to provide superior benefits through effective and efficient administration, and claims to deliver the most cost-effective plans.

IV. THE PLAN INCURRED SIGNIFICANT LOSSES DURING THE CLASS PERIOD.

34. In or about May 2009, the Indiana Department of Insurance (“DOI”) conducted an investigation of the Plan and determined that it lacked the resources to pay health and disability claims to Plan participants and beneficiaries and was underfunded by approximately \$67 million.

35. The poor financial condition of the Plan is the direct result of poor management by the fund Trustees and other fiduciaries in general, and, more particularly, inappropriate investments of trust funds that were recommended and facilitated by investment advisor and broker David Karandos while employed by UBS and, more recently, Morgan Stanley.

36. Approximately 88% of Plan funds were invested in hedge funds, derivatives, private equities, and long-term real estate investments. These investments were extremely volatile, inherently high-risk, illiquid, and presently are virtually worthless. These investments were drastically ill-suited for investment of insurance trust funds, which are intended to protect Plan participants in times of need due to health issues or disability.

37. By contrast, Plan funds were previously invested mostly in conservative—and far more appropriate—investment vehicles such as United States Treasury Bonds.

38. The Plan engaged in an extremely high volume of investment trades in 2008 for a portfolio of this size, which is reflective of an inappropriately high-risk investment strategy. This high volume of trades generated a correspondingly high amount of commissions for Karandos, Morgan Stanley, and UBS.

39. Many of the investments in the Plan are illiquid, leaving the Plan without sufficient liquid funds for the successful and efficient operation of the Plan.

40. Despite substantial losses in Plan funds in recent years, the Defendants actually increased the commissions paid to Karandos by as much as 50%. In addition, Karandos was paid both overall fees for his work for the Plan and commissions, in essence being paid twice for his high-risk and imprudent investment of Plan funds.

41. In addition to investment losses resulting from the fiduciaries' breaches of their duties, the plan has incurred significant losses due to mismanagement, including the excessive payment of fees and expenses to Account Services Corporation ("ASC"), which dealt primarily with administration of Plan benefits, and Financial Services Corporation ("FSC"), and other outside vendors and professionals.

42. There was little distinction between ISTA, ASC and FSC. The overlap of ISTA with ASC and FSC includes the following:

A. The employment contracts of employees of ASC and FSC were generated by ISTA and signed by ISTA Executive Director Warren Williams.

B. The members of the Boards of Directors of ISTA, ASC, and FSC were nearly identical, demonstrating common control.

C. Warren Williams was responsible for all hiring and firing for ISTA, ASC, and FSC.

D. The employees of ASC and FSC were in the same union as ISTA employees.

E. Payroll for ASC and FSC was administered by ISTA.

F. All raises and promotions of ASC and FSC employees were approved by Warren Williams.

G. Warren Williams received daily reports regarding Plan investments and the operations of ASC and FSC.

H. Warren Williams exercised control over the banking accounts of the Plan, and at one point ordered that all operating accounts related to the Plan be moved from UBS to Morgan Stanley. This move was ordered after Defendant Karandos changed employment from UBS to Morgan Stanley.

I. Warren Williams negotiated all labor contracts on behalf of ASC and FSC.

J. Warren Williams was signatory on all investment accounts of ASC and FSC.

K. Warren Williams approved all major vendor contracts of ASC and FSC.

V. THE DEFENDANTS' EVOLVING RESPONSE TO THE PLAN'S IMPENDING FINANCIAL MELTDOWN

43. Well after ISTA and the Trustees were aware of the impending financial collapse of the Plan, they continued to assure plan participants and beneficiaries that they should continue making premium payments to the Plan, and that their benefits would not be affected. For example:

A. On April 28, 2009, Richard Darko, Interim Trust Fund Director, issued a memo to ISTA members urging them to remain with the plan, calling it "one of the least expensive, best administered long-term disability products in the country." *FBI Investigating Teachers Union Fund*, INDIANAPOLIS STAR, May 15, 2009.

B. On May 15, 2009, Dan Clark, ISTA Deputy Director, told the Indianapolis Star the Trust Fund was not in immediate danger. "It's not imminent. These 650 people are collecting benefits now, and the only thing we're currently liable for is next month's payments. That's the cash we have. I think it's probably a few years before all the investments would have been completely exhausted and nothing is left." *Teachers Union Trust Fund in Hole*, INDIANAPOLIS STAR, May 15, 2009.

C. On May 16, 2009, Clark told the Star: "We're responsible, and we will be judged by how well we fix the problem. We hope next week to announce a solution that will guarantee that no one will go unpaid." *ISTA Fund Showed Many Trades, Big Losses*, INDIANAPOLIS STAR, May 16, 2009.

44. Despite ISTA's reassurances that things were not as bad as reported, things continued to get worse. As widely reported by news media, on May 19, 2009, ISTA President Schnellenberger announced to ISTA members that on May 16 the ISTA Board of Directors met

in a special session and unanimously agreed to ask the NEA to institute a “Trusteeship” over ISTA.

45. In response, NEA agreed to appoint a trustee and appointed Edward Sullivan for this role. According to Schnellenberger’s May 19 announcement to ISTA members, Sullivan “will have complete authority over the operations of ISTA.”

46. While not specifically referenced in Schnellenberger’s May 19 announcement, Sullivan apparently also seized control of the Plan. In a June 2, 2009 memorandum Sullivan issued to Indiana school corporations that fund LTD benefits through the ISTA Insurance Trust, Sullivan referred to himself as “Sole Trustee of the ISTA Insurance Trust,” and stated that he had the “authority to make all decisions regarding the operation of the ISTA Insurance Trust.”

47. In the memorandum, Sullivan notified the school corporations that, due to “cash flow problems” and “a lack of liquidity” of Insurance Trust investments, July 2009 would be the last month for which long-term disability insurance benefits would be made available through the insurance trust. Sullivan also announced that “the cash currently available to the ISTA Insurance Trust does not appear to be sufficient to pay long term disability benefits after July 2009.”

48. The significance of this announcement cannot be overstated. At present, approximately 650 current and former Indiana school teachers receive LTD benefits from the ISTA Insurance Trust, with each receiving varying amounts in the range of roughly \$1500-\$2000 per month. The cessation of these benefits payments would leave 650 disabled teachers without a significant source of income. By ISTA’s own estimate, the total amount of disability payments to these 650 disabled teachers over the next 15-20 years is projected between \$45,000,000 and \$65,000,000.

49. Days after ISTA's unequivocal announcement that it intended to discontinue LTD benefits payments after July 2009, Sullivan on the morning of June 8, 2009, called Irwin Levin, counsel for the Plaintiffs and proposed class in the present matter, to notify him that NEA and ISTA purportedly had reached an agreement whereby they would ensure that no LTD benefits would go unpaid. Sullivan further indicated that he and Schnellenberger would be holding a press conference that afternoon to make this announcement. Levin asked Sullivan for details of how NEA and ISTA planned to secure sufficient funds to ensure that LTD benefits would not go unpaid. Sullivan said he did not know any details and that they would have to be "worked out."

50. In the afternoon of June 8, 2009, Sullivan and Schnellenberger held a press conference at ISTA headquarters, during which they announced that NEA and ISTA had entered into a partnership through which they would marshal sufficient funds to pay all LTD benefits to the approximately 650 teachers currently receiving those benefits. When pressed for details on where this money would come from and what portions would be paid by NEA and ISTA, Sullivan and Schnellenberger were unable to provide details. In fact, Sullivan and Schnellenberger admitted that these details had not yet been finally decided or reduced to writing. Moreover, Sullivan and Schnellenberger said that they were unsure whether any agreements between NEA and ISTA about funding LTD benefits would be kept confidential or shared with beneficiaries and the public.

51. One detail of the "partnership" between NEA and ISTA that became clear only after persistent questioning by the press was that the NEA's portion of funding for LTD benefits would not be a gift, but instead would be nothing more than a long-term loan to ISTA. In order to pay back this loan, Schnellenberger admitted that ISTA would raise dues on Indiana teacher

members of ISTA and would have to consider selling its assets and laying off staff. In other words, under the NEA and ISTA “partnership,” Indiana teachers will end up paying millions of dollars for the mismanagement and irresponsible investment of ISTA Insurance Trust funds for many years to come.

52. The Plaintiffs and their counsel are understandably skeptical that the NEA and ISTA will follow through on their public commitment to pay all LTD benefits over the next 15-20 years. As described above, just over a month ago ISTA principals publicly stated that its LTD policy was among the best administered in the country, that the financial problems it was experiencing were not severe, and that benefits would not go unpaid. Days later, ISTA issued a memo to school saying LTD benefits would be completely cut off after July 31, 2009.

53. Plaintiffs Shirley O’Neil, Dennis Dittrick, and Cheryl Lakes, all of whom are disabled teachers who count on LTD benefits payments to pay their monthly living expenses, and Dennis McAllen, a teacher and father who supposedly still has LTD coverage through the Plan, view NEA’s and ISTA’s recent announcement that their benefits are safe with suspicion. It certainly does not help that NEA and ISTA indicated during their June 8 press conference that the details of their “partnership” had not yet been determined and might ultimately remain confidential.

54. Plaintiffs’ counsel has repeatedly asked counsel for ISTA and Sullivan to provide documentation and details concerning their purported partnership with NEA to fix the Insurance Trust’s severe financial problems, but counsel for ISTA and Sullivan have consistently refused to do so. During a July 13, 2009 telephonic conference with court in the Federal Action, Plaintiffs’ counsel again reiterated their request for documents and details about the plans to ensure health and LTD benefits would be paid. Defense counsel again refused. In fact, during that call,

counsel for Sullivan made it clear that the plan to ensure benefits would not go unpaid was still a work in progress, and that the details had not been worked out or finalized. At present, the beneficiaries have nothing more than an unsubstantiated promise that the problem will be solved, which comes in part from an entity that recently said benefits *would not* be paid after July 2009.

VI. CLASS ACTION ALLEGATIONS

55. **Class Definition.** Plaintiff brings Count I of this Complaint as a class action pursuant to Trial Rules 23(A), (B)(1), (B)(2), and (B)(3) on behalf of the Plaintiff and the following class of persons similarly situated (the “Class”):

All persons, other than Defendants, who were participants in or beneficiaries of the Indiana State Teachers Association Insurance Trust at any time between May 14, 2007 and the present.

56. **Numerosity.** The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to the Plaintiff at this time, there are thousands of class members.

57. **Commonality.** Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- A. Whether Defendants each owed a fiduciary duty to Plaintiff and members of the Class;
- B. Whether Defendants breached their fiduciary duties to Plaintiff and members of the Class by failing to act prudently and solely in the interests of the Plan’s participants and beneficiaries;
- C. Whether the Plan and/or beneficiaries suffered losses and, if so, what is the proper measure of damages.

58. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the Class.

59. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

60. **Rule 23(B)(1)(b) Requirements.** Class action status in this action is warranted under Rule 23(B)(1)(b) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

61. **Other Rule 23(B) Requirements.** Class action status is also warranted under the other subsections of Rule 23(B) because: (1) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; (2) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole; and (3) questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

VI COUNT I: CLAIM FOR BREACHES OF TRUST AND BREACHES OF FIDUCIARY DUTIES

62. Plaintiffs incorporate all of the allegations set forth above as if fully set forth herein.

63. Under Indiana law, Defendants Williams, Eddington, Robinson, Moudy, Schnellenberger, Steele, Stilwell, Watkins, and Frankel, are or were Trustees of the Plan, and are therefore liable to the beneficiaries for breaches of trust and fiduciary duties.

64. Under Indiana law, persons or entities who knowingly participate, take part, or aid in a breach of trust or fiduciary duty are directly liable to trust beneficiaries for losses resulting from such breaches. Defendants Karandos, Morgan Stanley, UBS, ISTA, and Darko all knowingly participated, took part, and aided in the breaches of trust and fiduciary duties of the named Trustees, and are therefore directly liable to the beneficiaries for these breaches.

65. Under Indiana law, the beneficiaries may bring claims against Trustees for breaches of trust and fiduciary duties, including breaches by their agents, for losses caused by such breaches and against persons and entities who knowingly participate in, take part in, and aid in such breaches. The Trustees were unwilling or neglected to commence actions against Defendants Karandos, Morgan Stanley, UBS, ISTA, and Darko, and have failed to do so even after the Plaintiffs' initial filing of such claims and even though the plan participants' benefits, including the long term disability benefits owed to hundreds of participants, are in jeopardy.

66. The Trustees of the Plan, Defendants Williams, Eddington, Robinson, Moudy, Schnellenberger, Steele, Stilwell, Watkins, and Frankel owed a fiduciary duty to the beneficiaries to administer the Plan, including use and investment of Plan funds, in a manner that was in the best interests of the beneficiaries.

67. In breach of this fiduciary duty, the Trustees failed to administer the Plan in manner that was in the best interests of the beneficiaries, as set forth in detail throughout this Complaint.

68. Defendants Karandos, Morgan Stanley, UBS, ISTA, and Darko, despite their knowledge that the Trustees were administering the Plan in a manner that was not in the best interests of the beneficiaries—and therefore in breach of the Trustees’ fiduciary obligations—participated in, took part in, and aided these fiduciary breaches.

69. The Plan suffered millions of dollars in losses because substantial assets of the Plan were imprudently invested or allowed to be invested by Defendants in inappropriate and high-risk investments during the Class Period, in breach of the Defendants’ fiduciary duties.

70. Had the Defendants properly discharged their fiduciary and co-fiduciary duties, including the monitoring and removal of fiduciaries who failed to satisfy their duties of prudence and loyalty and eliminating inappropriately high-risk investments, the Plan would have avoided some or all of the losses that it, and indirectly, the participants and beneficiaries suffered.

71. The Defendants breached their fiduciary duties in that they knew or should have known the facts as alleged above, and therefore knew or should have known that the Plan’s assets should not have been invested as they were during the Class Period.

72. Plaintiffs and the Class are therefore entitled to relief as follows:

A. An Order certifying a Class as requested above and appointing Plaintiffs as Plaintiff Class Representatives and their counsel as Class Counsel.

B. An Order compelling the Defendants to make good to the Plan and/or the beneficiaries all losses to the Plan resulting from the Defendants’ breaches of their fiduciary duties, including losses to the Plan resulting from imprudent investment of the Plan’s assets, and to restore to the Plan and/or the beneficiaries all profits which the participants would have made if the Defendants had fulfilled their fiduciary obligations;

C. Imposition of a constructive trust on any amounts by which any Defendant was unjustly enriched at the expense of the Plan as the result of breaches of fiduciary duties;

D. Disgorgement of commissions or other profits the Defendants made in connection with their mismanagement of Plan investments or other wrongdoing.

E. Actual damages in the amount of any losses the Plan suffered;

F. An Order awarding attorneys' fees pursuant to the common fund doctrine, and other applicable law; and

H. An Order for equitable restitution and other appropriate relief.

VII. COUNT II: CLAIM UNDER INDIANA LAW TO ENFORCE THE TERMS OF THE TRUST AGREEMENT BY APPOINTING EIGHT ADDITIONAL TRUSTEES

73. The Plaintiffs bring non-class action claim pursuant to enforce the terms of the Trust Agreement.

74. As set forth below, the appointment of Sullivan as Sole Trustee violates the terms of the Trust Agreement, which among other things requires that nine Trustees administer the Plan. In order to enforce the terms of the Trust Agreement, the Plaintiffs ask that the Court appoint eight additional Trustees to serve with Sullivan to administer the Plan consistent with its terms.

75. The most recent version of the instrument governing the operation and administration of the Plan is the Trust Agreement attached as Exhibit A.

76. The recent resignation and or termination of the nine Plan Trustees, and the appointment of Sullivan as "Sole Trustee" violates the terms of the Trust Agreement.

77. The Trust Agreement has provisions specifically dealing with the required number of Trustees and procedures for resignation, termination, and replacement of Trustees.

More particularly::

A. The Trust Agreement specifies that the Plan shall be administered by nine Trustees as follows:

7.1. Appointment and Term of Trustees. The Fund shall be administered by nine (9) Trustees. Three (3) of the Trustees shall be the Association President, the Treasurer and Executive Director, who shall serve so long as they hold their respective offices. The remainder of the Trustees shall be appointed by the President of the Association and approved by the Association's Board of Directors. One (1) of the Trustees so appointed shall be a school administrator. However, in no case shall any of the six (6) be actively serving on the Association's Board of Directors. Trustees appointed by the Association shall serve six (6) year terms, or until their successors are selected by the Board of Directors and have duly qualified as a Trustee. Any Trustee other than the Association President, Treasurer, or Executive Director may serve no more than three (3) six (6)-year terms.

B. Consistent with the requirement of multiple Trustees, the Trust Agreement refers to the plural "Trustees" nearly 200 times. The Trust Agreement makes no reference to a "Sole Trustee," the title recently taken by Sullivan.

C. The Trust Agreement contains the following specific procedures for the resignation and removal of Trustees:

7.4. Resignation of Trustee. A Trustee may resign and become and remain fully discharged from all further duty or responsibility hereunder upon giving thirty (30) days notice in writing to the remaining Trustees and to the Association, or such shorter notice as the remaining Trustees may accept as sufficient, in which notice there shall be stated a date on which such resignation shall take effect. Such resignation shall take effect on the date specified in the notice unless a successor Trustee shall have been appointed at an earlier date, in which event such resignation shall take effect immediately upon the appointment and acceptance of trust of such successor Trustee.

7.5. Removal of Trustee. Any Trustee may be removed from office at any time during his/her term by resolution adopted by the President of the

Association and approved by the Association's Board of Directors delivered to the Secretary-Treasurer of the Trustees. However, no more than two (2) Trustees may be removed in any calendar year.

D. The Trust Agreement also contains a procedure for appointment of successor Trustees in the event a Trustee resigns, providing:

7.3. Successor Trustees. The Association's President shall appoint successor Trustees upon the expiration of their terms, or in the event a Trustee resigns, dies, or becomes incapable of acting as a Trustee. Any such appointment must be approved by the Association's Board of Directors. The Association Board of Directors shall appoint a successor Trustee to complete the unexpired term of such Trustee. Any successor Trustee shall, immediately upon his/her appointment as a successor Trustee and his/her acceptance of the Trusteeship in writing, become vested with all the property rights, powers and duties of a Trustee hereunder with like effect as if originally named a Trustee, without the necessity of any formal conveyance or other instrument of title.

78. The appointment of Sullivan as "Sole Trustee" of the Plan violates the terms of the Trust Agreement. As set forth above, the Trust Agreement requires that nine Trustees administer the Plan, and contains no authority for the appointment of a "sole trustee."

79. In addition to violating the express terms of the Trust Agreement, the sudden resignation and/or termination of all nine Trustees, each of whom is a Defendant in this lawsuit, in the wake of the public revelation that the Plan was on the brink of insolvency due to breaches of fiduciary duties, raises serious questions about the propriety of any action taken by the NEA, ISTA, the Trustees, or others to appoint Sullivan as Sole Trustee.

80. ISTA and Sullivan claim that Sullivan is authorized to act as Sole Trustee pursuant to a recent amendment of the Trust Agreement, which was authorized by the ISTA Board of Directors, that permits the Plan to be administered by a single Trustee. However, the amendment was procedurally improper and therefore never became effective because it was approved by Sullivan alone, rather than by a majority of the Trustees as required by the Trust

Agreement. In circular fashion, Sullivan tried to exercise authority as a Sole Trustee by amending the Trust Agreement to grant the very authority required to take such action.

81. Sullivan's appointment as Sole Trustee raises concerns because he apparently is heading both ISTA and the Plan. Considering that the Plan may have a cause of action against ISTA for its involvement in the Plan's financial collapse, Sullivan's dual roles may present a conflict of interest.

82. The recent appointment of Defendant Schnellenberger, who until recently was a Trustee of the Plan and is alleged to have participated in and facilitated the Plan's financial mismanagement, as ISTA President creates an additional conflict of interest. Schnellenberger may abuse his role as acting President of ISTA to protect himself from personal liability for breaches of fiduciary duties as a former Trustee of the Plan.

83. While Sullivan, the NEA, and ISTA publicly stated they are forming a partnership to ensure that no LTD benefits will go unpaid, they provided no details about how this partnership will raise funds sufficient to cover this enormous liability, and even said the details might remain confidential.

84. In light of Defendants' breaches of the Trust Agreement, potential and/or existing conflicts of interest, and lack of transparency regarding the Plan's current operation in general and the NEA/ISTA partnership in particular, the Plaintiffs ask that the Court immediately appoint eight additional Trustees to serve with Sullivan to administer the Plan consistent with its terms.

85. In the event ISTA, Schnellenberger, or anyone else appoints additional Trustees either before or after the Court has had an opportunity to do so, the Plaintiffs ask that the those

appointments be subject to Court approval to ensure that the new Trustees are qualified and unbiased.

86. Based on the allegations in the previous Court, the Plaintiffs ask that the Court exercise this authority by appointing eight additional Trustees to serve with Sullivan to administer the Plan consistent with its terms.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for, in addition to the relief requested above, an Order appointing eight additional Trustees to serve with Sullivan to administer the Plan consistent with its terms, and further requiring that any Trustees appointed by ISTA, Schnellenberger, or anyone else, either before or after the Court has had an opportunity to do so, be subject to Court approval to ensure that the new Trustees are qualified and unbiased.

Dated: 7/24/04

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