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<input type="checkbox"/> EXPEDITE
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X Hearing is set
Date: <u>March. 27, 2009</u>
Time: 9:00 a.m.
Judge/Calendar: <u>Murphy</u>

<input type="checkbox"/> No hearing is set.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

)	No. 08-2-01674-6
IN RE: WASHINGTON)	
BUILDERS BENEFIT TRUST)	DECLARATION OF KNOLL
_____)	LOWNEY IN SUPPORT OF
)	MOTION FOR ACCOUNTING
RE SOURCES FOR)	
SUSTAINABLE COMMUNITIES)	
<i>ET AL,</i>)	
)	
Plaintiffs,)	
)	
v.)	
)	
BUILDING INDUSTRY)	
ASSOCIATION OF)	
WASHINGTON <i>ET AL.</i>)	
)	
Defendants.)	
)	

1
2 I, Knoll Lowney, hereby declare the following under penalty of perjury
3 under the laws of the State of Washington.
4

5 1. I am counsel for petitioners herein and testify to the following based
6 upon personal knowledge.

7 2. The documents attached to the declaration of Stephen Sefcik are
8 true and correct copies of document provided by either the State of Washington
9 or Washington Builders Benefit Trust.

10 3. Attached as Exhibit A are true and correct excerpts of Defendants'
11 Opposition to Summary Judgment, filed in the preceding federal court action.

12 4. Attached as Exhibit B and C are true and correct excerpts of the
13 bylaws of Building Industry Association of Washington ("BIAW") and BIAW
14 Member Services Corporation ("MSC").

15 5. Attached as Exhibit D is a stipulation of fact provided by
16 Defendants regarding the 1994 Declaration of Trust.

17 6. Attached as Exhibit E is a printout from a website showing the
18 holdings and size of South Sound Bank.

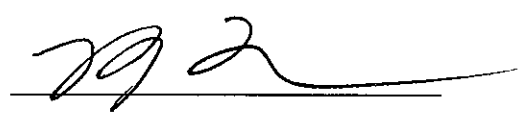
19 7. Attached as Exhibit F is the declaration of Lonnie Lopez previously
20 submitted on a motion for summary judgment that was withdrawn and has not
21 yet been re-noted.

22 8. Attached as Exhibit G is an excerpt of the transcript of the
23 deposition of Rick Tremaine, who served as a trustee of the Washington Builders
24 Benefit Trust from 2003 and served as its chair in 2005, 2006, and 2007.

25 9. Plaintiffs' counsel and expert witness have spent approximately six
26 weeks analyzing the Trust's financial documents in an attempt to understand the
27 holdings and earnings of the Trust, after the Trust refused to answer discovery

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Stated under oath this 19th day of March, 2009 in Seattle, Washington.



Knoll Lowney

Exhibit A
(excerpts)

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RE SOURCES FOR SUSTAINABLE
COMMUNITIES, et al.,

Plaintiffs,

v.

BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON, et al.,

Defendants.

No. C07-1519RSM

OPPOSITION OF BIAW,
MEMBER SERVICES CORP.,
AND BUILDERS BENEFIT
TRUST TO PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT

Noted for February 8, 2008

Oral Argument Requested

Plaintiffs' case is founded on a lie: that defendants "systematically and covertly transferred large amounts of . . . trust funds to themselves and their subsidiaries, violating [various] fiduciary duties." Motion at 2:9-11. Plaintiffs provide no competent evidence to support their accusation, which charges criminal misconduct. Fed. R. Civ. P. 56(e) requires more. So does common decency.

Nowhere do plaintiffs' pleadings or moving papers acknowledge that the supposed "covert transfers" are a contractually-agreed fee, legitimately paid to the Building Industry Association of Washington ("BIAW") and its affiliates for their role in sponsoring and promoting a retrospective rating program under RCW 51.18.010 *et seq.* Every year, plaintiffs and all other participants in BIAW-sponsored "retro" programs sign an agreement for renewal

1 owned businesses that lack sophisticated industrial safety and claims-management expertise
 2 of the sort that Member Services can and does provide them. These services improve
 3 workplace safety, hold down workers compensation expense, and thereby increase the refunds
 4 from DLI. Kwieceiak Decl. ¶¶ 6-7; McCabe Decl., ¶¶ 2, 14-16.

5 Defendant Washington Builders Benefit Trust ("the Benefit Trust") is a trust
 6 established by BIAW many years ago to hold and invest premium refunds from DLI prior to
 7 their disbursement to the trust beneficiaries. Kwieceiak Decl. ¶ 9-10 & Ex. B. Nothing in the
 8 statute or in DLI regulations requires organizations sponsoring retro programs to hold the
 9 group refund in trust; but BIAW has chosen to do so. The current trust instrument – nowhere
 10 disclosed in plaintiffs' motion – is a declaration dated as of January 1, 1994 (hereafter, the
 11 "Trust Declaration"). Kwieceiak Decl. Ex. B. Among the express purposes of the Benefit
 12 Trust as stated in the Trust Declaration is "[t]o receive, in trust for the benefit of BIAW and
 13 the Employer Participants, Adjustments pursuant to each Plan." ⁵ *Id.* Art. II, § 1(B)

14 The trustees of the Benefit Trust are individuals appointed from time to time by the
 15 President of BIAW. Contrary to plaintiffs' allegations, *see* Motion at 19:16-17, neither
 16 BIAW nor the other defendants are trustees of the Benefit Trust, nor have they ever been.
 17 Kwieceiak Decl. ¶ 10. Rather, BIAW is one of the named beneficiaries of the Benefit Trust.
 18 Kwieceiak Decl. Ex. B, Art. II, § 1(B)-(C).

19 The 1994 Trust Declaration grants the trustees broad discretionary powers, including
 20 the authority to charge to the Trust the expenses of administering the retro plan. *Id.* Art. III, §
 21 10.⁶ *In addition*, the 1994 Trust declaration provides in Article III, § 11:

22 **Before distribution of the balance of each Fund left *after***
 23 ***payment of all expenses* and final Adjustments by DLI, *the***
 24 ***Trustees shall pay to BIAW a marketing assistance fee of 10%***

25 ⁵ Both refunds and additional assessments are referred to by DLI as "adjustments" to the
 26 standard workers compensation premium. *See DLI About Retro.*

27 ⁶ In fact, however, the trustees have elected to charge few expenses of administering the
 plans to the Benefit Trust. BIAW and Member Services absorb most of the expenses of
 administration. Kwieceiak Decl. ¶ 11.

1 of all Employer Participants' distributive shares of the Fund. *In*
2 *addition, the Trustees shall pay to any local association with*
3 *members who are Employer Participants in a Plan a marketing*
4 *assistance fee of 10% of the distributive share of the Fund*
5 *allocated to Employer Participants who are members of such*
6 *local association.*

7 (Emphasis added.)

8 Thus, contrary to plaintiffs' allegation that the trustees are violating their fiduciary
9 duties by transferring funds to BIAW and its local affiliates, Motion at 2:9-17, the trustees are
10 carrying out the express mandate of the trust. The term "shall" normally indicates a
11 mandatory duty. *E.g., Guardianship Est. of Keffeler v. Dep't of Soc. & Health Servs.*, 151
12 Wn.2d 331, 344 n.10, 88 P.3d 949 (2004). It would have been a violation of their fiduciary
13 duties for the trustees *not* to have made these payments. *See* RESTATEMENT (SECOND) OF
14 TRUSTS § 164 (1957).

15 In addition to providing services directly to participants, Member Services performs
16 administrative services for the defendant Benefit Trust, including receiving the group's
17 refunds from DLI and transferring them to the trust's investment account. When the trustees
18 authorize distributions, Member Services calculates the amounts due to individual members,
19 to local associations, and to the BIAW itself, and writes the checks. Kweciak Decl. ¶¶ 9, 12.

20 III. PARTICIPANTS' ENROLLMENT AGREEMENTS

21 Each member who elects to participate in a BIAW retro program signs a new
22 enrollment contract annually. Kweciak Decl. ¶ 5. These contracts, examples of which are
23 attached to plaintiffs' motion as Exhibit 1, and to Kweciak Decl. as Exhibit A, explain that:

24 The "Washington Builders Benefit Trust" (hereinafter "the
25 Trust") will receive, on behalf of Participants, all Premium
26 Returns paid by DLI pursuant to this Agreement, and hold some
27 or all of such Premium Return until the expiration of the period
DLI may adjust such Premium Return or claim Penalties with
respect to the Coverage Period. The Trust is comprised of
seven trustees appointed by the president of BIAW from among
the BIAW general membership.

1 (1977). The situations are entirely different. Employees at a union shop are required by law
2 to pay dues to the union if they wish to remain at their jobs; it is the compulsory nature of the
3 dues that creates the constitutional issue. See *Teachers Union*, 475 U.S. at 305; *Abood*, 431
4 U.S. at 234-235. Plaintiffs are under no similar compulsion. They can participate effectively
5 in the building industry, and even in a DLI retro program (either on their own or as part of a
6 group program), without being members of BIAW or participating in its retro program.

7 Plaintiffs are also free to try to persuade a majority of BIAW members to their point of
8 view – something that they have been notably unsuccessful in doing. See McCabe Decl. ¶¶
9 29-30. What they are not entitled to do is to squelch the right of the BIAW to express the
10 views held by a majority of its members. That is what they seek to do in this lawsuit.

11 **V. PLAINTIFFS' MOTION IS SUBSTANTIVELY UNFOUNDED AND**
12 **PROCEDURALLY IMPROPER**

13 Plaintiffs' motion seeks a pre-trial ruling that (a) retro refunds are subject to an
14 express trust; (b) the contractual agreements between participants and BIAW are a "trust
15 instrument"; and (c) BIAW, Member Services, and the Benefit Trust owe fiduciary duties to
16 members "in their management of retro refunds." See Motion at 9:2-11; Plaintiffs' Proposed
17 Order at 1:25-2:5. Item (a) is only partially correct; item (b) is completely wrong; and item
18 (c) is mostly wrong.

19 **A. Existence of an "Express Trust"**

20 There is no question but that the Benefit Trust is an "express trust."¹⁰ All references
21 to a "trust" in the passages that plaintiffs quote from the enrollment contracts are to this trust.
22 The existence of this trust, with all that it implies in terms of fiduciary duties, is not in dispute.

23
24 ¹⁰ An "express trust" is one created or declared in express terms, usually (but not always)
25 in writing. *Gillespie v. Seattle-First National Bank*, 70 Wn.App. 150, 161 n.14, 855 P.2d 680
26 (1993). It is distinguished from "resulting trusts" and "constructive trusts." See generally *In*
27 *re Weir's Estate*, 134 Wash. 560, 236 Pac. 285 (1925); *Farrell v. Mentzer*, 102 Wash. 629,
632, 174 Pac. 482 (1918); *Diel v. Beekman*, 7 Wn.App. 139, 499 P.2d 37 (1972) (*overruled*
on other grounds by Chaplin v. Sanders, 100 Wn.2d 853, 676 P.2d 431 (1984).



1 Plaintiffs apparently assert that the enrollment agreements create some other trust,
2 apart from the Benefit Trust that is expressly referred to in the enrollment form. There is
3 nothing in the enrollment agreements that can fairly be so read. "To constitute a trust, there
4 must be an explicit declaration of trust or circumstances that show beyond doubt that a trust
5 was intended to be created." In re *Madsen's Est.*, 48 Wn.2d 675, 678, 296 P.2d 518 (1956).
6 "Before a trust will be found to exist, there must be a clear manifestation thereof. This means
7 an intention to create a trust and not to do something else. . . . [T]o establish an express trust
8 the evidence must be clear and satisfactory." *Hoffman v. Tieton View Cmty. Methodist*
9 *Episcopal Church*, 33 Wn.2d 716, 726, 207 P.2d 699 (1949).

10 Plaintiffs principally rely on *Westview Invs., Ltd. v. U.S. Bank Nat'l Ass'n*, 133 Wn.
11 App. 835, 138 P.3d 638 (2006). That case dealt with provisions in a standard-form AIA
12 construction contract requiring that progress payments to a general contractor for work
13 performed by subcontractors or suppliers "shall be held by the Contractor for those
14 Subcontractors or suppliers," and that Subcontractors should be paid "out of the amount paid
15 to the Contractor on account of such Subcontractor's portion of the work." 133 Wn. App. at
16 846. The court of appeals held that this language was sufficient to establish an express trust,
17 particularly in view of the AIA commentary indicating that these provisions were intended to
18 create such a trust. *Id.* at 845-47. There is nothing comparable to this language in the
19 enrollment agreements except insofar as it relates to the Benefit Trust.

20 In part D below, we address further what we believe may be plaintiffs' unarticulated
21 position – or perhaps a legal theory – that they have deliberately chosen not to raise.

22 **B. The "Trust Instrument"**

23 The trust instrument governing the Benefit Trust is the 1994 Declaration of Trust
24 (which the plaintiffs conspicuously fail to disclose in their motion, let alone discuss).
25 Kwiecek Decl. ¶ 10 & Ex. B. Contrary to plaintiffs' assertions, *see* Motion at 12:14-15, the
26 enrollment agreements that plaintiffs refer to as "the ROII Instrument" did not establish the
27 Benefit Trust, which predated them, and they do not modify its terms. The trustees of the

1 Benefit Trust are bound to follow the 1994 Trust Declaration, not the enrollment agreements,
2 to which the trustees are not parties.

3 The enrollment agreements are simply contracts, not declarations of trust. *See Grandy*
4 *v. Luther*, 12 Wn. App. 542, 530 P.2d 679 (1975). Plaintiffs cannot turn them into trust
5 declarations simply by labeling them as “the ROII Instrument” – a phrase of plaintiffs’ own
6 creation.¹¹

7 To the extent that plaintiffs are attempting to establish the existence of a trust different
8 from the Benefit Trust, see Part D below.

9 **C. Fiduciary Duties**

10 To the extent that fiduciary duties have not been modified or disclaimed, *see* RCW
11 11.97.010, the trustees of the Benefit Trust unquestionably owe fiduciary duties to the BIAW
12 and to the participants in the BIAW retro programs. Both the BIAW and its participant
13 members are expressly identified as the beneficiaries of that trust in the Trust Declaration.
14 One of the most important fiduciary duties of trustees is to carry out the terms of the trust – in
15 this case, including the mandatory requirement to pay 20% of any refund disbursement to the
16 BIAW and its local affiliates. *See* RESTATEMENT (SECOND) OF TRUSTS § 164 (1957).
17 Complying with this obligation cannot possibly be a breach of any fiduciary duty by the
18 trustees.

19 Contrary to plaintiffs’ assertion, BIAW and Member Services are not trustees of the
20 Benefits Trust; and the Trust is not a trustee of itself. *See* Kwieciak Decl. ¶ 10. To the extent
21 that plaintiffs assert that BIAW and/or Member Services owe fiduciary duties as the trustees
22 of some other trust, see Part D below. Even if BIAW or Member Services were found to be
23

24
25 ¹¹ If each enrollment agreement established an express trust, as plaintiffs apparently
26 contend, there would be thousands of such trusts each year – some of them with no trust estate
27 because the participant concerned is not entitled to share in the group refund that year. *See*
Kwieciak Decl. ¶¶ 15-16. Contracts should not be construed to reach implausible or absurd
results. *E.g., City of Woodinville v. Northshore United Church of Christ*, 139 Wn. App. 639,
651, 162 P.3d 427 (2007).

Exhibit B
(excerpts)

**BYLAWS OF THE
BUILDING INDUSTRY
ASSOCIATION OF
WASHINGTON**

LABOR AND INDUSTRIES
MAR 2 9 2002
RETROSPECTIVE RATING

**AS AMENDED AND APPROVED
BY BOARD OF DIRECTORS
FEBRUARY 20, 2002**

ARTICLE I
(NAME, LOCATION, AFFILIATION AND JURISDICTION)

- Section 1 The name of this association shall be the BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, INCORPORATED.
- Section 2 The principal office of this corporation shall be located at Olympia, Washington, or such other location as the Board of Directors may from time to time designate.
- Section 3 This Association is and shall be an Affiliated Association of the National Association of Home Builders of the United States and shall abide by its respective Bylaws, as amended from time to time.
- Section 4 The operation of this Association shall be conducted within the territorial boundaries of the State of Washington as assigned to its jurisdiction now and hereafter by the National Association of Home Builders.

LABOR AND INDUSTRIES
MAR 29 2002
RETROSPECTIVE RATING

**ARTICLE XII
(EXECUTIVE COMMITTEE)**

Section 1 **DUTIES AND RESPONSIBILITIES, AUTHORITY AND
ACCOUNTABILITIES.**

- A. The Executive Committee, between meetings of the Board of Directors, shall have and shall exercise the authority of the Board of Directors in the management of the Association; EXCEPT that it shall not have the authority of electing or removing any member of the Executive Committee or any elected directors or elected officers of the Association; amending the Articles of Incorporation; restating Articles of Incorporation; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefore; adopting a plan for the distribution of the assets of the Association; approving the expenditure of any funds specifically set aside as reserve funds by the Board of Directors; or amending, altering or repealing any resolution of the Board of Directors.

- B. The Executive Committee is accountable for the management of the Association. The Committee, through regular meetings, runs the Association. The Committee establishes the goals and accountabilities of the Executive Vice President.

- C. The Executive Committee shall have jurisdiction over matters relating to the budget of the Association. The annual budget of the Association shall be reviewed, amended as appropriate, and recommended by the Executive Committee to the Board of Directors. The Executive Committee shall provide general supervision of the administration of the financial affairs of the Association. The Executive Committee must approve or disapprove any expenditure of money greater than \$15,000 for any non-budgeted item.

- D. The Executive Committee is accountable for its actions to the Board of Directors.

- E. The members of the Executive Committee are responsible for selecting and monitoring member benefit programs which are deemed to be a viable membership service and which may produce non-dues revenue for the Association, subject to the approval of the Board of Directors. Implementation and administration of such programs will be carried out by the administration of the Executive Vice President and staff of the Association and any outside assistance as may prove necessary for the marketing and administration of such program. The Executive Committee may also recommend to the Board of Directors the deletion of any member benefit program, but the authority to delete such program rests with the Board of Directors.

Section 2 NUMBER AND TENURE. The Executive Committee shall be composed of the President; 1st Vice President; 2nd Vice President; Treasurer; Secretary; Area 15 Vice President, if from Washington State; National Representative; National Director; Associate National Director; the most recent past President of the Association able and qualified to serve; the Chairman of the Legislative Policy Committee; the Vice Chairman of the Legislative Policy Committee; the Chairman of the Washington Builders Benefit Trust; the Vice Chairman of the Washington Builders Benefit Trust; the Chairman of the Washington Affordable Housing Council; the Chairman of the Remodelors Council; the Chairman of the Education Committee; the Chairman of the Long Range Planning Committee; the Chairman of the Membership Committee; and three members-at-large appointed by the President, two of whom shall reside East of the Cascade Mountains.

Section 3 MEETINGS. The Executive Committee may hold meetings at the same time and place, and in conjunction with, the annual or any special meeting of the Board of Directors.

Section 4 SPECIAL MEETINGS. Special meetings of the Executive Committee may be called by or at the request of the President or by not less than two members of the Executive Committee.

Section 5 NOTICE. Notice of any meeting of the Executive Committee shall be given at least seven days previously thereto by written notice sent by mail, or at least five days previously thereto if sent by telegram, to each

Exhibit C
(excerpts)

BYLAWS OF

BIAW MEMBER SERVICES CORPORATION

ARTICLE 1

Meetings of Shareholders

SECTION 1.1 - Meetings. Shareholder meetings shall be held at the principal office of the corporation, or at such other location within or without the State of Washington as shall be determined by the Board of Directors (the "Board") and stated in the notice of meeting. The exact time at which the meeting shall commence shall be determined by the President or other person or persons who call the meeting and set forth in the notice of meeting.

SECTION 1.2 - Annual Meeting. The regular annual meeting of the shareholders for the transaction of such business as may properly be brought before the meeting shall be held on the date of the annual meeting of the membership of the Building Industry Association of Washington each year, or on such day and at such time during the one month preceding or four months following the close of the corporation's fiscal year as shall be determined each year by the Board. If such annual meeting is omitted by oversight or otherwise during such period, a subsequent annual meeting may nonetheless be held, and any business transacted or elections held at such meeting shall be as valid as if the annual meeting had been held during the period provided above.

SECTION 1.3 - Quarterly Meetings. Regular quarterly meetings of the shareholders for the transaction of such business as may properly be brought before the meeting shall be held on the date of the quarterly meetings of the membership of the Building Industry Association of Washington, or on such other date as is fixed by the Board.

SECTION 1.4 - Special Meetings. Special meetings of the shareholders may be called at any time by the President, one of the officers, or a majority of the Executive Committee. Shareholders may hold a meeting at any time and place without notice or call, upon appropriate waivers signed by all shareholders who are entitled to vote at a shareholders' meeting.

SECTION 1.5 - Notice. Written notice stating the place, day, and hour of the meeting, and in case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered not less than seven (7) days nor more than sixty (60) days before the date of the meeting, either personally, by facsimile transmission, or by mail, by or at the direction of the President, the Executive Vice President, the secretary, or the person or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If by facsimile transmis-

the entire board is present, or (iii) the reconvening of a meeting pursuant to adjournment. A director may waive notice of any meeting. A director shall be deemed to have waived notice of any meeting which the director attends if he participates in the meeting for any purpose other than to object to the conduct of the meeting without proper notice having been given.

SECTION 2.8 - Quorum. A quorum of the Board shall be the same as a quorum of the Board of Directors of the Building Association of Washington.

SECTION 2.9 - Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by law or these Bylaws.

SECTION 2.10 - Reserved.

SECTION 2.11 - Reserved.

SECTION 2.12 - Reserved.

SECTION 2.13 - Reserved.

SECTION 2.14 - Manifestation of Dissent. A director of the corporation who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

SECTION 2.15 - Reserved.

ARTICLE 2A
Executive Committee

SECTION 2A.1- Duties and Responsibilities, Authority and Accountabilities.

A. The Executive Committee between meetings of the Board shall have and shall exercise the authority of the Board in the management of the corporation EXCEPT that it shall not have the authority of electing or removing any member of the Executive Committee or any directors or officers of the corporation; or authority to act in the place of the Board with respect to amending the Articles of Incorporation, restating Articles of Incorporation, authorizing the sale, lease, exchange or mortgage of all or

substantially all of the property and assets of the corporation, authorizing the voluntary dissolution of the corporation or revoking proceedings therefore, adopting a plan for the distribution of the assets of the corporation; or amending, altering or repealing any resolution of the Board.

B. The Executive Committee is accountable for the management of the corporation. The Committee, through regular meetings, runs the corporation. The Committee establishes the goals and accountabilities of the Executive Vice President and evaluates the Executive Vice President's job performance.

C. The Executive Committee shall have jurisdiction over matters relating to the budget of the corporation. The annual budget of the corporation shall be prepared under the general supervision of, and recommended by, the Executive Committee. The Executive Committee shall provide general supervision of the administration of the budget after approval by the Board. The Treasurer shall act as Chairman of the Executive Committee in matters relating to the budget and finances of the corporation and shall be the responsible officer for the supervision and administration of the financial affairs of the corporation. The Executive Committee must approve or disapprove any expenditure of money greater than \$15,000 for any nonbudgeted item.

D. The Executive Committee is accountable for their actions to the Board.

E. Members of the Executive Committee shall be ex-officio members of all committees and councils unless otherwise provided by these Bylaws. Membership on the Executive Committee shall not take away the right to vote if the right exists otherwise.

F. The members of the Executive Committee are responsible for selecting and monitoring member benefits programs which are deemed to be a viable membership service; subject to the approval of the Board. Implementation and administration of such programs will be carried out by the administration of the Executive Vice President and staff of the corporation, and any outside assistance as may prove necessary for the marketing and administration of such program. The Executive Committee may also recommend to the Board the deletion of any member benefit program; but the authority to delete such program rests with the Board.

SECTION 2A.2 - Number and Tenure. The Executive Committee shall be comprised of the duly elected and acting members of the Executive Committee of the Building Industry Association of Washington. the terms of members of the Executive Committee shall coincide with the member's term as a member of the Executive Committee of the Building Industry Association of Washington and until their respective successors are elected and qualified for


SECTION 2A.10 - Consent to Action. Any action which may be taken at a meeting of the Executive Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the members of the committee. Such consent shall have the same force and effect as a unanimous vote at a duly convened meeting.

SECTION 2A.11 - Manifestation of Dissent. A member of the Executive Committee who is present at a meeting of the Committee at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a member who voted in favor of such action.

SECTION 2A.12 - Compensation of Executive Committee. Members of the Executive Committee shall serve without compensation; provided, however, that the corporation shall pay or reimburse the member for any reasonable expense incurred in attending meetings of the Committee.

ARTICLE 3
Officers and Employees

SECTION 3.1 - Officers. The officers of the corporation shall be determined by the positions held in the Building Industry Association of Washington, as follows:

President	President of Building Industry Association of Washington	
First Vice President	First Vice President of Building Industry Association of Washington	
Executive Vice President	Executive Vice President of Building Industry Association of Washington	
Treasurer	Treasurer of Building Industry Association of Washington	
Secretary	Secretary of Building Industry Association of Washington	

The officers of the corporation shall be appointed at the time such person is appointed to the office of the Building Industry of Washington, and each officer shall hold office until his or her

Exhibit D

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RE SOURCES FOR SUSTAINABLE
COMMUNITIES, A-1 BUILDERS, AND ALL
OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON, BIAW MEMBER SERVICES
CORPORATION, MASTER BUILDERS
ASSOCIATION OF KING AND SNOHOMISH
COUNTIES, DOES 1-10,

Defendants.

No. C07-1519RSM

**FIRST STIPULATION OF
FACT**

STIPULATION

The Washington Builders Benefit Trust ("WBBT"), the Building Industry Association of Washington ("BIAW"), and BIAW Member Services Corporation, stipulate as follows:

WBBT's trustees believe and maintain that the instrument currently governing the WBBT is the Declaration of Trust, dated as of January 1, 1994 ("1994 Declaration of Trust"), a true copy of which bears Bates numbers BIAW 00028-38 and is attached hereto as Exhibit A. This instrument has not been subsequently amended. WBBT's trustees have endeavored and continue to endeavor to comply with the 1994 Declaration of Trust and to faithfully protect and preserve the assets of the trust.

**FIRST STIPULATION OF FACT -- 1
(C07-1519RSM)**

DWT 2244343v1 0030722-000009
Seattle

Davis Wright Tremaine LLP
LAW OFFICES
1101 Third Avenue, Suite 2100
Seattle, Washington 98101
(206) 622-3150 • Fax: (206) 757-7700

1 Copies of the 1994 Declaration of Trust are regularly provided to trustees of WBBT
2 when they take office and, from time to time, to certain other ROII Participants involved in
3 governance of the BIAW. Defendants do not contend that most ROII Participants have seen a
4 copy, although they maintain that under BIAW policies a copy would have been provided to
5 any Participant or other BIAW Member who requested it. Defendants have no record of any
6 such requests.

7 There is no copy of the 1994 Declaration of Trust available through the BIAW website
8 or in any other readily available public repository. The WBBT is expressly referenced in
9 materials provided to ROII Participants; but the 1994 Declaration of Trust itself is not
10 separately referred to in such materials.

11 DATED this 5th day of February, 2008.

12 DAVIS WRIGHT TREMAINE LLP
13 Attorneys for Building Industry Association of Washington,
14 BIAW Member Services Corporation, and
15 Washington Builders Benefit Trust

16 
17 Harry J. F. Korrell, WSBA #23173
18 Robert J. Maguire, WSBA #29909

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FIRST STIPULATION OF FACT -- 2
(C07-1519RSM)

DWT 2244343v1 0030722-000009
Seattle

Davis Wright Tremaine LLP
LAW OFFICE
1201 Third Avenue, Suite 2100
Seattle, Washington 98101
(206) 622-3150 • Fax: (206) 357-7100

Exhibit E

navigation

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5 Mi.**Current Record: South Sound Bank****South Sound Bank**

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Toponlinebanking.info/OnlineBanks**Assets And Deposits Information**

Total Deposits	106,537,000
Bank's Assets	123,150,000

Details

Bank Name	South Sound Bank
Branch Deposits	46,367,000
Branch Name	South Sound Bank
State	WA
City	Olympia
Address	2006 Harrison Avenue NW 10
ZIP Code	98502
County	Thurston

Headquarters

State	WA
County	Thurston
City	Olympia
Address	P.o. Box 12720
ZIP Code	98502

Specialization

COMMERCIAL LENDING

Exhibit F

1
2 2. Exhibit 1 to this declaration accurately reflects the various leadership positions
3 held by recent trustees of the Washington Builders Benefit Trust ("BIAW Trust") in the
4 Building Industry Association of Washington ("BIAW") and the BIAW Member Services
5 Corporation. Leadership Directories produced by the Defendants in discovery and internet
6 research showed that over the last 10 years, virtually every trustee of the BIAW Trust held
7 significant leadership positions in the BIAW and/or BIAW Membership Services Directory.

8 3. The left hand column of the table attached as Exhibit 1 lists the eighteen
9 individuals that have served as trustees for the BIAW Trust since 1997. These individuals
10 were identified as trustees during this time period on a list produced by defendants, Defendants
11 produced this list of current and former BIAW Trustees in response to discovery requests
12 served by the plaintiffs in the matter of *Re Sources for Sustainable Communities et al. v.*
13 *Building Industry Association of Washington*, W.D. Wash. No. 2:07-CV-01519-RSM.

14
15 4. The right hand column accurately describes the various positions that each of
16 these current and former BIAW Trust trustees have held with the BIAW Trust, the BIAW,
17 BIAW Member Services Corporation, the BIAW's local associations. This information was
18 derived from searching the BIAW Leadership Directories for the names of the trustees
19 identified in the list described in paragraph 3 above. The BIAW Leadership Directories were
20 similarly produced by Defendants in response to discovery requests served by the plaintiffs in
21 the matter of *Re Sources for Sustainable Communities et al. v. Building Industry Association of*
22 *Washington*, W.D. Wash. No. 2:07-CV-01519-RSM. I supplemented the information
23 contained in the Leadership Directories with an internet research, which in a few cases
24 identified additional leadership roles held by the trustees.
25
26

27 DATED this 22nd of August, 2008.

28 DECLARATION OF LONNIE LOPEZ
 No. 08-2-01674-6

1

SMITH & LONEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

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By: Lonnie Lopez
Lonnie Lopez

DECLARATION OF LONNIE LOPEZ
No. 08-2-01674-6

SMITH & LONEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

BIAW Trustee	Positions with BIAW, BIAW Member Services and/or BIAW Local Associations
Dave Baker	Past BIAW President (1993); Legal Trust Committee (2003); Past Presidents' Council; Legislative Policy Committee (2001, 2002, 2003, 2004); BIAW Trust (1997, 1998, 1999); Spokane HBA State Board of Directors (1997, 1998, 1999); BIAW Executive Committee Member at Large (1997, 1998); Bylaws and Nominating Committee (1997, 1998, 1999, 2000, 2001, 2002, 2003); Long Range Planning Committee (1997, 1998); BIAW Board of Directors (1997) BIAW Rep on State Building Code Council
John Miller	Master Builders Association of Pierce County State Board of Directors (1998), BIAW Trust (1997); BIAW Board of Directors Master Builders Association of Pierce County (1997)
Dick Rokes	BIAW President (1991), BIAW Life Director/Life Member, Bylaws and Nominations Committee (1999, 2001, 2004), BIAW Trust (1999, 2002, 2003, 2004), Education Endowment Fund (2002, 2003), Bylaws and Nominating Committee (1997, 1998, 2002); Legislative Policy Committee (2001, 2002), Past Presidents' Council, BIAW Executive Committee (2001), BIAW Trust Chair (1997, 2001), BIAW Trust Vice Chair (1998, 2000), Legislative Policy Committee Chair (2000), Legislative Policy Committee Vice Chair (1999), Master Builders Association of King and Snohomish Counties State Board of Directors (1998, 1999), Legislative Policy Committee Chair Appointee (1997, 1998), BIAW Board of Directors MBAKSC (1997) Candidate to BIAW Hall of Fame
Rob Stewart	Bylaws and Nominations Committee (1997, 1998, 1999, 2000, 2002, 2003, 2004); Past Presidents Council; BIAW President (1997); BIAW Board of Directors MBAKSC (1997, 1998, 1999); BIAW Executive Committee (1997, 1998); BIAW Past Presidents' Council Chair (1998); Investment Strategy Committee (1997, 1998); Legislative Policy Committee (1997, 1998); BIAW Trust (1997, 1998); Long Range Planning Committee (1997)
Jerry Sturgill	BIAW President (1998); BIAW Life Director/Life Member; BIAW Bylaws and Nominations Committee (1998, 1999, 2001, 2002, 2004); BIAW Past Presidents' Council; BIAW Executive Committee (1998, 1999); BIAW Investment Strategy Committee (1998, 1999); BIAW Legislative Policy Committee (1998, 1999); Washington Affordable Housing Council Chair (1999); BIAW Trust (1998, 1999); Long Range Planning Committee (1998); BIAW Legal Trust Committee (1998); BIAW Board of Directors (1998)
Steve Thosath	BIAW Trust (2000); BIAW Trust Chair (1998, 1999); BIAW Executive Committee (1999); BIAW

Russ Tye	Board of Directors (1998, 1999); BIAW Trust Vice Chair (1998) BIAW Trust Vice Chair (1999); BIAW Executive Committee (1999); BIAW Trust (1997, 1998); BIAW Board of Directors (1997)
Paul Nolan	BIAW Executive Committee (1997, 1998, 2000); BIAW Trust Chair (2000); BIAW Legislative Policy Committee (1999, 2000); BIAW Trust (1998, 1999); BIAW Legislative Policy Committee Chair (1997, 1998)
Paul Abenroth	Home Builders Association of Tri-Cities First Vice President (2003, 2004); BIAW State Board of Directors (1998, 1999, 2000, 2001, 2003, 2004); BIAW Executive Committee BIAW Trust Chair (2002, 2003); BIAW Executive Committee BIAW Trust Vice Chair (2001); BIAW Legislative Policy Committee (1998, 1999); BIAW Trust (1999); Home Builders of Tri Cities Legislative Chair (1998, 1999); Home Builders of Tri Cities Walla Walla Chapter President (1998)
Randy Gold	BIAW President (2003); BIAW Executive Committee (2003, 2004); BIAW Legislative Policy Committee (2004); BIAW Past Presidents Council; BIAW Trust (2004); BIAW Budget and Investment Strategy Committee (2002, 2003); BIAW Bylaws and Nominations Committee (2001, 2002, 2003); BIAW Education Endowment Fund (2003); BIAW Legislative Policy Committee (1998, 1999, 2002, 2003); Washington Affordable Housing Council (1998, 1999, 2001, 2002, 2003); BIAW Trust (2001, 2002, 2003); BIAW First Vice President (2002); BIAW Treasurer (2001); BIAW Investment Strategy Committee Chair (2001); BIAW Long Range Planning Committee (2001); BIAW Board of Directors (1998, 1999, 2000, 2001); BIAW Executive Committee (1998, 1999); BIAW Trust Chair (2008); BIAW Trust Vice Chair (2004, 2005); BIAW Life Director (2008)
Gary Gronce	BIAW Executive Committee (2002, 2003, 2004); BIAW Legislative Policy Committee (1999, 2000, 2001, 2003, 2004); BIAW Trust (2001, 2003, 2004); BIAW Budget and Investment Strategy Committee (2003); BIAW Bylaws and Nominations Committee (2002, 2003, 2007); BIAW Membership Committee (2001, 2002); Washington Affordable Housing Council (1998, 1999, 2001, 2002); BIAW Board of Directors (2002); Home Builders Association of Mason County President (2000, 2001); Home Builders Association of Mason County Legislative Chair (1999); BIAW Past Presidents Council; BIAW President (2004)
Dick Lowell	BIAW Trust (2001); BIAW Board of Directors (1998, 1999, 2001); MBA of King and Snohomish Counties (2000)
John Piazza	BIAW President (1992); BIAW Life Director/Life Member; BIAW Trust Chair (2004); BIAW Bylaws

	and Nominations Committee (1998, 1999, 2000, 2001, 2002, 2003, 2004); Past Presidents Council; BIAW Executive Committee (1998, 2004); BIAW Trust Chair (2004); BIAW Trust Vice Chair (2003); Education Endowment Fund (2002, 2003); BIAW Trust (2001, 2002); BIAW Long Range Planning Committee (1998, 1999, 2001); BIAW Legislative Policy Committee (2000); BIAW Board of Directors (1998, 1999); BIAW Long Range Planning Committee Chair (1999), State Rep to National Association of Home Builders (2007)
Jenni Stack	Washington Affordable Housing Council (2000, 2001, 2002); BIAW Trust Vice Chair (2001, 2002); Spokane Home Builders Association Secretary (2002); BIAW Board of Directors (1999, 2000, 2002); BIAW Legislative Policy Committee (2001); Spokane Home Builders Association Legislative Chair (2001); Spokane Home Builders Association President (2000); Spokane Home Builders Association Treasurer (1999)
Cathy Gingrow	BIAW Trust (2002, 2003, 2004, 2007); Health Insurance Trust (2007); Home Builders Association of Tri-Cities, Walla Walla Chapter President (2000); BIAW Board of Directors (1999, 2000)
Rick Tremaine	BIAW Legislative Policy Committee (2000, 2001, 2002, 2004); BIAW Trust Chair (2005, 2007), BIAW Trust Vice Chair (2004); BIAW Executive Committee Associate National Director (2003); BIAW Trust (2003); BIAW Executive Committee Second Vice President (2002); BIAW Budget and Investment Strategy Committee (2002); BIAW Associate Advisory Council Chair (2001); BIAW Membership Committee Chair (2001); BIAW Bylaws and Nominating Committee (2001, 2002); BIAW Convention and Meetings Committee (2001); BIAW Investment Strategy Committee (2001); BIAW Associate Advisory Council (1999, 2000); Skagit-Island Counties Builders Association Associate Advisory Council Member (2000); Skagit-Island Counties Builders Association Second Vice President (1999, 2000); Skagit-Island Counties Builders Association Legislative Chair (2000); BIAW State Board of Directors (1999, 2000); BIAW Associate National Director (2003); member/BIAW rep (?) for BUILD-PAC (2003); 2001 BIAW Associate of the Year; BIAW Board of Directors Secretary (2003); NAHB Associate Advisory Council; Health Insurance Trust Chair (2006)
Ted Clifton	BIAW Education Committee (2003, 2004); Skagit-Island Counties Builders Association Education Chair (2003, 2004); BIAW Board of Directors (2001, 2003); Washington Affordable Housing Council (2002); Skagit-Island Counties Builders Association President (2001); Skagit-Island Counties Builders Association First Vice President (1999, 2000); current Vice Chair of BIAW Trust; Skagit-Island Counties Builders Association Board of Directors (2007); VP of BuiltGreen Washington
Cathy Sanders	Home Builders Association of Tri-Cities, Walla Walla Chapter Secretary/Treasurer (2007)

Mark Smith	BIAW Legislative Policy Committee (2001, 2002, 2003, 2004); North Peninsula Building Association Legislative Chair (2001, 2003, 2004); BIAW Board of Directors (2001, 2002, 2004); North Peninsula Building Association Second Vice President (2001)
Jerry Clark	Building Industry Association of Clark County First Vice President (2004); BIAW Board of Directors (2003, 2004); BIAW Education Committee (2003); Washington Affordable Housing Council (2003); Clark County Home Builders Association Secretary (2003)
Mark Shaffer	BIAW Board of Directors (1997), Olympia Master Builders President (1997); BIAW Legislative Policy Committee Chair/Vice Chair (2006, 2007); BIAW Education/Licensing Task Force (2004); Olympia Master Builders L&I's Retro Advisory Committee

Exhibit G
(excerpts)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RESOURCES FOR SUSTAINABLE
COMMUNITIES; A-1 BUILDERS; and all
Others similarly situated,

Plaintiffs,

v.

BUILDING INDUSTRY ASSOCIATION
OF WASHINGTON; BIAW MEMBER
SERVICES; MASTER BUILDERS
ASSOCIATION OF KING AND
SNOHOMISH COUNTIES;
WASHINGTON BUILDERS BENEFIT
TRUST; and DOES 1-60

Defendants.

No. 2:07-CV-01519-RSM

DEPOSITION UPON ORAL EXAMINATION OF
RICK TREMAINE

March 18, 2008
9:00 a.m.
2317 East John Street
Seattle, Washington

Carl T. Beck, Court Reporter
CCR 2952

1 A I don't recall specific conversations. So --

2 Q Do you recall him ever expressing concerns about the amount
3 of money BIAW was making off of Retro?

4 A I don't recall.

5 Q Can you say -- you don't recall the specifics or you don't
6 recall that ever happening?

7 A Well, I don't recall -- I don't recall that. Dick is a
8 vocal member of the trust and he talks about or has talked
9 about a lot of things, and I don't specifically recall that.

10 Q Okay. What steps do you take to properly account for trust
11 funds? And when I say "you," you and other the members of
12 WBBT, the other trustees.

13 MR. MAGUIRE: Object. Vague and overbroad.

14 A What specifically do we do?

15 Q [By Mr. Lowney] Uh-huh. Or is that something you'd leave
16 to staff?

17 A Well, I mean, staff handle the specific -- I don't get a
18 check and look at it and carry it somewhere and deposit it
19 and so forth. But, I mean, we -- but we, you know, get a
20 report as to what the funds are and what's happening with
21 them and that type of stuff. I'm not sure -- boy --
22 specifically what we do. It's hard to --

23 Q Right. Would you state that the level of oversight that the
24 trustees give is rigorous or would you say that it's -- it
25 is appropriate given that you're busy volunteers?

1 testimony; is that right?

2 A I was guessing as to May or June. But again, I know that
3 there -- I know that there is some lag time there.

4 Q Do you know whether the trust receives into its accounts 100
5 percent of the Retro fund or if somebody else gets some of
6 the money before the trust receives the Retro refunds?

7 A I don't know that anybody receives part of the funds before
8 hand.

9 Q Okay.

10 A I don't recall that.

11 Q As the chair of WBBT, do you feel like you should know the
12 answer to that?

13 MR. MAGUIRE: Objection. Argumentative.

14 A Well, my answer is based on I know the funds come in, but I
15 don't believe there is anything that comes out of it. But I
16 don't know that for certain. As chair of the trust, I
17 suppose it would be good if I knew if that occurs.

18 Q [By Mr. Lowney] How long during that period -- well, I may
19 be begging -- I don't know. But how long after DLI
20 distributes the Retro refunds, how long does it take for
21 WBBT to take possession of that money and put it into its
22 accounts?

23 A I don't know the answer specifically to that.

24 Q And when WBBT receives the Retro refunds, do you hold those
25 funds in interest-bearing accounts?

1 A Yes.

2 Q For the entire time that you hold them?

3 A We receive the funds and at least the last two years we've
4 invested them on a short-term basis, money market-type basis
5 until we distributed them, so that we would have earnings
6 for the benefit of the beneficiaries. Whether it's in there
7 every day, every day of that time period, I'm not certain.

8 Q Right.

9 A Yeah.

10 Q But for the most part, your goal as a trustee is to keep
11 those funds in interest-bearing accounts?

12 A My goal is to optimize the return on those funds.

13 Q And then when you transfer the funds away from WBBT, who are
14 they sent to?

15 A Well, I don't -- I don't do that myself, so -- but I -- and
16 I don't mean to be coy about it. I just -- I don't want to
17 say something that isn't quite accurate. But the funds --
18 the funds that are disbursed, ten percent goes to the BIAW
19 and ten percent goes to the locals; and the balance that we
20 keep is put into investments.

21 Q Right. And a large portion would presumably also go to --

22 A I'm sorry.

23 Q -- the beneficiaries?

24 A Yes. I'm sorry. I'm presuming that.

25 Q So in your understanding of the way things work, the trust

1 would either electronically transfer or write a check to the
2 BIAW for its share of the marketing assistance fee; would
3 that be your understanding?

4 A Yes.

5 Q And would it be your understanding what you would also --
6 the trust would either write a check or somehow
7 electronically transfer the marketing assistance fee to the
8 local affiliates?

9 A Yes.

10 Q And then also transfer the appropriate sums to the -- to the
11 beneficiaries, the individual, employer beneficiaries?

12 A Yes.

13 Q And do you think those transfers would happen by check or
14 electronic transfer or do you not know?

15 A I don't know.

16 Q And are you aware as a trustee that part of the Retro
17 refunds -- I guess -- never mind. You said you are, I
18 think.

19 You're aware that some of these funds are paid to local
20 associations and some are paid to BIAW, and these are the
21 Retro refunds, part of those -- scratch that question. It's
22 bungled.

23 A Okay.

24 Q Okay. Where is your authority to transfer Retro refunds to
25 Member Services Corporation if they receive any of that

1 money?

2 MR. MAGUIRE: Objection. Calls for speculation.

3 A Where is --

4 Q [By Mr. Lowney] Well, actually, let me back up a little
5 bit.

6 Are you aware of any of the funds, Retro funds, going
7 to Member Services Corporation?

8 A Not specifically. Again, I tend to personally view BIA and
9 Member Services in kind of the same context. So on a
10 specific-detail basis, I don't know.

11 Q Do you feel that the trust has authority to transfer funds
12 to Member Services Corporation?

13 A That's a good question. I don't know.

14 Q But you also don't know whether or not Member Services
15 Corporation receives any of them?

16 A Right. I'm not sure what the chain is.

17 Q Where did you find your authority to transfer funds to the
18 BIAW? Would that be based upon that 1994 Declaration of
19 Trust?

20 A Yes.

21 Q Is there any other authority that you would look to for --
22 would there be any other bases for that authority that you
23 could cite to?

24 A Well, I think it's fairly clear in there that that's what it
25 is, but --

1 Q So a -- okay. Do you know when the transfers to the local
2 affiliates are made?

3 A Well, again, I believe we do the distributions, I believe,
4 in July, like early July, I believe.

5 Q Are you aware that the Master Builder Association
6 distributes their Retro checks -- distributes the Retro
7 checks to their membership at their picnic in the second
8 half of July? Does that sound familiar? You don't know?

9 A I don't -- I'm not a member.

10 Q Do you know when most Retro checks get cashed?

11 A No.

12 Q Are you aware of anybody, any entity, holding Retro refunds
13 other than WBBT? And I mean the Retro refunds from the ROII
14 program.

15 A Am I aware of any other entity?

16 Q Yeah.

17 A Holding?

18 Q The trust funds over which you're responsible.

19 A You mean, other than Wachovia or, you know -- I'm not
20 sure --

21 Q Like any other entities or other -- yeah.

22 A Holding the funds? I don't know.

23 Q When the trust invests, it -- you stated that you keep the
24 money in interest-bearing accounts for the benefit of these
25 beneficiaries.

1 How is that interest distributed among the
2 beneficiaries?

3 A The -- well, it would be the same way that the earnings on
4 the -- all of the investments are distributed. Annually,
5 it's reviewed as to what amount is going to be disbursed
6 based on the funds that have been taken in, including the
7 investment return on that, and that's distributed out to the
8 member companies.

9 Q Does any of that interest go to the BIAW?

10 A Not that I'm aware of.

11 Q Does any of that interest go to Member Services Corporation?

12 A Not that I'm aware of.

13 Q Does any of that interest go to the local affiliates?

14 A Not that I'm aware of.

15 Q Have you ever had discussions among the WBBT board about any
16 of these issues that I'm talking about right now: the
17 interest, who's holding the money, the interest, how it's
18 distributed; any of these issues?

19 A Sure. The WBBT trustees? Yeah. I mean, we discuss --
20 that's primarily what we --

21 Q What you discuss?

22 A What we discuss.

23 Q Have you talked about the importance of all the money being
24 maintained in interest-bearing accounts for the benefit of
25 the beneficiaries?

1 A I don't know that we've had a specific discussion about
2 that. I mean, we talk about -- we talk about how we best
3 get a yield on the funds that we have. So, for example, the
4 funds coming in that are going to be distributed, we want to
5 put them in an instrument that will provide us an optimum
6 return but yet we have the funds to send back out when it's
7 distributed.

8 Q And your decision to keep the funds, the more liquid funds,
9 in a money market rather than in like a checking account is
10 part of that same goal of maximizing the interest for the
11 beneficiaries; would you say?

12 A Yes.

13 Q And would you agree that it's important to keep the money in
14 interest-bearing accounts for as much of the time as
15 possible; that's what you try and do?

16 A I don't know how important that is, but that's my personal
17 view is to try to -- I use the word "optimize" rather than
18 "maximize" because maximizing can sometimes create
19 restraints. And so there's going to be times that funds may
20 not be yielding anything, but that's -- but that's a normal
21 course of business.

22 Q Have you ever seen any documentation relating to the
23 distribution of interest from WBBT investments?

24 A Well, that's a difficult question. I -- I'm -- it's an
25 investment fund, and we distribute from the entire

1 investment fund. We don't -- we don't identify the interest
2 or the investment yields individually. It's all for the
3 benefit of the member companies.

4 Q I guess my question is --

5 A I don't know if I answered --

6 Q --you've testified that the money from the interest, the
7 profits, go to beneficiaries and anyone else --

8 A To my knowledge.

9 Q -- are there any documents that would support or refute that
10 that you know of?

11 A Well, I'm sure there would be ways to verify that, but I
12 don't know.

13 Q So what is your -- can you describe for me the marketing
14 assistance fee, the ROII marketing assistance fee?

15 A Can I describe it for you?

16 Q Yeah.

17 A Well, as far as I know; it's -- for the BIAW, it's ten
18 percent of funds received from the Department of labor and
19 Industries; and for the member associations, it's ten
20 percent of the funds.

21 Q And how is that calculated exactly?

22 A Well, I don't personally calculate it. So I -- I mean, I --
23 again, I don't want to be coy. But I don't know exactly how
24 it's calculated. I -- I mean to me ten percent of a number
25 is ten percent of a number, but I --