

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SHEET METAL WORKERS' LOCAL 19  
BENEFIT FUNDS, ET AL.,

Plaintiffs,

v.

JLS MECHANICAL, INC., a/k/a J L S  
MECHANICAL

Defendant.

Civil Action No. 06-4700

January 18, 2007

**MEMORANDUM/ORDER**

Plaintiffs request this court to enter judgment by default pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure against defendant JLS Mechanical, Inc. for its failure to make contributions on behalf of its employees to plaintiff accounts in violation of ERISA, 29 U.S.C. § 1132(g). Plaintiffs' motion seeks unpaid contributions, liquidated damages, interest, attorneys' fees, and costs. For the reasons described below, I will grant plaintiffs' motion and enter default judgment against defendant.

**Facts**

The complaint alleges that defendant and the plaintiffs' union are parties to a collective bargaining arrangement, under which defendant is required to make contributions to plaintiff accounts. Compl. at ¶ 7. The complaint further alleges that "[d]efendant has been delinquent in remitting the required monies (principal, estimated principal[,]) and estimated liquidated

damages) to the [p]laintiffs for the period March 6, 2006 through September 26, 2006 . . . .”  
Compl. at ¶ 8. On October 19, 2006, a summons was issued to JLS Mechanical, Inc. It was  
returned executed on October 24, 2006, with a note describing that the complaint and summons  
had been served by John E. Manko upon John Lodise, owner, on behalf of JLS Mechanical, Inc.  
on October 23, 2006 at 7:00pm.

Defendant JLS Mechanical, Inc. subsequently failed to plead or otherwise defend against  
the suit. On November 30, 2006, the clerk of court entered default, and plaintiffs filed the  
present motion seeking default judgment. Plaintiffs request an award of \$25,028.71, “which  
consists of employee benefit fund contributions due to the Plaintiff Funds of \$21,967.26 for the  
period of March through July, 2006 and \$1,813.32 for the period August 5, 2006 through  
November 10, 2006, plus interest in the amount of \$46.00, plus estimated liquidated damages in  
the amount of \$180.88, which amount is equal to 5% of delinquent principal amount per month  
(or 1.25% per week where applicable), up to a maximum of 20% for late payments, pursuant to  
the parties’ Collective Bargaining Agreement[, plus \$1021.25 in legal fees].” Certification of  
Amount Due at 4.

### **Default Judgment**

Plaintiffs’ motion is pursuant to Federal Rule of Civil Procedure 55(b)(2), which reads:

b) Judgment. Judgment by default may be entered as follows:

....

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply  
to the court therefor; but no judgment by default shall be entered against an infant or  
incompetent person unless represented in the action by a general guardian, committee,  
conservator, or other such representative who has appeared therein.

The decision to enter default judgment is left to the court’s discretion. *See Petrucelli v.*

*Bohringer & Ratzinger*, 46 F.3d 1298, 1303 (3d Cir. 1995). This discretion is not unlimited, however, as “the Third Circuit has enumerated three factors that control whether a default judgment should be entered: ‘(1) prejudice to the plaintiff if default is denied, (2) whether the defendant appears to have a litigable defense, and (3) whether defendant’s delay is due to culpable conduct.’” *Carpenters Health & Welfare Fund v. Bold & Clauss Constr., Inc.*, 2006 WL 782051, at \*1 (E.D. Pa. 2006) (quoting *Chamberlain v. Giampapa*, 210 F.3d 154, 164 (3d Cir. 2000)).<sup>1</sup>

## **Discussion**

ERISA section 515 states in pertinent part that “[e]very Employer who is obligated to make contributions to a multiemployer plan . . . under the terms of a collectively bargained agreement shall . . . make such contributions in accordance with . . . such agreement.” 29 U.S.C. § 1145. ERISA section 502(a) permits a plan fiduciary to sue an employer who fails to make the required contributions. 29 U.S.C. § 1132(a). If a court enters judgment in favor of the plan

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<sup>1</sup> Other factors to be considered are:

[T]he amount of money potentially involved; whether material issues of fact or issues of substantial public importance are at issue; whether the default is largely technical; whether plaintiff has been substantially prejudiced by the delay involved; and whether the grounds for default are clearly established or are in doubt. Furthermore, the court may consider how harsh an effect a default judgment might have; or whether the default was caused by a good-faith mistake or by excusable or inexcusable neglect on the part of the defendant. Plaintiff’s actions also may be relevant; if plaintiff has engaged in a course of delay or has sought numerous continuances, the court may determine that a default judgment would not be appropriate. Finally, the court may consider whether it later would be obliged to set aside the default on defendant’s motion, since it would be meaningless to enter the judgment as a matter of course if that decision meant that the court immediately would be required to take up the question of whether it should be set aside.

*United States v. Pettit*, 2000 U.S. Dist. LEXIS 17434, \*2–3 (E.D. Pa. 2000) (citing 10A Charles Alan Wright et al., *Federal Practice and Procedure* § 2685, at 32–41 (3d ed. 1998)).

fiduciary, ERISA section 502(g)(2) requires the court to award: (1) unpaid contributions; (2) interest on the unpaid contributions; (3) liquidated damages; (4) reasonable attorneys' fees and costs; and (5) other relief the court deems appropriate. 29 U.S.C. § 1132(g)(2).

Since the defendant has filed no responsive pleading, the record before the court offers no basis for finding that defendant has "a litigable defense."

Under ERISA, a plan is required to pay benefits and pension credits to vested participants regardless of whether an employer contributes to the plan. *See* 29 C.F.R. § 2530.200b-2(a)(1); *Sheet Metal Workers' Local 19 v. E.J. Deseta Co.*, 1995 WL 549070, at \*3 (E.D. Pa. Sept. 12, 1995) (citing *Benson v. Brower's Moving & Storage, Inc.*, 907 F.2d 310, 314 (2d Cir. 1990)). If a delinquent defendant does not make the required contributions, the plan will still be held accountable for paying vested participants. Accordingly, plaintiffs will be substantially prejudiced if default judgment is not entered in their favor.

## **Conclusion**

For the above reasons, I will grant the plaintiffs' motion and enter a default judgment in their favor.

And now, this      day of January, 2007, upon entry of default by the Clerk's office, and upon consideration of plaintiffs' Motion for Judgment by Default (Docket # 6) it is hereby ORDERED that plaintiffs' motion is GRANTED.

It is ORDERED that default judgment is entered in favor of plaintiffs in the amount of \$25,028.71, consisting of a principal amount of \$23,780.58, plus estimated liquidated damages of \$180.88, plus pre-judgment interest running at the rate of 8% in the

amount of \$46.00, plus costs and attorneys' fees in the amount of \$1021.25. Post-judgment interest will run thereon at a rate of 8% from the date of the judgment until paid, together with such additional reasonable attorneys' fees and costs which shall have been incurred in the collection and enforcement necessary to achieve satisfaction of the judgment.

It is further ORDERED that defendant shall permit an audit and accounting of its books to determine whether other amounts may be due to plaintiffs, and plaintiffs may apply to the court for amendment of the amounts set forth herein should such an accounting disclose that additional amounts are due.

BY THE COURT:

/s/ Louis. H. Pollak

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Pollak, J.