

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

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| State of Indiana, et al. |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | No. : 3:04-CV-0506 |
| |) | |
| Robert A. Pastrick, et al. |) | |
| |) | |
| Defendants. |) | |

PLAINTIFFS’ PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs, by and through Attorney General Gregory F. Zoeller, Special Deputy Attorneys General Patrick M. Collins, Joel R. Levin and G. Robert Blakey and Deputy Attorneys General Patricia Orloff Erdmann and David A. Arthur, respectfully submit the following Proposed Findings of Fact and Conclusions of Law.

Introduction

1. On August 3, 2004, Plaintiffs filed the complaint in this action, alleging that defendants Robert A. Pastrick, James Harold Fife, III, Frank Kollintzas and other defendants unlawfully managed and operated the City of East Chicago (“the City”) as a racketeering enterprise through a pattern of racketeering activity under Federal and State law as well as theft, conversion and official misconduct under State law for a period of approximately eight years, from 1996 through 2004. Docket Entry No. 1. The Complaint sought actual damages, treble damages, punitive damages, and injunctive and other appropriate relief. Complaint, pages 58-59.

2. Defendant Kollintzas filed no answer to the complaint and failed to appear at the time set for trial on May 26, 2009. Docket No. 550.

3. Defendants Pastrick and Fife answered the complaint and participated in pre-trial proceedings, but, shortly before trial, advised the Court that they would no longer defend the allegations and would, instead, take default judgments. See Docket Entry No. 543, 544, 546.

4. Defendants Pastrick and Fife did not appear for trial. Docket Entry No. 550. This cause came before the Court on the Plaintiffs' Motions for Default Judgment against defendants Robert A. Pastrick, James Harold Fife, III and Frank Kollintzas. Docket Entry No. 548. After proper notice to the defendants Pastrick, Fife and Kollintzas, the Court entered default judgments against all three defendants on June 2, 2009 and dismissed the counterclaim filed by defendant Pastrick. Docket Entry No. 558, 559, 560, 561.

5. An evidentiary hearing was held in open court on June 9, 2009, and taken under advisement. Docket Entry No. 565. Plaintiffs appeared through Special Deputy Attorneys General Patrick M. Collins, Joel R. Levin and G. Robert Blakey and Deputy Attorney General David A. Arthur. Docket Entry No. 565. Defendant Pastrick appeared by counsel, Michael Bosch; defendant James Harold Fife III appeared pro se; and defendant Frank Kollintzas did not appear. Docket Entry No. 565. At the June 9, 2009 hearing, Plaintiffs presented witnesses, introduced exhibits relating to their requests for damages and other relief, and made arguments relating to the facts and the law. Docket Entry No. 565. Defendants cross-examined Plaintiffs' witnesses, but presented no other evidence and offered no exhibits. Docket Entry No. 565.

6. The Court has considered all the filings, testimony, evidence of record, and arguments of the parties, and enters the following findings of fact and conclusions of law.¹ In so doing, the Court incorporates by reference all Findings from the Default Judgments entered against defendants Pastrick, Fife and Kollintzas. Docket Entry. Nos. 559, 560 and 561.

¹ As discussed further herein, Plaintiffs seek leave to supplement the record with an excerpt of the sworn deposition of defendant Pastrick.

7. The Court hereby GRANTS the Plaintiffs' request for damages and other relief, attorneys' fees and costs, and prejudgment interest, in the specified amounts and under the following terms and conditions, for the reasons set forth herein:

Findings of Fact

A. The Pastrick Political Organization

1. Defendant Pastrick was elected to serve as the Mayor of the City of East Chicago in 1971 and was re-elected every term through 2003. Complaint, ¶ 10. Defendant Kollintzas was elected in 1979 to serve as a member of the Common Council of the City of East Chicago ("Common Council") as Fourth District Councilman, and was re-elected every term through 2003. Complaint, ¶ 13. Defendant Fife was a confidant of Pastrick, who served as a Special Assistant to Pastrick and operated the Sidewalks for Votes scheme on behalf of Pastrick and the other Defendants. Complaint, ¶ 20.

2. During Pastrick's tenure in office, governmental resources and money were regularly used unlawfully, that is, conduct constituting racketeering activity under Federal and State law and theft, conversion and official misconduct under State law, for the personal and political benefit of Pastrick and his political allies. Tr. 19-66.² As Pastrick and his associates unlawfully managed and operated the City as a racketeering enterprise, they drew little or no distinction between government affairs, political affairs and personal affairs. Job applications for governmental jobs included a signature line for the applicant's political sponsor. Tr. 20; Ex. 19. Newly hired employees were "encouraged" to contribute a percentage of their salary, withdrawn from their paychecks, to a "flower fund" or "slush fund" that financed Pastrick's political organization. Tr. 21, 85-86. The City Controller, who also served as the treasurer of the political

² References to the transcript of the June 9, 2009 hearing are hereafter designated as "Tr." References to Plaintiffs' exhibits introduced at the hearing are designated as "Ex."

organization, ran reports for Pastrick's office that identified which employees were contributing to the mayor's political fund. Tr. 15, 22.

3. During his mayoral administration, Pastrick and his associates caused the city payroll to increase markedly in the period leading up to elections when as many as 50-90 new employees were hired. Tr. 23. Pastrick and his associates told new and old employees to vote for Pastrick. Ex. 33. Contractors or consultants who were political allies received preferential treatment in the award of City contracts. Tr. 23-24. Most City department heads also held leadership roles in the Pastrick political organization. Tr. 24.

4. Pastrick and his associates maintained a large sum of undocumented cash for political and other uses, totaling as much as \$25,000 - \$30,000, that was kept in a safe in the City Controller's office. Tr. 47. Prior to elections, the City Controller gave Mayor Pastrick somewhere between \$2,000 - \$5, 000 in cash from the safe to hand out to poll workers. Tr. 47-48. The Controller gave a similar amount of cash from the safe to Fife for the same purpose. Tr. 48. Neither the Controller nor anyone else kept an accounting of the cash that was maintained in the safe. Tr. 48.

5. Defendant James Fife, a Pastrick associate, served as the head of Pastrick's political organization and was one of the highest paid consultants for the City. Tr. 24. Fife drafted his own contract to be a consultant with the City Board of Public Works and no one, other than Fife, approved the contract. Tr. 38-39; Ex. 24. Fife also received a \$5,000 per month consulting fee from the City pursuant to an agreement in which he was ostensibly a consultant for issues relating to the East Chicago casino. Tr. 40; Ex. 25.

6. In addition to the consulting money that he received in his own name, Fife used four sham consulting firms to disguise the receipt of \$757,509 in fees that he received from the

City from 1998 through 2001. Ex. 14. In total, Fife, for his participation in the unlawful operation and management of the City as a racketeering enterprise, received payments totaling \$1,597,625.84 from the City from 1996 through 2003. Ex. 2.

7. Defendant Timothy Raykovich, a Pastrick associate, served as one of the primary aides to Mayor Pastrick in the unlawful operation and management of the City as racketeering enterprise. Tr. 42. Like Fife, for his participation in the unlawful operation and management of the City as a racketeering enterprise, Raykovich was the beneficiary of multiple financial arrangements with the City during Pastrick's administration. Tr. 42. During the approximately eight year period of the unlawful operation and management of the City, Raykovich, for his participation in such unlawful operation and management of the City as a racketeering enterprise, received \$2,394,220.00 in fees and other payments from the City. Ex. 4. Raykovich, for his participation in the unlawful operation and management of the City as a racketeering enterprise, received at least \$1.5 million in non-employee compensation and the balance of his compensation was in the form of payments to firms in which Raykovich had a financial interest. Exs. 4, 15.

8. Defendant Pastrick received, for his participation in the unlawful operation and management of the City as a racketeering enterprise, compensation totaling \$920,755.46 during the period of his unlawful operation and management of the City as a racketeering enterprise. Tr. 3. In addition, Pastrick's son, Drew, was given a \$1500 per month contract, approved by Fife, to be the beverage manager for the City marina. Tr. 50-51. Drew Pastrick also had a "no show" job as the City Director of Weights and Measures. Tr. 52. The Mayor's other son, Kevin, had no official position with the City, but was often present for high-level meetings and had a financial interest in a lease with the City. Tr. 53.

B. Casino Proceeds

9. After the legislative and voter approval for the East Chicago Showboat Casino occurred in 1993-94, the City of East Chicago entered into an agreement with the casino whereby economic development payments totaling 3% of the casino's adjusted gross receipts were to be paid in the following amounts: 1 % to the City of East Chicago; 1 % to the Twin City Education Foundation (TCEF) (a private foundation); and 1% to the East Chicago Community Foundation (ECCF)(a private foundation). Complaint, ¶ 52. Pastrick also agreed, on behalf of the City of East Chicago, to the diversion of an additional .75% fee to Second Century, Inc., a for-profit corporation. Tr. 57; Ex. 28.

10. The primary owners of Second Century, Inc., Tom Cappos and Mike Panos, were also investors in the Showboat casino.³ Tr. 59.

11. As part of his unlawful operation and management of the City as a racketeering enterprise, Pastrick, without the approval of the Common Council, and having no executive authority to divert money and property of East Chicago, created a "trust fund" for the receipt of the 1% fee that the casino paid to the City of East Chicago. Complaint, ¶ 58. Pastrick exercised sole power and control over the expenditure of funds in the trust fund. Complaint, ¶ 60.

12. In contrast to the system employed by Pastrick for the diversion of significant casino revenue to private foundations and a for-profit corporation, in Hammond, all casino fees were paid directly to the City of Hammond to be appropriated by the City Council and then disbursed under appropriation. Tr. 122.

³ In Pastrick's sworn deposition on October 2, 2007, Pastrick acknowledged that Thomas Cappas was a long-time personal friend, and that, while Pastrick was mayor, Cappas purchased a lot adjacent to Pastrick's home lot in Ogden Dunes. Dep. at 175. Pastrick has been repurchasing the lot back from Cappas by paying \$3,000 per year. Dep. at 175. Pastrick also acknowledged taking a week-long golfing trip to Ireland with Cappas and Pannos, though Pastrick claimed his son Kevin paid for Pastrick's portion of the trip. Dep. at 177, 179. Plaintiffs seek leave to supplement the record and add the Pastrick deposition (attached as Exhibit 36) to this filing.

C. Sidewalk and Tree Program

13. In approximately June of 1998, the City of East Chicago's Board of Public Works initiated a "Sidewalk Improvement Program" in order to replace concrete public sidewalks in some portions of the City. Complaint, ¶ 63. While specifications were developed for the Sidewalk Improvement Program and contractor Rieth-Riley, one of the settling defendants, submitted a bid to perform some of the work, the bid was not accepted and the Board of Public Works took no action on the proposed program. Complaint, ¶¶ 63-66.

14. In early 1999, there was a renewed effort to obtain bids for a sidewalk improvement program, but once again, no bids were accepted by the Board of Works. Complaint, ¶¶ 68-73; Tr. 27. Notwithstanding the Board of Works' failure to approve the sidewalk program, Defendants, as part of Pastrick's unlawful operation and management of the City as a racketeering enterprise, had contractors perform millions of dollars of work on sidewalks and parking lots on public and private property beginning in February of 1999 and continuing until the primary election in early May 1999. Complaint, ¶ 74.

15. Defendants arranged for this concrete work, as well as tree trimming work, in order to curry political favor with residents and thereby advance the political prospects of Pastrick and his slate of candidates, who were facing tough opposition in the May 1999 primary. Complaint, ¶¶ 48, 74. The sidewalk/tree program served as the center piece for Pastrick's 1999 primary campaign. Exs. 21, 33. To circumvent Indiana bidding laws, Defendants had contractors submit invoices and bids in amounts less than \$75,000 even when the proposed work was in excess of that amount. Complaint, ¶¶ 75-76; Tr. 69.

16. As part of Pastrick's operation and management of the City as a racketeering enterprise, Defendant Kollintzas and other City Council members approached City residents and businesses and (1) falsely represented that the City had a duly authorized and lawful program to pay for the work being done on either public or private property, and (2) offered contractors to perform the work as a means of inducing political support. Complaint, ¶ 78. On one occasion, Defendant Pastrick even authorized work at a religious institution when he met with an official of Our Lady of Guadalupe Church and guaranteed that the City would perform work for the church. Complaint, ¶ 78; Tr. 30; Ex. 16 at 181-82. Thereafter, a contractor was paid \$77,000 for the work at the church. Complaint, ¶ 78; Ex. 1.

17. As part of Pastrick's operation and management of the City as a racketeering enterprise, in the period between mid February and June 30, 1999, the City of East Chicago paid approximately \$9.1 million in public funds to concrete contractors who performed work on public, private and commercial property and approximately \$1.5 million of public money to tree contractors who trimmed and cut trees on public and private property. Complaint, ¶ 79. As a result of the unlawful spending for sidewalks and tree trimming, members of the Pastrick racketeering enterprise had entirely depleted the City's General Fund by May 1999, at which time the City's General Fund bank account was overdrawn by several million dollars. Complaint, ¶ 85.

18. Shortly prior to the May 1999 election, Edward Maldonado, the City Controller, expressed concern to Fife that the City was going to start bouncing checks because of the uncontrolled spending for the sidewalk and tree project. Tr. 34. Fife asked whether there were sufficient funds to make it through the election and Maldonado assured him that most likely,

there were sufficient funds to last until the election. Tr. 34. Fife then told Maldonado that they would worry about it after the election. Tr. 34.

19. Shortly after the May 1999 election, National City Bank refused to honor numerous City of East Chicago checks. Complaint, ¶ 87. Raykovich and Fife directed contractors to stop all work and in some instances, contractors walked away from job sites, leaving work unfinished, and in some cases, leaving behind dangerous and hazardous conditions for City residents from the unfinished sidewalk, driveways, patios and porches. Complaint, ¶ 87.

20. Once the City's General Fund was depleted and its bank account overdrawn, members of the Pastrick racketeering enterprise embarked on a "second stage" to finance the sidewalk scheme. Complaint, ¶ 88. First, the City tapped into the casino trust fund money to pay millions of dollars in bills from the sidewalk and tree program. Complaint, ¶ 88. Thereafter, members of the Pastrick enterprise arranged for corrupt bond authorizations and appropriations by the Common Council by concealing the fact that public money previously spent on the sidewalk scheme had neither been paid pursuant to properly accepted public bids, nor appropriated by the Common Council. Complaint, ¶ 89.

21. The City Council called a special meeting on June 15, 1999, and passed an ordinance appropriating \$14 million, including \$13.5 million for "contractual services" and a \$450,000 disbursement for "capital outlay." Complaint, ¶ 90. Members of the Pastrick racketeering enterprise orchestrated the approval of an ordinance authorizing the City to issue municipal bonds not to exceed \$15 million and to issue Bond Anticipation Notes (BANs) not to exceed \$15 million "to pay the cost of certain capital improvements" in East Chicago. Complaint, ¶ 90. Bond Anticipation Notes were issued in July of 1999 and generated proceeds of \$13.75 million that were used to pay contractors for as yet uncompensated work related to the

sidewalk scheme and to replenish City bank accounts that had been depleted as a result of the money paid to sidewalk and tree contractors. Complaint, ¶ 101.

22. In mid-1999, Pastrick and his associates in the unlawful operation and management of the City as a racketeering enterprise embarked on an effort to conceal and cover up the illegal sidewalk and tree program by creating false and misleading documents. Complaint, ¶ 96. Specifically, members of the enterprise arranged for contractor Rieth-Riley to execute a contract to perform work under the terms of their proposed 1998 Street Improvement Project bid, even though that project was by then defunct and even though the work on the bid had already been performed as part of the 1999 sidewalk project. Complaint, ¶ 96.

23. Defendant Pastrick and the Group Manager for Rieth-Riley executed an ostensible contract titled as “Assignment of Bid and Right to Contract,” which purported to assign all of Rieth-Riley’s rights under their 1998 bid to the contractors who had performed work during the 1999 sidewalk program. Complaint, ¶ 97. To further cover up the scam, members of the Pastrick enterprise prepared and executed backdated contracts that purported to show that the respective sidewalk contractors had entered into legally binding agreements to perform work in July 1998. Complaint, ¶ 99.

24. After the signing of these contracts, which set a unit pricing rate for concrete services, three of the contractors, Calumet, H&Y Maintenance, and Roger & Sons, complained about the set rates and members of the Pastrick racketeering enterprise arranged for these contractors to be paid an additional \$2.3 million; the City did not pay similar funds to the other contractors. Complaint, ¶ 107. Based on the rates set in the contracts, two of the contractors, JGM and Windstorm, had been overpaid for the work they had performed. Complaint, ¶ 110. However, Defendants failed to collect the money and property owed to East Chicago by JGM

and Windstorm. Complaint, ¶ 110. The contractors that were given preferential treatment in this process had supported the Pastrick political organization. Tr. 36.

25. Several associates of Pastrick in his unlawful operation and management of the City as a racketeering enterprise, including Edward Maldonado and Frank Kollintzas, were indicted and convicted for the 1999 sidewalk and tree fraud. Exs. 11, 12, 15:7. As part of his unlawful operation and management of the City as a racketeering enterprise, Pastrick caused the City to pay legal bills totaling \$1,662,801.00 for the defendants who were convicted of defrauding the City. Ex. 1, 15:7; Tr. 63.

26. The cost incurred by the City for the sidewalk and tree fraud, including payments made to contractors, payments associated with the Bond Anticipation Notes issued to pay for the scam and the legal bills paid for the criminal defendants, was \$27,274,642.51. Ex. 1. The total of all damages caused by Pastrick's and his associates' unlawful operation and management of the City as a racketeering enterprise, including ostensible salaries and similar payments made to Pastrick, Fife and Raykovich was \$32,187,242.00. Ex. 1-4.

D. Long Term Effects of the Racketeering Enterprise

27. The pattern of theft, conversion, official misconduct and racketeering activity under Federal and State law that began with the diversion of casino money continued through August of 2004, when the complaint in this case was filed. Complaint, ¶ 62. During the 2003 election, associates of Pastrick in his operation and management of the City as a racketeering enterprise, engaged in "pervasive, illegal conduct and violation of election laws," as determined by Indiana Special Judge Stephen King, who heard a challenge to the election brought by George Pabey, Pastrick's challenger. Complaint, ¶ 133. Further, in the 2003 election, Pastrick and his associates in the unlawful operation and management of the City as a racketeering enterprise

engaged in a massive effort to buy the votes of absentee voters by giving or promising them money. Complaint, ¶ 131; Tr. 65.

28. As a result of the multiple thefts, conversions and official misconduct under State law that occurred during the Pastrick's unlawful operation and management of the City as a racketeering enterprise by a pattern of racketeering activity under Federal and State law, at the time Pastrick was finally removed from office, the City's general fund had a deficit of \$17 million. Tr. 125, 147. The projected budget shortfall was approximately \$5.5 million. Tr. 147. The City payroll had grown to over 1045 employees, far in excess of the comparably sized Michigan City. Tr. 147; Exs. 5, 6.

29. The succeeding City administration has taken steps to address the financial disaster left behind by Pastrick's unlawful operation and management of the City as a racketeering enterprise. Tr. 124-25, 147-48. The casino trust fund money, previously and unlawfully controlled by Pastrick, was transferred into the general wagering and admission account so that it would be appropriated in the same manner as any other funds. Tr. 125. Expenditures were reduced and some City workers were laid off to address the bloated payroll. Tr. 147-48.

30. The measures taken by the new administration to address the City's dire financial situation have met with limited success. Tr. 148. The effort to trim the payroll resulted in thirty-three lawsuits being filed against the City for wrongful termination. Tr. 148. The City's payroll remains bloated today and the salaries of many municipal employees are inflated, in comparison to Michigan City, a comparable municipality. Exs. 5-9. Efforts to apply the casino proceeds that Pastrick and his associates unlawfully diverted to the foundations as part of the racketeering enterprise have been unsuccessful. Tr. 127. Initially, the City had some success in getting

monetary grants from the foundations, but in recent years, the foundations deny virtually all grant requests from the City. Tr. 128, 151.

31. Today, the City's infrastructure has been left for too long in desperate need of repair, because of Patrick's and his associates' operation and management of the City as a racketeering enterprise through a pattern of racketeering activity under Federal and State law as well as theft, conversion and official misconduct under State law. Tr. 149. The sewers are over one hundred years old and are in need of replacement. Tr. 149. The streets of the City are crumbling and are in desperate need of repair or replacement. Tr. 149. Abandoned buildings litter the City's landscape, but cannot be demolished due to lack of funding. Tr. 149. As a result of Pastrick's diversion of casino revenue, the City has been substantially limited in its ability to use the wagering and admission revenue for infrastructure repair or replacement. Ex. 10. The newly consolidated foundation is in large measure still controlled by Pastrick holdovers. Tr. 129. The money held by the foundation and Second Century remains unavailable to the City to address its dire financial predicament. Tr. 127-28; 151. Moreover, the State Board of Accounts lacks statutory authority to audit the foundation or Second Century. Tr. 113.

32. To the extent that any of the Court's Conclusions of Law are deemed findings of fact, they are incorporated herein by reference.

Conclusions of Law

Based on the foregoing undisputed facts, the Court makes the following Conclusions of Law:

1. Defendants Pastrick, Fife and Kollintzas, by virtue of the default judgments, have admitted their liability for substantive violations of the Federal racketeering law, under 18 U.S.C. § 1962(c), (first Claim for Relief, at paragraphs 139-148 of complaint), as well as a violation of Federal racketeering conspiracy, under 18 U.S.C. §1962(d), (second Claim for

Relief, at paragraphs 149-156 of complaint). Defendants Pastrick, Fife and Kollintzas have also admitted their liability for State racketeering offenses, in violation of Indiana Code § 35-45-6-1, (third Claim for Relief, at paragraphs 157-167 of complaint) and state civil recovery for crime victims for theft and conversion pursuant to Indiana Code § 34-24-3, (fifth Claim for Relief, at paragraphs 173 – 178 of complaint).

2. The Federal racketeering statute provides for the mandatory recovery of treble damages, costs and attorneys' fees to an aggrieved party:

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee . .

18 U.S.C. § 1964(c). State law contains a comparable provision. Ind. Ann. Stat. §34-4-30.5-5 (b) (2009) (“three (3) times his actual damages”).

3. The Supreme Court has made it clear that in assessing civil remedies under RICO, the statute is to be read “broadly.” *Sedima v. Imrex Company, Inc.*, 473 U.S. 479, 497-98 (1985). Uniquely, too, RICO has a statutory liberal construction clause, applicable to the implementation of the statute’s remedial purposes. Pub. L. No. 91-452, § 904(a), 84 Stat. 947 (1970) (“liberally construed to effectuate its remedial purposes”). See *Bridge v. Phoenix Bond & Indem. Co.*, 128 Sup. Ct. 2131, 2143 (2008) (refusing “to adopt narrowing constructions of RICO”) and *Boyle v. United States*, 2009 U.S. LEXIS 4159 *18-23 (June 8, 2009) (“We see no basis in the language of RICO for the structural requirements petitioner ask us to recognize [to limit associations-in-fact, noting that prior cases had] “rejected similar argument in favor of the clear but expansive text of the statute”) (citing *National Organization for Women*, 510 U.S. at 262 ... *Sedima*, 473 U.S. at 499; *Turkette*, 452 U.S. at 589-591; *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. ___; *H. J. Inc* , 492 U. S. at 224). See also *PacifiCare Health Systems, Inc. v. Brook*, 538 U.S.

401, 406 (2003) (“Indeed, we have repeatedly acknowledged that the treble-damages provision contained in RICO itself is *remedial* in nature. In *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, . . . we stated that ‘both RICO and the Clayton Act are designed to *remedy* economic injury by providing for the recovery of treble damages, costs, and attorney’s fees,’ (emphasis added). And in *Shearson/Am. Express, Inc. v. McMahon*, . . . we took note of the ‘*remedial function*’ of RICO’s treble damages provision.”) (emphasis added; citations omitted).

4. Both the Federal and State RICO statutes also authorize the Court to grant significant injunctive relief to address Defendants’ violations. Specifically, 18 U.S.C. § 1964(a), gives district courts authority:

to prevent and restrain violations of [RICO] by issuing *appropriate* orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise

18 U.S.C. § 1964(a)(emphasis added). State RICO contains a similar provision. Ind. Ann. Stat. §34-24-2-6 (2009) (“an appropriate order for relief”).

5. The language of §1964(a) makes clear that the Court may order a broad range of equitable remedies, and both relevant case law and the legislative history of RICO establish that the remedies enumerated are “not exhaustive.” S. Rep. No. 617, 91st Cong., 1st Sess. 160 (1969) (“only limit on remedies is that they accomplish the aim set out of removing the corrupt influence and make due provision for the rights of innocent persons.”); *accord.*, H.R. Rep. No. 1549, 91st Cong., 2d Sess. 57 (1970). Senator John L. McClellan, the chief Democratic sponsor of RICO, observed when he introduced the legislation that he wanted to retain the “ability of our chancery courts to formulate a remedy to fit the wrong”; he also commented that he did not

intend to “limit the remedies available to those which have already been established.”⁴ Senator Roman Hruska, the chief Republican sponsor of RICO, added, “Hopefully, experts . . . will be able to conceive of additional applications of the law. The potential is great.”⁵

6. The equitable remedies for violations of the racketeering statute are available in private civil actions. *National Organization for Women, Inc. v. Scheidler*, 267 F.3d 687 (7th Cir. 2001) (holding that plain reading of RICO supported availability of private equitable relief), *reversed on other grounds*, 537 U.S. 393 (2003)⁶ As the Supreme Court recognized, §1964(a) “spell[s] out a non-exclusive list of the remedies district courts are empowered to provide in such cases, and permitting civil plaintiffs to pursue this broad range of remedies is consistent with “Congress’s admonition that the RICO statute is to be ‘liberally construed to effectuate its remedial purposes.’” *Id.* at 697-98 (citations omitted); *See also Agency Holding Corp.*, 483 U.S. at 151 (“private attorneys general [for] a serious national problem for which public prosecutorial resources are deemed inadequate”); *Shearson/Am. Express, Inc.*, 482 U.S. at 241 (“vigorous incentives for plaintiffs to pursue RICO claims”); *Sedima*, 473 U.S. at 493 (“private attorney general provision . . . designed to fill prosecutorial gaps”) (citing *Reiter*, 442 U.S. at 344).

7. Congress modeled 18 U.S.C. § 1964 after the antitrust statutes. *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 265-68 (1992). Thus, antitrust precedent is relevant to reading RICO. *United States v. Cappetto*, 502 F.2d 1351, 1356-59 (7th Cir. 1975) (“It is the same kind of equitable relief that federal courts have been granting for generations in civil

4 115 Cong. Rec. 9567 (1969).

5 *Id.* at 6993.

6 The Circuits are split on the availability of private equity relief. *Religious Technology Center v. Wollersheim*, 796 F.2d 1076, 1084, 1088 (9th Cir. 1986) (no private equitable relief authorized, based on a reading, not of the text of the statute, but its legislative history, though granting it would be a “plausible reading” of the statute, and recognizing “that strong policy arguments [could] be made to support a right to injunctive relief for private RICO plaintiffs”).

actions under Section 4 of the Sherman Act and Section 15 of the Clayton Act, 15 U.S.C. §§ 4 and 25.”) (citing antitrust precedent and holding that RICO’s civil provisions are remedial, not punitive, the showings required need only be to a preponderance of the evidence, and no showing of irreparable injury or inadequacy of the remedy at law need be made).

8. 18 U.S.C. § 1964(a) gives the court the power “to prevent and restrain.” Under *De Beer Consolidated Mines, Ltd. v. United States*, 325 U.S. 212, 218 (1945) (antitrust) “to prevent and restrain” merely states the “power . . . traditionally exercised by courts of equity”. See also Joseph Story, Commentaries on Equity Jurisprudence § 866 at 575 (1st English ed. 1884) (Under Roman law, which English equity powers reflected, courts possessed prohibitory, restitution, and exhibitory powers. The purpose of relief to prevent and restrain is to undo the damage caused by the defendant and to deprive him of future benefits. *United States v. United States Gypsum Co.*, 340 U.S. 76, 88-89 (1950) (“[T]he duty [of the court is] to compel action by the conspirators that will, so far as practicable, cure the ill effects of the illegal conduct, and assure the public freedom from its continuance. Such action is not limited to prohibition of the proven means by which the evil was accomplished, but may range broadly through practices connected with acts actually found to be illegal. Acts entirely proper when viewed alone may be prohibited. The conspirators should, so far as practicable, be denied future benefits from their forbidden conduct.”). Dissolution or divestiture is often required. See, e.g., *Schine Chain Theatres, Inc. v. United States*, 334 U.S. 110, 128 (1948) (such remedies serve three functions: “(1) puts an end to the ...conspiracy... (2) ...deprives the ...defendants of the benefit of their conspiracy, [and] (3) ... break[s] or renders impotent the ... power which violate [the law.]”). Where a divestment is necessary, the court should determine which assets were illegally acquired and focus its degree on the specific assets to be divested. *Id.* 126. That such orders cause

considerable dislocation is not a reason by itself to decline to order them. *United States v. DuPont*, 366 U.S. 316, 326-27 (1967). In fact, the Senate Report on RICO cited *DuPont's* divestiture of its interest in General Motors as an envisioned remedy under RICO. S. Rep. No. 617 at 81-82. *Accord, United States v. Crescent Amusement Co.*, 323 U.S. 173, 189 (1944) (breaking up conspiracy that dominated local theatres and forced film distributors to make anticompetitive agreements). Particularly significant for these proceedings, in *United States v. Coca-Cola Bottling Co. of Los Angeles*, 575 F.2d 222, 227-28 (9th Cir. 1978) the court held that “prevent” in the anti-trust statutes, included rescission as against, not merely buyers, but also sellers in prohibited transactions. The district court had, the court held, the power to order rescission, if necessary, “to eliminate the effects of an acquisition offensive to the statute.” *Id.* In addition, the Court squarely rejected the Appellant’s argument that “prevent” only extended to stop future illicit transactions, not undo past illicit transactions, saying the Appellant’s “reading of [the statute] strain[ed] the normal reading of the terms ... far out of perspective.” *Id.* Such remedies under the antitrust statutes unquestionably extend to private-party suits. *See also United States v. Lane Labs USA*, 427 F.3d 219, 229-30 (3d Cir. 2005) (noting that restitution serves a forward-looking deterrent function that is embodied in the district court’s authority to restrain violations of federal law). *California v. Am. Stores Co.* 495 U.S. 271, 284-85 (1990). (“no restrictions ... to the forms of injunctive relief a private plaintiff may seek. . . . [S]tatutory language indicates Congress’ intention that traditional principles of equity govern the grant of injunctive relief.’ . . . We agree ...[that the statutory language] authorizes divestiture decrees [by a private party] to remedy ...violations.”)(citations omitted).

9. Tracing remedies are the key to the successful identification of unlawfully obtained property that has changed hands. Restatement of Restitution § 215 (1937). The victim

may be entitled to enforce either a constructive trust or an equitable lien. *Id.* at § 202. The law recreates a constructive trust where the property of one person is held by another, and he is subject to an equitable duty to return it to avoid unjust enrichment. *Id.* §160. It reaches the property itself rather than its value. See *Am. Motor Club, Inc. v. Neu*, 109 B.R. 595, 599 (E.D. N.Y. 1990) (“The defendant also contends that because the property is now worth in excess of \$ 1,500,000 and the alleged defalcation amounts to only \$ 300,000, a turnover of the property would be inequitable. This argument is meritless. Even assuming *arguendo* that there has been a substantial increase in the market value of the property, there is only better reason why a constructive trust be imposed. Where an officer or director has been found to have diverted corporate assets, he will be held accountable for the fruits of his wrongdoing.”). The law creates an equitable lien where property of one person is held by another, and he would be unjustly enriched if security interest was not imposed. *Id.* §161. It does not reach the property *qua* property, but its value. See *Dayton Monetary Assocs. v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 1995 WL 43669, at *5 (S.D. N.Y. Feb. 2, 1995) (denying motion to dismiss Plaintiffs’ claim for a constructive trust to recover fees paid to defendants involved in racketeering). As the Supreme Court has emphasized, “the scope of the district’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.” *Swann v. Charlotte-Mecklenberg Bd. of Ed.*, 402 U.S. 1 (1971) (school desegregation order).⁷

⁷ Plaintiffs’ Complaint sought disgorgement. Complaint, pages 58-59. The case law on the availability and scope of disgorgement relief under Federal RICO is in disarray. Compare *United States v. Private Sanitation Indus. Ass’n of Nassau/Suffolk*, 44 F.3d 1082, 1084 (2d Cir. 1995) (disgorgement granted); *United States v. Carson*, 52 F.3d 1173, 1182 (2d Cir. 1995) (disgorgement not granted under the circumstances) with *United States v. Phillip Morris USA*, 396 F.3d 1190, 1198-1202 (D.C. 2005)(disgorgement not available under any circumstances). Until such time as the Court is presented with a request for disgorgement of specified funds from a particular person in this litigation, the Court will not enter this thicket to decide which path to follow. See *generally* Comment: Equitable Remedies in Civil RICO Actions: In Support of Allowing District Courts to Order Disgorgement, 74 U. Chi. L. Rev. 1057 (2007) reviewing the conflicting authorities.

10. Given RICO's broad remedial purpose, the Seventh Circuit has imposed a correspondingly broad range of civil and criminal remedies to address RICO violations. In addition to *United States v. Cappetto*, a civil case noted above, in *United States v. Horak*, the Circuit approved the *criminal* forfeiture of a defendant's job, salary, bonuses, and pension plans to the extent they were acquired or maintained in violation of RICO. 833 F.2d 1235 (7th Cir. 1987). The Court reasoned that "[a] RICO defendant should be separated from any employment position that afforded him the opportunity to engage in the racketeering activity for which he was convicted." *Id.* at 1242.

11. If a particular interest, such as a pension payment or portion thereof, would not have been acquired but for a defendant's racketeering activities, then that interest should be forfeited. *Id.* at 1243. Likewise, if a defendant would not have held or kept a position but for racketeering activities, his entire salary and benefits earned after that point must be surrendered. *Id. Accord, Pidcock v. Sunnyland America, Inc.*, 854 F.2d 443, 446-48 (11th Cir. 1988) (measure of civil disgorgement limited to funds not acquired by special efforts of violator). The range of available civil remedies was also aptly illustrated in *United States v. Local 30, United Slate, Tile, and Composition Roofers, Damp and Waterproof Workers Association*, 686 F. Supp. 1139 (E.D. Pa. 1988), *aff'd*, 871 F.3d 401 (3rd Cir.), *cert. denied*, 493 U.S. 953 (1989). In that case, a civil action following the conviction of various union leaders, a district court preliminarily enjoined the defendants from holding union leadership positions and employment in the construction industry within the union's jurisdiction. *Id.* at 1171-72. The court also appointed a monitor to enforce and oversee the terms of injunction and ordered an audit of the enterprise in light of the fact that union business had been conducted through a pattern of racketeering for years. *Id.* The district court imposed the monitor in lieu of a trusteeship, a more extensive remedy, which is

widely employed in the union corruption area. *See, e.g., United States v. Local 560, Int'l Bhd of Teamsters*, 581 F. Supp. 279 (D.N.J. 1984), *aff'd*, 780 F.2d 267 (3d Cir. 1985).

12. As noted, the civil remedies available to this court for violations of Indiana's RICO statute are similarly broad; each statute provides for "appropriate" remedies. Specifically, I.C. 34-24-2-1 provides that a court may order divestiture of any interest in any enterprise or property, prohibit a defendant from engaging in the business in which the subject enterprise was engaged, suspend or revoke any license of the subject enterprise, or "make any other order or judgment that the court considers appropriate" taking into consideration "the rights of innocent persons." Thus, both the federal and the state statute include catch-all provisions that make clear that the long list of available remedies is not intended to limit the relief available. Indeed, the provisions vest the Court to award whatever relief is "appropriate" to remedy the violations that have occurred.

13. Last, but of equal significance, are the remedies in the I.C. 34-24-3-1(civil damage remedies for victims of crime) and I.C. 34-24-2-6 (civil damage remedies for victims of corrupt business influence or Indiana's RICO statute). I.C. 34-24-3-1 provides that if a person suffers "a pecuniary loss as a result of a violation of I.C. 35-43[theft or conversion]... the person may bring a civil action ... [to recover an amount] not to exceed three (3) times the actual damage of the person."

14. In addition, I.C. 34-24-2-6 provides that an aggrieved person, such as the City, may bring an action for the damages it suffered as a result of a corrupt business influence, such as by Pastrick and his associates in the unlawful operation and management of the City as a racketeering enterprise for a period of approximately eight years, from 1996 through 2004, and may recover "an amount equal to three (3) times" its actual damages and any punitive damages

awarded by the court and allowable under law. *See Stroud v. Lints*, 790 N.E.2d 440, 441-47 (2003) (considering factors providing for, including criminal conduct, but limiting any award of punitive damages by inability to pay). The injury to the City of East Chicago by theft and conversion and corrupt business influence by Pastrick and his associates in the unlawful operation and management of the City for a period of approximately eight years, from 1996 through 2004, as a racketeering enterprise is a persuasive-fact established by the admission of the defendants and then shown by a preponderance of the evidence by the plaintiffs in these proceedings to determine damages and other relief. On the other hand, in the absence of a showing that Pastrick or the other defendants have the ability to pay a punitive damage judgment, it will not be awarded.

15. Liability for damages under the statutes herein discussed is joint and several, as admitted by Pastrick and the other defaulting defendants, Complaint ¶¶ 148, 156, 167, 178, and under applicable law. *Liquid Air Corp. v. Rodgers*, 834 F.2d 1297, 1310 (7th Cir. 1987) (RICO). They are assessed before any offsets, which are of no moment, as none has been established by any defendant. Nevertheless, the single satisfaction rule applies to RICO. *Morley v. Cohen*, 888 F.2d 1006, 1012-13 (4th Cir. 1989). Accordingly, the Court does not award damage relief under any count that is duplicative of relief granted under another count.

16. Plaintiffs are entitled to prejudgment interest under the Crimes Victims Act or for tortious conduct at the rate of eight percent per annum. *Indiana Bell Telephone Co., Inc. v. Thrifty Call, Inc.*, 2005 U.S. Dist. Lexis 3687 *5 - *16 (S.D. Ind. 2005)(prejudgment interest under Crime Victims Act (I.C. § 34-24-31 (2009)); I.C. § 34-51-4-1 (2009)(tortious conduct): I.C. § 24-4.6-1-102 (2009)(rate: eight percent per annum). Federal law is in agreement. *Raybestos Products Co., v. Younger*, 54 F.2d 1234, 1247 (7th Cir. 1995). At a rate of eight

percent for the period from the filing of the complaint to the present, a period of approximately 4.83 years, the prejudgment interest is \$12,437,150.30 based on the actual damage of \$32,187,242.00 caused by the unlawful acts of the racketeering enterprise.⁸

17. To the extent that any of the Court's Findings of Fact are conclusions of law, they are incorporated herein by reference.

Damages and Other Relief

WHEREFORE, the Court hereby orders the following damages and injunctive relief:

Federal Substantive Racketeering Claim

1. The Court, having found for the Plaintiffs and against Defendants Robert A. Pastrick, James Harold Fife, III, and Frank Kollintzas, on Plaintiffs' Claim for Relief for substantive violations of the Federal racketeering law, under 18 U.S.C. § 1962(c), (first Claim for Relief, at paragraphs 139-148 of complaint), now finds Plaintiffs' actual damages are \$32,187,242.00. The Court further finds that the Plaintiffs are entitled to treble damages totaling \$96,561,726.00, plus pre-judgment interest in the amount of \$12,437,150.30, for a total award of \$108,998,876.30, jointly and severally against each Defendant. Said sum is due and payable immediately;

Federal Racketeering Conspiracy Claim

⁸ This rate is a compromise. While Plaintiffs are entitled to prejudgment interest calculated under the usual standards, its proper calculation is highly complex. Usually, a tort occurs on a single day, and the damages are ascertained on the day of the tort. Litigation follows and concludes with a reasonable period of time. Here, however, the unlawful conduct began years ago; it continued for a lengthy period; and litigation did not immediately occur, and when it did, it had been delayed while a criminal investigation and criminal proceedings proceeded. Typically, Plaintiffs are entitled to collect interest under the market rate for borrowed money from the beginning of the tort and continuing each year during the period of the unlawful behavior; the interest is also compounded. Plaintiffs accept the simple compromise of forgoing starting the period from the beginning of the tort and compounding, recognizing that the market rate has varied above and below the compromise rate. Thus, a flat statutory rate makes sense. *See generally In the Matter of the Oil Spill etc.*, 954 F2d 1279 (7th Cir. 1992). To simplify the calculation, Plaintiffs accept the statutory rate of eight (8) percent per annum, as a flat rate, from the date of the filing of the complaint, that is, August 3, 2004.

2. The Court, having found for the Plaintiffs and against Defendants Robert A. Pastrick, James Harold Fife, III, and Frank Kollintzas, on Plaintiffs' Claim for Relief for a violation of Federal racketeering conspiracy, under 18 U.S.C. §1962(d), (second Claim for Relief, at paragraphs 149-156 of complaint), now finds Plaintiffs' actual damages are \$32,187,242.00. The Court further finds that the Plaintiffs are entitled to treble damages totaling \$96,561,726.00, plus pre-judgment interest in the amount of \$12,437,150.30, for a total award of \$108,998,876.30, jointly and severally against each Defendant. Said sum is due and payable immediately;

Indiana Racketeering Claim

3. The Court, having found for the Plaintiffs and against Defendants Robert A. Pastrick, James Harold Fife, III, and Frank Kollintzas, on Plaintiffs' Claim for Relief for violations of State racketeering offenses, in violation of Indiana Code § 35-45-6-1, (third Claim for Relief, at paragraphs 157-167 of complaint) now finds Plaintiffs' actual damages are \$32,187,242.00. The Court further finds that the Plaintiffs are entitled to treble damages totaling \$96,561,726.00, plus pre-judgment interest in the amount of \$12,437,150.30, for a total award of \$108,998,876.30, jointly and severally against each Defendant. Said sum is due and payable immediately;

Indiana Civil Recovery for Crime Victims Claim

4. The Court, having found for the Plaintiffs and against Defendants Robert A. Pastrick, James Harold Fife, III, and Frank Kollintzas, on Plaintiffs' Claim for Relief for violations of the State Civil Recovery for Crime Victims for theft, conversion and official misconduct pursuant to Indiana Code § 34-24-3, (fifth Claim for Relief, at paragraphs 173 – 178 of complaint) now finds Plaintiffs' actual damages are \$32,187,242.00. The Court further finds

that the Plaintiffs are entitled to treble damages totaling \$96,561,726.00, plus pre-judgment interest in the amount of \$12,437,150.30, for a total award of \$108,998,876.30, jointly and severally against each Defendant. Said sum is due and payable immediately;

Injunctive and other Equitable Relief

5. Defendants Pastrick, Fife and Kollintzas are forever barred from holding any paid positions of any kind, whether as consultants or employees, with any governmental body in the State of Indiana or the United States;

6. The Plaintiffs, through the Indiana Attorney General, shall arrange for a forensic accounting to be completed within one hundred and twenty days of all money received by the foundations and Second Century during the period from 1996 through the present. Upon review of the accounting, the Court shall determine what, if any, further relief is appropriate, including restitution, disgorgement and, divestment, or otherwise, to recover funds wrongfully paid or diverted to members of the racketeering enterprise or other private parties.

7. All letters or agreements made during the administration of Pastrick relating to the allocation or disbursement of funds from the casino are hereby declared null and void. The City and the casino shall immediately confer and determine by agreement how future revenues or fees from the casino shall be allocated and disbursed. Said agreement shall be subject to the approval of the Indiana Gaming Commission to ensure that said agreement maintains the integrity of the Indiana gaming industry and serves the public interest of the citizens of the City of East Chicago and the State of Indiana.

8. Reasonable costs and attorneys' fees, the amount of which will be determined in a subsequent hearing before the Court, are imposed in favor of the Plaintiffs.⁹

⁹ Plaintiffs are to file a petition for attorneys fees and taxation of costs and submit AO Form 133 pursuant to L.R. 54.1 within 14 days of the issuance of the final judgment reflecting the Court's rulings on damages and other relief.

9. The Court retains jurisdiction respecting these matters to effectuate the goals of its orders, as it shall be amended from time to time.

IT IS SO ORDERED

JAMES MOODY
U.S. District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2009, a copy of the foregoing **Plaintiff's Proposed Findings of Fact and Conclusions of Law** was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

| | |
|-------------------|--|
| Michael W. Bosch: | mbosch@netnitco.net |
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| Stephen M. Maish: | maishmys@aol.com |

I further certify that I have caused the foregoing to be served by facsimile upon the following CM/ECF non-participants:

James H. Fife III
Pact Bradley Center
132 E. 6th Street
Michigan City, IN 46360
Facsimile: 219.378.9320

By:

/s/ Patrick M. Collins

Patrick M. Collins, Special Deputy
Attorney General

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PLAINTIFF'S EXHIBIT 36

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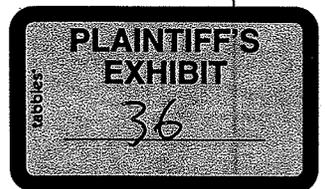
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

STATE OF INDIANA, ex rel.)
Steve Carter, Attorney General)
of Indiana and the CITY OF)
EAST CHICAGO, ex rel. Steve Carter,)
Attorney General of Indiana,)
Plaintiffs,)
VS.)
ROBERT A. PASTRICK, et al.,)
Defendants.)

No. 3:04-CV-0506-AS

THE CONTINUED DEPOSITION OF ROBERT PASTRICK,
taken at the instance of the Plaintiffs herein, pursuant to
notice as to time and place and pursuant to the Statutes of
the State of Indiana, before Lisa Pena, CSR, a Notary
Public for the State of Indiana, at 800 East 81st Avenue,
Merrillville, Indiana, on the 2nd day of October, 2007,
commencing at the hour of 9:30 o'clock a.m.

REPORTED FOR FISSINGER & ASSOCIATES
BY: LISA PENA
CERTIFIED SHORTHAND REPORTER
LICENSE NO. 084-003484



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A P P E A R A N C E S

PERKINS COIE, LLP
By: Mr. Patrick Collins
131 South Dearborn Street
Suite 1700
Chicago, Illinois 60603

Appeared on behalf of the plaintiffs,

MS. MOLLY C. JOHNSON
Deputy Attorney General
302 West Washington Street
Indianapolis, Indiana 46204

Appeared on behalf of the plaintiffs,

DAVID W. WEIGLE & ASSOCIATES
By: Mr. David W. Weigle
5231 Hohman Avenue
Suite 600
Hammond, Indiana 46320

Appeared on behalf of the defendant,

BOSCH & BANASIAK
By: Mr. Michael W. Bosch
7150 Indianapolis Boulevard
Hammond, Indiana 46324

Appeared on behalf of the defendant.

ALSO PRESENT:

Thompson Court Reporters, Inc.
By: Mr. Bruce Witty, Videographer

I N D E X

CONTINUED DEPOSITION OF ROBERT A. PASTRICK

| | <u>DX</u> | <u>CX</u> | <u>RDX</u> | <u>RCX</u> | <u>FRDX</u> |
|----------------------|-----------|-----------|------------|------------|-------------|
| By Mr. Collins | 169 | | 242 | | 244 |
| By Mr. Bosch | 238 | | | | |

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Will counsels please introduce themselves and state whom they represent beginning with the noticing party.

MR. COLLINS: Patrick Collins and Molly Johnson on behalf of the State of Indiana, plaintiffs.

MR. BOSCH: Michael Bosch for Robert Pastrick.

MR. WEIGLE: David Weigle for Timothy Raykovich.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

ROBERT A. PASTRICK,

called as a witness herein, having been first duly sworn, was examined upon oral interrogatories and testified as follows:

THE VIDEOGRAPHER: Please proceed.

CONTINUED DIRECT EXAMINATION

BY MR. COLLINS:

Q. Good morning, Mr. Pastrick.

A. Good morning, Pat.

Q. We are here as you know to continue the deposition that we started two weeks ago on September 20; is that correct?

A. Correct.

Q. Now, we indicated that we have some more questions for you. We got a late start through no fault of your own. You also indicated that it's your need to leave

1 foundations.

2 Q. For the foundations?

3 A. Yes.

4 Q. For both Twin City and East Chicago Community?

5 A. Yes. But it was known as the foundations, yes.

6 Q. Did you appoint him to those two positions?

7 A. No, I did not.

8 Q. Did you authorize his appointment?

9 A. Not to my knowledge.

10 Q. Do you have any understanding of how he came to be the

11 treasurer for both foundations?

12 A. I think possibly because he was the City Comptroller.

13 Q. Do you have any knowledge as to how Mr. Fife became

14 registered agent for both foundations?

15 A. No, I don't.

16 Q. Did you authorize him to be registered agent for both

17 foundations?

18 A. Not to my knowledge.

19 Q. Sir, I asked you some questions last time about a

20 gentleman, Mr. Thomas Cappas and Mr. Michael Pannos.

21 Do you remember generally those questions?

22 A. Yes, you did.

23 Q. Now, sir, you were aware that both gentlemen had a

24 financial relationship with Showboat such that they

25 were the representatives of Showboat advocating for

1 the boat, the East Chicago boat, to go to Showboat,
2 correct?
3 A. Yes.
4 Q. Mr. Cappas is a long time friend of yours; is that
5 correct?
6 A. Yes.
7 Q. Have you heard him being called in the press or
8 otherwise the Midnight Mayor?
9 A. Yes, I've seen that.
10 Q. And you're chuckling, sir. Did Mr. Cappas have any
11 role official or unofficial in the conduct and the
12 affairs of East Chicago during your tenure as Mayor?
13 A. I believe he was on the School Board for a period of
14 time.
15 Q. Other than on the School Board did he have any other
16 role officially or unofficially in conducting the
17 affairs of East Chicago during your tenure as Mayor?
18 A. Not that I can remember.
19 Q. Did he consult with you on any decisions?
20 A. Wait. Let's revert back to that. I think at one
21 period -- I am not sure. I thought at one period he
22 may have been City Attorney. But I am not sure of
23 that.
24 Q. Did you ever have any financial relationship with
25 Mr. Cappas?

1 And when I say financial relationship, at
2 any point in time either professionally, personally or
3 in any of your various capacities did you have any
4 relationship, financial relationship with Mr. Cappas?
5 A. Only one time he purchased a lot adjacent to my home
6 lot in Ogden Dunes. And I have since been
7 repurchasing it back from him.
8 Q. Has that repurchase been completed?
9 A. No. It hasn't. I still owe him some payments.
10 Q. When was the contract -- was it basically an
11 installment contract where you would pay -- purchase
12 it over a period of time?
13 A. I pay over a period of time, yes.
14 Q. What was the total purchase price?
15 A. I really can't -- I can't recall the total. I was
16 paying him increments of like \$3,000.
17 Q. Approximately what year did you enter into the
18 contract?
19 A. It's been a few years back.
20 Q. What is your best estimate, sir?
21 A. Maybe -- I don't know. I really can't recall.
22 Q. Is there a written document that exists, sir? Was
23 there a written contract?
24 A. Yes. There was a contract.
25 Q. Do you have possession of it or have access to it,

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sir?

A. I probably could ask him for it. I haven't fully paid for it. So he probably retains all that, still retains all the records.

Q. Is that a \$3,000 a month payment that you make to Mr. Cappas?

A. No. It's an annual payment.

Q. Do you have use of the property?

A. The property is vacant.

Q. How long was it between the time Mr. Cappas purchased the property and he sold it to you? In other words, how long did he own it before he sold it?

A. Best of my knowledge for a few years.

Q. You were the Mayor at the time you entered into this transaction?

A. Yes, I was.

Q. We'd make a request for the purchase, for the sale contract.

Other than that purchase or sale contract, sir, and that arrangement that you just described generally have you ever had any financial arrangement with Mr. Cappas wherein he has provided to you any cash benefits or things of value over the course of your relationship with him?

A. Not to my knowledge.

1 Q. Sir, did you take a trip to Ireland, a golf trip to
2 Ireland during your tenure as Mayor?
3 A. Yes, I did.
4 Q. Who paid for your trip?
5 A. My son, Kevin.
6 Q. Your son, Kevin, paid for the trip?
7 A. Yes.
8 Q. What was the occasion?
9 A. It was a golf trip.
10 Q. Why did Kevin pay for it?
11 A. Because he wanted to pay for it.
12 Q. Did he use his own funds, sir, or did Mr. Cappas
13 provide the funds?
14 A. No. I believe he used his own funds to the best of my
15 knowledge. I'm not sure.
16 Q. Was Mr. Cappas on the trip?
17 A. Yes, he was.
18 Q. Did you understand that was a Cappas sponsored trip,
19 that Mr. Cappas organized the trip?
20 A. No, not to my knowledge.
21 Q. Do you have any sense of the approximate value that
22 Mr. Kevin Pastrick paid for the trip?
23 A. I have no knowledge of that.
24 Q. How long were you there?
25 A. I don't remember the exact time.

1 Q. Approximately?

2 A. You're going back sometime. Probably a week.

3 Q. Did you take your wife, sir?

4 A. No.

5 Q. But you paid -- you, yourself, paid nothing out of

6 your own pocket, correct?

7 A. Well, I paid during the trip.

8 Q. But in terms of lodging and golf fare and air fare you

9 did not pay for that, correct?

10 A. Well, my son handled most of that. But I paid, you

11 know, I paid my share into things we did.

12 Q. Well, there was some up-front fee, correct? And this

13 was coordinated in advance, correct?

14 A. Yes.

15 Q. And you're saying your son paid that up-front fee?

16 A. Yes.

17 Q. Do you have any approximation of how much the up-front

18 fee is that your son paid?

19 A. I have no knowledge of that.

20 Q. Was it your birthday or Christmas? In other words --

21 A. It was something my son wanted to do for me.

22 Q. Okay.

23 A. Okay.

24 Q. Do you have any idea how much it was, sir, that your

25 son paid?

1 A. No idea.

2 Q. How many attendees were on the trip?

3 A. How many attendees?

4 Q. Attendees? How many folks went on the trip?

5 A. Approximately half a dozen I guess.

6 Q. And I'm sorry. Mr. Cappas was or was not on the trip?

7 A. He was on the trip.

8 Q. Who else was on the trip, sir?

9 A. Mr. Pannos, Mr. Pannos' son, my son.

10 Q. Kevin?

11 A. Yes. Of course Mr. Cappas.

12 Q. Do you recall what --

13 A. And Mr. Gauthier.

14 Q. I'm sorry. Can you spell his name?

15 A. Richard Gauthier.

16 Q. Can you spell his name?

17 A. G-a-u-t-h-i-e-r. It's French.

18 Q. So, sir, just to summarize, it's your testimony that

19 your son, Kevin, paid for the trip. And Mr. Cappas in

20 no way, shape or form advanced any funds on your

21 behalf for the trip?

22 A. Not to my knowledge.

23 Q. Did you take a trip to Kohler, Wisconsin in which

24 Mr. Cappas was involved? Kohler, Wisconsin?

25 A. I've been to Kohler. I am trying to think whether

1 Mr. Cappas was involved.

2 Q. How many times have you been to Kohler, sir?

3 A. Twice.

4 Q. Do you recall whether Mr. Cappas either was with you
5 on either of those trips or paid for any portion of
6 your trip?

7 A. Well, he certainly didn't pay for any portion of my
8 trip.

9 Q. Do you recall was anyone else -- did anybody pay for
10 your trip other than you, your two trips?

11 A. Not to my knowledge.

12 Q. Sir, are there any other trips out of state that you
13 have taken during your tenure as Mayor that were paid
14 for or sponsored by anyone other than yourself?

15 A. By our political funds.

16 Q. And where did you go, sir?

17 A. When I made trips to Washington, DC, and when I made
18 trips to the Democratic National Committee, when I
19 made trips to the State Committee.

20 Q. Other than trips that you took that were paid for by
21 political --

22 A. Democratic conventions.

23 Q. Any other trips, sir, out of state more in the nature
24 of vacations that were paid for by anyone other than
25 yourself?