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August 16, 2021

Board of Trustees  
Buffalo Laborers' Benefit Funds  
25 Tyrol Drive, Suite 200  
Cheektowaga, New York 14227

Re: Summary Report of cases handled by Gorlick, Kravitz & Listhaus, P.C.  
on behalf of the Buffalo Laborers' Benefit Funds

Gentlemen:

We are pleased to present our Summary Status Report of litigation matters being handled by this Firm on behalf of the Buffalo Laborers' Benefit Funds (the "Funds") between September 1, 2020 and the date of this letter (the "Reporting Period"). As described below, our firm continues to prosecute the matters referred to us by the Funds efficiently and effectively.

During the Reporting Period, we handled 15 matters for the Funds. Of those matters 9 were closed including 6 closed after receiving full payment, 2 discharged in bankruptcy, and 1 written off at the direction of the Trustees. Additionally, there are currently 2 active matters involving litigation or pre-litigation demands. The remaining open cases include 4 matters in which judgments have been obtained and judgment execution is proceeding.

Collections on behalf of the Funds during the Reporting Period have totaled \$1,220,697.11. Legal fees incurred by the Funds during the same period total \$166,743.00.

## SIGNIFICANT MATTERS

### I. ACTIVE LITIGATION

#### A. Telco Construction, Inc.

This matter was referred to us to obtain an audit of Telco Construction, Inc.'s ("Telco") books and records for the period of October 1, 2014 through the date of the demand (the "Audit Period"). Records show that Telco signed an Independent Agreement with Laborers Local 210 (the "Union") for 2011-2016 ("CBA") in September of 2012.

On October 7, 2019, we issued an audit demand. Telco responded through counsel that it terminated its collective bargaining agreement with the Union by letter dated April 26, 2016 and furnished a copy of the letter. It also stated that the Funds conducted an audit of its books and

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records through the claimed termination date. However, Telco continued to utilize Union laborers, submit remittance reports, and pay contributions to the Funds for the hours worked through March 2019. After extensive negotiations, Telco agreed to the performance of an audit which was conducted on February 24, 2020 and found a deficiency of \$1,460.49 in principal contributions.

After suspecting that Telco was using non-union employees to perform work covered by the CBA and since the Funds believe that the CBA was never properly terminated, the matter was referred back to the auditors. A second demand letter for an audit was sent to Telco for the Audit Period. Telco refused to comply with the audit request and we filed a complaint on October 2, 2020.

The complaint seeks an Order requiring Telco to permit an audit for the Audit Period, payment of all contributions, dues and NYSLPAC checkoffs found due and owing and all contractual and statutory damages. Telco filed its Answer to the Complaint on December 4, 2020. We served initial disclosures on January 26, 2021. The parties have traded Requests for Documents and Interrogatories and responses to discovery were due by May 31, 2021 which deadline was extended through August 31, 2021.

The matter was automatically referred to mediation which took place on May 12, 2021 before mediator James Donathen. Although Telco had taken the position that the Funds were only entitled to review records for the three Union members on Telco's payroll, during the mediation Telco agreed to a complete audit of its books and records for all of its employees. The Funds provided a list of records needed to complete the audit on May 21, 2021 and Telco provided access to all requested records. The audit was conducted on June 7, 2021 and the audit report was issued on July 21, 2021. As Telco's records for non-prevailing rate work provided no basis for distinguishing between covered work and non-covered work, the revised audit report included all flat rate non-prevailing job work, resulting in a contributions deficiency of \$3,323,821.03 based on 125,245 hours of covered work. The parties will be scheduling a second mediation session for the end of August and will pursue additional discovery with respect to the amended audit report.

As Telco stopped contributing to the Funds in early 2019 but continued performing work within the Union's jurisdiction, we sent a Notice and Demand for Withdrawal Liability to Telco's counsel on November 30, 2020. The deadline for Telco to begin paying withdrawal liability payments was January 25, 2021 and the last date for them to have requested review was February 22, 2021. On April 20, 2021, the Funds sent a notice of overdue payment for withdrawal liability, which means it had until June 19, 2021 to pay the overdue quarterly payment of \$9,455.00. The payment was not made and a letter demanding immediate payment of the entire \$30,269.00 withdrawal liability, plus interest was issued. As Telco did not initiate arbitration before the May 14, 2021 deadline, should it fail to make payment, we will commence litigation to collect the withdrawal liability.

**B. Donegal Construction Corp.**

This matter was referred to us to obtain an audit of Donegal Construction Corp.'s ("Donegal") books and records for the period of January 1, 2017 to December 31, 2020 (the "Audit

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Period"). We issued a demand letter on July 27, 2021 seeking full compliance with the auditor's requests. On July 30, 2021, the CEO of Donegal, Bob Miner, consented to the audit which should be completed in September of 2021.

## II. CLOSED MATTERS

### A. Insulation Coating & Consultants, LLC

This matter was referred to us to demand that Insulation Coating & Consultants, LLC ("ICC") remit delinquent fringe benefit contributions, dues checkoffs, LECET and PAC contributions in the principal amount of \$89,320.68. The claimed deficiency was made pursuant to an audit of ICC's books and records for the period of January 1, 2018 to April 30, 2019 and based on remittance reports for the period of August 2019 to October 2019. On December 5, 2019, we issued a demand letter to ICC for the full and immediate payment of at least \$95,280.72 to the Funds, representing the entire principal plus \$5,960.04 in interest on the past due contributions.

The Trustees approved a pre-litigation settlement of \$98,303.02 ("Settlement Amount"), which included the total principal delinquency of \$89,320.68, \$7,164.46 in accrued interest plus \$1,817.88 in interest on the declining balance. The Settlement Amount was to be paid in eight (8) monthly payments of \$12,287.88 with the first payment due on January 27, 2020. As part of the settlement, ICC executed an Affidavit of Confession of Judgment for \$117,862.43 which included the principal delinquency of \$89,320.68, accrued interest on the fringe benefit and LECET contributions in the amount of \$7,164.46, accrued interest on the unremitted dues checkoffs and PAC contributions in the amount of \$493.93, liquidated damages in the amount of \$7,164.46, and audit costs in the amount of \$13,718.90. The settlement agreement provided that should ICC fail to cure a noticed breach of the settlement, the Funds are authorized to take judgment against it by entering the Confession of Judgment.

ICC made the first \$12,287.88 settlement payment but failed to make any subsequent payments. We sent default notices on February 28, 2020, March 30, 2020 and again on April 13, 2020 advising ICC that if payment is not timely made, the Funds would enter judgment against it. Due to the COVID-19 pandemic, the Supreme Court, Chautauqua County suspended the filing of all Affidavits of Confession of Judgment. On June 2, 2020, ICC made the second \$12,287.88 settlement payment but failed to make any subsequent payments. On June 17, 2020, after the COVID-19 moratorium was lifted, we filed the Confession of Judgment. Chautauqua County issued a Judgment by Confession on July 8, 2020 in the amount of \$93,511.67. This amount reflected \$117,862.43 less the settlement payments ICC made, plus costs. After serving a restraining notice, we received a check from Manning Squires in the amount of \$9,778.18 representing monies it owed to ICC, which was applied towards the Judgment and reduced the principal balance to \$83,733.49.

On March 17, 2021, the Funds restrained ICC's operating account at Evans Bank which contained approximately \$16,000. On March 19, 2021, the Funds agreed to release the restraint in exchange for Charles Sorce ("Sorce"), ICC's principal, personally agreeing to pay \$10,000.00 on or before March 24, 2021 and \$5,000.00 on the 15<sup>th</sup> of every month commencing on April 15,

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2021 until the balance of the Judgment is paid in full. Sorce also agreed to assign ICC's rights to the \$51,246.00 in outstanding retention monies owed from Walsh/Consigli JV on a project at the site located at Vassar Brothers Medical Center and to execute all required documents to perfect the Funds' security interest in the retention. On March 24, 2021, the Funds received a check from ICC in the amount of \$10,000.00, which was applied towards the Judgment and reduced the balance to \$73,733.49.

Sorce executed a Settlement Agreement, Affidavit of Confession of Judgment, Assignment, and Security Agreement. On March 30, 2021, we filed a UCC Financing Statement to perfect the Funds' security interest and on April 20, 2021, we received the first settlement installment payment of \$5,000. On May 19, 2021 the Funds received the second \$5,000.00 installment payment and on May 20, 2021, the Funds received a payment of \$51,246.00 from Walsh/Consigli JV in payment of the retention. ICC has now made all settlement payments and in total has paid the Funds \$82,946.35 in principal contributions, \$6,374.35 in principal dues and \$28,766.75 in interest and damages in full satisfaction of its obligations under the agreement. We have therefore closed our file in this matter.

### III. CONCLUSION

We will continue to vigorously prosecute all matters referred to us in an effort to maximize the collection of delinquent fringe benefit contributions in a cost-effective manner. We appreciate the confidence the Trustees have placed in our firm and look forward to being of continued service to you.

Sincerely,

GORLICK, KRAVITZ  
& LISTHAUS, P.C.



Bruce L. Listhaus

cc: Thomas L. Panek, CPA, Administrator  
Tracy Baugher, Office Manager