

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS: CIVIL DIVISION ROOM FIVE
COUNTY OF MARION) CAUSE NUMBER 49D05 0907 PL 34768

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

Plaintiffs,)

v.)

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

Defendants.)

(17)

AUG 31 2009

Christy J. White
CLERK OF THE MARION CIRCUIT COURT

**ORDER GRANTING PLAINTIFFS' EMERGENCY MOTION TO ENFORCE
COMPLIANCE WITH TERMS OF TRUST AGREEMENT**

On July 24, 2009, the Plaintiffs filed this lawsuit against the individual former Insurance Fund Trust Trustees, the Indiana State Teachers' Association, Edward Sullivan (currently the sole Trustee of the Plan), David M. Karandos (financial adviser and Senior Vice President at Morgan Stanley & Co., Inc. and former employee of UBS Financial Services, Inc.), Morgan Stanley & Co., Inc. and UBS the employers of Mr. Karandos, and Mr. Richard Darko (plan director and General Counsel to I.S.T.A.). Simultaneous with the filing of this lawsuit, Plaintiffs filed a request for this court to hold a hearing and, thereafter, to enforce compliance with certain terms of the Trust Agreement. A hearing was held on the emergency motion, among other issues, on August 26, 2009. All parties were represented by counsel and the plaintiffs were present in person and by counsel. After hearing oral arguments on August 26, 2009, the Court took the issue of the emergency motion under advisement.

The instrument referred to throughout these proceedings as "the plan" or "the trust" is a certain trust instrument dated December 17, 2002, entitled AMENDMENT AND

RESTATEMENT OF THE AGREEMENT AND DECLARATION OF TRUST ESTABLISHING I.S.T.A. INSURANCE TRUST. This instrument under which the lawsuit was brought is actually a restatement and reestablishment of the I.S.T.A. Insurance Trust effective May 3, 1985. Both the original and the Restatement of the Trust were created for the purpose of providing a funding source and administration for employee welfare benefits. Pertinent to the present issue before the court is the long term disability benefit insurance program administered by the trust and provided to teachers (and certain eligible non-teachers) throughout the state of Indiana. The Settlor of the trust was I.S.T.A., which is a labor organization representing teachers and associated school corporation personnel within the state of Indiana. Certain school corporations elected to participate in the Trust. By doing so, the Employer/School Corporation agreed to be bound by the terms of the Trust, agreed to make contributions to the Trust, agreed to delegate to the Trust the authority to determine eligibility of employees for participation in the plan, agreed to indemnify the Trust under certain circumstances, among other commitments.

For purposes of the emergency motion, the parties did not dispute that the Trust is governed by the written agreement attached to the Complaint. It also was presented by the Plaintiffs, and not disputed by the Trust or I.S.T.A., that until recently the Trust had two components: health insurance and long term disability. The Trust became insolvent and it is contended that the insolvency was the result of exceedingly poor management of the trust funds. As a consequence of the devastating losses in the Trust, the I.S.T.A. implored its parent organization, the National Education Association, to come to its rescue and to the rescue of the Trust. Being well aware of the devastating consequences of the failure of the Trust to the members of its local labor organization, the NEA came to Indianapolis and, in a friendly process, placed I.S.T.A. in "Trusteeship". Mr. Sullivan has full power and control over I.S.T.A., and its "separate entities". One of the separate entities over which Mr. Sullivan took full control was the Insurance Trust. There is no dispute but that Mr. Sullivan and the NEA have every right to exercise the control over I.S.T.A. that he is exercising.

The rub comes into the fact situation when Mr. Sullivan likewise took full control over the Insurance Trust. Mr. Sullivan advised his fellow Trustees of the Trust that he was assuming control and that they should resign or their positions would be terminated as Trustees. His colleagues complied and, thus, Mr. Sullivan now stands as the sole authority over the Trust.

The liquid assets of the Trust (approximately \$6 million) were marshaled and packaged with the health component of the Trust and transferred to United Health for the purpose of securing continuous health insurance coverage for the members of the Trust. It is of no consequence, at this juncture, whether this transfer occurred before or after Mr. Sullivan took control. Suffice to say, the health insurance coverage for the members of I.S.T.A. participating in the Trust is now secure.

The future for the beneficiaries of the disability insurance is not so secure. The on-going liability is approximately \$750,000 per month, likely to be at least \$60 million over the life of the remaining disabled beneficiaries. Plain and simple, the Trust is broke.

Fortunately, the I.S.T.A. has made loans to the Trust so that it can continue to pay the disability benefits each month which the Trust is obligated to pay. So far, I.S.T.A.'s payments have been out of its acknowledged moral obligation to its members but the future of those payments is unclear and not secure. I.S.T.A. has made draconian cuts in its staff and has sold its building to the NEA, both of which were done for the stated purpose of meeting the obligations of the Trust to its disabled members who rely on the payments for their welfare.

The Plaintiffs have come to this court initially requesting information about the Trust, so that they can correctly assess their situation and determine if there are rights and remedies that should be exercised against other responsible parties. They further request that the court require compliance with the governance portion of the Trust.

The Trust instrument provides that the Fund "shall be administered by nine (9) Trustees". Three trustee positions are filled by officers of I.S.T.A. and the remaining 6 trustee positions are not restricted. In the event of a vacancy by expiration of a term of office, resignation, death, or incapacity, the President of the Association is commanded by the terms of the Trust to appoint successor Trustees. It has been stated by counsel that the president of the Association does not deem it advisable, nor does he intend, to appoint any Trustees, other than Mr. Sullivan as the Sole Trustee. Counsel for I.S.T.A., the Trust fund, and Mr. Sullivan, asserted, and no one has disputed, that governance by a sole individual is more efficient and nimble than governance by a Board. Hence, in the opinion of I.S.T.A., Mr. Sullivan should remain the Sole Trustee, despite the terms of the Trust. The fact that Mr. Sullivan is also the sole Trustee over I.S.T.A. only facilitates the efficiencies and nimbleness found in singular leadership, according to counsel for I.S.T.A.

While acknowledging the potential conflict which exists in decisions that can affect both the Trust and I.S.T.A., sometimes for the benefit of one to the detriment of the other, counsel seeks to assure the court that when this has happened to date, Mr. Sullivan has been astute enough to perceive the conflict and resolve it by choosing someone else to make that particular decision in his stead, presumably free from the conflict which afflicted Mr. Sullivan. It's laudable that Mr. Sullivan has deftly avoided making any decisions himself which he perceived as having a potential conflict. It's clear to the court that this is, and should be, insufficient safeguard for the beneficiaries.

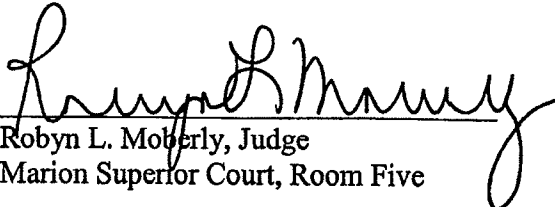
When I.S.T.A. created the Trust Fund, its leadership saw the significant advantage found in diverse interests being represented by 9 members of the Board of Trustees, one of whom must be a school administrator. A larger body of Trustees who are properly informed and engaged in the business of the Trust also should assure that all actions taken by the Trust are legal and in the best interests of the beneficiaries, and only the beneficiaries. The Trust is strengthened by independent thought and judgment. The expertise and common sense of nine well qualified Trustees must surely generate ideas and solutions to problems that a sole Trustee might miss. Finally, after acknowledging the wisdom of the founding document, the Court (and I.S.T.A.) is simply not empowered

to ignore the clear and unequivocal language of the Trust instrument. To date, I.S.T.A. and Mr. Sullivan have refused to properly fill the Trustees' vacancies. It is also hard to understand the refusal of the Sole Trustee (of both the Trust and I.S.T.A.) to share, even in a protected or confidential manner, the actions and transactions taken with Trust property to date. It has been disclosed that loan transactions between the Trust and I.S.T.A. have occurred and that I.S.T.A., a party against whom allegations of responsibility and liability in this action have been formally made, has transferred its ownership of significant real estate to NEA. It is presently unknown if the transfer was made for fair consideration and if other transfers may have been made.

After the past several months of high anxiety of the beneficiaries, changing messages by I.S.T.A., and significant transactions with trust property, it is this court's decision that the beneficiaries and all stake-holders in this unfortunate situation are entitled to a transparent resolution. Trust and confidence in the leadership and the tough decisions to be made by them will only result from Trustees with unwavering allegiance to the best interests of the beneficiaries of the Trust. At this time, this confidence can only be assured if the Court takes the step of appointing qualified, competent, and independent Trustees.

Therefore, the Court orders that the Trustees of the I.S.T.A. Insurance Trust shall number nine, and no less. They shall be comprised of: the I.S.T.A. President, Mr. Schnellenberger; the Executive Director of I.S.T.A., Mr. Edward Sullivan as the Trustee over I.S.T.A.; the Treasurer of I.S.T.A. (if there is a Treasurer), and six members who will be appointed by the Court. If I.S.T.A. currently has no Treasurer, Mr. Sullivan may name a Treasurer who will also be a Trustee of the Trust or the Court will appoint someone to assume this position on the board of Trustees. The plaintiffs as beneficiaries of the Trust may suggest six names and I.S.T.A. may suggest six names; or such lesser number as they may choose. If the court is to be charged with the responsibility of naming a Trustee to take the place of the position reserved for the Treasurer of I.S.T.A., this number shall be seven. The party suggesting a potential trustee shall also provide current *curriculum vitae* for such person. The parties shall have seven days from the date of this Order to tender names with supporting *curriculum vitae* to ensure that the Trustee leadership of the Trust is independent, with loyalty only to the welfare and best interests of the Trust and its beneficiaries, well-qualified so that wise and creative leadership is ensured, and willing and able to assume the arduous task.

Date: 8/31/09


Robyn L. Moberly, Judge
Marion Superior Court, Room Five

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