

STATE OF INDIANA
COUNTY OF LAPORTE

SS:

IN THE LAPORTE CIRCUIT COURT
CAUSE NO. 46C01-1004-CC-

STATE OF INDIANA *ex rel.*
GREGORY F. ZOELLER,
ATTORNEY GENERAL OF INDIANA,

Plaintiff,

v.

DONNALD W. GAMBREL and
CONTINENTAL WESTERN INSURANCE
GROUP,

Defendants.

COMPLAINT TO RECOVER PUBLIC FUNDS

Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, by Deputy Attorney General Luke P. Hodgin, for its Complaint to Recover Public Funds due and owing, states as follows:

FACTS

1. The State Board of Accounts (“SBOA”), pursuant to Ind. Code § 5-11-1-9, performed a special investigation and examination of the books, accounts, and records of the Kingsford-Union Volunteer Fire Department (the “Department”). The results of the examination are set forth in SBOA Audit Report B36074 dated April 12, 2010, attached hereto and incorporated herein as Exhibit A.
2. Donald W. Gambrel (“Gambrel”) was the Treasurer of the Kingsford-Union Volunteer Fire Department from January 1, 2002 until January 13, 2009.

3. The Audit Report disclosed malfeasance, misfeasance, or nonfeasance on the part of Gambrel and was referred by the State Examiner to Attorney General Gregory F. Zoeller pursuant to Ind. Code § 5-11-5-1(a).
4. The public funds that the State seeks to recover were found by the SBOA to be misappropriated, diverted, or unaccounted for.
5. Defendants are either a delinquent officer, a surety of the officer, or another proper person against whom recovery of misappropriated, diverted, or unaccounted for funds may be had.
6. Continental Western Insurance Group (“Continental”) is a corporation duly authorized to conduct business in Indiana. Continental is now and was at all times relevant to this action, engaged in the business of, among others, writing bonds upon and in favor of public officials and their subordinate public employees in the State of Indiana.
7. This Complaint is brought for the benefit of the Kingsford-Union Volunteer Fire Department.
8. This Complaint is brought by Attorney General Gregory F. Zoeller in the name of the State of Indiana pursuant to Ind. Code § 5-11-7-1.

COUNT I

Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, by and through its undersigned counsel, complains of Defendant, Donald W. Gambrel, and says:

9. During the audit period Gambrel had a duty to properly account for and deposit all funds of the Department and/or to assure that the funds of the Department were expended as authorized by law, and to commit no acts of misfeasance, malfeasance, or nonfeasance.

10. A volunteer fire department is deemed to be a governmental subdivision pursuant to Ind. Code § 5-11-1-16 as well as supporting case law.
11. During the audit period, Gambrel wrongfully or negligently failed to properly account for, expend, and/or deposit the funds of the Department, or otherwise committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation, diversion, and misapplication of public funds.
12. The nature of the breach by Gambrel was so egregious as to constitute gross negligence or an intentional disregard of his duties.
13. The loss to the Department is as follows:

a.	Deposits not intact:	\$2,200.00
b.	Receipts not Deposited :	\$1,404.20
c.	Undocumented Expense Reimbursements:	\$16,225.00
d.	Unauthorized cash withdrawals:	\$41,999.45
e.	Penalties, Interest, and Other Charges Incurred:	\$3,695.79
f.	Unauthorized Travel Expenses:	\$8,801.60
g.	Personal Expenses:	\$10,436.14
h.	Unauthorized Donations:	\$1,465.00
i.	Improper Records Retention:	\$633.00
14. Gambrel is liable to the State of Indiana and to the Kingsford-Union Volunteer Fire Department in the amount of Eighty Six Thousand Eight Hundred Sixty and 18/100 Dollars (\$86,860.18).

15. As a direct and proximate result the breach of Gambrel's duty to the Department, the Department suffered a pecuniary loss in the amount of Eighty Six Thousand Eight Hundred Sixty and 18/100 Dollars (\$86,860.18).

WHEREFORE, Plaintiff requests that the Court enter judgment for Plaintiff and against Defendant, Donald W. Gambrel, in the amount of Eighty Six Thousand Eight Hundred Sixty and 18/100 Dollars (\$86,860.18), plus audit costs of Seven Thousand Nine Hundred Forty Four and 30/100 Dollars (\$7,944.30), prejudgment interest, and all other just and proper relief.

COUNT II

Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, by and through its undersigned counsel, complains of Defendant, Donald W. Gambrel, and says:

16. Plaintiff restates and pleads each and every allegation contained in the previous paragraphs inclusive of Count I, and those paragraphs are incorporated in Count II as if wholly set forth herein.

17. Indiana Code § 34-24-3-1 provides that if a party suffers a pecuniary loss as a result of a violation of Ind. Code Art. 35-43, he may bring a civil action against the person(s) who caused the loss for:

- (1) An amount not to exceed three times the actual damages of the person suffering the loss;
- (2) The costs of the action;
- (3) A reasonable attorney's fee;
- (4) Actual travel expenses that are not otherwise reimbursed under subdivisions (1) through (3) and are incurred by the person suffering loss to:
 - (A) have the person suffering loss or an employee or agent of that person file papers and attend court proceedings related to the recovery of a judgment under this chapter; or
 - (B) provide witnesses to testify in court proceedings related to the recovery of a judgment under this chapter;

- (5) A reasonable amount to compensate the person suffering loss for time used to:
 - (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or
 - (B) travel to and from activities described in clause (A);
 - (6) Actual direct and indirect expenses incurred by the person suffering loss to compensate employees and agents for time used to:
 - (A) file papers and attend court proceedings related to the recovery of a judgment under this chapter; or
 - (B) travel to and from activities described in clause (A); and
 - (7) All other reasonable costs of collection.
18. Plaintiff is a party suffering a pecuniary loss as a result of a violation by Defendant Gambrel of one or more of the following: Ind. Code § 35-43-4-2, Ind. Code § 35-43-4-3, and/or Ind. Code § 35-43-5-3, as described in SBOA Audit Report B36074.
19. Plaintiff is a party suffering a pecuniary loss as a result of a breach by Defendant Gambrel, of Defendant's contract and trust, both real and constructive, which Plaintiff imposed on Defendant by law to properly account for public funds for the Kingsford-Union Volunteer Fire Department.
20. Plaintiff is entitled to the relief described in Ind. Code § 34-24-3-1 including three times the actual loss, which is Two Hundred Sixty Thousand Five Hundred Eighty and 54/100 Dollars (\$260,580.54), plus costs and reasonable attorney fees.

WHEREFORE, Plaintiff requests that the Court enter judgment for Plaintiff and against Defendant, Donald W. Gambrel, and grant the relief described in Ind. Code § 34-24-3-1 in the amount of Two Hundred Sixty Thousand Five Hundred Eighty and 54/100 Dollars (\$260,580.54), plus audit costs of Seven Thousand Nine Hundred Forty Four and 30/100 Dollars (\$7,944.30), reasonable attorney fees, prejudgment interest, and all other just and proper relief.

COUNT III

Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, by and through its undersigned counsel, complains of Defendant, Continental Western Insurance Group, and says:

21. Plaintiff restates and pleads each and every allegation contained in the previous paragraphs inclusive of Counts I and II, and those paragraphs are incorporated in Count III as if wholly set forth herein.
22. Defendant Continental provided commercial insurance coverage for “Employee Dishonesty” and “Loss Data Preparation Cost” in the amount of Ten Thousand Dollars (\$10,000.00) annually for a total of Seventy Thousand Dollars (\$70,000.00) during the audit period for direct loss resulting from dishonesty acts committed by any employee, and Five Thousand Dollars (\$5,000.00) annually for a total of Thirty Five Thousand Dollars (\$35,000.00) during the audit period for costs incurred in collecting and preparing loss data required by the policy for the period beginning January 1, 2003 and ending December 31, 2009. *See* Exhibit B.
23. During said term Defendant Gambrel wrongfully and negligently failed to enter insurance reimbursements, legal settlements, and contract payments into the Department’s savings account; incurred financial charges for delinquent payments; expended Department funds for personal expenses; reimbursed himself from Department funds without documentation; paid himself travel expenses that were not authorized by the Department Board; made donations to various places without Board authorization; incurred record retention costs by failing to present the necessary records; and made unauthorized cash withdrawals.

24. The total funds that Defendant Gambrel misappropriated, diverted, misapplied, or failed to account for during the period of said employee dishonesty insurance coverage is in excess of Seventy Thousand Dollars (\$70,000.00).
25. The total funds that Defendant Gambrel caused the State to incur in collecting and preparing loss data is Eight Thousand Five Hundred Seventy Seven and 30/100 Dollars (\$8,577.30).
26. As a result of the matters alleged in the above rhetorical paragraphs, Defendant Continental is jointly and severally liable with Defendant Gambrel in the amount of Seventy Eight Thousand Five Hundred Seventy Seven and 30/100 Dollars (\$78,577.30).

WHEREFORE, Plaintiff requests that the Court enter a judgment for Plaintiff and against Defendants, Donald Gambrel and Continental Western Insurance Group, in the amount of Seventy Eight Thousand Five Hundred Seventy Seven and 30/100 Dollars (\$78,577.30), plus costs, attorney fees, prejudgment interest, and all other just and proper relief.

Respectfully submitted,

GREGORY F. ZOELLER
Attorney No. 1958-98
Indiana Attorney General

By: _____
Luke P. Hodgkin
Deputy Attorney General
Attorney No. 27162-49

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Indiana Government Center South, Fifth Floor
302 West Washington Street
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NOTICE OF MOTION FOR TEMPORARY RESTRAINING ORDER

To: Donald W. Gambrel
416 Exeter Rd
Kingsford Heights, IN 46346

Please take notice that on April 21, 2010, at the LaPorte County Circuit/Superior Court, LaPorte, Indiana, the Plaintiff, by the Motion attached hereto, moved the Court to enter a temporary restraining order to restrain you, the Defendant, Donald W. Gambrel, and your agents, representatives, successors, and assigns from dissipating, distributing, transferring, encumbering, assigning, paying over, or otherwise disposing in any manner or by any means property in your possession or control including, but not limited to, real estate located at 416 Exeter Rd, Kingsford Heights, IN 46346, bank accounts, and retirement plans pending hearing on the Plaintiff's motion for injunctive relief currently set for April 27, 2010, at 1:30 p.m., and for all other just and proper relief.

GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By: _____
Luke P. Hodgkin
Deputy Attorney General
Attorney No. 27162-49

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**STATE OF INDIANA'S MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana (the "State"), by Luke P. Hodgin, Deputy Attorney General, respectfully moves this Court pursuant to Rule 65 of the Indiana Rules of Trial Procedure and Ind. Code § 34-26-1-6 to issue a Temporary Restraining Order and Preliminary Injunction against the Defendant, Donald W. Gambrel ("Gambrel"), his agents, representatives, successors, and assigns to temporarily restrain and enjoin from dissipating, distributing, transferring, encumbering, assigning, paying over, or otherwise disposing in any manner or by any means property in the Defendant's possession or control including, but not limited to, real estate located at 416 Exeter Rd, Kingsford Heights, IN 46346, bank accounts, and retirement plans pending hearing on the State's Motion. In support of its Motion, the State of Indiana states:

1. On April 21, 2010, the State filed its Complaint in this action alleging that Defendant Gambrel, serving as Treasurer for the Kingsford-Union Volunteer Fire Department,

wrongfully or negligently failed to properly account for, expend, and/or deposit the funds of the Kingsford-Union Volunteer Fire Department, or other committed several acts of misfeasance, malfeasance, and nonfeasance which resulted in the misappropriation, diversion, and misapplication of public funds totaling \$86,860.18. The allegations of Plaintiff's Complaint are incorporated herein and made a part of this Motion by reference. *See also* Affidavit of Susan Lardino, attached hereto and incorporated herein as Exhibit A.

2. If Defendant Gambrel is not restrained from dissipating, distributing, transferring, encumbering, assigning, paying over, or otherwise disposing in any manner or by any means property in the Defendant's possession or control including, but not limited to, real estate located at 416 Exeter Rd, Kingsford Heights, IN 46346, bank accounts, and retirement plans, the State will be irreparably harmed.
3. There is the likelihood that such property has been or may be sold, conveyed, or otherwise disposed of with the intent to cheat, hinder, or delay the State of Indiana or the Kingsford-Union Volunteer Fire Department.
4. A temporary restraining order is necessary to preserve the status quo until the issues raised by the State's motion for injunctive relief can be heard and considered at hearing.
5. There is substantial likelihood that the State will prevail on its Complaint in this action, and the State does not have an adequate remedy at law to protect the interests of the State of Indiana and the Kingsford-Union Volunteer Fire Department in the matters raised in this Motion.
6. The State of Indiana is a governmental organization and is not required to offer security pursuant to Rule 65(C) of the Indiana Rules of Trial Procedure.

7. The State requested, and the Court granted, a hearing on this motion for injunctive relief within ten (10) days; specifically, April 27, 2010 at 1:30 p.m.

WHEREFORE, Plaintiff, State of Indiana *ex rel.* Gregory F. Zoeller, Attorney General of Indiana, respectfully requests that the Court (1) issue an order restraining the Defendant, Donald W. Gambrel, and his agents, representatives, successors, and assigns from dissipating, distributing, transferring, encumbering, assigning, paying over, or otherwise disposing in any manner or by any means property in the Defendant's possession or control including, but not limited to, real estate located at 416 Exeter Rd, Kingsford Heights, IN 46346, bank accounts, and retirement plans pending hearing on the State's motion for injunctive relief, and (2) grant the State all other just and proper relief.

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By: _____
Luke P. Hodgkin
Deputy Attorney General
Attorney No. 27162-49

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Indianapolis, IN 46204-2770
Telephone: (317) 232-6356
Facsimile: (317) 232-7979

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was duly served upon the party listed below on this 21st day of April, 2010:

Donnald Gambrel
416 Exeter Rd
Kingsford Heights, IN 46346

Continental Western Insurance Company
P.O. Box 1594
Des Moines, IA 50306-1594

Luke P. Hodgkin
Deputy Attorney General

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