

STATE OF INDIANA

COUNTY OF JOHNSON

STATE OF INDIANA *ex rel.* CURTIS T.
HILL, JR., ATTORNEY GENERAL OF
INDIANA,

Plaintiff,

v.

DIVONNA HENDRICKSON and ARCH
INSURANCE COMPANY,

Defendants.

SS:

IN THE JOHNSON CIRCUIT/SUPERIOR COURT

CAUSE NO.

COMPLAINT TO RECOVER PUBLIC FUNDS

Plaintiff, State of Indiana *ex rel.* Curtis T. Hill, Jr., Attorney General of Indiana (“State”), by counsel, Shana D. Tesnar, Deputy Attorney General, for its Complaint to Recover Public Funds, states the following:

INTRODUCTION

1. Plaintiff brings this claim pursuant to Indiana Code § 5-11-1-27(m), Indiana Code § 5-11-5-1, Indiana Code § 5-11-5-4, Indiana Code § 5-11-7-1, Indiana Code § 34-24-3-1, and various common law claims.

2. Plaintiff seeks to: redress harm done to the public welfare; the property of the State of Indiana (“State”); property of Whiteland Volunteer Fire Department, Inc., Johnson County, Indiana (“WVFD”), which resulted from Defendant Divonna Hendrickson’s misappropriations of public funds.

FACTS

3. Pursuant to Ind. Code § 5-11-1-9, State Board of Accounts (“SBOA”) performed an examination of the books, accounts, and records of WVFD for the period of January 1, 2010 to August 31, 2017 (“Audit Period”). The results of the examination are set forth in SBOA Special Investigation

Report B50173 (“Audit Report”), dated June 6, 2018. *See* Audit Report, attached hereto and incorporated herein as **Exhibit A**.

4. The Audit Report disclosed malfeasance, misfeasance, and/or nonfeasance on the part of public officials, public employees, and/or other proper persons, and was placed by the State Examiner with the Attorney General pursuant to Ind. Code § 5-11-5-1(a).

5. The Audit Reports also disclosed that public funds the State seeks to recover upon this Complaint, were either:

- a. misappropriated, diverted, or unaccounted;
- b. illegally received;
- c. illegally retained;
- d. unaccountable for or not paid over any money so received;
- e. obtained by fraud or in any unlawful manner; and/or
- f. wrongfully withheld from the public treasury.

6. The State’s claims arise from systematic violations of a position of trust by a public official, misappropriation and diversion of public funds, malfeasance, misfeasance, nonfeasance, dishonest acts, breached fidelity of duties by a public official, overt acts, fraud, and other conduct in breach of the duties owed to the State and the public by a public official, public servant, and other proper persons and/or entities.

7. The Audit Report further disclosed that public money had been unlawfully expended, obtained by fraud or any unlawful manner, or wrongfully withheld from the public treasury pursuant to Ind. Code § 5-11-6-3.

8. The State seeks damages, disgorgement of ill-gotten gains, enhanced damages pursuant to the Indiana Crime Victims Relief Act, and other appropriate relief.

PARTIES

9. The Attorney General of Indiana is exclusively charged with the responsibility and sovereign powers of recovering public funds, pursuant to Ind. Code § 5-11-5, *et seq.* of the State Board of Accounts Act. This Complaint is brought by the State of Indiana on the relation of the Attorney General of Indiana, pursuant to Ind. Code §§ 5-11-5-4 and 5-11-7-1, for the benefit of the citizens of this State and WVFD.

10. Defendant Divonna Hendrickson (“Hendrickson”) served as Secretary Treasurer for WVFD at all relevant times during the Audit Period.

11. Defendant Arch Insurance Company (“Arch”) is a corporation duly authorized to conduct business in Indiana. Arch is now, and was at all times relevant to this action, engaged in the business, among others, of issuing insurance policies and/or surety bonds in the State of Indiana.

12. Defendants are either delinquent officers, sureties of the officers, or any other proper persons against whom recovery of such misappropriated, diverted, or unaccounted for funds may be had, pursuant to Ind. Code § 5-11-5-1.

JURISDICTION

13. This Court has both subject matter jurisdiction over the claims and personal jurisdiction over the parties.

14. Venue is proper pursuant to Indiana Rule of Trial Procedure 75, as WVFD is a local governmental entity located in Johnson County, Indiana.

COUNT I

Malfeasance, Misfeasance, and/or Nonfeasance

Plaintiff, State of Indiana *ex rel.* Curtis T. Hill, Jr., Attorney General of Indiana, by and through its undersigned counsel, complains of Defendant Hendrickson, and says:

15. The State restates and pleads each and every allegation contained in the previous paragraphs, and those paragraphs are incorporated in Count I as if wholly set forth herein.

16. During the Audit Period, Hendrickson had a duty to properly account for all funds of WVFD, and to not commit acts of malfeasance, misfeasance, and/or nonfeasance.

17. As Secretary Treasurer for WVFD at all relevant times, Hendrickson was responsible for all WVFD financial activity, including preparing checks, depositing receipts, recording financial transactions, and reconciling WVFD's bank accounts.

18. From January 1, 2010 through August 31, 2017 during the Audit Period, Hendrickson received checks totaling \$54,018.56 in unsupported check payments from WVFD funds.

19. Additionally, Hendrickson used WVFD's credit card to make \$6,430.08 in inadequately supported and non-allowable personal purchases, including groceries, personal care items, children's clothes, toys, among other items.

20. Moreover, Hendrickson issued an endorsed checks made out to "Cash" from WVFD funds, detailed as follows:

- \$600.00 check dated April 8, 2011;
- \$66 check dated May 25, 2012; and
- \$125.00 check dated November 29, 2016.

21. As a result, Hendrickson received a total of \$791.00 in either inadequately or entirely unsupported disbursements.

22. As a direct and proximate result of the breach of Hendrickson' duties to WVFD, WVFD suffered a pecuniary loss in the amount of \$61,239.64.

23. As a direct and proximate result of the breach of Hendrickson' duties to WVFD, SBOA incurred additional audit costs in the amount of \$19,534.41.

24. Consequently, Plaintiff is entitled to restitution and disgorgement from Hendrickson of all ill-gotten gains unjustly and wrongfully received.

WHEREFORE, Plaintiff, State of Indiana *ex rel.* Curtis T. Hill, Jr., Attorney General of Indiana, respectfully requests that the Court: (1) enter judgment for the State and against Defendant Divonna Hendrickson in the amount of \$80,774.05; (2) order Defendant Divonna Hendrickson to disgorge any and all ill-gotten gains and/or any diverted funds under Ind. Code § 5-11-5-4, as a result of Defendant's wrongful misappropriations of public funds; and (3) grant the State all other just and proper relief.

COUNT II – IND. CODE § 34-24-3-1
Treble Damages Pursuant to Indiana's Crime Victims Relief Act

Plaintiff, State of Indiana *ex rel.* Curtis T. Hill, Jr., Attorney General of Indiana, by and through its undersigned counsel, complains of Defendant Hendrickson, and says:

25. The State 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.

26. 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, Ind. Code § 35-42-3-3, Ind. Code § 35-42-3-4, and/or Ind. Code § 35-45-9, the party 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) court costs; (3) a reasonable attorney's fee; (4) and other miscellaneous costs and expenses.

27. The State is a party suffering a pecuniary loss as a result of a violation by Hendrickson, 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 B50173—where she:

- Disbursed unsupported WVFD checks to herself totaling \$54,018.56 for her own personal gain;
- Used WVFD's credit card to make \$6,430.08 in inadequately supported and non-allowable personal purchases; and

Issued an endorsed checks made out to “Cash” from WVFD funds totaling \$791.00, which were either inadequately or entirely unsupported disbursements.

28. The State, on behalf of WVFD, is entitled to the relief described in Ind. Code § 34-24-3-1, including three times the actual loss, which is \$183,718.92, court costs, and a reasonable attorney’s fee.

WHEREFORE, Plaintiff, State of Indiana *ex rel.* Curtis T. Hill, Jr., Attorney General of Indiana, respectfully requests that the Court: (1) enter judgment for the State and against Defendant Divonna Hendrickson; (2) grant the State the relief described in Ind. Code § 34-24-3-1, in the amount of \$183,718.92, plus attorney fees, and costs; and (3) grant the State all other just and proper relief.

COUNT III
Surety Liability

Plaintiff, State of Indiana *ex rel.* Curtis T. Hill, Jr., Attorney General of Indiana, by and through its undersigned counsel, complains of Surety Defendant Arch, and says:

29. The State restates and pleads each and every allegation contained in the previous paragraphs, inclusive of Counts I through II, and those paragraphs are incorporated in Count III as if wholly set forth herein.

30. To comply with Indiana’s bonding statutes and/or Johnson County Ordinance Codes, WVFD and/or Hendrickson obtained blanket Crime and Fidelity Coverage (“Fidelity Bonds”) from Arch during the Audit Period, to cover fidelity of duties and employee theft of Hendrickson, in her capacity as Secretary Treasurer. *See* Fidelity Bonds, attached hereto and incorporated herein as **Exhibit B**.

31. Specifically, Arch issued eight (8) annual Fidelity Bonds covering Hendrickson during each year of the Audit Period, with each Fidelity Bond providing \$300,000.00 in bond coverage, respectively.

32. During the terms of Arch's Bonds, Hendrickson failed to honestly and faithfully perform the duties of her office, where she wrongfully or negligently: disbursed unsupported WVFD checks to herself totaling \$54,018.56 for her own personal gain; used WVFD's credit card to make \$6,430.08 in inadequately supported and non-allowable personal purchases; issued unauthorized and/or unsupported payments from WVFD for her own personal gain; or otherwise committed several acts of malfeasance, misfeasance, and nonfeasance, which resulted in the misappropriation, diversion, and misapplication of public funds.

33. Hendrickson's acts, or failures to act, constitute dishonesty, gross negligence, and/or an intentional disregard of the requirements of her office.

34. The amount of funds misappropriated, diverted, or misapplied during the terms and time frames of Arch's Bonds is \$80,774.05.

35. As a result of the matters alleged in the rhetorical paragraphs above, Arch is jointly and severally liable with Hendrickson in the amount of \$80,774.05, while offsetting any applicable criminal restitution recoveries obtained by WVFD.

WHEREFORE, Plaintiff, State of Indiana *ex rel.* Curtis T. Hill, Jr., Attorney General of Indiana, respectfully requests the Court (1) enter judgment for the State and against Defendant Arch Company, in the amount of \$80,774.05, and (2) grant the State all other just and proper relief.

PRAYER FOR RELIEF

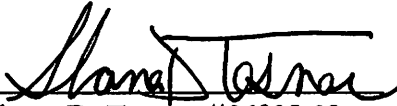
WHEREFORE, Plaintiff, State of Indiana *ex rel.* Curtis T. Hill, Jr., Attorney General of Indiana, respectfully requests the Court:

- (1) Award judgment against Defendant Divonna Hendrickson on each respective cause of action asserted against her in this Complaint;
- (2) Award judgment against Defendant Divonna Hendrickson in an amount not exceeding three times Plaintiff's actual loss;

- (3) Order Defendant Divonna Hendrickson to disgorge all ill-gotten gains unjustly and wrongfully received and funds diverted from WVFD and the State as a result;
- (4) Award judgment against Defendant Arch Company on each cause of action asserted against it in this Complaint;
- (5) Award judgment in favor of Plaintiff for costs of this action, including reasonable attorneys' fees in accordance with Indiana Code 34-24-3-1, and post judgment interest of eight percent (8%) per annum; and
- (6) Grant all other relief which is just and proper in the premises.

Respectfully submitted,

CURTIS T. HILL, JR.
Attorney General of Indiana
Attorney No. 13999-20

By: 
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Counsel for Plaintiff

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