

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. _____

**R. GLENN JENNINGS, EXECUTIVE
DIRECTOR KENTUCKY OFFICE OF
INSURANCE AS REHABILITATOR
OF AIK COMP, FOR AND ON
BEHALF OF AIK COMP**

PLAINTIFF

V.

VERIFIED COMPLAINT

**MAURICE TURNER, in his individual
capacity as an Officer and CEO to AIK
COMP f/k/a ASSOCIATED INDUSTRIES
OF KENTUCKY SELECTIVE SELF
INSURANCE FUND**

**Serve: Maurice Turner
4 Parkway Drive
Paris, KY 40361**

**DONALD VISH, in his individual capacity
as an Officer and Vice-President and
General Counsel to AIK COMP f/k/a
ASSOCIATED INDUSTRIES OF
KENTUCKY SELECTIVE SELF
INSURANCE FUND**

**Serve: Donald Vish
401 S. Fourth Ave., Ste. 2500
Louisville, KY 40202**

**DEWEY MINTON, in his individual
capacity as an Officer, CFO and Treasurer
of AIK COMP f/k/a ASSOCIATED
INDUSTRIES OF KENTUCKY
SELECTIVE SELF INSURANCE FUND**

**Serve: John E. Hanley
One Riverfront Plaza
401 W. Main St., Ste. 1950
Louisville, KY 40202**

CHERYL GUIDICE, in her individual capacity as an Officer and Vice-President for Claims to AIK COMP f/k/a ASSOCIATED INDUSTRIES OF KENTUCKY SELECTIVE SELF INSURANCE FUND

**Serve: Cheryl Guidice
4228 Woodmont Park Lane
Louisville, KY 40254**

KATHY BAKER, in her individual capacity as an Officer and Vice-President for Underwriting to AIK COMP f/k/a ASSOCIATED INDUSTRIES OF KENTUCKY SELECTIVE SELF INSURANCE FUND

**Serve: Kathy Baker
7704 Wictor Court
Louisville, KY 40220**

BILL MARZIAN, in his individual capacity as an Officer and Director of Marketing to AIK COMP f/k/a ASSOCIATED INDUSTRIES OF KENTUCKY SELECTIVE SELF INSURANCE FUND

**Serve: Bill Marzian
2007 Tyler Lane
Louisville, KY 40205**

RICHARD SPEARS, in his individual capacity as Trustee to AIK COMP f/k/a ASSOCIATED INDUSTRIES OF KENTUCKY SELECTIVE SELF INSURANCE FUND

**Serve: Charles D. Greenwell
401 S. Fourth Ave., Ste. 2500
Louisville, KY 40202**

**THOMAS PROW, in his individual capacity
as Trustee to AIK COMP f/k/a
ASSOCIATED INDUSTRIES OF
KENTUCKY SELECTIVE SELF
INSURANCE FUND**

**Serve: Charles D. Greenwell
401 S. Fourth Ave., Ste. 2500
Louisville, KY 40202**

**GEORGE SOTSKY, in his individual
capacity as Trustee to AIK COMP f/k/a
ASSOCIATED INDUSTRIES OF
KENTUCKY SELECTIVE SELF
INSURANCE FUND**

**Serve: Charles D. Greenwell
401 S. Fourth Ave., Ste. 2500
Louisville, KY 40202**

**ERNIE STAMPER, in his individual
capacity as Trustee to AIK COMP f/k/a
ASSOCIATED INDUSTRIES OF
KENTUCKY SELECTIVE SELF
INSURANCE FUND**

**Serve: Charles D. Greenwell
401 S. Fourth Ave., Ste. 2500
Louisville, KY 40202**

**HENRY L. STEPHENS, JR., in his
individual capacity as Trustee to AIK
COMP f/k/a ASSOCIATED INDUSTRIES
OF KENTUCKY SELECTIVE SELF
INSURANCE FUND**

**Serve: Charles D. Greenwell
401 S. Fourth Ave., Ste. 2500
Louisville, KY 40202**

**ROY STEVENS, in his individual capacity
as Trustee to AIK COMP f/k/a
ASSOCIATED INDUSTRIES OF
KENTUCKY SELECTIVE SELF
INSURANCE FUND**

**Serve: Charles D. Greenwell
401 S. Fourth Ave., Ste. 2500
Louisville, KY 40202**

DEFENDANTS

**ASSOCIATED INDUSTRIES OF
KENTUCKY, INCORPORATED
2302 Greene Way
Louisville, Kentucky 40220**

**Serve: 3300 LLC
3500 National City Tower
101 South Fifth Street
Louisville, KY 40202**

*** **

Plaintiff, R. Glenn Jennings, Executive Director Kentucky Office of Insurance as Rehabilitator of AIK Comp, for and on behalf of AIK Comp (“Plaintiff”), in person and by counsel, for his Verified Complaint against Defendants, Maurice Turner (“Turner”), Donald Vish (“Vish”), Dewey Minton (“Minton”), Cheryl Guidice (“Guidice”), Kathy Baker (“Baker”), Bill Marzian (“Marzian”), Richard Spears (“Spears”), Thomas Prow (“Prow”), George Sotsky (“Sotsky”), Ernie Stamper (“Stamper”), Henry L. Stephens, Jr. (“Stephens”). Roy Stevens (“Stevens”), and Associated Industries of Kentucky, Incorporated (“AIK”), states as follows:

I. JURISDICTION AND VENUE

1. This court has jurisdiction because the amount in controversy exceeds the minimum threshold for the jurisdiction to be invoked, because Defendants were at all times

engaged in business in the Commonwealth of Kentucky, because the claims set forth herein arise out of Defendants' tortious and other conduct within the Commonwealth, and because the Rehabilitator brings this action pursuant to authority granted him under KRS Chapter 304, Subtitle 33.

2. Venue of this action is properly in the Franklin Circuit Court pursuant to KRS Chapter 304, Subtitle 33.

II. THE PARTIES

3. Plaintiff is the Executive Director of the Kentucky Office of Insurance. By orders of the Franklin Circuit Court, Division II, in Case No. 04-CI-01067, Plaintiff predecessor was appointed and Plaintiff continues to serve as Rehabilitator of AIK Comp with the authority to bring this action under the provisions of KRS Chapter 304, Subtitle 33.

4. AIK Comp is an unincorporated association and a group self-insurance fund as authorized by KRS Chapter 342. AIK Comp consists of employers who employ workers throughout the Commonwealth of Kentucky who have agreed to jointly and severally pool their workers' compensation liabilities.

5. Defendant Turner was, during the relevant time period alleged herein, the CEO of AIK Comp. Upon information and belief, Turner resides in the Commonwealth of Kentucky.

6. Defendant Vish was, during the initial years of the class period, 1997, legal counsel to AIK Executive Committee. Based upon information and belief, Vish served in an ongoing and substantial capacity as legal counsel to AIK Comp and was a fiduciary to that entity. Based upon information and belief, Vish was from 1998 to present the legal adviser to AIK and thus served in a fiduciary capacity to the AIK Comp group self-insurance fund (the "Fund") (for all intents and purposes, Vish served as the in-house counsel to AIK). On December 12, 2000, Defendant Vish entered into a formal Memorandum of Agreement for Legal

Services in which Vish was to serve as “secretary to the Fund and general counsel.” The terms and duties set forth in the Agreement do not differ substantially from the services and duties performed by Vish prior to the execution of the contract.

7. In that Agreement, Vish agreed to give the Fund’s legal business his first priority in his law practice and that such priority would constitute 25% or more of his legal practice. Based upon information and belief, during substantial portions of the relevant time period, Vish served as the Vice President and General Counsel of AIK Comp and then the CFO of AIK Comp. Upon information and belief, Vish resides within the Commonwealth of Kentucky.

8. Defendant Minton was, during the relevant time period alleged herein, the CFO and Treasurer of AIK Comp. Upon information and belief, Minton resides within the Commonwealth of Kentucky.

9. Defendant Guidice was, during the relevant time period alleged herein, the Vice-President for Claims Administration of AIK Comp. Upon information and belief, Guidice resides within the Commonwealth of Kentucky.

10. Defendant Baker was, during the relevant time period alleged herein, the Vice-President for Underwriting of AIK Comp. Upon information and belief, Baker resides within the Commonwealth of Kentucky.

11. Defendant Marzian was, during the relevant time period alleged herein, the Director of Marketing of AIK Comp. Upon information and belief, Marzian resides within the Commonwealth of Kentucky.

12. Defendants Turner, Vish, Minton, Guidice, Baker, and Marzian (collectively the “Officer Defendants”) served as executive officers within AIK Comp. As executive officers of

AIK Comp, the Officer Defendants owed the group members of AIK Comp a fiduciary duty and responsibility to administer properly the funds and assets of the Fund.

13. Defendant Spears was, during the relevant time period alleged herein, a trustee to AIK Comp. Upon information and belief, Spears resides within the Commonwealth of Kentucky.

14. Defendant Prow was, during the relevant time period alleged herein, a trustee to AIK Comp. Upon information and belief, Prow resides within the Commonwealth of Kentucky.

15. Defendant Sotsky was, during the relevant time period alleged herein, a trustee to AIK Comp. Upon information and belief, Sotsky resides within the Commonwealth of Kentucky.

16. Defendant Stamper was, during the relevant time period alleged herein, a trustee to AIK Comp. Upon information and belief, Stamper resides within the Commonwealth of Kentucky.

17. Defendant Stephens was, during the relevant time period alleged herein, a trustee to AIK Comp. Upon information and belief, Stephens resides within the Commonwealth of Kentucky.

18. Defendant Stevens was, during the relevant time period alleged herein, a trustee to AIK Comp. Upon information and belief, Stevens resides within the Commonwealth of Kentucky.

19. Defendants Spears, Prow, Sotsky, Stamper, Stephens, and Stevens (collectively the “Trustee Defendants”) are currently, and were, during the relevant time period members of the Board of Trustees of AIK Comp.

20. Defendant AIK is a non-profit Kentucky corporation with its principal place of business at 2303 Greene Way, Louisville, Kentucky 40220. AIK has substantial business operations located at 207 Shelby Street, Frankfort, Kentucky 40601. AIK sponsored and endorsed AIK Comp, a group self-insured workers' compensation fund, and owed certain oversight duties to AIK Comp which were breached.

21. AIK Comp was used by AIK as a marketing vehicle to promote AIK to prospective members and to retain existing members within the trade association.

III. AVERMENTS AGAINST OFFICERS AND TRUSTEES

21. The Franklin Circuit Court, on petition by Martin J. Koettters, then Executive Director Kentucky Office of Insurance ("KOI"), placed AIK Comp in rehabilitation by an order entered August 5, 2004.

22. The Franklin Circuit Court ordered Koettters, as Rehabilitator of AIK Comp, "to immediately take possession and control of all the assets, property, books, accounts, documents, and other records of AIK Comp, wherever located, and regardless of whose custody or control they may be found..." Accordingly, Koettters took possession of all known assets, including causes of action that AIK Comp could have maintained in its own name. Koettters has resigned and been replaced by Plaintiff as Executive Director of KOI and has succeeded Koettters as Rehabilitator of AIK Comp.

23. Pursuant to KRS Chapter 304, Subtitle 33, Plaintiff has the authority to bring civil actions on behalf of AIK Comp against "any officer, manager, agent, employee, or other person" whom the rehabilitator has reason to believe engaged in "tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer [AIK Comp]."

24. Since August 5, 2004, financial statements have been prepared and audited for the year ending December 31, 2003 which reveal a balance sheet deficit of over \$60,000,000, and certain members of AIK Comp have been assessed accordingly.

25. Financial statements for the year ending December 31, 2004 are being prepared which, upon information and belief, will reveal that the deficit will substantially increase, thereby necessitating additional assessments upon members.

26. Pursuant to KRS 342.340, each employer in the Commonwealth of Kentucky is required either to insure its workers' compensation liability or provide satisfactory proof of its financial ability to assume such liability.

27. The Commonwealth of Kentucky has permitted employers to use as an alternative to purchasing insurance in the traditional marketplace the ability to participate in a group self-insurance fund authorized under KRS 342.350(4). AIK Comp is such a group self-insurance fund.

28. Group self-insurance funds such as AIK Comp must file statements of financial condition, audited by certified public accountants, on an annual basis. The financial statement required to be filed by self-insurance groups must include "an actuarial opinion by a member or fellow of the Casualty Actuarial Society and a supporting reserve study regarding reserves for claims and expenses associated therewith." KRS 342.347(2).

29. Pursuant to applicable by-laws and statutory and common law of the Commonwealth of Kentucky, each individual Trustee had an obligation to govern and oversee the administration of AIK Comp. The Trustees had a duty to act in good faith, to act in compliance with the law and the governing documents, and to deal fairly with the association and its members. Each and every Defendant Trustee signed an annual questionnaire in which he

acknowledged that the Trustees owed a duty of care and loyalty to AIK Comp, its members, and its injured workers. The By-Laws explicitly state: “[t]he Trustees on behalf of the group members shall be responsible for the administration of the group self-insurance fund, for the assessment and collection of premium, for disbursement from the group self-insurance fund, and investment of the fund monies.”

30. As part of their administrative responsibilities, the Trustees could, by written contract, delegate the power and duties to an Administrator of the Fund [AIK Comp]. Specifically, the by-laws allowed the delegation of duty to the fund Administrator to provide on behalf of AIK Comp “excess loss insurance, claims handling, safety engineering, administrative services and any and all other services that the Board deems expedient for the proper servicing of the program.” This ability to delegate the implementation of these duties did not relieve the Trustees from their ultimate responsibility of oversight and administration of AIK Comp.

31. AIK Comp was managed and operated by officers and directors identified in this Complaint as the Officer Defendants. The Officer Defendants were paid salaries and expenses for their services as officers and managers of AIK Comp. Such Officers and Directors received significant bonuses that were tied to employee and AIK Comp performance.

32. Pursuant to written contract, and the applicable statutory and common law of the Commonwealth of Kentucky, each of the Officer Defendants had an obligation to manage AIK Comp according to their respective contractual and fiduciary obligations in the underwriting and collection of premiums, disbursement of moneys from the fund, the investment of AIK Comp assets, the maintenance of adequate loss reserves, and the provision of safeguards against deficits. The Officer Defendants had a duty to act in good faith, to act in compliance with the law and the governing documents, and to deal fairly with the association and its members.

33. The Trustee Defendants and the Officer Defendants had fiduciary duties imposed by statute and the common law of the Commonwealth of Kentucky to govern, manage and operate AIK Comp in a responsible and competent manner. The Trustee Defendants and the Officer Defendants had a duty of good faith and fair dealing with the governance, management and operation of AIK Comp. Both the Officer Defendants and Trustee Defendants breached their respective duties and obligations.

34. The Trustee Defendants and the Officer Defendants knew or should have known of the specific terms of AIK Comp's by-laws, governing documents and contractual provisions, and of the state of operation of AIK Comp. Therefore, any misrepresentations or failure in operations must be imputed to the Defendant Trustees and the Officer Trustees.

35. As high-ranking officers of AIK Comp, and pursuant to Kentucky law, the Officer Defendants were obligated to exercise their best efforts to ensure that AIK Comp was properly underwriting its risk and properly reporting its claims.

36. The Trustee Defendants were paid fees and expenses for their services and, pursuant to Kentucky law, assumed the obligation to oversee the administration of AIK Comp and to be responsible for the proper underwriting of risk and the proper reporting of claims.

37. Pursuant to KRS § 342.347, AIK Comp was required to file with the Commissioner of Workers' Compensation (now the Executive Director of the Office of Workers' Claims) annual statements of financial condition that fairly and accurately depict the financial condition of AIK Comp.

38. By agreement, Trustee Defendants were to act as agent for the group members of AIK Comp in all matters relating to Kentucky Workers' Compensation statutes.

39. The Officer and Trustee Defendants violated their aforesaid duties by providing inaccurate and misleading financial disclosures to AIK Comp's members and to KOI's regulatory predecessor, and by failing to properly underwrite AIK Comp's risk or to charge adequate premiums for same.

40. As alleged herein, the Officer Defendants and the Trustee Defendants knew, or should have known, the public documents and statements issued or disseminated in the name of and to AIK Comp members were materially inaccurate and misleading, that such statements or documents would be issued or disseminated to the public and to potential group members, and knowingly and substantially participated or acquiesced in the issuance or dissemination of such inaccurate and misleading statements or documents. As set forth elsewhere in this Complaint, the Officer Defendants and the Trustee Defendants, by virtue of their control over, and/or receipt and/or modifications of, AIK Comp's materially misleading statements, and/or their associations with AIK Comp which made them privy to confidential information concerning AIK Comp, were negligent and/or reckless in their oversight and management of AIK Comp.

IV. AVERMENTS AGAINST AIK, INC.

41. On November 13, 1997, the Kentucky Department of Workers' Claims, Office of the Commissioner, issued an Agreed Order in which the following findings were made:

- a. AIK (as the sponsoring organization) had not exercised appropriate control over the Fund to assure that the group workers' compensation plan was being administered for the optimal benefit of group members;
- b. The Fund's Board of Trustees had members with direct and significant familial relationships with service providers;
- c. The Fund, through the Board of Trustees, had failed to create adequate books and records that reflected the true operation and management of the Fund;

- d. There was no conflict of interest policy in place that governed the Board of Trustees and its relationship with the service provider;
- e. Failure of internal and external controls to assure that the Fund was being operated for the ultimate benefit of the group members; and
- f. Failure of adequate safeguards providing for arm's length transactions between the Board of Trustees and the service providers.

42. The Agreed Order further found that the Board of Trustees of AIK Comp may not have exercised prudent business judgment when it adopted a plan of dividend return in the amount of \$15,400,000, and that the declaration of this dividend may not be supported by surplus, in violation of 803 KAR 25:06 § 9(2).

43. The November 13, 1997 Agreed Order further found that the Fund's selection of trustees was in violation of 803 KAR 25:026 § (1), that the Board of Trustees failed to provide a proper fidelity bond in violation 803 Ky. Admin. Reg. 25:026 § 11(1), that a Trustee had also acted as a service provider to the Fund in violation of 803 Ky. Admin. Reg. 25:026 § 7(1), that the Trustees had engaged in unauthorized investment in money market funds in violation of 803 Ky. Admin. Reg. 25:026 § 9(4), and that the Trustees failed to escheat unclaimed funds to the Commonwealth of Kentucky in violation of Ky. Rev. Stat. Chapter 363.

44. As a result of the November 13, 1997 Agreed Order, AIK, its Executive Committee, and the Board of Trustees for AIK were put on notice that the Fund needed to be administered for the ultimate benefit of the group's members. AIK, its Executive Committee, its Board of Trustees, the Trustee Defendants and the Officer Defendants failed to heed this notice.

45. The November 13, 1997 Agreed Order was "agreed to" and thus executed by "Donald H. Vish, Attorney on behalf of Associated Industries of Kentucky Executive

Committee.” Mr. Vish became an Officer of AIK Comp (a Vice-President) and the Fund’s General Counsel thereafter. Upon information and belief, the Fund had no other independent legal counsel who reviewed and assessed the management and governance of the Fund, its assets, and claims reserves on behalf of the group members.

46. Upon information and belief, from November 13, 1997 forward, AIK (through its Executive Committee) was required to exercise a duty of oversight over AIK Comp’s actuarial analysis, financial and operational audits. The agreed Order required that AIK Comp was to initiate as soon as possible an independent actuarial analysis, a certified financial audit, and a certified operational audit. The persons to perform such audits were to be selected by the Executive Committee of the Board of Trustees of AIK and that such obligation was to continue as part of the ongoing examination required under KRS § 342.247.

47. From November 13, 1997, AIK, the Trustees of AIK Comp, its Officers and Directors should have been under a heightened duty of care with respect to the administration of AIK Comp to manage the fund for the ultimate benefit of its members.

48. Each of the AIK Comp annual financial statements for calendar years 1998 through 2002 reflected a positive fund surplus and sufficient assets (and adequate and appropriate reserves for liabilities) to cover all of the group’s aggregate future claims; however, the representations of a positive AIK Comp surplus and adequate and appropriate reserves for liabilities were materially misleading and the dissemination of such misrepresentations to the group members caused a false sense of reliance to AIK Comp and its group members.

V. CAUSES OF ACTION

COUNT I – BREACH OF FIDUCIARY DUTY AGAINST OFFICERS AND TRUSTEES

49. Plaintiff states, reiterates and incorporates by reference each of the preceding paragraphs of this Complaint.

50. This cause of action is against the Officer Defendants and Trustee Defendants for breach of fiduciary duty.

51. The Officer Defendants and the Trustee Defendants owe to AIK Comp a fiduciary duty to operate AIK Comp for the ultimate benefit of AIK Comp group members to accomplish the following: (a) to establish premiums at a sufficient level to ensure the solvency of AIK Comp; (b) to provide financial statements to its regulators and to AIK Comp group members that were not materially misleading; (c) to procure and maintain adequate reinsurance coverage to protect AIK group members from liability for the significant assessments that the group members now face; and (d) to establish and maintain adequate reserves for the payment of claims.

52. Pursuant to the agreements which AIK group members were required to execute in order to self-insure through AIK Comp, “AIK Comp, its trustees or agents will procure on behalf of the Fund insurance coverage to support the financial integrity and stability of the Fund.” This representation was included on the AIK Comp Agreement revised as of April 2003, and continued to be on the membership agreement disseminated to the public.

53. The Officer Defendants are “agents” within the meaning of the aforesaid contractual undertaking.

54. The Trustee Defendants are “agents” and/or “trustees” within the meaning of the aforesaid contractual undertaking.

55. The Officer Defendants and the Trustee Defendants failed to procure and maintain the required reinsurance coverage, failed to establish premiums at a sufficient level to ensure the solvency of AIK Comp, failed to provide financial statements to its regulators and to AIK Comp group members that were not materially misleading, and failed to establish and maintain adequate reserves for the payment of claims.

56. As a direct and proximate result of those failures by the Officer Defendants and the Trustee Defendants, and as a direct and proximate result of the Officer Defendants and the Trustee Defendants' breach of their fiduciary obligations, AIK Comp has been damaged in an amount to be proven at trial.

COUNT II – NEGLIGENT MISREPRESENTATION
AGAINST OFFICERS AND TRUSTEES

57. Plaintiff restates, reiterates, and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint.

58. This cause of action is against the Officer Defendants and the Trustee Defendants for misrepresentation.

59. The Officer Defendants and the Trustee Defendants signed and/or prominently participated in the preparation and publication of the financial statements complained about in this Complaint. In so doing, they supplied false and misleading information.

60. At the same time that the Officer Defendants and the Trustee Defendants were approving and/or participating in the preparation and publication of the financial statements identified in this Complaint, each Officer and Trustee received compensation and/or remuneration for such services in the form of salaries, bonuses and/or fees. Such salaries, bonuses, and/or fees, and the right of the Officer and Trustee Defendants to receive them, were based in whole or in part on representations of positive Fund performance. Therefore, each and

every Officer Defendant and Trustee Defendant had a pecuniary interest in the operation and business of AIK Comp.

61. AIK Comp members directly or indirectly relied upon the financial statements.

62. As a result of the Officer Defendants' and the Trustee Defendants' negligent misrepresentation, AIK Comp has been damaged in an amount to be proven at trial.

COUNT III – NEGLIGENCE AGAINST OFFICERS AND TRUSTEES

63. Plaintiff states, reiterates and incorporates by reference each of the preceding paragraphs of this Complaint.

64. The Trustee Defendants each had a duty to govern and oversee the administration of AIK Comp.

65. The Trustee Defendants were negligent in their management and oversight of AIK Comp.

66. As a result of the Trustee Defendants' negligence, the members of AIK Comp and AIK Comp have been damaged in an amount to be proven at trial.

67. The Officer Defendants each had a duty to manage and administer AIK Comp. This duty included, but was not limited to, the underwriting and collection of premiums, the disbursement of monies from the fund, the investment of AIK Comp assets, the maintenance of adequate loss reserves, and the creation of safeguards against deficits.

68. The Officer Defendants were negligent in the management and administration of AIK Comp.

69. As a result of the Officer Defendants' negligence, the members of AIK Comp and AIK Comp have been damaged in an amount to be proven at trial.

COUNT IV – VIOLATION OF KRS § 304.12-010, 020 AND 040

70. Plaintiff states, reiterates and incorporates by reference each of the preceding paragraphs of this Complaint.

71. This cause of action is against all Defendants for violation of KRS §§ 304.12-010, 020 and 040.

72. The Defendants, acting jointly and in active concert and participation with one another, have violated KRS §§ 304.12-010, 020 and 040 by preparing and filing with AIK Comp's regulators, and providing to the AIK Comp group members, deceptive, unfair and misleading financial statements and actuarial reports which misrepresent the true financial condition of AIK Comp and which grossly and materially understate the proper reserves for claims losses, and which conceal the fact that AIK Comp has been unprofitable since 1998.

73. The above-referenced statutes were enacted for the benefit of AIK Comp group members, among others.

74. AIK Comp has been damaged in an amount to be shown at trial as a direct and proximate result of the statutory violations alleged in this Count.

COUNT V – UNJUST ENRICHMENT AGAINST AIK INC.

75. This is a cause of action against AIK for unjust enrichment.

76. Group members of AIK Comp were not allowed to participate in AIK Comp's group self-insured worker's compensation insurance fund without joining AIK as a member.

77. AIK controlled, sponsored or approved the governance and management of AIK Comp and thus is responsible for the mismanagement of AIK Comp.

78. Based upon information and belief, AIK knew or should have been aware of the financial problems faced or to be faced by the Fund. Notwithstanding this knowledge, AIK

continued to use participation in the AIK Comp group workers' self-insurance fund as a means of securing (and increasing) membership in its trade association.

79. AIK received membership and/or endorsement fees which on information and belief were paid by AIK Comp pursuant to an unwritten agreement. To the extent such fees were improper, AIK was unjustly enriched.

80. Group members of AIK Comp annually submitted membership dues to AIK as a result of the misleading and material misrepresentations of the financial integrity and stability of the Fund. Thus, AIK was unjustly enriched by this on-going pattern of misrepresentation.

81. AIK received a benefit of increased membership fees, sponsorship fees and endorsements to the detriment of all group members of AIK Comp.

82. AIK group members have been damaged by the continued requirement of membership in AIK and payment of membership to AIK. All such membership and/or endorsements fees are unjust enrichment to AIK and, accordingly, such fees should be disgorged to AIK Comp and its group members.

COUNT VI – UNJUST ENRICHMENT AGAINST OFFICERS

83. This cause of action is against the Officer Defendants of AIK Comp for unjust enrichment.

84. Pursuant to each respective contract of employment for the Officer Defendants, the Officer was entitled to bonus compensation on a twice yearly basis. Such bonus compensation was tied directly to employee and AIK Comp performance. As is now known, the reports of positive AIK Comp performance and the financial statements for each year were inaccurate, misleading, and resulted in negligent misrepresentations to AIK Comp and its group members.

85. AIK Comp and the Fund have been damaged by the continued misrepresentation which resulted in inappropriate and unearned monetary reward to the Officers of AIK Comp, and such bonus compensation is an unjust enrichment. Accordingly, such bonuses should be disgorged to AIK Comp.

WHEREFORE, Plaintiff demands as follows:

1. Judgment against Defendants jointly and severally for monetary damages in an amount in excess of this Court's jurisdictional limits;
2. any and all equitable relief to which AIK Comp may appear properly entitled;
2. attorneys' fees and all costs herein expended;
3. all appropriate interest;
4. trial by jury on all issues so triable;
5. all further relief to which AIK Comp may appear entitled; and,
6. consolidation of this matter with Civil Action No. 05-CI-00455 upon its remand to the Franklin Circuit Court by the United States District Court.

Respectfully submitted,

Walter L. Sales
Douglas C. Ballantine
Justin D. Clark
OGDEN NEWELL & WELCH PLLC
1700 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202
(502) 582-1601
Counsel for Plaintiff

VERIFICATION

STATE OF KENTUCKY
COUNTY OF FRANKLIN

I, R. Glenn Jennings, Executive Director Kentucky Office of Insurance as Rehabilitator of AIK Comp, for and on behalf of AIK Comp, hereby verifies that the factual allegations set forth in the foregoing Complaint are to the best of my knowledge true and correct.

_____, 2005
R. Glenn Jennings, Executive Director
Kentucky Office of Insurance as Rehabilitator
of AIK Comp, for and on behalf of AIK Comp,
Affiant

SWORN to and SUBSCRIBED before me this ____ day of May, 2005.

My commission expires:_____.

NOTARY PUBLIC, STATE AT LARGE, KY