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DRAFT

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MARY MEMBER,
individually on behalf of herself
as a member of The Humane Society
of the United States; and in
addition, if she is so qualified,
on behalf of all others similarly
situated,
3000 J Street, N.W.
Washington, D.C.

and

DOROTHY DIRECTOR,
individually on behalf of herself
as a Director of The Humane Society
of the United States; and in addition,
if she is so qualified, on behalf of
all others similarly situated,
3001 J Street, N.W.
Washington, D.C.

and

TERESA TAXPAYER,
individually on behalf of herself
as a taxpayer to the Federal Government
of the United States; and in addition,
if she is so qualified, on behalf of
all others similarly situated,
3002 J Street, N.W.
Washington, D.C.

Plaintiffs

vs.

Civil Action
- No.

JOHN A. HOYT,
individually and as President of
The Humane Society of the United
States,
2100 L Street, N.W. *ML*
Washington, D.C. 20037

and

PAUL G. IRWIN,
individually and as Treasurer of
The Humane Society of the United
States,
2100 L Street, N.W. *ML*
Washington, D.C. 20037

and

K. WILLIAM WISEMAN,
individually and as current
Chairman of the Board of Directors
and member of the "Deferred
Compensation Committee" of The
Humane Society of the United
States,
P.O. Box 120
Woolwich, ME 04579

and

HUMANEWATCH.ORG

JACK W. LYDMAN,
individually and as a member of
the "Deferred Compensation
Committee" of The Humane Society
of the United States,
2815 Q Street, N.W.
Washington, D.C. 20007

and

COLEMAN BURKE,
individually and as former
Chairman of the Board of
Directors and a member of the
"Deferred Compensation Committee"
of The Humane Society of the
United States,
45 Stewart Road
Short Hills, NJ 07078

and

(For Count VIII only)
O.J. RAMSEY,
individually and as vice-
chairman of the Board of Directors
and chairman of the "reconstituted"
investigative committee of The
Humane Society of the United States,
10399 Old Placerville Road
Sacramento, CA 95821

Defendants

COMPLAINT FOR DAMAGES TO
THE HUMANE SOCIETY OF THE UNITED STATES

The Humane Society of the United States is a charitable corporation organized for the prevention of cruelty to animals and other purposes under the laws of the State of Delaware, with its headquarters at 2100 L Street, N.W., Washington, D.C. It enjoys a status under the Internal Revenue Code of the United States as a 501(c)(3) charitable organization with numerous tax and other advantages arising from this status. It also enjoys certain tax-exempt status in many of the states of the United States where it conducts its affairs and, accordingly, not only individual members, Directors, taxpayers at large but the government officials of the various states whose duty it is to supervise and regulate charities have a public interest in the conduct of the affairs of The Humane Society of the United States.

JURISDICTION

1. Jurisdiction of this lawsuit is founded on the District of Columbia Code, 1981 Edition as amended, Sections 11-921, 13-422 and 13-423.

PARTIES

2. Plaintiff, MARY MEMBER, was at all times relevant to this lawsuit a member of The Humane Society of the United States.

3. Plaintiff, DOROTHY DIRECTOR, was at all times relevant to this lawsuit a Director of The Humane Society of the United States.

4. Plaintiff, TERESA TAXPAYER, was at all times relevant to this lawsuit a taxpayer to the Federal Government of the United States.

5. Defendant, JOHN A. HOYT, was at all times relevant to this lawsuit President of The Humane Society of the United States.

6. Defendant, PAUL G. IRWIN, was at all times relevant to this lawsuit Treasurer of The Humane Society of the United States.

7. Defendant, K. WILLIAM WISEMAN, was at all times relevant to this lawsuit a member of the "Deferred Compensation Committee" until its dissolution in 1988, and an officer of the Board of Directors during all times relevant to this lawsuit, and is the current Chairman of the Board of Directors of The Humane Society of the United States.

8. Defendant, JACK W. LYDMAN, was a member of the "Deferred Compensation Committee" until its dissolution and abandonment in 1988, and was at all times relevant to this lawsuit a member of the Board of Directors of The Humane Society of the United States.

9. Defendant, COLEMAN BURKE, was Chairman of the Board of Directors at the initial portion of the time relevant to this lawsuit, is currently a member of the Board of Directors, and

was a member of the "Deferred Compensation Committee" until it was abandoned and dissolved in 1988.

10. Defendant O.J. RAMSEY is vice-chairman of the Board of Directors, became chairman of the "reconstituted" investigative committee of the Board in 1988, and was at all times relevant to this lawsuit a member of the Board of Directors of The Humane Society of the United States.

CLASS ACTION ALLEGATIONS

11. In addition to this action being brought by the individual Plaintiffs in their individual capacity as a member, Director, or taxpayer, this action is brought by Plaintiffs as a class action on their own behalf and on behalf of all others similarly situated, under the provisions of Rule 23(a) and 23(b)(1)(B), (2) or (3) of the Rules of this Court. The organization, which has allegedly been so severely damaged, has a membership numbering in the hundreds of thousands which is so numerous so that joinder of the individual members herein is impractical, and there are common questions of law and fact in this action that relate and affect the rights of each member of the organization, and the relief sought is common to each member of the organization, namely that the Defendants reimburse and pay into the treasury of The Humane Society of the United States the sums representing the damages and expenses incurred by the organization due to the misconduct, deception, fraud, negligence, and dereliction of duty of the Defendants, all of which will be spelled out in more detail hereinafter. Plaintiff DOROTHY DIRECTOR alleges that she has a supervisory duty and responsibility for the proper management of the affairs of the charitable organization involved and that she has an affirmative duty to attempt to recover damages on behalf of the organization and thus to make it whole, and that in addition she has an exposure of individual liability for the

misconduct which has allegedly taken place during the period of her Directorship, all of which she has an affirmative duty to remedy, and insofar as there are common questions of law in fact in this action that relate and affect the rights of some or all of the other members of the Board of Directors and insofar as she is deemed to be qualified to act on behalf of that class, this action is brought as a class action on behalf of all other Directors similarly situated under the provisions of Rule 23(a), 23(b)(1)(B), (2) or (3) of the Rules of this Court. Plaintiff TERESA TAXPAYER represents the taxpayers in the United States who subsidize and grant benefits to charities such as The Humane Society of the United States and therefore have a direct interest in their proper management and a direct financial interest in remedying any wrongdoing and recovering for the organization monies that were improperly disbursed due to the wrongdoing of the Defendants.

COUNT I

12. The allegations in paragraphs 1 through 11 are incorporated by reference herein.

13. Upon information and belief, commencing on or about January of 1985, Defendants Hoyt and Irwin, President and Treasurer of The Humane Society of the United States, to wit, the Chief Executive Officer and the Chief Fiscal Officer of the organization, created a dummy or shell bank account utilizing a dormant organization, namely, The National Humane Education Center (NHEC), opened a bank account through utilizing a false affidavit indicating that that corporation had taken appropriate action to authorize such an account, and funneled through that organization to themselves the sum of \$94,000 from funds in an HSUS annuity account at the Mellon Bank in Pittsburgh, Pennsylvania, with the sole purpose of having these transactions and these funds coming to them not show up anywhere on the books of The Humane Society of the United States and therefore to be hidden from the Board of Directors of The Humane Society of the United States, the membership of The Humane Society of the United States, the Federal Government, all of which entities had a right to know the total compensation paid to these two officers, and the public at large, which had a right to an accurate report of the financial affairs of this public charity. More specifically, Mr. Hoyt arranged to have himself paid through this shell corporation the sum of \$13,000 in 1985, \$14,000 in 1986, \$14,000 in 1987, and \$14,000 in 1988. Mr. Irwin, the Treasurer, arranged to have himself paid the sum of \$9,000 in 1985, \$9,000 in 1986, \$10,000 in 1987, and \$10,000 in 1988.

In order to complete the deception, defendants caused these payments to be transferred from an annuity trust account at the Mellon Bank through this dormant corporation, NHEC, to

defendants Hoyt and Irwin and listed in the HSUS 990 Tax Returns as "payments to beneficiaries," and it is further alleged that in order to open the bank account for this dormant corporation NHEC, to receive the annuity trust money and pay it out to Mr. Hoyt and Mr. Irwin, defendants Hoyt and Irwin filed a false document certifying that the Board of the NHEC had authorized the opening of the account.

In addition, on or about March 17, 1987, a new and unexplained HSUS account was opened at American Security Bank, a \$5,000 sum was deposited in that account and simultaneously a check was drawn on that account payable to The HSUS Treasurer, Mr. Irwin, marked "contribution" and then the account was immediately closed.

All of these transactions were undertaken and conducted surreptitiously by the chief officials of the organization, who manipulated and were aided and abetted by an illegal and sham so-called Deferred Compensation Committee which operated secretly, carefully hiding its actions from the Board of Directors. It is alleged that these actions constituted breach of fiduciary duty, conflict of interest, self dealing, private inurement, unjust enrichment, misappropriation of charitable assets, and fraud.

COUNT II

14. The allegations in paragraphs 1 through 11 are incorporated by reference herein.

15. Upon information and belief, on or about July 24, 1986, the President and the Treasurer, defendants Hoyt and Irwin respectively, arranged to have the ownership of certain life insurance policies that had been owned by The Humane Society of the United States transferred to them individually, and further arranged that The Humane Society of the United States would pay future premiums thereon, which has, in fact, occurred from that time until the present. These transactions were undertaken and conducted surreptitiously by the chief officials of the organization, who manipulated and were aided and abetted by an illegal and sham so-called Deferred Compensation Committee which operated secretly, carefully hiding its actions from the Board of Directors. It is alleged that these actions constituted breach of fiduciary duty, conflict of interest, self dealing, private inurement, unjust enrichment, misappropriation of charitable assets and fraud.

COUNT III

16. The allegations in paragraphs 1 through 11 are incorporated by reference herein.

17. Upon information and belief, on or about May 4, 1987, Defendants Hoyt and Irwin arranged to have The Humane Society of the United States purchase Defendant Hoyt's house in Germantown, Maryland, for the price of \$310,000. This transaction was consummated without the knowledge of the Board of Directors and was undertaken and conducted surreptitiously by the chief officials of the organization, who manipulated and were aided and abetted by an illegal and sham so-called Deferred Compensation Committee which operated secretly, carefully hiding its action from the Board of Directors. It is alleged that this action constituted breach of fiduciary duty, conflict of interest, self dealing, private inurement, unjust enrichment, misappropriation of charitable assets and fraud.

COUNT IV

18. The allegations in paragraphs 1 through 11 are incorporated by reference herein.

19. Upon information and belief, on October 22, 1987, and October 26, 1987, the Treasurer, Paul Irwin, had checks issued to him in the sum of \$50,000 and \$35,000 respectively for a total of \$85,000, allegedly to reimburse himself for his purchase of some recreational property in Maine. This transaction was consummated without the knowledge of the Board of Directors and was undertaken and conducted surreptitiously by the chief officials of the organization, who manipulated and were aided and abetted by an illegal and sham so-called Deferred Compensation Committee, which operated secretly, hiding its action from the Board of Directors. It is alleged that this action constituted breach of fiduciary duty, conflict of interest, self dealing, private inurement, unjust enrichment, misappropriation of charitable assets, and fraud.

COUNT V

20. The allegations in paragraphs 1 through 11 are incorporated by reference herein.

21. Upon information and belief, there was an alleged committee called the Deferred Compensation Committee supposedly created by the Board of Directors in 1983 which from its inception not only never reported any of its activities to the Board but actively worked with Defendants Hoyt and Irwin to conceal its activities from the Board of Directors. This Committee was made up of Defendants Coleman Burke, William Wiseman, and Jack Lydman, and it is alleged that it was an utter sham, that it did nothing more than rubber-stamp the improper and illegal activities of the President and the Treasurer, and that the Committee members that made this concealment continue over the years are fully culpable and responsible for the activities that went on unchecked during this period, that the concealment and secrecy of this Committee continued until it came to light in December of 1987 due to inquiries made by some of the members of the Board of Directors. The activities of Defendants Hoyt and Irwin in manipulating this committee and the committee in permitting itself to be so manipulated, and operating itself in secret from the Board of Directors and serving as nothing more than a vehicle to put an apparent stamp of approval on improper and illegal benefits taken by the President and Treasurer, constituted the grossest imaginable breach of fiduciary duty, misappropriation of charitable assets and fraud.

COUNT VI

22. The allegations in paragraphs 1 through 11 are incorporated by reference herein.

23. (a) Upon information and belief, on or about January 10, 1980 Mrs. Irene Evans deeded her home at 3045 P Street, N.W., Washington, D.C., to The HSUS. By memorandum, she mentioned her desire that it become a residence "for the HSUS President," but that this "was not a condition of the gift." There was no mention of John Hoyt at this time. Based solely on this, by a series of misleading and false premises and assumptions, on May 4, 1987, Defendants Hoyt and Irwin in secret and by acts concealed from the Board of Directors arranged to purchase Defendant Hoyt's home in Germantown, Maryland, from him to be furnished as a residence for him by The HSUS for the sum of \$310,000. At no time did the Board of Directors, or even the Executive Committee, or in fact anyone other than the sham Deferred Compensation Committee ever consider the question of furnishing a house for The HSUS President--nor has that, upon information and belief, been done to this day. The alleged "ratification" of this improper and illegal transaction by the Board of Directors has neither made it proper nor legal--and it has all happened, with the \$310,000 benefit given to Defendant Hoyt as a result of a shameful sequence of events based on legerdemain, deceit, illegality, and unconscionable manipulation, all of which has been the result of a clear breach of fiduciary duty by all defendants, self dealing, private inurement, unjust enrichment, misappropriation of charitable assets, and fraud by Defendant Hoyt.

(b) On information and belief, on or about November 2, 1981, Defendant John Hoyt purportedly "borrowed" \$100,000 from Mrs. Irene Evans who was a wealthy long-term supporter of The HSUS, and a member of its Board of Directors. There was a

promissory note due July 1, 1987 with interest payable at 10%. After one year no interest was paid, the note allegedly being amended on January 7, 1986, reducing the interest to 0% retroactive to November 1, 1982. It is alleged that at the time this transaction was entered into it was improper and illegal and an outrageous conflict of interest, and that there was no intent to ever repay this amount, and in fact it never was repaid by Defendant Hoyt, but rather was extinguished by the device of having The HSUS "buy" his home.

This whole transaction constituted conflict of interest, private inurement, self dealing, unjust enrichment, misappropriation of charitable assets and funds which presumably otherwise would have been donated to The HSUS on the part of Defendant Hoyt, and breach of fiduciary duty on the part of all other defendants who were aware or should have been aware of the above facts.

(c) On information and belief, during recent years Defendant Hoyt utilized certain funds of The HSUS as personal "slush" or "discretionary" funds to be spent as he saw fit for his personal benefit and comfort, and on December 1, 1987 Defendant Hoyt improperly and illegally either caused or permitted a wealthy benefactor of The HSUS, one Regina Frankenberg, who was and is also a member of its Board of Directors, to specifically designate some of the funds that she had previously donated to The HSUS, unencumbered in any way, to be used to pay the expenses of Defendant Hoyt's wife on his trips.

It is alleged that the allegations contained in subsections (b) and (c) of this Count VI, constituted unconscionable manipulation of wealthy and vulnerable animal lovers, and was a breach of Defendant Hoyt's fiduciary duty, constituted self dealing, private inurement, unjust enrichment, and a fraud on The

HSUS. It is further alleged that there is a presumption that Defendant Hoyt could have assured that these same funds would be donated to The HSUS but instead diverted them to his own personal use and benefit, and in that way was guilty of misappropriation of charitable assets.

COUNT VII

24. The allegations in paragraphs 1 through 11 are incorporated by reference herein.

25. Upon information and belief, at divers times during 1988 and 1989, in spite of the clear evidence that the President and Treasurer, Defendants Hoyt and Irwin, had been guilty of multiple acts of greivous misconduct in office, including but not limited to violations of clear fiduciary duties, conflict of interest, self inurement, self dealing, unjust enrichment and misappropriation of charitable assets, Defendants Wiseman, Lydman, Burke and Ramsey contrived to give them very beneficial long range employment and benefits contracts, initially drafted by Defendants Hoyt and Irwin themselves, through their private attorneys being paid by The HSUS. This unconscionable and illegal action was taken without the informed approval of the Board of Directors and without the knowledge of, much less the approval of the membership, and as such said contracts are improper, illegal, unenforceable and void and of no effect, and not binding upon the charity, The HSUS. It is alleged that these actions constituted a breach of fiduciary duty, conflict of interest, self dealing, private inurement, unjust enrichment, misappropriation of charitable assets and fraud.

COUNT VIII

26. The allegations of paragraphs 1 through 11 are incorporated by reference herein.

27. Upon information and belief, Defendant Ramsey has, since all of the aforesaid matters have come to light, to wit, since December, 1987, actively conspired with the other Defendants to violate the rights of the HSUS membership and fellow members of the Board of Directors in that he engaged in the following conduct:

(1) he participated in the rejection of the very comprehensive and accurate report prepared by the law firm of Harmon & Weiss, and

(2) because the report was critical, he conspired to eradicate the Audit Committee that had been authorized to prepare such a report, and

(3) he manipulated himself into the chairmanship of the new "Select Committee," and with Defendant Wiseman assured that the Board dissidents would have no further voice in these matters, and conspired to cover up all of the investigations that had been done by the Harmon & Weiss firm and fire attorney Harmon and hire Jacob Stein, whom he had reason to believe would not be as critical as the very carefully documented Harmon & Weiss report had been.

It is further alleged that Defendant Ramsey, an attorney at law himself and vice-chairman of the HSUS Board, instead of fulfilling his legal, ethical and moral obligations to act solely to protect the charity itself, conspired and actively participated in action after action designed solely to protect and cover up the wrongdoing of Defendants Hoyt and Irwin and the secret Deferred Compensation Committee.

COUNT IX

28. The allegations of paragraphs 1 through 11 are incorporated herein by reference.

29. Upon information and belief, Defendants Hoyt and Irwin caused false and misleading official reports to be prepared and filed with the Federal Government and with divers state governmental authorities in that the compensation paid to Defendants Hoyt and Irwin was grossly understated. As a result, The HSUS itself could receive penalties for false filings and the tax exempt status as a charity has been placed in jeopardy. Such irresponsible, self serving, illegal conduct constitutes a gross breach of the fiduciary duty owed by Defendants Hoyt and Irwin to The HSUS.

COUNT X

30. The allegations of paragraphs 1 through 11 are incorporated herein by reference.

31. As and for a general charge of breach of fiduciary duty, the following is further alleged against each and every Defendant:

(1) The Defendants and each of them owe an uncompromising duty as fiduciaries to protect the interests of The Humane Society of the United States.

(2) Defendants Hoyt and Irwin violated their fiduciary duty to at all times be completely open, above board and frank, and to make full disclosure at all times to all members of the Board of Directors and to the membership of the organization. Defendants Wiseman, Lydman, and Burke breached their fiduciary duty to their fellow members of the Board of Directors, even to the membership of the smaller Executive Committee, and to the membership at large of The Humane Society of the United States.

(3) Defendants are charged with not only breach of fiduciary duty to conduct the corporation's affairs with a high degree of care and skill but are charged with affirmatively practicing deceit and deception.

(4) The deceit and deception in broadest terms includes knowingly or negligently permitting the "Deferred Compensation Committee" to be used solely as a vehicle for granting hidden and unwarranted benefits to Defendants Hoyt and Irwin, acting solely under the guidance and direction of Defendants Hoyt and Irwin, never exercising the slightest bit of independent judgment, knowingly participating in several years of duplicity and cover-up and secret activities and, in effect, participating in absolute sham. It is alleged that the facts will show that meetings were called when Defendants Hoyt or Irwin needed some action or benefit to be granted to them personally, the agendas

were set by Defendants Hoyt and Irwin, the minutes were written by Defendants Hoyt and Irwin, and the Directors Wiseman, Lydman and Burke shamefully permitted themselves to be manipulated in this manner over a substantial period of time, all to the disastrous detriment of the organization they were charged with protecting and representing.

PRAYER FOR RELIEF

As a result of the misconduct alleged in Counts I through X above, The Humane Society of the United States and plaintiffs have been severely damaged, in part as set forth below:

(1) The HSUS has been held up to scorn as a result of common knowledge of these matters and its once fine reputation for integrity and honesty has been severely damaged with present and future supporters, and its influence to perform its charitable purposes severely curtailed.

(2) The HSUS has been forced to spend in excess of one-half million dollars (\$500,000.00) as a direct result of the misconduct of Defendants Hoyt and Irwin and the misconduct and breach of fiduciary duty of Defendants Wiseman, Lydman and Burke as members of the secret Deferred Compensation Committee which had knowledge of and permitted this conduct, and, finally, the subsequent misconduct and breach of fiduciary duty of all of the defendants once the facts began to come to the attention of the Board of Directors in late 1987.

These expenditures include, but are not limited to:

(a) substantial legal fees spent on the firm of Harmon & Weiss, the attorneys for the first Audit Committee;

(b) substantial legal fees to Jacob Stein, the attorney hired following the obliteration of the Audit Committee, firing of Harmon & Weiss and their replacement by a controlled "Select" Committee and new counsel Stein;

(c) the substantial legal fees paid to Theodore Sonde, private attorney for Defendants Hoyt and Irwin;

(d) substantial legal fees paid to Bardyl Tirana of Silverstein and Mullens, the attorney that several "dissident" Board members were forced to hire in order to receive any information as to what was going on internally at the HSUS, the organization of which they were Board members;

(e) substantial fees paid to the accounting firm of Deloitte, Haskins and Sells;

(f) substantial extra fees paid to the regular HSUS accounting firm of Thomas Havey & Co.;

(g) the \$85,000 which Defendant Treasurer Irwin wrongfully paid to himself in connection with the Maine property;

(h) the loss incurred in having \$310,000 invested in the purchase of Defendant Hoyt's home in Germantown, Maryland, which constituted having these funds diverted from normal charitable use, or earning interest as an investment;

(i) the value of the personal insurance policies turned over to Defendants Hoyt and Irwin and the premiums already paid on them since the turnover;

(j) the funds illegally funnelled to Defendants Hoyt and Irwin through the sham bank account for the dormant NHEC corporation;

(k) the extra costs incurred by the HSUS, various staff members and directors in connection with special meetings and the diversion of time and energy from the charitable purposes of the HSUS;

(l) the extra costs incurred by HSUS in connection with the time spent away from useful and HSUS-related charitable matters for Defendants Hoyt and Irwin, to wit, the hours, weeks or months and the thousands of dollars of travel expenses expended by President Hoyt and Treasurer Irwin, meeting with directors all over the country "one on one" in order to deal with these charges of misconduct. (The fact that so many directors have been willing to do this oblivious of the impropriety of such get-togethers, merely points up the abysmal lack of consciousness on the part of the majority of the HSUS Board of Directors of the basics of fiduciary propriety and duty.)

Attorney

Jury Demand

Plaintiffs demand a trial by jury on all jury issues raised by these pleadings.
