

OFFICE OF THE ATTORNEY GENERAL

(Civil action against certain officers and directors of The Humane Society of the United States, a charitable corporation which operates, raises funds and does business in this State.)

Preamble: It is axiomatic that the assets of charitable non-profit corporations are impressed with a trust, and accordingly strict trust principles apply to the corporate fiduciaries, namely the officers and directors in their dealings with these assets. This action is brought to surcharge these fiduciaries who have breached their fiduciary duties and caused financial loss to the corporation through selfdealing and other malfeasance.

versus

JOHN A. HOYT,
individually and as President of
The Humane Society of the United
States,
2100 L Street, N.W.
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.
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

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

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 raises funds and operates in every state of the United States including _____ and maintains facilities in a number of states of the United States, including _____. 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.

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

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

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.

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.

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.

COUNT I

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

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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

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

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

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

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

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 Hoyt and Irwin manipulated the Board into giving 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 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 VII

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 VIII

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 above, The Humane Society of the United States has 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) 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.

WHEREFORE,

plaintiffs pray for judgment against the defendants, and each of them, jointly and severally, for the following:

1. Seven Hundred Fifty Thousand Dollars (\$750,000.00), to be reimbursed, disgorged, or in any event paid to or for the benefit of The Humane Society of the United States.

CONCLUSION

It appearing that in the past, members of the Board of Directors who have raised questions concerning the above matters have been dropped from the Board as a result of the manipulation and control of the Board by President Hoyt and Treasurer Irwin and the other defendants, and it further appearing that the Board of Directors of The HSUS cannot and will not exercise the required control over the affairs of the charity;

It is therefore concluded that the Attorney General must exercise its power to repair the damage suffered by this public charity.

OFFICE OF THE ATTORNEY GENERAL