

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

ANN H. WOMER BENJAMIN,
Ohio Superintendent of Insurance,
in her Capacity as Liquidator of
Renaissance Health Plan, Inc.,

Plaintiff,

vs.

M. DANIEL SPLAIN
23199 Shaker Blvd.
Shaker Heights, OH 44122.

ELIZABETH STOLKOWSKI
23199 Shaker Blvd.
Shaker Heights, OH 44122.

RUSSELL BROWN
5956 Sherwood Drive
North Olmsted, OH 44070.

RANDALL S. ANDERSON
7324 Heritage Court
Frankfort, IL 60423.

RENATO J. SUNTAY
1615 Winchester Court
Westlake, OH 44145.

PHILIP S. HEHIR
3904 Spring Valley Way
Louisville, KY 40241.

TRIGG D. JAMES
247 Glenstone Circle
Brentwood, TN 37027.

PATRICK S. CARUSO
109 South Stauffer
Naperville, IL 60540.

2009 JAN 23 AM 9:53

CASE NO. _____

JUDGE _____

CATEGORY H

JURY DEMAND

CLERK OF COURTS
2009 JAN 23 AM 9:53

THOMAS W. COURTNEY, JR.,
201 E. 79th Street, Apt. 11D
New York, NY 10021.

JAMES M. PETRAS
19721 Edgecliff Drive
Euclid, OH 44119.

EMILE GEISENHEIMER
52 Vanderbilt Avenue
New York, NY 10017.

WILLIAM E. HUNT
5300 Wilkens Avenue
Pittsburgh, PA 15217.

Defendants.

COMPLAINT

Plaintiff, Ann H. Womer Benjamin, Ohio Superintendent of Insurance, in her capacity as Liquidator for Renaissance Health Plan, Inc. ("Renaissance"), states for her Complaint against the Defendants, as follows:

PARTIES

1. Plaintiff is presently collecting the assets and administering the liquidation of Renaissance in this case pending before the Franklin County Court of Common Pleas, Case Number 02CVH08-9275 (Judge Travis). Renaissance was ordered into liquidation on November 6, 2002. Plaintiff has the power and authority to bring this action pursuant to the Liquidation Order of that date and pursuant to Ohio Revised Code Chapter 3903, as the Liquidator of Renaissance and on behalf of Renaissance's creditors and policyholders/members.

2. Renaissance is an Ohio corporation and was formerly known as Emerald HMO, Inc. ("Emerald"). In a Stock Purchase Agreement dated November 1, 1999, an Ohio corporation then known as Splain Health, Inc. ("SHI"), agreed to purchase from a company known as E.H.N. Holdings, Inc. ("E.H.N.") all the outstanding shares of Emerald. This stock purchase transaction closed on or about February 1, 2000.

3. On or about July 26, 2000, Emerald changed its name to Renaissance Health Plan, Inc. On or about October 20, 2000, SHI merged into and with Renaissance Health System, Inc. ("RHSI"), with the surviving corporation bearing the name Renaissance Health System, Inc. Upon information and belief, at all relevant times, Renaissance has been an Ohio corporation and RHSI has been a Delaware corporation licensed to conduct business in Ohio as a foreign corporation. Renaissance and RHSI both had as their principal place of business the Diamond Building, 1100 Superior Avenue, Suite 1300, Cleveland, Ohio 44114.

4. Throughout this Complaint, when the term Renaissance is used, it will refer both to Emerald HMO, Inc. and its legal successor in interest, Renaissance Health Plan, Inc. and, when appropriate, it will also be used to refer to RHSI. Throughout this Complaint, when the term RHSI is used, it will refer both to Splain Health, Inc. and its legal successor in interest, Renaissance Health System, Inc. The officers and directors of Renaissance and RHSI overlapped significantly. Many actions of the officers and directors of RHSI, including actions taken at RHSI Board meetings, were taken with respect to the business of Renaissance. Thereby, the actions and omissions of RHSI officers and directors were actions and omissions in a *de facto* capacity as officers and directors of Renaissance.

5. Until on or about May 3, 2002, Defendant M. Daniel Splain ("Splain") was Chairman of the Board of Renaissance and RHSI, as well as Chief Executive Officer and for some periods of time President, of Renaissance and its parent, RHSI. Defendant Splain was one of the defendants responsible for all aspects of Renaissance's operations, including without limitation compliance by Renaissance with all financial reporting requirements.

6. Until on or about May 3, 2002, Defendant Elizabeth Stolkowski ("Stolkowski") was Executive Vice President and/or President/Chief Operating Officer of Renaissance and RHSI. She was also a member of the Board of Renaissance and Secretary of the Board of RHSI. Defendant Stolkowski was one of the defendants responsible for all aspects of Renaissance's operations, including without limitation compliance by Renaissance with all financial reporting requirements.

7. Until on or about August 22, 2002, Defendant Russell W. Brown was Senior Vice President of Renaissance and RHSI and a member of the Board of Renaissance. He was also Secretary of the Board of Renaissance. Defendant Brown was one of the defendants responsible for, *inter alia*, compliance and the governmental health care programs of Renaissance as well as compliance by Renaissance with all financial reporting requirements.

8. Until on or about August 22, 2002, Defendant Randall S. Anderson was Senior Vice President of Renaissance and RHSI and a member of the Board of Renaissance. Defendant Anderson was one of the defendants responsible for, *inter alia*, operations of Renaissance.

9. Defendant Renato J. Suntay was Treasurer and Chief Financial Officer of Renaissance and RHSI, and a member of the Board of Renaissance from on or about April 1, 2000, until on or about either February 28, 2001 or April 2, 2001. Defendant Suntay was one of the defendants responsible for, *inter alia*, compliance by Renaissance with all financial reporting requirements.

10. Defendant Philip S. Hehir was Chief Financial Officer of Renaissance from on or about July 16, 2001 until on or about October 25, 2001. During that time, Defendant Hehir was one of the defendants responsible for, *inter alia*, compliance by Renaissance with all financial reporting requirements.

11. Defendant Trigg D. James was retained as a consultant to Renaissance on or about December 12, 2001, and became an Executive Vice President and the Chief Financial Officer of Renaissance on March 25, 2002. During that time, Defendant James was one of the defendants responsible for, *inter alia*, compliance by Renaissance with all financial reporting requirements.

12. Defendant Patrick S. Caruso was a Vice President of Renaissance (V.P. MIS) from on or about May 22, 2000, until on or about July 15, 2002. He was one of the defendants responsible for, *inter alia*, the information technologies of Renaissance.

13. Defendant Thomas J. Courtney, Jr. was a Director of Renaissance and RHSI, including serving as the Vice Chairman of the Board of RHSI and Renaissance, and served on the Audit and Compensation Committee of Renaissance and RHSI.

14. Defendant James Petras was a Director of Renaissance and RHSI, and served on the Audit and Compensation Committee of Renaissance and RHSI.

15. Defendant Emile Geisenheimer was a Director of Renaissance and RHSI, and served on the Audit and Compensation Committee of Renaissance and RHSI.

16. Defendant William E. Hunt was a Director of Renaissance and RHSI and served on the Audit and Compensation Committee of Renaissance and RHSI.

JURISDICTION AND VENUE

17. The Court of Common Pleas for Franklin County, Ohio has exclusive jurisdiction over this matter and venue is proper pursuant to R.C. 3903.04(E). Defendants are or were residents of Ohio during all relevant times, or were residents of other states who served as Officers or Directors of Renaissance (an Ohio corporation) and attended Renaissance Board meetings in Ohio, or who had other contacts with Ohio sufficient to subject them to the jurisdiction of this Court.

DUTIES OF DIRECTORS AND OFFICERS

18. Those Defendants who served on the Board of Renaissance (the "Director Defendants") occupied positions of trust with respect to Renaissance, and as a result owed certain fiduciary duties to Renaissance, its creditors and policyholders/members, which duties are defined by Ohio law. These duties included, without limitation, a duty to exercise reasonable care in the exercise of authority as a director, a duty to develop reasonable familiarity with the financial affairs of Renaissance, a duty to act in the best interest of Renaissance, its creditors and policyholders/members, and a duty of loyalty. These duties are specified in part in Section 1701.59(B) of the Ohio Revised Code. For those directors who also served on the Audit and Compensation Committees of

Renaissance, they owed additional duties to Renaissance, its creditors and policyholders/members under the law, which duties arose from their responsibilities specific to those Committees.

19. Those Defendants who served as officers of Renaissance (the "Officer Defendants") occupied positions of trust, and as a result owed certain fiduciary duties to Renaissance, its creditors and policyholders/members, which duties are defined by Ohio law. These duties included, without limitation, a duty to exercise reasonable care in the exercise of their authority, a duty to act in the best interest of Renaissance, its creditors and policyholders/members, a duty of loyalty, as well as duties specific to their individual offices.

CORPORATE OPERATIONS AND FINANCIAL CONDITION

20. Renaissance, an Ohio corporation, is an "insurer" and "health insuring corporation" as defined in R.C. 3903.01(L) and 1751.01(N) respectively, and is therefore subject to regulation by the Department of Insurance for the State of Ohio (the "ODI") pursuant to Titles 39 and 17 of the Revised Code.

21. Renaissance operated a health maintenance organization ("HMO") that provided medical services to persons enrolled in or covered by one or more of several different programs, including at various times Medicaid and Medicare, as well as commercial lines of business that were structured at one time as capitated programs and at other times as fee for service programs.

22. At all relevant times herein, Renaissance had provider agreements with hospitals, pharmacies, consulting physicians, mental health/substance abuse providers.

urgent care centers, primary care physicians, physician hospital organizations and multi-specialty group providers and affiliated providers

23. Renaissance's Medicaid program derived most of its revenues through its contracts with the Ohio Department of Jobs and Family Services ("ODJFS"), which was formerly known as the Ohio Department of Human Services ("ODHS"). Under these contracts with ODJFS, Renaissance was paid a fixed dollar amount per month per HMO member.

24. Renaissance did business in a number of counties in Northeast Ohio, including without limitation Cuyahoga, Summit and Lorain Counties.

25. Despite the substantial amount of health insurance business that Renaissance wrote, the Officer and Director Defendants failed to adopt adequate systems, procedures and controls to accumulate appropriate data and to manage and report on the processing of data with respect to risk-sharing contracts that Renaissance entered into with certain providers and with respect to its obligations in its Medicaid and Medicare programs. The Officer and Director Defendants also failed to adopt adequate systems, procedures and controls over underwriting, claims processing and the recording and management of claim liability. With respect to the systems and procedures that Renaissance did adopt from time to time, the Officer and Director Defendants failed to provide for the proper training of Renaissance employees to use those systems and procedures and failed to implement them effectively.

26. When certain Officer Defendants of Renaissance decided to change provider contracts from a capitation arrangement to a fee for service arrangement, the Officer Defendants failed to properly analyze the potential operational and financial

effects upon Renaissance from this change. The Director Defendants failed to require the Officer Defendants to perform such an analysis. Officer and Director Defendants also failed to properly consider whether Renaissance should enter into such fee for service contracts or should implement another alternative. The change from capitated arrangements to fee for service contracts resulted in severe operational and financial problems, which caused substantial harm to Renaissance, its creditors and policyholders/members.

27. In early 2001, Renaissance hired an internal auditor, Idi Miliken, who had experience as a claims auditor. Despite her position and the knowledge she possessed about the problems with Renaissance operations, the members of the Audit Committee of Renaissance failed to communicate with the internal auditor.

28. During the summer of 2001, Renaissance prepared its quarterly financial statement for the second quarter of 2001 (i.e., the quarter ending June 30, 2001). Renaissance submitted this financial statement, as well as the others prepared by Renaissance pursuant to Ohio law, to the Ohio Department of Insurance. Renaissance's June 30, 2001, financial statement reported that Renaissance had a net worth of \$4,998,422, and a net income of \$1,274,829. That financial statement misstated the true financial condition of Renaissance. That financial statement, as with the others prepared by Renaissance, was prepared under, or subject to, the direction of certain Officer Defendants and the Directors on the Board.

29. During the summer of 2001, the Officer Defendants responsible for the finances of Renaissance learned that the outside auditors of Renaissance had calculated the incurred but not reported reserves ("IBNR") of Renaissance to be

significantly different than that calculated by management of Renaissance. The Audit Committee should have known, investigated, analyzed and followed up on, the difference in the calculations and the impact of that difference in reporting on the true financial condition of Renaissance.

30. Renaissance continued to report misstatements of Renaissance's true financial condition in the financial statements for all subsequent quarters in 2001 and 2002 and in the financial statement for year-end 2001.

31. The bases for Renaissance's financial problems included the factors described elsewhere in this Complaint and included without limitation the following: Renaissance did not have adequate systems and processes to estimate accurately the liability for unpaid claims; Renaissance did not properly reconcile and monitor key accounts, including accounts receivable, accounts payable, and capitation and other charges to enable accurate and timely financial reporting; Renaissance did not properly prepare monthly reconciliations of cash and investment accounts in a timely and accurate manner; Renaissance did not have adequate systems and procedures to properly accumulate appropriate data and to monitor and report on the processing of data with respect to risk-sharing contracts that Renaissance entered into; Renaissance had inadequate controls over cash and cash disbursements; Renaissance had inadequate controls over claims processing and recording of claim liabilities and claim payments; Renaissance had an incomplete and inaccurate general ledger and subsidiary financial ledgers; and, for the controls and procedures that it did adopt from time to time, Renaissance failed to implement them properly and to train properly its employees to use them. The Officer Defendants were responsible for these

management failures. The Director Defendants were responsible for those failures and not exercising appropriate oversight of Renaissance's Officers.

32. As an insurer organized under the laws of Ohio, Renaissance was required to provide annual and quarterly reports of its financial condition to the Superintendent of Insurance. These statements were signed under oath by the President, Secretary and Chief Financial Officer of Renaissance. Thus, annual and quarterly statements were signed at various times by Defendants Stolkowski, Brown, Suntay, Hehir and James. Other officers and employees worked on or reviewed those financial statements, including without limitation Defendant Splain. The members of the Board of Renaissance would review and discuss the financial statements.

33. Each annual and quarterly statement that Renaissance submitted stated that Renaissance's capital and surplus was in excess of that required by law for the organization. For example, the quarterly statement for the period ending June 30, 2001, showed a statutory capital and surplus of approximately \$4,998,422. By no later than that date, however, Renaissance's statutory surplus was non-existent and Renaissance was actually insolvent as defined in Ohio Rev. Code § 3903.01(K)(2).

34. The annual and quarterly statements that Renaissance submitted did not accurately report the true financial condition of Renaissance. Had the quarterly statement for the period ending June 30, 2001 accurately reported the true condition of Renaissance, it would have shown that Renaissance was insolvent. As of that date, the liabilities together with the capital and surplus required by law for Renaissance exceeded the admitted assets of Renaissance. In subsequent quarters, the amount of Renaissance's insolvency continued to grow into the millions of dollars.

35. Renaissance may have also been insolvent, as defined in Ohio Rev. Code § 3903.01(K)(2), for a period of time prior to June 30, 2001. Renaissance remained continuously insolvent after June 30, 2001, until it was placed into liquidation.

36. The financial problems of Renaissance resulted from the negligence, gross negligence and breach of fiduciary duties of the Defendants, which consisted of, *inter alia*, failures that the Defendants caused by their reckless acts and omissions, failed to correct and/or failed to disclose to the appropriate persons, including the failures alleged elsewhere in this Complaint and including without limitation the following failures:

- a. Renaissance did not create or maintain sufficient unpaid claim reserves, including without limitation IBNR reserves and loss adjustment expense reserves as required by Statement of Statutory Accounting Principles ("SSAP") No. 55, *Unpaid Claims, Losses and Loss Adjustment Expenses* included in the NAIC *Accounting Practices and Procedures Manual* ("Manual") as adopted by the State of Ohio.
- b. Renaissance operated with inadequate financial controls, which failed in at least the following requisite objectives, among others: (1) reliability of financial reporting; (2) effectiveness and efficiency of operations; and (3) compliance with applicable laws and regulations.
- c. Renaissance operated with inadequate controls over its process of administering claims, which also failed in at least the foregoing requisite objectives.

d. Renaissance operated with inadequate controls in its Medicaid, Medicare and commercial programs, which also failed in at least the foregoing requisite objectives.

e. Renaissance failed to report its financial condition accurately to Ohio's Superintendent of Insurance, thereby preventing timely investigation and remediation of the financial affairs of Renaissance.

f. Renaissance failed to record certain losses on its books in accordance with SSAP #55 of the Manual.

g. Renaissance booked and relied on receivables that were not properly secured and/or that were not reasonably collectible, or if collectible, Renaissance failed to properly submit them accurately and timely to the proper entity in order to collect the receivable.

h. Renaissance failed to properly analyze, understand and monitor the effects of the change in contracts with certain providers from a capitation arrangement to a fee for service arrangement. These failures also resulted in severe financial losses for Renaissance and caused other serious problems in the operations of Renaissance.

BREACHES OF DUTIES BY THE DEFENDANTS

37. Defendants Splain, Stolkowski, Brown, Anderson and Caruso, in connection with their responsibilities as officers of Renaissance, knew or, by exercising reasonable care, should have known of some or all of these operational problems described herein. They breached their fiduciary duties to Renaissance by failing to

provide proper notice of these problems, as required under the law, and by failing to propose and implement actions necessary to see that these problems did not continue

38. Defendants Splain, Stolkowski and Brown, as well as Defendants Suntay, Hehir and James, in connection with their financial responsibilities as officers of Renaissance, knew or, by exercising reasonable care, should have known of some or all of these financial problems described herein. They breached their fiduciary duties to Renaissance by failing to provide proper notice of these problems, as required under the law, and by failing to propose and implement actions necessary to see that these problems did not continue.

39. The Director Defendants, including the Audit Committee, by exercising reasonable care, should have known of some or all of these operational and financial problems described herein. They breached their fiduciary duties to Renaissance by failing to propose and implement actions necessary to see that these problems did not occur and continue, by failing to exercise the requisite degree of oversight of the officers of Renaissance, and by failing to provide proper notice, as required under the law.

40. The breaches of fiduciary duties described in this Complaint also constituted negligence and gross negligence and were undertaken with reckless disregard for the best interests of Renaissance, its creditors and policyholders/members.

41. These breaches of fiduciary duties, negligence, gross negligence and reckless conduct proximately caused substantial injury to Renaissance, its creditors and policyholders/members. They contributed materially to the severe financial losses

suffered by Renaissance and to the continuing deterioration of Renaissance's financial condition over time.

42. On August 22, 2002, Renaissance agreed to an order of rehabilitation entered by the Franklin County Court of Common Pleas. On November 6, 2002, the Franklin County Court of Common Pleas ordered the liquidation of Renaissance.

COUNT I

(Breach of Fiduciary Duties by Officer Defendants)

43. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.

44. Each of the Officers was a fiduciary to Renaissance, its creditors and its policyholders/members.

45. Each Officer Defendant breached his or her fiduciary duties by, among other things, mismanagement, wasting corporate resources, failing to equip Renaissance with appropriate management information and claims processing systems, failing to seek adequate and appropriate advice and assistance in re-negotiating provider agreements, failing to reduce all provider agreements to writing, failing to negotiate provider agreements that were commercially reasonable and suitable for Renaissance's claims processing system, failing to make sure that all the terms and conditions of provider agreements were properly entered into the claims processing system, failing to properly underwrite the business of Renaissance, failing to timely and properly manage the Medicaid, Medicare and commercial programs, failing to implement any systems and procedures that it did adopt from time to time, failing to train properly its employees to use such systems and procedures, failing to adopt and

implement appropriate operational and financial controls over its business, and issuing financial statements that misstated Renaissance's true financial condition.

46. Based upon all of the breaches of their fiduciary duties, including without limitation the aforementioned breaches, the Officer Defendants each breached their statutory and common law fiduciary duties of loyalty, ordinary care and good faith to Renaissance, its creditors and policyholders/members.

47. As a direct and proximate result of these breaches by each and all of the Officer Defendants, Renaissance, its creditors and policyholders/members have been damaged in an amount in excess of \$25,000.

COUNT II

(Negligence and Gross Negligence of Officer Defendants)

48. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.

49. The Officer Defendants were each negligent in the performance of their duties and responsibilities as officers of Renaissance. Their negligence includes, but is not limited to, mismanagement, wasting corporate resources, failing to equip Renaissance with appropriate management information and claims processing systems, failing to seek adequate and appropriate advice and assistance in re-negotiating provider agreements, failing to reduce all provider agreements to writing, failing to negotiate provider agreements that were commercially reasonable and suitable for Renaissance's claims processing system, failing to make sure that all the terms and conditions of provider agreements were properly entered into the claims processing system, failing to properly underwrite the business of Renaissance, failing to timely and properly manage the Medicaid, Medicare and commercial programs, failing to

implement any systems and procedures that it did adopt from time to time, failing to train properly its employees to use such systems and procedures, failing to adopt and implement appropriate operational and financial controls over its business, and issuing financial statements that misstated Renaissance's true financial condition.

50. All the negligent actions and omissions by the Officer Defendants, as set forth in this Complaint, also constituted gross negligence and a reckless disregard for the best interests of Renaissance, its creditors and policyholders/members.

51. As a direct and proximate result of those actions and omissions by each and all of the Officer Defendants, Renaissance, its creditors and policyholders/members have been damaged in an amount in excess of \$25,000.

COUNT III

(Breach of Fiduciary Duties by Director Defendants)

52. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.

53. Each of the Directors was a fiduciary to Renaissance, its creditors and its policyholders/members.

54. Each Director Defendant breached his or her fiduciary duties by, in addition to the other failures described in this Complaint, failing to oversee properly the management of Renaissance. Reasonable and proper oversight of management would have prevented, *inter alia*, Renaissance officers from wasting corporate resources, failing to equip Renaissance with appropriate management information and claims processing systems, failing to seek adequate and appropriate advice and assistance in re-negotiating provider agreements, failing to reduce all provider agreements to writing,

failing to negotiate provider agreements that were commercially reasonable and suitable for Renaissance's claims processing system, failing to make sure that all the terms and conditions of provider agreements were properly entered into the claims processing system, failing to properly underwrite the business of Renaissance, failing to timely and properly manage the Medicaid, Medicaid and commercial programs, failing to implement any systems and procedures that it did adopt from time to time, failing to train properly its employees to use such systems and procedures, failing to adopt and implement appropriate operational and financial controls over its business, and issuing financial statements that misstated Renaissance's financial condition.

55. Based upon all of the breaches of their fiduciary duties, including without limitation the aforementioned breaches, the Director Defendants each breached their statutory and common law fiduciary duties of loyalty, ordinary care and good faith to Renaissance, its creditors and policyholders/members. The actions and omissions of the Director Defendants set forth in this Complaint were undertaken with reckless disregard for the best interests of Renaissance, its creditors and its policyholders/members.

56. As a direct and proximate result of those breaches by each and all of the Director Defendants, Renaissance, its creditors and policyholders/members have been damaged in an amount in excess of \$25,000.

COUNT IV

(Negligence and Gross Negligence of Director Defendants)

57. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.

58. The Director Defendants were each negligent in the performance of their duties and responsibilities as directors of Renaissance. Their negligence includes, but is not limited to, their failure to oversee properly the management of Renaissance. Reasonable and proper oversight of management would have prevented, *inter alia*, Renaissance officers from wasting corporate resources, failing to equip Renaissance with appropriate management information and claims processing systems, failing to seek adequate and appropriate advice and assistance in re-negotiating provider agreements, failing to reduce all provider agreements to writing, failing to negotiate provider agreements that were commercially reasonable and suitable for Renaissance's claims processing system, failing to make sure that all the terms and conditions of provider agreements were properly entered into the claims processing system, failing to properly underwrite the business of Renaissance, failing to timely and properly manage the Medicaid, Medicare and commercial programs, failing to implement any systems and procedures that it did adopt from time to time, failing to train properly its employees to use such systems and procedures, failing to adopt and implement appropriate operational and financial controls over its business, and issuing financial statements that misstated Renaissance's financial condition.

59. All the negligent actions and omissions by the Director Defendants, as set forth in this Complaint, also constituted gross negligence and a reckless disregard for the best interests of Renaissance, its creditors and policyholders/members.

60. As a direct and proximate result of those actions and omissions by each and all of the Director Defendants, Renaissance, its creditors and policyholders/members have been damaged in an amount in excess of \$25,000.

COUNT V

(Unlawful Preferences by the Officer and Director Defendants)

61. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.

62. Within one year before the filing of the complaint for rehabilitation of Renaissance, the Officer and Director Defendants authorized the payment of preferences, totaling millions of dollars, to a number of companies, including without limitation, MetroHealth Systems, the Cleveland Clinic and their affiliates. These payments were for the payment of antecedent debt.

63. These payments were authorized and made by the Officer Defendants and the Director Defendants at a time when they had reasonable cause to believe that Renaissance was insolvent or was about to become insolvent.

64. The Defendants knowingly participated in giving these preferences. These payments constitute unlawful preferences pursuant to R.C. 3903.28(K).

65. As a direct and proximate result of the Defendants giving these preferences, Renaissance, its creditors and policyholders/members have been damaged in an amount in excess of \$25,000.

COUNT VI

(“Fraudulent Transfers” by the Officer and Director Defendants)

66. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.

67. The payments alleged in the preceding Count of this Complaint were made within one year prior to the filing of the complaint for rehabilitation of Renaissance.

68. These payments were made without fair consideration, as defined in R.C. 3903.26(A) and 3903.01(H).

69. The Officer Defendants and the Director Defendants participated in making these payments. Pursuant to R.C. 3903.26, these payments constitute "fraudulent transfers."

70. As a direct and proximate result of making these payments, Renaissance, its creditors and policyholders/members have been damaged in an amount in excess of \$25,000.

COUNT VII

(Breach of Fiduciary Duties and Gross Negligence and/or Negligence In Reporting the Financial Condition of Renaissance)

71. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.

72. Renaissance provided annual and quarterly reports of its financial condition to the Superintendent of Insurance. These statements were signed under oath by the President, Secretary and Chief Financial Officer of Renaissance. Thus, annual and quarterly statements were signed at various times by Defendants Stolkowski, Brown, Suntay, Hehir and James. Other officers and employees worked on or reviewed those financial statements, including without limitation Defendant Splain. The members of the Board of Renaissance would review and discuss the financial statements.

73. The annual and quarterly statements that Renaissance submitted did not accurately report the true financial condition of Renaissance. As described in the foregoing paragraphs of this Complaint, these Defendants breached their fiduciary duties, were grossly negligent and/or were negligent by not accurately reporting the true financial condition of Renaissance.

74. Thus, these Defendants breached their statutory and common law duties of loyalty, ordinary care and good faith to Renaissance, its creditors and policyholders/members.

75. As a direct and proximate result of these breaches, Renaissance, its creditors and policyholders/members have been damaged in an amount in excess of \$25,000.

COUNT VIII

(Breaches of Fiduciary Duties by Audit Committee of the Board)

76. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.

77. Defendants Petras, Courtney, Hunt and Geisenheimer were appointed as the members of the Audit Committee of Renaissance and RHSI on November 21, 2000.

78. As Directors and members of the Audit Committee, each of them had a number of duties including without limitation, a duty to exercise reasonable care in the exercise of authority as Directors and as members of the Audit Committee, a duty to establish and enforce information and reporting systems reasonably designed to provide accurate and timely financial information for the consideration of the Audit Committee and the Board, a duty to develop reasonable familiarity with the financial

affairs of Renaissance, and a duty to act in the best interest of Renaissance, its creditors and policyholders/members. The members of the Audit Committee have heightened fiduciary duties, in part because they were appointed, *inter alia*, due to their special knowledge or qualifications in the financial reporting or control areas.

79. By the time of their appointment to the Audit Committee and during their tenure on the Audit Committee, Defendants Petras, Courtney, Hunt and Geisenheimer should have been aware that Renaissance had severe financial problems. They should have known of the critical need to monitor carefully the financial condition of Renaissance and to oversee carefully the financial management of Renaissance.

80. Defendants Petras, Courtney, Hunt and Geisenheimer recklessly failed to monitor and oversee the financial affairs of Renaissance and acted with reckless disregard for the best interests of Renaissance, its creditors and policyholders/members, and thereby breached their fiduciary duties as Directors and as members of the Audit Committee.

81. As a direct and proximate result of these breaches and gross negligence, Renaissance, its creditors and policyholders/members have been damaged in an amount in excess of \$25,000.

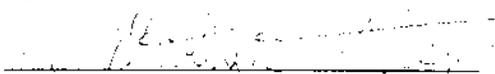
WHEREFORE, the Plaintiff demands judgment as follows:

1. Compensatory damages against each of the Defendants in an amount in excess of \$25,000.
2. Costs, interest and attorneys' fees.
3. Such other relief this Court deems just and equitable.

Respectfully submitted,

JAMES PETRO (0022096)
Ohio Attorney General

By Special Counsel:


S. MARTIJN STEGER (0018362)
ROBERT G. COHEN (0041707)
RICHARD W. SCHUERMANN, JR.
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Attorneys for Plaintiff

JURY DEMAND

Pursuant to Civil Rule 38, the Plaintiff respectfully demands a trial by jury on all eligible claims and issues.

S. Martijn Steger

(0018362)