

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Centre County

For Prothonotary Use Only:

Docket No:

2021-957

JEREMY S. BREON
 PROTHONOTARY
 CENTRE COUNTY, PA
 2021 MAY -6 PM 4:15
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SECTION A

Commencement of Action:

- Complaint
 Writ of Summons
 Petition
 Transfer from Another Jurisdiction
 Declaration of Taking

Lead Plaintiff's Name:
James C. King, on behalf of himself & all others sim. sit.

Lead Defendant's Name:
Glenn O. Hawbaker, Inc.

Are money damages requested? Yes No

Dollar Amount Requested: (check one) within arbitration limits
 outside arbitration limits

Is this a *Class Action Suit*? Yes No

Is this an *MDJ Appeal*? Yes No

Name of Plaintiff/Appellant's Attorney: Michael Donovan, Esq., et al.

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other _____
 Employment Dispute: Discrimination
 Employment Dispute: Other Breach of Contract; Failure to Pay Wages Owed
 Other: _____

CIVIL APPEALS

- Administrative Agencies
- Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other _____
 Zoning Board
 Other: _____

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other: _____

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other: _____

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations Restraining Order
 Quo Warranto
 Replevin
 Other: _____

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional: _____

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
PENNSYLVANIA

JAMES C. KING, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

GLENN O. HAWBAKER, INC.,

Defendant.

CIVIL DIVISION

No. *2021-957*

Issue No.

**CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED
Code:

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2021 MAY -6 PM 4:17
JEREMY S. BLEDSON
PROTHONOTARY
CENTRE COUNTY, PA

Filed on behalf of James C. King
and all others similarly situated

Counsel of Record for this Party:

Michael D. Donovan, Esq.
Pa. I.D. #51895
Donovan Litigation Group, LLC
1885 Swedesford Road
Malvern, PA 19355
(610) 647-6067

mdonovan@donovanlitigationgroup.com

Eric Lechtzin (PA ID # 62096)
Marc H. Edelson (PA ID # 51834)
Edelson Lechtzin LLP
3 Terry Drive, Suite 205
Newtown, PA 18940
(215) 867-2399
elechtzin@edelson-law.com
medelson@edelson-law.com

Andrew J. Shubin, Esq.
Pa. No. 63263
Shubin Law Office
333 South Allen Street
State College, PA 16801
(814) 867-3115
shubin@shubinlaw.com

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Class Action Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

CENTRE COUNTY
PENNSYLVANIA BAR
ASSOCIATION
P.O. BOX 186
HARRISBURG, PA 17108
800-692-7375

CENTRE COUNTY BAR
ASSOCIATION
232 MATCH FACTORY PLACE
BELLEFONTE, PA 16823
814-548-0052

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JEREMY S. PREGO
PROTHONOTARY
CENTRE COUNTY, PA
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CLASS ACTION COMPLAINT

Plaintiff, by his undersigned attorneys, for his Class Action Complaint against Glenn O. Hawbaker, Inc. (“Hawbaker,” “GOH,” or “Defendant”), alleges, upon information and belief, except as to the allegations that pertain to the named Plaintiff and his counsel, which are based upon personal knowledge, as follows:

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JEREMY S. BIRSON
BETH ANNOTRY
CENTRE COUNTY, PA

NATURE OF THE ACTION

1. Plaintiff James C. King (“King” or “Plaintiff”) brings this action against Defendant Hawbaker for engaging in a systematic and clandestine scheme of wage abuse and wage and benefit shortages against its hourly paid employees in Pennsylvania. This scheme involved, among other things, failing to pay prevailing wages to hourly employees working on prevailing wage projects by misrepresenting and misreporting the amounts paid by Defendant for various wage benefits, including health and retirement benefits, when, in fact, Defendant was obligated to pay the difference between the actual amounts paid for such benefits and the applicable prevailing wage in cash (*i.e.* higher hourly wage payments) to each hourly employee working on the prevailing wage projects. Defendant designed, implemented and maintained this clandestine scheme from at least 2015 through and including 2018. The scheme was finally disclosed publicly on April 8, 2021 when the Pennsylvania Attorney General filed a criminal complaint against Hawbaker alleging four counts of felony “Theft by failure to make required disposition of funds

received,” *Commonwealth v. Glenn O. Hawbaker, Inc.*, No. Cr-89-2021 (Mag. Dist. 49-2-01, Centre County, Pa. filed Apr. 8, 2021) (Attachment 1). As a result of Defendant’s systematic and clandestine scheme of failing to properly pay its hourly employees throughout Pennsylvania, Hawbaker has violated Pennsylvania common law and statutory laws as described more particularly below.

JURISDICTION AND VENUE

2. Venue is proper in this county under Rule 2179 of the Pennsylvania Rules of Civil Procedure. Hawbaker transacts business throughout the Commonwealth of Pennsylvania and within Centre County specifically. Many of the acts, as well as the common course of conduct charged herein, occurred in Centre County.

PARTIES

3. Plaintiff, James C. King, is an individual who resides at 1975 Turnpike Avenue, Clearfield, Pennsylvania.

4. Defendant, Glenn O. Hawbaker, Inc., is a Pennsylvania corporation located at 1952 Waddle Road, Suite 203, State College, Centre County, Pennsylvania.

5. Plaintiff was employed as an Operating Engineer and Crane Operator at Hawbaker during the time period of 2012 through and including August 2017. At least 95% of the work Plaintiff performed at Hawbaker was on prevailing wage

projects, *i.e.* state or Davis-Bacon Act projects in which Hawbaker was obligated to pay its employees the “prevailing wage” throughout the duration of the project.

6. At any given time, Hawbaker employs approximately 1200 employees, including roughly 100 employees who work at the company’s corporate headquarters, and approximately 600 to 900 employees who work at construction sites throughout the Commonwealth and surrounding states on both public and private projects. A very large percentage of Hawbaker’s construction projects are government-funded public works projects requiring compliance with state and/or federal prevailing wage laws. PennDOT is Hawbaker’s largest government client.

7. The vast majority (about 95%) of Plaintiff’s work at Hawbaker was on government-funded public works projects.

BACKGROUND AND PREVAILING WAGE LAWS

8. Public works projects funded by \$25,000 or more of state funds are subject to the Pennsylvania Prevailing Wage Act (“PWA”). Public works projects funded by \$2,000 or more of federal funds are subject to the Davis-Bacon Act (“DBA”). The PWA and the DBA are intended to ensure that wages paid to workers on publicly-funded construction projects comport with the wages that prevail in that particular geographical region. The laws ensure a level playing field by requiring that every bidder on a publicly-funded project pay the same wage rates to its workers, as required by a prevailing wage determination. Prevailing wage determinations are

issued by the United States Department of Labor or the Pennsylvania Department of Labor & Industry depending on whether the project is subject to federal or state prevailing wage requirements. Contractors bidding on public works projects are notified in the Request for Proposal that the project is subject to prevailing wage law requirements.

9. When a contractor is awarded a public works project subject to the PWA or the DBA, the contractor agrees that it will pay its workers in accordance with prevailing wage laws. To meet this agreement and get paid for the project, the contractor must submit sworn certified payroll reports to contracting government agencies attesting that the contractor paid its workers on the project in accordance with prevailing wage laws. Thus, contractors on public works projects are required to use a portion of the moneys received on the contract to pay their workers the applicable prevailing wage.

10. Wage determinations specify the different wages a contractor must pay each classification or worker, such as heavy equipment operators, carpenters, laborers, etc., on a given project. Generally, classifications that entail a higher degree of expertise or training have higher wage determination rates. All workers must be paid the applicable wage determination rate for all wages and benefits earned in each classification each week. Each wage determination consists of both an hourly base

rate and an amount allowable as a fringe benefit credit. The hourly base rate is the amount that is paid in wages directly to the workers.

11. The fringe benefit component is intended to offset the employers' total wage obligation by crediting them for the costs incurred in providing benefits to prevailing wage workers in lieu of cash wages. Contractors have three options for paying the fringe benefit component. They may pay the fringe benefit component to the worker entirely in cash wages. They may contribute the full amount of the component into bona fide fringe benefit programs, such as health insurance, retirement plans, or paid time off. Or, they may contribute some combination of cash and contributions to bona fide benefits. The entire fringe benefit component must be used for the sole benefit of the worker who earned the money on the publicly-funded project.

12. There are limitations to the costs a contractor may assess to prevailing wage fringe benefit funds. For instance, contractors may not use prevailing wage fringe benefit funds to cover internal administrative fees, and the amount of fringe benefit money contributed into a bona fide fringe benefit program must be reasonably anticipated to cover the actual cost of the benefit. Prevailing wage fringe benefit money cannot be used to fund benefits for anyone other than the individual worker who earned the money.

13. Both the PWA and the DBA require employers to annualize fringe benefit credits taken for contributions to employee benefits, to ensure that the employers are only offsetting their prevailing wage obligations by the proportion of contributions actually attributable to time the employees spend on public works projects. Thus, an employer may only claim a fringe benefit credit for the actual hourly rate of contributions for all hours worked in a year by each worker on both prevailing wage and non-prevailing wage work. So, if an employee worked 1,500 hours on prevailing wage jobs and 500 hours on jobs not covered by the PWA or the DBA during the year, an employer's contribution of \$2,000 to a particular employee's pension fund would only be creditable for \$1,500, or \$1.00 per hour, as a fringe benefit under the prevailing wage laws.

14. Every week, contractors working on public works projects must submit certified payrolls, which are sworn certifications attesting that wages and fringe benefits were paid in accordance with prevailing wage laws, to the contracting government entity for every public works project as part of their application for payment.

DEFENDANT'S REPRESENTATIONS TO HOURLY EMPLOYEES

15. Defendant's Employee Manual contained multiple representations and promises about employee benefits:

1.2 Benefits: Our comprehensive benefits package for regular full-time employees includes: basic group life and accident death and

dismemberment insurance for each employee, their spouse and their unmarried children; additional group life insurance of 15% of previous year's earnings up to \$100,000; short-term disability insurance for all employees; long-term disability insurance for exempt employees; year-round health and vision insurance; prescription drug benefits, and voluntary dental insurance; profit sharing plan and 401K traditional and 401K Roth plans with employer match; employee assistance program (EA), education assistance program and paid time off package, including holiday pay and bereavement pay.

16. More particularly, for publicly-funded projects, Defendant represented and promised that each employee would be paid in cash for any difference between the cost attributable for associated fringe benefits and the requirements of the prevailing wage laws, including PWA and DBA:

For employees working on public sector construction jobs funded using Federal dollars, GOH [Defendant] complies with Davis-Bacon Act requirements by providing each employee working on public sector contracts health care and retirement benefits, comparable to, or exceeding, the requirements of Davis-Bacon. If the fringe requirement for a given year under the Davis-Bacon regulations is more than the value of the Company's benefits, the difference is paid in cash to the employee. In other words, the employee never receives a fringe lower than the law requires.

17. In Section 1.12 of the Employee Manual, Defendant represented that the health and welfare and pension fringes it provided "through our group benefit and profit sharing plans" were compliant with Prevailing Wage Law and thus equivalent to the cash difference between the hourly wages paid and the applicable hourly prevailing wage: "Also, on prevailing wage projects, employees will not

receive health and welfare and pension fringes in cash, since our company provides this through our group benefit and profit sharing plans.”

18. The Employee Manual further represented, in Section 1.0.1, that to the extent the company’s policies conflicted with any contract entered into by the company, the terms of the contract would prevail: “To the extent these policies conflict with any contract entered into by GOH, the terms of the contract prevail.”

19. In this respect, the PWA (and the DBA) specifies that every contract for public work must contain a provision that the workers will be paid the minimum prevailing wages on the project. 43 P.S. § 165. Of necessity, GOH’s representations, written policies, promises and agreements with its employees incorporate by reference all of the agency promises to pay the prevailing wage to prevailing wage workers and the workers are, at a minimum, the intended third party beneficiaries of the promises in the public agency contracts, as set forth in the Employee Manual and elsewhere.

DEFENDANT’S CLANDESTINE SCHEME TO UNDERPAY WORKERS

20. Hawbaker reported how it claimed to be paying its prevailing wage workers by creating and submitting false and misleading fringe benefit letters to each contracting government agency for each project. Those letters listed each job classification for a particular project and a representation as to how workers in each classification would be paid. Such letter would list a “Base Rate,” which is the

hourly rate workers would receive in the paychecks. For the fringe benefit component, such letters included the following columns: “Health & Welfare,” “Cash Pd In addition to Health,” “Pension,” and “Total Fringes.” The fringe benefit letters submitted by GOH during the Class Period (defined below) all listed the amount of cash paid in addition to health as zero (0). The letters listed the same health and welfare cost for all job classifications on the project. The letters listed the amount for pension that varied by job classification.

21. Hawbaker payroll and accounting employees have explained how GOH calculated the amounts listed on the fringe benefit letters and how those amounts differed from what was recorded the company’s payroll and accounting system. Wage determinations list the total hourly cash equivalent of fringe benefits due to workers in each job classification. In its payroll and accounting system, GOH attributed 50% of the total fringe amount to health and welfare and 50% to pension. In the fringe benefit letter, GOH reported that it was allocating 50% of the fringe amount listed in the wage determination to pension.

22. The health and welfare amount reported in the fringe benefit letters, however, bore no relation to the fringe benefit amount listed on the wage determination. Instead, GOH concocted a grossly exaggerated health and welfare hourly credit by including inflated health insurance costs and nonqualifying expenses in its health and welfare credit calculation. The figure GOH reported in

the fringe benefit letter under “Total Fringes” was the sum of the inflated hourly health and welfare rate and the hourly pension rate. The pension amount listed on the fringe benefit letter per employee per hour was put into one big pot and then used to fund all employees’, executives’, and owners’ pension accounts.

23. What GOH reported on the fringe benefit letters never reflected how GOH was actually using the prevailing wage workers’ money. While GOH boasted that it provided great employee benefits and used that supposed fact as a recruiting tool, in actuality, GOH was stealing its prevailing wage workers’ pension and health and welfare money. GOH used its prevailing wage workers’ fringe benefit funds to lower its costs, thereby helping GOH to win more government bids, and increasing the company’s reported profits.

24. Forensic accountants retained by the Pennsylvania Office of the Attorney General (“OAG”) reviewed GOH’s fringe benefit contributions and found that between 2015 and 2018, GOH stole just under \$20.7 million of prevailing wage workers’ fringe benefit money:

<u>Year</u>	<u>Pension Underfunding</u>	<u>H&W Underfunding</u>	<u>Total</u>	<u>Net Combined Underfunding</u>
2015	\$3,454,303	\$426,430	\$3,880,733	\$3,875,246
2016	\$3,858,623	\$2,063,459	\$5,922,082	\$5,916,948
2017	\$3,848,721	\$1,583,202	\$5,431,923	\$5,406,300
2018	\$4,330,141	\$1,233,866	\$5,564,007	\$5,497,959
Total	\$15,491,788	\$5,306,957	\$21,651,605	\$20,696,453

25. Both the PWA and the DBA allow employers to use prevailing wage fringe benefit money to fund retirement contributions. As with all prevailing wage fringe money, the contributions must go into the individual retirement account of the worker who earned the money. However, GOH used its prevailing wage workers' contributions to fund all GOH pension contributions for all employees, including hundreds of non-prevailing wage employees.

26. Hawbaker's retirement benefit program has two components: a profit sharing component and an elective contribution 401(k) component. GOH represented to its employees that the profit sharing program was designed to reward eligible employees and that contributions were funded by the company. While GOH claimed it was funding the profit sharing plan, it was actually using fringe benefit moneys from the prevailing wage workers' wages to foot the bill. Moreover, not all employees were eligible to receive profit sharing contributions – to receive them, an employee must have worked a minimum number of hours and be employed on the last day of the calendar year.

27. Prior to 2019, GOH's pension plan did not provide for immediate vesting. As explained above, GOH was required to annualize prevailing wage pension contributions because its plan did not provide for immediate participation and essentially immediate vesting until 2019. However, GOH failed to do so.

28. On the fringe benefit letters submitted to contracting government agencies, GOH claimed it was contributing as much as \$15.12 per hour into prevailing wage workers' 401(k) accounts, which, according to law, must be made to workers' accounts no less frequently than quarterly. In its payroll and accounting system, GOH allocated half of the total fringe amount listed on the wage determination toward retirement accounts. However, instead of paying that money over to the retirement account owned by the worker who earned the money (including Plaintiff King, herein), GOH transferred that money into one big, unallocated account. The money sat in that unallocated account throughout the year. Just prior to the end of the first quarter of the following year, that pot of prevailing wage workers' money was spread out across all GOH employees', executives', and owners' retirement accounts.

29. The forensic accountant retained by the OAG calculated the misappropriation of mandatory employer contributions for GOH prevailing wage workers by year as follows:

<u>Year</u>	<u>Pension Underfunding</u>
2015	\$3,454,303
2016	\$3,858,623
2017	\$3,848,721
2018	\$4,330,141
Total	\$15,491,788

30. Instead of putting all of the prevailing wage workers' retirement benefit funds into the account of the worker who actually earned it, GOH stole that money and used it to pay for all GOH employees', executives', and owners' retirement benefits. As a result, the company's prevailing wage workers (including Plaintiff) have been left with, and continue to be left with, vastly short-changed 401(k) accounts. Further, as a result of the clandestine theft, the prevailing wage workers were vastly short-changed on the wages they were actually paid, as those cash wages were lowered due to the false representation of fringe benefit amounts that were not actually paid to Plaintiff and similarly situated employees.

31. Both the PWA and the DBA also permit contractors to allocate prevailing wage fringe benefit funds to bona fide health and welfare benefits such as health insurance, life insurance, disability insurance and paid time off. Contribution amounts may only be used to pay for benefits for the prevailing wage worker who

earned the money and must be reasonably anticipated to cover the cost of that worker's benefits.

32. Since GOH was claiming the full fringe benefit credit for all prevailing wage workers per hour, it was obligated to provide that amount in fringe benefits to those workers. In reality, GOH was only paying a fraction of the required amount in the form of health and welfare benefits for prevailing wage workers and was stealing the rest to pay for the health and welfare benefits of all of the remaining non-prevailing wage employees and executives at the company. GOH disguised this theft by reporting to government agencies that it was paying well in excess of what was required by law, using an hourly health and welfare figure that was based on grossly inflated costs and nonqualifying expenses.

33. Prior to 2019, GOH accounting employees conducted a so-called "Benefits Analysis" annually to determine the hourly credit the company would take for providing health and welfare benefits to employees. But many of the costs GOH included in this calculation were either grossly inflated or were not allowable costs. GOH also failed to employ an appropriate annualization calculation.

34. Based on these false numbers, GOH reported the hourly cost of its health and welfare benefits to be between \$14 and \$19, depending on the year. By claiming these inflated credits when submitting fringe benefit letters and certified payroll records to public agencies, GOH obscured the reality: the actual cost of

providing health and welfare benefits to employees ranged from \$4 to \$7 per hour, and was heavily subsidized by funds stolen from prevailing wage workers, including Plaintiff.

35. GOH operates a self-funded health insurance plan. This means that GOH pays health insurance claims itself instead of paying insurance premiums to an insurance company that would then be responsible for paying claims. Between 2015 and 2018, GOH contracted with a third-party administrator, Cigna, to administer its health insurance plan. Beginning in 2018, GOH contracted with Aetna to serve as a third-party administrator.

36. By contracting with a third-party administrator, like Cigna or Aetna, companies with self-funded health insurance plans receive the benefit of the third-party administrator's network of participating providers. Participating providers agree to accept a set payment, which is usually much less than the provider's typical fee, as full payment. Therefore, the amount the company pays out in claims is substantially lower than the amount billed on claims. These agreements vastly lower self-funded insurance plans' costs.

37. When calculating the hourly cost of providing health benefits, GOH used the total amount of claims considered, instead of what it actually paid out, in its Benefits Analysis calculation. By using the total claims considered amount instead of the claims actually paid amount, GOH took credit not only for millions of

dollars in contractual write-offs that were never paid by anyone, but also for money paid by the prevailing wage workers and other employees in the form of deductibles, copays and employee payroll contributions. Between 2015 and 2018, GOH included over \$50 million in costs it never paid into the health and welfare calculations:

<u>Year</u>	<u>Claims Submitted</u>	<u>Claims Paid</u>	<u>Difference</u>
2015	\$24,723,446	\$12,756,422	-\$11,967,024
2016	\$21,891,122	\$11,065,510	-\$10,825,612
2017	\$27,310,916	\$13,096,921	-\$14,213,995
2018	\$26,647,775	\$12,887,585	-\$13,760,190
Total	100,573,259	49,806,438	-50,766,821

38. GOH also included a number of ineligible expenses in the health and welfare hourly cost calculation. GOH wrongly included the cost of paying the company's own human resources employees in the health and welfare calculation. While the PWA and the DBA allow contractors with self-insured plans to include external administrative costs, like third-party plan administrator's fees, in their health and welfare cost calculation, they are not permitted to include internal administrative costs, including employee wages. GOH included the cost of paying wages for GOH employees who purportedly had some involvement in benefits administration, plus ten percent to cover employer payroll taxes. Between 2015 and

2018, GOH added approximately \$1.8 million in ineligible personnel wages to its health and welfare cost calculation:

<u>Year</u>	<u>GOH Benefits Personnel Wages</u>
2015	\$410,637.81
2016	\$441,778.51
2017	\$488,769.70
2018	\$457,490.57
Total	\$1,798,676.59

39. GOH also included a line item called “Additional Costs that support Plan” in its health and welfare cost calculation. Those additional costs had nothing to do with health and welfare. Instead, GOH added 401(k) match funds into its health and welfare cost calculation. Between 2015 and 2018, GOH lumped over \$3.9million of 401(k) matching funds into its health and welfare calculation:

<u>Year</u>	<u>Additional Costs that Support Plan</u>
2015	\$619,054.00
2016	\$1,015,476.41
2017	\$1,122,595.50
2018	\$1,154,053.70

40. What is more, GOH completely ignored employee health insurance payroll contributions when calculating the health and welfare cost credit. Depending on the health plan option the worker selected, many GOH workers were required to make contributions toward the health plan. But these contributions, totaling over \$10.8 million, were simply ignored by GOH. Between 2015 and 2018, the following employee contributions were deducted from workers' paychecks, but GOH did not apply them as an offset to the company's calculation for health care cost credits:

<u>Year</u>	<u>Employee Contributions</u>
2015	\$3,086,441
2016	\$2,919,411
2017	\$2,494,139
2018	\$2,357,867
Total	\$10,857,858

41. GOH also included the cost of providing all of its employees with paid time off in the health and welfare cost credit calculation. Although some of that money was allocated toward paid time off for prevailing wage workers, GOH failed to annualize that benefit as required by law. Instead of using that total amount for the calculation, GOH was required to use and annualized, per-worker cost based on the amount of paid leave prevailing wage workers actually used in the calculation.

42. Using the actual amount of money GOH paid out in health insurance claims, removing ineligible expenses, and giving workers credit for their own payroll contributions, the actual hourly health and welfare cost GOH was required to report to public agencies was:

<u>Year</u>	<u>GOH H&W Hourly Rate</u>	<u>Actual H&W Hourly Rate</u>	<u>Difference</u>
2015	\$14.65	\$5.03	-\$9.62
2016	\$14.01	\$4.19	-\$9.85
2017	\$17.50	\$5.23	-\$12.27
2018	\$18.65	\$6.67	-\$11.98

43. The OAG's forensic accountant applied the actual health and welfare hourly rate to the hours worked by prevailing wage workers during the Class Period (defined below). The accountant compared the amount of fringe benefit funds actually spent on providing health and welfare benefits to prevailing wage workers to what GOH was required to pay based on the wage determination. Between 2015 and 2018, the total health and welfare underfunding was approximately \$5.3 million:

<u>Year</u>	<u>H&W Underfunding</u>
2015	\$426,430
2016	\$2,063,459
2017	\$1,583,202
2018	\$1,233,866
Total	\$5,306,957

44. This money should have been paid to the prevailing wage workers (including Plaintiff) either as additional pension contributions or in cash.

45. All current and former prevailing wage workers employed by GOH during the period 2015 through 2018 (including Plaintiff) continue to suffer harm from Defendant's clandestine scheme to short and steal the workers' wages and benefits, as all of the retirement plans remain underfunded and the prevailing wage workers all failed to receive all wages earned and owed, as required by law. The prevailing wage workers (including Plaintiff) have also been deprived of the earnings and growth they otherwise should have received had timely payments to their retirement plans been made and timely wage payments been received.

46. All prevailing wage workers of Hawbaker (including Plaintiff) are the intended third party beneficiaries of a tolling agreement entered into by the company and the OAG. Moreover, prior to the filing of felony charges against the company by the OAG, the prevailing wage workers (including Plaintiff) could not have

discovered through reasonable diligence the clandestine scheme and deceit designed, implemented and maintained by Hawbaker.

CLASS ACTION ALLEGATIONS

47. Plaintiff is an individual who, within the applicable period, was employed by Hawbaker as a prevailing wage worker. Plaintiff brings this case as a class action pursuant to Pennsylvania Rules of Civil Procedure 1701, *et seq.*, on behalf of a Class consisting of: “all current and former hourly wage employees who worked on prevailing wage contracts at Hawbaker in the Commonwealth of Pennsylvania during the period September 1, 2015 through December 31, 2018” (the “Class”).

48. Plaintiff believes and therefore avers that there are hundreds if not thousands of current and former Hawbaker employees in the Class. These current and former employees are geographically dispersed throughout the Commonwealth of Pennsylvania and elsewhere. Given this large number and the clandestine, systematic nature of Defendant’s failure to comply with Pennsylvania statutory law and common law, the member of the Class are so numerous that joinder of all members is impractical.

49. Plaintiff’s claims are typical of the claims of the Class members because he was an hourly wage employee who worked predominantly on prevailing wage jobs at Hawbaker during the Class Period who, like the Class members,

sustained damages, and continues to sustain damages, arising out of Defendant's clandestine, systematic scheme to short prevailing wage workers of promised wages and fringe benefits.

50. Plaintiff will fairly and adequately protect the interests of the Class members. Plaintiff has retained counsel competent and experienced in complex, class action litigation

51. Common questions of law or fact exist as to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of law or fact common to Plaintiff and the Class are:

- a. Whether Defendant engaged in a common pattern, scheme, practice or course of conduct that shorted prevailing wage workers of the wages and fringe benefits earned and owed during the Class Period;
- b. Whether Defendant engaged in a common pattern, scheme, practice or course of conduct to breach its contract with Plaintiff and the Class to pay the prevailing wage as promised in the form of actual wages and fringe benefits;
- c. Whether Defendant engaged in a common pattern, scheme, practice or course of conduct to violate the Pennsylvania Wage Payment and

Collection Law by failing timely to pay all wages and benefits earned and owed during the Class Period to Plaintiff and the Class members;

- d. Whether Plaintiff and the Class members are intended third party beneficiaries of the tolling agreement entered into between Defendant and the OAG;
- e. Whether Defendant failed to keep true and accurate records for all hours worked by, and all wages and benefits owed to, Plaintiff and the Class members in violation of Pennsylvania and federal law;
- f. Whether Plaintiff and the Class members continue to suffer harm and damages as a result of Defendant's violations of statutory and common law;
- g. Whether Plaintiff and the Class have suffered damages and the measure thereof; and
- h. Whether Defendant acted willfully in failing to timely pay all wages and benefits earned and owed to Plaintiff and the Class as required by law.

52. A class action will provide for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous

individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action. The criminal charges brought by the OAG are unlikely to achieve a full and complete recovery of all Class member damages, including liquidated damages, interest and lost earnings arising from violations of the Wage Payment and Collection Law and the common law. The Class is readily identifiable from the Defendant's records.

53. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants.

54. Furthermore, the amounts at stake for many of the Class members, while substantial, are not great enough to enable them to maintain separate suits against Defendant.

55. Without a class action, Defendant will likely retain the benefit of its wrongdoing, which will result in further and continuing damages to Plaintiff and the Class. Plaintiff envisions no difficulty in the management of this action as a class action.

FIRST CAUSE OF ACTION

(Breach of Contract: Failure to Pay Timely All Wages and Benefits Earned)

56. Under Pennsylvania law, “wages” includes fringe benefits or wage supplements, whether payable by the employer from his funds or from amounts withheld from the employees’ [sic] pay by the employer. 43 P.S. § 260.2a; *Braun v. Wal-Mart Stores, Inc.*, 24 A.3d 875, 897 (Pa. Super. 2011), *aff’d*, 106 A.3d 656 (Pa. 2014), *cert. denied*, 2016 WL 1278628 (U.S. Apr. 2016). Upon hiring and continuing the employment of Plaintiff and Class members, Defendant offered and agreed through its written and oral representations, contracts, policies, promises and procedures that it would pay the prevailing wage to Plaintiff and Class members on all projects with state and federal government agencies covered by the PWA or the DBA. That representation, contract, policy and promise was reflected in both Defendant’s Employee Handbook and in its contracts with government agencies.

57. These representations, contracts, policies and promises were disseminated to Plaintiff and the Class members in a manner to ensure that they were aware of the contents and terms and would reasonably believe them to be an offer of employment pursuant to the terms of the representations, contracts, policies and promises.

58. Plaintiff and the Class accepted Defendant's offer of employment by commencing and/or continuing to work for Defendant after receiving the representations, contracts, policies and promises of Defendant.

59. Plaintiff and the Class justifiably relied upon Defendant's representations, contracts, policies and promises and performed work on the basis of Defendant's representations, contracts, policies and promises, particularly those related to wages and fringe benefits.

60. Defendant breached its contract with Plaintiff and the Class by not paying them timely for all wages and fringe benefits earned, owed and promised on jobs covered by the PWA or the DBA and by failing to pay wages according to Pennsylvania law.

61. More particularly, Defendant designed, implemented and maintained a clandestine scheme to inflate the retirement and health and welfare costs it purportedly was paying for the benefit of prevailing wage workers and failed to timely pay all amounts owed for prevailing wage workers retirement benefits as required by Pennsylvania law.

62. Defendant is liable to Plaintiff and the Class for the damages incurred as a result of Defendant's clandestine scheme and its corresponding breach of contract.

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for judgment against Defendant as follows:

- A. Determining that this action may proceed and be maintained as a class action;
- B. For damages for breach of contract according to proof at trial;
- C. For pre-judgment interest from the earliest date of breach of contract but no later than 30 days after such wages and fringe benefits were earned and due; and
- D. All other relief as this Court may deem just and proper.

SECOND CAUSE OF ACTION

(Continuing Breach of Contract – Misappropriated Retirement Accounts)

63. Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

64. By designing, implementing and maintaining the clandestine scheme to overstate fringe benefit cost credits and underfund the retirement accounts of Plaintiff and the Class, Defendant has committed a continuing breach of contract that has damaged and will continue to damage Plaintiff and the Class.

65. By failing timely to deposit the amounts earned and owed to the retirement accounts of prevailing wage workers, including Plaintiff and the Class, Defendant has deprived and continues to deprive Plaintiff and the Class of interest,

earnings and investment returns that otherwise would have been received in the absence of Defendant's scheme and breach of contract.

66. This misappropriation and underfunding continues to harm the retirement accounts of Plaintiff and the Class and continues to deprive them of interest, earnings and investment returns that they would have and should have received.

67. In the alternative, Defendant was required by the PWA and the DBA to pay in cash wages the difference between its actual fringe benefit costs and the prevailing wage determination associated with each public agency contract covered by the PWA and the DBA. Defendant's failure to timely pay that difference also constitutes and continuing violation and has deprived Plaintiff and the Class of the wages they have earned and are owed.

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for judgment against Defendant as follows:

- A. Determining that this action may proceed and be maintained as a class action;
- B. For damages according to proof at trial;
- C. Awarding Plaintiff and the Class pre-judgment interest from the first date on which Defendant failed to deposit earned and owed retirement benefits into the retirement accounts of the prevailing wage workers;

D. An Order directing Defendant to pay all amounts owed to the retirement accounts of Plaintiff and the Class together with interest at the statutory rate running from the first date of non-payment; and

E. All other relief as this Court may deem just and proper.

THIRD CAUSE OF ACTION

(Violation of the Wage Payment and Collection Law, 43 P.S. § 260.1 *et seq.*)

68. Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

69. The Wage Payment and Collection Law (“WPCL”) (43 P.S. § 260.3) provides, in relevant part: “Every employer shall pay all wages, . . . due to his employes [*sic*] on regular paydays designated in advance by the employer. Overtime wages may be considered as wages earned and payable in the next succeeding pay period.”

70. In addition, the WPCL defines “wages” to include “fringe benefits or wage supplements.” 43 P.S. § 260.2a. These “fringe benefits and wage supplements” must be remitted by the employer “within 10 days after such payments are required to be made to . . . to a trust or pooled fund” retirement account of the employee, or within 10 days after such payments are required to be made directly to the employe [*sic*]” 43 P.S. § 260.3.

71. By its actions alleged above, Defendant violated the provisions of the Wage Payment and Collection Law.

72. Defendant entered into a tolling agreement with the OAG in which Plaintiff and the Class are intended third-party beneficiaries such that the statute of limitations has been tolled on this claim through and including April 8, 2021.

73. In addition, Defendant's clandestine scheme fraudulently concealed this claim from Plaintiff and the Class, and reasonable diligence and investigation would not have allowed Plaintiff or the Class to discover the claim any earlier than April 8, 2021.

74. As a result of the unlawful acts of Defendant, Plaintiff and the Class have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, including interest, liquidated damages, attorney's fees and costs pursuant to 43 P.S. §§ 260.9a and 260.10 of the WPCL.

75. Defendant acted willfully in implementing its clandestine scheme and willfully failed to pay timely all wages and fringe benefits earned by and owed to Plaintiff and the Class.

76. The WPCL expressly contemplates class proceedings for claims of this sort: "Any employe or group of employes, to whom any type of wages is payable may institute actions provided under this act." 43 P.S. § 260.9a(a).

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for judgment against Defendant as follows:

- A. Determining that this action may proceed and be maintained as a class action;
- B. For damages according to proof at trial;
- C. Awarding Plaintiff and the Class wages and pre-judgment interest at the statutory rate from the first date on which Defendant failed to pay earned and owed wages and fringe benefits to the prevailing wage workers as required by law;
- D. Liquidated damages according to proof at trial;
- E. Reasonable attorney fees, expenses and costs of suit; and
- F. All other relief as this Court may deem just and proper.

FOURTH CAUSE OF ACTION

(Restitution)

77. Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

78. Defendant, at all times material to this Class Action Complaint, was aware that Plaintiff and the Class had not been paid wages and fringe benefits as Defendant had promised in representations, policies, and contracts, and as required by law under the PWA and DBA.

79. Defendant, at all times material to this Class Action Complaint, was also aware that Plaintiff and the Class had provided a great deal of labor to Defendant for which Defendant received inflated compensation from public agency contracts that it otherwise should have paid, and had agreed to pay, to the prevailing wage workers but instead had kept for itself.

80. Defendant accepted and appreciated the benefits conferred by Plaintiff and the Class but has never properly paid Plaintiff and the Class for the labor provided.

81. Defendant is liable to Plaintiff and the Class for all amounts improperly withheld from the wages and fringe benefits owed to Plaintiff and the Class.

82. Defendant knew of and appreciated the benefit conferred upon it by the retention of Plaintiff's and the Class's property.

83. Under the circumstances alleged, it would be inequitable for Defendant to continue to retain the property of Plaintiff and the Class, entitling Plaintiff and the Class to the relief set forth below.

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for judgment against Defendant as follows:

A. Determining that this action may proceed and be maintained as a class action;

B. An order imposing a constructive trust upon Defendant to compel GOH to transfer to Plaintiff and the Class members the wages and fringe benefits that have been wrongfully obtained and held by Defendant;

C. Awarding Plaintiff and the Class pre-judgment interest at the statutory rate from the first date on which Defendant failed to pay earned and owed wages and fringe benefits to the prevailing wage workers as required by law;

D. Reasonable attorney fees, expenses and costs of suit; and

E. All other relief as this Court may deem just and proper.

FIFTH CAUSE OF ACTION

(Unjust Enrichment – Quasi Contract)

84. Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

85. By reason of the clandestine scheme set forth above, and having secured the work and efforts of Plaintiff and the Class, Defendant enjoyed reduced over-head and increased profits arising from its public agency contracts. Defendant received compensation from these public agency contracts that should have been paid to the prevailing wage workers, including Plaintiff and the Class. In addition, Defendant was able to underbid other contractors to secure additional public agency contracts as a result of the clandestine scheme.

86. Defendant has enjoyed and continues to enjoy the benefits arising from the clandestine scheme to the detriment of Plaintiff and the Class, and it has retained and continues to retain such benefits contrary to the fundamental principles of justice, equity and good conscience.

87. Plaintiff and the Class provided labor to Defendant based on the representation that Defendant was complying with the PWA and DBA when, in fact, Defendant had developed, implemented and maintained a scheme to thwart and shortchange its lawful obligations.

88. Accordingly, Plaintiff and the Class are entitled to judgment in an amount equal to the benefits unjustly retained by Defendant, including prejudgment interest.

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for judgment against Defendant as follows:

- A. Determining that this action may proceed and be maintained as a class action;
- B. For general damages according to proof at trial;
- C. For special damages according to proof at trial;
- D. Awarding Plaintiff and the Class pre-judgment interest at the statutory rate from the first date on which Defendant failed to pay earned and owed wages and fringe benefits to the prevailing wage workers as required by law;

- E. Reasonable attorney fees, expenses and costs of suit; and
- F. All other relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury for all issues so triable.

Dated: May 5, 2021

Donovan Litigation Group, LLC



Michael D. Donovan
Pa. No. 51895
1885 Swedesford Road
Malvern, PA 19355
(610) 647-6067
mdonovan@donovanlitigationgroup.com

Andrew J. Shubin, Esq.
Pa. No. 63263
Shubin Law Office
333 South Allen Street
State College, PA 16801
(814) 867-3115
shubin@shubinlaw.com

Eric Lechtzin (PA ID # 62096)
Marc H. Edelson (PA ID # 51834)
Edelson Lechtzin LLP
3 Terry Drive, Suite 205
Newtown, PA 18940
Telephone: (215) 867-2399

elechtzin@edelson-law.com
medelson@edelson-law.com

VERIFICATION

I, James C. King, have read the foregoing Class Action Complaint. The statements therein are correct to the best of my personal knowledge, information or belief.

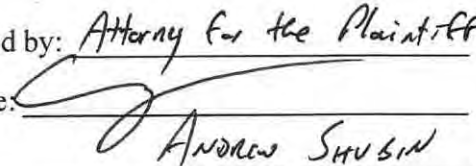
This statement and verification is made subject to the penalties of 18 Pa. C.C. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties

By: James C. King
James C. King

Date: 4-27-21

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Attorney for the Plaintiff
Signature: 
Name: Andrew Shubin
Attorney No. (if applicable): C9263

ATTACHMENT 1

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF:

Magisterial District Number: 49-2-01
MDJ: Hon. Casey M. McClain
Address: 1524 W. College Ave Box11
State College, PA 16801

Telephone: (814)237-4981



POLICE CRIMINAL COMPLAINT
COMMONWEALTH OF PENNSYLVANIA
VS.

DEFENDANT:

(NAME and ADDRESS):

GLENN O. HAWBAKER, INC.
First Name Middle Name Last Name Gen

1952 Waddle Road, State College, PA 16803

NCIC Extradition Code Type

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> 1-Felony Full | <input type="checkbox"/> 5-Felony Pending Extradition | <input type="checkbox"/> C-Misdemeanor Surrounding States | <input type="checkbox"/> Distance: _____ |
| <input type="checkbox"/> 2-Felony Limited | <input type="checkbox"/> 6-Felony Pending Extradition Determ. | <input type="checkbox"/> D-Misdemeanor No Extradition | |
| <input type="checkbox"/> 3-Felony Surrounding States | <input type="checkbox"/> A-Misdemeanor Full | <input type="checkbox"/> E-Misdemeanor Pending Extradition | |
| <input checked="" type="checkbox"/> 4-Felony No Extradition | <input type="checkbox"/> B-Misdemeanor Limited | <input type="checkbox"/> F-Misdemeanor Pending Extradition | |

DEFENDANT IDENTIFICATION INFORMATION

Docket Number CR-84-2021	Date Filed 4/08/2021	OTN/LiveScan Number	Complaint/Incident Number 43-1351	Request Lab Services? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
GENDER <input type="checkbox"/> Male <input type="checkbox"/> Female	DOB / /	POB	Add'l DOB / /	Co-Defendant(s) <input type="checkbox"/>
First Name	Middle Name	Last Name	Gen.	
AKA				
RACE <input type="checkbox"/> White <input type="checkbox"/> Asian <input type="checkbox"/> Black <input type="checkbox"/> Native American <input type="checkbox"/> Unknown				
ETHNICITY <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic				
Hair Color <input type="checkbox"/> GRY (Gray) <input type="checkbox"/> RED (Red/Aubn.) <input type="checkbox"/> SDY (Sandy) <input type="checkbox"/> BLU (Blue) <input type="checkbox"/> PLE (Purple) <input type="checkbox"/> BRO (Brown) <input type="checkbox"/> BLK (Black) <input type="checkbox"/> ONG (Orange) <input type="checkbox"/> WHI (White) <input type="checkbox"/> XXX (Unk./Bald) <input type="checkbox"/> GRN (Green) <input type="checkbox"/> PNK (Pink) <input type="checkbox"/> BLN (Blonde / Strawberry)				
Eye Color <input type="checkbox"/> BLK (Black) <input type="checkbox"/> BLU (Blue) <input type="checkbox"/> BRO (Brown) <input type="checkbox"/> GRN (Green) <input type="checkbox"/> GRY (Gray) <input type="checkbox"/> HAZ (Hazel) <input type="checkbox"/> MAR (Maroon) <input type="checkbox"/> PNK (Pink) <input type="checkbox"/> MUL (Multicolored) <input type="checkbox"/> XXX (Unknown)				
DNA <input type="checkbox"/> YES <input type="checkbox"/> NO	DNA Location			WEIGHT (lbs.)
FBI Number	MNU Number			
Defendant Fingerprinted <input type="checkbox"/> YES <input type="checkbox"/> NO				Ft. HEIGHT In.
Fingerprint Classification:				

DEFENDANT VEHICLE INFORMATION

Plate #	State	Haz mat <input type="checkbox"/>	Registration Sticker (MM/YY) /	Comm'l Veh. Ind. <input type="checkbox"/>	School Veh. <input type="checkbox"/>	Oth. NCIC Veh. Code	Reg. same as Def. <input type="checkbox"/>
VIN	Year	Make	Model	Style	Color		

Office of the attorney for the Commonwealth Approved Disapproved because: _____

(The attorney for the Commonwealth may require that the complaint, arrest warrant affidavit, or both be approved by the attorney for the Commonwealth prior to filing. See Pa.R.Crim.P. 507).

DAG PHILIP M. MCCARTHY
(Name of the attorney for the Commonwealth)

(Signature of the attorney for the Commonwealth)

4/8/2021
(Date)

I, <u>THOMAS J. MOORE II</u> (Name of the Affiant)	<u>437</u> (PSP/MPOETC -Assigned Affiant ID Number & Badge #)
of <u>Pennsylvania Office of Attorney General</u> (Identify Department or Agency Represented and Political Subdivision)	<u>PA0222400</u> (Police Agency ORI Number)
do hereby state: (check appropriate box)	
1. <input checked="" type="checkbox"/> I accuse the above named defendant who lives at the address set forth above <input type="checkbox"/> I accuse the defendant whose name is unknown to me but who is described as _____	
<input type="checkbox"/> I accuse the defendant whose name and popular designation or nickname are unknown to me and whom I have therefore designated as John Doe or Jane Doe with violating the penal laws of the Commonwealth of Pennsylvania at [] <u>1952 Waddle Road, State</u> County, Pa 16803 (Subdivision Code) (Place-Political Subdivision)	
in County	[14] on or about BETWEEN 09/01/2015 THROUGH 12/31/2018 (County Code)



POLICE CRIMINAL COMPLAINT

Docket Number: CR-89-2021	Date Filed: 4/8/21	OTN/LiveScan Number	Complaint/Incident Number 43-1351
Defendant Name:	First: GLENN	Middle: O.	Last: HAWBAKER, INC.

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically. (Set forth a brief summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated. The age of the victim at the time of the offense may be included if known. In addition, social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA.Code §§ 213.1 – 213.7.)

<input checked="" type="checkbox"/> Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____					
<input checked="" type="checkbox"/> Lead?	1	3927	A	of the	18	1	F1		
PennDOT Data (if applicable)	Accident Number	<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone					
Statute Description (include the name of statute or ordinance): THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION OF FUNDS RECEIVED									
Acts of the accused associated with this Offense: In that the above named defendant, on or about/between September 01, 2015 and December 31, 2015, did obtain property upon agreement, or subject to a known legal obligation, to make specified payments or other disposition, whether from such property or its proceeds or from its own property to be reserved in equivalent amount to wit, the defendant failed to remit U.S. Currency in the form of required fringe benefits owed to Glenn O. Hawbaker, Inc. employees working prevailing wage jobs, as required by prevailing wage law, to such employees and did intentionally deal with the property as its own, with the amount involved being in excess of \$500,000, in violation of 18 Pa.C.S. § 3927(a).									

<input type="checkbox"/> Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____					
<input type="checkbox"/> Lead?	2	3927	A	of the	18	1	F1		
PennDOT Data (if applicable)	Accident Number	<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone					
Statute Description (include the name of statute or ordinance): THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION OF FUNDS RECEIVED									
Acts of the accused associated with this Offense: In that the above named defendant, on or about/between January 01, 2016 and December 31, 2016, did obtain property upon agreement, or subject to a known legal obligation, to make specified payments or other disposition, whether from such property or its proceeds or from its own property to be reserved in equivalent amount to wit, the defendant failed to remit U.S. Currency in the form of required fringe benefits owed to Glenn O. Hawbaker, Inc. employees working prevailing wage jobs, as required by prevailing wage law, to such employees and did intentionally deal with the property as its own, with the amount involved being in excess of \$500,000, in violation of 18 Pa.C.S. § 3927(a).									

<input type="checkbox"/> Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____					
<input type="checkbox"/> Lead?	3	3927	A	of the	18	1	F1		
PennDOT Data (if applicable)	Accident Number	<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone					
Statute Description (include the name of statute or ordinance): THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION OF FUNDS RECEIVED									
Acts of the accused associated with this Offense: In that the above named defendant, on or about/between January 01, 2017 and December 31, 2017, did obtain property upon agreement, or subject to a known legal obligation, to make specified payments or other disposition, whether from such property or its proceeds or from its own property to be reserved in equivalent amount to wit, the defendant failed to remit U.S. Currency in the form of required fringe benefits owed to Glenn O. Hawbaker, Inc. employees working prevailing wage jobs, as required by prevailing wage law, to such employees and did intentionally deal with the property as its own, with the amount involved being in excess of \$500,000, in violation of 18 Pa.C.S. § 3927(a).									



POLICE CRIMINAL COMPLAINT

Docket Number: CR-89-21	Date Filed: 4/8/21	OTN/LiveScan Number	Complaint/Incident Number 43-1351
Defendant Name:	First: GLENN	Middle: O.	Last: HAWBAKER, INC.

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically. (Set forth a *brief* summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated. The age of the victim at the time of the offense may be included if known. In addition, social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA.Code §§ 213.1 – 213.7.)

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____					
<input type="checkbox"/>	4	3927	A	of the	18	1	F1		
Lead?	Offense #	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code	
PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone			
Statute Description (include the name of statute or ordinance): THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION OF FUNDS RECEIVED									
Acts of the accused associated with this Offense: In that the above named defendant, on or about/between January 01, 2018 and December 31, 2018, did obtain property upon agreement, or subject to a known legal obligation, to make specified payments or other disposition, whether from such property or its proceeds or from its own property to be reserved in equivalent amount to wit, the defendant failed to remit U.S. Currency in the form of required fringe benefits owed to Glenn O. Hawbaker, Inc. employees working prevailing wage jobs, as required by prevailing wage law, to such employees and did intentionally deal with the property as its own, with the amount involved being in excess of \$500,000, in violation of 18 Pa.C.S. § 3927(a).									

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____					
<input type="checkbox"/>				of the					
Lead?	Offense #	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code	
PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone			
Statute Description (include the name of statute or ordinance):									
Acts of the accused associated with this Offense:									

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____					
<input type="checkbox"/>				of the					
Lead?	Offense #	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code	
PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone			
Statute Description (include the name of statute or ordinance):									
Acts of the accused associated with this Offense:									



POLICE CRIMINAL COMPLAINT

Docket Number: CR-89-21	Date Filed: 4/8/21	OTN/LiveScan Number	Complaint/Incident Number 43-1351
Defendant Name:	First: GLENN	Middle: O.	Last: HAWBAKER, INC.

- I ask that a warrant of arrest or a summons be issued and that the defendant be required to answer the charges I have made.
- I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn falsification to authorities.
- This complaint consists of the preceding page(s) numbered 1 through .
- I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

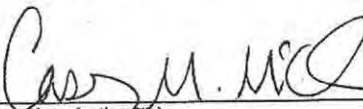
The acts committed by the accused, as listed and hereafter, were against the peace and dignity of the Commonwealth of Pennsylvania and were contrary to the Act(s) of the Assembly, or in violation of the statutes cited.
(Before a warrant of arrest can be issued, an affidavit of probable cause must be completed, sworn to before the issuing authority, and attached.)

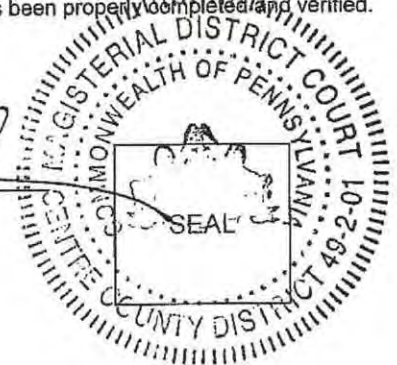
(Date)

 4/8/21
 (Signature of Affiant)

AND NOW, on this date April 8, 2021 I certify that the complaint has been properly completed and verified.
 An affidavit of probable cause must be completed before a warrant can be issued.

49-2-01
 (Magisterial District Court Number)


 (Issuing Authority)





POLICE CRIMINAL COMPLAINT

Docket Number: CR-89-21	Date Filed: 4/18/21	OTN/LiveScan Number	Complaint/Incident Number 43-1351
Defendant Name:	First: GLENN	Middle: O.	Last: HAWBAKER, INC.

AFFIDAVIT of PROBABLE CAUSE

See attached Affidavit of Probable Cause.

I, THOMAS J. MOORE II, BEING DULY SWORN ACCORDING TO THE LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

I CERTIFY THAT THIS FILING COMPLIES WITH THE PROVISIONS OF THE CASE RECORDS PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA THAT REQUIRE FILING CONFIDENTIAL INFORMATION AND DOCUMENTS DIFFERENTLY THAT NON-CONFIDENTIAL INFORMATION AND DOCUMENTS.

 04/18/2021
(Signature of Affiant)

Sworn to me and subscribed before me this 8th day of April, 2021
Date Cass M. McC, Magisterial District Judge

My commission expires first Monday of January, 2024



AFFIDAVIT OF PROBABLE CAUSE

Your affiant, Supervisory Narcotics Agent Thomas J. Moore II, Pennsylvania Office of Attorney General, Bureau of Narcotics Investigation and Drug Control, submits there is probable cause to charge Glenn O. Hawbaker, Inc. for theft by failure to make required disposition of funds received.

Affiant's Background

Your Affiant, Thomas J. Moore II is a narcotics agent employed by the Pennsylvania Office of Attorney General, Bureau of Narcotics Investigation and Drug Control. I am presently assigned to the Strategic Response Team in Harrisburg.

Prior to my employment with the Pennsylvania Office of Attorney General, I was employed as a patrolman with the Cresson Borough Police Department from 1998 to 2001. I served as the Officer in Charge of the Cresson Borough Police Department between 2001 and 2004.

From 2001 through 2008, I was a member of the Cambria County Drug Task Force and worked as an undercover officer and a case officer. From 2004 to 2008, I was also employed by the Cambria County District Attorney's Office as a detective.

In my law enforcement career, I have investigated over one thousand felony cases, including homicides, assaults, armed robberies, sex crimes, child abuse, elder abuse, human trafficking, domestic violence and numerous other felony and non-felony crimes. I have made hundreds of arrests, testified at a multitude of trials and have attended a myriad of trainings on subjects covering all aspects of criminal investigations.

As a member of the Office of Attorney General, Bureau of Narcotics Investigation and Drug Control, I am empowered by law to conduct investigations of, and to make arrests for,

offenses involving violations of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act and certain enumerated offenses of the Pennsylvania Crimes Code.

Background

Glenn O. Hawbaker, Inc. ("GOH") is a family-owned, heavy construction contractor headquartered in State College, Centre County. GOH was founded in 1952 by Glenn and Thelma Hawbaker as a small excavation company. Over the years, the company has vastly expanded to include heavy highway construction, asphalt and aggregate materials production, and quarrying operations. Since 1990, GOH has completed numerous bridge construction projects throughout the Commonwealth for the Pennsylvania Department of Transportation ("PennDOT"), counties, and municipalities. GOH has a number of facilities throughout the Commonwealth and in New York and Ohio.

Since 1978, Daniel Hawbaker, one of Glenn and Thelma Hawbaker's sons, has been the president of GOH. Daniel's sons, D. Michael ("Michael") and Patrick Hawbaker, serve GOH as vice presidents. GOH is currently owned by Daniel, Michael, and Patrick Hawbaker (collectively "the Hawbakers") and family trusts established for the benefit of the Hawbakers.

At any given time, GOH employs up to approximately 1,200 employees, including roughly 100 employees who work at the company's corporate headquarters, located at 1952 Waddle Road, State College, and approximately 600 to 800 employees who work at construction sites throughout the Commonwealth and surrounding states on both public and private projects. A large percentage of the company's construction projects are government-funded public works projects requiring compliance with state and/or federal prevailing wage laws. PennDOT is GOH's largest government client.

Prevailing Wage Laws

Public works projects funded by \$2,000 or more of federal funds are subject to the Davis-Bacon Act ("DBA").¹ The DBA is intended to ensure that wages paid to workers on federally funded construction projects comport with the wages that prevail in that particular geographical region. Public works projects funded by \$25,000 or more of state funds are subject to the Prevailing Wage Act ("PWA"), Pennsylvania's version of the DBA. The laws create a level playing field by ensuring that every bidder on a project that receives federal or state funds pays the same wage rates, as required by a prevailing wage determination. Prevailing wage determinations are issued by the United States Department of Labor or Pennsylvania's Department of Labor & Industry—depending on whether the project is subject to federal or state prevailing wage laws—on an individual project basis. Contractors bidding on public works projects are notified in the Request for Proposal that the project is subject to prevailing wage law requirements.

When a contractor is selected to complete a public works project subject to the DBA or PWA, the contractor agrees that it will pay its workers in accordance with prevailing wage laws. It is fulfillment of this agreement, as verified by the submission of sworn certified payroll reports to contracting government agencies, along with successful completion of other project requirements, that entitles the contractor to be paid for the job. Thus, contractors on public works projects are required to use a portion of moneys received to pay their workers the applicable prevailing wage.

¹ These projects may also be subject to the Davis-Bacon Related Acts. The Related Acts are federal statutes which authorize federal assistance in the form of contributions, grants, loans, insurance, or guarantees for programs such as the construction of hospitals, housing complexes, sewage treatment plants, highways, and airports. Included in the language of these statutes are references to the DBA labor standards provisions and the requirement that laborers and mechanics be paid prevailing wage rates.

Wage determinations specify the different wages that a contractor must pay each classification of worker, such as equipment operators, carpenters, laborers, etc., on a project. Generally, classifications that entail a higher degree of expertise or training have higher wage determination rates. All workers must be paid the applicable wage determination rate for all wages and benefits earned in each classification each week. Each wage determination consists of both an hourly base rate and an amount allowable as a fringe benefit credit. The hourly base rate is the amount that is paid in wages directly to workers.

The fringe benefit component is intended to offset employers' total wage obligation by crediting them for costs incurred for providing benefits to prevailing wage workers in lieu of wages. Contractors have three options for paying the fringe benefit component. They may pay the fringe benefit component to the worker entirely in wages; contribute the full amount into bona fide fringe benefit programs, such as health insurance, retirement plans, or paid time off; or use some combination of cash and contributions to bona fide benefits. The entire fringe benefit component must be used for the sole benefit of the worker who earned the money.

There are limitations to the costs that a contractor may assess to prevailing wage fringe benefit funds. For instance, contractors may not use prevailing wage fringe benefit funds to cover internal administrative fees, and the amount of fringe benefit money contributed into a bona fide fringe benefit program must be reasonably anticipated to cover the actual cost of the benefit. Prevailing wage fringe benefit money cannot be used to fund benefits for anyone other than the individual worker who earned the money.

Both the DBA and PWA require employers to annualize fringe benefit credits taken for contributions to employee benefits. Employers are required to annualize fringe benefit credits to ensure that they are only offsetting their prevailing wage obligations by the proportion of

contributions actually attributable to time employees spend on public works projects. Therefore, an employer may only claim a fringe benefit credit for the actual hourly rate of contributions for all hours worked in a year by each worker on both prevailing wage and non-prevailing wage work. For example, presume that an employer contributes \$2,000 to a particular employee's pension fund in a calendar year. If that employee worked 1,500 hours on prevailing wage jobs and 500 hours on jobs not covered by the DBA or PWA, only \$1,500.00, or \$1.00 per hour, could be creditable as a fringe benefit. However, employers are not required to annualize contributions to employees' retirement accounts under a plan that provides for immediate participation and "essentially immediate vesting."²

Every week, contractors working on public works projects must submit certified payrolls, which are sworn certifications attesting that wages and fringe benefits were paid in accordance with prevailing wage laws, to the contracting government entity for every public works project as part of their application for payment.

GOH's Prevailing Wage Practices

As explained below, GOH stole fringe benefit funds that were supposed to go into prevailing wage workers' pensions and to pay for prevailing wage workers' health and welfare benefits.

GOH reported how it claimed to be paying its prevailing wage workers by creating a fringe benefit letter that was submitted to the contracting government agency for each project.³ Those letters listed each job classification for a particular project and a representation as to how workers

² The U.S. Department of Labor defines "essentially immediate vesting" to mean 100% vesting after an employee works no more than 500 hours.

³ A sample Fringe Benefit Letter is attached as Attachment A.

in each classification would be paid. It listed a "Base Rate," which is the hourly rate workers would receive in their paychecks. For the fringe benefit component, the letter included the following columns: "Health & Welfare," "Cash Pd In addition (sic) to Health," "Pension,"⁴ and "Total Fringes." Every fringe benefit letter reviewed during the course of this investigation listed the amount of cash paid in addition to health as zero. The letters listed the same health and welfare cost for all job classifications on the project. The pension amount listed varied by job classification.

GOH payroll and accounting employees have explained how GOH calculated the amounts listed on the fringe benefit letters and how those amounts differed from what was recorded in the company's payroll and accounting system. Wage determinations list the total hourly cash equivalent of fringe benefits due to workers in each job classification. In its payroll and accounting system, GOH attributed 50% of the total fringe amount to pension and 50% to health and welfare. In the fringe benefit letter, GOH reported that it was allocating 50% of the fringe amount listed in the wage determination to pension.

The health and welfare amount reported in the fringe benefit letter, however, bore no relation to the fringe benefit amount listed on the wage determination. Instead, GOH concocted a grossly exaggerated health and welfare hourly credit by including inflated health insurance costs and nonqualifying expenses in its health and welfare credit calculation. The figure GOH reported in the fringe benefit letter under "Total Fringes" was the sum of the inflated hourly health and welfare rate and the hourly pension rate. The pension amount listed on the fringe benefit letter per

⁴ GOH maintains a defined contribution retirement plan, but the company refers to the retirement benefit it offers as a "pension." Although the term "pension" is generally understood to refer to a defined *benefit* plan—not a defined *contribution* plan—it is used here for the sake of continuity.

employee per hour was put into one big pot and then used to fund all employees', executives', and owners' pension accounts.

As explained below, what GOH reported on the fringe benefit letters never reflected how GOH was actually using the prevailing wage workers' money. While GOH boasted that it provided great employee benefits and used that supposed "fact" as a recruiting tool, in actuality, GOH was stealing its prevailing wage workers' pension and health and welfare money. GOH used its prevailing wage workers' fringe benefit funds to lower its costs, thereby helping GOH to win more government bids, and increase the company's profits.

Forensic accountants from Stout, a forensic accounting firm retained by the Office of Attorney General ("OAG"), have reviewed GOH's fringe benefit contributions and found that between 2015 and 2018, GOH stole just under \$20.7 million of prevailing wage workers' fringe benefit money:⁵

<u>Year</u>	<u>Pension Underfunding</u>	<u>H&W Underfunding</u>	<u>Total</u>	<u>Net Combined Underfunding</u>
2015	\$3,454,303	\$426,430	\$3,880,733	\$3,875,246
2016	\$3,858,623	\$2,063,459	\$5,922,082	\$5,916,948
2017	\$3,848,721	\$1,583,202	\$5,431,923	\$5,406,300
2018	\$4,330,141	\$1,233,866	\$5,564,007	\$5,497,959
Total	\$15,491,788	\$5,306,957	\$21,651,605	\$20,696,453

Theft of Pension Money

Both the DBA and the PWA allow employers to use prevailing wage fringe benefit money to fund retirement contributions. As with all prevailing wage fringe money, the contributions must go into the individual retirement account of the worker who earned the money. However, GOH

⁵ The theft scheme began over a decade before 2015. However, these charges are based on conduct beginning on September 1, 2015 due to the applicable statute of limitations, which was extended based on a tolling agreement entered into between the OAG and GOH.

used its prevailing wage workers' contributions to fund all GOH pension contributions for all employees, including hundreds of non-prevailing wage employees.

GOH's retirement benefit program has two components: a profit sharing component and an elective contribution 401(k) component.⁶ GOH represented to its employees that the profit sharing program was designed to reward eligible employees and that contributions were funded by the company. While GOH claimed that it was funding the profit sharing plan, it was actually using fringe benefit moneys from the prevailing wage workers' wages to foot the bill. Further, not all employees were eligible to receive profit sharing contributions; in order to receive them, an employee must have worked a minimum number of hours⁷ and be employed on the last day of the calendar year.

Prior to 2019, GOH's pension plan did not provide for immediate vesting. As explained above, GOH was required to annualize prevailing wage pension contributions because its plan did not provide for immediate participation and essentially immediate vesting until 2019. However, GOH failed to do so.

On fringe benefit letters submitted to contracting government agencies, GOH claimed that it was contributing as much as \$15.12 per hour into prevailing wage workers' pension accounts, which, according to law, must be made to workers' accounts no less frequently than quarterly. In its payroll and accounting system, GOH allocated half of the total fringe amount listed on the wage determination toward pensions. However, instead of paying that money over to the retirement account owned by the worker who earned the money, GOH transferred that money into one big, unallocated account. The money sat in that big pot throughout the year. Just prior to the end of

⁶ Employees who made elective contributions were eligible to receive matching contributions.

⁷ This minimum number varied as the plan was amended over the course of the years examined in this investigation.

the first quarter of the following year, that pot of prevailing wage workers' money was spread out across all GOH employees', executives', and owners' retirement accounts.

Stout has reviewed GOH pension contributions and determined the amount of pension money stolen from prevailing wage workers. Using information obtained from GOH payroll and accounting personnel, reports from the company's payroll and accounting system, and data from third-party fund administrators, Stout found that the difference between what GOH was legally required to pay into prevailing wage workers' pension accounts and what was actually contributed between 2015 and 2018 was just under \$15.5 million. Stout calculated the pension underfunding by year as follows:⁸

<u>Year</u>	<u>Pension Underfunding</u>
2015	\$3,454,303
2016	\$3,858,623
2017	\$3,848,721
2018	\$4,330,141
Total	\$15,491,788

Instead of putting all of the prevailing wage workers' pension funds into the account of the worker who actually earned it, GOH stole that money and used it to pay for all GOH employees', executives', and owners' pensions. As a result of this theft, the company's prevailing wage workers have been left with vastly short-changed pension accounts.

Theft of Health and Welfare Money

Both the DBA and PWA permit contractors to allocate prevailing wage fringe benefit funds to bona fide health and welfare benefits such as health insurance, life insurance, disability insurance, and paid time off. Contribution amounts may only be used to pay for benefits for the

⁸ The 2015 pension underfunding amount was not prorated because the final distribution of 2015 pension funds into all employees' individual retirement accounts was not completed until the first quarter of 2016.

prevailing wage worker who earned the money and must be reasonably anticipated to cover the cost of that worker's benefits.

GOH provides various health and welfare benefits to its employees, including medical, vision, prescription, short-term disability, and life insurances. The company also provides paid time off and an employee assistance plan.

Since GOH was claiming a full fringe benefit credit for all prevailing wage workers per hour, it was obliged to provide that amount in fringe benefits to those workers. In reality, GOH was only paying a fraction of the required amount in the form of health and welfare benefits for prevailing wage workers and was stealing the rest to pay for everyone else's health and welfare benefits. GOH disguised the theft by reporting to government agencies that it was paying well in excess of what was required by law, using an hourly health and welfare cost based on grossly inflated costs and nonqualifying expenses.

Prior to 2019, GOH accounting employees conducted a so-called "Benefits Analysis" annually to determine the hourly credit the company would take for providing health and welfare benefits to employees.⁹ This analysis lists what GOH claims were the costs of providing health and welfare benefits in the previous year. The sum of those costs was inserted into a formula used to determine what GOH claimed to be the hourly cost of providing health and welfare benefits to its employees. However, this investigation has revealed that many of the costs GOH included in this calculation were either grossly inflated or were not allowable costs, and that GOH failed to employ an appropriate annualization calculation.

Based on these false numbers, GOH reported the hourly cost of its health and welfare benefits to be between approximately \$14 and \$19, depending on the year. By claiming these

⁹ Benefits Analysis for the years 2015-2018, based on costs for the prior year, are attached as Attachments B-E.

exorbitant credits when submitting fringe benefit letters and certified payroll records to public agencies, GOH obscured the reality: the actual cost of providing health and welfare benefits to employees ranged from \$4 to \$7 per hour, and was heavily subsidized by funds stolen from prevailing wage workers.

GOH operates a self-funded health insurance plan. This means that GOH pays health insurance claims itself instead of paying insurance premiums to an insurance company that would then be responsible for paying claims.¹⁰ GOH purchased re-insurance that would cover the cost of any large, unanticipated claims, thereby limiting the company's potential costs. Between 2015 and 2018, GOH contracted with a third-party administrator, Cigna, to administer its health insurance plan. Beginning in 2018, GOH contracted with Aetna to serve as a third-party administrator. Large employers often choose to self-insure because the cost of paying claims is usually much lower than paying premiums for all employees.

By contracting with a third-party administrator, like Cigna or Aetna, companies with self-funded health insurance plans receive the benefit of the third-party administrator's network of participating providers. Participating providers agree to accept a set payment, which is usually much less than the provider's typical fee, as full payment. Therefore, the amount the company pays out in claims is substantially lower than the amount billed on claims. These agreements vastly lower self-funded insurance plans' costs.

When calculating the hourly cost of providing medical benefits, GOH used the total amount of claims considered—rather than what it actually paid out—in its Benefits Analysis calculation. Use of the total claims considered amount rather than the claims actually paid means that GOH took credit for not only millions of dollars in contractual write-offs that were never paid by anyone, but

¹⁰ GOH's self-funded plan is a voluntary employee beneficiary association ("VEBA") plan, where the company and employees make contributions into a trust fund from which claims are paid.

also for money paid by the prevailing wage workers and other employees in the form of deductibles, copays, and employee payroll contributions. Between 2015 and 2018, GOH included over \$50 million in costs it never paid into the health and welfare calculations:

<u>Year</u>	<u>Claims Submitted</u>	<u>Claims Paid</u>	<u>Difference</u>
2015	\$24,723,446	\$12,756,422	-\$11,967,024
2016	\$21,891,122	\$11,065,510	-\$10,825,612
2017	\$27,310,916	\$13,096,921	-\$14,213,995
2018	\$26,647,775	\$12,887,585	-\$13,760,190
Total	100,573,259	49,806,438	-50,766,821

Even though it was already attributing millions of dollars of expenses it never paid to the prevailing wage workers, GOH did not stop there. GOH also included a number of ineligible expenses in the health and welfare hourly cost calculation.

Timothy Helm, former Director of Government Contracts for the United States Department of Labor (“DOL”), managed DOL’s Wage and Hour Division and was responsible for enforcement of federal prevailing wage laws throughout the entire United States. Helm was retained by the OAG to render his expert opinion on various aspects of prevailing wage laws and to review the fringe benefit credits taken by GOH. In addition to the use of claims considered instead of claims paid, Helm found that GOH included ineligible expenses in its health and welfare calculation.

Specifically, Helm found that GOH wrongly included the cost of paying the company’s own human resources employees in the health and welfare calculation. The DBA and PWA allow contractors with self-insured health plans to include external administrative costs, like third-party plan administrators’ fees, in their health and welfare cost calculation. However, contractors are not permitted to include internal administrative costs, including employee wages. GOH included the cost of paying wages for GOH employees who purportedly had some involvement in benefits administration, plus ten percent to cover employer payroll taxes. Beyond the fact that prevailing

wage laws prohibit passing any of these costs on to prevailing wage workers, GOH included the salaries of employees who had little, if any, real involvement with administering fringe benefits. Between 2015 and 2018, GOH added approximately \$1.8 million in ineligible personnel wages to its health and welfare cost calculation:

<u>Year</u>	<u>GOH Benefits Personnel Wages</u>
2015	\$410,637.81
2016	\$441,778.51
2017	\$488,769.70
2018	\$457,490.57
Total	\$1,798,676.59

GOH also included a line item called "Additional Costs that support (sic) Plan" in its health and welfare cost calculation. GOH accounting employees have explained that those additional costs had nothing to do with health and welfare. Instead, GOH added 401(k) match funds into its health and welfare cost calculation. Between 2015 and 2018, GOH lumped over \$3.9 million of 401(k) matching funds into its health and welfare calculation:¹¹

<u>Year</u>	<u>Additional Costs that Support Plan</u>
2015	\$619,054.00
2016	\$1,015,476.41
2017	\$1,122,595.50
2018	\$1,154,053.70

Further conflating its hourly credit, GOH completely ignored employee health insurance payroll contributions when calculating the health and welfare cost. Depending on the health plan

¹¹ In its calculations, Stout removed this entire amount from the health and welfare calculation. Any portion of the 401(k) match that was paid into prevailing wage workers' retirement accounts was used to offset those workers' pension underfunding.

option the worker selected, whether the worker had dependents covered by the health plan, whether the worker participated in a wellness plan, and whether the worker was a tobacco user, many GOH workers were required to make contributions toward the health plan. However, these contributions, totaling over \$10.8 million, were simply ignored by GOH. Between 2015 and 2018, the following employee contributions were deducted from workers' paychecks, but GOH did not acknowledge the offset to the company's burden for health care costs:

<u>Year</u>	<u>Employee Contributions</u>
2015	\$3,086,441
2016	\$2,919,411
2017	\$2,494,139
2018	\$2,357,867
Total	\$10,857,858

Finally, GOH included the cost of providing all of its employees paid time off in the health and welfare calculation. Although some of that money was allocated toward paid time off for prevailing wage workers, GOH failed to annualize that benefit as required by law. Stout removed that total amount from the calculation and, instead, used an annualized, per-worker cost based on the amount of paid leave prevailing wage workers actually used in the calculation.

Using the actual amount of money GOH paid out in health insurance claims, removing ineligible expenses, and giving workers credit for their own contributions, Stout was able to determine the actual hourly health and welfare cost:

<u>Year</u>	<u>GOH H&W Hourly Rate</u>	<u>Actual H&W Hourly Rate</u>	<u>Difference</u>
2015	\$14.65	\$5.03	-\$9.62
2016	\$14.01	\$4.19	-\$9.85
2017	\$17.50	\$5.23	-\$12.27
2018	\$18.65	\$6.67	-\$11.98

Stout applied the actual health and welfare hourly rate to the hours worked by prevailing wage workers. To determine the amount stolen from prevailing wage workers, Stout compared the amount of fringe benefit funds actually spent on providing health and welfare benefits to prevailing wage workers to what GOH was required to pay based on the wage determination.¹² Between 2015 and 2018, the total health and welfare underfunding was approximately \$5.3 million.¹³

<u>Year</u>	<u>H&W Underfunding</u>
2015	\$426,430
2016	\$2,063,459
2017	\$1,583,202
2018	\$1,233,866
Total	\$5,306,957

This money should have been paid to the prevailing wage workers either as additional pension contributions or in cash.

GOH Response

GOH officials have admitted that the company used prevailing wage fringe benefit funds to pay for all employees', executives', and owners' benefits. The company claims that it relied on bad advice of former counsel.

¹² The theft amount was calculated by comparing what the company was required to pay, not the inflated hourly rate the company claimed to have paid in fringe benefits letters, to what was actually paid. Here is a hypothetical illustration:

- a. The company claimed to have paid \$18.00 per hour in health and welfare benefits.
- b. The company was required to have paid \$10.00 per hour in health and welfare benefits.
- c. The company actually paid \$8.00 per hour in health and welfare benefits.
- d. The theft amount would be the difference between what the company was required to have paid (\$10.00 per hour) and what it actually paid (\$8.00), not the inflated rate it claimed to have paid (\$18.00), resulting in a theft amount of \$2.00 per hour.

¹³ The 2015 health and welfare underfunding was prorated based on the applicable statute of limitations, as modified by the tolling agreement between the OAG and GOH.

Since this investigation began, GOH has changed the way it handles prevailing wage fringe benefit funds. The OAG executed a search warrant at GOH's corporate headquarters in June 2018. Since GOH was aware of the investigation, the company retained a consultant to review its prevailing wage practices and changed the way that it handled prevailing wage fringe benefits funds in 2019.¹⁴ Pension money earned by prevailing wage workers is now contributed directly into those workers' individual retirement accounts as required. GOH also made changes to the method used to calculate the hourly health and welfare rate. The company now uses the actual amount of health insurance claims paid in its health and welfare calculation and other allowable costs, and it excludes internal administrative and other impermissible costs.

Conclusion

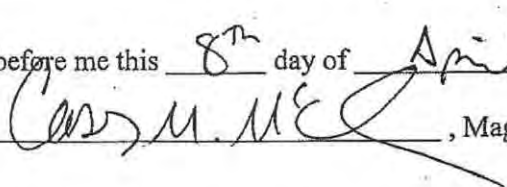
The evidence shows that GOH stole \$20,696,453 in fringe benefit funds from prevailing wage workers between September 1, 2015 and 2018 and used that money to pay for all GOH benefits and otherwise to lower the company's costs. GOH was required to use that money for the sole benefit of the prevailing wage workers who earned the money, but it failed to do so. Therefore, there is probable cause, for each year between 2015 and 2018, that GOH committed the crime of Theft by Failure to Make Required Disposition of Funds Received, 18 Pa.C.S. § 3927(a), and that the amount involved for each year exceeds \$500,000.

¹⁴ Despite these changes, it appears that GOH continued to underfund prevailing wage fringe benefits. Since GOH made efforts to correct its practices starting in 2019, no criminal conduct is alleged for that year.

I, THOMAS J. MOORE II, BEING DULY SWORN ACCORDING TO THE LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

I CERTIFY THAT THIS FILING COMPLIES WITH THE PROVISIONS OF THE CASE RECORDS PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA THAT REQUIRE FILING CONFIDENTIAL INFORMATION AND DOCUMENTS DIFFERENTLY THAN NON-CONFIDENTIAL INFORMATION AND DOCUMENTS.

 04/08/2021
(Signature of Affiant)

Sworn to me and subscribed before me this 8th day of April 2021
Date , Magisterial District Judge

My commission expires first Monday of January, 2024



Attachment A

Since 1952



Project: 18078- SR 422 (19A) Armstrong 91249, 91249

Work Classification	Base Rate	Health & Welfare*	Cash Pd In addition to Health	Pension**	Total Fringes
OPERATOR CL 1	31.29	18.65	0.00	10.39	29.04
OPERATOR CL 2	31.03	18.65	0.00	10.39	29.04
OPERATOR CL 3	27.38	18.65	0.00	10.39	29.04
LABOR CL 1	24.85	18.65	0.00	11.18	29.83
LABOR CL 2	25.01	18.65	0.00	11.18	29.83
LABOR CL 3	25.40	18.65	0.00	11.18	29.83
LABOR CL 6	23.10	18.65	0.00	11.18	29.83
TRUCK DRIVER CL 1	28.52	18.65	0.00	9.20	27.85
TRUCK DRIVER CL 2	28.66	18.65	0.00	9.24	27.89
TRUCK DRIVER CL 3	29.13	18.65	0.00	9.39	28.04
CARPENTER	33.17	18.65	0.00	8.89	27.54
IRONWORKER/STRUCTURAL	33.54	18.65	0.00	15.12	33.77
CEMENT MASON	31.04	18.65	0.00	9.95	28.60
PILED RIVERMEN	33.55	18.65	0.00	9.28	27.93
PILE DRIVEMAN/WELDER	33.55	18.65	0.00	9.28	27.93
FOREMAN (OPER CL 1 RATE)	32.29	18.65	0.00	10.39	29.04
SUPERINTENDENT-OP CL 1	33.29	18.65	0.00	10.39	29.04

* Third Party Administrator

Aetna
P.O. Box 981106
El Paso, TX 79998-1106

** Record Keeper / Fund Manager

Principal Financial Group
PO Box 9394
Des Moines, Iowa 50306-9394

Employee Deductions:

FICA	6.20%
Medicare	1.45%
State Income Tax	3.07%
State Unemployment	0.07%
Local Tax	1.0% to 3.4% dependent upon residence.

Overnight Mailing Address

711 High Street
Des Moines, Iowa 50392

Print Date: 8/9/2018

An Equal Opportunity Employer

PAOAGHC: 2272

1952 Waddle Road, Suite 203, State College, PA 16803

Phone: 814-237-1444 Fax: 814-272-2469 www.goh-inc.com

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Attachment B

GLENN O. HAWBAKER, INC. BENEFIT ANALYSIS

For Calander Year Ended December 31, 2014

BENEFIT	Total Costs	Per Hour Costs	Receiver of Funds
Health Plan Claims	\$24,723,446.27	\$20,517.38	\$11.50 Hawbaker Employee Welfare Benefit Trust
Vision Plan	\$124,287.69	\$103.14	\$0.06 Hawbaker Employee Welfare Benefit Trust
HSA plan contributions by GOH	\$774,255.00	\$642.54	\$0.36 GOH EWBT then to Employees HSA accts
Prescription Costs	\$1,648.84	\$1.37	\$0.00 Hawbaker Employee Welfare Benefit Trust
Admin Fees	\$975,553.92	\$809.59	\$0.45 Hawbaker Employee Welfare Benefit Trust
GOH Benefits Personnel Wages	\$410,637.81	\$340.78	\$0.19 Hawbaker Personnel Employees
UNUM Life Insurance (LTC, LTD & Life Ins)	\$423,818.59	\$351.72	\$0.20 UNUM Life Ins. Co.
Short Term Disability	\$153,365.31	\$127.27	\$0.07 Direct to employees utilizing STD
Employee Assistance Program	\$45,439.96	\$37.71	\$0.02 Health Management Corp
Additional Costs that support Plan	\$619,054.00	\$513.74	\$0.29 Hawbaker P/S Plan
TOTAL COST OF BENEFITS	\$28,251,507.39	\$23,445.23	\$13.14

\$1.51 vacation/holiday

TOTAL NUMBER OF FULL TIME EQUIVALENT EMPLOYEES

1205

\$14.65

COST PER EMPLOYEE PER YEAR

\$23,445.23

TOTAL NUMBER OF PEOPLE WORKING DAVIS BACON JOBS WITH MORE THAN 40 HOURS OF DAVIS BACON WORK

707

TOTAL HOURS WORKED BY DAVIS BACON EMPLOYEES THAT WORKED MORE THAN 40 HOURS OF DAVIS BACON WORK

1,261,130

TOTAL VACATION/HOLIDAY LIABILITY FOR DAVIS BACON EMPLOYEES LESS THOSE WITH 40 OR LESS DAVIS BACON HOURS

\$1,899,994.84

Total Benefit per hour for Davis Bacon Employees = total number of employees working more than 40 hours of Davis Bacon work X benefit cost per year / total hours worked by Davis Bacon employees that worked more than 40 Davis Bacon hours plus vacation and holiday cost per hour

Total Benefit per hour for Davis Bacon Employees = (707 X 23,445.23 / 1,261,130) + (1,899,994.84 / 1,261,130)

Total Benefit per hour for Davis Bacon Employees = \$14.65

Attachment C

GLENN O. HAWBAKER, INC. BENEFIT ANALYSIS
 For Calendar Year Ended December 31, 2015

BENEFIT	Total Costs		Per Hour Costs	Receiver of Funds
Health Plan Claims	\$21,891,122.00	\$17,928.85	\$10.55	Hawbaker Employee Welfare Benefit Trust
Vision Plan	\$136,667.59	\$111.93	\$0.07	Hawbaker Employee Welfare Benefit Trust
HSA plan contributions by GOH	\$818,625.00	\$670.45	\$0.39	GOH EWBT then to Employees HSA accts
Prescription Costs	\$0.00	\$0.00	\$0.00	Hawbaker Employee Welfare Benefit Trust
Admin Fees	\$772,018.11	\$832.28	\$0.37	Hawbaker Employee Welfare Benefit Trust
GOH Benefits Personnel Wages	\$441,778.51	\$361.82	\$0.21	Hawbaker Personnel Employees
UNUM Life Insurance (LTC, LTD, STD & Life Ins)	\$867,708.37	\$546.85	\$0.32	UNUM Life Ins. Co.
Employee Assistance Program	\$0.00	\$0.00	\$0.00	ESI - Employee Service EAP Oct 2014-Dec 2015 paid in 2014
Additional Costs that support Plan	\$1,015,476.41	\$831.88	\$0.49	Hawbaker P/S Plan
TOTAL COST OF BENEFITS	\$25,743,395.99	\$21,083.86	\$12.41	
			\$1.63	vacation/holiday
TOTAL NUMBER OF FULL TIME EQUIVALENT EMPLOYEES	1221		\$14.04	
COST PER EMPLOYEE PER YEAR	\$21,083.86			

TOTAL NUMBER OF PEOPLE WORKING DAVIS BACON JOBS WITH MORE THAN 40 HOURS OF DAVIS BACON WORK 717

TOTAL HOURS WORKED BY DAVIS BACON EMPLOYEES THAT WORKED MORE THAN 40 HOURS OF DAVIS BACON WORK 1,218,087

TOTAL VACATION/HOLIDAY LIABILITY FOR DAVIS BACON EMPLOYEES LESS THOSE WITH 40 OR LESS DAVIS BACON HOURS \$1,984,537.72

Total Benefit per hour for Davis Bacon Employees= total number of employees working more than 40 hours of Davis Bacon work X benefit cost per year / total hours worked by Davis Bacon employees that worked more than 40 Davis Bacon hours plus vacation and holiday cost per hour

Total Benefit per hour for Davis Bacon Employees= (717 X 21,083.86/1,218,087) + (1,984,537.72/1,218,087)

Total Benefit per hour for Davis Bacon Employees= \$14.65

Attachment D

GLENN O. HAWBAKER, INC. BENEFIT ANALYSIS
 For Calander Year Ended December 31, 2016

BENEFIT	Total Costs		Per Hour Costs	Receiver of Funds
Health Plan Claims	\$27,310,916.00	\$23,727.99	\$13.92	Hawbaker Employee Welfare Benefit Trust
Vision Plan	\$136,502.07	\$118.59	\$0.07	Hawbaker Employee Welfare Benefit Trust
HSA plan contributions by GOH	\$570,535.93	\$495.69	\$0.29	GOH EWBT then to Employees HSA accls
Prescription Costs	\$0.00	\$0.00	\$0.00	Hawbaker Employee Welfare Benefit Trust
Admin Fees	\$819,171.20	\$711.70	\$0.42	Hawbaker Employee Welfare Benefit Trust
GOH Benefits Personnel Wages	\$488,769.70	\$424.65	\$0.25	Hawbaker Personnel Employees
UNUM Life Insurance (LTC, LTD, STD & Life Ins)	\$686,160.81	\$596.14	\$0.35	UNUM Life Ins. Co.
Employee Assistance Program	\$36,486.52	\$31.70	\$0.02	ESI - Employee Service EAP
Additional Costs that support Plan	\$1,122,595.50	\$975.32	\$0.57	Hawbaker P/S Plan
TOTAL COST OF BENEFITS	\$31,171,137.73	\$27,081.79	\$15.88	

			\$1.62	vacation/holiday
TOTAL NUMBER OF FULL TIME EQUIVALENT EMPLOYEES	1151			
				<u>\$17.50</u>
COST PER EMPLOYEE PER YEAR	\$27,081.79			

TOTAL NUMBER OF PEOPLE WORKING DAVIS BACON JOBS WITH MORE THAN 40 HOURS OF DAVIS BACON WORK 697

TOTAL HOURS WORKED BY DAVIS BACON EMPLOYEES THAT WORKED MORE THAN 40 HOURS OF DAVIS BACON WORK 1,188,460

TOTAL VACATION/HOLIDAY LIABILITY FOR DAVIS BACON EMPLOYEES LESS THOSE WITH 40 OR LESS DAVIS BACON HOURS \$1,923,931.22

Total Benefit per hour for Davis Bacon Employees = total number of employees working more than 40 hours of Davis Bacon work X benefit cost per year / total hours worked by Davis Bacon employees that worked more than 40 Davis Bacon hours plus vacation and holiday cost per hour

Total Benefit per hour for Davis Bacon Employees = (697 X 27,081.79/1,188,460) + (1,923,931.22/1,188,460)

Total Benefit per hour for Davis Bacon Employees = \$17.50

Attachment E

GLENN O. HAWBAKER, INC. BENEFIT ANALYSIS
For Calander Year Ended December 31, 2017

BENEFIT	Total Costs		Per Hour Costs	Receiver of Funds
Health Plan Claims	\$26,647,775.00	\$22,225.00	\$13.39	Hawbaker Employee Welfare Benefit Trust
Vision Plan	\$134,443.64	\$112.13	\$0.07	Hawbaker Employee Welfare Benefit Trust
HSA plan contributions by GOH	\$1,007,377.11	\$840.18	\$0.51	GOH EWBT then to Employees HSA accts
Prescription Costs	\$2,945,782.00	\$2,456.87	\$1.48	Hawbaker Employee Welfare Benefit Trust
Admin Fees	\$828,828.98	\$691.27	\$0.42	Hawbaker Employee Welfare Benefit Trust
Patient Advocate Service	\$47,808.60	\$39.87	\$0.02	Hawbaker Employee Welfare Benefit Trust
GOH Benefits Personnel Wages	\$457,490.57	\$381.56	\$0.23	Hawbaker Personnel Employees
UNUM Life Insurance (LTC, LTD, STD & Life Ins)	\$604,496.53	\$504.17	\$0.30	UNUM Life Ins. Co.
Employee Assistance Program	\$36,398.53	\$30.36	\$0.02	ESI - Employee Service EAP
Additional Costs that support Plan	\$1,154,053.70	\$962.51	\$0.58	Hawbaker P/S Plan
TOTAL COST OF BENEFITS	\$33,864,454.66	\$28,243.92	\$17.01	

TOTAL NUMBER OF FULL TIME EQUIVALENT EMPLOYEES	1199		\$1.64	vacation/holiday
			<u>\$18.65</u>	
COST PER EMPLOYEE PER YEAR	\$28,243.92			

TOTAL NUMBER OF PEOPLE WORKING DAVIS BACON JOBS WITH MORE THAN 40 HOURS OF DAVIS BACON WORK 784 current calculation includes GOH & HE

TOTAL HOURS WORKED BY DAVIS BACON EMPLOYEES THAT WORKED MORE THAN 40 HOURS OF DAVIS BACON WORK 1,301,536

TOTAL VACATION/HOLIDAY LIABILITY FOR DAVIS BACON EMPLOYEES LESS THOSE WITH 40 OR LESS DAVIS BACON HOURS \$2,132,647.36

Total Benefit per hour for Davis Bacon Employees = total number of employees working more than 40 hours of Davis Bacon work X benefit cost per year / total hours worked by Davis Bacon employees that worked more than 40 Davis Bacon hours plus vacation and holiday cost per hour

Total Benefit per hour for Davis Bacon Employees = (697 X 27,081.79/1,188,460) + (1,923,931.22/1,188,460)

Total Benefit per hour for Davis Bacon Employees = \$17.50