

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CGI TECHNOLOGIES AND SOLUTIONS,  
INC., in its capacity as sponsor and fiduciary for  
CGI TECHNOLOGIES AND SOLUTIONS,  
INC. WELFARE BENEFIT PLAN,

Plaintiff,

v.

RHONDA ROSE AND NELSON LANGER  
ENGLE, PLLC.,

Defendants.

Case No. CV10-298 RSM

**AMENDED COMPLAINT**

Comes Now Plaintiff, CGI TECHNOLOGIES AND SOLUTIONS, INC. ("CGI"), in its capacity as fiduciary for the CGI TECHNOLOGIES AND SOLUTIONS INC. WELFARE BENEFIT PLAN (the "Plan"), and files this Amended Complaint showing the Court as follows:

**I. NATURE OF ACTION**

1. This is an action to enforce the terms of the Plan and to obtain appropriate equitable relief as authorized by the federal common law and statutory scheme of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, et seq.

**II. JURISDICTION**

2. This Court has original and exclusive jurisdiction over Plaintiff's claims for relief pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

1 **III. VENUE**

2 3. Venue is proper pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), of  
3 ERISA because Defendants reside in this judicial district and the funds at issue are being held in  
4 this judicial district.

5 **IV. PARTIES**

6 4. Plaintiff CGI Technologies and Solutions, Inc. (“CGI”) sponsors and is a  
7 fiduciary of the Plan. CGI’s principal place of business is 11325 Random Hills Road, Fairfax,  
8 Virginia, 22030. The Plan is an employee welfare benefit plan within the meaning of ERISA §  
9 3(1), 29 U.S.C. § 1002(1).

10 5. Defendant Rhonda Rose (“Rose”) is a citizen of Duvall, Washington. At all times  
11 relevant hereto, Rose was a participant or beneficiary in the Plan with the meaning of ERISA §  
12 3(7), (8).

13 6. Defendant Nelson Langer and Engle PLLC (“Nelson”) is a law firm doing  
14 business at 705 Second Avenue, Hoge Building, 17<sup>th</sup> Floor, Seattle, Washington 98104. Nelson  
15 is counsel to Rose and is in possession of funds that are the subject of this dispute.

16 **V. FACTS**

17 7. The Plan provides welfare benefits to eligible CGI employees and their  
18 dependants, including medical benefits.

19 8. Benefits provided under the Plan are contained within a Summary Plan  
20 Description (“SPD”). A true and correct copy of the relevant excerpts from the SPD is attached  
21 as Exhibit A to this Complaint.

22 9. The Plan is self-funded out of the general assets of CGI. Ex. A, Attachment II.

23 10. The SPD provides that the Plan shall have subrogation and reimbursement rights  
24 to recover medical expenses paid by the Plan to a beneficiary or participant in the event that  
25 individual receives recovery from various specified sources, relating to injuries or damages for  
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1 which the Plan also paid benefits. Ex. A., pp. 70-72. Specifically, the Plan provides that it has  
2 “the right to be reimbursed...for the reasonable value of any services and benefits” the Plan  
3 provides, “from any or all of the following listed below”:

- 4 • Third Parties, including any person alleged to have caused you to suffer injuries  
5 or damages;
- 6 • Your employer;
- 7 • Any person or entity who is or may be obligated to provide benefits or payments  
8 to you, including benefits or payments for underinsured or uninsured motorist  
9 protection, no-fault or traditional auto insurance, medical payment coverage  
10 (auto, homeowners or otherwise), workers’ compensation coverage, other  
11 insurance carriers or third party administrators;
- 12 • Any person or entity who is liable for payment to you on any equitable or legal  
13 liability theory.

14 (Ex. A, p. 71)

15 11. The Plan also provides that “no court costs or attorneys’ fees may be deducted  
16 from our recovery without our express written consent.” The Plan clearly and expressly  
17 disclaims the “Common Fund Doctrine” and “Attorney’s Fund Doctrine.” (Ex. A., p. 71)

18 12. The Plan also provides that “regardless of whether you have been fully  
19 compensated or made whole, [the Plan] may collect from you the proceeds of any full or partial  
20 recovery that you or your legal representative obtain, whether in the form of a settlement (either  
21 before or after a determination of liability) or judgment, with such proceeds available for  
22 collection to include any and all amounts earmarked as non-economic damage settlement or  
23 judgment.” (Ex. A, p. 71)

24 13. The Plan also makes it clear that its rights to subrogation and reimbursement are  
25 “considered as the first priority claim against Third Parties, including tortfeasors for [sic] whom  
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1 you are seeking recovery, to be paid before any other of your claims are paid.” Ex. A, p. 72.

2 14. The SPD instructs participants that if they receive “any payment from any  
3 potentially responsible party as a result of any injury or illness, whether by settlement (either  
4 before or after any determination of liability), or judgment, [participant] will serve as a  
5 constructive trustee over the funds, and failure to hold such funds in trust will be deemed a  
6 breach of your duties hereunder.” Ex. A, p. 71.

7 15. On October 28, 2003, Rose sustained injuries in a car accident involving a third  
8 party (the “Accident”).

9 16. To date, the Plan has paid medical expenses of \$30,581.09 on behalf of Rose for  
10 treatment of injuries sustained by her as a result of the Accident.

11 17. The Plan paid the benefits referenced in the paragraph above, and Rose accepted  
12 them, under the express condition contained in the Plan that Rose would reimburse the Plan for  
13 any benefits paid or disbursed by the Plan if she received a recovery from any party or entity  
14 listed on page 71 of the SPD.

15 18. Rose retained the services of the Nelson firm to pursue claims relating to the  
16 Accident. Rose ultimately received a settlement substantially in excess of the amount of medical  
17 expenses the Plan paid on her behalf, from the other motorist’s insurance carrier.

18 19. Upon information and belief, Rose also filed an insurance claim with her  
19 Underinsured Motorist Carrier, and received \$100,000 in payments under the Policy (the “UIM  
20 Claim”).

21 20. The Nelson firm retained at least of portion of the settlement/insurance funds  
22 outlined above as attorney’s fees and costs associated with Accident-related claims. The Plan  
23 did not provide Rose or Nelson with express written consent to deduct attorney’s fees and costs  
24 from t he Plan’s potential recovery out of the insurance settlements.

25 21. Despite repeated demands, Rose has refused to reimburse the Plan out of the  
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1 funds she received in settlement for accident-related injuries.

2 22. Rose and Nelson maintain the Plan is either not entitled to reimbursement, or that  
3 the Plan's reimbursement rights should be reduced or otherwise mitigated.

4 23. Rose is in possession of the fund or funds from which reimbursement is sought,  
5 namely, the other motorist's insurance funds and Rose's own first-party UIM carrier funds.

6 **VI. COUNT I**

7 **CLAIM FOR EQUITABLE RELIEF UNDER ERISA § 502(a)(3)**

8 24. Plaintiff re-states and re-alleges paragraphs 1 – 23 of the Complaint as if fully set  
9 forth herein.

10 25. The Plan has a right to reimbursement for the \$30,581.09 in medical benefits it  
11 paid on Rose's behalf as a result of the Accident.

12 26. The Plan language is sufficient under Sereboff v. Mid-Atlantic Med. Servs., Inc.,  
13 547 U.S. 356, 362-63 (2006) to enable the Plan to place a constructive trust and/or equitable lien  
14 by agreement consisting of the benefits the Plan paid to Rose, in the amount of \$30,581.09.  
15 Specifically, the Plan identifies the portion of the fund to which it is entitled ("the reasonable  
16 value of any services and benefits" the Plan provides), and specifies the fund or funds from  
17 which such reimbursement is to be had. Ex. A, p. 71.

18 27. The disputed funds are in Defendants' possession and control.

19 28. The language of the Plan makes clear that the Plan is not attempting to recover  
20 from Rose's general assets, but rather, the disputed funds constitute a specifically identified  
21 portion of amounts paid to Rose from Third Parties as a result of the Accident.

22 29. The language of the Plan sufficiently disclaims the "made whole" or "common  
23 fund" doctrine or any other common law or equitable doctrine Defendants may cite to attempt to  
24 avoid or mitigate Rose's obligations under the Plan.

25 30. Rose has refused, despite requests, to reimburse the Plan for benefits the Plan paid  
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1 on her behalf, out of settlement funds she received in connection with the Accident. Rose's  
2 actions violate the terms of the Plan.

3 31. Rose has been unjustly enriched by her refusal to reimburse the Plan for the  
4 medical benefits it paid on her behalf.

5 32. As a result of Rose's violation of the terms of the Plan, the Plan has been harmed  
6 and Plaintiff seeks all appropriate equitable relief, pursuant to ERISA § 502(a)(3), to enforce the  
7 terms of the Plan, including:

8 (a) the imposition of a constructive trust and/or equitable lien by agreement in favor  
9 of the Plan upon that portion of the first-party UIM settlement proceeds and the proceeds  
10 received from the other motorist's insurance, in possession of Rose and Nelson which are subject  
11 to the Plan's subrogation/reimbursement rights;

12 (b) a declaration of the Plan's ownership of the above-referenced settlement proceeds  
13 up to the full amount of payments made by the Plan for Rose's medical expenses; and

14 (c) an order directing the Nelson firm and Rose, respectively, to pay or turn over such  
15 settlement proceeds, plus accumulated interest, to the Plan to the extent of its interest therein.

16 **VII. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff CGI Technologies and Solutions, Inc., as sponsor and fiduciary  
18 of the CGI Technologies and Solutions, Inc. welfare plan, prays that the Court enter a Judgment  
19 and Order in its favor as follows:

20 (a) the imposition of a constructive trust and/or equitable lien by agreement in favor  
21 of the Plan upon that portion of the first-party UIM settlement proceeds and the proceeds  
22 received from the other motorist's insurance, in possession of Rose and Nelson which are subject  
23 to the Plan's subrogation/reimbursement rights;

24 (b) a declaration of the Plan's ownership of the above-referenced settlement proceeds  
25 up to the full amount of payments made by the Plan for Rose's medical expenses;

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- 1 (c) an order directing the Nelson firm and Rose, respectively, to pay or turn over such
- 2 settlement proceeds, plus accumulated interest, to the Plan to the extent of its interest therein;
- 3 (d) Awarding the Plan its attorney fees and costs against Defendants; and
- 4 (e) Granting any such other equitable and legal relief to the Plan as this Court deems
- 5 just and appropriate.

6

7 March 4, 2010

8

9 *s/ Leigh Ann Tift*

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 11 Joanna M. Silverstein, WSBA #38577  
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19 Attorneys for Plaintiff  
 20 CGI Technologies and Solutions, Inc.

21 Firmwide:94007847.1 061304.1009

CERTIFICATE OF SERVICE

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I hereby certify that on March 4, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Michael Nelson  
NELSON LANGER ENGLE, PLLC  
705 Second Avenue, Suite 1700  
Hoge Building  
Seattle, WA 98104

and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

N/A

Dated: March 4, 2010

s/ Cheryl A. Phillips  
Cheryl A. Phillips  
cphillips@littler.com

**LITTLER MENDELSON, P.C.**