

THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

CAROL CHESEMORE, DANIEL )  
DONKLE, THOMAS GIECK, MARTIN )  
ROBBINS, and NANETTE STOFLET, on )  
behalf of themselves, individually, and on )  
behalf of all others similarly situated, )

Plaintiffs, )

vs. )

ALLIANCE HOLDINGS, INC., DAVID B. )  
FENKELL, PAMELA KLUTE, JAMES )  
MASTRANGELO, STEPHEN W. PAGEDLOW, )  
JEFFREY A. SEEFELDT, TRACHTE )  
BUILDING SYSTEMS, INC. EMPLOYEE )  
STOCK OWNERSHIP PLAN, ALLIANCE )  
HOLDINGS, INC. EMPLOYEE STOCK )  
OPTION PLAN, A.H.I., INC., ALPHA )  
INVESTMENT GROUP, LLC, JOHN MICHAEL )  
MAIER, AH TRANSITION CORPORATION, )  
and KAREN FENKELL, )

Defendants. )

**CASE NO.: 3:09-cv-000413**

**Judge William M. Conley**

**NOTICE OF APPEAL**

**NOTICE OF APPEAL**

Notice is hereby given that Defendant-Appellant, David B. Fenkell in the above-named case, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the following:

(1) an Opinion and Order signed by District Judge William M. Conley on the 4th day of September, 2014, and entered in this action on the 5th day of September 2014, Document 985, granting a motion for payment of incentive awards to the class representatives, a motion for attorneys’ fees (class counsel's motion for an award of attorney's fees and reimbursement of expenses), a motion for attorneys’ fees (Plaintiffs' motion for an award of attorneys’ fees and costs pursuant to Employee Retirement Income Security Act of 1974, as amended (“ERISA”)),

§502(g)(1) against Defendant David B. Fenkell), and a motion for final approval of a settlement agreement by Plaintiffs Carol Chesemore, Daniel Donkel, Thomas Gieck, Martin Robbins, and Nannette Stoflet;

(2) a Final Judgment in a Civil Case signed by District Judge William M. Conley and entered in this action on the 8th day of September 2014, Document 986, in favor of Carol Chesemore, Daniel Donkel, Martin Robbins, Nannette Stoflet, and Thomas Gieck against David B. Fenkell in the total amount of \$1,854,008.50 and in favor of the Alliance Holdings, Inc. Employee Stock Ownership Plan and Trust in the amount of \$2,044,014.42, respectively;

(3) an Opinion and Order signed by District Judge William M. Conley on the 17th day of February 2011, and entered in this action on the 17th day of February 2011, Document 172, among other things, granting in part and denying in part Defendant David B. Fenkell's Motion to Dismiss Plaintiffs' Amended Class Action Complaint;

(4) an Order signed by District Judge William M. Conley on the 27th day of May 2011, and entered in this action on the 27th day of May 2011, Document 256, among other things, granting Plaintiffs' Motion to Amend Complaint;

(5) an Order signed by District Judge William M. Conley on the 7th day of October 2011, and entered in this action on the 7th day of October 2011, Document 555, among other things, granting in part and denying in part Defendant David B. Fenkell's Motion in Limine to Exclude Expert Testimony;

(6) an Order signed by District Judge William M. Conley on the 18th day of January 2012, and entered in this action on the 18th day of January 2012, Document 631, among other things, granting Plaintiffs' Motion to Compel Production of Documents From David B. Fenkell;

(7) an Order signed by District Judge William M. Conley on the 28th day of March 2012, and entered in this action on the 28th day of March 2012, Document 677, among other things, granting in part and denying in part Defendant David B. Fenkell's Motion for Summary Judgment;

(8) an Opinion and Order signed by District Judge William M. Conley on the 24th day of July 2012, and entered in this action on the 24th day of July 2012, Document 733, among other things, entering liability against Defendant David B. Fenkell and granting Plaintiffs' Motion to Amend the Amended Class Action Complaint;

(9) an Opinion and Order signed by District Judge William M. Conley on the 25th day of July 2012, and entered in this action on the 25th day of July 2012, Document 736, among other things, granting Plaintiffs' Motion to Amend the Amended Class Action Complaint;

(10) an Opinion and Order signed by District Judge William M. Conley on the 31st day of May 2013, and entered in this action on the 31st day of May 2013, Document 789, among other things, ordering that Plaintiffs are entitled to judgment on all affirmative defenses alleged in Defendant David B. Fenkell's Answer;

(11) an Opinion and Order signed by District Judge William M. Conley on the 4th day of June 2013, and entered in this action on the 4th day of June 2013, Document 790, among other things, ruling on remedies;

(12) an Opinion and Order signed by District Judge William M. Conley on the 15th day of October 2013, and entered in this action on the 16th day of October 2013, Document 824, among other things, denying Defendant Karen G. Fenkell's Motion to Dismiss and amending Document 790 to provide a ruling on remedies;

(13) an Opinion and Order signed by District Judge William M. Conley on the 28th day of January 2014, and entered in this action on the 29th day of January 2014, Document 866, among other things, granting in part and denying in part Plaintiffs' Motion for an Order that David B. Fenkell's Alliance ESOP Account may be Used to Satisfy the Award Against Him in this Court's Remedies Decisions;

(14) an Opinion and Order signed by District Judge William M. Conley on the 18th day of February 2014, and entered in this action on the 19th day of February 2014, Document 889, among other things, granting Plaintiffs' Motion for Preliminary Approval of Settlement Agreement;

(15) an Opinion and Order signed by District Judge William M. Conley on the 9th day of April 2014, and entered in this action on the 9th day of April 2014, Document 913, among other things, granting Plaintiffs' Motion for Preliminary Approval of Settlement Agreement;

(16) an Opinion and Order signed by District Judge William M. Conley on the 9th day of July 2014, and entered in this action on the 9th day of July 2014, Document 969, among other things, granting Motion for Appointment of Independent Fiduciary;

(17) a Text Order signed by District Judge William M. Conley on the 7th day of December 2011, and entered in this action on the 7th day of December 2011, Document 617, among other things, granting Plaintiffs' Motion to Compel; and

(18) a Text Order signed by District Judge William M. Conley on the 16th day of April 2012, and entered in this action on the 16th day of April 2012, Document 688, among other things, ordering that Plaintiffs may file leave to amend the complaint to add Karen G. Fenkell as a Defendant.

The Docketing Statement required pursuant to Circuit Rule 3(c)(1) of the United States Court of Appeals for the Seventh Circuit is filed as an attachment to this Notice of Appeal.

Dated: October 3, 2014

Respectfully submitted,

JACKSON LEWIS LLP

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*Attorneys for Defendant-Appellant David B. Fenkell*

**CERTIFICATE OF SERVICE**

This is to certify that on this 3rd day of October, 2014, I caused to be electronically filed the foregoing NOTICE OF APPEAL (including the Docketing Statement required pursuant to Circuit Rule 3(c)(1) of the United States Court of Appeals for the Seventh Circuit filed as an attachment to this Notice of Appeal along with a separate Certificate of Service for the Docketing Statement) via the CM/ECF system, which sent electronic notice to all counsel of record.

/s/ David R. Johanson  
David R. Johanson

THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

CAROL CHESEMORE, DANIEL )  
DONKLE, THOMAS GIECK, MARTIN )  
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and KAREN FENKELL, )

Defendants. )

CASE NO.: 3:09-cv-000413

Judge William M. Conley

**SEVENTH CIRCUIT RULE 3(c)**  
**DOCKETING STATEMENT**  
**OF DEFENDANT-APPELLANT DAVID B.**  
**FENKELL**

**SEVENTH CIRCUIT RULE 3(c) DOCKETING STATEMENT OF**  
**DEFENDANT-APPELLANT DAVID B. FENKELL**

Defendant-Appellant David B. Fenkell, by his undersigned counsel, respectfully submits this Docketing Statement pursuant to Circuit Rule 3(c)(1) of the United States Court of Appeals for the Seventh Circuit.

**I. DISTRICT COURT JURISDICTION.** The United States District Court for the Western District of Wisconsin (the “District Court”) has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question) because it arises under the laws of the United States and pursuant to 29 U.S.C. § 1132(e)(1) which provides for jurisdiction of actions

brought under Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

**II. APPELLATE COURT JURISDICTION.** This appeal is taken from the District Court’s following opinions and orders and final judgment:

(A) an Opinion and Order signed by District Judge William M. Conley on the 4th day of September, 2014, and entered in this action on the 5th day of September 2014, Document 985, granting a motion for payment of incentive awards to the class representatives, a motion for attorneys’ fees (class counsel's motion for an award of attorney's fees and reimbursement of expenses), a motion for attorneys’ fees (Plaintiffs' motion for an award of attorneys’ fees and costs pursuant to Employee Retirement Income Security Act of 1974, as amended (“ERISA”), §502(g)(1) against Defendant David B. Fenkell), and a motion for final approval of a settlement agreement by Plaintiffs Carol Chesemore, Daniel Donkel, Thomas Gieck, Martin Robbins, and Nannette Stoflet;

(B) a Final Judgment in a Civil Case signed by District Judge William M. Conley and entered in this action on the 8th day of September 2014, Document 986, in favor of Carol Chesemore, Daniel Donkel, Martin Robbins, Nannette Stoflet, and Thomas Gieck against David B. Fenkell in the total amount of \$1,854,008.50 and in favor of the Alliance Holdings, Inc. Employee Stock Ownership Plan and Trust in the amount of \$2,044,014.42, respectively;

(C) an Opinion and Order signed by District Judge William M. Conley on the 17th day of February 2011, and entered in this action on the 17th day of February 2011, Document 172, among other things, granting in part and denying in part Defendant David B. Fenkell’s Motion to Dismiss Plaintiffs’ Amended Class Action Complaint;



(D) an Order signed by District Judge William M. Conley on the 27th day of May 2011, and entered in this action on the 27th day of May 2011, Document 256, among other things, granting Plaintiffs' Motion to Amend Complaint;

(E) an Order signed by District Judge William M. Conley on the 7th day of October 2011, and entered in this action on the 7th day of October 2011, Document 555, among other things, granting in part and denying in part Defendant David B. Fenkell's Motion in Limine to Exclude Expert Testimony;

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(I) an Opinion and Order signed by District Judge William M. Conley on the 25th day of July 2012, and entered in this action on the 25th day of July 2012, Document 736, among other things, granting Plaintiffs' Motion to Amend the Amended Class Action Complaint;

(J) an Opinion and Order signed by District Judge William M. Conley on the 31st day of May 2013, and entered in this action on the 31st day of May 2013, Document 789, among

other things, ordering that Plaintiffs are entitled to judgment on all affirmative defenses alleged in Defendant David B. Fenkell's Answer;

(K) an Opinion and Order signed by District Judge William M. Conley on the 4th day of June 2013, and entered in this action on the 4th day of June 2013, Document 790, among other things, ruling on remedies;

(L) an Opinion and Order signed by District Judge William M. Conley on the 15th day of October 2013, and entered in this action on the 16th day of October 2013, Document 824, among other things, denying Defendant Karen G. Fenkell's Motion to Dismiss and amending Document 790 to provide a ruling on remedies;

(M) an Opinion and Order signed by District Judge William M. Conley on the 28th day of January 2014, and entered in this action on the 29th day of January 2014, Document 866, among other things, granting in part and denying in part Plaintiffs' Motion for an Order that David B. Fenkell's Alliance ESOP Account may be Used to Satisfy the Award Against Him in this Court's Remedies Decisions;

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(R) a Text Order signed by District Judge William M. Conley on the 16th day of April 2012, and entered in this action on the 16th day of April 2012, Document 688, among other things, ordering that Plaintiffs may file leave to amend the complaint to add Karen G. Fenkell as a Defendant.

The United States Court of Appeals for the Seventh Circuit has jurisdiction to decide this case pursuant to 28 U.S.C. § 1291 and 28 U.S.C. § 1294.

David B. Fenkell timely filed the required Notice of Appeal (including this Docketing Statement required pursuant to Circuit Rule 3(c)(1) of the United States Court of Appeals for the Seventh Circuit filed as an attachment to the Notice of Appeal along with a separate Certificate of Service for the Docketing Statement) with the District Court on October 3, 2014.

**III. THIS IS AN APPEAL OF AN IMMEDIATELY APPEALABLE FINAL JUDGMENT.** As noted above, the District Court entered a final appealable judgment on September 8, 2014. This is a civil appeal as a matter of right pursuant to Federal Rule of Appellate Procedure 3(a) and Circuit Rule 3(a).

**IV. PRIOR OR RELATED APPELLATE PROCEEDINGS.** There have been no prior or related appellate proceedings in this case.

**V. ADDITIONAL REQUIREMENTS OF CIRCUIT RULE 3(c)(1).** None of the parties to the litigation appear in an official capacity. This is a civil case that does not involve any criminal convictions. 28 U.S.C. § 1915(g) is inapplicable. This case does not involve a collateral attack on a criminal conviction.

Dated: October 3, 2014.

Respectfully submitted,

JACKSON LEWIS LLP

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*Attorneys for Defendant-Appellant David B. Fenkell*

**CERTIFICATE OF SERVICE**

This is to certify that on this 3rd day of October, 2014, I caused to be electronically filed the foregoing DOCKETING STATEMENT OF DEFENDANT-APPELLANT DAVID B. FENKELL via the CM/ECF system, which sent electronic notice to all counsel of record in this matter.

/s/ David R. Johanson

David R. Johanson