

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GLENN E. SCHEMBECHLER III,
an Ohio citizen,

Plaintiff,

v.

KATHRYN A. SCHEMBECHLER,
a Florida citizen.

Defendant.

Case No. 1:09cv803

Weber

**Complaint for Declaratory
Judgment/Accounting**

Plaintiff, Glenn E. Schembechler III ("Mr. Schembechler"), for his Complaint for Declaratory Judgment/Accounting, states:

JURISDICTION AND VENUE

1. Jurisdiction is proper pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000.00 and there is complete diversity of citizenship between the parties.

2. This Court also has jurisdiction pursuant to 28 U.S.C. § 1331 because this request for declaratory judgment/accounting to the trustee of the Glenn E. Schembechler Jr. Trust Agreement ("Trust" or "Trust Agreement") is hereby made under 28 U.S.C. § 2201.

3. Venue is proper in the Southern District of Ohio under 28 U.S.C. § 1391(b) because the Trust Agreement was executed in Cincinnati, Ohio, and because the defendant-trustee has otherwise consented to venue in this District. See Ohio Rev. Code § 5802.02(A).

PARTIES

4. Mr. Schembechler, who resides in Worthington, Ohio, is a residuary beneficiary of the Trust.

5. Defendant, Kathryn A. Schembechler ("Trustee"), who resides in Boca Grande, Florida, is the trustee of the Trust.

FACTS

6. On or about September 17, 1998, Glenn E. ("Bo") Schembechler Jr. ("Bo Schembechler"), as grantor, executed a trust agreement in Cincinnati, Ohio.

7. On June 20, 2003, Bo Schembechler amended the trust agreement in its entirety in Cincinnati, Ohio. **Exhibit 1:** Trust Agreement. The Trust was created under and is governed by Ohio law. *Id.* at Art. IX, § 5.

8. Under the Trust Agreement, Bo Schembechler was declared the trustee of the Trust, but upon his death, his wife, Kathryn A. Schembechler, would become the trustee. **Exhibit 1** at Art. VII, § 1.

9. Bo Schembechler passed away on November 17, 2006.

10. Pursuant to the Trust Agreement, Trustee became the trustee of the Trust in or about November 2006. **Exhibit 1** at Art. VII, § 1.

11. Mr. Schembechler is a residuary beneficiary of the Trust. **Exhibit 1** at Art. IV, § 3.

12. Mr. Schembechler is entitled to, not less often than quarterly, statements of administration from Trustee regarding the Trust. **Exhibit 1** at Art. IX, § 1.

13. Mr. Schembechler is also entitled to statements of administration under Ohio law. Ohio Rev. Code § 5808.13.

14. Throughout Trustee's trusteeship, Mr. Schembechler, through his counsel, has made various requests for an accounting.

15. Most recently, on July 28, 2009, Mr. Schembechler, through his financial services professional, requested an accounting from Trustee. **Exhibit 2: 7/28/09 Correspondence.**

16. To date, Mr. Schembechler has not received an accounting from Trustee.

17. Consequently, Mr. Schembechler brings this action to obtain an accounting from the Trustee.

COUNT I

(Declaratory Judgment/Demand for Accounting)

18. Mr. Schembechler realleges and incorporates by reference paragraphs 1 through 17 of this Complaint for Declaratory Judgment/Accounting.

19. Trustee is obligated to give Mr. Schembechler an accounting of the Trust pursuant to both the Trust Agreement and Ohio law. **Exhibit 1** at Art. IX, § 1; Ohio Rev. Code § 5808.13.

20. Mr. Schembechler has requested an accounting from Trustee. **Exhibit 2.**

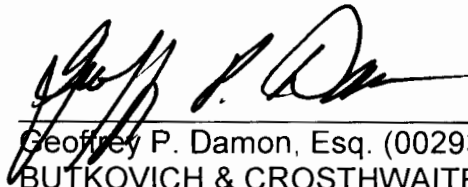
21. To date, Trustee has failed to provide Mr. Schembechler an accounting.

22. As a result of Trustee's failure to provide Mr. Schembechler with an accounting of the Trust as contemplated by the Trust Agreement and Ohio law, Mr. Schembechler is entitled to a declaration and order directing Trustee to provide Mr. Schembechler with an accounting as it relates to the Trust. 28 U.S.C. § 2201.

WHEREFORE, Plaintiff, Glenn E. Schembechler III, requests that this Honorable Court order Defendant, Kathryn A. Schembechler, as trustee of the Glenn E. Schembechler, Jr. Trust Agreement, provide an accounting and award him costs and attorney fees wrongfully incurred.

Respectfully Submitted,

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