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Attorney for the Independent Fiduciary, Jeanne Bryant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THOMAS E. PEREZ, Secretary of the United
States Department of Labor,

Plaintiff,

v.

MATTHEW D. HUTCHESON, HUTCHESON
WALKER ADVISORS LLC, GREEN VALLEY
HOLDINGS LLC, and the RETIREMENT
SECURITY PLAN AND TRUST, f/k/a PENSION
LIQUIDITY PLAN AND TRUST,

Defendants.

Case No.: 1:12-CV-00236-EJL

NOVEMBER 2014 INDEPENDENT FIDUCIARY REPORT AND FEE NOTICE OF
COSTS AND EXPENSES

PURSUANT TO THE Preliminary Injunction entered on June 13, 2012 [Doc. 16], Jeanne
B. Bryant, Independent Fiduciary for Retirement Security Plan & Trust (RSPT) submits this
Thirty-First Report and Notice for the period beginning November 1, 2014 – November 30,
2014.

NOVEMBER 2014 INDEPENDENT FIDUCIARY REPORT AND FEE NOTICE OF COSTS
AND EXPENSES – PAGE 1

I. ACTIVITY REPORT

ADMINISTRATIVE FEE COLLECTIONS

The Independent Fiduciary (“IF”) informed the Sponsoring Employers of the current status of their individual collections involving payment of the monthly administration fee. Attached as **Exhibit 1** is a report noting the collections and payments made from the account for previously approved fees and cost through November 2014. The Independent Fiduciary has determined to collect any unpaid monthly administration fees using the same process previously approved by the Court.

ASSET RECOVERY EFFORTS

As previously reported, the IF hired contingency counsel for asset recovery legal services, and has received payment from ASPIre for any amounts due for previously approved fees and costs concerning the PCB investment from those members holding such accounts. All costs have been paid by the RSPT sponsor employers and/or the RSPT Plans on an ongoing basis, pursuant to the payment submission and approval procedures previously outlined in the court’s Preliminary Injunction Order entered on June 13, 2012.

The Note concerning the PCB investment has been turned over to the RSPT asset recovery counsel in Idaho. A foreclosure action was filed against Green Valley Holdings and West Mountain Golf. A Stipulated Order of Foreclosure was entered. The IF is working with asset recovery counsel on scheduling a sale and is advising the RSPT employer sponsors on an ongoing basis. The IF is currently disputing the ongoing use by Tamarack Resort owners of the golf course and lodge facilities securing the Note. These owners continue to use the facilities pursuant to a previous lease agreement with West Mountain Golf which the IF (on behalf of

RSPT as lender) has terminated, and which did not require any significant lease payments to West Mountain Golf. There has been discussion of a possible meeting with all the involved parties to take place as soon as possible to try to move forward with the sale. The IF remains available and willing to meet with involved principles to work towards an amicable resolution of all issues surrounding the golf course property. However, neither TMA nor LOMA have shown an interest in working with the IF to resolve issues hampering the sale, instead they seem to want to preserve a status quo whereby local homeowners and others benefit from the operation of the properties, without an income benefit to the RSPT plan. As a result, the IF has pursued a federal court complaint against TMA to get a court order requiring TMA to pay RSPT for the use of the resort property. This case remains pending, with TMA currently attempting to dismiss the claims. A trial in that case will likely take place sometime during the summer or fall of 2015. The parties are currently engaging in discovery efforts.

The IF is pursuing a fiduciary bond claim on the fiduciary bond insuring against Hutcheson's actions. This case remains ongoing, and mediation took place on this claim November 14, 2014, in Boise, Idaho. After a full day of effort, the parties were unable to reach an agreement. As a result, the litigation will proceed with discovery. We are seeking to move the litigation process as quickly as possible. The discovery deadline is January 2, 2015 and the Motions deadline is February 2, 2015. The IF is also pursuing recovery of a house located within Tamarack Resort that was previously owned by Green Valley Holdings, LLC (Hutcheson's company that "borrowed" the funds from RSPT to purchase the golf course note and mortgage). That matter also remains pending, and mediation was also scheduled for November 14, 2014. However, the mediation was cancelled by the defendants despite RSPT's objections. A trial in that matter is currently set for March 30, 2015. The IF also continues to investigate potential

additional claims against additional parties and other avenues to recover funds for RSPT. The IF intends to schedule a conference call with the employer group early in 2015 to discuss any questions.

II. ANTICIPATED FUTURE ACTIVITIES AND RESOLUTION OF ISSUES

1. Early Withdrawal Procedures. As stated in earlier reports, an early withdrawal process has been discussed with the Department of Labor and the IF filed information and the process that would be followed in the October Report filed with the Court in early December 2012. There were no objections filed to that process. As of this report 15 employers have completed the early withdrawal process.

2. Valuations for Individual Employers. Employers under the terms of the RSPT Plans' Documents are required to provide an annual independent business valuation to the Plans' trustee and administrator. The co-trustee agreements executed by each sponsoring employer require a business valuation to be submitted by May 31 following the end of a plan year at 12-31. As of this report 35 employers submitted their business valuations for valuations as of 12-31-2013. We will begin the process of reminding employers of the due dates on the valuations due for 12-31-2014 in January.

3. Directed Investments by Members. The IF has determined not to amend the Plan Document to allow participants to direct individual investments and to maintain the current Plan structure. Investment changes can be made by contacting the IF's office who, once receiving appropriate documentation, will issue instructions to ASPire. The available mutual funds are not being changed.

4. Hardship Applications. The IF has received 10 hardship applications from participants. Six hardship applications have been granted and six have been paid. Three remain

pending for completed distribution forms and additional information; the other remains pending due to the fact the account has no liquid balance. The IF believes that, given the strict limitations on hardship distributions, no significant harm to the RSPT plans will occur if hardship applications are allowed to be processed. The IF has established procedures for handling hardship distribution applications and required minimum distributions, and after consultation with the DOL believes the previous Orders issued by the Court allow the IF to process hardship distribution applications without any other Orders being required. The IF has adopted an amendment to the plan in order to assist members with this process and has sent out Notice of this amendment to the members.

5. Required Minimum Distributions. Six participants are eligible to receive required minimum distributions by year end. Four participants do not have liquid assets to make the payments from their accounts as these funds are tied to the funds stolen by Mr. Hutcheson. Notice regarding this situation and possible tax consequences was sent to the four participants.

III. ACCOUNTINGS REGARDING THE RSPT PLANS

As noted in Section 18 of the June 13, 2012 Preliminary Injunction, before causing the RSPT Plans to pay compensation, fees or expenses, the IF is to provide written notice (the “Fee Notice”) of such compensation, fees or expenses, by filing the Fee Notice (such as set forth herein) with the Court, and by serving a copy of that filing to the Secretary of the U.S. Department of Labor, Employee Benefits Security Administration, Hutcheson and HWA. The IF intends to submit her Fee Notice and Activity Report on a monthly basis. If, within fifteen (15) days after filing of a Fee Notice, no objection to the Fee Notice, nor to payment by the Plan of the compensation, fees or expenses described therein, is filed with the Court, such compensation, fees or expenses shall be deemed reasonable expenses of the RSPT Plans and

shall be paid by the RSPT Plans without further action or approval of the Court. The fees and expenses will be allocated as outlined above. In an effort to reduce costs, copies of this Report and Fee Notice are being posted to a website of the IF's company Receivership Management, Inc. ("RMI") and the participating employers will be given notice of the filing.

Attached hereto as **Exhibit 2** is a schedule of the hourly rates for the Independent Fiduciary and the hourly rates of any staff of Receivership Management, Inc. that might be used to carry out the terms of the Court's June 13, 2012 Preliminary Injunction.

Attached hereto as **Collective Exhibit 3** are expense summaries for the period of November 1, 2014 – November 30, 2014.

Total expenses, as listed on **Collective Exhibit 3** include \$1,680.00 in IF fees, \$445.96 in legal expenses, and \$8,808.95 in contract labor expenses (which include auditor fees and identified charges for other fees, postage, copies, telephone, travel, etc.) for the period of November 1, 2014 – November 30, 2014.

Please note that counsel have, as necessary, redacted exact descriptions of litigation issues in order to protect applicable privileges, and the IF may also redact the names of employers and or members as to protect the companies or the members involved when responding to individual questions if required. The IF believes that the remaining descriptions are sufficient for approval of the charges requested. All expenses and fees are separated between those costs necessary for administration and those costs necessary for asset recovery, and will be paid as noted in this report.

In the absence of any objection, total reimbursement for \$1,680.00 in IF fees, \$445.96 in legal expenses and \$8,808.95 in contract labor expenses for administration and litigation will be

paid from the Plan's expense reserve in accordance with the Court's June 13, 2012 Preliminary Injunction. The exact amounts and the parties to be paid are listed below:

- | | | |
|----|------------------------------|------------|
| 1. | Jeanne Barnes Bryant | \$1,680.00 |
| 2. | Angstman Johnson | \$320.96 |
| 3. | Berry & Tudor, PC | \$125.00 |
| 4. | Receivership Management Inc. | \$8,808.95 |
| | \$6,903.00/Contract labor | |
| | \$1,905.95/Other expenses | |

Pursuant to the Court's June 13, 2012 Preliminary Injunction [Doc. 16], if no objection is filed with the Court within fifteen (15) days after the filing of this Notice and Report, the IF will proceed to authorize payments due counsel and any other parties listed.

DATED this 31st day of December, 2014.

/s/ Matt Christensen
MATTHEW T. CHRISTENSEN
Attorney for Jeanne B. Bryant, Independent
Fiduciary for RSPT Plans

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of December, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the individual(s) so noted below.

Jamila B. Minnicks	minnicks.jamila@dol.gov
Michael R. Hartman	hartman.michael@dol.gov
Michael A. Schloss	schloss.michael@dol.gov
Raymond E. Patricco	raymond.patricco@usdoj.gov
Michael J. Elia	mje@mbelaw.net
J. Graham Matherne	gmatherne@wyattfirm.com
Matthew T. Christensen	mtc@angstman.com

All others as listed on the Court's ECF Notice.

I further certify that on the 31st day of December, 2014, I served a copy of the foregoing notice on the following individuals or entities via US Mail, postage prepaid.

Matthew D. Hutcheson
33 Pinnacle Court
Donnelly, ID 83615

Matthew D. Hutcheson 14620-023
Federal Correctional Institution
P.O. Box 3007
Terminal Island, CA 90731

Matthew D. Hutcheson
14076 Morell Road
McCall, Idaho 83638

Monty W. Walker
c/o R. Bradford Huss
Trucker Huss, APC
One Embarcadero Center, 12th Floor
San Francisco, CA 94111

DATED: December 31, 2014

/s/ Matt Christensen
Matthew T. Christensen