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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

JANUARY 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  
Twenty-First Report and Notice for the period beginning January 1, 2014 – January 31, 2014.

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

## I. ACTIVITY REPORT

There have been a number of issues that have occurred with RSPT since the last report of the Independent Fiduciary (“IF”). The IF informed the Employer members of the current status of their individual collections involving 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 January 2014. The Independent Fiduciary has determined to collect any unpaid monthly administration fees using the same process previously approved by the Court.

As noted in the last report, the IF has 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 and/or its 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.

As a result of the process accepted by the Court, the voting concerning the settlement with Fletcher was approved by 88% of those members voting, and the settlement was finalized. The Note concerning the PCB investment has been turned over to the RSPT counsel in Idaho. A foreclosure action was filed against Green Valley Holdings and West Mountain Golf. The IF is working with counsel and is advising the RSPT group on an ongoing basis of the progress of the asset recovery efforts. There has been a change of the date of the foreclosure sale as noted below.

The foreclosure sale that was previously set for February 5, 2014, was vacated. The real properties being foreclosed on are subject to Association dues in excess of \$220,000.00 per year. The IF was attempting to negotiate a waiver of those dues while RSPT is the property owner (post-foreclosure), but the two Associations (Tamarack Municipal Association, and Lodge at

Osprey Meadows Association) failed to engage in negotiations in time to have the sale without putting RSPT at risk of ongoing dues obligation payments. Accordingly, the IF vacated the sale, and is now attempting to foreclose solely on the golf course property (which is not subject to any dues obligations), and abating a foreclosure sale on the lodge property (at least until such time as LOMA and RSPT can reach an agreement regarding dues obligations). At this time, we anticipate the re-scheduled sale will be in early April 2014.

The Independent Fiduciary sent notice of the issue of payment of property tax on the Idaho property to the RSPT employer group and the collections were completed before the end of July 2013 and the taxes paid. As a result, the Plans' interest in the golf resort properties has been preserved. At this time, it will likely be necessary to pay similar property taxes in 2014 in order to forestall any further tax sale of the property.

The IF is also pursuing a fiduciary bond claim on the fiduciary bond insuring against Hutcheson's actions. The bond company, Colonial Surety, previously moved to dismiss the case, alleging that the bond at issue did not, in fact, insure RSPT or its participants. That motion was denied on February 12, 2014, and the IF is now pursuing discovery in that action – no trial date has been set. 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, with the Defendants (and current owners – Mr. Hutcheson's mother- and father-in-law) actively defending that case. A trial in that matter is currently set for March 30, 2015. The IF is also investigating potential additional claims against additional parties.

The significant activity during the month of January continued to be centered on review of additional information and any additional work needed for Form 5500 filings. Prior to May

2012, RSPT purported to operate (albeit incorrectly), for both purposes of regulation by the IRS and the U.S. Department of Labor, as a multiple employer plan. In May 2012, the U.S. Department of Labor both as a policy matter and as well as its position in this case, took the position that RSPT was not a multiple employer plan but rather a common trust within which several individual employer plans participated. This position triggered a new reporting requirement for each individual plan. As a result, additional financial accounting on an individual plan basis had to be prepared, something not previously done. The IF is currently concentrating on working with counsel and accountants to complete all required work for 2012 and beginning work on 2013 reporting.

## II. ANTICIPATED FUTURE ACTIVITIES AND RESOLUTION OF ISSUES

The IF takes this opportunity to inform the Court and the parties to this litigation of the following issues, and anticipated means of resolution of same, involving the RSPT Plans. The IF will post a copy of this Report and Fee Notice on its web site and will inform the sponsors of the RSPT Plans of such posting as noted below after filing of same with this Court.

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. There were no objections filed to that process. On January 28, 2013, withdrawal forms and draft resolutions were sent to eleven employers whose plans do not hold the PCB investment. On that same day, all of the remaining employers in RSPT whose plans do hold PCB investments were sent information regarding the amounts required to be paid, plus lost earnings calculations and requesting those employers to respond if they intend to participate in the early withdrawal

process. As of this report 10 employers have completed the early withdrawal process, and 3 employers have partially completed the 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. On February 20, 2013, employers were notified that in order to meet the Form 5500 deadline of July 31, 2013, the business valuations needed to be filed with the IF by May 20, 2013. As of the filing of this report, all but 10 employers of 78 active employers have submitted to the IF their business valuations for plan year 2012. The required audit was completed on October 15, 2013. The 10 employers who failed to provide business valuations are currently being reviewed.

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 four (4) hardship applications from 4 members. Three hardship applications have been granted and paid. One 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.

### 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, Huteson 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 January 1, 2014 – January 31, 2014.

Total expenses, as listed on **Collective Exhibit 3** include \$2,640.00 in IF fees, \$568.50 in legal expenses, and \$9,634.41 in contract labor expenses (which include auditor fees and

identified charges for other fees, postage, copies, telephone, travel, etc.) for the period of January 1, 2014 – January 31, 2014. As previously reported, Lattimore Black has agreed to payment in increments of \$5,000 as required in order to space out their payments for the concentrated work for the 2012 reporting that they are currently undertaking.

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 \$2,640.00 in IF fees, \$568.50 in legal expenses and \$9,634.41 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	\$2,640.00
2.	Angstman Johnson	\$193.50
3.	Berry & Tudor	\$375.00
4.	Lattimore Black Morgan & Cain	\$5,000.00
5.	Receivership Management Inc.	\$4,634.41
	\$3,884.00/Contract labor	
	\$750.41/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 21<sup>st</sup> day of February, 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 21<sup>st</sup> day of February, 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 21<sup>st</sup> day of February, 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, 12<sup>th</sup> Floor  
San Francisco, CA 94111

DATED: February 21, 2014

/s/ Matt Christensen  
Matthew T. Christensen