

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENVIROSOLVE, et al.	)	
	)	
Plaintiffs,	)	Case No. 03-cv-635-TCK-FHM
	)	(Consolidated for settlement purposes
vs.	)	only with 04-cv-963-TCK-FHM)
	)	CLASS ACTION
ePEO LINK, INC. et al.	)	
	)	
Defendants.	)	

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**MOTION FOR APPROVAL OF DISTRIBUTION OF ASSETS,  
PROCEDURE TO CLOSE THE SETTLEMENT FUND ESTATE  
AND REPORT OF THE INDEPENDENT FIDUCIARY**

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**I. Introduction**

Jeanne B. Bryant, Independent Fiduciary for the ePEO Link Group Health ERISA Plan (“IF”), pursuant to the Court’s Order Approving Independent Fiduciary’s Recommendations as to Distribution of Settlement Funds (E.O.D. 12/19/07) (D.E. #298), submits her Motion for Approval of Distribution of Assets, Procedure to Close the Settlement Fund Estate and Report of Independent Fiduciary.

**II. Establishment of Second Proof of Claim Process**

As the Court will recall, after payment of all approved claims arising from the initial Proof of Claim process, funds remained in the Settlement Fund. That situation gave rise to the IF recommending, and the Court approving, a Second Proof of Claim Process. The Court’s Order approving a Second Proof of Claim procedure (D.E. #298) stated as follows:

While the Court does not applaud earlier decisions by Plan claimants not to be involved in the initial Proof of Claim procedure, the Court finds that in order to fulfill the purpose of the Settlement Fund, a final opportunity should be provided to Settlement Class Members and Medical Providers to submit a claim against the Settlement Fund. The Court further finds that the amount remaining in the Settlement Fund, after payment of interest as provided for herein, is an amount which justifies a Second Proof of Claim procedure. To expedite and tailor the Second Proof of Claim procedure, the Court finds it reasonable for that procedure to include only those Settlement Class Members and Medical Providers who/which (1) did not participate in the initial Proof of Claim procedure, (2) have, according to the information available to the Independent Fiduciary, an unpaid claim against the Plan and (3) did not have the mailing of the Notice of the initial Proof of Claim procedure returned to the Independent Fiduciary as undeliverable.

Id. at 2. The Court, at page 3 of its Order, further stated that the treatment of the claims in the Second Proof of Claim procedure would follow the provisions of the Court's Order Approving the Independent Fiduciary's Plan of Distribution (D.E. #227), which, in turn, provides:

As soon as practicable after the processing of the Proofs of Claim has been completed by the Independent Fiduciary, she will file with the Court a Proposal to Distribute Assets, which sets forth recommendations regarding disbursement of the Settlement Fund; that proposal will address, among any other matters felt necessary by the Independent Fiduciary, (a) amounts that had been submitted and approved by the Court regarding fees and expenses of the Lead Counsel, Class Notice, Independent Fiduciary, Authorizing Fiduciary and any other fees and expenses relating to the implementation of the Plan of Distribution; (b) establishing a reserve for payment of further fees and expenses of the Independent Fiduciary and those working for her; (c) payment of up to one third (1/3) of the remaining amount pro rata to out-of-pocket expenditures of Settlement Class Members whose claims should have been paid [i.e., (Class A Creditors pursuant to the Court's Order of June 14, 2006 (D.E. #223)) and (d) payment of the balance of the Settlement Fund to all Settlement Class Members (including those had (sic) pro rata out-of-pocket reimbursements) and medical care providers, [Class B and Class C Creditors pursuant to the Court's Order of June 14, 2006 (D.E. #223)], pro rata in accordance with their unpaid claims amount calculated after giving effect to the payments made to those with out-of-pocket claims.

D.E. #227 at p. 3 (brackets added for clarity).

**III. Report Regarding Processing of Claims Submitted  
in the Second Proof of Claim Process**

On January 18, 2008, the IF issued separate Statements of Unpaid Claims to each participant and medical care provider who/which qualified under the above-quoted terms of the Court's Order authorizing the Second Proof of Claim Process.<sup>1</sup> Those qualifying participants and medical care providers had forty-five (45) days from the date of the mailing to return those forms to the IF. The IF has received and processed all information from the applicable participants and medical care providers in accordance with the Court-approved Plan of Distribution. All requests for additional information have been satisfied; all of the claim amounts presented by the IF were agreed to by the claimants, or the IF has agreed with additions requested by particular claimants; and all processing is now complete. All responses have been deemed by the IF as being "timely-filed."<sup>2</sup>

**IV. Gross Assets Available for Distribution**

As of October 31, 2008, the Settlement Fund balance is \$600,066.07. This amount includes the payments received, pursuant to Order of Court (E.O.D. 6/19/08)(D.E. #313), from the IPIS Defendants. There are no other receipts due the Settlement Fund.

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<sup>1</sup> Participants and Providers were requested to review the Statement of Unpaid Claims and return the form listing those claim amounts with which they agreed, those with which they disagreed, and those claims not appearing on the Statement of Unpaid Claims.

<sup>2</sup> Two claims were submitted after the 45-day timeframe. One claim was from Town Center Medical Group, which claimed \$700.32 and which has had an approved amount set at \$700.32. The other claim was from Marilyn Brennan which claimed amounts, in general, that had already been claimed by medical providers and has had an approval amount of \$143.85 established. Because of the small amounts at issue, because of the non-material impact accepting the claims would have upon payments to the timely-filed claims and because it would not be efficient use of Settlement Fund assets to deny and contest the claims for being late-filed, the IF has treated those claims as "timely-filed." If Ms. Brennan contests the determining of her claim at the \$143.95 amount, the IF reserves the ability to take the position that the claim was untimely.

**V. Status of Reserve for Payment of Further Fees and Expenses of the Independent Fiduciary and Those Working for Her and Net Assets Available for Distribution**

The IF, in the motion wherein she recommended a Second Proof of Claim procedure be instituted (D.E. #292), estimated that the amount needed to get through a second proof of claim process and proceed to the closing of this matter would be approximately \$75,000. D.E. #292 at p. 11. As of October 31, 2008, the costs attendant to this effort totaled approximately \$47,496.00<sup>3</sup>. The IF believes that the remaining amount withheld for expenses (i.e., approximately \$34,066.00)<sup>4</sup> is adequate to complete the tasks remaining in relation to the second distribution and closure of the Settlement Fund estate.<sup>5</sup> Therefore, the net amount available for distribution is \$566,000.00 (the October 31<sup>st</sup> gross amount of \$600,066.00, minus the \$34,066 estimated expense amount).

**VI. Payment to Class A Claimants**

As set forth in previous Orders of Court relating to distribution from the Settlement Fund – D.E. ##223 and 227 – different classes of claimants were established for payment purposes: Class A (Settlement Class Members claiming out-of-pocket expenditures), Class B (Settlement Class Members in general) and Class C (medical care provider claimants). In the Second Proof of Claim procedure, a total of 53 Class A claimants submitted claims. Attached as **Exhibit 1** is a listing of Class A claimants payable amounts, which totals \$44,285.07. That amount is less than

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<sup>3</sup> These fee and expense amounts have been set forth in the monthly fee and expense filings that the IF has been submitting to the Court (and to the Settling Parties' Counsel and Class Plaintiffs' Lead Counsel) and which have been approved by the Court.

<sup>4</sup> The actual amount that would remain from the previous estimate would be \$34,504, but \$34,066 is used because of the non-material difference in the two amounts and to allow for an even \$566,000 for the final distribution.

<sup>5</sup> Included in this estimate are the costs of storing the Plan documents for onwards to six (6) years. ERISA-specifically 29 U.S.C. §§1027, 1059 and 1113 – provides both specific requirements and guidance regarding how long records relating to an ERISA benefit plan are to be retained. The answer, in general, is six (6) years.

1/3 of the Settlement Fund available for distribution (i.e., less than 1/3 of \$566,000.00). Based upon the Court's Order authorizing a Second Proof of Claim procedure (D.E. #298), the terms of the Settlement Agreement and the Court's Order approving the plan of distribution (D.E. #227), the IF proposes to pay 100% of the claim amounts set forth in **Exhibit 1** for the Class A claimants.

#### **VII. Payment to Class B and Claimants**

In the Second Proof of Claim procedure, a total of 334 Class B and C claims were filed. Attached as **Exhibit 2** is a listing of Class B and C claimants payable amounts. After payment of the Class A claims from the net funds available, the remaining Settlement Fund balance would be \$521,715.00. The aggregate of the claim amounts for Class B and C claimants set forth in **Exhibit 2** is \$615,021.78, which is more than the remaining balance of the Settlement Fund. The IF proposes to pay the remaining balance, pro rata, on the claim amounts of the Class B and C claimants set forth in **Exhibit 2** -- an approximate 84.8% payment as to those Class B and C claims.

#### **VIII. Payment Procedures Regarding Returned and Uncashed Checks**

Upon the Court's Order in this matter becoming final, the Independent Fiduciary will issue and mail checks to the claimants for the amounts set forth in **Exhibits 1** and a pro-rata of 84.8% of the amounts listed in **Exhibit 2**. As to all returned checks that are issued as a result of both the first Proof of Claim process and the second Proof of Claim process, the IF will conduct a search to determine a revised address and send payment to those revised addresses. Funds reflecting checks a) that remain uncashed after six months of being sent, and b) checks for claimants for whom no revised address can be determined will be disbursed to the Unclaimed Property Fund of the state of the claimant's last known address. Those funds will be held in that

claimant's name pursuant to the rules and regulations of the particular state's Unclaimed Property Fund. Currently, there are 10 checks from the first Proof of Claim process, totaling \$1,100.91, that have either been returned as not deliverable or remain un-cashed.

**IX. Disagreements as to Claim Determinations Received from  
Second POC Procedure Claimants**

In connection with the second Proof of Claim procedure, ten (10) claimants disagreed with the amounts determined by the IF. The two (2) major reasons for objections by these claimants relate to either a) the amount of benefit payable toward a particular service under the Plan, or b) the amount of benefit payable toward a service provided by a provider who was not in a contracted network (a.k.a "an out-of-network provider"). These "disagreeing" claimants were sent notices which explained the benefit coverage afforded by the Plan and explained how the approved payable amount was determined, with a November 1, 2008 deadline set forth to further pursue their positions. Only one of these ten (10) claimants has pursued the disagreement as to the determined payable amount. That one claimant -- North Idaho Family Physicians Clinic -- has maintained that what was owed to it was \$106 less than the determined claim amount. The IF has accepted that claimant's position and **Exhibit 2** sets forth that lower claim amount.

**X. Procedure Leading to Closure of Settlement Fund Estate**

If the fee and expense reserve and the distribution recommended herein are allowed, then all of the Settlement Funds will have been paid out and this matter will be ripe for closure after completion of the second distribution. The IF, therefore, recommends that upon the completion of tasks regarding that distribution, she file a Final Report regarding that completion and submit

a Final Order closing the Settlement Fund estate, closing this case and discharging her from any further obligations.<sup>6</sup>

**X. Request That Order Approving Distribution Be Entered as Final Under Rule 54(b) Fed. R.Civ. P.**

The IF asserts that certainty and finality are needed in relation to the payment of the distribution proposed in this Motion. Whether because of the need for certainty of payment from the claimants' perspective or because of the need for the IF to be certain of the disposition of the assets, the Order approving the distribution needs to be final. Accordingly, the IF requests that the Court find there is no just reason for delay and direct entry of the Order approving the distribution as final pursuant to Rule 54(b) Fed. R.Civ. P.

**XI. Notice to Claimants**

Notice of this filing is being given to all claimants listed in **Exhibit 1** and **Exhibit 2** with instructions to view the filing in its entirety at an identified website address and with contact information that any claimant can use regarding questions or concerns. Attached as **Exhibit 3** is a draft of that postcard notice that will be sent to all claimants within three (3) business days of the filing of this Report and Motion.

**XII. Conclusion**

Based upon the foregoing, the IF respectfully requests entry of an Order of Court granting the relief request herein.

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<sup>6</sup> The Final Order would recognize that the IF would, as set forth herein, continue to address returned/unclaimed distribution checks and would, within her discretion, continue to address issues relating to retention and destruction of Plan documents.

Respectfully submitted,

s/ Christopher K. Woosley

R. Casey Cooper, OBA #1897

Christopher K. Woosley, OBA #16348

COOPER, NEWSOME & WOOSLEY, PLLP

401 S. Boston Ave, Suite 3300

Tulsa, Oklahoma 74103-4070

(918) 592-3300 – Telephone

(918) 592-7816 – Facsimile

*Counsel for Jeanne Barnes, Bryant, Independent  
Fiduciary of ePEO Link Group Health ERISA  
Settlement Fund*



**Certificate of Service**

I hereby certify that on November 24, 2008, a true and correct copy of the above and foregoing pleading was electronically transmitted to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Graydon Dean Luthey, Jr., Esq.  
Hall, Estill, Hardwick, Gable, Golden &  
Nelson, P.C.

Edward P. Perrin, Jr., Esq.  
Jennifer R. Poe, Esq.  
Hallett & Perrin

Steven Joseph Adams  
Brooks A. Richardson  
John D. Russell  
Fellers, Snider, Blankenship, Bailey &  
Tippens, P.C.

Douglas D. Haloftis, Esq.  
John B. Brown, Esq.  
Gardere Wynne Sewell, LLP

John A. Burkhardt, Jr., Esq.  
Bill G. Freudenrich, Jr., Esq.  
Frederic N. Schneider, III, Esq.  
Boone Smith Davis Hurst & Dickman

Brad Smith, Esq.  
Jeffrey L. Wilson  
Barkley Law Firm

James K. Secrest, II, Esq.  
Edward J. Main, Esq.  
Secrest, Hill and Butler

Steve Bugg, Esq.  
McAfee & Taft

I hereby certify that on November 24, 2008 I served the same document by U.S. mail on the following who are not registered participants of the ECF system:

OutSource Now  
7811 LaMesa Blvd., Suite D  
LaMesa, CA 91941

Steven W. Hendricks  
500 Coho Lane  
Crescent City, CA 95531

David Miller, Esq.  
2277 Townsgate Road, Ste. 212  
Westlake Village, CA 91361

The Book Works, Inc.  
c/o Jacqueline Holovka, Registered Agent  
8191 North Loch Haven Drive  
Hayden Lake, Idaho 83835  
Charles Michael Barkley  
Barkley Law Firm  
401 S. Boston, Ste. 2700  
Tulsa, OK 74103-4063

Teresa Smith  
U.S. Dept. of Labor  
Employee Benefits Security Administration  
1111 Third Avenue, Suite 860  
Seattle, WA 98101-3212

s/ Christopher K. Woosley  
Christopher K. Woosley