



Fund estate. In the Independent Fiduciary's parallel filing - Report Regarding Proof of Claim Process and Notice of Claim Determinations to Which There Are No Objections - the efforts and current status of addressing claims against the Fund estate are set forth. Of the several thousand claims submitted against the Fund estate, only ten (10) have the claimants still objecting to the Independent Fiduciary's claim determination. This Motion sets forth a recommendation for a procedure to address those few objections.

## **II. Relevant Background**

The Court-approved Revised Orderly Plan of Liquidation (E.O.D. 9/17/04) (D.E. ##75 and 76) established a March 15, 2005 bar date for submission of claims.<sup>1</sup> The Independent Fiduciary received two hundred eleven (211) Proofs of Claim after March 15, 2005. The Independent Fiduciary denied all of these claims because they were late-filed and sent notice to all of those claimants of that determination. In that notice, the Independent Fiduciary informed the claimants that they could object to her determinations. Ten (10) claimants have objected to the Independent Fiduciary's classification and denial of their claims as "late-filed." Attached as Exhibit A is a

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<sup>1</sup> A "bar date" creates a deadline for the submission of claims. See In re: Trans World Airlines, 96 F.3d 687, 690 (3<sup>rd</sup> Cir. 1996).

listing of those claimants, including the applicable Proof of Claim numbers, claimed amount and other information, including what the Independent Fiduciary-approved claim amount would be if the claim had not been denied as late-filed.

The Independent Fiduciary reviewed the ten (10) "late-filed" claimants' objections. Because the Court-established March 15, 2005 bar date is not something the Independent Fiduciary can, or would, unilaterally alter or relax, she has not further addressed these ten (10) objections. Rather, she has informed the ten (10) "late-filed claim" objectors that because the matter at issue in their objections related to a court-set deadline, she would petition the Court to establish a procedure for further review and determination of the objections.

The only objections to any of the thousands of claims determinations in this matter are the ten (10) claimants set forth in Exhibit 1 who object to their claims being classified and denied as "late-filed."

**III. Court Involvement in Determining Claim Objections Should Occur**

The Independent Fiduciary respectfully requests that the Court approve a procedure by which these ten (10) "late-filed claim" objectors can present to the Court their objections, the

Independent Fiduciary can respond thereto and the Court, or an assigned Magistrate Judge, can decide the objections.

In a parallel situation - as independent fiduciary, of another insolvent benefit fund estate in front of another district court in this Circuit -- the Independent Fiduciary has moved for and obtained an order of Court that established a procedure for judicial review and determination of the objections of claimants to her claim determinations. See Exhibit B, January 26, 2006 Order in Chao v. Service and Business Workers of American Local 125 Benefit Fund, 02-80945-CIV-Marra/Seltzer (U.S. Dist Ct. S.D. Fla.).

The Independent Fiduciary has, in good faith, done all that she can do as a claims reviewer and adjuster, including reviewing objections and requests to reconsider her determination of various claims. The ten (10) objections that remain involve the challenging of a Court-approved claim bar date and whether such should be relaxed, as opposed to challenging a "claim adjusting" issue such as whether a particular medical charge was covered or was usual and customary. There may be reasons that would invoke fairness and equity so as to have the strict application of the bar date relaxed. But, because that bar date was approved by this Court, respectfully, the Independent Fiduciary urges that this Court

should be the one to decide whether the deadline should be relaxed and the late-filed claim accepted.

Moreover, because there are very few objectors (i.e., ten (10)) and because all of the objections involve the same basic issue (whether reason exists to excuse the late-filing of the claim), the judicial review involved should be efficient.

**IV. Independent Fiduciary's Recommendation**

Therefore, the Independent Fiduciary recommends the Court to adopt the following procedure to address the outstanding ten (10) objections to her claim determinations:

1. Assign a Magistrate Judge to consider and issue Reports and Recommendations as to the objections to the Independent Fiduciary's claim determination;
2. Within seven (7) days of that assignment, the Independent Fiduciary will send notice to all objecting claimants setting forth this procedure, including basic instructions and deadlines, regarding the filing by the objecting claimants of Motions to Review Claim Determination;
3. Objecting claimants would have thirty (30) days from the date of the mailing of the notice referred to in No. 2 above to file the motions and all supporting documentation with the assigned Magistrate Judge, with a copy sent to counsel for the Independent Fiduciary;
4. If an objecting claimant does not timely file a Motion to Review Claim Determination, his/her/its objection shall be considered and otherwise deemed withdrawn/waived.
5. The Independent Fiduciary would submit her response to any motion with any additional documentation within twenty (20) days of the

- receipt of the objecting claimant's motion to review, with copy sent to the objecting claimant;
6. The assigned Magistrate Judge, if necessary, may order oral argument or request additional information or briefing from any party;
  7. The assigned Magistrate Judge will then, in due course, issue a Report and Recommendation to this Court regarding the objections to the claim determinations;
  8. Objection or comment to the Report and Recommendation would be filed with this Court within ten (10) business days of the Report and Recommendation being entered on the docket; and
  9. This Court could order oral argument or request further information or briefing from any party to assist it in deciding whether to adopt, modify or reject the Report and Recommendation.

See Exhibit B at 3-4.

#### **V. Notice to Objecting Claimants**

To make sure that the objecting claimants are apprised of this Motion, and to provide them the opportunity to respond, the Independent Fiduciary is placing all ten (10) objecting claimants on the Certificate of Service of this Motion.

#### **VI. Conclusion**

Accordingly, the Independent Fiduciary moves the Court to approve the recommendation set forth herein regarding a procedure to address objections of claimants to their respective claim determinations in this matter.

This 30th day of July, 2008.

Respectfully submitted,

/s/J. Graham Matherne

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*Counsel for Jeanne Barnes Bryant,  
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International Union of Industrial  
and Independent Workers Benefit  
Fund*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 30, 2008, a true and correct copy of the foregoing was filed electronically with the Clerk of the Court using the CM/ECF filing system which will automatically send email notification of such filing to all counsel of record.

/s/J. Graham Matherne

I also certify that on July 30, 2008, a true and correct copy of the forgoing was mailed via first class mail, postage prepaid to the following:

M.D. Anderson Cancer Center  
University of Texas Health System  
201 West 7<sup>th</sup> Street  
Austin, TX 78701-2902  
Attn: Traci Cotton

Babak Tehranchi DO  
ASBS - Attn: Megan Jukich  
P.O. Box 26904  
Phoenix, AZ 85068

M.D. Anderson Physical Referral  
University of Texas Health System  
201 West 7<sup>th</sup> Street  
Austin, TX 78701-2902  
Attn: Traci Cotton

Pine Top Fire District  
Stacey Black Bear  
1845 S. Pine Lake Road  
Pinetop, AZ 85935

Donna Askew  
9218 Rangely  
Houston, TX 77055

Primary Children's Hospital  
Turek Law Firm  
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The Woodlans, TX 77380  
Attn: Douglas Turek

Harris Meth Ft. Worth  
Manziel Law Office  
8330 Meadow Road, Suite 100  
Dallas, TX 75231  
Attn: Lisa Manziel

Karen Vanderstelt  
4209 Lauren Way  
Flower Mound, TX 75028



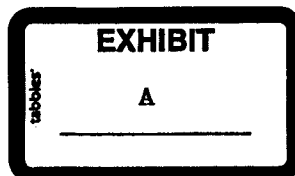
Camden Medical Center  
2000 Dan Proctor  
St. Marys, GA 31558  
Attn: Crystal Porter

Southeast Georgia Health System  
2415 Parkwood Drive  
Brunswick, GA 31520  
Attn: Crystal Porter

/s/ J.Graham Matherne

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1603549	M D ANDERSON CANCER CENTER	UNIV. OF TEXAS HLTH SYST., ATTN TRACI COTTON	201 WEST 7TH STREET	AUSTIN, TX 78701-2902
1603550	M D ANDERSON PHYS. REFERRAL	UNIV. OF TEXAS HLTH SYST., ATTN TRACI COTTON	201 WEST 7TH STREET	AUSTIN, TX 78701-2902
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1603381	KAREN VANDERSTELT		4209 LAUREN WAY	FLOWER MOUND, TX 75028
1603244	CAMDEN MEDICAL CENTER	CRYSTAL PORTER	2000 DAN PROCTOR	ST MARYS, GA 31558
1603513	SOUTHEAST GEORGIA HLT SYST	CRYSTAL PORTER	2415 PARKWOOD DR	BRUNSWICK, GA 31520



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 02-80945-CIV-MARRA/SELTZER

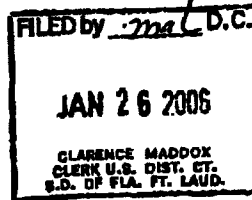
ELAINE CHAO, Secretary of Labor,  
United States Department of Labor

Plaintiff,

vs.

SERVICE AND BUSINESS WORKERS  
OF AMERICA LOCAL 125, et al.

Defendants.



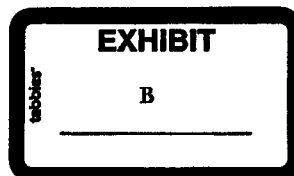
ORDER

This Cause is before the Court upon the Independent Fiduciary's Motion to Adopt Recommended Proof of Claim Procedure, filed December 27, 2005. (DE 1148.) The Court has considered the motion and the pertinent portions of the record, and is otherwise advised in the premises.

I. BACKGROUND

Pursuant to a Plan of Liquidation and Distribution which this Court approved in this matter, the Independent Fiduciary issued Proof of Claim forms to all known Plan participants and providers. (Motion at 1.) Plan participants and providers had until May 31, 2003, to submit their Proof of Claim forms to the Independent Fiduciary. Id. Approximately 3,021 forms were received by the Independent Fiduciary by the filing deadline. One hundred sixty-one forms were received after the deadline and therefore deemed "late-filed" for purposes of priority. (Motion at 2.)

On June 17, 2005, the Independent Fiduciary issued a statement to all participants and providers notifying them of the determination on their claim. Id. Thereafter, participants and



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providers had sixty (60) days to object to the Independent Fiduciary's determination.

Approximately thirty (30) objections were received and the Independent Fiduciary has reviewed the objections.

The Independent Fiduciary has filed the instant motion to request that this Court institute a procedure for considering and ruling on the objections to the Independent Fiduciary's claim determinations. The Independent Fiduciary has recommended that the Court assign a Magistrate Judge from this district to rule on the objections. An objecting claimant would file a motion to review his/her/its claim to the assigned Magistrate Judge, setting forth all grounds upon which the objection is based, along with any supporting documentation. The Independent Fiduciary in turn would file a response along with any additional documentation relating to the claim in dispute. The Independent Fiduciary further recommends that the Magistrate Judge be allowed thirty (30) days to issue his or her ruling, which would be final.

## **II. DISCUSSION**

While the Court recognizes the advantages to the Independent Fiduciary's streamlined procedure for review of objections to her claim determinations, the Court is concerned that the process does not afford participants and providers the full review they are entitled to receive. Specifically, the Independent Fiduciary's proposal would limit the parties' right to have the Magistrate Judge's decision independently reviewed. Absent a stipulation in the record that the parties have consented to a Magistrate Judge's jurisdiction for all proceedings, including entry of final judgment, the Court will not impose such a requirement on the parties. Therefore, the Court concludes that the better solution is to treat the Magistrate Judge's determination as a report and recommendation for submission to the district judge to enter a final decision. This procedure

grants the parties the right to object to the Magistrate Judge's determination and reserves to them the same rights afforded other litigants before a Magistrate Judge.

Additionally, the Court feels that requiring the Magistrate Judge to issue a determination within thirty (30) days could be unduly restrictive and cumbersome for the Magistrate Judge. Rather, the Magistrate Judge should be free to maintain a certain degree of managerial autonomy over the matters before him. Accordingly, the Court shall not impose a mandatory thirty (30) day time period by which the Magistrate Judge will be required to issue determinations on claim objections. Instead, the Magistrate Judge shall, at his discretion and within a reasonable time period, issue such determinations.

**III. CONCLUSION**

Based upon the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. The Independent Fiduciary's Motion to Adopt Recommended Proof of Claim Procedure, (DE 1148), is **GRANTED** in part. Magistrate Judge Barry S. Seltzer shall be assigned to consider and rule on objections to the Independent Fiduciary's claim determinations.
2. Within seven (7) days of the date of entry of this Order, the Independent Fiduciary will send notice of this procedure, including instructions regarding the filing of a motion to review claim determinations to all objecting claimants.
3. Objecting claimants shall have thirty (30) days from the date of the notice to file a motion and supporting documentation with the Magistrate Judge. If an objecting claimant chooses not to timely pursue the matter, his/her/its objection shall be considered and otherwise deemed withdrawn/waived.
4. The Independent Fiduciary shall submit her response to any motion to review and any

additional documentation regarding the dispute within twenty (20) days of the receipt of the objecting claimant's motion to review;

5. The Magistrate Judge, if necessary, may order oral argument or request additional information from either party to assist in making a ruling.

**DONE AND SIGNED** in Chambers at Fort Lauderdale, Broward County, Florida, this 26<sup>th</sup> day of January, 2006.

  
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**KENNETH A. MARRA**  
United States District Judge

Copies furnished to:

All counsel of record  
Donald E. Touchet  
Thomas Brown Jr.