

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

HILDA L. SOLIS, )  
Secretary of Labor, )  
U. S. Department of Labor, )  
 ) FILE NO. 2:07-CV-00068 RL  
Plaintiff, )  
 )  
v. )  
 )  
HARRIS N.A. )  
Defendant. )  
 )

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**SIXTH STATUS REPORT OF THE INDEPENDENT FIDUCIARY FOR MY SMART  
BENEFITS INC. TRUST FOR OUTSTANDING CLAIMS**

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On April 21, 2010, the Independent Fiduciary filed her Fifth Status Report and Recommendations for the My Smart Benefits Inc. Trust for Outstanding Claims (D.E. # 125). In that Fifth Status Report, the Independent Fiduciary presented a detailed account of events that had transpired since the Court's December 8, 2008 Opinion and Order (D.E. # 81). Further, the Independent Fiduciary provided her update regarding issues surrounding Mr. Hogge's revelation of Explanation of Benefits documents not previously provided to the Independent Fiduciary, her investigation of those matters, the impact of including the reprocessing of claims with that additional information, and her recommendation to proceed without incurring the additional expense of including that information in the processing of unpaid dental reimbursement claims.

On May 10, 2010, Mr. Hogge filed a Motion to Assess Supplemental Costs of Independent Fiduciary Against United States Department of Labor (D.E. 130). The Independent Fiduciary filed a Reply to the Responses to her Fifth Status Report (D.E. 133) and generally responded to the matters raised in Mr. Hogge's Motion (D.E. 130).

#### COURT ORDERED STATUS CONFERENCE

On July 1, 2010, the Court held a status conference. Based on the proceedings during that conference, it was the sense of the Independent Fiduciary that the Court had not taken her recommendations and, therefore, in an effort to resolve as many disputes as possible, and in compliance with the Court's December 8, 2008 Opinion and Order, agreed to schedule four (4) consecutive days during which the Chief of Operations of Receivership Management Inc., Mr. Robert Moore, Jr. and Mr. Hogge would proceed to meet and utilize the additional documents gathered, review Mr. Hogge's objections, and resolve as many disputes as possible as between the Independent Fiduciary and Mr. Hogge.<sup>1</sup>

#### MEETINGS IN AUGUST 2010

On August 9, 10, and 11, Mr. Moore met with Mr. Hogge. Also present at the meeting was Mr. Jeff Archbold, Investigator with the Employee Benefits Security Administration of the U.S.

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<sup>1</sup> The Court's December 8, 2008 Order directed the Independent Fiduciary to utilize the benefit information developed by Hogge to more accurately adjudicate submitted claims; and Hogge was ordered to promptly provide the Independent Fiduciary supporting bank and accounting information to verify and validate the prior claims history used by him to adjudicate the claims submitted to the Independent Fiduciary. (D.E. #81 at page 13)

Department of Labor's Chicago Office. The Independent Fiduciary understood from Mr. Hogge that at this meeting other than the documents he intended to present, there were no further documents he had remaining and whatever claims remained unresolved after the meeting would be the objections that could not be resolved between the Independent Fiduciary and Mr. Hogge and would be for the Court to consider. Mr. Hogge agreed with that understanding. Also at this meeting, cancelled checks contained on disks created by Bank Calumet were presented to the Independent Fiduciary by Mr. Archbold for the first time.

The meetings took three of the allotted four days. Mr. Moore spent nearly thirty (30) hours reviewing the documents and questioned claims presented at this meeting. An additional twenty-seven (27) hours were spent re-processing the affected claims.

#### **INDEPENDENT FIDUCIARY'S TIMELINE OF EVENTS AND COSTS**

On April 4, 2007, the Independent Fiduciary received from Harris Bank \$274,627.12. Based on the initial information from the Department of Labor there were 445 claims to be processed.<sup>2</sup>

The Independent Fiduciary proceeded with processing and filed her first Plan of Distribution on August 13, 2007. During the pendency of that filing, the Independent Fiduciary became aware that additional claimants existed whose claims had not been provided. These additional claimants were included into the processing and, on February 13, 2008, the Independent Fiduciary

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<sup>2</sup> Actual claims received were 884.

submitted her Revised Plan of Distribution, assuming she had everything necessary to move forward. At the point of filing the Revised Plan of Distribution, expenses incurred were \$30,597.52.

In response to the Revised Plan of Distribution, Mr. Hogge sought to intervene and raised several objections to accuracy of the processing. With regard to the potential cost of the processing at the level being sought by Hogge, the Independent Fiduciary advised this Court in her response as follows:

The Independent Fiduciary strongly agrees that evidence showing that claims submitted to the Independent Fiduciary are in fact paid, not unpaid, should be reviewed and considered. However, the costs of additional claims processing (i.e. correctly identifying if a deductible was correctly taken into consideration or if a maximum benefit had been reached) may outstrip any cost savings to be provided by the review..." (D.E. # 25 at pages 7 and 8)

The gross amount claimed at the time of the February 2008 Revised Plan of Distribution was \$685,097.84. The adjudicated eligible payable in the February 2008 Revised Plan of Distribution was \$404,357.71. It should be noted that this amount did not represent the final total amount as claimants had not yet been notified to prove their payment (a procedure recommended but yet to be taken at that time).

After the Court's December 8, 2008 Order, the adjudicated eligible payable amount, after taking into consideration Mr. Hogge's documentation submissions from February 2009 through July 2009, stood at \$352,676.03. The Independent Fiduciary went forward to seek proof of payment from claimants regarding their claims. It is significant to note that the reason the amount

decreased between August 2009 at \$352,676.03 to \$273,502.36 at October 31, 2009 was as a result of claimants who failed to submit their proof of payment as required under the Dental Plan, not as a result of Hogge-assisted processing.

At the time Mr. Hogge raised his objection concerning documents not provided to the Independent Fiduciary, the Independent Fiduciary had concluded processing on October 31, 2009. The adjudicated total was \$273,502.36. Plan assets were \$204,626.18.

After Mr. Hogge's announcement of documents in the possession of the U.S. Department of Labor, the trip to Chicago, the investigation of these documents, the reprocessing of the documents from Chicago trip, the additional information provided by Hogge in March and August of 2010, and the reprocessing of affected claims from all of those documents, the adjudicated payable total is now \$251,203.79 (of which \$11,678.92 remains in dispute). Plan assets now total as of September 30, 2010 \$155,743.10. Mr. Hogge's efforts can claim the reduction between \$404,357.71 and \$352,676.03, as well as the reduction between \$273,502.36 and \$251,203.79. Mr. Hogge's efforts netted a total reduction to claims payable of \$73,980.25.<sup>3</sup> The Independent Fiduciary has had no problem with the cooperation of Mr. Hogge or with the accuracy of his work.

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<sup>3</sup> In her Second Revised Plan of Distribution, the Independent Fiduciary has recommended that claimants who submitted proof of payment after the September 15, 2009 deadline be included in the claims receiving payment from the Trust. If the Court agrees with the Independent Fiduciary's recommendation, the reduction of the claims payable by Mr. Hogge is \$66,797.45.

## ISSUES CONCERNING DOCUMENTS

In considering the impact of the U.S. Department of Labor's providing documents to the Independent Fiduciary, the Court should understand that in the Independent Fiduciary's experience, the size and scope of the MSB plans and the assets available to pay claims would not have justified the expense of using all of the documents provided (had they been provided prior to the Court's December 8, 2008 Order) to create a database of paid claims in order to process unpaid claims. In fact, the cost of creating the prior claims database was born by Mr. Hogge alone, not the Trust. The expense paid for by the Trust was the level of processing required to utilize that database, as directed by the Court's December 8, 2008 Order. In fact, but for the Court's December 8, 2008 Order (D.E. # 81), the Independent Fiduciary would not have proceeded with the level of processing performed in this case.

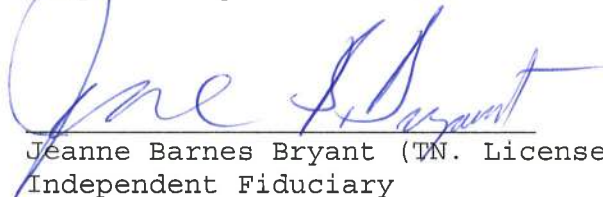
With these factors in mind, it is most accurate to say that had the U.S. Department of Labor provided the Independent Fiduciary or Mr. Hogge with all documents needed for processing prior to August, 2009, the cost of the Chicago trip and the additional processing in 2010 would not have been incurred. That cost to the Trust is \$37,136.81 (from 1-1-2010 to 8-31-2010). There are other ways to quantify these costs, but using these dates seemed to the Independent Fiduciary to be the best method.

**PROCEEDING FORWARD**

Simultaneously with the filing of this Sixth Status Report, the Independent Fiduciary is filing her Motion to Approve Distribution of Assets. This Motion will advise of the Independent Fiduciary's Determination on Claims. The Motion will be posted to the website of Receivership Management Inc.

It is the Independent Fiduciary's intent to notify all claimants of the Motion by post-card advising claimants to submit to this Court any objections with the Independent Fiduciary's determination. The Independent Fiduciary will respond to any objection so submitted within fifteen days of filing with this Court.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeanne Barnes Bryant", is written over a horizontal line.

Jeanne Barnes Bryant (TN. License 5835)  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Status Report has been or will be mailed and/or faxed if number available by the 8 day of October, 2010 to all parties noted below:

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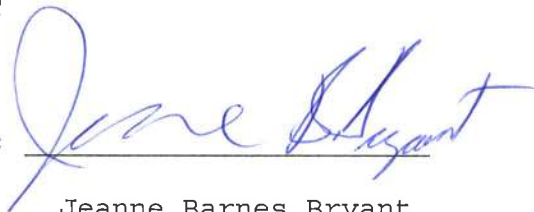
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BY:



Jeanne Barnes Bryant  
Independent Fiduciary