

# Exhibit F

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

ELAINE L. CHAO,	)	
Secretary of Labor,	)	
U.S. Department of Labor,	)	FILE NO.
	)	1:04-CV-0943-BBM
Plaintiff,	)	
	)	
vs.	)	
	)	
INTERNATIONAL UNION OF INDUSTRIAL	)	
AND INDEPENDENT WORKERS, OAK TREE	)	
ADMINISTRATORS, INC., GEOFFREY J.	)	
BELTZ, JAMES MILLER, DAVID WRIGHT,	)	
HENRY SOLOWIEJ, CHERILLE G. SHELP,	)	
and INTERNATIONAL UNION OF INDUSTRIAL	)	
AND INDEPENDENT WORKERS BENEFIT FUND,	)	
	)	
Defendants.	)	

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INDEPENDENT FIDUCIARY'S MOTION TO APPROVE DISTRIBUTION OF ASSETS  
OF IUIIW BENEFIT FUND ESTATE AND FOR RELATED RELIEF, INCLUDING  
CONTINUATION OF LIMITATIONS UPON HEALTHCARE PROVIDER CLAIMANTS'  
ABILITY TO PURSUE BENEFIT FUND PARTICIPANTS AND PROCEDURE TO  
CLOSE ESTATE AND SECURE DISCHARGE

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NOTICE OF HEARING AND DEADLINE FOR FILING OBJECTIONS

A hearing on any opposition or objection to this Motion is set for Friday, April 3, 2009 at 10:00 a.m. (EST) before the Honorable Beverly B. Martin, Courtroom 2308, Richard B. Russell Federal Building and United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30303-3309. Any opposition or objection to this Motion must be in writing and filed on or before





costs is the cost of presenting to the Court final filings relating to the closure of the Benefit Fund Estate - e.g., will a Final Report and Statement of Completion of Tasks, a Summary Accounting and a proposed Order closing the matter and discharging the Independent Fiduciary suffice, or will a more detailed (and expensive) filing be required? Therefore, the Independent Fiduciary requests the Court approve the post-distribution plans set forth herein, so that she can establish, with fair certainty, an adequate reserve as low as she can, which in turn, maximizes the amounts to be distributed to the claimants.

## II. INTRODUCTION

On July 30, 2008, the Independent Fiduciary filed with the Court her Report Regarding Proof of Claim Process and Notice of Claim Determinations (D.E. #287) ("July 30, 2008 Report"). Exhibit A to that July 30, 2008 Report set forth all of the claims that had been accepted and to which no objections had been made. On January 16, 2009, the Court entered an Order (D.E. #302) addressing the eleven (11) objections to the Independent Fiduciary's claim determinations that existed in this matter. Accordingly, through the July 30, 2008 Report and the Court's January 16, 2009 Order, the final listing of the approved claimants, and listing of the approved claim amounts for each claimant, have been established and are set forth in **Exhibit 1** hereto. Moreover, all asset recovery efforts have been



through which a listing of approved claimants and approved claim amounts has been established. Attached as **Exhibit 1** is that listing of approved claimants and claim amounts regarding claims either made by Participants or which relate to Participant-incurred medical service charges.<sup>2</sup>

Through the Independent Fiduciary's proof of claim process, and through the Court's aid in issuing its January 16, 2009 Order, the claims against the Benefit Fund have been addressed. All of the claims set forth in **Exhibit 1** are "participant" claims -- i.e., either 1) claims relating to money spent by the Benefit Fund Participant out-of-pocket, or 2) claims relating to medical services provided to the Benefit Fund Participant (or a dependent of the Participant) for which the Participant would ultimately be liable.<sup>3</sup> Because all of the claims are Participant-related and because in previous filing (e.g., July 30, 2008 Report - D.E. #287) the claims were treated on par with one another without objection, the Independent Fiduciary recommends that the claims

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<sup>2</sup> **Exhibit 1** also sets forth the pro rata distribution for which approval in this Motion is sought. **Exhibit 1** incorporates the disposition of objections made by various claimants as determined by the Court in its January 16, 2009 Order (D.E. #302).

<sup>3</sup> As noted in the Independent Fiduciary's July 30, 2008 Report, when both a Participant and a healthcare provider submitted a claim on the same matter, the recommendation of the Independent Fiduciary was to accept the healthcare provider's claim and deny the Participant's claim (D.E. #287 at 8 n.3). All claimants obtained notice of that recommended treatment of the "duplicative claims." Id. at 11 and Exhibit 4 thereto. No one objected to that treatment of the "duplicative claims."

set forth in **Exhibit 1** all be paid pro rata and on par with each other. Accordingly, the Independent Fiduciary asserts that, from a claims processing, prioritization and approval perspective, all matters have been completed in relation to claims against the Benefit Fund.

**V. MARSHALLING OF BENEFIT FUND ASSETS COMPLETED**

At the time of the July 30, 2008 Report, the Independent Fiduciary also reported that all efforts reasonably calculated to result in meaningful recovery to the Benefit Fund had been completed, save two: 1) a legal malpractice action against one of the Benefit Fund's former attorneys, and 2) a breach of fiduciary duty/negligence lawsuit against a large business agent/enroller of the Benefit Fund. D.E. #287 at 2.

Since that July 30, 2008 Report, both of these matters have, for all practical purposes, been resolved. The legal malpractice claim has been settled and the action dismissed. See Stipulation and Order of Dismissal of Action With Prejudice (E.O.D. 9/18/08, D.E. #36) in Bryant v. Rentea and Associates, #1:07-CV-2935 (U.S. Dist. Ct. N.D. Ga. -- Pannell).

The remaining asset recovery action was a Georgia state court action against Raymond T. Palombo (and two of his companies Progressive Health Alliance, Inc. and Contractors and Merchants Association) - Bryant v. Palombo, et al., #2006-CV-115381 (Ga. Sup. Ct., Fulton County) (Goger). On or about September 3, 2008, Palombo, and his wholly-owned/"d/b/a" companies, filed a Chapter





Injunction at ¶11 (D.E. #70). Therefore, to determine the amount available for distribution to the Participant-related claims, claims relating to the administration of the Benefit Fund, and administrative costs that are reasonably anticipated, must be addressed.

i) Addressing Transfer of Funds Regarding IUPIW Claims

As part of the administration of the Benefit Fund proceedings, the Independent Fiduciary addressed various issues relating to another insolvent union-sponsored health plan -- International Union of Public and Industrial Workers (Canadian) Benefit Fund ("IUPIW")<sup>4</sup> When the Independent Fiduciary was first brought into these proceedings, investigation showed that prior thereto, a block of individuals, and approximately \$1.26 million worth of medical claims that had amassed on them, had been transferred from the IUPIW Benefit Fund to the IUIIW Benefit Fund. When that transfer occurred, a certain amount of funds relating to that block of claimants -- \$179,490.34 - was also transferred from the IUPIW Benefit Fund to the IUIIW Benefit Fund. Between 1) the time of the Court's April 26, 2004 Order and Consent Decree (D.E. #11 -- E.O.D. 4/27/04), which instructed the Independent Fiduciary to continue paying legitimate Participant-

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<sup>4</sup> As this Court is aware, the IUPIW and the IUIIW were controlled by the same basic group of individuals. The IUPIW Benefit Fund was taken over, and an independent fiduciary appointed to liquidate that fund, in an action that is also pending before the Court -- Chao v. IUPIW, et al., #05-cv-3053 BBM (U.S. Dist. Ct. N.D. Ga.).



of claims, the net amount owed back to the IUPIW Benefit Fund Estate is \$35,740.93.<sup>5</sup>

The Independent Fiduciary asserts that the \$35,740.93 are funds that she has been administratively holding and which belong to the IUPIW Benefit Fund Estate. In essence, given the illegality of the transfer, the \$35,740.93 was never an IUPIW Benefit Fund asset to begin with. Accordingly, the Independent Fiduciary moves for the Court's approval to transfer the \$35,740.93 amount to the IUPIW Independent Fiduciary prior to the pro rata distribution to the IUPIW Participant-related claims.

ii) Establishment of a Reserve to Address Administration Expenses

In addition to the return of funds to the IUPIW Benefit Fund Estate, a reserve for current and future administrative expenses of the Independent Fiduciary needs to be deducted from Benefit Fund assets prior to the distribution to the Benefit Fund claimants. The Independent Fiduciary is recommending a reserve of \$64,440 be established to cover the activities taken in conjunction with the distribution, as well as activities that will be required after the distribution. See Exhibit 2 which sets forth, amongst other matters, a breakdown of this estimate. This amount would include all costs incurred by the Independent

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<sup>5</sup> While the Independent Fiduciary is confident regarding the agreement as between herself and Ms. Cordial, a copy of this filing is being sent to Ms. Cordial, as Independent Fiduciary of the IUPIW Benefit Fund, so that she can respond if she takes issue with the contents of this part of the Motion.

Fiduciary, from February 1, 2009 forward, in seeking the Court's approval and effecting the pro rata distribution on the Participant-related claims.<sup>6</sup> This reserve amount also includes costs associated with the closure of the Benefit Fund Estate including filing of a final report, a summary accounting and a request by the Independent Fiduciary to be discharged.<sup>7</sup> Finally, the amount recommended as a reserve includes what is reasonably anticipated as being needed to address matters that will require attention after the closure of the Benefit Fund Estate, such as 1) addressing any matters concerning the Proof of Loss filed in the Palombo bankruptcy, 2) responding to inquiries from the Internal Revenue Service or the U.S. Department of Labor concerning the Benefit Fund, 3) addressing matters relating to distribution payments that are returned or otherwise unclaimed, and 4) maintaining, for a period of six (6) years (and ultimately destroying), the Benefit Fund records pursuant to ERISA record retention requirements.<sup>8</sup>

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<sup>6</sup> The reserve amount assumes that there will be no objections or responses to the instant Motion that would require material reply.

<sup>7</sup> The reserve has been estimated assuming that the Court will approve the Independent Fiduciary's proposal relating to matters required in conjunction with the closure of the Benefit Fund Estate. See infra at pp. 21-25.

<sup>8</sup> ERISA -- specifically 29 U.S.C. §§1027, 1059 and 1113 - sets forth specific requirements and guidance regarding how long records relating to an ERISA plan are to be retained by a plan fiduciary. The answer, in general, is six (6) years.

Accordingly, as part of determining the amount available for distribution to the Participant-related claimants set forth in **Exhibit 1**, the Independent Fiduciary seeks approval of her recommendation that a reserve of \$64,440 for current and future administrative expenses be established.

iii) Amount Available to Distribute Pro Rata to Participant-Related Claims

After addressing administrative expenses incurred through January 31, 2009, the Benefit Fund Estate, as of February 1, 2009, has \$920,079. After subtracting the \$35,741 proposed transfer to the IUPIW Benefit Fund and the \$64,440 reserve requested immediately above, the net amount of assets available to distribute, pro rata, to the Participant-related claims is \$821,000. See Exhibit 2. As shown on the last page of **Exhibit 1**, the total amount of approved claims is \$5,819,612.86. Pro rata payment as to all of the approved claims listed on **Exhibit 1**<sup>9</sup> would yield a pro rata payment of @14.1%. The far right hand column entitled "Pro rata Pmt" on **Exhibit 1** sets forth the

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<sup>9</sup> The claims listed on **Exhibit 1** are all Participant-based claims. As referenced earlier, these claims are either 1) from a Benefit Fund Participant for funds paid by that Participant for a covered medical service, or 2) from a healthcare provider for covered medical services provided to the Benefit Fund Participant (or a dependent of the Participant). Because both of these sources of claims relate to amounts either paid by a Participant or incurred on behalf of a Participant (and for which the Participant would otherwise be responsible), the Independent Fiduciary has considered them all to be Participant-related claims and thus to be treated on par with one another for purposes of the pro rata distribution, approval of which is sought in this Motion.

proposed 14.1% pro rata payment proposed to be made on each listed approved claim.

**VII. CONTINUATION OF PROTECTIONS AFFORDED PARTICIPANTS IS REQUESTED**

Since the September 7, 2004 entry of the Preliminary Injunction, the Participants have been protected 1) from any healthcare provider reporting negative credit information concerning amounts owed, and 2) from any healthcare provider suing a Benefit Fund Participant for amounts not paid. D.E. #70 at ¶17. The Preliminary Injunction also made clear that all of the healthcare providers with a claim against the Benefit Fund or a Participant were specifically instructed to utilize the proof of claim procedures to pursue that/those claim(s). Id.

Respectfully, these protections provided to the Benefit Fund Participants need to continue past the closure of the Benefit Fund Estate. The Participants were the individuals who made contributions/paid premiums to the Benefit Fund and, thus, could be seen as the more direct beneficiaries of the Benefit Fund assets held by the Independent Fiduciary. In a similar vein, the ability of a healthcare provider to claim in the Proof of Claim process is derivative of, and dependent upon, the Participant's status of 1) being covered by the Benefit Fund, and 2) having the ability himself/herself to claim against the Benefit Fund for healthcare claims. As a result of this, the Independent Fiduciary asserts that a healthcare provider should have no greater right for payment of a claim on a health benefit than a

Participant has to pursue payment for that same health benefit. However, as a general rule, if an insurer refuses to pay a healthcare claim, the patient (i.e., Participant) is at risk of having the healthcare provider pursue him/her directly for payment.

In a liquidation context, payment -- and, typically, pro rata payment -- from the liquidation estate to an approved claimant is considered full satisfaction of the claim. Thus, payment of a pro rata amount to a Participant, who submitted an approved claim, will end that Participant's ability to recover on amounts he/she paid (or is being billed for) for medical services that the Benefit Fund should have covered. Because of the derivative nature of the healthcare providers' claims -- i.e., they are able to claim only because the Participant's claim is a covered claim -- the healthcare provider claimants should, at best, only receive the same treatment. Yet, upon receiving whatever pro rata payment it receives from the Benefit Fund Estate, and after closure of the Estate, a healthcare provider claimant could, absent order from the Court otherwise, sue the Participant for the amount of shortfall or deficiency the healthcare provider claimant did not receive from the Benefit Fund Estate. To allow a healthcare provider claimant to pursue a Participant for this unpaid amount would give the healthcare provider claimant a greater opportunity for recovery of healthcare benefits than would be given to the Participant.



The Independent Fiduciary asserts that such result is not consistent with equity and fairness and not consistent with the letter and spirit of the Court's Preliminary Injunction which clearly indicates that efforts by healthcare providers to collect as against Participants were to cease and that those healthcare providers, as well as all other claimants, were to avail themselves of the Proof of Claim process for recovery of all amounts the Benefit Fund owed them. See Preliminary Injunction at ¶17 (D.E. #70).

Therefore, through this Motion, and in anticipation of the distribution of funds, pro rata, to the approved claimants, the Independent Fiduciary recommends, and requests, that the Court enter an order which provides that if a healthcare provider claimant accepts the distribution proposed herein from the Benefit Fund Estate, then that healthcare provider would be bound by that pro rata distribution as full satisfaction of the total amount of his/hers/its claim. In doing so, the healthcare provider claimant would be waiving the ability to pursue the Participant for any deficiency regarding the claim. The Independent Fiduciary also requests that the Court's order provide that no healthcare provider claimant may report negative credit history information on any Participant relating to any deficiency not paid to the healthcare provider claimant.

To the extent that the Benefit Fund Participant was personally liable for deductibles and/or co-pays relating to the

healthcare provider's claim, the Independent Fiduciary recognizes that protections against suit, and from negative credit reporting, would not be appropriate because those charges would have been the Participant's responsibility even with a solvent benefit fund paying the other part of the healthcare provider's claim. This result - prohibiting healthcare providers from pursuing suits and reporting of negative credit information (other than as relating to Participant-owed deductibles and co-pays) - has been ordered by a district court in this Circuit under almost exact circumstances of the closing of a benefit fund estate arising from a failed union-sponsored healthcare plan. See Order Granting Independent Fiduciary's Motion to Limit Recovery of Health Care Provider Claimants (E.O.D. 1/12/07; D.E. #1300) Chao v. Service and Business Workers of America Local 125, #02-80945 (U.S. Dist. Ct. S.D. Fla.) (Marra) (copy attached as Exhibit 3).

The Independent Fiduciary asserts that the order she requests from the Court -- i.e., that, by accepting the pro rata distribution from the Benefit Fund Estate, the healthcare provider claimant waives any future collection efforts against the Participant for any deficiency and agrees not to report negative credit information concerning the deficiency -- is necessary and appropriate to ensure continuation of existing orders of the Court and to ensure the proper and equitable administration of justice in this liquidation proceeding.

The requested order is a continuation of, and in aid of, the orders already in existence in this case (e.g., the Preliminary Injunction D.E. #70 at ¶17). The Independent Fiduciary is aware that a preliminary injunction is temporary in nature and, thus, is envisioned to expire at the conclusion of this case. But, the "temporary" nature of the Preliminary Injunction does not detract from 1) the rationale underlying that order, and 2) the fact that the Independent Fiduciary's requested continuation of protections for the Participants is necessarily in aid of the continuation of that rationale. For example, a clear rationale for enjoining suits by the health care providers against Participants was to allow for all creditors to submit claims and then to have an equitable distribution of Benefit Fund assets to all approved claimants. This rationale still exists as to distributions from the Benefit Fund Estate. But, equitable and pro rata distribution to all the claimants is frustrated if one group of claimants (i.e., the healthcare provider claimants) comes away from the pro rata distribution with the ability to sue the other group of claimants (Participants) for additional funds. Moreover, the rationale behind the Preliminary Injunction's prohibition of reporting negative credit information -- i.e., that the Participants, who were supposed to be fully covered, were not at fault for the Benefit Fund's inability to pay the claims -- is still germane and compels the continuation of the protections afforded by the Court's Preliminary Injunction.

Order. Therefore, the order requested by the Independent Fiduciary continues the reasoning behind an existing order of this Court and is in aid of continuing the protections afforded by that order.

Similarly, the issuance of the order requested by the Independent Fiduciary would aid in the proper administration of justice because it would ensure that the Benefit Fund liquidation proceedings would conclude in an equitable manner. The Independent Fiduciary is acutely aware of her responsibilities to treat all claimants fairly, and she asserts that the pro rata treatment of all Participant-related claims as being of equal priority, as set forth in **Exhibit 1**, accomplishes that. Also confronting the Independent Fiduciary is the fact that the healthcare provider claimants are in a position to frustrate the overall equal pro rata treatment by taking the distribution from the Benefit Fund Estate only to turn around and pursue the Participants personally for the deficiency once the Estate is closed and the protections of the Preliminary Injunction vanish.

From the beginning of this matter, the Participants have been seen as victims of the circumstances surrounding the Benefit Fund's insolvency -- they paid their contributions/premiums to the Benefit Fund in good faith reliance that healthcare coverage was being provided; they are, in all instances known to the Independent Fiduciary, people of modest, if not meager, means who are not in a position to pay healthcare providers amounts which

the Benefit Fund was supposed to pay; they do not deserve being pursued by healthcare provider claimants over deficiencies caused by the Benefit Fund's failure to pay or to having their credit ratings damaged due to circumstances for which they are not at fault. Moreover, the Participants, as a group, are sharing the "pain" of the situation because, to the extent that they submitted claims that have been approved, they certainly are not receiving full recovery as against the Benefit Fund Estate. Rather, they are only receiving payments on their separate claims that are equal, on a pro rata basis, with what the healthcare provider claimants are receiving on their claims.<sup>10</sup>

The Independent Fiduciary, however, is also aware that the healthcare provider claimants provided their services to the Participants in reliance upon being paid by the Benefit Fund and, to the Independent Fiduciary's knowledge, are not at fault in this situation either. But, that is why the Independent Fiduciary is recommending treatment of, and has treated, the healthcare providers' Participant-related claims on equal footing with the Participants' direct claims and is recommending pro rata payment as to both claim groups.

Accordingly, the Independent Fiduciary asserts that, to ensure the proper administration of justice toward an equitable

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<sup>10</sup> Also, it should be noted that to the extent that there were duplicative claims, the claim of the healthcare provider was accepted and the claim of the Participant was denied.

conclusion of this Benefit Fund Estate liquidation, the Court should order that, other than as it relates to deductibles/co-pays owed by a Participant, all healthcare provider claimants which accept pro rata distribution from the Benefit Fund Estate are prohibited from pursuing the Participant for the deficiency in payment or from reporting negative credit information on the Participant as to the deficiency to any credit reporting agency. See Exhibit 3.

As noted in Section IX below, all approved claimants are being sent a postcard notification of this Motion -- see Exhibit 4. That notification, therefore, is being sent to the approved healthcare provider claimants and informs those claimants that the Independent Fiduciary is requesting in this Motion limitations upon their ability to pursue Participants. See Exhibit 4.

**VIII. APPROVAL OF PROCEDURES TO ADDRESS POST-DISTRIBUTION MATTERS LEADING TO CLOSURE OF THE BENEFIT FUND ESTATE**

After the completion of the pro rata distribution to the claimants set forth in **Exhibit 1**, there will still remain several matters prior to the actual closure of the Benefit Fund Estate. The Independent Fiduciary requests approval of the way in which she proposes to address these several matters.<sup>11</sup>

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<sup>11</sup> Again, and as noted at the beginning of this Motion, the Independent Fiduciary seeks approval of the Court as to these matters so that she can, with a fair degree of confidence, set a reserve amount as low as  
(continued...)

a) Treatment of Unclaimed/Returned Distribution Payments

Although the notices from the Independent Fiduciary to the claimants during the Proof of Claim process instructed each claimant to update contact information, the Independent Fiduciary does anticipate that some, but hopefully not many, distribution payments will be returned as undeliverable. Unclaimed funds, in a final liquidation context, are typically paid to the unclaimed property fund of the state where the claimant was last known to reside. Those funds are then held in the claimant's name and distributed pursuant to the rules and regulations of that state's unclaimed property department.

Because the issues surrounding disposition of unclaimed/returned checks impacts upon the amount to be reserved to cover the costs of such efforts, the Independent Fiduciary requests approval of the Court to address all returned/unclaimed distribution checks as follows: 1) because there is time and expense involved in locating recipients of de minimus payments, the Independent Fiduciary will not attempt to locate claimants who/which have returned distribution checks of less than \$50, but rather will send those payments directly to the unclaimed

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(...continued)

she can which, in turn, will allow distribution of as much as she can to the **Exhibit 1** claimants.

property department of the state of that claimant's last known address, 2) the Independent Fiduciary will employ reasonable means to locate an updated address or contact information for any claimant who/which has an unclaimed/returned distribution of over \$50, and 3) if those reasonable efforts fail in locating the particular claimant within sixty (60) days of having the distribution check returned, or if the second effort also results in a returned distribution payment, then the returned funds would be forwarded to the unclaimed property department of the state of the last known residence of the claimant, to be held in the name of that particular claimant pursuant to the rules and regulations of that particular state's unclaimed property department.

b) Submission of Final Report and Summary Accounting and Request for Discharge

Once the distribution and the efforts regarding returned/unclaimed funds are completed, the Benefit Fund Estate will be ready for closure.<sup>12</sup> The Independent Fiduciary would request, through this Motion, that the closure of the Benefit Fund Estate be accomplished through the filing of a Final Report and Summary Accounting relating to the completion of all matters and the submission of an Order of Closure and Discharge to be

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<sup>12</sup> Because of the pending nature of the Palombo bankruptcy, it is likely that matters relating to that will have to be addressed post-closure. While recovery from the Palombo bankruptcy is unlikely, if such occurs, it will be de minimus and the Independent Fiduciary requests that that amount, if ever recovered, be added to the reserve to address post-closure expenses relating to document retention and any other miscellaneous matters that might arise.



entered by the Court, closing the Benefit Fund Estate and discharging the Independent Fiduciary.

Since the termination of the Benefit Fund, pursuant to the Court's Preliminary Injunction (D.E. #70), the Independent Fiduciary has made and completed all required filings, reasonable asset pursuits, claim determinations and all other tasks, to the best of her knowledge and ability and in good faith. In all of those efforts, there have either been no objection, or only scant objection,<sup>13</sup> raised. Moreover, the costs incurred by the Independent Fiduciary and the amounts recovered have been filed, as public record with the Court, first as motions to approve, and later as notice filings, and have always been provided to the Secretary for review -- all without objections or oppositions as to the amounts spent and measures taken relating to the running of the Estate and the pursuit of recoveries.

The Independent Fiduciary requests that, in order to minimize the reserves needed for final efforts to close the Benefit Fund Estate, and to have as much of the Benefit Fund assets available for distribution as possible, she be allowed to submit to the Court 1) a general statement/report that she has completed all tasks and made all required filings and taken all required efforts, 2) a summary accounting of funds received,

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<sup>13</sup> For example, and as the Court will recall, as to the several thousand claim determinations made by the Independent Fiduciary, only eleven (11) objections remained for the Court to address through its January 16, 2009 Order (D.E. #302).

spent, distributed and reserved, and 3) a proposed order that acknowledges the completion of the tasks, discharges the Independent Fiduciary and closes the Benefit Fund Estate as fully liquidated. Again, the lack of objection to the Independent Fiduciary's actions throughout these proceedings support this request and, as mentioned previously, notice of this Motion is being provided to all interested parties (see Section IX, infra) and therefore the opportunity is being given to object to this proposed manner of closing the Estate.

c) Retention and Ultimate Destruction of Benefit Fund Records

As a substitute ERISA plan fiduciary, the Independent Fiduciary is to retain, for six (6) years, various Benefit Fund records and documents, as required under ERISA. See e.g., 29 U.S.C. §§1027, 1059 and 1113. Those records determined not to fall under these ERISA provisions could be, from an ERISA document retention perspective, discarded at the closure of this matter. The Independent Fiduciary proposes that she be allowed, at the closure of this Estate, to dispose of all Benefit Fund documents that do not relate to or fall under the coverage of the above-referenced statutes. By allowing the Independent Fiduciary to address Benefit Fund document retention/destruction in this

way will bring efficiencies to that process and allow more funds to be available to distribute to the **Exhibit 1** claimants.<sup>14</sup>

**IX. NOTICE OF MOTION, HEARING DATE AND OBJECTION DEADLINE TO APPROVED CLAIMANTS**

Attached as **Exhibit 4** is a template of a postcard that will be mailed to every claimant listed on **Exhibit 1** notifying the claimant of this filing, the deadline for objections, and the hearing date for objections if any are filed. The postcard notice informs the healthcare provider claimants that the Independent Fiduciary seeks continuation of limitations of their actions regarding Participants and it also informs all claimants how to contact the Independent Fiduciary and provides a website address where they can access a copy of this filing and its exhibits.

**X. REQUEST FOR ORDER TO BE ENTERED AS FINAL PURSUIT TO RULE 54(b) FED. R. CIV. P.**

The Independent Fiduciary also requests that the order addressing the relief sought in this Motion be entered as a final order pursuant to Rule 54(b) Fed. R. Civ. P. To the extent that distributions are ordered/approved as a result of this Motion, the recipients of those distributions need to know that their receipt of funds is certain and will not be undone by some later challenge. Because of the need for certainty regarding any order

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<sup>14</sup> The amounts recommended to be reserved to address document retention and destruction (see Exhibit 2) are based upon the Independent Fiduciary having to only retain the documents required by the above-referenced ERISA provisions for that six (6) year period.

arising from this Motion and because there is no just reason for delay regarding the finality of an Order arising from this Motion, the Independent Fiduciary requests it be entered as a Final Order pursuant to Rule 54(b) Fed. R. Civ. P.

**XI. CONCLUSION**

For the reasons set forth herein, the Independent Fiduciary requests an Order of Court approving 1) the final distribution of Benefit Fund assets, 2) the continuation of Participant protections, and 3) the plan regarding post-distribution matters, all as set forth herein, and that such Order be entered as final pursuant to Rule 54(b) Fed. R. Civ. P.

This 26th day of February, 2009.

Respectfully submitted,

/s/J. Graham Matherne

J. Graham Matherne, #11294  
(Admitted through Court Order  
entered October 17, 2004)  
Wyatt, Tarrant & Combs LLP  
2525 West End Avenue, Suite 1500  
Nashville, TN 37203-1423  
Phone: 615-244-0020  
Fax: 615-256-1726

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

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2009, 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.

I hereby certify that on February 26, 2009, a true and correct copy of the foregoing was mailed via first class mail, postage prepaid to the following:

Betty Cordial  
Independent Fiduciary of IUPIW Benefit Fund  
300 West Osborn Road, Suite 500  
Phoenix, Arizona 85013

I hereby certify that on or before March 1, 2009, a postcard, the template to which is set forth in **Exhibit 4**, will have been mailed via first class mail, postage prepaid to each claimant listed on **Exhibit 1** and that a copy of this filing and all exhibits will have been posted at [www.receivermgmt.com](http://www.receivermgmt.com) (click on "IUIIW Updates" link).

/s/J. Graham Matherne