

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

FILED

SEP 13 2010

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY dk, DEPUTY

FLOYD SEIBERT, individually, and as)
TRUSTEE FOR THE CENTRAL)
HOME CARE SERVICES, INC., and)
AFFILIATES 401(K) PLAN,)
Plaintiff,)

vs.)

Case No. 5:06-cv-01330-F

(1) CENTRAL HOME CARE)
SERVICES, INC., and AFFILIATES)
401(K) PLAN;)

(2) MATTHEWS BENEFIT GROUP,)
ADMINISTRATOR OF THE CENTRAL)
HOME CARE SERVICES, INC.,)
and AFFILIATES;)

(3) CENTRAL HOME CARE)
SERVICES, INC.;)

(4) EXTENDED CARE SERVICES OF)
OKLAHOMA, INC.;)

(5) CENTRAL OKLAHOMA CARE)
AT HOME, INC.;)

(6) CENTRAL TEXAS HOME)
HEALTH SERVICES, INC.;)

(7) CENTRAL TEXAS EXTENDED)
CARE)

SERVICES, INC.;)

(8) WESTERN MEDICAL SUPPLIES)
AND)

EQUIPMENT, INC.;)

(9) SECRETARY OF LABOR)
FOR THE UNITED STATES OF)
AMERICA;)

(10) JOHN HANCOCK LIFE)
INSURANCE COMPANY (USA),)

Defendants.)

**SUCCESSOR FIDUCIARY'S RESPONSE TO PLAINTIFF SIEBERT'S
OBJECTION TO REPORT AND PROPOSAL TO DISTRIBUTE ASSETS OF
THE TRUSTEE-DIRECTED PORTION OF THE CENTRAL HOME CARE INC.
AND AFFILIATES 401(K) PLAN**

Comes now, Jeanne Barnes Bryant, Court-appointed Successor Fiduciary of The Central Home Care Inc. and Affiliates 401(K) Plan (CHC Plan) and respectfully responds to the Objections of the Plaintiff, Floyd Siebert.

1. Necessary Information. The Successor Fiduciary has provided semi-annual notices to participants regarding the status of the CHC Plan's activities. This was done so as to minimize mailing expenses. Post-card notices and postings to Receivership Management Inc.'s website have also provided activity updates. Mr. Siebert's stated concern over the status of assets is questionable since at the time of the Successor Fiduciary's appointment the Trustee-Directed portion of the CHC Plan held only \$9,118.91. The Participant-Directed portion of the CHC Plan has already been distributed as was reported in paragraph 2 of the Successor Fiduciary's Report. (D.E. # 49). In fact, the \$9,118.91 balance of the Trustee-Directed portion were the only assets held by that portion of the CHC Plan until the restitution payments of Mr. Golden and the payment of the insurance claim (a total of approximately \$350,000). Thus it is unclear as to what "balances" Mr. Siebert is referring. To further respond to Mr. Siebert, attached is a Statement of Net Assets of the CHC Plan as of 7-31-2010.

2. Time of Distributions. In response to Mr. Siebert, the Successor Fiduciary would issue benefit election forms to CHC Plan Participants within thirty (30) days from a final Order of the Court approving an allocation methodology.

3. Future Distributions Mr. Siebert and Mr. Golden are jointly and severably liable for full restitution to the CHC Plan as a part of their criminal sentencing. The Successor Fiduciary contemplates making annual distributions. The proposed available for distribution figure in the Successor Fiduciary's report is net of a \$50,000

reserve. If the Successor Fiduciary's recommendations are approved, this reserve will be utilized to pay fees from July 1, 2010 forward.¹ The established reserve takes into account that Mr. Siebert and Mr. Golden are to continue making restitution payments to the CHC Plan and thus a second distribution will occur.

4. Amounts of Distributions in real dollars. The Successor Fiduciary strongly objects to Mr. Siebert's characterization that her Report is misleading. If her recommended methodology is adopted by the Court, the pro-rata payment is 49.91%. Should Mr. Siebert and Mr. Golden make their required restitution payments, participants will receive 100% of their account balance.

5. Income Taxes Withheld. The Successor Fiduciary is required by law to withhold appropriate income taxes. Participants will be able to roll over their payments into an IRA or other tax qualified retirement plans.

6. Forfeiture Action The Successor Fiduciary would rely upon the reports made by the U.S. Department of Justice in connection with any factual representations made by Mr. Siebert regarding the Forfeiture Action. While Mr. Siebert, without facts, resorts to accusations, the Successor Fiduciary would note that her rights, as well as the CHC Plan's rights, to knowledge concerning the transactions was limited to that of a criminal victim and therefore her rights to information were not as broad as outlined by Mr. Siebert. To her knowledge, the activities surrounding the sale were completed as directed by the U.S. District Court for the Southern District of Iowa in

¹ An individual participant's account balance is subject to the expense of searching for the participant if the individual under the U.S. Department of Labor Rules is a "missing participant." Any such fee has to meet a reasonableness test as directed by the Department's rules.

accordance with procedures approved for such sales by the U.S. Marshall. Mr. Siebert's opinion of himself and his abilities to handle such a sale does not lead to a conclusion that the federal government was nefarious in its handling of the sale or that the Successor Fiduciary was negligent.

7. Fiduciary Liability Policies and Fidelity Bonds. In his objection, Mr. Siebert attempts to suggest that while one of the companies that issued insurance covering trustee negligence denied the CHC Plan's claim, other companies for other periods held negligence policies as well which could be claimed upon. Mr. Siebert spends a great deal of time outlining what happened to the CHC Plan, how he did transactions that he apparently believes were legitimate and legal. He states specifically that his actions were in compliance with and authorized by the CHC Plan Document. Instead his actions were and are violations of ERISA as being a prohibited transaction with a party in interest. It is uncontroverted that his actions and transactions were criminal. He pled guilty to these crimes and he is serving his sentence. Regardless of how Mr. Siebert now wants to characterize his actions, Mr. Siebert intentionally entered into transactions prohibited by ERISA and is a convicted felon for having conducted these transactions as he has described them. For the same reason U.S. Specialty Insurance Company denied these claims, so too would the other insurance companies because intentional fraudulent acts are not recoverable losses under fiduciary policies insuring against negligence. To expend further CHC Plan assets on a course of conduct unlikely to benefit the CHC Plan would not be a prudent course of conduct.

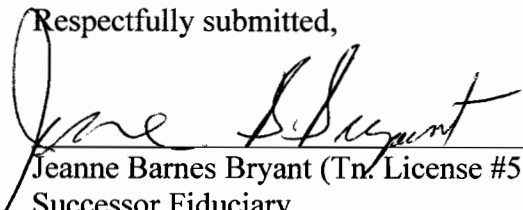
8. Participants Vesting and Plan Balances. In describing the number of documents, communications, and people involved with the CHC Plan to support his

contention there was “no way Seibert could have manipulated vesting schedules,” Mr. Siebert goes on to explain how he directed an attorney to prepare an amendment that does just that: manipulate the vesting schedule. While Mr. Siebert may have had the authority to seek and make amendments to the CHC Plan Document, under ERISA his actions in doing so have to be in the best interests of both the Plan and its participants. The Successor Fiduciary in her Report described the motives of Mr. Siebert as not being congruent with the best interests of both the Plan and its participants. Mr. Siebert did utilize a third party administrator, attorneys, accountants, and employees in the creation of reports, plan testing, and plan operations. Nevertheless, Mr. Siebert controlled the source documentation for actual cash payments and investments of the Trustee-Directed portion of the CHC Plan. It cannot be ignored that despite all of the persons involved, Mr. Siebert orchestrated a \$3 million fraud on the CHC Plan. It is the lack of verification that is at the root of the Successor Fiduciary’s recommendation on allocation methodology. Post 12-31-2001 Plan contribution activities to the Trustee-Directed portion of the CHC Plan cannot be verified and that is at the heart of the Successor Fiduciary’s recommendation. The Successor Fiduciary does not doubt the employees of Central Home Care Inc., and its affiliates bore many hardships during the final days of the company’s operations. It is Mr. Siebert’s actions as trustee of the CHC Plan that have created the situation for the employees who continued to work from 2001 to the end.

9. In response to Mr. Siebert’s requests, the Successor Fiduciary states:
 - a) She has responded to Mr. Siebert’s questions and supplied a Statement of Net Assets with her response;

- b) She does not possess anything other than what is contained in the public record of Mr. Siebert's criminal case that relates to the forfeiture sale of the Texas property.
- c) She believes the review of files and documents for any possible filing of claims for Fiduciary liability to be an expensive exercise knowing that fiduciary negligence policies will as a matter of form exclude losses from intentional criminal acts and objects to further expense in this area.
- d) She has already reviewed Plan participant balances and has stated that the information is not verifiable. Service providers were limited to prepare reports from source documents prepared by Siebert; further, Trustee-directed contributions and activity was maintained and controlled only by Siebert after 12-31-2001.
- e) She does not understand to what Mr. Siebert is referring as "vested balances that are undisputed" and therefore cannot respond fully to this recommendation and objects to any such distribution without a full understanding as to what Mr. Siebert is referring.
- f) The CHC Plan, as a regulated tax qualified defined contribution plan, is obligated to cooperate and respond to questions and inquiries of the Department of Labor.
- g) She is prepared to respond in any manner the Court may direct and may seek any further relief to which she or the CHC Plan may be entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeanne Barnes Bryant". The signature is written in a cursive style and is positioned above a horizontal line.

Jeanne Barnes Bryant (Tn. License #5835)

Successor Fiduciary

Central Home Care Inc. and Affiliates

401(K) Plan

P.O. Box 2307

Brentwood, TN 37024

615-370-0051 Phone

615-373-4336 Fax

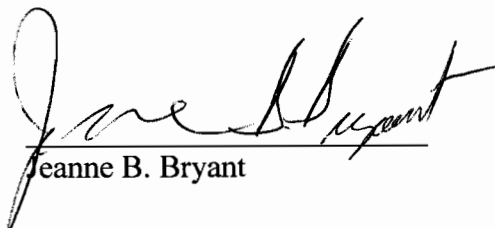
Certificate of Service

I hereby certify that a true and correct copy of the foregoing document and exhibit has been or will be mailed by U.S. Mail and/or faxed if number available by the 10 day of Sept, 2010 to the parties noted below:

Floyd W. Seibert 07260-030
Federal Correctional Institution
PO Box 1500
El Reno, OK 73036

Dane Steffenson
Office of the Solicitor
U.S. Department of Labor
61 Forsyth Street S.W. Room 7T10
Atlanta, GA 30303
Counsel to the U.S. Secretary of Labor

Mr. C. William Threlkeld, Esq.
Fenton, Fenton, Smith, Reneau, & Moon
211 North Robinson, Suite 800 North
Oklahoma City, Oklahoma 73102
Counsel to Matthews Benefit Group



Jeanne B. Bryant