

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

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

**MY SMART BENEFITS, INC'S AND JONATHAN HOGGE'S VERIFIED
OBJECTION TO REVISED PLAN OF DISTIBUTION AND REQUEST FOR
ADDITIONAL TIME TO REVIEW REVISED PLAN**

Jonathan E. Hogge, individually, and as President of My Smart Benefits, Inc.,
being duly sworn upon his oath, states as follows:

1. I am adult over the age of eighteen, and otherwise competent to testify. At all times relevant to these proceedings, I was the President and Chief Executive Officer of My Smart Benefits, Inc. ("MSB"), and I have personal knowledge of the facts and circumstances stated in this document, and I am therefore competent to testify as to the facts stated within this document.

2. To date, I have been an individually named defendant in three (3) separate actions involving allegation arising from the factual circumstances in issue in this action, to wit: United States of America v. Jonathan Hogge and Jack Lait, Case No.: 2:07-CR-046 PPS-PRC, pending in the U.S. District Court for the Northern District of Indiana, Hammond Division (the "Criminal Proceeding"); U.S. Department of Labor v. Jonathan E. Hogge, Adversary Case No.: 06-6122, pending in the United States Bankruptcy Court for the Northern District of Indiana (Hammond Division) Cause No.: 2:07-CR-46PS (the

“Bankruptcy Adversary Proceeding”); and Harris N.A., as successor by merger to Mercantile National Bank of Indiana v. Jonathan E. Hogge, *in rem*, Amy J. Wadas-Hogge, *in rem*, and First Midwest Bank, as successor by merger to Bank Calumet, Cause No.: 45D04-0710-MF-00488, pending in the Lake Superior Court, Room Number 4 (the “Foreclosure Proceeding”).

3. In preparing this document, I have reviewed copies of MSB records and reports currently available to me. The original copies of these documents were prepared or obtained, and subsequently maintained, by employees and agents of MSB, for the benefit of MSB, in the ordinary course of business of MSB. The United States Department of Justice, pursuant to a subpoena, removed most of the records from MSB offices in November 2003. I had no access to most of these documents until the later months of 2006, when many file boxes were made available for inspection at Department of Labor offices in Chicago. The documents were stored in two different locations, and based upon time constraints, I was not able to review claims documentation at that time, and instead performed a cursory inventory of documents, reviewed and obtained documents relating to another bankruptcy adversary action (Case No. 06-6052, then pending in the United States Bankruptcy Court for the Northern District of the Indiana, Hammond Division, which was promptly resolved for a nominal sum once said documents were obtained), and requested copies of certain plan documents related to the Bankruptcy Adversary Proceeding, but not directly related to the adjudication of claims. I was not able to begin a review of claims payment issues until after June 7, 2007, when the United States Attorney’s Office in Hammond, in connection with the Criminal Proceeding, produced multiple CDs and DVDs with images of MSB documents. Since produced, I have invested approximately two thousand five hundred (2,500) hours examining and reorganizing the seventy two thousand plus (72,000+) pages of

documentary evidence produced as non-indexed scans, as well as other evidence available to me.

4. I also reviewed the Independent Fiduciary's Revised Plan of Distribution, and exhibits attached thereto (the "Revised Plan"). I compared Jeanne Barnes Bryant's (the "Independent Fiduciary's") findings with the claims information available to me, including MSB records maintained through QuickBooks and Apolline, the proprietary software under development by MSB's to process claims such as reviewed by the Independent Fiduciary. Although I did not review all claims, I reviewed every claim over one thousand dollars (\$1,000.00), and at least every tenth (10th) person, with a particular focus on claimants from the City of Minot ("City") and Minot Public School District #1 ("School"). At this point in my investigation, I have only been able to verify checks paid for claims through QuickBooks, and have not been able to verify checks processed through Apolline, which accounts for certain payments beginning in January 2003; if these payment were verified, it is possible that additional claims were paid which I have not been able to verify.

5. Neither My Smart Benefits nor I were made parties to this lawsuit, and I was not served with any papers related to the lawsuit until February 13, 2008 when attorney J. Michael Katz, one of my attorneys, received a copy of the Revised Plan. I was aware of this action and the appointment of the Independent Fiduciary, and based upon a June 22, 2007 telephone conference between my attorney and counsel for the Independent Fiduciary believed that the Independent Fiduciary would provide us with copies of the Independent Fiduciary's findings and any plan for the distribution of assets for comment, prior to its submission to the Court.

6. Based upon my review of MSB documents, the City and School had negative account balances at the time MSB ceased operations, and each owed money to MSB.

7. MSB records indicate that on October 17, 2003, School had a negative account balance of \$61,426.71, all claims were processed, and the account would have a negative account balance of \$124,718.39 if all claims were paid. Documents supporting the conclusion that the School group had a negative balance for are attached hereto as group Exhibit "A."

8. MSB records indicate that on October 17, 2003, City had a negative account balance of \$7,388.83, all claims were processed, and the account would have a negative account balance of \$19,662.73 if all claims were paid. Documents supporting the conclusion that the City group had a negative balance for payment of claims are attached hereto as group Exhibit "B."

9. I reviewed three hundred twenty-six (326) of the claims submitted, representing claims from sixty-seven (67) different groups. Of those groups, based upon my review of Apolline invoicing records, five (5) groups had a collective credit (a credit for future claims fees) of \$4680.61, fifty-eight had a collective negative balance (i.e. funds owed to MSB for administration and payment of claims) of \$632,801.66, and four (4) groups could not be identified based on the MSB records I have reviewed since June 2007.

10. MSB also maintained records (through its Apolline software) regarding the "net" balance of funds available for the payment of claims for a particular group. If a group had a positive ledger balance, a group had submitted funds sufficient to pay some, but not necessarily all, of its claims. If a group has a negative ledger balance, a group had submitted insufficient funds to pay any claims. These funds were tracked using

Apolline ledger balance records. Based on the records I reviewed, at least fourteen (14) groups had negative ledger balances, in the aggregate sum of \$125,627.52, meaning that insufficient funds were submitted by those groups for payment of any claims. Although I was able to identify forty (40) groups with positive ledger balances (funds were available for payment of claims, the aggregate amount available for payment of claims for those groups was \$139,359.52, meaning that a relatively small amount, on average, is available for payment for those groups compared with the amount of claims “adjudicated” by the Independent Fiduciary as being eligible for payment..

11. In addition to the problems with the distribution plan related to ledger balances and invoice balances, there are clear problems with the payment of claims to certain individuals. At least two individuals are to be paid an amount in excess of the total amount of charges. At least three individuals are to be paid 100% of the amount owed, which is unlikely based upon the plans, which almost always paid a set percentage of the gross amount owed.

12. Based on my work reviewing MSB documents from June 2007 to the present, and my initial review of the Revised Plan, if the Revised Plan is approved, many claims that should not be paid will be paid, some claimants will be paid more than once, claim amounts will be calculated improperly, and many accounts receivable (which might result in additional funds availability) will go uncollected and disregarded.

13. With additional time to review the Revised Plan, and prior documents not provided to myself or my attorneys by the Independent Fiduciary, it is my opinion that further investigation will uncover further inconsistencies and problems with the Revised Plan.

WHEREFORE, My Smart Benefits, Inc. and Jonathan Hogge respectfully request that this Court reject the Revised Plan of Distribution, that they be provided

additional time of not less than sixty (60) days to review the Independent Fiduciary's methodology for analysis of claims, claims, and claims payment procedures, to determine whether additional objections or actions are necessary by Intervenor to protect his interests as they affect this action and the other actions he is defending, and to file a more complete objection to the Plan of Distribution, and for all other relief just and proper in the premises.

VERIFICATION

I Affirm, under penalties for perjury, that the foregoing representations are true and correct to the best of my knowledge, information, and belief.

/s/ Jonathan E. Hogge
Jonathan E. Hogge

My Smart Benefit, Inc.

By: /s/ Jonathan E. Hogge
Jonathan E. Hogge
Its: President

/s/ Gordon E. Gouveia
Gordon E. Gouveia, #7235-45
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219-736-6020

CERTIFICATE OF SERVICE

The undersigned, hereby certifies that service of a true and complete copy of the Verified Objection to Revised Plan of Distribution and Request for Additional Time to Review Revised Plan was served upon the following parties in interest by placing same in the United States Mail, in envelopes, properly addressed and with sufficient postage affixed thereto as indicated by the attached matrix, or electronically at the e-mail addresses set forth below on February 26, 2008.

/s/ Gordon E. Gouveia
Gordon E. Gouveia

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