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11 Attorney for the Independent Fiduciary, Jeanne Bryant

12 UNITED STATES DISTRICT COURT  
13 FOR THE DISTRICT OF IDAHO

14 HILDA L. SOLIS, Secretary of the United States  
15 Department of Labor,

16 Plaintiff,

Case No.: 1:12-CV-00236-EJL

17 v.

18 MATTHEW D. HUTCHESON, HUTCHESON  
19 WALKER ADVISORS LLC, GREEN VALLEY  
20 HOLDINGS LLC, and the RETIREMENT  
21 SECURITY PLAN AND TRUST, f/k/a  
22 PENSION LIQUIDITY PLAN AND TRUST,

23 Defendants.

24 **NOVEMBER 2012 INDEPENDENT FIDUCIARY REPORT**  
25 **AND FEE NOTICE OF COSTS AND EXPENSES**

26 PURSUANT TO THE Preliminary Injunction entered on June 13, 2012 [Doc. 16],  
27 Jeanne B. Bryant, Independent Fiduciary for Retirement Security Plan & Trust (RSPT)  
28 submits this Seventh Report and Notice for the period beginning November 1, 2012 –  
29 November 30, 2012.

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## I. ACTIVITY REPORT

There have been a number of issues that have occurred with RSPT since the last report of the Independent Fiduciary (“IF”). The IF informed the Employer members of the current status of their individual collections involving the monthly administration fee, and has requested payment from ASPIre for any delinquent amounts. Attached as **Exhibit 1** is a report noting the collections and payments made from the account for previously approved fees and cost through November 2012. With the collection of the outstanding amounts, there are currently sufficient funds expected from the monthly collections to pay the fees and costs for administration noted in this report.

As noted in the last report, the IF has now hired contingency counsel, and has received payment from ASPIre for any amounts due for previously approved fees and costs concerning the PCB investment from those members holding such accounts. All costs will be paid by the RSPT and/or its Plans on an ongoing basis, pursuant to the payment submission and approval procedures previously outlined in the court’s Preliminary Injunction Order entered on June 13, 2012. The IF held a conference call on December 19, 2012 with the RSPT Employer group holding investments involved with the previous actions of Matthew Hutcheson to discuss possible resolution of some of the issues involved with that transaction. A separate report concerning those issues will be filed with the Court as soon as possible.

## II. ANTICIPATED FUTURE ACTIVITIES AND RESOLUTION OF ISSUES

The IF takes this opportunity to inform the Court and the parties to this litigation of the following issues, and anticipated means of resolution of same, involving the RSPT

1 Plans. The IF will post a copy of this Report and Fee Notice on its web site and will  
2 inform the sponsors of the RSPT Plans of such posting as noted below after filing of same  
3 with this Court.  
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5 Tax Qualification Issues. The IF has completed her review of plan documents and  
6 sponsor files. It appears all required amendments to RSPT were not timely made; however, the  
7 IF, acting in accordance with the authority granted to her by this Court, has now executed  
8 amendments to bring the RSPT into compliance with all provisions of the Internal Revenue  
9 Code that currently require RSPT to be amended and except for matters pending before this  
10 court and/or to be addressed in a voluntary compliance program application with the Internal  
11 Revenue Service or by individual employers, the RSPT Plans appear to have been administered  
12 in accordance with plan documents, as amended, have been self-corrected in accordance with  
13 plan documents, or will be self-corrected in the future. As stated in earlier reports an early  
14 termination process has been discussed with the Department of Labor and the IF filed  
15 information and the process that would be followed in the October Report filed with the Court.  
16 There were no objections filed to that process, and therefore the IF is proceeding to send out  
17 information to each plan concerning the details of that process. Those instructions and forms  
18 will be mailed out by the end of January 2013.  
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23 Delinquent Contributions and/or Participant Loan Payments. The IF has  
24 reviewed the RSPT Plans' trust records concerning these issues. No contributions or  
25 participant loan payments to the RSPT Plans appear to be delinquent at the present time.  
26 However, during plan year 2011, the Plans in the RSPT in the aggregate had \$140,449.19  
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1 in delinquent contributions and loan payments that were corrected and paid to the Plans,  
2 along with \$892.63 in additional lost earnings.

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4 Valuation for Individual Employers- Employers under the terms of the RSPT  
5 Plans' Documents are required to provide an annual independent business valuation to  
6 the Plans' trustee and administrator. A deadline of September 15, 2012 had already been  
7 established by the previous administrator. This business valuation is necessary to the  
8 valuation of qualified employer securities held in each of the RSPT Plans. All but forty  
9 submitted their independent business valuations in time for use in the 2011 Forms 5500  
10 filed October 15, 2012. For those that did not, the form was filed utilizing last year's  
11 valuation. The Independent Fiduciary is working to receive the final business valuations  
12 and is reviewing all forms for any corrections needed after discussion with the  
13 Department of Labor.  
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17 Forms 5500 for Plan Year 2011 filed- A completed Form 5500 along with audit  
18 was filed timely with the U.S. Department of Labor. Also, as now indicated by the U.S.  
19 Department of Labor, Forms 5500 for each employer sponsored plan within the RSPT  
20 were also filed timely. A total of 106 Forms 5500 were filed in connection with RSPT as  
21 of October 15, 2012.  
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24 Required Minimum Distributions- As set for in Treas. Regs. 1.401(a)(9)-1 to -9  
25 and 1.408-8, Required Minimum Distributions are being prepared and will be distributed  
26 to eligible participants as required under the Rules.  
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1                                    III. ACCOUNTINGS REGARDING THE RSPT PLANS

2                    As noted in Section 18 of the June 13, 2012 Preliminary Injunction, before  
3 causing the RSPT Plans to pay compensation, fees or expenses, the IF is to provide  
4 written notice (the “Fee Notice”) of such compensation, fees or expenses, by filing the  
5 Fee Notice (such as set forth herein) with the Court, and by serving a copy of that filing  
6 to the Secretary of the U.S. Department of Labor, Employee Benefits Security  
7 Administration, Hutcheson and HWA. The IF intends to submit her Fee Notice and  
8 Activity Report on a monthly basis. If, within fifteen (15) days after filing of a Fee  
9 Notice, no objection to the Fee Notice, nor to payment by the Plan of the compensation,  
10 fees or expenses described therein, is filed with the Court, such compensation, fees or  
11 expenses shall be deemed reasonable expenses of the RSPT Plans and shall be paid by  
12 the RSPT Plans without further action or approval of the Court. The fees and expenses  
13 will be allocated as outlined above. In an effort to reduce costs, copies of this Report and  
14 Fee Notice are being posted to a website of the IF’s company Receivership Management,  
15 Inc. (“RMI”) and the participating employers will be given notice of the filing.  
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20                    Attached hereto as **Exhibit 2** is a schedule of the hourly rates for the Independent  
21 Fiduciary and the hourly rates of any staff of Receivership Management, Inc. that might  
22 be used to carry out the terms of the Court’s June 13, 2012 Preliminary Injunction.  
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24                    Attached hereto as **Collective Exhibit 3** are expense summaries for the period of  
25 November 1, 2012 – November 30, 2012. The November costs are within the expected  
26 payments from the monthly amounts at this time.

27                    Total expenses, as listed on **Collective Exhibit 3** include \$1,650.00 in IF fees,  
28 \$3,287.83 in legal expenses and \$5,644.18 in contract labor expenses (which include  
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1 auditor fees and identified charges for other fees, postage, copies, telephone, travel, etc.)  
2 for the period of November 1, 2012 – November 30, 2012. Please note that counsel have,  
3 as necessary, redacted exact descriptions of litigation issues in order to protect applicable  
4 privileges, and the IF may also redact the names of employers and or members as to  
5 protect the companies or the members involved when responding to individual questions  
6 if required. The IF believes that the remaining descriptions are sufficient for approval of  
7 the charges requested. All expenses and fees are separated between those costs necessary  
8 for administration and those costs necessary for asset recovery, and will be paid as noted  
9 in previous reports. Upon final replacement by contingency counsel, costs for asset  
10 recovery efforts are expected to be minimal.

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13 In the absence of any objection, total reimbursement for \$1,650.00 in IF fees,  
14 \$3,287.83 in legal expenses and \$5,644.18 in contract labor expenses for administration  
15 and litigation will be paid from the Plan’s expense reserve in accordance with the Court’s  
16 June 13, 2012 Preliminary Injunction. The exact amounts and the parties to be paid are  
17 listed below:  
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|    |    |                              |            |
|----|----|------------------------------|------------|
| 19 | 1. | Jeanne Barnes Bryant         | \$1,650.00 |
| 20 | 2. | Angstman Johnson             | \$455.08   |
| 21 | 3. | Berry & Tudor                | \$2,832.75 |
| 22 | 4. | Receivership Management Inc. | \$5,644.18 |
| 23 |    |                              |            |
| 24 |    | \$3,512.00/Contract labor    |            |
| 25 |    | \$2,132.18/Other expenses    |            |
| 26 |    |                              |            |

27 Pursuant to the Court’s June 13, 2012 Preliminary Injunction [Doc. 16], if no  
28 objection is filed with the Court within fifteen (15) days after the filing of this Notice and  
29 NOVEMBER 2012 INDEPENDENT FIDUCIARY REPORT AND FEE NOTICE OF  
COSTS AND EXPENSES - PAGE 6  
Matter: 8571-002

1 Report, the IF will proceed to authorize payments due counsel and any other parties  
2 listed.

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5 DATED this 10<sup>th</sup> day of January, 2013.

6  
7 /s/ Matt Christensen  
8 \_\_\_\_\_  
9 MATTHEW T. CHRISTENSEN  
10 Attorney for Jeanne B. Bryant, Independent  
11 Fiduciary for RSPT Plans  
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CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of January, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the individual(s) so noted below.

|                        |                            |
|------------------------|----------------------------|
| Jamila B. Minnicks     | minnicks.jamila@dol.gov    |
| Michael R. Hartman     | hartman.michael@dol.gov    |
| Michael A. Schloss     | schloss.michael@dol.gov    |
| Raymond E. Patricco    | raymond.patricco@usdoj.gov |
| Michael J. Elia        | mje@mbelaw.net             |
| J. Graham Matherne     | gmatherne@wyattfirm.com    |
| Matthew T. Christensen | mtc@angstman.com           |

All others as listed on the Court's ECF Notice.

I further certify that on the 10<sup>th</sup> day of January, 2013, I served a copy of the foregoing notice on the following individuals or entities via US Mail, postage prepaid.

Matthew D. Hutcheson  
33 Pinnacle Court  
Donnelly, ID 83615

Monty W. Walker  
c/o R. Bradford Huss  
Trucker Huss, APC  
One Embarcadero Center, 12<sup>th</sup> Floor  
San Francisco, CA 94111

DATED: January 10, 2013

\_\_\_\_\_  
/s/ Matt Christensen  
Matthew T. Christensen