

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

ELAINE L. CHAO, Secretary of Labor,)	
United States Department of Labor,)	
)	
Plaintiff,)	
)	
v.)	
)	
MISSISSIPPI STATE MEDICAL ASSOCIATION and)	
MISSISSIPPI STATE MEDICAL ASSOCIATION)	Civil Action
BENEFIT PLAN AND TRUST,)	
Defendants.)	
)	
)	

CONSENT JUDGMENT AND ORDER

On January 1, 2004, the Mississippi State Medical Association Benefit Plan and Trust ("MSMA Plan") terminated with over \$5,000,000 in outstanding claims for medical benefits and funds sufficient to pay only 7% of those claims. Although some service providers have waived payments beyond what the MSMA Plan has paid, others have not and have taken actions to collect unpaid amounts from MSMA Plan participants and beneficiaries. As a result, MSMA Plan participants and beneficiaries have been subjected to collection actions, have had their credit ratings adversely affected, and have otherwise suffered financial hardships.

The Secretary of the United States Department of Labor, Elaine L. Chao, alleges in this action that the MSMA Plan's inability to pay outstanding claims results from Defendant Mississippi State Medical Association's ("MSMA") breach of its fiduciary responsibilities under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. 1001, *et seq.* In particular, the Secretary alleges that MSMA violated Sections 404(a)(1)(A), (B), and (D) of ERISA, 29

U.S.C. 1104(a)(1)(A), (B), and (D), by failing to properly monitor the MSMA Plan's benefit committee and other individuals who exercised authority or control over MSMA Plan administration and management. The Secretary also alleges that MSMA is liable as a co-fiduciary under 29 U.S.C. 1105(a) for either knowingly participating in breaches by the benefit committee and other MSMA Plan fiduciaries (collectively "MSMA Plan Fiduciaries"), enabling fiduciary breaches through its own breaches, or knowing of fiduciary breaches and failing to make reasonable efforts to remedy them. MSMA neither admits nor denies these allegations.

MSMA admits that this Court has subject matter jurisdiction under 29 U.S.C. 1132(a)(2), (5), and 1132(e)(1), and personal jurisdiction over MSMA, and that venue is proper in the Southern District of Mississippi under 29 U.S.C. 1132(e)(2). The Secretary and MSMA expressly waive Findings of Fact and Conclusions of Law and consent to the entry of this Consent Judgment as a full and complete resolution of all of the civil claims and issues raised against MSMA in the complaint without trial of any issue of fact or law.

Upon the parties' joint motion and for good cause shown, it is therefore ORDERED ADJUDGED AND DECREED that:

1. Within 1 day after entry of this Judgment, MSMA will forward all remaining assets of the MSMA Plan, believed to be \$21,831.68, to the Independent Fiduciary. MSMA will send evidence of such payment to the United States Department of Labor, Employee Benefits Security Administration, 61 Forsyth St., SW, Suite 7B54, Atlanta, GA 30303 within 5 days after entry of this Judgment.

2. MSMA is removed from any position it may currently hold with respect to the MSMA Plan as a MSMA Plan Fiduciary or service provider, and enjoined from providing health, disability or other welfare benefits through an ERISA-covered plan or arrangement, except

through a plan or arrangement that is fully insured by an insurance company licensed to do business in the state of Mississippi. As explained below, MSMA may assist the Independent Fiduciary by negotiating with MSMA's members and other medical care providers to resolve claims and to remedy any adverse credit reports that participants or beneficiaries have sustained as a result of the MSMA Plan's nonpayment of its participants' and beneficiaries' medical bills.

3. To ensure an orderly distribution of the funds recovered in this action and other MSMA Plan assets, this Court asserts its authority to exercise equitable jurisdiction under the All Writs Act, 28 U.S.C. 1651, ERISA, and the federal common law over the MSMA Plan, the MSMA Plan's participants and beneficiaries, all creditors of the MSMA Plan, and all persons and entities against whom the MSMA Plan has claims. *See Cutler v. The 65 Security Plan*, 831 F. Supp. 1008 (E.D.N.Y. 1993); *In re Consolidated Welfare Fund ERISA Litigation*, 798 F. Supp. 125 (S.D.N.Y. 1992). The MSMA Plan and its assets are within the Court's *in rem* jurisdiction, *see Princess Lida v. Thompson*, 305 U.S. 456, 466 (1939); *Lankenau v. Coggeshall & Hicks*, 350 F.2d 61, 64 (2d Cir. 1965), and the Court hereby imposes a quasi-bankruptcy proceeding as an equitable remedy to ensure that the equitable policies underlying ERISA are satisfied. *See Cutler*, 831 F. Supp. at 1021-23.

4. To effectuate this remedy, the Court will appoint an Independent Fiduciary of the MSMA Plan to serve as this Court's receiver for the MSMA Plan. The Independent Fiduciary shall assume discretionary control over the MSMA Plan, subject to this Court's oversight, and have plenary fiduciary responsibility and authority with respect to the MSMA Plan and all powers and responsibilities customarily vested in trustees and receivers appointed by this Court. In addition, the Independent Fiduciary shall have those powers and responsibilities that the Court may see fit to assign in any subsequent Order issued in this case.

5. MSMA shall cooperate fully with the Independent Fiduciary by:

a. Providing reasonable and necessary assistance to the Independent Fiduciary, when asked, concerning questions pertaining to the operation of the MSMA Plan and other issues necessary to determine eligibility for benefits under the MSMA Plan;

b. Making available to the Independent Fiduciary all books, records, bank accounts, electronic hardware and software, data files however stored, and any indicia of ownership of the assets of the MSMA Plan;

c. Making available to the Independent Fiduciary documents of every nature relating in any way to the MSMA Plan's management and operation; and

d. Assisting the Independent Fiduciary, when requested, in negotiations with medical care providers and in taking appropriate action to remedy any adverse credit reports that participants or beneficiaries have sustained as a result of the MSMA Plan's nonpayment of the participants' and beneficiaries' medical bills.

6. In the event that the assets held by the Independent Fiduciary are insufficient to pay for (a) any valid outstanding benefit claims that the Independent Fiduciary determines are still owed by the MSMA Plan, including any amounts that were paid out-of-pocket by MSMA Plan participants and beneficiaries and (b) the reasonable fees of the Independent Fiduciary, attorneys, actuaries, accountants, consultants and other professional service providers retained by the Independent Fiduciary, MSMA shall pay such additional amounts to the Independent Fiduciary as are reasonably necessary to cover the outstanding benefit claims and reasonable administrative expenses. MSMA shall make payments of funds needed to reimburse MSMA Plan participants and beneficiaries for any valid outstanding benefit claims within 7 days of notice from the Independent Fiduciary of the need for additional funds. MSMA shall make payments of funds

needed to pay medical providers the amounts owed by the MSMA Plan for any valid outstanding benefit claims within a reasonable time, as agreed between MSMA and the Independent Fiduciary, of receiving notice from the Independent Fiduciary of the need for additional funds. With respect to reasonable fees of the Independent Fiduciary, attorneys, actuaries, accountants, consultants or other professional service providers retained by the Independent Fiduciary, MSMA shall make payments of funds needed to pay such fees within 7 days of the Court's approval of a fee application as set forth in paragraph 8 below.

7. Receivership Management, Inc. (215 Centerview Drive, Suite 133, Brentwood, Tennessee) is hereby appointed as the Independent Fiduciary of the MSMA Plan. The Independent Fiduciary is hereby directed to:

- a. collect, marshal, and administer the assets of the MSMA Plan, including those sums owing and payable to it;
- b. identify all creditors of the MSMA Plan and the amounts of their claims;
- c. process the MSMA Plan's unadjudicated claims or claims adjudicated but not fully paid and pay those claims found to be legitimate under the terms of the applicable plan documents;
- d. negotiate with medical care providers or other creditors, where appropriate, to resolve their claims for services;
- e. take appropriate action to pursue any valuable claims that the MSMA Plan may have against any person or entity, other than actions against MSMA for the ERISA violations already alleged in the Secretary's complaint;
- f. provide a copy of this Consent Judgment to the MSMA Plan's participants and beneficiaries within 30 days after entry of Judgment by this Court. Alternatively, the

Independent Fiduciary may send letters to the MSMA Plan's participants and beneficiaries directing them to an internet site containing a copy of the Consent Judgment;

g. send written notice of the Judgment to all hospitals, physicians, pharmacists, therapists, laboratories and other health care or service providers who have not received full payment on claims because the MSMA Plan lacked sufficient funds to pay them. The notice will inform those entities of the Court's injunction under the All Writs Act, set out in paragraph 9 below, against actions that could interfere with the implementation of this Consent Judgment; and

h. take all other necessary and appropriate actions to fulfill its fiduciary duties to the MSMA Plan.

8. Prior to obtaining payment for reasonable services and expenses authorized pursuant to this Consent Judgment, the Independent Fiduciary shall present an itemized fee application to the Court, including hourly rates of pay, and dates and hours of work, accompanied by a description of work performed and an itemized statement of expenses for itself and all service providers retained by the Independent Fiduciary. The Independent Fiduciary shall provide a copy of the fee application when it is filed with the Court to the Secretary of Labor at United States Department of Labor, Employee Benefits Security Administration, Attn: Howard Marsh, 61 Forsyth St., SW, Suite 7B54, Atlanta, GA 30303 and to MSMA, Attn: Linda McMullen, 408 W. Parkway Place, Ridgeland, MS 39157. Absent objection from the Secretary or from MSMA within 15 business days of receipt of the application, the application shall be deemed approved. If the Secretary or MSMA objects, the Court will decide whether the Independent Fiduciary's request should be granted. The Independent Fiduciary's fees and expenses shall be paid solely from the amounts set forth in paragraphs 1 and 6 above, and from any recoveries obtained pursuant to paragraph 7(e) above.

9. All hospitals, physicians, pharmacists, therapists, laboratories and other health care or service providers, including their agents, employees, representatives, and assigns are hereby enjoined from commencing or continuing any judicial, administrative, enforcement, collection or other proceeding, asserting any lien, providing negative reports to any credit rating or credit reporting entity, and threatening to take any such action against the MSMA Plan or any participant or beneficiary of the MSMA Plan. This injunction is issued under authority of the All Writs Act, 28 U.S.C. 1651(a), to prevent interference with this Consent Judgment and to ensure an orderly resolution of claims arising out of the MSMA Plan's termination with insufficient funds to pay claims for medical benefits. *See, e.g., Cutler*, 831 F. Supp. at 1013-14; *In re Consolidated Welfare Fund "ERISA" Litigation*, 798 F. Supp. at 127-128.

10. After payment of all valid, outstanding benefit claims and payment of all reasonable expenses of the Independent Fiduciary and service providers to the Independent Fiduciary, the Court shall issue a permanent injunction barring any adverse actions against the MSMA Plan and its participants and beneficiaries by any and all creditors or their agents for claims associated with health coverage through the MSMA Plan and otherwise discharging those claims.

11. MSMA hereby releases the Secretary and her officers, agents, attorneys, employees, and representatives, both in their individual and governmental capacities, from all actions, claims and demands of whatever nature, including those arising under any statute, rule or regulation, that relate in any manner to the filing, prosecution, and maintenance of this civil action or any other proceeding or investigation incident thereto, including but not limited to claims for costs, fees, or other expenses under the Equal Access to Justice Act, as amended.

12. The Secretary hereby releases MSMA from all claims in the complaint. However, nothing in this Consent Judgment and Order shall prohibit the Secretary from assessing a penalty

pursuant to ERISA 502(l) on the applicable recovery provided for by this Consent Judgment and Order.

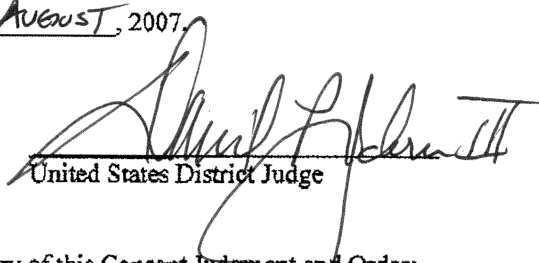
13. The Consent Judgment is binding on the parties as to the allegations in the Secretary of Labor's complaint but shall not be binding on any federal, state, or local governmental or prosecutorial agency other than the United States Department of Labor.

14. This Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of enforcing the terms of this Consent Judgment.

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15. This Consent Judgment may be executed in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute a single document.

SO ORDERED this 14th day of AUGUST, 2007.


United States District Judge

The undersigned hereby consent to the entry of this Consent Judgment and Order:

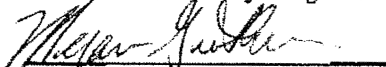
FOR ELAINE L. CHAO, SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR:

DATED: 7/26/07

JONATHAN L. SNARE
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ELAINE L. CHAO, Secretary of Labor
U.S. DEPARTMENT OF LABOR

FOR MISSISSISSIPPI STATE MEDICAL ASSOCIATION:

DATED: 7/25/07


LINDA MCMULLEN
General Counsel
Mississippi State Medical Association