

Matthew T. Christensen
ANGSTMAN JOHNSON
3649 Lakeharbor Lane
Boise, Idaho 83703
Telephone: (208) 384-8588
Facsimile: (208) 853-0117
Christensen ISB: 7213

Attorney for the Independent Fiduciary, Jeanne Bryant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

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

Plaintiff,

v.

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

Defendants.

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

MAY 2013 INDEPENDENT FIDUCIARY REPORT
AND FEE NOTICE OF COSTS AND EXPENSES

PURSUANT TO THE Preliminary Injunction entered on June 13, 2012 [Doc. 16], Jeanne B. Bryant, Independent Fiduciary for Retirement Security Plan & Trust (RSPT) submits this Thirteenth Report and Notice for the period beginning May 1, 2013 – May 31, 2013.

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. Attached as **Exhibit 1** is a report noting the collections and payments made from the account for previously approved fees and cost through May 2013. 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 have been 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.

As a result of the process accepted by the Court, the voting concerning the settlement with Fletcher was approved by 88% of those members voting, and the settlement was finalized. The note concerning the PCB investment has been turned over to the RSPT counsel in Idaho. The IF is working with counsel to evaluate other asset recovery efforts.

On May 28, 2013, our Idaho counsel informed us that the Valley County Treasurer, in Valley County, Idaho, will conduct a property tax deed sale (auction) to sell the Osprey Meadows Golf Course (and certain other property), which is the collateral for the PCB Note purchased with RSPT Plan assets, in an attempt to collect property taxes due and unpaid for 2009 (roughly \$65,000.00 – the total amount unpaid since 2009 is approximately \$400,000.00). Our

counsel also informed us that if the property is sold at a tax deed sale, the RSPT plan's interest in it will be extinguished. However, the property tax auction can be postponed to August 2014 if the Valley County, Idaho property taxes due for 2009 (\$65,535.23) are paid prior to August 1, 2013.

The Independent Fiduciary believes it is her duty to protect the PCB Note, which she views as an RSPT plan asset. This asset will be irrevocably harmed should a tax deed sale of the property occur. The Independent Fiduciary intends to pay the Valley County, Idaho property taxes due for 2009 (\$65,535.23) on the property before August 1, 2013, using RSPT plan assets.

The Independent Fiduciary intends to allocate this expense to those employer plans in the RSPT holding interests in the PCB Note. Due to the illiquid nature of some of the participants' accounts within affected employers' plans, those participants holding PCB investments with liquid balances will initially bear a heavier share of the expense. These funds will be restored dollar for dollar, on a first priority basis, from the expected proceeds due to RSPT from the sale of the property. The Independent Fiduciary intends to proceed with this course of action with all due haste. The Independent Fiduciary will send notice of this process to the RSPT employer group.

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 Plans. The IF will post a copy of this Report and Fee Notice on its web site and will inform the sponsors of the RSPT Plans of such posting as noted below after filing of same with this Court.

Early Withdrawal Procedures. As stated in earlier reports an early withdrawal process has been discussed with the Department of Labor and the IF filed information and the process that would be

followed in the October Report filed with the Court in early December. There were no objections filed to that process. On January 28, 2013, withdrawal forms and draft resolutions were sent to eleven employers whose plans do not hold the PCB investment. On that same day, all of the remaining employers in RSPT whose plans do hold PCB investments were sent information regarding the amounts required to be paid, plus lost earnings calculations and requesting those employers to respond if they intend to participate in the early withdrawal process. As of this report, six employers have requested such termination. As of this report two employers have completed the early withdrawal process, one employer has partially completed the process. The remaining three employers have not completed the documentation or fee payment to complete the early withdrawal process.

Valuations for Individual Employers. Employers under the terms of the RSPT Plans' Documents are required to provide an annual independent business valuation to the Plans' trustee and administrator. All but forty submitted their independent business valuations in time for use in the 2011 Forms 5500 filed October 15, 2012. For those that did not, the form was filed utilizing last year's valuation. Of the forty who did not submit an independent business valuation, three have corrected this. On February 20, 2013, employers were notified that in order to meet the Form 5500 deadline of July 31, 2013, the business valuations needed to be filed with the IF by May 20, 2013. As of the filing of this report, only seven (7) employers have submitted to the IF their business valuations. The IF understands how these valuations are often tied to an employer's tax reports that have had their deadlines extended. She is committed to working with employers so as to avoid costly delays to the Plan. The IF has arranged for the required audit for 2012.

Directed Investments by Members. The IF is contemplating amending the Plan Document to allow participants to direct individual investments as opposed to the Plan's current structure. In the meantime, investment changes can be made by contacting the IF's office who, upon receiving appropriate documentation, will issue instructions to ASPire. The available mutual funds are not being changed. Once the draft amendment is finalized, it will be discussed with participating employers with a date of implementation and notice to participants, with instructions and information.

III. ACCOUNTINGS REGARDING THE RSPT PLANS

As noted in Section 18 of the June 13, 2012 Preliminary Injunction, before causing the RSPT Plans to pay compensation, fees or expenses, the IF is to provide written notice (the "Fee Notice") of such compensation, fees or expenses, by filing the Fee Notice (such as set forth herein) with the Court, and by serving a copy of that filing to the Secretary of the U.S. Department of Labor, Employee Benefits Security Administration, Hutcheson and HWA. The IF intends to submit her Fee Notice and Activity Report on a monthly basis. If, within fifteen (15) days after filing of a Fee Notice, no objection to the Fee Notice, nor to payment by the Plan of the compensation, fees or expenses described therein, is filed with the Court, such compensation, fees or expenses shall be deemed reasonable expenses of the RSPT Plans and shall be paid by the RSPT Plans without further action or approval of the Court. The fees and expenses will be allocated as outlined above. In an effort to reduce costs, copies of this Report and Fee Notice are being posted to a website of the IF's company Receivership Management, Inc. ("RMI") and the participating employers will be given notice of the filing.

Attached hereto as **Exhibit 2** is a schedule of the hourly rates for the Independent Fiduciary and the hourly rates of any staff of Receivership Management, Inc. that might be used to carry out the terms of the Court's June 13, 2012 Preliminary Injunction.

Attached hereto as **Collective Exhibit 3** are expense summaries for the period of May 1, 2013 – May 31, 2013. The May costs are within the expected payments from the monthly amounts at this time. There are no payments requested for the accounting firm of Latimore Black in this filing.

Total expenses, as listed on **Collective Exhibit 3** include \$1,935.00 in IF fees, \$1,976.56 in legal expenses, and \$5,791.89 in contract labor expenses (which include auditor fees and identified charges for other fees, postage, copies, telephone, travel, etc.) for the period of May 1, 2013 - May 31, 2013.

Please note that counsel have, as necessary, redacted exact descriptions of litigation issues in order to protect applicable privileges, and the IF may also redact the names of employers and or members as to protect the companies or the members involved when responding to individual questions if required. The IF believes that the remaining descriptions are sufficient for approval of the charges requested. All expenses and fees are separated between those costs necessary for administration and those costs necessary for asset recovery, and will be paid as noted in previous reports.

In the absence of any objection, total reimbursement for \$1,935.00 in IF fees, \$1,976.56 in legal expenses and \$5,791.89 in contract labor expenses for administration and litigation will be paid from the Plan's expense reserve in accordance with the Court's June 13, 2012 Preliminary Injunction. The exact amounts and the parties to be paid are listed below:

- | | | |
|----|----------------------|------------|
| 1. | Jeanne Barnes Bryant | \$1,935.00 |
| 2. | Angstman Johnson | \$174.80 |

- | | | |
|----|------------------------------|------------|
| 3. | Berry & Tudor | \$1,801.76 |
| 4. | Receivership Management Inc. | \$5,791.89 |
| | \$2,541.00/Contract labor | |
| | \$3,250.89/Other expenses | |

Pursuant to the Court's June 13, 2012 Preliminary Injunction [Doc. 16], if no objection is filed with the Court within fifteen (15) days after the filing of this Notice and Report, the IF will proceed to authorize payments due counsel and any other parties listed.

DATED this 11th day of June, 2013.

/s/ Matt Christensen

MATTHEW T. CHRISTENSEN
Attorney for Jeanne B. Bryant, Independent
Fiduciary for RSPT Plans

