

FILED

MAR 17 2008

At _____ M
STEPHEN R. LUDWIG, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

ROGER D. SANDACK (2856)
170 South Main Street, Suite 400
Salt Lake City, UT 84101
Telephone: (801) 533-8383
Facsimile: (801) 531-1486

Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

ELAINE L. CHAO, Secretary of
Labor, U.S. Department of Labor,

Plaintiff,

v.

HARRIS N.A.,

Defendant

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FILE NO. 2:07-CV-00068-RL-PRC

**OBJECTION TO REVISED PLAN OF DISTRIBUTION
DIRECT BENEFITS LLC, A UTAH LIMITED LIABILITY COMPANY**

Direct Benefits, LLC, a Utah limited liability company, and Daniel Dixon respectfully object to the Independent Fiduciary's recommended Revised Plan of Distribution in the above-entitled matter and requests that this Objection be filed with the Independent Trustee's Report to the Court.

FACTS

1. Direct Benefits, LLC is a Utah limited liability company and Daniel Dixon of Salt Lake City, UT is an insurance agent duly licensed by the State of Utah, Department of Insurance.

2. Direct Benefits and Daniel Dixon sold, as broker, a product of My Smart Benefits, Inc., a third-party dental administrator, through Direct Benefits, LLC to employers and their employees in the state of Utah.

3. Upon gaining information of the insolvency of My Smart Benefits, Inc., Direct Benefits, LLC and Daniel Dixon contacted all of the Utah claimants through their employers that had purchased benefit plans through Direct Benefits and Daniel Dixon.

4. In accordance with public policy of the state of Utah and its Department of Insurance, Direct Benefits and Daniel Dixon paid in full the claims of each employee who had purchased such product through Direct Benefits, and who had presented claims that had not been paid by My Smart Benefits, Inc.

5. The total claims paid by Direct Benefits and Daniel Dixon aggregated \$25,940.92.

6. Attached hereto as Exhibit A and by this reference made a part hereof is a listing of each and every Utah employer and their claiming employees who filed for such benefits and who were paid such benefit from Direct Benefits, LLC and Daniel Dixon.

7. All of the above-listed claims were paid pursuant to contracts signed by each participant having claims and their employers. These contracts assigned all claims and all of the participant's rights to future reimbursement to Direct Benefits and Daniel Dixon, stating in material part, as follows:

11. Assignment of Claim. Releasor hereby assigns, transfers and delivers all right, title and interest in and to any claim or benefit that Releasor has or had by reason of My Smart Benefits' actions or omissions, and Releasor further agrees to keep Releasees advised of any and all actions and proceedings of which the Releasors have been advised by reason of their status as claimants against My Smart Benefits or any entity or individual associated therewith. In addition, Releasors agree to apply for and cooperate with in all proceedings designed to reimburse Releasors for their claims and losses for and in the name of Releasees. This assignment shall operate as an appointment of Releasees as attorney-in-fact for the Releasors for the purpose of applying for and perfecting any and all claims

Releasors have or had in connection with their claims against My Smart Benefits. Releasors agree that all such claims shall be processed timely for the benefit of Releasees, and that should Releasors fail to apply for or timely process their claims against My Smart Benefits, they shall owe back to Releasees any and all consideration paid by Releasees to Releasors above.

8. On or about February 22, 2008, Direct Benefits, LLC and Daniel Dixon received the Independent Fiduciary's Revised Plan of Distribution, which proposes that Direct Benefits' claim be placed under a Class 3 priority, which, upon information and belief, would relegate Direct Benefits' claim into the "worthless" category based upon the aggregate claim in Class 2 and the available funds for payment.

LEGAL OBJECTIONS

Based upon the foregoing statement of fact, Direct Benefits and Daniel Dixon submit that the inferior priority assigned to this claim violates public policy and private rights of contract.

A. Public Policy.

Utah Code Ann. § 31A-21-108 (1953, as amended) provides that subrogation actions may be brought by the insurer in the name of its insured. In addition, the liquidation and receivership provisions of the Utah Insurance Code recognize that an assignee stands in the shoes of and receives the same priority of insured's whose claims have not been paid. The purpose of these statutes, modeled after numerous state and federal statutes, are to promote the voluntary payment of claims by agents or other persons who may be in the marketing process or who may have acted as an agent for the issuer. This right of subrogation allows an agent comfort in knowing that the claims paid by that agent may someday be reimbursed in part or in full with the same degree of priority that the insured would have had had no payment been offered. These and similar statutes help to promote administrative efficiency in handling such unliquidated claims, both in claims processing as well as the claims payment, and they promote earlier payments to

claimant's who otherwise would have received nothing. Thus, agents who relied upon these statutory and contract schemes also rely upon similar treatment in prioritizing their claims. Since Direct Benefits, LLC and Daniel Dixon, contractually and by operation of statute, stand in the shoes of each and every one of the participants who were paid, it makes no logical sense to treat those participants different than participants who received nothing but are placed in a higher priority class. To do so would frustrate the State of Utah's statutory scheme and policy and upon information and belief would be adverse to every other state who has adopted a similar policy.

It is for this reason that Section 1191 of ERISA, Title 29 U.S.C.A. § 1191 provides that state laws shall not be construed to be superseded by ERISA. In addition, the payments made by Direct Benefits were clearly for the direct benefit of the claimants, a purpose mandated by ERISA as well. The fact that these Utah Claimants received 100% of their claims does not affect the other members of the class, because any amount paid over and above what they would have received from the Trustee came from the pocket of Direct Benefit and Dan Dixon. Direct Benefit and Dan Dixon took the honorable role by paying benefits that should have been paid by the issuer, My Smart Benefits, Inc. They should accordingly be reimbursed at least at the rate other claimants in Class 2 are paid.

DISSIMILAR TREATMENT

Direct Benefits and Daniel Dixon noticed in that included within the Class 2 claims receiving priority is an Oklahoma company by the name of "Triangle Companies" whose claim is similar in number to that of Direct Benefits (\$24,845.52). The Triangle claimant clearly stands in shoes similar to that of Direct Benefits as it appears that Triangle is a claimant employer who paid its employees' claims directly and is now applying for reimbursement with Class 2 priority. Since there is virtually no difference between Triangle's standing and Direct Benefits', it is not

only illogical to continue to place Direct Benefits in a lesser priority, but it would also constitute a violation against equal treatment and protection of the law, and arbitrary and capricious classifications without a material justification.

Pursuant to the Assignment received by each and every one of the claimant's who had been paid by Direct Benefits, LLC and Daniel Dixon, the undersigned respectfully submits the names, addresses and claim as a master proof of claim and respectfully requests the Independent Fiduciary to add each and every such name and claim to the Class 2 priority list with the further request that all payments be made directly to Direct Benefits, LLC, a Utah Limited Liability Company, and Daniel Dixon, in recognition of the written contracts and agreements duly executed between Direct Benefits, LLC, Daniel Dixon and each claimant submitted herewith. Copies of all such individual contracts have been previously supplied to the Independent Fiduciary.

OTHER CONSIDERATIONS

In addition to the significance of the contractual arguments and public policy as expressed in State statutes, Direct Benefits further argues that a significant market has developed around the assignment of insurance claims and benefits where such claims have been sold, either at face value or at discounts. Direct Benefits did not do that in this matter since it fully paid all of the claims submitted. However, in the event the Court approves a dissimilar treatment of this claim, assigned over by each insured, these developed commercial markets will be gravely affected.

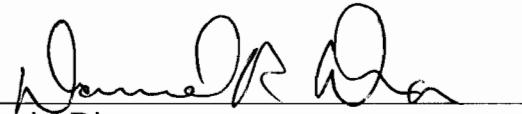
A further review of the individual claims and the proposed payments in Class 2 evidences additional disparate treatment within the Class. For example, some claims are paid at 100% of the amounts expended for dental care, while most others are being paid at approximately 60% in

recognition of the deductibles and co-pays. Since the Trustees Recommendation does not specify the factors or formulas used to determine payment, it is difficult to know why there appears to be this disparity.

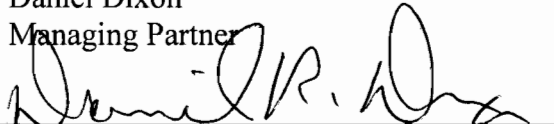
For the foregoing reasons, it respectfully requested that the Independent Fiduciary reclassify the claim filed by Direct Benefits, LLC and Daniel Dixon as a Class 2 priority with the same benefits as all members of that Class.

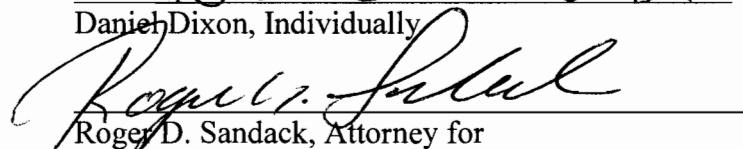
Respectfully submitted this 17th day of March 2008.

DIRECT BENEFITS, LLC
A Utah Limited Liability Company

By: 
Daniel Dixon

Its: Managing Partner


Daniel Dixon, Individually


Roger D. Sandack, Attorney for
Direct Benefits, LLC and Daniel Dixon
170 South Main Street, Suite 400
Salt Lake City, UT 84101
Telephone: (801) 533-8383
Facsimile: (801) 531-1486

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DIRECT BENEFITS

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Direct Benefits
 Claims Paid Directly to Employees of Customers
 Funds to Be Reimbursed to Direct Benefits

AE Carter	Brad Carter	\$ 100.00	TOTAL PD OUT	\$ 30,786.70
	Lynne Edwards	\$ 188.00	Minus Premiums Collected	<u>\$4,845.78</u>
	Robert Huish	\$ 110.40	Total of Claims Reimbursed	\$ 25,940.92
	Rich Mahoney	\$ 996.60		
	Jim Stiarwalt	\$ 405.00		
TOTAL		\$ 1,800.00		
AUCH	Kevin McCulley	\$ 229.60		
	Richard Moore	\$ 179.20		
	Betty Vierra	\$ 1,500.00		
	Julianne Tronier	\$ 782.00		
	Michael Baker	\$ 205.60		
	Mauricio Agramont	\$ 334.50		
TOTAL		\$ 3,230.90		
Crist Cathcart & Pat	Jamie Cathcart	\$ 1,436.90		
	Neil Crist	\$ 498.60		
	Joy Jones	\$ 100.00		
TOTAL		\$ 2,035.50		
Grand County School	Michael Arehart	\$ 451.80		
	Adam Cannon	\$ 783.60		
	Doug Cannon	\$ 671.00		
	Robert Farnsworth	\$ 570.10		
	Murine Gray	\$ 120.80		
	Richard Jenkinson	\$ 174.00		
	Susan Johnson	\$ 204.80		
	Raquel Martin	\$ 202.40		
	Patricia Meierdierks	\$ 172.00		
	Margaret Nissen	\$ 1,000.00		
	Ray Olsen	\$ 1,233.60		
	Arlajeane Paskett	\$ 45.50		
	Brandy Shumway	\$ 348.80		
	Carol Stephenson	\$ 280.80		
	Elizabeth Stocks	\$ 967.20		
	Ginger Torres	\$ 91.00		
	Elizabeth Vaccaro	\$ 1,468.50		
	Dennis Wells	\$ 882.30		
	Ruth Westwood	\$ 330.00		
	Helen Benson	\$ 148.80		
	Mike Hill	\$ 236.00		
	Sharon Leavitt	\$ 111.00		
	Deanne Mecham	\$ 91.00		
TOTAL		\$ 10,585.00		
Heinhold Engineering	Edward VanDyke	\$ 50.00		
TOTAL		\$ 50.00		

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Utah Valley Pediatrics	Mitch Adams	\$ 1,573.10
	Nancy Allen	\$ 1,000.00
	Laurie Anderson	\$ 702.40
	Brenda Ashby	\$ 300.00
	Lynn Barlow	\$ 444.00
	Vickie Bronson	\$ 262.50
	Sue Ann Christiansen	\$ 584.00
	Laurel Darling	\$ 224.00
	Brett Davis	\$ 295.00
	Richard Farnsworth	\$ 588.00
	Gordon Glade	\$ 706.50
	Brady Giles	\$ 450.00
	Cheryl Green	\$ 394.50
	Douglas Hacking	\$ 652.70
	Annena Guymon	\$ 422.50
	Ardrienne Higginson	\$ 532.50
	Jeffrey Jensen	\$ 315.90
	Richard Later	\$ 511.00
	Michael Lauret	\$ 483.00
	Liz Memmott	\$ 100.00
	Karen Nielson	\$ 100.00
	Stacey Phillips	\$ 100.00
	Kathryn Rawlings	\$ 234.40
	Daniel Simmons	\$ 394.40
	Stuart Slingerland	\$ 178.50
	Ui Thomas	\$ 216.00
	Ryan Wilcox	\$ 421.00
	Karla Young	\$ 899.40
TOTAL		\$ 13,085.30

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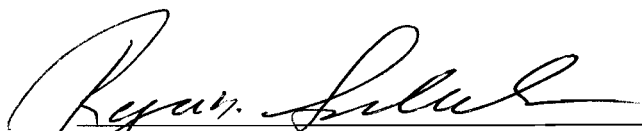
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TOTAL		\$ 13,085.30

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed postage pre-paid this 17th day of March 2008, to Jeanne Barnes Bryant at the following address:

Jeanne Barnes Bryant
Receivership Management, Inc.
P.O. Box 2307
Brentwood, TN 37024

United States District Court Clerk
Northern District, Indiana
5400 Federal Plaza Suite 2300
Hammond, Indiana 46320


Roger D. Sandack