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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

**SEPTEMBER 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 Seventeenth Report and Notice for the period beginning September 1, 2013 – September 30, 2013.

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AND EXPENSES – PAGE 1

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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. Attached as **Exhibit 1** is a report noting the collections and payments made from the account for previously approved fees and cost through September 2013. There has been a lot of activity in September with more expected in October concerning preparations for the 5500 filings and completing work on valuations. This has required increased work from the accountants and counsel. Therefore at this time, while the Independent Fiduciary is requesting approval of all fees and costs expended in September, the Independent Fiduciary will defer payment for fees due the IF or for Receivership Management as necessary to make payment of all fees to the accountants and counsel. The IF anticipates that with the next months’ collections, any amounts unpaid to the IF and Receivership Management will be collected and will be paid at that time.

As noted in the last report, the IF has hired contingency counsel for asset recovery legal services, 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. Actions have been filed against Green Valley Holdings and West Mountain Golf to foreclose on

the Notes and Mortgage. The IF is working with counsel and is advising the RSPT group on an ongoing basis of the progress of the asset recovery efforts.

The Independent Fiduciary sent notice of the issue of payment of property tax on the Idaho property to the RSPT employer group and the collections were completed before the end of July 2013 and the taxes paid. As a result, the Plans' interest in the golf resort properties has been preserved.

In addition, the Independent Fiduciary is pursuing claims against Colonial Surety Company related to the fiduciary bond insuring RSPT against Hutcheson's actions. The Independent Fiduciary is also pursuing a fraudulent transfer claim against the Mason Family Trust (among others) related to a house located within the Tamarack Resort that was fraudulently transferred by Green Valley Holdings, LLC, to the Mason Family Trust in April 2011. Both of these claims remain ongoing.

The Significant activity during the month of September has centered on review of additional information and preparation of Form 5500 filings. Prior to May, 2012, the RSPT operated, for both purposes of regulation by the IRS and the U.S. Department of Labor, as a multiple employer plan. In May, 2012, the U.S. Department of Labor both as a policy matter and as well as its position in this case, took the position that RSPT was not a multiple employer plan but rather a common trust within which several individual employer plans participated. This position triggered a new reporting requirement for each individual plan. As a result, additional financial accounting on an individual plan basis had to be prepared, something not previously done. The IF is currently concentrating on working with counsel and accountants to complete all required work for 2012 reporting.

## 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.

*1. 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, 2012. 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 6 employers have completed the early withdrawal process, and 1 employer has partially completed the process. Several employers have recently expressed renewed interest in the Early Withdrawal Program and it is anticipated that number is likely to increase.

*2. 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, all but 14 employers (out of 78 active employers) have submitted to the IF their business valuations. The required audit was completed on October 15, 2013. The fourteen employers who failed to provide business valuations are currently being reviewed.

*3. Directed Investments by Members.* The IF has determined not to amend the Plan Document to allow participants to direct individual investments and to maintain the current Plan structure. Investment changes can be made by contacting the IF's office who, once receiving appropriate documentation, will issue instructions to ASPire. The available mutual funds are not being changed.

### 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 September 1, 2013 – September 30, 2013.

Total expenses, as listed on **Collective Exhibit 3** include \$1,665.00 in IF fees, \$1,741.50 in legal expenses, and \$14,422.60 in contract labor expenses (which include auditor fees and identified charges for other fees, postage, copies, telephone, travel, etc.) for the period of September 1, 2013 – September 30, 2013. As previously reported, Lattimore Black has agreed to payment in increments of \$5,000 as required in order to space out their payments for the concentrated work for the 2012 reporting that they are currently undertaking. Therefore the next invoice from Lattimore Black in the amount of \$5,000 is listed for payment.

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 this report.

In the absence of any objection, total reimbursement for \$1,665.00 in IF fees, \$1,741.50 in legal expenses and \$14,422.60 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	\$1,665.00
2.	Angstman Johnson	\$129.00
3.	Lattimore Black	\$5,000.00
4.	Berry & Tudor	\$1,612.50
5.	Receivership Management Inc.	\$9,422.60
	\$8,258.50/Contract labor	
	\$1,164.10/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 22<sup>nd</sup> day of October, 2013.

/s/ Matt Christensen

MATTHEW T. CHRISTENSEN

Attorney for Jeanne B. Bryant, Independent  
Fiduciary for RSPT Plans

