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THOMAS A. DILLON, ESO.  
Independent Fiduciary  
851 Burlway Road, Suite  
Burlingame, CA 94010  
Telephone: (650) 558-8384  
Facsimile: (650) 558-8387

U.S. DISTRICT COURT  
DISTRICT OF NEVADA  
ENTERED & SERVED  
APR 30 2002  
CLERK U.S. DISTRICT COURT  
UNITED STATES DISTRICT COURT  
DEPUTY

FILED  
02 APR 30 PM 2:35  
LANCE S. WILSON  
CLERK  
BY *Bertie Marsick*  
DEPUTY

ELAINE CHAO, ) CASE NO. CV-N-01-0698-DWH-RAM  
Secretary of the United States) )  
Department of Labor, ) ORDER ESTABLISHING A QUASI-  
 ) BANKRUPTCY (~~PROPOSED~~)  
Plaintiff, )  
 ) Date:  
vs. )  
 ) Time:  
JAMES GRAF, et al., )  
 ) Court:  
Defendants. )

Based upon the Declaration and Memorandum of Points and Authorities submitted by the Independent Fiduciary, Thomas A. Dillon, Esq., and the complete court files in this case, the court makes the following Orders:

1. The liabilities of the Association<sup>1</sup> Plans and related

<sup>1</sup>  
All references to "Association" herein shall be deemed to refer collectively to the following entities: American Association of Agriculture, LLC, Association of Automotive Dealers and Mechanics, LLC, Association of Barristers and Legal Aids, LLC, Communication Trade Workers Association, LLC, Construction Trade Workers Association, LLC, American Coalition of Consumers, LLC, Association of Cosmetologists, LLC, Culinary and Food Services Workers Association, LLC, Association of Educators, LLC, Association of Health Care Workers, LLC, National Alliance of Hospitality and Innkeepers, LLC, Association of Manufacturers and Wholesalers, LLC, Association of Real Estate Agents, LLC, Association of Retail Sellers, LLC, National Association of Transportation Workers, LLC, and National Association of Independent Truckers, LLC.

73

1 employee benefit plans (hereafter referred to collectively as  
2 "the Plans") are substantially greater than their assets and the  
3 Plans are insolvent. The Court hereby approves the termination  
4 of the Plans effective February 1, 2002; the Independent  
5 Fiduciary shall provide notice to the participants,  
6 beneficiaries and employers.

7 2. Based on the findings and recommendations set forth in  
8 the Independent Fiduciary's declaration and the complete court  
9 files in this case, this Court is vested with the authority to  
10 exercise its equitable jurisdiction over the Plans, its  
11 participants and beneficiaries, all creditors of the Plans, and  
12 all persons and entities against whom the Plans have claims  
13 under the All Writs Act, 28 U.S.C. §1651, ERISA, and the federal  
14 common law. See *Cutler v. The 65 Security Plan*, 831 F.Supp.  
15 1008 (E.D.N.Y. 1993); *In re Consolidated Welfare Fund ERISA*  
16 *Litigation*, 798 F. Supp. 125 (S.D.N.Y. 1992); *Security Life*  
17 *Insurance. Co. of America v. Meyling*, 146 F.3d 1184, 1191 (9<sup>th</sup>  
18 Cir. 1998); see also *Scott v. Gulf Oil Corp.*, 754 F.2d 1499,  
19 1502, (9<sup>th</sup> Cir. 1985);

20 3. Based on the findings and recommendations set forth in  
21 the Independent Fiduciary's declaration and the complete court  
22 files in this case, this Court must exercise its jurisdiction  
23 over the assets of the Plans, marshal their assets, and oversee  
24 an equitable distribution of those assets, which are now within  
25 the Court's *in rem* jurisdiction. See *Princess Lida of Thurn and*  
26 *Taxis v. Thompson*, 305 U.S. 456, 466 (1939); *Lankenau v.*  
27 *Coggeshall & Hicks*, 350 F.2d 61, 64 (2d Cir. 1965). An  
28 equitable dissolution plan is necessary to assure the protection

1 of the Plans' participants and creditors, and the equitable  
2 resolution of the parties' claims and counter-claims against  
3 each other and against non-parties;

4 4. Based on the findings and recommendations set forth in  
5 the Independent Fiduciary's Declaration and the complete court  
6 files in this case, the Court imposes a quasi-bankruptcy  
7 proceeding for the equitable dissolution of the Plans and their  
8 assets, which is an equitable bankruptcy remedy to ensure that  
9 the equitable policies underlying ERISA are satisfied. See  
10 *Cutler v. The 65 Security Plan*, 831 F.Supp. 1008, 1022-23  
11 (E.D.N.Y. 1993);

12 5. In the quasi-bankruptcy proceeding, the Court creates  
13 the following categories of creditors of the Plans:

14 a. Independent Fiduciary, attorneys, actuaries,  
15 accountants, consultants and other professional service  
16 providers retained by the Independent Fiduciary who have  
17 incurred or will incur fees or wages on or after December 13,  
18 2001 ("Administrative Creditors");

19 b. Participants and beneficiaries who have paid out-  
20 of-pocket for medical and health claims, other than co-payments  
21 and deductibles, that should have been paid by the Plans  
22 ("Category A Creditors");

23 c. Medical and health providers of the Plans  
24 ("Category B Creditors");

25 d. All other service providers of the Plans  
26 ("Category C Creditors");

27 e. Any other remaining obligations of the Plans  
28 ("Category D Creditors").

1           6.     Based On the All Writs Act, ERISA and the federal  
2 common law, the assets of the Plans shall be distributed and the  
3 priority of payment shall be as follows:

4           a.     Administrative Creditors shall have first  
5 priority and shall be paid 100 percent of their claims;

6           b.     Category A Creditors shall have second priority  
7 and, as funds permit after payment of the Administrative  
8 Creditors, shall be paid 100 percent of their claims;

9           c.     Category B and Category C Creditors shall receive  
10 pro rata distribution of the funds remaining after payment of  
11 the Administrative and Category A Creditor claims.

12           d.     Category D Creditors shall receive pro rata  
13 distribution of the funds remaining after payment of the  
14 Administrative and Category A, B, and C Creditor claims;

15           7.     After the final pro rata distribution is made, the  
16 Court shall issue a permanent injunction barring any adverse  
17 actions against the Plans and their participants and  
18 beneficiaries by any and all creditors or their agents for  
19 claims associated with health coverage through the Plans, and  
20 otherwise discharging those claims;

21           8.     Within a reasonable time following entry of this order  
22 the Independent Fiduciary shall serve a copy of it upon all of  
23 the Plan's known creditors, participants and beneficiaries and  
24 the parties in this action. The Independent Fiduciary shall  
25 file and serve certificates of service reflecting the names and  
26 addresses of all individuals and entities whom he has served  
27 pursuant to this Order;

28

1           9.     Within a reasonable time after the issuance of the  
2 Court's Order, the Independent Fiduciary will file and serve on  
3 the parties a statement identifying to the extent reasonably  
4 possible:

5           a.     Each participant and beneficiary of the Plans who  
6 have incurred actual or potential liability as a result of the  
7 Plans' inability to pay medical providers and for each person  
8 identified the amount of such actual or potential liability;

9           b.     All known creditors of the Plans.

10          10.    Based on the findings and recommendations set forth in  
11 the Independent Fiduciary's Declaration and the complete file in  
12 this action this Order establishes the exceptional circumstances  
13 necessary to marshal the Plans' assets under the Court's  
14 equitable powers and the Independent Fiduciary is empowered to  
15 oversee the pro rata distribution and liquidation of those  
16 assets by conducting settlement negotiations with all interested  
17 parties, providing all appropriate notice to participants,  
18 employers, and other interested parties, validating and  
19 resolving all claims, and winding down and then terminating the  
20 Plans. See *Cutler v. The 65 Security Plan*, 831 F. Supp. 1008  
21 (E.D.N.Y. 1993); *In re Consolidated Welfare Fund ERISA*  
22 *Litigation*, 798 F. Supp. 125 (S.D.N.Y. 1992); *McLendon v.*  
23 *Continental Group, Inc.*, 749 F.Supp. 582 (D.N.J. 1989) aff'd 908  
24 F2d 1171 (3<sup>rd</sup> Cir. 1990).

25          11.    In addition to the powers set forth in the Court's  
26 preliminary injunction filed on February 1, 2002, which Order  
27 shall remain in full force and effect, the Independent Fiduciary  
28 has the power and duty to take any and all actions necessary and

1 proper to fully effectuate this Order, including, without  
2 limitation, the responsibilities to initiate, defend and settle  
3 litigation, to negotiate and settle creditors' claims, to  
4 petition the Court for appropriate instructions, to retain such  
5 professional and administrative service providers whose  
6 assistance he may reasonably require, to prepare or cause to be  
7 prepared all necessary Federal and state tax forms, and to  
8 effect the formal termination of the Plans, including the  
9 preparation and filing of all necessary forms with Department of  
10 Labor and the Internal Revenue Service. The Independent  
11 Fiduciary need not pursue claims which are being pursued by the  
12 Plaintiff in this action. The Independent Fiduciary may not be  
13 held personally liable for any claims arising out of the Plans  
14 or the related entities which existed, arose, matured or vested  
15 prior to the appointment of the Independent Fiduciary;

16       12. The fee of the Independent Fiduciary shall be \$150 per  
17 hour; his reimbursable expenses shall be those he actually  
18 incurs in performing the duties set forth herein. The  
19 Independent Fiduciary shall submit to the Court, with service on  
20 the parties, a monthly Request for Payment detailing the work  
21 performed by him and his service providers, time spent on each  
22 task and the amount of remuneration sought. If no objection to  
23 the Request for Payment is made within five court days of  
24 service, the Request for Payment shall be deemed approved by the  
25 Court, and the Independent Fiduciary shall make the payments for  
26 the amounts specified in the Request. If an objection is filed,  
27 the objecting party shall stipulate to have the dispute heard  
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before the court on shortened time and the Court shall resolve the matter.

13. The Independent Fiduciary shall file and serve upon the parties such interim reports summarizing his activities and their results as he may deem necessary, but in any event he shall file and serve such reports every ninety (90) days after the entry of this Order.

IT IS SO ORDERED.

This Order was entered in Reno, Nevada at 1:20 p.m., this 30<sup>th</sup> day of apr., 2002.

  
UNITED STATES DISTRICT JUDGE