

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MARTIN J. WALSH, Secretary of Labor,)	
U.S. DEPARTMENT OF LABOR,)	
)	
Plaintiff,)	
)	No. 2:20-cv-02624-TC-ADM
v.)	
)	
DANIEL L. WHITNEY, et al.)	
)	
Defendants.)	

THIRTY-EIGHTH REPORT OF INDEPENDENT FIDUCIARY

Receivership Management, Inc. (“RMI”), in its capacity as court-appointed Independent Fiduciary, by counsel and pursuant to ¶ 8(d) of the Consent Order entered in this matter (Dkt. 32) (“Consent Order”), submits to the Court this Thirty-Eighth Report.

I. Introduction

On March 18, 2021, the Consent Order was entered appointing RMI as Independent Fiduciary on an interim basis “for all the employee welfare benefit plans, as defined in Section (3)(1) of [ERISA] (the “Plans”) for which Defendant Medova [Healthcare Financial Group, LLC (“Medova”)] serves as the claims administrator.” Consent Order, ¶ 1. The Consent Order confers various responsibilities and powers upon the Independent Fiduciary relating to the Plans. *Id., passim.* The Consent Order requires RMI to report monthly on “all actions taken and all assets expended in its administration of the Plans.” *Id.*, ¶ 8(d).

On June 7, 2024, the Court issued an order that terminates the Independent Fiduciary’s appointment and the Court’s Order entered pursuant to the All Writs Act, 28 U.S.C. §1651 (Doc. 58), effective August 31, 2024. As a result, all the Independent Fiduciary’s efforts are now directed towards winding up its affairs as quickly as possible. This report will drop several

sections from prior reports, where no further action was taken, and none now will be. All efforts are focused upon concluding work as rapidly as possible.

II. Thirty-Eighth Report of Independent Fiduciary

A. All Assets Expended in RMI's Administration of the Plans.

Pursuant to ¶ 8(d) of the Consent Order, attached as Exhibits 1-5 is financial information for the Plans, including a detailed listing of all expenditures made in administration of the Plans since entry of the Consent Order. The accounts which RMI has been using to fund its fees and expenses of administration (Medova Operating Account (“Appendix B”)) are now virtually depleted. *See* Banking Exhibit 3. As of May 31, 2024, the Appendix B funds were at \$148,986.29, and RMI's 39th Fee Filing (submitted June 14, 2024) (Doc. 189) requested \$31,064.62 to be paid with Appendix B funds.¹

B. Actions of the Third-Party Administrator.

Third-Party Administrator (“TPA”) Verdegard Administrators LLC (“Verdegard”) reports there are a total of 835 Plans it is administering as of June 20, 2024. At this juncture, a plan is being “administered” for purposes of this report if it: 1) has not had a Final Report issued (as described in Section C.2. below); or 2) Verdegard has an open bank account for a plan with funds in it. Overall, including all plans, there are a total of 1,533 “short” Plans, with unpaid adjudicated and ready to pay claims, and expenses totaling \$35,530,615 in excess of their bank balances. Since May 1, 2024, RMI authorized HMA to pay a total of \$42,682 in stop-loss premiums, network access fees, pharmacy benefit manager fees, and TPA fees, as well as \$168,237 of adjudicated claims, from Plans with sufficient bank balances to fund such payments.

¹ Form 5500 fees are paid by the Plans.

The cumulative dollar value of medical claims which have been paid to date during RMI's administration as Independent Fiduciary beginning March 18, 2021, is \$53,957,999.

As of June 13, 2024, Verdegard has submitted 238 specific stop loss claims totaling \$11,155,428.52 for which \$5,098,054.69 in benefits have been paid to date and for which \$4,893,069.80 in claims have been denied (balance remains pending). Verdegard has also filed 1268 aggregate stop loss claims totaling \$43,287,346.04 for which \$14,260,332.80 in benefits have been paid to date and for which \$28,145,201.04 in claims have been denied (balance remains pending).²

During May 2024, RMI authorized Verdegard to pay into a Trust account under RMI's control a total of \$93,538 for the payment of fees associated with filing of final Forms 5500 for Plans. Before RMI makes any payment from the Trust account under its control to itself for any fees for Form 5500 work for any Plan, a final Form 5500 will be filed for that Plan and RMI will include a request for payment for such completed filing in a monthly Fee Notice. RMI requested \$32,000 in fees for filing Forms 5500 in its May 2024 (Thirty-Ninth) Fee Notice. It should also be noted that not all Plans have the financial ability to pay the \$500 Form 5500 fee at this time. Those Plans' sponsors will be billed for the Form 5500 fees, and any other Plan administration fees, such as TPA fees, that their Plans may owe. The Independent Fiduciary has begun taking partial payments from Plans that have some funds, but not necessarily the full \$500, to pay towards Form 5500 work.

C. Actions Going Forward/Liquidation Phase

All Plans under the jurisdiction of the Independent Fiduciary have now terminated and

² As mentioned in prior reports, these reported amounts have undergone some adjustments over time and continue to be adjusted to exclude non-ERISA plan amounts and to eliminate some double-counting of dollars which occurred due to stop loss claim amendments and supplements. Denied claim amounts may also change as a result of successful appeals.

have also reached the end of their run-out period. With this being the case, the focus of the administration of the Plans has moved into the next phase: project termination. As previously reported, Verdegard has informed RMI it will not be renewing its Administrative Services Agreement and exiting the program on July 31, 2024. That event, combined with this Court's termination of RMI's appointment as of August 31, 2024, is causing changes and an acceleration of the procedures for the project termination phase, as more fully detailed below.

1. Plans With No Outstanding Medical Claims

RMI is making it a priority to liquidate Plans which have no stop loss to be resolved; no medical claims to pay; and a positive bank balance. As of June 20, 2024, one thousand twenty-nine (1029) of these plans have been approved for a refund/reimbursement. The total amount approved for distribution to plan sponsors as of June 20, 2024 is \$11,265,216.00. Verdegard has reported it believes all remaining refund groups will be processed and completed by July 31, 2024.

RMI has also begun to liquidate plans which have no further stop loss claims, and no outstanding medical claims to pay, but which do owe TPA and/or Form 5500 fees, by sending a demand to those Plans' sponsors for fee reimbursement (which RMI is calling "fee collection liquidation"). As of June 20, 2024, seven hundred seven (707) plan sponsors had been issued such a notice. RMI anticipates all remaining fee collection liquidation groups will be sent a billing notice by Verdegard before it exits on July 31, 2024.

2. Plans With Outstanding Medical Claims

To attempt to complete the liquidation process for all remaining plan sponsors before Verdegard's exit and termination of the Independent Fiduciary's appointment, RMI is no longer having Verdegard perform full-blown plan audits as was the procedure as detailed in prior

reports. Instead, Verdegard is now preparing and issuing a final report (“Final Report”) for all Plans with unpaid medical claims, which contains the following information: a paid-claims run; an unpaid-claims run; a bank account balance and a statement as to any pending, approved or denied stop loss claims. Information is not being audited or verified at all, and not being cross-checked against bank accounts to reconcile with cash activity. Whatever the electronic records show at this juncture is simply being taken as accurate and issued.

Final Reports are also being accompanied by a statement advising the plan sponsor that the plan sponsor is responsible for satisfying all unpaid medical claims under its Plan documents and the Employee Retirement Income Security Act of 1974 (“ERISA”), and that these unpaid claims should be satisfied within 60 days of the date of the notice. RMI is also providing templates of various documents to use if plan sponsors wish to negotiate and resolve unpaid medical claims. RMI is also in the process of notifying plan participants by postcard that if they have unresolved claims, they may have rights to assert. As of now, there are still thousands of unpaid medical claims with plan responsibility amounts. Suits could be filed by plan participants wherever personal jurisdiction exists over Plans/plan sponsors.

RMI is making every effort to issue all Final Reports by July 31, 2024.

As of June 20, 2024, and pursuant to the prior and current procedure by which RMI was issuing Liquidation Notice(s) and now issuing Final Reports (together “Notices”), one thousand one hundred three (1103) Notices for plans with unpaid medical claims had been sent out. Also as of June 20, 2024, out of the one thousand one hundred three (1103) plan sponsors who have been issued a Notice, forty (40) plan sponsors fully resolved the unpaid plan expenses reported to

be owed in the Notice. The collective amount of outstanding plan expenses³ resolved by the forty (40) plan sponsors amounts to \$1,896,590.95.

RMI is not collecting any brokerage commissions alleged to be due to brokers as those are contractual obligations of the employers to the brokers, not Plan liabilities.

Also, as part of the distribution of a Final Report to each plan sponsor, RMI is providing a status report to the plan sponsor regarding any stop loss claims. Those who have pending stop loss claims will be responsible for monitoring the stop loss claim thereafter. The plan sponsors are, in virtually all cases, named insureds under the issued stop loss policies. Any plan sponsor who is a named insured under a stop loss policy is free to pursue their own rights under it.

Each Plan requires a final Form 5500 to be filed when they reach the point of final liquidation. RMI will continue to make efforts to file final Form 5500s until its authority terminates on August 31, 2024. Beginning with the report filed in February 2023, a list of plans for which a final Form 5500 has been completed has been and is attached as Exhibit 5.

On October 9, 2023, RMI filed a lawsuit asserting claims on behalf of an underfunded Plan against its plan sponsor/plan administrator,⁴ based upon the plan documents and ERISA, to compel the plan sponsor to provide the benefits it promised the Plan's participants and pay the Plan's responsibility portion of all unpaid medical claims and Plan expenses. (That employer-plan sponsor flatly refused to accept financial responsibility for funding the plan responsibility portion of the Plan's outstanding medical claims.) The unpaid medical claims in that case total approximately \$350,000. Several dispositive motions were filed and are fully briefed and

³ These outstanding plan expenses consist of unpaid medical claims, pharmacy claims, TPA fees, RMI fees/loans (Appendix B advances) for stop loss premiums, network fees and/or other miscellaneous expenses that the IF has determined to be plan expenses owed by the Plan Sponsor.

⁴ *Magnolia Health Systems Employee Group Benefit Plan, The v. Magnolia Health Systems, Inc.*, 5:23-cv-04089-TC-ADM.

pending. RMI's authority to continue to pursue those claims on behalf of the plan in question will cease on August 31, 2024.⁵

3. Cash and Bank Accounts

With regard to the individual bank accounts that were opened and are still open (1117 were closed during May 2024 and 460 remain open as of May 31, 2024) for each individual Plan at Arizona Bank & Trust, RMI has determined that the best course of action to is to pay out any remaining funds to creditors who are owed amounts from the Plans, and close out those bank accounts upon exhaustion. RMI intends to pay creditors in the following priority: repayment of any funds advanced to the Plan from Appendix B funds or by Verdegard; payment or partial payment of the Form 5500 fee owed to RMI; payment or partial payment of TPA fees owed to Verdegard; payment or partial payment of pharmacy benefit claims to the relevant vendor; and payment or partial payment of medical claims to the relevant provider. In making these payments, RMI intends to pay as many full claims amounts as possible, but will send partial payments to creditors if no further full payments are possible. Uncashed or returned checks will result in those funds becoming unclaimed property, as RMI will have no authority over them after August 31, 2024.

D. Stop-Loss Insurance Issues.

The balance due back to Appendix B for prior advances to Plans for stop loss premiums has been reduced by \$9,065.10 to \$151,200.49 as of this report.

⁵ There is another case pending against a Plan brought by a participant for a denied benefit, although it is presently stayed by the All Writs Act Order. As RMI's appointment is being terminated, it will cease defending that matter as of August 31, 2024, and the defense will default to the plan sponsor/plan administrator. *Nichols v. Ask Staffing Inc. Medova Lifestyle Health Plan*, 2:23-cv-02058-TC-TJJ.

RMI is also notifying all stop loss carriers and their managing general agents/underwriters that after August 31, 2024, all matters related to stop loss, including but not limited to in-process claims appeals and stop loss proceeds payable, should be addressed to the plan sponsor as named stop loss policy insured.

E. AWA Order Matters

On June 3, 2021, this Court entered an Order under the All Writs Act, 28 U.S.C. 1651 (Doc. 58), to, *inter alia*, enjoin medical providers and others from pursuing collection of amounts that are due from the Plans. The Court has now ordered that the AWA terminate on August 31, 2024. RMI is notifying participants with unpaid claims by posting on its website that the AWA Order is ending and will also provide information in the postcard notification it is sending to participants that the AWA Order will terminate.

F. Third-Party Administrator

Verdegard will cease all active claim adjudication and financial management activities, including claims payments, as of July 15, 2024, in preparation for its full cessation of activities on July 31, 2024.

Date: June 25, 2024

Respectfully submitted,

RECEIVERSHIP MANAGEMENT, INC., IN ITS
CAPACITY AS INDEPENDENT FIDUCIARY

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