

**UNITED STATES DISTRICT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JULIE A. SU , Secretary of Labor, United States Department of Labor,)	
)	
)	Case No. 1:22-cv-01030
Plaintiff,)	
)	Hon. Nancy L. Maldonado
v.)	
)	
DAVID FENSLER et al.)	
)	
Defendants.)	

AMENDED PRELIMINARY INJUNCTION ORDER

For the reasons stated in the Court’s separate memorandum opinion and order, Dkt. 146, as modified by the Court’s Order on reconsideration, Dkt. 174, the Court hereby orders that the Secretary of Labor’s Motion for Temporary Restraining Order and Preliminary Injunction (Dkt. 117) is Granted.

IT IS Hereby ORDERED:

1. Defendants John Fernandez and Gary Meyers, and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, are hereby REMOVED as fiduciaries, service providers, trustees, and administrators of the United Employee Benefit Fund Trust (“Fund”) and Participating Plans.
2. Defendants Fernandez and Meyers and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, are enjoined from acting as a fiduciary or service provider to the United Employee Benefit Fund Trust.

3. Defendants are enjoined from using any assets of the Fund to pay, advance, or reimburse attorneys' fees incurred by the Fund or by any Defendant in this matter.
4. As of the date of entry of this Order, Receivership Management, Inc. ("Independent Fiduciary") is hereby appointed as the Independent Fiduciary to the United Employee Benefit Fund Trust and the Participating Plans. The Independent Fiduciary shall have full and exclusive fiduciary authority over the United Employee Benefit Fund Trust's administration, management, and control of the United Employee Benefit Fund Trust, the Fund's assets, including on-going contributions paid by the Participating Employers, and any claims the Fund can make.
5. Defendants Fernandez and Meyers, and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, are to immediately notify the Independent Fiduciary of all funds from trust accounts or bank accounts that contain contributions from participating employers and, at the Independent Fiduciary's direction, immediately work with the Independent Fiduciary to immediately transfer assets to a bank account identified by the Independent Fiduciary.
6. Defendants Fernandez and Meyers, and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, are to immediately notify the Independent Fiduciary of all funds from trust accounts or bank accounts that contain contributions from participating employers and, at the Independent Fiduciary's direction, immediately provide information and assistance to the Independent Fiduciary to immediately identify and

contact companies that issued the insurance policies that are a part of the Fund's assets identified by the Independent Fiduciary.

7. Defendants Fernandez and Meyers, and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, are enjoined to preserve, secure, and immediately produce to the Independent Fiduciary upon the Independent Fiduciary's direction, all books, records, and documents, including electronic files, that relate to the administration, management, and operation of the United Employee Benefit Fund Trust and the United Employee Benefit Fund Trust assets. Defendants Fernandez and Meyers are to immediately produce all information that identifies the receipt of any monies that are a part of the United Employee Benefit Fund Trust and the current location of those monies or assets purchased with that money.
8. Defendants Fernandez and Meyers, and anyone acting on their behalf, including their agents, officers, employees, assigns, subsidiaries, affiliates, service providers, accountants, and attorneys are enjoined from expending, transferring, hypothecating, secreting, or otherwise obligating or disposing of any assets of the United Employee Benefit Fund Trust, and from destroying, altering, or secreting any of the United Employee Benefit Fund Trust's documents, books, records, or electronic files or data or the documents, books, records, or electronic files or data of any associated trust accounts, bank accounts, or "segregated accounts."
9. Defendants Fernandez, Meyers, and United Employee Benefit Fund Trust shall execute and timely tender to the Independent Fiduciary or its representative, agent, or attorneys

any and all documents, files, or other items necessary to transfer sole control and governance of all bank accounts to the Independent Fiduciary.

10. Defendants Fernandez, Meyers, and United Employee Benefit Fund Trust as to themselves shall, and shall require anyone acting on their behalf, including their officers, employees, assigns, attorneys, agents, advisers, and representatives, and all persons who serve in any capacity that involves decision making authority for them, to act and discharge their duties in full compliance with the terms of this Order and shall require that they not take any action in the discharge of such duties that is inconsistent with the terms of this Order. Defendants Fernandez, Meyers, and United Employee Benefit Fund Trust also shall require anyone acting on their behalf, including their officers, employees, assigns, attorneys, agents, advisers, representatives, and all persons who serve in any capacity that involves decision making authority for them, as a condition of maintaining their relationships with them, to cooperate completely and immediately with the Independent Fiduciary in the performance of the Independent Fiduciary's duties and responsibilities.
11. Defendants Fernandez, Meyers, and United Employee Benefit Fund Trust shall provide a copy of this Order to anyone acting on their behalf, including all of their officers, employees, assigns, attorneys, agents, advisers, representatives and all persons who serve in any capacity that involves any decision making authority for them, within five (5) days after the entry of this Order.
12. The Independent Fiduciary shall have sole and exclusive responsibility and authority to control and manage the United Employee Benefit Fund Trust and all assets of the

Participating Plans and United Employee Benefit Fund Trust, including, but not limited to:

- a. Authority to exercise all fiduciary responsibilities relating to the Participating Plans and the United Employee Benefit Fund Trust, including, but not limited to, the responsibility to act as the administrator of the Participating Plans and the United Employee Benefit Fund Trust;
- b. Authority given to trustees under the terms of the documents governing any of the Participating Plans and the United Employee Benefit Fund Trust;
- c. Authority to amend the documents governing any of the Participating Plans and the United Employee Benefit Fund Trust, except that prior to any such proposed amendment, the Independent Fiduciary must first file a written Notice of Proposed Amendment with the Court, and the parties shall be given seven (7) days from the date of filing of the Notice to file any objection to the proposed amendment, after which the Court will issue a ruling on the proposal;
- d. Exclusive authority to appoint, replace and remove such administrators, trustees, attorneys, employees, assigns, agents, and service providers as the Independent Fiduciary shall, in the Independent Fiduciary's sole discretion, determine are necessary to aid the Independent Fiduciary in the exercise of the Independent Fiduciary's powers, duties, and responsibilities to the Participating Plans and the United Employee Benefit Fund Trust;
- e. Authority to conduct an accounting of Fund assets and attorney's fees;
- f. Authority to terminate the Participating Plans and the United Employee Benefit Fund Trust and to establish a claim submission procedure, if it is in the best

interest of the Participating Plans, the United Employee Benefit Fund Trust, and their participants and beneficiaries, except that prior to any such proposed termination, the Independent Fiduciary must first file a written Notice of Proposed Termination with the Court, and the parties shall be given seven (7) days from the date of filing of the Notice to file any objection to the proposed termination, after which the Court will issue a ruling on the proposal;

- g. Authority to adjudicate and pay or deny any and all claims submitted to the United Employee Benefit Fund Trust and the Participating Plans;
- h. Authority to review and determine whether expenses owed to any service provider of the United Employee Benefit Fund Trust as of the date of this Order are reasonable and necessary Fund expenses and to pay such reasonable expenses;
- i. Authority to pursue recovery of monies owed and due to the Participating Plans and the United Employee Benefit Fund Trust from any person obligated to make such payments under the terms and conditions of the Participating Plans and the United Employee Benefit Fund Trust;
- j. Authority to identify and pursue recovery of Participating Plans' and the United Employee Benefit Fund Trust's assets as well as any monies to which the Participating Plans or the United Employee Benefit Fund Trust have a right of recovery;
- k. Authority to identify and pursue claims on behalf of the Participating Plans and the United Employee Benefit Fund Trust;

- l. Authority to review and make a determination as to the reasonableness of any administrative claims made against the Plan by any service provider that are outstanding as of date of entry by order of the court;
- m. Except as provided herein, the authority to delegate to such administrators, trustees, attorneys, employees, agents, assigns, and service providers such fiduciary responsibilities as the Independent Fiduciary shall determine appropriate. The Independent Fiduciary may not, however, delegate the authority to appoint, replace and remove such administrators, trustees, attorneys, employees, agents, assigns, and service providers or the responsibility to monitor the activities of the trustees, attorneys, employees, agents, assigns, and service providers of the Participating Plans and the United Employee Benefit Fund Trust; and
- n. Authority to pay itself reasonable and necessary fees from the Participating Plans' and the United Employee Benefit Fund Trust's assets and pay the reasonable and necessary fees of service providers, pursuant to the requirements of this Order. All fees paid to the Independent Fiduciary and service providers by the United Employee Benefit Fund Trust shall be reimbursed to the Fund, by Defendant Fernandez, and Defendant Meyers, after entry of a final judgment or finding of liability against those Defendants. The Independent Fiduciary has the authority to file with the Court a motion asking the Court to enforce this provision by ordering United Employee Benefit Fund Trust, Fernandez and Meyers to comply with this provision.

13. The Independent Fiduciary shall not be discharged or terminated during the duration of this Order except by leave of Court upon application by either the Secretary or the Independent Fiduciary. Upon termination, discharge, or resignation of the Independent Fiduciary during the term of this Order, the Secretary shall recommend a successor Independent Fiduciary for appointment by the Court. Recommendations for a successor Independent Fiduciary shall be made by the Secretary within such periods as the Court, by further order, may provide and require.
14. The United Employee Benefit Fund Trust is authorized and directed to pay the reasonable compensation, fees and expenses of the Independent Fiduciary and such person(s) and firm(s) retained by the Independent Fiduciary in the performance of services to or for the Participating Plans or the United Employee Benefit Fund Trust, subject to the following procedures:
 - a. Before causing the Defendants or the United Employee Benefit Fund Trust to pay compensation, fees or expenses to the Independent Fiduciary or any person or firms retained by the Independent Fiduciary, the Independent Fiduciary shall provide written notice of such compensation, fees or expenses, by filing a Fee Notice with this Court and by serving a copy to the Secretary;
 - b. The fee notice shall include a detailed invoice itemizing the compensation, fees and expense to be paid by the United Employee Benefit Fund Trust;
 - c. The Independent Fiduciary shall not be required to file, serve, or otherwise deliver the Fee Notice to any person or person other than the Court and the Secretary.
 - d. If within fifteen (15) days after filing of a Fee Notice, no objection to the Fee Notice or payment by the United Employee Benefit Fund Trust of the

compensation, fees, or expenses described therein is filed with this Court, such compensation, fees, and expenses shall be deemed reasonable expenses of the United Employee Benefit Fund Trust and shall be paid by the United Employee Benefit Fund Trust without further action or approval of this Court;

- e. If an objection to a Fee Notice or payment by the United Employee Benefit Fund Trust of the compensation, fees, or expenses described therein is filed with this Court, within fifteen (15) days after filing of such Fee Notice, the Court shall hold a hearing on the matter and the compensation, fees, expenses described in the Fee Notice shall be paid by the United Employee Benefit Fund Trust only to the extent approved by the Court; and

15. The Independent Fiduciary shall cooperate fully with the Secretary in the exercise of the Secretary's enforcement responsibilities under ERISA, inter alia, by promptly providing such documents, information and persons under the Independent Fiduciary's control as the Secretary from time to time may request. Nothing herein shall be construed to limit the rights of the Secretary to maintain access to documents, information or persons or to waive or restrict the exercise by the Independent Fiduciary and any individual of his or her constitutional rights.

16. The Secretary may provide to the Independent Fiduciary any documents necessary to the administration of the Participating Plans and the United Employee Benefit Fund Trust and to assist the recovery and identification of the Participating Plans' and the United Employee Benefit Fund Trust's assets. To the extent any privilege or confidentiality applies to any such documents, the privilege or confidentiality is not waived and is preserved when documents are provided to the Independent Fiduciary.

17. The payment of administrative expenses and all fees that occur in preparation for and after the execution of this Order and the Independent Fiduciary appointment and the Independent Fiduciary's assistants, attorneys, accountants, actuaries and other necessary service providers are to be considered priority administrative expenses of the Participating Plans and the United Employee Benefit Fund Trust and its related entities, superior to any other class of expense or obligation of the Participating Plans and the United Employee Benefit Fund Trust or its related entities as long as the payment of such is in accordance with the fiduciary duties under ERISA. In the event they are found liable or have judgment entered against them, Defendants Fernandez and Meyers shall be responsible for repaying the Participating Plans and the United Employee Benefit Fund Trust for such funds expended. The Independent Fiduciary's second priority is to be the payment of legitimate claims. On a quarterly basis, the Independent Fiduciary shall provide the Secretary with a report of all significant actions taken and all United Employee Benefit Fund Trust and Participating Plans' assets expended in its administration of the United Employee Benefit Fund Trust and the Participating Plans.
18. The terms of the documents governing the Participating Plans and the United Employee Benefit Fund Trust Plan are hereby amended to include the terms of this Order. This Judgment and Order shall, for the term of this Judgment and Order, supersede all other provisions in any documents governing the Participating Plans and the United Employee Benefit Fund Trust that are inconsistent with the terms of this Order including, but not limited to, any Participating Plans' or the United Employee Benefit Fund Trust's documents, trust agreements, and/or shareholder agreements.
19. Nothing in this Order shall be construed:

- a. To limit the powers and responsibilities of any officer or employee of the United States under ERISA or any other law, or
 - b. To relieve the Participating Plans or the United Employee Benefit Fund Trust, or any of their administrators, fiduciaries, officers, trustees, custodians, attorneys, agents, employees, assigns, advisers, providers of goods or services, consultants, representatives in any capacity, or persons who serve in any capacity that involves decision making authority or custody or control of the monies, funds or assets of the Participating Plans or the United Employee Benefit Fund Trust prior to the appointment of the Independent Fiduciary of any duty, responsibility, or liability under ERISA or any other law.
20. This Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of enforcing this Order.
21. Provisions of this Order requiring service and notice to the Independent Fiduciary and the Secretary shall be satisfied by delivering it in writing as follows:
- To the Independent Fiduciary:
- Receivership Management, Inc.
510 Hospital Drive
Suite 490
Madison, Tennessee 37115
- To the Secretary:
- Office of the Solicitor
Attn: Kevin Wilemon, Lydia Faklis, Aaron Wenzloff
230 S. Dearborn St., Rm. 844

Chicago, IL 60604

The parties to this Order may, as they deem necessary, change the designation of persons to receive service and notice on their behalf by filing with the Court notification of such change and serving a copy thereof on the other party or parties to this Order.

22. This Order may be amended only upon application by the Secretary or the Independent Fiduciary to this Court.

23. Pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, no bond or other security shall be required of the Secretary.

24. This Order is hereby entered at 8:00 am on November 28, 2023. This Order will expire upon the closure of this action or upon further Order of the Court.

DATED: November 28, 2023



Judge Nancy L. Maldonado
Northern District of Illinois
Eastern Division