

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS E. PEREZ, SECRETARY OF : CIVIL ACTION  
LABOR, UNITED STATES :  
DEPARTMENT OF LABOR :  
 :  
v. :  
 :  
 :  
JOHN J. KORESKO, V, et al. : NO. 09-988

**ORDER ON DISTRIBUTION TIMELINE AND INITIAL NOTICE TO PLANS**

AND NOW, this 12th day of September, 2016, upon consideration of the Department of Labor's ("DOL") Motion for Equitable Distribution (ECF No. 1384) and referral of the motion by Judge Beetlestone to Judge Hey "for the purpose of developing the Notice of Proposed Distribution of Trust Assets and a Scheduling Order" (ECF No. 1389), it is hereby ORDERED as follows.

The DOL proposes that the Court adopt the Unified Model for distribution prepared by the court-appointed forensic accountant Marcum LLC ("Marcum"). To enable the Court to rule on the DOL's motion, it is necessary to provide notice to the plan sponsors of the distribution methodology contained in the Unified Model as well as Marcum's calculation of each plan's share in the Trusts under the Court's control ("Trusts"). To ensure that the plans have an opportunity to consider both the methodology for disbursement and the accounting of each plan's assets, the Court's consideration of the DOL's motion will proceed in two stages.<sup>1</sup> During the first stage, plan sponsors will be provided notice and an explanation of the proposed

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<sup>1</sup>The notice will be directed to plan sponsors rather than plan participants. Judge McLaughlin found the Koresko entities liable to the plans. (ECF No. 1149). Likewise, in appointing the forensic accountant, the court directed that the forensic accountant determine "the balance of the individual Plan's interests in the Trusts," and the valuation for the "individual employer member accounts." (ECF No. 1240).

distribution methodology and be given an opportunity to submit objections to the methodology. Additionally, any challenge to a plan's inclusion in the Trusts or a plan's categorization as "open" or "closed/terminated" must be made during the first stage. During the second stage, plan sponsors will be provided notice of Marcum's calculation of their specific plan's interest in the Trusts and have an opportunity to object to the calculation and an opportunity to present documentation supporting any such objection. If a plan has an interest in an insurance policy held by the Trusts, the Court intends to give that plan an opportunity to purchase the policy. However, details regarding the distribution to which each plan is entitled and the purchase amount for the policies cannot be determined until the second stage of the disbursement process. It is expected that the assets in the Trust will not be sufficient to satisfy the Trusts' liabilities to the plans and that the distribution will be based upon the calculation of each plan's proportional interest in the Trusts.

This Order sets forth a timeline of events and deadlines for this process, including steps for objections to decisions issued by Judge Hey. All dates set forth below are mandatory deadlines. In the event Judge Hey or Judge Beetlestone issues a decision that does not meet the applicable deadline, new deadlines will be issued with that decision.

In preparation for the first notice, Marcum is directed to provide to the Clerk's Office the name and address of the plan sponsor for all plans that have or had assets in the Trusts during the period of Marcum's review (hereinafter "plan sponsors"), and to prepare a description of the Unified Model which shall include a list identifying all plans and whether the plan is open or closed/terminated.<sup>2</sup> The Clerk's Office is directed to prepare a page on its website dedicated to

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<sup>2</sup>Plan sponsors or their counsel will be able to provide email addresses and receive future notices by email rather than by mail.

this process and to post documents as directed by Judge Hey or Judge Beetlestone.<sup>3</sup> The Court will absorb the cost of providing the notices to plan sponsors, except for the notice of each plan's calculations, which will be borne by Marcum, to be reimbursed by the Trusts and ultimately by the Koresko entities in accordance with prior orders of the Court.

<u>Date</u>	<u>Event</u>
10/17/16	The Clerk's Office mails the initial notice to the plan sponsors (See Exhibit A), and opens the <u>Perez v. Koresko</u> page of the Court's website. Marcum provides the description of the Unified Model to the Clerk's Office for posting on the website.
12/12/16	A hearing is scheduled before Judge Hey at 10:00 a.m.. The courtroom will be listed on the court's website as the hearing approaches. Any plan sponsor wishing to ask questions of Marcum to understand how the Unified Methodology works may do so. Any plan sponsor wishing to make an objection to the methodology must attend this hearing.
1/3/17	Any plan sponsor who objects to the Unified Methodology must submit a written objection. Additionally, all objections based on whether a plan is or is not part of the Trusts or whether a plan is categorized as open or closed/terminated must be made at this time. Directions for presenting objections are contained in the notice.
1/17/17	DOL files responses to all objections. No replies are permitted.
2/17/17	Judge Hey issues an interim Report and Recommendation ("R&R") addressing the objections and proposing a second notice to be issued to all plan sponsors of the calculation of their plan's interest in the Trusts. The Clerk's Office posts the R&R to the website and mails/emails the R&R to all plan sponsors together with notice that objections must be made by March 3, 2017.
3/3/17	Any objections to Judge Hey's R&R must be submitted.

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<sup>3</sup>The court's website is: [www.paed.uscourts.gov](http://www.paed.uscourts.gov). Documents related to this distribution process will be in the "Documents" tab under "Perez v. Koresko." The posted documents shall include this Order, the DOL's Motion and Judge Beetlestone's referral to Judge Hey (ECF Nos. 1384 & 1389), Judge McLaughlin's February 6, 2015 opinion and March 13, 2015 Judgment and Order (ECF Nos. 1134 & 1149), the Third Circuit's opinion affirming Judge McLaughlin's opinion imposing liability on Koresko for breach of fiduciary duty (C.A. 15-2470, Document 003112254243), and the orders authorizing the retention and appointment of the trustee, forensic accountant, and administrator (ECF Nos. 1162, 1240, 1242 & 1176)

- 3/17/17 DOL files responses to objections. No replies are permitted.
- 4/17/17 Judge Beetlestone rules on the objections and adopts a methodology for distribution, and approves a second notice to be issued to all plan sponsors of the calculation of their plan's interest in the Trusts. The Clerk's Office posts Judge Beetlestone's decision to the website.
- 4/24/17 Marcum mails/emails an individual accounting to each plan sponsor.
- 5/8/17 Any plan sponsor who objects to Marcum's calculations must submit a written objection by this date, pursuant to instructions contained in the notice. Each of the plans with active insurance policies must also advise the court if they are interested in purchasing the policies to allow Marcum time to determine a purchase price for the policy. The Court intends to allow plans to use the value of their interest in the Trusts' assets to fund such purchase, but plans may incur additional cost if the value of the policy exceeds their interest in the Trusts. Any additional cost must be paid at the end of August (see below) or the policies will be liquidated.
- 5/24/17 A hearing will take place before Judge Hey to consider objections to the individual accountings. At the hearing, the plan sponsors may provide evidence in support of any objections. (Depending on the number of objections, the court may individually schedule each plan's objection hearing.) The time and location of the hearing will be posted on the court's website prior to the hearing.
- 6/7/17 DOL responds to objections to the individual accountings. No replies are permitted.
- 6/23/17 Judge Hey issues an R&R addressing the objections to the individual accountings and recommending a final distribution process. The Clerk's Office posts the R&R to the website and mails/emails it to plan sponsors.
- 7/10/17 Any objections to the R&R on individual accountings must be submitted.
- 7/24/17 DOL responds to objections to R&R. No replies are permitted.
- 8/21/17 Judge Beetlestone issues a decision and adopts calculations of amounts due to all plan sponsors and distribution process, and refers oversight of liquidation and distribution to Judge Hey. The Clerk's Office posts the decision to the website. Marcum provides an analysis of the assets held by the Trusts and recommends an appropriate holdback for the administrative fees necessary for the liquidation process and residual duties. Plan sponsors who have requested to purchase their policy(ies) will be advised of the amount they will need to pay into the Trusts to receive the policy(ies).
- 8/30/17 Liquidation begins with a 30 day period to purchase life policies.

- 9/30/17      Liquidation of all unpurchased policies begins.
- 10/30/17     Distribution of remaining assets to the plan sponsors with a holdback for the administrative costs of any residuals.

BY THE COURT:

/s/ELIZABETH T. HEY

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ELIZABETH T. HEY, U.S.M.J.

## Exhibit A

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS E. PEREZ, SECRETARY OF : CIVIL ACTION  
LABOR, UNITED STATES :  
DEPARTMENT OF LABOR :  
 :  
v. :  
 :  
 :  
JOHN J. KORESKO, V, et al. : NO. 09-988

**NOTICE OF PROPOSED METHODOLOGY**  
**FOR DISTRIBUTION OF TRUST ASSETS**

READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS MAY BE AFFECTED

**A Federal Court authorized this notice. This is not a solicitation from a lawyer.**

On February 6, 2015, the United States District Court for the Eastern District of Pennsylvania entered a final judgment against Defendant John J. Koresko and several entities that he owned or controlled, including PennMont Benefit Services, Inc. The Court found that Defendant Koresko and others violated the Employee Retirement Income Security Act of 1974 (“ERISA”) in managing the Regional Employers Assurance Leagues Voluntary Employees’ Beneficiary Association (“REAL VEBA”) Trust and the Single Employer Welfare Benefit Plan (“SEWBP”) Trust (“the Trusts”). The Court removed Defendant Koresko as trustee and ordered that Defendant Koresko and others pay money in restitution to the Trusts. The Court took control of the assets in the Trusts.

This notice is directed to the sponsors of all employer-sponsored benefit plans that are found in the databases for the Trusts held by Koresko and related entities. All plans are listed in the Addendum to this Notice and classified as either open (Category A) or closed/terminated (Category B).

Accordingly, your plan may have participated in the Trusts and/or may have assets held on its behalf in one of the Trusts. The Trusts may hold an insurance policy insuring the life of one or more of your plan’s participants.

The Trusts’ assets will be liquidated and its assets distributed to the plans. The Court is currently considering how to distribute the assets held by the Trusts. Because your plan may have chosen to participate in one of the Trusts, it may have a right to receive some of the Trusts’ assets. Plans classified as “open” (Category A) may be entitled to a distribution. Plans classified as “closed/terminated” (Category B) will not be entitled to any distribution.

The United States Department of Labor has proposed that the Court adopt a methodology for distributing the Trusts’ assets to participating employer plans. The Department of Labor proposes adopting a distribution method that has been presented by the Court-appointed forensic

accountant, Marcum LLP,<sup>4</sup> referred to as the “Unified Model,” which combines an accounting of each plan’s contributions to the Trusts in addition to the value of any insurance policy(ies) currently assigned to the plan. The Unified Model also credits back to the plan any improper fees or charges that Defendant Koresko took from the plan.

The Court will address the motion to adopt the Unified Model in two steps. First the court will address the methodology used in the Unified Model (including the inclusion and categorization of plans in the Trusts), and second the Court will address the specific calculations that apply to each plan to reach a distribution figure for that plan. Plan sponsors will have an opportunity to object at each stage, and must present their objections as instructed or waive any right to object. I have assigned Magistrate Judge Hey to oversee this process, with all final decisions made by me.

The Court has made available for your review a summary statement by Marcum explaining the Unified Model, including hypothetical examples of how the model works. You may review this summary through the Court’s website at: [www.paed.uscourts.gov](http://www.paed.uscourts.gov). From the home page, use the “Documents” tab to access the link for documents under “Perez v. Koresko.” Other documents posted on the website you may find helpful include the schedule for adopting a distribution methodology and for distribution, Judge McLaughlin’s February 6, 2015 opinion, the March 13, 2015 Judgment and Order, the Court of Appeals opinion affirming Judge McLaughlin’s opinion imposing liability on Koresko for breach of fiduciary duty, and the orders authorizing the retention of the trustee, forensic accountant, and administrator. Additional orders will be posted as this matter proceeds.

In the first stage of this process the Court will adopt a methodology for distribution. Judge Hey will hold a hearing on **December 12, 2016**, at 10:00 a.m., at the James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA, 19106. The courtroom will be listed on the court’s website. Representatives of the Department of Labor and Marcum will be present to answer questions from plan sponsors about the proposed Unified Model.<sup>5</sup> Any plan sponsor wishing to make an objection to the Court’s adoption of the Unified Model must appear at this hearing. **Be advised that all persons seeking entrance to the Courthouse must present a government-issued photographic identification document.**

Any plan sponsor wishing to object to the proposed Unified Model for distribution of Trust assets must submit their objection in writing no later than January 3, 2017. Additionally, any plan sponsor wishing to object to the inclusion in the Trusts of any plan listed in the attached Addendum or a plan’s classification as “open” or “closed /terminated” must do so in writing by the same deadline. Any objection received after that date will only be accepted if the postmark

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<sup>4</sup>The Court appointed Smart Devine as the forensic accountant. Shortly after the appointment, Smart Devine merged with Marcum, LLP and the resultant firm is known as Marcum, LLP (“Marcum”).

<sup>5</sup>Objections regarding distribution amounts and the retention/purchase of insurance policies will not be accepted during the first stage of the distribution process. The December 12, 2016 hearing is dedicated to an explanation of the distribution model and how Marcum developed the distribution model.



shows a mailing date on or before January 3. All written objections must be addressed and sent by United States mail to:

Clerk's Office – United States District Court  
James A. Byrne U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106  
Attn: Koresko Plan Sponsors

The Department of Labor will be given an opportunity to respond to any objections submitted by plan sponsors, after which Judge Hey will issue a written Report and Recommendation on the objections. Plan sponsors who object to Judge Hey's Report and Recommendation must provide written objection to Judge Beetlestone. Details for submitting such objections will be set forth in Judge Hey's ruling, which will be sent to you and posted on the Court's website referenced above and which you must follow to present your plan's objection to Judge Beetlestone. Judge Beetlestone will then make a determination on adoption of a distribution methodology.

After Judge Beetlestone approves a methodology for distribution of the assets of the Trusts, the Court will begin the second stage of the process by addressing the specific calculations applicable to each plan. Marcum will calculate the amount owed to each plan according to the approved distribution methodology. All plan sponsors will be sent a second notice containing the calculations specific to that plan, which will include details of all monies that were paid in and out of the Trusts on behalf of that plan, any fees or loans that were taken in connection with policies in the plan, the value of any policies held by the Trusts in connection with the plan, and a final calculation of the amount due to the plan.<sup>6</sup> **Be advised that the assets in the Trust are not expected to meet all liabilities to the plans, and the actual pay-out figures are therefore expected to be less than the calculation of amounts due.** The final distribution will be based upon a percentage of each plan's proportional interest in the Trusts in light of the plan-specific calculations and monies available in the Trusts.

The Court will adopt a similar hearing and objection process which will be set forth in the second notice and which must be followed by all plans wishing to object to the calculations applicable to their plans. Also, any plan wishing to purchase a Trust-held insurance policy will be instructed on how to inform the court of that intention. The plan's interest in the Trusts' assets may be used for such purchase, but may fall short of the value of the policy.

The plans will be given an opportunity to object and present evidence of any error in the calculations/payments/loans at a hearing before Judge Hey. Judge Hey will issue a Report and Recommendation addressing any objections to the plan-specific calculations and plan sponsors who object to the Report and Recommendation will be instructed how to present those objections. Judge Beetlestone will issue a final decision on the plan-specific objections, after which the court will begin the liquidation of the Trusts' assets by allowing the plans to purchase

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<sup>6</sup>Because the values of the Trusts' assets fluctuate on a daily basis, the exact distribution amount will not be determined until all the insurance policies have been purchased by the plans or liquidated.

their policies. Thereafter, any remaining policies will be liquidated and the remaining assets distributed.

Any future communication directed to plan sponsors will be sent to you at the same address used for this notice. You may make corrections to this address or provide an email address by notifying the Clerk's Office in writing at the address above. If you choose to be contacted by email, all future communications will be by email only. If a plan sponsor retains counsel to represent your plan in this matter, counsel may provide contact information to the Clerk's Office at the same address.

BY THE COURT:

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WENDY BEETLESTONE, U.S.D.J.