

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

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

ORDER

AND NOW, this 21st day of July, 2015, whereas, on April 10th, 2015, the Court ordered that a forensic accountant be retained to conduct an equitable accounting of the assets of the Single Employer Welfare Benefit Plan Trust ("SEWBPT") and the Regional Employers Assurance League Voluntary Employees' Beneficiary Association Trust ("REAL VEBA"), (together, the "Trusts") and the Plans' respective interests in the Trusts (Docket No. 1162), IT IS HEREBY ORDERED that:

1. Smart, Devine & Company, LLC ("Smart Devine") is appointed to conduct an equitable accounting of the assets of the Trusts, with a sub-accounting by plan of each Plan's interest in the Trusts to determine:

- a. the location of any assets diverted by the Koresko Defendants and not yet restored to the Trusts by the Court's orders, and profits thereon;
- b. the present assets and liabilities of the Trusts; and

- c. the balance of the individual Plan's interests in the Trusts.

2. As detailed in the Request for Proposals prepared by the Department of Labor and Smart Devine's response thereto (attached as Exhibit A), the accounting will be completed in the following three phases:

- a. In Phase One, to be completed within 90 days, Smart Devine shall:

- (1) evaluate the condition of the available documentation;
- (2) develop alternative methodologies for establishing past and present employer member accounting values (Phase Two) and develop firm pricing and a timeline for Phase Two;
- (3) prepare and present the alternative methodologies to the Court; and
- (4) provide the Court and the Employee Benefits Security Administration ("EBSA") with monthly progress reports

- b. In Phase Two, Smart Devine shall:

- (1) determine the total value of the distributable Trust assets;
- (2) determine the values of the individual employer member accounts;
- (3) develop alternative methodologies for the equitable distribution of Trust assets (Phase Three) and

develop firm pricing and timelines for completing Phase Three;

- (4) present the alternative methodologies to the Court; and
- (5) provide the Court and EBSA with monthly progress reports

c. In Phase Three, Smart Devine shall:

- (1) present and defend the selected distribution methodology to the Court;
- (2) amend the selected methodology as directed by the Court; and
- (3) consult on determining the initial and subsequent distribution amounts

3. The following individuals and entities shall comply with requests from Smart Devine regarding information related to the finances and administration of the Plans and the Plans' Trusts and shall provide Smart Devine with access to all books, documents, and records related to the finances and administration of the Plans and the Trusts:

- a. the defendants, their agents, employees, service providers, banks, accountants, and attorneys;
- b. Plan Sponsors;
- c. any insurance company that issued policies owned by or for the benefit of the Trusts or Plans; and
- d. all banks and financial institutions participating in transactions involving the defendants, the Trusts, the Plans, and any

banks or financial institutions that hold or held any assets of the defendants, the Trusts, or the Plans.

4. The costs of the equitable accounting ordered herein will be borne by the Koresko Defendants. ERISA § 409(a); 29 U.S.C. § 1109(a); accord Solis v. Malkani, 216 F. Supp. 2d 505, 519 (D. Md. 2002), aff'd 452 F.3d 290 (4th Cir. 2006) (appointing independent trustee and requiring that the defendants pay all associated costs). Had the Koresko Defendants complied with their fiduciary duties and maintained records of the Trusts' assets and liabilities and the Plan's sub-accounts as contemplated in the plan documents, this equitable accounting would be unnecessary. The Koresko Defendants' failure to maintain these records has resulted in widespread ambiguity as to the location and extent of diverted Trust assets, the solvency of the Trusts, and the value of each Plan's sub-account.

The equitable accounting, however, does not need to be postponed until the Koresko Defendants provide funding. Rather, Smart Devine shall be paid out of Trust assets in accordance with the terms outlined in its attached bid. At the close of the equitable accounting, the Court shall issue a separate Order specifying the total amount the Koresko Defendants are liable to the Plans to restore on account of the equitable accounting.

5. The Court retains jurisdiction over this action for purposes of enforcing compliance with the terms of this Order and supervising the fiduciaries and processes described herein.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.