

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

R. ALEXANDER ACOSTA,	:	CIVIL ACTION
SECRETARY OF LABOR, UNITED	:	
STATES DEPARTMENT OF LABOR	:	
	:	
	:	
v.	:	
	:	
JOHN J. KORESKO, V, et al.	:	NO. 09-988

ORDER

WHEREAS the Court outlined a years-long plan for the equitable distribution of the Regional Employers Assurance League Voluntary Employees Beneficiary Association (“REAL VEBA”) and Single Employer Welfare Benefit Plan (“SEWBP”) Trusts (collectively “the Trusts”), which involved giving notice to plan sponsors of the distribution methodology and an opportunity to object, and then subsequently giving notice to plan sponsors of their specific plan’s interest in the Trust and the opportunity to object to that calculation, *see* ECF No. 1395;¹

WHEREAS the Court provided that Plan Sponsors could elect between receiving a cash distribution or receiving the insurance policy associated with the specific plan (a “policy distribution”), *see* ECF No. 1409;²

WHEREAS Wilmington Trust (“Wilmington”) was appointed to serve as Trustee of the Trust, and was Ordered by the Court to “[p]repare and file with any local, state, or federal taxing or other governmental authority, such tax returns and other reports, together with supporting data and schedules, as may be required of the Trustee by law with respect to the Trust Fund,” ECF No. 1242;

¹ *See also* Unified Model for Distribution, <http://www.paed.uscourts.gov/documents/koresko/Perez%20v.%20Koresko%20-%20Unified%20Model.pdf> at 8 n.15; Doc. 1455 at 12-13 n.17 (Report and Recommendation Methodology adopted Doc. 1471); Explanation of Account Statements to Plan Sponsors, <http://www.paed.uscourts.gov/documents/koresko/Perez%20v.%20Koresko%20-%20Explanation%20of%20Account%20Statements%20to%20Plan%20Sponsors.pdf> at 7 n.10; Doc 1558 at 11-12 (Report and Recommendation on Distribution Plan Phase Two adopted Doc. 1569).

² *See also* Explanation of Account Statements to Plan Sponsors and Plan Sponsor Distribution Election Request and Declaration (Accompanied by a Separate Plan Sponsor Statement), <http://www.paed.uscourts.gov/documents/koresko/Perez%20v.%20Koresko%20-%20Explanation%20of%20Account%20Statements%20to%20Plan%20Sponsors.pdf> at 2.

WHEREAS until July 27, 2018—the date set by the Court for the first cash distribution from the Trusts—Wilmington did not inform the Court that distributions from the Trusts were/would be subject to tax consequences depending on the status of the individual/entity receiving any distribution and whether the distributions were in the form of cash or in the form of a policy;

WHEREAS Wilmington subsequently withheld certain sums for the payment of taxes from cash distributions made in the summer and fall of 2018, informed other Plan Sponsors that their distributions were subject to other taxes, and used the funds in the Trusts' reserve to pay for employer FICA liabilities as well as tax liabilities associated with prior distributions of Trust assets;

WHEREAS the Department of Labor (“DOL”) objected to Wilmington’s use of funds from the Trusts’ reserve to cover tax liabilities, *see* ECF No. 1773, following which the Court enjoined Wilmington from using the funds from the reserve or any unallocated funds in the Trusts, *see* ECF No. 1777, and held a hearing on November 2 and 3, 2018, to consider the DOL’s objection, after which it ordered Wilmington to reimburse the Trusts \$778,485.70 already withdrawn from the Trusts’ reserve, *see* ECF No. 1795, and;

WHEREAS Wilmington and the DOL have submitted a joint letter, ECF No. 1811, indicating outstanding questions as to taxation and distribution issues, which include:

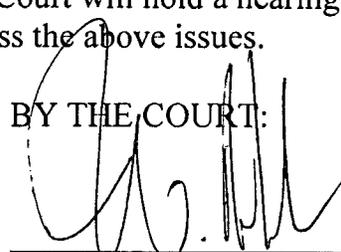
1. Income Tax and Employee FICA Withholdings for the Summer 2018 Cash Distributions,
2. Income Tax and Employee FICA Withholdings for the November 2018 Cash Distributions,
3. Employer FICA and funds reimbursed by Wilmington withheld for the Employer FICA,
4. Income Tax and Employee FICA Withholdings on the policy distributions,
5. Employer FICA withholdings on the policy distributions;

AND NOW, this 3rd day of January, 2019, **IT IS ORDERED** that, no later than February 22, 2019, the DOL and any Plan may submit a brief addressing the proposed solutions set forth in the Wilmington/DOL letter (ECF No. 1811), as well as the propriety of Wilmington conferring with the individual plans to decide upon the tax solution for

their individual distribution.³ Wilmington shall have 14 days to file a response, and the DOL and Plans shall have 7 days to file a reply.

IT IS FURTHER ORDERED that the Court will hold a hearing on **April 2, 2019, at 9:00 A.M.**, in Courtroom 3-B to address the above issues.

BY THE COURT:



WENDY BEETLESTONE, J.

³If a plan requires clarification of Wilmington's analysis to file its brief, it may contact Wilmington at jkemp@wilmingtontrust.com.

The court-appointed Forensic Accountant ("Marcum") is hereby directed to email this Order, together with a copy of the Wilmington/DOL letter (ECF No. 1811) to all of the Plans at their last known email address. Plans shall submit any responsive letter or brief to the following email address: lawclerk_jhey@paed.uscourts.gov.