

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

THOMAS E. PEREZ,)
UNITED STATES SECRETARY)
OF LABOR,)
)
Plaintiff,)
)
v.)
)
JOHN J. KORESKO, et al.,)
)
Defendants.)

CIVIL NO. 09-988-WB

SECRETARY’S MOTION FOR EQUITABLE DISTRIBUTION

After entering judgment in favor of the Secretary of Labor under the Employee Retirement Income Security Act of 1974 (ERISA), the Court appointed an independent fiduciary to hold the assets of 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 also appointed Marcum LLP (Marcum) to conduct a forensic accounting of the Trusts’ assets with the goal of proposing an equitable distribution of the assets to the participating employer plans. Having assessed Marcum’s forensic accounting and suggested distribution method, the Secretary submits that Marcum’s approach is the most fair and equitable method for determining each plan’s proportionate share of the Trusts’ assets. Marcum’s suggested distribution model adheres to ERISA’s goal of fulfilling the reasonable expectations of plan participants and further follows the applicable equitable principles of the common law of trusts for determining the appropriate distribution of trust funds to multiple beneficiaries. Moreover, Marcum’s thorough analysis and suggested method for calculating

each plan's proportionate share comports with this Court's factual findings and captures all of the relevant data through a reconstruction of the relevant Trusts' accounting database.

The Secretary moves the Court to adopt Marcum's proposed distribution method after providing the interested employer plans with an opportunity to review the proposal and submit any comments in support or in opposition. To ensure full notice and a meaningful ability to provide comments, the Secretary submits that the Court should provide a public hearing to allow Marcum and the Secretary's representatives an opportunity to explain the proposed distribution method to interested parties, after which the plans may provide written statements to the Court. After hearing from the interested parties, the Court should adopt Marcum's proposed distribution, or alter, if necessary, Marcum's proposal in light of any significant comments from the participating plans.

The Secretary files along with this motion a memorandum in support and a proposed notice to participating plans regarding Marcum's proffered distribution model.

Dated: August 22, 2016

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

OSCAR L. HAMPTON, III
Regional Solicitor of Labor

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CERTIFICATE OF SERVICE

I certify that on August 22, 2016, I electronically filed the foregoing SECRETARY'S MOTION FOR EQUITABLE DISTRIBUTION with the Clerk of Court by using the CM/ECF system, which will provide notice and an electronic link to this document to all registered CM/ECF users.

I further certify, pursuant to the Court's Order regarding the service of filings in this case (Order, ECF No. 1320), that I will cause a true and correct copy of the forgoing SECRETARY'S MOTION FOR EQUITABLE DISTRIBUTION to be served on Defendant John J. Koresko in person or by United States Postal Service, first class mail, postage prepaid to the following:

John J. Koresko, Inmate # 67892-066
FDC Philadelphia
Federal Detention Center
PO Box 562
Philadelphia, PA 19105

s/ Geoffrey Forney
GEOFFREY FORNEY
Senior Trial Attorney
United States Department of Labor