

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 4<sup>th</sup> day of August, 2015, whereas, on April 10th, 2015, the Court ordered that a trustee be appointed to serve as the investment advisor and independent fiduciary to the Single Employer Welfare Benefit Plan Trust ("SEWBPT") and the Regional Employers Assurance League Voluntary Employees' Beneficiary Association Trust ("REAL VEBA"), (together, the "Trusts") (Docket #1162), IT IS HEREBY ORDERED that:

1. Manufacturers and Traders Trust Company, including its Wilmington Trust affiliated entities ("Trustee"), is appointed to serve as Trustee, investment manager, and independent fiduciary for SEWBPT and REAL VEBA. The Court may employ the Trustee in any capacity to perform any act, keep any records or accounts, or make any computations required by the Court or Secretary of the United States Department of Labor ("Secretary"). Nothing done by the Trustee in such capacity

shall affect its responsibility or liability as Trustee hereunder.

2. The Trustee shall exercise full authority and control of the trust assets; retitle ownership of those assets to the full control of the Trustee for the benefit of SEWBPT and REAL VEBA Trust; and hold in trust all cash, insurance policies, or other property that may from time to time be paid over or delivered to or collected by the Trustee, including such cash or property delivered by a predecessor trustee or trustees, together with any increment thereto and income therefrom, and shall administer, disburse and apply such amounts in the manner, for the purposes, and to the extent provided therein. Such cash or other property together with such increment and income shall be called the "Trust Fund." The Trustee shall not be responsible, directly or indirectly, for the acts or omissions of any predecessor trustees or predecessor fiduciaries.

3. The Trustee shall:

- a. Maintain such accounts and records as it deems necessary and proper with respect to its administration of the Trust Fund, and shall permit inspection of such accounts and records and the Trust Fund by any duly authorized representative of the Court or the Secretary at any time during usual business hours;
- b. Prepare 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; and

- c. Make monthly reports to the Court, the Secretary, and the Wagner Law Group ("WLG"). These reports shall show all cash receipts and disbursements for the Trust Fund, a list of assets, and the current market prices obtained by the Trustee from one or more third party pricing services selected by the Trustee. When adequate pricing for any security or securities is not readily available to the Trustee from any such third party pricing service providers, the Trustee will not be required to provide current market prices for those securities.

4. The Trustee shall furnish the Court, the Secretary, and WLG with an annual statement of account as soon as possible after the close of each accounting year of the Trust. Such statement of account shall include the contributions to the Trust Fund, income earned on the Trust Fund and expenses and benefits paid out of the Trust Fund during such year, and the value of the Trust Fund at the close of such year.

5. The Trustee shall have exclusive authority and discretion to manage, invest, reinvest, and control the Trust Fund to include the following:

- a. The Trustee is also solely responsible for portfolio risk management, monitoring, management and reporting;
- b. The Trustee shall provide quarterly reports to the Court and Secretary of investment manager performance in relation to an

appropriate benchmark as agreed upon by the Court or Secretary.

6. The Trustee shall be responsible for the Trust Fund asset allocation within the following investment guidelines ("Investment Guidelines"):

- a. The overall investment performance objectives are preservation of principle, minimum volatility, and positive returns after inflation with an investment horizon not to exceed 5 years;
- b. Assets shall be invested in instruments that can be converted to cash within six months;
- c. A maximum of 10% of Trust Fund assets can be domestic or international equity instruments;
- d. The Trustee shall not allow the use of any form of leverage, including the use of derivatives contracts to replicate leveraged positions;
- e. The Trustee shall monitor and vote proxies as determined in its sole discretion;
- f. For any life insurance policy held by the Trustee, the Trustee shall not reduce the amount payable on the policy to the Trusts unless directed otherwise by the Court;
- g. In the event that the investment options in a particular life insurance policy do not permit the Trustee to select instruments within the Investment Guidelines, the Trustee shall, in its sole discretion, make such investment selections that most closely conform to the Investment Guidelines. The Trustee, with 90 days' notice to the Court and the Secretary, may seek modifications to the Investment Guidelines, as it deems appropriate.

7. The Trustee shall:

- a. Effect transactions through such securities brokers, dealers, market makers, principals, or other persons at the Trustee selects in its sole discretion or by such other means as it deems appropriate; and,
- b. To the extent permitted by applicable law, is expressly authorized to consider the fact that a broker or dealer has furnished statistical, research, or other information or services which enhance the Trustee's investment research or general portfolio management or trade execution capability.

8. The Trustee may, in its discretion, at its own expense and at no additional expense to the Trust, employ or contract with one or more persons, corporations or other entities (including a sub-investment manager or sub-investment adviser) to assist it in carrying out its responsibilities, provided that, prior to retaining any such person (i) the Trustee must determine whether the individual or entity's interests conflict with those of the Trusts or its constituent Plans; and (ii) the Trustee shall not retain any individual or entity whose interests may be in conflict with the interests of the Trusts or its constituent Plans, without prior approval of the Court. The Trustee shall be fully responsible to the Court, Secretary, participants, and beneficiaries for the acts and omissions of such person, corporation or entity as it is for its own acts and omissions.

9. The Trustee is further authorized:
- a. To accept and hold any securities or other property it receives under paragraphs 2-4, whether the Trustee would be authorized hereunder then to invest in such securities;
  - b. To cause any investments from time to time held by it or to be registered in, or transferred into, its name as Trustee or in the name of a nominee or nominees, including but not limited to that of the Trustee, a clearing corporation, or a depository, or in a book entry form, or to retain such investments unregistered or in the form permitting transfer by delivery, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;
  - c. To cause any such investment, or evidence thereof, to be held by the Trustee, in a depository, in a clearing corporation, in book entry form, or by any other entity or in any other manner permitted by law;
  - d. To hold any property at any place, except that the indicia of ownership of any part of the Trust Fund shall not be maintained outside the jurisdiction of the district courts of the United States; except as permitted by regulations;
  - e. To invest cash balances of the Trust Fund, to the extent practicable, in one or more market funds approved by the Trustee and to retain the Trustee (and/or one or more of the Trustee's affiliates) to provide custodial, investment management, administrative or other services for one or more of those money market funds;
  - f. To exercise any options appurtenant thereto for the conversion thereof into other stocks, bonds, or securities to the extent any rights to subscribe for additional stocks, bonds or

other securities and to make any and all necessary payments therefore and to join in, dissent from, or oppose the reorganization, recapitalization, consolidation, liquidation, sale or merger of corporations or properties in which it may be interested as Trustee;

- g. To make, execute, acknowledge and deliver any and all deeds, leases, assignments, and instruments;
- h. To invest all or part of the Trust Fund in interest bearing deposits with M & T Bank in its corporate, nonfiduciary capacity or with a bank or similar financial institution (including affiliates of it), including, but not limited to, investments in time deposits, savings deposits, certificates of deposit, or time accounts which bear a reasonable rate of interest; and
- i. To do all such acts, execute all such instruments, take all such proceedings and exercise all such rights and privileges with relation to any assets constituting a part of the Trust Fund as are necessary to carry out the purposes of this Order.

10. The Trustee shall pay from and charge to the Trust Fund, from time to time, such amounts as the Court or person designated by the Court directs are to keep certain life insurance policies from lapsing, for periodic distributions of death benefits, for payment for services rendered and other expenses or for the equitable distributions of trust assets. The Trustee may make any distribution or payment required to be made by it hereunder by mailing a check payable from or transferring funds from the Trust Fund for the specified amount, or delivering

the specified property, to the person to whom such distribution or payment is to be made, at such address or to such account as has been last furnished to the Trustee. The Trustee need not inquire whether payments the Court instructs it to make are (i) in accordance with the terms of any employee benefit plan; (ii) made for the exclusive purpose of providing benefits to participants and beneficiaries, or defraying reasonable expenses of the Trust; and (iii) not prohibited transactions under ERISA Sections 406, 408, or Code Section 4975.

11. The Trustee shall receive compensation in accordance with the Request for Trustee Proposals and bid, attached hereto as Exhibit A. The Trustee shall submit monthly invoices detailing its proposed fees. The Secretary shall have fifteen days to review and object to the proposed fees before they are approved by the Court. Upon Court approval, the Trustee is authorized to receive the approved fees and expenses by deducting them from the Trust Fund.

12. The Trustee may resign by filing written notice of resignation with the Court or Secretary. The Court may remove the Trustee by filing written notice of removal with the Trustee or Order reflecting the same. Such resignation may be with respect to all of the Trust Fund or any part thereof designated by the Court in such notice. The resignation or removal of the

Trustee shall take effect on any date specified in the notice of resignation or removal which is at least 60 days after the filing of such notice, or on the date a successor Trustee is appointed, whichever is later.

13. If the trusteeship is vacant for any reason, the Court shall appoint a successor and deliver written notice thereof to the successor so appointed and to the Trustee ceasing to act if it is in existence.

14. Any successor trustee appointed hereunder shall execute, acknowledge, and deliver to the Court and the Trustee an instrument in writing accepting such appointment. Thereupon, such successor trustee shall become vested with all the properties, powers, and duties of the predecessor Trustee with respect to the Trust Fund or any part thereof for which it is appointed successor trustee. On the written request of the Court, Secretary or the successor trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to the successor trustee the properties, powers, and duties with respect to the Trust Fund or any part thereof for which the successor trustee is appointed and shall assign, transfer and deliver to the successor trustee any assets held in the Trust Fund or in its custody which are to be held by the successor trustee. The Trustee will have no further responsibility for such assets of

the Trust Fund once the Trustee so assigns, transfers, and delivers such assets to the successor trustee.

15. Within 60 days after the resignation or removal of the Trustee as to all or part of the Trust Fund, the Trustee shall file with the Court and Secretary a written report setting forth all investments, receipts, disbursements, and other transactions effected by it since its last report, and showing each asset held at the date of resignation or removal and the cost thereof as carried on the books of the Trustee.

16. The following individuals and entities shall comply with the requests from the Trustee regarding information related to the finances and administration of the Plans and the Plans' Trusts and shall provide the Trustee 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.

17. The costs of the Trustee's appointment 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 209 (4<sup>th</sup> Cir. 2006) (appointing independent trustee and requiring that the defendants pay all associated costs). Had the Koresko Defendants complied with their fiduciary duties, there would be no need to appoint an Independent Trustee in this case. The Trustee's services, however, do not need to be postponed until the Koresko Defendants provide funding. Rather, the Trustee shall be paid out of the Trust assets in accordance with the terms outlined in its attached bid. At the close of its appointment, the Court shall issue a separate order specifying the total amount the Koresko Defendants are liable to the Plans to restore on account of this appointment.

18. The Court retains jurisdiction over this action for the 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.