Exhibit H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CIVIL ACTION NO. 02-80945

ELAINE L. CHAO, Secretary of Labor, U. S. Department of Labor,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO. 02-80945 JUDGE MARRA/ SELTZER
SERVICE AND BUSINESS WORKERS OF AMERICA LOCAL 125, et al.,	)	
Defendants.	)	

[redacted] ORDER GRANTING INDEPENDENT FIDUCIARY'S MOTION TO LIMIT RECOVERY OF HEALTH CARE PROVIDER CLAIMANTS TO AMOUNTS PAID THROUGH THE LIQUIDATION OF THE SERVICE AND BUSINESS WORKERS OF AMERICA LOCAL 125 BENEFIT FUND

I. INTRODUCTION

Pending before the Court is the Independent Fiduciary's[1] Motion to Limit Recovery of Health Care Provider Claimants to Amounts Paid Through the Liquidation of the Service and Business Workers of America Local 125 Benefit Fund ("Motion to Limit"). The Motion to Limit was filed on November 1, 2006 (D.E. #1282). A copy of the Motion to Limit was mailed to each claimant who/which held an approved claim in this Benefit Fund estate proceeding, said mailing including all health care provider claimants who/which held an approved claim. This Court has not received, either through filing with the Clerk's Office or through contact with Chambers, any opposition

[1] Through previous Orders of Court (i.e., October 8, 2002 Temporary Restraining Order -- D.E. #13 -- and October 28, 2002 Preliminary Injunction -- D.E. #18), Jeanne B. Bryant was appointed Independent Fiduciary of the Service and Business Workers of America Local 125 Benefit Fund ("Benefit Fund").

or objection to the Motion to Limit. A hearing on the Motion to Limit was set for Thursday, January 4, 2007, at 10:00 a.m. (EST) with the Independent Fiduciary filing a Notice of Setting of Hearing with the Court on December 19, 2006 (D.E. #1290) and also serving a copy of the Notice of Setting of Hearing upon all approved claimants. At the hearing of this Motion to Limit, no claimant, including no health care provider claimant, appeared to voice opposition to the Motion to Limit.

II. BACKGROUND

The Benefit Fund was a health care plan ostensibly sponsored by the Service and Business Workers of America Local 125 Union ("Union"). For numerous reasons not relevant to this Court's opinion, the Benefit Fund, beginning in the 2003 time frame (and arguably earlier), began experiencing financial difficulties. Insufficient funds were available to pay all of the self-insured claims of the participants to the Benefit Fund. Complaints arose from the Benefit Fund participants and health care providers regarding the Benefit Fund's failure to pay health care benefits. These complaints gave rise to an investigation by the Secretary of the Department of Labor and that investigation, in turn, gave rise to the institution of this action wherein the Benefit Fund was taken over and the Independent Fiduciary was appointed.

Presently, and through the efforts of the Independent Fiduciary in preserving existing assets and in pursuing additional assets, the Benefit Fund has approximately $2.4 Million. Through the implementation of a Proof of Claims process, which included the Court's ruling upon objections to various of the Independent Fiduciary's claim determinations, the amount of approved claims against the Benefit Fund estate is approximately $11.5 Million. While there are additional assets and causes of action that the Independent Fiduciary is pursuing/may elect to pursue, it is highly unlikely that the

Benefit Fund will ever have sufficient funds to pay all of the approved claims lodged against it.

The holders of approved claims against the Benefit Fund estate fall into two categories: Benefit Fund participants, or their covered dependents, and health care providers who provided services to the participants or their covered dependents. The Benefit Fund participants are individuals who were members of the Union and who paid premium or contribution amounts to the Benefit Fund for health care coverage. The Benefit Fund participants relied upon the Benefit Fund to provide health care benefits and were not involved with any act or omission that contributed to the Benefit Fund's financial deterioration and insolvency. The health care providers, who/which are amongst the approved Benefit Fund claimants, are persons or entities within the health care industry -- e.g. doctors, physical therapists, medical clinics, hospitals, etc. --that provided health care services to the Benefit Fund participants. The health care providers provided services in reliance that the Benefit Fund would pay health care benefits regarding those services. The health care provider claimants were not involved in any act or omission that contributed to the Benefit Fund's financial deterioration and insolvency.

In separate Order entered in this proceeding, the Court approved an interim distribution of approximately $2 Million from the Benefit Fund estate. In that Court Order, the Independent Fiduciary's recommendation of paying all approved claimants, be they participants or health care providers, at the same pro rata level (i.e., not paying one group in full before paying another) was adopted. The Court, in that separate Order found that such equal pro rata treatment of all approved claimants was equitable and appropriate given that all of the approved claimants were relying upon the Benefit Fund

to pay health service benefits and none of the approved claimants were culpable for the Benefit Fund's insolvency.

In this Motion to Limit, however, the Independent Fiduciary is recommending that the Court issue an order which would limit health care provider claimants who/which submitted Proofs of Claim, had claims approved and accept a pro rata interim distributions/distributions from the Benefit Fund estate a) from pursuing any Benefit Fund participant for any deficiency in payment for health care services and b) from reporting negative credit information concerning the participant. The Independent Fiduciary makes this recommendation in the pending Motion to Limit for several reasons. First, the Independent Fiduciary argues that the relief requested and protections afforded the Benefit Fund participants is a continuation of the relief afforded the participants through previous Orders of Court -- see e.g. Temporary Restraining Order at ¶ 17 (D.E. #13) and Preliminary Injunctions at ¶ 17 (D.E. #18) -- which enjoined health care providers from pursuing collections against participants and from reporting adverse credit information as to the participants. Second, the Independent Fiduciary asserts that by allowing an approved health care provider claimant the ability to accept pro rata distributions from the Benefit Fund, while also being allowed to further pursue participants for a deficiency in payment, would create an inequity regarding pro rata treatment of all approved claimants. In essence, the Independent Fiduciary urges that while a participant would be unable to do anything but accept the pro rata distribution, the health care provider claimant, absent order of the Court, would have the ability to pursue the participant and thus have a preferred position created through the Benefit Fund estate proceedings. Third, and in a related fashion, the Independent Fiduciary argues that

because it was the participant who paid premium and contribution payments into the Benefit Fund, they are the more direct beneficiary of the funds held by the Benefit Fund estate. Such being the case, the Independent Fiduciary maintains that health care provider claimants should not have rights greater than the participants coming from these proceedings and should not be afforded a greater opportunity to be paid more than the participant claimants. Without the required relief, as argued by the Independent Fiduciary, the approved health care provider claimants will have advantage and thus the treatment of the two approved claimant groups will not have been equal. Finally, the Independent Fiduciary asserts that the Court's ability to grant the requested relief is well within the power allowed it under the All Writs Act -- 28 U.S.C. §1651.

For the reasoning set forth below, the Court finds the Independent Fiduciary's Motion to Limit well taken and grants that Motion, with one modification, under the authority allowed it under the All Writs Act.

The Court initiates its discussion concerning the All Writs Act with the acknowledgment that exercise of jurisdiction and issuance of orders under it are to be the exception rather than the rule. It is clear, however, that the All Writs Act has been relied upon by courts in situations where union-sponsored health care benefit plans have been taken over and receivers/independent fiduciaries appointed. In re: Consolidated Welfare Fund "ERISA" Litigation, Department of Labor v. Goldstein, 798 F. Supp 125 (S.D.N.Y. 1992); Cutler v. The 65 Security Plan, 831 F. Supp 1008 (E.D.N.Y. 1993).

Under the All Writs Act, all federal district courts are empowered to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651. The concept of "in aid of jurisdiction"

in the All Writs Act, while usually found in terms of "in rem" jurisdiction, is flexible enough to apply to jurisdiction in aid of an independent fiduciary's discharge of duties in marshalling assets and liquidating estates in cases before the particular district court. See In re: Consolidated Welfare Fund, 798 F. Supp. at 127-28; see also Lankenau v. Coggeshall & Hicks, 350 F.2d 61, 64 (2nd Cir. 1965). Orders "in aid of jurisdiction" under the All Writs Act also include orders in aid of a court's supervisory jurisdiction over complex litigation pending before it. State of Texas v. United States, 837 F.2d 184, 186-87 n. 4 (5th Cir. 1988); Castano v. American Tobacco Co., 879 F. Supp. 594, 597 (E.D. La. 1995). The All Writs Act empowers federal district courts to fashion broad remedies in matters involving public interests and large numbers of individuals -- such as in a case wherein a multiemployer health benefit trust fund is taken over and a receiver appointed. Cutler, 831 F. Supp. at 1013. An order issued under the All Writs Act may extend to persons/entities who/which, though neither parties to the original action nor involved in wrongdoing, are nevertheless in a position to frustrate orders of the court or frustrate the proper administration of justice. United States v. New York Tel. Co., 434 U.S. 159, 174; 98 S.Ct. 364; 54 L.Ed.2d 376 (1977); Orbe v. True, 201 F. Supp. 2d 671 676 (E.D. Va. 2002). The court may issue an order, otherwise proper under the All Writs Act, as against anyone or any entity, whether a party or non-party to the action, if "minimum contacts" exist as between the person/entity and the forum court that is issuing the order. United States v. IBT, 907 F.2d 277, 281 (2nd Cir. 1990); United States v. International Brotherhood of Teamsters, 266 F.3d 45, 50 (2nd Cir. 2001).

Accordingly, the questions become 1) whether "minimum contacts" exist as between this forum/Court and the approved health care provider claimants who/which

filed claims in the Proof of Claim process and who/which will receive pro rata distributions and 2) whether the Independent Fiduciary's requested relief is necessary or appropriate to ensure compliance with previous orders and/or to ensure the proper and equitable administration of justice. See Orbe, 201 F.Supp.2d at 676.

The Court finds that personal jurisdiction exists as between this forum and each of the health care providers who/which submitted a Proof of Claim against the Benefit Fund estate. Clearly, in submitting their Proofs of Claim into this liquidation proceeding and in being determined as holders of approved claims, the health care providers were purposefully availing themselves of this forum, were interjecting themselves into this case, and were seeking the aid of this specific Court in supervising the treatment and determination of their specific claims against the Benefit Fund estate. Accordingly, because personal jurisdiction exists over them, any order issued by the Court pursuant to the All Writs Act would be binding upon the approved health care provider claimants who/which had filed Proofs of Claim against the Benefit Fund estate.

The Court further finds that issuing an order, which addresses the relief sought by the Independent Fiduciary, is necessary and appropriate to ensure continuation of existing orders of the Court and to ensure the proper and equitable administration of justice in this liquidation proceeding.

The Court finds that the relief requested by the Independent Fiduciary is a continuation of, and in aid of, the orders already in existence in this case (e.g., the Temporary Restraining Order and Preliminary Injunction) which prohibit the health care providers from pursuing collection of amounts owed from participants and which prohibit them from reporting negative credit information concerning the participants in relation to

amounts that were supposed to be covered by the Benefit Fund. It can be argued, perhaps[2], that those orders -- the Temporary Restraining Order and the Preliminary Injunction -- are temporary in nature and, thus, are envisioned to expire at the conclusion of this case. But, the "temporary" nature of the existing orders does not detract from 1) the rationale underlying those orders and 2) the fact that the Independent Fiduciary's requested relief is necessarily in aid of the continuation of that rationale and the continuation of the protections that should be afforded to the participants. For example, a clear rationale for enjoining suits by the health care providers against participants was to allow for all creditors to submit claims and then to have an equitable distribution of Benefit Fund assets to all creditors. This rationale still exists as to distributions from the Benefit Fund estate, particularly in light of the fact that the amount of approved claims far outstrip the amount of assets presently available and/or expected to be available for distribution. Equitable distribution and pro rata treatment of all the claimants is frustrated if one group of claimants (i.e., the health care provider claimants) comes away from the Benefit Fund distribution with the ability to pursue the other group of claimants (participants) for additional funds because the first group was not fully paid, even though the second group had not been paid any more, pro rata, than the first. Moreover, the rationale behind the Preliminary Injunction's prohibition of reporting negative credit information -- i.e., that the participants, who were supposed to be fully covered, were not at fault for the Benefit Fund's inability to pay the claims -- is still germane and compels the continuation of the general protections afforded by the Court's existing orders through entry of an order addressing the matters raised by the Independent Fiduciary.

[2] Again, it is noted that no opposition or objection to this Motion to Limit has been filed with the Clerk's Office, communicated to Court's Chambers or made at the January 4, 2007 hearing of the matter.

Therefore, the relief requested by the Independent Fiduciary continues the reasoning behind the existing orders of this Court, is in aid of continuing the impact of and protections afforded by those orders and, thus, is proper under the All Writs Act.

Similarly, the Court finds that the relief requested by the Independent Fiduciary would aid in the proper administration of justice because it would ensure that the Benefit Fund liquidation proceedings would conclude in an equitable manner. The health care provider claimants are in a position to frustrate the overall equal pro rata treatment of all claimants by taking the distribution from the Benefit Fund estate only to turn around and pursue the participants personally for the deficiency. Pursuit of the participants in this fashion, after the health care provider claimants had availed themselves of the Proof of Claim process which has sought to equalize payment, pro rata, amongst all approved claimants, would be inequitable.

From the beginning of this Benefit Fund proceeding, the participants have been seen as victims of the circumstances surrounding the Benefit Fund matter -- they paid their contributions/premiums to the Benefit Fund in good faith reliance that full health care coverage was being provided; they are, in all instances reported by the Independent Fiduciary and otherwise known to the Court, people of average, if not meager, means who are not in a position to pay health care providers amounts which the Benefit Fund was supposed to pay; they do not deserve being pursued by health care provider claimants over deficiencies caused by the Benefit Fund's failure to pay or to having their credit ratings damaged due to circumstances for which they are not at fault. Moreover, the participants are not receiving full recovery as against the Benefit Fund estate. Rather,

they are only receiving payments on their separate claims that are equal, on a pro rata basis, with what the health care provider claimants are receiving on their claims.[3]

The participants to the Benefit Fund, however, did have individual liability for various matters under the Benefit Fund health plan coverage, such as "co-pays" and "out of network" services. Accordingly, the one modification to the relief requested by the Independent Fiduciary is that the health care providers who/which are otherwise limited through this Order, may still pursue the participant for amounts owed for which the participant was individually liable under the Benefit Fund health plan documents and may report adverse credit information concerning the participant to that extent.

With that caveat to the Independent Fiduciary's request having been addressed, the Court, nevertheless, finds that, to ensure the proper administration of justice toward an equitable conclusion of this Benefit Fund estate liquidation, the general relief requested by the Independent Fiduciary in this Motion to Limit, with the one exception noted, is needed, and, thus, is proper under the All Writs Act.

As noted earlier, while the All Writs Act is to be used sparingly, it clearly has been relied upon by courts in situations where union-sponsored health insurance plans have been taken over and receivers/independent fiduciaries appointed. In re: Consolidated Welfare Fund, supra and Cutler, supra. Personal jurisdiction over the approved health care provider claimants exists in this forum/in this Court. Existing orders of the Court prohibit health care providers from pursuing participants for amounts owed and/or from reporting negative credit information concerning the participants

[3] The Court is aware that the approved health care provider claimants provided their services to the participants in reliance upon being paid by the Benefit Fund and are not at fault in this situation either. But, this situation of equal reliance and equal "non-culpability" is being addressed, in a separate Order of the Court, by having both claimant groups (the approved participants and the approved health care provider claims) being paid pro rata, on the same priority level.

regarding the amount owed. Because the reasons for those protections still exist, further order of Court is needed to ensure appropriate continuation of and compliance with those court-ordered protections. Moreover, the equity and fairness of a pro rata distribution to all claimants to the Benefit Fund estate would be frustrated if the approved health care provider claimants, who are to be paid on par with the approved participant claimants, were allowed to enjoy payment from the Benefit Fund estate and then to pursue the participants for any deficiencies. Thus, further order of this Court is needed to ensure the proper administration of justice and an equitable conclusion of this Benefit Fund proceeding.

Accordingly, and pursuant to the All Writs Act, the Court grants this Motion to Limit, with the one noted caveat, and orders that, if an approved health care provider claimant (i.e., one who/which has submitted a Proof of Claim and holds an approved claim) accepts a distribution/interim distribution from the Benefit Fund liquidation estate, then

1) the health care provider claimant will waive any ability to pursue the participant for any deficiency in payment of the claim other than for amounts for which the participant would have been individually liable under the Benefit Fund health plan coverage, such as "co-pays" and "out of network" services; and

2) the health care provider claimant will not report to anyone any adverse credit information as to the participant concerning the deficiency except as to reporting of such adverse credit information which represents the participant's failure to pay amounts for which the participant would have been individually liable under the Benefit Fund health plan coverage.

The Court also finds that there is no just reason for delay regarding the finality of this particular Order. In a separate Order, the Court has approved an interim payment to the SBWA Benefit Fund approved claimants. The limitations placed upon approved

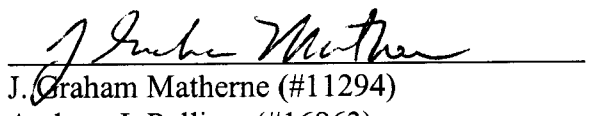
health care provider claimants, as set forth in this Order, has impact upon the payment of this interim distribution. The claimants need to know that receipt of the interim payment allowed by separate Court Order will not be undone or affected by some later challenge of the limitations upon the health care provider claimants set forth herein. Accordingly, pursuant to Rule 54(b) Fed.R.Civ.P., the Court expressly directs the Clerk to enter this Order as a final judgment on the matter addressed herein.

Because there has been no opposition or objection to the Independent Fiduciary's Motion to Limit, and in order to preserve SBWA Benefit Fund funds, the Court deems it sufficient for the Independent Fiduciary to post a copy of this Order on the SBWA Local website -- www.sbwa125.com -- as opposed to mailing the Order to every approved claimant.

It is so ORDERED this the 8th day of January, 2007.

KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE

Approved for Entry:



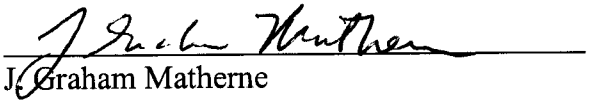
J. Graham Matherne (#11294)
Andrew J. Pulliam (#16863)
(Admitted by Order (Docket No. 22))
WYATT, TARRANT & COMBS LLP
2525 West End Avenue, Suite 1500
Nashville, Tennessee 37203-1423
(615) 244-0020

Counsel for Jeanne Barnes Bryant, Independent Fiduciary of Service & Business Workers of America Local 125 Benefit Fund

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2007, a true and correct copy of the foregoing was served by First Class Mail, postage prepaid, on the following:

Thomas C. Shanahan
U.S. Department of Labor
Office of the Solicitor
61 Forsyth Street, SW Room 7T10
Atlanta, Georgia 30303



J. Graham Matherne

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