

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

FLOYD SEIBERT, individually, and as)
TRUSTEE FOR THE CENTRAL HOME)
CARE SERVICES, INC., and)
AFFILIATES 401(K) PLAN,)

Plaintiffs,)

-vs-)

CENTRAL HOME CARE SERVICES,)
INC., and AFFILIATES 401(K) PLAN;)
MATTHEWS BENEFIT GROUP,)
ADMINISTRATOR OF THE CENTRAL)
HOME CARE SERVICES, INC., and)
AFFILIATES; CENTRAL HOME CARE)
SERVICES, INC.; EXTENDED CARE)
SERVICES OF OKLAHOMA, INC.;)
CENTRAL OKLAHOMA CARE AT)
HOME, INC.; CENTRAL TEXAS)
HOME HEALTH SERVICES, INC.;)
CENTRAL TEXAS EXTENDED CARE)
SERVICES, INC.; WESTERN)
MEDICAL SUPPLIES AND)
EQUIPMENT, INC.; SECRETARY OF)
LABOR FOR THE UNITED STATES)
OF AMERICA; JOHN HANCOCK LIFE)
INSURANCE COMPANY (USA),)

Defendants.)

Case No. CIV-06-1330-F

**ORDER APPROVING SUCCESSOR FIDUCIARY’S
REPORT AND PROPOSED DISTRIBUTION**

Before the court is the Successor Fiduciary’s Report and Proposal to Distribute Assets of the Trustee-Directed Portion of the Central Home Care, Inc. and Affiliates 401(K) Plan, doc. no. 49, filed on August 10, 2010. In this report and proposal,

Jeanne Barnes Bryant, the Successor Fiduciary, reports on the results of her activities as Successor Fiduciary and proposes a plan of distribution for funds held by her in that capacity, with a termination date established for distribution purposes as of December 31, 2001 for the Trustee-Directed Portion of the plan which is the subject of this action.

The court has also carefully reviewed plaintiff's opposition to the report, doc. no. 50, filed on August 31, 2010, a letter from Mary Catherine Wilder, doc. no. 51, filed on September 1, 2010, a communication apparently from Monica Rodriguez, doc. no. 52, filed on September 10, 2010, the Successor Fiduciary's response to Siebert's objection, doc. no. 53, filed on September 13, 2010, the Successor Fiduciary's response to Mary Catherine Wilder's objection, doc. no. 54, filed on September 15, 2010, and Siebert's additional objection to the report and proposal, doc. no. 55, filed on September 20, 2010.

On April 4, 2007, the court entered an order, doc. no. 44, which, among other things, appointed Jeanne Bryant of Receivership Management, Inc. as the Successor Fiduciary. The April 4, 2007 order authorized the Successor Fiduciary to terminate the pension plan, marshal the assets of the pension plan, and distribute the assets of the pension plan without seeking further court authorization. *Id.* at ¶ 7, p. 4. That order also stated, as pertinent here, that the Successor Fiduciary "may, in her sole discretion, determine that the pension plan should be terminated, in which case the Successor Fiduciary shall terminate the pension plan, marshal the assets of the pension plan, and implement an orderly pension plan termination and liquidation at such time and in such manner as she shall determine." Doc. no. 44, at ¶ 8, pp. 4-5. The April 4, 2007 order also stated that the court retains jurisdiction over the parties as may be necessary for enforcement of the order. *Id.* at ¶ 16, p. 6.

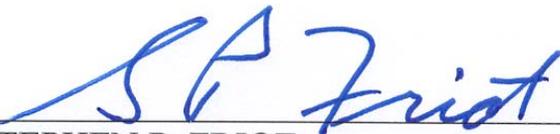
The report, doc. no. 49, provides a detailed explanation of the background of this matter, including the nature of the plan and its two components, the fraudulent activities of Floyd Seibert, the efforts by the Successor Fiduciary to marshal assets and accumulate distributable funds, the efforts by the Successor Fiduciary to ascertain account balances, and the Successor Fiduciary's determination that participant account balances should be distributed on the basis of a termination of the plan as of December 31, 2001 with vesting of all participants at 100% as of December 31, 2001. The report also provides a cogent explanation of the potential impact of that vesting date on plan participants, as well as a persuasive explanation of the accounting issues which make it impossible or, at a minimum, highly impracticable, to verify contributions to the Trustee-Directed portion of the plan for periods subsequent to December 31, 2001.

The court notes the letter from Mary Catherine Wilder, doc. no. 51, in which Ms. Wilder requests that a distribution be made on the basis of "the full & true vested balances brought up to date through 2005 when the companies closed." The court is certainly sympathetic to the concerns which underlie this request. However, the Successor Fiduciary's report persuasively demonstrates the difficulties in reliably accounting for contributions after December 31, 2001, and none of the papers before the court demonstrate any realistic possibility of ascertaining the "full & true vested balances" as of any date after December 31, 2001. The court would also note that it is by no means clear that any particular participant would derive any net benefit from a later termination date, if an accounting could be accomplished on the basis of actual contributions made as of a termination date later than December 31, 2001. Treating Ms. Wilder's letter as an objection to the report, the objection is **OVERRULED**. The objections by Mr. Seibert are **OVERRULED** substantially for the reasons set forth in the Successor Fiduciary's responses to those objections.

The court notes, as mentioned above, that the April 4, 2007 order stated that the court retains jurisdiction over the parties as may be necessary for enforcement of that order. The court considers the Successor Fiduciary's report and proposal, with the requests set forth on pages 11 and 12 thereof, to be a request for enforcement of the April 4, 2007 order. Under the circumstances, it is entirely understandable that the Successor Fiduciary seeks court authorization for her proposed distribution even though the April 4, 2007 order authorized her to make a distribution without further order of the court. The court notes that no objecting party has challenged the propriety of entering an order authorizing a distribution. Rather, the objections go to the particulars of the proposed distribution, including, most notably, a distribution on the basis of the proposed termination date of December 31, 2001.

Accordingly, it is **ORDERED** that the Successor Fiduciary be, and hereby is, directed to distribute participant account balances net of any withdrawals, unpaid loans, and calculated interest from December 31, 2001, on the basis of a termination date of December 31, 2001 for the Trustee-Directed Portion of the plan. Accordingly, the court adopts the recommendations set forth in paragraphs (a) through (f) on pages 11 and 12 of the Successor Fiduciary's report and proposal, doc. no. 49. The court further finds that there is no just reason to delay entry of this order, and expressly directs entry of this order as a final order, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Dated December 15, 2010.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE