

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

R. ALEXANDER ACOSTA, Secretary of Labor,)
United States Department of Labor,)

Plaintiff,)

V.)

Civil action no.: 1:18-cv-00609

Hon. Jorge L. Alonso

**ROY M. PAYAWAL, EDWARD J. NOVAK,
and SACRED HEART HOSPITAL PROFIT
SHARING 401(k) PLAN,**

Defendants.)

CONSENT ORDER AND JUDGMENT

Plaintiff **R. ALEXANDER ACOSTA**, Secretary of Labor, United States Department of Labor, pursuant to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001, et seq., filed a complaint against Roy M. Payawal ("Defendant Payawal") and Edward J. Novak ("Defendant Novak"), alleging breaches of their fiduciary responsibilities under ERISA § 404(a)(1)(A) & (B), 29 U.S.C. § 1104(a)(1)(A) & (B), with respect to the Sacred Heart Hospital Profit Sharing 401(k) Plan ("Plan"). The Plan was named as a defendant pursuant to Federal Rule of Civil Procedure 19(a) solely to assure that complete relief would be granted.

Defendants Payawal, Novak and the Plan have waived service of process of the complaint and admit to the jurisdiction of this Court over them and the subject matter of this action.

The Secretary and Defendants agree to resolve all matters in controversy in this action between them (except for the imposition by Plaintiff of any penalty pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l), and any proceedings related thereto), and said parties do now consent to entry of a Consent Order and Judgment by this Court in accordance therewith.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED AND ADJUDGED that:

1. Defendants are permanently enjoined from violating the provisions of Title I of ERISA.
2. Defendants Payawal and Novak are removed from any positions they now have as fiduciaries to the Plan.
3. Defendants are permanently enjoined from serving as fiduciaries or service providers to any ERISA-covered employee benefit plan.
4. Lefoldt & Co., is hereby appointed as the independent fiduciary for the Plan to terminate the Plan and issue distributions consistent with the Plan's governing documents, the Internal Revenue Code, and ERISA. See *Curriculum Vitae* of M. Larry Lefoldt, CPA, attached hereto as Exhibit A. The independent fiduciary shall not be responsible for any other individual's or entities' actions or omissions with regard to the Plan that occurred prior to his appointment. The independent fiduciary shall have the following powers, duties and responsibilities:
 - a. The independent fiduciary shall have responsibility and authority to collect, liquidate, and manage such assets of the Plan for the benefit of the eligible participants and beneficiaries of the Plan who are entitled to receive such assets, until such time that the

assets of the Plan are distributed to the eligible participants and beneficiaries of the Plan and the Plan is fully terminated;

b. The independent fiduciary shall exercise reasonable care and diligence to identify and locate each participant and beneficiary of the Plan who is eligible to receive a payment under the terms of this Consent Order and Judgment and to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled;

c. The independent fiduciary shall have full access to all data, information and calculations in the Plan's possession or under its control, including that information contained in the records of the Plan's custodial trustees and other service providers, bearing on the distribution of benefit payments, participant account balances and current plan assets;

d. The independent fiduciary may retain such persons and firms including, but not limited to, accountants and attorneys, as may be reasonably required to perform his duties hereunder;

e. The independent fiduciary shall obtain bonding in an amount that meets the requirements of ERISA § 412, 29 U.S.C. § 1112;

f. The independent fiduciary shall initiate the termination of the Plan in accordance with ERISA within thirty days of entry of this Judgment. The independent fiduciary's responsibilities shall include, but not be limited to, causing the distribution of the Plan's assets to the Plan participants and filing all appropriate documents with the various government agencies. The independent fiduciary shall provide the Regional Director of the Employee Benefits Security Administration, Chicago Regional Office, located at 230 South Dearborn Street, Suite 2160, Chicago, IL 60604, with quarterly updates on his progress toward terminating the Plan. Within thirty days from the date that the Plan is fully terminated, the

independent fiduciary shall provide satisfactory proof of such termination, including proof of issuance of the Plan's participant distributions, to the Regional Director; and

g. After terminating the Plan, as referenced in paragraph 4(f) above, for the services performed pursuant to this Consent Order and Judgment, the Independent Fiduciary shall receive compensation, from the Plan not to exceed \$3,973.75 for fees and expenses reasonably and necessarily incurred in administering and terminating the Plan.

5. Within seven days of execution of this Consent Order and Judgment, Defendants shall place \$3,973.75, (the "independent fiduciary's fee") in an escrow account under the sole control of attorney Sergio Acosta, Esq., counsel for Defendant Novak, and will provide to the undersigned attorney for the Secretary written proof that the transfer has occurred. Once the transfer has occurred, the executed Consent Order and Judgment will then be submitted by the parties for approval by the Court. Within five business days of the independent fiduciary terminating the Plan pursuant to 4(g) above, Mr. Acosta shall transfer the independent fiduciary's fee from the escrow account to the independent fiduciary located at Lefoldt & Co., P.A., 690 Towne Center Boulevard, Post Office Box 2848, Ridgeland, MS 39158-2848. Defendants will provide to the undersigned attorney for the Secretary written proof that the independent fiduciary's fee has been transferred from the escrow account to the independent fiduciary in the manner discussed above.

6. The independent fiduciary's appointment shall terminate upon the first to occur of: 1) removal by the Court; 2) its resignation after finding an acceptable replacement, agreed to by all parties or the Court, providing notice to all parties to this matter, and approval by the Court to have the replacement independent fiduciary appointed; or 3) the liquidation and distribution of the Plan's assets and the completion of all related tasks.

7. Defendants Payawal and Novak agree to fully cooperate with any requests from the independent fiduciary, any service provider, the Regional Director, or asset custodian, that relate to the administration and termination of the Plan.

8. Each party agrees to bear his or its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

9. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Order and Judgment.

10. Nothing in this Order is binding on any government agency other than the United States Department of Labor.

ENTERED:

10/09/18

A handwritten signature in black ink, consisting of a large, loopy 'J' followed by 'L. A.' and a small dot.

JORGE L. ALONSO
UNITED STATES DISTRICT JUDGE

EXHIBIT A

M. Larry Lefoldt, CPA
Curriculum Vitae

- A) Graduated with honors from Mississippi State University with a B.S. Degree in Accounting in May, 1971.
- B) Became a Certified Public Accountant in August, 1972.
- C) I am shareholder in Lefoldt & Co. Certified Public Accountants, with an office in Ridgeland, Mississippi. I have served as the firm's administrative shareholder and presently serve as shareholder in charge of the firm's auditing and accounting practice, as well as being involved in employee benefit plan and insolvency services.
- D) Member of Mississippi Society of Certified Public Accountants.
- E) Member of American Institute of Certified Public Accountants.
- F) Former President and Vice-President of Central Mississippi Chapter of the Mississippi Society of CPAs.
- G) Have served two terms on the board of Governors of the Mississippi Society of CPAs.
- H) Past Treasurer of the Mississippi Society of CPAs.
- I) Served as Chairman of the Professional Conduct Committee of the Mississippi Society of Certified Public Accountants.
- J) Have served as Discussion Leader and Lector on behalf of the American Institute of CPAs for numerous accounting and auditing seminars.
- K) Have served as Lead Examiner on Behalf of the Mississippi Insurance Department in an Examination of Prudential Property and Casualty Insurance Company's "Collateral/Protection Insurance" program in Mississippi.
- L) Have served as a consultant and expert witness in lawsuits primarily in the following areas:
 - (1) Business Valuations
 - (2) Construction (claims for contractual adjustments, contractors tax, etc.)
 - (3) Economic Damages, Loss of Profits, etc.
- M) Presently serving as the Deputy Liquidator responsible for the Liquidation of one Insurance Company on behalf of the Commissioner of Insurance of the State of Mississippi with total assets totaling approximately \$25,100,000.