

Mona Vie website notice re rollovers

At the direction of Fiduciary Counselors, on April 1, 2019, almost all funds remaining in the Mona Vie, Inc. ESOP (“the ESOP”) were transferred to Individual Retirement Accounts (“IRAs”) at Retirement Clearinghouse (“RCH”) in Charlotte, NC. These IRAs are for all participants who either (1) did not receive a distribution of amounts allocated to them or (2) did receive a distribution but did not cash their checks before the checks became stale.¹ These IRAs will be invested in the Federated Government Obligations Fund, a money market mutual fund invested in U.S. Treasuries and government securities.

If you have not yet received your distribution from the ESOP or cashed your distribution check, you will receive a welcome kit from RCH with details about the IRA that has been set up in your name. You have total control over your rollover IRA account. You may claim those funds at any time, leave them in the IRA, change the investments in that IRA, or transfer your funds to a different retirement account. The welcome kit will provide detailed explanations regarding all of these options. RCH will charge a maintenance fee of \$2.50/month per account for as long as your IRA account remains at RCH. RCH will also charge \$30.00 to process a distribution. These fees will be deducted directly from your IRA account. If you prefer not to wait to receive your welcome kit from RCH, you may contact RCH directly at 888-600-7655.

This transfer to RCH was approved by the U.S. District Court Judge in *Jessop v. Dallin, et al.* on February 27, 2019 following review of Fiduciary Counselors’ final report to the Court on January 29, 2019. Both the final order of the Court and Fiduciary Counselors’ report to the Court are included with this notice. (Please note that the exhibits referenced in Fiduciary Counselors’ report contain identifying information and will not be posted on the website in order to protect the privacy of the ESOP participants.)

¹ The only funds not transferred to RCH are for four checks that were reissued in February 2019 at participants’ requests. The funds for those checks will be transferred to RCH only if they remain uncashed after their stale date.



Final Report of the Independent Fiduciary
In *Jessup v. Larsen, et al.*

January 10, 2019

Pursuant to Section 8.2(i) of the Settlement Agreement, Fiduciary Counselors serves as the "plan administrator" as defined in ERISA for the Mona Vie, Inc. ESOP (the "ESOP" or the "Plan"). Our duties as plan administrator include the duties set out in Sections 8.2(ii) through 8.2(viii) of the Settlement Agreement. In discharging those duties, we are subject to the requirements of ERISA, including those governing the distribution of assets to plan participants upon plan termination.¹

We previously provided the following reports to the Court:

- Report of the Independent Fiduciary in *Jessup v. Larsen, et al.*, dated July 23, 2018, covering our work and work of KCC LLC ("KCC") to that point, including allocation of both the residual plan assets and the net settlement proceeds to plan participants; providing election forms and notices to plan participants regarding their allocations, their right to appeal and their distribution options; resolving an appeal; following up regarding returned mail; and processing election forms, including answering questions and following up regarding incomplete election forms.
- Update from the Independent Fiduciary in *Jessup v. Larsen, et al.*, dated August 2, 2018, notifying the Court of the number and total dollar amount of checks mailed to that point.
- Update from the Independent Fiduciary in *Jessup v. Larsen, et al.*, dated September 4, 2018, providing details on the checks issued, checks cashed, checks outstanding, funds remaining to be distributed, total allocations for 24 participants to whom notices had been re-sent following phone calls from KCC and other direct contact initiated by participants, allocations for 36 participants for whom no direct contact had been established, and our plans with respect to those remaining participants.

This report covers all distributions as of January 7, 2019, the status of uncashed checks, KCC's attempts to find unresponsive participants and to encourage them to complete and return their election forms, and our plans with respect to uncashed checks and participant account balances for participants who do not return complete election forms.

Attached with this report as Exhibits A and B are two spreadsheets providing each recipient's allocation, date and method of distribution, and outstanding check amounts. Exhibit A lists all participants to whom plan assets were allocated, in alphabetical order by last name. Exhibit B contains the same data but has three groups – participants who have not submitted election forms and received distributions, participants to whom checks were sent but have not been cashed as of January 7, 2019, and participants

¹ The residual assets from the ESOP were always Plan assets. The settlement proceeds became Plan assets once the expenses had been paid and the funds were transferred from the Qualified Settlement Fund into the Plan.

whose checks have been cashed. The spreadsheets show the separate allocations of Net Settlement Proceeds and residual plan assets.²

Of the \$16,764,443.79 net funds available for distribution to 458 participants of the ESOP, \$16,528,472.82 (98.6%) has been distributed to 440 participants (96% of participants) as of January 7, 2019. Group distributions were issued on July 31, 2018 and on November 26, 2018. Single checks were issued on December 31, 2018 after receipt of two additional election forms.

Only 18 participants (3.9% of participants), with a total allocation of \$235,970.97 (1.4% of total allocations), have failed to return election forms.

In fulfilling our responsibilities as plan administrator and fiduciary under section 404(a) of ERISA, we rely on the guidance provided by the Department of Labor (“DOL”) in their Field Assistance Bulletin No. 2014-01 (“FAB 2014-01”) on methods of locating missing participants and of distributing their plan account balances. DOL requires that notices be sent by certified mail to the last known address of participants; that employer and related plan records be checked for alternate addresses; that inquiries be sent to the designated beneficiaries of participants; and that free electronic search tools be used. DOL further requires us to consider using additional search methods if these are not fruitful.

In this case, our search efforts were hampered by the unavailability of employer or related plan records and of beneficiary designations. The settlement administrator, KCC, conducted an internet search of all participants prior to the initial mailing of notices and election forms. We asked KCC to search for evidence of death for the 66 participants identified as unresponsive after that first mailing. Because no evidence of death was found, KCC then performed in-depth searches by hand for these participants and re-mailed notices if new addresses were located. If the in-depth searches yielded email addresses and/or telephone numbers, these were also used by KCC staff to establish contact. Finally, a private investigator was hired to search for the 33 participants with whom no contact had been established, and a \$225 fee was charged to the accounts of each of the 31 participants the private investigator was able to contact.

In sum, after extensive outreach efforts, contact was confirmed with all but two participants. Unfortunately, even personal contact with and promises from participants do not always result in the submission of election forms, a pattern we have seen before.

Where participants have not submitted election forms for distributions from their plan accounts or have not cashed checks for distributions from their plan accounts, section 404(a) of ERISA and FAB 2014-01 are quite clear that distributing benefits into individual retirement accounts (“IRAs”) or annuities is the preferred distribution option because it is the method that offers the most protection to the participants. Distributions are rolled over to an account with no tax consequences or penalties for the participants, invested in safe and tax-free funds that are more likely to preserve capital than other options. Specifically, FAB 2014-01 states:

² The three individual named defendants were excluded from the allocation of the Net Settlement Proceeds but included in the allocation of the much smaller pool of residual plan assets, since those amounts are amounts to which they were entitled independent of the Settlement. We confirmed with Class Counsel that this approach was appropriate.

Individual Retirement Plan Rollovers – Preferred Distribution Option

Section 404(a) of ERISA requires plan fiduciaries to consider distributing missing participant benefits into individual retirement plans (i.e., an individual retirement account or annuity). An individual retirement plan is more likely to preserve funds for retirement than any other option. A distribution that qualifies as an eligible rollover distribution from a qualified plan, which is handled by a trustee to trustee transfer into an individual retirement plan, will avoid immediate taxation. An eligible direct rollover results in the deferral of income tax, avoids 20 percent mandatory withholding, and avoids any 10 percent additional tax for early distributions that might otherwise apply based on the participant's age and related facts. Funds in the individual retirement plan continue to grow tax-free and income taxes do not need to be paid until funds are withdrawn.

As the ERISA fiduciary for the Plan, we have determined that all amounts from uncashed checks and amounts for which no election forms have been submitted should be transferred to safe harbor IRAs at Retirement Clearinghouse ("RCH"). RCH is located in Charlotte, North Carolina and has provided automatic rollover services since 2005. RCH provides rollover services to both active and terminated plans, having serviced over 24,000 retirement plans. In particular, RCH has serviced over 2,100 terminated plans, representing over 178,000 participants and over \$2.7 billion in retirement assets.

The U.S. Department of the Treasury recently selected RCH as the IRA provider for former account holders that did not transfer their accounts upon the closing of the Department's myRA program. FCI has worked successfully with RCH on various independent fiduciary projects and transactions, and we have found them to be an experienced and reputable rollover service provider. Our primary contact at RCH is Michael Wilder, Senior Vice President, Strategic Accounts. FCI has no affiliation or financial relationship with RCH.

All of the investment options offered by RCH for IRAs are designed to preserve capital. The option FCI has chosen for rollovers and after-tax, uncashed distributions from the ESOP is the Federated Government Obligations Fund, a money market mutual fund invested in U.S. Treasuries and government securities. Participants will have the right to change investments, rollover to another IRA or their current employer's retirement plan if eligible, or take a cash distribution at any time. RCH will charge these IRAs a maintenance fee of \$2.50 per month and a \$30.00 fee at distribution to the participant. These fees are reasonable, particularly in light of the size of the allocations involved.

RCH will follow the escheatment rules of the states of participants' last known residence, including notice rules. Generally, funds may be escheated following three to five years of inactivity after a participant is 70½, which is when Required Minimum Distribution rules apply. For more information regarding RCH, please refer to their website: <https://rch1.com/>.

The rollovers to RCH also are consistent with participant expectations and with the notice we sent participants, which stated that uncashed checks and participant account balances for which participants have not submitted election forms would be rolled over to RCH. RCH will mail a welcome kit to participants, which will serve as an additional notice to them. KCC will post rollover information and RCH contact information on the settlement website. After plan funds have been rolled over to RCH, the KCC call center will let callers whose accounts were rolled over to RCH know how to contact RCH.

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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

KELLY JESSOP, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

DALLIN LARSEN, an individual, HENRY
MARSH, an individual, RANDY LARSEN, an
individual, MACHIEL KENNEDY, an
individual, DOES 1-10, and BANKERS TRUST
COMPANY, a Delaware corporation,

Defendants.

BANKERS TRUST COMPANY OF SOUTH
DAKOTA, a South Dakota corporation,

Third-Party Plaintiff,

v.

MONA VIE, INC., a Utah corporation,

Third-Party Defendant.

**ORDER ON THE FINAL REPORT
OF THE INDEPENDENT
FIDUCIARY**

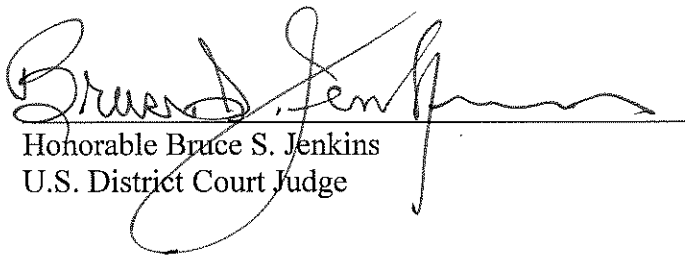
Civil No. 2:14-cv-00916

Honorable Bruce S. Jenkins

A hearing was held on January 29, 2019, to consider the Final Report of the Independent Fiduciary [212]. Gregory Y. Porter and Jennifer Fraser Parrish attended the hearing on behalf of Plaintiff Kelly Jessop and the Class. Stephen Caflisch, counsel for the Independent Fiduciary, Fiduciary Counselors Inc., was also in attendance.

On October 31, 2018, the Court ordered, “The Independent Fiduciary shall take no action with respect to any unclaimed and/or surplus amounts until further order of the Court.” [211] Having now reviewed the Final Report of the Independent Fiduciary [212] and discussed the same at the January 29, 2019, hearing, and for good cause shown, the Court hereby ORDERS that the Independent Fiduciary may proceed as set forth in the Final Report of the Independent Fiduciary [212].

DATED this 27th day of February, 2019.


Honorable Bruce S. Jenkins
U.S. District Court Judge