

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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	:	Chapter 11 Bankruptcy
<b>In re: INTREPID U.S.A., INC.,</b>	:	Case No. 04-40416-NCD
and Jointly Administered Cases,	:	Case No. 04-40462-NCD
	:	Case No. 04-40418-NCD
Debtors	:	Case Nos. 04-41942 to 04-41988-NCD
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**SECRETARY OF LABOR'S OBJECTION TO DEBTOR'S  
MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT  
BETWEEN F.C. ACQUISITION CORPORATION, TBJG, LLC,  
AND MEDSHARES, INC., A/K/A MERIDIAN CORPORATION**

ELAINE L. CHAO, Secretary of Labor, United States Department of Labor (Secretary), hereby files her objection to the Debtor's *Motion For Order Approving Settlement Agreement Between F.C. Acquisition Corporation, TBJG, LLC, and Medshares, Inc., a/k/a Meridian Corporation* currently pending before this Court and requests that the court's consideration of the settlement agreement be continued for another sixty days for the reasons stated herein. A hearing on the motion is currently scheduled for August 26, 2004, at 1:30 p.m. The Secretary's concerns arising from the Debtor's motion are in connection with the TBN of TN, Inc., Employee Group Health Plan (Plan) as follows:

1. In its motion, the Debtor seeks approval of a settlement agreement which provides for the distribution of \$683,000 in monies on deposit with the Registry of the U.S. Bankruptcy Court for the Western District of Tennessee, Memphis Division., which represent return or refund of various unpaid premiums on several different insurance policies relating to workers' compensation and

property insurance contracts. The Debtor proposes that \$500,000 of the monies on deposit be paid over to it, with the remaining \$183,000 to be paid over to the Medshares bankruptcy estate.

2. Intrepid purchased Medshares on June 30, 2003, for \$44,500,000, resulting in \$2,500,000 in net cash proceeds, with \$2,000,000 of the proceeds going to Medshares and \$500,000 to the Internal Revenue Service. The Plan was not specifically noted in the purchase agreement as one of the assets purchased. However, on information and belief, the agreement was written by exclusion; assets which were not purchased were specifically listed and everything else was the subject of the purchase agreement. Intrepid assumed Medshare's contract with the Plan's third party administrator, Fiserve.

3. On information and belief, on July 1, 2003, Intrepid seized \$758,603.70 held by the First Tennessee Bank in an account titled TBN of TN Employee Benefit Plan Account; these trust monies represented the Plan's reserve funds, earmarked for the payment of medical claims from Plan participants and beneficiaries.

4. It further appears that Intrepid may have transferred an unspecified amount of funds from the Plan account at First Tennessee Bank prior to June 30, 2003, the date of Intrepid's purchase of Medshares to facilitate that same purchase of Medshares.

5. Unpaid medical claims arising under the Plan which accrued prior to June 30, 2003, total approximately \$30,000; Medshare's counsel has stated that he will forward funds to the Plan's third party administrator in an amount sufficient to pay this indebtedness.

6. Unpaid medical claims arising under the Plan which accrued between July 1, 2003, and December 31, 2003, and which remained unpaid as of July 27, 2004, total \$664,943.09, representing 642 claims.

7. The Plan is an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. §§1001, *et seq.*. See ERISA §3(3), 29 U.S.C. §1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA §4(a), 29 U.S.C. §1003(a).

8. The Secretary is charged with the enforcement of the fiduciary requirement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. §§1001, *et seq.*, including the institution of actions in federal district court for injunctive relief and restitution to employee benefit plans.

9. Under her statutory authority, the Secretary has initiated an investigation of the Plan, which is continuing. The Secretary has not yet determined the extent and nature of ERISA violations and anticipates that it will take approximately sixty additional days to complete.

10. The Secretary respectfully requests the court to delay its consideration of the settlement agreement for another sixty days to permit the Secretary's investigation of the Plan to be completed and to give her the opportunity to draft an adversary complaint asking the court for a determination of the proper ownership and entitlement to the monies, which must be approved by the United States Department of Justice in Washington, D.C.

**CONCLUSION**

**WHEREFORE**, the Secretary requests that her objection to the Debtor's motion be sustained and that the court to delay its consideration of the settlement agreement for another sixty days.

Respectfully submitted,

**HOWARD RADZELY**  
Solicitor of Labor

**JOAN E. GESTRIN**  
Regional Solicitor

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Counsel for ERISA

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/s/ Eileen R. Hurley

**EILEEN R. HURLEY**  
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**MAUREEN CAFFERKEY**  
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Attorneys for Elaine L. Chao  
Secretary of Labor  
United States Department of Labor

**CERTIFICATE OF SERVICE**

I certify that one copy of the foregoing **SECRETARY OF LABOR'S OBJECTION TO DEBTOR'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN F.C. ACQUISITION CORPORATION, TBJG, LLC, AND MEDSHARES, INC., A/K/A MERIDIAN CORPORATION** and proposed **ORDER** have been served today on the individuals listed below via facsimile transmission:

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August 25, 2004  
**DATE**

/s/ Eileen R. Hurley  
**EILEEN R. HURLEY**  
Attorney

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**ORDER GRANTING SECRETARY OF LABOR'S MOTION  
OBJECTING TO DEBTOR'S MOTION FOR ORDER  
APPROVING SETTLEMENT AGREEMENT  
BETWEEN F.C. ACQUISITION CORPORATION, TBJG, LLC,  
AND MEDSHARES, INC., A/K/A MERIDIAN CORPORATION**

The Secretary of Labor, United States Department of Labor, having filed an objection to the Debtor's *Motion for Order Approving Settlement Agreement Between F.C. Acquisition Corporation, TBJG, LLC, and Medshares, Inc., a/k/a Meridian Corporation*, and good cause having been shown, it is therefore

ORDERED that consideration of the settlement agreement shall be postponed for sixty days, through and including \_\_\_\_\_, 2004.

Date: \_\_\_\_\_

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**NANCY C. DREHER**  
UNITED STATES BANKRUPTCY JUDGE