

The logo for Fiduciary Counselors features a stylized, light green graphic of three curved, overlapping shapes that form a triangular or star-like pattern. A dark green rectangular box with a thin white border is superimposed horizontally across the center of this graphic. Inside the box, the words "FIDUCIARY COUNSELORS" are written in a white, uppercase, sans-serif font.

FIDUCIARY COUNSELORS

Report of the Independent Fiduciary  
for the Settlement in  
*Ahrendsen, et al. v. Prudent Fiduciary Services, LLC, et al.*

May 17, 2023

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## **I. Introduction**

Fiduciary Counselors has been appointed as an independent fiduciary for the World Travel, Inc. Employee Stock Ownership Plan (the “Plan” or the “ESOP”), in connection with the settlement (the “Settlement”) reached in *Ahrendsen, et al. v. Prudent Fiduciary Services, LLC, et al.*, Case No. 2:21-cv-02157-HB (the “Litigation” or “Action”), which was brought in the United States District Court for the Eastern District of Pennsylvania (the “Court”). Fiduciary Counselors has reviewed over 100 previous settlements involving ERISA plans.

## **II. Executive Summary of Conclusions**

After a review of key pleadings, decisions and orders, selected other materials and interviews with counsel for the parties, Fiduciary Counselors has determined that:

- In connection with preliminary approval of the Settlement, the Court has certified the Settlement Class as defined in the Settlement, and in any event, there is a genuine controversy involving the Plan.
- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan and the amount of any attorneys’ fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan’s likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone.
- The terms and conditions of the transaction are no less favorable to the Plan than comparable arm’s-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.
- The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.
- The transaction is not described in Prohibited Transaction Exemption (“PTE”) 76-1.
- All terms of the Settlement are specifically described in the written settlement agreement and the plan of allocation.
- The Plan is receiving no assets other than cash in the Settlement.

Based on these determinations about the Settlement, Fiduciary Counselors hereby approves and authorizes the Settlement on behalf of the Plan in accordance with PTE 2003-39.

## **III. Procedure**

Fiduciary Counselors reviewed key documents, including the Second Amended Complaint (“SAC”), the Motions to Dismiss, the Court’s Memorandum Order denying the Motion to Dismiss for the Trustee and James Wells and granting the Motion for Dismiss for James Wells and Richard Wells, the Settlement Agreement, the Notice, the Plan of Allocation, the Motion for

Preliminary Approval and related papers, the Court’s Order Preliminarily Approving the Settlement, the Notice, the Motion for Attorneys’ Fees and Expense Reimbursement, Settlement Administration Expenses, and Service Awards and related papers, the Motion for Final Approval of Settlement and Certification of Settlement Class and related papers, and the Unopposed Request to Correct the Record Nunc Pro Tunc. In order to help assess the strengths and weaknesses of the claims and defenses in the Litigation, as well as the process leading to the Settlement, the members of the Fiduciary Counselors Litigation Committee conducted separate telephone interviews with counsel for the Trustee, counsel for the Selling Shareholder and counsel for Plaintiffs.

#### **IV. Background**

##### **A. Procedural History of Case**

###### *Litigation.*

Plaintiffs Shari Ahrendsen, Barry Clement, Lisa Bush, and Thomas Kallas brought the Action against Defendants Miguel Paredes (“Paredes”), Prudent Fiduciary Services, LLC (“PFS” and with Paredes, the “Trustee”), and James A. Wells (“Selling Shareholder” and with Paredes and PFS, “Defendants”) (together, Plaintiffs and Defendants are the “Parties”). Plaintiffs Shari Ahrendsen and Barry Clement filed their original Complaint on May 11, 2021. On July 30, 2021, the Trustee filed a motion to dismiss and the Selling Shareholders (then including Defendants James R. Wells and Richard G. Wells) filed a motion to dismiss on August 9, 2021. Plaintiffs, then including Lisa Bush, filed an Amended Complaint on August 30, 2021 and Defendants’ motions to dismiss were therefore denied as moot. Defendants filed motions to dismiss the Amended Complaint on September 23, 2021, and the Parties completed briefing those motions on October 25, 2021. On February 1, 2022, the Court denied the Trustee’s motion to dismiss; denied Defendant James A. Wells’ motion to dismiss; and granted Defendants’ James R. Wells’ and Richard G. Wells’ motion to dismiss. On July 14, 2022, the Court granted leave for Plaintiffs to file the SAC, which named Thomas Kallas as a plaintiff. The SAC alleged that Defendants violated ERISA in connection with the purchase of shares of Company common stock by the Plan on December 20, 2017 (the “ESOP Transaction”). In Counts I and II of the SAC, Plaintiffs asserted that the Trustee violated ERISA in connection with the ESOP Transaction by, *inter alia*, causing the ESOP to pay more than fair market value for World Travel, Inc. (“World Travel” or the “Company”) stock. In Count III, Plaintiffs alleged that agreements by the Company to indemnify the Trustee violated ERISA. In Count IV, Plaintiffs asserted, pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), that the Selling Shareholder engaged in prohibited transactions. In Count V, Plaintiffs asserted, pursuant to ERISA § 405(a), 29 U.S.C. § 1105(a), that the Selling Shareholder was liable as co-fiduciary for the Trustee’s fiduciary breaches. Defendants denied these allegations, denied any wrongdoing or liability, and have defended themselves in the Action. Defendants did not admit wrongdoing of any kind regarding the ESOP Transaction or the Action.

The Parties began discussing settlement on March 25, 2022. As part of those discussions, Plaintiffs requested documents they would need to evaluate any potential settlement. In addition, Plaintiffs engaged in formal discovery, issuing Requests for Production of Documents to Defendants on April 1, 2022. Plaintiffs also issued document subpoenas to numerous individuals and entities involved in the ESOP Transaction: World Travel; the Trustee's legal and financial advisors; entities that showed interest in acquiring World Travel; and advisors to World Travel and the Selling Shareholder.

### ***Settlement and Preliminary Approval.***

The Parties engaged in negotiation between September 1, 2022 and October 19, 2022 to arrive at the terms of the Settlement Agreement. Plaintiffs filed a motion seeking preliminary approval of the Settlement on January 25, 2023. The Court granted Plaintiffs' motion on January 30, 2023. The Court's Order: (1) certified the Settlement Class as defined in the Settlement; (2) approved the form and method of class notice; (3) set May 22, 2023 as the deadline for objections; (4) set June 12, 2023 as the date for a Fairness Hearing; and (5) appointed Analytics Consulting, LLC as Settlement Administrator.

### ***Objections.***

May 22, 2023 is the deadline for Class Members to file objections to the Settlement. As of the date of this report, no Class Members have filed any objections.

## **V. Settlement**

### **A. Settlement Consideration**

The Settlement provides for a Settlement Amount of \$8,700,000. After deducting (i) the amount required for payment of any taxes owed on the Settlement Fund Account, (ii) the fees and costs of the Independent Fiduciary, and (iii) amounts for the reasonable expenses of administering the Settlement Fund Account, including (a) reasonable expenses associated with the preparation and filing of all tax reports and tax returns required to be filed; (b) expenses associated with the preparation and issuance of any required Forms 1099 associated with payments from the Settlement Fund Account; (c) fees charged and expenses incurred by the Financial Institution associated with the administration of the Settlement Fund Account; (d) fees charges and expenses incurred by the Settlement Administrator, including reasonable costs incurred in preparing and mailing the Class Notice and any supplemental notice to the Settlement Class, in implementing the plan of allocation, the remainder (known as the "Net Proceeds") will be distributed to the Class Members in accordance with the Plan of Allocation.

## **Class and Class Period**

The Settlement defines the Settlement Class as follows:

“Settlement Class” shall mean all persons who, at any time on or prior to January 1, 2023, were vested participants in the ESOP and the beneficiaries of such participants. Excluded from the Settlement Class are the shareholders who sold their World Travel, Inc. stock to the ESOP, directly or indirectly, and their immediate families; the directors of World Travel, Inc. and their immediate families; and legal representatives, successors, and assigns of any such excluded persons.

In connection with preliminary approval of the Settlement, the Court has certified the Settlement Class as defined in the Settlement.

## **B. The Release**

The Settlement defines Released Claims as follows:

any and all claims of any nature whatsoever (including claims for any and all losses, damages, unjust enrichment, attorneys’ fees, disgorgement of fees, litigation costs, injunction, declaration, contribution, indemnification, or any other type or nature of legal or equitable relief), whether against Releasees in their capacity as individuals, corporate entities, or in their capacities as fiduciaries, whether known or unknown, in law or equity, which were or could have been asserted in the Lawsuit that relate to or arise from the facts and claims alleged in the Second Amended Complaint (the “Released Claims”).

The Released Claims do not include any individual ESOP participant’s or beneficiary’s claim for benefits under Section 502(a)(1)(B) of ERISA based only on errors unrelated to the allegations in the Lawsuit regarding that participant’s salary, age, or years of service. In the event that any court with original or appellate jurisdiction over the Lawsuit issues a final determination that any portion of Section 3 [Releases] is not enforceable, the Parties will jointly modify Section 3 [Releases] to conform with such determination, and in any event portions of Section 3 [Releases] that are enforceable shall remain enforceable.

Plaintiffs hereby expressly waive, on their own behalf and on behalf of all members of the Settlement Class and the World Travel ESOP, any and all rights and benefits respectively conferred upon them by the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common law of any other State, Territory, or other jurisdiction.

The terms of the release, including the provision for the Independent Fiduciary to provide a release of claims by the Plan, are reasonable.

### C. The Plan of Allocation

The Settlement Administrator will allocate the Net Proceeds as follows:

- a. The total number of vested shares of World Travel, Inc. stock allocated to each individual Authorized Claimant on or prior to January 1, 2023, divided by the total number of vested shares of World Travel, Inc. stock allocated to the ESOP accounts of all Authorized Claimants on or prior to January 1, 2023 shall constitute the Authorized Claimant's "Entitlement Percentage"; and
- b. The Authorized Claimant's benefit shall be calculated by multiplying the Net Proceeds by his or her Entitlement Percentage.

Active ESOP Participants are Authorized Claimants with an active ESOP account in the World Travel, Inc. ESOP as of the time of the distribution of Net Proceeds and will receive a cash payment into their ESOP accounts, which will be deposited into a money market fund in the ESOP. Non-Active ESOP Participants are Authorized Claimants without an active ESOP account in the World Travel, Inc. ESOP as of the time of the distribution of Net Proceeds. Non-Active ESOP Participants will receive their distribution by check, unless they submit a completed Election Form at least 21 days before the Fairness Hearing, wherein they request that their distribution is deposited directly into an individual retirement account ("IRA") or other eligible retirement plan. No distribution to Authorized Claimants without an active ESOP account will be made if the allocated payment falls below the *de minimis* threshold.

No amount shall be distributed by check to Non-Active ESOP Participants, if the allocation amount is less than \$10, the "*De Minimis* Threshold" amount. All such *De Minimis* amounts will be reallocated on a per capita<sup>1</sup> basis to all Authorized Claimants with an allocation amount above the *De Minimis* Threshold. All checks issued in accordance with the Plan of Allocation shall expire no later than one hundred twenty (120) calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date will revert to the Settlement Fund for distribution.

No sooner than one hundred and eighty (180) calendar days after the Settlement becomes Final, any Net Proceeds remaining in the Settlement Fund after distributions, including undelivered and uncashed checks and any undistributed funds below the *De Minimis* Threshold, will be deposited in the Plan and the Plan administrator will allocate it to Active ESOP Participants, divided equally on a per capita basis. In no event will any part of the Settlement Fund be used to reimburse any Defendants, to offset normal Plan expenses, nor to offset settlement-related costs incurred by any Defendant.

<sup>1</sup> Class Counsel informed us that the reference to "per capita" was a scrivener's error and that they actually intended for the *De Minimis* amounts to be allocated pro rata in proportion to Authorized Claimants' Entitlement Percentages calculated without including Authorized Claimants who will not receive payments because of the *De Minimis* provision. Class Counsel subsequently filed the Unopposed Request to Correct the Record Nunc Pro Tunc, which noted the error and stated that they will submit a corrected Plan of Allocation with a proposed Final Order that incorporates adoption of the corrected Plan of Allocation and consistent with the Court's rulings at the Fairness Hearing.

We find the Plan of Allocation to be reasonable, including:

- (1) the pro rata distribution of funds based on vested shares allocated on or before January 1, 2023;
- (2) the application of a *De Minimis* amount of \$10 to Non-Active ESOP Class Members; and
- (3) the provisions for payments into Plan accounts for Class Members with active accounts when possible and by check or deposit to an IRA or other eligible retirement plan for Class Members with non-active accounts.

The provisions are cost-effective and fair to Class Members in terms of both calculation and distribution.

#### **D. Attorneys' Fees, Litigation Expenses and Service Awards**

Class Counsel seek an award of attorneys' fees in the amount of \$2,900,000, which represents one-third of the Settlement Amount of \$8,700,000. Class Counsel's lodestar to date was \$1,045,300.50, which would produce a lodestar multiplier of 2.77 if the requested \$2,900,000 were awarded.

In our experience, the percentage requested and the lodestar multiplier are within the range of attorney fee awards for similar ERISA cases. Class Counsel also are highly qualified and highly experienced ERISA litigators and have obtained a favorable settlement for the Settlement Class. In light of the work performed, the result achieved, the litigation risk assumed by Class Counsel, and the combination of the percentage and the lodestar multiplier, Fiduciary Counselors finds the requested attorneys' fees to be reasonable.

Class Counsel also request reimbursement of \$67,649.70 in litigation costs, including expert consultant charges (\$57,050.50), online research (\$7,377.05), delivery and courier fees (\$2,225.46), court fees (\$834.53), database hosting and processing/vendor costs (\$144.16), and government or other publicly available reports (\$18.00)<sup>2</sup>. Fiduciary Counselors finds the request for expenses to be reasonable.

Class Counsel seek service awards for the Named Plaintiffs, in the amounts of \$15,000 for Mr. Kallas and \$10,000 each for Ms. Ahrendsen, Mr. Clement, and Ms. Bush for a total of \$45,000. All of the Named Plaintiffs in this Action dedicated significant time and effort to this matter, including by reviewing pleadings, responding to discovery requests, communicating with counsel, and evaluating the merits of the proposed settlement. Mr. Kallas in particular provided additional information that helped with the litigation. For example, the operative Second Amended Complaint attributes to Mr. Kallas various allegations furnished by "Confidential Witness 1," which provided useful information to support Plaintiffs' legal theories. Given Mr. Kallas' additional contributions to the

<sup>2</sup> The itemized numbers references in this paragraph are from the chart in paragraph 42 of the Porter Declaration except the amount for online research reflects a correction noted in the Unopposed Request to Correct the Record Nunc Pro Tunc.



Lawsuit, Class Counsel believes that a higher service award is warranted. Fiduciary Counselors finds the requested service awards to be reasonable.

In sum, although the Court ultimately will decide what fees, expenses and service awards to approve, we find that the requested amounts are reasonable under ERISA.

## VI. PTE 2003-39 Determination

As required by PTE 2003-39, Fiduciary Counselors has determined that:

- In connection with preliminary approval of the Settlement, the Court has certified the Settlement Class.** Thus, the requirement of a determination by counsel regarding the existence of a genuine controversy does not apply. Nevertheless, we have determined that there is a genuine controversy involving the Plan. Based on the documents we reviewed and our calls with counsel, we find that there is a genuine controversy involving the Plan within the meaning of the Department of Labor Class Exemption, which the Settlement will resolve.
- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.** The Litigation claimed that Defendants violated ERISA in connection with the ESOP Transaction. Specifically, the Litigation alleged that the Trustee violated its duties under ERISA § 404, 29 U.S.C. § 1104, and ERISA § 406, 29 U.S.C. § 1106, when it, among things, allegedly approved a purchase price for World Travel stock that exceeded fair market value, and Wells participated in a prohibited transaction in violation of ERISA § 406, 29 U.S.C. § 1106, by selling his World Travel stock to the Plan. Plaintiffs' core allegations regarding the ESOP Transaction rested on facts that were strongly contested by Defendants. These allegations involved the accuracy of World Travel's projections, whether the valuation methods (including the appropriate discount and premiums) employed by the Trustee's advisors were proper, and whether there were negative facts that were ignored by or not sufficiently investigated by the Trustee during the due diligence and negotiation process, and the fair market value of World Travel stock as of the transaction date. Defendants vigorously denied all of the allegations, asserted affirmative defenses and otherwise defended their actions with respect to the Transaction. Defendants pointed to evidence, such as interest shown by independent third parties in acquiring World Travel, which, in their view, supported the conclusion that Defendants had no liability. Defendants also would have argued that the allegations regarding revenue sharing obligations were incorrect, and that the revenue sharing under each contract with clients involved individualized calculations that were done correctly. If the Action were to proceed, Plaintiffs would have to overcome these and other defenses and arguments with respect to both liability and damages. These fact intensive inquiries would have led to a battle of experts and conflicting evidence and testimony wherein no party could reasonably be certain that its expert or evidence would persuade the Court.

The size of the Settlement is \$8,700,000, a fair and reasonable recovery given the results in numerous similar cases in the last several years, the defenses the Defendants would have asserted, the risks involved in proceeding to trial, and the possibility of reversal on appeal of any favorable judgment. Plaintiffs' valuation consultant—after reviewing documents and information provided by Defendants—estimated that the Plan paid between \$8.6 million and \$22.4 million in excess of fair market value in the ESOP Transaction because, for example, in the valuation consultant's view, the transaction valuation included improper premiums and used inappropriate valuation multiples. Plaintiffs' expert reached this opinion by changing what he viewed as errors in the report provided by the Trustee's financial advisor in the transaction at issue. Before subtracting expenses and attorneys' fees, each of the approximately 728 Class members will receive approximately \$11,950 on average. Settlement Class Members will receive approximately 39% of the "best possible recovery."

Given the substantial expense and risk involved in further litigation, the difficulty in prevailing on the merits and establishing damages, and the delay that would have resulted in providing any relief to the Class if the matter had been prolonged through trial and appeal, the amount of the Settlement is reasonable.

Fiduciary Counselors also finds the other terms of the Settlement to be reasonable, including the scope of the release, attorneys' fees and expenses, the service awards to the Class Representatives, and the Plan of Allocation.

- **The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.** As indicated in the finding above, Fiduciary Counselors determined that Class Counsel obtained a favorable agreement from Defendants in light of the challenges in proving the underlying claims.
- **The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.** Fiduciary Counselors found no indication the Settlement is part of any broader agreement between Defendants and the Plan.
- **The transaction is not described in PTE 76-1.** The Settlement did not relate to delinquent employer contributions to multiple employer plans and multiple employer collectively bargained plans, the subject of PTE 76-1.
- **All terms of the Settlement are specifically described in the written settlement agreement and the plan of allocation.**
- **The Plan is receiving no assets other than cash in the Settlement.** Therefore, conditions in PTE 2003-39 relating to non-cash consideration and extensions of credit do not apply.

- **Acknowledgement of fiduciary status.** Fiduciary Counselors has acknowledged in its engagement that it is a fiduciary with respect to the settlement of the Litigation on behalf of the Plan.
- **Recordkeeping.** Fiduciary Counselors will keep records related to this decision and make them available for inspection by the Plan's participants and beneficiaries as required by PTE 2003-39.
- **Fiduciary Counselors' independence.** Fiduciary Counselors has no relationship to, or interest in, any of the parties involved in the litigation, other than the Plan, that might affect the exercise of our best judgment as a fiduciary.

Based on these determinations about the Settlement, Fiduciary Counselors (i) authorizes the Settlement in accordance with PTE 2003-39; and (ii) gives a release in its capacity as a fiduciary of the Plan, for and on behalf of the Plan. Fiduciary Counselors also has determined not to object to any aspect of the Settlement.

Sincerely,



Stephen Caflisch

Senior Vice President & General Counsel