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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

NOV 03 2017

JUDGE MANISH S. SHAH
UNITED STATES DISTRICT COURT

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

Plaintiff,

v.

AEU BENEFITS, LLC,
AEU HOLDINGS, LLC,
BLACK WOLF CONSULTING, INC.,
SD TRUST ADVISORS, LLC,
and the AEU HOLDINGS, LLC
EMPLOYEE BENEFIT PLAN,

Defendants.

CIVIL ACTION NO.

1:17-cv-07931-JHL-SMF

EX PARTE TEMPORARY RESTRAINING ORDER

R. ALEXANDER ACOSTA, Secretary of the United States Department of Labor (the “Secretary”), filed a Motion for an Ex Parte Temporary Restraining Order and Preliminary Injunction. Based on the pleadings, memorandum in support of the Secretary’s motion, and the declarations and exhibits in support, the Court GRANTS the Motion and finds the Secretary has shown a reasonable likelihood of success on the merits of the ERISA claims, irreparable harm absent this injunction, and the balance of harm to the parties and the public interest weigh in favor of an injunction. This Order is hereby entered to enjoin the named Defendants from causing any further harm to the AEU Holdings, LLC Employee Benefit Plan (“AEU Plan”) and all welfare plans covered by the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001, et seq. that are part of or participate in the AEU Plan

(“Participating Plans”) and their participants who have suffered over \$26 million in unpaid claims.

It is hereby **ORDERED**:

1. Defendants AEU Benefits, LLC, and AEU Holdings, LLC (collectively “AEU”), and Black Wolf Consulting, Inc. (“Black Wolf”), and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, are removed as fiduciaries, service providers, trustees, and administrators of the AEU Plan or the Participating Plans.
2. Black Wolf and AEU and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, are enjoined from acting as a fiduciary or service provider to the AEU Plan or the Participating Plans.
3. SD Trust Advisors, LLC (“SD Trust”) and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, are enjoined from moving AEU Plan or the Participating Plans’ assets, except at the direction of the Independent Fiduciary defined in Paragraph Four.
4. Receivership Management, Inc. (“Independent Fiduciary”) is hereby appointed as the independent fiduciary to the AEU Plan and the Participating Plans. The Independent Fiduciary shall also serve as the successor Trustee and Plan Administrator of the AEU Plan and shall have full and exclusive fiduciary authority over the AEU Plan’s administration, management, and control of the AEU Plan’s assets.
5. Black Wolf and AEU, and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, are

to immediately notify the Independent Fiduciary of all funds from trust accounts or bank accounts that contain contributions from participating employers or Professional Employer Organizations (“PEOs”), and at the Independent Fiduciary’s direction, immediately transfer those assets to a bank account identified by the Independent Fiduciary.

6. Black Wolf and AEU, and anyone acting on their behalf, including their officers, agents, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, are enjoined to preserve, secure, and immediately produce to the Independent Fiduciary upon the Independent Fiduciary’s direction, all books, records, and documents, including electronic files, that relate to the administration, management, and operation of the AEU Plan and the AEU Plan’s assets as deemed by the Independent Fiduciary. This includes the following Bermuda entities: Cox Hallett Wilkinson, State House Trust Co. Ltd., Uberrimae Fidei Insurance Co. Ltd., Benedek Lewin Ltd., Omnium Trust Co. Ltd., R&Q Quest Insurance, Ltd. (collectively “Bermuda Entities”). Black Wolf and AEU are to immediately produce all information that identifies the receipt of any monies from participating employers or PEOs in the AEU Plan and the current location of those monies or assets purchased with that money.
7. Black Wolf and AEU, and anyone acting on their behalf, including their agents, officers, employees, assigns, subsidiaries, affiliates, service providers, accountants, attorneys, and the Bermuda Entities, are enjoined from expending, transferring, hypothecating, secreting, or otherwise obligating or disposing of any assets of the Participating Plans or the AEU Plan, and from destroying, altering, or secreting any of the Participating Plans’ or the AEU Plan’s documents, books, records, or electronic files or data or the

documents, books, records, or electronic files or data of any associated trust accounts, bank accounts, or “segregated accounts.”

8. The following trust and bank accounts which hold plan assets that are subject to the control and/or direction of Black Wolf, AEU, or AEU’s agents, including SD Trust Advisors, LLC, and Halo Insurance Group, shall immediately be subject to the Independent Fiduciary’s exclusive control:

- a. All monies in the name of Black Wolf Consulting, Inc., including the following accounts at the Bank of Pontiac, in Pontiac, Illinois: XXXXX6428, XXXXX1983 (“Bank of Pontiac Accounts”);
- b. All monies in the Iberia Bank in the name of SD Trust Advisors, LLC, including the following accounts:

BPT I CLAIMS PAYMENT ESCROW, No. XXXXXXX0623
BPT II CLAIMS PAYMENT ESCROW, No. XXXXXXX0275
BLACK WOLF PREMIUM EQUIVALENTS, No. XXXXXXX0259
CAPITOL CLAIMS PAYMENT ACCOUNT, No. XXXXXXX6195
CAPITOL SERVICE FEE ACCOUNT, No. XXXXXXX6187
CLAIMS PAYMENT ESCROW ACCOUNT, No. XXXXXXX0623
CORPORATE SOLUTIONS PREMIUM EQUIVALENT,
No. XXXXXXX6241
OEM PREMIUM EQUIVALENTS, No. XXXXXXX0283
PEQUOT CLAIMS ESCROW ACCOUNT, No. XXXXXXX0054
PPACA ESCROW, No. XXXXXXX0291
PREMIUMS EQUIVALENT ESCROW ACCOUNT,
No. XXXXXXX0658
QUALITY BUSINESS SOLUTIONS PREMIUM EQUIV,
No. XXXXXXX0267

(“Iberia Bank Accounts”);

- c. All monies in the Bermuda Purchasing Trust or in the name of the Bermuda Purchasing Trust with State House Trust Co. Lmt. as the trustee or account holder;
 - d. All monies in the Second Bermuda Purchasing Trust or in the name of Second Bermuda Purchasing Trust with Omnium Trust Co. Lmt. as the trustee or account holder;
 - e. All monies in the Segregated Account or any account affiliated with the Bermuda Purchasing Trust controlled by Uberrimae Fidei Insurance Company, Ltd;
 - f. All monies in the AEUB#1 Segregated Account or any account affiliated with the Second Bermuda Purchasing Trust controlled by R&Q Quest Insurance; and
 - g. All other assets of the Participating Plans or the AEU Plan, including insurance policies, held in accounts other than those set forth above in (a) through (f).
9. All of the bank accounts referenced in Paragraph Eight, above, shall be allowed to continue to receive deposits, but any and all transfer or withdrawal of funds from these accounts shall be done only at the Independent Fiduciary’s exclusive control and direction.
10. Black Wolf, AEU, AEU’s agents, including SD Trust Advisors, LLC, and Halo Insurance Group, shall execute and timely tender to the Independent Fiduciary or its representative, agent, or attorneys any and all documents, files, or other items necessary to transfer sole control and governance of all accounts in Paragraph Eight above to the Independent Fiduciary.

11. Black Wolf and AEU shall require anyone acting on their behalf, including their officers, employees, assigns, attorneys, agents, advisers, and representatives, and all persons who serve in any capacity that involves decision making authority for them, to act and discharge their duties in full compliance with the terms of this Order and shall require that they not take any action in the discharge of such duties that is inconsistent with the terms of this Order. Black Wolf and AEU also shall require anyone acting on their behalf, including their officers, employees, assigns, attorneys, agents, advisers, representatives, and all persons who serve in any capacity that involves decision making authority for them, as a condition of maintaining their relationships with them, to cooperate completely and immediately with the Independent Fiduciary in the performance of the Independent Fiduciary's duties and responsibilities.
12. Black Wolf and AEU shall provide a copy of this Order to anyone acting on their behalf, including all of their officers, employees, assigns, attorneys, agents, advisers, representatives and all persons who serve in any capacity that involves any decision making authority for them, within five (5) days after the entry of this Order.
13. The Independent Fiduciary shall have sole and exclusive responsibility and authority to control and manage the Participating Plans and the AEU Plan and all assets of the Participating Plans and the AEU Plan, including, but not limited to:
 - a. Authority to exercise all fiduciary responsibilities relating to the Participating Plans and the AEU Plan, including, but not limited to, the responsibility to act as the administrator of the Participating Plans and the AEU Plan;
 - b. Authority given to trustees under the terms of the documents governing any of the Participating Plans and the AEU Plan;

- c. Authority to amend the documents governing any of the Participating Plans and the AEU Plan;
- d. Exclusive authority to appoint, replace and remove such administrators, trustees, attorneys, employees, assigns, agents, and service providers as the Independent Fiduciary shall, in the Independent Fiduciary's sole discretion, determine are necessary to aid the Independent Fiduciary in the exercise of the Independent Fiduciary's powers, duties, and responsibilities to the Participating Plans and the AEU Plan;
- e. Authority to conduct an accounting of all medical claims and negotiate all medical claims;
- f. Authority to terminate the Participating Plans and the AEU Plan, if it is in the best interest of the Participating Plans and the AEU Plan and, in that event, to establish a claims submission deadline and to adjudicate all claims filed by such deadline and to deny claims not filed by the claims submission deadline;
- g. Authority to adjudicate and pay or deny any and all claims submitted to the AEU Plan and the Participating Plans;
- h. Authority to pursue recovery of monies owed and due to the Participating Plans and the AEU Plan from any person obligated to make such payments under the terms and conditions of the Participating Plans and the AEU Plan;
- i. Authority to identify and pursue recovery of Participating Plans' and the AEU Plan's assets as well as any monies to which the Participating Plans or the AEU Plan have a right of recovery;

- j. Authority to identify and pursue claims on behalf of the Participating Plans and the AEU Plan;
 - k. Except as provided herein, the authority to delegate to such administrators, trustees, attorneys, employees, agents, assigns, and service providers such fiduciary responsibilities as the Independent Fiduciary shall determine appropriate. The Independent Fiduciary may not, however, delegate the authority to appoint, replace and remove such administrators, trustees, attorneys, employees, agents, assigns, and service providers or the responsibility to monitor the activities of the trustees, attorneys, employees, agents, assigns, and service providers of the Participating Plans and the AEU Plan; and
 - l. Authority to pay itself reasonable and necessary fees from the Participating Plans' and the AEU Plan's assets and pay the reasonable and necessary fees of service providers, pursuant to the requirements of Paragraph Fifteen of this Order. All fees paid to the Independent Fiduciary and service providers shall be reimbursed to the Participating Plans and the AEU Plan jointly and severally by Black Wolf and AEU. The Independent Fiduciary has the authority to file with the Court a motion asking the Court to enforce this provision by ordering Black Wolf and AEU to comply with this provision.
14. The Independent Fiduciary shall not be discharged or terminated during the duration of this Order except by leave of Court upon application by either the Secretary or the Independent Fiduciary. Upon termination, discharge, or resignation of the Independent Fiduciary during the term of this Order, the Secretary shall recommend a successor Independent Fiduciary for appointment by the Court. Recommendations for a successor

Independent Fiduciary shall be made by the Secretary within such periods as the Court, by further order, may provide and require.

15. The AEU Plan is authorized and directed to pay the reasonable compensation, fees and expenses of the Independent Fiduciary and such person(s) and firm(s) retained by the Independent Fiduciary in the performance of services to or for the Participating Plans or the AEU Plan, subject to the following procedures:
 - a. Before causing the Defendants or the AEU Plan to pay compensation, fees or expenses to the Independent Fiduciary or any person or firms retained by the Independent Fiduciary, the Independent Fiduciary shall provide written notice of such compensation, fees or expenses, by filing a Fee Notice with this Court and by serving a copy to the Secretary;
 - b. The fee notice shall include a detailed invoice itemizing the compensation, fees and expense to be paid by the AEU Plan;
 - c. The Independent Fiduciary shall not be required to file, service, or otherwise deliver the Fee Notice to any person or person other than the Court, the Secretary, or the AEU Plan.
 - d. If within fifteen (15) days after filing of a Fee Notice, no objection to the Fee Notice or payment by the AEU Plan of the compensation, fees, or expenses described therein is filed with this Court, such compensation, fees, and expenses shall be deemed reasonable expenses of the AEU Plan and shall be paid by the AEU Plan without further action or approval of this Court;
 - e. If an objection to a Fee Notice or payment by the AEU Plan of the compensation, fees, or expenses described therein is filed with this Court, within fifteen (15)

days after filing of such Fee Notice, the Court shall hold a hearing on the matter and the compensation, fees, expenses described in the Fee Notice shall be paid by the AEU Plan only to the extent approved by the Court; and

16. This Paragraph Fifteen shall not apply to fees and expenses of the funds that third party administrators of the AEU Plan generated in the course of their performance under their service agreements that pre-date this Order.
17. The Independent Fiduciary shall cooperate fully with the Secretary in the exercise of the Secretary's enforcement responsibilities under ERISA, *inter alia*, by promptly providing such documents, information and persons under the Independent Fiduciary's control as the Secretary from time to time may request. Nothing herein shall be construed to limit the rights of the Secretary to maintain access to documents, information or persons or to waive or restrict the exercise by the Independent Fiduciary and any individual of his or her constitutional rights.
18. The Secretary may provide to the Independent Fiduciary any documents necessary to the administration of the Participating Plans and the AEU Plan and to assist the recovery and identification of the Participating Plans' and the AEU Plan's assets. To the extent any privilege or confidentiality applies to any such documents, the privilege or confidentiality is not waived and is preserved when documents are provided to the Independent Fiduciary.
19. The payment of administrative expenses and all fees to the Independent Fiduciary and the Independent Fiduciary's assistants, attorneys, accountants, actuaries and other necessary service providers are to be considered priority administrative expenses of the Participating Plans and the AEU Plan and its related entities, superior to any other class

of expense or obligation of the Participating Plans and the AEU Plan or its related entities and the Independent Fiduciary's second priority is to be the payment of legitimate claims. Black Wolf and AEU shall be responsible for repaying the Participating Plans and the AEU Plan for such funds expended. On a quarterly basis, the Independent Fiduciary shall provide the Secretary with a report of all significant actions taken and all AEU Plan and Participating Plans' assets expended in its administration of the AEU Plan and the Participating Plans.

20. The terms of the documents governing the Participating Plans and the AEU Plan are hereby amended to include the terms of this Order. This Order shall, for the term of this Order, supersede all other provisions in any documents governing the Participating Plans and the AEU Plan that are inconsistent with the terms of this Order including, but not limited to, any Participating Plans' or the AEU Plan's documents, trust agreements, and/or shareholder agreements.
21. Nothing in this and Order shall be construed:
 - a. To limit the powers and responsibilities of any officer or employee of the United States under ERISA or any other law, or
 - b. To relieve the Participating Plans or the AEU Plan, or any of their administrators, fiduciaries, officers, trustees, custodians, attorneys, agents, employees, assigns, advisers, providers of goods or services, consultants, representatives in any capacity, or persons who serve in any capacity that involves decision making authority or custody or control of the monies, funds or assets of the Participating Plans or the AEU Plan prior to the appointment of the Independent Fiduciary of any duty, responsibility, or liability under ERISA or any other law.

22. This Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of enforcing this Order.
23. Provisions of this Order requiring service and notice to the Independent Fiduciary, the Secretary, Black Wolf, AEU, and SD Trust shall be satisfied by delivering it in writing as follows:

To the Independent Fiduciary:

Receivership Management, Inc.
1101 Kermit Dr., Suite 735
Nashville, TN 37217

To the Secretary:

Office of the Solicitor
Attn: Brooke E. Worden
230 S. Dearborn St., Rm. 844
Chicago, IL 60604

To Defendant Black Wolf:

Black Wolf Consulting, Inc.
26113 S. Ridgeland Ave.
Monee, Illinois 60449

To AEU:

AEU Holdings, LLC
AEU Benefits, LLC
8131 LBJ Freeway, Suite 750
Dallas, Texas 75251

To SD Trust:

SD Trust Advisors, LLC
2131 S Street NW
Washington, DC 20008

The parties to this Order may, as they deem necessary, change the designation of persons to receive service and notice on their behalf by filing with the Court notification of such

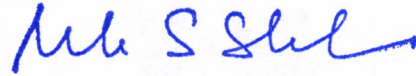
change and serving a copy thereof on the other party or parties to this Order.

24. Any party subject to this Order may seek relief from or amendment to this Order.
25. Pursuant to Rule 65(b)(1), the Secretary filed a supporting declaration with specific facts that have shown that immediate and irreparable injury, loss, or damage will result to the movant, the Participating Plans and the AEU Plan and their participants represented by the Secretary, before the adverse party can be heard in opposition; and the Secretary's attorney certified in writing the reasons why service should not be required.
26. The irreparable injury to be prevented is the continued incurrence of unpaid medical claims of the Participating Plans' and the AEU Plan's participants and to prevent the dissipation of the Participating Plans' and the AEU Plan's assets to service providers and to accounts in Bermuda. The injury is irreparable because the funds are being distributed to both known and unknown sources, including to accounts in Bermuda. The order is issued without notice to stop the payment of the Participating Plans' and the AEU Plan's assets for fees to Black Wolf, AEU, and other service providers, to prevent Black Wolf and AEU from withholding the payments of medical claims, and to stop the transfer of funds to accounts in Bermuda.
27. Pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, no bond or other security shall be required of the Secretary.
28. Pursuant to Rule 4.1(a) of the Federal Rules of Civil Procedure, the U.S. Department of Labor's Office of the Inspector General is hereby specially appointed to serve the following documents in the this matter: the Complaint, the Motion, the Memorandum and all documents attached thereto, and this Order. Service may be done by any United States marshal or deputy marshal or any Special Agent of the U.S. Department of Labor's

Office of the Inspector General.

29. This Order is hereby entered at 11:25 a.m. on November 3, 2017. This Order will expire at 11:25 a.m. on November 17, 2017.

Entered: November 3, 2017



Hon. Manish S. Shah

United States District Judge