

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JULIE A. SU, Acting Secretary of Labor,)
 U.S. DEPARTMENT OF LABOR,)
)
 Plaintiff,)
)
 v.)
)
 RIVERSEDGE ADVANCED RETIREMENT)
 SOLUTIONS, LLC., a Pennsylvania Company,)
 PAUL PALGUTA, an individual,)
)
 v.)
)
 MID ATLANTIC TRUST COMPANY dba)
 AMERICAN TRUST CUSTODY, a corporation,)
 SCHWAB RETIREMENT TECHNOLOGIES,)
 INC., a corporation, and CHARLES SCHWAB)
 TRUST BANK, a corporation, *solely as Rule 19*)
defendants,)
)
 v.)
)
 BEAVER COUNTY DEFERRED)
 COMPENSATION PLAN, CHRISTIAN)
 AID MISSION 403(b) PLAN, and)
 LCBC CHURCH 403(b) PLAN,)
solely as Rule 19 defendants,)
)
 Defendants.)

No. 2:24-cv-00104 (MJH)

SEVENTH AND FINAL ACTIVITY REPORT OF INDEPENDENT FIDUCIARY

1. Receivership Management, Inc. (“RMI”), in its capacity as court-appointed Independent Fiduciary, by counsel and pursuant to ¶ 17 of the Preliminary Injunction entered in this matter [Dkt. 40] (“Preliminary Injunction”), submits to the Court its Seventh and Final Activity Report.

I. Introduction

2. On February 20, 2024, the Preliminary Injunction was entered appointing RMI as

Independent Fiduciary to the “Mismanaged Plans” and “Client Plans,” as defined therein (collectively, the “Plans”), effective February 8, 2024. As Independent Fiduciary, RMI has been directed by the court to secure all Plan records from RiversEdge Advanced Retirement Solutions, LLC (“RiversEdge”) and Mr. Paul Palguta (“Palguta”)(collectively, the RiversEdge Defendants), to assist all Plans in facilitating the transfer of Client Plan records to one or more other recordkeeping services providers in coordination with the initial Rule 19(a) Defendants, and to conduct an accounting of assets of the named 17 Mismanaged Plans. Preliminary Injunction [Dkt. 40] ¶ 7. The Consent Order requires RMI to report to the Court on at least a monthly basis of all significant actions taken. *Id.*, ¶ 17.

II. Seventh Activity Report of Independent Fiduciary

A. Securing All Plan Records from the RiversEdge Defendants.

3. Since its Second Activity Report of April 12, 2024, RMI and its data contractor, Lattimore Black Morgan and Cain PC (“LBMC”) have accomplished the following in the securing of Plan Records:

- a. Completion of all plan record downloads from Schwab Retirement Technologies, Inc. (“Schwab RT”)
- b. Receipt of thirteen (13) RiversEdge laptop computers used by the RiversEdge Defendants. On May 2, 2024 RMI issued letters to twelve (12) persons indicated by RiversEdge Defendants as employees or former employees.
- c. Established procedures for copying all Plan Data (255 plans) held by Rule 19(a) Defendant Schwab RT, placing same in a secure environment established by

LBMC, and converting same to SQL for ease of query, all verified for accuracy and completeness.¹

d. Identification of two additional Plan records databases/software used by the RiversEdge defendants: Egnyte and WorkXpress. Egnyte's extraction is complete. LBMC has contacted WorkXpress, paid the \$900 for data and re-contacted WorkXpress as a result of the Court's hearing for software access to view and evaluate the data. WorkXpress says it will need \$900 to re-establish the data and \$2,400 for one month's access to their software (reportedly a discounted amount). While RMI understands a subpoena for information was issued, no further information has come to RMI from WorkXpress. As a result, information contained in WorkXpress was not available in the preparation of RMI's Accounting Report to the Court [Dkt. 93-1].

B. Assisting All Client Plans in Facilitating the Transfer of Plan Records to Other Recordkeeping Service Providers.

4. RMI has confirmed that all but five (5) Plans have completed either a deconversion or a termination as of the date of this Report. Those five (5) Plans are (1) Beaver County Deferred Compensation Plan (by Neil Gregorio by email dated September 20, 2024, anticipated deconversion on October 29, 2024); (2) Camp Deer Creek (unable to reach directly; appears completed because not listed on SRT deconversion report dated August 2, 2024); (3) BlueStem State of Minnesota 403(b) Plan (by Scott Marquardt by voicemail dated August 9, 2024, anticipated deconversion by October 1, 2024); (4) Selective Dining 401(k) Plan (by Bindu George by email dated September 27, 2024, anticipated deconversion on unspecified date with

¹ "SQL" (pronounced "ess-que-el") stands for Structured Query Language. SQL is used to communicate with a database. According to ANSI (American National Standards Institute), it is the standard language for relational database management.

Metro Benefits as TPA and John Hancock Insurance as funds custodian/annuity provider); and (5) Tyrone Hospital 457(b) Plan (by Michele Coletti by email dated of September 11, 2024, in the process of plan termination). Another “Plan,” the Holy Cross Greek Orthodox Endowment Fund, is neither an employee benefit plan nor subject to ERISA (and thus, is not a “Plan”) and is therefore outside of RMI’s authority under the Preliminary Injunction [Dkt. 40].

5. RMI implemented a form to be completed by the sponsoring employer for the authorization to issue data belonging to its sponsored Plan to others, as directed by the sponsoring employer. This includes data and paper record information that is not present on the Schwab RT system. This information involves adoption agreements, enrollment forms, Plan Documents, amendments thereto, loan documents and amortization schedules. RMI continues to receive requests for this information. All pending requests for this information have been completed.

C. Accounting of the Transactions Within the Seventeen (17) Mismanaged Plans.

6. On July 19, 2024, RMI filed with the Court its Accounting Report regarding the seventeen (17) Mismanaged Plans [Dkt. 93-1]. The total market value, as of February 9, 2024 of the missing securities from the seventeen (17) Mismanaged Plans (with transactions reviewed from January 1, 2017 to January 2024) is \$18.79 million. An expanded view prior to 2017 shows the total market value at February 9, 2024 of the missing securities in the seventeen (17) Mismanaged Plans to be \$20.37 million.

III. Other Matters

7. Disposition of Records, Computers, Data. On September 26, 2024, RMI received a subpoena from William B. Guappone, Assistant United States Attorney, which requires RMI to

produce all books and records of RiversEdge on or before October 22, 2024 at 9:00 a.m. RMI has not yet responded to the subpoena, other than to request additional time until October 31, 2024 to respond. That request has been granted. RMI proposes to transfer all books and records of RiversEdge in its possession to the Assistant United States Attorney in response to the subpoena. RMI believes that it shall be relieved of any and all responsibility to keep, store or otherwise maintain copies of such books and records thereafter because it is not a person or entity that is subject to ERISA's records retention requirements, 29 U.S.C. §1027 and 29 U.S.C. §1059 and because the Court did not require such in the Preliminary Injunction [Dkt. 40]. LBMC will destroy all Plan books and records in its possession as well.

8. RiversEdge SOC Audit Report Discovery. On or about October 9, 2024, RMI learned that a Client Plan had obtained a 2022 SOC audit report for RiversEdge. Until that time, RMI did not know that any such report existed for RiversEdge. The auditor furnished a copy of the report to RMI. RMI has reviewed the report and has determined that it does not contain any information that would alter the Accounting Report [Dkt. 93-1]. However, it does contain information that may be useful to the Mismanaged Plans. Further, the RiversEdge 2022 SOC audit report states that RiversEdge represented that it annually received and reviewed type 2 SOC 1 audit reports from Schwab Retirement Technologies Recordkeeping Software ("SRT"), Schwab Retirement Technologies ("Schwab RT"), Schwab ASB ("ASB"), Egnyte, Inc. ("Egnyte"), Mid Atlantic Trust Company and the Charles Schwab Bank. RMI has requested copies of the SOC 1 reports from ASB and Egnyte but has not received them.

9. Request for Relief and Discharge. Assuming there are no objections to the proposed transfer of data, records, and computers to the U.S. Attorney's Office, pursuant to subpoena, having completed all tasks assigned and there being no further actions required of the

Independent Fiduciary, the Independent Fiduciary respectfully requests that it be released and discharged effective October 31, 2024.

10. Notice of Final Fee Filing and Motion. RMI anticipates that it will file a Notice of Eighth and Final Fee Filing with the Court, together with a motion for disbursement and proposed order, on or before October 31, 2024.

Respectfully submitted,

RECEIVERSHIP MANAGEMENT, INC.,
IN ITS CAPACITY AS INDEPENDENT
FIDUCIARY

By: /s/ Bynum E. Tudor III

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ATTORNEYS FOR RECEIVERSHIP
MANAGEMENT, INC., in its capacity as
INDEPENDENT FIDUCIARY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JULIA A. SU, ACTING SECRETARY OF U.S.)
DEPARTMENT OF LABOR,)
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Plaintiff,) CASE NO. 2:24-CV-00104 (MJH)
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v.)
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RIVERSEDGE ADVANCED RETIREMENT)
SOLUTIONS, LLC a Pennsylvania Company,)
PAUL PALGUTA, an individual,)
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v.)
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MID ATLANTIC TRUST COMPANY dba)
AMERICAN TRUST CUSTODY, a)
corporation, and CHARLES SCHWAB)
TRUST BANK, a corporation, *solely as Rule 19*)
defendants)
Defendants.)

CERTIFICATE OF SERVICE REGARDING
INDEPENDENT FIDUCIARY'S SEVENTH AND FINAL ACTIVITY REPORT

I hereby certify that on October 23, 2024, I caused the Independent Fiduciary's Seventh and Final Activity report [Dkt. 124] to be filed and electronically served using the Court's CM/ECF system to counsel for all parties to this action.

I also hereby certify that on October 23, 2024, I caused the Independent Fiduciary's Seventh and Final Activity Report [Dkt. 124] to be served upon the following fourteen (14) non-party plans listed in the Court's Preliminary Injunction Order [Dkt. 40], by email:

- (1) RiversEdge 401(k) Profit Sharing Plan (pshoup@amibenefit.com);
- (2) Hampton Technical Associates 401(k) Profit Sharing Plan (MarkS@Hampton-Tech.net);
- (3) Max Environmental Technologies, Inc. 401(k) Savings Plan (JStango@MaxEnvironmental.com);
- (4) Medical Predictive Science Corporation (GAlms@HeroScore.com);
- (5) Elite Mechanical, Inc. 401(k) Profit Sharing Plan (donna@elite-mechanical.com);
- (6) Leech Tishman Fuscaldo & Lampl, LLC 401(k) Profit Sharing Plan (jsteiner@leechtishman.com);

- (7) W.N. Tuscano Agency, Inc. 401(k) Savings Plan (scrary@tuscano.com);
- (8) St. Barnabas Health System Retirement Savings Plan (jdturco@stbarnabashealthsystem.com);
- (9) Hawaiian Island Dental, Inc. 401(k) Plan (allhawaiiismiles@hotmail.com);
- (10) Ad-base Group 401K Plan (adams@abgcapital.com);
- (11) Arc of Wabash County Inc. 403(b) Plan (MGuthrie@ArcWabash.org);
- (12) Adventure WV Plan (m.fowler@onthegorge.com);
- (13) The National Fruit Product Co., Inc. 401(k) Employee Savings Plan (atinsman@nfpc.com) and (agum@nfpc.com) and (tomwillis@glenlochlegal.com); and
- (14) Family Medicine of Albemarle 401(k) Plan (rwynne@mcguirewoods.com) and (lsneathern@mcguirewoods.com).

Further, on or before October 24, 2024, the Independent Fiduciary posted/will post a copy of the Independent Fiduciary's Seventh and Final Activity Report [Dkt. 124] on its web site at www.receivermgmt.com/riversedge.

Respectfully submitted,

**RECEIVERSHIP MANAGEMENT, INC., AS
COURT-APPOINTED INDEPENDENT
FIDUCIARY OF MISMANAGED PLANS AND
CLIENT PLANS OF RIVERSEDGE
ADVANCED RETIREMENT SOLUTIONS
LLC,**

/s/ Bynum E. Tudor III

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