

**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)

SIXTH 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 Sixth 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 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 ¶ 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. Sixth 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.
- b. Receipt of ten (10) 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 Retirement Technologies, Inc. (“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.

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

4. The Fifth Activity Report states that as of June 21, 2024, Schwab RT reported there were seven (7) plans that had not identified new recordkeepers and new funds custodians and three (3) terminated Plans for whom RMI is unaware of any new recordkeeper or funds custodian. The following is an update on those plans:

Beaver County Deferred Compensation Plan: Transferring to Empower Financial Services effective October 29, 2024.

Bluestem State of Minnesota 403(b) Plan: Working on transfer and conversion of plan with Penserv to be accomplished between October 1 and October 20.

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.

Harvard Club of Boston 457(b) Plan: Was a one-participant plan that has terminated and its assets have been distributed.

Holy Cross Greek Orthodox Church Endowment: This is an endowment fund not subject to ERISA. Accordingly, because this fund is not within the scope of RMI's appointment, RMI has taken no action with respect to it.

Tyrone Hospital 457(b) Plan: No new recordkeeper is being sought. The Plan has two participants and is being terminated. A Plan Amendment for termination was adopted in 2023. Plan termination and distributions in process being coordinated with MATC. No final date given for termination.

Fichter Wildlife: Transferred to EPIC in July 2024 as its new recordkeeper. The Plan's funds remain at MATC as EPIC is one of MATC's recordkeeping clients.

Camp Deer Creek: The Plan was scheduled to be liquidated on September 16, 2024 and transferred to T Rowe upon settlement.

Selective Dining Safe Harbor 401K Plan: RMI's efforts to reach the employer/plan sponsor by telephone have not been successful. Letter issued to employer/plan sponsor September 23, 2024. No record of investment advisor or other contact in RMI's files. Plaintiff informed RMI on September 27, 2024 that this plan is being transferred to Metro Benefits as successor TPA and John Hancock as successor custodian/annuity provider. Transfer date unspecified.

McMurray Family Dental: Transferred to Kline, Keppel & Koryak in February, 2024 as its new recordkeeper.

Jefferson Internal Medicine: Transferred to Kline, Keppel & Koryak in March, 2024 as its new recordkeeper.

5. RMI has 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. As the new recordkeepers begin to review the data from Schwab RT, requests for this additional information will continue.²

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. The total market value, as of February 9, 2024 of the missing securities from the Seventeen 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 Mismanaged Plans to be \$20.37 million.

III. OTHER MATTERS

7. As reported earlier, RMI continues to be contacted by several of the employer sponsors of the Mismanaged Plans. Their questions center on asset recovery. RMI continues to encourage these employers to seek ERISA/retirement plan counsel to evaluate potential claims that either they or their sponsored plans may have. Participants have also contacted RMI regarding responsibility to replace missing funds. RMI has encouraged those individuals to seek

² One of the most common questions has to do with reports normally prepared by RiversEdge Defendants for Form 5500 reporting. Those reports were not prepared and many plan sponsors are left to find service providers to prepare this information. The lack of those reports poses problems for Plans that are subject to the Form 5500 annual audit requirements. However, Plan administrators can report on Form 5500 that RiversEdge failed to provide the reports.

counsel for advice they may need to exercise their rights under ERISA. As reported earlier, the RiversEdge Defendants have reported to RMI some policies of insurance that, in RMI's opinion, may provide some protection. RMI, through its counsel, encouraged the RiversEdge Defendants' Counsel to submit notification of the Court's Preliminary Injunction to these insurance carriers. The RiversEdge Defendants' counsel has informed RMI and its counsel that Mr. Palguta has notified all of the insurance carriers, other than RiversEdge's workers' compensation insurer. RMI has no authority under the Preliminary Injunction to notify the RiversEdge Defendants' insurance carriers of potential claims against the RiversEdge Defendants.

8. Several Plan sponsors have contacted RMI about whether any other insurance exists that would indemnify their Plans against alleged losses. RMI has informed those Plan sponsors that it is not authorized to engage in asset recovery for any of the Plans. Rather, it is the duty of each Plan's "administrator" (typically, the Plan's employer/sponsor) to engage its own counsel to assist it in determining what asset recovery actions, if any, may afford recovery of the missing securities.

9. RMI continues to receive requests from service providers for the Seventeen (17) Mismanaged Plans to provide loss allocations among participants within those Plans. Some of the new plan recordkeepers and some employer sponsors believed this work would be completed by RMI. That is not the case, nor does our appointment cover these responsibilities. RMI has reported its belief that these loss allocations are the responsibility of the employer sponsors and their new recordkeepers to those who have contacted RMI and to MATC. RMI believes that any participant-level recordkeeping and allocations are outside of the scope of its appointment.

Respectfully submitted,

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

By: /s/ Bynum E. Tudor III

Bynum E. Tudor III (*Admitted Pro Hac Vice*)

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