

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,)

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

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.)

FIRST 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 First Activity Report.

I. Introduction

2. On February 20, 2024, the Preliminary Injunction was entered appointing RMI as Independent Fiduciary to the “Mismanaged Plans” and the “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 in this action, 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. First Report of Independent Fiduciary

A. Securing All Plan Records from the RiversEdge Defendants.

3. Commencing on February 8, 2024, RMI and its data contractor, Lattimore Black Morgan and Cain PC (“LBMC”) held meetings with the initial Rule 19a defendants and their counsel. RMI also had meetings and exchanged emails with counsel for the RiversEdge Defendants. Since those initial meetings, the following has been accomplished in the securing of the Plans’ books and records:

- a. Travel to offices of RiversEdge by RMI personnel and the securing of 34 boxes of paper plan document files now held at the offices of RMI.
- b. Receipt of three (3) of the known eight (8) RiversEdge computers used by the RiversEdge Defendants and duplicating the contents of same and the duplicating of

the contents of a desktop RiversEdge computer.¹

c. Establishment of a procedure for copying all Plan data (nearly 400 plans) held by Schwab Retirement Technologies (“Schwab RT”), placed in a secure environment established by LBMC and a conversion of same to SQL² for ease of query of the accounting, all verified for accuracy and completeness.

d. Identification of two additional Plan records databases/software used by the RiversEdge Defendants: Egnyte and WorkXpress. Extraction of this data remains pending at this time. WorkXpress has denied access because of RiversEdge’s unpaid, past due invoices. Counsel for the RiversEdge Defendants is reluctant to grant RMI full administrative access to both databases due to spoliation concerns.

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

4. Rule 19(a) Defendant Schwab RT reported to RMI, as of March 8, 2024, that it has transferred Plan records (which Schwab RT refers to as “deconversion data files”) of 206 Plans, which it states is 80% of the total Plans. It stated that of the Plan records yet to transfer, two (2) Plans were in progress on March 8, 2024, and thirteen (13) Plans have identified a new

¹ Counsel for RiversEdge states the five (5) unretrieved computers are located with the former remote employees of RiversEdge, who are scattered about the nation. Attempting their retrieval is difficult and possibly expensive. Counsel for RMI has advised the RiversEdge Defendants’ counsel said computers should be retrieved and provided to RMI. RiversEdge Defendants’ counsel has expressed concerns about its doing so without government approval. As of this report, no further computers have been received from the RiversEdge Defendants

² “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 systems.

recordkeeper; which leaves 36 Plans needing to identify a new recordkeeper.³

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 has had a few requests for this information from Plan sponsors and new recordkeepers. As the new recordkeepers begin to review the data from Schwab RT, requests for this additional information will likely increase.

C. Accounting of the Assets of the Seventeen (17) Mismanaged Plans.

6. RMI has requested and received the following information from Defendant RiversEdge:

- a. QuickBooks and General Ledgers of RiversEdge
- b. Tax Reports⁴
- c. Bank Statements⁵
- d. Three of eight computers containing transactional databases (e.g., Egnyte and WorkXpress). Access to those databases remains pending and is expected to show

³ RMI was informed after some of these transfers were approved without receiving documentation on which Schwab RT was relying. Schwab RT has agreed to provide that documentation to RMI but has not done so yet.

⁴ RiversEdge is a single member limited liability company. Its taxable income is reported on Defendant Palguta's Forms 1040 on Schedule C. Although RMI requested full income tax returns from the RiversEdge Defendants, RMI has only received the Schedule C's (2017-2022) and comparable data from Palguta's state income tax returns. Counsel for the RiversEdge Defendants is working with counsel for RMI to resolve this issue.

⁵ The statements do not include copies of cancelled checks.

the invoicing of service fees of RiversEdge and other service providers to the Mismatched Plans.

e. ERISA Bond and other business insurance information for the current policy years only (July 1, 2023 to June 30, 2024).

7. RMI has requested and not received from the RiversEdge Defendants:

a. Five (5) remaining computers belonging to RiversEdge.

b. Information necessary to understand the reporting of certain amounts on Schedule C's, including, without limitation, copies of Mr. Palguta's complete state and federal income tax returns, as filed for 2017-2022 and to be filed for 2023. Although this information is past due, Mr. Palguta has agreed, through counsel, to allow access to his tax returns by means of completing an IRS Form 4506. It is not clear whether Mr. Palguta's wife will have to consent on Form 4506 also. Filing a completed and signed Form 4506 with the Internal Revenue Service will allow RMI to receive only federal income tax returns, not state returns.

8. RMI requested from Schwab RT information or access to persons familiar with the internal control environment in relation to entry of information and changes to participant records within the Mismatched Plans. Schwab RT, through counsel, responded, in part saying, "SRT [Schwab RT] is just a software platform, and there is no component of software that monitors the accuracy of the information entered into the software. Accordingly, there would be no "internal controls environment" for SRT as to the accuracy of data with respect to the 17 mismatched retirement plans for which MATC [Mid Atlantic Trust Company] was the custodian, nor would a CPA be involved with any SRT internal controls (as again, that assumes

that a software platform would be responsible for the accuracy of data, which it is not).”

9. RMI has also requested copies of all Plans’ custodial agreements in possession of the Schwab Rule 19(a) defendants.

10. RMI’s efforts to evaluate the draft report of Mid-Atlantic Trust Company have been delayed due to the need to access the other databases of transactional information (e.g., Egnyte and WorkXpress). Testing of some of the information used by Mid-Atlantic Trust Company has begun.

III. OTHER MATTERS

11. 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 whether recoveries can occur from filing claims with (1) the Securities Investor Protection Corporation (SIPC); (2) the ERISA bond purchased by the Plan’s sponsor/employer to protect the Plan from theft losses; or (3) other sources, including without limitation, general liability insurance. RMI has encouraged these employers to seek ERISA counsel to evaluate potential claims that either they or their sponsored Plans may have.

12. RMI has received correspondence from one service provider for one or more of the Plans, complaining that it has not been paid for services rendered. Counsel for RMI forwarded that correspondence to counsel for the RiversEdge Defendants.

Respectfully submitted,

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

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