

**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)

THIRD 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 Third 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. Third 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 4 of approximately eight (8) RiversEdge computers used by the RiversEdge Defendants and duplication of the contents of same and the contents of a desktop RiversEdge computer. Login credentials for only Mr. Palguta’s laptop have been provided and verified.¹ The three RiversEdge employee laptops are not accessible due to no receipt of current login credentials. On May 2, 2024, RMI issued letters to 12 persons indicated by RiversEdge Defendants as employees or former employees who had RiversEdge computers. One of these employees had already supplied his laptop to

¹ Login credentials for two employees’ computers have also been provided, but not verified.

RiversEdge Defendants and to RMI. He has now provided what he believes to be his login credentials. One person has indicated he does not possess “a pertinent computer or records.” Another person has indicated he does have a laptop computer, but the said computer is in Nevada, and he is in Hawaii currently. He states he will provide the requested computer and information upon his return to Nevada the week of May 27, 2024. We have received two shipping notices from UPS that two people have mailed RMI something. The remaining 7 individuals have not responded.

c. Established procedures for copying all Plan Data (between 255-260 plans²) 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.³

d. Identification of two additional Plan records databases/software used by the RiversEdge defendants: Egnyte and WorkXpress. LBMC reports that it has completed extraction of 98% of the data contained on Egnyte. The remaining 2% are being extracted by RMI manually due to technical errors encountered by LBMC. LBMC has contacted WorkXpress, paid the \$900 for data and recontacted 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). These amounts were not contained in the budget and would require additional funding to accomplish.

² Prior reports of there being approximately 400 plans have proven to be erroneous.

³ “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.

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

4. Schwab RT reports, as of May 10, 2024 all but 9 Plans have identified replacement plan administrators and transferred Plan Records (which Schwab RT refers to as “deconversion data files”).

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.

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

6. RMI has requested and received the following information from the RiversEdge Defendants, or on their behalf:

- a. QuickBooks and General Ledgers of RiversEdge
- b. PNC Bank Statements⁴
- c. Four of eight computers containing transactional databases; Access to three of those computers has not been achieved.
- d. ERISA Bond and Insurance Information for the current policy years (July 1, 2023 to June 30, 2024).

⁴ The bank statements failed to include copies of cancelled checks.

- e. Full IRS Form1040 information for tax years 2017 to 2022, inclusive.
 - f. Mrs. Palguta has also provided transcripts, prepared by the Internal Revenue Service, of her and her husband's joint federal income tax returns for 2020, 2021, and 2022.
 - g. Access to the tax return preparer for Mr. Palguta's 2017-2022 federal and state income tax returns.
 - h. RiversEdge's fee/rate sheet(s) that told its clients about the fees RiversEdge charged during 2017-2023.
7. RMI has requested and not received from the RiversEdge Defendants:
- a. Four (4) remaining computers belonging to RiversEdge.
 - b. Current credentials for three (3) of the four (4) laptop computers in RMI's custody.
8. RMI has continued to work with Rule 19(a) Defendant Mid Atlantic Trust Company ("MATC") on its Plan-level report regarding transactions within the Mismanaged Plans during 2017-2024. MATC has updated its report to reflect securities names as well as CUSIP numbers. It has also updated its draft report regarding two of the Mismanaged Plans. On April 14, 2024, RMI requested a copy of MATC's SOCs Audit. Said copy was received on April 29, 2024.
9. On May 13, 2024, RMI received a copy of Schwab RT's 2023 SOCs audit.

III. OTHER MATTERS

10. 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 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.

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.

12. Recently, RMI was contacted by MATC regarding participant-level loss allocations. 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 RMI's appointment cover these responsibilities. RMI has reported to MATC that RMI believes that these loss allocations are the responsibility of the employer/sponsors and their new recordkeepers to MATC and that 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*)
TN Bar #012279
BERRY & TUDOR, P.C.
5123 Virginia Way, Suite B-23
Brentwood, Tennessee 37027
Telephone: (615) 726-1000
Fax: (615) 370-0077
btudor@berrytudor.com

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