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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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

Plaintiff,

v.

RIVERSTONE CAPITAL, LLC, a
California limited liability
corporation; NEXGEN
INSURANCE SERVICES
INCORPORATED, a California
corporation; NGI BROKERAGE
SERVICES, INC., a California
corporation; JAMES C. KELLY, an
individual; TRAVIS O. BUGLI, an
individual; ROBERT CLARKE, an
individual; ERIK MANQUEROS, an
individual,

Defendants.

CASE NO. 19-CV-778-MWF (MAAx)
Honorable Michael W. Fitzgerald

**ORDER GRANTING
INDEPENDENT FIDUCIARY’S
MOTION TO APPROVE ITS
REVISED (PROPOSED)
ORDERLY PLAN OF
LIQUIDATION AND FOR ORDER
PROVIDING ALL WRITS ACT
PROTECTION**

Before the Court is the Independent Fiduciary’s Motion to Approve Its Proposed Orderly Plan of Liquidation and for Order Providing All Writs Act Protection filed March 29, 2019 (“Independent Fiduciary’s Motion”). By order of Court entered on May 1, 2019 (Docket No. 89), the Court deferred ruling upon the

1 Independent Fiduciary’s Motion until submission of a Revised (Proposed) Orderly
2 Plan of Liquidation, due May 6, 2019. The Independent Fiduciary, through separate
3 Notice of Filing, submitted its Revised (Proposed) Order of Plan of Liquidation on
4 May 6, 2019.

5 **1. Independent Fiduciary’s Revised Orderly Plan of Liquidation**

6 The Court has reviewed the Independent Fiduciary’s Revised (Proposed)
7 Orderly Plan of Liquidation Plan and approves it as the Revised Liquidation Plan in
8 this matter. The Independent Fiduciary is instructed, upon entry of this Order, to
9 prepare and file a Notice of Filing with its Revised Liquidation Plan attached.

10 **2. “All Writs Act” Order in Relation to the Revised Liquidation Plan**

11 The Consent Judgment entered in this action provides that the Independent
12 Fiduciary will have sole and exclusive control over the Riverstone MEWA and
13 Participating Plans’ assets and will have sole and exclusive responsibility and
14 authority to adjudicate and determine claims made by persons or entities as against
15 the assets of the Riverstone MEWA and the Participating Plans (the “Plan”).
16 (Docket No. 41). The Independent Fiduciary will address review and adjudication
17 of all such claims through the liquidation procedure set forth in the Revised
18 Liquidation Plan approved herein. That liquidation procedure will provide a
19 centralized and fair system by which to receive, adjudicate and determine all the
20 claims against the Plans’ assets. However, if persons or entities choose to ignore the
21 procedures of the Revised Liquidation Plan and rather choose to pursue claims
22 against the assets of the Plan in a different forum, the centralized liquidation process
23 approved by this Order is/will be frustrated.

24 Under the All Writs Act, 28 U.S.C. § 1651, a federal court may issue orders
25 as may be necessary or appropriate to effectuate its orders and/or prevent frustration
26 of its orders. *United States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977)
27 (concluding that “[t]he power conferred by the [All Writs] Act extends, under
28 appropriate circumstances, to persons who, though not parties to the original action

1 or engaged in wrongdoing, are in a position to frustrate the implementation of a court
2 order or the proper administration of justice”). For the reasons set forth in this
3 Independent Fiduciary’s Motion and based on the record set forth in this matter, the
4 Court finds it appropriate to issue an order pursuant to the All Writs Act that would
5 stay, enjoin or prohibit any person or entity from pursuing a claim against the assets
6 of the Plan outside of the procedures and process set forth in the Revised Liquidation
7 Plan. Such is necessary (1) in aid of the Court’s jurisdiction to effectuate orders
8 entered in this action, (2) to ensure that a centralized liquidation process (as ordered
9 herein) is not frustrated and (3) to prevent races by persons or entities to other forums
10 in relation to claims lodged against the assets of the Plans. *See Cutler v. The 65*
11 *Security Plan*, 831 F. Supp. 1008 (E.D.N.Y. 1993) (recognizing “the court’s power
12 to stay all actions against the Fund” under the All Writs Act and analyzing “what
13 procedure the court could adopt to assist the parties in achieving a quick and fair
14 settlement of the case with the lowest possible transaction costs”).

15 Moreover, as set forth in the Revised Liquidation Plan, the date of May 28,
16 2019, has been established as the deadline for providers to submit invoices to the
17 third-party administrators (Hawaii Mainland Administrators and S&S Health). The
18 Independent Fiduciary has been instructed to provide notice of the Revised
19 Liquidation Plan, which contains the May 28, 2019 “provider invoice deadline,” to
20 the providers, as well as the participating employees and Sponsoring Employers.
21 (Docket No. 89). Notice of the Revised Liquidation Plan will be given by both mail
22 and email. The Court understands that there is not a comprehensive and readily
23 available database for emails regarding participating employees and providers, but
24 where the emails are readily available to the Independent Fiduciary, the Independent
25 Fiduciary should provide email notice of the Revised Liquidation Plan to
26 participating employees and providers.

27 It is imperative that the Independent Fiduciary, as well as the participating
28 employees and Sponsoring Employers, know with certainty the amounts of provider

1 invoices that have not been paid in the Riverstone MEWA matter – that is the
2 baseline from which other matters set forth in the Revised Liquidation Plan starts.
3 Accordingly, and upon the above-stated All Writs Act rationale, the Court finds that
4 to ensure that a centralized and orderly liquidation process is not frustrated by the
5 untimely submission of provider medical invoices, the providers will have until May
6 28, 2019, to submit provider medical invoices in relation to services provided to
7 participating employees/dependents covered under the Riverstone MEWA. Further,
8 the Court enjoins any provider, which/who receives notice of this Order but then
9 fails to submit timely medical invoices by May 28, 2019, from pursuing the
10 participating employees/dependents, the Sponsoring Employers and/or the
11 Riverstone MEWA Liquidation Estate assets as to collection of any amounts due on
12 the untimely invoices.

13 Accordingly, the Court grants the Independent Fiduciary’s Motion and
14 **ORDERS** as follows:

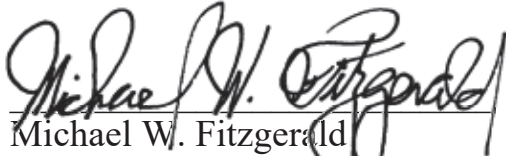
- 15 1. Independent Fiduciary’s Revised (Proposed) Orderly Plan of Liquidation,
16 filed May 6, 2019, is approved. Upon entry of this Order, the Independent
17 Fiduciary will file an appropriate Notice of Filing attaching the approved
18 Liquidation Plan;
- 19 2. Pursuant to the All Writs Act, 28 U.S.C. § 1651, all persons or entities having
20 claims against the Riverstone MEWA Liquidation Estate or the assets of the
21 Plan are stayed, enjoined and otherwise prohibited from pursuit of those
22 claims outside of the procedures set forth in the Revised Liquidation Plan, and
23 said limitations are to apply through the pendency of the liquidation process
24 or until further order of this Court;
- 25 3. Pursuant to the All Writs Act, 28 U.S.C. § 1651, any provider with notice
26 hereof is prohibited and enjoined from pursuing, collecting from or
27 demanding from any participating employee/dependent, any Sponsoring
28 Employer and/or the Independent Fiduciary, the Riverstone MEWA

1 Liquidation Estate and the Plan's assets any portion or all amounts due on any
2 provider medical invoice not submitted to the Plan's relevant third-party
3 administrator (i.e. Hawaii Mainland Administrators or S&S Health) on or
4 before after May 28, 2019.

5 4. The Independent Fiduciary, upon entry of this Order, will post a copy of the
6 Order on the website dedicated to this matter
7 (www.receivermgmt.com/riverstone-nexgenhealthplan). In an abundance of
8 caution, but only as to this Order and the Revised Liquidation Plan, the
9 Independent Fiduciary, upon entry of this Order, will email and mail a copy
10 of this Order and the Revised Liquidation Plan approved herein to the
11 Sponsoring Employers, participating employees, and providers.

12
13 IT IS SO ORDERED.

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15 Dated: May 9, 2019

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17 Michael W. Fitzgerald
18 United States District Judge
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