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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

**[PROPOSED] ORDER GRANTING
INDEPENDENT FIDUCIARY’S
MOTION TO APPROVE ITS
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”) which seeks

1 an order addressing three matters:

2 (1) Approval of the Independent Fiduciary’s Proposed Orderly Plan of
3 Liquidation (“Liquidation Plan”);

4 (2) Entry of an Order pursuant to 28 U.S.C. § 1651 (“All Writ Act”) that
5 would stay, enjoin and/or prohibit any person or entity from claiming as against
6 the assets of the Riverstone MEWA and Participating Plans outside of the
7 procedures and process set forth in the Liquidation Plan, and for such protections
8 to be maintained until the closure of the liquidation process or until further order of
9 this Court; and

10 (3) Approval that the posting of matters relating to the Liquidation Plan
11 on the Independent Fiduciary’s website dedicated to this matter
12 (www.receivermgmt.com/riverstone-nexgenhealthplan) is sufficient notice to
13 employers, participating employees and medical providers of those matters.

14 **1. Independent Fiduciary’s Liquidation Plan.**

15 The Court has reviewed the Independent Fiduciary’s Liquidation Plan and
16 approves it as the Liquidation Plan in this matter. The Independent Fiduciary is
17 instructed, upon entry of this Order, to prepare and file a Notice of Filing with its
18 Liquidation Plan attached.

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

20 The Consent Judgment entered in this actions (DE #41) provides that the
21 Independent Fiduciary will have sole and exclusive control over the Riverstone
22 MEWA and Participating Plans’ assets and will have sole and exclusive
23 responsibility and authority to adjudicate and determine claims made by persons or
24 entities as against the assets of the Riverstone MEWA and the Participating Plans
25 [“Plans”]. See DE #41 at p. 3, ¶ 2.a. and at p. 4, ¶ 2.g. The Independent Fiduciary
26 will address review and adjudication of all such claims through the liquidation
27 procedure set forth in the Liquidation Plan approved herein. That liquidation
28 procedure will provide a centralized and fair system by which to receive,

1 adjudicate and determine all the claims against the Plans' assets. However, if
2 persons or entities choose to ignore the procedures of the Liquidation Plan and
3 rather choose to pursue claims against the assets of the Plans in a different forum,
4 the centralized liquidation process approved by this Order is/will be frustrated.

5 Under 28 U.S.C. § 1651 ("All Writs Act"), a federal court may issue orders
6 as may be necessary or appropriate to effectuate its orders and/or prevent
7 frustration of its orders. *United States v. New York Tel. Co.*, 434 U.S. 159, 174
8 (1977). For the reasons set forth in this Independent Fiduciary's Motion and based
9 on the record set forth in this matter, the Court finds it appropriate to issue an order
10 pursuant to the All Writs Act that would stay, enjoin or prohibit any person or
11 entity from pursuing a claim against the assets of the Plans outside of the
12 procedures and process set forth in the Liquidation Plan. Such is necessary (1) in
13 aid of the Court's jurisdiction to effectuate orders entered in this action, (2) to
14 ensure that a centralized liquidation process (as ordered herein) is not frustrated
15 and (3) to prevent races by persons or entities to other forums in relation to claims
16 lodged against the assets of the Plans. *See Cutler v. The 65 Security Plan*, 831 F.
17 Supp. 1008 (E.D. N.Y. 1993); *In re: Consolidated Welfare Fund ERISA Litigation*,
18 798 F. Supp. 125 (S.D. N.Y. 1992). *See also Acosta v. AEU Benefits, LLC, et al.*,
19 (N.D. Ill., #1:17-cv-07931-JHL-SMF) (DE #146 entered on April 18, 2018).

20 **3. Website Posting Constitutes Adequate Notice to Employers,**
21 **Participating Employees and Medical Providers**

22 The costs associated with mailing notice to the employers, participating
23 employers and medical providers of matters relating to the Liquidation Plan is
24 prohibitive given the assets under the Independent Fiduciary's control. Through
25 the Independent Fiduciary's mailing efforts regarding the Notice of Plan
26 Termination (*see* DE #27), the employers, participating employees and medical
27 providers are on notice to refer to the dedicated website in this matter
28 (www.receivermgmt.com/riverstone-nexgenhealthplan) for matters relating to the

1 liquidation process. Posting of matters on that website relating to the liquidation
2 process will be considered adequate notice to the employers, participating
3 employees and medical providers.

4 Accordingly, the Court grants the Independent Fiduciary's Motion and
5 orders as follows:

- 6 1. Independent Fiduciary's (Proposed) Orderly Plan of Liquidation is
7 approved. Upon entry of this Order, the Independent Fiduciary will
8 file an appropriate Notice of Filing attaching the approved Liquidation
9 Plan;
- 10 2. Pursuant to 28 U.S.C. § 1651, all persons or entities having claims
11 against the assets of the Plans are stayed, enjoined and otherwise
12 prohibited from pursuit of those claims outside of the procedures set
13 forth in the Liquidation Plan and said limitations are to apply through
14 the pendency of the liquidation process or until further order of this
15 Court;
- 16 3. Through the Independent Fiduciary's mailing efforts regarding the
17 Notice of Plan Termination (*see* DE #27), the employers, participating
18 employees and medical providers are on notice to refer to the
19 dedicated website in this matter ([www.receivermgmt.com/riverstone-
20 nexgenhealthplan](http://www.receivermgmt.com/riverstone-nexgenhealthplan)) for matters relating to the liquidation process.
21 Posting of matters on that website relating to the liquidation process
22 will be considered adequate notice to the employers, participating
23 employees and medical providers.

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4. The Independent Fiduciary, immediately upon entry of this Order, will post a copy of the Order on the website dedicated to this matter (www.receivermgmt.com/riverstone-nexgenhealthplan).

It is so ORDERED this the _____ day of _____, 2019.

HONORABLE MICHAEL W. FITZGERALD
United States District Court Judge

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid county, State of California. I am over the age of 18 years and not a party to the within action. My business address is Caldwell Law Firm, 21550 Oxnard Drive, 3rd Floor, Woodland Hills, CA 91367.

On the date set forth below, I caused the foregoing document described as:

[PROPOSED] ORDER GRANTING INDEPENDENT FIDUCIARY’S MOTION TO APPROVE ITS PROPOSED ORDERLY PLAN OF LIQUIDATION AND FOR ORDER PROVIDING ALL WRITS ACT PROTECTION

to be serve on all other parties and/or their attorney(s) of record to this action as follows:

SEE ATTACHED SERVICE LIST

- BY CM/ECF SYSTEM** In accordance with the electronic filing procedures of this Court, I certify that I caused a copy of the above document to be served upon the following counsel of record, who are registered participants of this Court’s CM/ECF system, via the court’s CM/ECF System on March 29, 2019.
- BY ELECTRONIC MAIL** I served the above document to the e-mail address(es) listed in the attached Service List on March 29, 2019. A true and correct copy of said transmittal will be produced if requested by any party or the court.
- BY MAIL** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelope was placed for deposit in the United States Postal Service on March 29, 2019. The envelope was sealed and placed for collection and mailing with first-class prepaid postage on this date following ordinary business practices.
- (FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct, and that I am employed at the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 29, 2019, at Woodland Hills, California.

s/ Larry J. Caldwell
LARRY J. CALDWELL

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SERVICE LIST

ACOSTA v. RIVERSTONE CAPITAL, et al.
USDC Case No. 19-CV-778-MWF (MAAx)

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Defendants, In Pro Per, via Electronic Mail and First Class Mail

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