IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

	)	Chapter 11
In re:	)	
	)	Case No. 14-11873
THE BUDD COMPANY, INC.,	)	
	)	Hon. Jack B. Schmetterer
Debtor.	)	
	)	

PENSION BENEFIT GUARANTY CORPORATION'S STATEMENT IN SUPPORT OF THE DEBTOR'S MOTION TO APPROVE AFFILIATE SETTLEMENT AGREEMENT PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE AND RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

INTRODUCTION

The Pension Benefit Guaranty Corporation ("PBGC") is the largest unsecured creditor in the Debtor's bankruptcy case. PBGC asserts contingent general unsecured claims in excess of $370 million.

The Debtor has filed a motion seeking approval of a proposed settlement of certain potential causes of action held by the Debtor's estate against ThyssenKrupp North America ("TKNA") and TKNA's affiliates. Among other consideration, the proposed settlement provides for the transfer to and continuation by TKNA of two significantly underfunded defined benefit pension plans with over 10,000 participants, combined. If the proposed settlement is approved, PBGC's contingent claims of over $370 million will not arise and will not dilute recoveries to general unsecured creditors. Accordingly, the proposed settlement is in the best interest of PBGC and the nation's pension insurance program, and furthers the interest of the Debtor's other creditors to the extent that it prevents PBGC's claims from diluting their recoveries. PBGC supports the settlement and urges the Court to set it for final hearing.

BACKGROUND

PBGC and the Budd Pension Plans

1. PBGC is the United States government agency that administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), *as amended* .[1]

2. PBGC guarantees the payment of certain pension benefits upon the termination of a single-employer defined benefit pension plan covered by Title IV of ERISA. When an underfunded pension plan terminates, PBGC generally becomes trustee of the plan and, subject to certain statutory limitations, pays the plan's unfunded benefits with its insurance funds.[2]

3. One of the three stated purposes of Title IV of ERISA, to be carried out by PBGC, is to encourage the continuation and maintenance of private pension plans for the benefit of their participants.[3]

4. The Debtor is the sponsor of the Budd-UAW Consolidated Retirement Benefit Plan (the "Union Plan") and the Budd Company Pension Plan for Executive and Administrative Employees (the "Non-Union Plan" and, together with the Union Plan, the "Budd Pension Plans"). Both Budd Pension Plans are covered by Title IV or ERISA.

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[1] 29 U.S.C. §§ 1301-1461 (2012).

[2] *See* 29 U.S.C. §§ 1321-1322, 1342, 1361.

[3] 29 U.S.C. § 1302(a)(2).

5. Together, PBGC estimates that the Budd Pension Plans cover approximately 10,200 participants and have unfunded benefit liabilities on a termination basis of over $332 million.[4]

6. When an underfunded pension plan terminates, PBGC assumes a statutory obligation to pay participants and beneficiaries their Title IV benefits.[5] The plan's sponsor, however, is not relieved of its liability for promised benefits. Instead, under ERISA, the plan's sponsor and each member of its controlled group become jointly and severally liable to PBGC for, among other liabilities, the "amount of the unfunded benefit liabilities" of the pension plan under 29 U.S.C. § 1362(a) and (b), and a termination premium, under 29 U.S.C. § 1306(a)(7), at the rate of $1,250.00 per plan participant per year for three years.

7. If one or both of the Budd Pension Plans is (or are) terminated, the Debtor will be jointly and severally liable to PBGC for the unfunded benefit liabilities of that (or those) Plan(s) as well as the corresponding termination premium(s).

The Debtor's Bankruptcy Proceeding

8. On March 31, 2014, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois, along with a motion for entry of an order approving a settlement between the Debtor and TKNA and TKNA's affiliates other than the Debtor (the "9019 Motion" and the "Settlement", respectively).

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[4] PBGC estimates that the Union Plan is underfunded by $145.9 million, and that the Non-Union Plan is underfunded by $186.4 million.

[5] 29 U.S.C. §§ 1322, 1361.

9. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America is serving under section 1114(c) of the Bankruptcy Code as the authorized representative of the Debtor's union retirees (the "Union Retirees"). And, on April 14, 2014, the Court entered an Order directing the appointment of a retiree committee representing the Debtor's non-union retirees (the "Non-Union Retirees"), which the United States Trustee so appointed on April 30, 2014 .

10. Under the Settlement, potential claims against TKNA are resolved; TKNA is obligated to assume sponsorship of both of the Budd Pension Plans, thus providing for the continuation of both Plans; and the Debtor will receive from TKNA, among other consideration, $10.3 million in cash.[6]

11. The Court held an initial hearing on the 9019 Motion on April 18, 2014, but is yet to schedule an objection deadline or final hearing date. On May 20, 2014, the Court entered an order continuing the 9019 Motion hearing to June 16, 2014.

12. For the reasons discussed below, PBGC supports the 9019 Motion, and urges the Court to set an objection deadline and final hearing date, and to approve the Settlement.

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[6] PBGC has not reviewed the merits of the claims that the Debtor may have against TKNA and its affiliates, and takes no position regarding the reasonableness of the consideration the Debtor will receive under the Settlement.

ARGUMENT

PBGC Supports the Settlement Because It Provides For the Continuation of the Budd Pension Plans and Prevents PBGC's Claims from Arising Against the Debtor.

13. It is widely recognized that compromises are favored in the bankruptcy context "[t]o minimize litigation and expedite the administration of a bankruptcy estate."[7] The Supreme Court has stated that "in administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims in which there are substantial and reasonable doubts."[8]

14. Ultimately, approval of a settlement or compromise is within the "sound discretion" of a bankruptcy court.[9] A bankruptcy court should not substitute its judgment for that of a trustee or debtor in possession so long as there is a legitimate business justification for the decision to enter in to a settlement.[10] A bankruptcy court is not to decide the numerous questions of law or fact raised in the dispute. Instead, a court should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness.[11]

15. PBGC supports the continuation of underfunded pension plans whose sponsors are in bankruptcy whenever such continuation is feasible. Plan continuation ensures that

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[7] *Martin v. Myers (In re Martin)*, 91 F. 3d 389, 393 (3d Cir. 1996); *see also In re Nutraquest, Inc.*, 434 F.3d 639, 644 (3d Cir. 2006).

[8] *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (applying the former Bankruptcy Act).

[9] *In re Nutraquest*, 434 F.3d at 644.

[10] *Martin*, 91 F.3d at 395.

[11] *See In re Penn Central Transp. Co.*, 596 F.2d 1102, 1114 (3d Cir. 1979); *Cosoff v. Rodman (In re W.T. Grant Co)*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied*, 464 U.S. 822 (1983).

participants will continue to receive their full pension benefits, as promised by their employer. On the other hand, if an underfunded pension plan terminates and PBGC becomes the statutory trustee, participants may face benefit reductions due to ERISA's benefit limits.

16. Absent approval of the Settlement, TKNA will not be under an obligation to assume either of the Budd Pension Plans, thus leaving both Plans at risk of being without an ongoing sponsor and subject to termination under ERISA. Moreover, if TKNA refused to assume sponsorship of the Budd Pension Plans, and if those Plans were to terminate, PBGC's claims in excess of $370 million would arise, which would greatly reduce the recoveries from the Debtor's estate of both the Union and Non-Union Retirees.

17. Accordingly, PBGC supports the approval of the Settlement.

WHEREFORE, PBGC respectfully requests that the Court:

A. Schedule the 9019 Motion for a final hearing;

B. Approve the Settlement; and

C. Grant such other and further relief as is just and proper.

Dated: June 9, 2014
Washington, DC

Respectfully submitted,

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