IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	**Chapter 11**
Rural/Metro Corporation, *et al.*,	:	**Case No. 13-11952 (KJC)**
Debtors.[1]	:	**Jointly Administered**

Objection Deadline: October 28, 2013 at 4:00 P.M. (ET)[2]
Hearing: November 5, 2013 at 11:00 A.M. (ET)
Related to Docket Nos. 255, 256, and 428

LIMITED OBJECTION OF THE PENSION BENEFIT GUARANTY CORPORATION TO THE DEBTORS' DISCLOSURE STATEMENT

PLEASE TAKE NOTICE that the Pension Benefit Guaranty Corporation ("PBGC"), a United States government agency, on behalf of itself and on behalf of the Southwest Ambulance Pension Plan ("Pension Plan"), hereby objects to the proposed Disclosure Statement of Rural/Metro Corporation and the above-referenced debtors and debtors in possession jointly administered under Case No. 13-11952 (KJC) (the "Debtors") filed on September 15, 2013. PBGC makes this limited objection on the grounds that the Debtors' Disclosure Statement fails to provide "adequate information" as defined under 11 U.S.C. § 1125(a) with regard to the Debtors' obligations and liabilities to PBGC and the Pension Plan. PBGC has discussed with Debtors' counsel its concerns regarding the proposed Disclosure Statement, and also has provided Debtors' counsel with proposed language to be inserted in the Disclosure Statement to

[1] A list of the Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are listed in Schedule 1 to the Declaration of Stephen Farber in Support of Chapter 11 Petition and First Day Pleadings [Docket No. 2] and at www.donlinrecano.com/rmc. The Debtors' headquarters are located at 9221 E. Via de Ventura, Scottsdale, AZ 85258.

[2] Debtors' counsel agreed to extend the objection deadline for PBGC until Monday, October 28, 2013.

resolve its objections.[3] PBGC files the instant limited objection, as a protective measure, in the event it is unable to review a revised Disclosure Statement before its objection deadline.

BACKGROUND

1. PBGC is a wholly owned United States government corporation, and an agency of the United States, that administers the defined benefit pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), *as amended*, 29 U.S.C. §§ 1301-1461 (2006 & Supp. V 2011). PBGC guarantees the payment of certain pension benefits upon the termination of a single-employer pension plan covered by Title IV of ERISA. When an underfunded 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. *See* 29 U.S.C. §§ 1321-1322, 1342, 1361.

2. The Debtors are contributing sponsor of the Pension Plan. *See* 29 U.S.C. § 1301(a)(13), or members of a contributing sponsor's controlled group, 29 U.S.C. § 1301(a)(14). The Pension Plan is a defined benefit plan covered by Title IV of ERISA. *See* 29 U.S.C. § 1321.

3. If the Pension Plan terminates, the assets of the Pension Plan may be insufficient to cover the liabilities of the Pension Plan. *See* 29 U.S.C. § 1362(b). This insufficiency is the amount of the Pension Plan's unfunded benefit liabilities. The Debtors and each member of its controlled group would be jointly and severally liable to PBGC for the amount of unfunded benefit liabilities of the Pension Plan. *See* 29 U.S.C. § 1362(a), (b); *See* 29 U.S.C. § 1301(a)(18).

4. Each member of the contributing sponsor's controlled group is jointly and severally liable to PBGC for insurance premiums, interest, and penalties (collectively "premiums") with respect to the Pension Plan. 29 U.S.C. § 1307(e)(2).

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[3] *See* Exhibit A. The inclusion of this language will resolve all of PBGC's objections.

5. The contributing sponsor of the Pension Plan and each member of its controlled group are jointly and severally liable to the Pension Plan for contributions necessary to satisfy the minimum funding standards under sections 412 and 430 of the Internal Revenue Code ("I.R.C.").

6. The exclusive means of terminating a pension plan are through: (1) a standard termination, 29 U.S.C. § 1341; (2) a distress termination, 29 U.S.C. § 1341(c); or (3) a PBGC initiated termination, 29 U.S.C. § 1342.[4] The filing of a petition under the Bankruptcy Code does not automatically result in plan termination.

7. On August 4, 2013, the Debtors filed voluntary petitions under chapter 11 of the United States Code (the "Bankruptcy Code"). The Debtors' cases have been consolidated for procedural purposes only and are being jointly administered under Case No. 13-11952 (KJC).

8. On September 15, 2013, the Debtors concurrently filed its proposed Disclosure Statement and Joint Chapter 11 Plan of Reorganization ("Plan").

9. PBGC filed three contingent unliquidated proofs of claim against each of the Debtors related to the Pension Plan for: (1) unfunded benefit liabilities, (2) minimum funding contributions, and (3) premiums.

10. The proposed Disclosure Statement does not provide any information about the Pension Plan, PBGC, and PBGC's claims. Thus, the proposed Disclosure Statement does not provide "adequate information" as required under 11 U.S.C. § 1125.

11. PBGC has conveyed to the Debtors its request for certain additions to the Debtors' proposed Disclosure Statement and Plan and hopes that its concerns will be resolved by agreement prior to the scheduled November 5, 2013 hearing. Because PBGC will be unlikely to

[4] *See Hughes Aircraft Co. v. Jacobsen*, 532 U.S. 432, 446-48 (1999).

review an amended Disclosure Statement, if filed, before its October 28, 2013 filing deadline, PBGC files the following objection as a protective measure, in order to preserve its rights pending clarification of these matters in the proposed Disclosure Statement.

OBJECTIONS

12. PBGC objects to the proposed Disclosure Statement because it fails to inform creditors of facts that may affect the value of their claims and the conformability of the Debtors' Plan. It therefore does not provide "adequate information," as required by 11 U.S.C. § 1125(a). As used in that section, adequate information means:

> . . . information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, . . . that would enable a hypothetical reasonable investor . . . to make an informed judgment about the plan . . . .

11 U.S.C. § 1125(a)(1).[5]

13. The Disclosure Statement should inform creditors of a number of facts regarding the Debtors' Pension Plan obligations that may affect the value of creditors' claims and the feasibility of the Plan.

14. The Disclosure Statement should state that PBGC is a wholly owned United States government corporation, created by ERISA, 29 U.S.C. § 1301 *et seq.*, to administer the mandatory pension plan termination insurance program established under Title IV of ERISA, and that PBGC guarantees the payment of certain pension benefits upon termination of a pension plan covered by Title IV. The Disclosure Statement should state that the Pension Plan is a defined benefit pension plan covered by Title IV.

[5] *See Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. General Motors Corp.*, 337 F.3d 314, 321-22 (3d Cir. 2003) (emphasizing that a chapter 11 debtor has an affirmative duty to provide creditors with a disclosure statement containing "adequate information" so that a creditor can make an informed judgment about the Plan); *see also In re Lisanti Foods, Inc.*, 329 B.R. 491, 508 (D.N.J. 2005); *In re Quigley Co.*, 377 B.R. 110, 115 (Bankr. S.D.N.Y. 2007) (stating that a disclosure statement must contain adequate information describing a confirmable plan, and that if the plan is patently unconfirmable on its face, the application to approve the disclosure statement must be denied).

15. The Disclosure Statement should provide a detailed description of the Pension Plan sponsored by the Debtors. Also, the Disclosure Statement should explain the status of the Pension Plan and the funding level of the Pension Plan.

16. The proposed Disclosure Statement fails to give creditors "adequate information" in that it does not fully inform creditors of the impact of the possibility of termination of the Pension Plan on the anticipated amount of administrative expenses, priority claims, and general unsecured claims. In the event that the Pension Plan terminates prior to confirmation of the Debtors' Plan, PBGC asserts that it will have an administrative expense claim, a priority tax claim, and/or, in the alternative, a general unsecured claim against the Debtors.

17. The Disclosure Statement should state that ERISA requires that unfunded benefit liabilities upon termination of a pension plan are to be calculated in accordance with assumptions prescribed by PBGC. The Disclosure Statement should inform creditors that PBGC filed contingent, unliquidated, and priority claims with respect to the Pension Plan's unfunded benefit liabilities. *See* 29 U.S.C. § 1362.

18. The Disclosure Statement should disclose that PBGC also filed, on behalf of the Pension Plan, unliquidated and administrative priority claims for statutorily required minimum funding contributions, *see* 29 U.S.C. §§ 1082 and 1362(c), and I.R.C. § 412, 26 U.S.C. § 412, and statutorily mandated premiums and penalties and interest relating thereto. *See* 29 U.S.C. § 1307(a), (b) and (e); 29 C.F.R. § 2610.26(a).

19. The Disclosure Statement should state whether there are other entities that might be jointly or severally liable with the Debtors (i.e. additional members of a controlled group of trades or businesses within the meaning of 29 U.S.C. § 1301(a)(14)). If there are controlled group members, the Disclosure Statement should state that as provided by ERISA, the Debtors

and each member of the Debtors' controlled group are jointly and severally liable for the Pension Plan's unfunded benefit liabilities, for due and unpaid employer contributions, and for unpaid premiums.

20. The Disclosure Statement should state that the Pension Plan may be terminated only by a (1) a standard termination, 29 U.S.C. § 1341; (2) a distress termination, 29 U.S.C. § 1341(c); or (3) a PBGC initiated termination, 29 U.S.C. § 1342. The filing of a petition under the Bankruptcy Code does not automatically result in plan termination.

21. The Disclosure Statement should explain that, under ERISA, the PBGC has discretionary authority to seek to terminate a pension plan, including where PBGC determines that its possible long-run loss may reasonably be expected to increase unreasonably unless the plan is terminated.

22. In describing the Debtors' treatment of claims and interests under the proposed Plan, the proposed Disclosure Statement should more clearly state the impact of the possibility of termination of the Pension Plan prior to the Effective Date on the anticipated amount of administrative expenses, priority claims, and general unsecured claims.

23. The Debtors seek broad releases of the Released Debtor Parties, Released Directors, and Released Parties" (collectively "Released Parties") in the Plan. Specifically, within Articles 6.13(g), 6.14(a), and 6.14(b) of its proposed Disclosure Statement and Articles 2.7 and 12.8 of its Plan, the Debtors seek various releases with respect to the Released Parties. While the Debtors appear to limit the scope of these releases with respect to United States government and its agencies, it is not entirely clear, as currently drafted, whether the PBGC and the Pension Plan and potential past, present, or future claims associated with both the PBGC and the Pension Plan would be encompassed by these Articles. Thus, the proposed Disclosure

Statement falls far short in providing adequate information explaining and justifying releases for the Released Parties, and should not be accepted. While such releases are not strictly prohibited, courts hold that non-debtor releases are "proper only in rare cases."[6] Moreover, third party releases are valid only when they are necessary for the reorganization.[7]

24. In addition to bankruptcy law, the releases are contrary to ERISA. The releases, potentially, would require PBGC to abandon its joint and several claims against controlled group members associated with the Pension Plan. Moreover, the releases potentially would require PBGC to abandon its claims against the Released Parties as defined in the Plan, with respect to the Pension Plan under ERISA. The Released Parties may have been fiduciaries of the Pension Plan. Whether an entity or individual is a fiduciary to the Pension Plan requires an intensive analysis based upon facts and circumstances.[8] A blanket release of fiduciary breach claims is "void against public policy."[9] PBGC may become Statutory Trustee of the Pension Plan. PBGC, as Statutory Trustee, would succeed to any and all claims of the Pension Plan. Consequently, PBGC may have claims — yet unknown without further investigation — against present or former entities or individuals, like the directors and officers of the Debtor or other non-debtors, for breach of duty under ERISA, 29 U.S.C. § 1101-1114. ERISA holds such persons personally liable to make good to the pension plan any losses to the plan resulting from any fiduciary breach.[10] In addition, PBGC's recoveries for fiduciary breaches are treated as

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[6] *In re Metromedia Fiber Network, Inc*., 416 F.3d 136, 141 (2d Cir. 2005).

[7] *In re Continental Airlines*, 203 F.3d. 203 (3d Cir. 2000).

[8] 29 U.S.C. § 1002(21)(A); *see also Mertens v. Hewitt Assocs.*, 508 U.S. 248, 262 (1993) (statute delineates fiduciary conduct "in functional terms of control and authority over the plan").

[9] 29 U.S.C. § 1110(a).

[10] *See* 29 U.S.C. § 1104, 1106, 1109; *see also Harris Trust and Savings Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238 (2000) (finding that non-fiduciary party in interest can be held liable for ill-gotten assets in ERISA

assets of the terminated pension plan and may affect the amount of benefits paid to participants. 29 U.S.C. § 1344. Because of the fact intensive nature of a fiduciary breach investigation, ERISA affords PBGC several years to pursue losses to the pension plan caused by a fiduciary breach or prohibited transaction of a terminated pension plan.[11] The proposed Disclosure Statement provides no information to justify these releases. Consequently, the proposed Disclosure Statement fails to provide adequate information.

CONCLUSION

For the foregoing reasons, PBGC respectfully requests that the Court require the Debtors to amend the proposed Disclosure Statement to provide adequate information as required by 11 U.S.C. § 1125.

Dated: October 28, 2013
Washington, D.C.

Respectfully Submitted,

/s/Damarr M. Butler

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prohibited transaction).

[11] *See* 29 U.S.C. § 1303(e)(6).