

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

TACTICAL INTERMEDIATE
HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 14-11659 (KG)

(Jointly Administered)

Objections Due: 10/17/14 at 4:00 p.m.

Hearing Date: 11/13/14 at 11:00 a.m.

Related Docket No.: 318

**RESPONSE OF THE PENSION BENEFIT GUARANTY CORPORATION TO
DEBTOR'S SECOND OMNIBUS OBJECTION (SUBSTANTIVE) TO CLAIMS
PURSUANT TO 11 U.S.C. §§ 501(A) AND 502(B), AND FED. R. BANKR. P. 3003 (C)(2)
AND 3007 TO CERTAIN REDUCE/RECLASSIFIED CLAIMS, NO LIABILITY
CLAIMS, SATISFIED CLAIMS, RECLASSIFIED CLAIMS, AND
CONTINGENT/UNLIQUIDATED CLAIMS**

The Pension Benefit Guaranty Corporation (“PBGC”) hereby submits this Response (“Response”) to the Debtor’s Second Omnibus Objection (Substantive) to Claims Pursuant to 11 U.S.C. §§ 501(a) and 502(b), and Fed. R. Bankr. P. 3003(c)(2) and 3007 to Certain Reduce/Reclassified Claims, No Liability Claims, Satisfied Claims, Reclassified Claims, and Contingent/Unliquidated Claims [Docket No. 318] (“Objection”). For the reasons stated below, the Court should overrule the Objection in its entirety. In support of this Response, PBGC respectfully states as follows:

BACKGROUND

1. PBGC is a wholly-owned United States government corporation, and an agency of

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtor’s federal taxpayer identification number, are: Tactical Intermediate Holdings, Inc. (4895); Tactical Holdings Operations, Inc. (8504); Wellco Enterprises, Inc. (9274); Ro-Search Incorporated (6293); Mo-Ka Shoe Corporation (2446); Altama Delta Corporation (6369); Altama Delta (Puerto Rico) Corporation (3459); Massif Holdings L.L.C. (1692); and Massif Mountain Gear Company L.L.C. (9717). The address of the Debtors’ corporate headquarters is 5968 Commerce Blvd., Morristown, TN 37814.

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, *as amended*, 29 U.S.C. §§ 1301-1461 (2012) (“ERISA”). 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. The employer, however, is not relieved of its liability for the benefits it promised to its employees under the pension plan.

2. Wellco Enterprises, Inc. (“Wellco”) is a contributing sponsor, within the meaning of 29 U.S.C. § 1301(a)(13), of two defined benefit pension plans: (1) Wellco Enterprises, Inc. Pension Plan and (2) Wellco Enterprises, Inc. Supplemental Retirement Plan (collectively, “Pension Plans”). PBGC estimates that these plans are underfunded by approximately \$1,822,879.00 on a termination basis. The other Debtors are members of Wellco’s controlled group within the meaning of 29 U.S.C. § 1301(a)(14).²

Pension Plan Termination

3. When an underfunded pension plan is terminated, PBGC typically becomes trustee of the pension plan and, subject to certain statutory limitations, pays the participant’s pension benefits up to the guaranteed amount.³

4. Title IV of ERISA sets forth the exclusive means of terminating a single-employer defined benefit pension plan.⁴ A contributing sponsor of a single-employer pension plan may voluntarily terminate the plan either in a standard termination under 29 U.S.C. § 1341(b) or in a

² 26 C.F.R. § 1.414(c)-2(b).

³ *See* 29 U.S.C. §§ 1322, 1341(c), 1342.

⁴ *See* Hughes Aircraft Co. v. Jacobsen, 532 U.S. 432, 446-48 (1999); PBGC v. Mize Co. 987 F.2d 1059, 1063 (4th Cir. 1993); Phillips v. Bebbler, 914 F.2d 31, 34 (4th Cir. 1990).

distress termination under 29 U.S.C. § 1341(c). An underfunded pension plan may terminate in a distress termination, thereby triggering PBGC's obligation to guarantee certain benefits under the plan, only if the sponsor and all members of the sponsor's controlled group satisfy certain statutory criteria set forth in 29 U.S.C. § 1341(c). PBGC may initiate termination of an underfunded pension plan, which also triggers PBGC's obligation to guarantee certain benefits under the pension plan, if the pension plan meets any of the criteria set forth in 29 U.S.C. § 1342(a). PBGC may involuntarily terminate a pension plan if PBGC determines, among other things, the plan fails to meet the minimum funding standard set forth in section 412 of the Internal Revenue Code, 29 U.S.C. § 1342(a)(1); the plan will be unable to pay benefits when due, 29 U.S.C. § 1342(a)(2); or that PBGC faces an unreasonable increase in its liability unless the plan is terminated, 29 U.S.C. § 1342(a)(4).

5. Under ERISA, when the Pension Plans terminate, Wellco, as the contributing sponsor of the Pension Plans, and each member of its controlled group become jointly and severally liable to PBGC for the "amount of unfunded benefit liabilities" of the terminated Pension Plan (Unfunded Benefit Liabilities), *see* 29 U.S.C. §§ 1301(a)(18), 1362(a), (b). Regardless of whether the Pension Plans terminate, the Debtors are liable under ERISA for any unpaid minimum funding contributions owed to the terminated Pension Plan ("Minimum Funding Contributions"), 29 U.S.C. § 1082; 26 U.S.C. § 412, and for premiums due to PBGC with respect to the Pension Plans in accordance with 29 U.S.C. § 1307.

6. On September 12, 2014, PBGC filed proofs of claim against each of the Debtors, pursuant to a claim stipulation that is pending before this Court [Docket No. 262], for Unfunded Benefit Liabilities, Minimum Funding Contributions, and premiums.

ARGUMENT

Debtors object to all the claims filed by PBGC on the grounds that “[t]he PBGC has not assumed control over the pension plan at this time and no amounts are due and owing to PBGC at this time. Accordingly, the PBGC claims cannot be allowed.”⁵

Under the Bankruptcy Code, a proof of claim filed with the bankruptcy court is deemed allowed unless a party in interest objects.⁶ A proof of claim filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes prima facie evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). When an objection is filed, the bankruptcy court, after notice and a hearing, determines the amount of the claims and is required to allow the claim in such amount unless the claim falls into one of certain statutory exceptions.⁷

The Debtors argue that since the pension plan has not been terminated and PBGC has not yet assumed the plan then PBGC’s claims should be disallowed. Thus, the contingent nature of the PBGC’s claims is the sole basis for the objection, notwithstanding that the definition of “claim” in Bankruptcy Code section 101(5)(A) clearly includes contingent claims. Nor have the Debtors alleged that such contingency as exists with respect to PBGC’s claims will result in delay or other prejudice in the administration of Debtors’ estates. Most importantly, the argument that PBGC’s claims are contingent is a technical, not a substantive point. The sponsor of the Pension Plans, Wellco, has liquidated, as have its controlled group members. On August 4, 2014, the Debtors informed PBGC that none of the buyers of the Debtors’ assets would be assuming the Pension Plans. There is no controlled group member that has the financial ability to maintain sponsorship of the Pension Plans. There is no scenario in which the Pension Plans can continue. Debtors have not proposed continued maintenance of the Pension Plans and have

⁵ Objection ¶ 21

⁶ 11 U.S.C. § 502(a).

⁷ 11 U.S.C. § 502(b).

made no provision for the continued maintenance of the Pension Plans in the Plan of Liquidation filed with the Court. The practical effect of the Debtor's actions is imminent abandonment of its underfunded Pension Plans. PBGC anticipates terminating the Pension Plans during the course of this proceeding, thus maturing PBGC's claims. There is no other possible outcome for the Pension Plans.

The Debtors are fully aware that PBGC is engaged in collecting and analyzing the information it needs to make an agency determination to terminate the Pension Plans. PBGC has so advised the Debtors, and the Debtors have provided information in response to PBGC's requests. PBGC filed its claims in its anticipation of the inevitable termination of the Pension Plans and appointment of PBGC as statutory trustee. PBGC's claims will mature and must be afforded the treatment provided for in the Debtors' liquidating plan.

CONCLUSION

The Pension Plans will terminate during the course of this bankruptcy proceeding, as the Debtors have liquidated and have filed a plan of liquidation that does not – and cannot – make any provision for the continued maintenance of the Pension Plans following the liquidation of the contributing sponsor and all of its controlled group members. As a result, PBGC's claims will mature during this bankruptcy. The Debtors' objection is entirely without merit and must be overruled.

WHEREFORE, PBGC respectfully requests that this Court overrule the Debtors' objections to PBGC's claims.

PENSION BENEFIT GUARANTY
CORPORATION

Dated: October 16, 2014

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*Counsel to Pension Benefit Guaranty
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CERTIFICATE OF SERVICE

I hereby certify, that on this 16th day of October, 2014, the foregoing Response of the Pension Benefit Guaranty Corporation to Debtor’s Second Omnibus Objection (Substantive) to Claims Pursuant to 11 U.S.C. §§ 501(A) and 502(B), and Fed. R. Bankr. P. 3003 (c)(2) and 3007 to Certain Reduce/Reclassified claims, No Liability Claims, Satisfied Claims, Reclassified Claims, and Contingent/Unliquidated Claims was served on the following:

<p>Domenic E. Pacitti Michael W. Yurkewicz Klehr Harrison Harvey Branzburg LLP 919 Market Street, Suite 1000 Wilmington, DE 19801</p> <p><i>Debtors’ Counsel</i> via CM/ECF</p>	<p>David L. Buchbinder Office of the U.S. Trustee J. Caleb Boggs Federal Building Suite 2207 Wilmington, DE 19801</p> <p><i>U.S. Trustee</i> via CM/ECF</p>
<p>Benjamin Joseph Steele Prime Clerk, LLC 830 3rd Avenue 9th Floor New York, NY 10022</p> <p><i>Claims Agent</i> via CM/ECF</p>	<p>Jamie Lynne Edmonson Daniel A. O'Brien Venable, LLP 1201 North Market Street, Suite 1400 Wilmington, DE 19801</p> <p><i>Counsel for the Official Committee of Unsecured Creditors</i> via CM/ECF</p>
<p>Jessica M. Ward Otterbourg, Steindler, Houston & Rosen 230 Park Avenue New York, NY 10169</p> <p><i>Counsel for the Official Committee of Unsecured Creditors</i> via CM/ECF</p>	

/s/ Cassandra Burton Caverly
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