

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

In re:)	Chapter 11
)	
Constellation Enterprises, LLC. <i>et al.</i> , ¹)	Case No. 16-11213 (CSS)
)	(Jointly Administered)
)	
Debtors.)	Hearing Date: June 15, 2016 at 10:00 a.m. (ET)
)	Obj. Deadline: June 8, 2016 at 4:00 p.m. (ET)
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**PENSION BENEFIT GUARANTY CORPORATION’S LIMITED OBJECTION TO
DEBTORS’ MOTION FOR ENTRY OF (I) AN ORDER ESTABLISHING BIDDING
PROCEDURES AND GRANTING RELATED RELIEF AND (II) AN ORDER
APPROVING THE SALE OF THE ASSETS**

The Pension Benefit Guaranty Corporation (“PBGC”), an agency of the United States Government and a creditor in the above-captioned case, hereby responds to Debtors’ Motion for (I) an Order Establishing Bidding Procedures and Granting Related Relief and (II) An Order Approving the Sale of the Assets (Docket 88) (the “Bidding Motion”).

The procedures set forth in the Bidding Motion (“Bidding Procedures”) fail to take into account that a prospective bidder may wish to assume one or more of the defined benefit pension plans sponsored by Debtors. Assumption of one or more pension plan may reduce claims against the Debtors’ estates. Furthermore, the Bidding Procedures fail to provide that in determining the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Constellation Enterprises LLC (9571); JFC Holding Corporation (0312); The Jorgensen Forge Corporation (1717); Columbus Holdings Inc. (8155); Columbus Steel Castings Company (8153); Zero Corporation (0538); Zero Manufacturing, Inc. (8362); Metal Technology Solutions (7203); Eclipse Manufacturing, Co. (1493); and Steel Forming, Inc. (4995). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 50 Tice Boulevard, Suite 340, Woodcliff Lakes, NJ 07677.

successful bid(s) to be submitted to the Court for approval, the Debtors may credit the value of the liabilities for the Debtors' defined benefit pension plans that any bidder agrees to assume. PBGC also requests that the Debtors provide PBGC with copies of all bids received by the Debtors. For these reasons, the Court should modify the order approving the Bid Procedures Motion to resolve PBGC's objections. In support of its objection (the "Objection"), PBGC states as follows:

PRELIMINARY STATEMENT

1. On May 16 and May 17, 2016 (as applicable, the "Petition Date"), Debtors each filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code").
2. Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.
3. No trustee or examiner has been appointed in Debtors' cases. An Official Committee of the Unsecured Creditors was appointed on May 25, 2016.
4. Debtors have filed the Bidding Motion seeking entry of an order approving bidding and notice procedures.

STATUTORY BACKGROUND AND PBGC

5. PBGC is a wholly owned United States government corporation established by section 4002 of the Employee Retirement Income Security Act, *as amended* ("ERISA"), 29 U.S.C. § 1302, to administer the pension plan termination insurance program established by Title IV of ERISA.

6. Debtor, Eclipse Manufacturing Co. (“Eclipse”), sponsors two single-employer defined benefit pension plans, Pension Plan for Bargaining Unit Employees of Eclipse Manufacturing Co. and the Eclipse Manufacturing Co. Administrative and Technical Group. Both pension plan are covered by PBGC’s insurance program. Metal Technology Solutions (“Metal Technology”) also sponsors two single-employer defined benefit pension plans, Pension Plan for Hourly Paid Employees of Metal Technology Solutions and Pension Plan for Salaried Employees of Metal Technology Solution. All four plans are collectively (the “Pension Plans”). These Pension Plans provide retirement benefits for approximately 621 of Debtors’ employees and their beneficiaries.

7. When a debtor, such as Eclipse and Metal Technology, are members of a “controlled group” of trades or businesses, each member of the controlled group is jointly and severally liable for the unfunded benefit liabilities of a debtor’s pension plans if such plans terminate. *See* 29 U.S.C. §§ 1362, 1368.

8. The contributing sponsors of the pension plans and each member of its controlled group are also jointly and severally liable to the Pension Plans for contributions necessary to satisfy the minimum funding standards under sections 412 and 430 of the Internal Revenue Code (“IRC”) and sections 302 and 303 of ERISA. Sponsors and controlled group members are liable to PBGC for unpaid annual premiums, under 29 U.S.C. §§ 1306-1307, as well as liabilities under 29 U.S.C. § 1362(c). In addition, when a pension plan terminates under certain circumstances, ERISA holds each member of the controlled group jointly and severally liable for termination premiums. *See* 29 U.S.C. §§ 1306, 1307.

9. PBGC intends to file claims against all Debtors, as members of the controlled group, for (i) unfunded benefit liabilities, 29 U.S.C. § 1362(b) (contingent on Pension Plan

termination); (ii) employer contributions due to the Plan, 29 U.S.C. § 1342(d); and (iii) unpaid premiums, 29 U.S.C. § 1307. PBGC currently estimates that these claims will exceed \$19 million against each debtor, jointly and severally.

OBJECTION

10. The Bidding Motion indicates that the Debtors hope to achieve the sale either pursuant to stalking horse credit bid by the Supporting Noteholders or to the prevailing bidder(s) at auction. Bidding Motion ¶ 1. However, there is currently no proposed asset purchase agreement, and the disposition of the Pension Plans is unclear. The bidding procedures should be amended require a statement as to whether Pension Plan liability will be assumed by potential bidders, and to permit credit to be granted for any assumption of Pension Plan liability. Through allowing this additional form of credit, a more robust bidding process may occur, and the unsecured claim pool may be less diluted.

11. It is almost always preferable to Pension Plan participants that the Pension Plans continue and are not terminated by PBGC. Continuation of the Pension Plans can also benefit the Debtors' estates and their creditors, because it would avoid a claim by PBGC for the Pension Plans' liabilities against each of the Debtors. Accordingly, the Debtors should encourage bidders to assume one or more of the Pension Plans. To do so, the Debtors should make two modifications to the bidding procedures.

12. First, the procedures should require all bidders to state in their bids whether they intend to assume one or more of the Pension Plans. Second, the bidding procedures should provide that in determining the successful bid to be submitted to the Court for approval, the Debtors will give credit for the value of the liabilities under the Pension Plan(s) that the bidder agrees to assume. Accordingly, the successful bid for the Debtors' assets should be the one that

provides the greatest total amount of consideration to the Debtors, including any pension liabilities transferred to the purchaser.

13. Additionally, PBGC requests that the Debtors provide to PBGC copies of the bids. PBGC requests that any successful bidder who proposes to assume one or more of the Pension Plans provide sufficient information for the agency to assure itself of the bidder's financial ability to maintain the Pension Plan(s).

14. In addition, PBGC files this Objection as a reservation of rights for PBGC and the Pension Plans. PBGC reserves all rights with respect to the Bidding Motion, including its rights to file further pleadings.

CONCLUSION

WHEREFORE, PBGC requests that this Court make any necessary modifications to any proposed Bidding Order consistent with the above requests in order to preserve the claims and rights of the PBGC and the Pension Plans.

DATED: June 8, 2016
Washington, D.C.

Respectfully submitted,

By: /s/ Samuel C. Batsell

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2016, the *Pension Benefit Guaranty Corporation's Limited Objection to Debtors' Motion for Entry of (I) an Order Establishing Bidding Procedures and Granting Related Relief and (II) an Order Approving the Sale of the Assets* was served electronically upon those parties registered to receive service through the Court's Electronic Case Filing System in the above-captioned bankruptcy case.

/s/ Samuel C. Batsell
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