

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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In re: : **Chapter 11**
REICHHOLD HOLDINGS US, INC., *et al.* : **Case No. 14-12237 (MFW)**
 : **(Jointly Administered)**
Debtors.¹ : **Re: Dkt. No. 221**
 : **Hearing Date: December 2, 2014 at 9:30 a.m.**
 : **Objection Deadline: November 25, 2014 at**
 : **4:00 p.m. (Committee and PBGC only)**
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**PENSION BENEFIT GUARANTY CORPORATION’S LIMITED
OBJECTION TO DEBTORS’ MOTION FOR ENTRY OF
AN ORDER APPROVING BIDDING PROCEDURES**

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) Order (A) Approving Bidding Procedures in Connection with the Sale of Substantially all of the Debtors’ Assets Pursuant to Sections 363 and 365 of the Bankruptcy Code; (B) Scheduling an Auction and Hearing to Consider Approval of the Sale; and (C) Approving Notice of Respective Date, Time and Place for Auction and for Hearing on Approval of the Sale and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (II) Order Authorizing (A) The Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims and Encumbrances; and (B) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* (the “Bid Procedures Motion”)². The procedures set forth in the

¹The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Reichhold Holdings US, Inc. (5768), Reichhold, Inc. (4826), Canadyne Corporation (7999) and Canadyne-Georgia Corporation (7170). The Debtors' address is 1035 Swabia Ct., Durham, NC 27703.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms as in the Bid

Bid Procedures Motion fail to take into account that a prospective bidder may wish to assume the defined benefit pension plan sponsored by Debtors. Assumption of the pension plan may reduce claims against the Debtors' estates. Furthermore, the Bidding Procedures fail to provide that in determining the 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 plan 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.

PRELIMINARY STATEMENT

1. On September 30, 2014 (the "Petition Date"), the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code").
2. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.
3. Debtors have filed the Bid Procedures Motion seeking (a) entry of an order approving Bidding Procedures, as well as (b) entry of an order approving the Asset Purchase Agreement filed on November 12, 2014 ("APA").

STATUTORY BACKGROUND AND PBGC

4. PBGC is a wholly owned United States government corporation established by section 4002 of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012) ("ERISA"), to administer the pension plan termination insurance program established by Title IV of ERISA. PBGC guarantees nonforfeitable pension benefits under defined benefit pension plans covered by Title IV of ERISA up to certain statutory limits.

Procedures Motion, as applicable.

29 U.S.C. § 1322.

5. Debtor Reichhold, Inc. sponsors a single-employer defined benefit pension plan, The Reichhold, Inc. Retirement Plan (the “Pension Plan”), covered by PBGC’s insurance program. The Pension Plan provides retirement benefits for approximately 4,571 of Debtor Reichhold, Inc.’s employees and their beneficiaries.

6. The proposed Bidding Procedures and the APA do not provide for the assumption of the Reichhold Pension Plan by the proposed stalking horse Purchaser. APA, § 2.3.

7. PBGC estimates the underfunding of the Pension Plan to be about \$119 million. If the Pension Plan terminates, PBGC’s claims against Debtors may exceed this amount. PBGC is the Debtors’ largest unsecured creditor.

OBJECTION

A. The Bidding Procedures should be modified to encourage assumption of the Pension Plan.

8. The APA provides that the Stalking Horse Purchaser will not assume the Pension Plan. APA, § 2.3. PBGC and plan participants almost always benefit when a pension plan continues. Continuing the Pension Plan can also benefit the Debtors’ estates and their creditors, because plan continuation would avoid PBGC’s claims for the Pension Plan’s liabilities.

Accordingly, the Debtors should encourage bidders to assume the Pension Plan or, at the very least, disclose sufficient information regarding the Pension Plan to allow prospective bidders to submit informed and competitive bids. To do so, the Debtors should make two modifications to the Bidding Procedures.

9. First, the procedures should require all bidders to explicitly state in their bids whether they intend to assume the Pension Plan. 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 associated with the Pension Plan that the bidder agrees to assume. Accordingly, the Bidding Procedures should state that all Qualified Bids may be a combination of cash and certain assumed obligations, including obligations with respect to the Pension Plan. The Bidding Procedures should further state that in determining a successful bidder, the Debtors shall consider any bid that assumes the liabilities of the Pension Plan and give credit for the value of the liabilities under the Pension Plan that the bidder agrees to assume.

10. Additionally, PBGC asks the Court to direct the Debtors to provide to PBGC copies of all Qualified Bids. PBGC also asks the Court to direct any successful bidder who proposes to assume the Pension Plan to provide sufficient information for PBGC to assure itself of the bidder's financial ability to maintain the respective pension plan.

B. Reservation of Rights

11. If the Pension Plan terminates, PBGC reserves its rights to request from Debtors, the stalking horse Purchaser, or Designated Purchaser copies of all pension and personnel records for participants in the Pension Plan.

12. In addition, PBGC files this objection as a reservation of rights for the PBGC and the Pension Plan. PBGC reserves all rights with respect to the Bid Procedures Motion, including its rights to file further pleadings.

CONCLUSION

For the foregoing reasons, PBGC requests that the procedures set forth in the Bid Procedures Motion be modified as stated above.

DATED: November 25, 2014
Washington, D.C.

Respectfully submitted,

/s/ Shari D. Williams
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CERTIFICATE OF SERVICE

I hereby certify, that on this 25th day of November, 2014, the Pension Benefit Guaranty Corporation's Limited Objection to Debtors' Motion for Entry of an Order Approving Bidding Procedures was served on the following:

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/s/ Shari D. Williams
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