

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

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In re: : Chapter 11
: :
APPVION, INC., *et al.*, : Case No. 17-12082 (KJC)
: :
Debtors. : (Jointly Administered)
: :
: Related Docket No. 710
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**LIMITED OBJECTION OF THE PENSION BENEFIT GUARANTY CORPORATION
TO AP SERVICES, LLC’S REPORT OF COMPENSATION AND EXPENSES**

The Pension Benefit Guaranty Corporation (“**PBGC**”), on behalf of itself and the Appvion, Inc. Retirement Plan (the “**Pension Plan**”), files this limited objection to AP Services LLC’s (“**APS**”) *Second Report of Compensation Earned and Expenses Incurred for the Period of January 1, 2018 Through March 31, 2018* (the “**Second Fee Application**”) [Doc. 710].

While PBGC does not object to the allowance of APS’ fees and expenses, it objects to the extent that APS seeks immediate payment of any fees. Immediate payment of professional fees is premature given the possibility that the Debtors’ estates may become administratively insolvent. Accordingly, PBGC requests that this Court hold payments of all professional fees and expenses in abeyance until the Debtors can ensure that PBGC’s claim arising under 11 U.S.C. § 507(a)(2) of the Bankruptcy Code, in the amount of \$3,276,329, will be paid in full or treated *pari passu* with all other administrative claims, including professional fees. In support, PBGC respectfully states as follows:

BACKGROUND

1. On October 1, 2017, Appvion, Inc. (“**Appvion**”) and certain of its affiliates (collectively, the “**Debtors**”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Debtors continue to manage their business as debtors in possession pursuant

to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On October 30, 2017, the Court granted the Debtors' application to retain and employ APS and designate Alan Holtz as the Debtors' Chief Restructuring Officer. [Doc. 216]. APS was hired to assist the Debtors in their restructuring efforts. [Doc. 85-2, Exhibit A at 2].

3. On January 17, 2018, PBGC filed a proof of claim against the Debtors for due and unpaid minimum required contributions to the Pension Plan, stating that the portion of contributions attributable to the post-petition period are entitled to administrative priority under section 503(b)(1).¹

4. On February 2, 2018, APS filed its first application for compensation earned and expenses incurred from October 1, 2017, through December 31, 2017, in the amount of \$1,703,980.27. [Doc. 408]. There were no objections to that application.

5. On May 1, 2018, APS filed its Second Fee Application for compensation earned and expenses incurred from January 1, 2018, through March 31, 2018, in the amount of \$2,090,479.47.

6. On May 10, 2018, PBGC filed a motion for allowance and payment of its administrative expense claim in the amount of \$3,276,329. [Doc. 740]. Before that filing, PBGC notified the Debtors of the amount of its administrative expense claim and provided the calculations supporting that claim.²

7. On May 14, 2018, the Court approved a compromise under Bankruptcy Rule 9019 between the Debtors, the Official Committee of Unsecured Creditors, the Ad Hoc Group of

¹ D.I. 282. This claim further states that portions of the contributions attributable to services rendered within 180 days of the Debtors' petitions are entitled to priority under section 507(a)(5) of the Bankruptcy Code.

² PBGC also informed the Debtors that the portion of its claim attributable to (a)(5) priority totals \$936,573, and shared the calculations supporting that amount.

Second Lien Noteholders, Franklin Advisers, Inc., and Appvion Holding Corp. (the “**Settlement**”). The Settlement provides for Appvion Holding Corp. to fund a wind-down budget for the Debtors’ estates that the Debtors and their professionals have reasonably determined “is adequate or otherwise appropriate to fund all unpaid priority and administrative claims.” [Doc. 753-1 at 6-7]. That wind-down budget (and its \$17 million cost) specifically excluded PBGC’s administrative and priority claims. [*Id.* at 20].

LIMITED OBJECTION

8. Given the current posture of this case, any payment of APS’ interim fees should be held in abeyance. Interim fees can be paid only when it is reasonably clear that the assets of the estate will be sufficient to pay all administrative expenses. *In re Chips 'N Twigs, Inc.*, 58 B.R. 109, 111 (Bankr. E.D. Pa. 1986); *see also In re HQ Global Holdings, Inc.*, 282 B.R. 169, 173 (Bankr. D. Del. 2002) (“[D]istributions prior to confirmation of a plan are usually disallowed when the estate may not be able to pay *all administrative claims in full.*”) (internal citations omitted).

9. Although the Settlement includes a wind-down budget that the Debtors estimated will provide for full payment of “all unpaid priority and administrative claims,” that wind-down budget does not include **any** amount for PBGC’s administrative and priority claims. [Doc 753-1 at 7, 20]. And because the Debtors anticipate having a finite amount of cash to pay all administrative claims, it is unclear that PBGC will receive the full payment of its administrative claim or that the Debtors’ estates will remain administratively solvent. In that situation, PBGC’s administrative claim must be treated *pari passu* with all other administrative claims, including professional fees. *See In re LTV Steel Co., Inc.*, 288 B.R. 775, 778–79 (Bankr. N.D. Ohio 2002) (denying administrative claimant’s request of immediate payment because it contradicts the

Bankruptcy Code's pro-rata distribution rule).

10. Section 1129(a)(9) of the Bankruptcy Code states that a plan cannot be confirmed unless the allowed claims under sections 507(a)(2) or 507(a)(3) are paid in full. Put differently, “[t]he Code’s confirmation scheme elevates allowed administrative claims to a dominant priority such that unless the holders agree to a different treatment, a plan cannot be confirmed without full payment of those claims even if there are no estate assets to pay them.” *In re Scott Cable Commcn’s, Inc.*, 227 B.R. 596, 600 (Bankr. D. Conn. 1998); *see also Pan Am Corp. v. Delta Air Lines, Inc.*, 175 B.R. 438, 508 (S.D.N.Y. 1994) (referring to section 1129(a)(9)(A) as the “administrative solvency” requirement, which is “the ability of the [debtor’s] estate to satisfy administrative claims at the confirmation hearing”).

11. Given the uncertainty that the Debtors’ estates will have sufficient assets to fully pay their administrative claims, PBGC requests that any payment of APS’ Second Fee Application (and any other administrative claims) be held in abeyance until there is certainty regarding the Debtors’ ability to pay all administrative claims, including PBGC’s administrative claim.

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CONCLUSION

For the foregoing reasons, PBGC respectfully requests that any payment of APS' Second Fee Application be held in abeyance until the solvency of the Debtors' estates and the payment of all administrative claims can be adequately addressed. Moreover, to the extent that PBGC does not receive full payment on its administrative expense claim, PBGC reserves its right to seek reallocation or disgorgement of any professional fees paid pursuant to the Debtors' professionals fee applications.

Dated: May 18, 2018

Respectfully submitted,

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