

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

PENSION BENEFIT GUARANTY CORPORATION)	
)	
)	Civil Action No. 4:14-cv-00449-AGF
Plaintiff,)	Honorable Audrey G. Fleissig
)	
v.)	
)	
FBI WIND DOWN, INC. (f/k/a Furniture Brands International, Inc.), as Plan Administrator for the Furniture Brands Retirement Plan)	
)	
Defendant.)	

**PBGC’S MEMORANDUM IN SUPPORT OF THE MOTION TO ADJOURN HEARING
TO CONSIDER ENTRY OF DECREE TO TERMINATE THE FURNITURE BRANDS
RETIREMENT PLAN**

Pension Benefit Guaranty Corporation (“PBGC”) files this memorandum in support of PBGC’s Motion to Adjourn Hearing to Consider Entry of Decree to Terminate the Furniture Brands Retirement Plan (“Motion to Adjourn”).

FACTS

1. On March 11, 2014, PBGC filed a complaint in this Court seeking an order terminating the Furniture Brands Retirement Plan (“Pension Plan”) in accordance with 29 U.S.C. § 1342(c), appointing PBGC statutory trustee of the Pension Plan, and establishing November 21, 2013 as the Pension Plan’s termination date.
2. On March 13, 2014, PBGC filed a motion for an order to show cause why the Pension Plan should not be terminated in accordance with 29 U.S.C. § 1342(c).
3. On March 14, 2014, this Court entered an order to show cause that scheduled a hearing to consider entry of a decree to terminate the Pension Plan at 9:00 am on April 15, 2014;

directed PBGC to serve the summons and complaint, together with a copy of the order to show cause with its supporting memorandum and declarations to the Plan administrator and to Defendant's bankruptcy counsel by March 21, 2014, and required Defendant to serve and file its answers, objections and responses to PBGC's request for entry of a decree to terminate the Pension Plan by April 4, 2014.

4. On March 18, 2014, PBGC served the aforementioned documents to the Plan administrator and to Debtor's bankruptcy counsel.

5. On March 31, 2014, PBGC, Defendant, and Defendant's Unsecured Creditors' Committee executed an agreement ("Settlement Agreement") that, if approved by the Bankruptcy Court, will among other things require Defendant to execute an agreement to terminate the Pension Plan, appoint PBGC statutory trustee of the Pension Plan, and establish November 21, 2013 as the Pension Plan's termination date. A true, complete and correct copy of the Settlement Agreement is attached as Exhibit 1 and incorporated herein by reference.

6. Under Paragraph 2 of the Settlement Agreement, "If the Debtors deliver an executed copy of the [Settlement] Agreement by March 31, 2014, . . . , then PBGC shall extend the Debtors' deadline to respond to the Show Cause Motion to April 10, 2014, at 5:00 pm." Accordingly, on April 2, 2014, PBGC filed in this action a Notice of Agreement to Extend Time for Debtor to File Answer to Motion for Order to Show Cause. On April 3, 2014, this Court entered a docket order extending Defendant's time to answer to April 10, 2014.

7. On April 4, 2014, Defendant and Defendant's Unsecured Creditors' Committee filed a motion to approve the Settlement Agreement ("Motion to Approve") with the United States Bankruptcy Court for the District of Delaware. A true, complete, and correct copy of the Motion to Approve is attached as Exhibit 2 and incorporated herein by reference.

8. Objections to the Motion to Approve must be filed by April 18, 2014. The bankruptcy court will hold a hearing to approve the Settlement Agreement on April 28, 2014, at 10:00 am Eastern time, in Wilmington, Delaware.

9. Under Paragraph 2 of the Settlement Agreement, if the Motion to Approve is filed by April 4, 2014, PBGC must seek an adjournment of the April 15, 2014 hearing to consider entry of a decree to terminate the Pension Plan to a date after April 30, 2014, and to extend Defendant's time to answer to five business days before the date of the adjourned hearing. PBGC files this motion in satisfaction of its obligation under the Settlement Agreement.

ARGUMENT

10. The Eighth Circuit recognizes "the public policy favoring the compromise and settlement of disputes."¹ Other circuits have similarly expressed that out-of-court settlements are highly favored.²

11. The relief requested will afford the parties an opportunity to consensually resolve the termination of the Pension Plan, subject to bankruptcy court approval under Rule 9019 of the Federal Rules of Bankruptcy Procedure. If the bankruptcy court grants the Motion to Approve, and Defendant signs the Termination Agreement attached to the Settlement Agreement, this Court will not need to determine whether the Pension Plan should be terminated under 29 U.S.C. § 1342(c), and PBGC will dismiss this case with prejudice as moot.

¹ *Weems v. Tyson Foods, Inc.*, 665 F.3d 958, 965 (8th Cir. 2011).

² *Ford Motor Co. v. Mustangs Unlimited, Inc.*, 487 F.3d 465, 469 (6th Cir. 2007), quoting *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1372 (6th Cir. 2007) ("Public policy strongly favors settlement of disputes without litigation."); *D.H. Overmyer Co. v. Loflin*, 440 F.2d 1213, 1215 (5th Cir. 1971) ("Settlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and uncertainties and preventing lawsuits.").

12. If the bankruptcy court denies the Motion to Approve, setting a hearing date after April 30, 2014 allows this Court to then consider whether to enter a decree terminating the Pension Plan in order to protect the interests of over 18,000 Plan participants and their beneficiaries. The adjournment neither prejudices the interests of those participants and beneficiaries nor the interests of PBGC.

CONCLUSION

The Court should grant PBGC's Motion to Adjourn and set a hearing after April 30, 2014 to consider entry of a decree to terminate the Pension Plan, appoint PBGC statutory trustee of the Pension Plan, and establish November 21, 2013, as the Pension Plan's termination date. The court should also direct Defendant to serve and file its answer, objection, or response by a date five business days before the date of the adjourned hearing

Dated: Washington, D.C.
April 7, 2014

Respectfully submitted,

/s/ Ralph L. Landy _____

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