

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

PENSION BENEFIT GUARANTY)
CORPORATION)
1200 K Street, N.W.)
Washington, D.C. 20005-4026,)
)
Plaintiff,)
)
v.) Civil Action No. 1:14-cv-872
)
RETIREMENT COMMITTEE)
OF REICHHOLD, INC.,)
as administrator of The Reichhold, Inc.) Date Filed: October 17, 2014
Retirement Plan)
1035 Swabia Court)
Durham, North Carolina 27703,)
)
Defendant.)
_____)

COMPLAINT FOR PENSION PLAN TERMINATION

This action arises under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012) ("ERISA"). Plaintiff, the Pension Benefit Guaranty Corporation ("PBGC"), files this Complaint, pursuant to 29 U.S.C. §§ 1342(a)(2) and (4), 1342(c) and 1348(a), seeking an order (a) terminating The Reichhold, Inc. Retirement Plan (the "Pension Plan"), (b) appointing PBGC statutory trustee of the Pension Plan, (c) establishing October 17, 2014, as the termination date for the Pension Plan, and (d) directing the Defendant and any other person or entity having possession,

custody or control of any records, assets or other property of the Pension Plan, to transfer, convey and deliver all such records, assets and property to the PBGC, as the statutory trustee upon request under 29 U.S.C. § 1342(d)(1).

JURISDICTION AND VENUE

1. This Court has exclusive jurisdiction of this action pursuant to 29 U.S.C. §§ 1303(e)(3) and 1342(e) and (f).
2. Venue lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g).

PARTIES

3. Plaintiff, PBGC, is a wholly owned United States government corporation established under 29 U.S.C. § 1302(a) to administer the pension plan termination insurance program created by Title IV of ERISA. When an underfunded pension plan terminates, PBGC ensures the timely and uninterrupted payment of statutorily guaranteed pension benefits to plan participants and their beneficiaries. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.

4. Defendant, Retirement Committee of Reichhold, Inc. (“Committee”), is the Plan administrator of the Pension Plan within the meaning of 29 U.S.C. §§ 1301(a)(1) and 1002(16)(A). On information and belief, the Defendant is located in Durham, North Carolina and the Pension Plan is administered there.

THE PENSION PLAN

5. The Pension Plan is a tax-qualified, single-employer, defined benefit pension plan that is covered by Title IV of ERISA. 29 U.S.C. § 1321(a).

6. The Pension Plan provides pension benefits to certain present and former employees of Reichhold, Inc. (“Reichhold”) and to their beneficiaries. On information and belief, the Pension Plan has approximately 4,571 participants, and PBGC estimates that the Pension Plan is underfunded by approximately \$97.4 million on a termination basis.

7. Reichhold is the contributing sponsor of the Pension Plan within the meaning of 29 U.S.C. § 1301(a)(13).

CAUSE OF ACTION

8. On September 30, 2014, Reichhold, along with its parent and subsidiaries, filed a petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

9. On information and belief, Reichhold intends to complete a sale of substantially all of its assets under section 363 of the Bankruptcy Code to shed legacy liabilities, including the Pension Plan. After the asset sale, Reichhold will be a Plan administrator without assets, operations or employees.

10. PBGC is authorized by 29 U.S.C. § 1342 to commence proceedings to terminate a plan whenever PBGC determines, *inter alia*, that a plan will be unable to pay benefits when due, 29 U.S.C. § 1342(a)(2), and that the possible long-run loss of PBGC with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated. 29 U.S.C. § 1342(a)(4).

11. PBGC has determined, pursuant to 29 U.S.C. § 1342(a)(2) and (a)(4), that the Pension Plan will be unable to pay benefits when due, and that the possible long-run loss of PBGC with respect to the Pension Plan may reasonably be expected to increase unreasonably if the Pension Plan is not terminated. PBGC also has determined that the Pension Plan's termination date should be October 17, 2014.

12. On October 17, 2014, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination (the "Notice") to Reichhold, as plan administrator of the Pension Plan, notifying Reichhold that PBGC determined that the Pension Plan does not have assets to pay benefits which are currently due and that the possible long-run loss of PBGC with respect to the Pension Plan may reasonably be expected to increase unreasonably if the Pension Plan is not terminated. A copy of the Notice is attached hereto as Exhibit 1.

13. PBGC also caused a notice to be published in a national newspaper on October 17, 2014, advising the Pension Plan's participants of PBGC's

determination both to terminate the Pension Plan and to have October 17, 2014, established as the Pension Plan's termination date. That notice was published in *USA Today*.

14. Pursuant to 29 U.S.C. § 1342(c), a district court may order the termination of a pension plan if necessary to protect the interests of participants, to avoid any unreasonable deterioration of the financial condition of the plan, or to avoid any unreasonable increase in liability to the PBGC insurance fund.

15. PBGC has determined that termination of the Pension Plan is necessary to protect the interests of participants and to avoid any unreasonable increase in liability to the PBGC insurance fund.

16. Pursuant to 29 U.S.C. § 1348(a)(4), a district court establishes the date of termination of a pension plan covered by Title IV when PBGC and the plan administrator have not agreed on a date of termination.

17. As of the filing of this Complaint, PBGC and the Pension Plan administrator have not agreed on a date of plan termination.

18. October 17, 2014, should be established as the date of the Pension Plan's termination pursuant to 29 U.S.C. § 1348(a)(4), because as of that date, the Pension Plan's participants received constructive notice of the Pension Plan termination, and they no longer had any justifiable expectations of the Pension Plan's continuation. Establishment of that date furthers the interests of PBGC by

preventing PBGC's long-run loss from increasing unreasonably, thus preventing an unreasonable increase in the liability of the PBGC insurance fund.

19. Pursuant to 29 U.S.C. § 1342(c), a trustee for a pension plan shall be appointed by the court upon granting a decree of plan termination. Further, 29 U.S.C. § 1342(c) provides that PBGC may request that it be appointed as trustee of a plan in any case.

20. PBGC is ready, willing, and able to serve as statutory trustee of the Pension Plan.

REQUEST FOR RELIEF

WHEREFORE, PBGC respectfully requests that this Court grant judgment for PBGC and issue an order granting the following relief:

1. Adjudicating the Pension Plan terminated pursuant to 29 U.S.C. § 1342(c);
2. Appointing PBGC statutory trustee of the Pension Plan pursuant to 29 U.S.C. § 1342(c);
3. Establishing October 17, 2014, as the termination date of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4);
4. Directing Reichhold and any other person or entity having possession, custody or control of any records, assets or other property of the Pension Plan, to

transfer, convey and deliver all such records, assets, and property to PBGC as statutory trustee upon request under 29 U.S.C. § 1342(d)(1); and

5. Granting such other relief as the Court deems just and proper.

Dated: Washington, D.C.
October 17, 2014

Respectfully submitted,

/s/ Shari D. Williams
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EXHIBIT 1



Pension Benefit Guaranty Corporation

1200 K Street, N.W., Washington, D.C. 20005-4026

OCT 15 2014

Retirement Committee of Reichhold, Inc.
c/o Roger Willis, Chief Financial Officer.
1035 Swabia Court
Durham, NC 27703

EIN/PN: 131764826/080

PBGC Case Number: 22577800

Plan Name: *The Reichhold, Inc Retirement Plan*

NOTICE OF DETERMINATION

PLEASE TAKE NOTICE that the Pension Benefit Guaranty Corporation ("PBGC") has determined under section 4042(a)(2) and (4) of the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"), 29 U.S.C. § 1342(a)(2) and (4), that The Reichhold, Inc. Retirement Plan ("Plan") will be unable to pay benefits when due, and the possible long-run loss of the PBGC with respect to the Plan may reasonably be expected to increase unreasonably if the Plan is not terminated. PBGC has further determined, under ERISA § 4042(c), 29 U.S.C. § 1342(c), that the Plan must be terminated in order to protect the interests of the Plan's participants and in order to avoid any unreasonable increase in the liability of the PBGC insurance fund. Accordingly, PBGC intends to proceed under ERISA § 4042, 29 U.S.C. § 1342, to have the Plan terminated and PBGC appointed as statutory trustee, and under ERISA § 4048, 29 U.S.C. § 1348, to have October 17, 2014, established as the Plan's termination date.

PBGC has completed its decision-making process in this matter; accordingly, this determination is effective on the date it is issued.

PENSION BENEFIT GUARANTY CORPORATION

 Michael Rae / for SR

Sanford Rich

Chief of Negotiations and Restructuring