

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

In re:

REVSTONE INDUSTRIES, LLC, et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 12-13262 (BLS)

(Jointly Administered)

**Hearing Date: April 8, 2014 at 10:00 a.m.**

Related Docket Nos.: 1322, 1334, 1376

**SUPPLEMENTAL RESPONSE OF PENSION BENEFIT GUARANTY CORPORATION  
TO PRELIMINARY OBJECTION OF BOSTON FINANCE GROUP  
TO (I) CLAIMS 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 545, 546,  
547, 548, 549, 550, 551 AND 552 FILED BY PBGC AND (II) THE DEBTORS'  
PROPOSED SETTLEMENT OF PBGC CLAIMS; AND PBGC'S RESPONSE TO THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF REVSTONE  
INDUSTRIES' (I) JOINDER TO BFG'S PRELIMINARY OBJECTION AND  
(2) SUPPLEMENTAL OBJECTION TO PBGC'S CLAIMS**

The Pension Benefit Guaranty Corporation (“PBGC”) hereby submits this Supplemental Response (“Response”) to the Preliminary Objection of Boston Finance Group, LLC (“BFG”) to (I) Claims 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 545, 546, 547, 548, 549, 550, 551 and 552 Filed by PBGC and (II) the Debtor’s Proposed Settlement of PBGC Claims [Docket No. 1334] (“BFG’s Objection”) and also submits this Response to the Joinder to the BFG Objection and Supplemental Objection filed by the Official Committee of Unsecured Creditors of Revstone Industries, LLC (“Committee”) [Docket No. 1376] (“Committee Objection”). For the reasons stated below, the Court should overrule the BFG and Committee Objections in their entirety. In support of this Response, PBGC respectfully states as follows:

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<sup>1</sup> The Debtors in these Chapter 11 Cases and the last four digits of each Debtor’s federal tax identification numbers are: Revstone Industries, LLC (7222); Spara, LLC (6613); Greenwood Forgings, LLC (9285); and US Tool and Engineering, LLC (6450). The location of the Debtors’ headquarters and the service address for each of the Debtors is 230 N. Limestone St., Ste. 100, Lexington, KY 40507.

## **PRELIMINARY STATEMENT**

The Debtors' proposed settlement of PBGC's claims should be approved because it is in the best interests of the Debtors and the creditors of their estates. The proposed settlement 1) resolves the claims of the PBGC, the key creditor in these cases; 2) settles and avoids further protracted and costly litigation over pension liabilities in these bankruptcy cases and in two separate district court cases; and 3) provides for distributions to unsecured creditors from the Debtors' estates, which are administratively insolvent absent a settlement of PBGC claims.

Although BFG and the Committee dispute the amount of PBGC's allowed claim under the Settlement Agreement (defined below), there is no genuine dispute as to the amount of PBGC's claims. PBGC's claims are based on: 1) total pension benefit liabilities, which have been calculated and agreed to by enrolled actuaries for both the Debtors and PBGC in accordance with applicable federal regulations, minus 2) the actual value of pension assets. Here, the Debtors and PBGC each calculated pension benefit liabilities according to PBGC regulations and arrived at nearly identical amounts. Similarly, there is no true dispute over the value of pension assets, which consist primarily of easily ascertainable liquid assets and notes that are in default, or otherwise valueless, and are the subject of fiduciary breach litigation initiated by the Department of Labor ("DOL"). The Debtors and PBGC each analyzed the pension assets and, again, agree on the value of those assets. In short, PBGC's claims are supported by straightforward, consistent and undisputed calculations.

Additionally, PBGC's claims are not contingent in any meaningful sense because pension plan termination is imminent and inevitable. The plan sponsor of the two largest pension plans has liquidated and the sponsor of the third pension plan is being sold. Furthermore, there are no controlled group members that could assume and maintain the pension plans, as all of the

operating entities in the controlled group have been or will be liquidated. Therefore, the pension plans must terminate.

BFG and the Committee's argument that PBGC's claims are contingent because the mechanics of plan termination have yet to be completed in no way addresses the reality that the plans cannot continue without sponsors that can fund the plans in the future. The pension plans *will* terminate, either by agreement or after expensive litigation (in these bankruptcy cases, in the PBGC's termination action, and in the fiduciary breach litigation) that will deplete the assets of the Debtors' estates.

For these reasons, the Debtors would not be likely to succeed if they objected to PBGC's claims, a course of action advocated by BFG and the Committee. None of the arguments endorsed by BFG and the Committee are supported by the prevailing view of the courts, by current law, or by the plain language of the statute. First, courts have repeatedly discredited the argument that a non-regulatory discount rate should be used in calculating pension liabilities owed to PBGC. Second, arguments that rely on requiring PBGC to identify the controlled group and complete a 30 percent net worth calculation are patently incorrect as such determinations are not relevant to PBGC's calculation of its claims and are inconsistent with ERISA, PBGC's regulations and applicable case law. Finally, BFG's and the Committee's argument that PBGC would not be entitled to Termination Premiums (defined below) is contrary to the statute and the only published case on the issue. Therefore, the Debtors would not likely prevail on any of the arguments BFG and the Committee believe the Debtors should make in objecting to PBGC's claims.

Rather than depleting estate assets challenging the legal basis for PBGC's claims, the Debtors have used their sound business judgment to settle PBGC's claims as proposed in the

Settlement Agreement. The Settlement Agreement will further benefit the estates by avoiding protracted and expensive litigation regarding termination of the pension plans and the fiduciary breach actions brought by the DOL. Finally, the Settlement Agreement provides for funds to unsecured creditors at the Revstone and Spara estates, payment of administrative expenses, and a path to resolution of these cases. Therefore, the Settlement Agreement is in the best interest of the Debtors' estates.

For the foregoing reasons, and as set forth below, the Settlement Agreement should be approved.

### **BACKGROUND**

1. PBGC is the United States government agency that administers the pension insurance program created by Title IV of the Employee Retirement Income Security Act of 1974 (“ERISA”).<sup>2</sup> When a covered pension plan terminates, PBGC guarantees the payment of basic pension benefits up to statutory limits using its insurance funds.<sup>3</sup> PBGC receives no funding from tax revenues. Rather, PBGC’s insurance funds come from four sources: insurance premiums paid by employers, assets in terminated pension plans, recoveries from employers and controlled group members of terminated plans, and investment income.<sup>4</sup> In 2013, PBGC paid \$5.5 billion in pension benefits to retirees who would not receive them without the PBGC program.<sup>5</sup> As a result of insuring retirement benefits for employees of companies that, like the Debtors here, cannot keep the promises made to their employees, PBGC has accumulated a deficit of \$36 billion.<sup>6</sup>

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<sup>2</sup> See 29 U.S.C. §§ 1301-1461 (2012).

<sup>3</sup> See 29 U.S.C. §§ 1322, 1361.

<sup>4</sup> See 29 U.S.C. § 1305(b)(1); see also 2013 PBGC Annual Report at 26, <http://www.pbgc.gov/documents/2013-annual-report.pdf>.

<sup>5</sup> 2013 PBGC Annual Report at 5, <http://www.pbgc.gov/documents/2013-annual-report.pdf>.

<sup>6</sup> *Id.* at 17.

## **Pension Plan Termination**

2. Title IV of ERISA establishes the exclusive means of terminating single-employer defined benefit pension plans.<sup>7</sup> A plan sponsor may voluntarily terminate a pension plan in a “standard” termination only if the pension plan has enough assets to provide all benefit liabilities under the plan.<sup>8</sup> If a plan’s assets are not sufficient to pay all benefit liabilities, a plan sponsor may apply to PBGC for a “distress” termination.<sup>9</sup> Finally, as PBGC has done in this case, PBGC may initiate termination of a pension plan if the pension plan has not met the minimum funding standards required by 26 U.S.C. § 412, the pension plan will be unable to pay benefits when due, or the possible long-run loss of the PBGC with respect to the pension plan may reasonably be expected to increase unreasonably if the pension plan is not terminated (“Involuntary Termination”).<sup>10</sup>

## **Unfunded Benefit Liabilities**

3. The vast majority of pension plans insured by PBGC do not have sufficient assets to pay promised retirement benefits. This shortfall gives rise to PBGC’s claim for unfunded benefit liabilities (“Unfunded Benefit Liabilities”). Simply put, the Unfunded Benefit Liabilities are the total amount of benefits owed to participants under the plan, calculated according to PBGC’s regulations, less the actual value of plan assets on the date of plan termination (“Termination Date”).<sup>11</sup>

4. When a pension plan that does not have enough assets to satisfy its liabilities terminates in an Involuntary Termination, PBGC becomes trustee of the plan and assumes an

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<sup>7</sup> 29 U.S.C. § 1341(a)(1) (“Exclusive means of plan termination”); *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 446 (1999); *PBGC v. Mize Co.*, 987 F.2d 1059, 1061 (4<sup>th</sup> Cir. 1993).

<sup>8</sup> See 29 U.S.C. 1341(b).

<sup>9</sup> See 29 U.S.C. § 1341(c).

<sup>10</sup> See 29 U.S.C. § 1342.

<sup>11</sup> 29 U.S.C. § 1362 (b)(1)(A).

unconditional obligation to pay participants and beneficiaries their benefits guaranteed under Title IV of ERISA. The employer, however, is not relieved of its liability for the benefits it promised to its employees under the pension plan. Under ERISA, the employer and each member of its controlled group become jointly and severally liable to PBGC for the “total amount of the unfunded benefit liabilities.”<sup>12</sup> This liability arises as of the pension plan’s Termination Date.<sup>13</sup>

5. In cases where the employer or a controlled group member is in bankruptcy, PBGC files a claim for this amount on behalf of each pension plan in the controlled group so that it can receive its share of any distributions made to similarly situated creditors. Thus, the fact that an employer or controlled group member is in bankruptcy does not alter the obligation to satisfy the claim, and does not change the underlying substantive law upon which the claim is based.

### **Statutory Premiums**

6. Employers that sponsor pension plans must pay insurance premiums (“Insurance Premiums”) to PBGC each year.<sup>14</sup> These Insurance Premiums continue to accrue until the pension plan has been terminated and either its assets have been distributed or a statutory trustee has been appointed, whichever occurs earlier.<sup>15</sup> The pension plan’s contributing sponsor, and members of the contributing sponsor’s controlled group<sup>16</sup> are jointly and severally liable for the Insurance Premiums.<sup>17</sup>

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<sup>12</sup> 29 U.S.C. § 1362.

<sup>13</sup> *Id.*

<sup>14</sup> *See* 29 U.S.C. §§ 1306, 1307.

<sup>15</sup> *See* 29 U.S.C. § 1307(a).

<sup>16</sup> A group of trades or businesses under common control are referred to as a “controlled group.” This term includes, for example a parent and its 80% owned subsidiaries. *See* 29 U.S.C. § 1301(a)(14)(A), (B); 26 U.S.C. § 414(b), (c); 26 C.F.R. §§ 1.414(b)-1, 1.414(c)-1, 1.414(c)-2.

<sup>17</sup> *See* 29 U.S.C. § 1307(e).

7. Additionally, if a pension plan terminates under certain circumstances, the plan sponsor and each member of its controlled group are jointly and severally liable for termination premiums payable at the rate of \$1,250 per plan participant per year, for three years (“Termination Premiums,” together with Insurance Premiums “Statutory Premiums”).<sup>18</sup>

### **Minimum Funding Contributions**

8. A plan sponsor must also pay contributions to its pension plan to fund the benefits it has promised its employees. Accordingly, ERISA and the Internal Revenue Code (“IRC”) hold the plan sponsor and its controlled group members jointly and severally liable to contribute to the pension plan pursuant to statutory minimum funding standards (“Minimum Funding Contributions”).<sup>19</sup> If PBGC becomes statutory trustee of the pension plan after termination, it collects—on behalf of the plan—any amounts owed to the plan, including any unpaid Minimum Funding Contributions.<sup>20</sup>

### **The Pension Plans**

9. TPOP, LLC (f/k/a Metavation, LLC, “TPOP”), a subsidiary of Revstone Industries, LLC (“Revstone”), is the contributing sponsor of the Hillsdale Hourly Pension Plan (“Hourly Plan”) and the Hillsdale Salaried Pension Plan (“Salaried Plan” and together with the Hourly Plan, the “Hillsdale Plans”). Fairfield Castings, LLC (“Fairfield”), a subsidiary of Spara, LLC (“Spara”), is the contributing sponsor of the Revstone Casting Fairfield GMP Local 359 Pension Plan (the “Fairfield Plan”, together with the “Hillsdale Plans”, the “Pension Plans”).

10. On information and belief, the Hillsdale Plans have 1,523 participants. Using the assumptions set forth in 29 U.S.C. § 1344 and the regulations thereunder, PBGC calculates the

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<sup>18</sup> See 29 U.S.C. §1306(a)(7), as amended by § 8101(b) the Deficit Reduction Act of 2005 (Pub. L. 109B171) and by §§ 401(b) and 402(g)(2)(B) of the Pension Protection Act of 2006 (Pub. L. 109B280).

<sup>19</sup> See 29 U.S.C. § 1082(b); 26 U.S.C. § 412(b).

<sup>20</sup> See 29 U.S.C. § 1362(c).

amount of Unfunded Benefit Liabilities for the Hillsdale Plans to be \$85.2M.<sup>21</sup> Additionally, PBGC calculates the Termination Premiums for the Hillsdale Plans to be \$5,711,250. There are no Insurance Premiums or Minimum Funding Contributions currently due for the Hillsdale Plans. Thus, the total amount of PBGC's statutory claims with respect to the Hillsdale Plans is \$90,911,250.

11. On information and belief, the Fairfield Plan has 311 participants. Using the assumptions set forth in 29 U.S.C. § 1344 and the regulations thereunder, PBGC calculates the amount of Unfunded Benefit Liabilities for the Fairfield Plan to be \$5 million. Additionally, PBGC calculates the Termination Premiums for the Fairfield Plan to be \$1,166,250. There are no Insurance Premiums or Minimum Funding Contributions currently due for the Fairfield Plan. Thus, the total amount of PBGC's statutory claims with respect to the Fairfield Plan is \$6,166,250.

12. The total amount of PBGC statutory claims with respect to the Pension Plans is \$97,077,500.

### **PBGC's Determinations that the Pension Plans Must be Terminated**

13. On March 1, 2013, in accordance with 29 U.S.C. § 1342(c), PBGC issued Notices of Determination to TPOP ("Hillsdale Notices") as plan administrator of the Hillsdale Plans, notifying TPOP that PBGC had determined that the Hillsdale Plans will be unable to pay benefits when due and that the possible long-run loss of the PBGC with respect to the Hillsdale Plans may reasonably be expected to increase unreasonably if the Hillsdale Plans are not terminated. The Hillsdale Notices also stated that PBGC determined, under 29 U.S.C. § 1342(c), that the Hillsdale Plans must be terminated in order to protect the interests of participants and to avoid

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<sup>21</sup> For a detailed explanation of the calculation of Unfunded Benefit Liabilities for the Pension Plans, refer to the Report of Cynthia R. Travia, Senior Actuary at the PBGC, attached hereto as Exhibit A.

any unreasonable increase in liability of the PBGC insurance fund. The Hillsdale Notices further stated that PBGC intended to proceed to seek termination of the Hillsdale Plans, have PBGC appointed as trustee of the Hillsdale Plans, and establish March 1, 2013, as the Termination Date for the Hillsdale Plans.

14. On August 23, 2013, PBGC issued revised Notices of Determination (“Revised Hillsdale Notices”) to TPOP as plan administrator of the Hillsdale Plans, notifying TPOP that PBGC had determined that the Hillsdale Plans should be terminated because they will be unable to pay benefits when due and that the possible long-run loss to PBGC may reasonably be expected to increase unreasonably if the Hillsdale Plans are not terminated. The Revised Hillsdale Notices also stated that PBGC has determined, under 29 U.S.C. § 1342(c), that the Hillsdale Plans must be terminated in order to protect the interests of participants and to avoid any unreasonable increase in liability of the PBGC insurance fund. The Revised Hillsdale Notices further stated that PBGC intended to proceed to seek termination of the Hillsdale Plans, have PBGC appointed as trustee of the Hillsdale Plans, and establish March 1, 2013, as the Termination Date for the Hillsdale Plans.

15. On August 29, 2013, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination to Fairfield Castings as plan administrator of the Fairfield Plan (“Fairfield Notice”), notifying Fairfield Castings that PBGC had determined that the Fairfield Plan will be unable to pay benefits when due and that the possible long-run loss to PBGC may reasonably be expected to increase unreasonably if the Fairfield Plan is not terminated. The Fairfield Notice also stated that PBGC has determined, under 29 U.S.C. § 1342(c), that the Fairfield Plan must be terminated in order to protect the interests of participants and to avoid any unreasonable increase in liability of the PBGC insurance fund. The Fairfield Notice further

stated that PBGC intended to proceed to seek termination of the Fairfield Plan, have PBGC appointed as trustee of the Fairfield Plan, and establish August 29, 2013, as the Termination Date for the Fairfield Plan.<sup>22</sup>

16. On March 1, 2013, PBGC caused notices to be published in the Detroit Free Press and the Lexington Herald-Leader advising the Hillsdale Plans' participants of PBGC's determinations to terminate the Hillsdale Plans and to have March 1, 2013, established as the Hillsdale Plans' Termination Date. On August 29, 2013, PBGC caused notices to be published in the Fairfield Daily Ledger and the Lexington Herald-Leader advising the Fairfield Plan participants of PBGC's determination both to terminate the Fairfield Plan and to have August 29, 2013 established as the Fairfield Plan's Termination Date.

#### **PBGC's Termination Action**

17. On September 6, 2013, PBGC filed an amended complaint in the United States District Court for the Eastern District of Kentucky against TPOP and Fairfield Castings ("Termination Action") seeking termination of the Pension Plans pursuant to 29 U.S.C. §§ 1342 and 1348(a) seeking a decree (A) terminating the Plans; (B) appointing PBGC as statutory trustee of the Plans; and (C) establishing March 1, 2013, and August 29, 2013, as the Termination Dates for the Hillsdale Plans and the Fairfield Plan, respectively. On October 17, 2013, TPOP and Fairfield Castings filed answers to the amended complaint.

18. Subsequent to the initial pleading, PBGC and the Debtors have focused their resources on settling rather than litigating the Termination Action.

19. TPOP has liquidated, Fairfield is being sold, and there is no other controlled group member with the financial ability to maintain sponsorship of the Hillsdale or Fairfield

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<sup>22</sup> The Revised Hillsdale Notices and the Fairfield Notice are attached hereto as Exhibit B.

Plans. Thus, the Debtors and PBGC agree that there is no scenario in which the Pension Plans can continue.

20. Because PBGC initiated proceedings to terminate the Pension Plans, the Pension Plans can be terminated by agreement between PBGC and the plan administrators, TPOP and Fairfield Castings, pursuant to 29 U.S.C. § 1342(b)(3). If there is no agreement, PBGC will obtain a court order terminating the Pension Plans. Either way, the Pension Plans will terminate during the course of these bankruptcy cases. For that reason, PBGC's claims are not contingent in any meaningful sense.

### **PBGC's Settlement with the Debtors**

21. On February 11, 2014, PBGC entered into a Settlement Agreement with the Debtors, TPOP, Fairfield Castings, and certain of Revstone and Spara's non-debtor subsidiaries ("Settlement Agreement"). A copy of the Settlement Agreement was filed on February 14, 2014 as Exhibit 1 to the Debtors' Motion Pursuant to Bankruptcy Rule 9019 seeking approval of the Settlement Agreement [Docket No. 1322] ("9019 Motion").

22. Pursuant to the Settlement Agreement, the Pension Plans will be terminated by agreement, and PBGC will have an allowed general unsecured claim in the amount of \$95 million. PBGC is a direct creditor of all controlled group members, including all debtors and non-debtors. Under the terms of the Settlement Agreement, PBGC will receive a minimum recovery of \$80 million. PBGC is accepting a reduced recovery on its claims to avoid costly and time-consuming litigation over pension plan termination and pension liabilities.

## RESPONSE

### I. STANDARD OF REVIEW

23. Although BFG's Objection is styled as a claims objection, claims estimation motion and an objection to the 9019 Motion, this Court has ruled that the claims objection and claims estimation motion will be entertained, if necessary, only after the 9019 Motion is decided. Accordingly, PBGC files this Response only with respect to BFG's objection to the 9019 Motion, and reserves its right to seek a separate briefing schedule if and when BFG's claims objection and claims estimation motion are considered.

24. The Settlement Agreement should be approved under Bankruptcy Rule 9019, which states that "[o]n motion by the trustee and after notice and hearing, the court may approve a compromise or settlement."<sup>23</sup> "It is within the discretion of the bankruptcy court to approve a settlement."<sup>24</sup> In exercising such discretion, "the bankruptcy court must determine whether the compromise is fair, reasonable, and in the best interests of the estate."<sup>25</sup>

25. In determining whether the proposed settlement is fair, the Court is guided by two principles. First, "[c]ompromises are favored in bankruptcy,"<sup>26</sup> and are "a normal part of the reorganization process."<sup>27</sup> Second, settlements should be approved if they are above the lowest range of reasonableness. "[The] responsibility of the bankruptcy judge...is not to decide the numerous questions of law and fact raised by the appellants but rather to canvass the issues and

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<sup>23</sup> Fed. R. Bankr. P. 9019(a).

<sup>24</sup> *In re World Health At., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006).

<sup>25</sup> *Key3Media Group, Inc. v. Pulver.com, Inc. (In re Key3Media Group, Inc.)*, 336 B.R. 87, 92 (Bankr. D. Del. 2005).

<sup>26</sup> 10 LAWRENCE P. KING, COLLIER ON BANKRUPTCY, ¶ 9019.10, at 9019-2 (15th ed. rev. 1997)(citing *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993).

<sup>27</sup> *Protective Committee for Independent Stockholder of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424, 88 S. Ct. 1157, 1163 (1968)(quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130, 60 S. Ct. 1, 14 (1939)); *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986)("The law favors compromise and not litigation for its own sake..."); *In re Michael*, 183 B.R. 230 at 232 (Bankr. D. Mont. 1995)("[I]t is also well established that the law favors compromise."); *In re Best Prods. Co.*, 168 B.R. 35, 50 (Bankr. S.D.N.Y. 1994); *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994)(Court recognizes "the general rule that settlements are favored...").

see whether the settlement fall[s] below the lowest point in the range of reasonableness.”<sup>28</sup>

Therefore, the Court should not determine whether a better settlement could be reached, but rather, it should approve settlements that are within the lowest range of reasonableness.<sup>29</sup>

26. Bankruptcy courts in the Third Circuit generally consider four factors when determining whether to approve a settlement: (1) the probability of success in litigation, (2) the likely difficulties in collection, (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it, and (4) the paramount interest of the creditors.<sup>30</sup> “Additionally, the court should defer to the trustee’s judgment so long as there is a legitimate business justification for his action.”<sup>31</sup>

27. The Settlement Agreement should be approved because, as more fully explained in the 9019 Motion, it satisfies the relevant standards and is consistent with core principles promoted by this and other bankruptcy courts.

## **II. THERE IS NO GENUINE DISPUTE AS TO THE AMOUNT OF PBGC’S CLAIMS**

28. PBGC has joint and several claims against the Debtors, TPOP, and non-debtor affiliates, which are all members of TPOP’s and Fairfield’s controlled group. Accordingly, in June 2013, PBGC timely filed claims against each Debtor’s estate for Unfunded Benefit Liabilities, Minimum Funding Contributions and Statutory Premiums on account of, or on behalf of, the Pension Plans.

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<sup>28</sup> *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *In re Planned Protective Servs. Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991). See generally *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976)(Court should not conduct a “mini-trial” on the merits of a proposed settlement).

<sup>29</sup> *Nellis*, 165 B.R. at 123; *In re Tech. for Energy Corp.*, 56 B.R. 307, 311-312 (Bankr. E.D. Tenn. 1985); *In re Mobile Air Drilling Co., Inc.*, 53 B.R. 605, 608 (Bankr. N.D. Ohio 1985); 10 Collier on bankruptcy ¶ 9019.01, at 9091-4.

<sup>30</sup> *In re Kaiser Aluminium Corp.*, 339 B.R. 91, 96 (Bankr. D. Del. 2006). *Fry’s Metals, Inc. v. Gibbons (In re RFE Industries, Inc.)*, 283 F.3d 159, 165 (3d Cir. 2002).

<sup>31</sup> *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004) (Citing *In re Martin*, 91 F.3d 389, 395 (3d Cir. Pa. 1996)).

29. When PBGC initially filed its claims in June 2013, the Unfunded Benefit Liabilities calculated were estimates based on documents provided by the administrators of the Pension Plans. However, a significant portion of the assets attributed to the Pension Plans in those documents were overvalued and ultimately written off. Such assets are the result of questionable transactions by the former Pension Plan fiduciaries and are the subject of litigation brought by the DOL against the Pension Plan sponsors and fiduciaries. Although the claims PBGC filed in June 2013 for Unfunded Benefit Liabilities of the Pension Plans were for an aggregate amount of approximately \$55 million, PBGC took care to indicate in the statements supporting the claims that the Unfunded Benefit Liabilities were likely significantly understated because the value of the pension assets provided to PBGC at that time was likely overstated.

30. PBGC routinely refines its liability calculations and amends its claims as it receives additional information in the course of its investigations. After filing its initial claims in these cases, PBGC continued to gather additional information relevant to the calculation of the Unfunded Benefit Liabilities of the Pension Plans. Based on the additional information, PBGC's actuaries revised the calculation of the Pension Plans' Unfunded Benefit Liabilities, and PBGC promptly amended its claims in December 2013,<sup>32</sup> as discussed below.

31. The amended claims filed in December 2013 for Unfunded Benefit Liabilities for the Pension Plans were for a total amount of approximately \$54 million. However, PBGC still lacked complete information regarding the Pension Plans' assets. Because of the remaining gaps in information, the statements PBGC submitted in support of the amended proofs of claim once again indicated that the Unfunded Benefit Liabilities were still likely significantly understated because the value of the pension assets was likely overstated. The losses attributable to problematic pension assets were valued by the DOL in its litigation at approximately \$30 – 40

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<sup>32</sup> PBGC concedes that the claims it filed in December 2013 amend and supersede the claims it filed in June 2013.

million, meaning that if those assets were found to have no value, the Unfunded Benefit Liabilities could increase by as much as \$40 million, *i.e.*, from \$54 million to approximately \$94 million.

32. Subsequent to filing its amended proofs of claim, and in connection with settlement negotiations with the Debtors, PBGC obtained more complete information about both benefit liabilities and pension plan assets. As anticipated, most of the problematic assets were found to be valueless. As a result, in January 2014, PBGC completed revised calculations of the Unfunded Benefit Liabilities in the amount of \$90.2 million.<sup>33</sup> Additionally, PBGC calculated Termination Premiums for the Pension Plans to be \$6,877,500. PBGC does not believe any Minimum Funding Contributions or Insurance Premiums are currently due and, thus, did not include amounts for those claims in its claims calculation.

33. The total amount of PBGC's claims is \$97,077,500. As stated above, for settlement purposes, PBGC has compromised on its claims and agreed to an allowed claim of \$95 million in the Settlement Agreement.

### **III. BECAUSE THE PENSION PLANS MUST BE TERMINATED, PBGC'S CLAIMS MUST BE RESOLVED**

34. PBGC engaged in a rigorous and lengthy investigation resulting in informal adjudication and issuance of Notices of Determination that the Pension Plans must be terminated. PBGC has filed complaints in the United States District Court for the District of Kentucky to enforce its determinations.

35. BFG and the Committee's argument that PBGC's claims are contingent is a technical, not a substantive, point. TPOP (sponsor of the Hillsdale Plans) has liquidated. Fairfield (sponsor of the Fairfield Plan) is being sold, and, even if Fairfield is not sold, it cannot

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<sup>33</sup> For a detailed explanation of PBGC's calculation of the Unfunded Benefit Liabilities, refer to the Expert Report of Cynthia R Travia, Senior Actuary at the Pension Benefit Guaranty Corporation, attached hereto as Exhibit A.

afford the Minimum Required Contributions necessary to maintain the Pension Plans. Moreover, there is no other controlled group member that has the financial ability to maintain sponsorship of the Pension Plans. Therefore, the Debtors and PBGC agree, and the Debtors have stated on the record, that there is no scenario in which the Pension Plans can continue.

36. Since PBGC has initiated proceedings to terminate the Pension Plans, the Pension Plans can be terminated by agreement between PBGC and the plan administrators, TPOP and Fairfield, pursuant to 29 U.S.C. § 1342(b)(3). The interests of financial stakeholders in the sponsor or controlled group members play no role. Even if the Pension Plan administrators do not agree to termination, PBGC will obtain a court decree terminating the plans. Either way, the Pension Plans will terminate during the course of this bankruptcy. For that reason, PBGC's claims will mature and must be resolved.

#### **IV. PBGC'S CLAIM FOR UNFUNDED BENEFIT LIABILITIES IS PROPERLY CALCULATED AS OF THE TERMINATION DATE**

37. PBGC determines the amount of the Unfunded Benefit Liabilities as of the Termination Date.<sup>34</sup> As mentioned above, PBGC issued Revised Hillsdale Notices advising participants of the Hillsdale Plans of PBGC's determination to terminate the Hillsdale Plans and establish March 1, 2013, as the Termination Dates for the Hillsdale Plans. PBGC also issued the Fairfield Notice advising participants of the Fairfield Plan of PBGC's determination to terminate the Fairfield Plan and establish August 29, 2013, as the Termination Date of the Fairfield Plan. PBGC published notices of its determinations in newspapers in Detroit Free Press, the Lexington Herald-Leader and the Fairfield Daily Ledger. Those Termination Dates are proper because that is when participants' expectations of pension plan continuation were extinguished by notice from

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<sup>34</sup> 29 U.S.C. § 1301(a)(18).

PBGC that the Pension Plans were going to terminate.<sup>35</sup> Therefore, PBGC's claims for Unfunded Benefit Liabilities are properly calculated as of these Termination Dates for each of the Pension Plans.

**V. PBGC'S CALCULATION OF UNFUNDED BENEFIT LIABILITIES IS PRESCRIBED BY ERISA AND PBGC REGULATIONS**

38. The amount of the Unfunded Benefit Liabilities of a plan is determined by subtracting the current value of the plan's assets from the value of its benefit liabilities as of the Termination Date.<sup>36</sup> ERISA requires that the value of the benefit liabilities be determined "on the basis of assumptions prescribed by [PBGC]."<sup>37</sup> PBGC employs a valuation method using interdependent mortality and interest assumptions that, in combination, replicate the market value of annuity contracts. The interest rates used are derived from annuity price data obtained by the PBGC from the private insurance industry and have been designed so that, when coupled with the mortality assumptions found in the regulation, the benefit values obtained for immediate and deferred annuities are in line with industry annuity prices.<sup>38</sup> The interest factor is periodically adjusted to reflect changes in insurance industry prices.<sup>39</sup> PBGC's regulations also prescribe expected retirement age and expense load assumptions.<sup>40</sup> The exact calculation methods are fully detailed in the expert Report of Cynthia R. Travia, Senior Actuary for the PBGC, attached hereto as Exhibit A.

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<sup>35</sup> Termination Date is substantially different from and not to be confused with the Date of Trusteeship, which is the date when the pension plan terminates and PBGC becomes trustee of the pension plan.

<sup>36</sup> 29 U.S.C. § 1301(a)(18).

<sup>37</sup> *Id.* Section 1301(a)(18) states: "Amount of unfunded liabilities" means, as of any date, the excess (if any) of – (A) the value of the benefit liabilities under the plan (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title), over (B) the current value (as of such date) of the assets of the plan.

<sup>38</sup> See Interim Regulation on Valuation of Plan Benefits, 41 Fed. Reg. 48484, 48485 (1976).

<sup>39</sup> 58 Fed. Reg. 50,812 (1993).

<sup>40</sup> 29 C.F.R. §§4044.57 and 4044.52(d).

39. BFG and the Committee incorrectly assert that a different interest rate, the “prudent investor rate”, should be used in calculating the claims.

40. As a matter of law, the Court need not decide the issue. In *Law Debenture Trust Co. v. Kaiser Aluminum Corp.*<sup>41</sup> where, as here, the trustee sought to avoid the expense and uncertainty of litigation over PBGC’s claims, the court stated that “the proposed settlement serves the best interest of the estate and the creditors by arranging for a global settlement which will facilitate a plan of reorganization that will ultimately benefit all creditors and reduce the fees, costs and expenses that the estate would have had to bear in order to litigate the extensive, complex and uncertain issues raised by PBGC's claim.”<sup>42</sup> To the extent the adjudication of the issue of the proper interest rate amount to litigation of PBGC’s claims, this Court may instead approve the 9019 Motion because the Debtors in the Settlement Agreement seek to avoid the cost of such litigation and serve the best interest of the estates.

41. Even if the Court is inclined to decide the issue of the proper interest rate, the Court must find that the interest rate employed by PBGC in calculating the Unfunded Benefit Liabilities is proper. PBGC has calculated the benefit liabilities using actuarial assumptions and interest rates explicitly prescribed by its regulations for every pension plan terminated by PBGC since the inception of the agency.

42. It is well-settled that administrative regulations adopted pursuant to an express delegation give rise to legislative rules that have the “force and effect of law.”<sup>43</sup> “In a situation of this kind, Congress entrusts to the [agency], rather than to the courts, the primary responsibility for interpreting the statutory term.”<sup>44</sup> As the Supreme Court confirmed, such a

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<sup>41</sup> 339 B.R. 91 (D. Del. 2006).

<sup>42</sup> *Id.* at 96.

<sup>43</sup> *Chrysler Corp. v. Brown*, 441 U.S. 281, 295 (1979); *Batterton v. Francis*, 432 U.S. 416, 425 (1977).

<sup>44</sup> *Batterton*, 432 U.S. at 425.

delegation “helps guarantee that the rules will be written by ‘masters of the subject’ ... who will be responsible for putting the rules into effect.”<sup>45</sup>

43. Additionally, Congress has ratified the PBGC regulation. Section 4044 was in the original Title IV provisions enacted as part of ERISA in 1974. PBGC’s regulation prescribing assumptions for valuing plan benefits under Section 4044 was first proposed in 1975, adopted on an interim basis in 1976, and finalized in 1981, in a notice-and-comment rulemaking under the Administrative Procedures Act. When Congress amended ERISA in 1987 to add the provision in 29 U.S.C. § 1301(a)(18) explicitly referring to “assumptions prescribed by [PBGC]” for valuing benefit liabilities, Congress endorsed the applicability of a specific, preexisting regulation.<sup>46</sup>

44. BFG and the Committee’s argument that PBGC’s regulatory methodology should not be used is contrary to administrative law and the bankruptcy law principle that a claim is determined in accordance with substantive non-bankruptcy law under which the liability arose.<sup>47</sup> BFG and the Committee rely on the decisions in *In re CSC Industries, Inc.* and *In re CF&I Fabricators*, from the Sixth and Tenth Circuits respectively, wherein the courts found it was acceptable to use the “prudent investor rate.” However, BFG and the Committee’s position is based on two cases whose reasoning has been discredited and has not been followed by other courts.

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<sup>45</sup> *United States v. Cleveland Indians Baseball Co.*, 121 S. Ct. 1433, 1444 (2001).

<sup>46</sup> Pension Protection Act of 1987, Subtitle D of Title IX of the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, §§ 9312(b)(2)(A), 9313(a)(2)(F), 1987 U.S.C.C.A.N. (101. Stat.) 1330-333, 1330-361, 1330-365. Congress similarly endorsed PBGC’s regulatory methodology a year earlier. In the 1986 Single-Employer Pension Plan Amendments Act (SEPPAA), Congress created a “termination trust” in 29 U.S.C. § 1349, which referred to the “outstanding benefit commitments.” The latter term, then defined in 29 U.S.C. § 1301(a)(19), also explicitly incorporated the “assumptions prescribed by [PBGC].” The termination trust provision was repealed in the Pension Protection Act of 1987 and replaced with the provision regarding additional payments to participants and beneficiaries in 29 U.S.C. § 1322(c).

<sup>47</sup> *Butner v. United States*, 440 U.S. 48, 55 (1979).

45. Bankruptcy courts do not have the authority to ignore legislative regulations that define liability to a government agency when that regulation provides the substantive law for determining liability. The Supreme Court affirmed this principle in *Raleigh v. Illinois Dep't of Revenue*.<sup>48</sup> In *Raleigh*, the Supreme Court held that “[c]reditors’ entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor’s obligation.”<sup>49</sup> Additionally, the Court held that “[b]ankruptcy courts are not authorized in the name of equity to make wholesale substitution of underlying law controlling the validity of creditor’s entitlements.”<sup>50</sup>

46. In the case of *In re US Airways Group, Inc.*,<sup>51</sup> the bankruptcy court, in a carefully reasoned opinion following the Supreme Court’s guidance in *Raleigh*, agreed that PBGC’s regulations, not the “prudent investor rate,” should apply in calculating Unfunded Benefit Liabilities despite the decisions of the Sixth and Tenth Circuit.<sup>52</sup> The court stated “[t]his court must respectfully disagree with the Sixth and Tenth Circuits.”<sup>53</sup> The court found that *Raleigh* is very clear that “a creditor's claim “in the first instance” is a function of the nonbankruptcy law giving rise to the claim,”<sup>54</sup> and went on to hold that:

“the PBGC's claim for unfunded benefit liabilities should be determined using the PBGC valuation regulation, since Congress has chosen to define the claim by reference to that regulation. Although the amount calculated under the regulation may exceed the amount a hypothetical “prudent investor” would have to set aside to pay the promised benefits as they became due, the use of a “prudent investor” rate impermissibly shifts the risk of loss from adverse stock-market performance . . . to the retirees. Because the PBGC's valuation regulation . . . gives proper weight to Congress's goal of protecting the health of the nation's private pension system, it is to be preferred over the use of discount rate premised on uncertain projections of

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<sup>48</sup> 530 U.S. 15 (2000).

<sup>49</sup> *Raleigh* at 20.

<sup>50</sup> *Id.* at 24-25.

<sup>51</sup> 303 B.R. 784 (Bankr. E.D. Va. 2003).

<sup>52</sup> *Id.* at 792.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

future stock market returns.”<sup>55</sup>

47. Since the Supreme Court’s ruling in *Raleigh* and the court’s decision in *US Airways*, courts opining on the issue have consistently followed the ruling in *US Airways* and rejected application of the prudent investor rate. In *In re UAL Corp.*,<sup>56</sup> the court, following *U.S. Airways*, rejected the reasoning applied by the Sixth and Tenth Circuits, and held that PBGC’s regulations govern the calculation of its claims.<sup>57</sup> Likewise, in *In re Wolverine Proctor & Schwartz*<sup>58</sup>, the court also rejected *In re CSC Industries* and *In re CF&I Fabricators* and held that PBGC’s regulations control the calculation of its claim.<sup>59</sup> Notably, the court’s remarks in approving the settlement of PBGC’s claims are equally applicable to the 9019 Motion before this Court:

“Moreover, even if the [discount rate] issue were in doubt, the Trustee acted reasonably by choosing to settle the dispute in the face of an unsettled question. The issue involves a core contention by the PBGC, an institutional litigant intent - as a matter of precedent - on not compromising the integrity of its regulations. Litigation with the PBGC would lead to lengthy delay, increased litigation costs and uncertain risks of further exposure for the bankrupt estate. The Trustee acted reasonably in avoiding litigation with the PBGC as a result of dispute over this issue.”<sup>60</sup>

48. All courts to consider the issue subsequent to *U.S. Airways* have followed its holding. See *In re High Voltage Eng’g.*<sup>61</sup> (PBGC’s regulation applies in calculating unfunded benefit liabilities); *Dugan v. PBGC*<sup>62</sup> (PBGC’s determination of its claim is binding on both debtors and bankruptcy courts).

49. Therefore, if the Court is inclined to reach a decision on the issue (it is not required to do so), this Court should reject BFG and the Committee’s argument that a “prudent

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<sup>55</sup> *Id.* at 798.

<sup>56</sup> *In re UAL Corp.*, No. 02-48191 (N.D. Ill. Dec. 16, 2005).

<sup>57</sup> *Id.*

<sup>58</sup> 436 B.R. 253, 263 (D. Mass. 2010).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> (Bankr. D. Mass. July 26, 2006).

<sup>62</sup> (*In re Rhodes, Inc.*), 382 B.R. 550, 560 (Bankr. N.D. Ga. 2008).

investor” rate should be used in PBGC’s calculation of the Unfunded Benefit Liabilities.

Instead, the Court should accept as proper PBGC’s calculation of its claim for Unfunded Benefit Liabilities in accordance with ERISA and its regulations, as it is well supported by case law.

**VI. PBGC’S CLAIMS FOR TERMINATION PREMIUMS ARE PROPER BECAUSE LIABILITY FOR TERMINATION PREMIUMS ARISES IN A LIQUIDATING CHAPTER 11**

50. BFG and the Committee argue that PBGC’s claims for Termination Premiums are improper because Termination Premiums will not arise when the Pension Plans terminate. BFG and the Committee are incorrect.

51. If a pension plan terminates in an Involuntary Termination pursuant to 29 U.S.C. § 1342, each member of the contributing sponsor’s controlled group is jointly and severally liable to PBGC for Termination Premiums.<sup>63</sup> Under 29 U.S.C. § 1307, the designated payor, defined for the purposes of the Termination Premiums as the contributing sponsor of a pension plan, is responsible for paying premiums imposed by PBGC under Title IV of ERISA; however, members of the contributing sponsor’s controlled group as of the plan’s Termination Date are “jointly and severally liable for *any* premiums required to be paid by each contributing sponsor.”<sup>64</sup>

52. Termination Premiums are payable over three 12-month periods beginning the month following the month of the Termination Date.<sup>65</sup> However, there is a special rule when a pension plan is terminated during a bankruptcy organization under Chapter 11 of the Bankruptcy Code (“Special Rule”):

“In the case of a single-employer plan terminated under section 4041(c)(2)(B)(ii) or under section 4042 during pendency of any bankruptcy *reorganization* proceeding

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<sup>63</sup> See 29 U.S.C. §1306(a)(7), as amended by § 8101(b) the Deficit Reduction Act of 2005 (Pub. L. 109B171) and by §§ 401(b) and 402(g)(2)(B) of the Pension Protection Act of 2006 (Pub. L. 109B280).

<sup>64</sup> 29 U.S.C. § 1307(e)(2) (emphasis added).

<sup>65</sup> 29 U.S.C. §1306(a)(7)(C).

under chapter 11 of title 11, United States Code, or any similar law...[the Termination Premiums] shall not apply to such plan until the date of the discharge or dismissal of such person in such case.”<sup>66</sup>

53. Contrary to BFG and the Committee’s assertions, the Special Rule does not apply when a pension plan terminates while a debtor is *liquidating* in Chapter 11. The statute explicitly provides that the Special Rule applies only in Chapter 11 reorganizations, not in Chapter 11 liquidations or in Chapter 11 cases in general. To apply the Special Rule to Chapter 11 liquidations would be at odds with the plain language of the statute and would render the word “reorganization” meaningless, which is not a permissible interpretation of the statute.<sup>67</sup>

54. Moreover, because a debtor liquidating in Chapter 11 never receives a discharge, adopting BFG and the Committee’s interpretation would produce a result that the Termination Premiums would never arise as to that debtor. Furthermore, if the debtor is the “designated payor” under 29 U.S.C. § 1307(d)—i.e., the contributing sponsor of a pension plan—then the Termination Premiums would not arise as to that debtor or any member of the debtor’s controlled group. This is an absurd result, is contrary to the plain language of the statute, and is not what Congress intended.<sup>68</sup>

55. The court’s decision in *PBGC v. Oneida Ltd.* does not support BFG’s and the Committee’s position. In that case, Oneida, a company that sponsored three single-employer defined-benefit pension plans, filed for Chapter 11 on March 19, 2006, with a pre-negotiated disclosure statement and plan of reorganization. It was not seeking to liquidate in bankruptcy.<sup>69</sup> On May 6, 2006, while Oneida was still in bankruptcy, one of its pension plans was terminated.<sup>70</sup>

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<sup>66</sup> 29 U.S.C. §1306(a)(7)(B) (emphasis added).

<sup>67</sup> See *PBGC v. Asahi Tec Corp.*, 2013 WL 550191 at \*19 (D.D.C. Oct. 4, 2013) (“the need to give each word in the provision some meaning is an important consideration”).

<sup>68</sup> See *Asahi*, 2013 WL 550191 at \*19-20.

<sup>69</sup> *In re Oneida*, 383 B.R. 29, 33 (Bankr. S.D.N.Y. 2008).

<sup>70</sup> *Id.* at 34.

The debtor’s plan of reorganization was confirmed on August 30, 2006.<sup>71</sup> The bankruptcy court held that the Termination Premiums arising from that plan termination was a dischargeable pre-petition contingent claim.<sup>72</sup> The Second Circuit reversed, finding that under applicable non-bankruptcy law—i.e., the Special Rule under ERISA section 1306(a)(7)(B)—Oneida was not obligated to pay the Termination Premiums until it was discharged from bankruptcy.<sup>73</sup> The purpose of the Special Rule, the court reasoned, “is to prevent employers from evading the Termination Premiums while seeking *reorganization* in bankruptcy.”<sup>74</sup> Oneida filed for bankruptcy within weeks after passage of the law providing for Termination Premiums, was reorganizing in bankruptcy and appeared to have no unsecured creditors other than the pension plans and PBGC.<sup>75</sup> Oneida’s actions were of the very kind that Congress was seeking to address with the Special Rule.<sup>76</sup> Here, TPOP, Revstone and Spara are not seeking to reorganize, but to liquidate.

56. Moreover, the Committee’s reliance on *In re: Commercial Mortgage Co.* is not persuasive. In that case, the judge appeared to rule from the bench (expressly stating he did not intend to publish his decision) that he did not find a claim for Termination Premiums where the debtor was liquidating in Chapter 11. But even that ruling is not clear, as the court said,

“Yeah. I’ve got to admit I’m a little conflicted on whether or not—there’s clearly no administrative claim, and it would seem to me that [PBGC] wouldn’t even have a claim, period, because of the way [29 U.S.C. §1306] works, but I’m unclear about—maybe the point is it’s just an unsecured claim because it never comes into being...”<sup>77</sup>

And with respect to the *Oneida* decision, the court said,

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 47.

<sup>73</sup> *PBGC v. Oneida Ltd.*, 562 F.3d 154, 156-57 (2nd Cir. 2009).

<sup>74</sup> *Id.* at 157 (emphasis added).

<sup>75</sup> *In re Oneida*, 383 B.R. at 33.

<sup>76</sup> *See Oneida*, 562 F.3d at 157.

<sup>77</sup> Transcript of Record at 61, *In re Commercial Mortgage Co.*, No. BK-S-06-10725 (Bankr. D. Nev. April 17, 2008).

“*I’m not sure I disagree* or I don’t have that circumstance, but it would seem to me that the logic would follow that you [PBGC] don’t even have a claim because it doesn’t even arise until after confirmation.”<sup>78</sup>

57. The District Court in *PBGC v. Asahi Tec Corp.*, the only published opinion on this issue, recently considered the position adopted by BFG and the Committee and rejected it.<sup>79</sup> In considering Asahi Tec’s argument that Congress intended that debtors liquidating in Chapter 11 would never be liable for Termination Premiums, the court said:

“There is nothing about section 1306(a)(7)(B) that indicates that the special rule was meant to be an exception to the liability for termination premiums imposed in section 1306(a)(7)(A) for a category of debtors. The text reveals that the special rule is meant to be a timing provision only.”<sup>80</sup>

The court specifically rejected the argument that *Oneida* limits Termination Premiums liability to those debtors who are reorganizing in bankruptcy and exempts those debtors who are liquidating.<sup>81</sup> Therefore, the court found that under the plain language of the statute, Termination Premiums are imposed on debtors regardless of whether they are liquidating or reorganizing in bankruptcy.<sup>82</sup>

58. Here, TPOP (the contributing sponsor of the Hillsdale Plans) and Revstone and Spara (controlled group members of TPOP) are liquidating in Chapter 11, not reorganizing. As such, the Special Rule does not apply to any of these debtors. When the Hillsdale Plans terminate, TPOP and each of its controlled group members—including Revstone and Spara—will be liable to PBGC for Termination Premiums pursuant to 29 U.S.C. § 1306(a)(7)(A), and PBGC’s contingent claim for Termination Premiums liability will mature. Similarly, when the

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<sup>78</sup> *Id.* at 64 (emphasis added).

<sup>79</sup> 2013 WL 550191 at \*20.

<sup>80</sup> *Asahi*, 2013 WL 550191 at \*20.

<sup>81</sup> 2013 WL 550191 at \*19.

<sup>82</sup> *Id.*

Fairfield Plan terminates, Fairfield, which is not a debtor in bankruptcy, and each of its controlled group members—including TPOP, Revstone and Spara—will be liable for the Termination Premiums with respect to the Fairfield Plan.

## **VII. THE DEBTORS AND THEIR AFFILIATES CANNOT AVOID CONTROLLED GROUP LIABILITY**

59. As discussed above, ERISA and the IRC are clear that when a pension plan terminates, the plan sponsor and each member of its controlled group are jointly and severally liable for termination liabilities.<sup>83</sup> A controlled group is a group of trade or businesses linked by at least 80% ownership interest (parent-subsidary) or two or more trades or businesses owned by five or fewer persons (brother-sister) or a combination of the two.<sup>84</sup> PBGC has explicit legal authority to seek payment of 100 percent of the termination liabilities from any or all controlled group members on a joint-and-several basis.<sup>85</sup> Debtors Revstone and Spara and their subsidiaries were in TPOP's controlled group as of the respective Termination Dates. For these reasons, PBGC may seek collection of termination liabilities from the Debtors even though they were not sponsors of the Pension Plans.

60. BFG and the Committee incorrectly assert that the Debtors may have been able to avoid controlled group liability if only US Tool and Greenwood Forgings converted their cases to Chapter 7 and confirmed a plan of reorganization for Spara before the Termination Action and each Pension Plans' Termination Date. Aside from the reality that speculation over what *could* have been done has no legal significance to the 9019 Motion, BFG and the Committee's argument ignores the fact that controlled group liability is fixed as of the Termination Date. “[A]ny person who is, on the Termination Date, a contributing sponsor of the plan or a member

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<sup>83</sup> I.R.C. § 414(b), (c).

<sup>84</sup> I.R.C. § 414(b), (c).

<sup>85</sup> 29 U.S.C. § 1362(b)(1)(A).

of such contributing sponsor's controlled group shall incur liability" and that liability is joint and several.<sup>86</sup> As such, the date the Termination Action commenced is irrelevant to determining controlled group liability.

61. Additionally, even if US Tool and Greenwood Forgings took steps prior to the Termination Dates to avoid liability by removing themselves from the TPOP and Fairfield controlled group, those entities would still be subject to controlled group liability. 29 U.S.C. §1369 states that if a person enters into any transaction for the principal purpose of evading controlled group liability and such transaction takes place within five years of the Termination Date, that person will be subject to liability as if such person were a contributing sponsor of the plan on the Termination Date.

62. Because US Tool and Greenwood were in the TPOP and Fairfield controlled group as of the Termination Dates, those entities are jointly and severally liable for termination obligations with respect to the Pension Plans.

#### **VIII. LIABILITY FOR PBGC'S CLAIMS IS JOINT AND SEVERAL AGAINST ALL CONTROLLED GROUP MEMBERS REGARDLESS OF NET WORTH**

63. ERISA clearly provides that the termination liability owed to the PBGC is incurred by the plan sponsor and its controlled group members, jointly and severally, as of the Termination Date.<sup>87</sup> Moreover, the statute provides that the amount of the Unfunded Benefit Liabilities, plus interest, is calculated from the Termination Date in accordance with the regulations prescribed by PBGC.<sup>88</sup>

64. BFG and the Committee challenge the amount as well as the joint-and-several aspect of PBGC's claims, asserting that PBGC must identify the controlled group liable for

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<sup>86</sup> 29 U.S.C. § 1362(a).

<sup>87</sup> 29 U.S.C. §§ 1362(a), (b).

<sup>88</sup> 29 U.S.C. §§ 1362(a), (b).

obligations relating to the Pension Plans, calculate the controlled group's net worth, and seek recovery first from solvent members of the controlled group before recovering from the Debtors.

65. First, contrary to BFG's and the Committee's assertions, PBGC's identification of all controlled group members and calculation of 30 percent of the controlled group's net worth are irrelevant to the calculation of PBGC's allowable claims.

66. 29 U.S.C. §§ 1362 (a)-(c) clearly state who is liable—the plan sponsor and its controlled group members—and for what amount—total Unfunded Benefit Liabilities. Section 1362(b)(2) merely addresses collection issues. Section 1362(b)(2)(B), the “Special Rule,” directs the parties to make an effort to reach agreement on payment of liability that exceeds 30% of the net worth of the controlled group: payment of such liability shall be made on commercially reasonable terms. That is exactly what the Debtors and PBGC have done. There is no basis whatsoever for BFG and the Committee's assumption that “commercially reasonable terms” involves long term periodic payments or deferral of payments.

67. Second, there is no requirement that PBGC must first seek recovery from solvent controlled group members. Despite ERISA's clear language concerning joint and several liability, BFG and the Committee assert that PBGC should be required to first seek satisfaction of its claims against solvent controlled group members, and that it would be inequitable to force creditors of Revstone and other Debtors to share with PBGC in their recovery.

68. BFG and the Committee do not address the common and well-known definition of “joint and several liability,” or why that plain meaning should not apply here. Based on ERISA's plain language, courts have widely recognized the joint and several nature of PBGC's claims.<sup>89</sup> Joint and several liability means that every liable entity, including each of the Debtors,

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<sup>89</sup> See, e.g., *PBGC v. Beverley*, 404 F.3d 243, 247 (4th Cir. 2005) (discussing PBGC's joint and several claims against the plan sponsor and members of its controlled group); *PBGC v. E. Dayton Tool & Die Co.*, 14 F.3d 1122,

is responsible for the entire liability, and can be pursued directly at PBGC's option.<sup>90</sup> The discretion of the creditor in deciding whom to pursue for the liability is central to the definition of joint and several liability.<sup>91</sup> Accordingly, courts have rejected attempts to reduce a defendant's joint and several pension plan liability under ERISA based on a plaintiff's ability to recover from other defendants.<sup>92</sup>

69. Instead, to support their position, BFG and the Committee rely on the court's decision in *PBGC v. Ouimet Corp.*, 711 F.2d 1085 (1st Cir. 1983) ("*Ouimet II*"). But *Ouimet II*'s holding is limited to the facts of that case and an earlier provision of ERISA that limited PBGC's Unfunded Benefit Liabilities claim to 30% of the employer's net worth of the controlled

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1126-27 (6th Cir. 1994) (same); *Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Corp. (In re Chateaugay)*, 973 F.2d 141, 142 (2d Cir. 1992) (same); *PBGC v. Am. Shelter Indus., Inc.*, 821 F. Supp. 1465 (M.D. Fla. 1993) (finding members of the plan sponsor's controlled group jointly and severally liable for the unfunded benefit liabilities).

<sup>90</sup> See *SEC v. J.W. Barclay & Co.*, 442 F.3d 834, 843 (3d Cir. 2006) ("A liability is joint and several when the creditor may sue one or more of the parties to such liability separately, or all of them together, at his [or her] option.") (internal citations omitted); *Janney Montgomery Scott, Inc. v. Shepard Niles, Inc.*, 11 F.3d 299, 412 (3d Cir. 1993); *Tavery v. United States*, 897 F.2d 1032, 1034 (10th Cir. 1990); *Martin v. Auto. Lamborghini Exclusive, Inc.*, 307 F.3d 1332, 1336 (11th Cir. 2012) (discussing appellants' joint and several liability for sanctions, and citing Black's Law Dictionary for the definition of "joint and several liability"); BLACK'S LAW DICTIONARY 997 (9th ed. 2009) ("Liability that may be apportioned either among two or more parties or to only one or a few select members of the group, at the adversary's discretion.").

<sup>91</sup> See *J.W. Barclay*, 442 F.3d at 843; *Tavery*, 897 F.2d at 1034; *Martin*, 307 F.3d at 1336.

<sup>92</sup> See *PBGC v. Reorganized CF&I Fabricators of Utah, Inc. (In re CF&I Fabricators of Utah, Inc.)*, 179 B.R. 704, 711-12 (D. Utah 1994) (affirming bankruptcy court's determination that ERISA mandated application of joint and several liability for PBGC's claims, even if it may impact other creditors); see also *Cent. States, Se. & Sw. Areas Pension Fund v. Chatham Props.*, 929 F.2d 260, 263-64 (6th Cir. 1991) (rejecting appellant controlled-group members' suggestion that the court should create an exception to their joint and several liability for withdrawal from a multiemployer pension plan); *Cent. States, Se. & Sw. Areas Pension Fund v. Lloyd L. Sztanyo Trust*, 693 F. Supp. 531, 540-41 (E.D. Mich. 1988) (striking defendant's affirmative defense that a multiemployer pension fund had waived its rights against defendants by first pursuing other jointly and severally liable entities); *In re Ne. Dairy Co-op. Fed'n, Inc.*, 88 B.R. 21, 23-24 (Bankr. N.D.N.Y. 1988) (rejecting dairy cooperative's argument that a multiemployer pension fund's withdrawal liability claim should be reduced by any amounts recovered from another member of its jointly and severally liable controlled group).

group.<sup>93</sup> In 1987, Congress eliminated any limitation on the amount of PBGC's claim for Unfunded Benefit Liabilities from ERISA.<sup>94</sup>

70. Moreover, soon after *Ouimet II* was decided, the court in *PBGC v. Anthony Co.* discredited *Ouimet II* by explicitly rejecting the holding and the court's reasoning: "this Court is left entirely unpersuaded by the *Ouimet II* rationale."<sup>95</sup>

71. *Ouimet II* partially reaffirmed the First Circuit's earlier holding in the same case, 630 F.2d 4, 12 (1st Cir. 1980) ("*Ouimet I*"), that multiple corporations under "common control" were a "single employer" for purposes of the Section 1362(b) 30 percent of net worth calculation. Two of the corporations within that "single employer" group had gone bankrupt and terminated their pension plans. The court in *Anthony* explained,

"[e]ven though *Ouimet I* had affirmed the district court's imposition of joint and several liability on the entire [controlled group] (including the bankrupt corporations), *Ouimet II*...shifted ground entirely: It apportioned the *Section 1362(b)* liability solely among the solvent, non-bankrupt [controlled group] members...Any straightforward reading of *Section 1362(b)* reveals there is something very bizarre about the *Ouimet II* construction."<sup>96</sup>

The *Anthony* court pointed out that Section 1362(b) literally placed liability on the "employer" and in the *Ouimet* employer group, the actual employer – the one with employee participants in the terminated plan—was in bankruptcy.<sup>97</sup> Therefore, the court posited, the First Circuit's reading of Section 1362(b) in *Ouimet II* would result in the following language: "any employer [including the common-control affiliates of the actual employer but *excluding* the actual

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<sup>93</sup> See Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, § 4062(A)(2), 88 Stat. 829 (1974) (amended thereafter).

<sup>94</sup> See 29 U.S.C. §§ 1082, 1307, 1362; see also *PBGC v. Am. Shelter Indus., Inc.*, 821 F. Supp. 1465, 1467 (M.D. Fla. 1993) (discussing the 1987 amendments to ERISA that removed any net worth limitations on PBGC's claim for unfunded benefit liabilities).

<sup>95</sup> 575 F. Supp. 953, 956 (N.D. Ill. 1983).

<sup>96</sup> *Id.* at 955.

<sup>97</sup> *Id.* at 956.

employer itself]...shall be liable” and “the plain language of *Section 1362(b)* does not really allow for such a skewed reading.”<sup>98</sup>

72. The *Ouimet II* decision is unpersuasive and contrary to the plain language of Section 1362. On the other hand, courts have widely recognized the validity of PBGC’s joint and several claims and have rejected ERISA defendants’ attempts to reduce their joint and several liability.<sup>99</sup>

73. Alternatively, the Committee, in a footnote, urges the Court to require PBGC to pursue payment of PBGC’s claims from solvent controlled group members through the doctrine of equitable marshalling. ERISA specifically provides for joint and several liability of PBGC’s claims and the common law doctrine of equitable marshalling is at direct odds with provisions in ERISA. As such, the doctrine of equitable marshalling is preempted by ERISA and cannot be applied to PBGC’s claims.<sup>100</sup>

74. For the foregoing reasons, PBGC is not required to identify all controlled group members or complete a 30-percent net worth calculation to calculate its allowable claims. TPOP, Fairfield, and each member of its controlled group (including the Debtors) are jointly and severally liable for the full amount of the Pension Plans’ Unfunded Benefit Liabilities and PBGC is not required to seek recovery from solvent controlled group members before recovering from the Debtors. Furthermore, payment of such liability is proper as PBGC negotiated such payment on commercially reasonable terms.

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<sup>98</sup> *Id.*

<sup>99</sup> *See In re CF&I Fabricators of Utah, Inc.*, 179 B.R. at 711-12 (affirming bankruptcy court’s determination that ERISA mandated application of joint and several liability for PBGC’s claims); *see also Cent. States, Se. & Sw. Areas Pension Fund v. Chatham Props.*, 929 F.2d 260, 263-64 (6th Cir. 1991) (rejecting suggestion that the court should create an exception to joint and several liability); *Cent. States, Se. & Sw. Areas Pension Fund v. Lloyd L. Sztanyo Trust*, 693 F. Supp. 531, 540-41 (E.D. Mich. 1988) (striking defendant’s affirmative defense that a multiemployer pension fund had waived its rights against defendants by first pursuing other jointly and severally liable entities); *In re Ne. Dairy Co-op.*, 88 B.R. 21, 23-24 (Bankr. N.D.N.Y. 1988) (rejecting the argument that a withdrawal liability claim should be reduced by any amounts recovered from another controlled-group member).

<sup>100</sup> *See* 29 U.S.C. § 144(a); *Boggs v. Boggs*, 520 U.S. 833, 841 (1997).

**IX. ISSUES REGARDING CLAIMS AGAINST GREENWOOD FORGINGS',  
INSURANCE PREMIUMS, MINIMUM FUNDING CONTRIBUTIONS AND  
PRIORITY CLAIMS DO NOT IMPACT THE SETTLEMENT**

75. The plan sponsor and members of its controlled group are jointly and severally liable for the payment of Minimum Funding Contributions and Insurance Premiums.<sup>101</sup> However, as noted above, PBGC believes no Minimum Funding Contributions or Insurance Premiums are currently due. Therefore, the Settlement Agreement is not premised on those claims and, thus, PBGC's claims for Minimum Funding Contributions and Insurance Premiums are not relevant to the Settlement Agreement and approval of the 9019 Motion. For the same reason, PBGC's entitlement to priority for portions of those claims is not at issue.

76. One of the Debtors, Greenwood Forgings, is an obligor to the Pension Plans under the terms of a note that is a subject of the DOL litigation. The Pension Plans' claim against Greenwood forging presents complex issues regarding collateral that the Debtors and the Pension Plans have been investigating. Amounts due under the note were not a meaningful aspect of the settlement and need not be resolved in the context of the 9019 Motion presently before this Court. The Settlement Agreement provides the PBGC with a unitary unsecured claim that subsumes the claim under the Greenwood note.

**X. SUPPLEMENTAL ARGUMENTS RAISED BY THE COMMITTEE  
SHOULD BE REJECTED**

77. The Committee also inaccurately asserts that only the bankrupt Debtors are being held responsible for the PBGC claims. As discussed above, 29 U.S.C. § 1362 prescribes that all members of a controlled group, including bankrupts, are jointly and severally liable for PBGC's claims—*i.e.*, PBGC can pursue collection of its claims against any or all controlled members, including bankrupt members.

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<sup>101</sup> See 29 U.S.C. § 1362(b)(1)(A), 29 U.S.C. § 1307(e)(2), 29 U.S.C. § 1082(b); 26 U.S.C. § 412(b).

78. Nonetheless, the Settlement Agreement does not provide that PBGC is to recover on its claims solely from the Debtors. In fact, the Settlement Agreement provides that the majority of distributions expected to be made to PBGC will come from the assets of non-debtors. The only debtor from which PBGC expects a distribution is TPOP, the unsecured creditors of which are not represented by the Committee. Moreover, the largest unsecured creditors holding the majority of claims at the TPOP estate are comprised of PBGC, the DOL and the Pension Plans, the claims of which are all addressed unitarily under the Settlement Agreement.

79. Not only is no distribution expected from the Debtors here (*i.e.*, from Revstone, Spara, U.S. Tool, and Greenwood Forgings) but the Settlement Agreement provides for a reduced recovery on PBGC's claims in order for value from non-debtor subsidiaries of Revstone and Spara to be available for the benefit of those estates—value which would not be available to the Revstone and Spara estates absent the Settlement Agreement. Thus, the Committee's argument that the Debtors are inequitably being held responsible for the PBGC claims is mistaken.

80. The Committee also asserts that PBGC's claims should be disallowed as duplicative of the claims filed by the current Pension Plans' trustees. This assertion is mooted by the Settlement Agreement itself, which provides that all of the claims filed on behalf of the Pension Plans, whether by the PBGC, DOL, or the current plan trustees, are unitarily settled by PBGC's recovery on its allowed claim. Even if the Settlement Agreement is not approved, PBGC has claims independent of the Pension Plans for Unfunded Benefit Liabilities<sup>102</sup> and

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<sup>102</sup> 29 U.S.C. §§ 1342, 1362.

Statutory Premiums,<sup>103</sup> and only brings claims on behalf of the Pension Plans for unpaid Minimum Funding Contributions,<sup>104</sup> which are currently zero.

*The remainder of this page is intentionally left blank.*

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<sup>103</sup> 29 U.S.C. §§ 1306, 1307.

<sup>104</sup> See 29 U.S.C. §§ 1082(b) and 1362(c); 26 U.S.C. § 412(b).

## CONCLUSION

The factual basis for PBGC's claims is amply demonstrated in PBGC's expert report. The objectors' contentions have no factual support and rely primarily on disfavored or unsupported legal positions. However, the Court need not resolve those legal disputes, since it is clear that litigation with the PBGC over those issues would be costly, time consuming, and very likely unsuccessful. The interests of all stakeholders are clearly served by the proposed Settlement Agreement, which not only averts litigation over claims issues, but also resolves the pending pension plan termination complaints, and removes TPOP from the DOL litigation.

WHEREFORE, PBGC respectfully requests that this Court overrule BFG and the Committee's Objections and approve the Settlement Agreement between PBGC and the Debtors.

Dated: March 20, 2014  
Washington, D.C.

Respectfully Submitted,

/s/ Desiree M. Amador  
ISRAEL GOLDOWITZ  
Chief Counsel  
KAREN L. MORRIS  
Deputy Chief Counsel  
KARTAR S. KHALSA  
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# EXHIBIT A

**Report of  
Cynthia R. Travia, ASA, EA  
Senior Actuary  
Pension Benefit Guaranty Corporation**

**In the Matters of**

**In re Revstone Industries, LLC, et. al, case no. 12-13262 (BLS)**

**and**

**In re TPOP, LLC, case no. 13-11831 (BLS)**

**In the  
United States Bankruptcy Court for the District of Delaware**

**March 12, 2014**

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## **I. Introduction**

This report is submitted in connection with the following matters: In re Revstone Industries, LLC, et. al., case no. 12-13262 (BLS) and In re TPOP, LLC, case no. 13-11831 (BLS). The report was prepared to document the PBGC's calculations of unfunded benefit liabilities for the Hillsdale Hourly Pension Plan ("Hourly Plan"), Hillsdale Salaried Pension Plan ("Salaried Plan" and, together with the Hourly Plan, the "Hillsdale Plans"), and Revstone Casting Fairfield GMP Local 359 Pension Plan ("Fairfield Plan" and, together with the Hillsdale Plans, the "Pension Plans"). Included in this report are a description of the source data and the assumptions and methods used in the calculation and a summary of the results of the unfunded benefit liabilities for the Pension Plans.

## **II. Qualifications**

I am a Senior Actuary in the Corporate Finance and Restructuring Department (CFRD) of the Pension Benefit Guaranty Corporation (PBGC). I began working for the PBGC in February, 2004 as an Actuary and was promoted to Senior Actuary in March, 2009. During my employment at PBGC, I have performed or reviewed calculations of unfunded benefit liabilities according to Title IV of ERISA for more than 500 large pension plans (plans in excess of 5,000 participants or greater than \$50 million in unfunded benefit liabilities).

I am an Associate of the Society of Actuaries (ASA) and received the designation in May, 2001 after passing 14 actuarial exams. I am required to report compliance annually with the continuing professional development requirements as outlined by the Society of Actuaries. I became an Enrolled Actuary in September, 2004, which required me to pass two exams related specifically to pension plans. Enrolled actuaries are certified by the Joint Board established under the Employee Retirement Income Security Act of 1974 ("ERISA") 29 U.S.C. §§ 1301-1461 (2006 & Supp. V 2011), and must also attest to compliance with continuing education credits.

In my current position at PBGC, I am the team leader for five actuaries who are all credentialed as either Enrolled Actuaries or members of the Society of Actuaries. I am also responsible for overseeing the work of the actuarial consulting firms that are contracted by

PBGC to support CFRD. CFRD actuaries and PBGC's actuarial contractors calculate unfunded liabilities for pension plans sponsored by companies in economic distress or for pension plans whose sponsors are completing certain types of business transactions. We also calculate projections of pension plan minimum funding requirements in order to analyze the affordability of that plan for its sponsor.

Prior to joining PBGC, I was a Senior Consultant with PriceWaterhouseCoopers ("PWC"). I worked for 8½ years in actuarial consulting at PWC. I was responsible for managing work related to actuarial calculations for over 20 pension plans ranging in size from 15 to 10,000 participants. My duties included individual pension benefit calculations, actuarial funding valuation reports, as well as all required actuarial calculations and government forms filings for the clients that I managed.

I co-authored a Reportable Events Study Note for the Joint Board for the Enrollment of Actuaries Exam EA-2b. A resume is attached to this report as Exhibit A.

### **III. Background**

Metavation, LLC ("Metavation")<sup>1</sup> is a limited liability company, organized under the laws of Delaware, with its principal places of business located in Southfield, Michigan and Lexington, Kentucky. Metavation filed for Chapter 11 bankruptcy protection on July 22, 2013 in the United States Bankruptcy Court for the District of Delaware, case no. 13-11831 (BLS). On August 30, 2013, the court entered an order approving the sale of substantially all of Metavation's operating assets to Dayco Products, LLC, docket no. 216.

Metavation is the contributing sponsor of the Hillsdale Plans. The Hourly Plan is a tax-qualified, single-employer defined benefit pension plan that was established on December 1, 2006 and covers 1,153 participants. The Salaried Plan is a tax-qualified, single-employer defined benefit pension plan that was established on December 1, 2006 and covers 370 participants. The Hillsdale Plans were both frozen for future benefit accruals on January 31, 2009.

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<sup>1</sup> Metavation is now TPOP, LLC.

Fairfield Castings, LLC (“Fairfield”) is a limited liability company, organized under the laws of Delaware, with its headquarters located in Lexington, Kentucky and its principal place of business in Fairfield, Iowa. Fairfield is the contributing sponsor of the Fairfield Plan. The Fairfield Plan is a tax-qualified, single-employer defined benefit pension plan that was established on April 8, 1967 and covers 311 participants. The Fairfield Plan was frozen for future benefit accruals on March 31, 2011.

I have been informed that on August 9, 2012, the Department of Labor filed a complaint in the United States District Court for the Eastern District of Kentucky against Metavation, the Hillsdale Plans, and other parties alleging fiduciary breaches causing the Hillsdale Plans losses totaling approximately \$34.6 million, case number 12-cv-00250 (KKC). On May 30, 2013, the Department of Labor filed a complaint in the United States District Court for the Eastern District of Kentucky against Fairfield, the Fairfield Plan, and other parties alleging fiduciary breaches causing the Fairfield Plan losses totaling approximately \$4.4 million, case number 13-cv-00156 (KSF).

I have been informed that on March 1, 2013, in accordance with 29 U.S.C. § 1342(c), PBGC issued Notices of Determination to Metavation as plan administrator of the Hillsdale Plans (“Metavation Notices”), notifying Metavation that PBGC had determined that the Hillsdale Plans will be unable to pay benefits when due and that the possible long-run loss of the PBGC with respect to the Hillsdale Plans may reasonably be expected to increase unreasonably if the Hillsdale Plans are not terminated. The Metavation Notices also stated that PBGC determined, under 29 U.S.C. § 1342(c), that the Hillsdale Plans must be terminated in order to protect the interests of participants and to avoid any unreasonable increase in liability of the PBGC insurance fund. The Metavation Notices further stated that PBGC intended to proceed to seek termination of the Hillsdale Plans, have PBGC appointed as trustee of the Hillsdale Plans, and establish March 1, 2013, as the date of termination for the Hillsdale Plans.

I have been informed that on August 23, 2013 PBGC issued revised Notices of Determination (“Revised Notices”) to Metavation as plan administrator of the Hillsdale Plans, notifying Metavation that PBGC had determined that the Hillsdale Plans should be terminated because they will be unable to pay benefits when due and that the possible long-run loss to PBGC may

reasonably be expected to increase unreasonably if the Hillsdale Plans are not terminated. The Revised Notices also stated that PBGC has determined, under 29 U.S.C. § 1342(c), that the Hillsdale Plans must be terminated in order to protect the interests of participants and to avoid any unreasonable increase in liability of the PBGC insurance fund. The Revised Notices further stated that PBGC intended to proceed to seek termination of the Hillsdale Plans, have PBGC appointed as trustee of the Hillsdale Plans, and establish March 1, 2013, as the date of termination for the Hillsdale Plans.

I have been informed that on August 29, 2013, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination to Fairfield as plan administrator of the Fairfield Plan (“Fairfield Notice”), notifying Fairfield that PBGC had determined that the Fairfield Plan will be unable to pay benefits when due and that the possible long-run loss to PBGC may reasonably be expected to increase unreasonably if the Fairfield Plan is not terminated. The Fairfield Notice also stated that PBGC has determined, under 29 U.S.C. § 1342(c), that the Fairfield Plan must be terminated in order to protect the interests of participants and to avoid any unreasonable increase in liability of the PBGC insurance fund. The Fairfield Notice further stated that PBGC intended to proceed to seek termination of the Fairfield Plan, have PBGC appointed as trustee of the Fairfield Plan, and establish August 29, 2013, as the date of termination for the Fairfield Plan.

I have been informed that on March 1, 2013, PBGC caused notices to be published in the Detroit Free Press and the Lexington Herald-Leader advising the Hillsdale Plans’ participants of PBGC’s determination both to terminate the Hillsdale Plans and to have March 1, 2013, established as the Hillsdale Plans’ termination date. I further understand that on August 29, 2013, PBGC caused notices to be published in the Fairfield Daily Ledger and the Lexington Herald-Leader advising the Fairfield Plan participants of PBGC’s determination both to terminate the Fairfield Plan and to have August 29, 2013 established as the Fairfield Plan termination date.

#### IV. Summary of Findings

PBGC calculates the unfunded benefit liabilities of each Pension Plan as follows:

Pension Plan	Unfunded Benefit Liabilities(\$M)
Hillsdale Hourly Pension Plan	\$59.2
Hillsdale Salaried Pension Plan	\$26.0
Revstone Casting Fairfield GMP Local 359 Pension Plan	\$5.0

#### V. Unfunded Benefit Liabilities

a. Definition

Under ERISA section 4001(a)(18), unfunded benefit liabilities means, as of any date, the excess of the value of the benefit liabilities, determined using the assumptions described in ERISA section 4044, over the current value of the plan assets as of such date. ERISA section 4062 states that when a pension plan terminates, the plan sponsor and all members of its controlled group are liable to the PBGC in the amount of the unfunded benefit liabilities determined as of the plan’s termination date.

b. Source Documents for Basis of Calculating Benefit Liabilities

A pension plan’s actuary determines the plan’s funding target as described in Internal Revenue Code (“IRC”) section 430(d) (“Funding Target”) through a process called an actuarial valuation. A calculation is performed to determine each participant’s benefit amount earned as of the valuation date based on certain assumptions. Assumptions such as discount rate, expected retirement age, probability of termination, death, or disability, and benefit form of payment are used to calculate the actuarial present value of each participant’s benefit as of the valuation date. The total Funding Target for the plan is the actuarial present value of all benefits accrued or earned under the plan as of the beginning of the plan year and is shown in an annual actuarial valuation report (“AVR”) completed

by the plan actuary. AVRs are completed by plan actuaries annually for ongoing pension plans for purposes of determining the minimum required contributions due according to IRC section 430. The assumptions used by the plan actuary are disclosed in the AVR.

For the Hourly Plan and Salaried Plan, the benefit liabilities based on the assumptions described in ERISA section 4044 were calculated by PBGC using information provided by the plan actuary, Bryan, Pendleton, Swats & McAllister, LLC (“BPS&M”), and which PBGC understands will be included in each plan’s AVR as of December 1, 2012. For the Fairfield Plan, the benefit liabilities based on the assumptions described in ERISA section 4044 were calculated by PBGC using information provided by plan’s actuary, BPS&M, and which PBGC understands will be included in the plan’s AVR as of January 1, 2013. The Funding Target received from the Pension Plans’ actuary was adjusted to reflect the assumptions prescribed by ERISA section 4044. The methods used to adjust the plan actuary’s Funding Target as well as details about the assumptions are described below.

c. Determination of Benefit Liabilities

To determine the benefit liabilities under ERISA section 4044 for each of the Pension Plans, CFRD actuaries made adjustments to the Pension Plans’ actuary’s calculations of total active participant Funding Target and total retiree Funding Target prepared for each plan’s AVR. For the terminated vested (i.e. participants no longer employed but not yet retired) liability, PBGC directly calculated the liability using individual plan participant data from the plan actuary and the assumptions prescribed under ERISA section 4044. Adjustments were made to the aggregate total of active participant Funding Target and the aggregate total of retiree Funding Target to convert the assumptions used for the purposes of the AVR under IRC section 430 to the assumptions required under ERISA section 4044 and the regulations thereunder. Below is a description of each adjustment.

1. *Early Retirement* – an adjustment was made to the plan actuary’s calculation of Funding Target for each Pension Plan to reflect the change from the average expected retirement age assumed by the actuary to the average expected retirement age prescribed in 29 C.F.R. §4044.57. The adjustments were made by multiplying the plan actuary’s Funding Target by a ratio of present value factors. The

numerator of the ratio reflects the average expected retirement age prescribed in 29 C.F.R. §4044.57 and the early retirement reduction factor defined in the plan for that age. The denominator of the ratio reflects the average expected retirement age assumed by the plan actuary and the early reduction factor defined in the plan for that age.

2. *Passage of Time* – the Hillsdale Plans’ Funding Target reported by the plan actuary for the purposes of the AVR are as of December 1, 2012, and the Fairfield Plan Funding Target reported by the plan actuary for the purposes of the AVR are as of January 1, 2013. An adjustment was made to the each Pension Plan’s Funding Target to add interest from the date of the Funding Target provided by the plan actuary to the date of termination of each Pension Plan. An adjustment was also made to reduce the retiree liability to account for benefit payments made from the date of the Funding Target provided by the actuary to the date of plan termination.
3. *Interest Rate* – 29 C.F.R. § 4044.52(a) prescribes the interest rate factors to be applied in valuing the benefit liabilities of a pension plan. These quarterly interest rate factors are developed by PBGC using survey information provided by the American Council of Life Insurers and, when combined with the prescribed mortality assumption, reflect the market price of group annuity contracts available to discharge pension obligations.

For the Hillsdale Plans, the Funding Target was adjusted to reflect interest rate factors of 2.67% for the first 20 years and 3.01% thereafter, as prescribed in 29 C.F.R. §4044.52(a). These are the rates applicable for plans with termination dates in March, 2013. For the Fairfield Plan, the Funding Target was adjusted to reflect interest rate factors of 2.60% for the first 20 years and 3.43% thereafter, as prescribed in 29 C.F.R. §4044.52(a). These are the rates applicable for plans with termination dates in August, 2013.

4. *Mortality Schedule* – As required by 29 C.F.R. § 4044.52(a), the Funding Target for each plan was adjusted to reflect the mortality table as prescribed in 29 C.F.R. §4044.53.
5. *Expense Load* – an expense load was added to the Pension Plans’ liabilities as prescribed in 29 C.F.R. §4044.52(d).

d. Source Documents for Assumed Value of Assets

To determine the unfunded benefit liabilities for each of the Pension Plans, CFRD actuaries relied on asset valuations from the Debtors’ Chief Restructuring Officer and BPS&M, the methodology of which was reviewed and approved by a CFRD financial analyst. CFRD’s actuaries understand that the calculations of the asset values for each of the Pension Plans were based on October 2013 asset statements and adjusted for contributions, payments and expenses, to determine the value of the assets as of the date of plan termination. The results of those calculations are as follows:

Pension Plan	Termination Date	Value of Plan Assets* as of Termination Date(\$M)
Hillsdale Hourly Pension Plan	March 1, 2013	\$10.2
Hillsdale Salaried Pension Plan	March 1, 2013	\$3.4
Revstone Casting Fairfield GMP Local 359 Pension Plan	August 29, 2013	\$8.9

\* *Numbers are rounded to the nearest hundred thousand.*

## VI. Conclusion and Opinion of Unfunded Benefit Liability Calculations

CFRD actuaries estimated the following amount of unfunded benefit liabilities for the Plan as of the termination date using the assumptions prescribed in ERISA section 4044 and the regulations thereunder.

<b>Pension Plan</b>	<b>Termination Date</b>	<b>Benefit Liability (\$M)</b>	<b>Assumed Market Value of Assets(\$M)</b>	<b>Unfunded Benefit Liabilities(\$M)</b>
Hillsdale Hourly Pension Plan	March 1, 2013	\$69.4	\$10.2	\$59.2
Hillsdale Salaried Pension Plan	March 1, 2013	\$29.4	\$3.4	\$26.0
Revstone Casting Fairfield GMP Local 359 Pension Plan	August 29, 2013	\$13.9	\$8.9	\$5.0
<b>Total</b>		<b>\$112.7</b>	<b>\$22.5</b>	<b>90.2</b>

I understand that the actuary for the Pension Plans independently calculated liabilities based on ERISA section 4044 and the regulations thereunder, and listed below are his results compared to CFRD's actuaries' results:

<b>Pension Plan</b>	<b>Benefit Liability calculated by BPS&amp;M (\$M)</b>	<b>Benefit Liability calculated by CFRD (\$M)</b>	<b>% difference</b>
Hillsdale Hourly Pension Plan	\$70.0	\$69.4	-0.9%
Hillsdale Salaried Pension Plan	\$29.3	\$29.4	0.3%
Revstone Casting Fairfield GMP Local 359 Pension Plan	\$13.6	\$13.9	2.2%
<b>Total</b>	<b>\$112.9</b>	<b>\$112.7</b>	<b>-0.2%</b>

The Pension Plans' actuary's liabilities were based on individual participant benefit calculations for all participants including active, terminated vested, and retired participants.

The liability estimates calculated by PBGC for active and retired participants, on the other hand, were based on aggregate active and retiree Funding Targets provided by the plan actuary and adjusted as described in Section V of this report. The liability estimates calculated by PBGC for terminated vested participants were based on individual participant data provided by the plan actuary. CFRD's estimates of benefit liability for the Hourly Plan, Salaried Plan, and Fairfield Plan differed from the plan actuary's calculations by -0.9%, 0.3%, and 2.2%, respectively. The difference in the liabilities can be explained by the fact that the plan actuary calculated individual benefits for each participant, while CFRD used aggregate adjustments for the active and retiree liabilities. CFRD's estimates are very reasonable for this case because they were in total 0.2% different than the plan actuary's participant-by-participant calculations.

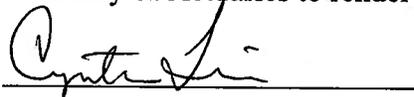
## VII. Certification

The PBGC calculations presented in this report were developed under my supervision. I have reviewed the calculations and find them to be accurate. I certify that these calculations were based on PBGC's normal methods and assumptions for calculating benefit liabilities.

Accordingly, I have concluded that the total estimate of unfunded benefit liabilities for the Pension Plans is \$90.2M. If additional information becomes available, I will re-evaluate my opinion in light of that information, and so reserve the right to supplement this report or to modify or supplement my testimony at trial.

As an employee of the PBGC, I am not being compensated separately for my work as an expert witness in this case.

I, Cynthia Travia, am a Senior Actuary in CFRD at PBGC. I am an Associate of the Society of Actuaries and an Enrolled Actuary. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this report.



Cynthia R. Travia, ASA, EA  
Senior Actuary  
Corporate Finance and Negotiations Department  
Pension Benefit Guaranty Corporation

3/12/2014  
Date

## Exhibit A

**Cynthia Travia**  
**travia.cynthia@pbgc.gov**

### **Professional Designations**

Society of Actuaries - ASA  
Joint Board for the Enrollment of Actuaries - EA

### **Work Experience**

#### **Pension Benefit Guaranty Corporation**

*GS-1510-13*

*February, 2003 – present*

- Leader of team of five actuaries; responsible for assigning and managing work
- Calculate unfunded benefit liabilities for large plans with more than 5,000 participants or \$50 million in unfunded benefit liabilities
- Project minimum funding calculations
- Calculate due and unpaid employer contributions for bankruptcy claims
- Calculate 430(k) liens
- Responsible for the process of calculating liabilities for all large plans where termination is reasonably possible including writing new procedures and completing the calculations for the financial statements
- Complete calculations and forms for plans where termination is probable
- Provide actuarial explanations to non-actuaries

#### **PricewaterhouseCoopers, LLP**

*Senior Consultant*

*June, 1995 – January, 2003*

- Responsible for 8 clients with a total of 21 retirement plans ranging in size from 15 to 10,000 participants
- Complete pension benefit calculations, actuarial funding reports, SFAS 87, SFAS 106 and SFAS 132 reports, accounting information according to GASB 25 and GASB 27, PBGC Forms, 5500 Forms, cost studies for union negotiations and acquisitions, plan design studies, calculations for executives participating in nonqualified plans, calculations for freezing plan benefits and plan termination, and review of summary plan descriptions
- Plan and lead client meetings for a large client who maintains 11 qualified and nonqualified plans
- Responsible for assignment of work, monitoring work flow, and managing deadlines for all associates and consultants
- Office site leader for actuarial exam program

- Recruiting coordinator for associate and consultant hiring

**Education**

**Georgia State University**, Atlanta, Georgia 30302      June, 1995  
Master of Actuarial Science

**Presbyterian College**, Clinton, South Carolina 29325      May, 1993  
Bachelor of Science in Mathematics and Business Administration  
Magna Cum Laude

**Shamrock High School**, Decatur, Georgia 30033      June, 1989

**Publication**

Co-author of Reportable Events Study Note for Joint Board for the  
Enrollment of Actuaries Exam EA-2b

## Exhibit B

### **List of Documents Considered**

1. Hillsdale Hourly Pension Plan, Summary of Participant Data, prepared by BPS&M, LLC. (PBGC-RI-000001-000002)
2. Hillsdale Salaried Pension Plan, Summary of Participant, prepared by BPS&M, LLC. (PBGC-RI-000003-000004)
3. Revstone Casting Fairfield GMP Local 359 Pension Plan, Summary of Participant, prepared by BPS&M, LLC. (PBGC-RI-000005-000006)
4. Hillsdale Hourly Pension Plan 2011 Form 5500. (PBGC-RI-000007-000075)
5. Hillsdale Salaried Pension Plan 2011 Form 5500. (PBGC-RI-000076-000143)
6. Revstone Casting Fairfield GMP Local 359 Pension Plan 2011 Form 5500. (PBGC-RI-000144-000208)
7. Ascalon Enterprises, LLC Pension Information Profile calculated January 24, 2014. (PBGC-RI-000209-000210)
8. Hillsdale Hourly Pension Information Profile and backup calculations. (PBGC-RI-000211-000220)
9. Hillsdale Salaried Pension Information Profile and backup calculations. (PBGC-RI-000221-000231)
10. Revstone Casting Fairfield GMP Local 359 Pension Plan Pension Information Profile and backup calculations. (PBGC-RI-000231-000240)
11. Information on Funding of the Pension Plans, prepared by BPS&M, LLC on January 24, 2014. (PBGC-RI-000241)
12. Hillsdale Hourly Pension Plan, 2012 Demographic Data. (PBGC-RI-000242-000297)
13. Hillsdale Salaried Pension Plan, 2012 Demographic Data. (PBGC-RI-000298-000318)
14. Revstone Casting Fairfield GMP Local 359 Pension Plan, 2012 Demographic Data. (PBGC-RI-000319-000329)
15. Hillsdale Hourly Pension Plan Assets as of October, 2013. (PBGC-RI-000330)
16. Hillsdale Salaried Pension Plan Assets as of October, 2013. (PBGC-RI-000331)
17. Revstone Casting Fairfield GMP Local 359 Pension Plan Assets as of October, 2013. (PBGC-RI-000332)
18. Pension Plan Asset Analysis, prepared by BPS&M, LLC, February 1, 2014. (PBGC-RI-000333-000360)

# EXHIBIT B



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

EIN/PN: 204605884/009

PBGC Case Number: 22217600

Plan Name: Hillsdale Hourly Pension Plan

Metavation, LLC  
2250 Thunderstick Drive, Suite 1203  
Lexington, KY 40505  
Attn: Mr. George Hofmeister, Chairman

### **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 Hillsdale Hourly Pension 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. 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 March 1, 2013, 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

  
\_\_\_\_\_  
Sanford Rich  
Chief of Negotiations and Restructuring



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

EIN/PN: 204605884/014

PBGC Case Number: 22217700

Plan Name: Hillsdale Salaried Pension Plan

Metavation, LLC  
2250 Thunderstick Drive, Suite 1203  
Lexington, KY 40505  
Attn: Mr. George Hofmeister, Chairman

### **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 Hillsdale Salaried Pension 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. 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 March 1, 2013, 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

Sanford Rich  
Chief of Negotiations and Restructuring



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

EIN/PN: 273527976/002

PBGC Case Number: 22315600

Plan Name: Revstone Casting Fairfield GMP  
Local 359 Pension Plan

Revstone Casting Fairfield LLC  
2250 Thunderstick Dr.  
Suite 1203  
Lexington, KY 40505  
Attn: Mr. George Hofmeister

### **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 Revstone Casting Fairfield GMP Local 359 Pension 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. 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 August 29, 2013, 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

Sanford Rich  
Chief of Negotiations and Restructuring

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of March, 2014, the Pension Benefit Guaranty Corporation's Supplemental Response of Pension Benefit Guaranty Corporation to Preliminary Objection of Boston Finance Group to (I) Claims 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 545,546, 547, 548, 549, 550, 551 and 552 Filed by PBGC and (II) the Debtors' Proposed Settlement of PBGC Claims; and PBGC's Response to The Official Committee of Unsecured Creditors of Revstone Industries' (I) Joinder to BFG's Preliminary Objection and (2) Supplemental Objection to PBGC's Claims was served on the following:

<p><b>Timothy P. Cairns</b> <b>Laura Davis Jones</b> <b>Colin R. Robinson</b> Pachulski Stang Ziehl &amp; Jones LLP 919 North Market Street, 17th Floor P.O. Box 8705 Wilmington, DE 19899-8705</p> <p><b>Debtor's Counsel</b> <b>via CM/ECF</b></p>	<p><b>Mark L. Desgrosseilliers</b> <b>Ericka Fredricks Johnson</b> <b>Steven K. Kortanek</b> <b>Matthew P. Ward</b> Womble Carlyle Sandridge &amp; Rice, LLP 222 Delaware Avenue Suite 1501 Wilmington, DE 19801</p> <p><b>Counsel for the Official Committee of Unsecured Creditors</b> <b>via CM/ECF</b></p>
<p><b>Jane M. Leamy</b> Office of the U.S. Trustee 844 King St. Suite 2207 Wilmington, DE 19801</p> <p><b>U.S. Trustee</b> <b>via CM/ECF</b></p>	<p><b>Rust Consulting/Omni Bankruptcy</b> www.omnimgt.com 5955 DeSoto Avenue Suite 100 Woodland Hills, CA 91367</p> <p><b>Claims Agent</b> <b>via CM/ECF</b></p>

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**Counsel for Boston Finance Group, LLC  
via CM/ECF**

/s/ Desiree M. Amador  
Desiree M. Amador

**File an answer to a motion:**[12-13262-BLS Revstone Industries, LLC](#)

Type: bk Chapter: 11 v Office: 1 (Delaware)  
Assets: y Judge: BLS  
Case Flag: SealedDoc(s), LEAD, APPEAL, CLMSAGNT, FeeDue

**U.S. Bankruptcy Court****District of Delaware**

## Notice of Electronic Filing

The following transaction was received from Desiree M. Amador entered on 3/20/2014 at 1:57 PM EDT and filed on 3/20/2014

**Case Name:** Revstone Industries, LLC

**Case Number:** [12-13262-BLS](#)

**Document Number:** [1399](#)

**Docket Text:**

Supplemental Response of Pension Benefit Guaranty Corporation to Preliminary Objection of Boston Finance Group to (I) Claims 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 545, 546, 547, 548, 549, 550, 551 and 552 Filed by PBGC and (II) the Debtors Proposed Settlement of PBGC Claims; and PBGCs Response to The Official Committee of Unsecured Creditors of Revstone Industries (I) Joinder to BFGs Preliminary Objection and (2) Supplemental Objection to PBGCs Claims (related document(s)[1322], [1334], [1376]) Filed by Pension Benefit Guaranty Corporation (Attachments: # (1) Exhibit A-Report of Cynthia R. Travia # (2) Exhibit B-Revised Hillsdale Notices and Fairfield Notices # (3) Certificate of Service) (Amador, Desiree)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**Revstone\_Supplemental Response to BFG Claims Objection\_FINAL.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=3/20/2014] [FileNumber=12342524-0]  
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4bc1ec5a0269c1c6c90727bfc64070e8d5831c9227d377bab7642aa945a07]]

**Document description:**Exhibit A-Report of Cynthia R. Travia

**Original filename:**C:\fakepath\Exhibit A- Report of Cynthia R Travia.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=3/20/2014] [FileNumber=12342524-1]  
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**Document description:**Exhibit B-Revised Hillsdale Notices and Fairfield Notices

**Original filename:**C:\fakepath\Exhibit B- Revised Hillsdale Notices and Fairfield Notice.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=3/20/2014] [FileNumber=12342524-2]  
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**Document description:**Certificate of Service

**Original filename:**C:\fakepath\Revstone\_Supplemental Response\_COS.pdf

**Electronic document Stamp:**

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0ea996fe5558eb1ee9d72a0efed5fecf7c79d13b237db567c59f5ed1dc46]]

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