

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

_____)	Case No. 12-01988 (BWB)
In Re:)	
)	
ROYAL CROWN BOTTLING)	CHAPTER 7
COMPANY OF CHICAGO, INC.,)	
A Delaware Corporation,)	
)	JUDGE BRUCE W. BLACK
)	(Joliet)
Debtor.)	
_____)	

**LIMITED OBJECTION OF THE PENSION BENEFIT GUARANTY CORPORATION
TO THE TRUSTEE’S MOTION FOR AUTHORIZATION TO ABANDON PROPERTY**

PRELIMINARY STATEMENT

The Pension Benefit Guaranty Corporation ("PBGC"), a United States government agency, hereby objects to the above captioned motion (the "Motion").¹ PBGC's objection can be resolved by the Debtor taking adequate steps to preserve its corporate information, participant records and insurance (fiduciary, directors, officers) documents that are related to the defined benefit pension plan formerly sponsored by the Debtor.

BACKGROUND

PBGC is the federal agency which administers the termination insurance program for private-sector defined benefit pension plans and enforces the rules under Title IV of ERISA.² If a pension plan terminates in accordance with Title IV of ERISA without sufficient assets to pay promised benefits, PBGC assumes responsibility for the plan and pays guaranteed pension

¹ Terms not defined herein are defined in the Debtor's Motion.

² 29 U.S.C. § 1301, et seq.

benefits to the workers and retirees.³ PBGC protects the pension benefits of nearly 42 million American workers and retirees participating in about 25,000 private sector defined benefit pension plans.⁴

Upon termination of a pension plan, the contributing sponsor and its controlled group members are jointly and severally liable to PBGC for the pension plan's unfunded benefit liabilities, any unpaid minimum funding contributions owed to the plan, and any unpaid insurance premiums owed to PBGC.⁵ Also, any party who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by Titles I and IV shall be personally liable to pay for any losses to the plan resulting from each such breach.⁶

The above-referenced Debtor was, pursuant to ERISA and the Internal Revenue Code ("Code"), the contributing sponsor of the Retirement Plan for Employees of Royal Crown Bottling Company of Chicago (the "Pension Plan" or "Plan"). The Debtor may have also been a fiduciary with regard to the Pension Plan.⁷

³ See 29 U.S.C. §§ 1322, 1361.

⁴ See 2013 PBGC Annual Report, p. 26, www.pbgc.gov/documents/2013-annual-report.pdf#page=13.

⁵ A group of trades or business under common control, referred to as a "controlled group" includes, for example, a parent and its 80% owned subsidiaries. Another example includes brother-sister groups of trades or businesses under common control. See 29 U.S.C. § 1301(a)(14); 26 U.S.C. § 414(b), (c); 26 C.F.R. §§ 1.414(b)-1, 1.414(c)-2. See 29 U.S.C. § 1307, 1342(d)(1)(B)(ii), 1362.

⁶ 29 U.S.C. §§ 1109(a), 1342(d)(1)(B)(ii).

⁷ See 29 U.S.C. § 1002(21).

On September 21, 2012, the Debtor and PBGC entered into an agreement (“Trusteeship Agreement”) that terminated the Pension Plan, appointed PBGC as the statutory trustee of the Pension Plan, and established the effective date of the Plan’s termination as January 20, 2012. In the Trusteeship Agreement, the Debtor also agreed that it “shall convey and deliver to PBGC any records, assets, or property” relating to the Pension Plan. In addition, PBGC has the statutory authority to require the plan sponsor to furnish any information with respect to the Plan which PBGC may reasonably need in order to administer the Plan.⁸ As statutory trustee of the Pension Plan, PBGC has the authority to pursue and recover lost assets relating to any fiduciary breach committed against the Pension Plan.⁹

ARGUMENT

PBGC objects to the Debtor’s Motion because PBGC requires from the Debtor documents relating to the Pension Plan. First, PBGC requires documents evidencing the complete controlled group, including the Debtor and any non-debtor entities, all of whom are jointly and severally liable for the Plan’s unfunded benefit liabilities, unpaid minimum funding contributions and unpaid premiums.

Second, although it is not yet prepared to publicly identify any particular fiduciary liability(ies), or any other non-debtor controlled group member, PBGC is still investigating transactions with regard to the Pension Plan. Any such claims against the fiduciaries of the

⁸ See 29 U.S.C. § 1342(d)(1)(A)(vii), (B).

⁹ See 29 U.S.C. § 1342(d)(1)(B)(iv).

Pension Plan may involve the pursuit of the Debtor's fiduciary insurance policy and certain present and former directors, officers, employees, and agents who served as the Pension Plan's fiduciaries. Any such claims for controlled group liability would include the pursuit of claims against non-debtor trades or businesses that are in the Debtor's controlled group. Any claims would be separate and distinct from the claims that PBGC filed in the bankruptcy.

In order to properly investigate the foregoing issues, PBGC needs documents that are in the possession of the Debtor. As statutory trustee of the Pension Plan, PBGC is entitled to this information.¹⁰ The Debtor is also obliged to hold Pension Plan information for the benefit of the participants.¹¹

The Debtor can resolve this Objection by one of two ways: (1) the Debtor could make arrangements to ship the documents in question to PBGC; or (2) it can make arrangements with a reputable storage company to hold the data in question. Any arrangements with the storage entity would have to include a provision for unfettered access by PBGC to the documents.

¹⁰ See 29 U.S.C. § 1342(d)(1)(A)(ii), (vii).

¹¹ See 29 U.S.C. § 1059.

CONCLUSION

For the foregoing reasons, PBGC objects to the Motion and requests that the Debtor make arrangements with PBGC either to store the requested documents and give PBGC access, or to deliver the requested documents directly to PBGC.

Dated: Washington, DC
May 27, 2014

Respectfully submitted,

Local Counsel:
Joel R. Nathan
Assistant United States Attorney
United States Attorney's Office
219 S. Dearborn St.
Chicago, IL 60604
Phone: 312-353-5300
E-mail: joel.nathan@usdoj.gov

/s/ Vicente Matias Murrell
ISRAEL GOLDOWITZ
Chief Counsel
CHARLES L. FINKE
Deputy Chief Counsel
ANDREA WONG
Assistant Chief Counsel
VICENTE MATIAS MURRELL
(MD Bar No. 9806240098)
Attorney

PENSION BENEFIT GUARANTY CORP.
Office of the Chief Counsel
1200 K Street, N.W.
Washington, D.C. 20005-4026
Ph: 202-326-4020 (x3580) or
800-400-7242 (x3580)
Fax: 202-326-4112
E-mails: murrell.vicente@pbgc.gov and
efile@pbgc.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May, 2014, the Limited Objection of the Pension Benefit Guaranty Corporation to the Trustee's Motion for Authorization to Abandon Property was served on the following:

<p>Jason J. DeJonker Seyfarth Shaw LLP 131 South Dearborn Street Suite 2400 Chicago, IL 60603-5577</p> <p><i>Debtor's Counsel</i> via CM/ECF</p>	<p>David P. Lloyd David P. Lloyd, Ltd. 615B S. LaGrange Road LaGrange, IL 60525</p> <p><i>Counsel for Debtor and Chapter 7 Trustee</i> via CM/ECF</p>
<p>Peter N. Metrou Metrou & Associates PC 123 W Washington Street, Suite 216 Oswego, IL 60543</p> <p><i>Chapter 7 Trustee</i> via CM/ECF</p>	<p>Patrick S. Layng Office of the U.S. Trustee, Region 11 219 S. Dearborn Street, Room 873 Chicago, IL 60604</p> <p><i>U.S. Trustee</i> via CM/ECF</p>
<p>Joel R. Nathan Assistant United States Attorney United States Attorney's Office 219 S. Dearborn Street, 5th Floor Chicago, IL 60604</p> <p><i>Local Counsel</i> via FedEx</p>	

/s/ Vicente Matias Murrell
Vicente Matias Murrell