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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In Re: : HONORABLE CHRISTINE M. GRAVELLE
SQUIRE CORRUGATED CONTAINER :
CORPORATION, : CASE NO. 13-19920 (CMG)
:
Debtor and : CHAPTER 11
Debtor-in-Possession. :
: HEARING DATE: OCTOBER 1, 2013
:

**OBJECTION OF THE PENSION BENEFIT GUARANTY CORPORATION TO THE
DEBTOR'S DISCLOSURE STATEMENT**

TO: Honorable Christine M. Gravelle

PLEASE TAKE NOTICE that the Pension Benefit Guaranty Corporation ("PBGC"), a United States government agency, on behalf of itself and on behalf of the Squire Corrugated Container Corporation Employee's Pension Plan ("Pension Plan"), hereby objects to the proposed Disclosure Statement of Squire Corrugated Container Corporation (the "Debtor") filed

on August 26, 2013. PBGC makes this objection on the grounds that the Debtor's Disclosure Statement fails to provide "adequate information" as defined under 11 U.S.C. § 1125(a) with regard to the Debtor's obligations and liabilities to PBGC and the Pension Plan. PBGC has provided the Debtor with proposed language to be inserted in the Disclosure Statement to resolve its objections.¹ PBGC files the instant objection out of caution, in the event it is unable to review a revised Disclosure Statement before the September 17, 2013 objection deadline.

BACKGROUND

1. PBGC is a wholly owned United States government corporation, and an agency of the United States, that administers the defined benefit pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), *as amended*, 29 U.S.C. §§ 1301-1461 (2006 & Supp. V 2011). PBGC guarantees the payment of certain pension benefits upon the termination of a single-employer pension plan covered by Title IV of ERISA. When an underfunded plan terminates, PBGC generally becomes trustee of the plan and, subject to certain statutory limitations, pays the plan's unfunded benefits with its insurance funds. *See* 29 U.S.C. §§ 1321-1322, 1342, 1361.

2. The Debtor is a contributing sponsor of the Pension Plan. *See* 29 U.S.C. § 1301(a)(13). The Pension Plan is a defined benefit plan covered by Title IV of ERISA. *See* 29 U.S.C. § 1321.

3. If the Pension Plan terminates, the assets of the Pension Plan may be insufficient to cover the liabilities of the Pension Plan. *See* 29 U.S.C. § 1362(b). This insufficiency is the amount of the Pension Plan's unfunded benefit liabilities. The Debtor and each member of its

¹ *See* Exhibit A.

controlled group would be jointly and severally liable to PBGC for the amount of unfunded benefit liabilities of the Pension Plan. *See* 29 U.S.C. § 1362(a), (b); *See* 29 U.S.C. § 1301(a)(18).

4. Each member of the contributing sponsor's controlled group is jointly and severally liable to PBGC for insurance premiums, interest, and penalties (collectively "premiums") with respect to the Pension Plan. 29 U.S.C. § 1307(e)(2).

5. The contributing sponsor of the Pension Plan and each member of its controlled group are jointly and severally liable to the Pension Plan for contributions necessary to satisfy the minimum funding standards under sections 412 and 430 of the Internal Revenue Code ("IRC").

6. The exclusive means of terminating a pension plan are through: (1) a standard termination, 29 U.S.C. § 1341; (2) a distress termination, 29 U.S.C. § 1341(c); or (3) a PBGC initiated termination, 29 U.S.C. § 1342.² The filing of a petition under the Bankruptcy Code does not automatically result in plan termination.

7. On April 19, 2013, Georgia-Pacific Corrugated, LLC, Viking Industries, Inc., and Freedom Corrugated, LLC filed an Involuntary Petition under chapter 7 of the Bankruptcy Code with this Court against the Debtor.

8. The Debtor filed its voluntary petition under chapter 11 of the Bankruptcy Code with this Court on May 6, 2013.

9. The involuntary and voluntary cases were consolidated on June 12, 2013.

10. On August 26, 2013, the Debtor concurrently filed its proposed Disclosure Statement and Plan of Liquidation ("Liquidating Plan").

² See *Hughes Aircraft Co. v. Jacobsen*, 532 U.S. 432, 446-48 (1999).

11. PBGC will file three contingent proofs of claim against the Debtor related to the Pension Plan for: (1) unfunded benefit liabilities, (2) minimum funding contributions, and (3) premiums. PBGC is in the process of estimating the amounts of its claims based on data recently provided by the Debtor and the PBGC intends to file contingent proofs of claim by the October 16, 2013 Bar Date.³

12. The proposed Disclosure Statement does not provide any information about the Pension Plan, PBGC, and PBGC's claims.⁴ Thus, the proposed Disclosure Statement does not provide "adequate information" as required under 11 U.S.C. § 1125.

13. PBGC has conveyed to the Debtor its request for certain additions to the Debtor's proposed Disclosure Statement and Plan and hopes that its concerns will be resolved by agreement prior to the scheduled October 1, 2013 hearing. Because PBGC will be unable to review an amended Disclosure Statement, if filed, before the September 17, 2013 deadline for filing objections, PBGC files the following objection as a protective measure, in order to preserve its rights pending clarification of these matters in the proposed Disclosure Statement.

OBJECTIONS

14. PBGC objects to the proposed Disclosure Statement because it fails to inform creditors of facts that may affect the value of their claims and the conformability of the Plan. The proposed Disclosure Statement fails to provide adequate information as required by 11 U.S.C. § 1125. As used in that section, adequate information means:

³The Local Rules provide that a plan proponent review all claims prior to filing a plan or disclosure statement. *See* D.N.J. LBR 3016-1 and 3016-2. However, in the instant case, the Debtor has filed a proposed Disclosure Statement and Plan before the Bar Date has even elapsed. Thus, the Debtor does not know how many claims will be filed and what the respective claim amounts will be.

⁴The only reference to PBGC in the proposed Disclosure Statement is that the Debtor states that PBGC is estimated to have a 100% recovery on its priority claim. *See* Debtor's Proposed Disclosure Statement at 8.

. . . information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, . . . that would enable a hypothetical reasonable investor . . . to make an informed judgment about the plan

11 U.S.C. § 1125(a)(1).⁵

The proposed Disclosure Statement submitted by the Debtor fails to meet this threshold.

15. The Disclosure Statement should inform creditors of a number of facts regarding the Debtor's Pension Plan obligations that may affect the value of creditors' claims and the feasibility of the Plan.

16. The Disclosure Statement should state that PBGC is a wholly owned United States government corporation, created by ERISA, 29 U.S.C. § 1301 *et seq.*, to administer the mandatory pension plan termination insurance program established under Title IV of ERISA, and that PBGC guarantees the payment of certain pension benefits upon termination of a pension plan covered by Title IV. The Disclosure Statement should state that the Pension Plan is a defined benefit pension plan covered by Title IV.

17. The Disclosure Statement should provide a detailed description of the Pension Plan sponsored by the Debtor. Also, the Disclosure Statement should explain the status of the Pension Plan and the funding level of the Pension Plan. Additionally, the Disclosure Statement should disclose the contingency that the Pension Plan might be terminated in accordance with

⁵ See *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. General Motors Corp.*, 337 F.3d 314, 321-22 (3d Cir. 2003) (emphasizing that a chapter 11 debtor has an affirmative duty to provide creditors with a disclosure statement containing "adequate information" so that a creditor can make an informed judgment about the Plan); see also *In re Lisanti Foods, Inc.*, 329 B.R. 491, 508 (D.N.J. 2005) (holding that a disclosure statement was adequate when assets and liabilities were disclosed, as well as the range of potential recovery to creditors); *In re Quigley Co.*, 377 B.R. 110, 115 (Bankr. S.D.N.Y. 2007) (stating that a disclosure statement must contain adequate information describing a confirmable plan, and that if the plan is patently unconfirmable on its face, the application to approve the disclosure statement must be denied).

29 U.S.C. § 1342. Finally, the Disclosure Statement should explain the asserted basis for and the magnitude of the PBGC's claims for termination liability.⁶

18. Since the Debtor has filed a plan of liquidation, it appears that the Debtor will cease to exist after all of its assets are sold. Thus, the Pension Plan faces imminent abandonment. For these reasons, the Disclosure Statement should disclose the Debtor's intentions for the Pension Plan.

19. The proposed Disclosure Statement fails to give creditors "adequate information" in that it does not fully inform creditors of the impact of the possibility of termination of the Pension Plan on the anticipated amount of administrative expenses, priority claims, and general unsecured claims. In the event that the Pension Plan terminates prior to confirmation of the Debtor's Plan, PBGC asserts that it will have an administrative expense claim, a priority tax claim, and/or, in the alternative, a general unsecured claim against the Debtor.

20. The Disclosure Statement should state that ERISA requires that unfunded benefit liabilities upon termination of a pension plan are to be calculated in accordance with assumptions prescribed by PBGC. The Disclosure Statement should inform creditors that PBGC will file contingent, unliquidated, and priority claims with respect to the Pension Plan's unfunded benefit liabilities. *See* 29 U.S.C. § 1362.

21. The Disclosure Statement should disclose that PBGC will also file, on behalf of the Pension Plan, unliquidated and administrative priority claims for statutorily required minimum funding contributions, *see* 29 U.S.C. §§ 1082 and 1362(c), and IRC § 412, 26 U.S.C.

⁶If the Pension Plan terminates in a distress termination pursuant to 29 U.S.C. §§ 1341(c)(2)(B)(ii) or (iii), or in an involuntary termination under 29 U.S.C. § 1342, Termination Premiums at the rate of \$1,250 per plan participant per year for three years. *See* 29 U.S.C. § 1306(a)(7), as amended by § 8101(b) the Deficit Reduction Act of 2005 (Pub. L. 109-171) and by §§ 401(b) and 402(g)(2)(B) of the Pension Protection Act of 2006 (Pub. L. 109-280).

§ 412, and statutorily mandated premiums and penalties and interest relating thereto. *See* 29 U.S.C. § 1307(a), (b) and (e); 29 C.F.R. § 2610.26(a).

22. The Disclosure Statement should state whether there are other entities that might be jointly or severally liable with the Debtor (i.e. additional members of a controlled group of trades or businesses within the meaning of 29 U.S.C. § 1301(a)(14)). If there are controlled group members, the Disclosure Statement should state that as provided by ERISA, the Debtor and each member of the Debtor's controlled group are jointly and severally liable for the Pension Plan's unfunded benefit liabilities, for due and unpaid employer contributions, and for unpaid premiums.

23. The Disclosure Statement should state that the Pension Plan may be terminated only by a (1) a standard termination, 29 U.S.C. § 1341; (2) a distress termination, 29 U.S.C. § 1341(c); or (3) a PBGC initiated termination, 29 U.S.C. § 1342. The filing of a petition under the Bankruptcy Code does not automatically result in plan termination.

24. The Disclosure Statement should explain that, under ERISA, the PBGC has discretionary authority to seek to terminate a pension plan, including where PBGC determines that its possible long-run loss may reasonably be expected to increase unreasonably unless the plan is terminated.

25. In describing the Debtor's treatment of claims and interests under the proposed Plan, the proposed Disclosure Statement should more clearly state the impact of the possibility of termination of the Pension Plan prior to the Effective Date on the anticipated amount of administrative expenses, priority claims, and general unsecured claims. As it stands now, the

Debtor opines on how claims will be resolved before the Bar Date has even passed without even knowing the magnitude of PBGC's claims.

CONCLUSION

For the foregoing reasons, PBGC respectfully requests that the Court require the Debtor to amend the proposed Disclosure Statement to provide adequate information as required by 11 U.S.C. § 1125.

Dated: September 16, 2013
Washington, D.C.

Respectfully Submitted,

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