

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

In re:)	Chapter 11
)	
REVSTONE INDUSTRIES, LLC, <u>et. al.</u> ,)	Case No. 12-13262 (BLS)
)	
Debtors.)	(Jointly Administered)
)	
In re:)	Chapter 11
)	
METAVATION, LLC,)	Case No. 13-11831 (BLS)
)	
Debtor.)	(Joint Administration Requested)
)	

**PENSION BENEFIT GUARANTY CORPORATION’S OBJECTION TO
METAVATION, LLC’S MOTION FOR ORDER: (A) APPROVING BID PROCEDURES
FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S OPERATING
ASSETS; (B) SCHEDULING AN AUCTION AND HEARING TO CONSIDER THE
SALE AND APPROVE THE FORM AND MANNER OF NOTICE RELATED
THERE TO; (C) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION
AND ASSIGNMENT OF CERTAIN CONTRACTS, INCLUDING NOTICE OF
PROPOSED CURE AMOUNTS; (D) APPROVING PAYMENT OF A BREAK-UP FEE
AND EXPENSE REIMBURSEMENT; AND (E) GRANTING RELATED RELIEF**

The Pension Benefit Guaranty Corporation (“PBGC”), the Debtor’s largest unsecured creditor, hereby objects to Metavation LLC’s (“Debtor”) Motion for Order: (A) Approving Bid Procedures for the Sale of Substantially All of the Debtor’s Operating Assets; (B) Scheduling an Auction and Hearing to Consider the Sale and Approve the Form and Manner of Notice Related Thereto; (C) Establishing Procedures Relating to the Assumption and Assignment of Certain Contracts, Including Notice of Proposed Cure Amounts; (D) Approving Payment of a Break-Up Fee and Expense Reimbursement; and (E) Granting Related Relief (the “Bid Procedures Motion”). First, PBGC should be involved and/or consulted during the bidding process and auction. Second, the Bid Procedures Motion does not make it clear that the Debtor will give appropriate consideration to any Qualified Bid that proposes to assume liability for the Hillsdale

Salaried Pension Plan and Hillsdale Hourly Pension Plans (together, the “Pension Plans”).

Finally, PBGC objects to the § 11.6 Fee and Expense Reimbursement contained in the Asset Purchase Agreement dated as of July 19, 2013 (“APA”).

A. PBGC Involvement in Bidding Process and Auction

1. PBGC is by far the Debtor’s largest unsecured creditor and, as such, has an enormous stake in the outcome of this sale. Therefore, PBGC, on its own or as part of an unsecured creditors committee, should be fully involved in the bidding process and the auction.

Specifically, this Court should order that,

- a. PBGC have full access to the electronic data room that the Debtor has set up to facilitate data sharing and due diligence;
- b. PBGC promptly receive copies of all bids and required documents submitted by each Potential Bidder;
- c. the Debtor promptly inform PBGC whether a Potential Bidder is determined by the Debtor to be a Qualified Bidder, and, if not, the basis for that determination;
- d. PBGC be consulted regarding which Qualified Bid constitutes the highest and best offer, and
- e. PBGC be permitted to attend the Auction.

2. PBGC’s meaningful role in the sale of the Debtor’s assets will ensure a competitive bidding process, which will maximize the value of the Debtor’s estate to its unsecured creditors, including in large part, PBGC.

B. Consideration of Assumption of Pension Plan Liability

3. The APA attached to the Debtor’s sale motion, docket number 18, explicitly excludes the purchaser’s assumption of pension plan liabilities. For the avoidance of doubt, PBGC objects to the extent that this language can in any way be construed to mean that no bid will be allowed to assume liability for the Pension Plans. Even if that is not the intended meaning, PBGC believes this language may discourage bidders from considering assumption of

the Pension Plans. PBGC reserves its rights to object in the event that a Qualified Bid that includes assumption of the Pension Plans is not given appropriate consideration by the Debtor at any point in the bidding process or at auction. Any Qualified Bid that proposes to assume over \$46 million in liability—and remove that claim from the claims pool—should be appropriately credited in determining the highest and best bid.

C. Section 11.6 Fee and Expense Reimbursement

4. Paragraph 25(d) of the Bid Procedures Motion seeks this Court’s approval of the § 11.6 Fee and Expense Reimbursement, which is a payment to the Stalking Horse Bidder by the Debtor of not more than \$1 million in the event that the Debtor terminates the Agreement because the Debtor does not receive an acceptable PBGC Seller Release. PBGC objects to this payment.

5. The Debtor is already seeking approval of \$1 million in Bid Protections, including a Break-Up Fee and Expense Reimbursement. Therefore, it is not clear what expenses and fees the § 11.6 Fee and Expense Reimbursement would cover that are not already provided for by the requested Bid Protections.

6. Unlike break-up fees, the § 11.6 Fee and Expense Reimbursement will do nothing to encourage competitive bidding or maximize the value of the estate for its creditors. To the contrary, the § 11.6 Fee and Expense Reimbursement provides a windfall to the Stalking Horse Bidder to the detriment of unsecured creditors. It is completely unreasonable and has no basis in law, and this Court should reject it.

Conclusion

For the foregoing reasons, this court should not approve the bidding procedures unless they are modified to address PBGC's concerns.

Dated: August 2, 2013
Washington, D.C.

Respectfully submitted,

/s/ Desiree M. Amador

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