IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
RB LIQUIDATION, INC. F/K/A/ REED AND BARTON CORPORATION	)	
	)	Case No. 15-10534-HJB
Debtor.	)	

THE PENSION BENEFIT GUARANTY CORPORATION'S RESPONSE IN SUPPORT OF THE DEBTOR'S THIRD OMNIBUS OBJECTION TO CLAIMS FILED AGAINST THE DEBTOR

In its Third Omnibus Objection to Claims ("Objection"), the Debtor objects to claims filed by two participants ("Claimants") of the Reed and Barton Corporation Retirement Plan ("Pension Plan" or "Plan"). (Dkt. No. 409). PBGC files this Response to protect the integrity of the federal statutory scheme under the Employee Retirement Income Security Act ("ERISA"). When a pension plan has insufficient funds to pay benefits, PBGC typically terminates and trustees the plan and pays to the participants their pension benefits, up to statutory limits. PBGC also seeks to recover from the pension plan sponsor the plan's underfunding, which helps to pay participants' benefits. ERISA makes clear that only PBGC has the exclusive right to recover a terminated plan's underfunding. To allow Claimants' pension claims would result in a double recovery by them and a double payment by the Debtor. The Debtor would be paying the same claim twice – once to PBGC, as required by ERISA, and again to the Claimants. Accordingly, PBGC respectfully requests that the Claimants' proofs of claims be disallowed.

BACKGROUND

I. PBGC AND TITLE IV OF ERISA

PBGC is the federal government agency that administers the defined benefit pension plan termination insurance program established by Title IV of ERISA. 29 U.S.C. §§ 1301-1461. When a pension plan covered by Title IV terminates without sufficient assets to pay all of its promised benefits, PBGC typically becomes trustee of the plan and pays plan participants their pension benefits subject to statutory limits. *See* 29 U.S.C. §§ 1321, 1322, 1344, 1361.

After PBGC becomes trustee of a terminated pension plan, it collects, reviews, and analyzes all of the plan's documents and participants' employment records and calculates the amount of the participants' benefits under the plan that PBGC will pay pursuant to ERISA. During that process, to ensure that retirees receive uninterrupted payment of pension benefits, PBGC pays eligible retirees *estimated* pension benefits, which are subject to change upon PBGC's final review. If the final benefit determination shows that PBGC's estimated payments have been too low, PBGC reimburses the underpayment, with interest. 29 C.F.R. §§ 4022.81(c), 4022.83.

Simultaneous to its calculating benefits, PBGC pursues the employer and its controlled group members for the terminated pension plan's underfunding – i.e., "the *total amount* of the unfunded benefit liabilities (as of the termination date) to *all* participants and beneficiaries under the plan, together with interest."[1] 29 U.S.C.

[1] A "controlled group" includes a parent-subsidiary or brother-sister group of trades or businesses connected through ownership of at least 80% controlling interest by a common entity. *See* 29 U.S.C. § 1301(a)(14), (b); 26 U.S.C. § 414(b), (c); 26 C.F.R. §§ 1.414(b)-1, 1.414(c)-1, 1.414(c)-2.

§ 1362(b)(1)(A). Unfunded benefit liabilities are the value of the plan's benefit liabilities minus the current value of the plan's assets.[2] *See* 29 U.S.C. § 1301(a)(18).

Where the employer and any of its controlled group members are in bankruptcy, PBGC files bankruptcy claims against each one for the unfunded benefit liabilities. ERISA imposes responsibility on a controlled group member regardless of whether its employees participate in the pension plan. 29 U.S.C. § 1362(a)(1). As is true for all creditors, PBGC's recoveries depend largely on the available funds in the bankruptcy estates.

II. THE DEBTOR'S PENSION PLAN

The Debtor is the contributing sponsor of the Pension Plan, which is covered by Title IV of ERISA. Approximately 806 employees of the Debtor participate in the Pension Plan. The Pension Plan terminated, effective July 15, 2015. PBGC became the statutory trustee of the terminated plan on December 4, 2015. Consequently, PBGC will be making *estimated* pension benefits to the Debtor's retired employees participating in the Pension Plan and eventually will issue final benefit determination letters.

On November 20, 2015, Debtor and PBGC executed a settlement agreement regarding the PBGC claims filed in this bankruptcy.[3] The settlement provided PBGC with an allowed general unsecured claim in the amount of $21,788,085. On December 2, 2015, the Court approved the settlement agreement. (Dkt. No. 444).

---

[2] Benefit liabilities are the benefits of employees and their beneficiaries under the plan. *See* 29 U.S.C. § 1301(a)(16).

[3] PBGC timely filed proofs of claim with respect to the Pension Plan for unfunded benefit liabilities, unpaid minimum funding contributions and unpaid premiums.

III. THE CLAIMANTS' PROOFS OF CLAIMS

Two Plan participants have filed against the Debtor proofs of claims seeking pension benefits under the Plan. The Debtor objected on the grounds that participants cannot recover pension benefits directly from the plan sponsor. *See* Objection.

ARGUMENT

Claimants' claims seeking to recover benefits under the Pension Plan should be disallowed because PBGC has the exclusive right under ERISA to recover the Plan's unfunded benefit liabilities. Courts have found that pension plan participants cannot recover directly from their employer's bankruptcy estate monies for the benefits of their terminated pension plan. *United Steelworkers of Amer. v. United Eng'g, Inc.*, 52 F.3d 1386, 1393 (6th Cir. 1995); *Ricke v. Armco, Inc.*, 882 F. Supp. 896, 899 (D. Minn. 1995), *order aff'd and remanded by*, 92 F.3d 720 (8th Cir. 1996); *In re Lineal Group, Inc.*, 226 B.R. 608, 613-14 (Bankr. M.D. Tenn. 1998); *Adams Hard Facing Co. v. AHF Corp.*, 129 B.R. 662, 663 (W.D. Okla. 1991). In the leading case of *United Steelworkers of Amer. v. United Eng'g, Inc*., the Sixth Circuit held that, because Congress has specifically addressed the payment of pension benefits and provided that such benefits are to be recovered solely by PBGC, ERISA preempts employees' direct actions against employers to recover pension benefits. *United Eng'g*, 52 F.3d at 1394.

To hold otherwise would result in a double recovery by the participants and double payment by the employer's bankruptcy estate. Participants would recover pension benefits from both the employer and PBGC, and the bankruptcy estate would be paying the same claim twice – once to participants and once to PBGC. *Id.* "It would be counterproductive indeed to find that the employer would, following a distress termination, be liable not only to the PBGC but also remain liable to the plan participants and beneficiaries." *Int'l Ass'n of Machinists and Aerospace Workers v. Rome Cable Corp.*, 810 F. Supp. 402, 407 (N.D.N.Y. 1993).

CONCLUSION

WHEREFORE, PBGC requests that this Court disallow the Claimants' claims seeking benefits under the Pension Plan, and grant such other and further relief to PBGC as the Court deems proper.

Dated: January 11, 2016

Respectfully submitted,

/s/ Brad Rogers

ISRAEL GOLDOWITZ
Chief Counsel
CHARLES L. FINKE
Deputy Chief Counsel
ANDREA M. WONG
Assistant Chief Counsel
BRAD ROGERS
Attorney
PENSION BENEFIT GUARANTY CORPORATION
Office of the Chief Counsel
1200 K Street, NW, Suite 340
Washington, D.C. 20005-4026
202-326-4020 ext. 3029
202-326-4112 (facsimile)
EMAIL: rogers.brad@pbgc.gov and efile@pbgc.gov