

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

<b>In re:</b>	)	
	)	<b>Case No. 3:16-bk-08624</b>
<b>WERTHAN PACKAGING, INC.,</b>	)	<b>Chapter 11</b>
	)	<b>Judge Mashburn</b>
<b>Debtor.</b>	)	
	)	<b>Response Deadline: 12/13/17</b>
	)	<b>Hearing Date: 1/2/18</b>

**LIMITED OBJECTION OF PENSION BENEFIT GUARANTY CORPORATION  
TO JOINT OBJECTION TO CLAIM NO. 18 FILED BY WILLIAM RICHARD HOLT**

Werthan Packaging, Inc. (the “Debtor”) and the Official Committee of Unsecured Creditors ( the “Committee”) have objected to Claim No. 18 (“Joint Objection”) [Doc. No. 226], filed by William Richard Holt, (“Individual Pension Claim”) a potential pension plan participant.<sup>1</sup> The Debtor and Committee assert that Mr. Holt may be seeking a claim for benefits under the Employees’ Retirement Plan of Werthan Packaging (“Pension Plan”), a terminated pension plan that has been trusteeed by the Pension Benefit Guaranty Corporation (“PBGC”). PBGC now pays benefits to the Debtor’s retired employees participating in the Pension Plan.

While PBGC does not object to this relief, it challenges the Debtor’s and Committee’s failure to provide an adequate legal basis for the relief sought. PBGC therefore files this *Limited Objection of Pension Benefit Guaranty Corporation to Joint Objection to Claim No. 18 Filed by William Richard Holt* (“Limited Objection”) to correct the record and to provide adequate support for the disallowance of the Individual Pension Claim to the extent that Mr. Holt seeks payment for unpaid Pension Plan benefits.<sup>2</sup> PBGC seeks to move the Court to either deny the

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<sup>1</sup> Joint Objection ¶ 6.

<sup>2</sup> PBGC notes that neither the Debtor nor the Committee contacted PBGC prior to filing their Joint Objection. Had they contacted PBGC to assist in the Joint Objection, PBGC would have supplied the appropriate grounds for objecting, thus obviating the need for this Limited Objection.

Joint Objection, or, in the alternative, to grant it based on the arguments set forth in this Limited Objection.

## **BACKGROUND**

### **I. PBGC AND TITLE IV OF ERISA**

1. PBGC is the United States government agency that administers the nation's pension insurance program under Title IV of the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA").<sup>3</sup> This program generally covers all tax-qualified, defined benefit pension plans of private sector companies.<sup>4</sup> If a plan lacks sufficient assets to pay all promised benefits, then PBGC pays the benefits subject to statutory limitations.<sup>5</sup>

2. The contributing sponsor of a pension plan and its controlled group<sup>6</sup> members are jointly and severally obligated to contribute to the plan amounts necessary to satisfy the minimum funding standard set forth in ERISA. They are also obligated to pay to PBGC insurance premiums.<sup>7</sup> Upon termination of an underfunded pension plan, the contributing sponsor and controlled group members also incur joint and several liability to PBGC under 29 U.S.C. § 1362(a) for the total amount of the plan's "unfunded benefit liabilities." Accordingly, PBGC typically files claims against the plan sponsor and the members of its controlled group for

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<sup>3</sup> 29 U.S.C. §§ 1301-1461 (2012 & Supp. IV 2016).

<sup>4</sup> *See* 29 U.S.C. § 1321. Title IV does not apply to defined contribution plans. *PBGC v. LTV Corp.*, 496 U.S. 633, 637 n.1; 29 U.S.C. § 1321(b)(1).

<sup>5</sup> 29 U.S.C. §§ 1322, 1361; *LTV Corp.*, 496 U.S. at 637-38 (1990); *Nachman Corp. v. PBGC*, 446 U.S. 359, 375 (1980).

<sup>6</sup> A "controlled group" includes a parent-subsidary 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.

<sup>7</sup> *See* 29 U.S.C. §§ 1082, 1307; *see also* 26 U.S.C. § 412.

unfunded benefit liabilities, due and unpaid minimum funding contributions, and any unpaid PBGC premiums.

## **II. THE DEBTOR'S PENSION PLAN**

3. The Debtor was the contributing sponsor of the Pension Plan. The Pension Plan is a defined benefit pension plan covered by Title IV of ERISA. Approximately 431 employees of the Debtor participated in the Pension Plan.

4. Pursuant to Title IV of ERISA, the Pension Plan terminated, effective March 31, 2016, and PBGC became the statutory trustee of the Pension Plan on May 16, 2017. PBGC now pays benefits to the Debtor's retired employees participating in the Pension Plan.

5. On March 2, 2017, PBGC filed claims of over \$15 million against the Debtor for the Pension Plan's unfunded benefit liabilities, unpaid minimum funding contributions, and unpaid insurance premiums.<sup>8</sup>

### **LIMITED OBJECTION**

6. In the Joint Objection, the Debtor and Committee assert that Mr. Holt does not have a legitimate pension claim against the Debtor and seek to disallow the Individual Pension Claim because the claim was not scheduled by the Debtor in the Debtor's sworn schedules of liabilities.<sup>9</sup> But a creditor can assert a valid claim without being scheduled. *See* Fed. R. Bankr. P. 3001(f) ("A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim."). As such, the Debtor and Committee have not provided an adequate basis to deny the Individual Pension Claim.

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<sup>8</sup> *See* Claim Nos. 33, 34, 35. Claims 34 & 35 were amended on May 25, 2017.

<sup>9</sup> Joint Objection ¶ 7.

7. Because the Debtor relied upon an inadequate legal argument to determine that the Individual Pension Claim should be disallowed, their request for relief lacks a legal basis. To the extent that Mr. Holt seeks payment for unpaid Pension Plan benefits, his claim should be disallowed because PBGC has been granted the exclusive right to recover from the employer under Title IV of ERISA.<sup>10</sup> Moreover, by filing a pension claim in this bankruptcy, Mr. Holt may be seeking payment of benefits under the Pension Plan that PBGC is already paying to him, and in an amount to which he is not entitled under ERISA.

8. Participants may not recover pension benefits under a terminated pension plan from their employer.<sup>11</sup> In the leading case of *United Engineering*, the Sixth Circuit held that ERISA preempts employees' direct actions against employers to recover pension benefits.<sup>12</sup>

9. In addition, when Congress amended the Pension Protection Act ("PPA") in 1987, it explicitly provided that upon termination of a pension plan, the employer's liability to PBGC "shall be the *total* amount of the unfunded benefit liabilities (as of the termination date) to all participants and beneficiaries under the plan."<sup>13</sup> The amendment also required PBGC to share a portion of its recovery of the unfunded benefit liabilities with participants, setting out a precise formula for this sharing mechanism in 29 U.S.C. § 1322(c). Because of the explicit and detailed statutory language and because Congress has preemptively occupied a field previously addressed

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<sup>10</sup> See 29 U.S.C. § 1362(b).

<sup>11</sup> *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).

<sup>12</sup> 52 F.3d at 1393. See also *Int'l Ass'n of Machinists and Aerospace Workers v. Rome Cable Corp.*, 810 F. Supp. 402, 407 (N.D.N.Y. 1993) ("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.").

<sup>13</sup> 29 U.S.C. § 1362(b).

by federal common law, actions by employees to recover unfunded nonguaranteed benefits directly from their employers are precluded.<sup>14</sup>

### CONCLUSION

PBGC respectfully requests that the Court deny the Joint Objection with regard to the Individual Pension Claim as lacking an adequate legal basis. In the alternative, PBGC seeks a declaration that the Debtor's and Committee's Joint Objection is granted, but based on the argument asserted in this Limited Objection.

Dated: December 13, 2017

Respectfully submitted,

/s/ Kimberly E. Neureiter

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<sup>14</sup> *United Eng'g*, 52 F.3d at 1394.