

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
CORUS BANKSHARES, INC., <sup>1</sup>	)	Case No. 10-26881 (PSH)
	)	
Debtor.	)	Objection deadline: July 27, 2011, 4:00 pm
	)	Hearing: July 28, 2011, 10:30 am
	)	

**PRECAUTIONARY OBJECTION OF THE PENSION BENEFIT GUARANTY  
CORPORATION TO DEBTOR'S MOTION FOR AN ORDER APPROVING  
PROPOSED DISCLOSURE STATEMENT (DOCKET NUMBER 516)**

The Pension Benefit Guaranty Corporation ("PBGC"), a United States government agency, files this precautionary objection to the Debtor's motion (Dkt. No. 516) (the "Motion") seeking, *inter alia*, approval of the proposed Disclosure Statement filed by the Debtor on June 29, 2011, (Dkt. No. 514) (the "Disclosure Statement"). PBGC has reached an agreement in principle with the Debtor and other interested parties that would resolve, among other things, PBGC's concern that the proposed Disclosure Statement fails to provide "adequate information," as that term is defined under 11 U.S.C. § 1125(a). On information and belief, this agreement either has been or shortly will be filed with this Court for approval, and provides, in part, for modification and additions to the Disclosure Statement and the Debtor's Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Plan of Reorganization") (Dkt. No. 515) that it describes. On information and belief, revised versions of the proposed Disclosure Statement and Plan of Reorganization either have been or shortly will be filed with this Court. Because the parties' agreement has not yet received Court approval, PBGC files this

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<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor's tax identification number, is: Corus Bankshares, Inc. (3592). The location of the Debtor's corporate headquarters and the service address for the Debtor is: 10 S. Riverside Plaza, Suite 1800, Chicago, IL 60606.

objection as a protective measure in order to preserve its rights.

## **BACKGROUND**

1. PBGC is the United States government agency that administers the defined benefit pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1301-1461 (2006 & Supp. III 2009) (“ERISA”). The program guarantees a secure, predictable retirement for approximately 44 million workers.<sup>2</sup> When a pension plan covered by Title IV terminates without sufficient assets to pay promised benefits, PBGC typically becomes the statutory trustee of the plan and pays covered plan participants and their beneficiaries their pension benefits up to the limits established by Title IV. *See* 29 U.S.C. §§ 1321, 1322, 1361.

2. Pursuant to ERISA, a sponsor of a pension plan covered by Title IV must satisfy certain financial obligations to the plan. While a pension plan is on-going, the responsibilities of the plan sponsor include the following: (1) administering the pension plan, 29 U.S.C. §§ 1021-1061; (2) paying the statutorily required minimum funding contributions to the pension plan, 26 U.S.C. § 412(c)(11) (2007); 29 U.S.C. § 1082(c)(11) (2007); and 26 U.S.C. § 412(b)(1), (2) (2009); 29 U.S.C.A. § 1082(b)(1), (2) (2009);<sup>3</sup> and (3) paying flat-rate and variable-rate insurance premiums to PBGC, 29 U.S.C. §§ 1306, 1307.

3. Also, any party who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries and parties in interest by Title IV shall be personally liable to make good to such plan any losses to the plan resulting from each such breach. *See* 29 U.S.C. §§ 1104,

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<sup>2</sup> 2010 PBGC Annual Management Report at p.1-2, [http://www.pbgc.gov/Documents/2010\\_annual\\_report.pdf](http://www.pbgc.gov/Documents/2010_annual_report.pdf).

<sup>3</sup> References to 26 U.S.C. § 412, or to 29 U.S.C.A. § 1082, with a date of 2007 refer to the pre-Pension Protective Act of 2006 (“PPA of 2006”) provisions in effect for pension plan years beginning *on or before* December 31, 2007. References with a date of 2009 refer to the PPA of 2006 provisions in effect for pension plan years beginning *after* December 31, 2007.

1106, 1109.

4. ERISA provides the exclusive means for a plan sponsor to terminate a pension plan. *See* 29 U.S.C. § 1341(a)(1); *see also Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 446 (1999). A pension plan can be terminated in a standard termination, a distress termination, or a PBGC-initiated termination. *See* 29 U.S.C. §§ 1341(b), (c), 1342(a).

5. Upon a distress termination or a PBGC-initiated termination of a pension plan, the contributing sponsor is still subject to certain liabilities with regard to the terminated pension plan. For example, it becomes jointly and severally liable to PBGC for unfunded benefit liabilities of the pension plan. *See* 29 U.S.C. § 1362(a), (b). ERISA explicitly assigns the recovery of a terminated pension plan's unfunded benefit liabilities exclusively to PBGC. *See* 29 U.S.C. § 1362(b).

6. The plan sponsor is also liable to PBGC for any unpaid flat-rate and variable-rate PBGC premiums accruing through date when PBGC assumes trusteeship of a terminated pension plan. *See* 29 U.S.C. §§ 1306, 1307; 29 C.F.R. § 4007.11(d). If the pension plan terminates, PBGC also may be entitled to a termination premium ("Termination Premium") 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-B171) and by §§ 401(b) and 402(g)(2)(B) of the Pension Protection Act of 2006 (Pub. L. 109-B280). In the case of a PBGC-initiated plan termination during a reorganization in bankruptcy, if the debtor ultimately obtains confirmation of a Chapter 11 plan of reorganization, the debtor's obligation to PBGC for Termination Premiums does not exist until after the Chapter 11 plan is confirmed and the debtor obtains a discharge. *See* 29 U.S.C. § 1306(a)(7)(B). Thus, under those circumstances, Termination Premiums are not a dischargeable claim or debt within the meaning of 11 U.S.C.

§§ 101(5) and 1141, and are a liability of the reorganized debtor.

7. When PBGC has become the statutory trustee of a terminated pension plan, it has authority to collect all amounts owed to the plan, including any unpaid minimum funding contributions and any losses resulting from any fiduciary breaches or prohibited transactions. *See* 29 U.S.C. § 1342(d). Furthermore, section 4062(c) of ERISA provides for a liability called “Shortfall Amortization Charge.” 29 U.S.C. § 1362(c).

8. The Debtor, Corus Bankshares, Inc., sponsors and administers the Corus Bankshares, Inc. Retirement Income Plan and Trust (“Pension Plan”), a defined benefit plan covered by Title IV of ERISA. *See* 29 U.S.C. § 1321(a).

9. On June 15, 2010, the Debtor filed a voluntary Chapter 11 petition with this Court. The Debtor continues to manage its affairs as a debtor-in-possession.

10. PBGC timely filed proofs of claims with respect to the Pension Plan against the Debtor for the following: (1) unfunded benefit liabilities, contingent on Pension Plan termination, in an estimated amount of \$9,081,485; (2) unpaid premiums, in an unliquidated amount; (3) unpaid minimum funding contributions, in an unliquidated amount; and (4) shortfall amortization charges, in an unliquidated amount.

11. PBGC and the Debtor entered into negotiations addressing PBGC’s claims against the Debtor and the Reorganized Debtor, and PBGC’s concerns regarding releases under the proposed Plan of Reorganization. The parties have now reached an agreement, subject to the Court’s approval and conditional on Pension Plan termination, that resolves their differences without litigation.

### **PBGC'S OBJECTION AND PROPOSED SETTLEMENT**

12. PBGC hopes that the Court will approve the parties' negotiated resolution of their differences. If it does not, PBGC reserves its rights to argue its objection to the disclosure statement – *i.e.*, that the disclosure statement fails to disclose adequate information justifying the broad releases contained in the proposed plan of reorganization and explaining the Debtor's obligations and liabilities with respect to the Pension Plan.

13. In resolution of PBGC's objections, the parties' agreement provides for the addition of the following paragraph to the Plan of Reorganization:

Nothing in the Debtor's bankruptcy proceeding, the Confirmation Order, the Plan [of Reorganization], the Bankruptcy Code (and section 1141 thereof), or any other document filed in the Chapter 11 case shall in any way be construed to discharge, release, limit, or relieve any individual or entity, other than the Debtor, in any capacity, from any liability or responsibility with respect to the [Corus Bankshares, Inc. Retirement Income Plan and Trust] Pension Plan or any other defined benefit pension plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility by any of the provisions of the Plan [of Reorganization], Confirmation Order, Bankruptcy Code, or any other document filed in the Debtor's bankruptcy case.

14. Corresponding language repeating or describing this paragraph will also be added to the Disclosure Statement. The parties have also reached agreement, subject to Court approval, regarding the liabilities asserted by PBGC relating to the Pension Plan sponsored by the Debtor, and minor modifications to the Disclosure Statement and Plan of Reorganization reflecting these terms. In short, the settlement provides that PBGC shall have an allowed general unsecured claim in the amount of \$15,000,000 and shall receive payment of any unpaid premiums.

## CONCLUSION

15. For the foregoing reasons, PBGC reserves its rights to object to the Disclosure Statement should the parties' proposed settlement not be approved.

Dated: July 27, 2011

Respectfully submitted,

/s/ Deborah J. Bisco  
ISRAEL GOLDOWITZ  
Chief Counsel  
CHARLES L. FINKE  
Deputy Chief Counsel  
ANDREA WONG  
Assistant Chief Counsel  
DEBORAH J. BISCO  
Attorney  
PENSION BENEFIT GUARANTY  
CORPORATION  
Office of the Chief Counsel  
1200 K Street, N.W., Suite 340  
Washington, D.C. 20005-4026  
Telephone: (202) 326-4020, extension 3062  
Facsimile: (202) 326-4112  
Email: bisco.deborah@pbgc.gov  
**and** efile@pbgc.gov

LOCAL COUNSEL:  
JOEL R. NATHAN  
Assistant United States Attorney  
United States Attorney's Office  
219 S. Dearborn St., 5<sup>th</sup> Floor  
Chicago, IL 60604  
Telephone: (312) 353-5300