

**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.	)	
	)	<b>Objection Deadline: August 4, 2011 at 4:00 p.m. C.T.</b>
	)	<b>Hearing Date: August 11, 2011 at 10:30 a.m. C.T.</b>
	)	

**NOTICE OF THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT BETWEEN THE DEBTOR AND THE PENSION BENEFIT  
GUARANTY CORPORATION PURSUANT TO BANKRUPTCY RULE 9019**

**PLEASE TAKE NOTICE** that on **August 11, 2011 at 10:30 a.m. C.T.** or as soon thereafter as counsel may be heard, we shall appear before the Honorable Pamela S. Hollis in Courtroom 644 in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, or before any other judge who may be sitting in her place and stead, and present the attached **Debtor's Motion for Entry of an Order Approving Settlement Between the Debtor and the Pension Benefit Guaranty Corporation Pursuant to Bankruptcy Rule 9019** (the "Motion"), at which time and place you may appear if you so desire.

**PLEASE TAKE FURTHER NOTICE** that any objection to the Motion must be filed with the Bankruptcy Court by **August 4, 2011 at 4:00 p.m. C.T.** and served by such time on: (a) counsel to the Debtor; (b) the Office of the United States Trustee for the Northern District of Illinois, 219 South Dearborn Street, Suite 873, Chicago, Illinois 60604, Attn: M. Gretchen Silver; (c) counsel to the Committee; and (d) those parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 and the Case Management Procedures approved by the Bankruptcy Court in this case.

**PLEASE TAKE FURTHER NOTICE** that, unless a written objection to the Motion with proof of service is filed with the Bankruptcy Court by **August 4, 2011 at 4:00 p.m. C.T.** there may not be a hearing on the Motion and an order approving the Motion may be signed without further notice.

**PLEASE TAKE FURTHER NOTICE** that, you may obtain additional information concerning this chapter 11 case at the Debtor's private web site at <http://www.bmcgroup.com/corus>.

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<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor's federal 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.

Dated: July 27, 2011

Respectfully Submitted,

/s/ Jeffrey W. Gettleman

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*Counsel to the Debtor and Debtor in Possession*

**UNITED STATES BANKRUPTCY COURT  
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The above-captioned debtor and debtor in possession (the "Debtor") has been in active negotiations with the Pension Benefit Guaranty Corporation ("PBGC") and has agreed to a settlement (the "Settlement") of PBGC's claims against the Debtor's estate. The terms of the Settlement are set forth in that certain Settlement Agreement between the Debtor and PBGC, dated as of July 27, 2011, attached hereto as **Exhibit A** (the "Settlement Agreement"). The Debtor hereby moves the Court, pursuant to this motion (the "Motion"), for the entry of an order, substantially in the form attached hereto as **Exhibit B**, authorizing it to enter into and take all necessary actions to effectuate the terms of the Settlement and the Settlement Agreement. In support of the Motion, the Debtor respectfully states as follows:

**Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor's federal 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.

3. The statutory bases for the relief requested herein are section 363(b) of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) and Rules 2002, 4001, 6004(h) and 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **Background**

4. On the June 15, 2010 (the “Petition Date”), the Debtor filed a voluntary petition with this Court under chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this chapter 11 case. On June 29, 2010, the United States Trustee for the Northern District of Illinois (the “U.S. Trustee”) appointed the Committee pursuant to section 1102 of the Bankruptcy Code [Docket No. 39].

5. The Debtor is a contributing sponsor of the Corus Bankshares, Inc. Retirement Income Plan and Trust (the “Pension Plan”), which is a defined pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1301–1461 (“ERISA”).

6. The Pension Plan is a “single employer plan” within the meaning of 29 U.S.C. 1301(a)(15). As of May 31, 2011, the Pension Plan had 587 participants, which included 299 terminated employees with vested benefits, 266 retirees and 22 beneficiaries of retirees. Most of the participants in the Pension Plan were employed by Corus Bank, N.A. (the “Bank”) and therefore terminated their participation in the Pension Plan when the Bank entered receivership on September 11, 2009. With respect to any employees of the Debtor who continued to participate in the Pension Plan after September 11, 2009, the Debtor amended the Pension Plan, effective May 14, 2010, to freeze participation and benefit accruals as of such date. Thus, since May 14, 2010, the Pension Plan has no participants who are accruing additional benefits.

7. In connection with the Pension Plan, PBGC asserted the following proofs of claim against the Debtor: (a) a claim for the estimated amount of plan “termination premiums” under 29 U.S.C. § 1306(a)(7) (the “DRA Premium Claim”) and a claim for the estimated amount of PBGC flat-rate or variable-rate insurance premiums under 29 U.S.C. § 1307(a)(3) (the “PBGC Premium Claim”) [Claim No. 215];<sup>2</sup> (b) a claim in the amount of \$9,081,485, based on an estimate of the Pension Plan’s unfunded benefit liabilities if the Pension Plan were to terminate (the “Unfunded Liability Claim”) [Claim No. 216]; (c) a claim for the estimated amount of unpaid minimum funding contributions that may be owed with respect to the Pension Plan (the “Funding Claim”) [Claim No. 217]; and (d) a claim for the shortfall and waiver amortization charges that may be owed to the Pension Plan if the Pension Plan were to terminate [Claim No. 218] (the “Shortfall Claim,” and together with the PBGC Premium Claim, the Unfunded Liability Claim and the Funding Claim, collectively, the “PBGC Claims”).

8. On July 27, 2011, the Debtor and PBGC entered into the Settlement Agreement.

### **The Settlement**

9. The key terms of the Settlement, as set forth in the Settlement Agreement, are as follows:

- Upon termination of the Pension Plan, PBGC shall have an allowed Other Unsecured Claim<sup>3</sup> against the Debtor in the aggregate amount of \$15,000,000;
- Upon termination of the Pension Plan, any outstanding pension insurance premiums as of the date the Pension Plan is terminated by agreement and transferred to PBGC trusteeship shall be paid to PBGC; and
- Upon termination of the Pension Plan, the Reorganized Debtor will pay to PBGC the DRA Premium as and when required under 29 U.S.C. § 1306(a)(7).

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<sup>2</sup> Claim Nos. refer to the claim numbers assigned to such proofs of claim on the claims register by the Debtor’s claims and solicitation agent.

<sup>3</sup> As defined in *The Debtor’s Second Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 553] (the “Plan”).

**Relief Requested**

10. By this Motion, the Debtor seeks entry of an order (a) approving the Settlement and the Settlement Agreement and (b) authorizing the Debtor to enter into and take all actions necessary to effectuate the Settlement and the Settlement Agreement.

**Basis for Relief**

**A. The Settlement Is Fair and in the Best Interests of the Debtor's Estate and Should Be Authorized Pursuant to Bankruptcy Rule 9019(a).**

11. Bankruptcy Rule 9019(a) authorizes a bankruptcy court, after appropriate notice and a hearing, to approve a compromise or settlement so long as the proposed compromise or settlement is fair and equitable and in the best interest of the estate. See Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994) ("In conducting a hearing under Rule 9019(a), the bankruptcy court is to determine whether the proposed compromise is fair and equitable and in the best interests of the bankruptcy estate.") (internal citations omitted); In re Andreuccetti, 975 F.2d 413, 421 (7th Cir. 1992) (Bankruptcy Rule 9019(a) authorizes the court to approve a settlement if "the settlement is in the best interests of the estate."); In re Energy Co-op, Inc., 886 F.2d 921, 926-927 (7th Cir. 1989) ("[t]he benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate.").

12. Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. See Fogel v. Zell, 221 F.3d 955, 960 (7th Cir. 2000) ("Judges naturally prefer to settle complex litigation than to see it litigated to the hilt, especially when it is litigation in a bankruptcy proceeding — the expenses of administering the bankruptcy often consume most or even all of the bankrupt's assets."); In re Martin, 91 F.3d 389, 393 (3d Cir. 1996) ("To minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy").

13. It is well-settled that a proposed settlement need not be the best result that the debtor could have achieved, but only must fall “within the reasonable range of litigation possibilities.” Energy Co-op, 886 F.2d at 929; Official Comm. of Unsecured Creditors of Artra Group, Inc. v. Artra Group, Inc. (In re Artra Group, Inc.), 300 B.R. 699, 702 (Bankr. N.D. Ill. 2003) (same); In re Telesphere Commc’ns, Inc., 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994) (same).

14. As further guidance, the Seventh Circuit has offered the following guidelines:

Central to the bankruptcy judge’s determination is a comparison of the settlement’s terms with the litigation’s probable costs and probable benefits. Among the factors the bankruptcy judge should consider in [the] analysis are the litigation’s probability of success, the litigation’s complexity, and the litigation’s attendant expense, inconvenience, and delay.

LaSalle Nat’l Bank v. Holland (In re Am. Reserve Corp.), 841 F.2d 159, 161 (7th Cir. 1987) (citations omitted.).

15. The Settlement, negotiated at arm’s length and in good faith, achieves a result that is in the best interest of the Debtor and its estate. Specifically, the Settlement provides a global resolution between the Debtor and PBGC of each of the PBGC Claims against the Debtor’s estate. This result greatly enhances the prospects for success in this case, reduces the overall administrative costs associated with this case, thereby preserving the value of the Debtor’s estate, and likely represents the best negotiated outcome possible. If the Settlement is not approved, PBGC will continue to prosecute the PBGC Claims and the Debtor will be responsible for contributions to and the administration of the Pension Plan, resulting in unnecessary expense to the detriment of the Debtor and its estate. Additionally, termination of the Pension Plan is both a condition precedent to the effectiveness of the Plan and the obligations of the plan support parties under the plan support agreements to support the Plan. The Debtor believes that the

Settlement falls within the reasonable range of litigation possibilities given the expense and the unknown outcomes associated with further negotiation and potential litigation.

16. The Settlement is consistent with other settlements previously approved by courts in this and other districts. See, e.g., In re Crucible Materials Corp., No. 09-11582 (Bankr. D. Del. July 22, 2010) [Docket No. 1056] (Approving settlement between PBGC and debtors wherein PBGC releases certain claims in exchange for allowance of approximately \$133.6 million in other claims); In re Proliance Int'l, Inc., No. 09-12278 (Bankr. D. Del. Apr. 26, 2010) [Docket No. 688] (Approving settlement between PBGC and debtors wherein, among other things, PBGC releases certain claims in exchange for allowance of approximately \$16.5 million in other claims); In re Lehman Bros. Holdings, Inc., No. 08-13555 (Bankr. S.D.N.Y. June 3, 2009) [Docket No. 3753] (Approving settlement between PBGC and debtors wherein debtors make cash payment of approximately \$127.6 million in exchange for release of claims); In re UAL Corp., No. 02-48191 (Bankr. N.D. Ill. May 11, 2005) [Docket No. 11229] (Approving a settlement between PBGC and debtors that included, among other things, approximately \$1.5 billion in plan recoveries for PBGC in exchange for release and reduction of certain claims); In re Centis, Inc., No. 02-15865 (Bankr. C.D. Cal. May 27, 2004) [Docket No. 646] (Approving settlement between PBGC and debtors wherein debtors make cash payment in exchange for release of claims).

17. In sum, the Settlement allows the Debtor to resolve the PBGC Claims and avoids any potential litigation between the parties. The Debtor believes that the Settlement maximizes the value of the Debtor's assets and minimizes the burden to its estate and respectfully request that it be approved pursuant to Bankruptcy Rule 9019.



**B. The Proposed Use of Property of the Debtor's Estate in Connection with the Settlement Is an Exercise of the Debtor's Sound Business Judgment and Should Be Authorized Pursuant to Section 363 of the Bankruptcy Code.**

18. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor, “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Although section 363 of the Bankruptcy Code does not set forth a standard for determining when a sale or disposition of property of the estate outside the ordinary course of business should be authorized, courts in this and other circuits have consistently held that the proposed use or sale of property of the estate is appropriate if the transaction represents the sound or reasonable business judgment of the debtor. See, e.g., Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991) (a sale under section 363 of the Bankruptcy Code involves the exercise of fiduciary duties and requires an “articulated business justification”); Comm. of Equity Sec. Holders v. Lionel Corp., (In re Lionel), 722 F.2d 1063, 1070 (2d Cir. 1983) (same); In re Telesphere Commc'ns, Inc., 179 B.R. 544, 552 (Bankr. N.D. Ill. 1994) (same).

19. If a valid business justification exists for the use of property of the estate, a debtor's decision enjoys a strong presumption that “in making the business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” In re S.N.A. Nut Co., 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) (citations omitted); see generally In re Fleming Packaging Corp., 351 B.R. 626 (Bankr. C.D. Ill. 2006); In re H. King and Assocs., 295 B.R. 246 (Bankr. N.D. Ill. 2003).

20. Indeed, when applying the “business judgment” standard, courts show great deference to a debtor's business decisions. See Pitt v. First Wellington Canyon Assoc. (In re First Wellington Canyon Assoc.), No. 89-C-593, 1989 WL 106838, \*3 (N.D. Ill. Sept. 8, 1989) (“Under this test, the debtor's business judgment . . . must be accorded deference unless shown

that the bankrupt's decision was taken in bad faith or in gross abuse of the bankrupt's retained discretion"); see also In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions"). Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code.

21. The Settlement achieves a result that is in the best interest of the Debtor and its estate. As stated above, the Debtor believes that the Settlement represents a beneficial compromise that avoids the cost and uncertainty of continuing to negotiate and potentially litigate termination of the Pension Plan with PBGC. In addition, the Debtor believes the cash payment to PBGC that the Debtor will make pursuant to the Settlement represents a fair and reasonable amount to satisfy PBGC Claims in exchange for resolution of such claims.

**Waiver of Bankruptcy Rule 6004(h)**

22. The Debtors also seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). The Debtor requests that an order entered pursuant to the Motion be effective immediately so that the Debtor can proceed immediately under the Settlement. If the Settlement is not approved, PBGC will continue to prosecute the PBGC Claims and the Debtor will be responsible for contributions to and the administration of the Pension Plan, resulting in unnecessary expense. Additionally, termination of the Pension Plan is both a condition precedent to the effectiveness of the Plan and the obligations of the plan support parties under the plan support agreements to support the Plan.

Accordingly, ample cause exists to justify a waiver of the ten (10) day stay imposed by Bankruptcy Rule 6004(h).

**Notice**

23. The Debtor has provided notice of this Motion to: (a) the Office of the U.S. Trustee for the Northern District of Illinois; (b) counsel to the Committee; (c) counsel to the indenture trustee for each of the TOPrS Trusts; (d) any persons who have filed a request for notice in this chapter 11 case pursuant to the Order Establishing Certain Notice, Case Management, and Administrative Procedures [Docket No. 20] and Bankruptcy Rule 2002; and (e) counsel to PBGC. In light of the nature of the relief requested, the Debtor respectfully submits that no further notice is necessary.

**No Prior Request**

24. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) approving the Settlement and the Settlement Agreement, (b) authorizing the Debtor to enter into and take all actions contemplated by the Settlement Agreement, and (c) granting such other and further relief as is just and proper.

Dated: July 27, 2011

**KIRKLAND & ELLIS LLP**

*Jeffrey W. Gettleman*

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