

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

In re:)	Chapter 11
)	Case No. 09-13395 (CSS)
PTC Alliance Corp., <i>et al.</i> , ¹)	Jointly Administered
)	
Debtors.)	Hearing Date: To Be Determined
_____)	Objection Deadline: To Be Determined

DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 1114(c) AND (d) FOR AN ORDER DIRECTING THE APPOINTMENT OF A COMMITTEE OF RETIRED EMPLOYEES

PTC Alliance Corp. and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned cases hereby move this Court for the entry of an order (the “Order”) (i) directing the appointment of a committee of retired employees pursuant to 11 U.S.C. § 1114(c) and (d) (the “Retiree Committee”), and (ii) acknowledging that the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the “USW”) is the authorized representative for those retirees receiving retiree benefits pursuant to collective bargaining agreements. In support of this Motion, the Debtors respectfully state as follows:

BACKGROUND

A. The Chapter 11 Filings

1. On October 1, 2009 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

¹ The Debtors in these cases, along with the last four digits of their federal tax identification numbers are: PTC Alliance Corp. (2395), with a principal executive office located at 6051 Wallace Road Ext., Suite 200, Wexford, PA 15090; Alliance Tubular Products Co. (7185), with a principal executive office located at 640 Keystone Street, Alliance, OH 44601; PACD Acquisition LLC (3405), with a principal executive office located at 4400 West 3rd, Beaver Falls, PA 15010; Enduro Industries, Inc. (4669), with a principal executive office located at 2001 Orchard Avenue, Hannibal, MO 64031; PTC Tubular Products, LLC (9342), with a principal executive office located at 23041 E 800 North Road, Fairbury, IL 61739-8824; Mid-West Mfg. Co. (0660), with a principal executive office located at 475 East 16th Street, Chicago Heights, IL 60411; and PT/VW Corporation (9385), with a principal executive office located at 6051 Wallace Road Ext., Suite 200, Wexford, PA 15090.

(as amended, the “Bankruptcy Code”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors’ chapter 11 cases (these “Cases”).

3. On October 14, 2009, the United States Trustee appointed the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) in these Cases.

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

5. The statutory predicate for the relief requested herein is section 1114 of the Bankruptcy Code.

B. Factual Background

6. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these Cases is set forth in detail in the Affidavit of Thomas W. Crowley in Support of the Debtors’ Chapter 11 Petitions and First Day Orders [Doc. No. 3] (the “Crowley Affidavit”), which is fully adopted and incorporated herein by reference.

7. The Debtors maintain retiree medical and prescription drug benefit programs (collectively referred to herein as the “retiree benefits”) for certain of its union and salaried retirees. Retiree benefits for union retirees are governed by certain collective bargaining agreements (the “CBAs”) between the Debtors and the USW for the Debtors’ Midwest, Alliance, and Darlington facilities. There are approximately 341 persons presently receiving benefits from

the retiree programs established in connection with the USW CBAs. Another approximately 66 former salaried employees are presently receiving retiree benefits from the Debtors.

C. Asset Sale

8. On or about February 5, 2010, the Debtors filed the Debtors' Motion Pursuant To 11 U.S.C. §§ 105 And 363 And Fed. R. Bankr. P. 2002, 6004, And 6006 For (I) Entry Of An Order (A) Establishing Bidding And Auction Procedures Related To The Sale Of Substantially All Of The Debtors' Assets; (B) Scheduling An Auction And Sale Hearing For The Sale Of The Debtors' Assets; (C) Permitting Credit Bidding Pursuant To Bankruptcy Code Section 363(k); (D) Approving Form And Manner Of Notice Of All Procedures; And (E) Granting Certain Related Relief; And (II) Entry Of An Order Approving The Sale Of Substantially All Of The Debtors' Assets [Doc. No. 452] (the "Sale Motion"). Pursuant to the Sale Motion, the Debtors sought Court authority to sell substantially all of their assets.

9. On April 21, 2010, the Court entered the Order Authorizing And Approving The Sale Of Substantially All Of The Debtors' Assets To BD PTC Acquisition, Inc. and ABL PTC Holdings LLC (together, the "Buyers") in Accordance With The Terms Of Asset Purchase Agreement Free And Clear Of All Liens, Claims, Encumbrances, And Other Interests [Doc. No. 618] (the "Sale Order").

10. The Sale Order approved the proposed sale pursuant to the terms of that certain Enterprise Asset Purchase Agreement (the "APA") among the Buyers and the Debtors (among others).

11. The APA provides that the Buyers are not assuming any of the Debtors' retiree benefit obligations. See APA at §§ 27(ix) and (xi). Moreover, the APA provides that the Buyer may unilaterally terminate the agreement if the Debtors fail to either (i) negotiate modifications to the CBAs (including the retiree benefits) that are acceptable to the Buyers, or (ii) obtain a

Bankruptcy Court order rejecting the CBAs (including the retiree benefits) pursuant to Sections 1113 and 1114 of the Bankruptcy Code by May 17, 2010. See APA at § 9.1(b)(viii).

12. As of the date hereof, the Debtors are in the process of negotiating modifications to the CBAs with the USW that will be acceptable to the Buyers. The negotiations include discussions of the retiree benefits. No such discussions are occurring with salaried retirees concerning salaried retiree benefits.

RELIEF REQUESTED

13. By this Motion, and pursuant to Section 1114 of the Bankruptcy Code, the Debtors request an order (i) directing the United States Trustee to appoint a Retiree Committee for the salaried retirees concerning salaried retiree benefits within fifteen (15) days, and (ii) acknowledging the USW as the authorized representative of those retirees receiving retiree benefits pursuant to collective bargaining agreements retroactive to the date that the USW began negotiating on behalf of such retirees for purposes of Section 1114 of the Bankruptcy Code.

BASIS FOR RELIEF REQUESTED

A. The Need for Retiree Cost Savings

14. To meet the conditions of the APA, the Debtors must implement cost reductions in connection with its retiree benefits for both union and non-union retirees (and, to the extent applicable, their surviving spouses, dependants, and beneficiaries). The costs associated with the retiree benefits are significant, and it is essential that such costs be significantly reduced. For example, during 2009, the aggregate annual expense of the retiree benefits was approximately \$3.5 million and a similar amount is anticipated for 2010. As of the Petition Date, the Debtors estimated the aggregate long term liability for fully performing all of their existing retiree benefits obligations on behalf of all eligible retired employees and current employees who have accrued rights to retiree benefits (and their respective dependants) would total more than \$40

million. See Crowley Affidavit at ¶ 17. The Debtors estimate that eliminating retiree benefits will result in significant cost savings that are essential to the Debtors' ongoing viability.

15. Section 1114(e)(1) of the Bankruptcy Code provides, generally, that a chapter 11 debtor shall timely pay and not modify retiree benefits. However, modification of such benefits is permitted if the debtors and the "authorized representative" of the retirees agree to a modification or termination of retiree benefits, or if the debtors and the authorized representative do not reach an agreement and the Court authorizes modification or termination of such benefits pursuant to the standards set forth in sections 1114(g) and/or (h) of the Bankruptcy Code.

16. Section 1114(f) requires the Debtors to "make a proposal to the authorized representative of the retirees" and to "meet . . . with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits." 11 U.S.C. § 1114(f).

17. Section 1114(c) of the Bankruptcy Code states:

[a] labor organization shall be, for purposes of this section, the authorized representative of those persons receiving any retiree benefits covered by any collective bargaining agreement to which that labor organization is signatory, unless (A) such labor organization elects not to serve as the authorized representative of such persons, or (B) the court, upon a motion by any party in interest, after notice and hearing, determines that different representation of such persons is appropriate.

11 U.S.C. § 1114(c). In the event that a labor organization elects not to serve as the authorized representative of those persons receiving retiree benefits covered by the relevant collective bargaining agreement, Section 1114(c)(2) of the Bankruptcy Code provides that, *inter alia*, the Court shall, upon a motion by any party in interest, appoint a committee of retired employees from among such persons to serve a their authorized representative.

18. Similarly, with respect to those persons receiving retiree benefits who are not covered by a collective bargaining agreement, Section 1114(d) of the Bankruptcy Code provides

that the Court shall, upon a motion by any party in interest, order the appointment of a committee of retired employees from among such persons to serve as their authorized representative.

Section 1114(d) of the Bankruptcy Code further provides that the United States Trustee shall appoint any such committee.

19. The Debtors request an order pursuant to Section 1114 of the Bankruptcy Code (i) confirming that the USW is the authorized representative for those retirees receiving benefits covered by a collective bargaining agreement, and (ii) directing the appointment of members to a Retiree Committee to serve as the “authorized representative” of retirees who are receiving retiree benefits outside of any collective bargaining agreement.

B. USW’s Determination Whether to Serve as Authorized Representative

20. Retiree benefits for the Debtors’ retired union workforce are governed by collective bargaining agreements between one or more of the Debtors and the USW. The USW has informed counsel to the Debtors that it has agreed to act as the authorized representative for the union retirees. With respect to retirees whose retiree benefits are based on a collective bargaining agreement, the Debtors request that the USW be recognized as the authorized representative of such retirees for purposes of Section 1114 of the Bankruptcy Code, unless the USW gives written notice via mail or facsimile to the United States Trustee and the Debtors that it will not serve as such retirees’ authorized representative, such written notice being delivered so as to be actually received by the U.S. Trustee by the deadline for objecting to this Motion (the “Determination Deadline”) at the following addresses:

Joseph J. McMahon, Jr., Esq.
Trial Attorney
United States Department of Justice
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Suite 2207, Lockbox 35
Wilmington, DE 19801
Facsimile: 302-573-6497

with a copy to:

Paul M. Singer, Esq.
REED SMITH LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222
Facsimile: 412-288-3063

21. The relief requested by the Debtors regarding union representation of its retired members is consistent with Section 1114(c)(1) of the Bankruptcy Code. Unless a labor organization gives notice to the U.S. Trustee that it will not serve as an authorized representative, Section 1114(c)(1) of the Bankruptcy Code provides that such union shall be the authorized representative of persons receiving retiree benefits pursuant to a collective bargaining agreement to which the USW is a party. Requesting the USW to determine whether to opt-out by the Determination Deadline gives the USW a reasonable amount of time to make an election under Section 1114(c)(2) of the Bankruptcy Code, and at the same time facilitates the Debtors' request to constitute a Retiree Committee.

C. Section 1114 Retiree Committee

22. For those retirees whose retiree benefits are not part of any collective bargaining agreement, the appointment of a Retiree Committee will adequately represent the interests of all retirees and will permit the Debtors to conduct focused negotiations with a limited number of authorized representatives. Moreover, a single Retiree Committee will lessen the financial burden on the Debtors' estates. Pursuant to Section 1114(b)(2) of the Bankruptcy Code, a retiree

committee may seek to have its reasonable out-of-pocket expenses, as well as fees and costs of its advisors, paid out of the assets of the bankruptcy estate.

23. The Debtors further request that this Court expressly provide that the Retiree Committee, acting as representative of the non-union retirees, and the USW, acting as representative of the union retirees, are being designated for the sole purpose of representing the Debtors' retirees in connection with their rights arising under Section 1114 of the Bankruptcy Code.

24. The Debtors' proposed procedures thus contemplate a single Retiree Committee to represent the interests of its salaried retirees. This court has routinely appointed retiree committees. See, e.g., In re Hayes Lemmerz Int'l, Inc., Case No. 09-11655(MFW) (Bankr. D. Del.); In re Internet Corp., Case No. 08-11859 (KG) (Bankr. D. Del.).

25. No previous request for the relief sought in this Motion has been made to this Court or any other Court.

26. Notice of this Motion will be given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the agent under the Debtors' prepetition and debtor-in-possession credit facilities; (iii) counsel to the Creditors' Committee; (iv) the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC; (v) all applicable government agencies; and (vi) all parties that have filed prior to the date of service request for notices of matters in these cases. In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) granting the Motion; (ii) establishing the Determination Deadline as the last date for the USW to deliver to the U.S. Trustee a notice of election not to serve as an authorized representative pursuant to Section 1114(c) of the Bankruptcy Code; (iii) directing the appointment of the Retiree Committee, to be appointed by the U.S. Trustee, as expeditiously as practicable, but in no event any later than fifteen (15) days after entry of the Court's order; and (iv) granting such other and further relief as the Court deems just and appropriate.

Dated: April 29, 2010
Wilmington, Delaware

Respectfully submitted,

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