

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
PGX HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 23-10718 (CTG)
)	
Debtors.)	(Jointly Administered)
)	

**DECLARATION OF NEIL A. AUGUSTINE IN SUPPORT OF
THE (I) REPLY OF DEBTORS IN SUPPORT OF THE PROPOSED SALE
TRANSACTIONS AND (II) DEBTORS’ OBJECTION TO THE MOTION OF THE
UNITED STATES OF AMERICA TO CONVERT CHAPTER 11 CASES TO CHAPTER 7**

I, Neil A. Augustine, hereby declare under penalty of perjury as follows:

1. I am Vice Chairman and Co-Head of North American Financing Advisory and Restructuring at Greenhill & Co., LLC (“Greenhill”), a leading investment banking firm, which has its principal office at 1271 Avenue of the Americas, New York, NY 10020.

2. Greenhill and its senior professionals have extensive experience working with financially troubled companies in complex financial restructurings, both out-of-court and in bankruptcy proceedings. Greenhill and its principals have been involved as advisors to various parties in interest and constituencies in many reorganization cases and asset sales. Over the last 34-plus years, my transaction experience has ranged from out-of-court restructurings to in-court insolvencies in the U.S., Europe, Canada, Brazil, Chile and Mexico, including involvement in the bankruptcy proceedings of the following companies, among others: Akorn Holdings Company

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PGX Holdings, Inc. (2510); Credit Repair UK, Inc. (4798); Credit.com, Inc. (1580); Creditrepair.com Holdings, Inc. (7536); Creditrepair.com, Inc. (7680); eFolks Holdings, Inc. (5213); eFolks, LLC (5256); John C. Heath, Attorney At Law PC (8362); Progrexion ASG, Inc. (5153); Progrexion Holdings, Inc. (7123); Progrexion IP, Inc. (5179); Progrexion Marketing, Inc. (5073); and Progrexion Teleservices, Inc. (5110). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 257 East 200 South, Suite 1200, Salt Lake City, Utah 84111.



LLC; American Commercial Lines Inc., Atlantic Express Transportation Group, Answers Corporation, Avaya Inc., Blockbuster Inc., Cengage Learning, Inc., Cenveo, Inc., Cirque du Soleil Canada Inc., David's Bridal, Inc., Destination Maternity Corporation, EXCO Resources, Inc., Fairpoint Communications, Inc., Fusion Connect, Inc., Genco Shipping & Trading Limited, Global Geophysical Services, Inc., Global Eagle Entertainment Inc., GT Advanced Technologies, Inc., The Gymboree Corporation, Harry & David Holdings, Inc., Inner City Media Corporation, Innovative Communication Corporation, LATAM Airlines Group S.A., LifeCare Holdings, LLC, M&G USA Corporation, Milacron Holdings Inc., Momentive Performance Materials, Motor Coach Industries International, Inc., MTE Holdings LLC, Nassau Broadcasting Partners, L.P., New World Pasta Company, Performance Sports Group Ltd., rue21, inc., The Roman Catholic Diocese of Rockville Centre, New York, Skillsoft Corporation, Trident Resources Corp., Trump Entertainment Resorts, Inc., VeraSun Energy Corporation, Werner Co., and WestPoint Stevens Inc.

3. I have been employed by Greenhill since March 2018. Prior to joining Greenhill, I was an Executive Vice Chairman and Co-Head of North American Debt Advisory and Restructuring at Rothschild Inc., where I was employed for seventeen years. Prior to Rothschild Inc., I was the Group Portfolio Manager for the Distressed Debt Group of Morgens, Waterfall, Vintiadis & Company Inc., and prior to that, I was the Director of Distressed Debt Research at Lehman Brothers, Inc. and was the Director of Research at Whippoorwill Associates, Inc. I began my career at Chemical Bank and prior to entering the principal business, I was one of the founding members of The Blackstone Group's Restructuring and Reorganization Financial Advisory Department. I hold a B.A. degree and an M.B.A. from the University of Rochester.

4. I am authorized to submit this declaration (this “Declaration”) on the Debtors’ behalf in support of (i) the proposed sale of substantially all of the Debtors’ assets pursuant to the terms set forth in the Progrexion APA and the Lexington Law APA, respectively, and (ii) the *Debtors’ Objection to Motion of the United States of America to Convert Chapter 11 Cases to Chapter 7* [Docket No. 369] (the “Objection”).²

5. On June 6, 2023, I submitted a declaration in support of the entry of the Bidding Procedures Order [Docket No. 67] (the “Initial Declaration”), which is incorporated by reference herein.

6. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my discussions with other members of the Greenhill team, the Debtors’ management team, and the Debtors’ other advisors, my review of relevant documents and information concerning the Debtors’ operations, financial affairs, and restructuring initiatives, or my opinions based upon my experience and knowledge. If called as a witness, I could and would testify competently to the facts set forth in this Declaration on that basis. I am authorized to submit this Declaration on behalf of the Debtors. I am not being specifically compensated for this testimony other than through payments received by Greenhill as a professional retained by the Debtors. I am over the age of 18 years and authorized to submit this Declaration on behalf of the Debtors.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Order (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets; (B) Authorizing the Debtors to Enter into One or More Stalking Horse Agreements and to Provide Bidding Protections Thereunder; (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof; (D) Approving Assumption and Assignment Procedures; and (E) Scheduling A Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 331] (the “Bidding Procedures Order”) or the *Objection of Debtors to Motion of the United States of America to Convert Chapter 11 Cases to Chapter 7*, as applicable.

The Marketing Process

7. Following the initial stage of Greenhill's engagement, the Company engaged in discussions with the Prepetition Secured Lenders with respect to (i) incremental financing, including a potential DIP Facility, and (ii) a comprehensive restructuring. After extensive arm's-length negotiations with the prepetition First Lien Lenders, the Debtors were able to secure the \$2.9 million bridge financing, the multi-draw DIP Facility in an aggregate amount of up to \$19.925 million of new money, as further described in the DIP Motion, and a \$257.5 million credit bid for substantially all the PGX Assets, which served as the basis of the Progrexion Stalking Horse Bid.

8. At the same time, the Debtors negotiated a stalking horse bid for substantially all of the assets of Lexington Law wherein the Lexington Law Stalking Horse Bidder agreed to assume (i) the PGX Operating Agreements (as defined in the Lexington Law APA), including the corresponding cure obligations (the prepetition balance thereof being approximately \$24 million in the aggregate), and (ii) the Assumed Liabilities, which are certain obligations owed to third parties, capped at approximately \$5.1 million in the aggregate.³ Given the symbiotic nature of the business of the PGX Debtors and Lexington Law, the Lexington Law Stalking Horse Bid and the Progrexion Stalking Horse Bid are conditioned on each other and intended to permit the Debtors' underlying businesses to continue to operate as going concerns post-closing. The structure of the Lexington Law Stalking Horse Bid was the product of significant, arm's-length negotiations between the Debtors, the Lexington Law Stalking Horse Bidder, and the DIP Lenders.

³ The Lexington Law Stalking Horse Bidder increased the cap for Assumed Liabilities from \$4.4 million to \$5.1 million. *See* revised Lexington Law APA [Docket No. 331-3].

9. Prior to the Petition Date, Greenhill worked diligently to prepare for a robust postpetition marketing process to meet certain milestones provided for in the Restructuring Support Agreement and required by the DIP Facility, including identifying more than 120 parties,⁴ including strategic and financial parties, as potential bidders for the Debtors' assets. Greenhill also collected and organized diligence materials for inclusion in virtual data room (the "VDR"), access to which was provided to interested parties that elected to execute a nondisclosure agreement (an "NDA") and participate in the process. Greenhill also worked with the Debtors to draft marketing materials aligned with the Company's go-forward business plans for this process.

10. On June 6, 2023, the Debtors filed the Bidding Procedures Motion, which contemplated going-concern transactions for the benefit of all stakeholders. Shortly thereafter, the Debtors and Greenhill launched the marketing process in order to market-test the Stalking Horse Bids to confirm that the Debtors obtained the highest or otherwise best offer (or combination of offers) with respect to their assets. Throughout the marketing and sale processes, my team at Greenhill regularly provided updates to the board of directors of both PGX Holdings, Inc. (the "PGX Board") and the PGX management team ("PGX Management") regarding our outreach efforts and status of discussions with certain third parties in relation to the PGX assets. These updates included various presentations, phone calls, Zoom meetings, emails, and other communications. In addition, the PGX Board and PGX Management provided guidance and direction to Greenhill and the Debtors' other advisors as and when appropriate for the marketing process related to the PGX assets. Similar meetings and updates were convened with and provided to Roger Meltzer, the disinterested director on the board of Lexington Law

⁴ Following the Petition Date, additional parties were identified, and Greenhill ultimately approached 137 potential strategic and financial parties as potential bidders for the Debtors' assets.

(the “Independent Director of Lexington Law”), to provide updates to the Independent Director of Lexington Law on the marketing process in relation to the Lexington Law Assets, answer questions, receive any feedback, and generally discuss the strategy and next steps for the marketing and sale process for the Lexington Law Assets and these chapter 11 cases.

11. Following the appointment of the Committee and selection of FTI Consulting, Inc. (“FTI”) as the Committee’s financial advisor, Greenhill engaged with FTI with respect to the marketing processes for both the PGX assets and Lexington Law Assets, including providing (i) access to the marketing materials and related VDR, (ii) contact log details, including lists of parties contacted, and soliciting feedback from FTI with respect thereto, and (iii) periodic telephonic, email and other marketing process updates, including answering specific questions, addressing the status of certain potential bidders, and addressing other strategy and process points.

12. In total, Greenhill participated in eighteen (18) formal telephone conference calls to keep the Debtors, their other advisors, and the Committee up to date on the sales process and to answer any questions as they arose. This figure does not include a number of routine, ad hoc status calls between my team at Greenhill and the Debtors and/or their other advisors.

13. To foster a competitive bidding process, my team at Greenhill also spent considerable time engaging with potential bidders, including working with parties to develop proposals prior to the August 11, 2023 bid deadline and regularly following up with each interested party until they declined to continue in the process. The initial bid deadline was extended by more than one week from August 3, 2023 to August 11, 2023 in order to provide additional time for interested parties to review the data provided in the VDR. Overall, my team contacted a total of 137 bidders, including seventy-one (71) potential financial bidders and

sixty-six (66) potential strategic bidders, of which twelve (12) executed non-disclosure agreements and received access to confidential information, including a confidential information presentation, a detail financial model and other relevant financial and legal due diligence information.

14. The twelve (12) potential bidders—consisting of four (4) financial bidders and eight (8) strategic bidders—that executed NDAs received access to the VDR. Greenhill, along with the Debtors and their other advisors, facilitated diligence materials and relevant information during the period between the Petition Date and the August 11, 2023 bid deadline. During this time period, my team maintained consistent engagement with all active parties regarding diligence, timelines, and preliminary feedback. Based on correspondence with potential bidders throughout the sale process, I believe that many parties, including those that executed NDAs, were evaluating submitting a bid.

15. In order to foster bids on any or all of the Debtors' assets, all active parties were encouraged to explore bid configurations for different asset packages, including standalone or combination bids, as well as to submit a bid below that of the initial Stalking Horse Bids. By the August 11, 2023 deadline, Greenhill received no Qualified Bids, other than the Stalking Horse Bids, and no actionable alternatives to the Sale Transactions materialized. For the avoidance of doubt, the Debtors did receive one indication of interest solely with respect to the acquisition of the client list of Lexington Law (the "Lexington Law Indication") and where any payment to the Debtors was not for a fixed amount but conditioned on the amounts earned from the client list. At the direction of the Independent Director of Lexington Law, Greenhill worked with the interested party to understand and attempt to improve the Lexington Law Indication such that it could be considered a Qualified Bid for purposes of the Bidding Procedures. To that end,

Greenhill performed an analysis of the Lexington Law Indication that was presented to the Independent Director of Lexington Law and engaged in discussions with both the interested party and the Independent Director of Lexington Law. As the Lexington Law Indication related only to a subset of the Lexington Law Assets, Greenhill also engaged with the Lexington Law Stalking Horse Bidder to determine whether carving the applicable assets out of the Lexington Law Stalking Horse Bid was possible and, if so, whether such a carve-out could provide higher or otherwise better value to the Lexington Law Debtors. Ultimately, no bid materialized with respect to the Lexington Law Indication. Accordingly, and consistent with my recommendation and the recommendation of the Debtors' other advisors, the PGX Board and the Independent Director of Lexington Law approved the designation of each of the Progexion Stalking Horse Bidder and Lexington Law Stalking Horse Bidder, respectively, as the offers that the Debtors would present to the Court for approval. *See* Docket No. 356.

**The Stalking Horse Purchase Agreements
Represent the Highest or Best Offer for the Debtors' Assets**

16. Based on the extensive marketing efforts described above and my experience as a restructuring professional, I believe that the terms of the Stalking Horse Purchase Agreements represent the highest or best offer for the Debtors' assets given the extensive marketing process led by Greenhill.

17. A market test, such as the one conducted by Greenhill, is the best means to identify the Debtors' value. Here, the market has spoken—the Stalking Horse Bids represent the highest or best offer for the Debtors' assets. The Stalking Horse Bids are the only binding bids that will preserve the Debtors' operations as a going concern, and based on the extensive marketing efforts described above, the terms of the Stalking Horse Bids represent the highest or otherwise best offer for the Debtors' assets. Further, I believe that the Sale Transactions

contemplated by the Stalking Horse Purchase Agreements realize value that would otherwise not be available outside of the chapter 11 process. I do not believe that the Debtors would have been able to secure buyers or bidders (including the Stalking Horse Bidders) without a finding that the Sale Transactions would be consummated free and clear of all claims, interests, and encumbrances. Neither the DIP Lenders, Prepetition Lenders, nor the owners and principal attorneys of Lexington Law had a role in the marketing process apart from the negotiations regarding the initial Stalking Horse Agreements and with respect to the potential carve-out related to the Lexington Law Indication referenced above.

18. I believe that the Bidding Procedures were reasonable and appropriate and represented the best available method for conducting the sale process in a manner that maximizes value for the benefit of the Debtors' estates. In addition, I believe the Debtors conducted a fulsome marketing process and conducted the sale process in compliance with the Bid Procedures and the Bid Procedures Order, and that the Debtors and their advisors have afforded potential purchasers an appropriate opportunity to participate in the auction process for the Debtors' assets and make higher or better offers. Based on my professional experience, the sale process was robust, fair, and consistent with other sale processes in other similar chapter 11 cases.

19. Based on my professional experience and knowledge of these chapter 11 proceedings, I believe that the Stalking Horse Bidders acted in compliance with the Bidding Procedures and the Bidding Procedures Order and conducted themselves in a non-collusive, fair, and good-faith manner, as evidenced by, among other things, the Progexion Stalking Horse Bidder eliminating the expense reimbursement in the Progexion APA, the extensive marketing process, and the Debtors' efforts during arm's-length negotiations between sophisticated parties

represented by competent counsel. I further believe that the Stalking Horse Purchase Agreements represent the highest or otherwise best terms available for the purchase of the Debtors' assets based on the extensive marketing process described herein.

20. I am not aware of any facts indicating that the Progexion APA or Lexington Law APA were entered into for the purpose of hindering, delaying, or defrauding any creditor. I believe that the consideration provided by the Progexion Purchaser and the Lexington Law Purchaser for the Debtors' assets pursuant to the Stalking Horse Purchase Agreements (i) is fair and reasonable, (ii) is the highest or best offer for the Debtors' assets, and (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other available alternative. In addition, the Progexion Sales Transaction and the Lexington Law Sales Transaction will help preserve more than 300 jobs in the United States. Moreover, I am not aware of any facts indicating that the Debtors, the Progexion Purchaser, or the Lexington Law Purchaser are fraudulently entering into the transactions contemplated by the Stalking Horse Agreement.

21. I believe that the Sale Transactions provide a superior alternative to a liquidation of the Debtors' business operations because, pursuant to these transactions, the Progexion Purchaser and Lexington Law Purchaser will continue their operations, including the employment of hundreds of people, certain vendors will receive cure payments, general unsecured creditors will receive meaningful recoveries, and certain postpetition claims will be assumed by the Progexion Purchaser and Lexington Law Purchaser.

Conclusion

22. Accordingly, for all these reasons, given the exhaustive months-long marketing process that the Debtors and their advisors undertook, as described herein, I believe that the Progexion Sale Transaction and the Lexington Law Sale Transaction represent the highest or

best (and indeed, the only) binding offers that would preserve the Debtors' business operations as a going concern. Converting these chapter 11 cases at this juncture would be counterproductive. Accordingly, I believe that approving the Progrexion Sale Transaction and the Lexington Law Sale Transaction is in the best interests of the Debtors' estates.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: August 22, 2023

/s/ Neil A. Augustine

Neil A. Augustine

Vice Chairman & Co-Head of North American

Financing Advisory and Restructuring

Greenhill & Co., LLC