

**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 DEBTORS’ MOTION FOR ENTRY OF ORDERS
(I)(A) APPROVING BIDDING PROCEDURES FOR 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**

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

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. The debtors and

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.



2. I am authorized to submit this declaration (this “Declaration”) on the Debtors’ behalf in support of the relief requested in the *Motion Of the Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for 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* (the “Sale Motion”).³

3. 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 advisor to various parties in interest and constituencies in many reorganization cases and asset sales. Over the last 33-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: 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.,

³ Capitalized terms used but not otherwise defined shall have the meaning ascribed to them in the Sale Motion or the *Declaration of Chad Wallace, Chief Executive Officer of PGX Holdings, Inc., in Support of Chapter 11 Filing and First Day Motions* [Docket No. 12], as applicable.

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.

Qualifications

4. 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.

5. 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 proposed to be retained by the Debtors, subject to approval by this Court. I am over the age of 18 years and authorized to submit this Declaration on behalf of the Debtors.

The Retention of Greenhill

6. On March 29, 2023, the Debtors retained Greenhill as their proposed investment banker. Since commencing its engagement, Greenhill has, among other things, led the Debtors' marketing processes to obtain debtor-in-possession financing. Through this period of advising the Debtors, members of the Greenhill team and I are familiar with the Debtors' capital structure, liquidity needs, and business operations.

The Prepetition Marketing Preparation

7. I understand that the Debtors have been working for years to evaluate paths forward in response to the CFPB Litigation and the significant financial stress brought about by this litigation, among other factors. Despite these efforts, in March of 2023, the Debtors suffered an adverse ruling in the CFPB Litigation, exposing the Debtors to alleged damages of nearly \$3 billion and forcing the Debtors to shut down approximately 80% of their business. At that time, interest payments on prepetition facilities were quickly coming due, and I understand that the Debtors requested that the existing second lien lenders fund incremental borrowing under the prepetition delayed draw term loan at that time; however, the second lien lenders did not fund, citing that the Debtors had not satisfied all conditions precedent to such advance. Unable to secure a comprehensive solution or bridge financing, the Company pivoted to negotiate a comprehensive in-court restructuring transaction.

8. Following Greenhill's initial engagement regarding the Company's liquidity needs with the Prepetition Secured Lenders in March 2023, the Company engaged in discussions in April

and May 2023 with the Prepetition Secured Lenders with respect to (i) incremental financing, including a potential DIP Facility, and (ii) a comprehensive restructuring.

9. After extensive arm's-length negotiations with the Prepetition Secured Lenders, the Debtors were able to secure the \$2.9 million bridge financing, the proposed 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 credit bid for substantially all of the assets of the Debtors, however, not including Lexington Law. This proposal formed the basis for the Debtors' DIP Financing and the Progrexion Stalking Horse Bid.

10. The Debtors also negotiated a stalking horse bid for substantially all of the assets of Lexington Law. As consideration for the purchase of the Lexington Law Assets (as defined in the Bidding Procedures Order), the Lexington Law APA provides for the assumption and cure of the Operating Agreements (other than the Teleservices Outsourcing Agreement) with PGX, including cure of the approximately \$24 million prepetition balance thereunder over time post-closing, and assumption of the nearly 150,000 engagement agreements between Lexington Law and its direct clients (subject to applicable legal ethics rules). 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, which are dependent on each other, to continue to operate as a going concern post-closing.

11. The liquidity provided by the bridge facility, DIP Financing, the Progrexion Stalking Horse Bid, and Lexington Law Stalking Horse Bid, will facilitate a fulsome postpetition marketing process for the sale of all or substantially all of the Debtors' assets. The Debtors intend to market-test the proposed stalking horse transactions through the process contemplated by the bid procedures in these chapter 11 cases.

12. In the period leading up to the Petition Date, Greenhill has worked to prepare for a robust postpetition marketing process on an expedited basis that aligns with the milestones provided in the Restructuring Support Agreement and required by the DIP Facility. To date, Greenhill, with the assistance of the Debtors, has identified more than 120 parties, including strategic and financial parties, as potential bidders for the Debtors' assets. Greenhill expects that additional parties may become aware of the potential sale through the chapter 11 process, thus driving even more interest in the Debtors' assets.

13. In addition to identifying potential bidders, prior to the Petition Date, Greenhill has collected and organized diligence materials for inclusion in a virtual data room, access to which will be provided to interested parties that elect to execute a nondisclosure agreement and participate in the process. Greenhill has also worked with the Debtors to draft marketing materials for this process. To that end, Greenhill worked with the Debtors' management to align marketing communications with the Company's go-forward business plans. Together, these preparations will enable Greenhill and the Debtors to launch outreach for the sale and bidding process shortly after the initiation of the chapter 11 cases.

The Bidding Procedures

14. As set forth in the Sale Motion, the Debtors are seeking approval of the Bidding Procedures to establish a clear and transparent process for the solicitation, receipt, and evaluation of bids on a court-approved timeline that allows the Debtors to timely consummate a sale of their Assets.

15. I have reviewed the Bidding Procedures. Generally speaking, the Bidding Procedures establish, among other things:

- the availability of and access to conduct due diligence by Prospective Bidders;

- the deadlines and requirements for submitting competing bids and the method and criteria by which such competing bids are deemed to be “Qualified Bids” sufficient to trigger the Auction, including the terms and conditions that must be satisfied and the deadline that must be met by any bidder to be considered a “Qualified Bidder” and to participate in the Auction;
- the manner in which Qualified Bids will be evaluated by the Debtors;
- the conditions for having the Auction and procedures for conducting the Auction, if any;
- the expense reimbursement provided to the Progrexion Stalking Horse Bidder pursuant to the terms and conditions of the Progrexion APA; and
- various other matters relating to the sale process generally, including the designation of the Back-Up Bid, return of any good faith deposits, and certain reservations of rights

16. In addition, the Bidding Procedures propose the following key dates and deadlines:

Event	Date
Bid Deadline	Thursday, August 3, 2023
Sale Objection Deadline	Thursday, August 3, 2023
Auction	Tuesday, August 8, 2023
Post-Auction Objection Deadline	Wednesday, August 9, 2023
Sale Hearing	Friday, August 11, 2023

17. Based on my experience, I believe that the Bidding Procedures are designed to maximize the value received for the Assets by facilitating a fair and competitive bidding process where potential bidders are encouraged to participate and submit competing bids within the specified time frame. As described in the Sale Motion, the proposed Bid Deadline requires bids for the purchase of the Assets to be delivered no later than Tuesday, August 1, 2023. The Bid Deadline thus provides parties with approximately eight (8) weeks from the filing of the Sale Motion to obtain information and formulate and submit a timely and informed competing bid to purchase some or all of the Assets.

18. Given the outreach process to be launched by Greenhill for the Progrexion Assets and similar process to launch shortly for the Lexington Law Assets, the potential publicity surrounding these chapter 11 cases, the potential for the Stalking Horse Bids to facilitate a fulsome

postpetition marketing process, and the timeline proposed by the Debtors, it is my view, based on my experience and in light of the circumstances, that the proposed postpetition sale process set forth in the Bidding Procedures is reasonable and appropriate under the circumstances. The Bidding Procedures seek to balance the Debtors' interests in consummating the Sale Transactions on a reasonable timeline while simultaneously preserving the opportunity to attract the highest or otherwise best offer. At the Auction, as set forth in the proposed Bidding Procedures, the Debtors will have an opportunity to consider all competing offers and select the offers that they deem to be the highest or otherwise best offer for the Assets.

The Stalking Horse Bids and the PGX Expense Reimbursement are Fair and Reasonable

19. As described above, in May 2023, the Debtors entered into arm's-length negotiations with the Prepetition Secured Lenders on the terms of the Progexion Stalking Horse Bid and Progexion APA. The Progexion Stalking Horse Bid is a credit bid for the amounts that will be outstanding under the proposed DIP Facility and the full amount of the prepetition first lien claims. Further, in my experience, the Expense Reimbursement, which is capped at \$1 million, is customary, usual, and consistent with expense reimbursements offered to stalking horse parties in similar contexts.

20. At or around the same time, the Debtors entered into arm's-length negotiations with the owners of and the principal attorney at Lexington Law on the terms of the Lexington Law Stalking Horse Bid and Lexington Law APA. The Lexington Law Stalking Horse Bid provides for the assumption and cure of certain of the Operating Agreements (other than the Teleservices Outsourcing Agreement) and the assumption of certain other liabilities.

21. The terms of the Stalking Horse Bids and Stalking Horse Agreements are customary, reasonable, and were negotiated in good faith and at arm's length. To facilitate

continued negotiations and a smooth transition into these chapter 11 cases, the Prepetition Secured Lenders funded the \$2.9 million bridge financing. Negotiations were hard-fought and ongoing until immediately prior to the parties agreeing to enter into Stalking Horse Agreements substantially in the forms attached to the Bidding Procedures Order as Exhibit 2 and Exhibit 3. I believe that there was no guarantee that the Stalking Horse Bidders would bid the price of the Stalking Horse Bids at the auction without the Stalking Horse Agreements. Moreover, the Stalking Horse Agreements provide the Debtors with a minimum purchase price of the assets at the Auction and, accordingly, will provide a clear benefit to the Debtors' estates, their creditors, and all other parties in interest, in addition to setting clear terms and conditions that will facilitate third-party participation in the sale and bidding process.

Conclusion

22. Accordingly, for all the foregoing reasons, I believe that the Bidding Procedures and the timeline set forth therein: (a) will encourage bidding for the Debtors' assets; (b) are generally consistent with other procedures previously approved in chapter 11 cases of similar size and complexity; and (c) are appropriate under the circumstances. Given the details described above and based on my experience as a restructuring professional and involvement in other sales transactions, I believe that the Bidding Procedures are appropriate and should be approved.

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

Dated: June 6, 2023

/s/ Neil A. Augustine

Neil A. Augustine

Vice Chairman & Co-Head of North American
Financing Advisory and Restructuring
Greenhill & Co., LLC