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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**JCK LEGACY COMPANY, *et al.*,**

**Wind-Down Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 20-10418 (MEW)**

**(Jointly Administered)**

<sup>1</sup> The Wind-Down Debtors in these chapter 11 cases and the last four characters of each Wind-Down Debtor's tax identification number are: JCK Legacy Company (0478) and Herald Custom Publishing of Mexico, S. de R.L. de C.V. (SUZ1). The location of the Plan Administration Trustee's service address for purposes of these chapter 11 cases is: 1201 W Peachtree Street, NW, Suite 500, Atlanta, Georgia 30309.



**PENSION BENEFIT GUARANTY CORPORATION’S RESPONSE TO PLAN  
ADMINISTRATION TRUSTEE’S FOURTH OMNIBUS OBJECTION TO CLAIMS (NO  
LIABILITY CLAIMS – PENSION CLAIMS) THROUGH PLAN ADMINISTRATION  
TRUSTEE’S EIGHTEENTH OMNIBUS OBJECTION TO CLAIMS  
(NO LIABILITY CLAIMS – PENSION CLAIMS) (DKT. NOS. 911-925)**

**Preliminary Statement**

In the Fourth Omnibus Objection through the Eighteenth Omnibus Objection (Dkt. Nos. 911-925) (“Objections”), the Plan Administration Trustee (“Plan Administration Trustee”) objects to claims filed by certain employees (“No Liability Claims”) with regard to amounts asserted for pension benefits owing as beneficiaries under The McClatchy Company Retirement Plan (the “Pension Plan”).<sup>2</sup> The Pension Benefit Guaranty Corporation (“PBGC”) does not oppose the relief sought in the Objections. Rather, PBGC files this Response with regard to the No Liability Claims that may be related to the Pension Plan, because participants must look exclusively to PBGC for any benefits they may be entitled to under the terminated Pension Plan.

**Background**

PBGC is a wholly owned United States government corporation that administers the nation’s termination insurance program for defined benefit pension plans under Title IV of the Employee Retirement Income Security Act of 1974 (“ERISA”). 29 U.S.C. §§ 1301-1461 (2018). If a pension plan covered by the insurance program terminates and lacks sufficient assets to pay all promised benefits, PBGC becomes statutory trustee of the pension plan and pays the pension plan’s benefits subject to the statutory limitations set forth in 29 U.S.C. § 1322(b). *See* 29 U.S.C. §§ 1322, 1341(c), 1342, 1361; *PBGC v. LTV Corp.*, 496 U.S. 633, 637-638 (1990); *Nachman Corp. v. PBGC*, 446 U.S. 359, 375 (1980).

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<sup>2</sup> Capitalized terms not otherwise defined herein are defined as in the Objections.

The Pension Plan, sponsored by The McClatchy Company (“McClatchy”), terminated effective August 31, 2020. By an agreement between PBGC and the administrator of the Pension Plan dated September 4, 2020, PBGC became the statutory trustee of the Pension Plan. At termination, the Pension Plan had approximately 24,056 participants. PBGC is administering the Pension Plan and has, with respect to the Pension Plan, all the rights and powers of a trustee specified by ERISA or otherwise granted by law. PBGC is paying or will pay pension benefits to participants, including participants asserting No Liability Claims.<sup>3</sup>

On July 8, 2020, PBGC timely filed claims against each of the Debtors.<sup>4</sup> On October 22, 2020, PBGC filed amended claims for two of its claims.<sup>5</sup>

### **Argument**

Participants may not recover pension benefits under the terms of a terminated pension plan from their employer. *United Steelworkers of Am. v. United Eng’g, Inc.*, 52 F.3d 1386, 1393 (6th Cir. 1995); *Ricke v. Armco, Inc.*, 882 F. Supp. 896, 899 (D. Minn. 1995), *order aff’d and remanded by*, 92 F.3d 720 (8th Cir. 1996); *In re Lineal Group, Inc.*, 226 B.R. 608, 613-14 (Bankr. M.D. Tenn. 1998); *Adams Hard Facing Co. v. AHF Corp.*, 129 B.R. 662, 663 (W.D. Okla. 1991). In the leading case of *United Engineering*, the Sixth Circuit held that ERISA preempts employees’ direct actions against employers to recover pension benefits. 52 F.3d at 1393. *See also Int’l Ass’n of Machinists and Aerospace Workers v. Rome Cable*

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<sup>3</sup> Participants in the Pension Plan can find additional information at <https://www.pbgc.gov/mcclatchy-qa> or may contact PBGC’s Customer Contact Center at 1-800-400-7242.

<sup>4</sup> PBGC asserted its unfunded benefit liabilities claim against each of the Debtors of \$1,008,800,000 (Claim No. 1765); its premium claim of \$90,210,000 (Claim No. 1772); and its claim for unpaid minimum funding contributions of \$80,428,564 (Claim No. 1876).

<sup>5</sup> Claim No. 2666 of \$126,001,676 amends Claim No. 1876 (claim for unpaid minimum funding contributions) and Claim No. 2667 of \$877,500,000 amends Claim No. 1765 (unfunded benefit liabilities). Claim No. 1772 (premiums) is not amended.

*Corp.*, 810 F. Supp. 402, 407 (N.D.N.Y. 1993) (“It would be counterproductive indeed to find that the employer would, following a distress termination, be liable not only to the PBGC but also remain liable to the plan participants and beneficiaries.”).

Here, 1,434 participants are seeking to recover benefits under the Pension Plan from their respective employer as unsecured, secured, priority, or administrative expense claims under 503 and 507 of the Bankruptcy Code. *See* Dkt. Nos. 911-925, Ex. 1. Their No Liability Claims should be disallowed and expunged. To hold otherwise would result in a double recovery by the participants and double payment by McClatchy, the Pension Plan’s former sponsor. Participants would recover pension benefits from both McClatchy and PBGC, and the GUC Recovery Trust would be paying the same claim twice – once to participants and once to PBGC. The Court should not allow this counterproductive and inequitable result.

### **Conclusion**

WHEREFORE, PBGC requests that this Court disallow the No Liability Claims and grant such other and further relief as the Court deems proper.

Dated: November 6, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of November, 2020, the **Pension Benefit Guaranty Corporation's Response to Plan Administration Trustee's Fourth Omnibus Objection to Claims (No Liability Claims – Pension Claims) Through Plan Administration Trustee's Eighteenth Omnibus Objection to Claims (No Liability Claims – Pension Claims)** was filed electronically through the Court's NextGen system, which caused all parties or counsel that requested notification to be served by the Court's NextGen system on the date of filing including the following:

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