

C. PAUL CHALMERS  
Acting General Counsel  
KARTAR S. KHALSA  
Deputy General Counsel  
ERIKA E. BARNES  
Assistant General Counsel  
ERIN C. KIM  
KIMBERLY E. NEUREITER  
EMILY E. MANBECK  
Attorneys  
PENSION BENEFIT GUARANTY CORPORATION  
Office of the General Counsel  
1200 K Street, N.W.  
Washington, D.C. 20005-4026  
(202) 229-3581  
(202) 326-4112  
neureiter.kimberly@pbgc.gov and efile@pbgc.gov

– and –

SCHAFER AND WEINER, PLLC  
Joseph K. Grekin (P52165)  
70950 Woodward Ave., Suite 100  
Bloomfield Hills, MI 48304  
(248) 540-3340

*Counsel for Pension Benefit Guaranty Corporation*

**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. (5UZ1). 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 TWENTY-SIXTH OMNIBUS OBJECTION TO  
CLAIMS (NO LIABILITY CLAIMS – PENSION CLAIMS) (DKT. NO. 1051)**

**Preliminary Statement**

In the Twenty-Sixth Omnibus Objection (Dkt. No. 1051) (“Objection”), the Plan Administration Trustee (“Plan Administration Trustee”) objects to claims (“No Liability Claims”) identified in Exhibits 1-3 of the Declaration of Sean M. Harding in Support of the Plan Administration Trustee’s Twenty-Sixth Omnibus Objection to Claims (No Liability Claims) (Dkt. No. 1051-2) (“Harding Declaration”).<sup>2</sup> At Exhibit 2 to the Harding Declaration, the Plan Administration Trustee identifies claims filed by, or on behalf of, certain employees with regard to amounts asserted for pension benefits under The McClatchy Company Retirement Plan (the “Pension Plan”). The Pension Benefit Guaranty Corporation (“PBGC”) does not oppose the relief sought in the Objection. Rather, PBGC files this Response with regards 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. PBGC also filed, at Dkt. No. 956, a Response to the Fourth Omnibus Objection through the Eighteenth Omnibus Objection (Dkt. Nos. 911-925) for the same reasons.<sup>3</sup>

**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

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

<sup>3</sup> On November 25, 2020, and December 22, 2020, the Court entered orders granting the Fourth Omnibus Objection through the Eighteenth Omnibus Objection (Dkt. Nos. 1012-14, 1057-68).

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).

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>4</sup>

On July 8, 2020, PBGC timely filed claims against each of the Debtors.<sup>5</sup> On October 22, 2020, and December 8, 2020, PBGC filed amended claims.<sup>6</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); *In re Adams Hard Facing Co.*, 129 B.R. 662, 663 (W.D. Okla. 1991).

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<sup>4</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>5</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>6</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. 2789 of \$101,729,550 amends Claim No. 1772 (premiums).

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 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, 7 participants and/or beneficiaries (the "Participants") are seeking to recover benefits under the Pension Plan from their respective employers. *See* Dkt. No. 1051, Ex. 2. 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 relating to pension benefits under the Pension Plan and grant such other and further relief as the Court deems proper.

Dated: January 12, 2020

Respectfully submitted,

/s/ Erin C. Kim  
C. PAUL CHALMERS  
Acting General Counsel  
KARTAR S. KHALSA  
Deputy General Counsel  
ERIKA E. BARNES  
Assistant General Counsel

ERIN C. KIM  
KIMBERLY E. NEUREITER  
EMILY E. MANBECK  
Attorneys  
PENSION BENEFIT GUARANTY  
CORPORATION  
Office of the General Counsel  
1200 K Street, N.W.  
Washington, D.C. 20005-4026  
(202) 229-3399  
(202) 326-4138  
kim.erin@pbgc.gov and  
efile@pbgc.gov

– and –

SCHAFER AND WEINER, PLLC  
Joseph K. Grekin (P52165)  
70950 Woodward Ave., Suite 100  
Bloomfield Hills, MI 48304  
(248) 540-3340

*Counsel for Pension Benefit Guaranty Corporation*

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neureiter.kimberly@pbgc.gov and efile@pbgc.gov

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**UNITED STATES BANKRUPTCY COURT  
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<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. (5UZ1). 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.fid

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of January, 2021, the **Pension Benefit Guaranty Corporation's Response to Plan Administration Trustee's Twenty-Sixth Omnibus Objection to Claims (No Liability Claims – Pension Claims) (Dkt. No. 1051)** 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:

<b>Sean M. Harding</b> JCK Legacy Company c/o FTI Consulting, Inc. 1201 W. Peachtree Street, N.W., Suite 500 Atlanta, GA 30309 Email: sean.harding@fticonsulting.com  <i>Debtors JCK Legacy Company</i> Via Email	<b>Shana A. Elberg</b> <b>Bram A. Strohlic</b> Skadden, Arps, slate, Meagher & Flom LLP One Manhattan West New York, NY 10001 Emails: shana.elberg@skadden.com bram.strohlic@skadden.com  <i>Counsel for the Plan Administration Trustee</i> Via NextGen
<b>Van C. Durrer, II</b> <b>Destiny N. Almogue</b> Skadden, Arps, slate, Meagher & Flom LLP 300 South Grand Avenue, Suite 3400 Los Angeles, CA 90071 Emails: van.durrer@skadden.com destiny.almogue@skadden.com  <i>Counsel for the Plan Administration Trustee</i> Via NextGen	<b>Jennifer Madden</b> Skadden, Arps, slate, Meagher & Flom LLP 525 University Avenue Palo Alto, CA 94301 Email: jennifer.madden@skadden.com  <i>Counsel for the Plan Administration Trustee</i> Via Email

<p><b>Albert Togut</b> <b>Kyle J. Ortiz</b> Togut, Segal &amp; Segal LLP One Penn Plaza, Suite 3335 New York, NY 10119 Emails: altogut@teamtogut.com kortiz@teamtogut.com</p> <p><i>Co-Counsel for the Plan Administration</i> <i>Trustee</i> Via NextGen</p>	<p><b>Benjamin J. Higgins</b> <b>Brian S. Masumoto</b> Office of the United States Trustee U.S. Federal Office Building 201 Varick Street, Room 1006 New York, NY 10014</p> <p><i>U.S. Trustee</i> Via NextGen</p>
<p><b>Kristopher M. Hansen</b> <b>Daniel A. Fliman</b> Stroock &amp; Stroock &amp; Lavan LLP 180 Maiden Lane New York, NY 10038-4982 Emails: khansen@stroock.com dfliman@stroock.com</p> <p><i>Counsel to the Official Committee of</i> <i>Unsecured Creditors</i> Via NextGen</p>	<p><b>Andrew N. Rosenberg</b> <b>Elizabeth R. McColm</b> <b>John T. Weber</b> Paul, Weiss, Rifkind, Wharton &amp; Garrison LLP 1285 Avenue of Americas New York, NY 10019 Emails: arosenberg@paulweiss.com emccolm@paulweiss.com jweber@paulweiss.com</p> <p><i>Counsel to Chatham Asset Management</i> Via NextGen</p>

/s/ Erin C. Kim

Erin C. Kim