

**Response Deadline: October 13, 2021 at 4:00 p.m. (Prevailing Eastern Time)**  
**Hearing Date and Time: October 20, 2021 at 11:00 a.m. (Prevailing Eastern Time)**

PILLSBURY WINTHROP SHAW PITTMAN LLP  
 31 West 52nd Street  
 New York, NY 10019-6131  
 Telephone: 212-858-1000  
 Facsimile: 212-858-1500  
 Leo T. Crowley  
 Patrick E. Fitzmaurice  
 Kwame O. Akuffo

*Counsel for GUC Recovery Trustee*

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

-----	X	
In re:	:	Chapter 11
	:	
JCK LEGACY COMPANY, <i>et al.</i> ,	:	Case No. 20-10418 (MEW)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
-----	X	

**GUC RECOVERY TRUSTEE’S OBJECTION TO  
 TERMINATION PREMIUMS ASSERTED BY THE PENSION  
 BENEFIT GUARANTY CORPORATION IN PROOF OF CLAIM NO. 2689**

William A. Brandt, Jr., in his capacity as trustee (the “**GUC Recovery Trustee**”) of the JCK Legacy Company GUC Recovery Trust (the “**GUC Recovery Trust**”) created under the GUC Recovery Trust Agreement (the “**Trust Agreement**”) and the confirmed *First Amended Joint Chapter 11 Plan of Distribution of JCK Legacy Company and its affiliated Debtors and Debtors in Possession* (the “**Plan**”) [Docket No. 879], by and through undersigned counsel, files this objection (the “**Objection**”), pursuant to section 502(b) of title 11 of the United States Code (the

<sup>1</sup> The last four digits of Debtor The McClatchy Company’s tax identification number are 0478. Due to the large number of debtor entities in these jointly administered chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/McClatchy>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 2100 Q Street, Sacramento, California 95816.



**“Bankruptcy Code”**) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (**“Bankruptcy Rule”**), for entry of an order, substantially in the form attached as **Exhibit A** (the **“Proposed Order”**), disallowing termination premiums asserted by the Pension Benefit Guaranty Corporation (**“PBGC”**) in Proof of Claim No. 2689. In support of this Objection, the GUC Recovery Trustee respectfully represents as follows:

### **JURISDICTION**

1. This Court has jurisdiction to consider this Objection pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The statutory predicate for the relief requested herein are section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007.

### **BACKGROUND**

#### **A. General Overview**

5. On February 13, 2020 (the **“Petition Date”**), The McClatchy Company, a corporation organized under the laws of the state of Delaware, and certain of its affiliates (collectively, the **“Debtors”**), filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the U.S. Bankruptcy Court for the Southern District of New York. The chapter 11 cases have been jointly administered for procedural purposes, and all claims against the Debtors have been transferred to and consolidated in the bankruptcy case for the lead debtor, JCK Legacy Company.

6. On May 21, 2020, this Court entered an *Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* (the **“Bar Date Order”**), and

set July 10, 2020 at 5:00 p.m. (ET), as the deadline for creditors to file proofs of claim against the Debtors [Docket No. 485].

7. Notice of the Bar Date Order was mailed and also published in the *New York Times* as required by the Bar Date Order. *See* Docket Nos. 485, 513.

8. On September 25, 2020, this Court entered an order (the “**Confirmation Order**”) confirming the Plan, which became effective on September 30, 2020 (the “**Effective Date**”). *See* Docket Nos. 879, 886.

#### **B. GUC Recovery Trustee**

9. The Plan and Confirmation Order provide for the establishment of the GUC Recovery Trust pursuant to the Trust Agreement on the Effective Date, at which time the GUC Recovery Trustee was appointed to administer the GUC Recovery Trust. Confirmation Order at 11, 42; Trust Agreement, § 2.1; Plan, § 6.20.

10. Under the Trust Agreement, the GUC Recovery Trustee is authorized to review, object to, settle and resolve all general unsecured claims filed against the Debtors’ estates. Trust Agreement, § 6.1. The GUC Recovery Trustee is also authorized to take any action that may be or could have been taken by any officer or director of the Debtors or their estates with respect to the GUC Recovery Trust Assets, *id.* at § 2.2(e), represent the Debtors’ estate before any court of competent jurisdiction on matters concerning the GUC Recovery Trust, *id.* at § 2.2(m), to enter into any agreement that is consistent with the Plan, the Confirmation Order and the GUC Recovery Trust, *id.* at § 2.2(u), and to take any action that is reasonably necessary to administer the GUC Recovery Trust and the Plan. *Id.* at § 2.2(aa).

#### **C. Pension Plan and PBGC Proofs of Claim**

11. Prior to the Petition Date, the Debtors established and maintained The McClatchy

Company Retirement Plan (the “**Pension Plan**”), a qualified single-employer defined benefit pension plan, pursuant to Title IV of the Employee Retirement Income Security Act of 1974 (ERISA), *as amended*, 29 U.S.C. §§ 1301-1461 (2018).

12. Effective as of August 31, 2020, the Pension Plan was terminated pursuant to 29 U.S.C. § 1342(c) through an Agreement for Appointment of Trustee and Termination of Plan between the Debtors and PBGC. PBGC became the statutory trustee for the Pension Plan on September 4, 2020.

13. On July 8, 2020, PBGC filed three proofs of claim. Proof of Claim No. 1765 asserted a claim of \$1,008,000,000 for unfunded benefit liabilities; that is for the difference between assets of the Pension Plan and an estimate by PBGC of the liabilities of the Plan under 29 U.S.C. § 1362. Proof of Claim No. 1772 asserted a claim of \$90,210,000 for unpaid insurance premiums; that is for termination premiums related to flat-rate and variable rate premiums, 29 U.S.C. § 1306(a)(3), and resulting from a distressed termination under 29 U.S.C. §§ 1341(c)(2)(B)(ii) or (iii), or an involuntary termination under 29 U.S.C. § 1342. Proof of Claim No. 1876 asserted an amount of \$80,428,564 for unpaid minimum funding contributions; that is for minimum funding contributions required under ERISA, 29 U.S.C. § 1082, and the Internal Revenue Code, 26 U.S.C. §§ 412, 430, to ensure that the Pension Plan does not have an accumulated unfunded benefit liability.

14. On October 22, 2020, PBGC filed two amended proofs of claim. Proof of Claim No. 2666 amends Proof of Claim No. 1876 and asserts a revised amount of \$126,001,676 for unpaid minimum funding contributions. Proof of Claim No. 2667 amends Proof of Claim No. 1765 and asserts a revised amount of \$877,500,000 for unfunded benefit liabilities.

15. On December 8, 2020, PBGC filed Proof of Claim No. 2689, which amends Proof

of Claim No. 1772 and asserts a revised amount of \$101,729,550 for unpaid insurance premiums. The claim has two components: (a) Flat-Rate and Variable-Rate Premiums in the amount of \$11,519,550.00 pursuant to 29 U.S.C. § 1306(a)(3), 29 C.F.R. § 4006.3; and (b) Termination Premiums in the amount of \$90,210,000 pursuant to 29 U.S.C. § 1306(a)(7), *as amended* by § 8101(b) the Deficit Reduction Act of 2005 (Pub. L. 109-171) and by §§ 401(b) and 402(g)(2)(B) of the Pension Protection Act of 2006 (Pub. L. 109-280) (the “**Termination Premium Claim**”). The Termination Premium Claim is attached as **Exhibit B**.

16. In a statement in support of the Termination Premium Claim, PBGC states that the Termination Premium Claim applies to any termination premium “other than described in paragraph 10.” Paragraph 10 of the statement provides that “[i]f the Pension Plan terminates in a distress termination pursuant to 29 U.S.C. § 1341(c)(2)(B)(ii) or in an involuntary termination under 29 U.S.C. § 1342 while the Debtor is attempting to reorganize in Chapter 11, and the Debtor ultimately obtains confirmation of a Chapter 11 plan of reorganization, the Debtor’s obligation to PBGC for Termination Premiums does not exist until after the Chapter 11 plan is confirmed and the Debtor obtains a discharge. *See* 29 U.S.C. § 1306(a)(7)(B). Thus, under those circumstances, Termination Premiums are not a dischargeable claim or debt within the meaning of 11 U.S.C. §§ 101(5) and 1141.” Exhibit B at ¶ 10.

17. Section 1306(a)(7)(B) (as quoted and described in detail below) creates a special rule for termination premiums in cases where a plan is terminated during a chapter 11 bankruptcy reorganization. Thus, PBGC’s statement that the Termination Premium Claim applies to any termination premium “other than described in paragraph 10” suggests that the “special rule” under section 1306(a)(7)(B) does not apply to the Termination Premium Claim asserted here.

### **RELIEF REQUESTED**

18. Pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 3007, the GUC Recovery Trustee seeks entry of the Proposed Order disallowing the Termination Premium Claim because, due to the absence of a discharge, PBGC's right to collect the termination premium has not accrued, and will never accrue under 29 U.S.C. § 1306(a)(7)(B).

### **BASIS FOR RELIEF**

19. Section 502 of the Bankruptcy Code governs the allowance and disallowance of claims. 11 U.S.C. § 502. Generally, a proof of claim filed is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). If an objection is filed, section 502(b) requires the court to determine the amount of the claim and allow it, unless the claim falls in one of the enumerated categories under sections 502(b)(1)-(9). *See* 11 U.S.C. § 502(b). Among other provisions, section 502(b) provides that a claim may be disallowed if it is unenforceable against the debtor under applicable law. 11 U.S.C. § 502(b)(1).

20. The objecting party has the initial "burden of putting forth evidence sufficient to refute the validity of the claim." *In re Metex Mfg. Corp.*, 510 B.R. 735, 740 (Bankr. S.D.N.Y. 2014) (citation omitted). "By producing 'evidence equal in force to the prima facie case,' an objector can negate a claim's presumptive legal validity, thereby shifting the burden back to the claimant to 'prove by a preponderance of the evidence that under applicable law the claim should be allowed.'" *In re Residential Capital, LLC.*, 518 B.R. 720, 731 (Bankr. S.D.N.Y. 2014) (quoting *In re Motors Liquidation Co.*, 2013 WL 5549643, at \*3 (S.D.N.Y. 2013)).

#### **A. Termination Premiums under ERISA**

21. Section 1306(a)(7) provides:

(A) In general. - If there is a termination of a single-employer plan under clause (ii) or (iii) of section 1341(c)(2)(B) of this title or

section 1342 of this title, there shall be payable to the corporation, with respect to each applicable 12-month period, a premium at a rate equal to \$1,250 multiplied by the number of individuals who were participants in the plan immediately before the termination date. Such premium shall be in addition to any other premium under this section.

(B) Special rule for plans terminated in bankruptcy reorganization. - In the case of a single-employer plan terminated under section 29 USCS § 1341(c)(2)(B)(ii) or under 29 USCS § 1342 *during pendency of any bankruptcy reorganization proceeding under chapter 11 of title 11*, United States Code, or under any similar law of a State or a political subdivision of a State (or a case described in 29 USCS § 1341(c)(2)(B)(i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought), subparagraph (A) *shall not apply to such plan until the date of the discharge or dismissal of such person in such case.*

29 U.S.C. § 1306(a)(7) (emphasis added) (subparagraph (B), hereinafter referred to as the “**Special Rule**”).

22. Section 1306(a)(7) of ERISA exclusively provides for payment of termination premiums to PBGC after a pension plan is terminated. Generally, an employer is obligated to pay a termination premium within three years following a distress termination of a single-employer plan under sections 1341(c)(2)(B)(ii) or (iii) or an involuntary termination of such plan under section 1342. *See* 29 U.S.C. § 1306(a)(7)(A) and (C). However, the Special Rule applies to pension plans terminated during an employer’s chapter 11 bankruptcy reorganization. Section 1306(a)(7)(B) provides that section 1306(a)(7)(A) does not apply to a single-employer plan terminated under section 1341(c)(2)(B)(ii) or section 1342 of ERISA during the pendency of “any bankruptcy reorganization proceeding under chapter 11 of title 11 . . . until the date of the discharge or dismissal of such person in such case.” 29 U.S.C. § 1306(a)(7)(B).

23. In construing the Special Rule, the Second Circuit determined that “an employer’s obligation to pay a Termination Premium on a pension plan that is terminated during the course of

the bankruptcy does not even arise until the bankruptcy itself is terminated. No matter how broadly the term ‘claim’ is construed, it cannot extend to a right to payment that does not yet exist under federal law.” *Pension Ben. Guar. Corp. v. Oneida Ltd.*, 562 F.3d 154, 157 (2d Cir. 2009). Other courts interpreting *Oneida* have concluded that termination premiums do not arise until after the employer receives a discharge or the bankruptcy case is terminated (*i.e.*, dismissed). *See In re Briggs*, No. 11-CV-73A, 2011 WL 2457875, at \*5 (W.D.N.Y. June 16, 2011) (“the financial liability in *Oneida* was not a liability that arose pre-petition and simply could not be enforced until later; it did not exist at all until the end of the bankruptcy proceedings.”).

**B. Application of the Special Rule to Chapter 11 Plans of Liquidation**

*a. Rules on Statutory Construction*

24. All federal statutes must be interpreted according to their plain meaning. *Tyler v. Douglas*, 280 F.3d 116, 123 (2d Cir. 2001), *cert. denied*, 536 U.S. 906 (2002). In determining its degree of ambiguity or clarity, courts cannot examine statutory language in isolation, *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997), but must determine the specific context in which the language appears, and the statutory scheme’s broader framework in order to preserve the coherence and consistency of the statutory scheme. *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240-41 (1989) (citation omitted). “[I]n matters of statutory interpretation, the plain meaning of statutory language is often illuminated by considering not only the particular statutory language at issue, but also the structure of the section in which the key language is found, and the design of the statute as a whole and its object.” *Pellegrino v. United States Transp. Sec. Admin.*, 896 F.3d 207, 216 n.10 (3d Cir. 2018), *reh’g en banc granted*, 904 F.3d 329 (3d Cir. 2018).

*b. The Special Rule Applies to Debtors Liquidating Under Chapter 11*

25. As previously stated, ERISA provides a Special Rule under section 1306(a)(7)(B)



for termination premiums in cases where an employer terminates a pension plan during a chapter 11 bankruptcy case. Under ERISA, a termination premium claim arising from termination of a plan during “*any bankruptcy reorganization proceeding under chapter 11 of title 11*” does not accrue until the date of discharge or dismissal of such debtor’s case. 29 U.S.C. § 1306(a)(7)(B) (emphasis added). The provision unambiguously provides that termination premiums arising from *any bankruptcy reorganization proceeding under chapter 11* are deferred “until the date of the discharge or dismissal of such person in such case.” 29 U.S.C. § 1306(a)(7)(B).

26. There is no statutory exception to the Special Rule if the ultimate chapter 11 confirmed plan is one of liquidation. That no termination premium may ever be enforceable against the Debtors in any circumstance such as those presented here is consistent with the overall architecture of the termination premium statute. In a straight up liquidation, no termination premium would be due. Thus, if, for example, this case had been filed under chapter 7 at the outset, no termination premium claim would accrue. Similarly, if this case had been converted before the Pension Plan was terminated, no termination premium would be due.

27. In crafting the termination premium statute, Congress never intended for termination premium to apply in the context of liquidation. *See* 29 U.S.C. § 1306(a)(7)(A) (applying termination premiums only to terminations under 29 U.S.C. §§ 1341(c)(2)(B)(ii) and (iii) and 1342, not § 1341(c)(2)(B)(i) (which applies to true liquidations under chapter 7)); 29 U.S.C. § 1306(a)(7)(B) (providing that “[i]n the case of a single-employer plan terminated under section 1341(c)(2)(B)(ii) of this title or under section 1342 of this title during . . . (or a case described in section 1341(c)(2)(B)(i) of this title filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought), subparagraph (A) shall not apply to such plan until the date of the discharge or dismissal of such person in such

case.”).

28. That is hardly a surprising result because the cost of such a premium in any liquidation scenario (*i.e.*, chapter 7 or 11 (a liquidating chapter 11)) would be borne by other creditors, rather than the employer. *See Oneida*, 562 F.3d at 157 (“The obvious purpose of [the special] rule is to prevent *employers* from evading the Termination Premium while seeking reorganization in bankruptcy.” [emphasis added]). And in any event, if the termination premium did apply in a liquidation (albeit it does not), it is a penalty<sup>2</sup> that would be subordinated to all other claims under section 726(a)(4) of the Bankruptcy Code, thus ensuring that creditors are not affected by such exaction (which is primarily the responsibility of the going-concern entity).

29. At the time the Pension Plan was involuntarily terminated, the Debtors were in a bankruptcy reorganization proceeding. Chapter 11 of the Bankruptcy Code is labeled “Reorganization” and contains provisions that provide for liquidating plans. *See* 11 U.S.C. §§ 1123(a)(5)(D) and 1123(b)(4); *see also In re Ocean Beach Properties*, 148 B.R. 494, 497 (Bankr. E.D. Mich. 1992) (“[T]he purpose of Chapter 11 is to reorganize a business. It is certainly true that reorganization might in appropriate cases consist of either *rehabilitation* of the debtor’s business or the orderly *liquidation* of the debtor’s assets. The law as it has developed under Chapter 11 permits either course of action or a combination of both courses of action.” [emphasis in original]); *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 985-86 (Bankr. N.D.N.Y. 1988) (“While the primary purpose of Chapter 11 is reorganization, liquidation is not prohibited. . . . ‘Reorganization encompasses rehabilitation and may include liquidation.’” [citations omitted]).

30. In *USA Commercial Mortgage Co.*, No. 06-10725 (LBR) (Bankr. D. Nev. 2006), the bankruptcy court disallowed a termination premium claim identical to that asserted here by

---

<sup>2</sup> The termination premium is a penalty because it is payable even if all premiums under section 1306 of ERISA go unpaid. *See* 29 U.S.C. § 1307(d).

PBGC, after finding that the term “reorganization” applies to cases where a debtor liquidates under chapter 11. A copy of the bankruptcy court’s order is attached as **Exhibit C** and the transcript of findings of fact and conclusions of law (“**Transcript of Record**”) is attached as **Exhibit D**.

31. According to the court, the Special Rule is broad and applies to “any bankruptcy reorganization proceeding,” not merely “a bankruptcy reorganization.” Transcript of Record at 4, *USA Commercial Mortgage Co.*, No. 06-10725 (LBR) (Bankr. D. Nev. Apr. 17, 2008) (Docket No. 6417). In its words, the Special Rule was designed to “cover everything in a Chapter 11.” *Id.* The court also recognized that the Special Rule specifically refers to “Title 11” and that chapter 11 reorganization allows for liquidating plans. *Id.* Albeit a liquidating plan was approved in *USA Commercial Mortgage*, the court recognized that the liquidating plan involved more than proceeds from the sale of assets, but also the creation of a trust to recover more assets to maximize recoveries for the benefit of creditors. *Id.* Because there was no discharge, the court held that the termination premium claim did not accrue. The case is well-reasoned and squarely on point.

32. In response to the Objection, the GUC Recovery Trustee anticipates that PBGC may rely on *Pension Ben. Guar. Corp. v. Asahi Tec Corp.*, 979 F.Supp.2d 46 (D. D.C. 2013), where the district court determined that the Special Rule does not apply to debtors liquidating under chapter 11. However, *Asahi* is questionable authority.

33. *Asahi* did not involve a PBGC claim against the debtor’s estate. In *Asahi*, after the debtor-affiliate filed for bankruptcy, terminated its pension plan, and liquidated under chapter 11, PBGC sought to impose liability on a non-debtor affiliate as a control group member for, among other things, termination premiums. *Id.* at 52, 55. PBGC argued in *Asahi* that the term “reorganization” under section 1306(a)(7)(B) does not apply in cases where the employer attempts to liquidate under chapter 11. *Id.* at 73-74. Applying the *Chevron* deference, the court deferred to

PBGC's interpretation and held that the Special Rule does not apply to debtors liquidating under chapter 11. *Id.* at 74. According to the court, the Special Rule is a "timing" provision that triggers a termination premium only after "the date of discharge or dismissal" of the debtor's case. *Id.* at 75.

34. Regardless of whether the Special Rule is a timing provision, such timing turns on whether a pension plan *was* in fact terminated in a "bankruptcy reorganization proceeding under chapter 11 of title 11" to trigger the termination premium. *See* 29 U.S.C. § 1306(a)(7)(B). The Special Rule is unambiguous and thus the rule requires courts to give effect to the meaning of "bankruptcy reorganization proceeding under chapter 11." Because the debtor-affiliate in *Asahi* liquidated under chapter 11 and chapter 11 liquidation is deemed a form of reorganization under the Bankruptcy Code, deference should not have been afforded to PBGC.

35. Indeed, any litigation position espoused by PBGC here deserves no special deference, especially where the issue is determining whether a plan termination in a context such as this is in "the pendency of any bankruptcy reorganization proceeding under chapter 11 of title 11" 29 U.S.C. § 1306(a)(7)(B). PBGC has no expertise in construing those terms. *See, e.g., In re Kaiser Aluminum Corp.*, 456 F.3d 328, 344 (3d Cir. 2006) (refusing to defer to PBGC's interpretation of 29 U.S.C. § 1341(c)(2)(B)(ii)(IV)'s reorganization test under *Chevron* because "[i]ssues relating to an employer's bankruptcy and reorganization are within the expertise of bankruptcy courts, not the PBGC.>").

### **C. The Termination Premium Claim Should Be Disallowed**

36. Here, albeit the Debtors were unable to emerge from bankruptcy with a discharge, a bankruptcy reorganization proceeding existed. The case was filed under, and at all times remained under, chapter 11. In substance, the Debtors here were reorganized. Their businesses

continued operating under new ownership pursuant to restructuring transactions executed during the case under section 363 of the Bankruptcy Code, but with the former senior most creditors becoming the owners through a new acquisition vehicle and much of the prepetition debt being canceled.

37. Although the lack of a discharge means the termination premium claim would never accrue, that result in the context of a liquidating chapter 11 plan is consistent with the spirit of other provisions of ERISA, most notably 29 U.S.C. § 1341(c)(2)(B)(i), which confers what is tantamount to an automatic right of termination in liquidation, 29 U.S.C. § 1306(a)(7)(A) (no termination premium payable when plan is terminated pursuant to the aforementioned clause), and section 1306(a)(7)(B), which provides that a termination premium does not arise in a liquidation case until such case is converted into a case where reorganization is sought.

38. Because the Debtors' Pension Plan was terminated while they were in reorganization proceedings under chapter 11 of title 11, the Termination Premium Claim asserted here against the estate will never arise under section 1306(a)(7)(B)'s Special Rule because the Debtors have not received a discharge. Accordingly, the GUC Recovery Trustee respectfully requests that the Termination Premium Claim be disallowed in its entirety.

### **NOTICE**

39. Notice of this Objection has been given to parties on the master service list who have agreed to accept service by email and by first-class mail to: (a) the United States Trustee; (b) the Attorney General of the United States; (c) Office of the United States Attorney for the Southern District of New York; and (d) PBGC. The GUC Recovery Trustee submits that such notice is sufficient and no other or further notice need be provided.

**CONCLUSION**

**WHEREFORE**, the GUC Recovery Trustee requests that this Court enter the Proposed Order attached as **Exhibit A**: (a) disallowing the Termination Premium Claim; and (b) granting such other and further relief as the Court deems just and proper.

Dated: September 20, 2021

New York, New York

/s/ Leo T. Crowley

PILLSBURY WINTHROP SHAW PITTMAN LLP

Leo T. Crowley

Patrick E. Fitzmaurice

Kwame O. Akuffo

31 West 52nd Street

New York, New York 10019

Telephone: (212) 858-1000

Facsimile: (212) 858-1500

[leo.crowley@pillsburylaw.com](mailto:leo.crowley@pillsburylaw.com)

[patrick.fitzmaurice@pillsburylaw.com](mailto:patrick.fitzmaurice@pillsburylaw.com)

[kwame.akuffo@pillsburylaw.com](mailto:kwame.akuffo@pillsburylaw.com)

*Counsel for GUC Recovery Trustee*

**Response Deadline: October 13, 2021 at 4:00 p.m. (Prevailing Eastern Time)**  
**Hearing Date and Time: October 20, 2021 at 11:00 a.m. (Prevailing Eastern Time)**

PILLSBURY WINTHROP SHAW PITTMAN LLP  
31 West 52nd Street  
New York, NY 10019-6131  
Telephone: 212-858-1000  
Facsimile: 212-858-1500  
Leo T. Crowley  
Patrick E. Fitzmaurice  
Kwame O. Akuffo

*Counsel for GUC Recovery Trustee*

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

.....	X	
In re:	:	Chapter 11
	:	
JCK LEGACY COMPANY, <i>et al.</i> ,	:	Case No. 20-10418(MEW)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
.....	X	

**NOTICE OF OBJECTION AND HEARING**

**PLEASE TAKE NOTICE** that William A. Brandt, Jr., in his capacity as trustee of the JCK Legacy Company GUC Recovery Trust, filed the *GUC Recovery Trustee's Objection to Termination Premiums Asserted by the Pension Benefit Guaranty Corporation in Proof of Claim No. 2689* (the "**Objection**") with the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**").

---

<sup>1</sup> The last four digits of Debtor The McClatchy Company's tax identification number are 0478. Due to the large number of debtor entities in these jointly administered chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <http://www.kccllc.net/McClatchy>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 2100 Q Street, Sacramento, California 95816.

**PLEASE TAKE FURTHER NOTICE** that any response to the Objection must be filed on or before **October 13, 2021 at 4:00 p.m. (ET)** (the “**Response Deadline**”) with the Bankruptcy Court, Courtroom 617, One Bowling Green, New York, New York 10004. At the same time, you must serve a copy of any response by the Response Deadline upon the undersigned counsel to the movant and to:

- (a) The Debtors, JCK Legacy Company, c/o FTI Consulting, Inc., 1201 W. Peachtree Street, NW, Suite 500, Atlanta, Georgia 30309, Attn.: Sean M. Harding ([sean.harding@fticonsulting.com](mailto:sean.harding@fticonsulting.com));
- (b) Counsel for the Plan Administration Trustee, Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001, Attn.: Shana A. Elberg ([shana.elberg@skadden.com](mailto:shana.elberg@skadden.com)) and Bram A. Stochlic ([bram.stochlic@skadden.com](mailto:bram.stochlic@skadden.com)), 300 South Grand Avenue, Suite 3400, Los Angeles, California 90071, Attn.: Van C. Durrer, II ([van.durrer@skadden.com](mailto:van.durrer@skadden.com)), and Destiny N. Almogue ([destiny.almogue@skadden.com](mailto:destiny.almogue@skadden.com)) and 525 University Avenue, Palo Alto, California 94301 Attn.: Jennifer Madden ([jennifer.madden@skadden.com](mailto:jennifer.madden@skadden.com));
- (c) Co-counsel for the Plan Administration Trustee, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119, Attn.: Albert Togut ([altogut@teamtogut.com](mailto:altogut@teamtogut.com)) and Kyle J. Ortiz ([kortiz@teamtogut.com](mailto:kortiz@teamtogut.com));
- (d) The GUC Recovery Trust, c/o DSI Consulting, Inc., 110 East 42nd Street, Suite 1818, New York, New York 10017 Attn.: William A. Brandt., Jr. ([bbrandt@DSIconsulting.com](mailto:bbrandt@DSIconsulting.com));
- (e) Counsel for the GUC Recovery Trustee, Pillsbury Winthrop Shaw Pittman LLP, 31 West 52nd Street, New York, New York. Attn.: Leo T. Crowley ([leo.crowley@pillsburylaw.com](mailto:leo.crowley@pillsburylaw.com)), Patrick Fitzmaurice ([patrick.fitzmaurice@pillsburylaw.com](mailto:patrick.fitzmaurice@pillsburylaw.com)), and Kwame O. Akuffo ([kwame.akuffo@pillsburylaw.com](mailto:kwame.akuffo@pillsburylaw.com));
- (f) The Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014, Attn.: Benjamin J. Higgins and Brian S. Masumoto; and
- (g) Any party that has requested notice pursuant to Bankruptcy



Rule 2002.

Only those responses made in writing and timely filed in accordance with the above procedures will be considered by the Bankruptcy Court.

**PLEASE TAKE FURTHER NOTICE THAT**, unless the telephonic hearing procedures set forth in General Order M-543 (Morris, C.J.) are amended, the hearing to consider the Objection shall be held **telephonically via Court Solutions LLC on October 20, 2021, at 11:00 am (ET)** before the Honorable Michael E. Wiles in the Bankruptcy Court, Courtroom 617, One Bowling Green, New York, New York 10004. Instructions to register for Court Solutions LLC are attached to Gen. Ord. M-543.

**PLEASE TAKE FURTHER NOTICE THAT** if you fail to respond in accordance with this Notice and by the Response Deadline, the Bankruptcy Court may grant the relief requested in the Objection without further notice or a hearing.

Dated: September 20, 2021  
New York, New York

/s/ Leo T. Crowley  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
Leo T. Crowley  
Patrick E. Fitzmaurice  
Kwame O. Akuffo  
31 West 52nd Street  
New York, New York 10019  
Telephone: (212) 858-1000  
Facsimile: (212) 858-1500  
[leo.crowley@pillsburylaw.com](mailto:leo.crowley@pillsburylaw.com)  
[patrick.fitzmaurice@pillsburylaw.com](mailto:patrick.fitzmaurice@pillsburylaw.com)  
[kwame.akuffo@pillsburylaw.com](mailto:kwame.akuffo@pillsburylaw.com)

*Counsel for GUC Recovery Trustee*

**Exhibit A**

Proposed Order

PILLSBURY WINTHROP SHAW PITTMAN LLP  
31 West 52nd Street  
New York, NY 10019-6131  
Telephone: 212-858-1000  
Facsimile: 212-858-1500  
Leo T. Crowley  
Patrick E. Fitzmaurice  
Kwame O. Akuffo

*Counsel for GUC Recovery Trustee*

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

.....	X	
In re:	:	Chapter 11
	:	
JCK LEGACY COMPANY, <i>et al.</i> ,	:	Case No. 20-10418 (MEW)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
.....	X	

**ORDER GRANTING GUC RECOVERY TRUSTEE'S OBJECTION  
TO TERMINATION PREMIUMS ASSERTED BY THE PENSION  
BENEFIT GUARANTY CORPORATION IN PROOF OF CLAIM NO. 2689**

Upon consideration of the *GUC Recovery Trustee's Objection to Termination Premiums Asserted by the Pension Benefit Guaranty Corporation in Proof of Claim No. 2689* (the "**Objection**") to disallow termination premiums asserted by PBGC<sup>2</sup> in Proof of Claim No. 2689 (the "**Termination Premium Claim**"); and the Court having jurisdiction to consider the Objection and relief requested under 28 U.S.C. §§ 157 and 1334; and the Objection and relief requested being a core proceeding under 28 U.S.C. § 157(b)(2); and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Objection having been provided; and

---

<sup>1</sup> The last four digits of Debtor The McClatchy Company's tax identification number are 0478. Due to the large number of debtor entities in these jointly administered chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <http://www.kccllc.net/McClatchy>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 2100 Q Street, Sacramento, California 95816.

<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Objection.

it appearing that no other notice is needed; and such relief being in the best interest of the Debtors' estates and its creditors, and the GUC Recovery Trust; and the Court having considered all papers submitted; and for good cause shown;

It is hereby **ORDERED** that:

1. The Objection is **SUSTAINED** to the extent set forth herein.
2. The Termination Premium Claim is hereby disallowed in its entirety.
3. The GUC Recovery Trustee or the claims agent is authorized and directed to modify the claims register in accordance with the terms of this Order.
4. This Court shall retain jurisdiction over any matter arising from or related to the implementation or interpretation of this Order.

Dated: October \_\_, 2021  
New York, NY

---

Michael E. Wiles  
United States Bankruptcy Judge

**Exhibit B**

Proof of Claim No. 2689

Fill in this information to identify the case:

Debtor The McClatchy Company

United States Bankruptcy Court for the: Southern District of New York  
(State)

Case number 20-10418

Official Form 410  
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Pension Benefit Guaranty Corporation</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	<b>Where should notices to the creditor be sent?</b>  Pension Benefit Guaranty Corporation Emily E. Manbeck 1200 K Street, N.W. Washington, DC 20005, United States  Contact phone <u>2022296607</u> Contact email <u>manbeck.emily@pbgc.gov</u>	<b>Where should payments to the creditor be sent? (if different)</b>   Contact phone _____ Contact email _____  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____
4. Does this claim amend one already filed?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) <u>1772</u> Filed on <u>07/08/2020</u> MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor? ☒ No  
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_

7. How much is the claim? \$ 101,729,550.00. Does this amount include interest or other charges?  
☒ No  
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
  
Please see attached Statement in Support.

9. Is all or part of the claim secured? ☒ No  
☐ Yes. The claim is secured by a lien on property.  
**Nature or property:**  
☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
☐ Motor vehicle  
☐ Other. Describe: \_\_\_\_\_  
  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
☐ Fixed  
☐ Variable

10. Is this claim based on a lease? ☒ No  
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff? ☒ No  
☐ Yes. Identify the property: \_\_\_\_\_



<p><b>12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?</b></p> <p>A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.</p>	<div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> No  <input type="checkbox"/> Yes. Check all that apply:                 </div> <div style="text-align: right; background-color: #f2f2f2; padding: 2px 5px; font-weight: bold;">Amount entitled to priority</div> </div> <div style="margin-top: 10px;"> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 70%;"> <input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).                         </div> <div style="width: 25%; text-align: right;">\$ _____</div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 5px;"> <div style="width: 70%;"> <input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).                         </div> <div style="width: 25%; text-align: right;">\$ _____</div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 5px;"> <div style="width: 70%;"> <input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).                         </div> <div style="width: 25%; text-align: right;">\$ _____</div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 5px;"> <div style="width: 70%;"> <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).                         </div> <div style="width: 25%; text-align: right;">\$ _____</div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 5px;"> <div style="width: 70%;"> <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).                         </div> <div style="width: 25%; text-align: right;">\$ _____</div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 5px;"> <div style="width: 70%;"> <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.                         </div> <div style="width: 25%; text-align: right;">\$ _____</div> </div> </div> <p style="font-size: small; margin-top: 10px;">* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.</p>
<p><b>13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?</b></p>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.  <div style="text-align: right;">\$ _____</div>

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 12/08/2020  
MM / DD / YYYY

/s/Erika E. Barnes  
Signature

**Print the name of the person who is completing and signing this claim:**

Name Erika E. Barnes  
First name Middle name Last name

Title Assistant General Counsel

Company Pension Benefit Guaranty Corporation  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_





For phone assistance: Domestic (866) 810-6898 | International (424) 236-7215

<b>Debtor:</b> 20-10418 - The McClatchy Company <b>District:</b> Southern District of New York, New York Division		
<b>Creditor:</b> Pension Benefit Guaranty Corporation Emily E. Manbeck 1200 K Street, N.W.  Washington, DC, 20005 United States <b>Phone:</b> 2022296607 <b>Phone 2:</b>  <b>Fax:</b> 2023264318 <b>Email:</b> manbeck.emily@pbgc.gov	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> Yes - 1772, 07/08/2020 <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> Please see attached Statement in Support.	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 101,729,550.00	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Erika E. Barnes on 08-Dec-2020 3:04:09 p.m. Eastern Time <b>Title:</b> Assistant General Counsel <b>Company:</b> Pension Benefit Guaranty Corporation		

United States Bankruptcy Court for the Southern District of New York

Indicate Debtor against which you assert a claim by checking the appropriate box below. **(Check only one Debtor per claim form.)**

<input checked="" type="checkbox"/> The McClatchy Company (Case No. 20-10418)	<input type="checkbox"/> Macon Telegraph Publishing Company (Case No. 20-10436)	<input type="checkbox"/> Oak Street Redevelopment Corporation (Case No. 20-10888)
<input type="checkbox"/> Aboard Publishing, Inc. (Case No. 20-10419)	<input type="checkbox"/> Mail Advertising Corporation (Case No. 20-10437)	<input type="checkbox"/> Olympian Publishing, LLC (Case No. 20-10455)
<input type="checkbox"/> Bellingham Herald Publishing, LLC (Case No. 20-10420)	<input type="checkbox"/> McClatchy Big Valley, Inc. (Case No. 20-10438)	<input type="checkbox"/> Olympic-Cascade Publishing, Inc. (Case No. 20-10456)
<input type="checkbox"/> Belton Publishing Company, Inc. (Case No. 20-10421)	<input type="checkbox"/> McClatchy Interactive LLC (Case No. 20-10439)	<input type="checkbox"/> Pacific Northwest Publishing Company, Inc. (Case No. 20-10457)
<input type="checkbox"/> Biscayne Bay Publishing, Inc. (Case No. 20-10422)	<input type="checkbox"/> McClatchy Interactive West (Case No. 20-10440)	<input type="checkbox"/> Quad County Publishing, Inc. (Case No. 20-10458)
<input type="checkbox"/> Cass County Publishing Company (Case No. 20-10423)	<input type="checkbox"/> McClatchy International Inc. (Case No. 20-10441)	<input type="checkbox"/> San Luis Obispo Tribune, LLC (Case No. 20-10459)
<input type="checkbox"/> Columbus-Ledger Enquirer, Inc. (Case No. 20-10424)	<input type="checkbox"/> McClatchy Investment Company (Case No. 20-10442)	<input type="checkbox"/> Star-Telegram, Inc. (Case No. 20-10460)
<input type="checkbox"/> Cypress Media, Inc. (Case No. 20-10417)	<input type="checkbox"/> McClatchy Management Services, Inc. (Case No. 20-10443)	<input type="checkbox"/> Tacoma News, Inc. (Case No. 20-10461)
<input type="checkbox"/> Cypress Media, LLC (Case No. 20-10425)	<input type="checkbox"/> McClatchy News Services, Inc. (Case No. 20-10445)	<input type="checkbox"/> The Bradenton Herald, Inc. (Case No. 20-10462)
<input type="checkbox"/> East Coast Newspapers, Inc. (Case No. 20-10426)	<input type="checkbox"/> McClatchy Newspapers, Inc. (Case No. 20-10444)	<input type="checkbox"/> The Charlotte Observer Publishing Company (Case No. 20-10463)
<input type="checkbox"/> El Dorado Newspapers (Case No. 20-10427)	<input type="checkbox"/> McClatchy Property, Inc. (Case No. 20-10446)	<input type="checkbox"/> The News & Observer Publishing Co. (Case No. 20-10464)
<input type="checkbox"/> Gulf Publishing Company, Inc. (Case No. 20-10428)	<input type="checkbox"/> McClatchy Resources, Inc. (Case No. 20-10447)	<input type="checkbox"/> The State Media Company (Case No. 20-10465)
<input type="checkbox"/> Herald Custom Publishing of Mexico, S. de R.L. de C.V. (Case No. 20-10429)	<input type="checkbox"/> McClatchy Shared Services, Inc. (Case No. 20-10448)	<input type="checkbox"/> The Sun Publishing Company, Inc. (Case No. 20-10466)
<input type="checkbox"/> HLB Newspapers, Inc. (Case No. 20-10430)	<input type="checkbox"/> McClatchy U.S.A., Inc. (Case No. 20-10449)	<input type="checkbox"/> Tribune Newsprint Company (Case No. 20-10467)
<input type="checkbox"/> Idaho Statesman Publishing, LLC (Case No. 20-10431)	<input type="checkbox"/> Miami Herald Media Company (Case No. 20-10450)	<input type="checkbox"/> Tru Measure, LLC (Case No. 20-10468)
<input type="checkbox"/> Keltatim Publishing Company, Inc. (Case No. 20-10432)	<input type="checkbox"/> N & O Holdings, Inc. (Case No. 20-10451)	<input type="checkbox"/> Wichita Eagle and Beacon Publishing Company, Inc. (Case No. 20-10469)
<input type="checkbox"/> Keynoter Publishing Company, Inc. (Case No. 20-10433)	<input type="checkbox"/> Newsprint Ventures, Inc. (Case No. 20-10452)	<input type="checkbox"/> Wingate Paper Company (Case No. 20-10470)
<input type="checkbox"/> Lee's Summit Journal, Incorporated (Case No. 20-10434)	<input type="checkbox"/> Nittany Printing and Publishing Company (Case No. 20-10453)	
<input type="checkbox"/> Lexington H-L Services, Inc. (Case No. 20-10435)	<input type="checkbox"/> Nor-Tex Publishing, Inc. (Case No. 20-10454)	

## Official Form 410 Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for an administrative expense arising after the commencement of the case.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed.

### Part 1: Identify the Claim

1. <b>Who is the current creditor?</b>	Pension Benefit Guaranty Corporation Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. <b>Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. <b>Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b> Emily E. Manbeck Name 1200 K Street, N.W. Number Street Washington DC 20005 City State ZIP Code U.S.A. Country Contact phone (202) 229-6607 Contact email manbeck.emily@pbgc.gov  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	<b>Where should payments to the creditor be sent? (if different)</b> Name Number Street City State ZIP Code Country Contact phone _____ Contact email _____
4. <b>Does this claim amend one already filed?</b>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) 1772 Filed on 07/08/2020 MM / DD / YYYY	
5. <b>Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _
7. How much is the claim? \$ 101,729,550.00	Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  Please see attached Statement in Support.
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature of property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check all that apply:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ \_\_\_\_\_

☐ Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies. \$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 12/08/2020  
MM / DD / YYYY

/s/ Erika E. Barnes

Signature

Print the name of the person who is completing and signing this claim:

Name	Erika	E.	Barnes
	First name	Middle name	Last name
Title	Assistant General Counsel		
Company	Pension Benefit Guaranty Corporation		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	1200 K Street, N.W.		
	Number	Street	
	Washington	DC	20005 U.S.A.
	City	State	ZIP Code Country
Contact phone	(202) 229-3460		Email <u>barnes.erika@pbgc.gov</u>

IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
	)	
JCK Legacy Company, et al.	)	Case No. 20-10418
	)	
Debtors.	)	

**STATEMENT OF THE PENSION BENEFIT GUARANTY CORPORATION  
IN SUPPORT OF ITS AMENDED CLAIM FOR PENSION INSURANCE PREMIUMS**

The Pension Benefit Guaranty Corporation (“PBGC”) hereby submits this Statement in Support of its amended claim against The McClatchy Company<sup>1</sup> (“Debtor”) and each of the other Debtors for pension insurance premiums with respect to The McClatchy Company Retirement Plan (the “Pension Plan”), stating:

1. PBGC is a wholly-owned United States government corporation, and an agency of the United States, that administers the defined benefit pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2018) (“ERISA”). PBGC guarantees the payment of certain pension benefits upon the termination of a single-employer pension plan covered by Title IV of ERISA. When an underfunded plan terminates, PBGC generally becomes trustee of the plan and, subject to certain statutory limitations, pays the plan’s unfunded benefits with its insurance funds. *See* 29 U.S.C. §§ 1321-1322, 1342, 1361.

2. The Pension Plan is a single-employer defined benefit pension plan covered by Title IV of ERISA. *See* 29 U.S.C. § 1321.

3. On February 13, 2020, the Debtors filed a petition for relief under Chapter 11 of the

---

<sup>1</sup> JCK Legacy Company f/k/a The McClatchy Company. On September 11, 2020, the Court entered an order at Docket 837 authorizing the change of case caption in accordance with the change in corporate name from The McClatchy Company to JCK Legacy Company.

Bankruptcy Code. By Order of this Court, the Debtors' cases are consolidated for procedural purposes only, and are being jointly administered under case 20-10418.

4. On July 8, 2020, PBGC filed a proof of its claim against each of the Debtors for PBGC insurance premiums with respect to the Pension Plan, in the estimated amount of \$90,210,000. PBGC understands this claim was registered as Claim Number 1772. PBGC has revised the amount of the claim based on the date PBGC became the statutory trustee of the Pension Plan.

5. On September 4, 2020, PBGC became the statutory trustee of the Pension Plan, through an Agreement for Appointment of Trustee and Termination of Plan between the Debtor and PBGC. The date of termination for the Pension Plan is August 31, 2020.

6. On August 31, 2020, each of the Debtors was a contributing sponsor of the Pension Plan, 29 U.S.C. § 1301(a)(13), or a member of a contributing sponsor's controlled group, 29 U.S.C. § 1301(a)(14).

7. The contributing sponsor of the Pension Plan or the Pension Plan's Plan Administrator is the designated payor of PBGC insurance premiums. 29 U.S.C. § 1307(a), (e).

8. Each member of the contributing sponsor's controlled group is jointly and severally liable to PBGC for insurance premiums, interest, and penalties (collectively, "Premiums") with respect to the Pension Plan. 29 U.S.C. § 1307(e)(2). These Premiums include:

(a) Flat-Rate and Variable-Rate Premiums, *see* 29 U.S.C. § 1306(a)(3), 29 C.F.R. § 4006.3, and

(b) If the Pension Plan terminates in a distress termination pursuant to 29 U.S.C. §§ 1341(c)(2)(B)(ii) or (iii), or in an involuntary termination under 29 U.S.C. § 1342, Termination Premiums at the rate of \$1,250 per plan participant per year for three

years. *See* 29 U.S.C. § 1306(a)(7), *as amended* by § 8101(b) the Deficit Reduction Act of 2005 (Pub. L. 109-171) and by §§ 401(b) and 402(g)(2)(B) of the Pension Protection Act of 2006 (Pub. L. 109-280).

9. This is an amended claim for Premiums that the Debtors owe to PBGC in the total amount of \$101,729,550, apportioned as follows:

(a) Flat-Rate and Variable-Rate Premiums arising after the petition date are administrative expenses entitled to priority under 11 U.S.C. §§ 503(b)(1) and 507(a)(2). This claim includes Flat-Rate and Variable-Rate Premiums arising after the petition date in an amount of zero (\$0.00).

(b) Flat-Rate and Variable-Rate Premiums arising before the petition date are general unsecured claims. This claim includes Flat-Rate and Variable-Rate Premiums arising before the petition date in an amount of \$11,519,550.00.

(c) Any Termination Premiums other than that described in paragraph 10 are asserted as a general unsecured claim. PBGC estimates that the total amount of Termination Premiums is \$90,210,000.00.

10. If the Pension Plan terminates in a distress termination pursuant to 29 U.S.C. § 1341(c)(2)(B)(ii) or in an involuntary termination under 29 U.S.C. § 1342 while the Debtor is attempting to reorganize in Chapter 11, and the Debtor ultimately obtains confirmation of a Chapter 11 plan of reorganization, the Debtor's obligation to PBGC for Termination Premiums does not exist until after the Chapter 11 plan is confirmed and the Debtor obtains a discharge. *See* 29 U.S.C. § 1306(a)(7)(B). Thus, under those circumstances, Termination Premiums are not a dischargeable claim or debt within the meaning of 11 U.S.C. §§ 101(5) and 1141.

11. Documents supporting this claim include the Pension Plan document with

applicable amendments; relevant collateral agreements, if any; United States Internal Revenue Service Form 5500s; PBGC Annual Premium Payment forms; and annual actuarial valuation reports for the Pension Plan. On information and belief, the Debtor or a member of its controlled group has in its possession and control copies or originals of these documents.

12. PBGC's investigation of this matter is continuing. The agency reserves the right to amend, modify, and supplement this proof of claim and/or to file additional proofs of claim. This claim may be subject to a right of setoff by PBGC as an agency of the United States government, and the right of the United States to withhold subject to offset amounts due from other federal entities. The filing of this proof of claim is not intended to be and shall not be construed as (1) an election of remedy or (2) a waiver or limitation of any rights of PBGC, the Pension Plan or any of its beneficiaries or participants.

13. Under the Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof signed by this Court on May 21, 2020 (Dkt. 485), this single proof of claim shall be deemed to constitute the filing of a proof of claim against each and every Debtor, asserted as a joint and several liability, in this jointly administered proceeding.

Dated: Washington, D.C.  
December 8, 2020

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  
Office of the General Counsel



PENSION BENEFIT GUARANTY CORPORATION

1200 K Street, N.W.

Washington, D.C. 20005-4026

(202) 229-6607

(202) 326-4112

manbeck.emily@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

jgrekin@schaferandweiner.com

**Exhibit C**

USA Commercial Mortgage Order  
Disallowing PBGC Termination Premium



Entered on Docket  
July 18, 2008

A handwritten signature in dark ink, appearing to read "Linda B. Riegler".

Hon. Linda B. Riegler  
United States Bankruptcy Judge

**LEWIS AND ROCA LLP**

3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169-5996  
Facsimile (702) 949-8321  
Telephone (702) 949-8320  
Susan M. Freeman AZ State Bar No. 004199  
Email: sfreeman@lrlaw.com  
Rob Charles NV State Bar No. 006593  
Email: rcharles@lrlaw.com  
John Hinderaker AZ State Bar No. 018024  
Email: jhinderaker@lrlaw.com

**FOLEY & LARDNER LLP**

321 North Clark Street, Suite 2800  
Chicago, IL 60610  
Facsimile (312) 832-4700  
Telephone (312) 832-4500  
Edward J. Green IL State Bar No. 6225069  
Email:  
Geoffrey S. Goodman IL State Bar No. 6272297

*Attorneys for USACM Liquidating Trust*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

USA Commercial Mortgage Company,  
USA Capital Realty Advisors, LLC,  
USA Capital Diversified Trust Deed Fund, LLC,  
USA Capital First Trust Deed Fund, LLC,<sup>1</sup>  
USA Securities, LLC,<sup>2</sup>  
Debtors.

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR<sup>1</sup>  
Case No. BK-S-06-10729-LBR<sup>2</sup>

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

**ORDER DISALLOWING AMENDED  
CLAIM NO. 791 FILED BY THE  
PENSION BENEFIT GUARANTY  
CORPORATION**

Date of Hearing: April 17, 2008  
Time of Hearing: 9:30 a.m.

**Affects:**

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

<sup>1</sup> This bankruptcy case was closed on October 12, 2007.

<sup>2</sup> This bankruptcy case was closed on December 26, 2007.

1 This matter having come before the Court upon the supplemental objection (the  
2 “Objection”) of the USACM Liquidating Trust (the “USACM Trust”) [DE 5927], filed on  
3 March 4, 2008, to the termination premium claim under 29 U.S.C. § 1306(a)(7) included  
4 in Amended Claim No. 791 (the “Termination Premium Claim”) filed by the Pension  
5 Benefit Guaranty Corporation (the “PBGC”); the PBGC having filed a response in  
6 opposition to the Objection on March 14, 2008 (the “Response”) [DE 5984]; the USACM  
7 Trust having filed a reply in support of the Objection on March 25, 2008 (the “Reply”)  
8 [DE 6049]; the PBGC having filed a sur-reply in opposition to the Objection on March 31,  
9 2008 (the “Sur-reply”) [DE 6063]; the Objection having come before the Court for hearing  
10 on April 17, 2008 (the “Hearing”); the Court having considered the Objection, the  
11 Response, the Reply, the Sur-reply, the arguments of counsel at the Hearing and other  
12 materials of which this Court may take judicial notice; and the Court being otherwise  
13 sufficiently advised;

14 IT IS HEREBY ORDERED:

- 15 1. The Objection is sustained for the reasons set forth by this Court in its oral  
16 ruling at the Hearing; and  
17 2. The Termination Premium Claim No. 10725-00791-2 is hereby disallowed  
18 in its entirety.
- 19  
20  
21  
22  
23  
24  
25  
26

1 PREPARED AND SUBMITTED:

2 **LEWIS AND ROCA LLP**

3 By: /s/ RC (#0006593)

4 Susan M. Freeman

5 Rob Charles

6 John Hinderaker

7 -and -

8 **FOLEY & LARDNER LLP**

9 Edward J. Green

10 Geoffrey S. Goodman

11 *Attorneys for USACM Liquidating Trust*

12 APPROVED

13 **PENSION BENEFIT GUARANTY  
CORPORATION**

14 By: 

15 James Eggeman Assistant Chief Counsel (*pro*  
*hac vice* pending)

16 Frank A. Anderson, DC 478234 (*pro hac vice*)

17 Erika E. Barnes, CA 197309 (*pro hac vice*)

18 Office of the Chief Counsel

19 1200 K. Street, NW Suite 340

Washington, DC 20005-3759

Email: anderson.frank@pbgc.gov

20 **APPROVED**

21 **LISA POULIN, CHAPTER 11 TRUSTEE FOR  
22 USA INVESTMENT PARTNERS, LLC**

23 By: /s/ Gregory Garman

24 Gregory Garman

25 Gordon & Silver, Ltd.

26 3960 Howard Hughes Pky., 9<sup>th</sup> Floor

Las Vegas, NV 89109

Email: geg@gordonsilver.com

CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

In accordance with Local Rule 9021, the undersigned certifies:

- ☐ The Court waived the requirements of approval under LR 9021.
- ☐ No parties appeared or filed written objections, and there is no trustee appointed in the case.
- ☐ No opposition was filed to the motion and no other party or counsel appeared at the hearing.
- ☒ I have delivered a copy of this proposed order to all attorneys and unrepresented parties who have appeared at the hearing, and any trustee appointed in the case, and each has approved or disapproved the order, or failed to respond, as indicated below:

PENSION BENEFIT GUARANTY CORPORATION (Approved)  
[Claimant]

LISA POULIN, CHAPTER 11 TRUSTEE FOR USA INVESTMENT PARTNERS, LLC  
(Approved) [Interested Party]

**LEWIS AND ROCA LLP**

By: /s/ RC (#0006593)  
Susan M. Freeman  
Rob Charles  
*Attorneys for USACM Liquidating Trust*

**Exhibit D**

Transcript of Record

1 (Court previously convened at 09:42:16 a.m.)

2 (Partial transcript at 09:48:45 a.m.)

3 THE COURT: Oh, those are at 10:30. Okay. All  
4 right.

5 Next, let's before we do this --

6 (Colloquy not on the record.)

7 THE COURT: Well, these are all equally horrific, so  
8 I guess we'll do the PBGC first.

9 THE CLERK: Item No. 4.

10 THE COURT: All right. Appearances, please, in the  
11 USA Commercial Mortgage case.

12 (Colloquy not on the record.)

13 MR. GOODMAN: Good morning, your Honor.

14 Geoff Goodman, Foley & Lardner, special counsel to the  
15 USACM Liquidating Trust for the PBGC matter.

16 MR. BARNES: Good morning, your Honor. Erika Barnes  
17 representing Pension Benefit Guaranty Corporation.

18 MR. GARMAN: Your Honor, Greg Garman for the estates  
19 of USA Investments Partners and Investor VI. The claim  
20 trickles over and relates to us, also.

21 THE COURT: Okay. Anybody else wish to make their  
22 appearance in the Commercial Mortgage matter since we're in the  
23 case? Okay. I just need --

24 MR. EGGEMAN: Good morning, your Honor. Jim Eggeman  
25 also on behalf of Pension Benefit Guaranty Corporation.



1 THE COURT: Okay. All right. Just to clarify the  
2 record here, the only claim remaining is 791, correct?

3 MR. GOODMAN: That's correct, your Honor. And,  
4 actually, in a way, it's actually only a portion of that claim,  
5 the portion that was resolved pursuant to stipulation and on  
6 the 4th of April, but it's the termination-premium portion of  
7 791.

8 THE COURT: Okay. So I'm just trying to clean up the  
9 calendar for the clerk's purpose.

10 MR. GOODMAN: Yes, your Honor.

11 THE COURT: So Docket No. 4 can be taken off  
12 calendar. Docket No. 5 can be taken off calendar, and what  
13 we're really hearing is the supplemental objection to 791,  
14 correct?

15 MR. BARNES: Yes, your Honor.

16 MR. GOODMAN: That's correct.

17 THE COURT: All right. Go ahead.

18 MR. GOODMAN: Thank you, your Honor. Geoff Goodman  
19 on behalf of USACM Liquidating Trust, special counsel. As  
20 your Honor mentioned, the only thing left -- we settled with  
21 the PBGC on a substantial portion of that claim.

22 What's left is this termination-premium claim, and this  
23 claim arises out of or has its genesis in the so-called  
24 Deficit Reduction Act of -- I believe it's labelled as of 2005.

25 You know, the president didn't sign it until February of

1           THE COURT: Thank you. First of all, I want to thank  
2 both of you for your briefs and your arguments. A lot of  
3 times -- you know, I always take oral argument.

4           But a lot of times oral argument isn't that helpful to me.  
5 This time it was helpful to -- and for another reason to kind  
6 of crystallize the thoughts in my mind and try and understand  
7 this statute. I mean, reading the -- my hat's off to you who  
8 deal with this.

9           Reading the ERISA and PBGC's statutes is as obtuse to me  
10 as people who do state court litigation trying to read the  
11 bankruptcy code I'm sure, so I understand.

12           But I'm going to sustain the objection, and I think that  
13 PBGC has argued well. The point is -- I just -- the law's just  
14 not on your side on this issue.

15           I appreciate your arguments, and I certainly fully  
16 appreciate the goals of the PBGC, the work of the PBGC, but we  
17 have the competing interest of the bankruptcy code, and we have  
18 two statutes involved.

19           The 1306 amendment -- the amendments to 1306 by the DRA  
20 (phonetic) of 2005 -- and I think we need to parse it and say  
21 special rules or plans terminated in bankruptcy  
22 reorganizations, but then it goes on to say in the case of a  
23 single-employer plan terminated under -- in this case,  
24 Section 1342 -- during pendency of any bankruptcy  
25 reorganization proceeding under Chapter 11 of Title 11

1 United States Code, 11, USC, Section 1101, et seq.

2 While -- or -- okay, seminal law. Subparagraph A, which  
3 is the termination of premium "shall not apply to such plan  
4 until the date of discharge or dismissal of such person in such  
5 case."

6 So first of all, does that mean that it's only a  
7 reorganization in the very limited sense of the term? And I  
8 find it does not.

9 I mean, Chapter 11 is called reorganization. Chapter 11  
10 allows liquidating plans. Importantly, I think the statute  
11 says any bankruptcy reorganization proceeding. It didn't say a  
12 bankruptcy reorganization, and it refers specifically to  
13 Title 11.

14 I don't think it's illogical to read the statute that way  
15 because congress could have wanted that reorganizations are --  
16 that -- I don't think it's illogical to read it in that regard  
17 because it wanted to cover everything in a Chapter 11.

18 In this case, while there's a liquidating plan, it wasn't  
19 merely that the assets were taken and sold, there's more. In  
20 other words, the trust continues, the trust collects assets,  
21 but there are no more employees.

22 And I don't think it's illogical -- now, we have sort of  
23 like I guess it'd be the equivalent of the old springing  
24 interest. We purportedly have a premium, but then when's the  
25 premium due? Well, the premium's never due until there's a

1 discharge or a dismissal.

2 So one could say isn't that illogical that you have a  
3 premium, but it never comes due? Well, no. Perhaps that was  
4 congress' way of distinguishing. We're only going to apply  
5 this premium to new employers who take over -- who buy  
6 companies out of bankruptcy, and that could be quite logical.

7 We've seen a lot of hedge funds, for example, buy  
8 companies out of bankruptcy, proceed having terminated the  
9 plan, dumping the employees. Maybe it was congress' way of  
10 saying wait a minute. If you're going to do that, you got to  
11 pay a termination premium.

12 And conversely, it would be illogical for congress to say,  
13 well, if we're just liquidating, there's no sense for an  
14 administrative priority. There's no sense for a claim, the  
15 employees have been terminated.

16 So I find that the PBGC doesn't have a claim for the  
17 premium under that section. Although, you know, again, it  
18 seems to have a claim, but it never comes into being.

19 But, in any case, I don't find that even assuming that we  
20 took the very narrow reading and reorganization meant coming  
21 out with a new entity -- and I'm not sure how we even get to  
22 that, I don't -- I find that it's a penalty because the point  
23 is it is not applicable to single-employer plans -- it is only  
24 applicable to single-employer plans who terminate under 1342  
25 which is a hardship discharge or clause 2 or 3 of Section

1 1341(c)(2)(B). (C)(2)(B) is distress terminations of  
2 single-employer plans.

3 So clearly, it's meant to be a penalty or a deterrent from  
4 termination of plans under distressed circumstances. It bears  
5 no relationship to what was owed.

6 And I think that as I sort of indicated to counsel, she  
7 did a very good job trying to distinguish, but I think the  
8 point is to suggest that just because -- because the money's  
9 owed to the PBGC, because the PBGC does government work,  
10 because PBGC gets taxpayers' funds, ergo, it's a tax, takes  
11 that argument too far. It means everything's a tax and  
12 nothing's ever a penalty, and we know from the reorganized  
13 CFI&R (sic) case that that's not the case.

14 Just an aside note, it is not my intent to publish at this  
15 time. I just have too many other irons in the fire. I know  
16 you all sort of want published decisions for various purposes.  
17 That's not to say I won't, but I don't think I will. I just --  
18 as I said, I'm just too backed up, so these are my oral  
19 findings and conclusions on the record.

20 Thank you, again, very much.

21 MR. GOODMAN: Thank you, your Honor.

22 MS. BARNES: Excuse me.

23 THE COURT: All right. What I'd like to do --

24 MR. EGGEMAN: Your Honor --

25 THE COURT: Sorry. Um-h'm. Oh, I'm sorry.

1 (Indiscernible) comment.

2 MS. BARNES: Your Honor, we just ask for a  
3 clarification.

4 THE COURT: Sure.

5 MR. EGGEMAN: You said you find that there's no claim  
6 under --

7 THE COURT RECORDER: I'm sorry. Could you speak into  
8 one of the microphones.

9 MR. EGGEMAN: I beg your pardon.

10 THE COURT RECORDER: Thank you.

11 MR. EGGEMAN: Your Honor, you were saying you find  
12 that there's no claim under --

13 THE COURT: Yeah. I've got to admit I'm a little  
14 conflicted on whether or not -- there's clearly no  
15 administrative claim, and it would seem to me that you wouldn't  
16 even have a claim, period, because of the way 1306 works, but  
17 I'm unclear about -- maybe the point is it's just an unsecured  
18 claim because it never comes into being, and I --

19 MR. EGGEMAN: Well, you --

20 THE COURT: I don't know. I --

21 MR. EGGEMAN: Your Honor --

22 THE COURT: I think their point is there is no claim  
23 as opposed to --

24 MR. GOODMAN: Yes. Under your Honor's reasoning of  
25 the first point --

1 THE COURT: Of the first point.

2 MR. GOODMAN: -- there would be no claim because it's  
3 not owed.

4 THE COURT: Because it's not owed. Right.

5 MR. EGGEMAN: Under B, under 1307(a)(7)(B).

6 THE COURT: Yes. Let me clarify that. 1307 --

7 MS. BARNES: 1306.

8 THE COURT: -- B, because --

9 MR. EGGEMAN: I beg your pardon --

10 THE COURT: -- while there is a termination premium,  
11 it never becomes due, so the point is since it never becomes  
12 due, it becomes a nullity I guess is the best way to explain  
13 that.

14 MR. GOODMAN: Essentially, your Honor, if I may --

15 THE COURT RECORDER: I'm sorry. Could you move  
16 closer to the microphone --

17 THE COURT: We need you by the microphone.

18 THE COURT RECORDER: -- please.

19 MR. GOODMAN: I apologize.

20 THE COURT RECORDER: Thank you.

21 MR. GOODMAN: Jeff Goodman on behalf USACM  
22 Liquidating Trust. I mentioned this. You know, even if it  
23 were a claim, it would have been a contingent claim. To the  
24 extent that it was, the contingency doesn't arise here, so,  
25 therefore, if it would have been estimated, it would have been

1 estimated at zero.

2 THE COURT: Okay. I don't know if I agree with that.  
3 I'm not adopting that necessarily --

4 MR. GOODMAN: I understand that.

5 THE COURT: -- by finding.

6 MR. EGGEMAN: May I have --

7 THE COURT: Yes. Uh-huh.

8 MR. EGGEMAN: -- just another word, your Honor. It's  
9 Jim Eggeman on behalf of PBGC. So you're saying that under B  
10 no claim would arise in a liquidating 11, is that --

11 THE COURT: I --

12 MR. EGGEMAN: -- but in --

13 THE COURT: That's right. No. As long as it's a  
14 Chapter 11 proceeding then it doesn't apply, there is no claim,  
15 and I think that's the point because I think even the code  
16 means, even -- let's assume that we had a reorganization. I  
17 don't believe it's even a claim in the estate because it says  
18 it doesn't apply until the date --

19 MR. EGGEMAN: Well, that's the argument --

20 THE COURT: -- of the confirmation.

21 MR. EGGEMAN: That's the argument we made in Oneida,  
22 and Oneida found that there was a claim.

23 THE COURT: I appreciate that.

24 MR. EGGEMAN: Okay.

25 THE COURT: But that's -- I --



1 MR. EGGEMAN: I --

2 THE COURT: I have --

3 MR. EGGEMAN: Off point. I --

4 THE COURT: -- great respect for that Judge, and I'm  
5 not sure I disagree or I don't have that circumstance, but it  
6 would seem to me that the logic would follow that you don't  
7 even have a claim because it doesn't even arise until after the  
8 confirmation.

9 MR. EGGEMAN: We would agree with you, your Honor.

10 THE COURT: So -- all right. Thank you --

11 MR. EGGEMAN: In --

12 THE COURT: -- again.

13 MR. EGGEMAN: In reorganization certainly.

14 THE COURT: Thank you again for your arguments.

15 MR. EGGEMAN: Thank you, your Honor.

16 MS. BARNES: Thank you, your Honor.

17 THE COURT RECORDER: Mr. Eggeman, could you spell  
18 your last name for the record please.

19 MR. EGGEMAN: E-g-g-e-m-a-n.

20 THE COURT RECORDER: Thank you, sir.

21 THE COURT: Okay.

22 MS. ITKIN: Your Honor, regarding Hantges. The  
23 parties (indiscernible) --

24 THE COURT RECORDER: I'm sorry. Could you come to  
25 the microphone please.

1 I certify that the foregoing is a correct transcript from  
2 the electronic sound recording of the proceedings in the  
3 above-entitled matter.

4  
5  
6 /s/ Michele Phelps

04/25/08

7 \_\_\_\_\_  
Michele Phelps, Transcriptionist

8 \_\_\_\_\_  
Date