

**Hearing Date and Time: October 12, 2021, at 10:00 a.m. (prevailing Eastern Time)**  
**Objection Deadline and Time: October 5, 2021, at 4:00 p.m. (prevailing Eastern Time)**

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

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

<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 MOTION FOR  
AN ORDER TO COMPEL MEDIATION REGARDING THE GUC RECOVERY  
TRUSTEE’S OBJECTIONS TO PBGC CLAIMS**

Pension Benefit Guaranty Corporation (“PBGC”), a creditor in the above-captioned proceeding, by and through undersigned counsel, hereby files on its own behalf and on behalf of the McClatchy Company Retirement Plan (the “Pension Plan”), this motion (“Mediation Motion”) for entry of an order (the “Order”) pursuant to Rule 9019-1 of the Local Rules of Bankruptcy Court for the Southern District of New York (the “Local Rules”) referring the parties to mediation to resolve the GUC Recovery Trustee’s Objection to Proof of Claim No. 2666 Filed by the Pension Benefit Guaranty Corporation (ECF Doc. 1266) and the GUC Recovery Trustee’s Objection to Termination Premiums Asserted by the Pension Benefit Guaranty Corporation in Proof of Claim No. 2689 (ECF Doc. 1267) (collectively, the “Objections”) that are pending before this Court. In support of this Mediation Motion, PBGC respectfully represents as follows:

**FACTUAL AND STATUTORY BACKGROUND**

**A. PBGC and ERISA’s Statutory Provisions**

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 ERISA, 29 U.S.C. §§ 1301-1461 (2018).

2. PBGC guarantees the payment of certain pension benefits upon the termination of a single-employer pension plan covered by Title IV. 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. The single-employer insurance program administered by PBGC acts as a backstop for American

workers, providing retirement income for approximately 984,000 workers whose underfunded plans have been terminated (with another 552,000 workers scheduled to receive benefits from PBGC when they retire). *See* PBGC 2020 Annual Report, at 2.<sup>2</sup> In 2020, PBGC’s single-employer insurance program paid over \$6.1 billion in benefits and protected the benefits of 127,000 employees whose employers emerged from bankruptcy during the year. *Id.* Currently, PBGC guarantees the pension benefits of more than 34 million participants in approximately 24,600 pension plans. *See id.* at 1, 10.

3. Title IV of ERISA provides the exclusive means to terminate a defined benefit pension plan, and PBGC regulates such terminations. *See* 29 U.S.C. §§ 1341, 1342. An employer may terminate a plan in a “standard” termination if the plan is fully funded or seek termination in a “distress” termination if the sponsor and each member of its controlled group demonstrate that they meet certain requirements relating to their financial viability. PBGC may initiate termination of a plan if certain statutory criteria are met and must seek to terminate it if a plan runs out of money to pay benefits currently due. 29 U.S.C. § 1342(a).

4. When an underfunded pension plan terminates in a distress or PBGC-initiated termination, PBGC typically becomes trustee of the plan and assumes an unconditional obligation to pay participants and beneficiaries their lifetime Title IV benefits. *See* 29 U.S.C. §§ 1322, 1361. The employer, however, is not relieved of its liability for the benefits it promised to its employees. Instead, under ERISA, the employer and each member of its controlled group become jointly and severally liable as follows: (1) to PBGC for the “amount of unfunded benefit liabilities” of the pension plan pursuant to 29 U.S.C. §§ 1362(a) and (b); (2) to the pension plan

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<sup>2</sup> PBGC’s 2020 Annual Report is available on the agency’s website at <https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2020.pdf>.

for unpaid minimum funding contributions owed under to 26 U.S.C. §§ 412 and 430 pursuant to 29 U.S.C. §§ 1082, 1342, and 1362 (a) and (c); and (3) to PBGC for any unpaid premiums owed pursuant to 29 U.S.C. § 1307.

5. Additionally, if a 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, the plan sponsor is liable to PBGC for 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); *see also* 29 U.S.C. § 1307. PBGC routinely pursues joint and several claims for these liabilities against plan sponsors and each of their controlled group members. *See generally* 29 U.S.C. §§ 1342(d), 1362.

6. Where the employer is in bankruptcy, PBGC files claims so that it can receive its share of any distributions made to similarly situated creditors. *See* 11 U.S.C. § 1123(a)(4). Thus, the fact that an employer is in bankruptcy does not alter the obligation to satisfy the claim and does not alter the underlying substantive law upon which the claim is based.

**B. The Debtors' Bankruptcy Proceeding, the Pension Plan, and PBGC's Proofs of Claims**

7. On February 13, 2020, each of the Debtors filed a voluntary petition under Chapter 11 of the Bankruptcy Code.

8. As it does in other bankruptcy proceedings where a debtor sponsors a defined benefit pension plan covered by Title IV of ERISA, PBGC timely filed three proofs of claims and statements in support related to the Pension Plan against each of the Debtors on July 8, 2020: one for \$1,008,800,000 for unfunded benefit liabilities under 29 U.S.C. §§ 1362 and 1368 (Claim No. 1765); one for \$80,428,564 for minimum funding contributions that the Debtors were

required to pay to the Pension Plan but did not, pursuant to 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1082, 1342, and 1362(c) (Claim No. 1876); and one for \$90,210,000 for premiums under 29 U.S.C. §§ 1306(a)(7) and 1307 (Claim No. 1772). On October 22, 2020, and December 8, 2020, PBGC filed amended claims: Claim No. 2666 for \$126,001,676 amends Claim No. 1876, claim for minimum funding contributions; Claim No. 2667 for \$877,500,000 amends Claim No. 1765, claim for unfunded benefit liabilities. and Claim No. 2689 for \$101,729,550 amends Claim No. 1772 for premiums (collectively, the “PBGC Claims”).

9. The Pension Plan, sponsored by The McClatchy Company (“McClatchy”), terminated effective August 31, 2020. On September 4, 2020, PBGC became the statutory trustee of the Pension Plan pursuant to 29 U.S.C. § 4042(b)(3) by an agreement between PBGC and the administrator of the Pension Plan. At termination, the Pension Plan had approximately 24,056 participants.

10. When the Pension Plan terminated, Debtors became liable under federal law to PBGC for the claims described above. As statutory trustee, PBGC now has custody and control of the Pension Plan assets and is responsible under federal law for the Pension Plan’s administration, including payment of benefits to Pension Plan participants and beneficiaries. *See* 29 U.S.C. § 1342(d).

11. On September 20, 2021, the GUC Recovery Trustee filed the Objections to PBGC’s claim for unpaid minimum funding contributions (Claim No. 2666) and PBGC’s claim for premiums (Claim No. 2689).

### **JURISDICTION**

12. The Court has jurisdiction over this Mediation Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

### **RELIEF REQUESTED**

13. By this Mediation Motion, PBGC respectfully requests entry of an order, directing the GUC Recovery Trustee and PBGC (the “Parties”) to participate in mediation before a neutral mediator regarding the Objections that are pending before this Court and remain unresolved (the “Contested Matters”).

### **BASIS FOR RELIEF REQUESTED**

14. Rule 9019-1 of the Local Rules directs that alternative dispute resolution shall be conducted in the manner required by the Procedures Governing Mediation of Matters and the Use of Early Neutral Evaluation and Mediation/Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings (“Mediation Procedures”).<sup>3</sup> The Mediation Procedures state that “[t]he Court may order assignment of a matter to mediation upon its own motion, or upon a motion by any party in interest or the U.S. Trustee.” Mediation Procedures, Rule 1.1. Moreover, Mediation Procedures Rule 1.3, clarifies that the Court’s authority to refer a dispute to mediation broadly extends to disputes arising in “any adversary proceeding, contested matter or other dispute.” Mediation Produces, Rule 1.3. Accordingly, the Court possess the authority to refer the Contested Matters to mediation.

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<sup>3</sup> The Mediation Procedures are available on the Court’s web site (<http://www.nysb.uscourts.gov/content/mediation-procedures>).

15. PBGC submits that Court ordered mediation is the best and most efficient manner for the Parties to reach a prompt, consensual resolution.<sup>4</sup> The GUC Trustee may file objections to claims until March 27, 2022. Order Granting GUC Recovery Trustee's Motion for Entry of an Order Extending the Claims Objection Deadline (ECF Doc. 1234). Mediation can be initiated quickly and will not impinge on the GUC Recovery Trustee's ability to pursue claims objections timely if mediation is not successful.

16. PBGC files claims in all bankruptcy cases where plans covered by Title IV of ERISA are involved. The treatment of these claims is an important programmatic issue for the agency and are based on statute. Where necessary, PBGC is prepared to litigate these issues at all judicial levels.

17. As a result, if the Parties are unable to reach a consensual resolution and these Contested Matters proceed to litigation, it could prove to be lengthy and costly to the estate, reducing and delaying recovery to all unsecured creditors, including PBGC, as well as expending unnecessary Court resources and time.

18. While PBGC and the GUC Recovery Trustee have engaged and continue to engage in settlement discussions, they have thus far been unsuccessful.

19. Counsel for the GUC Recovery Trustee represented to the Court during the omnibus hearing on September 15, 2021, that the pool of money available for distribution may be small, potentially no more than five (5) cents on the dollar, but this amount is dependent on

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<sup>4</sup> See Mediation Procedures, Rule 2.2 ("If the parties cannot agree upon a mediator within seven (7) days of the assignment to mediation, the Court shall appoint a mediator and alternate mediator." *Id.* at Rule 3.1 ("The conference shall be set as soon after the entry of the mediation order and as long in advance of the Court's final evidentiary hearing as practicable.") *Id.* at Rule 8.0 ("Nothing in these Procedures shall relieve any debtor, party in interest, or the U.S. Trustee from complying with this Court's orders or Local Rules, U.S. Code, or the Bankruptcy Rules, including times fixed for discovery or preparation for any Court hearing pending on the matter."))

discussions with PBGC. PBGC is the largest general unsecured creditor in these cases, and respectfully submits that all general unsecured creditors would be well served through the intervention of a neutral mediator in an attempt to resolve some or all of the Contested Matters.

20. PBGC requested the GUC Recovery Trustee participate in mediation in an attempt to resolve some or all of the Objections. To date, the GUC Recovery Trustee has not agreed to participate in mediation.

21. PBGC submits that the most efficient path forward for the Parties and the Court is for the Parties to participate in a mediation process where the Parties seek to bring these Contested Matters, as well as any other issues pertaining to PBGC's claims in this case, to a conclusion that optimizes value for the entire general unsecured creditor pool. Given the limited recoveries available in this case, the unsecured creditor body will be best served by a mediation process that minimizes both the expenditure of estate resources and the timeframe for distribution. This is especially so inasmuch as, depending on the outcome of the estate's pending tax refund application, there may be no meaningful distribution to general unsecured creditors.

22. Ordering the Parties to mediate is an appropriate exercise of this Court's judicial power.

### **CONCLUSION**

WHEREFORE, PBGC requests that the Court enter an order, substantially in the form attached hereto as Exhibit A that: orders PBGC and the GUC Recovery Trustee to engage in mediation before a neutral mediator approved or designated by the Court and (ii) grants such other and further relief as may be equitable and just.



Dated: September 21, 2021

Respectfully submitted,

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*Counsel for Pension Benefit Guaranty Corporation*

**EXHIBIT A**

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

	)	
<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>JCK LEGACY COMPANY, <i>et al.</i>,</b>	)	<b>Case No. 20-10418 (MEW)</b>
	)	
<b>Wind-Down Debtors.<sup>5</sup></b>	)	<b>(Jointly Administered)</b>
	)	

**ORDER GRANTING PBGC’S MOTION FOR AN ORDER REQUIRING MEDIATION**

This matter is presented upon *Pension Benefit Guaranty Corporation’s Motion for an Order to Compel Mediation Regarding the GUC Recovery Trustee’s Objections to PBGC Claims* (the “Mediation Motion”); the Court finds good cause for entry of this Order and is otherwise fully advised in the premises.

**NOW THEREFORE, IT IS HEREBY ORDERED** that pursuant to Local Rule 9019-1 PBGC and the GUC Recovery Trustee shall engage in mediation before a neutral mediator designated by the Court.

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

\_\_\_\_\_  
Honorable Michael E. Wiles  
United States Bankruptcy Judge

<sup>5</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.

Hearing Date and Time: October 12, 2021, at 10:00 a.m. (prevailing Eastern Time)  
Objection Deadline and Time: October 5, 2021, at 4:00 p.m. (prevailing Eastern Time)

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**UNITED STATES BANKRUPTCY COURT  
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<b>Wind-Down Debtors.<sup>1</sup></b>	)	<b>(Jointly Administered)</b>
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**NOTICE OF MOTION AND HEARING**

**PLEASE TAKE NOTICE** that the Pension Benefit Guaranty Corporation (“PBGC”), a creditor in the above-captioned proceeding, by and through undersigned counsel, hereby files on its own behalf and on behalf of the McClatchy Company Retirement Plan (the “Pension Plan”), this motion (“Mediation Motion”) with the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”).

**PLEASE TAKE FURTHER NOTICE** that any objection to the Motion must be filed on or before October 5, 2021 at 4:00 p.m. (ET) (“Objection 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 objection by the Objection 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);
- (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) and Bram A. Stochlic (bram.stochlic@skadden.com), 300 South Grand Avenue, Suite 3400, Los Angeles, California 90071, Attn.: Van C. Durrer, II (van.durrer@skadden.com), and Destiny N. Almogue (destiny.almogue@skadden.com) and 525 University Avenue, Palo Alto, California 94301 Attn.: Jennifer Madden (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) and Kyle J. Ortiz (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);
- (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), Patrick Fitzmaurice

(patrick.fitzmaurice@pillsburylaw.com), and Kwame O. Akuffo  
(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 objections 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 Motion  
shall be held telephonically via Court Solutions LLC on October 12, 2021, at 10:00 a.m. (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 Objection Deadline, the Bankruptcy Court may grant the relief requested  
in the Motion without further notice or a hearing.

Dated: September 21, 2021

Respectfully submitted,

/s/ Kimberly E. Neureiter  
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KARTAR S. KHALSA  
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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>JCK LEGACY COMPANY, <i>et al.</i>,</b>	)	<b>Case No. 20-10418 (MEW)</b>
	)	
<b>Wind-Down Debtors.<sup>1</sup></b>	)	<b>(Jointly Administered)</b>
<hr/>	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of September, 2021, the **Pension Benefit Guaranty Corporation's Motion for an Order to Compel Mediation Regarding the GUC Recovery Trustee's Objections to PBGC Claims** was filed electronically through the Court's NextGen

<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.



system, which caused all parties or counsel that requested notification on the attached Master Service List to be served by the Court's NextGen system, electronic mail, or first class mail on the date of filing.

/s/ Kimberly E. Neureiter  
Kimberly E. Neureiter

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