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

In re:

JCK LEGACY COMPANY, *et al.*,

Wind-Down Debtors.¹

Chapter 11

Case No. 20-10418 (MEW)

(Jointly Administered)

¹ 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 OPPOSITION TO GUC
RECOVERY TRUSTEE'S OBJECTION TO PROOF OF CLAIM NO. 2666 FILED BY
THE PENSION BENEFIT GUARANTY CORPORATION**

The Pension Benefit Guaranty Corporation (“PBGC”) hereby files on its own behalf and on behalf of the McClatchy Company Retirement Plan (the “Pension Plan”), this opposition to the GUC Recovery Trustee’s Objection to Proof of Claim No. 2666 Filed by the Pension Benefit Guaranty Corporation (Dkt. No. 1266) (the “Objection”).

The GUC Recovery Trustee’s Objection asks this Court to ignore the substantive law governing PBGC’s claims. First, the GUC Recovery Trustee (the “Trustee”) argues that the statutory claim for unpaid minimum funding contributions (“MFC”) that PBGC filed on behalf of the Pension Plan (Proof of Claim No. 2666) (the “Contribution Claim”) is duplicative of PBGC’s separate statutory claim for unfunded benefit liabilities (“UBL”) (Proof of Claim No. 2667) (the “Underfunding Claim”) and thus should be disregarded. But this Court cannot do that. The Supreme Court in *Raleigh v. Illinois Dep’t of Revenue*, 530 U.S. 15 (2000), held that the Bankruptcy Court cannot ignore the underlying law creating a claim, and the MFC is created by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), an explicit federal statute. Thus, PBGC clearly has a valid Contribution Claim and, contrary to the Trustee’s arguments, this Court cannot disallow it without acting contrary to Supreme Court precedent.

Second, the Trustee argues that, in the alternative, if the Contribution Claim stands, as it must under the law, the Court should reduce PBGC’s Underfunding Claim dollar-for-dollar by the amount of the Contribution Claim. But that would require the Court to act as though the Contribution Claim was actually paid in full to the Pension Plan and that those assets were available to pay benefits. In fact, however, the reason PBGC has a Contribution Claim is

because those assets were not paid into the Pension Plan and were not available to pay benefits to Pension Plan participants. ERISA states that PBGC's claim for underfunding in the Pension Plan is measured based on the difference between the pension plan's liabilities and the assets that are actually available to pay those liabilities, not the assets that might have been there if the facts had been different. Therefore, the law and the actual facts of this case require that the Objection be denied.

Background

A. PBGC and ERISA

PBGC is a wholly owned United States government corporation that administers the nation's termination insurance program for defined benefit pension plans under Title IV of ERISA. 29 U.S.C. §§ 1301-1461 (2018). If a single-employer pension plan covered by the insurance program terminates and lacks sufficient assets to pay all promised benefits, PBGC becomes statutory trustee of the pension plan and pays the pension plan's benefits subject to the statutory limitations set forth in 29 U.S.C. § 1322(b). *See* 29 U.S.C. §§ 1322, 1341(c), 1342, 1361; *PBGC v. LTV Corp.*, 496 U.S. 633, 637-38 (1990); *Nachman Corp. v. PBGC*, 446 U.S. 359, 375 (1980). PBGC's insurance funds for the single employer pension program come from four sources: insurance premiums paid by employers, assets in terminated pension plans, recoveries from employers of terminated plans, and investment income. *See* 29 U.S.C. § 1305(b)(1). Upon termination of a pension plan by PBGC, claims arise in favor of PBGC for MFC, UBL, and premiums (collectively, "PBGC's Claims").

1. Minimum Funding Contributions.

Employers must pay contributions to their pension plans in order to fund the pension benefits they have promised their workers. Accordingly, ERISA and the Internal Revenue Code

(“IRC”) hold the employer and its controlled group members jointly and severally liable to make contributions to the pension plan pursuant to statutory minimum funding standards. *See* 29 U.S.C. § 1082(c)(11); 26 U.S.C. § 412(c)(11); *Nachman Corp.*, 446 U.S. at 375. The minimum funding obligation continues through the year in which the pension plan is terminated. *See* Rev. Rul. 79-237, 1979-2 C.B. 190. If PBGC becomes statutory trustee of the pension plan after termination, it collects any amounts owed to the pension plan, including any unpaid contributions. *See* 29 U.S.C. §§ 1342(c), (d)(1)(B)(ii).

2. Unfunded Benefit Liabilities.

Since statutory funding requirements are in the nature of minimum standards, even pension plans that receive all required contributions still may not have sufficient assets to provide employees all of their promised benefits and, thus, may be underfunded. While meeting contribution requirements could result in a pension plan being fully funded by the end of the life of the plan, such as if interest on investments brings up funding levels, that is often not the case at any given point in time. For example, here the Contribution Claim is smaller than the Underfunding Claim. Even if Debtors had made all required contributions, the Pension Plan would still have been underfunded when it terminated. If an underfunded pension plan satisfies the requirements in Title IV of ERISA for termination, *see* 29 U.S.C. §§ 1341, 1342, PBGC typically takes over the pension plan and pays the pension plan’s benefits subject to statutory limitations. *See* 29 U.S.C. §§ 1322, 1361. Upon termination, the employer and each member of its controlled group become jointly and severally liable to PBGC for the amount of the pension plan’s UBL, plus interest as of the pension plan’s termination date. *See* 29 U.S.C. § 1362(b)(1)(A).

The amount of UBL is equal to the present value of the benefit liabilities as of the

pension plan termination date minus the current value of the pension plan's assets.² 29 U.S.C. § 1301(a)(18); *see also* 29 C.F.R. §§ 4044.41-4044.75.

3. Premiums.

As the insurance company guaranteeing the pension, PBGC also has a claim for unpaid insurance premiums, which are the subject of, and discussed more fully in the context of, a different objection that has been raised by the Trustee. 29 U.S.C. §§ 1306, 1307.

B. The Pension Plan

The Pension Plan, sponsored by The McClatchy Company, terminated effective August 31, 2020. By agreement between PBGC and the administrator of the Pension Plan dated September 4, 2020, PBGC became the statutory trustee of the Pension Plan. At termination, the Pension Plan had approximately 24,056 participants. PBGC is administering the Pension Plan and has, with respect to the Pension Plan, all the rights and powers of a trustee specified by ERISA or otherwise granted by law. 29 U.S.C. § 1342(d)(1).

C. Debtors' Bankruptcy Proceeding and PBGC's Claims

On February 13, 2020, each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code. By order of this Court, Debtors' cases are consolidated for procedural purposes only and are being jointly administered under case number 20-10418. Dkt. No. 59. On July 8, 2020, PBGC timely filed claims against each of the Debtors.³ On October 22, 2020, and

² Benefit liabilities means the present value of the benefits of employees and their beneficiaries under the plan. *See* 29 U.S.C. § 1301(a)(16).

³ PBGC asserted its Underfunding Claim in the amount of \$1,008,800,000 (Claim No. 1765); its premium claim in the amount of \$90,210,000 (Claim No. 1772); and its Contribution Claim in the amount of \$80,428,564 (Claim No. 1876). All claims are asserted against each of the Debtors.

December 8, 2020, PBGC filed amended claims, including the Contribution Claim and the Underfunding Claim.⁴ On September 21, 2021, the Trustee filed the Objection.

Argument

I. Claims Must Be Determined in Accordance with Substantive Nonbankruptcy Law.

The Supreme Court has made clear that a bankruptcy claim is a function of the nonbankruptcy law under which it arises. *Travelers Cas. & Sur. Co. of America v. Pac. Gas & Elec. Co.*, 549 U.S. 443 (2007); *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15 (2000); *Butner v. United States*, 440 U.S. 48, 55 (1979); *Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156, 161-62 (1946). Bankruptcy law does not displace that substantive law, but rather provides a forum for the resolution of claims under such law. The Supreme Court in *Raleigh* unequivocally affirmed this principle in stating that “[c]reditors’ entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor’s obligation.” *Raleigh*, 530 U.S. at 20; accord *In re US Airways Group, Inc.*, 303 B.R. 784, 792 (Bankr. E.D. Va. 2003) (“*Raleigh* is very clear that a creditor’s claim ‘in the first instance’ is a function of the nonbankruptcy law giving rise to the claim”). Additionally, the Supreme Court held that “[b]ankruptcy courts are not authorized in the name of equity to make wholesale substitution of underlying law controlling the validity of creditor’s entitlements.” *Raleigh*, 530 U.S. at 24-25.

Here, ERISA provides the underlying substantive law for determining the claims at issue. And as further discussed below, ERISA provides that PBGC’s UBL claim and the

⁴ Claim No. 2666 of \$126,001,676 amends Claim No. 1876 (claim for unpaid minimum funding contributions) and Claim No. 2667 of \$877,500,000 amends Claim No. 1765 (unfunded benefit liabilities). Claim No. 2789 of \$101,729,550 amends Claim No. 1772 (premiums).

Pension Plan's MFC claim are separate and independently collectible liabilities to PBGC and the Pension Plan or the statutory trustee respectively.

Despite the express language of ERISA, the Trustee argues that the Contribution Claim, as an MFC claim, is somehow duplicative and asks that the Court disallow and expunge it. Under the Trustee's argument, claims for MFC would be completely subsumed by UBL claims and therefore only be allowed in the amount of zero. This contravenes the explicit language of ERISA that treats claims for MFC and UBL as independently collectible and would render the statutory provisions establishing the Contribution Claim superfluous. But "a cardinal principle of statutory construction [is] that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant"). *United States v Ballinger*, 395 F.3d 1218, 1236 (11th Cir. 2005) (quoting *TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001)). Adopting the Trustee's argument would effectively write the statutory trustee's authority under 29 U.S.C. § 1342 to collect unpaid contributions out of the statute.

In drafting ERISA, Congress was well aware that PBGC would participate in the bankruptcy proceedings of distressed pension plan sponsors.¹⁹ If Congress had intended that the claim for missed contributions expressly established in 29 U.S.C. §§ 1082 and 1342 be disregarded in bankruptcy proceedings, it could have so provided. But nothing in ERISA suggests any such intent. The Court should not be in the business of adding to, or limiting, the remedies already provided in the text of ERISA. *In re Holyoke Nursing Home, Inc.*, 372 F.3d 1, 5 (1st Cir. 2004) (overruling objection to government's claim to recoup Medicare payments); *In re Slater Health Center, Inc.*, 398 F.3d 98, 104 (1st Cir. 2005) (same). Instead, this Court must, as required by *Raleigh*, apply the substantive underlying law of the Contribution Claim and Underfunding Claim – in this case, the clear statutory language of ERISA that creates separate

independently collectible claims – and reject the Trustee’s argument that MFC claims are duplicative. *See Raleigh*, 530 U.S. at 24-25.

The principle announced in *Raleigh* has been repeatedly applied by courts overruling challenges to the amount of PBGC’s UBL claim by parties seeking to displace the applicable ERISA law governing those claims with equitable bankruptcy principles. *See e.g. Dugan v. PBGC (In re Rhodes, Inc.)*, 382 B.R. 550, 560 (Bankr. N.D. Ga. 2008) (“PBGC is authorized by law to make a determination of the amount of its claim that is binding on Debtors and therefore on this Court.”); *PBGC v. Durango Ga. Paper Co. (In re Durango Ga. Paper Co.)*, No. 02-21669, 2017 Bankr. LEXIS 160 (Bankr. S.D. Ga. Jan. 18, 2017) (same); *Cox Enters., Inc. v. News-Journal Corp.*, No. 6:04-cv-698, 2014 U.S. Dist. LEXIS 57209, at *33-34 (M.D. Fla. Mar. 21, 2014) (“ERISA mandates that the value of the plan’s benefit liabilities be determined ‘on the basis of assumptions prescribed by [PBGC].’ 29 U.S.C. § 1301(a)(18)(A). As Cox’s calculation is not determined on the basis of these assumptions, it is not appropriate in determining the amount of the UBL claim”).⁵ The requirement of *Raleigh* that ERISA determine PBGC’s claims is even more salient here, where the Trustee seeks not to revalue the Contribution Claim, but to invalidate it entirely.

The Trustee attempts to convince the Court to ignore the clear rule of law as stated by the Supreme Court in *Raleigh*. The Trustee asks the Court to disregard the applicable nonbankruptcy law, asserting that MFC claims and UBL claims “violate[s] principles of ratable

⁵ *See also In re Wolverine Proctor & Schwartz, LLC*, 436 B.R. 253 (D. Mass. 2010), *aff’g* 2009 WL 1271953 (Bankr. D. Mass. May 5, 2009), *aff’d* No. 10-1334 (1st Cir. Apr. 20, 2011) (pursuant to *Raleigh*, bankruptcy court held that substantive nonbankruptcy law controlled the amount of liability; district and court of appeals held the bankruptcy court applied the correct standard); *In re US Airways Grp.*, 303 B.R. 784, 792 (Bankr. E.D. Va. 2003) (“*Raleigh* is very clear that a creditor’s claim ‘in the first instance’ is a function of the nonbankruptcy law giving rise to the claim.”).

distribution and equal treatment of creditors that are fundamental to the bankruptcy code.”

Objection at 9. But the Supreme Court spoke clearly to this point in *Raleigh*:

Bankruptcy courts are not authorized in the name of equity to make wholesale substitution of underlying law controlling the validity of creditors’ entitlements, but are limited to what the Bankruptcy Code itself provides.

530 U.S. at 24-25. Nothing in the Bankruptcy Code authorizes the Court to grant “equitable” relief that violates other laws, such as ERISA. *See In re Lapiana*, 909 F.2d 221, 223-24 (7th Cir. 1990) (“[B]ankruptcy, despite its equity pedigree, is a procedure for enforcing pre-bankruptcy entitlements under specified terms and conditions rather than a flight of redistributive fancy or a grant of free-wheeling discretion . . . We deprecate flaccid invocations of ‘equity’ in bankruptcy proceedings. Creditors have rights . . . and bankruptcy judges are not empowered to dissolve rights in the name of equity.”).

Thus, a bankruptcy court does not have the authority to disregard underlying substantive nonbankruptcy law based on equitable considerations. Because the applicable substantive law clearly establishes MFC claims as separate and distinct from claims for UBL, the Objection should be overruled.

II. Treating the Contribution Claim as “Duplicative” Would Be Contrary to the Applicable Substantive Law that Determines PBGC’s Claims.

The Trustee argues that PBGC’s Contribution Claim, as a MFC claim, should be disallowed on the theory that it is duplicative of the Underfunding Claim, as a UBL claim. This argument should be rejected because it is contrary to governing substantive nonbankruptcy law.

A. ERISA Explicitly Provides that the Underfunding Claim and the Contribution Claim are Two Separate and Distinct Claims.

Under ERISA, liabilities for MFC and UBL are separate and independently collectible claims by PBGC and the pension plan or statutory trustee respectively.

The claim for MFC is a receivable of the pension plan, and arises because the IRC and ERISA require an employer to make periodic minimum funding contributions to its pension plan until the pension plan is terminated. 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1082; Rev. Rul. 79-237, 1979-2 C.B. 190. If these required contributions are not made, the employer incurs liability to the pension plan, not to PBGC, for any missed contributions. This claim arises any time a pension plan sponsor fails to make a required contribution. Upon termination of a pension plan pursuant to 29 U.S.C. § 1342(c), and appointment of a statutory trustee under 29 U.S.C. § 1342(b), the statutory trustee is authorized, *inter alia*, “to collect for the plan any amounts due the plan, including but not limited to the power to collect from the persons obligated to meet the requirements of section 1082 [“Minimum Funding Standards”] of this title.” 29 U.S.C. § 1342(d)(1)(B)(ii).

In contrast, the claim for UBL arises if, upon termination, there is a shortfall between the pension plan’s assets and its liabilities to covered employees and their survivors. 29 U.S.C. §§ 1301(a)(18), 1362(b). 29 U.S.C. § 1362(b), titled “Liability to the Corporation,” provides that “. . . the liability to the corporation [PBGC] . . . shall be the total amount of the unfunded benefit liabilities (as of the termination date) to all participants and beneficiaries under the [pension] plan . . .” Unlike a claim for MFC, a claim for UBL arises only upon termination of the pension plan. The employer and its controlled group members owe this statutory liability not to the pension plan, but to PBGC in its separate capacity as the government agency that insures benefits in terminated underfunded pension plans. 29 U.S.C. § 1362(b).

Thus, Congress expressly created two separate and independent claims based on different events, with separate statutory sources. The UBL claim is a one-time charge under 29 U.S.C. § 1362(b) that arises upon plan termination and is payable exclusively to PBGC as federal

guarantor. The MFC claim arises under 29 U.S.C. § 1082 and is payable by the plan sponsor to the pension plan while the pension plan is ongoing. Unpaid contributions can be collected by the pension plan or, upon termination, by the statutory trustee of the pension plan.⁶ Importantly, the claim for MFC is a pension plan asset, a debt owed to the pension plan, while the UBL claim is owed to PBGC, and is calculated by deducting pension plan assets from the total liabilities of the pension plan. Under ERISA, the UBL claim is calculated based on the current value of pension plan assets that includes the current value of the PBGC's MFC claim. Therefore, as explained in further detail below, these are separate and independently collectable claims.

In this case, when the underfunded Pension Plan terminated, the Debtors became liable to PBGC for the full amount of the Pension Plan's UBL. 29 U.S.C. § 1362(b). Therefore, PBGC filed the Underfunding Claim in its corporate capacity as a federal agency.⁷ In contrast, the Debtors incurred liabilities to the Pension Plan for the MFC when they failed to pay required contributions. Accordingly, PBGC, as the statutory trustee appointed upon termination of the Pension Plan, filed the Contribution Claim *on behalf of the Pension Plan* for these unpaid contributions.⁸ See 29 U.S.C. §§ 1342(d)(1)(B)(ii), 1362(c).

The MFC claim cannot be conflated with the UBL claim because the MFC claim is not exclusively consigned to PBGC. While PBGC is the statutory trustee of the Pension Plan in this case, 29 U.S.C. § 1342 provides that a party other than PBGC may be appointed as statutory trustee of a pension plan. Regardless of who is appointed as the statutory trustee, such statutory

⁶ Under 29 U.S.C. § 1342, a party other than PBGC can be appointed as statutory trustee of a pension plan.

⁷ Proof of Claim No. 2667, amending Proof of Claim No. 1765.

⁸ Proof of Claim No. 2666, amending Proof of Claim No. 1876.

trustee has the authority to “collect for the plan any amounts due the plan, including but not limited to the power to collect from the persons obligated to meet the [minimum funding requirements]”. 29 U.S.C. § 1342(b), (d)(3).⁹ Thus, when PBGC is appointed as the statutory trustee of pension plan, it pursues a claim for MFC due to the pension plan in addition to and separate from its collection of its claim for UBL as the federal insurer of pension benefits.

Accordingly, this Court must reject the Trustee’s arguments and treat the claims for UBL and MFC to be separate and independently collectible as Congress expressly provided for in multiple provisions of ERISA.

B. The PBGC’s UBL Claim as Calculated in Accordance with ERISA Does not Duplicate the Pension Plan’s MFC Claim.

In asserting that the Contribution and Underfunding Claims are duplicative, the Trustee disregards not only the ERISA provisions discussed above that create separate and independently collectible claims, but also the express statutory and regulatory provisions that set forth how UBL must be calculated.¹⁰ The basis for calculating PBGC’s UBL Claim is set forth in ERISA and the regulations thereunder at 29 U.S.C. §§ 1301(a)(18)(A), 1362(b)(1)(A, B), and 29 C.F.R. §§ 4044.41–4044.75. Specifically, Congress explicitly provided in 29 U.S.C. § 1301(a)(18) that the amount of unfunded benefit liabilities is “the excess (if any) of the value of the benefit liabilities under the [pension] plan. . . over the current value. . . of the assets of the [pension]

⁹ See *In re J.L. Thomson Rivet Corp.*, 19 B.R. 385, 390 (Bankr. D. Mass. 1982), *aff’d*, No. 82-1455 (D. Mass. Sept. 7, 1983) (copy included in Exhibit), *infra* pp. 14-15.

¹⁰ The GUC Recovery Trustee filed a declaration in support of its Objection. Declaration of John Lowell in Support of GUC Recovery Trustee’s Objection to Claim No. 2666 Filed by PBGC. Dkt. No. 1266-2. However, the purported expert declaration contains only conclusory statements regarding the MFC claim that reiterate the legal argument of the GUC Recovery Trustee, and therefore provides no evidentiary support. As such, the Declaration should be disregarded.

plan.” Here, a critical point is evident from the plain words of the statute: the employer’s liability to PBGC for the UBL is the difference between: (1) the value of the pension plan’s benefit liabilities, and (2) the *current value* of the pension plan’s assets. Further, under PBGC’s asset valuation regulation, “[pension plan] assets shall be valued at their *fair market value*, based on the method of valuation that most accurately reflects such fair market value.” 29 C.F.R. § 4044.41(b) (emphasis added).

A pension plan’s claim for MFC is an asset of the pension plan.¹¹ As such, it is taken into account in calculating the UBL amount. Contrary to the Trustee’s assertions, however, the dollar amount of the MFC that is owed to the Pension Plan (*i.e.* the face amount of the MFC claim) is not synonymous with the *current value* or *fair market value* of the MFC claim – the amount the Pension Plan can expect to recover. The calculation of UBL takes into account only the amount of contributions *actually paid* to the pension plan, not the amount that the employer and its controlled group were obligated but failed to pay to the pension plan. U.S.C. § 1301(a)(18).

In sum, ERISA provides that PBGC’s claim for UBL must be computed by subtracting the current fair market value of a pension plan’s assets from the value of its benefit liabilities as of the termination date. The current value of a pension plan’s claim for MFC, an asset of the pension plan, is less than its face amount because of the likelihood that it will be paid only in part. Thus, the Pension Plan’s claim for MFC does not reduce the PBGC’s claim for UBL on a dollar-for-dollar basis but rather by the current value of the Pension Plan’s MFC Claim. PBGC is required to calculate UBL claims based on the current value of assets held by the pension plan. And while the fair market value for unpaid minimum funding contributions may be unknown at

¹¹ See *In re J.L. Thomson Rivet Corp.*, 19 B.R. 385, 390.

date of plan termination as recovery is uncertain at that time, once recovery is made certain, then UBL can be reduced by the actual recovery on the MFC claim.

C. Courts Have Recognized that the UBL and MFC Claims are Separate and Distinct.

At least two courts have recognized that the UBL and MFC claims are separate and distinct. *See In re CF&I Fabricators of Utah, Inc.*, No. 90B-6721, 1992 Bankr. LEXIS 2585, at *27-28 (Bankr. D. Utah Dec. 31, 1992); *In re J.L. Thomson Rivet Corp.*, 19 B.R. at 390. The court in *In re CF&I Fabricators of Utah, Inc.* accurately analyzed the relationship between the claims. The court held, in part, that PBGC's UBL claim was correctly reduced only by the "probable recovery" on its MFC claim, a pension plan asset, rather than by the total allowed amount of the MFC claim. *In re CF&I Fabricators of Utah, Inc.*, 1992 Bankr. LEXIS 2585 at *27-28.¹² Specifically, the court stated that the process of

[s]ubtracting the value of the Minimum Contribution Claims (a plan asset) from the Unfunded Benefit Claims, as calculated by the PBGC ... does not reduce the Unfunded Benefit Claims by the total amount of the Minimum Contribution Claims. The process used by the PBGC only reduces the Unfunded Benefit Claims by the amount of the PBGC's probable recovery on the Minimum Contribution Claims. In this case, giving the PBGC credit for the probable value of the Minimum Contribution Claims, a plan asset, as opposed to the dollar amount of the claim, provides the correct determination of the total Unfunded Benefit Claims.

Id.

Further, the court in *In re J.L. Thomson Rivet Corp.* also found that an employer's obligation to make plan contributions is an asset of the pension plan that must be pursued by the statutory trustee. In *J.L. Thomson Rivet Corp.*, certain parties objected to PBGC's claim for delinquent contributions, asserting that collection of UBL under 29 U.S.C. § 1362 was PBGC's

¹² On appeal, the district court held that this issue was moot for reasons that do not bear on its analysis of the relation between the MFC and UBL claims. *In re CF&I Fabricators of Utah Inc.*, 179 B.R. 704, 711 (D. Utah 1994).

sole remedy. 19 B.R. at 387. In upholding PBGC's MFC claim, the court stated that the "duties and powers of an ERISA trustee mandate the collection of assets of a terminated pension plan. JLT's statutory and contractual obligation to make these pre-termination payments is an asset of the Plan which an ERISA trustee must be able to assert in this bankruptcy proceeding." *Id.* at 390. The court further noted that there is no basis to support a finding that PBGC has any less powers than any other statutory trustee of a pension plan and that the MFC claim is a liability that the statutory trustee, whoever it may be, is required to pursue separate from the collection of PBGC's UBL claims. *Id.*

While failing to mention the cases above, the Trustee relies heavily on *In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey*, 160 B.R. 882, (Bankr. S.D.N.Y. 1993); *In re Simetco, Inc.*, No. 93-61772, 1996 WL 651001 (Bankr. N.D. Ohio Feb. 15, 1996); and *In re Chateaugay Corp.*, 115 B.R. 760, 782-84 (Bankr. S.D.N.Y. 1990), *aff'd*, 130 B.R. 690 (S.D.N.Y. 1991), vacated per consent order, Nos. 89-CV-6012 and 90-CV-6048, 1993 U.S. Dist. LEXIS 21409 (S.D.N.Y. June 7, 1993). The Trustee's reliance on these cases is misplaced for a number of reasons. First and foremost, these cases contain no meaningful consideration of the applicable provisions of ERISA and ignore the clear statutory language of ERISA discussed above that creates PBGC's separate claims. Instead, these decisions rest on briefly articulated and misapplied equitable concepts, such as equality of distribution and uniformity of treatment.¹³ As discussed above, a claim must be determined in accordance with applicable nonbankruptcy law. As the court noted in *In re US Airways Group, Inc.*, in overruling an objection to PBGC's UBL claim based on equitable bankruptcy principles, "[s]o long as all

¹³ *In re Chateaugay Corp.*, 115 B.R. at 784; *In re Simetco Corp.*, 1996 WL 651001, at *10; *In re Finley*, 160 B.R. at 894.

claims are determined in accordance with applicable nonbankruptcy law, there cannot be any genuine issue of disparate treatment.” 303 B.R. 784, 794, Bankr. E.D.Va. (2003). Second, we note that the opinion in *Chateaugay* has been vacated and the district court expressly stated that it has “no precedential value.” *In re Chateaugay Corp.*, No. 86B-11270, 1993 WL 388809, at *3 (S.D.N.Y. June 16, 1993).

Further, the holding in *Finley* is predicated on a blatant misunderstanding of PBGC’s position. Specifically, the court based its decision on an analysis, quoted by the Trustee in the Objection, that misstated PBGC’s position by concluding that PBGC was seeking to have the amount of an MFC claim *not recovered* in the bankruptcy *added* to the face amount of the UBL claim rather than, as PBGC was actually arguing, *subtracting from the UBL* claim the amount *recovered* on the MFC claim.¹⁴ Thus, contrary to the *Finley* court’s mistaken statement that PBGC would assert additional amounts for the MFC claim, PBGC would seek no further recovery on the MFC claim. Because the holding in *Finley* is based on a flawed premise, it should be given no weight.

¹⁴ Specifically, the *Finley* court provided a hypothetical under which the pension plan’s MFC claim is \$500,000, PBGC’s UBL Claim is \$1,000,000 and the expected distribution is thirty cents on the dollar. *In re Finley*, 160 B.R. at 894. The court in *Finley* misstated that the PBGC would “assert an unsecured claim for the remaining \$350,000 [of the MFC Claim] in addition to their \$1,000,000 asset insufficient claim.” *Id.* The *Finley* court was inexplicably mistaken. The correct approach under ERISA would be to allow the full amount of the pension plan’s claim for MFC and to calculate the amount of the claim for UBL by using a current value of pension plan assets which accounts for \$150,000 that the pension plan is expected to actually recover for the MFC claim. Accordingly, with the 30 percent expected recovery rate, PBGC as statutory trustee of the pension plan would collect \$150,000 for the MFC claim and that collected amount would be accounted for when calculating the current value of the pension plan’s assets. With the pension plan’s recovery of \$150,000 for the MFC claim, thus raising plan assets by that amount, the pension plan’s unfunded benefit liability amount would in turn decrease from \$1,000,000 to \$850,000 and result in PBGC recovering 30% of an \$850,000 UBL claim.

In addition to the weaknesses discussed above, the cases relied on by the Trustee do not support the relief the Trustee seeks. None of the cases disallowed the MFC claim. Rather than expunging the MFC claim, the courts in these cases allowed the MFC claim and reduced the UBL claim by the amount of the MFC claim.¹⁵

Finally, the cases that the Trustee relies on predate and are contrary to the Supreme Court's decision in *Raleigh* that, as discussed above, explicitly held that a bankruptcy court does not have the authority to disregard substantive law in determining the validity of claims based on equitable considerations. *See Raleigh*, 530 U.S. at 24-25. Accordingly, those cases should be given no weight and the Trustee's reliance on those cases is misplaced.

Therefore, because the underlying substantive nonbankruptcy law clearly establishes the Contribution Claim as separate and distinct from the Underfunding Claim, the Objection should be overruled.

¹⁵ *In re Simetco, Inc.*, 1996 WL 651001, at *5; *In re Finley*, 160 B.R. at 893-94; *In re Chateaugay Corp.*, 115 B.R. at 782-84.

Conclusion

For the foregoing reasons, PBGC respectfully requests that this Court overrule the GUC Recovery Trustee's Objection.

Dated: October 13, 2021

Respectfully submitted,

/s/ Erin C. Kim

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Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Thereby attest and certify on
Dec 23, 1983, that the
foregoing document is a full,
true and correct copy of the
original on file in my office,
and in my legal custody.

THE OFFICIAL CREDITOR'S
COMMITTEE, et al

v.

PENSION BENEFIT GUARANTY CORP.

82-1455-MA

GEORGE F. McGRATH
CLERK, U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MEMORANDUM AND ORDER

BY: [Signature] Deputy

Mazzone, D.J.

September 7, 1983

This matter is before the Court on an appeal brought by International Basic Economy Corporation (IBEC) and the Official Creditors' Committee from an order issued by the Bankruptcy Court upholding the validity of a claim filed by Pension Benefit Guaranty Corporation (PBGC) in Bankruptcy No. 78-381-L, In re J. L. Thomson Rivet Corporation, Debtor. In his Order, dated April 12, 1982, Chief Judge Lawless determined that PBGC was not precluded from asserting a claim, as trustee of a pension plan, against the debtor in this action, J. L. Thomson Rivet Corporation. That claim is brought for contribution payments due to the Plan for the years 1973 to 1976. The relevant facts have been stipulated to by the parties, and stated by Chief Judge Lawless in his Order. See Order dated April 12, 1982, at pp. 1-3. I summarize them briefly.

J. L. Thomson Rivet Corporation entered into a pension agreement with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 946 effective in 1955, and most recently

8.

amended and restated on August 3, 1972. Pursuant to the terms of this agreement, J. L. Thomson entered into a trust agreement with First National Bank as trustee to provide for the management of pension funds. J. L. Thomson agreed to make contributions "in amounts sufficient to insure the successful operation of the Plan." Payments were made regularly and without incident until 1973, when J. L. Thomson failed to make the required contributions to the trustee Bank. No further payments were received for the Plan years of 1973, 1974, 1975 or 1976.

On March 13, 1978, J. L. Thomson filed a voluntary petition in bankruptcy. The pension plan was declared terminated as of February 28, 1978, and PBGC was appointed substitute trustee of the plan pursuant to section 1342 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1342, with all the rights and powers of a pension plan trustee under ERISA and otherwise granted by law.

As Chief Judge Lawless noted, the balance of payments due and unpaid to the Plan as of the date of termination, including interest, is \$917,140.00. This sum is undisputed and is the amount of the proof of claim submitted by PBGC and allowed in the bankruptcy proceeding.

Appellants argue that Chief Judge Lawless erred in allowing PBGC's proof of claim on grounds that PBGC is restricted to recovery of not more than thirty percent of an employer's net worth as recompense for benefits paid by PBGC

as insurer of a pension plan that has terminated without assets sufficient to pay all benefits due. They base their argument on language found in section 1362 of ERISA, limiting employer liability to PBGC for unpaid contributions to 30 percent of the net worth of the employer determined as of a day chosen by [PBGC] but not more than 120 days prior to the date of termination [of the plan]...

29 U.S.C. §1362(b)(2). This limitation, appellants argue, prevents PBGC from seeking payments in excess of thirty percent not only when PBGC acts as a statutory insurer of a pension plan, but also when it serves, as here, as plan trustee.

Chief Judge Lawless considered this same argument and concluded that reliance by appellants on the 1362 limitation "misconceives the basis of the claim asserted by the PBGC and the effect of ERISA upon its validity." Order dated April 12, 1982, at pp. 5-6. Specifically, he found:

[J. L. Thomson's] obligation to make the contributions at issue existed prior to the enactment of ERISA as it arose from the Pension Plan adopted and established by JLT pursuant to the collective bargaining agreement negotiated between the employer and the UAW...In the absence of ERISA, JLT's contractual promise contained in the Plan to make the annual payments is a binding obligation on JLT

enforceable by the Plan's beneficiaries...[T]his contractual obligation became a statutory one as well under 29 U.S.C. §1082...The limitation of employer liability contained in ERISA is not applicable to employees' contractual rights under a pension plan.

Order dated April 12, 1982, at pp. 6-7 (footnotes omitted, emphasis supplied).

Appellants further argue that the intent of Congress in adopting ERISA would be frustrated if PBGC were allowed to pursue claims in excess of 30 percent of an employer's net worth. "Such a circumvention of any limits on liability," they state, "would impose exactly the type of financial pressure on employers...which Congress both wished to avoid and explicitly legislated against." However, the appellants' argument, if adopted, would lead to the anomolous result that PBGC would have less authority than any other trustee to collect and liquidate Plan assets. Indeed, PBGC might well be delinquent in its fiduciary responsibilities as Plan trustee if it did not attempt to recover assets of the Plan, including J. L. Thomson's statutory and contractual obligation to make pre-termination Plan payments. The function of PBGC in this regard must be carefully distinguished from its role as guarantor of pension plan payments, and it is only in this second capacity that the limitation set forth in section 1362 governs the extent of PBGC's maximum recovery.

For the reasons given above, I concur in Chief Judge Lawless' finding that PBGC is a proper party to bring this claim on behalf of the Plan, to execute its duties to collect and liquidate Plan assets. The Order of the Bankruptcy Court is therefore affirmed.^{1/}

SO ORDERED.



United States District Judge

1. The parties requested oral argument in this case. Because the issues were comprehensively briefed and the record complete, I did not believe oral argument would be of assistance in resolving this matter.

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

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

¹ 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.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 2021, the **Pension Benefit Guaranty Corporation's Opposition to GUC Recovery Trustee's Objection to Proof of Claim No. 2666 Filed by the Pension Benefit Guaranty Corporation** was filed electronically through the Court's NextGen system, which caused all parties or counsel that requested notification to be served by the Court's CM/ECF system on the date of filing including the following:

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/s/ Erin C. Kim
Erin C. Kim