PENSION BENEFIT GUARANTY CORPORATION

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LITIGATION OUTLINE

PBGC
Protecting America's Pensions

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I. TERMINATION OF PENSION PLANS

A. The Circumstances Under Which Termination May Occur

1. In General

► United Steelworkers of Am. v. Harris & Sons Steel Co., 706 F.2d 1289 (3d Cir. 1983) – PBGC filed an application in the district court seeking to be appointed trustee of an underfunded pension plan. PBGC contended that the plan did not terminate until 1976, and that PBGC thereafter had a duty to insure the plan. The plan sponsor contended that the plan partially terminated in 1972, when it moved its location and discharged most of its employees. The district court found for the plan sponsor. The court of appeals, in vacating the decision of the district court, deferred to PBGC's interpretation of ERISA, holding that a "partial termination" within the meaning of the tax code is not a termination for purposes of Title IV of ERISA.

► Interco, Inc. v. PBGC, 620 F. Supp. 688 (E.D. Mo. 1985) – The plan sponsor sued PBGC seeking an order compelling PBGC to issue a notice of sufficiency regarding the employer's termination of a pension plan and an injunction against PBGC attaching any conditions to the notice of sufficiency. The parties filed cross-motions for summary judgment. The district court held that PBGC's refusal to recognize the company's spin-off transaction as a legitimate plan termination was a valid exercise of agency enforcement discretion. The district court stressed that PBGC is entitled to great deference in administering and enforcing Title IV.

► In re Bastian Co., 45 B.R. 717 (Bankr. W.D.N.Y. 1985); 66 B.R. 92 (Bankr. W.D.N.Y. 1986) – The debtor moved to reject a pension plan under the Bankruptcy Code, and for an order permitting it to give notice of its intent to terminate its pension plan under ERISA. The bankruptcy court held that: (1) the Bankruptcy Code governs the termination of pension plans of employers in bankruptcy; (2) a pension plan is an executory contract that may be rejected in bankruptcy; and (3) such rejection relates back to the bankruptcy petition date. In a later decision, the bankruptcy court denied a motion to reject because the plans already had been terminated pursuant to ERISA, and because it would have been inequitable to permit rejection where the objective in doing so was to avoid priority status for PBGC's claims. (This case was superseded by the Single Employer Pension Plan Amendments Act of 1986 and case law thereunder, clarifying that the plan termination procedures in Title IV constitute the exclusive means of terminating a plan covered by Title IV).

► Phillips v. Bebber, 914 F.2d 31 (4th Cir. 1990) – Participants sued seeking to terminate pension plans following their employer's merger. The district court entered summary judgment in favor of the participants, and an appeal was taken. As amicus curiae, PBGC argued on appeal that, notwithstanding any arguably inconsistent plan language, a plan covered by Title IV may be terminated only through the statutory plan termination procedures. The court of appeals agreed. In reversing and remanding the case, the court of appeals held that strict compliance with terms and procedures set forth in Title IV is a prerequisite to pension plan termination.

► Rosa v. Resolution Trust Corp., 938 F.2d 383 (3d Cir.1991), rev'g 752 F. Supp. 1231 (D.N.J. 1990) – Plan participants sued seeking to enjoin a successor Savings & Loan ("S&L") from attempting to retroactively terminate a pension plan sponsored by its predecessor, and from cutting off benefit accruals in violation of ERISA. PBGC intervened in support of the participants. The district court enjoined the plan's termination. The court of appeals reversed, holding, inter alia, that: (1) the Financial Institutions Reform Recovery and Enforcement Act ("FIRREA")'s anti-injunction provision barred the issuance of an injunction against the successor S&L; and (2) the portion of the action that alleged that the successor S&L's actions violated Title IV could bypass the FIRREA claims procedure and proceed in district court. The case settled when the successor S&L agreed to a standard termination of the plan in accordance with Title IV procedures.

► Aldridge v. Lily-Tulip, Inc., 953 F.2d 587 (11th Cir. 1992); 40 F.3d 1202 (11th Cir. 1994) – The court of appeals upheld PBGC's position, as amicus, that the provisions of the anti-cutback rule in section 204(g) of ERISA (IRC § 411(d)(6)) apply to plan terminations as well as plan amendments. Thus, a participant may satisfy the conditions for an early retirement benefit after the date of plan termination. In a second decision, the court of appeals again upheld PBGC's position, as amicus, that Title IV of ERISA sets forth the exclusive requirements for the standard termination of a pension plan. The decision rejected the district court's holding that a plan could not be terminated under Title IV unless the plan was amended to freeze benefit accruals, and participants were given a notice of the freeze under Title I of ERISA.

► PBGC v. Trustee in Bankr. for Esco Mfg. Co. (In re Esco Mfg. Co.), 50 F.3d 315 (5th Cir. 1995), rev'g 1993 U.S. Dist. LEXIS 9276, 16 Employee Benefits Cas. (BNA) 2544 (N.D. Tex. May 25, 1993) – The district court reversed the bankruptcy court's decision permitting the bankruptcy trustee to abandon the debtor's pension plan, holding that the plan must be terminated in accordance with Title IV. In reaching its conclusion, the district court rejected the trustee's argument that the Chapter 7 bankruptcy estate did not succeed to the administrative and financial obligations of the debtor with respect to the pension plan. The court of appeals, on rehearing, reversed the district court's decision, holding that: (1) only a plan administrator or PBGC can terminate a pension plan, and only as provided in Title IV; and (2) that because the plan was administered by a joint committee, neither the debtor nor the bankruptcy trustee had the power to terminate the plan.

► PBGC v. Smith Corona, 205 B.R. 712 (D. Del. 1996) – Plan sponsors filed for Chapter 11 bankruptcy relief. As part of their reorganization efforts, the plan sponsors moved for a distress termination of their pension plans, requesting that the bankruptcy court order the termination of the plans. PBGC moved for withdrawal of reference to the bankruptcy court. In denying PBGC's motion, the district court held that withdrawal was not warranted, because whether the debtors met the reorganization test for a distress termination involved a straightforward application, rather than substantial and material consideration, of ERISA. The court further held that withdrawal would not promote the goal of an efficient bankruptcy process. The case later settled.

► Jacobson v. Hughes Aircraft Co., 525 U.S. 432 (1999), rev'g 105 F.3d 1288 (9th Cir. 1997) – Retired participants in a defined benefit pension plan filed a class action against their former employer, alleging that the employer had violated ERISA by amending the plan to provide for an early retirement program and a noncontributory benefit structure. The district court granted the employer's motion to dismiss. The court of appeals reversed and remanded, holding, inter alia, that the addition of the noncontributory benefit structure to the plan may have terminated the plan and created two new plans. On writ of certiorari, the Supreme Court adopted the position of PBGC, appearing as amicus curiae, and reversed the court of appeals, holding, inter alia, that the employer's amendment of the plan did not terminate it, as the provisions of Title IV "constitute[ ] the sole avenues for voluntary termination."

► Black v. PBGC, 2019 WL 1315275 (E.D. Mich. Mar. 22, 2019), aff'd, 973 F.3d 576 (6th Cir. 2020), modified, 983 F.3d 858 (6th Cir. 2020), cert. denied, 2022 WL 145243 (U.S. Jan. 18, 2022) – PBGC and a plan sponsor entered into an agreement to terminate the company's salaried pension plan following its bankruptcy reorganization. Plan beneficiaries then sued PBGC, asserting that the agency violated ERISA, breached its fiduciary duties, and denied participants due process by terminating the plan without a court adjudication. The district court granted summary judgment to PBGC, and the Sixth Circuit affirmed. Both courts held that ERISA does not require PBGC to seek a court order to terminate a plan; that plan termination did not deprive the participants of due process; and that PBGC's decision to terminate was not arbitrary or capricious.

2. Distress Termination

► In re Eastmet Corp., No. 86-B-0035 (Bankr. D. Md. Jan. 22, 1988) – Adopting PBGC's interpretation of the Chapter 11 reorganization test for a distress termination under ERISA § 4041(c)(2)(B)(ii), as added by the Single Employer Pension Plan Amendments Act of 1986, the bankruptcy court permitted the distress termination of the debtor's pension plans, based upon a finding that, unless the plans were terminated, the debtor and each of its wholly owned subsidiaries would be unable to pay their debts pursuant to a plan of reorganization, and would thus be unable to continue in business outside the Chapter 11 reorganization process.

► In re Resol Mfg. Co., Inc., 110 B.R. 858 (Bankr. N.D. Ill. 1990) – A plan sponsor in Chapter 11 filed a motion in bankruptcy court to terminate its pension plan in a distress termination, after the plan had been frozen in conjunction with the sponsor's inability to pay contributions. The plan sponsor claimed that it would be unable to continue in business otherwise, and would have to be liquidated. PBGC argued that the sponsor could fund the plan. Agreeing with PBGC, the bankruptcy court denied the sponsor's motion, holding that the standard for a distress termination was that, but for the termination, the debtor would be unable to pay its debts and continue in business, and that the sponsor had not made that showing.

► In re Diversified Indus., Inc., 166 B.R. 141 (Bankr. E.D. Mo. 1993) – The bankruptcy court held that a debtor was not required to seek a bankruptcy court determination that it met the reorganization distress test for plan termination under ERISA § 4041(c). Overruling the objection of a plan participant, the bankruptcy court held that ERISA gives a plan administrator discretion to ask either PBGC or the bankruptcy court to make a determination of financial distress. Noting its lack of jurisdiction over the debtor's non-bankrupt controlled group members, the bankruptcy court found it appropriate for the plan administrator to file its application solely with PBGC, which had jurisdiction under ERISA over both the bankrupt and non-bankrupt entities.

► In re Sewell Mfg. Co., 195 B.R. 180 (Bankr. N.D. Ga. 1996) – A plan sponsor in Chapter 11 filed a motion seeking approval of a distress termination. PBGC opposed the plan sponsor's motion as premature, arguing that satisfying the distress test criteria depended upon the bankruptcy court's finding of financial distress in the context of a proposed plan of reorganization. The bankruptcy court granted the plan sponsor's motion, holding that: (1) the case was ripe because a debtor need not submit a plan of reorganization prior to a court's analysis of the plan sponsor's financial distress; and (2) absent plan termination, the plan sponsor would be unable to pay all of its debts pursuant to a plan of reorganization, and would be unable to continue in business outside the Chapter 11 reorganization process.

► In re Wire Rope Corp. of Am., Inc., 287 B.R. 771 (Bankr. W.D. Mo. 2002) – In a reorganization distress termination, the bankruptcy court held that the threshold issue is whether a debtor can confirm *any* plan of reorganization with its pension plan in place. The bankruptcy court held that no investor would be willing to invest and make the plan of reorganization confirmable because the minimum funding required for the pension plan would lead to negative cash flow for the first four years after confirmation. The bankruptcy court found that the debtor could not reorganize with the pension plan in place or continue business outside of bankruptcy. Accordingly, the bankruptcy court granted the motion for approval of the distress termination.

► In re US Airways Group, Inc., 296 B.R. 734 (Bankr. E.D. Va. 2003) – In a reorganization distress termination case, the debtor sought to terminate its pension plan for pilots, replace that plan with a defined contribution plan, and continue its other retirement plans for employees other than pilots. The bankruptcy court found that various alternatives (such as an IRS funding waiver, deferral of contributions under a "restoration funding" schedule, legislative relief, new financing for the debtor's operations, freezing the retirement plans, and additional concessions from employee groups other than the pilots) had proven unsuccessful or would be insufficient. Accordingly, the bankruptcy court found that the debtor had made the necessary showing of financial distress. The bankruptcy court noted a statutory ambiguity whether financial hardships for employees were also a relevant factor. On that point, however, the bankruptcy court saw no alternative to plan termination, without which the debtor would liquidate, and the pilots would be in the same position or worse.

► In re Special Metals Corp., No. 02-10335 (Bankr. E.D. Ky. Sept. 11, 2003) – A plan sponsor filed a motion in bankruptcy court seeking findings that each of its five pension plans met the reorganization test on an aggregate basis, and that it could terminate all its plans in a distress termination. PBGC objected, asserting that the plans must be reviewed on an individual basis, and that since the plan sponsor could afford its three smaller plans, those plans did not meet the distress termination requirements. The bankruptcy court granted the plan sponsor's motion, holding that, while it must review the plans individually, even the smallest plan met the distress test. PBGC and the plan sponsor later reached a settlement under which PBGC would accept the distress termination of the three larger pension plans while the plan sponsor would continue to fund, administer, and maintain its two smallest pension plans.

► In re Philip Serv. Corp., 310 B.R. 802 (Bankr. S.D. Tex. 2004) – Chapter 11 debtors filed motions in bankruptcy court for distress termination of their pension plans, and to reject the plans as executory contracts, arguing that an investor's proposal to finance and acquire the debtors' businesses required termination as a condition to closing, and that their reorganization plan might not be consummated otherwise. PBGC objected, arguing that adequate funds were available to maintain the plans. The bankruptcy court denied the debtors' motions, holding that: (1) paying the pension obligations did not make the plan of reorganization impossible, but merely made the cost slightly higher to the investor; (2) the debtors did not prove by a preponderance of the evidence that the reorganization plan would not be consummated absent the granting of the motions; and (3) because Title IV is the exclusive means of terminating a pension plan, the debtors could not reject theirs as executory contracts.

► In re Aloha Airgroup, Inc., 2005 WL 3487724 (Bankr. D. Haw. Dec. 13, 2005), vacated as moot, 2006 WL 695054 (D. Haw. Mar. 14, 2006) – The bankruptcy court held, over PBGC's objection, that the Chapter 11 debtor's distress termination of its pension plans may proceed; otherwise, a successful reorganization was improbable.

According to the bankruptcy court, a successful reorganization could not occur because investors were unwilling to invest if the debtor had an ongoing obligation to fund the plans. The bankruptcy court further held that it had jurisdiction to set the plan termination date, when PBGC and the debtor disagreed on the appropriate date. PBGC appealed, but the district court affirmed the bankruptcy court. The parties later settled the case, with the reorganized company retaining one of the plans.

► PBGC v. Kaiser Aluminum Corp. (In re Kaiser Aluminum Corp.), 456 F.3d 328 (3d Cir. 2006), aff'g 2005 WL 735551, 34 Employee Benefits Cas. (BNA) 2228 (D. Del. Mar. 30, 2005) – PBGC appealed a bankruptcy court order (upheld by the district court) approving the distress termination of the debtor's six pension plans. PBGC argued that the statutory provision requires analysis of whether the debtor meets the distress criteria with respect to each plan individually, and does not allow an aggregated analysis of the debtor's plans. PBGC also argued that the "fair and equitable" standard in Bankruptcy Code section 1113 should not be considered when applying ERISA's distress provision. The court of appeals disagreed, finding that Congress did not provide guidance as to how the distress termination standard should apply to multiple plans, and that a plan-by-plan test would be unworkable and inequitable. Although the court acknowledged PBGC's concerns about the ramifications of an aggregate approach, the court interpreted Congress's failure to provide "a shred of guidance" on how to apply a plan-by-plan approach as "indicative of its intent" and challenged it to amend the statute.

► PBGC v. Falcon Prods., Inc. (In re Falcon Prods., Inc.), 497 F.3d 838 (8th Cir. 2007), aff'g 354 B.R. 889 (E.D. Mo. 2006) – Closely following the Third Circuit's decision in Kaiser Aluminum Corp., 456 F.3d 328 (3d Cir. 2006), the district court had rejected PBGC's arguments that ERISA, its legislative history, policy considerations, and deference to PBGC's interpretation of ERISA required the bankruptcy court to apply a plan-by-plan approach in assessing the debtors' distress termination application for its three pension plans. The district court concluded under Bankruptcy Code section 1113 that it would be unfair and inequitable to union employees to terminate their plan while allowing participants under another plan to maintain their benefits, particularly where those participants were no longer the employees of the debtors. The district court also concluded that the bankruptcy court did not err in reviewing the financial status of the non-debtor controlled group members solely to determine whether they could help the debtors to support the pension plans under the reorganization distress test. On appeal, however, the Eighth Circuit held that is was unnecessary to address whether ERISA mandates a plan-by-plan or aggregate approach. Relying instead on the bankruptcy court's finding that the debtor could not survive outside of Chapter 11 bankruptcy without a potential multi-million-dollar investment B which was expressly conditioned on termination of the pension plans B the court of appeals affirmed that termination of all three plans was warranted.

3. PBGC-Initiated Termination

► In re Jones & Laughlin Hourly Pension Plan, 824 F.2d 197 (2d. Cir. 1987) – The district court entered a consent order approving an agreement between PBGC and the administrators of several pension plans, executed without prior notice to participants, that terminated the plans and named PBGC as their statutory trustee. A union representing plan participants moved to intervene and to vacate and/or stay the consent order. The district court denied the union's motion, and the union appealed. The court of appeals confirmed, holding that ERISA does not require advance notice of termination to participants; participants' due process rights were not violated by the agreement, as ERISA contains "ample post-deprivation remedies"; and PBGC's interest in expeditious plan terminations outweighed the union's desire for pre-termination hearings.

► PBGC v. Pension Comm. of Pan Am. World Airways, 777 F. Supp. 1179 (S.D.N.Y. 1991), aff'd mem., 970 F.2d 896 (2d Cir. 1992) – PBGC sued to terminate several pension plans and to set the plans' termination dates. The pension committee and intervening unions opposed the terminations and the PBGC-proposed termination dates. The district court held that PBGC's determination that the plans must be terminated was not arbitrary or capricious where the plan sponsor had missed minimum funding contributions, breached the conditions of its minimum funding waiver, and indicated that it would not make further contributions while in bankruptcy. Furthermore, the loss to PBGC would have increased significantly for each additional month that the plans continued.

► PBGC v. FEL Corp., 798 F. Supp. 239 (D.N.J. 1992) – The district court affirmed PBGC's authority to terminate a plan involuntarily where a threatened breakup of a controlled group created the risk of an unreasonable increase in PBGC's long-run losses. Confirming that PBGC's determinations with respect to plan termination are to be reviewed under the traditional "arbitrary and capricious" standard, the district court ordered the termination of the plans prior to the effective date of a Chapter 11 plan of reorganization.

► PBGC v. Haberbush, 2000 WL 33362003, 25 Employee Benefits Cas. (BNA) 1481 (C.D. Ca. Nov. 3, 2000) – The district court upheld PBGC's determination that a pension plan should be terminated. The district court held that PBGC's termination decisions are final agency decisions under the Administrative Procedure Act and, therefore, must be upheld unless they are arbitrary, capricious, or an abuse of discretion. The district court ordered the plan terminated and appointed PBGC as statutory trustee.

► Air Line Pilots Ass'n, Int'l v. PBGC, 334 F.3d 93 (D.C. Cir. 2003), aff'g 193 F. Supp. 2d 209 (D.D.C. 2002) – PBGC entered into an agreement with a plan sponsor and a controlled group member not to immediately terminate a pension plan, but to allow the plan to shift to a subsidiary of the controlled group member, subject to what the agreement defined as a "significant event." When the significant event did occur, PBGC initiated a termination of the plan. The pilots' association challenged the termination. The district court held that PBGC had the power to enter into a settlement agreement regarding the terms under which it would terminate a given plan. Moreover, the district court agreed with PBGC that the termination was proper because, at the time of the agreement and at the time of the settlement, PBGC could conclude that termination would prevent an unreasonable increase in the agency's long-run loss. The court of appeals affirmed, holding that: (1) PBGC has the authority to settle potential liability that would flow from the termination of a pension plan; and (2) PBGC did not have to make a subsequent "cause determination" under § 4042 where the grounds existed at the time of the agreement, and the agreement specified that the plan "shall" be terminated.

► PBGC v. WHX Corp., 2003 WL 21018839, 30 Employee Benefits Cas. (BNA) 2567 (S.D.N.Y. May 6, 2003) – PBGC sued seeking enforcement of its decision to terminate a pension plan. PBGC argued that its termination decision had to be enforced unless, upon review of the administrative record, the decision was found to be arbitrary and capricious. WHX argued that the decision should be reviewed de novo on a record that also included post-termination events including administrative materials and discovery. The district court held that PBGC-initiated terminations are reviewed on an "arbitrary and capricious" standard, based on the administrative record at the time the agency made its final decision.

► Adams v. PBGC, 332 F. Supp. 2d 231 (D.D.C. 2004), aff'd mem., 2006 WL 593199 (D.C. Cir. Jan. 27, 2006) – In a second action challenging the settlement at issue in Air Line Pilots Ass'n, Int'l v. PBGC, participants in an airline pilot pension plan sued PBGC, the plan sponsor, and others asserting that a settlement agreement among them was illegal because (1) PBGC lacked statutory authority to settle unfunded benefit liability claims, (2) it constituted an attempt to evade liability to PBGC, and (3) it constituted a breach fiduciary duties under ERISA. Among other things, the agreement established how certain pension plans might terminate in the future, and, if the plans did terminate, settled the amount of contingent termination liability the then-sponsor would owe to the agency. The district court dismissed the case for failure to state a claim, basing its decision on the D.C. Circuit opinion in Air Line Pilots Ass'n, Int'l v. PBGC that had rejected a challenge to the plan termination provisions in the agreement. The district court held that: (1) PBGC had the authority under ERISA § 4067 to settle its claim for unfunded benefit liabilities; (2) there was no attempt to evade liability because the settlement acted as an alternative arrangement for the satisfaction of liability to PBGC; and (3) there was no breach of fiduciary duties because plan sponsors may enter into settlements with PBGC. The decision was summarily affirmed on appeal.

► PBGC v. Republic Tech. Int'l, Inc., 386 F.3d 659 (6th Cir. 2004), rev'g 287 F. Supp. 2d 815 (N.D. Ohio 2003) – PBGC filed suit seeking involuntary termination of an underfunded plan covering union employees before the plan sponsor sold its assets and ceased operations, in order to prevent an increase in PBGC's probable long-run loss stemming from liability for shutdown benefits under the plan. PBGC sought to establish a termination date effective as of the day before the sale, when it provided notice of the agency's intent to seek termination of the plan to plan participants. The union intervened, seeking a termination date after the sale. The district court ruled in favor of the union. The court of appeals reversed, holding that the date selected by PBGC – prior to the asset sale closing – should have been selected because (1) any reliance interest the plan participants had in the receipt of shutdown benefits was extinguished the day that PBGC sent out the notices of termination, and (2) the district court improperly failed to defer to PBGC's determination that it faced an unreasonable increase in its long-run loss if the court selected a termination date after the shutdown.

► In re UAL Corp., 428 F.3d 677 (7th Cir. 2005), aff'g Association of Flight Attendants-CWA, AFL-CIO v. United Air Lines, Inc., 333 B.R. 436 (N.D. Ill. 2005) – The bankruptcy court approved a settlement agreement between PBGC and United Air Lines that addressed PBGC's claims, pension issues, and other related matters. The AFA appealed the order approving the agreement, arguing that it effectively terminated the flight attendants' pension plan. The Seventh Circuit upheld the settlement agreement, concluding that it did not require plan termination and did not violate the AFA's collective bargaining rights. The court recognized PBGC's broad settlement authority, and noted that Congress authorized PBGC to terminate a plan to nip its increasing losses and thereby reduce PBGC's exposure to mounting liabilities.

► Association of Flight Attendants-CWA, AFL-CIO v. PBGC, 372 F. Supp. 2d 91 (D.D.C. 2005) (denying preliminary injunction); 2006 WL 89829, 36 Employee Benefits Cas. (BNA) 2233 (D.D.C. Jan. 13, 2006) (upholding termination) – The AFA sued PBGC for a preliminary injunction preventing PBGC from instituting proceedings to involuntarily terminate the flight attendants' pension plan. The AFA argued that the settlement agreement between PBGC and United Air Lines violated ERISA. The district court denied the union's motion for a preliminary injunction under the traditional four-part test. In a subsequent decision, the district court granted summary judgment, holding that PBGC properly terminated the pension plan under the long-run loss standard in ERISA section 4042(a)(4). Although the court held that external factors, such as a settlement agreement, cannot be considered in determining whether there was a long-run loss, it concluded that PBGC had ample other grounds for termination of the flight attendants' plan to avoid a long-run loss where the employer did not intend to make further contributions to the plan and the agency's losses were increasing.

► In re UAL Corp. (Pilots' Pension Plan Termination), 468 F.3d 444 (7th Cir. 2007), aff'g PBGC v. United Airlines, Inc., 436 F. Supp. 2d 909 (N.D. Ill. 2006) – PBGC initiated the termination of one of a debtor's pension plans, after determining that, absent termination, the agency ran a risk of an unreasonable increase in its long-run loss. After conducting a bench trial, the bankruptcy court proposed to the district court that PBGC had met its burden under section 4042 of ERISA, and that the agency's proposed date of plan termination was appropriate. The debtor and unions representing the plan's participants objected to the bankruptcy court's proposed findings, and PBGC objected on the ground that the bankruptcy court applied a de novo standard when it reviewed PBGC's determination, rather than reviewing it on the administrative record under the "arbitrary and capricious" standard. The district court affirmed the bankruptcy court's use of the de novo standard of review, accepted the recommendations of the bankruptcy court, and issued a decree of termination, using PBGC's proposed termination date. The court of appeals affirmed.

► PBGC v. New United Motor Mfg., Inc., 2010 WL 2739993 (N.D. Cal. Jul. 11, 2010) – PBGC initiated termination of a pension plan sponsored by a joint venture involving a bankrupt automobile manufacturer. After PBGC sued the joint venture under section 4042 of ERISA, the agency and the joint venture reached a settlement and together moved to dismiss the case. Under the settlement, the joint venture agreed to initiate a standard termination of the pension plan, make a contribution to the plan, and, if the standard termination could not be completed, make an additional contribution and execute a trusteeship agreement terminating the plan. A union representing the pension plan's participants moved to intervene and opposed the parties' motion to dismiss. The court, in denying the union's motion, held that "Congress gave the authority to PBGC, not the union, to bring . . . enforcement actions [under section 4042] and to settle them," and that intervention "would interfere with PBGC's ability to effectively manage and terminate [pension] plan[s] in the most beneficial manner."

► PBGC v. Rouge Steel Co., 2006 WL 83062, 36 Employee Benefits Cas. (BNA) 2882 (E.D. Mich. Jan. 10, 2006); 2010 WL 3324921 (E.D. Mich. Aug. 23, 2010) – In 2006, the court vacated PBGC's decision to initiate the termination of two pension plans of a bankrupt sponsor and remanded the decision for further development of the administrative record. According to the district court, the administrative record lacked sufficient analysis of the plan sponsor's financial condition and intentions with regard to the plans. In its second decision, the court granted PBGC's motion for summary judgment, ordering the two pension plans terminated as of the date PBGC chose and denying the UAW's motion for summary judgment, which sought a later termination date. The court concluded that the participants' expectation that the plans would continue had been extinguished both by actual notice of PBGC's termination action, and by constructive notice when the plans' sponsor ceased operations. The court rejected the union's argument that participants' receipt of benefits during the pendency of the litigation revived their expectations that the plans would continue. The court was also unconvinced by the union's argument that either the lengthy termination litigation or the possible assumption of the plans by a third party revived participants' expectations. Finally, the court rejected the union's request that the court equitably prohibit PBGC from recouping benefit overpayments.

► In re Chemtura Corp., 439 B.R. 561 (Bankr. S.D.N.Y. 2010) – As part of a global settlement between PBGC, a pension plan sponsor, and its creditors, the sponsor agreed to maintain its pension plans and make a contribution to the largest plan, in exchange for PBGC agreeing not to initiate termination due to possible long-run loss. In confirming the plan of reorganization over objections of a committee of equity holders, the bankruptcy court held that "settling with . . . PBGC was entirely sensible," and that "the wisdom of . . . pushing . . . pension funding issues off to another day, and risk[ing PBGC-initiated] termination of their pension plans . . . would be debatable, at best." The court added that absent settlement, the plan sponsor "may well have had to create a huge reserve for satisfying [PBGC's] plan termination claims."

► FBOP Corp. v. PBGC, No. 11-C-2782 (N.D. Ill. Oct. 5, 2011) – PBGC notified a plan sponsor of the agency's determination that the plan should be terminated under section 4042 of ERISA. PBGC also notified the sponsor that it intended to set off the plan's unfunded benefit liabilities against the sponsor's anticipated income tax refund. PBGC withdrew the setoff notice after learning that the refund would be delayed. The sponsor refused to terminate consensually, and instead sued PBGC for a judgment declaring that the plan should not be terminated and an injunction against any setoff. PBGC, in turn, sued the sponsor for an order terminating the plan, and moved to dismiss the sponsor's suit. The court granted the motion to dismiss, holding that the sponsor's suit for declaratory judgment was duplicative of PBGC's termination suit, and that, because PBGC had withdrawn the setoff notice, the court lacked subject-matter jurisdiction over it. The case was later settled, with the parties agreeing upon termination of the plan.

► PBGC v. Saint-Gobain Corp. Benefits Comm., 2013 WL 5525693, 57 Employee Benefits Cas. (BNA) 2335 (E.D. Pa. Oct. 4, 2013) – PBGC determined that the Saint-Gobain plan should be terminated, and brought suit under ERISA section 4042(c) for a termination order. On cross-motions for summary judgment, the district court held that the "arbitrary and capricious" standard of review under the Administrative Procedure Act does not apply to PBGC's determination, as it is not "agency action" producing a decision with legally binding effect. The court denied PBGC's motion to certify the ruling for immediate appeal.

B. Date of Plan Termination

► PBGC v. Heppenstall Co., 633 F.2d 293 (3d Cir. 1980) – The court of appeals held that in selecting a plan termination date, the interests of the plan participants and PBGC must be balanced. The court of appeals also held that the earliest possible date that properly can be selected by a court is the date on which participants had reasonable notice that PBGC was seeking termination. Reasonable notice is notice sufficient to extinguish the participants' justifiable reliance interests, and constructive notice is sufficient. Once the notice date is determined, the court should select the earliest date thereafter that serves PBGC's financial interest.

► In re Syntex Fabrics, Inc. Pension Plan, 698 F.2d 199 (3d Cir. 1983) – The court of appeals clarified that only the participants' and PBGC's interests are to be considered in fixing a plan termination date; concern for the employer's interests is "conspicuously absent" from ERISA.

► In re Pension Plan for Employees of Broadway Maint. Corp., 707 F.2d 647 (2d Cir. 1983) – Following Heppenstall and Syntex, the court of appeals held that in setting the date of plan termination, a court should assign no role to the financial interests of the plan sponsor; rather, the interests of the participants and PBGC are the sole factors to be considered.

► In re Maryland Glass Corp. Non-Salaried Employee's Pension Plan, 618 F. Supp. 1410 (D. Md. 1985) – PBGC sued to terminate two pension plans. Unions representing plan participants moved to intervene and challenged PBGC's proposed date of plan termination. Following PBGC v. Heppenstall Co., the court held that the earliest date of plan termination is the date on which the plan sponsor ceased operations.

► PBGC v. Pension Comm. of Pan Am. World Airways, 777 F. Supp. 1179 (S.D.N.Y. 1991), aff'd mem., 970 F.2d 896 (2d Cir. 1992) – Following Broadway Maintenance and Heppenstall, the district court held that once participants have been given reasonable notice, the plan termination date should be the earliest date thereafter that serves PBGC's interests. The district court concluded that although actual notice to participants was not required, the appropriate termination date was one week after PBGC published notices of its intent to terminate the plans.

► PBGC v. Mize Co., 987 F.2d 1059 (4th Cir. 1993) – Following Broadway Maintenance, the court of appeals ruled that deference to PBGC's expertise is appropriate in selecting a plan termination date, especially in determining the date that best serves PBGC's interests. The plan sponsor had notified plan participants of its intent to terminate the plan in 1976, but had not followed the termination procedures prescribed by Title IV. The plan sponsor's failure to comply with the procedures was a significant factor in the court of appeals' rejection of the sponsor's argument that the date of notice to participants was the appropriate termination date, where that date did not serve PBGC's interests.

► Pension Comm. for Farmstead Foods Pension Plan v. PBGC, 991 F.2d 1415 (8th Cir. 1993), aff'g 778 F. Supp. 1020 (D. Minn. 1991) – Plan administrators had issued notices of plan termination to participants in connection with previous applications for distress terminations. (The distress termination applications were not approved, because a union representing participants of the plans asserted that termination would violate the terms of collective bargaining agreements.) PBGC subsequently initiated the termination of the plans, and proposed the same dates of termination, finding that the earlier notices had extinguished the plan participants' reasonable expectations of plan continuation. Upholding the district court's conclusion that PBGC's proposed dates were appropriate, the court of appeals stated that "where PBGC is interpreting provisions of Title IV of ERISA, the recommendation proffered by PBGC should be accorded deference." The court of appeals also summarily rejected the union's argument that PBGC had an inherent and inappropriate conflict of interest as statutory trustee of the plans.

► PBGC v. Valley-Vulcan Mold Co., 1993 WL 476158 (W.D. Pa. July 8, 1993) – The district court upheld PBGC's proposal of a plan termination date that fell nearly two years after the employer's cessation of operations. PBGC sought a termination date coincident with its commencement of an action for a decree of plan termination. The employer contended that if an objectively determinable date, such as the date on which operations cease, is not used, PBGC could arbitrarily delay bringing a termination action until interest rates fell, thereby increasing its claim. Rejecting this argument, the district court held that the cessation date is merely "the earliest date within the potential range of termination dates" that may be proposed, and that PBGC's proposed date should be accorded deference.

► PBGC v. United Airlines, Inc., 2007 WL 57271, 39 Employee Benefits Cas. (BNA) 2741 (4th Cir. Jan. 9, 2007) – The Fourth Circuit affirmed the district court's decision that the plan termination date that PBGC chose for the United Ground Plan (to which the plan administrator agreed) was not arbitrary and capricious, and thus would be upheld. The union had argued that PBGC's notice to plan participants, through publication and notice to the union and the airline (via newspaper and online sources, including the union's website), was insufficient to cut off participants' expectations and thus could not be used to set the termination date. The court of appeals rejected this argument and affirmed PBGC's choice of termination date, finding that the notice provided was sufficient.

► PBGC v. Durango-Ga. Paper Co., 2006 WL 3762085 (S.D. Ga. Dec. 20, 2006), aff'd per curiam, 2007 WL 3047329 (11th Cir. Oct. 19, 2007) – The former sponsor of Durango's pension plan challenged the termination date that Durango and

PBGC had agreed to upon termination of the plan. The district court held that when a pension plan is terminated under section 4042 of ERISA, the statute authorizes PBGC and the plan administrator to set the termination date (either before or after litigation is begun), and the former sponsor had no right to object.

► PBGC v. Eber Bros. Wine & Liquor Corp., No. 15-06283 (W.D.N.Y. Jan. 19, 2016) – PBGC sued a plan sponsor to terminate its pension plan, to set the plan's date of termination concurrent with the sponsor's cessation of operations, and to have PBGC appointed as the plan's statutory trustee. On cross-motions for summary judgment, the court, relying on In re Pension Plan for Employees of Broadway Maint. Corp., 707 F.2d 647 (2d Cir. 1983) (supra), upheld PBGC's choice of plan termination date, holding that the participants had constructive notice of the termination upon the sponsor's cessation of operations, and that deferring the plan's date of termination based on winding-up activities would "place[] undue control over a plan termination date into the hands of plan sponsors and their controlled groups' members."

C. Liability to PBGC as Result of Plan Termination

1. In General

► Nachman Corp. v. PBGC, 446 U.S. 359 (1980), aff'g 592 F.2d 947 (7th Cir. 1979) – In this early challenge to ERISA's termination liability provisions, an employer filed suit against PBGC, arguing that a provision in its pension plan limiting benefits to the amounts that could be provided by plan assets prevented benefits from becoming "nonforfeitable," and thus covered by the insurance program. The Supreme Court recited Congress's goal of preventing the "great personal tragedy" suffered by employees whose vested benefits are not paid when a plan terminates, and refused to allow the employer to disclaim liability for any deficiency in plan assets. Thus, benefits were "nonforfeitable," as defined by PBGC regulations, if on the date of plan termination, the participants had satisfied all the conditions required under the plan.

► A-T-O, Inc. v. PBGC, 634 F.2d 1013 (6th Cir. 1980), rev'g 456 F. Supp. 545 (N.D. Ohio 1978) – The court of appeals, in reversing and remanding the decision of the district court, upheld the constitutionality of termination liability to PBGC under ERISA § 4062, and, following Nachman, held that benefits under a pension plan may be nonforfeitable, notwithstanding a plan provision purporting to limit an employer's liability.

► PBGC v. White Motor Corp. (In re White Motor Corp.), 731 F.2d 372 (6th Cir. 1984) – The court of appeals, in reversing and remanding the decision of the district court, held that PBGC, in its capacity as guarantor of pension liabilities, has standing as a co-debtor to pursue an employer's contractual obligation to fund its pension plan.

► PBGC v. AlloyTek, Inc., 924 F.2d 620 (6th Cir. 1991) – In 1981, a plan sponsor sued to reverse PBGC's decision to refuse termination of the sponsor's pension plan because of its proposal to adopt a "follow-on" plan. (See PBGC Opinion Letter 81-11, infra.) Ultimately, the litigation was settled with PBGC agreeing to accept termination of the plan. In 1985, with the plan terminated, PBGC sued to collect termination liability and unpaid contributions, and to enforce potential third-party beneficiary contract rights of the plan participants. The district court dismissed the suit, agreeing with the plan sponsor that PBGC was obligated to bring these claims as a part of the earlier litigation. The court of appeals reversed and remanded the district court's decision, rejecting the defendant's argument that Fed. R. Civ. P. 13 required PBGC to file a compulsory counterclaim for liability in the plan sponsor's 1981 civil action, and holding that the specific provisions of ERISA prevail over a general rule of procedure.

► Kinek v. Paramount Commc'n, Inc., 22 F.3d 503 (2d Cir. 1994), as modified, Nos. 93-6230, 93-6232 (2d Cir. June 13, 1994), aff'g Kinek v. Gulf & Western, Inc., 720 F. Supp. 275 (S.D.N.Y. 1989), Kinek v. Gulf & Western, Inc., 817 F. Supp. 353 (S.D.N.Y. 1993) – The district court granted summary judgment to PBGC and a class of participants against a plan sponsor for its liability arising out of its failure to fully fund its pension plan in connection with a previous asset sale and plan spin-off. Later, the district court assessed damages in favor of PBGC and the class. The court of appeals upheld the district court's summary judgment and damages awards, holding that: (1) the plan sponsor's promise to a union representing the plan participants to fund vested benefits upon termination, when read in conjunction with the plan's provision regarding allocation of assets upon a spin-off, required the plan sponsor to transfer sufficient assets to fund the spun-off portion of the plan; and (2) the appropriate remedy was for the plan sponsor to pay to PBGC the entire award, plus interest (at a rate less than the rate of return earned by the plan prior to termination).

► PBGC v. Ziffer, 1994 WL 11654 (N.D. Ill. Jan. 6, 1994) – The district court allowed PBGC to amend its complaint under Fed. R. Civ. P. 15. In its amended complaint, PBGC added as a party the executor of the plan sponsor's estate. PBGC alleged that the executor transferred funds from the estate in violation of PBGC's lien for plan termination liability. The district court held that PBGC's claim was not futile because the executor was aware of the lien before the transfer occurred.

► PBGC v. Carter & Tillery, 133 F.3d 1183 (9th Cir. 1998) – The court of appeals, in reversing and remanding the decision of the district court, held that the lien provision in Title IV is not PBGC's exclusive remedy for collecting termination liability. PBGC may choose to collect liability either by filing suit or by perfecting a lien. The court of appeals also held that PBGC could file suit to collect unpaid employer liability, even if the employer had a pending administrative appeal. The court of appeals explained that because dismissal would have created a statute of limitations problem, the appropriate resolution was to stay the judicial proceedings pending completion of administrative review.

► PBGC v. Boury, Inc., 2008 WL 2803798 (N.D. W. Va. Jul. 18, 2008); 2009 WL 3334924 (N.D. W. Va. Oct. 14, 2009) – PBGC sued the sponsor of a terminated pension plan and its controlled group members to enforce the agency's lien under section 4068(a) of ERISA. The court dismissed the case after entering a consent judgment in PBGC's favor, under which the plan sponsor and its controlled group members were ordered to sell real property within a time certain and pay PBGC a portion of the sale proceeds. The sale did not occur within the time certain and PBGC was not paid; instead, a local land commissioner sold the property to a third party in a "tax sale" under West Virginia law. After granting PBGC's motion to reopen the case, the court held that PBGC's lien survived the "tax sale" because section 4068(b) of ERISA, which states that a lien continues until the liability is satisfied or becomes unenforceable by reason of lapse of time, preempts state law. The court also held that the provisions of the Internal Revenue Code governing the discharge of certain federal tax liens do not apply to federal liens arising under ERISA.

2. Evade or Avoid / Corporate Successor Liability

► In re Consolidated Litig. Concerning Int'l Harvester's Disposition of Wisconsin Steel, 681 F. Supp. 512 (N.D. Ill. 1988) (as supplemented from the bench Nov. 16, 1988) – The district court held that PBGC can recover termination liability from a plan sponsor when it transfers a division – and its unfunded pension liabilities – to a thinly financed buyer, where a principal purpose of the transaction is to evade pension obligations, and the buyer lacks a reasonable chance of satisfying those obligations. (The transaction at issue occurred before the enactment of ERISA § 4069(a) in 1986.) PBGC subsequently reached a settlement with the plan sponsor.

► In re Doskocil Cos., Inc., 130 B.R. 858 (Bankr. D. Kan. 1991) – PBGC filed claims in bankruptcy for the underfunding of pension plans of two subsidiaries that the debtor had sold in leveraged buy-outs in 1984, contending that the sales of these subsidiaries were an attempt to evade liability for the underfunding under ERISA section 4069(a). The bankruptcy court rejected PBGC's contentions. Faced with an appeal by PBGC on the eve of a confirmation hearing on the debtor's plan of reorganization, the debtor settled by agreeing to an allowed claim for PBGC.

► Raytech Corp. v. PBGC, (In re Raytech Corp.), 241 B.R. 790 (Bankr. D. Ct. 1999), aff'd, No. 03-479 (D. Conn. Mar. 21, 2001) – A debtor had restructured in bankruptcy, leaving itself as a parent corporation with valuable assets, and an insolvent subsidiary corporation responsible for its asbestos-related claims and pension liability. The subsidiary filed an adversary proceeding to determine whether it was liable, as a successor in interest, for the pension fund contributions that the debtor had failed to make. (In prior unrelated litigation, courts had held that the subsidiary was liable as a successor in interest for debts of the parent corporation.) The bankruptcy court held that: (1) the subsidiary was estopped from reasserting the arguments, which had been rejected in prior litigation, that it was a good-faith purchaser and had paid fair consideration for the assets that it had acquired; (2) PBGC had standing because it did not seek to avoid a transfer for the benefit of the debtor's creditors but rather a declaratory judgment that the subsidiary was liable for pension contributions; (3) declaratory and injunctive relief was warranted; and (4) the subsidiary was responsible for funding the plans.

► PBGC v. White Consol. Indus., 215 F.3d 407 (3d Cir. 2000) – The court of appeals, in affirming the district court, held that the prior owner of an unprofitable company had predecessor liability for its pension plan under section 4069(a) of ERISA. The court of appeals held that a transaction does not "become effective" for the five-year look-back period until the transferring company no longer makes substantial pension contributions, rather than at the date of transfer. In addition, the court of appeals held that a "principal purpose" of evading cannot be implied from after-the-fact objective assessments of the company to which the pension plan was transferred. The court held, however, that the principal purpose was to evade predecessor liability because the transferring company "ceased propping up the pension plan" after it thought the five-year liability period had elapsed.

► PBGC v. Union Steel Products, Inc., No. 01-828 (W.D. Mich.) – PBGC filed suit under section 4069(a) of ERISA against the plan sponsor of a terminated underfunded plan, its individual owner, and former brother-sister controlled group members. Before the plan terminated, the individual owned 100 percent of the stock of the plan sponsor and other businesses. Shortly before the plan sponsor's business failed and ceased operations, the individual owner transferred 22 percent of his stock in the plan sponsor to officers of the company, thus severing the 80-percent ownership connection needed to keep the other businesses he owned in a brother-sister controlled group with the plan sponsor. Evidence indicated that the transfer of stock was a sham transaction for no consideration. The action settled on the eve of trial and the court dismissed the suit with prejudice.

► PBGC v. Cone Mills Int'l, No. 04-838 (M.D.N.C.) – Before a debtor's plan terminated, it had requested, and received, permission from the bankruptcy court to enter a stock sale involving the debtor and various controlled group members. However, after the deal was approved by the bankruptcy court, the debtor and the buyer agreed to change the transaction from a stock sale to an asset sale with respect to certain of the controlled group members. Because the effective date of the sale was before the plan termination date, changing the transaction from a stock sale to an asset sale could have allowed the buyer to escape employer liability. PBGC sued the parties to the transaction under both ERISA section 4069(b), which provides for successor liability, and the fraudulent conveyance provisions of the Federal Debt Collection Procedures Act, 28 U.S.C. § 3304 et seq. The case was settled, and the court dismissed the suit with prejudice.

► Durango-Ga. Paper Co. v. H.G. Estate, LLC, 739 F.3d 1263 (11th Cir. 2014) – The court held that the trustee of a bankrupt plan sponsor cannot obtain a money judgment against predecessor controlled group members under section 4069(a) of ERISA for liability that is owed to PBGC under section 1362 of ERISA. The court held that the trustee's action was brought on behalf of the debtor and its creditors, whereas liability under section 1369 runs exclusively to PBGC and the pension plan's beneficiaries. PBGC participated as amicus curiae.

► PBGC v. The Renco Group, No. 13 Civ. 621 (RJS) (S.D.N.Y. Mar. 14, 2014); 60 Employee Benefits Cas. (BNA) 2286, 2015 WL 997712 (S.D.N.Y. Mar. 5, 2015) – PBGC sued a plan sponsor under section 4069(a) of ERISA and state common law causes of action for fraud and misrepresentation. The plan sponsor moved to dismiss PBGC's state law claims, asserting that the agency was not authorized to bring them and that they were preempted by ERISA. In denying the motion, the court held that section 4002(b)(1) of ERISA authorizes PBGC to sue under any cause of action in any appropriate court, including state law claims in either state or federal court, and that ERISA did not preempt the state law claims. The court subsequently denied cross-motions for summary judgment, opining that section 4069(a) liability can result from a transaction, as long as at least one of its principal purposes was to evade pension liability.

3. Controlled Group Liability

► PBGC v. Ouimet Corp., 630 F.2d 4 (1st Cir. 1980) ("Ouimet I"); on remand, 14 B.R. 884 (Bankr. D. Mass. 1981); PBGC v. Ouimet Corp., 711 F.2d 1085 (1st Cir. 1983) ("Ouimet II") – In Ouimet I, the court of appeals held that ERISA imposes termination liability jointly and severally on a plan sponsor and all members of its controlled group, and that joint and several liability is not an unconstitutional denial of due process. On remand, the bankruptcy court held that PBGC's valuation of the business under common control with the plan sponsor was adequate and that PBGC was entitled to recover from the solvent controlled group members. In Ouimet II, the court of appeals confirmed that termination liability may be allocated to the solvent members of a bankrupt plan sponsor's controlled group, and that PBGC must pursue the solvent members for the liability.

► PBGC v. Anthony Co., 537 F. Supp. 1048 (N.D. Ill. 1982); 575 F. Supp. 953 (N.D. Ill. 1983) – In its first decision, the district court held that the employer and its parent company constituted a single employer for purposes of termination liability, and that such liability is constitutional. In its second decision, the district court held that termination liability cannot be apportioned solely among the solvent, non-bankrupt members of a controlled group, but should be apportioned among all members.

► In re Challenge Stamping & Porcelain Co., 719 F.2d 146 (6th Cir. 1983), aff'g PBGC v. Dickens, 535 F. Supp. 922 (W.D. Mich. 1982) – Disregarding the "bright-line" ownership test of the Treasury Regulations, the court of appeals, in affirming the decision of the district court, held that the entity in question was not a member of a controlled group because it did not have "actual" control at the time the pension plan terminated.

► PBGC v. Center City Motors, 609 F. Supp. 409 (S.D. Cal. 1984) – PBGC sued the plan sponsor and the individual owners of rental property. The district court, in denying the defendants' motion for summary judgment, held that: (1) the rental proprietorship that had leased property, under a net lease, to an entity that was under common control with the plan sponsor was not excluded from ERISA's definition of "trade or business"; and (2) whether the rental proprietorship was operated as part of a "trade or business" carried on by the defendants presented genuine issues of material fact.

► PBGC v. Continental Airlines (In re Continental Airlines), No. 92-02 (Bankr. D. Del. 1992) – In a declaratory judgment action, PBGC sought to establish that a joint venture between two airlines was a separate entity that could be held jointly and severally liable for the underfunding of the terminated pension plans of another controlled group member. The bankruptcy court held that the joint venture was not operated as a separate entity, but was instead merely a division of one of the airlines, and thus not separately liable to PBGC. PBGC appealed. The parties later settled.

► PBGC v. Satralloy, Inc., 1993 U.S. Dist. LEXIS 21422 (S.D. Oh. Aug. 6, 1993), rev'g in part 1992 U.S. Dist. LEXIS 22829 (S.D. Oh. July 16, 1992) – PBGC sued the sponsor of a pension plan and three members of the sponsor's controlled group to recover the plan's termination liabilities. The controlled group members, two of which were incorporated outside the United States, moved to dismiss. The court denied the motion with respect to the domestic entity, but dismissed both foreign entities, even though they were liable under ERISA, holding that the evidence could not establish that the foreign entities had sufficient minimum contacts with the United States. On reconsideration, the court concluded that it indeed had jurisdiction over one of the foreign entities, relying on evidence that the foreign entity had conducted business in the United States through a domestic agent.

► PBGC v. American Shelter Indus., 821 F. Supp. 1465 (M.D. Fla. 1993) – A sole proprietor owned 82 percent of a parent corporation of a plan sponsor. PBGC alleged that the individual was a member of the plan sponsor's controlled group; the individual argued that he was not a "trade or business." Noting that the individual's income tax returns stated that he was in the business of "real estate brokerage" and "real estate," the district court granted summary judgment in favor of PBGC. In reaching its holding, the district court looked to the purpose of ERISA controlled group provisions, viz., preventing businesses from limiting their liability by fractionalizing their business operations.

► Connors v. Incoal, Inc., 995 F.2d 245 (D.C. Cir. 1993), rev'g 781 F. Supp. 50 (D.D.C. 1992) – The court of appeals, agreeing with the views expressed by PBGC as amicus curiae, held that whether there is an "economic nexus" among two or more entities is irrelevant, as a matter of law, in determining whether the entities are members of a controlled group under ERISA. The district court had held that because there was no economic nexus between a sole proprietorship and a plan sponsor, the sole proprietorship was not a "trade or business." Although the court of appeals reversed this decision, it remanded the case to the district court for a determination whether the entity was a "trade or business," without regard to any nexus, noting that the only criteria for liability under ERISA are that the enterprise be a trade or business and that it be under common control.

► PBGC v. East Dayton Tool & Die Co., 14 F.3d 1122 (6th Cir. 1994) – Distinguishing Challenge Stamping, supra, the court of appeals held that "actual" control is not relevant to ERISA's joint and several liability for pension underfunding pursuant to PBGC's controlled group regulations, which adopt the bright-line stock ownership test of the Treasury Regulations. The court of appeals reversed the district court's decision, which – relying on Challenge Stamping – had found no liability where there was allegedly no "actual" control by the controlled group member.

► PBGC v. J.D. Industries, Inc., 887 F. Supp. 151 (W.D. Mich. 1994) – PBGC sued a parent company of a plan sponsor and the holding company of that parent company, alleging that they were members of the plan sponsor's controlled group, and therefore jointly and severally liable for the plan's unfunded benefits. The holding company and parent company denied liability on the ground that they did not have "actual" control of the plan sponsor. The district court upheld PBGC's application of ERISA's bright-line stock ownership test for determining composition of a controlled group, deferring to PBGC in its interpretation of the controlled group regulations.

► PBGC v. Armco, Inc., No. 94-326 (D. Minn. July 20, 1999) – PBGC sued on an alter ego theory, for employer liability arising out of the termination of a plan sponsored by a partnership, 50 percent of which was owned by the defendant. PBGC's alter ego allegation was based in part on a previous decision in unrelated litigation, holding that the defendant was the alter ego of the partnership entity. The case was settled when the defendant agreed to pay a significant portion of the liability and to make contributions in excess of its minimum funding requirements to its own underfunded pension plans.

► PBGC v. Beverley, 404 F.3d 243 (4th Cir. 2005) – In an earlier and unreported matter, PBGC, in its capacity as a statutory trustee, sued the plan sponsor of a terminated pension plan for fiduciary breach. In this case, PBGC, in its corporate capacity, sued the plan sponsor and its individual owners, a husband and wife, for termination liability under Title IV. PBGC claimed that members of the company's controlled group – including the husband and wife, and the alleged partnership between the spouses – were liable for unfunded benefits stemming from the plan termination. The plan sponsor contended that the doctrines of res judicata and election of remedies barred the second suit. The court of appeals disagreed, holding that: (1) the parties were not identical in the two cases, because PBGC had sued in separate capacities; (2) although the doctrine of election of remedies did not apply, PBGC was required to offset any actual recovery against the first judgment to prevent a double recovery; and (3) the husband and wife were jointly and severally liable for the employer liability, because they had intended to act as a partnership, based on the sharing of business profits and losses, and the mixing of business and personal assets.

► PBGC v. Asahi Tec Corp., 839 F. Supp. 118 (D.D.C. 2012); 979 F. Supp. 2d 46 (D.D.C. 2013) – In this case of first impression, the district court agreed with PBGC that the court has jurisdiction over a foreign member of a plan sponsor's controlled group for purposes of enforcing termination liability. A foreign auto-parts manufacturer had bought a U.S. manufacturer. When the U.S. company sold its assets under Chapter 11, its pension plan was terminated and PBGC sued the foreign company for termination liability. The court held that because ERISA bases liability on the fact of ownership alone, the foreign manufacturer's deliberate and knowing decision to acquire a U.S. company and subject itself to ERISA is a sufficient minimum contact for specific jurisdiction. In a subsequent opinion, the court held that the foreign manufacturer was a member of the U.S. company's controlled group as of the plan's termination date, and was therefore jointly and severally liable for the plan's underfunding and termination premiums, giving deference to PBGC's regulations.

► PBGC v. Findlay Indus., 902 F.3d 597 (6th Cir. 2018), rev'g 2016 WL 7474404 (N.D. Oh. Dec. 29, 2016), cert. dismissed sub nom. Sept. Ends Co. v. PBGC, 140 S. Ct. 16 (2019) – PBGC sued the sponsor of a terminated pension plan and the members of the sponsor's controlled group, including a trust that had rented real property to the sponsor, for the plan's termination liabilities, and two purchasers of the sponsor's assets, for successor liability. The district court dismissed the action, holding that PBGC had failed to adequately plead that the trust is a trade or business, and that ERISA and federal common law did not support the imposition of successor liability on asset purchasers. On appeal, the Sixth Circuit reversed and remanded, holding that: (1) any entity that leases property to a commonly controlled entity is categorically a trade or business for ERISA purposes; and (2) the federal common law of successor liability applies to single employer plans.

► PBGC v. 20 SE 3rd St LLC, defendants' motion to dismiss rejected by magistrate, 2019 WL 2254820 (S.D. Fla. Feb. 22, 2019), magistrate's recommended decision adopted, 2019 WL 3890333 (S.D. Fla. Jun. 5, 2019), summary judgment granted, 2019 WL 6250804 (S.D. Fla. Nov. 22, 2019), aff'd sub nom. PBGC v. 50509 Marine LLC, 981 F.3d 927 (11th Cir. 2020), cert. denied, 2021 WL 4507754 (U.S. Oct. 4, 2021) – PBGC filed suit to recover underfunding from members of the plan sponsor's controlled group. The controlled group members asserted that the sponsor had dissolved under state law many years earlier, and therefore they could not be held liable, even though the company continued to act as sponsor. The district court held that dissolution of an entity under state law did not terminate its status as plan sponsor under ERISA or prevent it from having controlled group members, and that defendants were trades or businesses under common control with the plan sponsor as of DOPT. On appeal, the Eleventh Circuit affirmed, holding that a company's role as plan sponsor is a question of federal law, and this company persisted as the plan's sponsor even after it dissolved as an Illinois corporation. The court noted that this rule furthers ERISA's goals by protecting employees' interests in their pension plans and promoting uniformity in plan administration, rather than applying disparate state corporation laws.

4. Bankruptcy / Receivership Claims

► In re Bollinger Corp., No. 76-282 (Bankr. W.D. Pa. Jan. 30, 1981) – The bankruptcy court held that PBGC's filing of a proof of claim in bankruptcy for termination liability constitutes a "demand" under ERISA § 4068(a), giving rise to a lien that is to be treated as a tax due and owing the United States, notwithstanding the fact that the lien was not perfected. The court also held that: (1) PBGC's termination liability claims have the status of a prepetition tax, even though the liability arose post-petition upon termination of the pension plan; and (2) PBGC's claims for unpaid pension contributions were entitled to first-priority treatment as a normal business expense.

► In re J. L. Thomson Rivet Corp., 19 B.R. 385 (Bankr. D. Mass. 1982) – In overruling an objection to PBGC's claim for unpaid minimum funding contributions, the bankruptcy court held that the agency could assert such a claim as trustee of a terminated pension plan, independent of its claim for termination liability under section 4062 of ERISA.

► PBGC v. Pincus, Verlin, Hahn, Reich & Goldstein, PC (In re Alan Wood Steel Co.), 42 B.R. 960 (E.D. Pa. 1984) – PBGC, as statutory trustee of a terminated pension plan, filed bankruptcy claims against the plan sponsor. Counsel for the official committee of unsecured creditors excluded PBGC from distributions from the debtor's estate. PBGC sued the committee's counsel for negligence. On cross-motions for summary judgment, the court held, inter alia, that the committee's counsel had an attorney-client relationship with PBGC and that the agency had not waived or withdrawn its claims as part of a settlement with a union representing the pension plan's participants. The court left the question of negligence to the jury.

► In re Divco Phila. Sales Corp., 60 B.R. 323 (Bankr. E.D. Pa.); reconsideration denied, 64 B.R. 232 (Bankr. E.D. Pa.), amended by 72 B.R. 199 (Bankr. E.D. Pa. 1986) – A bankruptcy trustee objected to a claim filed by PBGC for unpaid minimum funding contributions owed by the debtor, on the ground that the claim was untimely. PBGC appeared on the list of creditors to receive notice, yet filed its claim after the bar date. The bankruptcy court overruled the objection under Bankruptcy Rule 2002(j)(4), which, for debts owed to the United States other than for taxes, requires service of notice to both the applicable federal agency and the United States attorney for the district in which the case is pending. The trustee moved for reconsideration, arguing that PBGC's claim was for a "tax" under section 4068 of ERISA and, thus, the Bankruptcy Rule did not apply. The bankruptcy court denied the motion, holding that section 4068 did not apply to PBGC's claim, as that section creates liens based on plan termination liability and does not concern a plan sponsor's liability for unpaid minimum funding contributions.

► Columbia Packing Co. v. PBGC, 81 B.R. 205 (D. Mass. 1988) – The district court held that PBGC's entire claim for minimum funding contributions was entitled to priority treatment, including amounts attributable to past service liability. Amounts attributable to "normal cost," however, were subject to proportional reduction to reflect declines in the covered workforce during the relevant priority periods.

► LTV Corp. v. PBGC (In re Chateaugay Corp.), 130 B.R. 690 (S.D.N.Y. 1991), vacated, 1993 WL 388809, 17 Employee Benefits Cas. (BNA) 1102 (S.D.N.Y. June 16, 1993) – A debtor challenged PBGC's claims for pension liability. The district court withdrew the reference, but referred the matter to the bankruptcy court for recommended findings. The bankruptcy court recommended that: (1) none of PBGC's bankruptcy claims were entitled to priority, except to the extent that they were attributable to benefits accrued by employees for post-petition services; (2) the actuarial interest rate assumptions prescribed in PBGC's regulation governing the valuation of benefits under terminated plans should not be used to calculate PBGC's termination liability claim; and (3) the bankruptcy court should instead prescribe a discount rate to be used in determining the present value of future benefits. The bankruptcy court rejected the three alternatives presented by PBGC and instead accepted a rate based on the forecast of a so-called "prudent, long-term pension fund portfolio investor." The district court, over PBGC's objections, adopted the bankruptcy court's recommendations virtually in their entirety. Subsequently, PBGC reached a global settlement with the debtor and most of its creditors. Pursuant to the settlement terms, the district court vacated its prior decision and the bankruptcy court's recommendations, ordering that they "shall be of no force and effect" and "shall have no precedential value."

► In re Pan Am. World Airways, Inc., 133 B.R. 700 (S.D.N.Y. 1991) – PBGC filed bankruptcy claims for the underfunding of pension plans sponsored by the debtor. The debtor objected, raising the issues that were decided adversely to PBGC in the LTV claims litigation, supra. At PBGC's request, the district court withdrew the reference of these objections from the bankruptcy court, but then remanded the matter to the bankruptcy court for submission of proposed findings of fact and conclusions of law. The case was later settled.

► PBGC v. FDIC as Receiver for Amoskeag Bank, No. 92-624 (D.N.H. filed Dec. 10, 1992); PBGC v. FDIC as Receiver for Bank Meridian, No. 93-82 (D.N.H. filed Feb. 11, 1993) (administratively consolidated with Amoskeag) – PBGC filed civil actions seeking FDIC allowance of PBGC's claims for the pension liabilities of failed financial institutions. FDIC moved to dismiss, arguing that because the pension plans had not terminated before the date that the financial institutions were placed in receivership, PBGC's claims were contingent and, therefore, not "provable" under federal banking law. The agencies later settled.

► In re Interstate Cigar Co., 150 B.R. 305 (Bankr. E.D.N.Y. 1993) – A committee of unsecured creditors objected to proofs of claim filed by PBGC, asserting that the claims were untimely. The court, in allowing the claims, held that PBGC was a known creditor, to which the debtor was required to give notice of the claims bar date and, even if the agency was not known, its failure to file timely claims was the result of excusable neglect.

► PBGC v. Uniroyal Plastics Acquisition Corp (In re Uniroyal Plastics Acquisition Corp.), No. 93-722 (N.D. Ind. Nov. 15, 1993) – The district court granted in part and denied in part PBGC's motion to withdraw the reference pursuant to 28 U.S.C. § 157(d) with respect to: (1) the debtor's objections over whether ERISA or the Bankruptcy Code governed the so-called "discount rate" to be applied to PBGC's unfunded benefit liabilities claim; and (2) an adversary proceeding that concerned whether an alleged right of subrogation contravenes the joint and several liability provisions of ERISA. On the first issue, the district court agreed with PBGC that the debtor's objection involved substantial and material consideration of the two statutes, and therefore required withdrawal. Over PBGC's objection, however, the district court remanded this issue to the bankruptcy court, pursuant to 28 U.S.C. § 157(c)(1), citing judicial economy and the bankruptcy judge's familiarity with the issue. On the second issue, the district court refused to withdraw the reference, finding that substantial and material consideration of ERISA and the Internal Revenue Code was not required. The case later settled.

► In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, 160 B.R. 882 (Bankr. S.D.N.Y. 1993) – Relying on the already vacated decisions in the LTV claims litigation, supra, the bankruptcy court held that PBGC's claims against a bankrupt law firm were not entitled to priority, and that PBGC's claim for unpaid contributions was duplicative of its claim for underfunding. A third-party trustee of the plan, appointed by the bankruptcy court, had also filed claims, including a claim seeking to impose a constructive trust on surplus assets in individual defined benefit plans maintained on behalf of a number of the firm's partners. (The firm terminated these plans shortly before the bankruptcy and distributed the assets to the covered partners.) The trustee alleged that the debtor had a fiduciary duty to contribute the surplus assets to the underfunded plan. The bankruptcy court held that the plan trustee had stated a claim for equitable relief under ERISA § 409(a) that would survive the bankruptcy trustee's motion for summary judgment. The case was later settled.

► <u>Mason v. Star Bank Nat'l Ass'n (In re Artesian Indus., Inc.)</u>, No. 92-62018 (Bankr. N.D. Ohio Oct. 20, 1993), <u>modified</u>, No. 92-62018 (Bankr. N.D. Ohio Jan. 28, 1994) – PBGC moved for summary judgment on a portion of its claim for unpaid minimum funding contributions attributable to the period during which a debtor was in a state court receivership proceeding, arguing that the contributions were entitled to priority under section 503(b)(3) of the Bankruptcy Code as the "actual, necessary expense . . . incurred by . . . a custodian." The bankruptcy court granted PBGC's motion and, applying state receivership law, awarded PBGC's contributions claim higher priority than the prepetition secured claim of a bank.

► <u>PBGC v. Reorganized CF&I Fabricators of Utah, Inc. (In re CF&I Fabricators of Utah, Inc.)</u>, 179 B.R. 704 (D. Utah 1994) – Reorganized debtors appealed the bankruptcy court's holding that, <u>inter alia</u>, the debtors were jointly and severally liable to PBGC for a pension plan's unfunded benefit liabilities and the plan sponsor's unpaid funding contributions. The district court affirmed, holding that Congress "clearly provided" for the imposition of joint and several liability under ERISA against each debtor. The district court further held that allowing a claim against each debtor did not so offend the bankruptcy principle of equal distribution among creditors as to warrant directly overriding Congress's intent under ERISA. PBGC's appeal of the portion of these decisions dealing with the priority and amount of PBGC's claims is discussed below.

► <u>In re Infotechnology, Inc.</u>, 89 F.3d 825 (2d Cir. 1995) (table) – The court of appeals affirmed the district court, which had held that a plan sponsor's settling of termination liability claims with PBGC does not violate the Bankruptcy Code or the due process clause of the Constitution. Although the plan termination date had not been established as of the plan of reorganization confirmation date, the district court held that the bankruptcy court did not abuse its discretion by deciding that a proposed settlement with PBGC was fair and equitable. In reaching this conclusion, the district court had embraced a bright-line test to determine controlled group membership.

► <u>In re Kent Plastics Corp.</u>, 183 B.R. 841 (Bankr. S.D. Ind. 1995) – In this Chapter 7 case, the bankruptcy trustee moved to pay the administrative expenses of the debtor's estate, other than its pension-related expenses. PBGC objected, arguing that portions of its claims for the pension plan's unfunded benefit liabilities, the debtor's post-petition unpaid contributions to the pension plan, and insurance premiums owed to PBGC were entitled to priority as administrative and/or tax expenses. The bankruptcy court held that (1) PBGC's claim for unfunded benefit liabilities was not entitled to tax priority status, as no lien had arisen under section 1368 of ERISA; and (2) PBGC's claims for contributions were not entitled to administrative priority status, as they bore no relation to the ongoing, post-petition affairs of the debtor.

► <u>In re Simetco, Inc.</u>, 1996 WL 651001 (Bankr. N.D. Ohio Feb. 15, 1996) – On cross-motions for summary judgment, a distribution trustee argued that PBGC's claim for unfunded benefit liabilities was in part duplicative of the agency's claim for minimum funding contributions and thus, to the extent that the minimum funding contributions claim was allowed, the unfunded benefit liabilities claim should be reduced on a dollar for dollar basis. Alternatively, the trustee argued that the minimum funding contributions claim was subsumed within the unfunded benefit liabilities claim and thus, the minimum funding contributions claim should be disallowed in full. PBGC maintained that its unfunded benefit liabilities claim could be reduced only by the amount that was actually paid on its minimum funding contributions claim. The court disagreed, reducing PBGC's claim for unfunded benefit liabilities by the face amount of its minimum funding contributions claim.

► <u>PBGC v. Sunarhauserman</u>, 126 F.3d 811 (6th Cir. 1997) – The court of appeals affirmed the district court's holding that PBGC's bankruptcy claim for unpaid minimum funding contributions was entitled to priority only to the extent that it was based on work performed by the debtor's employees during bankruptcy (<u>i.e.</u>, the "normal cost," adjusted to reflect any declines or increases in workforce). Although the court of appeals acknowledged that some expenses are entitled to priority as costs ordinarily incident to a debtor's business, even in the absence of any meaningful benefit to the estate, it concluded that in this case, "the non-normal cost component of [PBGC's] claim relates to a prepetition liability." The court of appeals further held that because priority is limited to the portion of the claim directly related to benefits actually earned by the debtor's employees during bankruptcy, the priority amount is appropriately reduced to reflect actual reductions in workforce. A sharp dissent agreed with PBGC that compliance with ERISA was a mandatory obligation of the debtors and must therefore be deemed an administrative expense of the estate, regardless of whether it benefits the estate.

► <u>PBGC v. Skeen (In re Bayly)</u>, 163 F.3d 1205 (10th Cir. 1998), <u>aff'g</u> 1997 WL 33484011 (D. Colo. Feb. 12, 1997) – The bankruptcy court denied administrative expense priority status to PBGC's claim for unfunded benefit liabilities. On appeal, the district court affirmed the decision of the bankruptcy court. The court of appeals, in affirming the district court, held that PBGC's claim for unfunded benefit liabilities predicated on prepetition employment represented a prepetition contingent claim not entitled to administrative post-petition tax priority.

► PBGC v. CF&I Fabricators of Utah, Inc., 150 F.3d 1293 (10th Cir. 1998) – PBGC argued on appeal that the district court erred by denying tax priority to its unfunded benefit liabilities claim, by denying administrative priority to its entire claim for unpaid plan contributions, and by refusing to apply PBGC's regulatory methodology to determine the present value of its unfunded benefit liabilities claim. The court of appeals, in affirming the district court, held that: (1) PBGC's rights and powers under ERISA do not give it priority over the other unsecured creditors of a debtor's estate; (2) PBGC's claim for unpaid contributions was not entitled to administrative priority; and (3) nothing in ERISA implies a carry-over into the realm of bankruptcy to allow PBGC to set its own valuation methodology for its unfunded benefit liabilities claim, or the priority of its claim for unpaid contributions.

► Belfance v. PBGC (In re Copperweld Steel Co.), 232 F.3d 505 (6th Cir. 2000) – The court of appeals, affirming the district court, held that a so-called "prudent investor" rate should be used in determining PBGC's unfunded benefit liabilities claims, despite the statutory definition of unfunded benefit liability, which expressly delegates rule-making authority to PBGC. PBGC's claims were markedly reduced by the decision. (But see Raleigh v. Illinois Dep't of Revenue, 530 U.S. 15 (2000), infra.) In addition, the court of appeals affirmed the district court's holding that minimum funding contributions were not entitled to tax priority. The court reasoned that tax priority is accorded to the amount of missed contributions on which a lien is imposed, and no lien could be imposed on the plan sponsor for missed contributions that exceeded $1 million post-petition, as the automatic stay was in effect.

► Raleigh v. Illinois Dep't of Rev. (In re Stoecker), 530 U.S. 15 (2000) – The Supreme Court unanimously agreed with the State of Illinois and PBGC, appearing as amicus curiae, that absent a contrary provision in the Bankruptcy Code, bankruptcy courts must apply the substantive non-bankruptcy law that gives rise to a claim. The Supreme Court's decision clarifies that the substantive law that gives rise to a claim (such as ERISA) is not to be supplanted absent some specific language in the Bankruptcy Code.

► In re US Airways Group, Inc., 303 B.R. 784 (Bankr. E.D. Va. 2003) – The bankruptcy court agreed that PBGC's regulations, and not the so-called "prudent investor" approach, should apply to unfunded benefit liabilities claims despite the Sixth and Tenth Circuit courts of appeals' decisions discussed supra. Following the logic of Raleigh v. Illinois Dep't of Rev., the bankruptcy court held that the substantive law controlled the amount of liability. Here, the substantive law is ERISA's definition of unfunded benefit liabilities, which includes PBGC's regulatory assumptions. Accordingly, the court rejected the so-called "prudent investor" approach.

► PBGC v. Enron Corp., 2004 WL 2434928, 43 Employee Benefits Cas. (BNA) 2674 (S.D.N.Y. Nov. 1, 2004) – The district court affirmed the bankruptcy court's voting procedure for confirmation of a reorganization plan. PBGC had filed 15 proofs of claim that were deemed filed against each of 180 debtors by stipulation. The bankruptcy court held that the voting procedures only allowed PBGC to have one vote per proof of claim filed (i.e., 15 total votes). PBGC objected and claimed it should have 2,700 votes (i.e., 180 controlled group members multiplied by 15 proofs of claim for each member). PBGC claimed that it should have had these votes because it had potential joint and several claims against each member of the controlled group. The district court held that: (1) PBGC's joint and several liability claims were contingent on the commencement of plan termination, which had not occurred as of the voting date; and (2) determination of the number of votes that PBGC was entitled to was within the bankruptcy court's discretion to ensure voting power commensurate with a party's current economic interest.

► In re UAL Corp., No. 02-48191 (Bankr. N.D. Ill. Dec. 16, 2005) – In a bench ruling, the bankruptcy court held that PBGC's regulations – and not the so-called "prudent investor" approach – should apply to unfunded benefit liabilities claims despite the decisions of the Sixth and Tenth Circuits discussed supra. Following the logic of US Airways Group, the bankruptcy court held that substantive law controlled the amount of liability. Here, the substantive law is ERISA's definition of unfunded benefit liability, which included PBGC's regulatory assumptions. Accordingly, the bankruptcy court rejected the so-called "prudent investor" approach.

► Koken v. PBGC, 383 F. Supp. 2d 712 (E.D. Pa. 2005) (denying motion to remand); 430 F. Supp. 2d 493 (E.D. Pa. 2006) (granting motion to dismiss) – PBGC sought to enforce liens for unpaid pension plan contributions against subsidiaries of an insurance company liquidating in a state court receivership. Pennsylvania's Insurance Commissioner sued in state court for a declaration that these liens were void. PBGC removed the action to federal court, and the Insurance Commissioner moved to remand the action to state court. In the first decision, the district court declined to remand the action, holding that federal courts have exclusive jurisdiction over Title IV enforcement actions, because neither the reverse preemption provisions of the McCarran-Ferguson Act with respect to state regulation of the business of insurance, nor principles of abstention required remand to the state court.

PBGC subsequently asserted a counterclaim against a third-party defendant based in England that had purchased property subject to the liens. The foreign defendant asserted a lack of personal jurisdiction, arguing that it had insufficient contacts with the Commonwealth of Pennsylvania. In the second decision, the court granted the motion, holding that the facts were insufficient for the court to exercise jurisdiction over the defendant.

► Official Unsecured Creditors' Comm. v. PBGC (In re Harriet & Henderson Yarn Co.), 2006 WL 305538 (4th Cir. Feb. 9, 2006) – The court of appeals affirmed the district court's holding that PBGC could amend its bankruptcy claim for unfunded benefit liabilities, which the debtor had listed in its bankruptcy schedule, to reflect the true amount of the claim, even after the claims bar date. Considering this holding, the court also upheld a settlement of the claim reached between PBGC and the debtor, which the unsecured creditors' committee had disputed.

► Law Debenture Trust Co. v. Kaiser Aluminum Corp. (In re Kaiser Aluminum Corp.), 339 B.R. 91 (D. Del. 2006) – A creditor objected to PBGC's claim for unfunded benefit liabilities, arguing that it must be calculated using the so-called "prudent investor" rate, rather than the assumptions in PBGC's regulation. The bankruptcy court stayed the objection and approved the proposed settlement between PBGC and the debtors. On the creditor's appeal, the district court held that the bankruptcy court did not abuse its discretion in approving the settlement, citing In re US Airways Group, Inc., 303 B.R. 784 (Bankr. E.D. Va. 2003) (supra). The court also noted that the Sixth and Tenth Circuit decisions that the creditor cited conflict with the Supreme Court's more recent reasoning in Raleigh v. Illinois Dep't of Revenue, 530 U.S. 15 (2000) (supra).

► In re High Voltage Eng'g, No. 05-10787 (Bankr. D. Mass. July 26, 2006) – The court, relying on In re UAL Corp. and In re US Airways Group, Inc., ruled, over the bankruptcy trustee's preliminary objection, that PBGC's regulations, rather than the so-called "prudent investor" approach, should be applied in calculating the agency's unfunded benefit liabilities claim against the debtors.

► In re Wolverine Proctor & Schwartz, LLC, 436 B.R. 253 (D. Mass. 2010), aff'g 2009 WL 1271953, 47 Employee Benefits Cas. (BNA) 1569 (Bankr. D. Mass. May 5, 2009); affirmed, No. 10-1334 (1st Cir. Apr. 20, 2011) – PBGC settled its claims for termination liability with the liquidating trustee of the former plan sponsor. A creditor objected to the settlement on grounds that the so-called "prudent investor" rate should have been used to calculate PBGC's claim for the plan's unfunded benefit liabilities, and that PBGC was precluded from recovering more than what it set forth in its original proof of claim. Following Raleigh v. Illinois Dep't of Rev., the bankruptcy court held that the substantive non-bankruptcy law controlled the amount of liability. Here, the substantive law is ERISA's definition of unfunded benefit liabilities, which includes PBGC's regulatory assumptions. Citing PBGC's amended claim, and that PBGC had reserved its right to "amend, modify and supplement [its original] proof of claim and/or to file additional proofs of claim," the bankruptcy court held that the amount of PBGC's original proof of claim was immaterial. Accordingly, the bankruptcy court overruled the creditor's objection, and the district court and the court of appeals affirmed, holding that the bankruptcy court did not abuse its discretion in approving the settlement agreement, but rather, correctly applied the relevant legal standard.

► Oneida, Ltd. v. PBGC (In re Oneida, Ltd.), 562 F.3d 154 (2d Cir. 2009), pet. for cert. filed, No. 09-442 (U.S. Oct. 9, 2009), rev'g and remanding 383 B.R. 29 (Bankr. S.D.N.Y. 2008) (merits); 372 B.R. 107 (S.D.N.Y. 2007) (denying motion to withdraw reference) – The debtor filed an adversary proceeding against PBGC, seeking a declaration that the statutory termination premiums it incurred by terminating its pension plan were pre-petition bankruptcy claims that were discharged through its reorganization. The bankruptcy court agreed, and PBGC appealed to the Second Circuit, pursuant to the parties' joint effort to take a direct appeal. The court of appeals reversed, holding that the "obvious purpose of [section 4006(a)(7)(B) of ERISA] is to prevent employers from evading . . . termination premium[s] while seeking reorganization in bankruptcy." The court held that non-bankruptcy law (in this case, ERISA) determines the nature and timing of an obligation, and that ERISA specifically states that termination premiums for a plan terminated during reorganization do not apply until the debtor emerges from bankruptcy. The debtor subsequently petitioned the Supreme Court for a writ of certiorari.

► Dugan v. PBGC (In re Rhodes, Inc.), 382 B.R. 550 (Bankr. N.D. Ga. 2008) – A Chapter 11 liquidation agent objected to the interest assumption in PBGC's regulation that is used to calculate PBGC's claim for unfunded pension liabilities. Relying on PBGC v. CF&I Fabricators of Utah, Inc. and In re Copperweld Steel Co., the agent argued that sections 502(b) and 1123(a)(4) of the Bankruptcy Code take precedence over ERISA. Citing Raleigh v. Illinois Dep't of Rev. and Travelers Cas. and Sur. Co. of Am. v. Pacific Gas and Elec. Co., 549 U.S. 443 (2007), the court specifically rejected the agent's arguments, holding that PBGC has the authority to determine the amount of its unfunded benefit liabilities claim. The court concluded that PBGC's determination of its claim, computed pursuant to its regulation, is "like a judgment" that is binding on debtors and bankruptcy courts, alike.

► Cox Enter., Inc. v. PBGC, 666 F.3d 697 (11th Cir. 2012), vacating and remanding 2010 WL 3220198 (M.D. Fla. Aug. 13, 2010); 794 F.3d 1259 (11th Cir. 2015), aff'g 59 Employee Benefits Cas. (BNA) 1745, 2014 WL 3962694 (M.D. Fla. Aug. 13, 2014) – A minority shareholder won a judgment against a newspaper company's directors and officers for corporate waste. Under state law, the shareholder was entitled to a buyout, but the company defaulted, and a receiver was appointed to oversee its liquidation. PBGC terminated the company's pension plan, and sought recovery of the underfunding. The receiver recommended that the shareholder receive all the company's assets, the district court approved, and the receiver made a distribution to the shareholder. The Eleventh Circuit, in overturning the district court, confirmed that debt comes before equity, and that PBGC's claim for pension underfunding was therefore senior to the shareholder's statutory right to a buyout. On remand, the district court ordered the shareholder to remit to the court's registry the full amount of the plan's underfunding, and retained jurisdiction to effect distribution of the funds. The court of appeals affirmed.

► In re Colonial Brokerage, Inc., 2013 WL 3049232 (Bankr. M.D. Ala. June 17, 2013) – PBGC was omitted from the list of creditors of a bankrupt corporation whose controlled group included the sponsor of a terminated pension plan, and was not given official notice of the case in time to file a timely claim. The Chapter 7 trustee objected to PBGC's motion to have its proofs of claim treated as if timely under section 726(a)(2)(C) of the Bankruptcy Code. The court awarded PBGC summary judgment, holding that because PBGC had neither sufficient notice nor actual knowledge of the bankruptcy case in time to file a timely claim, its late-filed claims could not be subordinated.

► Durango-Ga. Paper Co. v. PBGC (In re Durango-Ga. Paper Co.), 539 B.R. 896 (Bankr. S.D. Ga. 2015); 2017 WL 221785, 2017 BL (Bloomberg/BNA) 14361 (Bankr. S.D. Ga. Jan. 18, 2017) – A bankrupt plan sponsor attempted to equitably subordinate PBGC's bankruptcy claims. The sponsor challenged PBGC's decision not to join the sponsor's lawsuit, which alleged that the company's owners were liable under ERISA § 4069(a). See supra Durango-Ga. Paper Co. v. H.G. Estate, LLC, 739 F.3d 1263 (11th Cir. 2014). The bankruptcy court granted summary judgment to PBGC, holding that it had not acted inequitably toward other creditors in exercising its unreviewable enforcement discretion. In subsequent litigation, PBGC moved for allowance of its claim. The court granted PBGC's motion, holding, in a comprehensive opinion following Dugan, supra, that ERISA and its regulations control the determination of PBGC's claim, not the so-called "prudent investor" standard.

► Suhar v. PBGC (In re R.C.A. Rubber Co.) , 2020 WL 1488759 (Bankr. N.D. Ohio Mar. 26, 2020) – A bankruptcy trustee sued to avoid PBGC's statutory lien for due and unpaid minimum funding contributions, which PBGC had perfected against the debtor shortly before its bankruptcy case commenced. The trustee asserted that the lien was avoidable as a preferential transfer under the Bankruptcy Code, and that in any event the lien did not attach to assets the estate acquired post-petition. In granting PBGC's motion to dismiss, the court held that because PBGC's lien was statutory, it was excepted from avoidance as a preferential transfer and continued to attach to post-petition assets.

5. Preference Litigation

► Shugrue v. PBGC (In re Ionosphere Clubs), 147 B.R. 855 (Bankr. S.D.N.Y. 1992) – A Chapter 11 trustee filed an adversary proceeding against PBGC alleging that the debtor's pension plan contributions made within the 90 days preceding the petition date were voidable as preferences. The bankruptcy court granted PBGC's motion to dismiss, holding that PBGC and the airline had, in connection with a prior settlement, released each other from any liability relating to the airline's pension plans.

► Official Comm. of Unsecured Creditors of Continental Airlines v. PBGC (In re Continental Airlines), No. 92-33 (Bankr. D. Del.) – A creditors committee filed an adversary proceeding against PBGC contending that three minimum funding contributions made by the debtor to a related organization's pension plans within a year before the petition date were voidable as preferences. This litigation was resolved as part of a global settlement among PBGC, the debtor, and other creditors.

► In re Lindsay Olive Growers, No. 93-1095 (Bankr. E.D. Cal. Aug. 26 & Dec. 14, 1993) – A creditors committee filed an adversary proceeding against PBGC, arguing that: (1) because several participants of a pension plan were officers and directors of the debtor, the plan was an "insider" of the debtor within the meaning of the Bankruptcy Code; and (2) contributions to the pension made within a year before the bankruptcy petition date were voidable as preferences. PBGC filed an amicus brief in support of the plan's motion for summary judgment. The bankruptcy court granted the motion, holding that the plan was not an insider. The committee then filed an amended complaint alleging that the prepetition contributions were made for the benefit of certain participants, alleged to be insiders, from whom the contributions could be recovered. The court again granted the plan's motion for summary judgment, holding that while some participants in the plan may have been insiders of the debtor and creditors of the plan, they were not creditors of the debtor.

► Wilmington Trust Co. v. WCI Steel, Inc. (In re WCI Steel, Inc.), 313 B.R. 414 (Bankr. N.D. Ohio 2004) – The bankruptcy court held that it is not an avoidable post-petition transfer under Bankruptcy Code section 549 when a bankrupt plan sponsor contributes to a pension plan in accordance with a collective bargaining agreement. The court relied on Bankruptcy Code section 1113(f), which prevents a trustee from unilaterally terminating or altering a provision of a collective bargaining agreement.

6. Net Worth

► PBGC v. Diamond Reo Trucks, 509 F. Supp. 1191 (W.D. Mich. 1981) – The district court upheld PBGC's interpretation of the net worth provisions of ERISA as applied in determining the net worth of a controlled group. (Under prior law, PBGC's claim was limited to 30 percent of a controlled group's net worth; under current law, the 30 percent limitation only applies to the amount of PBGC's statutory liens. See ERISA § 4068(a).) Specifically, in determining the aggregate net worth of a controlled group, PBGC properly treated members with no value as having zero net worth. Moreover, in determining net worth for purposes of termination liability, the term is to be interpreted in light of ERISA's goals and objectives, and with deference to PBGC's wide discretion under ERISA sections 4062(b)(2) and (c).

► In re AM Int'l, 1985 WL 1542, 5 Employee Benefits Cas. (BNA) 2337 (Bankr. N.D. Ill. Mar. 13, 1985) – The bankruptcy court held that PBGC properly determined that the debtor's net worth, for purposes of ERISA termination liability, was its reorganization value.

► PBGC v. The Washington Group, Inc. (In re The Washington Group, Inc.), 1987 U.S. Dist. LEXIS 5686, 8 Employee Benefits Cas. (BNA) 1351 (M.D.N.C. Mar. 9, 1987) – PBGC sought review of a bankruptcy court order discarding PBGC's valuation of its net worth claim. The bankruptcy court used the book value instead. The district court reversed the bankruptcy court, holding that: (1) the bankruptcy court's use of book value to determine PBGC's claim was erroneous; (2) in determining PBGC's claim, the bankruptcy court should follow PBGC's interpretation, unless there were compelling indications that it was incorrect; and (3) PBGC had properly valued the debtor as of the plan termination date.

D. PBGC's Enforcement of Fiduciary Breach Claims

► PBGC v. Greene, 570 F. Supp. 1483 (W.D. Pa. 1983), aff'd per curiam, 727 F.2d 1100 (3d. Cir. 1984) – PBGC sued the former trustees of four terminated pension plans to recoup missed contributions and loans made by the trustees using plan assets. The district court assumed pendent jurisdiction over PBGC's pre-ERISA state law claims, and held that: (1) the trustees had breached their fiduciary duty; (2) the trustees had remained fiduciaries after the effective date of ERISA; and (3) the trustees' pre-ERISA actions gave rise to liability for their failure to take corrective steps after the effective date of ERISA. The court of appeals affirmed.

► PBGC v. Scherling, 905 F.2d 173 (8th Cir. 1990), rev'g 719 F. Supp. 785 (N.D. Iowa 1989) – In its capacity as statutory trustee of a terminated plan, PBGC sued, pursuant to ERISA section 4042(d)(1)(B)(iv), to recover amounts due the plan as a result of pretermination fiduciary breaches. The district court found PBGC's suit untimely, relying on ERISA section 413, which requires fiduciary breach actions to be brought within six years of the alleged breach. The court of appeals reversed the district court, holding that ERISA section 4003(e)(6), which allows PBGC three years after its trusteeship of a plan to bring actions in that capacity, supersedes the Title I statute of limitations.

► PBGC v. Solmsen, 671 F. Supp. 938 (E.D.N.Y. 1987); 743 F. Supp. 125 (E.D.N.Y. 1990) – In the first decision, the court held that a plan fiduciary had breached his duties by failing to forward to the plan employee contributions that were deducted from paychecks and employer contributions. In the second decision, the court authorized PBGC to set off the fiduciary's benefits under the pension plan by the amount of the plan's losses due to his breach.

► PBGC v. Fletcher, 750 F. Supp. 233 (W.D. Tex. 1990); 12 Employee Benefits Cas. (BNA) 2518 (Sep. 5, 1990) – The trustee of a pension plan transferred assets of the plan to a joint bank account he owned with his wife. Thereafter, the trustee used the transferred assets to purchase certificates of deposit in his own name. The pension plan was terminated and PBGC sued the trustee. The court rejected the trustee's assertion that the transferred assets in fact belonged to the plan sponsor, and found that the transfers were a violation of ERISA § 406. The court also held that the trustee's other defense – that he had taken possession of the transferred assets to protect them from a fraudulent scheme by participants – was a per se violation of § 404's standard of prudence for fiduciaries. PBGC was later awarded its attorneys' fees and costs.

► Mertens v. Black, 948 F.2d 1105 (9th Cir. 1991), aff'g Mertens v. Kaiser Steel Ret. Plan, 744 F. Supp. 917 (N.D. Cal. 1990); Mertens v. Hewitt Assocs., 508 U.S. 248 (1993), aff'g in part and rev'g in part 948 F.2d 607 (9th Cir. 1991) – The district court held that a suit for fiduciary breach was not barred by a prior judgment in an individual benefits suit brought by prior group of participants. The court of appeals affirmed, reasoning that the prior group did not represent the pension plan as a whole, whereas the participants at bar represented the plan and sought to recover the losses caused by the fiduciary breach. Following an appeal, PBGC was realigned as a plaintiff and filed a complaint alleging that the fiduciaries had breached their duties to the plan. The former plan fiduciaries, the participants, and PBGC later settled. PBGC was also realigned as a plaintiff in Mertens v. Hewitt Assocs., a companion fiduciary breach action brought by plan participants against former plan actuaries, alleging knowing participation and malpractice. The Supreme Court affirmed dismissal of the knowing participation claim. Under the settlement in Mertens v. Black, the participants continued to prosecute the malpractice claim.

► PBGC v. Eckert, 156 B.R. 656 (C.D. Cal. 1993) – After a pension plan terminated, the plan trustees filed for personal bankruptcy without giving notice of the bankruptcy to PBGC. After their debts were discharged by the bankruptcy court, PBGC became aware of the proceedings and that the trustees had "borrowed" most of the assets of the plan in the early 1980s. PBGC, after being appointed as statutory trustee of the plan, sued the trustees for breaching their fiduciary duties. The trustees argued that PBGC's claim had been discharged in bankruptcy. The district court held that, considering the trustees' fraudulent misrepresentations, PBGC's claim was not discharged. The case was later settled.

► Reich v. Daniels (In re Daniels), 1994 WL 470213, 18 Employee Benefits Cas. (BNA) 1399 (Bankr. D. Mass. Apr. 25, 1994) – The Department of Labor brought a fiduciary breach action against a pension plan trustee, who was a debtor in Chapter 11, for failing to account for plan assets and withdrawing them for personal use. PBGC joined as a plaintiff when it determined that the plan must be terminated because it did not have assets to pay benefits currently due. The bankruptcy court granted DOL's and PBGC's motion for summary judgment, holding that the plan trustee had acted in a fiduciary capacity and had breached his fiduciary duty, committing an "alarming defalcation." The court entered a default judgment against the trustee, and declared that the debt was nondischargeable under section 523(a)(4) of the Bankruptcy Code.

► PBGC v. Bank One, N.A., 34 F. Supp. 2d 608 (S.D. Ohio 1998) – PBGC sued a former trustee, alleging fiduciary breach. The trustee argued that the suit was barred by statute of limitations in Title I of ERISA. The court denied the motion, holding that the statute of limitations in Title IV of ERISA, section 4003(e)(6), governs PBGC's suit, and not that in Title I.

► Cunningham v. PBGC (In re Simetco, Inc.), 235 B.R. 609 (N.D. Ohio 1999) – PBGC sued several plan fiduciaries, alleging that they had breached their duties in managing pension plan assets. The fiduciaries then filed an adversary proceeding in bankruptcy court, seeking declaratory and injunctive relief, asserting that they were released under the plan sponsor's plan of reorganization. In granting PBGC's motion to dismiss, the bankruptcy court declined to exercise jurisdiction, because a plan of reorganization had already been confirmed. The individuals appealed, arguing that the bankruptcy court erred by deciding that the underlying adversary proceeding was not "related to" a case under Title 11. The district court affirmed the bankruptcy court, holding that the adversary proceeding did not involve property of the bankrupt estate, and that the issues were not related to the bankruptcy case. The parties later settled.

► PBGC v. Baker, No. 97-4372 (D. Md. Jan. 25, 1999) – The district court granted summary judgment to PBGC, holding that a section 4049 trustee breached his fiduciary duty by paying himself "fees" that had consumed all of a trust's liquid assets. (ERISA section 4049, now repealed, had provided for the recovery of a claim for certain nonguaranteed benefits by an independent trustee.) The district court also ruled that the trustee breached his duty to the trust by failing to keep records of his activities. PBGC was awarded the full amount that the trustee had removed from the trust, plus interest.

► PBGC v. Lewis, No. 98-564 (W.D.N.Y. Mar. 29, 2002) – After becoming statutory trustee of a pension plan, PBGC sued individuals for having withdrawn and used plan assets to fund their business interests. The district court granted in part and denied in part the parties' cross-motions for summary judgment, holding that: (1) the statute of limitations is not six years from the date of a breach of fiduciary duty as under Title I, but three years from the date that PBGC was appointed statutory trustee of the plan; (2) a participant-fiduciary who breaches her fiduciary duty can face reduced benefits under ERISA section 206(d)(1)(A) as a set-off under section 553(a) of the Bankruptcy Code; and (3) whether one of the individuals had actual or constructive knowledge of unlawful use of plan assets presented a triable issue of material fact.

► Paulsen v. CNF, Inc., 559 F.3d 1061(9th Cir. 2009), aff'g 2006 WL 4094289 (N.D. Cal. Dec. 22, 2006) – Participants in a terminated pension plan brought suit against the former parent of the plan sponsor, the plan's administrative committee, and the plan actuary, alleging fiduciary breach under ERISA and actuarial malpractice under state law. The court ordered joinder of PBGC as an essential party. The participants alleged that PBGC committed fiduciary breach by failing to sue the plan actuary. The district court dismissed the complaint against PBGC, and the Ninth Circuit affirmed. Focusing on PBGC's unique role and varied statutory duties, the court of appeals held that PBGC's discretionary decision not to pursue claims for fiduciary breach is not subject to judicial review. The court also agreed with PBGC's view that any proceeds of a participant suit for fiduciary breach relating to a terminated plan would go first to PBGC, and not directly to participants. As a result, the participants lacked standing to bring those claims.

► Chao v. USA Mining, Inc., 2007 WL 208530, 40 Employee Benefits Cas. (BNA) 2267 (E.D. Tenn. Jan. 24, 2007) – The district court granted summary judgment in favor of the Secretary of Labor and PBGC against an individual and three corporations for fiduciary breaches against certain terminated pension plans. In conspiracy with the plans' former trustee, the individual had caused the plans to fruitlessly "invest" millions of dollars of plan assets in the corporate defendants, which were owned by the individual defendant. The district court ruled in favor of PBGC and the Department of Labor on all counts, finding that the terminated pension plans were entitled to damages in the full amount of all transactions that took place after the individual became a plan fiduciary, and permanently enjoining the individual from becoming a plan fiduciary.

► Chao v. Johnston, 2007 WL 2847548, 41 Employee Benefits Cas. (BNA) 2233 (E.D. Tenn. July 9, 2007) – The defendant had served as an attorney and escrow agent for the chief executive officer of USA Mining, Inc. (discussed supra) and was the conduit through which many of the pension plan assets were dissipated. PBGC and the Department of Labor sued, seeking to recover his profits. The defendant moved to dismiss, claiming that he was not a fiduciary of the pension plan, and thus not liable for any of the fiduciary breaches. The district court denied the defendant's motion, holding that PBGC and DOL had adequately alleged that even though he was not a fiduciary, he had knowingly participated in the breaches, thus satisfying the standard for liability.

► PBGC v. Divin, 2010 WL 2196114, 49 Employee Benefits Cas. (BNA) 1923 (M.D. Ga. May 27, 2010) – After a pension plan was terminated and trusteed by PBGC, the agency intervened as lead plaintiff in a suit originally brought by the plan's participants against the plan sponsor's former officers and directors for allegedly failing to prudently invest the plan's assets, a breach of their fiduciary duties under Title I of ERISA. The court denied the defendants' motion to dismiss the complaint, holding that the facts alleged in the complaint were a sufficient basis for the claims, but denied PBGC's motion to strike two of the defendants' affirmative defenses, holding that such a decision should not be made prior to the close of discovery.

► David v. Alphin, 704 F.3d 327 (4th Cir. 2013) – Participants of an ongoing pension plan appealed a decision denying their standing to sue for fiduciary breach because their plan was "overfunded" and they had not proven any loss of benefits. PBGC, appearing as amicus curiae, argued that participants' standing to sue for fiduciary breach should not depend on the plan's funding status or proof of lost benefits. The court of appeals rejected this argument, finding that the participants' risk of loss was not sufficiently concrete to confer constitutional standing.[1]

► PBGC v. Mizrachi, 363 F. Supp. 3d 342 (E.D.N.Y. 2019) – PBGC sued former plan trustees for engaging in several prohibited transactions from 1985 to 2006. The trustees moved to dismiss, asserting that PBGC's claims were time-barred and were not pled with sufficient particularity. The court denied the motion, holding that ERISA clearly allows PBGC to assert claims within three years after being appointed plan trustee, and fiduciary duty claims do not require particularized pleading.

► Coker v. Vanarsdel, No. 18-0691 (S.D. Tex. Jan. 29, 2019) – Two former trustees of a pension plan filed claims against each other for fiduciary breach. In a counterclaim for payment of pension benefits, the former trustee who was also a participant named the plan as a defendant. PBGC subsequently terminated and became statutory trustee of the plan, and moved to intervene and to have the entire case dismissed. The court granted that motion and dismissed the case, agreeing with PBGC that the former trustees no longer had standing to pursue fiduciary breach claims, and that the former trustee participant had failed to exhaust administrative remedies for her benefits claim.

II. MULTIEMPLOYER AND MULTIPLE-EMPLOYER PLANS [2]

► Solar v. PBGC, 504 F. Supp. 1116 (S.D.N.Y.), aff'd per curiam, 666 F.2d 28 (2d Cir. 1981) – Before the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA") took effect, trustees of a multiemployer pension plan sued PBGC and an employer for a declaratory judgment that the employer had withdrawn from the pension plan, and for an injunction directing PBGC to enforce withdrawal liability against the employer. The court found that the employer was motivated by reasonable business

1 PBGC made similar arguments, appearing as amicus curiae, in Harley v. Minnesota Mining & Mfg. Co., 284 F.3d 901 (8th Cir. 2002), and McCullough v. AEGON USA, Inc., 585 F.3d 1082 (8th Cir. 2009).

2 In addition to the cases summarized below, PBGC has also appeared as amicus curiae in many cases involving the Multiemployer Pension Plan Amendments Act of 1980. These cases mainly concern the so-called "arbitrate first" requirement. See, e.g., Flying Tiger Lines v. Teamster Pension Trust Fund of Phila., 830 F.2d 1241 (3d Cir. 1987).

purposes and held that the employer did not withdraw from the plan, despite its significant, though less than total, reduction in contributions.

► PBGC v. R.A. Gray & Co., 467 U.S. 717 (1984), rev'g Shelter Framing Corp. v. PBGC, 705 F.2d 1502 (9th Cir. 1983) – The Supreme Court held that application of the withdrawal liability provisions of MPPAA during the five-month period prior to its enactment did not violate the due process clause of the Fifth Amendment. PBGC, the appellant, had intervened as a defendant in the original district court action, filed against a multiemployer plan by one of its contributing employers.

► Connolly v. PBGC, 475 U.S. 211 (1986) – Trustees of a multiemployer pension plan challenged the withdrawal liability provisions of MPPAA as a violation of the takings clause of the Fifth Amendment. They argued that under the plan's terms, employer liability was limited to payments required under the collective bargaining agreement, and MPPAA's withdrawal liability provisions were inconsistent with those terms. The Supreme Court held that the government had not taken anything for its own use; rather, it simply nullified a contractual provision limiting liability. Indeed, Congress has the authority to impose obligations on employers withdrawing from multiemployer plans, and employers may not contract around that power. Since the employers' liability is not disproportionate to their responsibility under the plan, the withdrawal obligation does not interfere with investment-backed expectations, and the government did not actually take anything for its own use; thus, there was no violation of the takings clause.

► PBGC v. Potash, 1986 WL 3809, 7 Employee Benefits Cas. (BNA) 1292 (W.D.N.Y. Mar. 26, 1986) – PBGC originally determined that a pension plan was a multiple-employer plan. PBGC later determined that the plan was an aggregate of separate pension plans, and that an employer's cessation of participation constituted a plan termination. The employer and the trustees of the plan challenged PBGC's determination and the district court remanded the matter to PBGC. On remand, PBGC once again determined that the plan was an aggregate of separate plans. The employer and trustees challenged PBGC's finding again. On cross-motions for summary judgment, the district court held that a pension plan is a single plan if, on an ongoing basis, all the plan's assets are available to pay all participants' benefits.

► Cook v. PBGC, 652 F. Supp. 1085 (S.D.N.Y. 1987) – The trustees of an ongoing pension plan sued PBGC, seeking reimbursement for benefits that the plan paid to retirees who had worked at two closed warehouses in reliance on PBGC's initial representation that it could guarantee those benefits. PBGC ultimately determined that the plan was a multiemployer plan, rather than an aggregate of separate plans, and no termination had occurred. The court granted PBGC summary judgment, refusing to apply estoppel when doing so would circumvent congressional intent and there was no evidence that PBGC had engaged in affirmative misconduct or that the decision would cause a gross injustice.

► PBGC v. Artra Group, Inc., 972 F.2d 771 (7th Cir. 1992), rev'g 768 F. Supp. 248 (N.D. Ill. 1991); on remand, 1993 WL 225370 (N.D. Ill. June 12, 1993) – After determining that a group pension plan was an aggregate of separate pension plans, PBGC brought an action against one of the participating employers to collect termination liability. The employer argued that the plan was a multiple-employer plan, that it was not a "substantial employer," and that the plan was not covered by Title IV. The district court held that the employer was not liable for the underfunding because its pension plan was not covered by Title IV. The court of appeals, in reversing the district court, held that the plan was covered by Title IV, but then remanded the case to the district court to decide whether the plan was an aggregate of plans or a multiple-employer plan. Holding that PBGC's determination was not arbitrary and capricious, the district court, on remand, held that the plan was an aggregate of separate plans, and granted PBGC's motion for summary judgment.

► Concrete Pipe & Prod. of Cal. v. Construction Laborers Pension Trust of So. Cal., 508 U.S. 602 (1993) – An employer ceased its contributions to a multiemployer plan and was assessed withdrawal liability under ERISA and the MPPAA. The employer contended that MPPAA's assessment and arbitration provisions violated the Due Process and Takings Clauses of the Constitution. At the Supreme Court stage, PBGC filed an amicus brief supporting the plan, and participated in oral argument. The Supreme Court held that: (1) since the employer voluntarily negotiated and participated in a pension plan within the regulatory framework of ERISA, there was no substantive due process violation because MPPAA imposed on the employer a higher liability than its contract contemplated; (2) readjusting the employer's rights and burdens pursuant to MPPAA was not unlawful solely because it upset the employer's expectations; (3) the imposition of withdrawal liability was rationally related to the terms of the employer's participation in the multiemployer plan; (4) the employer had failed to show that its withdrawal liability was out of proportion to its experience with the plan; and (5) the arbitration requirements of the MPPAA did not violate the employer's due process rights.

► Bay Area Laundry Pension Trust Fund v. Ferbar Corp., 522 U.S. 192 (1997), rev'g 73 F.3d 971 (9th Cir. 1996) – The Supreme Court was asked to decide when the statute of limitations begins to run for an action to collect withdrawal liability. Adopting the position advocated by joint amici PBGC and the Solicitor General, the Court held that the statute of limitations begins to run when an employer fails to make a scheduled withdrawal liability payment, and not on the (earlier) date that the employer withdrew from the plan. The Ninth Circuit's holding to the contrary could have significantly limited the ability of multiemployer plans to collect withdrawal liability.

► Sara Lee Corp. v. American Bakers Ass'n, 512 F. Supp. 2d 32 (D.D.C. 2007); 252 F.R.D. 31 (D.D.C. 2008); 671 F. Supp. 2d 88 (D.D.C. 2009) – PBGC made an administrative determination classifying a pension plan to which more than one employer contributed as a multiple-employer plan, rather than an aggregate of single-employer plans, as it previously had determined. Several contributing employers and the plan trustees challenged PBGC's determination and sought extensive discovery, arguing that PBGC had used flawed procedures, changed the applicable legal standard, and failed to adequately explain various aspects of its determination. In a series of opinions, the district court held that the deferential "arbitrary and capricious" standard applied to PBGC's reclassification of the plan, and that PBGC's submission of the administrative record is entitled to a "strong presumption of regularity," which the challengers fell far short of rebutting. And far from inadequately explained, the court found PBGC's determination to be "clear on its face." The court ultimately granted PBGC's motion for summary judgment, describing the agency's determination as "based on a consideration of the relevant factors," not reflecting "a clear error of judgment," and thus not arbitrary or capricious.

► Central States Se. & Sw. Area Pension Fund v. O'Neill Bros. Transfer & Storage Co., 620 F.3d 766 (7th Cir. 2010) – A contributing employer to a multiemployer pension plan notified the plan that the company was "preparing for its termination and liquidation." The plan deemed the notification to be a withdrawal and determined that the employer was in default and thus required to immediately pay the entire amount of its withdrawal liability. Mandatory arbitration ensued. The plan sued the employer, seeking an interim payment of the entire withdrawal liability during the pendency of the arbitration. The district court granted summary judgment for the plan and the employer appealed. The circuit court invited PBGC to file a brief as amicus curiae. In affirming the district court's decision, the circuit court agreed with PBGC, holding that under ERISA § 4219(c)(5)(B), when there is an "insolvency default," the plan may require the employer to immediately pay its entire withdrawal liability pending arbitration.

► National Shopmen Pension Fund v. DISA Indus., Inc., 653 F.3d 573 (7th Cir. 2011) – The Seventh Circuit reinforced the MPPAA principle that an employer must arbitrate any dispute it has about a plan's assessment of withdrawal liability before the employer can challenge the assessment in court. The court held that this principle applies even where the disputed withdrawal liability assessment was a revision of a previously undisputed assessment. PBGC filed a brief as amicus curiae at the court's invitation.

► HOP Energy, LLC v. Local 553 Pension Fund, 678 F.3d 158 (2d Cir. 2012) – The Second Circuit held that an asset seller owed withdrawal liability, despite the buyer's agreement to contribute to a multiemployer plan at the same rate as the seller. In an asset sale, ERISA § 4204 exempts a seller from liability if the buyer is obligated to contribute to the plan for substantially the same number of contribution base units, typically hours of work, as the seller. At the circuit court's request, PBGC filed an amicus brief clarifying that the time for meeting the § 4204 requirements is the time of the sale. In agreeing and ruling for the multiemployer plan, the court reasoned that, although the buyer had an obligation to contribute at the same rate as had the seller, it did not have an obligation to maintain the same number of covered hours of work.

► Sun Capital Partners III v. New England Teamsters & Trucking Indus. Pension Fund, 724 F.3d 129 (1st Cir. 2013), on remand, 172 F. Supp. 3d 447 (D. Mass. 2016), rev'd, 943 F.3d 49 (1st Cir. 2019) – An operating company owned by two private equity funds withdrew from a multiemployer plan, and the plan assessed withdrawal liability against the two private equity funds. The district court held that the private equity funds were not liable because they were passive investments, not "trades or businesses." On appeal, the First Circuit reversed and remanded, finding that at least one of the funds was a "trade or business," because it operated, managed, and was advantaged by its relationship with the operating company. The appellate court also noted the lack of a Treasury regulation or other agency guidance defining "trade or business" in this context, but found PBGC's analysis, in an unrelated PBGC Appeals Board decision and its amicus curiae brief, persuasive. On remand, the district court held that both funds were "trades or businesses," and concluded that they were under common control with the operating company because they had formed a partnership-in-fact that engaged in a trade or business in its operation of the operating company. On appeal, the First Circuit reversed. Relying on the 8 factors adopted in a federal tax court case, the court concluded that the facts did not weigh in favor of finding that the funds had formed a partnership-in-fact.

► Quality Auto. Serv., LLC v. PBGC, 960 F. Supp. 2d 211 (D.D.C. 2013) – An employer that had withdrawn from a multiemployer "trucking industry" plan challenged PBGC's determination that the withdrawal caused "substantial damage" to the plan's contribution base. In granting PBGC's motion for summary judgment, the court found reasonable PBGC's consideration of the plan's overall financial condition, as well as the cumulative effect on the plan of all employer withdrawals. The court held that PBGC's determination was consistent with prior agency precedent; and that PBGC had reasonably concluded that the employer's replacement by another contributing employer was irrelevant.

III. PROHIBITION OF FOLLOW-ON PLANS

A. Opinion Letters

► Facet Indus. – PBGC Op. Ltr. (unpublished) (Apr. 24, 1981) – A plan sponsor had attempted to terminate its underfunded pension plan and establish a new plan that effectively continued the prior plan. The new plan credited service earned under the prior plan for benefit accruals and eligibility purposes, and made up benefit amounts promised under the prior plan but not guaranteed by PBGC. In effect, payments under the new plan "wrapped around" PBGC-guaranteed benefit payments such that the two payments combined would provide participants with substantially the same benefits as under the prior plan, but with PBGC paying most of the cost of the company's ongoing pension program. PBGC refused to accept the termination of the prior plan, stating that it interpreted Title IV to require it to assume an employer's unfunded pension liabilities only when a plan actually terminates. Stating that it would be inimical to the statute's purposes for it to provide financial assistance to an employer's ongoing pension arrangement, the agency warned that it would use its "restoration" authority under section 4047 of ERISA to remedy the establishment of abusive follow-on plans.

► AlloyTek, Inc., PBGC Op. Ltr. 81-11, Pens. Rep. (BNA) No. 367 (May 11, 1981) – In a case similar to Facet, PBGC reiterated and published its views on abusive follow-on plans.

► Wheeling-Pittsburgh Steel Corp., PBGC Op. Ltr. 86-27 (Dec. 17, 1986) – PBGC again rejected an employer's proposal to establish follow-on plans, and reiterated its warning that it would restore a previously terminated pension plan to remedy such an abuse of the pension insurance program.

B. Court Decisions

► United Steelworkers of Am. v. PBGC (In re Wheeling-Pittsburgh Steel Corp.), 103 B.R. 672 (W.D. Pa. 1989) – After PBGC rejected Wheeling-Pittsburgh's follow-on plans (see PBGC Op. Ltr. 86-27, discussed supra), Wheeling-Pittsburgh and the United Steelworkers of America brought an adversary proceeding seeking a declaratory judgment that the follow-on plans were permissible. The district court issued a preliminary injunction permitting implementation of the follow-on plans and enjoining PBGC from restoring the company's previously terminated plans. The district court stayed the litigation pending the Supreme Court's LTV decision, infra. After the LTV decision, PBGC moved for dissolution of the preliminary injunction. The parties later settled.

► PBGC v. LTV Corp., 496 U.S. 633 (1990), rev'g 875 F.2d 1008 (2d Cir. 1989) – PBGC had restored three previously terminated pension plans in response to LTV's establishment of abusive follow-on plans. PBGC sued to enforce the restoration order. The district court vacated the restoration. The court of appeals affirmed, holding that PBGC had "focused inordinately on ERISA" without giving appropriate weight to LTV's status as a debtor under Chapter 11 of the Bankrupcy Code. The Supreme Court reversed. The Court endorsed PBGC's follow-on policy as an "eminently reasonable" interpretation of ERISA. The Court also held that PBGC need not consider bankruptcy and labor law policies in making restoration decisions, and that LTV received all of the procedural protections to which it was entitled.

IV OTHER REGULATORY ISSUES

A. Payment of Guaranteed Benefits

► Rettig v. PBGC, 744 F.2d 133 (D.C. Cir. 1984) – Participants sued PBGC, seeking the guarantee of benefits that had vested by plan amendments. PBGC argued that the benefits, although vested under the pension plan, were only partially guaranteed under ERISA's rules regarding the phasing-in of amendments to comply with minimum vesting standards. The district court held that PBGC's argument was based on a reasonable construction of the statutory phase-in provision. The court of appeals reversed and remanded the case to the district court, holding that PBGC's decision to phase-in mandatory vesting improvements did not reflect the result of a reasoned decision-making process. The case later settled.

► Belland v. PBGC, 726 F.2d 839 (D.C. Cir. 1984) – Participants sued PBGC, challenging its determination that their pension plan terminated before the retroactive effective date of the Title IV benefit guarantee, despite de minimis participation in the plan following the date of plan termination, and was thus ineligible for insurance coverage. The district court held that PBGC's determination was not arbitrary or capricious. The court of appeals affirmed, upholding PBGC's decision to proceed by adjudication rather than rule making.

► Bechtel v. PBGC, 781 F.2d 906 (D.C. Cir. 1986), aff'g 624 F. Supp. 590 (D.D.C. 1984) – Participants in a terminating pension plan sued PBGC, challenging its effort to recoup excess benefit payments, distributed after the plan's termination date, but before the proper level of guaranteed benefits was calculated. The district court held that benefits paid at levels above those guaranteed by ERISA constitute overpayments, and that PBGC has the authority to recoup them.

► Lami v. PBGC, 1989 U.S. Dist. LEXIS 19153 (W.D. Pa. July 18, 1989) – Participants of a terminated underfunded pension plan challenged PBGC's benefit reduction regulations on their face and as applied to reduce their benefits. Pursuant to the terms of the plan, each participant received part of her plan benefit from the plan's trust fund and the balance from an individual annuity contract purchased with plan assets at the time of her retirement. When the plan had terminated, plan officials relied upon PBGC's advice to apply the regulation to each participant's total plan benefit, regardless of the source of payment, and to reduce the amounts paid from the trust fund (and guaranteed benefits) to zero. (Without the reduction, combining the two sources of benefits would have exceeded the plan's guaranteed benefits.) The district court upheld PBGC's interpretation and application of its regulations.

► Collins v. PBGC, Page v. PBGC, 968 F.2d 1310 (D.C. Cir. 1992), on remand, 1996 WL 335346 (D.D.C. June 7, 1996), class counsel's motion for additional attorneys' fees denied, 213 F. Supp. 3d 200 (D.D.C. 2016), aff'd 881 F.3d 69 (D.C. Cir. 2018), petition for rehearing denied, No. 16-5310 (D.C. Cir. Mar. 20, 2018) – Participants brought class actions against PBGC seeking the guarantee of benefits under plans that terminated without being amended to comply with ERISA. The district court ruled for PBGC, holding that ERISA section 4022(a) must be strictly construed to limit PBGC's guarantee to those benefits that were nonforfeitable under a pension plan's express terms. The court of appeals reversed, holding that: (1) ERISA section 4022(a) has more than one plausible interpretation; (2) PBGC did not engage in decision-making of the character required by its regulations; and (3) if, on remand, PBGC maintained that the participants did not qualify for guaranteed benefits, it would have to show that its position was a reasonable accommodation of the policies underlying ERISA. The case settled in 1996. In 2016, class counsel moved to compel payment of additional attorneys' fees, arguing that PBGC had prevented the payment of settlement benefits. The district court rejected that motion, and the D.C. Circuit affirmed that decision on appeal, finding that the settlement agreement's ten-year period for payment of fees was unambiguous and expired.

► Ailor v. PBGC, No. IP-91-404-C (S.D. Ind. Sept. 30, 1992), aff'd mem., 7 F.3d 238 (7th Cir. 1993) – The district court upheld PBGC's position that Title IV's guarantee extends only to benefits that were vested as of a plan's termination date.

► Shanbaum v. United States, 32 F.3d 180 (5th Cir. 1994) – The court of appeals affirmed the district court's dismissal of a civil action, brought by a participant, seeking an increase in his estimated pension benefit and an order directing PBGC not to honor an IRS levy on his benefit. The court of appeals held that the United States did not waive its sovereign immunity as to the participants' civil action, and that ERISA plan pension benefits were not exempt from an IRS levy in light of, inter alia, ERISA section 1144(d), which provides that ERISA shall not be "construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . or any rule or regulation issued under any such law."

► Kauble v. PBGC, 1994 WL 722966 (S.D. Ind. Dec. 27, 1994), aff'd mem., 94 F.3d 647 (7th Cir. 1996) – A group of retired participants sued PBGC, challenging its decision that a portion of the participants' benefits were not guaranteed. PBGC would not guarantee the benefits because they were not pension benefits, and their payment would result in a monthly benefit that exceeded the regular pension payable at normal retirement age. The district court granted PBGC's motion for summary judgment, upholding PBGC's construction of its guaranteed benefit regulation.

► Fetty v. PBGC, 104 F.3d 367 (10th Cir. 1996), aff'g 915 F. Supp. 230 (D. Colo. 1996) – Participants of a terminated pension plan sued PBGC, challenging its denial of unreduced early retirement benefits. The participants alleged that they were entitled to the benefits based on layoffs that occurred approximately one year after the pension plan terminated during the plan sponsor's bankruptcy proceeding. PBGC denied the benefits because the participants had not met the applicable requirements as of the plan termination date. The district court upheld PBGC's denial, and the court of appeals affirmed.

► Pineiro v. PBGC, 1997 WL 739581 (S.D.N.Y. Nov. 26, 1997); Pineiro v. PBGC, 1999 WL 195131 (S.D.N.Y. Apr. 7, 1999); Pineiro v. PBGC, 2000 WL 282894 (Mar. 15, 2000); Pineiro v. PBGC, 318 F. Supp. 2d 67 (S.D.N.Y. 2003) – Participants filed a class action against PBGC seeking to remove the agency as statutory trustee of a terminated pension plan. The participants alleged, among other things, that PBGC had: improperly commingled the plan's assets with the assets of other terminated plans; improperly withheld documents that the participants had requested under the Freedom of Information Act ("FOIA"); failed to comply with certain Title I reporting and disclosure requirements; and violated fiduciary duties in its benefit determinations. After addressing many of the issues in three successive decisions on PBGC motions to dismiss, the district court granted the parties' cross-motions for summary judgment in part, and denied them in part. Specifically, the court held that: (1) PBGC is subject to a fiduciary duty only after it is appointed as statutory trustee; (2) PBGC is not liable as a fiduciary when performing certain functions, such as calculating the amount of guaranteed benefits; (3) PBGC is not required to segregate its trustee and agency functions to avoid a conflict of interest; (4) PBGC's interpretation of disputed language in the plan's summary plan description was appropriate; (5) participants cannot claim back or future benefits as remedies for fiduciary breach under Title IV; (6) participants are not required to rely on FOIA to obtain pension-related information from PBGC; (7) PBGC, as statutory trustee, has no obligation to provide annual reports to participants; and (8) PBGC, as a statutory trustee, is not subject to the claims procedures under Title I or under the terminated plans' terms. The case was later settled.

► Dycus v. PBGC, 133 F.3d 1367 (10th Cir. 1998) – Participants sued PBGC, challenging its decision to deny shutdown benefits, where most of the employees of a mining company went to work for an asset purchaser, and the purchaser had assumed the pension plan. The district court upheld PBGC's decision, and the court of appeals affirmed. The court of appeals held that there had not been a permanent shutdown of the mining company, since the purchaser had reopened the mine after the sale and rehired most of the participants.

► Caskey v. PBGC, 1999 U.S. Dist. LEXIS 21448 (E.D. Pa. Jan. 14, 1999), aff'd mem., 203 F.3d 816 (3d Cir. 1999) – The district court upheld PBGC's determination that a participant was not entitled to benefits, based on a workers' compensation offset provision in the plan. The participant argued that the offset provision was nullified by a "minimum benefit" provision in the plan. The district court held that PBGC's interpretation of the plan was not arbitrary and capricious.

► Holl v. PBGC, 234 F.3d 1273 (7th Cir. 2000), aff'g No. 98-214 (S.D. Ind. Jan. 14, 2000) – A participant sued PBGC, seeking information regarding terminated pension plans formerly sponsored by his former employer. The district court granted PBGC's motion for summary judgment, holding that PBGC was only a trustee of the employer's pension plans, not their administrator, and that PBGC had provided the participant with all the information in its possession that had been requested. The court of appeals affirmed, holding that the participant failed to provide any evidence contesting the conclusion that PBGC did not administer the pension plans.

► Coleman v. PBGC, 94 F. Supp. 2d 18 (D.D.C. 2000); 469 F.3d 1061 (D.C. Cir. 2006), aff'g 2005 WL 5534139 (D.D.C. Nov. 28, 2005) – Participants filed a class action challenging PBGC's denial of shutdown benefits. They alleged that a shutdown had occurred before plan termination, notwithstanding representations to PBGC by their union and the company that it had not. The participants also challenged the company's amendment to the plan removing shutdown and mutual consent benefits, alleging that it violated section 411(d)(6) of the Internal Revenue Code and various procedural requirements. PBGC moved to dismiss on exhaustion grounds, but the court denied the motion, finding that the exhaustion doctrine did not apply to allegations of statutory violation. In later proceedings, the court granted PBGC's motion for summary judgment. The court of appeals affirmed, holding that the representations of the union and the company were independently supported by the facts and that PBGC reasonably relied on them. The court also held that the company had validly eliminated the mutual consent benefits.

► Greer v. PBGC, 2001 WL 137330 (S.D.N.Y. Feb. 15, 2001) – A participant filed an Age Discrimination in Employment Act ("ADEA") claim with respect to PBGC's benefit determination. The participant argued that older participants with fewer years of service received higher benefits. The district court granted PBGC's motion to dismiss for failure to state a claim, as such a "reverse age discrimination" claim is not cognizable under the ADEA.

► Waters v. PBGC, 2002 WL 1775262, 28 Employee Benefits Cas. (BNA) 2234 (E.D. Tenn. June 10, 2002) – A participant sued PBGC, seeking disability pension benefits. PBGC moved for summary judgment. The district court held that: (1) dismissal was appropriate due to the participant's failure to exhaust his administrative remedies; (2) the plain language of PBGC's regulations entitles a participant to benefits only for disabilities arising prior to his plan's termination date; and (3) the participant failed to establish that he was disabled prior to the plan termination date.

► Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. & Research Found., 334 F.3d 365 (3d Cir. 2003), aff'g in part and rev'g in part 263 F. Supp. 2d 949 (E.D. Pa. 2002); on remand, 2004 WL 2612162 (E.D. Pa. Oct. 21, 2004) – Participants argued that their accrued benefits had become nonforfeitable upon partial termination of a cash balance plan. They also asserted that PBGC's collection of statutory premiums creates an implied agreement to guarantee all plan benefits. The district court disagreed, holding that (1) the accrued benefits had not become nonforfeitable before plan termination, and thus, no vested benefit liability existed for PBGC to guarantee; and (2) promissory estoppel did not apply. The court of appeals affirmed in part, reversed in part, and remanded, holding, among other things, that ERISA specifically limits PBGC's responsibility to guaranteed plan benefits, and excludes benefits that have become nonforfeitable solely as a result of a plan's partial termination. On remand, the district court granted PBGC's motion to dismiss, holding that PBGC had no obligation to guarantee those benefits or any unfunded nonguaranteed benefits.

► PBGC v. Cafeteria Operators, L.P., 2004 WL 1800850, 33 Employee Benefits Cas. (BNA) 1665 (N.D. Tex Aug. 12, 2004) – In a PBGC-initiated plan termination proceeding, the plan sponsor counterclaimed for a declaration whether amendments to the pension plan were subject to phase-in, or were fully guaranteed. The district court dismissed the counterclaim for lack of a ripe controversy, and granted PBGC's motion for summary judgment.

► McCree v. PBGC, 2004 WL 1800850 (D. Mass. Dec. 16, 2004) – A participant sued PBGC, challenging its determination of his pension benefit and its definition of the terms "compensation" and "offset plan." PBGC argued that its calculation of the participant's pension benefit was based on the terms of the plan documents; that "compensation" is clearly defined in the plan documents as the amount actually paid that is subject to tax; and that "offset plan" is clearly defined in I.R.C. section 401(l)(4)(D). The district court granted PBGC judgment on the pleadings.

► Boivin v. US Airways, Inc., 446 F.3d 148 (D.C. Cir. 2006) – After the US Airways Pilots Plan was terminated, several participants sued PBGC, before the agency had completed their benefit determinations, alleging that PBGC had miscalculated their estimated benefits. The district court granted PBGC's motion for summary judgment. Without reaching the merits, the court of appeals ordered the district court to dismiss the case, holding that the participants must exhaust their administrative remedies before bringing a civil action. Noting that PBGC's administrative review regulations were entitled to deference, the court held that requiring exhaustion of administrative remedies would promote judicial efficiency by giving the agency the opportunity to correct any errors. The court also stated that the participants do not have to suffer an "interminable wait" and could sue to compel agency action, if necessary.

► Szydlowski v. PBGC, 2006 WL 903246, 37 Employee Benefits Cas. (BNA) 2643 (E.D. Mo. Apr. 7, 2006) – A retiree challenged PBGC's final determination of his and his former spouse's benefits under a qualified domestic relations order. The court granted PBGC's motion for summary judgment, holding that the agency properly refused to recognize an amended order obtained by the retiree after the death of his former spouse, because it attempted to assign to the retiree a reversionary interest in her benefit in violation of ERISA section 206(d)(3)(D). In addition, relying on Pineiro v. PBGC, 318 F. Supp. 2d 67 (S.D.N.Y. 2003) (supra), the court denied the retiree's Title I fiduciary breach claim against PBGC, holding that although the agency is subject to Title I fiduciary duties to a certain extent when it determines and pays benefits under a trusteed plan, no breach had occurred because the agency is not subject to 29 U.S.C. § 1132(c). The court also held that PBGC is a government agency subject to FOIA, not a plan administrator subject to Title I information penalties, and that PBGC had not violated the retiree's due process rights by denying him an in-person hearing with its Appeals Board.

► Segmiller v. PBGC, No. 04-284 (M.D. Fla. Nov. 16, 2006) – The district court granted summary judgment to PBGC in this participant suit challenging PBGC's recoupment of pre-termination overpayments and seeking repayment from PBGC of the recouped amounts. The court cited the participant's failure to exhaust administrative remedies and held that the suit was not a claim for equitable relief allowed under Title IV of ERISA.

► Dumas v. PBGC, 2007 WL 1099542, 41 Employee Benefits Cas. (BNA) 1271 (N.D. Ind. Apr. 9, 2007), aff'd per curiam, 2007 WL 3328179 (7th Cir. Nov. 9, 2007) – A participant in a terminated plan, who had retired early due to a disability, brought an action against PBGC challenging his benefit calculation. (PBGC's maximum insurance limitation, which is ordinarily reduced for an early retirement, is not adjusted for participants who were found to be disabled by the Social Security Administration.) The participant argued that, because he was a disability retiree for whom the maximum insurance limitation is not adjusted, he should receive an unadjusted monthly "maximum" benefit rather than his calculated monthly plan benefit. PBGC argued that the limitation is merely a cap on a participant's entitlement, not a separate source of benefit entitlement. The court agreed and granted summary judgment to PBGC.

► Jackson v. PBGC, 2007 WL 1121487 (5th Cir. Apr. 13, 2007), aff'g per curiam No. 06-214 (W.D. La. July 10, 2006) – The court of appeals affirmed the district court's dismissal of a participant's benefits claim against PBGC, agreeing that the claim was barred by the doctrine of res judicata, because the participant had raised the same claim against PBGC in two previously dismissed suits.

► Koehler v. PBGC, 2008 WL 1751732 (6th Cir. Apr. 16, 2008) – Participants of a terminated plan brought suit against PBGC, claiming that they were entitled to disability pensions, which had been denied them by the former plan sponsor and, subsequently, by PBGC. The participants asserted that PBGC had breached its fiduciary duties by failing to pay the claimed benefits. None of the participants had appealed their benefit determinations to the PBGC Appeals Board. The district court dismissed the complaint based upon the participants' failure to exhaust their administrative remedies. The court of appeals affirmed.

► Douglas v. PBGC, 2008 WL 2805604 (E.D. Pa. July 18, 2008) – A participant sued PBGC to challenge his benefit determination. PBGC moved for summary judgment affirming its determination that the participant lacked the required years of continuous service. Applying the deferential "arbitrary and capricious" standard of review, the court ruled in ruled in PBGC's favor.

► Adey v. PBGC, 2008 WL 4724314, 45 Employee Benefits Cas. (BNA) 2698 (N.D. W. Va. Oct. 24, 2008); 2010 WL 892229 (N.D. W. Va. Mar. 9, 2010) – A group of participants of a terminated pension plan sued PBGC to challenge the agency's determination that they did not meet certain service requirements. The participants sought discovery beyond the agency's administrative record. The court, applying the deferential "arbitrary and capricious" standard and limiting its review to the administrative record, denied the participants leave to serve discovery, except with regard to the narrow issue of approval and execution of the agreement terminating the plan. Later, the court granted PBGC summary judgment on all counts, finding that the agency's interpretation of the plan's terms was reasonable, and its application of such terms was sufficiently supported by the evidence.

► Stephens v. US Airways Group, Inc., 555 F. Supp. 2d 112 (D.D.C. 2008); 644 F.3d 437 (D.C. Cir. 2011), aff'g in part and rev'g in part 696 F. Supp. 2d 84 (2010); 755 F.3d 959 (D.C. Cir. 2014), rev'g and remanding 908 F. Supp. 2d 10 (D.D.C. 2012) – A group of participants sued US Airways for paying lump sum benefits 45 days after their retirement date, and without interest. During an appeal, the plan was terminated. The participants named PBGC as a defendant, asserting that the delay deprived them of the actuarial equivalence of their benefit, and that PBGC committed a fiduciary breach by failing to compensate them for the interest/actuarial equivalence they claim was due. After winning a change of venue, PBGC moved to dismiss certain parts of the case. In its first decision, the district court agreed with PBGC that the participants cannot maintain a fiduciary breach claim that arises from an alleged failure to pay benefits; that PBGC is not liable for this alleged breach by a prior fiduciary; and that the participants are not entitled to attorneys' fees under Title IV. The district court then granted PBGC summary judgment, holding that the participants were not entitled to interest on their lump sum benefits. The court of appeals affirmed regarding attorneys' fees, but reversed and remanded the issue of interest payments, holding that, absent sufficient justification, the 45-day delay was unreasonable. The district court denied the participants' subsequent motions for class certification on this issue. The court of appeals reversed the district court's denial, and remanded the case for reconsideration, holding that the participants did not need to exhaust their administrative remedies prior to bringing suit for a violation of ERISA.

► Davis v. PBGC, 734 F.3d 1161 (D.C. Cir. 2013), aff'g 864 F. Supp. 2d 148 (D.D.C. 2012); 571 F.3d 1288 (D.C. Cir. 2009), aff'g 596 F. Supp. 2d 1 (D.D.C. 2008); No. 08-1064 (D.D.C. Mar. 17, 2009); 815 F. Supp. 2d 283 (D.D.C. 2011) – A group of retired participants of a terminated pension plan sued PBGC, contending that it erred in making benefit determinations and breached its fiduciary duty. They sought a preliminary injunction prohibiting PBGC from recouping benefit overpayments from them while the suit was pending. The district court denied the injunction, and the D.C. Circuit affirmed, holding that PBGC's interpretations of ERISA are entitled to deference. In subsequent holdings, the district court reiterated that the "arbitrary and capricious" standard of review applied, rejecting the argument that PBGC functions under a conflict of interest, and upheld PBGC's determinations on all twelve counts of the complaint. The court of appeals affirmed, holding that regardless of the standard of review, in every instance, PBGC's interpretation of the statutory asset-allocation scheme and the pension plan were the better interpretations.

► Montgomery v. PBGC, 601 F. Supp. 2d 139 (D.D.C. 2009) – A participant of a terminated pension plan sued PBGC to challenge the agency's denial of his application for benefits. The participant argued that PBGC should have considered his total hours worked, rather than his years of service. Granting PBGC's motion for summary judgment, the court held that PBGC did not abuse its discretion in denying benefits when, under the unambiguous terms of the plan, the participant failed to meet the vesting requirement.

► Deppenbrook v. PBGC, 2011 WL 1045765, 50 Employee Benefits Cas. (BNA) 2981 (W.D. Pa. Mar. 17, 2011); No. 11-600 (D.D.C. Mar. 12, 2012); 778 F.3d 166 (D.C. Cir. 2015), aff'g 950 F. Supp. 2d 68 (D.D.C. 2013) – A group of participants of a terminated pension plan challenged PBGC's denial of shutdown benefits. The Pennsylvania district court transferred the case to the District of Columbia, the only proper venue under section 4003(f) of ERISA. The participants then sought to supplement the agency's administrative record with declarations and other documents. The district court denied the motion, holding that the documents were not considered by PBGC and could shed no light on its determination. The court subsequently granted PBGC summary judgment, reviewing PBGC's decisions with "great deference" under the Administrative Procedure Act. The court agreed that the shutdown benefits did not vest before the plan's termination date, and that PBGC did not mishandle any of the plan's assets. The court of appeals affirmed.

► Burmeister v. PBGC, 943 F. Supp. 2d 83 (D.D.C. 2013) – A retiree and his union challenged PBGC's reduction of his benefit due to early retirement. Applying the deferential "arbitrary and capricious" standard of review, the court upheld PBGC's benefit determination, as the plan document in effect on the termination date did not reflect an earlier collective bargaining agreement that had eliminated reductions for early retirement.

► VanderKam v. PBGC, 943 F. Supp. 2d 130 (D.D.C. 2013) – A retiree and his spouse sued PBGC and the retiree's former spouse, challenging PBGC's refusal to recognize a qualified domestic relations order that purported to transfer the retiree's survivor benefit from his former spouse to his current spouse. The court, deferring to PBGC's interpretation of ERISA, granted summary judgment, holding that the survivor benefit vested at the annuity starting date, and the subsequent substitution was invalid.

► DeLeon v. US Airways, Inc., 2014 WL 341570, 57 Employee Benefits Cas. (BNA) 2381 (D.D.C. Jan. 31, 2014) – A retiree sued PBGC, challenging her benefit determination. The court granted PBGC's motion for summary judgment, applying the Administrative Procedure Act's arbitrary and capricious standard of review, and limiting its review to the record available to PBGC at the time of the determination. The court held that since the plan document's controlling language was clear, it was unnecessary to look elsewhere to interpret it, as the retiree had argued.

► Lewis, W. v. PBGC, 40 F. Supp. 3d 147 (D.D.C. 2014) – A participant sued PBGC, challenging his benefit denial. Applying the Administrative Procedure Act's arbitrary and capricious standard of review, the court granted PBGC's motion to dismiss, holding that the agency reasonably concluded that the participant had already received his benefits under the plan, based on evidence in the administrative record.

► Dullea v. PBGC, 2015 WL 7313857 (D. Minn. Nov. 20, 2015); 241 F. Supp. 3d 155 (D.D.C. 2017) – A participant challenged PBGC's determination that a domestic relations order would not be qualified because it changed the form of benefits that the participant's former spouse was receiving under a previously qualified order. PBGC moved to transfer venue, and the Minnesota court agreed that the plan's principal office closed upon plan termination, and therefore, the only proper venue was the District of Columbia. On cross-motions for summary judgment, the District of Columbia court, reasoning that PBGC did not fully review and determine whether the proposed replacement domestic relations order would violate the ERISA requirement that such an order not provide increased benefits on the basis of "actuarial value," vacated PBGC's determination as arbitrary and capricious under the Administrative Procedure Act, and remanded the case to PBGC.

► Maher v. PBGC, 2016 WL 8673134 (N.D. Ill. Jul. 22, 2016); 271 F. Supp. 3d 296 (D.D.C. 2017); appeal dismissed 2018 WL 3912024 (D.C. Cir. May 11, 2018) – An individual challenged PBGC's determination that he was not entitled to a statutory benefit because he had received his full benefit when his pension plan terminated in 1984. In granting PBGC's transfer-of-venue motion, the Illinois district court held that a terminated plan does not have a principal office, and therefore, under ERISA § 4003(f), the only proper venue was the District of Columbia. The District of Columbia upheld PBGC's determination, finding that it was not arbitrary and capricious, and was supported by substantial evidence in the administrative record.

► Fisher v. PBGC, 151 F. Supp. 3d 159 (D.D.C. 2016), following remand to PBGC, 468 F. Supp. 3d 7 (D.D.C. 2020), aff'd, 994 F.3d 664 (D.C. Cir. 2021) – The administrator of a pension plan denied a participant's request for a lump-sum distribution several months before notifying participants of the sponsor's intent to terminate. After the plan terminated, the participant sued PBGC to challenge its denial of his renewed request for a lump-sum distribution. The district court remanded the matter to PBGC for explanation of its reasoning on one of the arguments the participant raised. On remand, PBGC again concluded that the plan administrator had properly denied the participant's request. The participant challenged that determination, and the district court granted PBGC's motion for summary judgment. On appeal, the D.C. Circuit affirmed, holding that the agency had properly issued a new decision featuring additional reasons; that PBGC's regulation governing lump-sum distributions is a permissible statutory construction under *Chevron*; and that PBGC's determination was not arbitrary and capricious.

► Smith v. PBGC, 2017 WL 5508343 (D.D.C. Nov. 15, 2017) – An individual challenged PBGC's denial of her claim for benefits based on evidence that she had received a lump-sum distribution from the plan decades ago. The court, limiting its review to the administrative record, upheld PBGC's determination, holding that it was reasonable to rely on plan distribution records, particularly when a general audit found them reliable for thousands of participants.

► Furfari v. PBGC, 2021 WL 2949169 (D.D.C. July 14, 2021) – A participant challenged PBGC's denial of his request for disability benefits. On cross-motions for summary judgment, the district court found that the agency had not provided an adequate explanation for reaching that result, and remanded the matter to PBGC for further proceedings consistent with the court's opinion.

B. Payment of Nonguaranteed Benefits

► Murphy v. The Heppenstall Co., 635 F.2d 233 (3d Cir. 1980) – A group of retired employees brought a contract claim against their former employer, alleging that terms of a collectively bargained pension agreement obligated the employer to pay benefits even after termination of the plan. The employer moved to dismiss the complaint, arguing that it was not directly liable under the agreement, that arbitration was required, and that ERISA preempted the retirees' claim. The district court denied the motion and granted partial summary judgment for the retirees. The court of appeals affirmed, holding that: (1) the agreement established the employer's continuing direct liability for post-termination pension payments; (2) ERISA did not apply to the action because the retirees were suing the employer for the difference between payments due under the plan and benefits guaranteed under Title IV; and (3) ERISA (as originally enacted) did not preempt direct employer liability under the agreement.

► In re Adams Hard Facing Co., 129 B.R. 662 (W.D. Okla. 1991) – PBGC filed a claim for termination liability against the sponsor of an underfunded pension plan. At the same time, plan participants filed claims for the difference between the benefits guaranteed by PBGC and their accrued benefits under the plan. PBGC argued that the participants' claims should be disallowed as duplicative of PBGC's termination liability claim. PBGC contended that the plan participants could not recover separately because the Pension Protection Act of 1987 had increased PBGC's termination liability claim to the total amount of the unfunded benefit liabilities of the plan, and required PBGC to pay participants, in addition to guaranteed benefits, a portion of its recoveries for nonguaranteed benefits. The district court, which had withdrawn the reference from the bankruptcy court on PBGC's motion, agreed with PBGC and disallowed the participants' claims.

► In re CF&I Fabricators of Utah, Inc., No. 90-6721 (Bankr. D. Utah June 21, 1993) – Relying on the rationale of Adams Hard Facing, the bankruptcy court agreed with PBGC that the Pension Protection Act of 1987 reserves to PBGC the entire claim against a plan sponsor for unfunded benefit liabilities, and requires PBGC to distribute its recovery of nonguaranteed benefits, if any, in accordance with the allocation scheme set forth in ERISA section 4022(c). Accordingly, the bankruptcy court held that contractual claims of individual participants, and of their union, against a plan sponsor for nonguaranteed benefits were precluded by PBGC's claims. The bankruptcy court noted specifically that permitting the union's duplicative claim to stand would defeat the purposes of ERISA section 4022(c).

► International Ass'n of Machinists & Aerospace Workers v. Rome Cable Corp., 810 F. Supp. 402 (N.D.N.Y. 1993) – Participants of a terminated pension sued the plan sponsor, seeking to recover nonguaranteed benefits under the plan. The plan sponsor moved for summary judgment. PBGC, appearing as amicus curiae, argued that under the Pension Protection Act of 1987, participants of a terminated pension plan cannot maintain a civil action directly against a plan sponsor to recover nonguaranteed benefits. The district court granted the plan sponsor's motion, holding that PBGC has exclusive statutory power to assert claims on behalf of participants for nonguaranteed benefits, and to negotiate and enter into settlement agreements with plan sponsors for the entire amount of the plan's pension liability.

► Barto Technical Servs. v. United Steelworkers of Am., AFL-CIO (In re Barto Technical Servs.), No. 93-22540 (Bankr. W.D. Pa. 1995) – A union representing participants of a terminated pension plan filed a claim in bankruptcy against the plan sponsor for the plan's unfunded nonguaranteed benefits. PBGC objected to the union's claim. The bankruptcy court sustained PBGC's objection, holding that Title IV granted PBGC the exclusive right to collect all unfunded liabilities of a terminated pension plan, including those for nonguaranteed benefits.

► United Steelworkers of Am., AFL-CIO v. United Eng'g, 52 F.3d 1386 (6th Cir. 1995), aff'g 839 F. Supp. 1279 (N.D. Ohio 1993) – A union sued an employer and PBGC, seeking payment from the employer for supplemental pension benefits that were not guaranteed by PBGC. The union argued that these nonguaranteed benefits were required by a collective bargaining agreement. PBGC moved for summary judgment, arguing that under ERISA section 4062(b), liability for the full amount of unfunded benefits, including unfunded nonguaranteed benefits, runs directly to PBGC, and, pursuant to ERISA section 4022(c), PBGC is required to pay a portion of nonguaranteed benefits based on its recoveries. The district court agreed, holding that to allow direct recoveries of nonguaranteed benefits by employees would defeat the plan termination framework set out in ERISA. The district court also held that ERISA's exclusive grant of authority to PBGC to negotiate and settle employer liability claims comported with the constitutional right to due process. The court of appeals affirmed, holding that Congress had displaced employees' right to bring such an action when it enacted the Pension

Protection Act of 1987, which gave PBGC the right to recover all unfunded benefit liabilities from the sponsor and its controlled group.

► Ricke v. Armco, Inc., 92 F.3d 720 (8th Cir. 1996), aff'g 882 F. Supp. 896 (D. Minn. 1995) – The court of appeals affirmed the district court's decision permitting a trustee appointed under ERISA section 4049 to bring a collection action against a plan sponsor. The plan sponsor argued that a settlement with the plan participants' union precluded the trustee's action. PBGC, as amicus curiae, supported the trustee in arguing that ERISA permitted the trustee's action to collect nonguaranteed benefits owed to the plan participants.

► In re Lineal Group, Inc., 26 B.R. 608 (Bankr. M.D. Tenn. 1998) – PBGC and the debtor objected to claims filed by early retirees seeking to recover the difference between their guaranteed benefits and the benefits that they were promised under the pension plan. While in bankruptcy, the IRS, at the request of the employer, issued a ruling prospectively eliminating the early retirement program from the pension plan. PBGC argued that the early retirees' claims were preempted by the agency's claim for unfunded benefit liabilities, and were moot in light of the IRS ruling. The employer argued that the early retirees' claims were duplicative of those filed by PBGC. Citing United Steelworkers of Am. v. United Eng'g, 52 F.3d 1386 (6th Cir. 1995) (supra), the court sustained PBGC's objections, explaining that allowing the early retirees' claims would frustrate the purposes of ERISA section 4022(c).

C. Standard Termination Issues [3]

► District 65, UAW v. Harper & Row Publishers, Inc., 670 F. Supp. 550 (S.D.N.Y. 1987); 696 F. Supp. 29 (S.D.N.Y. 1988) – When a plan termination resulted in a significant reversion to the plan sponsor, the participants sued the plan sponsor alleging that lump sum distributions were too low because they had been valued using an inappropriate interest rate. PBGC agreed, asserting that officials of the plan sponsor who had chosen the annuity contract from which the interest rate was derived had usurped functions that should have been performed by the plan administrator. PBGC filed a motion to appoint an independent fiduciary to reallocate and redistribute benefits. The district court denied PBGC's motion, but held that the plan sponsor's activities taken to implement termination of the plan were subject to ERISA's fiduciary standards, and that because the plan sponsor had assumed the role of plan administrator, it would be judged by the same fiduciary standards. The plan sponsor then moved for summary judgment. The district court denied the motion, holding that: (1) the participants had raised issues of fact to support their contention that the rate was not reasonable; and (2) the plan sponsor

3 Certain sections of ERISA and the applicable federal regulations were amended after many of the decisions below were issued. Thus, some holdings may vary from current law.

did not demonstrate as a matter of law that it satisfied its fiduciary duty to the participants.

► Walker v. Chalmers, No. 87-3263 (S.D. Tex. Feb. 21, 1989), appeal dismissed, No. 89-2220 (5th Cir. 1990) – The district court affirmed, without opinion, an unpublished bankruptcy court order requiring a plan administrator to use a higher rate, rather than the applicable PBGC rate or the plan rate, to calculate lump sum benefits on termination of the plan. The bankruptcy trustee had sought approval of the higher rate for the express purpose of creating a larger reversion for the benefit of the plan sponsor's creditors. PBGC, appearing as amicus curiae in the court of appeals, argued that ERISA, as in effect at the time, required the use of an interest rate no higher than the applicable PBGC rate. While on appeal, a settlement was reached in which the bankruptcy trustee agreed to the use of the plan rate.

► Waller v. Blue Cross of Calif., 32 F.3d 1337 (9th Cir. 1994) – Participants sued officials of a pension plan sponsor, alleging that they had breached their fiduciary duty in selecting annuity providers in connection with a standard termination. The officials argued that fiduciary duties do not govern termination-related actions, and that a PBGC regulation required them to select the annuity providers in question. The district court dismissed the participants' complaint for failure to state a cause of action. The participants appealed. PBGC and the Department of Labor each filed amicus briefs, arguing that a plan sponsor terminating a sufficiently funded pension plan must comply with both the fiduciary requirements of Title I and the termination procedures set forth in Title IV. The court of appeals, in affirming in part and reversing in part the district court's decision, agreed with PBGC that if annuity contracts are purchased in the correct amount and proper form at the time of plan termination, a plan sponsor's liabilities are satisfied for purposes of Title IV.

► PBGC v. Becker, No. 93-0824 (E.D. La.) – In a compliance audit of a standard termination, PBGC determined that a plan actuary performing lump sum calculations had erroneously used PBGC's interest rate rather than the plan's higher rate. Under Treasury regulations in effect at the time, a participant's benefits were calculable using the rate that produced the greater benefits. When informal compliance efforts failed, PBGC sued the plan sponsor seeking enforcement of its determination. Subsequently, PBGC and the plan sponsor entered into a settlement agreement, under which plan participants would receive substantial additional benefit payments.

► Piggly Wiggly Southern, Inc. v. PBGC, 19 Employee Benefit Cas. (BNA) 1163, aff'd mem., 82 F.3d 430 (11th Cir. 1996) – An employer sued PBGC seeking a declaration that it had used the appropriate interest rate to compute the value of the lump sum benefit distributed to plan participants during a standard termination, contrary to PBGC's finding in a standard termination compliance audit. The employer and PBGC filed cross-motions for summary judgment. The district court granted PBGC's motion and denied the employer's motion, holding that: (1) the employer had incorrectly calculated lump sum distributions; (2) PBGC's regulations that the employer had relied on had been effectively superseded by amendments to section 417(e) of the Internal Revenue Code; and (3) the employer had used an interest rate exceeding the permissible rate set by ERISA and the Internal Revenue Code.

► Flo-Con Sys. v. PBGC, 39 F. Supp. 2d 995 (C.D. Ill. 1998) – An employer sued PBGC seeking a declaration that it had terminated its pension plan in a standard termination in conformity with the requirements of the ERISA, contrary to PBGC's finding in a standard termination compliance audit. PBGC and the employer filed cross-motions for summary judgment. PBGC argued that the employer had incorrectly calculated lump sum distributions. The employer argued that it properly relied on PBGC's regulations in selecting the interest rates. The district court granted PBGC's motion and denied the employer's, holding that PBGC's regulations that the employer had relied on had been effectively superseded by amendments to section 417(e) of the Internal Revenue Code.

► PBGC v. Wilson H. Jones Mem'l Hosp., 374 F.3d 362 (5th Cir. 2004), aff'g 250 F. Supp. 2d 676 (E.D. Tex. 2003) – PBGC sued a sponsor and administrator of a pension plan to enforce its standard termination compliance audit determination, alleging that they had underpaid benefits to plan participants. Under ERISA section 4041(b)(3)(A), a plan administrator must distribute assets in accordance with the provisions of the plan and any applicable regulations. PBGC and the hospital filed cross-motions for summary judgment. The district court granted PBGC's motion and denied the hospital's motion, holding that: (1) favorable tax qualification does not preclude PBGC from interpreting provisions of ERISA relating to termination of a pension plan; (2) PBGC has authority to determine whether a plan administrator correctly interpreted the Internal Revenue Code for purposes of calculating lump sum benefits due plan participants; and (3) PBGC reasonably determined that the hospital used an incorrect termination interest rate.

► Becker v. Weinberg Group, Inc. Pension Trust, 473 F. Supp. 2d 48 (D.D.C. 2007) – A participant asserted that a plan administrator underpaid her benefits during a standard termination. The participant also asked the court to direct PBGC to audit the plan and, as necessary, nullify the termination. PBGC moved to dismiss, arguing that there was no ripe claim against it, and that its decision not to halt a termination or select a plan for audit is committed to the agency's prosecutorial discretion. The court agreed, finding that PBGC's decision not to act was a "single-shot non-enforcement decision," which is not reviewable.

► Beck v. PACE Int'l Union, 551 U.S. 96 (2007), rev'g and remanding 427 F.3d 668 (9th Cir. 2005) – The Supreme Court adopted the position articulated by PBGC, the Department of Labor, and the Solicitor General as amici curiae and unanimously reversed a decision of the Ninth Circuit. The Court considered whether an employer that sponsors and administers a single-employer defined benefit plan has a fiduciary obligation under ERISA to consider merger as a method of implementing the employer's decision to terminate the plan. Deferring to PBGC's interpretation of ERISA, the Court rejected the Ninth Circuit's conclusion that merger is a permissible method of termination, accepting PBGC's argument that merger is an alternative to, rather than an example of, plan termination. The Court noted that it has "traditionally deferred to the PBGC when interpreting ERISA," and found PBGC's construction to be "eminently reasonable."

► PBGC v. Ferfolia Funeral Homes, Inc., 835 F. Supp. 2d 416 (N.D. Ohio 2011) – PBGC received a post-distribution certification from the sponsor of a pension plan stating that it had completed a standard termination and made distributions to the participants. PBGC selected the pension plan for post-distribution audit, and determined that the lump-sum distributions were not calculated in accordance with applicable law. The plan sponsor disputed the determination. PBGC filed suit under section 4003(e)(1) of ERISA to enforce the determination and to require payment of the additional distributions allegedly owed the plan participants and beneficiaries. The sponsor moved to dismiss the complaint, arguing that PBGC's suit was barred by the statute of limitations under section 4003(e)(6)(A)(i) of ERISA, as the complaint was dated more than six years from the plan termination date. The court denied the motion, agreeing with PBGC that the statute of limitations begins to run when a company commits a noncompliant act – like making deficient distributions – and not on the plan termination date.

► PBGC v. Town & Country Bank and Trust Co., 2012 WL 4753352 (W.D. Ky. Oct. 4, 2012) – A plan sponsor informed participants that their plan would terminate in a standard termination on a given date. Two days after that date, a Saturday, the sponsor amended the plan to change the assumptions for valuing lump sums, and later paid benefits using the amended assumptions, resulting in reduced lump sums in violation of ERISA regulations. On audit, PBGC informed the plan sponsor of the violation and its need to pay additional benefits. The plan sponsor refused to comply and PBGC sued to enforce its audit findings. The district court, in rejecting the plan sponsor's arguments, held that PBGC is entitled to deference on its interpretation of its ERISA regulations, and that the agency's determination was reasonable.

► Powell Valley Nat'l Bank v. PBGC, 2013 WL 4759242, 56 Employee Benefits Cas. (BNA) 2835 (W.D. Va. Sept. 4, 2013) – A plan sponsor initiated a standard termination and, after the termination date it had chosen, amended its plan to adopt certain factors from the Pension Protection Act of 2006 for valuing lump sums, resulting in smaller benefit amounts. PBGC audited the plan and found that the participants' benefit amounts were decreased in violation of section 4041(b)(1)(D) of ERISA. The sponsor sued PBGC, contending that the distributions were proper because Congress had changed the lump-sum valuation factors, making it reasonable for it to use the new factors in calculating benefits. Applying the deferential "arbitrary and capricious" standard of review, the court agreed with PBGC that in completing a standard termination, a plan administrator must follow the plan provisions in effect on the termination date. The sponsor's appeal was voluntarily dismissed after it had agreed to comply with PBGC's audit findings.

► PBGC v. Endodontic Specialists of Colo., 2014 WL 5465307 (D. Colo. Sep. 28, 2014) – In a standard termination audit enforcement action that PBGC brought, the court dismissed the plan sponsor's third-party complaint against the plan administrator. The court held that there was no diversity between the parties, and that exercising supplemental jurisdiction over their dispute would interfere with the disposition of the case, which is determined on PBGC's administrative record.

► PBGC v. Kentucky Bancshares, Inc., 597 Fed. App'x 841 (6th Cir. 2015), aff'g 7 F. Supp. 3d 689 (E.D. Ky. 2014) – PBGC sued a plan sponsor to enforce its determination that the sponsor's standard termination was not completed in accordance with Title IV, since the sponsor had adopted a post-termination amendment that unlawfully reduced benefits. Applying deferential review, the court of appeals affirmed the district court's grant of summary judgment to PBGC. The court upheld PBGC's determination that there could be no *de facto* plan amendment, since ERISA requires plans to be established and maintained pursuant to a written instrument; that the amendment was not necessary for tax qualification; and that the Pension Protection Act of 2006 did not affect the requirements of Title IV, which prohibit post-termination reductions in benefits.

► Royal Oak Enter., LLC v. PBGC, 78 F. Supp. 3d 431 (D.D.C. 2015) – A plan sponsor challenged PBGC's determination that the sponsor had impermissibly reduced benefits by amending a plan after the date of its standard termination. The court granted summary judgment to PBGC, holding that its determination that the amendment was unnecessary for tax qualification was not arbitrary or capricious; that the Pension Protection Act of 2006 did not affect the requirements of Title IV, which prohibit post-termination benefit reductions; and that the tax code does not prohibit a sponsor from paying larger benefits, if required by another statutory or plan provision.

► PBGC v. Idaho Hyperbarics, Inc., 2017 WL 2125743 (D. Ida. May 15, 2017); 2018 WL 2088733 (D. Idaho May 4, 2018) – PBGC sued a plan sponsor to enforce its post-standard-termination audit findings that the plan sponsor improperly reduced participant benefits. The sponsor moved to dismiss, asserting that PBGC brought the action after the three-year limitations period in ERISA section 4006(e), which, it alleged, began either when the participants received their benefits or PBGC selected the case for audit. The court denied the motion, holding that the action was filed timely, as the limitations period did not begin until PBGC completed its enforcement process.

Before that, according to the court, there could be no final agency determination of which, if any, violations of ERISA had occurred. On subsequent cross-motions for summary judgment, the court ruled in PBGC's favor, finding unpersuasive the plan sponsor's assertion that the third party administrator was at fault, since the plan sponsor, as the plan administrator, was ultimately responsible for the termination.

D. Allocation of Plan Assets

► Audio Fidelity Corp. v. PBGC, 624 F.2d 513 (4th Cir. 1980) – A plan sponsor sued PBGC seeking a declaratory judgment validating a proposed reversion of the residual assets of a terminated pension plan. The plan allowed the plan sponsor to amend it at any time, but stated that no amendment should vest in the sponsor any interest in property subject to terms of the trust, and that no amendment should deprive any participant of benefits to which she was entitled. The court of appeals held that: (1) a plan sponsor cannot, by retroactive amendment to a terminated plan, recapture funds that it had dedicated to the trust; and (2) the participants were entitled, on termination of the plan, to a ratable share of the plan's assets, as the payment of the excess funds to participants upon termination would not unjustly enrich them, but would simply discharge the plaintiff's contractual obligation, in exchange for which the participants had rendered their services.

► LLC Corp. v. PBGC, 703 F.2d 301 (8th Cir. 1983), rev'g 537 F. Supp. 355 (E.D. Mo. 1981) – An employer sued PBGC seeking a determination that it was entitled to the residual assets of its terminated pension plan. The court of appeals held that the employer was entitled to the residual assets, based on a showing that none of residue was attributable to employee contributions.

► Blessitt v. Ret. Plan for Employees of Dixie Engine Co., 848 F.2d 1164 (11th Cir. 1988) (en banc), rev'g on rehearing 817 F.2d 1528 (11th Cir. 1987) – Participants of a terminated pension plan sued their employer alleging that they were entitled to receive benefits for anticipated future employment. The district court granted summary judgment in favor of the employer. The participants appealed. The court of appeals agreed with PBGC, appearing as amicus curiae, that when a pension plan terminates, ERISA does not require that participants receive the retirement benefits they would have received had they continued to work to normal retirement age, as ERISA section 4044 does not give participants a right to receive normal retirement benefits calculated on the basis of anticipated future years of service.

► Ashenbaugh v. Crucible, Inc. 1975 Salaried Ret. Plan, 854 F.2d 1516 (3d Cir. 1988) – The district court upheld a pension plan's decision to deny participants subsidized early retirement benefits. The participants appealed. PBGC filed an amicus brief with the court of appeals. The court of appeals confirmed that under ERISA, an accrued benefit is an individual's benefit expressed in the form of an annual benefit commencing at normal retirement age. The court also agreed with PBGC that section 4044 of ERISA is an ordering provision that sets priorities to be applied when plan assets are insufficient, and does not create substantive rights to benefits.

► Firestone Tire & Rubber Co. v. PBGC, 892 F.2d 105 (D.C. Cir. 1989), aff'g 701 F. Supp. 836 (D.D.C. 1988) – The district court upheld as reasonable PBGC's interpretation of ERISA section 4044(d)(2) that a portion of residual plan assets upon termination had to be attributed to mandatory employee contributions if the earnings on those contributions exceeded the interest employees received as part of their accrued benefits under the plan. The district court rejected the plan sponsor's argument that employee contributions and earnings had to be exhausted to pay benefits before any employer contributions were used for that purpose. The court of appeals affirmed the district court's decision on the ground that even assuming the statute was ambiguous, a district court should defer to PBGC's reasonable interpretation of it. (The Pension Protection Act of 1987 disposed of this issue for plans terminating after its effective date by enacting a statutory allocation method for residual assets in a contributory plan.)

► Mead Corp. v. Tilley, 490 U.S. 714 (1989), rev'g and remanding 815 F.2d 989 (4th Cir. 1987); on remand, 927 F.2d 756 (4th Cir. 1991) – Participants of a terminated pension plan claimed entitlement to subsidized early retirement benefits. Accepting PBGC's interpretation of Title IV, the Supreme Court held that ERISA section 4044(a)(6) does not create additional benefit entitlements at termination; rather, the section merely provides for the orderly distribution of benefits already earned under the terms of the plan or required to be paid by some other provision of ERISA. On remand, the court of appeals held, as advocated by PBGC, that the unearned early retirement subsidies in question were not accrued benefits under ERISA. However, the court of appeals also held that participants who, as of the date of plan termination, had satisfied the years of service, but not age, requirements for unreduced early retirement benefits must be paid the value of those benefits before the employer could take a reversion of surplus assets based on "actuarial error."

► Nobers v. Crucible, Inc. 1975 Salaried Ret. Plan, 760 F. Supp. 464 (W.D. Pa. 1990), aff'd mem., 925 F.2d 418 (3d Cir. 1991) – The district court, in a case involving the same facts as Ashenbaugh, adopted PBGC's position that early retirement subsidies were not liabilities of the plan within the meaning of ERISA section 4044(d)(1)(A).

► In re Guterl Special Steel Corp., 198 B.R. 128 (Bankr. W.D. Pa. 1996) – Prior to bankruptcy, PBGC filed an enforcement action in district court against a plan sponsor, alleging that it improperly allocated and distributed the assets of one of its two terminated pension plans. PBGC later raised similar issues regarding the second terminated plan. The bankruptcy court approved a settlement agreement between PBGC and the debtor's Chapter 7 trustee, under which participants in the two plans would receive additional retirement and life insurance benefits.

E. Plan Coverage

► Rose v. Long Island R. Pension Plan, 828 F.2d 910 (2d Cir. 1987) – A beneficiary who had been denied benefits under a pension plan appealed a district court order holding that the plan was a governmental plan exempt from ERISA coverage and compliance. The district court held that the appellee, a railroad, was an agency or instrumentality of a political subdivision at the time that the beneficiary had applied for benefits, and was therefore a governmental plan exempt from ERISA. The decision was upheld on appeal, in which PBGC appeared as amicus. In reaching its decision, the court of appeals sanctioned PBGC's approach of interpreting the terms "established and maintained" in the governmental plan exemption under Title IV of ERISA disjunctively, consistent with congressional intent. See PBGC Op. Ltr. 75-44 (pension plan maintained by a government agency or political subdivision that has been taken over from a private entity is exempt from Title IV coverage). The court recognized that for purposes of the exemption, the appropriate focus should be on the status of the entity that currently maintains a plan.

► Tynes v. PBGC, 2005 WL 1828578, 35 Employee Benefits Cas. (BNA) 2509 (D.N.J. Aug. 2, 2005) – Hospital employees filed a class action against the IRS, PBGC, and others, challenging the classification of the hospital's pension plan as a church plan exempt from Title IV coverage. The district court dismissed the suit without prejudice, holding that, because the IRS was reconsidering the classification, the suit was not ripe.

F. Miscellaneous

► Garland v. US Airways, Inc., 2006 WL 3762047, 40 Employee Benefits Cas. (BNA) 1050 (W.D. Pa. Dec. 21, 2006), aff'd, 2008 WL 564694 (3d. Cir. Mar. 3, 2008) – The district court granted PBGC's motion to dismiss all claims of a plan participant against the agency and its former executive director. The participant had alleged, inter alia, wrongful termination of his employment with the plan sponsor, because of race discrimination and retaliation. The district court held that the participant's claims against PBGC and its former executive director should be dismissed for improper service of process, lack of jurisdiction (including failure to exhaust administrative remedies), improper venue, and failure to state a claim upon which relief could be granted. The district court also denied the participant's request to amend his complaint for a third time, because no amendment could render his claims meritorious. On appeal, the participant failed to address these claims in his opening brief. Accordingly, the court of appeals affirmed the dismissal of the claims, as the participant had waived them.

► United Steelworkers, Int'l, AFL-CIO v. PBGC, 707 F.3d 319 (D.C. Cir. 2013), aff'g 839 F. Supp. 2d 232 (D.D.C. 2012); 602 F. Supp. 2d 1115 (D. Minn. 2009) – A union challenged PBGC's benefit determinations under Thunderbird Mining Company's pension plan, alleging that participants were wrongly denied shutdown benefits. The Minnesota district court granted PBGC's motion to transfer the case to the District of Columbia because, under section 4003(f) of ERISA, the appropriate court for an action against PBGC is either where termination proceedings are taking place, where the plan has its principal office, or the District of Columbia. The District of Columbia court upheld PBGC's determination that the mining company's idling of operations did not entitle participants to shutdown benefits. The court of appeals affirmed, applying the deferential "arbitrary and capricious" standard of review. The court held that weighing the evidence is not its function in reviewing agency action, and that the administrative record contained ample support for PBGC's determination that there had been no permanent shutdown of the mine prior to plan termination.

► Carstens v. Michigan Dep't of Treasury, 2009 WL 2581504, 48 Employee Benefits Cas. (BNA) 1060 (W.D. Mich. Aug. 18, 2009) – The former sponsor of a terminated pension plan sued the state of Michigan and PBGC in Michigan state court for a declaratory judgment regarding ownership of unclaimed property. PBGC moved for removal to federal district court. PBGC then moved to dismiss or transfer the case to the District of Columbia because, under section 4003(f) of ERISA, the appropriate court for an action against PBGC is either where termination proceedings are taking place, where the plan has its principal office, or the District of Columbia. Because the pension plan terminated and closed its principal office years ago, the court agreed with PBGC that the District of Columbia was the only court in which the action could have been brought, and transferred the case there.

► US Airline Pilots Ass'n v. PBGC, 2010 WL 3168048, 49 Employee Benefits Cas. (BNA) 1827 (D.D.C. Apr. 16, 2010); 274 F.R.D. 28 (2011); 603 Fed. App'x 6 (D.C. Cir. 2015), aff'g 2014 WL 3537827, 58 Employee Benefits Cas. (BNA) 1802 (D.D.C. June 20, 2014) – A union representing participants of a terminated pension plan alleged that PBGC breached its fiduciary duty by failing to investigate and to rectify possible wrongdoing by former plan fiduciaries. The union moved for a preliminary injunction to have a "special trustee" appointed to fulfill the duties that PBGC allegedly refused to perform. The court denied the union's motion, finding that the likelihood of success on the merits was remote, and that the union failed to show that its members would suffer irreparable injury absent an injunction because, should PBGC sue the former fiduciaries and recover judgment, that judgment (up to $510 million) would go to PBGC, and not to participants. Moreover, according to the court, a decision to appoint a "special trustee" would inevitably "open the door to frequent disruptions" of PBGC operations. After a bench trial, the court ruled for PBGC, holding that the agency had not breached a fiduciary duty with respect to the terminated plan, and had "met the prudent person standard required of Title IV trustees." The court of appeals affirmed.

► Carter v. Pension Plan of A. Finkl & Sons Co. For Eligible Office Emps., 654 F.3d 719 (7th Cir. 2011), aff'g 2010 WL 1930133, 49 Employee Benefits Cas. (BNA) 1050 (N.D. Ill. May 12, 2010) – A plan sponsor gave notice to participants and PBGC of its intent to complete a standard termination of its pension plan, and amended the plan to allow participants, upon plan termination, to receive their pension benefits before retiring. The sponsor subsequently withdrew its standard termination application and adopted a second plan amendment nullifying the first amendment. Participants demanded immediate distribution of the plan's assets and sued the sponsor under ERISA's anti-cutback provision, section 204(g). The district court granted summary judgment to the sponsor, holding that the second plan amendment did not violate the anti-cutback provision, and that, because the pension plan did not terminate, active participants were not entitled to immediate payment of their benefits. The court of appeals affirmed the district court's decision, agreeing with PBGC, appearing as amicus curiae, that under PBGC regulations a plan sponsor may withdraw a standard termination application.

► PBGC v. Bendix Commercial Vehicle Sys., 2012 WL 629928, 52 Employee Benefits Cas. (BNA) 2236 (N.D. Ohio Feb. 24, 2012) – This was PBGC's first lawsuit under ERISA section 4062(e), which imposes contingent liability when a company ceases operations at a facility, resulting in a separation from employment of more than 20 percent of employees who are participants in its pension plan. PBGC filed the administrative record supporting the agency's determination of liability, and Bendix sought extra-record discovery. The court rejected all three bases for discovery that the company asserted, emphasizing that a presumption of regularity is accorded to an agency's submission and certification of the administrative record.

► H & R Convention & Catering Corp. v. PBGC, 2013 WL 1911335, 56 Employee Benefits Cas. (BNA) 1631 (E.D.N.Y. May 8, 2013) – The purchaser of a pension plan sponsor sued PBGC and others after the sponsor failed to complete an agreed-upon standard termination and PBGC initiated termination. The purchaser sought a declaration that it was not liable for contributions or termination liability, recovery against the former sponsor for fiduciary breach, and an order prohibiting PBGC from paying benefits to the sponsor's former shareholders. PBGC was appointed trustee of the pension plan after the suit was filed, then moved to dismiss the fiduciary breach claims based on the purchaser's lack of standing. The court dismissed the case, holding that PBGC's trusteeship cuts off a former sponsor's right to maintain fiduciary breach claims, even if they were initiated prior to PBGC trusteeship. The court concluded that the facts were not sufficient to issue a declaratory judgment, given the statutory provisions governing assigning termination and contribution liability.

► FDIC v. FBOP Corp., 2014 WL 4344655 (N.D. Ill. Sept. 2, 2014); 2017 WL 5891033 (N.D. Ill. Nov. 27, 2017) – FDIC, which had taken over several failed banks in 2009, sued the banks' parent company, FBOP, to resolve who owns an escrowed tax refund. FBOP's pension plan had terminated and PBGC was to receive a portion of FBOP's tax refund to pay for the plan's termination liabilities. The entire refund, however, was mistakenly paid to FBOP, so PBGC moved to intervene in FDIC's suit. FDIC argued that the court lacked jurisdiction over PBGC's claim. The court disagreed, holding that PBGC's claim related to matters central to the litigation, and FDIC's receivership was inadequate to address PBGC's claim. PBGC subsequently settled its claims with FDIC, while FBOP moved for judgment on the pleadings, arguing that the 2012 settlement in FBOP Corp. v. PBGC (supra) precluded PBGC's recovery. The court denied the motion, noting that FBOP presented "an absurd interpretation" of the settlement that "would allow FBOP to reap a huge, undeserved windfall." The court also rejected FBOP's *res judicata* argument based on the 2012 dismissal of PBGC's termination action.

► Senick v. PBGC, 2014 WL 6891360 (E.D. Pa. Dec. 8, 2014) – A retiree challenged PBGC's determination of his benefit under a terminated pension plan. In transferring the case, the court held that the plan no longer had a principal office within its judicial district and, therefore, under ERISA § 4003(f), the only proper venue for an action against PBGC relating to the plan was the District of Columbia.

► Lewis, K. v. PBGC, 2015 WL 5577377 (N.D. Ga. Aug. 11, 2015); PBGC's motion to dismiss fiduciary breach claim denied, 197 F. Supp. 3d 16 (D.D.C. Jul. 6, 2016), denial of PBGC's motion to dismiss fiduciary breach claim reversed, 912 F.3d 605 (D.C. Cir. 2018), cert. denied, 139 S. Ct. 2717 (Jun. 17, 2019); summary judgment granted on benefit claims, 314 F. Supp. 3d 135 (D.D.C. 2018), aff'd, 831 F. App'x 523 (D.C. Cir. Dec. 7, 2020), cert. denied, 2021 WL 4509072 (U.S. Oct. 4, 2021) – A group of retired pilots challenged PBGC's determination of their benefits, asserting fiduciary breach, wrongful benefit denials, and violations of the Administrative Procedure Act. They alleged venue in Georgia because the plan had been administered there, and a PBGC Field Benefit Administration office there had assisted with PBGC's benefit administration. In granting PBGC's transfer motion, the court held that a terminated plan does not have a principal office, and therefore, under ERISA § 4003(f), the only proper venue was the District of Columbia. Upon transfer, the court granted PBGC's motion to strike the demand for attorneys' fees, confirming as settled law in the D.C. Circuit that ERISA does not authorize attorneys' fees against PBGC. But the court denied PBGC's motion to dismiss the participants' fiduciary breach claim, holding that it was not duplicative of the benefit denial claim, that it could provide an avenue for individual relief, and that disgorgement of PBGC's investment gains was a permissible remedy. PBGC filed an interlocutory appeal of that denial, and the D.C. Circuit reversed. The court of appeals held that ERISA § 4044(c) precluded the remedy of disgorgement of PBGC's investment gains, reserving all post-termination gains and losses to the agency. On subsequent cross-motions for summary judgment on the remaining benefit issues, the district court ruled in PBGC's favor, holding that *Chevron* deference applies to the statutory interpretations PBGC makes in determining Title IV benefits, even if made as statutory trustee and through informal adjudication. Applying deference, the district court rejected all the participants' challenges to the benefit determinations. On appeal, the D.C. Circuit affirmed.

► PBGC v. Evans Tempcon, Inc., 630 Fed. App'x 410 (6th Cir. Nov. 2, 2015), aff'g 60 Employee Benefits Cas. (BNA) 23552015, 2015 WL 1249716 (W.D. Mich. Mar. 18, 2015) – PBGC perfected a statutory lien for missed minimum funding contributions against a sponsor's controlled group member on behalf of an ongoing pension plan. PBGC sued to foreclose on the lien, then obtained appointment of a receiver to prevent further transfers of company assets outside the ordinary course of business. On appeal, the Sixth Circuit affirmed, noting that appointment of a receiver is an "extraordinary remedy" that a court should employ with the "utmost caution," but holding that the district court had not abused its discretion under these circumstances.

► PBGC v. United Tool & Stamping Co. of N.C., 2017 WL 6001490, 2017 BL (Bloomberg/BNA) 432816 (D.N.J. Dec. 4, 2017) – In this breach of contract action, PBGC sought to recover contributions that were due to a plan under an agreement between two companies created by a split of the plan sponsor. The company moved to dismiss, arguing that the plan and PBGC were not intended third-party beneficiaries. The court disagreed, holding that PBGC ("as trustee for the plan's participants") was an intended beneficiary of the contract, which the company had breached.

► PBGC v. Panache Destination Mgmt., 2021 WL 5050413 (N.D. Cal. Nov. 1, 2021) – PBGC petitioned the district court to enforce its administrative subpoena issued under ERISA § 4003 to a plan sponsor. The assigned magistrate judge recommended that the court grant the petition, concluding that PBGC had authority to investigate, it had followed the applicable procedural requirements, and the evidence sought was not plainly incompetent or irrelevant to any lawful purpose of PBGC. The court adopted the recommendation and ordered the plan sponsor to comply with the subpoena.

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