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Thelen on Beck v. PACE Intl Union

2008 Emerging Issues 856

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November 5, 2007

SUMMARY: "In *Beck v. PACE Intl Union*, 2007 U.S. LEXIS 7716 (June 11, 2007), the Supreme Court considered whether an employer that sponsored and administered a single-employer defined benefit pension plan breached its fiduciary duties under ERISA by failing adequately to consider a merger with a multiemployer plan as a method of terminating the plan. The Court unanimously held that the employer did not breach its fiduciary duties because merger is not a permissible means of effecting a standard termination under 29 U.S.C. § 1341(b). This Expert Commentary, which appears in the August, 2007 issue of Benders Labor & Employment Bulletin, examines the Courts opinion, provides contextual background from the record, the law and experience, and concludes that the Court correctly decided that merger is not an authorized means of terminating a plan. The Commentary also suggests, however, that the Courts concern about the character of union motives in seeking mergers may have been misplaced. Click on the Expert Commentary link above to see an analysis of this case by Charles M. Dyke, partner, Thelen Reid Brown Raysman & Steiner, LLP, David L. Bacon, partner, Thelen Reid Brown Raysman & Steiner, LLP and Nicholas S. Curabba, benefits litigation associate, Thelen Reid Brown Raysman & Steiner, LLP."

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ARTICLE: Introduction. It is well-established under the Employee Retirement Income Security Act of 1974, as amended(ERISA), that the sponsor of a single-employer pension plan that serves as the plan administrator wears only its business hat when deciding whether to terminate the plan. The termination decision, like the decision to establish the plan in the first place, is a settlor function exempt from ERISAs fiduciary standards. n1 At the same time, it also is well-accepted that certain actions taken by an employer administrator to implement a termination decision, such as choosing an insurer when purchasing annuities in a standard termination under 29 U.S.C. § 1341 (b), are fiduciary functions subject to ERISAs fiduciary standards. n2

In *Beck v. PACE Intl Union*, 2007 U.S. LEXIS 7716(June 11, 2007), the Supreme Court considered whether an employer that sponsored and administered a single employer defined benefit pension plan breached its fiduciary duties under ERISA by failing adequately to consider a merger with a multiemployer plan as a method of terminating the plan. The Court unanimously held that the employer did not breach its fiduciary duties because merger is nota permissible means of effecting a standard termination under 29 U.S.C. § 1341 (b). n3

For many benefits practitioners, the idea that an administrator seeking to annuitize a plan would have a fiduciary

duty to consider merging the plan is a foreign one, and for that reason the *Beck* result seems unlikely to generate major controversy. Indeed, had the Court decided the case the other way, employers would have been faced with serious obstacles in ascertaining the extent to which the standard termination requirements of Title IV of ERISA apply in a given transaction and in trying to meet their fiduciary duties under Title I of the statute. The fact that a sponsor has no fiduciary duty to consider merger does not mean that unions will stop proposing the merger of single-employer plans into multiemployer plans, as PACE International Union (PACE) did in *Beck*, or that employers suddenly will stop agreeing to such mergers when they otherwise make sense, which, for a number of practical tax and labor reasons many of them do.

Despite the unsurprising result in *Beck*, the legal analysis behind it was perhaps closer than expected. In an opinion authored by Justice Scalia, the Court found that ERISA's standard termination provision, 29 U.S.C. § 1341(b), is ambiguous as to whether termination by merger is permissible. The Court resolved the ambiguity by deferring to the position taken by the Pension Benefit Guaranty Corporation (PBGC), which had construed the statute on linguistic and policy grounds as not permitting terminations by merger. n4 The Court also challenged PACE's motives in seeking the merger. The opinion, like some of the questioning at oral argument, focused on the fact that the pension plan contained a **\$5 million post-termination surplus, and assumed the surplus was the driving force for the proposal: For employers, the ill-effects [of a termination-by-merger approach] are demonstrated by the facts of this very case: by diligently funding its pension plans, Crown became the bait for a union bent on obtaining a surplus that was rightfully Crown's.** n5

This Commentary examines the Court's opinion, provides contextual background from the record, the law and experience, and concludes that the Court correctly decided that merger is not an authorized means of terminating a plan. The Commentary also suggests, however, that the Court's concern about the character of union motives in seeking mergers may have been misplaced.

Background. In March 2000, Crown Vantage, Inc. and its operating subsidiary, Crown Paper Company (collectively, Crown), filed petitions for Chapter 11 bankruptcy protection. At the time, Crown operated seven paper mills and employed 2600 workers under collective bargaining agreements (CBAs) with PACE. n6 Crown began selling assets to pay its debts, but when the proceeds proved insufficient to pay even secured creditors, the company in June 2001 began winding down operations and moving toward confirmation of a Chapter 11 liquidation plan. n7

At that time, Crown sponsored 18 defined benefit pension plans, 17 for the benefit of hourly workers represented by PACE and one for salaried workers. n8 Members of Crown's board of directors served as the plans' trustees, and later, when 12 of the plans were merged, the company served as the plan administrator. n9 Under a defined benefit plan, participants receive a specific benefit at retirement determined by a formula in the plan, often based on years of service and high average pay. In most defined benefit plans, employees do not contribute (only the employer does), and the employer therefore bears the plan's investment risk. In many unionized industries, defined benefit pension plans have been established and maintained pursuant to the terms of a CBA. For obvious reasons, retirement planning often is a critical bargaining topic, and many CBAs contain specific provisions preventing the employer from terminating the pension plan during the CBA's term and requiring the employer to use specified actuarial assumptions when determining funding.

Plan Termination. In the summer of 2001, Crown decided to terminate its pension plans, although it was unclear to Crown and its advisors whether any were fully funded on a termination basis. The PBGC had filed contingent claims for millions of dollars in unfunded benefit liabilities pursuant to 29 U.S.C. § 1362 in the event that the Crown plans ultimately were terminated with insufficient assets to pay liabilities. n10 A plan's funding looks different depending on whether it is an ongoing plan or a terminating plan. In general, the law allows the use of more optimistic actuarial assumptions to determine an ongoing plan's funding level than is permitted under PBGC regulations for a terminating plan. n11

PACE officers proposed to merge Crown's 17 hourly plans into the PACE Industrial Union Management Pension

Fund (PIUMPF), an industry-wide multiemployer plan covering PACE work-ers. n12 Such mergers are fairly common except where the plan to be merged is in serious financial trouble. It is not unusual for unions to seek to merge not only the occasional overfunded plan but also plans that are viewed as only mildly underfunded. Unions typically believe it is in their members collective best interests to participate in the industry multiemployer plan, with all employers becoming contributing sponsors. This ensures the continuing health and vitality of the plan and a solid retirement benefit for the participants.

In cases where the sponsor of the merged plan becomes a contributing sponsor of the surviving multiemployer plan, the employees continue accruing benefits after the merger, often at the same rate as before, thereby giving the workers the opportunity to accrue a full benefit under their plan. If a plan being merged is overfunded, as some are, the Internal Revenue Code significantly discourages an employer reversion by subjecting the amount to excise and income taxes at cumulative rates that can reach as high as 85%. n13

Because of this, employers sometimes find it advantageous to agree to merge an overfunded plan in exchange for concessions by the unions elsewhere during contract negotiations. PACE's merger suggestion was viewed favorably by Crown's board at the time it first was raised because the merger had the potential to resolve the plans tenuous funding status and, therefore, as explained below, to effectively eliminate PBGC's contingent claims for unfunded benefit liabilities. n14

PACE argued that participants would be better off under PIUMPF because in prior years that plan had paid its participants a 13th check. PACE also argued that PIUMPF provided an established dispute resolution program for participants. n15 However, Crown's board separately had put the plans out to insurers for annuity bids, and to its surprise received offers indicating that, if Crown were to consolidate 12 of the plans into a single plan, those benefits could be annuitized in full for a premium of \$84million, leaving a \$5 million surplus in the plan. n16 At some point, it also had been decided that Crown's five other hourly plans would be given back to a prior plan sponsor under what was referred to as the PBGC-James River Agreement. n17

Under the annuitization scenario, therefore, Crown would have no potential liability to the PBGC for the 12 annuitized plans, and only theoretical potential liability for any of the other five plans and even then, only if they terminated with insufficient assets to pay liabilities before Crown's bankruptcy concluded. That is because the PBGC has no actual claim for unfunded benefit liabilities until a plan terminates, and it is only those entities that constitute the plan sponsor and the members of the sponsors controlled group on the plans termination date that can be held liable for the underfunding. n18 The PBGC cannot involuntarily terminate an underfunded plan to trigger that liability except in relatively limited circumstances. n19 Since the PBGC appeared not to have any claim for underfunding under either terminate any of the Crown plans, or that it hinted it would do so. the annuity scenario or the merger scenario, n20 it is odd that the Supreme Court and lower courts found significant the fact that the PBGC was willing to withdraw its contingent claims and give releases under the annihilation scenario but not the merger scenario. n21 After Crown received the final annuity bids, it ceased further consideration of the PACE proposal and chose to merge and annuitize the 12 remaining hourly plans. n22 It also elected to take a reversion of the \$5 million surplus (for the benefit of creditors), which under the circumstances likely was subject to no more than 20% in excise taxes and no income taxes. n23

PACE contended that the merger was a means of implementing Crown's decision to terminate the plans, and that Crown therefore had a fiduciary duty to consider the merger. Since under 29 U.S.C. § 1104 plan fiduciaries such as Crown must act on fiduciary matters prudently and solely in the interests of participants, PACE argued that Crown breached its fiduciary duty by failing to consider the proposal further. Crown responded that merger was a business decision outside the scope of 29 U.S.C. § 1104. PACE brought an adversary proceeding, and the bankruptcy court agreed that Crown had breached its fiduciary duties. The court declined to order Crown to cancel its annuity contract with the insurer (which would have resulted in a substantial penalty), issuing instead a preliminary injunction barring Crown from obtaining the \$5 million surplus. Later, the court entered an order approving distribution of the surplus for the benefit of participants and beneficiaries, but

stayed the order pending appeal. n24

The district court and the Ninth Circuit Court of Appeals sided with PACE as well. The Ninth Circuit concluded that the merger of one defined benefit plan into another is a means of accomplishing a termination because, as a practical matter, after the merger is complete, one pension plan will cease to exist. n25 Moreover, ERISA's provision dealing with standard terminations, 29U.S.C. § 1341 (b), expressly provides for alternative means of accomplishing a standard terminations other than through the purchase of annuities, without explicitly or implicitly prohibiting merger as one such means. n26

Therefore, the court ruled, the merger decision was subject to ERISA's fiduciary standards, and a prudent fiduciary would have given further consideration of the merger proposal. n27 The Supreme Court granted *certiorari* and reversed.

Supreme Courts Analysis. The Court began by noting that, while it makes sense in some circumstances to talk of merger as a means for accomplishing termination, the real question is whether merger is a *permissible* form of plan termination under ERISA. n28

ERISA Procedures Governing Standard Terminations. Section 1341 sets forth the exclusive means for accomplishing the standard termination of a plan. n29 The procedures are exhaustive, requiring notice to participants and any union, review by the PBGC, and certification to the PBGC that final distribution of plan assets has been made. n30 The statutorily authorized *methods* of distributing assets in a standard termination are set forth in § 1341(b)(3)(A), which provides: In connection with any final distribution of assets pursuant to the standard termination of the plan under this subsection, the plan administrator shall distribute the assets in accordance with section 1344 of this title. In distributing such assets, the plan administrator shall

- (i) purchase irrevocable commitments from an insurer to provide all benefit liabilities under the plan, or
- (ii) in accordance with the provisions of the plan and any applicable regulations, otherwise fully provide all benefit liabilities under the plan. . . . n31

There was no dispute among the parties and the PBGC that paragraph (i) plainly refers to the purchase of annuities, and that paragraph (ii) authorizes the payment of lump sums to participants. Nor was there any dispute that annuities and lump sums were by far the most common distribution methods. n32 PACE argued, however, that the use of the term otherwise in the phrase otherwise fully provide all benefit liabilities under the plan expressly authorizes any other method that is the legal equivalent of the purchase of annuities. n33 The PBGC disagreed, arguing that the statute should not extend beyond longstanding ERISA practice of allowing standard terminations except through annuities or lump sums. n34 Deference to the PBGC. The Supreme Court acknowledged that the broad residual language in paragraph(ii) is potentially more embracing of alternative methods of plan termination, but concluded that the PBGC's policy of not allowing terminations by merger was based on a permissible construction of the statute. n35 The Court found it reasonable for the PBGC to determine both that merger does not fully provide all benefit liabilities under the plan the way annuities do, and that the statute generally distinguishes between merger and termination rather than treat merger as an example of termination. n36 The Court offered three points in support.

Three Reasons for the Courts Deference. *First*, the Court found that the purchase of annuities and the payment of lump sums severs the applicability of ERISA to the terminated plan and its sponsor. Once severance occurs, the PBGC no longer guarantees benefit payments and the employer ceases to pay ERISA insurance premiums to the PBGC. n37 The Court also found persuasive that the participants risk of nonpayment with an annuity relates solely to the solvency of an insurance company, and not the performance of the merged plans investments. n38 This criterion seems somewhat oddly stated, because in the case of an ongoing plan it is not so much the plans investments as it is the sponsors financial health that ultimately informs the participants risk of nonpayment, while in the case of an insurance

company it is very much the performance of the insurers investments that affects its solvency. But the Courts point appears to be that annuities from a solid insurer are safer than a plans future promise to pay benefits, a point with which most would agree.

The Court then contrasted the cessation of the ERISA regime that occurs when plan assets are distributed in the form of annuity contracts with the continuation that occurs in a merger. In a merger, the transferred assets of the plan are commingled with those of the transferee plan for use to pay any benefits under that plan, including those of workers who were not participants in the merged plan. If it is a complete transfer of assets and liabilities, the transferor plan is effectively swallowed up by the transferee plan, and the merged plans assets remain subject to regulation under ERISA and the participants benefits remain protected by PBGCs guarantee. To the extent the employer contributes to the merged plan, it too remains subject to ERISA regulation. n39

Second, the Court found that the labor provisions of ERISA expressly contemplate and allow sponsors to obtain a reversion of any residual assets after all benefit liabilities are satisfied in a standard termination. n40 But in the absence of a standard termination, a reversion would violate ERISAs anti-inurement rule, which prohibits plan assets from inuring to the benefit of the sponsor. n41 Under this rule, Crown could not simply have taken assets equal to the residue out of its plan, nor could it have done so once the assets had transferred to PIUMPF.

The Court also rejected PACEs argument that Crown could have avoided the problem by transferring only assets sufficient to cover plan liabilities and taking a reversion of the remainder, as that simply proved the existence of an ongoing residual plan in need of termination following the transfer. n42

Third, the Court found strong support in ERISAs structure. It noted that § 1341 does not address merger. That subject is instead addressed in entirely different areas of the statute, *e.g.*, § 1058 (dealing with mergers generally), § 1411 (dealing with mergers between multiemployer plans), and § 1412 (dealing specifically with mergers between single-employer and multiemployer plans). Indeed, section 1058 assumes that merger and termination differ from one another. Using language that expressly differentiates termination from merger, section 1058 prohibits a merger unless each participant in the plan would (*if the plan then terminated*) receive a benefit immediately after the merger at least as great as the benefit he or she would have received immediately before the merger . . . (*if the plan had then terminated*). n43

The Court also noted that there were significant differences in the PBGCs oversight role in a termination as compared to a merger. Under § 1341(a), the plan administrator must provide the PBGC with advance notice of the termination and significant data going to the financial health of the plan, and the PBGC can stop the termination if it determines that plan assets are insufficient to pay all liabilities. In a merger, the notice rules differ markedly, and the PBGC has less oversight and no ability to stop the transaction. The Court rejected as unworkable PACEs argument that sponsors should simply comply with both the merger and the § 1341 rules whenever the merger is intended to serve as a method of terminating the plan. n44

Finally, the Court took a parting shot at PACE, commenting that: For employers, the ill effects are demonstrated by the facts of this very case: by diligently funding its pension plans, Crown became the bait for a union bent on obtaining a surplus that was rightfully Crowns. n45

Conclusion. The Courts decision to uphold the PBGCs policy of disallowing merger as a permissible means of plan termination under section 1341(b) seems unlikely to make waves among benefits practitioners. If the Court had ruled that mergers were a permissible means of termination, employers would have been left wondering without a guidepost whether the standard termination rules or the merger rules apply to a particular merger transaction.

In many cases, employers would have had no practical choice but to seek to comply with both sets of rules. Furthermore, if the Court had ruled that administrators have a fiduciary duty to consider a merger when terminating a

plan, administrators (and others) would face a difficult time determining their obligations. For example, what criteria would the administrator use to determine whether a merger transaction is appropriate? How, if at all, would 29 C.F.R. § 2509.95-1 (the DOL's safest insurer rule) apply in a merger case? When would it be appropriate for an administrator to select merger over annuitization or lump sums? Since merger and termination are fundamentally different from a risk perspective, how should a fiduciary compare the two?

The PBGC assumed that at least some plans would end up being merged when they otherwise would have been annuitized, thereby tending to increase the agency's exposure to risk. n46

Although *Beck* holds that a plan merger is not a permissible means of distributing plan assets to implement a standard termination, that appears unlikely to have any chilling effect on future plan mergers, as mergers remain perfectly appropriate vehicles for accomplishing the labor-related business objectives that give rise to them in the first place. Indeed, many merger transactions are not part of a plan termination transaction. For example, in a merger consisting of a complete transfer of assets and liabilities, the transferor plan and its assets effectively are absorbed into the receiving plan. It is not a termination because the assets and liabilities remain within the ERISA regulatory scheme. For a merger that is part of a termination transaction, such as a merger followed by a reversionary termination of the residual plan, the *Beck* decision simply forecloses any argument that the merger transaction itself can be treated as the distribution of plan assets that § 1341(b)(3)(A) requires.

The Courts suggestion that PACE inappropriately pursued the merger solely to obtain the plans **\$5 million surplus appears to be belied by the fact that PACE's initial proposal contemplated merger into PIUMPF of all 17 of Crowns hourly plans, including the five underfunded PBGC-James River Agreement plans. It also would seem to be belied by the Courts own acknowledgment of the substantial ambiguity in § 1341(b)(3)(A)(ii) supporting PACE's position, wrong though PACE's position ultimately was found to be. Moreover, PACE's actions probably should be viewed in light of the fact that pensions are regarded under the law as a form of deferred compensation, not a gift by the employer. In many CBAs, the concern about the adequacy of pension funding is sufficiently high that the parties have negotiated and specified the plans actuarial assumptions in an effort to ensure that the plan will be fully funded or even overfunded. In such cases, it is hardly surprising that the union would want to keep the surplus within the ERISA system, even if in a particular case the union may fail.**

For US Supreme Court Briefs on this case, see *Beck v. PACE Intl Union*

For further discussion of pension plan mergers, see Employee Benefits Guide, Section 4.09, Pension Plan Mergers.

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n1 . E.g., *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 439-44 (1999); *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995).

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[2]. *See* 29 C.F.R. §§ 2509.95-1, 4041.28(c)(3) (2006); *Waller v. Blue Cross of California*, 32 F.3d 1337, 1343 & n.12 (9th Cir. 1994); *Bussian v. RJR Nabisco, Inc.*, 223 F.3d 286, 295-98 (5th Cir. 2000).

n3

[3]. *Beck v. PACE Intl Union*, 2007 U.S. LEXIS 7716 at **5-6, 25.

n4

[4]. *Beck v. PACE Intl Union*, 2007 U.S. LEXIS 7716 at **15-17.

n5

[5]. *Id.* at *26; *see also id.* at 7 (describing PACE as having interjected itself into Crowns termination discussions).

n6

[6]. *Id.* at *6. PACE was the product of a merger in January 1999 between the United Paperworkers International Union and the Oil, Chemical and Atomic Workers International Union, and today is part of the United Steelworkers union. *See* <http://www.usw.org/usw/program/content/3184.php>. PACE became the successor to Crowns collective bargaining agreements with the United Paperworkers International Union.

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[7]. *Beck v. PACE Intl Union*, 2007 U.S. LEXIS 7716 at *6; *see Beck v. PACE Intl Union*, 2003 U.S. Dist. LEXIS 2283 a *2.

n8

[8]. *Beck v. PACE Intl Union*, 427 F.3d 668, 671-72 (9th Cir. 2005); *Beck v. PACE Intl Union*, 2007 U.S. LEXIS 7716 at *6.

n9

[9]. *Beck v. PACE Intl Union*, 2003 U.S. Dist. LEXIS 2283 at *2; *Beck v. PACE Intl Union*, 2007 U.S. LEXIS 7716 at *6.

n10

[10]. *Beck v. PACE Intl Union*, 427 F.3d at 672; *Beck v. PACE Intl Union*, 2007 U.S. LEXIS 7716 at **6-7.

n11

[11]. Compare 29 U.S.C. § 1082 and 26 U.S.C. § 412 with 29 C.F.R. § 4044.41 to 4044.75. The PBGCs valuation regulation specifies the use of a very conservative interest rate for discounting plan liabilities. 29 C.F.R. § 4044.41 to 4044.75. All other things being equal, the more conservative the rate, the greater the underfunding. The Sixth and Tenth Circuits have held that the PBGCs valuation regulation is inapplicable in bankruptcy, and authorized instead the bankruptcy courts use of a prudent investor rate for discounting plan liabilities. *PBGC v. Belfance (In re CSC Indus., Inc.)*, 232 F.3d 505 (6th Cir. 2000); *PBGC v. CF & I Fabricators of Utah, Inc. (In re CF&I Fabricators of Utah, Inc.)*, 150 F.3d 1293 (10th Cir. 1998); see *In re Chateaugay Corp.*, 115 B.R. 760 (Bankr. S.D.N.Y. 1990). But see *In re US Airways Group, Inc.*, 303 B.R. 784, 792-94 (Bankr. E.D. Va. 2003) (holding that the court could not disregard the PBGCs valuation regulation based solely on fairness and equity arguments without statutory authority).

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[12]. *Beck v. PACE Intl Union*, 427 F.3d 668 at 672; *Beck v. PACE Intl Union*, 2003 U.S. Dist. LEXIS 2283 at **3-5.

n13

[13]. See 26 U.S.C. § 4980 (a), (d); id. §§ 61 & 111; id. § 11. Note that 26 U.S.C. § 4980 (d), the provision that increases the excise tax from 20% to 50% does not apply in bankruptcy.

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[14]. See 2007 WL 618888 at **93-94 (Joint Appendix, App. 10).

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[15]. *Beck v. PACE Intl Union*, 427 F.3d at 672.

n16

[16]. *Beck v. PACE Intl Union*, 2003 U.S. Dist. LEXIS 2283 at *3.

n17

[17]. *Beck v. PACE Intl Union*, 427 F.3d at 672 & n.3; see 2007 WL 618888 at **98-100 (Joint Appendix, App. 12); see generally *In re Crown Vantage, Inc. (Beck v. Fort James Corp.)*, 421 F.3d 963, 967-970 (9th Cir. 2005).

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[18]. See 29 U.S.C. §§ 1362, 1348.

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[19]. See 29 U.S.C. § 1342. There does not appear to be anything in the record suggesting that the PBGC believed it had grounds to involuntarily

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[20]. The PBGCs own position was that a merger is not a termination.

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[21]. E.g., *Beck v. PACE Intl Union*, 2007 U.S. LEXIS 7716 at *8; *Beck v. PACE Intl Union*, 427 F.3d at 672-73; *Beck v. PACE Intl Union*, 2003 U.S. Dist. LEXIS 2283 at **4-5.

n22

[22]. *Id.* In the typical Chapter 11 case, section 1113 of the Bankruptcy Code forces the debtor to engage in substantial bargaining negotiations with the union before it may reject its CBAs and thereby eliminate any

contract restrictions on the termination of its pension plans. The debtor must show that rejection is economically necessary to its reorganization. *11 U.S.C. § 1113 (b)(1)(A)*. Section 1113 by its terms does not apply to liquidation cases filed under Chapter 7 of the Bankruptcy Code, nor does it have any practical application to a liquidating Chapter 11 case such as *Beck*. See *In re Jones Truck Lines, Inc.*, 166 B.R. 885, 890 (Bankr. W.D. Ark. 1994).

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[23]. See 26 U.S.C. § 4980 (d)(6); *United States v. Reorganized CF & I Fabricators of Utah Inc.*, 518 U.S. 213 (1996).

n24

[24]. *Beck v. PACE Intl Union*, 2007 U.S. LEXIS 7716 at **8-10; *Beck v. PACE Intl Union*, 427 F.3d at 672-73.

n25

[25]. *Beck v. PACE Intl Union*, 427 F.3d at 675.

n26

[26]. *Id.* at 674-76.

n27

[27]. *Id.* at 676-78.

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[28]. *Beck v. PACE Intl Union*, 2007 U.S. LEXIS 7716 at **12-13.

n29

[29]. *Id.* at *13. A standard termination is one in which the plans assets are sufficient on a termination basis to pay all benefits accrued under the plan. A plan cannot be terminated when assets are insufficient to pay accrued benefits unless the employer is able to qualify for a distresstermination and thereby turn the plan over to the PBGC, or the PBGC itself involuntarily terminates the plan due to exigent circumstances. *See 29 U.S.C. §§ 1341 (c), 1342, 1362.*

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[30]. *Beck v. PACE Intl Union, 2007 U.S. LEXIS 7716* at *13.

n31

[31]. *29 U.S.C. § 1341 (b)(3)(A).*

n32

[32]. *Beck v. PACE Intl Union, 2007 U.S. LEXIS 7716* at *14.

n33

[33]. *Id.* at **17-18.

n34

[34]. *Id.* at *16-18.

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[35]. *Id.* at *17.

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[36]. *Id.* at *18.

n37

[37]. *Id.* at *19.

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[38]. *Id.*

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[39]. *Id.* at *19-20.

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[40]. *Id.* at *20 (citing 29 U.S.C. § 1344(d)(1), (3)).

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[41]. *Id.* at *20-21 (citing 29 U.S.C. § 1103(c)).

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[42]. *Id.* at *21 & n.5.

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[43]. *Id.* at *22.

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[44]. *Id.* at *23-25.

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[45]. *Id.* at *25.

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[46]. Brief for the United States as Amicus Curiae Supporting Petitioner at 29.

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