Former Senior PBGC Attorney Offers Practical Guidance on PBGC Distress and Involuntary Terminations

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Harold J. Ashner

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BOSTON, MA, UNITED STATES, September 17, 2026 / EINPresswire.com/ -- An underfunded pension plan may be manageable while a company is healthy. When the business is already under financial strain, however, the plan can threaten the company's survival. Termination may be the only workable course, even though it creates substantial liabilities to the Pension Benefit Guaranty Corporation ("PBGC").

In an article recently published in the Journal of Pension Planning & Compliance, Wagner Law Group Partner Harold J. Ashner discusses that problem and the practical choices that often determine whether a non-bankruptcy business-continuation case succeeds.

Ashner served as Assistant General Counsel for Legislation and Regulations at PBGC, where he drafted or supervised virtually all regulations and policies issued by PBGC from 1988 until he left the agency in 2005.

"Harold brings a rare combination of institutional knowledge and current case experience to these matters," said Marcia Wagner, Founder and Managing Partner of The Wagner Law Group. "He understands not only how PBGC's rules were developed, but how the agency's legal, actuarial, and financial teams apply them when a company's survival may be at stake."

The full article, PBGC Distress and Involuntary Terminations: A Brief Overview and Some Observations, has now been published and is available by [clicking here](). Among Ashner's practical observations:

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WHY PURSUE DISTRESS TEST 3 OUTSIDE BANKRUPTCY? If a company cannot afford its pension plan, terminating outside bankruptcy may seem to compound the problem by creating PBGC liabilities without a bankruptcy process for resolving them. But Distress Test 3 is intended to allow the employer to stay in business. PBGC understands that the test would serve little purpose if the resulting settlement were one the company could not afford.

DISTRESS ALONE DOES NOT MAKE THE CASE. The employer must establish both that it cannot continue with the plan and that it can continue after termination on realistic settlement terms. PBGC may question why it should take a loss when major creditors have not made concessions and may closely examine contribution assumptions and operating projections. If the projections assume a PBGC settlement, PBGC may treat that number as the opening offer. Ashner advises making it reasonable without being overly generous.

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> *Marcia S. Wagner, Founder and Managing Partner*

CONSIDER TALKING WITH PBGC BEFORE FILING. When circumstances permit, Ashner strongly recommends a pre-filing consultation. A high-level presentation gives the company an opportunity to hear PBGC's concerns while there is still time to improve the submission and, in some cases, may simplify or expedite the process. Once the proposed termination date has passed, Ashner generally recommends filing Form 601 promptly: the 120-day period is a deadline, not a target.

DO NOT LOSE SIGHT OF ONGOING PLAN ADMINISTRATION. The Notice of Intent to Terminate restricts participant loans, most lump sums, purchases of irrevocable commitments, and payment of PBGC premiums from plan assets, but ordinary plan administration continues.

Benefit payments continue, subject to applicable interim reductions, and missed funding obligations may continue to trigger excise-tax and lien issues.

ONE SIGNATURE CAN CHANGE THE NEGOTIATING POSITION. After PBGC approves the application and accepts the proposed termination date, it may send an agreement terminating the plan and appointing PBGC statutory trustee. Ashner's advice: "Don't sign that agreement until you have a settlement in place with PBGC." Signing creates the liabilities still being negotiated.

Settlement documents also must account for PBGC's different capacities. As guarantor, PBGC may assert claims for unfunded benefit liabilities, unpaid premiums, and termination premiums; as trustee, it may claim unpaid employer contributions. A general release may not cover both. IRS, rather than PBGC, administers minimum-funding excise taxes, and PBGC ordinarily will not immediately release potential fiduciary-breach claims.

SETTLEMENT DISCUSSIONS NEED NOT AWAIT FORMAL APPROVAL. More complicated settlements involving installments, collateral, future-profit payments, or other contingencies can take time to negotiate, so talk to the PBGC case team about settlement options early in the process. Whatever the structure, the company must be able to honor the agreement and remain in business. Ashner therefore starts with affordability rather than a recovery percentage: "If all you can afford to pay is $100,000," he writes, "it doesn't matter whether the PBGC liability is $200,000 or $200,000,000."

SOMETIMES THERE IS A SHORTER ROUTE. A distress termination is initiated by the plan administrator, while an involuntary termination is initiated by PBGC. But "involuntary" does not necessarily mean contested. PBGC often completes an involuntary termination by agreement - what Ashner calls a "consensual involuntary termination." For the right plan, that approach may avoid the full distress-termination process.

No one chooses this route when a fully funded standard termination is available. When it is not, early advice can matter, particularly before the company takes a step that cannot easily be undone.

Ashner is one of several former senior PBGC professionals in The Wagner Law Group's Washington, DC office. The team also includes Israel Goldowitz, former PBGC Chief Counsel and Deputy General Counsel for Program Law and Policy; Linda Rosenzweig, former Executive Assistant to the General Counsel; Camille Castro, former Senior Associate Participant and Plan Sponsor Advocate; John Langhans, former Deputy Manager of PBGC's Actuarial Services Division; John Henkel, former Supervisory Auditor for PBGC's Plan Termination Insurance Program; and Ellan Spring, formerly PBGC's primary program official on benefit policy.

Together, their backgrounds encompass PBGC legal policy, participant benefits, actuarial and financial analysis, and plan-termination administration.

Employers, plan administrators, restructuring professionals, lenders, actuaries, and other advisers dealing with an underfunded pension plan may contact Harold Ashner at hashner@wagnerlawgroup.com or (202) 969-2800 to discuss the available options.

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