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Pension Benefit Guaranty Corporation (PBGC)

Despite the Pension Protection Act of 2006 (PPA), the most sweeping reform of the United States' pension laws in over 30 years, many employer and multi-employer defined benefit plans will become insolvent in 2007 and the year ahead. There has been frequent chatter on the family law listserve regarding this issue and it will continue to become a point of discussion for any of your divorce cases that may involve one or more defined benefit pension plans. Some of these plans may already be in financial trouble while others are frantically working their way out of difficulties. Nonetheless, a repeat of the stock market woes between March 2000 and July 2002 or another September 11, 2001 incident could deliver a severe blow to the financial stability of many plans.

A plan is insolvent when its available financial resources are not sufficient to pay benefits when such benefits are due in a given plan year. An insolvent plan is required to pay benefits in a reduced amount, but at the highest level that can be paid from the available resources. If such resources are not adequate to pay benefits at the minimum levels specified by the PBGC, the plan must apply to the PBGC for financial assistance. The PBGC will loan the amount necessary to pay benefits at the guaranteed level. Reduced benefits may be restored if the plan's financial condition improves.

A plan that becomes insolvent *must provide prompt notification* of the insolvency to participants and beneficiaries (Alternate Payee's under a QDRO are beneficiaries), contributing employers, labor unions representing employees and PBGC. Additionally, participants and beneficiaries also must be notified regarding whether their benefits will be reduced, how their benefits will be reduced or affected as a result of the insolvency *including the automatic loss* of a lump sum option, if any.

What Does PBGC Guarantee?

PBGC guarantees basic benefits earned before a plan became insolvent. They include:

- Pension benefits at normal retirement age
- Most early retirement benefits
- Annuity benefits for survivors of plan participants
- Disability benefits for disabilities that occurred *prior to* the plan's insolvency

What does PBGC not guarantee?

- Health and welfare benefits

- Vacation pay
- Severance benefits
- Lump sum death benefits for a death that occurs after the date the plan ended
- Disability benefits for a disability that occurs after the date the plan ended

What are the Legal Limits on PBGC's Guarantees?

- PBGC does not guarantee any monthly pension amount greater than the monthly amount the plan would have provided or provide if the participant retired at the normal retirement age
- The maximum amount is set each year under provisions of ERISA
- If a plan was created or amended to increase benefits within 5 years before it ended, benefits may not be fully insured

What is the Amount of a Maximum Benefit Payable by the PBGC?

More than 90% of the participant's in plans taken over by the PBGC face no reduction in benefits due to legal limits on coverage, PBGC research states. The largest reductions occur in cases where participants earn pensions that significantly exceed the maximum insured benefit or where the plan provided generous early retirement subsidies. However, insured benefit entitlement is based upon whether the plan is single employer funded plan or a multi-employer funded plan. An example of a multi-employer funded plan would be most union plans covered under separate bargaining agreements.

For single employer funded plans that become insolvent in year 2007, the maximum annual benefit is $49,500.00 per year ($4,125.00 per month) at the normal retirement age. The amount is higher for those participants that choose to retire after age 65 and the maximum amount is lower for those participants that choose to retire at an earlier age than 65. For example, the maximum benefit payable to a 62-year-old participant is $3,258.75 per month. And at age 55 it is $1,856.25 per month. What is critically important to remember is that a plan that goes insolvent in year 2007, but a participant may not begin to collect benefits until a date into the future, the 2007 maximum insured limits still apply. In other words, a 45-year-old participant will not receive any adjustment or increase when he retires in 20 years at age 65, these limits will apply.

Under the multi-employer plan rules it is a little more complicated. The PBGC guarantees a monthly benefit payment equal to 100% of the first $11.00 of the plans' accrual rate, 75% of the next $33.00 of the accrual rate times the number of years of credited service. The maximum benefit is $35.75 per month times the number of years of credited service.

You can find more information about PBGC and information about plans that PBGC has already taken over at the PBGC website **www.pbgc.gov** or call PBGC toll-free at 1-800-400-7242.