

## PBGC Advice and Controversy

Miller & Chevalier's Title IV/PBGC Counseling and Controversy practice involving the Pension Benefit Guaranty Corporation (PBGC) includes consulting on ongoing administrative matters, corporate transactions including bankruptcies of plan sponsors, plan terminations, and funding disputes. Additionally, our team also has significant experience in navigating the administrative appeals process, and in litigating matters against the PBGC when a matter cannot be resolved administratively.

### REPRESENTATIVE ENGAGEMENTS

- Bankruptcy and Early Warning Program: After a client filed a proposed plan of reorganization in the bankruptcy that implicated its defined benefit retirement plan, the PBGC filed objections to the reorganization plan, arguing that its rights under Title IV of ERISA would be impaired. Drawing on its extensive experience of litigating PBGC claims, Miller & Chevalier represented the client in responding to the PBGC's objections under ERISA. This engagement required intensive negotiation over various agreements with the PBGC, and deep substantive knowledge of the PBGC's regulatory structure. The PBGC ultimately withdrew its objection, clearing the way for the client to emerge from bankruptcy.
- Subsidiary spin-off: A client spun off a subsidiary along with the portion of the client's pension plan benefiting the subsidiary's current and former employees. Years later, the subsidiary went into bankruptcy and the PBGC took over the subsidiary's plan in a distress termination. The PBGC came back to the client looking for detailed, historical information from the pension plan's records with respect to the subsidiary's current and former employees, much of which the client no longer maintained. We were engaged to help the client work with the PBGC. After reviewing the documentation we provided, the PBGC did not pursue the matter further.
- Subsidiary Spin-off: Miller & Chevalier counseled a high-profile company involved in the spinoff of a subsidiary. When news of the potential spin-off was reported in the Wall Street Journal, the PBGC began inquiring into the assets of the pension plan and the plan sponsor's future intentions regarding the plan. The PBGC did not pursue the matter further once we confirmed that the plan would remain at the parent level.
- Complex Plan Terminations: A government contractor was in the process of closing down operations at a time when it still maintained five different pension plans. The PBGC sought assurances regarding funding. When the plans were terminated, the plans remained underfunded although the plan sponsor entered into a statement of intent to fund the plans. In addition to dealing with the PBGC's concerns over the sponsor's financial health, the client required additional time to obtain assets from the government to fund the final termination. This engagement required several high-level meetings with the PBGC to discuss plan funding and to obtain PBGC concessions regarding termination timing.
- Premium audit: The PBGC inquired about the financial status of a plan sponsor and potential reportable events. This project required completion of a late reportable event filing and submission of a reasonable cause statement. The PBGC did not assert any penalties or sanctions.
- Funding issues: We routinely advise clients concerning bases for voluntary and involuntary termination, creation of PBGC liens, and extraterritorial enforcement of PBGC liens and judgments.
- Controversy: The firm has been involved in litigation against (and administrative appeals before) the PBGC relating to some of the largest pension plan termination matters in the agency's history, including Delphi (*Black, et al. v. PBGC*, No. 2:09-cv-13616 (E.D. Mich.)), Delta Air Lines (*Lewis, et al., v. PBGC*, 15-1328 (D.D.C.)) and U.S. Airways (*Davis v. PBGC*, No. 12-5274 (D.C. Cir.)). These suits involve novel issues under Title IV of ERISA, including the statutory and constitutional limits on the PBGC's ability to terminate pension plans, the appropriate amount of deference owed to the PBGC depending upon the statutory function at issue and the proper interpretation of Title IV's asset allocation system.

### GOVERNMENT EXPERIENCE

- Deputy Associate Solicitor, Office of the Solicitor, U.S. Department of Labor
- Senior Trial Attorney, Office of the Solicitor, U.S. Department of Labor
- ERISA Counsel, Regional Office of the Solicitor, U.S. Department of Labor
- ERISA Trial Attorney, Regional Office of the Solicitor, U.S. Department of Labor