

ELIMINATING NEED TO POST SECURITY WITH PBGC IN CONNECTION WITH FACILITY SHUTDOWN

Hodgson Russ assisted a large, multinational corporation with respect to liability for posting of security with the Pension Benefit Guaranty Corporation (PBGC) under Employee Retirement Income Security Act of 1974 (ERISA) Section 4062(e). Under ERISA Section 4062(e), if there is a cessation of business operations that results in more than 20 percent of active participants separating from employment, the employer is required to deposit a calculated amount into an escrow account with the PBGC or obtain a bond in favor of the PBGC. In connection with this representation, the client was ultimately able to demonstrate to the PBGC that there was no additional risk to the PBGC as a result of the cessation of operations. As a result, the employer was able to avoid the need to post security with the PBGC. This was a very favorable result because the PBGC has become extremely active in pursuing security or other means of promoting plan solvency in these situations.

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