

# Pension Dumping: The Reasons, the Wreckage, the Stakes for Wall Street

(Bloomberg Press, 2008)

BY FRAN HAWTHORNE

**P**ENSION DUMPING BY FRAN HAWTHORNE is almost the book I wish I had written. Her research has been extensive, and she has interviewed a wide range of players in the lucrative trade of shedding pension plans while sticking the Pension Benefit Guaranty Corp. (PBGC) with the butcher's bill. Not surprisingly, former Academy Senior Pension Fellow Ron Gebhardtbauer, who used to be chief actuary for the PBGC, is quoted a number of times: Early in the book he recalls seeing signs proclaiming Wheeling-Pittsburgh to be a lean and mean company. "I thought, yeah, you can compete, because we've taken over the pension."

In the 34 years since ERISA was enacted to prevent employees from being shorn of their pension rights, the defined benefit (DB) pension plan has become an endangered species. Perhaps courts would give more deference to pension promises if the EPA *did* declare the DB plan endangered. Certainly the dreams held by the drafters of ERISA have not come to pass, and few of them could have envisioned the current environment, with union membership at a historic low and the key industries of that era now struggling to rid themselves of the "legacy costs" of employee benefits.

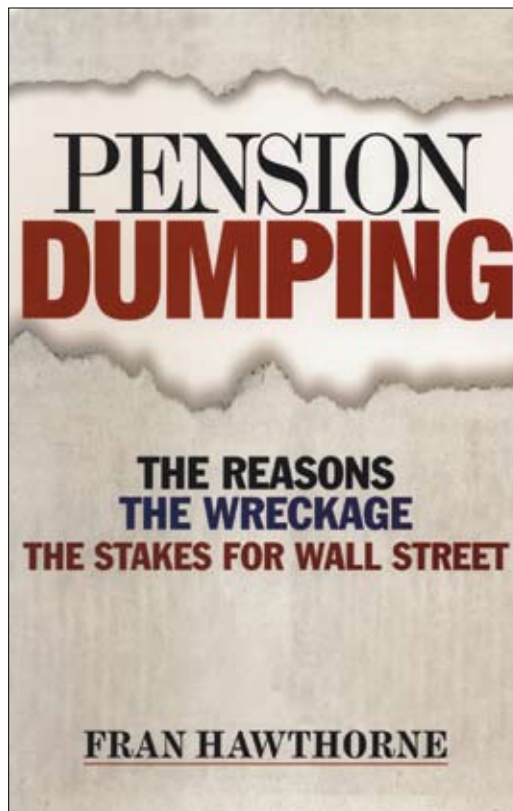
Fran Hawthorne has a harsh view of ERISA. "Because ERISA left the requirements for paying for the pension promises unclear, companies let the red ink pile up year after year. Because ERISA made it logistically easy to shed a plan, the PBGC was deluged...The result was to push companies to do the complete opposite of what ERISA was supposed to accomplish—prudent long-term funding and planning. In short, ERISA was written with sand under many of its pillars. Disaster was only waiting for the next strong wind."

Speaking as an actuary who had the unfortunate responsibility to terminate several large plans during the mid-1980s, I disagree that it was "logistically easy to shed a plan." I remember long nights strug-

gling to determine final accrued benefits for thousands of workers with inadequate computer resources and wrestling with the intricacies of PBGC regulations, including the infamous "Joint Implementation Guidelines." Nor were the plan sponsors I dealt with eager to terminate their pension plans, despite their ability to transfer their underfunding to the PBGC. Moreover, I think ERISA was exceptionally well thought out and worked extremely well on the whole. Much of the present dearth of DB pension plans should be laid at the door of later legislation, in particular the Tax Reform Act of 1986, as well as the law that created 401(k) plans.

It is *de rigueur* now to bemoan the deficit of the PBGC, and to regard it as a looming savings-and-loan-type bailout at taxpayer expense. In fact, the financial peril apparently faced by the PBGC was a key driver for the passage of the Pension Protection Act of 2006. Few stop to recognize that the PBGC has done exactly what it was intended to do, namely, prevent rank-and-file workers from losing their pensions when their employers went bankrupt. Like Social Security, it was never intended to cover everything, but hundreds of thousands, if not millions, of retirees are receiving pension checks they would otherwise have lost had it not been for ERISA and the PBGC.

Fran Hawthorne does not consider ERISA the only, or even the main, culprit behind the termination of pension plans. She has some choice words for the Bankruptcy Reform Act of 1978: "Bankruptcy judges favor corporate management because



the law in essence pushes them to... (T)he new code changed previous laws ...to give existing corporate management—the management that probably got the company into trouble in the first place—more control over the bankruptcy process.” Later she notes that “Pension funding does not fall into any of the ‘essential’ categories. After all, the people getting the pensions are no longer working at the company, by definition, and thus they can’t be essential to the company’s long-term survival.”

She also recognizes that trends in demographics, health care, labor-management relations, and globalization have played a large role in the decline of DB plans. Surprisingly, she does not comment on one of the key trends that has created problems for these plans: the

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decades-long decline in interest rates. In June of 1984, the 30-year Treasury rate was 13.43 percent. Five years later, it was 8.47 percent, and five years after that, 7.06 percent. Today it is 4.52 percent. The impact on pension liabilities of such a pronounced drop in interest rates cannot be overstated. A plan that was well

funded at 7 percent can only be poorly funded at 4 ½ percent, and the days when 8 ½ percent was easy to obtain are a distant memory now.

Sadly, a book with the provocative title of *Pension Dumping* ends with almost a blessing of the phenomenon: “By dumping the pension plan that was supposed to provide a stipend for workers *after* they retire, a company might have enough money to stay in business and provide respectable wages for those workers *before* they retire. That isn’t what Congress intended when it passed ERISA. But it could provide a paradigm that might work.” ●

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