UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN

PENSION BENEFIT GUARANTY CORPORATION 1200 K Street, N.W. Washington, DC 20005 Plaintiff, v. TRAVELERS AID SOCIETY OF METROPOLITAN DETROIT 65 Cadillac Square Suite 3000 Detroit, MI 48226 REGISTERED AGENT E.B. Thomas 65 Cadillac Square Suite 3000 Detroit, MI 48226 Defendant.	Civil Action No. 2:16-cv-11497 **COMPLAINT**

PRELIMINARY STATEMENT

1. This action arises under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1001-1461 (2012 & Supp. II 2014). Plaintiff, the Pension Benefit Guaranty Corporation ("PBGC"), brings this action to collect from Defendant, Travelers Aid Society of Metropolitan Detroit ("TASMD"): (1) the statutory liability arising under 29 U.S.C. §§ 1362(a), (b) and 1364 for unfunded benefit liabilities owed to PBGC as a result of the termination of the United Way for Southeastern Michigan Affiliated Entities Pension Plan (the "Pension Plan"); and (2) the statutory liability arising under 29 U.S.C. §§ 1306 and 1307 for termination premiums owed to PBGC.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action, without regard to the amount in controversy, under 28 U.S.C. § 1331 and under 29 U.S.C. § 1303(e)(3).

3. Venue properly lies with this Court under 29 U.S.C. § 1303(e)(2).

PARTIES

4. PBGC is a wholly owned United States government corporation established under 29 U.S.C. § 1302(a) to administer and enforce the pension plan termination insurance program established by Title IV of ERISA. PBGC guarantees the payment of certain pension benefits upon the termination of single and multiple employer plans covered by Title IV of ERISA.

5. TASMD was formed in Michigan and is a Domestic Nonprofit Corporation pursuant to local laws and regulations. TASMD's primary place of business is in Detroit, Michigan. Travelers was a contributing sponsor of the Pension Plan.

STATUTORY AND REGULATORY BACKGROUND

6. Congress established PBGC to administer the federal defined benefit pension insurance program. Its mission is to: (1) encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants; (2) provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under pension plans covered by Title IV of ERISA; and (3) maintain premiums at the lowest level possible. 29 U.S.C. § 1302(a).

7. As the insurer of pension plans covered by Title IV of ERISA, PBGC generally becomes trustee of a pension plan when a pension plan terminates without sufficient assets to

pay benefits and, subject to certain statutory limitations, PBGC pays the pension plan's unfunded benefits from PBGC's insurance funds. *See* 29 U.S.C. §§ 1321, 1322, 1361.

8. Title IV of ERISA constitutes the exclusive means by which a pension plan covered by Title IV of ERISA may be terminated. 29 U.S.C. § 1341.

9. If a pension plan lacks sufficient assets to pay accrued benefits, and PBGC determines that certain statutory criteria have been met, PBGC may initiate termination under 29 U.S.C. § 1342.

10. Under 29 U.S.C. §§ 1362, each person who is, on the effective termination date of the pension plan, a contributing sponsor of a pension plan covered under Title IV of ERISA, as that term is defined in 29 U.S.C. § 1301(a)(13), or a member of the contributing sponsor's controlled group, as that term is defined in 29 U.S.C. § 1301(a)(14), shall incur joint and several liability to PBGC for the total amount of the pension plan's unfunded benefit liabilities, as that term is defined in 29 U.S.C. § 1301(a)(18) and 29 C.F.R. § 4062.3(a), together with interest ("Employer Liability").

11. Single employer pension plans that have two or more "contributing sponsors" at least two of which are not "under common control", are defined as multiple employer plans. 29 C.F.R. § 4001.2. Under 29 U.S.C. § 1364(a), all contributing sponsors of a multiple employer plan that terminated under 29 U.S.C. §§ 1341(c) or 1342, who at any time within the 5 plan years preceding the date of termination, made contributions to the pension plan, are subject to liability under 29 U.S.C. § 1364(b).

12. Under 29 U.S.C. § 1362, PBGC determines the aggregate Employer Liability of the contributing sponsors and former contributing sponsors, and each member of their controlled

groups, and allocates such liability in accordance with 29 U.S.C § 1364 to each contributing sponsors that made contributions within the 5 plan years preceding plan termination (the "Allocated Employer Liability").

13. Under 29 U.S.C. §§ 1306(a)(7), 1307 and 29 C.F.R. §§ 4006.7, 4007, when a single employer pension plan covered under Title IV of ERISA is terminated under 29 U.S.C. § 1342, each person who is, on the date of plan termination, a contributing sponsor of the pension plan or a member of the contributing sponsor's controlled group, incurs joint and several liability to PBGC for three termination premiums, of $1,250 multiplied by the number of pension plan participants immediately before the date of plan termination ("Termination Premium"). Generally, under 29 U.S.C. § 1306(a)(7)(c), the initial termination premium is due the first month following the month in which the termination date occurs. The remaining termination premiums are due each of the first two 12-month periods immediately following the date the initial termination premium is due.

THE PENSION PLAN

14. On October 1, 1945, the United Way Community Services of Metropolitan Detroit, now known as United Way for Southeastern Michigan, established a defined benefit pension plan named the Employee Benefits Plan for United Community Services of Metropolitan Detroit and Affiliated Agencies.

15. The original pension plan was thereafter amended and restated from time to time and, effective July 1, 1995, was renamed the Employee Benefits Plan of United Way for Southeastern Michigan and Affiliated Agencies (defined above as the "Pension Plan").

16. On December 22, 2003, the Internal Revenue Service issued a favorable determination letter for the Pension Plan.

17. At all relevant times, the Pension Plan has been covered by the pension plan termination insurance program established under Title IV of ERISA.

18. At all relevant times, the Investment Subcommittee of the Finance Committee of United Way for Southeastern Michigan and Affiliated Agencies was the administrator of the Pension Plan under 29 U.S.C. § 1002(16).

19. At all relevant times, TASMD was a contributing sponsor of the Pension Plan, within the meaning of 29 U.S.C. § 1301(a)(1), (13). For the five years preceding the Pension Plan's termination, TASMD made contributions to the Pension Plan totaling $230,430. TASMD's contributions accounted for 1.42% of all contributions to the Pension Plan for the five years preceding the Pension Plan's termination.

20. On May 16, 2012, PBGC issued notice to the Pension Plan's administrator, the Investment Subcommittee of the Finance Committee of United Way for Southeastern Michigan and Affiliated Agencies, of PBGC's determination pursuant to 29 U.S.C. § 1342(a) that the Pension Plan should be terminated.

21. By agreement between PBGC and the Investment Subcommittee of the Finance Committee of United Way for Southeastern Michigan and Affiliated Agencies entered into on June 28, 2012, the Pension Plan was terminated under 29 U.S.C. §§ 1342 and 1348, with an effective termination date of March 1, 2010 ("Date of Plan Termination").

COUNT I
STATUTORY LIABILITY FOR UNFUNDED BENEFITS PROMISED UNDER THE PENSION PLAN

22. PBGC hereby realleges and incorporates by reference each and every allegation in paragraphs 1 through 21 of this Complaint.

23. On the Date of Plan Termination, PBGC estimates that the Pension Plan had $23,577,183 of unfunded benefit liabilities.

24. On the Date Plan Termination, TASMD was a contributing sponsor of the Pension Plan.

25. TASMD was required to contribute $230,430 in the five plan years preceding the Date of Plan Termination, out of a total $16,231,855 in required contributions for the same five plan years. TASMD's total contributions over the cumulative required contributions for the Pension Plan equals TASMD's proportional contribution percentage for the applicable 5-year period (the "Contribution Percentage"). TASMD's Contribution Percentage for the applicable five year period was approximately 1.42%. TASMD's Allocated Employer Liability under 29 U.S.C. § 1364(b) is $334,705.45, which is equal to TASMD's pro rata share of the $23,577,183 of the Pension Plan's total Employer Liability, based on TASMD's Contribution Percentage.

26. Under regulations prescribed by PBGC, interest on the Employer Liability is compounded daily and accrues at the rate prescribed in section 6601(a) of the Internal Revenue Code ("IRC"). *See* 29 C.F.R. § 4062.7(a), (c).

27. From March 1, 2010, interest has accrued on the Employer Liability for the Pension Plan.

28. TASMD is liable to PBGC for $334,705.35 for its Allocated Employer Liability plus interest accruing since the Date of Plan Termination. *See* 29 U.S.C. § 1362(b) (liability for amount of unfunded benefit liabilities); 29 U.S.C. § 1301(a)(18) (defining "amount of unfunded benefit liabilities"); 29 U.S.C. § 1364(b). From March 1, 2010 to April 1, 2016, interest in the amount of $72,468.91 has accrued on TASMD's Allocated Employer Liability, and interest continues to accrue.

29. On May 18, 2013, PBGC sent a letter to TASMD demanding payment of TASMD's Allocated Employer Liability. TASMD has not tendered payment.

COUNT II
STATUTORY LIABILITY FOR UNPAID TERMINATION PREMIUMS

30. PBGC hereby realleges and incorporates by reference each and every allegation in paragraphs 1 through 29 of this Complaint.

31. As a result of the termination of the Pension Plan, TASMD, as a contributing sponsor of the Pension Plan, was required to pay Termination Premiums to PBGC. *See* 29 U.S.C. § 1306(a)(7).

32. The Pension Plan had 1,572 participants on the Date of Plan Termination, and 41 of those participants are former employees of TASMD. The combined amount of the three annual Termination Premiums due for the entire Pension Plan was $1,965,000 per year. The amount of each of the three Termination Premiums due that were attributable to the TASMD participants was $51,250.

33. TASMD failed to pay Termination Premiums totaling $51,250 due on July 30, 2012. Interest continues to accrue. TASMD also failed to pay the additional Termination

Premiums on July 30, 2013 and July 30, 2014. Together, TASMD owes $153,750 in Termination Premiums.

34. Under regulations prescribed by PBGC, interest on the Termination Premiums is compounded daily and accrues at the rate prescribed in section 6601(a) of the IRC. *See* 29 C.F.R. § 4007.7.

35. TASMD is liable to PBGC for $153,750 in Termination Premiums, plus interest from the dates payments were due.

COUNT III
JUDGMENT FOR FEES AND COSTS INCURRED BY PBGC IN CONNECTION WITH THIS ACTION

36. PBGC hereby realleges and incorporates by reference each and every allegation in paragraphs 1 through 35 of this Complaint.

37. PBGC will devote substantial time and expense to the pursuit and presentation of its claims in this action. Under 29 U.S.C. § 1303(e)(5), the Court may award PBGC all or a portion of its costs of litigation incurred in any action. PBGC seeks such costs in connection with the pursuit and presentation of its claims in this action.

RELIEF REQUESTED

WHEREFORE, PBGC requests that this Court grant the following relief:

1. Judgment in favor of PBGC against TASMD for Employer Liability owed to PBGC in the amount of $334,705.45, together with interest accruing from the Date of Plan Termination in accordance with 29 C.F.R. § 4062.7(a), (c);

2. Judgment in favor of PBGC against TASMD for Termination Premiums owed to PBGC, in the amount of $153,750, together with interest calculated in accordance with 29 C.F.R. §§ 4007.7, 4007.13(c);

3. Award PBGC all of its costs of litigation in this action pursuant to 29 U.S.C. § 1303(e)(5); and

4. Award such other further relief that is just and proper.

Dated: April 26, 2016
Washington, D.C.

Respectfully submitted,

LOCAL COUNSEL:

/s/ Peter A. Caplan
BARBARA L. McQUADE
United States Attorney
PETER A. CAPLAN
Assistant United States Attorney
211 W. Fort Street, Ste. 2001
Detroit, MI 48226
Phone: (313) 226-9784
Fax: (313) 226-3800
Email: peter.caplan@usdoj.gov
P30643

/s/ Jon M. Chatalian
ISRAEL GOLDOWITZ
Chief Counsel
CHARLES L. FINKE
Deputy Chief Counsel
JOEL W. RUDERMAN
Assistant Chief Counsel
JON M. CHATALIAN
MARY A. PETROVIC
Attorneys
Pension Benefit Guaranty Corporation
Office of the Chief Counsel
1200 K Street, N.W.
Washington, D.C. 20005
Phone: (202) 326-4020 ext. 6757
Fax: (202) 326-4112
Emails: chatalian.jon@pbgc.gov and
efile@pbgc.gov

Attorneys for Plaintiff
Pension Benefit Guaranty Corporation