

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

BAPTIST HEALING HOSPITAL TRUST,

Plaintiff,

v.

PENSION BENEFIT GUARANTY  
CORPORATION,

Defendant.

Case No. 3:16-cv-00022

Judge William J. Haynes, Jr.  
Magistrate Judge Joe Brown

**THE PENSION BENEFIT GUARANTY CORPORATION'S MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT OR, IN THE ALTERNATIVE,  
TRANSFER VENUE TO THE DISTRICT OF COLUMBIA**

For the reasons set forth in the accompanying Memorandum of Law, the Pension Benefit Guaranty Corporation moves to dismiss Plaintiff Baptist Healing Hospital Trust's Complaint for Declaratory Judgment pursuant to Rule 12(b)(3) and (b)(6) of the Federal Rules of Civil Procedure. In the alternative, PBGC requests that this matter be transferred pursuant to 28 U.S.C. §§ 1404(a) and 1406(a) to the District of Columbia, the only appropriate venue for this action.

WHEREFORE, the PBGC requests that the Court enter an Order:

1. granting the Motion to Dismiss Plaintiff's Complaint;
2. dismissing the Complaint for Declaratory Judgment; and

3. granting such other and further relief as the Court deems appropriate.

Dated: February 9, 2016  
Washington, D.C.

Respectfully submitted,

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**THE PENSION BENEFIT GUARANTY CORPORATION'S MEMORANDUM OF LAW  
IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT OR, IN THE  
ALTERNATIVE, TRANSFER VENUE TO THE DISTRICT OF COLUMBIA**

Dated: Washington, D.C.  
February 9, 2016

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The Pension Benefit Guaranty Corporation (“PBGC”) moves to dismiss Baptist Healing Hospital Trust’s (the “Healing Trust”) Complaint for Declaratory Judgment (the “Complaint”)<sup>1</sup> pursuant to Rule 12(b)(3) and (b)(6) of the Federal Rules of Civil Procedure because the Pension Plan is not a church plan and the United States Bankruptcy Court for the Middle District of Tennessee has already determined that PBGC has standing to pursue claims on behalf of the Pension Plan. Backed by the Bankruptcy Court orders, PBGC has been for the past three years protecting the retirement benefits of thousands of former Baptist Hospital workers and their beneficiaries. In the Complaint,<sup>2</sup> the Healing Trust seeks a declaration from this Court that the Baptist Hospital System, Inc. Pension Plan (the “Pension Plan”) is exempt from coverage under Title IV of the Employee Retirement Income Security Act of 1974 (“ERISA”)<sup>3</sup> as a “church plan.” In other words, the Healing Trust asserts that PBGC has acted improperly.

This memorandum will show, however, that this Court should dismiss the Complaint because: (i) the declaratory-judgment action is an impermissible collateral attack on the final order of the bankruptcy court, barred by the doctrine of res judicata; (ii) the declaratory-judgment action is equitably moot; (iii) the Complaint fails to plausibly allege that the Pension Plan is a church plan and thus exempt from coverage under Title IV of ERISA; and (iv) venue is improper in this Court under ERISA.

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<sup>1</sup> The Healing Trust filed the Complaint on January 12, 2016, and its “Motion to Stay Arbitration Involving These Same Parties” on January 15, 2016. PBGC and the United States were not served in accordance with the Federal Rules of Civil Procedure prior to PBGC filing a Notice of Appearance on February 1, 2016. As such, PBGC’s deadline to answer or respond to the Complaint runs therefore from February 1, 2016. Contemporaneously with filing this Motion to Dismiss or, in the Alternative, Transfer Venue, PBGC filed its Opposition to the Motion to Stay Arbitration. PBGC does not concede or waive any of its defenses to the Complaint under the Federal Rules of Civil Procedure, nor any statutory or affirmative defenses that may be available to it.

<sup>2</sup> Compl. at 3, *Baptist Healing Hospital Trust v. Pension Benefit Guaranty Corporation*, No. 16-00022 (M.D. Tenn. Jan. 12, 2016).

<sup>3</sup> 29 U.S.C. §§ 1301-1461 (2012 & Supp. II 2014).

In the alternative, if this Court declines to dismiss this matter, PBGC requests that this matter be transferred pursuant to 28 U.S.C. §§ 1404(a) and 1406(a) to the District of Columbia, the only statutorily appropriate venue for this action.

## **BACKGROUND**

### **PBGC and ERISA**

PBGC is the United States government agency that administers the nation's pension insurance program under Title IV of ERISA. The program guarantees a secure, predictable retirement for approximately 40 million American workers in nearly 24,000 pension plans.<sup>4</sup> When a pension plan covered by Title IV terminates without sufficient assets to pay employer-promised benefits, PBGC typically becomes the statutory trustee of the plan and pays covered benefits up to the limits established by Title IV.<sup>5</sup> "PBGC's purpose is to ensure that retirees receive pension benefits they have earned, even if their employer has terminated their pension plan or is otherwise unwilling or unable to pay."<sup>6</sup>

### **Baptist Hospital System, Inc. Retirement Plan**

The Pension Plan is a single-employer defined benefit pension plan covered by Title IV of ERISA.<sup>7</sup> The Pension Plan has more than 2,000 participants residing generally in Tennessee.<sup>8</sup>

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<sup>4</sup> 2015 PBGC Annual Report at 2, <http://www.pbgc.gov/Documents/2015-annual-report.pdf>.

<sup>5</sup> See 29 U.S.C. §§ 1321, 1322, and 1361.

<sup>6</sup> *Sara Lee Corp. v. Am. Bakers Ass'n Ret. Plan*, 512 F. Supp. 2d 32, 34-35 (D.D.C. 2007) (citing *Mead Corp. v. Tilley*, 490 U.S. 714, 717-18 (1989)).

<sup>7</sup> See 29 U.S.C. § 1321.

<sup>8</sup> Amended Disclosure Statement to Accompany Chapter 11 Plan of Liquidation, *In re BHI* at 7, Case No. 12-11744, (Bankr. M.D. Tenn. Oct. 16, 2013), ECF No. 98-2. Attached as Ex. A is a true and correct copy of the Amended Disclosure Statement to Accompany Chapter 11 Plan of Liquidation. See *Lee v. Dell Prods., LP*, 236 F.R.D. 358, 361 (M.D. Tenn. 2006) (holding that a court may take judicial notice of pleadings filed in another litigation).

As of August 30, 2013, the Pension Plan was underfunded on a termination basis by more than \$100 million.<sup>9</sup>

Baptist Hospital System, Inc. (“Baptist Hospital”) was the sponsor of the Pension Plan from 1960 through 2013. In 2001, however, Baptist Hospital’s name was changed to BH1 as part of the sale of the hospital. During the bankruptcy of BH1 (filed on December 28, 2012, and discussed below), PBGC concluded that the Pension Plan must be terminated in order to protect the interests of the participants of the Pension Plan.<sup>10</sup> On December 11, 2013, BH1, as the plan administrator, and PBGC entered into an agreement to terminate the Pension Plan and appoint PBGC as the Pension Plan’s statutory trustee (the “Trusteeship Agreement”).<sup>11</sup>

As its statutory trustee, PBGC has with respect to the Pension Plan all of the rights and powers of a trustee specified in ERISA or otherwise granted by law, including the right to collect any amounts owed to the Pension Plan, and the right to enforce contracts.<sup>12</sup> Specifically, PBGC’s authority includes the rights:

to do any act authorized by the plan or this subchapter to be done by the plan administrator or any trustee of the plan; . . . to collect for the plan any amounts due the plan, including but not limited to the power to collect from the persons obligated to meet the requirements of section 1082 of this title or the terms of the plan; . . . to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan.<sup>13</sup>

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<sup>9</sup> Amended Disclosure Statement to Accompany Chapter 11 Plan of Liquidation at 13, 15, *In re BH1*, No. 12-11744 (Bankr. M.D. Tenn. Oct. 16, 2013), ECF No. 98-2.

<sup>10</sup> *See* 29 U.S.C. § 1342(c).

<sup>11</sup> *See* 29 U.S.C. § 1342(b), (c). Section 1342(c) authorizes the termination of a pension plan and appointment of a trustee if the PBGC and the plan administrator agree. Attached as Ex. B is a true and correct copy of the Trusteeship Agreement.

<sup>12</sup> *See* 29 U.S.C. § 1342(d).

<sup>13</sup> 29 U.S.C. § 1342(b), (d).

## **The Asset Purchase Agreement and the Creation of the Healing Trust**

On November 14, 2001, Baptist Hospital (now known as BH1) sold its assets under an asset purchase agreement (“APA”) to Seton Corporation, Ascension Health, and Tennessee Health Corporation d/b/a St. Thomas Baptist Health Corporation. Before the close of the sale, the Healing Trust was established as a Tennessee not-for-profit corporation. Under the APA, in exchange for substantial monetary consideration, the Healing Trust guaranteed all of Baptist Hospital’s obligations to the Pension Plan.<sup>14</sup> Schedule 4.17 of the APA listed the Pension Plan as an employee benefit plan covered under ERISA.<sup>15</sup>

## **BH1’s Bankruptcy**

On December 28, 2012, BH1 filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Tennessee (the “Bankruptcy Court”), and its assets were subsequently liquidated pursuant to a confirmed plan of liquidation (the “Liquidation Plan”), effective December 16, 2013.<sup>16</sup> According to BH1’s bankruptcy schedules, PBGC was the only significant creditor in the bankruptcy proceeding. Because the second largest unsecured creditor in the BH1’s bankruptcy schedules had a claim of \$570, absent BH1’s liabilities to the Pension Plan, BH1 would have been solvent.<sup>17</sup>

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<sup>14</sup> The APA contains a confidentiality provision banning its disclosure without the written consent of all parties thereto. The Healing Trust stated that it is submitting the APA for in camera review. Memorandum of Law in Support of Baptist Healing Hospital Trust’s Motion to Stay Arbitration Involving These Same Parties at 2, *Baptist Healing Hospital Trust v. Pension Benefit Guaranty Corporation*, No. 16-00022 (M.D. Tenn. Jan. 12, 2016).

<sup>15</sup> APA, Schedule 4.17.

<sup>16</sup> *In re BHI*, No. 12-11744, (Bankr. M.D. Tenn. Dec. 28, 2012), ECF No. 98-3. Attached as Ex. C is a true and correct copy of the Liquidation Plan.

<sup>17</sup> *In re BHI*, No. 12-11744, (Bankr. M.D. Tenn. Dec. 28, 2012), ECF No. 14. Attached as Ex. D is a true and correct copy of BH1’s bankruptcy schedules.

On September 23, 2013, BH1 and PBGC jointly moved the Bankruptcy Court for an order granting PBGC the authority to commence and prosecute all actions relating to the APA on behalf of BH1 and the Pension Plan.<sup>18</sup> On October 25, 2013, the Bankruptcy Court entered an Order granting PBGC standing to pursue all claims belonging to BH1 and the Pension Plan relating to the APA and to commence and prosecute an action or actions asserting any and all associated claims.<sup>19</sup> Neither the Healing Trust nor any other party opposed the joint motion or otherwise filed a pleading that challenged the Order or argued that the Pension Plan was exempt from Title IV of ERISA as a “church plan.” In fact, in its Liquidating Chapter 11 Plan, BH1 defined the Pension Plan as “a tax qualified pension plan which is covered by the Pension Plan Termination Insurance Program established under Title IV of ERISA.”<sup>20</sup>

### **Demands Made on the Healing Trust**

In 2011, BH1 determined that it was financially incapable of making future funding contributions to the Pension Plan required under ERISA and the Internal Revenue Code.<sup>21</sup> Beginning in 2011 and continuing through 2012, BH1 requested that the Healing Trust make the funding contributions owed to the Pension Plan for the 2013, 2014, and subsequent plan years, as required under the Healing Trust’s contractual guaranties in the APA.<sup>22</sup> BH1 made these

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<sup>18</sup> See Joint Mot. of the Debtor and the Pension Benefit Guaranty Corporation Pursuant to Sections 105 and 1109(b) of the Bankruptcy Code for Authority to Commence and Prosecute Certain Actions and for Related Relief, *In re BHI*, No. 12-11744 (Bankr. M.D. Tenn. Sep. 23, 2013), ECF No. 88. Attached as Ex. E is a true and correct copy of the Joint Motion.

<sup>19</sup> See Order Granting Joint Mot. of the Debtor and the Pension Benefit Guaranty Corporation Pursuant to Sections 105 and 1109(b) of the Bankruptcy Code for Authority to Commence and Prosecute Certain Actions and for Related Relief, *In re BHI*, No. 12-11744 (Bankr. M.D. Tenn. Oct. 25, 2013), ECF No. 103. A true and correct copy of which is attached hereto as Ex. F.

<sup>20</sup> *In re BHI* at 5, No. 12-11744 (Bankr. M.D. Tenn. Dec. 28, 2012), ECF No. 98-3.

<sup>21</sup> See 26 U.S.C. §§ 412 and 430.

<sup>22</sup> See generally Amended Disclosure Statement to Accompany Chapter 11 Plan of Liquidation, *In re BHI* at 6-7, No. 12-11744, (Bankr. M.D. Tenn. Oct. 16, 2012), ECF No. 98-2.

requests to prevent a possible termination of the Pension Plan and to prevent the resulting liabilities that would arise upon such termination.<sup>23</sup>

### **The American Arbitration Association Proceeding**

On July 30, 2015, PBGC filed against the Healing Trust its demand for arbitration with the American Arbitration Association, in accordance with the mandatory arbitration provision of the APA. PBGC, acting jointly on behalf of BH1 and the Pension Plan, sought monetary relief from the Healing Trust of: (1) \$100,800,000 on account of the Pension Plan's unfunded benefit liabilities;<sup>24</sup> (2) \$7,829,071 on account of the unpaid minimum funding contributions owed to the Pension Plan;<sup>25</sup> and (3) \$8,081,250 on account of insurance premiums owed to PBGC.<sup>26</sup>

On September 4, 2015 the Healing Trust filed its Answering Statement. On October 9, 2015, an Arbitrator was appointed. On December 10, 2015, an initial scheduling conference was held with the Arbitrator and, later that day, the Arbitrator entered an order setting forth the schedule of the arbitration (the "Scheduling Order").<sup>27</sup> In the Scheduling Order, the Arbitrator required that preliminary motions be filed by January 15, 2016, and any opposing papers be filed by February 1, 2016. The Arbitrator further required the parties to serve written discovery requests by February 1, 2016.

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<sup>23</sup> See generally Amended Disclosure Statement to Accompany Chapter 11 Plan of Liquidation at 6-7, *In re BH1*, No. 12-11744 (Bankr. M.D. Tenn. Oct. 16, 2013), ECF No. 98-2.

<sup>24</sup> See 29 U.S.C. § 1362(b).

<sup>25</sup> I.R.C. § 412(c)(11) (2007) (effective for pension plan years beginning on or before Dec. 31, 2007); see also 29 U.S.C. § 1082(c)(11) (2007) (same); and I.R.C. § 412(b)(1) & (2) (2009) (effective for pension plan years beginning after Dec. 31, 2007); see also 29 U.S.C. § 1082(b)(1) & (2) (2009) (same).

<sup>26</sup> 29 U.S.C. § 1307(a), (e).

<sup>27</sup> Attached as Ex. G is a copy of the Scheduling Order.

## **The District Court Litigation**

On January 12, 2016, the Healing Trust filed its Complaint against PBGC in which it alleges that the Pension Plan is a church plan exempt from coverage under ERISA.<sup>28</sup>

On January 15, 2015, the Healing Trust filed in this proceeding a “Motion to Stay Arbitration Involving These Same Parties” (the “Stay Motion”),<sup>29</sup> and filed in the Arbitration a “Motion to Hold Scheduling Order in Abeyance.”

On February 1, 2015, PBGC timely opposed in the Arbitration the Motion to Hold Scheduling Order in Abeyance and, in accordance with the Scheduling Order, served on the Healing Trust written discovery requests. Contemporaneously with this filing, PBGC filed an opposition to the Stay Motion.

## **ARGUMENT**

### **I. The Declaratory Judgment Action is an Impermissible Collateral Attack on a Final Order of the Bankruptcy Court.**

The Healing Trust seeks a declaration that PBGC lacks the authority to pursue claims against the Healing Trust, in arbitration or elsewhere, on behalf of the Pension Plan.<sup>30</sup> This issue, however, was finally decided when the Bankruptcy Court assigned to PBGC any claim that BH1 or the Pension Plan itself has against any person or entity arising out of the 2001 APA - explicitly determining that PBGC has standing to pursue such claims and implicitly determining that such standing is consistent with PBGC’s statutory authority under ERISA.<sup>31</sup> Not only has

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<sup>28</sup> See generally Compl.

<sup>29</sup> Baptist Healing Hospital Trust’s Mot. to Stay Arbitration Involving These Same Parties, *Baptist Healing Hospital Trust v. Pension Benefit Guaranty Corporation*, No. 16-00022 (M.D. Tenn. Jan. 12, 2016), ECF No. 6.

<sup>30</sup> See generally Compl.

<sup>31</sup> Order Granting Derivative Standing ¶ 2, *In re BHI*, ECF No. 103. See *Lee*, 236 F.R.D. at 361 (M.D. Tenn. 2006) (holding that court may take judicial notice of pleadings from another litigation).

the Bankruptcy Court determined PBGC’s standing to pursue claims against the Healing Trust, but the claims themselves have been transferred to PBGC. Under long-standing judicial doctrine, these Bankruptcy Court orders are final, and immune from collateral attack in this purported declaratory-judgment action.

“The doctrine of *res judicata*, also called claim preclusion, means a final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were or could have been raised in that action.”<sup>32</sup> Furthermore:

[t]he judicial system’s need for order and finality requires that orders of courts having jurisdiction to enter them be obeyed until reversed, even if proper grounds exist to challenge them. A challenge for error may be directed to the ordering court or a higher court, as the rules provide, but it may not be made collaterally. . . . These principles are firm and long standing.<sup>33</sup>

The Bankruptcy Court “is a forum where finality of court orders is particularly important.”<sup>34</sup> Even if in error, an order of the Bankruptcy Court is binding and immune from collateral attack.<sup>35</sup>

“[A]n order confirming a plan of reorganization constitutes a judgment and a final adjudication on the merits of the bankruptcy proceeding.”<sup>36</sup> Moreover, “[c]ourts have held in the

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<sup>32</sup> *In re Micro-Time Mgmt. Sys., Inc.*, 983 F.2d 1067, at \*3 (6th Cir. 1993).

<sup>33</sup> *Spartan Mills v. Bank of Am. Illinois*, 112 F.3d 1251, 1255 (4th Cir. 1997) (citing *Celotex Corp. v. Edwards*, 514 U.S. 300, 305-07 (1995)) (emphasis added); *see also Spartan Mills*, 112 F.3d at 1254-55:

If Spartan feels the Bankruptcy Court exceeded its jurisdiction or did not accord Spartan due process, then Spartan’s remedy lies in [the] Florida [Bankruptcy Court] not in [the] South Carolina [District Court]. Spartan’s action constitutes an improper collateral attack on the Sale Order issued by the United States Bankruptcy Court . . . and, thus, the Sale Order may not be challenged in this forum.

(quoting, with approval, the holding of the district court).

<sup>34</sup> *In re Lawrence*, 293 F.3d 615, 621 (2d Cir. 2002).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at \*4 (citation omitted).

context of bankruptcy matters that not only formally named parties, but all participants in the bankruptcy proceedings are barred by *res judicata* from asserting matters they could have raised in the bankruptcy proceedings.”<sup>37</sup> “In particular, the *res judicata* effect of [an] order confirming [a] [Chapter 11] plan bars claims by creditors that could have been brought within the context of the confirmation proceedings.”<sup>38</sup>

According to the record of the Bankruptcy Court:

- by order dated October 25, 2013, the Bankruptcy Court granted PBGC “derivative standing to pursue all claims belonging to [BH1] or the [Pension] Plan relating the 2001 Agreement” and authorized the PBGC to commence and prosecute all such claims;<sup>39</sup>
- by order dated December 11, 2013, the Bankruptcy Court confirmed the Liquidation Plan, which defined the Pension Plan as an ERISA-covered retirement plan;<sup>40</sup>
- in confirming the Liquidation Plan, the Bankruptcy Court expressly incorporated its October 25, 2013, order granting PBGC derivative standing to pursue any and all claims held by BH1 or the Pension Plan related to the APA;<sup>41</sup>
- in confirming the Liquidation Plan, the Bankruptcy Court appointed a dissolution agent who completed the liquidation of the BH1 bankruptcy estate in accordance with the Liquidation Plan<sup>42</sup> and moved the Bankruptcy

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<sup>37</sup> *Id.* (emphasis added) (citations omitted).

<sup>38</sup> *Id.* (citation omitted).

<sup>39</sup> Order Granting Derivative Standing ¶ 2, *In re BHI*, No. 12-11744, ECF No. 103.

<sup>40</sup> Chapter 11 Plan of Liquidation ¶ 14, *In re BHI*, No.12-11744, ECF No. 98-3; Order Confirming Chapter 11 Plan ¶ 14, ECF No. 133. Attached as Ex. H is a true and correct copy of the Order Confirming Chapter 11 Plan.

<sup>41</sup> Order Confirming Chapter 11 Plan ¶ 14, *In re BHI*, No. 12-11744, ECF No. 133. The Bankruptcy Court expressly held that the “PBGC [should] have the sole authority to commence, prosecute and resolve any and all of the 2001 Agreement Claims on behalf of [BH1]’s estate.” *Id.*

<sup>42</sup> Chapter 11 Plan of Liquidation, *In re BHI*, No. 12-11744, ECF. 98-3, Article IV; Order Confirming Chapter 11 Plan ¶ 34, ECF. No. 133.

Court for a final decree and order closing the bankruptcy case;<sup>43</sup> and

- upon the completed liquidation of the BH1 bankruptcy estate, the Bankruptcy Court entered a final decree and order, closing the bankruptcy case.<sup>44</sup>

In the Complaint, the Healing Trust urges this Court to declare that the Pension Plan is a church plan exempt from coverage under Title IV of ERISA and that PBGC, therefore, lacks statutory authority to pursue claims on the Pension Plan's behalf.<sup>45</sup> This Court should dismiss the Healing Trust's request for declaratory judgment because, by seeking such relief, the Healing Trust has asked this Court to ignore completely the Bankruptcy Court's prior determinations that the Pension Plan is subject to ERISA, and that PBGC has exclusive standing to pursue BH1's and the Pension Plan's claims against the Healing Trust arising out of the APA.

The Healing Trust is precluded from challenging the Bankruptcy Court orders in this collateral action. The confirmed Chapter 11 plan is a final judgment and is entitled to full *res judicata* effect. Accordingly, this Court should dismiss the Complaint. If, as the Healing Trust insists, the Court declared that the Pension Plan is a church plan and exempt from coverage under Title IV of ERISA, and that PBGC lacks standing to assert claims on the Pension Plan's behalf, the Court would, through its actions, be overturning each of the final findings and orders of the Bankruptcy Court, above. This, the doctrine of *res judicata* does not allow.

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<sup>43</sup> Mot. for Entry of Final Decree and Order Closing Case, *In re BHI*, No. 12-11744, ECF No. 166. Attached as Ex. I is a true and correct copy of the Mot. for Entry of Final Decree and Order Closing Case.

<sup>44</sup> Final Decree and Order Closing Case, Approving Final Distribution, and Discharging and Releasing Liquidation Agent, *In re BHI*, Case No. 12-11744 (Bankr. M.D. Tenn. Jan. 4, 2016), ECF No. 168. Attached as Ex. J is a true and correct copy of the Final Decree and Order.

<sup>45</sup> See generally Compl.

## II. The Declaratory-Judgment Action Is Also Barred by the Doctrine of Equitable Mootness.

In addition to being *res judicata*, the Healing Trust's purported declaratory judgment action is barred as equitably moot. The Bankruptcy Court confirmed the Liquidation Plan, which specifically defined the Pension Plan as an ERISA-covered retirement plan,<sup>46</sup> and the Liquidating Agent has completed its work and disposed of the BH1 bankruptcy estate.<sup>47</sup> The bankruptcy matter is now closed.<sup>48</sup> The declaratory judgment action is, in reality, designed to unwind BH1's entire bankruptcy to the detriment of the numerous parties that participated in the bankruptcy and not parties to this action.

Equitable mootness is a pragmatic principle, applied mainly in bankruptcy proceedings, that is grounded in the fact "that, with the passage of time after a judgment . . . effective relief on appeal becomes impractical, imprudent, and therefore inequitable."<sup>49</sup> "In the context of a confirmed chapter 11 plan," as here, "the 'doctrine seeks to prevent parties from upsetting a plan of reorganization once it is well underway.'"<sup>50</sup>

Courts in the Sixth Circuit consider three factors in determining whether a challenge to a confirmed bankruptcy plan is equitably moot: "(1) whether a stay [of the Chapter 11 plan] has been obtained; (2) whether the plan has been substantially consummated; and (3) most importantly, whether the relief requested would affect the rights of parties not before the court or

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<sup>46</sup> Chapter 11 Plan of Liquidation ¶ 34, *In re BHI*, No. 12-11744, ECF No. 98-2.

<sup>47</sup> Final Decree and Order Closing Case, Approving Final Distribution, and Discharging and Releasing Liquidation Agent, *In re BH1*, Case No. 12-11744 (Bankr. M.D. Tenn. Jan. 4, 2016), ECF No. 168.

<sup>48</sup> *Id.*

<sup>49</sup> *In re United Producers, Inc.*, 353 B.R. 507, 509 (B.A.P. 6th Cir. 2006) (emphasis added) (internal quotations and citation omitted).

<sup>50</sup> *Id.* (quoting *In re Arbors of Houston Assocs., Ltd.*, 172 F.3d 47 (Table), 1999 WL 17649, at \*2 (6th Cir. 2006)).

the success of the plan.”<sup>51</sup> “[I]t is the reliance interests engendered by the plan, coupled with the difficulty of reversing the critical transactions, that counsels against attempts to unwind things on appeal.”<sup>52</sup>

With respect to the second factor, “substantial consummation” is defined in the Bankruptcy Code as “(A) the transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan.”<sup>53</sup>

The Healing Trust’s challenge to the Bankruptcy Court’s disposition of the BH1 estate, thinly veiled as a declaratory-judgment action, should be dismissed as equitably moot under the Sixth Circuit test.

First, the Liquidation Plan was not stayed in the Bankruptcy Court. The Healing Trust did not challenge or seek to appeal any of the Bankruptcy Court’s rulings.

Second, the Liquidation Plan is not only “substantially consummated” but completed. The liquidating agent has disposed of the property of BH1’s bankruptcy estate, and the Bankruptcy Court closed the bankruptcy proceeding.

Third, the relief requested by the Healing Trust would adversely affect the rights of the numerous parties of the bankruptcy case who are not before this Court and who relied on the Bankruptcy Court’s rulings. Such relief would require the Liquidation Plan to be completely undone, the bankruptcy proceeding reopened, and the BH1 bankruptcy estate restored to its

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<sup>51</sup> *Id.* (citing *In re Am. HomePatient, Inc.*, 420 F.3d 559, 563-64 (6th Cir. 2005)).

<sup>52</sup> *Id.* (emphasis added) (citing *City of Covington v. Covington Landing Ltd. P’ship*, 71 F.3d 1221, 1225 (6th Cir. 1995)).

<sup>53</sup> 11 U.S.C. § 1101(2).

original state. If the Pension Plan had been exempt from Title IV of ERISA, PBGC would not have been a creditor in the bankruptcy, and would not have asserted claims for the Pension Plan's underfunding, missed funding contributions, and premiums. Without PBGC having collectively represented the interests of more than 2,000 pension plan participants, these individuals would have had separate claims against BH1 in the bankruptcy. Thus, the Healing Trust's attack here would unfairly imperil the rights of the 2,000 participants, many of whom are retired and dependent on the continuation and stability of the Pension Plan as the source of their retirement income. Under these circumstances, the doctrine of equitable mootness bars the Healing Trust's challenge to the Liquidation Plan.p

**III. The Declaratory-Judgment Action Should Be Dismissed Because the Complaint Fails to Set Forth Sufficient Facts to Establish That the Pension Plan Is a Church Plan and Exempt From Coverage Under Title IV of ERISA.**

Under Rule 8 of the Federal Rules of Civil Procedure, a complaint must contain (1) a short and plain statement of the grounds for the Court's jurisdiction, and (2) a short and plain statement of the claim showing that the pleader is entitled to relief. This affords the defendant the opportunity to receive fair notice of what the claim is and the grounds upon which it rests.<sup>54</sup>

To survive a Rule 12(b)(6) motion, a plaintiff must present factual allegations that are sufficiently detailed "to raise a right to relief above the speculative level."<sup>55</sup> In satisfying this requirement, a complaint cannot survive a motion to dismiss through only "a formulaic recitation of the elements of a cause of action."<sup>56</sup> While a complaint attacked by a Rule 12(b)(6) motion to

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<sup>54</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554 (2007).

<sup>55</sup> *Twombly*, 550 U.S. at 555.

<sup>56</sup> *Id.* at 555.

dismiss does not need detailed factual allegations,<sup>57</sup> the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.<sup>58</sup>

A district court is required to deem the factual allegations in the complaint as true and consider those allegations in the light most favorable to the non-moving party when evaluating a motion to dismiss under Rule 12(b)(6).<sup>59</sup> But courts are not bound to accept as true a legal conclusion couched as a factual allegation.<sup>60</sup> When a court is presented with a Rule 12(b)(6) motion, it may consider the complaint and any exhibits attached thereto, public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the complaint and are central to the claims contained therein.<sup>61</sup>

The Healing Trust alleges in the Complaint that the Pension Plan is a church plan and exempt from coverage under Title IV of ERISA.<sup>62</sup> Church plans are defined under section 4002 of ERISA as:

plans established and maintained for its employees by a church or by a convention or association of churches including a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of

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<sup>57</sup> *Id.*

<sup>58</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

<sup>59</sup> *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172, 174-75 (1965); *see also Evans-Marshall v. Bd. of Educ. Of the Tipp City Exempted Village Sch. Dist.*, 428 F.3d 223, 228 (6th Cir. 2005).

<sup>60</sup> *Twombly*, 550 U.S. at 555; *see also Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007); *Gregory v. Shelby Cnty.*, 220 F.3d 433, 446 (6th Cir. 2000) (holding that a court must construe the complaint's allegations and facts in the light most favorable to the plaintiffs, but should not accept legal conclusions, unwarranted factual inferences, or allegations not supported by the facts).

<sup>61</sup> *See Amini v. Oberlin Coll.*, 259 F.3d 493, 502 (6th Cir. 2001); *see also Bassett v. National Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008); *Weiner v. Klais & Co.*, 108 F.3d 86, 89 (6th Cir. 1997) (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)).

<sup>62</sup> *See Compl.* ¶¶ 8, 14, 15, 30, 31, 33.

churches, if such organization is controlled by or associated with a church or convention or association of churches. . . .<sup>63</sup>

As explained below, the Healing Trust failed to set forth facts in the Complaint to establish that the Pension Plan was a Church Plan under section 4002 of ERISA.

- i. The Complaint does not allege that the Pension Plan was sponsored by a church.

The Complaint does not allege any facts to even suggest that Baptist Hospital or BH1 was at any time a church, nor do any facts exist to support such conclusion.<sup>64</sup> Because BH1 was not a church, in order for the Complaint to survive a motion to dismiss, the Healing Trust must allege sufficient factual matter that the Pension Plan was maintained by an organization either controlled by *or* associated with a church or convention or association of churches.<sup>65</sup>

- ii. The Complaint does not allege that the Pension Plan was *controlled by* a church.

An organization is deemed to be controlled by a church or convention or association of churches if a majority of the organization's officers or directors are appointed by the church's governing board or by officials of a church.<sup>66</sup> Here, the Healing Trust has put forth no factual

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<sup>63</sup> 29 U.S.C. § 1002(33)(C)(i).

<sup>64</sup> See *American Guidance Foundation, Inc. v. U.S.*, 490 F. Supp. 304 (D.D.C. 1980); see also IRS Publication 1828, Tax Guide for Churches and Religious Organizations.

<sup>65</sup> 29 U.S.C. § 1002(33)(C)(iv); 26 C.F.R. § 414(e)(3)(D); See, e.g., *Lown v. Continental Casualty Co.*, 238 F.3d 543, 548 (4th Cir. 2001); *Chronister v. Baptist Health*, 442 F.3d 648, 653 (8th Cir. 2006).

An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches." Simply stated, this test points to three factors that bear primary consideration in in deciding whether an organization shares such common bonds and convictions with a church: 1) whether the religious institution plays in official role in the governance of the organization, 2) whether the organization receives assistance from the religious institution, 3) whether a denominational requirement exist for any employee or patient customer of the organization.

*Id.*

<sup>66</sup> See *Catholic Charities of Maine, Inc. v. City of Portland*, 304 F. Supp. 2d 77, 85 (D. Me. 2004); see also 26 C.F.R. § 1.414(e)-1(d)(2).

matter, nor does any exist, that BH1 was controlled by a church or convention or association of churches following the asset sale in 2001.

- iii. The Complaint does not allege that the Pension Plan was associated with a church or convention or association of churches.

Because BH1 was not a church and because it was not controlled by a church, the only possible way the Complaint could survive a motion to dismiss would be for the Healing Trust to allege facts that demonstrate that BH1 was associated with a church or convention or association of churches. It has failed to do so.

An organization is associated with a church or convention or association of churches if it shares common religious bonds and convictions with that church.<sup>67</sup> Factors courts have considered in determining whether an organization shares common religious bonds and convictions with a church include whether the church plays an official role in the governance of the organization, whether a denominational requirement exists for any employee or patient/customer of the organization, and whether the organization receives financial assistance from the religious institution.<sup>68</sup> Here, the Healing Trust fails to assert any factual matter that a religious institution played any role in the governance of BH1, assisted it financially, or that denominational requirements existed for BH1 employees. Accordingly, the Complaint must be dismissed for failure to state a claim upon which relief may be granted.

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<sup>67</sup> 29 U.S.C. § 1002(33)(C)(iv); 26 C.F.R. § 414(e)(3)(D).

<sup>68</sup> See, e.g., *Lown v. Continental Casualty Co.*, 238 F.3d 543, 548 (4th Cir. 2001); *Chronister v. Baptist Health*, 442 F.3d 648, 653 (8th Cir. 2006).

- iv. The Healing Trust erroneously alleges that this Court should determine whether the Pension Plan was covered under ERISA as of the date the Pension Plan was frozen prior to the APA.

In asserting that the Pension Plan is a church plan and exempt from Title IV of ERISA, the Healing Trust alleges without any legal authority that the relevant time period for a coverage determination with respect to the Pension Plan was a date prior to the APA – i.e., when the Pension Plan was frozen.<sup>69</sup> Notwithstanding the fact that the Complaint does not allege sufficient facts to support a claim that the Pension Plan was ever a church plan, nowhere in 29 U.S.C. § 1002(33), IRC § 414(e), or Treas. Reg. § 1.414(e)-1 is there support for the contention that a pension plan’s status as a church plan is determined as of the date the pension plan was frozen. Furthermore, no case law exists to support this view.<sup>70</sup> Because a church plan must at all times be *maintained* by a church,<sup>71</sup> it does not stand to reason that the freeze date or any specific date should be determinative of a church-plan exemption. Instead, this Court must determine if the Pension Plan was maintained as a church plan throughout its entire existence, including the period from 2001, post-APA, through the termination of the Pension Plan in 2013. In this context, the Complaint is utterly lacking.

Ultimately, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.”<sup>72</sup> Here, the Healing Trust has not pled anywhere near enough facts to state a claim,

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<sup>69</sup> See Compl. ¶ 31.

<sup>70</sup> See, e.g., *Morgan County War Mem. Hosp. v. Baker*, 314 Fed. Appx. 529, 531, 538 (4th Cir. 2008) (affirming the district court’s decision that a pension plan frozen in 1987 but remaining “in effect today,” is an “ERISA-exempt plan” because it was a “plan established or maintained” as a governmental plan); see also *Colville Confederated Tribes v. Somday*, 96 F. Supp. 2d 1120 (2000) (holding that although a defined benefit plan was frozen in 1995, but the pension plan was determined to be a governmental plan in 1983); IRS Private Letter Ruling 200108050; IRS Private Letter Ruling 9633035.

<sup>71</sup> Treas. Reg. § 1.414(e)-1 (1980).

<sup>72</sup> *Twombly*, 550 U.S. at 570.

plausible on its face, that the Pension Plan is a church plan. Accordingly, this Court should dismiss the Complaint for failure to state a claim upon which relief may be granted.

**IV. This Case Should be Dismissed Because Venue Does Not Lie in this Court.**

Rule 12(b)(3) of the Federal Rules of Civil Procedure authorizes a district court to dismiss an action for improper venue. The burden of establishing venue falls on the plaintiff.<sup>73</sup> When venue is improper, “[t]he district court of a district in which is filed . . . shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.”<sup>74</sup>

Under section 4003(f)(3) of ERISA,<sup>75</sup> section 4003(f) is the exclusive means for a person to bring a cause of action against PBGC under Title IV of ERISA, Under section 4003(f)(1) & (2), venue lies in only three potential places for such an action against PBGC.<sup>76</sup> A person<sup>77</sup> may bring such action in:

- (A) the United States district court before which proceedings under section 1341 or 1342 are being conducted,
- (B) if no such proceedings are being conducted, the United States district court for the judicial district in which the [pension] plan has its principal office, or
- (C) the United States District Court for the District of Columbia.<sup>78</sup>

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<sup>73</sup> *Receiver of Assets of Mid-America Energy, Inc. v. Coffan*, 719 F. Supp. 2d 884, 890 (M.D. Tenn. 2010).

<sup>74</sup> 28 U.S.C. § 1406(a).

<sup>75</sup> 29 U.S.C. § 1303.

<sup>76</sup> 29 U.S.C. § 1303(f)(1).

<sup>77</sup> A “person” is defined as a fiduciary, employer, contributing sponsor, member of a contributing sponsor’s controlled group, participant, or beneficiary, and is adversely affected by any action of the corporation with respect to a plan in which such person has an interest, or who is an employee organization representing such a participant or beneficiary so adversely affected for purposes of collective bargaining with respect to such plan, may bring an action against the [PBGC] for appropriate equitable relief in the appropriate court.” See 29 U.S.C. § 1303(f)(1).

<sup>78</sup> 29 U.S.C. § 1303(f)(1).

The “appropriate court” depends on the present status of the pension plan.<sup>79</sup> For an ongoing plan, venue options include where court proceedings are being conducted, where the plan has its principal office, or the United States District Court for the District of Columbia.<sup>80</sup>

Here, the Pension Plan was terminated in 2013 by agreement between PBGC and the administrator of the Pension Plan. Accordingly, no pension-plan termination proceedings are currently being conducted under 29 U.S.C §§ 1341 or 1342, and subsection 4003(f)(2)(A) is no longer a viable option for venue to challenge an action of PBGC.

Similarly, after a pension plan terminates and PBGC takes over as statutory trustee, the plan no longer has a principal office. From that point forward, PBGC is responsible for making benefit determinations and paying benefits under the plan. Accordingly, after PBGC takes over responsibility for a terminated plan, the former principle office of the pension plan no longer is considered a viable location of venue in accordance of subsection 4003(f)(2)(B) of ERISA.<sup>81</sup>

In this action, because the Pension Plan was terminated in 2013, the only remaining option for venue is the United States District Court for the District of Columbia, under subsection 1303(f)(2)(C) of ERISA.<sup>82</sup> Accordingly, venue does not lie in this District and the Court should dismiss this action.

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<sup>79</sup> 29 U.S.C. § 1303(f)(2).

<sup>80</sup> For example, an ongoing plan might have a dispute with PBGC with respect to premium underpayments, or interest or penalties thereon. *See* 29 U.S.C. § 1307; 29 C.F.R. 4007. Such plans would be able to take advantage of the venue provision permitting them to file in the venue where their principal office is located. An ongoing plan has operations in such a venue, unlike a terminated plan.

<sup>81</sup> *United Steel, Paper, & Forestry Rubber Mfg. Energy Allied Indus. and Serv. Workers Int’l Union v. PBGC*, 602 F. Supp. 2d 1115, 1119 (D. Minn. 2009); *see also Lewis v. PBGC*, No. 14-03838, 2015 WL 5577377 (N.D. Ga. Aug. 11, 2015).

<sup>82</sup> *United Steel*, 602 F. Supp. 2d at 1119-20.

**V. If the Court Does Not Dismiss This Action, It Should Transfer It to the United States District Court for the District of Columbia.**

As set forth in section IV above, under ERISA section 4003(f)(2), venue is not proper in this Court. Under 28 U.S.C. §§ 1404 and 1406, in the interest of justice, this Court may transfer this action to any district where it might have been brought.<sup>83</sup> As set forth in sections I, II and III above, sufficient grounds exist to dismiss this action, in addition to the ground that venue is not proper. If this Court, however, determines that in the interest of justice this action should be transferred, PBGC asserts that pursuant to section 4003(f)(2) of ERISA the only appropriate venue is the United States District Court for the District of Columbia. Accordingly, in the alternative, PBGC requests that this action be transferred to the United States District Court for the District of Columbia.

**CONCLUSION**

This Court should dismiss the Complaint because: (i) the declaratory-judgment action is an impermissible collateral attack on the final order of the Bankruptcy Court; (ii) the declaratory-judgment action is equitably moot; (iii) the Complaint fails to plausibly allege that the Pension Plan is a church plan and thus exempt from coverage under Title IV of ERISA; and (iv) venue is improper in this Court under ERISA. These reasons present an opportunity for a quick disposition of this matter, which would allow the arbitration pending between the parties to move forward without delay and interference.

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<sup>83</sup> 28 U.S.C. §§ 1404(a), 1406(a).

In the interest of justice, if the Court declines to dismiss this action, the action should be transferred to the United States District Court for the District of Columbia.

Dated: February 9, 2016  
Washington, D.C.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of February, 2016, the Pension Benefit Guaranty Corporation's Motion to Dismiss Plaintiff's Complaint Or, in the Alternative, Transfer Venue to the District of Columbia and the Pension Benefit Guaranty Corporation's Memorandum of Law in Support of its Motion to Dismiss Plaintiff's Complaint Or, in the Alternative, Transfer Venue to the District of Columbia was served on the following:

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