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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

| | | |
|----------------------------|---|-----------------------------|
| ESTATE OF NICOLAS PASUCCI, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. |
| |) | 3:14-cv-07974-PGS-DEA |
| PENSION BENEFIT GUARANTY |) | Motion Day: 2/2/2015 |
| CORPORATION, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

**BRIEF IN SUPPORT OF MOTION TO DISMISS OR, IN THE
ALTERNATIVE, FOR CHANGE OF VENUE**

Defendant Pension Benefit Guaranty Corporation (“PBGC”) hereby submits
this memorandum in support of its motion under Federal R. Civ. P. 12(b)(3) to

dismiss or, in the alternative, for change of venue to the United States District Court for the District of Columbia pursuant to 28 U.S.C. §§ 1404(a) and 1406.

The District of New Jersey is not the proper venue under ERISA § 4003(f), 29 U.S.C. § 1303(f), which is the exclusive source of jurisdiction for actions maintained against PBGC relating to pension plans. Section 1303(f) expressly defines the “appropriate court” in which such an action may be brought.¹ The United States District Court for the District of New Jersey is not such a court. For this reason, the Complaint should be dismissed. In the alternative, should the Court decide not to dismiss the Complaint but to transfer the action, pursuant to 28 U.S.C. § 1406(a), to a district court where venue is proper, the only appropriate court would be the United States District Court for the District of Columbia.

FACTS

PBGC is a wholly-owned United States government corporation and agency of the United States government, established under Title IV of the Employee Retirement Income Security Act of 1974 (“ERISA”), *as amended*, 29 U.S.C. §§ 1301-1461 (2012). *See* 28 U.S.C. § 451; 29 U.S.C. § 1302.

Plaintiff is the estate for decedent Nicolas Pasucci. (Compl. ¶1.) The decedent was a participant in the New Jersey Brewery Employees Pension Plan

¹ 29 U.S.C. § 1303(f); *See Burstein v. Ret. Account Plan for Emps. of Allegheny Health Educ. & Research Found.*, 334 F.3d 365, 374 (3d Cir. 2003) (noting that, with respect to claims asserted against PBGC, jurisdiction is granted by 29 U.S.C. § 1303(f)).

(“Plan”). (Compl. ¶ 8.) The Plan terminated on or about December 31, 1977. (Compl., Ex D.)

The decedent was a member of the class in the consolidated class actions entitled *Collins v. PBGC*, Civil Action No. 88-3406, and *Page v. PBGC*, Civil Action No. 89-2997 filed in the United States District Court for the District of Columbia (hereinafter “*Page/Collins*”). (See Compl. ¶¶ 10, 15.) The consolidated class action was settled in 1996. (See Compl. ¶ 11.) The settlement provided, “[t]o the extent the laws of the United States do not govern any matter set forth herein, this Agreement shall be governed and construed in accordance with the laws for the District of Columbia without giving effect to its conflict of laws rules.” (See Ex. 1.) The United States District Court for the District of Columbia has retained jurisdiction over the *Page/Collins* settlement.

Pursuant to the *Page/Collins* settlement, PBGC paid Plaintiff \$86,387.10 in settlement benefits in June of 2014. (See Compl. ¶ 22.) Plaintiff alleges that it is entitled to additional benefits under the *Page/Collins* settlement agreement and was adversely affected by PBGC’s actions with respect to the Plan. (See *Compl. passim.*) In an amendment to the original settlement, it was agreed that “there shall be a limited right of appeal to correct the payee and to enforce this agreement and the statutory protections against arbitrary agency actions under the Administrative Procedures Act, 5 U.S.C. §706.” (See Ex. 2.)

Plaintiff initiated this action in the Superior Court of New Jersey, Middlesex County, Law Division. PBGC removed this action to this Court pursuant to 29 U.S.C. § 1303(f)(7) and 28 U.S.C. § 1446.

ARGUMENT

Fed. R. Civ. P. 12(b)(3) authorizes a district court to dismiss an action for improper venue. The defendant bears the burden of showing that venue is improper.² “The district court of a district in which is filed a case laying venue in the wrong division or district 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.”³

A. This case should be dismissed for improper venue, because the United States District Court for the District of Columbia is the only appropriate venue for this action under ERISA § 4003, 29 U.S.C. §1303.

Venue for an action seeking relief for alleged adverse actions by PBGC with respect to pension plans can lie only in three possible federal judicial districts: (1) the district where plan-termination proceedings are pending under ERISA § 4041 or 4042, 29 U.S.C. § 1341 or 1342; (2) the district where the plan has its principal office; or (3) the District of Columbia.⁴

² *Myers v. Am. Dental Ass’n*, 695 F.2d 716, 724 (3d Cir. 1982).

³ 28 U.S.C. § 1406(a).

⁴ *See* 29 U.S.C. § 1303(f)(2).

The first and second venue options are not available in this case. First, the plan terminated in 1977. Thus, there are no pending plan termination proceedings. Second, because the plan was terminated long ago, it no longer has a “principal office.”

The third venue option, the District of Columbia, is the only appropriate venue in this case. Courts have repeatedly concluded that after a pension plan has been terminated and the plan’s principal office has closed, the only appropriate venue for suit against PBGC lies in the District of Columbia.⁵ Therefore, venue does not lie in this district, and this case should be dismissed.

B. In the alternative, this Court should transfer this action to the United States District Court for the District of Columbia.

This case could only have been brought in the United States District Court for the District of Columbia (“D.D.C.”). And even if venue were proper in the District of New Jersey, D.D.C. is a more appropriate venue. In D.D.C., the same judge who is presiding over the *Page/Collins* settlement and who is already

⁵ See, e.g., *Senick v. PBGC*, 2014 WL 6891360 (E.D. Pa. Dec. 8, 2014) (finding that District of Columbia is only appropriate venue where plan has been terminated and principal office is closed); *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) (holding that Congress “decided that where the PBGC has assumed trusteeship, and a plan’s principal office has closed, suits must be located in the District of Columbia.”); *Cartsens v. Michigan Dep’t of Treasury*, 2009 WL 2581504 at *2 (W.D. Mich. August 18, 2009) (finding that “where there are no current proceedings under §§ 1341 or 1342, and the plan’s principal office has closed, the statute compels venue in the District of Columbia.”).

familiar with its terms could hear the allegations that PBGC has breached the *Page/Collins* settlement. D.D.C. is the district with the most familiarity and experience adjudicating claims under the stipulated arbitrary and capricious standard of review. D.D.C. is more familiar with the laws of the District of Columbia, which apply to the extent that the Administrative Procedures Act and ERISA do not govern review and interpretation of the settlement under the settlement's choice of law provision. Thus, the United States District Court for the District of Columbia would be the best choice of venue should the Court decide to transfer the case pursuant to 28 U.S.C. §§ 1404(a) and 1406.

CONCLUSION

Because venue is improper in the District of New Jersey, PBGC respectfully requests that the Court dismiss this action or – in the alternative – transfer it to the United States District Court for the District of Columbia as the most appropriate court.

Dated: December 29, 2014

Respectfully submitted,

/s/ Elisabeth Boyan Fry
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