

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF MICHIGAN**  
(Southern Division)

PENSION BENEFIT GUARANTY )  
CORPORATION, )  
a U.S. Government Corporation )  
1200 K Street N.W. )  
Washington, D.C. 20005 )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
TTOD LIQUIDATION, INC. )  
f/k/a DOTT INDUSTRIES, INC. )  
39400 Woodward Avenue )  
Suite 250 )  
Bloomfield Hills, MI 48304 )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. 2:15-cv-13278

**COMPLAINT FOR DECLARATORY RELIEF**

Plaintiff, the Pension Benefit Guaranty Corporation (“PBGC”), brings this civil action under 26 U.S.C. § 1303(e) and 28 U.S.C. § 2201(a) for judgments declaring that:

- (A) under ERISA (as defined below), the IRC (as defined below), and the Plan Document (as defined below), Defendant, TTOD Liquidation, Inc. (“TTOD”), is, and at all times relevant was, the “contributing sponsor” of the DOTT Manufacturing Company Union Employees’ Pension Plan, as amended and restated effective as of July 1, 2008 (the “Pension Plan”);
- (B) under ERISA and the IRC, TTOD, along with the members of its “controlled group” (if any), is jointly and severally liable to the Pension Plan for all due and

- unpaid “minimum required contributions,” including accrued statutory interest, and for additional minimum required contributions as they become due;
- (C) under ERISA, TTOD, along with the members of its controlled group (if any), is jointly and severally liable to PBGC for all due and unpaid “insurance premiums,” interest, and penalties with respect to the Pension Plan, and for additional insurance premiums as they become due;
- (D) PBGC may lawfully draw from the Letter of Credit (as defined below) proceeds sufficient to cover the sum of the Contributions Liability (as defined below) and the Insurance Premiums Liability (as defined below); and
- (E) PBGC may lawfully allocate and disburse any proceeds drawn from the Letter of Credit to the Pension Plan’s trust, to PBGC, and to TTOD, pursuant to the Standstill Agreement (as defined below).

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this civil action under 26 U.S.C. §§ 1303(e)(3) and 1307(c), and 28 U.S.C §§ 1331 and 2201(a).
2. Venue is proper in this Court under 26 U.S.C. §§ 1303(e) and 1307(c), and 28 U.S.C § 1391(b)(2).

### **COMMON ALLEGATIONS**

#### **The Parties**

3. PBGC is a wholly owned United States government corporation and federal agency that administers the nation’s pension insurance program established by Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012, Supp. I 2013) (“ERISA”). When a pension plan covered by Title IV of ERISA terminates

without sufficient assets to pay all of its promised benefits, PBGC typically becomes trustee of the plan and pays plan participants their pension benefits up to the limits established by Title IV. 29 U.S.C. §§ 1321, 1322, and 1361.

4. TTOD is a “domestic profit corporation” organized under the laws of Michigan, with a principal place of business in Oakland County, Michigan.

5. Before January 20, 2009, TTOD was known in Michigan’s corporate records as DOTT Industries, Inc.<sup>1</sup>

### **The Pension Plan and the Plan Document**

6. Effective July 1, 1974, TTOD established the Pension Plan for the purpose of providing retirement benefits to its union-member employees.

7. The Pension Plan is a “single-employer plan” as defined by 29 U.S.C. § 1301(a)(15).

8. Currently, the Pension Plan has approximately 290 participants.

9. Based upon information and belief, the Pension Plan is, and at all times relevant was, a covered pension plan insured by Title IV of ERISA.

10. TTOD caused the Pension Plan’s plan document to be amended and restated effective July 1, 1976; July 1, 1984; July 1, 1989; and July 1, 1997.

11. Effective December 31, 2006, TTOD caused an amendment to the Pension Plan’s plan document that closed the Pension Plan to new entrants.

12. Effective December 31, 2006, TTOD caused an amendment to the Pension Plan’s plan document that eliminated the ability of the Pension Plan’s participant to accrue further benefits or credited service under the Pension Plan.

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<sup>1</sup> For convenience, all allegations shall refer to TTOD, only.

13. A true and correct copy of the Pension Plan's current plan document is attached hereto as Exhibit A (the "Plan Document").
14. The effective date of the Plan Document is July 1, 2008.
15. On January 19, 2009, TTOD employed Larry Gatt as its chief executive officer.
16. On January 19, 2009, TTOD authorized and caused Larry Gatt to execute the Plan Document.
17. On January 19, 2009, Larry Gatt executed the Plan Document.
18. Section 5.1 of the Plan Document states that "[t]he Company shall . . . contribute to the [Pension] Plan's Trust Fund, in cash, an amount that is not less than the minimum amount necessary to prevent an accumulated funding deficiency . . . with respect to the [Pension] Plan."
19. Section 1.1(q) of the Plan Document defines the term "Company" as the "Employer."
20. Section 1.1(jj) of the Plan Document identifies the "Employer" as TTOD.
21. The Plan Document has not been amended since its effective date, July 1, 2008.
22. Due and unpaid minimum required contributions, as defined by 29 U.S.C. § 1083(a) and 26 U.S.C. § 430(a) (along with accrued statutory interest, the "Contributions Liability") are owed to the Pension Plan.
23. The Contributions Liability is \$3,040,125, plus interest that continues to accrue.
24. Under 29 U.S.C. § 1083(j) and 26 U.S.C. § 430(j), the Contributions Liability continues to accrue.
25. Under 29 U.S.C. § 1083(k)(1) and 26 U.S.C. § 430(k)(1), a lien has arisen in favor of the Pension Plan upon all property and rights to property of the Pension Plan's contributing sponsor, and upon all property and rights to property of the members of the Pension

Plan's contributing sponsor's controlled group, as defined by 29 U.S.C. § 1301(a)(14), if any (the "430(k) Lien").

26. Under 29 U.S.C. § 1083(k)(3) and 26 U.S.C. § 430(k)(3), the 430(k) Lien is in the amount of the Contributions Liability.

27. Under 29 U.S.C. § 1083(k)(5) and 26 U.S.C. § 430(k)(5), PBGC may perfect and enforce the 430(k) Lien.

28. With respect to the Pension Plan, there may be due and unpaid insurance premiums, as determined pursuant to 29 U.S.C. § 1306(a)(3) and 29 C.F.R. § 4006.3 (along with accrued statutory interest and penalties, the "Insurance Premiums Liability").

29. Under 29 U.S.C. § 1307 and 29 C.F.R. § 4007, the Insurance Premiums Liability continues to accrue.

30. Under 29 U.S.C. 1307(c), PBGC is authorized to bring a civil action to recover the Insurance Premiums Liability.

### **The Dispute and the Standstill Agreement**

31. On October 15, 2014, PBGC informed TTOD's counsel that it considers TTOD to be, and at all relevant times to have been, the Pension Plan's contributing sponsor (the "PBGC Assertion").

32. On November 20, 2014, TTOD's counsel informed PBGC that TTOD fully disputed the PBGC Assertion (the "Dispute"), based on TTOD's allegation that on January 20, 2009, "there was . . . an effective transfer of plan sponsorship for the [Pension Plan] from TTOD to Dott Acquisition, LLC. . . ."

33. In July of 2009, less than six months after the alleged "effective transfer of plan sponsorship for the [Pension Plan]" to Dott Acquisition, LLC ("DAL"), TTOD sued DAL in

Michigan state court for breach of contract in connection with DAL's failure to perform its obligations under a lease agreement between TTOD and DAL, effective January 20, 2009, under which DAL had leased TTOD's property and equipment and had assumed TTOD's business operations (the "Lease Agreement").

34. In June of 2010, TTOD obtained a judgment against DAL, and subsequently took possession, from DAL, of all the property, equipment, and business operations that had been subject to the Lease Agreement.

35. On October 21, 2011, an involuntary petition was filed under chapter 7 of the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, against DAL in the United States Bankruptcy Court for the Eastern District of Michigan (Case Number 11-05526-pjs).

36. DAL's bankruptcy proceedings remain ongoing.

37. Effective March 3, 2015, PBGC and TTOD entered into a standstill agreement, a true and correct copy of which is attached hereto as Exhibit B (the "Standstill Agreement"), to provide for, in part, a practical means for PBGC and TTOD to attempt to resolve the Dispute without resort to certain statutory remedies or accelerated litigation.

38. The Standstill Agreement is a valid, binding, and enforceable contract between PBGC and TTOD.

39. Pursuant to paragraph 2 of the Standstill Agreement, on March 18, 2015, PBGC received, in exchange for its agreement to forbear from perfecting and enforcing the 430(k) Lien against TTOD or members of TTOD's controlled group, a certain irrevocable standby letter of credit issued by The PrivateBank on March 16, 2015, at the request of TTOD and in favor of PBGC, for \$3,000,000 (the "Letter of Credit"). A true and correct copy of the Letter of Credit is attached hereto as Exhibit C.

40. Paragraph 2 of the Standstill Agreement also provides in part: “After any draw based on a PBGC Judgment, the draw proceeds shall be allocated and disbursed in the following sequence: (1) to the Plan’s trust, by PBGC’s deposit therein of the amount of missed Contribution Payments, plus interest thereon; (2) if any proceeds remain, then to PBGC, the amount of all outstanding and unpaid PBGC insurance premiums owed with respect to the Plan, plus interest thereon; and (3) if any proceeds remain, then all such remainder to TTOD.”

41. On August 15, 2015, the Standstill Period, as defined by the Standstill Agreement, expired.

42. The parties were unable to resolve the Dispute before the expiration of the Standstill Period.

43. PBGC maintains that TTOD is the contributing sponsor of the Pension Plan, and thus liable to the Pension Plan for the Contributions Liability, and to PBGC for the Insurance Premiums Liability.

#### **COUNT I: DECLARATORY JUDGMENT**

**(TTOD is, and at all times relevant was, the contributing sponsor of the Pension Plan under ERISA, the IRC, and the Plan Document.)**

44. PBGC restates and realleges paragraphs 1 through 43 as though fully set forth herein.

45. ERISA provides that the contributing sponsor of a single-employer pension plan is the person described in 29 U.S.C. § 1082(b)(1) or 26 U.S.C. § 412(b)(1). 29 U.S.C. § 1301(a)(13).

46. Both 29 U.S.C. § 1082(b)(1) and 26 U.S.C. § 412(b)(1) provide that any contribution required to meet a plan’s minimum funding standard, as described by 29 U.S.C.

§ 1082(a)(2) and 26 U.S.C. § 412(a)(2), for each plan year shall be paid by “the employer responsible for making contributions to or under the plan.”

47. Neither 29 U.S.C. § 1082(b)(1) nor 26 U.S.C. § 412(b)(1) describe any persons other than “the employer responsible for making contributions to or under the plan.”

48. Therefore, under ERISA and the IRC, the “contributing sponsor” of the Pension Plan is “the employer responsible for making contributions to or under” the Pension Plan.

49. Under the Plan Document, TTOD is “the employer responsible for making contributions to or under” the Pension Plan.

50. Therefore, PBGC seeks a declaratory judgment that, under ERISA, the IRC, and the Plan Document, TTOD is, and at all times relevant was, the contributing sponsor of the Pension Plan.

### **COUNT II: DECLARATORY JUDGMENT**

**(TTOD, along with the members of its controlled group (if any), is jointly and severally liable to the Pension Plan for all due and unpaid minimum required contributions, including accrued statutory interest, and for additional minimum required contributions as they become due.)**

51. PBGC restates and realleges paragraphs 1 through 50 as though fully set forth herein.

52. Under ERISA and the IRC, any contributions required to meet the Pension Plan’s minimum funding standard for each plan year shall be paid by “the employer responsible for making contributions to or under the plan,” i.e., the Pension Plan’s contributing sponsor. 29 U.S.C. § 1082(b)(1) and 26 U.S.C. § 412(b)(1).

53. Under ERISA and the IRC, the contributions required to meet the Pension Plan’s minimum funding standard, for each plan year, are the minimum required contributions calculated with respect to the plan year. 29 U.S.C. § 1083(a)(1) and 26 U.S.C. § 430(a)(1).



54. Under ERISA and the IRC, the minimum required contributions calculated with respect to the Pension Plan are due 8½ months after the close of a given plan year. 29 U.S.C. § 1083(j)(1) and 26 U.S.C. § 430(j)(1).

55. Under ERISA and the IRC, any due and unpaid minimum required contributions shall be adjusted for interest accruing at the applicable statutory rate. 29 U.S.C. § 1083(j)(2), (3) and 26 U.S.C. § 430(j)(2), (3).

56. Under ERISA and the IRC, if the contributing sponsor of the Pension Plan is a member of a controlled group, “each member of such group shall be jointly and severally liable for payment of such contributions.” 29 U.S.C. § 1082(b)(2) and 26 U.S.C. § 412(b)(2).

57. TTOD is the contributing sponsor of the Pension Plan.

58. Therefore, PBGC seeks a declaratory judgment that under ERISA and the IRC, TTOD, along with the members of its controlled group (if any), is jointly and severally liable to the Pension Plan for all due and unpaid minimum required contributions, including accrued statutory interest, and for additional minimum required contributions as they become due.

### **COUNT III: DECLARATORY JUDGMENT**

**(TTOD, along with the members of its controlled group (if any), is jointly and severally liable to PBGC for all due and unpaid Premiums, and for additional Premiums as they become due.)**

59. PBGC restates and realleges paragraphs 1 through 58 as though fully set forth herein.

60. Under ERISA, the contributing sponsor of the Pension Plan, along with the members of its controlled group, are jointly and severally liable to PBGC for all Premiums. 29 U.S.C. § 1307(e)(2).

61. TTOD is the contributing sponsor of the Pension Plan.

62. Therefore, PBGC seeks a declaratory judgment that under ERISA, TTOD, along with the members of its controlled group (if any), is jointly and severally liable to PBGC for all due and unpaid Premiums, and for additional Premiums as they become due.

**COUNT IV: DECLARATORY JUDGMENT**

**(Upon entry of final and non-appealable judgments on Count I, II, and III, PBGC may lawfully draw from the Letter of Credit draw proceeds equal to the sum of the Contributions Liability and the Insurance Premiums Liability.)**

63. PBGC restates and realleges paragraphs 1 through 62 as though fully set forth herein.

64. Under paragraph 2 of the Standstill Agreement, PBGC may draw upon the Letter of Credit in the event of the entry of a final, non-appealable judgment in its favor against TTOD.

65. PBGC is entitled to declaratory judgment under all Counts of this Complaint, including Counts I, II, and III.

66. Upon entry of final and non-appealable judgments on Counts I, II, and III, TTOD will be declared by this Court to be the contributing sponsor of the Pension Plan, and thus jointly and severally liable, along with the members of its controlled group, to the Pension Plan for the Contributions Liability, and to PBGC, for the Insurance Premiums Liability.

67. Therefore, PBGC seeks a declaratory judgment that, upon entry of final and non-appealable judgments on Counts I, II, and III, PBGC is authorized to draw from the Letter of Credit draw proceeds sufficient to cover the sum of the Contributions Liability and the Insurance Premiums Liability.

## COUNT V: DECLARATORY JUDGMENT

**(Upon entry of a final and non-appealable judgment on Count IV, PBGC may lawfully allocate and disburse the Letter of Credit's draw proceeds pursuant to the terms of the Standstill Agreement.)**

68. PBGC restates and realleges paragraphs 1 through 67 as though fully set forth herein.

69. Under paragraph 2 of the Standstill Agreement, after any draw from the Letter of Credit, the draw proceeds must be allocated and disbursed in the following sequence: to the Plan's trust, the amount of the Contributions Liability; to PBGC, the amount of the Insurance Premiums Liability; and to TTOD, the remainder, if any.

70. PBGC is entitled to declaratory judgment under all Counts of this Complaint, including Count IV.

71. Upon entry of a final and non-appealable judgment on Count IV, PBGC will have the authority to draw from the Letter of Credit proceeds sufficient to cover the sum of the Contributions Liability and the Insurance Premiums Liability.

72. Therefore, PBGC seeks a declaratory judgment that, upon entry of final and non-appealable judgment on Count IV, PBGC is authorized to allocate the Letter of Credit's draw proceeds in the following sequence: to the Plan's trust, the amount of the Contributions Liability; to PBGC, the amount of the Insurance Premiums Liability; and to TTOD, the remainder, if any.

**WHEREFORE**, the Plaintiff demands judgment and prays this Court:

- I. Declare and adjudge that, under ERISA and the IRC, the Defendant is, and at all times relevant was, the contributing sponsor of the Pension Plan;
- II. Declare and adjudge that, under ERISA and the IRC, the Defendant, along with the members of its controlled group (if any), is jointly and severally liable to the Pension Plan for all due and unpaid minimum required contributions, including accrued

- statutory interest, and for all additional minimum required contributions as they become due;
- III. Declare and adjudge that, under ERISA, the Defendant, along with the members of its controlled group (if any), is jointly and severally liable to PBGC for all due and unpaid Premiums, and for all additional Premiums as they become due;
- IV. Declare and adjudge that, upon entry of final and non-appealable judgments on Counts I, II, and III, PBGC is authorized to draw from the Letter of Credit proceeds sufficient to cover the sum of the Contributions Liability and the Insurance Premiums Liability; and
- V. Declare and adjudge that, upon entry of a final and non-appealable judgment on Count IV, PBGC is authorized to allocate any proceeds drawn from the Letter of Credit in the following sequence: to the Pension Plan's trust, the amount of the Contributions Liability; to PBGC, the amount of the Insurance Premiums Liability; and to TTOD, the remainder, if any.

DATED: September 16, 2015  
Washington, D.C.

Respectfully Submitted,

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