

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

PENSION BENEFIT GUARANTY CORPORATION)
1200 K Street, N.W.)
Washington, DC 20005)

Plaintiff,)

v.)

OBSIDIAN ENTERPRISES, INC.,)
as Plan Administrator for the Danzer Metal Works)
Retirement Income Plan & Trust)
111 Monument Cir., Ste. 4800)
Indianapolis, IN 46204-5118)

Defendant.)

Civil Action No. 1:14-cv-436

COMPLAINT FOR PENSION PLAN TERMINATION

This action arises under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012) (“ERISA”). Plaintiff, Pension Benefit Guaranty Corporation (“PBGC”), brings this action, pursuant to 29 U.S.C. §§ 1342 and 1348(a), seeking an order (a) terminating the Danzer Metal Works Retirement Income Plan & Trust (the “Pension Plan”); (b) appointing PBGC as statutory trustee of the Pension Plan; (c) establishing November 24, 2009, as the termination date of the Pension Plan; and (d) directing the defendant and any other person or entity having possession, custody or control of any of the records, assets, or other property of the Pension Plans, to transfer, convey and deliver all such records, assets, and property to PBGC, as the statutory trustee upon request under 29 U.S.C. § 1342(d)(1).

JURISDICTION AND VENUE

1. This Court has exclusive jurisdiction of this action pursuant to 29 U.S.C. §§ 1303(e)(3) and 1342(e) and (f).
2. Venue lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g).

PARTIES

3. Plaintiff, PBGC, is a wholly owned United States government corporation established under 29 U.S.C. §1302(a) to administer the pension plan termination insurance program created under Title IV of ERISA. When an underfunded pension plan terminates, PBGC ensures the timely and uninterrupted payment of statutorily guaranteed pension benefits to plan participants and their beneficiaries. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.

4. On information and belief, The Danzer Metal Works Company (“Danzer”) established the Plan, effective April 1, 1971. Danzer was founded in 1971, in Hagerstown, MD, and sold air conditioning and heating equipment. In 2002, Danzer merged with Defendant, Obsidian Enterprises, Inc. (“Obsidian”). The merged company adopted Obsidian’s name and was headquartered in Indianapolis, Indiana. On November 24, 2009, the FBI raided Obsidian and on or about that date Obsidian ceased operations.

5. On information and belief, under Section 1.3 of the plan document, Obsidian is the plan administrator.

6. On information and belief, Obsidian’s last known address is in Indianapolis, Indiana.

THE PENSION PLAN

7. The Pension Plan is a single-employer defined benefit pension plan and is covered under Title IV of ERISA. 29 U.S.C. §§ 1002(35), 1301(a)(15), 1321(a).

8. Obsidian is the contributing sponsor of the Pension Plan within the meaning of 29 U.S.C. § 1301(a)(13). Obsidian was incorporated under the laws of Delaware. On information and belief, Obsidian’s headquarters was located in Indianapolis, IN.

9. The Pension Plan provides pension benefits to former employees of Obsidian and to their beneficiaries. On information and belief, the Pension Plan has approximately 26 participants, and PBGC estimates the Pension Plan is underfunded by approximately \$135,000 on a termination basis.

CAUSE OF ACTION

10. The last contribution to the Pension Plan was made in 2009. The Pension Plan has missed several annual catch-up payments to the Plan.

11. On information and belief, there are four plan participants who currently are entitled to monthly payments under the Pension Plan, and Obsidian has not paid benefits due for several months.

12. PBGC is authorized by 29 U.S.C. § 1342 to commence proceedings to terminate a plan whenever PBGC determines, inter alia, that the plan has not met the minimum funding standard, 29 U.S.C. § 1342(a)(1), or the plan will be unable to pay benefits when due, 29 U.S.C. § 1342(a)(2).

13. On January 9, 2014, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination (the "Notice") to Obsidian, notifying Obsidian that PBGC had determined that the Pension Plan will be unable to pay benefits when due and that the Plan must be terminated in order to protect the interests of the Plan's participants under 29 U.S.C. § 1342. A copy of the Notice is attached hereto as Exhibit 1.

14. Pursuant to 29 U.S.C. § 1342(c), a district court may order the termination of a pension plan if necessary to protect the interests of participants, to avoid any unreasonable deterioration of the financial condition of the plan, or to avoid any unreasonable increase in liability to the PBGC insurance fund.

15. PBGC has determined that termination of the Pension Plan is necessary to protect the interests of participants.

16. Pursuant to 29 U.S.C. § 1348(a)(4), a district court establishes the date of termination of a pension plan covered by Title IV when PBGC and the plan administrator have not agreed on a date of termination.

17. As of the filing of this Complaint, PBGC and the Pension Plan administrator have not agreed on a date of plan termination.

18. November 24, 2009, should be established as the date of plan termination of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4), because the Pension Plan's participants received constructive notice that Obsidian was no longer in business on that date, and they no longer had any justifiable expectations of the Pension Plan's continuation.

19. Pursuant to 29 U.S.C. § 1342(c), a trustee for a pension plan shall be appointed by the court upon granting a decree of plan termination. Further, 29 U.S.C. § 1342(c) provides that PBGC may request that it be appointed as trustee of a plan in any case.

20. PBGC is ready, willing, and able to serve as statutory trustee of the Pension Plan.

RELIEF REQUESTED

WHEREFORE, PBGC respectfully requests that this Court grant judgment for PBGC and issue an order granting the following relief:

1. Adjudicating the Pension Plan terminated pursuant to 29 U.S.C. § 1342(c);
2. Appointing PBGC statutory trustee of the Pension Plan pursuant to 29 U.S.C. § 1342(c);
3. Establishing November 24, 2009, as the termination date of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4);

4. Directing Obsidian and any other person or entity having possession, custody or control of any records, assets or other property of the Pension Plan, to transfer, convey and deliver all such records, assets, and property to PBGC as statutory trustee upon request under 29 U.S.C. § 1342(d)(1); and

5. Granting such other relief as this Court deems just and proper.

Dated: Washington, D.C.
March 19, 2014

Respectfully submitted,

/s/ Elisabeth B. Fry
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