



statutory trustee, (iii) fixing the Pension Plan's termination date; and (iv) commanding MWOA and any third parties to transfer to PBGC all Pension Plan assets, information, and documents related to the Pension Plan.

### **Jurisdiction**

3. The Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. §§ 1303(e)(3) and 1342.

4. The Court has personal jurisdiction over Defendant under 29 U.S.C. § 1303(e)(2). Venue is appropriate in this district pursuant to 29 U.S.C. § 1342(g).

### **The Parties**

5. Plaintiff PBGC is the agency and wholly owned corporation of the United States government that administers the pension plan insurance program of Title IV of ERISA.

6. Defendant MWOA was incorporated on July 3, 1975, in the state of Maryland, and its principal place of business is located at 6144 Oxon Hill Road, Oxon Hill, Maryland, 20745.

7. Defendant MWOA is the Plan Sponsor and Plan Administrator of the Pension Plan within the meaning of 29 U.S.C. §§ 1002(16)(A) and 1301(a)(1).

### **Statutory Background**

8. PBGC may institute proceedings to terminate a defined benefit pension plan whenever it determines that the plan has not met the minimum funding standard required by the Internal Revenue Code or that the plan will be unable to pay benefits when due. 29 U.S.C. § 1342(a)(1), (2).

9. PBGC may institute proceedings to terminate a defined benefit pension plan whenever it determines that termination is necessary to protect the interest of participants. 29 U.S.C. § 1342(c).

10. After determining that a pension plan should be terminated and notifying its plan administrator of such determination, PBGC may “apply to the appropriate United States district court for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the liability of the [PBGC insurance] fund.” 29 U.S.C. § 1342(c). Alternatively, PBGC and the plan administrator may enter into an agreement to terminate the plan.

11. When an underfunded defined benefit pension plan terminates, PBGC typically becomes the statutory trustee of the plan and, subject to certain statutory limitations, uses PBGC’s insurance funds to pay the plan’s unfunded benefits. *See* 29 U.S.C. § 1322.

12. The termination date of a pension plan is either agreed upon by PBGC and the plan administrator or, in the absence of an agreement, established by the district court. 29 U.S.C. § 1348(a)(4).

13. Upon issuing a termination decree under 29 U.S.C. § 1342(c), the district court must appoint and authorize a trustee to terminate the pension plan in accordance with Title IV of ERISA. 29 U.S.C. § 1342(b), (c). PBGC may request its appointment as trustee in any case. 29 U.S.C. § 1342(b)(1).

### **Factual Background**

14. Defendant established the Pension Plan on July 1, 1975, for the benefit of MWOA's employees. The Pension Plan has approximately 81 participants.

15. The Pension Plan is a defined benefit pension plan covered by Title IV of ERISA. *See* 29 U.S.C. §§ 1002(35), 1321(a).

16. The Pension Plan was frozen in 1997.

17. Upon information and belief, MWOA ceased operations approximately ten years ago.

18. Upon information and belief, MWOA's President and owner died on November 30, 2017.

19. Upon information and belief, the Pension Plan does not have assets available to pay benefits which are currently under the terms of the Pension Plan.

20. Upon information and belief, the Pension Plan has not paid any benefits to plan participants since the death of MWOA's President and owner.

21. Pursuant to PBGC Policy 3.4-1 *Benefit Payments Prior to Trusteeship*, PBGC has taken action to place eligible participants in the Pension Plan into pay status prior to prior to trusteeship.

### **COUNT I**

22. PBGC realleges and incorporates by reference paragraphs 1 through 21.

23. Under 29 U.S.C. § 1342(c), PBGC is authorized, after determining that a pension plan covered by Title IV of ERISA should be terminated, "[to] apply to the appropriate United States District Court for a decree adjudicating . . . the plan . . .

terminated in order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the liability of [PBGC's insurance] fund.”

24. PBGC has made determinations under 29 U.S.C. § 1342(a) and (c) that the Pension Plan must be terminated, has provided notice of its determinations to the Pension Plan's participants, and has sent notice to the last known address of the Pension Plan's administrator. Accordingly, this Court may issue a decree terminating the Pension Plan.

## **COUNT II**

25. PBGC realleges and incorporates by reference paragraphs 1 through 24.

26. Upon issuing a termination decree under 29 U.S.C. § 1342(c), a United States district court may appoint PBGC as statutory trustee of the terminated plan. 29 U.S.C. § 1342(b)(1).

27. PBGC is willing and able to serve as statutory trustee of the Pension Plan.

28. If appointed trustee of the Pension Plan, PBGC will complete the termination of the Pension Plan in accordance with Title IV of ERISA, pursue statutory claims for liability under 29 U.S.C. § 1362, pay Pension Plan benefits in accordance with ERISA, and administer the Pension Plan in accordance with its terms and the provisions of 29 U.S.C. § 1342(d).

## **COUNT III**

29. PBGC realleges and incorporates by reference paragraphs 1 through 28.

30. The termination date of a pension plan is the date agreed to by PBGC and the plan administrator, or, in the absence of such an agreement, the date established by the Court. 29 U.S.C. § 1348(a)(3) and (a)(4).

31. The death of MWOA's President and owner on November 30, 2017 and cessation of payment of benefits extinguished participants' reasonable expectations that the Pension Plan would continue after November 30, 2017.

32. The termination date that best serves PBGC's interests is November 30, 2017.

33. The Court should establish November 30, 2017, as the Pension Plan's termination date.

#### **COUNT IV**

34. PBGC realleges and incorporates by reference paragraphs 1 through 33.

35. Under 29 U.S.C. § 1342(d), a court-appointed statutory trustee is authorized, among other things, to pay pension plan benefits and manage pension plan assets in accordance with Title IV of ERISA.

36. To carry out its statutory duties with respect to a pension plan, the court-appointed statutory trustee must receive all pension plan assets and all documents relating to the plan, the participants, and the plan's assets.

37. The Court should therefore order the transfer to PBGC of all Pension Plan assets and Pension-Plan-related documents, wherever located, as an incident of appointing PBGC statutory trustee of the Pension Plan.

**WHEREFORE**, PBGC requests that the Court enter a judgment on all counts of this Complaint, and the Court enter an Order:

- A. Adjudicating that the Pension Plan is terminated under 29 U.S.C. § 1342(c);
- B. Appointing PBGC statutory trustee of the Pension Plan under 29 U.S.C. § 1342(c);
- C. Establishing November 30, 2017, as the Pension Plan's termination date under 29 U.S.C. § 1348(a);
- D. Ordering MWOA and all other persons or entities having possession, custody, or control of any records, assets, or other property of the Pension Plan, or any documents required to determine Pension Plan benefits, to transfer, convey, and deliver all such items to PBGC; and
- E. Granting such other relief as the Court deems just and proper.

Dated: May 31, 2018

Respectfully submitted,



---

KARTAR KHALSA  
Deputy General Counsel  
C. WAYNE OWEN, JR.  
Assistant General Counsel  
ELISABETH B. FRY  
Attorney

PENSION BENEFIT GUARANTY CORP.  
Office of the General Counsel  
1200 K Street, N.W.  
Washington, D.C. 20005  
Telephone: 202.326.4020, ext. 6863  
Facsimile: 202.326.4112  
Emails: fry.elisabeth@pbgc.gov and  
efile@pbgc.gov

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

<p><b>I. (a) PLAINTIFFS</b>                  PENSION BENEFIT GUARANTY CORPORATION</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff _____  <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i>                  Elisabeth B. Fry, Esq., PBGC, Office of the General Counsel                  1200 K Street, N.W., Washington, D.C. 20005                  (T)(202)326-4020x6863 (F)(202) 326-4112 (E)fry.elisabeth@pbgc.gov</p>	<p><b>DEFENDANTS</b>                  METROPOLITAN WASHINGTON ORTHOPAEDIC ASSOCIATION</p> <p>County of Residence of First Listed Defendant <u>Prince George's</u>  <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
---	--

<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> <td></td> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen of Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 6	<input type="checkbox"/> 6
<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																	
<input type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																	
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen of Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																	
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 6	<input type="checkbox"/> 6																	

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i></p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input checked="" type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
--	---	--	---	---

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

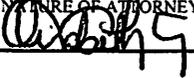
**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
 29 U.S.C. 1342 and 1348

Brief description of cause:  
 To terminate pension plan and appoint PBGC as Statutory Trustee.

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:     Yes     No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*    JUDGE Theodore D. Chuang    DOCKET NUMBER 8:17-cv-00966-TDC

DATE 5-31-18    SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY    RECEIPT # \_\_\_\_\_    AMOUNT \_\_\_\_\_    APPLYING IFP \_\_\_\_\_    JUDGE \_\_\_\_\_    MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT
for the
District of Maryland

PENSION BENEFIT GUARANTY CORPORATION

Plaintiff(s)

v.

METROPOLITAN WASHINGTON ORTHOPAEDIC ASSOCIATION, CHARTERED 1975

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Metropolitan Washington Orthopaedic Association, Chartered 1975
c/o Donald L. Noble, Registered Agent
7801 Old Branch Avenue
Clinton, MD 20735

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Elisabeth B. Fry, Esq. Pension Benefit Guaranty Corporation 1200 K Street, N.W. Washington, D.C. 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk