

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA

PENSION BENEFIT GUARANTY CORPORATION,	)	)	Civil Action No.
	)	)	1:14-cv-00436-TWP-DKL
Plaintiff,	)	)	
	)	)	
v.	)	)	Honorable Tanya Walton Pratt
	)	)	
OBSIDIAN ENTERPRISES, INC.,	)	)	
	)	)	
Defendant.	)	)	

**MOTION FOR DEFAULT JUDGMENT**

Plaintiff, Pension Benefit Guaranty Corporation (“PBGC”), respectfully moves this Court to issue an order granting PBGC Judgment by Default against defendant, Obsidian Enterprises, Inc., (“Obsidian”), pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. In support of its motion, PBGC states as follows.

PBGC is an agency and wholly owned corporation of the United States government established under 29 U.S.C. § 1302(a) to administer and enforce the defined benefit pension plan termination insurance program created under Title IV of ERISA.<sup>1</sup> When an underfunded pension plan terminates, PBGC pays statutorily guaranteed pension benefits to plan participants.

29 U.S.C. §§ 1302(a)(2), 1321, 1322.

The Danzer Metal Works Company (“Danzer”) established the Danzer Metal Works Retirement Income Plan & Trust (the “Pension Plan”), effective April 1, 1971. Danzer was the sponsor of the Pension Plan. Danzer merged with Obsidian Enterprises, Inc. (“Obsidian”). (Compl. ¶ 4.) Thus, Obsidian became the sponsor of the Pension Plan within the meaning of 29 U.S.C. § 1301(a)(13). (Compl. ¶ 5.)

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<sup>1</sup> The Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1301-1461 (2012).

Obsidian Enterprises, Inc., was incorporated in Delaware with its primary place of business in Indianapolis, Indiana. (Compl. ¶ 8.) Obsidian ceased operations on or about November 24, 2009 when the FBI raided its headquarters in Indianapolis. (Compl. ¶ 4.) Obsidian no longer administers the Plan. (See Compl. ¶ 10.) Therefore, the Plan has been effectively abandoned.

On or about January 9, 2014, in accordance with 29 U.S.C. § 1342(c), PBGC issued a notice (“Notice of Determination”) to Obsidian, notifying Obsidian that PBGC had determined that the Pension Plan will be unable to pay benefits when due, that the Plan must be terminated in order to protect the interests of the Plan’s participants under 29 U.S.C. § 1342, and that November 24, 2009 was an appropriate termination date for the Plan under 29 U.S.C. § 1348. (See Compl. ¶ 13.) A copy of PBGC’s Notice of Determination with respect to the Plan was attached to the Complaint. (See Document 1-1.) An agreement terminating the Plan and naming PBGC as statutory trustee has not been reached. (Compl. ¶ 17.)

The Plan has been abandoned. Absent the relief sought herein, the Plan does not have a sponsor to provide funding, if needed, and does not have an administrator to manage assets and assure continuity of benefits. There is therefore a substantial risk that retirees under the Plan will not be paid benefits unless a new trustee is appointed. Similarly, participants in the Plan who now desire to start receiving benefits will have no way to do so until a new trustee is appointed.

Upon issuing a termination decree under 29 U.S.C. § 1342(c), a United States district court may appoint PBGC as a statutory trustee. 29 U.S.C. § 1342(b)(1). PBGC is prepared to serve as statutory trustee of the Plan.

Indiana law provides that service upon a defunct corporation can be made upon someone who was an officer at the time the company went out of business. See Munster v. Groce,

829 N.E.2d 52 (2005). Timothy Durham was an officer of Obsidian. On March 31, 2014, PBGC served former officer Timothy Durham. (See Document 5, Return of Service.)

Accordingly, PBGC requested that the Clerk of the Court (“Clerk”) enter default against Obsidian, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. The Clerk entered the default on June 9, 2014. (See Document No. 7.)

Under Rule 55(b) of the Federal Rules of Civil Procedure, because PBGC’s Complaint does not seek a sum certain, PBGC must request that the Court enter a default judgment on its Complaint.

WHEREFORE, PBGC moves this honorable Court for an order (i) terminating the Plan; (ii) appointing PBGC statutory trustee of the Plan; (iii) establishing November 24, 2009, as the termination date of the Plan; (iv) ordering all persons in possession of plan assets, documents, or property to transfer such items to PBGC; and (v) decreeing that PBGC shall have all the powers of a trustee as set forth in ERISA and the Plan.

Dated: June 23, 2014

Respectfully submitted,

/s/ Elisabeth B. Fry  
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