UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

BAPTIST HEALING HOSPITAL TRUST,	)	
	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No.: 3:16-CV-00022**
	)	
PENSION BENEFIT GUARANTY CORPORATION,	)	**Judge Trauger**
	)	
	)	**Magistrate Judge Brown**
Defendant.	)	

PENSION BENEFIT GUARANTY CORPORATION'S RESPONSE IN OPPOSITION TO THE BAPTIST HEALING HOSPITAL TRUST'S OBJECTIONS TO REPORT AND RECOMMENDATION

Defendant, the Pension Benefit Guaranty Corporation, ("PBGC"), by and through counsel and pursuant to Rule 72 of the Federal Rules of Civil Procedure, hereby responds to Baptist Healing Hospital Trust's (the "Healing Trust") Objections to the Magistrate Judge's Report and Recommendation (the "Report and Recommendation"), recommending dismissal of the Healing Trust's Complaint for Declaratory Judgment ("Complaint"). This Court should reject the Objection, adopt the Magistrate Judge's Report, and dismiss the Complaint.

INTRODUCTION

The Healing Trust filed this declaratory judgment action in response to an arbitration initiated by PBGC against the Healing Trust. In the arbitration, PBGC seeks to enforce a guaranty agreement in a 2001 Asset Purchase Agreement (the "APA") against the Healing Trust. PBGC acts on behalf of the Baptist Hospital System Retirement Plan (the "Pension Plan") and its

former sponsor, BH1. PBGC was given the express authority to do so in the now-closed BH1 Chapter 11 bankruptcy proceeding, in 2013. In the BH1 bankruptcy, the United States Bankruptcy Court for the Middle District of Tennessee (the "Bankruptcy Court") determined the Pension Plan to be covered under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") and granted PBGC the sole authority to prosecute claims on behalf of the Pension Plan and BH1.

Despite these rulings, the Healing Trust now asks this Court to declare the opposite: first, that the Pension Plan is a "church plan" exempt from ERISA and outside PBGC's statutory purview; and second, that, as a result, PBGC has no authority to prosecute its claims against the Healing Trust. Specifically, the Healing Trust "seeks a declaration that the Baptist Pension Plan was, at all relevant times, a church plan exempt from ERISA. . . . [T]he Baptist Pension Plan's exempt status means PBGC is without statutory authority to pursue the action it is currently attempting against the Healing Trust."[1]

As the Magistrate Judge correctly determined, the Healing Trust was a creditor with notice of the bankruptcy proceedings. The Healing Trust does not dispute this fact. The Healing Trust thus had the opportunity in the BH1 bankruptcy to object to the ERISA-status of the Pension Plan and PBGC's authority to act on its behalf. It failed to do so. The Healing Trust's claim for declaratory relief is an impermissible collateral attack on final orders of the Bankruptcy Court. As the Magistrate Judge correctly determined,[2] the Healing Trust's claim is equitably moot and should be dismissed.[3]

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[1] Decl. J. Compl., Doc. 1 ¶ 8.

[2] *See generally* Report and Recommendation ("R&R"), Doc. 32.

[3] Although not the basis of the Magistrate Judge's recommendation, the claim also fails under the doctrine of *res judicata* and for failure to state a claim upon which relief can be granted.

The Healing Trust puts forth numerous arguments in objection to the Report and Recommendation, each of which is irrelevant, legally incorrect, or factually untrue. Despite the Healing Trust's complex assertions, the issue before the Court is simple: the Healing Trust was a creditor with notice of the BH1 bankruptcy and therefore is bound by the decisions of the Bankruptcy Court. The Court should adopt the Report and Recommendation and dismiss the Healing Trust's Complaint.

BACKGROUND

This case comes before the Court on PBGC's motion to dismiss the Complaint, or in the alternative, to transfer venue to the District of Columbia.[4] The Report and Recommendation recommends that PBGC's motion to dismiss be granted and the Complaint dismissed.[5] The Healing Trust objects.[6] The Report and Recommendation contains a factual "statement of the case," to which neither party objects.[7]

ARGUMENT

I. AS THE MAGISTRATE JUDGE CORRECTLY DETERMINED, THE HEALING TRUST WAS A CREDITOR WITH NOTICE OF THE BANKRUPTCY AND IS THUS BOUND BY THE BANKRUPTCY COURT'S ORDERS.

The Healing Trust argues that it is not bound by the Bankruptcy Court orders because it was not a "party" to the BH1 bankruptcy. Therefore, the Healing Trust asserts, it may attack the Bankruptcy Court's final orders in a collateral action.[8] The Healing Trust is wrong. The Magistrate Judge correctly determined that the Healing Trust was a "creditor" with actual notice

[4] Doc. 11.

[5] Doc. 32.

[6] Doc. 33.

[7] The facts alleged in the declaratory judgment complaint (Doc. 1) are accepted as true for purposes of PBGC's motion to dismiss. *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008). PBGC does not concede that any fact alleged is true.

[8] *See generally* Docs. 15 and 33.

of the BH1 bankruptcy,[9] findings the Healing Trust does not dispute.[10] Under the United States Bankruptcy Code (the "Bankruptcy Code"),[11] the Healing Trust was therefore a "party" to the BH1 bankruptcy and is bound by the Bankruptcy Court's rulings.[12]

Under the Bankruptcy Code, confirmed bankruptcy plans are binding on all "creditors," who thus are considered "parties" to bankruptcy proceedings.[13] "Creditor" is defined in the Bankruptcy Code as any "entity that has a claim against the estate of the debtor," and "claim" is defined, in turn, to include any "contingent" or "disputed" "right to payment."[14]

The Healing Trust was a "creditor" of the BH1 bankruptcy estate because it was a guarantor of BH1 and therefore held a contingent right to payment against BH1.[15] As the Magistrate Judge explained, "'It is well settled that a guarantor or surety for the debtor . . . will be a creditor under the Code because the guarantor holds a contingent claim against the debtor that becomes fixed when the guarantor pays the creditor whose claim was guaranteed or insured.'"[16] This is true even though the Healing Trust disputes its status as guarantor.[17] The Bankruptcy Code defines "claim" to include not only "contingent" but also "disputed" rights to payment.[18]

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[9] R&R, Doc. 32 at 4, 6.

[10] *See generally* Objections to R&R, Doc. 33.

[11] 11 U.S.C. §§ 101-1532.

[12] R&R, Doc. 32 at 6-7.

[13] R&R, Doc. 32 at 6 (citing 11 U.S.C. § 1141(a)); *see also* PBGC's Reply in Supp. of Mot. to Dismiss, Doc. 20 at 5 ("a creditor of the debtor qualifies as a party" under the Bankruptcy Code) (internal quotations and citations omitted).

[14] R&R, Doc. 32 at 6 (citing 11 U.S.C. §§ 101(10)(A)-(B) & 101(5)(A)).

[15] R&R, Doc. 32 at 6.

[16] R&R, Doc. 32 at 6 (quoting *In re Matthews*, 516 F. App'x 556, 562 (6th Cir. 2013)).

[17] R&R, Doc. 32 at 6, 6 n.3.

[18] R&R, Doc. 32 at 6 (quoting 11 U.S.C. § 101(5)(A)).

The Healing Trust does not object to the Magistrate Judge's finding that it was a "creditor" of the BH1 bankruptcy estate, or even address the foregoing provisions of the Bankruptcy Code.[19] In fact, it never even cites them. Nor does the Healing Trust object to the Magistrate Judge's finding that it had actual notice of the BH1 bankruptcy.[20] Because it has not objected to the finding that it was a creditor with notice, the Healing Trust is bound by this finding and has waived the right to further review.[21]

Because it was a creditor with notice of the BH1 bankruptcy, the Healing Trust is bound, like any other party, by the orders of the Bankruptcy Court. According to the record of the Bankruptcy Court:

- by Order dated October 25, 2013, the Bankruptcy Court granted PBGC "derivative standing to pursue all claims belonging to [BH1] or the [Pension] Plan relating the 2001 Agreement" and authorized PBGC to commence and prosecute all such claims;[22]

- By Order dated December 11, 2013, the Bankruptcy Court confirmed BH1's Chapter 11 Liquidation Plan, which defined the Pension Plan as an ERISA-covered retirement plan;[23]

- In confirming BH1's Chapter 11 Liquidation Plan, the Bankruptcy Court expressly incorporated its October 25, 2013 order, granting PBGC derivative standing to pursue any and all claims held by BH1 or the Pension Plan related to the APA.[24] The Bankruptcy Court expressly held that the "PBGC sh[ould] have the sole authority to

[19] *See generally* Objections to R&R, Doc. 33.

[20] To the contrary, the Healing Trust concedes it knew of and participated (short of intervening) in the bankruptcy proceeding. (*See, e.g.*, Objections to R&R, Doc. 33 at 5 (stating "the Healing Trust did not simply 'sit on its hands' while PBGC moved forward [in the bankruptcy proceeding]" but gave PBGC information "in an effort to cooperate")); *see* R&R, Doc. 32 at 4, 6 n.2; *see generally* Objections to R&R, Doc. 33.

[21] *See, e.g.*, *Hobson v. Hagel*, 2015 WL 5519571, at *1 (M.D. Tenn. Sep. 16, 2015):

> When a Magistrate Judge issues a report and recommendation regarding a dispositive pretrial matter, the district court must review de novo any portion of the report and recommendation to which a specific objection is made. Objections must be specific; an objection to the report in general is not sufficient and will result in waiver of further review. *Id.* (internal citations omitted).

[22] Order Granting Derivative Standing ¶ 2, Doc. 11-7.

[23] Chapter 11 Plan of Liquidation ¶ 14, Doc. 11-4; Order Confirming Chapter 11 Plan ¶ 14, Doc. 11-9.

[24] Order Confirming Chapter 11 Plan ¶ 14, Doc. 11-9.

commence, prosecute and resolve any and all of the 2001 Agreement Claims on behalf of [BH1]'s estate."[25]

- In confirming BH1's Chapter 11 Liquidation Plan, the Bankruptcy Court appointed a Dissolution Agent, who completed the liquidation of the BH1 bankruptcy estate in accordance with the Chapter 11 Plan of Liquidation,[26] and moved the Court for a final decree and order closing the bankruptcy case.[27]

- Upon the completed liquidation of the BH1 bankruptcy estate, the Bankruptcy Court entered a final decree and order, closing the bankruptcy case.[28]

In the Complaint, the Healing Trust asks the Court to rule that the Pension Plan is not an ERISA-covered pension plan and that PBGC has no authority to prosecute its claims.[29] But the Bankruptcy Court decided these issues, years ago, and its decisions are binding on the Healing Trust, who was a creditor with notice of the BH1 bankruptcy. As the Healing Trust concedes, "[B]ankruptcy creditors, upon legal notice of a bankruptcy, are obliged to appear and protect their claim."[30] The Healing Trust failed to do so. Whether considered under basic principles of bankruptcy law, the doctrine of equitable mootness, or *res judicata*, the Healing Trust cannot collaterally attack the Bankruptcy Court's orders under the guise of its Complaint.

II. AS THE MAGISTRATE JUDGE CORRECTLY DETERMINED, THE HEALING TRUST'S CLAIM IS EQUITABLY MOOT AND SHOULD BE DISMISSED.

The doctrine of equitable mootness is a pragmatic principle applied in bankruptcy proceedings to protect reliance interests and "prevent parties from upsetting a plan of

[25] Order Confirming Chapter 11 Plan ¶ 14, Doc. 11-9.

[26] Chapter 11 Plan of Liquidation, Doc. 11-4; Order Confirming Chapter 11 Plan ¶ 34, Doc. 11-9.

[27] Mot. for Entry of Final Decree and Order Closing Case, Doc. 11-10.

[28] Final Decree and Order, Doc. 11-11.

[29] *See generally* Decl. J. Compl., Doc. 1.

[30] Resp. in Opp'n to PBGC's Mot. to Dismiss, Doc. 15 at 8.

reorganization once it is well underway."[31] As the Magistrate Judge explained, "Once a bankruptcy plan has been confirmed, the parties' reasonable expectations in reliance on that plan are protected through the doctrine of equitable mootness."[32] "[I]t is the reliance interests engendered by the plan, coupled with the difficulty of reversing the critical transactions, that counsels against attempts to unwind things on appeal."[33] Each of the three equitable mootness factors—(1) "whether a stay has been obtained," (2) "whether the plan has been 'substantially consummated,'" and (3) "whether the relief requested would affect either the rights of parties not before the court or the success of the plan"[34] — demands dismissal of the Complaint.[35]

A. The Healing Trust Did Not Seek a Stay[36]

The Magistrate Judge properly found this factor to weigh in favor of equitable mootness. The Healing Trust asserts several arguments in objection to this finding.[37] First, it argues, without any legal authority, that equitable mootness only applies in the context of an *appeal* from a bankruptcy order, not in a wholly separate (and potentially stale) collateral litigation.[38] The Magistrate Judge swiftly disposed of this argument:

> The fact that the Healing Trust opted to pursue this matter through a collateral attack in the District Court rather than through a Rule 60 motion for relief or an appeal in the Bankruptcy Court will not preclude this Court from applying the doctrine of equitable mootness.[39]

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[31] *In re United Producers, Inc.*, 353 B.R. 507, 509 (B.A.P. 6th Cir. 2006).

[32] R&R, Doc. 32 at 8 (citations omitted).

[33] *In re United Producers, Inc.*, 353 B.R. at 509.

[34] *In re United Producers, Inc.*, 526 F.3d 942, 947 (6th Cir. 2008) (citation omitted).

[35] R&R, Doc. 32 at 8-11.

[36] R&R, Doc. 32 at 8.

[37] *See* Objections to R&R, Doc. 33 at 6-7.

[38] *See* Objections to R&R, Doc. 33 at 6-7

[39] R&R at 7.

The Magistrate Judge's sound reasoning reflects that the doctrine of equitable mootness protects reliance interests engendered by confirmation of a bankruptcy plan, regardless of whether the attack is by a Rule 60 motion, an appeal, or a collateral action. The doctrine is even more applicable in the context of a collateral action, which might be brought—as it was in this case—*years* after confirmation of a bankruptcy plan, than by a Rule 60 motion or an appeal.

The Healing Trust next argues that equitable mootness does not apply because it was not a "party" to the bankruptcy proceeding.[40] This argument is dispensed with above. The Magistrate Judge easily determined, as a "preliminary issue," that the Healing Trust was a creditor with actual notice of the BH1 bankruptcy and therefore a "party" under the Bankruptcy Code.[41] The Healing Trust is bound by this finding and waived its right to further review.[42]

The Healing Trust next contends that because it was not a "party" to the bankruptcy (an assertion that is false), application of equitable mootness would deprive the Healing Trust of "its day in court" and "deny the Healing Trust due process."[43] The Healing Trust cites no authority in support of this argument. The Healing Trust had its "day in court" in the bankruptcy proceeding: as a creditor with actual notice, the Healing Trust could have objected to PBGC's

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[40] It also argues it was not a "participant" in the bankruptcy proceeding. Objections to R&R, Doc. 33 at 2, 3, 6, 7. As a threshold matter, the only relevant issue is whether the Healing Trust was a creditor with notice of the bankruptcy proceeding (*i.e.*, a "party" in the bankruptcy sense). It was. As a result, the findings of the bankruptcy court are binding and immune from collateral attack. *See generally* R&R, Doc. 32; *see also* Part I, *supra*.

Moreover, the assertion that it did not "participate" is patently false, as demonstrated by the Healing Trust's own brief. According to the Healing Trust, it "did not simply 'sit on its hands' while PBGC moved forward [in the bankruptcy proceeding]," but rather furnished the PBGC with information "in an effort to cooperate[.]" Objections to R&R, Doc. 33 at 5. As the Magistrate Judge correctly found, "This is not the case where the Healing Trust was oblivious to the ongoing bankruptcy proceedings until their conclusion." *See* R&R, Doc. 32 at 6 n.2. Application of equitable mootness is appropriate.

[41] R&R, Doc. 32 at 6-7.

[42] *See* Part I, *supra*.

[43] Objections to R&R, Doc. 33 at 1, 6-8.

authority and the Pension Plan's ERISA-status but failed to do so. The Healing Trust is not denied due process by the Court precluding the Healing Trust a second bite at the apple.[44]

Additionally, the Healing Trust argues it "had no reason to appear in the BH1 Bankruptcy," because "its interests were not implicated in that proceeding in the first place."[45] In support of this argument, the Healing Trust makes much of the following sentence in BH1's Chapter 11 disclosure statement: "The [Healing] Trust takes the position that it has no on-going obligations under that Agreement; [BH1] contends otherwise, *but lacks any legal right to enforce the Agreement*."[46] The Healing Trust misses the point: regardless of whether BH1 had a legal right during the bankruptcy to enforce the APA, the Healing Trust was, and is, a guarantor of all of BH1's obligations contained therein. The Healing Trust thus was a creditor of the BH1 bankruptcy estate,[47] and creditors' rights, of course, are implicated in bankruptcy proceedings.[48]

Relatedly, the Healing Trust also contends its rights were not at issue in the bankruptcy proceeding because the Bankruptcy Court's orders were not "final."[49] In its October 2013 Order, the Bankruptcy Court expressly granted PBGC "derivative standing to pursue all claims

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[44] *See, e.g.*, *In re Pence*, 905 F.2d 1107, 1111 (7th Cir. 1990) (due process in bankruptcy actions "does not require formal, written notice of court proceedings"; so long as a creditor had "informal actual notice," it cannot "stick its head in the sand and pretend it would not lose any rights by not participating in the proceeding"); *see also* Resp. in Opp'n to PBGC's Mot. to Dismiss, Doc. 15 at 8 ("[B]ankruptcy creditors, upon legal notice of a bankruptcy, are obliged to appear and protect their claim.").) Similarly, the Healing Trust will have its "day in court" with respect to its guaranty defenses. Under the APA, however, those defenses must be raised in the pending arbitration.

[45] Objections to R&R, Doc. 33 at 7.

[46] Objections to R&R, Doc. 33 at 7-8 (emphasis in original) (citing Disclosure Statement at 7, Bankr. Docket No. 79).

[47] *See In re Matthews*, 516 F. App'x 556, 562 (6th Cir. 2013) (guarantors are creditors under the Bankruptcy Code).

[48] The Healing Trust confusedly invokes the doctrine of judicial estoppel in this section of its brief. This argument was never raised before the Magistrate Judge and therefore is waived. *See Murr v. United States*, 200 F.3d 895, 902 n.1 (6th Cir. 2000) ("While the Magistrate Judge Act, 28 U.S.C. § 631, *et seq.*, permits de novo review by the district court if timely objections are filed, absent compelling reasons, *it does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate*."); *United States v. Waters*, 158 F.3d 933, 936 (6th Cir. 1998) ("[I]ssues raised for first time in objections to magistrate judge's report and recommendation are deemed waived.") (citing *Marshall v. Chater*, 75 F.3d 1421, 1426-27 (10th Cir. 1996)).

[49] Objections to R&R, Doc. 33 at 3.

belonging to [BH1] or the [Pension] Plan relating to the [APA]" and "author[ity] to commence and prosecute an action or actions asserting any and all of the [c]laims."[50] The Healing Trust disputes the finality of this ruling, pointing to the next paragraph of order, which reads, "[N]othing in this order should be construed as limiting any defenses or issues that may be raised by a defendant in connection with a claim pursued by the PBGC."[51] The Healing Trust mischaracterizes this paragraph as an "express[ ] disclaime[r]" against any preclusive effect of the Bankruptcy Court's order.[52] The import of this paragraph, however, is simply the Bankruptcy Court's commonsense observation that in granting PBGC authority to pursue BH1's and the Pension Plan's claims, it was not resolving the merits of those claims, which may be subject to certain defenses. The Healing Trust may raise these defenses at the arbitration. On the other hand, attacking PBGC's authority to bring a claim, *ex ante*, is not a "defense," but an impermissible collateral attack on the Bankruptcy Court's final order that granted PBGC that authority.

The Magistrate Judge correctly found that the Healing Trust failed to seek a stay of the bankruptcy proceeding or to appeal the Bankruptcy Court's final orders, despite notice and the opportunity to do so. The Healing Trust's arguments, although persistent, are without merit. The first equitable mootness factor weighs decisively in favor of dismissal of the Complaint.

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[50] Doc. 11-7 ¶¶ 2-3.

[51] Doc. 11-7 ¶ 4.

[52] Objections to R&R, Doc. 33 at 4 ("The Report and Recommendation erroneously assigns to the Bankruptcy Court's orders a preclusive effect the Bankruptcy Court expressly disclaimed.").

B. The Liquidation Plan Has Been Substantially Completed[53]

The second factor is undisputed. The Magistrate Judge correctly determined, "The Healing Trust agrees that the Liquidation Plan was substantially consummated."[54] Consummation of the Liquidation Plan weighs heavily in favor of a finding of equitable mootness.[55]

C. The Relief Sought Would Affect Third Parties' Rights[56]

As the Magistrate Judge correctly determined, the relief the Healing Trust seeks would completely undermine the Bankruptcy Court's Liquidation Plan, "which has been completed *in toto*," and jeopardize the claims of the 2,000 pensioners, who rely on PBGC for their retirement security.[57] The Healing Trust has offered absolutely no basis on which to question this finding.[58] The third factor of the equitable mootness test, and the most important,[59] thus weighs heavily in favor of dismissal of the Complaint.

The Magistrate Judge understood that the Pension Plan's 2,000 participants relied on PBGC to represent their claims in the BH1 bankruptcy:

> If, as the Healing Trust requests, the PBGC is declared to have no authority to pursue the rights of the 2,000 pensioners, these individuals would be expected to have the opportunity to assert claims against BH1's bankruptcy estate. Instead of asserting these individual claims during the bankruptcy proceedings, these individuals have relied on the PBGC to ensure receipt of a pension for three years and counting.[60]

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[53] R&R, Doc. 32 at 9.

[54] R&R, Doc. 32 at 9 (citing Docket Entry 15, p. 14); *see generally* Objections to R&R, Doc. 33 (failing to object that the Liquidation Plan has been completed).

[55] R&R, Doc. 32 at 9.

[56] R&R, Doc. 32 at 9.

[57] R&R, Doc. 32 at 10-11.

[58] *See* Objections to R&R, Doc. 33 at 9-10.

[59] *In re United Producers, Inc.*, 526 F.3d at 949 (citation omitted).

[60] R&R, Doc. 32 at 10-11.

The Court pointed out that had PBGC not taken action, the bankruptcy case would have turned out differently. It is not clear who would have appeared on behalf of the participants and beneficiaries of the Pension Plan or who would be advancing their interests now. As the Court stated, "By challenging the PBGC's statutory authority to pursue the pensioners' rights at the thirteenth hour, the Healing Trust may well undermine the pensioners' reliance interests and the success of the plan which has been completed *in toto*."[61] Indeed, resolution of the Pension Plan's more than $100 million unfunded benefit liabilities, by granting PBGC derivative standing to pursue all claims belonging to BH1 was the linchpin of the Liquidation Plan

The Healing Trust does not genuinely dispute the Magistrate Judge's findings that the success of the Liquidation Plan and the rights of the 2,000 pensioners will be imperiled by the relief it seeks. Without any support, the Healing Trust asserts that "a ruling in favor of the Healing Trust [would not] change the outcome for the Pension Plan participants."[62] This is a false statement. The entire Liquidation Plan was premised on recognizing the Pension Plan as an ERISA-covered pension plan and the granting of derivative standing to PBGC to pursue claims belonging to BH1. As statutory trustee, PBGC has been responsible for the Pension Plan for years, paying benefits to over 2,000 participants. A collateral attack on the Liquidation Plan certainly would affect the rights of the Pension Plan's participants.

The Magistrate Judge correctly determined that the Healing Trust's Complaint threatens to unwind the fully consummated Liquidation Plan and imperil the rights of 2,000 participants, who have relied on the Liquidation Plan for years. For all of these reasons, the Complaint should be dismissed as equitably moot.

[61] R&R, Doc. 32 at 11.

[62] Objections to R&R, Doc. 33 at 3.

III. THE HEALING TRUST'S CLAIM IS BARRED BY *RES JUDICATA* AND SHOULD BE DISMISSED.

For the same reasons the Complaint is equitably moot, it is barred by *res judicata* and should be dismissed. Although this is not the basis of the Report and Recommendation, the Court may dismiss the Complaint on this additional basis.[63] "The doctrine of *res judicata* . . . means a final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were or could have been raised in that action."[64] The doctrine is enforced fastidiously in the context of bankruptcy, "where finality of court orders is particularly important."[65] Indeed, "finality is considered in a more pragmatic and less technical way in bankruptcy cases than in other situations."[66]

The Healing Trust seeks a declaration that the Pension Plan is not an ERISA-covered pension plan and that PBGC lacks authority to act on its behalf or assert claims against the Healing Trust.[67] These arguments are barred by *res judicata* because they could, and should, have been raised and litigated in the bankruptcy proceeding. The premise of the Liquidation Plan was the granting of derivative standing to PBGC to pursue claims belonging to BH1 on behalf of the Pension Plan.[68] The Bankruptcy Court confirmed the Liquidation Plan, appointed a Dissolution Agent to liquidate the BH1 bankruptcy estate, and granted PBGC express authority to pursue claims on behalf of the Pension Plan and its former sponsor, BH1. The Liquidation

[63] *See generally* Fed. R. Civ. P. 72.

[64] *In re Micro-Time Mgmt. Sys., Inc.*, 983 F.2d 1067, at *3 (6th Cir. 1993).

[65] *In re Lawrence*, 293 F.3d 615, 621 (2d Cir. 2002).

[66] *Winget v. JP Morgan Chase Bank, N.A.*, 537 F.3d 565, 578 (6th Cir. 2008).

[67] *E.g.*, Decl. J. Compl., Doc. 1 ¶ 6.

[68] *See generally* Doc. 11-3.

Plan is now fully consummated. Each of these actions is predicated on the Bankruptcy Court's recognition of the Pension Plan as an ERISA-covered pension plan.

The Healing Trust was a creditor of the BH1 bankruptcy estate with notice of the BH1 bankruptcy. Its objections to the Pension Plan's status as an ERISA-covered pension plan could have and should have been raised in the BH1 bankruptcy. They are now barred by *res judicata*.

IV. THE COMPLAINT SHOULD ALSO BE DISMISSED FOR FAILURE TO STATE A CLAIM AND IMPROPER VENUE.

Even if this litigation were not foreclosed by the doctrines of equitable mootness and *res judicata*, the case cannot proceed. First, the Healing Trust has not and cannot allege sufficient facts to plausibly show that the Pension Plan is a "church plan" exempt from coverage until Title IV of ERISA.[69] Second, there is no basis for venue in this Court and the Court should therefore dismiss or, at the very least, transfer the case to the statutorily mandated district.[70]

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must present factual allegations that are sufficiently detailed "to raise a right to relief above the speculative level."[71] A complaint cannot survive a motion to dismiss through only "a formulaic recitation of the elements of a cause of action."[72] While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations,[73] it must contain sufficient factual matter, accepted as true, to state a claim to relief that is "plausible on its face."[74]

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[69] 29 U.S.C. § 1001 et seq.

[70] As the Magistrate Judge recognized, the Court need not address these arguments to resolve this dispute given that the Trust's suit is foreclosed by fundamental principles of bankruptcy law. The issues are addressed here only briefly, but are briefed at greater length at in PBGC's Memoranda in Support of Its Motion to Dismiss or Transfer. Those arguments are incorporated herein by reference. *See* Doc. 11-1, at 13-19; Doc. 20, at 11-15.

[71] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

[72] *Id.*

[73] *Id.*

[74] *Id.*

A "church plan" is defined under ERISA and the Internal Revenue Code as a plan established and maintained for its employees by a church.[75] Under Treasury Regulation section 1.414(e)(1), a church plan must be "established and *at all times* maintained for its employees by a church . . . ."[76] Treasury regulations are deemed to have received congressional approval and have the effect of law.[77]

In order for an organization that is not itself a church, or convention or association of churches, to have a qualified church plan, it must—at a minimum—establish that its employees are employees or deemed employees of a church, or convention or association of churches, by virtue of the organization's control by or affiliation with a church or convention or association of churches.[78] Because BH1 was not a church, and because it was not controlled by a church, the only way the Complaint could survive a motion to dismiss would be for the Healing Trust to allege facts that demonstrate that BH1 was associated with a church or convention or association of churches, at all times.

Baptist Hospital (known as BH1 post-2001) was the sponsor of the Pension Plan from 1960 through 2013.[79] The Complaint fails to allege any facts to show that between execution of the APA in 2001 through 2013: (1) a church played a role in governing BH1; (2) any employee or patient of BH1 was required to be a member of a specific denomination; or (3) BH1 received any financial assistance from a church. The mere conclusory allegation that BH1 operated in

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[75] 29 U.S.C. § 1002(33) (2012 & Supp. II 2014); 26 U.S.C. § 414(e)(1) (2006).

[76] 26 C.F.R. § 1.414(e)(1) (1980) (emphasis added).

[77] *United States v. Correll*, 389 U.S. 299, 307 (1967) ("Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law."); *Fribourg Nav. Co. v. Commissioner*, 383 U.S. 272, 283 (1966); *Helvering v. Winmill*, 305 U.S. 79, 83 (1938).

[78] 29 U.S.C. § 1002(33); 26 U.S.C. § 414(e)(3) (2006).

[79] On November 14, 2001, Baptist Hospital sold its assets and its name was changed to BH1.

accordance with the religious mission of the Baptist Hospital after the execution of the APA does not suffice.[80] Accordingly, the Healing Trust has failed to plead facts sufficient to show that the Pension Plan is a "church plan" that is exempt under ERISA and the Complaint should be dismissed.[81]

The Complaint also should be dismissed for improper venue. Rule 12(b)(3) of the Federal Rules of Civil Procedure authorizes a district court to dismiss an action for improper venue. When venue is improper, "[t]he district court of a district in which is filed . . . 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."[82] Under ERISA, suits against PBGC must be brought in one of three venues:

> (A) the United States district court before which proceedings under section 1341 or 1342 are being conducted,
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> (B) if no such proceedings are being conducted, the United States district court for the judicial district in which the [pension] plan has its principal office, or
>
> (C) the United States District Court for the District of Columbia.[83]

The Healing Trust cannot and does not dispute that there are no proceedings under "section 1341 or 1342 being conducted." Nor can it dispute that Pension Plan terminated; so, the Plan has no principal office. As such, the only proper venue for this action—if this case were

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[80] *See Chronister v. Baptist Health*, 442 F.3d 648, 653 (8th Cir. 2006) (concluding that a hospital's long-term disability-benefits plan was not a church plan even though the hospital required that management employees be guided by Christian principles).

[81] *See generally Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 *(2007)* (noting that a plaintiff must "present factual allegations that are sufficiently detailed "to raise a right to relief above the speculative level.").

[82] 28 U.S.C. § 1406(a).

[83] 29 U.S.C. § 1303(f)(1).

somehow to proceed forward—is the United States District Court for the District of Columbia. Accordingly, this Court should dismiss the Complaint for lack of proper venue.

CONCLUSION

The Bankruptcy Court recognized the Pension Plan as an ERISA-covered pension plan rather than a "church plan." The Healing Trust did not take action or object in the BH1 bankruptcy. It cannot do so now. The Report and Recommendation should be adopted and the Complaint dismissed.

Dated: July 5, 2016

Respectfully submitted,

By: s/ Damarr M. Butler
Israel Goldowitz, Chief Counsel
Charles L. Finke, Deputy Chief Counsel
Joel W. Ruderman, Assistant Chief Counsel
Damarr M. Butler, Attorney
Marc S. Pfeuffer, Attorney
Mary A. Petrovic, Attorney
PENSION BENEFIT GUARANTY CORP.
1200 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 326-4020, ext. 6883
Facsimile: (202) 326-4112
Emails: butler.damarr@pbgc.gov
and efile@pbgc.gov
Attorneys for Defendant Pension Benefit Guaranty Corporation

MILLER & MARTIN PLLC
C. Crews Townsend (TN BPR 12274)
Meredith C. Lee (TN BPR 033948)
Volunteer Building, Suite 1200
832 Georgia Avenue
Chattanooga, TN 37402
Telephone (423)756-6600
Facsimile (423)785-8480
Crews.Townsend@millermartin.com
Meredith.Lee@millermartin.com
Counsel for PBGC
and:

SARAH L. REID
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178
Telephone: (212) 808-7800
Facsimile: (212) 808-7897
Email: sreid@kelleydrye.com
Of Counsel for PBGC

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2016, a copy of the foregoing Pension Benefit Guaranty Corporation's Response in Opposition to the Baptist Healing Hospital Trust's Objections to Report and Recommendation was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

John E. B. Gerth
Robert E. Boston
James B. Bristol
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, TN 37219-8966

Counsel for Plaintiff via CM/ECF

/s/ Damarr M. Butler
Damarr M. Butler