

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION – BAY CITY**

In re:	)	Chapter 11
	)	
COMMUNITY MEMORIAL HOSPITAL	)	Case No. 12-20666 (DOF)
d/b/a CHEBOYGAN MEMORIAL	)	
HOSPITAL, a Michigan nonprofit	)	Honorable Daniel S. Opperman
corporation,	)	
	)	
Debtor.		

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**STIPULATION BY AND BETWEEN LIQUIDATING TRUSTEE AND THE PENSION BENEFIT  
GUARANTY CORPORATION RESOLVING  
CLAIMS AGAINST THE DEBTOR**

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This stipulation is made by and between A. Brooks Darling, the Liquidating Trustee (the "Liquidating Trustee") under the Liquidating Trust (the "Liquidating Trust"), established by, and as assignee of the Debtor pursuant to, the Corrected First Amended Chapter 11 Plan of Liquidation of the Official Unsecured Creditors Committee [Docket No. 777] (the "Liquidation Plan"), and the Pension Benefit Guaranty Corporation (the "PBGC") and together with the Liquidating Trustee, the "Parties").

**WHEREAS**, on March 1, 2012 (the "Petition Date"), the Debtor filed its voluntary Chapter 11 petition in this Court; and, on April 3, 2012 (the "Sale Date"), the Debtor sold substantially all of its assets and ceased operations;

**WHEREAS**, prior to the Petition Date, the Debtor sponsored, and after the Petition Date, continued to sponsor, the Cheboygan Memorial Hospital Employee Pension Plan (the "Pension Plan"), which is a defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1301-1461, as amended;

**WHEREAS**, the PBGC is a wholly owned United States Government corporation that administers the defined benefit pension plan termination insurance program under Title IV of the Employment Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §§ 1301-1461. The Pension Plan is covered under Title IV of ERISA;

**WHEREAS**, on June 21, 2012, the PBGC and the Debtor executed that certain Agreement for Appointment of Trustee and Termination of Plan, pursuant to which the Pension Plan was terminated under 29 U.S.C. § 1342(c) as of April 3, 2012, and the PBGC was appointed trustee of the Pension Plan under 29 U.S.C. § 1342(c);

**WHEREAS**, on January 16, 2013, the PBGC filed five proofs of claim in this case totaling \$5,851,247 and identified as follows (collectively, the "PBGC Claims"): (i) Claim No. 165 for unfunded benefit liabilities of \$2,987,188.00, including an administrative expense claim under 11 U.S.C. §§503(b)(1)(B) and 507(a)(2) and alternatively as a priority claim under 11 U.S.C. §507(a)(8), each in an unliquidated amount, (ii) Claim No. 166 for unpaid minimum funding contributions of \$303,279.00, including an administrative expense claim under 11 U.S.C. §§503(b) and 507(a)(2) of \$6,764.00 and a priority expense claim under 11 U.S.C. §507(a)(5) of \$39,310.00, (iii) Claim No. 167 for unpaid premiums in an unliquidated amount, including an administrative expense claim under 11 U.S.C. §503(b)(1) and 507(a)(2) in an unliquidated amount, (iv) Claim No. 168 for shortfall and amortization charges of \$1,255,780.00 as an unsecured claim, and (v) Claim No. 304 as an administrative expense claim under 11 U.S.C. §507(a)(2) for minimum funding contributions of \$6,764.00;

**WHEREAS**, on August 7, 2013, the Bankruptcy Court entered its Order Confirming First Amended Chapter 11 Plan of Liquidation [Docket No. 799] confirming the Liquidation Plan;

**WHEREAS**, effective September 7, 2013, the Liquidating Trust was established pursuant to the Plan of Liquidation, and James W. Boyd commenced the administration of the Liquidating Trust as the Liquidating Trustee;

**WHEREAS**, effective May 30, 2014, James W. Boyd resigned as Liquidating Trustee and A. Brooks Darling commenced to serve, and continues to serve, as the successor Liquidating Trustee under the Liquidating Trust as set forth in the Notice of Resignation of Liquidating Trustee and Appointment and Acceptance of Appointment by Successor Liquidating Trustee [Docket No. 1091];

**WHEREAS**, the Liquidating Trustee has disputed the amount and priority of the PBGC Claims, and, on September 30, 2014, filed the Third Omnibus Objection of Liquidating Trustee to the Allowance of Claims Filed by Certain Creditors of Debtor [Docket No. 1118], objecting in part to PBGC Claims (the “Objections”);

**WHEREAS**, the Parties have engaged in negotiations regarding resolution of the Objections; and

**NOW, THEREFORE**, in consideration of the foregoing recitals, which are incorporated into this Stipulation, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, following good faith, arm’s length negotiations, the Parties hereby stipulation and agree as follows:

1. The PBGC Claims constitute all claims of the PBGC in this case and the PBGC has no other claims in this case.
2. The PBGC Claims shall be allowed claims or deemed withdrawn as follows
  - a. Claim No. 165 shall be allowed as a Class 5 General Unsecured Claim in the amount of \$2,987,188.00 and no part of Claim No. 165 shall be entitled to priority;

b. Claim No. 166 shall be allowed as a Class 5 General Unsecured Claim in the amount of \$303,279.00 and no part of Claim No. 166 shall be entitled to priority;

c. Claim No. 167 shall be allowed as a Class 5 General Unsecured Claim in the amount of \$1,305,000.00 and no part of Claim No. 167 shall be entitled to priority;

d. Claim No. 168 shall be deemed withdrawn; and

e. Claim No. 304 shall be deemed withdrawn.

This stipulation fully and finally resolves the PBGC Claims and all liabilities and obligations of the Liquidating Trust relating thereto.

3. Upon entry of the Order Resolving Objections to PBGC Claims in substantially in the form attached to this Stipulation, the Objections shall be deemed withdrawn.

4. This stipulation contains the entire agreement by, between and among the Parties with respect to the PBGC Claims.

5. This Stipulation may be executed in counterparts, each of which is deemed an original, but when taken together constitute one and the same document. Facsimile copies of signatures on this Stipulation are acceptable, and a facsimile copy of a signature on this Stipulation is deemed an original.

6. Each person signing this Stipulation represents and warrants that he or she has been duly authorized and has the requisite authority to execute and deliver this Stipulation on behalf of the Parties on whose behalf this Stipulation is executed and to bind the respective Parties to the terms and conditions of this Stipulation.

**Agreed to the 5th day of January, 2015**

**Pension Benefit Guaranty Corporation**

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**Liquidating Trust**

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