



Pension Benefit Guaranty Corporation  
Office of Inspector General  
1200 K Street, N.W., Washington, D.C. 20005-4026

January 30, 2015

Congressman Bennie G. Thompson, MS-02  
Ranking Member, House Committee on Homeland Security  
United States House of Representatives  
2466 Rayburn House Office Building  
Washington, D.C. 20515-2402  
ATTN: Ms. LeMia B. Jenkins

Re: Southland Management Corporation

Dear Ms. Jenkins:

I am responding to a letter dated October 30, 2014, your office sent on behalf of Bennie Stone Gooden's heirs, who strongly opposed the distressed termination of Mr. Gooden's Southland Management Corporation Defined Benefit Pension Plan (Plan). In summary, the Gooden heirs believe that:

- Southland Management Corporation (SMC) had a sufficient ownership interest in 19 housing developments that should result in assets to the pension plan.
- SMC's interests in some of those developments were sold and potentially represented substantial assets available to the Plan.

The Gooden heirs stated they had requested documents from SMC to which they were entitled but did not receive them, and are now seeking them from PBGC. As we have discussed, I did not receive the October 30 letter until December 4, 2014; we began our inquiry immediately upon receipt.

Background. SMC is a privately held corporation that was founded in 1967 and is based in Jackson, Mississippi. SMC manages multi-family apartment projects in Mississippi that receive assistance from the U.S. Department of Housing and Urban Development. SMC is the contributing sponsor of the Southland Management Corporation Defined Benefit Pension Trust plan, which has 19 participants. PBGC reports that the SMC Plan is underfunded by approximately \$2.3 million on a termination basis.

According to documentation, on April 3, 2014, SMC filed a Form 600, *Application for a Distress Termination*, with PBGC citing the business-continuation test under 29 U.S.C. § 1341(c)(2)(B)(iii)(I), commonly referred to as ERISA § 4041. SMC represented to PBGC that it is unable to afford its pension plan as a result of declining revenues from its property-

management business. As a result, SMC proposed a plan termination with a date of May 31, 2014. Under the Employee Retirement Income Security Act of 1974 (ERISA), as amended<sup>1</sup>, a plan that does not have enough money to pay all benefits owed participants and beneficiaries may be terminated only if the employer and the members of the employer's "controlled group" of affiliated companies each meets one of the distress termination tests. To do so, the employer must prove that the controlled group is financially unable to support the plan. A company in financial distress may seek to terminate a pension plan if:

- The plan administrator has issued a notice of intent to terminate the pension plan to affected parties, including PBGC, at least 60 days, and no more than 90 days, in advance of the proposed termination date;
- The plan administrator has issued a subsequent termination notice to PBGC, which includes data concerning the number of participants and the plan's assets and liabilities; and
- PBGC has determined that the plan sponsor and each of its corporate affiliates have satisfied at least one of the four financial distress tests – though not necessarily the same test.<sup>2</sup>

Should the plan qualify for distress termination, PBGC is then obligated to continue an uninterrupted stream of benefits to participants, subject to the ERISA limitations.<sup>3</sup>

Our inquiry and what we found. We did not conduct an audit or investigation. We interviewed pertinent staff and PBGC officials involved, and reviewed ERISA regulations. We inquired about current procedures and obtained and reviewed PBGC's documentation for SMC, including the supporting documentation on the controlled group limited partnership interests owned.

At particular issue for the Gooden heirs are the 19 housing development properties. The question for PBGC to determine is whether these properties are within SMC's "controlled

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<sup>1</sup> 29 U.S.C. §§ 1301-1461, ERISA . §§ 4001 – 4261.

<sup>2</sup> ERISA § 4041(c) states that each contributing sponsor and controlled group member of the plan must meet one of these requirements before PBGC can determine a distress termination is necessary:

1. A petition has been filed seeking liquidation in bankruptcy;
2. A petition has been filed seeking reorganization in bankruptcy, and the bankruptcy court (or an appropriate state court) has determined that the company will not be able to reorganize with the plan intact and approves the plan termination;
3. It has been demonstrated that the sponsor or affiliate cannot continue in business unless the plan is terminated; or
4. It has been demonstrated that the costs of providing pension coverage have become unreasonably burdensome solely as a result of a decline in the number of employees covered by the plan.

<sup>3</sup> ERISA § 4002(a)(2); 29 U.S.C. § 1302(a)(2.)

group” so that they would have some liability for the plan’s underfunding. Under Federal regulations,<sup>4</sup> the plan sponsor must have at least an 80% ownership interest in a business/partnership for it to be deemed within the controlled group. We reviewed documentation PBGC obtained to support its assessment that SMC did not wholly own these 19 housing development properties, but rather held a limited partnership interest. Based on this documentation, PBGC reported to our office that SMC’s interest in these properties was beneath the threshold of 80% required to hold the limited partnerships responsible for any liabilities associated to the SMC Plan.

From discussions with PBGC officials, PBGC has not made a final determination with respect to whether the pension plan meets the distress termination criteria. PBGC is continuing to analyze the financial information, including obtaining additional documents from and engaging in discussions with SMC. At the end of that process, PBGC has stated it will document its analysis and conclusion regarding whether the pension plan must be terminated under ERISA. This analysis could result in a recommendation to terminate the pension plan. PBGC has established an internal multi-disciplinary group to review the recommendation and analysis to determine whether the plan should be terminated. If the reviewing group concurs with the recommendation to terminate the pension plan in a distress termination, PBGC will notify the plan participants.

PBGC stated that it has provided some documentation to the Gooden heirs. If they want additional documents, they can request them from PBGC by filing a Freedom of Information Act request. Information about where to file such a request is on PBGC’s website at:

<http://www.pbgc.gov/about/pg/footer/foia/foiacontact.html>.

Respectfully submitted,



Deborah Stover-Springer  
Acting Inspector General

cc: Alice Maroni, Acting PBGC Director

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<sup>4</sup> PBGC’s statute (ERISA § 4001.3) states that PBGC will determine whether businesses are under common control in accordance with regulations prescribed by the Internal Revenue Service, in this case 26 CFR § 1.41.(c).