

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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PENSION BENEFIT GUARANTY )  
CORPORATION )  
1200 K Street, NW )  
Washington, D.C. 20005 )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
EBER BROS. WINE & LIQUOR )  
CORPORATION )  
as Plan Administrator of the )  
Eber Bros. Wine & Liquor Corp. Retirement Plan )  
95 Allens Creek Road )  
Building 2, Suite 10 )  
Rochester, NY 14618 )  
) )  
Defendant. )

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Case No. \_\_\_\_\_

**COMPLAINT FOR PENSION PLAN TERMINATION**

1. This action arises under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1001-1461 (2012) (“ERISA”). Plaintiff, Pension Benefit Guaranty Corporation (“PBGC”), files this Complaint, pursuant to 29 U.S.C. §§ 1342(a)(1) and (2), 1342(c) and 1348(a) seeking an order (i) terminating the Eber Bros. Wine & Liquor Corp. Retirement Plan (“Plan”); (ii) appointing PBGC as statutory trustee of the Plan; (iii) establishing April 30, 2010, as the termination date of the Plan; and (iv) directing the Defendant and any other person or entity having possession, custody or control of any of the records, assets, or other property of the Plan, to transfer, convey, and deliver all such records, assets and property to PBGC, as the statutory trustee upon request under 29 U.S.C. § 1342(d)(1).

**JURISDICTION AND VENUE**

2. This Court has exclusive jurisdiction over this action, without regard to the amount in controversy, pursuant to 29 U.S.C. §§ 1303(e)(3) and 1342(e) and (f).

3. Venue lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g) because the Defendant is located in Rochester, New York, and the Pension Plan was administered in Rochester, New York.

**PARTIES**

4. Plaintiff, PBGC, is an agency and a wholly owned United States government corporation established under 29 U.S.C. § 1302(a) to administer and enforce the pension plan termination insurance program created by Title IV of ERISA. When an underfunded pension plan terminates, PBGC ensures the timely and uninterrupted payment of statutorily guaranteed pension benefits to participants and their beneficiaries. 29 U.S.C. §§ 1302(a)(2), 1321(a), 1322.

5. Defendant, Eber Bros. Wine & Liquor Corporation (“Defendant” or “Eber Bros.”) is the Plan administrator of the Plan within the meaning of 29 U.S.C. §§ 1301(a)(1) and 1002(16)(A). On information and belief, Defendant is a corporation organized under the laws of New York, with its principal place of business located in Rochester, New York.

**THE PENSION PLAN**

6. The Plan is a tax-qualified, single-employer, defined benefit plan that is covered by Title IV of ERISA. 29 U.S.C. 1321(a).

7. The Plan provides benefits to certain former employees of Eber Bros. and to their beneficiaries. On information and belief, the Plan has approximately 434 participants. PBGC estimates that the Plan is underfunded by \$5.2 million on a termination basis as of April 30, 2010.

8. Eber Bros. is the contributing sponsor of the Plan within the meaning of 29 U.S.C. § 1301(a)(13).

**COMPANY BACKGROUND AND CESSATION OF BUSINESS**

9. On information and belief, Eber Bros. was a large wine and liquor distribution business located in New York.

10. On information and belief, by December 31, 2008, Eber Bros. had terminated all of its employees and had ceased all business operations.

11. Eber Bros. administered the Plan. On information and belief, the Board of Directors of Eber Bros. resigned from their positions as of March 31, 2014.

12. The resignation of the Board of Directors left Eber Bros. without the ability to administer the Plan. Among other effects, any new retirees who sought benefits were unable to receive their benefits when due, as there was no one available to authorize payment.

Accordingly, Eber Bros. turned over administration of the Plan to PBGC on or about March 31, 2014.

**CAUSE OF ACTION**

13. PBGC is authorized by 29 U.S.C. § 1342 to commence proceedings to terminate a plan whenever PBGC determines, *inter alia*, that a plan has not met the minimum funding standard under § 412 of the Internal Revenue Code, 29 U.S.C. § 1342(a)(1), and that the plan will be unable to pay benefits when due, 29 U.S.C. § 1342(a)(2).

14. PBGC has determined, pursuant to 29 U.S.C. §§ 1342(a)(1) and (a)(2), that the Plan has not met the minimum funding standard under §§ 412 and 430 of the Internal Revenue Code and will be unable to pay benefits when due. PBGC will file an administrative record with respect to its determinations.

15. On August 6, 2014, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination to Eber Bros. (“Notice”), as Plan administrator of the Plan, notifying Eber Bros. that PBGC had determined that the Plan has not met the minimum funding standard required under sections 412 and 430 of the Internal Revenue Code and will be unable to pay benefits when due. The Notice further stated that PBGC intends to proceed to seek termination of the Plan, have PBGC appointed as trustee of the Plan, and establish April 30, 2010, as the date of termination for the Plan. A copy of the Notice is attached hereto as Exhibit 1.

16. Pursuant to 29 U.S.C. § 1342(c), a district court may order the termination of a pension plan if necessary to protect the interests of participants.

17. PBGC has determined that termination of the Plan is necessary to protect the interests of participants. *See* Exhibit 1.

18. Pursuant to 29 U.S.C. § 1348(a)(4), a district court establishes the date of termination of a pension plan covered by Title IV of ERISA when PBGC and the Plan administrator have not agreed on a date of termination.

19. To date, Eber Bros. has not signed the agreement allowing PBGC to trustee the Plan and has not agreed on a date of termination.

20. April 30, 2010, should be established as the date of Plan termination pursuant to 29 U.S.C. § 1348(a)(4), because as of that date, all of the Plan participants’ employment had been terminated and all company operations had ceased, at which point the participants no longer had any justifiable expectation of the Plan’s continuation. Establishment of that date also furthers the interests of PBGC.

21. Pursuant to 29 U.S.C. § 1342(c), a trustee for a pension plan shall be appointed by the court upon granting a decree of plan termination. Further, 29 U.S.C. § 1342(b)(1) provides that PBGC may request that it be appointed as trustee of a plan in any case.

22. The PBGC is ready, willing and able to serve as statutory trustee of the Plan. Due to the Plan's abandonment, PBGC has initiated the steps necessary to administer the Plan and to pay current retirees their benefits under the Plan in accordance with the provisions of Title IV of ERISA.

**RELIEF REQUESTED**

WHEREFORE, PBGC respectfully requests that the Court grant judgment to PBGC and issue an Order granting the following relief:

1. Adjudicate that the Plan is terminated pursuant to 29 U.S.C. §1342(c);
2. Appoint PBGC statutory trustee of the Plan pursuant to 29 U.S.C. §1342(c);
3. Establish April 30, 2010, as the termination date of the Plan pursuant to 29 U.S.C. §1348(a)(4);
4. Direct Eber Bros. and any other person or entity having possession, custody, or control of any records, assets, documents or other property of the Plan, to transfer, convey, and deliver all such records, assets, and property to PBGC pursuant to 29 U.S.C. §1342(d)(1); and

5. Grant any and all other relief that this Court deems just and proper.

Dated: May 11, 2015  
Washington, D.C.

/s/ Kimberly E. Neureiter  
ISRAEL GOLDOWITZ  
Chief Counsel  
JAMES J. ARMBRUSTER  
Deputy Chief Counsel  
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Assistant Chief Counsel  
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# EXHIBIT 1



Pension Benefit Guaranty Corporation

1200 K Street, N.W., Washington, D.C. 20005-4026

AUG 6 2014

Mrs. Wendy Eber  
Chief Financial Officer  
Eber Bros. Wine & Liquor Corporation  
30 Corporate Drive  
North Haven, CT 06473

EIN/PN: 160417450/001  
PBGC Case Number: 22470300  
Plan Name: Eber Bros. Wine & Liquor Corp.  
Retirement Plan

**NOTICE OF DETERMINATION**

PLEASE TAKE NOTICE that the Pension Benefit Guaranty Corporation ("PBGC") has determined under section 4042(a)(1) and (2) of the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"), 29 U.S.C. § 1342(a)(1) and (2), that the Eber Bros. Wine & Liquor Corp. Retirement Plan ("Plan") has not met the minimum funding standard required under sections 412 and 430 of the Internal Revenue Code, and that the Plan will be unable to pay benefits when due. PBGC has further determined, under ERISA § 4042(c), 29 U.S.C. § 1342(c), that the Plan must be terminated in order to protect the interests of the Plan's participants. Accordingly, PBGC intends to proceed under ERISA § 4042, 29 U.S.C. § 1342, to have the Plan terminated and PBGC appointed as statutory trustee, and under ERISA § 4048, 29 U.S.C. § 1348, to have April 30, 2010, established as the Plan's termination date.

PBGC has completed its decision-making process in this matter; accordingly, this determination is effective on the date it is issued.

PENSION BENEFIT GUARANTY CORPORATION

Andrea Schneider  
Chairperson, Trusteeship Working Group