

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA**

In re: Pension Plan For The)
Employees of Neptune Inc.)
)
PENSION BENEFIT GUARANTY)
CORPORATION)
1200 K Street, N.W.)
Washington, D.C. 20005)
)
Plaintiff,)
)
v.)
)
Neptune, Inc.)
as administrator of the)
Pension Plan For The Employees of Neptune Inc.)
815D Virginia Street, S.W.)
Lenoir, North Carolina 28645)
)
Defendant.)

COMPLAINT

Jury Trial: Yes No

This action arises under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), *as amended*, 29 U.S.C. §§ 1301-1461 (2006 & Supp. V 2011). Plaintiff, the 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 (a) terminating the Pension Plan For The Employees of Neptune Inc. (the "Pension Plan"), (b) appointing PBGC as the statutory trustee of the Pension Plan, (c) establishing June 30, 2009, as the termination date for the Pension Plan, and (d) directing the defendant and any other person or entity having possession, custody or control of any records, assets or other property of the Pension Plan, to transfer, convey and deliver all such records, assets and property to the PBGC.

JURISDICTION AND VENUE

1. This Court has exclusive jurisdiction of this action pursuant to 29 U.S.C. §§ 1303(e)(3) and 1342(e) and (f).

2. Venue properly lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g). On information and belief, the Defendant is located in Lenoir, North Carolina, and the Pension Plan is administered there.

PARTIES

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

4. Defendant, Neptune, Inc. (“Neptune”), is the Plan administrator of the Pension Plan within the meaning of 29 U.S.C. §§ 1301(a)(1) and 1002(16)(A).

THE PENSION PLAN

5. The Pension Plan is a single-employer, defined benefit pension plan that is covered by Title IV of ERISA. 29 U.S.C. § 1321(a).

6. The Pension Plan provides pension benefits to certain former employees of Neptune and to their beneficiaries. On information and belief, the Pension Plan has approximately 58 participants, and PBGC estimates that the Pension Plan is underfunded by approximately \$883,744.00 on a termination basis.

7. Neptune is the contributing sponsor of the Pension Plan within the meaning of 29 U.S.C. § 1301(a)(13).

CAUSE OF ACTION

8. On or about June 30, 2009, Neptune terminated its employees and ceased business operations.

9. PBGC is authorized by 29 U.S.C. § 1342 to commence proceedings to terminate a plan whenever PBGC determines, *inter alia*, that a pension plan has not met the minimum funding standard required under sections 412 and 430 of the Internal Revenue Code, 29 U.S.C. § 1342(a)(1), or the pension plan will be unable to pay benefits when due, 29 U.S.C. § 1342(a)(2).

10. PBGC has determined, pursuant to 29 U.S.C. § 1342(a)(1), and (a)(2) that the Pension Plan has not met the minimum funding standard required under section 412 of the Internal Revenue Code, 29 U.S.C. § 1342(a)(1), and the Pension Plan will be unable to pay benefits when due, 29 U.S.C. § 1342(a)(2). PBGC also determined that the Pension Plan's termination date should be June 30, 2009.

11. On October 23, 2012, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination (the "Notice") to Neptune, as plan administrator of the Pension Plan, notifying Neptune that PBGC had determined that the Pension Plan has not met the minimum funding standard required under section 412 of the Internal Revenue Code, and the Pension Plan will be unable to pay benefits when due. A copy of the Notice is attached as Exhibit 1.

12. 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, to avoid any unreasonable deterioration of the financial condition of the plan, or to avoid any unreasonable increase in liability to the PBGC insurance fund.

13. PBGC has determined that termination of the Pension Plan is necessary to protect the interests of participants.

14. 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 when PBGC and the plan administrator have not agreed on a date of plan termination.

15. As of the filing of this Complaint, PBGC and the Pension Plan administrator have not agreed on a date of plan termination.

16. June 30, 2009, should be established as the date of the Pension Plan's termination pursuant to 29 U.S.C. § 1348(a)(4), because as of that date, the Pension Plan's participants received constructive notice of the Pension Plan termination, and they no longer had any justifiable expectations of the Pension Plan's continuation. Establishment of that date furthers the interests of PBGC by preventing an unreasonable increase in the liability of the PBGC insurance fund.

17. 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) provides that PBGC may request that it be appointed as trustee of a plan in any case.

18. The PBGC is ready, willing, and able to serve as the statutory trustee of the Pension Plan.

REQUEST FOR RELIEF

WHEREFORE, PBGC respectfully requests that this Court grant judgment for PBGC and issue an order granting the following relief:

1. Adjudicating that the Pension Plan is terminated pursuant to 29 U.S.C. § 1342(c);
2. Appointing PBGC statutory trustee of the Pension Plan pursuant to 29 U.S.C.

§ 1342(c);

3. Establishing June 30, 2009, as the termination date of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4);

4. Directing Neptune and any other person or entity having possession, custody or control of any records, assets or other property of the Pension Plan, to transfer, convey and deliver all such records, assets, and property to PBGC as statutory trustee upon request under 29 U.S.C. § 1342(d)(1); and

5. Granting such other relief as the Court deems just and proper.

Dated: August 7, 2014
Washington, D.C.

Respectfully submitted,

/s/ Thea D. Davis
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